

M E M O R A N D U M

DATE: 1/7/2021
TO: ZONING REVIEW
FROM: Office of Administrative Hearings
RE: Case No. 2020-0174-SPH

The appeal period for the above-referenced cases expired on January 6, 2021. There being no appeal filed, the subject file is ready for return to the Development Processing Office and is placed in the 'pick up box.'

/dlm

c: ✓ Case File
Office of Administrative Hearings

IN RE: **PETITION FOR SPECIAL HEARING** * BEFORE THE
(**6072 Falls Road**) *
9th Election District * OFFICE OF
2nd Council District *
Nancy L. Wilkey & Betty J. Ruano * ADMINISTRATIVE HEARINGS
Legal Owners * FOR BALTIMORE COUNTY
Petitioners * **Case No. 2020-0174-SPH**

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Special Hearing filed by Nancy J. Wilkey and Betty J. Ruano, legal owners of the property located at 6072 Falls Rd. (the "Property"). The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations ("BCZR") to alter the previous zoning decisions rendered in Case Nos. 92-322-A and 95-83-SPH, and in particular, to remove Restriction No. 2 from Case No. 92-322-A which permitted a variance of zero parking spaces in lieu of the required 5 parking spaces, but limited to an antique store use.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Petitioners Nancy L. Wilkey and Betty J. Ruano appeared at the hearing (the "Petitioners") along with Patrick Richardson, Jr, P.E. who prepared the Site Plan. (Pet. Ex.1).

A ZAC comment was received from the Department of Planning ("DOP") which opposed the requested relief. Department of Environmental Protection and Sustainability ("DEPS") had no comment on the Petition. A letter was also received from People's Counsel dated September 15, 2020 opposing the requested relief.

ORDER RECEIVED FOR FILING

Date 12/3/20

By D. Ruano

Evidence

The Property is a narrow site measuring approximately 5472 sf (.13 acres) and is zoned business-local (BL), with a small area zoned density-residential (DR 3.5) along the southern property line. It is located south of Lake Falls Village Shopping Center near the Baltimore County/Baltimore City line. (Pet. Ex. 2). The Property is improved with a home built in or about 1893. (Pet. Ex. 3).

For 25 years, the Petitioners have owned and operated an antique store at the Property. Approximately 3-5 years ago, in anticipation of selling the Property, they closed the store and began liquidating the inventory. Based on her research, Ms. Ruano testified that there are only 10 antique dealers remaining in Baltimore County. Most antique dealers are now located in shopping malls or sell items through the internet.

Mr. Richardson described the commercial businesses surrounding the Property including Lake Falls Village Shopping Center to the north and a hot dog stand to the south. To the east of the Property across Falls Rd. is a Royal Farms and other retail stores. There is parking along Falls Rd.

Ms. Ruano also testified that she and Ms. Wilkey have tried to sell the Property without a realtor. In their view, buyers are not willing to buy the Property due to the off-street parking required for uses in a BL zone (See BCZR, §409). (Pet. Ex. 4). On December 12, 2018, the Petitioners executed a contract of sale with a buyer who intended to use the Property for an art gallery (the "Contract"). (Pet. Ex. 5). The Contract was an "AS-IS", cash contract, and was not contingent upon the buyer obtaining zoning relief from Baltimore County for parking or otherwise. (Pet. Ex. 5). As the Contract reads, the buyer was the tenant of the Property and "has actual knowledge or all matters related to the Premises and accepts the Premises in AS-IS condition,

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Date

12/3/20

By

J. Ruano

without warranty.” (See §5 of Contract, Pet. Ex. 5). While this Court is not suggesting that the Petitioners take legal action, it is not clear whether the Petitioners have or will pursue their legal rights under the Contract to demand that settlement occur as agreed.

By January, 2019, the same buyer attempted to change the contract terms by offering an Amendment to the Contract with terms more favorable to the buyer (the “Amendment”). (Pet. Ex. 6). The Amendment proposed to add a study period for the buyer to obtain approval from Baltimore County of “an acceptable parking scheme to accommodate Buyer’s intended use of the Premises, in Buyer’s sole and absolute discretion” and, if such government approval was not obtained, the buyer had the right to terminate the Contract. (See §1, Pet. Ex. 6). According to Ms. Ruano, the Petitioners refused to sign that Amendment. Yet, despite the absence of any contingencies for Baltimore County parking approval in the Contract, and despite the Petitioners refusing to sign the Amendment, the buyer unabashedly declared the Contract null and void and demanded the return of the earnest money deposit by letter dated March 12, 2019. (Pet. Ex. 7).

The prior zoning history of the Property revealed that, in 1992, Deputy Zoning Commissioner Timothy Kotroco granted the Petitioners an off-street parking variance which allowed zero parking spaces in lieu of the minimum required five (5) parking spaces (Case No.: 92-322-A). However, that variance was limited to use of the Property as an antique store. (See Restriction No. 2 - Case No.: 92-322-A) (the “1992 Parking Variance”).

In 1995, the Petitioners were issued a Code Violation for creating an 8 ft. driveway along the southern end of the Property. The driveway extended from Falls Rd. to a small gravel area to the rear of the Property (the “1995 Special Hearing Case”) (See Case No. 95-83-SPH). According to the findings of fact in the 1995 Special Hearing Case, the Petitioners had installed crusher run (or gravel) to create an employee parking area in the rear of the Property. Additionally, they had

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Date

12/3/20

By

D. Ruano

extended the makeshift driveway to an alleyway located behind the Property. The Petitioners were using the driveway and the alleyway for deliveries made to the antique store. (*Id.*).

According to the 1995 Special Hearing Case, because the alleyway was intended for the use of the properties along Fairfield Avenue in the rear, the residents filed a Code Violation complaint. In response to the Code Violation citation, the Petitioners sought permission in the 1995 Special Hearing Case to continue to use the gravel parking area for (2) employee parking spaces and to continue to use both the alleyway and driveway for deliveries to the store. After agreement between the Petitioners and the residents, the requested relief was granted.

In this case, the Petition requests to “alter the previous zoning decisions rendered in Case Nos. 92-322-A and 95-83-SPH” and to “remove restriction number 2 from Case No. 92-322-A”. Admittedly, in order to attract potential buyers, the Petitioners want to be able to market the Property with no parking restrictions to any of the 70+ uses permitted in the BL zone. Under BCZR §409.6, the minimum number of required off-street parking spaces is dependent upon the particular type of use. By way of example, an office use would only require 3.3 spaces per 1,000 s.f. of gross area whereas a restaurant or retail use would require 5 per 1,000 s.f.

The variance granted in Case No. 92-322-A was restricted to the Petitioners’ use of the Property as an antique store. While an antique store is a retail use requiring 5 parking spaces, it is a benign retail use in regard to the limited number of customers coming to the store and thus, the customers’ limited need for parking spaces. In Case No. 95-83-SPH, the special hearing relief granting 2 parking spaces in the rear of the Property was for antique store employees only; no customers of the antique store were permitted to park on the rear gravel lot.

This is not the typical case where a contract purchaser and legal owner are jointly filing for a parking variance relief and/or special hearing relief where the fact finder can weigh the factors

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Date

12/3/20

By

J. M. Magon

required under BCZR §§307.1 and 500.7 respectfully for a proposed commercial use. In particular, when analyzing whether practical difficulty exists for variance relief, consideration must be given by the fact finder as to whether the compliance with the parking restrictions would unreasonably prevent a petitioner from using the property for a permitted purpose as well as the effect on neighboring properties. Similarly, where special hearing relief is requested, application of the zoning regulations and the rights of a petitioner in a property must be considered in the context of the proposed use. Each use would generate its own specific set of facts or circumstances which would need to be considered.

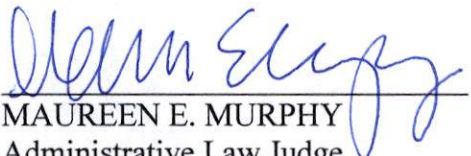
As a result, I will not grant prospective, open-ended, unlimited zoning relief to remove the parking restriction in Case No. 92-322-A, so that any of the 70+ permitted commercial uses in a BL zone would be free of parking regulations as set forth in BCZR. Likewise, I will not alter the restrictions in Case No. 95-83-SPH which were limited to employee parking, use of the driveway, or use of the alley in the rear of the Property so that any permitted commercial use can benefit from relief which was granted in the context of an antique store.

THEREFORE, IT IS ORDERED this 3rd day of **December, 2020** by this Administrative Law Judge, that the Petition for Special Hearing seeking relief to alter the previous zoning decisions rendered in Case Nos. 92-322-A and 95-83-SPH, and more particularly to remove the Restriction No. 2 to allow the parking variance for the property only while it is used as an antique store, be and it is hereby **DENIED**.

ORDER RECEIVED FOR FILING

Date 12/3/20
By [Signature]

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


MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm

ORDER RECEIVED FOR FILING

Date 12/3/20

By D. Mignon



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 6072 Falls Road

which is presently zoned BL

Deed References: 9054/626

10 Digit Tax Account # 0916000070

Property Owner(s) Printed Name(s) Nancy L. Wilkey & Betty J. Ruano

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

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

TO BE PRESENTED AT THE 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

Zip Code

Telephone #

Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address

City

State

Zip Code

Telephone #

Email Address

Legal Owners (Petitioners):

Nancy L. Wilkey / Betty J. Ruano

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

6072 Falls Road, Suite 302

Baltimore

MD

Mailing Address

City

State

21209-2217 /

410-377-9652 /

nlwilkey@aol.com

Zip Code

Telephone #

Email Address

Representative to be contacted:

Richardson Engineering, LLC

Name - Type or Print

Signature

30 E. Padonia Road, Suite 500

Timonium

MD

Mailing Address

City

State

21093

/ 410-560-1502

/ Rick@RichardsonEngineering.net

Zip Code

Telephone #

Email Address

CASE NUMBER 2020-0174-SPH Filing Date 7/20/2020

Do Not Schedule Dates: _____

Reviewer gh

REV. 10/4/11

Zoning Relief for 6072 Falls Road

Special Hearing:

Special Hearing to alter the previous zoning decisions rendered in Cases 92-322-A and 95-83-SPH. More particularly to remove the restriction to allow the parking variance for the property only while it is used as an Antique Store.

To remove restriction number 2 from
case # 1992-0322-A

... ..

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**ZONING PROPERTY DESCRIPTION FOR
6072 FALLS ROAD
9TH ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND**

BEGINNING FOR THE SAME at a point on the West side of Falls Road (44' paving) at the distance of 50 feet South and opposite to the centerline of Lake Avenue; then the following bearings and distances (1) South 5 degrees 0 minutes 0 seconds East 35.83 feet, (2) South 87 degrees 23 minutes 29 seconds West 154.23 feet, (3) North 5 degrees 0 minutes 0 seconds West 37.92 feet, (4) North 88 degrees 10 minutes 0 seconds West 154.33 feet to the point of beginning.

Containing a net area of 5,682 square feet or 0.13 acres +/-.

PROFESSIONAL CERTIFICATION:

I HEREBY CERTIFY THAT THESE DOCUMENTS WERE
PREPARED OR APPROVED BY ME, AND THAT I AM A DULY
LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF
THE STATE OF MARYLAND, LICENSE NUMBER 16597,
EXPIRATION DATE: 08-15-2021



2020-0174-SPH

CERTIFICATE OF POSTING

2020-0174-SPH

RE: Case No.: _____

Petitioner/Developer: _____

Nancy Wilkey, Betty Ruano

November 17, 2020

Date of Hearing/Closing: _____

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

Attn: Kristen Lewis:

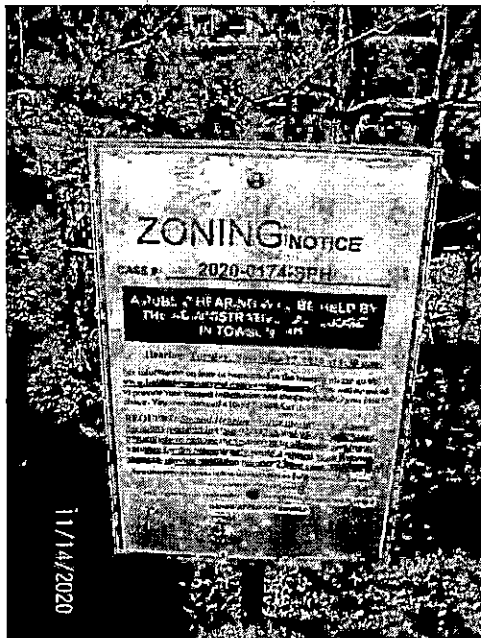
Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: _____

6072 Falls Road **SIGN 1 Recertification**

October 28, 2020

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



Sincerely,

November 14, 2020

(Signature of Sign Poster) (Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)

CERTIFICATE OF POSTING

2020-0174-SPH

RE: Case No.: _____

Petitioner/Developer: _____

Nancy Wilkey, Betty Ruano

November 17, 2020

Date of Hearing/Closing: _____

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

Attn: Kristen Lewis:

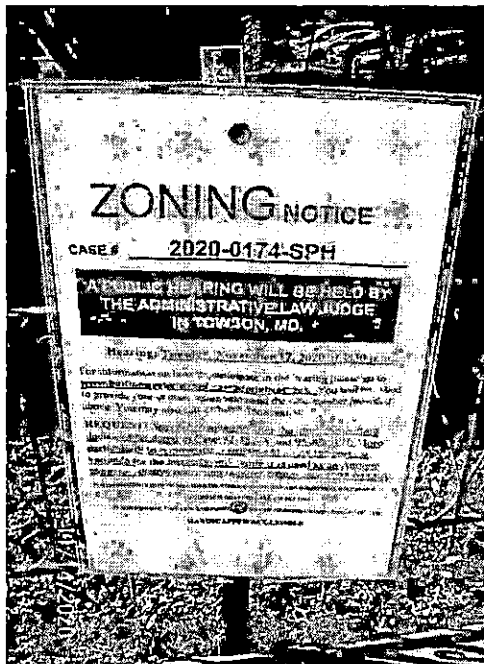
Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: _____

6072 Falls Road **SIGN 2 Recertification**

October 28, 2020

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



Sincerely,

November 14, 2020

(Signature of Sign Poster)

(Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)



JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL D. MALLINOFF, *Director*
Department of Permits,
Approvals & Inspections

October 22, 2020

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 virtual hearing on the property identified herein as follows:

CASE NUMBER: 2020-0174-SPH

6072 Falls Road

West side of Falls Road, south east of West Lake Avenue

9th Election District – 2nd Councilmanic District

Legal Owners: Nancy Wilkey, Betty Ruano

Special Hearing to alter the previous zoning decisions rendered in Case 92-322-A and 95-83-SPH. More particularly to remove the restriction to allow the parking variance for the property only while it is used as an Antique store; to remove restriction number 2 from case 1992-0322-A.

Hearing: Tuesday, November 17, 2020 at 1:30 p.m.

For information on how to participate in the hearings please go to www.baltimorecountymd.gov/adminhearings no later than 48 hours prior to the hearing. You will be asked to provide your contact information and the case number provided above. You may also call 410-887-3868, ext. 0.

A handwritten signature in black ink, appearing to read "Michael Mallinoff".

Michael Mallinoff
Director

MM:kl

C: Nancy Wilkey, Betty Ruano, 6072 Falls Road, Baltimore 21209
Richardson Engineering, 30 E. Padonia Road, Ste. 500, Timonium 21093

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WED., OCTOBER 28, 2020



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 6072 Falls Road which is presently zoned BL
Deed References: 9054/626 10 Digit Tax Account # 0916000070
Property Owner(s) Printed Name(s) Nancy L. Wilkey & Betty J. Ruano

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

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

TO BE PRESENTED AT THE 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

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Nancy L. Wilkey / Betty J. Ruano

Name #1 - Type or Print Name #2 - Type or Print

Nancy L. Wilkey Betty J. Ruano
Signature #1 Signature #2

6072 Falls Road, Suite 302 Baltimore MD
Mailing Address City State

21209-2217 / 410-377-9652 / nlwilkey@aol.com
Zip Code Telephone # Email Address

Representative to be contacted:

Richardson Engineering, LLC

Name- Type or Print

[Signature]
Signature

30 E. Padonia Road, Suite 500 Timonium MD
Mailing Address City State

21093 / 410-560-1502 / Rick@RichardsonEngineering.net
Zip Code Telephone # Email Address

CASE NUMBER 2020-0174-EPH Filing Date 7/20/2020

Do Not Schedule Dates: Reviewer gh

REV. 10/4/11

Donna Mignon

From: Kristen L Lewis
Sent: Thursday, October 22, 2020 4:00 PM
To: Donna Mignon
Subject: Webex
Attachments: 20201022155156054.pdf

Hey Donna,

Attached is the information for a new webex that needs to be created. Thank you and have a great evening.

Kristen Lewis
PAI – Zoning Review
410-887-3391

CERTIFICATE OF POSTING



2020-0174-SPH

JOHN A. OLSZEWSKI, JR.
County Executive

Case No.: _____
MICHAEL D. MALLINOFF, *Director*
Petitioner/Developer: _____
Department of Permits,
Approvals & Inspections

Nancy Wilkey, Betty Ruano

November 17, 2020
Date of Hearing/Closing: _____

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

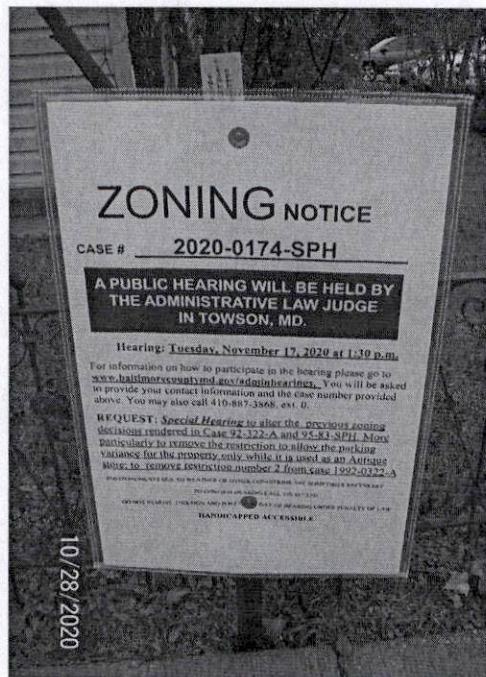
Attn: Kristen Lewis:

Ladies and Gentlemen:

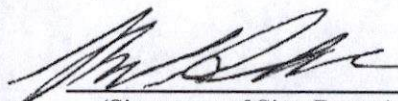
This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: _____

6072 Falls Road **SIGN 1**

October 28, 2020
The sign(s) were posted on _____
(Month, Day, Year)



Sincerely,

 October 28, 2020
(Signature of Sign Poster) (Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)

CERTIFICATE OF POSTING



2020-0174-SPH

JOHN A. OLSZEWSKI, JR.
County Executive

Case No.: _____
MICHAEL D. MALLINOFF, Director
Petitioner/Developer: Department of Permits,
Approvals & Inspections

Nancy Wilkey, Betty Ruano

November 17, 2020
Date of Hearing/Closing: _____

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

Attn: Kristen Lewis:

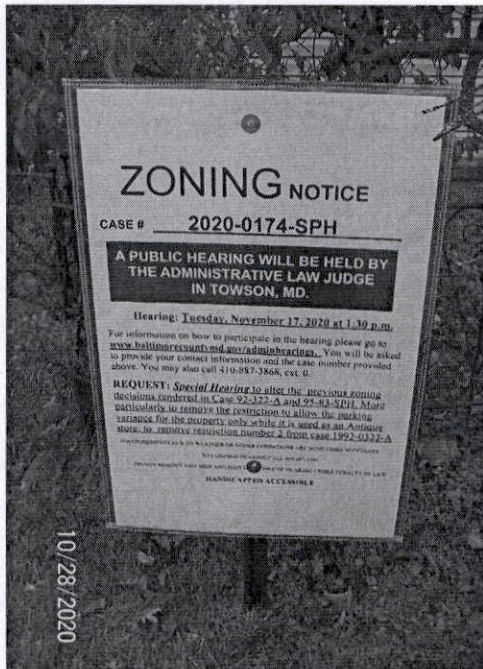
Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: _____

6072 Falls Road **SIGN 2**

October 28, 2020

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



Sincerely,

October 28, 2020

(Signature of Sign Poster) (Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)

The Daily Record

200 St. Paul Place Suite 2480

Baltimore, Maryland 21202

1 (443) 524-8100

www.thedailyrecord.com

PUBLISHER'S AFFIDAVIT

We hereby certify that the annexed advertisement was published in **The Daily Record**, a daily newspaper published in the State of Maryland 1 times on the following dates:

10/28/2020

Order #: 11930449

Case #:

Description:

NOTICE OF ZONING HEARING - CASE NUMBER:
2020-0174-SPH



Darlene Miller, Public Notice Coordinator
(Representative Signature)

Baltimore County
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 virtual hearing the property identified herein as follows: CASE NUMBER: 2020-0174-SPH 6072 Falls Road West side of Falls Road, south east of West Lake Avenue 9th Election District - 2nd Councilmanic District Legal Owners: Nancy Wilkey, Betty Ruano Special Hearing to alter the previous zoning decisions rendered in Case 92-322-A and 95-83-SPH. More particularly to remove the restriction to allow the parking variance for the property only while it is used as an Antique store; to remove restriction number 2 from case 1992-0322-A. Hearing: Tuesday, November 17, 2020 at 1:30 p.m. For information on how to participate in the hearings please go to www.baltimorecountymd.gov/adminhearings no later than 48 hours prior to the hearing. You will be asked to provide your contact information and the case number provided above. You may also call 410-837-3868, ext. 0. Michael Mallinoff Director of Permits, Approvals and Inspections for Baltimore County

o28



JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL D. MALLINOFF, *Director*
Department of Permits,
Approvals & Inspections

October 22, 2020

NOTICE OF ZONING HEARING

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CASE NUMBER: 2020-0174-SPH

6072 Falls Road
West side of Falls Road, south east of West Lake Avenue
9th Election District – 2nd Councilmanic District
Legal Owners: Nancy Wilkey, Betty Ruano

Special Hearing to alter the previous zoning decisions rendered in Case 92-322-A and 95-83-SPH. More particularly to remove the restriction to allow the parking variance for the property only while it is used as an Antique store; to remove restriction number 2 from case 1992-0322-A.

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A handwritten signature in black ink, appearing to read "Michael Mallinoff".

Michael Mallinoff
Director

MM:kl

C: Nancy Wilkey, Betty Ruano, 6072 Falls Road, Baltimore 21209
Richardson Engineering, 30 E. Padonia Road, Ste. 500, Timonium 21093

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WED., OCTOBER 28, 2020

TO: THE DAILY RECORD
Wednesday, October 28, 2020 - Issue

Please forward billing to:
Betty Ruano
6072 Falls Road
Baltimore, MD 21209

410-377-9652

NOTICE OF ZONING HEARING

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CASE NUMBER: 2020-0174-SPH

6072 Falls Road

West side of Falls Road, south east of West Lake Avenue

9th Election District – 2nd Councilmanic District

Legal Owners: Nancy Wilkey, Betty Ruano

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Michael Mallinoff

Director of Permits, Approvals and Inspections for Baltimore County

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

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: 2020-0174-SPH
Petitioner: NANCY WILKEY & BETTY RUANO
Address or Location: 6072 FALLS RD

PLEASE FORWARD ADVERTISING BILL TO:

Name: BETTY RUANO
Address: 6072 FALLS RD
BALTIMORE, MD 21209

Telephone Number: 410-377-9652

65-7675-2550 945

BETTY J RUANO & NANCY WILKEY 7-06
DBA SUNPORCH ANTIQUES
6072 FALLS ROAD
BALTIMORE, MD 21209
410-377-2904

July 08 2020

PAY TO THE ORDER OF Baltimore County, Md \$ 500.00 ~~XX~~

Five hundred and 00/100 DOLLARS

STATE EMPLOYEES CREDIT UNION
OF MARYLAND, INC.
BALTIMORE, MARYLAND 21286-5955

FOR Betty J. Ruano MP

2550767531 11788208 0945

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

No. 198983

Date: 7/20/2020

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Obj	Dept	Obj	BS Acct	Amount
001	806	0000		6150					500.00

Total: 500.00

Rec From: DBA Sunporch Antiques

For: 2020-0174-SPH

6072 Falls Rd

CASHIER'S
VALIDATION

DISTRIBUTION

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

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE MEMORANDUM

TO: Michael D. Mallinoff
Director, Department of Permits, Approvals and Inspections

DATE: 8/19/2020

FROM: C. Pete Gutwald
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 20-174

INFORMATION:

Property Address: 6072 Falls Road
Petitioner: Nancy L. Wilkey, Betty J. Ruano
Zoning: BL
Requested Action: Special Hearing

The Department of Planning has reviewed the petition for Special Hearing to determine whether or not the administrative law judge should alter the previous zoning decisions rendered in Cases 92-322-A and 95-83-SPH permitting no customer parking spaces, but with restrictions.

It should be noted that the petition lists the current zoning as BL. According to Baltimore County's GIS and the petition's site plan, there is a small area zoned D.R. 3.5 along the southern property line.

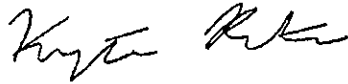
A site visit was conducted on August 6, 2020. The property is approximately 5,472 square feet and is comprised of a vacant dwelling-like structure. Access to the small paved area to the rear is limited to an 8-foot wide driveway directly off of Falls Road. The (unstriped) paved area is limited to employee parking, which was stipulated in the previous cases. Customer parking was only available to limited on-street parking along Falls Road. It was also ordered in Case 92-322-A that the parking variance is restricted "shall expire and become null and void" (Restriction #2, pp. 3-4) in the event that the property ceases to be an antique shop.

For the previous use (antique shop), zero parking spaces may have been adequate. However, according to the petitioner's representative, the subject property is for sale and there are currently no plans for its future use. The property is adjacent to Lake Falls Village, a shopping center with several dedicated parking spaces and signalized ingress/egress. The petitioners should seek a shared parking arrangement with the shopping center, which could provide more than zero customer parking spaces.

Until such time that a new use is proposed, The Department of Planning does not support the continuation of zero parking spaces and recommends denial.

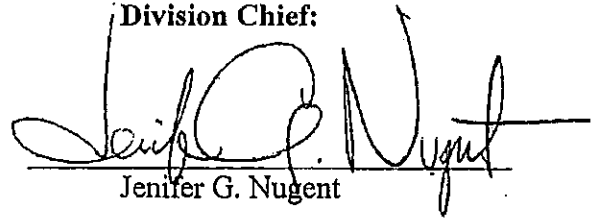
For further information concerning the matters stated herein, please contact Bill Skibinski at 410-887-3480.

Prepared by:



Krystle Patchak

Division Chief:



Jenifer G. Nugent

CPG/JGN/kma/

c: Bill Skibinski
Patrick C. Richardson, Jr., Richardson Engineering, LLC
Office of the Administrative Hearings
People's Counsel for Baltimore County



JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL D. MALLINOFF, *Director*
Department of Permits,
Approvals & Inspections

November 9, 2020

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

RE: Case Number: 2020-0174-SPH, 6072 Falls Road

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 July 20, 2020. This letter is not an approval, but only a **NOTIFICATION**.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,
A handwritten signature in black ink, appearing to read "W. Carl Richards, Jr.", is written over the words "Very truly yours,".

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR/kl

Enclosures

c: People's Counsel



MICHAEL D. MALLINOFF, *Director*
Department of Permits,
Approvals & Inspections

DATE: 8/19/2020

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
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For the previous use (antique shop), zero parking spaces may have been adequate. However, according to the petitioner's representative, the subject property is for sale and there are currently no plans for its future use. The property is adjacent to Lake Falls Village, a shopping center with several dedicated parking spaces and signalized ingress/egress. The petitioners should seek a shared parking arrangement with the shopping center, which could provide more than zero customer parking spaces.

Until such time that a new use is proposed, The Department of Planning does not support the continuation of zero parking spaces and recommends denial.

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

Date: 8/19/2020
Subject: ZAC # 20-174
Page 2



Prepared by:
JOHN A. OLSZEWSKI, JR.
County Executive

A handwritten signature in black ink, appearing to read "Krystle Patchak".

Krystle Patchak

Division Chief:

MICHAEL D. MALLINOFF, *Director*
Department of Permits,
Approvals & Inspections

A handwritten signature in black ink, appearing to read "Jenifer G. Nugent".

Jenifer G. Nugent

CPG/JGN/kma/

c: Bill Skibinski
Patrick C. Richardson, Jr., Richardson Engineering, LLC
Office of the Administrative Hearings
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



RECEIVED

JUL 31 2020

OFFICE OF
ADMINISTRATIVE HEARINGS

TO: Hon. Paul M. Mayhew; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: July 31, 2020

SUBJECT: DEPS Comment for Zoning Item # 2020-0174-SPH
Address 6072 Falls Road
(Wilkey & Ruano Property)

Zoning Advisory Committee Meeting of **August 3, 2020**.

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

Reviewer: Steve Ford

RECEIVED
JUL 10 1965
U.S. AIR FORCE

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Paul M. Mayhew; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: July 31, 2020

SUBJECT: DEPS Comment for Zoning Item # 2020-0174-SPH
Address 6072 Falls Road
(Wilkey & Ruano Property)

Zoning Advisory Committee Meeting of **August 3, 2020**.

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

Reviewer: Steve Ford

Fite

Carl Richards Jr

From: Peoples Counsel
Sent: Tuesday, September 15, 2020 12:42 PM
To: Paul Mayhew
Cc: Administrative Hearings; Debra Wiley; Donna Mignon; Rick@richardsonengineering.net; Michael Mallinoff; Carl Richards Jr; Lloyd Moxley; Peter Gutwald; Dino La Fiandra
Subject: Nancy Wilkey & Betty Ruano - 6072 Falls Road - Case No 2020-174-SPH
Attachments: Ltr to Mayhew on Nancy Wilkey & Betty Ruano - 6072 Falls Road - Case No 2020-174-SPH with attachments.pdf

Good Afternoon,

Attached for filing is a letter from our office relating to the above-mentioned case.

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



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

September 15, 2020

CAROLE S. DEMILIO
Deputy People's Counsel

SENT VIA EMAIL

Paul M. Mayhew, Managing Administrative Law Judge
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Nancy Wilkey & Betty Ruano, Petitioners
6072 Falls Road
Case No. 2020-174-SPH

Dear Judge Mayhew,

This special hearing petition relates to a change from antique store use to general commercial use. It focuses on the zoning history relating to off-street parking requirements, the 1992 variance approved but limited to antique store use, and the request to remove such restriction and expand the scope of the variance.

By way of background, this Falls Road property is at the southern border of the Lake Falls Village shopping center and just north of the Bonjour cafe. It is zoned B.L. The property is on about .15 gross acreage. There is a 2-story commercial building with over 5000 square feet of floor area. We enclose Google Maps photos.

BCZR Sec. 409.6.A.2 requires 5 parking spaces per 1000 square feet for retail-general uses. This computes to a 5-space requirement for this site.

In 1992, Deputy Zoning Commissioner Timothy Kotroco approved a variance for off-street parking limited to antique store use. Case No. 92-322-A. This allowed zero (0) instead of the required five (5) off-street-parking spaces. The restriction is in Condition 2 of the Order. In 1995, DZC Kotroco allowed limited delivery use for 2 parking spaces to the rear down a gravel alley. Case No. 95-83-SPH. The decisions are enclosed.

The current petition requests removal of this 1992 parking variance restriction so as to allow any commercial use.

The 1992 petition involved antique store use, and was offered at trial to be so limited. Planning Director Pat Keller testified he would support the variance only if limited to the antique business and would expire upon termination of the business. Its approval accordingly was limited

to antique store use, as reflected in the order. There was opposition to the 1995 approval, which resulted in the limited allowance of the 2 parking spaces to the rear down an alley.

The B.L. Zone permits many commercial uses by right. BCZR Sec. 230.1. We infer that the petition is limited to modest retail uses permitted by right and does not involve any special exception uses listed under BCZR Sec. 230.3. We count 78 uses permitted by right, many of which involve multiple uses. While it may not be practical to require identification of a specific proposed retail use, there should be some consideration of the parameters of the proposed use.

The main point here is that antique stores are recognized as more benign uses than standard retail. To illustrate, they are permitted by special exception in R.C. 2, R.C. 4, R.C. 5, R.C. 6, R.C. 7 and R.C. 8 zones, all residential. These zones prohibit the standard retail use.

The special hearing process may not be the proper vehicle for a new variance. The petition clearly requests a new and much expanded variance, along with use of the alley. A transition from antique store use to general retail use involves a material change and consequential impact to the parking situation. While the 1992 condition states the "...restriction may be modified only by public hearing," the applicable law requires that such public hearing involve a request for a variance for the proposed use which has to satisfy all the elements of the law, BCZR Sec. 307.1.

The scope of a special hearing per BCZR 500.7 is to determine the existence of any purported nonconforming use or to determine rights in property. The Court of Special Appeals has compared it to a declaratory judgment process. Antwerpen v. Baltimore County 163 Md. App. 194, 2009 (2005). It is not a vehicle for a modified or new variance. To repeat, the proper vehicle is a variance under BCZR Sec. 307.1.

We have often underlined that approval of a variance depends on the particular use. It does not run automatically to a new use. We reviewed the law in May 20, 2020 correspondence to PAI Director Michael Mallinoff and Zoning Supervisor Carl Richards. We addressed a situation in the development process. Zoning Commissioner William Wiseman had approved setback variances for an ice cream store in 2005. In 2019, Dunkin' obtained DRC and development plan approval for a new drive-through restaurant. We took the position that new variances would be required for the setbacks as well as for stacking spaces. Zoning Case 06-014-A, DRC 014619A, 4301 Washington Boulevard. We cited, *inter alia*, your decision in the 1141 Berryman's Lane case. Eventually, the PAI Director communicated that a public hearing would be necessary at least for a parking variance.

Here is what we wrote in the course of our correspondence to the PAI Director,

"The main point is that variances are use-specific and site-plan specific. They may run with the land for the same use to new owners, but not to new uses. Recently, ALJ Mayhew confirmed that variances are use-specific in the course of granting a petition effectively for amended variances for a garden center in the R.C.C. Zone. Case No. 20-014-A, 1141 Berryman's Lane, March 17, 2020 opinion attached, along with our office's letter dated March 2, 2020.

"To obtain a variance under BCZR Sec. 307.1, a petitioner must prove uniqueness of the property resulting in "practical difficulty" and without injury to public health, safety and general welfare. Cromwell v. Ward 102 Md. App. 691 (1995). The practical difficulty and public safety criteria are use-specific and contextual. Trinity Assembly of God v. People's Counsel 407 Md. 53, 79-84 (2008). Judge Harrell wrote,

"With respect to the practical difficulty prong of the Zoning Code's variance standards, the Board applied the factors that this Court articulated in McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973). In McLean we adopted, from Professor Rathkopf's treatise, a three-part inquiry to guide local zoning authorities in determining whether a landowner established this element:

- 1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

We should add that BCZR Sec. 307.1 connects the uniqueness prong of the variance standard to the resulting practical difficulty. Judge Harrell explained this in detail in Trinity Assembly. So DZC Kotroco reviewed all of the elements in the context of the antique store proposal. It does not extend to more general commercial use. Otherwise stated, the variance issues must be reviewed anew.

Accordingly, the petition should be changed and clarified to include a request for a new variance. It may be inferred from the 1992 decision that a variance for general retail use would be problematic unless there is a material change in circumstances. We leave that to your judgment. We also leave to your judgment reasonable parameters for a more general commercial use.

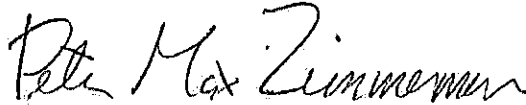
In the alternative, it would make sense that Petitioners formalize an arrangement with a written agreement for parking spaces at the Lake Falls Village per BCZR Sec. 409.7.B.2 and C. This looks consistent within the spirit and intent of the zoning approvals related to parking at Lake Falls Village approved in Case No. 2019-432-A, enclosed, see Page 4. We are sending a courtesy copy of this letter to Dino LaFiandra, attorney of record there for Lake Falls Village.

Paul Mayhew, Managing Administrative Law Judge
September 15, 2020
Page 4

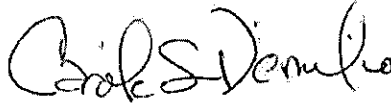
We note that the Director of Planning's August 19, 2020 memorandum parallels our concerns about this case and concludes with the parallel suggestion that Petitioner seek a shared parking arrangement with the Lake Falls Village.

Thank you in advance for your consideration.

Sincerely,



Peter Max Zimmerman
People's Counsel for Baltimore County



Carole S. Demilio
Deputy People's Counsel for Baltimore County

cc: Patrick Richardson, Representative for Petitioners, sent via email
Michael Mallinoff, Director of Permits, Approvals, and Inspections, sent via email
Carl Richards, Zoning Supervisor, sent via email
Lloyd Moxley, Development Manager, sent via email
Pete Gutwald, Director of Planning
Dino LaFiandra, attorney for Lake Falls Village

Google Maps 6072 Falls Rd

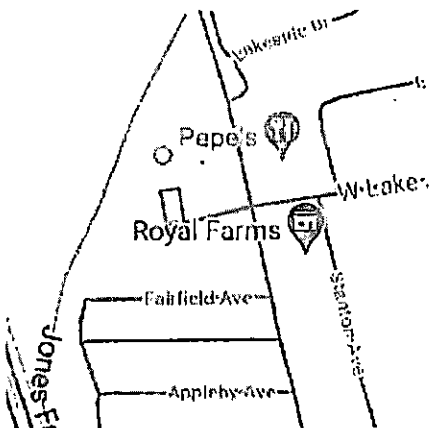


Image capture: Jun 2019 © 2020 Google

Baltimore, Maryland

Google

Street View



August 25, 2020

SENT VIA EMAIL
Paul M. Mayhew, Managing Administrative Law Judge
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Nancy Wilkey & Betty Ruano
6072 Falls Road
Case No. 2020-174-SPH

Dear Judge Mayhew,

This Falls Road property borders on the south the Lake Falls Village shopping center. The current zoning petition requests removal of the parking variance restriction to antique store use approved by Deputy Zoning Commissioner Timothy Kotroco in 1992, Case No. 92-322-A. This approval allowed zero (0) instead of the required five (5) off-street parking spaces. There restriction is in Condition 2 of the 1992 Order. In 1993, DZC Kotroco allowed limited delivery use for 2 parking spaces to the rear down a gravel alley. Case No. 93-83-SPH. These decisions are enclosed.

The gist of the petition is to modify the use from antique store to general retail. The 1992 petition involved antique store use, and was offered at trial to be so limited. Planning Director Pat Keller testified he would support the variance only if limited to the antique business and would expire upon termination of the business. Its approval accordingly was limited to antique store use, as reflected in the order. There was opposition to the 1993 approval, which resulted in the limited allowance of the 2 parking spaces to the rear down an alley.

This limited variance approval to antique store use is not subject to modification and removal of conditions by a petition for special hearing alone. The petition omits the required request for a new variance, in conjunction with limited use of the alley. A transition from antique store use to general retail use involves a material change with respect to the parking situation. While the 1992 condition states that the restriction may be modified only by public hearing, the applicable law requires that such public hearing involve a request and review of an amended variance, which has to satisfy all the elements of the law pertinent to the new use.

We have underlined that approval of a variance depends on the particular use and does not run automatically to a new use. We reviewed the law in May 20, 2020 correspondence to PAI Director Michael Mallinoff and Zoning Supervisor Carl Richards. We addressed a situation in the development process. Zoning Commissioner William Wiseman had approved setback variances for an ice cream store in 2003. In 2019, Dunkin' presented a new proposal for a drive-through restaurant. We took the position that new variances would be required for the setbacks as well as for the stacking spaces. Zoning Case 06-014-A, DRC 01-4619A, 4301 Washington Boulevard, We cited, *inter alia*, your decision in the 1141 Berryman Lane case. Eventually, the PAI Director communicated that a public hearing would be necessary at least for a parking variance.

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"The main point is that variances are use-specific and site-plan specific. They may run with the land for the same use to new owners, but not to new uses. Recently, ALJ Mayhew confirmed that variances are use-specific in the course of granting a petition effectively for amended variances for a garden center in the R.C.C. Zone, Case No. 20-014-A, 1141 Berryman Lane, March 17, 2020 opinion attached, along with our office's letter dated March 2, 2020.

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- 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

The bottom line is that the petition should be changed to include a request for an amended variance. It is may arguably be inferred from the 1992 decision that a variance for general retail

Paul Mayhew, Managing Administrative Law Judge
August 11, 2020
Page 3

use would be problematic unless there is some material change in circumstances. We leave that to your judgment.

It may be that an arrangement could be made for a written reservation for parking spaces at the Lake Falls Village, although that might also involve some adjustment of the zoning approvals related to that site as well.

Thank you in advance for your consideration.

Sincerely,

Peter Max Zimmerman
People's Counsel for Baltimore County

cc: Patrick Richardson, Representative for Petitioners
Michael Mallinoff, Director of Permits, Approvals, and Inspections
Carl Richards, Zoning Supervisor
Lloyd Moxley, Development Manager

Google Maps 1302 W Lake Ave

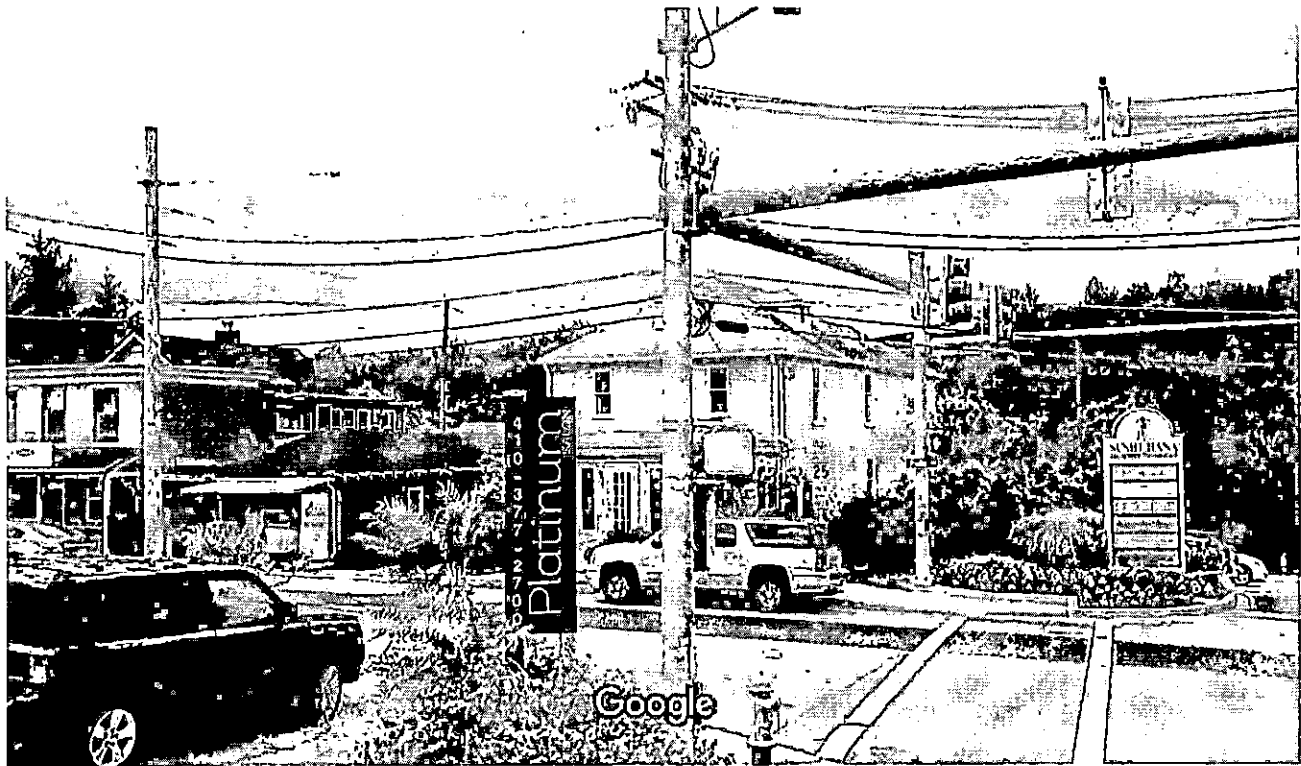
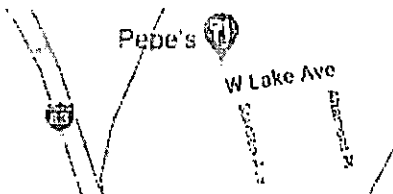


Image capture: Jun 2019 © 2020 Google

Baltimore, Maryland

Google

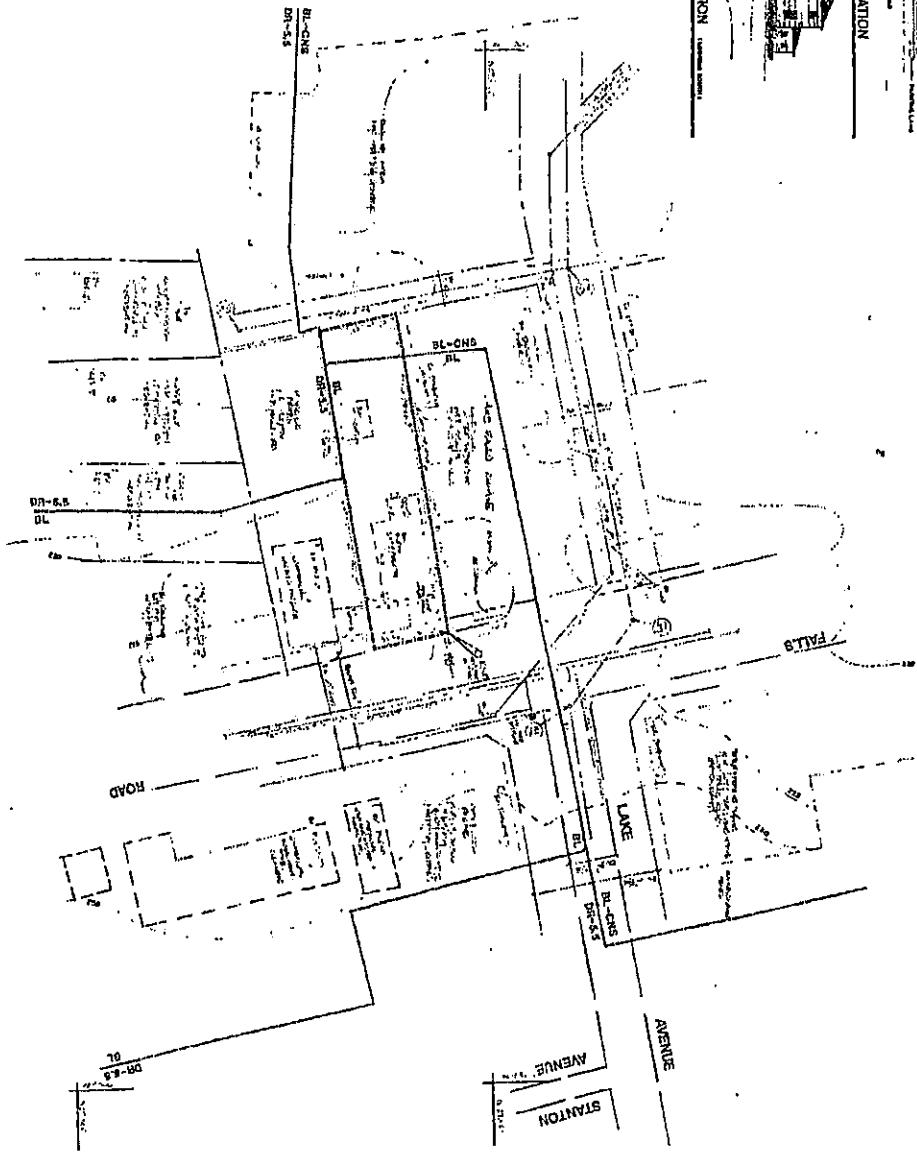
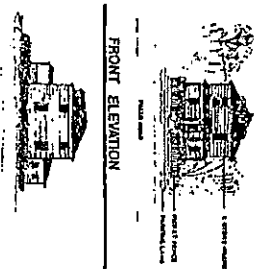
Street View





SIDE ELEVATION

FRONT ELEVATION



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933

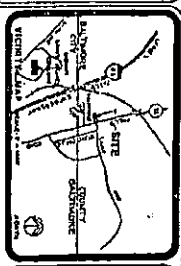
PETITIONERS
EXHIBIT 1

D.S. THALER & ASSOC., INC.
1000 E. BALTIMORE AVENUE
BALTIMORE, MD 21202
(410) 524-1100



PLAT TO ACCOMPANY VARIANCE PETITION
6072 FALLS ROAD

PLAN



DEVELOPER
BETTY J. RUANO &
NANCY L. WILKEY
8901 CROSS COUNTRY
ROADWAY
BALTIMORE, MD 21208

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
 W/S Falls Road, 50' S of the * DEPUTY ZONING COMMISSIONER
 c/l of Lake Avenue
 (6072 Falls Road) * OF BALTIMORE COUNTY
 3rd Election District * Case No. 95-83-SPH
 2nd Councilmanic District *
 Nancy L. Wilkey and
 Betty J. Ruano - Petitioners *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing for that property known as 6072 Falls Road, located in the vicinity of Lake Falls near the Baltimore County/Baltimore City Line. The Petition was filed by the owners of the property, Nancy L. Wilkey and Betty J. Ruano. The Petitioners seek approval of the use of an area to the rear of the subject property and at the end of an 8-foot driveway for employee parking and the use of said driveway to enter and exit said parking area. The subject property and relief sought are more particularly described on the site plan submitted into evidence as Petitioner's Exhibit 1.

Appearing on behalf of the Petition were Nancy Wilkey and Betty Ruano, property owners, and their attorney, Jeffrey H. Scherr, Esquire. Appearing as Protestants in the matter were Victoria Slagle Wilt and Shirley Gail Butler, residents of the surrounding locale.

Testimony and evidence offered revealed that the subject property consists of a gross area of 0.147 acres, more or less, predominantly zoned B.L., and is improved with a two-story frame building presently used as an antique store. This property was the subject of a prior hearing in Case No. 92-322-A in which the Petitioners were granted a parking variance to allow 0 parking spaces in lieu of the minimum required 5 spaces. Testimony

at that hearing demonstrated that the Petitioners were unable to provide on-site parking for any of their customers. The Petitioners filed the instant Petition in response to a zoning violation notice they received from the Zoning Administration and Development Management (ZADM) office as to the use of property to the rear of the store. Testimony revealed that over the course of time, the Petitioners have created a small driveway, approximately 8 feet in width, to the south of the existing building. This driveway extends from Falls Road to a small gravel area to the rear of this site. Testimony indicated that this gravel area is large enough to accommodate parking for two vehicles. Furthermore, the Petitioners have extended the driveway to an alleyway located behind the adjacent community so that deliveries can be made to the antique store. The Petitioners are requesting permission to continue using this gravel area for employee parking, only, and to permit the use of the driveway leading to and from this parking area for access to and from this site for delivery purposes.

Appearing and testifying in opposition to this request were Victoria Wilt and Shirley Butler, residents of the surrounding community. These residents filed the initial complaint with ZADM as a result of the driveway being extended back to the alleyway which is located behind their homes. These neighbors fear the use of this alleyway by customers of the antique store. They do not want to see this alley opened to serve any commercial purpose. At the present time, this alley serves only those residences along Fairfield Avenue.

At the hearing, all parties discussed this matter and the Petitioners agreed that the driveway which runs from their antique store to the alley shall be restricted to deliveries of antiques, only. This drive-

ORDER RECEIVED FOR FILING
 Date 11/2/95
 By [Signature]

MICROFILMED

ORDER RECEIVED FOR FILING
 Date 11/2/95
 By [Signature]

MICROFILMED

ORDER RECEIVED FOR FILING
Date 10/20/94
By [Signature]

way shall not be open to the public as a means of access to and from the antique store. The Petitioners have agreed to place a chain across this driveway to prevent its use by the general public. Furthermore the Petitioners agreed to move the pole that contains the chain onto their property, so as not to impede their neighbors' use of the alley to the rear of their homes.

Further testimony revealed that when the Petitioners installed crusher run or gravel on their parking area, the Contractor deposited a large amount of stone in the common area located behind the Petitioner's property adjacent to the alley. The Petitioners agreed that they would have the stone removed and the area replanted and restored to its natural state to the extent possible.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not be detrimental to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 20th day of October, 1994 that the Petition for Special Hearing seeking approval of the use of an area to the rear of the subject property for employee parking, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

RECEIVED
OCT 21 1994

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking approval of the use of the existing 8-foot wide driveway which leads from Falls Road to the alley to the rear of this site as access to the parking area, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.
- 2) The gravel parking area to the rear of the subject property shall be used for employee parking only. This area shall not be accessible to members of the general public.
- 3) The driveway which extends from the rear of the subject property to the alley that runs behind the homes along Fairfield Avenue shall only be used by the Petitioners for the pick-up and delivery of antiques. This driveway and alleyway shall not be used by any customers or members of the general public who visit the site. Furthermore, the Petitioners shall be required to maintain a chain across this driveway to prevent access to and from the site by members of the general public. This chain shall be installed within forty-five (45) days of the date of this Order.
- 4) The Petitioners shall remove the stone which was placed in the common area off the Petitioners property to the extent possible. This area shall be replanted with grass seed and restored to its natural state to the extent possible within forty-five (45) days of the date of this Order.
- 5) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

TMK:bjs

[Signature]
TIMOTHY M. KYRKO
Deputy Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING
Date 10/20/94
By [Signature]

MICROFILMED



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

September 15, 2020

CAROLE S. DEMILIO
Deputy People's Counsel

SENT VIA EMAIL

Paul M. Mayhew, Managing Administrative Law Judge
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Nancy Wilkey & Betty Ruano, Petitioners
6072 Falls Road
Case No. 2020-174-SPH

Dear Judge Mayhew,

This special hearing petition relates to a change from antique store use to general commercial use. It focuses on the zoning history relating to off-street parking requirements, the 1992 variance approved but limited to antique store use, and the request to remove such restriction and expand the scope of the variance.

By way of background, this Falls Road property is at the southern border of the Lake Falls Village shopping center and just north of the Bonjour cafe. It is zoned B.L. The property is on about .15 gross acreage. There is a 2-story commercial building with over 5000 square feet of floor area. We enclose Google Maps photos.

BCZR Sec. 409.6.A.2 requires 5 parking spaces per 1000 square feet for retail-general uses. This computes to a 5-space requirement for this site.

In 1992, Deputy Zoning Commissioner Timothy Kotroco approved a variance for off-street parking limited to antique store use. Case No. 92-322-A. This allowed zero (0) instead of the required five (5) off-street-parking spaces. The restriction is in Condition 2 of the Order. In 1995, DZC Kotroco allowed limited delivery use for 2 parking spaces to the rear down a gravel alley. Case No. 95-83-SPH. The decisions are enclosed.

The current petition requests removal of this 1992 parking variance restriction so as to allow any commercial use.

The 1992 petition involved antique store use, and was offered at trial to be so limited. Planning Director Pat Keller testified he would support the variance only if limited to the antique business and would expire upon termination of the business. Its approval accordingly was limited

to antique store use, as reflected in the order. There was opposition to the 1995 approval, which resulted in the limited allowance of the 2 parking spaces to the rear down an alley.

The B.L. Zone permits many commercial uses by right. BCZR Sec. 230.1. We infer that the petition is limited to modest retail uses permitted by right and does not involve any special exception uses listed under BCZR Sec. 230.3. We count 78 uses permitted by right, many of which involve multiple uses. While it may not be practical to require identification of a specific proposed retail use, there should be some consideration of the parameters of the proposed use.

The main point here is that antique stores are recognized as more benign uses than standard retail. To illustrate, they are permitted by special exception in R.C. 2, R.C. 4, R.C. 5, R.C. 6, R.C. 7 and R.C. 8 zones, all residential. These zones prohibit the standard retail use.

The special hearing process may not be the proper vehicle for a new variance. The petition clearly requests a new and much expanded variance, along with use of the alley. A transition from antique store use to general retail use involves a material change and consequential impact to the parking situation. While the 1992 condition states the "...restriction may be modified only by public hearing," the applicable law requires that such public hearing involve a request for a variance for the proposed use which has to satisfy all the elements of the law, BCZR Sec. 307.1.

The scope of a special hearing per BCZR 500.7 is to determine the existence of any purported nonconforming use or to determine rights in property. The Court of Special Appeals has compared it to a declaratory judgment process. Antwerpen v. Baltimore County 163 Md. App. 194, 2009 (2005). It is not a vehicle for a modified or new variance. To repeat, the proper vehicle is a variance under BCZR Sec. 307.1.

We have often underlined that approval of a variance depends on the particular use. It does not run automatically to a new use. We reviewed the law in May 20, 2020 correspondence to PAI Director Michael Mallinoff and Zoning Supervisor Carl Richards. We addressed a situation in the development process. Zoning Commissioner William Wiseman had approved setback variances for an ice cream store in 2005. In 2019, Dunkin' obtained DRC and development plan approval for a new drive-through restaurant. We took the position that new variances would be required for the setbacks as well as for stacking spaces. Zoning Case 06-014-A, DRC 014619A, 4301 Washington Boulevard. We cited, *inter alia*, your decision in the 1141 Berrymans Lane case. Eventually, the PAI Director communicated that a public hearing would be necessary at least for a parking variance.

Here is what we wrote in the course of our correspondence to the PAI Director,

"The main point is that variances are use-specific and site-plan specific. They may run with the land for the same use to new owners, but not to new uses. Recently, ALJ Mayhew confirmed that variances are use-specific in the course of granting a petition effectively for amended variances for a garden center in the R.C.C. Zone. Case No. 20-014-A, 1141 Berrymans Lane, March 17, 2020 opinion attached, along with our office's letter dated March 2, 2020.

"To obtain a variance under BCZR Sec. 307.1, a petitioner must prove uniqueness of the property resulting in "practical difficulty" and without injury to public health, safety and general welfare. Cromwell v. Ward 102 Md. App. 691 (1995). The practical difficulty and public safety criteria are use-specific and contextual. Trinity Assembly of God v. People's Counsel 407 Md. 53, 79-84 (2008). Judge Harrell wrote,

"With respect to the practical difficulty prong of the Zoning Code's variance standards, the Board applied the factors that this Court articulated in McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973). In McLean we adopted, from Professor Rathkopf's treatise, a three-part inquiry to guide local zoning authorities in determining whether a landowner established this element:

- 1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

We should add that BCZR Sec. 307.1 connects the uniqueness prong of the variance standard to the resulting practical difficulty. Judge Harrell explained this in detail in Trinity Assembly. So DZC Kotroco reviewed all of the elements in the context of the antique store proposal. It does not extend to more general commercial use. Otherwise stated, the variance issues must be reviewed anew.

Accordingly, the petition should be changed and clarified to include a request for a new variance. It may be inferred from the 1992 decision that a variance for general retail use would be problematic unless there is a material change in circumstances. We leave that to your judgment. We also leave to your judgment reasonable parameters for a more general commercial use.

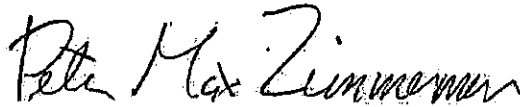
In the alternative, it would make sense that Petitioners formalize an arrangement with a written agreement for parking spaces at the Lake Falls Village per BCZR Sec. 409.7.B.2 and C. This looks consistent within the spirit and intent of the zoning approvals related to parking at Lake Falls Village approved in Case No. 2019-432-A, enclosed, see Page 4. We are sending a courtesy copy of this letter to Dino LaFiandra, attorney of record there for Lake Falls Village.

Paul Mayhew, Managing Administrative Law Judge
September 15, 2020
Page 4

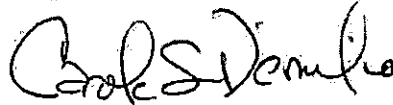
We note that the Director of Planning's August 19, 2020 memorandum parallels our concerns about this case and concludes with the parallel suggestion that Petitioner seek a shared parking arrangement with the Lake Falls Village.

Thank you in advance for your consideration.

Sincerely,



Peter Max Zimmerman
People's Counsel for Baltimore County



Carole S. Demilio
Deputy People's Counsel for Baltimore County

cc: Patrick Richardson, Representative for Petitioners, sent via email
Michael Mallinoff, Director of Permits, Approvals, and Inspections, sent via email
Carl Richards, Zoning Supervisor, sent via email
Lloyd Moxley, Development Manager, sent via email
Pete Gutwald, Director of Planning
Dino LaFiandra, attorney for Lake Falls Village

Google Maps 6072 Falls Rd

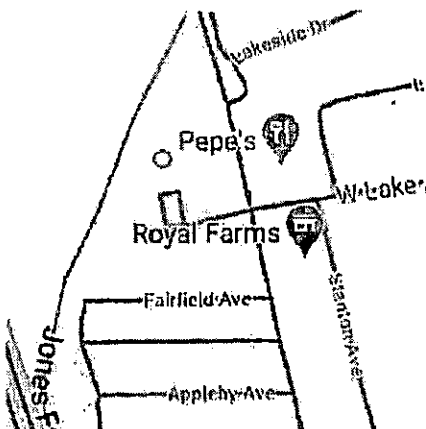


Image capture: Jun 2019 © 2020 Google

Baltimore, Maryland

Google

Street View



August 25, 2020

SENT VIA EMAIL

Paul M. Mayhew, Managing Administrative Law Judge
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Nancy Wilkey & Betty Ruano
6072 Falls Road
Case No. 2020-L74-SPH

Dear Judge Mayhew,

This Falls Road property borders on the south the Lake Falls Village shopping center. The current zoning petition requests removal of the parking variance restriction to antique store use approved by Deputy Zoning Commissioner Timothy Katrono in 1992, Case No. 92-122-A. This approval allowed zero (0) instead of the required five (5) off-street parking spaces. There restriction is in Condition 2 of the 1992 Order. In 1995, DZC Kompeo allowed limited delivery use for 2 parking spaces to the rear down a gravel alley. Case No. 95-83-SPH. These decisions are enclosed.

The gist of the petition is to modify the use from antique store to general retail. The 1992 petition involved antique store use, and was offered at trial to be so limited. Planning Director Pat Keller testified he would support the variance only if limited to the antique business and would expire upon termination of the business. Its approval accordingly was limited to antique store use, as reflected in the order. There was opposition to the 1995 approval, which resulted in the limited allowance of the 2 parking spaces to the rear down an alley.

This limited variance approval to antique store use is not subject to modification and removal of conditions by a petition for special hearing alone. The petition omits the required request for a new variance, in conjunction with limited use of the alley. A transition from antique store use to general retail use involves a material change with respect to the parking situation. While the 1992 condition states that the restriction may be modified only by public hearing, the applicable law requires that such public hearing involve a request and review of an amended variance, which has to satisfy all the elements of the law pertinent to the new use.

We have underlined that approval of a variance depends on the particular use and does not run automatically to a new use. We reviewed the law in May 20, 2020 correspondence to PAI Director Michael Mallinoff and Zoning Supervisor Carl Richards. We addressed a situation in the development process: Zoning Commissioner William Wiseman had approved setback variances for an ice cream store in 2005. In 2019, Dunkin' presented a new proposal for a drive-through restaurant. We took the position that new variances would be required for the setbacks as well as for the stacking spaces. Zoning Case 06-014-A; DRC 014619A, 4301 Washington Boulevard. We cited, *inter alia*, your decision in the 1141 Berryman Lane case. Eventually, the PAI Director communicated that a public hearing would be necessary at least for a parking variance.

Here is what we wrote in the course of our correspondence to the PAI Director,

"The main point is that variances are use-specific and site-plan specific. They may run with the land for the same use to new owners, but not to new uses. Recently, ALJ Mayhew confirmed that variances are use-specific in the course of granting a petition effectively for amended variances for a garden center in the R.C.C. Zone, Case No. 20-014-A, 1141 Berryman Lane, March 17, 2020 opinion attached, along with our office's letter dated March 2, 2020.

"To obtain a variance under BCZR Sec. 307.1, a petitioner must prove uniqueness of the property, resulting in "practical difficulty" and without injury to public health, safety and general welfare. *Cromwell v. Ward* 102 Md. App. 691 (1995). The practical difficulty and public safety criteria are use-specific and contextual. *Trinity Assembly of God v. People's Council* 407 Md. 53, 79-84 (2008). Judge Harrell wrote,

"With respect to the practical difficulty prong of the Zoning Code's variance standards, the Board applied the factors that this Court articulated in *McLean v. Solis*, 270 Md. 208, 110 A.2d 781 (1971). In *McLean* we adopted, from Professor Rathkopf's treatise, a three-part inquiry to guide local zoning authorities in determining whether a landowner established this element:

- 1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

The bottom line is that the petition should be changed to include a request for an amended variance. It is may arguably be inferred from the 1992 decision that a variance for general retail

Paul Mayhew, Managing Administrative Law Judge
August 11, 2020
Page 3

use would be problematic unless there is some material change in circumstances. We leave that to your judgment.

It may be that an arrangement could be made for a written reservation for parking spaces at the Lake Falls Village, although that might also involve some adjustment of the zoning approvals related to that site as well.

Thank you in advance for your consideration.

Sincerely,

Peter Max Zimmerman
People's Counsel for Baltimore County

cc: Patrick Richardson, Representative for Petitioners
Michael Mallinoff, Director of Permits, Approvals, and Inspections
Carl Richards, Zoning Supervisor
Lloyd Moxley, Development Manager

Google Maps 1302 W Lake Ave

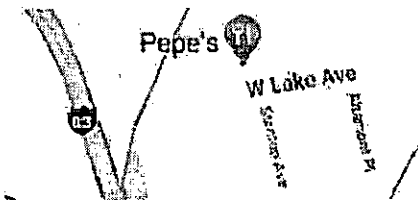


Image capture: Jun 2019 © 2020 Google

Baltimore, Maryland

Google

Street View



6072 FALLS ROAD

PLAN

6072 FALLS ROAD

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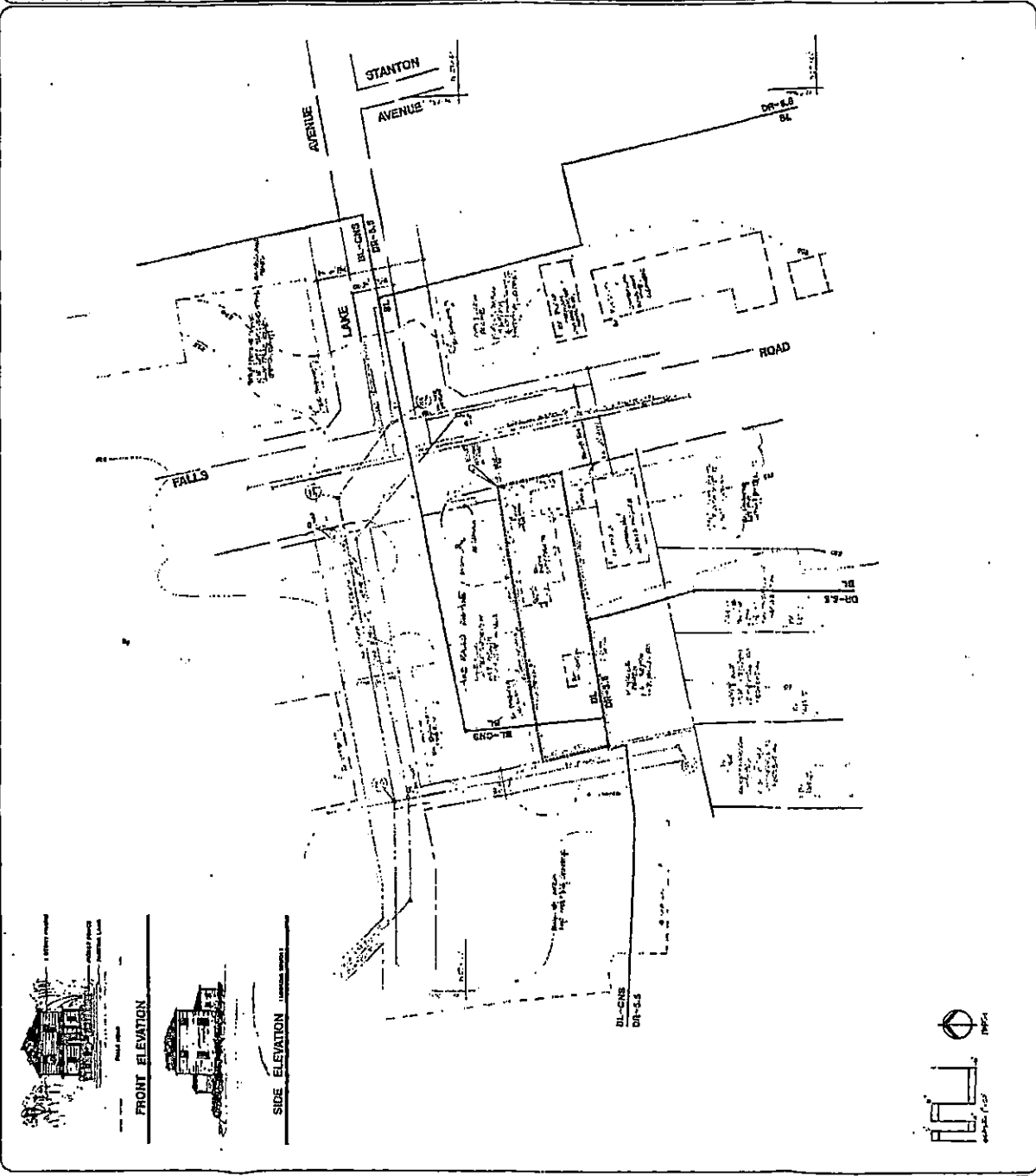
PLAN

6072 FALLS ROAD

PLAN

6072 FALLS ROAD

PLAN



FRONT ELEVATION

SIDE ELEVATION

REAR ELEVATION

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
W/S Falls Road, 50' S of the * DEPUTY ZONING COMMISSIONER
c/l of Lake Avenue *
(6072 Falls Road) * OF BALTIMORE COUNTY
3rd Election District *
2nd Councilmanic District *
Nancy L. Wilkey and *
Betty J. Ruano - Petitioners *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing for that property known as 6072 Falls Road, located in the vicinity of Lake Falls near the Baltimore County/Baltimore City Line. The Petition was filed by the owners of the property, Nancy L. Wilkey and Betty J. Ruano. The Petitioners seek approval of the use of an area to the rear of the subject property and at the end of an 8-foot driveway for employee parking and the use of said driveway to enter and exit said parking area. The subject property and relief sought are more particularly described on the site plan submitted into evidence as Petitioner's Exhibit 1.

Appearing on behalf of the Petition were Nancy Wilkey and Betty Ruano, property owners, and their attorney, Jeffrey H. Scherr, Esquire. Appearing as Protestants in the matter were Victoria Slagle Wilt and Shirley Gail Butler, residents of the surrounding locale.

Testimony and evidence offered revealed that the subject property consists of a gross area of 0.147 acres, more or less, predominantly zoned B.L., and is improved with a two-story frame building presently used as an antique store. This property was the subject of a prior hearing in Case No. 92-322-A in which the Petitioners were granted a parking variance to allow 0 parking spaces in lieu of the minimum required 5 spaces. Testimony

at that hearing demonstrated that the Petitioners were unable to provide on-site parking for any of their customers. The Petitioners filed the instant Petition in response to a zoning violation notice they received from the Zoning Administration and Development Management (ZADM) office as to the use of property to the rear of the store. Testimony revealed that over the course of time, the Petitioners have created a small driveway, approximately 8 feet in width, to the south of the existing building. This driveway extends from Falls Road to a small gravel area to the rear of this site. Testimony indicated that this gravel area is large enough to accommodate parking for two vehicles. Furthermore, the Petitioners have extended the driveway to an alleyway located behind the adjacent community so that deliveries can be made to the antique store. The Petitioners are requesting permission to continue using this gravel area for employee parking, only, and to permit the use of the driveway leading to and from this parking area for access to and from this site for delivery purposes.

Appearing and testifying in opposition to this request were Victoria Wilt and Shirley Butler, residents of the surrounding community. These residents filed the initial complaint with ZADM as a result of the driveway being extended back to the alleyway which is located behind their homes. These neighbors fear the use of this alleyway by customers of the antique store. They do not want to see this alley opened to serve any commercial purpose. At the present time, this alley serves only those residences along Fairfield Avenue.

At the hearing, all parties discussed this matter and the Petitioners agreed that the driveway which runs from their antique store to the alley shall be restricted to deliveries of antiques, only. This drive-

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Date

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Date

By

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way shall not be open to the public as a means of access to and from the antique store. The Petitioners have agreed to place a chain across this driveway to prevent its use by the general public. Furthermore the Petitioners agreed to move the pole that contains the chain onto their property, so as not to impede their neighbors' use of the alley to the rear of their homes.

Further testimony revealed that when the Petitioners installed crusher run or gravel on their parking area, the Contractor deposited a large amount of stone in the common area located behind the Petitioner's property adjacent to the alley. The Petitioners agreed that they would have the stone removed and the area replanted and restored to its natural state to the extent possible.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not be detrimental to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 20th day of October, 1994 that the Petition for Special Hearing seeking approval of the use of an area to the rear of the subject property for employee parking, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking approval of the use of the existing 8-foot wide driveway which leads from Falls Road to the alley to the rear of this site as access to the parking area, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

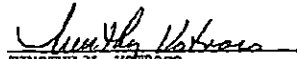
1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

2) The gravel parking area to the rear of the subject property shall be used for employee parking only. This area shall not be accessible to members of the general public.

3) The driveway which extends from the rear of the subject property to the alley that runs behind the homes along Fairfield Avenue shall only be used by the Petitioners for the pick-up and delivery of antiques. This driveway and alleyway shall not be used by any customers or members of the general public who visit the site. Furthermore, the Petitioners shall be required to maintain a chain across this driveway to prevent access to and from the site by members of the general public. This chain shall be installed within forty-five (45) days of the date of this Order.

4) The Petitioners shall remove the stone which was placed in the common area off the Petitioners property to the extent possible. This area shall be replanted with grass seed and restored to its natural state to the extent possible within forty-five (45) days of the date of this Order.

5) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.


TIMOTHY H. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

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Date 10/20/94
By [Signature]

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ORDER RECEIVED FOR FILING

Date 10/20/94
By [Signature]

MICROFILMED

BALTIMORE COUNTY, MARYLAND INTER-OFFICE MEMORANDUM

TO: Michael D. Mallinoff
Director, Department of Permits, Approvals and Inspections

DATE: 8/19/2020

FROM: C. Pete Gutwald
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 20-174

INFORMATION:

Property Address: 6072 Falls Road
Petitioner: Nancy L. Wilkey, Betty J. Ruano
Zoning: BL
Requested Action: Special Hearing

The Department of Planning has reviewed the petition for Special Hearing to determine whether or not the administrative law judge should alter the previous zoning decisions rendered in Cases 92-322-A and 95-83-SPH permitting no customer parking spaces, but with restrictions.

It should be noted that the petition lists the current zoning as BL. According to Baltimore County's GIS and the petition's site plan, there is a small area zoned D.R. 3.5 along the southern property line.

A site visit was conducted on August 6, 2020. The property is approximately 5,472 square feet and is comprised of a vacant dwelling-like structure. Access to the small paved area to the rear is limited to an 8-foot wide driveway directly off of Falls Road. The (unstriped) paved area is limited to employee parking, which was stipulated in the previous cases. Customer parking was only available to limited on-street parking along Falls Road. It was also ordered in Case 92-322-A that the parking variance is restricted "shall expire and become null and void" (Restriction #2, pp. 3-4) in the event that the property ceases to be an antique shop.

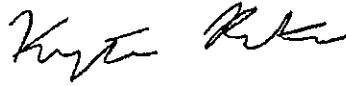
For the previous use (antique shop), zero parking spaces may have been adequate. However, according to the petitioner's representative, the subject property is for sale and there are currently no plans for its future use. The property is adjacent to Lake Falls Village, a shopping center with several dedicated parking spaces and signalized ingress/egress. The petitioners should seek a shared parking arrangement with the shopping center, which could provide more than zero customer parking spaces.

Until such time that a new use is proposed, The Department of Planning does not support the continuation of zero parking spaces and recommends denial.

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

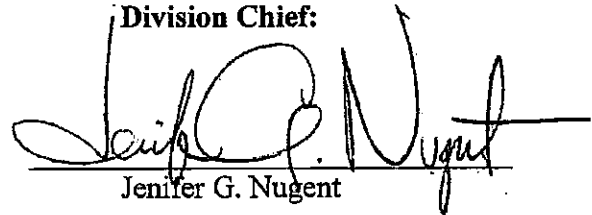
Date: 8/19/2020
Subject: ZAC # 20-174
Page 2

Prepared by:



Krystle Patchak

Division Chief:



Jennifer G. Nugent

CPG/JGN/kma/

c: Bill Skibinski
Patrick C. Richardson, Jr., Richardson Engineering, LLC
Office of the Administrative Hearings
People's Counsel for Baltimore County

IN RE: PETITIONS FOR SPECIAL
HEARING AND VARIANCE
(6080 Falls Road)

3rd Election District
2nd Council District

Lake Falls Village Limited
Partnership, LLLP, *Legal Owner*
Petitioner

BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

CASE NO. 2019-0432-SPHA

MODIFIED OPINION AND ORDER¹

This matter comes before the Office of Administrative Hearings ("OAH") for consideration of Petitions for Special Hearing and Variance filed on behalf of Lake Falls Village Limited Partnership, LLLP, legal owner ("Petitioner"). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("BCZR"): (1) to approve an amendment to the previously approved site plan in Zoning Case No. 1997-0272-X; (2) commercial parking in a residential zone pursuant to BCZR Section 409.8 B for six (6) existing parking spaces that partially extend into the adjacent DR 3.5 zone and partial drive aisle in DR 2; (3) a modified parking plan under BCZR Section 409.12.B to allow the existing surface parking lot containing 184 parking spaces as shown on the Plan to Accompany Petition for Zoning Hearing to serve the proposed uses on the property, which would otherwise require 207 parking spaces; (4) for modification of the Residential Transition Area ("RTA") under BCZR Section 1B01.1.B.1.c(2) to permit the existing surface parking to be located within the 50-ft. RTA buffer and the 75-ft. RTA setback otherwise required by BCZR Section 1B01.1.B.1.E(3) and Section 1B01.1.B.1.E(5), respectively; and (5) such further and other relief as the nature of this cause may require. In addition, a Petition for Variance was filed pursuant to BCZR as follows: (1) from BCZR Section 409.6 to permit 184 existing parking spaces in lieu of the 207

¹ This Modified Opinion and Order is entered by this Managing Administrative Law Judge for Baltimore County as a result of Petitioner's Motion for Reconsideration dated October 31, 2019, which is granted.

parking spaces required; (2) from BCZR Section 409.8.A.4 to permit existing parking spaces to be as close as four (4) ft. from the right-of-way line of a public street, in lieu of the ten (10) ft. required (no new development proposed); (3) from BCZR Section 1B01.1.B.1.E.3 to permit an RTA Buffer of zero feet in lieu of the 50 feet required in order to accommodate an existing surface parking lot (no new development proposed) and (4) from BCZR Section 1B01.1.B.1.E.5 to permit an RTA setback of zero (0) ft. in lieu of the 75 ft. required in order to accommodate an existing surface parking lot (no new development proposed). A redlined site plan was marked and accepted into evidence as Petitioner's Exhibit 1.

John Harrington, Senior Vice President of MacKenzie Commercial Real Estate Services, LLC and one of the tenants, Emily Howell, the owner of the Corner Pantry, a restaurant in the Lake Falls Village center appeared in support of the requests. Dino La Fiandra, Esq. represented the Petitioner. Steve Warfield, the professional engineer who sealed the redlined plan also attended. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. No substantive Zoning Advisory Committee ("ZAC") comments were received from any of the County reviewing agencies.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Because there were no protestants Mr. La Fiandra was allowed to proffer the following: He explained that the tenant, Corner Pantry was now occupying approximately 1200 square feet of space in the development and that because of the success of her business she wishes to double the size of her restaurant, thus necessitating the requested relief. He explained that the Lake Falls Village development was built in 1982 and that under the then existing BCZR the expanded restaurant space of 2400 square feet would cause the entire Lake Falls Village center to require a total of 207 parking spaces for all the uses in the center, if the parking for the center were tabulated

under the parking requirements of the BCZR in effect at the time center was originally developed which is what was depicted on the original blacklined site plan that was filed on August 19, 2019. However, in preparing for this hearing Mr. La Fiandra and Mr. Warfield realized that the proposed plan would be covered by the "shared parking adjustment" under the current BCZR Sec. 409.6.B.3 if they were to upgrade the Lake Falls Village to the parking regulations of the current BCZR, which is permitted by BCZR §409.1. As a result, Mr. Warfield prepared the redlined plan (Exhibit 1) with a "Shared Parking Analysis" Table which shows that the "adjusted" required number of spaces is only 159 under these current regulations. Mr. La Fiandra explained that since there are 184 existing spaces they do not need the Variance requested in paragraph 1 of the Variance request. However, as he further explained, since the shared parking adjustment is part of the current BCZR they must comply with all other aspects of the current BCZR as part of upgrading to the current regulations. Therefore, he requested that they be relieved from any minor deficiencies in the existing surface parking lot from the standpoint of BCZR §§409.3 and 409.4 of current BCZR relating to the required dimensions of the parking spaces, driveways and aisles as part of upgrading to the current regulations. For instance, Mr. Warfield pointed out that at the back of the property the parking spaces are only 15 feet in length and under the current regulations they are supposed to be 18 feet. Mr. La Fiandra asked that this relief be granted under paragraph 5 of the Special Hearing request.

With regard to paragraph 2 of the Special Hearing relief, Mr. Warfield explained that when the GIS line was created it did not precisely mirror the property line. As a result, on the south side of the property there is a very small section of the property that is now in the DR 3.5 zone, which partially extends into 6 of the existing parking spaces, thereby constituting commercial parking in a residential zone.

The relief requested in paragraph 4 of the Special Hearing is also a result of the GIS anomaly discussed above. Hence the Petitioner needs relief from the RTA buffer and setback requirements. Mr. La Fiandra explained that if this relief is granted it will obviate the identical relief that is requested in paragraphs 3 and 4 of the Variance petition. With regard to paragraph 2 of the Variance relief, Mr. La Fiandra further explained that the parking spaces at the front of the property were built only 4 feet from the roadway and have existed there since 1982 and have caused no complaint or incident. He observed that several businesses in the vicinity along Falls Road have no parking out front and use the Lake Falls Village lot.

SPECIAL HEARING

Based on the foregoing I find that all of the conditions of BCZR Sec. 502.1 are satisfied and that the requested relief is in keeping with the spirit and intent of the BCZR and that it will not harm the public health, safety, and general welfare. Accordingly, I shall grant the relief requested in Special Hearing Request Number 1.

With regard to the requirements for commercial parking in a residential zone, I find that BCZR § 409.8.B.2 is satisfied, and I will grant the requested relief as it relates to the 6 existing parking spaces and the partial drive aisle. Accordingly, I shall grant the relief requested in Special Hearing Request Number 2.

With regard to the modification of the Residential Transition Area under BCZR Section 1B01.1.B.1.c(2) to permit the existing surface parking to be located within the 50-ft. RTA buffer and the 75-ft. RTA setback otherwise required by BCZR Section 1B01.1.B.1.E (3) and (5), respectively, I find that the reduction of the RTA as requested will be compatible with the neighborhood within the context of BCC § 32-4-402 in that Lake Falls Village Shopping Center (including the parking spaces at issue) are and have been existing for almost 40 years and indeed

are a component of this neighborhood. I further specifically find that the reduction ordered hereby will not adversely impact the residential community or development on the land adjacent to the Lake Falls Village Shopping Center, as that land is already fully developed. Accordingly, I shall grant the relief requested in Special Hearing Request Number 4.

As discussed above, I have determined that the nature of this cause requires other incidental relief in the form of a modified parking plan for the existing surface parking lot under the authority of BCZR § 409.12 to allow minor deficiencies in the parking space dimensions and parking driveway and parking aisle dimensions otherwise required by BCZR §§ 409.3 and 409.4, and I shall grant this relief under Special Hearing Request Number 5.

VARIANCE

As to the variance, it requires a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

The property is split-zoned and is an irregularly shaped lot that is sandwiched between the Jones Falls and Falls Road. The rear section of the property is within the 100 year floodplain. As such, the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because it would be unable to accommodate its tenant's proposed restaurant expansion. Further, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the absence of County and/or community opposition. Finally, I note that the proposed restaurant expansion will not affect the existing

exterior structure of the Lake Falls Village buildings or its existing exterior parking, features, or amenities.

THEREFORE, IT IS ORDERED this 1ST day of November, 2019, by this Administrative Law Judge, that the Petition for Special Hearing: (1) to approve an amendment to the previously approved site plan in Zoning Case No. 1997-0272-X; (2) to allow commercial parking in a residential zone pursuant to BCZR Section 409.8 B for six (6) existing parking spaces that partially extend into the adjacent DR 3.5 zone and partial drive aisle in DR 2; (3) a modified parking plan for the existing surface parking lot under the authority of BCZR § 409.12 to allow minor deficiencies in the parking space dimensions and parking driveway and parking aisle dimensions otherwise required by BCZR §§ 409.3 and 409.4; including, but not limited to, permitting the existing 15 foot spaces at the rear of the property in lieu of the required 18 foot spaces; (4) for modification of the Residential Transition Area ("RTA") under BCZR Section 1B01.1.B.1.c (2) in order to allow the existing surface parking to be located within the 50-ft. RTA buffer and the 75-ft. RTA setback otherwise required by BCZR Section 1B.01.1.B.I.E (3) and (5), respectively, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance as follows: (1) from BCZR Section 409.8.A.4 to permit existing parking spaces to be as close as four (4) ft. from the right-of-way line of a public street, in lieu of the ten (10) ft. required (no new development proposed, be and is hereby GRANTED.

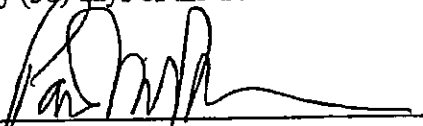
- (1) The variance relief requested in paragraphs 3 and 4 is now MOOT based on the Special Hearing relief granted above.

- (2) The variance relief requested in paragraph 1 is MOOT based on the applicability of the Shared Parking Adjustment pursuant to BCZR Sec. 409.6.B.3, as depicted in the Shared Parking Analysis Table on the redlined Plan.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

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



PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

RECEIVED

AUG 20 2020

OFFICE OF
ADMINISTRATIVE SERVICES

Mallinoff
Department of Permits, Approvals and Inspections

TO: Gutwald
Director, Department of Planning

PLANNING ADVISORY COMMITTEE COMMENTS
File Number: 20-174

FROM: Mallinoff
Address: 6072 Falls Road
Nancy L. Wilkey, Betty J. Ruano
BL
Recommended Action: Special Hearing

The Department of Planning has reviewed the petition for Special Hearing to determine whether or not the administrative law judge should alter the previous zoning decisions rendered in Cases 92-322-A and 95-83-SPH permitting no customer parking spaces, but with restrictions.

It should be noted that the petition lists the current zoning as BL. According to Baltimore County's GIS and the petition's site plan, there is a small area zoned D.R. 3.5 along the southern property line.

A site visit was conducted on August 6, 2020. The property is approximately 5,472 square feet and is comprised of a vacant dwelling-like structure. Access to the small paved area to the rear is limited to an 8-foot wide driveway directly off of Falls Road. The (unstriped) paved area is limited to employee parking, which was stipulated in the previous cases. Customer parking was only available to limited on-street parking along Falls Road. It was also ordered in Case 92-322-A that the parking variance is restricted "shall expire and become null and void" (Restriction #2, pp. 3-4) in the event that the property ceases to be an antique shop.

For the previous use (antique shop), zero parking spaces may have been adequate. However, according to the petitioner's representative, the subject property is for sale and there are currently no plans for future use. The property is adjacent to Lake Falls Village, a shopping center with several dedicated parking spaces and signalized ingress/egress. The petitioners should seek a shared parking arrangement with the shopping center, which could provide more than zero customer parking spaces.

Until such time that a new use is proposed, The Department of Planning does not support the petition for zero parking spaces and recommends denial.

For further information concerning the matters stated herein, please contact Bill Skibinski.

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OFFICE OF
ADMINISTRATIVE HEARINGS

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20-174

Page 2

Prepared by:

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Kryshak

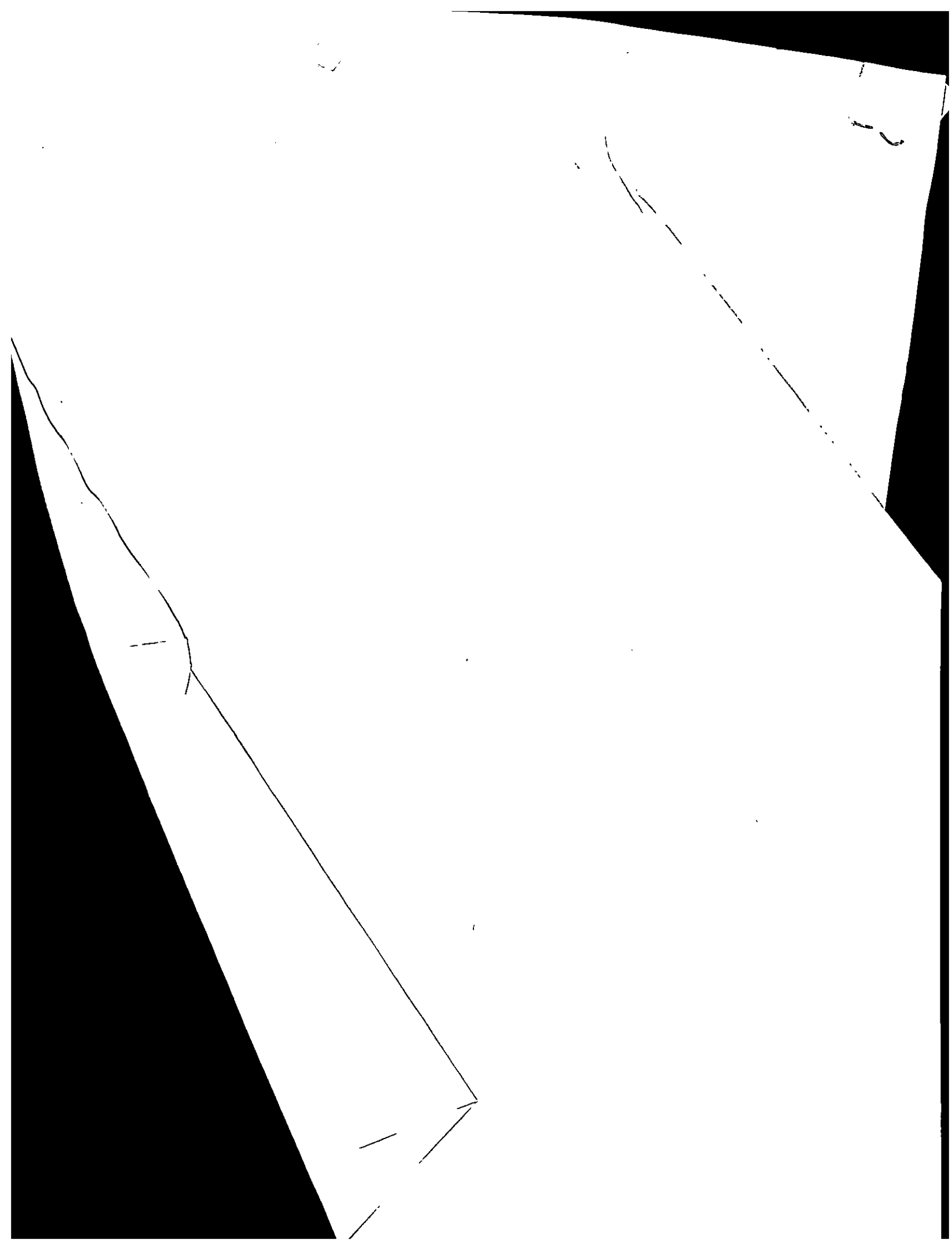
N/kma/

Bill Skibinski
Patrick C. Richardson, Jr., Richardson Engineering, LLC
Office of the Administrative Hearings
People's Counsel for Baltimore County

Division Chief:

Jenifer G. Nugent

Jenifer G. Nugent



Debra Wiley

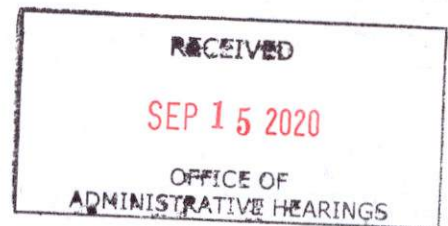
From: Peoples Counsel
Sent: Tuesday, September 15, 2020 12:42 PM
To: Paul Mayhew
Cc: Administrative Hearings; Debra Wiley; Donna Mignon; Rick@richardsonengineering.net; Michael Mallinoff; Carl Richards Jr; Lloyd Moxley; Peter Gutwald; Dino La Fiandra
Subject: Nancy Wilkey & Betty Ruano - 6072 Falls Road - Case No 2020-174-SPH
Attachments: Ltr to Mayhew on Nancy Wilkey & Betty Ruano - 6072 Falls Road - Case No 2020-174-SPH with attachments.pdf

Good Afternoon,

Attached for filing is a letter from our office relating to the above-mentioned case.

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



Event Information

Event:	Zoning Hearing - 6072 Falls Road - Case No: 2020-0174-SPH	Start Event
Type:	Listed Event	You can start event by clicking Start Now.
Event address for attendees:	https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=efcdd6350b0a451229219f59c1fa44f31	
Event address for panelists:	https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e1af150f73cfbf859b67d8fd898653cd3	
Date and time:	Tuesday, November 17, 2020 1:30 pm Eastern Standard Time (New York, GMT-05:00)	Start
Duration:	1 hour	
Description:	Zoning Hearing Case No: 2020-0174-SPH 6072 Falls Road Legal Owners: Nancy Wilkey, Betty Ruano	Send Email You can send emails by clicking Send Email
Event number:	172 248 1563	
Event password:	1234	
Host key:	698767	
Alternate Host:	Deb Wiley ,Henry Akwah	
Panelist Info:		Send Email
Panelist password:		
Panelist numeric password:	960557	
Video Address:	1722481563@baltimorecountymd.webex.com You can also dial 173.243.2.68 and enter your meeting number.	
Audio conference:	US Toll +1-415-655-0001 Show all global call-in numbers Access code: 172 248 1563	
Maximum number of registrants:	10000	
Destination address after event:		
Host image:		
Attendee list available for viewing by:	Host, presenter and panelists only	
Event material:	None	
Post-event survey:	No	
Email configured:	Pending, Approved, Rejected	
Registration Information		
Registration ID required:	No	
Password required:	No	
Password:		
Approval required:	No	
Custom registration form:	No	
After registration, go to URL:		

Donna Mignon

From: messenger@webex.com
Sent: Thursday, October 22, 2020 4:07 PM
To: Donna Mignon
Subject: Email delivery status for Web seminar: Zoning Hearing - 6072 Falls Road - Case No: 2020-0174-SPH

CAUTION: This message from messenger@webex.com originated from a non-Baltimore County Government or non-BCPL email system. Hover over any links before clicking and use caution opening attachments.



Webex sent the email message "Panelist Invitation" for your event.

Number of email addresses the message was sent to successfully: 3

Number of email addresses the message could not be sent to: 0

Need help? Go to <http://help.webex.com>

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Donna Mignon

Subject: Web seminar scheduled: Zoning Hearing - 6072 Falls Road - Case No: 2020-0174-SPH
Location: <https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e4872f81536212521a8959edcb4d6cad3>
Start: Tue 11/17/2020 1:30 PM
End: Tue 11/17/2020 2:30 PM
Recurrence: (none)
Meeting Status: Accepted
Organizer: webex

CAUTION: This message from messenger@webex.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

When it's time, start the Webex event here.

Host: Donna Mignon (dmignon@baltimorecountymd.gov)

Event number (access code): 172 248 1563

Tuesday, November 17, 2020 1:30 pm, Eastern Standard Time (New York, GMT-05:00)

Event address for attendees:

<https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e4872f81536212521a8959edcb4c>

Event address for panelists:

<https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e3d8dd46aaf555855c1bf76c9e24>



Audio conference information

+1-415-655-0001 US Toll

Global call-in numbers

Join from a video system or application

Dial 1722481563@baltimorecountymd.webex.com

You can also dial 173.243.2.68 and enter your meeting number.

Panelist numeric password: 960557

Donna Mignon

From: Donna Mignon
Sent: Monday, November 9, 2020 3:07 PM
To: 'Richardson, Patrick'
Subject: 6072 Falls Road - Case No: 2020-0174-SPH

Good Afternoon:

As you are aware, a virtual webex hearing has been scheduled for November 16, 2020 at 11:00 a.m. . You should have received an invitation in an email around October 22, 2020, that invited you to this hearing.

Please note that all hearing exhibits—documents, site plans, photographs or evidence of any kind—must be submitted in PDF format at **least two business days** in advance of the hearing to the Office of Administrative Hearings at administrativehearings@baltimorecountymd.gov. Exhibits must be separately numbered and submitted, an exhibit list with the Case Number, an exhibit number and a brief description for each exhibit.

If you have any questions or concerns, please feel free to contact our office.

Thank you so much

Donna Mignon, Legal Assistant
Baltimore County Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
410-887-3868

If you are a host, click here to view host information:

<https://baltimorecountymd.webex.com/baltimorecountymd/j.php?MTID=e5a7045f7d75f98ddf851fbf20db771c0>

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Donna Mignon

From: messenger@webex.com
Sent: Thursday, October 22, 2020 4:07 PM
To: Donna Mignon
Subject: Email delivery status for Web seminar: Zoning Hearing - 6072 Falls Road - Case No: 2020-0174-SPH

CAUTION: This message from messenger@webex.com originated from a non-Baltimore County Government or non-BCPL email system. Hover over any links before clicking and use caution opening attachments.



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Number of email addresses the message was sent to successfully: 2

Number of email addresses the message could not be sent to: 0

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Donna Mignon

From: Richardson, Patrick <rick@richardsonengineering.net>
Sent: Thursday, October 22, 2020 4:07 PM
To: Donna Mignon
Subject: Accepted: Zoning Hearing - 6072 Falls Road - Case No: 2020-0174-SPH

CAUTION: This message from rick@richardsonengineering.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

ZAC AGENDA

Case Number: 2020-0174-SPH **Reviewer:** Gary Hucik
Existng Use: COMMERCIAL **Proposed Use:** COMMERCIAL
Type: SPECIAL HEARING
Legal Owner: Nancy L. Wilkey & Betty J. Ruano
Contract Purchaser: No Contract Purchaser was set.

Critical Area: No **Flood Plain:** No **Historic:** No **Election Dist:** 9 **Council Dist:** 2

Property Address: 6072 FALLS RD

Location: West side of Falls Road South East 50 feet to the center line of West Lake Ave.

Existing Zoning: BL, OR 3.5

Area: .16 AC

Proposed Zoning:

SPECIAL HEARING:

To alter the previous zoning decisions rendered in Case 92-322-A and 95-83-SPH. More particularly to remove the restriction to allow the parking variance for the property only while it is used as an Antique store. To remove restriction number 2 from case #1992-0322-A.

Attorney: Not Available

Prior Zoning Cases: None

Concurrent Cases: None

Violation Cases: None

Closing Date:

Miscellaneous Notes:

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Special Tax Recapture: None		
Account Identifier: District - 09 Account Number - 0916000070		
Owner Information		
Owner Name:	WILKEY NANCY L RUANO BETTY J	Use: COMMERCIAL Principal Residence: NO
Mailing Address:	6072 FALLS RD BALTIMORE MD 21209-2217	Deed Reference: /09054/ 00626
Location & Structure Information		
Premises Address:	6072 FALLS RD 0-0000	Legal Description: WS FALLS RD LAKE AV
Map:	Grid:	Parcel:
0079	0009	0120
Neighborhood:	Subdivision:	Section:
20000.04	0000	
Block:	Lot:	Assessment Year:
		2020
Plat No:	Plat Ref:	
Town: None		
Primary Structure Built	Above Grade Living Area	Finished Basement Area
1893	2,232 SF	
Property Land Area	County Use	
5,472 SF	06	
Stories	Basement	Type
		RETAIL STORE
Exterior	Quality	Full/Half Bath
/	C3	
Garage	Last Notice of Major Improvements	
Value Information		
	Base Value	Value
		As of
		01/01/2020
Land:	177,300	177,300
Improvements	130,000	105,300
Total:	307,300	282,600
Preferential Land:	0	0
		Phase-in Assessments
		As of
		07/01/2020
		As of
		07/01/2021
		282,600
		282,600
Transfer Information		
Seller: HUST HELEN A	Date: 02/10/1992	Price: \$135,000
Type: ARMS LENGTH IMPROVED	Deed1: /09054/ 00626	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	07/01/2020
County:	000	0.00
State:	000	0.00
Municipal:	000	0.00 0.00
07/01/2021		0.00 0.00
Special Tax Recapture: None		
Homestead Application Information		
Homestead Application Status: No Application		
Homeowners' Tax Credit Application Information		
Homeowners' Tax Credit Application Status: No Application		
Date:		

Donna Mignon

From: Donna Mignon
Sent: Tuesday, November 10, 2020 10:39 AM
To: 'Richardson, Patrick'
Subject: RE: 6072 Falls Road - Case No: 2020-0174-SPH

Good Morning,

I indicated wrong, the hearing is set for November 17, 2020 at 1:30 p.m.

From: Donna Mignon
Sent: Monday, November 9, 2020 3:07 PM
To: 'Richardson, Patrick' <rick@richardsonengineering.net>
Subject: 6072 Falls Road - Case No: 2020-0174-SPH

Good Afternoon:

As you are aware, a virtual webex hearing has been scheduled for November 16, 2020 at 11:00 a.m. . You should have received an invitation in an email around October 22, 2020, that invited you to this hearing.

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If you have any questions or concerns, please feel free to contact our office.

Thank you so much

Donna Mignon, Legal Assistant
Baltimore County Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
410-887-3868

Donna Mignon

From: Donna Mignon
Sent: Monday, November 9, 2020 3:07 PM
To: 'Richardson, Patrick'
Subject: 6072 Falls Road - Case No: 2020-0174-SPH

Good Afternoon:

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If you have any questions or concerns, please feel free to contact our office.

Thank you so much

Donna Mignon, Legal Assistant
Baltimore County Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
410-887-3868

Donna Mignon

From: webmaster@baltimorecountymd.gov
Sent: Friday, November 13, 2020 3:25 PM
To: Donna Mignon; Debra Wiley
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Betty
Last Name	Ruano
Email	bettyruano1935@gmail.com
Phone	14103779652
Address	10 Lake Manor Court
City	Baltimore
State	Maryland
ZIP Code	21210
Case Number	2020-0174-SPH
Scheduled Hearing Date	Nov. 17, 2020

done

11-17
1:30 PM

Debra Wiley

From: SGT ROBERT BLACK <1opie@comcast.net>
Sent: Sunday, November 15, 2020 11:57 PM
To: Rick Richardson; Administrative Hearings
Subject: Recertification's For 2020-0174-SPH
Attachments: Re-Cert 1 2020-0174-SPH.doc; Re-Cert 2 2020-0174-SPH.doc

CAUTION: This message from 1opie@comcast.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Recertification's for 6072 Falls Road. Thanks.



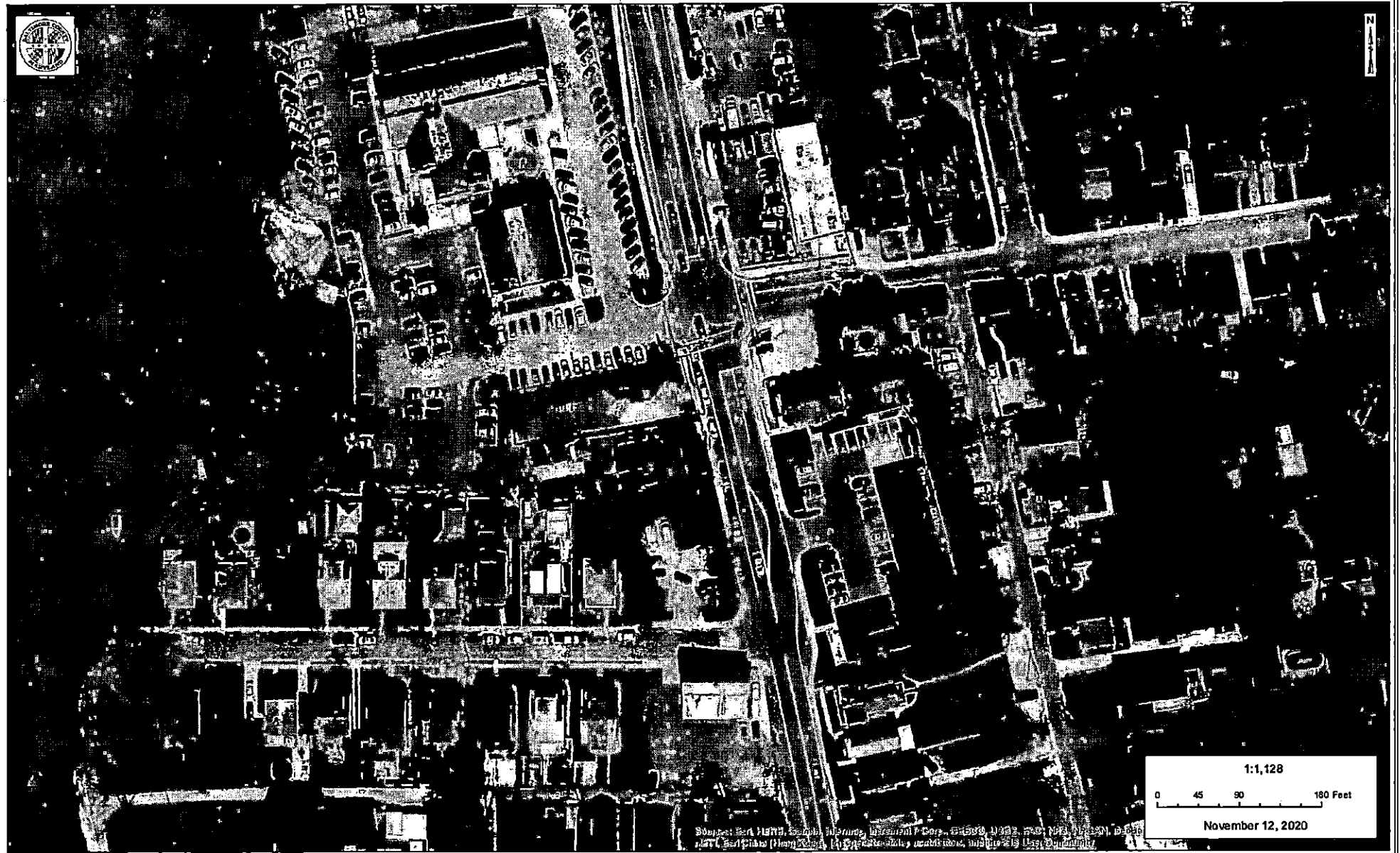
Case 2020-0174-SPH, 6072 Falls Road

Exhibit 1	Site Plan
Exhibit 2	Aerial Map
Exhibit 3	Picture of site
Exhibit 4	List of Buyer Inquiries
Exhibit 5	Contract of Purchase
Exhibit 6	Contract Extension to Correct Zoning Issue
Exhibit 7	Contract Termination Letter
Exhibit 8	Falls Lake Parking Request

12/2/20
DNL

1/7/21
DNL

Title

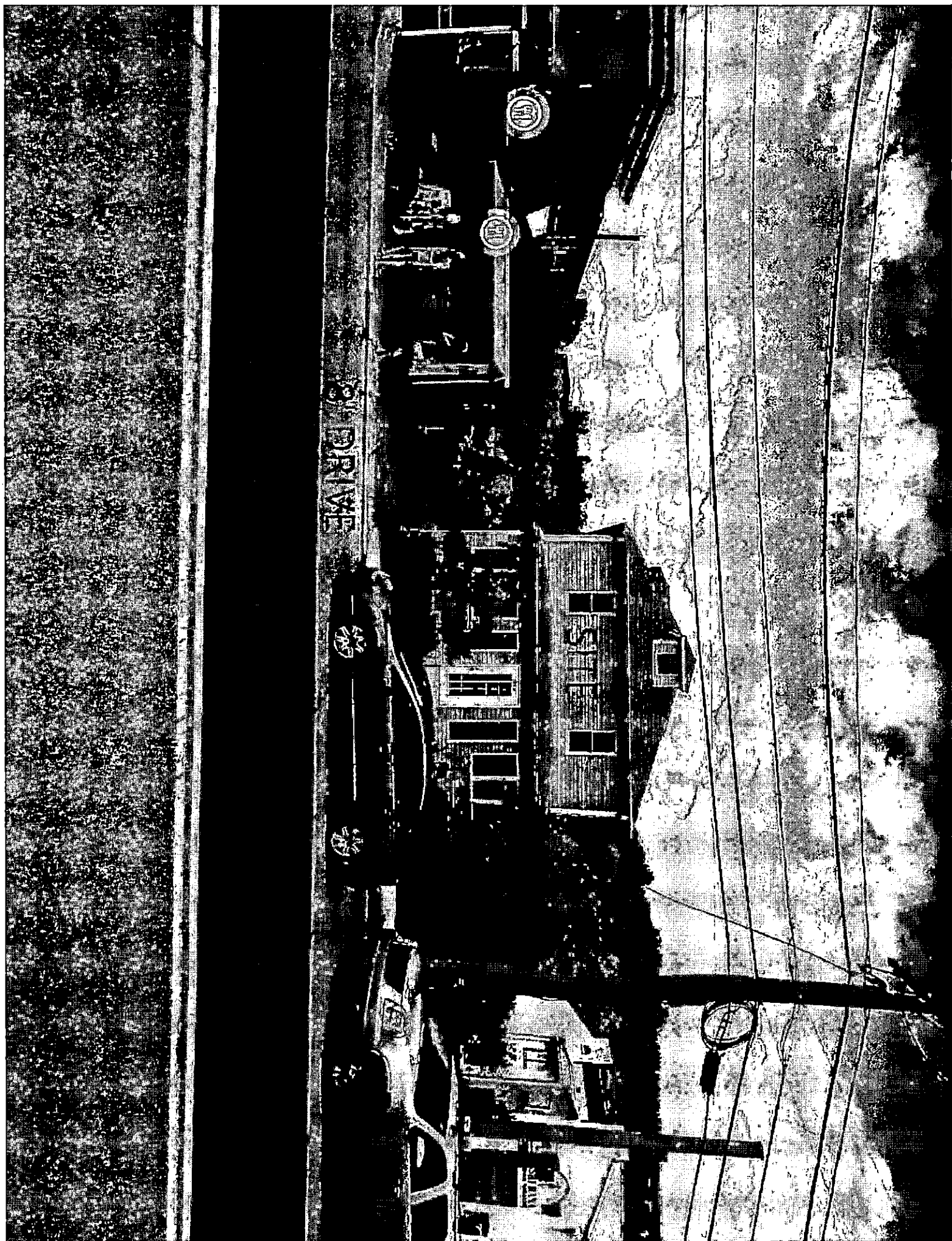


1:1,128

0 45 90 180 Feet

November 12, 2020

Subject: 1000 N. E. 10th St., Baltimore, MD 21202. This is a black and white aerial photograph of the property. The property is located at the intersection of N. E. 10th St. and N. E. 10th St. The property is a large, rectangular lot with a large building on the lot. The building is a two-story structure with a flat roof. The lot is surrounded by other residential properties. The image is oriented vertically on the page.



INQUIRIES RE. 6072 FALLS RD. SINCE LISTED FOR SALE

More than 100 individuals visited the property. The proposed uses included the following:

Antiques & Consignment (6)

physicians office

dental office

child care

wool shop

gift shop

restaurant & cafe

art studio and gallery (2)

pottery studio

center for non-profit

bakery

hot dog business

realtors office

interior decorators site

taro card reader with residence

accupuncture office

lawyers office

center for sports organization

financial planner

contractor's office

physical therapy center

counsellor's office

womens boutique

glass blower's studio and sales site

CONTRACT OF SALE

THIS CONTRACT OF SALE dated as of December 12, 2018, by and between Betty Ruano and Nancy Wilkey (the "Seller") Owners of the company called Sunporch Antiques, and 6072 Falls Road, LLC (the "Buyer").

WITNESSETH:

Agreement to Sell and Purchase. Subject to the terms and conditions of this Contract, the Seller sells to the Buyer and the Buyer purchases from the Seller all that tract of land commonly known as 6072 Falls Road Baltimore, Maryland, together with (i) all buildings and improvements thereon; (ii) any and all permanently attached fixtures and equipment therein or thereon (including, but not limited to and all electrical, mechanical, heating, ventilation, plumbing and other utility fixtures); and (iii) all of the Seller's right, title, and interest in and to all adjacent lands, rights; roads, alleys, ways, waters, privileges and easements and appurtenances thereunto belonging or in anywise appertaining. All of the property described above is hereinafter called the "Premises".

1. *Purchase Price.* The purchase price which the Buyer shall pay to the Seller for the Premises shall be Four Hundred Fifty Thousand Dollars (\$450,000.00), payable in the following manner:

(a) Ten Thousand Dollars (\$10,000) has been paid to the Seller as an earnest money deposit, the receipt of which is hereby acknowledged by the Seller. At the time of settlement hereunder the earnest money deposit shall be applied to the purchase price for the Premises. Such deposit will be paid to Seller within 24 hours of full execution of the Contract of Sale.

(b) At the time of settlement the balance of the purchase price for the Premises shall be paid in cash, by certified check, or by wired funds to the account of the Seller.

2. *Time and Place of Settlement.* It is the preference of both Buyer and Seller to consummate this transaction 30 days after the full execution of this Contract of Sale at the offices of Commonwealth Title Insurance Company, One South Street, Suite 1250, Baltimore, MD 21202. It is understood that the Buyer shall hire, at its own costs, various real estate consultants to assist in reviewing the Property. Such consultants shall include, but not be limited to an Environmental company, Title Company, Building Structural Company and any other real estate professionals it deems appropriate. In the event such consultants require more than 30 days to complete its work Buyer will deposit an additional \$10,000 to be applied towards purchase price.

In no event shall closing occur beyond 60 days from date of full Contract Execution. In the event the hired consultants cannot complete its work within 30 days then settlement will be extended.

3. *Apportionments and Adjustments.* Assuming Seller has paid its current real estate taxes and public utilities, public water and all of its standard government charges, then Buyer shall pay all standard closing costs. Buyer may also choose to buy the Seller's Limited Liability Company.

4. *Settlement.* At the time of settlement the following documents shall be executed and delivered.

(a) The Seller shall execute and deliver to the Buyer a Deed for the Premises containing covenants of special warranty and further assurances, which shall convey fee simple title to the Premises to the Buyer. Title to the Premises shall be good and merchantable, both of record and in fact and such as will be insurable by a recognized title insurance company at standard rates, free of all liens, encumbrances, easements, agreements and restrictions, except (i) utility easements and similar encumbrances, provided they are of an inconsequential nature and do not affect the fair market value of the Premises or its intended use by the Buyer as a warehouse and commercial office facility, and (ii) the encumbrances customary for property of similar location.

(b) The Seller shall execute and deliver to the Buyer assignments of all manufacturers' warranties relating to the Premises, if any.

(c) The parties shall execute and deliver such other documents as are reasonably required to consummate the transactions contemplated by this Contract.

All recordation and transfer taxes shall be paid by the Buyer. The cost of the title search, all premiums for title insurance, and all costs of recording the Deed to the Premises and other documents relating to this sale shall be paid by the Buyer.

5. *Possession and Condition of the Premises.*

Buyer is currently tenant in the Premises and has actual knowledge of all matters related to the Premises and accepts the Premises in AS IS condition, without warranty

7. *Seller's Warranties.* The Seller hereby makes the following warranties to Buyer.

(a) As of the date hereof the Seller has received no notice from any governmental authority of any building code violations or any other violations of law or governmental regulation affecting the Premises which have not been corrected.

(b) The Seller knows of no condemnation or eminent domain proceeding pending or contemplated against the Premises or any part thereof.

(c) The Seller is not now a party to any litigation affecting the Premises or the Seller's right to sell the Premises, or any part thereof: and the Seller knows of no litigation or threatened litigation affecting the Premises, or any part thereof.

(e) As of the date hereof adequate and usable public sanitary and storm sewers, public water facilities, and electrical facilities (collectively "Utilities"), necessary to the Seller's current operation of the Premises for commercial purposes, are installed in and are connected to, the Premises, and can be used without charge except for normal and customary charges of public utility companies. The Utilities enter the Premises either through adjoining public streets or via public or private easements.

(f) The buildings and improvements which are a part of the Premises are completely within the boundary lines of the Premises and do not violate any setback requirements and no structure of any kind encroaches upon the Premises.

8. *Commissions.* The Buyer and Seller warrant and represent to the other that they have not used the services of any real estate agent, broker or finder.

9. *Notices.* Any notices required or permitted to be given by either party to the other shall have been deemed to have been served when hand delivered or, if the United States Mail is used, on the second business day after the notice is deposited in the United States Mail, postage prepaid, registered or certified mail, and addressed to the parties as follows:

To the Seller:

Betty Ruano and Nancy Wilkey, Owners
Sunporch Antiques

To the Buyer:

6072 Falls Road, LLC
c/o Miller Property Management
623 W. 34th Street, Suite 300
Baltimore, MD 21211

Either party, by written notice to the other, may change its address to which notices are to be sent

10. *Miscellaneous.*

(a) As used herein the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

(b) This Contract shall be binding upon the parties hereto and on their respective successors or assigns.

(c) This Contract contains the final and entire agreement between the parties and they shall not be bound by any terms, conditions, statements or representations, oral or written, not herein contained. Any subsequent amendment to this Contract shall be valid only if executed in writing by the parties or their successors or assigns.

(d) The headings in this contract are for convenience of reference only and do not constitute a part hereof.

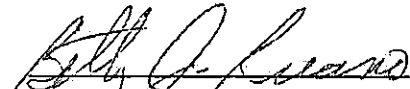
(e) This Contract shall be construed, interpreted and enforced according to the laws of the State of Maryland, without regard to principles of conflict of laws.

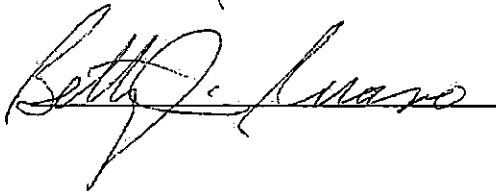
(f) Time shall be of the essence for this Contract.

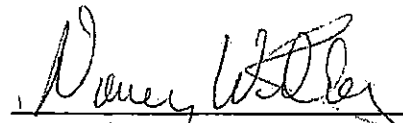
IN WITNESS WHEREOF, the parties hereto have duly executed this Contract of Sale and affixed their seals as of the date and year first above written.

WITNESS:

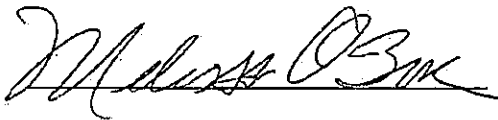


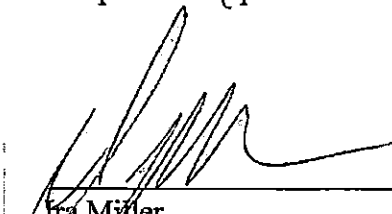
 (SEAL)
BETTY RUANO, SELLER
Sunporch Antiques



 (SEAL)
NANCY WILKEY, SELLER
Sunporch Antiques

WITNESS:




Ira Miller
6072 Falls Road, LLC, BUYER

AMENDMENT TO CONTRACT OF SALE

THIS AMENDMENT TO CONTRACT OF SALE (this "Amendment") is made and entered into as of the ____ day of January, 2019, by and between **Betty Ruano and Nancy Wilkey** (collectively, "Seller"), and **6072 Falls Road, LLC**, a Maryland limited liability company (the "Buyer").

Background

A. Seller and Buyer entered into a Contract of Sale dated December 12, 2018 (the "Original Agreement"), for the purchase and sale of certain property owned by Seller and located in Baltimore County, Maryland commonly known as 6072 Falls Road Baltimore, Maryland as described in the Original Agreement and as defined therein as the "Premises".

B. The parties desire to amend the Original Agreement to modify Section 2 of the Original Agreement relating to the Time and Place of Settlement, as more particularly set forth herein.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Amendment to the Original Agreement.

(a) Section 2 of the Original Agreement is hereby deleted in its entirety, the following being inserted in lieu thereof:

"Through information and belief, there exist certain restrictions with regard to parking on the Premises. Buyer shall endeavor during the Study Period, as defined herein, to obtain all necessary approvals from Baltimore County to remove the existing restrictions to allow an acceptable parking scheme to accommodate Buyer's intended use of the Premises, in Buyer's sole and absolute discretion (the "Parking Approval"). If Buyer is unable to obtain the Parking Approval, then Buyer shall have the right to terminate this Contract of Sale and a return of any deposit paid hereunder.

It is the preference of both Buyer and Seller to consummate this transaction at a date to be mutually agreed upon by the parties after receiving the final, unappealable Parking Approval from Baltimore County to permit the parking as detailed in this Section 2. Closing shall occur at the offices of Commonwealth Title Insurance Company, One South Street, Suite 1250, Baltimore, MD 21202. The period between the date of the Original Agreement and the date on which closing occurs shall be known as the "Study Period". During the Study Period, Buyer agrees to pay for (1) Seller's monthly property insurance up to \$250.00 per month, and (2) Seller's utility expenses for the Premises, up to \$200.00 per month. It is understood that the Buyer shall hire, at

its own expense, various real estate consultants to assist in reviewing the Premises during the Study Period. Such consultants may include, but not be limited to an environmental company, title company, building structural company and any other real estate professionals Buyer deems appropriate."

2. Full Force and Effect. Except as herein modified and amended, the Original Agreement is and shall remain in full force and effect and has not been otherwise modified or amended, either orally or in writing.

3. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall comprise but one and the same instrument. This Amendment may be delivered by facsimile or other electronic transmission of an originally executed copy to be followed by immediate delivery of the original of such executed copy.

[Signatures on following page]

IN WITNESS WHEREOF the parties hereto have duly executed this Amendment and affixed their seals as of the day and year first above written with the specific intention of creating a document under seal.

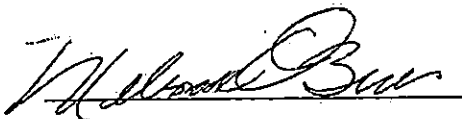
WITNESSES:

SELLER:

_____(SEAL)
Betty Ruano

_____(SEAL)
Nancy Wilkey

WITNESSES:



BUYER:

6072 FALLS ROAD, LLC

By:  (SEAL)

Name: Fra Miller

Title: 1/15/19



PASCALE STEVENS LLC
ATTORNEYS AT LAW



KEVIN J. PASCALE

Writer's Direct Dial: 443.863.5756

Writer's Email: Kpascale@PascaleStevens.com

March 12, 2019

Via Certified Mail, Return Receipt Requested

Betty J. Ruano
Nancy L. Wilkey
6072 Falls Road
Baltimore, Maryland 21209

RE: Termination of Agreement/Return of Earnest Money Deposit

Dear Ms. Ruano and Ms. Wilkey:

This law firm represents 6072 Falls Road, LLC ("6072 Falls") with respect to the property located at 6072 Falls Road (the "Property") that is the subject of a Contract of Sale between 6072 Falls, as Buyer, and Betty J. Ruano and Nancy L. Wilkey, as Sellers, dated December 12, 2018 (the "Agreement"). As you know, at the time the Agreement was executed, 6072 Falls knew very little about the Property, including whether it would be suitable for my client's intended use of the Property as a commercial art gallery. That is why my client presented the Agreement that provides 6072 Falls with thirty (30) days to hire, at its own cost, various real estate consultants to assist in reviewing the property, including, but not limited to, an Environmental company, Title Company, Building Structural Company and any other real estate professionals it deems appropriate (the "Study Period"). To demonstrate its seriousness in investigating whether the Property was suitable for its needs, 6072 Falls placed an earnest money deposit of \$10,000.00 with Sellers. Under the terms of the Agreement, closing was required to occur no later than sixty (60) days from the date of full Contract Execution, i.e., no later than February 11, 2019.

During the Study Period, 6072 Falls retained a land use attorney, Caroline Hecker, to investigate the zoning regulations that applied to the Property. During her investigation, Ms. Hecker was able to obtain a copy of Findings of Fact and Conclusions of Law dated October 20, 1994 before Baltimore County's Zoning Commission captioned as In re: Petition for Special Hearing w/s Falls Road, 50' S of the c/L of Lake Avenue (6072 Falls Road) (the "Ruling"). 6072 Falls was not provided a copy of the Ruling by either of you at the time they entered into the Agreement. Significantly, the Ruling limits the use of the gravel area to the rear of the Property to employee parking only and is not accessible to the members of the general public. Also, the driveway which extends from the rear of the subject property to the alley may be used only for the pick-up and delivery of antiques. These restrictions were imposed by the Zoning Commissioner in response to an earlier hearing in which Sellers were granted a parking variance to allow zero (0) parking spaces in lieu of the minimum required five (5) spaces. Moreover, 6072 Falls independently verified that the drive that accesses the

Page 2
March 12, 2019

rear gravel area is only eight (8) feet wide, and a neighbor's encroaching fence would only allow an additional one (1) foot if removed, still short of the ten (10) feet minimum width required by Baltimore County. In addition to these impediments, during the course of the Study Period my client has also learned of other restrictions affecting the Property that makes it economically impossible to use the Property as an art gallery open to the public.

Rather than walk away from this project and demand an immediate return of its earnest money, as my client has since learned that several other interested parties have done upon learning the true nature of the zoning restrictions on the Property, my client instead proposed an Amendment to Contract of Sale ("Amendment") that would allow the Buyer to attempt to resolve the issues that were discovered during the Study Period and extend the Time and Place of Settlement to "a date to be mutually agreed upon by the parties after receiving the final, unappealable Parking Approval from Baltimore County" Sellers, however, rejected the Amendment in an undated letter, and settlement did not occur within 60 days of December 12, 2018. Accordingly, the Agreement terminated on its own terms, and the Agreement has no further force or effect. Because closing did not occur by the outside date, and Sellers refused to Amend the Agreement, 6072 Falls is entitled to the return of the earnest money deposit. Please return the \$10,000.00 by sending it to my attention at the above-stated address. Should you refuse to return the earnest money, 6072 Falls reserves its rights to pursue a legal claim against you and will seek to recover its litigation expenses, including reasonable attorney's fees and costs of collection.

Very truly yours,



Kevin J. Pascale

cc: 6072 Falls Road, LLC

From: Richardson, Patrick
To: JHarrington@mackenziecommercial.com
Subject: 6072 Falls Road
Date: Thursday, October 22, 2020 11:37:00 AM
Attachments: Nancy Wilkey Betty Ruano - 6072 Falls Road - Case No 2020-174-SPH.msg

John, my clients Betty Ruano and Nancy Wilke own the property immediately to the south of the Falls Lake Shopping Center.

Mr. Zimmerman has raised an issue with the petition filed for a zoning relief for parking. So we are reaching out to you to see if there are any available parking spaces on the shopping center property. If so, is there a possibility for lease of those spaces?

I understand that you spoke with Betty today and have at this time declined to make any available for lease (if you do indeed have any extra spaces).

We are trying to document that you have declined to offer any spaces to Betty and Nancy. I appreciate your time and response.

Rick Richardson

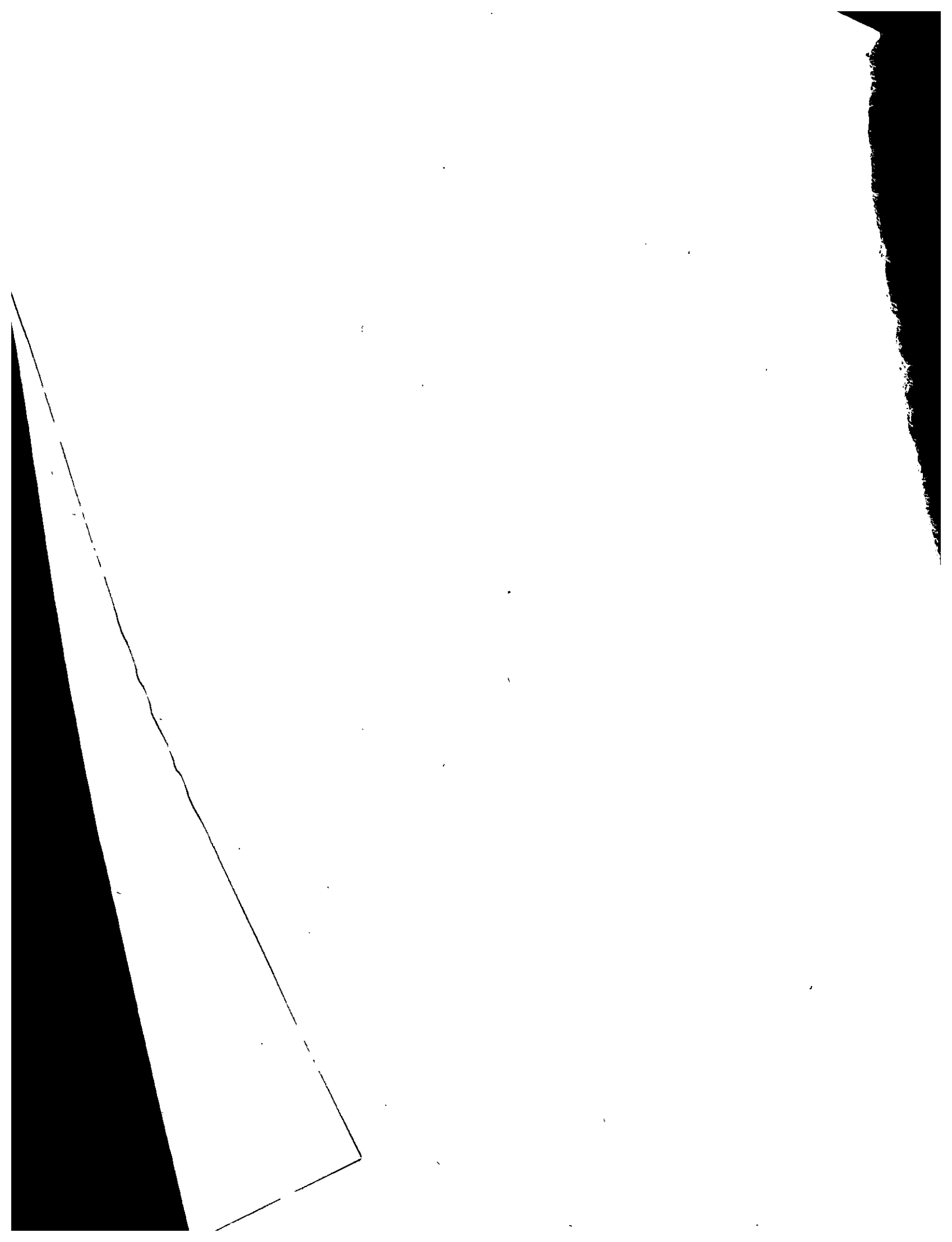
Richardson Engineering, LLC

30 E. Padonia Road Suite 500

Timonium, MD 21093

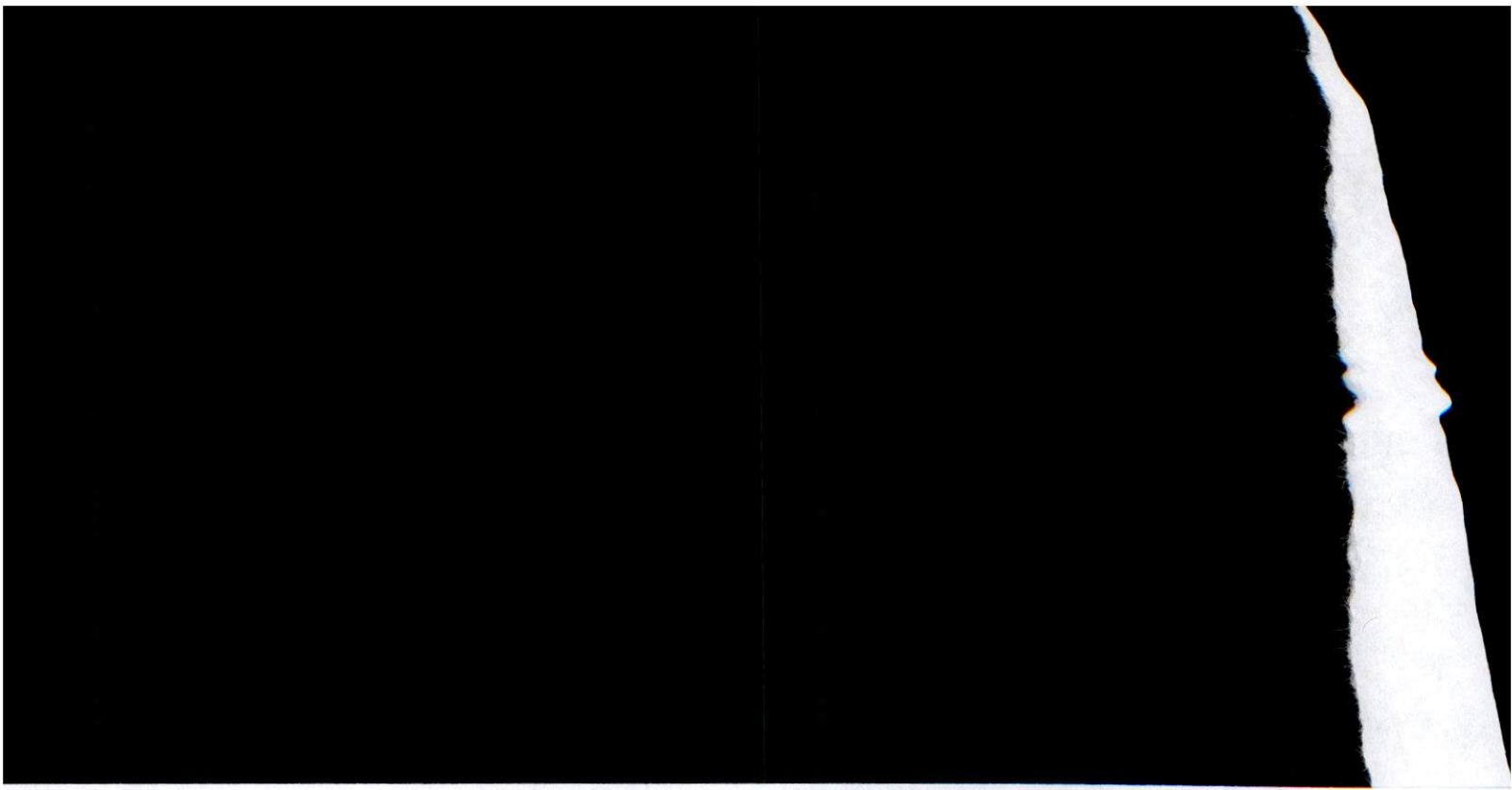
410-560-1502-x112

fax: 443-901-1208



From: [John Harrington](#)
To: [Richardson, Patrick](#)
Subject: Read: 6072 Falls Road
Date: Thursday, October 22, 2020 11:47:57 AM

Your message
To: John Harrington
Subject: 6072 Falls Road
Sent: Thursday, October 22, 2020 11:40:10 AM (UTC-05:00) Eastern Time (US & Canada)
was read on Thursday, October 22, 2020 11:47:44 AM (UTC-05:00) Eastern Time (US & Canada).



IN RE: PETITIONS FOR SPECIAL
HEARING AND VARIANCE
(6080 Falls Road)

3rd Election District
2nd Council District

Lake Falls Village Limited
Partnership, LLLP, *Legal Owner*
Petitioner

BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

CASE NO. 2019-0432-SPHA

MODIFIED OPINION AND ORDER¹

This matter comes before the Office of Administrative Hearings ("OAH") for consideration of Petitions for Special Hearing and Variance filed on behalf of Lake Falls Village Limited Partnership, LLLP, legal owner ("Petitioner"). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("BCZR"): (1) to approve an amendment to the previously approved site plan in Zoning Case No. 1997-0272-X; (2) commercial parking in a residential zone pursuant to BCZR Section 409.8 B for six (6) existing parking spaces that partially extend into the adjacent DR 3.5 zone and partial drive aisle in DR 2; (3) a modified parking plan under BCZR Section 409.12.B to allow the existing surface parking lot containing 184 parking spaces as shown on the Plan to Accompany Petition for Zoning Hearing to serve the proposed uses on the property, which would otherwise require 207 parking spaces; (4) for modification of the Residential Transition Area ("RTA") under BCZR Section 1B01.1.B.1.c(2) to permit the existing surface parking to be located within the 50-ft. RTA buffer and the 75-ft. RTA setback otherwise required by BCZR Section 1B01.1.B.1.E(3) and Section 1B01.1.B.1.E(5), respectively; and (5) such further and other relief as the nature of this cause may require. In addition, a Petition for Variance was filed pursuant to BCZR as follows: (1) from BCZR Section 409.6 to permit 184 existing parking spaces in lieu of the 207

¹ This Modified Opinion and Order is entered by this Managing Administrative Law Judge for Baltimore County as a result of Petitioner's Motion for Reconsideration dated October 31, 2019, which is granted.

parking spaces required; (2) from BCZR Section 409.8.A.4 to permit existing parking spaces to be as close as four (4) ft. from the right-of-way line of a public street, in lieu of the ten (10) ft. required (no new development proposed); (3) from BCZR Section 1B01.1.B.1.E.3 to permit an RTA Buffer of zero feet in lieu of the 50 feet required in order to accommodate an existing surface parking lot (no new development proposed) and (4) from BCZR Section 1B01.1.B.1.E.5 to permit an RTA setback of zero (0) ft. in lieu of the 75 ft. required in order to accommodate an existing surface parking lot (no new development proposed). A redlined site plan was marked and accepted into evidence as Petitioner's Exhibit 1.

John Harrington, Senior Vice President of MacKenzie Commercial Real Estate Services, LLC and one of the tenants, Emily Howell, the owner of the Corner Pantry, a restaurant in the Lake Falls Village center appeared in support of the requests. Dino La Fiandra, Esq. represented the Petitioner. Steve Warfield, the professional engineer who sealed the redlined plan also attended. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. No substantive Zoning Advisory Committee ("ZAC") comments were received from any of the County reviewing agencies.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Because there were no protestants Mr. La Fiandra was allowed to proffer the following: He explained that the tenant, Corner Pantry was now occupying approximately 1200 square feet of space in the development and that because of the success of her business she wishes to double the size of her restaurant, thus necessitating the requested relief. He explained that the Lake Falls Village development was built in 1982 and that under the then existing BCZR the expanded restaurant space of 2400 square feet would cause the entire Lake Falls Village center to require a total of 207 parking spaces for all the uses in the center, if the parking for the center were tabulated

under the parking requirements of the BCZR in effect at the time center was originally developed which is what was depicted on the original blacklined site plan that was filed on August 19, 2019. However, in preparing for this hearing Mr. La Fiandra and Mr. Warfield realized that the proposed plan would be covered by the "shared parking adjustment" under the current BCZR Sec. 409.6.B.3 if they were to upgrade the Lake Falls Village to the parking regulations of the current BCZR, which is permitted by BCZR §409.1. As a result, Mr. Warfield prepared the redlined plan (Exhibit 1) with a "Shared Parking Analysis" Table which shows that the "adjusted" required number of spaces is only 159 under these current regulations. Mr. La Fiandra explained that since there are 184 existing spaces they do not need the Variance requested in paragraph 1 of the Variance request. However, as he further explained, since the shared parking adjustment is part of the current BCZR they must comply with all other aspects of the current BCZR as part of upgrading to the current regulations. Therefore, he requested that they be relieved from any minor deficiencies in the existing surface parking lot from the standpoint of BCZR §§409.3 and 409.4 of current BCZR relating to the required dimensions of the parking spaces, driveways and aisles as part of upgrading to the current regulations. For instance, Mr. Warfield pointed out that at the back of the property the parking spaces are only 15 feet in length and under the current regulations they are supposed to be 18 feet. Mr. La Fiandra asked that this relief be granted under paragraph 5 of the Special Hearing request.

With regard to paragraph 2 of the Special Hearing relief, Mr. Warfield explained that when the GIS line was created it did not precisely mirror the property line. As a result, on the south side of the property there is a very small section of the property that is now in the DR 3.5 zone, which partially extends into 6 of the existing parking spaces, thereby constituting commercial parking in a residential zone.

The relief requested in paragraph 4 of the Special Hearing is also a result of the GIS anomaly discussed above. Hence the Petitioner needs relief from the RTA buffer and setback requirements. Mr. La Fiandra explained that if this relief is granted it will obviate the identical relief that is requested in paragraphs 3 and 4 of the Variance petition. With regard to paragraph 2 of the Variance relief, Mr. La Fiandra further explained that the parking spaces at the front of the property were built only 4 feet from the roadway and have existed there since 1982 and have caused no complaint or incident. He observed that several businesses in the vicinity along Falls Road have no parking out front and use the Lake Falls Village lot.

SPECIAL HEARING

Based on the foregoing I find that all of the conditions of BCZR Sec. 502.1 are satisfied and that the requested relief is in keeping with the spirit and intent of the BCZR and that it will not harm the public health, safety, and general welfare. Accordingly, I shall grant the relief requested in Special Hearing Request Number 1.

With regard to the requirements for commercial parking in a residential zone, I find that BCZR § 409.8.B.2 is satisfied, and I will grant the requested relief as it relates to the 6 existing parking spaces and the partial drive aisle. Accordingly, I shall grant the relief requested in Special Hearing Request Number 2.

With regard to the modification of the Residential Transition Area under BCZR Section 1B01.1.B.1.c(2) to permit the existing surface parking to be located within the 50-ft. RTA buffer and the 75-ft. RTA setback otherwise required by BCZR Section 1B01.1.B.1.E (3) and (5), respectively, I find that the reduction of the RTA as requested will be compatible with the neighborhood within the context of BCC § 32-4-402 in that Lake Falls Village Shopping Center (including the parking spaces at issue) are and have been existing for almost 40 years and indeed

are a component of this neighborhood. I further specifically find that the reduction ordered hereby will not adversely impact the residential community or development on the land adjacent to the Lake Falls Village Shopping Center, as that land is already fully developed. Accordingly, I shall grant the relief requested in Special Hearing Request Number 4.

As discussed above, I have determined that the nature of this cause requires other incidental relief in the form of a modified parking plan for the existing surface parking lot under the authority of BCZR § 409.12 to allow minor deficiencies in the parking space dimensions and parking driveway and parking aisle dimensions otherwise required by BCZR §§ 409.3 and 409.4, and I shall grant this relief under Special Hearing Request Number 5.

VARIANCE

As to the variance, it requires a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

The property is split-zoned and is an irregularly shaped lot that is sandwiched between the Jones Falls and Falls Road. The rear section of the property is within the 100 year floodplain. As such, the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because it would be unable to accommodate its tenant's proposed restaurant expansion. Further, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the absence of County and/or community opposition. Finally, I note that the proposed restaurant expansion will not affect the existing

exterior structure of the Lake Falls Village buildings or its existing exterior parking, features, or amenities.

THEREFORE, IT IS ORDERED this 1ST day of November, 2019, by this Administrative Law Judge, that the Petition for Special Hearing: (1) to approve an amendment to the previously approved site plan in Zoning Case No. 1997-0272-X; (2) to allow commercial parking in a residential zone pursuant to BCZR Section 409.8 B for six (6) existing parking spaces that partially extend into the adjacent DR 3.5 zone and partial drive aisle in DR 2; (3) a modified parking plan for the existing surface parking lot under the authority of BCZR § 409.12 to allow minor deficiencies in the parking space dimensions and parking driveway and parking aisle dimensions otherwise required by BCZR §§ 409.3 and 409.4; including, but not limited to, permitting the existing 15 foot spaces at the rear of the property in lieu of the required 18 foot spaces; (4) for modification of the Residential Transition Area ("RTA") under BCZR Section 1B01.1.B.1.c (2) in order to allow the existing surface parking to be located within the 50-ft. RTA buffer and the 75-ft. RTA setback otherwise required by BCZR Section 1B.01.1.B.I.E (3) and (5), respectively, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance as follows: (1) from BCZR Section 409.8.A.4 to permit existing parking spaces to be as close as four (4) ft. from the right-of-way line of a public street, in lieu of the ten (10) ft. required (no new development proposed, be and is hereby GRANTED.

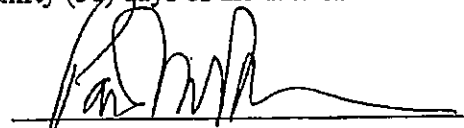
- (1) The variance relief requested in paragraphs 3 and 4 is now MOOT based on the Special Hearing relief granted above.

- (2) The variance relief requested in paragraph 1 is MOOT based on the applicability of the Shared Parking Adjustment pursuant to BCZR Sec. 409.6.B.3, as depicted in the Shared Parking Analysis Table on the redlined Plan.

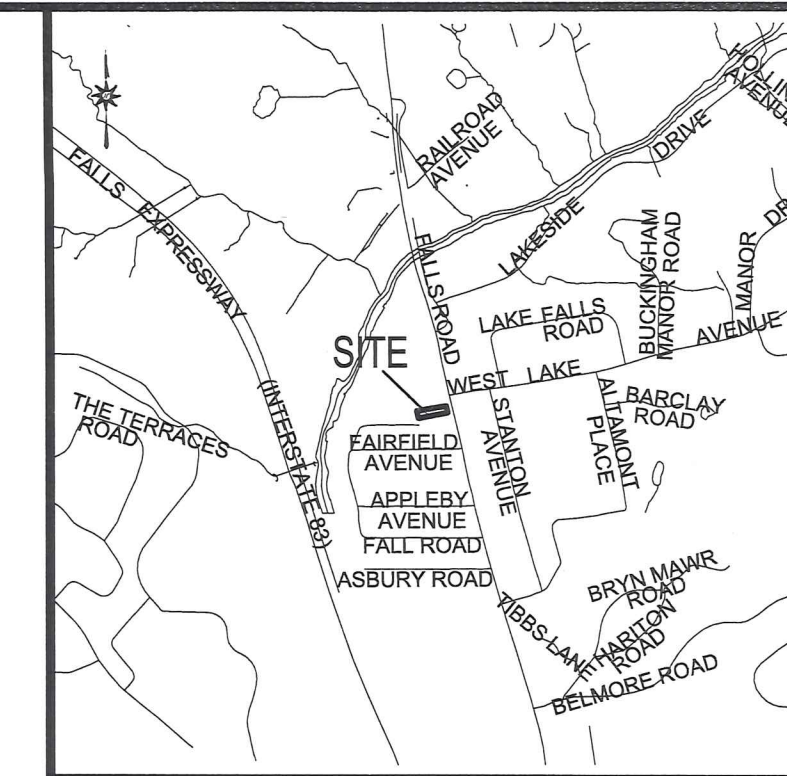
The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

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



PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County



LOCATION MAP

SCALE: 1" = 1000'

GENERAL NOTES:

- OWNER: NANCY L. WILKEY
BETTY J. RUANO
6072 FALLS RD
BALTIMORE MD 21209-2217
- SITE AREA:
NET: 5,682 SF OR 0.13 AC.±
GROSS: 6,757 SF OR 0.16 AC.±
- USE:
EXISTING: ANTIQUE STORE
PROPOSED: COMMERCIAL USE
- UTILITIES: PUBLIC WATER AND SEWER
- DEED REF: 9054/626
- TAX ACCOUNT: 0916000070
- ZONING: BL AND DR 3.5
(PER 1"=200' ZONING MAP 101B1)
- TAX MAP: 79
GRID: 9
PARCEL: 120
- LOCATED IN ZONE X PER FLOOD INSURANCE RATE MAP (FIRM) PANEL 2400100385F DATED SEPTEMBER 26, 2008.
- PREVIOUS ZONING CASES: 1995-0083-SPH THE USE OF AN AREA TO THE REAR OF THE PROPERTY FOR EMPLOYEE PARKING AND THE USE OF DRIVEWAY TO ENTER AND EXIT SAID PARKING AREA. GRANTED OCTOBER 20, 1994.
1992-0322-A TO REQUEST RELIEF FROM THE REQUIRED NUMBER OF PARKING SPACES AND PERMIT 0 SPACES IN LIEU OF THE REQUIRED 6. GRANTED APRIL 13, 1992.
R-1962-5817 TO CHANGE FROM A BL AND R20 TO A BM ZONE. GRANTED APRIL 11, 1993.
- PREVIOUS PERMITS: NONE ON FILE.
- SITE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
- THERE ARE NO HISTORIC FEATURES ON SITE NOR IS THE SITE ITSELF HISTORIC.
- SETBACKS FOR BL PROVIDED
FRONT 41' 10'±
SIDE 0' 2'± MIN 5'± MAX
REAR 0' 8'±
- PARKING REQUIRED: 0 PER ZONING CASE 1992-0322-A

Richardson Engineering, LLC

30 East Padonia Road, Suite 500
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PLAN TO ACCOMPANY ZONING PETITION
FOR
SUNPORCH
ANTIQUES
6072 FALLS ROAD

BALTIMORE COUNTY MARYLAND
9TH ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT

REVISIONS		DRAWN BY:	CHECKED BY:	SCALE:
		LNR	PCR	1" = 20'
DATE:	JOB NO.:	SHEET NO.:		
07-03-20	20060	1 OF 1		

PROFESSIONAL CERTIFICATION:
I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR
APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL
ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE
NUMBER 16597, EXPIRATION DATE: 06-15-2021



7/16/20

2020-0174-SPH