Board of Appeals of Baltimore County

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

April 23, 2018

Adam Baker, Esquire
Whiteford, Taylor & Preston, LLP
8830 Stanford Boulevard, Suite 400
Columbia, Maryland 21045

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, Maryland 21286

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

RE: In the Matter of: *RREF II SB-MD, LLC*
Case No.: 17-113-SPH

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,

Sunny Cannington Hay

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Multiple Original Cover Letters

c: RREF II SB-MD, LLC
M. V. Runkles, III
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

RE: PETITION FOR SPECIAL HEARING 502 & 504 Montclair Court: E/S Montclair Court, Mt. Clair Court, 1860 NW of York Road 7th Election District 3rd Counsel Manic District Legal Owner: RREF II SB-MD, LLC	*	BOARD OF APPEALS FOR BALTIMORE COUNTY CASE NO: 17-113-SPH
Petitioner		

* * * * * * * * * * * *

OPINION

This case comes before the Baltimore County Board of Appeals as an appeal from Administrative Law Judge ("ALJ") John E. Beverungen's March 13, 2017 Order granting People's Counsel Motion to Dismiss on grounds of *res judicata*. This Board convened arguments on People's Counsel's Motion to Dismiss and the Petitioner's responses thereto on June 27, 2017. A deliberation was held on August 9, 2017. Protestant, M. V. Runkells, III, was represented by J. Carroll Holzer, Esquire. The Petitioner/Appellant was represented by Adam Baker, Esquire of Whiteford, Taylor & Preston, LLP. Peter Max Zimmerman appeared on behalf of the Office of the People's Counsel.

BACKGROUND

The history of this matter starts on June 1, 2004, when, then hearing officer, John V. Murphy, approved a 16 lot development plan, named Montclair, with conditions (HOH Case #: VII-372). During the course of that case and based on the Planning Board referral recommendation, the developer modified the proposed plan, including a minimal front yard set back for lots 14 and 15. Hearing Officer Murphy added a one-story height limitation for these

lots. The reason for this height limitation is that these lots adjoined the property of Marion Runkells and the historic Wiseburg Inn and was meant to mitigate the adverse impact on his property. This decision was subsequently appealed to the Baltimore County Board of Appeals and to the Circuit Court for Baltimore County, which both affirmed hearing officer Murphy's decision.

PRESENT CASE

On October 21, 2017, Petitioner filed a Petition for Special Hearing relief. In this petition, the Petitioner asked for a modification for the conditions imposed in case number VII-372 to prevent the homes on lots 14 and 15 (502 and 504 Mt. Claire Court) to be greater in height than be one-story. Additionally, the Petitioner has requested a modification of the previous conditions for these lots reducing the required rear yard set back from 100 feet to 80 feet. Additionally, in the course of the prior proceedings, the Petitioner filed a revised site plan and added a request for variance from section 1A04.3-B.2 to permit a set back of 55 feet from the center of line of the road in lieu of the required 75 feet and to permit a set back from the western lot line for lot 14 of 30 feet in lieu of the required 50 feet.

In its motion filed with the ALJ, Peoples' Counsel asserted and argued that the *res judicata* doctrine barred the Petitioner's petition. ALJ John Beverungen granted the Motion to Dismiss finding that *res judicata* did apply and that he was precluded from amending the Planning Board's previous requirement from 100 feet to 80 feet due to the binding nature of the previous determination pursuant to B.C.C. § 32-4-232(f).

The Petitioners contend that *res judicata* does not apply in this matter due to their assertion that significant changes have occurred in the community at issue since the original 2004 hearing. Petitioner notes that nearly all the houses in the subdivision have been constructed and sold, and the trees from the landscaping required a 2004 Order are now fully grown, obscuring some of the views sought to preserved by the Protestants. The Petitioner also contends that a large barn constructed in the rear of the Wiseburg Historic property, which also obscures the view shed that was sought to be preserved, constitutes a significant change in the community.

ANALYSIS

Under Maryland law, an agency determination affirmed on appeal is entitled to preclusive effect. *Seminary Galaria, LLC v. Dulaney Valley Improv. Ass'n Inc.*, 192 Md. App. 79, 736 (2010): *Esslinger v. Balto City,* 95 Md. App. 607, 621 (1993.) *Res judicata* will apply, unless there is a significant change in circumstances between the earlier and subsequent action. *See, e.g., Alvy v. Headin*, 243 Md. 334, 340 (1966). No legally significant change has occurred since the prior determination of the hearing officer imposing height and setback conditions on lots 14 and 15. Accordingly, *res judicata* bars the relief sought by Petitioner in this case.

ORDER

THEREFORE, IT IS, this 23rd day of April, 2018, by the Board of Appeals for Baltimore County,

ORDERED, that People's Counsel's Motion to Dismiss, be and is hereby **GRANTED**.

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

Andrew M. Belt, Panel Chairman

James H. West

Meryl W. Rosen was a Board Member at the time of the hearing and public deliberation of the Board. She resigned from the Board in September 2017.

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: RREF II SB-MD, LLC 17-113-SPH

DATE: August 9, 2017

BOARD/PANEL: Andrew M. Belt, Chairman
Meryl W. Rosen
James H. West

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the following:

1. Motion to Dismiss filed by People's Counsel, and Opposition thereto.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board reviewed the history of this property. There was a previous case from 2004 which imposed restrictions on the development of the lots in question within the Montclair development, including height limitations and minimum setbacks, in order to protect the adjoining property that includes the historic Wiseburg Inn. Petitioner seeks to amend certain restrictions from the prior case.
- A Motion to Dismiss was filed by People's Counsel, and an Opposition to the Motion was filed by Petitioner. The Board held a hearing to provide the parties with the opportunity to present argument on the application of *res judicata* to this case.
- The Board noted that, in order for Petitioner to avoid the application of *res judicata*, there must be a substantial change in circumstances involving the properties.
- The Petitioner argues that the development restrictions set forth in connection with the original approval of the Montclair development were put in place for the protection of the adjoining property. They argue that construction of a barn by the neighbor, the completion of the Montclair development, and mature tree growth constitute a material change in circumstance.
- The Board finds that the items argued by the Petitioner as material changes were to be expected, and finds there has not been a substantial change to the property or circumstances.

CONCLUSION: After thorough review of the facts in the record and law governing this matter, the Board unanimously agreed to GRANT the Motion to Dismiss on the basis of *res judicata*.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,

Tammy A. Zahner

Tammy A. Zahner

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 12, 2017

NOTICE OF DELIBERATION

IN THE MATTER OF: RREF II SB-MD, LLC – Legal Owner
502 & 504 Montclair Court
17-113-SPH 7th Election District; 3rd Councilmanic District

AGENDA: Motion to Dismiss filed by People's Counsel for Baltimore County on June 12, 2017 and Opposition to Motion to Dismiss filed by Petitioner on June 23, 2017.

Argument on the Motion to Dismiss and responses thereto having been heard on June 27, 2017, a public deliberation has been scheduled for the following:

DATE AND TIME: WEDNESDAY, AUGUST 9, 2017 at 9:30 a.m.

LOCATION: Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. ATTENDANCE IS NOT REQUIRED AND PARTICIPATION IS NOT ALLOWED. A WRITTEN OPINION AND ORDER WILL BE ISSUED BY THE BOARD WITHIN A REASONABLE TIMEFRAME AFTER THE CONCLUSION OF THE DELIBERATION. A COPY OF THAT OPINION AND ORDER WILL BE SENT TO ALL PARTIES.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

---

c: Counsel for Petitioner : Adam Baker, Esquire
Petitioner : RREF II SB-MD, LLC

Counsel for Protestant : J. Carroll Holzer, Esquire
Protestant : M. V. Runkles, III

Andrea Van Arsdale, Director/Department of Planning
Lawrence M. Stahl, Managing Administrative Law Judge
Nancy West, Assistant County Attorney

Arnold Jablon, Director/PAI
Michael Field, County Attorney, Office of Law
Office of People's Counsel

Board of Appeals of Baltimore County

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410-887-3180
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April 13, 2017

NOTICE OF ASSIGNMENT

IN THE MATTER OF: RREF II SB-MD, LLC – Legal Owner
502 & 504 Montclair Court
17-113-SPH 7th Election District; 3rd Councilmanic District

Re: Petition for Special Hearing pursuant to § 500.7 of the BCZR to:
- Permit a modification of the conditions imposed in Case No. VII-372 to permit homes on Lots 14 and 15 (502 and 504 Montclair Court) greater in height then the permitted one story (Restriction No. 3); and
- Permit a modification of the conditions imposed to reduce the required rear yard setback for Lots 14 and 15 from 100' to 80' (Footnote of April 15, 2004 Planning Board Decision); and
- To amend the Final Development Plan for Montclair

Petition for Variance from § 1A04.3.B.2.b to permit a setback of 55' from the center line of the road in lieu of the required 75' and to permit a setback from the western lot line for Lot 14 of 30 feet in lieu of the required 50 feet.

3/13/17 Opinion and Order of the Administrative Law Judge wherein the case was DISMISSED with prejudice. ALJ dismissed prior to a public hearing finding the relief sought was barred by the doctrine of *res judicata*, and that he is not authorized to modify the 100 foot rear yard setbacks.

ASSIGNED FOR: TUESDAY, JUNE 27, 2017, AT 10:00 A.M.

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

NEW! Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.

NEW! Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

c:	Counsel for Petitioner	: Adam Baker, Esquire
	Petitioner	: RREF II SB-MD, LLC
	Protestant	: M. V. Runkles, III

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

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COUNSEL
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ABaker@wtplaw.com

June 23, 2017

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

Re: Case No. 2017-113-SPH

Dear Ms. Cannington,

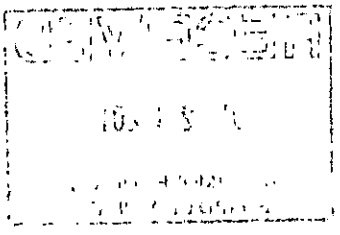
Enclosed please find one (1) original and four (4) copies of Petitioner's Response to People's Counsel for Baltimore County's Motion to Dismiss Petition for Special Hearing in the above-referenced matter. Please date stamp one of the copies and return it with the messenger.

Thank you for your kind attention in this matter.

Sincerely,

Adam D. Baker

AB:adb
Cc: Peter Max Zimmerman, Esq.
Carole S. Demilio, Esq.
J. Carroll Holzer, Esq.
Enclosure



RE: PETITION FOR SPECIAL HEARING 502 & 504 Montclair Court; E/S Montclair Court, 1860' NW of York Road 7th Election District 3rd Councilmanic District Legal Owner: RREF II SB-MD, LLC Petitioner	*	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY
	*	
	*	CASE NO: 2017-113-SPH

* * * * * * * * * * * *

PETITIONER'S OPPOSITION TO MOTION TO DISMISS

The Petitioner, RREF II SB-MD, LLC (hereinafter referred to as "RREF" or the "Petitioner"), by and through its attorneys, Adam D. Baker and Whiteford, Taylor & Preston, LLP, hereby oppose the Motion to Dismiss Petition for Special Hearing filed by People's Counsel for Baltimore County and states the following:

I. Statement of the Case

1. On October 21, 2016, the Petitioner filed a Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("BCZR") seeking the following relief:

> i. Permit a modification of the conditions imposed in Case No. VII-372 to permit homes on Lots 14 and 15 (502 and 504 Montclair Court) greater in height than the permitted one story (Restriction No. 3 in Case No. VII-372); and
>
> ii. Permit a modification of the conditions imposed to reduce the required rear yard setback for Lots 14 and 15 from 100 feet to 80 feet (Footnote of April 15, 2004 Planning Board Decision); and

iii. To amend the Final Development Plan for Montclair.

2. On February 2, 2017, Petitioner filed an amended Petition and Site Plan, adding the following relief (in addition to the relief already sought in the October 21, 2016 Petition (collectively, the "Petition")):

iv. Petition for Variance from Section A104.3.B.2.b to permit a setback of 55 feet from the center line of the road in lieu of the required 75 feet and to permit a setback from the western lot line for Lot 14 of 30 feet in lieu of the required 50 feet.

3. On March 13, 2017, the Administrative Law Judge ("ALJ") dismissed the case prior to a public hearing finding that the relief sought was barred by the doctrine of *res judicata*.

4. On March 23, 2017, Petitioner filed an Appeal of the ALJ's March 13, 2017 Order dismissing the case with prejudice.

II. Background

5. On June 1, 2004, in Case No. VII-372, John Murphy, the Baltimore County Hearing Officer/Deputy Zoning Commissioner, approved a proposed 16 lot single family development plan on a 60.075 acre unimproved site known as "Montclair". Hearing Officer Murphy imposed certain conditions on his approval. Of particular interest in this case are: (1) a one-story height limitation for the houses to be constructed on Lots 14 and 15, and (2) a rear yard setback of 100 feet for Lots 14 and 15, in light of the Planning Board's decision in the case, which was binding on the Hearing Officer. These conditions were imposed to alleviate the concerns of Mr. Runkles, who owns an adjacent property directly to the east of the Montclair development. Located on Mr. Runkles' property is the Wiseburg Inn, a

Baltimore County historic landmark. Mr. Runkles complained that one could see the roof and second floor of the homes built on Lots 14 and 15 which would adversely affect the historic nature of his property. Hearing Officer Murphy imposed the one-story condition in order to address the concerns of Mr. Runkles. The 100 foot setback was imposed by the Planning Board for the same reasons and binding on the Hearing Officer. A copy of the Hearing Officer's decision is attached at **Exhibit 1**.

6. The Hearing Officer's decision was appealed to the Baltimore County Board of Appeals and later to the Circuit Court, both of which affirmed the decision of the Hearing Officer. Copies of these decisions are attached as **Exhibit 2** and **Exhibit 3**, respectively.

7. The current Petition seeks to modify the two aforementioned conditions that the Hearing Officer placed on the 2004 approval of the Montclair development. Specifically the Petition seeks the removal of (1) the requirement that the homes on Lots 14 and 15 be no more than one story in height, and (2) to reduce the required rear yard setback for Lots 14 and 15 from 100 feet to 80 feet. In the alternative, if the rear yard setback relief is denied, the Petition seeks variance relief to reduce the front setback for Lots 14 and 15 from 75 feet to the road center line to 55 feet and to reduce the western lot line setback for Lot 14 from 50 feet to 30 feet, in order to allow a more compatible footprint for the homes on these lots.

III. Res Judicata

8. The doctrine of *res judicata* provides that "a judgment on the merits in a previous suit between the same parties or their privies precludes a second suit predicated upon the same cause of action." Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979).

9. In the land use and zoning context, Whittle v. Bd. of Zoning Appeals of Baltimore Co., 211 Md. 36 (1956), has been regarded as the seminal case with regard to *res*

judicata. Whittle involved a special permit to construct a funeral home on York Road in Towson. The initial petition was filed in 1949 and ultimately denied. In 1954, the property owners filed a second petition, asserting a variety of changes in circumstances from the 1949 petition, including (1) that the neighboring church supported the petition, (2) that there would be no adverse impacts on traffic and parking, (3) that there would be no decrease in area property values, (4) that there was increased commercial activity in the area, and (5) that there was greater population increase in the area. Id. at 40-41. The 1954 petition was approved at the administrative level and affirmed by the Circuit Court, but the Court of Appeals reversed the lower decisions. The Court of Special Appeals, in speaking on the issue of *res judicata*, provided:

> The general rule, where the question has arisen, seems to be that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may consider and act upon a new application for a special permit previously denied, but that it may properly grant such a permit only if there has been a substantial change in conditions. See Bassett on Zoning (2nd Ed., 1940), pp. 119-120; Yokely on Zoning Law and Practice (1953 Ed.), § 128; 168 A.L.R. 124; St. Partick's Church Corporation v. Daniels, 113 Conn. 132, 154 A. 343; Burr v. Rago, 120 Conn. 287, 180 A. 444; Romell v. Walsh, 127 Conn. 272, 16 A.2d 483; Rutland Parkway, Inc. v. Murdock, 241 App.Div. 762, 270 N.Y.S. 971. This rule seems to rest not strictly on the doctrine of res judicata, but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law. Id. at 45.

The court went on to further explain:

> It is our view that where the facts are subject to changes which might reasonably lead to an opposite result from that arrived at in an earlier case, and if there have been substantial changes in facts and circumstances between the first case and the second, the doctrine of res judicata would not prevent the granting of the special permit sought by the appellees. Id.

10. The most recent case involving the issue of *res judicata* in the land use and zoning context is Seminary Galleria, LLC v. Dulaney Valley Improvement, Ass'n, Inc., 192

Md.App. 719 (2010) in which the Galleria was attempting to obtain retroactive approval of the 14 parking spaces it had previously added to the parking lot. The Court of Special Appeals held that the Galleria was precluded by *res judicata* from seeking retroactive approval of the additional parking spaces. In forming its decision, the court relied on many prior zoning cases that discuss the issue of *res judicata*: Whittle v. Bd. of Zoning Appeals of Baltimore Co., 211 Md. 36 (1956); Woodlawn Area Citizens Ass'n., Inc. v. Board of County Commissioners for Prince George's County, 241 Md. 187 (1966)(petition for zoning reclassification barred by *res judicata* because no evidence of significant change in the neighborhood since prior application for same relief); and Chatham Corp. v. Beltram, 243 Md. 128 (1966)(petition for zoning reclassification in Howard County barred by *res judicata* because no evidence of significant differences between both applications for the same relief).

IV. Res Judicata Does Not Apply in the Instant Case

12. People's Counsel contends that the proposed removal of the conditions imposed on Lots 14 and 15 of the Montclair development cannot be approved based upon the doctrine of *res judicata*. While there is no dispute that the doctrine of *res judicata* is applicable in quasi-judicial administrative proceedings. Seminary Galleria v. Dulaney Valley Improvement Association, 192 Md.App. 719, 734 (2010), it does not, however, apply in the instant case. The Maryland Court of Appeals clarified in the Seminary Galleria case that *res judicata* will not apply if there have been substantial changes in fact and circumstances between the first case and the second case. Id. at 736-37, quoting Whittle v. Bd. of Zoning Appeals, 211 Md. 36, 45 (1956).

12. In the instant matter, there have been substantial changes in fact and circumstances between the Hearing Officer's Order of June 1, 2004, which imposed the

conditions which the Petitioner is now petitioning to have removed, and the filing of the current Petition.

13. First, at the time that Hearing Officer Murphy heard the case and submitted his Order, it is not clear from the record that the 4,000 square foot barn which now sits at the western edge of Mr. Runkles' property was constructed. While Mr. Runkles noted on cross examination during the hearing that he had obtained permits to build the barn, there is nothing in the record to indicate that the barn was already constructed. There is a significant difference between having a building permit and constructing a 4,000 square foot structure under that permit. A building permit represents an approval which is valid for a statutory period before it expires. A building permit can expire without any structure ever being built. With only the permit in hand and without the structure actually built, Hearing Officer Murphy could not fully comprehend the impact that the barn would have on Mr. Runkles'viewshed if the barn had yet to be built. Mr. Runkles contended at the Hearing Officer's Hearing that the view of the new homes on lots 14 and 15 would adversely affect the historic nature of his property and the viewshed west of his home into the Montclair development. Constructing the barn on his property, directly in the viewshed that he sought to protect, clearly represents a substantial change in the facts and circumstances surrounding the imposition of the conditions.

14. Second, as part of the original Montclair development, the developer planted a strip of trees intended to screen the Runkles property from the new homes in Montclair with a vegetative buffer. Included in the buffer was a strip of evergreen trees. Since their planting, these evergreen trees have matured to the point where the majority of them are at or over 30 feet in height. With such substantial screening now in place, there is some question as to

whether the houses on Lots 14 and 15 would be visible from Mr. Runkles' property if the conditions were removed (i.e. if the houses were 2 stories in height and setback 80 feet from the rear property line).

15. In addition to the screening approved under the original plan, the Petitioner now plans to incorporate additional screening and grading. This proposal is set forth in **Exhibit 4**, prepared by Human & Rohde, Inc. The additional screening includes Norway Spruce and American Holly trees. Norway Spruce trees can reach up to 40-60 feet high and 25-30 feet wide at maturity. American Holly trees can reach up to 30-40 feet high and 15-20 feet wide at maturity. These trees will fill some of the gaps in the existing evergreen trees and will serve as a substantial addition to the buffer already existing. The grading will provide a more level ground surface for Lots 14 and 15 and will also drop the roof line of the proposed houses significantly, thus reducing the visible impact to the neighboring Runkles property. Note **Exhibit 4** shows a two-story house. In light of the additional grading, however, the reduced height meets the spirit and intent of Hearing Officer Murphy's condition to limit the houses to one story.

16. Subsequent to the 2004 approval, the Montclair community adopted a Declaration of Covenants, Conditions and Restrictions (Liber 28987, folio 038) which apply to every lot in the subdivision in order to achieve a general plan of development (the "Covenants"). A copy of the Covenants and the First Amendment thereto are attached as **Exhibit 5**. The Covenants require Architectural Review for new structures which are erected in order to achieve an aesthetically pleasing and uniform sense of development within the community. In fact, the Architectural Guidelines (see pp. 47-61) expressly state: "The primary objective is to create a total community that is homogeneous in feeling, in a park-

like setting, and free from discordant architecture." Montclair Architectural Guidelines, p. 47. With the current 2004 conditions imposed on Lots 14 and 15, a narrow one story house could be constructed on the lots. Such a structure would not be compatible with the other houses already constructed in Montclair. It is likely that such a style and size of house would have significant trouble obtaining approval from the Montclair Architectural Committee.

17. Lastly, the Montclair property has been developed since the conditional approval was granted in 2004. At the time that the conditions were imposed, the viewshed which Mr. Runkles sought to have protected included his rear yard (now improved with a 4,000 square foot barn) and an unimproved neighboring parcel. Now that the subdivision has been constructed, Mr. Runkles property borders a 16 lot subdivision where 14 of the lots are improved with single family dwellings (all of which are currently occupied). Notwithstanding the fact that Mr. Runkles tainted the viewshed that he sought to protect through constructing the barn, his property now borders an occupied subdivision. The impact of this subdivision represents a substantial change in the facts and circumstances associated with the imposition of the 2004 conditions.

18. Considering these changes through the lens of Whittle, res judicata cannot apply. Recall, in Whittle, the court said:

> It is our view that where the facts are subject to changes which might reasonably lead to an opposite result from that arrived at in an earlier case, and if there have been substantial changes in facts and circumstances between the first case and the second, the doctrine of res judicata would not prevent the granting of the special permit sought by the appellees. 211 Md. at 45.

Putting this into context, one must ask: would Judge Murphy have imposed the same conditions on Lots 14 and 15 if all of the facts which are now in place existed in 2004? We

contend that the unequivocal answer is "no". In light of these significant changes since the 2004 approval, we respectfully submit that the doctrine of *res judicata* does not apply.

V. Conclusion

For all of the reasons stated herein, Petitioner RREF II SB-MD, LLC respectfully requests that the Board denies the Motion to Dismiss filed by People's Counsel for Baltimore County.

Respectfully submitted,

Adam D. Baker
Whiteford, Taylor & Preston, LLP
8830 Stanford Boulevard, Suite 400
Columbia, Maryland 21045
(410) 832-2052
Attorneys for RREF II SB-MD, LLC

PETITION FOR ZONING HEARING(S) AMENDED 2/1/17

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 502 & 504 Montclair Court **which is presently zoned** RC5

Deed References: 37237/494 10 Digit Tax Account # 2500002811, 2500002812

Property Owner(s) Printed Name(s) RREF II SB-MD, 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)

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

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

(SEE ATTACHED)

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

TO BE PRESENTED AT HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.
Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

ORDER RECEIVED FOR FILING
Date 3-13-17
By AW

Legal Owners (Petitioners):

RREF II SB-MD, LLC
Name #1 – Type or Print Name #2 – Type or Print

Signature #1 Signature #2

790 N.W. 107th Ave., Suite 300, Miami, FL
Mailing Address City State

33172 (305) 487-6332
Zip Code Telephone # Email Address

Attorney for Petitioner:

Adam Baker, Esq.
Name- Type or Print

Signature

8830 Stanford Boulevard, Suite 400, Columbia, MD
Mailing Address City State

21045 (410) 832-2052 abaker@wtplaw.com
Zip Code Telephone # Email Address

Representative to be contacted:

Adam Baker, Esq.
Name – Type or Print

Signature

8830 Stanford Boulevard, Suite 400, Columbia, MD
Mailing Address City State

21045 (410) 832-2052 abaker@wtplaw.com
Zip Code Telephone # Email Address

CASE NUMBER 2017-0113-SPH **Filing Date** 10/21/2016 **Do Not Schedule Dates:** _____ **Reviewer** JNP
Revised Filing Date 2/1/2017

REV. 10/4/11

fax 410-6606 · 0429 Linda

AMENDED

PETITION FOR ZONING HEARING
Montclair

Relief Requested:

1. Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations to permit a modification of the conditions imposed in Case No. VII-372 to permit homes on Lots 14 and 15 (502 and 504 Montclair Court) greater in height than the permitted one story. (See Restriction No. 3 of Hearing Officer's Order)
2. Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations to permit a modification of the conditions imposed in Case No. VII-372 to reduce the required rear yard setback for Lots 14 and 15 (502 and 504 Montclair Court) from 100 feet to 80 feet. (See Footnote of April 15, 2004 Planning Board Decision)
3. Special Hearing to amend the Final Development Plan for Montclair.
4. Variance from § 1A04.3.B.2.b to permit a setback of 55 feet from the center line of the road in lieu of the required 75 feet and to permit a setback from the western lot line for Lot 14 of 30 feet in lieu of the required 50 feet.

2195658

2017-0113-SPH

Polaris
LAND CONSULTANTS

10 GERARD AVENUE
SUITE 101
TIMONIUM, MD 21093
(410) 252-4444 (o)
(410) 252-4493 (f)
www.polarislc.com

Zoning Description of
Lots 14 and 15
"MONTCLAIR"
7th Election District
Baltimore County, MD

Beginning at a point on the East Side of Montclair Court at the distance of 1860 feet Northwest of the center of York Road (MD State Route No. 45) and being known as ~~Lots 14 and 15 of a~~ plat entitled "Plat One - MONTCLAIR" as recorded among the Land Records of Baltimore County in Plat Book 78 Page 259.

Lot 14 being designated as 502 Montclair Court and containing 1.221 Acres and Lot 15 being designated as 504 Montclair Court and containing 1.102 Acres

2017-0113-SPH

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

No 145722

Date: 10/21/2016

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: Whiteford, Taylor & Preston

For: Special Hearing - 502 & 504 Mordchair Court
2017-0213-SPH (RREF II SA-MD, LLC)

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

PAID RECEIPT

BUSINESS ACTUAL TIME DRW
10/25/2016 10/21/2016 13:47:10 1
REG USO1 WALKIN LJR
>>RECEIPT # 687651 10/21/2016 OFLN
Dept: 5 528 ZONING VERIFICATION
CR NO. 145722
Recpt Tot $1,200.00
$1,200.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

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

No. 148578

Date: 2/3/17

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
0001	806	0000		6150				$250.00

Total: $250.00

Rec From: Whiteford, Taylor & Preston

For: Amended 2017-0113 SPH

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

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
2/06/2017	2/03/2017	09:30:53	3

REG WS03 WALKIN CAH
>>RECEIPT # 714772 2/03/2017 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 148578
Recpt Tot $250.00
$250.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

TO: PATUXENT PUBLISHING COMPANY
Thursday, February 23, 2017 Issue - Jeffersonian

Please forward billing to:
Adam Baker 410-832-2052
Whiteford, Taylor & Preston
8830 Stanford Blvd., Ste. 400
Columbia, MD 21045

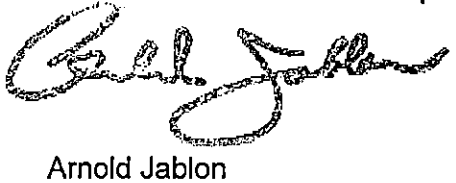
NOTICE OF ZONING HEARING

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: 2017-0113-SPH
502 & 504 Montclair Court
E/s Montclair Court, 1860 ft. NW of York Road
7th Election District – 3rd Councilmanic District
Legal Owners: RREF II SB-MD, LLC

Special Hearing to permit a modification of the conditions imposed in Case No. VII-372 to permit homes on Lots 14 & 15 (502 & 504 Montclair Ct.) greater in height than the permitted one story. (See Restriction No. 2 of Hearing Officer's order.) To permit a modification of the conditions imposed in Case No. VII-372 to reduce the required rear yard setback for Lots 14 & 15 (502 & 504 Montclair Ct.) from 100 ft. to 80 ft. (See Footnote of April 15, 2004 Planning Board Decision). To amend the Final Development Plan for Montclair. To permit a setback of 55 ft. from the centerline of the road in lieu of the required 75 ft. and to permit a setback from the western lot line for Lot 14 of 30 ft. in lieu of the required 50 ft.

Hearing: Thursday, March 16, 2017 at 11:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, November 29, 2016 Issue - Jeffersonian

Please forward billing to:
Adam Baker 410-832-2052
Whiteford, Taylor & Preston
8830 Stanford Blvd., Ste. 400
Columbia, MD 21045

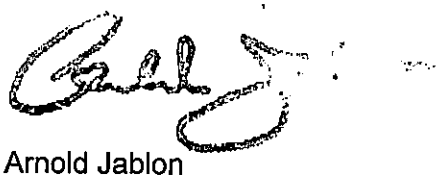
NOTICE OF ZONING HEARING

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: 2017-0113-SPH
502 & 504 Montclair Court
E/s Montclair Court
7th Election District – 3rd Councilmanic District
Legal Owners: RREF II SB-MD, LLC

Special Hearing to permit a modification of the conditions imposed in Case No. VII-372 to permit homes on Lots 14 & 15 (502 and 504 Montclair Court) greater in height than the permitted one story. (See restriction No. 3 of Hearing Officer's Order). To permit a modification of the conditions imposed in Case No. VII-372 to reduce the required rear yard setback for Lots 14 and 15 (502 and 504 Montclair Court) from 100 feet to 80 feet (See Footnote of April 15, 2004 Planning Board Decision). To amend the Final Development Plan for Montclair.

Hearing: Monday, December 19, 2016 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.

RE: PETITION FOR SPECIAL HEARING 502 & 504 Montclair Court; E/S Montclair Court, 1860' NW of York Road 7th Election & 3rd Councilmanic Districts Legal Owner(s): RREF II SB-MD, LLC Petitioner(s)	*	BEFORE THE OFFICE
	*	OF ADMINSTRATIVE
	*	HEARINGS FOR
	*	BALTIMORE COUNTY
	*	2017-113-SPH

* * * * * * * * * * * * *

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED
NOV 0 4 2016

Carole S Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of November, 2016, a copy of the foregoing Entry of Appearance was mailed to Adam Baker, Esquire, 8830 Stanford Boulevard, Suite 400, Columbia, Maryland 21045, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

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 legal owner/petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least twenty (20) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the legal owner/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:

Case Number: 2017-0113 SPH

Property Address: 502 & 504 Montclair Court

Property Description: E/S of Montclair Ct., 1860' NW of York Road

Legal Owners (Petitioners): RREF II SB-MD, LLC

Contract Purchaser/Lessee: _____

PLEASE FORWARD ADVERTISING BILL TO:

Name: Adam Baker

Company/Firm (if applicable): Whiteford Taylor & Preston, LLP

Address: 8830 Stanford Blvd
Columbia, MD 21045

Telephone Number: 410.832.2052

Revised 7/9/2015

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

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

DATE: 2/27/2017

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 17-113

INFORMATION:
Property Address: 502 & 504 Montclair Court
Petitioner: RREF II SB-MD, LLC.
Zoning: RC 5
Requested Action: Special Hearing

The Department of Planning has reviewed the petition for a special hearing to determine whether or not the Administrative Law Judge should approve a modification of the conditions imposed in Zoning Case No. VII-372 to permit homes on Lots 14 and 15 greater in height than the permitted one story, to reduce the required rear yard setback for Lots 14 and 15 from 100 feet to 80 feet and to amend the final development plan for Montclair. The Department also reviewed the petition for variance to permit a setback of 55 feet from the center line of the road in lieu of the required 75 feet and to permit a setback from the western lot line for Lot 14 of 30 feet in lieu of the required 50 feet.

The Department objects to granting the petitioned zoning relief. The amended petition and plan submitted in support thereof do not alter the case substantially enough to cause the Department to revise its zoning advisory comment dated December 6, 2016.

For further information concerning the matters stated herein, please contact Joseph Wiley at 410-887-3480.

Prepared by:

Lloyd T. Moxley

Deputy Director:

Kathy Schlabach

AVA/KS/LTM/ka

c: Joseph Wiley
RREF II SB-MD, LLC.
Adam Baker, Esquire
Office of the Administrative Hearings
People's Counsel for Baltimore County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of June, 2017, copies of the foregoing Petitioner's Opposition to Motion to Dismiss was mailed by first class mail and e-mailed to:

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, Maryland 21286
Jcholzer38@gmail.com

Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204
peoplescounsel@baltimorecountymd.org

Adam D. Baker

IN RE: DEVELOPMENT PLAN HEARING
N/S of Millers Lane, S Raven Rock Court
7th Election District
3rd Councilmanic District
(MONTCLAIR)
(fka Gaffney Property)

George W. Gaffney
Developer/Petitioner

* BEFORE THE
* HEARING OFFICER
* OF BALTIMORE COUNTY
* Case No. VII-372

* * * * * * * * * * * *

HEARING OFFICER'S OPINION & DEVELOPMENT PLAN ORDER

This matter comes before this Deputy Zoning Commissioner/Hearing Officer for Baltimore County, as a requested approval of a Development Plan known as "Montclair", prepared by McKee & Associates, Inc. The Developer is proposing to develop the subject property into 16 single-family dwellings. The subject property is located on the north side of Millers Lane, south of Raven Rock Court. The particulars of the manner in which the property is proposed to be developed are more specifically shown on Developer's Exhibit No. 1, the Development Plan entered into evidence at the hearing. However, on the third day of the case and after all reviews, the Developer substituted Exhibit No. 9 for Exhibit No. 1 as its Development Plan.

The property was posted with Notice of the Hearing for the Montclair Development Plan on January 30, 2004, in order to notify all interested citizens of the requested zoning relief.

Appearing at the hearing on behalf of the Development Plan approval request were George Gaffney and Marion K. Robinson on behalf of the Petitioner and Geoffrey C. Schultz, appearing on behalf of McKee & Associates, Inc, the firm who prepared the Development Plan. Howard L. Alderman, Jr., Esquire represented the Petitioner at the hearing.

Appearing in opposition to the Development plan were M. V. Runkles, III, Chris Matthai, Dr. Richard McQuaid, George and Mary Drake, Glen Miller and Lynne Jones. J. Carroll Holzer, Esquire, represented the protestants in this matter.

Also in attendance were representatives of the various Baltimore County reviewing agencies; namely, John Sullivan (Zoning Review), Robert Bowling (Development Plans Review), Colleen Kelly (Bureau of Land Acquisition) and Christine Rorke (Development Management), all from the Office of Permits & Development Management; R. Bruce Seeley from the Department of Environmental Protection and Resource Management ("DEPRM"); Lynn Lanham from the Office of Planning; and Jan Cook from the Department of Recreation & Parks.

Exh. #1

As to the history of the project, a Concept Plan Conference was held on November 13, 2001 and a Community Input Meeting followed on December 10, 2001 at the Hereford Middle School. A second Concept Plan Conference was held on April 7, 2003 and an additional Community Input Meeting followed thereafter on May 14, 2003 at the Hereford High School. A Development Plan Conference was held on February 11, 2004 and Hearing Officer's Hearings were held on March 5 and 9, 2004 in Room 106 of the County Office Building. An additional hearing was held in this matter on May 18, 2004 in Room 407 of the County Courts Building.

Developer Issues

The Developer raised no issues on his own and recommended approval of the plan.

County Issues

Each of the representatives of the County agencies that review development plans indicated that the Redline Development Plan addressed their issues and met all County regulations within their jurisdiction. In addition the following agencies noted additional information for the record upon questioning by Mr. Holzer:

Recreation and Parks

The representative of the Department of Recreation & Parks indicated their department granted the Developer's request to pay a fee in lieu of providing local open space but that the written waiver had not yet been signed as of March 5, 2004.

Public Works

The retaining wall shown on the Development Plan is acceptable to Public Works.

There is enough right-of-way on York Road to provide an acceleration/deceleration lane.

Provided the Petitioner Terra Firma grants an easement there will be enough sight distance

on York Road for traffic coming from Montclair Court. This is a Phase II matter.

DEPRM

There had been a prior minor subdivision on the Gaffney property at 18020 York Road, which delineated certain forest conservation easement areas. There is a structure associated with 18020 York Road owned by Petitioner Gaffney which is located in the existing forest buffer area. Structures located within forest buffer areas would violate the regulations. Note 57 of the Development Plan indicates that the Developer will seek a continuing use variance for the structure to remain in the forest buffer area or the structure will be brought into compliance. However the property known as 18020 York Road is not within the Development Plan boundaries. Consequently the structure is not within the Development Plan boundaries.

A storm water management waiver for quantity was granted by DEPRM in October 30, 2002 which indicates that the waiver is effective only until July 1, 2003. The Developer was to have a building or grading permit by that time. Otherwise, the waiver becomes invalid. See Protestant's Exhibit No. 1. However, by letter dated March 24, 2003, DEPRM revised its prior ruling and indicated that since the plan was filed prior to July 1, 2001, the time that the waiver would be valid is two years after development plan approval provided a permit is issued within that two year time frame. See Protestant's Exhibit No. 2.

Community Issues

Carroll Holzer, Esquire represented the Protestants in this matter and he raised the following issues: traffic safety, nearby Wiseburg Inn is a historic site, loss of value of adjacent existing homes and properties; location of road on Lot 1; landscaping of the road; wells and septic systems on adjacent properties; and storm water management.

Applicable Law

Section 26-206 of the B.C.Z.R. *Development Plan Approval.*

(a) (1) A public quasi-judicial hearing before the hearing officer is required prior to final action on a plan. The hearing may be informal in nature. The hearing officer shall regulate the course of the hearing as he may deem proper, including the scope and nature of the testimony and evidence presented.

(2) The hearing officer shall take testimony and receive evidence regarding any unresolved comment or condition that is relevant to the proposed plan, including testimony or evidence regarding any potential impact of any approved development upon the proposed plan.

(3) The hearing officer shall make findings for the record and shall render a decision pursuant to the requirements of this section.

(b) The hearing officer shall grant approval of a Development Plan that complies with these development regulations and applicable policies, rules and regulations promulgated pursuant to section 2-416 et seq. of the Code, provided that the final approval of a plan shall be subject to all appropriate standards, rules, regulations, conditions, and safeguards set forth therein.

(o) In approving a plan, the hearing officer may impose such conditions, as may be deemed necessary or advisable based upon such factual findings as may be supported by evidence for the protection of surrounding and neighboring properties. Such conditions may only be imposed if:

(1) The condition is based upon a comment which was raised or a condition which was proposed or requested by a part;

(2) Without the condition there will be an adverse impact on the health, safety or welfare of the community;

(3) The condition will alleviate the adverse impact; and

(4) The condition does not reduce by more than twenty (20) percent the number of dwelling units proposed by a residential Development Plan in a D.R.5.5, DR 10.5, or DR 16 zone, and no more than twenty (20) percent of the square footage proposed by a non-residential Development Plan. This subsection is not applicable to a PUD Development Plan.

Section 26-278 Preservation of Natural or Historic Features

Testimony and Evidence

The Developer's case was presented by Geoffrey Schultz, a registered land surveyor, who was accepted as an expert witness. He testified that the property on which the development is proposed consists of two parcels, which together contain 61.1 acres, more or less, and is zoned RC 4 and RC 5. The east boundary of the property is Interstate 83 and the eastern side of the

property is forest buffer and forest conservation easement areas of approximately 35 acres with streams and steep sloped terrain. The property will have access to York Road via a new public road known as Montclair Court, which also serves to collect storm water throughout the development. The development will border the existing subdivision served by Raven Rock Court. The Developer proposes 16 lots for single-family dwellings each of which has passed septic perc testing. Existing structures on the property will be razed. Mr. Schultz testified that the Redline Development Plan met all County regulations as presented.

Mr. Schultz recognized that proposed Lots 14 and 15 are adjacent to the " Wiseburg Inn" located at 18200 York Road. This building is on the National Historic Landmark list. Consequently, the Developer proposed screening the historic site from the new homes on these lots by a 30 ft. wide landscape easement containing evergreen plantings.

He also noted that a swale containing historic artifacts on the northern edge of the property along Lots 10 and 11 had been designated on the Maryland Archeological Survey as Item 18 BA 496. This swale will be referred to hereinafter as the "dump swale". Mr. Schultz indicated that the Baltimore County Landmarks Preservation Commission had considered adding the dump swale to the landmarks list but had determined not to do so. See a letter from the Office of Planning to the owner, Mr. Gaffney dated November 14, 2003, Developer's Exhibit No. 4. Mr. Schultz pointed out that Note 53 on the Development Plan indicated that this area was not to be disturbed and would remain in the forest buffer.

Mr. Schultz noted that while the property known as 18020 York Road is and will be owned by Petitioner Gaffney, that the property is outside of the proposed development. Consequently, he did not believe having the existing structure in the forest buffer area of the prior subdivision was an issue for this plan.

He also indicated that the storm water management waiver granted by DEPRM was for quantity only, as the Developer showed a net decrease in storm water runoff from the property. However, he noted that the Developer had not been granted a waiver for water quality and that the plan showed that the storm water management system would capture and filter runoff to meet the quality regulations.

During cross-examination by Mr. Holzer, Mr. Schultz was shown a letter dated December 27, 2001 from the Administrative Secretary of the Baltimore County Landmarks Preservation Commission to Petitioner Gaffney, which showed the approximate limits of the dump swale containing historic artifacts. See Protestants' Exhibit No. 5. Mr. Schultz was asked to depict the dump swale on the Development Plan which is shown on Protestants' Exhibit No. 6 and highlighted in yellow. This indicated that the swale lies along proposed Lots 10, 11 and 12 rather than Lots 10 and 11.

Protestants Case

The protestants presented several lay witnesses in opposition to the plan. Chris Matthai, an adjacent property owner of 501 Raven Rock Court, expressed concern that the State Highway Administration reduced the length of the acceleration/deceleration lane on York Road at the intersection of Montclair Court from 375 ft. to 250 ft. Apparently, the State's initial comment at the Concept Plan Conference required the longer lanes. He indicated that the entrance was on a steep hill on York Road and that there is a sharp turn south of the property that would limit seeing oncoming vehicles on York Road. He also requested an environmental impact study of this development with the Tracy's Choice development, both of which were on the hill. He was concerned that Lots 4, 5 and 6 were too small to meet County regulations. He questioned whether this development would overload the public schools in the area. Finally, he requested that the fire suppressor tanks adjacent to his lot be moved onto the Gaffney property.

George Drake who owns 503 Raven Rock Court requested that Montclair Court and Lot 1 of the proposed Development Plan be redesigned so that the back of his home would not face the Montclair Court but rather face the rear of the new home on Lot 1. See Protestant's Exhibit No. 7 for a history of the road and Lot 1. The Developer agreed and the resulting realignment and modification to Lot 1 is shown on Developer's Exhibit No. 9, the Final Development Plan.

Mr. Drake also expressed concerns about the problems that he and his neighbors have had with wells going dry in the area. He noted that one nearby church had to drill 21 wells before getting a well with sufficient flow. He was concerned about 16 more homes drawing water from the same resource. Finally, he indicated that he observed endangered species such as a yellow bellied sap sucker on the Gaffney property.

Marion Runkles, adjacent property owner, gave a short overview of the historic buildings in the immediate area. He lives at the Wiseburg Inn, which is listed on the Baltimore County Landmarks Lists as well as the National Historic Register and occasionally operates tours from the inn to illustrate the historic nature of the property.. See protestants' Exhibit Nos. 11 and 17. He objected to the 10-lot cluster of new homes located immediately adjacent to the historic site, particularly in regard to the view from the historic buildings. He opined that the view toward the new homes was the last original vista from the historic site which would be destroyed by the new homes and interfere with programs run form the historic Inn. Prior to any final decision being made by this Zoning Commission, he strongly recommended that the Development Plan be referred to the Planning Board for their review.

Mr. Runkles further opined that the dump swale had produced artifacts from the Wiseburg Inn such as those shown in protestant's Exhibit No. 11. He indicated that in the days before the local government collected trash, people would dump refuse into such swales to dispose of trash. He presented the application for inclusion of the Wiseburg Inn on the National Register, which

indicated the swale dump as part of the overall application. He objected to simply "preserving" the site by designating the area in a forest buffer to remain undisturbed, but rather recommended that the Developer actively protect the dump swale from bottle collectors and the like by means of fencing and adding covenants to the deeds of Lots 11 and 12.

He was also concerned about the effect the new homes would have on a spring located on his property that he uses to water livestock. He stated that his well went dry during a recent drought. In addition, he was concerned about pollution from septic systems in the new development. He expressed concern regarding the development adverse affect on endangered species, which he has observed on the Gaffney property over the years. These species include birds such as the Yellow Bellied Sapsucker, Sharp Shinned Hawk, Loggerhead Strike, and Alder Flycatcher. He has also observed New England Cottontail, Eastern Spotted Skunk and Eastern Tiger Salamander on the property.

Mr. Runkles also was concerned about the additional traffic generated by this development and presented photographs of York Road, particularly south of the proposed intersection with Montclair Court. See protestant's Exhibit No. 16.

On cross-examination, he admitted that the Baltimore County Landmarks Preservation Commission failed to include the dump swale on the County List and that, based upon Dr. Wall's report, the Office of Archeology of the Maryland Historical Trust found that no further archeological work was warranted on the site. He also admitted that even if the property was fully developed according to the plan, there would be 35 + - acres of property which would remain in the forest conservancy easement. Finally, he acknowledged that he applied for and was granted a permit to build a barn on his property near the historic Inn.

Dr. Richard McQuaid testimony echoed that of other protestants who believed the plan should be referred to the Planning Board because it "involves" a historic structure. He

emphasized that Section 26-278 requires preservation of sites on the Maryland Historical Survey. He was also concerned about wells that may go dry and the traffic on York Road.

In rebuttal, the Developer called Dr. Robert Wall, a Registered Professional Archeologist, who was accepted as an expert witness. He testified that he conducted an archeological survey of the dump swale. This survey involved a surface survey and not an archeological excavations. He testified that he observed that the dump swale was used as a dumping ground containing modern refuse such as automobile tires, plastic items, etc. He found no foundations or ruins. He noted the these items had likely washed down the swale over time and in this context he found that the site was disturbed to the extent that further examination of the site from a historical perspective was not warranted. He indicated that the value of historical sites is that the artifacts are found in an undisturbed state that allows relating the find to the historic site. However, in this case, the material was disturbed and so any artifacts would have no archeological value. Therefore, he recommended no further archeological work on this site.

Referral to Planning Board

On March 9, 2004, after the second day of testimony, the attorneys agreed that the plan should be referred to the Planning Board for its review of the impact on the historic structures pursuant to Section 26-207 (a) 3 of the B.C.Z.R. As shown by the memorandum dated April 27, 2004 from Arnold Keller, Secretary of the Planning Board, to the hearing officer (a copy of which is attached hereto), the record reflects the fact that the Planning Board referred the plan to the Landmarks Preservation Commission who also reviewed the plan and recommended additional changes including additional screening and buffering. See the memorandum from Sharon Paul to the Planning Board dated April 9, 2004. On April 15, 2004, the Planning Board adopted the Landmarks Preservation Committee's recommendations, which pursuant to Section 28-208 (c) are binding on the hearing officer.

Subsequent to the memorandum of the Planning Board, the Developer modified the Development Plan. Mr. Schultz testified that Exhibit No. 9 incorporates all changes to the plan required by the Planning Board, incorporates the changes to the roadway and Lot No. 1 to meet the agreement with Mr. Drake, and meets all County regulations. The revised plan, Developer's Exhibit No. 9, was reviewed by each County agency and found to conform to each agency's regulations.

Mr. Rumkles also reviewed Developer's Exhibit No. 9 and recommended that Lots 14 and 15 be eliminated because the grade only drops off 15 ft. and the second floor and roofs would still be visible from the historic site.

Findings of Fact and Conclusions of Law

I find that Developer's Redline Development Plan, Exhibit No. 9, contains all of the conditions required by the Planning Board to mitigate the impact of the development on the historic Wiseburg Inn.

I accept Dr. Wall's testimony that the dump swale site was disturbed and that even if historic artifacts are found, they would have no archeological value. He recommended that no further archeological work be done on this site. The Office of Archeology of the Maryland Historical Trust agrees. In addition, apparently after full presentation and debate, the Baltimore County Landmarks Preservation Committee did not see enough historical merit to the dump swale to include it on the County Landmarks List.

Nonetheless, since the dump swale is on the Maryland Archeological Survey, it must be "preserved". I note that the Planning Office only recommends that the area be set aside in a mandatory forest buffer in order to comply with Section 26-278. Given Dr. Wall's testimony, I agree that fencing should not be required even though I considered such a condition. I further accept the Office of Planning's recommendation to simply preserve the site as undisturbed forest

buffer.

A problem arises, however, as I see the site depicted on Protestants' Exhibit No. 6 that the site extends beyond the forest buffer area and into the rear of Lots 11 and 12. Note 53 attempts to address this issue but does not cover Lot 12. Also, I am not convinced that adding a note to the Final Development Plan will accomplish the statutory requirement of preservation for future purchasers of these homes. I think a deed restriction is more appropriate under the circumstances. Therefore, I will require that the Developer delineate the extent of the dump swale site on Lots 10,11 and 12 by a metes and bounds description and further require deed covenants on these lots that the area of the dump swale in these lots remain undisturbed. Note that the fourth Planning Board requirement for exterior lighting also requires deed covenants.

The protestants raised the issue of protecting endangered species. Several lay witnesses testified they observed fauna on the endangered list on the Gaffney property. However Section 26-278 of the BCZR requires protection of the habitat of an endangered species. There was no lay testimony much less expert testimony that the habitat for the species observed on the property would be threatened by the development. Also as noted by the Developer, 35 acres of the property will be permanently dedicated to forest buffers and conservancy areas. There is no reason to believe this will not provide sufficient habitat for the species observed by the protestants.

The protestants raised the issue of the structure associated with 18020 York Road which all admit is in the existing forest conservation easement area of the prior subdivision. All evidence indicates that the structure is not located within the boundaries of this development plan. I find that even if the structure is in violation of another subdivision restrictions, that fact even if true has no effect on the subject development plan. Why the Developer added note 57 to this plan remains a great mystery to me.

Finally Mr. Runkles complains that even if the additional screening is placed between the Wiseburg Inn and lots 14 and 15 and the homes on these lots moved away from the Inn as directed by the Planning Board, one could still see the roof and second floor of the new homes from the historic site adversely affecting the historic nature of the property. He requests these lots be eliminated. However it appears to me that a less restrictive alternative of limiting the height of homes on these lots to one story will mitigate the problem sufficiently.

After considering the evidence and testimony in this case, I find the final Development Plan, Developer's Exhibit No. 9, complies with the development regulations and applicable policies, rules and regulations promulgated pursuant to Section 2-416 et seq. of the Code. I further find that final approval of a development plan is subject to all appropriate standards, rules, regulations, conditions, and safeguards set forth therein, subject to the following conditions:

1. The Developer shall delineate the dump swale site on Lots 10, 11 and 12 by metes and bounds and by deed covenants require that the area of the dump swale in these lots remain undisturbed.

2. That the Developer submit a landscape plan to the County Landscape Architect for approval, which among other requirements shown on the development plan clarify that the plantings used to screen the historic Wiseburg Inn from the new homes in this development be of a type to create a sight buffer with mature evergreens; and

3. That the homes on Lots 14 and 15 be no more than one story in height

THEREFORE, IT IS ORDERED, by this Deputy Zoning Commissioner/Hearing Officer for Baltimore County, this 1 day of June, 2004, that the Development Plan known as "Montclair", submitted into evidence as "Developer's Exhibit No. 9", be and is hereby APPROVED subject to the following conditions:

1. The Developer shall delineate the dump swale site on Lots 10, 11 and 12 by metes and bounds and by deed covenants require that the area of the dump swale in these lots remain undisturbed.

2. That the Developer submit a landscape plan to the County Landscape Architect for approval which among other requirements shown on the development plan shall clarify that the

plantings used to screen the historic Wiseburg Inn from new homes in this development be of a type to create a sight buffer with mature evergreens; and

3. That the homes on Lots 14 and 15 be no more than one story in height

Any appeal from this decision must be taken in accordance with Section 26-209 of the Baltimore County Code and the applicable provisions of law.

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

IN THE MATTER OF MONTCLAIR fka GAFFNEY PROPERTY / PDM VII-372 LOCATED ON THE N/S MILLERS LANE, S RAVEN ROCK CT	*	BEFORE COUNTY BOARD OF APPEALS OF
7TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
RE: HEARING OFFICER'S DECISION	*	CASE NO. CBA-04-134

* * * * * * * * * *

OPINION

This matter is before the Board of Appeals based on an appeal of the Hearing Officer's Order dated June 1, 2004 approving the development plan known as "Montclair." A timely appeal was filed by Appellants, M.V. Runkles, III; Weisberg Inn; Chris Matthai; Dr. Richard McQuaid; George and Mary Drake; Lynne Jones; and Jan Staples, individually, Maryland Line Area Association, Inc., and the Parkton Area Preservation Association, Inc., by and through their attorney, J. Carroll Holzer of HOLZER & LEE (hereinafter "Appellants").

In accordance with § 26-209 of the *Baltimore County Code* (new § 32-4-281 of the 2003 *Baltimore County Code*), the matter was set for public hearing on July 28, 2004. The Developer was represented by Howard Alderman, Jr., Esquire, (hereinafter "Developer"). Oral argument was heard at the hearing, and a public deliberation took place on August 25, 2004.

In argument before the Board, the Appellants described the property in question as containing a total of 60 acres on the north side of Millers Lane, south of Raven Rock Court. The property in question is zoned R.C. 4 and R.C. 5; ten lots will be developed on the R.C. 4 portion of the property and six will be developed on the R.C. 5 portion. The Appellants indicated that it was the lots on the R.C. 5 portion of the property that are the focus of the appeal. The Appellants presented testimony indicating that the Weisberg Inn was a historical landmark that hosts numerous reenactments of Revolutionary and Civil War activities.

In argument before the Board, the Appellants indicated that the Hearing Officer erred in the following areas:

1. By not increasing the size of the buffer between Montclair and the appellant's property line
2. By not recognizing that a stream that runs through the appellant's property.
3. By not recognizing the existence of the appellant's property serving as a habitat for endangered species.
4. By not addressing the scarceness of ground water available on the proposed development.
5. By not considering that the site has archaeological significance.
6. By not eliminating Lots 14 and 15 in the development plan.

Mr. Alderman argued for the Developer that 16 lots were allowed on the site and that 16 were proposed. He indicated that, although a portion of the Weisberg Inn was on the historical register, the entire property was not. According to Mr. Alderman's argument, the Weisberg Inn was actually 500 feet from the common property line. The Developer indicated that the stream on the property was in fact not a stream at all but a drainage ditch, and that there are no COMAR regulations on drainage ditches. The Developer also indicated that the forest buffers for the proposed project had been approved by Baltimore County's Department of Environmental Protection and Resource Management (DEPRM) and meet *Baltimore County Code* requirements. Regarding the habitat for endangered species, the Developer indicated that the Department of Natural Resources keeps the official list for the State of Maryland and that no endangered species habitats are listed on the property in question. The Developer also indicated that the drilling of the wells will be reviewed by DEPRM and that no wells have been drilled at this time. As for the discussion of whether or not the site has any archaeological significance, the Developer

4. He requests these lots be eliminated (14 and 15). However, it appears to me that a less restrictive alternative of limiting the height of homes on these lots to one story will mitigate the problem.

During the public deliberation held on August 25, 2004, the Board reviewed the argument presented at the public hearing which was held on July 28, 2004. The Board discussed the issue of the stream and found that there was not sufficient testimony to indicate that a stream did exist on the property. The Board indicated that the issue of endangered species must be decided by the Department of Natural Resources and not the residents of a particular property. The Board felt that the argument as to the historical nature of the Appellant's property was weakened by the existence of a non-historical barn that has been erected by the Appellant. The Board could not find reason to question the testimony of Dr. Wall regarding the archaeological insignificance of the property. The Board was confident that the issue of ground water on the site would be monitored by the appropriate County agencies during the development process. The Board also found it significant that each County agency had reviewed the Development Plan and found that it conformed to each agency's regulations, including all regulations regarding the buffer zone between the property lines. The Board also indicated that it was supportive of the conditions placed on the Development Plan by the Hearing Officer in his Opinion of June 1, 2004, particularly the condition limiting the homes on lots 14 and 15 to one-story dwellings.

Decision

Under § 26-209(b) of the *Baltimore County Code* (new § 32-4-281[e], 2003 *Baltimore County Code*), the Board may remand, affirm, reverse, or modify the Hearing Officer's decision. Modification or reversal, however, is warranted only upon the ground that a finding, conclusion, or decision of the Hearing Officer exceeded his statutory authority or jurisdiction, resulted from

an unlawful procedure, was affected by any other error of law, was unsupported by competent evidence when considered in toto, or was arbitrary or capricious. With respect to factual matters, the scope of review is quite narrow and deferential, attuned to the standard articulated by Maryland's Court of Appeals in *People's Counsel v. Mangione*, 85 Md. App. 738 (1991); namely, "whether a reasoning mind reasonably could have reached the factual conclusion that the agency reached; this need not and must not be either judicial fact-finding or substitution of judicial judgment for agency judgment."

If adequate information exists to support the finding of the Hearing Officer, the Board, on appellate review of the case, cannot substitute its judgment for that of the Hearing Officer. In reviewing the issues at hand, the Board finds that there is sufficient evidence and testimony to warrant affirming the Hearing Officer. The Board wishes to make it clear that it is affirming the Hearing Officer's decision with the following conditions that he established in his ruling on June 1, 2004:

1. The Developer shall delineate the dump swale site on Lots 10, 11, and 12 by metes and bounds and by deed covenants require that the area of the dump swale in these lots remain undisturbed.

2. That the Developer submit a landscape plan to the County Landscape Architect for approval, which among other requirements shown on the development plan clarify that the plantings used to screen the historic Wiseburg Inn (sic) from the new homes in this development be of a type to create a sight buffer with mature evergreens; and

3. That the homes on Lots 14 and 15 be no more than one story in height.

ORDER

IT IS THEREFORE this 2nd day of September, 2004 by the County Board of Appeals of Baltimore County

ORDERED that, for the reasons stated in the foregoing Opinion, the decision of the

Hearing Officer dated June 1, 2004, in which the subject Development Plan was approved with conditions, be and the same is hereby AFFIRMED; and it is further

ORDERED that the Development Plan for Montclair fka Gaffney Property, PDM VII-372, our Case No. CBA-04-134, be and the same is APPROVED, with the following conditions as ordered by the Hearing Officer:

1. The Developer shall delineate the dump swale site on Lots 10, 11, and 12 by metes and bounds and by deed covenants require that the area of the dump swale in these lots remain undisturbed.

2. That the Developer submit a landscape plan to the County Landscape Architect for approval, which among other requirements shown on the development plan clarify that the plantings used to screen the historic Wiseburg Inn (sic) from the new homes in this development be of a type to create a sight buffer with mature evergreens; and

3. That the homes on Lots 14 and 15 be no more than one story in height.

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*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chairman

Edward W. Crizer, Jr.

Donald L. Mohler III

IN RE:	IN THE MATTER OF MONTCLAIR DEVELOPMENT PLAN (f/k/a Gaffney Property) N/S Miller's Lane; S. of Raven Rock Ct.	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
	Marion v. Runkles, et. al., Appellants	*	CASE NO.: 03-C-04-010234
	v.	*	
	George W. Gaffney, MD and Terra Firm, Inc.	*	
	Appellees	*	

* * * * * * * * * * * * *

MEMORANDUM OPINION AND ORDER

This appeal comes to the Circuit Court for Baltimore County from a decision made by the Deputy Zoning Commissioner / Hearing Officer for Baltimore County and approved by the County Board of Appeals. A Community Input Meeting and a Development Plan conference concerning the approval of a development plan known as "Montclair" were held on May 14, 2003 and February 11, 2004, respectively. On June 1, 2004, the Hearing Officer approved the Development Plan. Petitioners appealed to the County Board of Appeals and a hearing was held on July 28, 2004. On September 2, 2004, the Board of Appeals affirmed the Decision of the Hearing Officer and the Development Plan for the Montclair property was approved with the three (3) conditions as ordered by the Hearing Officer. Petitioners filed a timely appeal and a hearing was held before this court on April 13, 2005. For the reasons stated herein, the Decision of the Hearing Officer and the Board of Appeals will be AFFIRMED.

Rpt BOA, Alderman, Holtzer

STATEMENT OF THE CASE

This case concerns the approval of a proposed Development Plan known as "Montclair." The Owners and Appellees of the property at issue are George W. Gaffney, M.D., and Terra Firm, Inc., a Maryland Corporation. The Appellants are local residents of property adjacent to the lots proposed by the Development Plan.

The Owners' property (the subject property) consists of sixty (60) acres on the north side of Miller's Lane and the south side of Rock Raven Court in the 3rd Councilmanic District of Baltimore County. It is situated in between Interstate 83, on the west, and York Road, on the east. Approximately 35 acres of the subject property are wooded. The remainder is an open field. (Appellee's Memorandum, 1-2)

The subject property is adjacent to property owned by M.V. Runkles, one of the Appellants (the Runkles Property). Located on the Runkles Property is the Weisburg Inn. The Inn is adjacent to York Road, which is approximately 500 feet east of the subject property. Recently, Mr. Runkles constructed a 4,000 square foot metal barn in the rear of his property between the Weisburg Inn and approximately 35 feet from the subject property. (Appellee's Memorandum, 2) The Weisburg Inn is designated as a Baltimore County landmark.

Just north of the Runkles property is a Baltimore Gas and Electric (BGE) site. Further north lies a church.

The property in question is zoned R.C. 4 and R.C. 5. According to the Development Plan, sixteen (16) lots will be developed with ten lots on the R.C. 4 portion and six lots on the R.C. 5 portion. The proposed development of lots on the R.C. 5 portion of the property are the focus of the appeal. (Hearing Officer's Opinion).

ISSUES PRESENTED

The Appellants raised the following issues on appeal:

1. Whether the Hearing Officer erred in approving the Development Plan without providing a greater buffer than that proposed by the Planning Board and Landmarks Preservation Commission;
2. Whether the Hearing Officer erred by failing to find a seasonal stream on the Weisburg Inn property that was not shown on the proposed Development Plans;
3. Whether the Hearing Officer erred in failing to address the destruction of habitat behind the Weisburg Inn as a result of the proposed development and its effect upon endangered species native to the area;
4. Whether the Hearing Officer erred in failing to make a finding as to the scarcity of ground water;
5. Whether the Hearing Officer erred by giving credibility to the testimony of Dr. Wall, expert archeologist, where Dr. Wall had no written documents to indicate the date, time and sites he visited;
6. Whether the Hearing Officer erred by failing to require that an area containing historic artifacts be fenced off where the Maryland Historic Trust recognized the area and assigned it a number.
7. Whether the Hearing Officer erred in failing to find Appellee's testimony on state highway issues credible.

STANDARD OF REVIEW

A person "aggrieved or feeling aggrieved" by final action on a Development Plan may file a notice of appeal with the County Board of Appeals and the Department of Permits and Development Management within 30 days after the date of the final decision of the Hearing Officer. Baltimore County, Md. Code (Baltimore County Code) §32-4-281(b) (2003).

In a proceeding under Baltimore County Code §32-4-281(e), the Board of Appeals may:

(i) Remand the case to the Hearing Officer;

(ii) Affirm the decision of the Hearing Officer; or

(iii) Reverse or modify the decision of the Hearing Officer if the decision:

1. Exceeds the statutory authority or jurisdiction of the Hearing Officer;
2. Results from an unlawful procedure;
3. Is affected by any other error of law;
4. Is unsupported by competent, material, and substantial evidence in light of the entire record submitted; or
5. Is arbitrary and capricious.

A County Board of Appeals' decision may be set aside by a reviewing court only if the decision is premised upon an error of law or if the decision is unsupported by substantial evidence. Umerley v. People's Counsel for Baltimore County, 108 Md. App. 497, 503, 672 A.2d 173, cert. denied, 342 Md. 584 (1996).

In Umerley, the Court of Special Appeals set forth a three-step analysis for the court to conduct when reviewing a decision of an administrative agency. First, the

reviewing court "must determine whether the agency recognized and applied the correct principles of law governing the case." Umerley, 108 Md. App. At 503-04, citing Comptroller v. World Book Childcraft, 67 Md. App. 424, 508 A.2d 148 (1986). Next, the reviewing court "examines the agency's factual findings to determine if they are supported by substantial evidence." Id. Finally, the reviewing court "must examine how the agency applied the law to the facts." The test of appellate review of this function is "whether – a reasoning mind could reasonably have reached the conclusion reached by the [agency]; consistent with a proper application of the [controlling legal principles]." Id.

DISCUSSION

1. Whether the Hearing Officer erred in approving the Development Plan without providing a greater buffer between Lots 14 and 15 and the Weisburg Inn than that proposed by the Planning Board and Landmarks Preservation Commission.

The Planning Board, in consideration of recommendations by the Landmarks Preservation Committee (LPC), imposed a 30 foot buffer area which included a post and rail fence with black mesh wire between the Weisburg Inn and Lots 14 and 15. The Planning Board also imposed an additional condition of 100 foot dwelling setbacks from the rear property lines for the same lots recommended by the LPC.

Appellant Runkles testified that Lots 14 and 15 would obstruct or affect the view from his property and the Weisburg Inn despite the Planning Board's proposed accommodations. As noted herein, the Planning Board's decision is binding on the Hearing Officer and must be incorporated as part of the Hearing Officer's decision. Baltimore County Code § 32-4-232(f)(1); §26-208(c). Appellants argue that the Hearing

Officer was arbitrary in failing to impose additional conditions and reductions on the Development Plan to protect the view and the Weisburg Inn. The Hearing Officer added the requirement of limiting Lots 14 and 15 to one story dwellings. According to Appellants, that additional condition would call for the elimination of lots 14 and 15.

The Baltimore County Code permits the Hearing Officer to impose additional conditions on the approval of a Development Plan in certain circumstances. Section 32-4-229(d) of the Baltimore County Code provides:

> (2) In approving a Development Plan, the Hearing Officer may impose any conditions if a condition:
>
> (i) Protects the surrounding and neighboring properties;
>
> (ii) Is based upon a comment that was raised or a condition that was proposed or requested by a participant;
>
> (iii) Is necessary to alleviate an adverse impact on the health, safety, or welfare of the community that would be present without the condition; and
>
> (iv) Does not reduce by more than 20 %:
>
> 1. The number of dwelling units proposed by a residential Development Plan in a DR 5.5, DR 10.5, or DR 16 zone; or
>
> 2. The square footage proposed by a non-residential Development Plan.
>
> (3) The Hearing Officer shall base the decision to impose a condition on factual findings that are supported by evidence.
>
> Baltimore County Code, § 32-4-229(d)(2)

During the proceedings before the Hearing Officer, the Appellants offered no evidence to show that eliminating Lots 14 and 15 "is necessary to alleviate an adverse impact on the health, safety, or welfare of the community that would be present without the condition." Baltimore County Code, § 32-4-229(d)(2) The facts indicate the Inn is

500 to 600 feet from the common property line and on the opposite side of an intervening ridge. Furthermore, Mr. Runkles acknowledged during cross-examination that he had constructed a 4000 square foot non-historical barn between the Inn and the proposed development property. Thus, the "historic view" he seeks to protect is already obstructed by his own construction. Notwithstanding the existence of the Runkles' barn, the Hearing Officer imposed an additional condition which limited Lots 14 and 15 to one story dwellings.

The recommendations of the LPC, Planning Board and the Hearing Officer's additional height restriction were all conditions imposed on the development of Lots 14 and 15.

This court finds that the Hearing Officer applied the correct law, made findings of fact supported by substantial evidence and properly applied the law to the facts. This court finds no error.

2. Whether the Hearing Officer erred by failing to find a seasonal stream on the Weisburg Inn property, which was not shown on the proposed Development Plans.

Appellants contend that the Hearing Officer failed to find a seasonal stream existed on Runkles' property. They argue that the alleged stream is within 100 feet of septic fields for Lots 12, 13, 14 and 15, in violation of the regulations.

Baltimore County Code §33-1-101(cc) defines a "stream" as follows: "Stream means a perennial or intermittent watercourse identified through site inspection and as approved by the Department of Environmental Protection and Resource Management (DEPRM)."

Bruce Seeley, a representative of the Baltimore County Department of Environmental Protection and Resource Management (DEPRM) testified before the Hearing Officer that the Appellees' Development Plan met all county rules and regulations. The Appellees' expert, George Schultz, noted that DEPRM conducted a field inspection and found that the alleged stream was merely a "drainage ditch." Mr. Schultz also testified that water flowed in the ditch during periods of hard rain, but noted that the ditch was not a perennial or intermittent watercourse. The Hearing Officer found Mr. Schultz's testimony credible.

Appellants offered the testimony by Mr. Runkles that a stream emanates from a spring on his property. They also offered photographs of the alleged stream into evidence. No expert testimony was offered to support Mr. Runkles' contention.

The Hearing Officer weighed the evidence before him and found the evidence from DEPRM and Mr. Schultz to be more credible than Mr. Runkles' testimony and photographs. The Hearing Officer evaluated the testimony of both witnesses and determined that there was no "stream" on the Runkles property as defined under Baltimore County Code §33-1-101(cc). He correctly identified, interpreted and applied the law. In addition, his findings were supported by substantial evidence.

3. Whether the Hearing Officer erred in failing to address the destruction of habitat behind the Weisburg Inn as a result of the proposed development and its effect upon endangered species native to the area.

Appellants contend that the Hearing Officer erred by failing to consider the impact of the proposed development on endangered species residing in the wooded area of the site.

Baltimore County Code, §33-1-101(i) defines "endangered species" as follows:

(i) *Endangered species.* "Endangered species" means a species of plant, animal, or fish that is listed as endangered:

(1) By regulation of the State Department of Natural Resources; or

(2) In accordance with the Federal Endangered Species Act.

Mr. Runkles and Mr. Drake testified that certain rare birds and rabbits on the endangered species list for the State of Maryland live in the woods and will be removed by the proposed development lots. Mr. Runkles testified that he has seen endangered birds and animals in these woods. Appellants also offered photographs of the purported endangered species.

In contrast, Mr. Schultz certified that no known endangered species live in the specified area. His certification and testimony was based upon site visits and a review of the list of rare, threatened and endangered species habitats maintained by the Maryland Department of Natural Resources. Furthermore, in a separate review, analysis and approval of the Forest Buffer plan and the State Forest Conservation plan, DEPRM reviewed the property for the presence of endangered species habitat areas. None were noted on the Forest Buffer plan or the state approved Forest Conversation plan.

The Hearing Officer considered the evidence and testimony presented by both parties and found the testimony offered by Mr. Schultz together with the DEPRM findings more credible than the lay testimony and photographs offered by the Appellants. The Hearing Officer determined that while there was testimony of sightings, there was no credible evidence in the record to establish the existence of an endangered species habitat on the subject property as defined in the Baltimore County Code. The Hearing Officer

did not consider the impact of the proposed development on the endangered species because he found, after considering the evidence, that there were no endangered species. His application of the law was correct and supported by substantial evidence.

4. Whether the Hearing Officer erred in failing to make a finding as to the scarcity of ground water.

Appellants argued that the Hearing Officer erred by failing to find that there is a scarcity of ground water in the area of the proposed development. They contend the Hearing Officer's decision should be remanded for an analysis of ground water content.

During the hearing, several residents testified about recent drilling in order to obtain new water wells. According to Appellants' testimony, a nearby church, located north of a BGE substation and an additional area of property, had to drill twenty-one (21) holes before finding well-water. Appellants expressed concern that the new development would deplete an already scarce water supply for area residents. The Appellants did not offer any expert testimony to support their scarcity of water argument.

Appellees affirmed, however, that the state mandated Water Appropriations process will be followed. As Appellees noted in their Memorandum and Mr. Schultz testified, test results indicated that a 1.0 acre lot would have adequate ground water recharge for one residential dwelling. The proposed development would build sixteen (16) homes on sixty (60) acres, which, according to Mr. Schultz, ensures a sufficient water supply. Also, Phase II of the Development Plan process will require the owners to obtain state mandated Water Appropriations Permits for the sixteen (16) lots.

Appellees also point out that the Appellant's testimony related to shallow, hand-dug water wells. The development property, however, requires deeper, drilled wells

which must meet DEPRM standards. Thus, Appellees' testimony that residents have had to dig many new well holes due to water scarcity does not bear on the methods required for the development property.

The Hearing Officer correctly identified, interpreted and applied the law. In addition, his conclusion was supported by substantial evidence.

5. Whether the Hearing Officer erred by giving credibility to the testimony of Dr. Wall, expert archeologist, where Dr. Wall had no written documents to indicate the date, time and sites he visited.

Appellants insist the Hearing Officer erred by accepting Dr. Wall's testimony that the dump site had been contaminated with modern refuse since Dr. Wall did not have written validation of the precise time and locations of his site visits.

Although Dr. Wall apparently did not have his field notes with him during cross-examination, his report indicated that he conducted a field investigation on October 15, 2004, of the property at issue. The report was admitted as Developer's Exhibit Number 2.

This Court finds that it was within the Hearing Officer's discretion to determine the credibility of Dr. Wall's testimony and that the Hearing Officer did not err by accepting Dr. Wall's testimony, despite lacking written verification of the times of his investigation.

6. Whether the Hearing Officer erred by failing to require that an area containing historic artifacts be fenced off where the Maryland Historic Trust recognized the area and assigned it a number.

In an effort to protect areas of concern to the Appellants, the Hearing Officer delineated dump swale sites on Lots 10, 11, and 12 by inclusion within a forest buffer and required deed covenants to describe the meets and bounds.

On appeal, Appellants contend that the Hearing Officer's order did not rise to the level of protection required by law. Appellants argue that any historic sites identified on any of the lists referred to in §32-4-223(8) of the Baltimore County Code must be preserved. Mr. Runkles' testimony indicated that the swale containing the historic artifacts on the northern end of the property along Lots 10 and 11 have been designated on the Maryland Archeological Survey as Item 13BA496. The Maryland Archeological Survey is found in Baltimore County Code §32-4-223(8). Appellants argue, therefore, that the property site "must be preserved." They contend that the Hearing Officer erred by failing to provide preservation according to Baltimore County Code §32-4-223(8), specifically requiring a fenced off area containing the historic artifacts.

Baltimore County Code §32-4-223(8) provides that archeological sites, including those identified by the Maryland Archeological Survey or the Maryland Historical Trust, must be identified on the Development Plan and preserved. However, the Code does not specify the means to preserve areas of land. Appellee's expert, Dr. Robert Wall, opined that fencing would not be required to preserve the site. In lieu of the fence, and in light of the evidence presented, the Hearing Officer selected two means of preservation, first including the majority of the dump swale within the County mandated, undisturbed forest buffer, and second, to require deed covenants on the area to be described by a metes and bounds survey. Appellants offered evidence that a fence is required to preserve the area.

The Court finds that the Hearing Officer correctly interpreted and applied the law. His decision was based upon substantial evidence in the record.

7. Whether the Hearing Officer erred in failing to find Appellee's testimony on State Highway issues credible.

During the hearing before the Board, Appellees offered lay testimony to support their contentions that the entrance area the development property will use to access York road is unsafe. The State Highway Administration, which is required to review development plans, has the sole authority to determine if a proposed access is safe and properly designed. Annotated Code of Maryland, Transportation Article § 8-204 (b) and (c) (2004), Code of Maryland Regulations (COMAR) § 11.04.06.01 et seq. As noted in Appellee's Memorandum, Mr. Schultz also testified about how the "State Highway Administration required the developer to redesign and relocate the entrance to the subject property to provide the maximum safety protection to the traveling public...." (Appellee's Memorandum, 24)

The Hearing Officer considered the lay testimony as well as the State Highway Administrations review of the access area at issue and the testimony of expert witness Schultz. He found the Appellee's evidence to be more credible. This court finds that the Hearing Officer properly weighed and evaluated the evidence before him. There was substantial evidence in the record to support his findings and he correctly interpreted and applied the law.

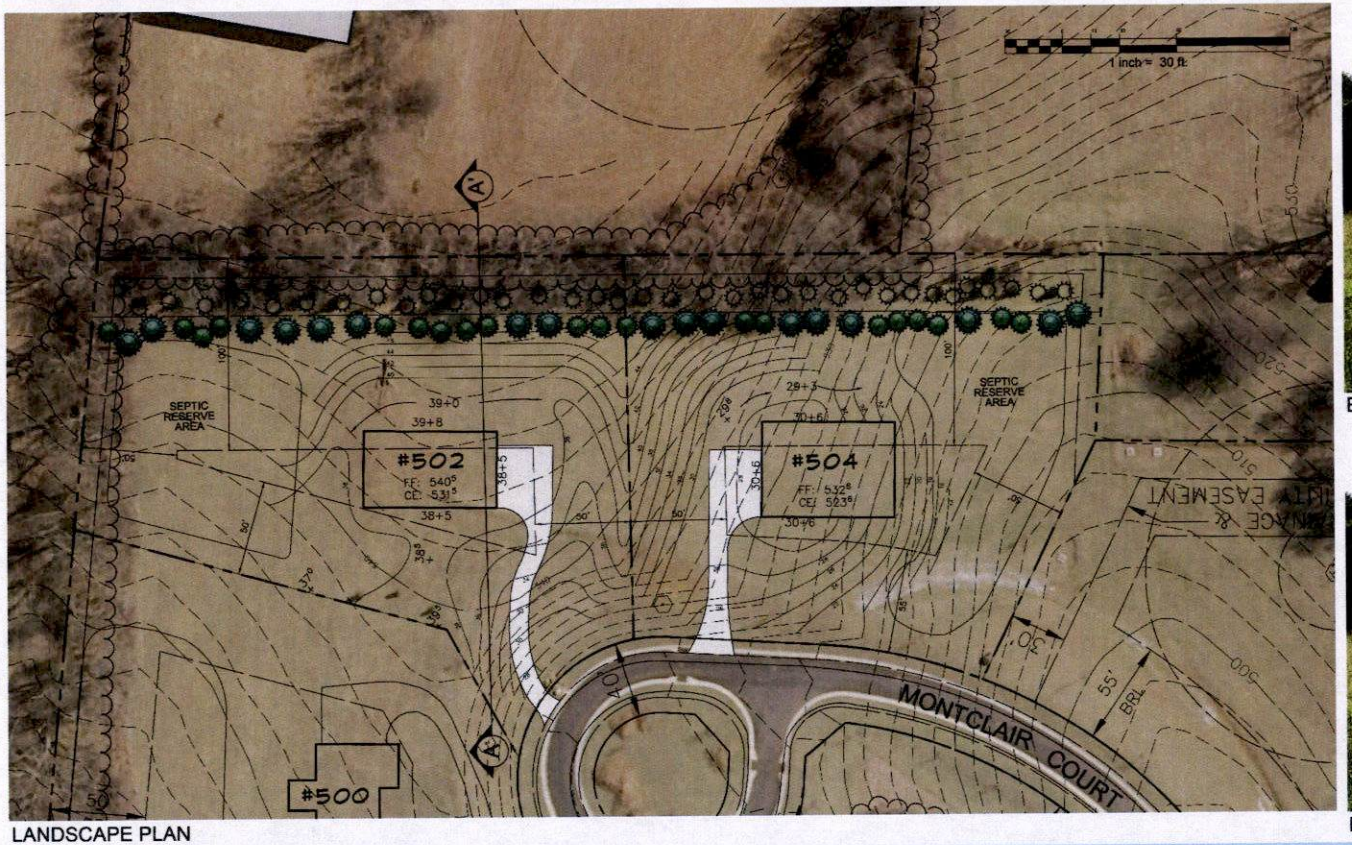
CONCLUSION

Therefore, upon consideration of the Board of Appeals Opinion, Appellees' Petition for Judicial Review, Appellant's Response to Petition for Judicial Review, the parties' respective Memoranda of Law, oral argument from both counsel, this matter having come for a hearing on April 13, 2005, and for the reasons cited above, on this 31st day of August, 2005, the decision of the Board of Appeals is hereby AFFIRMED.

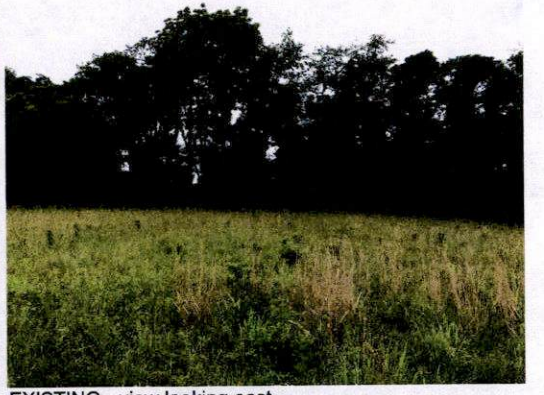
JUDGE VICKI BALLOU-WATTS

Clerk, send copies to:

Howard L. Alderman, Jr., Esquire
J. Carroll Holzer, Esquire



LANDSCAPE PLAN

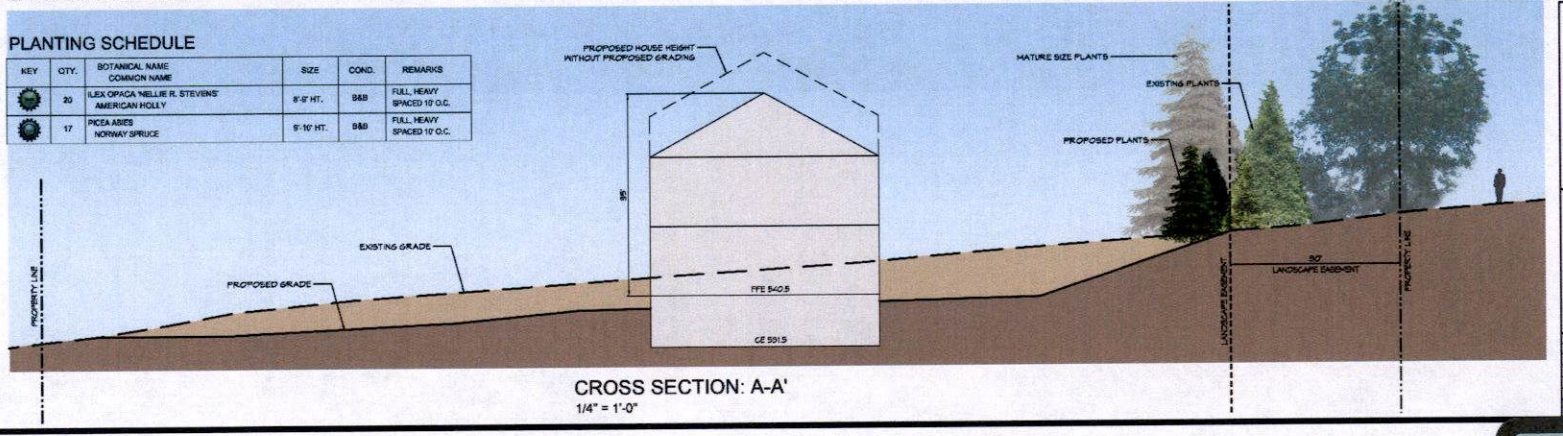


EXISTING - view looking east

PROPOSED - view looking east

PLANTING SCHEDULE

KEY	QTY.	BOTANICAL NAME / COMMON NAME	SIZE	COND.	REMARKS
	20	ILEX OPACA 'NELLIE R. STEVENS' / AMERICAN HOLLY	8'-9' HT.	B&B	FULL, HEAVY SPACED 10' O.C.
	17	PICEA ABIES / NORWAY SPRUCE	9'-10' HT.	B&B	FULL, HEAVY SPACED 10' O.C.



CROSS SECTION: A-A'
1/4" = 1'-0"

LANDSCAPE PLAN

#502 & #504 MONTCLAIR COURT
PARKTON MD 21120

BALTIMORE COUNTY, MARYLAND
7th ELECTION DISTRICT 1st COUNCILMANIC DISTRICT

HUMAN & ROHDE, INC.
Landscape Architects
512 Virginia Ave.
Towson, Maryland 21286
(410) 825-3885 Phone
(410) 825-3887 Fax

NO.	DATE	REVISIONS	BY

SCALE 1" = 30'
DATE: JUNE 2011
DESIGNED: DHL
DRAWN: EEV
CHECKED: DHL
SHEET 1 OF 1

tabbies

EXHIBIT
4

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR

MONTCLAIR HOMEOWNERS ASSOCIATION, INC.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR

MONTCLAIR HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MONTCLAIR HOMEOWNERS ASSOCIATION, INC. ("**Declaration**") is made this _____ day of _____ 2009, by **MONTCLAIR, LLC**, a Maryland limited liability company; **TERRAFIRM, INC.**, a Maryland corporation; and **GEORGE W. GAFFNEY**, individually (collectively referred to herein as the "**Declarant**").

RECITALS

A. Declarant is the owner of certain real property located in Baltimore County, Maryland, shown on the approved subdivision plans entitled "MONTCLAIR", which plats are recorded among the Land and Plat Records of Baltimore County in Plat Book No. 78, at pages 259-260, together with the individual properties known as 18020 York Road and 18034 York Road.

B. Declarant intends by this Declaration to impose upon the Property (hereinafter defined) mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property. Declarant intends through restrictions and special provisions set forth herein to protect the Forest Buffer Easement and its associated wetlands and streams and the Forest Conservation Easement. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property now or hereafter subjected to this Declaration.

C. Declarant has caused or will cause a not for profit, non-stock corporation known as

Montclair Homeowners Association, Inc. (the "Association") to be formed in order to perform certain functions on behalf of the Owners of Lots within the Property (as such terms are defined below), including, but not limited to, the enforcement of the covenants, conditions and restrictions herein set forth, and for the management of the Common Easement Areas (hereinafter defined) to be owned by, and the easements created for the use and benefit of, the Association, and collection and disbursement of the assessments and charges hereinafter created.

D. The purposes of the Covenants, Conditions, and Restrictions contained in this Declaration are to enhance the quality of the Subdivision, and to support the maximum property value for the Declarant and the future property Owners. The Declarant and each property Owner (as defined below) have the individual right, but not the obligation to enforce the terms set forth in this Declaration against any violation by means as provided herein or by appropriate legal proceedings. The Declarant has no legal obligation to enforce the terms and conditions set forth in this Declaration but may selectively act to further its own best interests. Any lot Owner has the right to retain legal counsel to enforce any of the terms and conditions of this Declaration.

NOW, THEREFORE, Declarant covenants and declares on behalf of itself and its successors and assigns that, in furtherance of the above-described Recitals which are incorporated herein as a material part of this Declaration, the Property shall be held, sold and conveyed subject to the following easements, covenants, conditions and restrictions, for the purpose of protecting the value and desirability, and enhancing the attractiveness of the Property and which shall run with the Property and shall be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the

benefit of each Owner of the Property or any part thereof and their respective heirs, personal representatives, successors and assigns.

ARTICLE 1. DEFINITIONS

As used herein, the following words and terms are defined to mean as indicated:

1.1. **"Architectural Committee"** shall mean and refer to the Montclair Architectural Committee, Inc. ("**MAC**"), a Maryland corporation, its successors and assigns. The Modifications Architectural Committee shall mean that committee as may be created pursuant to Section 7.1 herein below.

1.2. **"Architectural Review Criteria and House Plan Submission Checklist for the Montclair Development, Parkton, Maryland"** shall mean the architectural review criteria and plan submission checklists (both conceptual and final checklists) applicable to all Structures (defined in Section 1.28) to be constructed on the Property (defined in Section 1.27).

1.3. **"Articles of Incorporation"** shall mean and refer to the Articles of Incorporation of Montclair Homeowners Association, Inc.

1.4. **"Association"** shall mean and refer to the Montclair Homeowners Association, Inc., a Maryland corporation, as formed or to be formed by Declarant.

1.5. **"Association Property"** shall mean all of those areas identified as "HOA Area" on the Plat.

1.6. **"Board of Directors"** means the Board of Directors from time to time of the Association.

1.7. **"By Laws"** shall mean and refer to the corporate by laws of the Association as amended from time to time.

1.8. **"Common Easement Areas"** within the Property shown on the Subdivision Plats (defined below) or reserved in this Declaration in Sections 3.4, 3.12, 3.13 and including, but not limited to easements for the common benefit of the Owners, Fire Suppression Tank Easements and all Association Property to be used for the purposes described in detail herein, including but not limited to the construction of fencing, signage, entrance monuments/walls or landscaping and/or maintenance thereof.

1.9. **"Community"** shall mean the residential development on the Property, approved and known as "Montclair", including but not limited to all Lots and Common Easement Areas.

1.10. **"Conservancy Area"** means that portion of the Property indicated as Parcel 1 on Plat 2 of the Subdivision Plats (defined below). Although subject to an easement to the benefit of Baltimore County, Maryland, the Conservancy Area is not public property, is not open or otherwise available for use by any member of the public. Notwithstanding the foregoing, limited use and access of the Conservancy Area is afforded Owners of Lots and their respective invitees, provided that at all times: i) any person or persons using or accessing the Conservancy Area automatically agrees by such use or access to; and ii) the Association agrees to, indemnify and hold harmless the Owner of the Conservancy Area against any and all costs, damages, fees, liability, excess liability and the like, including without limitation attorneys' fees, associated with any complaint, claim, cause of action, arbitration or allegation arising out of such use or access and/or injury or death of any person using or accessing the Conservancy Area. The Owner of the Conservancy Area may unilaterally and without vote or concurrence by the Association or any other Owner, terminate all rights of use and access to the Conservancy Area by providing the Association written notice of termination, delivered not less than thirty (30) days prior to the effective date of such termination. The Owner of the Conservancy Area shall, without vote or concurrence of the Association or any other Owner, file among the Land Records of Baltimore County a *Notice of Termination of Use and Access to Conservancy Area*. Upon effective termination of the use and access to the Conservancy Area, the obligation of the Association to reimburse the Owner of the Conservancy Area for insurance premiums pursuant to Section 9.3 hereof shall also be terminated.

1.11. **"County Easements"** shall mean, collectively, the Forest Buffer Easement (defined below), the Forest Conservation Easement (defined below) and any and all other easements to be dedicated to Baltimore County, Maryland as shown on the Plat (defined below).

1.12. **"Declarant"** shall mean Montclair, LLC, Terrafirm, Inc., and George W. Gaffney and their respective successors and assigns, to which it or he shall specifically convey or otherwise transfer its or his right, title and interest to all or any part of the Property and in so doing expressly designates the transferee or transferees as a Declarant hereunder.

1.13. **"Development Period"** shall mean and refer to the period commencing on the day this Declaration is recorded in the Homeowner's Association Depository of Baltimore County, Maryland (the "Depository"), and/or the Land Records of Baltimore County, Maryland, and expiring on the date on which development of the Property as a residential subdivision has been completed (all common-use private improvements installed and all public improvements constructed and accepted by the appropriate governmental authority and all bonds or other surety posted in connection with such public improvements returned to the Declarant or the developer) and all of the Lots except Parcel 509 as shown on Tax Map No. 17 (otherwise known as 18020 York Road) have been deeded to the contract purchasers thereof by the Declarant and/or its or his assigns.

1.14. **"Development Plan"** shall mean the approved Final Development Plan for Montclair and any and all amendments thereto approved in accordance with the Baltimore County Zoning Regulations, the Baltimore County Development Regulations and/or this Declaration.

1.15. **"Dwelling"** shall mean the principal structure constructed on a Lot for residential living purposes.

1.16. **"Entranceway Easement Area"** means areas within the Property reserved in this Declaration in Section 3.13, designated as easements to be used for the construction, reconstruction, maintenance and repair of entrance signage, monuments and associated landscaping, all as more particularly described herein.

1.17. **"Fire Suppression Easement"** shall mean all of that land area identified on the Subdivision Plats as 'Fire Suppression Easement' and any easement agreement attendant thereto and shall be subject to the restrictions contained in such recorded easement agreement, this Declaration and to all rules, laws, regulations, ordinances, covenants, and requirements of applicable County, State and Federal governmental and quasi-governmental authorities.

1.18. **"Fire Suppression Tank"** shall mean that underground water tank installed in the Fire Suppression Easement.

1.19. **"Forest Buffer Easement"** or **"Forest Buffer Easement Area"** shall mean any Forest Buffer Easement as designated on the recorded Subdivision Plats for Montclair (as defined below) and any easement agreement attendant thereto.

1.20. **"Forest Conservation Easement"** or **"Forest Conservation Easement Area"** shall mean any Forest Conservation Easement as designated on the recorded Subdivision Plats for Montclair (as defined below) and any easement agreement attendant thereto.

1.21. **"Historic Swale"** shall mean those areas of Lot Nos. 10, 11 & 12 identified by the Hearing Officer for Baltimore County as deserving special considerations and restrictions.

1.22. **"Lot"** or **"Lots"** shall mean any of the lots of ground shown on the recorded Subdivision Plats, as hereinafter defined, designated as Lot Nos. 1 through and including 16, together with 18020 York Road and 18034 York Road (as defined below).

1.23. **"Member"** shall mean all persons or entities, collectively, who are an Owner (as defined below) of any Lot.

1.24. **"Owner"** shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot or, if a Lot is subject to a reversion reserved in a lease redeemable pursuant to Title 8 of the Real Property Article, Annotated Code of Maryland, the owner of the leasehold interest, and not the holder of title as such of the reversionary interest; including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.25. **"Parcels A & B"** shall mean Parcel 'A' and Parcel 'B' as shown on the recorded Subdivision Plat. As shown on the Development Plan, Parcel A is to be conveyed to the owner of the property known as 18020 York Road and Parcel B is to be conveyed to the owner of the property known as 18034 York Road.

1.26. **"Plat"** shall mean, individually and collectively, the Subdivision Plats as defined below.

1.27. **"Property"** shall mean that certain property identified as Lot Nos. 1 through and including 16, 18020 York Road and 18034 York Road, all Association Property and Parcels A & B, together with all road areas, road widening areas, easements and stormwater management reservation areas as shown on the Subdivision Plats defined in Section 1.30.

1.28. **"Structure"** means any thing or device the placement of which upon the Property (or any part thereof) may affect the appearance of the Property (or any part thereof) including, by way of illustration and not limitation, any building, trailer, garage, porch, shed, greenhouse, or bath house, coop or cage, covered or uncovered patio, swimming pool, spa, Jacuzzi, basketball apparatus, play sets, clothesline, radio, television or other antenna, fence, sign, curbing, paving, wall, roadway, walkway, exterior light, mailboxes, landscape, hedge, trees, shrubbery, signboard or any temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement made to the Property or any part thereof. "Structure" shall also mean (i) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across the Property, and (ii) any change in the grade of the property (or any part thereof) of more than twelve (12) inches from that existing at the time of first ownership by a Class A Member hereunder, as defined in Article 4 hereof.

1.29. **"Subdivision"** shall mean the recorded Subdivision Plats of "Montclair".

1.30. **"Subdivision Plats"** shall mean the recorded subdivision plat(s) of the Property entitled **"Final Subdivision Plat, Plat 1, MONTCLAIR, 1 of 2 Plats"** dated August 31, 2006 and prepared by McKee & Associates, Inc. and sealed by Geoffrey Craig Schultz, Professional Land Surveyor, and recorded in the Land and Plat Records of Baltimore County in Plat Book No. 78 at page 259 (**"Plat 1"**); and **"Final Subdivision Plat, Plat 2, MONTCLAIR, 2 of 2 Plats"** dated August 31, 2006 and prepared by McKee & Associates, Inc. and sealed by Geoffrey Craig Schultz, Professional Land Surveyor, and recorded in the Land and Plat Records of Baltimore County in Plat Book No. 78 at page 260 (**"Plat 2"**).

1.31. **"Utility Easement(s)"** shall mean the easements identified as drainage easements and utility easements or utility easements herein or on the Subdivision Plats for "Montclair".

1.32. **"18020 York Road and 18034 York Road"** shall mean, respectively, Parcel 509 and Parcel 259 as shown on the State of Maryland Tax Map for Baltimore County No. 17. Notwithstanding the fact that neither 18020 York Road nor 18034 York Road were included in the Baltimore County Hearing Officer's consideration and approval of the Development Plan or depicted on the Subdivision Plats, both properties shall be subject to this Declaration, the Owner(s) of the respective properties shall be Members of the Association and both properties shall otherwise be considered part of the Property in all respects under this Declaration.

ARTICLE 2. PROPERTY RIGHTS

2.1. ***Grant of Lots and Parcels A & B.*** Declarant shall hereafter hold, grant and convey the Property, and any parts thereof, including the Lots, 18020 York Road and 18034 York Road, Parcels A & B and Common Easement Areas, subject to the covenants, conditions and restrictions herein set forth or incorporated herein by reference, which are for the benefit of, binding upon and shall run with the land, and are for the benefit of Declarant, Baltimore County, the Association, the Owners, their heirs, personal representatives, successors and assigns. Declarant shall convey Common Easement Areas to the Association (excluding, however, any easement areas and other areas not intended to be conveyed) at such time as Declarant determines, in its sole discretion, is appropriate. The Association shall take title to the Common Easement Areas free and clear of all encumbrances, except this Declaration and all other matters of record when conveyed by Declarant.

2.2. ***Easements to Baltimore County.*** The Declarant is required, as part of the approval(s) of subdivision of the Property, to dedicate certain environmental, drainage and other easements to Baltimore County, Maryland. Declarant shall convey the Property, and any parts thereof, including the Lots or any one of them, subject to the covenants, conditions and restrictions set forth in all such easements delivered or required to be delivered to Baltimore County, Maryland, each of which is incorporated herein by reference, and which shall be binding upon and shall run with the Property.

2.3. ***Owners' Easements of Enjoyment.*** Every Owner of a Lot shall have a right and nonexclusive easement of enjoyment in and to the Common Easement Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

2.3.1. The rights of the Declarant as set forth in this Declaration.

2.3.2. The right of the Association to prescribe reasonable rules and regulations governing the use of the Common Easement Areas.

2.3.3. The right of the Association to assess annual and/or special fees for the maintenance, replacement and/or improvement of the Common Easement Areas.

2.3.4. The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid, or to suspend such voting rights for any period not to exceed ninety (90) days for any infraction of published rules and regulations.

2.3.5. The rights granted and conveyed to others or reservations for conservation easements, fire suppression easements, general utility easements, access and signage easements, foot path or walking trail easements, stream buffer easements, sediment control easements, easements described herein and forest buffer and all other easements shown and delineated on the Subdivision Plat.

2.4. ***Maintenance Obligations of the Association***. The Association shall improve, manage, operate, insure, inspect, repair, replace, restore and maintain the Common Easement Areas together with any items of personal property placed or installed thereon and any area dedicated to a public or governmental entity if such entity fails to properly maintain such area, as from time to time improved, all at its own cost and expense, and shall levy against each Member of the Association a proportionate share of the aggregate cost and expense required for the care, maintenance and improvement of the foregoing described areas, which proportionate share shall be determined based on the ratio which the number of Lots owned by the Member bears to the total number of Lots then laid out or established on the Property. The foregoing obligations of the Association shall also include performing, at its own expense, maintenance of any entrance monuments for the Community, including any such signs located within a public right-of-way and/or Lots.

2.5. ***Utility Lines.*** Each Owner shall be solely responsible for the care and maintenance of any sanitary or on-site sewer, water, gas, electric, telephone, storm sewer, cable television or other utility conduits or lines that serve exclusively such Owner's Dwelling. In the event such conduits or lines are in need of repair and/or replacement and any portions thereof are located in, under and/or through an abutting Lot or property of any abutting Lot Owner, the Owner so repairing and/or replacing such lines shall have the right to enter upon and is hereby granted an easement to enter in and onto the front ten (10) feet of the Lot of an abutting Lot Owner to perform such repair and/or replacement. The Owner so entering shall perform such construction and/or work as promptly as possible and shall take due precautions and care not to damage the Lot and/or property of the abutting Lot Owner and shall indemnify and hold any such abutting Lot Owner harmless in connection with such entry and work. To the extent that the abutting Lot and/or property is dug into, displaced, disturbed and/or dismantled, the abutting Lot and/or property shall, immediately upon the completion of the repair and/or replacement, be returned to the same condition as existed prior to such work being commenced by the Lot Owner performing the work.

ARTICLE 3. RESERVED RIGHTS OF DECLARANT

3.1. ***Reservation of Rights.*** The Declarant reserves an easement to exercise its right at

any time, prior to or subsequent to conveyance of individual Lots, to enter upon any of the Property, to complete, in its sole discretion, development of the Property; such development including but not limited to planting, replanting, clearing, grading, filling, forestation activities, afforestation and reforestation activities and the like as may be necessary to comply with all requirements of Baltimore County and the State of Maryland in connection with the approvals of the Subdivision Plat.

3.2. ***Waiver of Restrictions and Covenants.*** The Declarant, its successors and assigns, reserves the right to waive such portion of the Restrictions and Covenants placed on the Property as the Declarant deems necessary or in the best interest of the development as determined by the Declarant. All waivers shall be in writing and a copy thereof shall be filed with the Declarant and a copy thereof shall be available to all Lot Owners upon request.

3.3. ***Special Limited Power of Attorney.*** DECLARANT RESERVES THE RIGHT TO SIGN ON BEHALF OF ANY INTERESTED PARTY OR LOT OWNER SUCH WAIVERS OR CONSENTS AS MAY BE REQUIRED BY BALTIMORE COUNTY, CONSENTING TO THE ALTERATION OF THE DEVELOPMENT PLAN, THE FINAL DEVELOPMENT PLAN AND/OR THE SUBDIVISION PLATS, AS WELL AS ANY AND ALL EASEMENTS OR DEDICATIONS REQUIRED BY BALTIMORE COUNTY OR THE STATE OF MARYLAND IN CONNECTION WITH APPROVAL OF SUBDIVISION OF THE PROPERTY. SUCH LIMITED POWER OF ATTORNEY AND RESERVED RIGHT SHALL BE IRREVOCABLE AND COUPLED WITH AN INTEREST.

3.4. ***Easements.*** A non-exclusive, perpetual, blanket easement over the Property for the installation and maintenance of electric, telephone, cable television, water, gas, drainage, utility, sanitary sewer lines and facilities, pressure sewers and grinder pumps, and the like, is hereby reserved by Declarant and its successors and assigns, together with the right to grant and transfer the same during such time that Declarant or its successors and assigns is the Owner of the Property. In addition, easements along all property lines or as otherwise shown on the Subdivision Plats are reserved by the Declarant for the installation and maintenance of utilities and drainage facilities (**"Utility Easements"**), together with Forest Buffer Easements, the Forest Conservation Easements and Fire Suppression Easements, if any, all as shown on the Subdivision Plats. The Declarant reserves the right to execute any confirmatory documents which may be required to create or maintain such easements. In addition thereto, the Baltimore Gas and Electric Company, Verizon Telephone Company and any cable television company operating in Baltimore County having the requisite authority and power to provide such service to the Owners of the Lots, shall have the right to place upon the Lots, at such locations as may be deemed necessary by them, electrical transformers, transformer pads, telephone pedestals, and television cable (collectively the "Distribution Systems"). The aforesaid companies shall also have the right to use the roads located within the Subdivision for purposes of maintaining their respective Distribution Systems. No Structure, planting or other material shall be placed or permitted to remain upon any Lot which in the opinion of Declarant and/or the Architectural Committee, may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, obstruct

or retard direction or flow of any drainage channels. The Declarant reserves the right to place fencing within said easements as is desirable in its discretion, provided however, that such fencing shall not interfere with said easements. In addition to the above: i) the Baltimore County Department of Environmental Protection and Resource Management (or any successor agency) shall have the right to enter upon the Lots from time to time for the testing of water wells drilled thereon; and ii) the Baltimore County Fire Department and any agency or contractor designated by it shall have the right to enter upon the Fire Suppression Easement area for purposes of maintenance, filling and using the water contained in any tank installed therein and the like. The Property is also subject to those certain easements created by a reservation of rights for access at various points within the Property for the purpose of inspection of the County Easements), as shown on the Subdivision Plats and provided in the Forest Conservation and Forest Buffer Declaration (as defined in Sections 8.25 herein and provided in Section 8.26 hereof).

3.5. ***Development Easements.***

3.5.1. Easements Reserved to the Declarant.

3.5.1.1. Easement to Facilitate Development. The Declarant hereby reserves to itself and its designees, commencing on the date of this Declaration and expiring at such time as all required public improvements and development and warranty work have been fully completed in Declarant's sole and absolute judgment, a non-exclusive blanket easement over and through the Property for all purposes related to the development and completion of improvements on the Property, including without limitation: (i) temporary slope and construction easements; (ii) drainage, erosion control and storm and sanitary sewer easements including the right to cut or remove trees, bushes or shrubbery, to regrade the soil and to take any similar actions reasonably necessary; and (iii) easements for the construction, installation and upkeep of improvements (e.g., buildings, landscaping, street lights, signage, etc.) on the Property or reasonably necessary to serve the Property.

3.5.1.2. Easement to Facilitate Sales. The Declarant hereby reserves to itself and its designees the right to: (i) use any Lots owned or leased by the Declarant, and any other Lot with the written consent of the Owner thereof, as models, management offices, customer service offices or sales office parking areas; (ii) place and maintain in any location on the Common Easement Areas and the storm water management area, and on any Lot, street and directional signs, temporary promotional signs, temporary construction and sales offices, plantings, street lights, entrance features, "theme area" signs, lighting, stone, wood or masonry walls or fences and other related signs and landscaping features, provided however, that all signs shall comply with applicable governmental regulations and the Declarant shall obtain the consent of the Owner of any affected Lot or of the Architectural Committee if the Owner does not consent; and (iii) relocate or remove all or any of the above from time to time in the Declarant's sole discretion.

3.5.1.3. Landscaping Easement. The Declarant hereby reserves and

subjects the Property to an easement in perpetuity running with the land in favor of itself and the Association, over the Utility Easements and Common Easement Areas, for the purposes of installing trees, bushes, plants, flowers, fencing, landmarks and other landscaping as part of the Property; and for the further purpose of maintaining and replacing said landscaping in a neat and orderly manner. Except as otherwise provided herein, the Association shall be required to mow, mulch, maintain, plant, re-plant and otherwise rework the easement area as may be necessary to keep the easement at all times up to the Association's standards, provided that nothing contained herein shall relieve an Owner from the responsibility of mowing grass and otherwise maintaining his Lot. After the Declarant has installed any fencing, and/or landscaping, the maintenance and replacement of such and the maintenance of the area surrounding any of the above areas, including, but not limited to, the mowing of grass, shall be the responsibility of the Association. In the event that the Members elect to replace the signs, fencing, and/or landscaping, plans and specifications for same must be submitted to the Architectural Committee for approval.

3.5.1.4. Storm Water Management Easement. The Declarant hereby reserves to itself and its successors and assigns an easement and the right to grant and reserve easements over and through the Property for the construction and upkeep of storm water management facilities, including storm water retention areas. The Declarant shall also have the right to allow adjacent properties to tie their storm water management facilities into the storm water management facilities for the Property; provided, however, that the Owners of such adjacent properties agree to bear a portion of the expense of upkeep for the storm water management facilities for the Property in such amount as may be deemed appropriate by the Declarant. Declarant shall also have the right to convey storm water management facilities and easements over any Lot or Common Easement Areas at any time.

3.5.1.5. Relocation of Easements. The Declarant hereby reserves unto itself the right to relocate, change or modify, from time to time, any and all streets, roadways and utility easements which may be located within the Common Easement Areas and to create new streets, roadways and utility easements therein.

3.5.1.6. Completion Easements and Rights of Declarant. Declarant further reserves unto itself, for itself and its successors and assigns, the right, notwithstanding any other provision of the Declaration, to use any and all portions of the Property, including any Common Easement Areas which may have previously been conveyed to the Association, for all purposes necessary or appropriate to the full and final completion of construction of the Community. Specifically, none of the provisions in this Declaration concerning architectural control or use restrictions shall in any way apply to any aspect of the Declarant's development or construction activities and notwithstanding any provisions of this Declaration to the contrary, none of the Declarant's construction activities or any other activities associated with the development, marketing, construction, sales management or administration of the Community shall be deemed noxious, offensive or a nuisance. The Declarant reserves the right for itself, and its respective successors and assigns, to store materials, construction debris and trash during the construction period on the

Property without keeping same in containers. The foregoing includes, without limitation, an easement for Declarant to exercise its right at any time, prior or subsequent to conveyance of individual Lots, to enter upon any of the Property to complete, in its sole discretion, development and subdivision of the Property; such development and subdivision shall include, but shall not be limited to, tree cutting, grading and filling in order to install roads, Storm water management facilities, storm drains and utilities, and to do any and all work necessary to convey storm drainage over, across or under Lot(s) as may be required.

3.5.1.7. Grading Easements. Declarant expressly reserves unto itself the right at or after the time of grading of any street or to such other Lot or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of a dwelling built or to be built on such Lot, but said Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

3.5.1.8. Common Easement Areas and Lot Easements.

3.5.1.8.1. Utilities. The Declarant hereby expressly reserves unto itself and hereby grants to any utility company, to whom the Declarant may grant, convey, transfer, set over and assign the same, or any part thereof, the right to discharge surface water on and to lay, install, construct, and maintain, on, over, under or in those strips across land designated on the Plat, as "Drainage and Utility Easement", "Sewer Easement", "Drainage and Sewer Easement", "Open Space", "H.O.A. Area", "Common Easement Area", and within the area designated as "Entranceway Easement Area" or otherwise designated as an easement area, or on, over, under, or in any portion of any Common Easement Areas or Lots, pipes, drains, mains, conduits, lines, and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, and other public utilities or quasi-public utilities deemed necessary or advisable to provide adequate service to any Lot now or hereafter laid out or established on the Property, or the area in which the same is located, together with the right and privilege of entering upon the Common Easement Areas and Lots for such purposes and making openings and excavations therein, provided that same be corrected and the ground be restored and left in good condition.

3.5.1.8.2. Sediment Control Ponds/Facilities. The Declarant hereby expressly reserves unto itself the right to continue to use and maintain any sediment control ponds or facilities located on any Common Easement Areas and/or Lots.

3.5.1.9. Maintenance Easements. Each Owner hereby grants an easement to the Association and its agents in order for the Association to perform any and all repair and maintenance of Lots which the Association is either required to perform hereunder or elects to perform pursuant to the provisions of this Declaration.

3.5.2. Further Assurances. Any and all conveyances made by the Declarant to the

Association or any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. Upon written request of the Declarant, the Association and each Owner shall from time to time execute, acknowledge and deliver to the Declarant such further assurances of these reservations of rights and easements as may be requested.

3.5.3. Duration and Assignment of Development Rights. The Declarant may assign its rights under this Section to, or share such rights with, one or more other persons, exclusively, simultaneously or consecutively. The rights and easements reserved by or granted to the Declarant pursuant to this shall continue for so long as the Declarant or its designees are engaged in development or sales, or activities related thereto, anywhere on the Property, unless specifically stated otherwise.

3.5.4. Association Power to Make Dedications and Grant Easements. The Declarant, on behalf of itself and its successors and assigns, hereby also grants contemporaneously to the Association the rights, powers and easements reserved to the Declarant hereunder. These rights, powers and easements may be exercised by the Association, subject to any other provisions herein; provided, however, that the limitations on duration applicable to the Declarant shall not apply to the Association. If the Declarant or any Owner requests the Association to exercise its powers under this Section, the Association's cooperation shall not be unreasonably withheld, conditioned or delayed.

3.6. ***Easement for Upkeep.*** The Declarant hereby reserves unto itself and hereby grants to the Association, the managing agent and any other persons authorized by the Board of Directors, in the exercise and discharge of their respective powers and responsibilities, the right of access over and through any portion of the Property for purposes of upkeep of the Property, including, without limitation, the right to make inspections, correct any condition on a Lot or in the Common Easement Areas, correct drainage, perform installations or upkeep of utilities, landscaping, retaining walls or other improvements located on the Property for which the Association is responsible for upkeep, or correct any condition which violates this Declaration. The agents, contractors, officers and directors of the Association may also enter any portion of the Property (excluding any improvement) in order to utilize or provide for the upkeep of the areas subject to easements granted in this Article to the Association. Each Owner shall be liable to the Association for the cost of all upkeep performed by the Association and rendered necessary by any act, neglect, carelessness or failure to comply with this Declaration for which such Owner is responsible pursuant to this Declaration, and the costs incurred by the Association shall be assessed against such Owner's Lot in accordance with the terms hereof.

3.7. ***Easement for Support.*** To the extent that any portion of the Property now or hereafter supports or contributes to the support of any other portion of the Property, the former is hereby burdened with an easement for the lateral and subjacent support of the latter.

3.8. ***Easement for Emergency Access.*** The Declarant, on behalf of itself and its

successors and assigns, hereby reserves unto itself and grants an easement to: (1) all police, fire, ambulance and other rescue personnel over and through all or any portion of the Property for the lawful performance of their functions during emergencies; and (2) the Association, over and through all Lots, if emergency measures are required in any Lot to reduce a hazard thereto or to any other portion of the Property. The Association is hereby authorized but not obligated to take any such measures.

3.9. ***Limitations.*** The rights and easements of enjoyment created hereby shall be subject (in addition to any easements granted or reserved in this Declaration or pursuant to the Articles of Incorporation and By-Laws of the Association) to all rights and powers of the Declarant and the Association when exercised in accordance with the other applicable provisions of such documents, including without limitation the Association's right to regulate the use of the Common Easement Areas, to grant easements across the Common Easement Areas, to dedicate portions of the Common Easement Areas and to mortgage the Common Easement Areas subject to the provisions of this Declaration.

3.10. ***Sales Office, Etc.*** Nothing contained in this Declaration shall be construed to in any way limit the right of Declarant to use any Lot owned by Declarant for the purpose of a construction office, sales office, and/or for model and display purposes and for the carrying out of the above activities, and/or storage compound and parking lot for sales, marketing, and construction.

3.11. ***Forest Buffer/Conservation Easement.*** Any Forest Buffer Easement and/or any Forest Conservation Easement, as shown on the Plat, has been established pursuant to County regulations and adopted policies (as presently enacted) for the purpose of protecting wetlands, streams and forests/wooded areas associated with the Forest Buffer Easement and/or Forest Conservation Easement. The intention of this easement, including restrictions and limitations on uses permitted within it, are further outlined in the Forest Buffer Easement Agreement/Forest Conservation Easement and/or Covenants required by the Baltimore County Code and as the same may be recorded among the Land Records of Baltimore County, prior or subsequent hereto. Those covenants and this Declaration prohibit the erection of fences, structures and the placement of signs within any such easement areas unless the same are approved or required by Baltimore County for the delineation of the Easement Areas. Reasonable use of any Lot or Parcels A and B does not include violating the restrictions as set forth in the Forest Buffer Easement Agreement or the Forest Conservation Easement Agreement or the specific restrictions applicable to either as set forth in this Declaration.

3.12. ***Landscaping Easement.*** The Declarant hereby reserves for itself and the Association an easement in perpetuity over the Utility Easements for the purpose of landscaping the Utility Easements. In addition, the maintenance and replacement of landscaping within the Utility Easement shall be the responsibility of the Owner of each Lot and this easement shall extend to such maintenance and replacement, at the option of the Association.

3.13. ***Creation of and Use/Maintenance of Entranceway, Landscaping, Fencing, and Sign Easement Area - 18020 York Road and 18034 York Road.*** The Declarant hereby reserves for itself and its specific assigns and the Association an easement in perpetuity, in, on, over and under 18020 York Road and 18034 York Road, running with the land in favor of itself and its specific assigns and the Association, for the purposes of installing trees, bushes, plants, flowers, signs, walls, fencing, landmarks, lighting and other landscaping as part of the entrance to the Property, subject to the approval of the Architectural Committee; and for the further purpose of maintaining and replacing said landscaping, signs, landmarks and lighting in a neat and orderly manner. If improved or landscaped, the Association shall be required to mow, regrade, mulch and otherwise rework the easement area as may be necessary to keep the entrance at all times up to the Association's standards. After the Declarant has installed an entrance sign and/or wall, if any, the maintenance and replacement of the sign and/or wall and the maintenance of the area surrounding the sign and/or wall, including, but not limited to, the mowing of grass, shall be the responsibility of the Association. In the event that the Members elect to replace the sign and/or wall installed by Declarant, if any, or to install such a sign and/or wall on its own, plans and specifications for the proposed sign and/or wall must be submitted to the Architectural Committee for approval. No entrance sign may be erected without the prior written approval of the Architectural Committee. The Entranceway Easement is established hereby to provide for entry, access and to construct, reconstruct, maintain, replace, repair, enlarge, change, modify, electrify and/or remove such entrance monuments, signs, walls and associated landscaping as the Declarant and/or the Association deem necessary or desirable in their respective, sole judgment.

3.14. ***Modifications of Plan/Plat.*** The Declarant, for itself, its successors and assigns, reserves the right, with respect to any Lot while owned by Declarant, pursuant to an amendment to the Final Development Plan, Subdivision Plats or approved Development Plan, to alter, amend and change any lot lines, home orientation, well area, septic area and development envelope as may be shown on one or more of such plans or the Plat.

ARTICLE 4. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

4.1. ***Membership.*** Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

4.2. ***Voting.*** The Association shall have two (2) classes of voting membership:

4.2.1. ***Class A.*** Class A Members shall be all Owners (with the exception of Declarant). Each Class A Member shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

4.2.2. ***Class B.*** The Class B Member shall be the Declarant and shall be entitled to twenty (20) votes for each Lot owned. The Class B membership shall cease, and shall be converted to Class A membership on the happening of the first to occur of the following events:

4.2.2.1. Upon the expiration of the Development Period; or

4.2.2.2. December 31, 2075; or

4.2.2.3. At such time as the Declarant, in its sole discretion, determines is suitable and if such determination is made prior to the expiration of the Development Period then Declarant shall evidence this decision by recording an instrument in the Land Records of Baltimore County specifically referring to this provision.

ARTICLE 5. COVENANT FOR MAINTENANCE ASSESSMENTS

5.1. ***Creation of Lien and Personal Obligations of Assessments.*** Declarant, for each Lot hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges, (ii) special assessments for capital improvements, (iii) additional assessments, all such assessments to be established and collected as hereinafter provided and (iv) any monetary penalties levied for violation of covenants or rules. The annual, special and additional assessments, and any such penalties, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and attorney's fees, shall also be the personal obligation of the person(s) who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless assumed by them. Declarant and any Lots which Declarant owns shall be exempt from payment of any assessment hereunder.

5.2. ***Purpose of Assessments.*** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of Lots within the Property, for the improvement and maintenance of the Common Easement Areas, including without limitation the Entranceway Easement Areas and the Fire Suppression Tank (including the filling and refilling thereof, and reserves for replacement of the tank), and to fund all necessary insurance for the said Common Easement Areas and the Fire Suppression Easement and Fire Suppression Tank and for the directors and officers of the Association, and as is otherwise consistent with the rights and responsibilities of the Association hereunder and for the benefit of the Members.

5.3. ***Reserve Fund.*** The annual assessments shall include an amount adequate to establish a reserve fund for replacement of capital improvements in the Common Easement Areas and annual maintenance and/or repair of the Fire Suppression Tank (including the filling and refilling thereof). A proportionate amount of each assessment payment received by the Association applicable

to the reserve fund shall be received and held by the Association.

5.4. ***Maximum Annual Assessment.***

5.4.1. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than the Declarant, the maximum annual assessment, not including any Special Assessments levied pursuant to Section 5.5 of this Declaration, shall be Seven Hundred Dollars ($700.00) for each Lot, payable annually.

5.4.2. From and after such date, the maximum annual assessment, not including any Special Assessments levied pursuant to Section 5.5 of this Declaration, may be increased each year by not more than twenty percent (20%) of the maximum annual assessment, not including any Special Assessments levied pursuant to Section 5.5 of this Declaration, for the previous year without a vote of the membership of the Association.

5.4.3. From and after such date the maximum annual assessment, not including any Special Assessments levied pursuant to Section 5.5 of this Declaration, may be increased above the twenty percent (20%) limitation specified in the preceding sentence only by a vote of two-thirds (2/3) of each class of Members of the Association, voting in person or by proxy, at a meeting duly called for such purpose.

5.4.4. The Board of Directors of the Association may fix the annual assessment or charges against each Lot at any amount not in excess of the maximum annual assessment, which limitation shall not include any Special Assessments levied pursuant to Section 5.5 of this Declaration. Subject to the limitations set forth in this Section, and for the periods therein specified, the Association may change the maximum annual assessment and the basis of the assessments prospectively for any period provided that any such change shall have the assent of two-thirds (2/3) of each class of Members of the Association, voting in person or by proxy, at a meeting duly called for such purposes.

5.5. ***Special Assessments.*** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Easement Areas, including fixtures and personal property related thereto, and/or to meet any other deficit of the Association or any emergency or unforeseen expenses of the Association, provided that any such assessment shall have the assent of seventy-five percent (75.0%) of the votes of the Members at a meeting duly called for this purpose.

5.6. ***Notice and Quorum for Any Action Authorized under Sections 5.4, 5.5 .***

Written notice of any meeting called for the purpose of taking an action authorized under

Sections 5.4 or 5.5 shall be sent to all Members not less than twenty (20) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of Members shall constitute a quorum. If the required quorum is not present, further meetings may be called subject to the same notice requirement, and the required quorum at any subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

5.7. ***Uniform Rate of Assessment.*** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis, or other periodic basis not more often than monthly, or less often than annually, as provided by the Board of Directors.

5.8. ***Additional Assessments.*** Additional assessments may be fixed against any Lot only as provided for in this Declaration. Any such assessments shall be due as provided by the Board of Directors in making any such assessment.

5.9. ***Surplus Receipts.*** Other than any portion(s) of assessments allocated to the Reserve Fund (*see* Section 5.3), any surplus of receipts over expenses of the Association for any fiscal year shall be either applied to reduce the assessments necessary to meet the budget adopted by the Association for the next fiscal year or refunded by the Association to each Owner, and the refund may be prorated among the Owners (and former Owners), including Declarant, who have paid the prior years' assessments, based upon the portion of the previous fiscal year that each such Owner (or former Owner, including Declarant) shall have held record title to the Lot, as determined in the sole discretion of the Board of Directors.

5.10. ***Date of Commencement of Annual Assessments: Due Dates.*** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot from the Declarant to an Owner. The first annual assessment shall be fixed by the Board of Directors and shall be adjusted according to the number of months remaining in the fiscal year. Thereafter, the Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

5.11. ***Duties of the Board of Directors.***

5.11.1.Commencing with the first fiscal year of the Association, the Board of Directors shall determine the amount of the maintenance assessments annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of Annual Assessments may be levied and collected on a monthly, quarterly or semi-annual basis rather than on the annual basis herein above provided for. Any Member may prepay one or more installments of any maintenance assessment levied by the Association, without premium

or penalty.

5.11.2. The Board of Directors shall prepare, or cause the preparation of an annual operating budget for the Association, which shall provide, without limitation, for the management, operation and maintenance of the Common Easement Areas. The Board of Directors of the Association shall make reasonable efforts to fix the amount of the annual maintenance assessment against each Lot for each assessment period at least thirty (30) days in advance of the beginning of such period and shall, at that time, prepare a roster of the Lots and the annual maintenance assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner upon reasonable notice to the Board of Directors. Written notice of the annual maintenance assessments shall thereupon be sent to all Members of the Association. The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the annual maintenance assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any Member from the obligation to pay the annual maintenance assessment, or any installment thereof, for that or any subsequent assessment period; but the annual maintenance assessment fixed for the preceding period shall continue until a new maintenance assessment is fixed. For so long as there is one or more Class B Member, the annual assessment shall become effective when fixed by the Board of Directors. Where there is no longer any Class B Member, the budget and assessments shall become effective unless a special meeting of the Association is duly held and at such special meeting the budget and the assessments are disapproved by at least a majority of the Class A Members of the Association. No Member may exempt itself from liability for maintenance assessments by abandonment of any Lot owned by such Member or by the abandonment of such Member's right to the use and enjoyment of the Common Easement Areas.

5.11.3. The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A charge not to exceed ten dollars ($10.00) may be levied in advance by the Association for each certificate so delivered.

5.12. ***Effect of Nonpayment of Assessments; Remedies of the Association.*** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum, and shall be subject to a reasonable late charge in an amount established from time to time by resolution of the Board of Directors, and the Board of Directors shall have the right to declare the entire balance of the annual assessment and accrued interest thereon to be immediately due and payable. In addition, the Owner shall be liable for all costs of collecting any such assessment, including attorney's fees and court costs. The Association may bring an action at law against the Owner personally obligated to pay the same and/or, without waiving any other right, may foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Easement Area or abandonment of her/his Lot.

5.13. ***Maryland Contract Lien Act.*** The Association may establish and enforce the lien for any amounts due hereunder pursuant to the Maryland Contract Lien Act. The lien is imposed upon the Lot against which such assessment is made. The lien may be established and enforced for damages, costs of collection, late charges permitted by law, and attorney's fees provided for herein or awarded by a court for breach of any of the covenants herein, provided there be but one satisfaction of each and every claim when made.

5.14. ***Subordination of the Lien to Mortgages.*** The lien of the assessments provided for herein shall be subordinate to the lien of any recorded first mortgage or deed of trust now or hereafter placed against a Lot, unless such lien for assessments hereunder has been duly recorded as such among the Land Records of Baltimore County, Maryland prior to the recording of such mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, any contract purchaser of a Lot shall be entitled, on written request to the Association, to a statement in writing from the Association setting forth the amount of any unpaid assessments against the Owner of the Lot due the Association and such purchaser shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments made by the Association against the Owner-Grantor or the Lot in excess of the amount set forth in such statement. The sale or transfer of any Lot pursuant to foreclosure, or any proceeding in lieu thereof, of a mortgage senior in priority to the assessment lien, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from any lien therefor.

ARTICLE 6. MAINTENANCE

6.1. ***Owner's Responsibility.*** Subject to the restrictions and provisions in the Forest Conservation and Forest Buffer Declaration, the Owner of each Lot shall keep such Owner's respective Lot, and all improvements thereon, in good order, maintenance and repair, including; but not limited to, the seeding, control of soil pH levels, watering and mowing of all lawns and yards and maintaining them in accordance with the recommendations of the Maryland Cooperative Extension Service or its equivalent State agency, installation and maintenance of drainage swales within the boundaries of the Lot, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and Structures on the Lot, all in a manner and with such frequency as is consistent with good property management and maintenance. If, in the opinion of the Association or the Architectural Committee, any Owner fails to perform the duties imposed hereunder, the Association on affirmative action of a majority of the Board of Directors or the Architectural Committee, after fifteen (15) days written notice to the Owner to remedy the condition in question, and upon failure of the Owner to remedy the condition within such fifteen (15) day period, shall have the right (but not the obligation), through its agents and employees, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot and/or the improvements or Structures thereon, and the cost thereof shall be a binding, personal obligation of such Owner of the Lot, and as an additional assessment as contemplated in Section 5.8 hereof, on the Lot and enforced in the same manner and under the same terms as Sections 5.11, 5.12 hereof. In the event the

Association elects not to maintain any portions of the Common Easement Areas which are part of an Owner's Lot, such affected Owner(s) shall, at the respective Owner(s) sole cost, maintain all those portions of the Common Easement Areas that are part of their Lot.

6.2. ***Association's Responsibility.*** The Association shall maintain and keep in good repair the Common Easement Areas and similar areas, as well as the Fire Suppression Easement and Fire Suppression Tank, all shown on the Plat, and, at its option, may maintain the Utility Easements, such maintenance to be funded out of the Association's funds. In addition, the Association may, upon resolution of the Board of Directors, maintain any area dedicated to a public or governmental entity if such entity fails to properly maintain such areas, including, without limitation the storm water management reservation area shown on the Plat. The maintenance shall include all landscaping and other floras, Structures and improvements situated upon the Common Easement Areas and the filling and refilling of Fire Suppression Tank to the extent required by law or regulation. Any grass areas shall be mowed regularly and, open space shall be maintained by the Association as either lawn areas or wildflower meadows in accordance with the recommendations of the Maryland Cooperative Extension Service or its equivalent State agency. In addition to any other provisions herein, all cultivated beds shall be weeded and mulched on an as-needed basis and all plant materials shall be maintained and/or replaced as necessary surrounding any entrance areas serving the Property and islands located within the roads located in the Subdivision. All County Easements shall be maintained according to sound forestry practices and in accordance with forest conservation and forest buffer regulations. Any walking or natural trails shall be kept clear of debris and shall receive periodic maintenance. Naturalized landscaping shall be maintained to insure health and vigor. Any Structures within the Common Easement Areas shall be maintained in good condition. A blanket easement is hereby reserved to the Association over the Property as necessary to enable the Association to fulfill its responsibilities under this Declaration, including without limitation, this Section.

6.3. ***Responsibility for Fire Suppression Tank & Easement.*** The Association shall be required to maintain the Fire Suppression Tank and the Fire Suppression Easement in accordance with all applicable law, rule and/or regulation and in accord with any requirement(s) of any insurer providing insurance to the Association and/or Owners in connection with the Fire Suppression Tank and the Fire Suppression Easement.

6.4. ***Historic Swale - Lot Nos. 10, 11 & 12.*** As part of the approval of the Montclair development, the Baltimore County Hearing Officer imposed special considerations and/or restrictions regarding portions of Lot Nos. 10, 11 & 12. The specific conditions and restrictions, as well as a detailed description of the restricted area, are contained in that certain *Declaration of Restrictive Covenant Agreement* (the "Swale Declaration") recorded among the Land Records of Baltimore County in Liber 27436, beginning at page 256. The Swale Declaration provides, *inter alia*, that: i) the affected portions of each restricted Lot shall remain, in perpetuity, undisturbed, unless said restriction from disturbance is, in the future, modified by the Hearing Officer for Baltimore County and an amendment to the Swale Declaration, together with the Order of the

Hearing Officer for Baltimore County containing any such modification attached thereto is recorded in the same manner as the Swale Declaration; and ii) upon the transfer of ownership of any of the restricted Lots, the successor owner shall assume all obligations, duties and responsibilities of the predecessor in title in all respects relative to the Swale Declaration.

ARTICLE 7. ARCHITECTURAL REVIEW

7.1. ***Compliance with Architectural Review; Construction.*** No Structure, building, fence, wall, deck, garage, sign, pool, patio, pool house, racket sport or hand-ball court, game facilities, play equipment, or other Structure of any kind, including any driveway, walkway, clothes line, and outside lighting shall be commenced, constructed, erected or maintained on any Lot, nor shall any addition (including awnings and screens) to, change, or alteration therein (including any retreatment by painting or otherwise of any exterior part thereof) be made in structure or color of any improvements, nor shall any regrading change of any Lot contour or any other work of any nature (collectively, "Alterations") be commenced or performed which may result in a change of exterior appearance of any improvements until the final plans, color scheme, location, exterior plans and details, driveway plans and location, proposed topographic changes, landscape plans, and such other information as the Architectural Committee may request, have been submitted to and approved in writing by the Architectural Committee. The Architectural Committee may appoint a Modifications Architectural Committee to render approvals of all items requiring approval other than the basic and initial construction of residence on each Lot. It is intended that following completion of construction of all initial residences on the Lots, the Architectural Committee may, in its sole and absolute discretion, relinquish all or any of its power and authority to the Modifications Architectural Committee, whose members thereafter shall be appointed by the Board of Directors of the Association, or alternatively, the Architectural Committee may retain such power and authority until such time as the Architectural Committee deems suitable. Where reference is made herein to the Architectural Committee, it shall mean the Modifications Architectural Committee also, to the extent the Architectural Committee has delegated such authority to the Modifications Architectural Committee.

7.2. ***Architectural Guidelines.*** Architectural guidelines and criteria pertaining to the design of and construction materials for homes, fencing, decks, patios, driveways, entrances, mailboxes, swimming pools, tennis courts, outdoor lighting and operating systems, or other structures will be provided to the Owner of each Lot by the Architectural Committee, upon this request of the Owner, prior to architectural design and construction.

7.3. ***Drawings/Plans.*** A set of working drawings for the site development plan and construction plan, once approved by the Owner(s), shall be immediately furnished to the Architectural Committee. The site development plan shall at a minimum show the proposed location of the driveway and the proposed location of the house as well as any incidental structures. The construction plans, in addition to showing adequate design and construction detail, must also specifically show all exterior materials to be used on the house in detail necessary to adequately

identify said materials. In addition, all exterior grades must be shown in detail.

7.4. ***Submissions of Plans.*** There is a two phase submission of all plans and specifications. The first phase, which can not be bypassed, skipped or waived, is the conceptual phase and the second phase is the final phase. *The submission of incomplete plans, materials and/or other documentation as described herein will NOT be reviewed.* All submissions of plans and specifications for approval as to new construction of Structures or modifications or alterations on the Lot shall be presented to the Architectural Committee (at the address designated below) as follows:

7.4.1. Conceptual Submission: Every Lot Owner shall be required to submit to the Architectural Committee a conceptual site design, location and exterior elevation plans and specifications in advance of submitting for final approval and **as early in the dwelling design/site alteration process as possible**. At a minimum, the plans and specifications submitted at the conceptual stage shall include, but not be limited to: orientation of all proposed Structures and/or alterations on the Lot; the relationship of all proposed Structures and/or alterations to all existing improvements on adjacent lots and all applicable easements, setbacks (including without limitation zoning, forest buffer, conservancy areas, etc.), rights-of-way, etc; proposed grading and limits of grading; and preliminary exterior elevations, lighting and design features (collectively, the "Conceptual Submission"). **Approval by the Architectural Committee of the Conceptual Submission is required in advance of submitting final plans and specifications for approval by the Architectural Committee.** The Conceptual Submission shall be made using the Conceptual Submission Plan Checklist included as part of the *Architectural Review Criteria and House Plan Submission Checklist for the Montclair Development, Parkton, Maryland*, copies of which are available from the Architectural Committee.

7.4.2. Final Submission: Every Lot Owner shall be required to submit to the Architectural Committee, final site design, location and exterior elevation plans and specifications for approval by the Architectural Committee as required herein in advance of constructing any Structure and/or alteration on the Lot. The plans and specifications submitted for final approval by the Architectural Committee shall include, but not be limited to: final orientation of all proposed Structures and/or alterations on the Lot; the relationship of all Structures and/or alterations in their final design location to all existing Structures/ improvements on adjacent lots and all applicable easements, setbacks (including without limitation zoning, forest buffer, conservancy areas, etc.), rights-of-way, etc; finish grade elevations and limits of grading; and final exterior elevations, lighting and design features (collectively, the "Final Submission"). Approval by the Architectural Committee of the Final Submission is required in advance of construction or alteration of any Structure. The Final Submission shall be made using the Final Submission Plan Checklist included as part of the *Architectural Review Criteria and House Plan Submission Checklist for the Montclair Development, Parkton, Maryland*, copies of which are available from the Architectural Committee.

7.5. ***Review Standards.*** The Architectural Committee will meet only provided that it

has received one or more complete, conceptual or final submissions of plans, materials and documentation. The Architectural Committee shall consider applications for approval of plans, specifications, etc. (both Conceptual and Final Submissions, as defined herein), upon the basis of conformity with this Declaration and any rules or regulations adopted by the Architectural Committee and shall be guided by the extent to which such proposal will insure conformity and harmony in exterior design and appearance, based upon, among other things, the following factors: the quality of workmanship; nature and durability of materials; harmony of external design with existing structures; choice of colors; change in topography, grade elevations and/or drainage; adequacy of sediment controls with specific emphasis on the protection of the County Easements, specifically the Forest Buffer Easement Area and its associated wetlands and streams and the Forest Conservation Easement Area; the effect of the proposed improvements or alterations on the use, enjoyment and value of other neighboring properties, and/or on the outlook or view from adjacent or neighboring properties; and the suitability of the surrounding area. Each Lot Owner is hereby notified that all information regarding the orientation, location and layout of all Structures, driveways, garages, etc. as shown on the Subdivision Plan and/or the final Development Plan, is schematic in nature only and the Architectural Committee shall not be bound by the information shown thereon in its review and/or approval of either the Conceptual or Final Submission of plans and specifications as described and required herein.

7.6. ***Approval.*** All requests for approval of plans and specifications for Structures or alterations shall be decided by the member(s) of the Architectural Committee in its sole discretion. The Architectural Committee shall have the right to refuse to approve any such plans or specifications, including grading and location plans, which are not suitable or desirable, in its opinion, for aesthetic or other considerations. Written requests for approval, accompanied by the foregoing described plans and specifications or other specifications and information as may be required by the Architectural Committee from time to time shall be submitted to the Architectural Committee by mail, messenger or in person. The Architectural Committee shall charge non-refundable processing and review fees for conceptual and final plan submissions as specified in the *Architectural Review Criteria and House Plan Submission Checklist for the Montclair Development, Parkton, Maryland*, as amended from time to time. Revisions to the final plans as approved which are desired by the Lot Owner or the Lot Owner's representative shall be submitted in the same manner as for final plan approval and shall be accompanied by a non-refundable fee of $350 per submittal. The Architectural Committee shall not be required to maintain copies of any final plans and specifications submitted pursuant to the provisions of this Article 7, as denied, approved or approved as modified. A letter referencing such plans will then be sent to the applicant for its records. Every approved Structure constructed on the Lots must be completed in every exterior detail within twelve (12) months of breaking ground for such construction. Material samples, if not sooner retrieved by Owners, will be disposed of ten (10) days following alteration or Final Submission approval.

7.7. ***Disapproval of Plans.*** In any case where the Architectural Committee shall disapprove the plans and specifications submitted or shall approve the same only as modified or

upon specified conditions, such disapproval or qualified approval shall be communicated in writing to the Owner. In any such case, the Architectural Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval. However, the final decision of the Architectural Committee is binding.

7.8. ***Commencement of Construction Without Approval.*** The commencement of construction of any home, dwelling or Structure on a Lot, by or for the benefit of any Owner, without first obtaining approval from the Architectural Committee shall result, in addition to any other remedy that may be provided in this Declaration or otherwise, in a penalty of $1000 immediately due and payable by the Owner to the Architectural Committee. Each occurrence of construction without first obtaining approval from the Architectural Committee shall be a separate offense, with each offense subject to the $1000 penalty, together with all other available remedies.

7.9. ***Specific/Limited Exemption for Existing Structures.*** The dwellings that are in existence on the date that this Declaration is recorded among the Land Records of Baltimore County ("existing Structure") shall not be required to submit Plans for review of the existing Structure. Any new Structure or any Alterations or exterior modifications to an existing Structure shall be fully subject to compliance with all other requirements of this Article 7 in the same manner as any other Lot in the Community.

7.10. ***Specific Construction Criteria.*** The Architectural Committee shall not approve any Plan if any of the following special construction criteria are violated:

7.10.1. No exterior security lights shall be installed on any structure higher than thirty-five feet (35') from the ground; no exterior security lighting fixture shall be installed which is greater than 250 watts; and all exterior security lighting, except motion sensitive flood lighting, shall be minimized and shall be directed inward and downward toward the Dwelling.

7.10.2. The sediment control plans and other Plans must adequately protect the County Easement areas and the associated wetlands and streams.

7.10.3. There shall be no disturbance of or within the area of the County Easements.

7.11. ***Failure to Act.*** The Architectural Committee will be deemed to have approved any plans and specifications submitted to it pursuant to the provisions of this Article if the committee fails to approve, approve with modifications, disapprove or request additional information for, such plans and specifications (and all materials and information required by the Architectural Committee) within thirty (30) days after complete submission as specified in the *Architectural Review Criteria and House Plan Submission Checklist for the Montclair Development, Parkton, Maryland,* (incorporated herein by reference and a copy of which is to be provided to each Owner of a Lot; additional copies are also to be available from the Architectural Committee).

7.12. ***Certificate of Compliance.*** Upon the completion of any construction of the alterations or other improvements or Structure in accordance with plans and specifications approved by the Architectural Committee, the Architectural Committee shall, at the request of the Owner, issue a Certificate of Compliance which shall be *prima facie* evidence that such construction or alterations have been approved by the Architectural Committee, and constructed or installed in full compliance with the provisions of this Article and with such other provisions and requirements of this Declaration as may be applicable.

7.13. ***Post - Construction Maintenance.*** After construction, all Structures and/or alterations shall be maintained continuously in strict conformity with the plans and specifications so approved. Any exterior addition to or change or alteration made without application having first been made to and approval obtained from the Architectural Committee shall be deemed to be in violation of this covenant and the addition, change or alteration so made may be required to be restored to the original condition at the Owner's costs and expense. In any event, no such exterior addition to or change or alteration shall be made without approval and permits therefor having first been obtained by the Owner from the applicable governmental authorities.

7.14. ***Non-approved Structures.*** If any Structure shall be altered, erected, placed or maintained upon any Lot, or any new use commenced on any Lot, in violation of the provisions hereof, such Structure or new use shall be removed or discontinued, and such use shall be terminated so as to extinguish such violation. If within fifteen (15) days after notice from the Declarant, the Association, the Architectural Committee or any Owner of such violation the Owner of the Lot upon which such violation exists shall not have taken reasonable steps towards the removal or termination of the same, the party providing notice shall have all rights, at law or equity including, without limitation the right to seek judicial enjoinment of such violation.

7.15. ***Committee Compensation.*** The members of the Architectural Committee shall serve without compensation unless specifically approved by the Declarant. The Architectural Committee may, however, engage paid professional advisors as it deems necessary to assist in the review of plans. These costs are to be borne by the Architectural Committee.

7.16. ***Architectural Committee Rules.*** The Architectural Committee, to the extent of its functions hereunder and rights specifically provided herein, may, adopt and promulgate, amend, modify and/or repeal reasonable rules, guidelines, policies, standards and regulations regarding the administration, interpretation and enforcement of the provisions of Article 7 and Article 8 of this Declaration. Declarant grants to the Architectural Committee, its successors and assigns, the right to waive as to any Lot or all Lots, such portion or portions of covenants and restrictions set forth in this Declaration as the Architectural Committee, in its sole discretion, may deem advisable in the reasonable interests of the Montclair Community without impairing the validity or enforceability of these covenants and restrictions in any manner whatsoever.

7.17. ***Conditional Approval.*** In granting any permit, authorization, or approval, as

herein provided, the Architectural Committee may impose any appropriate conditions or limitations thereon as it shall deem advisable under the circumstances of each case.

7.18. ***Variance.*** The Architectural Committee may authorize, in its sole and absolute discretion, variances from compliance with any guideline or procedure when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules, guidelines and/or regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing or (b) estop the Architectural Committee from denying a variance in other circumstances. For the purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

7.19. ***Liability.*** Neither the Architectural Committee, its successors and/or assigns, nor any *bona fide* representative or agent thereof shall be responsible in any way for any defects in any Plans and Specifications, or any other plans and specifications, submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such Plans and Specifications or any other plans and specifications.

7.20. ***Performance Deposit.*** The Architectural Committee shall have the right and may do so as a condition of architectural approval to require the Owner to deposit in escrow (non-interest bearing) with the Architectural Committee a Performance Deposit in an amount not to exceed Ten Thousand Dollars ($10,000.00) (the "Performance Deposit"). If after written notice of a violation of these or any other restrictions affecting the Lot, the Owner fails to remedy such violation within thirty (30) days, the Architectural Committee may draw upon the Performance Deposit as necessary to correct said violation. The Architectural Committee shall provide Owner with written documentation of any debits against the Performance Deposit. Upon completion of the dwelling in accordance with the plans and specifications approved by the Architectural Committee, the balance of the Performance Deposit shall be promptly returned to Owner. For illustrative purposes, the Architectural Committee shall be entitled to draw upon the Performance Deposit for such violations including, but not limited to, repair to construction entrance, repair/installation of sediment control on a Lot, removal of trash/debris, enforcement of non-approved structures, and legal fees related to enforcement. In its sole and absolute discretion, the Architectural Committee may waive this provision.

7.21. ***Special Provisions Affecting Lot Nos. 14 & 15.*** As part of the approval of the Montclair development, the Baltimore County Hearing Officer, in response to binding comments received from the Baltimore County Planning Board (based on a recommendation from the Baltimore County Landmarks Preservation Commission) limited any dwelling to be constructed on Lot Nos. 14 and/or 15 to be a single-story dwelling (the "height restriction"). The height restriction is binding only on Lot Nos. 14 and 15 until modified, if at all, in the future by the Hearing Officer for Baltimore County and an amendment to the Hearing Officer's (June 1, 2004) final and

unappealable Order.

ARTICLE 8. USE RESTRICTIONS

8.1. ***Residential Use.*** Lots will be used for private residential purposes only, and no building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family dwelling per Lot, not to exceed the height allowed by the Baltimore County Zoning Regulations, the development approvals for Montclair or this Declaration, whichever height is less, excluding basement, with a private two or more attached car garage. All garages shall be located and designed so as to be entered from the side or rear of the dwelling. No garage opening shall be oriented toward any public or private street or roadway providing access for all Lot Owners to the Property. All dwellings shall be constructed in accordance with the guidelines promulgated by the Architectural Committee, a copy of which shall be provided to the prospective purchasers of any Lot along with a copy of this Declaration. Notwithstanding anything herein to the contrary, pursuant to Section 11 (B)-111.1 of the Real Property Article of the Annotated Code of Maryland (the "Code"), "No-impact home-based businesses" are permitted upon the Lots subject to the following requirements:

8.1.1. Owners shall notify the Association before operating a No-impact home-based business.

8.1.2. No-impact home-based businesses are expressly prohibited in any Common Easement Areas.

8.1.3. Such additional requirements as may be specified by the Board of Directors of the Association, to the extent permitted by applicable law. The foregoing provisions of this Section are intended to be a restatement of the provisions of Section 11B-111.1 of the Code, and any future amendments or modifications thereto shall be deemed incorporated by reference herein as a part hereof.

8.1.4. For purposes hereof, a "No-impact home-based business" means a business that:

8.1.4.1. Is consistent with the residential character of the dwelling;

8.1.4.2. Is subordinate to the use of the dwelling for residential purposes and requires no external modifications that detract from the residential appearance of the dwelling;

8.1.4.3. Uses no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable by neighbors

or that causes an increase of common expenses that can be solely and directly attributable to a No-impact home-based business;

8.1.4.4. Does not involve use, storage, or disposal of any grouping or classification of materials that the United States Secretary of Transportation or the State of Maryland or any local governing body designated as a hazardous material; and

8.1.4.5. Does not involve a significant increase in traffic within the Community or require any vehicles to park on the roads located in the Community.

8.2. ***Subdivision.*** No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer or otherwise after conveyance by the Declarant, except for: 1) the authority reserved unto the Declarant in this Declaration; and 2) the creation by an Owner of any non-density tract from a Lot after approval by Declarant and by Baltimore County, Maryland. Nothing herein shall be interpreted to imply Declarant's implicit or explicit approval of the creation of any such non-density tract as each request for such action will be reviewed and approved or disapproved on an individual, case-by-case basis by Declarant, in its sole and exclusive judgment. No approval by Baltimore County of the creation of any non-density tract is to be implied or assumed either by this Declaration or any action of the Declarant.

8.3. ***Motor Vehicles.*** No recreational vehicles, such as, but not limited to all boats, boat trailers, house trailers, trailers, trucks, commercial vehicles, campers, non-passenger vehicles and the like may be parked or kept in on any Lot without providing an approved, suitable enclosed storage area and without first obtaining the written approval of the Declarant herein, which approval shall be revocable at any time and without cause by the Declarant. No motorized bikes, all terrain vehicles or similar type recreational vehicles may be operated on any Lot or any portion of the Property.

8.4. ***Pools.*** No above ground pools shall be permitted to be constructed or maintained on any Lot.

8.5. ***Animals.*** No live poultry, hogs, cattle, horses, ponies, or other similar livestock, nor any dangerous animal or unstable breed of animal shall be kept on any Lot. A maximum of two (2) dogs and two (2) domestic cats is permitted, provided that they are properly housed and cared for, that they do not become a nuisance to neighbors or adjoining property owners and are restricted to the Owner's property. No animal shall be permitted beyond the lot lines of the Owner's Lot unless the animal is leashed or carried and is under the control of a responsible person. No household pet shall be allowed to make an unreasonable amount of noise or otherwise to become a nuisance. Upon request of any Owner, the Board of Directors shall determine, in its sole discretion, whether for the purposes of this paragraph a particular animal shall be considered a "similar domestic household pet" or its actions have constituted a "nuisance," or it has been property kept "under the control of a

responsible person." Owners shall promptly clean all litter deposited on any Lot or Common Areas by their household pet(s). The Board of Directors may require removal from the Property of any pet found to be in violation of this section or of any rules duly adopted by the Board of Directors. Pets shall be registered, licensed and inoculated as required by law.

8.6. ***Trash.*** All equipment and containers for the storage or disposal of such material shall be kept in a good, clean and sanitary condition, and:

8.6.1. During construction of any approved Structure on a Lot, the Owner shall keep the construction site free of unsightly accumulations of rubbish and scrap materials, and construction materials, trailers, shacks and the like employed in connection with such construction shall be kept in a neat and orderly manner. During the construction of the initial dwelling on any of the Lots shown on the Subdivision Plat, each such lot shall be required to have an on-site refuse container for construction debris and the same will be removed as required to prevent the overflow of trash and debris from said container, and neither trash nor debris will be buried or burned on-site; and

8.6.2. Trash or other refuse that is to be disposed of by being picked up and carried away on a regular and reoccurring basis, may be placed in closed containers at such place on the Lot so as to provide access to persons making such pick-up. At all other times, such containers shall be stored in such a manner so that they cannot be seen from adjacent and surrounding property.

8.7. ***Antenna.*** No radio aerial, antenna or satellite or other signal receiving dish, or other aerial or antenna for reception or transmission, shall be placed or kept on a Lot outside of a dwelling, except on the following terms:

8.7.1. An Owner may install, maintain and use on its Lot one (or, if approved, more than one) Small Antenna (as hereinafter defined) in the rear yard of a dwelling on the Lot, at such location, and screened from view from adjacent dwellings in such a manner and using such trees, landscaping or other screening material, as are approved by the Architectural Committee. Notwithstanding the foregoing terms of this subsection, (i) if the requirement that a Small Antenna installed on a Lot be placed in the rear yard of a dwelling would impair such Small Antenna's installation, maintenance or use, then it may be installed, maintained and used at another approved location on such Lot where such installation, maintenance or use would not be impaired; (ii) if and to the extent that the requirement that such Small Antenna be screened would result in any such impairment, such approval shall be on terms not requiring such screening; and (iii) if the prohibition against installing, maintaining and using more than one (1) Small Antenna on a Lot would result in any such impairment, then such Owner may install on such Lot additional Small Antenna as are needed to prevent such impairment (but such installation shall otherwise be made in accordance with this subsection).

8.7.2. In determining whether to grant any approval pursuant to this Section, neither Declarant, the Architectural Committee nor the Board of Directors shall withhold such approval, or

grant it subject to any condition, if and to the extent that doing so would result in an impairment.

8.7.3. As used herein, (i) "impair" has the meaning given it in 47 Code of Federal Regulations Part 1, Section 1.4000, as hereafter amended; and (ii) "Small Antenna" means any antenna (and accompanying mast, if any) of a type, the impairment of the installation, maintenance or use of which is the subject of such regulation. Such antennae are currently defined thereunder as, generally, being one (1) meter or less in diameter or diagonal measurement and designed to receive certain types of broadcast or other distribution services or programming.

8.8. ***Signs.*** Other than signs deemed necessary and appropriate by the Declarant or its specific successors and assigns, no advertising or display signs of any character shall be placed or maintained on any part of the Property or on any structure except with the written consent of Declarant or the Architectural Committee, except customary "For Sale" signs of standard size in the industry, on or in front of the dwelling house by the Owner thereof.

8.9. ***Single Family Occupancy.*** All dwellings constructed on any Lot shall be designed for single-family occupancy. Single-family occupancy shall not be construed to prevent the erection of a Dwelling with an attached apartment or living area for use by a member or members of the Lot Owner's family, if permitted by applicable law and regulation. Residential use shall not prohibit a home office use of the property provided the owner of said Lot complies with the applicable zoning regulations of Baltimore County. Private residential use shall not prohibit acquisition of the property for investment purposes or for acquisition by a contiguous property owner who does not intend to erect a residential dwelling in the immediate future.

8.10. ***Additional Structures.*** No structure of a temporary character, such as, but not limited to, a trailer, shack, or tent, shall be placed or used on any Lot as a residence or for storage, or as an auxiliary building, either temporarily or permanently.

8.11. ***Clearing Lots.*** No more than an aggregate total of sixteen thousand (16,000) square feet of wooded area on any Lot may be cleared without the express written authorization of the Architectural Committee, and in accordance with a clearing plan submitted to, and approved by, the Architectural Committee. In the event the Architectural Committee grants approval to exceed the 16,000 square foot clearing limit, as a condition of said approval, the Architectural Committee may require the Owner to mitigate said clearing by providing additional landscaping and plantings.

8.12. ***Lawn Maintenance/Foundation Landscaping.*** Each Lot shall be kept free from rubbish and trash of any kind, clean and with lawns neatly mowed a minimum of six (6) times per growing season, so that grass and weeds do not exceed five (5") inches in height. In the event the Owner of any Lot does not properly maintain his or her Lot, the Declarant, or its employees, shall have the right to enter upon said Lot to cut and remove the grass, weeds, rubbish or trash and the Owner of any Lots so benefitted shall pay reasonable charges for such services as determined by the Declarant or its designee. Those areas within the Forest Buffer Easement Area and/or the Forest

Conservation Easement Area, as shown on the Plat, shall be maintained as prescribed in the respective, recorded Easement Agreement. Specifically, the Forest Buffer Easement Agreement and the Forest Conservation Easement Agreement prohibit mowing any area within the easements. Notwithstanding the above, upon specific request to the Architectural Committee, permission will not be unreasonably withheld, delayed or conditioned for a Lot Owner to allow the Forest Buffer Easement Area to extend beyond the limits of the Forest Buffer Easement Area or to establish forested area(s) on that Owner's Lot. All Lots shall have a landscape package that includes foundation plants generally situated across the front and sides of the Dwelling as approved by the Architectural Committee.

8.13. ***Noise and Nuisances.*** No nuisance shall be maintained, allowed or permitted on any part of any Lot and no use thereof shall be made or permitted which may be noxious or detrimental to health or which may become an annoyance or nuisance to the neighborhood. Musical instruments, radios, televisions and record players, CD players and the like shall be used at all times only in such manner as not to unreasonably disturb persons on other Lots. For purposes of this Section 8.13, any motor vehicle emanating any source of noise in excess of such vehicle's original equipment manufacturing standard shall be considered a nuisance prohibited hereby.

8.14. ***Driveways.*** Owners shall be responsible for providing driveway access to their homes from the paved public roadway to which their Lot is adjacent. All driveways shall be paved with a hard durable surface, such as macadam, tar and chip, concrete or other similar material. Paving shall be completed no later than one (1) year from the date of commencement of construction of the Dwelling on said Lot. NO BERM SHALL BE ALLOWED ALONG THE PROPERTY LINE OF ANY LOT AND ANY PUBLIC ROAD WHICH WILL IN ANY WAY INHIBIT THE WATER COURSE INTENDED IN THE APPROVED ROAD DESIGN.

8.15. ***Grade.*** No change in ground level may be made on any Lot in excess of one foot in height over existing grades without the written approval of the Declarant obtained prior to the commencement of work.

8.16. ***Restoration.*** Any Structure on any Lot which may be destroyed in whole or in any part by fire, windstorm or for any other cause or act of God must be rebuilt or all debris removed and the Lot restored to a sightly condition with reasonable promptness, provided, however, that in no event shall such debris remain on the Lot for more than sixty (60) days.

8.17. ***Tanks.*** No fuel tanks of any kind shall be permitted on any portion of the Property, excepting tanks for heating oil or propane which shall be buried on the Lot served. This provision shall not be interpreted or applied so as to prohibit 20 lb. propane tanks (or smaller) attached to moveable gas grills.

8.18. ***Construction Entrance.*** A construction entrance twelve feet by fifty feet (12'

x 50') must be built on each Lot by the Owner prior to construction and shall consist of not less than eight inches (8") of crushed stone and shall be maintained during construction to minimize sediment runoff and damage to the road system adjacent to the construction site.

8.19. ***Roadway Damage.*** Any DAMAGE TO ANY PUBLIC OR PRIVATE ROADWAY OR DRIVEWAY AREAS INCLUDING, BUT NOT LIMITED TO, DAMAGE RESULTING FROM IMPROPERLY INSTALLED AND/OR MAINTAINED CONSTRUCTION ENTRANCES, SHALL BE THE SOLE RESPONSIBILITY OF EACH OWNER OF ANY LOT CAUSING SUCH DAMAGE, DIRECTLY OR THROUGH SUCH OWNER'S AGENTS, CONTRACTORS, MATERIALMEN, SUB-CONTRACTORS OR INDEPENDENT CONTRACTORS.

8.20. ***Environmental Control.*** The Declarant has entered into an agreement with the Baltimore County Department of Environmental Protection and Resource Management to adhere to the following "Water Quality Best Management Practices" and, by the acceptance of a Deed conveying any Lot, the Owner thereof covenants to adhere to the same:

8.20.1. All areas except that used for buildings, sidewalks and paving, will be planted with vegetated cover and/or landscaped as soon as possible after final grading and maintained in such condition.

8.20.2. Dirt and debris accumulating on roadways will be removed according to the following schedule: May through October, concurrent with grass mowing; November through April, as required.

8.20.3. Snow removal will be by mechanical means except in severe snow and ice conditions, when deicing compounds may be used.

8.20.4. Application of fertilizers, herbicides and pesticides will not exceed recommendations of the University of Maryland Cooperative Extension Service.

8.20.5. Filling will not occur in grassed or lined drainage ditches or swales.

8.21. ***Permitted Hours of Work During Initial Construction.*** The permitted hours of exterior work ("**exterior work**" being defined for the purposes of this Section as 'construction activity during the construction of the initial dwelling on any of the Lots within the Property which generates noise emanating beyond the property line of said Lots') shall be as follows: i) Monday thru and including Friday, 7:00 a.m. until Sundown; ii) Saturday, 8:00 a.m. until Sundown; and iii) no exterior work on Sunday, with appropriate allowances for unforeseen and/or unanticipated weather conditions and other delays.

8.22. ***Utilities.*** All utilities must be buried. No overhead lines are permitted within

the Subdivision, except as approved in writing by the Architectural Committee, subject to the provisions of Section 3.2 hereof.

8.23. ***Fences.*** Subject to the provisions of Section 3.2 hereof and the Guidelines, no fence of any kind or size shall be built or permitted to remain on any part of any Lot except as approved by the Architectural Committee as to location, height, materials used, design, color and other pertinent visible characteristics.

8.24. ***Use of Common Easement Area.*** The use of Common Easement Areas, if any, open spaces or the like on the Property for any organized recreational activities shall be subject to prior written approval of the Architectural Committee.

8.25. ***Forest Conservation and Forest Buffer Easement Areas*** Any portion of the Common Easement Areas or Lots designated and shown on any recorded Subdivision Plats of all or a portion of the Property as forest conservation easement and/or forest buffer easement (collectively, the "FC/FB Areas") shall remain in a natural, undisturbed state and will not be developed, or improvements erected thereupon by the Declarant, its successors or assigns, the Association, or any Owner, except those of a minor nature necessary for such intended use and permitted by applicable law. All Owners shall be subject to the provisions of any recorded declaration of covenants, conditions and restrictions (the "Forest Conservation and Forest Buffer Declaration") pertaining to the FC/FB Areas. Each Owner agrees to provide Declarant, its agents and any other party to the Forest Conservation and Forest Buffer Declaration full access to their Lot at any time for the purposes of complying with the Forest Conservation and Forest Buffer Declaration and to otherwise comply with all provisions of the Forest Conservation and Forest Buffer Declaration.

8.26. ***Baltimore County Access Easement.*** The duly authorized employees and representative of Baltimore County shall have the right to enter upon the Property for the purpose of performing necessary inspection, maintenance and repair to any Forest Buffer or Forest Conservation Easement areas and any completed storm water management facility, and until such time as the storm water management facility is dedicated to Baltimore County, when such maintenance or repair is not satisfactorily completed by the Owner thereof within a reasonable time, to assess such Owner for the costs thereof.

8.27. ***Non-Interference with Utilities.*** No Structure, planting or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels. No poles and wires for the transmission of electricity, telephone and the like shall be placed or maintained above the surface of the ground on any Lot.

8.28. ***Tree Removal*** No Owner shall have the right to remove any of the healthy growing trees which have a diameter of six inches (6") or more located on any of the Lots within the

Subdivision except upon Architectural Committee approval.

8.29. ***Family Day Care*** The use of any Lot within the Property as a "family day care home" (as such term is defined in Section 11B-111.1 of the Real Property Article, Annotated Code of Marylanbd,1996 Repl. Volume, as the same may be amended from time to time), is prohibited to the extent such prohibition may be enforced under Section 11B-111.1. In the event such prohibition may not be enforced under Section 11B-111.1, then family day care homes shall be controlled by the following conditions:

8.29.1. The Owner or day care provider (as defined in Section 11B-111.1) operating the family day care home ("Home") shall be registered with and have a license issued by the Department of Human Resources, in accordance with the registration and licensing provisions set forth in Title 5, Subtitle 5 of the Family Law Article. The Owner or day care provider shall furnish a copy of the license to the Architectural Committee prior to establishing and operating the Home and upon each renewal thereof.

8.29.2. The Owner or day care provider shall obtain the liability insurance described in Section 19-202 of the Insurance Article, Annotated Code of Maryland (2002 Replacement Volume), in at least the minimum amount described in that Section. The Owner or day care provider may not operate the Home without the liability insurance described herein, and shall present proof of insurance to the Architectural committee before establishing and operating the Home and upon any renewal of the policy.

8.29.3. The Owner or day care provider shall pay, on a pro-rata basis with other Homes then in operation in the Subdivision, any increase in the insurance costs of the Association attributable solely and directly to the operation of the Home, upon presentation of a statement from the Architectural Committee setting forth the increased costs and requesting payment of same. The increased insurance costs shall be considered an assessment against the Lot, and may be collected under the Maryland Contract Lien Act.

8.29.4. The Owner shall obtain any and all approvals as may be required by the *Baltimore County Zoning Regulations*.

8.29.5. The Owner or day care provider shall not use any of the Common Easement Areas for any purpose directly or indirectly relating to the operation of the Home.

8.30. ***Additional Remedies of Association*** Notwithstanding any other provision herein contained and the rights and remedies of the Declarant, the Association and the Lot Owners, if any Lot Owner shall violate any of the restrictions, requirements, obligations, agreements or commitments set forth in this Article VIII (collectively a "Breach"), the Association (based upon a determination by a majority of the Board of Directors or upon direction from the Architectural Committee) shall have the right (but not the obligation) to notify the Lot Owner of such breach

whereupon the same shall be cured by the Lot Owner within fifteen (15) days after such notice is given by the Association to the Lot Owner. If within fifteen (15) days after notice from the Association of such Breach, the Lot Owner shall not have cured such Breach, or, if such Breach cannot be cured within fifteen (15) days, taken reasonable steps toward curing the Breach, the Association, through its agents and employees, shall have the right (but not the obligation) to enter upon the Lot and to take such steps as it deems necessary to cure the Breach and the cost thereof shall be a binding, personal obligation of take Lot Owner, and as an additional assessment as contemplated by Section 5.8 hereof as the Lot and enforced in accordance with and under the terms of Section 5.11 and 5.12 of this Declaration.

8.31. ***Prohibition Against Jeopardizing Surety.*** The Declarant, the Developer or their respective agents have posted certain sureties with Baltimore County, the State of Maryland and/or other governmental agencies to ensure compliance with development approvals, development requirements and/or construction of public improvements. Any Owner(s) who, directly or through their agent, contractor, sub-contractor or other representative takes any action, fails to take any required action or causes damage to any portion of the Property or improvements to the Property that in any way jeopardizes any such surety shall be solely responsible for correcting immediately any such action, failure or damage to ensure that no surety is in jeopardy and shall be liable to reimburse the person or entity who caused the surety to be posted for any and all damages and costs suffered, including without limitation attorneys' fees.

8.32. ***Exemption of Declarant.*** During the Development Period, Declarant shall be exempt from the provisions of this Article 8.

ARTICLE 9. INSURANCE AND CASUALTY LOSSES

9.1. ***Types of Insurance Maintained by Association.*** The Board of Directors shall have the authority to and shall obtain the following types of insurance:

9.1.1. insurance on all insurable improvements on the Common Easement Areas, including the Fire Suppression Tank and Fire Suppression Easement against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief in an amount sufficient to cover the full replacement cost of such improvements in the event of damage or destruction;

9.1.2. a public liability insurance policy covering the Association, its officers, directors and managing agents, having at least a One Million Dollar ($1,000,000.00) limit per total claims that arise from the same occurrence, including but not limited to liability insurance for the recreational facilities located in the Community, or in an amount not less than the minimum amount required by applicable law, ordinance or regulation;

9.1.3. workers' compensation insurance, if and to the extent required by law; and

9.1.4. fidelity bond or bonds covering all Directors, officers, employees and other persons handling or responsible for the funds of the Association, in such amounts as the Board of Directors deems appropriate.

9.2. ***Premiums for Insurance Maintained by Association.*** Premiums for all insurance and bonds required to be carried under Section 9.1 hereof or otherwise obtained by the Association on the Common Easement Areas shall be an expense of the Association, and shall be included in the annual assessments. Premiums on any fidelity bond maintained by a third party manager shall not be an expense of the Association.

9.3. ***Premiums for Insurance Maintained by Owner of Conservancy Area.*** Premiums for any and all general liability and excess liability insurance obtained by the Owner of the Conservancy Area shall be reimbursed by the Association and shall be an expense of the Association, and shall be included in the annual assessments. The Association shall reimburse the Owner of the Conservancy Area for such premiums within twenty (20) days of the Association being provided with a copy of the paid receipt for such premiums.

9.4. ***Damage and Destruction of Common Easement Areas.***

9.4.1. Immediately after any damage or destruction by fire or other casualty to all or any part of the insurable improvements on the Common Easement Areas, the Board of Directors, or its agent, shall proceed with the filing and adjustment of all claims arising under the fire and extended coverage insurance maintained by the Association and obtain reliable estimates of the cost of repair or reconstruction of the damaged or destroyed improvements. Repair or reconstruction means repairing or restoring the improvements to substantially the same condition in which they existed prior to the fire or other casualty.

9.4.2. Any damage or destruction to insurable improvements on the Common Easement Areas shall be repaired or reconstructed unless at least seventy-five percent (75%) of the Members present at a meeting of the membership held within ninety (90) days after the casualty shall decide not to repair or reconstruct.

9.4.3. If, in accordance with Section 9.4.2, the improvements are not to be repaired or reconstructed and no alternative improvements are authorized by the Members, then and in that event the damaged Common Easement Areas shall be restored to its natural state and maintained as an undeveloped portion of the Common Easement Areas by the Association in a neat and attractive condition. In such event, any excess insurance proceeds shall be paid over to the Association for the benefit of the Property, which proceeds may be used and/or distributed as determined by the Board of Directors, in its discretion, or as otherwise provided in the Articles of Incorporation and/or the Bylaws of the Association.

9.5. ***Repair and Reconstruction of Common Easement Areas*** If any improvements on the Common Easement Areas are damaged or destroyed, and the proceeds of insurance received by the Association are not sufficient to pay in full the cost of the repair and reconstruction of the improvements, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Owners in order to cover the deficiency in the manner provided in Section 5.5 hereof. If the proceeds of insurance exceed the cost of repair, such excess shall be retained by the Association and used for such purposes as the Board of Directors shall determine.

9.6. ***Hazard Insurance on Improved Lots.*** Each Owner of an improved Lot at all times shall maintain fire and extended coverage insurance or other appropriate damage and physical loss insurance, in an amount equal to not less than one hundred percent (100%) of the current replacement value of the improvements on the Lot.

9.7. ***Obligation of Owner to Repair and Restore.*** In the event of any damage or destruction of the improvements on a Lot, the insurance proceeds from any insurance policy on an improved Lot, unless retained by a mortgagee of a Lot, shall be applied first to the repair, restoration or replacement of the damaged or destroyed improvements. Any such repair, restoration or replacement shall be done in accordance with the plans and specifications for such improvements originally approved by the Declarant or the Architectural committee; unless the Owner desires to construct improvements differing from those so approved, in which event the Owner shall submit plans and specifications for the improvements to the Architectural Committee and obtain its approval prior to commencing the repair, restoration or replacement. If any mortgagee does not permit insurance proceeds to be used to restore any damaged or destroyed improvements, then the Owner of such Lot shall raze the improvements and return the Lot to its natural condition free of all debris.

ARTICLE 10. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

10.1. ***Entranceway Areas/Common Easement Areas.*** The Association, subject to the rights of the Owners and Declarant, as set forth in this Declaration (including, but not limited to the provisions of Subsections 3.13, 6.2 or 6.3), shall be responsible for the exclusive management and control of the Common Entranceway Areas and the Common Easement Areas and all improvements thereon (including, without limitation, the common landscaped areas) and shall keep it in good, clean, attractive and sanitary condition, order and repair.

10.2. ***Fire Suppression Tank and Fire Suppression Easement.*** The Association shall be required to maintain the Fire Suppression Tank and the Fire Suppression Easement in accordance with all applicable law, rule and/or regulation and in accord with any requirement(s) of any insurer providing insurance to the Association and/or Lot Owners in connection with the Fire Suppression Tank and the Fire Suppression Easement.

10.3. ***Liability of Architectural Committee, Association and Declarant.*** Neither the Architectural Committee, the Association, the Declarant nor other Lot Owners shall have any

liability whatsoever for any loss, injury, expense, cost or damage which any particular Lot Owner, or in the case of the Fire Suppression Tank any person or persons, may suffer or incur by reason of:

10.3.1. the rejection or disapproval by the Architectural Committee of any plans and specifications required to be submitted to the Architectural Committee or Declarant hereunder or to any governmental or quasi-governmental agency having jurisdiction thereover;

10.3.2. any defects in plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration or under the authority of any governmental or quasi-governmental agency having jurisdiction thereover;

10.3.3. any uninsured damage resulting to any improvements on any Lot or any improvement located outside of the Property, resulting from the maintenance, repair, filling or refilling or the failure to maintain, repair, fill or refill the Fire Suppression Tank;

10.3.4. any structural or other defects in any work done in accordance with such plans or specifications; or

10.3.5. the subdivision and/or development of or construction on any Lot.

10.4. ***Personal Property and Real Property for Common Use.*** The Association may acquire, hold and dispose of tangible and intangible personal property and real property. The Board of Directors of the Association, acting on behalf of the Association, shall accept any real or personal property, leasehold or any other property interests within the property conveyed to it by Declarant and to grant easements, licenses, rights of way and other similar interests over the Common Easement Areas.

10.5. ***Rules and Regulations.*** The Association may make and enforce reasonable rules and regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions for violations of this Declaration, the by-laws, or the rules and regulations of the Association may include reasonable monetary penalties (which shall be part of the lien and assessments) and suspension of the right to vote and the right to use any recreational facilities on the Common Easement Area, if any. The Association shall also have the power to seek relief in any court of jurisdiction for violations or to abate nuisances.

10.6. ***Implied Rights.*** The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effect any such right or privilege.

ARTICLE 11. GENERAL PROVISIONS

11.1. ***Enforcement.*** The Declarant, the Association, the Architectural Committee or any Owner shall have the right, but in no event the obligation, to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, the Association, the Architectural Committee or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If the Declarant, the Association, the Architectural Committee or any Owner of any of the Lots proceeds with any action to enforce the provisions of this Declaration, the prevailing party in such action, whether by mediation, arbitration, settlement and/or trial shall be entitled to recover from the non-prevailing party, reasonable attorney's fees and court costs of the action, as the same may be determined or fixed by the court.

11.2. ***Incorporation by Reference on Resale.*** In the event any Owner of record sells or otherwise transfers any Lot, any deed purporting to effect such transfer shall be deemed to contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration, whether or not the deed actually so states.

11.3. ***Severability.*** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

11.4. ***Amendment.*** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may not be amended except by an instrument signed by all owners of the Lots subject to this Declaration. Notwithstanding any provision hereof to the contrary, no such amendment shall require the signature of the lender or lenders of the respective owners of the Lots subject to this Declaration, if any. Any such amendment must be recorded.

11.5. ***Notices.*** All notices required or provided for in this Declaration shall be in writing and hand delivered or sent by United States mail. If hand delivered, the notices shall be sent to the addresses shown below and shall be deemed to have been given on the date hand delivered to the party receiving the same. If United States mails are used, the notices shall be sent to the addresses shown below, certified or registered mail, return receipt requested, postage prepaid, and shall be deemed to have been given on the date deposited in the United States mails. Notice shall be addressed as follows:

To Declarant:
Montclair, LLC
P.O. Box 566
Monkton, Maryland 21111-0566

To the Architectural Committee:
Montclair Architectural Committee
P.O. Box 566
Monkton, Maryland 21111-0566

To Owner/Members as follows:	To the last known address of Owner/Member as shown on the records of the Maryland State Department of Assessments and Taxation at the time of such mailing, and if there is no such address, then to the Lot of such Owner/Member.

Any person shall have the right to designate a different address for the receipt of notices other than set forth above, provided the person's new address is contained in a written notice given to Declarant.

11.6. ***Right of Entry.*** Violation or breach of any provision herein contained shall give Declarant and its successors and/or assigns, the Association, the Architectural Committee and/or the Owner of a Lot, to the extent that any of them has a right of enforcement granted hereby, in addition to all other remedies, the right (but not the obligation), after five (5) days notice to the Owner of the Lot, to enter upon the Lot or the land as to which such violation or breach exists, and summarily to abate and remove, at the expense of the Owner thereof, and the cost thereof shall be a binding, personal obligation of such Owner of the Lot The said parties shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal, except that if any agent of Declarant, the Association, the Architectural Committee or any Owner shall be responsible for actually committing a trespass by behavior going beyond the intent of the authority conferred by this Section, in such event neither Declarant, the Association, the Architectural Committee nor any Owner shall be responsible for the unauthorized acts of such agent(s). Nothing herein contained shall be deemed to affect or limit the rights of the Declarant, the Association, the Architectural Committee or any Owner of the Lots when entitled to do so, to enforce the covenants by appropriate judicial proceedings.

11.7. ***No Reverter or Condition Subsequent.*** No provision herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

11.8. ***Remedies.*** Damages may not be deemed adequate compensation for any breach or violation of any provision hereof, so that any person or entity entitled to enforce any provision hereof shall be entitled to relief by way of injunction as well as any other relief available either at law or in equity.

11.9. ***Public/Private Restrictions.*** This Declaration shall not be construed as permitting any action, use or thing which is prohibited by the applicable zoning laws or by the laws, rules or regulations of any kind of any governmental authority or the development approvals/restrictions/conditions for Montclair. In the event of any such conflict between applicable private and public controls or restrictions, the most restrictive provisions of such public laws, rules, regulations and/or this Declaration, as the case may be, shall be construed to apply, govern and control.

11.10. ***Headings.*** The headings or titles herein are for convenience of reference only and

shall not affect the meaning or interpretation of the contents of this Declaration.

11.11. ***Scrivener's Error.*** Anything contained in the provisions of this Declaration to the contrary notwithstanding, the Declarant may without obtaining the consent thereto of any Owner, mortgagee or other person, amend this Declaration or the Plat if and only if such amendment is (in the Declarant's reasonable opinion) necessary to correct obvious typographical, mathematical, minor or similar errors therein. Any amendment which affects any law, regulation or policy of Baltimore County, Maryland shall be subject to the approval of Baltimore County, Maryland.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunder set its hand and seal the day and year first above written.

ATTEST:

_____

_____

_____

DECLARANT:
Montclair, LLC, a Maryland limited liability company

By: Marion R. Gaffney (SEAL)
Marion R. Gaffney, President/Authorized Member

Terrafirm, Inc., a Maryland corporation

By: Marion R. Gaffney (SEAL)
Marion R. Gaffney, President

George W. Gaffney (SEAL)
George W. Gaffney

ACKNOWLEDGMENT

STATE OF MARYLAND, COUNTY/CITY OF Anne Arundel to wit:

I HEREBY CERTIFY that on this 10th day of December 2009, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared Marion R. Gaffney, who acknowledged herself to be the President/Authorized Member of Montclair, LLC, a Maryland limited liability company, and being authorized to do so, she acknowledged that she executed the

foregoing on behalf of the said the Declarant for the purposes therein contained and he acknowledged the same to be the lawful act and deed of the aforesaid Declarant.

AS WITNESS my hand and Notarial Seal the day and year first above written.

Notary Public

CANDACE FAYE BAKER
NOTARY PUBLIC
ANNE ARUNDEL COUNTY
MARYLAND
MY COMMISSION EXPIRES JULY 11, 2011

My Commission Expires: 7-11-11

STATE OF MARYLAND, COUNTY/CITY OF Anne Arundel to wit:

I HEREBY CERTIFY that on this 10th day of December 2009, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared Marion R. Gaffney who acknowledged herself to be the President of Terrafirm, Inc., a Maryland corporation, and being authorized to do so, she acknowledged that she executed the foregoing as such officer on behalf of the said the Declarant for the purposes therein contained and she acknowledged the same to be the lawful act and deed of the aforesaid Declarant.

AS WITNESS my hand and Notarial Seal the day and year first above written.

Notary Public

CANDACE FAYE BAKER
NOTARY PUBLIC
ANNE ARUNDEL COUNTY
MARYLAND
MY COMMISSION EXPIRES JULY 11, 2011

My Commission Expires: 7-11-11

STATE OF MARYLAND, Ann Arundel COUNTY, TO WIT:

I HEREBY CERTIFY that on this 10th day of December, 2009, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared George W. Gaffney who represented himself to be one of the persons comprising the Declarant named herein and that he affixed her/his hand and seal hereto the date and year first above written for the purposes herein contained.

AS WITNESS my Hand and Notarial Seal.

Notary Public

My Commission expires: 7-11-11

CANDACE FAYE BAKER
NOTARY PUBLIC
ANNE ARUNDEL COUNTY
MARYLAND
MY COMMISSION EXPIRES JULY 11, 2011

BALTIMORE COUNTY OFFICE OF LAW REVIEW

Reviewed by Baltimore County Office of Law prior to recordation pursuant to Section 32-4-271(c), *Baltimore County Code* (2003) – Not reviewed for compliance with any other Baltimore County requirements.

Ashley Hofmeister 12/11/09

Ashley Hofmeister, Assistant County Attorney
[PRINT/TYPE NAME]

12/11/09

ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the above instrument was prepared by me, an attorney admitted to practice before the Court of Appeals of Maryland, or under my supervision.

Howard L. Alderman, Jr.

AFTER RECORDATION, PLEASE RETURN TO:

Howard L. Alderman, Jr., Esquire
Levin & Gann, P.A.
8th Floor, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204

(410) 321-0600
Fax: (410) 296-2801

MONTCLAIR

PROPOSED/ESTIMATED BUDGET FOR HOMEOWNERS ASSOCIATION

BUDGET ITEM	ESTIMATED ANNUAL COST
Accounting	$1,000.00
Fire Suppression Tank Maintenance & Reserve	$250.00
Insurance (Liability; Officers & Directors)	$1,600.00
Insurance Reimbursement - Conservancy Lot Owner	$1,300.00
Landscaping & Maintenance, Lighting, etc. of Landscaping	$3,500.00
Legal	$1,200.00
Miscellaneous	$550.00
Preparation & Filing Fees HOA Personal Property Tax Return	$500.00
Total Estimated Annual Budget	$9,900.00
ESTIMATED ANNUAL CHARGE PER LOT [1/]	**$550.00**

NOTE: **This Proposed/Estimated Budget was prepared based on the reasonable assumptions of Declarant at the time of preparation, but may be subject to change once actual expenditures have been contracted for, awarded or incurred.**

1/ The Estimated Annual Charge Per Lot is calculated on 18 residential Lots which include 18020 and 18034 York Road; Baltimore County will assign each of these Lots Montclair Court addresses in the future as each is included in the Homeowners Association. This Estimated Annual Charge is an estimate only and does not alter, reduce or limit the Maximum Annual Assessment described in Section 5.4.1 of the Declaration.

ARCHITECTURAL

GUIDELINES

AND

SITE/HOUSE PLAN

SUBMISSION CHECKLISTS

FOR THE

MONTCLAIR DEVELOPMENT

PARKTON, MARYLAND

MONTCLAIR ARCHITECTURAL GUIDELINES

INTRODUCTION

The developer is dedicated to creating a unique and environmentally sensitive community. The architectural design and construction philosophy is that buildings and other site improvements should be unobtrusive in form and color in order to complement their natural setting. The primary objective is to create a total community that is homogeneous in feeling, in a park-like setting, and free from discordant architecture. **Specifically, traditional architectural styles such as Georgian, Federal, Victorian Farmhouse, New England Farmhouse, New England Cape Cod, Southern Colonial and Southern Tidewater are endorsed and encouraged. Contemporary designs are not permitted as a matter of right and along with transitional homes are strongly discouraged.**

This philosophy suggests that each building be treated not as an individual creation or architectural entity arbitrarily placed on its site, but rather as a carefully planned addition to the natural setting which embraces its site and becomes one with it. Consequently, architectural solutions should extend beyond the building walls to include the entire site, varying in design to complement and enhance their natural surroundings. Colors and textures of exterior building materials should be compatible with the light-reflecting properties of the natural elements.

Montclair LLC, as developer of Montclair, utilizes these Architectural Guidelines ("Guidelines") to inform the Owner of the opportunities, constraints and requirements involved in the design, construction and maintenance of a home. The goal is to stimulate sound and creative individual architecture and site planning that will complement the existing natural features of each home site, while creating a harmonious community of lasting value that is compatible with the environment.

Should any buyer have a concern regarding the acceptance of their proposed house plan, they are strongly encouraged to address this concern during the contract purchase of the lot from Montclair, LLC.

Certain building, grading, design, landscaping and use restrictions and requirements are further detailed in the Declaration of Covenants, Conditions and Restrictions for Montclair Homeowner's Association, Inc. and the Special Restrictive Covenants. Lot owners, their architects and builders shall refer to these documents in order to insure compliance. Declarant and the Architectural Committee shall not be responsible for the failure of the owner or owner's plans and specifications to adhere to the requirements and restrictions set forth therein.

REVIEW OF ARCHITECTURAL ELEMENTS

A. BUILDING REQUIREMENTS.

1. FOUNDATIONS: Exposed foundations are to be kept to a minimum and should be appropriate to the architecture of the house. Finished first floor elevations should be a maximum of three feet above the finished grade at the front of the house. All exposed foundations must be covered with brick, stone or stucco to grade. Cement pargeting will not be approved.

2. EXTERIOR WALLS: Generally, **natural materials indigenous to the architecture of the area are preferred.** All wood is to be painted or stained in an approved color. Wood that is not painted or stained and left to weather naturally, such as cedar shingles, may be considered an acceptable material. Brick is allowed as an exterior material with the following conditions:

a. Brick may be painted or unpainted in a color that must be approved by the Architectural Committee

b. Brick is also allowed as an accessory material (i.e., chimneys, retaining walls, etc.) if it is painted in a color approved by the Architectural Committee. If unpainted brick is used, the color of the brick must be compatible with the rest of the house, in the sole discretion of the Architectural Committee.

c. Brick sizes shall be in scale to the structure. No "jumbo" brick is allowed.

Stucco, "Dryvit", "STO" or other similar materials are allowed if they are colored in a color approved by the Architectural Committee.

Native stone is allowed as a building or trim material in earth-tone colors as approved by the Architectural Committee. Manufactured Stone or Cultured Stone may be an acceptable treatment but its use is not a matter of right. The Architectural Committee will consider its use on a case by case basis.

Other Exterior Treatments — that is, fabricated materials intended to look like another material; as well as aluminum, vinyl and plywood are **not allowed.** This does not preclude future materials that might be produced, but such materials must be approved by the Architectural Committee. Hardiplank type cement fiber siding is acceptable materials provided their color and texture are approved by the Architectural Committee.

In the event brick or stone is proposed as an exterior material (excluding foundation treatments) in combination with Hardiplank and/or natural siding, the brick or stone is required to be used on both side elevations in addition to the front and rear elevations. The intent being to prohibit the use of

siding as a substitute for brick or stone on an elevation. Siding may be used as an accent or for small areas in conjunction with the brick or stone.

3. WALL OPENINGS: All elevations (front, rear & sides) should contain architecturally compatible widow placement and exterior trim treatment. Windowless elevations are strongly discouraged and will require special approval. Windows and doors, greenhouse elements used as large "window", louvers and vents must be compatible to the architectural style or period of the house. Wood or vinyl wrapped wood, anodized or baked enamel or aluminum are all acceptable if in appropriate colors that are the same or compatible to the exterior finish material. Fixed glass used to provide "picture windows" or passive solar heating must be carefully integrated into the overall design. Tinted glass in such panels is acceptable in colors that relate to other finish materials, but reflective glass is prohibited. Glass block will be considered on a case by case basis (but are strongly discouraged). Styles and samples of glass block must be submitted to the Architectural Committee with an application or request for approval. Storm windows must be painted to match window trim.

4. ROOFS: Roofing — its shape, massing, material and color is a critical element in any attempt to visually tie together various architectural styles. Therefore, a **minimum roof pitch on the dominant portion of the roof of 8 to 12 (8 inch rise in the 12 inch run) minimum is required**. Overhangs, where appropriate, can help the total design effect and are encouraged. Vent pipes piercing the roof should be placed away from the Road side and must be painted to match the roof color. If gutters and downspouts are employed to carry off roof rainwater, they must be "painted out" to match in color the element to which they are attached (fascia, siding or trim guard). Skylights, solar panels, dormers and roof "cut outs" are elements that can affect the roofing appearance in drastic ways and will be reviewed by the Architectural Committee on an individual basis. The design should provide adequate spacing between the header of any window and the fascia or overhang of the roof. All black shingles are strongly discouraged and shall require special approval.

Several roof types are acceptable:

a. Heavy weight 50 year composition shingles are recommended. Heavy weight, architectural grade, composition shingles can be used if they have a random cut textured effect, i.e., "Timberline" type shingle. The color of these shingles must be compatible with the exterior of the house. The color and appearance of composition shingle must be approved by the Architectural Committee and samples must be submitted for approval by Owners.

b. Other materials: (1) Slate roofs: Slate roofs are acceptable. (2) Wood shakes or wood shingles are acceptable. These roofs can be allowed to weather naturally. (3) Other materials: Copper (real copper only), raised seam metal and terracotta are also acceptable.

5. CHIMNEYS: Both the massing and materials are important to chimney design, and both must be compatible with the design of the house. **All chimneys must be of masonry design and construction and should incorporate proper shoulder detail and corbelling.**

a. Gas Fireplaces. Direct side vents for gas fireplaces are acceptable provided that they are located on the rear of the structure. Direct side vents located on either side of the structure will be considered on a case by case basis. Any shed bump outs associated with the treatment of gas fireplaces shall be considered on a case by case basis.

6. EXTERIOR COLORS: As with roofing, exterior colors offer another medium to tie together various architectural styles. Accordingly, a range of natural colors are acceptable but all must be compatible with one another. Bright pigmented colors are not appropriate. The use of an accent color for trim and special areas such as a front door is acceptable if the accent color is harmonious with the overall pre-selected palette. The final decision on exterior colors submitted by an Owner shall be made by the Architectural Committee.

7 OUTBUILDINGS AND STRUCTURES: Construction outside of the house itself can add or detract from the total design impression. It is imperative to anticipate the need for such structures so that they may be planned for in the initial design stages. Construction of garages, gazebos, decks, trellises, pools, patios, etc. must be carefully integrated with the building architecture and the landscape design. They must also be carefully planned in relationship to adjoining properties in order not to create a negative impact on them. Accessory structures must be contained within the building envelope as shown on the Final Development Plan for Montclair.

8. HOUSING APPURTENANCES: All housing appurtenances such as electric meters, air conditioning compressors, buried oil tanks, buried propane gas tanks and trash can storage areas, shall not be in the front of the house and must be adequately screened from the road and from the neighbors' view. Screening by landscaping is preferred, but wood fencing will be considered with low planting around it.

9 HOUSE SIZES: House size and presentation of mass are important when evaluating the aesthetic nature of the plans. The house size must be compatible with the lot size and not dominate the lot.

10. GARAGES: A 575 square foot, two-car garage is a required minimum. Garages must have doors. Whenever possible, garage doors should not face the Road. If the garage doors must face the Road, the garage must not dominate the front façade. Additional off-street parking spaces as required to accommodate guest parking should be located along the driveway and screened from view. **Since garage doors are a critical mass, they should be designed and trimmed to be architecturally compatible with the style of the house.**

B. SITE IMPROVEMENTS.

1. SITE DESIGN PLANS: Site design plans must be submitted for each lot for review by the Architectural Committee. These plans must be prepared by a registered surveyor, landscape architect or engineer. Following are explanations of some of the items to be included on the Site Design Plan:

a. BUILDING ENVELOPES: The approved plat shows the allowed building envelope. The house must be sited in that envelope in such a way as to maximize privacy and views. In order to achieve the best views from each lot, provide a varied visual composition along the street, and utilize the existing trees and topography to the greatest advantage, consideration should be given to how each house location would effect the views from adjacent lots and streets, solar orientation, required setbacks, septic field location and well sites, and other existing site considerations. Houses, outbuildings and other appurtenant structures must be sited within the building envelopes, views from each site and from the public streets will be preserved.

b. CLEARING RESTRICTIONS: Clearing on each lot is restricted to 7,000 square feet pursuant to the Declaration of Covenants, Conditions and Restrictions. A certification by site engineer must be placed upon the site design plan certifying that the clearing of the lot, as shown on the plan, does not exceed the square footage limitations contained in the Declaration. The area not included within the area to be cleared must be protected by temporary fencing to insure that vegetation in this area is not damaged during the clearing, grading, and building process, provided, however, that such fencing shall be promptly removed after completion of the construction of the dwelling. Additional landscaping and/or planting may be required to mitigate any clearing of wooded areas in excess of 7,000 square feet.

c. SETBACKS: Shall be as shown on the Record Plat. The Architectural Committee must approve final setbacks.

d. SEPTIC DRAINAGE AREA: A 10,000 square foot drainage area as required by Baltimore County Health Department is shown on the Final Development Plan for future sewer drain fields. These areas cannot be moved without the approval of the Baltimore County Health Department. No structure or paving (including driveways) can be constructed over these areas.

2. DRIVEWAYS: Driveways should be located to minimize disruption of the natural landscape and interference with natural site drainage. **Drives should be curved** and graded so as to reduce their visibility from the Road. Circular drives are allowed. Owners shall keep paving and other impervious surfaces to a minimum, not to exceed 15 % of the surface area of any lot as per Baltimore County Zoning Regulations. Declarant reserves the right to limit the amount of impervious surface on each Lot.

3. POOLS, TENNIS COURTS, DECK, AND OTHER AMENITIES: In-ground swimming pools, patios, wood decks, tennis courts, playground equipment, basketball backboards and other outdoor amenities should be located on the rear of a lot behind the home. Pool houses and gazebos will be reviewed on a case by case basis by the Architectural Committee. Above ground pools are prohibited.

Tennis courts and pools should be carefully integrated into the natural grades of the site and bermed and landscaped to minimize their visual impact. Tennis courts should be located toward the private side of the lot as much as possible and will be reviewed on a case by case basis. Lighting of any tennis court/sports court is strongly discouraged.

4. LAWN ORNAMENTS: Lawn ornaments, painted rocks and shells along driveways, etc. are **not allowed.**

5. EXISTING VEGETATION: No major trees (over 6 inches diameter at a point 4 feet above grade) may be removed or radically pruned from a lot without the approval of the Architectural Committee. Each lot should have a limit of disturbance marked on the site design plan.

6. FENCING: Fencing is generally one of these three types: property line, part of the house, or screening.

a. PROPERTY LINE fences are discouraged in the Community and will not be considered for approval except on the rear and side-rear property lines of a Lot. Before considering a request for property line fence approval, the Architectural Committee will require a significant justification for such fencing and will require proposed fence materials to be high grade, architectural quality and match the color and style of the surrounding homes. The fence materials, color, scale, and texture must appear integrated into the overall design of the residence. No metal fences of any kind will be permitted. In addition to any other considerations, provisions or requirements of this Declaration, the Architectural Committee shall have complete authority over the style, height, location, and materials proposed for any property line fence. The Architectural Committee shall include in any fence approval specific requirements for periodic maintenance and repair of any approved fence. If the Owner of a Lot on which a fence has been approved fails to maintain or repair the fence in accordance with the specific requirements of approval, the Association or the Architectural Committee may retain a contractor to perform the required maintenance or repair and to assess the Owner of the Lot for all such costs, including without limitation materials, installation, tax and labor. Such assessment is a personal obligation of the Owner(s) of the Lot and may be enforced and collected in the manner provided for any other assessment under Article 5 of this Declaration. The Architectural Committee reserves the right to reject fence approval for any reason whatsoever.

b. FENCES THAT ARE PART OF THE HOUSE will be considered as architectural elements thereof. As part of the house, these fences should be in a material and color compatible with the architecture of the house.

c. SCREENING FENCES which are separate from the house should blend into the surroundings. No chain link or stockade fencing is permitted, except that black or green vinyl link fencing can be used for tennis courts. Decorative fencing will be considered on a case by case basis.

d. Other fencing will be considered on a case by case basis.

7. EXTERIOR LIGHTING: All houses are encouraged to have a light in front of the house in addition to the porch lighting. Flood lighting attached to the house itself is not prohibited, but location, direction and intensity should not infringe on the privacy of adjacent homes and should be in compliance with the requirements contained in the Declaration of Covenants, Conditions and Restrictions. If outdoor illumination is desired for security and evening use of the grounds, such lighting should be directed toward the house and located in such a manner as not to intrude on neighboring properties. The use of high pressure sodium lamps or other lamps that are not "white" in color, is prohibited. All exterior lighting plans must be approved by the Architectural Committee. No exterior lighting shall be installed which is greater than 150 watts, and all exterior lighting, with the exception of motion sensitive flood lighting, shall be minimized and shall be directed inward or downward toward the dwelling. No exterior lighting shall be installed higher than 30' feet from the ground. Such lighting shall be in character and keeping with the other homes in the area and shall take into account the rural nature of the surrounding community.

8. LOT CLEARING: No lot clearing, filling, grading, or tree removal is allowed until plans have been approved for construction by the Architectural Committee and a construction permit has been issued.

C. LANDSCAPING

1. GENERAL CHARACTER: The landscaping of each house should enhance the community. A landscape plan prepared by a landscape architect or architect must be submitted for each lot for review by the Architectural Committee.

Careful use of plant material, in coordination with the siting of the homes, must retain the open, natural appearance of the property and must provide privacy in the areas where it is necessary and described. Care should be taken in placing trees and shrubs so that neighbors' views are not obstructed. Selective use of trees can enhance harsh elevations. Emphasis should be placed on landscaping adjacent to the house. Cutting and vegetable gardens, if approved, should be naturally screened and placed in unobtrusive locations. In addressing your foundation planting, consideration should be given to scale of plantings versus scale of the structure. All plant material, including shade trees, evergreen trees, shrubs, and ground covers should be clustered in natural groupings rather than sprinkled around the site. Clustering of plant material provides greater contrast between grassed open areas and landscaped zones, and between sunny and shaded areas. Natural groupings of plants echo the character of the site's undisturbed vegetation, and heighten the impact of flowering trees and shrubs.

2. PLANT MATERIALS: In selecting plants, consideration must be given to specific site conditions (drainage, orientation, exposure, etc.) as well as to the purpose and intended effect of the planting. The use of native species is strongly encouraged

3. PLAN PREPARATION: A formal, scaled landscape plan must be submitted to the Architectural Committee with construction plans. The landscape plan is considered to be for planting locations and proposed tree and shrub locations and site lighting. **The plantings shown on the plan must be completed within one year from the completion of the house and final grading.** Grass is an important part of the landscaping and achieving a healthy lawn should be aggressively pursued.

4. MINIMUM SIZES OF PLANT MATERIAL: It is the intention of the parties to encourage each Lot Owner to plant and maintain on their lot the maximum number of trees and shrubs. In order to assist in achieving this goal, each lot Owner is required to plant 12 Planting Units—half of which units must be deciduous trees—within 18 months of occupancy. Native plants should be utilized absent good cause to the contrary. Minimum tree sizes for primary site plantings at installation are:

	HEIGHT	CALIPER
Shade trees	0' - 10'	2"
Flowering trees	6' - 8'	1-1/2"
Evergreen trees	4' - 6'	

5. EARTH BERMING: Considerable landscape interest may be obtained with earth berming — a relatively simple and inexpensive process. Berms may be utilized to focus views or to provide privacy as well as to aid in screening such things as driveways or parking areas. A berm must flow gracefully and be an extension of the adjoining land and plant material, not an element unto itself. Slopes on berms shall not exceed 3 : 1. Any grading and/or berming shall not interfere with the natural drainage or designed storm drainage on each lot. No grading or berming shall increase the amount of drainage or runoff on any adjacent lot.

6. LAWN AREAS: Since a portion of each lot is expected to ultimately be covered with grass, uniform maintenance and species of grass is critical to the continuity of the community. A recommended variety is Rebel II which gives a lovely lawn for full sunlight to light shade areas and is good for high traffic areas.

ARCHITECTURAL REVIEW PROCESS

A. CONCEPTUAL SITE/HOUSE PLAN SUBMISSION

1. An Owner shall submit a check for **Three Hundred Fifty Dollars ($350)** made payable to Montclair Architectural Committee, Inc., P.O. Box 566, Monkton, Maryland 21111-

0566, and three sets of plans for review. Two approved sets will be returned with one set being retained in the Committee's files.

2. Plans must be professionally prepared.

3. Plans must include Owner's name, address and telephone number, plus lot identification and the following information and drawings:

SITE PLAT — Scale 1" = 5" (if possible) showing the following:

1. Topographical elevations at 5 foot intervals or less.
2. Building foundations outline.
3. House location showing driveway and walk to house front with dimensions to all property lines.
4. Location of well, and proposed septic system.
5. Location of other proposed structures.
6. Grading and drainage plan.
7. All rain water drainage lines from house.
8. Finished floor elevation.
9. Elevation of grade at foundation on all four sides of house.
10. Show relationship of house as proposed to envelope shown on Final Development Plan or Record Plat.
11. The limits of disturbance

HOUSE PLANS — Scale 1/4" = 1'-0" showing:

1. All exterior elevations.
2. All floor plans.
3. Detail of unusual features such as large windows and chimneys.
4. Grade line (showing where finished grade will appear on foundation walls).
5. Exterior materials, colors and finishes, should be noted on elevations.
6. All exterior architectural detail and trim must be shown on drawings.

MATERIALS — Submit sample and identify on house plans:

1. Roof shingle.
2. Siding material and window sample.
3. Brick, stone, stucco, mortar sample.
4. Fencing materials.

B. FINAL SITE/HOUSE PLAN SUBMISSION

1. An Owner shall submit a check for Three Hundred Fifty Dollars ($350) made payable to Montclair Architectural Committee, Inc., P.O. Box 566, Monkton, Maryland 21111-0566, and three sets of plans for review. Two approved sets will be returned with one set being retained in the Committee's files.

2. Plans must be professionally prepared.

3. Plans must include Owner's name, address and telephone number, plus lot identification and the following information and drawings:

SITE PLAT — Scale 1" = 5" (if possible) showing the following:

1. Show any and all changes from the Conceptual Site Plan Submittal
2. Contain a certification or illustration that no more than 7,000 square feet of area will be cleared as required by the Declaration of Covenants, Conditions and Restrictions.
3. Show the limits of disturbance, including the location of all silt and Super silt fence necessary to protect the forest buffer easement areas, areas where excavated materials will be stored during construction.

LANDSCAPE PLAN

Scale 1" = 5" showing the landscaping for the lot, including the location of all trees, shrubbery, walkways, and other plant materials. All landscape materials must be identified by species, size and location.

HOUSE PLANS — Scale 1/4" = 1'-0" showing:

Include all revisions required by the Montclair Architectural Committee noted during conceptual review.

1. All exterior elevations.
2. All floor plans.
3. Detail of unusual features such as large windows and chimneys.
4. Grade line (showing where finished grade will appear on foundation walls).
5. Exterior materials, colors and finishes, should be noted on elevations.
6. All exterior architectural detail and trim must be shown on drawings.
7. Locations of compressor/heat pump must be shown.
8. Show location and type of any exterior light attached to house.

MATERIALS — Submit sample and identify on house plans:

1. Any materials not provided during Conceptual Review or any changes in or additions to the material selections.

C. The Architectural Committee shall have the right to disapprove the plans and specifications submitted hereunder because of any of the following:

a. The failure of such plans or specifications to comply with the Declaration of Covenants, Conditions and Restrictions, Special Restrictive Covenants or any Rules, Regulations and Guidelines promulgated thereunder;

b. The failure to include information in such plans and specifications as may have been reasonably requested;

c. Objection to the exterior design, appearance or materials of any proposed structure;

d. Incompatibility of any proposed structure with existing structures upon other lots in the subdivision;

e. Objection to the location of any proposed structure upon any lot taking into account the impact on other lots in the subdivision;

f. Objection to the grading or sediment control plan for any lot;

g. Objection to the color scheme, finish, proportions, style or architectural height, bulk or appropriateness of any proposed structure; or

h. Any other matter which, in the judgement of the Architectural Committee, would render the proposed structure or structures inharmonious with the general plan of improvement of Montclair or with houses located upon other lots in the subdivision.

In any case where the Architectural Committee shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the ground upon which such action was based. In any such case, the Architectural Committee shall, if requested, make reasonable efforts to assist and advise the Owner in order that an acceptable proposal can be prepared and submitted for approval.

CONSTRUCTION ACTIVITY STANDARDS

A. Prior to Commencement of Construction

If an Owner desires to erect a sign on the construction site, it must be constructed and erected, as approved by the Architectural Committee. No other signs shall be placed on the construction site. The construction site sign must be erected no closer than 25 feet to the edge of the Road. Building permits may be posted on the rear of the sign. At no time shall a sign or permit be nailed to any tree. No additional signs shall be displayed on construction sites.

The following steps must be completed before construction may begin:

1. Obtain Baltimore County Building Permit and others, if required.

2. Confirm the location of all utilities and make arrangements to protect the same from any damage.

B. REQUIREMENTS DURING CONSTRUCTION

During the course of construction, an Owner will be responsible for observance of the following construction activity standards:

1. All trees and areas of significant vegetation to be preserved shall be surrounded with protective fencing placed beyond the tree's root zone. Vehicles, construction materials and other activity shall be kept outside of these fenced areas.

2. Building sites shall be maintained in a clean and neat condition; scrap materials shall be picked up on a daily basis.

3. A small trash container is to be provided by an Owner for the purpose of depositing used food containers and other small trash.

4. A large trash container is to be provided by an Owner for scrap material, building debris and other bulk trash items. The overflow or spillage around these containers is to be picked up daily. If a trash collection hauling service is used in lieu of trash container service, provision for a temporary trash storage bin must be made on the site. Pick-up of the stored trash must be made at lease once a week.

5. Care should be taken, when loading trucks hauling trash, so as not to have it spill over while in transit. Owners shall be responsible for trash and debris falling from vehicles servicing the construction site.

6. All construction materials must be kept within the property lines maintaining a neat Road right-of-way. The storage of materials should be in an inconspicuous area of the site and should be neat and orderly. The use of adjoining properties for access or storage of materials is prohibited. Temporary storage structures approved by the Architectural Committee may be used to store materials. Storage structures may not be used as living quarters.

7. Temporary utilities should be installed in a neat manner. The temporary power pole must be installed plumb and may not be used for the placement of signs.

8. Each construction site is required to have a job toilet for the use of workers. It must be placed at least 75 feet from the Road, with the door facing away from the Road.

9. No burning of trash or other fires of any kind is permitted.

10. An Owner shall insure that roads within Montclair are kept clean on a daily basis. All mud and debris from the construction operations must be cleaned up daily. Appropriate sediment control measures should be employed, so that dirt and silt do not accumulate on the road, the road right-of-way, adjoining properties or within the forest buffer easement area.

11. Construction workers are permitted only on the construction site. They are not permitted to trespass on other lots or property, nor to loiter during or after completion of the workday.

12. Loud vehicles and speeding are not permitted. All construction vehicles must be parked on the construction site. Workers are required to wear shirts and shoes when not on the job site. Loud music from radios and harassment of Owners or guests will not be permitted.

13. The Owner of a lot under construction shall bear full responsibility for the repair of any damage to the roads, the road rights-of-way, adjoining lots or any other private property caused by workmen involved with the construction of the lot.

14. A construction entrance twelve feet by fifty feet (12' x 50') must be built on each Lot by the Owner prior to construction and shall consist of not less than eight inches (8") of crushed stone and shall be maintained during construction to minimize sediment runoff and damage to the road system adjacent to the construction site. Mud and stone deposited on adjacent paved roads must be cleared immediately. DAMAGE TO THE ROAD RESULTING FROM IMPROPERLY INSTALLED AND MAINTAINED CONSTRUCTION ENTRANCES SHALL BE THE RESPONSIBILITY OF THE LOT OWNER.

15. The permitted hours of exterior work (**"exterior work"** being defined for the purposes of this Section as 'construction activity during the construction of the initial dwelling on any of the Lots within the Property which generates noise emanating beyond the property line of said Lots') shall be as follows: i) Monday thru and including Friday, 7:00 a.m. until Sundown; ii) Saturday, 8:00

a.m. until Sundown; and iii) no exterior work on Sunday, with appropriate allowances for unforeseen and/or unanticipated weather conditions and other delays.

16. The Owner of a lot under construction shall bear full responsibility for the repair of any and all sediment controls, including Super Silt fence, as may be installed or required to be installed on the Lot. Owner is hereby advised of the restrictions and requirements set forth in the Special Restrictive Covenants and the enforcement provisions and liability for failure to adhere to these requirements.

The construction of all improvements must be completed within twelve (12) months of the start of construction, with exceptions requiring Architectural Committee approval.

The above standards are designed to protect the Owners and their residents and guests. These standards are to be used as guidelines and are not intended to restrict, penalize or impede construction firms who adhere to them while performing their jobs. Repeated violation of these standards can result in the retraction of approval for a building project by the Architectural Committee until corrective action has been taken by the Owner.

Owners should make certain that all contractors working on the construction site have received written notice of the requirements set forth herein; and, before permitting any contractor to perform any work on a lot, require such contractor to agree, in writing, to observe these requirements.

C. ENFORCEMENT DURING CONSTRUCTION

All construction in Montclair will be under observation by the Architectural Committee to be sure that the improvements are being constructed as approved, and that the construction site is being maintained, as required. The Architectural Committee has the right to enter upon an Owner's lot to observe the construction, to insure that the construction is completed promptly and in a good and workmanlike manner.

Any design changes proposed during construction must receive approval by the Architectural Committee prior to implementation. The Architectural Committee discourages the request of major changes during construction. Any changes or mistakes implemented without Architectural Committee approval must be corrected by the Owner. The expenditures of the Architectural Committee in making any such correction or in otherwise implementing its powers under these Guidelines will be assessed against the Owner and constitute a lien against the lot.

The Architectural Committee is empowered to issue a Stop Work Order if construction work which has not been approved or is not in compliance with approvals is taking place. Work cannot commence after the issuance of a Stop Work Order until a letter is received from the Architectural Committee stating that work can proceed. This letter will detail corrective action to be taken, if appropriate.

Interested Parties, as defined in the Special Restrictive Covenants, have the ability to enforce certain requirements during construction as is more particularly detailed in the Special Restrictive Covenants.

OWNER'S ACCEPTANCE

We hereby acknowledge and understand the Guidelines of the Architectural Committee, the requirements and restrictions set forth in the Declaration of Covenants Conditions and Restrictions and the Special Restrictive Covenants and accept all design criteria outlined. We understand that all information regarding the orientation, location and layout of all Structures, driveways, garages, etc. as shown on the Development Plan, is schematic in nature only and that the Architectural Review Committee shall not be bound by the information shown thereon in its review and/or approval of this Final Submission. We understand that no construction shall commence on our lot until final written approval of the Final Submission of plans, specifications and materials has been received from the Architectural Committee. We understand that house plans and site design plans shall be considered on an individual basis and what is approved for one lot will not constitute approval on another lot.

LOT No. _____

OWNER:

_____ _____(SEAL)

_____
[PRINTED/TYPED NAME]

_____ _____(SEAL)

_____
[PRINTED/TYPED NAME]

State of Maryland Land Instrument Intake Sheet

0 8987 105

☐ Baltimore City ☑ County: BALTIMORE

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only.

(Type or Print in Black Ink Only–All Copies Must Be Legible)

Space Reserved for Circuit Court Clerk Recording Validation

IMP FD SURE $ 20.00
RECORDING FEE 75.00
TOTAL 95.00
Rcpt DAB6 Rcpt # 64867
SCM VG Blk # 1615
Dec 17, 2009 09:10 am

1 Type(s) of Instruments (Check Box if Addendum Intake Form is Attached)

☐ Deed ☐ Deed of Trust	☐ Mortgage ☐ Lease	☒ Other HOA Declaration	☐ Other

2 Conveyance Type Check Box

☐ Improved Sale Arms-Length [1]	☐ Unimproved Sale Arms-Length [2]	☐ Multiple Accounts Arms-Length [3]	☐ Not an Arms-Length Sale [9]

3 Tax Exemptions (if applicable) Cite or Explain Authority

Recordation:
State Transfer:
County Transfer:

4 Consideration and Tax Calculations

Consideration Amount		Finance Office Use Only – Transfer and Recordation Tax Consideration	
Purchase Price/Consideration	$	Transfer Tax Consideration	$
Any New Mortgage	$	%	
Balance of Existing Mortgage	$	Less Exemption Amount	$
Other:	$	Total Transfer Tax	$
Other:	$	Recordation Tax Consideration	$
Full Cash Value:	$ 0.00	Over $500	$
		TOTAL DUE	$

5 Fees

Amount of Fees	Doc 1	Doc 2	
Recording Charge	$ 95.00	$	Agent:
Surcharge	$	$	
State Recordation Tax	$	$	Tax Bill:
State Transfer Tax	$	$	CB Credit:
County Transfer Tax	$	$	
Other	$	$	Ag. Tax/Other:
Other	$	$	

6 Description of Property

SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOC (5)
7th	See Attach	4380/482 & 13542/131	17	182, 146 & 259	

Subdivision Name	Lot/Unit (2)	Block (3)	Sect/Ar (3c)	Plat Ref.	Sq Ft/Acreage (4)
MONTCLAIR	See Attach			78/259 & 260	

Location/Address of Property Being Conveyed (2): Subdivsion of Montclair - NO CONVEYANCE

Other Property Identifiers (if applicable): Homeowners Association Declaration

Water Meter Account No.:

Residential ✓ or Non-Residential | Fee Simple ☐ or Ground Rent ☐ | Amount:

Partial Conveyance? Yes ☐ ✓ No | Description/Amt. of SqFt/Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed: None

7 Transferred From

Doc. 1 – Grantor(s) Name(s)	Doc. 2 – Grantor(s) Name(s)
TERRAFIRM, INC.	
George W. Gaffney	
Doc. 1 – Owner(s) of Record, if Different from Grantor(s)	Doc. 2 – Owner(s) of Record, if Different from Grantor(s)

8 Transferred To

Doc. 1 – Grantee(s) Name(s)	Doc. 2 – Grantee(s) Name(s)
TERRAFIRM, INC.	
George W. Gaffney	

New Owner's (Grantee) Mailing Address: PO BOX 566 MONKTON, MD 21111

9 Other Names to Be Indexed

Doc. 1 – Additional Names to be Indexed (Optional)	Doc. 2 – Additional Names to be Indexed (Optional)

10 Contact/Mail Information

Instrument Submitted By or Contact Person

Name: Howard L. Alderman, Jr., Esquire
Firm Levin & Gann, PA, Nottingham Centre, 8th Floor
Address: 502 Washington Avenue
Towson, Maryland 21204 Phone: (410) 321-0600

☑ Return to Contact Person
☐ Hold for Pickup
☑ Return Address Provided

11 IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information

☐ Yes ✓ No Will the property being conveyed be the grantee's principal residence?
☐ Yes ✓ No Does transfer include personal property? If yes, identify:
☐ Yes ✓ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only – Do Not Write Below This Line

Terminal Verification | Agricultural Verification | Whole | Part | Tran. Process Verification
Transfer Number | Date Received | Deed Reference | Assigned Property No.
Year | 20 | 20 | Geo | Map | Grid | Parcel | Sub Div | Block
Land | Zoning | Corp/Mun/Other | Liber | Folio | Lot
Buildings | Use | Partial | Ex Code | Dec. Cd.
Total | Town Cd. | Tax Cd.
REMARKS

TP ART 12-108

Date 12/17/09

Space Reserved for County Validation

Distribution: White – Clerk's Office; Pink – Office of Finance; Canary – SDAT; Goldenrod – Preparer

AOC-CC 300 (4/05)

Name	Account	Street	OWN OCC	Map	Parcel
GAFFNEY GEORGE W	07 2500002816	MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002817	MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002818	MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002819	MONTCLAIR CT	N	17	182
TERRAFIRM INC	07 2500002814	MONTCLAIR CT	N	17	182
TERRAFIRM INC	07 2500002815	MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002810	500 MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002809	501 MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002811	502 MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002808	503 MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002812	504 MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002807	505 MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002813	506 MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002806	507 MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002805	509 MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002804	511 MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002803	523 MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002802	525 MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002801	527 MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002800	529 MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2500002799	531 MONTCLAIR CT	N	17	182
GAFFNEY GEORGE W	07 2300004370	533 MONTCLAIR CT	H	17	509
TERRAFIRM	07 0708000525	18034 YORK ROAD	N	17	259
TERRAFIRM INC	07 2500002798	540 MONTCLAIR CT	N	17	182

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MONTCLAIR HOMEOWNERS ASSOCIATION, INC.

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MONTCLAIR HOMEOWNERS ASSOCIATION, INC. (this "**Amendment**") is made this 28th day of February 2012, by **MONTCLAIR, LLC**, a Maryland limited liability company; **TERRAFIRM, INC.**, a Maryland corporation; and **GEORGE W. GAFFNEY**, individually (collectively referred to herein as the "**Declarant**").

RECITALS

A. Declarant has previously recorded a *Declaration of Covenants, Conditions and Restrictions for Montclair Homeowners Association, Inc.* (recorded among the Land Records of Baltimore County in Liber 28987, folio 038) (the "Original Declaration") applicable to certain real property located in Baltimore County, Maryland, shown on the approved subdivision plans entitled "MONTCLAIR", which plats are recorded among the Land and Plat Records of Baltimore County in Plat Book No. 78, at pages 259-260, together with the individual properties known as 18020 York Road and 18034 York Road.

B. The Original Declaration contained certain "Building Requirements" and "Site Improvement" standards within the *Review of Architectural Elements* which, prior to the construction of any new homes in Montclair, Declarant intends to change and modify.

C. Declarant intends by the recordation of this Amendment only to change and modify those portions of the "Building Requirements" and "Site Improvement" standards within the *Review*

of Architectural Elements, attached hereto and incorporated herein as Exhibit "A".

NOW, THEREFORE, Declarant covenants and declares on behalf of itself and its successors and assigns that, in furtherance of the Original Declaration and the above-described Recitals which are incorporated herein as a material part of this Amendment, the Original Declaration is hereby amended as follows:

1. The *Review of Architectural Elements*, "Building Requirements" and "Site Improvement" standards set forth on enumerated pages 48 through and including 52 of the Original Declaration are hereby deleted.

2. The *Review of Architectural Elements*, "Building Requirements" and "Site Improvement" standards set forth on Exhibit "A" are hereby inserted and incorporated into the Original Declaration as enumerated pages 48 through and including 52.

In all other respects, this Amendment shall not alter nor amend any provision of the Original Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunder set its hand and seal the day and year first above written.

ATTEST:

DECLARANT:
Montclair, LLC, a Maryland limited liability company

By: _____ (SEAL)
Marion R. Gaffney, President/Authorized Member

Terrafirm, Inc., a Maryland corporation

By _____ (SEAL)
Marion R. Gaffney, President

_____ (SEAL)
George W. Gaffney

ACKNOWLEDGMENT

STATE OF MARYLAND, COUNTY/CITY OF Anne Arundel County to wit:

I HEREBY CERTIFY that on this 28 day of February 2012, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared Marion R. Gaffney, who acknowledged herself to be the President/Authorized Member of Montclair, LLC, a Maryland limited liability company, and being authorized to do so, she acknowledged that she executed the foregoing on behalf of the said the Declarant for the purposes therein contained and he acknowledged the same to be the lawful act and deed of the aforesaid Declarant.

AS WITNESS my hand and Notarial Seal the day and year first above written.

Aaron Whitaker
Notary Public

My Commission Expires: 10/20/2013

STATE OF MARYLAND, COUNTY/CITY OF Anne Arundel County to wit:

I HEREBY CERTIFY that on this 28 day of February 2012, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared Marion R. Gaffney who acknowledged herself to be the President of Terrafirm, Inc., a Maryland corporation, and being authorized to do so, she acknowledged that she executed the foregoing as such officer on behalf of the said the Declarant for the purposes therein contained and she acknowledged the same to be the lawful act and deed of the aforesaid Declarant.

AS WITNESS my hand and Notarial Seal the day and year first above written.

Aaron Whitaker
Notary Public

My Commission Expires: 10/20/2013

STATE OF MARYLAND, Anne Arundel County COUNTY, TO WIT:

I HEREBY CERTIFY that on this 28 day of February, 2012, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared George W. Gaffney who represented himself to be one of the persons comprising the Declarant named herein and that he affixed her/his hand and seal hereto the date and year first above written for the purposes herein contained.

AS WITNESS my Hand and Notarial Seal.

Aaron Whitaker
Notary Public

My Commission expires: 10/20/2013

BALTIMORE COUNTY OFFICE OF LAW REVIEW

~~Reviewed by Baltimore County Office of Law prior to recordation~~ pursuant to ~~Section~~ 32-4-271(c), ~~*Baltimore County Code*~~ (2003)

N/A

~~_____, Assistant County Attorney~~
[PRINT/TYPE NAME]

ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the above instrument was prepared by me, an attorney admitted to practice before the Court of Appeals of Maryland, or under my supervision.

Howard L. Alderman, Jr.

AFTER RECORDATION, PLEASE RETURN TO:

Howard L. Alderman, Jr., Esquire
Levin & Gann, P.A.
8th Floor, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204

(410) 321-0600
Fax: (410) 296-2801

EXHIBIT "A"
REVIEW OF ARCHITECTURAL ELEMENTS

A. BUILDING REQUIREMENTS.

1. FOUNDATIONS: Exposed foundations are to be kept to a minimum and should be appropriate to the architecture of the house. Finished first floor elevations should be a maximum of three feet above the finished grade at the front of the house. All exposed foundations must be covered with brick or stone to grade. Cement pargeting will not be approved.

2. EXTERIOR WALLS: Generally, **natural materials indigenous to the architecture of the area are preferred.** All wood is to be painted or stained in an approved color. Wood that is not painted or stained and left to weather naturally, such as cedar shingles, may be considered an acceptable material. Brick is allowed as an exterior material with the following conditions:

a. Brick may be painted or unpainted in a color that must be approved by the Architectural Committee

b. Brick is also allowed as an accessory material (i.e., chimneys, retaining walls, etc.) if it is painted in a color approved by the Architectural Committee. If unpainted brick is used, the color of the brick must be compatible with the rest of the house, in the sole discretion of the Architectural Committee.

c. Brick sizes shall be in scale to the structure. No "jumbo" brick is allowed.

Stucco, "Dryvit", "STO" or other similar materials are allowed if they are colored in a color approved by the Architectural Committee.

Native stone is allowed as a building or trim material in earth-tone colors as approved by the Architectural Committee. Manufactured Stone or Cultured Stone may be an acceptable treatment but its use is not a matter of right. The Architectural Committee will consider its use on a case by case basis.

Other Exterior Treatments — that is, fabricated materials intended to look like another material; as well as aluminum and plywood are **not allowed.** This does not preclude future materials that might be produced, but such materials must be approved by the Architectural Committee. Hardiplank type cement fiber siding is acceptable materials provided their color and texture are approved by the Architectural Committee.

In the event brick or stone is proposed – as an exterior material (excluding foundation treatments) in combination with vinyl, Hardiplank and/or natural siding -- the brick or stone is required to be used on both side elevations up to grade level or above, in addition to the front elevation. If the rear elevation is visible from the road, then brick or stone is required up to grade level. The intent is to

prohibit the use of siding as a substitute for brick or stone on the entire side elevations. Siding may be used as an accent or for small areas in conjunction with the brick or stone.

3. WALL OPENINGS: All elevations (front, rear & sides) should contain architecturally compatible widow placement and exterior trim treatment. Windowless elevations are strongly discouraged and will require special approval. Windows and doors, greenhouse elements used as large "window", louvers and vents must be compatible to the architectural style or period of the house. Wood or vinyl wrapped wood, anodized or baked enamel or aluminum are all acceptable if in appropriate colors that are the same or compatible to the exterior finish material. Fixed glass used to provide "picture windows" or passive solar heating must be carefully integrated into the overall design. Tinted glass in such panels is acceptable in colors that relate to other finish materials, but reflective glass is prohibited. Glass block will be considered on a case by case basis (but are strongly discouraged). Styles and samples of glass block must be submitted to the Architectural Committee with an application or request for approval. Storm windows must be painted to match window trim.

4. ROOFS: Roofing — its shape, massing, material and color is a critical element in any attempt to visually tie together various architectural styles. Therefore, a **minimum roof pitch on the dominant portion of the roof of 8 to 12 (8 inch rise in the 12 inch run) minimum is required.** Overhangs, where appropriate, can help the total design effect and are encouraged. Vent pipes piercing the roof should be placed away from the Road side and must be painted to match the roof color. If gutters and downspouts are employed to carry off roof rainwater, they must be "painted out" to match in color the element to which they are attached (fascia, siding or trim guard). Skylights, solar panels, dormers and roof "cut outs" are elements that can affect the roofing appearance in drastic ways and will be reviewed by the Architectural Committee on an individual basis. The design should provide adequate spacing between the header of any window and the fascia or overhang of the roof. All black shingles are strongly discouraged and shall require special approval.

Several roof types are acceptable:

a. Heavy weight 50 year composition shingles are recommended. Thirty-year shingles are permitted. Heavy weight, architectural grade, composition shingles can be used if they have a random cut textured effect, i.e., "Timberline" type shingle. The color of these shingles must be compatible with the exterior of the house. The color and appearance of composition shingle must be approved by the Architectural Committee and samples must be submitted for approval by Owners.

b. Other materials: (1) Slate roofs: Slate roofs are acceptable. (2) Wood shakes or wood shingles are acceptable. These roofs can be allowed to weather naturally. (3) Other materials: Copper (real copper only), raised seam metal and terracotta are also acceptable.

5. CHIMNEYS: Both the massing and materials are important to chimney design, and both must be compatible with the design of the house. **All chimneys must be of masonry design and construction and should incorporate proper shoulder detail and corbelling or quoining.**

a. Gas Fireplaces. Direct side vents for gas fireplaces are acceptable provided that they are located on the rear of the structure. Direct side vents located on either side of the structure will be considered on a case by case basis. Any shed bump outs associated with the treatment of gas fireplaces shall be considered on a case by case basis.

6. EXTERIOR COLORS: As with roofing, exterior colors offer another medium to tie together various architectural styles. Accordingly, a range of natural colors are acceptable but all must be compatible with one another. Bright pigmented colors are not appropriate. The use of an accent color for trim and special areas such as a front door is acceptable if the accent color is harmonious with the overall pre-selected palette. The final decision on exterior colors submitted by an Owner shall be made by the Architectural Committee.

7. OUTBUILDINGS AND STRUCTURES: Construction outside of the house itself can add or detract from the total design impression. It is imperative to anticipate the need for such structures so that they may be planned for in the initial design stages. Construction of garages, gazebos, decks, trellises, pools, patios, etc. must be carefully integrated with the building architecture and the landscape design. They must also be carefully planned in relationship to adjoining properties in order not to create a negative impact on them. Accessory structures must be contained within the building envelope as shown on the Final Development Plan for Montclair.

8. HOUSING APPURTENANCES: All housing appurtenances such as electric meters, air conditioning compressors, buried oil tanks, buried propane gas tanks and trash can storage areas, shall not be in the front of the house and must be adequately screened from the road and from the neighbors' view. Screening by landscaping is preferred, but wood fencing will be considered with low planting around it.

9. HOUSE SIZES: House size and presentation of mass are important when evaluating the aesthetic nature of the plans. The house size must be compatible with the lot size and not dominate the lot.

10. GARAGES: A 575 square foot garage is recommended with a 400 square foot, two-car garage a required minimum. Where possible, three-car garages are highly recommended to accommodate storage of lawn and snow removal equipment, vehicles and boats. Storage on driveways is prohibited. Early consideration should be given to possible placement of a detached garage, perhaps with office or In-Law accommodations (single-family use only.) Detached garages will be considered on a case by case basis and require County approval. Garages must have doors. Whenever possible, garage doors should not face the Road. If the garage doors must face the Road, the garage must not dominate the front façade. Additional off-street parking spaces as required to accommodate guest parking should be located along the driveway and screened from view. **Since garage doors are a critical mass, they should be designed and trimmed to be architecturally compatible with the style of the house.**

B. SITE IMPROVEMENTS.

1. SITE DESIGN PLANS: Site design plans must be submitted for each lot for review by the Architectural Committee. These plans must be prepared by a registered surveyor, landscape architect or engineer. Following are explanations of some of the items to be included on the Site Design Plan:

a. BUILDING ENVELOPES: The approved plat shows the allowed building envelope. The house must be sited in that envelope in such a way as to maximize privacy and views. In order to achieve the best views from each lot, provide a varied visual composition along the street, and utilize the existing trees and topography to the greatest advantage, consideration should be given to how each house location would effect the views from adjacent lots and streets, solar orientation, required setbacks, septic field location and well sites, and other existing site considerations. Houses, outbuildings and other appurtenant structures must be sited within the building envelopes, views from each site and from the public streets will be preserved.

b. CLEARING RESTRICTIONS: Clearing on each lot is restricted to 7,000 square feet pursuant to the Declaration of Covenants, Conditions and Restrictions. A certification by site engineer must be placed upon the site design plan certifying that the clearing of the lot, as shown on the plan, does not exceed the square footage limitations contained in the Declaration. The area not included within the area to be cleared must be protected by temporary fencing to insure that vegetation in this area is not damaged during the clearing, grading, and building process, provided, however, that such fencing shall be promptly removed after completion of the construction of the dwelling. Additional landscaping and/or planting may be required to mitigate any clearing of wooded areas in excess of 7,000 square feet.

c. SETBACKS: Shall be as shown on the Record Plat. The Architectural Committee must approve final setbacks.

d. SEPTIC DRAINAGE AREA: A 10,000 square foot drainage area as required by Baltimore County Health Department is shown on the Final Development Plan for future sewer drain fields. These areas cannot be moved without the approval of the Baltimore County Health Department. No structure or paving (including driveways) can be constructed over these areas.

2. DRIVEWAYS: Driveways should be located to minimize disruption of the natural landscape and interference with natural site drainage. **Drives should be curved** and graded so as to reduce their visibility from the Road. Circular drives are allowed. Owners shall keep paving and other impervious surfaces to a minimum, not to exceed 15 % of the surface area of any lot as per Baltimore County Zoning Regulations. Declarant reserves the right to limit the amount of impervious surface on each Lot.

3. POOLS, TENNIS COURTS, DECK, AND OTHER AMENITIES: In-ground swimming pools, patios, wood decks, tennis courts, playground equipment, basketball backboards and other outdoor amenities should be located on the rear of a lot behind the home. Pool houses and gazebos will be reviewed on a case by case basis by the Architectural Committee. Above ground pools are prohibited. Safety enclosure fences, including black metal fences, are permitted around pools.

Tennis courts and pools should be carefully integrated into the natural grades of the site and bermed and landscaped to minimize their visual impact. Tennis courts should be located toward the private side of the lot as much as possible and will be reviewed on a case by case basis. Lighting of any tennis court/sports court is strongly discouraged. Black or green vinyl link enclosure fencing is permitted around tennis courts.

4. LAWN ORNAMENTS: Lawn ornaments, painted rocks and shells along driveways, etc. are **not allowed**.

5. EXISTING VEGETATION: No major trees (over 6 inches diameter at a point 4 feet above grade) may be removed or radically pruned from a lot without the approval of the Architectural Committee. Each lot should have a limit of disturbance marked on the site design plan.

6. FENCING: Fencing is generally one of these three types: property line, part of the house, or screening.

a. PROPERTY LINE fences are discouraged in the Community and will not be considered for approval except on the rear and side-rear property lines of a Lot. Before considering a request for property line fence approval, the Architectural Committee will require a significant justification for such fencing and will require proposed fence materials to be high grade, architectural quality and match the color and style of the surrounding homes. The fence materials, color, scale, and texture must appear integrated into the overall design of the residence. No metal fences of any kind will be permitted. In addition to any other considerations, provisions or requirements of this Declaration, the Architectural Committee shall have complete authority over the style, height, location, and materials proposed for any property line fence. The Architectural Committee shall include in any fence approval specific requirements for periodic maintenance and repair of any approved fence. If the Owner of a Lot on which a fence has been approved fails to maintain or repair the fence in accordance with the specific requirements of approval, the Association or the Architectural Committee may retain a contractor to perform the required maintenance or repair and to assess the Owner of the Lot for all such costs, including without limitation materials, installation, tax and labor. Such assessment is a personal obligation of the Owner(s) of the Lot and may be enforced and collected in the manner provided for any other assessment under Article 5 of this Declaration. The Architectural Committee reserves the right to reject fence approval for any reason whatsoever.

b. FENCES THAT ARE PART OF THE HOUSE will be considered as architectural elements thereof. As part of the house, these fences should be in a material and color compatible with the architecture of the house.

JOINDER BY CONTRACT PURCHASER

Gemcraft Homes, Inc., a Maryland corporation, contact purchaser of certain portions of the Montclair property, joins in this Amendment to evidence its assent and approval of this Amendment and agrees that its interests in the property governed by the Original Declaration as amended hereby shall be subject hereto.

WITNESS/ATTEST

Pat Pearl

CONTRACT PURCHASER:
Gemcraft Homes, Inc., a Maryland corporation

By: _____ (SEAL)
Dale Heveszy
[PRINTED/TYPED NAME]
V.P.
[TITLE/CAPACITY/AUTHORITY]

STATE OF MARYLAND, COUNTY/CITY OF Harford to wit:

I HEREBY CERTIFY that on this 6th day of March 2012, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared Dale Heveszy who acknowledged himself/herself to be the _____ of Gemcraft Homes, Inc., a Maryland corporation, Contract Purchaser, and being authorized to do so, he/she acknowledged that he/she executed the foregoing as such officer on behalf of the said Contract Purchaser for the purposes therein contained and he/she acknowledged the same to be the lawful act and deed of the aforesaid Contract Purchaser.

AS WITNESS my hand and Notarial Seal the day and year first above written.

Mary Patricia Pearl
Notary Public

My Commission Expires: 1-16-14

MARY PATRICIA PEARL NOTARY PUBLIC BALTIMORE CITY, MARYLAND

State of M nd Land Instrument Intake Sheet

☐ Baltimore ☒ County: Baltimore

003 49 059

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only.

(Type or Print in Black Ink Only–All Copies Must Be Legible)

Space Reserved for Circuit Court Clerk Recording Validation

IMP FD SURE 40.00
RECORDING FEE 75.00
TOTAL 115.00
Rcpt # 78838
Reg# BA85
JLE LL
Blk # 1862
Apr 17, 2012 02:34 PM

1 Type(s) of Instruments (☐ Check Box if addendum Intake Form is Attached.)

☐ Deed / Deed of Trust	☐ Mortgage / Lease	1 Other HOA	☐ Other

2 Conveyance Type Check Box

☒ Improved Sale Arms-Length [1]	☐ Unimproved Sale Arms-Length [2]	☐ Multiple Accounts Arms-Length [3]	☐ Not an Arms-Length Sale [9]

3 Tax Exemptions (if applicable) Cite or Explain Authority

Recordation	
State Transfer	
County Transfer	

4 Consideration and Tax Calculations

Consideration Amount		Finance Office Use Only – Transfer and Recordation Tax Consideration	
Purchase Price/Consideration	$ 0.00	Transfer Tax Consideration	$
Any New Mortgage	$ 0.00	X ( )% =	$
Balance of Existing Mortgage	$	Less Exemption Amount –	$
Other:	$	Total Transfer Tax =	$
Other:	$	Recordation Tax Consideration	$
		X ( ) per $500 =	$
Full Cash Value:	$	TOTAL DUE	$

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$ 95.00	$
Surcharge	$ 20.00	$
State Recordation Tax	$	$
State Transfer Tax	$	$
County Transfer Tax	$	$
Other	$	$
Other	$	$

Agent:
Tax Bill:
C.B. Credit:
Ag. Tax/Other:

6 Description of Property

SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG
	07-2500002798	13542/131			☐ (5)

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR (3c)	Plat Ref.	SqFt/Acreage (4)
MONTCLAIR	1				

Location/Address of Property Being Conveyed (2): 540 Montclair Court, Monkton, MD 21111

Other Property Identifiers (if applicable): | Water Meter Account No.:

Residential ☒ or Non-Residential ☐ | Fee Simple ☒ or Ground Rent ☐ | Amount: N/A

Partial Conveyance? ☐ Yes ☒ No | Description/Amt. of SqFt/Acreage Transferred: N/A

If Partial Conveyance, List Improvements Conveyed: N/A

7 Transferred From

Doc. 1 – Grantor(s) Name(s)	Doc. 2 – Grantor(s) Name(s)
Montclair LLC	
Doc. 1 – Owner(s) of Record, if Different from Grantor(s)	**Doc. 2 – Owner(s) of Record, if Different from Grantor(s)**

8 Transferred To

Doc. 1 – Grantee(s) Name(s)	Doc. 2 – Grantee(s) Name(s)

New Owner's (Grantee) Mailing Address:

9 Other Names to Be Indexed

Doc. 1 – Additional Names to be Indexed (Optional)	Doc. 2 – Additional Names to be Indexed (Optional)

10 Contact/Mail Information

Instrument Submitted By or Contact Person

Name: smccarron
Firm: Chesapeake Title Company, LLC
Address: 100 West Road Suite 215
Towson, MD 21204 Phone: (410) 321-6316

☒ Return to Contact Person
☐ Hold for Pickup
☐ Return Address Provided

11 IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information

☐ Yes ☒ No Will the property being conveyed be the grantee's principal residence?
☐ Yes ☒ No Does transfer include personal property? If yes, identify:
☒ Yes ☐ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Space Reserved for County Validation

Assessment Use Only – Do Not Write Below This Line

Terminal Verification | Agricultural Verification | Whole | Part | Tran. Process Verification
Transfer Number | Date Received: | Deed Reference: | Assigned Property No.:

	Year	20	20	Geo.	Map	Sub	Block
Land				Zoning	Grid	Plat	Lot
Buildings				Use	Parcel	Section	Occ. Cd.
Total				Term Cd.		Ex. Cd.	

REMARKS:

TAX NOT REQUIRED
Director of Budget and Finance
BALTIMORE COUNTY, MARYLAND

☐ COUNTY TRANSFER TAX
Per ART 11 TITLE 3 SUBTITLE 2, 11-3-202

☐ RECORDATION TAX
Per T.P. ART 12-108

Distribution: ☐ Clerk's Office ☐ Office of Finance ☐ Customer ☐ Preparer

Date 4/17/12

AOC-CC-300 (5/2007)

12-C-10272LOT

HOLZER & LEE

LAW OFFICES
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J. HOWARD HOLZER
1907-1989
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E-Mail: jcholzer38@gmail.com

June 16, 2017
#8195

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

RE: Case No.: 2017-113-SPH
Petition for Special Hearing
502 and 504 Montclair Court

Dear Ms. Cannington:

Please enter my appearance on behalf of Marion Runkles in the above-captioned matter currently scheduled for ***Tuesday, June 27, 2017***, before the Board. I represented Mr. Runkles in 2004 in the case that was the subject of this request for a modification of an Agreement in Case No. VII-372. I intend to appear on June 27, 2017 on behalf of Mr. Runkles.

I also adopt the People's Counsel of Baltimore County Motion to Dismiss Petition for Special Hearing and adopt his Memorandum as if it were set forth herein.

Thank you for your cooperation and assistance.

Very truly yours,

J. Carroll Holzer

JCH:mlg

cc: Mr. Marion Runkles
Peter Max Zimmerman, Esquire
Adam Baker, Esquire
Attorney for Petitioner

RE: PETITION FOR SPECIAL HEARING 502 & 504 Montclair Court; E/S Montclair Court, 1860' NW of York Road 7th Election & 3rd Councilmanic Districts Legal Owner(s): RREF II SB-MD, LLC Petitioner(s)	*	BEFORE THE BOARD
	*	OF APPEALS
	*	FOR
	*	BALTIMORE COUNTY
	*	2017-113-SPH

* * * * * * * * * * * * *

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S MOTION TO DISMISS PETITION FOR SPECIAL HEARING

People's Counsel for Baltimore County moves to dismiss the petition for special hearing on the basis of *res judicata*, and states:

I. Statement of the Case

On October 21, 2016, Petitioner RREF II SB-MD, LLC filed a petition for special hearing proposed zoning relief:

1. Special Hearing pursuant to Sec. 500.7 of the Baltimore County Zoning Regulations to permit a modification of the conditions imposed in Case No. VII-372 to permit homes on Lots 14 and 15 (502 and 504 Montclair Court) greater in height than the permitted one story. (See restriction No. 3 of the Hearing Officer's Order.

2. Special Hearing pursuant to Sec. 500.7 of the Baltimore County Zoning Regulations to permit a modification of the conditions imposed in Case No. VII-372 to reduce the required rear yard setback for Lots 14 and 15 (502 and 504 Montclair Court) from 100 feet to 80 feet. (See Footnote of April 15, 2004 Planning Board decision)

3. Special Hearing to amend the Final Development Plan for Montclair."

In the course of the proceedings, Petitioner filed a revised petition and site plan on February 2, 2017. This added,

> "4. Variance from Sec. 1A04.3.B.2 to permit a setback of 55 feet from the center line of the road in lieu of the required 75 feet and to permit a setback from the western lot line for Lot 14 of 30 feet in lieu of the required 50 feet."

Upon review of the zoning history, People's Counsel asserted and argued that the *res judicata* doctrine barred the present petition. Administrative Law Judge John Beverungen elicited input from both sides. He reviewed the record and issued his March 13, 2017 opinion and order dismissing the petition. Petitioner's present appeal followed.

II. Background

1. On June 1, 2004, Hearing Officer John V. Murphy approved the 16-lot Montclair development plan, as modified and with conditions. HOH Case No. VII-372. The decision is attached. During the case, based on a Planning Board referral and recommendation, the developer modified the plan, including minimum front yard building setbacks for lots 14 and 15. Hearing Officer Murphy added a one-story height limitation for these lots. It should be noted that the lots adjoin the property of Marion Runkles and mitigate the adverse impacts on his property.

2. For the sake of completeness, we note that Protestants Mr. Runkles and other area parties in interest appealed Hearing Officer Murphy's decision. The County Board of Appeals and Circuit Court affirmed. Case Nos. CBA 04-134, September 2, 2004 and Circuit Court 03-C-04-010234, Judge Vicki Ballou-Watts, August 31, 2005. These decisions are also attached.

3. In the 2004 HOH case, the parties agreed to refer the plan to the Planning Board for a review of the impact on historic structures, specifically the Weisburg Inn owned by Marion Runkles. See Hearing Officer decision. Pages 9-10.

4. The current Petition states in paragraph 2 that the April 15, 2004 Planning Board decision required rear yard setback for Lots 14 and 15 (502 and 504 Montclair Court) from 100 feet to 80 feet. Based on the predecessors of current County Code Secs. 32-4-231 and 32-4-232, especially 32-4-232(f), the Planning Board decision was binding on the Hearing Officer and necessarily incorporated in his June 1, 2004 decision. See 1988 County Code, Secs. 26-207, 26-208.

5. Our research discloses the Planning Board decision, attached, was dated April 27, 2004. Planning Director Arnold "Pat" Keller III, as Secretary to the Planning Board transmitted it to the Hearing Officer. The decision states, in its entirety:

"In accordance with Section 26-207(a)(3) of the Baltimore County Zoning Regulations, this project was reviewed by the Planning Board during its meetings on April 1, 2004 and April 15, 2004.

By unanimous vote of all members present, the Board's decision to the Hearing Officer is that, for the reasons stated in the March 24, 2004 staff report (enclosed), approval of the development plan for "Montclair" (PDM #VII-372) shall include the finding and, as requirements, the recommendations specified in the April 9. 2004 report from the Landmarks Preservation Commission (enclosed). In addition, the loop at the end of Montclair Court is to be reduced to a standard cul-de-sac and shifted so that the distance of the homes in lots #14 and #15 will be at least 100 feet from the rear property line (as close as possible to the minimum front building setback line). These properties shall also be landscaped and fenced in accordance with standards provided by the Office of Planning." *(emphasis supplied)*.

6. The Planning Board action is reviewed in detail in the Director of the Planning Department's December 6, 2016 Zoning Advisory Committee (ZAC) comments in the current case. This includes the undisputed observation that the Planning Board adopted the Landmark Preservation Commission recommendation that,

> "The new dwelling on Lot 15 should be sited as close as possible to the minimum front building setback line."

The ZAC comments are attached. Actually, as shown above, the 2004 Planning Board decision referred to both Lots 14 and 15.

7. The Hearing Officer's opinion observed that the developer modified the plan to satisfy the Planning Board conditions. This included rear yard building setbacks of 100 feet for both lots 14 and 15.

8. As noted, the Hearing Officer thereupon approved the development plan, as modified, with the additional conditions which also included the one-story height restriction for said lots 14 and 15. Pages 12-13.

People's Counsel's *Res Judicata* Argument and Analysis at the ALJ Level

9. In light of the above history, People's Counsel sent the attached December 13, 2016 e-mail to ALJ Beverungen. We asserted that *res judicata* barred the petition, reviewing the history and providing the relevant legal analysis.

10. Judge Beverungen on that same day then e-mailed Adam Baker, attorney for Petitioner, and asked for his response prior to the then scheduled December 19 hearing date. See attached.

11. Mr. Baker responded with the attached e-mail dated December 16, 2016, arguing for a substantial change in circumstances.

12. Meanwhile, Mr. Runkles had asked for a postponement. It was then granted.

13. On February 2, 2017, Petitioner filed a revised petition and site plan.

14. The case was rescheduled for haring on March 16, 2017.

15. On March 8, 2017, People's Counsel transmitted the attached letter to ALJ Beverungen. This both responded to Mr. Baker's December 16, 2016 argument and observing the revised petition did not alter or affect the *res judicata* analysis. The essence of the argument is that there was no substantial change in circumstances to justify amendment and relaxation of the 2004 conditions.

16. ALJ Beverungen thereupon issued on March 13, 2017 his order dismissing the petition, as amended, because barred by the *res judicata* doctrine. There then ensued on March 23, 2017 Petitioner's present appeal to the CBA.

IV. Argument at the CBA Level

A. The *Res Judicata* Doctrine

17. *Res judicata* applies *Res judicata* applies to parties and privies in quasi-judicial administrative proceedings. Batson v. Shifflett 325 Md. 684, 701-04 (1992); United States v. Utah Constr. Co. 384 U.S. 394 (1966); Powell v. Breslin 430 Md. 52, 63-65 (2013); Fertitta v. Brown 252 Md. 594, 599-600 (1969); Seminary Galleria v. Dulaney Valley Imp. Ass'n 192 Md. App. 719, 736 (2010).

18. A successor owner is in privity with a previous owner. 13 M.L.E. Judgments Sec. 123 (2016); Walzl v. King 113 Md. 550 (1910); cf. Kim v. Collington Center III 180 Md. App. 606, 615-20 (2008). This point is especially apt in zoning cases, where issues revolve around property use rather than the owner's identity or personality. City of Baltimore v. Poe 224 Md. 428 (1961).

19. The public policy underlying the doctrine is to effectuate repose. It is unfair to put parties through repeat cases. It is inimical and subversive to the efficient and proper administration of justice. Following Utah Constr. Co. the Supreme Court explained in Astoria Federal Savings & Loan Assoc. v. Solimino 501 U.S. 104, 107 (1991), Souter, J.:

> "Such repose is justified on the sound and obvious principle of judicial policy that a losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on an issue identical in substance to the one he subsequently seeks to raise. To hold otherwise would as a general matter, impose unjustifiably upon those who have already shouldered their burdens, and drain the resources of an adjudicatory system with disputes resisting resolution. ... The principle holds true when a court has resolved an issue, and should do so equally when the issue has been decided by an administrative agency, be it state or federal ...."

B. *Res Judicata* Translated to Land Use Cases

20. The application of *res judicata* to land use cases stretches back almost a century. In 1936, the Court of Appeals applied *res judicata* to a proposed substation post office in a residential zone. Mayor & City Council v. Linthicum 170 Md. 245 (1936). The Court observed "... there had been no change in the proposal, either in the use planned, or in the neighborhood conditions; and there was none in the relevant ordinances." Following Linthicum, the Court in Bensel v. Mayor and City Council 203 Md. 506 (1954) implemented the doctrine to sustain dismissal of a complaint to allow a nonconforming business use. Four years previously, there had been a final court judgment sustaining the Zoning Commissioner's permit denial.

21. Whittle v. Board of Zoning Appeals of Baltimore County 211 Md. 36 (1956) has become a landmark case. This involved a special permit for a funeral home on York Road, Towson. In 1949, there had been a prior application, based on need, population increase, and lack of proportionate increase in funeral homes. Area residents had opposed the project based on its effect on enjoyment of their homes and on traffic. Upon judicial review of the CBA approval, the Circuit Court had reversed.

Despite this final denial, the contract purchasers acquired the property. In 1954, they filed a second petition. They adduced testimony that the neighboring church supported the petition; experts said there would be no adverse impact on traffic and parking, and no decrease in area property values or adverse psychological impact; there

was more neighborhood commercial activity; and there was greater increase in population than previously. 211 Md. at 40-41. The neighbors still opposed the application, finding no need, that the use would be commercial, and it would still affect property values. The BZA granted the second petition; and the Circuit Court affirmed.

The Court of Appeals reversed. Chief Judge Brune wrote, 211 Md. at 45,

> "The general rule, where the question has arisen, seems to be that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may consider and act upon a new application for a special permit previously denied, but that it may properly grant such a permit only if there has been a substantial change in conditions. See Bassett on Zoning (2nd Ed., 1940), pp. 119-120; Yokley on Zoning Law and Practice (1953 Ed.), § 128; 168 A.L.R. 124; St. Patrick's Church Corporation v. Daniels, 113 Conn. 132, 154 A. 343; Burr v. Rago, 120 Conn. 287, 180 A. 444; Rommell v. Walsh, 127 Conn. 272, 16 A.2d 483; Rutland Parkway, Inc. v. Murdock, 241 App.Div. 762, 270 N.Y.S. 971. This rule seems to rest not strictly on the doctrine of *res judicata*, but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law.
>
> In the instant case we have, of course, a prior court determination and the question of *res judicata* is directly involved.
>
> Many zoning questions do not rest upon immutable facts, St. Patrick's Church Corp. v. Daniels, supra, and the application of the rules of *res judicata* is not always so easy and so clear cut as in the Linthicum and Bensel cases. It is our view that where the facts are subject to changes which might reasonably lead to an opposite result from that arrived at in an earlier case, and if there have been substantial changes in facts and circumstances between the first case and the second, the doctrine of *res judicata* would not prevent the granting of the special permit sought by the appellees. They contend that such changes have occurred, and we shall now proceed to examine the alleged differences."

The Court then reviewed and found the myriad of alleged differences to be insubstantial.

22. The appellate courts have followed Whittle consistently. Woodlawn Area Citizens Ass'n v. Board of County Comm'rs 241 Md. 187, 197-201 (1966); Alvey v. Hedin 243 Md. 334, 340-42 (1966); Seminary Galleria v. Dulaney Valley Imp. Ass'n 192 Md. App. 719, 736 (2010).

C. *Res Judicata* Applies to the Present Case

23. While this is a *de novo* appeal, the parties are bound by their pleadings below. People's Counsel v. Mangione 85 Md. App. 738, 744-47 (1991); Van Royen v. Lacey 286 Md. 649, 651-52 (1972). Based on the petition, as revised, together with the zoning

history and submissions by counsel, the facts material to *res judicata* are sufficiently clear to apply the doctrine.

24. As noted, on December 13, 2016, we alerted ALJ Beverungen to the *res judicata* bar. The petition seeks to eliminate the Lots 14 and 15 restrictions set by the contested 2004 Montclair subdivision case decision. The Petitioner, as successor owner, is in privity with the original developer and so effectively in the same shoes.

25. Under these circumstances, the experienced ALZ requested Petitioner's counsel to explain his position as to any substantial change in conditions, which counsel then did. To repeat, these e-mails are attached.

26. Subsequently, after postponement of the December hearing date, and the filing of a revised or supplemented petition, undersigned People's Counsel replied by letter dated March 8, also attached. We repeat here the heart of our reply:

> "The amended petition incorporates verbatim the three elements of the original petition concerning lots 14 and 15, in essence: 1. increase in height over the one story previously permitted; 2. reduction in setbacks from property line from 100 feet to 80 feet; and 3. amendment of the final development plan for the Montclair residential subdivision. The Amended Petition here just adds a fourth element, two variances, for 55 feet from the street centerline instead of the required 75 feet and from the western lot line for lot 14 of 30 feet instead of the required 50 feet.
>
> Upon review also of the redlined site plan, there are still the deviations to reduce the setbacks and increase the height in conflict with the limits set by Hearing Officer John Murphy in 2004 and affirmed by the County Board of Appeals and Circuit Court. Therefore, we see no reason to depart from our office's position that *res judicata* precludes this new request to relax those conditions substantially. We note that even were there were not a *res judicata* problem, it is difficult to see any legal justification for the FDP Amendment and variances.
>
> We shall focus here on Mr. Baker's response. He identifies and argues the following as material changes in conditions to warrant relaxation of the 2004 conditions:
>
> 1. The first argument is that it is not clear that the Mr. Runkles' barn was constructed at that time. It is admitted that Mr. Runkles indicated in 2004 that he had a permit for the barn, and there is no claim that such barn would be illegal.
> 2. As part of the original Montclair development, developer planted a strip of evergreen trees to screen the Runkles property from the new homes with a vegetative buffer.
> 3. The Montclair property has been developed.
> 4. Lots 14 and 15 are the only lots in the subdivision which remain undeveloped. It is argued that the 2004 restrictions result in a situation where only narrow single story

homes may be developed, and this would be incompatible with the homes in the neighborhood and are not currently in demand in the market.

A basic flaw permeates all of these allegations. In Prince George's County v. Prestwick 217 Md. 228029 (1971), the Court of Appeals held it settled that residential "development of an area along the lines contemplated in the original comprehensive zoning is not such a change as would support a finding of a substantial change in the character of the neighborhood." The Court cited, *inter alia,* MacDonald v. Board of County Comm'rs 238 Md. 549, 556 (1965) and Chatham Corp. v. Beltram 252 Md. 578, 585 (1969). Indeed, the MacDonald majority agreed with appellees to characterize such arguments as "bootstrap" arguments. The Court rejected another such claim of change in Cardon v. Town of New Market 302 Md. 77, 90-92 (2004).

To be sure, these cases were piecemeal zoning reclassification cases, but they are apt. Petitioners claimed that such things as new residential and commercial development, and new availability or installation of infrastructure, amounted to substantial changes in the neighborhood The principled denial of such claims applies even more forcefully here, where the first three of the "new" developments were all directly contemplated or even required by the original development approval. As for marketing, it is in the nature of markets to fluctuate. These do not amount to changes in the neighborhood. Anyway, the developer could have considered potential marketing issues in 2004.

Indeed, none of the alleged changes here even pertain to the neighborhood. They all focus on Mr. Runkles' barn and on the Montclair subdivision. Even more than in McDonald, these are bootstrap arguments. In the various appellate cases involving *res judicata* and changes in conditions which we cited in our e-mail, the courts have rejected a myriad of claims of change superficially more impressive. Accordingly, our office still maintains its *res judicata* position."

ALJ Beverungen concurred with our position. He found no substantial change in conditions and accordingly entered his order dismissing the amended petition.

27. On this record, there is no genuine dispute as to the facts and law material to *res judicata*. Accordingly, we ask the CBA likewise to dismiss the amended petition. This is in accordance with the law and also the efficient administration of justice.

28. We submit the *res judicata* bar is clear; so it is unnecessary to have a further hearing or reach the merits of the variances and Final Development plan issues. On the other hand, if the CBA does not dismiss the petition at this juncture, our office will oppose the petition based on the relevant criteria under BCZR Sec. 307.1 and 1B01.3.

V. The Epidemic of Repeat Cases

29. We have noted elsewhere that there has been an epidemic of repeat cases and *res judicata* applications in recent years. We attach an appendix of CBA cases where *res judicata* has applied to bar such repeat cases. The CBA may take note of its own records.

30. There arises the question of why there is such a multitude of cases when the law is relatively clear. There may be several factors at play.

First of all, petitioners have nothing to lose but their time and attorney's fees. Plus,

Secondly, new owners often feel entitled, despite the law on privity.

Thirdly, petitioners may try to exhaust the energy and resources of protestants, who usually have more limited ability to litigate actively and endure the costs.

Fourthly, if petitioners win, it is over for protestants, who can never come back and challenge an approval a second time. So, this poses a one-sided, one-way street.

Fifthly, there is no limit to the creativity and imagination which may go into arguments for substantial changes in conditions, even if cosmetic and delusive.

Conclusion

For all of the above reasons, and in concurrence with ALJ Beverungen's decision, the County Board of Appeals should dismiss the amended petition. To do justice here and for a helpful precedent, we ask the CBA to explain in detail the reasoning and strength of the *res judicata* doctrine.

Peter Max Zimmerman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of June, 2017, a copy of the foregoing People's Counsel for Baltimore County's Motion to Dismiss Petition for Special Hearing was mailed by first-class mail and e-mail to Adam Baker, Esquire, 8830 Stanford Boulevard, Suite 400, Columbia, Maryland 21045, attorney for Petitioner.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Appendix: Selected County Board of Appeals Cases

"It's déjà vu all over again." Yogi Berra

The County Board of Appeals often remembers its own history.

(1) **Seminary Galleria, LLC v. Dulaney Valley Imp. Ass'n** 192 Md. App. 719 (2010). Reported. This involved business parking in the residential zone split at Galleria shopping/office complex in Lutherville at York Road and Seminary Avenue. **SG** tried to overcome the initial final denial by claiming changed facts and circumstances: that it was required to have 1,000 parking spaces instead of the 728 originally thought based on a newly found tenant mix and "... characterization of the entire complex as a 'shopping center;'" that it obtained a new 'zoning verification letter;' and that there were specific aspects of the 14 parking spaces. 192 Md. App. at 731, 739-41. The CBA approved the second petition in 2008. But their decision was reversed on judicial review as a matter of law. CSA Judge Meredith reviewed the Court of Appeals cases and exposed the absence of substantial change in conditions.

(2) **Back River, LLC v. Baltimore County**: CBA No. 2008-531-SPH (2013). 221 Md. App. 726 (2014), Arthur, J., Unreported, cert. denied 442 Md. 743 (2015). This involved side and rear yard setbacks for a cell phone tower at 810 Back River Neck Road, adjacent to residentially zoned property. **BRLLC** and **Sprint** tried to overcome their previous variance denial by another claim of substantial change in circumstances: that the law had changed to allow the tower next to adjacent vacant residentially zoned property; that a dwelling was no longer on an adjacent property; and they filed a special hearing instead of a variance. The CBA rejected these arguments, and the CSA affirmed.

Judge Arthur dissected each of the arguments. He explained,

> The two petitions involve a single transaction: Sprint's attempt to secure permission from the local zoning bodies to retain a wireless telecommunications tower on the property." Pages 18-25.

He exposed **BRLLC's** suggestion of a change in the law as fallacious, "an unconvincing exercise in sophistry," Unreported opinion pages 25-33. Even if **BRLLC's** legal theory were correct, it could have argued it in the first case and also adjusted the tower location

to avoid the need for variances, Pages 33-36. Furthermore, **BRLLC'S** argument that it was precluded from asserting its new theory in the first case was specious, Pages 36-40.

(3) **Freeland Community Ass'n v. HZ Properties** CBA No. 09-039-M. 229 Md. App. 723 (2016), Kehoe, J., Unreported. Here, successor owner **HZ** sought to overcome a previous Zoning Commissioner decision which rejected the claim that a fee simple BGE utility strip bisecting an Agricultural Zone property divided the property into two parcels and so doubled the allowable density. **HZ** argued the previous decision was based on a mistake of law and anyway that subsequent legislation changed the outcome. The CBA accepted HZ's argument and allowed the increased density. But the CSA reversed. The CBA held, among other things, that mistake of law is not a defense to *res judicata* and that the subsequent legislation did not effectuate a change.

(4) **In the Matter of Steven and Joanne Galasso,** CBA No. 13-029 (2013). This involved a request for map correction to secure a business zone in Lutherville on Falls Road. The CBA applied the "transaction" test to find the petition raised issues equivalent to those of previous cases. Pages 9-13. The Galassos appealed, but then voluntarily dismissed their appeal. Civil Action No. 03-C-14-000485 (2014).

(5) **In the Matter of Harlan Zinn**, CBA No. 13-295-SPH (2014). This involved a request to approve a dwelling on an undersized waterfront lot on Cold Spring Road in the Bowleys Quarters area. The petitioners in the first case (2003), Janice Oberst and Robert Long, had requested variances; in the second case (2004) Oberst and Zinn requested approval to build a dwelling on an undersized lot. These two cases resulted in denials.

In 2007, Zinn filed another request for variances. The Zoning Commissioner and CBA dismissed based on *res judicata*. Zinn filed yet another petition, which the CBA decided in 2014. Zinn's new argument for change was that the small lot table provisions do not apply. He also asserted the property was larger than originally thought. Citing Seminary Galleria and Powell v. Breslin, the CBA dismissed this petition. The CBA found it "incredulous' that Zinn would claim the small lot table does not apply after his repeated requests for relief from such restrictions. CBA Page 10.

(6) **In the Matter of Belvedere Baptist Church (Davenport Preschool)** CBA No. 15-004-SPH (2015). The preschool on Cheverly Road requested relief from a condition imposed in the final 2013 grant of their special exception. They wanted a maximum of 150 children, instead of the 120 maximum set in the earlier contested case. In setting the limit, the ALJ had recognized the residents' traffic congestion concerns.

The preschool argued for a change in conditions. They argued the operation of the school showed it was safe, that there had been no accidents, and that parents were required to sign a statement on safe driving. They also cited student population growth and the need to accommodate them. The CBA rejected these arguments, citing the traffic issues and needs of the school were reviewed and resolved in the first case. If the preschool was unhappy with the limit in the earlier case, they should have filed an appeal.

(7) **In the Matter of Andrew and Stephanie Mattes**, CBA No. 11-051-SPH (2012). This involved a petition by area residents to determine that a fishing and crabbing operation on Island View Road had exceeded the scope of its 1978 use permit approval. Zoning Commissioner (ZC) Wiseman had previously denied their petition to determine the permit itself was invalid; but in his opinion, he advised the residents they could file another petition to seek review of their concern raised first at the hearing that the expansion or intensification was excessive and illegal.

The owners/operators of the facility asserted *res judicata*. Our office argued the expansion issue was sufficiently different from validity of the original permit. Because ZC Wiseman had advised the residents to file a new petition. It appeared to us to be extraordinarily unfair to apply *res judicata* in this unique situation. Nevertheless, the CBA held *res judicata* was applicable, that the residents were obligated to appeal the first decision, and so dismissed the new petition. There was no further appeal.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

IN RE: DEVELOPMENT PLAN HEARING N/S of Millers Lane, S Raven Rock Court 7th Election District 3rd Councilmanic District (MONTCLAIR) (fka Gaffney Property)	*	BEFORE THE HEARING OFFICER OF BALTIMORE COUNTY Case No. VII-372
George W. Gaffney *Developer/Petitioner*	*	

* * * * * * * * * * * *

HEARING OFFICER'S OPINION & DEVELOPMENT PLAN ORDER

This matter comes before this Deputy Zoning Commissioner/Hearing Officer for Baltimore County, as a requested approval of a Development Plan known as "Montclair", prepared by McKee & Associates, Inc. The Developer is proposing to develop the subject property into 16 single-family dwellings. The subject property is located on the north side of Millers Lane, south of Raven Rock Court. The particulars of the manner in which the property is proposed to be developed are more specifically shown on Developer's Exhibit No. 1, the Development Plan entered into evidence at the hearing. However, on the third day of the case and after all reviews, the Developer substituted Exhibit No. 9 for Exhibit No. 1 as its Development Plan.

The property was posted with Notice of the Hearing for the Montclair Development Plan on January 30, 2004, in order to notify all interested citizens of the requested zoning relief.

Appearing at the hearing on behalf of the Development Plan approval request were George Gaffney and Marion K. Robinson on behalf of the Petitioner and Geoffrey C. Schultz, appearing on behalf of McKee & Associates, Inc, the firm who prepared the Development Plan. Howard L. Alderman, Jr., Esquire represented the Petitioner at the hearing.

Appearing in opposition to the Development plan were M. V. Runkles, III, Chris Matthai, Dr. Richard McQuaid, George and Mary Drake, Glen Miller and Lynne Jones. J. Carroll Holzer, Esquire, represented the protestants in this matter.

Also in attendance were representatives of the various Baltimore County reviewing agencies; namely, John Sullivan (Zoning Review), Robert Bowling (Development Plans Review), Colleen Kelly (Bureau of Land Acquisition) and Christine Rorke (Development Management), all from the Office of Permits & Development Management; R. Bruce Seeley from the Department of Environmental Protection and Resource Management ("DEPRM"); Lynn Lanham from the Office of Planning; and Jan Cook from the Department of Recreation & Parks.

Exh. #1

As to the history of the project, a Concept Plan Conference was held on November 13, 2001 and a Community Input Meeting followed on December 10, 2001 at the Hereford Middle School. A second Concept Plan Conference was held on April 7, 2003 and an additional Community Input Meeting followed thereafter on May 14, 2003 at the Hereford High School. A Development Plan Conference was held on February 11, 2004 and Hearing Officer's Hearings were held on March 5 and 9, 2004 in Room 106 of the County Office Building. An additional hearing was held in this matter on May 18, 2004 in Room 407 of the County Courts Building.

Developer Issues

The Developer raised no issues on his own and recommended approval of the plan.

County Issues

Each of the representatives of the County agencies that review development plans indicated that the Redline Development Plan addressed their issues and met all County regulations within their jurisdiction. In addition the following agencies noted additional information for the record upon questioning by Mr. Holzer:

Recreation and Parks

The representative of the Department of Recreation & Parks indicated their department granted the Developer's request to pay a fee in lieu of providing local open space but that the written waiver had not yet been signed as of March 5, 2004.

Public Works

The retaining wall shown on the Development Plan is acceptable to Public Works.

There is enough right-of-way on York Road to provide an acceleration/deceleration lane.

Provided the Petitioner Terra Firma grants an easement there will be enough sight distance

on York Road for traffic coming from Montclair Court. This is a Phase II matter.

DEPRM

There had been a prior minor subdivision on the Gaffney property at 18020 York Road, which delineated certain forest conservation easement areas. There is a structure associated with 18020 York Road owned by Petitioner Gaffney which is located in the existing forest buffer area. Structures located within forest buffer areas would violate the regulations. Note 57 of the Development Plan indicates that the Developer will seek a continuing use variance for the structure to remain in the forest buffer area or the structure will be brought into compliance. However the property known as 18020 York Road is not within the Development Plan boundaries. Consequently the structure is not within the Development Plan boundaries.

A storm water management waiver for quantity was granted by DEPRM in October 30, 2002 which indicates that the waiver is effective only until July 1, 2003. The Developer was to have a building or grading permit by that time. Otherwise, the waiver becomes invalid. See Protestant's Exhibit No. 1. However, by letter dated March 24, 2003, DEPRM revised its prior ruling and indicated that since the plan was filed prior to July 1, 2001, the time that the waiver would be valid is two years after development plan approval provided a permit is issued within that two year time frame. See Protestant's Exhibit No. 2.

Community Issues

Carroll Holzer, Esquire represented the Protestants in this matter and he raised the following issues: traffic safety, nearby Wiseburg Inn is a historic site, loss of value of adjacent existing homes and properties; location of road on Lot 1; landscaping of the road; wells and septic systems on adjacent properties; and storm water management.

Applicable Law

Section 26-206 of the B.C.Z.R. *Development Plan Approval.*

(a) (1) A public quasi-judicial hearing before the hearing officer is required prior to final action on a plan. The hearing may be informal in nature. The hearing officer shall regulate the course of the hearing as he may deem proper, including the scope and nature of the testimony and evidence presented.

(2) The hearing officer shall take testimony and receive evidence regarding any unresolved comment or condition that is relevant to the proposed plan, including testimony or evidence regarding any potential impact of any approved development upon the proposed plan.

(3) The hearing officer shall make findings for the record and shall render a decision pursuant to the requirements of this section.

(b) The hearing officer shall grant approval of a Development Plan that complies with these development regulations and applicable policies, rules and regulations promulgated pursuant to section 2-416 et seq. of the Code, provided that the final approval of a plan shall be subject to all appropriate standards, rules, regulations, conditions, and safeguards set forth therein.

(o) In approving a plan, the hearing officer may impose such conditions, as may be deemed necessary or advisable based upon such factual findings as may be supported by evidence for the protection of surrounding and neighboring properties. Such conditions may only be imposed if:

(1) The condition is based upon a comment which was raised or a condition which was proposed or requested by a part;

(2) Without the condition there will be an adverse impact on the health, safety or welfare of the community;

(3) The condition will alleviate the adverse impact; and

(4) The condition does not reduce by more than twenty (20) percent the number of dwelling units proposed by a residential Development Plan in a D.R.5.5, DR 10.5, or DR 16 zone, and no more than twenty (20) percent of the square footage proposed by a non-residential Development Plan. This subsection is not applicable to a PUD Development Plan.

Section 26-278 Preservation of Natural or Historic Features

Testimony and Evidence

The Developer's case was presented by Geoffrey Schultz, a registered land surveyor, who was accepted as an expert witness. He testified that the property on which the development is proposed consists of two parcels, which together contain 61.1 acres, more or less, and is zoned RC 4 and RC 5. The east boundary of the property is Interstate 83 and the eastern side of the

property is forest buffer and forest conservation easement areas of approximately 35 acres with streams and steep sloped terrain. The property will have access to York Road via a new public road known as Montclair Court, which also serves to collect storm water throughout the development. The development will border the existing subdivision served by Raven Rock Court. The Developer proposes 16 lots for single-family dwellings each of which has passed septic perc testing. Existing structures on the property will be razed. Mr. Schultz testified that the Redline Development Plan met all County regulations as presented.

Mr. Schultz recognized that proposed Lots 14 and 15 are adjacent to the " Wiseburg Inn" located at 18200 York Road. This building is on the National Historic Landmark list. Consequently, the Developer proposed screening the historic site from the new homes on these lots by a 30 ft. wide landscape easement containing evergreen plantings.

He also noted that a swale containing historic artifacts on the northern edge of the property along Lots 10 and 11 had been designated on the Maryland Archeological Survey as Item 18 BA 496. This swale will be referred to hereinafter as the "dump swale". Mr. Schultz indicated that the Baltimore County Landmarks Preservation Commission had considered adding the dump swale to the landmarks list but had determined not to do so. See a letter from the Office of Planning to the owner, Mr. Gaffney dated November 14, 2003, Developer's Exhibit No. 4. Mr. Schultz pointed out that Note 53 on the Development Plan indicated that this area was not to be disturbed and would remain in the forest buffer.

Mr. Schultz noted that while the property known as 18020 York Road is and will be owned by Petitioner Gaffney, that the property is outside of the proposed development. Consequently, he did not believe having the existing structure in the forest buffer area of the prior subdivision was an issue for this plan.

He also indicated that the storm water management waiver granted by DEPRM was for quantity only, as the Developer showed a net decrease in storm water runoff from the property. However, he noted that the Developer had not been granted a waiver for water quality and that the plan showed that the storm water management system would capture and filter runoff to meet the quality regulations.

During cross-examination by Mr. Holzer, Mr. Schultz was shown a letter dated December 27, 2001 from the Administrative Secretary of the Baltimore County Landmarks Preservation Commission to Petitioner Gaffney, which showed the approximate limits of the dump swale containing historic artifacts. See Protestants' Exhibit No. 5. Mr. Schultz was asked to depict the dump swale on the Development Plan which is shown on Protestants' Exhibit No. 6 and highlighted in yellow. This indicated that the swale lies along proposed Lots 10, 11 and 12 rather than Lots 10 and 11.

Protestants Case

The protestants presented several lay witnesses in opposition to the plan. Chris Matthai, an adjacent property owner of 501 Raven Rock Court, expressed concern that the State Highway Administration reduced the length of the acceleration/deceleration lane on York Road at the intersection of Montclair Court from 375 ft. to 250 ft. Apparently, the State's initial comment at the Concept Plan Conference required the longer lanes. He indicated that the entrance was on a steep hill on York Road and that there is a sharp turn south of the property that would limit seeing oncoming vehicles on York Road.. He also requested an environmental impact study of this development with the Tracy's Choice development, both of which were on the hill. He was concerned that Lots 4, 5 and 6 were too small to meet County regulations. He questioned whether this development would overload the public schools in the area. Finally, he requested that the fire suppressor tanks adjacent to his lot be moved onto the Gaffney property.

George Drake who owns 503 Raven Rock Court requested that Montclair Court and Lot 1 of the proposed Development Plan be redesigned so that the back of his home would not face the Montclair Court but rather face the rear of the new home on Lot 1. See Protestant's Exhibit No. 7 for a history of the road and Lot 1. The Developer agreed and the resulting realignment and modification to Lot 1 is shown on Developer's Exhibit No. 9, the Final Development Plan.

Mr. Drake also expressed concerns about the problems that he and his neighbors have had with wells going dry in the area. He noted that one nearby church had to drill 21 wells before getting a well with sufficient flow. He was concerned about 16 more homes drawing water from the same resource. Finally, he indicated that he observed endangered species such as a yellow bellied sap sucker on the Gaffney property.

Marion Runkles, adjacent property owner, gave a short overview of the historic buildings in the immediate area. He lives at the Wiseburg Inn, which is listed on the Baltimore County Landmarks Lists as well as the National Historic Register and occasionally operates tours from the inn to illustrate the historic nature of the property.. See protestants' Exhibit Nos. 11 and 17. He objected to the 10-lot cluster of new homes located immediately adjacent to the historic site, particularly in regard to the view from the historic buildings. He opined that the view toward the new homes was the last original vista from the historic site which would be destroyed by the new homes and interfere with programs run form the historic Inn. Prior to any final decision being made by this Zoning Commission, he strongly recommended that the Development Plan be referred to the Planning Board for their review.

Mr. Runkles further opined that the dump swale had produced artifacts from the Wiseburg Inn such as those shown in protestant's Exhibit No. 11. He indicated that in the days before the local government collected trash, people would dump refuse into such swales to dispose of trash. He presented the application for inclusion of the Wiseburg Inn on the National Register, which

indicated the swale dump as part of the overall application. He objected to simply "preserving" the site by designating the area in a forest buffer to remain undisturbed, but rather recommended that the Developer actively protect the dump swale from bottle collectors and the like by means of fencing and adding covenants to the deeds of Lots 11 and 12.

He was also concerned about the effect the new homes would have on a spring located on his property that he uses to water livestock. He stated that his well went dry during a recent drought. In addition, he was concerned about pollution from septic systems in the new development. He expressed concern regarding the development adverse affect on endangered species, which he has observed on the Gaffney property over the years. These species include birds such as the Yellow Bellied Sapsucker, Sharp Shinned Hawk, Loggerhead Strike, and Alder Flycatcher. He has also observed New England Cottontail, Eastern Spotted Skunk and Eastern Tiger Salamander on the property.

Mr. Runkles also was concerned about the additional traffic generated by this development and presented photographs of York Road, particularly south of the proposed intersection with Montclair Court. See protestant's Exhibit No. 16.

On cross-examination, he admitted that the Baltimore County Landmarks Preservation Commission failed to include the dump swale on the County List and that, based upon Dr. Wall's report, the Office of Archeology of the Maryland Historical Trust found that no further archeological work was warranted on the site. He also admitted that even if the property was fully developed according to the plan, there would be 35 + - acres of property which would remain in the forest conservancy easement. Finally, he acknowledged that he applied for and was granted a permit to build a barn on his property near the historic Inn.

Dr. Richard McQuaid testimony echoed that of other protestants who believed the plan should be referred to the Planning Board because it "involves" a historic structure. He

emphasized that Section 26-278 requires preservation of sites on the Maryland Historical Survey. He was also concerned about wells that may go dry and the traffic on York Road.

In rebuttal, the Developer called Dr. Robert Wall, a Registered Professional Archeologist, who was accepted as an expert witness. He testified that he conducted an archeological survey of the dump swale. This survey involved a surface survey and not an archeological excavations. He testified that he observed that the dump swale was used as a dumping ground containing modern refuse such as automobile tires, plastic items, etc. He found no foundations or ruins. He noted the these items had likely washed down the swale over time and in this context he found that the site was disturbed to the extent that further examination of the site from a historical perspective was not warranted. He indicated that the value of historical sites is that the artifacts are found in an undisturbed state that allows relating the find to the historic site. However, in this case, the material was disturbed and so any artifacts would have no archeological value. Therefore, he recommended no further archeological work on this site.

Referral to Planning Board

On March 9, 2004, after the second day of testimony, the attorneys agreed that the plan should be referred to the Planning Board for its review of the impact on the historic structures pursuant to Section 26-207 (a) 3 of the B.C.Z.R. As shown by the memorandum dated April 27, 2004 from Arnold Keller, Secretary of the Planning Board, to the hearing officer (a copy of which is attached hereto), the record reflects the fact that the Planning Board referred the plan to the Landmarks Preservation Commission who also reviewed the plan and recommended additional changes including additional screening and buffering. See the memorandum from Sharon Paul to the Planning Board dated April 9, 2004. On April 15, 2004, the Planning Board adopted the Landmarks Preservation Committee's recommendations, which pursuant to Section 28-208 (c) are binding on the hearing officer.

Subsequent to the memorandum of the Planning Board, the Developer modified the Development Plan. Mr. Schultz testified that Exhibit No. 9 incorporates all changes to the plan required by the Planning Board, incorporates the changes to the roadway and Lot No. 1 to meet the agreement with Mr. Drake, and meets all County regulations. The revised plan, Developer's Exhibit No. 9, was reviewed by each County agency and found to conform to each agency's regulations.

Mr. Runkles also reviewed Developer's Exhibit No. 9 and recommended that Lots 14 and 15 be eliminated because the grade only drops off 15 ft. and the second floor and roofs would still be visible from the historic site.

Findings of Fact and Conclusions of Law

I find that Developer's Redline Development Plan, Exhibit No. 9, contains all of the conditions required by the Planning Board to mitigate the impact of the development on the historic Wiseburg Inn.

I accept Dr. Wall's testimony that the dump swale site was disturbed and that even if historic artifacts are found, they would have no archeological value. He recommended that no further archeological work be done on this site. The Office of Archeology of the Maryland Historical Trust agrees. In addition, apparently after full presentation and debate, the Baltimore County Landmarks Preservation Committee did not see enough historical merit to the dump swale to include it on the County Landmarks List.

Nonetheless, since the dump swale is on the Maryland Archeological Survey, it must be "preserved". I note that the Planning Office only recommends that the area be set aside in a mandatory forest buffer in order to comply with Section 26-278. Given Dr. Wall's testimony, I agree that fencing should not be required even though I considered such a condition. I further accept the Office of Planning's recommendation to simply preserve the site as undisturbed forest

buffer.

A problem arises, however, as I see the site depicted on Protestants' Exhibit No. 6 that the site extends beyond the forest buffer area and into the rear of Lots 11 and 12. Note 53 attempts to address this issue but does not cover Lot 12. Also, I am not convinced that adding a note to the Final Development Plan will accomplish the statutory requirement of preservation for future purchasers of these homes. I think a deed restriction is more appropriate under the circumstances. Therefore, I will require that the Developer delineate the extent of the dump swale site on Lots 10,11 and 12 by a metes and bounds description and further require deed covenants on these lots that the area of the dump swale in these lots remain undisturbed. Note that the fourth Planning Board requirement for exterior lighting also requires deed covenants.

The protestants raised the issue of protecting endangered species. Several lay witnesses testified they observed fauna on the endangered list on the Gaffney property. However Section 26-278 of the BCZR requires protection of the habitat of an endangered species. There was no lay testimony much less expert testimony that the habitat for the species observed on the property would be threatened by the development. Also as noted by the Developer, 35 acres of the property will be permanently dedicated to forest buffers and conservancy areas. There is no reason to believe this will not provide sufficient habitat for the species observed by the protestants.

The protestants raised the issue of the structure associated with 18020 York Road which all admit is in the existing forest conservation easement area of the prior subdivision. All evidence indicates that the structure is not located within the boundaries of this development plan. I find that even if the structure is in violation of another subdivision restrictions, that fact even if true has no effect on the subject development plan. Why the Developer added note 57 to this plan remains a great mystery to me.

Finally Mr. Runkles complains that even if the additional screening is placed between the Wiseburg Inn and lots 14 and 15 and the homes on these lots moved away from the Inn as directed by the Planning Board, one could still see the roof and second floor of the new homes from the historic site adversely affecting the historic nature of the property. He requests these lots be eliminated. However it appears to me that a less restrictive alternative of limiting the height of homes on these lots to one story will mitigate the problem sufficiently.

After considering the evidence and testimony in this case, I find the final Development Plan, Developer's Exhibit No. 9, complies with the development regulations and applicable policies, rules and regulations promulgated pursuant to Section 2-416 et seq. of the Code. I further find that final approval of a development plan is subject to all appropriate standards, rules, regulations, conditions, and safeguards set forth therein, subject to the following conditions:

1. The Developer shall delineate the dump swale site on Lots 10, 11 and 12 by metes and bounds and by deed covenants require that the area of the dump swale in these lots remain undisturbed.

2. That the Developer submit a landscape plan to the County Landscape Architect for approval, which among other requirements shown on the development plan clarify that the plantings used to screen the historic Wiseburg Inn from the new homes in this development be of a type to create a sight buffer with mature evergreens; and

3. That the homes on Lots 14 and 15 be no more than one story in height

THEREFORE, IT IS ORDERED, by this Deputy Zoning Commissioner/Hearing Officer for Baltimore County, this 1 day of June, 2004, that the Development Plan known as "Montclair", submitted into evidence as "Developer's Exhibit No. 9", be and is hereby APPROVED subject to the following conditions:

1. The Developer shall delineate the dump swale site on Lots 10, 11 and 12 by metes and bounds and by deed covenants require that the area of the dump swale in these lots remain undisturbed.

2. That the Developer submit a landscape plan to the County Landscape Architect for approval which among other requirements shown on the development plan shall clarify that the

plantings used to screen the historic Wiseburg Inn from new homes in this development be of a type to create a sight buffer with mature evergreens; and

3. That the homes on Lots 14 and 15 be no more than one story in height

Any appeal from this decision must be taken in accordance with Section 26-209 of the Baltimore County Code and the applicable provisions of law.

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

BALTIMORE COUNTY, MARYLAND

MEMORANDUM

TO: Lawrence E. Schmidt
Hearing Officer

DATE: April 27, 2004

FROM: Arnold F. 'Pat' Keller, III
Secretary, Baltimore County Planning Board

SUBJECT: Decision regarding development "Montclair" (Gaffney Property), PDM # VII-372) which involves a Landmark structure ("Weisburg Inn"/ "Half-Way House")

In accordance with Section 26-207(a)(3) of the Baltimore County Zoning Regulations, this project was reviewed by the Planning Board during its meetings on April 1, 2004 and April 15, 2004.

By unanimous vote of all members present, the Board's decision to the Hearing Officer is that, for the reasons stated in the March 24, 2004 staff report (enclosed), approval of the development plan for "Montclair" (PDM #VIII-372) shall include the finding and, as requirements, the recommendations specified in the April 9, 2004 report from the Landmarks Preservation Commission (enclosed). In addition, the loop at the end of Montclair Court is to be reduced to a standard cul-de-sac and shifted so that the distance of the homes in lots #14 and #15 will be at least 100 feet from the rear property line (as close as possible to the minimum front building setback line). These properties shall also be landscaped and fenced in accordance with standards provided by the Office of Planning.

Enclosures

AFK:CBH

c: Timothy M. Kotroco, Director, PDM

Baltimore County
Office of Planning

401 Bosley Avenue - Ste 406
Towson, Maryland 21204
410-887-3211
Fax: 410-887-5862
E-mail: planning@co.ba.md.us

TO: Baltimore County Planning Board, and Landmarks Preservation Commission

DATE: March 24, 2004

FROM: Office of Planning

SUBJECT: Proposed development -- "Montclair" (Gaffney Property) -- which "involves a structure on the Baltimore County Landmarks List (the "Half Way House"/ "Weisburg Inn")

General Information

Owner: George W. Gaffney

Project Number: VII-372

Location: Generally southwest of the intersection of York and Wiseburg Roads, in Northern Baltimore County

Zoning: RC 4, RC 5

Total Area: 60.07± acres

Surrounding Zoning and Land Use:

North:	RC 5	Agriculture
South:	RC 4	Agriculture and Single Family/Rural Standards
East:	RC 5	Agriculture and Single Family/Rural Standards
West:	RC 4	Interstate Highway (I-83)

Project Proposal:

The applicant proposes subdivision of the property, 60 acres of land zoned RC 5 (9 acres) and RC 4 (51 acres), into lots for 16 single-family-detached dwellings. The site is currently farmed, with steep slopes, a stream, and an associated forest buffer paralleling I-83.

Historic Resources - Landmark Structure:
The Weisburg Inn, at 18200 York Road, is located about 500' east of the Gaffney property, on an adjacent parcel abutting York Road at the intersection with Wiseburg Road. The Weisburg Inn, also known as the Halfway House, listed as No. 69 on the Baltimore County Final Landmarks List and is also listed on the National Register of Historic Places. Depending on the particular site conditions, development on land abutting a property with such historic significance and designations may be deemed to "involve" the Landmark structure (pursuant to County Code Section 26-207 (a)(3)).

Historic Resources – Planning Board's Role:
Before the Hearing Officer can take final action on the plan for development on a property which "involves a ... structure ... included on the Landmarks ... List" the plan must be referred to the Planning Board. The Board then has 45 days to "file its written decision with the Hearing Officer, including the reasons therefor." The Board's decision is "binding upon the Hearing Officer and shall be incorporated as part of the Hearing Officer's final action on a plan." These requirements are specified in the Development Regulations at subsections 26-207(a)(3), 26-208(b)(2) and 26-208(c).

The development plan for the Gaffney property has been referred, by the Hearing Officer, at the owner's request. Consideration by the Planning Board is scheduled to begin in the meeting on April 1, 2004 and to be concluded on April 15, 2004.

Historic Resources – Landmarks Preservation Commission's Role:
On individual properties (such as the Weisburg Inn), the Landmarks status, and the LPC's subsequent authority, pertain only to the "exterior architectural features" of the designated Landmark structure, i.e., only to the Weisburg Inn and not including any of the land surrounding the Landmark structure. Because the development plan has been referred to the Planning Board, however, the Plan will also be scheduled for review in the LPC's meeting on April 8, 2004 to give the Commission the opportunity, as usual, for making advisory comments to the Planning Board. The Commission's comments will be communicated to the Board on or before April 15th.

Staff Analysis and Recommendations:
The plans for the development of the Gaffney property have been reviewed by the Office of Planning (OP) at each stage of the process. Ultimately, the Office's February 11, 2004 report to the Hearing Officer with comments on the Development Plan, stated:

> The Office of Planning does not recommend referral to the Planning Board due to the distance and proposed landscaping between the development and the Weisburg Inn at 18200 York Road. (No. 69 on the Baltimore County Final Landmarks List.)

The staff's recommendation was based on the following analysis:

> The proposed houses on Lots [14] and [15], although about 600' distant from the Weisburg Inn, may be partially visible from the rear of the Inn. The Office of Planning recommends that the existing deciduous hedgerow along the boundary between the two properties be supplemented with large evergreens to provide an effective year-round

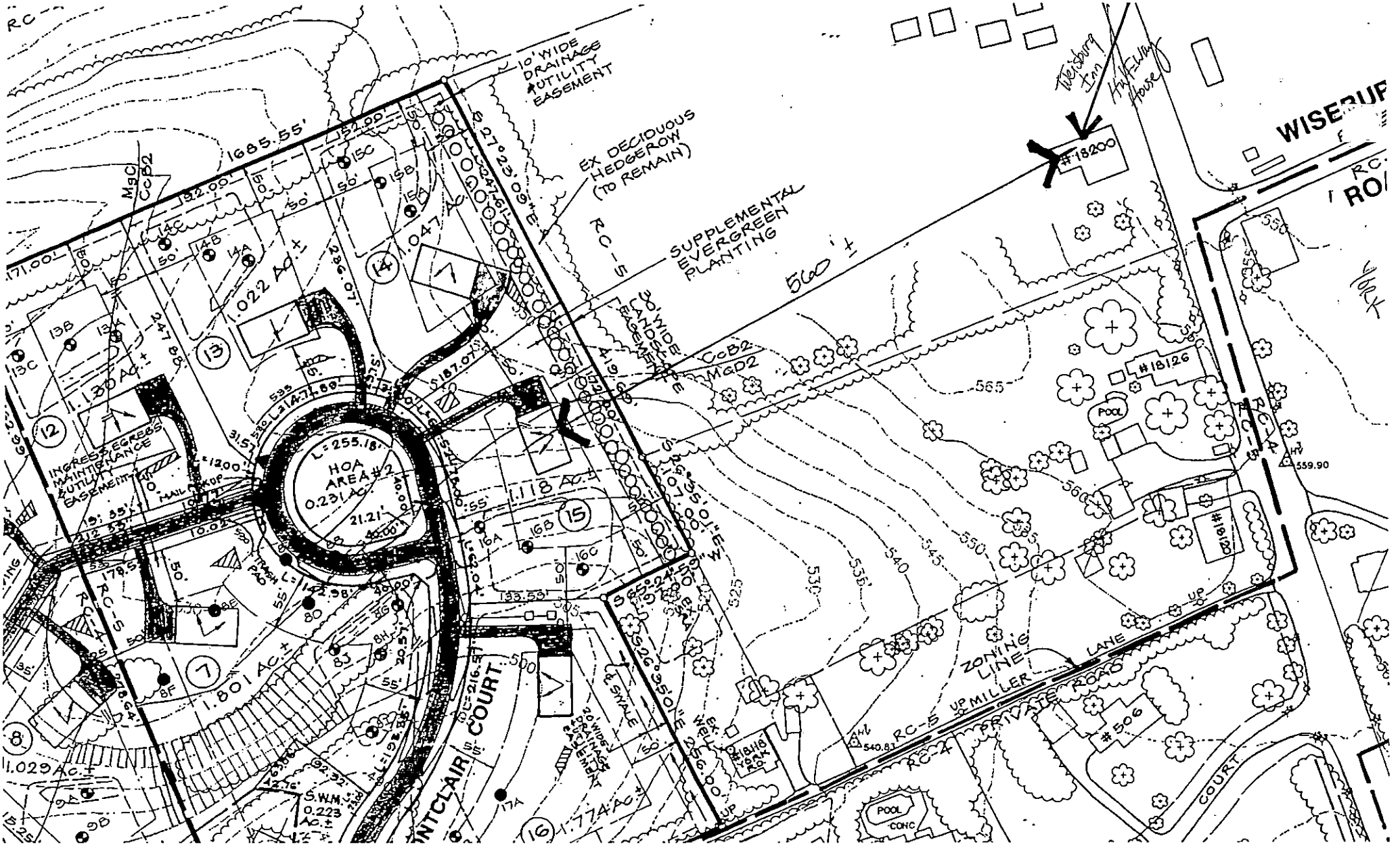
visual screen. The Final Landscape Plan should show this planting, which may, with the adjoining owner's permission, be installed on the east side of the property line, or, if installed on the developer's side, should be protected by easement. If the screening is approved by this means, the Office of Planning recommends a finding by the Hearing Officer that the Montclair development does not involve the Weisburg Inn.

The Office of Planning reviewed the Development Plan for conformance with prior comments. The Final Landscape Plan shows the requested planting (34 white pines, 6 to 7' height), on the developer's side, protected by a 30-foot wide landscape easement. The Development Plan also notes that the existing deciduous hedgerow is to remain.

Therefore, the Office of Planning continues to recommend, in relation to historic resources on or adjoining the Gaffney property, that the Development Plan be **APPROVED**, subject to any additional requirements that may be decided by the Planning Board.

Arnold F. 'Pat' Keller, III
Director

AFK:TD:td


10' WIDE DRAINAGE & UTILITY EASEMENT
EX. DECIDUOUS HEDGEROW (TO REMAIN)
SUPPLEMENTAL EVERGREEN PLANTING
20' WIDE LANDSCAPE EASEMENT
1685.55'
132.00'
171.00'
1.022 Ac.±
1.047 Ac.±
1.120 Ac.±
1.118 Ac.±
1.801 Ac.±
1.029 Ac.±
1.774 Ac.±
L=255.18'
HOA AREA#2
0.231 Ac.±
INGRESS EGRESS MAINTENANCE & UTILITY EASEMENT
MAIL PICK UP
PARK PAD
S.W.M. 0.223 Ac.±
INTCLAIR COURT
ZONING LINE
PRIVATE LANE
MILLER ROAD
COURT
#18200
#18126
#18120
#506
POOL
POOL CONC
RC-5
RC-4
CcB2
MgC
MgD2
559.90
540.81

BALTIMORE COUNTY, MARYLAND

MEMORANDUM

TO: Baltimore County Planning Board **DATE:** April 9, 2004

FROM: Sharon W. Paul, Planning Board's Representative
Landmarks Preservation Commission

SUBJECT: LPC's comments of the effects of the "Montclair" development on the Landmark Half-way House (Weisburg Inn)

As requested by the Planning Board the potential effects of the proposed development of the Gaffney property ("Montclair") on the adjoining property containing the Landmark structure were discussed in the LPC's April 8, 2004 meeting. After presentations by the developer's attorney and engineering and architectural consultants, and extensive discussion among the Commissioners, the LPC voted unanimously to recommend a finding by the Planning Board that the development would not have an adverse effect on the setting on the Landmark structure provided that the development plan is made subject to at least the following protective requirements:

1. The Planning Board's concerns about fencing should be met by requiring the installation, along the eastern side of the 30' buffer area, of a continuous, three-panel post-and-rail fence with black wire mesh between the rails.

2. There should be a perpetual, affirmative responsibility on the required Homeowners' Association for maintenance of the buffer area and its protective features.

3. The trees to be installed in the buffer area should be at least 10' – 12' high at the time of planting, and should be planted in a staggered, offset pattern.

4. The deed covenants pertaining at least to lots 14 and 15 should require that exterior lighting in the side and rear yards shall be aimed down, towards the ground, and not towards the Landmark property.

5. The new dwelling to be constructed on lot 15 should be sited as close as possible to the minimum front building setback line (i.e., moved forward approximately 20' – 30' from the position shown on the proposed development plan).

SWP:TD:td

Cc: Steven J. Nolan, Esq.
Mr. Marion Runkles

IN THE MATTER OF MONTCLAIR fka GAFFNEY PROPERTY / PDM VII-372 LOCATED ON THE N/S MILLERS LANE, S RAVEN ROCK CT	*	BEFORE
	*	COUNTY BOARD OF APPEALS
	*	OF
7TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
RE: HEARING OFFICER'S DECISION	*	CASE NO. CBA-04-134

* * * * * * * * *

OPINION

This matter is before the Board of Appeals based on an appeal of the Hearing Officer's Order dated June 1, 2004 approving the development plan known as "Montclair." A timely appeal was filed by Appellants, M.V. Runkles, III; Weisberg Inn; Chris Matthai; Dr. Richard McQuaid; George and Mary Drake; Lynne Jones; and Jan Staples, individually, Maryland Line Area Association, Inc., and the Parkton Area Preservation Association, Inc., by and through their attorney, J. Carroll Holzer of HOLZER & LEE (hereinafter "Appellants").

In accordance with § 26-209 of the *Baltimore County Code* (new § 32-4-281 of the 2003 *Baltimore County Code*), the matter was set for public hearing on July 28, 2004. The Developer was represented by Howard Alderman, Jr., Esquire, (hereinafter "Developer"). Oral argument was heard at the hearing, and a public deliberation took place on August 25, 2004.

In argument before the Board, the Appellants described the property in question as containing a total of 60 acres on the north side of Millers Lane, south of Raven Rock Court. The property in question is zoned R.C. 4 and R.C. 5; ten lots will be developed on the R.C. 4 portion of the property and six will be developed on the R.C. 5 portion. The Appellants indicated that it was the lots on the R.C. 5 portion of the property that are the focus of the appeal. The Appellants presented testimony indicating that the Weisberg Inn was a historical landmark that hosts numerous reenactments of Revolutionary and Civil War activities.

In argument before the Board, the Appellants indicated that the Hearing Officer erred in the following areas:

1. By not increasing the size of the buffer between Montclair and the appellant's property line
2. By not recognizing that a stream that runs through the appellant's property.
3. By not recognizing the existence of the appellant's property serving as a habitat for endangered species.
4. By not addressing the scarceness of ground water available on the proposed development.
5. By not considering that the site has archaeological significance.
6. By not eliminating Lots 14 and 15 in the development plan.

Mr. Alderman argued for the Developer that 16 lots were allowed on the site and that 16 were proposed. He indicated that, although a portion of the Weisberg Inn was on the historical register, the entire property was not. According to Mr. Alderman's argument, the Weisberg Inn was actually 500 feet from the common property line. The Developer indicated that the stream on the property was in fact not a stream at all but a drainage ditch, and that there are no COMAR regulations on drainage ditches. The Developer also indicated that the forest buffers for the proposed project had been approved by Baltimore County's Department of Environmental Protection and Resource Management (DEPRM) and meet *Baltimore County Code* requirements. Regarding the habitat for endangered species, the Developer indicated that the Department of Natural Resources keeps the official list for the State of Maryland and that no endangered species habitats are listed on the property in question. The Developer also indicated that the drilling of the wells will be reviewed by DEPRM and that no wells have been drilled at this time. As for the discussion of whether or not the site has any archaeological significance, the Developer

4. He requests these lots be eliminated (14 and 15). However, it appears to me that a less restrictive alternative of limiting the height of homes on these lots to one story will mitigate the problem.

During the public deliberation held on August 25, 2004, the Board reviewed the argument presented at the public hearing which was held on July 28, 2004. The Board discussed the issue of the stream and found that there was not sufficient testimony to indicate that a stream did exist on the property. The Board indicated that the issue of endangered species must be decided by the Department of Natural Resources and not the residents of a particular property. The Board felt that the argument as to the historical nature of the Appellant's property was weakened by the existence of a non-historical barn that has been erected by the Appellant. The Board could not find reason to question the testimony of Dr. Wall regarding the archaeological insignificance of the property. The Board was confident that the issue of ground water on the site would be monitored by the appropriate County agencies during the development process. The Board also found it significant that each County agency had reviewed the Development Plan and found that it conformed to each agency's regulations, including all regulations regarding the buffer zone between the property lines. The Board also indicated that it was supportive of the conditions placed on the Development Plan by the Hearing Officer in his Opinion of June 1, 2004, particularly the condition limiting the homes on lots 14 and 15 to one-story dwellings.

Decision

Under § 26-209(b) of the *Baltimore County Code* (new § 32-4-281[e], 2003 *Baltimore County Code*), the Board may remand, affirm, reverse, or modify the Hearing Officer's decision. Modification or reversal, however, is warranted only upon the ground that a finding, conclusion, or decision of the Hearing Officer exceeded his statutory authority or jurisdiction, resulted from

an unlawful procedure, was affected by any other error of law, was unsupported by competent evidence when considered in toto, or was arbitrary or capricious. With respect to factual matters, the scope of review is quite narrow and deferential, attuned to the standard articulated by Maryland's Court of Appeals in *People's Counsel v. Mangione*, 85 Md. App. 738 (1991); namely, "whether a reasoning mind reasonably could have reached the factual conclusion that the agency reached; this need not and must not be either judicial fact-finding or substitution of judicial judgment for agency judgment."

If adequate information exists to support the finding of the Hearing Officer, the Board, on appellate review of the case, cannot substitute its judgment for that of the Hearing Officer. In reviewing the issues at hand, the Board finds that there is sufficient evidence and testimony to warrant affirming the Hearing Officer. The Board wishes to make it clear that it is affirming the Hearing Officer's decision with the following conditions that he established in his ruling on June 1, 2004:

1. The Developer shall delineate the dump swale site on Lots 10, 11, and 12 by metes and bounds and by deed covenants require that the area of the dump swale in these lots remain undisturbed.

2. That the Developer submit a landscape plan to the County Landscape Architect for approval, which among other requirements shown on the development plan clarify that the plantings used to screen the historic Wiseburg Inn (sic) from the new homes in this development be of a type to create a sight buffer with mature evergreens; and

3. That the homes on Lots 14 and 15 be no more than one story in height.

ORDER

IT IS THEREFORE this 2nd day of September, 2004 by the County Board of Appeals of Baltimore County

ORDERED that, for the reasons stated in the foregoing Opinion, the decision of the

Hearing Officer dated June 1, 2004, in which the subject Development Plan was approved with conditions, be and the same is hereby AFFIRMED; and it is further

ORDERED that the Development Plan for Montclair fka Gaffney Property, PDM VII-372, our Case No. CBA-04-134, be and the same is **APPROVED**, with the following conditions as ordered by the Hearing Officer:

1. The Developer shall delineate the dump swale site on Lots 10, 11, and 12 by metes and bounds and by deed covenants require that the area of the dump swale in these lots remain undisturbed.

2. That the Developer submit a landscape plan to the County Landscape Architect for approval, which among other requirements shown on the development plan clarify that the plantings used to screen the historic Wiseburg Inn (sic) from the new homes in this development be of a type to create a sight buffer with mature evergreens; and

3. That the homes on Lots 14 and 15 be no more than one story in height.

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*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chairman

Edward W. Crizer, Jr.

Donald I. Mohler III

IN RE:	IN THE MATTER OF MONTCLAIR DEVELOPMENT PLAN (f/k/a Gaffney Property) N/S Miller's Lane; S. of Raven Rock Ct.	*	IN THE CIRCUIT COURT
		*	FOR
		*	BALTIMORE COUNTY
	Marion v. Runkles, et. al.,	*	
	Appellants	*	CASE NO.: 03-C-04-010234
	v.	*	
	George W. Gaffney, MD and Terra Firm, Inc.	*	
	Appellees	*	

* * * * * * * * * * * * *

MEMORANDUM OPINION AND ORDER

This appeal comes to the Circuit Court for Baltimore County from a decision made by the Deputy Zoning Commissioner / Hearing Officer for Baltimore County and approved by the County Board of Appeals. A Community Input Meeting and a Development Plan conference concerning the approval of a development plan known as "Montclair" were held on May 14, 2003 and February 11, 2004, respectively. On June 1, 2004, the Hearing Officer approved the Development Plan. Petitioners appealed to the County Board of Appeals and a hearing was held on July 28, 2004. On September 2, 2004, the Board of Appeals affirmed the Decision of the Hearing Officer and the Development Plan for the Montclair property was approved with the three (3) conditions as ordered by the Hearing Officer. Petitioners filed a timely appeal and a hearing was held before this court on April 13, 2005. For the reasons stated herein, the Decision of the Hearing Officer and the Board of Appeals will be AFFIRMED.

Ref Boa, Olderman, Holtzer

STATEMENT OF THE CASE

This case concerns the approval of a proposed Development Plan known as "Montclair." The Owners and Appellees of the property at issue are George W. Gaffney, M.D., and Terra Firm, Inc., a Maryland Corporation. The Appellants are local residents of property adjacent to the lots proposed by the Development Plan.

The Owners' property (the subject property) consists of sixty (60) acres on the north side of Miller's Lane and the south side of Rock Raven Court in the 3rd Councilmanic District of Baltimore County. It is situated in between Interstate 83, on the west, and York Road, on the east. Approximately 35 acres of the subject property are wooded. The remainder is an open field. (Appellee's Memorandum, 1-2)

The subject property is adjacent to property owned by M.V. Runkles, one of the Appellants (the Runkles Property). Located on the Runkles Property is the Weisburg Inn. The Inn is adjacent to York Road, which is approximately 500 feet east of the subject property. Recently, Mr. Runkles constructed a 4,000 square foot metal barn in the rear of his property between the Weisburg Inn and approximately 35 feet from the subject property. (Appellee's Memorandum, 2) The Weisburg Inn is designated as a Baltimore County landmark.

Just north of the Runkles property is a Baltimore Gas and Electric (BGE) site. Further north lies a church.

The property in question is zoned R.C. 4 and R.C. 5. According to the Development Plan, sixteen (16) lots will be developed with ten lots on the R.C. 4 portion and six lots on the R.C. 5 portion. The proposed development of lots on the R.C. 5 portion of the property are the focus of the appeal. (Hearing Officer's Opinion).

ISSUES PRESENTED

The Appellants raised the following issues on appeal:

1. Whether the Hearing Officer erred in approving the Development Plan without providing a greater buffer than that proposed by the Planning Board and Landmarks Preservation Commission;
2. Whether the Hearing Officer erred by failing to find a seasonal stream on the Weisburg Inn property that was not shown on the proposed Development Plans;
3. Whether the Hearing Officer erred in failing to address the destruction of habitat behind the Weisburg Inn as a result of the proposed development and its effect upon endangered species native to the area;
4. Whether the Hearing Officer erred in failing to make a finding as to the scarcity of ground water;
5. Whether the Hearing Officer erred by giving credibility to the testimony of Dr. Wall, expert archeologist, where Dr. Wall had no written documents to indicate the date, time and sites he visited;
6. Whether the Hearing Officer erred by failing to require that an area containing historic artifacts be fenced off where the Maryland Historic Trust recognized the area and assigned it a number.
7. Whether the Hearing Officer erred in failing to find Appellee's testimony on state highway issues credible.

STANDARD OF REVIEW

A person "aggrieved or feeling aggrieved" by final action on a Development Plan may file a notice of appeal with the County Board of Appeals and the Department of Permits and Development Management within 30 days after the date of the final decision of the Hearing Officer. Baltimore County, Md. Code (Baltimore County Code) §32-4-281(b) (2003).

In a proceeding under Baltimore County Code §32-4-281(e), the Board of Appeals may:

(i) Remand the case to the Hearing Officer;

(ii) Affirm the decision of the Hearing Officer; or

(iii) Reverse or modify the decision of the Hearing Officer if the decision:

1. Exceeds the statutory authority or jurisdiction of the Hearing Officer;
2. Results from an unlawful procedure;
3. Is affected by any other error of law;
4. Is unsupported by competent, material, and substantial evidence in light of the entire record submitted; or
5. Is arbitrary and capricious.

A County Board of Appeals' decision may be set aside by a reviewing court only if the decision is premised upon an error of law or if the decision is unsupported by substantial evidence. Umerley v. People's Counsel for Baltimore County, 108 Md. App. 497, 503, 672 A.2d 173, cert. denied, 342 Md. 584 (1996).

In Umerley, the Court of Special Appeals set forth a three-step analysis for the court to conduct when reviewing a decision of an administrative agency. First, the

reviewing court "must determine whether the agency recognized and applied the correct principles of law governing the case." Umerley, 108 Md. App. At 503-04, citing Comptroller v. World Book Childcraft, 67 Md. App. 424, 508 A.2d 148 (1986). Next, the reviewing court "examines the agency's factual findings to determine if they are supported by substantial evidence." Id. Finally, the reviewing court "must examine how the agency applied the law to the facts." The test of appellate review of this function is "whether – a reasoning mind could reasonably have reached the conclusion reached by the [agency], consistent with a proper application of the [controlling legal principles]." Id.

DISCUSSION

1. Whether the Hearing Officer erred in approving the Development Plan without providing a greater buffer between Lots 14 and 15 and the Weisburg Inn than that proposed by the Planning Board and Landmarks Preservation Commission.

The Planning Board, in consideration of recommendations by the Landmarks Preservation Committee (LPC), imposed a 30 foot buffer area which included a post and rail fence with black mesh wire between the Weisburg Inn and Lots 14 and 15. The Planning Board also imposed an additional condition of 100 foot dwelling setbacks from the rear property lines for the same lots recommended by the LPC.

Appellant Runkles testified that Lots 14 and 15 would obstruct or affect the view from his property and the Weisburg Inn despite the Planning Board's proposed accommodations. As noted herein, the Planning Board's decision is binding on the Hearing Officer and must be incorporated as part of the Hearing Officer's decision. Baltimore County Code § 32-4-232(f)(1); §26-208(c). Appellants argue that the Hearing

Officer was arbitrary in failing to impose additional conditions and reductions on the Development Plan to protect the view and the Weisburg Inn. The Hearing Officer added the requirement of limiting Lots 14 and 15 to one story dwellings. According to Appellants, that additional condition would call for the elimination of lots 14 and 15.

The Baltimore County Code permits the Hearing Officer to impose additional conditions on the approval of a Development Plan in certain circumstances. Section 32-4-229(d) of the Baltimore County Code provides:

> (2) In approving a Development Plan, the Hearing Officer may impose any conditions if a condition:
>
> (i) Protects the surrounding and neighboring properties;
>
> (ii) Is based upon a comment that was raised or a condition that was proposed or requested by a participant;
>
> (iii) Is necessary to alleviate an adverse impact on the health, safety, or welfare of the community that would be present without the condition; and
>
> (iv) Does not reduce by more than 20 %:
>
> 1. The number of dwelling units proposed by a residential Development Plan in a DR 5.5, DR 10.5, or DR 16 zone; or
>
> 2. The square footage proposed by a non-residential Development Plan.
>
> (3) The Hearing Officer shall base the decision to impose a condition on factual findings that are supported by evidence.
>
> Baltimore County Code, § 32-4-229(d)(2)

During the proceedings before the Hearing Officer, the Appellants offered no evidence to show that eliminating Lots 14 and 15 "is necessary to alleviate an adverse impact on the health, safety, or welfare of the community that would be present without the condition." Baltimore County Code, § 32-4-229(d)(2) The facts indicate the Inn is

500 to 600 feet from the common property line and on the opposite side of an intervening ridge. Furthermore, Mr. Runkles acknowledged during cross-examination that he had constructed a 4000 square foot non-historical barn between the Inn and the proposed development property. Thus, the "historic view" he seeks to protect is already obstructed by his own construction. Notwithstanding the existence of the Runkles' barn, the Hearing Officer imposed an additional condition which limited Lots 14 and 15 to one story dwellings.

The recommendations of the LPC, Planning Board and the Hearing Officer's additional height restriction were all conditions imposed on the development of Lots 14 and 15.

This court finds that the Hearing Officer applied the correct law, made findings of fact supported by substantial evidence and properly applied the law to the facts. This court finds no error.

2. Whether the Hearing Officer erred by failing to find a seasonal stream on the Weisburg Inn property, which was not shown on the proposed Development Plans.

Appellants contend that the Hearing Officer failed to find a seasonal stream existed on Runkles' property. They argue that the alleged stream is within 100 feet of septic fields for Lots 12, 13, 14 and 15, in violation of the regulations.

Baltimore County Code §33-1-101(cc) defines a "stream" as follows: "Stream means a perennial or intermittent watercourse identified through site inspection and as approved by the Department of Environmental Protection and Resource Management (DEPRM)."

Bruce Seeley, a representative of the Baltimore County Department of Environmental Protection and Resource Management (DEPRM) testified before the Hearing Officer that the Appellees' Development Plan met all county rules and regulations. The Appellees' expert, George Schultz, noted that DEPRM conducted a field inspection and found that the alleged stream was merely a "drainage ditch." Mr. Schultz also testified that water flowed in the ditch during periods of hard rain, but noted that the ditch was not a perennial or intermittent watercourse. The Hearing Officer found Mr. Schultz's testimony credible.

Appellants offered the testimony by Mr. Runkles that a stream emanates from a spring on his property. They also offered photographs of the alleged stream into evidence. No expert testimony was offered to support Mr. Runkles' contention.

The Hearing Officer weighed the evidence before him and found the evidence from DEPRM and Mr. Schultz to be more credible than Mr. Runkles' testimony and photographs. The Hearing Officer evaluated the testimony of both witnesses and determined that there was no "stream" on the Runkles property as defined under Baltimore County Code §33-1-101(cc). He correctly identified, interpreted and applied the law. In addition, his findings were supported by substantial evidence.

3. Whether the Hearing Officer erred in failing to address the destruction of habitat behind the Weisburg Inn as a result of the proposed development and its effect upon endangered species native to the area.

Appellants contend that the Hearing Officer erred by failing to consider the impact of the proposed development on endangered species residing in the wooded area of the site.

Baltimore County Code, §33-1-101(i) defines "endangered species" as follows:

(i) *Endangered species.* "Endangered species" means a species of plant, animal, or fish that is listed as endangered:

(1) By regulation of the State Department of Natural Resources; or

(2) In accordance with the Federal Endangered Species Act.

Mr. Runkles and Mr. Drake testified that certain rare birds and rabbits on the endangered species list for the State of Maryland live in the woods and will be removed by the proposed development lots. Mr. Runkles testified that he has seen endangered birds and animals in these woods. Appellants also offered photographs of the purported endangered species.

In contrast, Mr. Schultz certified that no known endangered species live in the specified area. His certification and testimony was based upon site visits and a review of the list of rare, threatened and endangered species habitats maintained by the Maryland Department of Natural Resources. Furthermore, in a separate review, analysis and approval of the Forest Buffer plan and the State Forest Conservation plan, DEPRM reviewed the property for the presence of endangered species habitat areas. None were noted on the Forest Buffer plan or the state approved Forest Conversation plan.

The Hearing Officer considered the evidence and testimony presented by both parties and found the testimony offered by Mr. Schultz together with the DEPRM findings more credible than the lay testimony and photographs offered by the Appellants. The Hearing Officer determined that while there was testimony of sightings, there was no credible evidence in the record to establish the existence of an endangered species habitat on the subject property as defined in the Baltimore County Code. The Hearing Officer

did not consider the impact of the proposed development on the endangered species because he found, after considering the evidence, that there were no endangered species. His application of the law was correct and supported by substantial evidence.

4. Whether the Hearing Officer erred in failing to make a finding as to the scarcity of ground water.

Appellants argued that the Hearing Officer erred by failing to find that there is a scarcity of ground water in the area of the proposed development. They contend the Hearing Officer's decision should be remanded for an analysis of ground water content.

During the hearing, several residents testified about recent drilling in order to obtain new water wells. According to Appellants' testimony, a nearby church, located north of a BGE substation and an additional area of property, had to drill twenty-one (21) holes before finding well-water. Appellants expressed concern that the new development would deplete an already scarce water supply for area residents. The Appellants did not offer any expert testimony to support their scarcity of water argument.

Appellees affirmed, however, that the state mandated Water Appropriations process will be followed. As Appellees noted in their Memorandum and Mr. Schultz testified, test results indicated that a 1.0 acre lot would have adequate ground water recharge for one residential dwelling. The proposed development would build sixteen (16) homes on sixty (60) acres, which, according to Mr. Schultz, ensures a sufficient water supply. Also, Phase II of the Development Plan process will require the owners to obtain state mandated Water Appropriations Permits for the sixteen (16) lots.

Appellees also point out that the Appellant's testimony related to shallow, hand-dug water wells. The development property, however, requires deeper, drilled wells

which must meet DEPRM standards. Thus, Appellees' testimony that residents have had to dig many new well holes due to water scarcity does not bear on the methods required for the development property.

The Hearing Officer correctly identified, interpreted and applied the law. In addition, his conclusion was supported by substantial evidence.

5. Whether the Hearing Officer erred by giving credibility to the testimony of Dr. Wall, expert archeologist, where Dr. Wall had no written documents to indicate the date, time and sites he visited.

Appellants insist the Hearing Officer erred by accepting Dr. Wall's testimony that the dump site had been contaminated with modern refuse since Dr. Wall did not have written validation of the precise time and locations of his site visits.

Although Dr. Wall apparently did not have his field notes with him during cross-examination, his report indicated that he conducted a field investigation on October 15, 2004, of the property at issue. The report was admitted as Developer's Exhibit Number 2.

This Court finds that it was within the Hearing Officer's discretion to determine the credibility of Dr. Wall's testimony and that the Hearing Officer did not err by accepting Dr. Wall's testimony, despite lacking written verification of the times of his investigation.

6. Whether the Hearing Officer erred by failing to require that an area containing historic artifacts be fenced off where the Maryland Historic Trust recognized the area and assigned it a number.

In an effort to protect areas of concern to the Appellants, the Hearing Officer delineated dump swale sites on Lots 10, 11, and 12 by inclusion within a forest buffer and required deed covenants to describe the meets and bounds.

On appeal, Appellants contend that the Hearing Officer's order did not rise to the level of protection required by law. Appellants argue that any historic sites identified on any of the lists referred to in §32-4-223(8) of the Baltimore County Code must be preserved. Mr. Runkles' testimony indicated that the swale containing the historic artifacts on the northern end of the property along Lots 10 and 11 have been designated on the Maryland Archeological Survey as Item 18BA496. The Maryland Archeological Survey is found in Baltimore County Code §32-4-223(8). Appellants argue, therefore, that the property site "must be preserved." They contend that the Hearing Officer erred by failing to provide preservation according to Baltimore County Code §32-4-223(8), specifically requiring a fenced off area containing the historic artifacts.

Baltimore County Code §32-4-223(8) provides that archeological sites, including those identified by the Maryland Archeological Survey or the Maryland Historical Trust, must be identified on the Development Plan and preserved. However, the Code does not specify the means to preserve areas of land. Appellee's expert, Dr. Robert Wall, opined that fencing would not be required to preserve the site. In lieu of the fence, and in light of the evidence presented, the Hearing Officer selected two means of preservation, first including the majority of the dump swale within the County mandated, undisturbed forest buffer, and second, to require deed covenants on the area to be described by a metes and bounds survey. Appellants offered evidence that a fence is required to preserve the area.

The Court finds that the Hearing Officer correctly interpreted and applied the law. His decision was based upon substantial evidence in the record.

7. Whether the Hearing Officer erred in failing to find Appellee's testimony on State Highway issues credible.

During the hearing before the Board, Appellees offered lay testimony to support their contentions that the entrance area the development property will use to access York road is unsafe. The State Highway Administration, which is required to review development plans, has the sole authority to determine if a proposed access is safe and properly designed. Annotated Code of Maryland, Transportation Article § 8-204 (b) and (c) (2004), Code of Maryland Regulations (COMAR) § 11.04.06.01 et seq. As noted in Appellee's Memorandum, Mr. Schultz also testified about how the "State Highway Administration required the developer to redesign and relocate the entrance to the subject property to provide the maximum safety protection to the traveling public...." (Appellee's Memorandum, 24)

The Hearing Officer considered the lay testimony as well as the State Highway Administrations review of the access area at issue and the testimony of expert witness Schultz. He found the Appellee's evidence to be more credible. This court finds that the Hearing Officer properly weighed and evaluated the evidence before him. There was substantial evidence in the record to support his findings and he correctly interpreted and applied the law.

CONCLUSION

Therefore, upon consideration of the Board of Appeals Opinion, Appellees' Petition for Judicial Review, Appellant's Response to Petition for Judicial Review, the parties' respective Memoranda of Law, oral argument from both counsel, this matter having come for a hearing on April 13, 2005, and for the reasons cited above, on this 31st day of August, 2005, the decision of the Board of Appeals is hereby AFFIRMED.

JUDGE VICKI BALLOU-WATTS

Clerk, send copies to:

Howard L. Alderman, Jr., Esquire
J. Carroll Holzer, Esquire

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

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

DATE: 12/6/2016

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-113

INFORMATION:
Property Address: 502 & 504 Montclair Court
Petitioner: RREF II SB-MD, LLC.
Zoning: RC 5
Requested Action: Special Hearing

The Department of Planning has reviewed the petition for a special hearing to determine whether or not the Administrative Law Judge should approve modification of the conditions imposed in Zoning Case No. VII-372 to permit homes on Lots 14 and 15 greater in height than the permitted one story, to reduce the required rear yard setback for Lots 14 and 15 from 100 feet to 80 feet and to amend the Final Development Plan (FDP) for Montclair.

A site visit was conducted on November 17, 2016.

The Department objects to granting the petitioned zoning relief.

The subject lots are adjacent to the Wiseburg Inn, a Baltimore County Historic Landmark. The property is also under a Baltimore County Agricultural Preservation TEA 21 (or TEP) view shed easement.

In the memo dated 4/9/04 from the Landmarks Preservation Commission (LPC) to the Baltimore County Planning Board, protective requirement 5 states "The new dwelling to be constructed on Lot 15 should be sited as close as possible to the minimum front building setback line." On 4/15/04 the Planning Board adopted the LPC recommendations. Being sensitive to the historic condition of the adjacent property, the Deputy Zoning Commissioner in Zoning Case No. VII-372 imposed the height limit condition. The Department perceives no substantial change in the facts on the ground precipitating the original condition No. 3 in the decision and order for Zoning Case No. VII-372 as imposed by the Deputy Zoning Commissioner and recommends it remain and that the FDP for Montclair maintain the 100' rear yard setbacks on Lots 14 and 15.

For further information concerning the matters stated herein, please contact Joseph Wiley at 410-887-3480.

Prepared by:

Lloyd T. Moxley

Deputy Director:

Jeff Mayhew

AVA/KS/LTM/ka

c: Joseph Wiley
RREF II SB-MD, LLC.
Adam Baker, Esquire
Office of the Administrative Hearings
People's Counsel for Baltimore County

Rebecca Wheatley

From: Peoples Counsel
Sent: Tuesday, December 13, 2016 2:02 PM
To: John E. Beverungen
Cc: 'Baker, Adam D'; Jeff Mayhew; Lloyd Moxley
Subject: RREF II SB-MD LLC - 502 & 504 Montclair Court - Case No.: 2017-113-SPH
Attachments: Ltr to Jablon from M V Runkles on Montclair 2017-113-SPH.pdf; RREF III SB-MD LLC - Montclair 2017-113-SPH Planning Comment.pdf; Montclair Property VII-372 ZC Opinion.pdf; Montclair Property VII-372 & CBA-04-134 CBA Opinion.pdf; Montclair Property VII-372 Cir Ct Opinion.pdf

December 13, 2016,

Dear Judge Beverungen,

This morning, I had the opportunity to review the attached letter from Marion Runkles of 18,200 York Road to Arnold Jablon, Director of Permits, Approvals, and Inspections regarding the above Montclair Court case. Mr. Runkles' property adjoins the Montclair Court lots involved in the zoning petition No. 2017-113-SPH.

The letter both asks for a postponement of the scheduled December 19 hearing and raises some concerns about the petition. My impression is that the matter of postponement may be within the jurisdiction of the PAI Director. In any event, it seems to me helpful to transmit a copy to your office and to the office of Adam Baker, attorney for Petitioner.

Perhaps more important, we would like to take this opportunity to comment on the 2004-05 zoning/development plan litigation history, the present petition to amend specific lot 14/15 plan restrictions imposed upon the subdivision approval after extensive 2004-05 litigation, and the applicability of the *res judicata* doctrine.

The land use history involves a contested residential development plan case decided initially by Hearing Officer John Murphy (VII-372) on June 1, 2004, the County Board of Appeals (CBA-04-134) on September 2, 2004, and the Circuit Court (03-C-04010234) on August 31, 2005. The case concluded with a compromise approval which set conditions of a one-story height limitation on lots 14 and 15 and a rear yard setback minimum of 100 feet for these lots. We attach each of these decisions.

The present petition seeks to eliminate these explicit restrictions. The present site plan appears to be the 2004 site plan with a few red lines and text to reflect the proposed new allowances. There is no indication that the zoning classifications have changed.

The Planning Department's attached December 6, 2016 memorandum recites some of the history, including the Landmark Preservation Commission recommendation of the limitation congruent with the historic situation of the adjacent property (of Mr. Runkles). The Planning Department recommends that the limits remain in place, perceiving no substantial change in the facts on the ground. A copy of this email is being transmitted to Jeff Mayhew and Lloyd Moxley of the Planning Department.

Under these circumstances, it appears at this juncture that zoning *res judicata* comes into play, as illustrated in such cases as Whittle v. Board of Appeals 211 Md. 36 (1956); Woodlawn Area Citizens v. Board of County Comm'rs 241 Md. 187 (1966); Seminary Galleria v. Dulaney Valley Improvement Ass'n 192 Md. App. 719 (2010), and such recent cases here as Back River, LLC v. Baltimore County 2008-531-SPH, 221 Md. App. 726 (2014), unreported, and Freeland Community Ass'n v. HZ Properties CBA 09-003, CSA No. 656, Sept. Term, 2014, final, unreported.

Zoning *res judicata* has applied in a number of cases where petitioner sought to terminate restrictions imposed in previous contested cases: In the Matter of Bonner-Joppa CBA No. 04-127 –SPH (tow truck prohibition condition for service garage special exception approval); In the Matter of Belvedere Church (Davenport Preschool CBA No. 15-004-SPH (limitation of 120 children for child care facility special exception approval, affirming ALJ decision); In the Matter of Catherine Robinson CBA 15-235-SPHA (minimum setback limitation for kennel special exception approval). In each of these cases, the Board found requests to remove the litigated restrictions barred by res judicata. The CBA decisions in Bonner-Joppa and Davenport Preschool became the final decisions. There were no petitions for judicial review. The Robinson decision is recent, with the CBA having issued its opinion and then denied in public deliberation a motion for reconsideration.

The gist of all these cases is that *res judicata* applies to land use cases, including zoning, so long as there is not a substantial change in circumstances in the neighborhood relevant to the situation. Otherwise stated, as Judge Hammond observed long ago in Whittle, it would be arbitrary and capricious to overturn or reverse a previous litigated decision among the parties or their privies. These cases show that the courts do not accept superficial and specious claims of substantial change.

It should also be noted that *res judicata* applies to parties and those in privity, such as successor owners. That was the situation, of course, in the HZ Properties case.

We hope you find this information and these observations helpful as you approach this case. Because our main preliminary concern is with the legal issue, our present intent is to submit on the record. We anticipate Mr. Runkles will reprise at the hearing the concerns which animated his participation in the 2004 case. At this juncture, we see no basis to allow any relaxation of the restrictions in issue.

Mr. Runkles has communicated with our office. Because he does not have email, we are sending this email to him by first class mail and phoning him to let him know. However, we felt it appropriate, in view of the timing, to seen this email promptly for review both by you and the attorney for Petitioner.

Sincerely, Peter Max Zimmerman, People's Counsel, 410 887-2188

Note: First class letter to Marion Runkles, III

Rebecca Wheatley

From: John E. Beverungen
Sent: Tuesday, December 13, 2016 2:43 PM
To: abaker@wtplaw.com; Peter Max Zimmerman
Subject: RE: RREF II SB-MD LLC - 502 & 504 Montclair Court - Case No.: 2017-113-SPH

Counsel,

I am in receipt of Mr. Zimmerman's email and the attachments thereto. Though I have not had a chance to review all of the prior orders, I did review the letter from Mr. Runkles requesting a postponement of the December 19 hearing. As Mr. Zimmerman noted, the postponement request will be decided by the Director of PAI.

Mr. Zimmerman also contends the above case is barred by the doctrine of *res judicata*. Though there is no formal motions practice in the OAH, the nature of the argument is such that the legal issue (like double jeopardy in a criminal proceeding) should be decided at the outset, whether before the public hearing or at the hearing before the "merits" of the case are reached.

As such, I would appreciate if Mr. Baker would file on or before December 16 a brief response to Mr. Zimmerman's *res judicata* argument. A short and succinct email would be fine, unless counsel thinks a more elaborate response is required.

John Beverungen
ALJ

From: Peoples Counsel
Sent: Tuesday, December 13, 2016 2:02 PM
To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Cc: 'Baker, Adam D' <ABaker@wtplaw.com>; Jeff Mayhew <jmayhew@baltimorecountymd.gov>; Lloyd Moxley <lmoxley@baltimorecountymd.gov>
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Rebecca Wheatley

From: Baker, Adam D <ABaker@wtplaw.com>
Sent: Tuesday, December 13, 2016 11:05 PM
To: John E. Beverungen; Peter Max Zimmerman
Subject: RE: RREF II SB-MD LLC - 502 & 504 Montclair Court - Case No.: 2017-113-SPH

Judge Beverungen,

Thank you. You will have my response by Friday, December 16th.

Adam D. Baker

Whiteford | Taylor | Preston LLP

8830 Stanford Boulevard, Suite 400 | Columbia, Maryland 21045
T: 410.832.2052 | F: 410.339.4028
abaker@wtplaw.com | Bio | vCard | www.wtplaw.com

From: John E. Beverungen [mailto:jbeverungen@baltimorecountymd.gov]
Sent: Tuesday, December 13, 2016 2:43 PM
To: Baker, Adam D; Peter Max Zimmerman
Subject: RE: RREF II SB-MD LLC - 502 & 504 Montclair Court - Case No.: 2017-113-SPH

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CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

Rebecca Wheatley

From: Peter Max Zimmerman
Sent: Wednesday, December 14, 2016 9:53 AM
To: John E. Beverungen
Cc: Baker, Adam D
Subject: RE: RREF II SB-MD LLC - 502 & 504 Montclair Court - Case No.: 2017-113-SPH

December 14, 2016

Dear Judge Beverungen,

Thank you for your response.

Under the circumstances, it seems fair that I attend the hearing rather than submit on the record. I assume it will go forward on Monday the 19th unless the PAI Director issues a postponement. I am not taking a position on the postponement.

Separately, I would like to add a postscript that should the case proceed beyond argument on the res judicata issue, it appears relevant to consider the zoning law governing amendments to final development plans (FDPs). BCZR Sec. 1B01.3. More specifically, there are the "special exception procedure" and 'consistent with the spirit and intent of the original plan" standards in BCZR Sec. 1B01.3.A.7.b. There is also the reliance interest expressed in the legislative purpose of BCZR Sec. 1B01.3.A.1.a, which I believe encompasses both subdivision lot purchasers and area citizens who decide to buy or stay in the area. It appears that Mr. Runkles has a reliance interest under this provision as well.

The FDP Amendment law has come up in several recent contested.cases, coincidentally involving religious institutions, reviewed by your office and now pending at the Board of Appeals (Hunt Valley Presbyterian and Goldman). Each case depends on its own facts and circumstances.

Again, in view of Mr. Runkles' lack of email capacity, I will send him a copy of your email and this reply by first class mail today.

Peter Max Zimmerman, People's Counsel

From: John E. Beverungen
Sent: Tuesday, December 13, 2016 2:43 PM
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John Beverungen
ALJ

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Sent: Tuesday, December 13, 2016 2:02 PM
To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Cc: 'Baker, Adam D' <ABaker@wtplaw.com>; Jeff Mayhew <jmayhew@baltimorecountymd.gov>; Lloyd Moxley <lmoxley@baltimorecountymd.gov>
Subject: RREF II SB-MD LLC - 502 & 504 Montclair Court - Case No.: 2017-113-SPH

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From: Baker, Adam D <ABaker@wtplaw.com>
Sent: Thursday, December 15, 2016 10:06 PM
To: John E. Beverungen; Peter Max Zimmerman
Subject: RE: RREF II SB-MD LLC - 502 & 504 Montclair Court - Case No.: 2017-113-SPH

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www.baltimorecountymd.gov

Rebecca Wheatley

From: John E. Beverungen
Sent: Friday, December 16, 2016 10:55 AM
To: Baker, Adam D; Peter Max Zimmerman
Cc: Debra Wiley; Kristen L Lewis
Subject: RE: RREF II SB-MD LLC - 502 & 504 Montclair Court - Case No.: 2017-113-SPH

OK. Please advise if anyone attends the hearing. Assuming the posting and advertisement requirements were satisfied, it will not be necessary for Petitioner to again post/advertise. Counsel should consult with one another and Mr. Runkles to obtain a convenient date, which must be arranged through Ms. Lewis at PAI.

John Beverungen
ALJ

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Sent: Thursday, December 15, 2016 10:06 PM
To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Subject: RE: RREF II SB-MD LLC - 502 & 504 Montclair Court - Case No.: 2017-113-SPH

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To: John E. Beverungen
Cc: Peter Max Zimmerman; jay.polin@rialtocapital.com
Subject: RE: RREF II SB-MD LLC - 502 & 504 Montclair Court - Case No.: 2017-113-SPH

Judge Beverungen,

Please accept this in response to People's Counsel's correspondence from earlier in the week regarding the above-referenced matter.

People's Counsel contends that the proposed removal of the conditions imposed on Lots 14 and 15 of the Montclair development cannot be approved based upon the doctrine of res judicata. It is clear that the doctrine of res judicata is applicable in quasi-judicial administrative proceedings. Seminary Galleria v. Dulaney Valley Improvement Association, 192 Md.App. 719, 734 (2010). It does not, however, apply in the instant case. The Maryland Court of Appeals clarified in Seminary that res judicata will not apply if there have been substantial changes in fact and circumstances between the first case and the second case. Id. at 736-37, quoting Whittle v. Bd. of Zoning Appeals, 211 Md. 36, 45 (1956).

In the instant matter, there have been substantial changes in fact and circumstances between the Hearing Officer's Order of June 1, 2004, which imposed the conditions we are now petitioning to have removed, and the filing of the current Petition for Special Hearing. First, at the time that Deputy Zoning Commissioner Murphy heard the case and submitted his Order, it is not clear that the 4,000 square foot barn which now sits at the rear of Mr. Runkles' property was constructed. While Mr. Runkles noted on cross examination during the hearing that he had obtained permits to build the barn, Judge Murphy could not fully comprehend the impact that the barn would have on Mr. Runkles' viewshed if the barn had yet to be built. Mr. Runkles contended at the Hearing Officer's Hearing that the view of the new homes on lots 14 and 15 would adversely affect the historic nature of his property. Constructing the barn on his property, directly in the viewshed that he sought to protect, clearly represents a substantial change in the facts and circumstances surrounding the imposition of the conditions.

Second, as part of the original Montclair development, the developer planted a strip of evergreen trees to screen the Runkles property from the new homes in Montclair with a vegetative buffer. Included in the buffer was a strip of evergreen trees. Since their planting, these evergreen trees have matured to the point where the majority of them are at or over 30 feet in height. With such substantial screening now in place, there is some question as to whether the roofs of the houses on Lots 14 and 15 would be visible if the conditions were removed (i.e. if the houses were 2 stories in height and setback 80 feet from the rear property line).

Third, the Montclair property has been developed since the conditional approval was granted in 2004. At the time that the conditions were imposed, the viewshed which Mr. Runkles sought to have protected included his rear yard (now improved with a 4,000 square foot barn) and an unimproved neighboring parcel. Now that the subdivision has been constructed, Mr. Runkles property borders a 15 lot subdivision where 12 of the lots are improved with single family dwellings (all of which are currently occupied). Notwithstanding the fact that Mr. Runkles tainted the viewshed that he sought to protect through constructing the barn, his property now borders an occupied subdivision. The impact of this subdivision represents a substantial change in the facts and circumstances associated with the imposition of the 2004 conditions.

Lastly, the interests of the residents of the Montclair subdivision should be considered. Lots 14 and 15, located on a cul de sac within Montclair, are the only 2 lots within the subdivision which remain undeveloped. This is largely because the conditions imposed in 2004 would only permit narrow, single story homes which (1) are incompatible with the Montclair

neighborhood, and (2) are not a pr t which is currently in demand in the re tate market. The residents of the community have an interest in having the development completed and in having these lots developed in a manner consistent with the existing community. The impact of undeveloped lots or lots developed in a manner that is wholly inconsistent with the rest of the development are issues that were not in place in 2004 when the conditions were imposed.

I appreciate your thoughtful consideration of this threshold issue. I will coordinate with People's Counsel and Mr. Runkles on finding a new date which is agreeable to all parties. Thank you.

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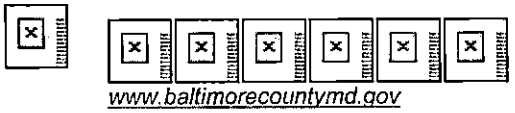

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Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

March 8, 2017

HAND DELIVERED
John Beverungen, Administrative Law Judge
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: RREF II, SB-MD, LLC
502 & 504 Montclair Court
Case No.: 2017-113-SPH
Hearing Date: March 16, 2017 @ 11 a.m.

Dear Judge Beverungen,

Upon review of the responsive e-mail from Adam Baker, attorney for petitioners, and also the amended petition, it appears to be in order to reply.

The amended petition incorporates verbatim the three elements of the original petition concerning lots 14 and 15, in essence: 1. increase in height over the one story previously permitted; 2. reduction in setbacks from property line from 100 feet to 80 feet; and 3. amendment of the final development plan for the Montclair residential subdivision. The Amended Petition here just adds a fourth element, two variances, for 55 feet from the street centerline instead of the required 75 feet and from the western lot line for lot 14 of 30 feet instead of the required 50 feet.

Upon review also of the redlined site plan, there are still the deviations to reduce the setbacks and increase the height in conflict with the limits set by Hearing Officer John Murphy in 2004 and affirmed by the County Board of Appeals and Circuit Court. Therefore, we see no reason to depart from our office's position that *res judicata* precludes this new request to relax those conditions substantially. We note that even were there were not a *res judicata* problem, it is difficult to see any legal justification for the FDP Amendment and variances.

We shall focus here on Mr. Baker's response. He identifies and argues the following as material changes in conditions to warrant relaxation of the 2004 conditions:

1. The first argument is that it is not clear that the Mr. Runkles' barn was constructed at that time. It is admitted that Mr. Runkles indicated in 2004 that he had a permit for the barn, and there is no claim that such barn would be illegal.
2. As part of the original Montclair development, developer planted a strip of evergreen trees to screen the Runkles property from the new homes with a vegetative buffer.

3. The Montclair property has been developed.
4. Lots 14 and 15 are the only lots in the subdivision which remain undeveloped. It is argued that the 2004 restrictions result in a situation where only narrow single story homes may be developed, and this would be incompatible with the homes in the neighborhood and are not currently in demand in the market.

A basic flaw permeates all of these allegations. In Prince George's County v. Prestwick 217 Md. 228029 (1971), the Court of Appeals held it settled that residential "development of an area along the lines contemplated in the original comprehensive zoning is not such a change as would support a finding of a substantial change in the character of the neighborhood." The Court cited, *inter alia,* MacDonald v. Board of County Comm'rs 238 Md. 549, 556 (1965) and Chatham Corp. v. Beltram 252 Md. 578, 585 (1969). Indeed, the MacDonald majority agreed with appellees to characterize such arguments as "bootstrap" arguments. The Court rejected another such claim of change in Cardon v. Town of New Market 302 Md. 77, 90-92 (2004).

To be sure, these cases were piecemeal zoning reclassification cases, but they are apt. Petitioners claimed that such things as new residential and commercial development, and new availability or installation of infrastructure, amounted to substantial changes in the neighborhood The principled denial of such claims applies even more forcefully here, where the first three of the "new" developments were all directly contemplated or even required by the original development approval. As for marketing, it is in the nature of markets to fluctuate. These do not amount to changes in the neighborhood. Anyway, the developer could have considered potential marketing issues in 2004.

Indeed, none of the alleged changes here even pertain to the neighborhood. They all focus on Mr. Runkles' barn and on the Montclair subdivision. Even more than in McDonald, these are bootstrap arguments. In the various appellate cases involving *res judicata* and changes in conditions which we cited in our e-mail, the courts have rejected a myriad of claims of change superficially more impressive. Accordingly, our office still maintains its *res judicata* position.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

cc: Adam Baker, Esquire, 8830 Stanford Blvd, Suite 400, Columbia MD 21045
M.V. Runkles, III, 18200 York Road, Parkton, Maryland 21120

Krysundra Cannington

From: Peoples Counsel
Sent: Monday, June 12, 2017 11:01 AM
To: Krysundra Cannington
Cc: Baker, Adam D
Subject: RREF II SB-MD, LLC - Case No.: 2017-113-SPH
Attachments: RREF II SB-MD, LLC 2017-113-SPH Motion to Dismiss.pdf

Ms. Cannington,

Attached you will find People's Counsel for Baltimore County's Motion to Dismiss Petition for Special Hearing. A hard copy was already filed with your office this morning.

If you have any problems viewing the document, please let our office know.

Thank you for your consideration.

Rebecca M. Wheatley, Legal Secretary
People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2189 Direct Dial
(410) 887-2188 Office
(410) 823-4236 Fax

KEVIN KAMENETZ
County Executive

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

March 30, 2017

Adam D. Baker, Esquire
Whiteford, Taylor & Preston, LLP
8830 Stanford Boulevard, Suite 400
Columbia, MD 21045

Peter Max Zimmerman, Esquire
Office of People's Counsel
105 West Chesapeake Avenue, Room 204
Towson, MD 21204

RE: **APPEAL TO BOARD OF APPEALS**
Petition for Special Hearing
Case No. 2017-0113-SPH
Property: 502 & 504 Montclair Court

Dear Counsel:

Please be advised that an appeal of the above-referenced case was filed in PAI on March 23, 2017 and received in this Office on March 27, 2017. 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,

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/dlw

c: Baltimore County Board of Appeals
M.V. Runkles, III, 18200 York Road, Parkton, MD 21120

WHITEFORD, TAYLOR & PRESTON L.L.P.

8830 STANFORD BLVD
SUITE 400
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MAIN TELEPHONE (410) 884-0700
FACSIMILE (410) 884-0719

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

WWW.WTPLAW.COM
(800) 987-8705

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

March 23, 2017

VIA HAND DELIVERY

RECEIVED
MAR 27 2017
OFFICE OF
ADMINISTRATIVE HEARINGS

Mr. Arnold Jablon, Director
Baltimore County Permits, Approvals and Inspections
County Office Building
111 W. Chesapeake Ave, Suite 105
Towson, Maryland 21204

Re: 502 & 504 Montclair Court
Case No.: 2017-0113-SPH

Dear Mr. Jablon:

Enclosed you will find an original and one copy of Notice of Appeal. Please file the original, date stamp the extra copy provided and return the copy to the undersigned in the enclosed self-addressed, stamped envelope. Also enclosed is a check in the amount of $265.00 to cover the filing fee.

Thank you.

Sincerely,

Adam D. Baker

AB/usm
Enclosure

cc: Peter Max Zimmerman, Esq.
23568

RECEIVED
MAR 23 2017
DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

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

Nº 143328

Date: 3-27-17

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0005		6150				265.00

Total: 265.00

Rec From: Adam Baker, Esq.

For: Appeal - Case No. 2017-0112-SPH

502 & 504 Montclair Rd.

March 16, 2017 Hearing

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

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
3/28/2017	3/27/2017	11:39:25	5

REG WS05 WALKIN LRB
>>RECEIPT # 892280 3/27/2017 OFLH
Dept 5 528 ZONING VERIFICATION
CR NO. 143328
Recpt Tot $265.00
$265.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

IN RE: PETITION FOR SPECIAL HEARING (502 & 504 Montclair Court) 7th Election District 3rd Councilmanic District	*	BEFORE THE
	*	OFFICE OF
	*	ADMINISTRATIVE HEARINGS
RREF II SB-MD, LLC	*	FOR BALTIMORE COUNTY
Legal Owner	*	Case No. 2017-0113-SPH
Petitioner		

* * * * * * * * * * *

NOTICE OF APPEAL

RREF II SB-MD, LLC (the "Owner"), Petitioner, by and through its attorneys, Adam Baker and Whiteford, Taylor and Preston L.L.P., feeling aggrieved by the Decision of the Administrative Law Judge in the above referenced matter, hereby files this Appeal to the County Board of Appeals from the Order of the Administrative Law Judge, dated March 13, 2017.

Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover costs. Petitioner was a party below and fully participated in the proceedings.

Respectfully submitted,

Adam Baker
Whiteford, Taylor & Preston, LLP
8830 Stanford Boulevard, Suite 400
Columbia, MD 21045
Phone: (410) 832-2052
Facsimile: (410) 339-4028
abaker@wtplaw.com
Attorneys for Petitioner,
RREF II SB-MD, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of March, 2017, a copy of the foregoing Notice of Appeal was mailed first-class, postage prepaid, to:

Peter Max Zimmerman, Esq.
People's Counsel for Baltimore County
The Jefferson Building
105 W. Chesapeake Ave., Suite 204
Towson, Maryland 21204

Adam Baker

23563

KEVIN KAMENETZ
County Executive

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

March 13, 2017

Adam D. Baker, Esquire
Whiteford, Taylor & Preston, LLP
8830 Stanford Boulevard, Suite 400
Columbia, MD 21045

Peter Max Zimmerman, Esquire
Office of People's Counsel
105 West Chesapeake Avenue, Room 204
Towson, MD 21204

RE: Petition for Special Hearing
Case No. 2017-0113-SPH
Property: 502 & 504 Montclair Court

Dear Counsel:

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

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

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw
Enclosure

c: M.V. Runkles, III, 18200 York Road, Parkton, MD 21120

IN RE: **PETITION FOR SPECIAL HEARING**	*	BEFORE THE
(502 & 504 Montclair Court)		
7th Election District	*	OFFICE OF
3rd Council District		
RREF II SB-MD, LLC	*	ADMINISTRATIVE HEARINGS
Legal Owner		
Petitioner	*	FOR BALTIMORE COUNTY
	*	**Case No. 2017-0113-SPH**

* * * * * * * *

OPINION AND ORDER

This case involves a residential subdivision in northern Baltimore County. Following a series of contested hearings and appeals, Developer obtained approval for a 16 lot subdivision. The approval imposed conditions that the dwellings on Lot Nos. 14 and 15 be limited to one-story structures and a rear yard setback of 100 feet was also required for these lots.

Developer has filed a petition for special hearing, seeking to have these restrictions modified. I believe the relief sought herein is barred by the doctrine of *res judicata*. In addition, the Administrative Law Judge (ALJ) is not authorized to modify the 100 ft. rear yard setbacks. As such, this case will be dismissed.

While it is unusual to dismiss a zoning case prior to a public hearing, it is not without precedent. *See, e.g.*, Case No. 2014-0064-SPH. In fact, a legal defense like *res judicata* should be decided at the earliest possible juncture, so the parties do not need to incur the time and expense of a hearing in a case that will ultimately not be resolved on the merits. In a series of e-mails (included in the case file) the parties have briefed the *res judicata* issue, which I believe can be decided as a matter of law.

Under Maryland law, an agency determination affirmed on appeal is entitled to preclusive effect. *Seminary Galleria, LLC v. Dulaney Valley Improv. Ass'n. Inc.*, 192 Md. App. 719, 736

(2010); *Esslinger v. Balto. City*, 95 Md. App. 607, 621 (1993). This is the case, and *res judicata* will apply, unless there is a significant change in circumstances between the earlier and subsequent action. *See, e.g., Alvey v. Hedin*, 243 Md. 334, 340 (1966). In light of this authority I believe the doctrine of *res judicata* mandates that the petition in this case be dismissed.

In its submissions Petitioner contends there have been significant changes in the community since the 2004 hearing. Petitioner notes nearly all of the homes in the subdivision have been constructed and sold, and the trees and other landscaping required in the 2004 order are now fully grown, obscuring some of the views sought to be preserved. Petitioner also contends a large barn was constructed in the rear yard of the Wiseburg Inn historic property (though such a structure is not shown on Petitioner's site plan), which also obscures the view shed sought to be preserved.

These are not the sort of significant changes contemplated by the case law. *See, e.g., Woodlawn Area Citizens Ass'n. v. Board of County Commissioners*, 241 Md. 187 (1966). Of course, it was intended and expected the homes in the subdivision would be constructed, and the same can be said regarding the maturation and growth of the vegetative buffer. These were anticipated and within the contemplation of the hearing officer when the conditions were imposed. As for the barn, the owner of the Wiseburg Inn testified at the 2004 hearing he had obtained a building permit for that structure, a fact expressly noted in the 2004 order. Thus, it is also clear the hearing officer was aware of this fact when the conditions were imposed. The neighborhood was in 2004, and remains today, a rural residential community. As such, the doctrine of *res judicata* is applicable.

In addition to the foregoing, the ALJ cannot grant the relief sought by Petitioner. The 100 foot rear yard setback was imposed by the Planning Board, to whom this case was referred pursuant to a Code provision concerning development proposals "involving" an historic structure.

Baltimore County Code ("B.C.C.") § 32-4-231(a)(3). The Wiseburg Inn, which adjoins the subject property, is designated as a Baltimore County historic landmark. Under the Code, the comments and conditions imposed by the Planning Board are "final" and "binding" on the ALJ. B.C.C. §32-4-232(f). As such, even if a hearing was held in this case the undersigned would be unable to grant the relief sought.

THEREFORE, IT IS ORDERED this **13th** day of **March, 2017** by this Administrative Law Judge, that the Petition for Special Hearing: (1) to permit a modification of the conditions imposed in Case No. VII-372 to permit homes on Lots 14 and 15 (502 and 504 Montclair Court) greater in height than the permitted one-story; (2) to permit a modification of the conditions imposed in Case No. VII-372 to reduce the required rear yard setback for Lots 14 and 15 (502 and 504 Montclair Court) from 100 ft. to 80 ft.; (3) to amend the Final Development Plan (FDP) for Montclair; and (4) to permit a setback of 55 ft. from the centerline of the road in lieu of the required 75 ft. and to permit a setback from the western lot line for Lot 14 of 30 ft. in lieu of the required 50 ft., be and is hereby **DISMISSED with prejudice**.

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln

ORDER RECEIVED FOR FILING
Date 3-13-17
By

Debra Wiley

From: John E. Beverungen
Sent: Monday, March 13, 2017 11:07 AM
To: Debra Wiley
Subject: 2017-113
Attachments: 2017-0113-SPH.docx

Final order. Lets email to Zimmerman and Baker, and mail to Runkles. In the cover letter lets ask Zimmerman to please contact Runkle to let him know the hearing date Thursday is cancelled. Thanks.

18,200 York Road
Parkton, MD. 21120
7 March 2017
(410) 343-0399

Hon. John Beverungen
Administrative Law Judge
Jefferson Building
105 W. Chesapeake Ave. Ste 103
Towson, MD. 21204

Ref: Case #2017-0113-SPH
16 March at 11:00 a.m.
502 & 504 Montclair Ct.

Dear Sir:

I did not learn of the date & time of this hearing until a telephone call from Peoples' Counsel yesterday, early afternoon. I was told back in December that I would consulted about the date & time.

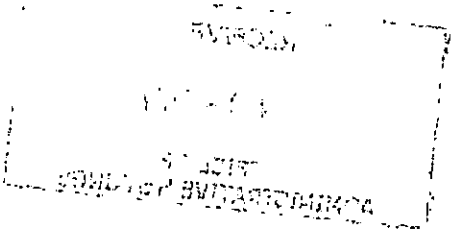
I would therefore like to request a postponement as I have an ophthalmologist appointment on that same day and will also be tied up the day before with a property tax protest. I also need more than this short notice to find old files and dig out information.

Furthermore, I was told that this hearing date was set on 17 February. Why was I not notified shortly thereafter? Please also note that I do not have E-mail at this time.

Very truly yours,

M. V. Runkles, III

cc: Peoples' Counsel
Arnold Jablon



Debra Wiley

From: Rebecca Wheatley
Sent: Thursday, March 09, 2017 10:33 AM
To: Debra Wiley; Sherry Nuffer
Cc: Kristen L Lewis
Subject: RREF II SB-MD, LLC - Case No.: 2017-113-SPH
Attachments: 20170309103253338.pdf

Debbie,

Per our conversation earlier today, attached are copies of the letters we received yesterday requesting postponement of the above-referenced case.

Please let our office know if a postponement is granted in this matter.

Rebecca Wheatley, Legal Secretary
Office of People's Counsel

Th.

18,200 York Road
Parkton, MD. 21120
7 March 2017
(410) 343-0399

Hon. John Beverungen
Administrative Law Judge
Jefferson Building
105 W. Chesapeake Ave. Ste 103
Towson, MD. 21204

Ref: Case #2017-0113-SPH
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Very truly yours,

M. V. Runkles, III

✓cc: Peoples' Counsel

Arnold Jablon

18,200 York Road
Parkton, MD. 21120
7 March 2017
(410) 343-0399

Mr. Arnold Jablon, Director
Permits, Approvals & Inspection
111 W. Chesapeake Ave. suite 105
Towson, MD. 21204

Ref: Case #2017-0113-SPH
16 March at 11:00 a.m.
502 & 504 Montclair Ct.

Dear Sir:

I would like to request a postponement of this case due to the reasons set forth in the carbon copy of my letter to Judge Beverungen, requesting the same, and which I have enclosed.

Very truly yours,

M. V. Runkles, III

JB 3-16-17
11 Am

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

March 8, 2017

HAND DELIVERED
John Beverungen, Administrative Law Judge
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

RECEIVED
MAR 07 2017
OFFICE OF
ADMINISTRATIVE HEARINGS

Re: RREF II, SB-MD, LLC
502 & 504 Montclair Court
Case No.: 2017-113-SPH
Hearing Date: March 16, 2017 @ 11 a.m.

Dear Judge Beverungen,

Upon review of the responsive e-mail from Adam Baker, attorney for petitioners, and also the amended petition, it appears to be in order to reply.

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Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

cc: Adam Baker, Esquire, 8830 Stanford Blvd, Suite 400, Columbia MD 21045
M.V. Runkles, III, 18200 York Road, Parkton, Maryland 21120

WHITEFORD, TAYLOR & PRESTON L.L.P.

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BALTIMORE, MD
BETHANY BEACH, DE*
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TOWSON, MD
WASHINGTON, DC
WILMINGTON, DE*

WWW.WTPLAW.COM
(800) 987-8705

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

February 1, 2017

Via Hand-Delivery
Mr. Jeffrey N. Perlow
County Office Building, Suite 105
111 West Chesapeake Avenue
Towson, Maryland, 21204

Re: 502 & 504 Montclair Court - Case No.: 2017-113-SPH

Dear Jeff,

Enclosed please find the following in association with the amended petition for the above-referenced matter:

1. Three (3) copies of the requested relief (to be attached to the original Petitions);
2. Twelve (12) updated site plans to accompany the Petitions; and
3. A check in the amount of $250 payable to Baltimore County for the amendment fee.

Per our discussion, you have my permission to update the Petition to indicate a request for Variance relief in addition to the requested Special Hearing relief.

Thank you for your kind attention in this matter. Should you have any questions, please call me.

Sincerely,

Adam D. Baker/mm

Adam D. Baker

AB:mm
Enclosures
446531

John E. Beverungen

From:	Peoples Counsel
Sent:	Tuesday, December 13, 2016 2:02 PM
To:	John E. Beverungen
Cc:	'Baker, Adam D'; Jeff Mayhew; Lloyd Moxley
Subject:	RREF II SB-MD LLC - 502 & 504 Montclair Court - Case No.: 2017-113-SPH
Attachments:	Ltr to Jablon from M.V Runkles on Montclair 2017-113-SPH.pdf; RREF III SB-MD LLC - Montclair 2017-113-SPH Planning Comment.pdf; Montclair Property VII-372 ZC Opinion.pdf; Montclair Property VII-372 & CBA-04-134 CBA Opinion.pdf; Montclair Property VII-372 Cir Ct Opinion.pdf

December 13, 2016,

Dear Judge Beverungen,

This morning, I had the opportunity to review the attached letter from Marion Runkles of 18,200 York Road to Arnold Jablon, Director of Permits, Approvals, and Inspections regarding the above Montclair Court case. Mr. Runkles' property adjoins the Montclair Court lots involved in the zoning petition No. 2017-113-SPH.

The letter both asks for a postponement of the scheduled December 19 hearing and raises some concerns about the petition. My impression is that the matter of postponement may be within the jurisdiction of the PAI Director. In any event, it seems to me helpful to transmit a copy to your office and to the office of Adam Baker, attorney for Petitioner.

Perhaps more important, we would like to take this opportunity to comment on the 2004-05 zoning/development plan litigation history, the present petition to amend specific lot 14/15 plan restrictions imposed upon the subdivision approval after extensive 2004-05 litigation, and the applicability of the *res judicata* doctrine.

The land use history involves a contested residential development plan case decided initially by Hearing Officer John Murphy (VII-372) on June 1, 2004, the County Board of Appeals (CBA-04-134) on September 2, 2004, and the Circuit Court (03-C-04010234) on August 31, 2005. The case concluded with a compromise approval which set conditions of a one-story height limitation on lots 14 and 15 and a rear yard setback minimum of 100 feet for these lots. We attach each of these decisions.

The present petition seeks to eliminate these explicit restrictions. The present site plan appears to be the 2004 site plan with a few red lines and text to reflect the proposed new allowances. There is no indication that the zoning classifications have changed.

The Planning Department's attached December 6, 2016 memorandum recites some of the history, including the Landmark Preservation Commission recommendation of the limitation congruent with the historic situation of the adjacent property (of Mr. Runkles). The Planning Department recommends that the limits remain in place, perceiving no substantial change in the facts on the ground. A copy of this email is being transmitted to Jeff Mayhew and Lloyd Moxley of the Planning Department.

Under these circumstances, it appears at this juncture that zoning *res judicata* comes into play, as illustrated in such cases as Whittle v. Board of Appeals 211 Md. 36 (1956); Woodlawn Area Citizens v. Board of County Comm'rs 241 Md. 187 (1966); Seminary Galleria v. Dulaney Valley Improvement Ass'n 192 Md. App. 719 (2010), and such recent cases here as Back River, LLC v. Baltimore County 2008-531-SPH, 221 Md. App. 726 (2014), unreported, and Freeland Community Ass'n v. HZ Properties CBA 09-003, CSA No. 656, Sept. Term, 2014, final, unreported.

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Mr. Runkles has communicated with our office. Because he does not have email, we are sending this email to him by first class mail and phoning him to let him know. However, we felt it appropriate, in view of the timing, to seen this email promptly for review both by you and the attorney for Petitioner.

Sincerely, Peter Max Zimmerman, People's Counsel, 410 887-2188

Note: First class letter to Marion Runkles, III

John E. Beverungen

From: Baker, Adam D <ABaker@wtplaw.com>
Sent: Tuesday, December 13, 2016 11:05 PM
To: John E. Beverungen; Peter Max Zimmerman
Subject: RE: RREF II SB-MD LLC - 502 & 504 Montclair Court - Case No.: 2017-113-SPH

Judge Beverungen,

Thank you. You will have my response by Friday, December 16th.

Adam D. Baker

Whiteford | Taylor | Preston

8830 Stanford Boulevard, Suite 400 | Columbia, Maryland 21045
T: 410.832.2052 | F: 410.339.4028
abaker@wtplaw.com | Bio | vCard | www.wtplaw.com

From: John E. Beverungen [mailto:jbeverungen@baltimorecountymd.gov]
Sent: Tuesday, December 13, 2016 2:43 PM
To: Baker, Adam D; Peter Max Zimmerman
Subject: RE: RREF II SB-MD LLC - 502 & 504 Montclair Court - Case No.: 2017-113-SPH

Counsel,

I am in receipt of Mr. Zimmerman's email and the attachments thereto. Though I have not had a chance to review all of the prior orders, I did review the letter from Mr. Runkles requesting a postponement of the December 19 hearing. As Mr. Zimmerman noted, the postponement request will be decided by the Director of PAI.

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As such, I would appreciate if Mr. Baker would file on or before December 16 a brief response to Mr. Zimmerman's *res judicata* argument. A short and succinct email would be fine, unless counsel thinks a more elaborate response is required.

John Beverungen
ALJ

From: Peoples Counsel
Sent: Tuesday, December 13, 2016 2:02 PM
To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Cc: 'Baker, Adam D' <ABaker@wtplaw.com>; Jeff Mayhew <jmayhew@baltimorecountymd.gov>; Lloyd Moxley <lmoxley@baltimorecountymd.gov>
Subject: RREF II SB-MD LLC - 502 & 504 Montclair Court - Case No.: 2017-113-SPH

December 13, 2016,

Dear Judge Beverungen,

This morning, I had the opportunity to review the attached letter from Marion Runkles of 18,200 York Road to Arnold Jablon, Director of Permits, Approvals, and Inspections regarding the above Montclair Court case. Mr. Runkles' property adjoins the Montclair Court lots involved in the zoning petition No. 2017-113-SPH.

The letter both asks for a postponement of the scheduled December 19 hearing and raises some concerns about the petition. My impression is that the matter of postponement may be within the jurisdiction of the PAI Director. In any event, it seems to me helpful to transmit a copy to your office and to the office of Adam Baker, attorney for Petitioner.

Perhaps more important, we would like to take this opportunity to comment on the 2004-05 zoning/development plan litigation history, the present petition to amend specific lot 14/15 plan restrictions imposed upon the subdivision approval after extensive 2004-05 litigation, and the applicability of the *res judicata* doctrine.

The land use history involves a contested residential development plan case decided initially by Hearing Officer John Murphy (VII-372) on June 1, 2004, the County Board of Appeals (CBA-04-134) on September 2, 2004, and the Circuit Court (03-C-04010234) on August 31, 2005. The case concluded with a compromise approval which set conditions of a one-story height limitation on lots 14 and 15 and a rear yard setback minimum of 100 feet for these lots. We attach each of these decisions.

The present petition seeks to eliminate these explicit restrictions. The present site plan appears to be the 2004 site plan with a few red lines and text to reflect the proposed new allowances. There is no indication that the zoning classifications have changed.

The Planning Department's attached December 6, 2016 memorandum recites some of the history, including the Landmark Preservation Commission recommendation of the limitation congruent with the historic situation of the adjacent property (of Mr. Runkles). The Planning Department recommends that the limits remain in place, perceiving no substantial change in the facts on the ground. A copy of this email is being transmitted to Jeff Mayhew and Lloyd Moxley of the Planning Department.

Under these circumstances, it appears at this juncture that zoning *res judicata* comes into play, as illustrated in such cases as Whittle v. Board of Appeals 211 Md. 36 (1956); Woodlawn Area Citizens v. Board of County Comm'rs 241 Md. 187 (1966); Seminary Galleria v. Dulaney Valley Improvement Ass'n 192 Md. App. 719 (2010), and such recent cases here as Back River, LLC v. Baltimore County 2008-531-SPH, 221 Md. App. 726 (2014), unreported, and Freeland Community Ass'n v. HZ Properties CBA 09-003, CSA No. 656, Sept. Term, 2014, final, unreported.

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It should also be noted that *res judicata* applies to parties and those in privity, such as successor owners. That was the situation, of course, in the HZ Properties case.

We hope you find this information and these observations helpful as you approach this case. Because our main preliminary concern is with the legal issue, our present intent is to submit on the record. We anticipate Mr. Runkles will reprise at the hearing the concerns which animated his participation in the 2004 case. At this juncture, we see no basis to allow any relaxation of the restrictions in issue.

Mr. Runkles has communicated with our office. Because he does not have email, we are sending this email to him by first class mail and phoning him to let him know. However, we felt it appropriate, in view of the timing, to seen this email promptly for review both by you and the attorney for Petitioner.

Sincerely, Peter Max Zimmerman, People's Counsel, 410 887-2188

Note: First class letter to Marion Runkles, III

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

John E. Beverungen

From: Baker, Adam D <ABaker@wtplaw.com>
Sent: Friday, December 16, 2016 4:56 PM
To: John E. Beverungen
Cc: Peter Max Zimmerman; jay.polin@rialtocapital.com
Subject: RE: RREF II SB-MD LLC - 502 & 504 Montclair Court - Case No.: 2017-113-SPH

Judge Beverungen,

Please accept this in response to People's Counsel's correspondence from earlier in the week regarding the above-referenced matter.

People's Counsel contends that the proposed removal of the conditions imposed on Lots 14 and 15 of the Montclair development cannot be approved based upon the doctrine of res judicata. It is clear that the doctrine of res judicata is applicable in quasi-judicial administrative proceedings. Seminary Galleria v. Dulaney Valley Improvement Association, 192 Md.App. 719, 734 (2010). It does not, however, apply in the instant case. The Maryland Court of Appeals clarified in Seminary that res judicata will not apply if there have been substantial changes in fact and circumstances between the first case and the second case. Id. at 736-37, quoting Whittle v. Bd. of Zoning Appeals, 211 Md. 36, 45 (1956).

In the instant matter, there have been substantial changes in fact and circumstances between the Hearing Officer's Order of June 1, 2004, which imposed the conditions we are now petitioning to have removed, and the filing of the current Petition for Special Hearing. First, at the time that Deputy Zoning Commissioner Murphy heard the case and submitted his Order, it is not clear that the 4,000 square foot barn which now sits at the rear of Mr. Runkles' property was constructed. While Mr. Runkles noted on cross examination during the hearing that he had obtained permits to build the barn, Judge Murphy could not fully comprehend the impact that the barn would have on Mr. Runkles' viewshed if the barn had yet to be built. Mr. Runkles contended at the Hearing Officer's Hearing that the view of the new homes on lots 14 and 15 would adversely affect the historic nature of his property. Constructing the barn on his property, directly in the viewshed that he sought to protect, clearly represents a substantial change in the facts and circumstances surrounding the imposition of the conditions.

Second, as part of the original Montclair development, the developer planted a strip of evergreen trees to screen the Runkles property from the new homes in Montclair with a vegetative buffer. Included in the buffer was a strip of evergreen trees. Since their planting, these evergreen trees have matured to the point where the majority of them are at or over 30 feet in height. With such substantial screening now in place, there is some question as to whether the roofs of the houses on Lots 14 and 15 would be visible if the conditions were removed (i.e. if the houses were 2 stories in height and setback 80 feet from the rear property line).

Third, the Montclair property has been developed since the conditional approval was granted in 2004. At the time that the conditions were imposed, the viewshed which Mr. Runkles sought to have protected included his rear yard (now improved with a 4,000 square foot barn) and an unimproved neighboring parcel. Now that the subdivision has been constructed, Mr. Runkles property borders a 15 lot subdivision where 12 of the lots are improved with single family dwellings (all of which are currently occupied). Notwithstanding the fact that Mr. Runkles tainted the viewshed that he sought to protect through constructing the barn, his property now borders an occupied subdivision. The impact of this subdivision represents a substantial change in the facts and circumstances associated with the imposition of the 2004 conditions.

Lastly, the interests of the residents of the Montclair subdivision should be considered. Lots 14 and 15, located on a cul de sac within Montclair, are the only 2 lots within the subdivision which remain undeveloped. This is largely because the conditions imposed in 2004 would only permit narrow, single story homes which (1) are incompatible with the Montclair

neighborhood, and (2) are not a product which is currently in demand in the real estate market. The residents of the community have an interest in having the development completed and in having these lots developed in a manner consistent with the existing community. The impact of undeveloped lots or lots developed in a manner that is wholly inconsistent with the rest of the development are issues that were not in place in 2004 when the conditions were imposed.

I appreciate your thoughtful consideration of this threshold issue. I will coordinate with People's Counsel and Mr. Runkles on finding a new date which is agreeable to all parties. Thank you.

Adam D. Baker

Whiteford | Taylor | Preston

8830 Stanford Boulevard, Suite 400 | Columbia, Maryland 21045
T: 410.832.2052 | F: 410.339.4028
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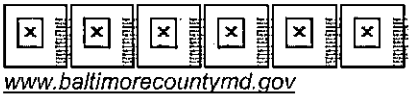
CONNECT WITH BALTIMORE COUNTY



www.baltimorecountymd.gov

12/12/
KL – OK to PP

18,200 York Road
Parkton, MD. 21120
6 December 2016
(410) 343-0399

Mr. Arnold Jablon, Director
Permits, Approvals & Inspections
111 W. Chesapeake Ave. Suite 105
Towson, MD. 21204

Ref: Case #2017-0113-SPH
19 Dec., 1:30 p.m.

Dear Mr. Jablon:

I did not see these signs until Mon. 5 December when a neighbor told me about them as they were posted in front of the lots and not at the York Road entrance to the development. These 2 lots abut the property line of the pasture directly behind my house.

A compromise on these two lots was finally agreed to in 2004; namely the 100 foot setback from my property line and the limit of one storey for these two houses. I strongly object to the re-visiting of this compromise that was legally settled, then.

This pasture has been consistently used for farm animals and since that time, I have constructed a 50 ft. by 100 ft. pole barn back there opposite lot 502. In addition, in 2010, my 41 acres of farm land was accepted for Agricultural Preservation. My land will remain a farm in perpetuity.

From what I read in the papers, this development went into bankruptcy last year and was forclosed upon by a Severn Bank.

I am also in the beginning stages of setting up a foundation for the preservation of this historic property which dates back to 1782.

In closing, I first request that this hearing be thrown out as this compromise was settled in 2004. Secondly, if this can not be done, I certainly need a post-ponement of this hearing in order to hire an attorney as well as search back through files that are in storage in order to be able to present a case. I do hope that my 53 yeats of being a tax paying citizen of this County will at least give me some advantage.

Very truly yours,

M. V. Runkles, III

CC: Peoples' Counsel
Pete Zimmerman

RECEIVED
DEC 8 2016
DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

PETITION FOR ZONING HEARING(S) AMENDED 2/1/17

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 502 & 504 Montclair Court **which is presently zoned** RC5

Deed References: 37237/494 10 Digit Tax Account # 2500002811, 2500002812

Property Owner(s) Printed Name(s) RREF II SB-MD, 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)

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

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

(SEE ATTACHED)

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

TO BE PRESENTED AT HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.
Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

ORDER RECEIVED FOR FILING
Date 3-13-17
By (RM)

Legal Owners (Petitioners):

RREF II SB-MD, LLC / Name #1 – Type or Print / Name #2 – Type or Print

Signature #1 Jason Cook / Authorized Signatory / Signature #2

790 N.W. 107th Ave., Suite 300, Miami, FL

Mailing Address City State

33172 / (305) 487-6332 /

Zip Code Telephone # Email Address

Attorney for Petitioner:

Adam Baker, Esq.

Name- Type or Print

Signature

8830 Stanford Boulevard, Suite 400, Columbia, MD

Mailing Address City State

21045 / (410) 832-2052 / abaker@wtplaw.com

Zip Code Telephone # Email Address

Representative to be contacted:

Adam Baker, Esq.

Name – Type or Print

Signature

8830 Stanford Boulevard, Suite 400, Columbia, MD

Mailing Address City State

21045 / (410) 832-2052 / abaker@wtplaw.com

Zip Code Telephone # Email Address

CASE NUMBER 2017-0113-SPH **Filing Date** 10/21/2016 **Do Not Schedule Dates:** _____ **Reviewer** JNP

Revised Filing Date 2/1/2017

REV. 10/4/11

AMENDED

PETITION FOR ZONING HEARING
Montclair

Relief Requested:

1. Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations to permit a modification of the conditions imposed in Case No. VII-372 to permit homes on Lots 14 and 15 (502 and 504 Montclair Court) greater in height than the permitted one story. (See Restriction No. 3 of Hearing Officer's Order)
2. Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations to permit a modification of the conditions imposed in Case No. VII-372 to reduce the required rear yard setback for Lots 14 and 15 (502 and 504 Montclair Court) from 100 feet to 80 feet. (See Footnote of April 15, 2004 Planning Board Decision)
3. Special Hearing to amend the Final Development Plan for Montclair.
4. Variance from § 1A04.3.B.2.b to permit a setback of 55 feet from the center line of the road in lieu of the required 75 feet and to permit a setback from the western lot line for Lot 14 of 30 feet in lieu of the required 50 feet.

2195658

2017-0113-SPH

PETITION FOR ZONING HEARING
Montclair

Relief Requested:

1. Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations to permit a modification of the conditions imposed in Case No. VII-372 to permit homes on Lots 14 and 15 (502 and 504 Montclair Court) greater in height than the permitted one story. (See Restriction No. 3 of Hearing Officer's Order)
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3. Special Hearing to amend the Final Development Plan for Montclair.

2195658

OLD

2017-0113-SPH

Polaris
LAND CONSULTANTS

10 GERARD AVENUE
SUITE 101
TIMONIUM, MD 21093
(410) 252-4444 (o)
(410) 252-4493 (f)
www.polarislc.com

Zoning Description of
Lots 14 and 15
"MONTCLAIR"
7th Election District
Baltimore County, MD

Beginning at a point on the East Side of Montclair Court at the distance of 1860 feet Northwest of the center of York Road (MD State Route No. 45) and being known as ~~Lots 14 and 15 of a~~ plat entitled "Plat One - MONTCLAIR" as recorded among the Land Records of Baltimore County in Plat Book 78 Page 259.

AB

Lot 14 being designated as 502 Montclair Court and containing 1.221 Acres and Lot 15 being designated as 504 Montclair Court and containing 1.102 Acres

AB

2017-0113-SPH

KEVIN KAMENETZ
County Executive

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

February 17, 2017

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: 2017-0113-SPH
502 & 504 Montclair Court
E/s Montclair Court, 1860 ft. NW of York Road
7th Election District – 3rd Councilmanic District
Legal Owners: RREF II SB-MD, LLC

Special Hearing to permit a modification of the conditions imposed in Case No. VII-372 to permit homes on Lots 14 & 15 (502 & 504 Montclair Ct.) greater in height than the permitted one story. (See Restriction No. 2 of Hearing Officer's order.) To permit a modification of the conditions imposed in Case No. VII-372 to reduce the required rear yard setback for Lots 14 & 15 (502 & 504 Montclair Ct.) from 100 ft. to 80 ft. (See Footnote of April 15, 2004 Planning Board Decision). To amend the Final Development Plan for Montclair. To permit a setback of 55 ft. from the centerline of the road in lieu of the required 75 ft. and to permit a setback from the western lot line for Lot 14 of 30 ft. in lieu of the required 50 ft.

Hearing: Thursday, March 16, 2017 at 11:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Adam Baker, 8830 Stanford Blvd., Ste. 400, Columbia 21045
RREF II SB-MD, LLC, 790 N.W. 107th Avenue, Ste. 300, Miami FL 33172

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY FRIDAY, FEBRUARY 24, 2017.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

KEVIN KAMENETZ
County Executive

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

November 17, 2016

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502 & 504 Montclair Court
E/s Montclair Court
7th Election District – 3rd Councilmanic District
Legal Owners: RREF II SB-MD, LLC

Special Hearing to permit a modification of the conditions imposed in Case No. VII-372 to permit homes on Lots 14 & 15 (502 and 504 Montclair Court) greater in height than the permitted one story. (See restriction No. 3 of Hearing Officer's Order). To permit a modification of the conditions imposed in Case No. VII-372 to reduce the required rear yard setback for Lots 14 and 15 (502 and 504 Montclair Court) from 100 feet to 80 feet (See Footnote of April 15, 2004 Planning Board Decision). To amend the Final Development Plan for Montclair.

Hearing: Monday, December 19, 2016 at 1:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Adam Baker, 8830 Stanford Blvd., Ste. 400, Columbia 21045
RREF II SB-MD, LLC, 790 N.W. 107th Avenue, Ste. 300, Miami FL 33172

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, NOVEMBER 29, 2016.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

THE BALTIMORE SUN MEDIA GROUP

501 N. Calvert St., P.O. Box 1377
Baltimore, Maryland 21278-0001
tel: 410/332-6000
800/829-8000

WE HEREBY CERTIFY, that the annexed advertisement of Order No 4615621

Sold To:
Whiteford Taylor & Preston LLP - CU00483501
8830 Stanford Blvd
Ste 400
Columbia,MD 21045-5425

Bill To:
Whiteford Taylor & Preston LLP - CU00483501
8830 Stanford Blvd
Ste 400
Columbia,MD 21045-5425

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Nov 29, 2016

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: # 2017-0113-SPH
502 & 504 Montclair Court
E/s Montclair Court
7th Election District - 3rd Councilmanic District
Legal Owner(s) RREF II SB-MD, LLC

Special Hearing to permit a modification of the conditions imposed in Case No. VII-372 to permit homes on Lots 14 & 15 (502 and 504 Montclair Court) greater in height than the permitted one story. (See restriction No. 3 of Hearing Officer's Order). To permit a modification of the conditions imposed in Case No. VII-372 to reduce the required rear setback for Lots 14 and 15 (502 and 504 Montclair Court) from 100 feet to 80 feet (See Footnote of April 15, 2004 Planning Board Decision). To amend the Final Development Plan for Montclair.

Hearing: Monday, December 19, 2016 at 1:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

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

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

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

JT 11/816 November 29 4615621

The Baltimore Sun Media Group

By S. Wilkinson

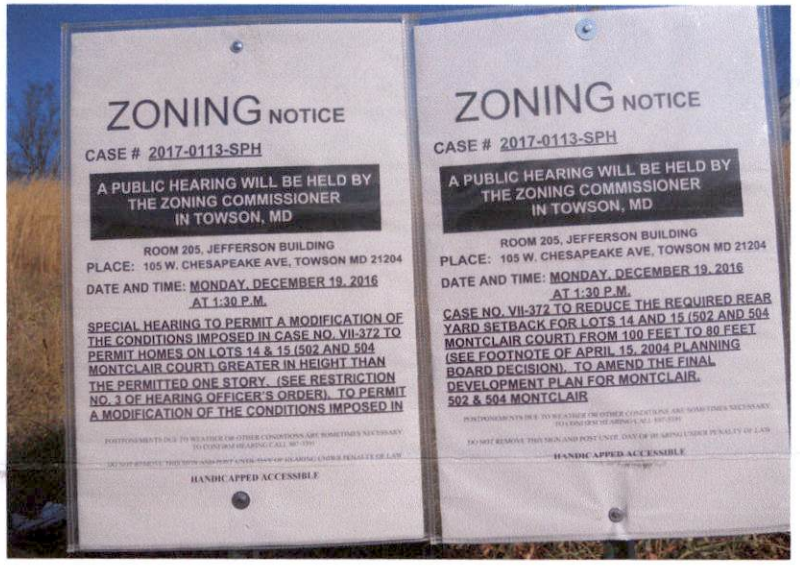
Legal Advertising

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS
DATE: 11/28/2016
Case Number: 2017-0113-SPH
Petitioner / Developer: ADAM D. BAKER, ESQ. ~ RREF II-MD, LLC
Date of Hearing (Closing): DECEMBER 19, 2016

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:
502 & 504 MONTCLAIR COURT

The sign(s) were posted on: NOVEMBER 27, 2016



Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

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

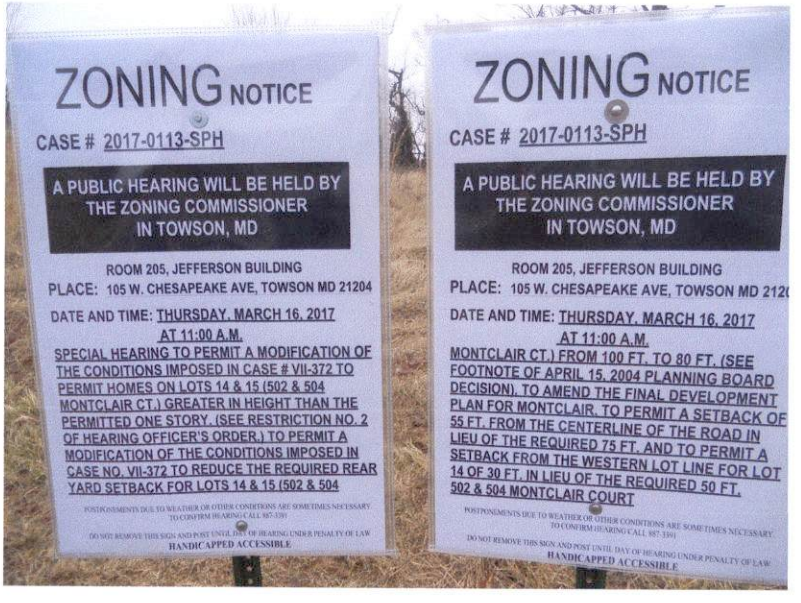
410 – 666 – 5366
(Telephone Number of Sign Poster)

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS
DATE: 2/23/2017
Case Number: 2017-0113-SPH
Petitioner / Developer: ADAM D. BAKER, ESQ. ~ RREF II SB-MD, LLC
Date of Hearing (Closing): MARCH 16, 2017

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:
502 & 504 MONTCLAIR COURT

The sign(s) were posted on: FEBRUARY 21, 2017



Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

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

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

KEVIN KAMENETZ
County Executive

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

March 7, 2017

RREF II SB-MD LLC
790 N W 107th Avenue
Suite 300
Miami FL 33172

RE: Case Number: 2017-0113 SPH, Address: 502 & 504 Montclair Court

To Whom It May Concern:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on October 21, 2016. 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,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaw

Enclosures

c: People's Counsel
Adam Baker, Esquire, 8830 Stanford Boulevard, Suite 400, Columbia MD 21045

3-16

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

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

DATE: 2/27/2017

FROM: Andrea Van Arsdale
Director, Department of Planning

RECEIVED
MAR 02 2017
OFFICE OF
ADMINISTRATIVE HEARINGS

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 17-113

INFORMATION:
Property Address: 502 & 504 Montclair Court
Petitioner: RREF II SB-MD, LLC.
Zoning: RC 5
Requested Action: Special Hearing

The Department of Planning has reviewed the petition for a special hearing to determine whether or not the Administrative Law Judge should approve a modification of the conditions imposed in Zoning Case No. VII-372 to permit homes on Lots 14 and 15 greater in height than the permitted one story, to reduce the required rear yard setback for Lots 14 and 15 from 100 feet to 80 feet and to amend the final development plan for Montclair. The Department also reviewed the petition for variance to permit a setback of 55 feet from the center line of the road in lieu of the required 75 feet and to permit a setback from the western lot line for Lot 14 of 30 feet in lieu of the required 50 feet.

The Department objects to granting the petitioned zoning relief. The amended petition and plan submitted in support thereof do not alter the case substantially enough to cause the Department to revise its zoning advisory comment dated December 6, 2016.

For further information concerning the matters stated herein, please contact Joseph Wiley at 410-887-3480.

Prepared by:

Lloyd T. Moxley

Deputy Director:

Kathy Schlabach

AVA/KS/LTM/ka

c: Joseph Wiley
RREF II SB-MD, LLC.
Adam Baker, Esquire
Office of the Administrative Hearings
People's Counsel for Baltimore County

s:\planning\dev rev\zac\zacs 2017\17-113.docx

Larry Hogan, *Governor*
Boyd K. Rutherford, *Lt. Governor*

State Highway Administration
Maryland Department of Transportation

Pete K. Rahn, *Secretary*
Gregory C. Johnson, P.E., *Administrator*

Date: 2/6/17

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

Dear Ms. Lewis:

Thank you for the opportunity to review your referral request on the subject of the Case number referenced below. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Case No. 2017-0113-SPH
Special Hearing
RREF II SB-MD, LLC
502 & 504 Montclair Court.

Should you have any questions regarding this matter, please contact Mr. Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,

Richard A. Zeller

Wendy Wolcott, PLA
Metropolitan District Engineer – District 4
Baltimore & Harford Counties

WW/RAZ

SITE DATA

1. EXISTING ZONING OF PROPERTY: RC-4 AND RC-5
2. GROSS AREA:
   RC-4 50.649 AC.
   RC-5 9.426 AC.
   TOTAL 60.075 AC.
3. NUMBER OF LOTS ALLOWED:
   RC-4 (50.649 X 0.2) = 10 LOTS
   RC-5 (9.426 X .667) = 6 LOTS
   TOTAL 16 LOTS
4. NUMBER OF LOTS PROPOSED:
   RC-4 10 LOTS
   RC-5 6 LOTS
   TOTAL 16 LOTS
5. HIGHWAY WIDENING AREA (YORK ROAD) = 0.018 ACRES
6. ROAD DEDICATION (MONTCLAIR COURT) = 2.116 ACRES
7. HOA AREA = 0.370 ACRES
8. PARCELS A AND B = 0.685 ACRES
9. SWM RESERVATION = 0.218 ACRES
10. CONSERVANCY AREA = 35.454 ACRES
11. NET AREA OF LOTS = 21.214 ACRES
12. AVERAGE LOT SIZE = 1.326 ACRES
13. PARKING REQUIRED = 2 SPACES PER LOT = 32 SPACES
14. PARKING PROPOSED = 2 PLUS SPACES PER LOT = 32 PLUS SPACES
15. OPEN SPACE REQUIRED = 10,400 S.F. ACTIVE AND 5,600 S.F. PASSIVE OR A COMBINATION THEREOF AS SPECIFIED IN SECTION 111.D.3
16. OPEN SPACE PROVIDED = WAIVER APPROVED AND FEE-IN-LIEU PAID.
17. COUNCILMANIC DISTRICT = 3RD
18. ELECTION DISTRICT = 7TH
19. 2000 CENSUS TRACT = 4070
20. 2000 CENSUS BLOCK TRACT = 4070.001
21. LAND MANAGEMENT AREA = APA
22. ELEMENTARY SCHOOL DISTRICT = 7TH
23. MIDDLE SCHOOL DISTRICT = HEREFORD
24. HIGH SCHOOL DISTRICT = HEREFORD
25. REGIONAL PLANNING DISTRICT = 301
26. WATERSHED = LOCH RAVEN
27. WATER SERVICES AREA = NON-SERVICE AREA
28. SUBSEWERSHED = 81
29. TRANSPORTATION ZONE = 402
30. ZIP CODE = 21120

RC-4 DATA

RC-4 RURAL CLUSTER INFORMATION	DATA
RC-4 ACREAGE	50.649
LOTS ALLOWED IN RC-4 (ACRES X .20)	10
EXISTING LOTS	2
PROPOSED LOTS (TOTAL)	10
REMAINING DENSITY	0
MAXIMUM RC-4 BUILDING AREA (30% X ACREAGE)	15.195
PROPOSED RC-4 BUILDING AREA	15.195
MINIMUM RC-4 CONSERVANCY AREA (70% X ACREAGE)	35.454
PROPOSED RC-4 CONSERVANCY AREA	35.454

GENERAL NOTES

1) ALL LOTS SHOWN HEREON ARE FOR SINGLE-FAMILY USE AND ARE FOR SALE.
2) EXISTING LAND IS FOREST, AGRICULTURAL, AND RESIDENTIAL.
3) TO THE BEST OF OUR KNOWLEDGE, THERE ARE NO CRITICAL AREAS, ENDANGERED SPECIES HABITAT, OR HAZARDOUS MATERIALS ON THIS SITE.
4) INDIVIDUAL LOT GRADING WILL BE ACCOMPLISHED BY THE INDIVIDUAL HOME BUILDING CONTRACTOR(S).
5) EXISTING TREES AND VEGETATION SHALL BE PRESERVED WHERE POSSIBLE OUTSIDE OF ROAD, BUILDING, AND UTILITY CONSTRUCTION.
6) TOPOGRAPHY SHOWN HEREON IS FLOWN.
7) SOILS SHOWN HEREON ARE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP 9W.
8) TOTAL AVERAGE DAILY TRIPS: 16 LOTS X 12.4 = 199
9) MITIGATING MEASURES FOR SOILS WITH LIMITATIONS DUE TO STEEP SLOPES:
   A) WHENEVER POSSIBLE, GRADING OR DISTURBANCE OF STEEP SLOPES SHALL BE AVOIDED.
   B) ALL LOTS AND ROADS SHALL BE GRADED SO AS TO DIRECT ANY CONCENTRATED STORM WATER FLOWS AWAY FROM AREAS OF STEEP SLOPES.
   C) IF DISTURBED, ALL AREAS OF STEEP SLOPES SHALL BE PROPERLY VEGETATED TO ASSURE STABILITY AND PREVENT EROSION.
10. THIS SITE IS NOT LOCATED IN ANY DEFICIENT AREA ON THE BASIC SERVICE MAPS PURSUANT TO SECTION 4A02-BCZR.
11. COURSES, COORDINATES, AND ELEVATIONS SHOWN HEREON ARE BASED ON MCS AND NAVD 88.
12. THERE ARE NO HISTORIC BUILDINGS ON THE SUBJECT PROPERTY.
13. TRASH IS TO BE COLLECTED BY BALTIMORE COUNTY.
14. PROPOSED HOUSE SIZES AND LOCATIONS ARE SCHEMATIC ONLY. FINAL LOCATIONS TO BE DETERMINED AT TIME OF BUILDING PERMIT.
15. STORM DRAINS, GRADING AND STORMWATER MANAGEMENT LAYOUTS SHOWN HEREON ARE SCHEMATIC ONLY, AND ARE SUBJECT TO CHANGE UPON FINAL DESIGN AND APPROVAL.
16. PROPOSED DRIVEWAYS ARE CONCEPTUAL ONLY, AND ARE SUBJECT TO CHANGE BASED ON FINAL DESIGN, GRADING OF LOTS, AND WELL LOCATIONS.
17. THERE ARE NO PROPOSED SIGNS FOR THIS SITE AT THIS TIME.. ANY FUTURE PROPOSED SIGNS WILL COMPLY WITH BCZR SECTION 450 AND WILL COMPLY WITH ALL ZONING POLICIES.
18. THERE HAVE BEEN NO PRIOR ZONING HEARINGS ON THIS SITE.
19. ALL EXISTING BUILDINGS ARE TO BE RAZED.
20. BUILDINGS TO BE RAZED WILL BE THE RESPONSIBILITY OF THE DEVELOPER.
21. ALL PROPOSED HOUSES WILL HAVE A MAXIMUM HEIGHT OF 35 FEET IN ALL RC ZONES, AND WILL COMPLY WITH ALL BALTIMORE COUNTY ZONING REGULATIONS.
22. NO MORE THAN 15 PERCENT OF ANY LOT IN A RC-5 ZONE MAY BE COVERED BY IMPERMEABLE SURFACES.
23. THIS DEVELOPMENT PLAN IS APPROVED BY THE DIRECTOR OF PDM BASED ON HIS INTERPRETATIONS OF THE ZONING REGULATIONS, THAT IT COMPLIES WITH PRESENT POLICY, DENSITY, AND BULK CONTROLS AS THEY ARE DELINEATED IN THE REGULATIONS. ANY PART OR PARCEL OF THIS TRACT THAT HAS BEEN UTILIZED FOR DENSITY TO SUPPORT DWELLINGS SHOWN THEREON SHALL NOT BE FURTHER DIVIDED, SUBDIVIDED OR DEVELOPED FOR ADDITIONAL DWELLINGS OR ANY PURPOSE OTHER THAN THAT INDICATED PRESENTLY ON SAID PLAN. UTILIZATION WILL HAVE OCCURRED WHEN A DWELLING IS CONSTRUCTED AND TRANSFERRED FOR THE PURPOSE OF OCCUPANCY.
24. ACCESSORY STRUCTURE NOTES.
   A) ENVELOPES SHOWN HEREON ARE FOR THE LOCATION OF ALL PRINCIPAL BUILDINGS ONLY. ACCESSORY STRUCTURES, FENCES AND PROJECTIONS INTO YARDS MAY BE CONSTRUCTED OUTSIDE THE ENVELOPES, BUT MUST COMPLY WITH SECTIONS 400 AND 301 OF THE BALTIMORE COUNTY ZONING REGULATIONS (SUBJECT TO COVENANTS AND APPLICABLE BUILDING PERMITS).
   B) ACCESSORY STRUCTURES, FENCES AND PROJECTIONS INTO YARDS CANNOT BE LOCATED IN FLOOD PLAIN AREAS OR HYDRIC SOILS.
25. ENVELOPES OR TYPICAL DWELLINGS AS SHOWN DICTATE A SPECIFIC ORIENTATION WHICH IS INTENDED TO ALLOW COMPLIANCE WITH BALTIMORE COUNTY ZONING REGULATIONS OR POLICIES. SHOULD THE ORIENTATION CHANGE OR CREATE CONFLICTS WITH THE REGULATIONS OR POLICIES, THE ORIENTATION MUST BE CHANGED TO ALLEVIATE THE CONFLICT.
26. 200-SCALE ZONING MAP NO. NW 30B AND 30C.
27. PART OF THIS SITE REPRESENTS A RESUBDIVISION OF LOT 1 OF A MINOR SUBDIVISION PLAN OF "DAVID AND MARY E. MEADOWCROFT PROPERTY" AS MINOR SUBDIVISION NO. 98-074 M.
28. IF A PORTION OF A CONSERVANCY AREA IS TO BE USED FOR AGRICULTURAL PURPOSES AND THE SAID PORTION ADJOINS A LOT OR LOTS IN A RC-4 ZONE, THE ADJOINING SETBACK ON THESE LOTS WILL BE INCREASED TO 50 FEET.
29. THE MAXIMUM AREA FOR CLEARING AND GRADING FOR ANY RC-4 LOT IS 20,000 SQUARE FEET.
30. THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION, OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER AND FOREST CONSERVATION EASEMENT EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.
31. ANY FOREST BUFFER AND FOREST CONSERVATION EASEMENT SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS, WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY, MARYLAND AND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS.
32. BALTIMORE COUNTY AGRICULTURAL NOTE:
   ANY DWELLING MAY BE SUBJECT TO INCONVENIENCES OR DISCOMFORTS ARISING FROM AGRICULTURAL OPERATION, INCLUDING BUT NOT LIMITED TO, NOISE, ODORS, FUMES, DUST, THE OPERATION OF MACHINERY OF ANY KIND DURING ANY 24-HOUR PERIOD (INCLUDING AIRCRAFT), THE STORAGE AND DISPOSAL OF MANURE, AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES. THE COUNTY SHALL NOT CONSIDER AN AGRICULTURAL OPERATION TO BE A PUBLIC OR PRIVATE NUISANCE, IF THE OPERATION COMPLIES WITH THESE REGULATIONS AND ALL FEDERAL, STATE, OR COUNTY HEALTH OR ENVIRONMENTAL REQUIREMENTS.
33. A WAIVER TO STORMWATER MANAGEMENT REGULATIONS HAS BEEN GRANTED FOR THIS SITE. (DATE OF APPROVAL WAS 10/30/2002, VALID FOR TWO YEARS AFTER APPROVAL OF DEVELOPMENT PLAN.)
34. PRIOR TO THE FINAL APPROVAL OF ANY RECORD PLAT, A PERMANENT PRESERVATION EASEMENT ON THE CONSERVANCY AREA SHALL BE RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY TO RUN WITH THE LAND AND CONTINUE IN PERPETUITY. THE CONSERVANCY AREA EASEMENTS SHALL BE GRANTED TO THE COUNTY OR SUCH OTHER AGENCY OR ENTITY WHICH THE COUNTY APPROVES, AND SHALL PERMANENTLY RESTRICT FURTHER SUBDIVISION OF THE CONSERVANCY AREA. THE CONSERVANCY AREA AGREEMENT SHALL ALSO BE IN A FORM APPROVED BY THE COUNTY ATTORNEY WHO SHALL CONSULT WITH THE DIRECTOR OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.
35. LOTS SHOWN HEREON SHALL OPERATE ON PRIVATE WELL AND SEPTIC SYSTEMS.
36. TO THE BEST OF OUR KNOWLEDGE, THERE ARE NO KNOWN EXISTING UNDERGROUND FUEL TANKS ON THIS SITE.
37. THERE ARE NO WELLS OR SEPTIC AREAS WITHIN 100 FEET OF THE PROPERTY EXCEPT AS SHOWN.
38. ALL BUILDINGS TO BE RAZED WILL BE DONE PRIOR TO RECORD PLAT APPROVAL. THE EXISTING SEPTIC SYSTEM ON THE CONSERVANCY LOT WILL BE ABANDONED AND THE EXISTING WELL WILL BE BACKFILLED PRIOR TO RECORD PLAT APPROVAL.
39. AS PERMITTED BY BCZR SECTION 1A03.5 AND THE BALTIMORE COUNTY CODE, COMMERCIAL LOGGING OR TIMBER HARVESTING ACTIVITIES MAY BE CONDUCTED IN THE FUTURE WITHIN THE IDENTIFIED CONSERVANCY AREA.
40. THE BUREAU OF DEVELOPMENT PLANS REVIEW HAS APPROVED THE USE OF 3-FOOT WIDE SHOULDERS FOR MONTCLAIR COURT BETWEEN STATIONS 8+00 AND 18+00.
41. THE BUREAU OF DEVELOPMENT PLANS REVIEW AND DEPRM HAVE APPROVED THE USE OF 2:1 SIDE SLOPES FOR CERTAIN PORTIONS OF MONTCLAIR COURT.
42. "NO PARKING" SIGNS SHALL BE POSTED PROHIBITING PARALLEL PARKING ON THE 18-FOOT WIDE STREETS AND WITHIN THE TURNAROUND AREA.
43. MILLER LANE WILL TERMINATE AT MONTCLAIR COURT AND WILL NOT CONNECT THERETO.
44. INGRESS, EGRESS, MAINTENANCE AND UTILITY EASEMENT AGREEMENTS WILL BE EXECUTED FOR THE USE-IN-COMMON PRIVATE DRIVEWAYS FOR LOTS 2 THROUGH 6 AND LOTS 7 THROUGH 12.
45. THE PROPOSED PUBLIC ROAD RIGHT-OF-WAY AND THE STORMWATER MANAGEMENT RESERVATION WILL BE DEDICATED TO BALTIMORE COUNTY AT NO COST. ALL BALTIMORE COUNTY EASEMENTS WILL BE DEDICATED TO BALTIMORE COUNTY.
46. THE HIGHWAY WIDENING AREA WILL BE DEDICATED TO THE STATE OF MARYLAND.
47. STORMWATER MANAGEMENT FACILITIES ARE TO BE PUBLIC, AND MAINTAINED BY BALTIMORE COUNTY.
48. THE EXISTING BGE RIGHT-OF-WAY IS BY EASEMENT ONLY AND IS NOT IN-FEE, WIDTH UNDEFINED.
49. BUREAU OF TRAFFIC ENGINEERING AND TRANSPORTATION PLANNING HAS CONFIRMED THAT THE SUBJECT SITE IS NOT WITHIN A TRAFFIC DEFICIENT AREA.
50. YORK ROAD AND I-83 ARE DESIGNATED AS "SCENIC CORRIDORS" ON THE "SCENIC RESOURCES MAP" IN THE MASTER PLAN 2010.
51. THE MASTER PLAN 2010 LAND MANAGEMENT AREA PLAN DESIGNATION IS AGRICULTURAL PRESERVATION.
52. THE CONSERVANCY AREA WILL BE RETAINED IN SINGLE OWNERSHIP BY THE OWNER OF PARCEL 182 SHOWN HEREON OR BY A TRUST TO BE ESTABLISHED BY THE SAID OWNER.
53. FOR THE PRESERVATION OF HISTORIC SITE 18BA496, NO GRADING OR OTHER GROUND DISTURBANCE SHALL BE PERMITTED WITHOUT PRIOR APPROVAL FROM THE DIRECTOR OF PLANNING IN THE PORTION OF THE FOREST BUFFER AND CONSERVATION AREA BOUNDED BY THIS DEVELOPMENT'S NORTHERN PROPERTY LINE, THE PERENNIAL STREAM, AND THE LINES OF LOTS 10 AND 11.
54. EXISTING PRIVATE ACCESS EASEMENT RECORDED UNDER MINOR SUBDIVISION NO. 98074 M WILL BE ABANDONED.
55. EXISTING DRIVEWAY TO #18020 YORK ROAD WILL BE ABANDONED.
56. THE SEPTIC SYSTEM FOR THE EXISTING DWELLING ON THE CONSERVANCY LOT WILL BE PROPERLY ABANDONED PRIOR TO RECORD PLAT APPROVAL.
57. A CONTINUING USE VARIANCE WILL BE SOUGHT FOR THE STRUCTURE ON #18020 YORK ROAD IN THE FOREST CONSERVATION EASEMENT OR IT WILL BE BROUGHT INTO COMPLIANCE.

SEALED FOR 2ND REFINEMENT AND SPECIAL HEARING REQUEST

GEOFFREY C. SCHULTZ 10/19/16 DATE

I HEREBY CERTIFY THAT I HAVE REVIEWED WITH DUE DILIGENCE THE APPROVED DEVELOPMENT PLAN DATED 07/20/2004, AND HAVE PREPARED WITH DUE DILIGENCE THIS FINAL DEVELOPMENT PLAN PURSUANT TO THAT APPROVED DEVELOPMENT PLAN.

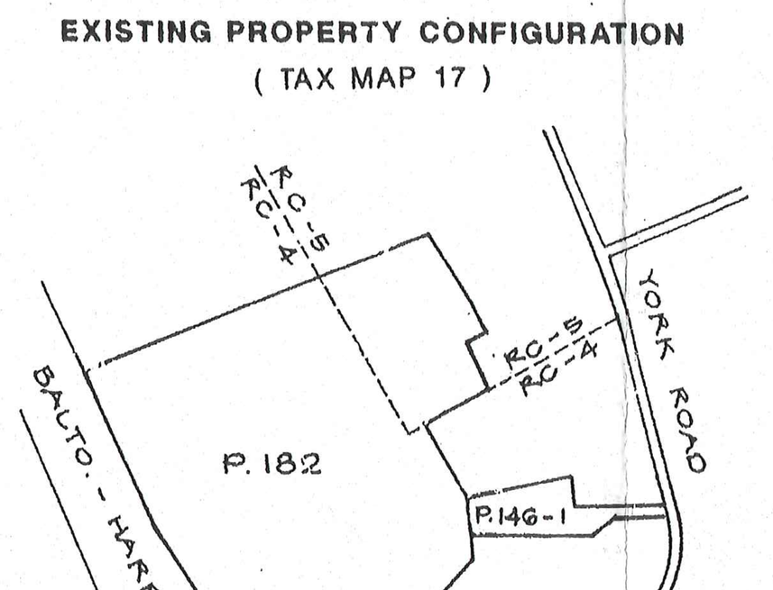
JAMES W. McKEE (MD REG. NO. 9012) 8/5/2004 DATE

McKEE & ASSOCIATES, INC.
Engineering – Land Planning – Land Surveying
Natural Resource Planning – Real Estate Development
5 SHAWAN ROAD, Suite 1 COCKEYSVILLE, MARYLAND 21030
TELEPHONE: (410) 527-1555 FACSIMILE: (410) 527-1563

JOB NUMBER : 00-074

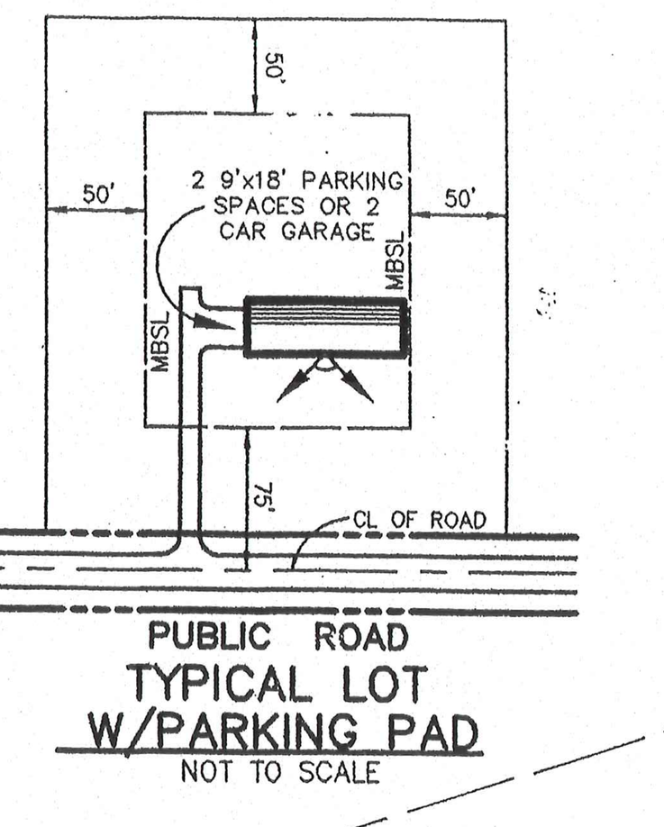
PROPERTY INFORMATION

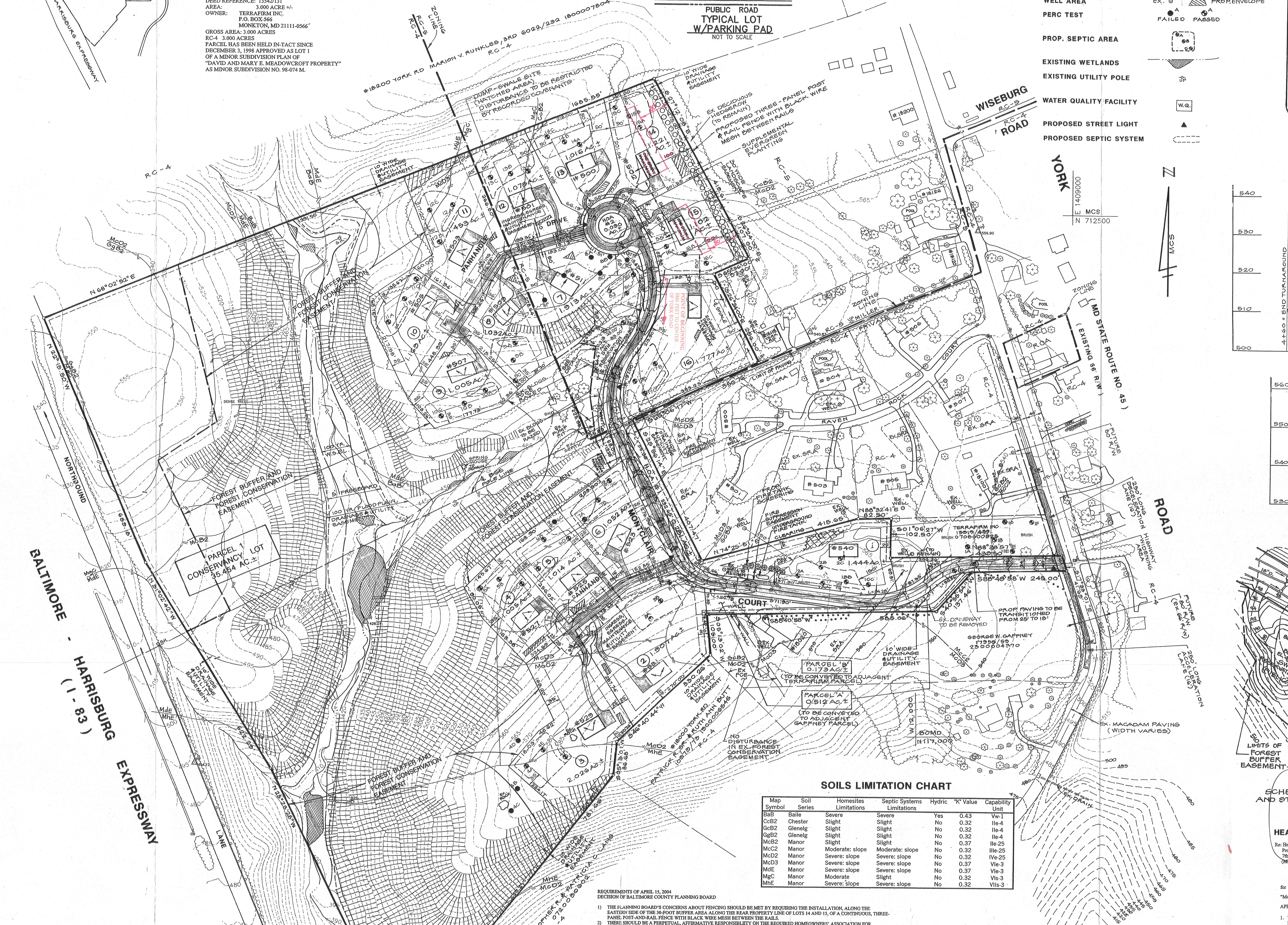
EXISTING PROPERTY CONFIGURATION
(TAX MAP 17)



TAX MAP 17, PARCEL 182
ACCOUNT NO.: 07-07-000145
DEED REFERENCE: 4380/482
AREA: 57.075 ACRE +/-
OWNER: GEORGE W. GAFFNEY
P.O. BOX 566
MONKTON, MD 21111-0566
GROSS AREA: 57.075 ACRES
RC-5 9.426 ACRES
RC-4 47.649 ACRES
PARCEL HAS BEEN HELD IN-TACT SINCE OCTOBER 23, 1964

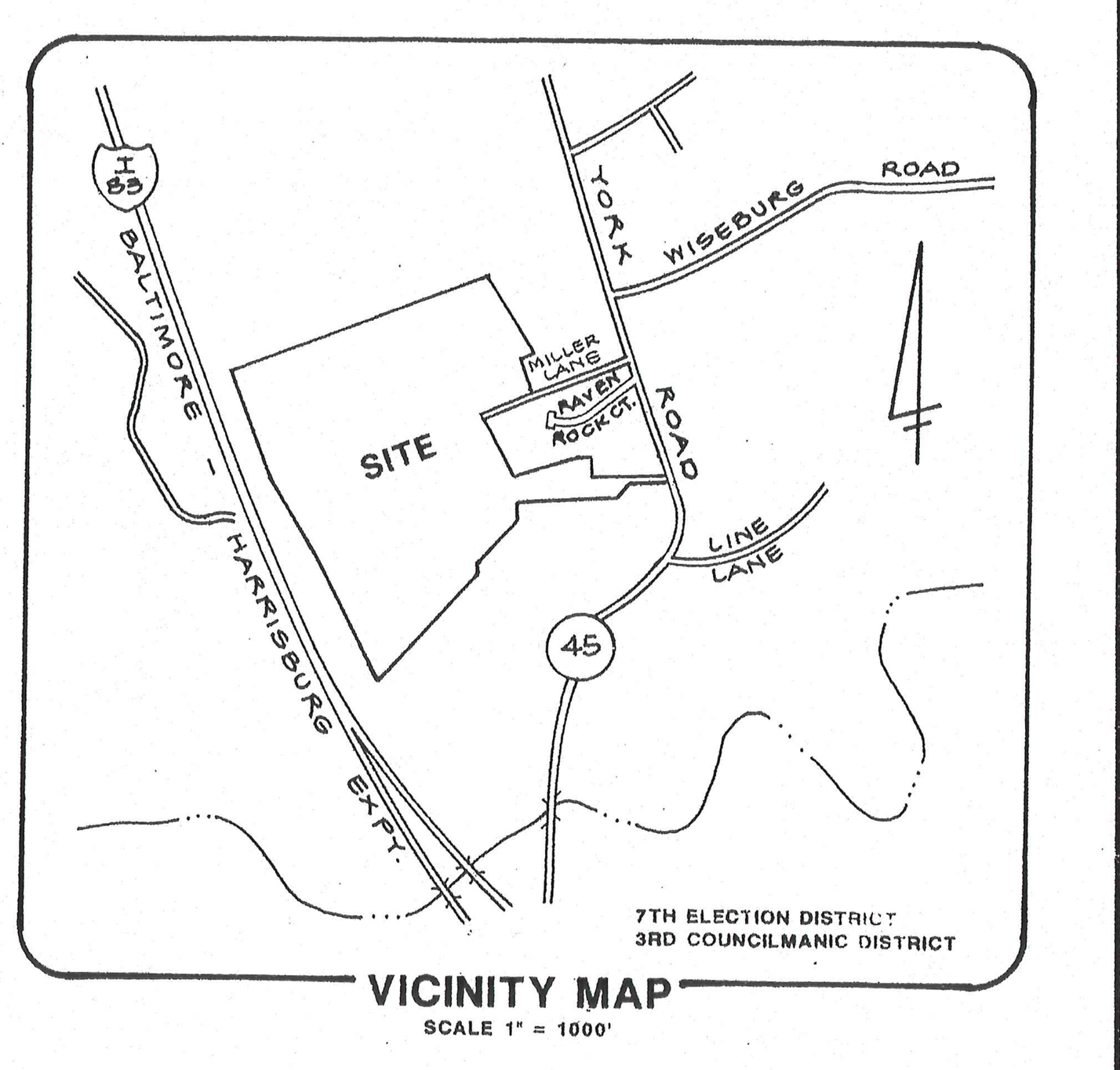
TAX MAP 17, PARCEL 146
ACCOUNT NO.: 23-00-004369
DEED REFERENCE: 13542/131
AREA: 3.000 ACRE +/-
OWNER: TERRAFIRM INC.
P.O. BOX 566
MONKTON, MD 21111-0566
GROSS AREA: 3.000 ACRES
RC-4 3.000 ACRES
PARCEL HAS BEEN HELD IN-TACT SINCE DECEMBER 3, 1998 APPROVED AS LOT 1 OF A MINOR SUBDIVISION PLAN OF "DAVID AND MARY E. MEADOWCROFT PROPERTY" AS MINOR SUBDIVISION NO. 98-074 M.



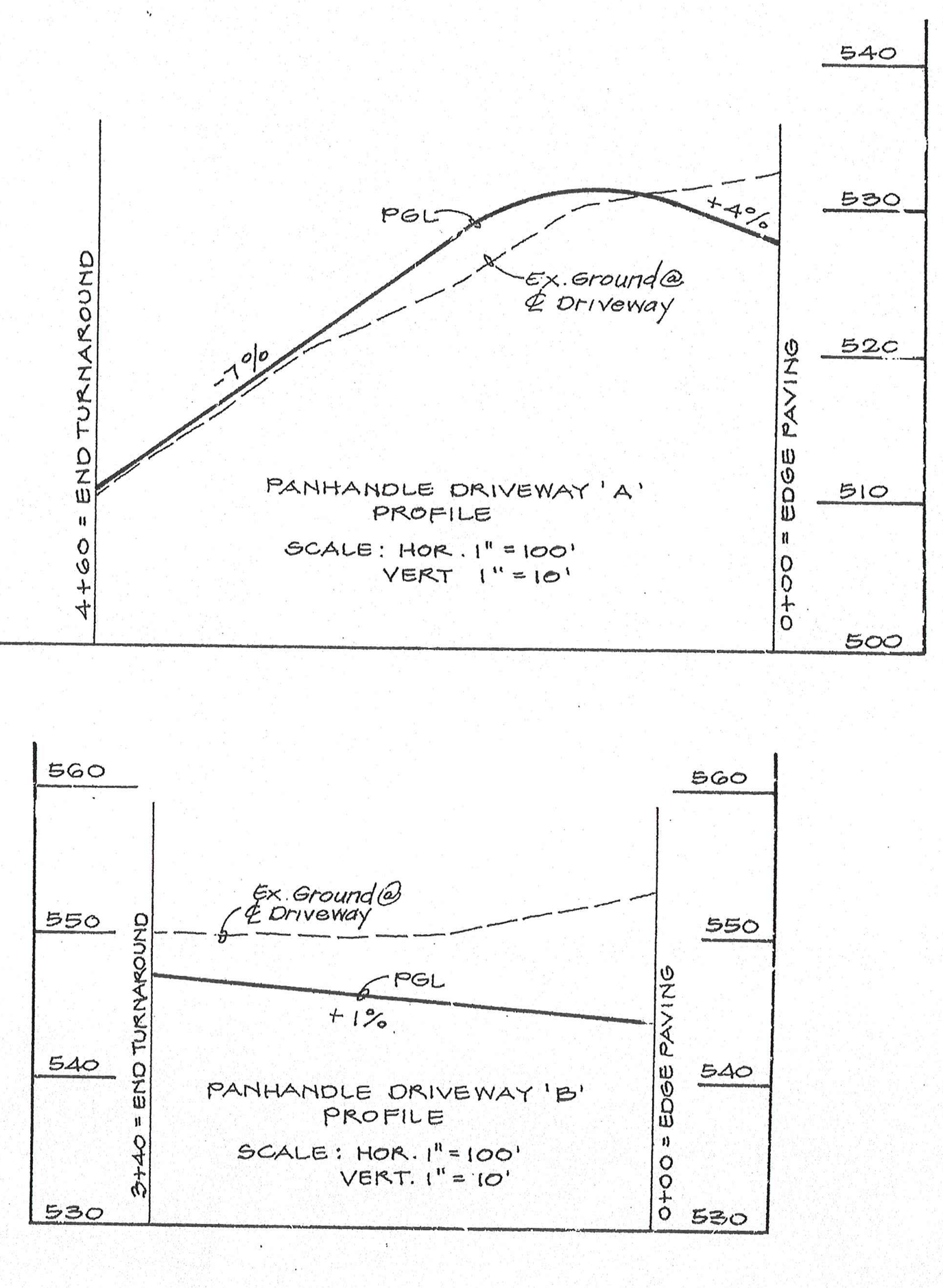


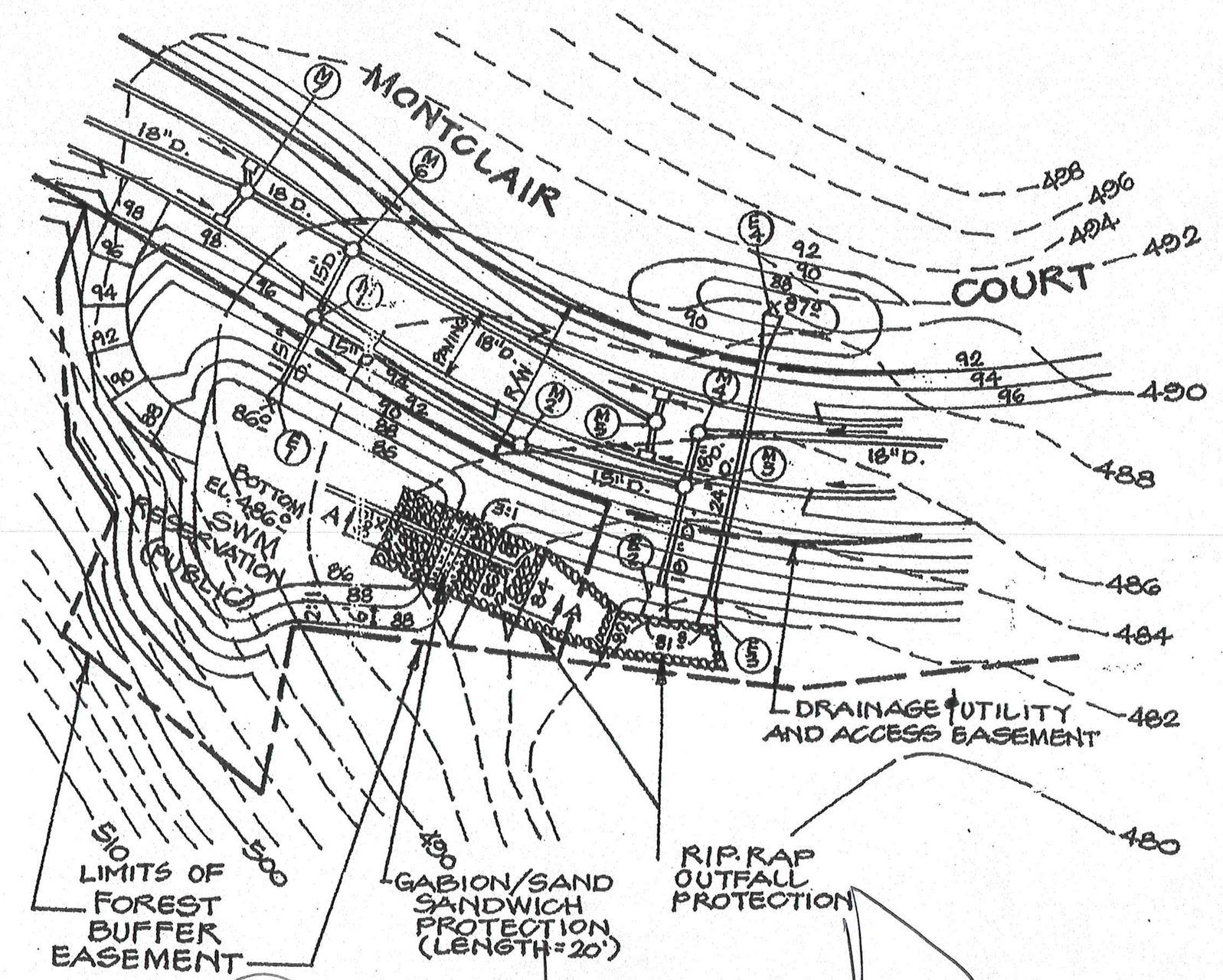
LEGEND

EXISTING CONTOUR
SLOPES > 25 %
EXISTING STREAM
EXISTING WOODS LINE
SOILS LINE
HOUSE SITE
WELL AREA
PERC TEST
PROP. SEPTIC AREA
EXISTING WETLANDS
EXISTING UTILITY POLE
WATER QUALITY FACILITY
PROPOSED STREET LIGHT
PROPOSED SEPTIC SYSTEM



VICINITY MAP
SCALE 1" = 1000'





DETAIL
SCHEMATIC STORM DRAINS, GRADING, AND STORMWATER MANAGEMENT FACILITY
SCALE: 1" = 40'

SOILS LIMITATION CHART

Map Symbol	Soil Series	Homesites Limitations	Septic Systems Limitations	Hydric	"K" Value	Capability Unit
BaB	Baile	Severe	Severe	Yes	0.43	Vw-1
CcB2	Chester	Slight	Slight	No	0.32	IIe-4
GcB2	Glenelg	Slight	Slight	No	0.32	IIe-4
GgB2	Glenelg	Slight	Slight	No	0.32	IIe-4
McB2	Manor	Slight	Slight	No	0.37	IIe-25
McC2	Manor	Moderate: slope	Moderate: slope	No	0.32	IIIe-25
McD2	Manor	Severe: slope	Severe: slope	No	0.32	IVe-25
McD3	Manor	Severe: slope	Severe: slope	No	0.37	VIe-3
MdE	Manor	Severe: slope	Severe: slope	No	0.37	VIe-3
MgC	Manor	Moderate	Slight	No	0.32	VIs-3
MhE	Manor	Severe: slope	Severe: slope	No	0.32	VIIs-3

REQUIREMENTS OF APRIL 15, 2004
DECISION OF BALTIMORE COUNTY PLANNING BOARD

1) THE PLANNING BOARD'S CONCERNS ABOUT FENCING SHOULD BE MET BY REQUIRING THE INSTALLATION, ALONG THE EASTERN SIDE OF THE 30-FOOT BUFFER AREA ALONG THE REAR PROPERTY LINE OF LOTS 14 AND 15, OF A CONTINUOUS, THREE-PANEL POST-AND-RAIL FENCE WITH BLACK WIRE MESH BETWEEN THE RAILS.
2) THERE SHOULD BE A PERPETUAL, AFFIRMATIVE RESPONSIBILITY ON THE REQUIRED HOMEOWNERS' ASSOCIATION FOR MAINTENANCE OF THE BUFFER AREA AND ITS PROTECTIVE FEATURES.
3) THE TREES TO BE INSTALLED IN THE BUFFER AREA SHOULD BE AT LEAST 10-12 FEET HIGH AT THE TIME OF PLANTING AND SHOULD BE PLANTED IN A STAGGERED, OFFSET PATTERN.
4) THE DEED COVENANTS PERTAINING AT LEAST TO LOTS 14 AND 15 SHOULD REQUIRE THE EXTERIOR LIGHTING IN THE SIDE AND REAR YARDS SHALL BE AIMED DOWN, TOWARDS THE GROUND, AND NOT TOWARDS THE LANDMARK PROPERTY.
5) THE NEW DWELLING TO BE CONSTRUCTED ON LOT 15 SHOULD BE SITED AS CLOSE AS POSSIBLE TO THE MINIMUM FRONT BUILDING SETBACK LINE (I.E., MOVED FORWARD APPROXIMATELY 20 – 30 FEET FROM THE POSITION SHOWN ON THE PROPOSED DEVELOPMENT PLAN).

NOTE: MONTCLAIR COURT AND THE PROPOSED HOMES ON LOTS 14 AND 15 HAVE BEEN SHIFTED TO THE WEST CONSISTENT WITH THE 100-FOOT REAR SETBACK AS REQUIRED BY DECISION OF THE PLANNING BOARD DATED 4/27/04.

REASON FOR SECOND REFINEMENT
TO REDUCE THE REQUIRED REAR YARD SETBACK FOR LOTS 14 AND 15 FROM 100 FEET TO 80 FEET AND TO ELIMINATE THE MAXIMUM ONE STORY ONLY HOUSE RESTRICTION ALSO FOR LOTS 14 AND 15.

REASON FOR 1ST REFINEMENT
TO RELOCATE THE FIRE SUPPRESSION TANK, TO ADJUST THE LOT LINES AND PROPOSED DRIVEWAYS OF LOTS 13, 14, & 15 AND TO DESIGNATE THE CONSERVANCY LOT AS PARCEL 1. APPROVED BY THE DEVELOPMENT REVIEW COMMITTEE AS DRC ITEM NO. 052305B.

ADDITIONAL ADJACENT OWNER INFORMATION

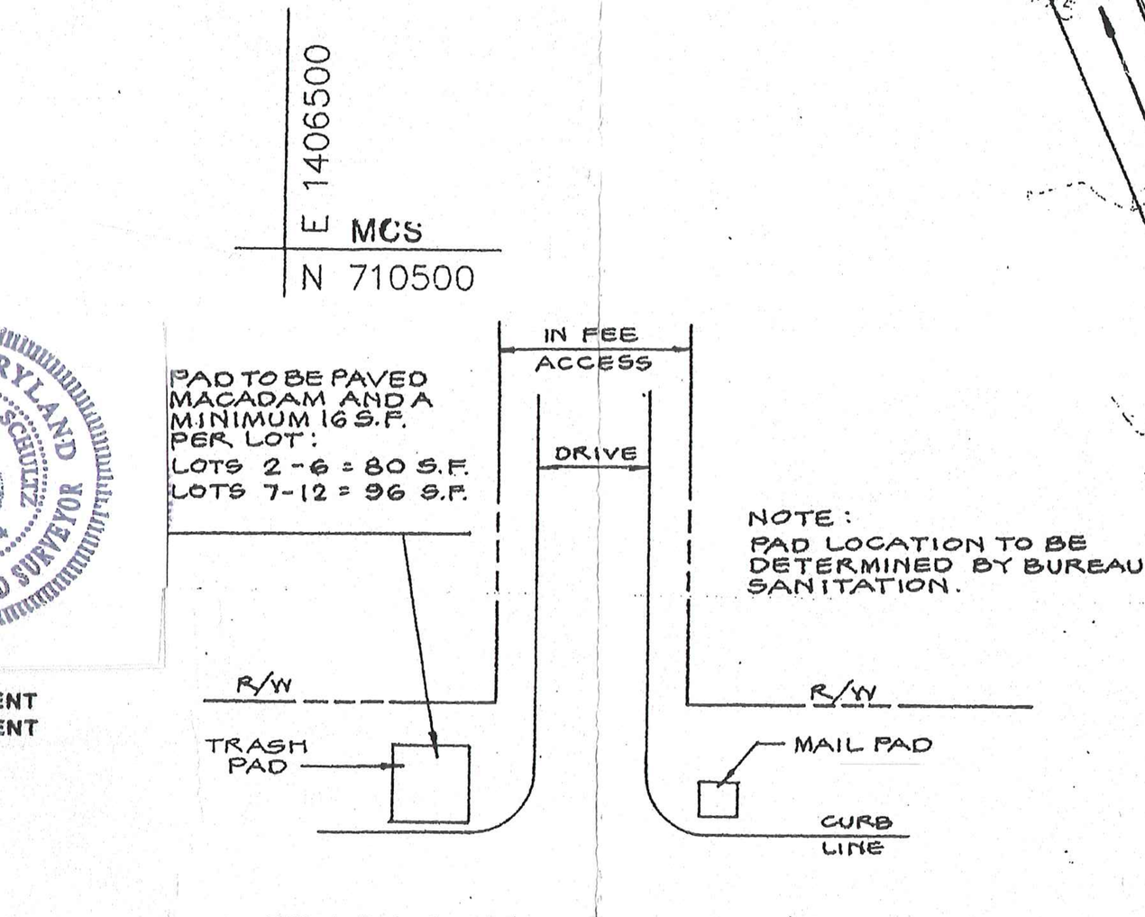
RAVEN ROCK COURT

	OWNERS	DEED REF.	TAX. ACCT. NO.
# 500	VICTOR J. & LINDA L. PULDA	9503/22	1700006860
# 501	CHRISTOPHER D. MATTHAI & CYNTHIA A. BUTTA	14491/72	1700006861
# 503	GEORGE R. & MARY JANET DRAKE	6219/507	1700006882
# 504	HENRY W. & NANCY K. STEWART	5814/618	1700013584
# 505	FRANK A. & CATHERINE CIRINCIONE	5625/873	1700006863
# 506	BRUCE T. & GEORGIA M. HARVEY	15356/696	1700013583
# 507	JOHN M. & MARILYN R. WELLING	5782/958	1700006864

YORK ROAD

	OWNERS	DEED REF.	TAX. ACCT. NO.
# 18100	DORIAN BOCK & DANIEL BOCK	17101/652	1700006865
# 18118	LEE A. & HAZEL L. PHILLIPS	NONE	0716035090
# 18120	JAMES E. & AMI A.W. CARRIER	10102/649	2000014278
# 18126	BEATRICE J. BOARDMAN	10992/296	0702057480
# 18200	MARION V., 3RD RUNKLES	4667/141	0718072251

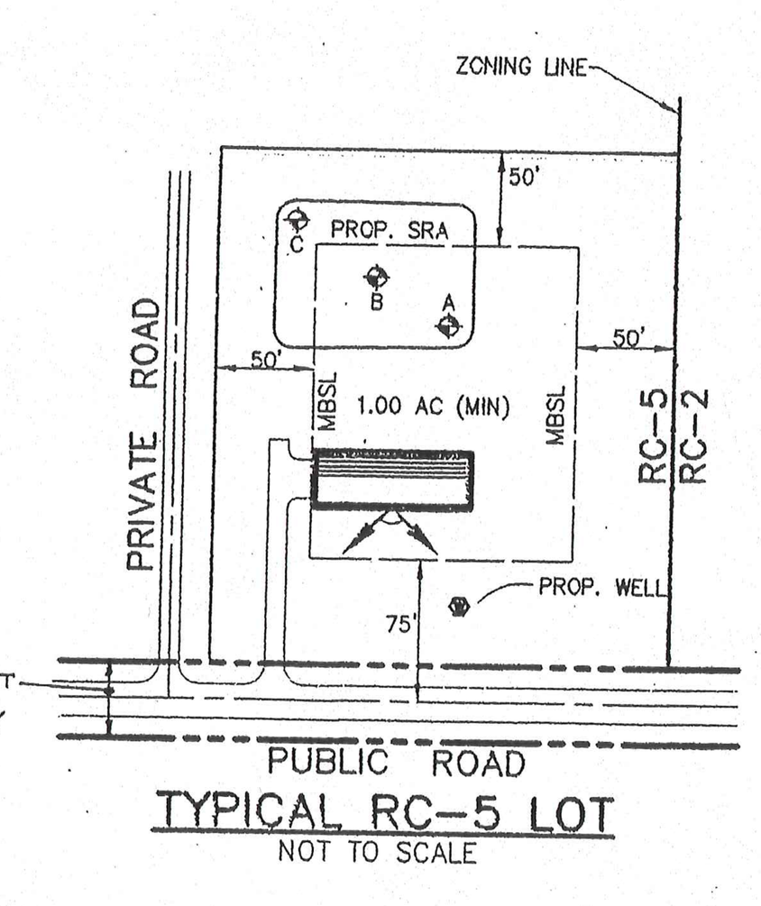
TRASH & MAIL PICKUP AREA DETAIL
NOT TO SCALE



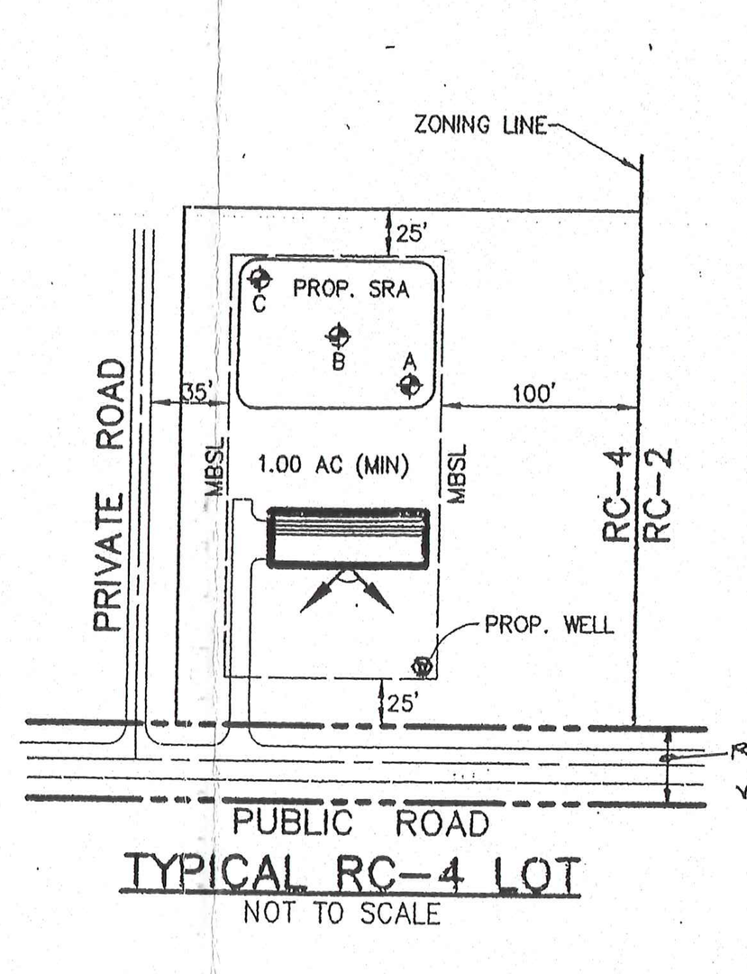
DATE	REVISION
6-6-05	1ST REFINEMENT

We, Terrafirm, Inc. and George W. Gaffney certify under oath that there are no delinquent accounts for any other development with respect to any of the following: the applicant, a person with a financial interest in the proposed development, or a person who will perform contractual services on behalf of the proposed development.

Terrafirm, Inc.
By: Marian K. Robinson, President 12/10/03 Date
George W. Gaffney, Individually 12/10/03 Date



PUBLIC ROAD
TYPICAL RC-5 LOT
NOT TO SCALE



PUBLIC ROAD
TYPICAL RC-4 LOT
NOT TO SCALE

DESIGN AND DRAWING BASED ON MARYLAND COORDINATE SYSTEM HORIZONTAL - NAD 83/91 VERTICAL - NAVD 88

HEARING OFFICER'S ORDER

Re: Hearing Officer's Hearing - Case No. VII-372
Property: N/S of Millers Lane, S Raven Rock Court
7th Election District, 3rd Councilmanic District
(Montclair Property)

THEREFORE, IT IS ORDERED, by this Deputy Zoning Commissioner/Hearing Officer for Baltimore County, this 1 day of June, 2004, that the Development Plan known as "Montclair", submitted into evidence as "Developer's Exhibit No. 9", be and is hereby APPROVED subject to the following conditions:

1. The Developer shall delineate the dump swale site on Lots 10, 11 and 12 by metes and bounds and by deed covenants require that the area of the dump swale in these lots remain undisturbed.
2. That the Developer submit a landscape plan to the County Landscape Architect for approval which among other requirements shown on the development plan shall clarify that the plantings used to screen the historic Wiseburg Inn from new homes in this development be of a type to create a sight buffer with mature evergreens; and
3. That the homes on Lots 14 and 15 be no more than one story in height.

Any appeal from this decision must be taken in accordance with Section 26-209 of the Baltimore County Code and the applicable provisions of law.

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

PLAN TO ACCOMPANY HEARING OFFICER'S ORDER
7/11/05 DATE
VII-372/052305B PROJECT MANAGER

PLAT TO ACCOMPANY PETITION FOR SPECIAL HEARING AND 2ND REFINEMENT

RECEIVED JUN 23 2005 DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

~~1ST REFINEMENT~~
SITE DEVELOPMENT PLAN

MONTCLAIR

FKA GAFFNEY PROPERTY
PDM NO. VII-372
3RD COUNCILMANIC DISTRICT
7TH ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND
SCALE : 1" = 100'
DATE : 9/26/2016

OLD

2017-0113-SPH

SITE DATA

1. EXISTING ZONING OF PROPERTY: RC-4 AND RC-5
2. GROSS AREA:
   RC-4 50.649 AC.
   RC-5 9.426 AC.
   TOTAL 60.075 AC.
3. NUMBER OF LOTS ALLOWED:
   RC-4 (50.649 X 0.2) = 10 LOTS
   RC-5 (9.426 X .667) = 6 LOTS
   TOTAL 16 LOTS
4. NUMBER OF LOTS PROPOSED:
   RC-4 10 LOTS
   RC-5 6 LOTS
   TOTAL 16 LOTS
5. HIGHWAY WIDENING AREA (YORK ROAD) = 0.018 ACRES
6. ROAD DEDICATION (MONTCLAIR COURT) = 2.116 ACRES
7. HOA AREA = 0.370 ACRES
8. PARCELS A AND B = 0.685 ACRES
9. SWM RESERVATION = 0.218 ACRES
10. CONSERVANCY AREA = 35.454 ACRES
11. NET AREA OF LOTS = 21.214 ACRES
12. AVERAGE LOT SIZE = 1.326 ACRES
13. PARKING REQUIRED = 2 SPACES PER LOT = 32 SPACES
14. PARKING PROPOSED = 2 PLUS SPACES PER LOT = 32 PLUS SPACES
15. OPEN SPACE REQUIRED = 10,400 S.F. ACTIVE AND 5,600 S.F. PASSIVE OR A COMBINATION THEREOF AS SPECIFIED IN SECTION 111.D.3
16. OPEN SPACE PROVIDED = WAIVER APPROVED AND FEE-IN-LIEU PAID.
17. COUNCILMANIC DISTRICT = 3RD
18. ELECTION DISTRICT = 7TH
19. 2000 CENSUS TRACT = 4070
20. 2000 CENSUS BLOCK TRACT = 4070.001
21. LAND MANAGEMENT AREA = APA
22. ELEMENTARY SCHOOL DISTRICT = 7TH
23. MIDDLE SCHOOL DISTRICT = HEREFORD
24. HIGH SCHOOL DISTRICT = HEREFORD
25. REGIONAL PLANNING DISTRICT = 301
26. WATERSHED = LOCH RAVEN
27. WATER SERVICES AREA = NON-SERVICE AREA
28. SUBSEWERSHED = 81
29. TRANSPORTATION ZONE = 402
30. ZIP CODE = 21120

RC-4 DATA

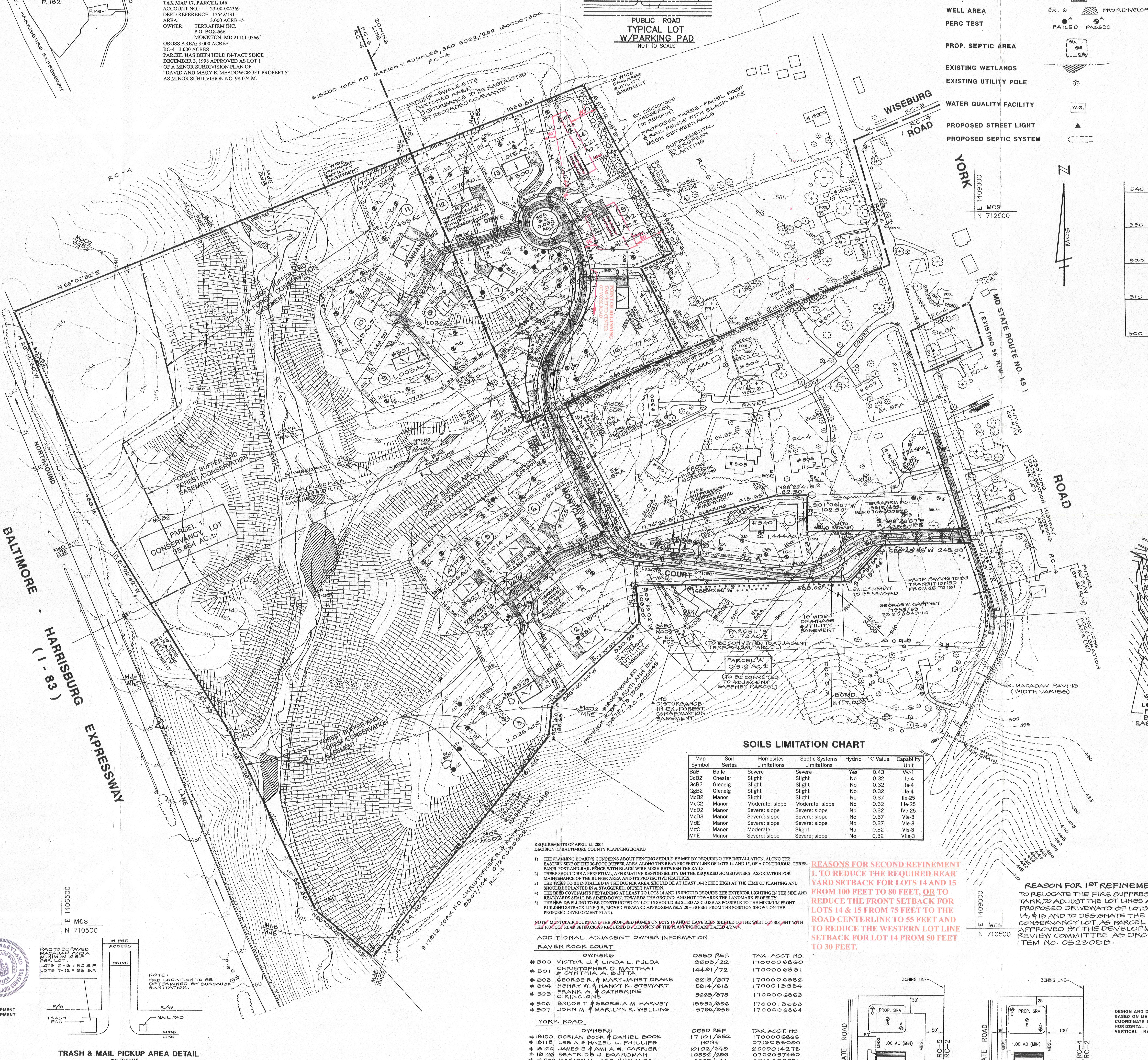
RC-4 RURAL CLUSTER INFORMATION	DATA
RC-4 ACREAGE	50.649
LOTS ALLOWED IN RC-4 (ACRES X .20)	10
EXISTING LOTS	2
PROPOSED LOTS (TOTAL)	10
REMAINING DENSITY	0
MAXIMUM RC-4 BUILDING AREA (30% X ACREAGE)	15.195
PROPOSED RC-4 BUILDING AREA	15.195
MINIMUM RC-4 CONSERVANCY AREA (70% X ACREAGE)	35.454
PROPOSED RC-4 CONSERVANCY AREA	35.454

GENERAL NOTES

1) ALL LOTS SHOWN HEREON ARE FOR SINGLE-FAMILY USE AND ARE FOR SALE.
2) EXISTING LAND IS FOREST, AGRICULTURAL, AND RESIDENTIAL.
3) TO THE BEST OF OUR KNOWLEDGE, THERE ARE NO CRITICAL AREAS, ENDANGERED SPECIES HABITAT, OR HAZARDOUS MATERIALS ON THIS SITE.
4) INDIVIDUAL LOT GRADING WILL BE ACCOMPLISHED BY THE INDIVIDUAL HOME BUILDING CONTRACTOR(S).
5) EXISTING TREES AND VEGETATION SHALL BE PRESERVED WHERE POSSIBLE OUTSIDE OF ROAD, BUILDING, AND UTILITY CONSTRUCTION.
6) TOPOGRAPHY SHOWN HEREON IS FLOWN.

[illegible]

PROPERTY INFORMATION



SOILS LIMITATION CHART

Map Symbol	Soil Series	Homesites Limitations	Septic Systems Limitations	Hydric	"K" Value	Capability Unit
BaB	Baile	Severe	Severe	Yes	0.43	Vw-1
CcB2	Chester	Slight	Slight	No	0.32	IIe-4
GcB2	Glenelg	Slight	Slight	No	0.32	IIe-4
GgB2	Glenelg	Slight	Slight	No	0.32	IIe-4
McB2	Manor	Slight	Slight	No	0.37	IIe-25
McC2	Manor	Moderate: slope	Moderate: slope	No	0.32	IIIe-25
McD2	Manor	Severe: slope	Severe: slope	No	0.32	IVe-25
McD3	Manor	Severe: slope	Severe: slope	No	0.37	VIe-3
MdE	Manor	Severe: slope	Severe: slope	No	0.37	VIe-3
MgC	Manor	Moderate	Slight	No	0.32	VIs-3
MhE	Manor	Severe: slope	Severe: slope	No	0.32	VIIs-3

REASONS FOR SECOND REFINEMENT
1. TO REDUCE THE REQUIRED REAR YARD SETBACK FOR LOTS 14 AND 15 FROM 100 FEET TO 80 FEET, OR TO REDUCE THE FRONT SETBACK FOR LOTS 14 & 15 FROM 75 FEET TO THE ROAD CENTERLINE TO 55 FEET AND TO REDUCE THE WESTERN LOT LINE SETBACK FOR LOT 14 FROM 50 FEET TO 30 FEET.

REASON FOR 1ST REFINEMENT
TO RELOCATE THE FIRE SUPPRESSION TANK, TO ADJUST THE LOT LINES AND PROPOSED DRIVEWAYS OF LOTS 13, 14, & 15 AND TO DESIGNATE THE CONSERVANCY LOT AS PARCEL 1. APPROVED BY THE DEVELOPMENT REVIEW COMMITTEE AS DRC ITEM NO. 0523055.

DETAIL

SCHEMATIC STORM DRAINS, GRADING, AND STORMWATER MANAGEMENT FACILITY

SCALE: 1" = 40'

HEARING OFFICER'S ORDER

Re: Hearing Officer's Hearing - Case No. VII-372
Property: N/S of Millers Lane, S Raven Rock Court
7th Election District, 3rd Councilmanic District
(Montclair Property)

THEREFORE, IT IS ORDERED, by this Deputy Zoning Commissioner/Hearing Officer for Baltimore County, this 1 day of June, 2004, that the Development Plan known as "Montclair", submitted into evidence as "Developer's Exhibit No. 9", be and is hereby APPROVED subject to the following conditions:

1. The Developer shall delineate the dump swale site on Lots 10, 11 and 12 by metes and bounds and by deed covenants require that the area of the dump swale in these lots remain undisturbed.
2. That the Developer submit a landscape plan to the County Landscape Architect for approval which among other requirements shown on the development plan shall clarify that the plantings used to screen the historic Wiseburg Inn from new homes in this development be of a type to create a sight buffer with mature evergreens; and
3. That the homes on Lots 14 and 15 be no more than one story in height

Any appeal from this decision must be taken in accordance with Section 26-209 of the Baltimore County Code and the applicable provisions of law.

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

PLAN TO ACCOMPANY HEARING OFFICER'S ORDER

PLAT TO ACCOMPANY PETITION FOR SPECIAL HEARING AND 2ND REFINEMENT

SEALED FOR 2ND REFINEMENT AND SPECIAL HEARING REQUEST

GEOFFREY SCHULTZ 10/19/16 DATE

I HEREBY CERTIFY THAT I HAVE REVIEWED WITH DUE DILIGENCE THE APPROVED DEVELOPMENT PLAN DATED 07/26/2004, AND HAVE PREPARED WITH DUE DILIGENCE THIS FINAL DEVELOPMENT PLAN PURSUANT TO THAT APPROVED DEVELOPMENT PLAN.

JAMES W. McKEE (MD REG. NO. 5012) 8/5/2004 DATE

TRASH & MAIL PICKUP AREA DETAIL
NOT TO SCALE

DATE	REVISION
6-6-05	1ST REFINEMENT

McKEE & ASSOCIATES, INC.
Engineering – Land Planning – Land Surveying
Natural Resource Planning – Real Estate Development
5 SHAWAN ROAD, Suite 1 COCKEYSVILLE, MARYLAND 21030
TELEPHONE: (410) 527-1555 FACSIMILE: (410) 527-1563
JOB NUMBER: 00-074

~~1ST REFINEMENT~~
SITE DEVELOPMENT PLAN
MONTCLAIR
FKA GAFFNEY PROPERTY
PDM NO. VII-372
3RD COUNCILMANIC DISTRICT
7TH ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND
SCALE: 1" = 100' DATE: 1/20/2017

SITE DATA

1. EXISTING ZONING OF PROPERTY: RC-4 AND RC-5
2. GROSS AREA:
   RC-4 50.649 AC.
   RC-5 9.426 AC.
   TOTAL 60.075 AC.
3. NUMBER OF LOTS ALLOWED:
   RC-4 (50.649 X 0.2) = 10 LOTS
   RC-5 (9.426 X .667) = 6 LOTS
   TOTAL 16 LOTS
4. NUMBER OF LOTS PROPOSED:
   RC-4 10 LOTS
   RC-5 6 LOTS
   TOTAL 16 LOTS
5. HIGHWAY WIDENING AREA (YORK ROAD) = 0.018ACRES
6. ROAD DEDICATION (MONTCLAIR COURT) = 2.116 ACRES
7. HOA AREA = 0.370 ACRES
8. PARCELS A AND B = 0.685 ACRES
9. SWM RESERVATION = 0.218 ACRES
10. CONSERVANCY AREA = 35.454 ACRES
11. NET AREA OF LOTS = 21.214 ACRES
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14. PARKING PROPOSED = 2 PLUS SPACES PER LOT = 32 PLUS SPACES
15. OPEN SPACE REQUIRED = 10,400 S.F. ACTIVE AND 5,600 S.F. PASSIVE OR A COMBINATION THEREOF AS SPECIFIED IN SECTION 111.D.3
16. OPEN SPACE PROVIDED = WAIVER APPROVED AND FEE-IN-LIEU PAID.
17. COUNCILMANIC DISTRICT = 3RD
18. ELECTION DISTRICT = 7TH
19. 2000 CENSUS TRACT = 4070
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21. LAND MANAGEMENT AREA = APA
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24. HIGH SCHOOL DISTRICT = HEREFORD
25. REGIONAL PLANNING DISTRICT = 301
26. WATERSHED = LOCH RAVEN
27. WATER SERVICES AREA = NON-SERVICE AREA
28. SUBSEWERSHED = 81
29. TRANSPORTATION ZONE = 402
30. ZIP CODE = 21120

RC-4 DATA

RC-4 RURAL CLUSTER INFORMATION	DATA
RC-4 ACREAGE	50.649
LOTS ALLOWED IN RC-4 (ACRES X .20)	10
EXISTING LOTS	2
PROPOSED LOTS (TOTAL)	10
REMAINING DENSITY	0
MAXIMUM RC-4 BUILDING AREA (30% X ACREAGE)	15.195
PROPOSED RC-4 BUILDING AREA	15.195
MINIMUM RC-4 CONSERVANCY AREA (70% X ACREAGE)	35.454
PROPOSED RC-4 CONSERVANCY AREA	35.454

GENERAL NOTES

1) ALL LOTS SHOWN HEREON ARE FOR SINGLE-FAMILY USE AND ARE FOR SALE.
2) EXISTING LAND IS FOREST, AGRICULTURAL, AND RESIDENTIAL.
3) TO THE BEST OF OUR KNOWLEDGE, THERE ARE NO CRITICAL AREAS, ENDANGERED SPECIES HABITAT, OR HAZARDOUS MATERIALS ON THIS SITE.
4) INDIVIDUAL LOT GRADING WILL BE ACCOMPLISHED BY THE INDIVIDUAL HOME BUILDING CONTRACTOR(S).
5) EXISTING TREES AND VEGETATION SHALL BE PRESERVED WHERE POSSIBLE OUTSIDE OF ROAD, BUILDING, AND UTILITY CONSTRUCTION.
6) TOPOGRAPHY SHOWN HEREON IS FLOWN.
7) SOILS SHOWN HEREON ARE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP 9W.
8) TOTAL AVERAGE DAILY TRIPS: 16 LOTS X 12.4 = 199
9) MITIGATING MEASURES FOR SOILS WITH LIMITATIONS DUE TO STEEP SLOPES:
   A) WHENEVER POSSIBLE, GRADING OR DISTURBANCE OF STEEP SLOPES SHALL BE AVOIDED.
   B) ALL LOTS AND ROADS SHALL BE GRADED SO AS TO DIRECT ANY CONCENTRATED STORM WATER FLOWS AWAY FROM AREAS OF STEEP SLOPES.
   C) IF DISTURBED, ALL AREAS OF STEEP SLOPES SHALL BE PROPERLY VEGETATED TO ASSURE STABILITY AND PREVENT EROSION.
10. THIS SITE IS NOT LOCATED IN ANY DEFICIENT AREA ON THE BASIC SERVICE MAPS PURSUANT TO SECTION 4A02-BCZR.
11. COURSES, COORDINATES, AND ELEVATIONS SHOWN HEREON ARE BASED ON MCS AND NAVD 88.
12. THERE ARE NO HISTORIC BUILDINGS ON THE SUBJECT PROPERTY.
13. TRASH IS TO BE COLLECTED BY BALTIMORE COUNTY.
14. PROPOSED HOUSE SIZES AND LOCATIONS ARE SCHEMATIC ONLY. FINAL LOCATIONS TO BE DETERMINED AT TIME OF BUILDING PERMIT.
15. STORM DRAINS, GRADING AND STORMWATER MANAGEMENT LAYOUTS SHOWN HEREON ARE SCHEMATIC ONLY, AND ARE SUBJECT TO CHANGE UPON FINAL DESIGN AND APPROVAL.
16. PROPOSED DRIVEWAYS ARE CONCEPTUAL ONLY, AND ARE SUBJECT TO CHANGE BASED ON FINAL DESIGN, GRADING OF LOTS, AND WELL LOCATIONS.
17. THERE ARE NO PROPOSED SIGNS FOR THIS SITE AT THIS TIME. ANY FUTURE PROPOSED SIGNS WILL COMPLY WITH BCZR SECTION 450 AND WILL COMPLY WITH ALL ZONING POLICIES.
18. THERE HAVE BEEN NO PRIOR ZONING HEARINGS ON THIS SITE.
19. ALL EXISTING BUILDINGS ARE TO BE RAZED.
20. BUILDINGS TO BE RAZED WILL BE THE RESPONSIBILITY OF THE DEVELOPER.
21. ALL PROPOSED HOUSES WILL HAVE A MAXIMUM HEIGHT OF 35 FEET IN ALL RC ZONES, AND WILL COMPLY WITH ALL BALTIMORE COUNTY ZONING REGULATIONS.
22. NO MORE THAN 15 PERCENT OF ANY LOT IN A RC-5 ZONE MAY BE COVERED BY IMPERMEABLE SURFACES.
23. THIS DEVELOPMENT PLAN IS APPROVED BY THE DIRECTOR OF PDM BASED ON HIS INTERPRETATIONS OF THE ZONING REGULATIONS, THAT IT COMPLIES WITH PRESENT POLICY, DENSITY, AND BULK CONTROLS AS THEY ARE DELINEATED IN THE REGULATIONS. ANY PART OR PARCEL OF THIS TRACT THAT HAS BEEN UTILIZED FOR DENSITY TO SUPPORT DWELLINGS SHOWN THEREON SHALL NOT BE FURTHER DIVIDED, SUBDIVIDED OR DEVELOPED FOR ADDITIONAL DWELLINGS OR ANY PURPOSE OTHER THAN THAT INDICATED PRESENTLY ON SAID PLAN. UTILIZATION WILL HAVE OCCURRED WHEN A DWELLING IS CONSTRUCTED AND TRANSFERRED FOR THE PURPOSE OF OCCUPANCY.
24. ACCESSORY STRUCTURE NOTES.
   A) ENVELOPES SHOWN HEREON ARE FOR THE LOCATION OF ALL PRINCIPAL BUILDINGS ONLY. ACCESSORY STRUCTURES, FENCES AND PROJECTIONS INTO YARDS MAY BE CONSTRUCTED OUTSIDE THE ENVELOPES, BUT MUST COMPLY WITH SECTIONS 400 AND 301 OF THE BALTIMORE COUNTY ZONING REGULATIONS (SUBJECT TO COVENANTS AND APPLICABLE BUILDING PERMITS).
   B) ACCESSORY STRUCTURES, FENCES AND PROJECTIONS INTO YARDS CANNOT BE LOCATED IN FLOOD PLAIN AREAS OR HYDRIC SOILS.
25. ENVELOPES OR TYPICAL DWELLINGS AS SHOWN DICTATE A SPECIFIC ORIENTATION WHICH IS INTENDED TO ALLOW COMPLIANCE WITH BALTIMORE COUNTY ZONING REGULATIONS OR POLICIES. SHOULD THE ORIENTATION CHANGE OR CREATE CONFLICTS WITH THE REGULATIONS OR POLICIES, THE ORIENTATION MUST BE CHANGED TO ALLEVIATE THE CONFLICT.
26. 200-SCALE ZONING MAP NO. NW 30B AND 30C.
27. PART OF THIS SITE REPRESENTS A RESUBDIVISION OF LOT 1 OF A MINOR SUBDIVISION PLAN OF "DAVID AND MARY E. MEADOWCROFT PROPERTY" AS MINOR SUBDIVISION NO. 98-074 M.
28. IF A PORTION OF A CONSERVANCY AREA IS TO BE USED FOR AGRICULTURAL PURPOSES AND THE SAID PORTION ADJOINS A LOT OR LOTS IN A RC-4 ZONE, THE ADJOINING SETBACK ON THESE LOTS WILL BE INCREASED TO 50 FEET.
29. THE MAXIMUM AREA FOR CLEARING AND GRADING FOR ANY RC-4 LOT IS 20,000 SQUARE FEET.
30. THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION, OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER AND FOREST CONSERVATION EASEMENT EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.
31. ANY FOREST BUFFER AND FOREST CONSERVATION EASEMENT SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS, WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY, MARYLAND AND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS.
32. BALTIMORE COUNTY AGRICULTURAL NOTE:
   ANY DWELLING MAY BE SUBJECT TO INCONVENIENCES OR DISCOMFORTS ARISING FROM AGRICULTURAL OPERATION, INCLUDING BUT NOT LIMITED TO, NOISE, ODORS, FUMES, DUST, THE OPERATION OF MACHINERY OF ANY KIND DURING ANY 24-HOUR PERIOD (INCLUDING AIRCRAFT), THE STORAGE AND DISPOSAL OF MANURE, AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES. THE COUNTY SHALL NOT CONSIDER AN AGRICULTURAL OPERATION TO BE A PUBLIC OR PRIVATE NUISANCE, IF THE OPERATION COMPLIES WITH THESE REGULATIONS AND ALL FEDERAL, STATE, OR COUNTY HEALTH OR ENVIRONMENTAL REQUIREMENTS.
33. A WAIVER TO STORMWATER MANAGEMENT REGULATIONS HAS BEEN GRANTED FOR THIS SITE. (DATE OF APPROVAL WAS 10/30/2002, VALID FOR TWO YEARS AFTER APPROVAL OF DEVELOPMENT PLAN.)
34. PRIOR TO THE FINAL APPROVAL OF ANY RECORD PLAT, A PERMANENT PRESERVATION EASEMENT ON THE CONSERVANCY AREA SHALL BE RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY TO RUN WITH THE LAND AND CONTINUE IN PERPETUITY. THE CONSERVANCY AREA EASEMENTS SHALL BE GRANTED TO THE COUNTY OR SUCH OTHER AGENCY OR ENTITY WHICH THE COUNTY APPROVES, AND SHALL PERMANENTLY RESTRICT FURTHER SUBDIVISION OF THE CONSERVANCY AREA. THE CONSERVANCY AREA AGREEMENT SHALL ALSO BE IN A FORM APPROVED BY THE COUNTY ATTORNEY WHO SHALL CONSULT WITH THE DIRECTOR OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.
35. LOTS SHOWN HEREON SHALL OPERATE ON PRIVATE WELL AND SEPTIC SYSTEMS.
36. TO THE BEST OF OUR KNOWLEDGE, THERE ARE NO KNOWN EXISTING UNDERGROUND FUEL TANKS ON THIS SITE.
37. THERE ARE NO WELLS OR SEPTIC AREAS WITHIN 100 FEET OF THE PROPERTY EXCEPT AS SHOWN.
38. ALL BUILDINGS TO BE RAZED WILL BE DONE PRIOR TO RECORD PLAT APPROVAL. THE EXISTING SEPTIC SYSTEM ON THE CONSERVANCY LOT WILL BE ABANDONED AND THE EXISTING WELL WILL BE BACKFILLED PRIOR TO RECORD PLAT APPROVAL.
39. AS PERMITTED BY BCZR SECTION 1A03.5 AND THE BALTIMORE COUNTY CODE, COMMERCIAL LOGGING OR TIMBER HARVESTING ACTIVITIES MAY BE CONDUCTED IN THE FUTURE WITHIN THE IDENTIFIED CONSERVANCY AREA.
40. THE BUREAU OF DEVELOPMENT PLANS REVIEW HAS APPROVED THE USE OF 3-FOOT WIDE SHOULDERS FOR MONTCLAIR COURT BETWEEN STATIONS 8+00 AND 18+00.
41. THE BUREAU OF DEVELOPMENT PLANS REVIEW AND DEPRM HAVE APPROVED THE USE OF 2:1 SIDE SLOPES FOR CERTAIN PORTIONS OF MONTCLAIR COURT.
42. "NO PARKING" SIGNS SHALL BE POSTED PROHIBITING PARALLEL PARKING ON THE 18-FOOT WIDE STREETS AND WITHIN THE TURNAROUND AREA.
43. MILLER LANE WILL TERMINATE AT MONTCLAIR COURT AND WILL NOT CONNECT THERETO.
44. INGRESS, EGRESS, MAINTENANCE AND UTILITY EASEMENT AGREEMENTS WILL BE EXECUTED FOR THE USE-IN-COMMON PRIVATE DRIVEWAYS FOR LOTS 2 THROUGH 6 AND LOTS 7 THROUGH 12.
45. THE PROPOSED PUBLIC ROAD RIGHT-OF-WAY AND THE STORMWATER MANAGEMENT RESERVATION WILL BE DEDICATED TO BALTIMORE COUNTY AT NO COST. ALL BALTIMORE COUNTY EASEMENTS WILL BE DEDICATED TO BALTIMORE COUNTY.
46. THE HIGHWAY WIDENING AREA WILL BE DEDICATED TO THE STATE OF MARYLAND.
47. STORMWATER MANAGEMENT FACILITIES ARE TO BE PUBLIC, AND MAINTAINED BY BALTIMORE COUNTY.
48. THE EXISTING BGE RIGHT-OF-WAY IS BY EASEMENT ONLY AND IS NOT IN-FEE, WIDTH UNDEFINED.
49. BUREAU OF TRAFFIC ENGINEERING AND TRANSPORTATION PLANNING HAS CONFIRMED THAT THE SUBJECT SITE IS NOT WITHIN A TRAFFIC DEFICIENT AREA.
50. YORK ROAD AND I-83 ARE DESIGNATED AS "SCENIC CORRIDORS" ON THE "SCENIC RESOURCES MAP" IN THE MASTER PLAN 2010.
51. THE MASTER PLAN 2010 LAND MANAGEMENT AREA PLAN DESIGNATION IS AGRICULTURAL PRESERVATION.
52. THE CONSERVANCY AREA WILL BE RETAINED IN SINGLE OWNERSHIP BY THE OWNER OF PARCEL 182 SHOWN HEREON OR BY A TRUST TO BE ESTABLISHED BY THE SAID OWNER.
53. FOR THE PRESERVATION OF HISTORIC SITE 18BA496, NO GRADING OR OTHER GROUND DISTURBANCE SHALL BE PERMITTED WITHOUT PRIOR APPROVAL FROM THE DIRECTOR OF PLANNING IN THE PORTION OF THE FOREST BUFFER AND CONSERVATION AREA BOUNDED BY THIS DEVELOPMENT'S NORTHERN PROPERTY LINE, THE PERENNIAL STREAM, AND THE LINES OF LOTS 10 AND 11.
54. EXISTING PRIVATE ACCESS EASEMENT RECORDED UNDER MINOR SUBDIVISION NO. 98074 M WILL BE ABANDONED.
55. EXISTING DRIVEWAY TO #18020 YORK ROAD WILL BE ABANDONED.
56. THE SEPTIC SYSTEM FOR THE EXISTING DWELLING ON THE CONSERVANCY LOT WILL BE PROPERLY ABANDONED PRIOR TO RECORD PLAT APPROVAL.
57. A CONTINUING USE VARIANCE WILL BE SOUGHT FOR THE STRUCTURE ON #18020 YORK ROAD IN THE FOREST CONSERVATION EASEMENT OR IT WILL BE BROUGHT INTO COMPLIANCE.

SEALED FOR 2ND REFINEMENT AND SPECIAL HEARING REQUEST

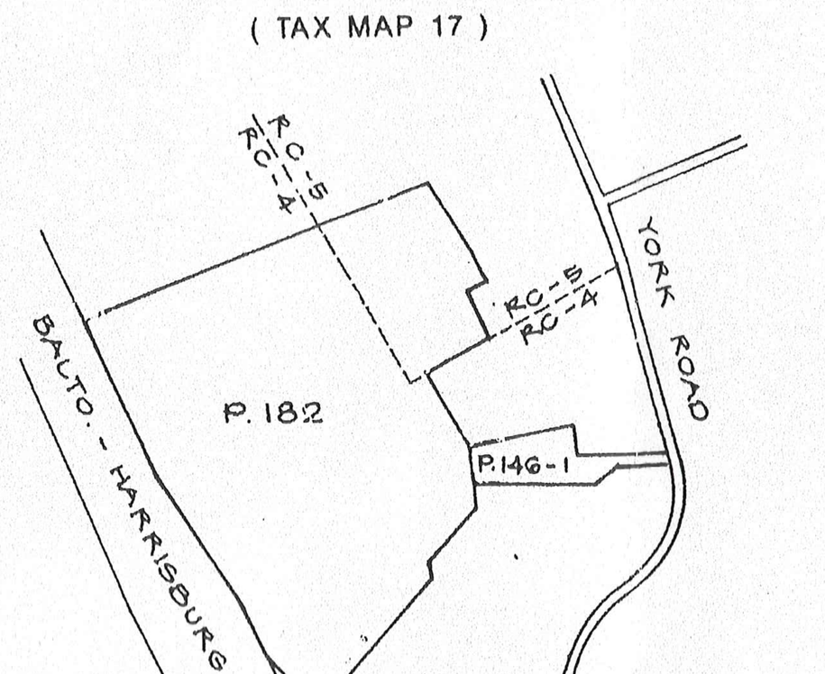
GEOFFREY C. SCHULTZ 10/19/16
DATE

I HEREBY CERTIFY THAT I HAVE REVIEWED WITH DUE DILIGENCE THE APPROVED DEVELOPMENT PLAN DATED 07/20/2004, AND HAVE PREPARED WITH DUE DILIGENCE THIS FINAL DEVELOPMENT PLAN PURSUANT TO THAT APPROVED DEVELOPMENT PLAN.

JAMES W. MCKEE (MD REG. NO. 9012) 8/5/2004 DATE

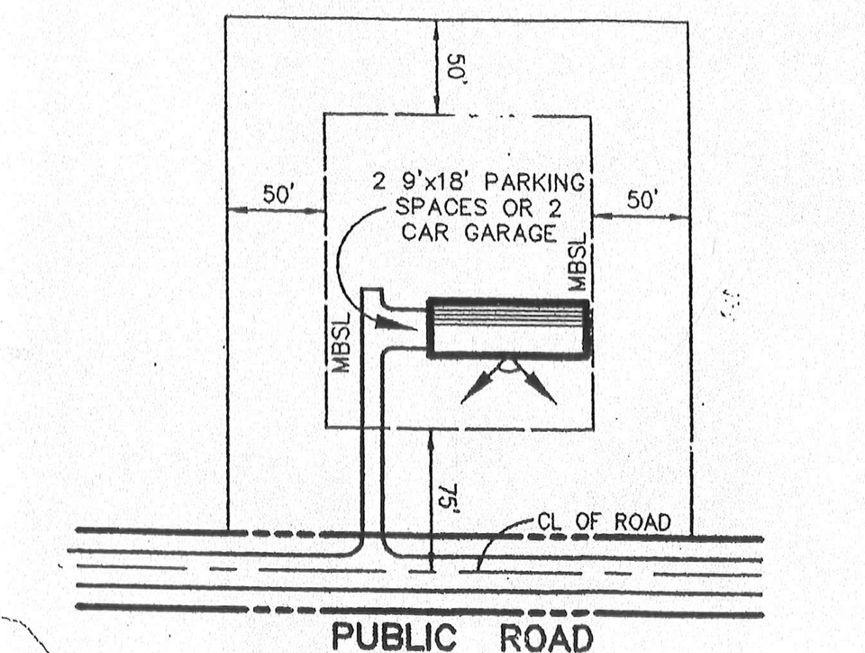
PROPERTY INFORMATION

EXISTING PROPERTY CONFIGURATION (TAX MAP 17)



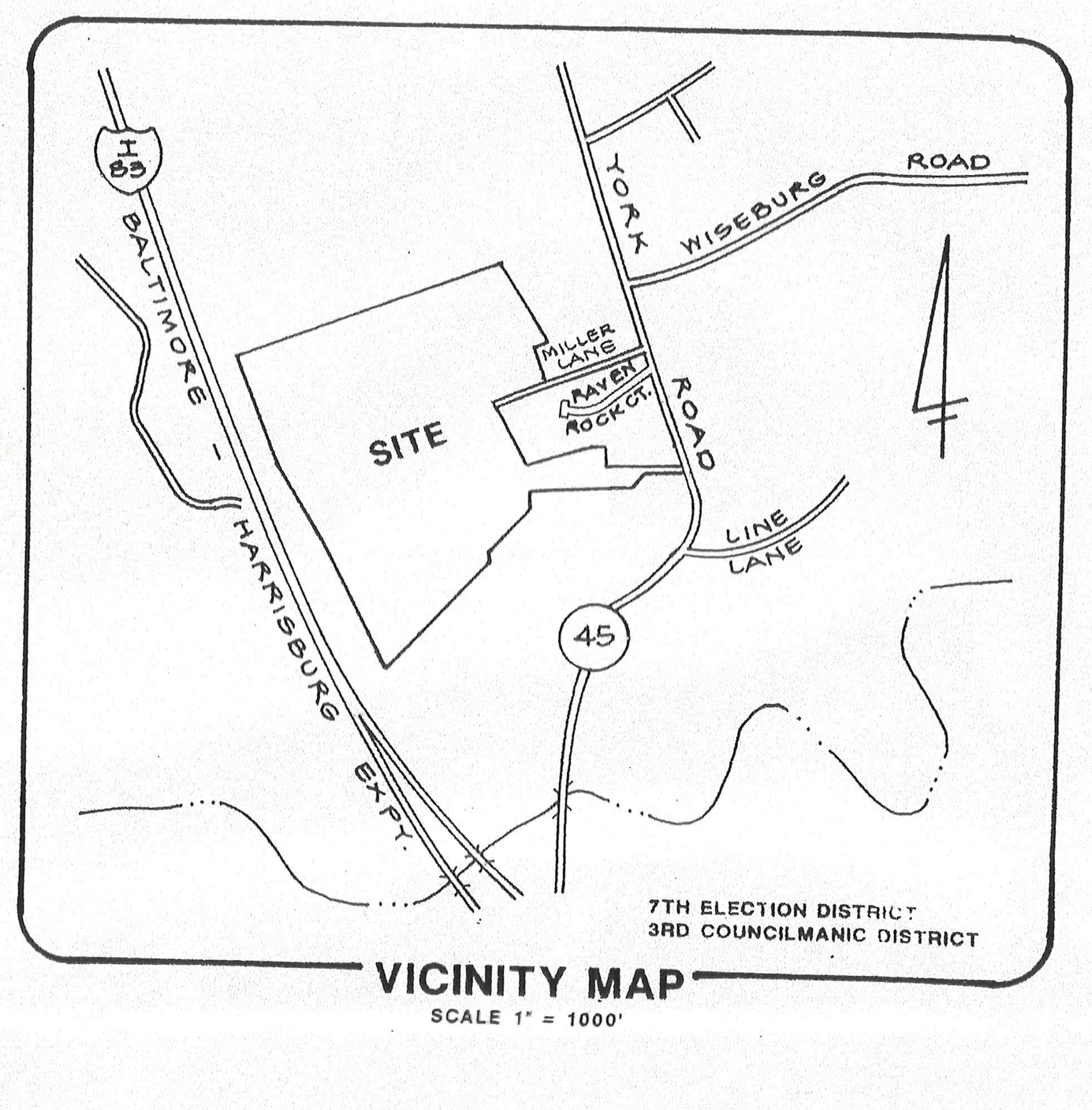
TAX MAP 17, PARCEL 182
ACCOUNT NO.: 07-07-000145
DEED REFERENCE: 4380/482
AREA: 57.075 ACRE +/-
OWNER: GEORGE W. GAFFNEY
P.O. BOX 566
MONKTON, MD 21111-0566
GROSS AREA: 57.075 ACRES
RC-5 9.426 ACRES
RC-4 47.649 ACRES
PARCEL HAS BEEN HELD IN-TACT SINCE OCTOBER 23, 1964

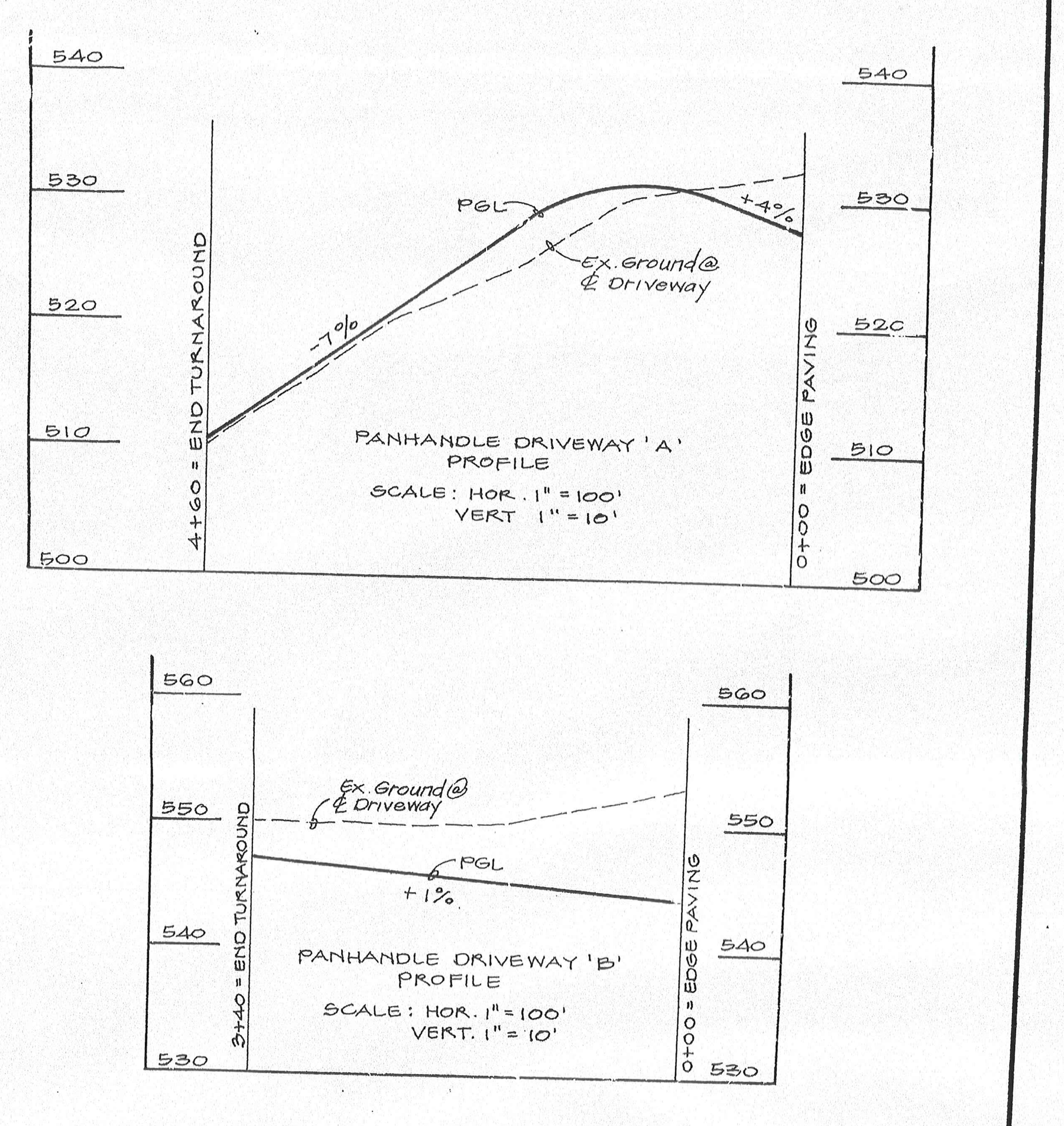
TAX MAP 17, PARCEL 146
ACCOUNT NO.: 23-00-004369
DEED REFERENCE: 13542/131
AREA: 3.000 ACRE +/-
OWNER: TERRAFIRM INC.
P.O. BOX 566
MONKTON, MD 21111-0566
GROSS AREA: 3.000 ACRES
RC-4 3.000 ACRES
PARCEL HAS BEEN HELD IN-TACT SINCE DECEMBER 3, 1998 APPROVED AS LOT 1 OF A MINOR SUBDIVISION PLAN OF "DAVID AND MARY E. MEADOWCROFT PROPERTY" AS MINOR SUBDIVISION NO. 98-074 M.

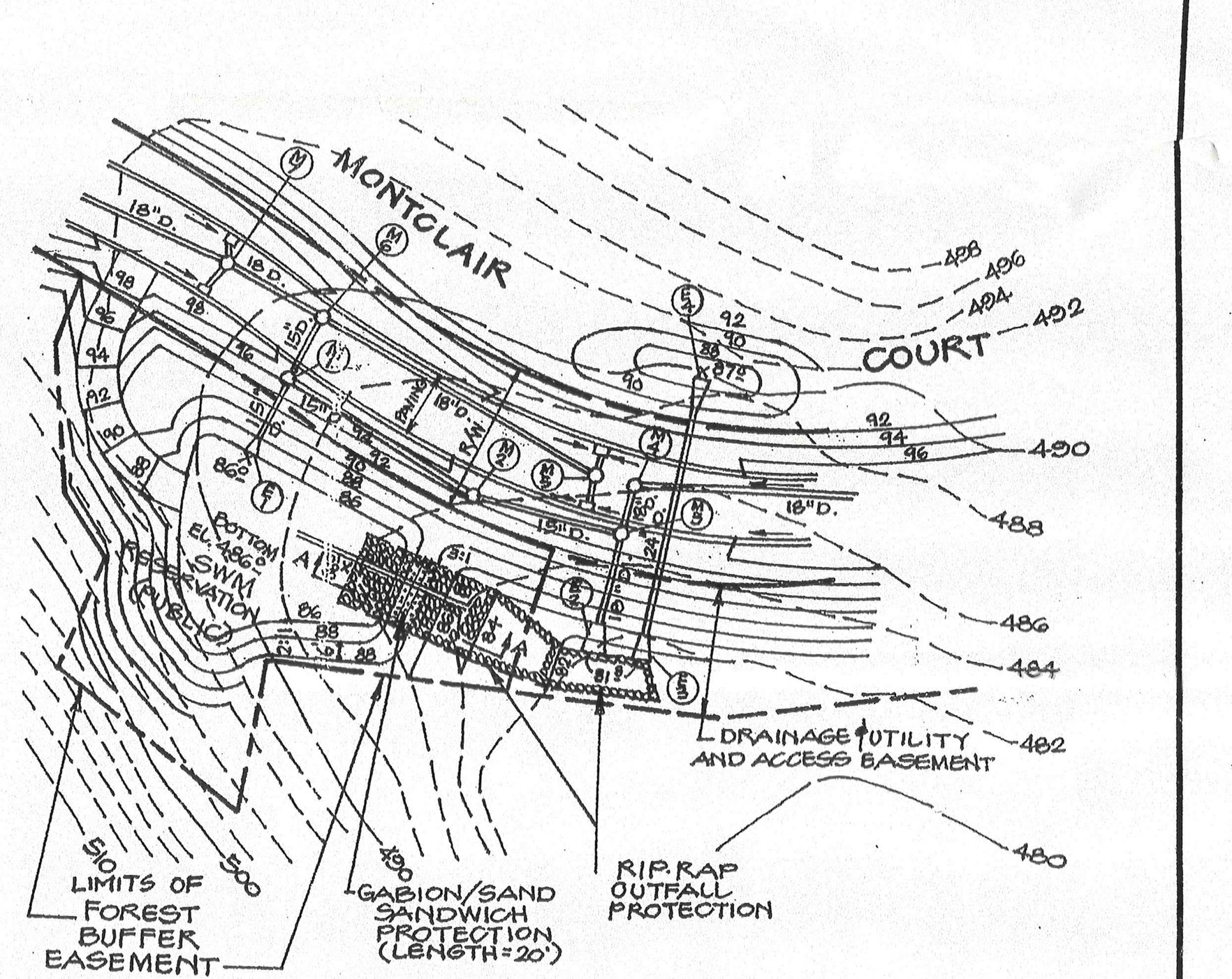


LEGEND

EXISTING CONTOUR
SLOPES > 25 %
EXISTING STREAM
EXISTING WOODS LINE
SOILS LINE
HOUSE SITE
WELL AREA
PERC TEST
PROP. SEPTIC AREA
EXISTING WETLANDS
EXISTING UTILITY POLE
WATER QUALITY FACILITY
PROPOSED STREET LIGHT
PROPOSED SEPTIC SYSTEM







DETAIL
SCHEMATIC STORM DRAINS, GRADING, AND STORMWATER MANAGEMENT FACILITY
SCALE: 1" = 40'

SOILS LIMITATION CHART

Map Symbol	Soil Series	Homesites Limitations	Septic Systems Limitations	Hydric	"K" Value	Capability Unit
BaB	Baile	Severe	Severe	Yes	0.43	Vw-1
CcB2	Chester	Slight	Slight	No	0.32	IIe-4
GcB2	Glenelg	Slight	Slight	No	0.32	IIe-4
GgB2	Glenelg	Slight	Slight	No	0.32	IIe-4
McB2	Manor	Slight	Slight	No	0.37	IIe-25
McC2	Manor	Moderate: slope	Moderate: slope	No	0.32	IIIe-25
McD2	Manor	Severe: slope	Severe: slope	No	0.32	IVe-25
McD3	Manor	Severe: slope	Severe: slope	No	0.37	VIe-3
MdE	Manor	Severe: slope	Severe: slope	No	0.37	VIe-3
MgC	Manor	Moderate	Slight	No	0.32	VIs-3
MhE	Manor	Severe: slope	Severe: slope	No	0.32	VIIs-3

REQUIREMENTS OF APRIL 15, 2004
DECISION OF BALTIMORE COUNTY PLANNING BOARD

1) THE PLANNING BOARD'S CONCERNS ABOUT FENCING SHOULD BE MET BY REQUIRING THE INSTALLATION, ALONG THE EASTERN SIDE OF THE 30-FOOT BUFFER AREA ALONG THE REAR PROPERTY LINE OF LOTS 14 AND 15, OF A CONTINUOUS, THREE-PANEL POST-AND-RAIL FENCE WITH BLACK WIRE MESH BETWEEN THE RAILS.
2) THERE SHOULD BE A PERPETUAL, AFFIRMATIVE RESPONSIBILITY ON THE REQUIRED HOMEOWNERS' ASSOCIATION FOR MAINTENANCE OF THE BUFFER AREA AND ITS PROTECTIVE FEATURES.
3) THE TREES TO BE INSTALLED IN THE BUFFER AREA SHOULD BE AT LEAST 10-12 FEET HIGH AT THE TIME OF PLANTING AND SHOULD BE PLANTED IN A STAGGERED, OFFSET PATTERN.
4) THE DEED COVENANTS PERTAINING AT LEAST TO LOTS 14 AND 15 SHOULD REQUIRE THE EXTERIOR LIGHTING IN THE SIDE AND REAR YARDS SHALL BE AIMED DOWN, TOWARDS THE GROUND, AND NOT TOWARDS THE LANDMARK PROPERTY.
5) THE NEW DWELLING TO BE CONSTRUCTED ON LOT 15 SHOULD BE SITED AS CLOSE AS POSSIBLE TO THE MINIMUM FRONT BUILDING SETBACK LINE (I.E., MOVED FORWARD APPROXIMATELY 20 – 30 FEET FROM THE POSITION SHOWN ON THE PROPOSED DEVELOPMENT PLAN).

NOTE: MONTCLAIR COURT AND THE PROPOSED HOMES ON LOTS 14 AND 15 HAVE BEEN SHIFTED TO THE WEST CONSISTENT WITH THE 100-FOOT REAR SETBACK AS REQUIRED BY DECISION OF THE PLANNING BOARD DATED 4/27/04.

ADDITIONAL ADJACENT OWNER INFORMATION

RAVEN ROCK COURT

	OWNERS	DEED REF.	TAX. ACCT. NO.
# 500	VICTOR J. & LINDA L. FULDA	9503/22	1700006860
# 501	CHRISTOPHER D. MATTHAI & CYNTHIA A. BUTTA	14491/72	1700006861
# 503	GEORGE R. & MARY JANET DRAKE	6219/507	1700006882
# 504	HENRY W. & NANCY K. STEWART	5814/618	1700013584
# 505	FRANK A. & CATHERINE CIRINCIONE	5623/873	1700006863
# 506	BRUCE T. & GEORGIA M. HARVEY	15356/696	1700013583
# 507	JOHN M. & MARILYN R. WELLING	5792/958	1700006864

YORK ROAD

	OWNERS	DEED REF.	TAX. ACCT. NO.
# 18100	DORIAN BOCK & DANIEL BOCK	17101/652	1700006865
# 18118	LEE A. & HAZEL L. PHILLIPS	NONE	0716035090
# 18120	JAMES E. & AMI A. W. CARRIER	10102/649	2000014278
# 18126	BEATRICE J. BOARDMAN	10992/296	0702057480
# 18200	MARION V., 3RD RUNKLES	4667/141	0718072251

REASONS FOR SECOND REFINEMENT
1. TO REDUCE THE REQUIRED REAR YARD SETBACK FOR LOTS 14 AND 15 FROM 100 FEET TO 80 FEET, OR TO REDUCE THE FRONT SETBACK FOR LOTS 14 & 15 FROM 75 FEET TO THE ROAD CENTERLINE TO 55 FEET AND TO REDUCE THE WESTERN LOT LINE SETBACK FOR LOT 14 FROM 50 FEET TO 30 FEET.

REASON FOR 1ST REFINEMENT
TO RELOCATE THE FIRE SUPPRESSION TANK, TO ADJUST THE LOT LINES AND PROPOSED DRIVEWAYS OF LOTS 13, 14, & 15 AND TO DESIGNATE THE CONSERVANCY LOT AS PARCEL 1. APPROVED BY THE DEVELOPMENT REVIEW COMMITTEE AS DRC ITEM NO. 052305B.

HEARING OFFICER'S ORDER

Re: Hearing Officer's Hearing - Case No. VII-372
Property: N/S of Millers Lane, S Raven Rock Court
7th Election District, 3rd Councilmanic District
(Montclair Property)

THEREFORE, IT IS ORDERED, by this Deputy Zoning Commissioner/Hearing Officer for Baltimore County, this 1 day of June, 2004, that the Development Plan known as "Montclair", submitted into evidence as "Developer's Exhibit No. 9", be and is hereby APPROVED subject to the following conditions:

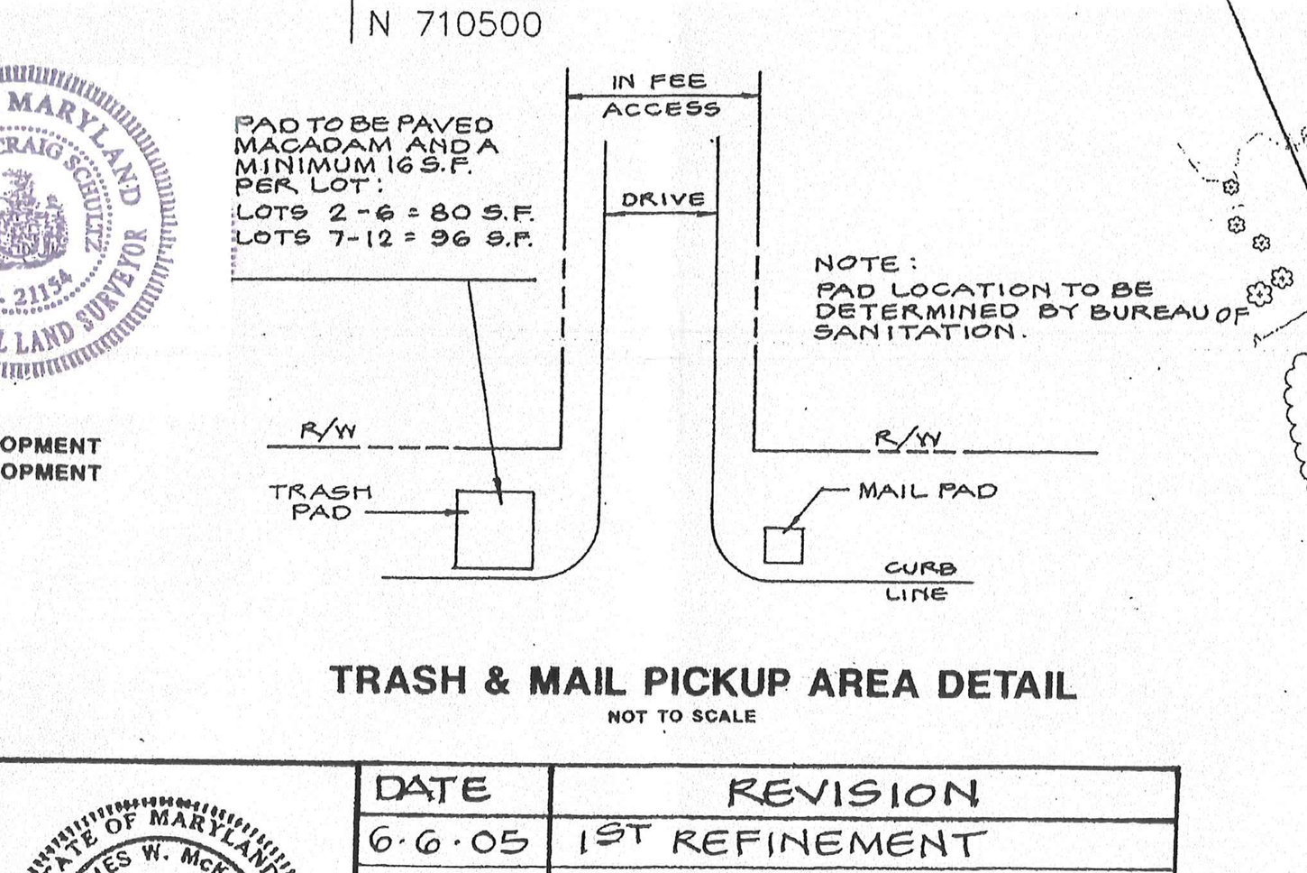
1. The Developer shall delineate the dump swale site on Lots 10, 11 and 12 by metes and bounds and by deed covenants require that the area of the dump swale in these lots remain undisturbed.
2. That the Developer submit a landscape plan to the County Landscape Architect for approval which among other requirements shown on the development plan shall clarify that the plantings used to screen the historic Wiseburg Inn from new homes in this development be of a type to create a sight buffer with mature evergreens; and
3. That the homes on Lots 14 and 15 be no more than one story in height

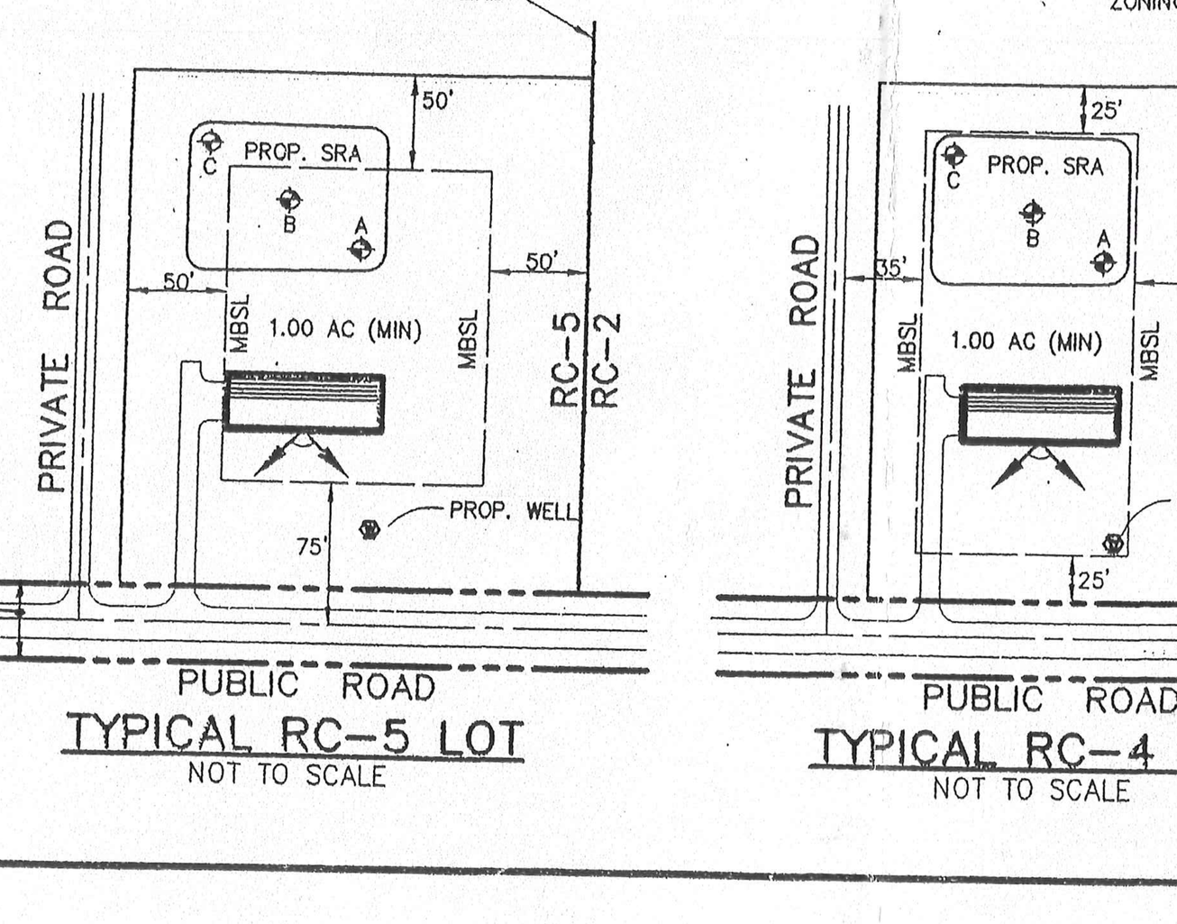
Any appeal from this decision must be taken in accordance with Section 26-209 of the Baltimore County Code and the applicable provisions of law.

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER FOR BALTIMORE COUNTY

We, Terrafirm, Inc. and George W. Gaffney, certify under oath that there are no delinquent accounts for any other development with respect to any of the following: the applicant, a person with a financial interest in the proposed development, or a person who will perform contractual services on behalf of the proposed development.

Terrafirm, Inc.
By: Marian K. Robinson, President 12/10/03 Date
George W. Gaffney, Individually 12/10/03 Date





DESIGN AND DRAWING BASED ON MARYLAND COORDINATE SYSTEM
HORIZONTAL - NAD 83/91
VERTICAL - NAVD 88

DATE	REVISION
6-6-05	1ST REFINEMENT

McKEE & ASSOCIATES, INC.
Engineering – Land Planning – Land Surveying
Natural Resource Planning – Real Estate Development
5 SHAWAN ROAD, Suite 1 COCKEYSVILLE, MARYLAND 21030
TELEPHONE: (410) 527-1555 FACSIMILE: (410) 527-1563
JOB NUMBER: 00-074

PLAN TO ACCOMPANY HEARING OFFICER'S ORDER
7/11/05 DATE
VII-372/052305B PROJECT MANAGER
PLAT TO ACCOMPANY PETITION FOR SPECIAL HEARING AND 2ND REFINEMENT

~~1ST REFINEMENT~~
SITE DEVELOPMENT PLAN
MONTCLAIR
FKA GAFFNEY PROPERTY
PDM NO. VII-372
3RD COUNCILMANIC DISTRICT
7TH ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND
SCALE: 1" = 100' DATE: 1/20/2017