

PETITIONS OF TOM GRAUL, ET AL and
PEOPLE’S COUNSEL FOR BALTIMORE COUNTY

* IN THE
* CIRCUIT COURT

* FOR
* BALTIMORE COUNTY
*
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* Case No. 03-C-17-007659
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FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY
The Jefferson Building, 105 W. Chesapeake Ave.
Suite 203, Towson MD 21204

IN THE CASE OF **RIVERWATCH, LLC**, LEGAL
OWNER, PETITION FOR SPECIAL EXCEPTION
AND VARIANCE ON PROPERTY LOCATED AT
118 Mount Carmel Road

7th Election District, 3rd Councilmanic District

Case No. 2014-131- SPHXA
Before the County Board of Appeals

* * * * *

OPINION AND ORDER

This case is before the Court on a Petition for Judicial Review filed by People’s Counsel for Baltimore County and a second Petition for Judicial Review filed by Petitioners, Tom Graul, Ken Bullen, Jr., Ruth Mascari and the Sparks-Glencoe Community Planning Council. Petitioners and People’s Counsel seek judicial review of the *Ruling on Motion to Dismiss* by the Board of Appeals dated March 10, 2017 and the *Opinion After Remand From Circuit Court* by the Board of Appeals dated July 21, 2017.

Background

The facts are presented in each of the parties’ thorough memoranda and need not be stated again by the Court. For reference, however, the Court will note the timeline relevant to the issues raised by the parties:

January 29, 2014- Administrative Law Judge granted Respondent Two Farms Inc. (“Royal Farms”) a special exception permitting Royal Farms to build a convenience store/ carryout restaurant and gas station on Mt. Caramel Road in Hereford.

October 20, 2015- The Board of Appeals granted Royal Farms a special exception and limited exemption.

November 9, 2015- Royal Farms filed its Development Plan with the County.

November 12, 2015- Royal Farms’ plat was submitted to PAI.

November 13, 2015- Baltimore County Department of Permits, Approvals and Inspections (PAI) approved both Royal Farms’ Development Plan and plat.

November 13, 2015- The plat was approved by the Department of Environmental Protection and Sustainability (DEPS) and other County agencies.

November 13, 2015- The plat was recorded in the land records of Baltimore County.

November 18, 2015- Petitioners filed their first Petition for Judicial Review of the Board’s decision of October 20, 2015.

June 8, 2016- Circuit Court Order with remand to the Board of Appeals to receive and consider additional evidence.

August 30, 2016- the County Council enacted Bill 56-16, which changed the zoning of the property from BL-CR to RCC, a zone that does not permit the proposed Royal Farms fuel service station.

The Petitioners and People’s Counsel contend that the new zoning regulations apply, which prohibit the proposed fuel service station. Royal Farms contends that its development

rights vested when the plat was recorded, and therefore, the change in zoning does not apply to the proposed development.

I. Whether Royal Farms obtained vested rights that protect it against a subsequent change in zoning laws?

In Yorkdale v. Powell, 237 Md. 121 (1964), the Court of Appeals recognized an exception in land use cases to the general rule that statutes are presumed to operate prospectively. “Yorkdale, as an exception to the general rule, provides for the retrospective application of changes to statutes that impact land use issues made during the course of litigation in land use and zoning cases.” Layton v. Howard County, 399 Md. 36, 51 (2007). In Yorkdale, the Court of Appeals stated:

“Maryland consistently has followed the rule that ‘[a]n appellate court is bound to decide a case according to existing laws, even though a judgment rightful when rendered by the court below should be reversed as a consequence,’ as Judge Markell, for the Court, repeated in Woman's Club of Chevy Chase v. State Tax Comm., 195 Md. 16, 19, 72 A.2d 742, 743 (or, it may be noted, even when a judgment wrong when rendered is made right by the change in the law). See also for this proposition that a change in the law after a decision below and before final decision by the appellate Court will be applied by that Court unless vested or accrued substantive rights would be disturbed or unless the legislature shows a contrary intent.” 237 Md. at 124.

Under common law, to obtain a vested right in the existing zoning use, a property owner must obtain a valid building permit and, in good faith reliance on the permit, undertake substantial construction and in committing the land to the permitted use before the change in zoning. O'Donnell v. Bassler, 289 Md. 501, 508 (1981); Marzullo v. Kahl, 366 Md. 158, 192-193 (2001); Powell v. Calvert County, 368 Md. 400, 411-412 (2002). The common law rule of vesting is not applicable to this case. There is no contention that Royal Farms obtained vested rights under the

common law rule of vesting. Royal Farms contends that it obtained vested rights under the Baltimore County Code (hereinafter “BCC”) §32-4-264 (inserted in the BCC by Bill 58-09), which provides an additional method to acquire vested rights i.e., additional to the common law method of vesting. Bill 58-09 stated as one of its purposes to provide for the manner and time of the vesting of development plans. Bill 58-09 included BCC §32-4-101 (ccc) which provides that a property owner and developer obtain vested rights for a Development Plan in accordance with §32-4-264. Bill 58-09 added §32-4-264, which provides for “Vesting of Development Plans”. §32-4-264 (b) (2) provides that a non-residential plan vests “when plat recordation occurs.” Specifically, §32-4-264 provides:

(a) A Development Plan vests in accordance with the provisions of this section

(b) Non-residential Plan

...

(2) A non-residential Plan for which a plat is recorded vests when plat recordation occurs for any portion of the Plan.

Royal Farms obtained County approval of its Development Plan and plat and recorded a plat on November 13, 2015. Under §32-4-264, Royal Farms believes it obtained vested rights as of November 13, 2015, before the property was re-zoned on August 30, 2016, and therefore the new zoning law does not apply and does not prohibit the intended use of a gas station and convenience store.

In ascertaining the legislative intent of the County Council of Baltimore County, the Court of Appeals stated in Marzullo v. Kahl 366 Md. 158 (2001):

“We have said that the cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. Legislative intent must be sought first in the actual language of the statute. Where the statutory language is plain and free from ambiguity, and expresses a definite and simple meaning, courts normally do not look

beyond the words of the statute to determine legislative intent. 366 Md. at 175. (citations omitted).

The language of BCC §32-4-264 is clear, plain, and unambiguous. Under §32-4-264 (b) (2), Royal Farms obtained vested rights for its Development Plan when the plat was recorded.

Petitioners and People's Counsel argue that Royal Farms did not obtain vested rights because there was, and still is, ongoing litigation involving the special exception, and therefore the change in the zoning laws applies retroactively to this development under the Yorkdale rule. The on-going litigation rule provides:

"In instances where there is ongoing litigation, there is no different 'rule of vested rights' for special exceptions and the like. Until all necessary approvals, including all final court approvals, are obtained, nothing can vest or even begin to vest. Additionally, even after final court approval is reached, additional actions must sometimes be taken in order for rights to vest." Powell v. Calvert County, supra, 368 Md. at 409.

Powell is distinguishable from the case at bar. In Powell, the Court was applying the ongoing litigation rule to the common law method of vesting. In Powell, the Court said, "in the case sub judice, a special exception approval, whose validity is being litigated, is not finally valid until all litigation concerning the special exception is final. Persons proceeding under it prior to finality are not 'vesting' rights; they are commencing at 'their own risk' so that they will be required to undo what they have done if they ultimately fail in the litigation process. We hold that respondent never obtained a final valid exception prior to the change in the law and, therefore, never obtained a vested right." 368 Md. at p. 410.

Obtaining a final valid special exception permit is a requirement to obtain vested rights under common law when an owner claims to acquire vested rights by commencing construction pursuant to the special exception permit or by using the property under the special exception as in Powell. That is not how Royal Farms is claiming vested rights. Royal Farms is not claiming vested rights under the special exception- which is still being litigated. Royal Farms is claiming vested rights under the BCC provision that provides for vesting by recording a plat. Obtaining a final special exception is not a precondition to vesting under BCC §32-4-264 (b) (2).

In its reply memorandum, People's Counsel relies on O'Donnel v. Bassler, 289 Md. 501 (1981) in support of its contention that the on-going litigation rule is "doubly effective" where the Court remanded the case to the Board of Appeals. (Reply Memorandum of People's Counsel p. 3) Quoting the Court of Appeals, People's Counsel argues "the issuance of a permit that is invalidated upon direct judicial review creates no vested right in an owner." 289 Md. at 508. As was the case in Powell, the Court was addressing acquiring vested rights under common law, which requires that an owner initially obtain a valid permit, and in reliance on a valid permit, the owner begins substantial construction toward the permitted use before the change in zoning. That is not the manner in which Royal Farms claims to have acquired vested rights in this case.

In analyzing the Yorkdale case, the Court of Appeals in Layton v. Howard County said:

"Because the amended law had come into effect during the course of litigation, (ie, while the appeal was pending and before final judgment), the Court applied it retrospectively." 399 Md. at 55-56.

Thus, the on-going litigation rule is an extension of, or at least consistent with, the common law Yorkdale rule- i.e. as long as there is on-going litigation concerning the permit, through which a landowner claims vested rights, the new law applies retroactively.

The on-going litigation rule is inconsistent with vesting under the BCC Article 32, title 4 for two reasons:

- 1.) §32-4-264 (b) (2) was intended to, and does provide for the manner and time of vesting of development plans, and
- 2.) §32-4-101 (ccc) provides that a vested Development Plan “shall proceed in accordance with the approved plan and the laws in effect at the time plan approval is obtained.”

The legislative intent is clear from the express purpose stated in Bill 58-09 to provide for the manner and time of vesting of development plans and the express provision in §32-4-101 (ccc) that a vested development plan shall proceed according to the laws in effect when the plan was approved. The language of the BCC is clear and unambiguous, and consistent with the portion of the Yorkdale rule that when vested rights would be disturbed the change in the law would not apply.

The Court reads §32-4-101 (ccc) to include the zoning laws in effect at the time the plan is approved. There is no language in the statute to suggest or give a reason to believe the provision does not include zoning laws.

None of the cases cited by Petitioners and People’s Counsel applied the on-going litigation rule to a statute like BCC §32-4-264 that provides when development rights vest. The cases cited by Petitioner and People’s Counsel all apply the on-going litigation rule to vesting under common law. The Court concludes that the on-going litigation rule does not apply to vesting under BCC

§32-4-264. In addition to the reasons already stated, this conclusion is consistent with the fact that appeal from the plat approval process is prohibited under BCC §32-4-272 (e), so that no on-going litigation is contemplated regarding plat approval. Therefore, under the plain and unambiguous language of BCC §32-4-264 (b) (2) and §32-4-101 (ccc) , Royal Farm's Development Plan vested at the time the plat was recorded and zoning laws in effect at the time of plan approval apply, unless one of the other reasons raised by Petitioners and People's Counsel invalidates the plat recordation.

II. Whether BCC § 32-4-281 (f) (1) precluded plat recordation?

Petitioners argue that BCC §32-4-281 (f) (1) applies because they appealed the limited exemption granted in the Development Review Committee (DRC) case to the Board of Appeals, even though they did not file an appeal of the approval of the Development Plan under §32-4-281 (b)(1).

§32-4-281 (f) (1) provides:

“While an appeal is pending before the Board of Appeals, a... plat may not be recorded in connection with a Development Plan that is the subject of the appeal.”

This provision did not preclude plat recordation for several reasons. First, there was no pending appeal regarding the Development Plan when the plat was recorded. The Board of Appeals granted the Petition for Special Exception on October 20, 2015. Royal Farms recorded the plat on November 13, 2015. There was nothing pending before the Board of Appeals on November 13, 2015. Merely because Petitioners had 30 days in which to file a Motion for Reconsideration- which they never did- does not mean that an appeal was still pending before the Board of Appeals.

Second, §32-4-281 (f) (1) applies when a party appeals a final action on a Development Plan under §32-4-281 (b) (1). “Development Plan” as used in subsection (f) (1)- that must be the

subject of the appeal- refers to “Development Plan” as defined in §32-4-101 (q). Development Plan is defined as a “written and graphic representation of the proposed development.” The definition refers to the Plan itself. There was never an appeal to the Board of Appeals regarding the Development Plan under §32-4-281 (b) (1), and therefore §32-4-281 (f) (1) does not apply, and did not preclude recording of the plat.

Third, Petitioners argue that §32-4-281 (f) (1) applies because they appealed the limited exemption of the DRC case to the Board of Appeals- which would be an appeal of whether the Development Plan proposed a “minor development,” for which Royal Farms could get an exemption from the Community input meeting and hearing before a Hearing Officer. Again, §32-4-281 (f) refers to “Development Plan” as it is defined in §32-4-202 (q)- the plan itself – not the procedure for approval- and Petitioners did not appeal approval of the Development Plan itself. Assuming, arguendo, §32-4-281 (f) (1) applied to the appeal to the Board of Appeals of the limited exemption because the Development Plan was the “subject of the appeal” through the limited exemption, Petitioners did not seek judicial review of the Board of Appeal’s ruling of October 20, 2015 granting the limited exemption. In Petitioners’ Reply Memorandum filed in the Circuit Court (p. 14), Petitioners concede that their Memorandum in Support of Judicial Review of the October 20, 2015 Board of Appeals Order did not argue that the Board of Appeals’ granting of the limited exemption was erroneous. Maryland Rule 7-207 provides:

“(a)... the Petitioner shall file a memorandum setting forth a concise statement of the questions presented for review, a statement of facts material to those questions, and arguments on each question, including citations of authority....”

The committee note to Rule 7-207 states that “the Committee intends that all issues and allegations of error be raised in the memoranda, and that ordinarily an issue not raised in a memorandum should not be entertained in argument.” At the time of the first Petition for Judicial Review, the

Petitioners did not raise the issue of the limited exemption of the DRC case before the Circuit Court. Therefore, there was no appeal pending before this Court or the Board of Appeals regarding the Development Plan after October 20, 2015 and § 32-4-281 (f) (1) did not prohibit recording the plat on November 13, 2015.

III. When a special exception is required for development, whether the special exception must be approved before vested rights can be acquired by recording a plat?

Baltimore County Code § 32-4-104 (b) provides:

“Proposed development shall be in compliance with the present zoning classification on the property to be developed.”

When a special exception is required for the proposed development, then the special exception must be approved for the proposed development to be “in compliance.” BCC § 32-4-104 (b) does not mean merely that the development comply with the zoning regulations when it is ultimately built as Royal Farms argues. Rather, the “proposed development” must be “in compliance” with the zoning classification. To be “in compliance” with the present zoning classification, if a special exception is required, it must be approved for the proposed development. This interpretation is consistent with Miller v. Forty West Builders, 62 Md. App. 320 (1985) in which the Court of Special Appeals quoted from the following treatises:

“A subdivider, seeking approval of a subdivision plat, must first meet applicable zoning regulations and then must comply with state and county subdivision regulations. Thus, where a preliminary plat indicates on its face that it is violative of zoning ordinances, the denial of approval of the plat will be sustained.”

1 Yokley, Zoning Law and Practice § 17-10 (1979) at 86-87. See also 4 Anderson, American Law of Zoning § 23-21 (1977) which states that:

“While the zoning power and authority to review plats are separate, it seems clear that plats should not be approved which violate existing zoning regulations. There is little to be said

for approving a plat, for example, which discloses substandard lots. Such an approval would be a disservice to the developer who would be unable to build on the lots, and it would encourage deviation from those portions of the comprehensive plan which are implemented by the zoning regulations in issue. Some of the enabling acts specifically require that a plat comply with the zoning regulations of the municipality.” Miller, 62 Md. App. at 334.

In Miller, the Court said that, although the case arose within the context of approval of a subdivision plan, the development review and approval process would also involve zoning. Therefore, approval of the subdivision plan by the County Review Group (hereinafter “C.R.G.”) would “necessarily entail review of and compliance with the applicable zoning regulations.” 62 Md. App. at 333. The Court of Special Appeals analyzed whether the plan complied with zoning requirements. The Court of Special Appeals held that “since appellee’s subdivision plan did not satisfy the applicable zoning requirements, the C.R.G.’s action in approving the plan was not in conformance with law,” and therefore the Court reversed and remanded the case to the Circuit Court with directions to reverse the determination by the Board to approve the plan. 62 Md. App. at 339.

In People’s Counsel v. Surina, 400 Md. 662 (2007), although the facts are distinguishable, the Court of Appeals made clear that “all proposed subdivision developments must comply with the applicable zoning ordinances in effect at the time the subdivision is proposed,” citing BCC §32-4-104 and §32-4-114 (a). Surina, 400 Md. at 691-692.

BCC §32-4-225 requires the Department of Permits, Approvals, and Inspections to review each Development Plan and accept the Development Plan only if the plan complies with other related laws, regulations or policies. BCC§ 32-4-225 (a) (1) (ii) (3). That provision would include compliance with the zoning laws.

With respect to plat approval, the BCC provides: “the applicant shall prepare a plat in accordance with the approved Development Plan...” §32-4-271 (a). Section 32-4-272 provides for “Procedure for Approval”:

(a) Items to be approved before plat approval

(l) After Development Plan approval, the applicant may submit a plat to the Department of Permits, Approval, and Inspections.”

Thus, it is clear that the Development Plan must be approved before the plat can be approved. Moreover, “a person may not offer and the Clerk of the Circuit Court may not accept a plat for recording in the plat records of the county unless the plat has been approved for recording as required by this title.” §32-4-109 (a). If the plat has not been approved, the recording shall be a nullity. BCC § 32-4-109 (b).

At the time the Development Plan was filed, a special exception was required for the development to comply with the zoning regulations. Upon consideration of the applicable BCC provisions and case law, the Court concludes that Royal Farms was required to obtain a special exception before the Development Plan could be approved and the plat recorded.

IV. What is the effect, if any, of the remand on Royal Farms’ vesting rights?

Petitioners and People’s Counsel argue that even if recordation of the plat was valid initially, the record plat was invalidated by the Circuit Court’s remand, and therefore no vesting rights were acquired. In support of this argument, Petitioner cites no authority (Petitioner’s Memorandum p. 21-22) and People’s Counsel does not cite a case on point. (Supp. Memo of People’s Counsel, p. 12-13). People’s Counsel argues that “because the Court decision invalidated the special exception and thereby the record plat, there was no valid record plat in force at the time

of the legislative rezoning, and thus disqualified as a premise for a vested rights defense,” citing O'Donnell v. Bassler, 289 Md. 501 (1989). (Supp. Memorandum of People's Counsel, p. 13). In O'Donnell v. Bassler, a special exception use permit granted by the Howard County Board of Appeals was invalid because it imposed additional conditions beyond the Board's authority. 289 Md. at 509. On judicial review, the Circuit Court eliminated the additional conditions. The Court of Appeals held that, instead of remanding the case to the Board of Appeals as it should have, the Circuit Court erred by modifying the Board's order by eliminating the additional conditions. Because the Circuit Court did not have the power to modify the Board's order, the Court of Appeals held that the special exception use permit was not valid. 289 Md. at 513-514. The facts in the present case are distinguishable from the facts in O'Donnell. This Court did not modify the Board of Appeals' decision. This Court expressly did not reverse the Board's decision, (T. of proceedings, June 3, 2016, p. 103). This Court did not set aside or vacate the Board's decision. In contrast to the Circuit Court in O'Donnell, this Court remanded the case to the Board of Appeals for further proceedings to receive and consider additional evidence. (See Order, dated June 8, 2016).

The Court of Appeals in O'Donnell v. Bassler did not hold, or support People's Counsel's argument (Supp. Memorandum of People's Counsel at p. 17), that a judicial remand to the Board of Appeals invalidates a special exception. In O'Donnell v. Bassler, the special exception use permit was held to be invalid because the Board of Appeals, and then the Circuit Court, exceeded their authority by imposing and removing conditions, respectively, on the special exception use permit, not because the Board's decision was remanded. 289 Md. at 514-515. Indeed, in Bassler, the Court of Appeals stated a fundamental rule of administrative law that:

“...if an administrative function remains to be performed after a reviewing court has determined that an administrative agency has made an error of law, the court ordinarily may not modify the agency order. Under such circumstances, the court should remand the matter to the administrative agency without modification.” (citations omitted) 289 Md. at 509.

Secondly, O'Donnell v. Bassler, involved vesting rights under the common law and through a special exception use permit for a commercial aircraft landing field. The Court of Appeals held that because the special exception use permit was not valid, the landowner did not obtain a vested right in the special exception use permit. 289 Md. at 514. O'Donnell v. Bassler is distinguishable from the present case because Royal Farms is not claiming vested rights through a special exception under the common law method of vesting, but rather based on plat recordation under BCC §32-4-264.

Petitioner argues that, “if a special exception is required, then that special exception must be in place, valid, and final for recordation of the plat to qualify as a basis for vesting rights.” (Petitioner’s Supp. Memorandum p. 6-9). In support of this argument, Petitioner cites two cases: Marzullo v. Kahl, 366 Md. 158 (2001) and O'Donnell v. Bassler, supra, (Petitioner’s Supp. Memorandum at p. 6). The Court has previously distinguished O'Donnell v. Bassler. The issue in Marzullo also involved vesting under the common law principles that vesting “could only result when a lawful permit was obtained and the owner, in good faith has proceeded with such construction under it as will advise the public that the owner has made a substantial beginning to construct the building and commit the use of land to the permission granted.” 366 Md. at 193. (citations omitted) The Court also noted this doctrine of vesting has a “constitutional foundation.” Id. at 192. Those are not the principles of vesting under which Royal Farms is claiming vested rights in this case. Marzullo is also distinguishable because there was no change to the Baltimore County Zoning Regulations (hereinafter “BCZR”); the Board of Appeals was interpreting the

BCZR as it was already enacted. The BCZR was the same as when the Petitioners filed for a hearing before the Zoning Commissioner. The issue was whether the landowner could lawfully conduct his reptile business in an RC4 zone. The Board of Appeals decision-affirmed by the Court of Appeals which found substantial evidence in the record- was that under the RC4 zone definition of farm, the landowner could not lawfully conduct his business, and therefore he had not obtained a lawful permit. 366 Md. at 193. The landowner did not obtain vested rights because he did not obtain a lawful permit and because he was not subjected to a subsequent change in the zoning regulations. Id. at 193-194. The Court did not hold that “valid and final zoning approval is necessary for rights to vest,” or that “zoning approval was a necessary precondition to obtain the permit required to vest rights” as Petitioner contends in their Supplemental Memorandum. (p.6,7-8).

Determining whether a final special exception is required before Royal Farms could record a plat is somewhat analogous to the analysis of whether the on-going litigation rule applies to vesting by plat recordation under BCC § 32-4-264. In Powell v. Calvert County, 368 Md. 400 (2002), the Court of Appeals cited prior decisions holding that “a vested right does not come into being until the completion of any litigation involving the zoning ordinance from which the vested right is claimed to have originated.” (emphasis added) 368 Md. at 412. In Powell, the Court held that “a special exception approval, whose validity is being litigated, is not finally valid until all litigation concerning the special exception is final.” 368 Md. at 410. In Antwerpen v. Baltimore County, 163 Md. App. 194 (2005), the Court of Special Appeals followed the rule enunciated in Powell and held that when vesting is claimed as a result of the very zoning approval which is being sought, the rights will not vest until the approval of the zoning becomes final. 163 Md. App. at 209.

The present case is distinguishable from Powell and Antwerpen. In the present case, the on-going litigation and the remand Order concern the special exception, not the plat recordation. The claim for vesting arises out of the plat recordation under § 32-4-264, not the special exception. There is no on-going litigation concerning the statute from which Royal Farms claims it acquired vested rights. As discussed elsewhere in this Opinion (see parts II and V), there is no pending appeal of the approval of the Development Plan, and no appeal is permitted from the plat approval process. § 32-4-272 (e).

This Court does not agree with Petitioners or People's Counsel that the plat recordation was rendered invalid or that vested rights had not been acquired because the Board of Appeals' decision granting the special exception was remanded for consideration of further evidence. At the time the Development Plan was submitted for approval and when the plat was recorded, Royal Farms had obtained a special exception as required by the BCZR. This Court did not reverse, vacate, or modify the special exception. Therefore, when the Development Plan was approved, the proposed development was "in compliance" with the BCZR as required by BCC§ 32-4-104 (b).¹

V. Whether People's Counsel or the Petitioners were denied Due Process.

People's Counsel argues that the Board of Appeals violated due process because it "disallowed inquiry into the record plat approval's validity ab initio," which "enabled a unilateral and functionally ex parte process to escape scrutiny." (Memorandum of People's Counsel p. 22, sec. IV.) People's Counsel has not cited any provision of the BCC in support of its allegation that it was denied due process. People's Counsel complains that the approval process for commercial plans and plats may be processed without public notice or a hearing. In its Order dated October

¹ In addition to obtaining zoning approval through the special exception granted on October 20, 2015, the record plat contains initials of a county agency for "zoning" approval on November 13, 2015. (Exhibit 9 to Royal Farms' Memorandum in Opposition to Petition for Judicial Review).

20, 2015, the Board of Appeals granted Royal Farms a limited exemption from BCC §32-4-106 (b) (8), so that the Development Plan was exempt from both the community input meeting and hearing officer's hearing. The Development Plan could therefore be processed for approval through the County agencies, without a hearing. Petitioners did not raise the granting of the limited exemption as an issue in their memorandum in support of their Petition for Judicial Review filed in the Circuit Court on November 18, 2015, which Petitioners had a right to do. Nor did People's Counsel participate to appeal the approval of the limited exemption. Nor did Petitioners or People's Counsel appeal approval of the Development Plan to the Board of Appeals under BCC §32-4-281 (b) (1).

People's Counsel contends that the Board of Appeals "foreclose[d] rights to review the validity of these approvals" of the plan and record plat in violation of their procedural due process (Memorandum of People's Counsel p.23), but does not refer the Court to anywhere in the record where they were denied the right to raise objections to, or appeal, the approval of the Development Plan or plat. In fact, the Board of Appeals noted that the record of its hearings indicates that the Petitioners were presented with the opportunity to review the Plan. (Board of Appeals Ruling on Motion to Dismiss, March 10, 2017, p.14). At the hearing on November 6, 2014, Royal Farms offered the Plan as an exhibit, and proffered that an expert could explain changes to the plan, but Petitioners objected to its admission. Id. The Board of Appeals further notes that at its hearing on January 21, 2015, Petitioners cross examined a Royal Farms expert about the County agency comments to the Plan. The hearing before the Board of Appeals on October 6, 2016 was originally scheduled to hear the issues on remand pursuant to the Order of the Circuit Court. In response to a letter from People's Counsel received one week before the hearing, however, the Board of Appeals converted the hearing to a hearing on People's Counsel's Motion to Dismiss. (T. of

hearing October 6, 2016, p.6, 92). The letter from People's Counsel to the Board of Appeals, dated September 29, 2016, did not address approval of the Development Plan or plat. (Exhibit 6 to Royal Farms' Post-Hearing Memorandum in Opposition to Motion to Dismiss.) At the October 6, 2016 hearing, People's Counsel and Petitioners' Counsel were given a full opportunity to be heard. In an extended argument at the beginning of the hearing, without interruption, People's Counsel never raised the issue of the plan or plat approval. (T. of hearing October 6, 2016, p. 6-31). Counsel for the Petitioners argued that recordation of the plat was improper because it was recorded within 30 days of the Board of Appeals' Order dated October 20, 2015, and therefore should not have been recorded under BCC § 32-4-281 (f), (T. of hearing October 6, 2016, p. 36, 41), and the County should not have processed the Plan while the case was in progress. (Id. at 41-48).

Picking up on Petitioners' Counsel's argument, People's Counsel then raised the question of the "review process," and wondered "how can that happen when you have a plat approved, signed off on the same day as Development Plan without any apparent reasoning or work or study?" (Id. at 63-64). People's Counsel offered no evidence or argument regarding any particular violations of the approval process, but said he "would like to see what [Petitioners' Counsel] and [Counsel for Royal Farms] have to say about that..." (Id. at 64). This Court has reviewed the entire transcript of the hearing before the Board of Appeals on October 6, 2016. At no time during the hearing- a hearing on the matters raised in People's Counsel's letter- did the Board of Appeals ever prevent or stop People's Counsel or Petitioners' Counsel from presenting evidence, arguing or inquiring into the plan or plat approval process. At the conclusion of the October 6, 2016 hearing, the Board chairman requested counsel to submit legal briefs on "all of the issues that you guys all raised here today," and "whatever it is that you feel we need to look at..." (T. of October 6, 2016 hearing p. 95).

The Court has reviewed Petitioners' and People's Counsel's post-hearing Memoranda submitted to the Board of Appeals on November 7, 2016. No further facts regarding the approval process were presented, and since there had been no appeal of the approval of the Development Plan, the Board of Appeals was correct in its Ruling on Motion to Dismiss when it said "we cannot make factual findings or decisions about whether or not the Plan should have been approved." (Board of Appeals Ruling on Motion to Dismiss, p. 8). The Board of Appeals did not "disallow inquiry into the record plat approval's validity ab initio" or "sidestep scrutiny" as argued by People's Counsel. (Memorandum of People's Counsel p. 22, 23). People's Counsel and the Petitioners were not denied due process; they were given a full opportunity to argue or inquire into the approval and recordation of the plat- notwithstanding the fact that "an appeal from the plat approval process is prohibited." BCC § 32-4-272 (e).

VI. Whether the plat was approved in accordance with BCC §32-4-272

The Petitioners and People's Counsel also argue that the attempt to vest was invalid because the plat was not approved in accordance with the requirements of BCC §32-4-272. This was not a reason for plat invalidation argued by Petitioners at the hearing on October 6, 2016. At the hearing on October 6, 2016, Petitioners' Counsel argued that recordation of the plat was improper because (1) it was recorded within thirty (30) days of the Board of Appeals' Order dated October 20, 2015, and therefore could not have been recorded under BCC §32-4-281 (f), (T. of Hearing on October 6, 2016, p. 36, 41), and (2) the County should not have processed the Development Plan while the case was in progress. (T. 41-48).

At the October 6, 2016 hearing, Petitioners' Counsel did not argue that the County committed "technical" violations of the BCC § 32-4-272 as it does in their memorandum to this Court, (Petitioners' Memorandum p. 21) but rather argued that the County should have stopped

the processing of the Development Plan. (T. of hearing on October 6, 2016 p. 44). In fact, Petitioners' Counsel introduced the Development Plan and the plat into evidence, (T. of hearing on October 6, 2016 p. 38, 40, 41), and acknowledged that the "plat itself reflects" that on November 13, 2016, the County agencies "signed off on the plat." (T. of hearing on October 6, 2016 p. 46-47). (see plat, attached as Exhibit 9 to Royal Farms' Memorandum in Opposition to Petition for Judicial Review). Petitioner's Counsel also acknowledged that the Department of Permits, Approvals, and Inspection (PAI) requested and obtained comments from various agencies (T. of hearing on October 6, 2016 p. 45) and the Director of PAI, or someone on his behalf, and the Director of the Department of Environmental Protection and Sustainability (DEPS) signed and approved the plat which was recorded the same day at 3:20 p.m. (T. of hearing on October 6, 2016, p. 47). At the hearing before this Court on April 13, 2018, People's Counsel also acknowledged that all the appropriate County agencies approved the plan. Petitioners do not argue that the plan or plat were never approved by the appropriate County agencies; rather, Petitioners' argument before this Court is that the plat and plan were approved by the Directors of PAI and DEPS on the same day, November 13, 2015, and there is no evidence whether the plat was signed and approved after the Development Plan was signed and approved as required by BCC §32-4-272 (a) (2). (Petitioners' Memorandum p. 21). Petitioners also argue that there is no evidence whether the storm water management plans or public works agreements were approved or whether PAI and DEPS reviewed the plat and determined that it conforms to the Development Plan. (Id.) Yet, at the hearing on October 6, 2016 and in their Memorandum, Petitioners acknowledge that the plat and Development Plan were signed by PAI and DEPS on November 13, 2015. (Petitioners' Memorandum p. 21) (T. of hearing on October 6, 2016 p. 47). Moreover, the plat states above the signature for the Director of PAI that it was "approved by the Director of Permits, Approvals and

Inspections pursuant to section 32-4-272, Baltimore County Code.” (Exhibit 9 to Royal Farms’ Memorandum in Opposition to Petition for Judicial Review).

People’s Counsel also acknowledges that at the hearing on October 6, 2016, Royal Farms submitted its November 13, 2015 “County approved development plan and record plat.” (Supplemental Memorandum of People’s Counsel p. 17). People’s Counsel argues however, that Royal Farms did not submit “documentation to show any County director or staff review, comments or reasoning to support the legal sufficiency of the approvals.” Id. at 18. There is no requirement that the County document its reasons for approving the plat. See People’s Counsel v. Elm Street, 172 Md. 690, 701 (2007). United Steelworkers v. Bethlehem Steel Corp, 298. Md. 665 (1984) cited by People’s Counsel, does not hold, as People’s Counsel suggests, that every agency that must give its approval to a county decision must state or document its reasons. To the extent United Steelworkers applies to this case, the Board of Appeals complied with the Court of Appeals’ decision by stating its reasons for its decision in its written opinion.

The BCC requires a written statement of reasons only if the plat is not approved:

BCC § 32-4-272 (a) (3) (ii) provides that “an agency that disapproves an item shall provide a written statement of the reasons for the disapproval.”

BCC §32- 4- 272 (c) (2) provides: “A Director [of PAI and DEPS] or the Director’s designee shall notify the applicant in writing of the reasons for modification or disapproval.”

When the plat is unanimously approved, to be recorded, the approvals must be “noted on the plat.”

BCC § 32-4-272 (d) (2).

The exhibits presented at the October 6, 2016 hearing- the Development Plan and the plat- containing the initials and signatures of officials of the County agencies, and the acknowledgements by both the Petitioners’ Counsel and People’s Counsel that the agency

approvals were obtained and noted on the plat are sufficient evidence of approval by the County agencies of the Development Plan and the plat as required by BCC § 32-4-272 (d) (1) and (2). This Court believes the argument by Petitioner and People's Counsel is similar to the argument in People's Counsel v. Elm Street, supra, that DEPRM failed to conduct a proper review of a development plan's compliance with Baltimore County zoning regulations. The Court of Special Appeals held:

“Appellants in effect claim that the County officials acted in an arbitrary and capricious manner in making their recommendations. But, ‘in the absence of evidence to the contrary, administrative officers... [are] presumed to have properly performed their duties and to have acted regularly and in a lawful manner.’ [citation omitted] And, since appellants chose not to produce any evidence or even question the County representatives as to the basis for their recommendations, we must conclude that the agencies carried out their duties properly.” 172 Md. App. at 705.

Petitioners and People's Counsel have raised questions about the approval of the Plan and plat under §32-4-272 based on how quickly they were approved, and on the same day. But Counsel have acknowledged there is no evidence that the Plan and plat were not approved chronologically as required by §32-4-272. Above the signature on the plat on behalf of the Director of PAI, it states that it was “approved... pursuant to section 32-4-272, Baltimore County Code.”

As the Board of Appeals observed, “once representatives from the various County agencies approved the Plan, a plat could be submitted for approval and recorded... a plat can be recorded the same date that a plan is approved.” (Board of Appeals Ruling on Motion to Dismiss, p. 4-5).

VII. Whether the Board of Appeals followed the remand Order?

1. Jakubiak testimony

The Board of Appeals heard the testimony of Mr. Jakubiak and accepted him as an expert. The Board obviously considered his testimony because the Board of Appeals analyzed it thoroughly

and at length in its opinion. (Opinion After Remand from Circuit Court, p.2-15) The Board found that Mr. Jakubiak's testimony was not helpful, that it did not assist the Board, and that his testimony was contrary to other evidence which the Board accepted. The Board disagreed with Mr. Jakubiak's testimony and his analysis. The Board also analyzed each one of Mr. Jakubiak's opinions and gave its reasons why it disagreed or rejected them. The Board of Appeals having heard the testimony, can give it the weight it determines it should be given, even if that is no weight.

2. The Petition

The Board of Appeals admitted the Petition into evidence, and reviewed and analyzed the Petition in depth and devoted a significant amount of time and effort in its opinion to discussing the Petition. (Opinion After Remand p. 15-32). The Board did consider the Petition on the question of whether the Royal Farms store is needed, not merely that the signatories opposed the store. (Opinion After Remand p. 17-18). The Board of Appeals did not find the signatories on the Petition as probative as the testimony of a live witness, and for the reasons stated in its opinion, the Board of Appeals did not find the Petition to be persuasive evidence. As with the issue of weighing Mr. Jakubiak's testimony, the Board of Appeals, as fact finder, can give the Petition the weight it determines it should be given, even if that is no weight.

3. In determining whether there is a "need" for the store, consider the duplication or availability of services and products in the area under BCZR 259.3 E.1.

In its Opinion After Remand, the Board of Appeals did consider the duplication or availability of services and products in the area. The Board reviewed the evidence and found that food sold at Royal Farms is different and distinctive from food sold at other establishments in the Hereford area. (Opinion After Remand at pgs. 34-35). The Board also found a need in the availability and

combination at Royal Farms of grocery, convenience store items, and a gas station. There is no other combination of convenience store, gas station, and carry out restaurant in Hereford. (Id. at p. 35). These findings are within the definition of “need” as defined in Neuman v. City of Baltimore et. al, 251 Md. 92, 99 (1967) “expedient, reasonably convenient and useful to the public.” The mere fact that these items can be bought somewhere else in Hereford does not mean there cannot be a need for them to be sold in another store, particularly if they are distinctive, different, and sold in combination with other products and services. The Board of Appeals considered the evidence of duplication and availability of services and there is substantial evidence in the record to support the Boards’ decision.

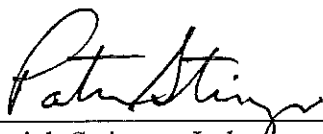
The Board followed the Court’s remand instructions on all three issues.

ORDER

Accordingly, for the reasons stated in this Opinion, it is this 11th day of June, 2018, by the Circuit Court for Baltimore County, hereby

ORDERED, that the *Ruling on Motion to Dismiss* by the Board of Appeals, dated March 10, 2017, which Denied People’s Counsel’s Motion to Dismiss, is AFFIRMED; and it is further

ORDERED, that the ORDER of the Board of Appeals, dated July 21, 2017 and ORDER of the Board of Appeals dated October 20, 2015, Granting the Petition for Special Exception, are AFFIRMED.



H. Patrick Stringer, Judge

Copies were sent to: Peter Max Zimmerman, Esq.
Carole S. Demilio, Esq.
Michael McCann, Esq.
Christopher Mudd, Esq.
Matthew Alsip, Esq.

IN THE MATTER OF
RIVERWATCH, L.L.C. – Legal Owner
TWO FARMS, INC. – CP/Lessee
118 Mount Carmel Road
Parkton, MD 21120

7th Election District, 3rd Councilmanic District

RE: Petition for Special Hearing per BCZR §405.2.B.2,
405.E.1 and 405.E.10 for fuel service station in
combination with a convenience store and carryout
restaurant; Approval of illuminated signage per BCZR
§259.3.C.7; and Limited Exemption approval per BCC
§32-4-106(b)(8)

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
*
*
* Case No. 14-131-SPHXA
*

* * * * *

OPINION AFTER REMAND FROM CIRCUIT COURT

This case comes to the Board from an Order of the Circuit Court for Baltimore County (Stringer, J.) dated June 8, 2016 remanding to the Board for further proceedings: (1) to allow the testimony of Petitioner's expert witness, Christopher Jakubiak, and give his testimony the weight that the Board considers appropriate; (2) to receive in evidence the Petition signed by members of the community (marked as Protestants' Exhibit 77), upon authentication satisfactory to the Board (which shall not require authentication by the 1,300 signatories themselves), and to give the Petition the weight the Board considers appropriate; and (3) to consider the duplication of availability of services and products in the area in making the Board's determination of whether there is a "need" for the proposed development under BCZR, §259.3.E.1 (the "Remand Issues").

A hearing on the Remand Issues was held before this Board on March 27, 2017. The Petitioner, Riverwatch, L.L.C., the legal owner, and Two Farms, Inc., the contract purchaser/lessee a/k/a "Royal Farms" (hereinafter "Royal Farms") were represented by David H. Karceski, Esquire, Christopher D. Mudd, Esquire and Venable, L.L.P. The Protestants, Sparks-Glencoe Community

Planning Council, Tom Graul, Ken Bullen, Jr. and Ruth Mascari were represented by Michael McCann, Esquire. A public deliberation was held on April 13, 2017 on the Remand Issues.

This Board previously issued an Opinion and Order dated October 20, 2015 which is incorporated herein in its entirety as if fully set forth herein (the "Opinion and Order").

REMAND ISSUES

1) Christopher Jakubiak.

As directed by the Remand Order, the Board accepted, without voir dire on qualifications, Christopher Jakubiak, as an expert in the areas of land use planning and zoning, master plans, community plans, and zoning regulations. (T., 3/27/17, p.13).

When this Board originally declined to have Mr. Jakubiak testify at the hearing on March 9, 2015 (Day 6 of 8), we stated that an expert would need to be able to assist this Board in understanding an issue(s) that the Board would not otherwise be capable of understanding without such testimony. Our Ruling to exclude Mr. Jakubiak's testimony at that hearing was based on the common law standard regarding the necessity of expert testimony as follows:

It is well settled that expert testimony is required "when the subject of the inference is so particularly related to some science or profession that it is beyond the ken of the average layman."

Hartford Accident and Indemnity Comp. v. Scarlett Harbor Assoc. Limited Partnership, 109 Md. App. 217, 257, 674 A.2d 106 (1996), *aff'd*, 346 Md. 122, 695 A.2d 153 (1997) (citing *Virgil v. "Kasha N' Kerry" Service Corp.*, 61 Md. App. 23, 23, 484 A.2d 652 (1984), *cert. denied*, 302 Md. 681, 490 A.2d 719 (1985)).

Additionally, we knew, at that time, that Rule 7 of this Board's Rules of Practice and Procedure permits us to look to the Maryland Rules of Evidence to determine admissibility of evidence:

**Board of Appeals
Rule 7. Evidence**

A. Any evidence which would be admissible under the general rules of evidence applicable in judicial proceedings in the State of Maryland shall be admissible in hearings before the county board of appeals.

(BCC, Appendix B).

In regard to expert testimony, the MD Rule 5-702 reiterates the common law standard set forth above:

Rule 5-702. Testimony by experts.

Expert testimony may be admitted, in the form of an opinion or otherwise, *if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue*. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

Mr. Jakubiak began his testimony by reading verbatim the contents of Baltimore County Zoning Regulations ("BCZR"), §230.1, concerning whether fuel service stations are permitted in a business-local ("BL") zones. He then read BCZR, §405.2A and stated that the proposed fuel service station is not permitted by right as it was not in a planned shopping center nor was it in a planned drive-in cluster. This testimony was needless to the Board because Royal Farms has never asserted that §405.2.A applies here. Instead, Royal Farms requested relief under §405.2.B.2.

Mr. Jakubiak then proceeded to read BCZR, §405.2.B.2 and explained that a special exception was required for this fuel service station. He pointed out that Royal Farms had to satisfy

BCZR, §405.3 and §405.4 as well as §259.3. Toward this end, he prepared a flow chart which was intended to assist the Board in understanding the applicable BCZR sections and the various requirements therein. (Prot. Ex. 88). However, his recitation of those Code sections and his flow chart did not provide this Board with any new information, or explain any issue that we did not already understand. Our Opinion and Order already identified each of these sections and facts were set forth in support thereof.

(A) Mr. Jakubiak's "Neighborhood."

Next, in addressing the Compatibility Standards set forth in BCC, §32-4-402, Mr. Jakubiak delineated his "neighborhood.". Toward that end, he offered an aerial photograph with a blue shaded area the boundaries of which end in the east at York Road, include the properties located to the north and south of Mt. Carmel Rd., and ended in the west immediately before the Grauls and Exxon in the Hereford Shopping Center. (Prot. Ex. 81).

It was his opinion that the Hereford Shopping Center (including the Grauls and Exxon) had to be excluded from his neighborhood because that shopping center was a "significant change in character or land use." (T., 3/27/17, p.28). The definition of "neighborhood" in BCC, §32-4-402(a)(2) does encompass that phrase. He emphasized that the standards set forth in the Hereford Plan would also exclude the shopping center. (T., 3/27/17, p. 85-86). Yet, in cross examination, Mr. Jakubiak conceded that the BCC does not actually require compliance with standards in the Hereford Community Plan. (T., 3/27/17, p. 86).

In defining his neighborhood, he alleged that the Grauls and Exxon were a significant change in character or land use because they oriented toward I-83. He explained that it was not the orientation of the building facades, but rather the orientation "...in terms of land use relationship with the highway." (T., 3/27/17, p. 92). Having removed that Shopping Center from his

“neighborhood,” he described the rest of Mt. Carmel Rd., as the “historical traditional town of Hereford” which he said resembled a “village.” (T, 3/27/17, p. 28-29, 94). He made this statement while agreeing that there are no historic structures on Mt. Carmel Rd. between York Rd. and I-83. (T., 3/27/17, p.94). He acknowledged that the historic structures are located along York Rd. and agreed that the Hereford Plan confirms this fact. (*Id*).

We find Mr. Jakubiak’s “neighborhood” to be contrary to the testimony of Protestant’s witness, Lynne Jones, and the photographs she presented. (Prot. Ex. 47). Her testimony and photographs confirm that the “historical town of Hereford” is not located along Mt. Carmel Rd. but in a north/south direction along York Rd. (*Id*). To be clear, based on the evidence, we find that there is nothing historic or rural about the stretch of Mt. Carmel Rd. where the Royal Farms is proposed to be located. To state that the Grauls and Exxon were oriented in “land use relationship” toward I-83, is nothing short of circular double-talk, without any logical reason to substantiate his conclusion.

We find, based on the Protestants’ photographs of the properties along Mt. Carmel Rd., that the Grauls and the Exxon in the Hereford Shopping Center are not “change[s] in character or land use.” Rather, the Grauls and Exxon are commercial uses just as the businesses along Mt. Carmel Rd., are commercial uses. Mr. Jakubiak even agreed to this on cross examination, but then attempted to rationalize his opinion by stating that the other businesses already existed and were designed to be compatible with the historic town of Hereford because of “good site design.” (T., 3/27/17, pp. 87-91)

To be clear, the evidence showed that the following businesses are located along Mt. Carmel Rd.: 12 Mt. Carmel Rd. – physical therapy and accountant; 14 Mt. Carmel Rd. – eye doctor; 106 Mt. Carmel Rd., - hair salon; Village Plaza (107 Mt. Carmel Rd. which includes a

Subway and the Backwater Angler); 108 Mt. Carmel Rd., - dentist; 110 Mt. Carmel Rd., - insurance company; Mt. Carmel Center, (111 Mt. Carmel Rd. which includes a pharmacy, an eye doctor and insurance company); 112 Mt. Carmel Rd., - insurance company; 115 Mt. Carmel Rd., contractor; PNC Bank, 201 Mt. Carmel Rd.); 211 Mt. Carmel Rd.; and Rittenhouse Fuel Company, 316 Mt. Carmel Rd. (Prot. Ex. 47). Accordingly, we find that all of these businesses, as well as the Grauls and Exxon, are of the *same* character and land use as the Royal Farms.

That evidence notwithstanding, Mr. Jakubiak then opined that his defined “neighborhood” was consistent with the Hereford Community Plan. We disagree. In fact, the Hereford Community Plan recommends that “no commercial expansion be permitted to the north or south along York Rd” (*i.e.* where these historic structures are located), but that “the western boundary of commercial expansion should continue to be the I-83 interchange.” (Prot. Ex. 14, p. 15). Consequently, to be consistent with the Hereford Plan, Mr. Jakubiak’s neighborhood should have included the Grauls and Exxon. Indeed, our definition of “neighborhood” was consistent with the Hereford Plan in that it had boundaries of: “I-83 to the west, the commercial zoning to the north and south and the rear property lines of properties bounding on York Rd. to the east.” (Opinion and Order, p. 44).

In addition, we fail to see how the Grauls and Exxon are changes in “land use” when the Royal Farms Property and the Hereford Shopping Center are both located in business zones. (Pet. Ex. 4). All the properties surrounding the Grauls and Exxon are Business-local (BL) or Business-Roadside (BR). (*Id.*). Since there is no change in land use, his theory is flawed.

Our defined “neighborhood” has not changed after hearing from Mr. Jakubiak. Mr. Jakubiak could not articulate any rational basis for excluding these two properties. He could not provide any logical reason why he excluded adjacent commercial properties from his neighborhood but included all the other Mt. Carmel Rd. businesses. In our view, his

“neighborhood” is self-serving and was designed to eliminate comparable properties. Accordingly, we assign no weight to his “neighborhood.”

(B) BCC, §32-4-402(d)(1) – Arrangement and Orientation of Royal Farms.

Mr. Jakubiak next opined that the Plan was not compatible with BCC, §32-4-402(d)(1) – in that the proposed Royal Farms store was not oriented or aligned in a way similar to other properties on Mt. Carmel Rd. Mr. Jakubiak prepared another exhibit which was entitled “Evaluation of Compatibility Objectives in Immediate Neighborhood”. (Prot. Ex. 84). He described his exhibit as a “very crude example or crude drawing....which was “roughly to scale.” (T. 3/27/17, p. 38).

On that exhibit, Mr. Jakubiak superimposed boxes to approximate the location of both the Royal Farms store and the gas station canopies, as well as an orange line which was intended to represent his measurement of the “general location for the setback” to Mt. Carmel Rd. (T. 3/27/17, p. 38, 100). He explained that, *in Montgomery County*, the orange line is known as the “build-to-line” Although he acknowledged that the exhibit was not to scale, he testified that the orientation of the Royal Farms store was not compatible with the orientation of the other Mt. Carmel businesses. (T, 3/27/17, pp. 100-101).

Given that the basis for his Opinion is a rough sketch using a Montgomery County planning concept, we find his analysis specious at best. Even if his Exhibit had precise measurements, his exclusion of the Exxon gas station undermines this Exhibit. The Protestants’ photographs of the Exxon show that both the Exxon store and its gas pumps are situated away from Mt. Carmel Rd. (Prot. Ex. 57). Likewise, the Royal Farms store, and its gas pumps, have been designed at a similar distance to Mt. Carmel Rd. It is obvious to us that the most comparable property for Compatibility evaluation under BCC, §32-4-402(d)(1) is the Exxon.

It is also evident that this issue hinges on the prescribed Baltimore County setbacks, not Montgomery County planning concepts. We previously found, based on the evidence, that no setback variances were being requested. (Opinion and Order. p. 4). In this case, the required setbacks are found in BCZR, §259.3.C.2 and the Baltimore County Zoning Commissioner's Policy Manual (Pet. Ex. 5).

In our review of the Plan and the testimony of Petitioner's expert, David Woessner, PE. the setback from Mt. Carmel Rd. to the Royal Farms' gas pump island under the canopy will equal 57 feet. (Pet. Ex. 1B). The setback had to be less than 65.8 feet which was the average setback for the adjoining properties (T., 7/22/14, p. 34). The Baltimore County Zoning Commissioner's Policy Manual, §303.2.d directs that gas pump islands are considered as "structures" and used in determining the average setbacks. (Pet. Ex. 5). Mr. Jakubiak interpreted §303.2.d of the Zoning Commissioner's Policy Manual as only applicable if an existing fuel service station was located next to an unimproved site that is to be developed. (T. 3/27/17, pp. 41-42). Yet, a plain reading of §303.2.d does not restrict it to existing fuel service stations. (Pet. Ex. 5).

Mr. Jakubiak insisted that the setbacks would not be at issue if Royal Farms had proposed that the fuel canopies be located on the side or in the rear of the Royal Farms store. (T. 3/27/17, p. 96). On cross examination, Mr. Jakubiak admitted that he did not actually know whether any fuel service stations in Baltimore County had fuel pump canopies located on the side or rear of their buildings. (*Id.*). He further conceded that the Hereford Plan did not specify where a fuel pump canopy needs to be located. (T. 3/27/17, p. 96-97). Thus, we assign no weight to his opinion regarding BCC, §32-4-402(d)(1).

(C) BCC, §32-4-402(d)(4) – Open Space.

We also disagree with Mr. Jakubiak's opinion that the proposed open space is not consistent with the existing open space along Mt. Carmel Rd. under BCC, §32-4-402(d)(4). (T. 3/27/17, pp. 44-45). He testified that the Royal Farms parking lot is a "big open space in front along a highway that is large and there is a great deal of open space in the back." (T. 3/27/17, p. 45). Mr. Jakubiak then admitted that the parking for both the PNC bank, and the Hereford Shopping Center each have parking in the front of those stores. (T. 3/27/17, p. 97).

Mr. Jakubiak's opinion in this regard reemphasizes for us why the exclusion of the Grauls and Exxon was improper. The parking layout for the Royal Farms is consistent with the Exxon parking lot which also has parking in the front and on the side. (T. 7/22/14, p. 41(Pet. Ex, 7). The Grauls and the Hereford Pharmacy both have parking on the front and side. (*Id*). For the Royal Farms store, the required and proposed parking spaces is 32. No parking variance is needed. Even with the required parking, the evidence was clear that the Royal Farms store is providing even more green space than either the Grauls or the Exxon. Accordingly, we cannot assign any weight to Mr. Jakubiak's unsupported conclusion as to the open space or the location of the parking.

(D) BCC, §32-4-402(a)(8) – Scale, Proportion and Detail of Royal Farms.

Finally, he contended that the Plan failed to meet BCC, §32-4-402(d)(8) in regard to the scale, proportion, massing and detailing of the Royal Farms as compared to those existing in the neighborhood. He based this opinion on the fact that the front façade of both the Village Plaza (107 Mt. Carmel Rd.) and the Mt. Carmel Center (111 Mt. Carmel Rd.) buildings face east toward York Rd, and not toward Mt. Carmel Rd. He then concluded that orienting the smaller part of these 2 buildings toward Mt. Carmel Rd. reinforced the "residential nature" of this community. (T.

3/27/17, p. 46). He made that statement before admitting that commercial uses comprise all of Mt. Carmel Rd. . (T., 3/27/17, pp. 87-91).

Based on the photographs submitted by the Protestants (Prot. Ex. 47, 57), and the aerial photographs submitted by the Petitioner (Pet. Ex. 7), we find the exact opposite to be true. On the South side of Mt. Carmel Rd., the following buildings face Mt. Carmel Rd., namely: PNC Bank (201 Mt. Carmel Rd.); 208 Mt. Carmel Rd. (former bank building); 116 Mt. Carmel Rd. (business). Likewise, on the north side of Mt. Carmel Rd., the following buildings face Mt. Carmel Rd., namely: 14 Mt. Carmel Rd.; 39 Mt. Carmel Rd.; 100 Mt. Carmel Rd.; 104 Mt. Carmel Rd.; 106 Mt. Carmel Rd.; 108 Mt. Carmel Rd.; 110 Mt. Carmel Rd.; 112 Mt. Carmel Rd.; and 114 Mt. Carmel Rd. Mr. Jakubiak admitted that the Exxon faced Mt. Carmel Rd. (T. 3/27/17, p. 92).

Village Plaza was built in 2007; Mt. Carmel Center was built in 1997. (Prot. Ex. 47, p. 18-19). Both are strip-shopping centers. Neither matches the orientation of the older buildings on the north side of Mt. Carmel Rd. which buildings were described by the Protestants as “bungalows and cottages.” (Id.). All of the bungalows and cottages have been converted to businesses as is clear from the commercial signs in the front yards of those properties. (Id.) (T., 3/27/17, pp. 87-91). Accordingly, we find that the orientation of Village Plaza (107 Mt. Carmel Rd.) and Mt. Carmel Center (111 Mt. Carmel Rd.) located on the south side of Mt. Carmel Rd. are exceptions, not the rule. As we see it, his conclusion that the orientation of two (2) smaller sides reinforces the “residential nature” of the community is inconsistent with his acknowledgement Mt. Carmel Rd. is commercial.

(E) Master Plan and Hereford Community Plan.

The next part of Mr. Jakubiak's testimony centered around the Master Plan. He spent a good amount of the Remand Hearing generally describing how Master Plans are created by local governments, why he believed such plans are generally important government planning tools and how he felt it was a good idea for County regulations to follow those Plans. (T. 3/27/17, pp. 49-50). Toward that end, he offered (over objection), the last three (3) Baltimore County Master Plans for the periods 1989-1999 (Prot. Ex. 85), 2000-2010 (Prot. Ex. 86) and 2010-2020 (Prot. Ex. 87). He then read sections of those plans to the Board and described his view of Baltimore County's general planning trend for rural areas. (T. 3/27/17, pp. 53-56).

Specifically, he highlighted a section in Master Plan 2020 that reads:

(9) For properties along **scenic routes** or within **scenic viewsheds**, variances, amendments and special exceptions should be granted sparingly.

(Id. at p. 101). (Emphasis Added). Mr. Jakubiak opined that this particular section of Master Plan 2020 applies to Mt. Carmel Rd. because from his perspective, it is a "scenic route" and "scenic viewshed." Therefore, he reasoned, the Royal Farms store would be inconsistent with the general concept of protecting rural areas. (T., 3/27/17, p. 55). On cross examination, Mr. Jakubiak admitted that he did not actually know the difference between a State designated "Scenic Byway" and a County "Scenic Route." (T. 3/27/16, pp. 84-85).

We find Mr. Jakubiak's opinion to be contrary to the testimony of Protestants' witness, Terry Maxwell, the Scenic Byways Coordinator for the State Highway Administration ("SHA"), whom they subpoenaed to testify prior to Mr. Jakubiak. Through Mr. Maxwell's earlier testimony, it was established that Mt. Carmel Road is not a "scenic route" or a "scenic viewshed."

At the hearing on March 9, 2015 (Day 6), Mr. Maxwell explained that Mt. Carmel Road is a segment of the State of Maryland “Horses and Hounds, Maryland Scenic Byway.” It is not designated as a national scenic byway. (T. 3/9/15, p. 77). The Horses and Hounds Scenic Byway begins at Hampton National Historic site, extends out to Cromwell Bridge and then up into My Lady’s Manor, through Hereford, and ends at Shawan Rd.. (T. 3/9/15, p. 75, 77).

Mr. Maxwell verified a January 28, 2015 letter from SHA to Michael Gesell, P.E. (professional engineer for proposed Royal Farms’ plan) (Prot. Ex. 66) which describes the State program as one which works with developers. Mr. Maxwell further described the section of Mt. Carmel Rd. where the Property was located, as one that has *undergone development* as follows:

MD 137 adjacent to this project is a segment of the **Horses and Hounds State Scenic Byway**. The Scenic Byways Program works with developers to build awareness and understanding of the byway’s character-defining features in an effort to maintain the byway and its surrounding resources. **Because this segment of the byway has undergone development that has altered much of [the] its character, the Scenic Byway’s Program is working to maintain and enhance the traveler’s experience wherever possible.**

The Maryland Scenic Byways Program suggests that the Royal Farms Store be designed and constructed in a manner which reduces ground-level visual clutter of the site’s circulation, parking and service areas, and which emphasizes the architecture and corporate identity of the project. OED requests the applicant to submit the architectural, grading, landscaping, and other applicable drawings, so that OED may better understand the visual appearance of the project. This information will be used to suggest possible enhancements to landscaping, etc. consistent with this byway.

(*Id.*). (Emphasis Added).

Mr. Maxwell described the section of Mt. Carmel Rd. where the Royal Farms will be located as “a commercial area.” (T. 3/9/15, p. 102). Mr. Maxwell provided the Board with the SHA Maryland Scenic Byways map which discusses each of the 19 scenic byways. (Prot. 64). He

made clear for the Board that the purpose of the Scenic Byways program was not to halt development but to work with developers on the architecture, landscaping and design to enhance the byway for travelers. (T. 3/9/15, p. 76). The desired end-result of the program is to bring drivers off the highways and to promote economic tourism. (T. 3/9/15, p. 74). Toward that end, he provided the Board with excerpts from another SHA document regarding design strategies for development along scenic byways. (Prot. Ex. 65).

In this particular case, SHA reviewed the proposed Plan for the Royal Farms. (T. 3/9/15, p. 78). Mr. Maxwell clarified that, because Mt. Carmel Rd. is a scenic byway, an acceleration/deceleration lane would not be required for entry into the access point of the Royal Farms store as explained in the SHA approval letter dated October 16, 2014. (Pet. Ex. 43). (T. 3/9/15, p. 84-85). We note that the Department of Planning also recognized the Scenic Byway designation and described Mt. Carmel Rd. as “scattered commercial with large parking lots.” (Pet. Ex. 14). Additionally, Protestant Kirsten Burger testified that Hereford was “the center of commercial activity in the area.” (T. 11/06/14, pp. 71-72).

With regard to Mr. Jakubiak’s reliance upon the Master Plan and the Hereford Community plan, these plans are only mentioned in the Statement of Legislative Findings and Policies in BCZR, §405.1.D. Neither Plan rises to the level of a required regulation. Mr. Jakubiak even conceded that the Hereford Plan states that it is an advisory guide when a proposed project meets the Bulk Regulations of BCZR, §259.3.C. (T. 3/27/17, pp. 73-74). (Prot. Ex. 14, p. 38). On that point, Mr. Jakubiak acknowledged that this particular Plan meets all of the Bulk Regulations. (*Id.*). Even if those Plans rose to the level of restrictions, we do not find the Royal Farms store violates either Plan.

Mr. Jakubiak went further to opine that the Royal Farms Plan was not consistent with the *Statement of Legislative Intent for CR Districts* as set forth in BCZR, §259.2.A. While BCZR §259.2.A mentions the needs of “tourists,” it was Mr. Jakubiak’s view that the “tourists” referred to in that Section are “not those driving on I-83 past Baltimore to Virginia and stopping off in Hereford.” (T. 3/27/2017, pp. 60-61). We are not persuaded that the County Council, in enacting BCZR, §259.2.A, intended to distinguish between types of tourists. For that matter, any type of tourist that stops at the Royal Farms, or the Grauls, or the Exxon, or the various other businesses is within the purview of “tourists.” In our view, there is no basis in fact for Mr. Jakubiak’s classification of tourists and his opinion on this point is nothing more than conjecture.

Finally, Mr. Jakubiak testified that the Royal Farms gas station was not among the acceptable uses listed in the Hereford Community Plan. (Prot. Ex. 14, Appendix E, p. 75). He testified that because Appendix E lists “service station” in the singular tense, that term must refer specifically to the Exxon. While never having prepared a Community Plan in Baltimore County, and while he was not one of the drafters of the Hereford Community Plan, he surmised the drafters were referring to the Exxon when they used the singular tense because the Exxon existed when the Plan was drafted. The only foreseeable conclusion for us to reach from his opinion was that if another gas station were built, it would not be consistent with the Hereford Plan. (T. 3/27/17, p. 63, 64, 67-68).

On cross examination, when asked about the singular tense of the word “restaurant” on the same Appendix of Acceptable Land Uses, he admitted the same logic did not apply as there was more than one (1) restaurant in Hereford. (T. 3/27/17, p. 71-72). Mr. Jakubiak also admitted that he was not familiar with the section in the Hereford Community Plan (*Prot. Ex. 14*, p. 19) which directs that Acceptable Uses listed in Appendix E “are to be encouraged.” (T. 3/27/17, pp.72-73).

Accordingly, Mr. Jakubiak's opinion regarding the Master Plan and Community Pla will be assigned no weight.

Having heard the testimony of Mr. Jakubiak, the Board unanimously agrees that Mr. Jakubiak's testimony, and the exhibits he provided, did not persuade the Board to change any of the factual findings or decisions contained in our Opinion and Order. Additionally, none of Mr. Jakubiak's testimony assisted the Board in understanding any issue that we did not already understand.

2. To receive in evidence the Petition signed by members of the community (Prot. Ex. 77), upon authentication satisfactory to the Board (which shall not require authentication by the 1,300 signatories themselves), and give the petition the weight the Board considers appropriate.

As instructed by the Remand Order, this Board admitted into evidence the Petition (Prot. Ex. 77) (the "Petition"). This document, which had been previously marked for identification as Prot. Ex. 77 on March 25, 2015 (Day 8), was admitted without authentication by the alleged signers. The Petition consists of one (1) form, reproduced onto 278 pages, containing entry lines for a person's name, address and signature. At the top of *nearly* every page reads, in part, as follows:

Action petitioned for:

We, the undersigned, are concerned citizens who urge the County Board of Appeals to deny the special exception request because, among other reasons, we believe (1) there is no need for the products and services that would be provided by the Royal Farm at the proposed location, (2) the products and services that would be provided are available elsewhere in Hereford or within reasonable distance, (3) the products and services that would be provided are not customarily or frequently needed by the rural residential or agricultural population or tourists, and (4) the proposed store would not be convenient, useful, appropriate, suitable, proper or conducive to the public.

(Prot. Ex. 77). The language in the Petition form, which is derived in part from the Statement of Legislative Intent for CR Districts (BCZR §259.2.A.1) was selected by Counsel for the Protestants. (T., 3/27/17, p. 143).

By way of background, on March 11, 2015, (Day 7), the Protestants called their last witness and closed their case. (T. 3/11/15, pp. 137-138). Prior to the Petitioner calling a rebuttal witness, the Protestants attempted to move into evidence the original Petition which their Counsel indicated contained 1,283 signatures of area residents who were allegedly opposed to the Royal Farms. (T. 3/11/15, p. 139). When it was offered, the Board was told that a **“vast majority” of the 1,200 people who signed were from Hereford and that the Petition was not duplicative of the Protestants’ fact witnesses who already testified:**

MR. McCANN: I don't think it's duplicative at all. If it was 30 signatures yes. 1,200 signatures. There's only 2,000 people in Hereford. **So, we have 1,200. And all these people are from Hereford.** But you look at the, the addresses a vast majority of them are from this area. 1, 200 people say there's no need.

(T., 3/11/15, p. 143). (Emphasis Added).

One of the Petition drives occurred at the Grauls on January 18, 2015. At the Board hearing on March 9, 2015 (Day 6), we accepted a photograph of Sharon Bailey at the Grauls’ Petition drive. (Prot. Ex. 63). Apparently, there were multiple Petition drives, on separate dates, at various locations. (See Prot. Proffer of Testimony and other Evidence Regarding Petition Filed 4/13/15).

At the hearing on March 25, 2015 (Day 8), this Board excluded the Petition on the basis that the Petition contained multiple levels of hearsay, could not be authenticated, and was repetitive and duplicative of the testimony of not only the Protestants’ expert, Richard Garrettson, but of the many facts witnesses from each party who testified about whether or not a Royal Farms store is

“needed” in Hereford. The Petition was offered for the truth of the matter asserted; *i.e.* that the Royal Farms was not needed because 1,283 citizens from Hereford were against the Plan.

First, a “petition of citizens” for or against a particular project that is the subject of a hearing before this Board is not appropriate evidence for the Board to consider, even if “need” for the proposed store/station is a factor for the Board to consider. This applies equally to petitioners and protestants. While a Petition may be useful for a Councilperson to consider when passing laws or regulations, or changing a property’s zoning classification, or in understanding the number of voters for or against a particular issue, this Board - unlike legislators - does not represent the voters of Baltimore County, nor should this Board ever make a decision based on popular vote. Rather, similar to a court of law, this Board is charged with hearing evidence that is relevant to legal standards applicable to the specific case before it.¹

Even if one of the requirements that must be met under BCZR, §259.3.E.1 in this case is the “Petitioner’s obligation to document the need for the development at the proposed location,” the Board does not interpret that section as being satisfied by the majority vote among “concerned citizens.” It is not the same as a homeowner’s association vote or a community association vote. If that were true, than §259.3.E.1 requirement would be reduced to a popularity contest; the party with the most votes would win.

The intended purpose of submitting this Petition was to impress upon the Board that there were 1,283 more people from Hereford than those who had testified, or would be testifying, who were opposed to the Plan. Mr. Jakubiak made this same point when he testified that he saw the Petition and that he thought it was “worth mentioning” that “1,300 people from the community” did not want the Royal Farms store:

1. MD Code Ann., Article 25A, known as the “Express Power Act” directs that this Board hold hearings and file written opinions including Statements of Fact and grounds for the decision.

MR. JAKUBIAK: Through the, the petition, I saw the petition, I saw all those signatures, **thirteen hundred people from the community** said this is not needed. They looked at the same standard that we're referring to and said it's not intended for this or it's not needed, we don't want it. Worth mentioning.

(T., 3/27/17, p. 100). (Emphasis Added).

Second, admitting this type of evidence eliminates the ability of the other party to cross examine the signers. This problem, in turn, eliminates the Board's ability to judge the credibility of the signers, to assess their understanding of the Plan, to verify their age of majority, to judge their competency, intent, motive(s), bias, relationship to the Protestants, relationship to the person conducting the Petition drive(s) and/or coercion, if any. We have found in other cases and also find here that a Petition of signatures is not compelling evidence when weighed against the live testimony of witnesses who are making the same point. In our view, accepting this Petition is no different than being handed 1,283 form letters signed by different people. This Board will never learn the facts that occurred when each person signed. It is also unduly burdensome for the Board and the Parties to have 1,283 witnesses testify. Indeed, the Remand Order directs that the signers not be required to testify.

Third, we note the timing for the collection of these signatures affects the weight that we will assign to it as discussed in more detail below. As written on the Petition, the earliest date that a signature was collected was November 20, 2014. By that point, this Board had already held three (3) days of hearings (July 22, 2014; November 5, 2014 and November 6, 2014). Moreover, by November 6, 2014 (Day 3), witnesses for the Protestants had already testified namely: Kirsten Burger, Andrew Alcarese, Adam Collins, Theaux LeGardeur, Nedda Pray and expert John Koontz.

Fourth, the only way to assign weight to this Petition per the Remand Order is for the Board to scrutinize each signature for genuineness, duplication, address location, correctness,

completeness, and age of majority. Having insisted on the Board's receipt of this Petition, the Protestants cannot now be heard to complain that the Board should blindly accept it and not actually read it. Indeed, this Board is now obligated to review the information provided by each signer. To ignore the contents of the Petition would be arbitrary and capricious on our part.

In analyzing each signature, we will apply the MD Rules of Evidence (Board Rule 7, BCC, Appendix B. *supra*), and specifically MD Rule 5-201. Under MD Rule 5-201, this Board may take judicial notice of the mileage from the Royal Farms store to each address listed. Under that Rule, mileage is both "generally known" and "capable of accurate and ready determination." *Sugarloaf Citizens Ass'n v. Dept. of Env.*, 103 Md. App. 269, 279 (1994) (judicial notice of proximity of appellant's property to determine standing).²

To do so, we consider the mileage of each signer's location to the Royal Farms property. Determining a maximum boundary area is necessary to assess weight to this Petition because, if the signers were to testify, the Board would need to know whether each witness is a "person aggrieved." To be "aggrieved," the Court of Appeals defined the requirement, at least in the context of appeals from zoning decisions, as follows:

[A] person aggrieved by the decision of a board of zoning appeals is one whose personal or property rights are adversely affected by the decision of the board. The decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally.

Bryniarski v. Montgomery County, 247 Md. 137, 144 (1967).

² Protestant Lynn Jones testified on January 22, 2015 (Day 5) that she measured and recorded the mileage for former gas stations. Other Protestants and fact witnesses who testified also identified the mileage from their home/business to the proposed Royal Farms. The Board accepted this testimony without requiring further verification of mileage.

The Court of Appeals defined “aggrievement” as whether a property owner may reasonably be thought to be “specially damaged if the application is approved.” *Sugarloaf* at 279. The Court in *Sugarloaf*, citing *Bryniarski* categorized property owners as such:

* * * *

(2) An adjoining, confronting, or nearby property owner is deemed, prima facie, to be specially damaged and, therefore, a person aggrieved. The person challenging the fact of aggrivement has the burden of denying such damage in his answer to the petition for appeal and of coming forward with evidence to establish that the petitioner is not, in fact, aggrieved.

(3) A person whose property is far removed from the subject property ordinarily will not be considered a person aggrieved unless he meets the burden of alleging and proving by competent evidence--either before the board or in the court on appeal if his standing is challenged--the fact that his personal or property rights are specially and adversely affected by the board's action.

In our Opinion and Order, we found the Petitioner’s expert, Joseph Cronyn’s analysis using a maximum 4 mile radius to be more persuasive on determining the trade or “need” area. On this point, we recall the testimony of Kirsten Burger, President of Sparks-Glencoe Community Association who testified on November 6, 2014 (Day 3) that she personally lived within that 4 mile radius. (T. 11/6/14, p. 63). In fact, she testified that she thought it was important to hear from citizens who will live in the area and will be affected by the proposed development:

MS. BURGER: I think the community would benefit and I think the County as a whole would benefit by having the **input of the people who live in the area and are affected by it**. I think whenever there is a development, **the more input from the people who are affected**, the better. And the more transparent the, the process is, the more confidence the whole community will have in the outcome.

(T. Nov. 6, 2014, p. 93). (Emphasis Added).

Indeed, we found in our review of the testimony of the Protestants’ witnesses, that each witness who testified, identified their address as being within a 4 mile radius of the Mt. Carmel

Rd. property. At the time of the hearings, the Board accepted (and still accepts) as truthful and sincere, the sworn testimony of the Protestants' witnesses as to the mileage of their homes to the proposed store. By way of example, Andrew Alcarese testified truthfully on November 6, 2014 that his home is within the 4 mile radius:

MR. McCANN: -- and where is that?...Where is it that you live, rather?

MR. ALCARESE: Oh. I live ah, 4 miles from there. That's going the back way, which I consider the back way. So really, it's less than 4 miles if I take the standard way.

MR. McCANN: Okay. And what do you mean by back way?

MR. ALCARESE: It's a prettier - - it's a nice drive down Monkton Road. Big Falls Road. I clocked it yesterday from the exact - - I started, I started my odometer at the exact point where the proposed site is to be built, and right when I pulled into my driveway, it was 4.0 on the odometer.

MR. McCANN: And your address again for the record?

MR. ALCARESE: 1346 Wiseburg Road.

Consequently, given that the witnesses who testified before the Board live within a 4 mile radius, we find that those are the residents living in that designated area are the ones who would be "affected by" the proposed Plan. During the 8 days of hearings, we allowed each fact witness for the Protestants to testify and did not exclude any of them. On the issue of whether each signer is personally "aggrieved," we would extend the maximum mileage to 4.5 miles, , based on the testimony of the Protestants' own expert, Richard Garretson..

On this issue, we reviewed again Mr. Garretson's "Needs Analysis" for a gas station and a convenience store/carryout within 1, 1.5, 2, 3, 4 and 4.5 miles of the Mt. Carmel location. (Prot. Exs.73, 74). In explaining his Needs Analysis, Mr. Garretson testified that the local demand will be found between a 1 mile - 4.5 mile radius because that is the "typical trade area:"

Concepts that I would recommend using for needs analysis for, for this particular station using my own methodology. It looks at local demand for several different radiuses and comes up with a, a conclusion on multi—based on multiple areas. And it, one of the things it, it develops demand in a , in a different methodology....A four mile area for a convenience store is actually - - the typical trade area for a convenience store in the industry is about a three mile area. But since this is a rural area it could be a little bit bigger than that. What, what I recommend for, for my clients is if you want the best return on investment find a site where there's a *local demand* that's unmet and a *greater demand* that unmet.

(Emphasis Added). (T. 3/11/2015, p. 58).

Mr. Garretson continued to explain the importance of selecting the 1 – 4.5 mile radii to find *local* demand:

I used a one mile, a mile and a half and two miles to measure *local* demand.

(Emphasis Added). (T. 3/11/2015, p. 59). To find the “greater demand,” he testified that a 4.5 mile radius would take into consideration the B.P. gas station which is located 4.3 miles away from the Mt. Carmel Royal Farms. (T. 3/11/2015, p. 63).

In order to determine whether another convenience store/carryout restaurant is needed in Hereford, Mr. Garretson analyzed the “same market area”:

And then for purposes of my C-store analysis I looked at the, the same market area one mile, a mile and a half, two miles for the *local area*, three miles, four miles and four and a half area for the, for the *greater demand* to come up with a conclusion.

(Emphasis Added). (T. 3/11/2015, p. 64).

Toward that end, Mr. Garretson used a survey prepared by Kirsten Burger to compare the products and services sold by Royal Farms with the products and services sold by the following 6 stores which stores he verified were within 4.5 miles of the Mt. Carmel location:

1. 7-11 - 16956 York Rd.
2. Grauls Market - 220 Mt. Carmel Rd.

3. Meadowcroft Exxon - 300 Mt. Carmel Rd.
4. Michael's Pizza – 16952 York Rd.
5. Subway – 107 Mt. Carmel Rd.
6. Wally's Country Store – 19200 Middletown Rd.

(T. 3/11/2015, p. 66). (Prot. Ex. 74). We note that from Mr. Garretson's Exhibit which is entitled "Hereford Area C-Store & Quick Serve Restaurant Options" lists **July of 2014** as the time period during which the survey was conducted. That date is nearly 6 months prior to the first Petition Drive.

Based on timing of that information, we find that the Protestants knew, or should have known, *prior to obtaining signatures for their Petition in November of 2014*, that their expert defined the "need" area as 4.5 miles from the site. Further, if the Protestants were unaware of the 4.5 mile radius, then after Mr. Garretson testified on March 11, 2015, they should have redacted all signatures which were beyond that radius prior to offering it as an Exhibit. Accordingly, to be consistent with the Protestants' expert, this Board will only consider the signatures of people who live within that 4.5 mile area to determine who is "aggrieved."

Having said all of that, this Board was initially informed by the Protestants that there were 1,283 signatures of people living in Hereford who signed this Petition. (T. 3/11/15, p. 138).³ The Remand Order states that there were 1,300 signatures. When the Petition was first offered into evidence on March 25, 2015 (Day 7), Counsel for the Protestants acknowledged that there were residents from Pennsylvania who signed but qualified it by stating that there were "not a lot" [of signers] from PA who crossed into Maryland to go into Hereford:

MR. McCANN: And, and by the way, by the way, the fact that somebody comes from Pennsylvania down to Hereford that's exactly what Hereford is all about. We've heard testimony, may be the most accurate is from Lynn Jones about why people come to Hereford. From, they cross state line to come down into the village.

³ In their Proffer of Testimony and Other evidence Regarding Petition filed 4/13/15, they stated that the Petition contains over 1,300 signatures.

So, the fact that someone is in P.A., and there's not a lot. I mean, take a look at them yourself. These folks are from Parkton, from Whitehall, from Monkton. You know, he just picks a page. Yes, there's people from P.A. I'm sure there's people from Owings Mills and Baltimore City in here. But the vast - -

(T., 3/11/15, p. 146).

In their Proffer of Testimony and Other Evidence Regarding Petition filed on April 13, 2015, the Protestants justified the out-of-state signatures as belonging to customers of the Backwater Angler, 107 Mt Carmel Rd., a fly fishing store, owned by Theaux Le Gardneur. (See Prot. Proffer of Testimony and Other Evidence Regarding Petition, ¶3). In our review of these signatures, those out-of-state signatures were not only from Pennsylvania, but were from as far away as California, Utah, Montana, Illinois, Ohio, New York, and New Jersey.

We weigh this discovery of out-of-state signatures against the Protestants' insistence that they did not want drivers exiting off I-83 to buy gas or items from Royal Farms because it would increase crime in Hereford: Theaux LeGardeur testified that:

Mr. McCann: And do you have anything to add on, on a personal level, that is, as a local businessman, other than what you said, about the need? Is there anything?

Mr. LeGardeur: Well, I've certainly seen a lot of crime, in the past few years, in the Hereford area, ramp up. I typically don't hear about it. I usually just hear a helicopter above my building, which is County owned, above - you know, just in front of the library. So, we've had quite a few smash and grabs. We had one in my parking lot just six months ago. We've also had some holdups at the bank. I don't know if they've been armed or unarmed, but the bank tellers have been locking the doors. And now we have security guards at all the banks within, you know, a couple 100 yards of the station - -

Mr. McCann: Okay.

Mr. Le Gardeur: - - or proposed station.

Mr. McCann: Well, why, why does Royal Farms concern you in that regard?

Mr. Le Gardeur: I think it would draw more folks from the interstate. The interstate seems to be a very easy way for folks to leave upon committing a crime.

(T., 11/6/14, pp. 186-187).

Even putting aside again whether a vote of any citizen should be considered in determining “need,” we see no compelling reason why an out-of-state fact witness should be permitted to express any viewpoint on whether or not a proposed gas station/store is needed in any area of Baltimore County. Those signers are not “affected” by the Royal Farms in Hereford. If offered to testify live before the Board, we would not allow the out-of-state fact witness to testify on the issue of “need.” As a result, the Protestants should have redacted these signatures before offering this document as evidence. The failure to do so emphasizes why a petition of signatures is not trustworthy evidence in a quasi-judicial proceeding. For these reasons, we assign no weight to these out-of-state signatures.

In our continued review, the Petition revealed more credibility problems. Not only did the Protestants collect signatures from out-of-state residents to support their cause, but they collected signatures from residents who live in counties other than Baltimore County. These included residents from Baltimore City, Prince George’s County, Harford County, Howard County, Anne Arundel County, Montgomery County. Again, if offered to testify as to the need of the proposed store, a non-Baltimore County resident would not be permitted to do so.

By way of example, a Baltimore City resident residing over 19 miles from the proposed store at 6914 Lachlan Circle, Apt. B, Baltimore 21239, signed this Petition. Likewise, a resident of Prince George’s County at 9202 Fairlane Place, Laurel which is at least 49 miles away, signed this Petition. A third resident was from Anne Arundel County, 1308 Antrim Drive, Millersville, MD 21108 which is over 40 miles from the proposed location. A fourth resident was from

Montgomery County, lives at 13612 Colgate Way, Apt 415, Silver Spring, MD which is over 47 miles from the proposed store. In our view, whether these signers were customers of Backwater Angler, or exited off I-83 to buy pizza from Michael's Pizza, or stopped at the Exxon for gas, these activities do not change their lacking of standing in this case.

As with the signers from out-of-state, we reiterate that a collection of signatures from residents living outside Baltimore County on the issue of "need" should never have been collected by the Protestants, and, if collected inadvertently, should have been redacted by the Protestants prior to offering it as evidence. We find that failure to do so negatively impacts the credibility of this entire Petition. Accordingly, the signatures of out-of-County residents will be assigned no weight.

Next are the signatures from inside Baltimore County, but well beyond Mr. Garretson's 4.5 mile maximum radius. If the Protestants support their own expert's designation of the "need area," then signatures of residents beyond 4.5 miles should not have been collected, or should have been redacted prior to offering the Petition into evidence.

Taking judicial notice of the location of signers within Baltimore County, we found signers from Essex, Arbutus, Owings Mills, Reisterstown, Middle River, White Marsh, Pikesville, Lutherville, Randallstown, Cockeysville, Towson, Parkville, Timonium, Phoenix, Ruxton, Manchester, Jarrettsville, Baldwin, Hydes, Nottingham, Rosedale and Gwynn Oak. These areas are between 10-30 miles from Royal Farms site. We find that these signers are not "affected by" the proposed store.

Not only is the mileage too far, but the Protestants made clear during their testimony that they disapproved of the proposed Royal Farms store because it would turn Hereford into

Cockeysville. Adam Collins, 1115 Wiseburg Rd. whose home is 2 miles from the proposed site, testified that:

Mr. McCann And what if any concerns do you have about the proposal?

Mr. Collins: Ah, one of my major concerns is, which has been stated already, is urban sprawl.

Mr. McCann: Okay.

Mr. Collins: I'm afraid that the new Royal Farms is going to entice more people to move into the area, which then entices more commercial buildings, which entices more people to move in

Mr. McCann: Right.

Mr. Collins: So I, I think it's just another step towards turning Hereford into Cockeysville.

(T. 11/6/14, p. 146).

Additionally, Nedda Pray testified on cross examination of her concern that the Royal Farms store in Hereford would be the same as the Royal Farms store in Rosedale:

Mr. Karceski: Okay. And you testified that the people that would come to the Royal Farms are gonna throw trash everywhere.

Ms. Pray: Um, this is what I have heard about the Royal Farms Store in Rosedale. That people come and throw their trash on the ground, and it blows on the next door neighbor's property and then it attracts rats. And that the owner has asked them to stop and they haven't responded at all to his requests that they do something about the trash problem.

Mr. Karceski: So, you're basing what happens in - - and you're - what happens in Rosedale is what you're basing your opinion on?

Ms. Pray: Right. Because I know that it's not a franchise. It is a - it's owned by a - one company and the fact that they're not responsive to concerns raised by their neighbors is troublesome. Because I would hate to see a company that is not responsive in Hereford because we have never had that problem in Hereford. And

we have one grocery store and I really wouldn't like to find that we have a lot of trash in Hereford from people coming in from 83, getting chicken for lunch, throwing their trash and then having a rat problem in Hereford. That would really be disgusting.

Mr. Karceski: Have you been to the Royal Farms in Rosedale?

Ms. Pray: I personally have not. Although, I would like to, now that I have a little more free time, make a site visit and see what the situation is.

Mr. Karceski: What, what is it about the people that are gonna come to the Royal Farms, that they're gonna trash and the people at the other - - that. That patronize the other establishments are not going to?

Ms. Pray: Well, people from 83 may be truck drivers or something, in a hurry, you know, might come in, eat and get the chicken, order it, eat it quickly and toss the trash. I don't know why they would do that, but it's been happening in Rosedale and it could happen, it could happen in Hereford too, with the traffic from 83. And this is something that currently does not happen now in Hereford and this is what we don't want to start happening in Hereford.

Mr. Karceski: People don't come off 83 to use the Exxon?

Ms. Pray: Um, they might, but we have not had a trash problem yet.

(T. 11/6/14, pp. 225 -227).

In light of this testimony, and in weighing the signatures from other areas of Baltimore County, we find it contradictory that the Protestants on the one hand, garnered support from residents of Cockeysville and Rosedale to support their cause, but, at the same time testified that they did not want Hereford to become a Cockeysville or a Rosedale. We find that while these signers may visit or drive through Hereford, they are not residents of Hereford and their signature that Royal Farms is not needed does not change our opinion. Accordingly, we assign no weight to these signatures from other parts of Baltimore County.

Next, we reviewed the signatures of residents who signed the Petition and lived within northern Baltimore County, but still outside of Mr. Garretson's 4.5 mile radius. In considering these signatures, it was not simply a matter of considering specific zip codes or certain towns because some parts of the zip code or town were within the 4.5 mile radius while others were not.

We also discovered in our review that it is not as simple as including signers who have a Mt. Carmel Rd. address because Mt. Carmel Rd. has 3 different zip codes (21120, 21155, 21074); and not all of these zip codes are within the 4.5 mile radius. Additionally, we could not assume that a Parkton address was within Mr. Garretson's 4.5 mile radius. Similarly, not all Upperco or Whitehall addresses are within this radius.

The Petition signatures from northern Baltimore County which are outside the 4.5 mile radius include the areas of Freeland, Manchester (Millers), Parkton, White Hall, Hampstead, Upperco, and Armacost. Even though these addresses are in northern Baltimore County, some of these addresses are just as far, if not farther than, the addresses in Hunt Valley, Cockeysville, Towson and Rosedale. Consequently, we find that these signers live too far from the Mt. Carmel property to be "affected by" the proposed store.

Having gone through each of the 1,283 signatures, Mr. Garretson's 4.5 radius includes some (but not all) parts of Parkton, Monkton, Hereford, Sparks, Glencoe and White Hall. The total number of addresses which were located within a 4.5 mile radius (less signatures which were disqualified as set forth below) was 370. (Appendix A lists each address within the 4.5 mile radius).

Unfortunately, however, our review did not end with the signers within the 4.5 mile radius. We were disappointed to discover that Ruth Mascari, 17210 Whitely Rd. Monkton, MD 21111, signed this Petition on three (3) separate dates: Dec. 4, 2014; Dec. 27, 2014; and Jan. 30, 2015.

She is a named Protestant in this case. She was also the person(s) running the Petition drive held at Grauls. (See Protestants' Proffer of Testimony and Other Evidence Regarding Petition filed with BOA 4/13/15).

Moreover, Ms. Mascari signed this Petition twice before, and once after, she testified on January 21, 2015. The only reason that we can find why the same person would sign more than once is to increase the total number of signatures. Because of this, the entire Petition loses credibility and this duplication makes the entire Petition drive process circumspect. It was only through the Board's review under the Remand Order that these multiple signatures were even discovered. Thus, we excluded her signatures.

We also found that, in addition to Ruth Mascari, another person, April Owens, 619 Monkton Rd., Monkton, MD 21111, signed the Petition on December 21, 2014 and then again January 17, 2015.⁴ As with Ms. Mascari, we see no compelling reason why the same person is signing the Petition twice. The fact that she did, and her second signature was not redacted by the Protestants, further contaminates this Petition. Moreover, it is entirely disingenuous to represent to this Board that 1,283 people from Hereford were against the Royal Farms when multiple signatures by the same person were allowed, and not redacted. We excluded Ms. Owens' signatures.

Next, we found that certain fact witnesses for the Protestants who testified live before the Board also signed the Petition namely: Theaux LeGardeur, Nedda Pray, Patrick Meadowcroft and Michael Newmeyer. Both Mr. LeGardeur and Ms. Pray testified on November 6, 2014 (Day 3) and then signed the Petition on December 4, 2014 and November 30, 2014 respectively. Patrick Meadowcroft, the owner of the Exxon station, signed on December 24, 2014 (or December 25,

⁴ The address of 619 Monkton Rd., Monkton, MD 21111 was left on Appendix A as another person residing at that address also signed the Petition.

2014 as there are two Patrick Meadowcrofts signing). Mr. Meadowcroft testified on March 11, 2015 (Day 7). Michael Newmeyer of Michael's Pizza, 16952 York Rd., signed the Petition on December 17, 2014 and testified on January 21, 2015 (Day 5). We find that these signatures, which were included within the 1,283 total, are duplicative evidence of the live testimony. Therefore, we will exclude those signatures.

Finally, we found problems with other signatures in that some addresses were missing entirely or were incomplete. For example, one address simply listed "7-11" but had no town, city or state. Signatures with PO Box addresses had to be excluded because PO Boxes can be located at any Post Office chosen by the signer and need not be in Hereford. Some lines had handwriting which was completely illegible. Since the Protestants did not redact these, we must exclude these signatures from the total.

Lastly, several names and signatures appear to belong to minors based on the letter formation, elementary signature styles, and having the same address as one for an adult who signed on same page. By way of example, two signatures with addresses at 16317 Yeoho Rd, Sparks, MD 21152 for Sarah and Katelyn Ogburn appear to be signatures of minors as compared to Vivian Ogburn's signature on the same date (1/18/15) for the same address. Another example was a printed name and elementary, cursive type signature of "Jackson R" (no last name written) at 810 Castlebridge Ct., Monkton, MD 21120. This signature was written underneath Marlene Reinartz at the same address.

As we see it, these missing, incomplete and questionable signatures lead us to question again the veracity of the Petition drive. It further leads us back to the observations we made *supra* about the problem with accepting Petitions in a quasi-judicial hearings. The discoveries made here

highlight why Petitions are more prejudicial than probative and support our reasoning for excluding it.

All of these disqualified signatures are particularly galling in light of the fact that the Petition was handed to the Board after the Protestants' case was closed on March 11, 2015 (Day 7), and the Protestants insisted that we accept it, based on proffers made at the time. After objection by the Petitioner, the Protestants reserved the right to call witnesses who would testify that they allegedly saw each signer sign on particular dates. (T., 3/11/15, p. 148). Even if those witnesses had testified as such, it would not change the lack of aggrievement, or the duplicate signatures, or the missing and incomplete information, or the PO Box addresses, or the lack of adult capacity. That testimony would not change our inability to judge credibility, competency, understanding, bias, or motive of each signer. Thus, the observations we made when we excluded the Petition 2 years ago have come to fruition.

Finally, of the 370 signatures which we did not exclude which were within the 4.5 mile radius, less the disqualified signatures as above, a more accurate number of signers is approximately 352. However, the existence of 352 signatures does not lead us to any different conclusion about "need" for all the reasons set forth herein. Accordingly, our Opinion remains unchanged.

3. Consider the Duplication or Availability of services and products in the area in making the Board's determination of whether there is a "need" for the proposed development under BCZR, §259.3.E.1.

In our Opinion, we summarized the Protestants' collective opposition to the Royal Farms gas station and convenience store. We wrote that witnesses for the Protestants testified that the Royal Farms is not 'needed' because everything that Royal Farm sells – from gas to convenience store items - is already available from existing businesses in Hereford. From their point of view,

if a new business offers some categories of the same products, they want to be able to vote on whether or not the business should be allowed in Hereford.

Our Opinion and Order discussed in detail how the evidence supported another gas station in Hereford. (Opinion and Order, pp. 55-64). As we have already incorporated our Opinion and Order herein, we will not repeat here why another gas station is needed.

We based our decision on “need” for products and services not on the number of people for or against the proposed Plan but rather on the Court of Appeals definition of “need” set forth in *Neuman v. Mayor and City County of Baltimore*, 251 Md. 92, 98-99 (1968). The Court of Appeals in *Neuman* said:

Need for the services of a physician likewise must be considered as elastic and relative. Clearly, it does not mean absolute necessity. Need has been judicially held to mean ‘expedient, reasonably convenient and useful to the public

We emphasize that *Neuman* has not been overruled and is still good law.

At the hearings on the merits, both parties had marketing analyst experts (Joseph Cronyn and Richard Garretson) present evidence on the need (or not) for the development at the proposed location as required by BCZR, §259.3.E.1. We found more persuasive Mr. Cronyn’s opinion that there was an abundant demand for products and services within the 4 mile radius of the Mt. Carmel location. We have not changed our Opinion that the BP gas station located 4.3 miles away on Middletown Rd. is in an entirely different neighborhood, to the north off I-83 and would not be ‘convenient’ for the same patrons of the Exxon or the proposed Royal Farms’ gas station. (Opinion, p. 63).⁶

⁶ Our decision to use Mr. Garretson’s 4.5 mile radius for the purpose of “aggrievement” does not change our decision.

As for the food and other convenience store items proposed to be sold at Royal Farms, we re-reviewed the Royal Farms carryout menus. (Pet. Ex. 54). A well-known item sold is Royal Farms Famous Fried Chicken and steak fries. Other items sold at Royal Farms include breakfast sandwiches, specialty avocado-bacon burgers, chicken slider sandwiches, meatball subs, tuna salad, chicken salad, vegetable sandwiches, baked beans, corn, potatoes, spinach, mac n'cheese, and green beans in ham sauce. (*Id*).

We looked again at photographs of items typically sold inside a Royal Farms store. (Pet. Ex. 53). These items include snacks like chips, pretzels, Tastecakes, nuts, donuts, Lunchables, energy bars, cookies, premade lunches, boxes of desserts to bake, specialty health snacks, and candy.

Royal Farms also sells a wide variety of drinks including many different brands and sizes of each category such as: individual bottles of water and cases of bottled water; sports drinks; dairy; juices; teas; fountain sodas; liters of soda; F'REALS; Smoothies with acai berries and other fruit; condiments; and Royal Farms brand coffee, to name a few. They also sell frozen dinners; ice cream by the gallon and by the quart; and individually wrapped frozen desserts. In addition to food/drink items, Royal Farms also sells gift cards; phone cards; medicine; toothpaste; health care products; automotive items; household cleaners; lightbulbs; batteries; and even pet food.

From the Protestants' perspective, if Grauls sells fried chicken, the Exxon sells chips, 7-11 sells bottles of soda, and Michael's Pizza sells deli sandwiches, then those products are exactly the same as the ones sold by Royal Farms. The Protestants are only looking to the category of food or convenience store item and concluding that it is duplicated because it already exists in some way, shape or form. We disagree.

By way of example, when Protestants' witness, Andrew Alcarese was asked who sells the best fried chicken, he responded that the chicken sold at Prettyboy Market on Middletown Road is as good as or better than Royal Farms chicken. (T. 11/6/14, p. 128). When Carolyn Gittings was asked the same question, she said that Grauls "serves great fried chicken." (T. 1/21/15, p. 144). Short of conducting a taste-testing on every food product and drink sold at both Royal Farms and all other stores in Hereford, we find, based on the evidence presented, that the food prepared by Royal Farms on their premises is different than the food prepared at Prettyboy Market, Grauls, Michael's Pizza, Subway or 7-11. We find that each food item prepared at Royal Farms has an individual taste, a distinctive quality, a specific presentation and price. Each of these factors makes the Royal Farm products different than those sold at other places in Hereford. Simply put, not all chicken salads taste the same; and not all coffee tastes the same.

We also find that the availability and combination of food prepared at Royal Farms, plus the selection of grocery and convenience store items, plus the availability of gas, makes the Royal Farms gas station and convenience store "needed" in Hereford. The evidence shows that there are no other convenience store/gas station/carryout restaurants in Hereford that offer all of the products and services that Royal Farms sells at one place.

The Exxon station sells gas and some of the items that Royal Farms sells, but it does not prepare food on the premises. A customer needing medicine, food for dinner and windshield wiper fluid can buy all those items at Royal Farms. While the same bottle of soda or F'REAL could be sold at both the Royal Farms, the 7-11 and the Exxon, this fact does not mean Royal Farms is not needed. A customer buying that bottle of soda at Royal Farms can also purchase chicken, a breakfast sandwich and a F'REAL while at the same time filling their tank with gas. This is expedient, convenient and useful to the public. *Neuman*, at 98-99.

As set forth in our Opinion, we still find that the duplication of services is not a criteria for determining whether a use is ‘needed.’ As we previously wrote, not only does the *Neuman* definition defy that position, but County Council Bill 103-88 which created the CR district, specifically deleted proposed language that would have required the duplication of services to be considered as a factor. (Pet. Ex. 32).

For all these reasons, we are persuaded by the evidence produced by Royal Farms, that the products and services sold by Royal Farms are not available or otherwise duplicated in Hereford.

ORDER

THEREFORE, IT IS THIS 21st day of July, 2017, by the Board of Appeals of Baltimore County, and in accordance with the Remand Order from the Circuit Court in Baltimore County,

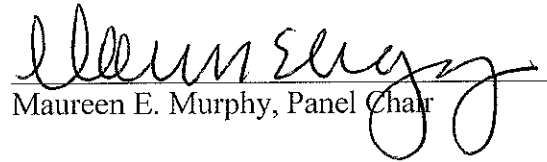
ORDERED, that the testimony of Protestant’s expert witness, Christopher Jakubiak, has been assigned no weight for the reasons set forth herein and the Opinion and Order of this Board dated October 20, 2015 remains the same; and it is further,

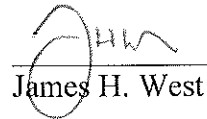
ORDERED that the Petition signed by members of the community (Prot. Ex. 77) was admitted into evidence and has been assigned no weight for the reasons set forth herein and Opinion and Order of this Board dated October 20, 2015 remains the same; and it is further,

ORDERED that the Board considered the issue of duplication or availability of services and products in the area in making the Board’s determination of whether there is a “need” for the proposed development under BCZR §259.3.E.1 and found, based on the evidence, that the products and services offered and sold by Royal Farms are neither duplicated nor available in the area and therefore, the Royal Farms gas station, convenience store and carryout restaurant is “needed” in the area.

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

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Panel Chair


James H. West

Board Member Benfred B. Alston served on the panel for the above referenced matter at the hearing on remand from the Circuit Court for Baltimore County on March 27, 2017 and participated at the public deliberation on April 13, 2017. He was not reappointed to the Board and his term expired on April 30, 2017.

APPENDIX A**ADDRESSES WITHIN 4.5 MILES OF PROPOSED LOCATION**

1. 1007 Glencoe Rd., Glencoe, MD 21152
2. 1303 Blue Mount Rd., Monkton, MD 21111
3. 2115 Mt. Carmel Rd., Parkton, MD 21120
4. 17224 Masemore Rd., Parkton, MD 21120
5. 16421 Cedar Grove Rd., Sparks, MD 21152
6. 1615 Corbett Rd., Monkton, MD 21111
7. 16339 Falls Rd., Monkton, MD 21111
8. 16911 Big Falls Rd., Monkton, MD 21111
9. 1339 Corbett Rd., Monkton, MD 21111
10. 16217 Corbett Village Lane, Monkton, MD 21111
11. 600 Cromwell Whye Lane, Monkton, MD 21111
12. 18126 York Rd., Parkton, MD 21120
13. 2335 Benson Mill Rd., Sparks, MD 21152
14. 17417 Masemore Rd., Parkton, MD 21120
15. 1447 Corbett Rd., Monkton, MD 21111
16. 17114 York Rd., Monkton, MD 21111
17. 1412 Magers Landing, Monkton, MD 21111
18. 16407 Cedar Grove Rd., Sparks, MD 21152
19. 17103 York Rd., Parkton, MD 21120
20. 2528 Mt. Carmel Rd., Parkton, MD 21120
21. 16720 Hereford Rd., Monkton, MD 21111
22. 16912 Flickerwood Rd., Parkton, MD 21120
23. 17307 Prettyboy Dam Rd., Parkton, MD 21120
24. 18713 Middletown Rd., Parkton, MD 21120
25. 9 English Saddle Ct., Parkton, MD 21120
26. 1628 Corbett Rd., Monkton, MD 21111
27. 17912 York Rd., Parkton, MD 21120
28. 1513 Mt. Carmel Rd. Parkton, MD 21120
29. 1036 Monkton Rd., Monkton, MD 21111
30. 1100 Armacost Rd., Parkton, MD 21120
31. 1321 Glencoe Rd., Sparks, MD 21152
32. 1152 Monkton Rd., Monkton, MD 21111
33. 427 Piney Hill Rd., Monkton. MD 21111
34. 2200 Monkton Rd., Monkton, MD 21111
35. 18311 York Rd., Parkton, MD 21120
36. 302 Stable View Ct., Parkton, MD 21120
37. 1717 Mt. Carmel Rd., Parkton, MD 21120
38. 1237 Piney Hill Rd., Monkton, MD 21111

39. 17731 Backbone Rd., Parkton, MD 21120
40. 329 Everett Rd., Monkton, MD 21111
41. 701 Indian Spring Ct., Sparks, MD 21152
42. 1118 Piney Hill Rd., Monkton, MD 21111
43. 1744 Monkton Farms Dr., Monkton, MD 21111
44. 1316 Bernoudy Rd., White Hall, MD 21161
45. 803 Maplehurst Lane., Monkton, MD 21111
46. 1015 Falls Rd., Parkton, MD 21120
47. 423 Piney Hill Rd., Sparks, MD 21152
48. 813 Corbett Rd., Monkton, MD 21111
49. 806 Cold Bottom Rd., Sparks, MD 21152
50. 18918 Hillcrest Rd., Parkton, MD 21120
51. 910 Everett Rd., Monkton, MD 21111
52. 1127 Wiseburg Rd., White Hall, MD 21161
53. 1105 Molesworth Rd., Parkton, MD 21120
54. 1115 Bernoudy Rd., White Hall, MD 21161
55. 17422 Masemore Rd., Parkton, MD 21120
56. 16308 Matthews Rd., Monkton, MD 21111
57. 17752 Big Falls Rd., White Hall, MD, 21161
58. 16937 Flickerwood Rd., Parkton, MD 21120
59. 525 Monkton Rd., Monkton , MD 21111
60. 1226 Blue Mount Rd., Monkton, MD 21111
61. 2012 Blue Mount Rd., Monkton, MD 21111
62. 16832 Wesley Chapel Rd., Monkton, MD 21111
63. 16260 Falls Rd., Monkton, MD 21111
64. 18103 School House Rd., White Hall, MD 21161
65. 1104 Molesworth Rd., Parkton, MD 21120
66. 16501 Garfield Ave., Monkton, MD 21111
67. 811 Wiseburg Rd., White Hall, MD 21161
68. 25 Chesterfield Ct., Monkton, MD 21111
69. 1 Caribou Ct., Parkton, MD 21120
70. 16133 York Rd., Sparks, MD 21152
71. Hillcrest Ave., Parkton, MD 21120
72. 16914 Daisy Dell Ct., Monkton, MD 21111
73. 1104 Bernoudy Rd., White Hall, MD 21161
74. 16704 Singletree Lane, Parkton, MD 21120
75. 623 Haileys Ct, Parkton, MD 21120
76. 17637 Backbone Rd., Parkton, MD 21120
77. 1102 Mt. Carmel Rd., Parkton, MD 21120
78. 1921 Monkton Rd., Monkton, MD 21111
79. 18603 York Rd., Parkton, MD 21120

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80. 921 Monkton Rd., Monkton, MD 21111
81. 1931 Bluemount Rd., Monkton, MD 21111
82. 16912 Millers Lane, Parkton, MD 21120
83. 2212 Monkton Rd., Monkton, MD 21111
84. 18007 York Rd., Parkton, MD 21120
85. 621 Gifford Lane., Monkton, MD 21111
86. 1010 Bernoudy Rd., White Hall, MD 21161
87. 1132 Wiseburg Rd., White Hall, MD 21161
88. 18701 Middletown Rd., Parkton, MD 21120
89. 16947 Gerting Rd., Monkton, MD 21111
90. 1402 Magers Landing Rd., Monkton, MD 21111
91. 1600 Mt. Carmel Rd., Parkton, MD 21120
92. 17814 Bacon Rd., White Hall, MD 21161
93. 908 Cold Bottom Rd., Sparks, MD 21152
94. 525 Monkton Rd., Monkton, MD 21111
95. 1115 Piney Hill Rd., Monkton, MD 21111
96. 18019 Bacon Rd., White Hall, MD 21161
97. 1109 Bernoudy Rd., White Hall, MD 21161
98. 18202 Bunker Hill Rd., Parkton, MD 21120
99. 1025 Wiseburg Rd., White Hall, MD 21161
100. 3 Kampman Ct., Sparks, MD 21152
101. 18375 Kings Rd., White Hall, MD 21161
102. 1309 Mt. Carmel Rd., Parkton, MD 21120
103. 16203 Corbett Village Lane, Monkton, MD 21111
104. 1400 Magers Landing Rd., Monkton, MD 21111
105. 47 Bush Cabin Ct., Parkton, MD 21120
106. 17304 Big Falls Rd., Monkton, MD 21111
107. 17417 York Rd., Parkton, MD 21120
108. 1443 Piney Hill Rd., Monkton, MD 21111
109. 16301 Yeoho Rd., Sparks, MD 21152
110. 507 Fieldstone Ct., Parkton, MD 21120
111. 920 Lower Glencoe Rd., Sparks, MD 21152
112. 15121 York Rd., Sparks, MD 21152
113. 23 Manor Brook Rd., Monkton, MD 21111
114. 15 Manor Brook Rd., Monkton, MD 21111
115. 147 Maplehurst Rd., Monkton, MD 21111
116. 1430 Wiseburg Rd., White Hall, MD 21161
117. 18315 Peters Ave., White Hall, MD 21161
118. 18918 Calder Ave., Parkton, MD 21120
119. 16949 York Rd., Hereford, MD 21111
120. 16308 Yeoho Rd., Sparks, MD 21152

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121. 16401 Falls Rd., Monkton, MD 21111
122. 932 Upper Glencoe Rd., Glencoe Rd., 21152
123. 232 Everett Rd., Monkton, MD 21111
124. 18014 York Rd., Parkton, MD 21120
125. 16640 Cedar Grove Rd., Sparks, MD 21152
126. 17119 Evna Rd., Parkton, MD 21120
127. 14 Grace Ridge Ct., Monkton, MD 21111
128. 18600 York Rd., Parkton, MD 21120
129. 2301 Mt. Carmel Rd., Parkton, MD 21120
130. 16620 Cedar Grove Rd., Sparks, MD 21152
131. 17209 Prettyboy Dam Rd., Parkton, MD 21120
132. 17351 Big Falls Rd., Monkton, MD 21111
133. 18014 York Rd., Parkton, MD 21120
134. 17405 Bushland Rd., Parkton, MD 21120
135. 17748 Big Falls Rd., White Hall, MD 21161
136. 16923 Flickerwood Rd., Parkton, MD 21120
137. 623 Piney Hill Rd., Monkton, MD 21111
138. 1408 White Hall Rd., White Hall, MD 21161
139. 1603 Coachmans Way, Parkton, MD 21120
140. 3 Falls Glen Ct., Parkton, MD 21120
141. 1018 Belfast Rd., Sparks, MD 21152
142. 9 Pheasant Wood Ct., Parkton, MD 21120
143. 16250 Falls Rd., Monkton, MD 21111
144. 525D Monkton Rd., Monkton, MD 21111
145. 10 Chesterfield Ct, Monkton, MD 21111
146. 1003 Wiseburg Rd., White Hall, MD 21161
147. 17401 Bushland Rd., Parkton, MD 21120
148. 16912 Daisy Dell Ct., Monkton, MD 21111
149. 1005 Wiseburg Rd., White Hall, MD 21161
150. 1313 Blue Mount Rd., Monkton, MD 21111
151. 1705 Mt. Carmel Rd., Parkton, MD 21120
152. 619 Monkton Rd., Monkton, MD 21111
153. 1146 Monkton Rd., Monkton, MD 21111
154. 1316A Mt. Carmel Rd., Parkton, MD 21120
155. 16304 Matthews Rd., Monkton, MD 21111
156. 17318 Big Falls Rd., Monkton, MD 21111
157. 1514 White Hall Rd., White Hall, MD 21161
158. 16956 York Rd., Monkton, MD 21111
159. 16996 York Rd., Monkton, MD 21111
160. 1219 Wiseburg Rd., White Hall, MD 21161
161. 16906 Flickerwood Rd., Parkton, MD 21120

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- 162. 7 Grace Ridge Ct., Monkton, MD 21111
- 163. 9 Pheasant Wood Ct., Parkton, MD 21120
- 164. 534 Belfast Rd., Sparks, MD 21152
- 165. 18910 Bernoudy Rd., White Hall, MD 21161
- 166. 1718 Mt. Carmel Rd., Parkton, MD 21120
- 167. 819 Upper Glencoe Rd., Sparks, MD 21152
- 168. 3 Grace Ridge Ct., Monkton, MD 21111
- 169. 17836 Bacon Rd., White Hall, MD 21161
- 170. 16306 Yeoho Rd., Sparks, MD 21152
- 171. 17408 Masemore Rd., Parkton, MD 21120
- 172. 16515 Garfield Ave., Monkton, MD 21111
- 173. 1134 Piney Hill Rd., Monkton, MD 21111
- 174. 7 Falls Glen Ct., Parkton, MD 21120
- 175. 16620 Cedar Grove Rd., Sparks, MD 21152
- 176. 16412 Falls Rd., Monkton, MD 21111
- 177. 9 Grace Ridge Ct., Monkton, MD 21111
- 178. 16916 Hereford Rd., Monkton, MD 21111
- 179. 534 Belfast Rd., Sparks, MD 21152
- 180. 17421 Masemore Rd., Parkton, MD 21120
- 181. 32 Bush Cabin Ct., Parkton, MD 21120
- 182. 412 Buedel Ct., Sparks, MD 21152
- 183. 17418 Big Falls Rd., Monkton, MD 21111
- 184. 901 Hillside View Rd., Parkton, MD 21120
- 185. 9 English Saddle Ct., Parkton, MD 21120
- 186. 18917 York Rd., Parkton, MD 21120
- 187. 17314 Big Falls Rd., Monkton, MD 21111
- 188. 933 Monkton Rd., Monkton, MD 21111
- 189. 1737 Falls Rd., Parkton, MD 21120
- 190. 10 Henderson Hill Rd., Monkton, MD 21111
- 191. 16916 Flickerwood Rd., Parkton, MD 21120
- 192. 2637 Mt. Carmel Rd., Parkton, MD 21120
- 193. 1002 Hillside View Rd., Parkton, MD 21120
- 194. 16940 Flickerwood Rd., Parkton, MD 21120
- 195. 2335 Benson Mill Rd., Sparks, MD 21152
- 196. 2100 Blue Mount Rd., Monkton, MD 21111
- 197. 1 Grace Ridge Ct., Monkton, MD 21111
- 198. 15801 York Rd., Sparks, MD 21152
- 199. 16623 Hereford Rd., Monkton, MD 21111
- 200. 750 Monkton Rd., Monkton, MD 21111
- 201. 414 Buedel Ct., Sparks, MD 21152
- 202. 1615 White Hall Rd., White Hall, MD 21161

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203.	17404 Evna Rd., Parkton, MD 21120
204.	2313 Benson Mill Rd., Sparks, MD 21152
205.	1515 Hunter Mill Rd., White Hall, MD 21161
206.	17715 Backbone Rd., Parkton, MD 21120
207.	16655 Millers Lane, Parkton, MD 21120
208.	908 Cold Bottom Rd., Sparks, MD 21152
209.	1001 Bernoudy Rd., White Hall, MD 21161
210.	17900 Bacon Rd., White Hall, MD 21161
211.	4 Falls Glen Ct., Parkton, MD 21120
212.	16625 York Rd., Monkton, MD 21111
213.	1018 Belfast Rd., Sparks, MD 21152
214.	1317 Blue Mount Rd., Monkton, MD 21111
215.	2210 Benson Mill Rd., Sparks, MD 21152
216.	531 Montclair Ct., Parkton, MD 21120
217.	11 Lauriann Ct., Parkton, MD 21120
218.	710 Upper Glencoe Rd., Sparks, MD 21152
219.	16411 Matthews Rd., Monkton, MD 21111
220.	2018 Falls Rd., Parkton, MD 21120
221.	1 Hunt Farms Ct., Sparks, MD 21152
222.	15804 Ensor Mill Rd., Sparks, MD 21152
223.	613 Cascade View Ct., Parkton, MD 21120
224.	16008 Baconsfield Lane, Monkton, MD 21111
225.	614 Monkton Rd., Monkton, MD 21111
226.	1 Prettyboy Garth, Parkton, MD 21102
227.	17300 Evna Rd., Parkton, MD 21120
228.	16626 Cedar Grove Rd., Sparks, MD 21152
229.	1404 Wiseburg Rd., White Hall, MD 21161
230.	16339 Falls Rd., Monkton, MD 21111
231.	8 Lantern Circle, Parkton, MD 21120
232.	24 Mt. Carmel Rd., Parkton, MD 21120
233.	16924 Flickerwood Rd., Parkton, MD 21120
234.	15114 York Rd., Sparks, MD 21152
235.	741 Monkton Rd., Monkton, MD 21111
236.	1207 Piney Hill Rd., Monkton, MD 21111
237.	534 Belfast Rd., Sparks, MD 21152
238.	2014 Blue Mount Rd., Monkton, MD 21111
239.	17502 Bunker Hill Rd., Parkton, MD 21120
240.	17300 Evna Rd., Parkton, MD 21120
241.	1101 Maplehurst Lane, Monkton, MD 21111
242.	1122 Piney Hill Rd., Monkton, MD 21111
243.	1429 Falls Rd., Parkton, MD 21120

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- 244. 9 Henderson Hill Ct., Monkton, MD 21111
- 245. 16932 Flickerwood Rd., Parkton, MD 21120
- 246. 16626 Remare Rd., Monkton, MD 21111
- 247. 16904 Flickerwood Rd., Parkton, MD 21120
- 248. 16317 Yeoho Rd., Sparks, MD 21152
- 249. 16527 Garfield Ave., Monkton, MD 21111
- 250. 910 Maplehurst Lane, Monkton, MD 21111
- 251. 15423 York Rd., Sparks, MD 21152
- 252. 623 Monkton Rd., Monkton, MD 21111
- 253. 16833 Yeoho Rd., Sparks, MD 21152
- 254. 17701 Masemore Rd., Parkton, MD 21120
- 255. 18103 School House Rd., White Hall, MD 21161
- 256. 16603 York Rd. Monkton, MD 21111
- 257. 16503 Garfield Ave., Monkton, MD 21111
- 258. 538 Monkton Rd., Monkton, MD 21111
- 259. 16114 Cedar Grove Rd., Sparks, MD 21152
- 260. 17709 Backbone Rd., Parkton, MD 21120
- 261. 1322 Mt. Carmel Rd., Parkton, MD 21120
- 262. 28 Bush Cabin Ct., Parkton, MD 21120
- 263. 1409 Mt. Carmel Rd., Parkton, MD 21120
- 264. 7 Little Falls Ct., Parkton, MD 21120
- 265. 17419 York Rd., Parkton, MD 21120
- 266. 1701 Mt. Carmel Rd., Parkton, MD 21120
- 267. 16820 Hereford Rd., Monkton, MD 21111
- 268. 1400 Corbett Rd., Monkton, MD 21111
- 269. 800 Bacon Hall Rd., Sparks, MD 21152
- 270. 720 Miller Rd., Parkton, MD 21120
- 271. 18692 Middletown Rd., Parkton, MD 21120
- 272. 17344 Masemore Rd., Parkton, MD 21120
- 273. 1614 Monkton Rd., Monkton, MD 21111
- 274. 6 Hunt Farms Ct., Sparks, MD 21152
- 275. 16745 Wesley Chapel Rd., Monkton, MD 21111
- 276. 18805 Fox Chase Ct., Parkton, MD 21120
- 277. 15609 Yeoho Rd., Sparks, MD 21152
- 278. 905 Monkton Rd., Monkton, MD 21111
- 279. 810 Castlebridge Ct., Monkton, MD 21111
- 280. 3 Falls Glen Ct., Parkton, MD 21120
- 281. 3 Prettyboy Garth, Parkton, MD 21120
- 282. 619 Giffords Lane, Monkton, MD 21111
- 283. 625 Piney Hill Rd., Monkton, MD 21111
- 284. 2224 Tracey Store Rd., Parkton, MD 21120

- 285. 1916 Monkton Rd., Monkton, MD 21111
- 286. 4 Middlewoods Ct., Parkton, MD 21120
- 287. 16913 Daisy Dell Ct., Monkton, MD 21111
- 288. 2220 Benson Mill Ct., Parkton, MD 21152
- 289. 14 Prettyboy Garth, Parkton, MD 21120
- 290. 16507 Garfield Ave., Monkton, MD 21111
- 291. 18805 Fox Chase Ct., Parkton, MD 21120
- 292. 11 English Saddle Ct., Parkton, MD 21120
- 293. 609 Cascade View Ct., Parkton, MD 21120
- 294. 18815 York Rd., Parkton, MD 21120
- 295. 18603-A York Rd., Parkton, MD 21120
- 296. 17104 Wesley Chapel Rd., Monkton, MD 21111
- 297. 4 Bush Cabin Ct., Parkton, MD 21120
- 298. 19 Manor Brook Rd., Monkton, MD 21111
- 299. 16326 Matthews Rd., Monkton, MD 21111
- 300. 12433 Wesley Chapel Rd., Monkton, MD 21111
- 301. 16820 York Rd., Monkton, MD 21111
- 302. 7 Henderson Hill Ct., Monkton, MD 21111
- 303. 18825 York Rd., Parkton, MD 21120
- 304. 15900 York Rd., Sparks, MD 21152
- 305. 421 Everett Rd., Monkton, MD 21111
- 306. 16112 Baconsfield Lane, Monkton, MD 21111
- 307. 2307 Mt. Carmel Rd., Parkton, MD 21120
- 308. 3 Kampman Ct., Sparks, MD 21152
- 309. 813 Castlebridge Ct., Monkton, MD 21111
- 310. 505 Fieldstone Ct., Parkton, MD 21120
- 311. 620 Corbett Rd., Monkton, MD 21111
- 312. 17907 Bunker Hill Rd., Parkton, MD 21120
- 313. 1624 Millers Lane, Parkton, MD 21120
- 314. 3 Single Tree Lane, Parkton, MD 21120
- 315. 17209 Prettyboy Dam Rd., Parkton, MD 21120
- 316. 17014 Big Falls Rd., Monkton, MD 21111
- 317. 1018 Maplehurst Lane, Monkton, MD 21111
- 318. 1222 Corbett Rd., Monkton, MD 21111
- 319. 1020 Bernoudy Rd., White Hall, MD 21161
- 320. 17500 Bushland Rd., Parkton, MD 21120
- 321. 1231 Armacost Rd., Parkton, MD 21120
- 322. 1933 Blue Mount Rd., Monkton, MD 21111
- 323. 1801 Mt. Carmel Rd., Parkton, MD 21111
- 324. 1614 York Rd., Sparks, MD 21152
- 325. 2400 Mt. Carmel Rd., Parkton, MD 21111

- 326. 416 Everett Rd., Monkton, MD 21111
- 327. 24 Lauriann Ct., Parkton, MD 21120
- 328. 17509 Prettyboy Dam Rd., Parkton, MD 21120
- 329. 603 Coachmans Way, Parkton, MD 21120
- 330. 2101 Mt. Carmel Rd., Parkton, MD 21111
- 331. 18916 York Rd., Parkton, MD 21120
- 332. 16351 Matthews Rd., Monkton, MD 21111
- 333. 16906 Big Falls Rd., Monkton, MD 21111
- 334. 616 Gifford Lane, Monkton, MD 21111
- 335. 2224 Tracy's Rd., Sparks, MD 21152
- 336. 333 Everett Rd., Monkton, MD 21111
- 337. 1431 White Hall Rd., White Hall, MD 21161
- 338. 1208 Brandy Springs Rd., Parkton, MD 21120
- 339. 16102 Baconsfield Lane, Monkton, MD 21111
- 340. 931 Maplehurst Lane, Monkton, MD 21111
- 341. 2144 Monkton Rd., Monkton, MD 21111
- 342. 17343 York Rd., Parkton, MD 21120
- 343. 17303 Prettyboy Dam Rd., Parkton, MD 21120
- 344. 1610 Mt. Carmel Rd., Parkton, MD 21111
- 345. 1600 Hicks Rd., White Hall, MD 21161
- 346. 2234 Shepperd Rd., Monkton, MD 21111
- 347. 16718 Hereford Rd., Monkton, MD 21111
- 348. 1535 Mt. Carmel Rd., Parkton, MD 21120
- 349. 1921 Blue Mount Rd., Monkton, MD 21111
- 350. 1034 Corbett Rd., Monkton, MD 21111
- 351. 8 Caribou Ct., Parkton, MD 21120
- 352. 17008 Evna Rd., Parkton, MD 21120
- 353. 17618 Prettyboy Dam Rd., Parkton, MD 21120
- 354. 17212 Masemore Rd., Parkton, MD 21120
- 355. 15 Henderson Hill Ct., Monkton, MD 21111
- 356. 202 Old Belfast Rd., Sparks, MD 21152
- 357. 7 Middle Woods Ct., Parkton, MD 21120
- 358. 612 Gifford Lane, Monkton, MD 21111
- 359. 13 Lauriann Ct., Parkton, MD 21120
- 360. 801 Maplehurst Lane, Monkton, MD 21111
- 361. 415 Buedel Ct., Sparks, MD 21152
- 362. 8 Hunt Farms Ct., Sparks, MD 21152
- 363. 6 Hunt Farms Ct., Sparks, MD 21152
- 364. 14 Hunt Farms Ct., Sparks, MD 21152
- 365. 609 Miller Rd., Parkton, MD 21120
- 366. 18044 Bacon Rd., White Hall, MD 21161

- 367. 621 Gifford Lane, Monkton, MD 21111
- 368. 3 Bush Cabin Ct., Parkton, MD 21120
- 369. 17500 Bushland Rd., Parkton, MD 21120
- 370. 16907 Daisy Dell Ct., Monkton, MD 21111



Board of Appeals of Baltimore County

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

July 21, 2017

David H. Karceski, Esquire
Christopher D. Mudd, Esquire
Venable, LLP
210 W. Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

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

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: *In the Matter of: Riverwatch, L.L.C. – Legal Owner*
Two Farms, Inc. – Contract Purchaser/Lessee
Case No.: 14-131-SPHXA

Dear Counsel:

Enclosed please find a copy of the Opinion after Remand from Circuit Court issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Multiple Original Cover Letters

c: Riverwatch, L.L.C.
John Kemp, President/Two Farms, Inc.
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law

Sparks-Glencoe Community Planning Council
Tom Graul
Ken Bullen, Jr.
Ruth Mascari
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF
RIVERWATCH, L.L.C. – Legal Owner
TWO FARMS, INC. – Contract Purchaser/Lessee
118 Mount Carmel Road
Parkton, MD 21120

7th Election District, 3rd Councilmanic District

RE: Petition for Special Hearing per BCZR §405.2.B.2,
405.E.1 and 405.E.10 for fuel service station in
combination with a convenience store and carryout
restaurant; Approval of illuminated signage per BCZR
§259.3.C.7; and Limited Exemption approval per BCC
§32-4-106(b)(8)

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
*
*
* Case No. 14-131-SPHXA
* and CBA-14-033
*

* * * * *

RULING ON MOTION TO DISMISS

This case comes to the Board on a Motion to Dismiss via letter dated September 29, 2016 filed by People’s Counsel for Baltimore County, Peter Max Zimmerman, requesting that the above-captioned case be dismissed because the subject property was rezoned during the 2016 Comprehensive Rezoning Process (the “2016 CZMP”). Protestants joined in support of that Motion.

On October 6, 2016, the date set for a public hearing on the Remand Order from the Circuit Court (the “Remand Hearing”), People’s Counsel appeared for the first time, and verbally moved to dismiss the case.¹ Argument was heard from all Parties. The Petitioner, Riverwatch, L.L.C., the legal owner, and Two Farms, Inc., the contract purchaser/lessee a/k/a “Royal Farms” (“Royal Farms”) was represented by David H. Karceski, Esquire, Christopher D. Mudd, Esquire and Venable, L.L.P. The Protestants, Sparks-Glencoe Community Planning Council, Tom Graul, Ken

¹ Baltimore County Charter, §524.1 permits People’s Counsel to represent the interests of the public in general and to defend the maps adopted during the CZMP. While the timing of this initial appearance seemed outside the norm given the lack of participation by People’s Counsel during the merit hearings, §524.1 authorizes People’s Counsel to exercise discretion when he/she deem the public interest to be involved.

Bullen, Jr. and Ruth Mascari were represented by Michael McCann, Esquire. As indicated, People's Counsel also participated in the hearing.

On November 7, 2016, Memorandums of Law were filed by each Party. A public deliberation was held on December 6, 2016.

FACTS RELEVANT TO MOTION TO DISMISS

On September 28, 2015, a CZMP application was filed by Protestant, Ken Bullen, to change the zoning on the property located at 118 Mt. Carmel Road, Parkton, MD (the "Property"). Almost a month later, on October 20, 2015, this Board issued our Opinion granting Royal Farms' request for a fuel service station in combination with a convenience store and carryout restaurant, along with certain accompanying signage (Case No.: 14-131-SPHXA); and for a limited exemption under BCC, §32-4-106(b)(8) (Case No.: CBA-14-033.)

On November 9, 2015, the Baltimore County Department of Permits, Approvals and Inspections ("PAI") received the proposed development plan for the Royal Farms store (the "Plan") *via* hand-delivery (Prot. Ex. 9 and 10 of Memo of Law). On November 13, 2015, Royal Farms received approval for the Plan from all of the Baltimore County agencies which are required to review the same (Pet. Ex. 3 of Memo of Law). That same day - upon receiving PAI approval - Royal Farms recorded a plat in the Land Records for Baltimore County at 3:20 p.m. (Liber 79, folio 575) (the "Plat") (Prot. Ex. 3 of Memo of Law). It is undisputed that neither the Protestants nor People's Counsel appealed the approval of the Plan.

Five (5) days later, on November 18, 2015, the Protestants appealed to the Circuit Court this Board's October 20, 2015 decision granting the Special Exception for the fuel service station in combination with the convenience store/carryout restaurant. As is clear from the Protestants' Memorandum in Support of Petition for Judicial Review filed in the Circuit Court, the Protestants

only appealed the Special Exception approval (Case No.: 14-131 SPHXA), and not this Board's decision to grant the limited exemption (Case No.: CBA-14-033) (Pet. Ex. 5 of Memo of Law). On June 8, 2016, the Circuit Court for Baltimore County remanded the case to this Board for further proceedings on three (3) specific evidentiary issues related to the special exception. As previously mentioned, the Remand Hearing on those issues was scheduled for October 6, 2016.

On August 30, 2016, in accordance with Bill 56-16, the County Council rezoned the Property from BL-CR (Business-Local with a Commercial Rural overlay) to R.C.C. (Resource Conservation-Commercial). The R.C.C. zone does not permit the fuel service station but does permit convenience stores and carryout restaurants.

DECISION

The issue before this Board is whether Royal Farms obtained vested development rights by recording the Plat in the Land Records for Baltimore County. If Plat recordation vests development rights, then the former BL-CR zoning applies, and the fuel service station (along with the convenience store and carryout restaurant) would be permitted.

The terms "vested" and "vesting" are defined in BCC, §32-4-101(ccc) as follows:

* * * *

(ccc) *Vested*. The terms "vested" or "vesting" is a protected status conferred on a Development Plan. A vested Development Plan shall proceed in accordance with the approved Plan and the laws in effect at the time Plan approval is obtained. A property owner, developer or applicant obtains vested rights for a Development Plan in accordance with §32-4-264 of this title.

Referring to BCC, §32-4-264, as set forth in the definition above, vesting of a non-residential development plan is accomplished upon recordation of a plat for any portion of a plan as follows:

§32-4-264

* * * *

(b) *Non-residential Plan.*

* * * *

(2) a non-residential Plan for which a plat is recorded vests when plat recordation occurs for any portion of the Plan.

A non-residential plan is defined in BCC, 32-4-101(ddd) as: “a Plan of Development in which the dominant element of the Plan is (1) commercial development...” In this case, there is no dispute that the Plan is “non-residential.”

Thus, the first step toward vesting is approval of a development plan. BCC, §32-4-104 ensures that Title 4 applies to the approval process for all development plans. BCC, §32-4-101(q) defines a development plan as: “a written and graphic representation of a proposed development prepared in compliance with Subtitle 2 of this title.” Subtitle 2, in turn, is entitled “*Development Review and Approval Process*” and is divided into three (3) “Parts”: Part 1- “Development and Design”; Part 2- “Concept Plan”; and Part 3- “Development Plan.”

There are exemptions from the development review and approval process as set forth in BCC, §32-4-106 *et seq.* As previously mentioned, this Board, in our Opinion dated October 20, 2015, granted Royal Farms a limited exemption from BCC, §32-4-106(b)(8) for a minor development that does not exceed 3 lots. This means that the Plan was exempt from both the community input meeting and hearing officer’s hearing. Thus, the Plan could be processed for approval through the County agencies.

Once representatives from the various County agencies approved the Plan, a plat could be submitted for approval and recording. While there is a chronological procedure to obtain plat approval as set forth in BCC, §32-4-271 and §32-4-272, once the plat is approved, there is no

restriction on the date when a plat can be recorded. In other words, a plat can be recorded the same date that a plan is approved.

In reviewing the relevant sections on plat approval, BCC 32-4-271(a) requires a plat to be prepared in accordance with an approved development plan. BCC, §32-4-272 provides a sequence of events which must be met before a plat may be submitted to PAI for approval:

§ 32-4-272. - PROCEDURE FOR APPROVAL.

(a) Items to be approved before plat approval.

(1) After Development Plan approval, the applicant may submit a plat to the Department of Permits, Approvals and Inspections.

(2) The Department may not approve the plat until approval is issued, if required, for:

- (i) Stormwater management plans;
- (ii) Public works agreements;
- (iii) Development Plan, if required by the Baltimore County Zoning Regulations;
- (iv) Security; and
- (v) Necessary fees.

(3) (i) The items specified under paragraph (2)(i) through (iii) of this subsection shall be approved or disapproved:

- 1. Within 30 days after submission if the action involves only approvals by county agencies; or
- 2. Within 60 days after submission if the action involves approvals by state or federal agencies.

(ii) An agency that disapproves an item shall provide a written statement of the reasons for the disapproval.

(4) The time periods specified in this subsection may be extended by written agreement of the applicant.

(b) Review of plat for conformity with Development Plan. After receipt and approval of all items required under subsection (a) of this section, the Director of Permits, Approvals and Inspections shall promptly transmit the plat to the Department of Environmental Protection and Sustainability for the Department's review for conformity with the Development Plan, unless the plat was already reviewed by the Department for conformity.

(c) Approval, modification, or disapproval of plat.

(1) Within 10 days after receipt of the plat, the Directors of Permits, Approvals and Inspections and Environmental Protection and Sustainability or their designees shall:

(i) Approve the plat;

(ii) With the consent of the applicant, modify the plat; or

(iii) Disapprove the plat.

(2) A Director or the Director's designee shall notify the applicant in writing of the reasons for modification or disapproval.

(d) Unanimous approval; required. An applicant may not record a plat unless:

(1) The plat has been unanimously approved by the Directors of Permits, Approvals and Inspections and Environmental Protection and Sustainability; and

(2) The approvals have been noted on the plat.

(e) Appeal prohibited. Appeal from the plat approval process is prohibited.

In review of the facts here, this was a non-residential Plan which received limited exemption status under 32-4-106(b)(8). The Plan was approved by representatives of the County agencies. Consequently, under BCC, §32-4-272(a)(2), the Plat could be submitted for approval. Once approved, the Plat could be recorded. Based on the foregoing, Royal Farms complied with

all of the requirements for both Plan and Plat approval. Once the Plat was recorded, Royal Farms acquired vested development rights under BCC, §32-4-264(b)(2).

The argument of both Protestants and People’s Counsel is that the Plan should never have been approved by the County agencies because (a) the Board had only issued its initial decision in connection with the special exception issue on October 20, 2015, and (b) the parties were within the thirty-day appeal period when the County agencies issued final approval of the Plan on November 13, 2015. Protestants and People’s Counsel assert that there was no zoning basis for the Plan approval since the special exception litigation was still pending at the time of the County agencies’ approval of the Plan. They further highlight that a development plan must comply with the zoning laws under BCC, §32-4-114(a), which includes obtaining a final special exception. They conclude that, since the Plan should never have been approved, the Plat is a nullity (PC Memo of Law, pp. 3-4).

Protestants advocate that support for their argument is found in BCC, §32-4-281(f) which prohibits the recordation of a plat that is connected to a development plan when the plan is the subject of an appeal to this Board. Undeniably, BCC, §32-4-281(f) comes into play when a development plan is appealed to the Board. When a development plan is appealed, a plat cannot be recorded for that development plan. Specifically, BCC, §32-4-281(b)(1) permits a person aggrieved or feeling aggrieved by “*final action on a Development Plan*” to file an appeal to this Board. The phrase “*final action on a Development Plan*” is defined in BCC 32-4-101(t) as:

(t) *Final action*. “Final action” on a Development Plan means:

- (1) The approval of a Development Plan as submitted;
- (2) The approval of a Development Plan with conditions; or
- (3) The disapproval of a Development Plan by the Hearing Office in accordance with §32-4-229 of this title.

Unfortunately, in this case, there was no appeal of the approval of the Plan to this Board by either the Protestants or People's Counsel. In fact, if the Plan is not appealed, BCC, §32-4-272(e), prohibits the appeal of the Plat approval. As such, because there is *no* "development plan that is the subject of appeal," BCC, §32-4-281(f) does not come into play, and there is no restriction on recording the Plat. There is a critical distinction between the appeal of the special exception for the fuel service station and the appeal of a development plan. Protestants and People's Counsel were entitled to appeal both cases.

As we previously said in *Carol Lynn Morris/C.G. Homes, 2016-302-SPHA*, a *de novo* appeal is an exercise of appellate jurisdiction rather than original jurisdiction. *Halle Companies v. Crofton Civic Ass'n*, 339 Md. 131, 143; 661 A.2d. 682, 687-88 (1995); see *Hardy v. State*, 279 Md. 489, 492, 369 A.2d 1043, 1046 (1977). Whether a tribunal's exercise of jurisdiction is appellate or original does not depend on whether the tribunal is authorized to receive additional evidence. *Halle Companies*, 339 Md. at 143; 661 A.2d. at 688. Instead, as Chief Justice Marshall explained, "[i]t is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted, and does not create that cause....." *Id.*, quoting *Marbury v. Madison*, 5 U.S. (1Cranch) 137, 175; 2 L. Ed. 60, 73 (1803).

Since we do not have the Plan appeal case before us, we cannot make factual findings or decisions about whether or not the Plan should have been approved; should have been approved with conditions; or should have been disapproved. Indeed, if we were to agree with People's Counsel and the Protestants' argument, we would be deciding, without a case before us, that the County agencies did something wrong and the Plan should not have been approved. This Board does not have jurisdiction to do that.

As we previously indicated above, the BCC permits Royal Farms to simultaneously and separately pursue the special exception case and the Plan approval. We acknowledge that the special exception status may ultimately be denied since it is still subject to appeal. However, the BCC does not prohibit a developer from making a business decision to expend costs obtaining plan and plat approval before obtaining zoning approval. Without the Plan appeal case before us, we are faced with the plain, express statutory language in BCC, §32-4-264(b)(2) that vesting occurred here when the Plat was recorded.

People’s Counsel advocates in its Memorandum of Law that the common law doctrine of “vested rights” describes ‘vesting’ as occurring with a valid building permit and substantial construction. People’s Counsel highlights the Court of Appeals holding in *Yorkdale Corp. v. Powell*, 237 Md. 121, 124, 126 (1964), otherwise known as the “*Yorkdale Rule*”:

A change in the law after a decision below and before final decision by the appellate Court will be applied by that Court unless vested or accrued substantive rights would be disturbed or unless the legislature shows a contrary intent.

(Emphasis Added).

We find that the *Yorkdale Rule* applies here. There was both vesting by Plat recordation as well as the legislative history of BCC, §32-4-264(b)(2) which shows the County Council’s intent to change the way vesting is accomplished - from building permits and substantial construction to plat recordation. To determine whether BCC, §32-4-264(b)(2) abrogated general common law vesting, the appellate courts have looked first to the statutory language itself and then to the legislative history to determine what the legislature intended. *100 Harborview Drive Condominium Council of Unit Owners and Zalco Realty, Inc. v. Paul C. Clark*, (224 Md. App. 13, 119 A.3d 87 (2015); *Fagerhus v. Host Marriott Corporation*, 143 Md. App. 525, 795 A.2d 221 (2002).

In Section 7 of Bill 58-09, the County Council expressed its unequivocal intent to change the process for vesting by use of the words “supersedes” and “abrogates”:

SECTION 7. AND BE IT FURTHER ENACTED, that this Act is adopted independently of Section 103 of the Baltimore County Zoning Regulations so that it **supersedes and abrogates the rights to the vesting** or processing of a development that would otherwise accrue from any provision of the zoning or development regulations or any other County laws or administrative interpretations thereof.

(Emphasis Added) (PC Memo of Law, App. 54) (*100 Harborview Drive*, 119 A.3d pp. 103-105); (*Fagerhus*, 143 Md. App. 525, 795 A.2d 228).

With regard to the legislative history of BCC, §32-4-264(b)(2) (formerly BCC §22-68), Bill 56-82 was the County Council’s first effort to codify vested rights (PC Memo of Law, p. 16). At that time, vesting was accomplished by the issuance of a building permit or the occurrence of substantial construction (PC Memo of Law, App. 16).

The 1978 BCC reflects the same vesting language (PC Memo of Law, App. 20). In the 1988 BCC, the vesting language is again repeated, albeit the Code sections were renumbered such that BCC §22-68 became BCC §26-216 (PC Memo of Law, App. 37-38). In 2006, by enactment of Bill 24-06, BCC §26-216 became §32-4-273 and the vesting language was only slightly changed. In that Bill, rather than 2 options, the County Council decided to require both a building permit and an inspection by the County that substantial construction had occurred as follows:

32-4-273. Time Limit for [Validity of Plats and Plans.] VESTING.

(d) Development. A subdivision or section or parcel of the subdivision is considered [developed and] vested if [any of the following has occurred with respect to the subdivision, section, or parcel:

- (1) Building permits have been issued or
- (2) Substantial construction on required public improvements or private improvements has occurred on the subdivision, section, or parcel in accordance with the applicable regulations and requirements of the Department of Public Works.]

~~BUILDING PERMITS HAVE A BUILDING PERMIT HAS BEEN~~
ISSUED FOR ANY LOT IN ACCORDANCE WITH AN APPROVED
PLAN OR PLAT, AND INSPECTION BY THE COUNTY CONFIRMS
THAT SUBSTANTIAL CONSTRUCTION HAS OCCURRED ~~ON~~
WITHIN THE SUBDIVISION, INCLUDING ANY LOT, TRACT,
SECTION, OR PARCEL THEREOF, WITHIN FOUR YEARS AFTER
THE DATE OF THE FINAL, NONAPPEALABLE APPROVAL OF THE
PLAN OR PLAT OR ANY EXTENSION THEREOF AUTHORIZED
UNDER SECTION 32-4-261(A).

(Emphasis Added) (PC Memo of Law, App. 43).

As indicated by People’s Counsel in his brief, the Fiscal Note for Bill 24-06 reflects an emphasis by the County Council to set a time period (4 years) during which an approved plan would expire, if it had not vested.

In 2009, with the passage of Bill 58-09, the County Council significantly and materially changed the process for vesting of a development plan, in that a building permit was no longer one of the requirements for vesting, and substantial development was only required if a plat had not been recorded (PC Memo of Law, App. 48-54). The current version of BCC, §32-4-264(b)(2) derives from Bill 58-09 and differentiates vesting for a residential and non-residential plan. Bill 58-09 also added the current definitions of “*Vesting*” in BCC, §32-4-101(ccc) and “*Non-Residential Plan*” in BCC, §32-4-101(ddd).

In summary, Bill 58-09 reveals that plat recordation is the operative, watershed event as to whether a development plan would vest (PC Memo of Law, App. 51). The County Council made clear that if a plat is not recorded, a development plan only vests if there is substantial construction. BCC, §32-4-264(b)(1). Conversely, if the plat is recorded, a non-residential plan vests upon recordation. Given the legislative history, we cannot ignore the specific deletion of “building

permits” and the reduced role of “substantial construction” in the determination of vested rights for non-residential plans.

Moreover, in reviewing the August 3, 2009 Fiscal Note which accompanied Bill 58-09, the County Council provided insight into the basis for vesting upon plat recordation. The Fiscal Note states that: “Builders and lenders in particular want greater certainty regarding the concept of vesting” (PC Memo of Law, App. 56). It further explained that a development plan would, upon passage of Bill 58-09, either expire or vest (PC Memo of Law, App. 57).

The Fiscal Note also reiterates the language in the Bill pertaining to non-residential plans:

IN GENERAL, THIS BILL IMPACTS ONLY RESIDENTIAL DEVELOPMENT PLANS AND DOES NOT AFFECT NON-RESIDENTIAL PLANS OF DEVELOPMENT.

The bill makes only one change with respect to non-residential plans: the time for vesting a non-residential plan is made consistent with the residential plan, i.e., if a plat is not recorded, the plan vests when substantial construction occurs; if a plat is recorded, the plan vests when the plat is recorded.

(PC Memo of Law, App. 57).

With regard to People’s Counsel’s argument that general common law vesting principles apply here, we find the legislative history shows a deliberate intent by the County Council to move away from vesting by building permits for every development plan, and to require substantial construction only in the specified situation. In our interpretation of BCC, §32-4-264(b)(2), the issuance of a building permit cannot now co-exist along with plat recordation as the triggering event for vesting. Further, substantial construction is not now required *in addition to* plat recordation; it is in lieu of plat recordation.

People’s Counsel’s reliance on *Powell v. Calvert County*, 368 Md. 400 (2002) and *Antwerpen v. Baltimore County*, 163 Md. App 194 (2005), is misplaced. While *Powell* also

involved a request for special exception, there was no vesting statute at issue. In *Powell*, the issue was whether the property owner acquired vested rights by storing materials on the property after an initial special exception was granted. Said another way, the issue in *Powell* was whether the property owner acquired vested rights as a result of the initial approval of a special exception. The Court of Appeals held that vesting did not occur by storing materials on the property.

Antwerpen also did not involve a vesting statute. The issue in *Antwerpen* was the same as in *Powell*; whether vesting occurred by *Antwerpen's* use of the property as a car dealership after special hearing relief was granted. The argument by *Antwerpen* was that it obtained vested rights by using the property as a car dealership for 9 days prior to the effective date of a bill that changed the zoning.

Quoting *Powell*, the *Antwerpen* Court explained that when vesting is claimed *as a result of the very zoning relief which is being sought*, then rights will not vest until the final approval of the special exception or special hearing is granted. Therein lies the critical distinction between the *Powell/Antwerpen* holdings and this case. Here, vesting is not claimed as a result of this Board's initial grant of the special exception relief for Royal Farms' fuel service station, carryout restaurant or convenience store. Rather, vesting is claimed by virtue of a statute that specifically dictates the moment in time when vesting of a plan will occur.

People's Counsel's reference to *Grasslands Plantation, Inc. v. Frizz-King Enterprises, LLC*, 410 Md. 191, 978 A.2d 622 (2009) and *O'Donnell v. Bassler*, 289 Md. 501, 425 A.2d 1003 (1981) is equally inapposite. The issue in *Grasslands* was whether a county ordinance passed during an appeal should be applied to the subdivision there. The Court of Appeals in *Grasslands* held that, under the facts of that case, the new ordinance should apply.

An appellate court must apply the law in effect at the time a case is decided, *provided that its application does not affect intervening vested rights*. *County Council for Prince George's County v. Carl M. Freeman Assocs., Inc.*, 281 Md. 70, 76, 376 A.2d 860, 863-64 (1977); *Rockville Fuel & Feed Co. v. City of Gaithersburg*, 266 Md. 117, 127, 291 A.2d 672, 677 (1972). In this case, the definition of “vesting” in BCC, §32-4-101(ccc) clarifies that a vested development plan proceeds in accordance with the laws in effect at the time the plan was approved. Thus, in our view, the holding in *Grasslands* was taken out of context.

In *O'Donnell*, as in *Powell* and *Antwerpen*, the issue was whether vesting occurred as a result of the issuance of a special exception use permit, not vesting by virtue of a statute. The Court in *O'Donnell* held that a special exception use permit which was invalidated on judicial review did not vest rights in the owner (*Id.* at 508.) Accordingly, *O'Donnell* is also distinguishable.

Finally, Protestants argued that Royal Farms changed the address of the Property on the Plan from 118 Mount Carmel Road to 200 Mount Carmel Road which, they allege, prevented them from tracking the processing of the Plan and ultimately filing an appeal to this Board.

We do not agree. In reviewing the record from our hearings, the Protestants were presented with the opportunity to review the Plan. At the hearing on November 6, 2014, Royal Farms offered the Plan as Petitioner's Exhibit 41a-c and proffered that an expert could explain changes to the Plan (T. 11/6/14, pp. 42-43; Pet. Memo of Law, Ex. 13). When it was offered into evidence, the Protestants objected to its admission on the basis that the Plan was not relevant to the special exception case (*Id.*). As a result, Royal Farms withdrew admission of the Plan (*Id.*).

Then, at our hearing on January 21, 2015, Protestants cross examined a Royal Farms expert about the County agency comments to the Plan; about the fact that Royal Farms was proceeding with Plan approval, even though the special exception had not been granted; and about what stage

the Plan was in the approval process (T. 1/21/15, pp. 19-21). Consequently, there was no mystery that Royal Farms was simultaneously pursuing approval of the Plan while the special exception case was pending.

CONCLUSION

For the foregoing reasons, this Board unanimously denies People's Counsel's Motion to Dismiss.

ORDER

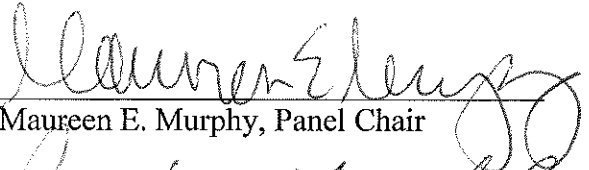
THEREFORE, IT IS THIS 10th day of March, 2017, by the Board of Appeals of Baltimore County,

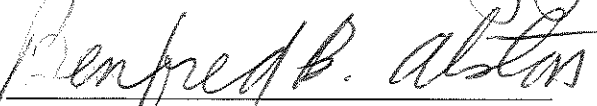
ORDERED that People's Counsel's Motion to Dismiss be, and it is hereby, **DENIED**; and it is further,

ORDERED that this matter shall be scheduled for an evidentiary hearing on a date mutually convenient for the parties and the Board's docket in accordance with the Order dated June 8, 2016 from the Circuit Court for Baltimore County; and it is further,

ORDERED, that a final Opinion will be issued by this Board after a hearing on the merits and a public deliberation.

BOARD OF APPEALS OF BALTIMORE COUNTY


Maureen E. Murphy, Panel Chair


Benfred B. Alston


James H. West



Board of Appeals of Baltimore County

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

March 10, 2017

David H. Karceski, Esquire
Christopher D. Mudd, Esquire
Venable, LLP
210 W. Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

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

RE: *In the Matter of: Riverwatch, L.L.C. – Legal Owner*
Two Farms, Inc. – Contract Purchaser/Lessee
Case Nos.: 14-131-SPHXA and CBA-14-033

Dear Counsel:

Enclosed please find a copy of the Ruling on Motion to Dismiss issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Pursuant to the enclosed, this Order is not a final decision of the Board of Appeals for Baltimore County and does not constitute an appealable event at this time. This matter will be held open on the Board's docket until such time as a final opinion can be issued.

Should you have any questions, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington Ham".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Multiple Original Cover Letter

c: Riverwatch, L.L.C.
John Kemp, President/Two Farms, Inc.
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

Sparks-Glencoe Community Planning Council
Tom Gaul
Ken Bullen, Jr.
Ruth Mascari

IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY
PETITION OF TOM GRAUL, et al.
FOR JUDICIAL REVIEW
OF THE BALTIMORE COUNTY
BOARD OF APPEALS 012649

V

IN THE CASSE OF:

Riverwatch, LLC (legal owner)
Two Farms, Inc. (CP/lessee)
7th Election District
3rd. Councilman District

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
*
* Case No: 03-C-15-012649
*
*

* * * * *

ORDER

This matter came before the Court on the Petition for Judicial Review filed by Petitioners, Tom Graul, Kenn Bullen, Jr., Ruth Mascari, and Sparks-Glencoe Community Planning Council, seeking judicial review of the Opinion and order of the Baltimore County Board of Appeals dated October 20, 2015. Upon consideration of the record, the parties' respective memoranda and argument of counsel, for the reasons stated on the record in open court, it is this 8th day of June, 2016 by THE CIRCUIT COURT FOR BALTIMORE COUNTY, hereby

LRS

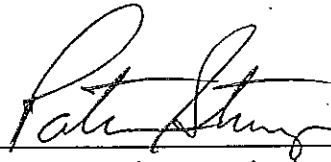
ORDERED, that this matter shall be remanded to the Board of Appeals of Baltimore County for further proceedings for the following purposes:

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BALTIMORE COUNTY
BOARD OF APPEALS

- 1.) To allow the testimony of Petitioner's expert witness, Christopher Jakubiak, and give his testimony the weight that the Board considers appropriate; and
- 2.) To receive in evidence the Petition signed by members of the community (Protestants' Exhibit 77), upon authentication satisfactory to the Board (which shall not require authentication by the 1,300 signatories themselves), and give the petition the weight the Board considers appropriate; and
- 3.) Consider the duplication or availability of services and products in the area in making the Board's determination of whether there is a "need" for the proposed development under BCZR §259.3.E.1.



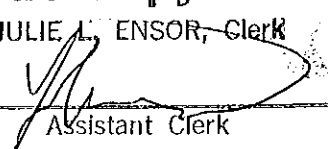
H. Patrick Stringer, Judge

cc: Michael McCann, Esquire
Matt Alsip, Esquire
Christopher Mudd, Esquire

True Copy Test

JULIE L. ENSOR, Clerk

Per



Assistant Clerk

IN THE MATTER OF
RIVERWATCH, L.L.C. – Legal Owner
TWO FARMS, INC. – CP/Lessee
118 Mount Carmel Road
Parkton, MD 21120

7th Election District
3rd Councilmanic District

RE: Petition for Special Hearing per BCZR §405.2.B.2,
405.E.1 and 405.E.10 for fuel service station in
combination with a convenience store and carryout
restaurant; Approval of illuminated signage per BCZR
§259.3.C.7; and Limited Exemption approval per BCC
§32-4-106(b)(8)

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
*
*
* Case Nos. 14-131-SPHXA
and CBA-14-033
*

* * * * *

OPINION

This case comes to the Board on appeal of the final decision of the Administrative Law Judge which granted, with conditions, a Petition for Special Exception pursuant to BCZR §405.2.B.2, §405.4.E.1 and §405.4.E.10 for a fuel service station in combination with a convenience store and carryout restaurant (a ‘Royal Farms’ store); granted a Petition for Special Hearing to approve illuminated signage pursuant to BCZR §259.3.C.7; and granted Petitions for Variance relief to: (1) permit a wall-mounted enterprise sign of 33.08 sq. ft. in lieu of the permitted 8 sq. ft.; and (2) to permit a front yard setback of 65.74 feet in lieu of the maximum allowed 58 feet, if necessitated by the State Highway Administration widening of Mt. Carmel Road.

Consolidated with the Petition for Special Hearing before this Board was a separate appeal from the Director of Permits, Approval and Inspections’ (“PAI”) approval of a limited exemption under BCC §32-4-106(b)(8) in regard to the 2-lot subdivision; one of those lots is proposed to be used for the Royal Farms store.

Public hearings were held *de novo* before this Board on the following eight (8) dates: July 22, 2014, November 5, 2014, November 6, 2014, January 21, 2015, January 22, 2015, March 9, 2015, March 11, 2015 and March 26, 2015. The Petitioner, Riverwatch, L.L.C., the legal owner,

and Two Farms, Inc., the contract purchaser/lessee a/k/a "Royal Farms" (hereinafter "Royal Farms" and/or the "Petitioner") were represented by David H. Karceski, Esquire, Christopher D. Mudd, Esquire and Venable, L.L.P. The Protestants, Sparks-Glencoe Community Planning Council, Tom Graul, Ken Bullen, Jr. and Ruth Mascari were represented by Michael McCann, Esquire. A public deliberation was held on April 29, 2015.

FACTUAL BACKGROUND

The property consists of 5.88 acres+/- of land in the Hereford area of Baltimore County. It is situated on the north side of Mt. Carmel Road between York Road to the east and I-83 to the west (the "Property"). The Property is an unimproved cornfield. The zoning is BL-CR (Business, Local with a Commercial Rural overlay district). Other commercial uses occupying the section of Mt. Carmel Road where the Property lies, include an Exxon gas station, a Graul's supermarket, a pharmacy, a bank, an insurance office and a strip shopping center. Bordering I-83 on the west end of Mt. Carmel Road is a State Highway Administration maintenance facility.

In this case, Royal Farms requests to construct a fuel service station in combination with a convenience store and carryout restaurant. The building would measure 5,125 sq. ft. as set forth on the proposed Site Plan (Pet. Ex. 1). Royal Farms is also in need of approval to illuminate all four (4) of its proposed signs.

On the first hearing date, Royal Farms withdrew the Variance requests to permit the wall mounted enterprise sign and to permit a front yard setback. Accordingly, those issues were dismissed.

Finally, Royal Farms seeks a limited exemption under BCC, §32-4-106(b)(8) from the development regulations in connection with the subdivision of the Property into two (2) lots. The Royal Farms store will be located on Lot 2 (2.51 acres). There are two (2) proposed access points to the Royal Farms store namely: a shared driveway between Lots 1 and 2 and an entrance/exit onto the Property from Mt. Carmel Road.

LAW AND REGULATIONS

The law and regulations that are dispositive to the Petitioner's request for a special exception are contained in the following sections of the BCZR and BCC:

1. Article 4 (Special Regulations) of the BCZR, Section 405 (Fuel Service Stations),
2. Article 2 (Districts) of the BCZR, Section 259.3 (CR Districts),
3. Article 4 (Special Regulations) of the BCZR, Section 450 (Signs),
4. Article 5 (Special Exception Factors) of the BCZR, Section 502.1.,
5. Title 4 (Compatibility Factors) of the BCC, Section 32-4-402, and
6. Title 4 (Limited Exemption) of the BCC, Section 32-4-106(b)(8).

A complete recitation for the aforementioned regulations and code sections are listed in Appendix A of this Opinion.

FACTS AND EVIDENCE

Over the 8 days of hearings before this Board, Royal Farms presented 14 witnesses in its case in chief and an additional 4 witnesses in rebuttal. Royal Farms also entered into evidence 54 exhibits. Likewise, the Protestants called 26 witnesses and offered into evidence 78 exhibits, 71 of which were accepted by the Board.

When a fuel service station in combination with a convenience store and carryout restaurant is requested, the burden of proof is on the petitioner to prove all of the applicable elements in the BCZR §259 – 'Districts' and BCZR §405 – 'Fuel Service Stations'. From the Board's reading of these regulations, §259 and §405 overlap, duplicate and reference not only each other but other additional requirements such as Special Exception factors in §502.1 and the Compatibility factors in BCC, Title 32, Subtitle 4. As a result, evidence that is required to prove one section, or subsection, can be used to prove another section. In this case, the Board found many instances of repetition among the required factors for CR Districts generally and for fuel service stations

specifically. As a result, to avoid confusion, the Board believes it may be useful to summarize the evidence on each factor followed by a decision on each factor.

BCZR §259.3.C.1 – Bulk Regulations.

In support of the Petitioner's case, David Woessner, PE, testified as an expert professional engineer with detailed knowledge of zoning regulations. Mr. Woessner prepared and certified the Site Plan (Pet. Ex. 1A, B and D). He explained that the Bulk Regulations of BCZR §259.3.C.1, which are contained within the 'Use Restrictions' of 259.3.C, are required for a convenience store and carryout. Specifically, the gross floor area of the Royal Farms store and carryout measures 5,125 sq. ft., which was below the maximum 8,800 sq. ft. under §259.3.C.1.a. The floor area ratio ('FAR') under §259.3.C.1.b was only ¼ of the maximum 0.20. Finally, the building height would not exceed 30 ft., measuring 27 ft. 10 in., and therefore would meet the requirements of §259.3.C.1.c.

Protestants did not offer expert testimony on the issue of bulk regulations.

BCZR §259.3.C.2 – Setbacks.

Mr. Woessner also testified that the setbacks under §259.3.C.2. were met and therefore the proposed use did not require any variances. Under §259.3.C.2.a, the maximum front yard setback based on the average of the adjoining properties is 65.8 ft. Measuring from the proposed island under the canopy to the nearest property line, the front yard setback is 57 ft. from Mt. Carmel Road. He said that the island and canopy are identified as a "structure" from which to measure the setback, in accordance with the §303.2.d of the Zoning Commissioner's Policy Manual. Under §259.3.C.2.b, the side yard setback is 56.68 ft. and the rear yard setback is 212.42 ft. Mr. Woessner opined that both of these meet the minimum 15 ft. setback.

Protestants did not offer expert testimony on the issue of setbacks.

BCZR §259.3.C.3 – Landscaping.

Mr. Woessner explained that a landscape buffer as required under §259.3.C.3.a. will envelope the entire perimeter of the Property. There will be 1 tree for every 8 parking spaces. The islands will be landscaped to meet the 7% impervious surface test under §259.3.C.3.b. A landscape plan outlining the details was accepted into evidence (Pet. Ex. 6).

Protestants did not offer expert testimony on the issue of landscaping.

BCZR §259.3.C.4 – Parking.

The required and proposed number of parking spaces is 32. The parking layout is consistent with neighboring Exxon station and other businesses along Mt. Carmel Rd. such that parking will be located between the convenience store and the street, as well as along the sides of the building. Other than entrance to the Property from the access road between the 2 lots, there is only 1 entrance and exit onto Mt. Carmel Road. Thus, according to Mr. Woessner §259.3.C.4 will be met.

Eric McWilliams, a landscape architect with Boehler Engineering, testified that the Grading Plan is still in the preliminary stages and that a final plan will be submitted to the County.

Protestants did not offer expert testimony on the issue of parking.

BCZR §259.3.C.5 – Environmental Holding Capacity.

As for the environmental holding capacity requirement in §259.3.C.5, in regard to potential interference with water, Paul Scott was accepted as an expert for Royal Farms in the field of hydrogeology. He undertook to study the impact of hydraulic pumping wells and the adequacy of the proposed stormwater management ('SWM') facilities with regard to the proposed use. He prepared a report entitled 'Hydrogeologic Evaluation' dated June 21, 2013 (Pet. Ex. 29).

Mr. Scott performed a ground water recharge analysis which evaluates the amount of water that moves through the Property based on precipitation. He concluded that there will be ample surplus recharge to the Property allowing for replenishment of withdrawn groundwater. Specifically, he explained that the peak amount of water recharge of 1,600 gallons per day exceeds

the well withdraw amount of 1,200 gallons per day. As a result, he testified that there would be an 80% return to the system by artificial recharge. In essence, he opined that there would be no net withdraw amount.

Mr. Scott also explained the peak water withdraw of 1,200 gallons per day for the proposed use is less than 1 foot of drawn down in adjacent wells. Accordingly, he said that the 3 wells on the Grauls' property would not be adversely affected by the proposed use. Indeed, he added that, because the Grauls' wells were closely spaced to each other (80 ft. +/-), those wells were more likely to affect each other than the Royal Farms' wells influencing them.

Mr. Scott also concluded that the Royal Farms' wells would require a yield of 0.83 gallons per minute at most. He said that this well yield meets the State of Maryland well yield of one gallon per minute. With regard to the proposed septic system, Royal Farms will be incorporating the Best Available Technology ("BAT") into the system and therefore, he concluded, there will not be any adverse impacts on either the Royal Farms' wells or the wells on neighboring properties.

In response to the issue of impact on water, Harvey Cohen, a hydrogeologist with S.S. Papadopoulos, a consulting firm specializing in water resource and environmental management, testified as an expert on behalf of the Protestants. Notably, Mr. Cohen served as an expert witness in the Jacksonville Exxon spill case. Mr. Cohen was asked to study the potential impacts to groundwater in terms of water supply and contamination. Mr. Cohen prepared a report in which he concluded that wells in the Hereford Shopping Center where the Grauls is located are susceptible to contamination (Prot. Ex. 37).

Mr. Cohen based his opinion on a study that he had performed for the federal government in the late 1990s or early 2000, entitled '*Source Water Assessment Program* ('SWAP')'. He explained that he and his company were hired to study non-community public water systems in Baltimore County. A non-community system is a system that supplies water to fewer than 25 users a year. He added that Grauls was one of the systems he studied. The Source Water Assessment

Area is the area that the State of Maryland considers to be a potential contaminant source of the non-community public water system.

He testified that nitrate levels were very high in the Hereford Shopping Center well; that sanitary surveys showed the presence of MTBE and other gasoline contaminants in the Grauls' wells in 2003 came from the Exxon; and that MDE data indicates that the area is considered to be a "high risk groundwater use area." This last point means that any gas station being built must do additional monitoring for the tanks and the piping to prevent the contamination of gas from entering the subsurface.

Mr. Cohen testified that the groundwater flow direction is west-northwest which he based on his reading of a topographical map, a 1988 MDE report showing groundwater level contours and a 2005 site assessment report. He further opined that there were 2 other properties zoned BL-CR that would not pose the same threat for subsurface contamination.

Mr. Cohen stated that Royal Farms overinflated both the amount of water that is available for pumping and the amount of water that can be transmitted horizontally. Mr. Cohen said that the transmissivity¹ is 15 feet per day rather than 800 feet per day and that a lower transmissivity means more draw down in a well. He reasoned that more draw down in a well may be an indication that more contaminants will be drawn towards the well (Prot. Ex. 37).

Also testifying for the Protestants was Markus Hilpert, a researcher and professor at the Johns Hopkins Bloomberg School of Public Health with a Ph.D. in civil engineering. Although he had not previously testified as an expert, the Board accepted Mr. Hilpert as an expert in the areas of engineering, physics and in the transportation and infiltration of contamination, including gasoline.

¹ "transmissivity" -- a technical term used by hydro-geologists to indicate the ease water will pass through a geologic formation

Mr. Hilpert testified about a study he conducted entitled: "Infiltration and Evaporation of Small Hydrocarbon Spills at Gas Stations" published in the 2014 *Journal of Contaminant Hydrology* (Prot. Ex. 39). His study discusses what happens when small amounts of gasoline spill into the environment. At the hearing, the Board viewed Mr. Hilpert's Power Point presentation describing "Chronic Hydrocarbon Release" (Prot. Ex. 40).

To demonstrate how gasoline enters the environment daily at gas dispensers, he produced a video he took showing sequence of events that occur when a milliliter of gasoline drops onto a concrete pad. His study concluded that .01% of gasoline spilled by dispensers on the ground can translate into 120 gallons of gasoline spilled at a station whose sales equal 1.2 million gallons of gas. Mr. Hilpert highlighted that when gasoline spills onto concrete, it will remain there even after 6 hours. If the concrete is cracked or damaged, the saturation of gasoline into the concrete will be accelerated. It was Mr. Hilpert's expert opinion that the proposed Royal Farms gas station has the potential to spill 240 gallons of gas per year into neighboring wells.

Addressing Mr. Cohen's opinions on rebuttal, Paul Scott testified that the other two properties proposed by Mr. Cohen as better suited for the proposed Royal Farms were in fact also SWAP areas and would be worse than the Property particularly because Hereford High School wells are downslope from the alternate site.

Mr. Scott also countered that groundwater flow does not follow the topographical map. Rather, he said ground water on the Property would flow to the north because there is a topographic divide, which is the location on the Property where the Department of Environmental Protection and Sustainability ("DEPS") instructed the Petitioner to locate the septic system. Consequently, Mr. Scott concluded that Mr. Cohen's opinion was nothing more than a general assumption. Mr. Scott emphasized that the Royal Farms' wells are not immediately adjacent to the Hereford Shopping Center but rather to the north. In addition, Mr. Cohen failed to take into account the proposed SWM facilities which will control water runoff.

BCZR §259.3.C.6. - Outside Storage.

Mr. Woessner testified that Royal Farms was not proposing to store equipment or material outside on the Property. Therefore, BCZR §259.3.C.6 did not apply to the proposed use.

There was no evidence presented by the Protestants in regard to outside storage.

BCZR §259.3.C.7 – Exterior Signs, Site Lighting and Accessory Structures.

With regard to the proposed exterior signs for the store and fuel pumps islands, Mr. Woessner acknowledged that Royal Farms is seeking approval to illuminate all of the proposed signs pursuant to BCZR §259.3.C.7.c, namely: a freestanding, a wall-mounted, as well as directional and fuel canopy signs (Pet. Ex. 1D and 1E). Mr. Woessner explained that the proposed Royal Farms signs are smaller in size than the maximum permitted under the BCZR.

Mr. Woessner explained that the Royal Farms' wall mounted sign measures 6.64 sq. ft. where the maximum is 8 sq. ft. (BCZR, §259.3.C.7.a) (Pet. Ex. 1D, 1E). The freestanding enterprise sign measures 24.5 sq. ft. and 20 ft. high where the maximum is 25 sq. ft. in size and 25 ft. high (BCZR, §259.3.C.3.7.b). *Id.* Two proposed directional signs will measure 0.93 sq. ft. where the maximum area is 8 sq. ft. and the Royal Farms logo will not be more than 30% of the total sign. *Id.* Three proposed canopy signs will measure 24.9 sq. ft. each where the maximum area is 25 sq. ft. Finally, Mr. Woessner testify that the proposed signs comply with BCZR §450 as required by BCZR, §259.3.C.3.7 (Pet. Ex. 1D, 1E).

There was no expert testimony presented by the Protestants that the proposed signs did not meet the sign requirements. While Royal Farms initially filed a Petition for variance under BCZR, §259.3.C.7 to permit a wall-mounted enterprise sign of 33.08 sq. ft. in lieu of the permitted 8 sq. ft., that request was withdrawn prior to the hearing. As a result, Royal Farms reduced the size of its proposed signage and does not require any variances in this case.

In regard to illumination of signs under BCZR §259.3.C.7.c, Mr. Woessner testified that illuminated signs already exist at the Grauls', Exxon, M&T Bank and the Hereford Pharmacy.

Additionally, the Protestants, including Kenneth Bullen (the manager at Grauls), Kirsten Burger and Nedda Pray, confirmed that the Grauls' signs are illuminated. As confirmed by Protestants, Kirsten Burger, Theaux LeGardeur, and Petitioner's witness Carol Daisey, the Exxon lights are on all day, every day. Further, Protestant, Lynne Jones testified that the sign at the First Baptist Church located at 9 Mt. Carmel Rd. is also illuminated.

BCZR §259.3.C.8 – Relationship to Surrounding Neighborhoods.

In BCZR §259.3.C.8, the proposed use must be compatible with the surrounding neighborhood. All new buildings or additions must meet the Compatibility Standards set forth in BCC §32-4-402. Under §32-4-402(c), the Director of Planning must make a recommendation for any development that is proposed in a CR District. Andrea Van Arsdale, the Director of Department of Planning, recommended approval of the development plan subject to certain conditions to enhance compatibility (Pet. Ex. 14).

Mr. Woessner testified with regard to each of the 8 criteria listed in Subsection (d) of §32-4-402. First, he defined the "neighborhood" as being bounded by I-83 and Mt. Carmel Road. This definition, he concluded was consistent with the definition of "neighborhood" in §32-4-402(a) as "a definable boundary such as a primary collector street or arterial street."

Mr. Woessner explained that under §32-4-402(d)(1), the proposed Royal Farms store will be arranged and oriented like the other buildings in the neighborhood, including the Exxon, to face Mt. Carmel Road and within the prescribed setbacks. The fuel canopies for both the Royal Farms and Exxon are similarly oriented.

William Mortorff, the project manager for the Royal Farms, presented the elevation drawings for the proposed store. He explained that Royal Farms typically uses a standard prototype. However, in this case, in order to maintain a rural design and to match the surrounding architecture, the silver roof was changed to red. The base of the store would be brick. Gables

were added to the windows. The size of and lettering on the signs was reduced as well as many of the architectural elements discussed with and agreed to by the Department of Planning.

Mr. Woessner also indicated that the proposed Royal Farms store and on-site parking will not have any adverse impact on the defined 'neighborhood' under §32-4-402(d)(2), as the store meets the setback requirements and the parking will not only be buffered by the landscaping but will be located along the side and front of the store, consistent with the parking of other commercial businesses on Mt. Carmel Road.

Mr. Woessner stated that Subsection (3) is not applicable here as there are no streets being proposed. There is only a private driveway connecting Lots 1 and 2.

According to Mr. Woessner, under Subsection (4), Royal Farms is proposing more open space than the neighboring businesses – as much as 40% of the Property will be open space. (Pet. Ex. 7). He confirmed that the open space patterns will be consistent with the existing open space patterns in the neighborhood.

Similar to Subsection (3), Mr. Woessner testified that Subsection (5) is not applicable here because there are no locally significant features on the Property such as distinctive buildings or vistas to be preserved along Mt. Carmel Road. The Hereford Community Plan reinforces that any locally significant historic buildings are located along York Road, not Mt. Carmel Road (Pet. Ex. 8). (Prot. Ex. 14).

With regard to the landscape design under Subsection (6), according to Mr. Woessner, although there is no landscape pattern along Mt. Carmel Road, Royal Farms is proposing vegetation indigenous to the area and the landscape buffer will exceed what is required.

Subsection (7) requires that exterior signs, site lighting and accessory structures support a uniform architectural theme and present a harmonious relationship with the neighborhood. As testified to by Mr. Mortorff, the proposed signs are smaller than required with small lettering and are consistent with other illuminated signs along Mt. Carmel Road. (Pet. Ex. 1D, 1E). Mr.

Woessner pointed out that Grauls has three separate free standing signs. The 'Grauls Market' roof sign has large script letters.

With regard to site lighting under Subsection (7), Randy Boice, PE of Johnson, Mirmiran & Thompson testified as an expert on behalf of Royal Farms. He prepared a Site Lighting Plan (Pet. Ex. 22). Mr. Boice provided the Board with 'cut-sheets' for the proposed light fixtures (Pet. Exs. 24A, 24B, 24C, 24D and 24E). He explained that the Property would have street lights on free standing poles, wall lights, flood lights, canopy lights and lights over the entrance to the store.

Mr. Boice explained that the lighting site plan divided the property into several zones and that the lighting or '*foot candles*' are designed to give off specific amount of light depending on the zone. Mr. Boice highlighted that the goal of the lighting design was to limit the lighting across the Property "to be less than 1 foot candle." In this way, he added that there would be no adverse impact on neighboring properties.

Mr. Boice explained that Royal Farms is proposing to use state-of-the-art LED lighting which projects the light down toward the ground rather than up or out and off the site. As requested by the Department of Planning (Pet Ex. 14), the lighting plan was submitted and approved by Baltimore County. (Pet. Ex. 44).

Other than cross examining Mr. Boice, the Protestants did not offer expert testimony in regard to site lighting.

Finally, in regard to Subsection (8), Mr. Woessner testified that the proposed Royal Farms store is in proportion with the buildings in the existing neighborhood in terms of scale, proportion, massing and detailing under BCC §32-4-402(d)(8) (Pet. Ex. 19A-D). The exterior incorporates a rural design. *Id.* The elevation drawings resemble an old-time country store with neutral colors, a cupola on top of a red roof, as well as a brick and stone façade. *Id.* Moreover, according to Mr. Woessner, the floor area ratio ("FAR") for the store is ¼ of the size of other commercial uses

including, Grauls (20.7% FAR), Village Plaza (20% FAR), Mt. Carmel Center (22% FAR) and pharmacy (21%) (Pet. Ex. 10).

Testifying against the Royal Farms on the issue of compatibility with the neighborhood were the Sparks-Glencoe Community Planning Council ("SGCPC"); Andrew Alcarese; Adam Collins; Nedda Pray (Correspondence Secretary for Board of SGCPC); and Ruth Mascari. The collective concerns of the Protestants and/or their witnesses is that a Royal Farms store and gas station is contrary to the rural character of Hereford. One or more of these witnesses testified that the proposed use is not compatible with the character of the "rural village" as mentioned in the Hereford Plan (Prot. Ex. 14).

Ruth Mascari was a member of the committee which drafted the Hereford Plan. She described the Hereford Plan as a "blueprint for restraint." She said the goals of that Plan do not encourage development but were written to "preserve the rural atmosphere." On cross examination, she did agree that the Hereford Plan did not prohibit all development and it did not forbid all new uses.

Kirsten Burger, President of SGCPC, testified that the SGCPC, which is an organization comprised of 400 members, has voted against the Royal Farms because it wants to maintain Hereford as a "rural village." The geographic boundaries of the SGCPC include the width of Baltimore County between Hereford County and Carroll County, from Hunt Valley northward to MD/PA border, with Hereford at its center. The SGCPC acknowledged at the hearing that Mt. Carmel Road is the "center of commercial activity" which includes Hereford High School, the Hereford library and Grauls. Ms. Burger added that Royal Farms was not unique as there is one located every few miles. SGCPC believes that the Royal Farms does not enhance the rural character of Hereford.

On cross examination, Ms. Burger admitted that Appendix E of the Hereford Plan designated 'convenience stores' and 'carryout restaurants' as "acceptable uses" within Hereford.

(Pet. Ex. 8) (Prot. Ex. 14). She also conceded that gas stations were also listed in the “action” items as a type of “location service.” Ms. Burger further acknowledged that the “Bulk Regulations” were designed as a mechanism to limit growth and to set a dividing line between projects that met the Bulk Regulations (Floor Area Ratio “FAR”) and those that did not. By way of example, the Hereford Plan designated that businesses along Mt. Carmel Road exceeded the Bulk Regulations (Village Plaza (11,804 sq. ft.) and Mt. Carmel Center (11,088 sq. ft.)). *Id.*

She further conceded that the United Methodist Church on the corner of York Road and Monkton Road exceeded the Bulk Regulations when the church was enlarged. She further acknowledged that the veterinary office located in Hereford exceeded the Bulk Regulations when it sought to expand.

BCZR §259.3.C.3.9 – Auto Service Stations subject to BCZR§405.

BCZR §405.2 provides the locations in which fuel service stations are permitted. Mr. Woessner explained that in this case, §405.2.B is applicable and that a fuel service station is only permitted by special exception. As such Royal Farms is seeking approval of the fuel service station by special exception under Subsection §405.2.B. The following evidence was provided in regard to the special exception factors set forth in BCZR, §502.1:

§502.1.A – Adverse Impact on Health, Safety or General Welfare of Locality.

In analyzing the special exception standards set forth in BCZR §502.1, Mr. Woessner testified that the combined use of a fuel service station, convenience store and carryout would not be detrimental to the health, safety or general welfare of the locality under §502.1A. He referenced the commercial zones listed along Mt. Carmel Road on the Zoning Map (Pet. Ex. 4) and opined that the proposed fuel service station would satisfy Subsection 1A as it is similar to those other commercial uses. He added that Royal Farms did ‘extensive testing on water usage’ and that the proposed septic system passed all health department regulations.

Royal Farms also called Jay Wiedel, the District Manager for Containment Solutions, a business which manufactures underground storage tanks (“USTs”), to discuss the specific type of UST which is proposed to be installed for the Royal Farms fuel service station. Mr. Wiedel explained that Royal Farms is proposing two 30,000 gallon capacity “state of art” USTs. He described the tanks as “double wall fiberglass tanks” because they are 100% compatible with the use of fuels and, unlike the old steel tanks, they do not have rust or corrosion problems.

The Royal Farms’ USTs also have a safety monitoring feature through the use of a brine solution located in an area between the primary storage tank and an outer secondary wall of the tank. He said that if there is a leak, the brine solution will rise and lower instantaneously which triggers an alarm system inside the store. Striker plates are located at every opening of the tank which protects against penetration of the tank when the tank is being filled or serviced.

Mr. Wiedel testified that Royal Farms is going “above and beyond what most end users do in terms of enclosing their piping and things that are coming from the tank...” (T, 11/5/14 Vol. I, p. 51-52). On cross examination, Mr. Wiedel said that while “triple wall tanks” exist, that type of tank would be “overkill” for this Property because those are only installed in environmentally sensitive areas.

Thomas Ruszin, Royal Farms’ Fuel and Environmental Leader, was accepted as an expert in the federal and state requirements for USTs and environmental compliance for fuel service stations. Mr. Ruszin completed a Third-Party Compliance Inspection Program at MDE which taught the federal and state regulations as they pertain to the operation of gas stations and implementation of protections to guard against gasoline leaks. Adding to Mr. Wiedel’s testimony, Mr. Ruszin described the monitoring systems that would be in place at the Royal Farms.

Mr. Ruszin said that the brine solution which is contained in between the tank walls as described by Mr. Wiedel, is connected to an electronic monitoring system which is then linked to the cashier’s area and the manager’s office for 24- hour monitoring. In the event of a tank leak, a

signal inside the store will sound and flash. Additionally, there is 24-hour liquid sensor monitoring of all of the containment sumps. The sumps are connected to an alarm which sounds if there is liquid in one of the containment sumps (Pet. Ex. 27).

To protect against overflow, a double-walled spill bucket is designed to catch the overflow of fuel from a delivery truck hose. When a tank is at 90% capacity, a flapper valve will sound. A delivery hose will be cut off if the tank reaches 95%. Corporate oversight is in place to review daily alarm reports from the store. All Royal Farms' employees must undergo training through classes and exams, followed by a certification in regard to the monitoring systems. Certifications are divided into 'A', 'B' and 'C' operators and Royal Farms requires that a Level 'C' operator be present on site at all times. External monitoring will occur by third party consultants at installation, after the first 6 months and then at 3 years.

Mr. Ruszin was knowledgeable about the Jacksonville Exxon spill and indicated that it occurred when a contractor, who was repairing a fiberglass line, drilled into it. To prevent this type of spill, Royal Farms uses chemical line leak detectors and provides as-built drawings to all contractors making repairs to tanks. Mr. Ruszin stated that Royal Farms is implementing safety monitoring measures above and beyond what is required by the State of Maryland. He opined that these safety measures will have no adverse impacts on the surrounding environment.

On cross examination, Mr. Ruszin agreed that possible sources of contamination could occur if: (1) an UST is installed improperly; (2) piping leading to and from the tank and/or dispenser is installed improperly; (3) the monitoring systems fail; (4) error in monitoring by Royal Farms operators; or (5) spills by customers at gas dispensers.

Protestants called Richard Klein, President of Community and Environmental Defense Services of Freeland MD, a business which assists community groups with environmental issues affecting their community. Mr. Klein was not offered as an expert in this case and therefore did not offer an opinion. Mr. Klein researched the existence of USTs in the Hereford and Parkton

areas via a Public Information Act request to MDE (Prot. Ex. 30). From the MDE database information he received, Mr. Klein marked with a highlighter all of the USTs which were both in use and out of use (Prot. Ex. 31 and 32). Mr. Klein confirmed that the chart did not show what gas stations were active or closed.

Mr. Klein also presented as evidence a chart that he prepared showing water usage in 17 other Royal Farms' stores which stores were located in Baltimore City and were served by public water (Prot. Ex. 33). Mr. Klein obtained the information for this chart from the water bills for those stores which he said are posted on the Baltimore City website.

On cross examination, Mr. Klein stated that he only visually observed some of the USTs in the field. Because only water bills for the public water system are available, Mr. Klein acknowledged that information on the water use for Royal Farms' stores in rural areas is not available to the public. Mr. Klein also conceded that the gallons per day that he calculated from the Baltimore City water bills could be inflated if the store used water for landscaping or if there was a leaky pipe or if there was a broken water line or if there was a problem with the water meter at those particular stores.

In responding to a question posed by the Board, Mr. Klein admitted that the Baltimore City water bill amount also included the rain tax as well as the septic and sewer charges. In addition, because Mr. Klein did not have the actual Baltimore City water bills for those Royal Farms' stores, but only the information from the Baltimore City website, he could not testify with any certainty that other fees and charges were not included in the amount he used to calculate the gallons of water used per day.

§502.1.B – Congestion in Roads.

Kenneth Schmid, PE, a traffic engineer with Traffic Concepts, Inc., testified on behalf of the Petitioner and submitted a Traffic Impact Study for the proposed use (the "Traffic Study") (Pet. Ex. 17). The Traffic Study was submitted to State Highway Administration ("SHA") for a site

access permit for the entrance from the Property onto Mt. Carmel Road. Mt. Carmel Road is also known as MD 137 and is a State road. SHA needed the Traffic Study to determine if any improvements to Mt. Carmel Road would be required if the Royal Farms' store is built. Mr. Schmid clarified that SHA did not require any improvements to Mt. Carmel Road as a result of the proposed use.

Mr. Schmid described the road network consisting of Mt. Carmel Road as a minor arterial road and York Road as a major collector road. He said that the Property is not located within a failing traffic shed. He studied the 4 intersections associated with the I-83 interchange as well as the intersection of Mt. Carmel and York Roads. His study found that the existing conditions were operating at an 'A' level of service even during the peak hours of 7:00-9:00 a.m. and 4:00-6:00 p.m.

Mr. Schmid found that, according to the SHA records, traffic declined between 2007 and 2010. In analyzing the potential impact of the Royal Farms at that location, Mr. Schmid used a 1% growth rate. For the sake of his study, he also assumed that any potential use on Lot 1 would be a '*high trip generator*' such as a fast food restaurant, and he concluded that future traffic would still remain at an 'A level of service.' At the same time he found that the exception was that the intersection of Mt. Carmel and York Roads would fall to a 'B level of service' and the intersection of I-83 and Mt. Carmel Road (northbound off ramp) would change to a 'B level of service.' In conclusion, Mr. Schmid testified that the impact on traffic as a result of the proposed use would be no greater here than elsewhere.

The Protestants subpoenaed Terry Maxwell from SHA who is the Scenic Byways Coordinator. Mr. Maxwell explained that the MD Scenic Byways division of the Office of Environmental Design of SHA partners with local jurisdictions to promote scenic roads. He explained to the Board that Maryland has 19 scenic byways which all have different themes. Mr. Maxwell produced a map and brochure of MD Scenic Byways (Prot. Ex. 64 and 65).

Mr. Maxwell confirmed that Mt. Carmel is not on the National Scenic Byways list (Prot. Ex. 64). It is designated as a Maryland Scenic Byway called the "Horses and Hounds" in deference to the horse racing areas surrounding Hereford. The "Horses and Hounds" byway measures 70 miles and includes the area from Hunt Valley to Towson. Mr. Maxwell confirmed that each Byway has amenities such as gas and dining. The goal is to get people to drive on the Scenic Byways and promote the economy.

In reviewing the Royal Farms plans, Mr. Maxwell said that SHA is not requiring an acceleration or deceleration lane at the access point to the Royal Farms store from Mt. Carmel (Pet. Ex. 43).

Witnesses for the Protestants who indicated that traffic would increase and cause congestion on Mt. Carmel and neighboring roads if the Royal Farms store were built included: Andrew Alcarese; Ronnie Seward; Sharon Bailey; Kirsten Burger on behalf of SGCPG; Kenneth Bullen, and Adam Collins. Ronnie Seward complained that he sees traffic increase when schools let out. He said that another gas station would bring the traffic from I-83 consumers. Mr. Alcarese stated that having lights on 24 hours a day at the Royal Farms store will increase traffic, particularly if a sign for the Royal Farms is advertised on I-83. He does not believe that Mt. Carmel Rd. was designed to handle additional traffic. He also believes that there is a safety issue when Royal Farms customers pull out onto Mt. Carmel Rd. because they will be headed uphill.

§502.1.C – Potential Hazard from Fire, Panic or Other Danger.

Mr. Woessner testified that Royal Farms checked the site distances and potential safety issues with regard proper access and turning radius for emergency vehicles into and out of the Property. He concluded that there were no such problems. He added that the Hereford Fire Department was 'down the street.' All buildings will meet fire safety codes.

§502.1.D – Overcrowding of Land and Undue Concentration of Population.

Mr. Woessner reemphasized the FAR for the Royal Farms was only 25% of the allowable FAR and therefore would not cause overcrowding of the land. Since the proposed use is not residential, there would be no increase in population.

§502.1.E – Interference with schools, parks, water, sewerage, transportation or other public requirements, conveniences and improvements.

First, in regard to potential interference with water available for the Royal Farms' wells , we incorporate here the evidence presented by Paul Scott, an expert for Royal Farms in the field of hydrogeology that we previously described with regard to BCZR §259.3.C.5. As set forth above, Mr. Scott opined that there would be no adverse impact on available water if the Royal Farms' store is permitted.

Mr. Woessner testified that there was no impact on schools or parks as the proposed use was not residential. Moreover, there was no impact on public water or sewer as the Property is outside the URDL and will use well and septic. Mr. Schmid's testimony and report as above expressed that there was no adverse impact on transportation.

For the Protestants, Mr. Cohen described in great detail, the type of aquifer that exists in Baltimore County, (i.e.: a '*fractured bedrock aquifer*'). He said: "[A]s you go deeper and deeper into the bedrock in Baltimore County...you get fewer and fewer of these fractures that transmit large amounts of water. So most of the available water in Baltimore County is limited to the upper couple hundred feet and you can't just drill deeper to get more water if, in fact, for example, your aquifer is contaminated" (T. p. 176-177).

Mr. Cohen stated that the Baltimore County aquifer was different from the Patapsco or Patuxent aquifers. The two later aquifers, he described, were large regional coastal plain aquifers. More specifically, he said:

They're made of sheets of sand that go on for many miles and there are sheets of clay between them called aquitards that prevent water flowing from one to the other. So theoretically if you had shelf

contamination, you could drill deeper and go through the aquitard into the deeper aquifer and potentially find a fresh source of water there, in the same physical location. That's not the case in Baltimore County. So you have what's essentially a sole source aquifer, meaning there's only one source of water in this area and that's, so that's how a geologist views Baltimore County (T. 176-178).

§502.1.F – Interference with Light and Air.

Mr. Woessner stated that the proposed 1½ story building will not block any light or air or therefore will not inhibit the enjoyment of the surrounding properties.

§502.1.G – Inconsistent with the Purposes of Zoning Classification or Spirit and Intent of BCZR.

With regard to the zoning classification, Mr. Woessner emphasized that a convenience store and restaurant are uses permitted by right in the BL zone, without any need for zoning relief (BCZR, §259.3.A). He added that if the fuel service station were not being requested, the proposed convenience store and carryout restaurant could still be built, subject to meeting the bulk regulations in §259.3.C.1.

On the issue of zoning, Protestants called Ann Bailey, an attorney and former member of SGCP Board from 2006-2009, who has also been President of the Pretty Boy Watershed Alliance since 2011. Ms. Bailey worked on the 2012 CZMP by providing advice to the County Council on environmental issues. She indicated on direct that Councilman Huff downzoned the Property when he applied the CR overlay district. The owner of the Property at the time had requested to increase the BL zoning on the Property. On cross examination, Ms. Bailey conceded that when the County Council applied the CR district overlay to the Property, a gas station became a use permitted by special exception.

§502.1.H – Inconsistent with Impermeable Surface and Vegetative Retention provisions of BCZR.

On this issue, Mr. Woessner testified that there are no streams, forests, wetlands or steep slopes on the Property. He added that there is no existing SWM on the Property and Royal Farms'

proposal to install SWM facility will be advantageous to neighboring properties because it will improve conditions. Currently, the parking lots from neighboring properties drain into the side swales and ditches along Mt. Carmel Road, which ultimately runs into the streams without any treatment or control as to quantity or quality. He also said that Royal Farms is exceeding the requirement that 7% of its parking lot be pervious.

§502.1.I – Detrimental to the Environmental and Natural Resources of the Site and vicinity including forest, streams, aquifers or floodplains.

As previously mentioned by Mr. Woessner in addressing §502.1.H – Inconsistent with Impermeable Surface and Vegetative Retention provisions of BCZR, there are no streams, forests, wetlands or steep slopes on the Property. Eric McWilliams, an expert landscape architect for Royal Farms, who designed some aspects of the proposed SWM facility as well as the preliminary grading plan, noted that the closest stream to the Property was on the other side of I-83 and the closest forest is adjacent to the Property, 300-400 ft. away. He also mentioned that there is a swale which is 400-500 ft. from the Property which conveys surface runoff into the nearest stream.

Eric McWilliams added that the high infiltration rate of the soil on the Property and the design of the proposed stormwater management will treat any runoff from the Property, such that there will be no adverse effect on the aquifers. He explained that rain water would fall into the drywells as clean water. In addition, he explained the bioretention SWM facility would treat any nitrogen phosphorous.

The evidence produced showed that DEPS did not find that the proposed combined use would negatively impact the environmental and natural resources of the Property (Pet. Ex. 14). Eric McWilliams clarified that the design of the SWM plan is in preliminary stage of review with the County. This means that the current location of the well could move. Also relevant on this factor was the testimony of Paul Scott, a hydrogeologist who testified that the Royal Farms' wells

will not affect the draw-down of the wells on neighboring properties as previously discussed and incorporated herein.

Testifying for the Protestants was Theaux LeGardeur who was admitted as an expert in area water resources, including the impact and protection of such resources. He was also on the Board of Directors of SGCPC and was the SGCPC water resources expert. Mr. LeGardeur is also the Working Director of Gunpowder Riverkeep, a non-profit organization which began in 1970 and monitors the Gunpowder watershed. The Gunpowder watershed is 53 miles long, has 217 tributaries and is less than 4 miles from the Property. Riverkeep has 225 members in 11 states who are advocates for water quality.

Mr. LeGardeur was concerned that water moving off the Royal Farms site will negatively impact water quality of nearby streams which eventually flows into Gunpowder River. He has personally tested the flow of water in the Gunpowder River. Class III trout streams are affected by sediment which can increase water temperature in streams. On cross examination, Mr. LeGardeur admitted that he was not an expert on designing SWM ponds and that he did not know how a SWM pond operates.

Also testifying for the Protestants was John Koontz, a licensed engineer and registered sanitarian. Mr. Koontz was admitted as an expert in water supply, waste water disposal, superfund sites and well and septic issues. Mr. Koontz' testimony centered on the proposed well location on the front of the Property along Mt. Carmel Road (Pet. Ex. 1A). Mr. Koontz said that the proposed location violates the well setbacks set forth in COMAR 26.04.04.05B(2)(a)(iv). He stated that the well location is less than 100 feet from "identifiable sources of contamination" which, he opined, includes not only underground storage tanks but also the piping and dispensers associated with the tanks. He measured the distance as 30 feet from the canopy area, 42 feet from the closest dispenser, and roughly 50-60 feet from one or more of the lines that connect the dispensers to the tanks.

Mr. Koontz cited the Exxon gas station leaks in Jacksonville and Fallston which he reminded were caused by failures in the piping and not the tanks. On cross examination, Mr. Koontz conceded that he was applying the definition of "storage system" and "Connected Piping" found in COMAR Subtitle 10 which is entitled '*Oil Pollution and Tank Management*'. He applied those definitions to a different COMAR Subtitle (Subtitle 4) which is entitled '*Regulation of Water Supply, Sewage Disposal, and Solid Waste*' (Prot. Ex. 17-22). The definitions listed in Subtitle 10, 'Oil Pollution and Tank Management' states that those definitions have those meanings within Subtitle 10.

Eric McWilliams stated that he supervised the preparation of the SWM plan for the Property. He explained that the SWM Plan is in the preliminary stage and that Royal Farms will submit Phase II for approval. He added that the Perk Site Plan was revised on September 3, 2013 (Prot.Ex.2). In response to John Koontz' opinion that the well location violated COMAR 26.04.04.05 regarding the 100 ft. setback, Mr. McWilliams responded that it was DEPS who required that the well location be moved to that area. Further, he said that the well could move again with a later phase of SWM design. The ultimate location could be anywhere within the shaded area (approx. 40' in length) on the latest SWM Plan.

Protestants called as an adverse witness, Jeffrey Stein of Advanced Environmental Consultants. Mr. Stein is a professional geologist who was charged with the creation of a corrective action plan and preparation of audit reports for gas leaks at other Royal Farms stores located in Rosedale and Northeast, MD. In support of this testimony, Protestants produced documents subpoenaed from MDE regarding the gas leaks at those other Royal Farms stores (Prot. Ex. 67).

Protestant Kenneth Bullen testified that he was concerned with water runoff from the Property and pointed out that it is situated at the highest point on Mt. Carmel Road. Mr. Bullen lives behind the Subway Restaurant in a community called Mount Carmel Meadows. He has also

been working as the manager at Grauls for the last 20 years. To illustrate water runoff, Mr. Bullen produced photos of storm drains and parking lots of properties along Mt. Carmel Rd. He testified about water flow problems at his home and the floods that previously occurred in his backyard after a heavy rain as a result of a ravine opening. Mr. Bullen then explained that the ravine was fixed by the owner of the Subway Restaurant.

Mr. Bullen said that he was equally concerned about contamination into his well. He explained that the Exxon had leaked and it contaminated the Grauls' wells. He is concerned that the Grauls' wells will be contaminated by the Royal Farms gas station.

Thomas Graul has owned the Grauls' store on Mt. Carmel Rd. for the last 35 years. Mr. Graul testified and produced documents about e-coli contamination of the Grauls' wells in the 1980s from fertilizer which drained down into his property (Prot. Ex. 76). When this occurred, he had three new wells drilled. He also testified about MTBEs from the Exxon which contaminated these wells. Because Royal Farms sits at a higher elevation from his property, he is concerned that a leak from Royal Farms gas station will contaminate his wells. If that happens, he said it would negatively impact all the Grauls' workers and their families.

Nedda Pray is the Correspondence Secretary for the Board of SGCP. At the hearing, she did not testify on behalf of SGCP but from personal experience. While conceding that the Loch Raven Reservoir was already impaired, she said she was concerned that the water runoff from the impervious surfaces of the proposed Royal Farms will reach the Reservoir watershed in 12 hours.

§405.3 – Conditions for Disapproving of Special Exception.

BCZR §405.3 provides a disqualification of a requested special exception for a fuel service station when there is a specific finding of 1 abandoned station within a ½ mile radius, or 2 abandoned stations within 1 mile radius. Eric McWilliams testified for Royal Farms that, in addition to reviewing aerial photographs, he drove his car within a one mile radius of the Property and did not observe any abandoned gas stations.

Lynne Jones, a witness for the Protestants who resides north of Hereford on a farm in Parkton, testified at length about not only the history of Hereford, but also documented by way of a maps and photographs, what she believed were abandoned gas stations in Hereford (Prot. Exs. 48 and 50). Each photograph, as described by Ms. Jones, was of a former gas station closed as far back as 1940s up to and including 2007.

Ms. Jones explained that she calculated the mileage from the Property to each former gas station. According to her calculations, only 8 of the former gas stations were within a 1 mile +/- radius of the Property (Prot. Exs. 49, 50 and 51). She testified consistently with the photographs that each of the former 8 gas stations had been converted to other uses including, without limitation, conversion to automotive repair shops, an office, an automotive towing shop, a restaurant², a bank, and a packaged-goods store. *Id.* The photographs of those businesses did not show any gas pumps or other gas station type equipment.

Ms. Jones also expanded her search for abandoned gas stations outside of the 1 mile radius of the Property to include former gas stations in the Hereford 'school' zone. The Hereford school zone included Hereford, Parkton, east to Harford County and West to Carroll County. Those photographs showed properties located in Whitehall, Freeland, Parkton, Middletown, Monkton, Sparks, Upperco and Maryland Line which is just south of York County Pennsylvania. For this expanded search, she compiled additional photographs of other properties which previously had gas pumps but have since been converted to other uses (Prot. Ex. 48).

§405.4 – Standards

As to the evidence produced pertaining to 'Site Dimensions' under BCZR §405.4.A.1, Mr. Woessner said that the area of the fuel service station is controlled by the chart under §405.4.E. Here, he pointed out, §405.4.E.1 indicates that a convenience store with a sales area larger than

² Ms. Jones acknowledged that the restaurant known as Casa Mia located at 17417 York Road was 1.23 miles from the Property.

1,500 sq. ft. requires that an additional site area of four (4) times the square footage of the convenience store's sales area.

Additional Requirements for Granting Special Exception in CR District. §259.E.

BCZR 259.E. In CR districts, in addition to the §502.1 Special Exceptions Factors, there are five (5) additional requirements for granting a special exception. The following evidence was submitted in regard to the additional five (5) factors:

BCZR 259.3.E.1. – 'Need' for the Development at the proposed location.

Market analyst, Joseph Cronyn, testified on behalf of Royal Farms in regard to the 'need for the development at the proposed location.' Mr. Cronyn is employed by Lippman, Frizzell & Mitchell, a real estate consulting and appraisal firm. In determining 'need,' Mr. Cronyn explained that he used a four mile radius as the 'trade area' in order to calculate supply and demand for the proposed use. The 4 mile radius was determined based on 'land use patterns and highway network in the area' (Pet. Ex. 31). He described the radius as a 'neighborhood kind of center' including Grauls, Exxon as well as various other businesses along Mt. Carmel Rd. and its intersection with York Rd. He found that the buyers would be coming through Mt. Carmel Rd. to reach this 'village or neighborhood commercial center'. The Property is located at the center of the radius and would become a central business location.

Next, Mr. Cronyn defined the demand within the trade area. He described the trade area as "stable and growing slowly" (Pet. Ex. 31). According to him, it is a heavy commuting area where residents do a lot of driving. Using information from Environmental Systems Research Institute, Inc. ("ESRI") and US Census statistics, he estimated that the number of households in the trade area was 3,103 in 2014 with an average household income of \$142,736.00. He found that 90% of the residents of the trade area own their own home and have an average of 2.4 vehicles per household (Pet. Ex. 31).

Mr. Cronyn used the 2012 Bureau of Labor Statistics Consumer Expenditure Survey which reported that consumer households spend 4.3% of annual gross income on gasoline and that 1,668 gallons of gas were sold in 2012. He added that the volumes of gas sold is stable. Using 1,668 gallons annually for each household, he opined that each household would buy 32.1 gallons per week which equates to 2 fill-ups for each vehicle. Based on his research, Mr. Cronyn opined that the demand would be 5,175,804 gallons of gas. In addition to the residents of the trade area, the proposed use is expected to serve workers in Hereford and travelers along I-83.

Mr. Cronyn also evaluated the supply of gasoline and testified that the only service station in direct competition within the 4 mile radius around the proposed use is the Exxon station located at 300 Mt. Carmel Rd. (Pet. Ex. 31). He said that there is a gas station located 4.3 miles away from the Property, but distinguished that station as not affecting his "supply" calculation because it is located on Middletown Road which is a different neighborhood altogether.

Mr. Cronyn also mentioned that County Council Bill 103-88³ eliminated the requirement that a petitioner must prove that the proposed use is not duplicated elsewhere and eliminated the requirement that the population within the trade area has adequate buying power to support the proposed facility. (Pet. Ex. 32). As such, the only requirement for a petitioner is to "...document the need for the development at the proposed location" (Pet. Ex. 32).

In summary, Mr. Cronyn found that, in his opinion, the demand of 51.8 million gallons of gas when compared to the limited supply of gas from the Exxon, confirms a 'need.'

Employing the same 4 mile trade area, the same 3,103 households, and the same average household income of \$142,736.00. Mr. Cronyn also studied the need for a convenience store and carryout restaurant. He prepared a 'Needs Analysis' and considered the 2013 Consumer Expenditure Survey conducted by the US Bureau of Labor Statistics regarding spending by

³ the bill which established the CR District and created the 'need' factor in BCZR §259.3.E as it reads today

American households (Pet. Ex. 34). Those statistics informed him that the total share of household income spent on food at home, carryout food and miscellaneous personal items was 10.14%. Applying that percentage to the trade area's aggregate household income, he determined that the total resident household expenditures on those goods would be \$44,911,055 in 2014.

On the supply side, Grauls, Exxon convenience store, Subway Restaurant, 7-Eleven and Michael's Pizza will offer some of the same products sold by Royal Farms. The Royal Farms, he concluded, would only capture a small part of the total spending. However, he said that the combination of gas station and convenience store/carryout restaurant offers unique *one-stop* shopping in Hereford (Pet. Ex. 34).

Lay witness, Ed Fishel testified in support of the Royal Farms gas station. He highlighted for the Board that Hereford has 5 attorneys and 3 pharmacies but only 1 gas station. He testified that the gas prices at the Exxon are 0.15 to 0.20 higher than at other gas stations that he frequents. As a retired citizen, he indicated that there was a need for competing gas stations. He also stated that he supported having more choices of fast food items such as fried chicken and coffee.

Mark Gardner testified on behalf of the Hereford Community Association ("HCA") in support of the Royal Farms. Mr. Gardner indicated that HCA has 150 members. HCA voted in favor of the proposed use because the organization supports having choices and emphasized that the price of gas at the Exxon is a problem for residents. He stated that the higher gas prices at the Exxon cause consumers to buy gas elsewhere. HCA also sees Royal Farms as an employment opportunity for high school youth in Hereford.

Mark Hochstein, a resident of Parkton, testified that, although it is not convenient, he drives to Hunt Valley to buy gas because the Exxon prices are high.

Testifying as an expert for the Protestants on the 'need' issue was Richard Garretson, a market analyst with Global Creative Concepts in Virginia. Mr. Garretson's research focused on information provided by Oil Price Information Services as well as information that he obtained

using a Freedom of Information Act ('FOIA') request. From that information, Mr. Garretson explained that he maintains a national database.

Mr. Garretson made clear that in determining 'need' for a trade area, there is no government model available, and therefore it is necessary to create a statistical model. Mr. Garretson did not agree with Mr. Cronyn's analysis. He said that Mr. Cronyn assumed that if the average household makes more money, they will spend more on gas. Mr. Garretson found no correlation between household earnings and the consumption of gas. He said that the consumption of gas is 'flat' (Prot. Ex. 71). He believes that it is more accurate to obtain data on the total amount of gas spent in Maryland as he did through a FOIA request because information is available to the public, rather than estimating the percentage of income spent on gas from the US Bureau of Labor Statistics as Mr. Cronyn did. The Bureau of Labor Statistics, he added, only represents about 125,000 households in the United States which equates to only a sample size of less than one-tenth of one percent.

Using Mr. Cronyn's methodology, Mr. Garretson recalculated the demand using 2014 data from the Hereford area and found that the percentage of household income spent on gasoline was 2.66% based on the 2014 actual income in Hereford of \$145,187.00. This differed from Mr. Cronyn's nationwide value of 4.30%. The percentage calculated by Mr. Cronyn, he said, was based on the average income of consumers nationwide of \$65,596.00 and also incorrectly includes the purchase of motor oil. He went on to say that Mr. Cronyn incorrectly applied the 4.3% to 2013 income data from Hereford of \$142,736.00. Using the information Mr. Garretson collected, he calculated the demand in the 4.0 mile trade area as \$3,430,014.00 rather than \$5,175,305.00. He opined that Mr. Cronyn's estimate of demand was 51% higher than Mr. Garretson's and was therefore, overinflated.

On the supply side, Mr. Garretson acknowledged that there is only 1 service station within the 4 mile radius. Mr. Garretson used 2014 sales data provided by Exxon owner, Pat Meadowcroft

of 2,300,000 gallons annually as opposed to Mr. Cronyn's US average adjusted gallons of gas per year of 1,400,000 (Prot. Ex. 72). Based on that information, Mr. Garretson concluded there will be a substantial oversupply of gasoline of 1,569,986 gallons. This oversupply, he said, would cause the Exxon to close. He added that if the BP station on Middletown Road were included in the trade area, it would increase the supply.

In addition to critiquing Mr. Cronyn's analysis, Mr. Garretson provided his own calculation of demand using a different methodology (Prot. Ex. 73). Mr. Garretson did not use information from the US Bureau of Labor Statistics but rather data from the State of Maryland and Baltimore County for the amount of gasoline actually purchased in 2014. That information provided a number of 1,126 gallons of gas as having been purchased in 2014 per household. He also noted the number of households in 2014 for 1, 1.5, 2, 3, 4 and 4.5 mile radii of the Property. The gasoline demand for each radius was less than Mr. Cronyn's demand calculation of 5,175,804 gallons of gas.

Factoring in the supply number of 2,300,000 based on Exxon's sales, left him with the conclusion there is a substantial oversupply of gas and therefore no need for another service station in Hereford. Referring to the Exxon, he testified that "people's gas needs are being met." However, Mr. Garretson also admitted that Exxon "might need to add a few extra pumps." He further stated that he does not know if the Exxon has the acreage to provide the extra pumps or whether the Exxon would be able to obtain permits for extra pumps.

In regard to the convenience store and carryout restaurant, Mr. Garretson used data from the National Association of Convenience Stores for average sales at convenience store and data regarding the number of convenience stores in Baltimore County (Prot. Ex. 74). To verify this data, Mr. Garretson had asked Protestant Kirsten Burger of SGCP to conduct a survey of every gas station, convenience store and grocery store within a 10 minute drive of the Property. To

compile the survey, Ms. Burger counted the types of products sold in all of the stations, convenience stores and grocery stores.

Taking the actual number of households in Baltimore County per AGS as his source of 338,145 (factoring in employees who work in but do not live in the area), Mr. Garretson determined that the average amount spent by each household on convenience store items was \$1,604.00. Applying that amount to the number of households in 1, 1.5, 2, 3, 4, and 4.5 mile radius, he determined the total amount spent on convenience store items by households in each radii. Then, subtracting the supply numbers that he previously calculated for each radius which included his calculation of the supply produced by Royal Farms, Mr. Garretson opined that there was a substantial oversupply of convenience store products (Prot. Ex. 74).

A number of witnesses for the Protestants testified about whether a gas station and convenience store were “needed” at the proposed location. Kirsten Burger on behalf of SGCP; Carolyn Gittings; Kenneth Bullen; Michael Newmeyer (Owner of Michael’s Pizza); Ronnie Seward and Patrick Meadowcroft (Owner of Exxon on Mt. Carmel Rd.). In addition, two witnesses for the Protestants presented photos of gas consumers at the Exxon station. Ann Lawrence Deering presented 31 photos taken over a period of 4 days (Prot. Ex. 60-61). Sue Parish also presented similar photos of the Exxon taken over a period of 21 days (Prot. Ex. 57).

Carolyn Gittings, who lives less than ¼ mile from the Property said that the Royal Farms store is not needed because Grauls sells the same type of grocery items and the Exxon sells gas. She believes that a Royal Farms store would commercialize Hereford. Likewise, Kirsten Burger, on behalf of the SGCP, testified that SGCP does not want duplication of products for sale. She highlighted that the Exxon, 7-Eleven, Subway, Michaels’s Pizza, Monkton Grill and Grauls all sell the same type of items proposed here. She added that the Hereford Plan contemplates ‘unique’ businesses, not businesses where services are already available.

Michael Newmeyer, owner of Michael's Pizza, testified that he is concerned that the Royal Farms will hurt his business. As seen on this menu, he sells many of the same fast food items that Royal Farms sells (Prot. Ex. 53). He testified that he is already in competition with the 7-Eleven, Casa Mia's and the Monkton Grill. Speaking about the 7-Eleven, Mr. Newmeyer candidly said: "7-Eleven crushed me when it moved in." Although he does not sell chicken at his store, he conceded that he personally buys chicken at Royal Farms stores.

Patrick Meadowcroft, owner of the Exxon, testified and produced documents revealing the monthly and annual gas sales for his station between the years 2005 and 2014 (Prot. Ex. 72). Those documents indicated that in 2013, the Exxon sold 2,406,509 gallons of gas and in 2014 it sold 2,485,728 gallons of gas per year.

Collectively, the Protestants testified that the Royal Farms is not 'needed' because everything that Royal Farm sells, from gas to convenience store items, is already available for sale in existing businesses in Hereford. In other words, if a new business offers duplicative services, they do not feel that it belongs in Hereford.

BCZR 259.3.E.2. – Existing Site Conditions.

Mr. Woessner described the Property as a cornfield. He said there are no proposed roads or 25% slopes, or wetlands, or forests or floodplains or buffers or streams on the Property; it is a clean site. Mr. Woessner testified that the proposed use will not result in undue site disturbance or excessive erosion or sediment loss. The testimony of Eric McWilliams confirmed that the soil type has a high infiltration rate. Therefore, infiltration will be maximized by the proposed state-of-the-art SWM facility. Royal Farms proposes to catch the rainfall and let it infiltrate the soil in a controlled manner. The evidence was undisputed that there currently is no SWM facility. The Protestants did not have an expert on SWM.

BCZR 259.3.E.3. – Architecturally/Historically Significant Buildings.

Mr. Woessner explained that the Property does not have any architecturally or historically significant buildings. As a result, this factor is not applicable here.

BCZR 259.3.E.4. – Scenic View and Natural Features.

Mr. Woessner added that there are no scenic views on Mt. Carmel Road or natural features of the Property that exist and therefore there are none that need to be protected. As previously mentioned, Royal Farms is proposing that 40% of its plan will be open space.

BCZR 259.3.E.5. – Detrimental to Neighboring Uses as a Nuisance.

Mr. Woessner opined that the Royal Farms use would produce noise, dust, fumes, vapors, gases and odors similar to other uses on Mt. Carmel Road including the Exxon, 7 Eleven and Grauls. By way of example, fuel trucks already deliver to the Exxon. Likewise, trucks delivering products to Grauls would produce similar sounds and smells.

Application for Limited Exemption under BCC §32-4-106(b)(8)

Testifying for Royal Farms on the application for Limited Exemption was Eric McWilliams. In his employment with Boehler Engineering as a landscape architect, he prepared the development plans for presentation to the Development Review Committee (Pet. Ex. 35A and B). He also prepared the Application requesting the Limited Exemption (Pet. Ex. 36). He testified that he was familiar with the development review process in Baltimore County and the development policy manual. He was accepted as an expert in the Development regulations and in the preparation of limited exemption development plans.

As to the basis for requesting the limited exemption under BCC §32-4-106(b)(8) from community input meetings and from having a hearing officer's hearing for 'a minor development with less than three lots.' Mr. McWilliams testified that it is proposed that the Property be divided into two lots (one of which will have the Royal Farms.) If granted, he testified that a development plan is still required to be reviewed and approved by all the relevant County agencies.

Mr. McWilliams opined that it qualified under BCC §32-4-101(1) as a 'minor development' because it is a development without a 'public works agreement.' He presented the Development Review Committee approval letter for the limited exemption dated March 19, 2014 (Pet. Ex. 38).

Through cross examination of Mr. McWilliams, the Protestants questioned that the community input meeting and hearing officer's hearing on the development were the only opportunities for the interested public to become informed about the Plan and to ask questions. Mr. McWilliams disagreed and stated that, as per the Development Management Policy Manual (Pet. Ex. 40) the public hearing in the zoning case was adequate due process for the Protestants. He also mentioned that Royal Farms representatives did hold a meeting at the Hereford Fire Hall for interested parties.

The Protestants did not offer any expert testimony in regard to the request for limited exemption.

DECISION

By way of background, commercial-rural (CR) districts are superimposed by the County Council to areas where such facilities are not available within a reasonable distance; where sewerage treatment and potable water supply can be provided without adverse effect on the environment and neighboring uses; and where public roads are capable of handling the anticipated increase in traffic without adverse impacts on surrounding areas (BCZR §259.2.A.1). The County Council may assign a CR district to an area of commercial development beyond the Urban Rural Demarcation Line ('URDL') for which the CR district is recommended in the Master Plan (BCZR §259.2.A.2). The underlying zone upon which the CR district is superimposed by the Council may be B.L., B.M., B.R., or R-O. *Id.*

The CR district was created in 1975 to provide opportunities for convenience shopping and personal services that are customarily and frequently needed by the rural residential and

agricultural population and tourists (BCZR §259.2.A.1). One of the specific functions of the CR District is to control service stations and other commercial uses in rural areas (BCZR, §405.1.A).

The CR districts have special 'Use and Bulk Regulations' which makes them unique (BCZR §405.1.B). The County Council intended to regulate the location and appearance of fuel service stations as well as other uses developed on the same site in combination with the fuel service stations (BCZR §405.1.D). Accordingly, the fuel service station regulations found in §405 of the BCZR, and the CR District regulations as set forth in BCZR §259, must be viewed together and the applicable sections therein proven by the evidence presented.

In regard to the Property at issue here, the County Council applied the CR district onto the underlying BL (business-local) zoning. With that application, the County Council was aware that a fuel service station was a possible use which would be permitted by special exception, provided it met the specific performance standards, use regulations and other additional requirements.

The request in this case for a fuel service station in combination with a convenience store and carryout restaurant is sought under BCZR §405.2.B.2. As above, §405.2.B.2 is for a fuel service station on an individual site, which does not meet the requirements of BCZR §405.2.A, and is located on property outside the URDL, with a CR district designation, in a BL zone. Consequently, the request here must satisfy the special exception standards in BCZR §502.1 in addition to the bulk regulations and additional requirements.

In reviewing the evidence presented, the Board makes the following findings of facts and decisions with regard to each of the requirements §259 and §405 of the BCZR for a fuel service station in combination with a convenience store and carryout restaurant:

BCZR §259.3.C.1 – Bulk Regulations.

Under the category of 'Use Restrictions' in BCZR §259.3.C, there are specific 'Bulk regulations' to control the appearance of a building in a CR district. Under BCZR §259.3.C.1.a, the maximum gross floor area for all buildings on any lot cannot be more than 8,800 sq. ft. Under

BCZR §259.3.C.1.b, the floor area ratio (FAR) shall not exceed 0.20. Finally, under BCZR §259.3.C.1.c, the height of a proposed building cannot be more than 30 ft. The undisputed evidence presented by David Woessner, PE, on behalf of Royal Farms, was that the Royal Farms store would meet each of these requirements. Specifically, the store would be 5,125 sq. ft.; the FAR measured .05; and the height of the proposed store would be 27' 10". Accordingly, we find that the Bulk Regulations have been satisfied by the evidence presented. We note that there was no evidence to the contrary presented by the Protestants as to §259.3.C.1.

BCZR §259.3.C.2 – Setbacks.

Building setbacks are another 'Use restriction' for CR district. The front yard setback for any building must not be less than 15 feet from the street right-of-way-line and not more than the average of the setbacks of adjacent buildings (BCZR §259.3.C.2). The rear and side yard setbacks shall be not less than 15 feet. *Id.* We note that the original variance request for a front yard setback of 65.74 feet was dismissed by Royal Farms because the store meets the setbacks.

Indeed, the undisputed evidence presented by Mr. Woessner was that the maximum permissible front yard setback (based on the average of the adjoining properties) is 65.8 feet. In addition, the service station gas pumps will be 57 feet from Mt. Carmel Rd. which is within the required range of 15 to 65.8 feet. Based on this evidence, we find that the setback use restrictions have been met. There was no evidence presented by the Protestants in regard to BCZR §259.3.C.2. Therefore we find that §259.3.C.2 has been met.

BCZR §259.3.C.3 – Landscaping.

In addition to the requirements set forth in the Landscape Manual for commercial zones, CR districts have landscape standards which must be met (BCZR §259.3.C.3). Landscaping must envelope the entire front, side and rear setbacks. Additionally, a minimum of 7% of the parking lot must be pervious, with at least one tree per every eight parking spaces.

Mr. Woessner described that the proposed landscape buffer will be a 15 foot area enveloping the entire perimeter of the Property. This area will contain evergreen and other deciduous trees. He said that there will be 1 tree for every 8 parking spaces. To meet the 7% pervious surface requirement, the islands with the gas pumps will be landscaped. Mr. Woessner testimony was supported by the preliminary landscape plan (Pet. Ex. 6). As is customary with various aspects of development plans, both DEPS and SHA will review the landscaping plan before it is final.

The cross examination of Mr. Woessner on the landscaping factor focused on Lot 2 which is not where the Royal Farms will be located. As such, the Board did not find that such information was sufficient to counter the Petitioner's evidence on this issue. The Protestants did not have an expert testify about the proposed landscaping. Thus, we find that BCZR §259.3.C.3 has been satisfied.

BCZR §259.3.C.4 - Parking.

In reviewing the Revised Site Plan and as clarified by Mr. Woessner, we were informed that the required number of parking spaces for this combined use is 32 (Pet. Ex. 1). The number of proposed parking spaces for the Royal Farms is 32. There is also a requirement in 259.3.C.4 that the proposed parking be consistent with neighboring properties and there will be no more than 2 access locations. As is evident from the aerial photo of the neighborhood, parking spaces on neighboring properties are located in the front and on the sides of the buildings. The Site Plan shows that the proposed Royal Farms' parking will be located in the front and on the sides of the store.

Based on the evidence, we find that the proposed parking layout is consistent with the Exxon station and with other businesses along Mt. Carmel Road. In addition, other than the access onto the shared driveway between Lots 1 and 2, which the public will not use, the Site Plan shows only 1 access point onto Mt. Carmel Road.

We add that no evidence was produced by the Protestants that the number of proposed parking spaces or the proposed layout was anything other than as described by the Petitioner or as set forth on the Landscaping and Site Plans. As a result, we find that the requirements of BCZR §259.3.C.4 have been met.

BCZR §259.3.C.5 – Environmental Holding Capacity.

On the environmental holding capacity issue, Royal Farms had to prove that the proposed combined use will not overburden the private sewage disposal system or potable water supply, endanger reservoirs or create health or environmental nuisances for neighboring properties (BCZR §259.3.C.5). There was a good amount of testimony from both parties by way of lay witnesses and experts, on the effect that the proposed combined use would have on the potable water supply/wells in the neighborhood.

In support of the Royal Farms combined use, the Board heard the testimony from Paul Scott, a hydrogeologist, as outlined above. His opinion was that there would not be a net withdraw amount on neighboring wells, including the Grauls' wells. Mr. Scott's conclusion was that the Royal Farms would withdraw 1,200 gallons per day which would be recharged by rain water entering the ground. His other calculation was that the Royal Farms would use 0.83 gallons per minute (at best) which is below the State of Maryland yield of 1 gallon per minute.

The Protestants' hydrogeologist expert, Mr. Harvey Cohen, disagreed with Mr. Scott's testimony and concluded that the horizontal transmissivity is 15 feet per day rather than 800 feet per day which ultimately means more draw down on a well. He informed the Board that more draw down in a well may be an indication that more contaminants will be drawn towards the well.

There was no evidence that the proposed use would adversely affect the private sewer system. On the issue of the effect on potable water supply, the Ground Water Management section of DEPS requested by letter dated March 20, 2013, that Royal Farms evaluate the impact on groundwater supply on the adjacent Grauls' wells due to the operation of the SWM facilities and

the wells proposed on the Property. In addition, DEPS' Ground Water Management Section requested an estimation from Royal Farms of the necessary water yield from the new wells to meet anticipated demand for water on site.

In response to Ground Water Management/ DEPS's request, and to satisfy the requirement in §259.3.C.5, Mr. Scott prepared a Report of Hydrogeologic Evaluation dated June 21, 2013 (Pet. Ex. 29). According to Mr. Scott, his Report was reviewed and approved by DEPS. There was no evidence to contradict that fact. As a result, we find that as per §259.3.C.5, DEPS is satisfied that the land can support the proposed development without overburdening the required potable water supply, endangering reservoirs or creating a health or environmental nuisance for neighboring properties.

While §259.3.C.5 does not require anything more than proof of DEPS' approval, having heard the testimony and reviewed the evidence on this issue, we find that Mr. Scott's analysis to be more convincing than Mr. Cohen's. The well yield calculated by Mr. Scott of 0.83 gallons per minute is less than the State of Maryland well yield of 1 gallon per minute. Mr. Scott's explanation that the peak well withdraw for Royal Farms of 1,200 gallons per day is only less than 1 foot draw down on adjacent wells. We find credible his recharge analysis of 1,600 gallons per day which supports his conclusion that there would be no net withdraw amount. Given the proximity of the Grauls' wells to each other, we agree that the Grauls' wells are more likely to influence one another, than the ones proposed by Royal Farms.

Mr. Scott described the proposed septic system as one where the Best Available Technologies ("BAT") will be used. We find this to be significant in terms of protecting both health and the environment under §259.3.C.5. Royal Farms' selection of the most recent state-of-art BAT systems strengthens their position that there will be no adverse impacts onsite wells or offsite wells. There was no expert testimony by the Protestants to counter the BAT systems proposed.

We understand the Protestants' concerns about gas stations leaks, particularly in light of the Jacksonville Exxon leak. The evidence here was that the Grauls' wells were already contaminated with E.coli from fertilizers used in agriculture as well as MTBE from the Exxon station on Mt. Carmel Road. Patrick Meadowcroft testified that, after the leak from his Exxon tanks was discovered in 2009, he had to close down his business during June, July and August of that year until the leak was repaired (Prot. Ex. 72).

As a result of these past contaminations from both fertilizer and gas, Mr. Gaul has a legitimate concern that same could happen in the future. Mr. Gaul presented the Board with documents from 1981 and 1982 which evidenced several locations on his property where potential wells were drilled to find water. Some of those locations were dry (Prot. Ex. 76). He testified that his property sits below the Royal Farms and he believes that groundwater will drain from Royal Farms into his wells.

We find that the proposed double-walled Brine tank system and BAT sewage disposal system, along with the safety mechanisms in place as proposed here, outweigh the general concerns about future possibilities. As we see it, the Exxon station had a breach, corrected it and has been operating continuously since it was repaired in 2009. Despite the Exxon breach, Grauls also continued to operate. Royal Farms will employ the latest up-to-date technology to prevent future problems. Gas stations such as the Exxon with older technology would be at higher risk for another breach than a state-of-art service station.

In addition, we do not find convincing Mr. Cohen's argument that there is a potential for onsite fuel leaks because groundwater flows from the Property toward Grauls. He based his opinion on his review of topography maps but failed to consider that the topographical divide located on the Property which would direct the groundwater primarily to the north, not to the west. This is buttressed by DEPS' request for Royal Farms to relocate the septic fields onto the north side of the Property.

Further, Mr. Cohen's selection of two (2) sites in Hereford which he opined were better suited for the Royal Farms, was not persuasive. If the potential for contamination is the concern, each of these 2 alternate locations might also potentially contaminate the wells serving Hereford High School as well as nearby residential wells. Moreover, each of the alternative sites were located within a "SWAP" area, the very area which Mr. Cohen argued needed protection. We note that Mr. Cohen's 2004 Hereford study shows that there are many SWAP areas and non-community public water systems. The SWAP area which includes Grauls is not the only one.

We also find that the study conducted by Protestants' expert Markus Hilpert regarding small spills of gasoline at the pumps penetrating concrete and eventually entering groundwater, would be equally applicable to not only the Mt. Carmel Rd. Exxon, but to every gas station, particularly those which do not have the most up-to-date safety measures in place. While his academic study is theoretically interesting, it does not change the Board's view. We find that Royal Farms proposal for subsurface spill buckets and containment sumps would capture most, if not all, droplets of fuel which are spilled. We also do not think it is reasonable to deny a fuel service station on the basis of what consumers might, or might not do, when pumping gas.

BCZR §259.3.C.6 – Outside Storage.

Mr. Woessner testified that there would be no 'outside storage' at the Royal Farms. The Protestants did not present any evidence to the contrary. As a result, this factor is not applicable to this case.

BCZR §259.3.C.7 – Exterior Signs, Site Lighting and Accessory Structures.

A previously addressed *supra*, Royal Farms withdrew its variance request for a 33.08 sq. ft. wall-mounted enterprise sign in lieu of the permitted 8 sq. ft. sign. The current proposal is for a 6.64 sq. ft. enterprise sign which is permissible under the regulation (Pet. Ex. 1D and 1E). In addition, there is one (1) proposed freestanding enterprise sign which will be 24.5 sq. ft. in size and 20 feet in height. This free standing enterprise sign fits squarely within the permitted 25 ft.

high and 25 sq. ft. in size. *Id.* The evidence also showed that Royal Farms is proposing directional and service station canopy signs which comply with BCZR §450. There was no evidence presented by the Protestants that the number of signs or size of the signs would be anything other than as proposed by Royal Farms. As such, we find that the evidence satisfies the requirement of 259.3.C.7.a and b.

In Section 259.3.C.7.c, approval is specifically needed for any sign that is to be illuminated. Royal Farms made a separate request for the illumination of all proposed signs (freestanding, wall-mounted, directional and fuel canopy signs). The Board heard from several lay witnesses that the Grauls' signs, the Exxon signs and the First Baptist church have signs which are illuminated. In particular, Kirsten Burger testified that the Exxon station signs are illuminated 24 hours a day.

Given the location of the Royal Farms along a commercial corridor adjacent to other commercial uses which have illuminated signs advertising their businesses, we find that it is reasonable and consistent with the other neighborhood businesses that Royal Farms should be permitted to have its signs illuminated. Royal Farms has already reduced the size of its signs as well as the lettering, which, in turn, reduces the amount of light protruding from the same. The Protestants did not offer evidence that the illumination of signs was anything other than as described by Royal Farms. Thus, we find that §259.3.C.7.c has been satisfied.

BCZR §259.3.C.8 – Relationship to Surrounding Neighborhoods.

With regard to the relationship of the proposed Royal Farms to the surrounding neighborhood, this factor requires evidence that the proposed Royal Farms store will comply with the *Compatibility Standards* contained in BCZR §32-4-402. The Compatibility Standards have eight (8) separate requirements which must be met as set forth above.

BCC §32-4-402(a)(1) defines 'neighborhood' as limited to the existing buildings and land uses adjacent to and extending from the proposed development to 'a definable boundary such as a primary collector street or arterial street.' Based on the collective testimony and documents from

both parties, and in particular the Revised Site Plan (Pet. Ex. 1 A), aerial zoning map (Pet. Ex. 4) and neighborhood aerial photograph (Pet. Ex. 7), we find that the 'neighborhood' for the purpose of applying the compatibility standards includes I-83 to the west, the commercial zoning to the north and south and the rear property lines of properties bounding on York Rd. to the east.

In regard to the 8 Compatibility Standards, we make the following decisions based on the evidence presented:

32-4-402(d)(1) – The arrangement and orientation of the proposed buildings and site improvements are patterned in a similar manner to those in the neighborhood.

In reviewing the Revised Site Plan, as clarified by both Mr. Woessner, we find that the proposed Royal Farms store will be arranged and oriented like the other buildings in the neighborhood, including the Exxon such that it will face Mt. Carmel Road and will be located within the prescribed setbacks. We also find that the fuel canopies for both the Royal Farms and Exxon are similarly oriented.

In reviewing the elevation drawings for the proposed store and as clarified by William Mortorff, the project manager for the Royal Farms, we find that Royal Farms changed many of its prototype designs to create an appearance that was in keeping with a rural look. We note that the Planning Office approved of the drawings. Finally, there was no evidence presented by the Protestants that the arrangement and orientation of the buildings was not as described by the Petitioner. Accordingly, we find §32-4-402(d)(1) has been met.

32-4-402(d)(2) The building and parking lot layouts reinforce existing building and streetscape patterns and assure that the placement of buildings and parking lots have no adverse impact on the neighborhood.

We find that the evidence presented by Royal Farms in regard to the building and parking lot layouts was satisfied through Mr. Woessner's testimony, the Revised Site Plan (Pet. Ex. 1A) and Elevation Drawings (Pet. Ex. 19A-D). We also find that the proposed Royal Farms store and

on-site parking will not have any adverse impact on the defined 'neighborhood' under §32-4-402(d)(2). The evidence showed that the store meets the setback requirements and the parking will not only be buffered by the landscaping but will be located along the side and front of the store, consistent with the parking of other commercial businesses on Mt. Carmel Road.

In regard to Subsection (2), the Protestants did not offer any evidence to the contrary. Thus, we find §32-4-402(d)(2) has been met.

32-4-402(d)(3) The proposed streets are connected with the existing neighborhood road network wherever possible and the proposed sidewalks are located to support the functional patterns of the neighborhood.

Subsection (3) is not applicable here as there are no streets being proposed. There is only a private driveway connecting Lot 1 and 2.

32-4-402(d)(4) The open spaces of the proposed development reinforce the open space patterns of the neighborhood in form and siting and complement existing open space systems.

In reviewing the Revised Site Plan (Pet. Ex. 1A) and Landscaping Plan (Pet. Ex. 6), we find that the proposed open space patterns will be consistent and will complement the existing open space patterns in the neighborhood. Here, the evidence shows that Royal Farms is proposing more open space than the neighboring businesses. *Id.* The photographs of some of the existing businesses along Mt. Carmel Rd. reveal that open space is sparse at best (Pet. Ex. 7). §32-4-402(d)(4) has been met.

32-4-402(d)(5) - Locally significant features of the site such as distinctive buildings or vistas are integrated into the site design.

The evidence confirmed that there are no locally significant features on the Property such as distinctive buildings or vistas along Mt. Carmel Road. The Hereford Community Plan reinforces that any locally significant buildings are located along York Road, not Mt. Carmel Road (Pet. Ex. 8) (Prot. Ex. 14). Thus, Subsection (5) is not applicable.

32-4-402(d)(6) The proposed landscape design complements the neighborhood's landscape patterns and reinforces its functional qualities.

The testimony of Mr. Woessner indicated that there is no landscape pattern along Mt. Carmel Road. That fact notwithstanding, Royal Farms chose vegetation indigenous to the area and the landscape buffer will exceed what is required. In making this decision, we find it significant that Royal Farms is proposing to plant evergreen and deciduous trees. The proposed landscape envelopes the entire proposed use. The Protestants did not provide any evidence on this issue. We find that the elements of Subsection (6) have been met.

32-4-402(d)(7) - The exterior signs, site lighting and accessory structures support a uniform architectural theme and present a harmonious visual relationship with the surrounding neighborhood.

We heard the testimony of Randy Boice, PE in regard to the site lighting as he described not only the cut sheets for the proposed light fixtures (Pet. Exs. 24A, 24B, 24C, 24D and 24E), but the Lighting Plan (Pet. Ex. 22). We learned that the use will have street lights on free standing poles, wall lights, flood lights, canopy lights and lights over the entrance to the store. We find that there would be no adverse impact on neighboring properties particularly given that the lighting across the Property will be less than '1 foot candle.'

The proposed state-of-art LED lighting which projects the light downward (rather than up or out and off the site) will be consistent with neighboring properties. We note that the lighting plan was submitted and approved by Baltimore County. (Pet. Exs. 14 and 44).

As previously discussed in regard to BCZR 259.C.7.c, the Royal Farms signs are smaller than required under the BCZR and are consistent with other illuminated signs along Mt. Carmel Road (Pet. Ex. 1 D, 1E). Other than cross examining Mr. Boise, the Protestants did not offer expert testimony in regard to site lighting. Accordingly, Subsection (d)(7) is met.

32-4-402(d)(8) - The scale, proportions, massing, and detailing of the proposed buildings are in proportion to those existing in the neighborhood.

On the final Compatibility factor, we find that the proposed Royal Farms store is in proportion to the buildings in the existing neighborhood in terms of scale, proportion, massing and detailing under BCC §32-4-402(d)(8) (Pet. Ex. 19 A-D). The exterior resembles an old-fashioned country store detailed with neutral colors, a red copula on the roof, and brick and stone façade. *Id.* In regard to scale and proportion, the testimony we heard from Mr. Woessner was that the floor area ratio for the store is ¼ the size of the Grauls, Exxon and Village Plaza (Pet. Ex. 10). The Protestants did not offer evidence to contradict that fact. Consequently, we find Royal Farms satisfied Subsection (d)(8).

BCZR §259.3.C.9 – Auto Service Stations subject to BCZR §405.

BCZR §259.3.C.9 requires that all auto service stations are subject to BCZR §405. Section §405.2.B is applicable here and requires Royal Farms to prove each of the special exception factors set forth in BCZR, §502.1.

The Court of Appeals in *People's Counsel for Baltimore County v. Loyola*, 406 Md. 54, 62 (2008) affirmed the holding in *Schultz v. Pritts*, 291 Md. 1, 22-23 (1981), in analyzing each of the 502.1 factors in a special exception case and stated:

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

The Court in *Loyola* explained that the adverse effects are inherent in all conditional or special exception uses.

Applying the holdings in *Loyola* and *Schultz* here, this Board must determine whether there are any facts and circumstances that show that the fuel service station, in combination with a convenience store and carryout restaurant, at this Property, would have any adverse effects above

and beyond those inherently associated with a fuel service station in combination with a convenience store and carryout restaurant, irrespective of its location within the zone.

As we discussed *supra*, the County Council's application of the CR district to this Property is a strong indication that the Council considered certain inherent adverse effects that a fuel service station in combination with a convenience store and carryout restaurant, would have in that neighborhood (*Loyola* at 106). Despite knowing those adverse effects, the Council elected to apply the CR district to this Property located outside the URDL and served by well and septic.

Loyola and *Schultz* inform us that unless we find that there are specific facts or circumstances in this case which demonstrate that the adverse effects inherent in a fuel service station in combination with a convenience store and carryout restaurant are more adverse at this Property than the effects that are already inherent in a fuel service station in combination with a convenience store and carryout restaurant, we must grant the request for special exception.

A special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses which the legislature has determined can, *prima facie*, properly be allowed in a specified use district, absent any fact or circumstance in a particular case which would change its presumptive finding; and that the duties given the board are to judge whether the neighboring properties would be adversely affected, and whether the use in the particular case is in harmony with the general purpose and intent of the zoning plan (*Rockville Fuel v. Board of Appeals*, 257 Md. 183, 262 A.2d 499 (1970); *Oursler v. Board of Zoning Appeals*, 204 Md. 397, 104 A.2d 568 (1954); *Montgomery County v. Merlands Club*, 202 Md. 279, 96 A.2d 261 (1953)).

BCZR §502.1 A – Adverse Impact on Health, Safety or General Welfare of Locality.

Based on the evidence summarized above with regard to health, safety or general welfare of this locality, and without repeating all the evidence presented on this factor previously outlined,

we find that the proposed use of a fuel service station in combination with a convenience store and carryout restaurant does not pose any more adverse effects at this location than are normally inherent with this use.

In addressing whether a funeral home as a special exception use would adversely impact health, safety and/or welfare, the Court of Special Appeals in *Anderson v. Sawyer*, 23 Md. App. 612 (1974), the Court of Special Appeals, explained:

By defining a funeral home as an appropriate use by way of special exception, the legislature of Baltimore County has, in essence, declared that such uses, if they satisfy the other specific requirements of the ordinance, do promote the health, safety and general welfare of the community. As part of the comprehensive zoning plan this legislative declaration shares in a presumption of validity and correctness which the courts will honor.

Id. at 624.

The presumption that the general welfare is promoted by allowing funeral homes in a residential use district, notwithstanding their inherent depressing effects, cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses.....

Id. at 624-625.

Specifically, Royal Farms satisfied this factor through the testimony of David Woessner, James Wiedel, Thomas Ruszin, Randy Boice, Kenneth Schmid and Paul Scott who each contributed important evidence through testimony and documents as discussed above.

On the other hand, the Protestants' collective complaints in regard to how the Royal Farms would adversely affect their health, safety and welfare, were not unique to this Property but were universal to any fuel service station, convenience store and carryout restaurant. The common theme centered on the general concern for possible future leaks from the Royal Farms USTs into adjacent wells. The Protestants said this while showing support for the Exxon gas station which already had a tank breach contaminating the Grauls' wells. The theme of the Protestants case was that the Property was located in a rural area and that it should remain as a cornfield. Yet, the

evidence showed that farm fertilizer actually contaminated the Grauls' wells causing Grauls to incur the cost of digging new wells.

In *Anderson v. Sawyer, supra*, the Court of Special Appeals described these types of conclusions as "amount[ing] to nothing more than a generalized fear unsupported by facts or reasons. It does not constitute probative evidence on the question of adverse effect" (*Id.* at 622).

In *Deen v. Baltimore Gas and Electric Company*, 240 Md. 317, 330 (1965), the Court of Appeals in discussing the health, safety and welfare factor stated the following:

Appellants assert that it was error for the Board to fail to consider the future effects which the high tension wires would have on the health, safety and general welfare of the locality 'which could be reasonably anticipated in a normal course of its development'. This factor was without relevance in this case, because there was no evidence produced at the hearing which would show that the effect of high tension wires on the future health, safety and welfare of this area would be in any respect different than its effect on any other rural area. Section 502.1 implies that the effect on health, safety or general welfare must be in some sense unique or else a special exception could never be granted in such an area for the above ground location of high tension wires. The only evidence as to future conditions was testimony revealing the possibility of future development of this land. Such a possibility alone does not come close to showing any future deleterious effect upon the public health, safety or general welfare.

Similarly, in *Mayor & City Council of Baltimore v. Foster & Kleisner*, 46 Md. App. 163 (1980), the testimony by witnesses against a conditional use permit for a sign amounted to vague and unsupported fear that it might hinder efforts improve other areas in the same neighborhood. The *Foster* Court said in discussing the permitting of billboards by the City Council and the role of the Board in reviewing the case:

The City Council, by permitted billboards as a conditional use, has legislatively determined that, as a general rule, they do not menace or endanger the public health, safety, general welfare or morals within the area of that permitted use. The Board has a limited amount of discretion to deny the use if there is substantial evidence to show that, notwithstanding the underlying legislative conclusion, a particular structure would have such an effect. But it may not thwart the legislative will based upon unspecific and unsupported

protestations and concerns. In short, these conclusions have absolutely no evidentiary support and are therefore by law, arbitrary and capricious.

Id. at 171-172.

Harvey Cohen's opinion actually supported the Petitioner's case on health, safety and welfare in that the subsurface conditions for this Property were no worse than any other parts of Baltimore County. Mr. Cohen described all of Baltimore County as having "fractured bedrock aquifer." He said that most of the available water in Baltimore County is limited to the upper couple hundred feet where the fractures are located. He contrasted the Baltimore County aquifer with the "coastal plain aquifers" of Anne Arundel which are made of sheets of sand with sheets of clay in between, preventing water from flowing between them. Under *Loyola* and *Schultz*, this testimony only shows how this Property is similar to other properties in Baltimore County, not how this use, at this Property, makes the location more susceptible to adverse impacts. We also incorporate here our reasoning in regard to Mr. Cohen's theory that two (2) alternate sites under §259.3.C.5 – Environmental Holding Capacity are not better suited for this use.

BCZR §502.1 B – Congestion in Roads.

Royal Farms had Kenneth Schmid testify as to a decrease in traffic between 2007 and 2013 in the area of the Property according to SHA records. The Protestants did not have an expert testify about any traffic congestion on Mt. Carmel or surrounding roads. The Board did hear from lay witnesses as to their general concerns that a Royal Farms store may bring more traffic. Under *Anderson, supra*, the Court of Special Appeals noted that the opponents of a development project could not rely upon lay witness testimony to rebut the expert testimony of a traffic engineer provided by the developer (*Id.* at 618-619). Rather, the Protestants in *Anderson* needed to present their own traffic expert (*Id.*).

We also heard that although Mt. Carmel is a designated scenic-byway (the "Horses and Hounds" Scenic-Byway) this designation does not prohibit commercial development. To the

contrary, Terry Maxwell from SHA testified that Mt. Carmel Road was one of the most, if not the most, commercialized “scenic byways” in the State. Mr. Maxwell confirmed that fuel service stations are not prohibited from being located along scenic byways. SHA has no authority to prevent a commercial uses outside of Mt. Carmel Road which is a state road.

More importantly, Mr. Maxwell cleared up for the Board that Mr. Carmel Road does not have any of the other designations that a majority of the scenic byways possess such as: “Official Main Street,” “Heritage Area,” “Historic District,” or “Arts & Entertainment District.” Indeed, we learned that the purpose of the “scenic byways” designation is to direct the traffic onto Mt. Carmel Road and beyond to where commercial businesses are located, not to deter consumers from coming.

Based on the weight of evidence, we find that the proposed fuel service stations in combination with a convenience store and carryout restaurant will not create congestion on Mt. Carmel Road or on surrounding roads. We also find that the traffic generated by the Royal Farms is no more than any other convenience store/carryout restaurant.

BCZR §502.1 C – Potential Hazard from Fire, Panic or Other Danger.

We find that there was no evidence presented that this fuel service station in combination with a convenience store and carryout restaurant would generate additional or different type of hazard from fire, panic or other danger than would any other fuel service station in combination with a convenience store and carryout restaurant. Protestants’ generalized concern for possible danger of a gas tank leak does not rise to level of probative evidence that would warrant denial of a special exception (*Anderson supra*; *Deen, supra*).

The Protestants did not offer evidence to contradict David Woessner’s expert testimony that the site distances were adequate to allow access, or that the turning radius for emergency vehicles was anything other than adequate. Accordingly, we find that the Petitioner satisfied § 502.1.C.

BCZR §502.1 D – Overcrowding of Land and Undue Concentration of Population.

There was no evidence by the Protestants that the combined fuel service station, convenience store and carryout restaurant would overcrowd the land or cause an undue concentration of population. We find that the nature of a gas station and convenience store is for one-stop, quick shopping. Customers would not be at the Royal Farms for extended periods. This case does not involve residentially zoned property nor is it the type of use that would lend itself to a concentration in population like a shopping mall, concert venue or movie theater.

We find that on this factor, the proposed use, at this location as it is situated among existing businesses, would not cause overcrowding of the land or undue concentration of population and would certainly be no more adverse than any other location where a fuel service station in combination with a convenience store and carryout restaurant would be located. Thus, §502.1.D is satisfied.

BCZR §502.1 E – Interference with Schools, Parks, Water, Sewerage, transportation or other public requirements, conveniences and improvements.

Weighing the evidence as outlined above as presented by Paul Scott (water), David Woessner (schools/parks) and Kenneth Schmid (transportation) against the evidence presented by Protestants experts, Harvey Cohen and Marcus Hilpert, as well as the testimony for lay witnesses for the Protestants, we find that a fuel service station in combination with a convenience store and carryout restaurant at the Property will not interfere with schools, parks, or other public requirements, conveniences and improvements. We further find that any adverse effects on water, sewerage or transportation will be no worse than the inherent adverse effects of those systems by any other fuel service station, convenience store and carryout restaurant in any other area.

This special exception factor is repetitive of the requirements for *Environmental Holding Capacity* in BCZR §259.3C.5 in regard to whether the potential development will overburden the private sewage disposal system and potable water supply, endanger reservoirs or create a health or

environmental nuisance. As a result, to avoid repetition, we incorporate here our analysis of §259.3C.5 above in favor of the Royal Farms in §502.1.E.

BCZR §502.1 F – Interference with Light and Air.

This Property is currently a cornfield. The proposed Royal Farms store will be a 1½ story building measuring 27’10” in height which meets the maximum height restrictions of 30’ as set forth in BCZR §259.3.C.1. The building will not cause shadows or block air to any other neighboring building. There was no evidence presented by the Protestants that there would be any interference with light or air. Accordingly, we find that Royal Farms has satisfied §502.1 F.

BCZR §502.1 G – Inconsistent with the Purposes of Zoning Classification or Spirit and Intent of BCZR.

As we previously indicated in discussing the application by the County Council of the CR District to this Property, the requested special exception use of a fuel service station in combination with a convenience store and carryout restaurant is directly in line with the purposes of the CR District. As we indicated above, BCZR §405.1.A. informs that the County Council crafted the CR district in 1975 to “govern service stations and other commercial uses in rural areas.”

We agree with the Petitioner that even if the fuel service station were denied, the convenience store and carryout restaurant are permitted by right in a BL zone. The underlying zoning here is BL and the nature of the proposed use is commercial. As we have said, the Property is located among other commercial uses. Thus, the proposed use is consistent with the BL zone.

Relevant to our review of this factor is that there are no variances being requested. As such, the requests comply with the various requirements in the BCZR including setbacks and sign specifications. This would be consistent with the spirit and intent of the BCZR.

BCZR §502.1 H – Inconsistent with Impermeable Surface and Vegetative Retention provisions of BCZR.

With regard to impermeable surface and vegetative retention provisions, the Protestants did not offer any expert testimony to contradict David Woessner’s testimony that Royal Farms

will exceed the requirement that 7% of its parking lot be pervious. Since there are no wetlands on the Property and it is a cornfield, vegetative retention is not applicable here. Thus, on this issue, the weight of the evidence favors Royal Farms and we find that §502.1.H has been satisfied.

BCZR §502.1 I – Detrimental to the Environmental and Natural Resources of the Site and vicinity including forest, streams, aquifers or floodplains.

The evidence produced by Royal Farms through David Woessner was that there are no streams, forests, wetlands or steep slopes on the Property. Similarly, the Board heard from Eric McWilliams who said that the closest stream is 300-400 ft. from the Property, on the western side of I-83. We find that the introduction of SWM to the Property where there is none, will greatly benefit water runoff by treating it before it enters the stream. Protestants' witness, Theaux LeGardeur, had no expertise in SWM facilities. Paul Scott's testimony on the lack of draw down on the wells will not impact the aquifers in the area was credible and convincing.

Our analysis of the Protestants experts, Harvey Cohen on aquifers and Markus Hilpert on possible well contamination is also applicable to §502.1.I and is incorporated here. We find that it is important that DEPS did not indicate that there would be any adverse effect on environmental or natural resources of the site.

Accordingly, we find that there will be no adverse impact on the environmental or natural resources of the Property or the vicinity. Therefore, Subsection §502.1.I is satisfied.

BCZR §405.3 – Conditions for Disapproving of Special Exceptions for Fuel Service Station.

The Protestants argued that if we found that the Special Exception factors were satisfied as above, the Special Exception request should still be denied because they believe that there are 'abandoned gas stations' within ½ mile and 1 mile radius of the Property. As set forth in detail above, this evidence was presented by Lynne Jones, a historian on Hereford who resides in Parkton. She estimated that those 8 properties were within a 1 mile radius of the Property. She

confirmed that each of those 8 gas stations had been converted to other uses, including automotive service station, restaurant and a bank.

We reviewed the condition for disapproving a special exception in BCZR §405.3 as well as the reference in §405.3 to §405.7, which contains the definition of “abandoned fuel service station” (one which is not in actual continuous operation “as a gas station”), in conjunction with §405.7 and §405.8. Having reviewed these sections together, we disagree that the 8 converted gas stations should be considered ‘abandoned.’ We find that the Protestants are misconstruing the intent of §405.3 by taking certain terms out of context without considering all of §405.

First, the definition of “abandoned fuel service station” in §405.7. B, which is entitled ‘Notice of Presumption of Abandonment’ instructs that when an owner ceases or terminates the use of a property as a fuel service station, the owner must notify PAI within 30 days of termination. The reason for the notice is linked to the County Council’s finding in §405.7.A that when a fuel service station ceases doing business because it is not in actual and continuous operation, it could be left to deteriorate. On that point, the County Council used the phrase “continued vacancy” in §405.7.E.3 which we interpret, reflects the Council’s concern for the presence of gas pumps as well as the lack of maintenance of the property by the owner who ceases the gas station operation.

The “continued vacancy” concern is incorporated into §405.7.A which states that such deterioration can threaten the health, safety and welfare of the community, can have a ‘blighting influence’ on surrounding properties, and can cause a deterioration of the ‘use, value and enjoyment of property in the immediate neighborhood.’ In fact, these 3 concerns listed by the County Council in §405.7.A are the same factors which must be considered by the Zoning Commissioner (now referred to as the Administrative Law Judge) under §405.7.E when deciding whether an owner of a station must remove ‘all above ground structures, including paving, and removal or abandonment in place of underground tanks.’

In §405.7.E which is entitled “Proceedings to require removal”, it is clear from the express language employed by the County Council that there is a limited time period (90 days) for an owner of a station that is not in continuous operation, and where the gas station pumps and other equipment are still on the premises but dormant, to correct all deficiencies noted by PAI. In 405.7.E, the County Council intended for there to be a hearing in place where an Administrative Law Judge could order the removal of the fuel station equipment if need be, thereby preventing the blight and depreciation of the property.

However, what is missing from the Protestants’ argument is that the conversion of each of the 8 former fuel service stations to other businesses, is precisely what the County Council intended to accomplish when a gas station operation ceases. So even if 8 properties meet the definition of ‘*abandoned*’ (which we do not find here), Section 405.8 states that the purposes of §405.8 is to “promote the conversion of ‘*vacated*’ fuel service stations to other uses...” (Emphasis added). A converted gas station occupied by another business is not an ‘abandoned’ or ‘vacated gas station.’ When a station is ‘converted’, the special exception use as a fuel service station terminates at the time of conversion (§405.7.C). Additionally, if converted, the gas station equipment and structures, if necessary or appropriate to the new use, do not need to be removed. Indeed, the photographs confirm that the 8 converted businesses do not have any above ground equipment such as the gas pumps (Prot. Exs. 48 and 40).

We also emphasize that under 405.7.A, in order to be an ‘abandoned’ fuel service station, there must be proof that an owner “intentionally” ceased or terminated the use as a station. There was no proof by the Protestants here of ‘intent’ by any owner of the 8 gas stations to close or terminate. The only evidence presented were photographs and Ms. Jones description of former stations. It is only after ‘intent’ is found in 405.7.A, that the consecutive 12 month time period of ‘actual and continuous operation *as a station*’ comes into play. But even then, there was no evidence here by the Protestants that operation ceased for ‘12 consecutive months.’ These stations

could have ceased operating as a gas station for 1 month and then converted to another business. There was no evidence that any of these 8 stations failed to operate at least 8 hours a day, 5 days a week as required by §405.7.B. The transition from gas station to another business could have been less than 8 hours a day or less than 5 days a week. This Board is without evidence to make that factual determination. Ms. Jones' general recollection as to years of possible closure do not provide this Board with probative evidence on this issue.

We find, upon our review of the evidence and these Subsections, that the 8 stations were not 'abandoned.' In the case of, *In re: Seven Kids, LLC*, Case Nos.: 99-199-X, CBA-99-127 and CBA 99-128, this Board in discussing the definition of 'abandoned' previously said:

"Unfortunately, Section 405.3 does not set forth a valid definition of abandoned gas stations, and the Board does not feel that the three long-abandoned stations at this intersection of Harford and Fork Road, including the one abandoned at the proposed site, would qualify as abandoned stations within the meaning of Section 405.3."

In addition, we find that purpose of determining whether a station is 'abandoned' is to establish there is no 'need' for a proposed station. Reading these Subsections together, it is clear that the County Council did not want another new station to be placed in an area where 1 or more former stations were sitting dormant with gas pump equipment in place and deteriorating buildings and landscape. It does not follow, however, that a station converted to another business, would be a reason that a proposed station is not 'needed.' To argue that position, is to ignore the express language in §405.7 and §405.8.

Even if 1 or more of these 8 stations is found to be 'abandoned' under §405.3, there is an exception in that Subsection to the 'need' requirement, where evidence is produced rebutting the abandoned station with market data indicating there is a 'need.' Accordingly, in the alternative, this Board finds that there is a 'need' based on market data under §405.3 as presented by the Petitioner under BCZR 259.3.E.1 for the reasons as set forth below, which is incorporated into this section in its entirety.

BCZR §405.4 – Standards.

As set forth above, BCZR §405.4 lists specific standards for site layout, site dimensions, setbacks for fuel pumps, appearance, general design, landscaping, parking spaces, internal driveways and paved areas for a fuel service station. Some of these sections are repetitive of Use Restrictions applicable to the CR district generally as in BCZR §259.3, and repetitive of some sections of the Compatibility Standards in 32-4-402 referenced in §259.3.C.3.8. The uncontroverted testimony here by David Woessner, along with our review of the Revised Site Plan (Pet. Ex. 1A-1F), supports the Petitioner's position that all the regulations in §405.4 have been satisfied. On this issue, the Protestants did not present any expert testimony to contradict Mr. Woessner. Accordingly, we find §405.4 Standards have been satisfied.

BCZR §259.3.E - Additional Requirements for granting a Special Exception in CR District.

In addition to the §405 Regulations for Fuel Service Stations and special exception factors of BCZR 502.1 as well as the Use and Bulk regulations applicable to development in a CR District in §259, the County Council has imposed 5 additional requirements which must be met before a special exception use is permitted in a CR District.

BCZR §259.3.E.1 – 'Need' for the Development at the proposed location.

As set forth above, the Board heard a great deal of testimony from experts and lay persons for both parties in regard to whether a Royal Farms fuel service station in combination with a convenience store and carryout restaurant is 'needed' under BCZR 259.3.E.1. As per the discussion above of the condition in BCZR §405.3 that even if there is determined to be a fuel service station which has been identified as 'abandoned' as defined therein, that finding can be rebutted by market data evidencing 'need.' We find that such evidence of need was presented here.

The definition of 'need' was spelled out by the Court of Appeals in *Neuman v. Mayor and City County of Baltimore*, 251 Md. 92, 98-99 (1968). The Court of Appeals in *Neuman* said:

Need for the services of a physician likewise must be considered as elastic and relative. Clearly, it does not mean absolute necessity. Need has been judicially held to mean '**expedient, reasonably convenient and useful to the public**' * * * *. *Baltis v. Village of Westchester*, 3 Ill.2d 388, 121 N.E.2d 495, 503; *accord, Baltimore, City of v. C&P Telephone Co.*, 92 Md. 692, 700-701, 48 A. 465; *Illinois Bell Telephone Co. v. Fox*, 402 Ill. 617, 85 N.E.2d 43, 51. *

* * *

(Emphasis Added). Protestants' collective position was that the products and services sold by Royal Farms are already available in Hereford and therefore they are not needed. In other words, if the product or service already exists, Protestants believe that it is not 'needed.'

First, the *Neuman* definition of 'need' does not require absolute necessity. It is more liberal and requires only that the use be "expedient, reasonably convenient and useful." Second, both experts Joseph Cronyn and Richard Garretson agree that more fuel pumps are needed in Hereford based on market data that there was unmet demand for fuel in Hereford (T. 3/11/48, pp. 114-115).

Third, the duplication of services is not a criteria for determining whether a use is 'needed.' Not only does the *Neuman* definition defy that position but County Council Bill 103-88, which created the CR district, specifically deleted language that would have required the duplication of services to be considered as a factor (Pet. Ex. 32). Bill 103-88 reads in pertinent part:

THE PETITIONER SHALL DOCUMENT THE NEED FOR THE DEVELOPMENT AT THE PROPOSED LOCATION,; ~~THAT THE COMMERCIAL SERVICES PROPOSED ARE NOT DUPLICATED ELSEWHERE AND THAT THEREIS A POPULATION WITHIN THE TRADE AREA WITH ADEQUATE BUYING POWER TO SUPPORT THE PROPOSED FACILITY.~~

(Pet. Ex. 32). Thus, this Board does not consider 'duplication of services' or whether there is 'adequate buying power.' Having left in only the requirement of "document[ing] the need"

informs us that the County Council intended that this be the only requirement. As a result, this Board must apply the *Neuman* definition in determining ‘need’.

Prior to the decision in *Neuman*, the Court of Appeals in *Board of County Commissioners for Prince George’s County v. Luria*, 249 Md. 1 (1968), denied a special exception request for a fuel service station in Bladensburg because the evidence was that there were eleven (11) active stations within $\frac{3}{4}$ mile of the subject property and therefore there was no need for an additional one. On the same day that *Neuman* was decided, the Court of Appeals, in *Board of County Commissioners for Prince George’s County v. Lightman*, 251 Md. 86 (1968) denied a request for special exception for a 24 hour-a-day Crown fuel service station in Prince George’s County. The basis for the denial was that there were seven (7) active stations within 2,500 feet of the proposed location.

Similarly, in *American Oil Company v. Board of Appeals of Montgomery County*, 270 Md. 301 (1973), denied the request for a gas station on the basis that there were eight (8) existing gas stations within 3.4 miles of the subject property, two (2) of which were owned by American Oil Company (Amoco). The Amoco Court citing its decision in *Mayor & City Council of Baltimore v. Biermann*, 187 Md. 514, 523 (1947) said: “...we indicated that the number of filling stations in the vicinity was one of the factors to be considered in sustaining a denial of a special exception for a filling station...”

The Court in *Hoffman v. Mayor & City Council*, 51 A.2d 269, 271 and 273 (1947) the Court of Appeals denied an application for a gas station on Edmondson Avenue and Swann Avenue in Baltimore City because there were five (5) active gas stations within close proximity to the site and that “the number of filling stations in the area of the site of the proposed filing station has reached a saturation point.”

In their Post-Hearing Memorandum, Protestants cite our opinion in *In The Matter of The Application of Donald E. Warrener, Jr.*, Case No.: 99-73-SPHXA and argue that we found “no

need for a gas station based on one abandoned gas station within one-half mile, and a number of existing gas stations that were adequate to serve the needs of the rural community” (Prot. Post Hearing Memo. p. 48). In *Warrener*, a majority of two (2) members of this Board agreed to deny the request for special exception and special hearing for a fuel service station but granted the request to continue the service garage and existing used car sale operation.

However, we do not agree with the Protestants interpretation of our decision in *Warrener* for denying the requests. The evidence there was that there were nine (9) active gas stations within 3 to 7 miles of the site and 11 abandoned gas stations. In *Warrener*, there was no dispute as to the presence of one abandoned gas station which then generated additional testimony on ‘need’ to rebut that presumption. However, of the abandoned gas stations, we made clear in *Warrener* that that reason alone was not enough to justify the disapproval of a fuel service station:

Based on the totality of testimony taken, the Board finds that such a reason would not, in and of itself, be sufficient enough to let that factor discourage a profitable commodity being offered in the form of gas sales, particularly when Mr. Svec and Mr. Grevey testified that other suppliers were interested in such sales at the site and saw great opportunities. Additionally, based on a number of other cases which have involved the Board concerning the “need” issue for gasoline sales, the Board has observed that such stations thrive and prosper if the gasoline “need” factor is coupled with customer demand for early morning and late afternoon commuter sales, where additional, limited food/necessity items can be purchased while waiting for gas to be pumped.

To the contrary, our reason for denying the fuel service station request in *Warrener* was the number of *active* fuel service stations in and around the site, not the presence of one (1) abandoned fuel service station. In *Warrener*, we also said:

Of key analysis, however, was Mr. Sherwood’s report. While the Sherwood Report reflects a need for gasoline sales on Md. Route 439 to serve residents of this section of Northeast Baltimore County, and those who live east of I-83 and north of the White Hall area, as well as other MD 439 motorists between Harford County and I-83, the Board finds, as fact, that the number of current stations available are more than adequate to serve the needs of this rural community.

Id. p. 19.

After *Warrener* was decided in April of 2000, this Board heard *In re: Seven Kids, LLC*, Case No.: 99-199-X, which was a request for special exception approval for a Royal Farms store and fuel service station at Harford and Sunshine Avenue in Fork, Maryland in August of 2000. We denied those requests having found: (1) that there were 11 abandoned gas stations; and (2) because of environmental concerns of tank leaks due to the nature of the site sitting atop a topographical ridge and drainage divide which was at the center of a large fault running through the property from northwest to southeast. The expert testimony produced showed that as a result of the flow of groundwater through the drainage divide on the property and the evidence of active contamination of the wells of witnesses who testified, there was probably contamination of neighboring wells.

In *In re: Seven Kids, LLC*, Joseph Cronyn and Kenneth Schmid also testified on behalf of Royal Farms. Unlike this case, the Board there found that the traffic study by Mr. Schmid showed a decrease in the amount of traffic within a 1 year period. As for Mr. Cronyn's data in that case, it showed that the population increase over a 13 year period prior to and after the store opening would increase by only 81 people.

We find that the facts here are distinguishable from those in *In re: Seven Kids, LLC* as well as in the cases cited above. Here, there is one (1) active fuel service station – the Mt. Carmel Rd. Exxon – within a 4 mile radius of the Property. The Protestants urge us to consider the station on Middletown Road which is 4.3 miles from the Property. Even though it is only 3/10 of a mile outside of the 4 mile radius used by Mr. Cronyn, we find that the location of the Middletown Rd. station is in an entirely different neighborhood, to the north off I-83, and would not be 'convenient' (as that term is identified in *Neuman*) for the same patrons of the Mt. Carmel Exxon or Royal Farms.

As previously discussed, we do not find that the fuel service stations presented by Lynne Jones on behalf of the Protestants which were converted to other uses meet the definition of 'abandoned' under BCZR §405.3. In the event that any one or more of those station(s) presented by her are found to have satisfied that definition, we find that the market data supplied by Joseph Cronyn met the burden of proof necessary to overcome the presumption of 'abandonment' as set forth in BCZR §405.3. We find Mr. Cronyn's analysis that there is an abundant demand for fuel within the 4 mile trade area using the Bureau of Labor Statistics figures to be more compelling and believable than Richard Garretson's testimony. Mr. Garretson's analysis focused only on the supply side, rather than on demand.

Mr. Cronyn testified that the proposed fuel service station in combination with the convenience store and carryout restaurant met the *Neuman* definition of "expedient, reasonably convenient and useful" in that the use, in totality, permitted a new and unique kind of one-stop type of shopping in Hereford. On the issue of 'convenience,' the Board found credible the testimony of Mark Hochstein, a resident of Parkton, who testified that, although it is not convenient, he drives to Hunt Valley to buy gas because the Exxon prices are high. Similar testimony was evinced by Hereford Community Association while the Exxon is geographically convenient, the high prices cause patrons to purchase gas elsewhere. Even some of the witnesses for the Protestants testified that they do not buy fuel at the Mt. Carmel Rd. Exxon even though it is convenient because the prices are too high.

Based on our review of the evidence regarding the 'need' for a fuel service station, in combination with a convenience store and carryout restaurant, we find that the Petitioner has satisfied BCZR §259.3.E.1.

BCZR §259.3.E.2 – Existing Site Conditions.

This factor is repetitive of the Special Exception criteria in §502.1A, H and I. As a result, rather than repeating the same, we incorporate our analysis here. The Board heard uncontroverted

testimony by David Woessner that this cornfield has no proposed roads or slopes, or wetlands, or forests or floodplains or buffers or streams on the Property; it is a clean site. Accordingly, the proposed use will not result in undue site disturbance or excessive erosion or sediment loss. The evidence showed that the soil type has a high infiltration rate which will be maximized by the proposed state-of-the-art SWM facility. The evidence was undisputed that there currently is no storm water management facility. Based on the weight of the evidence, we find that 259.3.E.2 has been satisfied.

BCZR §259.3.E.3 – Architecturally/Historically Significant Buildings.

The evidence was undisputed that there are no architecturally/historically significant buildings on the Property. Therefore, there are no buildings to preserve or to integrate into the site plan. Consequently, we find that BCZR §259.3.E.3 has been satisfied.

BCZR §259.3.E.4 – Scenic View and Natural Features.

The evidence revealed that the site design leaves 40% of the Property as open space. David Woessner testified that there are no scenic views to preserve. We incorporated herein our analysis of BCZR §259.3.C.3 (Landscaping) above as relevant to preservation of views and features. We also incorporate our discussion herein of the Compatibility factors in BCC §32-4-402 and highlight the proposed rural design/country store appearance as it will be situated among evergreens and indigenous trees. As a result, we find that BCZR §259.3.E.4 has been satisfied.

BCZR §259.3.E.5 – Detrimental to Neighboring Uses as a Nuisance.

By its very nature, the Royal Farms, operating as a fuel station/convenience store/carryout restaurant, will produce some degree of noise, air pollution and light that is not presently existing in the cornfield. However, we find that those types of effects are no different than the ones generated by the Grauls and Exxon or other neighboring commercial businesses along Mt. Carmel Rd. We have already found, based upon our review of the evidence, that Mt. Carmel Rd. is a commercial corridor. It houses the SHA facility with incoming and outgoing trucks. Any

testimony by the Protestants that the Royal Farms would create more of a nuisance by keeping its lights on 24/7 in our view, ignores the constant lights shining from Grauls and Exxon. We incorporate herein our analysis of the Special Exception factors and we find that BCZR §259.3.E.5 has been satisfied.

BCC §32-4-106(b)(8) – Application for Limited Exemption.

The request for limited exemption from the development regulations was consolidated with the Petition for Special Hearing and Petition for Special Exception. As noted above, the Petitioner seeks a limited exemption under BCC §32-4-106(b)(8) from community input meetings and from having a hearing officer's hearing. The basis for this request as testified to by Petitioner's expert, Eric McWilliams, was that this was 'a minor development with less than 3 lots.' Mr. McWilliams testified that it is proposed that the Property be divided into 2-lots (1 of which will have the Royal Farms). If granted, he testified that a development plan is still required to be reviewed and approved by all the relevant County agencies.

We heard Mr. McWilliams' opinion that it qualified under BCC §32-4-101(1) as a 'minor development' because it is a development without a 'public works agreement.' We reviewed the Development Review Committee approval letter for the limited exemption dated March 19, 2014 (Pet. Ex. 38). We reviewed the Development Management Policy Manual (Pet. Ex. 40). There was no expert testimony produced by the Protestants to counter Mr. McWilliams testimony.

Based on the weight of evidence as well as our review of the BCC §32-4-101(1), we find it appropriate that the Petitioner is granted a limited exemption under BCC §32-4-106(b)(8).

ORDER

THEREFORE, IT IS THIS 20th day of October, 2015, by the Board of Appeals of Baltimore County,

ORDERED that the Petition for Special Hearing under BCZR§259.3.C.7 for approval of illuminated signage be and the same is hereby **APPROVED**; and it is further,

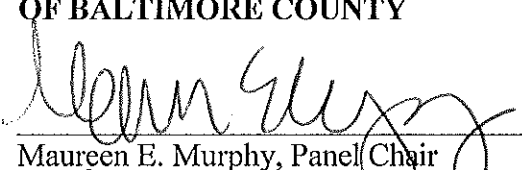
ORDERED that the Petition for Special Exception per BCZR §405.2.B.2, §405.4.E.1 and §405.4.E.10 to allow a fuel service station on an individual site and a convenience store having a sales area larger than 1,500 sq. ft. and a carry-out restaurant as uses in combination be, and the same is hereby **GRANTED**; and it is further,

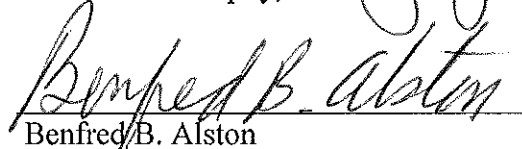
ORDERED that the Petition for Variance per BCZR §259.3.C.7 to permit a wall mounted enterprise sign of 33.08 sq. ft. in lieu of the permitted 8 sq. ft. which was previously withdrawn by the Petitioner, is hereby **DISMISSED**; and it is further,

ORDERED that the Petition for Variance to permit a front yard setback of 65.74 ft. in lieu of the maximum allowed 58 ft., if necessitated by the SHA widening of Mt. Carmel Road, which was previously withdrawn by the Petitioner, is hereby **DISMISSED**.

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

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Panel Chair


Benfred B. Alston

Richard A. Wisner was a Board member at the hearings and public deliberation. He was not reappointed to the Board and his term expired effective May 1, 2015.

APPENDIX A

ARTICLE 4. Special Regulations

SECTION 405. Fuel Service Stations

§ 405.1. Statement of legislative findings and policy.

A. Bill No. 40-1967 enacted six commercial districts (C.N.S., C.C.C., C.T., C.S.A., C.S.-1 and C.S.-2) and one industrial district (I.M.). One of the main purposes of the new commercial districts was to control the location of service stations and the uses associated with them. In 1975, the C.R. District was added to govern service stations and other commercial uses in rural areas.

B. While the C.T., C.C.C., C.R. and I.M. Districts have special use and bulk regulations which make each one unique, the remaining districts (C.N.S., C.S.A., C.S.-1 and C.S.-2) do not include provisions which make them distinct. As a consequence, the C.S.A., C.N.S., C.S.-1 and C.S.-2 Districts are consolidated into the automotive services (A.S.) District.

C. The design and operation of service stations has changed significantly and the provisions set forth in Bill No. 40-1967 no longer reflect contemporary business practices. Due to the rise of self-service stations, the number of businesses that "service" motor-vehicles by providing repair facilities has been steadily declining, while the number of stations with convenience stores or car wash operations has been increasing. To better reflect the evolving role of this use, the name of "automotive service station" is being changed to "fuel service station," and regulations which govern the permitted ancillary uses are being amended to reflect contemporary business practices and to facilitate the upgrading of existing stations.

D. It is the intent of this section to permit fuel service stations in accordance with the goals of the Master Plan and duly adopted community plans by requiring performance standards that will regulate their location and appearance as well as the additional uses which may be developed at such sites.

§ 405.2. Locations in which fuel service stations are permitted.

* * * *

B. Fuel service stations on individual sites which do not comply with the requirements of Section 405.2.A are permitted by special exception, as provided below and subject to Sections 405.3 and 405.4.

* * * *

2. Outside the URDL with C.R. District designation only in B.L., B.M. or B.R. Zones, subject to Section 259.3.B.2.

§ 405.3. Condition for disapproving special exception.

In addition to the findings required under Section 502.1, the Zoning Commissioner, prior to granting any special exception for a fuel service station, shall consider the presence of abandoned fuel service stations in the vicinity of the proposed site. A

finding by the Zoning Commissioner of the presence of one abandoned fuel service station, as defined in Section 405.7, within a one-half-mile radius, or two such stations within a one-mile radius of the proposed fuel service station establishes that there is no need for the proposed use, unless rebutted to the Zoning Commissioner's satisfaction by market data.

§ 405.4. Standards.

A. Site development.

1. Site dimensions. The area of any fuel service station site shall be no less than 15,000 square feet or 1,500 times the number of fuel service spaces (as defined in Section 101), whichever is greater. If any use permitted under Section 405.4.D or 405.4.E is added to the fuel service station, the area of the site shall be increased in accordance with the provisions of those sections.

2. Setbacks.

a. No main structure of a service station shall be set back less than 35 feet from any street right-of-way; no fuel pump shall be set back less than 25 feet from any street right-of-way; no canopy shall be set back less than 15 feet from any street right-of-way.

b. Except at the required access driveways, a landscape transition area shall be provided along the entire perimeter of fuel service stations. Such area shall have a minimum width of 10 feet if the fuel service station abuts a public right-of-way, and six feet in all side and rear yards abutting nonresidentially zoned land, except that service stations located within 50 feet of any residentially zoned property (other than a residential zone line in a public right-of-way) shall provide a buffer measuring no less than 15 feet from that property line.

c. The landscape transition area shall be vegetated and screened in accordance with the Landscape Manual requirements for automotive uses.

d. Other setbacks shall be as required by these regulations.

3. Access, internal circulation and vehicle reservoir capacity.

a. The number and location of access driveways shall be determined by the hearing officer or Zoning Commissioner based upon the recommendations of the Director of Public Works and the Department of Planning.

b. All internal paved areas of a fuel service station site used for parking, driveway, aisles and stacking purposes shall comply

with Section 409 and shall be laid out to preclude vehicles waiting on the street or blocking the right-of-way before gaining entrance.

c. In addition to the fuel service space, at least one stacking space shall be provided:

(1) For each pump island side, at pump islands that contain multiproduct dispensers (MPD) and where a bypass lane serves each MPD;

(2) For each MPD in cases where there is no bypass lane or where a convenience store is located on the same lot; or

(3) For each pump, if the pump dispenses a single fuel type.

d. Parking spaces on the site of any fuel service station shall be provided as follows:

(1) One space per employee on the largest shift.

(2) Three spaces per 1,000 square feet of gross floor area for a convenience store up to 1,500 square feet. (Convenience stores larger than 1,500 square feet shall be subject to the parking requirements for retail uses in accordance with Section 409, including the first 1,500 square feet).

(3) Three spaces per service bay, not counting service spaces in the bays.

(4) One space per self-service air or vacuum cleaner unit.

(5) One space per automatic teller machine.

B. All fuel service stations shall provide a rest room facility, water and compressed air for customers.

C. Appearance.

1. General design.

a. Any structure on the site that is converted to an ancillary use or to a use in combination with a fuel service station must be upgraded to create a unifying architectural theme with other structures on the site.

b. The rear and sides of buildings on lots abutting residentially zoned properties shall be finished with materials that in

texture and color resemble the front of the building. The type of facade treatment shall be indicated on the site plan or an accompanying elevation drawing and is subject to review by the Director of Planning.

c. Except for the temporary outdoor sale of items permitted under Section 230.1.A.9, the outside display of merchandise is permitted only under the canopy, or if there is no canopy, on or between the pump island or in an area immediately adjacent to the cashier's kiosk. Such goods may not block access drives, stacking spaces or interfere with the site's circulation pattern.

d. If the fuel service station is located within 50 feet of a residentially zoned property, lighting standards on site may not exceed a height of 18 feet and shall be directed away from any residentially zoned properties.

e. To increase compatibility with surrounding buildings or to enhance the attractiveness of the site of fuel service stations for which a special exception is required, the Zoning Commissioner may specify additional requirements, including:

- (1) Changes in building or site plan design;
- (2) Restrictions on hours of operations; or
- (3) Other requirements deemed necessary for compliance with this section.

2. Signs. Signs are permitted, subject to Section 450.

3. Maintenance. At all times, the premises shall be maintained in a clean and orderly condition. All landscaped areas shall be irrigated as needed and dead plants replaced. The responsibility for compliance with these provisions lies with all parties that individually or collectively have a lease or ownership interest in the fuel service station.

D. Ancillary uses. The uses listed below, only, are permitted by right in conjunction with any fuel service station. The minimum area of the site as determined under Section 405.4.A.1 shall be increased each ancillary use by at least the number of square feet indicated below, which includes land for required parking and stacking spaces:

* * * *

2. Convenience store with a sales area of up to 1,500 square feet inclusive of accessory storage. An additional site area of four times the square footage of the convenience store's sales area shall be provided.

3. Automatic teller machine, but no drive-through facilities. Additional site area of 1,000 square feet for each device shall be provided.
4. Self-service vacuum stations. All such stations shall be located at least 30 feet from a residentially zoned property. No additional site area is required.
5. Temporary outdoor sale of Christmas trees, firewood, cut flowers or live plants as limited by Section 230.1.A.9.
6. The sale of cigarettes, candy, drinks, snacks and similar items from vending machines or the cashier's kiosk. No additional site area is required if vending machines do not exceed a total of five machines, otherwise the area shall be considered a convenience store.
7. The retail sale of automotive service items such as motor oil, antifreeze or allied products. No additional site area is required.

E. Uses in combination with fuel service stations. The minimum area of the site as determined by Section 405.4.A.1 shall be increased for each use in combination with a fuel service station by at least the number of square feet indicated below:

Type of Use	Integral Planned Development	Individual Site
(SE = Special Exception and P = Permitted by Right)		
1. Convenience store with a sales area larger than 1,500 square feet inclusive of accessory storage. Additional site area of four times the square footage of the convenience store's sales area must be provided.	SE	SE
* * * *		
10. Restaurant, including fast food, fast food drive-through only, and carry-out restaurants. Additional site area of six times the gross square footage of the restaurant must be provided.	SE	SE

§ 405.7. Abandoned fuel service stations.

A. Finding. The County Council recognizes that at times the public need for fuel service stations at particular locations ceases, and those stations become abandoned. An abandoned fuel service station is one which, intentionally, is not in actual and continuous operation as defined in Section 405.7.B. The County Council further recognizes that an abandoned fuel service station which is left to deteriorate can become a threat to the health, safety and welfare of the community, can have

a blighting influence on surrounding properties and can cause a deterioration of the use, value and enjoyment of property in the immediate neighborhood.

B. Notice of presumption of abandonment. Whenever the owner or agent of any fuel service station has ceased or terminated the use of the premises as a fuel service station, the owner or agent shall notify the Director of Permits, Approvals and Inspections within 30 days after the termination. Notwithstanding the failure of the owner to notify the Director, any fuel service station which has not been in actual and continuous operation as a station for a period of 12 consecutive months shall be presumed to be abandoned and right to resume the use is thereby terminated. For purposes of this section, "continuous operation" shall mean operation as a fuel service station at least eight hours per day, five days per week.

C. Termination of special exception. Any special exception for the operation of a fuel service station shall become void upon notice of abandonment by the owner or upon proof of abandonment after notice and hearing pursuant to Section 500.7 of the zoning regulations. Any special exception for a fuel service station shall terminate at the time of the conversion to another use.

D. The premises (including landscaping) of any fuel service station which is not in continuous operation or which is abandoned shall be continuously maintained in the same manner as is required under these regulations for operating fuel service stations.

E. Proceedings to require removal.

1. Whenever it shall be determined by the Director of Permits, Approvals and Inspections that a fuel service station has not been in continuous operation and that the premises have not been continuously maintained, the Director shall issue a notice to the owner or agent to repair, correct or take other appropriate action to remedy the specific deficiencies enumerated in the notice.

2. If the deficiencies have not been corrected within a period of 90 days following the date of the notice, the Director of Permits, Approvals and Inspections shall refer the matter to the Zoning Commissioner for a hearing, pursuant to Section 500.7, to require removal.

3. If, after notice and hearing pursuant to Section 500.7 of the zoning regulations, it is determined that a fuel service station has not been in continuous operation and not continuously maintained and corrected according to prior notice, and if it is further found that by reason of the continued vacancy, the structure and grounds lack reasonable or adequate maintenance, thereby causing deterioration and blighting influence on nearby properties and thereby depreciating the enjoyment, use or value of the property in the immediate vicinity to such an extent that it is harmful to the public health, welfare, safety, comfort or convenience of the neighborhood in which the station is situated, the Zoning Commissioner shall order the station's removal. For purposes of the subsection, "removal" shall mean the removal by the owner of all aboveground structures,

including paving, and removal or abandonment in place of underground tanks in compliance with the provisions of COMAR 26.10.10.02 and § 33-7-103 of the Baltimore County Code.

§ 405.8. Conversions of abandoned stations.

One of the purposes of this subsection is to promote the conversion of vacated fuel service stations to other uses; therefore, if a fuel service station has been abandoned as such, but is converted to another use, no fuel service station structure, equipment or appurtenances necessary or appropriate to the new use need be removed.

SECTION 259. Districts.

BCZR §259 governs CR Districts. Specifically, §259.3 provides special regulations for CR Districts.

* * * *

B. Uses permitted by special exception.

1. Any use permitted by special exception in the underlying zone on which the C.R. District designation is applied and which meets the bulk regulations of Section 259.3.C.1 is permitted by special exception.
2. Any use permitted (by right or by special exception) within the C.R. District but which is not permitted in the underlying zone and which meets the bulk regulations of Section 259.3.C.1 is permitted by special exception, except that service stations and car wash operations are only permitted in a C.R. District with B.L., B.M. or B.R. as a base zone.
3. Buildings which exceed the requirements of Section 259.3.C.1 may be permitted by special exception only when the proposed development is in compliance with site design guidelines and performance standards which are part of a duly adopted Master Plan for the district.
4. In addition to the requirements generally imposed by Section 502.1, any use permitted by special exception in C.R. Districts shall meet the requirements of Subsection E below.

C. Use restrictions.

1. Bulk regulations.

- a. The gross floor area for all buildings on a lot shall not exceed 8,800 square feet, of which no more than 6,600 square feet shall be on the ground floor.
- b. The floor area ratio shall not exceed 0.20.
- c. Building height shall not exceed 30 feet.

2. Setbacks.

- a. The front yard setback shall be not less than 15 feet from the street right-of-way line and not more than the average of the setbacks of adjacent buildings.
- b. The rear and side yard setbacks shall be not less than 15 feet.

3. Landscaping. In addition to the requirements of the Landscape Manual for commercial zones, the following landscape standards shall apply to uses in C.R. Districts:

- a. The entire required front, side and rear setbacks shall be landscaped; and
- b. A minimum of 7% of the parking lot shall be pervious surface with a minimum of one tree per eight parking spaces provided.

4. Parking. Parking shall be located in a manner appropriate and consistent with adjoining development and must be located within the C.R. District. Access onto roadways shall be limited to no more than two locations. Except where physical constraints, site configuration or safety precludes compliance, parking must be accessible to the parking lots of adjacent nonresidential uses and zones.

5. Environmental holding capacity. The applicant shall prove to the satisfaction of the Director of the Department of Environmental Protection and Sustainability that the land can support the proposed development without overburdening the required private sewage disposal system and the potable water supply, endangering the metropolitan district reservoirs or creating a health or environmental nuisance for neighboring properties.

6. Outside storage. Outside storage of equipment and material shall be permitted only on the lot, subject to the following requirements:

- a. The storage area must be located to the side or rear of the building, outside of the required setbacks;
- b. The storage area shall not cover more than 15% of the lot, except as determined by the Zoning Commissioner in a special exception hearing; and
- c. The storage area shall be screened by a fence in association with plantings.

7. Signs and displays. Signs are permitted, subject to Section 450 and the following additional restrictions:

- a. Only one wall-mounted enterprise sign which does not project more than six inches from the building and does not have a surface area exceeding eight square feet is permitted.
- b. Only one freestanding enterprise sign with a surface area of no more than 25 square feet per side is permitted. The sign shall be integrated with the landscaping, and the location shall be approved by the Director of the Department of Planning.
- c. No sign shall be illuminated unless approved by the Zoning Commissioner after a hearing.
- d. Display of goods, vehicles and equipment is permitted in the front yard, but not more than five feet in front of the required front building line.

8. Relationship to surrounding neighborhoods. New buildings or additions shall be appropriate pursuant to § 32-4-402 of the Baltimore County Code.

9. Auto service stations are subject to the provisions of Section 405.

D. Procedure for obtaining plan approval in a C.R. District.

1. If a County Review Group (CRG) plan is required, the plan shall be approved prior to the granting of a special exception in a C.R. District.

2. When a special exception is required, the CRG shall also find that the proposed development satisfies the requirements of Subsection E below.

E. Additional requirements for the granting of a special exception in a C.R. District. In addition to the requirements generally imposed in the issuance of special exceptions by Section 502.1, the following requirements shall apply to the granting of special exceptions in C.R. Districts:

1. The petitioner shall document the need for the development at the proposed location.

2. The proposed development shall take into account existing and proposed roads, topography, existing vegetation, soil types and the configuration of the site. The proposed development will not disturb slopes with grades exceeding 25%; will minimize disturbance to vegetated areas, wetlands and streams; and will not result in undue site disturbance or

excessive erosion and sediment loss. Infiltration will be maximized and stormwater management discharge will be decentralized.

3. Architecturally or historically significant buildings and their settings shall be preserved and integrated into the site plan.

4. The buildings shall be sited to protect scenic views from public roads and so that the natural rural features, including but not limited to pastures, croplands, meadows and trees, are preserved to the extent possible. Additional open space may be required to preserve and enhance the enjoyment of the natural amenities and visual quality of the site.

5. The proposed development will not be detrimental to neighboring uses and the tranquility of the rural area through excessive noise and will not result in a nuisance or air pollution from dust, fumes, vapors, gases and odors.

Article 4. Special Regulations

Section 450. Signs.

Contained within BCZR, Article 4 Special Regulations and specifically Section 450, entitled "Signs" reads as follows:

§ 450.2. Organization and applicability.

A. Organization. The specific requirements for erecting and maintaining signs are set forth in Section 450.4. In the various zones or uses, a sign is permitted on the basis of its purpose, i.e., class, and form, i.e., structural type. All signs within the scope of Section 450 are subject to the general requirements in Section 450.6. Particular classes of signs are also subject to the special requirements in Section 450.7. Provisions relating to the administration of and compliance with these sign regulations are in Section 450.8.

B. Scope.

1. Unless otherwise provided, authority for erecting or maintaining a permanent or temporary on-premises sign or a permanent off-premises sign derives exclusively from Section 450.

2. The specific signage regulations for a district created pursuant to Section 259 are applicable to the extent that they impose more stringent requirements than Section 450.

3. Signs for a planned unit development are subject to the provisions of Section 450, unless specific signage provisions are modified pursuant to Section 430.

4. In the event of a conflict between Section 450 and Article 23 of the Baltimore County Code, the provisions of Article 23 shall control.

5. In the event of a conflict between Section 450 and the Annotated Code of Maryland, Transportation Article, Title 8, Subtitle 7, Regulation of Outdoor Advertising, the provisions of the Code shall govern signs visible from federal-aid primary highways.

6. All signs must comply with applicable provisions of the Baltimore County Building Code, except that Section 450 shall control to the extent that it imposes more stringent requirements.

C. Exemptions. The requirements of Section 450 do not apply to the following:

1. A "sign" not "visible" from any "highway" as each of these terms is defined in Section 450.3.

2. Merchandise displayed for customers and temporary signs incidental to the display of seasonal merchandise, provided that each sign has a maximum area of two square feet, six square feet for a garden center, a maximum height of 15 feet in OR-1, OR-2, O.T., S-E, B.L., B.M., B.R., M.R., M.L.R., M.L., M.H., C.B. and B.L.R. Zones and eight feet in any other zone, and is intended to provide information to customers on the premises provided it adheres to Section 450.6.A.

3. A sign consisting solely of words, symbols or characters not more than one inch in height.

4. A sign integral to accessory self-service machinery, including, but not limited to, gasoline pumps, automatic banking tellers, vending machines and newspaper boxes, if the sign does not display flashing, blinking, strobing or scrolling.

5. A sign identifying the owner or manufacturer of another sign to which it is attached or indicating licensure of another sign to which it is affixed.

* * * *

8. Except in the case of an enterprise or joint identification sign, a sign displaying a "street address," as that term is defined in Section 450.3, provided that the sign's copy is no more than four inches high in a residential zone and no more than eight inches high in a nonresidential zone, if the sign does not display flashing, blinking, strobing or scrolling.

9. An enterprise or joint identification sign consisting solely of a "street address," provided that the sign does not exceed the maximum area permitted for the sign's class in that zone, if the sign does not display flashing, blinking, strobing or scrolling.

10. The part of an enterprise or joint identification sign comprising the "street address," provided that it does not exceed 30% of the sign's area, if the sign does not display flashing, blinking, strobing or scrolling.

* * * *

12. A temporary window sign, if the sign does not display flashing, blinking, strobing or scrolling.

13. A seasonal display or decoration, for events such as national holidays, not advertising a product, service or activity.

* * * *

§ 450.4. Table of Sign Regulations.

The following table specifies the allowable combinations of sign classes and sign types, along with the use, permit, area, height and other pertinent limitations. Each column in the table has a Roman numeral heading, along with a corresponding summary title. The following descriptions of each summary title are incorporated into the table:

A. Class (I): The entries in this column identify and define the various categories of signs. Each sign must be categorized in a single class. For any sign that meets the definition of more than one class, the more restrictive class will control.

B. Structural Type (II): The entries in this column identify the various structural types of signs, as defined in Section 450.5, which may be used to display signs in a given class, subject to the limitations in the succeeding columns.

C. Zone or Use (III): The entries in this column establish the zone(s), e.g., B.M., B.R., etc., in which signs of the various class and structural type combinations may be displayed. In certain cases, a sign's permissibility is associated with a particular land use, e.g., farm market, in whichever zone(s) such use is otherwise permitted by the Zoning Regulations.

D. Permit Required (IV): The entries in this column indicate whether a specific permit is required for erection or maintenance of a sign. "None" indicates that a permit is not required, provided that the sign complies with all other applicable provisions of this section. "SE" indicates that each sign is permitted only as a special exception use authorized pursuant to Section 502 of the Zoning Regulations. "Use" indicates that a use permit for each sign must be obtained pursuant to Section 500.4 of the Zoning Regulations.

E. Maximum Area/Face (V): The entries in this column establish the maximum area, in square feet, or the formula for calculating the maximum area, permitted within the face of each sign in a given class, regardless of

structural type. Unless otherwise expressly stated, the maximum area is considered the limit for each sign face if more than one sign is permitted in Column VI. If double-faced signs are erected, only one face area is counted toward the maximum area allowed. For freestanding signs, the maximum area may be increased pursuant to Section 450.5.B.4.d.

F. Maximum No./Premises (VI): The entries in this column establish the maximum number of separate signs in a given class, or the formula for determining the maximum number, which may be displayed on a single premises. Unless otherwise provided, the maximum number of signs applies to any combination of signs included in each separate lettered paragraph under Column II. A double-faced sign is considered one sign. Where a sign is permitted on the basis of a building, frontage or vehicular entrance, the sign must be erected only upon the building or frontage, or at or near the vehicular entrance, for which it is permitted.

G. Maximum Height (VII): The entries in this column specify the maximum allowable height for freestanding signs only, subject to the additional limitation in Section 450.5.B.4.c.

H. Illumination (VIII): The entries in this column indicate whether a sign may be illuminated, subject to the requirements of Section 450.6.B.

I. Additional Limitations (IX): The entries in this column indicate additional limitations or identify cross-references to applicable sign provisions elsewhere in Section 450.

§ 450.5. Structural types of signs.

A. In general. The restrictions imposed by this section are intended to directly relate to the structural form in which a sign is erected or displayed. Type is determined by the general structural character of the sign. In addition to the general limitations imposed by the table in Section 450.4, the structural types defined below are subject to the specific limitations of this section.

B. Structural type definitions and restrictions.

* * * *

4. Freestanding sign: A sign that is maintained on a structural framework or supporting element, including a post or a pole, fixed in the ground, but is not attached to a building. Freestanding signs, except outdoor advertising and those that are temporary, are subject to the following:

a. Within a single premises, no freestanding sign may be erected within 100 feet of another freestanding sign having an area larger than eight square feet.

b. On the same side of a highway, no freestanding joint identification sign may be erected within 100 feet and no enterprise sign may be erected within 25 feet of a residential zone.

c. The maximum height of a freestanding sign may not exceed the height specified in Section 450.4.

d. The maximum area for any freestanding sign permitted in Section 450.4 may be increased relative to the setback from a right-of-way of the nearest highway on which a premises has frontage:

(1) Five percent if the setback is at least 10 feet.

(2) Ten percent if the setback is at least 20 feet.

(3) Fifteen percent if the setback is 50 feet or more from the right-of-way.

5. Integral sign: A sign comprising part of the face of a building by being carved or cast, as in stone, bronze or aluminum, or otherwise made or affixed as a permanent component of the building to display such information as building name, date of erection, commemorative citations or the like. An integral sign is not subject to the provisions of Section 450.8 pertaining to abandoned or nonconforming signs or abatement.

6. Projecting sign: A sign having its structural framework or supporting elements attached to a wall of a building with a face which is more than one foot from the wall at any point on the face or is not in a plane parallel to the wall. "Projecting sign" does not include wall-mounted, roof, canopy or awning signs. Projecting signs are subject to the following:

a. A projecting sign may not be higher than the lesser of:

(1) The height of the eaves, cornice or parapet at the top of the wall to which it is attached; or

(2) A height of 25 feet from the base of the wall below the sign, unless in the C.T. District of Towson, where the sign may extend to a height of 75 feet from the base of the wall below the sign.

b. Except for a sign permitted in the C.T. District of Towson under Section 450.4.5(p), a projecting sign may not extend horizontally more than four feet from the wall to which it is attached, except that a projecting sign may extend five feet and may have a maximum area up to 10% larger than would be permitted under Section 450.4 if the sign is:

(1) Attached to a building on a corner lot at an angle that approximately bisects the angle of the corner; and

(2) The only projecting sign on the building.

c. If a projecting sign extends over a sidewalk or walkway, no part of the sign may be closer than:

(1) One foot horizontally from the vertical plane of the nearest curb face; and

(2) Ten feet vertically from the nearest point on a sidewalk beneath the sign.

d. Except for a sign permitted in the C.T. District of Towson under Section 450.4.5(p), no part of a projecting sign may be closer than 10 feet to a side or rear lot line.

e. Except for a sign permitted in the C.T. District of Towson under Section 450.4.5(p), a projecting sign's structural framework or supporting elements may not be visible.

* * * *

8. Service station canopy: An open-sided structure, whether or not it is attached to a building or erected over fuel pumps or service islands at a fuel service station pursuant to Section 405 of these regulations. A "service station canopy" is not considered a canopy or a freestanding sign for purposes of this section. Service station canopy signs are subject to the following:

a. A sign may be erected upon a face of a service station canopy, provided that it does not project above, below or beyond either end of the face. Signs may be erected on or between, and attached to, structural columns which support the service station canopy.

b. Signs permitted on or under a service station canopy may not be erected elsewhere or combined with other signs permitted on the premises.

9. Wall-mounted sign: A sign painted on a wall of a building or structurally attached to a building wall in a plane parallel to the wall, including a sign erected upon a mansard, as defined in Section 450.3. Wall-mounted signs are subject to the following:

a. No part of a wall-mounted sign other than lighting fixtures may project more than 18 inches from the wall to which it is attached.

b. No part of a wall-mounted sign may extend above the eaves or parapet, whichever is higher, at the top of the wall to which it is attached, or be placed on the walls or screening enclosing elevator, air conditioning or similar utility mechanisms which project above the eaves or parapet.

c. No part of a sign erected on a mansard may extend more than four feet from its surface, project beyond the vertical plane of the fascia or eaves at the base of the mansard, or extend above the face or beyond either end of the face of the mansard.

10. Enterprise window sign: An enterprise sign mounted on the interior of an enclosed structure that is visible from the exterior of the structure. A sign applied or attached to the exterior of a window is considered to be a wall-mounted sign as covered by Section 450.5.B.9.

* * * *

§ 450.6. General sign requirements.

* * * *

B. Illumination. Illuminated signs are subject to the following:

1. The light emanating or reflecting from, or projecting onto, a sign shall be shaded, shielded or directed so that its intensity does not cause a glare or a similar adverse effect on neighboring, highways or parking areas.
2. Projected illumination must be reasonably confined to the face of the sign.
3. Except for that portion of a changeable copy sign displaying time or temperature, all elements illuminating a sign shall operate at a constant intensity so that no sign has the appearance of movement or of being illuminated by flashing, blinking, strobing, oscillating or alternating lights. The message display for changeable copy signs displaying time or temperature is restricted to date, time and temperature only.
4. A sign may be displayed with reflectorized surfacing if illumination is prohibited.

* * * *

Special Exception Factors – BCZR 502.1.

BCZR §502.1 outlines the conditions for determining whether a special exception should be granted:

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

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

Compatibility Factors – BCC 32-4-402.

BCZR §259.3C(8) requires a finding with compatibility standards in BCC § 32-4-402 which reads as follows:

(a) *“Neighborhood” defined.* In this section, “neighborhood” means the existing buildings and land uses adjacent to and extending from the proposed development to:

- (1) A definable boundary such as a primary collector street or arterial street;
- (2) An area with a significant change in character or land use; or
- (3) A major natural feature.

(b) *Exception.* This section does not apply to a research park.

(c) *Recommendations by Director of Planning.* The Director of Planning shall make compatibility recommendations to the Hearing Officer for:

- (1) A cluster subdivision;
- (2) A development in the RCC, R-O, OR-1, OR-2, O-3, SE, OT zones, the CR districts, or, except as provided for a development described in § 32-4-402, a Planned Unit Development; or
- (3) Alternative site design dwellings as provided in the comprehensive manual of development policies.

(d) *Compatibility objectives.* Subject to subsection (c) of this section, development of property shall be designed to achieve the following compatibility objectives in accordance with the guidelines in the comprehensive manual of development policies:

- (1) The arrangement and orientation of the proposed buildings and site improvements are patterned in a similar manner to those in the neighborhood;
- (2) The building and parking lot layouts reinforce existing building and streetscape patterns and assure that the placement of buildings and parking lots have no adverse impact on the neighborhood;
- (3) The proposed streets are connected with the existing neighborhood road network wherever possible and the proposed sidewalks are located to support the functional patterns of the neighborhood;

- (4) The open spaces of the proposed development reinforce the open space patterns of the neighborhood in form and siting and complement existing open space systems;
- (5) Locally significant features of the site such as distinctive buildings or vistas are integrated into the site design;
- (6) The proposed landscape design complements the neighborhood's landscape patterns and reinforces its functional qualities;
- (7) The exterior signs, site lighting and accessory structures support a uniform architectural theme and present a harmonious visual relationship with the surrounding neighborhood; and
- (8) The scale, proportions, massing, and detailing of the proposed buildings are in proportion to those existing in the neighborhood.

* * * *

Limited Exemption – BCC 32-4-106(b)(8).

A request for limited exemption from the development approval process § 32-4-106(b)(8).

LIMITED EXEMPTIONS.

* * * *

(b) *Exemption from community input meetings and Hearing Officer's hearing.* The following development is exempt from the community input meeting and the Hearing Officer's hearing under Subtitle 2 of this title:

* * * *

- (8) A minor development that does not exceed a total of three lots;



Board of Appeals of Baltimore County

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

October 20, 2015

David H. Karceski, Esquire
Christopher D. Mudd, Esquire
Venable, LLP
210 W. Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

Michael R. McCann, Esquire
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: *In the Matter of: Riverwatch, L.L.C. – Legal Owner*
Two Farms, Inc. – Contract Purchaser/Lessee
Case Nos.: 14-131-SPHXA and CBA-14-033

Dear Counsel:

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

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

Very truly yours,

A handwritten signature in cursive script, reading "Sunny Cannington", is written over a horizontal line.

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: See Attached Distribution List

Distribution List
October 20, 2015
Page 2

Riverwatch, LLC
John Kemp, President/Two Farms, Inc
Sparks-Glencoe Community Planning Council
Tom Graul
Ken Bullen, Jr.
Ruth Mascari
Joseph Cronyn
Ken Schmidt
Bill Mortorff
Jay Wiedel
Tom Ruszin
Kirsten Burger
Glenn Abbott and Barbara Burton Abbott
Ed Fishel
Russell Burton
Ken Stevenson
John Mays
Neil Tucker
Doug Schmidt
Janine Bryse
Cathy R. Tipper
Carrie Caittinger
Adam Collins
Lynne Jones
Barbara Ensor
Brian & Kelley Taylor
Cecil R. McMillion, PhD
Nedda Pray
Sharon Bailey
Laurie Deering
Jackie Brooks
Karen Goshaney
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law

Sharon Maben
Theresa DeGraw
Jonathan & Nancy Dinkins
Suzette Nozick
Ken Kuyawa
Winnie Dreier
Patricia Sweeney
Mary Schretlen
Lothan Weber
Irene Coan
Anthony & Catherine Nagy
Gloria Cameron/Monkton View Farm
Rena A. Olver
Harriet Iglehart/Carroll Branch Farm
Tracey Connell
Caroline Gittings
Joseph L. Evans
Tim and Hester Martin
Kenneth C. Bollinger, Jr.
Delmus Jackson
Linda Howard
Ed Chmar
Patricia S. Chilcoat
Karen Kinsey, Owner/Hereford Physical Therapy
Dean Yosue
Frank Weir
Patricia Bentz
Wendy S. McIver
David Woessner
Paul Scott
Jeff Bainbridge

KEVIN KAMENETZ
County Executive



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

February 28, 2014

David H. Karceski, Esquire
Justin Williams, Esquire
Venable, LLP
210 West Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

RECEIVED
FEB 28 2014

RE: **APPEAL TO BOARD OF APPEALS**
Case No. 2014-0131-SPHXA
Location: 118 Mount Carmel Road

BALTIMORE COUNTY
BOARD OF APPEALS

Dear Counsel:

Please be advised that an appeal of the above-referenced case was filed in this Office on February 27, 2014. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

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

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

Sincerely,

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

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:sln

c: Baltimore County Board of Appeals
People's Counsel for Baltimore County
Michael McCann, Esquire, 118 W. Pennsylvania Avenue, Towson, Maryland 21204

APPEAL

**Petitions for Special Hearing, Special Exception and Variance
(118 Mount Carmel Road)
7th Election District – 3rd Councilmanic District
Legal Owners: Riverwatch, LLC
Contract Purchaser/Lessee: Two Farms, Inc.
Case No. 2014-0131-SPHXA**

Petitions for Special Hearing, Special Exception and Variance (Amended)

Petitions for Special Hearing, and Special Exception and Variance (Old)

Zoning Description of Property

Notice of Zoning Hearing (January 9, 2014)

Certificate of Publication (The Jeffersonian – February 28, 2013)

Certificate of Posting (January 7, 2014) by Robert Black

Entry of Appearance by People's Counsel (December 19, 2013)

Petitioner(s) Sign-in Sheet – 1 Sheet (January 27, 2014)

Citizen(s) Sign-in Sheet – 1 Sheet (January 27, 2014)

Zoning Advisory Committee Comments

Petitioner(s) Exhibits

1. Site Plan (6 sheets)
2. Colorized 1st sheet of plan
3. Aerial photo
4. Hereford Community Association Letter
5. E. McWilliams Resume
6. Prelim. Lighting Plan
7. Truck turning plan
8. Schmid Resume
9. Cronyn Resume
10. Exhibit showing market area
11. Ruszin Resume
12. Proposed fuel system

Respondent(s) Exhibits

1. Sparks-Glencoe Position Statement

Miscellaneous (Not Marked as Exhibits) – Correspondence (E-mail)

Administrative Law Judge Order (GRANTED WITH CONDITIONS – January 29, 2014)

Notice of Appeal on Motion – [Appealing Special Hearing, Special Exception, and Variance] -
February 27, 2014 from Michael McCann, Esquire

JB 1/27/14

IN RE: PETITIONS FOR SPECIAL HEARING, *
SPECIAL EXCEPTION & VARIANCE *
(118 Mount Carmel Road) *
7th Election District *
3rd Councilmanic District *
Riverwatch, LLC, *Legal Owner* *
Two Farms, Inc., *
Contract Purchaser/Lessee *
Petitioners *

BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
Case No. 2014-0131-SPHXA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed by David H. Karceski, Esquire from Venable, LLP, on behalf of Riverwatch, LLC, the legal owner, and Two Farms, Inc., ("Petitioners").

The Petition for Special Hearing was filed pursuant to §259.3.C.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), for approval of illuminated signage. A Petition for Special Exception was filed pursuant to B.C.Z.R. §§ 405.2.B.2, 405.4.E.1, and 405.E.10 to allow a fuel service station on an individual site and a convenience store having a sales area larger than 1,500 square feet and a carry-out restaurant as uses in combination. Finally, a Petition for Variance was filed pursuant to B.C.Z.R. § 259.3.C.7 to permit a wall-mounted enterprise sign of 33.08 square feet in lieu of the permitted 8 square feet.

At the hearing, Petitioners' counsel submitted an amendment to the petition, seeking variance relief concerning a front yard setback, although this request was contingent upon the State Highway Administration's (SHA) widening of Mt. Carmel Road in front of the site. See Nash v. Board of Adjustment, 474 A.2d 241, 245-46 (N.J. 1984) (permissible to grant a variance premised upon the occurrence of a condition subsequent). Both the community and the

Petitioners are opposed to such highway widening. Kenneth Schmid, a traffic engineer accepted as an expert, testified he will meet with SHA officials and hopes to convince that agency that roadway widening is not necessary and/or appropriate in this case

Appearing at the public hearing in support of the requests was Jeff Bainbridge and Tom Ruszin. David H. Karceski, Esq. and Justin Williams, Esq. with Venable, LLP, appeared as counsel and represented the Petitioners. Several area residents attended the hearing, and for the most part they support the project. In addition, the Hereford Community Association submitted a letter expressing support for the plan. Petitioners' Exhibit 4. Kirsten Burger, on behalf of the Sparks-Glencoe Association, opposed the project and submitted a list of concerns marked as Protestant's Exhibit 1. The file reveals that the Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were submitted by several county agencies. The State Highway Administration (SHA) indicated the Petitioners must obtain an entrance permit. The Bureau of Development Plans Review (DPR) requested that Petitioners submit a landscape plan to (DPR) for review. Finally, the Department of Planning (DOP) supports the plan, provided certain conditions were imposed in the Order.

The subject property (identified on the plan as Lot 2) is approximately 2.5 acres in size and is zoned BL-CR. The site is unimproved, and the Petitioners propose to construct a Royal Farms Store with fuel service and a convenience store. Petitioners require several aspects of zoning relief to undertake the project, as discussed below.

SPECIAL HEARING

The Petition for Special Hearing seeks approval of illuminated signage. The property is located in a C.R. District (Commercial, Rural) and the relevant provision in the B.C.Z.R.

prohibits illuminated signs “unless approved by the Zoning Commissioner after a hearing.” B.C.Z.R. § 259.3.C.7.c. Other than the quoted language, the BCZR does not provide any guidance concerning what standards or requirements should be applied in determining whether to permit such signs.

Here the testimony established that all of the businesses in the immediate vicinity (including a grocery store, banks, and gasoline station) have illuminated signs. In addition, the Petitioners indicate that “dark sky friendly” lighting will be used, and a plan was submitted showing that there will be little or no spillage of light from the premises. Petitioners’ Ex. 6. As such, the special hearing relief seems appropriate in these circumstances.

SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The court in Schultz described the applicable test in this fashion:

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

Schultz, 291 Md. at 22-23.

Maryland’s highest court has recognized that most uses for which a special exception is required are regarded as “potentially troublesome because of noise, traffic, congestion....” Montgomery County v. Butler, 417 Md. 271, 297 (2010).

As noted at the outset, Ms. Burger submitted a list of concerns with the project, including the potential for environmental degradation and leakage of fuel from an underground storage tank. Of course, these are valid concerns, and many witnesses spoke about the Jacksonville

gasoline leak. While no one could in good faith guarantee that a leak would never occur, I found the testimony of Jay Wiedel--whose company will be manufacturing and supplying the tanks--and Thomas Ruszin--a Royal Farms employee with certification from the Maryland Department of the Environment--to be quite convincing. Each described the safeguards and procedures employed to prevent such an incident from occurring, and the fuel storage and monitoring system to be installed here will be state of the art. Such a concern would exist in connection with any fuel service station, and under Schultz this cannot serve as the basis to deny the special exception.

Ms. Burger also testified that the proposal appears to conflict with the Hereford Community Plan, which in 1991 was incorporated into the County Master Plan. She indicated that the plan is "controlling" (Protestants' Ex. 1, at p. 2) in this case, which is not entirely correct. Under Maryland law, master plans are, unless stated to the contrary in a statute, advisory in nature. City of Rockville v. Rylyns Enter., Inc., 372 Md. 514, 530 (2002). In development hearings, the Master Plan is in fact binding, pursuant to BCC § 32-4-102. HNS Develop., LLC v. People's Counsel, 425 Md. 426 (2012). But no such provision exists for zoning cases. Even so, the testimony in this case established that the proposal is in fact consistent with the Hereford plan, which identifies the site as appropriate for commercial uses.

VARIANCES

Based upon the testimony and evidence presented, I will also grant the request for variance relief. To obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

The Petitioners have met this test. Eric McWilliams, a landscape architect, testified the site is irregularly shaped, and noted the store will be set back over 150 feet from Mt Carmel Road to preserve the bucolic nature of the Scenic Byway. Thus, the property is unique.

If the B.C.Z.R. were strictly enforced, the Petitioners would suffer a practical difficulty, since they would be unable to install a sign of sufficient size to be seen by passing motorists. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the special hearing, special exception and variance relief requested shall be granted.

THEREFORE, IT IS ORDERED this 29th day of January, 2014, by this Administrative Law Judge, that Petitioners' request for Special Hearing filed pursuant to § 259.3.C.7.c of the Baltimore County Zoning Regulations ("B.C.Z.R."), for approval of illuminated signage, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' request for Special Exception filed pursuant to B.C.Z.R. §§ 405.2.B.2, 405.4.E.1, and 405.E.10 to allow a fuel service station on an individual site and a convenience store having a sales area larger than 1,500 square feet and a carry-out restaurant as uses in combination, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' request for Variance to permit a wall-mounted enterprise sign of 33.08 square feet in lieu of the permitted 8 square feet, be and is hereby GRANTED.

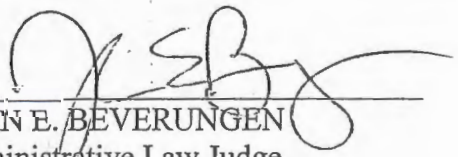
IT IS FURTHER ORDERED that Petitioners' request for Variance to permit a front yard

setback of 65.74 feet in lieu of the maximum allowed 58 feet, if necessitated by the SHA widening of Mt. Carmel Road, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioners must comply with the ZAC comment of DEPS, dated January 10, 2014.
3. Petitioners must submit for approval by Baltimore County's landscape architect lighting and landscape plans.
4. Petitioners must satisfy the conditions set forth in the DOP ZAC comment dated January 24, 2014.
5. The special exception granted herein must be utilized within two years of the date hereof, unless extended by subsequent order.

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:slm

CHECKLIST

<u>Comment Received</u>	<u>Department</u>	<u>Support/Oppose/ Conditions/ Comments/ No Comment</u>
-------------------------	-------------------	---

12/20/13

 DEVELOPMENT PLANS REVIEW
 (if not received, date e-mail sent _____)

C

 DEPS
 (if not received, date e-mail sent _____)

FIRE DEPARTMENT

 PLANNING
 (if not received, date e-mail sent _____)

12/19/13

STATE HIGHWAY ADMINISTRATION

C

TRAFFIC ENGINEERING

COMMUNITY ASSOCIATION

ADJACENT PROPERTY OWNERS

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT

Date:

1/9/14

SIGN POSTING

Date:

1/7/14

by

Black

PEOPLE'S COUNSEL APPEARANCE

Yes

☒

No

☐

PEOPLE'S COUNSEL COMMENT LETTER

Yes

☐

No

☐

Comments, if any: _____

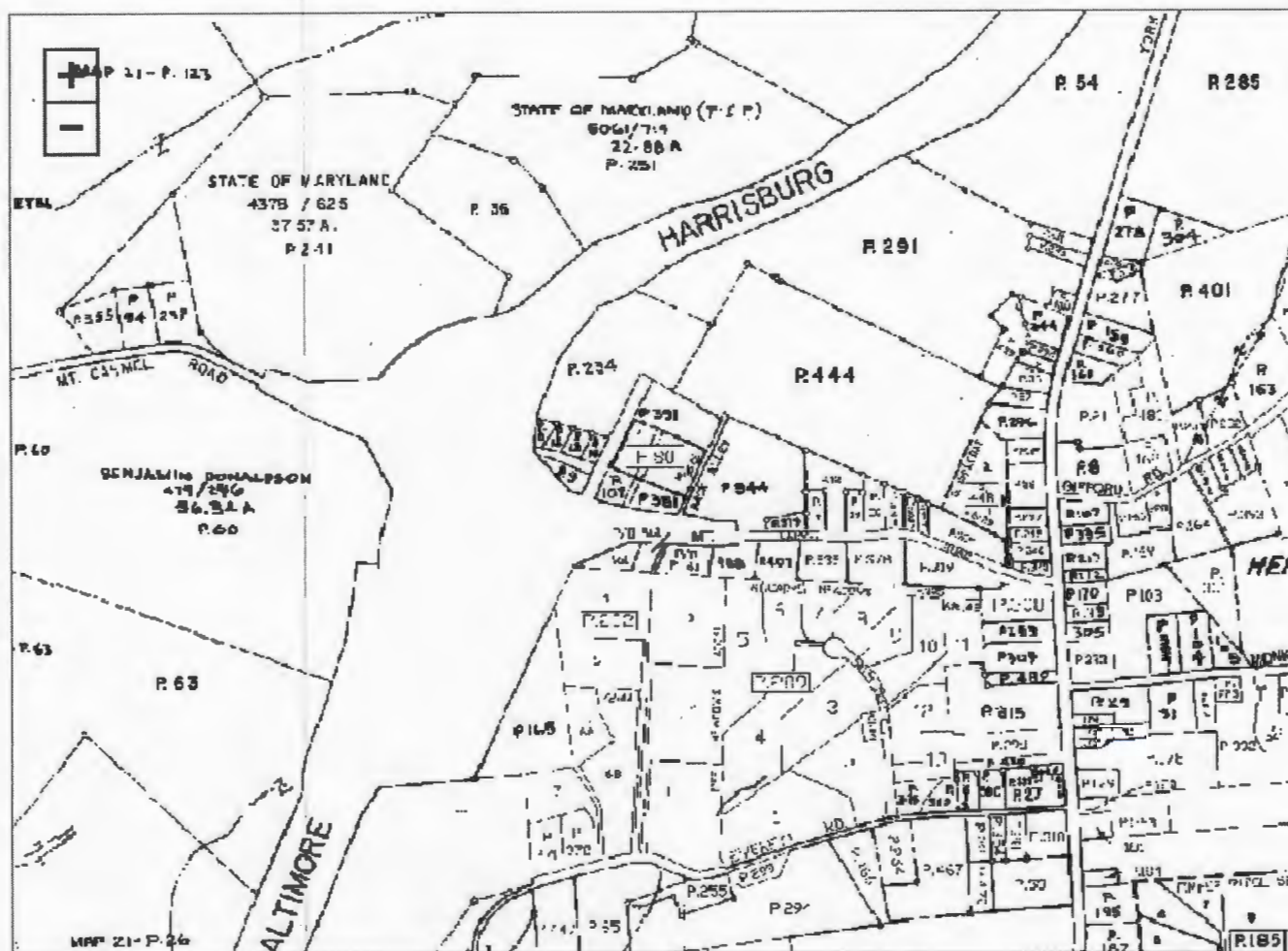
Real Property Data Search (w1)

[Search Help](#)

Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Account Identifier:	District - 07 Account Number - 0702086075	
Owner Information		
Owner Name:	RIVERWATCH LLC	Use: COMMERCIAL
	C/O BURTON MANAGEMENT INC	Principal Residence: NO
Mailing Address:	3731 ABINGDON BEACH RD	Deed Reference: 1) /14203/ 00679
	ABINGDON MD 21009-1332	2)
Location & Structure Information		
Premises Address:	MT CARMEL RD 0-0000	Legal Description: 5.4438 AC NS MT CARMEL RD 250 W YORK RD
Map:	Grid:	Parcel:
0022	0014	0344
Sub District:	Subdivision:	Section:
	0000	
Block:	Lot:	Assessment Year:
		2013
Plat No:	Plat Ref:	
		NONE
Special Tax Areas:	Town:	
	Ad Valorem:	
	Tax Class:	
Primary Structure Built	Above Grade Enclosed Area	Finished Basement Area
		5.4400 AC
County Use		06
Stories	Basement	Type
		Exterior
		Full/Half Bath
		Garage
		Last Major Renovation
Value Information		
	Base Value	Value
		As of
		01/01/2013
Land:	138,800	138,800
Improvements	0	0
Total:	138,800	138,800
Preferential Land:	0	0
		Phase-in Assessments
		As of
		07/01/2013
		As of
		07/01/2014
Transfer Information		
Seller: ABBOTT BARBARA D	Date: 12/14/1999	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /14203/ 00679	Deed2:
Seller: BURTON BETTY D	Date: 01/19/1988	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /07772/ 00568	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	07/01/2013
County:	000	0.00
State:	000	0.00
Municipal:	000	0.00 0.00
Tax Exempt:	Special Tax Recapture:	07/01/2014
Exempt Class:	NONE	0.00 0.00
Homestead Application Information		
Homestead Application Status: No Application		

Baltimore County

New Search (<http://sdat.resiusa.org/RealProperty>)District: **07** Account Number: **0702086075**

The information shown on this map has been compiled from deed descriptions and plats and is not a property survey. The map should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning Mapping, 301 W. Preston Street, Baltimore MD 21201.

If a plat for a property is needed, contact the local Land Records office where the property is located. Plats are also available online through the Maryland State Archives at www.plats.net (<http://www.plats.net>).

Property maps provided courtesy of the Maryland Department of Planning ©2011.

For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us/OurProducts/OurProducts.shtml (<http://www.mdp.state.md.us/OurProducts/OurProducts.shtml>).



(<http://imsweb05.mdp.state.md.us/website/mosp/>)

☒ Loading... Please Wait.

Loading... Please Wait.

→

Real Property Data Search (w1)

[Search Help](#)

Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Account Identifier:	District - 07 Account Number - 0716000620	
Owner Information		
Owner Name:	RIVERWATCH LLC	Use: COMMERCIAL
Mailing Address:	3731 ABINGDON BEACH RD ABINGDON MD 21009-1332	Principal Residence: NO Deed Reference: 1) /12927/ 00270 2)
Location & Structure Information		
Premises Address:	118 MT CARMEL RD PARKTON MD 21120-9723	Legal Description: .482 AC 118 MT CARMEL RD 1300 W YORK RD
Map: 0022	Grid: 0014	Parcel: 0379
Sub District:	Subdivision: 0000	Section:
Block:	Lot:	Assessment Year: 2013
Plat No:	Plat Ref:	Town: NONE
Special Tax Areas:		
Ad Valorem:		
Tax Class:		
Primary Structure Built	Above Grade Enclosed Area	Finished Basement Area
		Property Land Area 20,995 SF
County Use 06		
Stories	Basement	Type
Exterior	Full/Half Bath	Garage
Last Major Renovation		
Value Information		
	Base Value	Value
		Phase-in Assessments
		As of
		As of
Land:	102,400	102,400
Improvements	0	0
Total:	102,400	102,400
Preferential Land:	0	0
Transfer Information		
Seller: PARLETTE LOUISE N	Date: 06/10/1998	Price: \$110,000
Type: NON-ARMS LENGTH OTHER	Deed1: /12927/ 00270	Deed2:
Seller: MILLER THOMPSON B	Date: 05/08/1963	Price: \$11,500
Type: ARMS LENGTH IMPROVED	Deed1: /04138/ 00549	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	07/01/2013
County:	000	0.00
State:	000	0.00
Municipal:	000	0.00 0.00
Tax Exempt:	Special Tax Recapture:	0.00 0.00
Exempt Class:	NONE	
Homestead Application Information		
Homestead Application Status: No Application		

New Search (<http://sdat.resiusa.org/RealProperty>)

Order the **TAX MAP** [click here...](#)

(<http://imsweb05.mdp.state.md.us/website/mosp/>)

Loading... Please Wait.

Debra Wiley - Royal Farm Store, Mt Carmel Road, ZAC-2014-131

From: Lynn Lanham
To: Beverungen, John; Nuffer, Sherry; Wiley, Debra
Date: 1/24/2014 4:41 PM
Subject: Royal Farm Store, Mt Carmel Road, ZAC-2014-131
CC: Bialek, Jessie; Richards, Carl; Zimmerman, Peter
Attachments: 201401241625.pdf

All,
Sorry for the delayed comments. The applicant made revisions to the architecture, sign design and plan to address DOP concerns. Please see attached comments.

Lynn Lanham
Chief, Development Review
mlanham@baltimorecountymd.gov
410-887-3480
410-887-5862 Fax
Baltimore County Department of Planning
105 W. Chesapeake Ave.
Suite 101
Towson, MD 21204

John -

Per Lynn, this was deliv.
on Fri. & put under the door.

She advised that Karoski has
been provided a copy.

De



KEVIN KAMENETZ
County Executive

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

January 23, 2014

Riverwatch LLC
Harold F. Burton
C/O Burton Management LLC
3731 Abingdon Beach Road
Abingdon MD 21009

RE: Case Number: 2014-0131SPHX, Address: 118 Mount Carmel Road

Dear Mr. Burton:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on December 6, 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
Two Farms, Inc., John Kemp, 3611 Roland Avenue, Baltimore MD 21211
David H. Karceski, Esquire, 210 W Pennsylvania Avenue, Suite 500, Towson MD 21204

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



James T. Smith, Jr., Secretary
Melinda B. Peters, Administrator

Date: 12/19/13

Ms. Kristen Lewis
Baltimore County Department of
Permits, Approvals and Inspections
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County

Item No. 2014-0131-SPHXA

Special Hearing Special
Exception Variance

Riverwatch, LLC

Two Farms Inc. / Royal Farms Store
118 Mount Carmel Road. #185

Dear Ms. Lewis:

A We have reviewed the site plan to accompany petition for variance on the subject of the above captioned, which was received on 12/16/13. A field inspection and internal review reveals that an entrance onto MD 137 consistent with current State Highway Administration guidelines is required. As a condition of approval for Variance, Case Number 2014-0131SPHXA the applicant must contact the State Highway Administration to obtain an entrance permit.

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

Sincerely,

Steven D. Foster, Chief/
Development Manager
Access Management Division

SDF/raz

cc: Mr. Michael Pasquariello, Utility Engineer, SHA w/p plan
Mr. David Peake, District Engineer, SHA w/p plan
Two Farms Inc. / 3611 Roland Avenue, Baltimore, MD 21211

** SHA requires six(6) copies of a Traffic Impact Study for review.*

My telephone number/toll-free number is _____
Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: December 20, 2013

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

SUBJECT: Zoning Advisory Committee Meeting
For December 23, 2013
Item No. 2014-0131

The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment.

Submit separate landscape plan to this office for review.

DAK: CEN.

Cc: file.

ZAC-ITEM NO 14-0131-12232013.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: January 24, 2014

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: 118 Mount Carmel Road

INFORMATION:

Item Number: 14-131

Petitioner: Riverwatch, LLC

Zoning: BL-CR

Requested Action: Special Exception, Special Hearing, and Variance

SUMMARY OF RECOMMENDATIONS:

The Department of Planning has reviewed the petitioner's request and accompanying site plan.

The Department of Planning does not oppose the petitioner's request for special exception, special hearing, and variance. The subject property was re-zoned from a split zoned BL and BL-CR parcel to a parcel that is entirely zoned BL-CR during the 2012 Comprehensive Zoning Map Process (CZMP). At that time the intent was that the site would be used in a commercial capacity. To date and consistent with the subject petition, the intent has not changed.

Mount Carmel Road is a Maryland Scenic Byway ("Horses and Hounds") designated in Master Plan 2020. The roadside character in this area is a mix of scattered commercial with large parking lots, office, residential and residential/office. The consistent green buffer on this side of the road is an element that has been enhanced by a recent plan revision to set the parking back further from the road providing a 20' buffer. The applicant proposes LED lighting which will reduce or eliminate lighting spillover and glare. The applicant has also revised the proposed sign to be ground mounted with a brick base.

The Department of Planning has reviewed concept architectural elevations and renderings that have been revised to reflect a more rural style with earth tone colors and brick and stone materials.

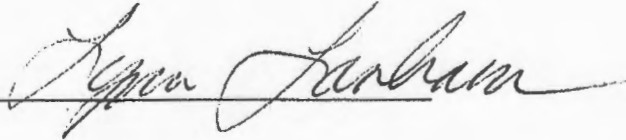
The Department of Planning recommends approval subject to the following conditions:

1. Submit final architectural elevations for review and approval at the time of building permit.
2. Submit a lighting plan for review and approval to the Baltimore County Landscape Architect. Lighting shall be low level LED type.
3. The free-standing sign shall be ground-mounted with a masonry base.
4. Use earth-tone natural wood mulch in the planting areas rather than stone.

Provided the aforementioned conditions are met, the Department of Planning opines that the proposed request is an appropriate land use and would not be detrimental to the health, safety or general welfare of the surrounding community.

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

Division Chief:
AVA/LL

A handwritten signature in cursive script, appearing to read "Lynn Furham", is written over a horizontal line.



BOHLER

ENGINEERING

901 Dulaney Valley Road, Suite 801
Towson, MD 21204
PHONE 410.821.7900
FAX 410.821.7987

ZONING DESCRIPTION
TAX MAP 22, PARCELS 344 AND 379
PROPOSED LOTS 1 AND 2

LOT 1 (Proposed)
THE LAND OF
RIVER WATCH, LLC
LIBER 14203 FOLIO 679
AND
LIBER 12927 FOLIO 270
7TH ELECTION DISTRICT
BALTIMORE COUNTY, MD

LOT 2 (Proposed)
THE LAND OF
RIVER WATCH, LLC
LIBER 14203 FOLIO 679
AND
LIBER 12927 FOLIO 270
7TH ELECTION DISTRICT
BALTIMORE COUNTY, MD

BEGINNING AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LIMITS OF MOUNT CARMEL ROAD - MD RTE. 137 (VARIABLE WIDTH RIGHT-OF-WAY), WHICH IS 495 FEET EAST OF THE INTERSECTION OF SAID MOUNT CARMEL ROAD AND THE NORTHBOUND OFF-RAMP OF INTERSTATE I-83 (VARIABLE WIDTH RIGHT-OF-WAY), THENCE DEPARTING SAID NORTHERLY RIGHT-OF-WAY LIMITS AND WITH THE DIVISION LINE BETWEEN THE MOUNT CARMEL ROAD RIGHT-OF-WAY ON THE NORTH AND THE LAND OF RIVER WATCH, LLC. (LIBER 14203 FOLIO 679) ON THE WEST;

1. NORTH 22 DEGREES – 19 MINUTES – 43 SECONDS EAST, 605.83 FEET TO A POINT, THENCE;
2. CONTINUING SOUTH 65 DEGREES – 50 MINUTES – 11 SECONDS EAST, 433.64 FEET TO A POINT, THENCE;
3. CONTINUING SOUTH 02 DEGREES – 04 MINUTES – 27 SECONDS EAST, 389.54 FEET TO A POINT, THENCE;
4. CONTINUING NORTH 88 DEGREES – 39 MINUTES – 32 SECONDS WEST, 249.00 FEET TO A POINT, THENCE;
5. CONTINUING 37.04 FEET ALONG THE ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 534.00 FEET, A CENTRAL ANGLE OF 03 DEGREES – 58 MINUTES – 29 SECONDS, AND A CHORD BEARING AND DISTANCE OF SOUTH 89 DEGREES – 21 MINUTES – 14 SECONDS WEST, 37.04 FEET TO A POINT, THENCE;
6. CONTINUING SOUTH 87 DEGREES – 21 MINUTES – 59 SECONDS WEST, 139.24 FEET TO A POINT, THENCE;

2014-0131-SPHXA

OTHER OFFICE LOCATIONS:

- | | | | | | |
|------------------------------------|------------------------------|----------------------------------|---------------------------------|---------------------------------------|--------------------------------|
| • Southborough, MA
508.480.9900 | • Albany, NY
518.438.9900 | • Ronkonkoma, NY
631.738.1200 | • Warren, NJ
908.668.8300 | • Center Valley, PA
610.709.9971 | • Chalfont, PA
215.996.9100 |
| • Philadelphia, PA
267.402.3400 | • Bowie, MD
301.809.4500 | • Sterling, VA
703.709.9500 | • Warrenton, VA
540.349.4500 | • Fort Lauderdale, FL
954.202.7000 | • Tampa, FL
813.379.4100 |

CIVIL AND CONSULTING ENGINEERS • PROJECT MANAGERS • SURVEYORS • ENVIRONMENTAL CONSULTANTS • LANDSCAPE ARCHITECTS

www.BohlerEngineering.com



BOHLER
ENGINEERING

7. CONTINUING 198.63 FEET ALONG THE ARC OF CURVE TO THE RIGHT, HAVING A RADIUS OF 1,868.96 FEET, A CENTRAL ANGLE OF 06 DEGREES – 05 SECONDS – 21 MINUTES, AND A CHORD BEARING AND DISTANCE OF NORTH 89 DEGREES – 35 MINUTES – 20 SECONDS WEST, 198.54 FEET TO A POINT OF CURVATURE, THENCE;
8. CONTINUING 17.37 FEET ALONG THE ARC OF CURVE TO THE RIGHT, HAVING A RADIUS OF 460.84 FEET, A CENTRAL ANGLE OF 02 DEGREES – 09 MINUTES – 35 SECONDS, AND A CHORD BEARING AND DISTANCE OF NORTH 69 DEGREES – 57 MINUTES – 45 SECONDS WEST, 17.37 FEET TO THE POINT OF BEGINNING.

CONTAINING 256,935 SQUARE FEET OR 5.90 ACRES.



11/20/13

0131-SPHXA



BOHLER

ENGINEERING

901 Dulaney Valley Road, Suite 801
Towson, MD 21204
PHONE 410.821.7900
FAX 410.821.7987

ZONING DESCRIPTION
TAX MAP 22, PARCELS 344 AND 379
PROPOSED LOT 2

LOT 2 (Proposed)
THE LAND OF
RIVER WATCH, LLC
LIBER 14203 FOLIO 679
AND
LIBER 12927 FOLIO 270
7TH ELECTION DISTRICT
BALTIMORE COUNTY, MD

BEGINNING AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LIMITS OF MOUNT CARMEL ROAD - MD RTE. 137 (VARIABLE WIDTH RIGHT-OF-WAY), WHICH IS 495 FEET EAST OF THE INTERSECTION OF SAID MOUNT CARMEL ROAD AND THE NORTHBOUND OFF-RAMP OF INTERSTATE I-83 (VARIABLE WIDTH RIGHT-OF-WAY), THENCE DEPARTING SAID NORTHERLY RIGHT-OF-WAY LIMITS AND WITH THE DIVISION LINE BETWEEN THE MOUNT CARMEL ROAD RIGHT-OF-WAY ON THE NORTH AND THE LAND OF RIVER WATCH, LLC. (LIBER 14203 FOLIO 679) ON THE WEST THE FOLLOWING COURSES, NORTH 22 DEGREES - 19 MINUTES - 43 SECONDS EAST, 605.83 FEET TO A POINT, THENCE, CONTINUING SOUTH 65 DEGREES - 50 MINUTES - 11 SECONDS EAST, 433.64 FEET TO A POINT OF BEGINNING;

1. SOUTH 02 DEGREES - 04 MINUTES - 27 SECONDS EAST, 389.54 FEET TO A POINT, THENCE;
2. CONTINUING NORTH 88 DEGREES - 39 MINUTES - 32 SECONDS WEST, 249.00 FEET TO A POINT, THENCE;
3. CONTINUING 37.04 FEET ALONG THE ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 534.00 FEET, A CENTRAL ANGLE OF 03 DEGREES - 58 MINUTES - 29 SECONDS, AND A CHORD BEARING AND DISTANCE OF SOUTH 89 DEGREES - 21 MINUTES - 14 SECONDS WEST, 37.04 FEET TO A POINT, THENCE;
4. CONTINUING SOUTH 87 DEGREES - 21 MINUTES - 59 SECONDS WEST, 17.99 FEET TO A POINT, THENCE;
5. CONTINUING NORTH 00 DEGREES - 02 MINUTES - 41 SECONDS WEST, 176.78 FEET TO A POINT, THENCE;
6. CONTINUING NORTH 26 DEGREES - 40 MINUTES - 59 SECONDS EAST, 308.70 FEET TO A POINT, THENCE;
7. CONTINUING SOUTH 65 DEGREES - 50 MINUTES - 11 SECONDS EAST, 165.90 FEET TO THE POINT OF BEGINNING.

CONTAINING 110,014 SQUARE FEET OR 2.53 ACRES.

20140131-SPHXA



OTHER OFFICE LOCATIONS:

- | | | | | |
|------------------------------------|------------------------------|----------------------------------|---------------------------------|---------------------------------------|
| • Southborough, MA
508.480.9900 | • Albany, NY
518.438.9900 | • Ronkonkoma, NY
631.738.1200 | • Warren, NJ
908.668.8300 | • Center Valley, PA
610.709.9971 |
| • Philadelphia, PA
267.402.3400 | • Bowie, MD
301.809.4500 | • Sterling, VA
703.709.9500 | • Warrenton, VA
540.349.4500 | • Fort Lauderdale, FL
954.202.7000 |
| | | | | • Chalfont, PA
215.996.9100 |
| | | | | • Tampa, FL
813.379.4100 |

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www.BohlerEngineering.com



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 118 Mount Carmel Road

which is presently zoned BL-CR

Deed References: 14203/679

10 Digit Tax Account # 0702086075, 0716000620

Property Owner(s) Printed Name(s) Riverwatch, LLC

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

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

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

See Attached Sheet

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

See Attached Sheet

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

See Attached Sheet

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:

Two Farms, Inc.

Name- Type or Print

Signature

3611 Roland Avenue, Baltimore, MD

Mailing Address City State

21211 / (410) 889-0200 /
Zip Code Telephone # Email Address

Attorney for Petitioner:

David H. Karceski, Esq.

Name- Type or Print

Signature

210 W. Pennsylvania Avenue, Ste. 500 Towson MD

Mailing Address City State

21204 / (410) 494-6285 / dhkarceski@venable.com
Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Riverwatch, LLC

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

c/o Burton Management, LLC 3731 Abingdon, MD

Mailing Address City State

21211 / /
Zip Code Telephone # Email Address

Representative to be contacted:

David H. Karceski, Esq.

Name - Type or Print

Signature

210 W. Pennsylvania Ave., Ste. 500 Towson MD

Mailing Address City State

21204 / (410) 494-6285 / dhkarceski@venable.com
Zip Code Telephone # Email Address

CASE NUMBER 2014-0131-SPHXA Filing Date 12/6/13

ORDER RECEIVED FOR FILING
Do Not Schedule Dates: 1/29/14 Reviewer [Signature]

Date 1/29/14 REV. 10/4/11

By [Signature]



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 118 Mount Carmel Road which is presently zoned BL-CR
Deed References: 14203/679 10 Digit Tax Account # 0702086075, 0716000620
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See Attached Sheet

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See Attached Sheet

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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:

Two Farms, Inc.

Name- Type or Print

Signature

3611 Roland Avenue, Baltimore, MD

Mailing Address City State

21211 / (410) 889-0200 /

Zip Code Telephone # Email Address

Attorney for Petitioner:

David H. Karceski, Esq.

Name- Type or Print

Just for David Karceski

Signature

210 W. Pennsylvania Avenue, Ste. 500 Towson MD

Mailing Address City State

21204 / (410) 494-6285 / dhkarceski@venable.com

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Riverwatch, LLC

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

c/o Burton Management, LLC 3731 Abingdon, MD

Mailing Address City State

21211 /

Zip Code Telephone # Email Address

Representative to be contacted:

David H. Karceski, Esq.

Name - Type or Print

Just for David Karceski

Signature

210 W. Pennsylvania Ave., Ste. 500 Towson MD

Mailing Address City State

21204 / (410) 494-6285 / dhkarceski@venable.com

Zip Code Telephone # Email Address

CASE NUMBER 2014-0131-SPA-XA Filing Date 12/6/13

Do Not Schedule Dates: _____

Reviewer TK

**Attachment to
Petition for Special Hearing**

118 Mount Carmel Road

Special hearing for approval of illuminated signage pursuant to Section 259.3.C.7.c of the
Baltimore County Zoning Regulations.

0131-SPH/XA

**Attachment to
Petition for Special Exception**

118 Mount Carmel Road

Special Exception on Lot 2 to allow a fuel service station on an individual site and a convenience store having a sales area larger than 1,500 square feet and a carry-out restaurant as uses in combination, pursuant to Sections 405.2.B.2, 405.4.E.1, and 405.E.10 of the Baltimore County Zoning Regulations.

0131-SPHXA

**Attachment to
Petition for Variance**

118 Mount Carmel Road

Variance from Section 259.3.C.7.a of the Baltimore County Zoning Regulations to permit a wall-mounted enterprise sign of 33.08 square feet in lieu of the permitted 8 square feet.

0131-SPHXA

**Attachment to
Petition for Special Hearing, Special Exception, and Variance**

118 Mount Carmel Road

Legal Owner/Petitioner

RIVERWATCH, LLC

By: Harold F. Burton

Name: Harold F. Burton

Title: Manager

Mailing Address: 3731 Abingdon Beach Rd
Abingdon, Maryland 21009

Phone: (410) 676 6160

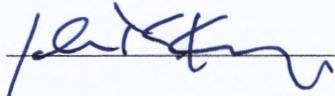
0131-SPHXA

**Attachment to
Petition for Special Hearing, Special Exception, and Variance**

118 Mount Carmel Road

Contract Purchaser/Lessee

Two Farms, Inc.

By:  _____

Name: John Kemp

Title: President

Mailing Address: 3611 Roland Avenue
Baltimore, MD 21211

Phone: (410) 889-0200

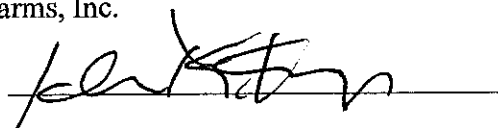
0131-SPHXA

**Attachment to
Petition for Special Hearing, Special Exception, and Variance**

118 Mount Carmel Road

Contract Purchaser/Lessee

Two Farms, Inc.

By: 

Name: John Kemp

Title: President

Mailing Address: 3611 Roland Avenue
Baltimore, MD 21211

Phone: (410) 889-0200

0131-SPHXA

**Attachment to
Petition for Special Hearing, Special Exception, and Variance**

118 Mount Carmel Road

Contract Purchaser/Lessee

Two Farms, Inc.

By: _____

Name: John Kemp

Title: President

Mailing Address: 3611 Roland Avenue
Baltimore, MD 21211

Phone: (410) 889-0200

0131-SPHXA



BOHLER

ENGINEERING

901 Dulaney Valley Road, Suite 801
Towson, MD 21204
PHONE 410.821.7900
FAX 410.821.7987

ZONING DESCRIPTION
TAX MAP 22, PARCELS 344 AND 379
PROPOSED LOTS 1 AND 2

LOT 1 (Proposed)
THE LAND OF
RIVER WATCH, LLC
LIBER 14203 FOLIO 679
AND
LIBER 12927 FOLIO 270
7TH ELECTION DISTRICT
BALTIMORE COUNTY, MD

LOT 2 (Proposed)
THE LAND OF
RIVER WATCH, LLC
LIBER 14203 FOLIO 679
AND
LIBER 12927 FOLIO 270
7TH ELECTION DISTRICT
BALTIMORE COUNTY, MD

BEGINNING AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LIMITS OF MOUNT CARMEL ROAD - MD RTE. 137 (VARIABLE WIDTH RIGHT-OF-WAY), WHICH IS 495 FEET EAST OF THE INTERSECTION OF SAID MOUNT CARMEL ROAD AND THE NORTHBOUND OFF-RAMP OF INTERSTATE I-83 (VARIABLE WIDTH RIGHT-OF-WAY), THENCE DEPARTING SAID NORTHERLY RIGHT-OF-WAY LIMITS AND WITH THE DIVISION LINE BETWEEN THE MOUNT CARMEL ROAD RIGHT-OF-WAY ON THE NORTH AND THE LAND OF RIVER WATCH, LLC. (LIBER 14203 FOLIO 679) ON THE WEST;

1. NORTH 22 DEGREES – 19 MINUTES – 43 SECONDS EAST, 605.83 FEET TO A POINT, THENCE;
2. CONTINUING SOUTH 65 DEGREES – 50 MINUTES – 11 SECONDS EAST, 433.64 FEET TO A POINT, THENCE;
3. CONTINUING SOUTH 02 DEGREES – 04 MINUTES – 27 SECONDS EAST, 389.54 FEET TO A POINT, THENCE;
4. CONTINUING NORTH 88 DEGREES – 39 MINUTES – 32 SECONDS WEST, 249.00 FEET TO A POINT, THENCE;
5. CONTINUING 37.04 FEET ALONG THE ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 534.00 FEET, A CENTRAL ANGLE OF 03 DEGREES – 58 MINUTES – 29 SECONDS, AND A CHORD BEARING AND DISTANCE OF SOUTH 89 DEGREES – 21 MINUTES – 14 SECONDS WEST, 37.04 FEET TO A POINT, THENCE;
6. CONTINUING SOUTH 87 DEGREES – 21 MINUTES – 59 SECONDS WEST, 139.24 FEET TO A POINT, THENCE;

2014-0131-SP.HXA

OTHER OFFICE LOCATIONS:

- | | | | | | |
|------------------------------------|------------------------------|----------------------------------|---------------------------------|---------------------------------------|--------------------------------|
| • Southborough, MA
508.480.9900 | • Albany, NY
518.438.9900 | • Ronkonkoma, NY
631.738.1200 | • Warren, NJ
908.668.8300 | • Center Valley, PA
610.709.9971 | • Chalfont, PA
215.996.9100 |
| • Philadelphia, PA
267.402.3400 | • Bowie, MD
301.809.4500 | • Sterling, VA
703.709.9500 | • Warrenton, VA
540.349.4500 | • Fort Lauderdale, FL
954.202.7000 | • Tampa, FL
813.379.4100 |

CIVIL AND CONSULTING ENGINEERS • PROJECT MANAGERS • SURVEYORS • ENVIRONMENTAL CONSULTANTS • LANDSCAPE ARCHITECTS

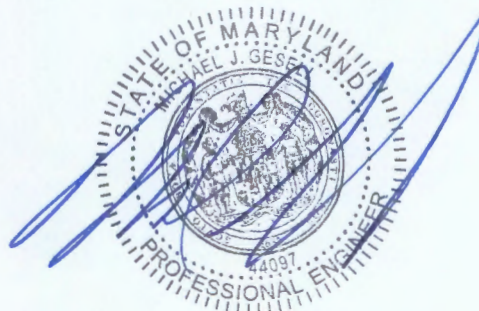
www.BohlerEngineering.com



BOHLER
ENGINEERING

7. CONTINUING 198.63 FEET ALONG THE ARC OF CURVE TO THE RIGHT, HAVING A RADIUS OF 1,868.96 FEET, A CENTRAL ANGLE OF 06 DEGREES – 05 SECONDS – 21 MINUTES, AND A CHORD BEARING AND DISTANCE OF NORTH 89 DEGREES – 35 MINUTES – 20 SECONDS WEST, 198.54 FEET TO A POINT OF CURVATURE, THENCE;
8. CONTINUING 17.37 FEET ALONG THE ARC OF CURVE TO THE RIGHT, HAVING A RADIUS OF 460.84 FEET, A CENTRAL ANGLE OF 02 DEGREES – 09 MINUTES – 35 SECONDS, AND A CHORD BEARING AND DISTANCE OF NORTH 69 DEGREES – 57 MINUTES – 45 SECONDS WEST, 17.37 FEET TO THE POINT OF BEGINNING.

CONTAINING 256,935 SQUARE FEET OR 5.90 ACRES.



11/20/13

0131-SPHXA



BOHLER

ENGINEERING

901 Dulaney Valley Road, Suite 801
Towson, MD 21204
PHONE 410.821.7900
FAX 410.821.7987

ZONING DESCRIPTION
TAX MAP 22, PARCELS 344 AND 379
PROPOSED LOT 2

LOT 2 (Proposed)
THE LAND OF
RIVER WATCH, LLC
LIBER 14203 FOLIO 679
AND
LIBER 12927 FOLIO 270
7TH ELECTION DISTRICT
BALTIMORE COUNTY, MD

BEGINNING AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LIMITS OF MOUNT CARMEL ROAD - MD RTE. 137 (VARIABLE WIDTH RIGHT-OF-WAY), WHICH IS 495 FEET EAST OF THE INTERSECTION OF SAID MOUNT CARMEL ROAD AND THE NORTHBOUND OFF-RAMP OF INTERSTATE I-83 (VARIABLE WIDTH RIGHT-OF-WAY), THENCE DEPARTING SAID NORTHERLY RIGHT-OF-WAY LIMITS AND WITH THE DIVISION LINE BETWEEN THE MOUNT CARMEL ROAD RIGHT-OF-WAY ON THE NORTH AND THE LAND OF RIVER WATCH, LLC. (LIBER 14203 FOLIO 679) ON THE WEST THE FOLLOWING COURSES, NORTH 22 DEGREES - 19 MINUTES - 43 SECONDS EAST, 605.83 FEET TO A POINT, THENCE, CONTINUING SOUTH 65 DEGREES - 50 MINUTES - 11 SECONDS EAST, 433.64 FEET TO A POINT OF BEGINNING;

1. SOUTH 02 DEGREES - 04 MINUTES - 27 SECONDS EAST, 389.54 FEET TO A POINT, THENCE;
2. CONTINUING NORTH 88 DEGREES - 39 MINUTES - 32 SECONDS WEST, 249.00 FEET TO A POINT, THENCE;
3. CONTINUING 37.04 FEET ALONG THE ARC OF CURVE TO THE LEFT, HAVING A RADIUS OF 534.00 FEET, A CENTRAL ANGLE OF 03 DEGREES - 58 MINUTES - 29 SECONDS, AND A CHORD BEARING AND DISTANCE OF SOUTH 89 DEGREES - 21 MINUTES - 14 SECONDS WEST, 37.04 FEET TO A POINT, THENCE;
4. CONTINUING SOUTH 87 DEGREES - 21 MINUTES - 59 SECONDS WEST, 17.99 FEET TO A POINT, THENCE;
5. CONTINUING NORTH 00 DEGREES - 02 MINUTES - 41 SECONDS WEST, 176.78 FEET TO A POINT, THENCE;
6. CONTINUING NORTH 26 DEGREES - 40 MINUTES - 59 SECONDS EAST, 308.70 FEET TO A POINT, THENCE;
7. CONTINUING SOUTH 65 DEGREES - 50 MINUTES - 11 SECONDS EAST, 165.90 FEET TO THE POINT OF BEGINNING.

CONTAINING 110,014 SQUARE FEET OR 2.53 ACRES.

2014-0131-SP4XA



11/20/13

OTHER OFFICE LOCATIONS:

• Southborough, MA
508.480.9900
• Philadelphia, PA
267.402.3400

• Albany, NY
518.438.9900
• Bowie, MD
301.809.4500

• Ronkonkoma, NY
631.738.1200
• Sterling, VA
703.709.9500

• Warren, NJ
908.668.8300
• Warrenton, VA
540.349.4500

• Center Valley, PA
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• Fort Lauderdale, FL
954.202.7000

• Chalfont, PA
215.996.9100
• Tampa, FL
813.379.4100

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**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: 2014-0131-SPHXA
Petitioner: RIVERWATCH, LLC
Address or Location: 118 Mount Carmel Road

PLEASE FORWARD ADVERTISING BILL TO:

Name: Barbara Lukasevich
Address: Venable, LLP
210 W. Pennsylvania Avenue, Suite 500
Towson, MD 21204
Telephone Number: 410-494-6200

Revised 2/20/98 - SCJ

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

No. **107007**

Date: **12/6/13**

CASH RECEIPT
RECEIVED
12/06/2013 14:47:49
5 528 ZONING VERIFICATION
107007
Receipt Tot \$1,200.00
\$1,200.00 CA \$1.00 CA
Baltimore County, Maryland

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				1200.00

Total: **1200.00**

Rec From:

Verable, LLP

For:

2014-131-SPHXA filing fee

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

TO: PATUXENT PUBLISHING COMPANY
Tuesday, January 7, 2014 Issue - Jeffersonian

Please forward billing to:

Barbara Lukasevich

410-494-6200

Venable, LLP

210 W. Pennsylvania Avenue, Ste. 500

Towson, MD 21204

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: 2014-0131-SPHXA

118 Mount Carmel Road

N/s Mt. Carmel Road, 495 ft. E/of centerline of North Bound off-ramp of Interstate I-83

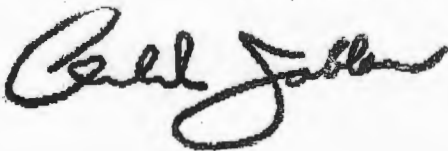
7th Election District – 3rd Councilmanic District

Legal Owners: Riverwatch, LLC

Contract Purchaser/Lessee: Two Farms, Inc.

Special Hearing for approval of illuminated signage. Special Exception on Lot 2 to allow a fuel service station on an individual site and a convenience store having a sales area larger than 1500 square feet and a carry-out restaurant as uses in combination. Variance to permit a wall-mounted enterprise sign of 33.08 square feet in lieu of the permitted 8 square feet.

Hearing: Monday, January 27, 2014 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Arnold Jablon

Director of Permits, Approvals and Inspections for Baltimore County

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Debra Wiley - Royal Farm Store, Mt Carmel Road, ZAC-2014-131

From: Lynn Lanham
To: Beverungen, John; Nuffer, Sherry; Wiley, Debra
Date: 1/24/2014 4:41 PM
Subject: Royal Farm Store, Mt Carmel Road, ZAC-2014-131
CC: Bialek, Jessie; Richards, Carl; Zimmerman, Peter
Attachments: 201401241625.pdf

All,
Sorry for the delayed comments. The applicant made revisions to the architecture, sign design and plan to address DOP concerns. Please see attached comments.

Lynn Lanham
Chief, Development Review
mlanham@baltimorecountymd.gov
410-887-3480
410-887-5862 Fax
Baltimore County Department of Planning
105 W. Chesapeake Ave.
Suite 101
Towson, MD 21204

John -

Per Lynn, this was deliv.
on Fri. & put under the door.

She advised that Karaski has
been provided a copy.

De

C H E C K L I S TComment
ReceivedDepartmentSupport/Oppose/
Conditions/
Comments/
No Comment

12/20/13

DEVELOPMENT PLANS REVIEW
(if not received, date e-mail sent _____)

C

DEPS
(if not received, date e-mail sent _____)

FIRE DEPARTMENT

PLANNING
(if not received, date e-mail sent _____)

12/19/13

STATE HIGHWAY ADMINISTRATION

C

TRAFFIC ENGINEERING

COMMUNITY ASSOCIATION

ADJACENT PROPERTY OWNERS

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT

Date:

1/9/14

SIGN POSTING

Date:

1/7/14

by

Black

PEOPLE'S COUNSEL APPEARANCE

Yes

☒

No

☐

PEOPLE'S COUNSEL COMMENT LETTER

Yes

☐

No

☐

Comments, if any: _____

Real Property Data Search (w1)

[Search Help](#)

Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Account Identifier: District - 07 Account Number - 0702086075		
Owner Information		
Owner Name:	RIVERWATCH LLC	Use: COMMERCIAL
		Principal Residence: NO
Mailing Address:	C/O BURTON MANAGEMENT INC 3731 ABINGDON BEACH RD ABINGDON MD 21009-1332	Deed Reference: 1) /14203/ 00679 2)
Location & Structure Information		
Premises Address:	MT CARMEL RD 0-0000	Legal Description: 5.4438 AC NS MT CARMEL RD 250 W YORK RD
Map: 0022	Grid: 0014	Parcel: 0344
Sub District:	Subdivision: 0000	Section:
Block:	Lot:	Assessment Year: 2013
Plat No:	Plat Ref:	
Special Tax Areas:	Town:	NONE
	Ad Valorem:	
	Tax Class:	
Primary Structure Built	Above Grade Enclosed Area	Finished Basement Area
		Property Land Area 5.4400 AC
		County Use 06
Stories	Basement	Type
		Exterior
		Full/Half Bath
		Garage
		Last Major Renovation
Value Information		
	Base Value	Value
		As of
		01/01/2013
Land:	138,800	138,800
Improvements	0	0
Total:	138,800	138,800
Preferential Land:	0	0
		Phase-in Assessments
		As of
		07/01/2013
		As of
		07/01/2014
		138,800
		138,800
Transfer Information		
Seller: ABBOTT BARBARA D	Date: 12/14/1999	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /14203/ 00679	Deed2:
Seller: BURTON BETTY D	Date: 01/19/1988	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /07772/ 00568	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	07/01/2013
County:	000	0.00
State:	000	0.00
Municipal:	000	0.00 0.00
Tax Exempt:	Special Tax Recapture:	07/01/2014
Exempt Class:	NONE	0.00 0.00
Homestead Application Information		
Homestead Application Status: No Application		

New Search (<http://sdat.resiusa.org/RealProperty>)

Order the **TAX MAP** [click here...](#)

(<http://imsweb05.mdp.state.md.us/website/mosp/>)

→

Real Property Data Search (w1)

[Search Help](#)

Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Account Identifier: District - 07 Account Number - 0716000620		
Owner Information		
Owner Name:	RIVERWATCH LLC	Use: COMMERCIAL
Mailing Address:	3731 ABINGDON BEACH RD ABINGDON MD 21009-1332	Principal Residence: NO Deed Reference: 1) /12927/ 00270 2)
Location & Structure Information		
Premises Address:	118 MT CARMEL RD PARKTON MD 21120-9723	Legal Description: .482 AC 118 MT CARMEL RD 1300 W YORK RD
Map: 0022	Grid: 0014	Parcel: 0379
Sub District:	Subdivision: 0000	Section:
Block:	Lot:	Assessment Year: 2013
Plat No:	Plat Ref:	Town: NONE
Special Tax Areas:	Ad Valorem:	Tax Class:
Primary Structure Built	Above Grade Enclosed Area	Finished Basement Area
		Property Land Area 20,995 SF
County Use 06		
Stories	Basement	Type
Exterior	Full/Half Bath	Garage
Last Major Renovation		
Value Information		
Base Value	Value	Phase-in Assessments
	As of	As of
	01/01/2013	07/01/2013
	102,400	102,400
Land:	102,400	
Improvements	0	
Total:	102,400	102,400
Preferential Land:	0	102,400
		0
Transfer Information		
Seller: PARLETTE LOUISE N	Date: 06/10/1998	Price: \$110,000
Type: NON-ARMS LENGTH OTHER	Deed1: /12927/ 00270	Deed2:
Seller: MILLER THOMPSON B	Date: 05/08/1963	Price: \$11,500
Type: ARMS LENGTH IMPROVED	Deed1: /04138/ 00549	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	07/01/2013
County:	000	0.00
State:	000	0.00
Municipal:	000	0.00 0.00
Tax Exempt:	Special Tax Recapture:	0.00 0.00
Exempt Class:	NONE	
Homestead Application Information		
Homestead Application Status: No Application		

New Search (<http://sdat.resiusa.org/RealProperty>)

District: **07** Account Number: **0716000620**



For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us/OurProducts/OurProducts.shtml (<http://www.mdp.state.md.us/OurProducts/OurProducts.shtml>).



(<http://imsweb05.mdp.state.md.us/website/mosp/>)

 Loading... Please Wait.

Loading... Please Wait.

RECEIVED

Hereford Community Association

JAN 27 2014

OFFICE OF ADMINISTRATIVE HEARINGS
P.O. Box 180 – Monkton, MD 21111

January 27, 2014

Honorable John Beverungem
105 W. Chesapeake Avneue
Suite #103
Towson, Maryland 21204

Re: Royal Farms Store #185
118 Mt. Carmel Road
Parkton, Md. 21120
Case #2014-131 SPHXA
GIS Tile#022A2

Dear Honorable Beverungem,

The Hereford Community Association held a special meeting on January 14, 2014 to hear a presentation from the representatives of the Royal Farms Stores. 120 people were in attendance. There was much discussion and many questions. Topics included traffic, noise, water consumption, underground tanks, bio-retention facilities, overhead lighting and signage. We were not given enough notice about this project to have a meeting with a formal vote from our members. We took an informal poll via email that showed 3 to 1 in favor of the project.

On January 20, 2014, our Architectural Committee met with Royal Farms. Of primary concern and importance to our membership is that the architecture reflects the rural character of the Hereford Area. It was agreed by all parties to use the plan submitted to Baltimore County, page 5 of 6 dated 11.05.13 by Ratcliffe Architects. Our committee wants the standing seam roof to be dark green or dark red which will fit in with the surrounding buildings in the town.

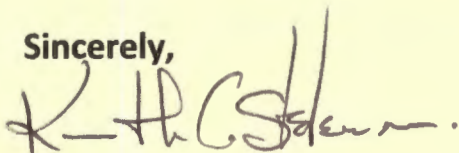
The Hereford Community Association Board of Directors met on Jan. 22, 2014 to determine the outcome of the informal poll and whether to show support for this project. We currently support the plan based on the following needed changes and or requests to the Royal Farms Store and the Hearing Officer.

1. We do want to know the future of the new road separating the two parcels of property.
2. We do not want any pornographic material of any kind in the store.
3. We do not want any liquor, beer or wine sold in the store.
4. ~~The Hereford Volunteer Fire Company would like Royal Farms~~
X.P.S. ~~to make their underground fire suppression tank increased~~
BY ~~to 30,000 gallons of water to be drawn on for local firefighting~~
~~purposes.~~
5. We have no problem with the signage being 33.08 sq. ft.
6. We will not accept this project if the SHA forces the addition of a deceleration lane on the North Side of Mt. Carmel Road. We feel the speed limit along this section of Mt. Carmel Road should be lowered to 30 mph.

The Hereford Community Association will support the proposed project as long as Royal Farms continues to show a willingness to work with us.

Thank you for your time, effort and expertise.

Sincerely,



Ken Stevenson, President
Hereford Community Association

From: Gunpowder Riverkeeper <keeper@gunpowderriverkeeper.org>
To: <administrativehearings@baltimorecountymd.gov>
CC: <crichards@baltimorecountymd.gov>, <jbeverungen@baltimorecountymd.gov>, ...
Date: 1/30/2014 5:24 PM
Subject: #2014-01310-SPHZA
Attachments: 2014-0131-sphza.pdf

Please accept the following comments of Gunpowder RIVERKEEPER related to Baltimore County Case #2014-01310-SPHZA. Thank you for your consideration and careful review.

Sincerely,

/s/

Theaux M. Le Gardeur

Theaux M. Le Gardeur
Gunpowder RIVERKEEPER
16938 York Rd
P.O. BOX 156
Monkton, MD 21111
410-967-3526
keeper@gunpowderriverkeeper.org
www.gunpowderriverkeeper.org

Gunpowder RIVERKEEPER®, (GRK) is accredited by the WATERKEEPER ALLIANCE® as the 18th RIVERKEEPER® in the Chesapeake Bay region. GRK is registered with the state of Maryland as a non-profit and has obtained 501,(c)(3) tax exempt status classified under natural resources conservation and protection. Donations are tax deductible to the fullest extent allowed by law.

RIVERKEEPER is a registered trademark of Waterkeeper Alliance, Inc.

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**GUNPOWDER
RIVERKEEPER®**

THEAUX M. LE GARDEUR
Executive Director
RIVERKEEPER®

P.O. Box 156
16928 York Rd
Monkton, MD 21111

410-967-3526

keeper@gunpowderriverkeeper.org
www.gunpowderriverkeeper.org

Gunpowder RIVERKEEPER®,
(GRK) values the biological,
recreational and economic
aspects of the river.

GRK champions enforcement
and compliance of environmental
laws within the watershed to
protect and conserve the river for
all users.

GRK Project Areas Include:

Monitoring Industrial Activities
Stormwater Runoff Compliance
Invasive Species Containment
and Outreach
Agricultural Runoff Compliance
Environmental Monitoring and
Mapping
Lawn Fertilizer Nutrient
Loading and Outreach
Sewage Overflow Compliance



**Gunpowder RIVERKEEPER®
Position Statement on Royal Farms, Hereford**

Baltimore County Case No. 2014-0131-SPHZA

Gunpowder RIVERKEEPER (GRK) is a 501(c)(3) grassroots,
advocacy based membership organization, EIN #271517453, classified
with the IRS under Environmental Quality, Protection and
Beautification: Natural Resources Conservation and Protection.

The organization is charged with protecting, conserving and restoring
the Gunpowder River and its Watershed. We value the biological,
recreational and economic aspects of the River. GRK champions
enforcement and compliance of environmental laws within the
watershed to protect and conserve the River for all users. GRK has
supporters that work, recreate and live along the Gunpowder River
watershed and benefit from it being in a natural state.

The Gunpowder River provides the primary source of Baltimore City's
drinking water and supply for over 1.8 million area residents. In
addition, the River is also a nationally recognized tail-water trout
fishery and an important tributary of the Chesapeake Bay.

It is for all of these reasons that the organization provides
environmental and community comments on case no. 2014-0131-
SPHZA. Royal Farms is proposing to build a store on Mt. Carmel
Road in Parkton, which is within the Gunpowder Watershed and
subject to the constraints outlined in the Hereford Plan¹.

ENVIRONMENTAL CONCERNS

The County must protect both the quantity and quality of water
including recharge of local groundwater resources. Residences and
business including doctor's offices, the local grocery store and deli as
well as Hereford High School rely on well and septic for water. For
this community, there is no other water source option. In view of the
Hereford plan guidance on water use and reuse² and the sensitive

¹Hereford Community Plan was adopted by the Baltimore County Council and
incorporated into the County's Master Plan in 1991.

²Actions recommended in the Hereford Plan include but are not limited to: a water
balance assessment; provide for groundwater recharge zones in any critical yield
area; require distributed infiltration for all stormwater runoff; and require the use of
water conservation devices.

water resources in the area should be followed. The potential for groundwater contamination with any facility of the type proposed should be fully evaluated. GRK provides information presented in the Baltimore Sun article³ related to recent Maryland Department of the Environment (MDE) administrative fines totaling \$600,000. against Royal Farms for leaks at two sites. GRK has incorporated the corrective plans of action for the facilities in Rosedale⁴ and Cecil County⁵ for your review and consideration. ***GRK suggests that any Baltimore County variance should only be granted if the following conditions are fully met:***

Use of Environmental Site Design: GRK suggests that the site must use Environmental Site design to manage and treat stormwater. The recent history of Baltimore county granting waivers and allowing for fee in lieu for ESD is not appropriate outside of the Urban Rural Deliniation Line (URDL)

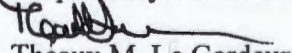
Best Available Technology: In addition, Best Available Technology should be mandated for the septic system the store will install to reduce the amount and type of pollutants that may re-enter the local groundwater.

Performance Bond : Royal Farms recent compliance history as evidenced by a Maryland Department of the Environment administrative order is not encouraging. GRK suggests that a performance bond (PB) for any future localized groundwater contamination be set to protect business, residences and the Gunpowder River and Maryland State Park lands within a radius of three (3) miles as a condition of any variance.

Sample Well Monitoring: GRK suggests that Royal Farms be required to monitor sample wells at varying depths, downslope of the gas pumps as another vital safeguard to protect irreplaceable groundwater resources. Testing those wells on a monthly basis to ensure that any leaks are detected prior to contaminating other well source areas is appropriate.

Thank you for the opportunity to comment.

Respectfully submitted on January 30, 2014

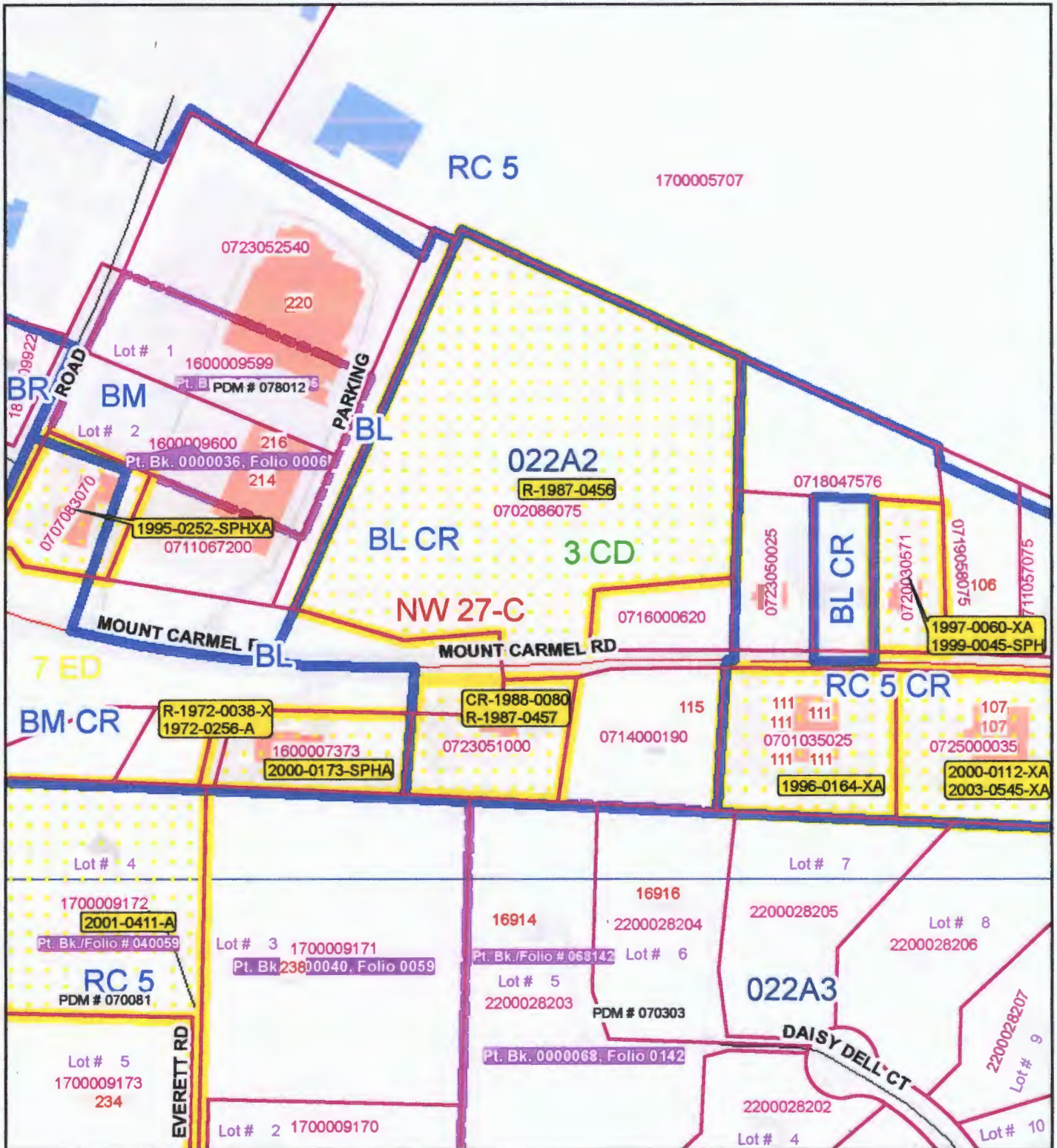

Theaux M. Le Gardeur
Gunpowder RIVERKEEPER

³http://articles.baltimoresun.com/2013-05-28/features/bs-gr-royal-farms-gas-leaks-20130524_1_royal-farms-fuel-leaks-roosedale

⁴<http://www.mde.state.md.us/programs/Land/OilControl/RemediationSites/Documents/BA%20Co%20%20Royal%20Farms%2064%20Revised%20CAP%20Addendum%206.27.13%2012%20pgs.pdf>

⁵ <http://www.mde.state.md.us/programs/Land/OilControl/RemediationSites/Documents/CE%20Co%20%20RF%2096%20CAP%20Addendum%203.28.13%2011%20pgs.pdf>

2014-0131-SPHXA



Publication Date: 12/9/2013



Publication Agency: Permits, Approvals & Inspections
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot

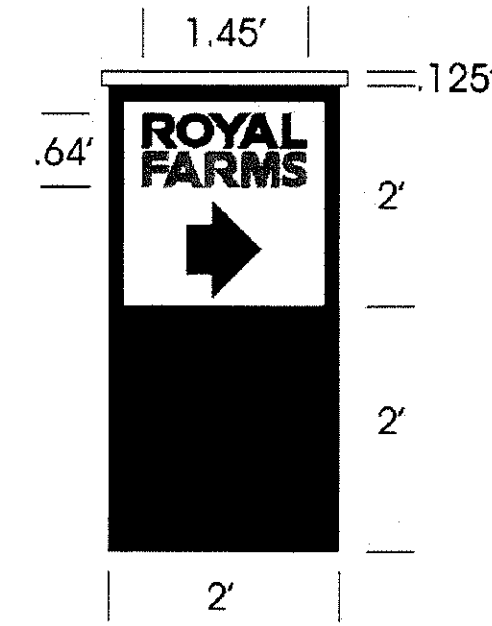


0 50 100 200 300 400 Feet

1 inch = 200 feet

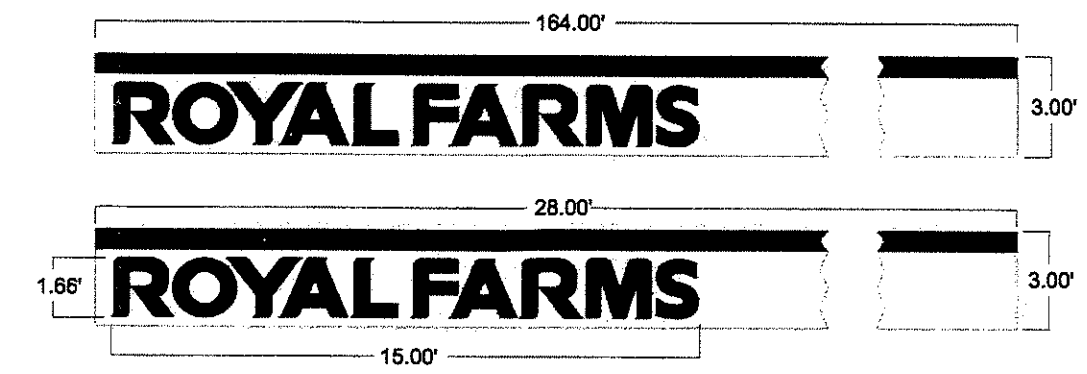


AREA = 33.08 S.F.
ROYAL FARMS CHANNEL LETTERS
NOT TO SCALE



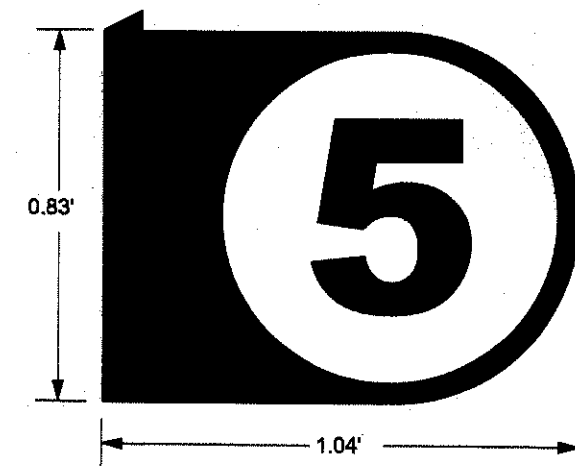
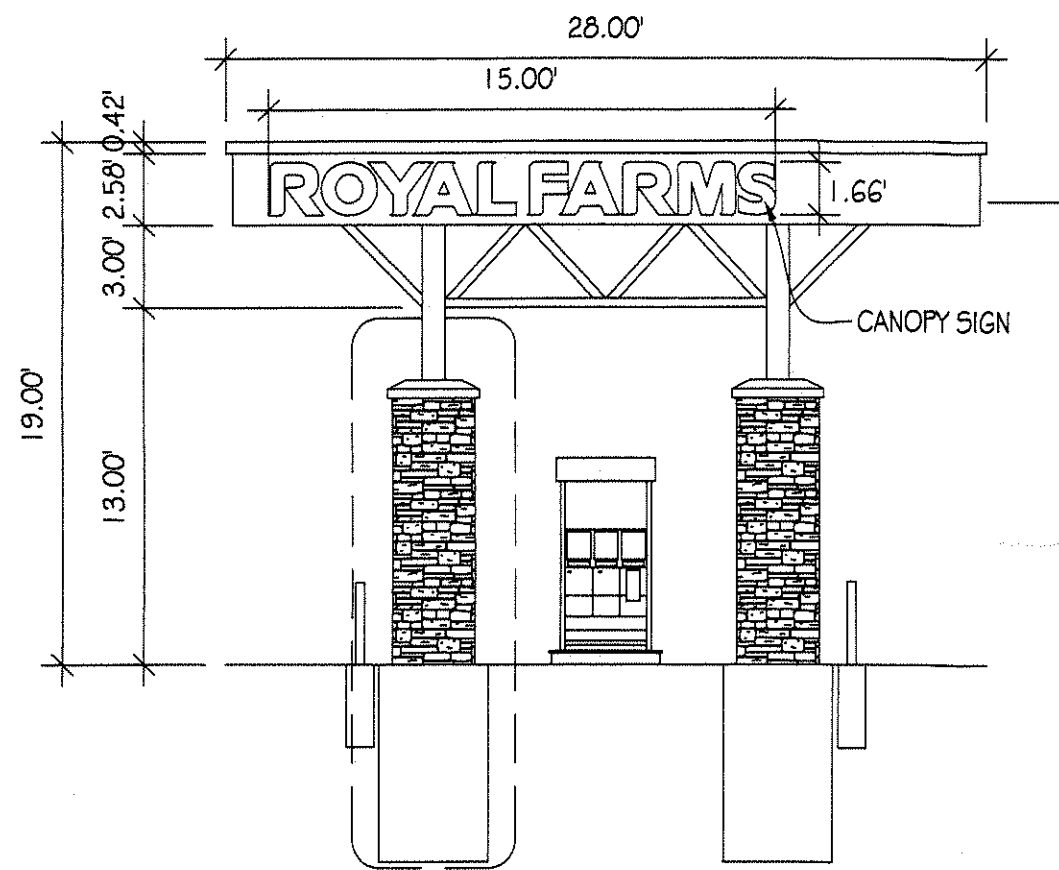
Sign 2' x 2' = 4'
Text .64' x 1.45' = .928' (23%)

STANDARD DIRECTIONAL SIGN
NOT TO SCALE



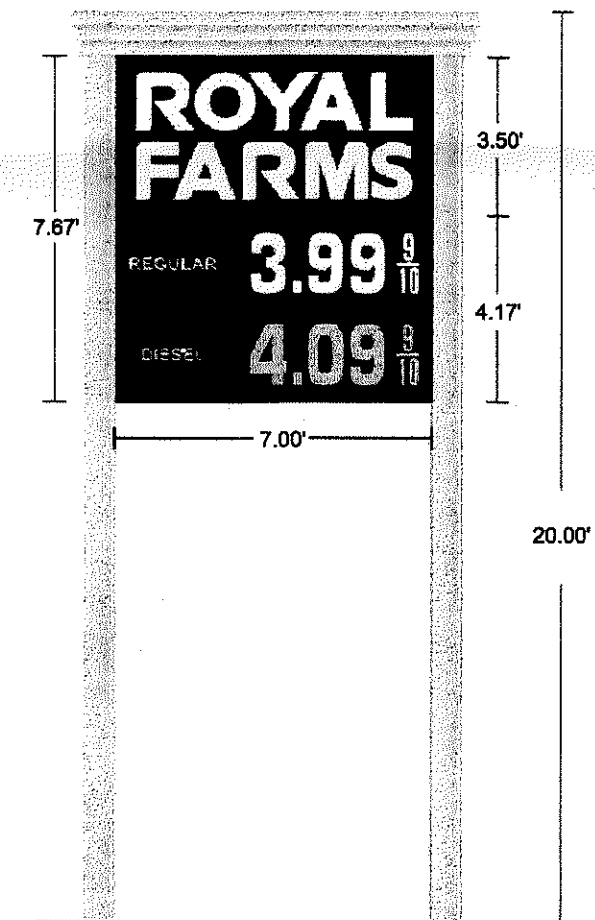
AREA = 24.90 S.F.

CANOPY SIGNS
NOT TO SCALE



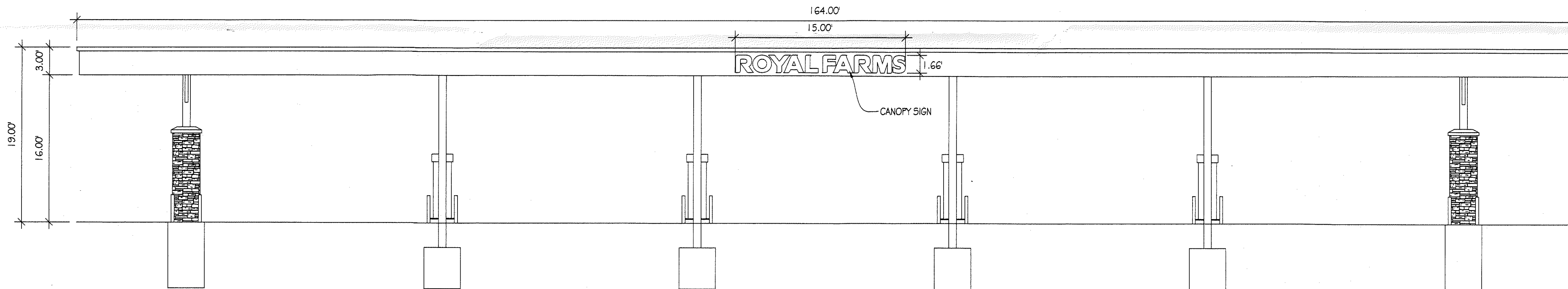
AREA = 0.84 S.F.

PUMP DESIGNATOR BLADE SIGN
NOT TO SCALE



AREA = 24.50 S.F.

2012 GOALPOST WITHOUT CAR WASH
PYLON SIGN
NOT TO SCALE



CANOPY DETAILS
NOT TO SCALE

SIGNAGE NOTES

FREESTANDING SIGNAGE (ILLUMINATED)
1 PERMITTED PER FRONTAGE
MAX. AREA: 25 S.F. PER SIGN
MAX. HEIGHT: 25 FT.
PROPOSED: 1 SIGN AT 24.50 S.F. (NOT INCLUDING 28.19 S.F. FOR FUEL PRICING) AND A HEIGHT OF 20.00 FT.

BUILDING SIGNAGE (ILLUMINATED)
1 PERMITTED
MAX. AREA: 8 S.F.
PROPOSED: 1 SIGN AT 33.08 S.F. EACH (VARIANCE REQUIRED)

DIRECTIONAL SIGNAGE (ILLUMINATED)
NUMBER OF SIGNS ON PREMISES NOT REGULATED
MAX. AREA: 8 S.F.
MAX. HEIGHT: 4.13 FT.
PROPOSED: 2 SIGNS AT 0.93 S.F. EACH (23%)

CANOPY SIGNAGE (ILLUMINATED)
6 PERMITTED
MAX. AREA: 25 S.F. PER SIGN
PROPOSED: 3 SIGNS AT 24.90 S.F. EACH

PER CR REGULATIONS, NO SIGN MAY BE ILLUMINATED UNLESS APPROVED BY THE ZONING COMMISSIONER AT A HEARING.

THESE PLANS ARE FOR
SPECIAL EXCEPTION AND
ARE NOT TO BE UTILIZED
FOR CONSTRUCTION

PROFESSIONAL CERTIFICATION
I, MICHAEL J. GESELL, HEREBY CERTIFY THAT THESE
DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND
THAT I AM A DAILY LICENSED PROFESSIONAL ENGINEER
UNDER THE LAWS OF THE STATE OF MARYLAND,
LICENSE NO. 44097, EXPIRATION DATE: 6/30/15

**BOHLER
ENGINEERING**



CONTRACT OFFICE:
WARREN, NJ
OFFICES:
BOWIE, MD
BOSTON, MA
CHICAGO, IL
COLUMBIA, SC
DENVER, CO
FORT LAUDERDALE, FL
HARTFORD, CT
INDIANAPOLIS, IN
JACKSONVILLE, FL
KANSAS CITY, MO
LONG BEACH, CA
LOS ANGELES, CA
MEMPHIS, TN
MIAMI, FL
MINNEAPOLIS, MN
NEW YORK, NY
PHILADELPHIA, PA
PORTLAND, ME
SAN ANTONIO, TX
SAN FRANCISCO, CA
SEATTLE, WA
SPRINGFIELD, IL
TAMPA, FL
WASHINGTON, DC
WICHITA, KS
WILMINGTON, DE
YAKIMA, WA

REVISIONS

REV	DATE	COMMENT	BY



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EXCAVATORS, DESIGNERS, OR ANY PERSON PREPARING TO
DISTURB THE EARTH'S SURFACE ANYWHERE IN THE STATE
IN VIRGINIA, MARYLAND, THE DISTRICT OF COLUMBIA, AND
DELAWARE: CALL 811
(WV) 1-800-246-4848 (PA) 1-800-242-1776 (DC) 1-800-257-7777
(VA) 1-800-652-7001 (MD) 1-800-287-7777 (DE) 1-800-382-8855

NOT APPROVED FOR
CONSTRUCTION

PROJECT No.: MD101007
DRAWN BY: RMJ
CHECKED BY: MJG
DATE: 10/28/13
SCALE: AS NOTED
CAD I.D.: SED

PROJECT:
**PLAN TO
ACCOMPANY
SPECIAL
EXCEPTION
FOR**

ROYAL FARMS
STORE #185

LOCATION OF SITE
118 MOUNT CARMEL ROAD
PARKTON, MD 21120
BALTIMORE COUNTY
ELECTION DISTRICT: 7
COUNCILMANIC DISTRICT: 3
GIS TILE NUMBER: 022A2

**BOHLER
ENGINEERING**
901 DULANEY VALLEY ROAD,
SUITE 801
TOWSON, MARYLAND 21204
Phone: (410) 821-7900
Fax: (410) 821-7967
www.BohlerEngineering.com

M. J. GESELL
PROFESSIONAL ENGINEER
STATE OF MARYLAND
LICENSE NO. 44097
EXPIRATION DATE: 6/30/15

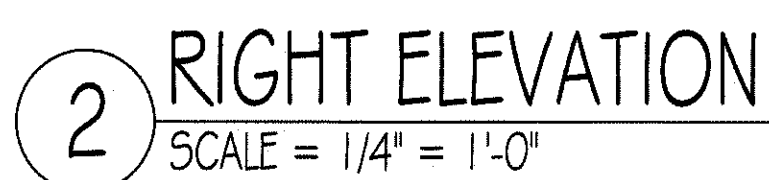
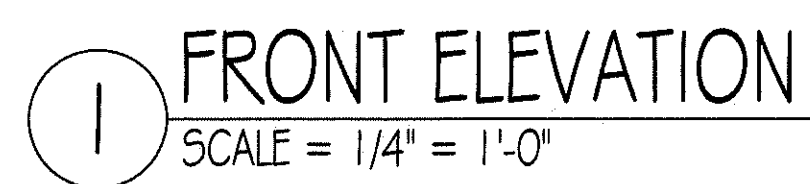
SHEET TITLE:

**SIGNAGE
DETAILS**

14-131-SPHX4

SHEET NUMBER:
4
OF 6

IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO REVIEW ALL OF THE DRAWINGS AND SPECIFICATIONS ASSOCIATED WITH THIS PROJECT.
WORK SCOPE PRIOR TO THE INITIATION OF CONSTRUCTION SHOULD THE CONTRACTOR FIND A CONFLICT WITH THE DOCUMENTS RELATIVE TO
THE SPECIFICATIONS OR APPLICABLE CODES. IT IS THE CONTRACTOR'S RESPONSIBILITY TO NOTIFY THE PROJECT ENGINEER OF RECORD IN
WRITING PRIOR TO THE START OF CONSTRUCTION. FAILURE BY THE CONTRACTOR TO NOTIFY THE PROJECT ENGINEER SHALL CONSTITUTE
ACCEPTANCE OF FULL RESPONSIBILITY BY THE CONTRACTOR TO COMPLETE THE SCOPE OF THE WORK AS SHOWN BY THE DRAWINGS AND IN
FULL CONFORMANCE WITH LOCAL REGULATIONS AND CODES.



1. PAINT ALL EXTERIOR ELECTRICAL EQUIPMENT TO MATCH BUILDING.
2. SEE CIVIL PLANS FOR DETAILED GRADING INFORMATION.
3. SEE SHEET AC-1 FOR EXTERIOR SPECIFICATIONS.

ROYAL FARMS

118 MOUNT CARMEL ROAD
PARKTON, MD 21120
STORE #185

ELEVATIONS

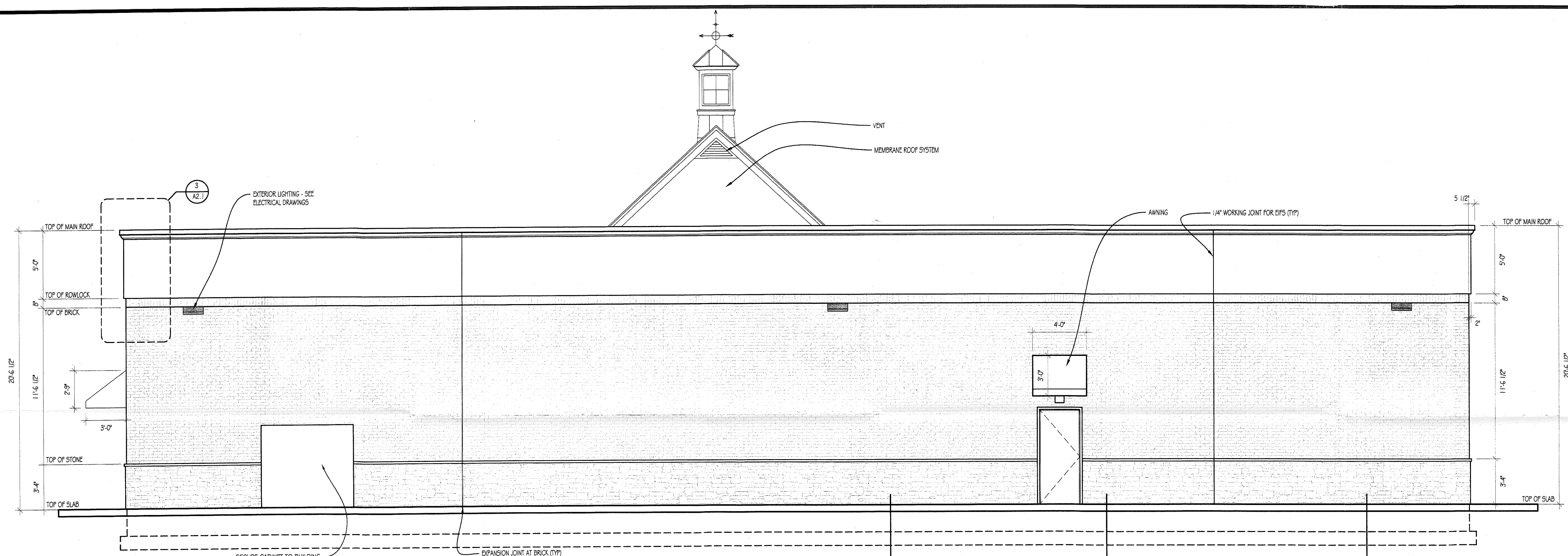
[illegible]

DATE	11.05.13
SCALE	NOTED
DRAWN BY	M STINEFFIT

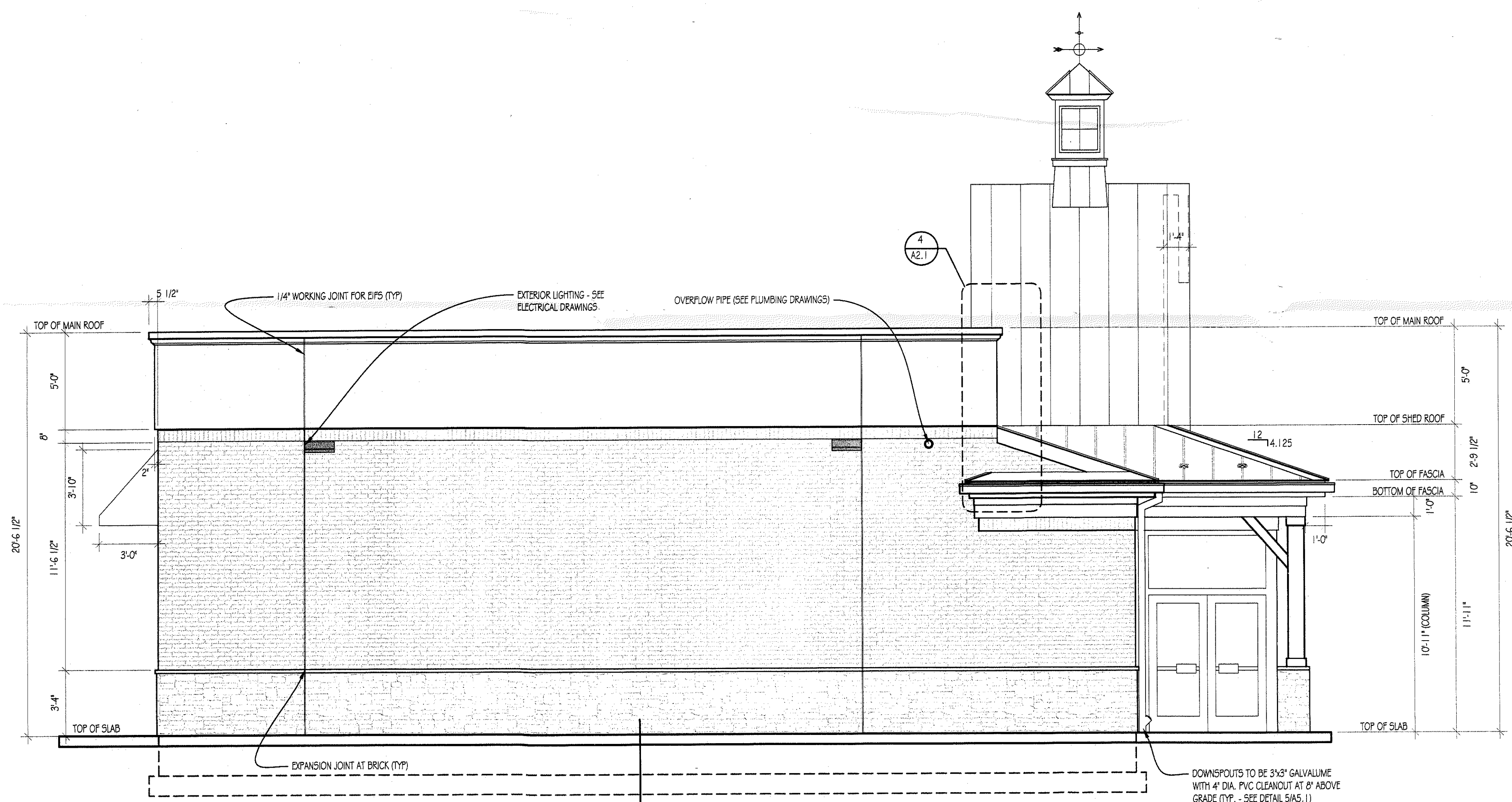
THESE DRAWINGS ARE PROTECTED UNDER THE
COPYRIGHT ACT OF 1976 AND SHALL NOT BE
REUSED WITHOUT THE WRITTEN PERMISSION OF
THE ARCHITECT.

5 OF 6

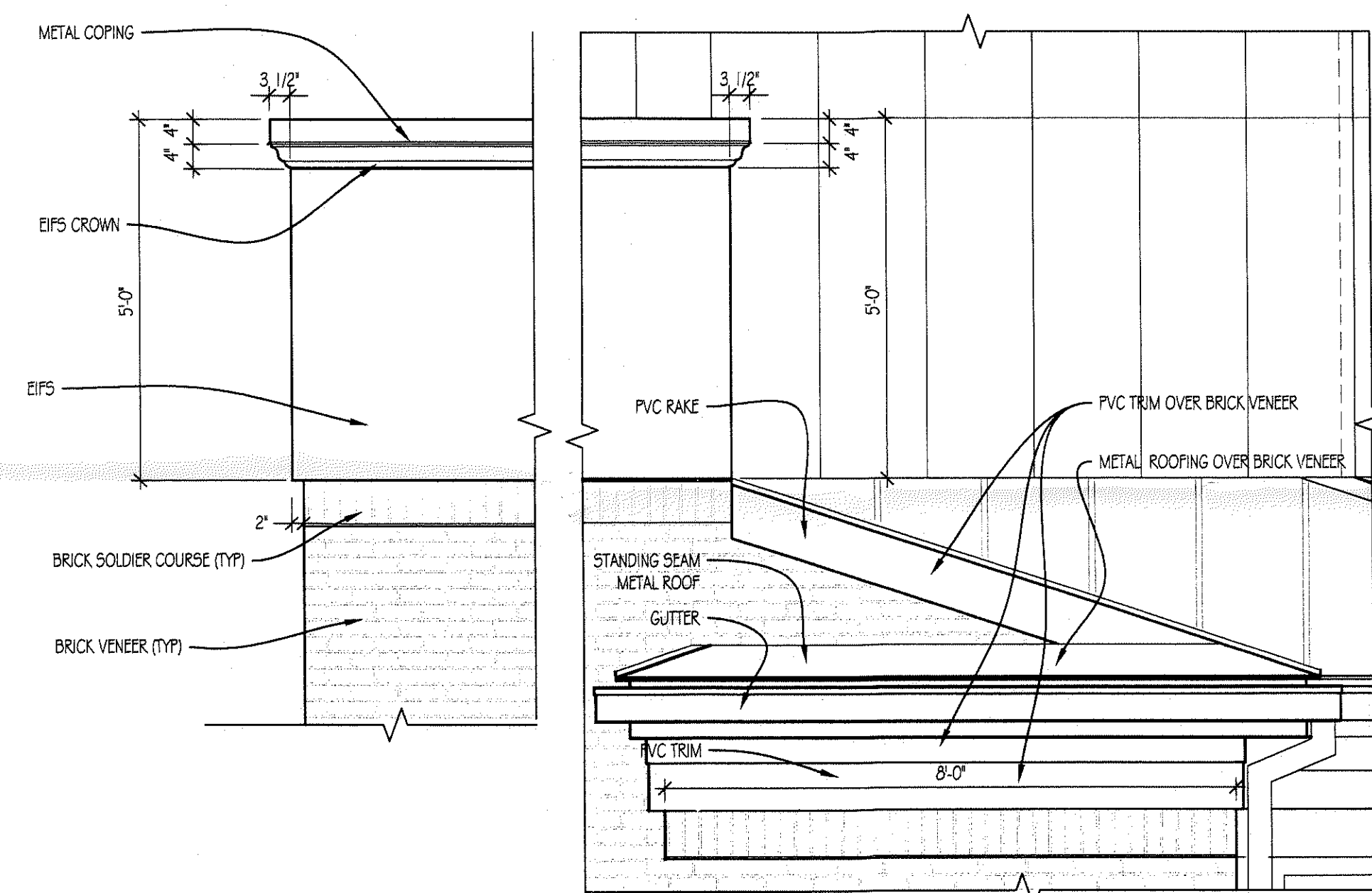
14-131-SPHXA



1 REAR ELEVATION
SCALE = 1/4" = 1'-0"



2 LEFT ELEVATION
SCALE = 1/4" = 1'-0"



3 DETAIL
SCALE = 1/2" = 1'-0"

4 DETAIL
SCALE = 1/2" = 1'-0"

NOTE:
1. PAINT ALL EXTERIOR ELECTRICAL EQUIPMENT TO MATCH BUILDING.
2. SEE CIVIL PLANS FOR DETAILED GRADING INFORMATION.
3. SEE SHEET AG.1 FOR EXTERIOR SPECIFICATIONS.

RATCLIFFE
ARCHITECTS
100 S. Green Road
Severna Park, Maryland 21153
410-481-7070 • Fax 410-484-3810 • info@ratcliffe.com

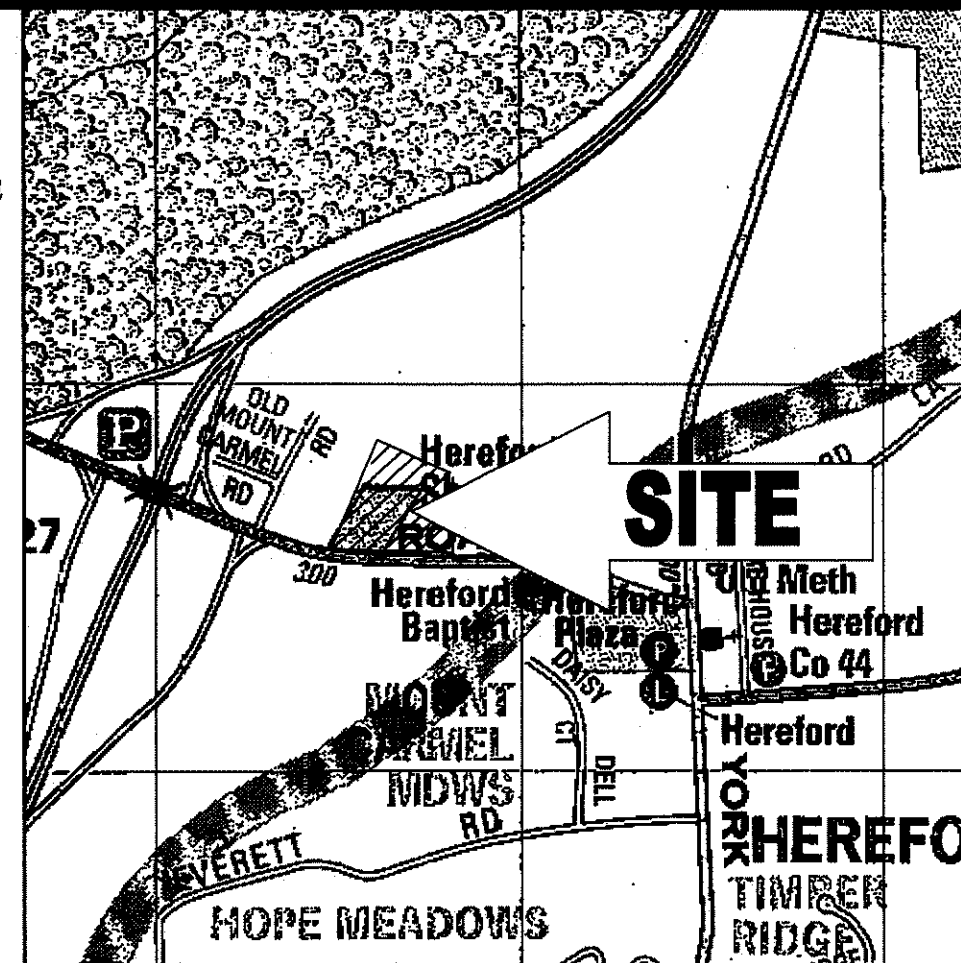
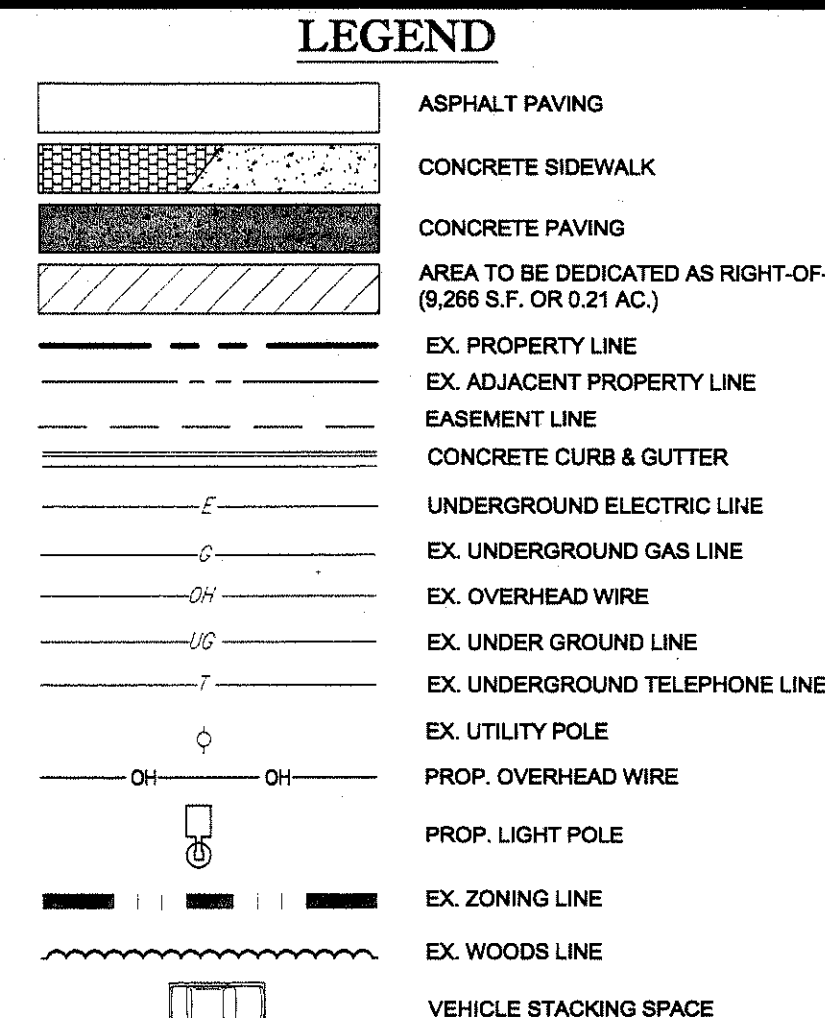
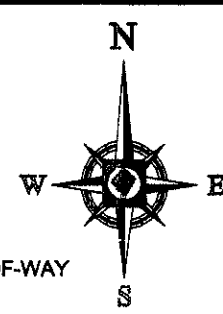
ROYAL FARMS
118 MOUNT CARMEL ROAD
PARKTON, MD 21120
STORE #185

ELEVATIONS

TITLE BLOCK		REVISED =
KEY		NOT REVISED =
#	REVISED DATE	CONTENT
		PERMIT SET
		BID SET
		CONSTRUCTION SET

DATE 11.05.13
SCALE NOTED
DRAWN BY M STINEFELT

THESE DRAWINGS ARE PROTECTED UNDER THE COPYRIGHT ACT OF 1976 AND SHALL NOT BE REPRODUCED WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT.



VICINITY MAP
COPYRIGHT ADC THE MAP PEOPLE
PERMIT USE NO. 20602153-5
SCALE: 1"=1000'

GENERAL NOTES

1. PROPERTY INFORMATION:
- | | |
|-------------------------|---|
| A. PROPERTY ADDRESS: | 118 MOUNT CARMEL ROAD |
| B. SITE AREA: | 146,921 S.F. ±, 3.37 AC. ± (LOT 1)
110,014 S.F. ±, 2.53 AC. ± (LOT 2)
9,266 S.F. ±, 0.21 AC. ± (DEDICATION) |
| C. ELECTION DISTRICT: | 7 |
| D. COUNCILMAN/DISTRICT: | 3 |
| E. ADC MAP: | 4234 |
| F. CENSUS TRACT: | 407700 |
| G. TAX MAP: | 22 |
| H. PARCEL: | 344 & 379 |
| I. TAX ACCOUNT NO.: | 0702086075 (PARCEL 344)
0716006620 (PARCEL 379) |
2. ZONING: BL-CR
3. ZONING MAP REFERENCE: 022A2
4. FLOOR AREA RATIO: PERMITTED = 0.20
PROVIDED = 0.05 (5,125 S.F. / 110,014 S.F.)
5. EXISTING LAND USE: VACANT
- PROPOSED LAND USE: CONVENIENCE STORE AND CARRY OUT RESTAURANT WITH GASOLINE
6. SETBACKS: (TO PROPERTY LINE)
- | | | |
|-----------------|-----------------|-----------------|
| FRONT (BLDG) | <u>REQUIRED</u> | <u>PROVIDED</u> |
| FRONT (AVERAGE) | 35' | 158.95' |
| SIDE | 65.8' (MAX.) | 64.93' |
| REAR | 15' | 50.73' |
| CANOPY | 15' | 200.48' |
| FUEL PUMPS | 25' | 62.94' |
| | | 75.21' |
7. LANDSCAPE TRANSITION AREA (L.TAS)
- | | | |
|-------------------------------|-----------------|-----------------|
| ALONG MT. CARMEL ROAD | <u>REQUIRED</u> | <u>PROVIDED</u> |
| ALONG REAR YARD (R.C.S. ZONE) | 10' | 15.62' |
| ALONG SIDE YARD (BL-CR ZONE) | 15' | 192.53' |
| ALONG SIDE YARD (R.C.S. ZONE) | 6' | 8.20' |
| | 15' | 15.91' |
8. HEIGHT REQUIREMENTS: NOT TO EXCEED 30'
- PROPOSED BUILDING HEIGHT: C-STORE = 27'-10 1/4"
CANOPY = 21'
9. THIS SITE WILL BE SERVICED BY A PRIVATE WELLS AND PRIVATE SEPTIC SYSTEM.
10. SCREENING AND LANDSCAPING SHALL COMPLY WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL.
11. THE SITE IS NOT LOCATED IN A 100 YEAR FLOODPLAIN.
12. THE SITE IS NOT LOCATED IN ANY FAILED BASIC SERVICE AREAS.
13. THERE ARE NO KNOWN EXISTING WELLS OR SEPTIC FIELDS ON THE PROPERTY.
14. ANY FUTURE USED TO ILLUMINATE AN OFF-STREET PARKING AREA SHALL BE ARRANGED AS TO REFLECT THE LIGHT AWAY FROM ADJACENT RESIDENTIAL SITE AND PUBLIC STREETS.
15. A REST ROOM FACILITY, WATER AND COMPRESSED AIR SHALL BE PROVIDED FOR CUSTOMERS.
16. SIGNAGE ON THIS SITE SHALL CONFORM WITH THE SIGNAGE REQUIREMENTS OF THE BALTIMORE COUNTY ZONING REGULATIONS SECTION, 430 OR A VARIANCE WILL BE REQUESTED.
17. THERE ARE NO ABANDONED FUEL SERVICE STATIONS WITH ONE MILE OF THE SITE (SECTION 405.3 BCZP)
18. THE SITE IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
19. THERE ARE NO HISTORICAL STRUCTURES LOCATED ON THE PROPERTY.

[illegible]

THE FOLLOWING STATES REQUIRE NOTIFICATION BY EXCAVATORS, DESIGNERS, OR ANY PERSON PREPARING TO DISTURB THE EARTH'S SURFACE ANYWHERE IN THE STATE IN VIRGINIA, MARYLAND, THE DISTRICT OF COLUMBIA, AND DELAWARE CALL - 811

(WV 1-800-245-4848) (PA 1-800-242-1778) (DC 1-800-257-7777)
 (VA 1-800-552-7001) (MD 1-800-257-7777) (DE 1-800-282-8555)

NOT APPROVED FOR
CONSTRUCTION

PROJECT No.:	MD101007
DRAWN BY:	RMS
CHECKED BY:	MJG
DATE:	10/28/13
SCALE:	1"=40'
CAD I.D.:	SE0

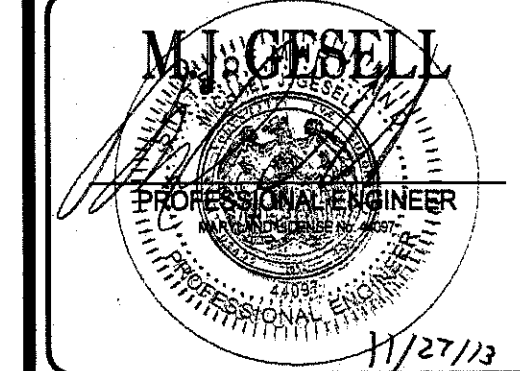
PROJECT: **PLAN TO
ACCOMPANY
SPECIAL
EXCEPTION**
FOR _____

ROYAL FARMS
STORE #185

LOCATION OF SITE
118 MOUNT CARMEL ROAD
PARKTON, MD 21120
BALTIMORE COUNTY
ELECTION DISTRICT: 7
COUNCILMANIC DISTRICT: 3
GIS TILE NUMBER: 022A2



**901 DULANEY VALLEY ROAD,
SUITE 801
TOWSON, MARYLAND 21204
Phone: (410) 821-7900
Fax: (410) 821-7987
www.BohlerEngineering.com**



SHEET TITLE:

SITE PLAN

2014-131-SPHX4

1
OF 6

BENCHMARKS

GIS # 122 N 701,559.92
ELEV. 617.43 E 1,404,030.99
DESCRIPTION : MONUMENT LOCATED NORTHWEST CORNER OF MOUNT
CARMEL ROAD AND I-83 SOUTHBOUND ON-RAMP.

SPECIAL EXCEPTION AREA

FUEL SERVICE STATION (12 FUELLING POSITIONS X 1,500 S.F.)	= 18,000 S.F.
CONVENIENCE STORE (4 X 4,625 S.F.)	= 18,500 S.F.
ATM MACHINE (1 ATM X 1,000 S.F.)	= 1,000 S.F.
CARRY OUT RESTAURANT (6 X 524 S.F.)	= 3,144 S.F.
REQUIRED TOTAL AREA	= 40,544 S.F.
PROVIDED TOTAL AREA	= 110,014 S.F.

PARKING TABULATION CHART			
(PARKING SPACES REQUIRED BY BCZR SECTION 409.6A)			
USE	GROSS S.F.	PARKING RATE	PARKING SPACES REQUIRED PER SECTION 409.6A
CONVENIENCE STORE AND CARRY OUT RESTAURANT W/ GASOLINE	5,125	5/1,000 S.F.	26
MAXIMUM # EMPLOYEES ON SHIFT			4
ATM			1
VACUUM		1/VACUUM	1
GRAND TOTAL BUILDING S.F.	5,125		
TOTAL PARKING REQUIRED			32
TOTAL PARKING PROVIDED (INCLUDE TWO HANDICAP SPACE)			46

COMMERCIAL PERMIT HISTORY

118 MOUNT CARMEL ROAD:
NO COMMERCIAL PERMIT HISTORY

ZONING HISTORY

CASE NO. R-1987-0456 - REZONING REQUEST FROM R.C.5 TO BR WAS
WITHDRAWN BY PETITIONER ON SEPTEMBER 18, 1987.

PROFESSIONAL CERTIFICATION

I, MICHAEL J. GESELL, 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. 44097, EXPIRATION DATE: 6/9/15

**OWNER /
CONTRACT SELLER**

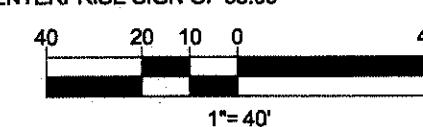
RIVERWATCH, LLC
C/O BURTON MANAGEMENT, LLC
3731 ABINGDON BEACH ROAD
ABINGDON, MD 21009

DEVELOPER /
CONTRACT PURCHASER

TWO FARMS, INC.
3611 ROLAND AVENUE 21211
ATTN.: MR. JEFF BAINBRIDGE
PHONE: (410) 494-1631

REASON FOR SPECIAL EXCEPTION, SPECIAL
HEARING, AND VARIANCE

1. SPECIAL EXCEPTION TO ALLOW A FUEL SERVICE STATION ON AN INDIVIDUAL SITE AND A CONVENIENCE STORE HAVING A SALES AREA LARGER THAN 1,500 SQUARE FEET, AND CARRY-OUT RESTAURANT AS USES IN COMBINATION, PURSUANT TO BCZR SECTIONS 405.2.B.2, 405.4.E.1, AND 405.4.E.10
 2. VARIANCE IS REQUESTED FROM SECTION 259.3.C.7.a TO PERMIT A WALL MOUNTED ENTERPRISE SIGN OF 33.08 S.F. IN LIEU OF THE PERMITTED 8 S.F.
 3. SPECIAL HEARING PER SECTION 259.3.C.7.c TO PERMIT ILLUMINATED SIGNS.
- 

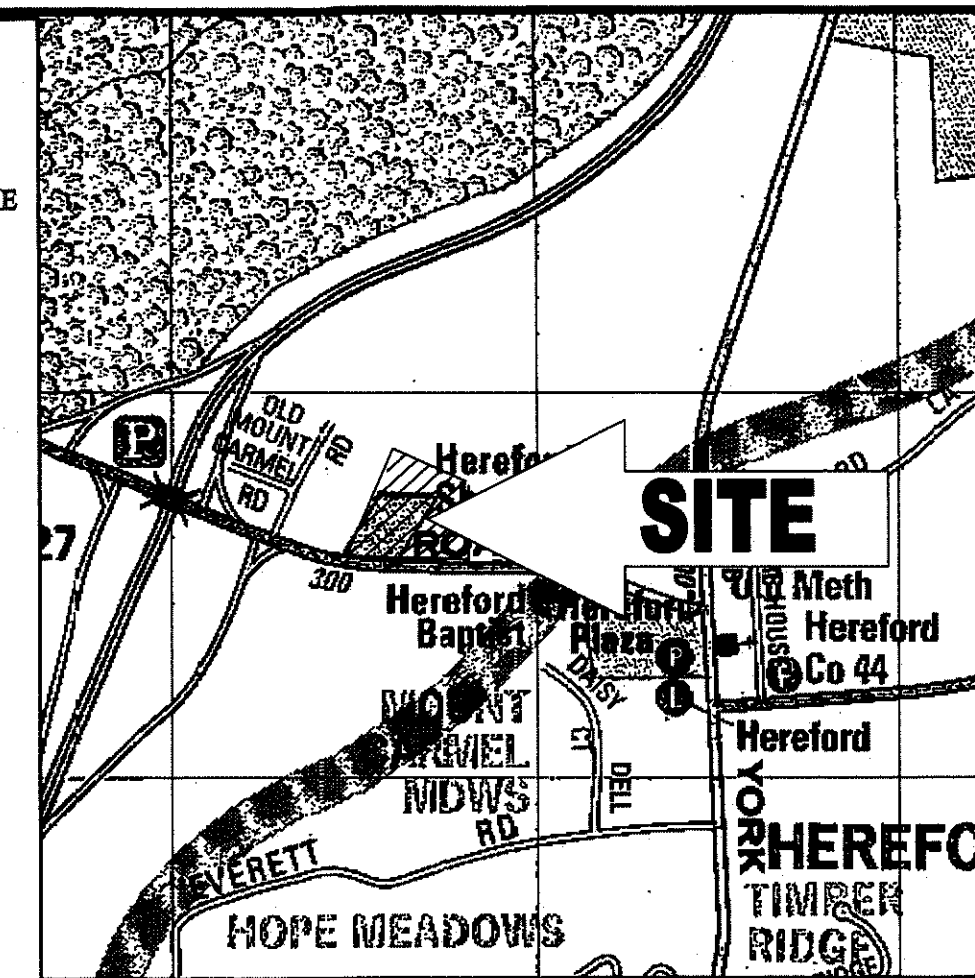
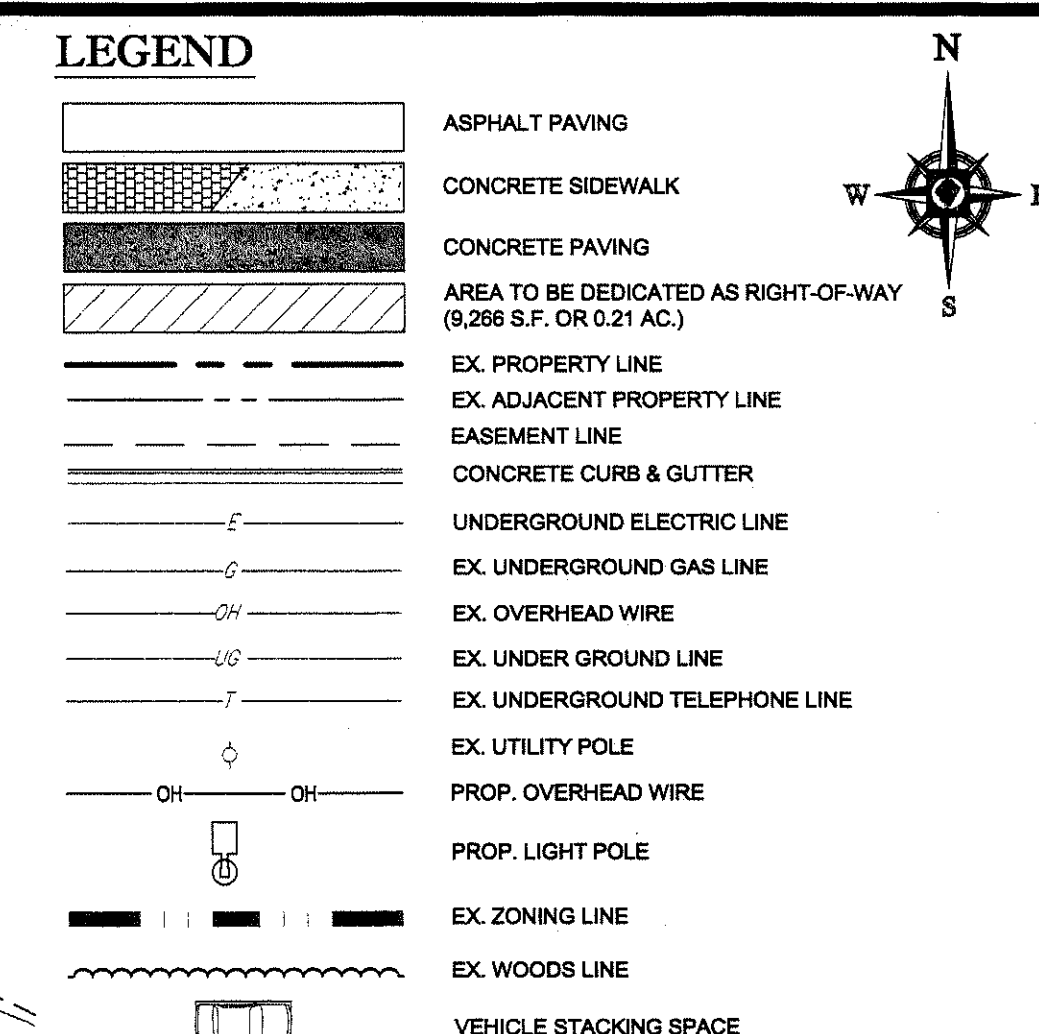


DESIGN & DRAWING BASED ON
MARYLAND COORDINATE SYSTEM
HORIZONTAL NAD 83/(1991)
VERTICAL NAVD 88

THESE PLANS ARE FOR
SPECIAL EXCEPTION AND
ARE NOT TO BE UTILIZED
FOR CONSTRUCTION

PROFESSIONAL CERTIFICATION
MICHAEL J. GESELL, HEREBY CERTIFY THAT THESE
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THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER
UNDER THE LAWS OF THE STATE OF MARYLAND,
LICENSE NO. 44087, EXPIRATION DATE: 6/9/15

C:\Users\WJONES1\APPDATA\LOCAL\TEMP\WJONES1\5164\WJ01100750.DWG PRINTED BY WJONES1 11/27/13 9:30:4 PM LAST SAVED BY WJONES1



VICINITY MAP
COPYRIGHT ADC THE MAP PEOPLE
PERMIT USE NO. 20602153-5
SCALE: 1"=1000'


BOHLER
ENGINEERING

CIVIL & CONSULTING ENGINEERS

SURVEYORS

PROJECT MANAGERS

ENVIRONMENTAL CONSULTANTS

LANDSCAPE ARCHITECTS

CORPORATE OFFICE:
♦ WARREN, NJ

OFFICES:

- ♦ SOUTHBOROUGH, MA
- ♦ BOWIE, MD
- ♦ WESTPORT, CT
- ♦ STERLING, VA
- ♦ WARRENTON, OR
- ♦ CHALFONT, PA
- ♦ FORT LAUDERDALE, FL
- ♦ CENTER VALLEY, PA
- ♦ TAMPA, FL

[illegible]

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(VA 1-800-552-7001) (MD 1-800-257-7777) (DE 1-800-282-
7777)

NOT APPROVED FOR
CONSTRUCTION

PROJECT No.:	MD101
DRAWN BY:	F
CHECKED BY:	I
DATE:	10/2
SCALE:	1"
CAD I.D.:	

PROJECT: **PLAN TO
ACCOMPANY
SPECIAL
EXCEPTION**
FOR

ROYAL FARM
STORE #185

LOCATION OF SITE
118 MOUNT CARMEL ROAD
PARKTON, MD 21120
BALTIMORE COUNTY
ELECTION DISTRICT: 7
COUNCILMANIC DISTRICT
GIS TILE NUMBER: 022A2


BOHLE
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Phone: (410) 821-7900
Fax: (410) 821-7987
www.BohlerEngineering.com**

SHEET TITLE:

SITE PLAN BLOW UP

14-131-SPHXA

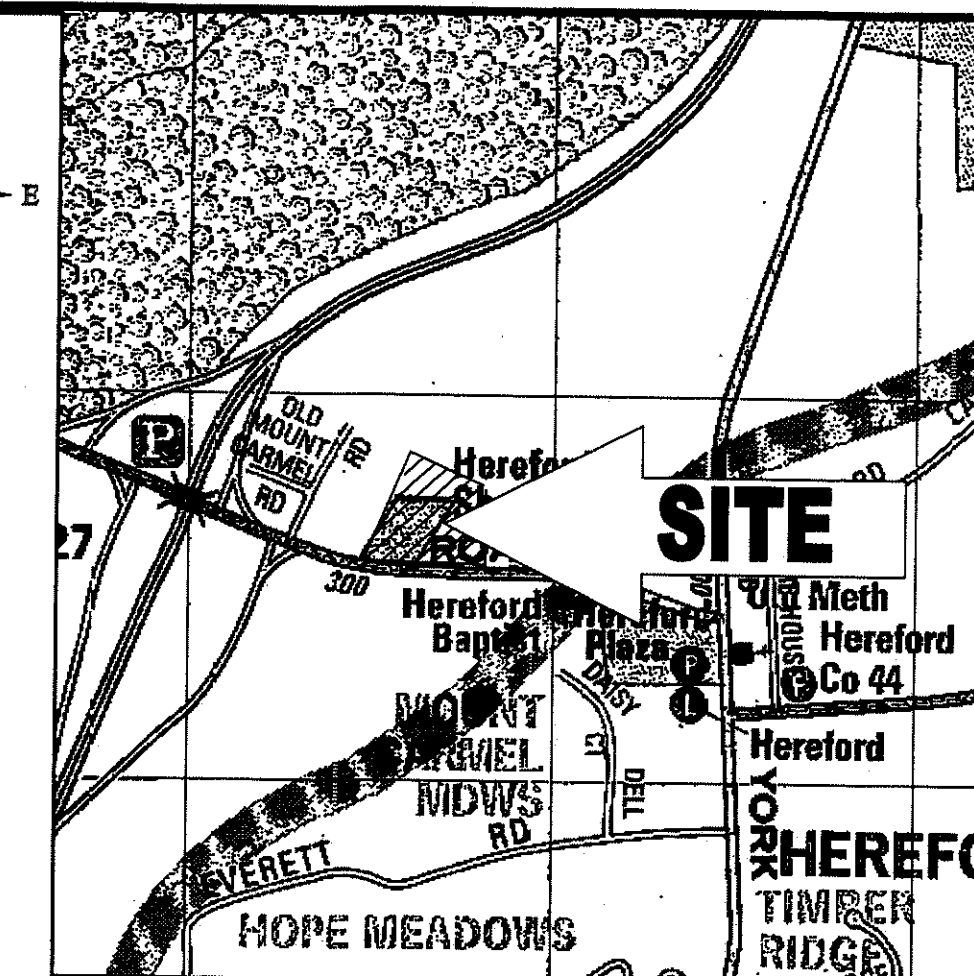
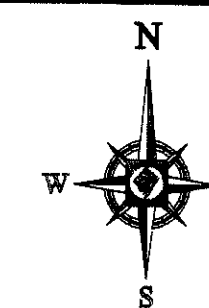
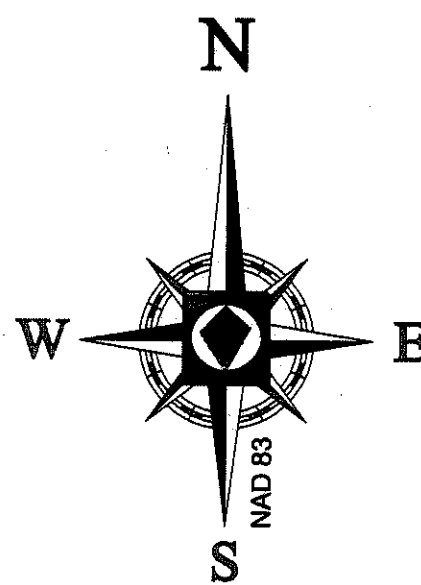
2
OF 6

THESE PLANS ARE FOR
SPECIAL EXCEPTION AND
ARE NOT TO BE UTILIZED
FOR CONSTRUCTION

PROFESSIONAL CERTIFICATION
I, MICHAEL J. GESELL, 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. 44007, EXPIRATION DATE 6/30/16

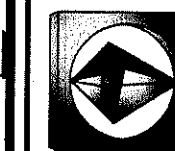
GENERAL NOTE:
IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO REVIEW ALL OF THE DRAWINGS AND SPECIFICATIONS ASSOCIATED WITH THIS PROJECT WORK SCOPE PRIOR TO THE INITIATION OF CONSTRUCTION. SHOULD THE CONTRACTOR FIND A CONFLICT WITH THE DOCUMENTS RELATIVE TO THE SPECIFICATIONS OR APPLICABLE CODES, IT IS THE CONTRACTOR'S RESPONSIBILITY TO NOTIFY THE PROJECT ENGINEER OF RECORD IN WRITING PRIOR TO THE START OF CONSTRUCTION. FAILURE BY THE CONTRACTOR TO NOTIFY THE PROJECT ENGINEER SHALL CONSTITUTE ACCEPTANCE OF FULL RESPONSIBILITY BY THE CONTRACTOR TO COMPLETE THE SCOPE OF THE WORK AS DEPICTED BY THE DRAWINGS AND IN FULL CONFORMANCE WITH LOCAL REGULATIONS AND CODES.

G:\USERS\WGESSELL\APPROACH\LOCAL\TEMP\ACPUBLISH_5194\MD1010075EO.DWG PRINTED BY: WGESSELL 11.27.13 @ 3:54 PM LAST SAVED BY: WGESSELL



VICINITY MAP
COPYRIGHT ADC THE MAP PEOPLE
PERMIT USE NO. 20802153-5
SCALE: 1"=100'

BOHLER
ENGINEERING



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WARREN, NJ
OFFICES:
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SOUTHBRIDGE, MA
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WARRINGTON, VA
PHILADELPHIA, PA
TAMPA, FL
SURVEYORS
PROJECT MANAGERS
LANDSCAPE ARCHITECTS
ENVIRONMENTAL CONSULTANTS

REVISIONS

REV	DATE	COMMENT	BY



THE FOLLOWING STATES REQUIRE NOTIFICATION BY EXCAVATORS, DESIGNERS, OR ANY PERSON PREPARING TO DISTURB THE EARTH'S SURFACE ANYWHERE IN THE STATE: IN VIRGINIA, MARYLAND, THE DISTRICT OF COLUMBIA, AND DELAWARE CALL: 811 (WW 1-800-245-4848) (PA 1-800-242-1778) (DC 1-800-257-7777) (VA 1-800-552-7001) (MD 1-800-257-7777) (DE 1-800-282-8855)

NOT APPROVED FOR CONSTRUCTION

PROJECT No.: MD101007
DRAWN BY: RWS
CHECKED BY: MJG
DATE: 10/28/13
SCALE: 1"=40'
CAD I.D.: SEU

PROJECT: **PLAN TO ACCOMPANY SPECIAL EXCEPTION FOR ROYAL FARMS**
STORE #185
LOCATION OF SITE
118 MOUNT CARMEL ROAD
PARKTON, MD 21120
BALTIMORE COUNTY
ELECTION DISTRICT: 7
COUNCILMANIC DISTRICT: 3
GIS TILE NUMBER: 022A2

BOHLER
ENGINEERING
901 DULANEY VALLEY ROAD,
SUITE 801
TOWSON, MARYLAND 21204
Phone: (410) 821-7900
Fax: (410) 821-7987
www.BohlerEngineering.com

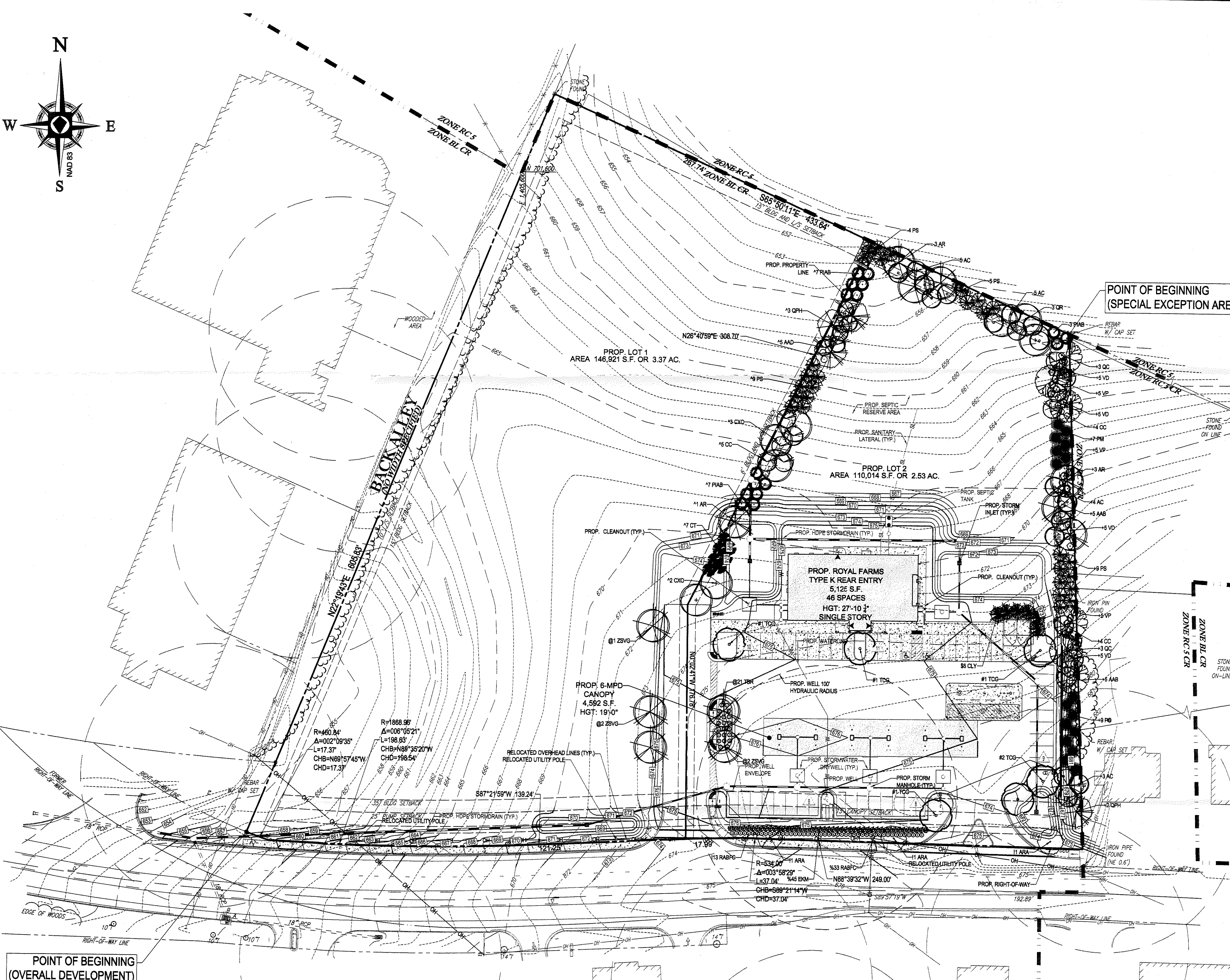
ERIC R. WILLIAMS
REGISTERED LANDSCAPE ARCHITECT
No. 14113
DATE: 10/27/13

SHEET TITLE:
SCHEMATIC LANDSCAPE PLAN
14-131-SP4XA
SHEET NUMBER:
3
OF 6

LANDSCAPE SCHEDULE

KEY	QTY	BOTANICAL NAME	COMMON NAME	SIZE	REMARKS
SHADE TREE(S)					
AR	7	ACER RUBRUM	RED MAPLE	2 1/2-3" CAL.	B+B
ARA	3	ACER RUBRUM 'ARMSTRONG'	ARMSTRONG COLUMNAR RED MAPLE	2 1/2-3" CAL.	B+B
CXO	5	CELTIS X OCCIDENTALIS	HACKBERRY	2 1/2-3" CAL.	B+B
QC	8	QUERCUS COCCINEA	SCARLET OAK	2 1/2-3" CAL.	B+B
QPH	5	QUERCUS PHELLOS	WILLOW OAK	2 1/2-3" CAL.	B+B
QR	9	QUERCUS RUBRA	RED OAK	2 1/2-3" CAL.	B+B
TCG	6	TILIA CORDATA 'GREENSPIRE'	GREENSPIRE LINDEN	2 1/2-3" CAL.	B+B
ZSVG	40	ZELKOVA SERRATA 'VILLAGE GREEN'	VILLAGE GREEN ZELKOVA	2 1/2-3" CAL.	B+B
ORNAMENTAL TREE(S)					
AAD	5	AMELANCHIER	DOWNY SERVICEBERRY	6-7'	B+B
AC	17	AMELANCHIER CANADENSIS	MULTI STEM SHADBLow SERVICEBERRY	8-10'	B+B
CC	13	CERCIS CANADENSIS	EASTERN REDBUD	2-2 1/2' CAL.	B+B
EVERGREEN TREE(S)					
CLY	6	X CUPRESSOCYPARIS LEYLANDII	LEYLAND CYPRESS	6-7'	B+B
CT	7	CHAMAECYPARIS THYOIDES	ATLANTIC WHITE CEDAR	9-7'	B+B
PIAB	17	PICEA ABIES	NORWAY SPRUCE	6-7'	B+B
PM	9	PSEUDOTSUGA MENZIESII	DOUGLAS FIR	6-7'	B+B
PO	7	PICEA OMORICA	SERBIAN SPRUCE	6-7'	B+B
PS	27	PINUS STROBUS	EASTERN WHITE PINE	6-7'	B+B
EVERGREEN SHRUB(S)					
EKM	45	EUONYMUS KIAUTSCHOVICUS 'MANHATTAN'	SPREADING EUONYMUS	24-30"	#5 CAN
TBR	21	TAXUS BACCATA 'REPANDENS'	SPREADING ENGLISH YEW	18-24"	B+B
DECIDUOUS SHRUB(S)					
AAB	15	ARONIA ARBUTIFOLIA 'BRILLIANTISSIMA'	RED CHOKEBERRY	3-4'	B+B
RABFC	46	ROSA 'APPLE BLOSSOM FLOWER CARPET'	APPLE BLOSSOM CARPET ROSE	2 GAL.	CONTAINER
VD	25	VIBURNUM DENTATUM	ARROWWOOD VIBURNUM	3-4'	B+B
VP	15	VIBURNUM PRUNIFOLIUM	BLACK-HAW VIBURNUM	3-4'	B+B

NOTE: IF ANY DISCREPANCIES OCCUR BETWEEN AMOUNTS SHOWN IN THE PLAN AND THE PLANT LIST, THE PLAN SHALL DICTATE.



POINT OF BEGINNING
(OVERALL DEVELOPMENT)

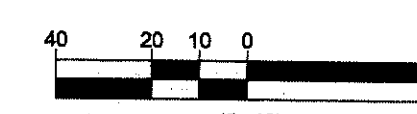
MD ROUTE 137 - MOUNT CARMEL ROAD
(A.K.A. HEREFORD MT. CARMEL ROAD)
(SEE PLAT NO. 12066, 23049 & 15390)
(VARIABLE WIDTH R.O.W.)

SCHEMATIC LANDSCAPE PLAN
CERTIFICATION FORM

THIS SCHEMATIC LANDSCAPE PLAN IS SEALED BY A LANDSCAPE ARCHITECT AND CERTIFIED BY MY SIGNATURE BELOW, BEING IN ACCORDANCE WITH ALL COUNTY AGENCY LANDSCAPE ARCHITECTURAL COMMENTS.

APPLICANT SIGNATURE: *[Signature]* DATE: 11/27/13 ERIC R. WILLIAMS PRINT NAME

MAILING ADDRESS (IF NOT ALREADY ON PLAN)



THESE PLANS ARE FOR SPECIAL EXCEPTION AND ARE NOT TO BE UTILIZED FOR CONSTRUCTION

PROFESSIONAL CERTIFICATION
I, ERIC R. WILLIAMS, HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED LANDSCAPE ARCHITECT UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 3667, EXPIRATION DATE: 9/20/2014.

IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO REVIEW ALL OF THE DRAWINGS AND SPECIFICATIONS ASSOCIATED WITH THIS PROJECT. WORK SHALL BE IN ACCORDANCE WITH THE SPECIFICATIONS AND REQUIREMENTS OF THE MARYLAND DEPARTMENT OF TRANSPORTATION (MDOT) STANDARD SPECIFICATIONS FOR CONSTRUCTION, LATEST EDITION. IT IS THE CONTRACTOR'S RESPONSIBILITY TO NOTIFY THE PROJECT ENGINEER OF RECORD IN WRITING PRIOR TO THE START OF CONSTRUCTION. FAILURE BY THE CONTRACTOR TO NOTIFY THE PROJECT ENGINEER SHALL CONSTITUTE ACCEPTANCE OF FULL RESPONSIBILITY BY THE CONTRACTOR TO COMPLETE THE SCOPE OF THE WORK AS DEFINED BY THE DRAWINGS AND IN FULL COMPLIANCE WITH ALL LOCAL, STATE AND FEDERAL LAWS.