

STANDARD APPLICATION
Harford County
Board of Appeals
 Bel Air, Maryland 21014

RECEIVED

JUL 29 2011

HARFORD COUNTY COUNCIL

Case No. 5751
 Date Filed 7/22/11
 Hearing Date _____
 Receipt _____
 Fee 450.00

Shaded Areas for Office Use Only

Type of Application

- Administrative Decision/Interpretation
- Special Exception
- Use Variance
- Change/Extension of Non-Conforming Use
- Minor Area Variance
- Area Variance
- Variance from Requirements of the Code
- Zoning Map/Drafting Correction

Nature of Request and Section(s) of Code

CASE 5751 MAP 65 TYPE Variance
ELECTION DISTRICT 01 TAX ID 01017799
LOCATION 725 Pulaski Highway, Joppa 21085
BY Mac Murphy, LLC
Appealed because a variance pursuant to Sec. 267-62E of the Harford County Code to
modify the previous Board of Appeals approval in #5158 to allow disturbance to the
Natural Resource District in the B3 district requires approval by the Board.

NOTE: A pre-conference is required for property within the NRD/Critical Area or requests for an Integrated Community Shopping Center, a Planned Residential Development, mobile home park and Special Exceptions.

Owner (please print or type)

Name Mac Murphy, LLC Phone Number call attorney

Address 304 S. Tollgate Road Bel Air MD 21015
Street Number Street City State Zip Code

Co-Applicant N/A Phone Number _____

Address _____
Street Number Street City State Zip Code

Contract Purchaser N/A Phone Number _____

Address _____
Street Number Street City State Zip Code

Attorney/Representative John J. Gessner, Esquire Phone Number 410-893-7500

Address 11 South Main Street Bel Air MD 21014
Street Number Street City State Zip Code

Land Description

Address and Location of Property 725 Pulaski Highway, Joppa, MD 21085

Subdivision _____ Lot Number _____

Acreage/Lot Size 58,500sq. ft. Election District 01 Zoning B3

Tax Map No. 0065 Grid No. 0003B Parcel 0083 Water/Sewer: Private _____ Public _____

List ALL structures on property and current use: Commercial building; commercial shed

Estimated time required to present case: 30 minutes

If this Appeal is in reference to a Building Permit, state number N/A

Would approval of this petition violate the covenants and restrictions for your property? N/A

Is this property located within the County's Chesapeake Bay Critical Area? Yes _____ No X

If so, what is the Critical Area Land Use designations: _____

Is this request the result of a zoning enforcement investigation? Yes _____ No X

Is this request within one (1) mile of any incorporated town limits? Yes _____ No X

Request

See Attached

Justification

See Attached

If additional space is needed, attach sheet to application. In answering the above questions, please refer to the Requirements that pertain to the type of approval request. (Special Exception, Variance, Critical Area or Natural Resource District (NRD) Variance, etc.)

7 : 7/22/11
2 : 28937
304401

ATTACHMENT TO APPLICATION OF MAC MURPHY, LLC

REQUEST:

Pursuant to Section 267-62 E of the Harford County Zoning Code ("Code"), the Applicant requests a variance from the provisions of Section 267-62 C and D of the Code to disturb a portion of the Natural Resources District containing a total of 1,419 square feet, more or less, located on the subject property zoned, B-3, General Business, as shown on the attached site plan.

JUSTIFICATION:

The subject property is improved with an existing structure and a storage shed and has been the subject of two previous Board of Appeals cases, Case No. 5158 and 4004, both of which approved disturbances of the NRD located on the subject property and shown on the site plan. The Applicant wishes to expand the existing building as shown on the attached site plan. The Applicant proposes to remove the storage shed from the subject property. The proposed building addition will comprise 774 square feet of the proposed area of disturbance which was previously approved for disturbance by the Board of Appeal and already disturbed by the previous owner of the subject property. The remaining 645 square feet of the proposed area of disturbance will be disturbed for proposed landscaping and was also approved for disturbance by the Board of Appeals and already disturbed by the previous owner. The proposed development has been designed to minimize adverse impacts to the NRD to the greatest extent possible.

BOARD OF APPEALS CASE NO. 5158

*

BEFORE THE

APPLICANT: Michael Horner

*

ZONING HEARING EXAMINER

REQUEST: Variance to disturb the non-tidal wetlands in the B3 District; 725 Pulaski Highway, Joppa

*

OF HARFORD COUNTY

*

Hearing Advertised

HEARING DATE: February 4, 2002

*

Aegis: 8/22/01 & 8/29/01

*

Record: 8/24/01 & 8/31/01

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicant, Michael Horner, is requesting a variance, pursuant to Section 267-41D(5)(e) and (6), of the Harford County Code, to disturb non-tidal wetlands in a B3 District.

The subject parcel is located at 725 Pulaski Highway, Joppa, Maryland 21085 and is more particularly identified on Tax Map 65, Grid 3B, Parcel 83, Lot 89. The parcel consists of 1.38± acres, is zoned B3 General Business and is within the First Election District.

SUMMARY OF FACTS

Two witnesses appeared and testified before the Hearing Examiner; Stanley Kollar, an expert environmental engineer on behalf of the Applicant, and Mr. Anthony McClune, on behalf of the Department of Planning and Zoning. The facts are undisputed and are summarized as follows:

The property was originally subject to Board of Appeals Case 4004 wherein the Board allowed a disturbance of the Natural Resource District. Disturbance was limited by Condition 1 imposed by the Hearing Examiner and adopted by the Board, that disturbance be limited to the area shown on the Applicant's site plan (Attachment 11 to Staff Report in Case 4004). Unfortunately, during construction of the commercial building an additional 2,125 square feet of NRD area along the south portion of the parcel was disturbed and is the subject of this request. The area of disturbance has been filled and gravel put down and compacted. The slope areas have been planted with grass and are maintained. There is no evidence of erosion in this area.

Case No. 5158– Michael Horner

The parcel was uniquely configured containing slopes, NRD area, areas of severe erosion and a Harford County pumping station. According to the Applicant's expert witness, the property was so constrained by these features it was an engineering challenge to be able to use it at all for a commercial use. Admittedly, the additional area of disturbance was inadvertent and unfortunate but neither of the witnesses felt that any adverse impact resulted from the disturbance. The property is significantly improved over its former condition. Storm water management has been added and a culvert was constructed to address severe erosion problems that existed on this parcel in the past. In the opinion of both witnesses, removal of the existing gravel and fill in this disturbed area would likely result in more harm to the Natural Resource District than simply leaving it alone.

Both witnesses agreed that the property is now stabilized, erosion is being controlled and that the disturbance to the NRD that occurred was inadvertent. The Department of Planning and Zoning has recommended approval of the request. There were no persons who appeared in opposition to the subject request.

CONCLUSION:

The Applicant, Michael Horner, is requesting a variance, pursuant to Section 267-41D(5)(e) and (6) of the Harford County Code, to disturb non-tidal wetlands in a B3 District.

Harford County Code Section 267-41D(5)(e) and (6) provide as follows:

D. Natural Resources District.

- (5) Conservation requirements. The following conservation measures are required within this district.**
 - (e) Nontidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.**
- (6) Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.**

Case No. 5158– Michael Horner

The Hearing Examiner finds nothing in the record or testimony that would lead to the conclusion that a grant of the subject request would result in adverse impact to the Natural Resource District. In fact, it was the unanimous opinion of the witnesses that restoration of this area would probably result in far greater environmental consequence than simply leaving the area “as is”. Based on all of the facts presented the Hearing Examiner recommends approval of the subject request subject to the following conditions:

1. A wetland mitigation/restoration plan for 2,125 square feet of non-tidal wetland loss is submitted for review and approval by the Department of Planning and Zoning.
2. Wetland mitigation/restoration shall be completed in accordance with the approved plan of mitigation.
3. A bond or letter of credit in the amount of \$5000.00 is provided to Harford County Government to insure survival of the proposed mitigation. The surety shall be held by Harford County for a period of five (5) years after the successful completion of the proposed mitigation, at which time the surety or bond will be released back to the Applicant.
4. The area of disturbance on Applicant’s property which is the subject of this request shall not be used for storage or parking and any materials currently located in that area shall be removed within 10 days of this decision becoming final.

Date MARCH 6, 2002

William F. Casey
Zoning Hearing Examiner

BOARD OF APPEALS CASE NO. 4004 *

BEFORE THE

APPLICANT: Michael Horner *

ZONING HEARING EXAMINER

REQUEST: Variance to disturb non-tidal wetlands and buffer area; 902 Fallenstone Court, Bel Air *

OF HARFORD COUNTY

Hearing Advertised

HEARING DATE: March 28, 1990 *

Aegis: 2/21/90 & 2/28/90

Record: 2/21/90 & 2/28/90

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicant, Michael Horner, is requesting a variance from the requirements of the Harford County Code pursuant to Section 267-41D(6), to disturb the non-tidal wetlands and buffer area in a B3 General Business District.

The subject property is located at 725 Pulaski Highway, Joppa, Maryland 21085 and is further identified on Tax Map '65, Grid 3B, Parcel 83. The subject parcel consists of 1.38 acres, more or less, is zoned B3 General Business, and is located within the First Election District.

Mr. Stan Kollar appeared for the Applicant and qualified as an expert in the field of environmental planning. Mr. Kollar testified that the subject property consists of 1.38 acres and that of that acreage, the front portion consists of "cup and fill" soil that has a drainage ditch traversing. Mr. Kollar stated that the Applicant intends to place an auto body shop and repair business on the front portion of the property and that the drainage ditch would be improved by diversion, creating a culvert or channelization. The witness stated that the drainage ditch is in presently poor condition and creates large quantities of sediment that flow into the adjacent stream. The plan of

the Applicant, according to the witness, will reduce sediment and control erosion. The witness introduced photographs of the area that indicate the poor condition of the ditch, the erosion that is present, and piles of sediment. The witness was shown the report of the Soil Conservation which indicated that the soil on the proposed site was unsuitable for construction of the intended use. The witness commented that the report assumes that no compaction would be done and that Applicant intended to compact the soil to acceptable levels prior to construction. The witness stated that a variance was required to the buffer area since the suitable building portion of the property is limited. Mr. Kollar further stated that the proposal anticipates that 62% of the remaining property will remain untouched. The witness further testified that a vegetated storm water management pond is proposed to handle runoff from the structure and the proposed paved parking areas. Additionally, the witness said that aside from the piping of the drainage feature, no disturbance of wetlands is proposed. The witness described the rear of the property as non-tidal wetlands with two drainage channels that form a stream. This area is densely wooded and the Applicant does not propose any disturbance to this area.

The Department of Public Works commented by letter that Harford County intends to construct a sewage pumping station on this site and expressed concerns that Applicant may intend the County to purchase the proposed area for the pumping station. The witness stated that the Applicant had agreed not to so charge and agreed to a condition allowing the construction of said pumping station. The witness added that the proposal includes landscaping of the area.

Pat Waldron appeared as a protestant. Ms. Waldron indicated that she had lived on Pine Road for 29 years. She stated that the area did not need another auto repair business, that there were three (3) junkyards and a rubble fill area in close proximity to the site and that there is traffic congestion already existing that would be further increased if the proposal were allowed. The witness also stated that this corner is a bus stop for schoolchildren at all age levels and she was concerned regarding the safety of these children while loading or unloading school buses.

Elizabeth Fink appeared next and stated that she had been a neighboring resident for some years. The witness expressed her concerns that the construction might result in downstream pollution that flows into Foster Branch from the auto shop. The witness offered no evidence that pollution was a likely result of approval of this application.

Mr. Johnny Byrne appeared and stated that he owns property behind that of Applicant's. The witness testified that the Applicant has been using the property for storage of used and junk cars and that there is no driveway to the subject property.

The Applicant made a brief rebuttal in which he indicated that he had, in the past, stored cars on the property but that he had removed all of them and there were none left on the site. He stated further that no used or junk cars would be stored there in the future except those few autos awaiting repairs.

CONCLUSION:

The Applicant is seeking a variance to Section 267-41D(6) of the Harford County Code, to disturb the non-tidal wetlands and buffer area in a B3 General Business District.

Section 267-41D(6) provides:

- (6) Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.

Additionally, 267-41D(3), (4) and (5) provides:

- (3) Use Restrictions. The following uses shall be prohibited:
 - (a) Mining or excavation, except existing operations of either, and dredging, except such dredging as may be permitted by state law.
 - (b) Deposit or landfills of refuse or solid or liquid waste, except manure. Acceptable fill permitted by the United States Army Corps of Engineers may be used for stream bank erosion control.
 - (c) Alteration of the streambed and bank of a waterway, except for best management practices to reduce stream erosion and maintenance of stream crossings for agricultural purposes.
- (4) Permitted uses. The following land uses shall be permitted, provided that the conditions described herein are met:
 - (a) Agriculture. Agriculture shall be permitted, provided that accepted soil conservation practices of the Soil Conservation Service are implemented along watercourses or a twenty-five-foot-wide grass filter strip along the edge of cropland bordering streams is provided to reduce surface runoff and associated pollutants from entering waterway.
 - (b) Forestry. Commercial timber operations shall be permitted, provided that a Forest Management Plan (FMP) is approved by the Maryland Forest, Park and Wildlife Service and the Department of Planning

and Zoning. Along streams, a buffer of fifty (50) feet, plus four (4) feet for each one-percent increase in slope, measured from the water's edge, shall be provided. The restriction on harvesting within this buffer may be waived, provided that a site-specific Buffer Management Plan is prepared and approved as an amendment to the Forest Management Plan (FMP). The Buffer Management Plan shall address potential water-quality impacts and shall include a minimum undisturbed buffer designed according to site characteristics. Trees within the buffer may also be harvested to remove diseased, insect-damaged or fire-damaged trees in order to salvage the same or reduce potential stream blockage due to fallen timber. Landowners are exempted from the Forest Management Plan (FMP) requirement when timber is harvested for personal use only. Forestry operations within the urban residential districts (R1, R2, R3, or R4) shall be required to meet the conservation requirements under Subsection D(5) below.

- (c) Utilities. The replacement of existing utilities or installation of new and accessory utilities will be permitted within the Natural Resources District. Following the placement of utilities, the disturbed land area shall be stabilized and reseeded. Wherever technically feasible, a buffer of seventy-five (75) feet from the water's edge shall be provided along watercourses.
- (d) Stormwater management. Where required, stormwater management facilities are permitted within the Natural Resources District, subject to other Harford County Stormwater Management Regulations.
- (5) Conservation requirements. The following conservation measures are required within this district:
 - (a) All development shall minimize soil disturbance during development and shall reduce soil erosion and sedimentation. When developing site plans, consideration shall be given to maintaining the existing drainageways within the Natural Resources District.
 - (b) Clearing or removal of natural ground cover and vegetation in preparation for development shall be minimized. Site development shall be clustered or designed in such a manner to preserve large contiguous tracts of woodland. Clearing of

woodlands shall not reduce the area coverage of trees below seventy percent (70%). Along streams, a buffer with minimum width of fifty (50) feet, plus four (4) feet for each one-percent increase in slope, measured from the water's edge, shall be provided. Trees within the buffer may be harvested to remove diseased, insect-damaged or fire-damaged trees to salvage the same or reduce potential stream blockage due to fallen timber. Essential access roads may be permitted to traverse the buffer.

- (c) Sensitive environmental areas, including significant/special natural features, significant wildlife habitats, saturated soils, highly erodible soils and designated scenic areas shall not be disturbed during any development.
- (d) Any land in excess of twenty-five percent slope for an area of forty thousand (40,000) square feet or more shall not be cleared of natural ground cover or vegetation in preparation for development, except for necessary roads and utilities. Not more than thirty percent (30%) of any land in excess of fifteen percent slope and less than twenty-five percent slope shall be cleared of natural ground cover or vegetation in preparation for development.
- (e) Nontidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.

Pursuant to the Harford County Code, Section 267-11, area variances are permitted provided that the Board finds:

- A. Variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:
 - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character

and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.

- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.

Based on the testimony of Applicant's expert witness and the various exhibits introduced, the Hearing Examiner finds that the property is topographically unique in that only 38 % of the subject parcel is potentially buildable, the remaining 62% being non-tidal wetland area. If the Applicant were denied, an unreasonable hardship would be imposed in that the property would be unusable for any purpose. The area in which Applicant proposes development is located in the Commercial/Industrial corridor of Pulaski Highway, an area characterized by a mix of commercial and light industrial uses. The Hearing Examiner finds that construction of a small (60 feet x 100 feet proposed) auto repair shop would not be substantially detrimental to adjacent properties nor will it materially impair the purposes of the Harford County Zoning Code. While one protestant expressed concerns regarding the safety of schoolchildren, the Hearing Examiner finds that the granting of the Applicant's proposal will not further increase the safety hazards associated with school bus loading and unloading on Pulaski Highway.

The Hearing Examiner therefore recommends approval of the requested variance subject to the following conditions:

1. That development of the site generally conform to the site plan submitted with regard to the limits of wetlands and buffer to be disturbed.
2. That a detailed plan be submitted to the Department of Planning and Zoning for approval with review by the Development Advisory Committee.
3. That the Applicant obtain any and all necessary permits including permits from the Army Corps of Engineers and a Water Quality Certification from the Department of the Environment.
4. That prior to issuance of a grading permit, the Applicant submit a detailed landscaping plan for review and approval by the Department of Planning and Zoning. This Plan will indicate the species, size and location of plants in the storm water management facility as well as plantings in the area of parking. The plan will include a schedule of planting.
5. That a Maintenance Agreement be executed between the property owner and Harford County providing for the maintenance and inspection of the storm water management facility. Both the Department of Public Works and the Department of Planning and Zoning shall review and approve said agreement prior to its execution. The Agreement shall be recorded among the Land Records of Harford County. Any change in design of the facility shall be approved by the Department of Planning and Zoning and the Department of Public Works. At the discretion of the Department of

Planning and Zoning, modification of the facility may require the approval of the Board of Appeals.

6. That a Letter of Credit be posted by the Applicant to guarantee the planting and survival of wetland species in the stormwater management facility. This Letter of Credit shall be an amount sufficient to provide for the purchase and installation of planting materials as depicted on the planting plan. This Letter of Credit shall run for a period of three years after the installation of planting materials. The Department of Planning and Zoning shall be notified of the planting date by the Applicant and shall monitor the site on an annual basis. The survival rate of plant species shall be eighty-five percent (85.0%).

7. That any necessary easements for the sewage pumping station be conveyed to Harford County to facilitate the provision of public water and sewer in the area.

8. That as part of the proposed plan submitted by Applicant, that provision be made for the safety and protection of schoolchildren during bus loading operations both during and after the construction phase.

April 23, 1990
Date

William F. Casey
William F. Casey
Zoning Hearing Examiner

DAVID R. CRAIG
HARFORD COUNTY EXECUTIVE

MARY F. CHANCE
DIRECTOR OF ADMINISTRATION



C. PETE GUTWALD
DIRECTOR OF PLANNING & ZONING

HARFORD COUNTY GOVERNMENT

Department of Planning and Zoning

October 6, 2011

STAFF REPORT

BOARD OF APPEALS CASE NO. 5751

APPLICANT/OWNER: MacMurphy, LLC
304 S. Tollgate Road, Bel Air, MD 21015

REPRESENTATIVE: John J. Gessner, Esquire
Gessner, Snee, Mahoney & Lutche, P.A.
11 South Main Street, Bel Air, Maryland 21014

LOCATION: 725 Pulaski Highway, Joppa, MD 21085
Tax Map: 65 / Grid: 3B / Parcel: 83
Election District: First (1)

ACREAGE: 1.34+/- acres

ZONING: B3/General Business District.

DATE FILED: July 22, 2011

HEARING DATE: October 19, 2011



APPLICANT'S REQUEST and JUSTIFICATION:

See Attachment 1.

CODE REQUIREMENTS:

The Applicant is requesting a variance pursuant to Section 267-62E of the Harford County Code to disturb the Natural Resource District (NRD) in the B3/General Business District and to modify previous Board of Appeals Case No. 5158.

Preserving Harford's past; promoting Harford's future

LAND USE and ZONING ANALYSIS:

Land Use – Master Plan:

The subject property is located on the southwest corner of US Route 40 and Pine Avenue. A location map and a copy of the Applicant's site plan are enclosed with the report (Attachments 2 and 3).

The subject property is located within the Development Envelope. The predominant land use designations in the area of the subject property are Low, Medium and High Intensities and Industrial/Employment. The Natural Features Map reflects Stream Systems. The 2004 Land Use map designates the subject property as High Intensity, which is defined as:

High Intensity - Areas within the Development Envelope where residential development occurs at a density greater than 7.0 dwelling units per acre. Major retail commercial centers and highway related businesses, such as automobile dealerships and home improvement centers, are examples of some of the most intensive uses associated with this designation.

Enclosed with the report are copies of a portion of the 2004 Land Use Map and the Natural Features Map (Attachments 4 and 5).

Land Use – Existing:

The existing land uses in this area of the County are generally consistent with the 2004 Master Plan. Commercial uses are predominate and include motor vehicle sales and service, gas stations with convenience stores, motels, warehousing, wholesaling and processing, personal and professional services, and a wide variety of retail and service uses. Residential uses include older single-family dwellings located south of US Route 40.

The subject property is rectangular in shape, contains approximately 1.34+/- acres and is accessed from Pine Avenue. The subject property is improved with a two story commercial building constructed of split face block with a large steel frame warehouse building with garage bay doors connected to the rear. The building was formerly used as a motor vehicle repair business. A Harford County owned pumping station facility is also located on the subject property along Pine Road. An existing stormwater management pond is also located between the parking lot and the pumping station. The remainder of the subject property is mature forest with non-tidal wetlands associated with a stream that traverses the property. The topography of the subject property is generally flat in the vicinity of the building and parking lot and drops off steeply towards the stream. Enclosed with the report are copies of the topography map, aerial photograph and site photographs (Attachments 6, 7 and 8).

STAFF REPORT

Board of Appeals Case Number 5751

MacMurphy, LLC

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Zoning History:

A variance to disturb the non-tidal wetlands and Natural Resource District (NRD) on the subject property was granted to the former owners of the property in 1990 under Case No. 4004. The variance allowed for the disturbance of the non-tidal wetlands and NRD buffer to construct the building, parking and stormwater management facility presently on the site. Condition #1 of the Board's decision limited disturbance to the area shown on the site plan submitted by the Applicant. Enclosed with the report is a copy of the Hearing Examiner's Decision in Case No. 4004 (Attachment 9).

During the initial development of the site, an additional 2,125 square feet of NRD to the south of the building was disturbed. The area was filled and compacted gravel was placed over the fill material. The area was used for the storage of automobiles and miscellaneous junk. The former property owner returned to the Board in 2002 to request a variance for the additional unpermitted disturbance under Case No. 5158. The variance was granted by the Board and the fill was allowed to remain. Although the fill was allowed to remain, the Hearing Examiner prevented the former property owner from using the area in question "for storage or parking" under Condition #4. Enclosed with the report is a copy of the Hearing Examiner's Decision in Case No. 5158 (Attachment 10).

Zoning:

The zoning classifications in the area are generally consistent with the 2004 Master Plan as well as the existing land uses. Commercial zoning in the area includes B3/General Business District. The north side of US Route 40 is predominately zoned CI/Commercial Industrial District with several parcels zoned GI/General Industrial District. Residential zoning in the area includes R1, R2 and R3/Urban Residential Districts. The Applicant's property is zoned B3/General Business District as shown on the enclosed zoning map (Attachment 11).

SUMMARY:

The Applicant is requesting a variance pursuant to Section 267-62E of the Harford County Code to disturb the Natural Resource District (NRD) in the B3/General Business District and to modify previous Board of Appeals Case No. 5158.

Variances of this nature may be approved by the Board of Appeals pursuant to Section 267-11 of the Harford County Code, provided it finds by reason of the uniqueness of the property or topographical conditions that literal enforcement of the Code would result in practical difficulty or unreasonable hardship. Further, the applicant must show that the request will not be substantially detrimental to adjacent properties or will not materially impair the purpose of the Code or the public interest.

The Applicant is proposing to construct a 4,190 square foot addition to the existing building in addition to a "freezer pump" facility on a 20-foot by 20-foot concrete pad. The addition to the

STAFF REPORT

Board of Appeals Case Number 5751

MacMurphy, LLC

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building will encroach into the area previously approved by the Board under Case No. 5158. An additional 400 square feet of disturbance beyond what was previously approved by the Board is proposed for the construction of the freezer pump and concrete pad.

The Applicant's property is approximately 1.34+/- acres in size with frontage on both US Route 40 and Pine Road. The subject property is significantly encumbered by non-tidal wetlands and Natural Resource District (NRD) buffer associated with a stream which traverses diagonally across the middle of the property. Therefore, the developable portion of the subject property is generally limited to the northeast corner of the property. In addition, the Harford County owned pumping station facility located on the subject property also encumbers the development potential of the property.

The Applicant's proposed addition to the building will be located in an area that was previously disturbed and approved by the Board. The proposed freezer pump facility will cause a minor increase of 400 square feet of additional disturbance. The Applicant proposes to use the building for food preparation, storage and distribution. The ability to use the existing building for retail and service uses typically found along US Route 40 would be severely limited due to the inability to provide sufficient parking. Retail and service uses would require between 31 and 47 spaces for a building of the size proposed. The Applicant's proposed use does not generate a demand for parking beyond what already exists on the site.

The proposed use of the building for food preparation and storage is an appropriate adaptive reuse of a vacant building which would be difficult to utilize for other permitted uses in the B3/General Business District due to the inability to provide additional parking. The proposed addition to the building and the freezer pump facility will not adversely impact the stream or non-tidal wetlands. The proposed additional disturbance is minimal given the limited development potential of the subject property. In addition, the Applicant's are proposing 700± square feet of landscaping to mitigate the previous disturbance.

RECOMMENDATION and or SUGGESTED CONDITIONS:

The Department of Planning and Zoning recommends the requested variance and modification to Case No. 5158 be approved subject to the following conditions:

1. The Applicants' shall obtain all necessary permits and inspections for the construction of the proposed addition and freezer pump facility.
2. A landscaping plan shall be submitted to the Department of Planning and Zoning for review and approval along with a cost estimate. A landscaping surety agreement and bond in the form of a letter of credit shall be submitted to the Department prior to building permit application.
3. Architectural renderings of the proposed addition shall be submitted to the Department of Planning and Zoning for review and approval prior to building

permit application.

4. A sediment and erosion control plan shall be submitted to the Department of Public Works for review and approval.



Shane P. Grimm, Chief
Site Plan & Building Permits Review



Anthony S. McClune, AICP
Deputy Director, Planning and Zoning

SG/ASM/jf