

MS 8/30

t 410.494.6365
f 410.821.0147
cdmudd@venable.com

August 15, 2012

VIA HAND DELIVERY

John E. Beverungen, Esquire
Administrative Law Judge
Office of Administrative Hearings
The Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

RECEIVED

AUG 15 2012

OFFICE OF ADMINISTRATIVE HEARINGS

Re: In Re: Petition for Special Hearing
12400 Owings Mills Boulevard
Case No. 2012-0324-SPH

Dear Judge Beverungen:

I am writing on behalf of Petitioner Owings Mills Sports Arena Partners, LLC to inform you that my client has decided to withdraw its Petition for Special Hearing in the above-referenced case. This withdrawal is, of course, without prejudice to Petitioner's right to refile a petition at a later date.

Thank you for your attention to this matter.

Very truly yours,


Christopher D. Mudd

CDM

cc: Mr. George Harman
Arnold Jablon, Director
Department of Permits, Approvals and Inspections
Peter Max Zimmerman, Esquire



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 12400 Owings Mills Boulevard which is presently zoned ML-IM

Deed References: 21281/1 10 Digit Tax Account # 20-00-000933

Property Owner(s) Printed Name(s) Owings Mills Sports Arena Partners LLC

(SELECT THE HEARING(S) BY MARKING X 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. X 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 SHEET

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

3. _____ a Variance from Section(s)

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)

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:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Attorney for Petitioner:

Christopher D. Mudd

Name- Type or Print

Signature

210 W. Pennsylvania Ave Towson MD

Mailing Address City State

21204 410-494-6200 cdmudd@venable.com

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

SEE ATTACHED SHEET

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature # 2

Mailing Address City State

Zip Code Telephone # Email Address

Representative to be contacted:

Christopher D. Mudd

Name- Type or Print

Signature

210 W. Pennsylvania Ave Towson MD

Mailing Address City State

21204 410-494-6200 cdmudd@venable.com

Zip Code Telephone # Email Address

CASE NUMBER 2012-0324-SPH Filing Date 6/19/12

Do Not Schedule Dates:

Reviewer

REV. 10/4/11

ATTACHED SHEET 1

Legal Owner:

Owings Mills Sports Arena Partners, LLC

By: Mark D. Neumann

Mark Neumann

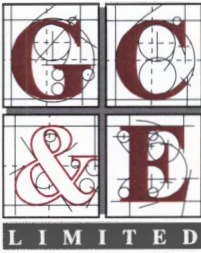
Member

Item # 324

ATTACHED SHEET 2

Petition for special hearing to amend a condition in the Board of Appeals' April 28, 1998
Opinion in Case No. 97-563-XA to permit a total of 50 accessory arcade machines.

Item #324



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

June 7, 2012

**Zoning Description
OWINGS MILLS
SPORTS ARENA
PARTNERS, LLC
12400 Owings Mill Boulevard
Baltimore County, Maryland**

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

Beginning for the same at a point on the southwestern right of way line of the 70 foot wide right of way of Owings Mill Boulevard, at the distance of 436 feet, more or less, measured northwesterly along said right of way line, from the point of intersection of the centerline of Glynlee Court and said southwestern right of way line, said point of beginning also being 35 feet southwesterly, more or less, from the centerline of said Owings Mill Boulevard, and running thence along said southwestern right of way line, the two following courses and distances, viz (1) North 44 degrees 03 minutes 54 minutes West 152.14 feet, and, (2) thence northwesterly by a line curving to the right having a radius of 990.00 feet for an arc distance of 156.28 feet, (said arc being subtended by a chord bearing North 39 degrees 32 minutes 22 seconds West 156.11 feet), thence leaving said right of way line, and running and binding on the outlines of the herein described property, the five following courses and distances, viz: (3) South 54 degrees 58 minutes 46 seconds West 274.96 feet, (4) South 40 degrees 39 minutes 46 seconds East 184.72 feet, (5) North 49 degrees 20 minutes 14 seconds East 17.00 feet, (6) South 40 degrees 39 minutes 46 seconds East 165.88 feet, and, (7) North 45 degrees 56 minutes 06 East 263.06 feet, to the place of beginning.

Containing 2.000 Acres of land, more or less.

Being all of Lot 2 as shown on a plat entitled "Plat of Resubdivision of St. Georges Industrial Park", dated August 31, 1984, and recorded among the Land Records of Baltimore County in Plat Book E.H.K.Jr. No. 51 folio 130.

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

Item # 324

X:\N\Neuman Owings Mills\ZONING DESCRIPTION 2.000 AC.doc



LICENSE exp. / RENEWS 2/22/13

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

No. **83499**

Date: **6/19/12**

PAID RECEIPT

BUSINESS RETURN TIME DOW
 6/20/2012 6/19/2012 14:05:17 2

REG 4502 MAILING JEFF JEE
 RECEIPT # 762769 6/19/2012 OFFER
 Dept 5 520 ZONING VERIFICATION
 CR NO. 083499

Recpt for \$385.00
 \$385.00 CI \$1.00 CA
 Baltimore County, Maryland

Fund	Dept	Unit	Sub Unit	Rev Source/Obj	Sub Rev/Obj	Dept	Obj	BS Acct	Amount
001	306	0000		6150					\$385.00

Total: _____

Rec From:

For:

zoning hearing - case # 2012-0324-SPH

DISTRIBUTION

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

**CASHIER'S
 VALIDATION**

CERTIFICATE OF POSTING

2012-0324-SPH

RE: Case No.: _____

Petitioner/Developer: _____

Owings Mills Sports Areana Partners, LLC

August 20, 2012

Date of Hearing/Closing: _____

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

Attn: Kristen Lewis:

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: _____

12400 Owings Mills Blvd

August 10, 2012

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

Sincerely,

August 10, 2012

(Signature of Sign Poster)

(Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

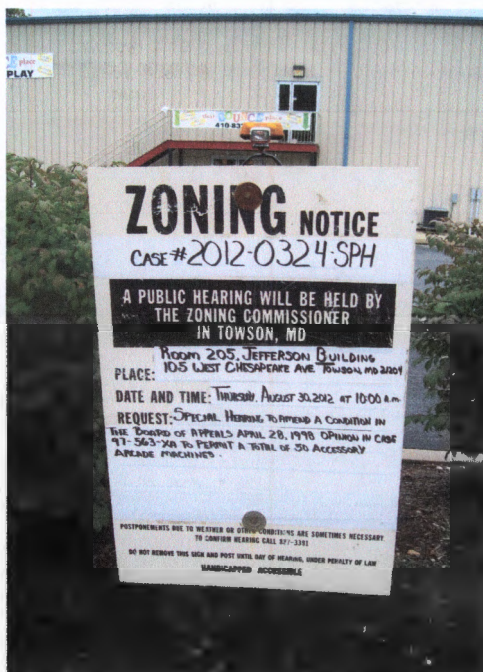
(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)





KEVIN KAMENETZ
County Executive

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

July 18, 2012

NEW 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 NUMBER: 2012-0324-SPH

12400 Owings Mills Boulevard
SW/s of Owings Mills Blvd., 436 ft. NW of centerline of Glynlee Court
4th Election District – 2nd Councilmanic District
Legal Owners: Owings Mills Sports Arena Partners, LLC

Special Hearing to amend a condition in the Board of Appeals April 28, 1998 Opinion in Case 97-563-XA to permit a total of 50 accessory arcade machines.

Hearing: Thursday, August 30, 2012 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in black ink, appearing to read "Arnold Jablon".

Arnold Jablon
Director

AJ:kl

C: Christopher Mudd, 210 W. Pennsylvania Ave., Towson 21204

- NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY FRIDAY, AUGUST 10, 2012.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

RE: PETITION FOR SPECIAL HEARING * BEFORE THE OFFICE
12400 Owings Mills Boulevard; SW/S Owings
Mills Boulevard, 436' NW c/line Glynlee Court* OF ADMINISTRATIVE
4th Election & 2nd Councilmanic Districts
Legal Owner(s): Owings Mills Sports Arena * HEARINGS FOR
Partners, LLC
Petitioner(s) * BALTIMORE COUNTY
* 2012-324-SPH

* * * * *

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

JUN 27 2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of June, 2012, a copy of the foregoing Entry of Appearance was mailed to Christopher D. Mudd, Esquire, 210 West Pennsylvania Avenue, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
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: 2012-0324-SPH
Petitioner: OWINGS MILLS SPORTS ARENA PARTNERS LLC
Address or Location: 12400 OWINGS MILLS BLVD.

PLEASE FORWARD ADVERTISING BILL TO:

Name: BARBARA LUKASEWICH
Address: 210 W. PENNSYLVANIA AVE.
SUITE 500
TOWSON, MD 21204
Telephone Number: 410-494-6200

NEW 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: #2012-0324-SPH

12400 Owings Mills Boulevard

SW/s of Owings Mills Blvd., 436 ft. NW of centerline of Glynlee Court

4th Election District - 2nd Councilmanic District

Legal Owner(s): Owings Mills Sports Arena Partners, LLC

Special Hearing to amend a condition in the Board of Appeals April 28, 1998 Opinion in Case 97-563-XA to permit a total of 50 accessory arcade machines.

Hearing: Thursday, August 30, 2012 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

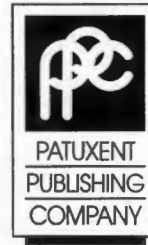
ARNOLD JABLON, DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS FOR BALTIMORE COUNTY

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.

08/109 August 9

866686



501 N. Calvert Street, Baltimore, MD 21278

August 9, 2012

THIS IS TO CERTIFY, that the annexed advertisement was published in the following newspaper published in Baltimore County, Maryland, ONE TIME, said publication appearing on August 9, 2012.

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

PATUXENT PUBLISHING COMPANY

By: Susan Wilkinson

Susan Wilkinson



KEVIN KAMENETZ
County Executive

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

August 21, 2012

Owings Mills Sports Arena Partners LLC
Mark Neuman, Member
12229 Garrison Forest Road
Baltimore MD 21117

RE: Case Number: 2012-0324 SPH , Address: 12400 Owings Mills Boulevard

Dear: Mr. Neuman:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on June 19, 2012. 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.", is written over the typed name.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaf

Enclosures

c: People's Counsel
Christopher D. Mudd, 210 W. Pennsylvania Avenue, Towson, MD 21204

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



Beverley K. Swaim-Staley, Secretary
Melinda B. Peters, Administrator

Date: 6-27-12

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

RE: Baltimore County
Item No 2012-0324-SPH
Special Hearing
Owings Mills Sports Arena
Partners, LLC
12400 Owings Mills Boulevard

Dear Ms. Lewis:

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. 2012-0324-SPH.

Should you have any questions regarding this matter, please contact Richard Zeller at 410-545-5598 or 1-800-876-4742 extension 5598. Also, you may E-mail him at (rzeller@sha.state.md.us).

Sincerely,

Steven D. Foster, Chief
Access Management Division

SDF/raz

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.roads.maryland.gov

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

DATE: June 29, 2012

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

SUBJECT: Zoning Advisory Committee Meeting
For July 09, 2012
Item Nos. 2012-0276, 0285, 0317, 0324, 0325 and 0326.

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

DAK:CEN

cc: File

G:\DevPlanRev\ZAC -No Comments\ZAC-07092012-NO COMMENTS.doc

7/13/12
TO KL
OK
S

July 13, 2012

T 410.494.6365
F 410.821.0147
cdmudd@venable.com

HAND-DELIVERED

Arnold Jablon, Director
Department of Permits, Approvals and Inspections
County Office Building
111 West Chesapeake Avenue, Room 105
Towson, MD 21204

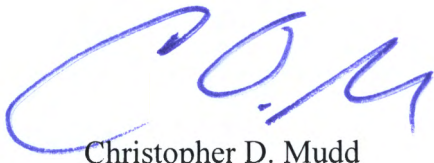
Re: 12400 Owings Mills Boulevard
Case No. 2012-0324-SPH

Dear Mr. Jablon:

By way of this letter, our client Owings Mills Sports Arena Partners, LLC, owner of the above-referenced property, is requesting that the hearing in Case No. 2012-0324-SPH scheduled for August 20, 2012, be postponed. We are available for a hearing at any time on either August 30 or August 31, 2012, if a date/time is available. If not, I would request that Ms. Kristen Lewis contact me to discuss available dates so that I can be sure they work for my witnesses.

I appreciate your consideration of this request.

Very truly yours,



Christopher D. Mudd

cc: Kristen Lewis



KEVIN KAMENETZ
County Executive

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

August 20, 2012

Christopher D. Mudd, Esquire
Venable, LLP
210 West Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

RE: Petition for Special Hearing
Case No.: 2012-0324-SPH
Property: 12400 Owings Mills Boulevard

Dear Mr. Mudd:

I am in receipt of your correspondence regarding the above matter. Under the Zoning Commissioner's Rules, a petition may be withdrawn without prejudice, provided the request is made in writing at least ten (10) business days prior to the hearing date. The Petitioner has satisfied these requirements, and the Petition for Special Hearing is therefore withdrawn without prejudice, and the hearing scheduled for Thursday, August 30, 2012 shall be cancelled and removed from the calendar.

Sincerely,

A handwritten signature in black ink, appearing to read "JEB", with a long horizontal flourish extending to the right.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw

c: Mr. George Harman, 5429 Weywood Drive, Reisterstown, MD 21136
Arnold Jablon, Director, Department of Permits, Approvals and Inspections (PAI)
Peter Max Zimmerman, Esquire, Office of the People's Counsel

Debra Wiley - 2012-0324-SPH

*Please place in
Case file originally
scheduled for Aug. 30th.*

From: Debra Wiley
To: Fisher, June; Lewis, Kristen
Date: 8/20/2012 3:46 PM
Subject: 2012-0324-SPH
CC: Adams, Sarah
Attachments: Message from "zoneprt1"

Hi there,

Please see attached correspondence; matter has been withdrawn without prejudice. Mr. Mudd and Judge Beverungen's correspondence have both been placed in the pick-up box to be included in the case file.

Thanks in advance.

Debbie Wiley
Legal Administrative Secretary
Office of Administrative Hearings
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

August 7, 2012

HAND DELIVERED

John Beverungen, Administrative Law Judge/Hearing Officer
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Owings Mills Sports Arena Partners LLC
12400 Owings Mills Boulevard
Case No.: 2012-324-SPH
Hearing Scheduled August 30, 2012

RECEIVED

AUG 07 2012

OFFICE OF ADMINISTRATIVE HEARINGS

Dear Judge Beverungen,

Upon review of this petition, and as noted in the site plan, it came to mind that there is a significant zoning history. On April 20, 1998, as reflected in the enclosed County Board of Appeals opinion in contested Case No. 97-563-XA, Gary Brightwell/David Gonzalez, Petitioners, the CBA granted a special exception for a commercial recreation facility, along with setback variances, but with several conditions: for staggering soccer games to alleviate traffic; for a limit of 10 machines in the accessory arcade; for a sidewalk between the parking areas and Glynowings Drive; for landscaping in conformity to the Baltimore County Landscape Manual; and for a special hearing within six months to review the parking conditions.

The present petition is filed by Owings Mills Sports Arena, LLC. The request is to replace the 10-machine arcade limit and to allow 50 arcade machines. In light of the 1998 CBA resolution of the Brightwell case with a conditional approval, the familiar doctrine of *res judicata* applies. As is well known to the Administrative Law Judge from the recent Back River, LLC case (No. 8-531-SPHX), the Court of Special Appeals dealt with the issue in Seminary Galleria v. Dulaney Valley Improvement Association 192 Md. App. 719 (2010). There also come into play, among other appellate decisions, the insightful Court of Appeals opinions in Whittle v. Board of Zoning Appeals of Baltimore County 211 Md. 36 (1956); Woodlawn Area Citizens Assoc. v. Board of County Comm'rs 241 Md. 187 (1966); Mayor & City Council of Baltimore v. Linthicum 170

John Beverungen, Administrative Law Judge/Hearing Officer

August 7, 2012

Page 2

Md. 245 (1936); Bensel v. Mayor & City of Baltimore 203 Md. 506 (1954). The gist of these decisions is that in the absence of material change in circumstances, it would be arbitrary and capricious to modify the previous decision. The "material change" standard, moreover, is not taken lightly. As these cases show, the Court of Appeals has rejected numerous assertions of purported changes because they did not really affect the heart of the original decision. Under these circumstances, the Petitioner bears a heavy burden to show why there should be any departure from the original limit.

Separately, there is no indication on the site plan of compliance with CBA condition 6, the special hearing to be held within six months of the opening of the facility to review the parking conditions. This brings to mind that there must also be an examination to determine whether the Petitioner can demonstrate satisfaction with the conditions relating to staggering of games, sidewalk, and landscaping.

These are our preliminary observations, and trust that they will be helpful in the review of this case.

Sincerely,

A handwritten signature in dark ink, reading "Peter Max Zimmerman". The signature is fluid and cursive, with the first name "Peter" and last name "Zimmerman" clearly legible.

Peter Max Zimmerman

People's Counsel for Baltimore County

Enclosure

cc: Christopher Mudd, Esquire w/enclosure

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF		
GARY BRIGHTWELL -PETITIONER	*	COUNTY BOARD OF APPEALS
DAVID GONZALES -C.P. FOR		
SPECIAL EXCEPTION AND VARIANCE*		OF
ON PROPERTY LOCATED ON THE		
SOUTH SIDE GLYNOWINGS DRIVE,	*	BALTIMORE COUNTY
530' NORTHWEST OF C/L GLYNLEE		
COURT (12400 GLYNOWINGS DRIVE)*		CASE NO. 97-563-XA
4TH ELECTION DISTRICT		
3RD COUNCILMANIC DISTRICT	*	

* * * * *

O P I N I O N

This case comes before the County Board of Appeals by way of an appeal from the decision of the Deputy Zoning Commissioner for Baltimore County wherein Petitions for Special Exception and Variances were approved. A special exception was granted to permit a commercial recreational facility, accessory arcade and related accessory uses on a 2-acre unimproved parcel in the Owings Mills area of the County. Variances were granted to permit the indoor recreational facility to be located within 100 feet of a residential zone line, a side yard setback of forty-two (42) feet in lieu of the required fifty (50) feet, and a rear yard setback of thirty-five (35) feet in lieu of the required fifty (50) feet.

This matter was heard de novo by this Board on January 7, 1998, and public deliberation was held on March 3, 1998. Counsel for Petitioner was Howard L. Alderman, Jr., Esquire; and Counsel for Appellants /Protestants was J. Carroll Holzer, Esquire. People's Counsel for Baltimore County did not participate in these proceedings.

David E. Gonzales, owner and Petitioner, testified of his desire to construct a one-story building of approximately 35,000 sq. ft. on the subject property zoned M.L.-I.M., which is located in the St. George's Industrial Park on Glynowings Drive. As the site is industrially zoned land, Petitioner had several options for

use of the property but described the County's need for the proposed indoor soccer facility due to the increasing popularity of the sport. His proposed facility will contain two indoor soccer fields that would be readily adaptable as indoor lacrosse fields. One field will be larger and used by older youth, while the smaller field will be reserved for smaller children's contests. The ancillary services of a snack food area, an arcade game area, and a children's party room are expected to be used by parents and siblings in attendance at the soccer games. There will be a limited seating area for parents to watch the contests in the climate-controlled facility. The proposed facility will be operated as a private commercial enterprise.

Mr. Gonzales testified of support for the soccer arena from various community organizations and individual citizens. The St. George's Station Association, representing residents of the townhouse community near the subject site, provided signature support for the recreational facility.

Robert Sellers, Esquire, representing the Reisterstown-Owings Mills-Glyndon Association, agreed that the proposed use is needed, but was neutral on the present site because of concern for adequate parking.

Counsel for Protestants contended that Mr. Gonzales has no arrangement for extra parking, if needed, at the warehouse sites that exist nearby in the Industrial Park. Locations on Glynwings Drive provide no alternative since parking there is prohibited. Protestant's counsel surmised that over-flow arena parking using the St. George's townhouse complex would be detrimental to the neighborhood.

In response, Petitioner explained that the required number of

parking spaces for the facility under the Baltimore County Zoning Regulations (BCZR) has been doubled from 50 to 105. He further agreed to Mr. Sellers request that the times for games scheduled to be played on the two fields be staggered. Game times shall stagger with one contest beginning at the half-time of the game currently being played. This scheduling of contests, with the two games ending at different times, will alleviate concerns over the overlapping of traffic.

Mrs. Nancy Kaestner, president of Historic Glyndon, Inc., testified in her individual capacity in opposition to the petition for special exception and the variances sought for construction of the soccer arena. Mrs. Kaestner considered the proposed facility an "inappropriate land use" as the site in the St. George's Industrial Park is zoned for industrial uses, such as the warehouses that make up the St. George's Park adjacent to a mainline railway. Other uses of the M.L.-I.M. zoned location, such as the soccer facility, will bring a high traffic volume to the area, which when added to the current heavy traffic on Butler Road and Central Avenue will have an adverse effect on the Glyndon community. Mrs. Kaestner expressed misgivings over traffic on the narrow rural roads leading to the facility, concerns for parking, and that the in and out flow and direction of traffic from the site as games end and others begin will cause congestion at the location at Glynowings Drive and feeder roads.

Dwight Little, a licensed professional engineer with expertise in zoning and development, testified that he prepared the Plat of the M.L.-I.M. zoned property, and described the subject site as irregular in shape, like a trapezoid, and unique as to other lots in the industrial park and area. Mr. Little cited other zoning

classifications in the immediate area as D.R. 5.5 and D.R. 16 (Petitioner's Exhibit #5), with the railroad right-of-way to the south separating the M.L.-I.M. site from residential zoning beyond, and thus the need for a setback variance. The subject site was the only one not developed for any purpose.

Petitioner has requested special exception approval pursuant to Section 253.2D.4 of the BCZR, recently adopted by the County Council, recognizing Commercial Recreational Facilities as being compatible uses when the proposed special exception use meets the minimum requirements under Section 502.1 of the County regulations. Referring to Bill 21-96 and its "definition" of the County regulations permitting commercial recreational facilities in the M.L.-I.M. zone, Mr. Little likened the proposed arena to an ice rink for non-professional athletic activity. Mr. Little, recalling his experience with other M.L.-zoned properties and his personal residence adjacent to an indoor soccer facility in Baltimore County, testified to its compatibility with residential uses. He further opined that the proposed facility at the St. George's Industrial Park would not have any adverse effects at the subject property above and beyond those inherent with those uses irrespective of where in the M.L. zone they are located. Mr. Little opined that the proposed special exception uses meet the requirements of BCZR 502.1.

Mr. Christian Profaci, a resident of Glyndon and an active member of his community, testified to his view that soccer is big business and the proposed arena will be an entertainment center for all. He visualized problems with "hangers-on." With a young daughter, he expressed concerns for heavy traffic on two-lane roads with no sidewalks.

Ms. Mary Ellen Porter, a resident of Glyndon for 13 years, testified on behalf of herself and the Glyndon Community Association. Mrs. Porter asserted that the subject property is flat, rectangular, and not unique. She argued that the vacant site could be developed into a low-impact warehouse facility like others in the industrial park. Mrs. Porter contended that two soccer fields on a site not large enough to support them is the only reason for the variances. She testified that the facility could be built with one soccer field requiring no variances, with sufficient parking, and a construction of which she would not be opposed.

Mrs. Porter conducted a survey of all M.L. zones in the County and found that the subject site is different than the great majority of M.L. sites in that it is bordered by residential zones on both the front and rear boundaries. It was her lay opinion that this condition exists in few M.L. locations, and that, therefore, the site deserves more rigorous scrutiny than an M.L. site in the middle of an industrial zone. It is not accessible by a regional arterial highway system, but is in fact only accessible in all directions entirely through residentially zoned neighborhoods. Mrs. Porter believed that the facility should not be permitted because of the anticipated traffic impact on Glyndon, and information that the County was proposing to construct an indoor facility nearby on Route 140. She had no confirmation of this rumor.

Mr. Stephen Weber, Chief of Traffic Engineering for the County, was subpoenaed by Petitioner /Appellee to testify, and he observed that any traffic associated with the proposed uses would not have any adverse impact on the surrounding areas. He testified that any use would increase the traffic from what is now a vacant

lot.

Any special exception use, if seen to be in the interest of the general welfare and a benefit to the community, is a valid presumption for approval. In this case the evidence and testimony offered showed that the proposed indoor soccer facility and accessory uses would provide a needed service and meet the increasing demand for indoor soccer facilities. The County Council recognized such facilities as being compatible uses pursuant to BCZR 253.2D.4 for Commercial Recreational Facility, and BCZR 423.C for an accessory arcade as part of that facility.

Support for the soccer facility was expressed through more than six pages of signatures of parents (Petitioner's Exhibit #4) in the Reisterstown-Owings Mills-Glyndon area. The primary opposition by Historic Glyndon, Inc., was concern for increased traffic over narrow roads leading to the facility and a concern for lack of off-street parking. Based on Mr. Guckert's testimony and findings from his traffic study, the Board agrees that the facility would not create any adverse impact on traffic conditions. Mr. Weber's concurrence with the views of Mr. Guckert that the uses would not adversely impact the surrounding area is equally compelling and uncontradicted by Protestants.

With Petitioner's plan to double the required parking spaces, and the staggered game schedule to avoid a mass departure from the arena at any one time, strongly approved by the County and community associations, principal objections as to parking and traffic have been alleviated.

After due consideration of the testimony and evidence, the Board finds that the Petitioner has met the burden of proof with regard to the special exception requirements specified in Section

502.1 of the BCZR. We find it clear from the testimony that the requested special exception will not be detrimental to the health, safety, or general welfare of the locality involved; will not tend to create congestion in roads, streets or alleys therein; will not create a potential hazard from fire, panic or other dangers; will not tend to overcrowd land and cause undue concentration of population; will not interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements; will not interfere with adequate light and air; will not be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; and, further, will not be inconsistent with the impermeable surface and vegetative retention provisions of the BCZR.

The Board is persuaded that the special exception use of the subject property for a Commercial Indoor Recreational Facility permitted under BCZR 253.2D.4 and 423.C, satisfies the standards of Section 502.1 and should be granted.

Protestants argue that this case stands or falls on the approval of variances, and that if the variances are denied, then any requested grant of the special exception for the project becomes moot. The Petition for Variances seeks relief to permit the soccer arena to be located within 100 feet of a residential zone line, with a side yard setback of 42 feet in lieu of 50 feet and a rear yard setback of 35 feet in lieu of 50 feet.

Section 307.1 of the BCZR sets forth the legal standards which must be met before any variance can be granted among which are the following:

Are there special circumstances in existence that are peculiar or unique to the land which is the subject of the variance request?

Would strict compliance with the regulation result in practical difficulty or unreasonable hardship?

Protestants claim that Petitioner failed to meet the legal standards for the granting of a variance by the testimony of their own witnesses. They assert that Petitioner and his engineer agreed an office building could be built, as well as other uses such as a warehouse, under the M.L.-I.M. zoning. Mr. Little had concurred that a soccer facility with one soccer field could be built on the subject property without the need for variances. Mr. Little, according to Protestants' counsel, described the property visually as basically "a square or rectangle" and similar to other lots in the industrial park. Petitioner became the owner of the property after the Deputy Zoning Commissioner's decision, and Protestants contend that he knew the location of the property lines and BCZR setback requirements. Counsel for Protestants also makes special note of omissions by the Deputy Zoning Commissioner regarding landscaping requirements and a condition in the Zoning Advisory Comment referencing parking conditions that was not incorporated by the Deputy Zoning Commissioner.

Looking at the variances, the Board must address the decision of the Maryland Court of Special Appeals in the Cromwell v. Ward case that "a property's peculiar characteristic or unusual circumstances, relating only and uniquely to that property, must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unreasonable hardship exists." (Emphasis added.)

Protestants contend that the site is flat without any irregular property lines, although there was no evidence that they referred to topography maps, but relied on photographs. In contrast, Mr. Little made a color mark-up of the Plat (Petitioner's Exhibit #6), showing the shape of the side property line and the "jog" in the rear property line, which make the property unique from other properties in the area. Mr. Little noted that other sites in the industrial park did not have the same irregular lines. The Board finds it interesting that the subject property is the only undeveloped lot in the Park, although accessible by the same roads and allowable for the same purposes.

The lot is an anomaly when compared to its neighbors at the subject site. It's not rectangular and has an odd shape compared to other lots in the industrial park. The width (66' to 83') of the railroad right-of-way and the D.R. 5.5 boundary down the middle of the railroad, the 50-foot setback from a rear property line required for land areas within 100 feet of a residential zone, as well as the other setbacks required by the regulation, impose a more severe impact on the subject property as referenced in Cromwell. The variance relief requested is not for the entire length of either side or completely along the rear property lines, but only for that area of an existing "jog" in the rear property line that distinguishes it from its neighbors. Likewise, the existing side property lines taper inward from the rear boundary forward, thus requiring a variance relief of 18 feet of each side of the 140-foot long building, effectively bringing it into compliance with the adjoining properties.

It has been argued that Petitioner had the opportunity to know of the property line configuration before his purchase. However,

the Board concurs that Petitioner had no part in establishing the existing property lines. A boundary survey by Petitioner merely identified the already existing hardship created by the irregular property lines of the odd-shaped property. This hardship is not self-created. Referencing Cromwell, Mr. Little opined that the setback regulations for portions of M.L.-I.M. zoned properties which lie within 100 feet of a residential zone boundary impact the subject site more severely because of its unique characteristics, with none of the other lots in St. George's Industrial Park having similar property lines or constraints.

With regard to the variances requested, we agree that the subject property has special circumstances that are unique to the land, and strict compliance with the regulations would result in practical difficulty or unreasonable hardship. The legal standards for a variance set by Section 307.1 of the BCZR have been met by the Petitioner, and the Board is persuaded that the variance relief requested should be granted. In addition, the variances requested will not cause any injury to the public health, safety or general welfare.

O R D E R

IT IS, THEREFORE, THIS 20th day of April, 1998, by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Exception to allow the use of the property for a Commercial Recreational Facility (indoor soccer) be and the same is hereby GRANTED; and it is further

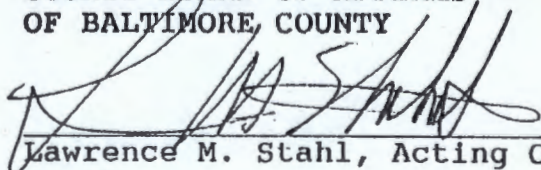
ORDERED that requested variance relief to permit the indoor recreational facility to be located within 100 feet of a residential zone line, a side yard setback of forty-two (42) feet in lieu of the required fifty (50) feet, and a rear yard setback of

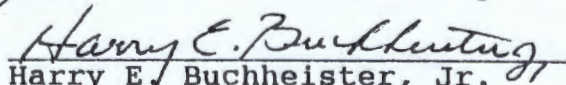
thirty-five (35) feet in lieu of the required fifty (50) feet be and is hereby GRANTED, all in accordance with Petitioner's Exhibit #5, subject to the following restrictions:

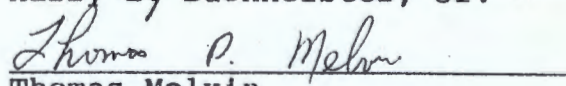
1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
2. The Petitioners shall stagger the times for the games to be played on the two soccer fields. Games shall alternate and begin at the half-time of the game currently being played. This staggering effect will alleviate the concerns raised over the overlapping of traffic between games.
3. The accessory arcade use shall be limited to a total of ten (10) machines and shall be available primarily for players' siblings and during birthday parties.
4. A sidewalk will be constructed between the proposed parking areas and Glynowings Drive.
5. The plan shall conform to Section 1XC.2.3(1) of the Landscape Manual providing landscape buffering required by the County.
6. A special hearing shall be required within six (6) months of the opening of the facility to review the parking conditions.

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

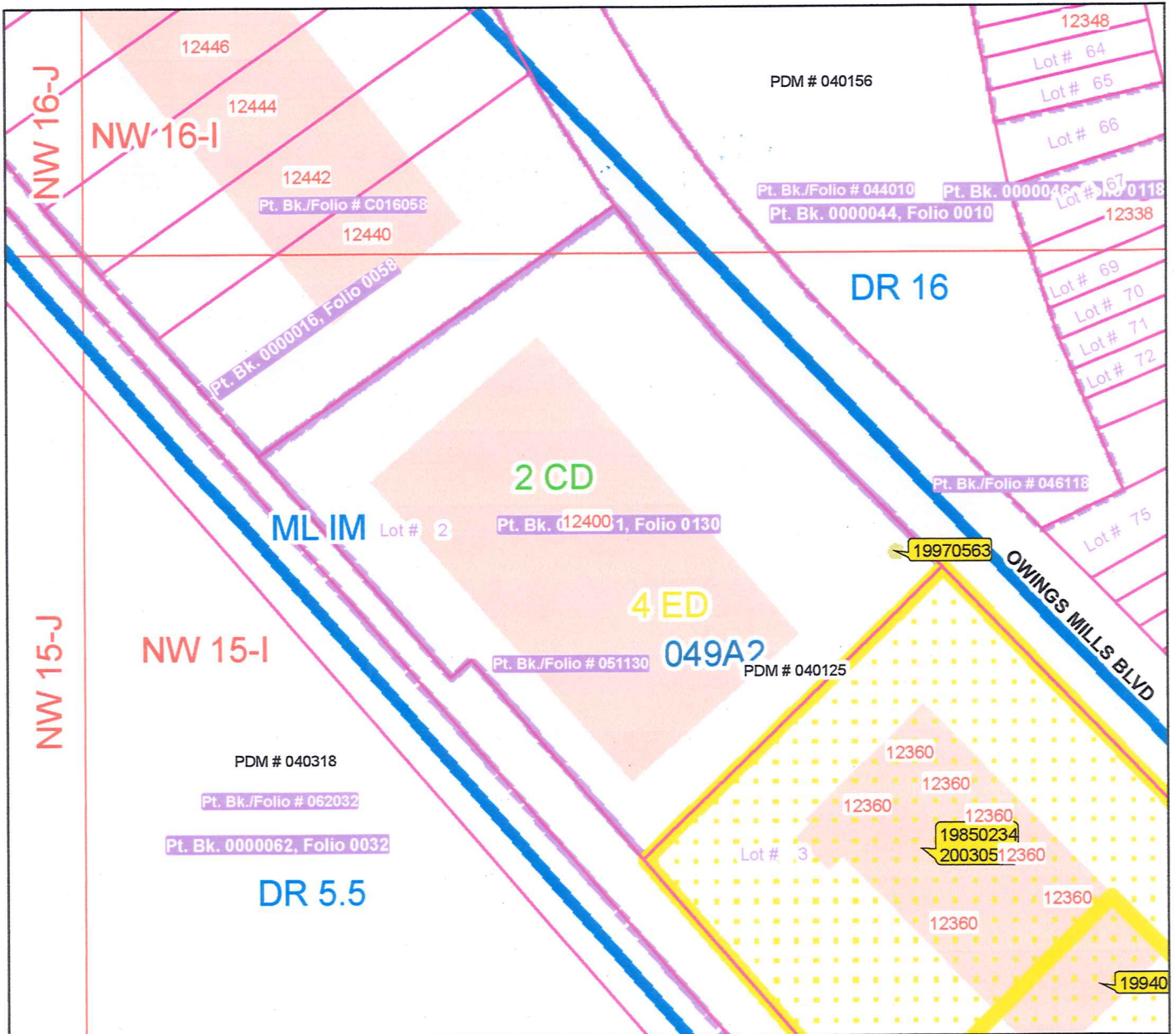
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Lawrence M. Stahl, Acting Chairman


Harry E. Buchheister, Jr.


Thomas Melvin

12400 Owings Mills Blvd



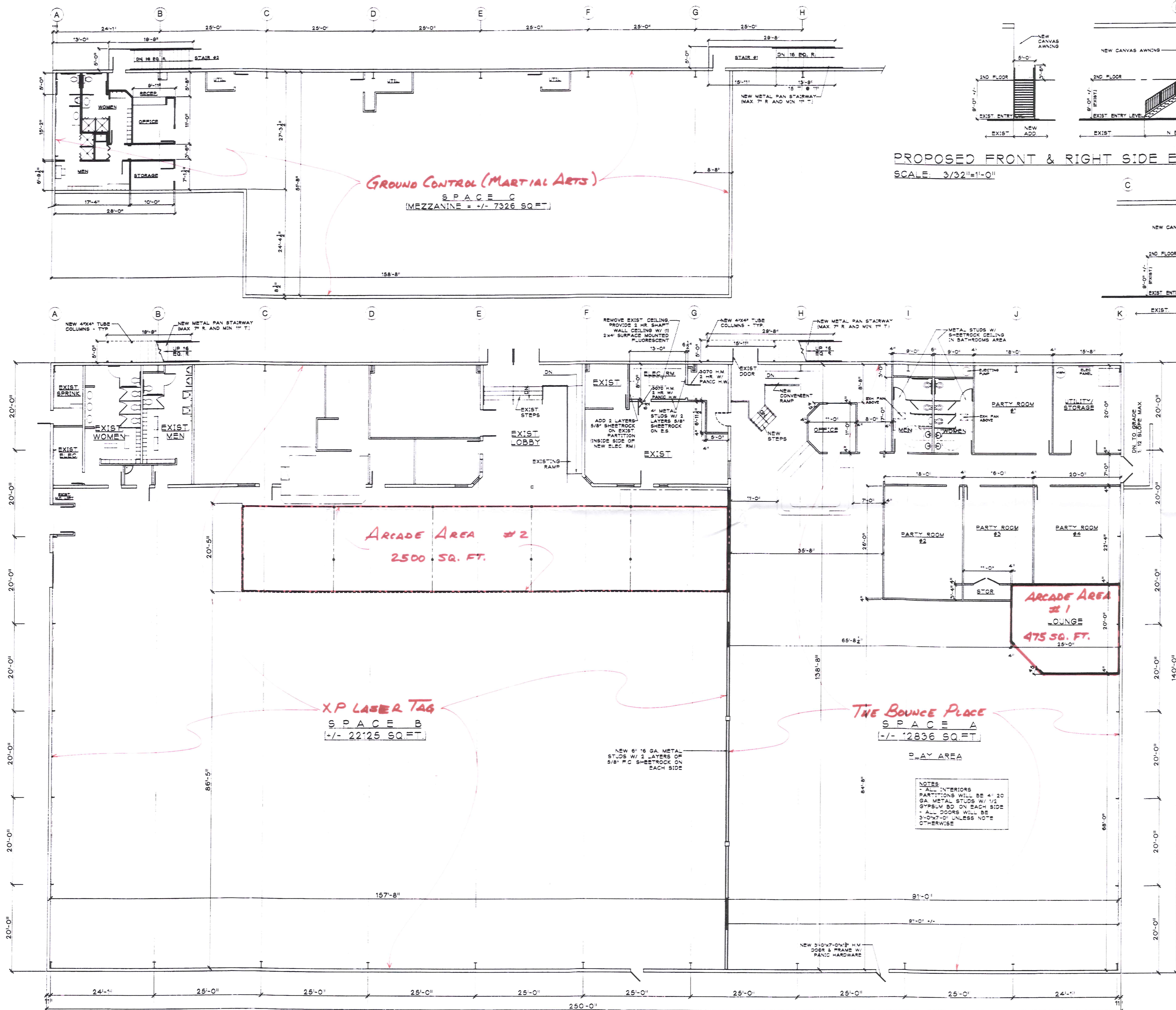
Publication Date: June 19, 2012
 Publication Agency: Department of Permits & Development Management
 Projection/Datum: Maryland State Plane,
 FIPS 1900, NAD 1983/91 HARN, US Foot



0 100 200
 Feet

1 inch = 100 feet

Item # 324



PROPOSED PLANS

SCALE: 3/32"=1'-0"

PROPOSED FRONT & RIGHT SIDE ELEVATIONS (STAIR #1)

SCALE: 3/32"=1'-0"

PROPOSED FRONT & LEFT SIDE ELEVATIONS (STAIR #2)

SCALE: 3/32"=1'-0"

EXISTING WALL/PARTITION TO REMAIN
NEW WALL/PARTITION

NOTES:
- ALL INTERIORS PARTITIONS WILL BE 4" 20 GA METAL STUDS W/ 1/2" GYPBLS BD ON EACH SIDE
- ALL DOORS WILL BE 3'-0"x7'-0" UNLESS NOTE OTHERWISE

DONALD B. RATCLIFFE & ASSOC.
ARCHITECTS AND PLANNERS
10404 Stevenson Road, Stevenson, Maryland 21153
410-484-3919
FAX: 410-484-7000

PLAN TO ACCOMPANY A PETITION - SHEET 2 OF 2
OWINGS MILLS SPORTS PLEX
12400 OWINGS MILLS BLVD.
REISTERSTOWN, MARYLAND

CONTENT:
PROPOSED PLANS,
AND ELEVATIONS

REVISED:			
#	date	#	date
1	06/02/08	6	11/26/08
2	06/11/08	12	nd FLR PLAN
3	06/27/08		
4	07/23/08		
5	10/28/08		

DATE: 05/22/08

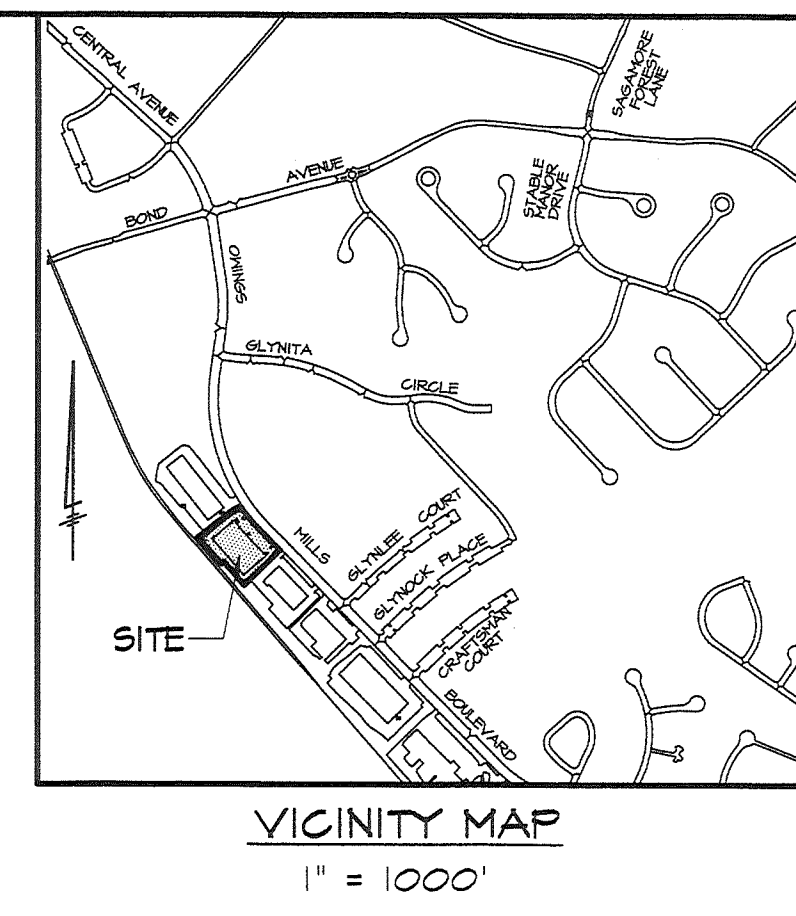
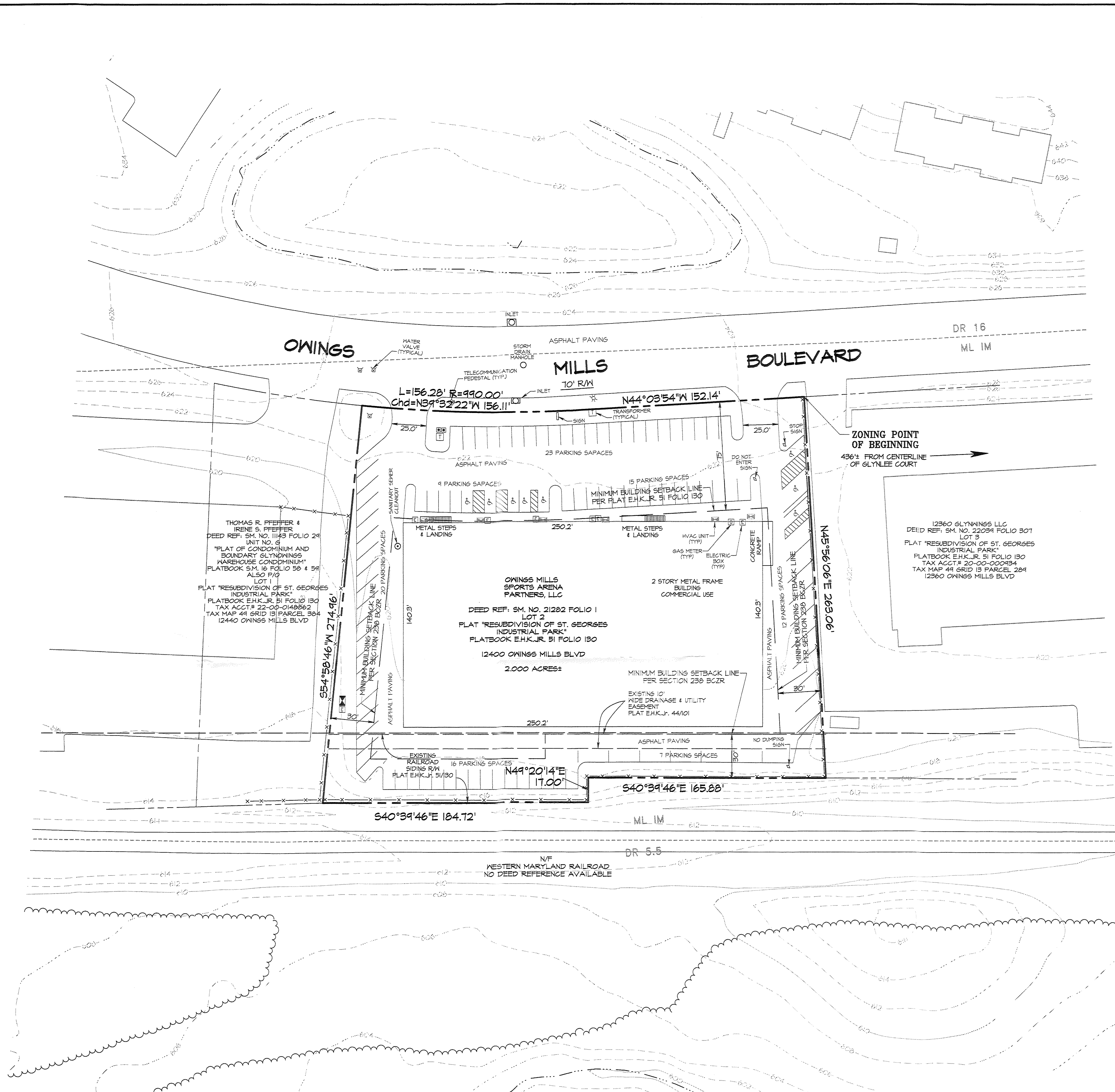
SCALE: AS NOTED

DRAWN BY: D.S.

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A-1

SHEET _____ OF _____



BALTIMORE COUNTY METROPOLITAN DISTRICT
PER PLAT - RESUBDIVISION OF ST. GEORGES
INDUSTRIAL PARK E.H.K.JR. 51/130

- GENERAL NOTES**
1. THE BOUNDARY SHOWN HEREON IS BASED ON THE PLAT OF RECORD.
 2. THE TOPOGRAPHY AND ZONING SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILE 049-A2.
 3. CENSUS TRACT 404402 REGIONAL PLANNING DISTRICT 306
WATERSHED GYNNIS FALLS SUBWERSHED GYNNIS FALLS
SCHOOL DISTRICT ELEMENTARY - GYNDON E.S.; MIDDLE - FRANKLIN M.S.; HIGH - FRANKLIN H.S.
A.D.C. MAP & GRID OLD 16 D6
 4. THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT.
 5. PARKING CALCULATIONS FOR GROUND CONTROL DETERMINED PURSUANT TO USE PERMIT.
 6. THERE ARE NO KNOWN UNDERGROUND FUEL STORAGE TANKS ON THE SUBJECT PROPERTY.
 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.

FLOOR AREA RATIO (F.A.R.) CALCULATIONS

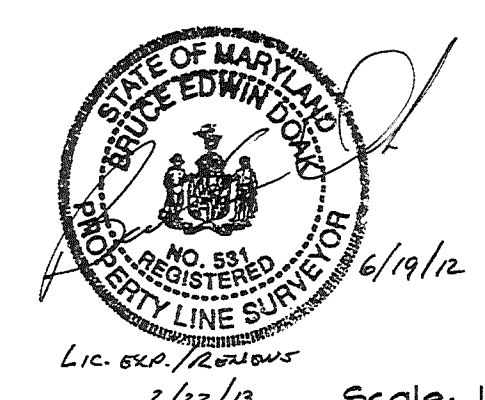
41,086 (GROSS FLOOR AREA OF THE BUILDING) / 96,312 (GROSS SITE AREA) = 0.426

PARKING CALCULATIONS

GROUND CONTROL (MARTIAL ARTS): 50 PEOPLE @ 1 PARKING SPACE PER 4 PEOPLE = 13 SPACES
XP LASER TAG: 120 PEOPLE @ 1 PARKING SPACE PER 4 PEOPLE = 30 SPACES
THAT BOUNCE PLACE: 120 PEOPLE @ 1 PARKING SPACE PER 4 PEOPLE = 30 SPACES
OFFICE: 842 SQ. FT. @ 5.3 PARKING SPACES PER 1,000 SQ. FT. = 9 SPACES
ARCADE: 3000 SQ. FT. @ 4 PARKING SPACES PER 1,000 SQ. FT. = 12 SPACES
TOTAL SPACES REQUIRED: 88
TOTAL SPACES PROVIDED: 102

OWNER
OWINGS MILLS SPORTS ARENA
PARTNERS, LLC
12234 GARRISON FOREST RD.
OWINGS MILLS, MD 21117-1103

CASE NO. 2012-324-SPH
SHEET 1 OF 2
**PLAN TO ACCOMPANY A PETITION
FOR THE PROPERTY OF
OWINGS MILLS
SPORTS ARENA
PARTNERS, LLC**
12400 OWINGS MILLS BOULEVARD
Deed Ref: SM. No. 21282 folio 1
Lot 2
Plat "Resubdivision of St. Georges
Industrial Park"
Platbook E.H.K.Jr. 51 folio 130
Tax Account No.: 20-00-000933
Zoned ML IM; GIS Tile 049-A2
Tax Map 49; Grid 13; Parcel 289
4th ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND



Scale: 1"=40' Date: JUNE 19, 2012

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

- LEGEND**
- EXISTING BUILDING
 - WOODS LINE
 - EXISTING PAVING
 - ZONING LINE
 - PROPERTY LINE
 - CONTOURS

ZONING CASE HISTORY

CASE #17-563-XA: GRANTED A SPECIAL EXCEPTION REQUEST FOR A COMMERCIAL RECREATIONAL FACILITY AND FOR AN ACCESSORY ARCADE IN COMBINATION THEREWITH AND A VARIANCE TO PERMIT A COMMERCIAL RECREATIONAL FACILITY TO BE LOCATED WITHIN 100' OF A RESIDENTIAL ZONE LINE, SIDE YARD SETBACKS OF 42 FEET IN LIEU OF THE REQUIRED 50 FEET, AND REAR YARD SETBACK OF 35 FEET IN LIEU OF THE REQUIRED 50 FEET.

CASE APPEALED TO THE BOARD OF APPEALS. CONDITION #3 IN BOARD ORDER PERMITTED NO MORE THAN 10 ARCADE MACHINES.

GENERAL NOTES REVISED	06/15/12	COMPUTED:	DRAWN: RTD	CHECKED:
REVISION	DATE			

RM
#2012-0324-SPH
FILE: X:\WNeuman Owings Mills\Zoning\Plat 04_24_12.ppt