

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600
(www.mo.co.md.us/council/board/html)**

WORKSESSION MINUTES

Second Floor Davidson Memorial Hearing Room

Wednesday, September 4, 2002, 9:00 A.M.

ACTION CALENDAR:

1. **Minutes**, July 31, 2002 Worksession.

Action: Approved as corrected, (AIF/LLM, 4-0).

2. **A-5604, Appeal of Battery Park Citizens Association** (Department of Permitting Services – Letter dated February 26, 2001). Inspection report from Edward J. Calloway, Investigator, Department of Permitting Services (DPS). Also included is a letter from Matt Ferace.

Action: (1) Re-opened the record to include Mr. Calloway's and Mr. Ferace's letters; (2) no additional action required by the Board, (LLM/AMC, 4-0).

3. **A-5615, Appeal of Chris and Andrea Murtha** (Historic Preservation Commission – Historic Area Work Permit). Letter requesting reconsideration.

Action: Denied reconsideration request, (AMC/LLM, 4-0).

4. **A-5757, Appeal of Clarksburg Venture Limited Partnership** (Department of Housing and Community Affairs (DHCA) – Condemnation Notice). Letter from Robert O. Eisinger, President of Clarksburg Holdings, Inc., requesting a continuance. Also included is a Motion to Strike Request for Continuance from Walter E. Wilson, Associate County Attorney.

Action: Public hearing continued to 9/11/02 @ 1:30 p.m., (AIF/LLM, 4-0).

5. **A-5759, Appeal of Laurie Burch** (Department of Housing and Community Affairs – Abandonment Letter dated 3/18/02). Letter to the Board from Sheldon P. Schuman, Esquire, requesting that the appeal be dismissed and a refund of the filing fee.

Action: (1) Dismissed the appeal as withdrawn; (2) granted use of the filing fee by appellant for a future administrative appeal, (LLM/AIF, 4-0).

6. **A-5777, Appeal of David M. and Patricia L. Sims** (Department of Permitting Services – Issuance of Building Permit No. 269479). Letter to the Board from Martin J. Hutt, Esquire, requesting to intervene.

Action: Granted request to intervene, (LLM/AMC, 4-0).

7. **A-5794, Appeal of Carlos Horcasitas** (Department of Permitting Services – Stop Work Order) and **A-5787, Appeal of Steven Grayson** (Department of Permitting Services – Issuance of Building Permit No. 265089). Letter from Stanley D. Abrams, Esquire, requesting that the Board issue a subpoena.

Action: Granted issuance of subpoena, (AMC/AIF, 3-0-1/DHS/recused).

8. **A-5809, Petition of Lewis M. and Tamara J. Kessler** (side lot line setback and accessory structure requirement). Letter from the petitioners requesting an expedited hearing. Also included is a letter from Katharine Alter, M.D.

Action: Granted request for an expedited hearing. Hearing will be 9/18/02 @ 9:30 a.m., (AMC/AIF, 4-0).

9. **CBA-2091 [S-342], Petition of Montgomery Square-Copenhaver Swim Club, Inc.** (community swimming pool). Memorandum to the Board from Stanley N. Garber, Investigator, DPS, rescinding the request for a Show Cause Hearing.

Action: Rescinded Show Cause Hearing, (LLM/AIF, 4-0).

10. **CBA-2402 [CBA-2402-A], Petition of Exxon Corporation** (automobile filling station). Memorandum from Stanley N. Garber, Investigator, DPS, requesting a Show Cause Hearing.

Action: Schedule Show Cause Hearing, (AMC/LLM, 4-0).

11. **CBA-2409, Petition of Dr. Elliott C. Flick** (non-resident medical practitioner). Letter to the Board from the petitioner requesting a transfer of the special exception.

Action: Granted transfer of special exception and administrative modification, (LLM/AIF, 4-0).

12. **CBA-2655, Petition of Lala H. Garritty** (child care home). Letter from the petitioner notifying the Board that the special exception has been abandoned and requesting that it be revoked.

Action: Revoked special exception as abandoned, (AIF/AMC, 4-0).

13. **CBA-3052 [CBA-3052-A], Petition of Exxon Corporation** (automobile filling station). Memorandum from Stanley N. Garber, Investigator, DPS, requesting a Show Cause Hearing.

Action: Schedule Show Cause Hearing, (LLM/AMC, 4-0).

14. **S-382-D, Petition of BP Amoco Corporation** (automobile filling station). Letter to the Board from Jody S. Kline, Esquire, requesting a continuance.

Action: Granted request for continuance, (AIF/AMC, 4-0).

15. **S-664 [S-644-A], Petition of Ashdun Corporation t/a Potomac Arts and Crafts Center** (antique shop). Letter to the Board from Joe H. Koh, Principal, Potomac Academy House, LLC, requesting a transfer of the special exception.

Action: Granted transfer of special exception, (LLM/AIF, 4-0).

16. **S-657-B, Petition of Sunoco, Inc.** (automobile filling station). Letter to the Board from **Anne C. Martin**, Esquire, requesting an administrative modification. (Large exhibits: lighting plan, landscape plan and site plan).

Action: Granted administrative modification, (AIF/LLM, 4-0).

17. **S-1041, Petition of Gulf Oil Products** (automobile filling station). Letter to the Board from Jody S. Kline, Esquire, requesting reconsideration.

Action: Item deferred until 9/11/02 Worksession, consensus.

18. **S-1550, Petition of Exxon Company, USA** (automobile filling station). Inspection report from Stanley N. Garber, Investigator, DPS. Also included is a status report from Jody S. Kline, Esquire.

Action: (1) Schedule Show Cause Hearing; (2) case referred to the Office of the Hearing Examiner, (LLM/AIF, 4-0).

19. **S-1887, Petition of Poindexter Joint Venture** (medical and dental clinic). Letter from Stanley D. Abrams, Esquire, requesting a minor modification. Also included is a letter of opposition from Mark M. Spradley, an adjoining neighbor.

Action: Grant administrative modification, re-issue the Board's Resolution transferring the special exception, (AIF/LLM, 4-0).

20. **S-2075, Petition of Patricia Floreno-Catanuso** (accessory apartment). Letter from Victor and Stella Martinson, the current property owners, notifying the Board that the special exception has been abandoned and requesting that it be revoked.

Action: Item deferred for additional information from DHCA.

21. **S-2351, Petition of Mid-Atlantic Petroleum Properties, LLC** (automobile filling station). Letter from Stanley D. Abrams, Esquire, requesting a minor modification. (Large exhibit: site and landscape plan).

Action: Item deferred until Worksession on 9/11/02, consensus.

22. **S-2478, Petition of American Tower Corporation and AT&T Wireless** (public utility buildings, public utility structures and telecommunication facilities). Letter to the Board from Edward L. Donohue, Esquire, withdrawing the special exception and requesting a 50% refund of the filing fee.

Action: (1) Re-opened record for reconsideration; (2) denied refund as request not in accordance with the Board's Rules of Procedure, (LLM/AMC, 4-0).

DECISION ITEMS:

23. Resolution to Refer Cases Nos. CBA-2091-A, **CBA-2079, CBA-2094, S-719-A, S-1244-A, S-2466-A, S-2514, S-2540, S-2541, S-2542, S-2543, S-2544** to the Office of the Hearing Examiner.

Action: Referred cases to the Office of the Hearing Examiner, (LLM/AMC, 4-0).

24. **CBA-2876-A, Petition of Great Hope Homes 2001, L.P.** (community redevelopment area). Hearing Examiner's Report and Recommendation.

Action: Granted special exception modification with conditions as amended per errata statement, (LLM/AMC, 4-0).

25. **S-558-A, Petition of Lawrence M. Balanken, D.V.M.** (veterinary hospital) and **S-2513, Petition of Layhill Animal Hospital, Inc.** (animal boarding). Hearing Examiner's Report and Recommendation.

Action: Remand case to Office of the Hearing Examiner for: (1) additional information about the relation of a Sound Transmission Coefficient of 58 to industry standards for soundproofing; (2) clarification of the recommendation of a total of 15 employees; (3) additional detail about the manner and frequency for walking dogs; and (4) impact of the requested modification on the job capacity of 62 jobs in the Aspen Hill Policy Area.

26. **S-2511, Petition of Douglas A. Harbit and Robert F. Patenaude** (bed and breakfast). Hearing Examiner's Report and Recommendation..

Action: Granted special exception as amended, (AIF/LLM, 4-0).

PENDING ITEMS:

27. **CBA-1692 [S-719, S-720, S-721], Petition of Karl W. Corby, Jr., et al** (medical practitioner's office). Letter to the Board from Stanley N. Garber, Zoning Investigator, DPS, notifying the Board of the special exceptions' outstanding Notices of Violation. Item deferred to a future worksession pending clarification from DPS.

28. **CBA-2640, Petition of The National Capital Area Council – Boy Scouts of America** (eleemosynary and philanthropic institution). Letter to the Board from Patricia A. Harris, Esquire, requesting an administrative modification. Board requested a review and recommendation from M-NCPPC.

29. **CBA-2986, Petition of Leafy House, Inc.** (housing for the elderly). Letter to the Board from Chris A. Fremuth, R.L.A., requesting an administrative modification. (Large exhibit: site, landscape and lighting plan). Item deferred for review of the landscape/lighting plan and the parking plan by M-NCPPC.

30. **S-569, [CBA-3051, S-95], Petition of C. O. and M. E. Bland** (horticultural nursery). Letter of complaint to the Board from David C. Gardner, Esquire, regarding the special exception use. Board requests DPS inspection of the special exception property.

31. **S-1547, Petition of Precision Tune** (automobile tune-up and service shop). Letter to the Board from Sa Kwon, owner, requesting a transfer of the special exception. Board granted the transfer of the special exception and requested DPS to inspect the special exception for compliance with landscape and lighting plan.

32. **S-1716, Petition of Sports Fun, Inc.** (commercial recreational or entertainment establishment). Letter to the Board from David and Nancy Ris, current property owners, notifying the Board that the special exception has been abandoned and requesting that the special exception be revoked. Item deferred. Board to request DPS correction of special exception address.

PENDING ITEMS (continued):

33. **S-1751, Petition of Hanna D. Saah** (boardinghouse). Memorandum to the Board from Stanley N. Garber, Zoning Investigator, DPS, regarding the inspection of the special exception. Letter will be sent to the petitioner to determine what future action he proposes for the special exception property.
34. **S-1944-B [S-1944], Petition of Four Streams Limited Partnership** (golf course in the RDT zone). Letter to the Board dated 5/15/02, from C. Robert Dalrymple, Esquire, with an update of the timetable for the proposed text amendment.
35. **S-2093, Petition of Bell Atlantic Mobile Systems, Inc.** (public utility structure). Letter to the Board from Sue Swett, Real Estate Department, Pinnacle Towers Inc., requesting a transfer of the special exception. Board requests additional information.
36. **S-2435, Petition of Saiful and Jannatul B. Islam** (accessory apartment). Order from the Circuit Court reversing the Board's Opinion. Board requested DHCA inspection of the special exception and the item will return to a future Worksession to determine if a public hearing is required.

Board Members

Donald H. Spence, Jr., Chairman
Donna L. Barron, Vice Chairman - **ABSENT**
Louise L. Mayer
Angelo M. Caputo
Allison Ishihara Fultz

Staff

Sherry Glazer, Assistant County Attorney
Katherine Freeman, Executive Secretary to the Board
Hermene Jones, Administrative Specialist