

TIMOTHY M. KOTROCO

Attorney at Law
305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Tkotroco@gmail.com

gk
2010-0089A

February 9, 2017

Hand Delivered

Mr. Arnold E. Jablon, Director PAI
Department of Permits, Approvals and inspections
111 West Chesapeake Avenue, Rm 111
Towson, Maryland 21204

Re: Request for Spirit & Intent and Zoning Verification
812 Regester Avenue, Tax Acct No. 09015408131513
Map 0080, Grid 0018, Parcel 0129

Dear Director Jablon,

I am writing to you today on behalf of my client, Valstone Partners, who intends to purchase the above referenced property. (the "Property"). The Property is located on the corner of Regester Avenue and Sherwood Road, in the Idlewyld area of Baltimore County. There have been a series of zoning approvals regarding the uses of this property, all of which are attached to this letter. Specific reference is made to the most recently issued Spirit and Intent letter dated July 31, 2014 and signed by your office on August 7, 2014. The purpose of that July 31, 2014 letter was to confirm the use of the property as an Assisted Living Facility II as being within the Spirit and Intent of the existing zoning approvals on the Property.

The purpose of this letter is to make a similar request. A new purchaser of the Property, Valstone Partners, has entered into a contract to purchase the site. Valstone intends to use the property in the same manner (Assisted Living Facility II) as the prior owner and seeks the same approval that your office provided to the current owner of the Property.

To be specific as to our intended use, Valstone will be working with Memory Care Living, a care provider whose primary focus is upon individuals suffering from Alzheimer's and other forms of dementia. Memory Care operates many such Assisted Living Facilities in and around the New Jersey area and is looking to expand their operations into Maryland and in particular, this location at 812 Regester Avenue. Before finalizing the purchase of this property, Valstone is seeking assurances with respect to the use of this Property. In light of the prior zoning approvals, we hereby request, zoning verification and confirmation that the use of the property as an Assisted Living Facility II is within the Spirit and Intent of the prior zoning approvals on the property.

Mr. Arnold E. Jablon, Director

February 9, 2017

Page 2

The zoning history of the property is as follows. In 1945, the then owner of the Property sought and obtained a Special Permit from the Zoning Commissioner to continue using the existing structure to operate a convalescent or nursing home. (Case No. 454) The Property was used as a nursing home without interruption until 2005. In 2007, The First Mariner Bank took title to the Property and sold it to Charles Phelan in January 2008.

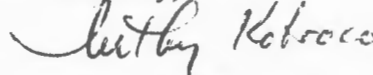
At that time, Section 432A.1.A.2 of the BCZR provided that an Assisted Living Facility II is only permitted by right in the DR zone when it is located on a principal arterial street. Therefore, in 2010, because the Property is not located on a principal arterial street, Mr. Phelan sought a zoning variance to allow an Assisted Living Facility II in Case No. 2010-0089-A. In exchange for support for his variance petition, Mr. Phelan entered into an Agreement with the Idlewylde Community Association, Inc. (the "Agreement"). The Agreement imposes a variety of restrictions on the proposed use and is binding on the parties' respective heirs, successors and assigns. On March 23, 2010 the Zoning Commissioner granted the variance petition to allow the Assisted Living Facility II to be located on a non-principal arterial street. The Zoning Commissioner's approval imposed a variety of conditions including the incorporation of the terms of that agreement.

The property was then sold on January 7, 2015 to Mr. Stephen Cromwell. Prior to the sale to Mr. Cromwell, your office issued the letter dated July 31, 2014 verifying and approving the use of the property as an Assisted Living Facility II.

In light of these facts, we respectfully request your verification and confirmation that the use of the Property for an Assisted Living Facility II under the prior zoning approvals is permitted to occur on the property. To assist you in your review, I have enclosed the following information; (1) the Order in Case No. 454; (2) the Zoning Commissioner's Order in Case No. 2010-0089-A; (3) the Agreement with Idlewylde and (4) your previously issued spirit and intent letter dated July 31, 2014 which approved this same request.

Thank you for your kind consideration of this matter.

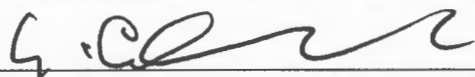
Sincerely,



Timothy M. Kotroco

Enclosures

SPIRIT AND INTENT AND ZONING VERIFICATION IS APPROVED:


Arnold E. Jablon, Director & Deputy Administrative Officer

2/9/17
DATE

WHITEFORD, TAYLOR & PRESTON L.L.P.

TIMOTHY M. KOTROCO
DIRECT LINE (410) 832-2004
DIRECT FAX (410) 339-4050
TKotroco@wtplaw.com

TOWSON COMMONS, SUITE 300
ONE WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5025
MAIN TELEPHONE (410) 832-2000
FACSIMILE (410) 832-2015

To: 3NP **File**
14-249

BALTIMORE, MD
BETHANY BEACH, DE*
BETHESDA, MD
COLUMBIA, MD
DEARBORN, MI
FALLS CHURCH, VA
LEXINGTON, KY
ROANOKE, VA
WASHINGTON, DC
WILMINGTON, DE*

WWW.WTPLAW.COM
(800) 987-8705

July 31, 2014

Via Hand Delivery

Mr. Arnold Jablon, Director
Baltimore County Department of Permits, Approvals & Inspections
111 W. Chesapeake Avenue, Room 111
Towson, MD 21204

Re: 812 Regester Avenue
9th Election District; 5th Councilman District
Request for Spirit & Intent Relief

Dear Mr. Jablon:

This office represents Stephen Cromwell, a prospective purchaser of the above-referenced property (the "Property"). The Property is located on Regester Avenue at the corner of Sherwood Road in the Idlewylde area of Baltimore County. The property is approximately 16,910 square feet in size and is zoned D.R. 5.5. It is currently improved with a one and two-story wood frame and stucco building that was originally constructed in 1926. Since 1926 there have been a series of zoning approvals on the Property, as further detailed in this letter. Our client is considering a purchase of the property, but is seeking assurances with respect to the permitted uses thereon. In light of the prior zoning approvals, we hereby request, on behalf of our client, confirmation that the use of the Property as an Assisted Living Facility II is within the spirit and intent of the existing approvals on the Property.

In 1945, the then owner of the Property sought and obtained a Special Permit from the Zoning Commissioner to continue using the existing structure to operate a convalescent or nursing home (Case No. 454). The Property was used as a nursing home without interruption until 2005. In 2007, First Mariner Bank took title to the Property and sold it to the current owner, Charles Phelan, in January 2008.

Section 432A.1.A.2 of the Baltimore County Zoning Regulations provides that Assisted Living Facility IIs are only permitted by right in the D.R. zone when located on a principal arterial street. In 2010, because the Property is not located on a principal arterial street, Mr. Phelan sought a zoning variance for an Assisted Living Facility II in Case No. 2010-0089-A. In exchange for support on his variance petition, Mr. Phelan entered into an Agreement with the Idlewylde Community Association, Inc. (the "Agreement"). The Agreement imposes a variety of restrictions on the proposed use and is binding on the parties' respective heirs, successors

Mr. Arnold Jablon, Director

July 31, 2014

Page 2

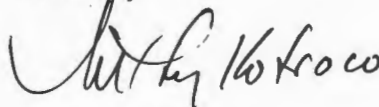
and assigns. On March 23, 2010, the Zoning Commissioner granted the variance petition to allow the Assisted Living Facility II to be located on a non-principal arterial street. The Zoning Commissioner's approval imposed a variety conditions including the incorporation of the terms of the Agreement.

After receiving this approval, Mr. Phelan spent a significant amount of time and money refurbishing both the interior and exterior of the structure on the Property, preparing it for the approved use. Unfortunately, after much effort, Mr. Phelan is unable to complete his work on the Property and commence the use of the permitted Assisted Living Facility II. Our client is seeking to purchase the Property and use it as an Assisted Living Facility II.

In light of these facts, we respectfully request your agreement that the use of the Property for an Assisted Living Facility II under the prior zoning approvals is permitted. To assist you in your review of our request, enclosed please find (1) the Order in Case No. 454, (2) the Zoning Commissioner's Order in Case No. 2010-0089-A and (3) the Agreement. In addition, also enclosed please find a \$100.00 check as payment to process this request.

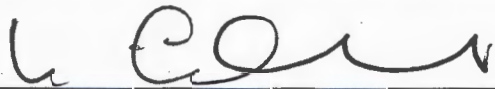
Thank you for your kind consideration of this matter.

Sincerely,



Timothy M. Kotroco

SPIRIT & INTENT REQUEST APPROVED:



Arnold Jablon, Esq.

Director

Baltimore County Department
of Permits, Approvals & Inspections

8/7/14

Date

TMK:adb

Attachments

cc: Stephen Cromwell

2103220

IN RE: PETITION FOR VARIANCE

NW corner Regester Avenue and
Sherwood Road
(812 Regester Avenue)
9th Election District
5th Council District

Charles Phelan
Petitioner

*

*

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*

*

BEFORE THE

ZONING COMMISSIONER

FOR

BALTIMORE COUNTY

Case No. 2010-0089-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter as originally filed came before the Zoning Commissioner for consideration of a Petition for Special Hearing filed Charles Phelan, the property owner, by and through his attorney, Sebastian Cross, Esquire of Gildea and Schmidt, LLC. Petitioner had requested special hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to confirm the approval granted by Special Permit in Case No. 454 that allowed a convalescent home/nursing home use and to affirm the characteristics of operations of convalescent/nursing homes at that time included those maintained by the modern equivalent of an Assisted Living Facility III, and to amend the previously approved Special Permit as determined to be necessary by the Zoning Commissioner. This Petition was scheduled for a public hearing on November 18, 2009 but postponed pursuant to a jointly filed Motion for Continuance by counsel representing the Petitioner and the Idlewylde Community Association. See Joint Exhibit 1. This Motion stated, in pertinent part, that Idlewylde Community initially opposed the Petition and the parties requested a continuance in order to negotiate a settlement of their differences. The Motion was granted and the hearing rescheduled for March 11, 2010.

ORDER RECEIVED FOR FILING

Date

3-23-10

By

Q3

At the outset of the second hearing, the parties presented an Agreement amending both the site plan presented and the relief requested from the Zoning Commissioner.¹ Pursuant to the Agreement, Petitioner withdrew the request for a special hearing in its entirety and amended the Petition to seek a Variance from Section 432A.1A.2 of the B.C.Z.R. to permit an Assisted Living Facility II limited to a maximum of 15 beds, to be located on a non-principal arterial street. The subject property and requested relief are more fully depicted on the amended site plan, which was marked and accepted into evidence as Petitioner's Exhibit 2.

Appearing at the hearing in support of the amended relief were the Petitioner, Charles Phelan, his relatives, Michael and Paul Phelan, and Bruce Doak, the land use consultant, who prepared the site plan for the Petitioner. Sebastian Cross, Esquire of Gildea and Schmidt, LLC appeared and represented the Phelan family. J. Carroll Holzer, Esquire appeared on behalf of the Idlewylde Community Association along with Paul Romney, its board member and Recording Secretary. Since the parties had entered into an Agreement prior to the public hearing, Mr. Romney and Mr. Holzer appeared as the authorized representatives on behalf of the community association. There were no Protestants or other interested persons in attendance at the public hearing.

The testimony and evidence offered revealed that the subject property is an irregular shaped parcel containing approximately 16,910 square feet of land zoned D.R.5.5. The property is located on Regester Avenue at the corner of Sherwood Road in the Idlewylde area of Baltimore County. Petitioner submitted two (2) aerial photographs revealing the precise location of the subject property. The photographs were marked and accepted into evidence as Petitioner's

¹ The copy of the Agreement that was presented at the public hearing contained a clerical error. Accordingly, the parties signed the signature page of the Agreement at the public hearing and submitted a corrected version following the conclusion of the hearing. The corrected Agreement contained in the case file marked as Petitioner's Exhibit 6 was delivered to the Zoning Commissioner on the afternoon of March 11, the same date at the public hearing.

Exhibits 4 and 5. The property is improved with a one and two-story wood frame and stucco building that was originally constructed in 1926. In 1945, the prior property owner sought and obtained a Special Permit from the Zoning Commissioner to continue using the existing structure to operate a convalescent or nursing home. A copy of the prior Order was marked and accepted into evidence as Petitioner's Exhibit 3. Testimony revealed that the property was used as a nursing home without incident until 2005. In 2007, First Mariner Bank took title to the property and sold it to Mr. Phelan in January 2008.

After purchasing the property, Mr. Phelan maintained the historic footprint of the existing building and spent a significant amount of money refurbishing both the interior and exterior of the structure. Petitioner was careful to preserve the historic value of the building while updating the facility to accompany a planned assisted living facility. While the property was used as a nursing home for over seventy years, Petitioner is now required to seek a variance for an Assisted Living Facility II because this use is only permitted as of right when located on an arterial road. B.C.Z.R. Section 101 defines an arterial street as:

"A motorway or portion thereof which: is or is intended for travel to or from major employment centers, such as town centers; has or is intended to have, four or more lanes for moving traffic; is or is intended to be designed for traffic speeds of at least 40 miles per hour; has or is intended to have a right-of-way at least 66 feet wide; is not a freeway or an expressway; and has been designated as an arterial street (or as a boulevard or thoroughfare) by the Planning Board."

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The Office of Planning and Department of Environmental Protection and Resource Management (DEPRM) offered no objection to the requested relief. The Office of People's Counsel submitted a letter, dated October 14, 2009, that will be explained in greater detail below.

As previously stated, Petitioner initially filed for a special hearing essentially requesting authority to continue and expand upon the relief obtained by the prior owner in the zoning case from the year 1945. However, after the proposal was opposed by the Idlewylde Community Association and the Office of People's Counsel, Petitioner agreed to withdraw the request for special hearing, reduce the scope of the facility from a Class III to a Class II and submit a variance petition. The Agreement submitted at the public hearing also contains a number of limiting conditions that satisfy the needs of the Idlewylde community. For the following reasons, I find that the amended petition for variance is appropriate.

As People's Counsel aptly points out in his October 14, 2009 correspondence, the relief requested in the initial petition for special hearing should have been denied for two (2) reasons. First, the relief obtained in the 1945 Order, a "special permit", is similar to the term "nonconforming use" as defined under the current iteration of the B.C.Z.R. Since the parties agreed at the public hearing that the use permitted under the 1945 Order was discontinued in 2005, the special permit/nonconforming use was terminated pursuant to Section 104.1 of the B.C.Z.R. Indeed, the Court of Appeals of Maryland has repeatedly held that nonconforming uses are not favored under Maryland law. *See, Prince George's County v. E.L. Gardner*, 293 Md. 259 (1982); *Purich v. Draper Properties*, 395 Md. 694 (2006).

Second, the 1945 Order permitted the prior owner to use the subject property as a "convalescent or nursing home" and the initial petition for special hearing requested authority to operate an "assisted living facility" on the property. While these terms appear similar, and are interchangeable in everyday language, they are separately regulated under the B.C.Z.R. Convalescent homes are permitted by special exception in D.R. zones without regard to density, and assisted living facilities are regulated and separated into three (3) categories by Section 432A

of the B.C.Z.R. Accordingly, the special hearing request to turn a nursing home into an assisted living facility could have been construed as a change in use, which is not permitted for a nonconforming use under Maryland law.

While the initial petition for special hearing would likely not have been granted, considering all of the evidence presented on the supplemental petition, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure. This property was used as a nursing home without incident for over seventy years. While the nonconforming use was technically terminated in 2005, Petitioner is proposing to use this property as an assisted living facility, which should similarly operate without incident in the future. I find that preventing the proposed facility solely due to its location on Regester Avenue where a similar facility operated for decades would cause the Petitioner to suffer practical difficulty and undue hardship. Petitioner is not requesting a variance from any area or height restrictions and is only seeking to continue using the structure in the same or similar manner in which it was used for over seventy years. Given that the Phelan family has maintained the historic value of the property and spent a significant amount of time and money renovating the structure for the purpose of operating an Assisted Living Facility in the future, denial would unnecessarily burden the Petitioner.

I further find that the variance can be granted in strict harmony with the spirit and intent of the regulations and in such a manner as to grant relief without injury to the public health, safety and general welfare. Most importantly, the Petitioner took the time to work with the Idlewylde Community Association to form an Agreement that permits the proposed facility to function while providing a number of limitations that meet the needs of the surrounding community. The agreement alleviates concerns regarding issues such as traffic, parking, and

aesthetics. While the terms of the Agreement are incorporated in the site plan presented at the public hearing, the Agreement is also attached hereto and expressly incorporated herein. Since the Agreement meets the needs of all parties,² I find that the variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R., as construed in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's variance request should be granted.

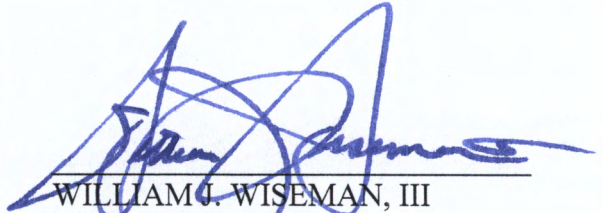
THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 23rd day of March, 2010, that the Petition for Variance seeking relief from Section 432A.1A.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an Assisted Living Facility II to be located on a non-principal arterial street that is limited to a maximum of 15 beds, in accordance with Petitioner's Exhibit 2 (amended site plan), be and is hereby GRANTED, subject to:

1. Petitioner may apply for any required permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.
2. The terms of the Agreement attached hereto are expressly incorporated as conditions precedent to the relief granted herein and state in pertinent part:
 - a. Petitioner agrees to eliminate the parking spot closest to Sherwood Road to reduce the number of on-site parking spaces to ten (10).
 - b. Petitioner will remove the existing wood frame shed.

² Mr. Holzer proffered at the public hearing that the Office of People's Counsel has reviewed the Agreement and does not oppose the variance request as long as the terms of the Agreement are incorporated as conditions of the approval.

- c. Petitioner will relocate the dumpster to the area indicated on the site plan as "Dumpster Enclosure." Depending on the timing of trash pickup and haul away, the parties agree that this may reduce the number of available onsite parking spaces from ten (10) to nine (9).
- d. The handicapped ramp will be removed and replaced with landscaping as shown on the site plan.
- e. The fire escapes must be removed pursuant to the Baltimore County Fire Code.
- f. Residents of the assisted living facility are prohibited from keeping and storing automobiles on the site or any adjacent street.
- g. Employees and visitors of the facility are prohibited from parking on adjacent streets.
- h. Delivery and trash pick-up will be limited to weekdays between the hours of 9:00 A.M. and 5:00 P.M.
- i. The operators of the facility agree to meet with the Board of Directors of the Idlewylde Community Association on an as needed basis to facilitate resolution of any additional Community concerns that may arise.

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


 WILLIAM J. WISEMAN, III
 Zoning Commissioner
 for Baltimore County

WJW:dlw

ORDER RECEIVED FOR FILING

Date 3-23-10

By 102

AGREEMENT

THIS AGREEMENT (the "Agreement") made this 11 day of March, 2010, by and between, CHARLES PHELAN, individually ("Phelan"), and IDLEWYLDE COMMUNITY ASSOCIATION, INC., a Maryland corporation (the "Community").

WHEREAS, Phelan is the owner of certain real property in Baltimore County, Maryland with an address of 812 Regester Avenue (the "Property"), and has applied for Special Hearing relief from the Zoning Commissioner of Baltimore County to confirm the Class III Assisted Living Facility is a proper and permitted use;

WHEREAS, the Property exists within the stated boundaries of the Community, who has been opposed to the proposed Class III Assisted Living Facility;

WHEREAS, Phelan has met with the Community and agreed to modify certain aspects of the Class III Assisted Living Facility in exchange for the Community's support of the requested relief; and

NOW, THEREFORE, THIS AGREEMENT, WITNESSETH, that for the mutual promises contained herein, Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals. The Recitals to this Agreement are to be considered as part of this Agreement and are thus incorporated by reference herein.

2. Amendments to the Plan Before the Zoning Commissioner. Attached hereto and made a part hereof is a copy of the amended site plan, which Phelan hereby agrees to submit to the Zoning Commissioner for approval as part of its Special Hearing relief (the "Site Plan"). The Site Plan, which details certain restrictions of the operation of the Assisted Living Facility agreed to by the parties. These agreed upon restrictions include:

(a) The elimination of the parking spot closest to Sherwood Road, leaving ten (10) parking spaces in lieu of the previously proposed eleven (11).

(b) The removal of the existing wood frame shed.

(c) Relocation of the dumpster to the area indicated on the Site Plan as "Dumpster Enclosure"; and

(d) Removal of the handicapped ramp and replacement of such with landscaping as shown on the Site Plan.

3. Additional Restrictions. In addition to the restrictions agreed to and depicted on the Site Plan, Phelan hereby agrees to (i) amend the zoning relief requested to seek a "variance from Section 432A.1.A.2 to permit an Assisted Living Facility II on a non-principal arterial street to be limited to a maximum of 15 beds"; (ii) to remove the previously shown fire escapes pursuant to the Baltimore County Fire Code; (iii) prohibit residents from keeping and storing automobiles

PETITIONER'S

EXHIBIT NO. 6

ORDER RECEIVED FOR FILING

Date

3-23-10

By

on the site or any adjacent street; (iv) to prohibit parking of employees or visitors of the facility on adjacent streets; (v) to limit delivery hours and trash pick-up to the week days between the hours of 9:00 a.m. and 5:00 p.m.; and (vi) for the operators of the assisted living facility to meet with the Community's Board of Directors on an as needed basis to facilitate resolution of additional Community concerns that may arise.

4. Community Support. The Community hereby agrees to attend any necessary zoning hearing before the Zoning Commissioner, and, if necessary any hearing based on an appeal thereof, to express its full support for the necessary zoning relief. Such support shall not be further conditioned or reserved even if any individual members of the Community continue to oppose the requested relief.

5. Further Assurances. The parties hereto agree that they will cooperate in good faith with each other and will execute and deliver, or cause to be delivered, all such other instruments, and will take all such other actions, as either party hereto may reasonably request from time to time in order to effectuate the provisions hereof.

6. Binding on Parties Successors. This Agreement shall be irrevocably binding upon the parties, their respective heirs, successors and assigns, and the parties and their respective heirs, successors and/or assigns shall execute such other supplemental Agreements, deeds, or other writings as may be necessary or advisable to carry out the full intent and meaning of this Agreement.

7. Cancellation, Modification or Waiver. If the parties agree to change any provision of this Agreement, such modifications shall be in writing and signed, sealed as appropriate, and acknowledged by the parties hereto. The failure of any party to insist upon strict performance of any provision of this Agreement shall not constitute a cancellation, modification or waiver of the same.

8. Enforcement. Each party shall have the right to enforce, by any proceeding at law or in equity, all Agreements, restrictions, conditions, covenants, reservations and easements now or hereafter imposed by the provisions of this Agreement.

9. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid under the laws of Maryland, such invalidity shall not invalidate the entire Agreement, but, in such event, this Agreement shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the parties shall be construed and enforced accordingly.

10. Headings. Any headings preceding the text of any of the paragraphs in this Agreement are inserted solely for convenience of reference and do not constitute a part of the Agreement, nor shall they affect the meaning, construction or effect of any of the paragraphs of the Agreement.

11. Complete Understanding. This Agreement represents the complete understanding between the parties as to the subject matter hereof, and supersede all prior negotiations, representations, warranties, promises, statements or Agreements, either written or oral, between the parties hereto as to the same.

12. Applicable law. All questions concerning the construction, validity and interpretation of this Agreement and the performance of the obligations imposed hereby shall be governed by the laws of the State of Maryland.

[SIGNATURES ON FOLLOWING PAGES]

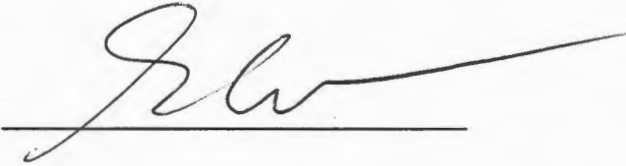
ORDER RECEIVED FOR FILING

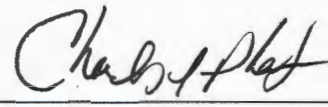
Date 3-23-10

By [Signature]

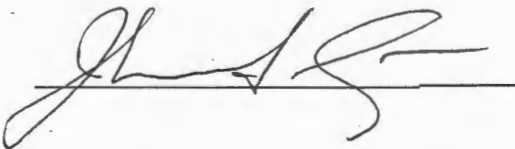
WITNESS, the hands and seals of the parties this day and year first above written.

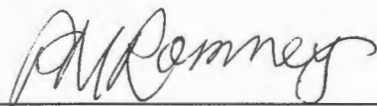
WITNESS:




Charles Phelan

IDLEWYLDE COMMUNITY ASSOCIATION
INC.
a Maryland corporation



By: 
Name:
Title: ~~President~~ Recording Secretary

ORDER RECEIVED FOR FILING

Date 3-23-10

By DJ



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

March 23, 2010

Sebastian A. Cross, Esquire
Gildea & Schmidt, LLC
600 Washington Avenue, Ste. 200
Towson, MD 21204

RE: PETITION FOR VARIANCE
NW corner Regester Avenue and Sherwood Road
(812 Regester Avenue)
9th Election District - 5th Council District
Charles Phelan - *Petitioner*
Case No. 2010-0089-A

Dear Mr. Cross:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "W. J. Wiseman, III", written over a large, stylized circular flourish.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure

c: Charles Phelan, 3016 Edgewood Avenue, Baltimore, MD 21234
Michael and Paul Phelan, 20809 Slab Bridge Road, Freeland, MD 21053
Bruce E. Doak, Gerhold, Cross & Etzel, 320 East Towsontown Boulevard,
Towson, MD 21286
J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286
Paul Romney, 6903 Banbury Road, Baltimore, MD 21239
Cynthia Jabs, 6605 Sherwood, Baltimore, MD 21239
Elena M. Basignani-Mentzer, 6509 Sharon Road, Baltimore, MD 21239
Vicky A. Vanik, 808 Regester Avenue, Baltimore, MD 21239
People's Counsel; File



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

February 19, 2010

Sebastian A. Cross, Esquire
Gildea & Schmidt, LLC
600 Washington Avenue, Ste. 200
Towson, MD 21204

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

RE: **Petition for Special Hearing**
N/W Corner Regester Ave. & Sherwood Road
9th Election District – 5th Council District
(812 Regester Avenue)
Charles Phelan - Petitioner
Case No. 2010-0089-SPH

Dear Counsel:

This letter is to confirm that counsel have agreed that the above-captioned matter be rescheduled for continuance on Thursday, March 11, 2010, at 10:00 A.M., in Room 106, of the County Office Building, 111 West Chesapeake Avenue, Towson, Maryland, 21204.

Should anyone have any questions on the subject, please do not hesitate to call me.

Very truly yours,

A handwritten signature in black ink, appearing to read "William J. Wiseman III", written over a horizontal line.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: Paul Romney, 6903 Banbury Road, Baltimore, MD 21239
Cynthia Jabs, 6605 Sherwood, Baltimore, MD 21239
Elena M. Basignani-Mentzer, 6509 Sharon Road, Baltimore, MD 21239
Vicky A. Vanik, 808 Regester Avenue, Baltimore, MD 21239
People's Counsel; Kristen Matthews, DPDM; File

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Kristen Matthews, DPDM
File

DATE: November 18, 2009

FROM: William J. Wiseman, III
Zoning Commissioner

SUBJECT: Petition for Special Hearing
N/W Corner Regester Ave. & Sherwood Road
9th Election District – 5th Council District
(812 Regester Avenue)
Charles Phelan - Petitioner
Case No. 2010-0089-SPH

The purpose of this memo is to let you know that the above case scheduled for a hearing on November 18, 2009 has been continued. Counsel for the Petitioner (Sebastian Cross) and Protestants (J. Carroll Holzer) filed a Joint Motion for a Continuance and will be contacting you to reschedule the matter before me in the not too distant future. The property will be reposted to give public notice that the Petition is being amended to request an "Assisted Living Facility – Class II" in a D.R. Zone that is not on a principal arterial street.

The file will remain in the Zoning Commissioner's Office in the event anyone is interested in reviewing it. Counsel for both sides are continuing efforts to negotiate a settlement of their differences. Once you advise of a new date, my office will give notice to the parties who attended the hearing on Wednesday, November 18, 2009 at 11:00 AM.

Please do not hesitate to call if you or the Office of Zoning Review (John Lewis who took in the Petition) have any questions.

WJW:dlw



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at: 812 Regester Avenue

which is presently zoned: DR 5.5

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

BCZR Section 432A.1.A.2 to allow an Assisted Living Facility ^{II} to be located on a non-principal arterial street.

II

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

TO BE PRESENTED AT HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Sebastian A. Cross

Name - Type or Print

Signature

Gildea & Schmidt, LLC

Company

600 Washington Avenue, Suite 200

(410) 821-00

Address

Towson

Maryland

Telephone No.

21204

City

State

Zip Code

Legal Owner(s):

Charles Pheian

Name - Type or Print

Signature

Name - Type or Print

Signature

812 Regester Avenue

Address

Baltimore

MD

State

Telephone No.

21229-1345

Zip Code

Representative to be Contacted:

Sebastian A. Cross

Name

600 Washington Avenue, Suite 200

410-821-0070

Address

Towson

Maryland

Telephone No.

21204

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

Case No.

UNAVAILABLE FOR HEARING

Reviewed By

Date

REV 9/15/98

ORDER RECEIVED FOR FILING

Date

By

Amended Pet.



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 812 Regester Avenue

which is presently zoned DR 5.5

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

See Attached

Property is to be posted and advertised as prescribed by the zoning regulations.

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Sebastian A. Cross

Name - Type or Print

Signature

Gildea & Schmidt, LLC

Company

600 Washington Avenue, Suite 200

(410) 821-0070

Address

Telephone No.

Towson

MD

21204

City

State

Zip Code

Legal Owner(s):

Charles Phelan

Name - Type or Print

Signature

Name - Type or Print

Signature

812 Regester Ave

Address

Baltimore

MD

21239-1345

State

Zip Code

Representative to be Contacted:

Sebastian A. Cross

Name

600 Washington Avenue, Suite 200

(410) 821-0070

Address

Telephone No.

Towson

MD

21204

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

1 HR

UNAVAILABLE FOR HEARING

-

Case No.

2010 0089 SPH

Reviewed By

JK

Date

9/10/09

**ATTACHMENT TO PETITION FOR
SPECIAL HEARING**
812 REGISTER AVENUE

- 1) To confirm the approval granted by Special Permit (Special ~~Exception~~) in Case No. 454 allowed a convalescent home/ nursing home use and to affirm the characteristics of operations of convalescent/ nursing homes at that time included those maintained by the modern equivalent of a Assisted Living Facility III;
- 2) To amend the previously approved Special Permit (Special ~~Exception~~) as determined as necessary by Zoning Commissioner; and
- 3) For such other and further relief as may be determined necessary by the Zoning Commissioner.



0401540813
26624/359
G.D. [initials]

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 812 REGISTER AVE
which is presently zoned DR S.5

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

Property is to be posted and advertised as prescribed by the zoning regulations.

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address

Telephone No.

City

State

Zip Code

Legal Owner(s):

CHARLES PHELAN
Name - Type or Print

Signature

Name - Type or Print

Signature

812 REGISTER AVE

Address

Telephone No.

BALTIMORE, MD 21239

City

State

Zip Code

Representative to be Contacted:

BRUCE DOAK

c/o GERHOLD, CROSS & ETZEL

Name

320 E. TOWSONTOWN BLVD SUITE 100

Address

Telephone No.

TOWSON MD 21286

City

State

Zip Code

410-823-4470

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. 2008-0448-SAPA

Reviewed By D.T. Date 3/26/08

SPECIAL HEARING REQUESTED

812 REGESTER AVENUE

TO AMEND THE PREVIOUSLY GRANTED SPECIAL EXCEPTION #454 FOR A NURSING HOME TO NOW ALLOW THE ISSUANCE OF A USE PERMIT FOR AN ASSISTED-LIVING FACILITY III PER SECTION 432A.A.3 OR THE B.C.Z.R.

TO ALLOW THE EXISTING PARKING TO REMAIN AS IT WAS WHEN THE ORIGINAL CASE #454 WAS APPROVED BECAUSE ALTERING IT WOULD CREATE AN UNDUE HARDSHIP.

2008-0448-SPHA



Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

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

1089

May 4, 2009

**ZONING DESCRIPTION
PHELAN PROPERTY
812 Register Avenue
Baltimore County, Maryland**

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

Beginning for the same at a point on the North West corner of Sherwood Road and Register Avenue, running thence along the north side of Register Avenue,

- 1) North 72°18'00" West 90.00 feet,
- 2) North 03°41'00" East 167.15 feet,
- 3) South 86°19'00" East 105.72 feet,
- 4) South 09°00'00" West 189.00 feet to the point of beginning

Containing 16,910 square feet of land, more or less.

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



**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: 2010-0089-SPH
Petitioner: Charles Phelan
Address or Location: 812 Regester Ave

PLEASE FORWARD ADVERTISING BILL TO:

Name: G. Iden + Schmidt LLC
Address: 600 Washington Ave, Suite 209
Towson MD 21204
Telephone Number: 410 821-0070

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

No. 0089

Date: 7/14/17

Fund	Dept	Unit	Sub Unit	Rev	Sub	Dept	Obj	BS Acct	Amount
				Source/	Rev/				
001	806	0000		6150					325.00

Total: 325.00

Rec
From:

For:

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

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: #2010-0089-SPH

812 Regester Avenue

N/west corner of Regester Avenue and Sherwood Road

9th Election District - 5th Councilmanic District

Legal Owner(s): Charles Phelan

Special Hearing: to confirm the approval granted by Special Permit (Special Exception) in Case No. 454 allowed a convalescent/nursing home use and to affirm the characteristics of operations of convalescent/nursing homes at that time included those maintained by the modern equivalent of an assisted living facility III; to amend the previously approved Special Permit (Special Exception) as determined as necessary by the Zoning Commissioner and for such other and further relief as may be deemed necessary by the Zoning Commissioner.

Hearing: Wednesday, November 18, 2009 at 11:00 a.m.
in Room 104, Jefferson Building, 105 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/11/640 Nov. 3

220184

CERTIFICATE OF PUBLICATION

11/5/, 2009

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 11/3/, 2009.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: 2010-0089-SPH

Petitioner/Developer: __

Charles Phelan.

Date of Hearing/closing: November 18, 2009

**Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204**

Attn; Kristin Matthews;

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at, _____
812 Regester Avenue

The sign(s) were posted on Nov 3 2009
(Month, Day, Year)

Sincerely,

Robert Black Nov 6, 2009

(Signature of Sign Poster) (Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)

ZONING NOTICE

CASE # 2010-0089-SPH

**A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD**

Room 104, JEFFERSON BUILDING
PLACE: 105 WEST CHESAPEAKE AVE. TOWSON 21204

DATE AND TIME: WEDNESDAY, NOVEMBER 18, 2009 AT 11:00 ^{A.M.}

REQUEST: SPECIAL HEARING TO CONFIRM THE APPROVAL GRANTED

BY SPECIAL PERMIT (SPECIAL EXCEPTION) IN CASE NO. 454 ALLOWED A
CONVALESCENT/NURSING HOME USE AND TO AFFIRM THE CHARACTER-
ISTICS OF OPERATIONS OF CONVALESCENT/NURSING HOME USE AND
TO AFFIRM THE CHARACTERISTICS OF OPERATIONS OF CONVALESCENT/NURSING HOMES
AT THAT TIME INCLUDED THOSE MAINTAINED BY THE MODERN EQUIVALENT OF A
ASSISTED LIVING FACILITY IN, TO AMEND THE PREVIOUSLY APPROVED SPECIAL PERMIT
(SPECIAL EXCEPTION) AS DETERMINED AS NECESSARY BY THE ZONING
COMMISSIONER AND FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE
DEEMED NECESSARY BY THE ZONING COMMISSIONER.

DISPENSATIONS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 807-1391

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING, UNDER PENALTY OF LAW
HANDICAPPED ACCESSIBLE

BW 3/11
10 am

+ CERTIFICATE OF POSTING

2010-0089-A

RE: Case No.: _____

Petitioner/Developer: _____

Charles Phelan

March 11, 2010

Date of Hearing/Closing: _____

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Attn: Kristin Matthews

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: _____
812 Register Avenue

February 24 2010

The sign(s) were posted on _____
(Month, Day, Year)

Sincerely,

Robert Black 2/26/10

(Signature of Sign Poster) (Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)

ZONING NOTICE

CASE # 2010-0089-A

**A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD**

PLACE: Room 104, JEFFERSON BUILDING 21204
105 WEST CHESAPEAKE AVE. TOWSON

DATE AND TIME: THURSDAY, MARCH 11, 2010 AT 10:00^{A.M.}

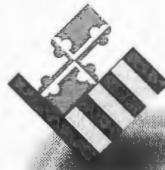
REQUEST: VARIANCE FROM SECTION 432-A.1.A.2 TO PERMIT

AN ASSISTED LIVING FACILITY III ON A NON-PRINCIPAL ARTERIAL STREET TO BE LIMITED TO A MAXIMUM OF 15 BEDS.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING, UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE



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

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: 2010-0089-SPH

812 Regester Avenue
N/west corner of Regester Avenue and Sherwood Road
9th Election District – 5th Councilmanic District
Legal Owners: Charles Phelan

Special Hearing to confirm the approval granted by Special Permit (Special Exception) in Case No. 454 allowed a convalescent/nursing home use and to affirm the characteristics of operations of convalescent/nursing homes at that time included those maintained by the modern equivalent of a assisted living facility III; to amend the previously approved Special Permit (Special Exception) as determined as necessary by the Zoning Commissioner and for such other and further relief as may be deemed necessary by the Zoning Commissioner.

Hearing: Wednesday, November 18, 2009 at 11:00 a.m. in Room 104, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in black ink that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

C: Sebastian Cross, Gildea & Schmidt, 600 Washington Ave., Ste. 200, Towson 21204
Charles Phelan, 812 Regester Avenue, Baltimore 21239

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, NOVEMBER 3, 2009.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, November 3, 2009 Issue - Jeffersonian

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

410-821-0070

NOTICE OF ZONING HEARING

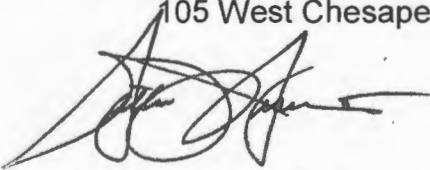
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2010-0089-SPH

812 Regester Avenue
N/west corner of Regester Avenue and Sherwood Road
9th Election District – 5th Councilmanic District
Legal Owners: Charles Phelan

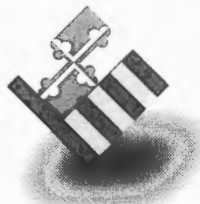
Special Hearing to confirm the approval granted by Special Permit (Special Exception) in Case No. 454 allowed a convalescent/nursing home use and to affirm the characteristics of operations of convalescent/nursing homes at that time included those maintained by the modern equivalent of a assisted living facility III; to amend the previously approved Special Permit (Special Exception) as determined as necessary by the Zoning Commissioner and for such other and further relief as may be deemed necessary by the Zoning Commissioner.

Hearing: Wednesday, November 18, 2009 at 11:00 a.m. in Room 104, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

November 12, 2009

Sebastian A. Cross
Gildea & Schmidt, LLC
600 Washington Ave. Ste. 200
Towson, MD 21204

Dear: Sebastian A. Cross

RE: Case Number 2010-0089-SPH, 812 Regester Ave.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on September 10, 2009. 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:lnw

Enclosures

c: People's Counsel
Charles Phelan; 812 Regester Ave.; Baltimore, MD 21239-1345

BW 3/11
10am

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



RECEIVED

MAR 08 2010

ZONING COMMISSIONER

TO: Timothy M. Kotroco
FROM: Dave Lykens, DEPRM - Development Coordination
DATE: November 3, 2009
SUBJECT: Zoning Item # 10-089-A
Address 812 Regester Avenue
(Phelan Property)

Zoning Advisory Committee Meeting of September 21, 2009

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

Reviewer: JWL

Date: 11/3/09

BW 11/18
2pm

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: October 21, 2009

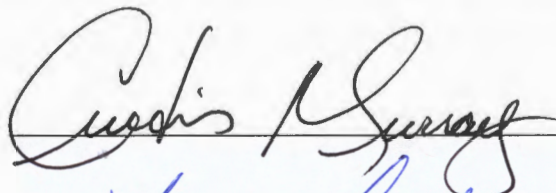
FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): **Case(s) 10-097- Variance**

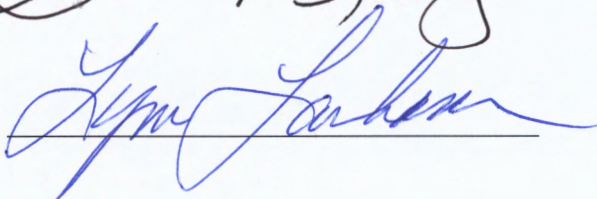
The Office of Planning has reviewed the above referenced case(s) and upon visiting the site has learned that the structure is already built. There are no further comments this Office has to offer.

For further questions or additional information concerning the matters stated herein, please contact Dennis Wertz in the Office of Planning at 410-887-3480.

Prepared By:



Division Chief:
CM/LL



RECEIVED

OCT 26 2009

ZONING COMMISSIONER

BW
11-18-09**BALTIMORE COUNTY, MARYLAND****Inter-Office Correspondence****RECEIVED****NOV 04 2009****ZONING COMMISSIONER**

TO: Timothy M. Kotroco

FROM: Dave Lykens, DEPRM - Development Coordination

DATE: November 3, 2009

SUBJECT: Zoning Item # 10-089-A
Address 812 Regester Avenue
(Phelan Property)

Zoning Advisory Committee Meeting of September 21, 2009

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

Reviewer: JWL

Date: 11/3/09

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

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

FROM: Dennis A. Kennedy^{DAK}, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For October 5, 2009
Item Nos. 10-087, 088, 089, 090,
091, 092, 093, 095 and 096

DATE: September 25, 2009

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

DAK:CEN:kmt

cc: File

G:\DevPlanRev\ZAC -No Comments\ZAC-10052009 -NO COMMENTS.doc

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor



MARYLAND DEPARTMENT OF TRANSPORTATION

Beverley K. Swaim-Staley, Secretary
Neil J. Pedersen, Administrator

Date: SEPT. 29, 2009

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

RE: Baltimore County
Item No. 2010-0089-SPH
812 REGESETER AVE
PHILAN PROPERTY
SPECIAL HEARING -

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 2010-0089-SPH.

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-5593 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,

A handwritten signature in dark ink, appearing to read "Michael P. Bailey", is written over the typed name of Steven D. Foster.

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.sha.maryland.gov



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

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

October 2, 2009

ATTENTION: Zoning Review Planners

Distribution Meeting Of: September 21. 2009

Item Numbers 0089

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

3. The site shall be made to comply with all applicable parts of the Baltimore County Fire Prevention Code prior to occupancy or beginning of operation.

Lieutenant Roland P Bosley Jr.
Fire Marshal's Office
410-887-4881 (C) 443-829-2946
MS-1102F

cc: File

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
812 Regester Avenue; NW corner Regester * ZONING COMMISSIONER
Avenue & Sherwood Road *
9th Election & 5th Councilmanic Districts * FOR
Legal Owner(s): Charles Phelan *
Petitioner(s) * BALTIMORE COUNTY
* 10-089-SPH

* * * * *

ENTRY OF APPEARANCE

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

RECEIVED

SEP 30 2009

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 Sebastian A. Cross, Esquire, Gildea & Schmidt LLC, 600 Washington Avenue, Suite 200, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

From: Debra Wiley
To: jcholzer@cavtel.net
Date: 2/19/2010 1:09 PM
Subject: Fwd: Ltr.2010-0089-SPH(continuance).doc
Attachments: Ltr.2010-0089-SPH(continuance).doc

*Resent to
updated
email*

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

ret'd see email

From: Debra Wiley
To: jcholzer@bcpl.net; scross@gildeallc.com
CC: Matthews, Kristen
Date: 2/19/2010 1:02 PM
Subject: Ltr.2010-0089-SPH(continuance).doc
Attachments: Ltr.2010-0089-SPH(continuance).doc

Counsel,

Please find attached the confirmation letter (hard copy in mail today) for the continuance of Case No. 2010-0089-SPH. Per Bill, please note that if the relief changes, the property should be reposted by or on behalf of Charles Phelan.

Thanks.

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

October 14, 2009

William J. Wiseman, III, Zoning Commissioner
Thomas H. Bostwick, Deputy Zoning Commissioner
County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

RECEIVED

OCT 14 2009

ZONING COMMISSIONER

Re: Charles Phelan, Petitioner
812 Regester Avenue
Case No: 10-89-SPH (Previous case, 08-448-SPHA)

Dear Mr. Wiseman:

Pursuant to our office's charter responsibility to defend the comprehensive zoning maps, we again express our interest in the zoning issues arising at 812 Regester Avenue.

The present case involves a petition for special hearing:

"... to confirm the approval granted by Special Permit (Special Exception) in Case No. 454 allowed a convalescent home/nursing home use and to affirm the characteristics of operations of convalescent/nursing homes at that time included those maintained by the modern equivalent of a Assisted Living Facility III."

The petition also requests an amendment to the previously approved special permit (special exception) "as determined as necessary"

This case is a sequel to Charles Phelan's March 26, 2008 petitions in Case No. 08-448-SPHA relating to the same property. That case included the enclosed petition for special hearing "to amend the [same] previously granted special exception #454 for a nursing home to now allow the issuance of a use permit for a an assisted-living facility III per section 432A.A.3 [sic] or the BCZR." Class III. There was also a request to allow the existing parking to remain and a petition (enclosed) for a variance to allow 11 spaces instead of the required 14.

The 1945 approval was actually a special permit to recognize a nonconforming nursing home use. It was not a special exception. The present petition apparently seeks to stretch

nonconforming use law to allow an Assisted Living Facility, Class III, under the umbrella of the approved nonconforming nursing home use for the Armacost Nursing Home. As was the situation with the 2008 petitions, the present petition does not stand up to legal scrutiny.

In the earlier case, we wrote the enclosed letter dated April 28, 2008 to explain in detail why, as a matter of law, the petitions must be denied. An Assisted Living Facility, Class III, is simply not a permitted use in the D.R. 5.5 Zone. BCZR § 432A.1.A.3.

Petitioner thereupon requested a postponement of the case, and ultimately did not pursue it. Following my enclosed letter dated June 4, 2009, Deputy Zoning Commissioner Thomas H. Bostwick issued on July 10, 2009 the enclosed order dismissing the case for lack of prosecution, without prejudice.

The present petition seeks to avoid the problems we identified in the earlier case. But it cannot do so. Here are the reasons.

A nonconforming nursing home use does not allow or cover the distinct use of an assisted living facility. The County Council has established separate definitions in BCZR § 101 for nursing homes (convalescent homes) and assisted living facilities (three classes), each with different characteristics. There is no basis to blur, commingle, or merge the nursing home and assisted living facility uses.

In residential zones, nursing homes (under the rubric of convalescent homes) are permitted by special exception in all D.R. zones, without regard to density. There is a separate special regulation for assisted living facilities, BCZR § 432A. In conjunction with the BCZR § 101 definition, it describes three classes of assisted living facilities and allocates or regulates them according to type of residential zone, structure, density (number of residents), parking, and compatibility. In sum, the establishment of an assisted living facility on a property with a legal nonconforming nursing home use would be a change in use. This is not allowed under BCZR § 104.1 and is contrary to the purpose of Maryland law to eliminate nonconforming uses. Prince George's County v. E.L. Gardner 293 Md. 259 (1982); Purich v. Draper Properties 395 Md. 694 (2006).

Among other things, if the proposed Assisted Living Facility is approved as a reincarnation of the Armacost Nursing Home, then there could not properly be any limit as to density. As stated, the zoning regulations place no limit on the density of nursing home uses. So, an approval here would effectively allow, either now or in the future, an assisted living facility with an indefinite number of residents.

Moreover, it is undisputed that the nursing home at 812 Regester Avenue was abandoned or discontinued several years ago, more than the one-year period for termination under BCZR § 104.1. See Canada's Tavern v. Town of Glen Echo 260 Md. 6 (1970). The office of planning correspondence of May 6, 2008 in Case 08-448-SPH described the nursing home use as "recently abandoned." The enclosed SDAT data reflects that Petitioner acquired the property

William J. Wiseman, III, Zoning Commissioner
Thomas H. Bostwick, Deputy Zoning Commissioner
October 14, 2009
Page 3

from First Mariner Bank on January 30, 2008. The record indicates that the bank had acquired title in September 2007.

We then reviewed the Towson Times archives. Various articles going back to 2006 indicate that the Armacost Nursing Home became vacant in 2005, that First Mariner Bank made various efforts to sell the property, and that Petitioner ultimately purchased the property in 2007.

Under these circumstances, the nonconforming use has terminated. In any event, an assisted living facility use would be a change in use, and therefore not permitted. This leaves only the question of whether an Assisted Living Facility, Class III, is a permitted use in the D.R. 5.5 Zone. It is not.

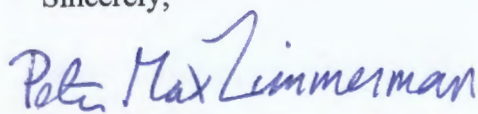
Unless a use is enumerated and listed affirmatively as a permitted use by right or special exception within a zone, then it is prohibited. BCZR § 102.1; Kowalski v. Lamar 25 Md. App. 493 (1975); People's Counsel for Baltimore County v. Surina 400 Md. 662 (2007). We did the analysis in our May 28, 2008 letter to show that an assisted living facility, class III is not a permitted use in the D.R. 5.5 Zone under BCZR § 432A.1.A.3. The present petition cannot properly circumvent this use limitation and prohibition.

It is noteworthy that an assisted living facility, class II, which accommodates between 8 and 15 residents, is allowed in any D.R. Zone, if it has frontage on a principal arterial street. BCZR § 101, 432A.1.A.2. While Regester Avenue is likely not a principal arterial street, it is an open question as to whether this site could qualify for an area variance for a class II facility. This may be a matter worthy of exploration.

We are cognizant that it would be worthwhile to see on this property a new beneficial use. This could perhaps contribute to the neighborhood and to society. But the use must be consistent with the zoning law. Zoning cases are not to be viewed *ad hoc* based on a subjective view of good or bad, but rather based on objective implementation of the rule of law.

Thank you in advance for your consideration of this matter.

Sincerely,



Peter Max Zimmerman

cc: Sebastian A. Cross, Esquire, attorney for Petitioner
Cynthia Jabs, interested citizen
Lynn Lanham, Office of Planning

CASE NAME Phelan
CASE NUMBER 2010-0089-SPH
DATE 11-18-09

[illegible]

CASE NAME Phelan Property
CASE NUMBER 10/089/SPH
DATE 11/18/09

[illegible]

CASE NAME 812 Register Ave
CASE NUMBER 10-089-SPH
DATE 3/11/10

[illegible]

CASE NAME 812 Regester Ave.
CASE NUMBER 2010-0089-A
DATE 3/11/10

[illegible]



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
 Real Property Data Search (2007 vw4.3d)

Go Back
 View Map
 New Search

Account Identifier: District - 09 Account Number - 0901540813

Owner Information

Owner Name: PHELAN CHARLES I, JR Use: COMMERCIAL
 Principal Residence: NO
 Mailing Address: 812 REGESTER AVE Deed Reference: 1) /26624/ 359
 BALTIMORE MD 21239-1345 2)

Location & Structure Information

Premises Address Legal Description
 812 REGESTER AVE LTS 364A,364B
 812 REGESTER AVE
 IDLEWYLDE

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
80	3	129			B		364A	2	Plat Ref: 12/ 70

Special Tax Areas Town
 Ad Valorem
 Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1924	7,590 SF	16,910.00 SF	06

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2008	07/01/2009	07/01/2010
Land	153,800	264,500		
Improvements:	408,000	551,700		
Total:	561,800	816,200	731,400	816,200
Preferential Land:	0	0	0	0

Transfer Information

Seller: 1ST MARINER BANK	Date: 01/30/2008	Price: \$275,000
Type: NOT ARMS-LENGTH	Deed1: /26624/ 359	Deed2:
Seller: GREENE PHILIP	Date: 09/28/2007	Price: \$170,000
Type: NOT ARMS-LENGTH	Deed1: /26221/ 646	Deed2:
Seller: HINDMAN W JAMES	Date: 09/19/1978	Price: \$280,000
Type: IMPROVED ARMS-LENGTH	Deed1: / 5936/ 795	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2009	07/01/2010
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
 Exempt Class:

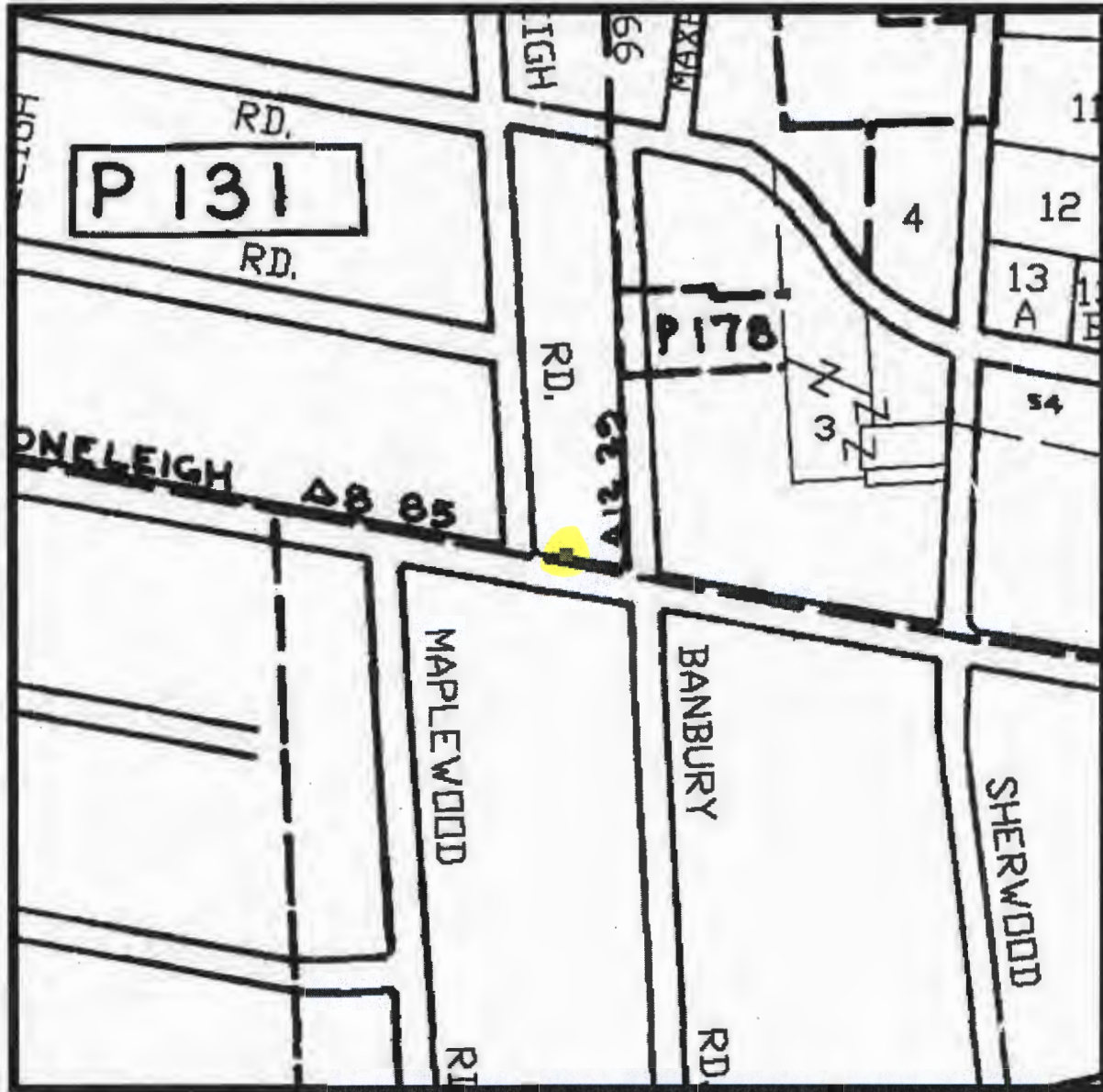
Special Tax Recapture:
 * NONE *



**Maryland Department of Assessments
and Taxation
BALTIMORE COUNTY
Real Property Data Search**

**Go Back
View Map
New
Search**

District - 09 Account Number - 0901540813



Property maps provided courtesy of the Maryland Department of Planning ©2008.
For more information on electronic mapping applications, visit the Maryland Department
of Planning web site at www.mdp.state.md.us/webcom/index.html

RE: PETITION FOR SPECIAL PERMIT
NORTHWEST CORNER OF REPESTER
AVENUE AND SHERWOOD ROAD,
IDLEWILDE -- ADDITION TO
NURSING HOME -- MARY C. STRECKER,
(formerly Annacost) Petitioner

This is a petition for a Special Permit to erect an addition to a convalescent or nursing home, known as Annacost Nursing Home, located at the northwest corner of Repester Avenue and Sherwood Road, in Idlewild.

It appears from the evidence that the petitioner has conducted, at this location, such an institution for some time prior to the adoption of zoning regulations in this County. When the zoning regulations and maps were adopted the property in question was not included in the class "2" Commercial Zone so that the petitioner then had an established and lawful non-conforming use existing on the effective date of the adoption of zoning regulations and this is conceded by all parties concerned.

The present application is for a special permit to enlarge this existing non-conforming use by an addition to the present building on the site and rear thereof. The contemplated addition is to be a two-story building for building regulations as far as setbacks and other similar regulations are concerned.

A substantial group of protestants appeared at the hearing before me and objected to the granting of the permit on the ground that the enlargement of the non-conforming use would depreciate the value of homes and deprive the community of the peace and quiet, and ruin its pure residential aspect. Even if it be conceded that the position taken by the protestants is sound nevertheless under the existing zoning regulations it is my opinion that the petitioner is clearly entitled to the special permit petitioned for.

SPECIAL EXCEPTION FROM 1945

CASE #454

Section XI of the Zoning Regulations entitled, "Non-Conforming Uses", provided not only that a "lawful non-conforming use existing on the effective date of the adoption of these regulations may continue" but further provides that "any such lawful non-conforming use may be extended or enlarged to an extent not more than once again the area of the land so used in the original non-conforming use". It is abundantly clear from the application and evidence adduced before me that the petitioner is enlarging or extending her lawful non-conforming use to an extent not more than once again the area of land used in the original non-conforming use and, ~~in fact, it is reasonably true that the extension permitted under the regulation cited, so that it is clear that the~~ petitioner is entitled to enlarge her non-conforming use to the extent desired.

It might be well for me to state that at the time of the adoption of zoning regulations great consideration was given to this problem of the increase in the size of non-conforming uses and it was determined that some reasonable right to extend a non-conforming use should have to be included in the regulations as otherwise it would prevent a reasonable enlargement or extension of an existing business or occupation ~~without compensation~~ and it is the opinion of the Zoning Department that the regulations now in effect is reasonable in all respects and affords such protection to those persons living in the vicinity of non-conforming uses.

In addition to the fact that I am convinced that the petitioner is entitled to the permit applied for, for the reasons ~~as~~ stated above, I may also say that the evidence produced before me indicates that the petitioner has always conducted the establishment in a proper manner and without in any way ~~annoying~~ or offending the immediate neighborhood.

I have carefully examined the brief filed on behalf of the protestants but I have concluded that the cases cited therein are not in point in the present controversy.

For the reasons given I have concluded that the special permit must be granted and I will sign an Order accordingly.

[Signature]
Zoning Commission

ZONING DEPARTMENT - BALTIMORE COUNTY, MD.

Certificate of Posting of Re-Classification of Special Permit Notice

9. District
Date of Posting Property
Location of Sign on Property
Location of Property
Re-Classification of Special Permit
Remarks

[Signature]

VARIANCE REQUESTED

TO PERMIT THE 2 EXISTING PARKING SPACES IN LOTS OF THE PROPOSED 14 PER SECTION ADJACENT OF THE BLOCK.

SPECIAL HEARINGS REQUESTED

TO AMEND THE PREVIOUSLY GRANTED SPECIAL EXCEPTION #484 FOR A NURSING HOME TO NOW ALLOW THE ISSUANCE OF A 280 PERMIT FOR AN ASSISTED-LIVING FACILITY IS THE SECTION ADJACENT OF THE BLOCK.

TO ALLOW THE EXISTING PARKING TO REMAIN AS IT WAS WHEN THE ORIGINAL CASE #484 WAS APPROVED BECAUSE ALTERING IT WOULD CREATE AN URBAN WAREHOUSE.

PARKING CALCULATIONS

MINIMUM NUMBER OF PARKING SPACES REQUIRED:
1 SPACE FOR EVERY 3 BEDS

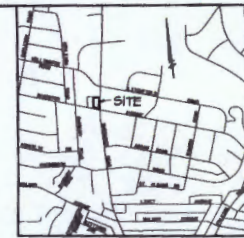
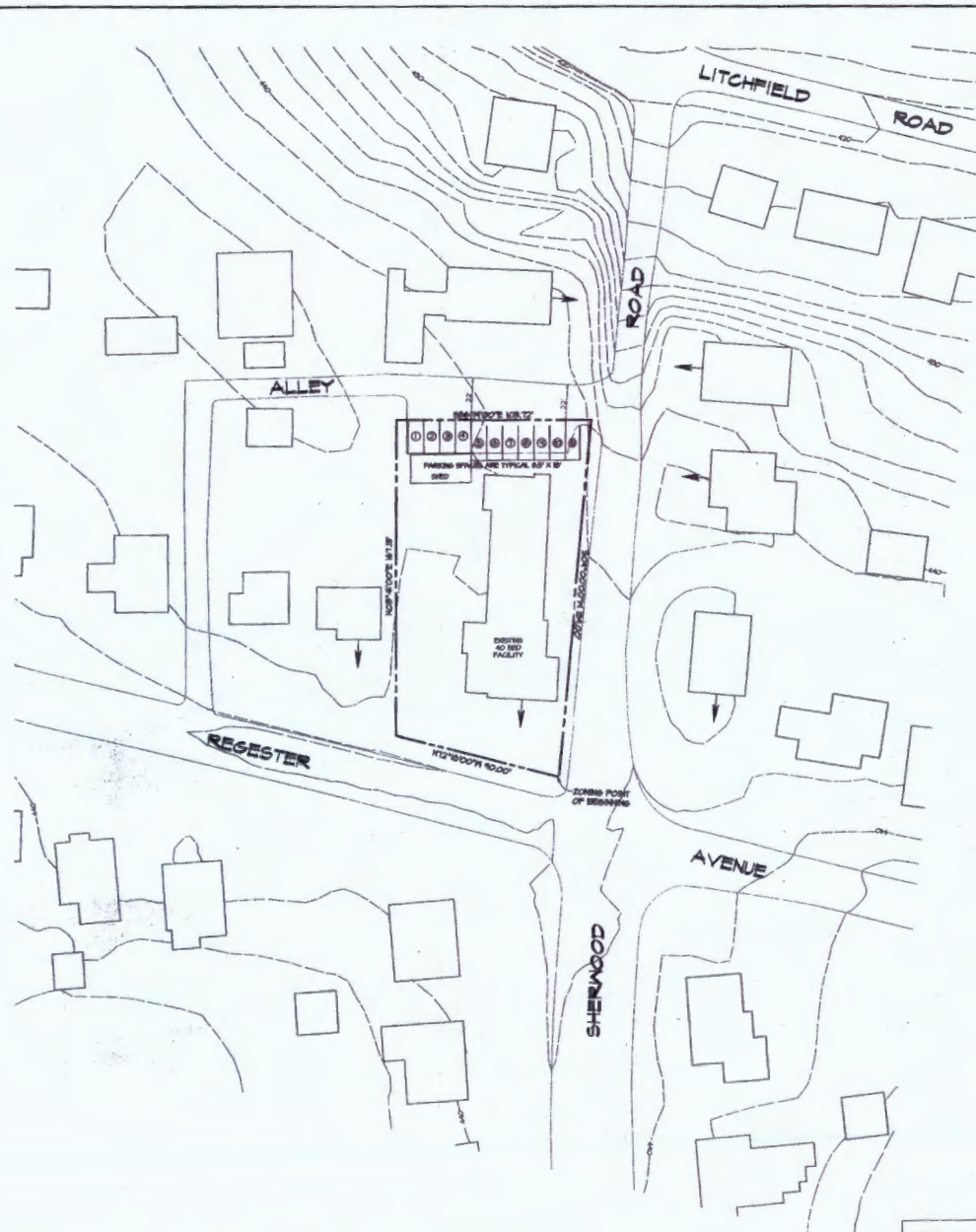
THERE ARE 40 BEDS

TOTAL PARKING SPACES REQUIRED = 14

PARKING SPACES PROVIDED = 2

LEGEND

EXISTING BUILDING
EXISTING PARKING
PROPERTY LINE
COURTLINE



VICINITY MAP
1" = 2000'

GENERAL NOTES

1. THE BOUNDARY BETWEEN HEREON IS FROM DEED S.W. 2642-42-42.
2. THE TOPOGRAPHY SHOWS HEREON HAS YACHT FROM BALTIMORE COUNTY AND TELLIS OBOAI, OBOAI.
3. THE TRACT - 48000 - REGIONAL PLANNING DISTRICT - 35
HISTORIC - BALTIMORE - 1800
SCHOOL DISTRICT: ELEMENTARY - STONELEIGH E.S. MIDDLE - DORCHESTER H.S.
1801 - TOWN HALL
A.D.G. MAP 1 880 21 80
4. THERE IS A PRIOR ZONING CASE ON THE SUBJECT PROPERTY. CASE #484 HAS A PETITION FOR A SPECIAL PERMIT TO DEDICATE AN ADDITION TO A CONVALESCENT OR NURSING HOME. THE PERMIT WAS GRANTED IN 1985. THE DECISION ALSO ACKNOWLEDGED THAT THE PETITIONER HAD AN ESTABLISHED AND LAWFUL NON-CONFORMING USE EXISTING ON THE EFFECTIVE DATE OF THE ADOPTION OF ZONING REGULATION AND THIS WAS CONCURRED BY ALL PARTIES CONCERNED.
5. THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT.
6. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
7. THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
8. ALL LOTS SHOWN HEREON ARE TO BE SERVED BY PUBLIC WATER AND SEWER SYSTEMS.

OWNER/DEVELOPER
CHARLES I. PHELAN, JR.
513 REGESTER AVE
BALTIMORE, MD 21204

PLAN TO ACCOMPANY A VARIANCE AND SPECIAL HEARING REQUEST PHELAN PROPERTY

513 REGESTER AVENUE
Deed Ref: S.W. No. 26624 folio 299
Tax Account No. 09-01-540813
Zoned DR 5.5; 515 Tiles OBOAI, OBOBI
Tax Map 60; Grid 3; Parcel 129
4th ELECTION DISTRICT
35th COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale: 1"=50' Date: MARCH 17, 2008

GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS

Suite 100
320 East Towson/Bowling Boulevard
Towson, Maryland 21286
(410) 825-4470

REVISION	DATE	COMPUTED	DRAWN BY	CHECKED

Case No.: ^{Amended to A} 2010-0089-SPH 812 Register Ave

Exhibit Sheet

Petitioner/Developer

Protestant

No. 1	JOINT MOTION FOR CONTINUANCE	JOINT MOTION FOR CONTINUANCE
No. 2	AMENDED SITE PLAN FOR ASSISTED LIVING FACILITY II	
No. 3	PRIOR ORDER	
No. 4	Aerial View of Neighbor Road	
No. 5	Close-up of Property	
No. 6	Agreement 3/11/10 between Petitioner and Community	
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

RE: PETITION FOR SPECIAL HEARING

*

BEFORE THE

812 Regester Avenue; NW corner Regester
Avenue & Sherwood Road
9th Election & 5th Councilmanic Districts
Legal Owner(s) Charles Phelan

*

ZONING COMMISSIONER

*

FOR

*

BALTIMORE COUNTY

Petitioner(s)

*

Case No: 10-089-SPH

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JOINT MOTION FOR CONTINUANCE

Charles Phelan, Petitioner, and the Idlewylde Community Association ("Association") and certain other individuals by their respective counsel, Sebastian A. Cross, Esquire and J. Carroll Holzer, Esquire, jointly move the Zoning Commissioner grant a continuance of the hearing of this matter currently scheduled for November 18, 2009, and as grounds therefore state:

1. That counsel for the Petitioner, Sebastian A. Cross, Esquire, and Idlewylde Community Association, J. Carroll Holzer have discussed and agreed to a continuance of this matter in order to amend the zoning relief requested in a manner acceptable to all parties and potential parties to the hearing.
2. That the parties have request a continuance in order to provide an opportunity to negotiate a settlement of their differences.
3. That Counsel for the Petitioner will coordinate the rescheduling of this matter to a date convenient to all parties and shall arrange for the posting of the sign on the subject property providing notice of the additional hearing date(s) at least 15 days prior to said hearing date.

**PARTIES
JOINT EXHIBIT**

Baltimore County - My Neighborhood



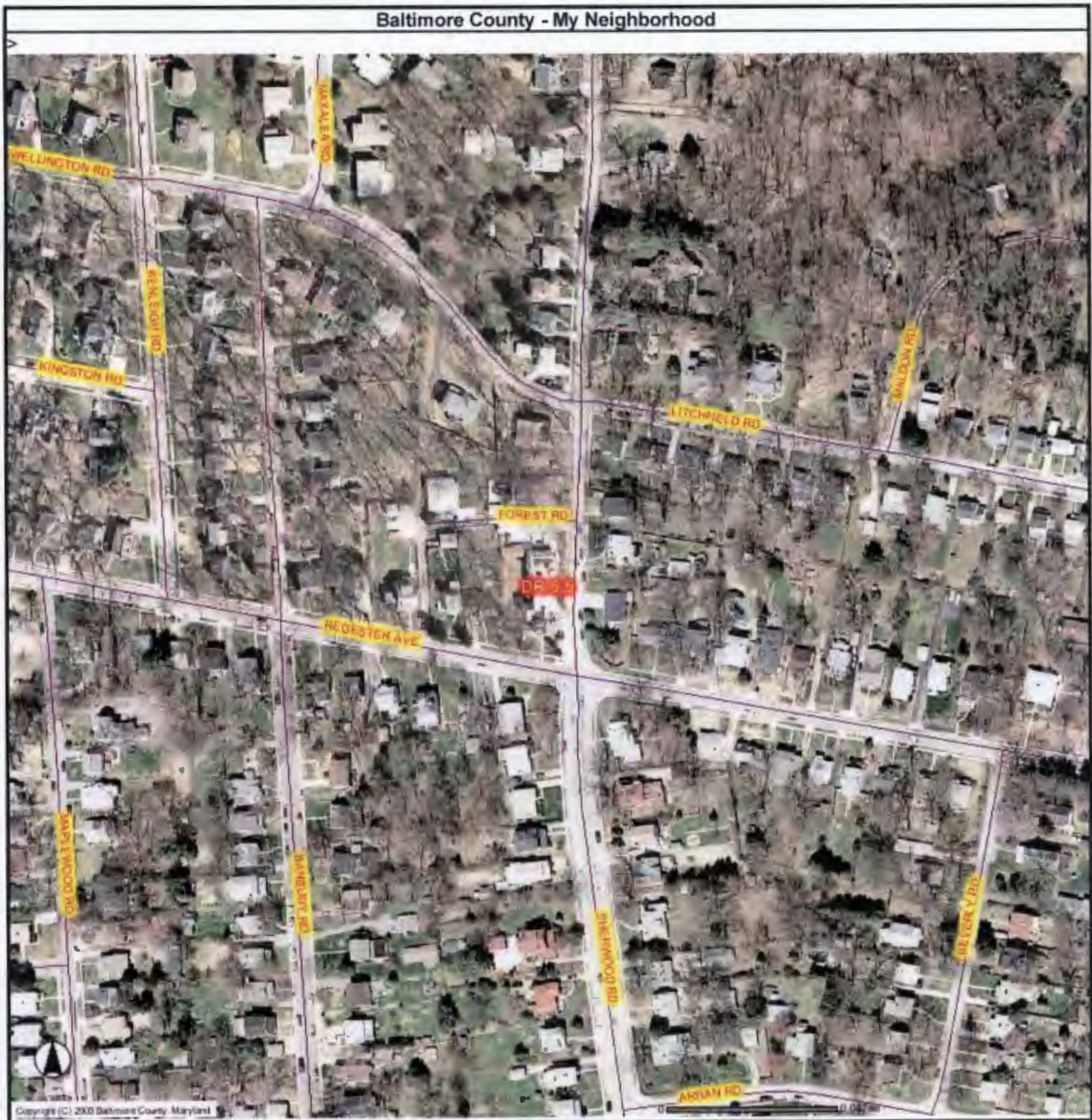
Copyright (C) 2005 Baltimore County, Maryland

0 0.16mi

PETITIONER'S

EXHIBIT NO.

4



PETITIONER'S

EXHIBIT NO.

5

AGREEMENT

THIS AGREEMENT (the "Agreement") made this 11 day of March, 2010, by and between, CHARLES PHELAN, individually ("Phelan"), and IDLEWYLDE COMMUNITY ASSOCIATION, INC., a Maryland corporation (the "Community").

WHEREAS, Phelan is the owner of certain real property in Baltimore County, Maryland with an address of 812 Regester Avenue (the "Property"), and has applied for Special Hearing relief from the Zoning Commissioner of Baltimore County to confirm the Class III Assisted Living Facility is a proper and permitted use;

WHEREAS, the Property exists within the stated boundaries of the Community, who has been opposed to the proposed Class III Assisted Living Facility;

WHEREAS, Phelan has met with the Community and agreed to modify certain aspects of the Class III Assisted Living Facility in exchange for the Community's support of the requested relief; and

NOW, THEREFORE, THIS AGREEMENT, WITNESSETH, that for the mutual promises contained herein, Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals. The Recitals to this Agreement are to be considered as part of this Agreement and are thus incorporated by reference herein.

2. Amendments to the Plan Before the Zoning Commissioner. Attached hereto and made a part hereof is a copy of the amended site plan, which Phelan hereby agrees to submit to the Zoning Commissioner for approval as part of its Special Hearing relief (the "Site Plan"). The Site Plan, which details certain restrictions of the operation of the Assisted Living Facility agreed to by the parties. These agreed upon restrictions include:

(a) The elimination of the parking spot closest to Sherwood Road, leaving ten (10) parking spaces in lieu of the previously proposed eleven (11).

(b) The removal of the existing wood frame shed.

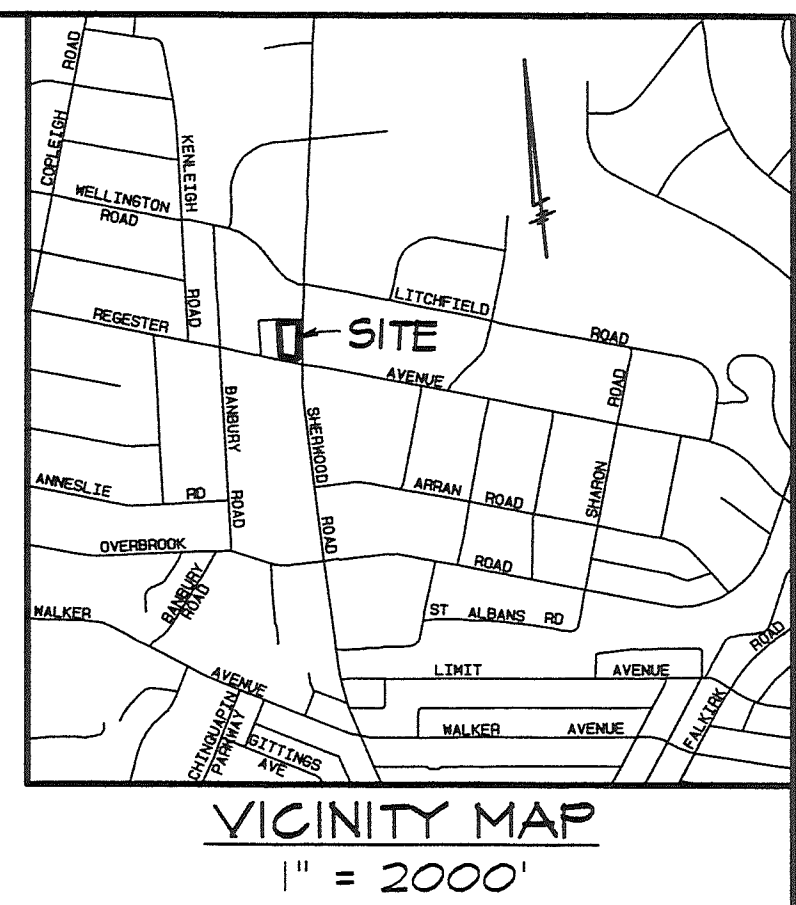
(c) Relocation of the dumpster to the area indicated on the Site Plan as "Dumpster Enclosure"; and

(d) Removal of the handicapped ramp and replacement of such with landscaping as shown on the Site Plan.

3. Additional Restrictions. In addition to the restrictions agreed to and depicted on the Site Plan, Phelan hereby agrees to (i) amend the zoning relief requested to seek a "variance from Section 432A.1.A.2 to permit an Assisted Living Facility II on a non-principal arterial street to be limited to a maximum of 15 beds"; (ii) to remove the previously shown fire escapes pursuant to the Baltimore County Fire Code; (iii) prohibit residents from keeping and storing automobiles

PETITIONER'S

EXHIBIT NO. 6



- LEGEND**
- EXISTING BUILDING
 - EXISTING PAVING
 - CONTOURS

- GENERAL NOTES**
1. THE BOUNDARY SHOWN HEREON IS FROM DEED S.M. 26624/359.
 2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILES 080A1, 080B1.
 3. CENSUS TRACT - 41000 REGIONAL PLANNING DISTRICT - 315 WATERSHED - BACK RIVER SUBWATERSHED - 51 SCHOOL DISTRICT, ELEMENTARY - STONELEIGH E.S.; MIDDLE - DUMBARTON M.S.; HIGH - TOMSON H.S. A.D.C. MAP 4 GRID 27 E10
 4. THERE IS A PRIOR ZONING CASE ON THE SUBJECT PROPERTY. CASE #454 GRANTED A SPECIAL PERMIT (SPECIAL EXCEPTION) TO APPROVE THE USE AND ERECT AN ADDITION TO A CONVALESCENT OR NURSING HOME IN 1945.
 5. ZONING CASE #08-0440-SPH HAS DISMISSED WITHOUT PREJUDICE.
 6. THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT.
 7. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
 8. THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
 9. ALL LOTS SHOWN HEREON ARE TO BE SERVED BY PUBLIC WATER AND SEWER SYSTEMS.

- SPECIAL HEARING REQUESTED**
1. TO CONFIRM THE APPROVAL GRANTED BY SPECIAL PERMIT (SPECIAL EXCEPTION) IN CASE NO. 454 ALLOWED A CONVALESCENT HOME / NURSING HOME USE AND TO AFFIRM THE CHARACTERISTICS OF OPERATIONS OF CONVALESCENT / NURSING HOMES AT THAT TIME INCLUDED THOSE MAINTAINED BY THE MODERN EQUIVALENT OF AN ASSISTED LIVING FACILITY III;
 2. TO AMEND THE PREVIOUSLY APPROVED SPECIAL PERMIT (SPECIAL EXCEPTION) AS DETERMINED AS NECESSARY BY THE ZONING COMMISSIONER; AND,
 3. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE DETERMINED NECESSARY BY THE ZONING COMMISSIONER.

PARKING CALCULATIONS

MINIMUM NUMBER OF PARKING SPACES PROVIDED:

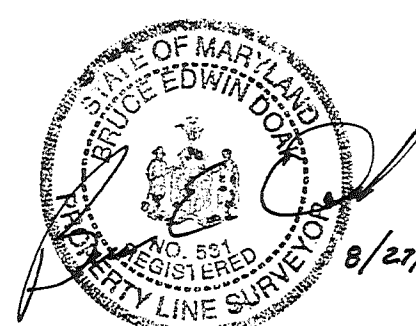
1 SPACE FOR EVERY 3 BEDS

THERE ARE 30 BEDS

PARKING SPACES PROVIDED = 11 (EXCEEDS CURRENT ZONING REQUIREMENTS OF 1 SPACE FOR EVERY 3 BEDS)

OWNER/DEVELOPER
CHARLES I. PHELAN, JR.
812 REGESTER AVE
BALTIMORE, MD 21231

**PLAN TO ACCOMPANY A
SPECIAL HEARING REQUEST
PHELAN PROPERTY**
812 REGESTER AVENUE
Deed Ref: S.M. No. 26624 folio 359
Tax Account No.: 09-01-540813
Zoned DR 5.5; GIS Tiles 080A1, 080B1
Tax Map 80; Grid 3; Parcel 129
9th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND



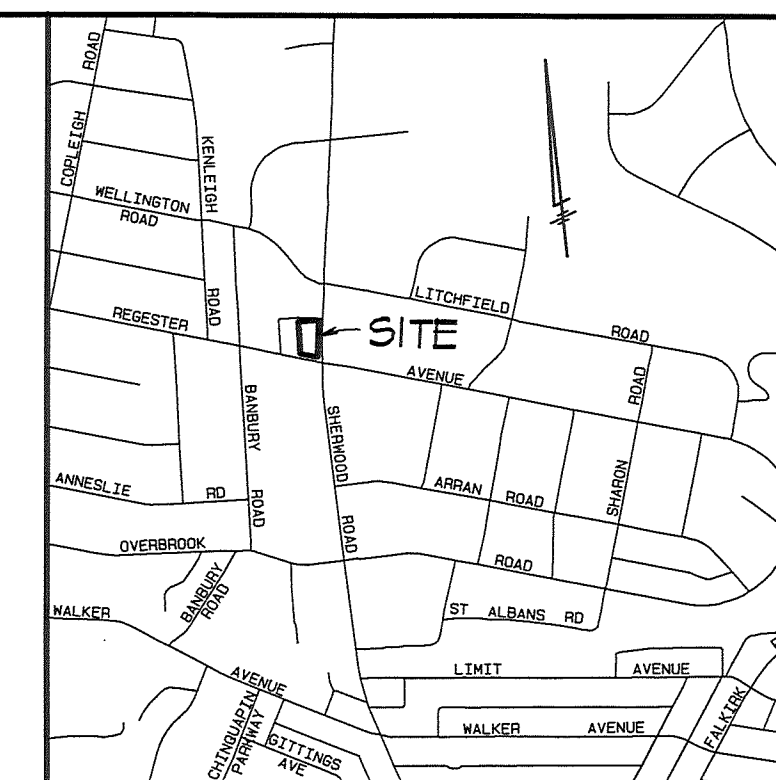
Scale: 1"=30' Date: August 27, 2009

GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Townsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

REVISION	DATE

COMPUTED:	DRAWN: TEH	CHECKED:
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FILE X:\P\Phelan Regester\ZONING PLAN.pr



VICINITY MAP
1" = 2000'

LEGEND

- EXISTING BUILDING
- EXISTING PAVING
- CONTOURS

GENERAL NOTES

- THE BOUNDARY SHOWN HEREON IS FROM DEED S.M. 26624/359.
- THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILES 080A1, 080B1.
- CENSUS TRACT - 41000 REGIONAL PLANNING DISTRICT - 315 WATERSHED - BACK RIVER SUBSEWERED - 51 SCHOOL DISTRICT ELEMENTARY - STONELEIGH ES; MIDDLE - DUMBARTON MS; HIGH - TOWSON HS. A.D.C. MAP & GRID 27 E10
- THERE IS A PRIOR ZONING CASE ON THE SUBJECT PROPERTY. CASE #454 GRANTED A SPECIAL PERMIT (SPECIAL EXCEPTION) TO APPROVE THE USE AND ERECT AN ADDITION TO A CONVALESCENT OR NURSING HOME IN 1945.
- ZONING CASE #08-0448-SPH WAS DISMISSED WITHOUT PREJUDICE.
- THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT.
- THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
- THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
- ALL LOTS SHOWN HEREON ARE TO BE SERVED BY PUBLIC WATER AND SEWER SYSTEMS.
- DELIVERY HOURS AND TRASH PICK UP WILL BE LIMITED TO WEEKDAYS BETWEEN THE HOURS OF 9 AM AND 5 PM.
- THE OPERATORS OF THE ASSISTED LIVING FACILITY WILL MEET WITH THE IDLEWYDE COMMUNITY ASSOCIATION BOARD ONCE A YEAR OR AS NEEDED IN ORDER TO ADDRESS ANY ADDITIONAL ISSUES THAT MAY ARISE.

VARIANCE REQUESTED

TO PERMIT AN ASSISTED LIVING FACILITY II ON A NON-PRINCIPAL ARTERIAL STREET TO BE LIMITED TO A MAXIMUM OF 15 BEDS

PARKING CALCULATIONS

MINIMUM NUMBER OF PARKING SPACES PROVIDED:
1 SPACE FOR EVERY 3 BEDS
THERE ARE 15 BEDS + 3 = 5 SPACES REQUIRED
PARKING SPACES PROVIDED = 9 (EXCEEDS CURRENT ZONING REQUIREMENTS OF 1 SPACE FOR EVERY 3 BEDS)
RESIDENTS OF THE ASSISTED LIVING FACILITY WILL NOT BE PERMITTED TO HAVE AUTOMOBILES ON SITE OR ON ADJACENT STREETS
NO PARKING OF EMPLOYEES, RESIDENTS OR VISITORS OF THE FACILITY WILL BE PERMITTED ON PUBLIC STREETS

OWNER/DEVELOPER

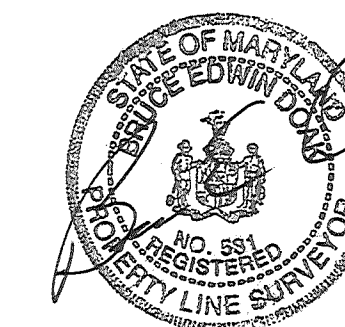
CHARLES I. PHELAN, JR.
812 REGESTER AVE
BALTIMORE, MD 21234

PLAN TO ACCOMPANY A
VARIANCE REQUEST
PHELAN PROPERTY

812 REGESTER AVENUE
Deed Ref: S.M. No. 26624 folio 359
Tax Account No.: 09-01-540813
Zoned DR 5.5; GIS Tiles 080A1, 080B1
Tax Map 80; Grid 3; Parcel 129
9th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale: 1"=30'

Date: August 27, 2009



GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS

Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

AMENDMENT PER AGREEMENT	2/1/0	COMPUTED:	DRAWN: TEH	CHECKED:
REVISION	DATE			

PETITIONER'S
EXHIBIT NO. 2