

IN RE: PETITION FOR SPECIAL HEARING *
(19 Warren Park Dr)
3rd Election District *
2nd Councilmanic District *
Milford Apartments I, LLC *
Petitioner *

BEFORE THE
OFFICE OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2013-0193-SPH

* * * * *

ORDER ON MOTION FOR RECONSIDERATION

Protestants have filed on June 3, 2013 a motion to reconsider the May 6 Order in the above case. The first portion of the motion contends that the ALJ erred by granting the special hearing relief and confirming that a "zoning subdivision" existed. As noted at the hearing, and in the Order, it is unclear whether such a doctrine exists under Maryland or Baltimore County law. But the granting of the relief on this point was tantamount only to recognizing that the property is in fact split-zoned, as discussed on page 3 of the Opinion. Stated otherwise, the words "zoning subdivision" were coined by the Petitioner, and do not, in and of themselves, have legally operative significance. Thus, I think the Protestants are emphasizing semantics over substance.

As noted in the Opinion, I did not conclude that "Parcel 3" had been lawfully subdivided under the pertinent County subdivision regulations. Nor did I find that a "de facto" subdivision had occurred, although cases were cited from other jurisdictions where such a concept has been recognized. The Council's rezoning of "Parcel 3" in the last CZMP was a pivotal event, and legal consequences flow from that action. One of those is that "Parcel 3" has a different zoning classification from the remainder of the lot, a scenario that is often encountered since there is no requirement that lot lines and zoning boundary lines coincide. The special hearing relief on this aspect merely acknowledged this state of affairs.

ORDER RECEIVED FOR FILING

Date 6/11/13

By Sen

The second issue raised by Protestants concerns the special hearing relief allowing all permitted uses on the M.L. zoned land. The Protestants fear that such inquiries (i.e., "what uses are allowed on this land?") will "open the floodgates." But it seems to me that Section 500.7 of the BCZR expressly permits such inquiries. Indeed, among other things, that regulation allows citizens to request a hearing "to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations." BCZR § 500.7.

The Protestants, as did Petitioner's engineer at the hearing, next discuss the permitted density of the overall parcel, and contend that "if parcel 3 had retained its previous DR5.5 zoning, residential development would not have been allowed, without a variance," since, according to Protestants, the apartment complex is already above allowed density. While that may be true, it is beside the point (since it would constitute a lawful nonconforming use in any event), and the property was rezoned. And under the ML zoning regulations, "density" is not provided and residential dwellings are not permitted in any event, so any discussion of density is inapposite in these circumstances.

Protestants' final argument on this point makes reference to Mr. Zimmerman's letter dated April 11, 2013, concerning whether or not "parcel 3" in the "original plan" had been designated or envisioned as a buffer area or open space. Any discussion in this regard is complicated by the fact that, as Protestants note, the Petitioner did not produce at the hearing a copy of the plan whereby the apartment complex was approved. But as I noted at the hearing, the zoning regulations at this time (1963 edition) provided local open space requirements for most "residence" zones (Sections 202, 205, 208 and 211 of 1963 BCZR) but not for apartments in the R.A. zone (although the regulations in Section 217.5 did provide setback requirements between the apartment buildings themselves). Even assuming for sake of argument that the land comprising "parcel 3" was shown

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²By

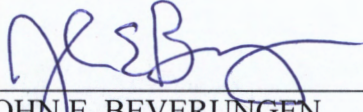
sen

as a buffer or open space on the original plan approved in the 1960s, I believe the Petitioner would nonetheless be able to avail itself of the M.L zoning, which was enacted in 2012. This legislation—if not the intervening roadway improvements which in and of themselves radically altered the land use which would have been depicted on the original plan—was enacted only after adequate procedural due process safeguards, and would “amend” by operation of law any earlier plan that was inconsistent therewith.

In light of the foregoing, the Protestants’ motion will be denied.

THEREFORE, IT IS ORDERED, this 11th day of June, 2013 by the Administrative Law Judge for Baltimore County, that the Motion for Reconsideration be and is DENIED.

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



JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:slh

ORDER RECEIVED FOR FILING

Date 6/11/13
By slh



KEVIN KAMENETZ
County Executive

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

June 11, 2013

Timothy M. Kotroco, Esquire
Whiteford, Taylor & Preston, L.L.P.
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, Maryland 21204

RE : **MOTION FOR RECONSIDERATION** - Petition for Special Hearing
Case No. 2013-0193-SPH
Property: Milford Apartments I, LLC

Dear Mr. Kotroco:

Enclosed please find a copy of the decision rendered on the Motion for Reconsideration.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

A handwritten signature in black ink, appearing to read "JEB", is written over a horizontal line.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Alan P. Zukerberg, President, Pikesville Communities Corporation,
7919 Longmeadow Road, Baltimore, Maryland 21208
Mark Sapp, Vice President, Colonial Village Neighborhood Association,
4207 Old Milford Mill Road, Baltimore, Maryland 21208
Peter Max Zimmerman, People's Counsel

IN RE: PETITION FOR SPECIAL HEARING *

(19 Warren Park Dr)

3rd Election District *

2nd Councilmanic District *

Milford Apartments I, LLC *

Petitioner *

BEFORE THE

OFFICE OF ADMINISTRATIVE

HEARINGS FOR

BALTIMORE COUNTY

CASE NO. 2013-0193-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Hearing filed by Timothy M. Kotroco, Esquire on behalf of Milford Apartments I, LLC, legal owner. The Petitioner is requesting Special Hearing relief pursuant to § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows: (1) to permit a zoning subdivision as created by road network; (2) to permit an amendment to a final development plan; (3) to allow all permitted uses on the ML zoned land, and (4) to allow such other and further relief as the nature of the cause may require. The subject property and requested relief is more fully depicted on the site plan and amended site plan that were marked and accepted into evidence as Petitioner's Exhibits 1 and 2.

Appearing at the public hearing held for this case was Richard E. Matz with Colbert, Matz & Rosenfelt, Inc., the engineering firm that prepared the site plan. Timothy M. Kotroco, Esquire with Whiteford, Taylor & Preston, LLP, appeared and represented the Petitioner. Citizens who attended and opposed the petition were Alan P. Zukerberg, President, Pikesville Communities Corporation, Mark Sapp (Vice President) and Bill Kaplan (board member) with Colonial Village Neighborhood Association, and Mike Pierce. The file reveals that the Petition was properly advertised and the site was properly posted (in fact, three [3] signs were posted) as required by the

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Date 5-6-13

By DS

Baltimore County Zoning Regulations. The Protestants complained that none of the signs was placed directly on the 1.3 acre parcel in question. But Maryland cases hold that when protestants are actually aware of and attend hearings on a disputed proposal, any alleged deficiencies in the notice will not negate the jurisdiction of the administrative tribunal. Landover Books, Inc. v. Prince George's Co., 81 Md. App. 54 (1989).

No substantive Zoning Advisory Committee (ZAC) comments were received from any County agency.

Testimony and evidence revealed that the subject property is approximately 11.55 acres and is split-zoned DR 16, DR 5.5 and ML. A large apartment complex was constructed on the property in the 1960s, and Petitioner's counsel believes the project was reviewed under the then-applicable process. In any event, neither the Petitioner nor Baltimore County could locate a copy of the approved plan for the site, which creates part of the difficulty in resolving the matter. Baltimore County in the 1980s exercised its powers of eminent domain and acquired a portion of Petitioner's property for the re-routing and construction of Milford Mill Road. Petitioner's Exhibit 4. This construction project greatly changed the area, and bisected the Petitioner's property. In the process, it also isolated (or "orphaned," as suggested by Petitioner's counsel) a small 1.3 acre parcel (known herein as Parcel 3), which is the subject of this case. It is this parcel of land that was rezoned to ML during the most recent Comprehensive Zoning Map Process (CZMP) process.

The first special hearing request is for a "zoning subdivision" created by the road network. I told the participants at the April 12, 2013 hearing that I was unfamiliar with this concept, and Petitioner submitted further briefing on the issue. See letter from John B. Gontrum, Esq., dated April 22, 2013. In that correspondence, Petitioner discusses the doctrine of "zoning merger," and

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By ISW

seems to be seeking a determination that these lots or parcels have not merged for zoning purposes. After reviewing the exhibits, I do not believe there is anything here that could merge. The property never consisted of discreet, undersized parcels, and that is the primary goal of the merger doctrine: to eliminate undersized parcels. While the site plan in the case refers to "Parcel One," "Parcel Two" and "Parcel Three," those are merely descriptive terms used by Petitioner's engineer and it appears this 10+/- acre tract is comprised of just one parcel (for tax purposes, Parcel 409) which has never been subdivided. What exists is a split-zoned parcel, which means only that "one parcel of land is encumbered with two different zoning classifications." Alviani v. Dixon, 365 Md. 95 (2001).

In these circumstances, I believe the Petitioner is entitled to use Parcel 3 for any of the purposes set forth in B.C.Z.R. § 253.1, or could seek special exception relief for the uses in B.C.Z.R. § 253.2. As I noted at the hearing, this represents a determination on an issue of zoning law only, and should not be construed to exempt the Petitioner from any otherwise applicable laws and regulations, including but not limited to the County's development and planning regulations. "Zoning dictates what one can build on, or how one may use his property while subdivision or planning determines how the land is divided." Remes v. Mont. Co., 387 Md. 52, 74 (2005). So on the portion zoned ML, the Petitioner can use the property for the purposes set forth in the ML regulations.

But this does not mean that the ML portion (approximately 1.3 acres) of the 10+/- acre overall tract is a separate "lot" for development or conveyancing purposes. As noted by the court of appeals, "subdivision regulations are utilized to create separate lots." Friends of the Ridge v. BGE, 352 Md. 645, 650-51 (1999). The development of "Lot Three" will therefore need to be in compliance with County development laws and procedure, as set forth in Article 32, Title 4 of the

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Date 5-6-13

By law

Baltimore County Code (B.C.C.), which is a matter entrusted to the County's Department of Permits, Approvals and Inspections (PAI).

In researching the issues involved in this case, I discovered that courts in Pennsylvania and New York recognize what is known as a "de facto" subdivision. Riverwatch Condo. Ass'n. v. Restoration Dev. Corp., 980 A.2d 674 (Pa. 2009); Northern Dutchess Club v. Town of Rhinebeck, 814 N.Y.S. 2d 691 (2006). In Rhinebeck, the Town's policy was that when a public road divides a parcel of land, a de facto subdivision has occurred. Id. at 693. I was unable to locate a Maryland case recognizing this doctrine, although in its development regulations St. Mary's County specifies that county or state roads function as "parcel dividers," that create separate "parcels of record." St. Mary's Co. v. Potomac River Ass'n., 113 Md. App. 580, 585 n.5 (1997). In addition, the County Board of Appeals (CBA) recently deliberated in a case where the CBA will apparently hold that a BGE power line which bisects a property located at 21257 Baker School House Road effects a subdivision of the overall parcel. Thus, it is unclear at this juncture whether Maryland law would deem a "de facto subdivision" to have occurred when the County in the condemnation case took title to reconfigured Milford Mill Road.

The second request is to amend the "final development plan." As I noted at the hearing, this nomenclature was adopted after the construction of this apartment project; and even if the terminology was applicable, a "final" plan for the project has not been located or introduced at the hearing. As such, I cannot permit an amendment to a plan I have not seen, and to that extent this aspect of the request is denied. The Petitioner did submit a zoning site plan (Petitioner's Exhibit 1) and a redlined site plan (Petitioner's Exhibit 2) showing existing site conditions, and those plans were admitted as exhibits and are included within the record of this case. Those plans were

prepared by a licensed engineer (Richard Matz) and can therefore serve as the basis for the relief

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By DW

Mr. Zimmerman's letter also asks whether the rezoning of Parcel 3 "renders inapplicable ... BCZR Section 1B01.3," pertaining to amendment of residential development plans. Article 1B of the B.C.Z.R concerns "density residential zones," and Parcel 3 is no longer a residential zone. The regulations pertaining to amendment of residential development plans (§1B01.3) are designed to encourage disclosure of development plans to prospective residents and to prevent developers from making "inappropriate changes" to such plans. B.C.Z.R. §1B01.3.A.1. For example, these regulations are designed to protect existing residents who purchased a single-family dwelling in a community of such homes from a developer later changing plans and constructing townhouses in that same community. That concern is simply not present here, and I therefore do not believe the process set forth in B.C.Z.R. § 1B01.3 is applicable. Parcel 3 was rezoned in 2012 through a legislative process and it is that recently-enacted legislation that controls the use of this parcel.

Pursuant to the advertisement, posting of the property, and public hearing, and after considering the testimony and evidence offered, I find that Petitioner's Special Hearing request should be GRANTED in part and DENIED in part.

THEREFORE, IT IS ORDERED, this 6th day of May, 2013 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to: (1) permit a zoning subdivision as created by road network, and to (2) allow all permitted uses on the ML zoned land; be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Hearing pursuant to § 500.7 of the B.C.Z.R., to permit an amendment to a final development plan, be and is hereby DENIED.

ORDER RECEIVED FOR FILING

Date 5-6-13

By 120



KEVIN KAMENETZ
County Executive

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

May 6, 2013

Timothy M. Kotroco, Esquire
Whiteford, Taylor & Preston, L.L.P.
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, MD 21204

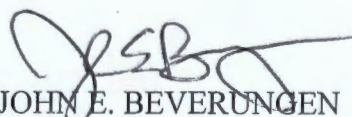
RE: Petition for Special Hearing
Case No. 2013-0193-SPH
Property: 19 Warren Park Drive

Dear Mr. Kotroco:

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

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw
Enclosure

c: Alan P. Zukerberg, President, Pikesville Communities Corporation, 7919 Longmeadow Road,
Baltimore, MD 21208
Mark Sapp, Vice President, Colonial Village Neighborhood Association,
4207 Old Milford Mill Road, Baltimore, MD 21208
Bill Kaplan, Board Member, Colonial Village Neighborhood Association,
7001 Deerfield Road, Pikesville, MD 21208
Mike Pierce, 7448 Bradshaw Road, Kingsville, MD 21087



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 19 Warren Park Drive which is presently zoned DR 16, DR 5.5, ML
Deed References: 28993 / 00181 10 Digit Tax Account # 0307051951
Property Owner(s) Printed Name(s) Milford Apartments I, LLC

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

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

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

SEE ATTACHED

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

3. ☐ **a Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

TO BE PRESENTED AT HEARING

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

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

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

Contract Purchaser/Lessee:

N/A

Name- Type or Print

Signature

Mailing Address

City

State

Zip Code

Telephone #

Email Address

Attorney for Petitioner:

Timothy Kotron
John Gontrum, Whiteford Taylor Preston

Name- Type or Print

Signature

Towson Commons, Suite 300, One Pennsylvania Ave

Mailing Address

City

State

Towson, MD

21204 / 410-832-2055

jgontrum@wtplaw.com

Zip Code

Telephone #

Email Address

Legal Owners (Petitioners):

Jonathan Ehrenfeld, Milford Apartments I, LLC

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

6609 Reisterstown Rd, Suite 100, Baltimore, MD

Mailing Address

City

State

21215

443-278-9302

jonathan@blueoceanrealty.net

Zip Code

Telephone #

Email Address

Representative to be contacted:

Richard E. Matz, Colbert Matz Rosenfelt, Inc.

Name - Type or Print

Signature

2835 Smith Avenue, Suite G, Baltimore, MD

Mailing Address

City

State

21209

410-653-3838

rmatz@cmrengineers.com

Zip Code

Telephone #

Email Address

CASE NUMBER 2013-093541 Filing Date 2/27/13

Do Not Schedule Dates:

Reviewer G. H.

PETITION FOR SPECIAL HEARING:

- 1) To permit a zoning subdivision as created by road network;
- 2) To permit an amendment to a final development plan;
- 3) To allow all permitted uses on the M.L. zoned land: and
- 4) To allow such other and further relief as the nature of the cause may require.

Colbert Matz Rosenfelt, Inc.

Civil Engineers • Surveyors • Planners



PARCEL ONE

BEGINNING FOR THE SAME at a rebar found on the southeast side of Slade Avenue (40 feet wide), which is 148.49 feet from the centerline of Roland Road, said rebar being at the end of the first or South 53° 23' 30" West 75 foot line of a deed dated August 26, 1963 from Gorn Brothers Inc., Harry S. Miller, Irvin Miller and Harold Miller to Samuel G. Gorn and Irvin Miller and recorded among the Land Records of Baltimore County, Maryland in Liber 4192, folio 258; thence binding on said Slade Avenue and binding reversely on the first, fourteenth and part of the thirteenth lines of said deed, referring all courses of this description to the Grid Meridian established in the Maryland Coordinate System NAD '83 (1991), as now surveyed for the following courses and distances, viz:

1. North 53° 02' 16" East 75.08 feet to a point; thence leaving said Slade Avenue
2. South 37° 09' 28" East 282.22 feet to a rebar found; thence
3. South 38° 21' 52" East 188.96 feet to a point on the westernmost right of way line of Relocated Milford Mill Road as shown on Baltimore County Bureau of Land Acquisition Drawing No. RW 83-395-2, which drawing is recorded among the aforementioned Land Records in the deed dated May 29, 1985, from Samuel G. Gorn and Irvin Miller to Baltimore County, Maryland in Liber 6974 Folio 759; thence binding on the right of way of said Relocated Milford Mill Road the following three courses and distances,
4. Southeasterly by a line curving to the left, having a radius of 635.00 feet for a distance of 64.49 feet (the arc of said curve being subtended by a chord bearing of South 15° 26' 26" East 64.46 feet) to a point of reverse curve; thence
5. Southerly by a line curving to the right, having a radius of 595.00 feet for a distance of 340.42 feet (the arc of said curve being subtended by a chord bearing bearing of South 01° 57' 34" East 335.79 feet); thence
6. South 22° 09' 06" West 16.58 feet to a point on the right of way line of Relocated Milford Mill Road as referred to in a deed dated January 25, 1988 from the State of Maryland and the Mass Transit Administration of the Department of Transportation to Baltimore County, Maryland and recorded among the aforementioned Land Records in Liber 7786, folio 769, said right of way line being shown on State Roads Commission of Maryland Right of Way Plat No. 28770, thence continuing to bind on said right of way line as shown on said plat and as referred to in said deed the five following courses and distances;
7. South 28° 29' 57" West 93.90 feet to a point; thence
8. South 38° 46' 13" West 93.29 feet to a point; thence
9. South 49° 41' 31" West 250.13 feet to a point; thence
10. South 50° 55' 21" West 76.52 feet to a point; thence

11. South 63° 59' 44" West 5.36 feet to a point on the northeast right of way line of The Western Maryland Railroad (being part of CSX Transportation), said right of way being 66' wide as shown on Valuation Map V.1 - 1/4; thence leaving the right of way line of Relocated Milford Mill Road, and binding on the northeast right of way line of the Western Maryland Railroad and binding reversely on part of the fifth and all of the fourth, lines of the firstmentioned deed the following two courses and distances,

12. Northwesterly by a line curving to the left having a radius of 1943.08 feet for a distance of 302.87 feet (the arc of said curve being subtended by a chord bearing of North 38° 38' 00" West 302.56 feet) to a point of tangency; thence

13. North 43° 05' 58" West 142.65 feet to a point at the end of the third or South 41° 06' 32" West 697.25 feet line of the firstmentioned deed; thence leaving the Western Maryland Railroad right of way, and binding reversely on the third and second lines of the firstmentioned deed, the following courses and distances,

14. North 40° 33' 09" East, passing over a 1 inch diameter pipe found at 1.21 feet, a total distance of 698.70 feet to a 1 inch diameter pipe found; thence

15. North 37° 09' 28" West a distance of 297.72 feet to the point of beginning.

CONTAINING 357,658 square feet or 8.2107 acres of land, more or less, and located in the 3rd Election District and 2nd Councilmanic District.



Professional Certification. I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland.

License No. 13203, Expiration Date: 11-2-14.

PARCEL TWO

BEGINNING FOR THE SAME at a point at the end of the eleventh or North 55° 27' 10" East 110.00 foot line of a deed dated August 26, 1963 from Gorn Bros., Inc., Harry S. Miller, Irvin Miller and Harold Miller to Samuel G. Gorn and Irvin Miller, which is 145.28 feet from the centerline of Deerfield Road, and recorded among the Land Records of Baltimore County, Maryland in the Liber 4192, folio 258; thence binding reversely on said eleventh line, referring all courses of this description to the Grid Meridian established in the Maryland Coordinate System NAD '83 (1991), as now surveyed:

1. South 55° 15' 27" West 63.34 feet to a point on the northeasternmost right of way line of Deerfield Road, said right of way referred to in a deed dated January 25, 1988 from the State of Maryland and the Mass Transit Administration of the Department of Transportation to Baltimore County, Maryland and recorded among the Land Records in Liber 7786, folio 769, said right of way line being shown on State Roads Commission of Maryland Right of Way Plats Nos. 20842 and 28770; thence binding on said right of way line as shown on said plat and as referred to in said deed the following courses and distances;
2. Northwesterly by a line curving to the left having a radius of 475.20 feet for a distance of 289.09 feet (the arc of said curve being subtended by a chord bearing North 51° 35' 10" West 284.66 feet) to a point; thence
3. North 70° 43' 39" West 7.68 feet to a point on the easternmost right of way line of Relocated Milford Mill Road as shown Baltimore County Bureau of Land Acquisition Drawing No. RW 83-395-1, which drawing is recorded among the aforementioned Land Records in the deed dated May 29, 1985, from Samuel G. Gorn and Irvin Miller to Baltimore County, Maryland in Liber 6974 Folio 759; thence binding on said right of way
4. Northerly by a line curving to the left having a radius of 665.00 feet for a distance of 274.86 feet (the arc of said curve being subtended by a chord bearing of North 01° 57' 44" East 272.91 feet) to a point on the thirteenth or North 38° 04' 17" West 407.23 feet line of the firstmentioned deed; thence binding reversely on part of the thirteenth and all of the twelfth line, the following courses and distances:
5. South 38° 28' 16" East 46.20 feet to a point; thence
6. South 32° 44' 22" East 451.63 feet to the point of beginning.

CONTAINING 41,943 square feet or 0.9629 acres of land, more or less, and located in the 3rd Election District and 2nd Councilmanic District.



Professional Certification. I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland.

License No. 13203, Expiration Date: 11-2-14

PARCEL THREE

BEGINNING FOR THE SAME at a point on the southwest right of way line of Relocated Deerfield Road, and 25.3 feet from the centerline of Deerfield Road, as shown on Baltimore County Bureau of Land Acquisition Drawing No. RW 81-122-2, which drawing is attached to and made a part of the Inquisition dated April 27, 1987, between Baltimore County, Maryland vs. Samuel G. Gorn and Irvin Miller and recorded among the Land Records of Baltimore County, Maryland in Liber 7511, folio 614, said point also being the northeast corner of the land which by deed dated October 19, 2004 was granted and conveyed from Baltimore County, Maryland to Shalem Holdings II, LLC and recorded among the aforesaid Land Records in Liber 20971, folio 256; thence leaving said right of way and binding on said deed, and running and binding reversely with the seventh and part of the sixth lines of the deed dated August 26, 1961 from Gorn Bros., Inc., Harry S. Miller, Irvin Miller and Harold Miller to Samuel G. Gorn and Irvin Miller and recorded among the Land Records of Baltimore County, Maryland in Liber 4192, folio 258 referring all courses of this description to the Grid Meridian established in the Maryland Coordinate System NAD '83 (1991)

1. South 55° 16' 58" West of 267.29 feet to a 2 inch diameter pipe found; thence
2. South 51° 29' 46" West 203.44 feet to a point on the southeast right of way line of Relocated Milford Mill Road, said right of way referred to in a deed dated January 25, 1988 from the State of Maryland and the Mass Transit Administration of the Department of Transportation to Baltimore County, Maryland and recorded among the aforementioned Land Records in Liber 7786, folio 769 said right of way line being shown on State Roads Commission of Maryland Plat No. 28770 ; thence binding on said right of way line as shown on said Plat and as referred to in said deed the seven following courses and distances;
3. North 29° 52' 51" West 5.78 feet to a point; thence
4. North 43° 04' 04" West 82.00 feet to a point; thence
5. Northeasterly by a line curving to the left having a radius of 1678.02 feet for a distance of 34.85 feet (the arc of said curve being subtended by a chord bearing of North 46° 20' 14" East 34.85 feet to a point; thence
6. Northeasterly by a line curving to the left having a radius of 1156.00 feet for a distance of 254.29 feet (the arc of said curve being subtended by a chord bearing North 39° 26' 17" East 253.77 feet) to a point; thence
7. Northeasterly by a line curving to the right having a radius of 165.00 feet for a distance of 144.85 feet (the arc of said curve being subtended by a chord bearing of North 59° 08' 28" East 140.24 feet) to a point; thence
8. South 86° 05' 05" East 47.93 feet to a point; thence
9. South 60° 50' 49" East 20.81 feet to a point on the aforementioned southwest right of way line of Relocated Deerfield Road; thence binding on said right of way line
10. Southeasterly by a line curving to the right having a radius of 395.20 feet for a distance of 87.82 feet (the arc of said curve being subtended by a chord bearing of South 42° 29' 56" East 87.64 feet) to the point of beginning.

CONTAINING 56,326 square feet or 1.2931 acres of land, more or less, and located in the 3rd Election District and 2nd Councilmanic District.



Professional Certification. I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland.

License No. 13203, Expiration Date: 11-2-14.

**DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW**

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 2013- 0193- SPH
Petitioner: Timothy Kotroco
Address or Location: 7227 Deerfield RD

PLEASE FORWARD ADVERTISING BILL TO:

Name: Jonathan Ehrenfeld
Address: Milford Apartments I, LLC/c/o Blue Ocean Realty
6609 Reisterstown Rd., Suite 100
Baltimore, MD 21215
Telephone Number: 443-278-9302

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

No. **94121**

Date: **2/20/13**

PAID RECEIPT

BUSINESS ACTION TIME DM
 2/20/2013 2/20/2013 14:35:04 5
 REC WORK WALKIN REOS LRE
 RECEIPT # 740872 2/20/2013 BFLN
 5 538 ZONING VERIFICATION
 094121
 Receipt Tot \$385.00
 \$385.00 CI \$1.00 CA
 Baltimore County, Maryland

Fund	Dept	Unit	Sub Unit	Rev Source/Obj	Sub Rev/Obj	Dept Obj	BS Acct	Amount
001	800	0003		650				385.00

Total: **385.00**

Rec From: **Whiteford, Taylor, & Preston LLP**

For: **2013-0193 SPH**

DISTRIBUTION

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

**CASHIER'S
 VALIDATION**

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS

DATE: 03/22/2013

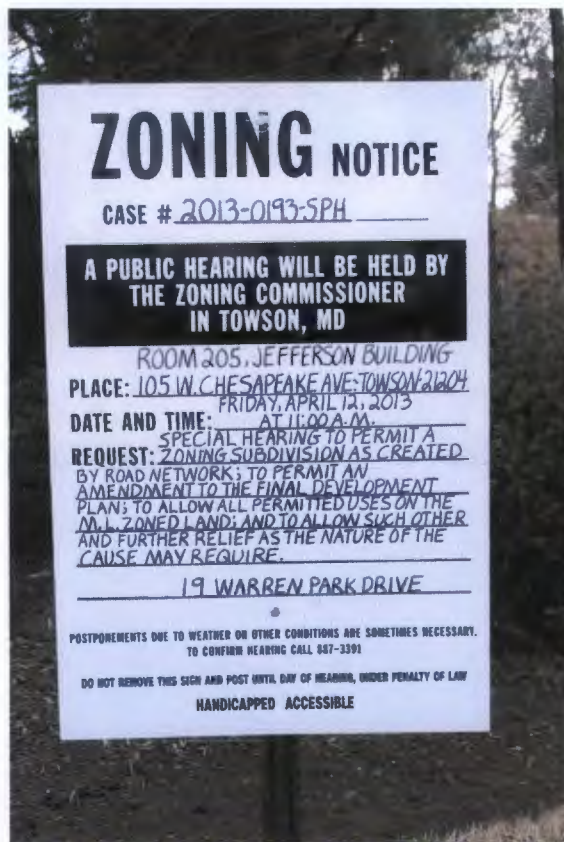
Case Number: 2013-0193-SPH

Petitioner / Developer: COLBERT, MATZ & ROSENFELT, INC.
TIMOTHY KOTROCO, ESQ.~JOHNATHAN EHRENFIELD

Date of Hearing (Closing): APRIL 12, 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:
19 WARREN PARK DRIVE SE/s SLADE AVE.~DEERFIELD RD.~
W/s of MILFORD MILL RD. (ON-SITE)

The sign(s) were posted on: MARCH 22, 2013



19 WARREN PARK DRIVE
S/Es SLADE AVE.

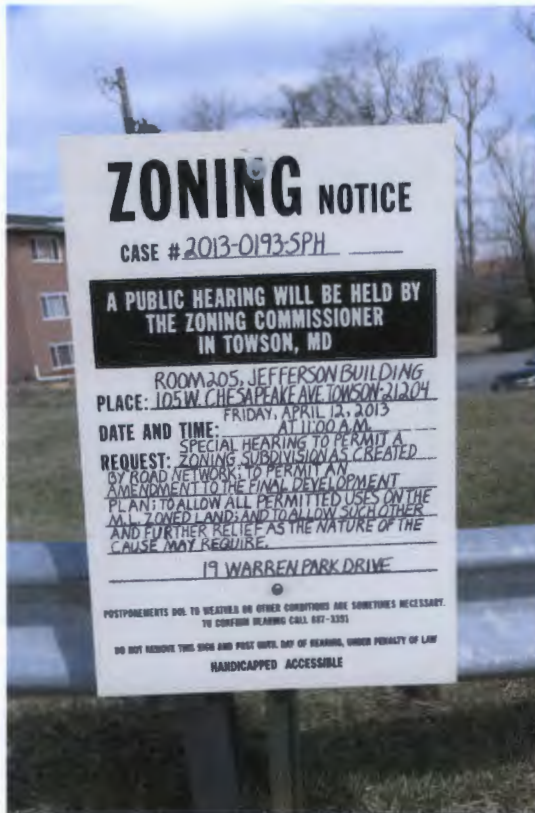
Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

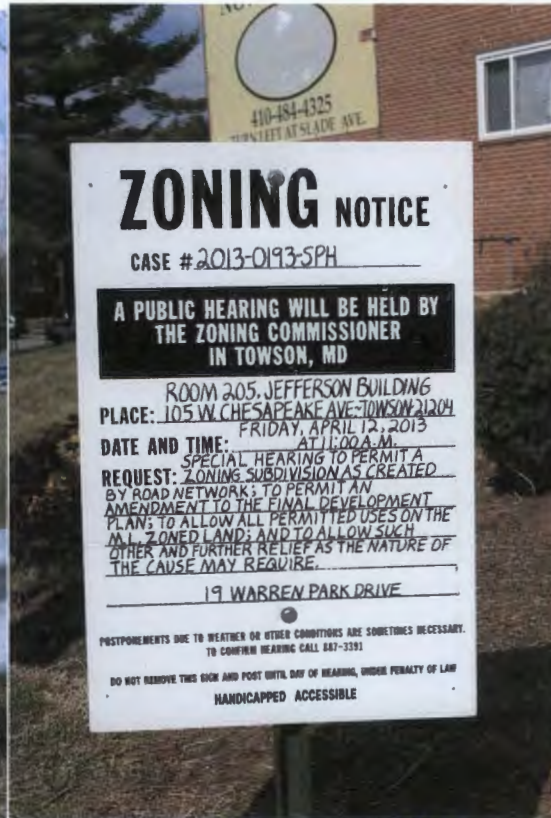
523 Penny Lane
(Street Address of Sign Poster)

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

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



DEERFIELD RD.



MILFORD MILL RD.

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: #2013-0193-SPH

19 Warren Park Drive
SE/s Slade Avenue, 148.49 sq. ft (+/-) from the centerline
of Roland Road
3rd Election District - 2nd Councilmanic District
Legal Owner(s): Jonathan Ehrenfeld, Milford Apartments I,
LLC

Special Hearing: to permit a zoning subdivision as created by road network; to permit an amendment to the Final Development Plan; to allow all permitted uses on the M.L. zoned land; and to allow such other and further relief as the nature of the cause may require.

Hearing: Friday, April 12, 2013 at 11:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

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

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

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.
3/24/9 March 21 911072



501 N. Calvert Street, Baltimore, MD 21278

March 21, 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 March 21, 2013.

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

PATUXENT PUBLISHING COMPANY

By: Susan Wilkinson

Susan Wilkinson

TO: PATUXENT PUBLISHING COMPANY
Thursday, March 21, 2013 Issue - Jeffersonian

Please forward billing to:

Jonathan Ehrenfeld
Milford Apartments
6609 Reisterstown Road, Ste. 100
Baltimore, MD 21215

443-278-9302

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: 2013-0193-SPH

19 Warren Park Drive

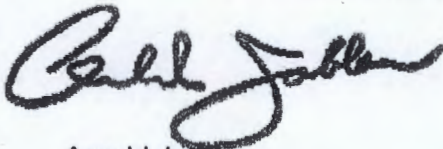
SE/s Slade Avenue, 148.49 sq. ft. (+/-) from the centerline of Roland Road

3rd Election District – 2nd Councilmanic District

Legal Owners: Jonathan Ehrenfeld, Milford Apartments I, LLC

Special Hearing to permit a zoning subdivision as created by road network; to permit an amendment to the Final Development Plan; to allow all permitted uses on the M.L. zoned land; and to allow such other and further relief as the nature of the cause may require.

Hearing: Friday, April 12, 2013 at 11:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Arnold Jablon

Director of Permits, Approvals and Inspections for Baltimore County

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL 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

March 12, 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: 2013-0193-SPH

19 Warren Park Drive

SE/s Slade Avenue, 148.49 sq. ft. (+/-) from the centerline of Roland Road

3rd Election District – 2nd Councilmanic District

Legal Owners: Jonathan Ehrenfeld, Milford Apartments I, LLC

Special Hearing to permit a zoning subdivision as created by road network; to permit an amendment to the Final Development Plan; to allow all permitted uses on the M.L. zoned land; and to allow such other and further relief as the nature of the cause may require.

Hearing: Friday, April 12, 2013 at 11:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

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

Arnold Jablon
Director

AJ:kl

C: Timothy Kotroco, One Pennsylvania Avenue, Ste. 300, Towson 21204
Jonathan Ehrenfeld, 6609 Reisterstown Road, Ste. 100, Baltimore 21215
Richard Matz, 2835 Smith Avenue, Ste. G., Baltimore 21209

- NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SAT. MARCH 23, 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.



KEVIN KAMENETZ
County Executive

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

April 4, 2013

Jonathan Ehrenfeld
Milford Apartments I, LLC
6609 Reisterstown Road
Suite 100
Baltimore MD 21215

RE: Case Number: 2013-0193 SPH, Address: 19 Warren Park Drive

Dear Mr. Ehrenfeld:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on February 20, 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
Richard E. Matz, Colbert Matz Rosenfelt, Inc., 2835 Smith Avenue, Baltimore MD 21209
Timothy M. Kotroco, Esquire, Whiteford Taylor Preston, Towson Commons, Suite 300
One Pennsylvania Avenue, Towson MD 21204

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



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

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

DATE: March 14, 2013

SUBJECT: DEPS Comment for Zoning Item # 2013-0193-SPH
Address 19 Warren Park Drive
(Milford Apartments 1, LLC Property)

Zoning Advisory Committee Meeting of February 25, 2012.

X The Department of Environmental Protection and Sustainability has no
comment on the above-referenced zoning item.

Reviewer: *Jeff Livingston – Development Coordination*

RECEIVED

MAR 15 2013

OFFICE OF ADMINISTRATIVE HEARINGS

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



Darrell B. Mobley, Acting Secretary
Melinda B. Peters, Administrator

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: 2-26-13

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

RE: Baltimore County

Item No. 2013-0193-SPA

Special Hearing

Jonathan Ehrenfeld

Wittford Apartments I, LLC.

19 Warren Park Drive

Dear Ms. Lewis:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 2013-0193-SPA.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Steven D. Foster".

Steven D. Foster, Chief
Access Management Division

SDF/raz

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.roads.maryland.gov

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

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

DATE: February 27, 2013

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For March 4, 2013
Item Nos. 2013-0189, 0192, 0193 and 0195.

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

DAK:CEN
Cc: file

RE: PETITION FOR SPECIAL HEARING
19 Warren Park Drive; SE/S Slade Avenue,
148.4 sq ft from c/line Roland Road
3rd Election & 2nd Councilmanic Districts
Legal Owner(s): Milford Apartments I, LLC
Petitioner(s)

* BEFORE THE OFFICE
* OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* 2013-193-SPH

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED

MAR 07 2013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of March, 2013, a copy of the foregoing Entry of Appearance was mailed to Richard Matz, P.E., Colbert Matz Rosenfelt, Inc, 2835 Smith Avenue, Suite G, Baltimore, MD 21209 and John Gontrum, Esquire, 1 Pennsylvania Avenue, Suite 300, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

April 11, 2013

HAND DELIVERED

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

RECEIVED

APR 11 2013

Re: Milford Apartments I, LLC
19 Warren Park Drive
Case No.: 2013-193-SPH

OFFICE OF ADMINISTRATIVE HEARINGS

Dear Judge Beverungen,

Upon inquiry from Mark Sapp, Vice President of the adjacent Colonial Village Neighborhood Improvement Association, we reviewed this unusual case.

The main request is to amend a final development plan (FDP) to utilize Parcel 3 for any use permitted in the M.L. Zone. The site plan does not identify the date and reference to the original plan. However, the existing use is for the Warren Park Apartment buildings on Parcels 1 and 2 (mainly on Parcel 1) and an apparent original buffer area on Parcel 3, labeled on the site plan as "vacant/industrial."

When the original final development plan was approved, the entire property was zoned residential, all parcels. We understand the apartment development has been there a long time, but do not have a copy of the approved final development plan.

There is an industrial area and park to the south. This gives rise to the probable or reasonable inference that Parcel 3 provided a buffer, a transition area to protect both onsite residents and the adjacent Colonial Village residents. It will be important for the analysis that Petitioner submit a copy of the approved Final Development Plan and any minutes or other documentation pertinent to the original approval.

The apparent background for the present petition is that in 2012, the County Council rezoned Parcel 3 from D.R. 5.5 (residential) to M.L. (manufacturing-light) as part of Issue 2-014, spanning 2.31 acres (Blue Ocean Realty, Petitioner, Southwest

Corner of Milford Mill Rd and Deerfield Rd). This rezoning precipitates the following very interesting questions:

1. Does the rezoning render inapplicable the basic law applicable to amendment of final development plans in Article 1B, Density Residential Zones, to wit, BCZR Section 1B01.3?

2. If the answer to the first question is yes, the inquiry ends.

3. If the answer to the first question is no, then the next question is whether the proposed amendment here satisfies the relevant standards for such amendments?

The zoning law governing development plans is BCZR Section 1B01.3. So far as we can tell, it originated with Bill 100, 1970 and has remained to this day, with modest amendments from time to time. The subsection dealing with amendments of development plans is Section 1B01.3.A.7. As enacted in 1970, it applied as a practical matter, to new developments residential developments in D.R. Zones and to amendments of previously approved FDPs. Upon the subsequent establishment of the Resource Conservation Zones, the County Council incorporated this provision for the R.C. Zones. Bill 98-75, BCZR Section 1A00.4.

Whether or not originally developed before 1970, the subject property was until 2012 zoned entirely residential for many years. Although the procedures for approval of development and subdivision plans have changed through the years, there is no doubt that a development plan exists for the subject property. The site plan does not refer to the zoning or development history. While this will be good to know, it does not affect the answer to the first question.

While we are accustomed to see amendments to final development plans relating to properties which have been and remain zoned entirely for residential uses within Article 1B, does the law on amendments change or disappear when a part of the property is rezoned to other than a residential zone, such as the manufacturing zone here?

We can find no explicit reference to such an eventuality in the language of BCZR Section 1B01.3. Nor can we find any explicit linguistic exclusion or modification in the subsection controlling amendments to final development plans. BCZR Section 1B01.3.A.7. While it is sometimes said it is hard to prove a negative, we see no reason to conclude that the law on amendments to final development plans is implicitly negated or repealed when there is a partial rezoning of the property.

It should be underlined that the majority of the approximately 11-acre property is still zoned Density-Residential, mostly D.R. 16. It should also be kept in mind that residential development controls function in some ways analogous to special exception review. In holding that residential developments must comply with the master plan as well as the underlying zoning classification controls, the Court of Appeals said in Board of County Comm'rs v. Gaster 285 Md. 233, 249-50 (1985),

“Subdivision regulations perhaps have a certain analogy to special exceptions to which the floating zone concept has been likened in this Court’s discussion in such cases as Bigenho v. Montgomery County 248 Md.. 386, 391 (1948)(other citations omitted).

The bottom line is that proposed residential developments, and amendments thereto, must comply with all of the panoply of land use laws, the “... three integral parts of adequate land planning, the master plan, zoning, and subdivision regulations.”

It should also be kept in mind that the parties interested in development plans, FDP amendments, special exception review, and the other criteria include the nearby citizens and community associations as well as the residents of the particular development. See BCZR Section 1B01.3.A.7.

So, in the context of the amendment of an approved integral final development plan, it still must comply with the specific law pertinent to such amendments. Therefore, we submit the answer to the first question is no.

We proceed then to the ultimate question of whether the petition here either meets or conflicts with the standards applicable to amendment of final development plans. Among other things, the amendment must comply with the Comprehensive Manual of Development Policies. In hearing situations, perhaps most important here, the amendment is subject to BCZR Section 502.1 special exception review for particular adverse impact on the neighborhood and, in addition, must “ ...be consistent with the spirit and intent of the original plan and of this article.” Section 1B01.3.A.7.b.(3). There is a corresponding prerequisite for certain situations where the amendment may proceed without a hearing,

“The Zoning Commissioner and Director of Planning must certify that the amendment is in keeping with the spirit and intent of this article and other Baltimore County land use and development regulations administered by them, and both must certify that the amendment does not violate the spirit and intent of the original plan.” BCZR Section 1B01.1.B.7.c.(4).

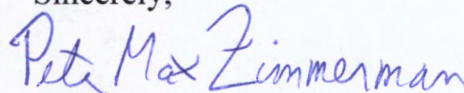
Indeed, at this juncture, it is hard to imagine any rational basis for anyone to conclude that an industrial use would be consistent with the spirit and intent of the original residential plan, which likely was to keep Parcel 3 as a buffer area, and in fact has done so for many years. This is especially true for a petition which asks for any use permitted in the zone. Despite the name "Manufacturing-Light," there are many fairly heavy and potentially offensive uses enumerated as permitted by right and special exception in the M.L. Zone. BCZR Section 253.

It may at first glance seem perplexing and paradoxical that despite the legislative rezoning of Parcel 3 to M.L., the FDP law precludes such use in the present context. If it is argued that the legislative intent was for this parcel to be used industrially, the answer is that if the apartments were razed and the developers started from scratch, they could perhaps request an entirely new development scheme, subject to the current zoning and development restrictions applicable to the various parcels. If the property were vacant, the situation would be different. The existence of the FDP and the actual apartment development and configuration are the controlling factors.

As a footnote, we have not yet said anything about whether the proposed amendment is consistent with the Baltimore County Master Plan. At this juncture, given our answers to the above questions, we need not reach that issue.

We trust this letter will assist as you review these unusually problematic issues.

Sincerely,



Peter Max Zimmerman

People's Counsel for Baltimore County

cc: John Gontrum, Esquire (sent via email and first class mail)
Timothy Kotroco, Esquire (sent via email and first class mail)
Richard E. Matz (sent via email and first class mail)
Andrea Van Arsdale, Director of Planning
Carl Richards, Zoning Supervisor
Mark Sapp, Vice President, Colonial Village Neighborhood Improvement Ass'n

WHITEFORD, TAYLOR & PRESTON L.L.P.

JB 4-12-13
11 AM
Rm-205

JOHN B. GONTRUM
DIRECT LINE (410) 832-2055
DIRECT FAX (410) 339-4058
JGontrum@wtplaw.com

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

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

WWW.WTPLAW.COM
(800) 987-8705

April 22, 2013

John Beverungen, Esquire
Administrative Law Judge
105 West Chesapeake Avenue
Towson, Maryland 21204

RECEIVED

APR 22 2013

OFFICE OF ADMINISTRATIVE HEARINGS

Re: **Milford Mill Apartments I, LLC**
Case No. 2013-193-SPH

Dear Judge Beverungen:

The Milford Mill Apartment property was developed in the 1960's prior to the enactment of County Council Bill 100-1970. It was this piece of legislation which developed the procedure of a special hearing to amend development plans after development of a subdivision had occurred.

The Bill becomes relevant because it speaks of subdivisions and a different use of property and because it appears to apply prospectively to development plans filed after enactment. As you know, it appears that no development plan is on record with the county, and there was never any record plat.

As a precaution and to give appropriate notice the Special Hearing was filed as a precaution in the event that someone would deem a special hearing as necessary to amend a previous filing for the apartments even though a development plan as such for a property in single ownership may not have been required. The 1960's development regulations only speak to subdivisions. Amending a non-existent plan, for a development existing prior to the impact of Bill 100 in a non-subdivision context would appear to be inappropriate. Consequently, the issue of spirit and intent need not be reached.

A special hearing, however, to determine that the ML use of the now orphaned property is, however, probably appropriate pursuant to the *Remes* case. In *Remes v. Montgomery County*, 384 Md. 581, 865 A. 2d 589 (2005) the Court applied the doctrine of zoning merger to two separate lots to state that although the properties had not merged for development purposes their joint use had merged them for zoning purposes and until they were separated for zoning purposes they could not be separately used. The Court upheld the denial of a building permit for a lot saying that it existed in support of an existing dwelling on the adjacent lot.

John Beverungen, Esquire
April 22, 2013
Page 2

In this case the subject property was originally part of a large tract zoned for high density residential use on which apartments were placed. Over the years a significant county road separated the parcel from the main tract, and the parcel was twice rezoned: once to a lower density of D.R. 5.5 and then to industrial zoning, which prohibits all residential use. We believe that even if the placement of the road did not separate the uses, then the enactment of the subsequent rezonings of the property certainly did. Accordingly, we requested that the property be allowed to be used for the ML zoning uses in accord with its current zoning and that it be deemed separate for zoning purposes from the residential apartments.

We believe that the current zoning for the property enacted by the county council is presumptively in conformance with the Master Plan and accords to the changes in the community over the last 45 years. So much has changed with this site over the decades not only with respect to zoning but also with respect to grading and location that it no longer serves any purpose in support of the apartment project of which it was once a part. The buffer for which it may have been intended, if that was the case, has now been provided by Milford Mill Road, which did not exist at the time of the original development. Consequently, that purpose has now been met by the county's use of eminent domain.

Very truly yours,



John B. Gontrum

JBG:jg

cc: Peter Max Zimmerman, Esq.
Alan Zuckerberg
Mark Sapp
Mr. Caplan

431007

Debra Wiley - Fwd: Milford Apartments I, LLC Case No.: 2013-193-SPH

From: John Beverungen
To: Debra Wiley; Sherry Nuffer
Date: 5/8/2013 12:08 PM
Subject: Fwd: Milford Apartments I, LLC Case No.: 2013-193-SPH
Attachments: Letter - Case No 2013-193-SPH - 2013_05_08-003 final001.pdf; s1625_020842-0001.pdf

Can you please make sure this email and the 2 attachments get put in this case file. I think the Order was sent out on Monday of this week? Thanks, John.

>>> "Mark Sapp" <mark.m.sapp@msn.com> 05/08/13 11:26 AM >>>
Dear Judge Beverungen,

Enclosed you will find an e-mail copy of our hardcopy letter dated May 8, 2013, which has been mailed via U.S. Post Office to the Administrative Law Judge's Office regarding the above-mentioned case.

Please let us know if you have any problems viewing the document.

Regards,

Mark M. Sapp, First Vice President
Colonial Village Neighborhood Improvement Association, Inc.
mark.m.sapp@msn.com
410-487-4720

Alan P. Zukerberg, President
Pikesville Communities Corporation
apzuk@msn.com
410-484-5047

JB 4-12-13

Colonial Village Neighborhood Improvement Association, Inc.
C/O 4207 Old Milford Mill Road
Pikesville, Maryland 21208

Pikesville Communities Corporation
7919 Long Meadow Rd
Pikesville, MD 21208

May 8, 2013 Transmitted U.S. mail and *via* email to John Beverungen at
jbeverungen@baltimorecountymd.gov

John Beverungen, Esquire
Administrative Law Judge
105 West Chesapeake Avenue
Towson, Maryland 21204

RECEIVED

MAY 10 2013

OFFICE OF ADMINISTRATIVE HEARINGS

Re: Milford Mill Apartments I, LLC
Case No. 2013-193-SPH

Dear Administrative Law Judge Beverungen,

The main request in this matter is to amend a final development plan (FDP) to utilize Parcel 3 for any use permitted in the M.L. Zone. Mr. Gontrum's letter dated April 22, 2013 states, in part: "As you know, it appears that no development plan is on record with the county, and there was never any record plat." At the hearing on April 12, 2013 the petitioner could not provide any evidence that a final development plan existed. He did not subpoena Colleen Kelly of the Department of Permits, Applications and Inspections to attend to testify regarding a search of the County Archives. You must certainly be aware that Ms Kelly is the go to person in that Department who is charged with investigating and obtaining archival information of prior subdivisions and other land matters. She, or someone else, is therefore, a "missing witness" whom the petitioner could have subpoenaed to testify about any failure to find a prior development plan. Furthermore, petitioner failed to introduce any evidence regarding what would be disclosed by a professional title examination of the property. This would be additional evidence to show that there is not prior evidence of an applicable development plan as well as any restrictions on the parcel at issue. It is not the respondent's burden to bring these matters before you when the petitioner claims there is not development plan. Therefore, we believe you would be remiss to hold for an amendment to a final development plan.

In this case the petitioner is also asking Baltimore County to permit a zoning subdivision as created by a road network. However, no one seems to know what a "zoning subdivision" is per Baltimore County Law and regulations. During the hearing, the petitioner could not specify which section of the Baltimore County law/regulations defined or allowed a "zoning subdivision". Therefore, it seems that you cannot to permit such a "zoning subdivision." Since no one seems to know what it is, Mr. Gontrum's letter

seems to support this conclusion as it states, in part: "The 1960's development regulations only speak to subdivisions. Amending a non-existing plan, for a development existing prior to Bill 100 in a non-subdivision context would appear to be inappropriate. Consequently, the issue of spirit and intent need not be reached." You will recall there was discussion concerning approval methods at the time of the possible development plan. We do not recall any evidence as to which method a development plan would have been subjected to at the time. Again, it is petitioner's obligation to bring that information before you to flesh out the law and the facts applicable to this situation. For example, if the JSPC applied, we would think that petitioner would have brought in Lynn Lanham, who we understand is still a member of the JSPC to testify about the applicable procedures and what, if any files the JSPC may have on this matter.

The third request in this case is: "to allow all permitted uses on the M.L. zoned land." This may be beyond the scope of a remedy for you to provide, not to mention it is vague. Once the zoning was changed from DR5.5 to M.L., theoretically the petitioner is allowed all "permitted" uses the land, subject to many other factors. However, permitted uses in an M.L. zone are set forth in applicable law and regulations. Further, as noted above, the petitioner did not submit a professional title examination at the hearing to show what, if any limitations or restrictive covenants may appear on the property regardless of zoning classification. The petitioner also failed to produce the original final development plan for the property, so we do not know what, if any limitations or restrictive covenants were specified in the plan.

During the hearing, the petitioner presented evidence stating the apartment complex has 184 density units. The evidence also showed, using the existing zoning on parcels 1 and 2, that the acreage on the parcels support only density of only 142.24 density units. The petitioner's evidence also showed that if parcel 3 was still zoned DR5.5, an additional 9 density units would be allowed, bringing the total number to 152. The math shows what additional density units would be supported if parcel 3 was zoned DR16. From the petitioners' evidence, parcel 3 has gross area of 1.71 which we multiply by 16 equaling 27.36. If we add this 27.36 to the 142.24 units currently allowed on parcels 1 and 2, the yield would be 169 density units. Creating a separate deed for parcel 3, separate from parcels 1 & 2, does not appear to meet the true intent of the Baltimore County code limiting the zoning density of residential developments.

The petitioner's evidence (the sheet of paper showing the zoning density calculations) states the original construction of the apartments is *circa* 1963.

On page 2 of Mr. Gontrum's letter, he states "In this case the subject property was originally part of a large tract zoned for high density residential use on which apartments were placed." He then states "Over the years a significant road separated the parcel from the main tract ..." While this is true, this statement does not tell the whole story. While researching the Baltimore County and Maryland State records, since the date of the April 12, 2013 hearing, we have discovered a copy of Plat No. 20842 issued October 10, 1961 on the Maryland State Archives website, a copy of this plat is attached to this letter. We suggest it was the petitioner's obligation to make a search and produce this plat. Plat No.



Maryland State Archives Digital Imaging Management for State Highway Administration

Plat Number	20842
Project Number	B -698-003-420
Date Issued	10/10/1961
Date Recorded	07/28/1972
Termini	
Image(s)	<i>Direct Scans:</i> <u>MSA S 1625-20842</u> [Image 1]

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Colonial Village Neighborhood Improvement Association, Inc.
C/O 4207 Old Milford Mill Road
Pikesville, Maryland 21208

Pikesville Communities Corporation
7919 Long Meadow Road
Pikesville, MD 21208

June 3, 2013

Transmitted by hand delivery and *via* email to John Beverungen at
jbeverungen@baltimorecountymd.gov

John Beverungen, Esquire
Administrative Law Judge
105 West Chesapeake Avenue
Towson, Maryland 21204

RECEIVED

JUN 03 2013

OFFICE OF ADMINISTRATIVE HEARINGS

Re: Milford Mill Apartments I, LLC
Case No. 2013-193-SPH Motion for Reconsideration

Dear Administrative Law Judge Beverungen,

This letter is a Motion for Reconsideration of your decision rendered in Case No. 2013-193-SPH dated May 6, 2013. This Motion for Reconsideration is pursuant to the Code of Baltimore County Regulations, Appendix G, Rule 4K .

We are asking for reconsideration of the two items granted the petitioner in your opinion and order dated May 6, 2013.

1. There is no "Zoning Subdivision" allowed by law, and therefore you should not have ordered same to exist.
 - a. In this case, the petitioners are asking Baltimore County to permit a zoning subdivision as created by a road network. However, no one seems to know what a "zoning subdivision" is per Baltimore County Law and regulations. During the hearing, the petitioner could not specify which section of the Baltimore County law/regulations defined or allowed a "zoning subdivision". Therefore, it seems that you cannot grant such a "zoning subdivision." Mr. Gontrum's letter dated April 22, 2013 seems to support this conclusion wherein he states, in part:

"The 1960's development regulations only speak to subdivisions. Amending a non-existing plan, for a development existing prior to Bill 100 in a non-subdivision context would appear to be inappropriate. Consequently, the issue of spirit and intent need not be reached."

- b. You will recall there was discussion concerning approval methods at the time of the possible development plan. We do not recall any evidence as to which method a development plan would have been subjected to at the time. Again, it is petitioner's obligation to bring that information before you to flesh out the law and the facts applicable to this situation. For example, if the JSPC applied, we would think that petitioner would have brought in Lynn Lanham a known employee of the Department of Planning, who we understand is still a member of the JSPC to testify about the applicable procedures and what, if any files the JSPC may have on this matter. Also, Petitioner could have subpoenaed Colleen Kelly of the Department of Permits, Applications and Inspections to testify as to whether a search of County records disclosed any files on this matter. Further, the Petitioner could have presented a witness to testify to any title examination of the property that would have disclosed any relevant, covenants, easements, filed plats of record, etc., and matters generally affecting title. The adverse inference/presumption as to "missing witnesses" should be held against the Petitioner.
2. In this case the petitioner is asking Baltimore County "to allow all permitted uses on the M.L. zoned land." This may be beyond the scope of a remedy for you to provide. This request opens the floodgates if it became a normal procedure to ask the Administrative Law Judge to issue confirmations of zoning uses. The request is also vague. Once the zoning was changed from DR5.5 to M.L., theoretically the petitioner is allowed all "permitted" uses on the land, subject to many other factors. However, permitted uses in an M.L. zone are set forth in applicable law and regulations. The petitioner also failed to produce the original final development plan for the property, so we do not know what, if any limitations or restrictive covenants were specified in the plan. Mr. Gontrum's letter dated April 22, 2013 states, in part:

"As you know, it appears that no development plan is on record with the county, and there was never any record plat."

During the hearing, the petitioner presented evidence stating the apartment complex has 184 density units. The evidence also showed, using the existing zoning on parcels 1 and 2, that the acreage on the 2 parcels supports a density of only 142.24 density units. The petitioner's evidence also showed that if parcel 3 was still zoned DR5.5, an additional 9 density units would be allowed, bringing the total number to 152. The math shows what additional density units would be supported if parcel 3 was zoned DR16. From the petitioners' evidence, parcel 3 has gross area of 1.71 which we multiply by 16 equaling 27.36. If we add this 27.36 to the 142.24 units currently allowed on parcels 1 and 2, the yield would be 169 density units. Creating a separate deed for parcel 3, separate from parcels 1 & 2, does not appear to meet the true intent of the Baltimore County code limiting the zoning density of residential developments.

The petitioner's evidence (the sheet of paper showing the zoning density calculations) states the original construction of the apartments is *circa* 1963.

On page 2 of Mr. Gontrum's letter, he states;

"In this case the subject property was originally part of a large tract zoned for high density residential use on which apartments were placed."

He then states;

"Over the years a significant road separated the parcel from the main tract ..."

While this is true, this statement does not tell the whole story. While researching the Baltimore County and Maryland State records, since the date of the April 12, 2013 hearing, we have discovered copies of SHA Plat numbers 20842 & 28770 on the Maryland State Archives website, both originally issued October 10, 1961. Copies of these plats are attached to this letter. We suggest it was the petitioner's obligation to make a search and produce these plats. Plat numbers 20842 & 28770 clearly shows the two roads bisecting this parcel were planned in 1961, a time prior to the construction of the apartments that took place 1963. During the hearing, the petitioner presented evidence consisting of a County Highway Deed documenting the transfer of land for the planned roads in 1985. We believe you can conclude from Plat numbers 20842 & 28770 and the evidence presented at the hearing that the apartment buildings were placed on the original large parcel in their existing locations, purposely knowing, in advance that the bisecting roads were to soon come. Splitting off parcel 3 from parcels 1 & 2, so that parcel 3 can be sold and developed (whether for manufacturing or residential use), will increase the overall development density. It seems clear that if parcel 3 had retained its previous DR5.5 zoning, residential development would not have been allowed, without a variance, as the apartment complex built on the petitioners' property including parcels 1, 2 and 3 is already above its allowed density. Plat numbers 20842 & 28770 indicate that the original developers of the apartment complex had advance knowledge of the roads to be developed through their property and purposely located their buildings appropriately.

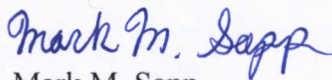
In this matter, the applicant or its predecessors were in the best position to know what previously transpired with its subdivision that would cause the splitting off of the current property from the major development. The applicant has not met any initial showing as to the reasons therefore. The burden is on the applicant. The Administrative Law Judge failed to recognize this aspect. It is settled law that when an applicant, for engineering, subdivision compliance, economic reasons, or some other reasons in laying out a subdivision, reserves an "outlot" (undeveloped portion) for some residential, commercial or industrial ground, the use of the particular ground is restricted because the applicant chose to develop it as it did. The bottom line is that the alleged hardship, where self-inflicted by the applicant prevents the applicant from obtaining the sought after relief. Randolf Hills v. Mont Cty. Council, 264 Md. 78; 285 A.2d 620 (1972)

As Peter Max Zimmerman, Esq., People's Counsel for Baltimore County said in his April 11, 2013 letter to you:

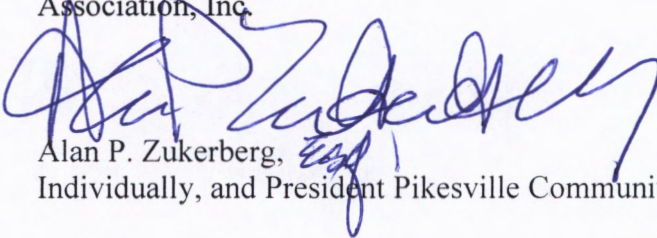
"Indeed, at this juncture, it is hard to imagine any rational basis for anyone to conclude that an industrial use would be consistent with the spirit and intent of the original plan, which likely was to keep parcel 3 as a buffer area, and in fact has done so for so many years. This is especially true for a petition that asks for any use permitted in the zone. Despite the name "Manufacturing-Light" there are many heavy and potentially offensive uses enumerated as permitted by right and special exception in the M.L. zone. BCZR Section 253."

For the above stated reasons and those espoused at the hearing, we believe your orders to: (1) permit a zoning subdivision as created by a road network, and (2) allow all permitted uses on the ML zoned land should be reversed / and Petitioner's relief sought should be DENIED.

Sincerely,



Mark M. Sapp,
Individually, and First Vice President Colonial Village Neighborhood Improvement Association, Inc.



Alan P. Zuckerberg, *Esq.*
Individually, and President Pikesville Communities Corporation

cc: John Gontrum, Esq.
JGontrum@wtplaw.com



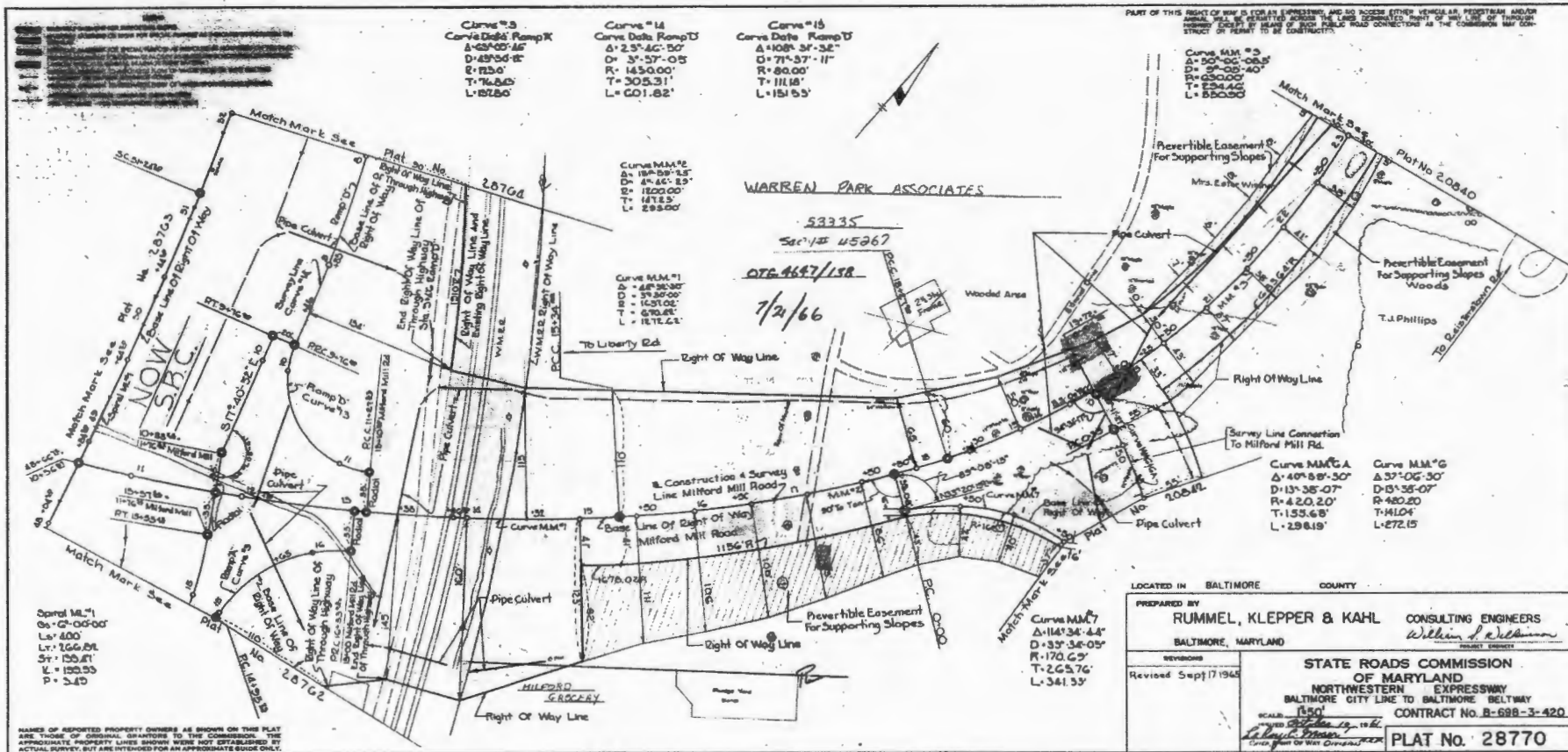
Maryland State Archives Digital Imaging Management for State Highway Administration

Plat Number	28770
Project Number	B -698-003-420
Date Issued	10/10/1961
Date Recorded	07/28/1962
Termini	
Image(s)	<i>Direct Scans:</i> <u>MSA S 1624-28770</u> [Image 1]

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LOCATED IN BALTIMORE COUNTY

PREPARED BY
RUMMEL, KLEPPER & KAHL
 BALTIMORE, MARYLAND

CONSULTING ENGINEERS
William J. Klepper

REVISIONS
 Revised Sept 17 1965

STATE ROADS COMMISSION
 OF MARYLAND
 NORTHWESTERN EXPRESSWAY
 BALTIMORE CITY LINE TO BALTIMORE BELTWAY
 CONTRACT No. R-68R-3-420

PLAT No. 28770

MSA 216-24-28770

SENT TO RECORD OFFICE ON: 8-17-66

MEMORANDUM

DATE: July 12, 2013
TO: Zoning Review Office
FROM: Office of Administrative Hearings
RE: Case No. 2013-0193-SPH - Appeal Period Expired

The appeal period for the above-referenced case expired on July 11, 2013. There being no appeal filed, the subject file is ready for return to the Zoning Review Office and is placed in the 'pick up box.'

c: ✓ Case File
Office of Administrative Hearings

RESUME

PROFESSIONAL BACKGROUND AND EXPERIENCE

RICHARD E. MATZ

Vice President

Colbert Matz Rosenfelt, Inc.

PROFESSIONAL STATUS: Professional Engineer, Maryland, PE No. 13203

PROFESSIONAL ASSOCIATION: Member - American Society of Civil Engineers
Member - Baltimore County Engineering Association

EDUCATION: University of Colorado
Boulder, Colorado
B.S. in Civil and Environmental Engineering - 1973

PROFESSIONAL EXPERIENCE:

12/92 - Present Colbert Matz Rosenfelt, Inc.
Consulting Engineers, Planners & Surveyors
Baltimore, Maryland

Vice president and Project Manager of industrial, institutional and residential land development projects. In charge of managing projects on a day-to-day basis and processing plans through the Development Process. Has experience in hundreds of land development projects. Numerous expert testimonies in zoning and civil engineering engagements.

11/86 - 4/91 Harris, Smariga, Matz, Inc.
Consulting Engineers & Surveyors
Baltimore, Maryland

President of mid-sized Civil Engineering, Land Planning and Surveying Company specializing in Baltimore County Land Development and Public Works engineering. Responsible for all facets of business including client development, proposals, planning, office management, scheduling, quality control, personnel, engineering review and sealing of land development drawings.

1984 - 1986 Kidde Consultants, Inc. (Now KCI Technologies, Inc.)
Consulting Engineers and Surveyors
Baltimore, Maryland
Senior Associate, Project Manager

Urban Planning & Development Division
Project Manager for residential, commercial and industrial projects.

Maryland Department of Assessments and Taxation
Real Property Data Search (vw4.1A)
BALTIMORE COUNTY

[Go Back](#)
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[New Search](#)
[GroundRent](#)
[Redemption](#)
[GroundRent](#)
[Registration](#)

Account Identifier: District - 03 Account Number - 0307051951

Owner Information

Owner Name: MILFORD APARTMENTS I LLC **Use:** APARTMENTS
Mailing Address: 6609 REISTERSTOWN RD STE 100 **Principal Residence:** NO
BALTIMORE MD 21215- **Deed Reference:** 1) /28993/ 00181
2)

Location & Structure Information

Premises Address **Legal Description**
SLADE AVE 10.637 AC SSR
0-0000 SLADE AV RER 300 FT
1300 SW REISTERSTOWN RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
0078	0015	0409		0000				1	Plat Ref:

Special Tax Areas **Town** NONE
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
		10.6300 AC	11

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2013	07/01/2012	07/01/2013
Land	2,659,200	2,659,200		
Improvements:	8,933,800	10,064,800		
Total:	11,593,000	12,724,000	11,593,000	11,970,000
Preferential Land:	0			0

Transfer Information

Seller: MILFORD STATION I LLC	Date: 12/18/2009	Price: \$11,950,000
Type: ARMS LENGTH IMPROVED	Deed1: /28993/ 00181	Deed2:
Seller: WARREN PARK PROPERTY GENERAL	Date: 05/03/2006	Price: \$12,500,000
Type: ARMS LENGTH IMPROVED	Deed1: /23779/ 00591	Deed2:
Seller: WARREN PARK ASSOCIATES	Date: 06/22/2004	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /20284/ 00766	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

CASE NAME 19 Women Park
CASE NUMBER 2013-0193
DATE 4-12-13

[illegible]

CASE NAME 19 Warren Park
CASE NUMBER 2013-0193
DATE 4-12-13

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
------	---------	------------------	----------

ALAN Zuckerberg 7919 Long Meadows Rd Pikesville Community Center	7919 Long Meadows Rd Pikesville, Md 21208	apzulk@msn.com
MARK SAPP	4207 OLD MILFORD RD BALTO 21208	mark.m.sapp@msn.com
MARK SAPP	Vice President Colonial Village Association	" "
MARK SAPP	DIRECTOR PCC	" "
Bill Kapsch	Board member Colonial Village Association	
Bill Kapsch	7001 Deerfield Rd Pikesville MD 21208	kapschome@verizon.net
Mike Pierce	7448 Bradshaw Rd Kingsville 21087	MPIERCE1@AOL.COM

Case No.:

2013-0193 - SPH

Exhibit Sheet

Petitioner/Developer

Protestant

No. 1	Site plan (filed)	Permit Review Map
No. 2	Site plan (redline)	April 11, 2013 letter from P. Zimmerman
No. 3	Historical review	
No. 4	As built drawing	
No. 5	Historical Aerial Maps	
No. 6	My Neighborhood Map	
No. 7	Aerial Photo	
No. 8	Aerial Photo highlighted showing County R.O.W.	
No. 9	Color Photos	
No. 10	Color Photos	
No. 11	Color Photos	
No. 12		

Historical Review

EXISTING APARTMENTS:

200 Individual Units (16 Studio, 64 One Bedroom, 104 Two Bedroom, 16 Three Plus Bedroom)

Density:

Studio = $16 \times 0.5 = 8$ Density Units

One Bedroom = $64 \times 0.75 = 48$ Density Units

Two Bedroom = $104 \times 1 = 104$ Density Units

Three Plus Bedroom = $16 \times 1.5 = 24$ Density Units

TOTAL = $8 + 48 + 104 + 24 = 184$ Density Units

EXISTING ZONING					
	ZONE	NET AREA	GROSS AREA	DENSITY MULTIPLIER	DWELLING/DENSITY UNITS
PARCEL ONE	OR-1	0.43	0.53	5.5	2.92
	D.R. 5.5	0.32	0.33	5.5	1.82
	D.R. 16	7.46	8.06	16	128.96
PARCEL TWO	D.R. 5.5	0.91	1.29	5.5	7.1
	D.R. 16	0.06	0.09	16	1.44
PARCEL THREE	M.L.	1.29	1.71	0	0
TOTAL (ACRES):		10.47	12.01	TOTAL:	142.24

ORIGINAL CONSTRUCTION OF APARTMENT UNITS: (CIRCA 1963)

One parcel, 13.61 ac +/-, zoned R.A. (18 Density Units per acre)

Allowable Density Units = $13.61 \times 18 = 244.98 = 244$ Density Units

SCENARIO 1: (CIRCA 1972)

Entire original site area (13.61 ac +/-) zoned D.R. 16 (16 Density Units per acre)

Allowable Density Units = $13.61 \times 16 = 217.76 = 217$ Density Units

SCENARIO 2: (CIRCA 1972 - LESS RIGHT-OF-WAY TAKING)

Using Parcels One, Two, and Three for gross site area (12.01 ac +/-) zoned D.R. 16 (16 Density Units per acre)

Allowable Density Units = $12.01 \times 16 = 192.16 = 192$ Density Units

SCENARIO 3: (CIRCA 1988)

Using Density units from Existing Zoning plus D.R. 5.5 density units for the gross site area of Parcel Three (1.71 ac +/-)

Allowable Density Units = Parcel One = $8.06 \times 16 + 0.86 \times 5.5 = 133.70$

+ Parcel Two = $0.09 \times 16 + 1.29 \times 5.5 = 8.54$

+ Parcel Three = $1.71 \times 5.5 = 9.41$

Total = $133.70 + 8.54 + 9.41 = 151.65 = 151$ Units



4300 old milford mill road

Search

Purchase

Overlays (Off) Compare (Off) Survey Share

Aerials

2005

1971

1966

1964

1957

Topos

T1984

T1975

T1965

T1956

T1953

T1944

T1934

T1924

T1918

T1915

T1911

T1908

T1907

T1904

T1902

T1899

T1896

1:262 ft.

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ALL-STATE LEGAL EXHIBIT 5

4300 old milford mill road

Search

Overlays (Off) Compare (Off) Survey Share

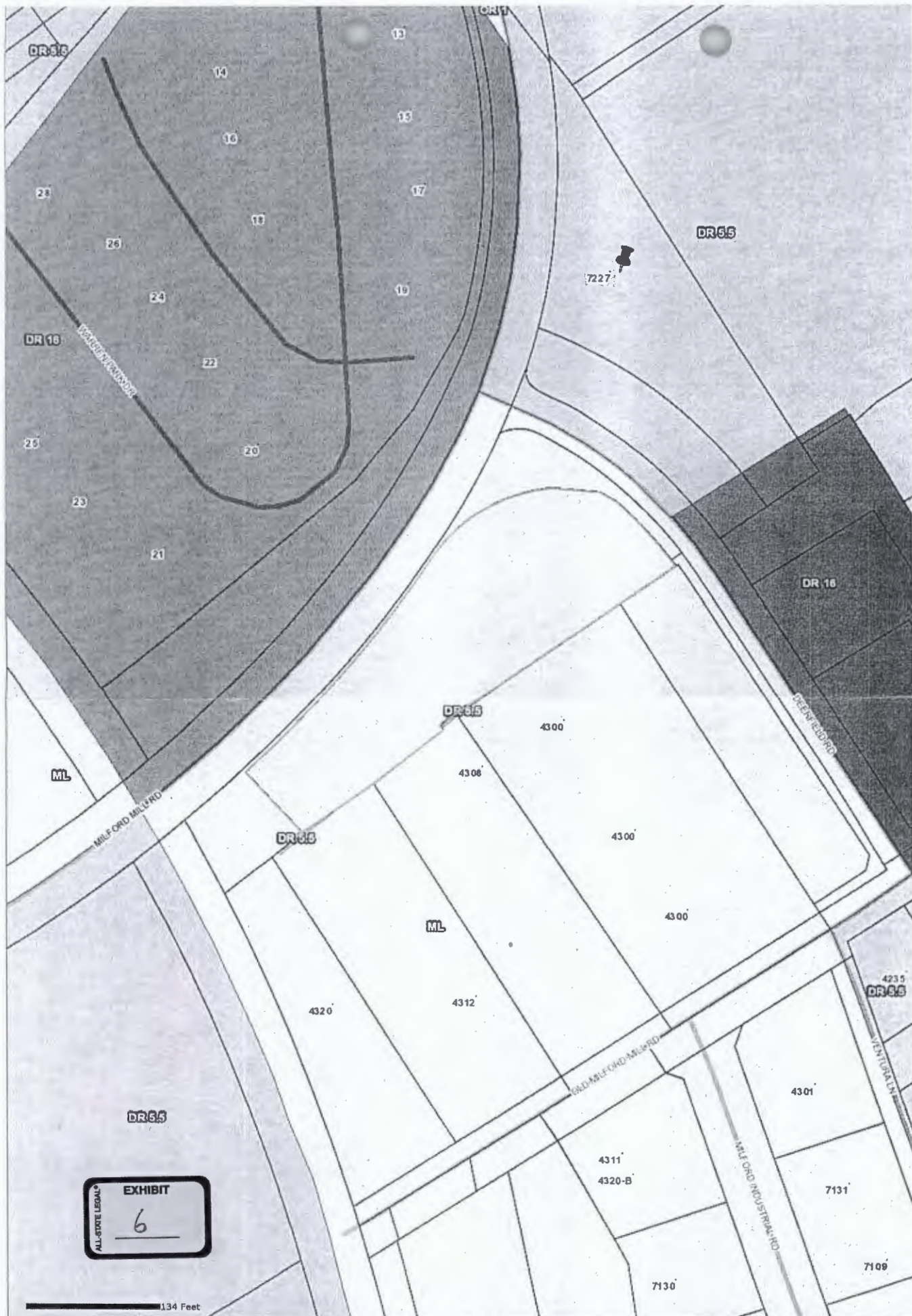
Purchase

Aerials

- 2005
- 1971
- 1966
- 1964
- 1957
- 1905
- T1984
- T1975
- T1965
- T1956
- T1953
- T1944
- T1934
- T1924
- T1918
- T1915
- T1911
- T1908
- T1907
- T1904
- T1902
- T1899
- T1896

1:262 ft.

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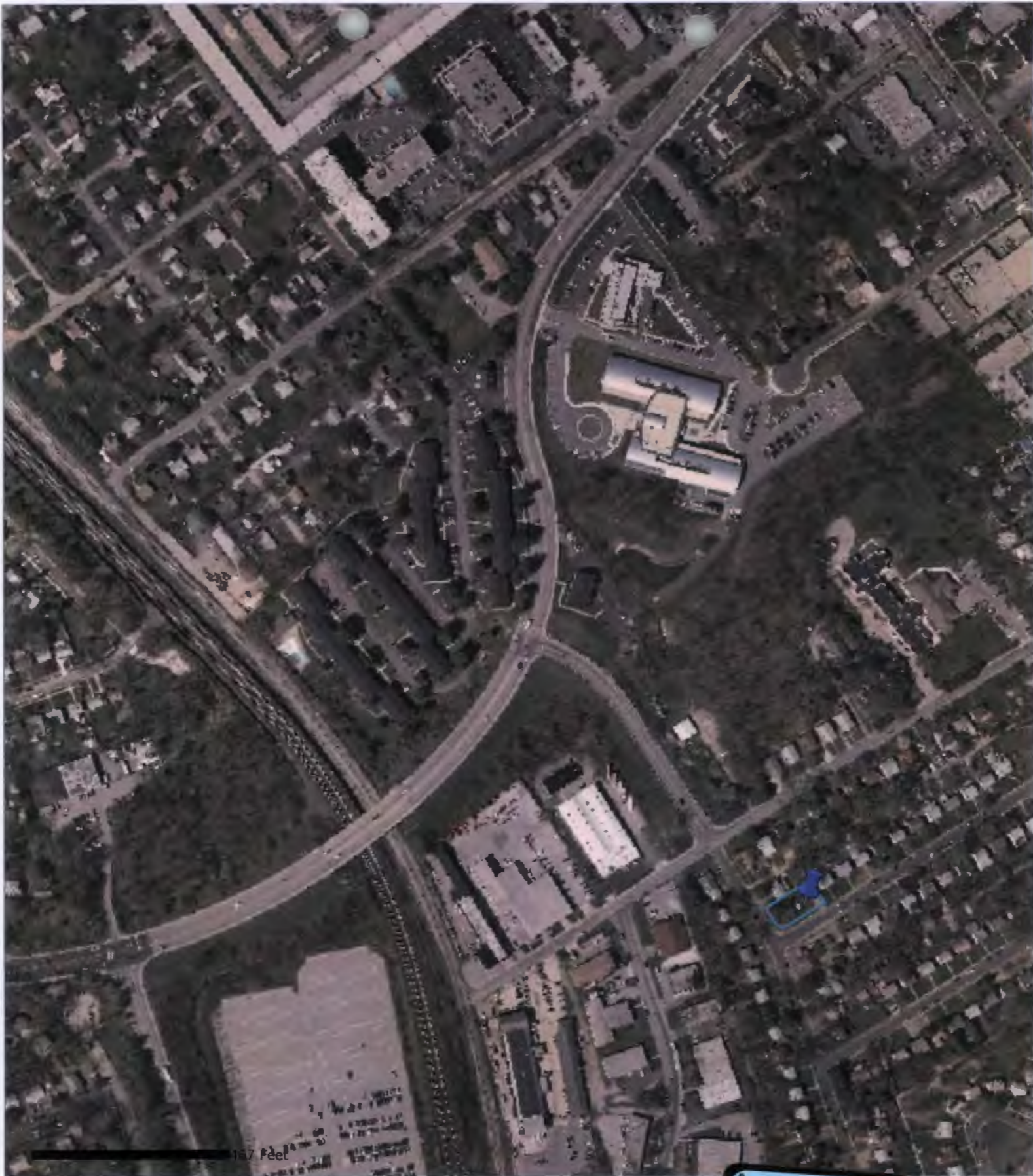
My Neighborhood Map

Created By
Baltimore County
My Neighborhood



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Printed 4/9/2013



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My Neighborhood Map

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EXHIBIT

8

Printed 4/10/2013



ALL-STATE LEGAL®
EXHIBIT
9









P's 11







Case No.:

2013-0193 - SPH DW 1-12-13

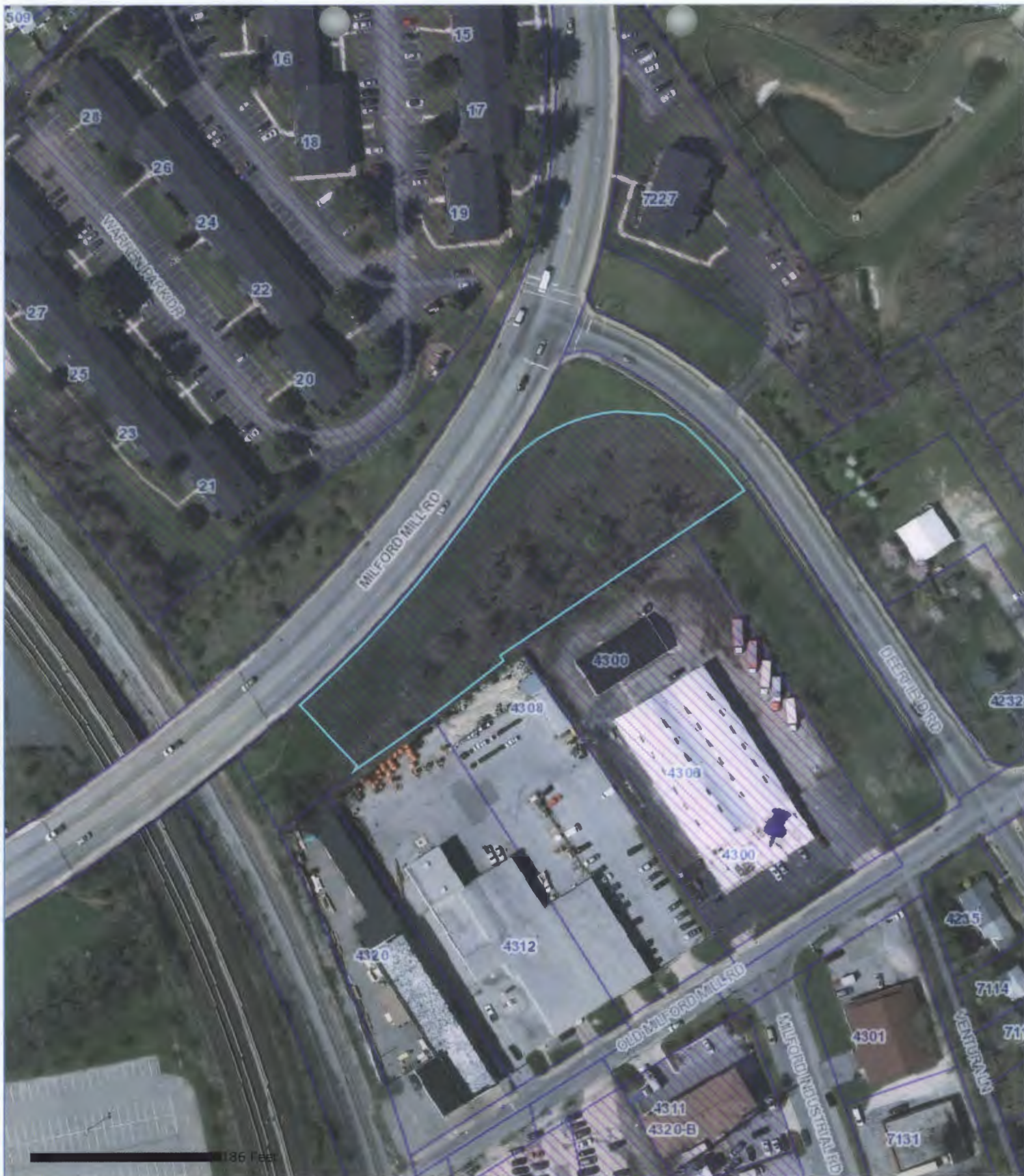
Exhibit Sheet

DW 5-16-13

Petitioner/Developer

Protestant

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No. 9	Color Photos	
No. 10	Color Photos	
No. 11	Color Photos	
No. 12		



Permit Review Map -
2013-0193-SPH
(Photo) *Prot. #1*

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Baltimore County
My Neighborhood



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Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

*Prot.
Exhibit
No. 2*

April 11, 2013

HAND DELIVERED

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

Re: Milford Apartments I, LLC
19 Warren Park Drive
Case No.: 2013-193-SPH

Dear Judge Beverungen,

Upon inquiry from Mark Sapp, Vice President of the adjacent Colonial Village Neighborhood Improvement Association, we reviewed this unusual case.

The main request is to amend a final development plan (FDP) to utilize Parcel 3 for any use permitted in the M.L. Zone. The site plan does not identify the date and reference to the original plan. However, the existing use is for the Warren Park Apartment buildings on Parcels 1 and 2 (mainly on Parcel 1) and an apparent original buffer area on Parcel 3, labeled on the site plan as "vacant/industrial."

When the original final development plan was approved, the entire property was zoned residential, all parcels. We understand the apartment development has been there a long time, but do not have a copy of the approved final development plan.

There is an industrial area and park to the south. This gives rise to the probable or reasonable inference that Parcel 3 provided a buffer, a transition area to protect both onsite residents and the adjacent Colonial Village residents. It will be important for the analysis that Petitioner submit a copy of the approved Final Development Plan and any minutes or other documentation pertinent to the original approval.

The apparent background for the present petition is that in 2012, the County Council rezoned Parcel 3 from D.R. 5.5 (residential) to M.L. (manufacturing-light) as part of Issue 2-014, spanning 2.31 acres (Blue Ocean Realty, Petitioner, Southwest

Corner of Milford Mill Rd and Deerfield Rd). This rezoning precipitates the following very interesting questions:

1. Does the rezoning render inapplicable the basic law applicable to amendment of final development plans in Article 1B, Density Residential Zones, to wit, BCZR Section 1B01.3?

2. If the answer to the first question is yes, the inquiry ends.

3. If the answer to the first question is no, then the next question is whether the proposed amendment here satisfies the relevant standards for such amendments?

The zoning law governing development plans is BCZR Section 1B01.3. So far as we can tell, it originated with Bill 100, 1970 and has remained to this day, with modest amendments from time to time. The subsection dealing with amendments of development plans is Section 1B01.3.A.7. As enacted in 1970, it applied as a practical matter, to new developments residential developments in D.R. Zones and to amendments of previously approved FDPs. Upon the subsequent establishment of the Resource Conservation Zones, the County Council incorporated this provision for the R.C. Zones. Bill 98-75, BCZR Section 1A00.4.

Whether or not originally developed before 1970, the subject property was until 2012 zoned entirely residential for many years. Although the procedures for approval of development and subdivision plans have changed through the years, there is no doubt that a development plan exists for the subject property. The site plan does not refer to the zoning or development history. While this will be good to know, it does not affect the answer to the first question.

While we are accustomed to see amendments to final development plans relating to properties which have been and remain zoned entirely for residential uses within Article 1B, does the law on amendments change or disappear when a part of the property is rezoned to other than a residential zone, such as the manufacturing zone here?

We can find no explicit reference to such an eventuality in the language of BCZR Section 1B01.3. Nor can we find any explicit linguistic exclusion or modification in the subsection controlling amendments to final development plans. BCZR Section 1B01.3.A.7. While it is sometimes said it is hard to prove a negative, we see no reason to conclude that the law on amendments to final development plans is implicitly negated or repealed when there is a partial rezoning of the property.

It should be underlined that the majority of the approximately 11-acre property is still zoned Density-Residential, mostly D.R. 16. It should also be kept in mind that residential development controls function in some ways analogous to special exception review. In holding that residential developments must comply with the master plan as well as the underlying zoning classification controls, the Court of Appeals said in Board of County Comm'rs v. Gaster 285 Md. 233, 249-50 (1985),

“Subdivision regulations perhaps have a certain analogy to special exceptions to which the floating zone concept has been likened in this Court’s discussion in such cases as Bigenho v. Montgomery County 248 Md.. 386, 391 (1948)(other citations omitted).

The bottom line is that proposed residential developments, and amendments thereto, must comply with all of the panoply of land use laws, the “... three integral parts of adequate land planning, the master plan, zoning, and subdivision regulations.”

It should also be kept in mind that the parties interested in development plans, FDP amendments, special exception review, and the other criteria include the nearby citizens and community associations as well as the residents of the particular development. See BCZR Section 1B01.3.A.7.

So, in the context of the amendment of an approved integral final development plan, it still must comply with the specific law pertinent to such amendments. Therefore, we submit the answer to the first question is no.

We proceed then to the ultimate question of whether the petition here either meets or conflicts with the standards applicable to amendment of final development plans. Among other things, the amendment must comply with the Comprehensive Manual of Development Policies. In hearing situations, perhaps most important here, the amendment is subject to BCZR Section 502.1 special exception review for particular adverse impact on the neighborhood and, in addition, must “...be consistent with the spirit and intent of the original plan and of this article.” Section 1B01.3.A.7.b.(3). There is a corresponding prerequisite for certain situations where the amendment may proceed without a hearing,

“The Zoning Commissioner and Director of Planning must certify that the amendment is in keeping with the spirit and intent of this article and other Baltimore County land use and development regulations administered by them, and both must certify that the amendment does not violate the spirit and intent of the original plan.” BCZR Section 1B01.1.B.7.c.(4).

Indeed, at this juncture, it is hard to imagine any rational basis for anyone to conclude that an industrial use would be consistent with the spirit and intent of the original residential plan, which likely was to keep Parcel 3 as a buffer area, and in fact has done so for many years. This is especially true for a petition which asks for any use permitted in the zone. Despite the name "Manufacturing-Light," there are many fairly heavy and potentially offensive uses enumerated as permitted by right and special exception in the M.L. Zone. BCZR Section 253.

It may at first glance seem perplexing and paradoxical that despite the legislative rezoning of Parcel 3 to M.L., the FDP law precludes such use in the present context. If it is argued that the legislative intent was for this parcel to be used industrially, the answer is that if the apartments were razed and the developers started from scratch, they could perhaps request an entirely new development scheme, subject to the current zoning and development restrictions applicable to the various parcels. If the property were vacant, the situation would be different. The existence of the FDP and the actual apartment development and configuration are the controlling factors.

As a footnote, we have not yet said anything about whether the proposed amendment is consistent with the Baltimore County Master Plan. At this juncture, given our answers to the above questions, we need not reach that issue.

We trust this letter will assist as you review these unusually problematic issues.

Sincerely,



Peter Max Zimmerman

People's Counsel for Baltimore County

cc: John Gontrum, Esquire (sent via email and first class mail)
Timothy Kotroco, Esquire (sent via email and first class mail)
Richard E. Matz (sent via email and first class mail)
Andrea Van Arsdale, Director of Planning
Carl Richards, Zoning Supervisor
Mark Sapp, Vice President, Colonial Village Neighborhood Improvement Ass'n





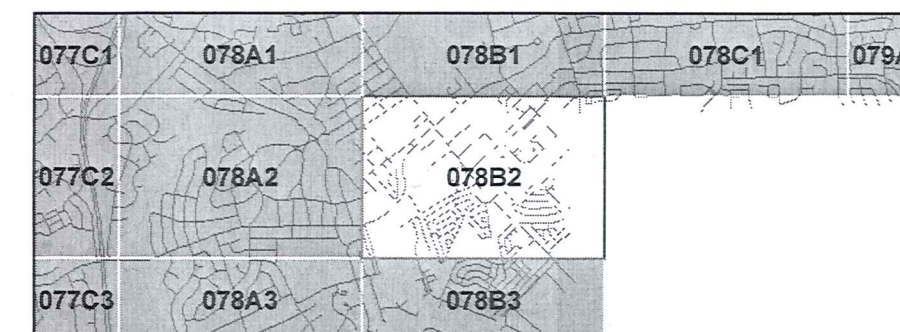
Plan Sheet: 078B2

Note:
The zoning depicted in this map incorporates the actions associated with 2012 Comprehensive Zoning Map Process and Baltimore County Board of Appeals actions through December 31, 2012.

Legend

- | | | | | | |
|--|-----------|--|---------|--|------------|
| | Zoning | | Streams | | Rail Lines |
| | Buildings | | Roads | | Vegetation |

Baltimore County Department of Planning Official Zoning Map



Scale

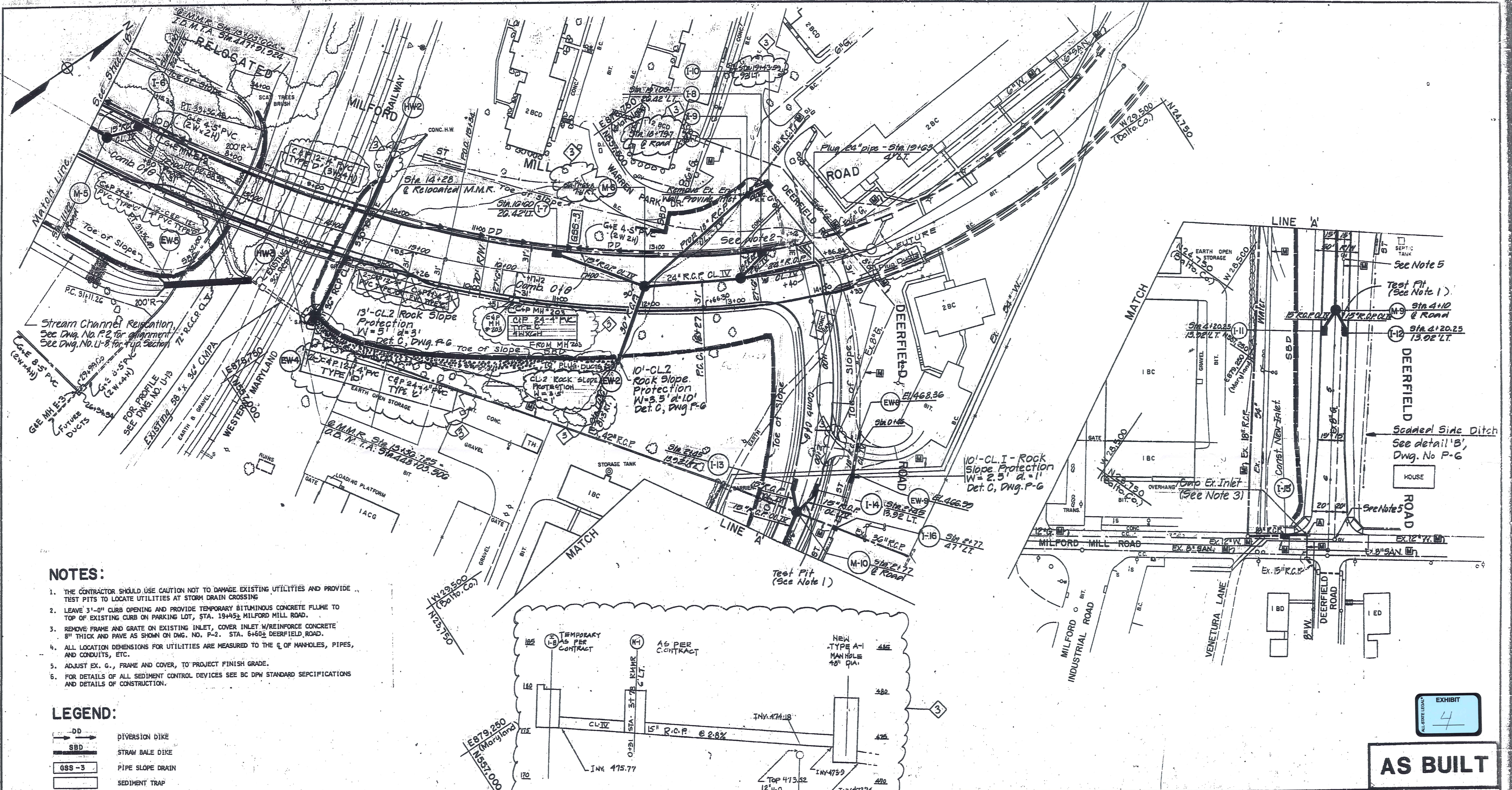
1" = 200'

0 100 200 400
Feet



Data Sources:
Planimetric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 2008 photography
Zoning - Baltimore County Office of Planning
1:2400, 2012

2013-0193-SPH



NOTES:

1. THE CONTRACTOR SHOULD USE CAUTION NOT TO DAMAGE EXISTING UTILITIES AND PROVIDE TEST PITS TO LOCATE UTILITIES AT STORM DRAIN CROSSING.
2. LEAVE 3'-0" CURB OPENING AND PROVIDE TEMPORARY BITUMINOUS CONCRETE FLUME TO TOP OF EXISTING CURB ON PARKING LOT, STA. 19+45. MILFORD MILL ROAD.
3. REMOVE FRAME AND GRATE ON EXISTING INLET, COVER INLET W/REINFORCED CONCRETE 8" THICK AND PAVE AS SHOWN ON DWG. NO. P-2. STA. 6+60. DEERFIELD ROAD.
4. ALL LOCATION DIMENSIONS FOR UTILITIES ARE MEASURED TO THE C. OF MANHOLES, PIPES, AND CONDUITS, ETC.
5. ADJUST EX. G., FRAME AND COVER, TO PROJECT FINISH GRADE.
6. FOR DETAILS OF ALL SEDIMENT CONTROL DEVICES SEE BC DPW STANDARD SPECIFICATIONS AND DETAILS OF CONSTRUCTION.

LEGEND:

- DD DIVERSION DIKE
- SBD STRAW BALE DIKE
- GSS-3 PIPE SLOPE DRAIN
- ST SEDIMENT TRAP

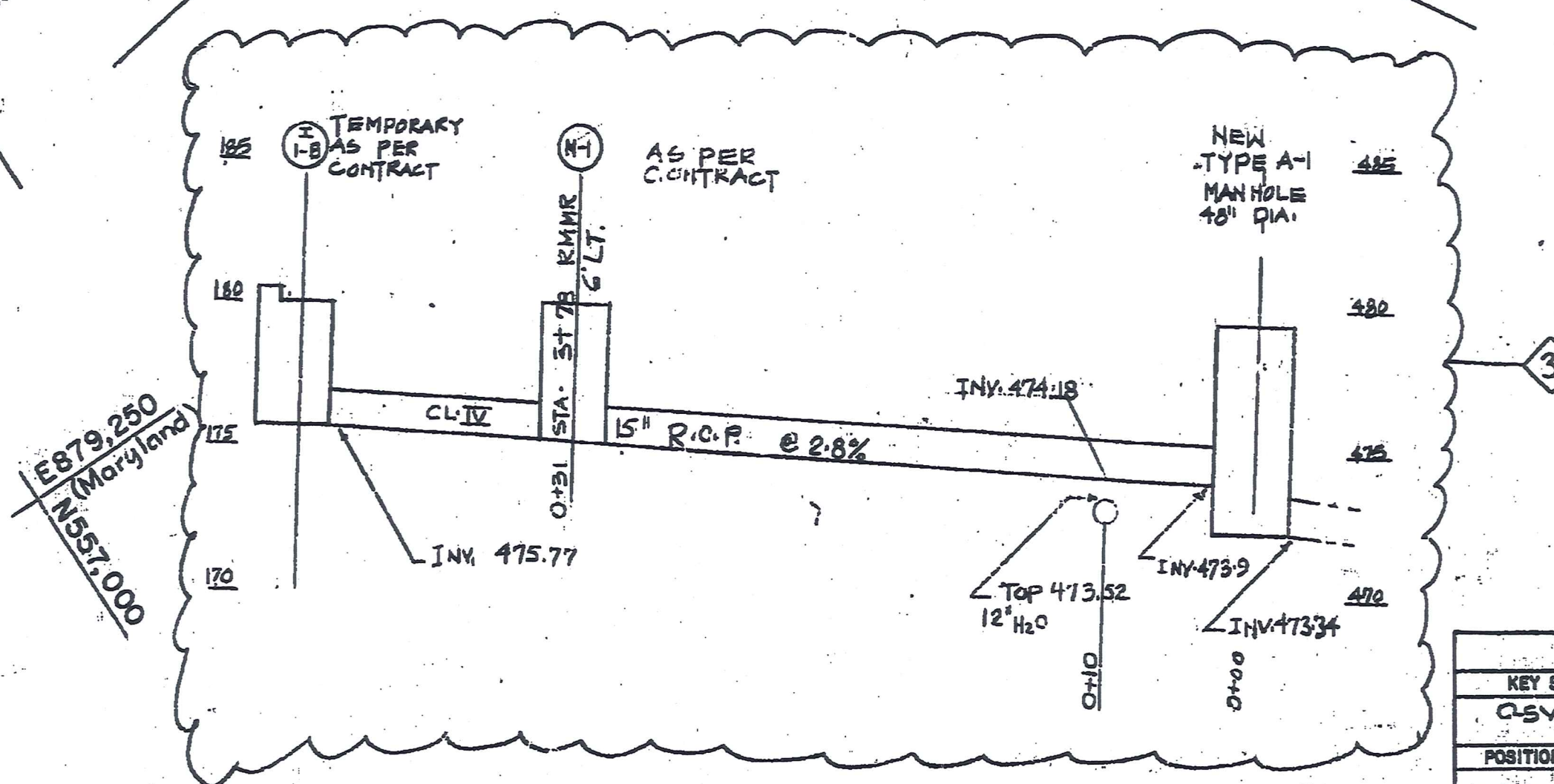
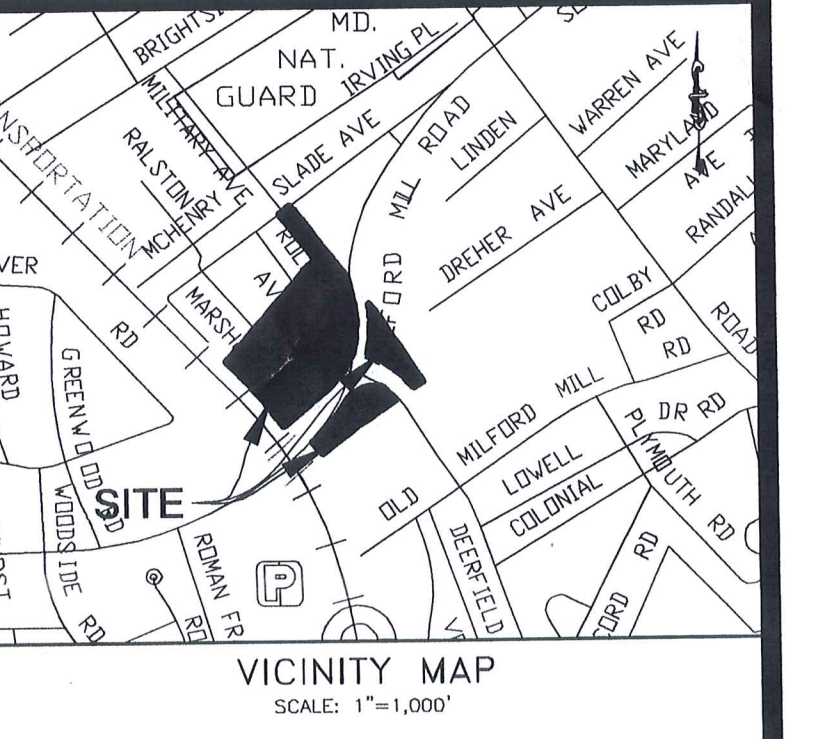


EXHIBIT
4

AS BUILT

STATE OF MARYLAND DEPARTMENT OF TRANSPORTATION MASS TRANSIT ADMINISTRATION		RUMMEL, KLEPPER & KAHL DESIGNER DISTRICT ENGINEERING SERVICES, INC. SUBCONSULTANT DESIGNER		BALTIMORE COUNTY BUREAU OF ENGINEERING DEPARTMENT OF PUBLIC WORKS	
BALTIMORE REGION RAPID TRANSIT SYSTEM PHASE 1-SECTION B		DANIEL, MANN, JOHNSON, & MENDENHALL/KAISER ENGINEERS GENERAL CONSULTANT		APPROVED: [Signature] DATE: 12/14/82	
		DESIGNED: L. GILFORD DATE: 5-8-81		NORTHWEST LINE RELOCATED MILFORD MILL ROAD STA. 11+00 TO STA. 19+63 UTILITIES - PLAN	
		DRAWN: M. BENTLEY APPROVED: W. L. SMITH		NW-08-01 U-5	
		CHECKED: R. EVANS APPROVED: A. L. DEEN		SHEET NO. 18	
		REVISIONS		SCALE: 1"=50'	

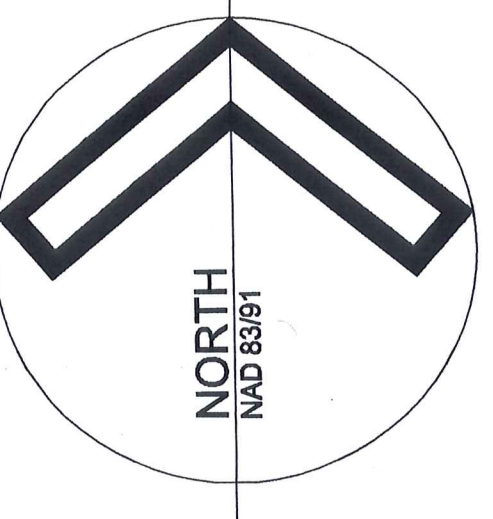
Plotted Nov 13, 2012 3:28:53 PM



GENERAL NOTES:

- OWNER/SITE DATA:
MILFORD APARTMENTS I LLC
6609 REISTERTOWN RD STE 100
BALTIMORE, MD. 21215
- DEED REFERENCE: 28993/00181
- TAX ACCOUNT: 0307051951
- TAX MAP: 0078
- PARCEL: 0409
- ZONING MAP (GIS TILE): 07882
- COUNCILMANIC DISTRICT: 2ND
- REGIONAL PLANNING DISTRICT: 313
- ELECTION DISTRICT: 3RD
- CENSUS TRACT: 403400
- WATERSHED: GWYNNS FALLS
- ZONING AREA:
D.R.-16: 357,658 SQ.FT. OR 8.21 AC.± (NET)
386,815 SQ.FT. OR 8.88 AC.± (GROSS)
D.R.-5.5: 41,943 SQ.FT. OR 0.96 AC.± (NET)
60,115 SQ.FT. OR 1.38 AC.± (GROSS)
ML: 56,326 SQ.FT. OR 1.29 AC.± (NET/GROSS)
- SITE AREA:
NET: 455,927 SQ.FT. OR 10.47 AC.±
GROSS: 503,118 SQ.FT. OR 11.55 AC.±
- BUILDING AREA:
EXISTING: 71,655 SQ.FT.
- EXISTING/PROPOSED USE:
APARTMENTS (PARCELS 1 & 2)
VACANT/INDUSTRIAL (PARCEL 3)
- UTILITIES:
PUBLIC WATER
PUBLIC SANITARY SEWER
- THE SITE DOES NOT LIE WITHIN THE FLOODPLAIN AS SHOWN ON FEMA F.I.R.M. #2400100380F, PANEL 380 OF 580, DATED SEPTEMBER 26, 2008.
- THIS PLAN IS FOR ZONING ONLY. NO CHANGE OF USE IS PROPOSED.
- OFF-STREET PARKING CALCULATIONS:
EXISTING RESIDENTIAL APARTMENT BUILDING - 16 (STUDIO-1 PER), 168 (1 OR 2 BEDROOM-1.25 PER), AND 16 (3+ BEDROOM-2 PER)
REQUIRED PARKING: 258 SPACES
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- NO AREAS OF CRITICAL STATE CONCERN ON THIS SITE.
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TO ALLOW ALL PERMITTED USES ON THE ML ZONED LAND; AND
TO ALLOW SUCH OTHER AND FURTHER RELIEF AS THE NATURE OF THE CAUSE MAY REQUIRE
- ZONING HISTORY: NONE
- SURVEY INFORMATION OBTAINED FROM A SURVEY TITLED "MILFORD STATION ONE" DATED APRIL 13, 2006 BY DEMARIO DESIGN CONSULTANTS, INC.
- TOPO CONTOURS ARE BASED ON GIS MAP 7882.

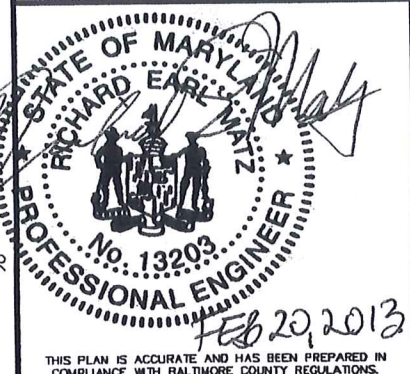
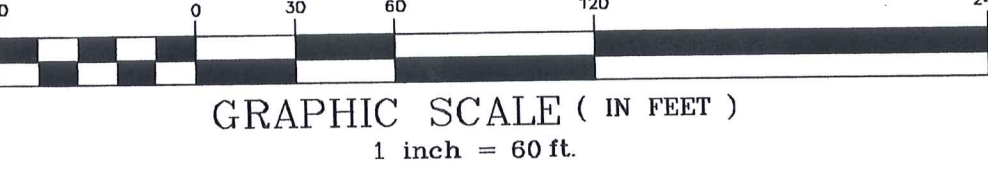
CURVE TABLE						
No.	RADIUS	LENGTH	TANGENT	DELTA	CHORD BRG.	DIST.
C-1	1943.08'	302.87'	151.74'	08°55'51"	N38°38'00"W	302.56'
C-2	295.00'	340.42'	175.01'	30°46'51"	S01°57'34"E	335.79'
C-3	635.00'	64.49'	32.27'	05°49'07"	S15°26'26"E	64.46'
C-4	665.00'	274.86'	139.42'	23°41'31"	N01°57'44"E	272.91'
C-5	475.20'	289.09'	149.19'	34°31'24"	N51°35'10"W	284.66'
C-6	395.20'	87.82'	44.09'	10°43'57"	S40°29'56"E	87.64'
C-7	165.00'	144.85'	77.46'	50°17'54"	N59°08'28"E	140.24'
C-8	1156.00'	254.28'	127.66'	10°36'12"	N39°26'17"E	253.77'
C-9	1678.02'	34.69'	17.43'	01°11'24"	N46°28'14"E	34.85'



LEGEND

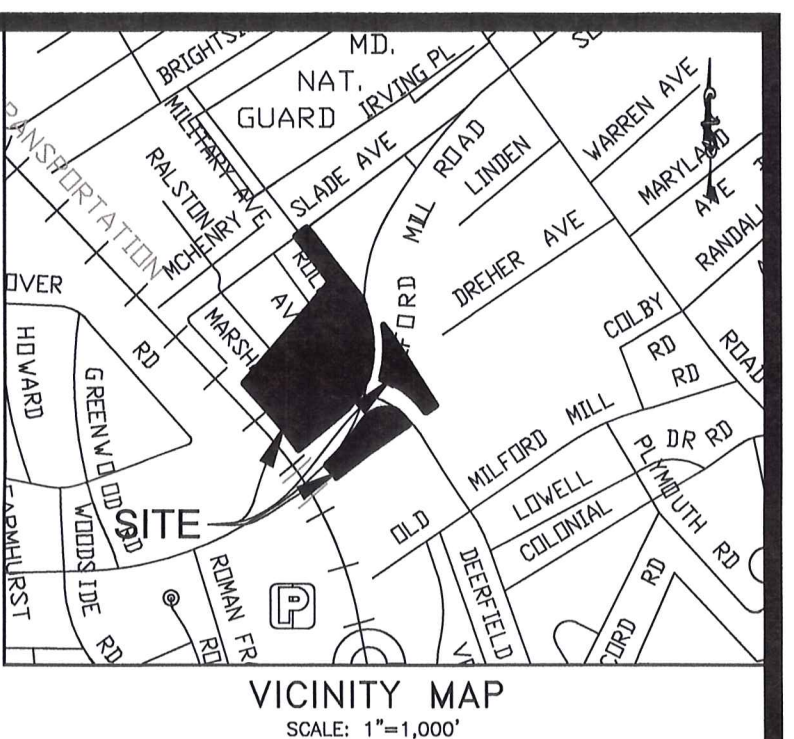
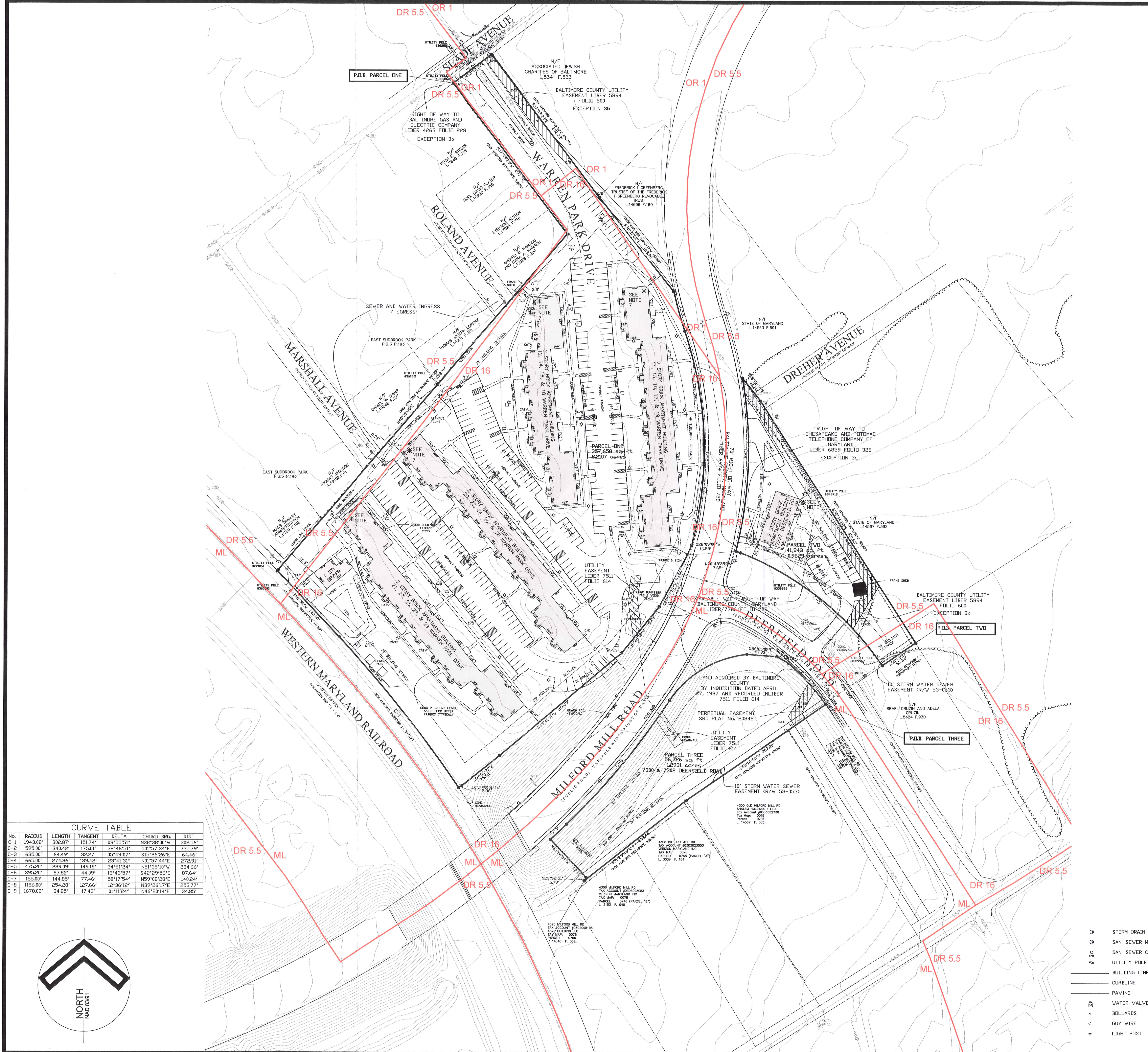
- STORM DRAIN MANHOLE
- SAN. SEWER MANHOLE
- SAN. SEWER CLEANOUT
- UTILITY POLE
- BUILDING LINE
- CURBLINE
- PAVING
- WATER VALVE
- BOLLARDS
- GUY WIRE
- LIGHT POST
- CONTOUR (2 FT)

PLAN TO ACCOMPANY ZONING PETITION
FOR SPECIAL HEARING
MILFORD APARTMENTS I, LLC
PARCELS 1, 2, & 3
3RD ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND



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

Professional Certification		SCALE 1" = 60'	
I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland. License No. 13203		DATE: 02/19/13 JOB NO.: 2011-186 DESIGNED: ERH DRAWING: ERH CHECKED: RCM FILE: 201106 ZONING HEARING.dwg DRAWING NUMBER: ZON-1	
No.	DATE	REVISIONS:	BY SHEET 1 OF 1



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306,815 SQ.FT. OR 6.98 AC.± (GROSS) 354,719 SQ.FT. OR 8.15 AC.± (GROSS)
D.R.-5.5: 41,943 SQ.FT. OR 0.96 AC.± (NET) 53,300 SQ.FT. OR 1.23 AC.± (NET)
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ML: 56,328 SQ.FT. OR 1.29 AC.± (NET/GROSS)
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LEGEND

- ⊙

STORM DRAIN MANHOLE
- ⊙

SAN. SEWER MANHOLE
- ⊙

SAN. SEWER CLEANOUT
- ⊙

UTILITY POLE
- BUILDING LINE
- CURBLINE
- PAVING
- WATER VALVE
- BOLLARDS
- GUY WIRE
- LIGHT POST

⊙

SIGN

⊙

ELECTRIC MANHOLE

⊙

TELEPHONE CABLE MANHOLE

⊙

HAND BOX

⊙

FIRE HYDRANT

⊙

WATER METER

⊙

SIAMENSE CONNECTION

⊙

GAS VALVE

⊙

ELECTRIC LINE

⊙

GRATE INLET

⊙

FENCE

CONTOUR (2 FT)

PLAN TO ACCOMPANY ZONING PETITION
FOR SPECIAL HEARING

MILFORD APARTMENTS I, LLC

PARCELS 1, 2, & 3

3RD ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

GRAPHIC SCALE (IN FEET)
1 inch = 60 ft.

Colbert Matz Rosenfelt, Inc.

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

Professional Certification
I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland. License No. 13803 Expiration Date: 11-02-14

CHECKED: REM
FILE: 201186 ZONING HEARING.dwg
DRAWING NUMBER:
ZON-1

NO. DATE REVISIONS: BY SHEET 1 OF 1