

IN RE: PETITION FOR VARIANCE

NE/side of Back River Neck Road @
the corner of the SE/side of Poles Rd. *
(215 Back River Neck Road)
15th Election District *
6th Election District *

Daniel W. Hubers & Charlotte W. Pine,
Legal Owners *
Zaremba Group, LLC,
Contract Purchaser *
Petitioners

BEFORE THE

OFFICE OF ADMINISTRATIVE

HEARINGS FOR

BALTIMORE COUNTY

CASE NO. 2012-0038-A

* * * * *

ORDER AND OPINION

This matter comes before the Administrative Law Judge as a Petition for Variance filed by the legal owners of the property, Daniel W. Hubers and Charlotte W. Pine, and the contract purchaser, Robert W. Shearer with Zaremba Group, LLC, Petitioners. The Petitioners are requesting Variance relief pursuant from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

- From Section 409.6.A.2 to permit 34 parking spaces in lieu of the 53 spaces required;
- From Section 409.8.4 to permit a parking space in a surface parking facility for a non-residential use 6 feet from a right-of-way of a public street in lieu of the required 10 feet;
- From Section 232.2 to permit an interior side yard of 3 feet where the property abuts a lot in a residential zone in lieu of the required 25 feet

Or, in the alternative:

- From Section 409.6.A.2 to permit 42 parking spaces in lieu of the 53 spaces required;
- From Section 409.8.4 to permit a parking space in a surface parking facility for a non-residential use 6 feet from a right-of-way of a public street in lieu of the required 10 feet;

ORDER RECEIVED FOR FILING

Date

9-27-11

By

193

- From Section 232.2 to permit an interior side yard of 4 feet where the property abuts a lot in a residential zone in lieu of the required 25 feet.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibits 1 and 2.

Appearing at the requisite public hearing held for this case were Robert Shearer, on behalf of the contract purchasers, the Petitioners, and Kenneth Colbert with Colbert Matz Rosenfelt, Inc., the consulting firm who prepared the site plan for the Petitioners. The Petitioners were represented by Deborah C. Dopkin, Esquire. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance at the hearing.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Sustainability (DEPS), dated September 7, 2011, and indicate as follows:

"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)".

Comments were also received from the Office of Planning, received September 7, 2011, and are as follows:

"The Office of Planning has reviewed the petitioner's request and accompanying site plan. This office prefers the site design as shown on drawing number: **ZON-1** as it appears to have less of an impact to the wetlands. However, staff defers to Environmental Protection and Sustainability for that determination. The Office of Planning does not oppose the requested variances provided that the following

information is submitted for review and approval prior to the application for any building permits:

- Architectural elevations including building materials and exterior finish;
- A landscape plan that includes dumpster screening;
- All proposed signage, in a sign package;
- Sidewalk connections to Back River Neck and Poles Road”.

At the outset of the hearing, counsel for the Petitioners determined to press for approval of option 1, which counsel described as the least environmentally intrusive option.

Kenneth Colbert of Colbert Matz Rosenfeld, Inc., engineers and planners, was called as a witness and was qualified as an expert in land use, the subdivision process and zoning matters, including variances as they relate to the Baltimore County Zoning Regulations (B.C.Z.R.). The witness presented the redlined plan to accompany the petition (Petitioners' Exhibit 1). He described the site as approximately 1.25 acres, zoned B.L.-A.S./D.R.10.5/and D.R.16 in parts. Formerly a restaurant, the parcel is now vacant and is served by public water and sewer. Power and telephone are also located at the site. He described the surrounding area as highly developed, with numerous retail stores, restaurants and other commercial enterprises, including a Rite-Aid and a 7-Eleven across Back River Neck Road from the subject site. In addition, to the northeast and southwest of the property is high density D.R.16 apartments and to the rear, townhouses and other D.R.10 development.

In further explanation as to why Petitioners are proceeding to request relief under option 1 (as opposed to the “alternate” site plan), Mr. Colbert pointed out that under option 1 Petitioner would utilize only the area of the site that was already concrete covered, thereby minimizing any effect the new project would have on the wetlands that also make up a portion of this site.

Turning to the instant proposal, Mr. Colbert described it as a 10,590 square foot Dollar General Store, selling a wide range of products. Petitioners intend to remove the existing

building and replace it with a masonry structure. He noted that the proposed new construction would actually be farther away from the nearest apartment development than the existing structure. He pointed out that demographic and marketing studies done by Petitioners identify the demographic of their typical customer as one who will primarily utilize public transportation or walk to their stores. The proposed site, he observed, was served by three bus stops and is three miles and just less than 4 miles from two other Dollar General Stores.

The witness explained the traffic arrangements for the proposed use on the site. He related closing existing entrances and replacing them with new ones (as set out in the plan to accompany the petition), determined in consultation with County planning staff in order to improve and direct the safe flow of traffic. He described in detail the routine that will be followed to bring merchandise onto the site, organized to maximize traffic flow and safety on and off the site from the public street.

I wish to note that a communication regarding traffic considerations relative to Petitioners' request was received from People's Counsel. Attached to his letter was an email from the Chief of Traffic Engineering. This "communication" was not a formal comment done in the normal course of review of the project by the several County agencies to which the opportunity to comment is extended by County procedure. Moreover, Mr. Zimmerman points out in his cover letter that some of the "concerns" described in the email needed "adjustment" upon his learning that the County staff were in concurrence and supported the Petitioners' plan in regard to the entrances and traffic arrangements for the site. Counsel for the Petitioners was herself "concerned" by this "unofficial" comment and, with some justification, wished it to be disregarded. Nevertheless, Mr. Colbert responded to the issues raised therein regarding parking on the site in addition to that which he had already presented in the course of his testimony.

Given the unorthodox form in which the communication was presented to me as well as the comments of Mr. Colbert, I afforded the email no further consideration.

Turning finally to the issue of the variance request, Mr. Colbert testified that, based upon a number of factors, including the long and narrow shape of the subject property, the convergence of three zoning classifications on the site and the imposition of wetlands on approximately 1/3 of the property, rendered it unique in comparison to the other properties in the immediate area. He pointed out that as a result of these constraints, the number of parking spaces required by Section 409.6.A.2 and the distances called for in Section 409.8.4 and 232.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) would present a real and insurmountable practical difficulty to the Petitioners' use of the subject property for an otherwise permitted purpose. Finally, he opined that based upon the totality of the details of the project, it was in harmony with the B.C.Z.R. and would have no detrimental effect on the public health, safety or welfare.

The testimony of Robert Shearer, on behalf of the contract purchasers, was proffered by counsel. He would have explained the "General Store" concept of the Petitioners' stores, located in 35 states and employing over 85,000 people nationwide. He would describe the particulars regarding this location, including three to four employees working three shifts, store hours at 8:00 AM to 9:00 PM and a well-lighted secure parking area. As a result of their own internal traffic and marketing studies, the 34 parking spots on site would be optimum for their customer demographic, which would include those walking and using public transportation. Finally, he would confirm that all signs would comply with County regulations and that all comments by the Office of Planning and the Department of Environmental Protection and Sustainability (DEPS) would be adhered to.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Moreover, I find that strict enforcement of the B.C.Z.R. would cause the Petitioners to suffer practical difficulty and undue hardship. Therefore, I also find that the variances requested can be granted in strict harmony with the spirit and intent of the said regulations, and in such a manner as to grant relief without injury to the public, health, safety, and general welfare. In all manner and respect, the variances requested meet the requirements of Section 307 of the B.C.Z.R. as well as those requirements established in *Cromwell v. Ward*, 102 Md. App. 691 (1995) and *McLean v Soley*, 270 Md. 208 (1973).

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

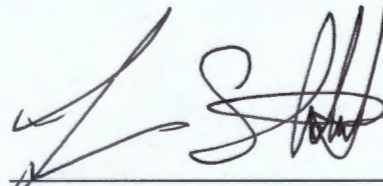
THEREFORE, IT IS ORDERED, this 27th day of September, 2011 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

- From Section 409.6.A.2 to permit 34 parking spaces in lieu of the 53 spaces required;
- From Section 409.8.4 to permit a parking space in a surface parking facility for a non-residential use 6 feet from a right-of-way of a public street in lieu of the required 10 feet;
- From Section 232.2 to permit an interior side yard of 3 feet where the property abuts a lot in a residential zone in lieu of the required 25 feet, be and hereby is GRANTED.

IT IS FURTHER ORDERED that the alternative request for Variance is therefore rendered MOOT.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for their building permit and be granted same upon receipt of 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 comply with the ZAC comments received from DEPS, dated September 7, 2011, and the Office of Planning, received September 7, 2011 respectively; copies of which are attached hereto and made a part hereof.



LAWRENCE M. STAHL
Managing Administrative Law Judge for
Baltimore County

LMS:dlw

ORDER RECEIVED FOR FILING

Date 9-27-11
By DLW

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: David Lykens, Department of Environmental Protection and Sustainability
(DEPS) - Development Coordination

DATE: September 7, 2011

SUBJECT: DEPS Comment for Zoning Item # 12-038-A
Address 215 Back River Neck Road
(Hubers Property)

Zoning Advisory Committee Meeting of August 15, 2011.

X The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

- X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
- X Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Reviewer: Paul Dennis; Environmental Impact Review

RECEIVED

SEP 07 2011

OFFICE OF ADMINISTRATIVE HEARINGS

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: August 29, 2011

FROM: Andrea Van Arsdale
Director, Office of Planning

RECEIVED

SUBJECT: 215 Back River Neck Road
INFORMATION:

SEP 07 2011

Item Number: 12-038

OFFICE OF ADMINISTRATIVE HEARINGS

Petitioner: Zarembo Group, LLC

Zoning: BL-AS, DR 10.5 and DR 16

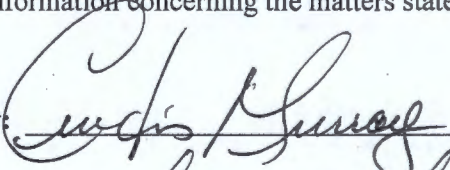
Requested Action: Variance

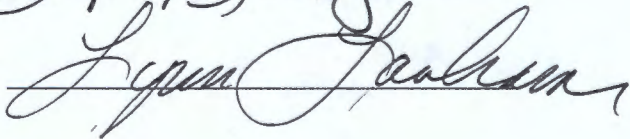
SUMMARY OF RECOMMENDATIONS:

The Office of Planning has reviewed the petitioner's request and accompanying site plan. This office prefers the site design as shown on drawing number: *ZON-1* as it appears to have less of an impact to the wetlands. However, staff defers to Environmental Protection and Sustainability for that determination. The Office of Planning does not oppose the requested variances provided that the following information is submitted for review and approval prior to the application for any building permits:

- Architectural elevations including building materials and exterior finish;
- A landscape plan that includes dumpster screening;
- All proposed signage, in a sign package;
- Sidewalk connections to Back River Neck and Poles Road.

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

Prepared by: 

Division Chief:
AVA/LL: CM 

ORDER RECEIVED FOR FILING

Date 9-27-11

By 



KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
TIMOTHY M. KOTROCO
Administrative Law Judges

September 27, 2011

Deborah C. Dopkin, Esquire
409 Washington Avenue
Towson, MD 21204

RE: PETITION FOR VARIANCE

NE/side of Back River Neck Road @ the corner of the SE/side of Poles Road
(215 Back River Neck Road)
15th Election District - 6th Election District
Daniel W. Hubers & Charlotte W. Pine, Legal Owners;
Zaremba Group, LLC, Contract Purchaser - Petitioners
CASE NO. 2012-0038-A

Dear Ms. Dopkin:

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 "L. Stahl", is written over the typed name.

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:dlw
Enclosure

c: Daniel and Nancy Hubers, 800 Cold Spring Road, Baltimore, MD 21220
Robert Shearer, Zaremba Group, LLC, 14600 Detroit Avenue, Lakewood, OH 44107
Kenneth Colbert, 2835 Smith Avenue, Suite G, Baltimore, MD 21209



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

address 215 Back River Neck Road

which is presently zoned BLAS/DR10.5/DR16

Deed Reference 12263/089

10 Digit Tax Account #1 9 0 0 0 0 5 3 9 7

Property Owner(s) Printed Name(s) Daniel W. Hubers & Charlotte W. Pine

CASE NUMBER 2012-0038-A Filing Date 8/10/2011 Estimated Posting Date / / Reviewer JNP

(SELECT THE HEARING(S) BY MARKING ☒ AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2. a Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for

3. ☒ a Variance from Section(s)

SEE ATTACHED

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (Indicate below your hardship or practical difficulty or indicate below "To Be Presented At Hearing". If you need additional space, you may add an attachment to this petition)

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 petition(s), 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.

Legal Owner(s) Affirmation: I / we do so 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 / these Petition(s).

Contract Purchaser/Lessee:

Zaremba Group, LLC ROBERT W SHEARER

Name- Type or Print

[Signature]
Signature

14600 Detroit Ave. Lakewood OH

Mailing Address City State

44107 / 216-226-5160 / rshearer@zarembagroup.com

Zip Code Telephone # Email Address

Attorney for Petitioner:

Deborah C. Dopkin, Esq.

Name- Type or Print

[Signature]
Signature

400 Washington Ave. Ste. 1000 Towson MD

Mailing Address City State

21204 / 41-821-0200 / ddopkin@dopkinlaw.com

Zip Code Telephone # Email Address

Legal Owners:

Daniel W. Hubers / Charlotte W. Pine

Name #1 - Type or Print

Name #2 - Type or Print

[Signature]
Signature #1

[Signature]
Signature #2

1520 Old Eastern Ave. Baltimore MD

Mailing Address City State

21221 / /

Zip Code Telephone # Email Address

Representative to be contacted:

Kenneth Colbert

Name - Type or Print

[Signature]
Signature

2835 Smith Ave, Ste. G Baltimore MD

Mailing Address City State

21209 / 410-653-3838 / kcolbert@cmrengineers.com

Zip Code Telephone # Email Address

REV. 2/23/11

ORDER RECEIVED FOR FILING

Date 9-27-11

By DW

2012-0038-A

ATTACHMENT TO PETITION FOR ZONING HEARING

FOR VARIANCES

from BCZR Section 409.6.A.2 to permit 34 parking spaces in lieu of the 53 spaces required;

from BCZR Section 409.8.4 to permit a parking space in a surface parking facility for a non-residential use 6 feet from a right-of-way of a public street in lieu of the required 10 feet;

from BCZR Section 232.2 to permit an interior side yard of 3 feet where the property abuts a lot in a residential zone in lieu of the required 25 feet.

OR, IN THE ALTERNATIVE

FOR VARIANCES

from BCZR Section 409.6.A.2 to permit 42 parking spaces in lieu of the 53 spaces required;

from BCZR Section 409.8.4 to permit a parking space in a surface parking facility for a non-residential use 6 feet from a right-of-way of a public street in lieu of the required 10 feet;

from BCZR Section 232.2 to permit an interior side yard of ~~4~~ feet where the property abuts a lot in a residential zone in lieu of the required 25 feet.

2012-0038-A

Colbert Matz Rosenfelt, Inc.

Civil Engineers • Surveyors • Planners



ZONING DESCRIPTION

DOLLAR GENERAL STORE

215 BACK RIVER NECK ROAD

BEGINNING AT A POINT ON THE NORTHEAST SIDE OF BACK RIVER NECK ROAD, 60 FEET WIDE, AT THE SOUTHEAST SIDE OF POLES ROAD, 60 FEET WIDE. THENCE THE FOLLOWING COURSES AND DISTANCES:

BY A CURVE TO THE LEFT $R = 303.92'$, $L = 115.66$

NORTH $29^{\circ} 28' 32''$ EAST, 222.23';

SOUTH $60^{\circ} 31' 27''$ EAST, 135.00';

SOUTH $29^{\circ} 28' 33''$ WEST, 425.32';

NORTH $35^{\circ} 43' 36''$ WEST, 148.26';

NORTH $10^{\circ} 32' 00''$ EAST, 22.41'

TO THE POINT OF BEGINNING.

AS RECORDED IN DEED LIBER 12263, FOLIO 099 AND CONTAINING 54,453 SQUARE FEET (1.25 ACRES) OF LAND MORE OR LESS, AND LOCATED IN THE 15TH ELECTION DISTRICT AND THE 6TH COUNCILMANIC DISTRICT.



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. 9752

Expiration Date: 02-12-2012

NOTICE OF ZONING HEARING

The Administrative Law Judges 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: # 2012-0038-A

215 Back River Neck Road

NE/side of Back River Neck Road @ the corner of the SE/side of Poles Road

15th Election District — 6th Councilmanic District

Legal Owner(s): Daniel Hubers & Charlotte Pine

Contract Purchaser: Zarembo Group, LLC

Variance: to permit 34 parking spaces in lieu of 53 spaces; to permit a parking space in a surface parking facility for a non-residential use 6 feet from a right-of-way of a public street in lieu of the required 10 feet; to permit an interior side yard of 3 feet where the property abuts a lot in a residential zone in lieu of the required 25 feet.

Hearing: Wednesday, September 14, 2011 at 1:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

ARNOLD JABLON, DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS FOR BALTIMORE COUNTY

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Administrative Hearings Office at (410) 887-3868.

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

JT 08/756 August 30

284875

CERTIFICATE OF PUBLICATION

9/11, 2011

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 8/30/, 2011.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS

DATE: 08/30/2011

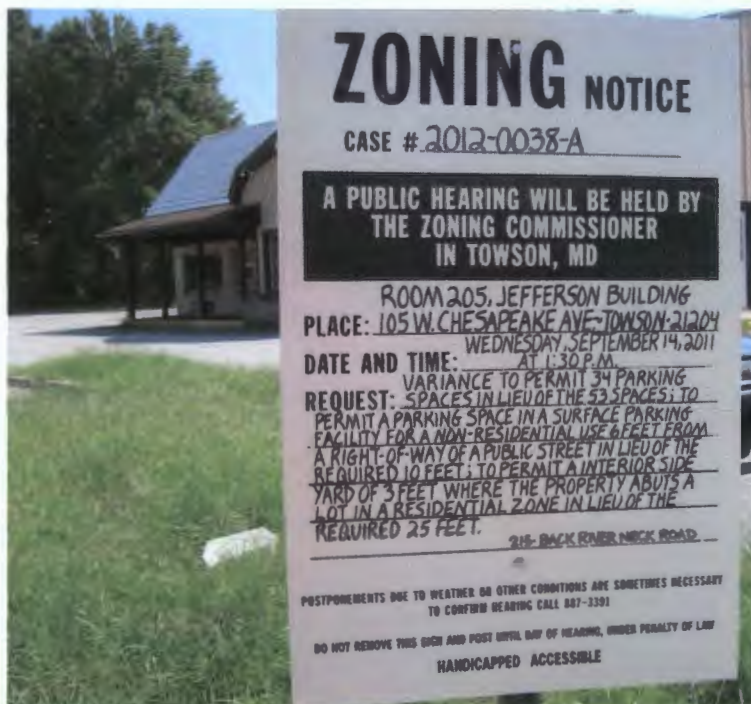
Case Number: 2012-0038-A

Petitioner / Developer: DEBORAH DOPKIN, ESQ.~ZAREMBA GROUP,
ROBERT SHEARER~DANIEL HUBERS, CHARLOTTE PINE~KENNETH
COLBERT of COLBERT, MATZ & ROSENFELT, INC.

Date of Hearing (Closing): SEPTEMBER 14, 2011

This is to certify under the penalties of perjury that the necessary sign(s)
required by law were posted conspicuously on the property located at:
215 BACK RIVER NECK ROAD

The sign(s) were posted on: AUGUST 29, 2011



Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley, Maryland 21030
(City, State, Zip of Sign Poster)

410 - 666 - 5366
(Telephone Number of Sign Poster)



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

September 7, 2011

Mr. Daniel Hubers
Ms. Charlotte Pine
1520 Old Eastern Avenue
Baltimore, MD 21221

RE: Case Number 2012-0038-A, 215 Back River Neck Road

Dear Mr. Hubers and Ms. Pine,

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on August 10, 2011. 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 black ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:mcn

Enclosures

c: People's Counsel
Deborah Dopkin, 400 Washington Avenue, Ste. 1000, Towson, MD 21204
Zaremba Group, Robert Shearer, 14600 Detroit Avenue, Lakewood, Ohio 44107
Kenneth Colbert, 2835 Smith Avenue, Ste. G, Baltimore, MD 21209



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

September 9, 2011

HAND DELIVERED

Lawrence M. Stahl, Managing Administrative Judge
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

RECEIVED

SEP 09 2011

OFFICE OF ADMINISTRATIVE HEARINGS

Re: PETITION FOR VARIANCE
Daniel Hubers/Zaremba Group, LLC
215 Back River Neck Road
Case No: 2012-038-A

Dear Mr. Stahl,

Because of the several parking issues and options, involving this proposed retail use, we asked Stephen E. Weber, Chief of Traffic Engineering, to review the petition and site plan alternatives in this case. As a result, he sent the enclosed e-mail dated September 8, 2011 with his usual careful and intelligent evaluation. As is our custom, we promptly forward it to you for consideration. The hearing date for this case is September 14, 2011.

Mr. Weber has informed me today that after he prepared his email, he learned of a conversation between Petitioner's consultant and county staff to support the entrance location on Poles Road. His email, therefore, should be adjusted to that extent.

As is maybe helpful preliminarily, we also enclose a Google Earth aerial photo of the site taken August 29, 2010.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

cc: Deborah Dopkin, Attorney for Petitioner, sent via first class mail & email
Stephen Weber, Chief, Division of Traffic Engineering
Dennis Kennedy, Department of Permits, Approval and Inspections
Andrea Van Arsadale, Director of Planning

RE: PETITION FOR VARIANCE	*	BEFORE THE
1520 Old Eastern Avenue; NE/S Back River	*	
Neck Road @ corner of SE/S Poles Road	*	ADMINISTRATIVE LAW
15 th Election & 6 th Councilmanic Districts	*	
Legal Owner(s): Daniel Hubers	*	JUDGE FOR
Contract Purchaser(s): Zaremba Group, LLC	*	
Petitioner(s)	*	BALTIMORE COUNTY
	*	2012-038-A

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party 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 all 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

AUG 18 2011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of August, 2011, a copy of the foregoing Entry of Appearance was mailed to Kenneth Colbert, Colbert, Matz & Rosenfelt, Inc, 2825 Smith Avenue, Suite G, Baltimore, MD 21209 and Deborah Dopkin, Esquire, 409 Washington Avenue, Suite 1000, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

From: Stephen Weber
To: Peter Zimmerman
CC: Dennis Kennedy
Date: 9/8/2011 5:45 PM
Subject: Fwd: Daniel Hubers/ Zaremba Group, LLC Case No. 2012-038-A
Attachments: 2012-038-A Petition.pdf

Dear Mr. Zimmerman:

In looking at this site plan, I don't see any issues that are particularly troubling. The new building is about 3 times bigger than the current old restaurant building. However, because it is a retail use rather than a restaurant, it is likely to only generate about 50% more total traffic even though it is 3 times bigger. Even then, this corridor has an excess road capacity so there is certainly no problem in accommodating any additional traffic flow.

There is an alternate site plan which provides 42 parking spaces in lieu of the required 53 whereas the regular site plan provides 34 spaces in lieu of 53. However, the alternate site plan is achieved by shifting the building location and some of the parking lot into an area marked as "EXISTING WETLANDS". Certainly our preference would be for the alternate site plan with 42 spaces since it more closely meets the BCZR parking requirements. While Dollar General may feel it can successfully operate with only 34 parking spaces, such retail sites should be designed to accommodate a variety of retail uses since the building will not be a Dollar General forever. In addition, having the additional parking will generally provide a more flexible lot for any potential future buyers/leasers of the property wanting to put some other type of retail use in the building. However, we realize that the wetlands could potentially create a complication in doing this.

Be advised that parking is prohibited on Poles Rd along the entire frontage of this property, as well as on all of Back River Neck Rd. Therefore, any parking variance is going to be somewhat self regulating since there will be no adjacent overflow location for employee's cars to be parked during the day. However, just beyond the subject property is a rowhouse community where on-street parking is located. So if employees are desperate for a parking space, they could potentially park in front of these homes. Also, while the entrance onto Poles Rd does meet County requirements, we would prefer seeing a single 35-foot wide entrance, as opposed to the monumental entrance shown, and having the centerline of it located about another 20 to 30 feet away from Back River Neck Rd. The monumental island is so small as to make it nearly worthless and more of a hazard than a control. Also, relocating the entrance further away from Back River Neck Rd would decrease the probability of queues from Back River Neck Rd backing beyond this entrance and reduce potential conflicts of traffic turning in from Back River Neck Rd inadvertently interfering with exiting traffic from the site.

Should you have any questions regarding these comments, please let me know.

Stephen E. Weber, Chief
Div. of Traffic Engineering
Baltimore County, Maryland
111 W. Chesapeake Avenue, Rm. 326
Towson, MD 21204
(410) 887-3554

>>> People's Counsel 8/19/11 9:40 AM >>>
Mr. Weber,

Attached you will find the Petition for Variance with regard to the above-mentioned case. Please review the case and let my office know if you have any traffic concerns with this case.

Thank you in advance.

Rebecca M. Wheatley
Legal Secretary
Office of the People's Counsel for Baltimore County
410-887-2188 Phone
410-823-4236 Fax



Case No.:

0038-A 215 BACK RIVER Neck Rd.

Exhibit Sheet

Petitioner/Developer

Protestants

No. 1	RED LINE VERSION PLAN TO ACCOMPANY PETITION	
No. 2	RED LINE ALTERNATE VERSION PLAN TO ACCOMPANY PETITION	
No. 3	AERIAL G.I.S. OF SITE- AREA + ZONING LINES	
No. 4	AERIAL G.I.S. OF PROPOSED DEVELOPMENT	
No. 5	PHOTO EXHIBIT OF SITE & AREA USE PHOTOGRAPHS	
No. 6	BALTIMORE COUNTY ZONING MAP	
No. 7	AERIAL OF USES & PROPOSED SITE	
No. 8	GOOGLE MAP OF SITE AREA	
No. 9	INTERIOR STORE PHOTOS	
No. 10		
No. 11		
No. 12		

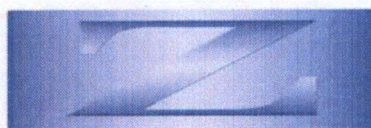


PETITIONER'S

EXHIBIT NO.

8

TAB 12
Interior Store Photos



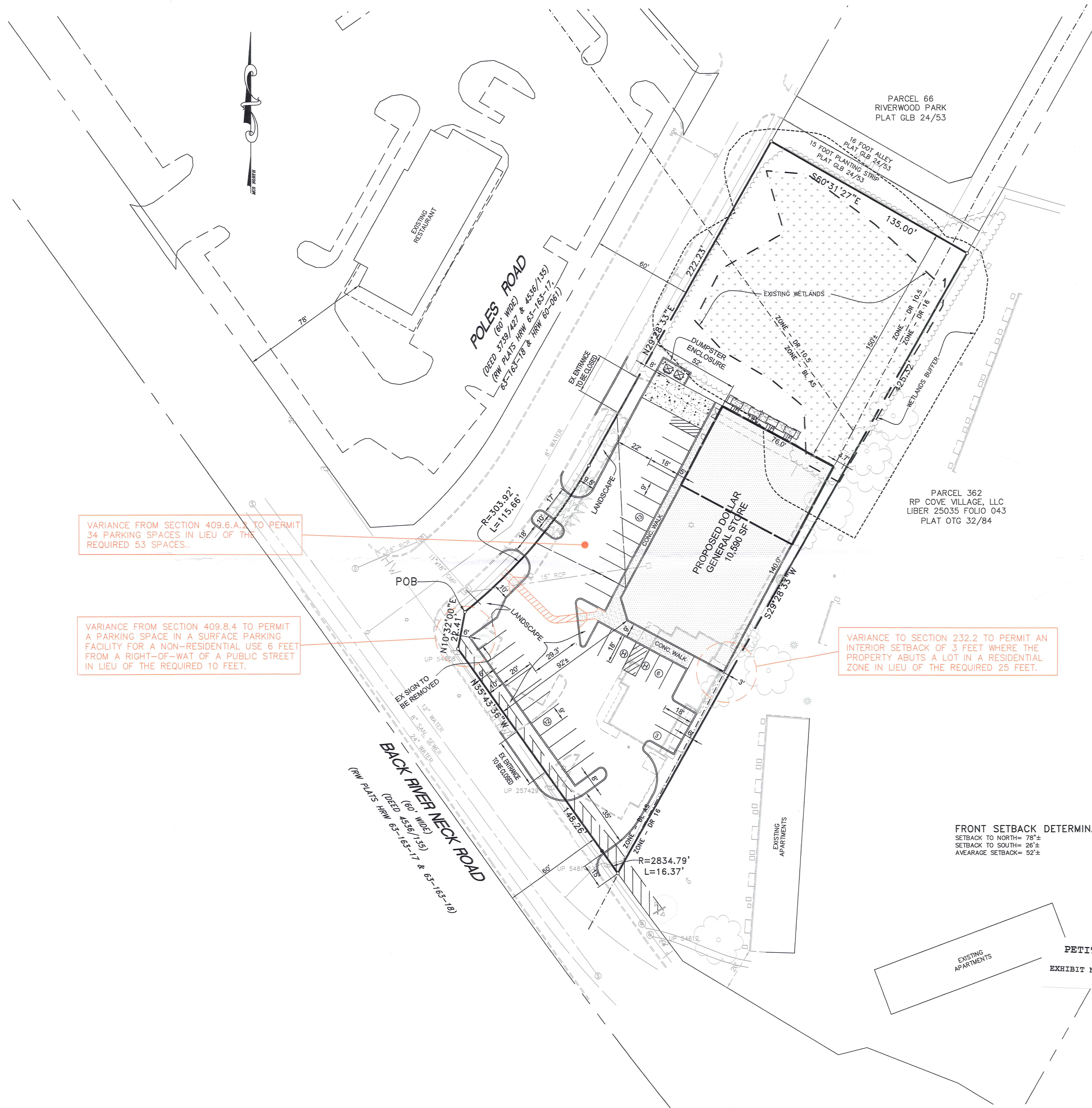
ZAREMBA GROUP

PETITIONER' S

EXHIBIT NO. 9







VICINITY MAP
SCALE: 1"=1000'

GENERAL NOTES

- OWNER:
DANIEL W. HUBERS & CHARLOTTE W. PINE
1520 OLD EASTERN AVE.
BALTIMORE, MD. 21221-3616
- DEVELOPER:
ZAREMBA GROUP, LLC
14600 DETROIT AVE.
LAKEWOOD, OH 44107
(216)226-5160
- SITE DATA
PARCEL 1087
TAX MAP 0097
TAX ACCOUNT NO. 1900005397
DEED REFERENCE: 12263/099
- TOTAL SITE AREA: 54,453 SQ. FT. (1.2501 ACRES)
- ZONED BL-AS / DR 10.5 / DR 16, ZONING MAP 97-C1
- REQUIRED/PROPOSED SETBACKS:
FRONT - 52 FT. REQUIRED 92 FT. PROPOSED
COR. SIDE - 10 FT. REQUIRED 52 FT.± PROPOSED
INT. SIDE - 25 FT. REQUIRED 3 FT.± PROPOSED
REAR - 20 FT. REQUIRED 150 FT. PROPOSED
- EXISTING USE: CLOSED RESTAURANT
PROPOSED USE: RETAIL STORE
- FLOOR AREA RATIO:
MAXIMUM PERMITTED - 3.0
PROPOSED - 0.20
- PARKING TABULATION:
REQUIRED: 10,590 SQ FT @ 5/1000 SQ FT = 53 SPACES
PROPOSED: 34 SPACES
- PARKING SURFACE WILL BE DURABLE, DUSTLESS AND PERMANENTLY STRIPED.
- THERE ARE NO PREVIOUS COMMERCIAL PERMITS CURRENTLY ON FILE.
- ANY SIGNS TO BE ERRECTED IN CONJUNCTION WITH THIS DEVELOPMENT WILL MEET ALL REQUIREMENTS OF SECTION 450, BCZR AND ANY REQUIREMENTS OF THE DESIGN REVIEW PANEL.
- THERE IS NO ZONING HISTORY FOR THIS SITE.
- THE SITE IS NOT IN THE CHESAPEAKE BAY CRITICAL AREA OR A 100 YEAR FLOOD PLAIN.
- THE SITE IS NOT IN A HISTORIC DISTRICT AND THERE ARE NO HISTORICAL BUILDINGS ON SITE.
- STORMWATER MANAGEMENT WILL BE REQUIRED FOR THIS PROJECT.

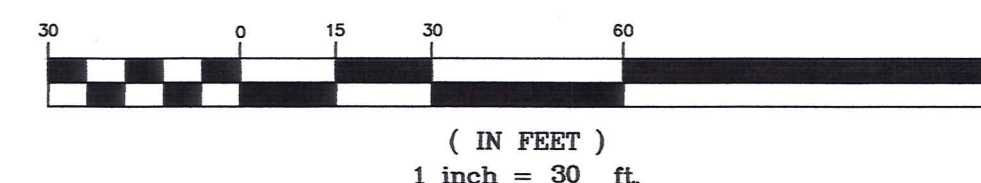
SITE PLAN

PLAN TO ACCOMPANY VARIANCE PETITION

DOLLAR GENERAL
215 BACK RIVER NECK ROAD

TAX MAP 0097 - GRID 0005 - PARCEL 1087
15TH ELECTION DISTRICT - 6TH COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

GRAPHIC SCALE



(IN FEET)

1 inch = 30 ft.

Colbert Matz Rosenfelt, Inc.

Engineers * Surveyors * Planners
2835 Smith Avenue, Suite G
Baltimore, Maryland 21209
Telephone: (410) 653-3838
Facsimile: (410) 653-7953

Professional Certification
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. 9752 Expiration Date: 02-28-12

CHECKED: KJC
FILE: 2011064 DRC.dwg
DRAWING NUMBER: ZON-1

1 9/13/11 REVISED FOR HEARING KJC

NO. DATE REVISIONS BY SHEET 1 OF 2

PETITIONER'S

EXHIBIT NO. 1

FRONT SETBACK DETERMINATION

SETBACK TO NORTH= 78'±
SETBACK TO SOUTH= 26'±
AVERAGE SETBACK= 52'±



1. OWNER:
DANIEL W. HUBERS & CHARLOTTE W. PINE
1520 OLD EASTERN AVE.
BALTIMORE, MD. 21221-3616

DEVELOPER:
ZAREBSKA GROUP, LLC
14600 DETROIT AVE.
LAKEWOOD, OH 44107
(216)226-5160

2. SITE DATA
PARCEL 1087
TAX MAP 0097
TAX ACCOUNT NO. 1900005397
DEED REFERENCE: 12263/099

3. TOTAL SITE AREA: 54,453 SQ. FT. (1.2501 ACRES)

4. ZONED BL-AS / DR 10.5 / DR 16, ZONING MAP 97-C1

5. ZONED REQUIRED/PROPOSED SETBACKS:

FRONT -	52 FT. REQUIRED	112 FT. PROPOSED
COR. -	10 FT. REQUIRED	51 FT. ± PROPOSED
INT. SIDE -	25 FT. REQUIRED	4 FT.± PROPOSED
REAR -	20 FT. REQUIRED	128 FT. PROPOSED

6. EXISTING USE: CLOSED RESTAURANT
PROPOSED USE: RETAIL STORE

7. FLOOR AREA RATIO:
MAXIMUM PERMITTED - 3.0
PROPOSED - 0.20

8. PARKING TABULATION:
REQUIRED: 0.590 SQ FT @ 5/1000 SQ FT = 53 SPACES
PROPOSED: 42 SPACES

9. PARKING SURFACE WILL BE DURABLE, DUSTLESS AND PERMANENTLY STRIPED.

10. THERE ARE NO CURRENT COMMERCIAL PERMITS CURRENTLY ON FILE.

11. ANY SIGNS TO BE ERECTED IN CONNECTION WITH THIS DEVELOPMENT WILL MEET ALL REQUIREMENTS OF SECTION 450 BCZR AND ANY REQUIREMENTS OF THE DESIGN REVIEW PANEL.

12. THERE IS NO ZONING HISTORY FOR THIS SITE.

13. THE SITE IS NOT IN THE CHESAPEAKE BAY CRITICAL AREA OF A 100 YEAR FLOOD PLAIN.

14. THE SITE IS NOT IN A HISTORIC DISTRICT AND THERE ARE NO HISTORICAL BUILDINGS ON SITE.

15. STORMWATER MANAGEMENT WILL BE REQUIRED FOR THIS

Y SHEET 2 OF 2

EXHIBIT NO. 2

NO.	DATE	REVISIONS.	B

Y SHEET 2 OF 2

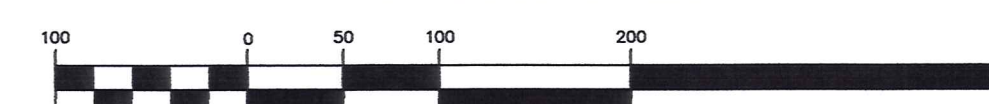


AERIAL EXHIBIT

DOLLAR GENERAL
215 BACK RIVER NECK ROAD

TAX MAP 0097 - GRID 0005 - PARCEL 1087
15TH ELECTION DISTRICT - 6TH COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

GRAPHIC SCALE



(IN FEET)
1 inch = 100 ft.

PETITIONER'S
EXHIBIT NO. **3**

Colbert Matz Rosenfelt, Inc.

Engineers * Surveyors * Planners
2835 Smith Avenue, Suite G
Baltimore, Maryland 21209
Telephone: (410) 653-3838
Facsimile: (410) 653-7953



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				JOB NO.: 2011-064
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				CHECKED: KJC
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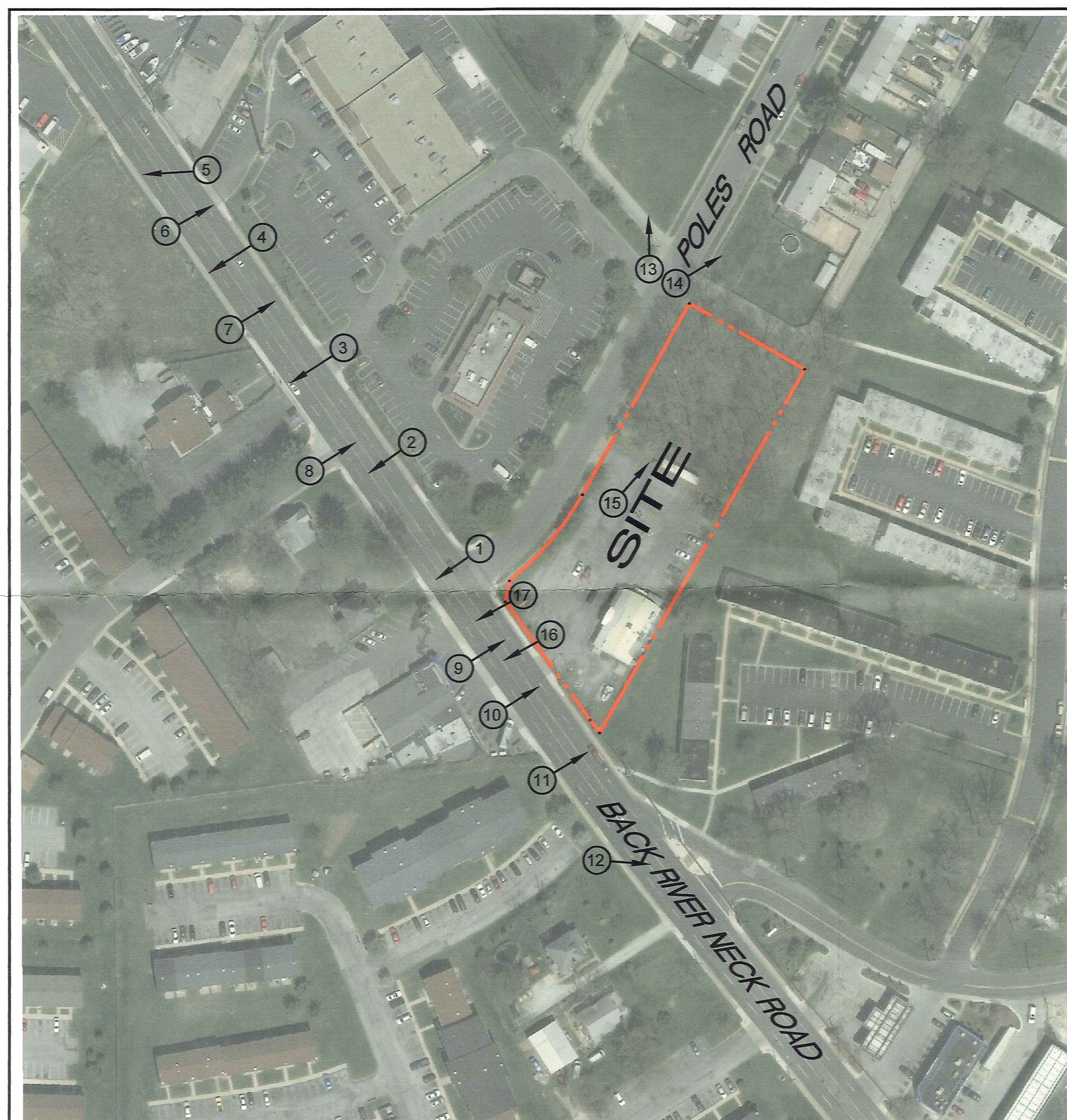
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existing



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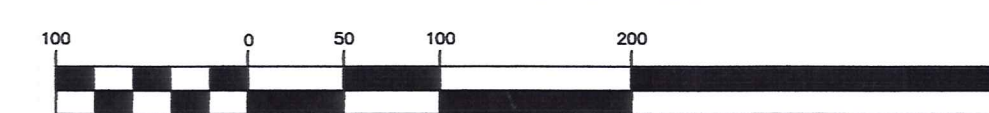
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PHOTO EXHIBIT

DOLLAR GENERAL
215 BACK RIVER NECK ROAD

TAX MAP 0097 - GRID 0005 - PARCEL 1087
15TH ELECTION DISTRICT - 6TH COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

GRAPHIC SCALE



(IN FEET)
1 inch = 100 ft

PETITIONER'S
EXHIBIT NO. 5

Colbert Matz Rosenfelt, Inc.

*Engineers * Surveyors * Planners*
2835 Smith Avenue, Suite G
Baltimore, Maryland 21209
Telephone: (410) 653-3838
Facsimile: (410) 653-7953



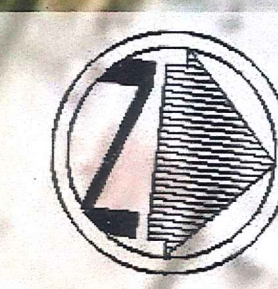
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Back River Neck Road

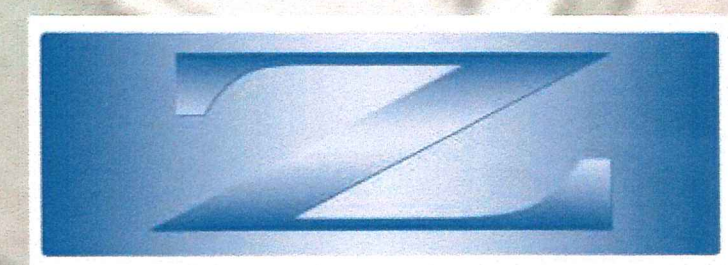
Poles Road

PROPOSED
DOLLAR GENERAL



Dollar General
Essex MD.

215 Back River Neck Road at Poles Rd.



ZAREMBA GROUP

PETITIONER'S
EXHIBIT NO. **7**