

1/23/17

13-080-X

Circuit Court for Baltimore County,
Maryland
Case No. 03-C-14007926
Argued: October 11, 2016

IN THE COURT OF APPEALS

OF MARYLAND

No. 12

September Term, 2016

AFSHIN ATTAR, et al.

v.

DMS TOLLGATE, LLC, et al.

Barbera, C.J.,
Greene,
Adkins,
McDonald,
Watts,
Hotten,
Getty,

JJ.

Opinion by Hotten, J.

Filed: January 23, 2017



In October 2012, William and Mary Groff, the property owners, and Respondent, DMS Tollgate, LLC (collectively "Applicants") applied for a Petition for a Special Exception of the Baltimore County Zoning Regulations ("BCZR"), to operate a fuel service station with a convenience store containing a sales area larger than 1,500 square feet. The petition requested that Tollgate be permitted to construct a Wawa on an 8.51 acre property known as 10609 Reisterstown Road ("the property"). The property is zoned as BL-AS, or Business Local with Automotive Services.¹ The property is bordered by Reisterstown Road, Groff Lane, and the Gwynns Falls stream.

The Office of Administrative Hearings ("OAH") conducted a hearing in which the Applicants appeared in support of the grant of the Special Exception. Petitioners in this Court, Afshin Attar, Ashkan Rahmanattar, Malik Imran, and Perry S. Cowl (collectively "Protestants") attended in opposition. Witnesses for the Protestants testified at the hearing as to how the proposed Wawa would cause traffic congestion, a harmful environmental impact, and a detrimental effect upon the economic stability of the neighborhood. In its Opinion and Order dated October 31, 2013, OAH found that "these are impacts that are

¹ This zoning was obtained through the 2012 Baltimore County Comprehensive Zoning Map Process after extensive discussions between Tollgate, several county agencies and community groups. In exchange for the community groups granting the rezoning request, on August 28, 2012, Tollgate entered into a "DECLARATION OF COVENANTS AND AGREEMENTS," which required that the property be developed "in a manner consistent with and compl[e]mentary to the historic character of" the adjacent property.

inherent in the operation of a gasoline/convenience store[,]” and granted the Petition with conditions.²

The Protestants appealed to the Board of Appeals for Baltimore County (“the Board”), which approved the conditions for the Special Exception after a *de novo* evidentiary hearing. The Board noted that Tollgate

decided to proceed with the request for a Special Exception before receiving County approval for the proposed road relocation and approval for the flood

² The Opinion and Order of the Administrative Law Judge stated:

The relief granted herein shall be subject to the following:

1. [Applicants] may apply for appropriate permits and be granted same upon receipt of this Order; however, [Applicants] 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, [Applicants] would be required to return, and be responsible for returning, said property to its original condition.
2. Unless extended by subsequent order, the special exception granted herein must be utilized within two (2) years from the date of this Order.
3. The “special exception area” shall include the 1.70 acre (74,088 SF) area of the proposed Wawa service station and convenience store, but shall not include the 0.43 acre (18,628 SF) area of proposed relocated Groff Lane.
4. Approval by Baltimore County of a landscape and light plan for the site.
5. Approval by county, state and federal authorities of the floodplain study and/or floodplain map amendment or revision as sought by [Applicants].
6. Approval and issuance of all necessary permits by the State Highway Administration.

plain relocation from [the Federal Emergency Management Agency]. Under the BCZR this approach is not prohibited and therefore the grant of a Special Exception has no bearing on the approval o[r] non-approval of the foregoing matters.

The Board granted the Special Exception “with the same conditions as those imposed by the Administrative Law Judge below.”

The Protestants appealed for judicial review in the Circuit Court for Baltimore County. The circuit court found that the Board’s findings: “were both reasonable and supported by substantial evidence in the record[.]” and “were premised upon the proper application and conclusions of law[.]” The circuit court accordingly affirmed the decision of the Board on December 19, 2014. Thereafter, the Protestants appealed to the Court of Special Appeals. In an unreported opinion dated December 28, 2015, the Court of Special Appeals affirmed the decision of the circuit court. We granted the Petition for Writ of Certiorari filed by the Protestants. 447 Md. 297, 135 A.3d 416 (2016). Protestants present two questions for our review:

1. Whether Maryland’s special exception jurisprudence requires the Baltimore County Board of Appeals to define the boundaries of the neighborhood of the proposed special exception before approving that special exception and, if so, whether the Board of Appeals’ opinion satisfied Maryland’s minimum requirements for articulating the facts found regarding the neighborhood’s boundaries.
2. Whether the Court of Special Appeals erred when it held that the Applicant met its burden of proof, as articulated by the concurring opinion in *People’s Counsel for Baltimore County, et al. v. Loyola College in Maryland*, 406 Md. 54, [956 A.2d 166] (2008).

We conclude that the Board's description of the neighborhood impacted by the special exception was precise enough to enable a party or appellate court to comprehend the area that the Board considered.

Secondly, we conclude that while an applicant for a special exception bears both the burden of persuasion and production, the coexistent presumption in favor of an applicant is not a mutually exclusive evidentiary burden. The Board correctly determined that the Protestants failed to sufficiently rebut the presumption of validity of a special exception. Accordingly, we affirm the judgment of the Court of Special Appeals.

Standard of Review

An appellate court reviews the decision of an administrative agency "under the same statutory standards as the [c]ircuit [c]ourt," meaning "we reevaluate the decision of the agency, not the decision of the lower court." *Gigeous v. Eastern Correctional Inst.*, 363 Md. 481, 495–96, 769 A.2d 912, 921 (2001) (citation and footnote omitted). In reviewing the decision of an agency, our role "is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *United Parcel Serv., Inc. v. People's Counsel*, 336 Md. 569, 577, 650 A.2d 226, 230 (1994). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Md. State Police v. Warwick Supply & Equip. Co., Inc.*, 330 Md. 474, 494, 624 A.2d 1238, 1248 (1993) (citation omitted). Further, we may not substitute our judgment for that of the Board of Appeals unless the agency's

conclusions were not supported by substantial evidence or were premised on an error of law. *Stansbury v. Jones*, 372 Md. 172, 182, 184, 812 A.2d 312, 318, 319 (2002).

Discussion

I. The Board's Opinion Referenced Ample Evidence of Record Which Sufficiently Enables Us to Comprehend the Area the Board Considered. Thus, the Board Sufficiently Defined the Neighborhood.

The Protestants argue that the Board erred when it failed to define the boundaries of the Wawa's neighborhood. In support, Protestants urge that an applicant for a special exception must establish the boundaries of the neighborhood, and the zoning tribunal's written decision must satisfy Maryland law's minimum requirements for articulating the facts found regarding the neighborhood's boundaries.

Under BCZR § 502.1(A), a special exception use is prohibited if it is "detrimental to the health, safety or general welfare of the locality involved."³ In *Schultz v. Pritts*, we held that an applicant for a special exception "does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted *without real detriment to the neighborhood* . . . he has met his burden." 291 Md. 1, 11, 432 A.2d 1319, 1325 (1981).

We further held in *Montgomery County v. Butler*, "[t]he phrase 'detriment to the neighborhood' implies necessarily that the Board's task is to determine if there is or likely will be a detriment *to the surrounding properties*." 417 Md. 271, 305, 9 A.3d 824, 844

³ BCZR § 502.1 does not explicitly require that a neighborhood's boundary be specifically defined.

(2010) (emphasis added). Thus, we held that, within the context of a special exception, the “neighborhood” means “the surrounding properties.” *Id.* See also *Montgomery v. Bd. of Cty. Comm’rs for Prince George’s Cty.*, 263 Md. 1, 5, 280 A.2d 901, 903 (1971) (holding that, in the rezoning context, “[t]he concept of a neighborhood is a flexible one, and will vary according to the geographical location involved[.]”); *Woodlawn Area Citizens Ass’n v. Bd. of Cty. Comm’rs for Prince George’s Cty.*, 241 Md. 187, 198, 216 A.2d 149, 156 (1966) (holding that, in the rezoning context, “what constitutes a neighborhood . . . is not and should not be precisely and rigidly defined[.]”).

In *Alviani v. Dixon*, we considered whether the Anne Arundel County Board of Appeals erred when it granted variances⁴ to enable applicants to satisfy criteria for a special exception, regarding the construction of an automotive service station. 365 Md. 95, 775 A.2d 1234 (2001). The protestants in *Alviani* specifically “allege[d] that the Board failed to properly define the relevant neighborhood that was considered when the Board found

⁴ We outline *infra* how, for purposes of determining the sufficiency of the description of the “neighborhood,” our rezoning jurisprudence is inapposite to our special exception jurisprudence. Parallel to this analysis, in *Alviani v. Dixon*, we addressed how our use variance jurisprudence is inapposite to our area variance jurisprudence. In *Alviani* we held:

The standards applied to area variances are more relaxed than those applied to use variances because the impact of an area variance is viewed as being much less drastic than that of a use variance. Consequently, the cases cited by appellants do not support their contention that the surrounding “neighborhood” must be defined with the same precision in approving area variances as is required in approving use variances.

365 Md. at 120, 775 A.2d at 1248 (citations and quotation omitted).

that the variances would not affect the neighborhood.” *Id.* at 117, 775 A.2d at 1247. We disagreed and found, “after examining the record, that the Board established the relevant neighborhood[,]” as the Board’s description was “precise enough to enable a party or an appellate court to comprehend the area that the Board considered when deciding to grant the variances.” *Id.* at 117, 119, 775 A.2d at 1247, 1248.

Lucas v. People’s Counsel for Balt. Cty. involved a petition for a special exception for an “airport” zoning special exception on a farm zoned for agriculture, located within a National Historic District in Baltimore County. 147 Md. App. 209, 216–17, 807 A.2d 1176, 1180 (2002), *disapproved of on other grounds by People’s Counsel for Balt. Cty. v. Loyola Coll. in Md.*, 406 Md. 54, 956 A.2d 166 (2008). In *Lucas*, the Honorable James A. Kenney, III employed the standard outlined in *Alviani*, and found that the Board’s definition of the relevant area was insufficient, as it relied on only amorphous descriptions of the area to be considered:

The Board relied on testimony regarding the adverse effect of the airport on the “land around Helmore Farm,” on “the horse industry in the area,” on the “historical district,” and on “Greenspring Valley.” The Board’s definition of the relevant area does not provide the precision required for a party or an appellate court to comprehend the adversely affected area and to determine if the neighborhood reasonably constitutes the immediate environment of the subject property.

147 Md. App. at 241, 807 A.2d at 1195.

In accord with our precedent in *Alviani*, in conjunction with the special exception jurisprudence reflected by *Schultz*, *Butler*, and *Lucas*, we hold that the description of the neighborhood impacted by the special exception must be precise enough to enable a party or appellate court to comprehend the area that the Board considered. Precision is

determined through a review of the evidence in the record describing the impact on the surrounding properties, as referenced within the Board's opinion. *See also Critical Area Comm'n for Chesapeake & Atl. Coastal Bays v. Moreland, LLC*, 418 Md. 111, 135, 12 A.3d 1223, 1238 (2011) (holding that meaningful judicial review is possible when the Board summarizes substantial evidence in support of its findings).

In the case at bar, the Board's opinion stated in relevant part:

The [Applicants] offered into evidence the testimony of Ken Schmid, of Traffic Concepts, Inc., who was admitted as an expert in the fields of Traffic Engineering and Transportation Planning. Mr. Schmid opined that the proposed use will not create congestion of the roads, streets or alleys in the area of the subject property. The proposed relocation of Groff Lane to create a four way signalized intersection, according to Mr. Schmid, will create a safer and more convenient pattern of traffic circulation for the subject property and the surrounding area.

The [Applicants] called Mr. Rick Richardson, of Richardson Engineering, who was offered and accepted by the Board as an expert in the fields of civil engineering, zoning and development.

Mr. Richardson testified that the proposed fuel service station is not . . . located within a mile radius of any abandoned fuel service station(s).

The Protestants called to testify John Seitz, of Transportation Resource Group, Inc. who was accepted by the Board as an expert in the area of Traffic Engineering. Mr. Seitz testified that as a part of his investigation of the proposed use of the subject site he evaluated the potential truck turning radius for fuel delivery trucks entering the proposed site using a computer based traffic modeling program and determined that a fuel delivery truck attempting to turn into the proposed site would cause potential congestion and traffic difficulty of Groff Mill Road because of the wide turning angle required for such trucks.

The Protestants next called Andrew Miller, PhD who was admitted as an expert in hydrological studies. Dr. Miller testified concerning the Flood Plain Study prepared by the [Applicants]. According to Dr. Miller the subject area contains a portion of the existing flood plain which will be filled in to facilitate construction of the site.

The Board's opinion references ample evidence of record for us to appreciate the area considered by the Board. The Board referenced testimony concerning the roads and intersections surrounding the subject property, including: Tollgate Road, Reisterstown Road, Groff Lane, and Reisterstown Road's intersection with Owings Mills Boulevard. The Board referenced testimony regarding the commercial development surrounding the property. In accordance with BCZR § 405.3,⁵ the Board referenced testimony regarding an exhibit which depicted the five gas stations contained within a one-mile radius from the property. The Board referenced testimony regarding the flood plain surrounding the property. Unlike in *Lucas*, there was ample evidence presented to the Board regarding the immediate environs of the proposed Wawa, which the Board referenced in its opinion. Here, the evidence presented to the Board regarding the area impacted by the special exception, as referenced in the Board's opinion, was precise enough to enable a party or appellate court to comprehend the area that the Board considered. Thus, we will not disturb the Board's decision.

⁵ BCZR 405.3 "Condition for disapproving special exception[]" provides in pertinent part "the Zoning Commissioner, prior to granting any special exception for a fuel service station, shall consider the presence of abandoned fuel service stations in the vicinity of the proposed site."

The Protestants further contend that we require a delineation of the neighborhood in rezoning matters, and accordingly, this same requirement should be extended to apply in special exception cases. We disagree.

Rezoning cases are inapposite to our analysis because of the respective burdens in rezoning and special exception matters. We have stated that:

[T]here is a strong presumption of the correctness of original zoning and comprehensive rezoning and that to sustain a piecemeal change therefrom there must be produced strong evidence of mistake in the original zoning and comprehensive rezoning and that to sustain a piecemeal change therefrom there must be produced strong evidence of mistake in the original zoning or else evidence of a change in conditions resulting in a substantial change in the character of the neighborhood.

Heller v. Prince George's Cty., 264 Md. 410, 412, 286 A.2d 772, 773 (1972) (citation omitted); *see also Border v. Grooms*, 267 Md. 100, 110, 297 A.2d 81, 86 (1972) (holding “that which reasonably constitutes the neighborhood of the subject property is one of the basic facts to be established by an applicant for rezoning, *and because of its fundamental involvement in any case resting on a contention of a change in the character of the neighborhood* it must be satisfactorily shown upon the record.”) (emphasis added).

Given the heavy burden upon the party seeking a rezoning, and the strong presumption in favor of the original zoning, “some delineation of the general boundaries encompassed” is an apt evidentiary element in the rezoning context. *Border*, 267 Md. at 110, 297 A.2d at 86; *see also Heller*, 264 Md. at 412, 286 A.2d at 773 (holding that, in the rezoning context, “there is a strong presumption of the correctness of the original zoning” and “[t]he burden of proof, of course, is quite onerous and it rests squarely on the one seeking the reclassification.”). There is an inverse evidentiary presumption, however, in

the special exception context. A special exception is presumed to be in the interest of the general welfare, and therefore a special exception enjoys a presumption of validity. *Schultz*, 291 Md. at 11, 432 A.2d at 1325. Given these conflicting presumptions, our requirement for a precise definition of the neighborhood within rezoning matters does not extend to special exception cases.

II. The Burden of Proof Was Not Inappropriately Assigned to the Protestants

The Protestants argue that the Board of Appeals erred when it assigned the burden of proof to the Protestants and concluded that the Protestants' evidence did "not rebut the presumption of validity of the Special Exception use in this case." We disagree. A special exception in Baltimore County is granted pursuant BCZR § 502.1, which provides, in pertinent part:

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein[.]

In *Schultz* we held:

[T]he appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

291 Md. at 22–23, 432 A.2d at 1331. We further held that a special exception is presumed to be in the interest of the general welfare, and therefore a special exception enjoys a presumption of validity. *Id.* at 11, 432 A.2d at 1325.

It is undisputed that “both the burden of production and the burden of persuasion on the issue of whether the special exception should be granted[]” fall on the applicant, whereby the applicant must persuade the Board “by a preponderance of the evidence that the special exception will conform to all applicable requirements.” *Loyola Coll. in Md.*, 406 Md. at 109, 956 A.2d at 199.

The Protestants, however, assert that the Board “assigned the burden of proof to the Protestants[]” when it stated: “The Protestants’ concerns taken from the available evidence do not rebut the presumption of validity of the Special Exception in this case.” Directly prior to this finding, however, the Board articulated the *Schultz* standard:

there is a presumption under Maryland Law that a Special Exception is in [] the general interest of the jurisdiction and therefore valid and that a Special Exception is properly denied only when there are facts and circumstances showing the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the Special Exception use.

The Board’s opinion did not improperly assign the burden of proof to the Protestants. While an applicant for a special exception bears both the burden of persuasion and of production, the concurrent presumption in favor of a special exception applicant is not a mutually exclusive evidentiary burden. As the Honorable Glenn T. Harrell, Jr. explained within the context of presumptions of civil actions under Maryland Rule 5-301(a):

[A] presumption does not necessarily shift the burden of persuasion. Rather, it merely satisfies the burden of going forward on a fact presumed and *may* satisfy the burden of persuasion if no rebuttal evidence is introduced by the other side. . . . Stated differently, the party favored by the presumption is not relieved of the requirement of presenting evidence to establish a prima facie case as to those issues for which he bears the burden of proof if the adverse party sufficiently rebuts the presumption. In such instances, the presumption merely enhances the probative value of other evidence adduced.

Anderson v. Litzenberg, 115 Md. App. 549, 564, 694 A.2d 150, 157 (1997). Here, the Protestants did not set forth sufficient evidence to indicate that the proposed fuel service station would have any adverse effects above and beyond those inherently associated with such use under the *Schultz* standard. 291 Md. at 15, 432 A.2d at 1327. Thus, the Board simply stated that, in light of the Applicants having presented sufficient evidence demonstrating compliance with BCZR § 502.1 and the general presumption of validity enjoyed by special exception uses, the evidence as a whole did not warrant denial of the petition for the special exception.. *See Anderson*, 115 Md. App. at 564, 694 A.2d at 157. The Board's opinion did not inappropriately assign the burden of proof.

III. The Evidence Presented by the Protestants Was Not Sufficient to Rebut the Presumption of the Validity of a Special Exception.⁶

⁶ Protestants argued in their reply brief that the issue of whether there was substantial evidence in the record to support the Board's conclusions is not before this Court. As we noted in *Garner v. Archers Glen Partners, Inc.*, 405 Md. 43, 949 A.2d 639 (2008):

Since the time when this Court's jurisdiction became largely dependent upon the issuance of a writ of certiorari, we have consistently held that, in a case decided by an intermediate appellate court, we shall not consider an issue unless it was raised in a certiorari petition, a cross-petition, or the order by this Court granting certiorari. We again decline to address an issue not raised fairly in an otherwise successful Petition for Writ of Certiorari.

405 Md. at 60–61, 949 A.2d at 649 (citations omitted). *See also* Md. Rule 8–131(b) (continued . . .)

The Protestants next argue that they presented evidence generating a genuine question of fact as to whether the special exception will create congested roads per BCZR § 502.1(B), and that it will have detrimental environmental and economic impacts per BCZR § 502.1(A).

A. Road Congestion

BCZR § 502.1(B) requires that a special exception not “[t]end to create congestion in roads, streets or alleys therein[.]” At the hearing before the Board, the Applicants called Ken Schmid of Traffic Concepts, Inc. as an expert in the fields of Traffic Engineering and Transportation Planning. Mr. Schmid testified that the proposed use will not create congestion in the roads, streets, or alleys. Mr. Schmid testified that he and his company submitted two Traffic Impact Studies on behalf of the Applicants to the Maryland State Highway Administration in support of the planned relocation of Groff Road. On cross-examination, Mr. Schmid acknowledged that the planned road relocation had not yet received approval. The Board ultimately conditioned the grant of the Special Exception

(. . . continued)

(“Unless otherwise provided by the order granting the writ of certiorari, in reviewing a decision rendered by the Court of Special Appeals . . . the Court of Appeals ordinarily will consider only an issue that has been raised in the petition for certiorari or any cross-petition and that has been preserved for review by the Court of Appeals.”). This Court granted certiorari on the question of whether the Court of Special Appeals erred when it held that the Applicants met their burden of proof, as articulated in the concurring opinion in *People’s Counsel for Balt. Cty. v. Loyola Coll. in Md.*, 406 Md. 54, 135 A.3d 416 (2016). We find that the sufficiency of the evidence in this matter is a necessary facet of the burden of proof issue, on which this Court granted certiorari. Moreover, the Protestant’s Petition for Writ of Certiorari argued that the Board erred because it failed to address the fact the record contained genuine questions of fact regarding the Wawa’s effect on traffic congestion, the Gwynns Falls stream and its flood plain, and the economic stability of the neighborhood.

upon approval and issuance of all necessary permits by the State Highway Administration. In addition, the Applicants presented the testimony of Mr. Rick Richardson, who was accepted by the Board as an expert in the fields of civil engineering, zoning and development. Mr. Richardson testified that the Wawa will meet or surpass the requirements of BCZR § 502.1. In rebuttal, Protestants provided testimony from John Seitz of Transportation Resource Group to support their contention that the proposed Wawa would result in potential congestion and traffic difficulty off Groff Mill Road as a result of turning fuel delivery trucks.

The *Schultz* special exception test considers whether the proposed use will have a greater impact here than one would ordinarily expect. The Protestants did not present “facts and circumstances [pertaining to congestion in the roads, streets, or alleys] that show that the particular use proposed at the particular location proposed would have any adverse effects *above and beyond those inherently associated with such a special exception use*[.]” 291 Md. at 15, 432 A.2d at 1327 (emphasis added). Thus, the Protestants did not sufficiently rebut the presumption of validity under *Schultz*.

B. Floodplain Relocation

The Protestants provided evidence that the Gwynns Falls floodplain may be impacted by the construction of the Wawa. The Board, however, did not render a factual conclusion on this issue: “The possibility of a negative impact upon the flood plain by [the Applicants’] plans will be determined separately by way of the investigation by State and Federal authorities and pursuant to Baltimore County Code (Section 32-8-101 [*et seq.*]) will only be granted when there is no adverse effect upon the safety and welfare of the

citizenry.” Tollgate is not prevented by the BCZR from proceeding with the request for the Special Exception before receiving approval for the proposed floodplain relocation. Because the Board did not render, nor was it required to make, a factual conclusion on this issue, and we cannot arrive at such a conclusion, there was no error from the Board for us to review. *See United Parcel Serv., Inc. v. People’s Counsel*, 336 Md. at 577, 650 A.2d at 230 (stating that our role “is limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.”).

C. Economic Impact

Lastly, Protestants argue that the Wawa will negatively impact the economic stability of the neighborhood, as the addition of a sixth gas station in the area may result in one of the five existing gas stations going out of business. We have held that the “prevention of competition is not a proper element of zoning.” *Kreatchman v. Ramsburg*, 224 Md. 209, 219, 167 A.2d 345, 351 (1961) (citations omitted). The economic effects of zoning should be considered only as they affect the general welfare. *Id.* at 222, 167 A.2d at 352.⁷ The speculative testimony provided by the Protestants as to the increase in supply in excess of demand within the fuel service station market fails to rebut the presumption of validity under *Schultz*.

⁷ As we noted, the Board conducted an analysis of BCZR 405.3 and determined that “[t]he evidence presented at the hearing established that there are no abandoned fuel service stations located within either one-half mile or one-mile of the proposed site.” Contrary to the Protestants’ contention, the Wawa may increase competition within the relevant fuel service station marketplace, increase consumer welfare, and thus, may even *increase* the general welfare of the locality.

**JUDGMENT OF THE COURT
OF SPECIAL APPEALS IS
AFFIRMED. COSTS TO BE
PAID BY PETITIONERS.**

Afshin Attar, et al. v. DMS Tollgate, LLC, et al., No. 12, September Term, 2016. Opinion by Hotten, J.

ZONING AND PLANNING — FINDINGS, REASONS, CONCLUSIONS, MINUTES OR RECORDS: The Board of Appeals' description of the neighborhood impacted by a special exception must be precise enough to enable a party or appellate court to comprehend the area that the Board of Appeals considered. The sufficiency of this precision is determined through a review of the evidence in the record describing the impact on the surrounding properties, as referenced within the Board's opinion.

ZONING AND PLANNING — PRESUMPTIONS AND BURDENS OF PROOF: While an applicant for a special exception bears both the burden of persuasion and of production, the coexistent presumption of validity of a special exception does not shift the burden of proof to the protestant. This presumption in favor of the applicant is not mutually exclusive from the burdens upon the applicant, and the protestant must sufficiently rebut the presumption in favor of the applicant. The applicant is not relieved of the requirement of presenting evidence to establish a prima facie case as to those issues for which the applicant bears the burdens if the protestant sufficiently rebuts the presumption. The presumption in favor of the applicant merely enhances the probative value of other evidence adduced.

12/28/15

13-080-X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2368

September Term, 2014

AFSHIN ATTAR, ET AL.

v.

DMS TOLLGATE, LLC, ET AL.

Wright,
Arthur,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: December 28, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

Appellants, Afshin Attar, Ashkan Rahmanattar, Malik Imran, and Perry S. Crowl (collectively “Protestants”), bring this appeal from the grant of a Special Exception (“the Special Exception”) by the Office of Administrative Hearings (“OAH”) for Baltimore County on October 31, 2013, pursuant to the Baltimore County Zoning Regulations (“BCZR”), to operate a fuel service station with a convenience store containing a sales area larger than 1,500 square feet (“Wawa”) in Baltimore County. The Special Exception was petitioned by William and Mary Groff, the property owners, and appellee, DMS Tollgate, LLC, the contract purchaser (“Tollgate”). The Special Exception was subsequently approved by the Board of Appeals for Baltimore County (“the Board”) on June 24, 2014, upon its conduction of a *de novo* hearing. The Protestants then petitioned for judicial review where the Circuit Court for Baltimore County affirmed the decision of the Board on December 19, 2014. Protestants now appeal to this Court and submit the following questions for our consideration:

1. Whether the Board of Appeals erred legally when it assigned the burden of proof to the Protestants and concluded that the Protestants’ evidence did “not rebut the presumption of validity of the Special Exception use in this case.”
2. Whether the Board of Appeals’ opinion satisfied Maryland’s minimum requirements for articulating the facts found regarding the neighborhood’s boundary.

For the reasons set forth below, we answer Protestants’ first question in the negative and their second question in the affirmative, and we affirm the decision of the circuit court.

Facts

In October 2012, Tollgate applied for a Petition for Zoning Hearing for a Special Exception with the Office of Administrative Law. The Special Exception requested that Tollgate be permitted to construct the Wawa in Baltimore County on an 8.51 acre property known as 10609 Reisterstown Road (“the property”). The property is zoned as BL-AS, or Business Local with Automotive Services;¹ it is bordered by Reisterstown Road, Groff Lane, and the Gwynn Falls stream.

The Special Exception was granted by OAH after a hearing, where Tollgate and other petitioners appeared in support, and Protestants attended in opposition.² Witnesses for the Protestants testified at the hearing of the damaging effect that the Wawa would have to the area in terms of traffic congestion, increased crime, and environmental impact. Acknowledging these “inherent adverse effects that the legislature was presumed to have anticipated when it allowed the use by special exception,” OAH approved the Special Exception.

¹ The property was rezoned as BL-AS through the 2012 Baltimore County Comprehensive Zoning Map Process (“CZMP”), which arose from extensive discussions between Tollgate, several county agencies, and community groups. In exchange for the community groups granting the rezoning request, Tollgate subjected the property to “a Declaration of Restrictive Covenants,” which required that the property “be developed in a manner consistent with and complimentary to the historic character of the historic Groff Mill.”

² Many of the Protestants are owners of gas service stations in close proximity to the proposed Wawa.

The Protestants appealed the matter to the Board, which also approved the conditions for the Special Exception after conducting a *de novo* evidentiary hearing. “Without the benefit of an approved plan,” the Board granted the Special Exception “with the same conditions as those imposed by the Administrative Law Judge below.”³ The Protestants then appealed for judicial review, where the lower court affirmed the Board, stating that the Board’s findings “were both reasonable and supported by substantial evidence in the record.”

Standard of Review

An appellate court reviews the decision of an administrative agency “under the same statutory standards as the Circuit Court,” meaning “we reevaluate the decision of the agency, not the decision of the lower court.” *Gigeous v. E. Corr. Inst.*, 363 Md. 481, 495-96 (2001) (citation omitted). We review the Board’s legal conclusions *de novo* but, regarding the findings of fact, we “must accept the agency’s conclusions if they are based

³ The OAH Order by the Administrative Law Judge reads as follows:

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however,
2. Unless extended by subsequent order, the special exception granted herein must be utilized within two (2) years from the date of this Order.
3. The “special exception area” shall include the 1.70 acre (74,088 SF) area of the proposed Wawa service station and convenience store, but shall not include the 0.43 acre (18,628 SF) area of proposed relocated Groff Lane.
4. Approval by Baltimore County of landscape and lighting plan for the site.
5. Approval by county, state, and federal authorities of the floodplain study and/or floodplain map amendment or revision as sought by Petitioners.
6. Approval and issuance of all necessary permits by the State Highway Administration.

on substantial evidence and if reasoning minds could reach the same conclusion based on the record.” *People’s Counsel for Balt. Cty. v. Prosser Co.*, 119 Md. App. 150, 167-68 (1998) (citations omitted). “Whether we would have reached the same conclusion based on those facts is not the issue. The question is whether there is legally sufficient evidence to support the Board’s conclusion.” *Id.* at 179.

Therefore, when reviewing the decision of an agency, our role “is limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *People’s Counsel for Balt. Cnty. v. Elm Street Dev., Inc.*, 172 Md. App. 690, 700 (2007) (citation omitted). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* (citation omitted). We “may not substitute our judgment for that of the Board” in making such a determination “unless the agency’s conclusions were not supported by substantial evidence or were premised on an error of law.” *Id.* 700-01 (citation omitted).

Discussion

I. The Burden of Proof was not inappropriately assigned to the Protestants.

A special exception in Baltimore County is granted pursuant BCZR § 502.1, which provides, in pertinent part:

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein[.]

The Court of Appeals has dictated that we determine whether a requested special exception should be denied based on the “facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” *Schultz v. Pritts*, 291 Md. 1, 22-23 (1981) (citations omitted).

It is undisputed that “both the burden of production and the burden of persuasion on the issue of whether the special exception should be granted” fall on the applicant, whereby he must persuade the Board “by a preponderance of the evidence that the special exception will conform to all applicable requirements.” *People’s Counsel for Balt. Cty. v. Loyola Coll. in Md.*, 406 Md. 54, 109 (2008).

The Protestants, however, assert that the Board “assigned the burden of proof to the Protestants” when it stated: “The Protestants’ concerns taken from the available evidence do not rebut the presumption of validity of the Special Exception in this case.” Read in the context of the Board’s opinion, the statement does not change the burden of proof from the applicant to the Protestants. First, in the “DECISION” section of its opinion, the Board states: “The instant case then presents the narrow issue of [Tollgate’s] compliance with the requirements for a Special Exception. In the Board’s view the evidence presented is sufficient to satisfy the requirements of Section 502.1 of the BCZR

...” The Board here acknowledges that Tollgate has met its burden of proof by presenting “sufficient” evidence that the Special Exception will comply with the requirements of BCZR § 502.1. Second, the Board follows this finding by noting that:

there is a presumption under Maryland Law that a Special Exception is in [] the general interest of the jurisdiction and therefore valid and that a Special Exception is properly denied only when there are facts and circumstances showing the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the Special Exception use.^[4]

By stating that the Protestants’ evidence “d[id] not rebut the presumption of validity of the Special Exception use in this case,” the Board is referring not to the burden of proof borne by Tollgate, as the applicant, but rather to the presumption of validity once the applicant has already presented sufficient evidence. The Board is merely emphasizing that the Protestants have failed to rebut the evidence put on by the applicant.

II. The evidence presented by the Protestants was not enough to rebut that put on by Tollgate, providing the Board with sufficient evidence to make its factual findings.

The Protestants next argue that they “presented evidence generating a genuine question of fact as to whether” the Special Exception will create congested roads per BCZR § 502.1(B), and that it will have detrimental environmental and economic impacts per BCZR § 502.1(A).

⁴ The Board refers to law cited earlier in its opinion. *Schultz v. Pritts* dictates that a special exception is presumed to be in the interest of the general welfare and is therefore valid. *Schultz*, 291 Md. at 11.

i. Road congestion

BCZR § 502.1(B) requires that a special exception not “[t]end to create congestion in roads, streets or alleys therein.” The Protestants maintain that the proposed Wawa would result in “potential congestion and traffic difficulty off Groff Mill Road” from turning fuel delivery trucks. They provided testimony from John Seitz of Transportation Resource Group supporting that theory. Tollgate, on the other hand, provided its evidence that the Wawa would not create congestion on the roads in testimonial form from its own expert witness, Ken Schmit, an expert in the field of Traffic Engineering and Transportation Planning. Tollgate also presented Traffic Impact Studies in accordance with the State Highway Access Manual. There was, therefore, sufficient evidence for the Board to find that the road congestion on Reisterstown Road would not be negatively impacted by the granting of the Special Exception. We thus will not disturb the Board’s decision.

ii. Floodplain relocation

Protestants provide evidence that the Gwynn Falls floodplain may be impacted by the construction of the Wawa. The Board, however, made no finding as to the impact that the granting of the Special Exception will have on the flood plain:

The possibility of a negative impact upon the flood plain by [the applicant’s] plans will be determined separately by way of the investigation by State and Federal authorities and pursuant to Baltimore County Code (Section 32-8-101 et seq.) will only be granted when there is no adverse effect upon the safety and welfare of the citizenry.

Tollgate is not prevented by the BCZR from proceeding with the request for the Special Exception before receiving approval for the proposed floodplain relocation. Because the Board did not make, nor was it required to make, a factual conclusion on this issue, and we cannot make such a conclusion, there was no error from the Board for us to review. *See Prosser Co.*, 119 Md. App. at 179 (explaining that “[t]he question is whether there is legally sufficient evidence to support the Board’s conclusion”).

iii. Economic impact

Protestants argue that the Wawa will negatively impact the economic stability of the neighborhood. BCZR § 502.1(A) provides that for a proposed special exception use to be approved, the petitioner must demonstrate that the use will not be “detrimental to the health, safety, and general welfare of the locality involved.” Protestants aver that since five gas stations already operate in close proximity to the proposed Wawa, several owned by some of the Protestants, “[t]he addition of a sixth gas station on this portion of Reisterstown Road will increase the amount by which the supply of gas exceeds the market demand” arguably causing “one of the existing five gas stations [to] go out of business if the proposed Wawa is built.”

While the new Wawa may result in the closure of an existing gas station, BCZR § 502.1(A) does not protect against economic competition. The Court of Appeals has previously noted that the “prevention of competition is not a proper element to be considered in zoning.” *Kreatchman v. Ramsburg*, 224 Md. 209, 219 (1961) (citations omitted). County zoning ordinances do not operate to provide economic protection to

existing businesses. *Superior Outdoor Signs, Inc. v. Eller Media Co.*, 150 Md. App. 479, 501 (2003). The economic effects of zoning should be considered only as they affect the general welfare. *Kreatchman*, 334 Md. at 222.

The Protestants provide only speculative evidence on the impact the Wawa would have if it opens. Even then, they discuss only the harm that the Protestants themselves may suffer. However, merely showing the economic impact on three or four of the Protestants if the Wawa is built is not enough to amount to the “general welfare” of the locality. Taking this into consideration, there is substantial evidence to support the Board’s findings of fact with respect to the Special Exception use’s impact on the health, safety, or general welfare of the locality involved.

III. The Board’s opinion satisfied any need for articulating the boundaries of the “neighborhood” under the BCZR.

Protestants allege that “a definition of the neighborhood is an element of the required proof for a special exception,” and that the neighborhood’s boundary is required to be specifically defined. In its language, BCZR § 502.1 does not explicitly required that a petition for special exception set forth a defined boundary of the neighborhood impacted by the prosed use. BCZR § 502.1 merely requires that a special exception consider the health and safety of “the locality involved.” Protestants, however, cite *Lucas v. People’s Counsel for Balt. Cnty.*, 147 Md. App. 209 (2002),⁵ for the proposition that

⁵ *Lucas* was disapproved of by *People’s Counsel for Balt. Cty. v. Loyola College in Md.*, *supra*, on different grounds.

the Board must specifically define the neighborhood pertinent to the special exception. *Lucas* involved a petition for a special exception for an “airport” zoning special exception on a farm zoned for agriculture, located within a National Register Historic District in Baltimore County. *Lucas*, 147 Md. App. at 216-17. While in *Lucas* we did explain that the definition of the relevant special exception area provided by the Board was insufficiently precise, it was insufficient because the Board relied on descriptions of the locality such as “‘land around Helmore Farm,’ on ‘the horse industry in the area,’ on the ‘historical district,’ and on ‘Greenspring Valley.’” *Id.* at 241. Contrary to what Protestants urge, we did not hold in *Lucas* that the Board must always provide a definitive boundary of the neighborhood when issuing a special exception, but rather that the areas impacted by the grant of a special exception need to be more concretely defined than what was relied on in that case. *Lucas* noted that “a neighborhood could be defined by a more flexible area, so long as the description is precise enough to enable a party or an appellate court to comprehend the area that the Board considered.” *Id.* (Citation omitted).

In the instant case, the pertinent area affected by the special exception has been sufficiently defined. There was testimony before the Board of the location of the proposed Wawa, the general vicinity surrounding the Wawa, as well as the location of the Protestants’ competing gas stations. Unlike in *Lucas*, where the special exception proposed a helicopter landing strip on a farm reserved for agriculture in a historical area, Tollgate here is proposing a gas station in an area where at least five other gas stations

already exist. That difference is important in determining “the area that the Board considered” for the purposes of our review. *Lucas*, 147 Md. App. at 241. Thus, without the definition of neighborhood being explicitly required by BCZR § 502.1 and the ample evidence before the Board as to “the locality involved” in the proposed Wawa, we will not disturb the Board’s decision because of a lack of an explicit, concrete outline of the neighborhood for the Special Exception.

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

12/19/14

13-080-X

IN THE MATTER OF
AFSHIN ATTAR, ET AL.

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* CASE NO. 03-C-14-7926
* * * * *

JAN 08 2015

BALTIMORE COUNTY
BOARD OF APPEALS

ORDER

WHEREAS, this matter came before the Court for Judicial Review of the June 24, 2014 decision of the Baltimore County Board of Appeals approving the Petition of property owners William and Mary Groff and the contract purchaser DMS Tollgate, LLC ("Applicants") for a Special Exception to use the property located at 10609 Reisterstown Road as a fuel service station with a convenience store containing a sales area larger than 1,500 square feet with conditions. Petitioners herein protested the application before the Administrative Law Judge and the Baltimore County Board of Appeals. A hearing was conducted before this Court on December 17, 2014, where counsel for Petitioners and Applicants argued each party's respective position; and

NOW THEREFORE, upon consideration of the record in this matter, together with the pleadings and oral arguments before this Court it is hereby this 19th day of December 2014:

ORDERED that the findings of the Baltimore County Board of Appeals were both reasonable and supported by substantial evidence in the record; and it is further

ORDERED that the Baltimore County Board of Appeals' findings were premised upon the proper application and conclusions of law; and it is further.

ORDERED that the Petition for Judicial Review filed by Affshin Attar, et al. is therefore **DENIED**; and it is further

ORDERED that the Baltimore County Board of Appeals' decision to approve the Applicants' Petition for Special Exception is hereby **AFFIRMED**.

True Copy Test
JULIE L. ENSOR, Clerk
Per E. Lane
Assistant Clerk

Colleen Cavanaugh
Judge, Colleen Cavanaugh
Circuit Court for Baltimore County

JAN 7 2015

CIRCUIT COURT FOR BALTIMORE COUNTY

Julie L. Ensor

Clerk of the Circuit Court
County Courts Building

401 Bosley Avenue

P.O. Box 6754

Towson, MD 21285-6754

(410)-887-2601, TTY for Deaf: (800)-735-2258

Maryland Toll Free Number (800) 938-5802

13-080-X
RECEIVED

JAN 09 2015

BALTIMORE COUNTY
BOARD OF APPEALS

01/08/15

Case Number: 03-C-14-007926 AA OTH

Date Filed: 07/24/2014

Status: Closed/Inactive

Judge Assigned: To Be Assigned,

Location :

CTS Start : 07/24/14 Target : 01/20/16

In the Matter of Afshin Attar, et al

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	13-080-X
Case Folder ID	C14007926V01

INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
PET 001	Attar, Afshin	Party ID: 2031946	CT DO 01/07/15	07/26/14
	Mail: 2610 Willow Glen Drive Baltimore, MD 21208	07/26/14		07/26/14 KY
	Attorney: 0023418 Nelson, G Macy 401 Washington Avenue Suite 803 Towson, MD 21204 (410)296-8166	Appear: 07/26/2014		07/26/14
PET 002	Rahmanattar, Ashkan	Party ID: 2031947	CT DO 01/07/15	07/26/14

Mail: 3317 Smith Avenue
Baltimore, MD 21208

07/26/14

07/26/14 KY

Attorney: 0023418 Nelson, G Macy
401 Washington Avenue
Suite 803
Towson, MD 21204
(410)296-8166

Appear: 07/26/2014

07/26/14

Type Num Name(Last,First,Mid,Title)

Addr Str/End

Pty. Disp.
Addr Update

Entered

PET 003 Imran, Malik

Party ID: 2031948

CT DO 01/07/15

07/26/14

Mail: 10615 Reisterstown Road
Owings Mills, MD 21117

07/26/14

07/26/14 KY

Attorney: 0023418 Nelson, G Macy
401 Washington Avenue
Suite 803
Towson, MD 21204
(410)296-8166

Appear: 07/26/2014

07/26/14

PET 004 Crowl, Perry S

Party ID: 2031949

CT DO 01/07/15

07/26/14

Mail: 10526 Reisterstown Road
Owings Mills, MD 21117

07/26/14

07/26/14 KY

Attorney: 0023418 Nelson, G Macy
401 Washington Avenue
Suite 803
Towson, MD 21204
(410)296-8166

Appear: 07/26/2014

07/26/14

ADA 001 Board Of Appeals

Party ID: 2031950

CT DO 01/07/15

07/26/14

Mail: Jefferson Bldg, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204

07/26/14

07/26/14 KY

ITP 001 D M S Tollgate L L C

Party ID: 2044175

CT DO 01/07/15

08/30/14

Attorney: 0016862 Barhight, G Scott
Whiteford, Taylor & Preston L.L.P.
One West Pennsylvania Ave
Towson, MD 21204-4515
(410)832-2050

Appear: 08/30/2014

08/30/14

CALENDAR EVENTS

Date	Time	Fac	Event Description	Text SA	Jdg Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec			
12/17/14	09:30A	CR04	Civil Non-Jury Trial	Y	CAC	01 /01	JMO
	Held/Concluded		12/17/14 E C.Cavanaugh	Y			
Stenographer(s): Court Smart							

DISPOSITION HISTORY

Disp	Disp	Stage	Activity
Date	Code Description	Code Description	User Date
01/07/15	DO Decree or Order	CT AFTER TRIAL/HEARING	EMH 01/07/15

JUDGE HISTORY

JUDGE ASSIGNED	Type Assign Date Removal RSN
TBA To Be Assigned,	J 07/26/14

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
00001000	Petition for Judicial Review Filed by PET001-Attar, PET002-Rahmanattar, PET003-Imran, PET004-Crowl	07/24/14	07/26/14	PET001	TBA	01/07/15	KY EMH
00001001	Response to Petition for Judicial Review	08/26/14	08/30/14	ITP001	TBA	01/07/15	CMS EMH
00002000	Amended Petition for Judicial Review with exhibits Filed by PET001-Attar, PET002-Rahmanattar, PET003-Imran, PET004-Crowl	07/24/14	07/26/14	PET001	TBA	01/07/15	KY EMH
00003000	Certificate of Compliance	08/01/14	08/05/14	000	TBA	01/07/15	HP EMH
00004000	Transcript of Record from Adm Agency	09/26/14	09/30/14	ADA001	TBA	01/07/15	KAD EMH
00005000	Notice of Transcript of Record Sent	09/30/14	09/30/14	ADA001	TBA	09/30/14	KAD
00006000	Notice of Transcript of Record Sent	09/30/14	09/30/14	ITP001	TBA	09/30/14	KAD

Num/Seq Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
00007000 Notice of Transcript of Record Sent	09/30/14	09/30/14	PET001	TBA	09/30/14	KAD
00008000 Scheduling Order	09/30/14	09/30/14	000	TBA	09/30/14	JMO
00009000 Memorandum of Petitioners, Afshin Attar, 10/23/14 10/27/14 PET001 TBA Ashkan Rahmanattar, Malik Imran and Perry S. Crowl * Filed by PET001-Attar, PET002-Rahmanattar, PET003-Imran, PET004-Crowl					10/27/14	KY
00010000 Memorandum of Respondent with attachments *	11/24/14	12/01/14	ITP001	TBA	12/01/14	KY
00011000 Petitioners' Reply Memorandum Filed by PET001-Attar, PET002-Rahmanattar, PET003-Imran, PET004-Crowl	12/09/14	12/16/14	PET001	TBA	12/16/14	KY
00012000 Open Court Proceeding December 17, 2014. Hon. Colleen A Cavanaugh. Hearing had. Testimony taken. Order to be filed.	12/17/14	12/17/14	000	CAC	01/07/15	KET EMH
00013000 Order affirming decision of the Balt Co Board of Appeals; denying petition for judicial review	01/07/15	01/07/15	000	CAC Affirmed	01/07/15	EMH
00014000 Docket Entries Transferred to Baltimore County Board of Appeals	01/08/15	01/08/15	000	TBA		JD

TICKLE

Code Tickle Name	Status Expires	#Days	AutoExpire	GoAhead From	Type	Num Seq
1ANS 1st Answer Tickle	CLOSED 08/26/14	0	no	no	DANS D	1 001
1YRT One Year Tickle (Jud	CLOSED 07/24/15	365	no	no	DAAA D	1 000
SLTR Set List For Trial	CANCEL 08/26/14	0	yes	no	1ANS T	1 001
SLTR Set List For Trial	Done 09/26/14	0	yes	yes	DTRA D	4 000

DIFFERENTIATED CASE MANAGEMENT**TRACKS AND MILESTONES**

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 09/30/14 Order Date : 09/30/14
Start Date : 09/30/14 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322()	10/15/14	01/07/15	CLOSED	
All Motions (excluding Motions in Limine	11/07/14	01/07/15	CLOSED	
TRIAL DATE is	12/17/14	12/29/14	12/17/14	REACHED

ACCOUNTING SUMMARYNON-INVOICED OBLIGATIONS AND PAYMENTS

Date	Rcpt/Initials	Acct Desc	Oblig	Payment	Total MOP	Balance
-----	-----	-----	-----	-----	-----	-----
07/24/14	201400017983/DC	1265 MLSC	.00	55.00	-55.00 CK	-55.00
07/24/14	201400017983/DC	1500 Appearance F	.00	10.00	-10.00 CK	-65.00
07/24/14	201400017983/DC	1102 CF-Civil Fil	.00	80.00	-80.00 CK	-145.00
07/26/14		1500 Appearance F	10.00	.00	10.00	-135.00
07/26/14		1265 MLSC	55.00	.00	55.00	-80.00
07/26/14		1102 CF-Civil Fil	80.00	.00	80.00	.00

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

Phone: 410-887-3180

Fax: 410-887-3182

To: David Thurston
Richard Wisner

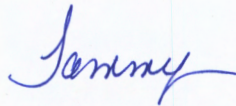
From: Tammy McDiarmid, Legal Secretary

Date: January 9, 2015

Re: In the matter of: Mary Groff – Legal Owner
Case No: 13-080-X

Attached please find a copy of the Circuit Court Order for your review. In summary the Circuit Court Affirmed the Board's decision.

Please see me with any questions.



c: Theresa R. Shelton, Administrator

LAW OFFICE OF
G. MACY NELSON, LLC

G. MACY NELSON
DAVID S. LYNCH

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
www.gmacynelson.com

TELEPHONE: (410) 296-8166
FACSIMILE: (410) 825-0670

December 9, 2014

Hand-Delivered

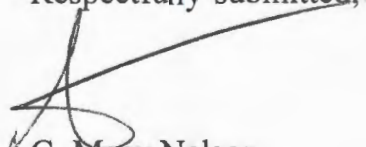
Clerk
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

Re: *Petition of Afshin Attar, et al., for Judicial Review of the Decision of
the Board of Appeals for Baltimore County, Maryland*
Case No. C-14-7926

Dear Clerk:

I have enclosed for filing Petitioner's Reply Memorandum.

Respectfully submitted,



G. Macy Nelson

GMN:ldr
Enclosure

cc: G. Scott Barhight, Esquire
Krysundra "Sunny" Cannington,
Administrator

RECEIVED
DEC 10 2014

BALTIMORE COUNTY
BOARD OF APPEALS

DEC 10 2014

* IN THE BALTIMORE BOARD
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
*
CASE NO. C-14-7926

FOR JUDICIAL REVIEW OF THE
DECISION OF THE BOARD OF
APPEALS FOR BALTIMORE COUNTY
IN THE CASE OF WILLIAM AND
MARY GROFF-LEGAL OWNER/
PETITIONER
CASE NO. 13-080-X

* * * * *

would violate the applicable legislation and/or the requirements of *Schultz*, the applicant must persuade the zoning authority by a preponderance of the evidence that the special exception will conform to all applicable requirements.

Loyola, 406 Md. at 109. The question of fact analysis for determining the burden of proof is analogous to the question of fact analysis in a Md. Rule 2-501 summary judgment proceeding.

The Applicant has the burden of proving compliance with BCZR section 502.1B because Citizen-Protestants' evidence generates genuine questions of fact as to whether the grant of a special exception will "[t]end to create congestion in the roads..." First, Groff Lane's width of only forty feet will cause traffic congestion. A standard fuel truck driving northbound on Reisterstown Road will be unable to stay in its lane as it turns onto eastbound Groff Lane. The left side of the truck will cross the center line of Groff Lane. (March 12, 2004, Seitz, 106-07; Protestants' Exhibit 3). Any vehicle which is travelling westbound on Groff Lane and is stopped for a red light will prevent the truck from making the turn. This problem would not exist at any site where the roads are wider.

Second, the distance of sixty feet between the edge of Reisterstown Road and the Groff Lane entrance to Wawa creates the risk that cars travelling westbound on Groff Lane and which are stopped at the intersection with Reisterstown Road will queue up past the entrance to the Wawa. (March 12, 2004, Seitz, 121-22). Those vehicles will obstruct any vehicle attempting to exit from Wawa onto westbound Groff Lane. This problem would not exist at any site where the access to Wawa is a greater distance from the main road.

Third, when a fuel truck on eastbound Groff Lane turns into the Wawa entrance, the left side of the truck will be in the lane for cars exiting Wawa. A car exiting from Wawa would "have to back up" to allow the truck to complete its turn and enter the Wawa. (March 12, 2014, Richardson 75; Protestants' Exhibit 3). This problem would not exist at any site where the roads are wider.

The Applicant has the burden of proving compliance with BCZR section 502.1A because Citizen-Protestants' evidence generates a genuine question of fact as to whether the construction of the proposed special exception in the flood plain of the Gwynns Falls stream will "[b]e detrimental to the health, safety or general welfare of the locality involved." The proposed Wawa will make the flood plain smaller. The loss of flood plain area reduces flood storage capacity and creates the increased risk of flooding downstream. (April 2, 2014, Miller, 4). The proposed use will also cause an elevation in the upstream water elevation. (April 2, 2014, Miller, 23-25). These problems would not exist at any site where the proposed special exception is not built on a flood plain.

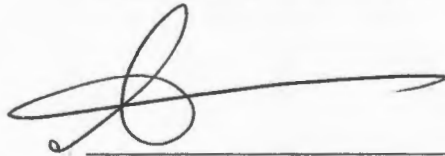
The Applicant also has the burden of proving compliance with BCZR section 502.1A because Citizen-Protestants' evidence generates a genuine question of fact as to whether the construction of the proposed special exception will cause a detriment to the economic stability of the neighborhood. There are five gas stations now operating on Reisterstown Road in close proximity to the proposed Wawa. (April 2, 2014, Imran, 65; Applicant's Exhibit 13). The supply of gas in this area of Reisterstown Road exceeds the market demand for gas. The addition of a sixth gas station on this portion of Reisterstown Road will increase the amount by which the supply of gas exceeds the market demand.

(April 2, 2014, Imran, 66). This evidence creates a genuine question of fact as to whether one of the existing five gas stations will go out of business if the proposed Wawa is built. These problems would not exist at any site where the supply of gas does not already exceed the market demand.

Conclusion

Citizen-Protestants request that this Court vacate the Board's decision and remand the case to the Board for further proceedings consistent with the Court's opinion.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

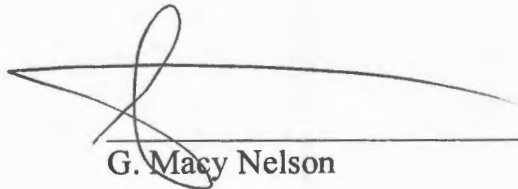
G. Macy Nelson
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204
(410) 296-8166 x113
Attorney for Petitioners

CERTIFICATE OF SERVICE

I CERTIFY that on this _____ day of December, 2014, a copy of the foregoing

Petitioners' Reply Memorandum was mailed, postage prepaid, to:

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston, LLP
1 W. Pennsylvania Avenue, Suite 300
Towson, Maryland 21204
Attorney for DMS Tollgate, LLC



G. Macy Nelson

Respondent, DMS Tollgate, LLC, by G. Scott Barhight, Adam D. Baker and Whiteford, Taylor & Preston, LLP, its attorneys, in accordance with Maryland Rule 7-207, submits this

Memorandum of Respondent in response to the Memorandum of Petitioners, Afshin Attar, Ashkan Rahmanattar, Malik Imran and Perry S. Crowl (collectively, the "Petitioners")¹.

I. QUESTIONS PRESENTED FOR REVIEW²

- A. Whether the Board of Appeals erred legally when it assigned the burden of proof to the Petitioners and concluded that the Petitioner's evidence did "not rebut the presumption of validity of the Special Exception use in this case."
- B. Whether case law requires that the Board of Appeals make findings of fact which specifically delineate the neighborhood boundary for the review and approval of Special Exception petitions.
- C. Whether the Board of Appeals erred legally in its interpretation of BCZR Section 405.3, which sets forth the circumstances under which Respondent would need to establish that there is a need for the proposed fuel service station.

II. STATEMENT OF FACTS

This matter commenced in October 2012 with the Respondent's filing of a Petition for Special Exception to permit a fuel service station use in combination with a convenience store with a sales area larger than 1,500 square feet pursuant to §§ 230.3 and 405 of the Baltimore County Zoning Regulations ("BCZR"). The proposed use is to be operated by Wawa. The proposed fuel service station and convenience store use is located on an 8.51 acre tract known as 10609 Reisterstown Road in Baltimore County, Maryland (the "Property"). The tract consists of three (3) parcels³ located on the northeast side of Reisterstown Road. The 2.13 acre Special Exception area,

¹ Perry S. Crowl was not a party before the Administrative Law Judge ("ALJ") for Baltimore County. The three individuals who appeared before the ALJ and filed the Petition before the Board of Appeals for Baltimore County are Afshin Attar, Ashkan Rahmanattar, and Malik Imran. They each own or operate fuel service stations in the vicinity of the proposed fuel service station and would be competitors of the proposed Wawa.

² For purposes of clarity and consistency, the Questions Presented are generally the same as those set forth in Petitioner's Memorandum. However, questions 2 and 3 of Petitioner's Questions Presented have been consolidated into Question 2, above.

³ On November 28, 2012, the Baltimore County Development Review Committee ("DRC") approved an exemption under Section 32-4-106(a)(1)(ii) or (a)(1)(v) of the Baltimore County Code ("BCC") to permit a lot

as shown on the Site Plan (Respondent's Exhibit No. 2), consists of a portion of Lot 1 and the relocated Groff Lane.

The Property is zoned BL-AS (Business, Local with Automotive Services overlay). This zoning was obtained through the 2012 Comprehensive Zoning Map Process ("CZMP") following extensive discussions among the Respondent, the Baltimore County Department of Planning, the Second District County Councilwoman Vicki Almond, and two critical community groups (namely, The Reisterstown-Owings Mills-Glyndon Coordinating Council, Inc. ("ROG") and The Greater Greenspring Association, Inc. ("GGA")). The AS overlay was sought through the CZMP because of its traditional application to areas within commercial zones "which are appropriate for uses dominated by the parking and servicing of automobiles or characterized by frequent parking turnover, such as fuel service stations." BCZR § 259.2.B. In exchange for the support of ROG and GGA for the CZMP rezoning request, the Respondent agreed to subject the Property to a Declaration of Restrictive Covenants (Respondent's Exhibit No. 3). The covenants require that the Property be developed in a manner consistent with and complimentary to the historic character of the historic Groff Mill.

The Respondent's Petition was approved by the Administrative Law Judge for Baltimore County ("ALJ") on October 31, 2013 and, after a de novo appeal proceeding, by the Board of

line adjustment. The purpose of the lot line adjustment was threefold: (1) to create a new lot (Lot 2) to match the approved Historic Environmental Setting for the historic Groff Mill and accessory structures; (2) to accommodate the approved relocation of Groff Lane; and (3) to allow for the development of the two parcels with frontage on Reisterstown Road (Lots 1 and 3). With regard to the Historic Environmental Setting, the Respondent worked extensively with the Department of Planning to coordinate the appropriate boundaries of the Historic Environmental Setting and accommodate for the envisioned future development of the Property, including the requested special exception use.

Appeals for Baltimore County (the “Board”) on June 24, 2014⁴. There were several protestants represented by G. Macy Nelson, Esq., who appeared in opposition to the Petition both before the ALJ and the Board: Malik Imran, Afshin Attar, and Ashkan Rahmanattar. Each of these individuals holds an interest in fuel service stations in close proximity to the proposed Wawa site.

III. STANDARD OF REVIEW

In reviewing the decision of an administrative agency, the scope of the Court’s review is narrow. The Court’s role is to determine if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions and to determine whether the agency decision is premised upon an erroneous conclusion of law. People’s Counsel for Baltimore County v. Elm Street Dev., Inc., 172 Md.App. 690, 700, 917 A.2d 166 (2007). The Maryland Court of Appeals has confirmed that “substantial evidence” is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Md. State Police v. Warwick Supply & Equip. Co., Inc., 330 Md. 474, 494, 624 A.2d 1238 (1993).

In People’s Counsel for Baltimore County v. Elm Street Dev., Inc., this court provided that “in making such a determination, we ‘may not substitute our judgment for that of the Board...unless the agency’s conclusions were not supported by substantial evidence or were premised on an error of law.’ 172 Md.App. 690, 700, 917 A.2d 166 (2007), quoting Montgomery County v. Rotwein, 169 Md.App. 716, 727, 906 A.2d 959 (2006). The court further explained that in determining “whether the agency’s conclusions were premised on an error of law, we ordinarily give ‘considerable weight’ to ‘an administrative agency’s interpretation and application of the

⁴ The Board of Appeals held a de novo evidentiary hearing on March 5, 2014, March 12, 2014 and April 2,

statute which the agency administers.” Id. (citing Bd. Of Physician Quality Assurance v. Banks, 354 Md. 59, 68-69, 729 A.2d 376 (1999)).

IV. ARGUMENT

A. THE BOARD OF APPEALS CORRECTLY APPLIED THE PRESUMPTION UNDER MARYLAND LAW WITH REGARD TO THE SPECIAL EXCEPTION USE

Section 502.1 of the BCZR sets forth the requirements which must be met in order for a special exception to be approved. In addition, BCZR § 405 provides special requirements for Fuel Service Stations. Section 502.1 of the BCZR provides:

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

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

BCZR § 502.1

There is a presumption under Maryland Law that a special exception is in the general interest of the jurisdiction where it is located and therefore valid. In addition, when a legislative body deems a use to be permitted as a special exception, there is the presumption that the use is

consistent with the Master Plan of the particular jurisdiction. People's Counsel for Baltimore County v. Loyola College in Maryland, 406 Md. 54, 77, 956 A.2d 166 (2008). The Maryland Court of Appeals has recognized that:

a special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses which the legislative body has determined can, *prima facie*, properly be allowed in a special use district, absent any fact or circumstance in a particular case which would change this presumptive finding. Id., at 105-106 (quoting Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261 (1953)).

Uses which the local legislature deems as being allowed only by a special exception in various zones have certain inherent adverse effects wherever in a particular zone they may be located. Loyola College at 106. The Loyola Court further explained that one must consider the two different contexts by which a petition for special exception should be viewed:

one by which a legislative body decides to classify a particular use as requiring the grant of a special exception before it may be established in a given zone, and a second one by which the individual applications for special exceptions are to be evaluated by the zoning body delegated with the responsibility to consider and act on those applications in accordance with criteria promulgated in the zoning ordinance. Id. at 69.

The legislative determination, therefore, is that uses are conceptually compatible in a particular zone with other uses permitted and with uses already in place in surrounding zones, "provided that, at a given location, adduced evidence does not convince the body to whom power to grant or deny individual applications is given that actual incompatibility would occur." Id. at 106.

Special exception uses, by their very nature, have inherent adverse impacts. Id. In the context of a fuel service station, those characteristics include fuel storage and dispensing, traffic, noise, lighting, fumes, visual impacts, stormwater runoff, and grading, to name just the obvious.

The Special Exception Test⁵ exists to determine if the use and its inherent adverse characteristics are greater than or beyond that which one would ordinarily expect the use to have regardless of its location. While the proposed Wawa includes many of these typical potential adverse impacts, there are components of the proposed Wawa which lessen some of these potential adverse impacts:

- low impact LED lighting;
- no automobile repairs;
- a standardized security protocol;
- new construction which will be required to meet all the current regulations regarding stormwater management and erosion and sediment control;
- installation and future testing of underground storage tanks ("USTs") in accordance with all current regulations;
- review of plan by the Department of Planning for consistency with the historic Groff Mill;
- review of the requested floodplain approvals from the Maryland Department of the Environment ("MDE") and the Army Corps of Engineers; and
- review of access permit by the Maryland State Highway Administration ("SHA") to ensure safe and convenient access to the roadway.

Further, as the Court in Loyola discussed, the special exception ensures that there is appropriate oversight for uses which ensures that the surrounding community where a use is proposed will not suffer real and significant harm. If a use will actually significantly harm the community, then it follows that that use is impacting the community in a manner that is above that which one would expect the use to have. Where the impacts of a use are mere inconveniences (e.g. traffic, noise, typical operation and construction impacts), though, it cannot be said that the impacts are above that which are expected with the use because they do not actually significantly harm the community. Loyola, 406 Md. at 99-100.

While the Board of Appeals noted there are certain characteristics of the proposed Wawa use which are inherently adverse, it found that the evidence presented by the Respondent was

⁵ The "Special Exception Test" as used herein shall mean BCZR § 502.1 as interpreted through the Maryland

sufficient to satisfy the requirements of BCZR § 502.1. (Board Order at 6). The Board also found that the evidence presented by the Petitioners did not rebut the presumption of the proposed use's validity under the law. (Board Order at 6). Therefore, under the law of special exceptions in Maryland, the Board determined that the Respondent met its burden of production and persuasion in satisfying the requirements of BCZR § 502.1. (Board Order at 6). In accordance with the applicable regulations and the case law in Maryland, the Board correctly applied the presumption with regard to special exception uses. Its opinion, therefore, was not premised on an erroneous conclusion of law.

i. Respondent met its burden of demonstrating that the proposed use meets the requirements of BCZR § 502.1.B with respect to congestion in the roads, streets or alleys

Reisterstown Road is a state road. The SHA is charged with the authority to oversee state roads and to control access thereon to ensure the safe and convenient circulation of vehicles on state roads. The development of the Wawa proposes direct access to and from Reisterstown Road and the relocation of Groff Lane (which borders the Property on the west side and to which the Property also has access) to a four way lit intersection with Reisterstown Road. These components of the proposal require the approval of the SHA. The SHA administers regulations pertaining to commercial and subdivision access to State highways and issues permits for the construction of approved entrances, street connections, and highway capacity improvements. The regulation and permitting of certain driveway access, utility work, and other construction activity is handled by the SHA. The design and construction of all improvements on State

property must adhere to the State's standards, specifications, and accepted highway engineering practices. This is ensured through a comprehensive plan review and inspection process.

The Maryland State Highway Access Manual presents the blueprint for the administrative process and technical requirements for obtaining an access permit to a state road. State Highway Access Manual Engineering Access Permits Division (January 2004). It consists of a compilation of standards, design practices, policies, and procedures and provides a framework for consideration of proposed impacts to state roads. State Highway Access Manual Engineering Access Permits Division (January 2004). The Access Manual acknowledges that considerable engineering judgment and agency discretion often must be applied in evaluating proposed access. State Highway Access Manual Engineering Access Permits Division (January 2004).

In accordance with the SHA Access Manual, the Respondent submitted Traffic Impact Studies to the SHA to address the anticipated impact that the use will have on Reisterstown Road and the surrounding area and to seek an SHA access permit. The first Traffic Impact Study was submitted in April 2013 and the second was submitted in August 2013 in response to comments from the SHA on the April 2013 study.

At the hearing before the Board, Ken Schmid of Traffic Concepts, Inc., who was admitted as an expert in the fields of Traffic Engineering and Transportation Planning, testified that the proposed use will not create congestion in the roads, streets or alleys. (T. at 129-133, March 5, 2014)⁶. Mr. Schmid further opined that the internal and external traffic circulation of the site has been appropriately designed and will meet the requirements of both Baltimore County and the State of Maryland. (T. at 129-133, March 5, 2014). Mr. Schmid stated that with regard to the traffic

⁶ All references to "T." shall refer to the Transcript of proceedings before the Board of Appeals.

considerations, the proposed Wawa would have no greater impact than one would expect (T. at 130-133, March 5, 2014).

The Special Exception Test, as articulated by the Loyola court, considers whether the proposed use will have a greater impact here than one would ordinarily expect. John Seitz, of Transportation Resource Group, Inc., was accepted by the Board as the Petitioners' traffic expert.⁷ Mr. Seitz did not apply the Special Exception Test (T. 84-132, 150-178, March 12, 2014). Instead, Mr. Seitz presented evidence which was not relevant to the appropriate standard.

Mr. Seitz testified that he evaluated potential truck turning radius using a template approved by the American Association of State Highway and Transportation Officials ("AASHTO"). (T. at 105, March 12, 2014). The study included only one approach to one entrance to the Property. Mr. Seitz did not study the right in/right out on Reisterstown Road nor did he study the turn from Groff Lane westbound into the site. (T. at 155, March 12, 2014). He did not use the AASHTO computer program which allows for myriad turn radius scenarios. (T. at 151-155, March 12, 2014). The AASHTO template which Mr. Seitz used only allows for one turning movement. According to Mr. Seitz, using the AASHTO template, the outside edge of a WB50 truck⁸ would cross over the centerline of Groff Lane if making a right into the Property from the northbound lane on Reisterstown Road. (T. at 106, March 12, 2014). The same truck, after making the turn onto Groff Lane would cause automobiles exiting the Wawa onto Groff Lane to have to yield to the truck

⁷ During voir dire, Mr. Seitz indicated that he has never sought any access permits from SHA, that he has never worked with a petitioner team in Baltimore County, and that he is not intimately familiar with the Baltimore County Zoning Regulations, the Baltimore County Development regulations, or the test for approving a special exception in Baltimore County. While Mr. Seitz was admitted as an expert, it was clear through his voir dire that he was unfamiliar with the regulations and requirements which special exception uses must meet with respect to traffic. It was also clear that Mr. Seitz was not familiar with the requirements or the process of approval for a SHA access permit. (T. at 88, March 12, 2014)

⁸ Testimony at the Board revealed that a WB50 truck is a semi-truck with a 50 foot wheelbase.

because of its wide turning radius in order to accommodate the truck making a right off of Groff into the Property.

In reviewing Mr. Seitz's turn radius analysis, several shortcomings are evident. First, the model only allows for one turning movement. There is a computer program study available which examines a variety of models (i.e. turning movements). Had Mr. Seitz used this computer program, the challenges of the truck turning movement may not have been as pronounced or present at all. Rick Richardson, of Richardson Engineering, who was admitted as an expert in the fields of civil engineering, zoning and development, testified that he performed the turn radius analysis using the computer program method and the results were acceptable. (T. at 38, 71, March 12, 2014). That is to say, the results indicated no adverse impact above that which one would normally expect for fuel service stations. Mr. Richardson added that the delivery of fuel by large trucks is an inconvenience that all fuel service stations experience. (T. at 77, March 12, 2014). The fact that this inconvenience is also present at the Property does not in and of itself cause the use to fail the Special Exception Test.

The Petitioners' conclusion with regard to the traffic impact of the proposed special exception use, as borne out through the testimony of Mr. Seitz, is that the traffic could be "problematic". (T. at 126, March 12, 2014). This is not the standard for evaluating a proposed special exception use nor is it part of the criteria which the SHA considers in considering whether or not to grant an access permit. Mr. Seitz never testified that the proposed use violated any special exception requirement. In addition, Mr. Seitz never testified that the use would have a greater impact than you would ordinarily expect. (T. 84-132, 150-178, March 12, 2014). As a result, it is clear that the anticipated traffic issues alleged by the Petitioners do not impact the surrounding area

of the Property in a manner above and beyond that which would be expected of any fuel service station. Each of the issues raised are issues which will be addressed by the SHA during its access permit review process. Furthermore, as conditioned by the Board, if the petitioner is unable to obtain an access permit from the SHA, then it will not be able to construct and operate the fuel service station.

Upon considering the evidence presented, which included testimony of Respondent's experts, Ken Schmid and Rick Richardson, as well as the testimony of Petitioner's expert, John Seitz, the Board approved the Petition for Special Exception. There was substantial evidence in the record to support the Board's findings of fact with respect to congestion in the roads, streets or alleys. The Board acknowledged in its approval that the Respondent chose to pursue the zoning approval of the special exception prior to receiving state and county approval for the relocation of Groff Lane and the access to and from Reisterstown Road. (Board Order at 5). The Board indicated its understanding that under the BCZR this approach is permitted. (Board Order at 5). Further, as the SHA had not yet approved the access permit to allow the ingress and egress from the Property to Reisterstown Road, the Board conditioned its approval of the special exception on the approval and issuance of all necessary permits by the SHA. (Board Order at 8).

- ii. **Respondent met its burden of demonstrating that the proposed use meets the requirements of BCZR § 502.1.A with respect to the health, safety or general welfare of the locality involved.**

- a. ***Gwynns Falls and Flood plain***

The Petitioners contend that the grant of the special exception will be detrimental to the Gwynns Falls stream and its flood plain and therefore should be denied. The Petitioners' expert at the Board, Dr. Andrew Miller, failed to establish any knowledge of the construction plans and

methods employed for fuel service stations, either generally or in the particular. (T. at 46-48. April 2, 2014). Further, the Petitioners set forth no evidence which indicated that the proposed fuel service station's impact here is above that which one would normally expect with such a use. (T. at 182-226, March 12, 2014, and T. at 2-50, April 2, 2014).

As part of the development approval process, the Respondent submitted a 100-Year Flood Plain Study to the Baltimore County Department of Public Works ("DPW"). By memorandum, dated October 16, 2013, Terry Curtis and David Thomas, of DPW, confirmed DPW's acceptance of the Flood Plain Study for filing. (T. at 31-32, March 12, 2014). As a result of the DPW memorandum, the Respondent is permitted to proceed with seeking the appropriate flood plain approvals from MDE and the Army Corps of Engineers. (T. at 28-37, March 12, 2014) Once the Respondent secures the approvals of MDE and the Army Corps of Engineers, it must submit a Letter of Map Amendment or Revision to the Federal Emergency Management Administration ("FEMA") to amend the flood plain map. Rick Richardson testified before the Board that in order to obtain approval for the revised flood plain it would have to be shown that there would be no adverse impact to upstream or downstream property owners (T. at 35, March 12, 2014). As highlighted during the hearing before the Board, though, the flood plain amendment is a development approval and is separate from the special exception zoning approval sought.

The impact to the flood plain has no tie to the use. It is a pure development issue which will have the appropriate oversight of the pertinent County, State and Federal agencies. If the special exception is denied, the Respondent will still proceed with the flood plain relief in order to develop site for some other use. As long as the required flood plain relief is granted, the modifications to the flood plain will occur regardless of whether the special exception is granted.

The proposed impact to the flood plain should be regarded as a development issue and separate from the zoning approval sought. Pursuant to § 32-8-203 of the BCC the proposed changes to the flood plain will have the appropriate oversight of the Baltimore County Department of Public Works, the State Secretary of the Environment and FEMA. The impact to the flood plain is tied to the development and has no connection to the proposed use on the Property. The use could be any other permitted use and the impact to the flood plain would be identical, regardless of the use.

During his voir dire, Dr. Miller indicated that he was not familiar with the standards governing the process of altering floodplains or changing the FEMA maps in Baltimore County. (T. at 190, March 12, 2014). After testimony which spanned two days of hearing before the Board and covered a detailed examination of the Respondent's Flood Plain Study (Respondent's Exhibit No. 15), Dr. Miller expressed his conclusion that the proposed fuel service station would cause no significant change to the water elevations and velocity of the projected 50-year and 100-year floods. (T. at 49, April 2, 2014). He specifically said that the proposed changes to the flood plain would not significantly affect upstream or downstream properties. (T. at 49, April 2, 2014). While Dr. Miller opined that it was "not good policy" to develop a fuel service station with USTs in the floodplain, he admitted that he had no knowledge of site development and construction and the governing standards for the same and therefore no basis for forming such an opinion. (T. at 44, April 2, 2014 and T. at 189-192, March 12, 2014). In addition, Dr. Miller never testified that the use would have a greater impact than you would ordinarily expect. (T. at 182-226, March 12, 2014, and T. at 2-50, April 2, 2014).

Maryland courts have consistently held that expert opinions are of no greater probative value than the soundness of the reasons given for the opinion will warrant. Surkovich v. Doub, 258 Md. 263, 265 A.2d 447 (1970); quoting Miller v. Abrahams, 239 Md. 263, 211 A.2d 309 (1963). Dr. Miller gave no basis for his conclusion that development within the floodplain would be bad policy. He had no knowledge whatsoever of the appropriate and required construction and safety techniques which will be imposed upon the Petitioner before being allowed to place USTs on the site. His position was further weakened by his admission that he was unfamiliar with the applicable development and construction regulations and that he had not reviewed any construction or permit plans for the proposed fuel service station. Perhaps most importantly, he testified that the proposed Wawa would cause no significant change to the water elevations and velocity of the projected 50-year and 100-year floods and the proposed changes to the flood plain would not significantly affect upstream or downstream properties. (T. at 49, April 2, 2014). Notwithstanding Dr. Miller's lack of foundation for his broad assertion, the Court should take comfort in the fact that the development and operation of a fuel service station is a highly regulated enterprise and will have the appropriate oversight at the County and State levels.

Similar to the SHA access issue and in conformance with the BMZA, the Respondent decided to proceed with the special exception petition before receiving the necessary approvals for the floodplain relocation. The Board acknowledged this procedural nuance and, upon consideration of the evidence presented, approved the Petition for Special Exception because even with the floodplain matter unresolved the proposal met the necessary requirements for a special exception. (Board Order at 5-6). There was substantial evidence in the record to support the Board's findings of fact with respect to the proposed use's impact on the health, safety or general welfare of the

locality involved. Much like the SHA access issue, the Board conditioned its approval of the special exception on the approval by county, state and federal authorities of the floodplain study and/or floodplain map amendment or revision sought by the Respondent. (Board Order at 8).

b. Economic stability of the neighborhood

Petitioners contend that the addition of the proposed fuel service station will be a detriment to the economic stability of the “neighborhood”, which Petitioners assert currently includes five (5) other fuel service stations operating within the area surrounding the proposed station. Section 502.1.A of the BCZR provides that for a proposed special exception use to be approved, it must be demonstrated that the use will not be detrimental to the health, safety or general welfare of the locality involved. The Petitioners assert that the proposed fuel service station fails to meet this requirement because of the economic harm that may potentially come to their respective service station uses if the new Wawa opens. The alleged harm is that the Wawa will beat them in the competition for customers and result in a loss of business which will lead to their closure.

Section 502.1.A is not a protection against competition. The special exception requirements of the zoning regulations do not exist to shield against competition nor are they intended to inhibit progress that comes with competition. The Maryland Court of Appeals has found that “the prevention of competition is not a proper element to be considered in zoning decisions.” Kreatcham v. Ramsburg, 224 Md. 209, 219, 176 A.2d 345 (1961). Further, it “is not the function of county zoning ordinances to provide economic protection to existing businesses.” Superior Outdoor Signs, Inc. v. Eller Media Co., 150 Md. App. 479, 491, 822 A.2d 478 (2003).

If a proposed business will provide better service at a cheaper rate than existing businesses, the harm that will fall upon the existing businesses if they do not make themselves more competitive is not the type of harm against which the special exception requirements of § 502.1 is intended to guard. In fact, a new business which provides better, cheaper and more efficient service than the existing competition is actually beneficial for the health, safety and general welfare of the general public.

Although the Board did not acknowledge the anti-competition stance of the Petitioner's in its Order, it did indicate that based upon the evidence presented the proposed use meets the special exception requirements of Section 502.1 of the BCZR, which includes the health, safety and general welfare of the locality involved. (Board Order at 6). There was substantial evidence in the record to support the Board's findings of fact with respect to the proposed use's impact on the health, safety or general welfare of the locality involved.

B. PETITIONERS MISCONSTRUE THE SPECIAL EXCEPTION REQUIREMENTS IN ALLEGING THAT THE NEIGHBORHOOD MUST BE STRICTLY DEFINED PRIOR TO GRANTING SPECIAL EXCEPTION RELIEF

The Petitioners contend that (1) there is a requirement in Maryland to define the "neighborhood" impacted by a proposed special exception use; (2) the Board of Appeals did not sufficiently articulate the facts to support its finding with regard to the defined "neighborhood"; and (3) the evidence in the record was insufficient to establish the "neighborhood" boundary. In considering this assertion, if there is no requirement to define the "neighborhood", then the allegations with regard to the facts supporting the Board's decision and the evidence in the record are immaterial.

There is no requirement that a Petition for Special Exception set forth a defined boundary of the neighborhood impacted by the proposed use. In addition, there is no requirement that an agency in reviewing a Petition for Special Exception make findings with regard to the boundaries of the neighborhood impacted. While reviewing agencies must consider the proposed use's impact on the surrounding area, there is no requirement that the boundaries of that area be concretely established and specifically delineated nor that the reviewing agency make specific findings with regard to the boundaries. BCZR § 502.1.

In setting forth this argument, Petitioners must be confusing the special exception and fuel service station requirements (BCZR §§ 502.1 and 405, respectively) with the Compatibility requirements found in BCC § 32-4-402⁹. In applying the Compatibility requirements to a development which meets the application criteria, § 32-4-402 specifies that a defined "neighborhood" be established. While BCC § 32-4-402 does not apply in this case, it is relevant because it clearly demonstrates that where there is a requirement to establish a defined "neighborhood" the statute is very clear in specifying the requirement. There is no such requirement in BCZR § 502.1 nor in BCZR § 405.

The cases cited by Petitioners in their brief do not support the alleged requirement of providing a definition of the "neighborhood" for special exception cases. Alvani v. Dixon, 365 Md. 95, 775 A.2d 1234 (2000) concerned a combined request for special exception and variance relief for a proposed fuel service station in Anne Arundel County. The requirement to describe the relevant "neighborhood" was required by the ordinance governing the variance relief, not the

⁹ BCC § 32-4-402 requires the Director of Planning to make compatibility recommendations for certain developments, including (1) a cluster subdivision; (2) development in the RCC, RO, OR-1, OR-2, O-3, SE, OT zones, the CR districts, or a Planned Unit Development; or (3) alternative site design dwellings as provided

special exception. Id. at 117. In Mortimer v. Howard Research & Dev. Corp., 83 Md.App. 432, 575 A.2d 750 (1990) the Court of Special Appeals reviewed a matter involving a county planning board's decision on a petition regarding the location of an employment center or commercial land use within a new town district. While Petitioners are correct in the assertion that express findings should be made by a reviewing administrative agency to provide clarity as to the agency's findings, nowhere in the Mortimer case is there mention of a requirement in special exception cases to define the neighborhood surrounding the proposed use with particularity. United Steelworkers of America AFL-CIO, Local 2610 V. Bethlehem Steel Corp., 298 Md. 665, 472 A.2d 62 (1984) and Eastern Outdoor Advertising Company v. Mayor of Baltimore, 128 Md.App. 494, 739 A.2d 854 (1999) both support the argument that there should be facts in the record to support administrative agency findings so as to prevent reviewing courts from speculating at the agency's conclusions. Neither, however, makes reference to the alleged requirement for defining a "neighborhood" boundary in special exception cases.

In the case before the Board there was ample testimony with regard to the location of the proposed Wawa, the location of the Petitioners' respective competing service stations, and the general vicinity surrounding the proposed use. (T. at 51-53, 61, 63, 65-66, 102-103, April 2, 2014). In an Inter-office memorandum, dated October 16, 2012, the Baltimore County Department of Planning also offered a comment which opined that the proposed Wawa will not be detrimental to the health, safety or general welfare of the locality involved. (Respondent's Exhibit 1). Because there is no requirement for the Board to define the "neighborhood" no such definition was articulated. In consideration of the evidence presented, the Board found that the proposed fuel

in the comprehensive manual of development policies. The Property does not fall into any of these

service station use meets the requirements of BCZR § 502.1. (Board Order at 6). Where there is no error of law, the Board must be upheld.

C. THE BOARD CORRECTLY INTERPRETED THE REQUIREMENTS OF BCZR SECTION 405.3

The Petitioners assert, incorrectly, that pursuant to BCZR § 405.3 the Respondent is required to demonstrate need for the proposed fuel service station. Section 405.3 provides:

In addition to the findings required under Section 502.1, the Zoning Commissioner, prior to granting any special exception for a fuel service station, shall consider the presence of abandoned fuel service stations in the vicinity of the proposed site. A finding by the Zoning Commissioner of the presence of one abandoned fuel service station, as defined in Section 405.7, within a one-half-mile radius, or two such stations within a one-mile radius of the proposed fuel service station establishes that there is no need for the proposed use, unless rebutted to the Zoning Commissioner's satisfaction by market data.

The traditional interpretation of § 405.3 has been that if there are no such abandoned stations within the described radii, then there is no requirement to establish a need for the proposed use.¹⁰ Notwithstanding this interpretation, there was evidence presented before the Board which established that there are abandoned service stations outside of the one-mile radius (T. at 78-89, 97-98, 103, April 2, 2014). Maryland courts have consistently held that when interpreting a statute, the language of the statute should be given its plain meaning. Dep't of Health & Mental Hygiene v. Kelly, 397 Md. 399 (2007). While § 405.3 recognizes the requirement that the Zoning Commissioner consider the presence of abandoned fuel service stations in the vicinity of the proposed site, the presumption, based upon the modifier in the second sentence of the section, is

categories.

¹⁰ Attached are two recent Orders from the Baltimore County Administrative Law Judge involving proposed fuel service stations which address BCZR § 405.3 requirements (Case Nos. 2013-0013-XA and 2014-0163-SPHX). In the instant case before the ALJ, Mr. Richardson testified that there are no abandoned fuel service stations within one: (1) mile of the subject property. The Petitioners claimed that there was no need for the proposed Wawa. The ALJ summarily ruled that the BCZR § 405 relief be granted.

that the analysis of the “vicinity” should only include stations within a one (1) mile radius or within a one-half (1/2) mile radius of the site. If there is a finding of abandoned service stations within the specifically identified radii, then the burden shifts to the petitioner to rebut the presumption that there is no need for the use. If there is no evidence showing abandoned stations within either one (1) mile or (1/2) mile, then the analysis is complete.

In the instant case, the Board had before it the evidence of the abandoned service stations outside of the prescribed vicinity. (T. at 103-104, April 2, 2014). It also had evidence that there were no abandoned service stations within the prescribed radii. The Board found that the evidence established there are no abandoned fuel service stations within a one-half (1/2) mile or one (1) mile radius of the site. (Board Order at 7). The Board disagreed with the Petitioners’ theory that the “vicinity” of § 405.3 extends beyond the area of the proposed site as stated in the second sentence of § 405.3. (Board Order at 7). As a result, the Board held that as there are no abandoned stations within the one-half or one mile radius of the site, the Respondent need not have established that there was a need for the proposed use. (Board Order at 7).

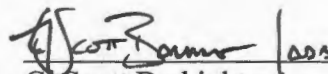
As stated previously, the scope of the Court’s review in considering the decision of an administrative agency is narrow. The Court’s role is to determine if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions and to determine whether the agency decision is premised upon an erroneous conclusion of law. Elm Street, 172 Md.App. at 700. In determining “whether the agency’s conclusions were premised on an error of law, the Court ordinarily gives ‘considerable weight’ to ‘an administrative agency’s interpretation and application of the statute which the agency administers.’” Id. In accordance with the applicable regulations and

the case law in Maryland, the Board correctly applied the requirements of BCZR § 405.3. Its opinion, therefore, was not premised on an erroneous conclusion of law.

V. CONCLUSION

In light of the evidence presented at the Board, it is clear that the proposed fuel service station use in combination with a convenience store with a sales area greater than 1,500 square feet meets the applicable requirements of BCZR §§ 502.1 and 405. The Respondent has met its burden of proof, for the many reasons articulated above. The Board had sufficient evidence before it to make its findings of fact and it articulated the appropriate standards and regulations in making its legal conclusions. As a result, the Court should affirm the Board's approval of the Petition for Special Exception.

Respectfully Submitted,



G. Scott Barhight

Adam D. Baker

Whiteford, Taylor & Preston L.L.P.

1 West Pennsylvania Avenue, Suite 300

Towson, Maryland 21204-4515

(410) 832-2000

Attorney for DMS Tollgate, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of November, 2014, a copy of the foregoing MEMORANDUM OF RESPONDENT was mailed to G. Macy Nelson, Law Office of G. Macy Nelson, LLC, 401 Washington Avenue, Suite 803, Towson, Maryland 21204; and Krysundra "Sunny" Cannington, Administrator, County Board of Appeals of Baltimore County, Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake Avenue, Towson Maryland 21204.



G. Scott Barhight

437961

Attachments

**IN RE: PETITIONS FOR SPECIAL EXCEPTION
AND VARIANCE**

(3716 Washington Blvd.)

Merritt-031, LLC
Petitioner

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2013-0013-XA**

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 3716 Washington Boulevard. The Petitions were filed by David H. Karceski, Esq., on behalf of Merritt-031, LLC, the legal owner of the subject property. The Special Exception Petition seeks relief to allow a fuel service station use on an individual site and a convenience store having a sales area larger than 1,500 square feet and carry-out restaurant as uses in combination, pursuant to §§ 405.2.B.1, 405.4.E.1, and 405.4.E.10 of the Baltimore County Zoning Regulations ("B.C.Z.R."). Petitioner is also requesting Variance relief from § 405.4.A.2.b of the B.C.Z.R., to allow a landscape transition area minimum of 5' in lieu of the required 6' for side and rear yards abutting non-residentially zoned land, and from § 405.4.A.3.c(2) of the B.C.Z.R., to allow 6 stacking spaces in lieu of the required 12 stacking spaces. The subject property and requested relief are more fully described on the redlined site plan which was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the hearing was Joseph Cronyn, Gena McNichol, Valek Zarski, Mickey Cornelius, Terri Levine, Dan Pallace, and Iwona Rostek-Zarska with Baltimore Land Design Group, Inc., the consulting firm that prepared the site plan. David H. Karceski, Esquire, with Venable, LLP, attended and represented the Petitioner. The file reveals that the Petition was

**IN RE: PETITIONS FOR SPECIAL HEARING *
AND SPECIAL EXCEPTION**

(10825 Beaver Dam Road) *
8th Election District *
3rd Council District *
10825 Beaver Dam Road, LLC, *
Legal Owner *

BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
Case No. 2014-0163-SPHX

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed by Dino C. LaFiandra, Esquire, with Whiteford, Taylor & Preston, on behalf of 10825 Beaver Dam Road, LLC, legal owner. The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve an amendment to the previously approved site plan in Case No. 89-306-SPHX. In addition, a Petition for Special Exception was filed pursuant to B.C.Z.R. §405.2.B.1 to use the herein property for additional fuel service in an existing fuel service station, and pursuant to §405.4.E.1 for a convenience store larger than 1,500 square feet inclusive of accessory storage.

Appearing at the public hearing in support of the requests was Briana Darnell and Wayne Newton, a professional engineer whose firm prepared the site plan. Timothy Kotroco, Esquire, with Whiteford, Taylor & Preston, represented the Petitioner. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition.

Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Substantive comments were received from the Department of Planning

WHITEFORD, TAYLOR & PRESTON L.L.P.

G. SCOTT BARHIGHT
DIRECT LINE (410) 832-2050
DIRECT FAX (410) 339-4057
gbarhight@wtpplaw.com

TOWSON COMMONS, SUITE 300
ONE WEST PENNSYLVANIA AVENUE
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FACSIMILE (410) 832-2015

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

November 24, 2014

Via Hand Delivery

Ms. Julie L. Ensor, Clerk of Court
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

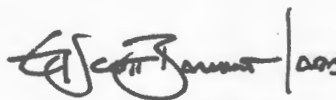
Re: In The Matter Of: William and Mary Groff - Legal Owner/Petitioner
Board of Appeals Case No. 13-080-X
Case No. 03-C-14-7926

Dear Ms. Ensor:

Enclosed for filing in the above-referenced case, please find an original and one copy of DMS Tollgate, LLC's Memorandum. Please date- stamp the extra copy and return it to our messenger.

Thank you for your attention to this matter.

Sincerely,


G. Scott Barhight

GSB:mm
Enclosure

cc: G. Macy Nelson, Esquire (w/encl.)
Krysundra "Sunny" Cannington (w/encl.) ✓

437002

RECEIVED
NOV 25 2014

BALTIMORE COUNTY
BOARD OF APPEALS

9/26/14

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
AFSHIN ATTAR, ASHKAN RAHMANATTAR,
MALIK IMRAN, AND PERRY S. CROWL

FOR JUDICIAL REVIEW OF THE OPINION OF
THE BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

CIVIL ACTION
NO. : 03-C-14-007926

IN THE MATTER OF:
WILLIAM AND MARY GROFF --
LEGAL OWNER
DMS TOLLGATE, LLC --
CONTRACT PURCHASER
FOR PROPERTY LOCATED AT
10609 REISTERSTOWN ROAD

4TH ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 13-080-X

* * * * *

**PROCEEDINGS BEFORE THE ADMINISTRATIVE LAW JUDGE
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

**ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
OF BALTIMORE COUNTY**

RECEIVED AND FILED
014 SEP 26 A 11:43
CLERK OF CIRCUIT COURT
BALTIMORE COUNTY

No. 13-080-X

October 1, 2012	Petition for Special Exception to permit an automotive service station use in combination with a convenience store greater than 1,500 square feet pursuant to Sections 230.3 and 405 of the Baltimore County Zoning Regulations (BCZR), filed by William D. Groff, III and Mary Groff, Legal Owners, and DMS Tollgate, LLC, Contract Purchaser/Lessee, Petitioners.
October 11, 2012	Entry of Appearance filed by People's Counsel for Baltimore County.
July 20, 2013	Certificate of Posting.
July 23, 2013	Certificate of Publication in newspaper
August 7, 2013	ZAC Comments.
October 18, 2013	Hearing held before the Office of Administrative Hearings, Day 1.
October 21, 2013	Hearing held before the Office of Administrative Hearings, Day 2.
October 29, 2013	Citizen-Protestants' Post-Hearing Memorandum filed by G. Macy Nelson, Esquire on behalf of Malik Imran, Afshin Attar and Ashkan Rahmanattar, Protestants.
October 29, 2013	Memorandum in Lieu of Closing Argument filed by G. Scott Barhight, Esquire and Adam D. Baker, Esquire, on behalf of DMS Tollgate, LLC, Petitioner.
October 31, 2013	Findings of Fact and Conclusions of Law issued by the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, with conditions.
November 27, 2013	Notice of Appeal filed by G. Macy Nelson, Esquire, on behalf of Malik Imram, Afshin Attar, and Ashkan Rahmanattar, Protestants/Appellants.
December 2, 2013	Appeal received by Board of Appeals.
February 21, 2014	Subpoena Duces Tecum issued to David L. Thomas, Baltimore County Department of Public Works.
March 5, 2014	Board convened for hearing. Matter continued to Day 2.
March 12, 2014	Board convened for hearing. Matter continued to Day 3.
April 2, 2014	Board convened for hearing. Matter completed.

Exhibits submitted at hearing before the Board of Appeals:

Petitioner's Exhibit No.

- 1 – ZAC comments, August 7, 2013
- 2 – Site Plan of subject property (redlined)
- 3 – Declaration of Covenants and Agreements
- 4 – Proposed Building Elevations
- 5 – Professional Resume – Kenneth W. Schmid
- 6 – Traffic Impact Study – March, 2013
- 7 – Letter from State Highway Administration to Traffic Concepts, Inc. dated April 29, 2013 with comments on Traffic Impact Study
- 8 – Traffic Impact Study – Revised August, 2013
- 9 – Letter from Traffic Concepts, Inc. to State Highway Administration dated September 4, 2013 regarding Traffic Impact Study comment letter.
- 10 – Letter from State Highway Administration to Traffic Concepts, Inc. dated October 18, 2013 with comments on revised Traffic Impact Study
- 11 – Letter from Traffic Concepts, Inc. to State Highway Administration dated February 4, 2014 regarding revised Traffic Impact Study comment letter.
- 12 – Curriculum Vitae - Patrick C. Richardson, Jr., PE
- 13 – My Neighborhood Map – 1 mile radius
- 14 – Development Review Committee package dated November 28, 2012
- 15 – 100 Year Floodplain Study – Groffs Mill Property – August 2013
- 16a – Inter-Office Correspondence dated October 16, 2013 from Terry W. Curtis, Jr. to Dennis A. Kennedy commenting on the 100 Year Floodplain
- 16b – Letter dated August 28, 2013 from MJ Consulting to Baltimore County DPW responding to comments on the 100 Year Floodplain
- 16c – Inter-Office Correspondence dated May 22, 2013 from Terry W. Curtis, Jr. to Dennis A. Kennedy commenting on 100 year Floodplain

Protestants' Exhibit No.

- 1 – Photograph of existing property
- 2 – Curriculum Vitae – Jon A. Seitz, P.E.
- 3 – Drawing of Truck Turning Radius – WB-50
- 4 – Baltimore County – Bureau of Development Plans Review Policy Manual
- 5 – Photograph – Reisterstown Road 1972
- 6 – Photograph – damaged roads (Agnes, 1972)

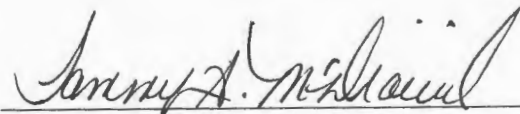
- 7 – Curriculum Vitae – Andrew Jay Miller
- 8 – Flood Plain map of property (2)
- 9 – Plats – 100 Year Flood Plain Analysis
- 10 – Photograph – Railroad Bridge
- 11 – Baltimore County topography of building location
- 12a – Photograph – closed Hess gas station
- 12b – Photograph – Wawa north on Reisterstown Road
- 12c – Photograph – closed Hess gas station
- 12d – Photograph – closed Mobil gas station
- 12e – Photograph – closed Hess gas station
- 12f – Photograph – closed BP gas station

April 18, 2014	Protestants' Motion to Dismiss or, Alternatively, Stay the Application for Special Exception, filed by G. Macy Nelson, Esquire on behalf of Protestants.
April 18, 2014	Proposed Opinion and Final Order filed by G. Macy Nelson, Esquire on behalf of Protestants.
April 18, 2014	Memorandum of Petitioner, DMS Tollgate, LLC, filed by G. Scott Barhight, Esquire and Adam D. Baker, Esquire.
April 29, 2014	Board convened for Public Deliberation.
June 24, 2014	Final Opinion and Order issued by the Board in which the Petition for Special Exception was GRANTED, with conditions.
July 24, 2014	Petition for Judicial Review filed in the Circuit Court for Baltimore County by G. Macy Nelson, Esquire on behalf of Afshin Attar, Ashkan Rahmanattar, Malik Imran and Perry S. Crowl, Petitioners/Protestants.
July 24, 2014	Amended Petition for Judicial Review filed in the Circuit Court for Baltimore County by G. Macy Nelson, Esquire on behalf of Afshin Attar, Ashkan Rahmanattar, Malik Imran and Perry S. Crowl, Petitioners/Protestants.
July 29, 2014	Copy of Amended Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.
August 1, 2014	Certificate of Compliance sent to all parties and interested persons.
August 26, 2014	Response to Petition for Judicial Review filed by G. Scott Barhight, Esquire and Adam D. Baker, Esquire on behalf of DMS Tollgate, LLC.

September 26, 2014 Transcript of testimony filed.

September 26, 2014 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.



Tammy A. McDiarmid, Legal Secretary
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3180

c: G. Macy Nelson, Esquire
G. Scott Barhight, Esquire
Adam Baker, Esquire
Malik Imram
Afshin Attar
Ashkan Rahmanattar
Perry S. Crowl
William and Mary Groff
DMS Tollgate, LLC
Faisal Naseer
Mohammad Khan
Cheryl Aaron
Gary Lenz
George Harman
Bruce Rice
Ken Schmid
Rick Richardson
Joe Ucciferro
Office of People's Counsel
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Jeff Mayhew, Deputy Director/Department of Planning
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law



Board of Appeals of Baltimore County

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

September 26, 2014

Civil Clerk
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

RE: In the matter of: William and Mary Groff – Legal Owner
Civil Action No.: 03-C-14-007926
Board of Appeals Case No.: 13-080-X

Dear Clerk:

Enclosed for filing please find the Proceedings before the Administrative Law Judge and the Board of Appeals for Baltimore County. Additionally, please allow this letter to reflect the filing of two accordion folders containing the entire Board of Appeals case file, exhibits, and transcript pursuant to Maryland Rule 7-206.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script, reading "Tammy A. McDiarmid".

Tammy A. McDiarmid
Legal Secretary

tam
Enclosures

c: See Distribution List

CIVIL DEPT. SEP 26 2014

Distribution List
Civil Action No.: 03-C-14-007926
September 26, 2014
Page 2

C. Macy Nelson, Esquire
G. Scott Barhight, Esquire
Adam Baker, Esquire
Malik Imram
Afshin Attar
Ashkan Rahmanattar
Perry S. Crowl
William and Mary Groff
DMS Tollgate, LLC
Faisal Naseer
Mohammad Khan
Cheryl Aaron
Gary Lenz
George Harman
Bruce Rice
Ken Schmid
Rick Richardson
Joe Ucciferro
Office of People's Counsel
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Jeff Mayhew, Deputy Director/Department of Planning
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law

*

WHITEFORD, TAYLOR & PRESTON L.L.P.

G. SCOTT BARHIGHT
DIRECT LINE (410) 832-2050
DIRECT FAX (410) 339-4057
gbarhight@wtplaw.com

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FALLS CHURCH, VA
LEXINGTON, KY
ROANOKE, VA
WASHINGTON, DC
WILMINGTON, DE*

WWW.WTPLAW.COM
(800) 987-8705

August 26, 2014

RECEIVED
AUG 27 2014

BALTIMORE COUNTY
BOARD OF APPEALS

Via Hand Delivery

Ms. Julie L. Ensor, Clerk of Court
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: In The Matter Of: William and Mary Groff - Legal Owner/Petitioner
Board of Appeals Case No. 13-080-X
Case No. 03-C-14-7926

Dear Ms. Ensor:

Enclosed for filing in the above-referenced case, please find an original and one copy of DMS Tollgate, LLC's Response to Petition for Judicial Review. Please date-stamp the extra copy and return it to our messenger.

Thank you for your attention to this matter.

Sincerely,

G. Scott Barhight/mm
G. Scott Barhight

GSB:mm
Enclosure

cc: G. Macy Nelson, Esquire (w/encl.)
Krysundra "Sunny" Cannington (w/encl.) ✓

437002

8/1/14

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
AFSHIN ATTAR, ASHKAN RAHMANATTAR,
MALIK IMRAN, AND PERRY S. CROWL

FOR JUDICIAL REVIEW OF THE OPINION OF
THE BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

CIVIL ACTION
NO. : 03-C-14-007926

IN THE MATTER OF:
WILLIAM AND MARY GROFF --
LEGAL OWNER
DMS TOLLGATE, LLC --
CONTRACT PURCHASER
FOR PROPERTY LOCATED AT
10609 REISTERSTOWN ROAD

4TH ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 13-080-X

* * * * *

RECEIVED AND FILED
2014 AUG - 1 A 9:16
CLERK OF CIRCUIT COURT
BALTIMORE COUNTY

CERTIFICATE OF COMPLIANCE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

G. Scott Barhight, Esquire
Adam Baker, Esquire
Whiteford, Taylor & Preston, L.L.P.
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, MD 21204

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, MD 21204

In the Matter of: William and Mary Groff - Legal Owner
DMS Tollgate, LLC - Contract Purchaser
Circuit Court Case No. 03-C-14-007926
Board of Appeals: 13-080-X

2

Malik Imram
10615 Reisterstown Road
Owings Mills, MD 21117

Afshin Attar
2610 Willow Glen Drive
Baltimore, MD 21209

Ashkan Rahmanattar
3317 Smith Avenue
Baltimore, MD 21208

Perry S. Crowl
10526 Reisterstown Road
Owings Mills, MD 21117

William and Mary Groff
P.O. Box 8
Owings Mills, MD 21117

DMS Tollgate, LLC
Michael J. Ertel, Member
100 E. Pennsylvania Ave., Suite 210
Towson, MD 21286

Cheryl Aaron
121 St. Thomas Lane
Owings Mills, MD 21117

Bruce Rice
P.O. Box 448
Riderwood, MD 21139

George Harman
5429 Waywood Drive
Reisterstown, MD 21136

Gary Lenz
4722 Butler Road
P.O. Box 279
Glyndon, MD 21071

Rick Richardson
30 E. Padonia Road, Suite 500
Timonium, MD 21093

Ken Schmid
Traffic Concepts, Inc.
7525 Connelley Drive, Suite B
Hanover, MD 21076

Joe Ucciferro
901 Dulaney Valley Road, Suite 801
Towson, MD 21204

Faisal Naseer
3 Hiawatha Court, Apt. J
Owings Mills, MD 21117

Mohammad Khan
11106 Hollowbrook Road
Owings Mills, MD 21117

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Ste 204
105 W. Chesapeake Avenue
Towson, MD 21204

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

Arnold Jablon, Director
Permits, Approvals and Inspections
County Office Building
111 W. Chesapeake Avenue, Suite 105
Towson, MD 21204

Andrea Van Arsdale, Director
Department of Planning
The Jefferson Building, Suite 100
105 W. Chesapeake Avenue
Towson, MD 21204

In the Matter of: William and Mary Groff -Legal Owner
DMS Tollgate, LLC-Contract Purchaser
Circuit Court Case No. 03-C-14-007926
Board of Appeals: 13-080-X

3

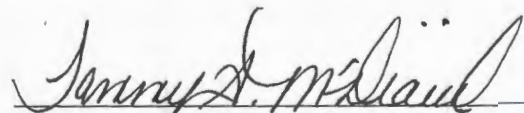
Jeff Mayhew, Deputy Director
Department of Planning
The Jefferson Building, Suite 100
105 W. Chesapeake Avenue
Towson, MD 21204

Michael Field, County Attorney
Baltimore County Office of Law
The Historic Courthouse
400 Washington Avenue
Towson, MD 21204

Nancy C. West, Assistant County Attorney
Baltimore County Office of Law
The Historic Courthouse
400 Washington Avenue
Towson, MD 21204

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

I HEREBY CERTIFY that on this 15th day of August, 2014, a copy of the foregoing Certificate of Compliance has been mailed to the individuals listed above.



Tammy A. McDiarmid, Legal Secretary
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
410-887-3180



County Board of Appeals of Baltimore County

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

August 1, 2014

G. Scott Barhight Esquire
Adam Baker, Esquire
Whiteford, Taylor & Preston, LLP
1 W. Pennsylvania Avenue, Suite 300
Towson, Maryland 21204

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-14-007926
In the Matter of: William and Mary Groff -- Legal Owner
DMS Tollgate, LLC -- Contract Purchaser
Board of Appeals Case No.: 13-080-X

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review, and Amended Petition for Judicial Review, was filed on July 24, 2014 by G. Macy Nelson, Esquire on behalf of Afshin Attar, Ashkan Rahmanattar, Malik Imran, and Perry S. Crawl, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response with the Circuit Court for Baltimore County within 30 days after the date of this letter, pursuant to the Maryland Rules.

In accordance with the Maryland Rules, the Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review within 60 days. G. Macy Nelson, Esquire on behalf of Afshin Attar, Ashkan Rahmanattar, Malik Imran, and Perry S. Crawl, having taken the appeal, is responsible for the cost of the transcript of the record and the transcript must be paid for in time to transmit the same to the Circuit Court within the 60 day timeframe as stated in the Maryland Rules.

Courtsmart was the official record of the hearings before the Board. The disk(s) will be copied by this office and provided to you for transcription. The transcriptionist must meet the requirements set forth in Maryland Rule 16-406d(B) which states: "*a stenographer, court reporter, or transcription service designated by the court for the purpose of preparing an official transcript from the recording.*" The Board of Appeals can assist in obtaining a qualified transcriptionist upon request.

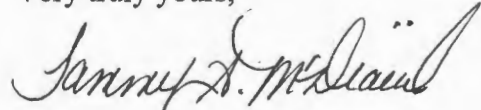
In the Matter of: William and Mary Groff-Legal Owner
DMS Tollgate, LLC-Contract Purchaser
Circuit Court Case No: 03-C-14-007926
Board of Appeals Case No: 13-080-X

2

Please be advised that the ORIGINAL transcripts must be provided to the Board of Appeals no later than SEPTEMBER 22, 2014 so that they may be transmitted to the Circuit Court with the record of proceedings, pursuant to the Maryland Rules.

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

Very truly yours,



Tammy A. McDiarmid
Legal Secretary

Duplicate Original
Enclosure

c: Malik Imram
Afshin Attar
Ashkan Rahmanattar
Perry S. Crowl
William and Mary Groff
DMS Tollgate, LLC
Faisal Naseer
Mohammad Khan
Cheryl Aaron
Gary Lenz
George Harman
Bruce Rice
Ken Schmid
Rick Richardson
Joe Ucciferro
Office of People's Counsel
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Jeff Mayhew, Deputy Director/Department of Planning
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law

7/24/14

RECEIVED

JUL 29 2014

BALTIMORE COUNTY
BOARD OF APPEALS

PETITION OF:

AFSHIN ATTAR
2610 Willow Glen Drive
Baltimore, Maryland 21209

ASHKAN RAHMANATTAR
3317 Smith Avenue
Baltimore, Maryland 21208

MALIK IMRAN
10615 Reisterstown Road
Owings Mills, Maryland 21117

PERRY S. CROWL
10526 Reisterstown Road
Owings Mills, Maryland 21117

Petitioners

FOR JUDICIAL REVIEW OF THE
DECISION OF THE BOARD OF
APPEALS FOR BALTIMORE COUNTY
IN THE CASE OF WILLIAM AND
MARY GROFF-LEGAL OWNER/
PETITIONER
CASE NO. 13-080-X

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

CASE NO. C-14-7926

RECEIVED AND FILED
2014 JUL 24 A 10:54
CLERK OF CIRCUIT COURT
BALTIMORE COUNTY

* * * * *

AMENDED PETITION FOR JUDICIAL REVIEW

Petitioners, Afshin Attar, Ashkan Rahmanattar, Malik Imran and Perry S. Crowl by their attorney, G. Macy Nelson, file this Amended Petition for Judicial Review of the decision of the Baltimore County Board of Appeals dated June 24, 2014. (Copy of Opinion attached as Exhibit A.) Afshin Attar, Ashkan

7/29/14

RECEIVED
JUL 24 2014

BALTIMORE COUNTY
BOARD OF APPEALS

PETITION OF AFSHIN ATTAR,
ASHKAN RAHMANATTAR
MALIK IMRAN and
PERRY S. CROWL

Petitioners

FOR JUDICIAL REVIEW OF THE
DECISION OF THE BOARD OF
APPEALS FOR BALTIMORE COUNTY
IN THE CASE OF WILLIAM AND
MARY GROFF-LEGAL OWNER/
PETITIONER
CASE NO. 13-080-X

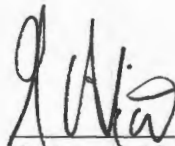
* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
*
*
* CASE NO. _____
*
*

* * * * *

PETITION FOR JUDICIAL REVIEW

Petitioners, Afshin Attar, Ashkan Rahmanattar, Malik Imran and Perry S. Crowl by their attorney, G. Macy Nelson, file this Petition for Judicial Review of the decision of the Baltimore County Board of Appeals dated June 24, 2014. (Copy of Opinion attached as Exhibit A.) Afshin Attar, Ashkan Rahmanattar and Malik Imran were parties to the agency proceeding. Perry S. Crowl testified as a witness at the agency proceeding. Perry S. Crowl owns property located at 10526 Reisterstown Road, Owings Mills, Maryland 21117. His property is immediately across the street from the property that is the subject of this land use case.

Respectfully submitted,



G. Macy Nelson
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204
(410) 296-8166 x113
Attorney for Petitioners

CERTIFICATE OF SERVICE

I CERTIFY that on this 24th day of July, 2014, a copy of the foregoing

Petition for Judicial Review was mailed, postage prepaid, to:

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston, LLP
1 W. Pennsylvania Avenue, Suite 300
Towson, Maryland 21204
Attorney for Respondent

Krysundra "Sunny" Cannington, Administrator
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204



G. Macy Nelson

CIRCUIT COURT FOR BALTIMORE COUNTY
Julie L. Ensor
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-14-007926

RECEIVED

JUL 29 2014

BALTIMORE COUNTY
BOARD OF APPEALS

TO: BOARD OF APPEALS
Jefferson Bldg, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204

LAW OFFICE OF
G. MACY NELSON, LLC

G. MACY NELSON
DAVID S. LYNCH
MICHAEL I. KROOPNICK

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
www.gmacynelson.com

TELEPHONE: (410) 296-8166
FACSIMILE: (410) 825-0670

July 24, 2014

**COPY
RECEIVED**
JUL 24 2014

Hand-Delivered

BALTIMORE COUNTY
BOARD OF APPEALS

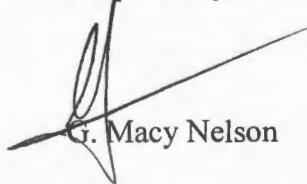
Clerk
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

Re: *Petition of Afshin Attar, et al., for Judicial Review of the Decision of the Board of Appeals for Baltimore County, Maryland*
Case No. 13-080-X

Dear Clerk:

I have enclosed for filing a Petition for Judicial Review, along with a filing fee of \$145.00. I have enclosed an additional copy of the Petition pursuant to Maryland Rule 7-202(d).

Respectfully submitted,


G. Macy Nelson

GMN:ldr
Enclosures

cc: G. Scott Barhight, Esquire
Krysundra "Sunny" Cannington,
Administrator

6/24/14

IN THE MATTER OF
WILLIAM AND MARY GROFF -
LEGAL OWNERS AND PETITIONERS
DMS Tollgate, LLC - Contract purchaser
For the property located at
10609 Reisterstown Road
4th Election District
2nd Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case No. 13-080-X

* * * * *

OPINION

This matter comes before the Board of Appeals as an appeal from the October 31, 2013 decision of the Office of Administrative Law which granted the Petitioners' request for Special Exception to use the subject property, known as 10609 Reisterstown Road, as a fuel service station with a convenience store containing a sales area larger than 1,500 sq. ft., with conditions.

The Petitioners are the property owners William and Mary Groff, and the contract purchaser, DMS Tollgate, LLC. The Petitioners were represented by G. Scott Barhight, Esquire. The Protestants in this matter consisted of Malik Imran, Afshin and Ashkin Rahmanattar, and were represent by G. Macy Nelson, Esquire.

BACKGROUND

The Special Exception sought in this matter is for the purpose of allowing the contract purchaser to construct and operate gasoline service station with an enclosed convenience store greater than 1,500 sq. ft., which is permitted under the Baltimore County Zoning Regulations by way of a Special Exception. The subject property is 8.51 +/- acres and is zoned BL-AS. The Special Exception sought in the matter covers an area of 1.70 acres and is the proposed site for the Wawa service station and convenience store. The Administrative Law judge granted the Special Exception with the following conditions:

1. Petitioners may apply for appropriate permits 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. Unless extended by subsequent order, the special exception granted herein must be utilized within two (2) years from the date of this Order.
3. The "special exception area" shall include the 1.70 acre (74,088 SF) area of the proposed Wawa service station and convenience store, but shall not include the 0.43 acre (18,628 SF) area of proposed relocated Groff Lane.
4. Approval by Baltimore County of a landscape and lighting plan for the site.
5. Approval by county, state and federal authorities of the floodplain study and/or floodplain map amendment or revision as sought by Petitioners.
6. Approval and issuance of all necessary permits by the State Highway Administration.

BOARD HEARING

The Board of Appeals conducted a de novo hearing in this matter as required under the Baltimore County Code. As a threshold matter there is no dispute as to whether the Petitioners are entitled to apply for a Special Exception for the proposed use of the subject property in the area where it is situate pursuant to sections 230.3 and 405.4.E of the Baltimore County Zoning Regulations (BCZR). The dispute involves the question of whether the use of the subject property as proposed by the Petitioners violates the established law regarding the grant of Special Exceptions by Baltimore County and Sections 502.1 and 405 of the BCZR.

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *People's Counsel v. Loyola College*, 406 Md. 54 (2008), where the Court held that a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

In the instant case the Protestants argue that the Administrative Law Judge failed to consider the proper section of the Baltimore County Code as it relates to filling stations; that the proposed location imperils the surrounding neighborhood by reason of its impact on the floodplain; and, that the proposed use would have a negative impact on the general welfare of the neighborhood in which it is situate.

PETITIONERS' CASE

The Petitioners offered into evidence the testimony of Ken Schmidt, of Traffic Concepts, Inc., who was admitted as an expert in the fields of Traffic Engineering and Transportation Planning. Mr. Schmid opined that the proposed use will not create congestion of the roads, streets or alleys in the area of the subject property. The proposed relocation of Groff Lane to create a four way signalized intersection, according to Mr. Schmid, will create a safer and more convenient pattern of traffic circulation for the subject property and the surrounding area. According to Mr. Schmid his company has created and delivered two (2) Traffic Impact Studies on behalf of the Petitioners to the Maryland State Highway Administration in support of the planned relocation of Groff Lane.

On cross examination Mr. Schmid acknowledged that the he has yet to receive approval for the planned road relocation.

The Petitioners called Mr. Rick Richardson, of Richardson Engineering, who was offered and accepted by the Board as an expert in the fields of civil engineering, zoning and development. Mr. Richardson testified that based on the proposed use and design of the site, the proposed use will meet or exceed the County requirements pursuant to Section 502.1 for a Special Exception. Mr. Richardson continued to opine that the proposed use will not have significant negative impacts on the surrounding area with respect to health, safety or general

welfare. Mr. Richardson testified that in his opinion the provisions of BCZR Section 405 concerning fuel service stations. Mr. Richardson testified that the proposed fuel service station is not is not located within a mile radius of any abandoned fuel service station(s).

The Petitioners offered into evidence a 100 year Flood Plain Study (Petitioners' Exhibit No. 15) which had been previously submitted to the County Department of Public Works as part of the review process for this site. While the flood plain study was accepted by the County for filing the document must be approved by the Maryland Department of the Environment and the Army Corps of Engineers.

PROTESTANTS' CASE

The Protestants called to testify John Seitz, of Transportation Resource Group, Inc. who was accepted by the Board as an expert in the area of Traffic Engineering. Mr. Seitz testified that as a part of his investigation of the proposed use of the subject site he evaluated the potential truck turning radius for fuel delivery trucks entering the proposed site using a computed based traffic modeling program and determined that a fuel delivery truck attempting to turn into the proposed site would cause potential congestion and traffic difficulty of Groff Mill Road because of the wide turning angle required for such trucks.

Mr. Seitz was questioned as to his familiarity with the Baltimore County Zoning Regulations and the requirements for a Special Exception. Mr. Seitz responded that he was not familiar with the particulars of those areas.

The Protestants next called Andrew Miller, PhD who was admitted as an expert in hydrological studies. Dr. Miller testified concerning the Flood Plain Study prepared by the Petitioners. According to Dr. Miller the subject area contains a portion of the existing flood plain which will be filled in to facilitate construction of the site. The issue of concern to Dr.

Miller was the impact of the proposed flood plain filling on the water elevations and velocity of the 50-year and 100-year floods as established by the federal government. Dr. Miller opined that in the event of a 100-year flood the velocity of water travelling along the water way adjoining the subject property could conceivably increase at or near an overpass bridge located along Reisterstown Road thereby causing the potential for damage to the bridge and the surrounding land.

Three Protestants were called to testify as to their concerns about the proposed Special Exception. They were: Malik Imram; Afshin Attar; and, Ashkam Rahmanattar. Each of the Protestants is either employed by or otherwise affiliated with other fuel delivery stations in the area. The Protestants generally voiced their concerns that the proposed site would cause traffic disruptions in the area, increase crime and specifically that there would be a problem with the entry and exit of fuel delivery tankers to the proposed site. Mr. Imram is the owner of the Gulf filling station which is located adjacent to the proposed site. Mr. Attar is the owner of the Exxon filling station which is likewise located adjacent to the proposed site. They both stated their concerns as to the negative impact on their businesses of the proposed Wawa fuel delivery and convenience store by reason of increased competition in the area.

DECISION

In this case the Petitioners' have decided to proceed with the request for a Special Exception before receiving County approval for the proposed road relocation and approval for the flood plain relocation from FEMA. Under the BCZR this approach is not prohibited and therefore the grant of a Special Exception has no bearing on the approval or non-approval of the foregoing matters.

The instant case then presents the narrow issue of the Petitioners' compliance with the requirements for a Special Exception. In the Boards' view the evidence presented is sufficient to satisfy the requirements of Section 502.1 of the BCZR which reads:

"Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

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

As noted above in this Opinion there is a presumption under Maryland Law that a Special Exception is in the general interest of the jurisdiction and therefore valid and that a Special Exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the Special Exception use.

The Protestants' concerns taken from the available evidence do not rebut the presumption of validity of the Special Exception use in this case. There are, however, factors that cannot be determined as this time and those include the proposed road relocation approval and the re-engineering of the flood plain. The possibility of a negative impact upon the flood plain by Petitioners' plans will be determined separately by way of the investigation by State and Federal

authorities and pursuant to the Baltimore County Code (Section 32-8-101 et. seq.) will only be granted when there is no adverse effect upon the safety and welfare of the citizenry. Likewise we are presented with a proposal for ingress and egress for the subject site without benefit of an approved plan. Any such approval will require a review of county standards by the appropriate county officials based upon the requirements of the B.C.Z.R. Those issues cannot be ascertained at this time and the Board will accordingly grant the Special Exception to the Petitioners' with the same conditions as those imposed by the Administrative Law Judge below.

Another issue raised and argued before the Board is the effect of the following prohibition contained in Section 405.3 of the BCZR titled "Conditions for disapproving special exception," which reads as follows:

"In addition to the findings required under Section 502.1, the Zoning Commissioner, prior to granting any special exception for a fuel service station, shall consider the presence of abandoned fuel service stations in the vicinity of the proposed site. A finding by the Zoning Commissioner of the presence of one abandoned fuel service station, as defined in Section 405.7, within a one-half mile radius, or two such stations within a one-mile radius of the proposed fuel station establishes that there is no need for the proposed use, unless rebutted to the Zoning Commissioner's satisfaction by market data."

The evidence presented at the hearing established that there are no abandoned fuel service stations located within either one-half mile or one-mile of the proposed site. However counsel for the Protestants urged the Board to read the first sentence of Section 405.3 separately from the remaining paragraph so as to interpret the provision of that sentence as requiring the Zoning Commissioner (Board) to examine an area more distant than one-mile for the presence of abandoned fuel service stations on the theory that the "vicinity" referred to in sentence one extends beyond the area of the proposed site as stated in sentence two of Section 405.3. The Board differs in its interpretation of Section 405.3 and holds that the examination of the "vicinity" extends only to those areas mentioned in the following sentence of Section 405.3.

Accordingly the application for a Special Exception is approved subject to the conditions stated below.

ORDER

THEREFORE, IT IS THIS 24th day of June, 2014, by the Board of Appeals of Baltimore County,

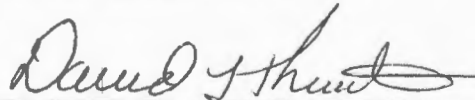
ORDERED that the Petition for Special Exception to use the subject property, known as 10609 Reisterstown Road, as a filling station with a convenience store containing a sales area larger than 1,500 sq. ft. be and the same are hereby **GRANTED**; and it is further,

ORDERED that the Petitioner's request be subject to the following conditions:

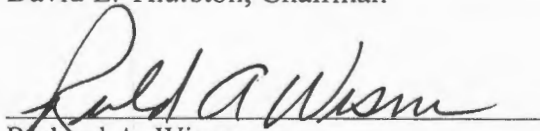
1. Unless extended by subsequent order, the special exception granted herein must be utilized within two (2) years from the date of this Order.
2. The "special exception area" shall include the 1.70 acre (74,088 SF) area of the proposed Wawa service station and convenience store, but shall not include the 0.43 acre (18,628 SF) area of proposed relocated Groff Lane.
3. Approval by Baltimore County of a landscape and lighting plan for the site.
4. Approval by county, state and federal authorities of the floodplain study and/or floodplain map amendment or revision as sought by Petitioners.
5. Approval and issuance of all necessary permits by the State Highway Administration.

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

**BOARD OF APPEALS
OF BALTIMORE COUNTY**



David L. Thurston, Chairman



Richard A. Wisner

*Wendell H. Grier was Panel Chairman at the hearings held on March 5, 2014, March 12, 2014, and April 2, 2014. His term expired on April 30, 2014.



Board of Appeals of Baltimore County

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

June 24, 2014

G. Scott Barhight, Esquire
Adam Baker, Esquire
Whiteford, Taylor & Preston, LLP
1 W. Pennsylvania Avenue, Suite 300
Towson, Maryland 21204

G. Macy Nelson, Esquire
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: *In the Matter of: William and Mary Groff – Legal Owner/Petitioner*
Case No.: 13-080-X

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KC/tam
Enclosure
Duplicate Original Cover Letter

c: William and Mary Groff
DMS Tollgate, LLC
Ashkan Rahmanattar
Office of People's Counsel
Arnold Jablon, Director/PAI
Jeff Mayhew, Deputy Director/Dep. of Planning
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law

Malik Imram
Afshin Attar
George Harman
Ken Schmid
Rick Richardson
Joe Ucciferro

Cheryl Aaron
Gary Lenz
Faisal Naseer
Bruce Rice
Mohammad Khan

4/18/14

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APR 18 2014

BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:
Petition for Special Exception
DMS Tollgate, LLC
10609 Reisterstown Road
4th Election District
2nd Councilmanic District

* BEFORE THE
* BOARD OF APPEALS FOR
* BALTIMORE COUNTY
* Case Number: 13-080-X

* * * * *

MEMORANDUM OF PETITIONER

DMS Tollgate, LLC, by and through its attorneys, G. Scott Barhight, Adam D. Baker and Whiteford, Taylor & Preston, L.L.P. (the "Petitioner"), hereby submits this Memorandum to the Board of Appeals for Baltimore County (the "Board") in lieu of final oral argument. This matter came before the Board on appeal from the Order of the Administrative Law Judge for Baltimore County ("ALJ") approving a Petition for Special Exception to permit a fuel service station use in combination with a convenience store with a sales area larger than 1,500 square feet pursuant to §§ 230.3 and 405 of the Baltimore County Zoning Regulations ("BCZR"). The proposed use is to be operated by Wawa. The Board conducted evidentiary hearings on the matter on March 5, 2014, March 12, 2014 and April 2, 2014. There were several protestants represented by G. Macy Nelson, Esq., who appeared in opposition to the Petition: Malik Imran, Afshin Attar, and Ashkan Rahmanattar (collectively, the "Protestants"). Each of the Protestants holds an interest in fuel service stations in close proximity to the proposed Wawa site.

I. BACKGROUND

The proposed fuel service station and convenience store use is located on an 8.51 acre tract known as 10609 Reisterstown Road in Baltimore County, Maryland (the "Property"). The tract consists of three (3) parcels¹ located on the northeast side of Reisterstown Road. The 2.13 acre

¹ On November 28, 2012, the Baltimore County Development Review Committee ("DRC") approved an exemption under Section 32-4-106(a)(1)(ii) or (a)(1)(v) of the Baltimore County Code ("BCC") to permit a lot

Special Exception area, as shown on the Site Plan (Petitioner's Exhibit No. 2), consists of a portion of Lot 1 and the relocated Groff Lane.

The Property is zoned BL-AS. This zoning was obtained through the 2012 Comprehensive Zoning Map Process ("CZMP") following extensive discussions among the Petitioner, the Baltimore County Department of Planning, the Second District County Councilwoman Vicki Almond, and two critical community groups (namely, The Reisterstown-Owings Mills-Glyndon Coordinating Council, Inc. ("ROG") and The Greater Greenspring Association, Inc. ("GGA")). The AS overlay was sought through the CZMP because of its traditional application to areas within commercial zones "which are appropriate for uses dominated by the parking and servicing of automobiles or characterized by frequent parking turnover, such as fuel service stations." BCZR § 259.2.B. In exchange for the support of ROG and GGA for the CZMP rezoning request, the Petitioner agreed to subject the Property to a Declaration of Restrictive Covenants (Petitioner's Exhibit No. 3). The covenants require that the Property be developed in a manner consistent with and complimentary to the historic character of the historic Groff Mill.

II. APPLICABLE STANDARDS

Sections 230.3 and 405.4.E of the BCZR provide that a fuel service station use in combination with a convenience store with a sales area larger than 1,500 square feet is permitted as a Special Exception within the BL-AS zone. Section 502.1 of the BCZR sets forth the requirements which must be met in order for a Special Exception to be approved. In addition, BCZR § 405 provides special requirements for Fuel Service Stations.

line adjustment. The purpose of the lot line adjustment was threefold: (1) to create a new lot to match the approved Historic Environmental Setting for the historic Groff Mill and accessory structures; (2) to accommodate the approved relocation of Groff Lane; and (3) to allow for the development of the two parcels with frontage on Reisterstown Road. With regard to the Historic Environmental Setting, the Petitioner worked extensively with the Department of Planning to coordinate the appropriate boundaries of the Historic Environmental Setting and accommodate for the envisioned future development of the Property, including the requested special exception use.

III. SPECIAL EXCEPTIONS IN MARYLAND

The Maryland Court of Appeals has recognized that “a special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses which the legislative body has determined can, *prima facie*, properly be allowed in a special use district, absent any fact or circumstance in a particular case which would change this presumptive finding.” People’s Counsel for Baltimore County v. Loyola College in Maryland, 406 Md. 54, 105-106 (quoting Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287 (1953)). In conjunction with the underlying § 502.1 requirements, the Maryland Court of Appeals has held that the underlying question in evaluating a petition for special exception is whether the proposed use will have an impact at the proposed location greater than or beyond that which one would expect the use to have regardless of its location elsewhere. Loyola College at 90.

The Court of Appeals has opined that the “regardless of its location” portion of the special exception standard means “without taking into account”. In doing so, the Court disagreed with the analyses applied in other cases where the language was interpreted to require “an applicant for a special exception to compare, and concomitantly the zoning body to consider, the adverse effects of the proposed use at the proposed location to, at least, a reasonable selection or representative sampling of other sites within the same zone throughout the district.” Id. at 102. The standard requires no such evidentiary burden of an applicant nor analysis by the zoning decision maker. Id.

Uses which the local legislature deems as being allowed only by a special exception in various zones have certain inherent adverse effects wherever in a particular zone they may be located. Loyola College at 106. The Loyola College Court further explained that one must consider the two different contexts by which a petition for special exception should be viewed: “one by

which a legislative body decides to classify a particular use as requiring the grant of a special exception before it may be established in a given zone, and a second one by which the individual applications for special exceptions are to be evaluated by the zoning body delegated with the responsibility to consider and act on those applications in accordance with criteria promulgated in the zoning ordinance.” 406 Md. At 69. The legislative determination, therefore, is that uses are conceptually compatible in a particular zone with other uses permitted and with uses already in place in surrounding zones, “provided that, at a given location, adduced evidence does not convince the body to whom power to grant or deny individual applications is given that actual incompatibility would occur.” Id. at 106.

Special exception uses, by their very nature, have inherent adverse impacts. Id. In the context of a fuel service station, those characteristics include fuel storage and dispensing, traffic, noise, lighting, fumes, visual impacts, stormwater runoff, and grading, to name the obvious. The special exception test exists to determine if the use and its inherent adverse characteristics are greater than or beyond that which one would expect the use to have regardless of its location. While the proposed Wawa includes many of these typical potential adverse impacts, there are components of the use which lessen some of these potential adverse impacts:

- low impact LED lighting
- no automobile repairs
- a standardized security protocol
- new construction which will be required to meet all the current regulations regarding stormwater management, erosion and sediment control, installation and future testing of underground storage tanks (“USTs”), review of plan by Planning for compliance with the historic site, review of access permit by SHA to ensure safe and convenient access to the roadway.

Further, as the Court in Loyola College discussed, the special exception ensures that there is appropriate oversight for uses which ensures that the surrounding community where a use is proposed will not suffer real and significant harm. If a use will actually significantly harm the

community, then it follows that that use is impacting the community in a manner that is above that which one would expect the use to have. Where the impacts of a use are mere inconveniences (e.g. traffic, noise, typical operation and construction impacts), though, it cannot be said that the impacts are above that which are expected with the use because they do not actually significantly harm the community.

IV. PROPOSED USE MEETS THE APPLICABLE REQUIREMENTS

Ken Schmid, of Traffic Concepts, Inc., who was admitted as an expert in the fields of Traffic Engineering and Transportation Planning, testified that the proposed use will not create congestion in the roads, streets or alleys. Based upon Mr. Schmid's observations in conjunction with the testimony of Bruce Rice², Mr. Schmid opined that the internal and external traffic circulation of the site has been appropriately designed and will meet the requirements of both Baltimore County and the State of Maryland. The relocation of Groff Lane to create a four way signalized intersection will create a safer and more convenient pattern of traffic circulation for the Property and the surrounding area. As Reisterstown Road (MD 140) is a State road, the Petitioner is pursuing an access permit from the State Highway Administration ("SHA").

In addition, Traffic Concepts, Inc. has submitted two Traffic Impact Studies to address the anticipated impact that the use will have on the surrounding area. The first Traffic Impact Study was submitted in April 2013 and the second was submitted in August 2013 in response to comments from SHA on the April 2013 study. The Petitioner is continuing to work with SHA on the Traffic Impact Studies and the requested intersection improvements and right-in/right-out access to Reisterstown Road. This is a development issue through which the Petitioner will continue to work with SHA. Notwithstanding this assertion, it is noteworthy that SHA, in its response to the Traffic

² Bruce Rice, an employee of Wawa, Inc., provided detailed testimony with regard to the proposed Wawa operation. Bruce highlighted that the site would provide additional parking and wider drive aisles than required throughout the site and in and around the fuel pumps, as is Wawa's customary site design practice.

Impact Studies has indicated that the site does not need the requested access to Reisterstown Road. SHA has adopted the position that the access from Groff Lane is adequate and the site can be accessed safely using only this access point. In addition, during his testimony, Mr. Schmid expressed his opinion that the Property will provide safe and adequate access and traffic circulation with or without the access to Reisterstown Road.

Rick Richardson, of Richardson Engineering, was admitted as an expert in the fields of civil engineering, zoning and development. Mr. Richardson testified that based upon the nature of the proposed use and the design of the site, the proposed use will meet or exceed the Special Exception requirements of BCZR § 502.1. Specifically, Mr. Richardson testified that the proposed use will not have impacts on the surrounding area with respect to health, safety, or general welfare, overcrowding, undue concentration of population, adequate provisions for public infrastructure, adequate light and air, and potential hazards from fire, panic or other dangers in a manner greater than the impact inherent with such a use regardless of its location. Mr. Richardson further testified that the proposed use will be consistent with the impermeable surface and vegetative retention provisions, the zoning classification, and the spirit and intent of the BCZR.

In addition, Mr. Richardson added that the proposed use will also comply with the special use requirements of BCZR § 405 for fuel service stations. Mr. Richardson testified that the proposed fuel service station is not located within a mile radius of any abandoned fuel service stations, that it meets the site development standards of § 405.4, that it will provide a restroom facility, water and compressed air for customers, and, more generally, that it will meet the various requirements of BCZR § 405.4.

As part of the development approval process, the Petitioner submitted a 100-Year Flood Plain Study to DPW (Petitioner's Exhibit No. 15). This study contained revisions which were

required by Baltimore County based upon correspondence exchanged between DPW and the Petitioner (Petitioner's Exhibit Nos. 16a, 16b, and 16c). By memorandum, dated October 16, 2013, Terry Curtis and David Thomas confirmed DPW's acceptance of the Flood Plain Study for filing (Petitioner's Exhibit No. 16). On account of the memorandum, the Petitioner may proceed with seeking the appropriate flood plain approvals from the Maryland Department of the Environment ("MDE") and the Army Corps of Engineers. Once the Petitioner secures the approvals of MDE and the Army Corps of Engineers, it must submit a Letter of Map Amendment or Revision to the Federal Emergency Management Administration ("FEMA") to amend the floodplain map. During his testimony, Rick Richardson opined that the proposed changes to the floodplain create no harm to the surrounding community.

V. ISSUES PRESENTED BY THE PROTESTANTS

a. Traffic

John Seitz, of Transportation Resource Group, Inc., was accepted by the Board as the Protestants' traffic expert. During voir dire, Mr. Seitz indicated that he has never sought any access permits from SHA, that he has never worked with a petitioner team in Baltimore County, and that he is not intimately familiar with the Baltimore County Zoning Regulations, the Baltimore County Development regulations, or the test for approving a special exception in Baltimore County. While Mr. Seitz was admitted as an expert, it was clear through his voir dire that he was unfamiliar with the regulations and requirements which special exception uses must meet with respect to traffic. It was also clear that Mr. Seitz was not familiar with the requirements or the process of approval for a SHA access permit.

Mr. Seitz testified that he evaluated potential truck turning radius using a template approved by the American Association of State Highway and Transportation Officials ("AASHTO"). The

study included only one approach to one entrance to the Property. Mr. Seitz did not study the right in/right out on Reisterstown Road nor did he study the turn from Groff Lane westbound into the site. He did not use the AASHTO computer program which allows for myriad turn radius scenarios. The AASHTO template which Mr. Seitz used only allows for one turning movement. Using the AASHTO template, the outside edge of a WB50 truck³ would cross over the centerline of Groff Lane if making a right into the Property from the northbound lane on Reisterstown Road. The same truck, after making the turn onto Groff Lane would cause automobiles exiting the Wawa onto Groff Lane to have to yield to the truck because of its wide turning radius in order to accommodate the truck making a right off of Groff into the Property.

In reviewing Mr. Seitz's turn radius analysis, several shortcomings are evident. First, the model only allows for one turning movement. There is computer program study which examines a variety of models (i.e. turning movements). Had Mr. Seitz used the computer program, the challenges of the truck turning movement may not have been as pronounced or present at all. Rick Richardson testified that he performed the turn radius analysis using the computer program method and the results were acceptable. That is to say, the results indicated no adverse impact above that which one would normally expect for fuel service stations. Mr. Richardson added that the delivery of fuel by large trucks is an inconvenience that all fuel service stations experience. The fact that this inconvenience is also present at the Property does not in and of itself cause the use to fail the special exception test.

A portion of Mr. Seitz's traffic testimony relied upon the Baltimore County Bureau of Development Plans Review Policy Manual and the State Highway Administration Access Manual, excerpts of which were introduced as Protestants' Exhibit No. 4. The context in which these

³ Testimony revealed that a WB50 truck is a semi-truck with a 50 foot wheelbase.

documents were raised was in reference to intersection spacing and corner clearance. The Development Plans Review Policy Manual advocates an optimal minimum distance between intersections. Protestants failed to mention, however that the provisions of the manual are discretionary.⁴ The language provides flexibility and it is up to the Director of the Baltimore County Department of Public Works ("DPW") to determine whether a particular use is safe and meets the guidelines. The fact that the proposed Special Exception would require relief from the Policy Manual does not mean that the special exception relief cannot be granted. With regard to the State Highway Administration Access Manual, it provides guidance for corner clearance distances between intersections and commercial entrances onto State roads. The Protestants used the policy to highlight perceived inefficiencies with Groff Lane, a county road, and the proposed Wawa entrance on Groff Lane. The SHA is charged with the authority to oversee its roads and the safe and convenient circulation of vehicles thereon.

The Protestants contend that the proposed Wawa use will bring more traffic to the roads, despite the common understanding that fuel service stations are not destination uses. They typically draw from the existing traffic on the road. Despite the Protestants' contention, testimony presented before the Board revealed that the intersection of Groff Lane and Reisterstown Road currently operates at an A level of service. With the realignment of Groff Lane and the addition of the proposed automobile fuel service station, the intersection operates at a B level of service, which is an acceptable level of service.

⁴ The portion of the Bureau of Development Plans Review Policy Manual regarding Traffic Engineering Development (Art. XIII. Traffic Engineering Development), upon which the Protestants rely, contains the following preamble in describing the General Guidelines: "The following items are intended as general guidelines and *may be* recommended to be waived or made more stringent by the Director of the Department of Public Works..." (emphasis added). Further, the general guideline covering Intersection Spacing, upon which the Protestants rely, provides: "*Where possible*, the distance between public or private street intersection shall be at least 100 feet..." (emphasis added). Based upon the permissive language, these "guidelines" should not be regarded as absolute mandates.

The Protestants' conclusion with regard to the traffic impact of the proposed special exception use, as borne out through the testimony of Mr. Seitz, is that the traffic could be "problematic". This is not the standard for evaluating a proposed special exception use nor is it part of the criteria which the SHA considers in considering whether or not to grant an access permit. Mr. Seitz never testified that the proposed use violated any special exception requirement. Each of the issues raised are issues which will be addressed by the SHA during its access permit review process. As a result, it is clear that the anticipated traffic issues alleged by the Protestants do not impact the surrounding area of the Property in a manner above and beyond that which would be expected of an automobile service station. If the petitioner is unable to obtain an access permit from the SHA, then it will not be able to construct and operate the fuel service station.

b. Floodplain

The Protestants contend that because of the location of the USTs in the proposed filled area of the existing floodplain, that the special exception must be denied. The Protestants' expert, Dr. Andrew Miller, failed to establish any knowledge of the construction plans and methods employed for fuel service stations, either generally or in the particular. Further, the Protestant set forth no evidence which indicates that the proposed fuel service station's impact here is above that which one would normally expect with such a use. The impact to the floodplain has no tie to the use. It is a pure development issue which will have the appropriate oversight of the pertinent County and State agencies. If the special exception is denied, the Petitioner will still proceed with the floodplain relief. As long as the required relief is granted, the modifications to the floodplain will occur regardless of whether the special exception is granted.

The proposed impact to the floodplain should be regarded as a development issue and separate from the zoning approval sought. Pursuant to § 32-8-203 of the Baltimore County Code

("BCC") the proposed changes to the floodplain will have the appropriate oversight of DPW, the State Secretary of the Environment and FEMA. The impact to the floodplain is tied to the development and has no connection to the proposed use on the Property. The use could be any other retail use and the impact to the floodplain would be identical.

The Protestants called Dr. Andrew Miller to testify as an expert in the fields of hydrology and floodplains generally. During his voir dire, Dr. Miller indicated that he was not familiar with the standards governing the process of altering floodplains or changing the FEMA maps in Baltimore County. After testimony which spanned two days of hearing and covered a detailed examination of the Petitioner's Floodplain Study (Petitioner's Exhibit No. 15)), Dr. Miller expressed his conclusion that the proposed fuel service station would cause no significant change to the water elevations and velocity of the projected 50-year and 100-year floods. He specifically said that the proposed changes to the floodplain would not significantly affect upstream or downstream properties. While Dr. Miller opined that it was "not good policy" to develop a fuel service station with USTs in the floodplain, he admitted that he had no knowledge of site development and construction and the governing standards for the same and therefore no basis for forming such an opinion. Maryland courts have consistently held that expert opinions are of no greater probative value than the soundness of the reasons given for the opinion will warrant. Surkovich v. Doub, 258 Md. 263 (1970); quoting Miller v. Abrahams, 239 Md. 263 (1963). Mr. Miller gave no basis for his conclusion that development within the floodplain would be bad policy. He had no knowledge whatsoever of the appropriate and required construction and safety techniques which will be imposed upon the Petitioner before being allowed to place USTs on the site. His position was further weakened by his admission that he was unfamiliar with the applicable development and construction regulations and that he had not reviewed any construction or permit plans for the

proposed fuel service station. Notwithstanding Mr. Miller's lack of foundation for his broad assertion, the Board should take comfort in the fact that the development and operation of a fuel service station is a highly regulated enterprise and will have the appropriate oversight at the County and State levels. Code of Maryland Regulations Title 26, Subtitle 10, et seq.

In addition to the floodplain relief, the proposed use will also need to secure a Forest Buffer variance as a result of the proposed encroachment into the existing forest buffer on the Property. Similar to the floodplain, the forest buffer relief is a development approval which is separate from the requested zoning relief. The forest buffer variance will be considered by the Baltimore County Department of Environmental Protection and Sustainability. In order to obtain approval, the Petitioner must demonstrate that strict compliance with the provisions of Article 33 of the BCC would result in practical difficulty or unreasonable hardship. In addition, the Petitioner will need to provide an alternatives analysis which demonstrates that no other feasible alternative exists and that minimal disturbance will take place. BCC § 33-3-112.

c. Crime

The Protestants assert that the proposed fuel service station use will exacerbate an existing problem that they have experienced with crime in the area. The Protestants base this conclusion solely on the fact that the Wawa will bring more people to the area. As borne out through the testimony of Bruce Rice, Wawa has a comprehensive security protocol for all of its stores which includes outside lighting, an intercom system, security cameras (interior and exterior) and a policy that at least three (3) employees be present on the store floor at any given time. These safety standards far exceed the current operational practices of the competition nearby. The assertion that Wawa, with its comprehensive security program, will increase crime in the area is mere conjecture and should be ignored by the Board.

d. Need

The Protestants assert, incorrectly, that pursuant to BCZR § 405.3 the Petitioner is required to demonstrate need for the proposed fuel service station. Section 405.3 provides:

In addition to the findings required under Section 502.1, the Zoning Commissioner, prior to granting any special exception for a fuel service station, shall consider the presence of abandoned fuel service stations in the vicinity of the proposed site. A finding by the Zoning Commissioner of the presence of one abandoned fuel service station, as defined in Section 405.7, within a one-half-mile radius, or two such stations within a one-mile radius of the proposed fuel service station establishes that there is no need for the proposed use, unless rebutted to the Zoning Commissioner's satisfaction by market data.

Maryland courts have consistently held that when interpreting a statute, the language of the statute should be given its plain meaning. Dep't of Health & Mental Hygiene v. Kelly, 397 Md. 399 (2007). While § 405.3 recognizes the requirement that the Zoning Commissioner consider the presence of abandoned fuel service stations in the vicinity of the proposed site, the presumption, based upon the modifier in the second sentence of the section, is that the analysis of the "vicinity" should only include stations within a one (1) mile radius of the site. If there is a finding of abandoned service stations within a one mile radius, then the burden shifts to the petitioner to rebut the presumption that there is no need for the use. If there is no evidence showing abandoned stations within one mile, then the analysis is complete.

Despite the fact that need does not need to be shown, Bruce Rice testified that Wawa did perform its due diligence in selecting the Property for the proposed use but that the methods utilized and information collected are proprietary to Wawa, Inc. Further, Malik Imran and Afshin Attar, who operate the Gulf and Exxon fuel service stations in close proximity to the Property, respectively, provided their own market data by testifying that they dispense approximately 80,000-100,000 gallons of petroleum fuel per month. They further indicated that there is a steady procession of traffic along the section of Reisterstown Road where their stations are

located. Based upon these facts alone, it is evident that there is a need for fuel service in the vicinity.

The Protestants speculated that their businesses would be hurt by the new Wawa, similar to the way in which other fuel service stations were allegedly impacted when a Wawa fuel service station opened approximately three (3) miles north on Reisterstown Road. The service stations to the north allegedly closed following the opening of the Wawa, but no evidence was presented indicating any details regarding the businesses closures. The Protestants offered this evidence in order to (1) demonstrate that there is no need for the proposed fuel service station, and (2) show that the proposed use will be harmful to the health, safety and general welfare of the locality involved. Conclusory and unsubstantiated testimony that service stations in the past have allegedly closed when a new Wawa opens does not establish a lack of need nor does it establish that the impacts will be the same for the Wawa proposed on the Property. The testimony is speculative and no causal connection was offered by the Protestants to link the closure of the service stations to the opening of the Wawa. If anything, the testimony establishes that there is a need because service stations are currently in operation and are dispensing fuel to a steady base of customers.

Section 502.1.A of the BCZR provides that for a proposed special exception use to be approved, it must be demonstrated that the use will not be detrimental to the health, safety or general welfare of the locality involved. The Protestants assert that the proposed fuel service station fails to meet this requirement because of the harm that may potentially come to their respective service station uses if the new Wawa opens. The alleged harm is that the Wawa will beat them in the competition for customers and result in a loss of business which will lead to their closure. Section 502.1.A is not a protection against competition. There is a staggering

irony to the Protestants' case: Gulf Oil and Exxon Mobil, two of the largest companies on the planet, are using the special exception requirements to shield themselves from competition. The special exception requirements of the zoning regulations do not exist to shield against competition nor are they intended to inhibit progress that comes with competition. If a proposed business will provide better service at a cheaper rate than existing businesses, the harm that will fall upon the existing businesses if they do not make themselves more competitive is not the type of harm against which the special exception requirements of § 502.1 is intended to guard. In fact, a new business which provides better, cheaper more efficient service than the existing competition is beneficial for the health, safety and general welfare of the general public.

VI. CONCLUSION

In light of the evidence presented at the hearing, it is clear that the proposed fuel service station use in combination with a convenience store with a sales area greater than 1,500 square feet meets the applicable requirements of BCZR §§ 502.1 and 405. The Petitioner has met its burden of proof, for the many reasons articulated above. As a result, the Board should affirm the ALJ's approval of the Petition for Special Exception, with the conditions imposed. These conditions include (1) clarification of the special exception area not to include Groff Lane; (2) approval by the County of a landscape and lighting plan; (3) approval by the appropriate County, State and Federal authorities of the floodplain study and/or floodplain map amendment; and (4) approval and issuance of all necessary permits by the SHA.

Respectfully submitted,

Adam D. Baker/MW

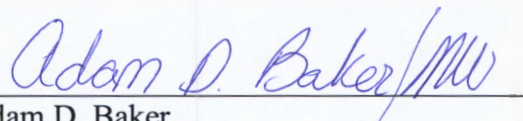
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Attorneys for DMS Tollgate, LLC

2088145v2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day April, 2014, a copy of the foregoing Memorandum was hand-delivered to:

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204



Adam D. Baker

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April 18, 2014

VIA HAND DELIVERY

Ms. Krysundra "Sunny" Cannington, Administrator
The Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204



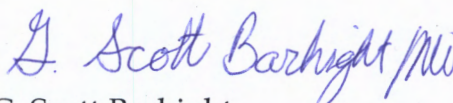
Re: Groff Property at 10609 Reisterstown Road
Case No. 13-080-X

Dear Ms. Cannington:

Enclosed for filing in the above-referenced matter, please find three (3) copies of the *Memorandum of Petitioner*. I have included an additional copy for date-stamp to be returned with the messenger. In addition, in accordance with the Board's request, please note that we will also submit an electronic copy of the *Memorandum of Petitioner*.

Thank you for your kind attention in this matter. Please contact me should you have any questions.

Very truly yours,


G. Scott Barhight

GSB:mw
Enclosures

cc: G. Macy Nelson, Esquire

434632v2

4/18/14

RECEIVED
APR 18 2014

BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:
William and Mary Groff – LO
DMS Tollgate, LLC – CP/Lessee
10609 Reisterstown Road
4th Election District;
2nd Councilmanic District

* BEFORE THE
*
* BOARD OF APPEALS
*
* OF BALTIMORE COUNTY
*
* Case No. 13-080-X
*

* * * * *

**PROTESTANTS' MOTION TO DISMISS OR, ALTERNATIVELY,
STAY THE APPLICATION FOR SPECIAL EXCEPTION**

Malik Imran, Afshin Attar and Ashkin Rahmanattar (collectively, "Protestants"), by their attorney, G. Macy Nelson, file this Motion to Dismiss or, Alternatively, Stay the Application for Special Exception

There are three separate reasons why this Board should dismiss or, alternatively, stay the application for special exception. First, the Board should dismiss the application because the Applicant failed to present evidence of the boundaries of the neighborhood. A definition of the neighborhood is an element of the required proof for a special exception. The central question in a special exception case concerns the effect of the proposed use on the neighborhood. To understand the effect on the neighborhood, the Applicant must present evidence about the boundaries of the neighborhood. Without evidence of the boundaries of the neighborhood, the application must fail as a matter of law. *Schultz v. Pritts*, 291 Md. 1, 11 (1981) ("If [the applicant] shows to the satisfaction of the Board that the proposed use would be conducted *without real detriment to the neighborhood* and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance *to the neighboring area* and uses is, of

course, material.”) *Cf. Alviani v. Dixon*, 365 Md. 95, 117 (2001) (affirmed grant of special exception because “Board established the relevant neighborhood.”). The Board should dismiss the application for special exception because the Applicant failed to present evidence regarding the boundaries of the neighborhood.

Second, the parties agree that the State Highway Administration (“SHA”) has not approved the Applicant’s proposed access to Reisterstown Road. The Board should dismiss or, alternatively, stay the application until the SHA approves access to Reisterstown Road. The current posture of the case requires the Board to make factual findings about the effect of the proposed use on traffic when there is no certainty about how traffic will have access to the site. Will the Applicant have access from Reisterstown Road and Groff Lane or just from Groff Lane?

Third, the parties agree that Baltimore County, the Maryland Department of the Environment and the U.S. Army Corps of Engineers have not yet approved the application to modify the flood plain. The Board should dismiss, or alternatively stay, the application until each of the governmental agencies approves the application to modify the flood plain. Of course, if the Applicant fails to obtain the approval, the application fails as a matter of law. The current posture of the case requires the Board to make factual findings about the effect of the proposed use on the flood plain when there is no certainty about whether the Applicant will be permitted to modify the flood plain.

Respectfully submitted,



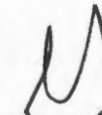
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Attorneys for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of April, 2014, a copy of the foregoing Motion to Dismiss or, Alternatively, Stay the Application for Special Exception was mailed first class, postage prepaid, to:

G. Scott Barhight, Esquire
Whiteford Taylor Preston
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One West Pennsylvania Avenue
Towson, Maryland 21204
Attorneys for DMS Tollgate, LLC



G. Macy Nelson



IN THE MATTER OF:
William and Mary Groff – LO
DMS Tollgate, LLC – CP/Lessee
10609 Reisterstown Road
4th Election District;
2nd Councilmanic District

BEFORE THE
BOARD OF APPEALS
OF BALTIMORE COUNTY
Case No. 13-080-X

* * * * *

PROPOSED OPINION AND FINAL ORDER

The County Board of Appeals conducted a *de novo* hearing on March 5, 2014, March 12, 2014, and April 2, 2014 on an appeal of the decision by the Office of Administrative Hearings dated October 31, 2013 granting a Petition for Special Exception to permit an automotive service station in combination with a convenience store greater than 1,500 square feet. G. Scott Barhight, Esq. represented the owners of the subject property, William D. and Mary Groff, and the contract purchaser, DMS Tollgate, LLC (collectively, the “Applicant”). G. Macy Nelson, Esq. represented Malik Imran, Afshin Attar and Ashkin Rahmanattar (collectively, “Protestants”).

Summary of Applicable Law

The Applicant bears the burden of proving compliance with Baltimore County Zoning Regulations (“ZR”) sections 502.1 and 405.3.¹ *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 73 (2008) (quoting *Easter v. Mayor of Baltimore*, 195 Md. 395, 400 (1950) (“The burden of showing facts to justify a[] [special] exception ... rests upon the applicant....”).

¹ Protestants have attached the full text of ZR sections 502.1 and 405.3 as an appendix.

The special exception test set forth in *Schultz v. Pritts* is well known:

We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

291 Md. 1, 22–23 (1981). *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 102 (2008), explained that the *Schultz* test is an “analytical overlay,” not a separate test. *Id.*, 406 Md. at 102. *Loyola* explained further:

Schultz speaks pointedly to an individual case analysis focused on the particular locality involved around the proposed site. *See Schultz*, 291 Md. at 15 (“These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in *an adverse effect upon adjoining and surrounding properties* unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone.”); *Schultz*, 291 Md. at 11 (“The duties given the Board are to judge whether *the neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.”); *id.* (“If [the applicant] shows to the satisfaction of the Board that the proposed use would be conducted *without real detriment to the neighborhood* and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance *to the neighboring area* and uses is, of course, material.”); *Schultz*, 291 Md. at 12 (“These standards dictate that if a requested special exception use is properly determined to have an adverse effect *upon neighboring properties in the general area*, it must be denied.”).

Id., 406 Md. at 102-03 (emphasis in original).

Judge Murphy’s concurring opinion in *Loyola* clarified the holding:

It may be helpful to restate the rules of engagement in special exception litigation, and review how those rules were applied in the case at bar.

Although it is of no real consequence whether we say that an applicant “is entitled to a special exception, *provided that*,” or that an applicant “is *not* entitled to a special exception, *unless*,” the applicant for a special exception bears both the burden of production and the burden of persuasion on the issue of whether the special exception should be granted. If the zoning authority is presented with evidence that generates a genuine question of fact as to whether the grant of a special exception would violate the applicable legislation and/or the requirements of *Schultz*, the applicant must persuade the zoning authority by a preponderance of the evidence that the special exception will conform to all applicable requirements.

Id., 406 Md. at 109 (emphasis in original).

In essence, the inquiry is whether the proposed use will have adverse effects on properties in the neighborhood that are “unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone.” That inquiry first requires an understanding of the subject property’s neighborhood. Then, it requires a cataloging of the neighborhood’s unique characteristics which could be adversely affected “above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.”

Proposed Findings of Fact

Even if the Board denies Protestants’ motion to dismiss or, alternatively, stay the application for Special Exception, the Board should disapprove the application because the Applicant failed to prove compliance with the requirements of ZR sections 502.1 and 405.3. Protestants set forth below in bold italics the relevant portions of ZR sections 502.1 and 405.3 and, in regular type, their proposed findings of fact and conclusions of law.

§ 502.1 Conditions determining granting of special exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

B. Tend to create congestion in roads, streets or alleys therein.

1. The edge of the Groff Lane entrance to Wawa is sixty feet from the edge of Reisterstown Road. (Schmid 3-4; Richardson at 30-31).

2. The Applicant's traffic engineer, Mr. Schmid, agreed that sixty feet between the edge of Reisterstown Road and the edge of Groff Lane entrance to Wawa does not satisfy section 10.6.3 of the SHA Manual. (Schmid at 31-32; Protestants' Exhibit 4). He also agreed that the sixty feet between the edge of Reisterstown Road and the edge of the Groff Lane entrance to Wawa is less than the minimum of one hundred feet set forth in the Baltimore County Bureau of Development Plans Review Manual. (Schmid at 29-31; Protestants' Exhibit 4).

3. Through traffic on the realigned Groff Lane does not line up with the receiving lane of Tollgate Road on the opposite side of the intersection. Similarly, through traffic on Tollgate Road does not line up with the receiving lane of realigned Groff Lane on the opposite side of the intersection. (Applicant's Exhibit 10, Comment 2). This configuration violates standard traffic engineering principles because it adversely affects the safety and function of the intersection. (Seitz).

4. The Applicant's traffic engineer's report states that the proposed Wawa will generate 37 new "ins" and 37 new "outs" during the afternoon peak hour. (Applicant's Exhibit 8, p. 16)

5. Prior to the hearing, the Applicant's traffic engineer, Mr. Schmid, had not analyzed whether a fuel truck could safely enter or exit the Wawa from Groff Lane. (Schmid at 18).

6. During the direct examination of the Applicant's civil engineer, Patrick C. Richardson, he only testified about a car's ability to enter and exit the Wawa. He did not testify about a fuel truck's ability to enter and exit the Wawa.

7. On cross-examination, Mr. Richardson conceded that he did not during his direct examination discuss whether a fuel truck could safely enter or exit the Wawa from Groff Lane. (Richardson at 30).

8. The Groff Lane access to Wawa will create congestion because the access road is too close to Reisterstown Road. A standard fuel truck, known as a WB-50 truck, driving northbound on Reisterstown Road will be unable to stay in its lane as it turns onto

eastbound Groff Lane. The left side of a WB-50 truck will cross the center line of Groff Lane during the initial turn from Reisterstown Road. (Seitz; Protestants' Exhibit 3; Richardson at 35). Any westbound vehicle on Groff Lane stopped at the Reisterstown Road intersection will obstruct the passage of the WB-50 truck.

9. The distance of sixty feet between the edge of Reisterstown Road and the Groff Lane entrance to Wawa also creates the risk that cars travelling westbound on Groff Lane will queue up past the entrance to the Wawa. That fact will exacerbate the problems caused by a WB-50 truck's inability to stay in its lane on Groff Lane. In this event, the fuel truck will have to back up into Reisterstown Road or the cars will have to back up Groff Lane. The Applicant's traffic engineer acknowledged the problem of cars queuing on Groff Lane and explained, "[t]hat's exactly why we want to have the right-in, right-out on the northern end of the site." (Schmid 21-22).

10. Additionally, when a WB-50 fuel truck on eastbound Groff Lane turns into the Wawa entrance, the left side of the truck will be in the lane for cars exiting Wawa. (Richardson at 36-37; Seitz). The Applicant's engineer, Mr. Richardson, testified that a car exiting from Wawa would "have to back up" to allow the WB-50 truck to complete its turn and enter the Wawa. (Richardson 36; Protestants' Exhibit 3). When asked whether "[a] prudent driver driving a WB-50 truck cannot turn into [the Wawa] entrance if someone is trying to get out in the center lane," Mr. Richardson responded, "No." (Richardson at 37).

11. The facts that (a) a WB-50 truck turning eastbound onto Groff Lane must use a portion of the westbound bound lane of Groff Lane and (b) a WB-50 truck entering Wawa from eastbound Groff Lane must use a portion of the exit lane from Wawa, individually and cumulatively, will create traffic congestion that is unique and different from the adverse traffic effect that would otherwise result from the development of such a special exception use located anywhere within the zone. These facts, individually and cumulatively, require the disapproval of the application for special exception.

12. The misalignment Groff Lane and Tollgate Rd. also creates safety and function issues. (Seitz). This fact will create traffic congestion that is unique and different from the adverse traffic effect that would otherwise result from the development of such a special exception use located anywhere within the zone. This fact requires the disapproval of the application for special exception.

13. The SHA has not approved access to Reisterstown Road. (Applicant's Exhibit 10). The Applicant's inability to implement its desired right-in and right-out from Reisterstown Road will make the traffic congestion worse because all of the cars and trucks will have to enter from, and exit to, Groff Lane. (Seitz). The construction of the shopping center on the north side of Groff Lane will also make the traffic congestion worse. (Seitz). Even if the SHA ultimately approves the right-in, right-out, the traffic

problems associated with Groff Lane will still exist. Additionally, the new access to Reisterstown Road, if approved by the SHA, will cause increased traffic congestion on Reisterstown Road.

14. The Board disapproves the application for special exception because the Applicant failed to prove compliance with section 502.1

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved.

The locality

15. The locality includes the flood plain in the northeast quadrant of the intersection of Reisterstown Road and the Gwynns Falls Stream, the Reisterstown Road corridor on the west side of the site, and the Historic Groff Mill Property on the north side of the proposed use.

Detriment to the Gwynns Falls stream and its flood plain

Current conditions

16. Protestant's Exhibit 1 depicts the floodplain. (Miller). "Most" land depicted in Protestant's Exhibit 1 is in flood plain. (Richardson at 7).

17. The stream flows from the northeast to the southwest. Protestant's Exhibit 11 illustrates the flood plain.

18. Dr. Crowl described flooding in the flood plain several years ago during a big storm.

19. Dr. Crowl produced a photograph showing the damage to Reisterstown Road caused by Hurricane Agnes. (Protestant's Exhibit 6).

20. A flood plain provides storage capacity for flood waters. (Miller). The loss of flood plain area or the narrowing of a floodplain creates the increased risk of flooding downstream. (Miller).

21. The stream flows from the northeast to the southwest. A short distance upstream of the site, the stream flows through a constriction at the railroad bridge.

(Protestant's Exhibit 10). The constriction causes an increase in the velocity of the stream. After the water passes through the constriction there is a sudden decrease in its velocity. That sudden decrease causes a hydraulic jump. (Miller).

Proposed conditions

22. The proposed use will require the elevation of the ground level about ten feet. The proposed surface level will be at the same grade as Reisterstown Road. (Miller; Protestant's Exhibit 1).

23. The proposed use, if built, will make the flood plain smaller. The new development will be built on what was floodplain at a location where it will be in close proximity to the hydraulic jump caused by the constriction in the stream at the railroad bridge. (Miller).

24. The proposed use and reduction of the size of the floodplain will cause an elevation in the upstream water elevation. (Miller; Richardson at 15-16; Applicant's Exhibit 15, p. 5).

25. The proposed use and reduction of the size of the floodplain will reduce storage flood storage capacity. That reduction will create a higher risk of flooding downstream. (Miller).

26. The reduction of the size of the floodplain and the construction of the proposed use on what was previously flood plain will expose the proposed development to even greater risks of hydraulic jump. (Miller).

27. The Applicant has failed to prove compliance with ZR section 502.1 A's requirement that the proposed use not be "detrimental to the health, safety or general welfare of the locality involved." The construction of the proposed use in the floodplain will create adverse effects that are "detrimental to the health, safety or general welfare of the locality involved." The construction of the proposed use in the floodplain just downstream of a constriction in the stream and in close proximity to the location of the hydraulic jump will exacerbate the adverse effects of the proposed use. The new development will have a serious risk of flood damage and erosion because it will be built on what was floodplain at a location where it will be in close proximity to the hydraulic jump caused by the constriction in the stream at the railroad bridge. Additionally, the proposed use will increase the risk of flooding downstream and will increase the water elevations upstream. These adverse effects are unique and different from the adverse effects that would otherwise result from the development of such a special exception use located anywhere within the zone. These facts, individually and cumulatively, require the disapproval of the application for special exception.

Detriment to the Historic Groff Mill

28. The Groff Mill and Groff residence are immediately adjacent to, and uphill from, the proposed use. (Protestant's Exhibit 1).

29. The Groff Mill and Groff residence are on the Baltimore County Final Landmarks List. (Applicant's Exhibit 2, note 4).

30. The design of the proposed use is not compatible with the historic mill and residence. The Wawa, if built, will have an adverse effect on the historic setting of the Groff Mill and Groff residence. These adverse effects are unique and different from the adverse effects that would otherwise result from the development of such a special exception use located anywhere within the zone. These adverse effects require the disapproval of the application for special exception.

Detriment to the economic stability of the neighborhood

31. There are five gas stations now operating on Reisterstown Road in close proximity to the proposed Wawa. (Applicant's Exhibit 13; Imran).

32. Malik Imran and Afshin Attar each sell approximately 80,000 - 90,000 gallons per month at their station on Reisterstown Road. (Imran, Attar). A busy station sells 200,000 - 240,000 per month. (Imran, Attar).

33. The supply of gas on this area of Reisterstown Road exceeds the market demand for gas. (Imran, Attar).

34. The addition of a sixth gas station on this portion of Reisterstown Road will increase the amount by which the supply of gas exceeds the market demand. (Attar/Imran).

35. The Applicant's traffic engineer's report states that the proposed Wawa will generate 37 new "ins" and 37 new "outs" during the afternoon peak hour. (Applicant's Exhibit 8, p. 16). The addition of this new traffic will probably be insufficient to create an economic need for a sixth fuel station.

36. It is likely that one of the existing five gas stations will go out of business if the Board approves the special exception and if the Wawa is built. The closure of a gas station will cause the area to become rundown and will be "detrimental to the health, safety or general welfare of the locality involved." These adverse effects are unique and different from the adverse effects that would otherwise result from the development of such a special exception use located anywhere within the zone. These adverse effects require the disapproval of the application for special exception.

§ 405.3 Condition for disapproving special exception.

In addition to the findings required under Section 502.1, the Zoning Commissioner, prior to granting any special exception for a fuel service station, shall consider the presence of abandoned fuel service stations in the vicinity of the proposed site. A finding by the Zoning Commissioner of the presence of one abandoned fuel service station, as defined in Section 405.7, within a one-half-mile radius, or two such stations within a one-mile radius of the proposed fuel service station establishes that there is no need for the proposed use, unless rebutted to the Zoning Commissioner's satisfaction by market data.

Proposed Conclusion of Law regarding ZR section 405.3

37. ZR section 405.3 requires the Applicant to prove an economic need for the fuel station. The law requires the Board to “consider the presence of abandoned fuel service stations in the vicinity of the proposed site.” The presence of one abandoned fuel station within one-half mile or two abandoned fuel stations within one mile of the proposed gas station creates a rebuttable presumption of the absence of an economic need for the gas station. An applicant must use “market data” to rebut that presumption.

38. The presence of an abandoned fuel station in the vicinity but greater than one mile from the proposed use does not create a presumption of the absence of an economic need for the fuel station. Instead, the inquiry is in equipoise. Therefore, the Applicant must prove with market data that there is an economic need for the fuel station.

Proposed Findings of Fact regarding ZR Section 405.3

39. The Applicant presented no evidence of an economic need for the proposed fuel station.

40. There are five fuel stations now operating on Reisterstown Road in close proximity to the proposed Wawa. (Applicant’s Exhibit 13; Imran).

41. There is a Wawa located 3.2 miles north on Reisterstown Road. (stipulation). A fuel station adjacent to the Wawa and a fuel station across the street from Wawa closed shortly after the Wawa opened. (Imran).

42. Malik Imran and Afshin Attar each sell approximately 80,000 - 90,000 gallons per month at their station on Reisterstown Road. (Imran, Attar). A busy station sells 200,000 - 240,000 per month. (Imran, Attar).

43. The supply of gas on this area of Reisterstown Road exceeds the market demand for gas. (Imran, Attar).

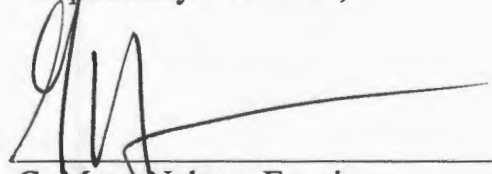
44. The Applicant's traffic engineer's report states that the proposed Wawa will generate 37 new "ins" and 37 new "outs" during the afternoon peak hour. (Applicant's Exhibit 8, p. 16). The addition of this new traffic will probably be insufficient to create an economic need for a sixth fuel station.

45. The addition of a sixth fuel station on this portion of Reisterstown Road will increase the amount by which the supply of gas exceeds the market demand. (Attar/Imran).

46. It is likely that one of the existing five fuel stations will go out of business if the Board approves the special exception and if the Wawa is built.

47. The Board disapproves the Special Exception because the Applicant has failed to prove an economic need for the fuel station.

Respectfully submitted,



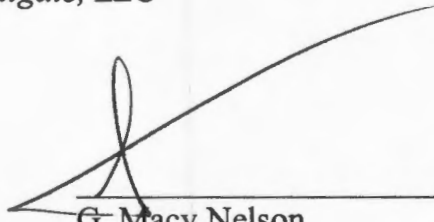
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Towson, Maryland 21204
(410) 296-8166
gmacynelson@gmacynelson.com

Attorneys for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of April, 2014, a copy of the foregoing Proposed Opinion and Final Order was mailed first class, postage prepaid, to:

G. Scott Barhight, Esquire
Whiteford Taylor Preston
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, Maryland 21204
Attorneys for DMS Tollgate, LLC



G. Macy Nelson

Appendix

§ 502.1 Conditions determining granting of special exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;

[Bill No. 45-1982]

- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;

[Bill No. 45-1982]

- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor

[Bill No. 45-1982]

- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

[Bill No. 74-2000]

§ 405.3 Condition for disapproving special exception.

In addition to the findings required under Section 502.1, the Zoning Commissioner, prior to granting any special exception for a fuel service station, shall consider the presence of abandoned fuel service stations in the vicinity of the proposed site. A finding by the Zoning Commissioner of the presence of one abandoned fuel service station, as defined in Section 405.7, within a one-half-mile radius, or two such stations within a one-mile radius of the proposed fuel service station establishes that there is no need for the proposed use, unless rebutted to the Zoning Commissioner's satisfaction by market data.

CROSS-EXAMINATION OF

KENNETH W. SCHMID

1 **IN THE MATTER OF:**

2 **GROFF PROPERTY**
3 **CASE NUMBER: 13-080-X**

4 **Hearing Date: March 12, 2014**

5 **Pursuant to Notice, the above-entitled hearing was held before the**
6 **Board of Appeals for**

7 **Baltimore County at the Jefferson Building, Second Floor, Suite 203,**
8 **105 West Chesapeake Avenue,**

9 **Towson, Maryland 21204, commencing at 11:06 AM.**

10 **(CROSS EXAM. OF KENNETH W. SCHMID ONLY)**

11 **PANEL PRECIDING:**

12 **WENDELL H. GRIER, CHAIRMAN**

13 **DAVID THURSTON, BOARD**

14 **RICHARD WISNER., BOARD**

15 **PRESENT ON BEHALF OF THE PARTIES:**

16 **ON BEHALF OF THE APPELLEES/PETITIONERS:**

17 **SCOTT BARHEIDT, ESQUIRE**
18 **ADAM BAKER, ESQUIRE**

19 **ON BEHALF OF THE APPELLANT/PROTESTANTS:**

20 **G. MACY NELSON, ESQUIRE**

21
22
23 **Debbie H. Eichner**
24 **8101 Bletzer Road**
25 **Baltimore, Maryland 21222**

KEVIN KAMENETZ
County Executive



LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

December 2, 2013

G. Scott Barhight, Esquire
Adam Baker, Esquire
Whiteford, Taylor & Preston, LLP
1 W. Pennsylvania Avenue
Suite 300
Towson, Maryland 21204

RECEIVED
DEC 02 2013

BALTIMORE COUNTY
BOARD OF APPEALS

RE: APPEAL TO BOARD OF APPEALS
Case No. 2013-0080-X
Location: 10609 Reisterstown Road

Dear Counsel:

Please be advised that an appeal of the above-referenced case was filed in this Office on November 27, 2013. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to contact the Board at 410-887-3180.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Stahl", is written over the typed name and title.
LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:sln

c: Baltimore County Board of Appeals
People's Counsel for Baltimore County
G. Macy Nelson, Esquire, 401 Washington Avenue, Suite 803, Towson, Maryland 21204
Cheryl Aaron, 121 St. Thomas Lane, Owings Mills, Maryland 21117
George Harman, 5429 Weywood Drive, Reisterstown, Maryland 21136
Office of Administrative Hearings

Gary Lenz, 4722 Butler Road, P.O. Box 279, Glyndon, Maryland 21071
Ken Schmid, 325 Gambrills Road, Suite E, Gambrills, Maryland 21054
Rick Richardson, 30 E. Padonia Road, Suite 500, Timonium, Maryland 21093
Joe Ucciferro, 901 Dulaney Valley Road, Suite 801, Towson, Maryland 21204
Malik Imran, 111 Summer Woods Way, Owings Mills, Maryland 21117
Ashkan Rahmanattar, 3317 Smith Avenue, Baltimore, Maryland 21208
Afshin Attar, 2610 Willow Glen Dr., Baltimore, Maryland 21209
Faisal Naseer, 3 Hiawatha Ct., Apt. J, Owings Mills, Maryland 21117
Mohammad Khan, 11106 Hollowbrook Road, Owings Mills, Maryland 21117
David Schlachman, 100 E. Pennsylvania Avenue, Suite 210, Towson, Maryland 21286

APPEAL

**Petition for Special Exception
(10609 Reisterstown Road)
4th Election District – 2nd Councilmanic District
Legal Owners: William D. and Mary Groff
Contract Purchaser: DMS Tollgate, LLC
Case No. 2013-0080-X**

Petition for Special Exception (October 1, 2012)

Zoning Description of Property

Notice of Zoning Hearing (July 8, 2013)

Certificate of Publication (July 23, 2013)

Certificate of Posting (July 20, 2013) by Linda O'Keefe

Entry of Appearance by People's Counsel (October 11, 2013)

Petitioner(s) Sign-in Sheet – 1 page (October 18, 2013) 1 Page (October 21, 2013)

Citizen(s) Sign-in Sheet – 1 page (October 18, 2013) 1 Page (October 21, 2013)

Zoning Advisory Committee Comments

Petitioner(s) Exhibits -

1. ZAC Comments
2. Site Plan (redlined)
3. Covenant Agreement
4. Reisterstown-Owings Mills- Glyndon council letter (10-9-2013)
5. Building elevations
6. Resume- Kenneth Schmid
7. Richardson- Resume
8. County Memo- 10-16-2013 RE: floodplain
9. Google Earth photo- Gulf
10. Google Earth photo- Exxon

Protestants' Exhibits –

- 1A-C Photos
2. Photo
3. Photo
4. Photo
5. Photo
6. Photo

Miscellaneous (Not Marked as Exhibits) – Email Comments, Post-Hearing Memorandum (G. Macy Nelson 10-29-13), Memorandum in Lieu of Closing Argument (Adam Baker 10-29-13), Opposition letters and SDAT

Administrative Law Judge Order and Letter (GRANTED with Conditions – October 31, 2013)

Notice of Appeal – November 27, 2013 by G. Macy Nelson, LLC on behalf of Protestants

10/31/13

IN RE: PETITION FOR SPECIAL EXCEPTION *

(10609 Reisterstown Road)

4th Election District

2nd Councilman District

William D. & Mary Groff

Legal Owners

DMS Tollgate, LLC

Contract Purchaser

Petitioners

BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

Case No. 2013-0080-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Exception filed for property located at 10609 Reisterstown Road. The Petition was filed by G. Scott Barhight, Esquire, on behalf of the owners of the subject property, William D. and Mary Groff, and the contract purchaser, DMS Tollgate, LLC, ("Petitioners"). The Special Exception Petition seeks relief pursuant to §§ 230.3 and 405 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an automotive service station in combination with a convenience store greater than 1,500 sq. ft. The subject property and requested relief are more fully described on the red lined site plan which was marked and accepted into evidence as Petitioners' Exhibit 2.

Appearing at the hearing in support of the petition was David Schlachman, Bruce Rice, Cheryl Aaron, George Harman, Gary Lenz, Ken Schmid, Rick Richardson, and Joe Ucciferro. G. Scott Barhight, Esquire and Adam Baker, Esquire attended and represented the Petitioners. Several members of the community (whose names are listed in the case file) attended the hearing and opposed the petition. G. Macy Nelson, Esq., represented these citizens. The file reveals that the Petition was advertised and the site was posted as required by the B.C.Z.R.

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Date 10/31/13

By Sen

The Zoning Advisory Committee (ZAC) comments were submitted as Petitioners' Exhibit 1. The Department of Planning (DOP) made several substantive comments, but opined the project was compatible with the surrounding community and would not be detrimental to the health, safety or welfare of the neighborhood. The Department of Environmental Protection and Sustainability (DEPS) indicated Petitioners must comply with the environmental regulations set forth in Article 33 of the Baltimore County Code (B.C.C.), and noted that a floodplain variance would also be required.

Testimony and evidence offered at the hearing revealed that the subject property is 8.51+/- acres and is zoned BL-AS. In fact, the property was rezoned to its current designation in the 2012 Comprehensive Zoning Map Process. The Petitioners propose to construct and operate a service station with convenience store, which is permitted in the zone by Special Exception.

SPECIAL EXCEPTION LAW

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use. I do not believe the Protestants rebutted this presumption, as discussed below.

PETITIONERS' CASE

David Schlachman, on behalf of the contract purchaser, testified in general about the plans for the site and his meetings with the community, which led to the covenant agreement, marked as Petitioners Exhibit No. 3. Bruce Rice, a regional manager with Wawa, was the next witness. Mr.

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10/31/13

By

sen

Rice described the proposed layout of the site, making reference to the site plan, Petitioners Exhibit No. 2. The witness indicated the store would have between 40-60 employees on 3 shifts. Mr. Rice was questioned on cross examination about his disagreement with the DOP over the signage for the site. Mr. Rice testified Wawa, like all convenience retailers, relies on signage to identify the store to passing motorists, and he said that Wawa wanted to erect a sign as permitted by the B.C.Z.R. rather than a ground mounted sign as requested by DOP.

Ken Schmid, a traffic engineer, was the next witness in Petitioners' case. After describing his background and experience, the witness indicated he prepared a traffic study for this site and is awaiting State Highway Administration (SHA) comments. Mr. Schmid opined the proposed traffic signal would be a vast improvement over existing conditions, and he felt the site was an "ideal location" and that the road network was sufficient to handle anticipated traffic. On cross examination, the witness stated that the proposed store would add traffic to Groff Lane, but would (with the proposed roadway re-alignment) make it safer.

The final witness in Petitioners' case was Rich Richardson, a Professional Engineer accepted as an expert witness. Mr. Richardson opined the proposal satisfied all of the requirements set forth in B.C.Z.R. §405.4. He also believed the Petitioners satisfied the special exception requirements in B.C.Z.R. § 502.1, and he noted there are no abandoned gasoline stations within one mile of the subject property.

On cross examination, Mr. Richardson confirmed the site is currently located in a floodplain shown on the Federal Emergency Management Administration (FEMA) maps. He stated that generally speaking one cannot build within a floodplain, but that Petitioners had filed for approval with County and State authorities to relocate the floodplain to the edge of the subject property.

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Date 10/31/13
By Sen

The Protestants presented several witnesses in their case, including the owners of the Gulf service station (Malik Imram) and Exxon station (Afshin Attar), both of which are immediately adjacent to the subject property. Both owners testified regarding the congested traffic conditions near the site, and also believed that the Wawa would cause an increase in both traffic and crime. Both owners testified there is an abundance (perhaps as many as ten) of gasoline stations within the immediate vicinity, and they both believed there is no need for the proposed Wawa.

The Protestants called three additional witnesses, each of whom is employed at the Gulf or Exxon stations mentioned above, and these witnesses also stressed that the traffic in the area was very congested and that crime was increasing in the area. They believed the proposed Wawa would exacerbate these problems.

Applying these facts to the law, I believe the petition for special exception must be granted. I found each of the Protestants to be sincere and credible witnesses, and it may well be that the Wawa would cause an increase in both traffic and crime. But these are impacts that are inherent in the operation of a gasoline/convenience store. In fact, these are exactly the type of inherent adverse effects that the legislature was presumed to have anticipated when it allowed the use by special exception. In other words, most uses for which a special exception is required are regarded as "potentially troublesome because of noise, traffic, congestion...." Montgomery County v. Butler, 417 Md. 271, 297 (2010). There was no testimony or evidence presented which would establish that these negative impacts (adverse effects) would be any greater at this site than at another BL-AS zoned property in the area. In their post-hearing memorandum, the Protestants argue that the potential impact upon and reconfiguring of the adjacent floodplain (discussed above) is such a non-inherent effect.

Part of the problem, in determining whether the Protestants' floodplain argument has

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Date 10/31/13

By Sen

validity, is that the “caselaw is silent” on what effects are inherent versus non-inherent in any particular special exception use. Id. at 303. This has caused some counties---such as Montgomery County—to amend their zoning law to specifically provide whether any given impact is inherent or non-inherent in the use. Id. Baltimore County has not done so, nor does the BCZR impose a “stricter standard” than that set forth in Schultz, which of course provides for a presumption of compatibility. Id.

But I do not believe that the Protestants’ flood plain argument can rebut the Schultz presumption in this case. As an initial matter, the only testimony on the issue was provided by lay witnesses who own and operate gasoline service stations, and none of the witnesses indicated they had any experience or training in engineering or environmental analysis. And, perhaps more importantly, whether or not the flood plain is negatively impacted by the proposed Wawa is the very inquiry that will be undertaken by state and federal authorities who are reviewing the Petitioners’ application. See Petitioners Exhibit. No.8. The County Code (§ 32-8-101 et. seq.) makes clear that—as required by state and federal law— revisions to floodplain maps will only be granted when there is no adverse effect upon the safety and welfare of the citizenry. The proposed Wawa should not be allowed to have an adverse effect upon neighboring properties by negatively impacting the 100-year floodplain. If—in the studies being conducted by state and federal authorities—it is determined that it would have such an effect, then the Petitioners’ application will no doubt be denied.

In any event, the relief granted herein will be made subject to the approval by the relevant authorities of the flood plain study and/or map amendments. Additional conditions, as suggested in Petitioners’ post-hearing memorandum, will also be included in the Order below. The DOP expressed a preference for a ground-mounted sign, which it felt would be more compatible with

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Date 10/31/13

By den

the nearby historic structures. While the Order will not require such a sign, it will condition the special exception relief upon the DOP's approval of the final sign design for the site.

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

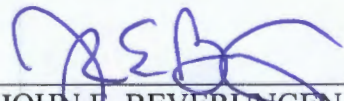
THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 31st day of October, 2013, that the Petition for Special Exception relief under §§ 230.3 and 405 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to permit an automotive service station in combination with a convenience store greater than 1,500 sq. ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits 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. Unless extended by subsequent order, the special exception granted herein must be utilized within two (2) years from the date of this Order.
3. The "special exception area" shall include the 1.70 acre (74,088 SF) area of the proposed Wawa service station and convenience store, but shall not include the 0.43 acre (18,628 SF) area of proposed relocated Groff Lane.
4. Approval by Baltimore County of a landscape and lighting plan for the site.
5. Approval by county, state and federal authorities of the floodplain study and/or floodplain map amendment or revision as sought by Petitioners.
6. Approval and issuance of all necessary permits by the State Highway Administration.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JEB/sln


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

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Date 10/31/13

By sln

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Malik Imran, 111 Summer Woods Way, Owings Mills, Maryland 21117
Ashkan Rahmanattar, 3317 Smith Avenue, Baltimore, Maryland 21208
Afshin Attar, 2610 Willow Glen Dr., Baltimore, Maryland 21209
Faisal Naseer, 3 Hiawatha Ct., Apt. J, Owings Mills, Maryland 21117
Mohammad Khan, 11106 Hollowbrook Road, Owings Mills, Maryland 21117
David Schlachman, 100 E. Pennsylvania Avenue, Suite 210, Towson, Maryland 21286

KEVIN KAMENETZ
County Executive



LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

October 31, 2013

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1 W. Pennsylvania Avenue
Suite 300
Towson, Maryland 21204

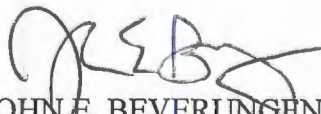
RE: Petition for Special Exception
Case No.: 2013-0080-X
Property: 10609 Reisterstown Road

Dear Counsel:

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 Baltimore County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Baltimore County Office of Administrative Hearings at 410-887-3868.

Sincerely,


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Cheryl Aaron, 121 St. Thomas Lane, Owings Mills, Maryland 21117
George Harman, 5429 Weywood Drive, Reisterstown, Maryland 21136
Gary Lenz, 4722 Butler Road, P.O. Box 279, Glyndon, Maryland 21071
Ken Schmid, 325 Gambrills Road, Suite E, Gambrills, Maryland 21054
Rick Richardson, 30 E. Padonia Road, Suite 500, Timonium, Maryland 21093

10/29/13

IN THE MATTER OF:
Petition for Special Exception
DMS Tollgate, LLC
10609 Reisterstown Road
4th Election District
2nd Councilmanic District

* BEFORE THE
* HEARING OFFICER OF
* BALTIMORE COUNTY
* Case Number: 2013-0080-SPHX

* * * * *

MEMORANDUM IN LIEU OF CLOSING ARGUMENT

DMS Tollgate, LLC, by its attorneys, G. Scott Barhight, Adam D. Baker and Whiteford, Taylor & Preston L.L.P. (the "Petitioner"), hereby submits this Memorandum in Lieu of Closing Argument. This matter came before the Administrative Law Judge for Baltimore County ("ALJ") on a Petition for Special Exception to permit an automotive service station use in combination with a convenience store greater than 1,500 square feet pursuant to §§ 230.3 and 405 of the Baltimore County Zoning Regulations ("BCZR"). The proposed use will be operated by Wawa. The Honorable John E. Beverungen, Administrative Law Judge for Baltimore County, conducted an evidentiary hearing on the Petition for Special Exception on October 18, 2013 and October 21, 2013. There were several protestants represented by G. Macy Nelson, Esq., who appeared in opposition to the Petition: Malik Imran, Afshin Attar, and Ashkan Rahmanattar (collectively, the "Protestants").

Section 502.1 of the BCZR sets forth the conditions which must be met in order for a Special Exception to be granted. In addition, BCZR § 405 provides special requirements for Fuel Service Stations. Testimony and evidence received at the hearing demonstrated that the requirements of BCZR §§ 502.1 and 405 have been met.

RECEIVED

OCT 29 2013

OFFICE OF ADMINISTRATIVE HEARINGS

I. THE PROPOSED USE MEETS ALL APPLICABLE ZONING REQUIREMENTS

The proposed fuel service station and convenience store use is located on the 8.51 acre tract known as 10609 Reisterstown Road in Baltimore County, Maryland (the "Property"). The tract consists of three (3) parcels¹ located on the northeast side of Reisterstown Road. The 2.13 acre Special Exception area, as shown on the Site Plan (Petitioner's Exhibit No. 2), consists of a portion of Lot 1 and the relocated Groff Lane.

The Property is zoned BL-AS. This zoning was obtained through the 2012 Comprehensive Zoning Map Process ("CZMP") following extensive discussion among the Petitioner, the Baltimore County Department of Planning, and several community groups. In exchange for the support of The Reisterstown-Owings Mills-Glyndon Coordinating Council, Inc. ("ROG") and The Greater Greenspring Association, Inc. ("GGA") for the CZMP rezoning request, the Petitioner agreed to subject the Property to a Declaration of Restrictive Covenants (Petitioner's Exhibit No. 3). The covenants require that the Property be developed in a manner consistent with and complimentary to the historic character of the historic Groff Mill.

Sections 230.3 and 405.4.E of the BCZR provide that an automotive service station use in combination with a convenience store greater than 1,500 square feet is permitted as a Special Exception within the BL-AS zone. The underlying question for a petition for Special Exception is whether the proposed use will have an impact at the proposed location greater than or beyond that which one would expect the use to have regardless of its location elsewhere. People's Counsel for Baltimore County v. Loyola College in Maryland, 406 Md. 54 (2008).

¹ On November 28, 2012, the Baltimore County Development Review Committee ("DRC") approved an exemption under Section 32-4-106(a)(1)(ii) or (a)(1)(v) of the Baltimore County Code ("BCC") to permit a lot line adjustment. The purpose of the lot line adjustment was threefold: (1) to create a new lot to match the Historic Environmental Setting for the historic Groff Mill and accessory structures; (2) to accommodate the relocation of Groff Lane; and (3) to allow for the development of the two parcels with frontage on Reisterstown Road.

Ken Schmid, of Traffic Concepts, Inc., who was admitted as an expert in the fields of Traffic Engineering and Transportation Planning, testified that the proposed use will not create congestion in the roads, streets or alleys. Based upon Mr. Schmid's observations in conjunction with the testimony of Bruce Rice², Mr. Schmid opined that the internal and external traffic circulation of the site has been appropriately designed and will meet the requirements of both Baltimore County and the State of Maryland. In addition, the relocation of Groff Lane to create a four way signalized intersection will create a safer and more convenient pattern of traffic circulation for the Property and the surrounding area. As Reisterstown Road (MD 140) is a State road, the property will need to obtain an access permit from the State Highway Administration ("SHA"). In addition, Traffic Concepts, Inc. has submitted two Traffic Impact Studies to address the anticipated impact that the use will have on the surrounding area. The first Traffic Impact Study was submitted in April 2013 and the second was submitted in August 2013 in response to comments from SHA on the April 2013 study.

Rick Richardson, of Richardson Engineering, was admitted as an expert in the fields of civil engineering, zoning and development. Mr. Richardson testified that based upon nature of the proposed use and the design of the site, the proposed use will meet or exceed the Special Exception requirements of BCZR § 502.1. In addition, Mr. Richardson added that the proposed use will also comply with the special use requirements of BCZR § 405 for fuel service stations.

The Department of Planning submitted a Zoning Advisory Committee comment, dated October 16, 2012. With the exception of the portion of Planning's comment pertaining to the proposed Wawa signage, the Petitioner is agreeable to the comment and has incorporated it into its proposal. Mr. Richardson, who prepared and sealed the redline Site Plan (Petitioner's Exhibit No.

² Bruce Rice, an employee of Wawa, Inc., provided detailed testimony with regard to the proposed Wawa operation. Bruce highlighted that the site would provide additional parking and wider drive aisles than required throughout the site and in and around the fuel pumps, as is Wawa's customary site design practice.

2), testified that the majority of the redlines shown on the Site Plan were in response to Planning's comment. The Petitioner's objection to Planning's comment with respect to the proposed signage is based upon the fact that the proposed signage is permitted pursuant to the BCZR and is consistent in scale to the signage of the other fuel service stations surrounding the Property. We acknowledge and understand Planning's concern with regard to the proposed sign. Since the sign design is not yet finalized, however, we believe the appropriate solution would be to impose a condition upon the Petitioner to work with Planning to develop an acceptable sign design.

As part of the development approval process, the Petitioner submitted a 100-Year Flood Plain Study to the Baltimore County Department of Public Works ("DPW"). By memorandum, dated October 16, 2013, Terry Curtis and David Thomas confirmed DPW's acceptance of the Flood Plain Study for filing (Petitioner's Exhibit No. 8). On account of the memorandum, the Petitioner may proceed with seeking the appropriate flood plain approvals from the Maryland Department of the Environment ("MDE") and the Army Corps of Engineers. Once the Petitioner secures the approvals of MDE and the Army Corps of Engineers, it must submit a Letter of Map Amendment or Revision to the Federal Emergency Management Administration ("FEMA") to amend the floodplain map. As highlighted during the hearing, these are development approvals and should be regarded as separate from the zoning approval sought.

II. ISSUES PRESENTED BY THE PROTESTANTS

a. Question of Need

Pursuant to BCZR § 405.3, the Zoning Commissioner shall consider the presence of any abandoned fuel service stations in the vicinity of the proposed use. The Protestants falsely contend that this provision places a burden on the Petitioner to establish a need for the proposed use. Section 405.3 provides that a finding of the presence of abandoned fuel stations within one mile and one-

half mile of the proposed fuel service station establishes that there is no need for the proposed use, unless the presumption is rebutted to the Zoning Commissioner's satisfaction by market data. The language of § 405.3 is clear on its face that unless there are abandoned fuel stations within one-mile of the proposed site, one need not provide evidence supporting the need for the proposed use. In the instant matter, there are no abandoned fuel service stations within a one-mile radius of the site.

b. Traffic

The Protestants contend that the introduction of the proposed use will exacerbate existing traffic deficiencies in the area. The Protestants contention is unsupported by sufficient evidence. While traffic may be an inconvenience to motorists in the vicinity of the Property, the proposed use and site design meet all of the applicable county and state traffic requirements. The Property is not located in the traffic shed of a failing intersection. Traffic Concepts, Inc. has worked on behalf of the Petitioner in documenting that the proposed use will meet all of the applicable State and county regulations. The relocation of Groff Lane will create a four-way signalized intersection, which will allow for safer and more convenient traffic circulation in and around the Property. Lastly, the Petitioner will need to secure an access permit from SHA before the development can be fully approved. In light of these factors, it is clear that the proposed use will need to meet all of the relevant State and county requirements before it receives development approval.

c. Landmarks

Groff Mill is listed on the Baltimore County Final Landmarks List (#386). The Protestants contend that the proposed Wawa use will have a negative impact on the Groff Mill. The Baltimore County Department of Planning and the Landmarks Preservation Commission ("LPC") have not made any such finding. The Petitioner has worked closely with the Baltimore County Department of Planning and the LPC in designing the site so as to ensure compatibility in materials and

appearance between the proposed use and the historic mill. The Zoning Advisory Committee comment from the Department of Planning is consistent with this collaborative design effort. In addition, Bruce Rice gave detailed testimony at the hearing which illustrated the level of scrutiny Wawa has given in selecting materials for the proposed use to ensure compatibility.

d. Crime

The Protestants assert that crime is an issue in the area and the introduction of the proposed Wawa use will add to the problem. While the Protestants may have experienced crime at their respective properties, their contention that the Wawa will increase crime in the area is unsupported. Bruce Rice testified that Wawa has a comprehensive security protocol for all of its stores which includes outside lighting, an intercom system, security cameras (interior and exterior) and a policy that at least three (3) employees be present on the store floor at any given time. This security program differs dramatically from the operation and practices of the Protestants' fuel service stations as described during the hearing. The assertion that Wawa, with its comprehensive security program, will increase crime in the area is mere conjecture and should be ignored.

III. CONDITIONS

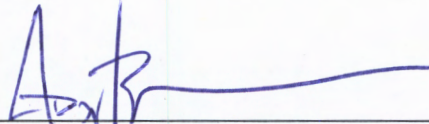
In response to certain development concerns which were discussed during the course of the hearing, the Petitioner believes that the following conditions are appropriate, should the ALJ approve the Petition for Special Exception:

1. Petitioner shall obtain an access permit from SHA;
2. Petitioners shall obtain all of the necessary development approvals for the proposed use;
3. Petitioner shall obtain floodplain approval from FEMA; and
4. Petitioner shall obtain approval from the Department of Planning for the proposed signage.

IV. CONCLUSION

In light of the evidence presented at the hearing, it is clear that the proposed automotive service station use in combination with a convenience store greater than 1,500 square feet meets the applicable requirements of BCZR §§ 502.1 and 405. The Petitioner has met its burden of proof, for the many reasons articulated above. As a result, the ALJ should approve the Petition for Special Exception.

Respectfully submitted,

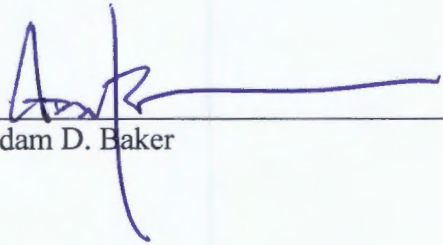
A handwritten signature in blue ink, appearing to read 'A. Baker', is written over a horizontal line.

G. Scott Barhight
Adam D. Baker
Whiteford, Taylor & Preston L.L.P.
1 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2050
Attorneys for DMS Tollgate, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day October, 2013, a copy of the foregoing
Memorandum was hand-delivered to:

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, MD 21204



Adam D. Baker

433033

WHITEFORD, TAYLOR & PRESTON L.L.P.

ADAM D. BAKER
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ROANOKE, VA
TOWSON, MD
WASHINGTON, DC
WILMINGTON, DE*

WWW.WTPLAW.COM
(800) 987-8705

October 29, 2013

VIA HAND DELIVERY

The Honorable John E. Beverungen
The Office of Administrative Hearings
Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, Maryland 21204

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OCT 29 2013

OFFICE OF ADMINISTRATIVE HEARINGS

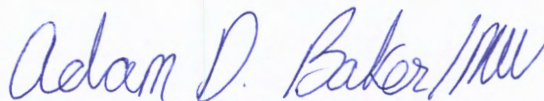
**Re: 10609 Reisterstown Road
2013-0080-SPHX**

Dear Judge Beverungen:

Enclosed please find a Memorandum in Lieu of Closing Argument in the above-referenced matter. Please do not hesitate to contact me should you have any questions.

Thank you in advance for your attention to this matter.

Sincerely,



Adam D. Baker

AB:mw
Enclosure

cc: G. Macy Nelson, Esquire
G. Scott Barhight, Esquire

433077

10/24/13

IN THE MATTER OF:
Petition for Special Exception
DMS Tollgate, LLC
10609 Reisterstown Road
4th Election District
2nd Councilmanic District

* BEFORE THE
* HEARING OFFICER OF
* BALTIMORE COUNTY
* CASE NO. 2013-0080-SPHX

* * * * *

CITIZEN-PROTESTANTS' POST-HEARING MEMORANDUM

Summary of Applicable Law

Two county statutes and relevant court decisions control the analysis of this application for special exception. Baltimore County Zoning Regulation § 502.1 sets forth the general criteria for a special exception:

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

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

Section 405.3 of the Baltimore County Zoning Regulations sets forth additional requirements for fuel service stations:

Condition for disapproving special exception.

In addition to the findings required under Section 502.1, the Zoning Commissioner, prior to granting any special exception for a fuel service station, shall consider the presence of abandoned fuel service stations in the vicinity of the proposed site. A finding by the Zoning Commissioner of the presence of one abandoned fuel service station, as defined in Section 405.7, within a one-half-mile radius, or two such stations within a one-mile radius of the proposed fuel service station establishes that there is no need for the proposed use, unless rebutted to the Zoning Commissioner's satisfaction by market data.

Schultz v. Pritts, 291 Md. 1 (1981) and *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54 (2008) inform the analysis of the application for special exception. The *Schultz* test is well known:

We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Schultz, 291 Md. at 22–23. *Loyola* explained that the *Schultz* test is an “analytical overlay,” not a separate test. *Id.*, 406 Md. at 102. *Loyola* explained further:

Schultz speaks pointedly to an individual case analysis focused on the particular locality involved around the proposed site. *See Schultz*, 291 Md. at 15 (“These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in *an adverse effect upon adjoining and surrounding properties* unique and different from the adverse effect that would otherwise result from the development of such a special exception use

located anywhere within the zone.”); *Schultz*, 291 Md. at 11 (“The duties given the Board are to judge whether *the neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.”); *id.* (“If [the Petitioner] shows to the satisfaction of the Board that the proposed use would be conducted *without real detriment to the neighborhood* and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance *to the neighboring area* and uses is, of course, material.”); *Schultz*, 291 Md. at 12 (“These standards dictate that if a requested special exception use is properly determined to have an adverse effect *upon neighboring properties in the general area*, it must be denied.”).

Id., 406 Md. at 102-03 (emphasis in original).

Judge Murphy’s concurring opinion clarified the holding:

It may be helpful to restate the rules of engagement in special exception litigation, and review how those rules were applied in the case at bar. Although it is of no real consequence whether we say that an Petitioner “is entitled to a special exception, *provided that*,” or that an Petitioner “is *not* entitled to a special exception, *unless*,” the Petitioner for a special exception bears both the burden of production and the burden of persuasion on the issue of whether the special exception should be granted. If the zoning authority is presented with evidence that generates a genuine question of fact as to whether the grant of a special exception would violate the applicable legislation and/or the requirements of *Schultz*, the Petitioner must persuade the zoning authority by a preponderance of the evidence that the special exception will conform to all applicable requirements.

Id., 406 Md. at 109 (emphasis in original).

The inquiry here is whether the proposed Wawa will have adverse effects on properties in the neighborhood that are “unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone.” That inquiry first requires an understanding of the subject property’s neighborhood. Then, it requires a cataloging of the neighborhood’s unique

characteristics which could be adversely affected "above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." The neighborhood surrounding the proposed Wawa includes the Gwynns Falls stream with its flood plain, the historic Groff Mill, and a stretch of Reisterstown Road. That portion of Reisterstown Road is already burdened with excessive traffic and has a crime problem.

1. Flood Plain.

Petitioner's Exhibit 2 illustrates that the Petitioner proposes to build the Wawa and its parking lot in a designated 100-year flood plain. Note 15 states, "[a] request has been made to the Department of Public Works for permission to fill the 100 year flood plain. A decision is pending." Petitioner's Exhibit 2 also illustrates that the Petitioner seeks to move the boundary of the flood plain to a location just beyond the limit of the construction.

The Petitioner failed to prove that the filling of the flood plain will not have an adverse effect upon the neighboring properties in the general area. Thus, the Petitioners failed to meet its burden of satisfying Sections 502.1 A (will not "[b]e detrimental to the health, safety or general welfare of the locality involved") and H (will not "[b]e inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations"). Constructing the proposed use at this location will have a greater adverse effect than it would elsewhere in the zone where it will not be necessary to fill in the 100-year flood plain. The Administrative Law Judge should disapprove the special exception because the Petitioner failed to meet its burden.

2. Historic Site.

Note 4 on Petitioner's Exhibit 2 states, "[t]he upper Groff Mill and the residential home within a 2.08 +/- historical setting has been placed on the Baltimore County final landmarks list." The elevation of the historic site is higher than the elevation of the proposed Wawa. As a result, the proposed Wawa with its proposed sign will be squarely within the historic mill's viewshed. The Petitioner failed to prove that constructing the proposed use so close to a historic site will not have an adverse effect on the historic site. Thus, the Petitioner failed to meet its burden of satisfying Section 502.1 A (will not "[b]e detrimental to the health, safety or general welfare of the locality involved").

3. Traffic.

The Citizen-Protestants described the existing traffic congestion on Reisterstown Road. They also testified that the Wawa, if constructed, will make the already congested traffic worse. The Petitioner called no traffic engineer to rebut this testimony. The Petitioner failed to prove that constructing the proposed use at this location will not have a greater adverse effect on traffic that it would elsewhere in the zone. Thus, the Petitioner failed to meet its burden of satisfying Section 502.1 B. (will not "[t]end to create congestion in roads, streets or alleys").

4. Need.

The citizens who operate the nearby Exxon and Gulf stations described the weak demand for gasoline on Reisterstown Road in the vicinity of the proposed Wawa. They also described the effect of the new Wawa, two miles north on Main Street, on two gas

stations that were close to it. Both stations closed after the Wawa opened. The Citizen-Protestants described the adverse effect that the proposed Wawa will have on their businesses.

Sections 502.1 A and 405.3 of the Baltimore County Zoning Regulations separately and together require the Petitioner to prove that there is an economic need for the proposed fuel station and that it will not cause existing business to go out of business. The Petitioner produced no evidence that rebutted the testimony of the Citizen-Protestants regarding the effect of the proposed Wawa on the existing nearby fuel stations. The Administrative Law Judge should disapprove the special exception because the Petitioner failed to meet its burden.

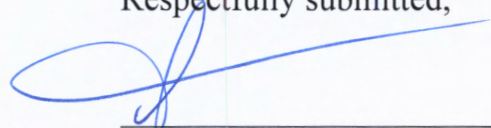
5. Crime.

The Citizen-Protestants described the existing crime problem in the neighborhood of the proposed Wawa. They also described the relationship between the number of people in the neighborhood and the crime rate. More people result in more crime. The proposed Wawa will bring more people to the neighborhood which, in turn, will cause an increase in crime. The Petitioner failed to prove that constructing the proposed Wawa at this location will not have a greater adverse effect on crime than it would elsewhere in the zone. Thus, the Petitioner failed to meet its burden of satisfying Section 502.1 A ("will not [b]e detrimental to the health, safety or general welfare of the locality involved").

Conclusion.

For all of these reasons, Citizen-Protestants urge the Administrative Law Judge to disapprove the application for special exception.

Respectfully submitted,



G. Macy Nelson
401 Washington Ave.
Suite 803
Towson, Maryland 21204
(410) 296-8166 - Telephone
(410) 825-0670 – Facsimile
gmacynelson@gmacynelson.com
Counsel for Malik Imran, Afshin Attar
and Ashkan Rahmanattar

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of October, 2013, a copy of the foregoing Citizen-Protestants' Post-Hearing Memorandum was mailed, first class, postage prepaid, to:

G. Scott Barhight, Esquire
Adam D. Baker, Esquire
Whiteford Taylor Preston
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, Maryland 21204
Attorneys for DMS Tollgate, LLC



G. Macy Nelson

LAW OFFICE OF
G. MACY NELSON, LLC

G. MACY NELSON
DAVID S. LYNCH
MICHAEL I. KROOPNICK

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TELEPHONE: (410) 296-8166
FACSIMILE: (410) 825-0670

October 29, 2013

Hand-Delivered

The Honorable John E. Beverungen
The Office of Administrative Hearings
Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: 10609 Reisterstown Road
Case No.: 2013-0080-SPHX

Dear Judge Beverungen:

Enclosed please find Citizens-Protestants' Post-Hearing Memorandum for filing in the above-captioned.

Thank you for your attention to this matter.

Very truly yours,



G. Macy Nelson

GMN:ldr

Enclosure

cc: G. Scott Barhight, Esq.
Adam D. Baker, Esq.

RECEIVED

OCT 28 2013

OFFICE OF ADMINISTRATIVE HEARINGS

RECEIVED

OCT 29 2013

OFFICE OF ADMINISTRATIVE HEARINGS



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 Reisterstown Road, Owings Mills, MD 21117 which is presently zoned BL-AS
Deed References: 9147/292 & 30128/417 10 Digit Tax Account # 2200006373 & 0407058460
Property Owner(s) Printed Name(s) William & Mary Groff

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

[Please see attached]

3. a **Variance** from Section(s)

TO BE PRESENTED AT HEARING

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:

DMS Tollgate, LLC

Name- Type or Print

Michael J. Ertel - MEMBER
Signature MICHAEL J. ERTTEL

100 E. Pennsylvania Ave, Ste 210 Towson, MD

Mailing Address City State

21286 / 410-296-3716 /
Zip Code Telephone # Email Address

Attorney for Petitioner:

G. Scott Barhight

Name- Type or Print

G. Scott Barhight / ADB
Signature 1 W. Pennsylvania Ave, Ste 300
Whiteland Taylor & Preston TOWSON, MD
Mailing Address City State

21204 / 410.352.2400 /
Zip Code Telephone # Email Address

CASE NUMBER 2013-0080-SPX Filing Date 10/1/12

Legal Owners (Petitioners):

William D. Groff III

Mary Groff

Name #1 - Type or Print

Name #2 - Type or Print

William D. Groff III Mary Groff
Signature #1 Signature #2

PO Box 8 Owings Mills MD

Mailing Address City State

21117 / /
Zip Code Telephone # Email Address

Representative to be contacted:

G. Scott Barhight

Name - Type or Print

G. Scott Barhight / ADB
Signature 1 W. Pennsylvania Ave, Ste 300
Whiteland Taylor & Preston TOWSON, MD
Mailing Address City State

21204 / /
Zip Code Telephone # Email Address

Date 10/3/12

Do Not Schedule Dates: 12/1/12 Reviewer JS

By JSN REV. 10/4/11

PETITION FOR ZONING HEARING
Reisterstown Road – Groff Property

Special Exception Relief Requested:

1. Special Exception to permit a an automotive service station use in combination with a convenience store greater than 1,500 square feet pursuant to Sections 230.3 and 405 of the BCZR;

2020100

2013-0080-SPX

Zoning Description
Portion of the Property of
William D. Groff, III & Mary J. Groff

Beginning for the same at the intersection of the northeast side of Reisterstown Road, US Rte 140, and the centerline of the Gwynns Falls, more or less, said point also being on the south side of the property of William D. Groff, III & Mary J. Groff, and running thence and binding on the northeast side of Reisterstown Road as now widened per SHA Plat 43657: North 37 degrees West 53.34 feet, South 46 degrees, 30 minutes, 05 seconds West 17.0 feet and North 43 degrees, 29 minutes, 35 seconds West 283.42 feet to the beginning point of the herein described lot.

Thence, still binding on the northeast side of Reisterstown Road, as now widened :

(1) North 43 degrees, 29 minutes, 35 seconds West 419.66 feet to intersect the angle point forming the intersection of the northeast side of Reisterstown Road and the north side of Groff Lane as now relocated and running thence and binding on said angle point :

(2) South 87 degrees, 40 minutes, 12 seconds east 35.85 feet to the north side of Groff Lane, 60 feet wide, and thence binding on the north side of said Groff Lane, so as to include the same :

(3) By a line curving to the right with a radius of 280.00 feet and an arc length of 170.28 feet

(4) North 85 degrees, 32 minutes, 37 seconds East 70.07 feet

(5) By a line curving to the left with a radius of 250.00 feet and an arc length of 33.15 feet to a point.

Thence crossing Groff Lane and running for new lines of division through the property of William D. Groff, III & Mary J. Groff, of which the herein described lot is a part :

(6) South 43 degrees, 29 minutes, 35 seconds East 268.98 feet

(7) South 46 degrees, 30 minutes, 49 seconds West 263.37 feet to the place of beginning.

Containing 92,716 square feet or 2.13 acres, more or less.



9/28/2012

2013-0080-SPX



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 Reisterstown Road, Owings Mills, MD 21117 which is presently zoned BL-AS
 Deed References: 9147/292 & 30128/417 10 Digit Tax Account # 2200006373 & 0407058460
 Property Owner(s) Printed Name(s) William & Mary Groff

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

[Please see attached]

3. a **Variance** from Section(s)

TO BE PRESENTED AT HEARING

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:

DMS Tollgate, LLC

Name- Type or Print

Michael J. Ertel - MEMBER
 Signature MICHAEL J. ERTTEL

100 E. Pennsylvania Ave, Ste 210 Towson, MD

Mailing Address City State

21286 / 410-296-3716 /

Zip Code Telephone # Email Address

Attorney for Petitioner:

G. Scott Barhight

Name- Type or Print

G. Scott Barhight
 Signature Whitcomb Taylor & Preston, 1 W. Pennsylvania Ave, Ste 300
TOWSON, MD

Mailing Address City State

21286 / 410.852.2000 /

Zip Code Telephone # Email Address

CASE NUMBER 2013-0080-SPX Filing Date 10/1/12

Legal Owners (Petitioners):

William D. Groff III

Mary Groff

Name #1 - Type or Print

Name #2 - Type or Print

William D. Groff III
 Signature #1

Mary Groff
 Signature #2

PO Box 8

Owings Mills

MD

Mailing Address

City

State

21117 /

Zip Code

Telephone #

Email Address

Representative to be contacted:

G. Scott Barhight

Name - Type or Print

G. Scott Barhight
 Signature Whitcomb Taylor & Preston, 1 W. Pennsylvania Ave, Ste 300
TOWSON, MD

Mailing Address

City

State

21286 / 410.852.2000 /

Zip Code

Telephone #

Email Address

Date 10/31/12

Do Not Schedule Dates: See

Reviewer JS

By See

PETITION FOR ZONING HEARING
Reisterstown Road – Groff Property

Special Exception Relief Requested:

1. Special Exception to permit a an automotive service station use in combination with a convenience store greater than 1,500 square feet pursuant to Sections 230.3 and 405 of the BCZR;

2020100

2013-0080-SPX

Zoning Description
Portion of the Property of
William D. Groff, III & Mary J. Groff

Beginning for the same at the intersection of the northeast side of Reisterstown Road, US Rte 140, and the centerline of the Gwynns Falls, more or less, said point also being on the south side of the property of William D. Groff, III & Mary J. Groff, and running thence and binding on the northeast side of Reisterstown Road as now widened per SHA Plat 43657: North 37 degrees West 53.34 feet, South 46 degrees, 30 minutes, 05 seconds West 17.0 feet and North 43 degrees, 29 minutes, 35 seconds West 283.42 feet to the beginning point of the herein described lot.

Thence, still binding on the northeast side of Reisterstown Road, as now widened :

- (1) North 43 degrees, 29 minutes, 35 seconds West 419.66 feet to intersect the angle point forming the intersection of the northeast side of Reisterstown Road and the north side of Groff Lane as now relocated and running thence and binding on said angle point :
- (2) South 87 degrees, 40 minutes, 12 seconds east 35.85 feet to the north side of Groff Lane, 60 feet wide, and thence binding on the north side of said Groff Lane, so as to include the same :
- (3) By a line curving to the right with a radius of 280.00 feet and an arc length of 170.28 feet
- (4) North 85 degrees, 32 minutes, 37 seconds East 70.07 feet
- (5) By a line curving to the left with a radius of 250.00 feet and an arc length of 33.15 feet to a point.

Thence crossing Groff Lane and running for new lines of division through the property of William D. Groff, III & Mary J. Groff, of which the herein described lot is a part :

- (6) South 43 degrees, 29 minutes, 35 seconds East 268.98 feet
- (7) South 46 degrees, 30 minutes, 49 seconds West 263.37 feet to the place of beginning.

Containing 92,716 square feet or 2.13 acres, more or less.



2013-0080-SPX



THE BALTIMORE SUN MEDIA GROUP

Baltimore, Maryland 21278-0001

July 23, 2013

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 July 23, 2013

☐ The Jeffersonian

THE BALTIMORE SUN MEDIA GROUP

By: Susan Wilkinson

Susan Wilkinson

NOTICE OF ZONING HEARING

The Administrative Law Judge 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: #2013-0080-SPHX
10609 Reisterstown Road
NE/s Reisterstown Road and Groff Lane
4th Election District - 2nd Councilmanic District
Legal Owner(s): William & Mary Groff
Contract Purchaser: DMS Tollgate, LLC

Special Exception: for an automotive service station use in combination with a convenience store greater than 1,500 sq.ft.

Hearing: Tuesday, August 13, 2013 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 07/807 July 23 935457

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS

DATE: 07/24/2013

Case Number: 2013-0080-SPHX

Petitioner / Developer: G. SCOTT BARHIGHT, ESQ. of WHITEFORD, TAYLOR & PRESTON, L.L.P.~DMS TOLLGATE, LLC~WILLIAM GROFF

Date of Hearing (Closing): AUGUST 13, 2013

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:
10609 REISTERSTOWN ROAD

The sign(s) were posted on: JULY 20, 2013



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)

LAW OFFICE OF
G. MACY NELSON, LLC

G. MACY NELSON
DAVID S. LYNCH
MICHAEL I. KROOPNICK

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
www.gmacynelson.com

TELEPHONE: (410) 296-8166
FACSIMILE: (410) 825-0670

November 27, 2013

VIA HAND DELIVERY

The Honorable John E. Beverungen
Administrative Law Judge
The Office of Administrative Hearings
Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, Maryland 21204

RECEIVED

NOV 27 2013

OFFICE OF ADMINISTRATIVE HEARINGS

**RE: Appeal of Administrative Law Judge's Opinion and Order
Case No. 2013-0080-X
*In Re: Petition for Special Exception (10609 Reisterstown Road)
4th Election District, 2nd Councilman District
William D. & Mary Groff- Legal Owners
DMS Tollgate, LLC- Contract Purchaser***

Dear Judge Beverungen:

The following protestants in the above-captioned matter, by their attorneys, G. Macy Nelson and the Law Office of G. Macy Nelson, LLC, hereby appeal Your Honor's decision dated October 31, 2013, in which Your Honor approved a Petition for Special Exception filed by William D. and Mary Groff and DMS Tollgate, LLC for property located at 10609 Reisterstown Road:

Malik Imram
111 Summers Woods Way
Owings Mill, Maryland 21117

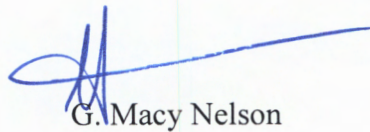
Afshin Attar
2610 Willow Glen Drive
Baltimore, Maryland 21209

Ashkan Rahmanattar
3317 Smith Avenue
Baltimore, Maryland 21208

Appeal of ALJ decision
RE: case no. 2013-0080-X
November 27, 2013
Page 2

I have enclosed a check made payable to Baltimore County, Maryland in the amount of \$385.00 for the filing of this appeal.

Very truly yours,



G. Macy Nelson

Enclosures

cc: Board of Appeals for Baltimore County
Arnold Jablon, Director
Department of Permits, Approvals, and Inspections
Lawrence E. Schmidt, Esquire

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: 2013-0080-SPX

Petitioner: DMS TOLLGATE LLC

Address or Location: 10609 REISTERSTOWN RD, OWINGS MILLS, MD 21117

PLEASE FORWARD ADVERTISING BILL TO:

Name: DMS TOLLGATE LLC

Address: 100 E. PENNSYLVANIA AVE
SUITE 210

TOWSON, MD 21286

Telephone Number: 410-296-5288

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

No. **90101**

Date: **10-1-12**

PAID RECEIPT

BUSINESS ACTUAL TIME DAY

10/01/2012 10/01/2012 10:14:38

REF 0005 WALKIN DICK 000

>>RECEIPT # 230212 10/01/2012 0011

Ref 5 528 TOLLGATE VERIFICATION

10: 090101

Receipt Tot 1251.00

\$450.00 CI 1.00 CA

Baltimore County, Maryland

Fund	Dept	Unit	Sub Unit	Rev Source/Obj	Sub Rev/Obj	Dept Obj	BS Acct	Amount
001	506	0000		6150				450.00

Total: **\$450.00**

Rec From: **DMS TOLLGATE, LLC**

For: **2013-0080-SPX**

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

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

No.

94026

Date:

11/27/13

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept	Obj	BS Acct	Amount
001	806	000		6150					385.00

Total:

385.00

Rec
From:

Law office of G. Mary Nelson

For:

CK# 6229

10609 Reisterstown Rd

Case # 2013-0080-X

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

PAID RECEIPT

BUSINESS ACTUAL TIME

11/27/2013 11/27/2013 13:12:06

REG MSM WALKIN SHIL SAH

>RECEIPT N 403900 11/27/2013 OFLN

IS 500 ZONING VERIFICATION

CR NO. 074624

Recpt Tot \$385.00

\$385.00 CK \$1.00 CA

Baltimore County, Maryland

**CASHIER'S
VALIDATION**

TO: PATUXENT PUBLISHING COMPANY
Tuesday, July 23, 2013 Issue - Jeffersonian

Please forward billing to:
DMS Tollgate, LLC
Attn: Michael Ertel
100 E. Pennsylvania Ave., Ste. 210
Towson, MD 21286

410-296-3716

NOTICE OF ZONING HEARING

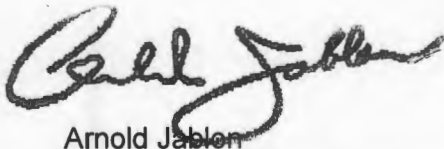
The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2013-0080-SPHX

10609 Reisterstown Road
NE/s Reisterstown Road and Groff Lane
4th Election District – 2nd Councilmanic District
Legal Owners: William & Mary Groff
Contract Purchaser: DMS Tollgate, LLC

Special Exception for an automotive service station use in combination with a convenience store greater than 1,500 sq. ft.

Hearing: Tuesday, August 13, 2013 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 ACCOMODATIONS, 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.



KEVIN KAMENETZ
County Executive

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

July 8, 2013

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: 2013-0080-SPHX

10609 Reisterstown Road
NE/s Reisterstown Road and Groff Lane
4th Election District – 2nd Councilmanic District
Legal Owners: William & Mary Groff
Contract Purchaser: DMS Tollgate, LLC

Special Exception for an automotive service station use in combination with a convenience store greater than 1,500 sq. ft.

Hearing: Tuesday, August 13, 2013 at 1:30 p.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: G. Scott Barhight, 1 W. Pennsylvania Avenue, Ste. 300, Towson 21204
DMS Tollgate, LLC, 100 E. Pennsylvania Ave., Ste. 210, Towson 21286
William Groff, P.O. Box 8, Owings Mills 21117

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, JULY 24, 2013.**
- (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.

WHITEFORD, TAYLOR & PRESTON L.L.P.

G. SCOTT BARHIGHT
DIRECT LINE (410) 832-2050
DIRECT FAX (410) 339-4028
GSBarhight@wtplaw.com

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

BALTIMORE, MD
BETHESDA, MD
COLUMBIA, MD
DEARBORN, MI
FALLS CHURCH, VA
ROANOKE, VA
TOWSON, MD
WASHINGTON, DC
WILMINGTON, DE*

WWW.WTPLAW.COM
(800) 987-8705

August 13, 2013

VIA HAND DELIVERY

The Honorable John E. Beverungen
Administrative Law Judge
Jefferson Building
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 2012-0080-SPHX

Dear Judge Beverungen,

Please accept this letter as a joint request to postpone the above-referenced matter. This matter involves a Petition for Special Exception to permit an automotive service station use in combination with a convenience store on the property located at 10609 Reisterstown Road (the "Petition").

Whiteford, Taylor & Preston, LLP represents the Petitioner, DMS Tollgate, LLC. Upon review of the zoning file on Friday, August 9, 2013, we discovered that several neighbors (the "Protestants") have raised concerns with respect to the Petition. These concerns were articulated in letters addressed to your attention, dated August 8, 2013. It is our understanding that the Protestants retained G. Macy Nelson as counsel in this matter on August 12, 2013.

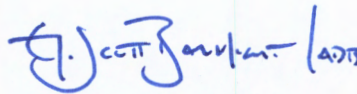
The property that is the subject of the Petition was recently rezoned through the 2012 Comprehensive Zoning Map Process ("CZMP"). During the CZMP process, our client performed a thorough community outreach. In an effort to address the concerns of the community, our client subjected the property to a declaration of covenants. On account of the CZMP community outreach, our client is very sensitive to the current concerns of the Protestants and would like an opportunity to meet with the Protestants to discuss their concerns.

Hon. John E. Beverungen
August 13, 2013
Page 2

I have spoken with Mr. Nelson about our client's desire to meet and he is in agreement that the parties should get together. We would like to provide adequate time for the parties to meet and, therefore, jointly request a postponement of today's hearing.

Thank you for your kind consideration in this matter. Should you need additional information, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Scott Barhight", with a date "8/13" written to the right.

G. Scott Barhight

AB:adb

Cc: Arnold Jablon, Esq.
G. Macy Nelson, Esq.
Adam D. Baker, Esq.

432184

WHITEFORD, TAYLOR & PRESTON L.L.P.

ADAM D. BAKER
DIRECT LINE (410) 832-2052
DIRECT FAX (410) 339-4028
ABaker@wtplaw.com

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

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

WWW.WTPLAW.COM
(800) 987-8705

January 8, 2014

Via Hand Delivery

Ms. Krysundra L. Cannington, Administrator
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204

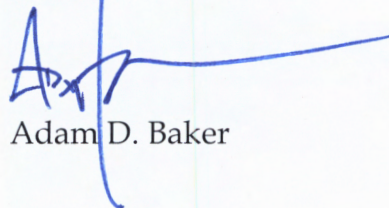
Re: 10609 Reisterstown Road; Zoning Case No. 2013-0080-SPHX

Dear Ms. Cannington,

Please accept this as a follow up to our discussion regarding the potential hearing dates for the above-referenced matter, which has been appealed to the Board of Appeals for Baltimore County. As I mentioned when we spoke, I estimate that this matter will require two (2) days of hearing before the Board. I have conferred with my clients and experts and of the dates you proposed (February 12, 13, 19 and 20), February 12 and 13 work best for us.

I appreciate your kind attention in this matter. Should you need anything additional from me at this time, please feel free to contact me.

Sincerely,



Adam D. Baker

AB:adb

Cc: Mr. David Schlachman
G. Scott Barhight, Esq.
G. Macy Nelson, Esq.

433981

RECEIVED
JAN 8 2014
BALTIMORE COUNTY
BOARD OF APPEALS

LAW OFFICE OF
G. MACY NELSON, LLC

G. MACY NELSON
DAVID S. LYNCH
MICHAEL I. KROOPNICK

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
www.gmacynelson.com

TELEPHONE: (410) 296-8166
FACSIMILE: (410) 825-0670

RECEIVED
JAN 10 2014

BALTIMORE COUNTY
BOARD OF APPEALS

January 8, 2014

Email: appealsboard@baltimorecountymd.gov
and U.S. Mail

Board of Appeals for Baltimore County
Attn: Sunny
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204

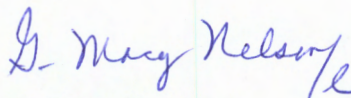
Re: 10609 Reisterstown Road
Case No.: 2013-0080-SPHX

Dear Sunny:

Thank you for suggesting four potential dates in February for the hearing in the above-captioned case. I respectfully request that the Board schedule the hearing in March. A major issue in the case will be the effect of the proposed development on the flood plain. We do not yet possess all the relevant information related to the flood plain. I anticipate that I should be able to obtain that information by March 1.

I discussed my proposal with Adam Baker, counsel for the Applicant. Mr. Baker's client is unwilling to agree to a March date. I regret that the parties are unable to agree on a date for the hearing. In view of our inability to reach an agreement, I request that the Board schedule the case for two days in March.

Very truly yours,



G. Macy Nelson

GMN:ldr
cc: Adam D. Baker, Esq.



Board of Appeals of Baltimore County

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

January 9, 2014

G. Scott Barhight, Esquire
Adam Baker, Esquire
Whiteford, Taylor & Preston, LLP
1 W. Pennsylvania Ave, Ste 300
Towson, MD 21204

G. Macy Nelson, Esquire
401 Washington Avenue, Ste 803
Towson, MD 21204

RE: *In the Matter of: Foxleigh Enterprises, Inc.*
Case No. 12-060-SA

Dear Counsel:

This office has received the appeal and file on the above referenced case matter.

In order to schedule a hearing before the Board of Appeals, without conflict; I am providing dates available on the docket. The Board sits on Tuesday, Wednesday and Thursday of each week.

Since the matter may take two (2) days before the Board, the following dates open for assignment and are consecutive dates:

Tuesday, March 4, 2014 at 10:00;
Wednesday, March 5, 2014 at 10:00;
Tuesday, March 11, 2014 at 10:00; and
Wednesday, March 12, 2014 at 10:00;

Please contact this office upon receipt of this letter to confirm availability. The Notice of Assignment will be issued to all parties at the time an agreeable date is established.

Thanking you in advance for your time and cooperation in this matter. Should you have any questions, please call me at 410-887-3180.

Very truly yours,

Sunny Cannington
Krysundra "Sunny" Cannington
Administrator

Duplicate Originals

WHITEFORD, TAYLOR & PRESTON L.L.P.

ADAM D. BAKER
DIRECT LINE (410) 832-2052
DIRECT FAX (410) 339-4028
ABaker@wtplaw.com

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

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

WWW.WTPLAW.COM
(800) 987-8705

January 14, 2014

Via Hand Delivery

Ms. Krysundra L. Cannington, Administrator
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204

RECEIVED
JAN 14 2014

BALTIMORE COUNTY
BOARD OF APPEALS

Re: 10609 Reisterstown Road; Zoning Case No. 2013-0080-SPHX

Dear Ms. Cannington,

Please accept this in response to Mr. Nelson's letter, dated January 8, 2014, regarding the above-referenced matter. We do not agree to Mr. Nelson's proposal to move the hearing before the Board of Appeals to March 2014. We strongly urge the Board to proceed with the February dates. As mentioned in my prior letter, February 12 and 13 work best for my client.

Mr. Nelson notes in his letter that he is waiting on information pertaining to the floodplain. Through information and belief, it is our understanding that Mr. Nelson has had a copy of the floodplain study submitted for this matter since November 2013.

I appreciate your kind attention in this matter. Should you have any questions, please feel free to contact me.

Sincerely,

Adam D. Baker/MW

Adam D. Baker

AB:adb

Cc: Mr. David Schlachman
G. Scott Barhight, Esq.
G. Macy Nelson, Esq.

434069



Board of Appeals of Baltimore County

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

January 16, 2015

G. Scott Barhight, Esquire
Adam Baker, Esquire
Whiteford, Taylor & Preston, LLP
1 W. Pennsylvania Ave, Ste 300
Towson, MD 21204

G. Macy Nelson, Esquire
401 Washington Avenue, Ste 803
Towson, MD 21204

Re: In the Matter of: William and Mary Groff
Case No.: 13-080-SPHX

Dear Counsel:

By letter dated January 9, 2014, Mr. Nelson's request for March dates was granted and I offered dates in the beginning of March.

This letter is to advise you that on January 14, 2014, this office received a hand delivered letter from Adam Baker, Esquire, opposing/objecting to having this case scheduled in March.

The previously offered February dates are no longer available on the Board's docket. Therefore, I kindly request that Counsel pick two of the following dates:

Tuesday, March 4, 2014 at 10:00;
Wednesday, March 5, 2014 at 10:00;
Tuesday, March 11, 2014 at 10:00; and
Wednesday, March 12, 2014 at 10:00;

It is to be noted that the Board is offering the above dates over the objection of Mr. Baker and his clients.

Please contact this office upon receipt of this letter to confirm availability. The Notice of Assignment will be issued to all parties at the time an agreeable date is established.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact this office.

Very truly yours,

Sunny Cannington
Krysundra "Sunny" Cannington
Administrator

Duplicate original

WHITEFORD, TAYLOR & PRESTON L.L.P.

ADAM D. BAKER
DIRECT LINE (410) 832-2052
DIRECT FAX (410) 339-4028
ABaker@wtplaw.com

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

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

WWW.WTPLAW.COM
(800) 987-8705

January 17, 2014

Via Hand Delivery

Ms. Krysundra L. Cannington, Administrator
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204

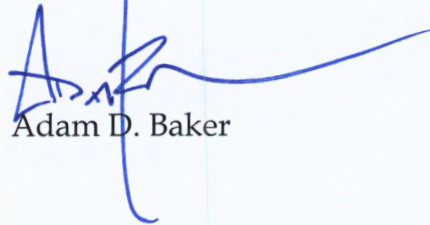
Re: 10609 Reisterstown Road; Zoning Case No. 2013-0080-SPHX

Dear Ms. Cannington,

Please accept this as a follow up to our discussion regarding the newly proposed hearing dates for the above-referenced matter. I have conferred with my clients and experts and of the dates you proposed (March 4, 5, 11 and 12), March 4, 5 and 11 work best for us.

I appreciate your kind attention in scheduling this matter as soon as possible. Should you need anything additional from me at this time, please feel free to contact me.

Sincerely,



Adam D. Baker

AB:adb

Cc: Mr. David Schlachman
G. Scott Barhight, Esq.
G. Macy Nelson, Esq.

433981

RECEIVED
JAN 17 2014

BALTIMORE COUNTY
BOARD OF APPEALS



Board of Appeals of Baltimore County

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

January 23, 2014

NOTICE OF ASSIGNMENT

IN THE MATTER OF:

13-080-X

WILLIAM AND MARY GROFF – LO
DMS TOLLGATE, LLC – CP/LESSEE
10609 REISTERSTOWN ROAD
4TH ELECTION DISTRICT; 2ND COUNCILMANIC DISTRICT

Re: Petition for Special Exception to allow an automotive service station use in combination with a convenience store greater than 1,500 square feet

10/31/13 Opinion and Order of the Administrative Law Judge wherein the requested relief was GRANTED WITH CONDITIONS.

ASSIGNED FOR:

WEDNESDAY, MARCH 5, 2014, AT 10:00 A.M. AND
WEDNESDAY, MARCH 12, 2014 AT 10:00 A.M.,
(IF NECESSARY)

LOCATION:

Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Krysundra "Sunny" Cannington, Administrator

c: Counsel for Petitioner/Legal Owner	: G. Scott Barhight, Esquire, Adam Baker, Esquire
Petitioner/Legal Owner	: William and Mary Groff
Counsel for Protestant/Appellants	: G. Macy Nelson, Esquire
Protestants/Appellants	: Malik Imram, Afshin Attar, Ashkan Rahmanattar

DMS Tollgate, LLC
Rick Richardson

Cheryl Aaron
Joe Ucciferro

Bruce Rice
Faisal Naseer

George Harman Gary Lenz
Mohammad Khan

Ken Schmid

Office of People's Counsel
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney

Arnold Jablon, Director/PAI
Jeff Mayhew, Deputy Director/Department of Planning
Michael Field, County Attorney, Office of Law



Board of Appeals of Baltimore County

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

April 4, 2014

NOTICE OF DELIBERATION

IN THE MATTER OF: William and Mary Groff – LO
13-080-X DMS Tollgate, LLC – CP/Lessee
10609 Reisterstown Road
4th Election District; 2nd Councilmanic District

Re: Petition for Special Exception to allow an automotive service station use in combination with a convenience store greater than 1,500 square feet

This matter having been heard on March 5, 2014, March 12, 2014 and April 2, 2014, a public deliberation has been scheduled for the following:

DATE AND TIME: TUESDAY, APRIL 29, 2014 at 9:00 a.m.

LOCATION: Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

NOTE: Closing briefs are due on Friday, April 18, 2013 by 3:30 p.m.
(Original and three [3] copies)

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c: Counsel for Petitioner/Legal Owner
Petitioner/Legal Owner

: G. Scott Barhight, Esquire, Adam Baker, Esquire
: William and Mary Groff

Counsel for Protestant/Appellants
Protestants/Appellants

: G. Macy Nelson, Esquire
: Malik Imram, Afshin Attar, Ashkan Rahmanattar

DMS Tollgate, LLC
Rick Richardson

Cheryl Aaron
Joe Ucciferro

Bruce Rice
Faisal Naseer

George Harman Gary Lenz
Mohammad Khan

Ken Schmid

Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney

Office of People's Counsel
Arnold Jablon, Director/PAI
Michael Field, County Attorney, Office of Law

8/13
30CASE NO. 2013- 0080 SPHXC H E C K L I S T

<u>Comment Received</u>	<u>Department</u>	<u>Support/Oppose/ Conditions/ Comments/ No Comment</u>
_____	DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____)	_____
<u>11/14/12</u>	DEPS (if not received, date e-mail sent _____)	<u>C</u>
_____	FIRE DEPARTMENT	<u>C</u>
<u>10/16/13</u>	PLANNING (if not received, date e-mail sent _____)	_____
<u>10/16/12</u>	STATE HIGHWAY ADMINISTRATION	<u>COMMENT</u>
_____	TRAFFIC ENGINEERING	_____
_____	COMMUNITY ASSOCIATION	_____
_____	ADJACENT PROPERTY OWNERS	<u>Opposed</u>
ZONING VIOLATION	(Case No. _____)	
PRIOR ZONING	(Case No. _____)	
NEWSPAPER ADVERTISEMENT	Date: <u>7/23/13</u>	
SIGN POSTING	Date: <u>7/20/13</u> by <u>O'Keefe</u>	
PEOPLE'S COUNSEL APPEARANCE	Yes ☒ No ☐	
PEOPLE'S COUNSEL COMMENT LETTER	Yes ☐ No ☐	

Comments, if any: _____



KEVIN KAMENETZ
County Executive

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

August 7, 2013

William D. & Mary Groff
P O Box 8
Owings Mills MD 21117

RE: Case Number: 2013-0080 SPHX, Address: Reisterstown Road

Dear Mr. & Ms. Groff:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on October 1, 2013. 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 that reads "W. Carl Richards, Jr." The signature is written in a cursive, flowing style.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaf

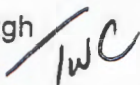
Enclosures

c: People's Counsel
G. Scott Barhight, Esquire, 1 W. Pennsylvania Avenue, Suite 300, Towson MD 21204
DMS Tollgate LLC, Michael J. Ertel, 100 E Pennsylvania Avenue, Suite 210, Towson MD 21286

BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PUBLIC WORKS
INTER-OFFICE CORRESPONDENCE

DATE: October 16, 2013

TO: Dennis A. Kennedy, Chief
P.A.I., Bureau of Development Plans Review

FROM: Terry W. Curtis, Jr, Engineer III through 
David L. Thomas, Assistant to the
Director of Public Works Office

SUBJECT: Groffs Mill Property 100-Year Flood Plain Study

Our office has received a report prepared by M. J. Consulting, Inc. for the Groffs Mill Property 100-Year Flood Plain Study your office submitted to us. We have reviewed this report and our comments are listed below.

1. Submit a copy of all computer program files used including Hec-Ras files on disk to our office for review. This disk must have input and output data provided.
2. The engineer must submit a Joint Permit Application with the Army Corp. of Engineers and the Maryland Department of the Environment. A copy of the application and a response letter from the Maryland Department of the Environment must be submitted to this office before approval of study. All other governmental permits and waivers must be filed and are the responsibility of the engineer.
3. The engineer must, upon approval of the study, submit a Letter of Map Amendment or Revision (LOMR) to The Federal Emergency Management Administration (FEMA) at the developer's expense.

We recommend that these plans and report **be accepted for filing** at this time. The comments above will not affect the validity of the submitted flood study.

If you have any questions, please feel free to contact Terry Curtis of my office on extension 3117.

Attachments
TWC:twc

cc: File

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



8-13-13 1:30
RECEIVED

NOV 14 2012

OFFICE OF ADMINISTRATIVE HEARINGS

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: November 14, 2012

SUBJECT: DEPS Comment for Zoning Item # 2013-0080-SPHX
Address 10609 Reisterstown Road
(Groff Property)

Zoning Advisory Committee Meeting of October 8, 2012.

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

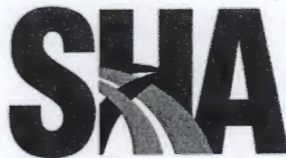
X Development of the property must comply with the Law for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

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).

Additional Comments:

An administrative variance to the for the Law for the Protection of Water Quality, Streams, Wetlands and Floodplains would be required to fill the 100-year floodplain and reduce the Forest Buffer Easement as proposed on the plan filed with the zoning petition. Any such variance request would have to clearly demonstrate that the variance criteria would be met.

Reviewer: Glenn Shaffer - Environmental Impact Review



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

State Highway
Administration

Darrell B. Mobley, Acting Secretary
Melinda B. Peters, Administrator

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: 10-16-12

Ms. Kristen Lewis
Baltimore County Department of
Permits, Approvals and Inspections
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 2013-0080-SPHX
Special Exception
William D. & Mary Grotz
10609 Reisterstown Road

Dear Ms. Lewis:

We have reviewed the site plan to accompany petition for variance on the subject of the above captioned, which was received on 10-15-12. A field inspection and internal review reveals that an entrance onto MD140 consistent with current State Highway Administration guidelines is required. As a condition of approval for Special Exception, Case Number 2013-0080-SPHX the applicant must contact the State Highway Administration to obtain an entrance permit.

Should you have any questions regarding this matter feel free to 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). Thank you for your attention.

Sincerely,

Steven D. Foster, Chief
Access Management Division

SDF/raz

cc: Mr. Michael Pasquariello, Utility Engineer, SHA
Mr. David Peake, District Engineer, SHA

Mr. Donald Distance, District 4 Traffic

3 w/plan

* SHA will require a traffic impact analysis to determine the developmental impacts to the surrounding road network.

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

INTER-OFFICE CORRESPONDENCE

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

DATE: October 16, 2012

FROM: Andrea Van Arsdale
Director, Department of Planning

RECEIVED

SUBJECT: 10609 Reisterstown Road
INFORMATION:

OCT 17 2013

Item Number: 13-080
Petitioner: William D. Groff III
Zoning: BL-AS
Requested Action: Special Exception

OFFICE OF ADMINISTRATIVE HEARINGS

SUMMARY OF RECOMMENDATIONS:

The Department of Planning has reviewed the petitioner's request and accompanying site plan and recommends that the proposed fuel service station and convenience store is compatible with surrounding buildings and will not be detrimental to health, safety or general welfare of the locality involved, subject to the following conditions:

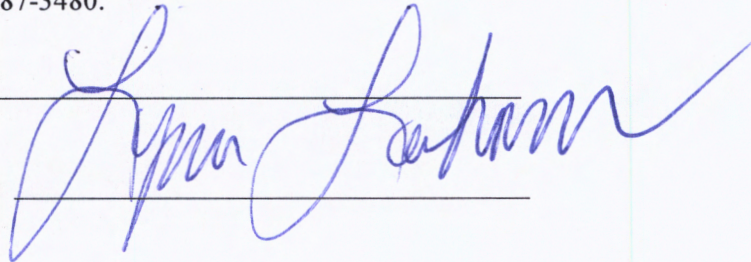
1. The special exception area should not include Groff Lane.
2. Existing "Groff's Mill" is located on Lot 2 of this proposal. The Baltimore County Council approved the addition of Groff's Mill to the Final Landmarks List by Bill 75-12 on November 19, 2012 (Final Landmarks List #386). The proposed gas station and convenience store are outside of the boundaries of the delineated historic environmental setting and therefore outside of the purview of the Landmarks Preservation Commission. Tentative plans for this particular project were presented to the LPC at the meeting scheduled for considering the addition of "Groff's Mill" to the Preliminary Landmarks List. Please note the LPC had no issue with the proposal as presented. The applicant agreed that future development of the site would be architecturally compatible with the historic structures.
 - a. Label the final landmark structures as Final Landmarks List #386.
3. Proposed elevations of the building and canopy were submitted to the Department of Planning on October 15, 2013. The Department of Planning recommends approval of the structures as being compatible with the historic structures subject to the following.
 - a. Label the awnings on the main building as standing seam metal.
 - b. Revise the canopy so that the color of the gabled standing seam metal roof matches the color of the main building standing seam metal awnings and roof (dark grey).
 - c. Increase the roof pitch of the canopy roof to match that of awnings on the main building.
 - d. Add stone base to support poles of canopy to match the building.

4. The sign design has been redesigned with masonry piers to match the building materials. Revise the design to be ground-mounted to be compatible with the adjacent historic structures.
5. Provide details of the masonry dumpster enclosure. Materials should match that of the proposed building.
6. Provide pedestrian connections from the building entrance to the sidewalk along Groff Lane and the sidewalk on Reisterstown Road.
7. Design future buildings on site to be compatible with materials and colors of the historic structures with review and approval by the Department of Planning.
8. Submit a landscape and lighting plan to Jean Tansey, Baltimore County Landscape Architect, for review and approval. The landscape transition area next to the retaining wall along Groff Lane should be 10 feet wide minimum.

For further information concerning the matters stated here in, please contact Amy Mantay or Donnell Zeigler at 410-887-3480.

Prepared by: _____

Division Chief:
AVA/LL: CM

A handwritten signature in blue ink, appearing to read "Amy Mantay", is written over a horizontal line. The signature is fluid and cursive.

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE OFFICE
AND SPECIAL EXCEPTION		
10609 Reisterstown Road; NE/S Reisterstown	*	OF ADMINISTRATIVE
Road, @ Reisterstown Road & Groff Lane		
4 th Election & 2 nd Councilmanic Districts	*	HEARINGS FOR
Legal Owner(s): William & Mary Groff		
Contract Purchaser(s): DMS Tollgate LLC	*	BALTIMORE COUNTY
Petitioner(s)		
	*	2013-080-SPHX

* * * * *

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

RECEIVED

OCT 11 2012

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 11th day of October, 2012, a copy of the foregoing Entry of Appearance was mailed to G Scott Barhight, Esquire, One West Pennsylvania Avenue, Suite 300, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

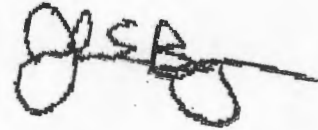
MEMORANDUM

TO: Kristen Lewis
Office of Zoning Review

FROM: John E. Beverungen, Administrative Law Judge
Office of Administrative Hearings

DATE: August 13, 2013

SUBJECT: Case No. 2013-0080-X (Scheduled for August 13, 2013)



As you are aware, the above-referenced case was scheduled before the undersigned today, August 13, 2013 at 1:30 PM in Room 205 of the Jefferson Building. Counsel presented at the hearing a motion to postpone, which was granted. No additional posting is necessary, and the attorneys will contact you with agreed upon date for rescheduling.

This matter is now being returned to you for rescheduling and processing. Thanks.

JEB:dlw

c: File

**BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PUBLIC WORKS
INTER-OFFICE CORRESPONDENCE**

DATE: October 16, 2013

TO: Dennis A. Kennedy, Chief
P.A.I., Bureau of Development Plans Review

FROM: Terry W. Curtis, Jr, Engineer III through *TWC*
David L. Thomas, Assistant to the
Director of Public Works Office

SUBJECT: Groffs Mill Property 100-Year Flood Plain Study

Our office has received a report prepared by M. J. Consulting, Inc. for the Groffs Mill Property 100-Year Flood Plain Study your office submitted to us. We have reviewed this report and our comments are listed below.

1. Submit a copy of all computer program files used including Hec-Ras files on disk to our office for review. This disk must have input and output data provided.
2. The engineer must submit a Joint Permit Application with the Army Corp. of Engineers and the Maryland Department of the Environment. A copy of the application and a response letter from the Maryland Department of the Environment must be submitted to this office before approval of study. All other governmental permits and waivers must be filed and are the responsibility of the engineer.
3. The engineer must, upon approval of the study, submit a Letter of Map Amendment or Revision (LOMR) to The Federal Emergency Management Administration (FEMA) at the developer's expense.

We recommend that these plans and report **be accepted for filing** at this time. The comments above will not affect the validity of the submitted flood study.

If you have any questions, please feel free to contact Terry Curtis of my office on extension 3117.

Attachments
TWC:twc

cc: File

KEVIN KAMENETZ
County Executive



LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

December 2, 2013

G. Scott Barhight, Esquire
Adam Baker, Esquire
Whiteford, Taylor & Preston, LLP
1 W. Pennsylvania Avenue
Suite 300
Towson, Maryland 21204

RECEIVED
DEC 02 2013

BALTIMORE COUNTY
BOARD OF APPEALS

RE: **APPEAL TO BOARD OF APPEALS**
Case No. 2013-0080-X
Location: 10609 Reisterstown Road

Dear Counsel:

Please be advised that an appeal of the above-referenced case was filed in this Office on November 27, 2013. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to contact the Board at 410-887-3180.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Stahl", is written over the name "LAWRENCE M. STAHL".

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:slm

c: Baltimore County Board of Appeals
People's Counsel for Baltimore County
G. Macy Nelson, Esquire, 401 Washington Avenue, Suite 803, Towson, Maryland 21204
Cheryl Aaron, 121 St. Thomas Lane, Owings Mills, Maryland 21117
George Harman, 5429 Weywood Drive, Reisterstown, Maryland 21136

Gary Lenz, 4722 Butler Road, P.O. Box 279, Glyndon, Maryland 21071
Ken Schmid, 325 Gambrills Road, Suite E, Gambrills, Maryland 21054
Rick Richardson, 30 E. Padonia Road, Suite 500, Timonium, Maryland 21093
Joe Ucciferro, 901 Dulaney Valley Road, Suite 801, Towson, Maryland 21204
Malik Imran, 111 Summer Woods Way, Owings Mills, Maryland 21117
Ashkan Rahmanattar, 3317 Smith Avenue, Baltimore, Maryland 21208
Afshin Attar, 2610 Willow Glen Dr., Baltimore, Maryland 21209
Faisal Naseer, 3 Hiawatha Ct., Apt. J, Owings Mills, Maryland 21117
Mohammad Khan, 11106 Hollowbrook Road, Owings Mills, Maryland 21117
David Schlachman, 100 E. Pennsylvania Avenue, Suite 210, Towson, Maryland 21286

APPEAL

**Petition for Special Exception
(10609 Reisterstown Road)
4th Election District – 2nd Councilmanic District
Legal Owners: William D. and Mary Groff
Contract Purchaser: DMS Tollgate, LLC
Case No. 2013-0080-X**

- ✓ Petition for Special Exception (October 1, 2012)
- ✓ Zoning Description of Property
- ✓ Notice of Zoning Hearing (July 8, 2013)
- ✓ Certificate of Publication (July 23, 2013)
- ✓ Certificate of Posting (July 20, 2013) by Linda O'Keefe
- ✓ Entry of Appearance by People's Counsel (October 11, 2013)
- ✓ Petitioner(s) Sign-in Sheet – 1 page (October 18, 2013) 1 Page (October 21, 2013)
- ✓ Citizen(s) Sign-in Sheet – 1 page (October 18, 2013) 1 Page (October 21, 2013)
- ✓ Zoning Advisory Committee Comments

Petitioner(s) Exhibits -

- ✓ 1. ZAC Comments
- ✓ 2. Site Plan (redlined)
- ✓ 3. Covenant Agreement
- ✓ 4. Reisterstown-Owings Mills- Glyndon council letter (10-9-2013)
- ✓ 5. Building elevations
- ✓ 6. Resume- Kenneth Schmid
- ✓ 7. Richardson- Resume
- ✓ 8. County Memo- 10-16-2013 RE: floodplain
- ✓ 9. Google Earth photo- Gulf
- ✓ 10. Google Earth photo- Exxon

Protestants' Exhibits –

- ✓ 1A-C Photos
- ✓ 2. Photo
- ✓ 3. Photo
- ✓ 4. Photo
- ✓ 5. Photo
- ✓ 6. Photo
- ✓ Miscellaneous (Not Marked as Exhibits) – Email Comments, Post-Hearing Memorandum (G. Macy Nelson 10-29-13), Memorandum in Lieu of Closing Argument (Adam Baker 10-29-13), Opposition letters and SDAT
- ✓ Administrative Law Judge Order and Letter (GRANTED with Conditions – October 31, 2013)
- ✓ Notice of Appeal – November 27, 2013 by G. Macy Nelson, LLC on behalf of Protestants



Board of Appeals of Baltimore County

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

March 14, 2014

G. Macy Nelson, Esquire
401 Washington Avenue, Ste 803
Towson, MD 21204

RE: In the matter of: William and Mary Groff – Legal Owners
Case No: 13-080-X

Dear Mr. Nelson:

Enclosed please find two CD's containing the recording of the hearings before the Board of Appeals on March 5, 2014 and March 12, 2014. I have spoken with our Transcriptionist, Debbie Eichner and advised her that you may be contacting her. She can be reached at 410-404-2110.

Please be advised that we use the CourtSmart system for recording our hearings. The enclosed CD's are data disks which will only be accessible in a computer. Any transcriptionist must meet the requirements set forth in Maryland Rule 16-406d(B) which states: "*a stenographer, court reporter, or transcription service designated by the court for the purpose of preparing an official transcript from the recording.*"

Ms. Eichner is highly recommended by this office. She prepares transcripts of CourtSmart recordings regularly.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

cc: Debbie Eichner

Debra Wiley - 2013-0080-SPHX - 1 of 3

From: Debra Wiley
To: davidlynch@gmacynelson.com
Date: 8/9/2013 10:11 AM
Subject: 2013-0080-SPHX - 1 of 3
Attachments: 20130809095005016.pdf

Per your request.

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

*Scanned
entire file
& emailed*

*Site plan
was taken
to Cent.
print.
for
copying*

>>> <officeofhearings@baltimorecountymd.gov> 8/9/2013 9:50 AM >>>
This E-mail was sent from "zoneprt1" (Aficio MP 2852).

Scan Date: 08.09.2013 09:50:04 (-0400)
Queries to: officeofhearings@baltimorecountymd.gov

Debra Wiley - RE: 2013-0080-SPHX - Groff

From: "Baker, Adam D" <ABaker@wtplaw.com>
To: 'Debra Wiley' <dwiley@baltimorecountymd.gov>
Date: 8/9/2013 9:31 AM
Subject: RE: 2013-0080-SPHX - Groff

Thanks, Debbie!

Adam D. Baker
LEED AP BD+C
Whiteford, Taylor & Preston, L.L.P.
Towson Commons, Suite 300 | One West Pennsylvania Avenue | Towson, MD 21204
t: 410-832-2052 | f: 410 339-4028
abaker@wtplaw.com | [Bio](#) | [vCard](#) | www.wtplaw.com

*2AC comments
Scanned
8-
enailed*

From: Debra Wiley [mailto:dwiley@baltimorecountymd.gov]
Sent: Friday, August 09, 2013 9:11 AM
To: Baker, Adam D
Subject: 2013-0080-SPHX - Groff

Mr. Baker,

Per your request.

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

>>> <officeofhearings@baltimorecountymd.gov> 8/9/2013 8:59 AM >>>

CIRCUIT COURT FOR BALTIMORE COUNTY
Julie L. Ensor
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

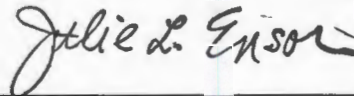
N O T I C E O F R E C O R D

Case Number: 03-C-14-007926 AA
Administrative Agency : 13-080-X
C I V I L

In the Matter of Afshin Attar, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 26th day of September, 2014.



Julie L. Ensor
Clerk of the Circuit Court, per JLS

Date issued: 09/30/14

TO: BOARD OF APPEALS
Jefferson Bldg, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204

RECEIVED
OCT 1 2014
BALTIMORE COUNTY
BOARD OF APPEALS

CIRCUIT COURT FOR BALTIMORE COUNTY

Julie L. Ensor

Clerk of the Circuit Court

County Courts Building

401 Bosley Avenue

P.O. Box 6754

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Maryland Toll Free Number (800) 938-5802

RECEIVED

OCT 1 2014

BALTIMORE COUNTY
BOARD OF APPEALS

Case Number: 03-C-14-007926

TO: BOARD OF APPEALS
Jefferson Bldg, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

RECEIVED
OCT 2 2014
BALTIMORE COUNTY
BOARD OF APPEALS

Board Of Appeals
Jefferson Bldg, Suite 203
105 W. Chesapeake Avenue
Towson MD 21204

Assignment Date: 09/30/14

Case Title: In the Matter of Afshin Attar, et al
Case No: 03-C-14-007926 AA

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.

You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 10/15/14
 2. All Motions (excluding Motions in Limine) are due by..... 11/07/14
 3. TRIAL DATE is..... 12/17/14
- Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned: 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable Kathleen Gallogly Cox
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients **MUST** attend the settlement conference **in person**. All insurance representatives **MUST** attend this conference **in person** as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs **MUST** be paid on the date of the settlement conference or trial.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., cameras and recording equipment are strictly prohibited in courtrooms

and adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

cc: G Scott Barhight Esq

cc: G Macy Nelson Esq

Issue Date 09/30/14

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: William and Mary Groff - LO 13-080-X
DMS Tollgate, LLC – CP/Lessee

DATE: April 29, 2014

BOARD/PANEL: Wendell H. Grier, Panel Chairman
David L. Thurston
Richard A. Wisner

RECORDED BY: Sunny Cannington, Administrator

PURPOSE: To deliberate the following:

1. Petition for Special Exception to allow an automotive service station use in combination with a convenience store greater than 1,500 square feet.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

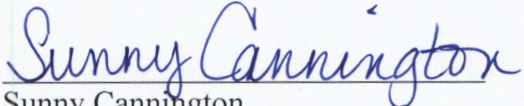
- The Board reviewed the history of this matter. The Board convened for two days of hearing in this matter. At the conclusion of the hearing, they requested memoranda in lieu of closing argument due on April 18, 2014. In addition to the memoranda, Protestants filed a Motion to Dismiss, or Alternatively, Stay the Application for Special Exception, the same day. The Board determined that the filing of the Motion was untimely. They chose to review the argument. Protestants primary argument stems from BCZR § 405.4 which provides where fuel service stations can be in relation to residential areas, as well as how far a new station should be from a failing or prosperous station. The Board reviewed that the subject property is not in or near a residential community. The subject property is, in fact, in a highly developed, commercial, area of Reisterstown Road. The Petitioner explained that the primary reason fuel service stations are usually grouped together is that the BCZR only allow fuel service stations in certain zones. The Board determined that they were unable to find any statutory authority to grant the Protestant's Motion.
- The Board discussed the Petition for Special Exception, evidence and testimony provided at the hearings. The Board reviewed the requirements of BCZR § 502.1. The Board determined that the Petitioners met requirements A through H of 502.1. The Board expressed concern about requirement I, which states that the Special Exception will not... "[b]e detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone." The Petitioner has admitted that they are requesting this Special Exception at their own risk. The Petitioner will be filing a Development Plan. During the Development Plan review, the Petitioner will be required to have all environmental concerns addressed by various County, State, and Federal agencies. The Board has

determined that because of the rigorous Development Plan process, they will grant the Petition for Special Exception with the conditions as applied by the Administrative Law Judge.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the Protestant's Motion to Dismiss, or Alternatively, to Stay the Application for Special Exception and to GRANT the requested relief with conditions.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,


Sunny Cannington

WHITEFORD, TAYLOR & PRESTON L.L.P.

G. SCOTT BARHIGHT
DIRECT LINE (410) 832-2050
DIRECT FAX (410) 339-4057
gbarhight@wtplaw.com

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

BALTIMORE, MD
BETHESDA, MD
COLUMBIA, MD
DEARBORN, MI
FALLS CHURCH, VA
ROANOKE, VA
TOWSON, MD
WASHINGTON, DC
WILMINGTON, DE*

WWW.WTPLAW.COM
(800) 987-8705

February 21, 2014

VIA HAND DELIVERY

Ms. Krysundra "Sunny" Cannington, Administrator
The Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204

RECEIVED
FEB 21 2014
BALTIMORE COUNTY
BOARD OF APPEALS

**Re: Subpoena for Board of Appeals Hearing
Wednesday, March 5, 2014 at 9:00 a.m.
Groff Property at 10609 Reisterstown Road**

Dear Ms. Cannington:

Pursuant to Rule 5 of the Rules of Practice and Procedure of County Board of Appeals, enclosed please find an original and two copies of a *Subpoena Duces Tecum* summoning David Thomas to appear and produce documents at the above-referenced hearing. Please accept this letter as a request for the issuance of the attached Subpoena.

Thank you in advance for your assistance in this matter.

Very truly yours,

G. Scott Barhight

G. Scott Barhight

GSB:mw
Enclosures

cc: David Thomas, Baltimore County Department of Public Works

434632

IN THE MATTER OF:
William and Mary Groff - LO
DMS Tollgate, LLC - Lessee
10609 Reisterstown Road
4th Election District
2nd Councilmanic District

* BEFORE THE
* BOARD OF APPEALS OF
* BALTIMORE COUNTY
* Case Number: 13-080-X

* * * * *

SUBPOENA DUCES TECUM

TO: David L. Thomas
Department of Public Works
County Office Building, Suite 307
111 W. Chesapeake Avenue
Towson, Maryland 21204

YOU ARE HEREBY SUMMONSED AND COMMANDED TO: (X) Personally appear,
testify and (X) produce the following documents or objects:

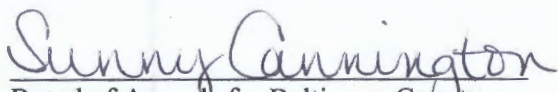
Any and all documents or objects related to the above-captioned matter, including, but
not limited to Baltimore County Department of Public Works' file(s) pertaining to the
Groff property located at 10609 Reisterstown Road, Owings Mills, Maryland 21117;

before the Board of Appeals of Baltimore County on **Wednesday, March 5, 2015 at 10:00 a.m.** and
Wednesday, March 12, 2014 at 10:00 a.m. in Hearing Room 2, Suite 206 of the Jefferson Building, 105
West Chesapeake Avenue, Towson, Maryland 21204, until completed, regarding the above-captioned
matter, for the purpose of testifying at the request of DMS Tollgate, LLC.

SUBPOENA REQUESTED BY:
G. Scott Barhight, Esquire
Whiteford, Taylor & Preston L.L.P.
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, Maryland 21204-5025
(410) 832-2050

Private Process Server:

Please process in accordance with Rule 5 of the Rules of Practice and Procedure of County
Board of Appeals.


Board of Appeals for Baltimore County

Issued:

RECEIVED

FEB 21 2014

434589

**BALTIMORE COUNTY
BOARD OF APPEALS**

From: "Baker, Adam D" <ABaker@wtplaw.com>
To: 'Krysundra Cannington' <kcannington@baltimorecountymd.gov>
CC: "G. Macy Nelson" <gmacynelson@gmacynelson.com>
Date: 1/22/2014 11:59 AM
Subject: RE: 10609 Reisterstown Road; Zoning Case No. 2013-0080-SPHX

Sunny,

Macy and I have connected on the dates and kindly request that the Board set the matter in for hearing on March 5 and March 12. Please let me know if you have any questions or need any additional information at this time. Thanks!

Adam D. Baker
LEED AP BD+C
Whiteford, Taylor & Preston, L.L.P.
Towson Commons, Suite 300 | One West Pennsylvania Avenue | Towson, MD 21204
t: 410-832-2052 | f: 410 339-4028
abaker@wtplaw.com | Bio | vCard | www.wtplaw.com

-----Original Message-----

From: Krysundra Cannington [mailto:kcannington@baltimorecountymd.gov]
Sent: Friday, January 17, 2014 3:01 PM
To: G. Macy Nelson
Cc: Baker, Adam D
Subject: RE: 10609 Reisterstown Road; Zoning Case No. 2013-0080-SPHX

Mr. Nelson,

Thank you. I will look forward to hearing from you on Tuesday.

I hope you have a great weekend.

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
(410) 887-3180

>>> "G. Macy Nelson" <gmacynelson@gmacynelson.com> 1/17/2014 2:58 PM >>>

Hi,

I plan to report to Sunny on Tuesday regarding the dates. I am meeting with an expert Monday morning. I don't anticipate a problem.

-Macy Nelson

G. Macy Nelson
401 Washington Avenue, Suite 803
Towson, Maryland 21204
410-296-8166, ex. 290

Fax 410-825-0670
Mobile 443-326-8749
Email gmacynelson@gmacynelson.com
www.gmacynelson.com

-----Original Message-----

From: Krysundra Cannington [mailto:kcannington@baltimorecountymd.gov]
Sent: Friday, January 17, 2014 2:51 PM
To: Adam D Baker
Cc: 'gmacynelson@gmacynelson.com'; G. Scott Barhight
Subject: Re: 10609 Reisterstown Road; Zoning Case No. 2013-0080-SPHX

Adam,

Thank you. I did receive the hand-delivered letter. I am awaiting a response from Mr. Nelson.

Please note, Baltimore County government offices will be closed on Monday in honor of Martin Luther King, Jr.

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
(410) 887-3180

>>> "Baker, Adam D" <ABaker@wtplaw.com> 1/17/2014 2:15 PM >>>
Sunny,

Attached please find a copy of a letter regarding the above-referenced matter. A copy is being hand-delivered to your office this afternoon.

Adam D. Baker
LEED AP BD+C
Whiteford, Taylor & Preston, L.L.P.
Towson Commons, Suite 300 | One West Pennsylvania Avenue | Towson, MD
21204
t: 410-832-2052 | f: 410 339-4028
abaker@wtplaw.com <<mailto:abaker@wtplaw.com>> |
Bio <<http://www.wtplaw.com/professionals/adam-d-baker>> |
vCard <<http://www.wtplaw.com/professionals/vcard/15942>> | www.wtplaw.com <<http://www.wtplaw.com>>

From: Wilson, Melissa
Sent: Friday, January 17, 2014 2:08 PM
To: Wilson, Melissa; Baker, Adam D
Subject: Copitrak Scan to E-Mail

Copitrak Scan

[cid:410-220141517198139207@13071999]

Your Scan File is Attached

[cid:184671-2201415171981392117@13071999]

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Circular 230 Disclosure:

To ensure compliance with requirements imposed by Treasury and the IRS, we inform you that any federal tax advice contained in this communication (including attachments) is not intended or written to be used and cannot be used for the purpose of (i) avoiding tax penalties that may be imposed under the Internal Revenue Code, or (ii) promoting, marketing, or recommending to another person any transaction or matter addressed herein.

From: Krysundra Cannington
To: Nelson, G. Macy
CC: Baker, Adam D
Date: 1/17/2014 3:01 PM
Subject: RE: 10609 Reisterstown Road; Zoning Case No. 2013-0080-SPHX

Mr. Nelson,

Thank you. I will look forward to hearing from you on Tuesday.

I hope you have a great weekend.

Sunny

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Administrator
Board of Appeals of Baltimore County
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
(410) 887-3180

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-Macy Nelson

G. Macy Nelson
401 Washington Avenue, Suite 803
Towson, Maryland 21204
410-296-8166, ex. 290
Fax 410-825-0670
Mobile 443-326-8749
Email gmacynelson@gmacynelson.com
www.gmacynelson.com

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Sent: Friday, January 17, 2014 2:51 PM
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Adam,

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Please note, Baltimore County government offices will be closed on Monday in honor of Martin Luther King, Jr.

Sunny

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Towson Commons, Suite 300 | One West Pennsylvania Avenue | Towson, MD 21204
t: 410-832-2052 | f: 410 339-4028
abaker@wtplaw.com<<mailto:abaker@wtplaw.com>> |
Bio<<http://www.wtplaw.com/professionals/adam-d-baker>> |
vCard<<http://www.wtplaw.com/professionals/vcard/15942>> |
www.wtplaw.com<<http://www.wtplaw.com/>>

From: Wilson, Melissa
Sent: Friday, January 17, 2014 2:08 PM
To: Wilson, Melissa; Baker, Adam D
Subject: Copitrak Scan to E-Mail

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From: "G. Macy Nelson" <gmacynelson@gmacynelson.com>
To: "Krysundra Cannington" <kcannington@baltimorecountymd.gov>
CC: "Baker, Adam D" <ABaker@wtplaw.com>
Date: 1/17/2014 2:59 PM
Subject: RE: 10609 Reisterstown Road; Zoning Case No. 2013-0080-SPHX

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21204

t: 410-832-2052 | f: 410 339-4028

abaker@wtplaw.com<mailto:abaker@wtplaw.com> |

Bio<<http://www.wtplaw.com/professionals/adam-d-baker>> |

vCard<<http://www.wtplaw.com/professionals/vcard/15942>> |

www.wtplaw.com<<http://www.wtplaw.com/>>

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Sent: Friday, January 17, 2014 2:08 PM

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From: Krysundra Cannington
To: Baker, Adam D
CC: 'gmacynelson@gmacynelson.com'; Barhight, G. Scott
Date: 1/17/2014 2:51 PM
Subject: Re: 10609 Reisterstown Road; Zoning Case No. 2013-0080-SPHX

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Krysundra Cannington - 10609 Reisterstown Road; Zoning Case No. 2013-0080-SPHX

From: "Baker, Adam D" <ABaker@wtplaw.com>
To: "Krysundra Cannington (kcannington@baltimorecountymd.gov)" <kcannington@...>
Date: 1/17/2014 2:15 PM
Subject: 10609 Reisterstown Road; Zoning Case No. 2013-0080-SPHX
CC: "gmacynelson@gmacynelson.com" <gmacynelson@gmacynelson.com>, "Barhight..."
Attachments: CopitrakScan.PDF

Sunny,

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Adam D. Baker

LEED AP BD+C

Whiteford, Taylor & Preston, L.L.P.

Towson Commons, Suite 300 | One West Pennsylvania Avenue | Towson, MD 21204

t: 410-832-2052 | f: 410 339-4028

abaker@wtplaw.com | [Bio](#) | [vCard](#) | www.wtplaw.com

From: Wilson, Melissa

Sent: Friday, January 17, 2014 2:08 PM

To: Wilson, Melissa; Baker, Adam D

Subject: Copitrak Scan to E-Mail

Copitrak Scan

The logo for Copitrak, featuring the word "copitrak" in a lowercase, sans-serif font. To the left of the text is a circular graphic composed of several concentric, slightly offset rings, creating a sense of motion or a stylized 'C'.

Your Scan File is Attached

Orna Tehrani

22 Tollgate Rd

Owings Mills, MD 2117

August 8, 2013

Re: Case Number 2013-0080-SPX

RECEIVED

AUG 08 2013

OFFICE OF ADMINISTRATIVE HEARINGS

Dear Judge Beverungen,

My name is Orna Tehrani and I am a resident of the Owings Mills neighborhood and within 0.2 mile distance from the Groff property. I, as a member of this community, would like to oppose the grant of the special exception for the Groff Property with the zoning case number of 2013-0080-SPX located at 10609 Reisterstown Rd, Owings Mills, MD 21117.

Having another huge gas station and convenient store is very detrimental to this neighborhood. Traffic is really bad on Reisterstown road and Owings Mills already and big stores like Wawa with attract more traffic to the neighborhood. We ask you to please help us by not granting this special exception.

Also these 24/7 huge stations usually attract drug dealers and homeless people to themselves during night time. We are seeing an increase in the crime rate of the neighborhood already and having a Wawa build on this property will contribute a lot to that as well. Besides all these, Wawa is trying to build the store over a floodplain which can endanger everyone in the neighborhood and environment.

This project also does not adhere to the following Rules and Regulations of the Baltimore county Zoning Department, Section 502, stating:

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;

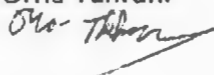
[Bill No. 45-1982]

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

[Bill No. 74-2000]

Sincerely,

Orna Tehrani



AUG-07-2013 03:15

Hodaa LLC D/B/A Tollgate at

Afshin Attar

Tollgate Exxon

10540 Reisterstown Rd

Owings Mills, MD 21117

August 7, 2013

Re: Case Number 2013-0080-SPX

Hodaa LLC D/B/A Tollgate

Ashkan Rahmanattar

Hodaa LLC

10540 Reisterstown Rd

Owings Mills, MD 21117

Hodaa LLC D/B/A Tollgate

Jaleh Attar

Hodaa LLC

10540 Reisterstown Rd

Owings Mills, MD 21117

August 7, 2013

Hodaa LLC D/B/A Tollgate

Mohammad Shahrukh Khan

11106 Hollowbrook Rd

Owings Mills Md, 21117

August 7, 2013

Re: Case Number 2013-0080-SPX

Dear Administrative Law Judges,

Sumaira Firdous

11106 Hollowbrook Rd

Owings Mills Md, 21117

August 7, 2013

Re: Case Number 2013-0080-SPX

AUG-08-2013 02:24

at

Devendar Kumar Duggal

32 Tollgate Rd

Owings Mills, MD 21117

August 8, 2013

Re: Case Number 2013-0080-SPX

Hodaa LLC D/B/A Tollgate

Kiran Rana Magar

8100 Greenspring Valley Rd

Owings Mills Md, 21117

August 8, 2013

Hodaa LLC D/B/A Tollgate

Mai Doua Vang

3 Hiawatha Ct. Apt. J

Owings Mills Md, 21117

August 7, 2013

Re: Case Number 2013-0080-SPX

August 7, 2013

RECEIVED

Re: Case Number 2013-0080-SPX

AUG 08 2013

OFFICE OF ADMINISTRATIVE HEARINGS

Dear Administrative Law Judges,

My name is Michael Scrivener and I have been a business owner in the Owings Mills area near the Groff property for over fourteen years. I have worked and been an integral part of the community for thirty two years. I, as a member of this community, would like to oppose the grant of the special exception for the Groff Property with the zoning case number of 2013-0080-SPX located at 10609 Reisterstown Rd, Owings Mills, MD 21117.

My basis for opposing the grant of special exception is the fact that this construction is detrimental to the environment and the community, and it is not consistent with the community needs.

- The traffic on the proposed stretch of Rt. 140 is already very congested throughout the day and evening, and especially during the morning and evening rush hours. An increase in traffic would potentially cause an increase in accidents and injuries to the surrounding community.
- Modifications to Rt. 140 would be required to manage the increase in traffic flow, and to ensure due diligence and offer a reasonable level of traffic safety for the community.
- The proposed addition of a gas station and food mart is not essential to the needs of the
- community. Currently there are five gas stations and food marts within 1 mile of the proposed location. The proposed addition would not enhance the area or the community's quality of life.

The quality, safety and environment of the community is my concern as I'm sure it is yours, and I believe the proposed grant would not provide any value or benefit to the community. I appreciate your consideration of this matter.

Respectfully,

Michael D. Scrivener
10301 Reisterstown Road
Owings Mills, MD 21117
(410)363 1191 (o)
(410)608 7787 (c)

Administrative Hearings - Opposing the grant of a special exception for Case # 2013-0080

From: Yitzchok Attar <galaxy_studio@hotmail.com>
To: "administrativehearings@baltimorecountymd.gov" <administrativehearings@b...>
Date: 8/8/2013 5:38 PM
Subject: Opposing the grant of a special exception for Case # 2013-0080

RECEIVED

AUG 09 2013

Dear Judge Beverungen,

OFFICE OF ADMINISTRATIVE HEARINGS

My name is Yitzchok Attar and I am a resident of the Owings Mills neighborhood and within **0.5 mile distance from the Groff property as well as a business owner in this neighborhood**. I, as a member of this community, would like to oppose the grant of the special exception for the Groff Property with the zoning case number of 2013-0080-SPX located at 10609 Reisterstown Rd, Owings Mills, MD 21117.

Having another huge gas station and convenient store is very detrimental to this neighborhood. Traffic is really bad on Reisterstown road and Owings Mills already and big stores like Wawa will attract more traffic to the neighborhood. We ask you to please help us by not granting this special exception.

Also these 24/7 huge stations usually attract drug dealers and homeless people to themselves during night time. We are seeing an increase in the crime rate of the neighborhood already and having a Wawa build on this property will contribute a lot to that as well. Besides all these, Wawa is trying to build the store over a floodplain which can endanger everyone in the neighborhood as well as the environment.

This project also does not adhere to the following Rules and Regulations of the Baltimore county Zoning Department, Section 502, stating:

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;

[Bill No. 45-1982]

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

[Bill No. 74-2000]

Sincerely,

Yitzchok Attar

DEBBIE EICHNER, TRANSCRIPTIONIST

8101 Bletzer Road
Baltimore, Maryland 21222-2824
(410) 477-1242

TRANSCRIPTION ACCOUNT

Law Offices of G. Macy Nelson, LLC
401 Washington Avenue
Suite 803
Towson, Maryland 21204

Attn: Linda DellaRose, Paralegal

DATE April 8, 2014

RECEIVED
APR 23 2014

BALTIMORE COUNTY
BOARD OF APPEALS

(Please make check payable to Debbie Eichner)

IN THE MATTER OF

No. 1948

Case # 13-080-X

P & H \$ 10.00 - delivered

GROFF PROPERTY

March 12, 2014 - testimony of Patrick C. Richardson only

38 pages at \$4.00 per page - Total \$ 152.00

SUBTOTAL \$ 162.00

LESS DEPOSIT RECEIVED \$ 0

BALANCE DUE \$ 162.00

THIS INVOICE IS DUE AND PAYABLE WHEN RENDERED

Please make check payable to Debbie Eichner

DEBBIE EICHNER, TRANSCRIPTIONIST

8101 Bletzer Road
Baltimore, Maryland 21222-2824
(410) 477-1242

TRANSCRIPTION ACCOUNT

DATE April 10, 2014

Law Offices of G. Macy Nelson, LLC
401 Washington Avenue
Suite 803
Towson, Maryland 21204

Attn: Linda DellaRose, Paralegal

RECEIVED
APR 23 2014

BALTIMORE COUNTY
BOARD OF APPEALS

(Please make check payable to Debbie Eichner)

IN THE MATTER OF

No. 1950

Case # 13-080-X

e-mailed

P & H \$ 10.00 - delivered after 4-22

GROFF PROPERTY

Expedited rate charge

March 12, 2014 - testimony of Ken Schmid only

35 pages at \$5.00 per page - Total \$ 175.00

SUBTOTAL \$ 185.00

LESS DEPOSIT RECEIVED \$ 0

BALANCE DUE \$ 185.00

THIS INVOICE IS DUE AND PAYABLE WHEN RENDERED

Please make check payable to Debbie Eichner

Real Property Data Search (w3)

[Search Help](#)

Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Account Identifier:	District - 04 Account Number - 2200006373	
Owner Information		
Owner Name:	GROFF WILLIAM D 3RD GROFF MARY J PO BOX 8 OWINGS MILLS MD 21117-0008	Use: COMMERCIAL Principal Residence: NO Deed Reference: 1) /09147/ 00292 2)
Mailing Address:		
Location & Structure Information		
Premises Address:	REISTERSTOWN RD 0-0000	Legal Description: 6 AC ES REISTERSTOWN SE COR BONITA AV
Map: 0058	Grid: 0021	Parcel: 0866
Sub District:	Subdivision: 0000	Section:
Block:	Lot:	Assessment Year: 2011
Plat No:	Plat Ref:	Town: NONE
Special Tax Areas:	Ad Valorem:	Tax Class:
Primary Structure Built	Above Grade Enclosed Area	Finished Basement Area
Property Land Area 6.0000 AC	County Use 06	
Stories	Basement	Type
Exterior	Full/Half Bath	Garage
Last Major Renovation		
Value Information		
Base Value	Value	Phase-in Assessments
As of 01/01/2011	As of 07/01/2012	As of 07/01/2013
Land: 376,000	376,000	
Improvements: 141,500	141,500	
Total: 517,500	517,500	517,500
Preferential Land: 0		0
Transfer Information		
Seller: GROFF WILLIAM D, JR	Date: 04/22/1992	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /09147/ 00292	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	07/01/2012 07/01/2013
County: 000		0.00
State: 000		0.00
Municipal: 000		0.00 0.00
Tax Exempt:	Special Tax Recapture:	
Exempt Class:	NONE	
Homestead Application Information		
Homestead Application Status: No Application		

Real Property Data Search (w3)

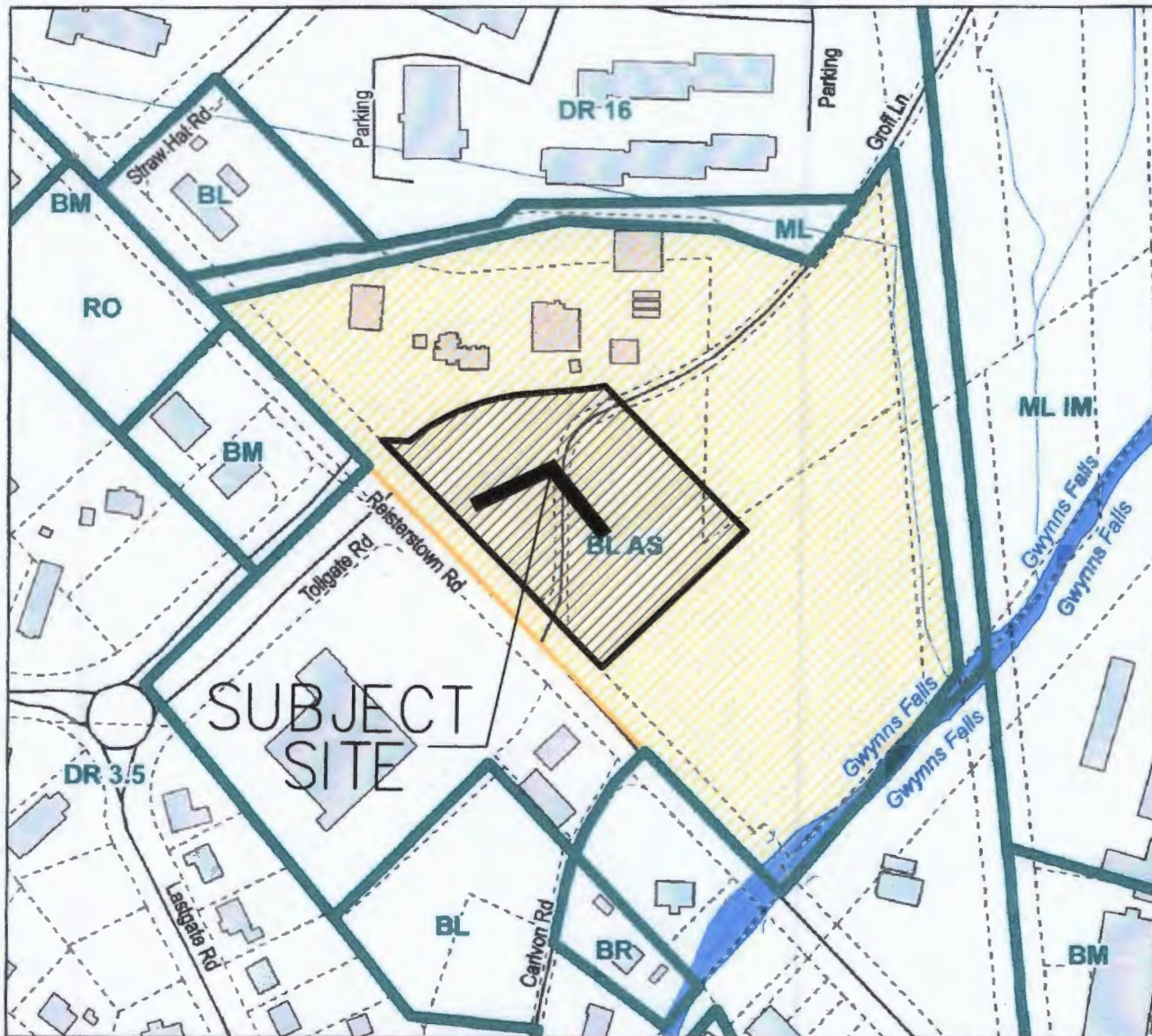
Search Help

Search Result for BALTIMORE COUNTY

View Map		View GroundRent Redemption		View GroundRent Registration	
Account Identifier:		District - 04 Account Number - 0407058460			
Owner Information					
Owner Name:		GROFF WILLIAM D 3RD		Use:	COMMERCIAL
Mailing Address:		PO BOX 8 OWINGS MILLS MD 21117-0008		Principal Residence:	NO
				Deed Reference:	1) /30128/ 00417 2)
Location & Structure Information					
Premises Address:		REISTERSTOWN RD 0-0000		Legal Description:	1.829 AC ES REISTERSTOWN RD BONITA AV
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:
0058	0021	0297		0000	
				Block:	Lot:
					2011
				Assessment Year:	Plat No:
					Plat Ref:
				Town:	NONE
				Ad Valorem:	
				Tax Class:	
Special Tax Areas:					
Primary Structure Built		Above Grade Enclosed Area		Finished Basement Area	Property Land Area
					1.8200 AC
					County Use
					06
Stories	Basement	Type	Exterior	Full/Half Bath	Garage
					Last Major Renovation
Value Information					
		Base Value	Value	Phase-in Assessments	
			As of	As of	As of
			01/01/2011	07/01/2012	07/01/2013
Land:		329,200	329,200		
Improvements		0	0		
Total:		329,200	329,200	329,200	329,200
Preferential Land:		0			0
Transfer Information					
Seller: GROFF WILLIAM D,JR		Date: 11/15/2010		Price: \$0	
Type: NON-ARMS LENGTH OTHER		Deed1: /30128/ 00417		Deed2:	
Seller: PANITZ LEON J ET AL		Date: 10/17/1957		Price: \$6,000	
Type: ARMS LENGTH IMPROVED		Deed1: /03250/ 00542		Deed2:	
Seller:		Date:		Price:	
Type:		Deed1:		Deed2:	
Exemption Information					
Partial Exempt Assessments:		Class		07/01/2012	07/01/2013
County:		000		0.00	
State:		000		0.00	
Municipal:		000		0.00 0.00	0.00 0.00
Tax Exempt:		Special Tax Recapture:			
Exempt Class:		NONE			
Homestead Application Information					
Homestead Application Status: No Application					

CZMP 2012 - Issue Map

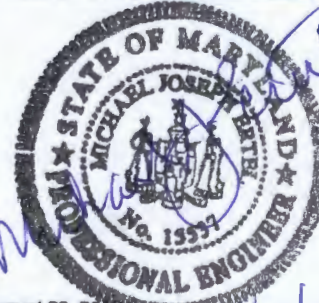
Holding Number: 109/Issue Number: 2-003



Iteration: COUNTY COUNCIL/1 ADC Reference Grid: 4576E3

Zone	District	Acreeage
BL	AS	10.76

Total Acreeage: 10.76

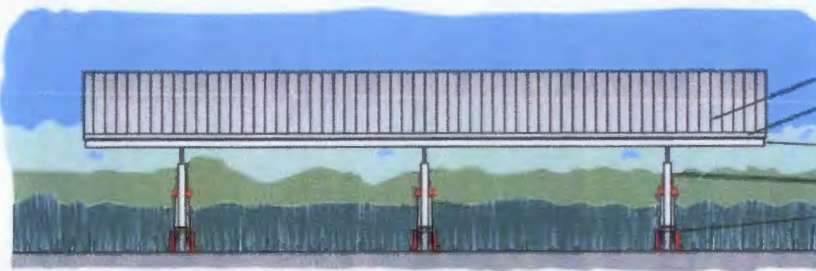


Publication Date: August 23, 2012
 Publication Agency: Office of Planning
 Projection/Datum: Maryland State Plane,
 FIPS 1900, NAD 1983/91 HARN, US Foot

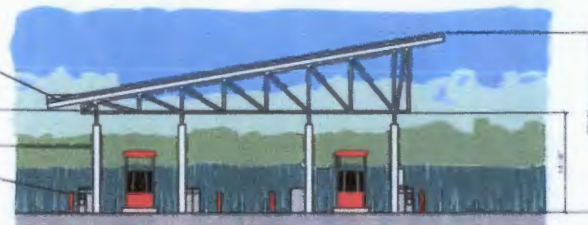
9/28/12

2013-0080-SPX





FRONT ELEVATION - STEEL CANOPY



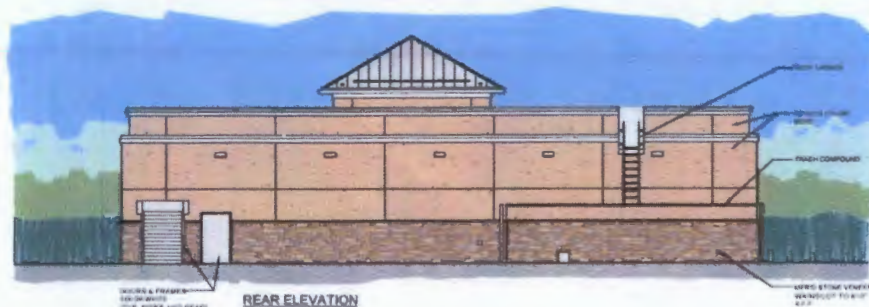
SIDE ELEVATION - STEEL CANOPY



RIGHT SIDE ELEVATION



FRONT ELEVATION



REAR ELEVATION



LEFT SIDE ELEVATION

Proposed Wawa
Rt 355 & Holiday Drive
Frederick, Maryland

March 26, 2012

Scale: 1/8" = 1'-0"

Store Code: W40

lma | ARCHITECTS LLC

921 Penlyn - Blue Bell Pike - Blue Bell, PA 19422

2013-0080-SPX

CASE NAME _____
CASE NUMBER 2013-0080-X
DATE OCTOBER 18, 2013

[illegible]

CASE NAME 10600 Reinston Rd
CASE NUMBER 2013-0020-SPHX
DATE OCTOBER 21, 2013

[illegible]

CASE NAME _____
CASE NUMBER 2013-0080-X
DATE 10-18-2013

CASE NAME _____
CASE NUMBER 2013-0080-X
DATE 10-18-2013

[illegible]

PLEASE PRINT CLEARLY

CASE NAME

CASE NUMBER 2013-0080

DATE 10-21-13

CITIZEN'S SIGN-IN SHEET

[illegible]

IN THE MATTER OF:

WILLIAM AND MARY GROFF
CASE NUMBER: 13-080-X

Hearing Date: March 5, 2014

Pursuant to Notice, the above-entitled hearing was held before the Board of Appeals for Baltimore County at the Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake Avenue, Towson, Maryland 21204, commencing at 10:00 AM.

PANEL PRESIDING:

WENDELL GRIER, CHAIRMAN

DAVID L. THURSTON, BOARD

RICHARD A. WISNER, BOARD

PRESENT ON BEHALF OF THE PARTIES:

ON BEHALF OF THE PETITIONER:

G. SCOTT BARHIGHT, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:

G. MACY NELSON, ESQUIRE

Christine R. Leary
9529 Fox Farm Road
Baltimore, Maryland 21236

1 (ON RECORD - 10:04:11 AM)

2 CHAIRMAN GRIER: Are we ready? Gentlemen, we are
3 here this morning for a regularly scheduled meeting of the
4 Baltimore County Board of Appeals. This morning we're here in
5 the matter of William and Mary Groff, legal owners, 10609
6 Reisterstown Road, Fourth Election District, 2nd Councilmanic
7 District, case number 13-080-X. This is concerning a Petition
8 for a special exception to allow an automotive service station
9 use and combination with a convenience store greater than
10 fifteen hundred square feet. This is an appeal from the
11 October 31st, '13 Opinion and Order of the Administrative Law
12 Judge wherein the requested relief was granted with conditions.
13 That much being said, counsel, would you identify yourselves,
14 please.

15 MR. BARHIGHT: Good morning, Mr. Chairman, Members of
16 the Board. My name is Scott Barhight, I'm an attorney with
17 Whiteford, Taylor & Preston with offices here in Towson at 1
18 West Pennsylvania Avenue. I'm here on behalf of your Appellee,
19 the Petitioners below, DMS Tollgate, LLC, who are the contract
20 purchasers of the Groff property, which is known as the Groff
21 property.

22 CHAIRMAN GRIER: All right.

23 MR. BARHIGHT: Thank you and good morning.

24 CHAIRMAN GRIER: Good morning.

25 MR. NELSON: Good morning, Chairman Grier and Members

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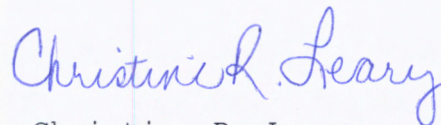
CERTIFICATE OF TRANSCRIBER

I hereby certify that the hearing In the Matter of William and Mary Groff, case number 13-080-X, heard before the Board of Appeals of Baltimore County, March 5, 2014 were recorded by means of audiotape.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 174 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness thereof, I have affixed my signature this 1st day of September, 2014.



Christine R. Leary

Transcriber

1
2 **IN THE MATTER OF:**

3 **GROFF PROPERTY**
4 **CASE NUMBER: 13-080-X**
5

6 Hearing Date: March 12, 2014

7 Pursuant to Notice, the above-entitled hearing was held before the Board of Appeals for
8 Baltimore County at the Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake
9 Avenue,

10 Towson, Maryland 21204, commencing at 11:06 AM.

11 **(CROSS EXAM. OF PATRICK C. RICHARDSON, JR. ONLY)**

12 **PANEL PRECIDING:**

13 **WENDELL H. GRIER, CHAIRMAN**

14 **DAVID THURSTON, BOARD**

15 **RICHARD WISNER., BOARD**

16 **PRESENT ON BEHALF OF THE PARTIES:**

17
18 **ON BEHALF OF THE APPELLEES/PETITIONERS:**

19 **SCOTT BARHEIDT, ESQUIRE**
20 **ADAM BAKER, ESQUIRE**

21 **ON BEHALF OF THE APPELLANT/PROTESTANTS:**

22 **G. MACY NELSON, ESQUIRE**

23
24
25

Debbie H. Eichner
8101 Bletzer Road
Baltimore, Maryland 21222

 **ORIGINAL**

1 PLEASE NOTE: This is not a complete transcript
2 of the hearing heard before the Board of Appeals on March 12,
3 2014. It is the cross examination of Patrick C. Richardson,
4 Jr., only.

5
6
7 (ON THE RECORD AT 11:06 AM)

8 CHAIR GRIER: Mr. Nelson, are you ready to
9 cross examine?

10 MR. NELSON: Thank, thank you Chairman. Mr.
11 Richardson, with regard to Exhibit 13 this is the exhibit which
12 shows the one mile radius and the presence of the existing gas
13 stations, (INAUDIBLE) sir. I want to ask you about that
14 topic. I understand your, your opinion that there are no
15 abandoned gas stations within one, within one mile. Do you
16 recall that?

17 MR. RICHARDSON: Yeah.

18 MR. NELSON: And, and I understand that you
19 drove the roads and saw nothing. I don't quarrel with that.
20 But I wanted to ask you about something you said about you
21 inquire with Baltimore County for their record. What records?
22 How do you do that?

23 MR. RICHARDSON: If the Zoning Office has any
24 records of abandoned stations.

25 MR. NELSON: So, did you ask them in this case

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CERTIFICATE OF TRANSCRIBER

I hereby certify that the hearing in the matter of Groff Property, case number 13-080-X heard before the Board of Appeals for Baltimore County, March 12, 2014 were recorded by means of audiotape.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 38 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness thereof, I have affixed my signature this 8th day of April, 2014.

Debbie H. Eichner
Debbie H. Eichner
Transcriber

1 **IN THE MATTER OF:**

2 **GROFF PROPERTY**
3 **CASE NUMBER: 13-080-X**
4 -----

5 **Hearing Date: March 12, 2014**

6 **Pursuant to Notice, the above-entitled hearing was held before the**
7 **Board of Appeals for**

8 **Baltimore County at the Jefferson Building, Second Floor, Suite 203,**
9 **105 West Chesapeake Avenue,**

10 **Towson, Maryland 21204, commencing at 11:06 AM.**

11 **(CROSS EXAM. OF KENNETH W. SCHMID ONLY)**

12 **PANEL PRECIDING:**

13 **WENDELL H. GRIER, CHAIRMAN**

14 **DAVID THURSTON, BOARD**

15 **RICHARD WISNER., BOARD**

16 **PRESENT ON BEHALF OF THE PARTIES:**

17 **ON BEHALF OF THE APPELLEES/PETITIONERS:**

18 **SCOTT BARHEIDT, ESQUIRE**
19 **ADAM BAKER, ESQUIRE**
20

21 **ON BEHALF OF THE APPELLANT/PROTESTANTS:**

22 **G. MACY NELSON, ESQUIRE**
23

24 **Debbie H. Eichner**
25 **8101 Bletzer Road**
Baltimore, Maryland 21222



ORIGINAL

1 PLEASE NOTE: This is not a complete transcript
2 of the hearing heard before the Board of Appeals on March 5,
3 2014. It is the cross examination of Kenneth W. Schmid only.
4

5
6 (ON THE RECORD AT 2:44 PM)

7 CHAIR GRIER: We are at cross examination. Sir?

8 MR. NELSON: Mr. Schmid, I'm not very good at
9 looking at these plats. I always get confused by the scale.
10 What is the scale?

11 MR. SCHMID: One inch equals fifty feet.

12 MR. NELSON: So, one inch equals fifty feet. And
13 I'm with Mr. Schlachman. I, I looked at the edges of the, the
14 road. You can barely make out the existing drop. It's hard to
15 read, but could you tell us which mark delineate the edge of a
16 road? And for example, let's take Groff, the proposed Groff
17 Lane. What, what is, what are the edges of the proposed Groff
18 Lane?

19 MR. SCHMID: Well, it's identified--

20 MR. NELSON: Keep your voice up.

21 MR. SCHMID: It's identified as forty foot
22 easement. And it's pointing to the two lines on each side of
23 the road. That's the width of the pave of the road.

24 MR. NELSON: Okay. So, that's the-- So, so, the
25 edge of Groff Lane would be at the, where that arrow ends?

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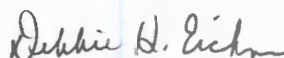
CERTIFICATE OF TRANSCRIBER

I hereby certify that the hearing in the matter of Groff Property, case number 13-080-X heard before the Board of Appeals for Baltimore County, March 12, 2014 were recorded by means of audiotape.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 35 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness thereof, I have affixed my signature this 10th day of April, 2014.


Debbie H. Eichner

Transcriber

IN THE MATTER OF:

WILLIAM AND MARY GROFF
CASE NUMBER: 13-080-X

Hearing Date: March 12, 2014

Pursuant to Notice, the above-entitled hearing was held before the Board of Appeals for Baltimore County at the Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake Avenue, Towson, Maryland 21204, commencing at 10:00 AM.

PANEL PRESIDING:

WENDELL GRIER, CHAIRMAN

DAVID L. THURSTON, BOARD

RICHARD A. WISNER, BOARD

PRESENT ON BEHALF OF THE PARTIES:

ON BEHALF OF THE PETITIONER:

G. SCOTT BARHIGHT, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:

G. MACY NELSON, ESQUIRE

Christine R. Leary
9529 Fox Farm Road
Baltimore, Maryland 21236

1 (ON RECORD - 10:09:56 AM)

2 CHAIRMAN GRIER: Okay. All right. We are here in
3 day number two in case 13-080-X, make sure I'm correct on that,
4 yes. In the matter of William and Mary Groff, legal owners,
5 10609 Reisterstown Road, in the Fourth Election District, in
6 the 2nd Councilmanic District, and this is a Petition for a
7 special exception to allow an automobile service station use in
8 combination with a convenience store greater than fifteen
9 hundred square feet. Counsel, please identify yourselves.

10 MR. BARHIGHT: Good morning, Mr. Chairman, Members of
11 the Board. My name is Scott Barhight, I'm with Adam Baker,
12 Whiteford, Taylor & Preston, on behalf of the Appellee,
13 Petitioner below, DMS Tollgate, Inc.

14 CHAIRMAN GRIER: Thank you, sir.

15 MR. NELSON: Good morning, Mr. Chairman and Members
16 of the Board. Macy Nelson on behalf of the
17 Citizen/Protestants.

18 CHAIRMAN GRIER: Good to see you again, sir. Now,
19 when we were last here, we were pending a new wit, a new
20 witness, right, I believe?

21 MR. BARHIGHT: Correct.

22 CHAIRMAN GRIER: Okay.

23 MR. BARHIGHT: Correct. About to call the witness
24 but if we could, if we could have the site plan that we could
25 put up on the board from the Board exhibits. And I also want

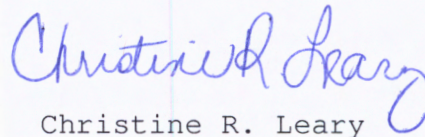
CERTIFICATE OF TRANSCRIBER

I hereby certify that the hearing In the Matter of William and Mary Groff, case number 13-080-X, heard before the Board of Appeals of Baltimore County, March 12, 2014 were recorded by means of audiotape.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 226 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness thereof, I have affixed my signature this 12th day of September, 2014.



Christine R. Leary

Transcriber

IN THE MATTER OF:

WILLIAM AND MARY GROFF
CASE NUMBER: 13-080-X

Hearing Date: April 2, 2014

Pursuant to Notice, the above-entitled hearing was held before the Board of Appeals for Baltimore County at the Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake Avenue, Towson, Maryland 21204, commencing at 9:30 AM.

PANEL PRESIDING:

WENDELL GRIER, CHAIRMAN

DAVID L. THURSTON, BOARD

RICHARD A. WISNER, BOARD

PRESENT ON BEHALF OF THE PARTIES:

ON BEHALF OF THE PETITIONER:

G. SCOTT BARHIGHT, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:

G. MACY NELSON, ESQUIRE

Christine R. Leary
9529 Fox Farm Road
Baltimore, Maryland 21236

1 (ON RECORD - 09:34:22 AM)

2 CHAIRMAN GRIER: Gentlemen, we are here today for a
3 regular scheduled meeting of the Baltimore County Board of
4 Appeals. We're here in this morning in the matter of William
5 And Mary Groff, legal owners, and DMS Tollgate, LLC, contract
6 purchasers, lessee rather, address of the property in question,
7 10609 Reisterstown Road, Fourth Election District, 2nd
8 Councilmanic District, case number 13-080-X. This is a
9 continuation of a case concerning a Petition for special
10 exception to allow an automotive service station use in
11 combination with a convenience store with greater than fifteen
12 hundred square feet. Good morning, again.

13 MR. BARHIGHT: Good morning.

14 CHAIRMAN GRIER: When we were last here, we were
15 listening to an expert, I believe.

16 MR. NELSON: Yes, Your Honor. Macy Nelson on behalf
17 of Citizens/Protestants. We had started the testimony of
18 Professor Andrew Miller. With your permission, I'd like to
19 recall him to the stand.

20 CHAIRMAN GRIER: Absolutely. Professor?

21 PROFESSOR MILLER: Yes, sir?

22 CHAIRMAN GRIER: Sir.

23 MR. BARHIGHT: And just for the record, Scott
24 Barhight, Adam baker, Whiteford, Taylor & Preston on behalf of
25 your Petition, DMS Tollgate, LLC.

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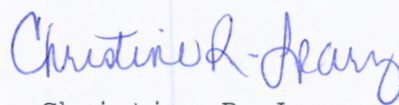
CERTIFICATE OF TRANSCRIBER

I hereby certify that the hearing In the Matter of William and Mary Groff, case number 13-080-X, heard before the Board of Appeals of Baltimore County, April 2, 2014 were recorded by means of audiotape.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 109 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness thereof, I have affixed my signature this 13th day of September, 2014.



Christine R. Leary

Transcriber

Case No.:

2013-0080-SPHX

Exhibit Sheet

ALR
10/31/13

Petitioner/Developer

Protestants

No. 1	ZAC Comments	Photo
No. 2	Site plan (redlined)	Photo
No. 3	Covenant Agreement	Photo
No. 4	R.O.G. Council Letter 10-9-2013	Photo
No. 5	building elevations	Photo
No. 6	Resume - Kenneth Schmid	Photo
No. 7	Richardson - Resume	
No. 8	County memo 10-16-2013 re: flood plain	
No. 9	Google Earth photo - Gulf	
No. 10	Google Earth photo - Exxon	
No. 11		
No. 12		



**Reisterstown~Owings Mills~ Glyndon
Coordinating Council**

October 9, 2013

Lawrence M. Stahl, Managing Administrative Law Judge
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204

RE: 2013-80080A (not listed online??) 10 digit tax account # 220006373 & 0407058460

Dear Mr. Stahl:

The Reisterstown-Owings Mills-Glyndon (ROG) Coordinating Council, Inc. , a duly incorporated entity registered with the State Department of Assessments and Taxation, and current in its registered status, has previously voted to support the request by the property owners,

DMS Development LLC
100 E. Pennsylvania Ave. Suite 210
Towson MD. 21286,

to build and operate facilities on the subject property in conformity with the covenant agreements previously established and attached. ROG further discussed the upcoming hearing at its general meeting on October 1, 2013 and agreed to continue its support. This includes the current request to have a building erected in size that exceeds current zoning limitations, subject to all elements contained in the covenant agreement, including the size limitation, the establishment of a realignment of Groff Road, and the use of building design and materials agreed upon that will be in conformity with the architectural elements of the designated historical buildings on the site.

Pursuant to the above, and the covenant agreements established, ROG does hereby extend its support to for the requested zoning relief specified and will be considered at the scheduled zoning hearing scheduled for October 18, 2013 at 10:00 AM, or as may be rescheduled. ROG requests that this letter be entered into the record, and indicates that it may have its leadership or a Board member attending the hearing to amplify on the merits of the project. ROG further requests that the covenant agreement be incorporated into the hearing decision and that this letter be accepted to satisfy Rule 8 requirements.

Sincerely,

Mark Stewart, President

attachment: covenant agreement

by email: dwiley@baltimorecountymd.gov, snuffer@baltimorecountymd.gov

P.O. Box 117 Reisterstown, Maryland 21136

Richardson Engineering, LLC

30 E. Padonia Road, Suite 500
Timonium, Maryland 21093

tel. 410-560-1502
fax 410-560-0827

Patrick C. Richardson, Jr., PE
30 E. Padonia Road, Suite 500
Timonium, Maryland 21093

EDUCATION

BSCE University of Delaware, 1982

Professional Engineer in Maryland 1988, Virginia 1993, Washington DC 1997, Delaware 1997

WORK EXPERIENCE

October 1999 to Present, Richardson Engineering, LLC

Owner of engineering firm specializing in Commercial and Residential Land Development. Work includes preparation of zoning plats, site development plans and project management for site development projects. Projects including: Giant Food Stores in Baltimore City and County, Krispy Kreme Stores in Maryland, Verizon switch station expansions in Maryland, Parkway 100 and Techwood Center in Anne Arundel County, and Columbia Technology Campus in Howard County.

July 1999 to September 1999, Purdum and Jeschke, LLC

Chief engineer responsible for preparation of layout and construction documents for commercial land developments. Work included preparation of zoning plats, site development plans and project management for sites in Maryland. Projects including: Loyola College play fields, Baltimore City, Md.; St Paul's Lutheran Church, Baltimore Co.; Red Star Yeast, Baltimore City; Giant Food Stores in Baltimore City.

February 1997 to June 1999, William Monk, Inc.

Chief engineer responsible for preparation of layout and construction documents for commercial land developments. Work included preparation of zoning plats, site development plans and project management for sites in Maryland and Washington DC.

Major projects including: Edmondson Square Shopping Center, Baltimore City, Md. Amoco Oil Company, sites in Baltimore, Anne Arundel, Prince George's, Howard and Baltimore City. Chick-fil-A Restaurant, Baltimore, Anne Arundel and Frederick Co., Md. International Trade Center Office Warehouse, Anne Arundel Co. Md. KFC Restaurants in Maryland and Washington DC.

April 1986 to Jan. 1997, STV Incorporated

Project Manager in the Site Development Department. Responsible for supervision of the preparation of design documents for the department, including review and sealing all documents submitted to reviewing agencies.

Major projects including: The New International Terminal at BWI Airport: Responsible for management of the civil aspects of the site construction including airfield taxiway and hardstand construction, reconstruction of the existing roadways and extension of the upper level roadway bridge to service the building addition. FILA Warehouse - 650,000 SF warehouse in Brandon Woods Industrial Park, Anne Arundel County, Md. Work included coordination with ongoing infrastructure grading, utilities, construction and sediment control for the adjacent activities. FILA Warehouse - 500,000 SF warehouse in Holabird Industrial Park, Baltimore City, Md. Work included getting permission to construct across Municipal Utilities, and Chesapeake Bay Critical Area mitigation. Amoco Oil Company Convenience Mart on Route 140 and Sandymount Road, Carroll County, Md. Blockbuster Video - New store in

PETITIONER'S

EXHIBIT NO. 7

BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PUBLIC WORKS
INTER-OFFICE CORRESPONDENCE

DATE: October 16, 2013

TO: Dennis A. Kennedy, Chief
P.A.I., Bureau of Development Plans Review

FROM: Terry W. Curtis, Jr, Engineer III through *TWC*
David L. Thomas, Assistant to the
Director of Public Works Office

SUBJECT: Groffs Mill Property 100-Year Flood Plain Study

Our office has received a report prepared by M. J. Consulting, Inc. for the Groffs Mill Property 100-Year Flood Plain Study your office submitted to us. We have reviewed this report and our comments are listed below.

1. Submit a copy of all computer program files used including Hec-Ras files on disk to our office for review. This disk must have input and output data provided.
2. The engineer must submit a Joint Permit Application with the Army Corp. of Engineers and the Maryland Department of the Environment. A copy of the application and a response letter from the Maryland Department of the Environment must be submitted to this office before approval of study. All other governmental permits and waivers must be filed and are the responsibility of the engineer.
3. The engineer must, upon approval of the study, submit a Letter of Map Amendment or Revision (LOMR) to The Federal Emergency Management Administration (FEMA) at the developer's expense.

We recommend that these plans and report **be accepted for filing** at this time. The comments above will not affect the validity of the submitted flood study.

If you have any questions, please feel free to contact Terry Curtis of my office on extension 3117.

Attachments
TWC:twc

cc: File



Google earth

feet
meters

10

5



Reisterstown to STRAND HAT

Petitioners No. 4



Google earth

feet
meters

10

6

Restoran o Tollgate

Petitioners No 10

Case No.:

2013-0080-SPHX

Exhibit Sheet

Petitioner/Developer

Protestants

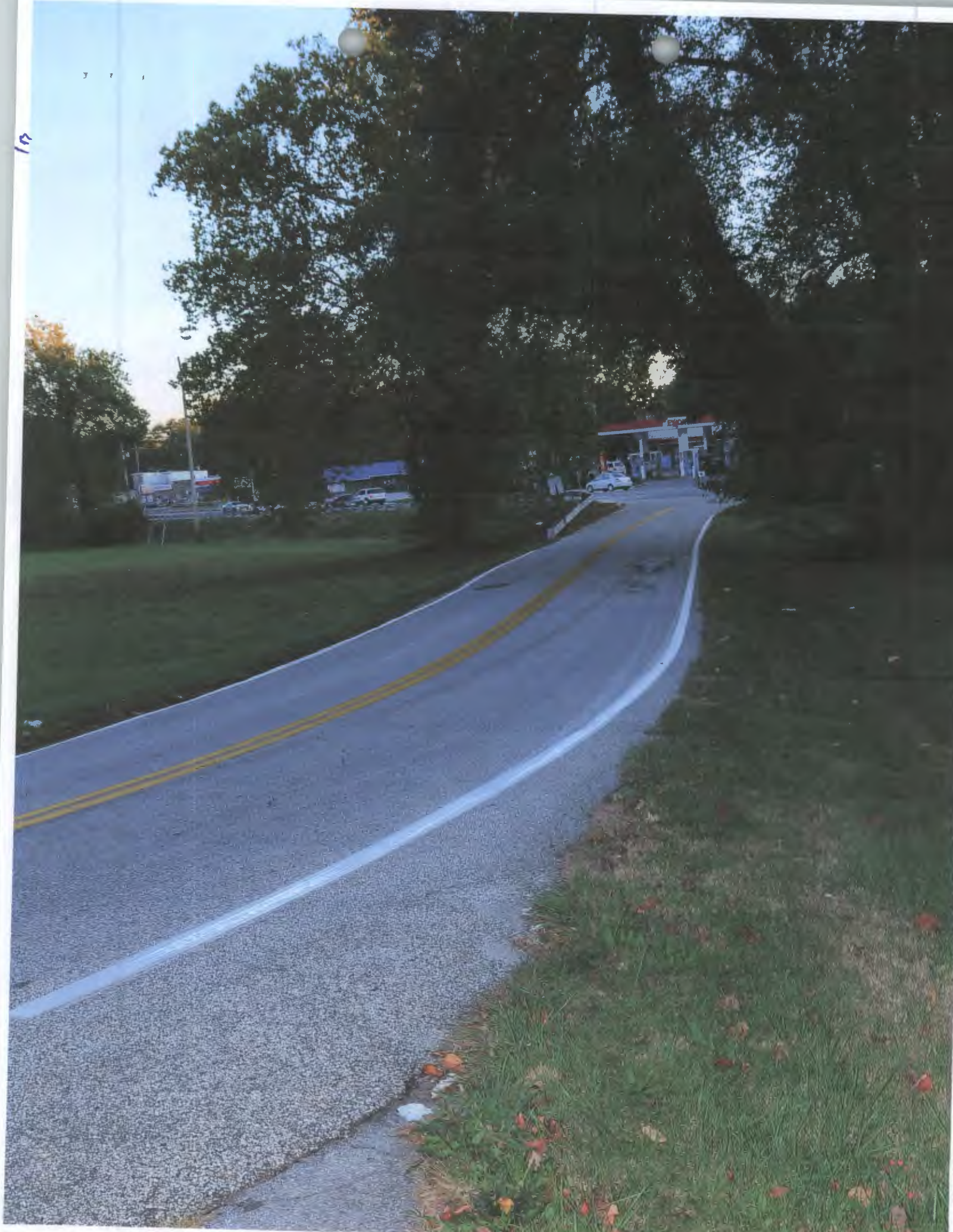
No. 1	ZAC Comments	Photo
No. 2	Site plan (redlined)	Photo
No. 3	Covenant Agreement	Photo
No. 4	R.O.G. Council Letter 10-9-2013	Photo
No. 5	building elevations	Photo
No. 6	Resume - Kenneth Schmid	Photo
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No. 12		

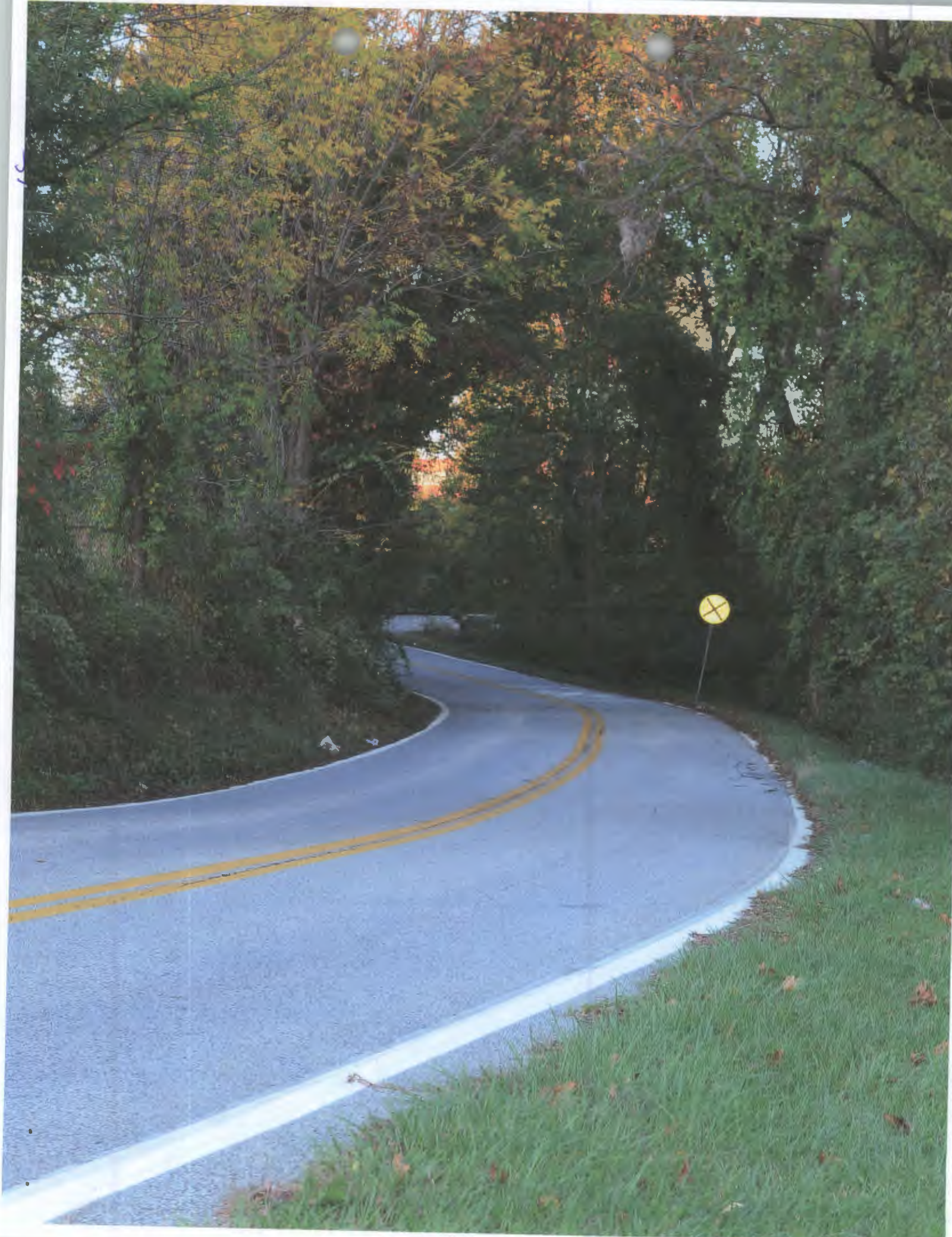
PROTESTANTS 1A



PROTESTANT'S

EXHIBIT NO. 1A-C



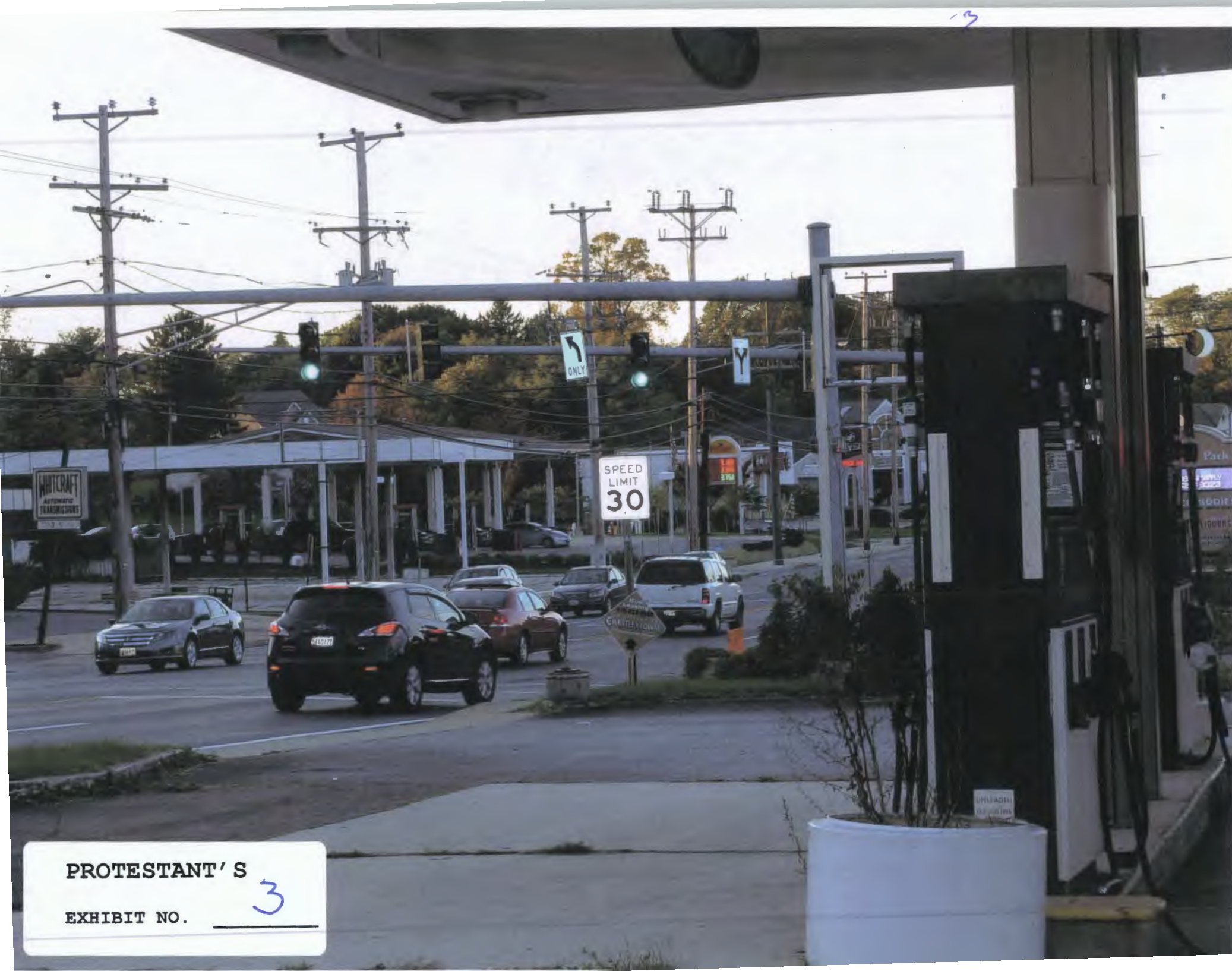


PROTESTANT' S

EXHIBIT NO. 2

2





PROTESTANT' S

EXHIBIT NO. 3



PROTESTANT' S

EXHIBIT NO. 6

Case No: 13-080XCase Name: William & Mary Groff

Exhibit List

Party: Groff / Dms Tollgate LLC Date: 3/5/14

Exhibit No:	Description:
✓ 1	ZAC Comments
✓ 2	Site Plan - (Redlined)
✓ 3	Declaration of Covenants - Association's
✓ 4	Proposed Building Smulation
✓ 5	Resume - Kenneth Schmid
✓ 6	Traffic study - Traffic Concepts 3/2013
✓ 7	SHA Comments 4/29/2013
✓ 8	Traffic Impact Study - Revised 8/2013
✓ 9	Letter From Traffic Concepts Inc to SHA
✓ 10	Letter From SHA to Mark Keelby - 10/8/2013
✓ 11	Letter From Traffic Concepts to SHA 2/4/2014
✓ 12	Patrick C Richardson Jr. - CV
✓ 13	My Neighborhood map - 1 mile Radius
✓ 14	BCo DR Package dated 11/28/2012
VERIFIED BY <u>KRC</u> DATE: <u>3/6/14</u>	

KRC 3/13/14

Case No: 13-080X

Case Name: William & Mary Joff

Exhibit List

Party: Groff / Dms Tollgate LLC

Date: 3/12/14 - DAY #2

Exhibit No:	Description:
✓ 15	100 year Floodplain study - Groff's Mill Property
✓ 16a	Letter dated 10/16/13 to Dennis Kennedy
✓ 16b	" " 8/28/13 to BCO-PW
✓ 16c	" " 5/22/13 to Dennis Kennedy
VERIFIED BY _____	DATE: _____

PETITIONER'S

EXHIBIT NO. 1



KEVIN KAMENETZ
County Executive

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

August 7, 2013

William D. & Mary Groff
P O Box 8
Owings Mills MD 21117

RE: Case Number: 2013-0080 SPHX, Address: Reisterstown Road

Dear Mr. & Ms. Groff:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on October 1, 2013. 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: jaf

Enclosures

c: People's Counsel
G. Scott Barhight, Esquire, 1 W. Pennsylvania Avenue, Suite 300, Towson MD 21204
DMS Tollgate LLC, Michael J. Ertel, 100 E Pennsylvania Avenue, Suite 210, Towson MD 21286

DECLARATION OF COVENANTS AND AGREEMENTS

THIS DECLARATION OF COVENANTS AND AGREEMENTS (this "Declaration") is made this 28th day of August, 2012, by **DMS DEVELOPMENT, LLC**, a Maryland limited liability company, having an address at 100 E. Pennsylvania Avenue, Suite 201, Towson, Maryland 21286 ("Declarant") for the benefit of **WILLIAM D. GROFF, III**, and **MARY J. GROFF**, each a Maryland resident having an address at P.O. Box 8, Owings Mills, Maryland 21117, as their interests may appear (together, "the Groffs"), **THE REISTERSTOWN - OWINGS MILLS - GLYNDON COORDINATING COUNCIL, INC.**, a Maryland corporation having an address at P.O. Box 117, Reisterstown, MD 21136 ("ROG"), **THE GREATER GREENSPRING ASSOCIATION, INC.**, a Maryland corporation having an address at 119 St. Thomas Lane, Owings Mills, Maryland 21117 ("GGA").

RECITALS

A. Declarant has an equitable interest in all that real property located in Baltimore County, Maryland, being more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"),

B. The Groffs are the owner of certain real property located directly adjacent to the Property, being more particularly described on Exhibit B attached hereto and made a part hereof (the "Retained Property") and the owner of the legal interest in the Property.

C. In order to ensure that: (i) the Property will be developed in a manner consistent with and complimentary to the historic character of the Retained Property, and (ii) that ROG and GGA did not oppose the rezoning of the Property (the "New Zoning Classification"), enabling Declarant to obtain zoning classification that will allow the construction of a gasoline station with a convenience store (a "Gasoline Service Station") upon the Property, Declarant agreed to establish certain covenants and restrictions upon the Property relating to the construction and the use of the improvements on the Property by the owner from time to time of all or any portion of the Property (the "Owner") and any occupant thereof, all as more particularly set forth below.

AGREEMENTS

NOW THEREFORE, in consideration of the foregoing Recitals, Declarant hereby declares that the Property shall be held, conveyed, encumbered, leased, used, occupied, and improved subject to the provisions hereinafter set forth.

1. **Architectural Elements of Buildings located on the Property.**

(a) Declarant hereby covenants and agrees that if Declarant constructs a Gasoline Service Station upon the Property, then any improvements to the Property in connection with such Gasoline Service Station, following the issuance of the New Zoning Classification shall contain a minimum floor area of three thousand (3,000) square feet and a maximum floor area of six thousand (6,000) square feet, as may be defined or further limited by decisions of the County under Special Exception hearings. Furthermore, Declarant hereby covenants and agrees that any such Gasoline Service Station shall contain no more pumps than is permitted pursuant to the New Zoning Classification, it being anticipated that any Gasoline Service Station located on the Property will include between six (6) and twelve (12) gasoline pumps. So long as any Gasoline Service Station located on the Property complies with the provisions of this section, and the following sections relating to the exterior color and design of the Gasoline Service Station, Declarant shall not be required to obtain the prior approval of the

PETITIONER'S

EXHIBIT NO. 34



Left Side Elevation



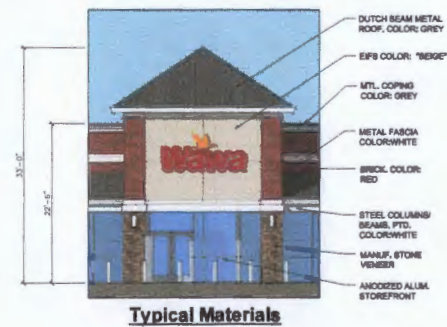
Front Elevation



Rear Elevation



Right Side Elevation



Proposed Wawa
Reisterstown Rd. + Tollgate Rd.
Baltimore County, MD

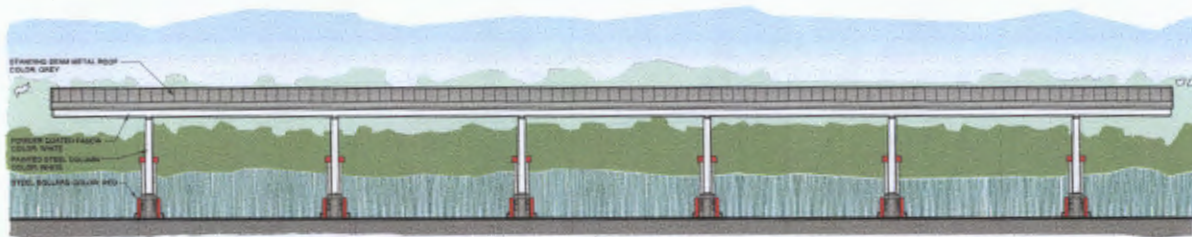
January 31, 2013

Scale: 1/8" = 1'-0"

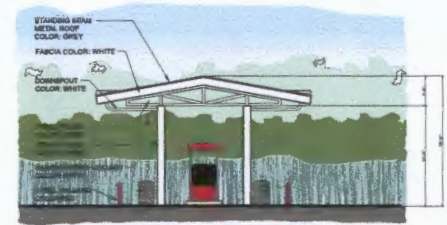
Store Code: W45T BRICK/CUSTOM

Cuhaci & Peterson
Architects Engineers Planners
ORLANDO • PHILADELPHIA

921 Penlyn - Blue Bell Pike - Blue Bell, PA 19422



FRONT ELEVATION - STEEL CANOPY
MATERIALS AND FINISHES SIMILAR OPPOSITE SIDE ELEVATION



SIDE ELEVATION - STEEL CANOPY
MATERIALS AND FINISHES SIMILAR OPPOSITE SIDE ELEVATION

Proposed Wawa

Reisterstown & Tollgate
Baltimore County, MD

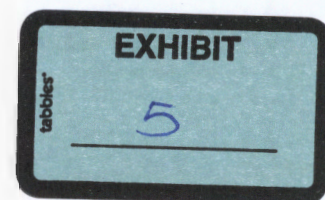
January 31, 2013

Scale: 1/8" = 1'-0"

Store Code: W45T-Custom

lma | ARCHITECTS LLC

821 Penllyn - Blue Bell Pike - Blue Bell, PA 19422



Professional Resume of
Kenneth W. Schmid
11022 Pfeffers Road
Kingsville, MD 21087

EXPERIENCE

January 1993 – Present

Traffic Concepts, Inc.
325 Gambrills Road, Suite E
Gambrills, MD 21054

Owner, Vice-President

Provides traffic engineering consultant services to the public and private sectors including:

Expert testimony before the County Zoning Officer and Board of Appeals for Special Exception and Rezoning cases. Development of Feasibility Analysis including access alternatives and the assessment of the impact of pertinent Adequate Public Facilities legislation of local governments on potential development sites. Development of Traffic Impact Studies including critical lane, highway capacity, and signal warrant analysis; recommendations of road improvements necessary to meet various Adequate Public Facility criteria and leading negotiations with government agencies to secure waivers for Adequate Public Facilities legislation. Design and preparation of traffic signal, maintenance of traffic, pavement marking, and road improvement concept plans. Preparation of technical and price proposals.

December 1989 – January 1993

Ronald W. Johnson Associates, Inc.
2661 Riva Road, Suite 420
Annapolis, MD 21401

Chief – Traffic Engineering Division

TRAFFIC IMPACT STUDY

TOLLGATE ROAD COMMERCIAL (Groff Lane Realignment)

Convenience Market with
Gasoline Sales, Restaurant & Retail

Baltimore County, Maryland

March, 2013

Prepared For:
DMS Development, LLC

Prepared By:
TRAFFIC CONCEPTS, INC.
325 Gambrills Road
Suite B
Gambrills, Maryland 21054
Phone 410-923-7101
Fax 410-923-6473

TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION	1
EXHIBIT 1 SITE LOCATION	
EXHIBIT 2 LANE CONFIGURATION	
EXISTING CONDITION	4
EXHIBIT 3 EXISTING TRAFFIC VOLUMES	
BACKGROUND CONDITION	7
EXHIBIT 4 PROJECTED GROWTH RATES	
EXHIBIT 5 BACKGROUND DEVELOPMENT LOCATION	
EXHIBIT 6 BACKGROUND TRAFFIC VOLUMES	
EXHIBIT 7 TOTAL BACKGROUND TRAFFIC VOLUMES	
FUTURE CONDITION	14
EXHIBIT 8 FUTURE LANE CONFIGURATION	
EXHIBIT 9 DIVERTED TRIPS	
EXHIBIT 10 ADJUSTED TOTAL BACKGROUND TRAFFIC	
EXHIBIT 11 SITE GENERATED TRAFFIC – NEW TRIPS	
EXHIBIT 12 SITE GENERATED TRAFFIC – PASS-BY TRIPS	
EXHIBIT 13 TOTAL FUTURE TRAFFIC VOLUMES	
CONCLUSIONS AND RECOMMENDATIONS	22
APPENDICES	
APPENDIX I CRITICAL LANE ANALYSIS CALCULATIONS	
APPENDIX II TRAFFIC COUNT INFORMATION	



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

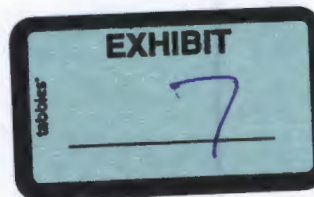
Darrell B. Mobley, Acting Secretary
Melinda B. Peters, Administrator

MARYLAND DEPARTMENT OF TRANSPORTATION

April 29, 2013

RE: Baltimore County
MD 140 at Groff Lane
Tollgate Road Commercial
SHA Tracking No. 13APBA012XX
Traffic Impact Study
Mile Point 5.63

Mr. Mark Keeley
Traffic Concepts, Inc.
325 Gambrills Road
Suite B
Gambrills, Maryland 21054



Dear Mr. Keeley,

Thank you for the opportunity to review the Traffic Impact Study prepared by Traffic Concepts Inc., dated March, 2013, for the Tollgate Road Commercial development in Baltimore County, Maryland. The major report findings and the Maryland State Highway Administration (SHA) comments and conclusions are as follows.

- Access to the 4,300 gross square foot (gsf) convenience market with gasoline sales, 4,620 gsf restaurant, and 2741 gsf retail buildings is proposed via one (1) full movement site access to MD 140 and two (2) right-in/right-out accesses to MD 140.
- The study analyzed MD 140 at Tollgate Road under existing, background, and future conditions.
- The report concludes that with the addition of the Groff Lane approach to the MD 140 at Tollgate Road signal, the intersection would continue to meet acceptable levels of service.

Based on the information provided, SHA offers the following comments:

1. The three-percent background growth application for a one-year time frame appears reasonable for the study.
2. The proposed MD 140 at Tollgate Road/Realigned Groff Lane signalized intersection creates a local-through connection for residents of the Tollgate Community to points north along Owings Mills Boulevard. That being said, the volume of re-assigned through traffic between Tollgate Road and Realigned Groff Lane may have been underestimated in the analysis. Please provide data (e.g. origin-destination data, peak hour observations, etc.) to support the low through trip re-assignment.

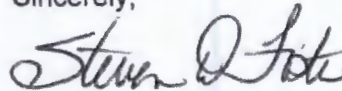
My telephone number/toll-free number is _____
Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.roads.maryland.gov

3. This development will add significant traffic to the roadway network. For this reason MD 140 at MD 940 and MD 140 at Straw Hat Road must be included in the study. Also the existing signal system on MD 140 must be evaluated to determine the impact the modification to MD 140 at Tollgate Road will have on the road network. Please provide this analysis.
4. The study proposes modifying Groff Road and the driveway north of Tollgate Road to a right-in/right-out access point along the east side of MD 140 and adding a full movement access point opposite Tollgate Road on MD 140. SHA would prefer one full movement access point at Tollgate Road. Please update the analysis.
5. The study proposes a split phase signal on MD 140 at Tollgate Road. This new access point should line up with Tollgate Road so a split phase is not needed. Please update the plans and analysis.

SHA will require the submission of six (6) hard copies and one (1) electronic revised traffic impact study and point-by-point response. Please send this information to the SHA Access Management Division addressed to Mr. Steven D. Foster to the attention of Ms. Kelly Kosino and reference the SHA Tracking Number on the submission. Unless specifically indicated in the SHA response on this report, the comments contained herewith do not supersede previous comments made on this development application. Please keep in mind that you can view the reviewer and project status via the SHA Access Management Division's web page at (<http://www.roads.maryland.gov/pages/amd.aspx>). If you have any questions regarding the enclosed traffic report comments, please contact Ms. Kosino at 410-545-8897 or kkosino@sha.state.md.us.

Sincerely,



Steven D. Foster, Chief
Access Management Division

SDF/kk

cc: Ms. Rola Daher, SHA DSED
Ms. Mary Dietz, SHA RIPD
Mr. Bob French, SHA CPD
Mr. William Groff and Ms. Mary Groff/PO
Box 8, Owings Mills, MD 21117
Mr. Derek Gunn, SHA DSED
Ms. Dianna Hines, SHA District 4
Ms. Damilola Kehinde, SHA RIPD
Mr. Dennis Kennedy, Baltimore County
Ms. Kelly Kosino, SHA AMD
Ms. Erin Kuhn, SHA District 4 Traffic

Ms. L'Kiesha Markley, SHA RIPD
Ms. Rochelle Outten, SHA AMD
Mr. Johnson Owusu-Amoako, SHA CPD
Mr. Saed Rahwanji, SHA TDSD
Ms. Erica Rigby, SHA AMD
Mr. Errol Stoute, SHA TDSD
Mr. Morteza Tadayon, SHA DSED
Ms. Wendy Wolcott, SHA District 4
Mr. Rich Zeller, SHA AMD
DMS Development LLC/100 E Pennsylvania
Avenue, Suite 210, Towson, MD 21286

EXHIBIT

8

TRAFFIC IMPACT STUDY

TOLLGATE ROAD COMMERCIAL (Groff Lane Realignment)

Convenience Market with
Gasoline Sales, Restaurant & Retail

Baltimore County, Maryland

Revised August, 2013

Prepared For:
DMS Development, LLC

Prepared By:
TRAFFIC CONCEPTS, INC.
325 Gambrills Road
Suite B
Gambrills, Maryland 21054
Phone 410-923-7101
Fax 410-923-6473

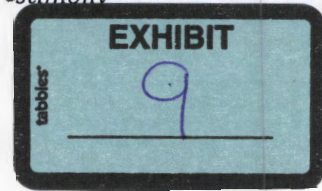
TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION	1
EXHIBIT 1 SITE LOCATION	
EXHIBIT 2 LANE CONFIGURATION	
EXISTING CONDITION	5
EXHIBIT 3 EXISTING TRAFFIC VOLUMES	
BACKGROUND CONDITION	7
EXHIBIT 4 PROJECTED GROWTH RATES	
EXHIBIT 5 BACKGROUND DEVELOPMENT LOCATION	
EXHIBIT 6 (6A-6B) BACKGROUND TRAFFIC VOLUMES	
EXHIBIT 7 TOTAL BACKGROUND TRAFFIC VOLUMES	
FUTURE CONDITION	15
EXHIBIT 8 FUTURE LANE CONFIGURATION	
EXHIBIT 9 DIVERTED TRIPS	
EXHIBIT 10 ADJUSTED TOTAL BACKGROUND TRAFFIC	
EXHIBIT 11 SITE GENERATED TRAFFIC – NEW TRIPS	
EXHIBIT 12 SITE GENERATED TRAFFIC – PASS-BY TRIPS	
EXHIBIT 13 TOTAL FUTURE TRAFFIC VOLUMES	
CONCLUSIONS AND RECOMMENDATIONS	23
APPENDICES	
APPENDIX I	CRITICAL LANE ANALYSIS CALCULATIONS
APPENDIX II	TRAFFIC COUNT INFORMATION
APPENDIX III	BACKGROUND DATA
APPENDIX IV	SITE PLAN

TRAFFIC CONCEPTS, INC.

Traffic Impact Studies • Feasibility • Traffic Signal Design • Traffic Counts • Expert Testimony

September 4, 2013



Ms. Erica Rigby
Maryland State Highway Administration
Access Management Division
707 North Calvert Street
Baltimore, Maryland 21202

RE: Baltimore County
MD 140 @ Groff Lane
Tollgate Road Commercial Development - Point by Point Letter
SHA Tracking No. 13APBA012XX
Traffic Impact Study
Mile Point 5.63

T/C 2878

Dear Ms. Rigby:

The purpose of this letter is to address the points contained in your April 29, 2013 traffic impact study comment letter.

- 1) We understand the three percent growth application for a one-year time frame is acceptable to the SHA. No change to the study is required.
- 2) We understand that SHA has concerns with the amount of traffic reassigned to the new Groff Lane intersection as was reported in the original April 2013 TIS. We have conducted field observations and have reevaluated the percentage of diverted traffic at this new intersection leg. Exhibit 9 of the revised study shows the new trip diversion pattern resulting from the Groff Lane realignment. The revised pattern now shows ten percent of the forecasted Tollgate Road right turning volume, diverted to Groff Lane.

The existing peak hour traffic distribution at the Tollgate Road @ MD 140 intersection is approximately 25 percent to and from MD 140 (north) and 75 percent to and from MD 140 (south). The majority of the right turning traffic exiting from Tollgate Road is thru MD 140 traffic or traffic bound for I-795 via MD 940. We believe that no more than 10 percent of the Tollgate Road peak hour trips would use the realigned Groff Lane to travel northbound on Owings Mills Boulevard. Therefore, we believe the revised diverted trip percentage as shown on the revised study exhibit 9 is valid.

- 3) The SHA comment that the site trip generation is significant maybe overstated. Half of the forecasted site generated trips are pass-by trips and it is possible that the proposed sit-down restaurant and specialty retail uses may not generate trips during the morning 7:00 to 9:00 AM peak period. However, as requested, we have included a Synchro analyses for the system affected by the Groff Lane realignment. The Synchro finding are presented below and a disk is included with the Synchro files.

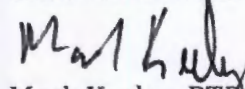
Synchro Traffic Results		
	Overall Intersection Delay (LOS)	
Intersection:	AM	PM
	Delay (LOS)	Delay (LOS)
<u>MD 140 & Tollgate Rd/Groff Lane</u>		
Background	8.8 (A)	6.6 (A)
Future with Realigned Groff Lane	13.8 (B)	15.6 (B)
<u>MD 140 & Straw Hat Road</u>		
Background	8.8 (A)	7.3 (A)
Future	19.0 (B)	13.3 (B)

- 4) The study continues to show the right-in/right-out access points along MD 140. We believe that these driveways are needed for improved on and off site traffic circulation. This access plan is also typical of commercial site access scenarios that exist throughout the MD 140 corridor.
- 5) The revised CLV analysis for the MD 140 @ Tollgate Road/Graff Lane intersection was not conducted with split phasing.

With the submittal of this revised traffic report, we are requesting technical approval of the report. As stated and as requested by your office, we will provide a Synchro analysis under a separate cover. If you have any questions, please do not hesitate to contact our office.

Sincerely,

TRAFFIC CONCEPTS, INC.



Mark Keeley, PTP
Project Manager

Attachments: Revised Tollgate Road Commercial TIA
Synchro Disk

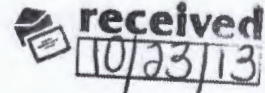


Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

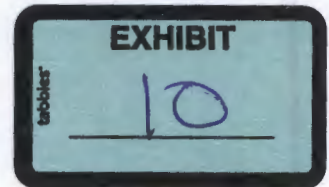
James T. Smith, Jr., Secretary
Melinda B. Peters, Administrator

Maryland Department of Transportation

October 18, 2013



RE: Baltimore County
MD 140 at Groff Lane
Tollgate Road Commercial
SHA Tracking No. 13APBA012XX
Traffic Impact Study
Mile Point 5.63



Mr. Mark Keeley
Traffic Concepts, Inc.
325 Gambrills Road
Suite B
Gambrills, Maryland 21054

Dear Mr. Keeley,

Thank you for the opportunity to review your letter dated September 4, 2013 and the Revised Traffic Impact Study Report prepared by Traffic Concepts, Inc. dated August 2013 (received by the AMD on September 6, 2013) that was prepared for the proposed Tollgate Road Commercial Development in Baltimore County, Maryland. The Maryland State Highway Administration (SHA) review is complete and we are pleased to respond.

The review determined the major report findings and the SHA comments and conclusions as follows

- Access to the development that includes a 4,300 square foot Convenience Market with Gasoline Sales, a 4,620 square foot Restaurant, and 2,741 square feet of General Retail Development was proposed in the report from one (1) full movement Site Access Driveway on Realigned Groff Lane, and two (2) right-in/right-out Site Access Driveways on MD 140. SHA has determined that the two (2) proposed right-in/right-out Site Access Driveways on MD 140 are unnecessary to support the proposed development. The proposed development can adequately be served by the proposed full movement Site Access Driveway on Relocated Groff Lane
- The study analyzed the following intersections under existing, background and future conditions:
 - MD 140 at Tollgate Road/Realigned Groff Lane (Future Only)
 - MD 140 at Straw Hat Road
 - MD 140 at MD 940 Ramps (Owings Mills Boulevard)
- The traffic report determined that the proposed development could be supported by the surrounding roadway network based upon the Critical Lane Volume analysis.

My telephone number/toll-free number is _____
Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

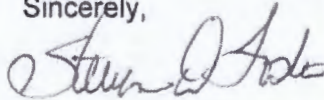
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.roads.maryland.gov

Based upon our review, SHA has the following comments and recommendations:

- 1) As stated above, SHA does not support the two (2) proposed right-in/right-out Site Access Driveways on MD 140. The site plan should be modified to only show the proposed full movement Site Access Driveway on Relocated Groff Lane.
- 2) The concept plan should be modified to show through traffic on Realigned Groff Lane and Tollgate Road as lining up with the receiving lane on the opposite side of the intersection.
- 3) The existing southbound MD 140 two-way center turn lane at the proposed Realigned Groff Lane/Tollgate Road intersection will need to be modified to provide an exclusive left turn lane.

SHA requests the submission of seven (7) hard copies and one (1) electronic copy of the revised Concept Plan (including a set of hydraulic plans and computations) that includes a point-by-point response to the issues above. Please send this information to the SHA Access Management Division addressed to Mr. Steven D. Foster to the attention of Mr. Eric Waltman and reference the SHA Tracking Number on the submission. Unless specifically indicated in the SHA response of this study, the comments contained herewith do not supersede previous comments made on this development. Please keep in mind that you can view the reviewer and project status via the SHA Access Management Division's web page at (<http://www.roads.maryland.gov/pages/amd.aspx>). If you have any questions regarding the enclosed traffic report comments, please contact Larry Green at (410) 995-0090 x 20 or via email at LGreen@danielconsultants.com.

Sincerely,



Steven D. Foster, Chief/Development Manager
Access Management Division

SDF/lg

cc: Ms. Rola Daher, SHA Data Services Engineering Division
Ms. Mary Dietz, SHA Regional and Intermodal Planning Division
Mr. Bob French, SHA Capital Programs Division
Mr. Larry Green, SHA Access Management Division
Mr. Derek Gunn, SHA Data Services Engineering Division
Ms. Damilola Kehinde, SHA Regional and Intermodal Planning Division
Ms. Colleen Kelly, Baltimore County Development Management Permits
Mr. Dennis Kennedy, Baltimore County Development Plans Review
Ms. Erin Kuhn, SHA District 4 Traffic Engineering
Ms. L'Kiesha Markley, SHA Regional and Intermodal Planning Division
Ms. Rochelle Outten, SHA Access Management Division
Mr. Johnson Owusu-Amoako, SHA Capital Programs Division

Mr. Mark Keeley
13APBA012XX
Page No. 3
October 18, 2013

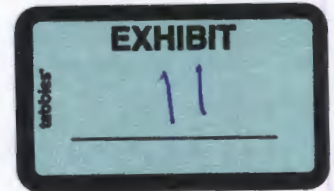
Mr. David Peake, SHA District 4 District Engineer
Mr. Gerry P. Powell, Frederick Ward Associates/PO Box 727, 5 South Main Street, Bel Air,
MD 21014
Mr. Saed Rahwanji, SHA Traffic Development and Support Division
Ms. Erica Rigby, SHA Access Management Division
Mr. Errol Stoute, SHA Traffic Development & Support Division
Mr. Morteza Tadayon, SHA Data Services Engineering Division
Mr. John Vananzo, SHA District 4 Traffic Engineering
Mr. Eric Waltman, SHA Access Management Division
Mr. Stephen Weber, Division of Traffic Engineering Baltimore County
Ms. Wendy Wolcott, SHA District 4 Project Development
Mr. Rich Zeller, SHA Access Management Division

TRAFFIC CONCEPTS, INC.

Traffic Impact Studies • Feasibility • Traffic Signal Design • Expert Testimony

February 4, 2014

Mr. Eric Waltman
Maryland State Highway Administration
Access Management Division
707 North Calvert Street
Baltimore, Maryland



RE: Tollgate Road Commercial
SHA # 13APBA012XX

Dear Mr. Waltman,

We are writing this letter to respond to your comment letter dated October 18, 2013. The letter was the second review of the site plan and traffic impact study for a proposed Wawa convenience store along MD 140 near Groff Lane. We would like to take this time to respond to the three remaining comments that are stated in the letter.

1) The current site plan shows access to relocated Groff Lane as a full movement access. Due to existing grades and the impacts to adjacent historic structures the access is located as far as possible from the MD 140 intersection. This still leaves the spacing at 75 feet. We have concluded that this access alone should not serve the proposed development and thus continue to request that the proposed right-in/right-out to the south and the proposed right-out only to the north be allowed. We conclude this arrangement will provide for the best operating conditions.

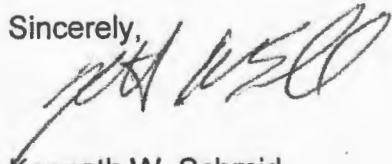
The introduction of the secondary access points will improve overall safety and efficiency. We do not conclude that introducing these types of accesses along this area of MD 140 will result in driver expectancy issues as many similar access configurations are located in the immediate area.

2) The access has been aligned to the extent possible with the existing Tollgate Road approach. Grades and impact to an adjacent historic structure and land makes moving the access further north not possible. That is the reason we first analyzed this intersection with split side road phasing. This type phasing will also help the operation of the proposed Wawa access to Groff Lane by minimizing conflicting movements from the Tollgate Road approach.

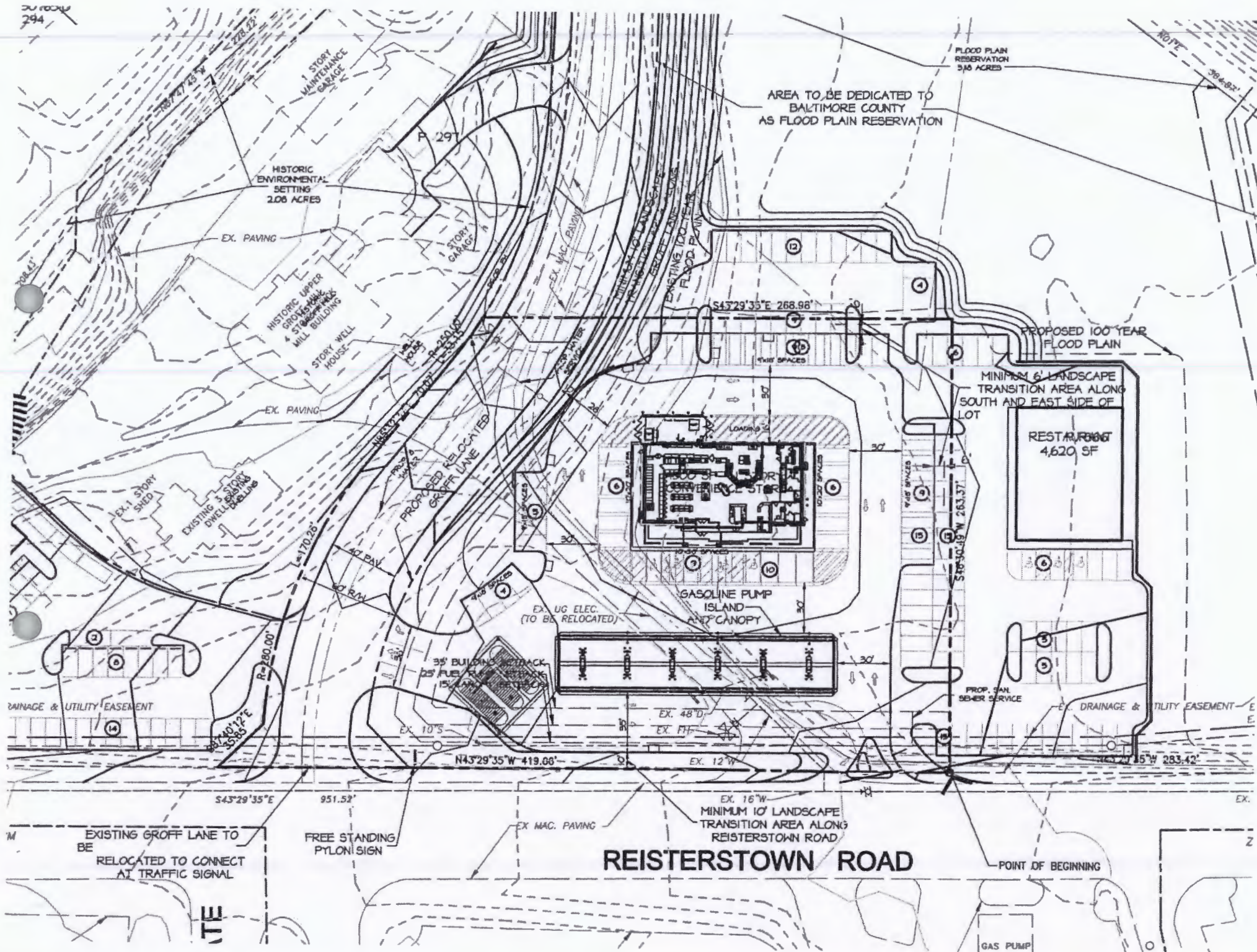
We have attached plans which reflect the physical hardships we have with locating the Groff Lane access requested as well as aligning the future intersection. We have also included information concerning the historic property designation and the boundary limits established by Baltimore County.

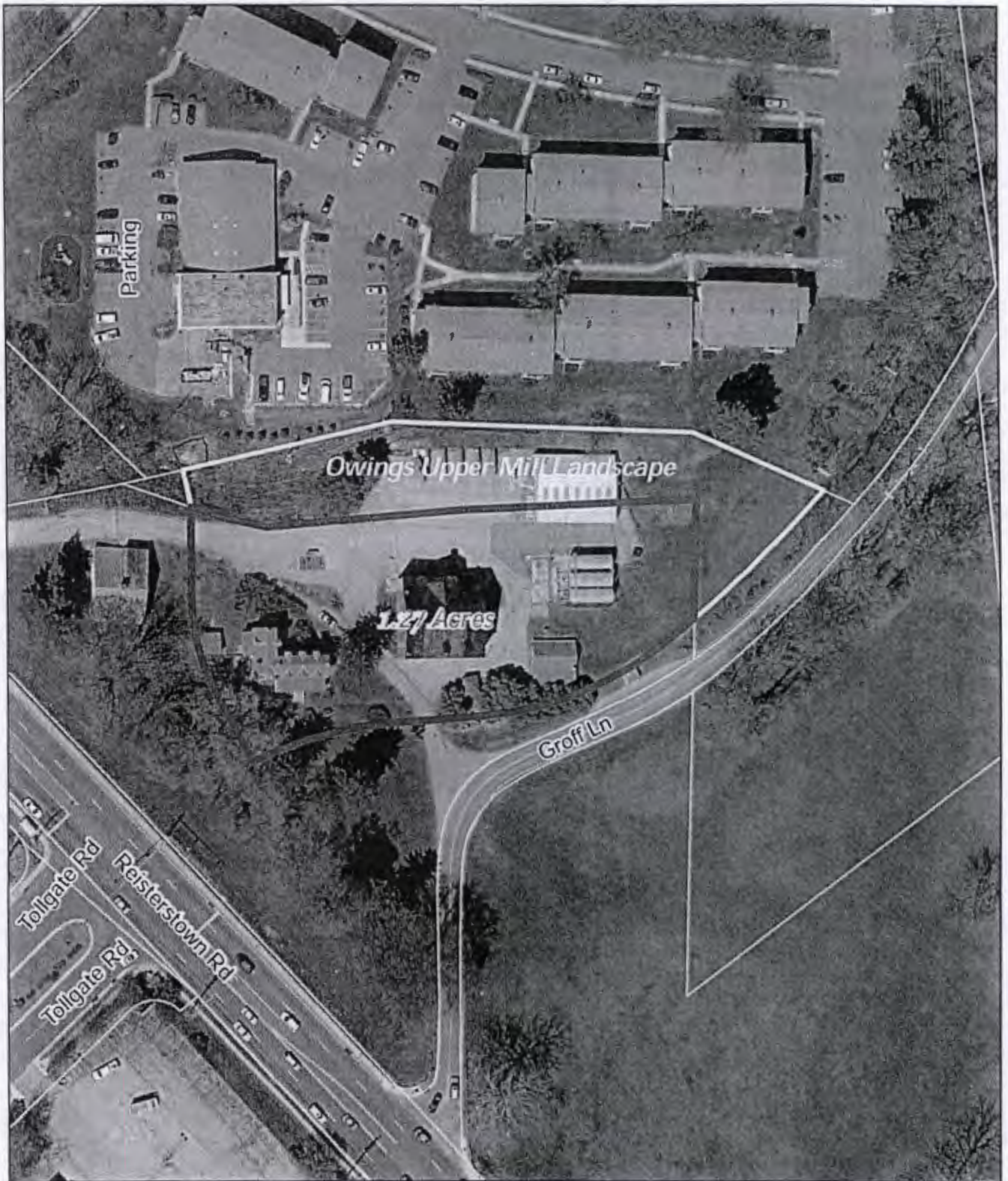
Since these issues are so important to the feasibility of the overall project we ask that you review this information and either approve the access as proposed or sit down with us to discuss options for resolution to this access problem. The local community is anxious to have Groff Lane relocated to allow for use of the existing signal to egress onto MD 140. Please call if you should wish to discuss this further. We ask that if you still feel inclined to not allow the auxiliary accesses to MD 140, we be able to meet with you to discuss this issue in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to read 'KWS', is written over the word 'Sincerely,'.

Kenneth W. Schmid
Vice-President
KSchmid@traffic-concepts.com





Historic Environmental Setting for Groff's Mill



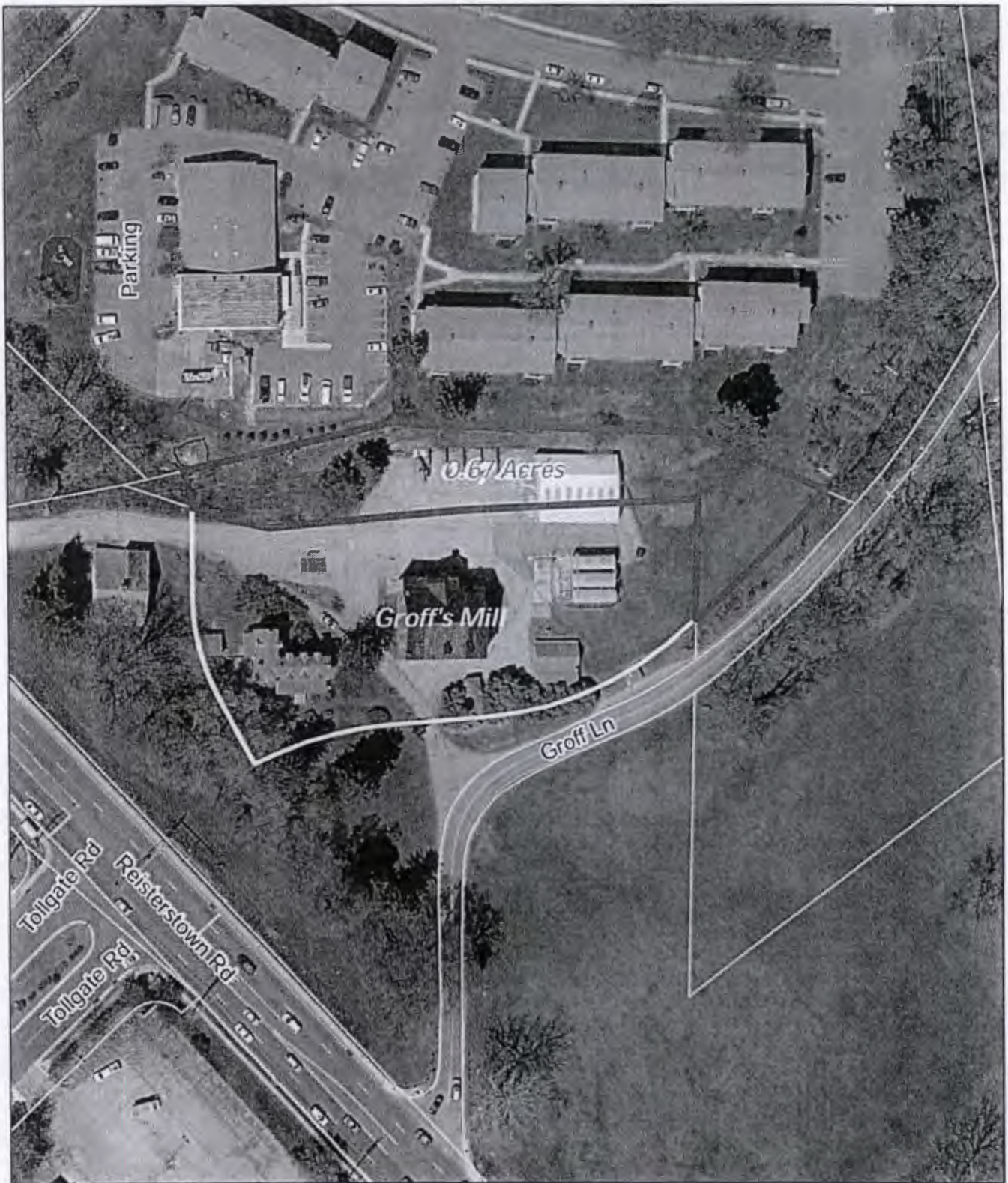
Historic Environmental Setting

Parcel Boundary



Map prepared Dec 11, 2012

0 100 200 300 Feet



Historic Environmental Setting for Owings Upper Mill Landscape



Historic Environmental Setting

Parcel Boundary



Map prepared Dec 11, 2012

0 100 200 300 Feet

30 E. Padonia Road, Suite 500
Timonium, Maryland 21093

tel. 410-560-1502
fax 410-560-0827

Patrick C. Richardson, Jr., PE
30 E. Padonia Road, Suite 500
Timonium, Maryland 21093

EDUCATION

BSCE University of Delaware, 1982

Professional Engineer in Maryland 1988, Virginia 1993, Washington DC 1997, Delaware 1997

WORK EXPERIENCE

October 1999 to Present, Richardson Engineering, LLC

Owner of engineering firm specializing in Commercial and Residential Land Development. Work includes preparation of zoning plats, site development plans and project management for site development projects. Projects including: Giant Food Stores in Baltimore City and County, Krispy Kreme Stores in Maryland, Verizon switch station expansions in Maryland, Parkway 100 and Techwood Center in Anne Arundel County, and Columbia Technology Campus in Howard County.

July 1999 to September 1999, Purdum and Jeschke, LLC

Chief engineer responsible for preparation of layout and construction documents for commercial land developments. Work included preparation of zoning plats, site development plans and project management for sites in Maryland. Projects including: Loyola College play fields, Baltimore City, Md.; St Paul's Lutheran Church, Baltimore Co.; Red Star Yeast, Baltimore City; Giant Food Stores in Baltimore City.

February 1997 to June 1999, William Monk, Inc.

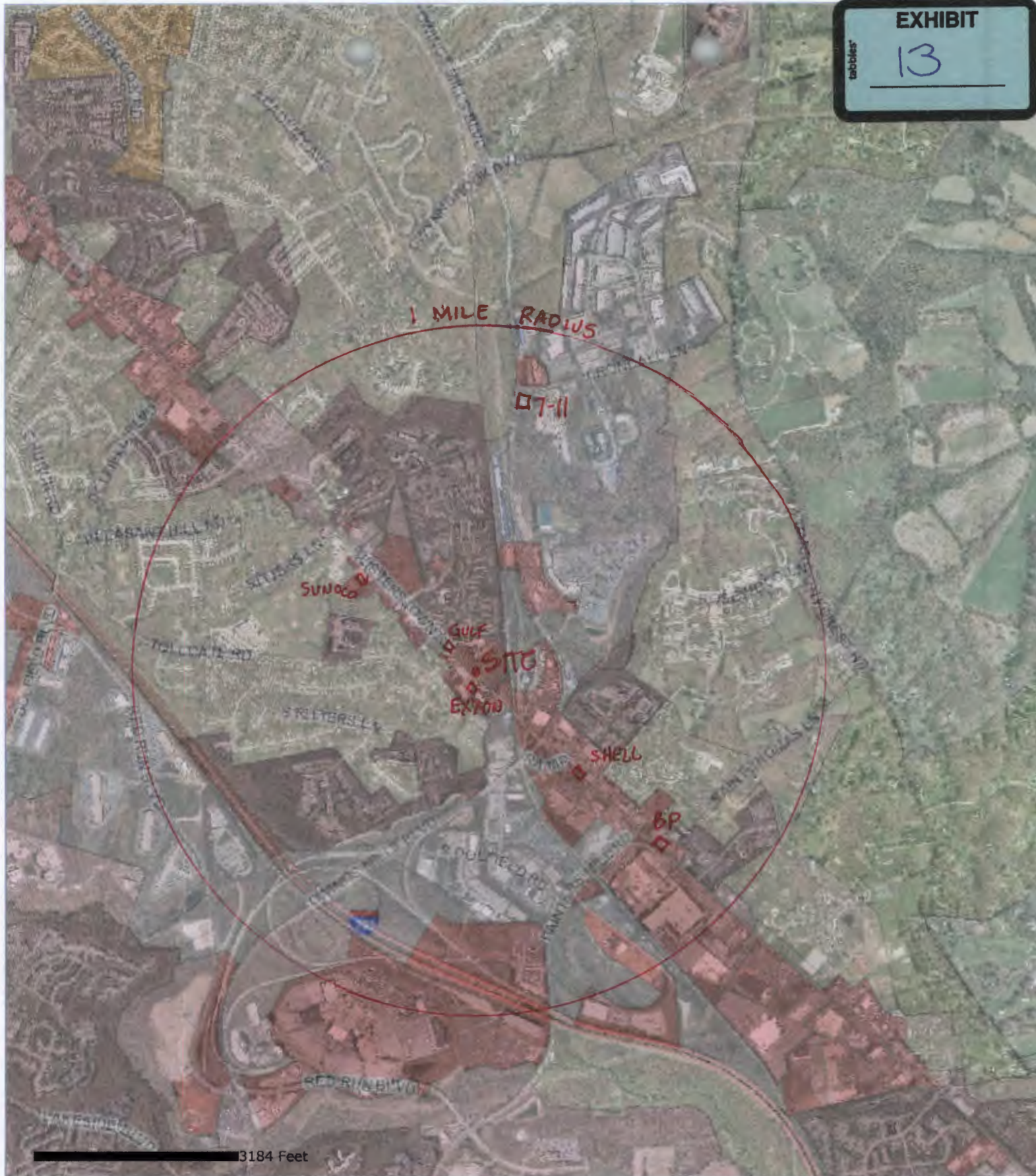
Chief engineer responsible for preparation of layout and construction documents for commercial land developments. Work included preparation of zoning plats, site development plans and project management for sites in Maryland and Washington DC.

Major projects including: Edmondson Square Shopping Center, Baltimore City, Md. Amoco Oil Company, sites in Baltimore, Anne Arundel, Prince George's, Howard and Baltimore City. Chick-fil-A Restaurant, Baltimore, Anne Arundel and Frederick Co., Md. International Trade Center Office Warehouse, Anne Arundel Co. Md. KFC Restaurants in Maryland and Washington DC.

April 1986 to Jan. 1997, STV Incorporated

Project Manager in the Site Development Department. Responsible for supervision of the preparation of design documents for the department, including review and sealing all documents submitted to reviewing agencies.

Major projects including: The New International Terminal at BWI Airport: Responsible for management of the civil aspects of the site construction including airfield taxiway and hardstand construction, reconstruction of the existing roadways and extension of the upper level roadway bridge to service the building addition. FILA Warehouse - 650,000 SF warehouse in Brandon Woods Industrial Park, Anne Arundel County, Md. Work included coordination with ongoing infrastructure grading, utilities, construction and sediment control for the adjacent activities. FILA Warehouse - 500,000 SF warehouse in Holabird Industrial Park, Baltimore City, Md. Work included getting permission to construct across Municipal Utilities, and Chesapeake Bay Critical Area mitigation. Amoco Oil Company Convenience Mart on Route 140 and Sandymount Road, Carroll County, Md. Blockbuster Video - New store in

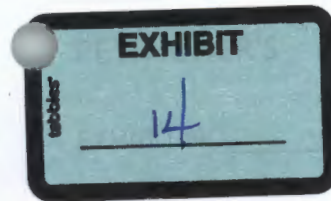


My Neighborhood Map

Created By
Baltimore County
My Neighborhood



This data is only for general information purposes only. This data may be inaccurate or contain errors or omissions. Baltimore County, Maryland does not warrant the accuracy or reliability of the data and disclaims all warranties with regard to the data, including but not limited to, all warranties, express or implied, of merchantability and fitness for any particular purpose. Baltimore County, Maryland disclaims all obligation and liability for damages, including but not limited to, actual, special, indirect, and consequential damages, attorneys' and experts' fees, and court costs incurred as a result of, arising from or in connection with the use of or reliance upon this data.



KEVIN KAMENETZ
County Executive

November 28, 2012

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

Donald N. Mitten
Richardson Engineering, LLC
30 E. Padonia Road, Ste. 500
Timonium, MD 21093

Re: GROFF PROPERTY, 10609 Reisterstown Road, 21117, Dist. 4c2
DRC Number: 120412-LLA2

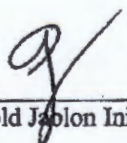
Dear Sir/Madam:

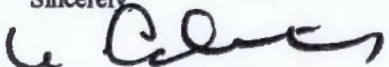
Pursuant to Section 32-4-106(a)(1) of the Baltimore County Code, this letter constitutes an administrative order and decision on the request you filed with this department.

Your request has been submitted for careful review and consideration to the Director and Zoning Office. It has been determined that your proposal:

- ☐ meets the requirements of a limited exemption under Section 32-4-106(a)(1)(viii) BCC
- ☒ meets the requirements of a limited exemption under Section 32-4-106(a)(1)(ii) or (a)(1)(v) BCC subject to Lot 1 and 3 being approved through the Development Process.
- ☐ does not meet the requirements of a limited exemption under Section 32-4-106(a)(1) BCC.
You will be notified if your project can be scheduled for the next open DRC meeting and any additional requirements for review.
- ☐ needs additional materials/information for review. Contact Carl Richards or Joseph Merrey at 410-887-3391.
- ☐ does not reach the scope or extent that would require Baltimore County development approval.
- ☐ all or a portion of the property is located within the Chesapeake Bay Critical Area, therefore prior to recording deeds or submitting a record plat you are required to apply for Lot Consolidation and Reconfiguration through the Dept. of Environmental Protection and Sustainability (Comar 27.01.02.08)

When recording deeds in the land records, please attach this letter and the survey plat as exhibits. Also, if the property(s) are improved or any Baltimore County permits are applied for or anticipated in the future, the following approval agencies should be contacted to resolve any possible development issues: Development Plans Review – 410-887-3751,
Planning 410-887-3480, Environmental Protection & Sustainability – 410-887-5859


Arnold Jablon Initial

Sincerely

W. Carl Richards, Jr.
Zoning Supervisor

Richardson Engineering, LLC

30 E. Padonia Road, Suite 500
Timonium, Maryland 21093

Tel: 410-560-1502
Fax: 443-901-1208

November 06, 2012

Attention: Mr. Arnold Jablon
Director of Permits, Approvals and Inspections
111 W. Chesapeake Avenue
Towson, MD 21204

Subject: 10609 Reisterstown Road - Groff Property

Dear Mr. Jablon:

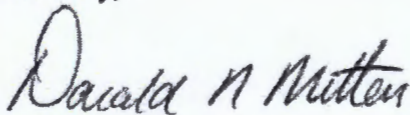
On behalf of our client, DMS Tollgate LLC, we hereby request a limited exemption from the development regulations for the development of the above project. This request is based upon the provision as defined in Section 32-4-106(b) (1).

The owner intends to adjust the existing lot lines of parcels 296, 297 and 866 to allow for the development of the property. The first newly adjusted lot will remain in the ownership of the Groff Family and will encompass the existing historic mill and accessory structures. The second newly adjusted lot will be developed as a future retail pad site and the third newly adjusted lot will be developed as a convenience store and gas station as well as a future retail building. No additional lots will be created.

In addition the existing Groff Lane (formerly known as Bonita Avenue) will be relocated. The existing Groff Lane does not have a formal public right of way associated with it. To correct this situation the developer will convey a highway right-of-way to Baltimore over the realigned Groff Lane.

We thank you for your consideration of the above request.

Sincerely,



Donald N. Mitten, P.E.

Encl: \$60.00 Processing Fee

BALTIMORE COUNTY
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

Development Review Committee (DRC) Application Form Checklist

All applications to the DRC must include the following:

- X 1. Three copies of the DRC Application.
- X 2. Three copies (one attached to each DRC Application) of a letter of request to the DRC containing the following:
- X a. Name, address and phone number of the applicant
- X b. Explanation of the request to the DRC.
- X c. Signature of the applicant.
- X 3. Nine copies of a plan*** showing the following:
- X a. A plan title box noting "Plan to accompany DRC request."
- X b. North arrow.
- X c. Vicinity map.
- X d. Election district.
- X e. Councilmanic district.
- X f. Property tax account numbers.
- X g. Site property owner's name and address.
- X h. Scale of the drawing.
- X i. Boundaries of the property lines shown in heavy bold lines.
- X j. Lengths of property lines
- X k. Area of project site in square feet and acreage.
- X l. Proposed structures, heights and dimensions.
- X m. Setbacks.
- n/a n. Location of existing wells and septic systems.
- X o. Zoning information:
- X 1. Current zoning on the property.
- X 2. Case numbers of any zoning hearings.
- n/a 3. Dates of zoning orders.
- n/a 4. Indication of what was granted or denied by the zoning commissioner.
- n/a 5. Copies of zoning orders attached to the DRC Application.
- ***Note: For refinements and material changes to previously approved plans you must use copies of the last approved plan to show items 3a-o listed above. Please show all changes in red.
- X 4. One copy of this checklist completed and signed by the applicant or the consultant.
- X 5. Check for \$60 payable to Baltimore County, MD (do not staple to forms).

I have reviewed the DRC application and plan using this checklist to insure that the application and plan are complete. I understand that an incomplete application or plan may cause the DRC to delay its action on this request.

Signed _____

11/06/2012
Date

Print Name **Donald N Mitten**
 Richardson Engineering, LLC

**BALTIMORE COUNTY
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
DEVELOPMENT REVIEW COMMITTEE (DRC) APPLICATION**

DRC# _____

County Use Only

This application must be accompanied by the following:

1. **One copy of the completed DRC checklist.**
2. **Three copies of this DRC application, completed in full.**
3. **Three copies of a letter of request (attach one to each DRC application).**
4. **Nine copies of the plan folded to 8 1/2 x 11 inches.**
5. **\$60 fee for limited exemption request; \$375 for waiver request (check made payable to Baltimore County and non-refundable; do not staple check to request form)**

Filing Date: _____

Stamp in w/PDM date stamp here

Project Name: 10609 Reisterstown Road – Groff Property

PDM File #: _____

Project Address: 10609 Reisterstown Road, Reisterstown, MD

Zip Code: 21117

ADC Map #: 24 G02

Councilmanic District: 2nd

Election District: 4th

Project Acreage: 8.5 Ac. +/-

Tax Account No(s): 2200006373, 0407058451 & 0407058460

Zoning: BL-AS

Engineer: RICHARDSON ENGINEERING, LLC

Engineer's Phone No.: 410 560-1502 X 114

Address: 30 E. Padonia Rd, Suite 500, Timonium MD

Zip 21093

Email don@richardsonengineering.net

Applicant: DMS Tollgate LLC (Mr. David Schlachman)

Applicant's Phone No.: (410) 296-3716

Address: 100 E. Pennsylvania Avenue, Towson, MD

Zip 21286

Email: david@dmsdevelopment.net

Attorney: N/A

Attorney's Phone No.:

Address: N/A

Zip

Email

Is this a tower? ☐ Yes ☒ No If "Yes" check one of the following: Cellular ☐ (CAC) Water Tower ☐ (WTC) MonoPole ☐ (CFC)

REQUESTED ACTION (TO BE COMPLETED BY THE APPLICANT)

(X) Limited Exemption under Section 32-4-106 (b)(1)

(County Use only)

() Material Amendment to the plan

Action: _____

() Plan Refinement

() Waiver of public works standards

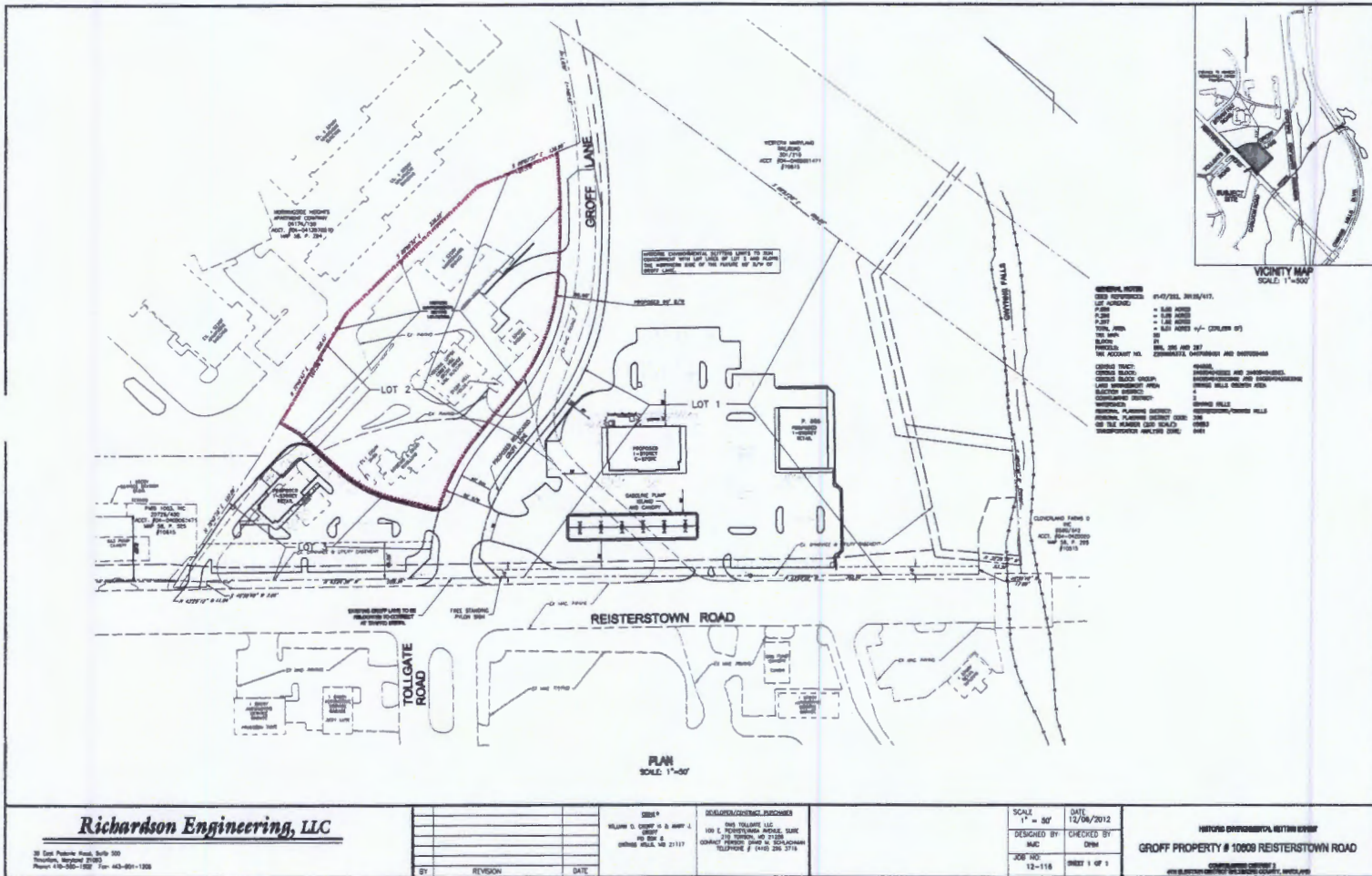
() Requires a Zoning () Special Hearing; () Special Exception; () Variance

() Other: _____

This application must be accompanied by a written request. That request must be in the form of a letter, legibly printed or typed, and signed by the applicant. The letter must contain the name, address and telephone number of the applicant and must provide details of the request. A copy of the checklist must be completed and included along with this DRC application. Please note that a DRC application form checklist is available in room 123 of the Baltimore County Office Building and on the Baltimore County web site at www.baltimorecountymd.gov/Agencies/permits/pdm_devmanage/pdmfdmgt.html. Please see page 2 for checklist of complete submittal requirements

Please see the DRC application form checklist for complete submittal requirements.

Cc: Council, Planning, DEPS



Richardson Engineering, LLC

30 East Patuxent Road, Suite 100
 Towson, Maryland 21204
 Phone: 410-550-1500 Fax: 410-550-1505

BY	REVISION	DATE

DESIGNER/CONTRACT MANAGER
WILLIAM D. GRIFFIN & ASSOCIATES, INC.
100 E. REISTERSTOWN AVENUE, SUITE 100
TOWSON, MARYLAND 21204
PHONE: (410) 251-3718

SCALE	DATE
1" = 50'	12/04/2012
DESIGNED BY	CHECKED BY
W.D.G.	W.D.G.
JOB NO.	SHEET 1 OF 1
12-115	

PROPERTY OWNER
GROFF PROPERTY # 10000 REISTERSTOWN ROAD
CONTRACT NO.
12-115

Dennis A. Kennedy 11/20/13

100-YEAR FLOODPLAIN STUDY

Groffs Mill Property

BALTIMORE COUNTY, MARYLAND

August 2013

Prepared by:

MJ Consulting, Inc.

100 E. Pennsylvania Avenue, Suite 210

Towson, MD 21286

410-296-5288

Contact: Michael J. Ertel, PE.

Owners:

William D. Groff, 3rd

Mary J. Groff

P.O. Box 8

Owings Mills, Maryland 21117

100-YEAR FLOODPLAIN CERTIFICATION

I certify that the 100-year flood plain outline shown on this plan is correct and done in accordance with the Department of Permits and Development Management, Bureau of Development Plans Review's Policy Manual, Appendix B, Recommendations and Procedures for Watershed Studies-Floodplain Studies and Waterway Crossing Studies.

Michael J. Ertel
Signature

8/26/13



EXHIBIT

15

TABLE OF CONTENTS

	<u>Page</u>
100-Year Floodplain Certification	Cover
Introduction and Location.....	2
Methodology and Model Development	2
Results.....	2
HEC-RAS Summary Table.....	3
Appendix A- Chow "n" Values.....	6
Appendix B- HEC-RAS Report for input and output- Existing	7
Appendix C - HEC-RAS Report for input and output -Proposed.....	49
Appendix D – HEC-RAS Summary	90
Appendix E – Photographs	92

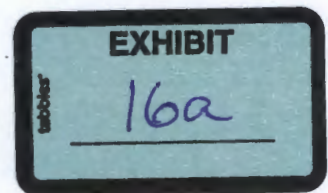
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PUBLIC WORKS
INTER-OFFICE CORRESPONDENCE

DATE: October 16, 2013

TO: Dennis A. Kennedy, Chief
P.A.I., Bureau of Development Plans Review

FROM: Terry W. Curtis, Jr, Engineer III through
David L. Thomas, Assistant to the
Director of Public Works Office *TWC*

SUBJECT: Groffs Mill Property 100-Year Flood Plain Study



Our office has received a report prepared by M. J. Consulting, Inc. for the Groffs Mill Property 100-Year Flood Plain Study your office submitted to us. We have reviewed this report and our comments are listed below.

1. Submit a copy of all computer program files used including Hec-Ras files on disk to our office for review. This disk must have input and output data provided.
2. The engineer must submit a Joint Permit Application with the Army Corp. of Engineers and the Maryland Department of the Environment. A copy of the application and a response letter from the Maryland Department of the Environment must be submitted to this office before approval of study. All other governmental permits and waivers must be filed and are the responsibility of the engineer.
3. The engineer must, upon approval of the study, submit a Letter of Map Amendment or Revision (LOMR) to The Federal Emergency Management Administration (FEMA) at the developer's expense.

We recommend that these plans and report **be accepted for filing** at this time. The comments above will not affect the validity of the submitted flood study.

If you have any questions, please feel free to contact Terry Curtis of my office on extension 3117.

Attachments
TWC:twc

cc: File

MJ CONSULTING, INC.

100 E. Pennsylvania Avenue, Suite 210
Towson, Maryland 21286

Phone 410-296-5288
Fax 410-296-4084
E-mail mjconsultinginc@comcast.net

August 28, 2013

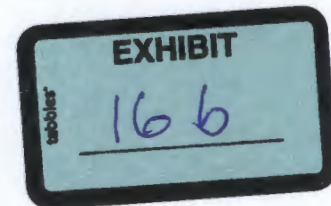
Baltimore County
Department of Public Works
Bureau of Engineering
111 W. Chesapeake Avenue
Towson, Maryland 21204
Attn: Mr. Terry Curtis

Subject: Groffs Mill Property 100 Year Floodplain
Baltimore County
Owings Mills, Maryland

Dear Terry:

Listed below is a point by point response to comments dated May 22, 2013.

1. A completed checklist from the current design manual signed and sealed by a registered Maryland Professional Engineer must accompany the report. *Response: The floodplain checklist has been signed and sealed by Maryland Register Professional Engineer and included with this report.*
2. The narrative of the report must be expanded to include more information such as assumptions made, references and additional comments to make the report understandable. The introduction and location portion describe an area in Middle River, this must be revised. *Response: The revised narrative has been expanded to include assumptions, references and additional comments.*
3. Explain the precipitation data used for flow rate calculations. Was NOAA Atlas 14 data Used, current design standards, etc. Also, were flow rates for proposed condition based on ultimate existing conditions? *Response: The floodplain study for Gwynns Falls by Wallace Montgomery and Associates dated 2007 has been used in this study.*
4. Submit a detailed explanation why NOAA Atlas 14 rain tables in TR-20 or Win TR-20 was not used this has been the accepted practice for Baltimore County and a deviation must be thoroughly explained. *Response: We have utilized the Wallace Montgomery and Associates studies.*
5. The Department of Public Works Bureau of Engineering and Construction Storm Drain Design has copies of flood studies on file. *Response: See the response for #4.*
6. *Verify the effective flow areas to make sure water can actually get to the ineffective flow areas. A levee may need to be added to get more accurate results.* *Response: Levees were added to sections 7.0 through 7.25. The results did not show more accurate readings mainly because of the proximity of the twins culverts and the resulting back water.*
7. In many instances, the critical water surface elevation and actual water surface elevation are equal which means the energy equation could not balance and find an answer for the actual water surface elevation. The engineer must completely explain why this has happened and make any changes necessary to rectify this situation. *Response: We have added levees to some of the cross sections. Also we have adjusted the sections by 1.6 feet to meet the current NAD 83 vertical elevations*
8. The stream profiles in the report must show the existing ground line with the date it was taken, the proposed grade, flow line rate, and the 2, 10 and 100-year water surface elevations. We prefer the stream profile be shown on full size 24" x 36" plan. *Response: A full size sheet 24" x 36" showing the profile with the existing ground line with the date it was taken, the proposed grade,*



- flow line rate, and the 2, 10 and 100-year water surface elevations has been included with the study.*
9. Add the HEC-RAS stream cross sections showing the existing and proposed ground lines, flow rates, as well as ground line with the date it was taken, the proposed grade, flow line rate, and the 2, 10 and 100-year water surface elevations. We prefer the stream profile be shown on full size 24" x 36" plan. *Response: A full size sheet 24" x 36" showing the profile with the existing ground line with the date it was taken, the proposed grade, flow line rate, and the 2, 10 and 100-year water surface elevations has been included with the study.*
 10. Explain all warnings errors and notes in the introduction. *Response: All warnings, errors and notes have been explained in the report.*
 11. All Plan views must have a north arrow and a minimum of three (3) grid ticks based on the Maryland Grid System. *Response: The north arrow and grid ticks have been shown on the plan.*
 12. Other comments made in red in the report not outlined in these comments. *Response: Other comments noted in red in the report have been addressed.*
 13. Submit a copy of all computer program files used including TR-55, TR-20 and HEC-RAS files on disk for our review. *Response: Copies of all computer program files used including, HEC-RAS files on disk will be provided. The TR-55 and TR-20 program files have been approved in 2007 by Baltimore County Department of Public Works.*
 14. The engineer must submit a Joint Application Permit with the Army Corps of Engineers and the Maryland Department of the Environment. A copy of the application and a response letter from the Maryland Department of the Environment must be submitted to this office before approval of study. *Response: A Joint Application Permit with the Army Corps of Engineers and the Maryland Department of the Environment will be submitted.*
 15. The engineer must, upon approval of the study, submit a Letter of Map Amendment or Revision (LOMR) to The Federal Emergency Management Administration (FEMA) at the developers expense. *Response: The comment is noted and will be complied with the approval of the floodplain.*

Should you have any other comments or questions, please contact this office at your earliest convenience.

Very Truly Yours,

Michael J. Ertel, PE.
Project Manager

To: Mike Ertel

DAK

**BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PUBLIC WORKS
INTER-OFFICE CORRESPONDENCE**

RECEIVED

MAY 23 2013

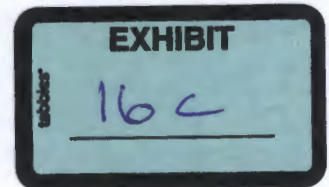
Development Plans Review
Department of Permits, Approvals
and Inspections

DATE: May 22, 2013

TO: Dennis A. Kennedy, Chief
P.A.I., Bureau of Development Plans Review

FROM: Terry W. Curtis, Jr, Engineer III through
David L. Thomas, Assistant to the
Director of Public Works Office *TWC*

SUBJECT: Groffs Mill Property 100-Year Flood Plain Study



Our office has received a report prepared by M. J. Consulting, Inc. for the Groffs Mill Property 100-Year Flood Plain Study your office submitted to us. We have reviewed this report and our comments are listed below.

- ✓ 1. A completed checklist from the current design manual signed and sealed by a registered Maryland Professional Engineer must accompany the report.
- ✓ 2. The narrative portion of the report must be expanded to include more information such as assumptions made, references and additional comments to make the report more understandable. The introduction and location portion describe and area in Middle River, this must be revised.
3. Explain the precipitation data used for flow rate calculations. Was NOAA Atlas 14 data used, current design standards, etc. Also, were flow rates for proposed conditions based on ultimate of existing conditions?
4. Submit a detailed explanation why NOAA Atlas 14 raintables in TR-20 or WinTR-20 was not used. This has been the accepted practice for Baltimore County and a deviation must be thoroughly explained.
5. The Department of Public Works Bureau of Engineering and Construction Storm Drain Design has copies of flood studies on file. We have a Gwynns Falls study that was performed by Wallace, Montgomery & Associates for Baltimore County Bureau of Engineering and Construction. This study shows the 100-year flow rate as 10,972 cubic feet per second. We feel this downstream flow rate must be used for accuracy; the engineer must compare this flow rate to the flow rates calculated and explain why this flow rate is not used.
6. Verify all the ineffective flow areas to make sure water can actually get to the ineffective flow areas. A levee may need to be added to get more accurate results.

7. In many instances the critical water surface elevation and actual water surface elevation are equal which means the energy equation could not balance and find a answer for the actual water surface elevation. The engineer must completely explain why this has happened and make any changes necessary to rectify this situation.
8. The stream profile in the report must show the existing ground line with the date it was taken, the proposed grade, flow rate, and the 2, 10, and 100-year water surface elevations. We prefer the stream profile to be shown on a full size 24" x 36" plan.
9. Add the Hec-Ras stream cross-sections showing the existing and proposed ground lines, flow rates, as well as the 2, 10 and 100-year water surface elevations must be added to the hydrologic and hydraulic report. We prefer the stream cross-sections to be shown on a full size 24" x 36" plan.
10. Explain all warnings, errors and notes in the Introduction. They may be acceptable but they must be explained as to why they are acceptable. Consider consulting the Army Corp.Of Engineers Research Document #42 to verify if enough cross-sections were used. An abbreviated version of this document can be found in the appendix of the Hec-Ras manual.
11. All plan views must have a north arrow and a minimum of 3 grid ticks based on the Maryland Coordinate System.
12. Other comments made in red in the report not outlined in these comments.
13. Submit a copy of all computer program files used including TR-55, TR-20, Hec-Ras files on disk to our office for review. This disk must have input and output data provided.
14. The engineer must submit a Joint Permit Application with the Army Corp. of Engineers and the Maryland Department of the Environment. A copy of the application and a response letter from the Maryland Department of the Environment must be submitted to this office before approval of study. All other governmental permits and waivers must be filed and are the responsibility of the engineer.
15. The engineer must, upon approval of the study, submit a Letter of Map Amendment or Revision (LOMR) to The Federal Emergency Management Administration (FEMA) at the developer's expense.

We recommend that these plans **not be approved** at this time until all comments have been properly addressed.

If you have any questions, please feel free to contact Terry Curtis of my office on extension 3117.

Attachments
TWC:twc

cc: File

Case No: 13-080xCase Name: William & Mary Groff

Exhibit List

Party: Protestant - Malik Imram et al Date: 3/13/14

Exhibit No:	Description:
✓ 1	Photograph of existing Property
✓ 2	Mr. John Seitz - CV
✓ 3	Truck Turning Radius - WBSO TRUCK
✓ 4	BCO Policy Manual: Bureau of Development
✓ 5	Photograph - RR in 1972
✓ 6	Photograph - damaged roads (Agnus)
✓ 7	Andrew Jay Miller - CV
✓ 8	Flood Plain map of Property
✓ 9	Plats - 100 year Flood Plane
✓ 10	Photograph - Rail Road Bridge
✓ 11	BCO Topography of Building Location
✓ 12a	Photograph - Hess Gas station closed
✓ 12b	↓ - Walwa North on RR
✓ 12c	↓ - Hess Gas station
VERIFIED BY <u>KLC</u> DATE: <u>3/13/14</u>	

KLC
4/4/14

Case No: 13080X

Case Name:

Exhibit List

Party:

Protestant - malik Imra elaf

Date:

[illegible]

Protestants
Ex #2

JON A. SEITZ, P.E., PTOE
TRANSPORTATION RESOURCE GROUP, INC.
PRINCIPAL, TRAFFIC ENGINEER

Education:

United States Military Academy, West Point, NY, B.S. in Engineering, 1985
United States Army Corps of Engineer Officer Advanced Course, Ft. Belvoir, VA
Civil Engineering, 1989

Registration:

Professional Engineer, Pennsylvania (No. 039625R)
Professional Engineer, Maryland (No. 21725)
Professional Engineer, Virginia (No. 019940)
Certified as a Professional Traffic Operations Engineer, ITE

Affiliations:

National Society of Professional Engineers (NSPE)
American Society of Highway Engineers (ASHE)
Mid-Atlantic Section of the Institute of Transportation Engineers
Current Director and Past President of The Engineering Society of York

Experience:

Years With This Firm: 20
Years With Other Firms: 9

Since joining Transportation Resource Group, Inc., Mr. Seitz, a Principal in the firm, has managed a wide range of transportation planning and traffic engineering projects. Mr. Seitz has prepared numerous engineering studies, including traffic impact and site access studies, signal design projects, intersection design and roadway design projects. Transportation Resource Group, Inc., completes approximately 50 traffic impact studies per year. As lead Engineer and Principal, Mr. Seitz is directly responsible for the quality control and quality assurance of each report. Mr. Seitz has provided expert testimony at numerous hearings and meetings.

Places where Mr. Seitz has qualified as an expert witness:

- Pennsylvania Public Utility Commission – Administrative Hearing
- Carlisle Borough, Cumberland County – Zoning Hearing Board
- Springettsbury Township, York County – Zoning Hearing Board
- City of York, York County – City Council and Mayor
- Mt. Joy Township, Adams County – Zoning Hearing Board
- Silver Spring Township, Cumberland County, Board of Supervisors
- East Lampeter Township, Lancaster County – Zoning Hearing Board
- Peach Bottom Township, York County – Zoning Hearing Board
- Baltimore County – Board of Appeals
- Carroll County – Circuit Court
- Prince George's County – Special Exception (Zoning Hearing Examiner)
- Harford County – Zoning Hearing Examiner
- Baltimore County – Hearing Officer Hearing (Zoning Commissioner)
- Howard County – Board of Appeals

Prider/autr: EX^{TP} 4

53

BALTIMORE COUNTY

DEPARTMENT OF PERMITS AND
DEVELOPMENT MANAGEMENT



BUREAU OF DEVELOPMENT PLANS REVIEW POLICY MANUAL

In accordance with Section 26-283 of the Baltimore County code, regulations in this manual are intended to repeal the following sections of the Department of Public Works Development Procedures and Policy Manual adopted by County Council Resolution No. 100-85 on November 18, 1985.

<i>Division I</i>	<i>Sections 4, 5, 6, 7, 8</i>
<i>Division II</i>	<i>All Sections</i>
<i>Division III</i>	<i>Section 14</i>
<i>Division IV</i>	<i>All Sections</i>

February 27, 2002



Ga 4 5

1972



6 4

1972

Andrew Jay Miller

Professional qualifications:

Ph.D. 1983, The Johns Hopkins University, Whiting School of Engineering

Professor of Geography & Environmental Systems, UMBC

31 years of teaching (graduate and undergraduate level) and research on geomorphology, hydrology, water resources and environmental science

Multiple publications in peer-reviewed journals on hydrology, hydraulics and geomorphic impacts of large floods and on hydrology of urban watersheds

PI and co-PI on multiple research projects funded by National Science Foundation, NOAA, and other agencies - cumulative more than \$7,000,000

Member of Chesapeake Bay Program Scientific and Technical Advisory Committee

Member of Baltimore County Commission on Environmental Quality

Academic Liaison to Maryland Stream Restoration Association

Member of Middle Gwynns Falls Small Watershed Action Plan Steering Committee

Active collaboration with Baltimore County Department of Environmental Protection and Sustainability on studies related to stream restoration and environmental mitigation projects

Member of Scientific and Technical Working Group of the Maryland Commission on Climate Change and principal author of chapter on Water Resources & Aquatic Environments in 2008 report and chapter on Water Resources in 2010 Adaption and Response report

Founder of UMBC's Center for Urban Environmental Research and Education (CUERE), working with faculty and staff to plan the research agenda, education connections and outreach activities involving public agencies and other stakeholders (1999-2001)

Expert Witness on fluvial geomorphology in U.S. District Court, Huntingdon Division, Ohio Valley Environmental Coalition et al. v. U.S. Army Corps of Engineers et al.; expert witness and consultant on other environmental legal cases involving water resources and environmental protection in Maryland

Protestant 8



Protestant 8

#8
Packets



Protestant 10



RA bridge

Reisenstein Road







ProQuest



Project 12.0



Protestant 12/21

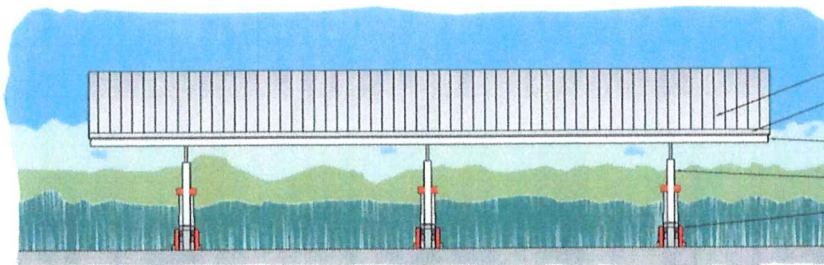




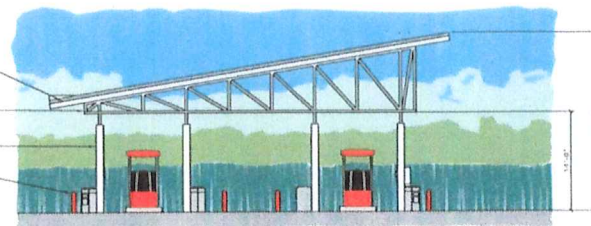
Sheet # 128



2013-0080-SPX

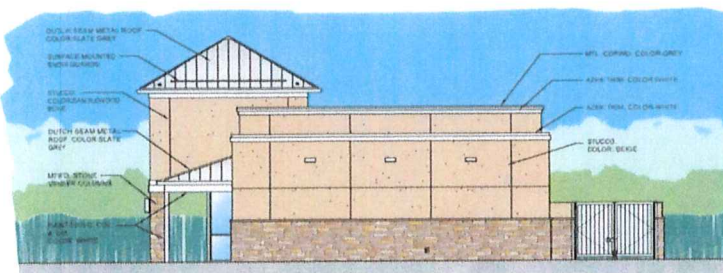


FRONT ELEVATION - STEEL CANOPY



SIDE ELEVATION - STEEL CANOPY

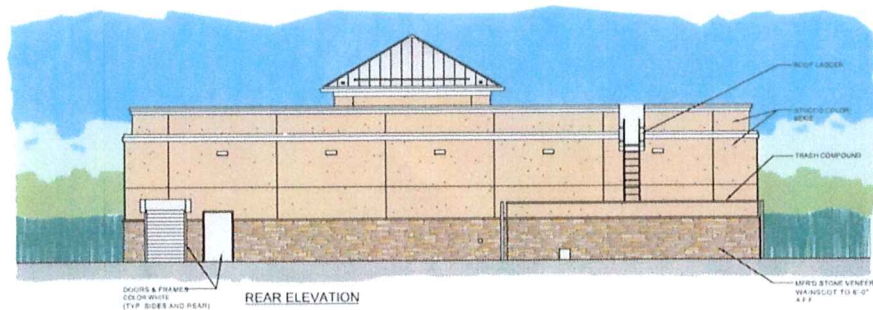
NATURAL AND FINISHES SHOWN OPPOSITE SIDE ELEVATION



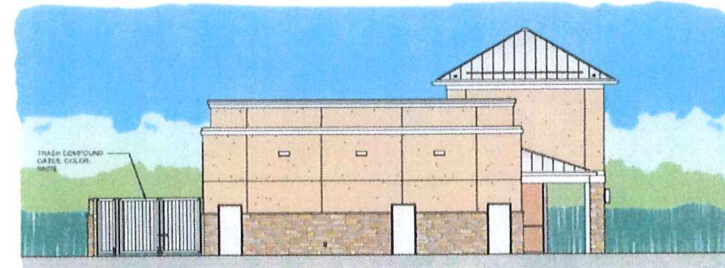
RIGHT SIDE ELEVATION



FRONT ELEVATION



REAR ELEVATION



LEFT SIDE ELEVATION

Proposed Wawa
Rt 355 & Holiday Drive
Frederick, Maryland

March 28, 2012

Scale: 1/8" = 1'-0"

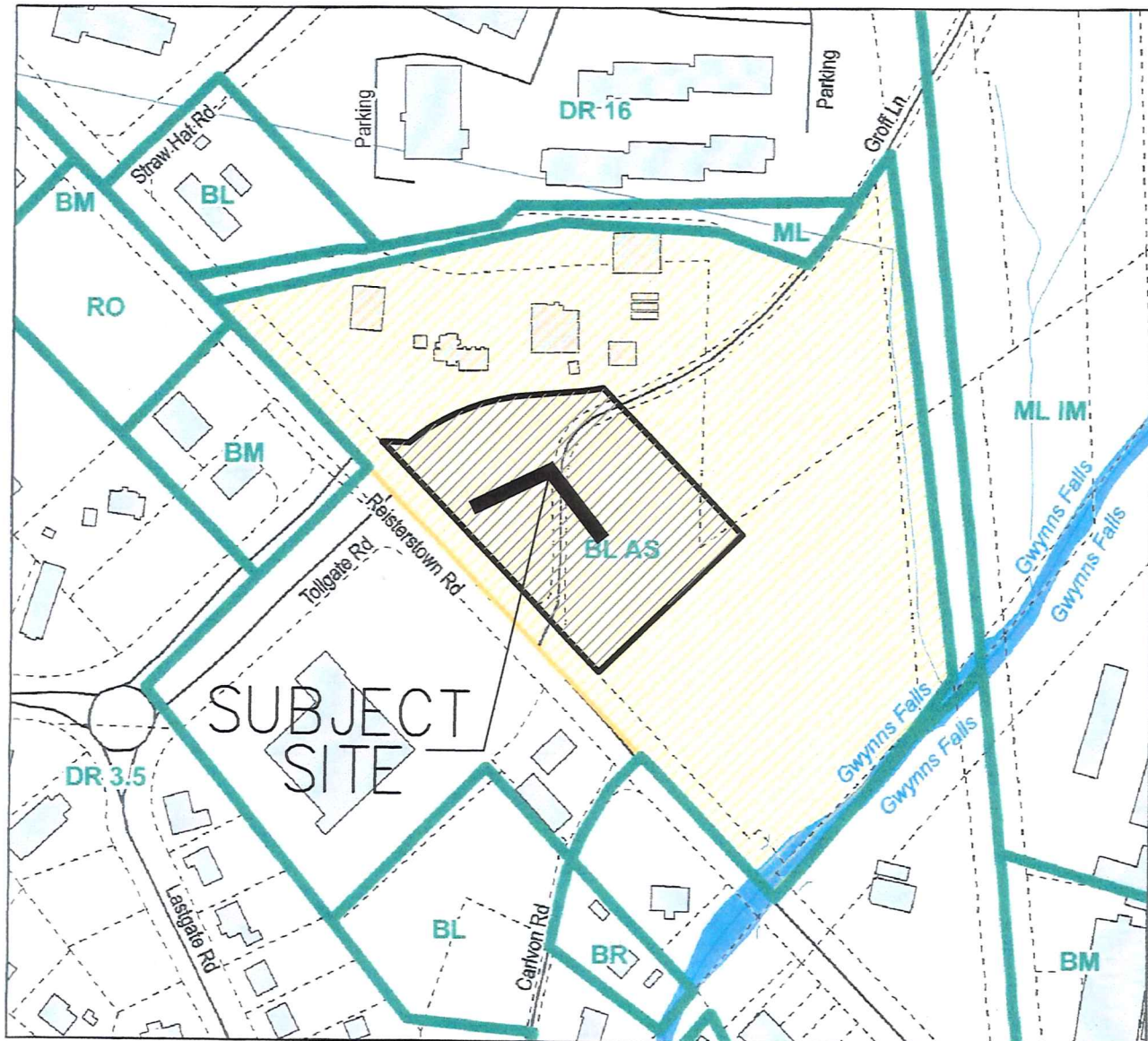
Store Code: W40

lma | ARCHITECTS LLC

921 Penlyn - Blue Bell Pike - Blue Bell, PA 19422

2013-0080-SPX

CZMP 2012 - Issue Map Holding Number: 109/Issue Number: 2-003



Iteration: COUNTY COUNCIL/1 ADC Reference Grid: 4576E3

Zone	District	Acreage
BL	AS	10.76
Total Acreage: 10.76		



200 0 200
Feet
1 inch = 200 feet



Publication Date: August 23, 2012
Publication Agency: Office of Planning
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot



2013-0080-SPX

COMPLIANCE WITH SECTION 405 OF THE BCZR:
 NO PART OF THIS LOT IS WITHIN 100' OF ANY RESIDENTIALLY
 ZONED PROPERTY. SEE VICINITY MAP FOR DIMENSION TO NEAREST
 DR-16 ZONE.
 THE PROPERTY IS LOCATED WITHIN THE UOPL.
 THE SITE MEETS THE MINIMUM DIMENSIONS REQUIRED BY SECTION
 405.1.A OF THE BCZR. SIX FUEL PUMPS OR 12 FUELING
 STATIONS x 1500 SF x 16,000' PROPOSED LOT IS 74,088 SF.
 THE GENERAL SITE AND BUILDING DESIGN WILL COMPLY WITH
 SECTION 405.4.C OF THE BCZR. MATERIALS USED WILL BE
 COMPATIBLE WITH EXISTING MILITARY AND HISTORICAL STRUCTURE
 LOCATED ON THE ADJACENT TRACT.
 THIS PLAN AS PROPOSED IS IN COMPLIANCE WITH SECTION 405 OF
 THE BCZR.