

**BALTIMORE COUNTY**  
M A R Y L A N D

JAMES T. SMITH, JR.  
County Executive

February 7, 2008

WILLIAM J. WISEMAN III  
Zoning Commissioner

Arnold Jablon, Esquire  
Venable, LLP  
210 Allegheny Avenue  
Towson, MD 21204

**RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE**  
NE/S Aigburth Road, 669' E c/line of York Road  
**(15 Aigburth Road)**  
9<sup>th</sup> Election District - 5<sup>th</sup> Council District  
John F. Geilfuss, et ux – Petitioners  
**Case No. 08-118-SPHA**

Dear Mr. Jablon:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted with conditions and the Petitions for Variance has been Dismissed as Moot, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County

WJW:dlw  
Enclosure

c: John F. and Angela M. Geilfuss, 9 Aigburth Road, Towson, MD 21286  
Tom Geilfuss, 9 Aigburth Road, Towson, MD 21286  
Elizabeth Schultz, Sara Gorman & Cassandra Pace, 15 Aigburth Road,  
Towson, MD 21286  
Vincent Moskunas, Site Rite Surveying, Inc., 200 East Joppa Road, Towson, MD 21286  
Ryan Casey, 66 Burkleigh Road, Towson, MD 21286  
Suzanne Walther, 304 Aigburth Road, Towson, MD 21286



Rikki Davis, 53 Burkleigh Road, Towson, MD 21286  
Noel Fales, 19 Cedar Avenue, Towson, MD 21286  
Francis X. Borgerding, Esquire, 409 Washington Avenue, Suite 600, Towson, MD 21204  
Jack L. and Judith Giacomo, 17 Aigburth Road, Towson, MD 21286  
Elizabeth Z. Kahl, President, Burkleigh Square Community Association,  
61 Burkshire Road, Towson, MD 21286  
Christia Raborn, 601 Wilton Road, Towson, MD 21286  
Fay Citerone, President, Knollwood-Donnybrook Improvement Association,  
909 Rappaix Court, Towson, MD 21286  
Richard and Brenda Ames-Ledbetter, 9 Maryland Avenue, Towson, MD 21286  
Edward T. Kilcullen, Jr., President, The Greater Towson Council of Community  
Associations, Inc., 100 Maryland Avenue, Towson, MD 21286  
Harv Noyes, 609 Coventry Road, Towson, MD 21286  
Paul S. Hartman, President, The Aigburth Manor Association of Towson, Inc.,  
18 ½ Cedar Avenue, Towson, MD 21286  
Susan Hartman, 18 ½ Cedar Avenue, Towson, MD 21286  
Jason Vettori, Esquire, Gildea & Schmidt, LLC, 600 Washington Avenue, Ste. 200,  
Towson, MD 21204  
Sally Malena, 18 Aigburth Road, Towson, MD 21286  
Howard Taylor, 8 Maryland Avenue, Towson, MD 21286  
Judith Frohman, 73 Cedar Avenue, Towson, MD 21286  
Leonard V. Kirby, 203 Aigburth Road, Towson, MD 21286  
B. Florence Newman & Howard M. Taylor, 8 Maryland Avenue, Towson, MD 21286  
Michael Gerding, Vice President of Planning and Zoning, Towson Manor Village  
Community Association, 100 Maryland Avenue, Towson, MD 21286-3233  
Mary Carol Bruff, 15 Hillside Avenue, Towson, MD 21286  
Charles H. Slike, 7901 York Road, Towson, MD 21204  
David Berman and Peggy Fussell, 77 Cedar Avenue, Towson, MD 21286  
Susan D. Troupe, 19 Aigburth Street, Towson, MD 21286  
Thomas P. and Lisa M. Kelly, 74 Cedar Avenue, Towson, MD 21286  
Jonathan Rudie, 4 Maryland Avenue, Towson, MD 21286  
Ashby and Milan Heath, 20 Cedar Avenue, Towson, MD 21286  
Russell J. Pope, President, Wiltondale Improvement Association, P.O. Box 10116,  
Towson, MD 21285-0116  
Ann and Randolph Rothschild, 21 Aigburth Road, Towson, MD 21286  
People's Counsel; Rental Registration Program, DPDM; File



IN RE: PETITIONS FOR SPECIAL HEARING \*  
AND VARIANCE – NE/S Aigburth Road, \*  
669' E c/line of York Road \*  
(15 Aigburth Road) \*  
9<sup>th</sup> Election District \*  
5<sup>th</sup> Council District \*  
  
John F. Geilfuss, et ux \*  
Petitioners \*

BEFORE THE  
ZONING COMMISSIONER  
OF  
BALTIMORE COUNTY  
Case No. 08-118-SPHA

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by John F. Geilfuss, and his wife, Angela M. Geilfuss, through their attorney, Arnold Jablon, Esquire. Special Hearing relief was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to amend the site plan approved in Case No. 73-209-RX, and to abandon the office use therein granted upon approval of the requested variances. In this regard, and as originally filed, relief was requested to allow for a *four (4) apartment* use requiring variances: (1) to permit 100' width of lot at front building line instead of 110' as required by B.C.Z.R. Section 402.1, (2) to permit a 10' interior side yard setback instead of 15' required by B.C.Z.R. Section 402.1 and, if applicable, (3) to permit a 13' wide access driveway instead of 20' for 2-way movement as required by B.C.Z.R. Section 409.4A. At the outset of the hearing, however, Counsel for the Petitioners amended the Variance petition by *reducing the number of apartments to three (3)*, thereby withdrawing the first and third requests involving a 100' lot width and driveway access. The subject property and requested relief are more particularly described on the amended site plan submitted, which was accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requests were John F. and Angela M. Geilfuss, property owners, their son, Tom Geilfuss, the current tenants of the property, namely: Elizabeth Schultz, Sara Gorman and Cassandra Pace. Also attending in support of the petitions were Vincent Moskunus of Site Rite Surveying, Inc., the consultant responsible for preparation of the site plan, and several nearby residents, Ryan Casey, Suzanne Walther, Rikki Davis and Noel Fales. Arnold Jablon, Esquire appeared as attorney for the

Petitioners. The issues presented in this case generated significant public interest, and a large number of individuals and community leaders appeared/or testified in opposition to the request. Additionally, I also received twelve (12) letters from Aigburth Manor neighbors indicating that they opposed the zoning relief requested. Due to limitations of time and space, a complete listing of all those individuals cannot be set out here; however, it needs to be noted that Francis X. Borgerding, Esquire represented adjacent neighbors, Jack L. Giacomo and his wife, Judith Giacomo. Community association representatives and neighbors who participated at the hearing include Elizabeth Z. Kahl, President, Burkleigh Square Community Association, Christia Raborn, Fay Citerone, President, Knollwood-Donnybrook Improvement Association, Richard and Brenda Ames-Ledbetter, Edward T. Kilcullen, Jr., President, The Greater Towson Council of Community Associations, Inc., (GTCCA), Harv Noyes, Paul S. Hartman, President, The Aigburth Manor Association of Towson, Inc., Susan Hartman, Jason Vettori, Esquire, Sally Malena, and Howard Taylor. Additionally, petitions were also submitted both for (Petitioners' Exhibit 20) and against (Protestants Exhibits 3, 4, 5, 6, 13 and 14) the request.

The facts of the case are relatively simple as referenced in the testimony and evidence produced at the hearing. On August 5, 2002, Mr. and Mrs. Geilfuss, who have resided in the Aigburth Manor community since 1981, purchased the property known as 9 Aigburth Road, which consisted of a rectangularly shaped lot roughly 0.63 acres located next to the Cardiff Hall Apartments in Towson. At the time of the purchase, the property consisted of an older dwelling built in 1905 fronting on Aigburth Road and in need of a total renovation. After much time and expense (in excess of \$750,000) the Petitioners moved into the home in 2005 which serves as their principal residence. As acknowledged by all parties, the improvements were welcome and the home has been restored to "a very impressive home". Some four (4) years after buying 9 Aigburth Road, the subject adjacent property at 15 Aigburth Road became available and was purchased by the Petitioners. This property also consists of a rectangularly shaped lot roughly 100' wide x 288' deep (0.66 acres) with frontage on Aigburth Road accessed by a use-in-common driveway between the common property lines of the two parcels. At the time of this purchase, 15 Aigburth Road was improved with an older 2-½ story stone dwelling with an enclosed area of

3,633 square feet, a frame two-car garage, and a parking area for nine (9) cars. The property by virtue of a 1973 zoning Order, to be discussed below, was split-zoned D.R.16 (26,293 square feet) and a narrow strip of D.R.5.5 zoned property (2,607 square feet), which allowed a number of uses that included a medical or dental office on the first floor with the above two floors converted to provide for two apartments. Mr. Geilfuss supplied a brief overview of how prior owners used the property and improvements. The property, a lot of record since 1920, was the home of William McClean and his family who resided in the home built in 1925 for some 50 years. The McClean's marriage ended in either a separation or divorce and following their deaths, their children started renting the upstairs as apartments. Dr. Filbert L. Moore, an orthodontist, bought the property in the late 1960's with the intention of utilizing the third floor as his residence, renting the rooms on the second floor to students at the nearby Towson University and providing for his dental practice on the first floor. Dr. Moore filed a petition for Reclassification and Special Exception in Case No. 73-209-RX (Petitioners' Exhibit 4), a site plan (Petitioners' Exhibit 5), and was granted approval by then Deputy Zoning Commissioner James E. Dyer. An appreciation of the relief granted is relevant and recited below for convenience:

“Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County this 20<sup>th</sup> of March, 1973, that the herein described property or area should be and the same is hereby Reclassified in part, from a D. R. 5. 5 Zone to a D. R. 16 Zone. That portion to be reclassified is to include all of the Petitioner's property, *with the exception of a parallel strip of land along the full depth of the lot, between the easternmost property line and the easternmost side of the dwelling as it presently exists.*

It is further ORDERED that a Special Exception for Offices on the first floor of the subject premises should be and the same is hereby Granted from and after the date of this Order, subject, however, to the following restrictions:

1. That the only use to be made of the office shall be for a medical or dental practice. Only one practice may exist on the premises. This restriction shall not preclude one doctor being assisted in his practice by a professional associate doctor and necessary employees.
2. The building and grounds must be maintained in a state comparable to other residences at all times.

3. There shall be no changes to the exterior of the building except those required for proper maintenance.
4. A satisfactory site plan indicating, among other things, all permitted uses in the building and required parking, with satisfactory access.
5. Approval of said site plan by the Department of Traffic Engineering, Department of Public Works, Health Department, Fire Department, and the Office of Planning and Zoning.”

Subsequently, some nineteen (19) years later in 1992, under the Comprehensive Zoning Map Process (CZMP), the local community association, Aigburth Manor, filed an application to downzone the surrounding properties to D.R.5.5. In filing the application, the community association sought the zoning change to restrict single-family use and stop the spread of converting these impressive homes for multi-family apartment uses. The County Council approved the change to D.R.5.5.

The Petitioners now come with a new approach to use the property that they believe will serve “as a better fit” for the community. Having invested substantial money to purchase and improve the property, they would like to convert the first floor medical office to an apartment. Testimony was taken from Mr. Moskunas, an experienced land planner, in this regard who discussed the proposed use and outlined several other similar properties in the neighborhood with single-family dwellings serving as multi-family buildings that contained three or more apartments. He opined that eliminating the more intense medical office use in favor of the proposed first floor apartment (844 square foot) would not have a detrimental affect upon the surrounding community and testified that the proposed use would meet the criteria of Section 502.1 of the B.C.Z.R. In sum, he believed after providing statistics on the average daily trips (ADT’s) (28 ADT’s for doctor’s office v. 18 ADT’s for 3 apartments) that the proposal would be an improvement to the locale.

As noted above, a number of local residents, community leaders and Mr. and Mrs. Jack Giacomo appeared in opposition to the special hearing and side yard setback variance.<sup>1</sup> Mrs. Giacomo testified that her home is 31 feet from the subject stone home and she is, therefore, susceptible to noise from tenants and cars. She provided background as to the general community association's fears of growing multi-family uses in the area, and a particular fear of the ever-expanding nearby Towson University and disruption of community activities, and a desire on the part of the community to retain its single-family concept. Mrs. Giacomo and her husband have resided at 17 Aigburth Road since 1984 and she has been an active member of the Aigburth Manor Association serving as President, Vice-President, and Secretary. The association represents approximately 135 households, and Mrs. Giacomo described the nature and character of the neighborhood submitting photograph exhibits as Protestants Exhibits 9 through 12. She acknowledged that the homes owned by the Petitioners are very attractive dwellings and that other multi-family dwellings exist in the immediate neighborhood and that the Cardiff Hall Apartments are in close proximity to the subject site. She recited the efforts of Baltimore County in its community conservation efforts in the area, and the southeast Towson Community Plan to stop the increase of multi-family units in this community. She would oppose the conversion allowing one more apartment even without the need for a variance. She and her husband would prefer to see the medical office use continue. Messrs. Kilcullen and Hartman as well as Meses. Kahl and Raborn supported the testimony of the Giacomo's. They appeared in opposition to the special hearing and variance request citing numerous problems with fraternity houses, traffic, noise and generally what they perceive to be numerous other areas which, in their opinion, deterred from the quality of life in the area, and to which the area residents were experiencing difficulties. Most of the negatives expressed by these community leaders were

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<sup>1</sup> The Giacomo's counsel, Francis X. Borgerding, Esquire states that the petitions as filed are defective because there is no reference to the Residential Transition Area (RTA) requirements applicable in the D.R. zones. He asserts that RTA buffers and a compatibility finding (B.C.Z.R. Sections 1B01.1A.1.c and 1B01.1B.1.e) are required conditions for the approval of a multi-family building. I disagree. These regulations apply to *the development of land* as opposed to improvements built in the early 1900's and that have existed in the same footprint without change.

personal and generic in nature, but serious as to an area resident who had to contend with the problems.

This is a close case. On the one hand, the Order of March 20, 1973 in Case No. 73-209-RX creates a presumption of correctness as to the rezoning classification and special exception use granted, and as to the required and pre-existing side yard setback, which were supported by the record in that case. There was a more intensive commercial use than the instant proposal of reverting the property back to a residential use. The parking was granted and approved to support residential and office use which is in excess of the requirements for the change to a residential unit. There is no difference in the side yard setback requirements in B.C.Z.R. Section 402.1 for a converted dwelling to a two-family dwelling or a three-family dwelling when Deputy Zoning Commissioner Dyer decided the case before him in 1973.<sup>2</sup> Section 402 is unchanged. The required area and lot width requirements are satisfied. On the other hand, the Giacomo's and community have legitimate and heartfelt concerns regarding the effect of rental properties in the neighborhood, and the potential "snowball effect" of granting the request in this case. The case before me pertains solely to 15 Aigburth Road and the requested zoning relief. In this regard, there is no evidence to support a distinction and the impact on the adjacent neighbor/and neighborhood of residential uses of the Petitioners' proposed change to residential from commercial which I find is more in keeping with the residential zoning classification.

Zoning is an orderly and lawful process that protects the rights of individuals, citizens and their communities while allowing planned, orderly and proper uses of all kinds in appropriate places and under appropriate conditions and restrictions. Like any set of rules, it is only as strong as the consistency of its application. Much to the dismay of the Protestants, this is

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<sup>2</sup> Comparing Petitioners' current site plan (Petitioners' Exhibit 1) and the site plan before Deputy Commissioner Dyer in 1973 (Petitioners' Exhibit 5) will evidence the very same existing 10-foot setback in lieu of the 15-foot required by B.C.Z.R. Section 402.1.

a case where consistency must be applied. Based on the 1973 decision, the side yard setback then required, the history of the site, and that the setback has remain unchanged, I believe that no variance is in fact required. I am, however, persuaded by Section 600 of the B.C.Z.R. that these regulations should be read in such a fashion as to impose the more severe requirements upon use so as to protect the health, safety and general welfare of the community. Accordingly, I shall impose conditions to the special hearing relief requested.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 7<sup>th</sup> day of February 2008 that the Petition for Special Hearing seeking relief from Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to amend the site plan approved in Case No. 73-209-RX, and to abandon the office use therein granted upon final approval of the conversion of the medical office to an apartment as requested, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED, for the reasons stated above, that the Petition for Variance to permit a 10' interior side yard setback (east side) instead of 15' required by B.C.Z.R. Section 402.1, be and is hereby DISMISSED AS MOOT; and

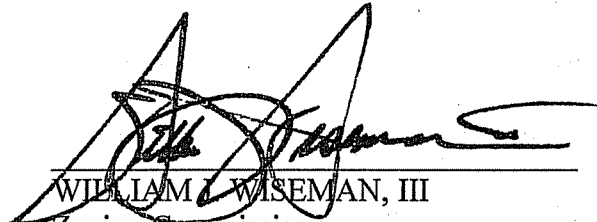
IT IS FURTHER ORDERED, for the reasons stated above, that this decision is subject to the following conditions precedent to the relief granted:

1. The property shall not be used as a "Boarding or Rooming House" as that term is defined in B.C.Z.R. Section 101; and
2. Should the Petitioners sell the property, the continuation of the third apartment on the first floor shall be subject to the approval by the Zoning Commissioner after a public hearing, pursuant to Section 500.7, and, if denied, the use on the first floor shall revert back to a medical office as approved in 1973; and
3. The building and grounds must be maintained in a state comparable to other single-family dwellings at all times. There shall be no "for rent" signs in front of the property, no parking pad arrangement of any kind

in the front lawn area of the property, no air conditioners mounted in the front windows and no storage of trash cans in the front yard lawn area between weekly trash pick-ups; and

4. A 6-foot high wood privacy fence starting from the garage shall be provided on the east and north sides of the parking area.
5. There shall be no changes to the exterior of the building except those required for proper maintenance.

IT IS FURTHER ORDERED that the Petition seeking variance relief to allow a 100' width of lot at front building line instead of 110' as required by B.C.Z.R. Section 402.1, and to permit a 13' wide access driveway instead of 20' required for 2-way movement as required by B.C.Z.R. Section 409.4A, be and are hereby DISMISSED AS MOOT.



WILLIAM L. WISEMAN, III  
Zoning Commissioner  
for Baltimore County

WJW:dlw