DEVELOPMENT PLAN HEARING	*	BEFORE THE COUNTY
18 Dean Avenue 4th Election District 2nd Councilmanic District	* *	BOARD OF APPEALS FOR
WOODLEY PARK f/k/a DEAN AVENUE Owner/Developer/Applicant	*	BALTIMORE COUNTY
HOH Case No. 04-0728	*	CBA CASE NO.: CBA-20-024

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

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S MOTION TO BE JOINED AND/OR TO INTERVENE

People's Counsel for Baltimore County, pursuant to County Board of Appeals (CBA) Rule 4b, guided by Maryland Rules 2-211 and 2-214, moves to be joined and/or to intervene as a party Appellee, for the following reasons:

Preamble

The citizens established the office of People's Counsel to defend the comprehensive zoning maps and master plan in cases deemed of public interest. Baltimore County Charter Sec. 524.1 (1974, 1978). Upon review of Administrative Law Judge (ALJ) Paul Mayhew's final decision denying this residential development, and the ensuing appeal by developer Woodley Park (WP), People's Counsel learned of significant zoning and master plan conflict issues.

Most development cases proceed on the premise that the use is permitted by right and/or that there are no outstanding zoning issues. The same may be said for cases which do not present a serious master plan conflict issue. Such cases do not necessitate our office's participation, so we do not mechanically or routinely enter our appearance.

Occasionally, it may appear at the outset that there are serious zoning or master plan issues in a development case. Also occasionally, as here, such issues emerge after the trial of the case either at the ALJ or CBA level.

Our office's purpose here, as a matter of public interest, is to defend ALJ Mayhew's decision, with specific reference to the zoning and master plan issues which emerged. We are not raising any new issues.

The appellate courts have recognized and allowed the entry, participation, and/or intervention of our office in such cases. The landmark case is People's Counsel v. Crown Development Corp. 328 Md. 303, 317 (1992), involving a transfer of density issue which emerged in the CBA opinion. This led to our intervention at the circuit court level, thereafter sustained on appeal. Subsequent development cases in which our office participated include Sycamore Realty Co. v. People's Counsel 344 Md. 57 (1996) and HNS Development, LLC v. People's Counsel 425 Md. 436 (2012).

The present case comes to the CBA as an appeal on the record under County Code Sec. 32-4-281. The zoning and master plan issues became apparent to our office only after review of the ALJ decision. Under these circumstances, we believe it prudent to file this motion, along with our entry of appearance. The CBA has no specific rule on joinder or intervention. Rule 4b authorizes the Chairman to regulate the conduct of hearings. Traditionally the CBA has entertained and decided a variety of motions.

Administrative agencies have more flexibility than courts. For example, there is lenient allowance for participation of any interested party, absent any explicit strict rule to the contrary. Dorsey v. Bethel AME Church 375 Md. 59, 71-74 (2003). It makes sense likewise that the CBA should liberally allow intervention, especially in cases of public interest within People's Counsel's charter purview. Even so, we will draw on the Maryland Rules for guidance.

1. **People's Counsel's Charter Responsibility.** The Baltimore County Charter assigns the People's Counsel to defend the comprehensive zoning map and master plan. It confers standing to appear before "the courts on behalf of the interests of the public in general, to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council. . . ." Sec. 524.1(b)(3)A.[1]

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[1] This provision states, in part,

> "He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, the planning board, and the courts on behalf of the interests of the public in general to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council, … as now or hereafter in force or effect, in which he may deem the public interest to be involved."

* Baltimore County Charter and Code references are available on the web at http://www.amlegal.com/baltimoreco_md/.

2. **People's Counsel's Functions.** Pursuant to this charter authority and responsibility, People's Counsel has consistently defended the zoning maps and master plan in a variety of settings before the CBA and the courts, sometimes n4cessitating intervention.

3. **Necessity of People's Counsel's participation.** The continuation of this litigation in the absence of the People's Counsel will, as a practical matter, preempt, impair or impede the office's ability to defend substantively and procedurally the important zoning and master plan issues in this case.

4. **Specific Interest of People's Counsel.** Existing representation is inadequate because People's Counsel's institutional function and role are different from those of Protestant Appellees in specificity, character, and independence.

5. **Joinder and Indispensability.** People's Counsel has such an interest that a judgment may not in fairness be rendered without his presence, so that the office is an indispensable party.

6. **Intervention by right or permissively.** Alternatively, intervention is proper, as a matter of administrative law and consistent with the Maryland Rules.

WHEREFORE, People's Counsel asks leave to participate and present argument to defend ALJ Mayhew's decision involving important zoning and master plan issues of public interest. People's Counsel thus prays that the office be joined or allowed as an interested party Appellee pursuant to the Baltimore County Charter.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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410 887-2188

Statement of Points and Authorities

I. Participation and Standing Generally

Maryland courts have consistently recognized and approved the standing of People's Counsel to defend the comprehensive zoning maps and master plan to implement the public interest before the CBA and the courts. People's Counsel v. A.V. Williams, 45 Md. App. 617, 618-23 (1980); People's Counsel v. Webster 65 Md. App. 694, 704 n.5 (1986); People's Counsel v. Maryland Marine Manufacturing Co. 316 Md. 491 (1989); Board of Child Care v. Harker 316 Md. 683 (1989); Security Management Co. v. Baltimore County 104 Md. App. 234, cert. denied 339 Md. 643, 516 U.S. 115 (1995); People's Counsel v. Beachwood I Limited Partnership 107 Md. App. 627, cert. denied 342 Md. 472 (1996); Sycamore Realty v. People's Counsel 344 Md. 57 (1996); Marzullo v. Kahl 366 Md. 158 (2001); People's Counsel v. Surina 400 Md. 662 (2007) People's Counsel v. Loyola College 406 Md. 54 (2008); HNS Development Corp. v. People's Counsel 425 Md. 436 (2012); Geddes v. People's Counsel unreported, 232 Md. App. 726, 2017 WL 1193781 , cert. denied 455 Md. 443 (2017); Baddock v. Baltimore County 239 Md. App. 467 (2018), cert. denied Sahbi Hookah v. Baltimore County 463 Md. 545 (2019); Staples v. Baltimore County unreported, 239 Md. App. 730, 2018 WL 6437681 (2018)..

II. The ALJ's Development Plan Opinion: Zoning and Master Plan issues.

A. The Integral Parts of Land Use Planning

There are three "integral" and "complementary" parts of adequate land planning; the master plan, zoning, and subdivision (development) regulations. Board of County Comm'rs v. Gaster 285 Md. 233, 245-50 (1979); Coffey v. Maryland Nat'l Capital Park v. Planning Comm'n 293 Md. 24, 26-31 (1982); People's Counsel v. Surina 400 Md. 662, 688-695 (2007). These cases show that many issues have mixed master plan, zoning, and subdivision components, such as density (Gaster, Coffey), stormwater management and access roads (Surina), and historic preservation (HNS Development).

Baltimore County Charter Sec. 523 links the comprehensive zoning maps to the master plan and development.[2] The County Code provisions on purposes and policies of zoning and development controls inevitably reflect their integral relationship to protect the public health, safety, and welfare, with parallel provisions for density, community conservation, compatibility, overcrowding, lot layout, and location and design of streets. Secs. 32-3-101, zoning; 32-4-102 and 32-4-103, development. As a corollary, development plans must comply with all other county laws, including zoning. Code Secs. 32-4-104(b), 32-4-114. Surina, *supra.* They must also be consistent with the master plan. Secs. 32-4-231, 32-4-232; HNS Development, *supra.*

In the present case, there have emerged such integral master plan, zoning, and subdivision issues. We now identify their emergence in ALJ Mayhew's opinion.

B. Density, Compatibility, and Panhandle Lots; BCZR Performance Standards;

ALJ Mayhew described on pages 9-12 Protestants' concern that the proposed duplexes and panhandle lots enable maximum density. They contend this is excessive and incompatible with the character of the neighborhood. They also focus on the Department of Planning's (DOP's) initial concerns about compatibility, which the DOP later reversed, without explanation.

ALJ Mayhew's decision to deny the development plan rested, in part, on these concerns. He found the plan incompatible; against the public safety, health, and welfare; contrary to legislative intent to limit panhandle lots, and inconsistent with the Master Plan

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[2] Sec. 523 states, in its entirety,

"Sec. 523. - The master plan and the zoning maps.

(a) *Definition and implementation of the master plan.* The master plan shall be a composite of mapped and written proposals setting forth comprehensive objectives, policies and standards to serve as a guide for the development of the county. Upon receipt of the master plan from the department of planning, the county council shall accept or modify and then adopt it by resolution.

(b) *Definition and implementation of the zoning maps.* The zoning maps shall show the boundaries of the proposed districts, divisions and zones into which the county is to be divided consistent with the master plan. Upon receipt of the zoning map from the department of planning, the county council shall accept or modify and then adopt it by legislative act.

(Bill No. 83, 1978, § 3; approved by voters Nov. 7, 1978; effective Dec. 8, 1978; Bill No. 13-18 , § 1; approved by the voters Nov. 6, 2018; effective Dec. 6, 2018)"

2020 T-3 "low density residential" transect, pages 19-21. He examined in depth the hybrid density and compatibility conflicts pertinent to panhandle lots on pages 23-24.

He then identified the master plan conflict. He explained on page 25 how the development conflicts with the T-3 low density transect and effectively takes the neighborhood to a T-4 "general urban" classification.

Density is a core zoning issue. Code Sec. 32-3-101(a)(5). Crown Development, *supra.* As to panhandle lots, Code Sec. 32-4-409 is located in the development regulations. But it is functionally a zoning/development hybrid. It functions to control density, overcrowding, and road access. As detailed below, our office has participated in many petitions for waivers of panhandle law requirements.

There is more. ALJ Mayhew evaluated the application of Baltimore County Zoning Regulation (BCZR) 260 Residential Performance Standards on Pages 21-22. He underlined the inexplicable DOP approval of "reverse frontage" lots 9 and 10 and the conflict with requirements to "Allow on-street parking" and "Provide street parking and accommodations which complement the surrounding neighborhood."

ALJ Mayhew's determination of incompatibility thus combines master plan/zoning/development elements. This fits with the broad reach of compatibility to all sectors of land use law. The Maryland Court of Appeals addressed compatibility as a zoning issue in Aubinoe v. Lewis 250 Md. 645 (1968). The Supreme Court effectively recognized planning and compatibility concerns in its landmark decision to put its imprimatur on comprehensive zoning, Village of Euclid v. Ambler Realty Co. 272 U.S. 365 (1926).

III. Differences Between Participation in Administrative Proceedings and Standing in Judicial proceedings

We reiterate that the administrative process generally takes a relaxed approach to allow participation of any interested person. This is also reflected in the approach to evidence. CBA Rule 7 allows for flexibility over and above the baseline Maryland Rules.

Because development appeals under Code Sec. 32-4-281 are analogous to judicial review proceedings, we shall discuss the precedents for People's Counsel's intervention

in various court cases. At the same time, we submit that intervention at the CBA level should be infused with the flexible premises of administrative law.

People's Counsel's Joinder and/or Intervention in Judicial Proceedings

As described in the preamble, the Court of Appeals affirmed the Circuit Court's grant of our office's motion to intervene in a residential development case involving zoning issues. People's Counsel v. Crown Development Corp. 328 Md. 303, 317 (1992). This involved a transfer of density controversy. Judge McAuliffe wrote:

> "People's Counsel has been given a broad charge to protect the public interest in zoning and related matters. See Baltimore County Charter Sec. 524.1. Density regulation is an important part of the zoning process. West Mont. Assn. v. MNCP & P Com'n 309 Md. 183 (1987).

Crown Development also observed that where there is a party with standing, the Court will not ordinarily inquire into or reject the standing of another party on the same side, such as nearby residents. Ibid. This reinforces the liberal approach to intervention, even in the stricter judicial forum.

There have also been many declaratory judgment cases brought directly in court against Baltimore County to challenge comprehensive zoning. The Circuit Court has approved the office's intervention to participate alongside the County Office of Law. Security Mortgage Corporation v. Baltimore County Equity 90514 (1983); Gun Road Historical and Protective Association v. Baltimore County 85-CG-1210, (1985); Security Management Co. v. Baltimore County 93 CV 03916 (1994), affirmed 104 Md. App. 234, cert. denied 339 Md. 643 (1995), cert. denied 516 U.S. 1115 (1996); Freeland Legacy Alliance v. Baltimore County 03-C-07-01241 (2008); affirmed Freeland v. Shelley Middletown 199 Md. App. 707 (2011); Greene Tree Homeowners v. Baltimore County 03-C-16-9301 (2017), affirmed Staples v. Baltimore County unreported, 239 Md. App. 730, 2018 WL 6437681 (2018). Circuit Court Orders attached.

IV. People's Counsel's Participation in Panhandle Lot Cases

We observed that the Code Sec. 32-4-409 panhandle lot controls include a mix of zoning/development plan aspects. They are of a piece with D.R. Zone density, area, and open space standards in BCZR Sec. 1B01.2; various BCZR Article 1A Resource Conservation Zone performance standards; residential performance standards of BCZR

Sec. 260, and BCZR Sec. 409 access controls. To illustrate, they complement BCZR Sec. 260.4 performance standards for streets and parking. The Comprehensive Manual of Development Policies addresses panhandle lots in the context of D.R. Zones, pages 15-16. Because of these mixed zoning characteristics, our office has often participated at the CBA in panhandle lot cases. Roberts, Case No. 05-137-SPHA (2005); Randlett, Case No. 05-205-SPH (2005), attached.

V. Indispensable Parties – Rule 2-211, by Analogy

An indispensable party is one whose interest in a controversy is such that a court cannot, in fairness, render the judgment without having jurisdiction over the party. In Re Harris, 15 F. Supp. 404 (D. Md. 1936). In the absence of parties necessary to the proper litigation of the action, the court is without jurisdiction. Chairman v. Waldron, 285 Md. 175 (1979). People's Counsel would be an indispensable or necessary party to be joined under Rule 2-211(a) because "disposition of the action may impair or impede [the office's] ability to protect a claimed interest relating to the subject of the action." See Southern Management Corp. v. Willes Construction Co. 382 Md. 524, 548, fn. 14 (2004).

VI. Intervention by Right: Rule 2-214, by Analogy.

To satisfy this rule, a party is or may be bound by a judgment where he has "an interest for the purpose of which intervention is essential and which is not otherwise protected." Citizens Coordinating Committee for Friendship Heights v. TKU, 276 Md. 705 (1976). This would translate here to impairment, as a practical matter, of the ability to protect the public interest.

The standard of "inadequacy of existing representation" is measured by the "serious possibility" standard. Maryland National Capital Park and Planning Commission v. Washington National Arena, 30 Md. App. 712 (1976). To this end, representation is inadequate so long as the interest of the absentee is not identical with the interest of existing parties. A finding of prospective adversity is not necessary. A difference of interest which might be reflected in focus or intensity will satisfy the minimal showing required of the absentee to meet the intervention test. Nuesse v. Camp, 385 F.2d 694, 701 (D.C. Cir. 1967); Hines v. D'Artois, 532 F.2d 726 (5th Cir. 1976).

The Protestants here have other and more particular private interests. This can lead to different approaches and perspectives. They may also have different perspectives on the initiation and/or participation in petitions for judicial review and subsequent appeals.

VII. Permissive Intervention: Rule 2-214, by analogy

In any event, People's Counsel has a public interest map/ordinance defense interest which would qualify for permissive intervention under Rule 2-214(b)(1), even if intervention by right were not applicable. Rule 2-214(b)(2) reinforces this interest by underlining the ability of the appropriate public office to defend a governmental interest. As noted, People's Counsel is the designated defender here for the comprehensive zoning map and master plan.

Distinction Between Participation and the Merits

It should be kept in mind that People's Counsel's participation to defend the public interest does not depend on the merits of the case. The ability of a party to participate in the proceedings is not dependent on an assessment of the potential outcome. The two are sometimes conflated. To illustrate, the Maryland Court of Appeals reminded that "standing to challenge governmental action and the merits of the challenge are separate and distinct issues." Sugarloaf Citizens v. Maryland Dep't of Environment 344 Md. 271, 295 (1996). They are similarly separate and distinct issues with respect to the defense of public law.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 11th day of February, 2020, a copy of the People's Counsel for Baltimore County's Motion to be Joined and/or to Intervene was mailed to J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Maryland 21286 and Howard Alderman, Esquire, Levin & Gann, P.A., Nottingham Centre, 502 Washington Avenue, 8th Floor, Towson, Maryland 21204, Attorney for Owner/Developer/Applicant.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

EXHIBIT B

SECURITY MORTGAGE CORPORATION	*	IN THE CIRCUIT COURT
VS.	*	FOR
BALTIMORE COUNTY, MARYLAND	*	BALTIMORE COUNTY
	*	EQUITY CASE NO. 90514

* * * * * * * * *

RULING ON DEMURRER AND MOTION TO INTERVENE

It is the opinion of this Court that zoning is something which, under the separation of powers, is clearly the function of the legislative branch of government. The Baltimore County Council would be that branch of government in Baltimore County.

The Judiciary has the function of reviewing the law, constitutionality and procedures regarding zoning but it does not establish or create zoning.

On February 16, 1978, the Honorable Marvin Land of the Circuit Court for Baltimore County, signed an order permanently enjoining Baltimore County from placing the subject property of these proceedings in any zoning classification more restrictive than Business - Local. The 1976 zoning maps adopted pursuant to the zoning laws of Baltimore County by the County Council were in effect at that time. In 1980 the Baltimore County Council adopted new zoning maps as provided for by law. The County Council downgraded the subject property's zoning on those maps. Security Mortgage Corporation, who had obtained the order from Judge Land, filed this petition which the parties agree is for contempt against Baltimore County. Baltimore County filed this demurrer which the Court sustains without leave to amend.

Assuming all the facts to be true as set out in the petition the Court could not grant the relief prayed.

The petitioner argues that the order was not appealed and has become final. The contention is that the order must be enforced unless set aside for fraud, mistake or irregularity.

The Court finds this argument to be specious. The short of it is that Judge Land was without judicial power to effect such an order permanently. Assuming judicial power to sign the order, such would exist only

Exhibit D

as to the maps adopted by the council for the period of 1976 to 1980. Such an order could be within the judicial function of reviewing the zoning laws and maps for that period. An order which would do more constitutes the establishment or creation of zoning by the judiciary which is clearly an act for the legislative branch of government and, therefore, an act of the Baltimore County Council in this county. A different interpretation would allow the courts to establish zoning which could not be changed in the future by the county government except by court sanction. A court order for which the court does not have judicial power does not have effect. It is as if it had not been signed. An appeal to reverse the order or a motion to strike for fraud, mistake or irregularity is not required. Such an order is void and not voidable i.e., it is without effect from the time signed and there isn't any need to have it stricken.

The Circuit Court for Baltimore County has extensive power to do many things and the authority to sign orders to effect decisions made pursuant to those powers is without doubt. The court does not have authority to sign an order regarding that over which it has no authority.

Assuming the order was valid as to zoning maps in effect from 1976 to 1980, it could not abrogate the zoning maps adopted by the Baltimore County Council in 1980. The petitioner can only exhaust remedies and, if unsuccessful, seek judicial review. The motion to intervene as filed by People's Counsel is granted. The prior proceedings do not prohibit this and People's Council may wish to participate in any appeal filed.

Edward A. DeWaters, Jr., Judge

Oct 18, 1983
Date

EAD/vs

cc: Harry S. Shapiro, Esq.
Malcolm F. Spicer, Jr., Esq.
Michael McMahon, Esq.

EXHIBIT B

MEMORANDUM

CHAMBERS OF
JOHN F. FADER II
Judge

December 10, 1985

TO: File

FROM: Judge John F. Fader, II

RE: Gun Road Historical and Protective Association, et al. v. Baltimore County, Maryland
Case No. 9/245/85CG1210

On December 6, 1985, the Court made certain rulings in this case as follows:

1. Motion to be Joined and/or to Intervene (paper no. 3) filed by People's Counsel for Baltimore County. Granted. People's Counsel named as defendant.

2. Motion for Leave to Intervene as a Party Defendant (paper no. 7) filed by The Martin Marietta Corporation. Granted. Martin Marietta named as defendant.

3. Motion to Dismiss filed by People's Counsel (paper no. 4) and Motion to Dismiss filed by Baltimore County (paper no. 5). Will be granted unless within 30 days from December 6, 1985 an Amended Complaint is filed. At this point, the Complaint does not show the requisite standing exists. Motion granted as to Gun Road Historical and Protective Association, which entity is struck as a plaintiff.

The Court grants all defendants 30 days to file a Response to any Amended Complaint filed by the individual plaintiffs. The case is reset for a hearing beginning at 9:30 A.M. on Thursday, February 20, 1986 (approximately one hour) in courtroom 11, County Courts Building, 401 Bosley Avenue, Towson, Maryland 21204. Any and all memoranda, citation of authority, etc. on which any party will rely at the time of the hearing should be forwarded to this office no later than the close of business on Tuesday, February 18, 1986.

JOHN F. FADER, II
Judge

cc: Robert B. Greenwalt, Esquire
Peter Max Zimmerman, Esquire
Michael J. McMahon, Esquire
Joseph P. Alcarese, Esquire
Assignment Office

E. 209

1 GUN ROAD HISTORICAL &
2 PROTECTIVE ASSOCIATION, et al.,
3 Plaintiffs
4 vs. Case No: 85-CG-1210
5 BALTIMORE COUNTY, MARYLAND,
6 et al.,
7 Defendants
8 REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
9 (Motions)
10 Towson, Maryland
11 Friday, December 6, 1985
12 BEFORE:
13 HONORABLE JOHN F. FADER, II, JUDGE
14
15 APPEARANCES:
16 For the Plaintiffs:
17 ROBERT D. GREENWALT, ESQUIRE
18 For the Defendants:
19 MICHAEL J. McMAHON, ESQUIRE
20 JOSEPH P. ALCARESE, ESQUIRE
21 PETER MAX ZIMMERMAN, ESQUIRE
22 PHYLLIS COLE FRIEDMAN, ESQUIRE
23 Reported by:
24 Patricia A. Cirasole
25 Official Court Reporter
401 Bosley Avenue, M-11
Towson, Maryland 21204

E. 210

THE COURT: Good-bye, Mr. Alcarese.

MR. ALCARESE: Thank you very much.

MR. GREENWALT: Thank you, Your Honor.

THE COURT: Now, while we are still waiting on the jury, let's talk about the People's Council. I have read what they have said and I read their statute and what they have cited and it rather appears to me that I have read what you said, rather appears to me that they have broad powers by Baltimore County enactment to jump in. What do you say about that?

MR. GREENWALT: That's something I have no objection to. I believe that they do have some responsibility in that regard.

THE COURT: Let me find their motion.

THE LAW CLERK: Paper number four, Judge.

THE COURT: I think Martin Harletta has absolute property right. It seems to me that People's Council has an absolute statutory right. It's paper number three, Motion to Intervene. The Clerk will mark paper number three, Motion to Intervene by People's Council, granted, designated as party defendant. I can understand you objecting to all these people. Now, they are all ganging up; only you as a Plaintiff and every body else as a Defendant.

MR. GREENWALT: I have to send out a lot more copies.

E. 211

RECEIVED
FEB 24 1994
OFFICE OF LAW

SECURITY MANAGEMENT CORP.	*	IN THE CIRCUIT COURT
Plaintiff	*	FOR
Vs	*	BALTIMORE COUNTY
BALTIMORE COUNTY, MARYLAND	*	CIVIL CASE NUMBER
Defendant	*	93 CV 03916

* * * * * * * * * * *

OPINION AND ORDER

Plaintiff filed an $80 million suit against Baltimore County alleging that the actions of Baltimore County violate 42 USCA sec. 1983, the Fourteenth Amendment of the United States Constitution, the Fifth Amendment to the United States Constitution as applied to the states through the Fourteenth Amendment, as well as Article 24 of Maryland's Declaration of Rights, and Articles 40 and 40A of the Maryland Constitution. Defendant, Baltimore County, joined by intervenor, People's Counsel for Baltimore County, filed Motions to Dismiss pursuant to Md. Rule 2-322. This Court held its opinion sub curia and has reviewed the pleadings and considered oral arguments presented at the hearing on October 7, 1993.

BACKGROUND

Plaintiff applied for a special exception to the Baltimore County Zoning Appeal. This request was denied. In the interim, pending a current rezoning case, this suit was filed.

Plaintiff contends that exhaustion of remedies is not a prerequisite under the sec. 1983 Civil Rights Act. Patsy v Board of Regents, 457 U.S. 496 (1982). 42 U.S.C.A. sec. 1983, part of the Civil Rights Act of 1871, provides as follows:

> Sec. 1983. Civil action for deprivation of rights
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

This Court recognizes that "[i]t is now clearly established that a plaintiff suing under 42 U.S.C. sec. 1983, either in state or federal court - need not exhaust his administrative remedies prior to bringing his sec. 1983 action." Essinger v Baltimore City, 95 Md. App. 607, 614-15 (1983).

Nevertheless, plaintiff's sec. 1983 claim is premature. Claims involving land use and regulatory takings still must manifest an injury. Plaintiff must both plead and prove an injury unless challenging the constitutionality of the procedures or character of the zoning board itself. See Williamson Planning Commission v. Hamilton Bank, 473 U.S. 172, 186 (1985) (taking claim "not ripe until the governmental entity charged with implementing the regulations has reached a final decision regarding the application of the regulation to the property at issue"); MacDonald, Sommer & Frates v. Yolo County, 477 U. S. 340 (1986) (refusing to reach the merits of a taking claim because the developer had only submitted

one application and thus it was unclear whether a new application for a less intensive use would have been approved).

The decision to grant a special exception remains within the discretion of the County Zoning Board and, ultimately, the Board of Appeals. Plaintiff cannot claim entitlement to a special exception under Maryland state law, as contemplated by sec. 1983. Biser v. Town of Bel Air, Md., 778 F.Supp. 249, aff'd, 991 F.2d 100 (1993). "A property interest requires more than a 'unilateral expectation' that a permit or license will be issued; instead there must be a 'legitimate claim of entitlement'." Id. at 104, quoting Board of Regents v. Roth, 408 U.S. 564, 577 (1972).

"In applying this standard of entitlement, we have held that if a local agency has any significant discretion whether a permit should issue, then a claimant has no legitimate entitlement and, hence, no cognizable property interest." Gardner v Baltimore Mayor & City Council, 969 F.2d 63, 68 (4th Cir. 1992).

Further, plaintiff does not contend that the RC-4 classification - applicable to the property at issue - does not serve a legitimate public purpose. Nor are there allegations that plaintiff is barred from developing within the constraints of that particular zoning classification. And, finally, there are no allegations of a constitutionally protected right to attain the zoning one desire - without something more. The nature of any comprehensive zoning plan necessitates concepts of boundaries and distinctions.

The County Council has significant discretion to decide whether an applicant should be permitted to secure a special exception. It is well established that zoning ordinances that merely prohibit the most "beneficial" use of property are valid regulations - which, thus, does not invoke sec. 1983, equal protection nor Fifth Amendment takings.

Takings actions include (1) actual appropriations, (2) physical invasions, as well as valid regulations which result in a denial of all economic value of land. See, e.g., Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922); Lucas v. South Carolina Coastal Council, 404 S.E. 2d 895 (1991), cert. granted, 116 L.Ed.2d 438 (1991); Whitney Benefits v. United States, 18 Cl. Ct. 394(1989), modified, 20 Cl. Ct. 324 (1990), aff'd 926 F.2d 1169 (Fed. Cir. 1991), cert. denied, U.S. (1991). In situations in which there is no physical occupation but potentially decreasing economic value, the Court applies a balancing test. E.g., Penn Central Transportation Co. v. New York, 438 U.S. 104 (1978).

Regulations that merely decrease the value of property may not amount to a taking if they leave an economically viable use of the property. In balancing, the Court considers (i) the social goals promoted, (ii) the diminution in value to the owner, and (iii) the investment-backed expectation of the owner. Thus, Pennsylvania Coal suggests that a state statute while substantially promoting public interests could still "so frustrate distinct investment-backed expectations as to amount as to amount to a 'taking'" Penn Central

stands for the proposition that a "taking" may not occur so long as a "reasonable return" permitted some continued economic viability.

Plaintiff in the instant matter makes much of this third prong. At this juncture there is no way that this Court can make a definite determination. Consideration need be given both to the frustration of investment-backed expectations where a landowner purchases land constrained by zoning and then embarks on attempting changing such zoning and, also to the analysis and determination of the final plan, if any, that is approved by the Board.

The County Council is guided by the protection and promotion of the general public in their review of rezoning applications. Protecting the character of rural residential areas and the valuable watershed are certainly legitimate powers of the County Council. The balancing test must come later. Insofar as this standard is a flexible one, this Court will defer to the decision of the Council unless this Court determines that the final decision is rendered in violation of Md. State Gov't Code Ann., sec. 10-215(g)(3) (1993).

The Biser court reasoned that the applicant "... had only a unilateral expectation that he would receive the special exception. He possessed no legitimate claim of entitlement, and thus no property right cognizable under the due process clause. The fact that Biser believes the Board acted arbitrarily on his application does nothing to change the fact that he was not deprived of any entitlement or right." Biser at 104.

While sec. 1983 is supplementary in nature, historically sec. 1983 is a means to override certain kinds of state law, provide a

remedy where state law is inadequate, and provide a federal remedy where the state remedy, through adequate in theory, is not available in practice. Monroe v. Pape, 365 U.S. 167 (1961). Plaintiff argues that further dealings with the County Council is futile and therefore need not be pursued. This Court disagrees. Certainly property interests are entitled to procedural due process protection, but Plaintiff falls short of pleading the procedural violations of the process which might invoke sec. 1983 review. Instead, plaintiff seeks damages calculated on an all or nothing basis depending on whether the special exceptions is granted or denied.

For similar reasons, this court is unconvinced by plaintiff's equal protection argument. For the reasons stated above, an analysis of disparate treatment by similarly situated parties - without more - must fail.

Accordingly, it is for the above reasons, it is on this date ____ of February, 1994, that Defendant, Baltimore County, Maryland's Motion to Dismiss is GRANTED, the Motion for Protective Orders are MOOT, and costs are to be borne by Plaintiff, SECURITY MANAGEMENT CORPORATION.

Feb 23, 1994
Date

MAURICE W. BALDWIN, JR., JUDGE
Circuit Court for Harford county,
sitting assigned to
Circuit Court for Baltimore County

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

JOHN F. FADER II, JUDGE
RETIRED, SPECIALLY ASSIGNED

401 BOSLEY AVENUE
COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204

AUGUST 8, 2008

MOTIONS RULING

RE: FREELAND AGENCY ALLIANCE V.
BALTIMORE COUNTY
CASE NO: 7-12414

All Open Motions filed in this case are HELD FOR FURTHER INFORMATION. Both of the Motions to Intervene will be granted.

Each of the individuals involved with this case has until September 30, 2008 to file an Amendment to what they have already filed provided it does not exceed 15 pages in length.

Let me tell you what I am looking for and why.

The appellate courts of Maryland have made is clear that if an administrative agency can afford relief requested (if relief can be given) then there is a responsibility to go through the administrative process. Attorneys involved with land development work have a tendency to assume that judges know as much about the process as they do and to sometimes jump from step no. 1 to step no. 4 in analysis. Because I do not fully understand the what, why, when and how of all of this, I suspect that may have occurred in this case.

Therefore, I need to know in as plain English (Lesson 101) as you can give me from the perspective of each person or entity involved:

- Just what the Plaintiffs are trying to accomplish, i.e. what specific Order do they want from the circuit court
- Why do they want the relief they request? Why do they feel entitled to that relief?
- Why do the opponents feel that the administrative process can give that relief, i. e. going through the process what relief can be given, can it address the concerns of the Plaintiffs, how can that be done through the administrative process, etc.

I am fairly well acquainted with the appellate court decisions that affect all of this as I teach Maryland State and County Administrative Law at the University of Maryland School of Law. It

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is the nitty gritty of this case that I do not know and understand and why or why not does one of you or the other feel that the relief can be granted or cannot be administratively granted and why.

Although the appellate courts have been definite that the judicial system should not become involved and defer to the primary administrative remedy when that remedy "can" afford relief, the threshold of the hoops to jump to reach "can" has not been determined. References in the appellate court decisions talk about deference to the expertise of the agency and the assistance that may give to a court after exhaustion of administrative remedies, even if agency relief is going to be hard to come by, but no further quantification of "can" has been given.

I hope that I have made myself clear in this memorandum to the parties. If not, please feel free to write me directly or to inquiry by e-mail if all of the parties have e-mail and can be copies of any questions.

The court appreciates your consideration. I wish had a curb-stone at this point to tell one of you who has the hill to climb, but I do not.

John F. Fader II, Judge
John.fader@worldnet.att.net
443-980-5782

True Copy Test
SUZANNE MENSH, Clerk
Per _____ Assistant Clerk

THE CLERK SHALL MAIL A COPY OF THIS ORDER TO THE PARTIES

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ACORN LAND, LLC d/b/a PCS HOMES	:	
v.	:	Civil Action No. CCB-09-422
BALTIMORE COUNTY, MD	:	

...oOo...

ORDER

For the reasons stated in the accompanying Memorandum, it is hereby **ORDERED** that:

1. Defendant People's Counsel for Baltimore County's motion for joinder and/or to intervene (docket entry no. 9) is **GRANTED**;
2. The defendants' motions to dismiss (docket entry nos. 8 & 10) are **GRANTED**;
3. The case is **DISMISSED** with prejudice as to Count I and **DISMISSED** without prejudice as to Counts II and III; and
4. The clerk shall **CLOSE** this case.

August 28, 2009
Date

/s/
Catherine C. Blake
United States District Judge

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

[illegible]

Case No.: 03-C-07-009407

BALTIMORE COUNTY, MARYLAND,

Defendant.

Towson, Maryland
December 15, 2003

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE THOMAS J. BOLLINGER

Appearances:

Jonathan Pasterick, Esquire
Jason Vettori, Esquire
On behalf of Plaintiff

James Nolan, Esquire
On behalf of Baltimore County

Peter Max Zimmerman, Esquire
On behalf of People's Counsel, Baltimore City

Reported by:
Edward C. Hintzer, CSR, RPR
Official Court Reporter
401 Bosley Avenue, Suite N-08
Towson, Maryland 21204
(410) 887-2636

P-R-O-C-E-E-D-I-N-G-S

THE COURT: Let's take up PCS Homes vs. Baltimore County, 03-07-009407.

Counsel, for the record, please.

MR. PASTERICK: Good morning, Your Honor. Jonathan Pasterick, on behalf of the plaintiff, PCS Homes.

MR. VETTORI: Also on behalf of the Plaintiff.

MR. NOLAN: James Nolan, on behalf of Baltimore County.

MR. ZIMMERMAN: Peter Max Zimmerman, People's Counsel. We have a motion filed as well.

THE COURT: This is a petition for contempt, is it not?

MR. PASTERICK: That's correct, Your Honor.

THE COURT: After being briefed by my Law Clerk this morning, I looked at the file. Isn't this a moot issue?

MR. PASTERICK: We don't believe it is, Your Honor.

THE COURT: Let's start over, and tell me why you shouldn't be in front of Judge Cox?

MR. PASTERICK: Well, first of all, the reason that we're not in front of Judge Cox is because there is the prior action. The only pending action before the Court

before this current action was, there was an appeal of Judge Cox' prior order.

THE COURT: Wasn't there a motion to stay granted?

MR. PASTERICK: It was granted, but it was only granted -- if you look at their motion, it was only granted pending their appeal, which they then dropped.

By extension, the motion to stay, enforcement of that order was also -- I don't want too say "moot," but it became irrelevant because the stay was only in place pending their appeal.

Their appeal is no longer. It is not no longer because they somehow argued that the appeal was moot, or that the Order could not be complied with. They simply dismissed.

THE COURT: I don't know about Judge Cox, but if it's my motion to stay, it is stayed until I say it's no longer stayed.

MR. PASTERICK: Your Honor, by the terms of their own motion in which they requested the stay, they only requested it pending appeal, and I have a copy of their motion for Your Honor, if you would like to take a look at it.

THE COURT: I would be glad to let you make a record, but I can tell you right now, I just don't see it. Unless she lifts the stay that means the matter stays, and

now I understand there's also a question of the law changing, the zoning changes, so she has to have a hearing on that.

Where is the contempt of a Court motion?

MR. PASTERICK: Your Honor, the contempt is that the defendant was ordered by Judge Cox to deliver a Water and Sewer --

THE COURT: And then they stayed that order?

MR. PASTERICK: Pending their appeal, Your Honor.

THE COURT: Until she says it's no longer stayed it's still stayed, gentlemen. That's what I'm having a hard time figuring out.

MR. PASTERICK: Our position is that they cannot -- they can ask for a stay, they cannot get a stay longer than what they asked for.

THE COURT: My position is, you go to Judge Cox and ask her to lift the stay, and then if he doesn't do what you say he ought to do under the law, then you file a petition for contempt. I don't know how you can come in and say they're violating a Court Order, which has been stayed until that Judge no longer stays it -- he or she. See what I'm saying?

MR. PASTERICK: I see what you're saying, but I don't agree with it, most respectfully.

MR. ZIMMERMAN: It is our position that the stay

E-221

should not have been in place any longer than the term that they asked for, which is their appeal.

THE COURT: So that's a good argument to make to her, and maybe she'll lift the stay. I don't think she's going to leave it nun pro tunc, but that's the way I feel about it.

Anything else you want to do to make your record? I don't want to cut you off.

MR. PASTERICK: No, Your Honor. That was the first prong I suppose, but we did not believe that the stay was applicable given the nature of the relief stated.

THE COURT: I would suggest to you that you contact Judge Cox's chambers and make an appointment. The ball is in her court.

Anything else? I didn't mean to cut your firm.

MR. ZIMMERMAN: I have to say something -- I won't say hello in less than five minutes.

There were a lot of additional reasons why this petition for contempt is inappropriate, but I don't need to get into them. Our office did not know about this case until earlier this year when another case was filed.

THE COURT: They're not asking People's Counsel be held in contempt.

MR. ZIMMERMAN: We did not know about this case during its early stage when it was before Judge Cox. I

filed a motion to be joined and intervene. There's been no pleadings filed in answer to that. I filed a motion -- I think it was a month ago, I believe. I would like the Court to at least grant our motion so that we are officially in the case when it goes over to Judge Cox and/or any other proceeding.

THE COURT: What do you have to say about that?

MR. PASTERICK: I don't object to People's Counsel, their motion being granted as a permissive intervenor. We don't believe there's a necessary intervenor, and that does have bearing on the prior case because it's our position that even though that case, the appeal was dismissed, and even if we have to get a motion to lift our stay, we believe that the findings made in that case are res judicata as to the further acts that would happen with respect to the enforcement of Judge Cox' Order and we don't want to be put in a position where we're now going to go back to section one, and there he made argument that we didn't join the necessary party. We don't believe they're necessary. We don't object to there permissive joining though.

MR. ZIMMERMAN: Our position motion is that we were necessary parties. If the Court simply grants us, puts us as a party in the case, I guess we can all argue later about that.

THE COURT: I'm going to grant the motion to the extent that you're a permissive party for joining at this juncture.

MR. ZIMMERMAN: Does there need to be an Order on that?

THE COURT: Madam Clerk, can you say that on the yellow sheet?

THE CLERK: Yes, Your Honor.

THE COURT: Motion granted to People's Counsel, and the contempt petition is dismissed at this time as moot.

MR. PASTERICK: Thank you, Your Honor.

(Thereupon, the matter concluded.)

REPORTER'S CERTIFICATE

I, Edward Carson Hintzer, an Official Court Reporter of the Circuit Court for Baltimore County, do hereby certify that I recorded stenographically the proceedings in the matter of P.C.S. Homes versus Baltimore County, Maryland, Case Number 03-C-07-009407, on December 15, 2003.

I further certify that the foregoing pages numbers one through seven constitute the official transcript of proceedings as transcribed by me to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have hereunto subscribed my name this 7th day of January, 2010.

Edward C. Hintzer
Official Court Reporter

E-222

IN THE CIRCUIT COURT OF MARYLAND FOR BALTIMORE COUNTY

Acorn Land, LLC d/b/a PCS Homes	*	
Plaintiff	*	
v.	*	
Baltimore County, Maryland	*	Case No. 03-C-07-000407
Defendant	*	

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

ORDER

Upon review of the Plaintiff's Petition for Contempt and Show Cause Order, the Opposition of Defendant Baltimore County, Maryland, and the Motion to be Joined and/or to Intervene and Answer of People's Counsel for Baltimore County, upon consideration of the record, and after argument of counsel in open court on December 16, 2009, it is this 26th day of January, 2010, **ORDERED**, by the Circuit Court for Baltimore County, consistent with the Court's rulings at the conclusion of said hearing,

1. That People's Counsel Motion to Intervene and/or Be Joined be, and hereby is, granted, so that People's Counsel is a permissive party in the case; and

2. The Plaintiff's Petition for Contempt be, and hereby is, dismissed at this time as moot.

Thomas J. Bollinger, Circuit Judge

True Copy Test
SUZANNE MENSH, Clerk
Per Donna Reddick
Assistant Clerk

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FEB 02 2010
People's Counsel for Baltimore County

E. 223

FILED JAN 29 2010

GREENE TREE HOMEOWNERS ASSOCIATION, INC., ET. AL.	*	IN THE
	*	CIRCUIT COURT
Plaintiff,		
v.	*	FOR
BALTIMORE COUNTY MARYLAND	*	BALTIMORE COUNTY
Defendant.	*	Case No.: 03-C-16-9301

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

ORDER

Having considered People's Counsel for Baltimore County's Motion to Be Joined and/or to Intervene, as well as all responses thereto, it is this 19th day of May, 2017 hereby

ORDERED that People's Counsel for Baltimore County's Motion to be Joined and/or to Intervene is **GRANTED**; and it is further

ORDERED that this Order shall be *nunc pro tunc* to the date of October 27, 2016.

The Honorable Sherrie R. Bailey, Judge
Circuit Court for Baltimore County
Case No.: 03-C-16-9301

Court clerks please copy: Alan Zukerburg, Esq.
7919 Long Meadow Road
Baltimore, MD 21208

Peter Max Zimmerman, Esq.
People's Counsel for Baltimore County
105 West Chesapeake Ave., Suite 204
Towson, MD 21204

Nancy West, Esq.
Assistant County Attorney
400 Washington Ave., 2nd Floor
Towson, MD 21204

True Copy Test
JULIE L. ENSOR, Clerk
Per _____
Assistant Clerk

FILED MAY 22 2017

RECEIVED BY
MAY 24 2017
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

IN THE MATTER OF:	*	BEFORE THE
THE APPLICATION OF	*	COUNTY BOARD OF APPEALS
BRYAN M AND LINDA G. ROBERTS - LEGAL OWNERS/PETITIONERS	*	OF
FOR SPECIAL HEARING AND VARIANCE ON THE PROPERTY	*	BALTIMORE COUNTY
LOCATED ON E/S HALETHORPE AVENUE, 640' S/OF C/LINE OF WASHINGTON BOULEVARD (1919 HALETHORPE AVENUE)	*	CASE NO.: 05-137-SPHA
	*	
13TH ELECTION DISTRICT	*	
1ST COUNCILMANIC DISTRICT		

* * * * * * * * * * *

OPINION

This matter is before the Board on appeal from the Zoning Commissioner's Order in which a request for special hearing was denied and a request for variance was granted in part and dismissed in part as moot.

The Petitioners, Bryan M. Roberts and his wife Linda G. Roberts, by their attorney, J. Carroll Holzer, Esquire, requested a special hearing pursuant to § 500.7 of the *Baltimore County Zoning Regulations* (B.C.Z.R.) to approve a waiver, pursuant to § 32-4-409(a)(2) of the *Baltimore County Code* (BCC) to allow a panhandle driveway and to confirm the use of an 8-foot wide in-fee strip along with a 20-foot wide easement for a proposed dwelling on Lot 2 consistent with §102.4 of the B.C.Z.R. and Section RM-1 of the Zoning Commissioner's Policy Manual (Z.C.P.M.). In addition, variance relief was requested from § 1B02.3.C of the B.C.Z.R. to allow a minimum front yard setback of 34 feet in lieu of the required 40 feet and a rear yard setback of 18 feet in lieu of the required 40 feet for the existing dwelling on Lot 1.

The Board held a hearing on May 24, 2005. Appellants/Petitioners were represented by J. Carroll Holzer, Esquire, and People's Counsel, Peter M. Zimmerman, Esquire, participated in

opposition. The parties filed Briefs in lieu of closing arguments on June 27, 2005. A Public Deliberation was held on August 10, 2005.

Background

Petitioners, Bryan and Linda G. Roberts, are developers who live in Ellicott City in Howard County, Maryland. They acquired 1919 Halethorpe Avenue in southwestern Baltimore County in 2001. It has an existing dwelling on the property. The property itself is .9619 acre in size (104 feet by 400 feet), and is zoned D.R.2, having been reclassified from D.R. 5.5 in 1996.

The Petitioners purchased the property with the intention of refurbishing the existing dwelling, and subdividing the property to create a second building lot to the rear. Lot #1 would remain 20,038 sq. ft. in area and the existing improvements on proposed Lot #2 would consist of 21,780 sq. ft. and would be developed with a single family dwelling. Access to Lot #2 would be provided via a panhandle driveway leading into the property from Halethorpe Avenue.

Petitioners commenced making renovations to the existing home and that home has been reoriented so that the door of the dwelling now faces the north side and the west side faces Halethorpe Avenue. Charles Crocken, a licensed professional engineer retained by the Roberts to prepare the development plan, found that when the minor subdivision plans were drafted, he learned that the D.R. 2 zoning of the property would require County approval to allow a panhandle driveway and that a minimum 20-foot wide in-fee strip was required pursuant to § 32-4-409(b) of the B.C.C. This panhandle strip would then jeopardize Lot #1's ability to meet the 20,000 sq. ft. requirement mandated by § 102.4 of the B.C.Z.R. Crocken stated that the special hearing was requested in order to confirm the use of an 8-foot wide in-fee strip for Lot #2 along with a 20-foot wide easement for access to and from Halethorpe Avenue to the proposed building to be located on Lot #2 at the rear of the property. He then stated that the request for the

8-foot wide strip was consistent with Baltimore County Zoning Policy set forth in the Zoning Commissioner's Policy Manual dated September 20, 1985 which stated

> RM-1A Access Residential Regulation: 102.4 (Baltimore County Zoning Regulations). No dwelling shall be built on a lot containing less than 20,000 sq. ft. which does not abut on a right-of-way at least 30' wide over which the public has an easement of travel.
>
> **Policy:**
>
> A. Pursuant to Section 102.4 (B.C.Z.R.) the Zoning Office will require in-fee access to a public road for all lots.
>
> B. Where more than one lot is involved several substandard panhandle in-fee strips "with a 2 ft. minimum width" may be established to meet this requirement.
>
> C. If the required in-fee strip is located in the only possible access area, the in-fee portion of the access or utility easement must be at least 8 ft. wide. A 12' or wider easement may be required for each lot by other agencies to provide for access or utilities.

(Section of policy manual submitted by the Petitioners as Petitioners' Exhibit No. 3.)

Mr. Crocken contended that a variance was requested for Lot #1 from § 1B02.3(c) of the B.C.Z.R. to allow a minimum front yard of 34 feet in lieu of the required 40 feet since the existing dwelling would be positioned on Lot #1 facing north towards the side of the proposed driveway. Petitioners proposed to reorient the front of the building on Lot #1 towards the north side of the property and this would be 34 feet from the proposed 8-foot strip rather than the required 40 feet if it is accepted that the front of the property is the north side of the building. Petitioners also requested a rear yard set back on the south side of the property of 18-foot in lieu of the required 40 feet for the existing drawing of Lot #1. The Zoning Commissioner granted the rear yard variance request and that was not a subject of appeal before the Board. Based upon the granting of that request, Petitioners took the position that the Zoning Commissioner had adopted

their position that the front of the building on Lot #1 was facing the north side of the property rather than towards Halethorpe as it was originally oriented.

The Planning Office, by way of a memo dated September 27, 2004 from the Director to Timothy Kotroco, Director of Permits and Development Management, stated:

> Summary of Recommendations: The Office of Planning reviewed the subject minor subdivision and forwarded comments to the Petitioners on April 30, 2004. The content of the comments are as follows:
>
> > The subject property is not wide enough to be subdivided. The minimum lot width in the T.R. zone is 100'. Minus a 20-foot in-fee strip required for Lot 2, Lot 1 will have a front yard width of approximately 84'. This office will not support any variance to create a panhandle lot, or to create a substandard lot. The Petitioner currently proposes an 8-foot wide in-fee strip for Lot #2. Lot #1 will still not meet the minimum lot width requirement of 100'. As such, this office recommends that the Petitioners' request be denied.

Petitioners contended that the Planning Office did not consider the fact that the front of the building on Lot #1 has been reoriented towards the north side of the property. Petitioners contended that the issue with respect to the driveway was an access issue and that it was not a panhandle driveway issue. They contended that it was a question as to whether adequate access for Lots #1 and #2 from Halethorpe Avenue had been provided.

Petitioners called Lloyd Moxley, a technician of the Baltimore County Zoning Office, in support of its position with respect to the access issue. Mr. Moxley testified that he had reviewed the proposed plan of the Petitioners and discussed the matter with his superiors. He referred to the BCZR § 102.4 and the policy manual relevant thereto as noted in RM-1A Access Residential and Policy C. Moxley stated that in his opinion the plan met the zoning requirements and that the Zoning Office approved the plan. On cross-examination, Moxley admitted that Section RM-1A was no longer in the current policy manual which was adopted May 31, 1991 and amended in 1992. His opinion was that it was left out due to an oversight. He stated that

the policy, with respect to the 8-foot of access, was followed by his department. Moxley also agreed on cross-examination that the law would supersede the regulations if the law were more specific with respect to panhandle lots. In addition, he stated that he defers to the Office of Planning as to whether or not Lot #2 is a panhandle lot. He also agreed that the Planning Office had the primary jurisdiction over the orientation of a lot.

Decision

A. The Motion to Dismiss

At the beginning of the hearing, People's Counsel moved to dismiss the appeal with prejudice on the following basis:

1) The two letters of appeal, attached, were prepared and signed by Charles Crocken, P.E. as a representative of Bryan Roberts.
2) The letters were not signed by Petitioners or by an attorney.
3) Under these circumstances, the appeal does not comply with Code § 32-3-401, CBA Rule 3(a) 6 and Maryland Law because it is not directly filed by Petitioners and because an engineer is not qualified to file an appeal in a representative capacity.
4) The Code allows "a person aggrieved or feeling aggrieved" to file an appeal. To satisfy this law, either the individual person or his/her attorney may file the appeal. The CBA Rules limit representation to attorneys.
5) The appeal is a nullity. The County Board of Appeals lacks jurisdiction.
6) In any event, People's Counsel believes that the appeal is without merit.

The Panel Chair of the Board ruled that the Board would accept the appeal as filed, but would not allow Mr. Crocken, the engineer, to represent the Petitioners at the hearing, to examine and cross –examine witnesses and present evidence, except as a witness.

The Board affirms the decision made at the hearing. Section 32-3-401 of the B.C.C. entitled Appeals to the Board of Appeals states:

> (a) In General. A person aggrieved or feeling aggrieved by a decision of the Zoning Commissioner or the Director of Permits and Development Management may appeal the decision or Order to the Board of Appeals.

This section does not prohibit an appeal from being filed by any person representing the Appellant, nor does that section require that the appeal be signed by the Appellant. Rule 3 of the Board's Rules states "a. no appeal shall be entertained by the Board of Appeals unless the notice of appeal shall state the names and addresses of the persons taking such appeal."

This does not require that the original Appellant sign the appeal. Mr. Crocken signed the appeal on behalf of Mr. and Mrs. Roberts and indicated that the appeal was taken with respect to the property of 1919 Halethorpe Avenue on behalf of Bryan Roberts, *et ux* – Petitioners. The Board would prefer that the appeal be signed by an attorney or by the actual individual effecting the appeal. However, there is no requirement under the Board rules that this be done.

Rule 6 of the Board's Rules covers the appearances and practice before the Board of Appeals. This rule allows any individual, who is a party to the proceeding, to appear in his own behalf and any member of a partnership may appear as representing said partnership if it is a party or a duly authorized officer of a corporation, trust, or an association as representing said body if it is a party to said proceedings. This rule also allows any party to be represented by an attorney at law admitted to practice before the Court of Appeals of Maryland. Section C states "no person shall appear before the Board in a representative capacity, engage in practice, examine witnesses or otherwise act in a representative capacity except as provided in Sections A and B above." As stated previously, the Board allowed the appeal to be accepted on the basis of filing by Mr. Cracken the engineer, but refused to allow Mr. Cracken to represent the Petitioners in the hearing before the Board. The Board considers that its position at that time was correct.

B. The Panhandle Lot Issue

The policy of the County Department of Permits and Development Management (PDM) follows the policy set forth in the Zoning Commissioner's Manual (RM-1A Access Residential):

> c. If the required in-fee strip is located in the only possible access area, the in-fee portion of the access or utility easement must be at least 8-foot wide. (A 12' wide or wider easement may be required for each lot by other agencies to provide for access or utilities).

This is in direct contravention to B.C.C. Section 32-4-101(ee) and 32-4-409. Section 32-4-101(ee) defines *Panhandle lot*:

> "Panhandle lot" means a lot shaped and situated so that the only frontage or access to a local street or collector street is a narrow strip of land that:
>
> (1) Is held in-fee, except as provided in Section 32-4-409 of this title; and
>
> (2) May contain a panhandle driveway, water and sewer lines, and other utilities.

Section 32-4-409 of the B.C.Z.R. entitled Panhandle Driveway states:

> ...(b) In-fee strip; required.
>
> (1) Except as provided in subsection (c) of this section, the county may permit a panhandle lot if the lot includes an in-fee strip of land for access to the local street.
>
> (2) Panhandle fee strips shall be a minimum of:
>
> i. 20 feet in width to serve one lot;
> ii. 12 feet in width per lot where two lots are involved...."

Nothing in § 32-4-409 mentions an 8-foot wide in-fee strip. As stated by the Court of Appeals in *Vest v. Giant Food Stores*, 329 Md. 461, 476 (1993):

> An agency cannot override the plain meaning of the statute or extend its provisions beyond the import of the language employed.

The *Baltimore County Code* does allow the Director of Permits and Development Management to adopt policies under Code § 32-3-105, but his authority is circumscribed. Any policies must be consistent with relevant legislation. Section 32-3-102 states:

> The Director of Permits and Development Management shall interpret and enforce the Baltimore County Zoning Regulations to ensure the uses or buildings, including structures, landscaping, roads, and streets, conform to plans approved by the county.

This does not give the Director of Permits and Development Management the authority to substitute his interpretation of the zoning regulations for that of the Zoning Commissioner or the Board of Appeals.

The Board finds that the policy of the Director of Permits and Development Management in interpreting Section RM-1A of the Policy Manual is contrary to, and in conflict with, the *Baltimore County Code*. The special hearing to allow an 8-foot strip in lieu of the 20-foot strip required by § 32-4-101(e) and § 32-4-409 is denied.

C. The Variance Request

The Planning Office noted that the required panhandle strip of 20 feet wide would leave Lot #1 substandard both as to net area and front lot width under B.C.Z.R. 1B02.3.C, Small Lot Table Requirements for the D.R.2 zone. In this assessment, the Planning Office assumed that the orientation of the lot was fronting on Halethorpe Avenue. Petitioners contend that the orientation of the lot is now fronting toward the north side of the lot which would make the front of the lot nearly 200 feet wide and the width of the lot approximately 104 feet without the in-fee strip. Petitioners contend that since the Zoning Commissioner allowed the variance for what he considered to be the rear of the lot and this issue was never appealed, the question of the orientation of the building on the lot is a settled matter. The Board disagrees. The tax map and data search shows 1919 Halethorpe Avenue as Parcel 73, one of several lots in Halethorpe

Terrace. The building was constructed in 1873 (PC Exhibit 10). It is one of a group of five lots of about the same size with street frontage and driveways on Halethorpe Avenue. The GIS aerial photograph submitted by People's Counsel (PC Exhibit 1) confirms this layout and shows a walkway leading from Halethorpe Avenue to the building constructed on the property in question. This is in addition to the driveway that shows on the aerial photograph. Two neighbors, Donald Hawkins and David Howard, who have lived in the area for many years, both testified that prior to the Roberts' purchasing the house, the entrance to the house was on Halethorpe Avenue.

Petitioners contend that the entrance to the house is now on the north side of the building and opens into a center hall, with stairs going to the upstairs rooms. The living room is to the right of the entranceway and the dining room and kitchen are to the left of the entranceway. In addition, the Petitioners contend that the entrance to the cellar, by means of metal doors opening up from the south side of the building, confirms that the house is oriented towards the north.

The fact that the Petitioners may have re-oriented the entrance to the house facing north does not change the original orientation of the house and the fact that the house still has an address on Halethorpe Avenue. The situation is much different from the *Wilder* case (CBA Case No. 04-252-SPHA), recently decided by the Board and quoted by the Petitioners. In that case, the house in question, in Rodgers Forge, was an end-of-group home that was constructed with the main entrance oriented toward Pinehurst Road, although the address was on Murdock Road. It contained an entranceway on Pinehurst and a walkway to Pinehurst. The rear of that home was attached to the neighbor's home in a row of homes in Rodgers Forge.

In attempting to prove its point that the address was on Murdock Road, the Protestants in *Wilder* cited several instances where homeowners had re-oriented the main entrance to their

homes to the side, as was done in the instant case. However, despite the main entrance being on the side of the home, the front of the home and the address remained the same. The Board finds a definite difference between the house in question and the home in the *Wilder* case.

Having found that the 8-foot in-fee strip is invalid, the Board feels that the request for a variance is moot. However, in the event the 8-foot strip should be allowed, the Board feels that the issue of uniqueness as required in the case of *Cromwell v. Ward*, 102 Md. App. 691 (1995) has not been proven in this case. Tax maps and the aerial photograph submitted by People's Counsel shows that this property is a long rectangular piece of property very similar to other properties on Halethorpe Avenue and in the immediate vicinity. In *Cromwell v. Ward*, 102 Md. App. 691 at page 710, the Court stated:

> In the zoning context the "unique"' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic that is not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.

Even assuming that the building is oriented towards the north side of the property, this does not make the property "unique." Therefore, the Petitioners' request for variance must be denied.

ORDER

THEREFORE, IT IS THIS 3rd day of November 2005, by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to approve a waiver pursuant to § 32-4-409(a)(2) of the *Baltimore County Code* to allow a panhandle driveway and to confirm the use of an 8-foot wide in-fee strip along with a 20-foot wide easement for access to and from Halethorpe

Avenue for a dwelling proposed on Lot #2 of the Development Plan consistent with § 102.4 of the B.C.Z.R. be and is hereby **DENIED**; and it is further

ORDERED that the Petition for Variance seeking relief from §B02.3.C of the B.C.Z.R. to allow a front yard setback of 34 feet in lieu of the required 40 feet be and is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chair

Michael O. Ramsey

John P. Quinn

IN THE MATTER OF THE APPLICATION OF KEITH RANDLETT – LEGAL OWNER / PETITIONER FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE SW/S COWENTON AVENUE, 220' NW OF THE C/L OF I-95 R/W (8902 COWENTON AVENUE) 11TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT	* * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 05-205-SPH

* * * * * * * * *

OPINION

This matter is before the Board on an appeal by People's Counsel for Baltimore County from a decision of the Zoning Commissioner dated February 15, 2005 in which the Zoning Commissioner granted a Petition for Special Hearing to approve two (2) panhandle lots on a portion of the subject property zoned D.R. 3.5-H. The special hearing was filed by the owner of the property, Keith Randlett, through his attorney, Howard L. Alderman, Jr., Esquire, pursuant to § 500.7 of the *Baltimore County Zoning Regulations* (BCZR). Petitioner requested approval of two panhandle lots in the D.R. 2-H /D.R. 3.5-H zone in lieu of the allowed D.R. 1 or D.R. 1-H zone.

A hearing was held before the Board on August 18, 2005. Briefs were submitted by close of business October 3, 2005. A public deliberation was held on October 20, 2005.

The subject property is an irregularly shaped parcel located on the southwest side of Cowenton Avenue, just north of the overpass of I-95 in Perry Hall. The property contains a gross area of 5.73 acres, more or less, split-zoned D.R. 2-H (2.43 acres) and D.R. 3.5-H (3.31 acres). The property is improved with a single-family dwelling known as 8902 Cowenton Avenue. The "H" overlay designation indicates that the subject property is located in the Honeygo area of Baltimore County, and therefore development is subject to § 259 of the BCZR, as well as other applicable provisions of the zoning regulations. Given the acreage in each zone,

the D.R. 2-H zoned portion of the property would yield a total of four dwelling units, and the D.R. 3.5-H zoned portion would yield 11 dwelling units.

Petitioner presented Charles Merritt, the engineer who prepared the plans for the development. He stated that the Petitioner was proposing a minor subdivision of the property to create two (2) residential lots. Proposed Lot 1 would consist of 1.26 acres, more or less, and is proposed to be developed with a single-family dwelling. The existing home will be located on what is designated as Lot 2 and will contain 2.06 acres, more or less. Counsel for the Petitioner indicated that each of the two proposed lots on the subject property would be in excess of 20,000 sq. ft. He stated that this would comply with the minimum lot size requirements set forth in § 102.4 of the BCZR. The balance of the tract will be dedicated to Baltimore County in fee simple at no cost as part of the County's Greenway Program.

At issue in the present case is the access for the proposed new lots. The subject property has an existing 30-foot wide strip running in an easterly direction and binding directly on Cowenton Avenue, a public roadway. This strip is improved with utilities and a driveway that provides access to the existing home on the subject property, as well as the adjacent property to the southeast. That piece of property is owned by Christine V. Sisk and Linda T. Mabry.

In discussing the title of the plan, Mr. Merritt indicated that originally he prepared and attempted to file a Petition for Variance, seeking approval of two panhandle lots (one existing and one proposed) in the D.R. 3.5-H zone. Baltimore County officials advised Mr. Merritt that, based on current regulation and policy, the requested relief could only be sought and approved by way of a Petition for Special Hearing.

Mr. Merritt stated that at present the subject property consists of two separate parcels conveyed by Charles Freitag, Jr., to the owner. The subject property is split-zoned D.R. 2-H and D.R. 3-5-H. He stated that although the D.R. 2-H portion generated available density of 4 dwelling units and the D.R. 3.5-H zoned portion generated available density of 11 dwelling units,

the owner proposes only two lots, his existing home and one new home. The dwellings will be served by public water and sewerage facilities, which are already in place, including taps previously approved by the Baltimore County Department of Public Works to serve the dwelling intended for the proposed second lot. Mr. Merritt testified that the owner's existing home is actually a panhandle lot and that the continued use of that panhandle for the existing dwelling and the proposed lot was necessary to serve the subject property.

Without the requested approval for access to this irregularly shaped property, the County mandated environmentally sensitive areas would have to be traversed, providing that access to Cowenton Avenue could be obtained through the adjoining property of Mr. Davis at 8904 Cowenton Avenue. Mr. Merritt described the .073 acre of forest buffer /forest conservation, 100-year floodplain and drainage and utility easement areas that would have to be invaded if alternative access were to be required. Mr. Merritt questioned whether Baltimore County would permit intrusion into those environmentally sensitive areas. Mr. Merritt opined that the public road would not be permitted with only 30 feet of right-of-way leading to its intersection with Cowenton Avenue.

People's Counsel presented Ms. Christine Sisk, a Baltimore County Police Officer, who, together with Ms. Mabry, owned her home on the panhandle lot known as 8840 Cowenton Avenue. Ms. Sisk was concerned about drainage problems from the new house to be developed on lot 2. In addition she was concerned about safety for herself and family and citizens coming off the driveway onto Cowenton Avenue. She was also concerned about the parking problems with respect to people parking on the panhandle lot when visiting Mr. Randlett or the occupants of the house on lots 1 and 2. Ms. Sisk did state that she had directed four large landscaping projects which might help in controlling drainage onto her property but she was still concerned with respect to the drainage problem.

William Libercci testified on behalf of the Perry Hall Improvement Association. He stated that his association was concerned that the Honeygo regulations specifically precluded the type of development sought by the Petitioner in the special hearing. He was also concerned with the safety issues of people coming out of the property onto Cowenton Road and with the issue of due process.

Finally, People's Counsel presented Kevin Gambrill, a County planner for the Fifth Councilmanic District. He stated that he had reviewed the initial request for the subdivision and it was the position of the Office of Planning that the Petition for Special Hearing should be denied because it violated the Honeygo regulations set forth in BCZR § 259.1, pertaining to panhandle lots.

Position of Parties

Petitioner contends that the Honeygo District regulations include regulations regarding use (BCZR 259.9A), bulk and area standards (BCZR 259.9B), and, in the present case, building and design standards (BCZR 259.9C). It contends that if the County Council intended that panhandle lots be viewed as uses it would have included them in BCZR 259.9A. It also contends that the building design standards for panhandle lots are no different than the standard applicable to garage offsets.

In support of its position, Petitioner submitted the case of a special hearing filed by Hagen Hall, LLC, legal owners; Brookfield Manor, LLC, contract purchaser, Case No. 05-593-SPH, a decision of the Zoning Commissioner dated July 19, 2005 which was not appealed to the Board. In that case, a Petition for Special Hearing for relief from the building design standards of BCZR 259.9C was filed with the Zoning Commissioner. The special hearing requested approval of a home with a garage recessed 4 feet behind the front façade in lieu of the 8 feet required by the building and design standards of BCZR 259.9C.3(a). The Zoning Commissioner granted that special hearing.

In addition, Petitioner submitted a Petition for Variance filed with the Zoning Commissioner by Melvin Guy in Case No. 02-108-A. The Petition requested a variance to create three single-family dwelling lots, all of which would share a panhandle driveway in the Honeygo area on property zoned D.R. 3.5-H. Allowing the variance, the Zoning Commissioner stated:

> The requirement that the underlying zoning of the property be D.R. 1 as set out in § 259.9C.1(a) of the BCZR is a different type restriction. In examining this issue, it is clear that the relief sought is not a request for the approval of a use that is not permitted in the D.R. 1 zone. Single-family dwellings are permitted uses by right in the D.R. 1 zone and certainly allowed in the Honeygo District. Moreover, § 259.9C of the BCZR is labeled as a "building and site design standard." Based upon these factors, I find that the relief sought may be properly considered by this Zoning Commissioner.

The variance was granted by the Zoning Commissioner, and was not appealed by any party.

People's Counsel contends that the proposed lots violate § 259.9C.1 of the BCZR. Since the underlying zoning of the property in question is not D.R. 1, People's Counsel contends the property is subject to the prohibition of BCZR 259.9C.1(a) which does not allow panhandle lots unless the underlying zoning is D.R. 1. People's Counsel contends that a request for special hearing is in effect a request for declaratory judgment. A declaratory judgment evaluates, interprets, and declares the law based on a given set of material facts. He contends that the special hearing process under County law is a limited function to declare the law. It does not allow the administrative agency to grant waivers or relaxations of the law or to change the law.

People's Counsel cites BCZR 259.4, the statement of legislative intent. He also cites § 259.9, the development standards, which states in pertinent part:

> These standards are intended to be additions to, modifications of and exceptions from the standards required by the underlying zoning classification in the land in the area. All conflicts are to be resolved in accordance with subsection G of this section.
>
> * * * * *
>
> G. Application
>
> (1) The provision of this section shall govern in any situation where there is a conflict between this section and other regulations.

People's Counsel contends that the information given to Petitioner by the zoning office, that relief could only be granted by the filing of a Petition for Special Hearing, was in error. People's Counsel also contends that the decision of Zoning Commissioner Wiseman was in error and particularly where it relied on the *Guy* case which was decided in 2001. People's Counsel contends that the language set forth by the Zoning Commissioner in the *Guy* case quoted above was in error and that it was irrelevant to single-family homes permitted in the Honeygo area. Based on the fact that the subsection is titled "Building and Site Design Standard," it does not mitigate the plain language that panhandle lots are permitted only in D.R. 1-H zones.

Finally, People's Counsel contends that the *Guy* case and the other cases cited by Petitioner cannot be the basis for allowing the special hearing in this case. He states that two wrongs do not make a right and the Court of Appeals in *Easter v. Mayor & City Council*, 195 Md. 395, 400 (1950), which stated:

> As was said in *Potts v Board of Adjustment*, 43 A.2d 850, 854, prior exceptions granted by the Adjustment Board are not in themselves controlling. Ill advised or illegal variances do not furnish grounds for a repetition of the wrong. If that was not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified. The annulment of zoning is a legislative function which is beyond the domain of the zoning board.

Decision

The Board has carefully considered the evidence submitted and the arguments detailed by the parties in their Briefs to the Board.

The *Baltimore County Zoning Regulations* set forth specific regulations with respect to the Honeygo area. Section 259.4 states:

> Statement of Legislative Intent for Honeygo Area and H-H1 Overlay Districts.
> The Honeygo Area and the H and H-1 overlay districts are established to implement the Honeygo Area Plan, an amendment to the Master Plan 1989-2000. This area is created to insure the development of infrastructure will coincide with the approval of building permits....The H and H-1 districts are to be read as additions to, modifications of and exceptions from the requirements of the underlying zoning classification on the land.

Section 259.9C states:

Building and Design Standards.

1. Panhandle lots are not permitted unless:

   a. The underlying zoning of the land is D.R. 1;
   b. No more than two lots share a driveway; and
   c. Lots exceed 30,000 sq. ft. in area.

On the property in question, there is already a panhandle driveway going from Cowenton Avenue to the lot owned by Christine Sisk and Linda Mabry. The driveway also services Lot #1 owned by Mr. Randlett. There was no explanation as to how this driveway was created. It appears that it did not go through the hearing procedures for a special hearing or a variance. However, this does not require the Board to follow suit in this matter.

The Board is persuaded by the argument of People's Counsel that the Petition for Special Hearing does not give the Board the authority to change the law as legislated by the County Council. In addition, the previous decisions of the Zoning Commissioner, which were not appealed to this Board, do not require the Board to follow those precedents. As stated by People's Counsel in its Brief, "two wrongs don't make a right." The Board is not unmindful of the problems that this decision will create for the Petitioner. However, the law is clear. Section 259.9C of the BCZR states that panhandle lots are not permitted unless they meet certain requirements as set forth above. The first requirement is not met in that the underlying zoning of the land is not D.R. 1 but is D.R. 2 and D.R. 3.5. The second requirement is not met in that the driveway in question will service more than three lots, two lots by Mr. Randlett and the third lot owned by Ms. Sisk and Ms. Mabry. Finally, the third requirement is not met in that the lots do not exceed 30,000 square feet in area, the testimony being that they exceeded 20,000 square feet in area.

It is not for the Board to determine whether or not the panhandle lots and therefore the driveway should be allowed to protect environmentally sensitive areas. That is for the County Council to determine. Therefore, the Board will deny the Petition for Special Hearing.

ORDER

THEREFORE, IT IS THIS 7th day of December, 2005 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing in this matter is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chairman

Mike Mohler

Edward W. Crizer, Jr.