

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

7th Election District, 3rd Councilmanic District

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

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
*
*
* Case No. 14-131-SPHXA
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OPINION AFTER REMAND FROM CIRCUIT COURT

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

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

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

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

REMAND ISSUES

1) Christopher Jakubiak.

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

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

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

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

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

**Board of Appeals
Rule 7. Evidence**

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

(BCC, Appendix B).

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

Rule 5-702. Testimony by experts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) Master Plan and Hereford Community Plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Action petitioned for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * *

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

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

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

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

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

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

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

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

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

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

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

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

MR. ALCARESE: 1346 Wiseburg Road.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. McCann: Okay.

Mr. Le Gardeur: - - or proposed station.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. McCann: Okay.

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

Mr. McCann: Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

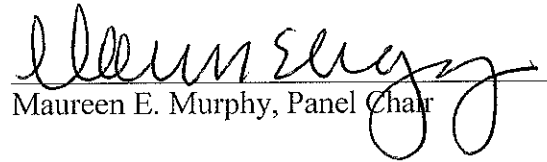
ORDERED, that the testimony of Protestant’s expert witness, Christopher Jakubiak, has been assigned no weight for the reasons set forth herein and the Opinion and Order of this Board dated October 20, 2015 remains the same; and it is further,

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

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

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

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Panel Chair


James H. West

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

APPENDIX A

ADDRESSES WITHIN 4.5 MILES OF PROPOSED LOCATION

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

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

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

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

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

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

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

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

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

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



Board of Appeals of Baltimore County

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July 21, 2017

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

Dear Counsel:

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

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

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Multiple Original Cover Letters

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

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