

file

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: S. Eric Di Nenna
Zoning Commissioner
Date: December 9, 1976

FROM: H. E. Phipps
Zoning Inspector I

SUBJECT: Allender Road properties, 11th District
1. Smuck parcel, File No. 5166 X
2. Nottingham parcel, File Nos. 5109 X and 68-214-X

Per your request, inspections were made of subject properties, November 26 and November 29, 1976.

(1) Smuck parcel, File No. 5166X is not being worked at this time, for extraction of material. It is being used for the storage of equipment and machinery.

Seven photos were taken, the positions and directions of which are indicated on the attached plat.

Some of these show that at some time in the past, excavations took place. These are now holding run-off or ground seepage water.

(2) Nottingham property, File Nos. 5109 X and 68-214 X, has been, and is now, being worked extensively.

This is shown on the series of 7 photos, the locations and directions of which are indicated on the overlay for the Zoning Plat and Grading Plan prepared by Dollenger Bros., all of which are attached to this report.

The plats should be returned to the original files.

H. E. Phipps
H. E. PHIPPS
Zoning Inspector I

HEP:tk
cc: H. E. Phipps
Files

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

S.D. to Mr.

TO: S. ERIC DiNENNA
Zoning Commissioner
Date: November 3, 1976

FROM: NORMAN E. GERBER, Acting Director
Office of Planning & Zoning

SUBJECT: Special Exceptions for Smuck and Nottingham Farms Properties

It has come to my attention that the special exceptions for controlled excavation granted to Harry A. Smuck and Nottingham Farms, Inc. for properties located at the eastern end of Allender Road have expired. In addition, it is my understanding that the requirements of the Special Exception Order were not met by either property owner. I would appreciate it if you would verify both of the aforementioned points.

Due to the environmentally sensitive nature of those properties and because of their proximity to the Big Gunpowder and Bird Rivers, I would also appreciate that notice of any future zoning changes or special exception requests for those properties be transmitted to our coastal zone planner, Cary B. Hinton.

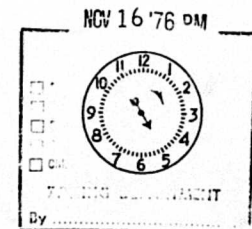
NEG/PJS/vh

Norman E. Gerber
NORMAN E. GERBER
Acting Director of Planning

cc: George J. Martinak
Deputy Zoning Commissioner

Paul J. Solomon
Environmental Planner

Cary B. Hinton
Coastal Zone Planner



RE: PETITION FOR SPECIAL EXCEPTION
FOR CONTROLLED EXCAVATION UNDER
SECTION 403 OF THE Zoning Regula-
tions - 21st of Allender and
Loreley Beach Roads, 11th District,
Nottingham Farms, Inc., Petitioner

BEFORE
DEPUTY ZONING COMMISSIONER
OF
BALTIMORE COUNTY
No. 5109-X

Upon hearing on the above petition for a special exception to use the property described therein for controlled excavation, under Section 403, of the Baltimore County Regulations, and it appearing that by reason of location, the safety, health and general welfare of the locality involved not being detrimentally affected the special exception should be granted. The granting of which does not violate Section 502.1 of the Regulations.

It is this 21st day of November, 1960, by the Deputy Zoning Commissioner of Baltimore County, ORDERED that the aforesaid special exception should be and the same is hereby granted, subject, however, to compliance with the following provisions and restrictions:

1. That the special exception is to exist for five (5) years and it shall conform to the contours as shown on Petitioner's Exhibit "A".
2. At the end of each calendar year the petitioner shall submit a cross-section of the property worked on during that year to indicate the excavations which have occurred. This shall be submitted to the Bureau of Land Development for approval. After the Bureau of Land Development has approved this cross-section report, said report shall be made a part of this file.
3. Ingress and egress shall be only at or near the intersection of Allender and Loreley Beach Roads.

Deputy Zoning Commissioner
of Baltimore County

RE: PETITION FOR SPECIAL EXCEPTION
FOR CONTROLLED EXCAVATION, Inter-
section of Allender and Loreley
Beach Roads, 11th District
Nottingham Farms, Inc.-Petitioner

BEFORE
COUNTY BOARD OF
APPEALS
OF
BALTIMORE COUNTY
No. 5109-X

This is a petition for a special exception for a Controlled excavation. The petitioner seeks to conduct a dry mining operation for sand and gravel on a tract of land of approximately 175 acres at the intersection of Allender and Loreley Beach Roads. At the present time the land is both farmland and wooded.

The petitioner stated that no permanent improvements would be erected on the land but that a scale and loading facilities would be installed. There also would be some screening of the mined gravel. All access to the property would be by Allender Road and Loreley Beach Road. Allender Road is the only access to Pulaski Highway, approximately 1/4 mile away.

There was considerable testimony regarding the run-off of silt from the proposed excavation to Bird River, approximately 1350 feet away and Lightwood Creek, approximately 600 feet away. A civil engineer, testifying for the Petitioner stated that removing the vegetation would tend to increase the velocity of water run-off but that decreasing the slope of the land would tend to have the opposite effect.

The Protestants pointed out that Allender Road, a blocktop road with no base, is 16 to 18 feet wide with no shoulders and no sidewalks, and that two trucks would have difficulty in passing on this road. Residents of the area stated that five school buses use Allender Road and that it is difficult to cross Pulaski Highway at Allender Road because of the absence of a traffic signal. Mr. Walter W. Ewell, a traffic expert, stated that Allender Road should be 24 feet wide with 10 foot shoulders. The Petitioner admitted, that at times of maximum production at this site, as many as 20 trucks an hour would be loaded. These trucks have a capacity of 8 to 14 tons.

The Board is of the opinion that the use of the subject property as a Controlled Excavation would create a traffic hazard by a steady flow of heavy trucks on an inadequate roadbed and no doing would conflict with Section 502.1 (b) of the Baltimore County Zoning Regulations.

For the reasons set forth in the foregoing Opinion it is this 21st day of February, 1962, by the County Board of Appeals, ORDERED that the special exception petitioned for, be and the same is hereby denied.

Any appeal from this decision must be in accordance with Rule No. 1101 of the Rules of Practice and Procedure of the Court of Appeals of Maryland.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

G. Mitchell Austin

Charles H. H. H. H.

NOTE: Mr. Nathan H. Kaufman, Jr., did not sit at the hearing.

RE: PETITION FOR SPECIAL
EXCEPTION FOR CONTROLLED
EXCAVATION UNDER SECTION
403 OF THE Zoning Regulations -
Int. of Allender and Loreley Beach
Roads, 11th Dist., Nottingham
Farms, Inc., Petitioner

BEFORE
COUNTY BOARD
OF
APPEALS
Re: Case No. 5109-X

MEMORANDUM FILED ON BEHALF OF PROTESTANTS
The applicant Nottingham Farms spent the greater part of two days establishing for the benefit of the Board the type of business use that they will make of the property involved. Nowhere in the Petitioner's case for Special Exception were the burdens placed on the Petitioner by the Zoning Regulations even alluded to.

Section 502.1 of the Zoning Regulations states that before any Special Exception shall be granted it must appear that the use for which the Special Exception is requested will not:

- (a) Be detrimental to the health, safety, or general welfare of the locality involved;
- (b) Tend to create congestion in roads, streets or alleys therein;
- (c) Create a potential hazard from fire, panic or other dangers;
- (d) Tend to overcrowd land and cause undue concentration of population;
- (e) Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
- (f) Interfere with adequate light and air.

Not one particle of testimony was presented as evidence by the Petitioner or to show that the above-mentioned Section of the Zoning Regulations had been adhered to. The Maryland Court of Appeals has many times stated that

these standards for a Special Exception were specific burdens of the Petitioner and must be overcome.

At the time of the hearing, there was ample testimony on behalf of the protestants that the reasoning would be detrimental to the health, safety, and general welfare of anyone surrounding the property or living on Bird River. The protestants by use of expert testimony by Dr. Worthington Ewell very specifically showed that the reasoning would tend to create congestion in roads and streets and that an extreme danger would exist at the intersection of Allender Road and Pulaski Highway. Nowhere in the Petitioner's testimony was one word said about this hazard, in fact the Petitioner did not feel it necessary to put on any testimony relative to traffic conditions. Section (c) of 502.1 places a very strict burden on the Petitioner in view of the fact of the narrowness of Allender Road and Loreley Beach Road. The Exhibits filed by the protestants plainly showed what would happen if children walked along Allender Road or if a fire truck or ambulance used the road at the same time a large truck was traversing on the said road. Section (f) of the aforementioned 502.1 relates to interference with provisions for parks, transportation, and other requirements, etc., as had been testified in this matter. As was testified, part of the Petitioner's property will be used for the Gunpowder Park. This property, along with others in the area, is in the heart of the Gunpowder Park and it is up to this Board at this time and in the future on other cases to determine whether or not the "focal point" of the Gunpowder Park will be a park for all the residents of Maryland or shall be a gravel pit for the use of the sand and gravel interests of the County. It was testified that over Three-and-a-half million dollars was being spent for the Gunpowder Park and the burden to determine the locality of the Gunpowder Park for years and years to come lies on the

County Board of Appeals at this time. It is the Protestants' contention that the Board of Appeals must, at this time, take cognizance of the fact that the Gunpowder Park is to be along the banks of Bird River and the Gunpowder Falls, and that this Petition must be, to a great extent, considered with other petitions, particularly that of the Smuck application.

Each engineering witness produced by the Campbell Corporation on cross-examination and each engineer produced by the Protestants testified that as a natural condition, whether the Campbell operation was a dry operation or not, water and silt would flow into Lightwood Creek and thus contaminate Bird River.

In summary, in argument of the Protestants' case against the granting of the Special Exception, great emphasis must be placed on:

1. The failure of the Petitioner to meet the burdens set down by the Zoning Regulations;
2. The extreme traffic danger on Allender Road and at the intersection of Allender Road and Pulaski Highway which could result from the granting of the Petitioner's application for a Special Exception;
3. Interference with the Gunpowder Park and
4. The creation of a situation to further increase the silt in Bird River.

Respectfully submitted,

B. Scott Moore

NOTTINGHAM FARMS, INC. # 5109-X
Special Exception for controlled excavation

Zoning Commissioner granted SE 11/21/60
Board of Appeals denied SE 2/21/62
Appealed to Circuit Court 3/13/62
Order to Dismiss filed 8/14/64
11/18/64

DENIED

Re: Petition for Special Exception of Nottingham Farms, Inc.,

PARCEL NO. 1

BEGINNING for the same at the intersection of Allender Road and Loreley Beach Road, at a point on the North side of Allender Road, and proceeding thence the following courses and distances, viz: South 58 degrees 13 minutes East 55 feet, South 66 degrees 1 minute East 240.5 feet, South 53 degrees 31 minutes East 429 feet to a point in the center line of Allender Road, and thence along the center line of such road the following courses and distances, viz: South 72 degrees 48 minutes East 33 feet, South 89 degrees 18 minutes East 528 feet, South 86 degrees 3 minutes East 363 feet, North 89 degrees 16 minutes East 370.1 feet, South 80 degrees 59 minutes 20 seconds East 336.06 feet, South 70 degrees 44 minutes 20 seconds East 165 feet, South 64 degrees 25 minutes 20 seconds East 66 feet, South 54 degrees 14 minutes 20 seconds East 66 feet, South 44 degrees 25 minutes 20 seconds East 165 feet, South 75 degrees 44 minutes 20 seconds East 130.35 feet, North 85 degrees 45 minutes 20 seconds East 330 feet; and thence leaving such road and proceeding for a line of division the following courses and distances, viz: South 10 degrees 15 minutes 40 seconds West 673.20 feet, South 67 degrees 59 minutes 20 seconds East 372.14 feet, South 4 degrees 11 minutes 30 seconds West 576.31 feet, North 85 degrees 54 minutes 20 seconds East 99 feet, South 20 degrees 5 minutes 20 seconds West 650 feet, South 4 degrees 9 minutes 20 seconds East 189.86 feet, South 32 degrees 52 minutes 30 seconds East 427.12 feet, South 38 degrees 7 minutes 20 seconds East 165 feet, South 17 degrees 7 minutes 20 seconds East 280.5 feet, South 8 degrees 37 minutes 20 seconds East 434.14 feet, South 25 degrees 6 minutes 50 seconds West 709.75 feet to the shore line of Bird River; and thence following and binding on the shore line of Bird River in a southeasterly direction to and across the mouth of Lightwood Creek, to a point on the northerly side of Bird River and the westerly side of the mouth of Lightwood Creek, and thence continuing southeasterly along the shore line of Bird River 400 feet, more or less, to a point; and thence leaving the shore line of Bird River and proceeding for lines of division the following courses and distances, viz: North 80 degrees 47 minutes 20 seconds West 30.36 feet, North 36 degrees 47 minutes 20 seconds West 181.50 feet, North 3 degrees 17 minutes 40 seconds East 940.50 feet, North 70 degrees 26 minutes West 110.84 feet, South 32 degrees 46 minutes 30 seconds West 467.69 feet, North 40 degrees 53 minutes 20 seconds West 100 feet, South 32 degrees 46 minutes 30 seconds West 225.08 feet to the center line of a road laid out by Brown; and running thence and binding on the center line of such road North 40 degrees 53 minutes 20 seconds West 547.50 feet; thence leaving the center line of such road and running for lines of division South 32 degrees 46 minutes 30 seconds West 672.50 feet to the shore line of Bird River, and running thence in a northwesterly direction along the shore line of Bird River 52 feet, more or less; thence leaving the shore line of Bird River North 32 degrees 46 minutes 30 seconds East 722.5 feet to the center line of a road laid out by Brown, and running thence and binding along the center line of such road North 40 degrees 53 minutes 20 seconds West 250 feet, and thence leaving the center line of the road laid out by Brown and running for a line of division North 32 degrees 46 minutes 30 seconds East 225.08 feet, North 40 degrees 53 minutes 20 seconds

PROCTOR, ROYERSON
MULLER
CARRUTH, BULLOCK
TAYLOR & CO.
VOLUME 1-1000

#5109-X

West 100 feet, South 32 degrees 46 minutes 30 seconds West 225.00 feet to the center line of a road laid out by Brown; running thence and binding at or near the center line of such road the following courses and distances, viz: North 40 degrees 51 minutes 20 seconds West 40.89 feet, North 22 degrees 27 minutes 20 seconds West 132.60 feet, North 26 degrees 13 minutes 40 seconds East 15 feet, North 20 degrees 29 minutes 20 seconds West 105 feet, more or less, North 79 degrees 3 minutes 20 seconds West 16.83 feet; and thence leaving the road laid out by Brown and running the following courses and distances, viz: North 10 degrees 56 minutes 30 seconds East 1030.12 feet, North 34 degrees 12 minutes 40 seconds East 399.36 feet, North 43 degrees 57 minutes 20 seconds West 293.96 feet, South 53 degrees 21 minutes 40 seconds West 300.70 feet, to a point in the center line of Loreley Beach Road, and proceeding along the center line of Loreley Beach Road North 37 degrees 9 minutes 20 seconds West 231 feet, North 8 degrees 39 minutes 20 seconds West 643.50 feet, North 25 degrees 39 minutes 20 seconds West 346.50 feet, North 19 degrees 9 minutes 20 seconds West 363 feet, North 30 degrees 9 minutes 20 seconds West 231 feet, North 23 degrees 9 minutes 20 seconds West 306.90 feet, North 23 degrees 9 minutes 20 seconds West 45 feet, more or less, and running thence in a straight line 200 feet, more or less, to the place of beginning.

PROCTOR, ROYSTON AND MUELLER
CAPITOL BUILDING

35-20

#5109-X
MAP
#11-C
10/10/60

#5109-X

#5109-X
MAP
#11-C
10/10/60

Re: Petition for Special Exception of Nottingham Farms, Inc., Owner.

PARCEL NO. 2

BEGINNING for the same at a point in the center line of Allender Road, located 332.61 feet easterly measured along the center line of such road from its intersection with Loreley Beach Road, and thence proceeding along the center line of Allender Road the following courses and distances, viz: North 83 degrees East 749.76 feet, North 82 degrees 15 minutes East 247.5 feet, North 65 degrees East 137.28 feet, North 8 degrees 15 minutes East 199.72 feet, North 98 degrees 45 minutes East 372.90 feet; thence leaving the center line of Allender Road and proceeding for lines of division the following courses and distances, viz: South 2 degrees East 367.95 feet, South 81 degrees 45 minutes East 211.2 feet, South 6 degrees East 3498.41 feet, North 86 degrees West 1134.38 feet, North 31 degrees 30 minutes West 280.5 feet, North 42 degrees 30 minutes West 165 feet, North 39 degrees 30 minutes West 825 feet, North 2 degrees 45 minutes East 64.5 feet, South 84 degrees 30 minutes West 99 feet, North 0 degrees 30 minutes East 886.05 feet, North 71 degrees West 371.25 feet, North 7 degrees 15 minutes East 673.2 feet to the place of beginning.

8 SIGNS

3- SIGNS

PROCTOR, ROYSTON AND MUELLER
CAPITOL BUILDING
TOWSON 4, MD.
VALLEY 2-1800

PETITION FOR SPECIAL EXCEPTION

IN THE MATTER OF THE
PETITION FOR SPECIAL
EXCEPTION OF
NOTTINGHAM FARMS, INC.

BEFORE THE
ZONING COMMISSIONERS
OF BALTIMORE COUNTY

For a Special Exception
To the Zoning Commissioners of Baltimore County

NOTTINGHAM FARMS, INC.

Legal Owner

Contract
Purchaser

heroby petition for a Special Exception, under the Zoning Regulations and Restrictions passed by the County Commissioners of Baltimore County, agreeable to Chapter 877 of the Acts of the General Assembly of Maryland of 1963, for a certain parcel and use, as provided under said Regulations and Act, as follows:

A Special Exception to use the land (and improvements now or be erected thereon) hereinafter described for controlled excavation under Section 403 of the Baltimore County Zoning Regulations, for Parcel No. 1 and Parcel No. 2 as shown on the attached plat, and more particularly described by the attached descriptions.

NOTTINGHAM FARMS, INC.

BY J. Lee Thomas
LEGAL OWNER

Contract Purchaser
Legal Owner
Capitol Building
Towson 4, Md.

10/10/60
10 AM

11th Dist

NOTTINGHAM FARMS, INC.
a Maryland corporation
Campbell Building
Towson 4, Maryland

Appellant

vs.

NATHAN H. KAUFMAN, JR.
G. MITCHELL AUSTIN, and
CHARLES STEINBOCK, JR.,
constituting the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Appellees

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

ORDER TO DISMISS

Mr. Clerk:

Please dismiss the Appeal of Nottingham Farms, Inc.,
in the above entitled matter.

W. Lee Thomas, Attorney for
Nottingham Farms, Inc.

I HEREBY CERTIFY that a copy of the foregoing Order to Dismiss was mailed to the County Board of Appeals of Baltimore County, Towson 4, Maryland, and to E. Scott Moore, Esq., Attorney for Fred G. Brown and George Bowman, Appellees, 408 Jefferson Building, Towson 4, Maryland, this 14th day of August, 1964.

W. Lee Thomas

PROCTOR, ROYSTON AND MUELLER
CAPITOL BUILDING
TOWSON 4, MD.
VALLEY 2-1800

PROCTOR, ROYSTON & MUELLER

ATTORNEYS AT LAW
COURTNEY BUILDING
TOWSON 4, MARYLAND

February 15, 1962

RENEWED BY PROCTOR
AND MUELLER
BY ATTORNEY OF APPEALS
E. SCOTT MOORE
JAMES L. REED, JR.
A FOSTER WAREHO
SUSAN A. REED
ARMED & DANGEROUS

Board of Appeals for Baltimore County
County Office Building
111 W. Chesapeake Avenue
Towson 4, Maryland

Re: Petition for Special Exception
For Controlled Excavation
Allender Road and Loreley Beach Road.
Petitioner: Nottingham Farms, Inc.
Petition No. 5109-X

Gentlemen:

The Chairman of the Board requested in writing a very short argument pertaining to the above request.

The oral testimony and the documentary evidence, including plat, submitted to the Board, establish beyond any doubt that the requested special Exception will not contravene any of the provisions of 302.1 of the Baltimore County Zoning Regulations. The protestants alleged that the proposed operation would be detrimental to the Bird River and to the area's traffic patterns. Their allegations, however, were not supported by proof and were rebutted in full by Petitioner. The mass of testimony presented included testimony from a recognized expert consultant in the problems of water and sewerage. This consultant's testimony supported in every particular by on-the-scene studies can lead to no conclusion other than that the dry operation for which the Special Exception is requested will in no way interfere with whatever foreign matter might now be entering the Bird River. It should be emphasized that the Petitioner will not, in its operation, excavate into subsurface water and that the improvement of the existing slope contours by the proposed excavation of the area is not a part of the operation. It is also worthy of note that the experts who testified were of the opinion that the distance between the area of excavation and the Bird River makes it improbable that surface water could carry to the Bird River any accumulation of soil or other deposits.

The traffic complaints of the protestants were based on the alleged narrowness of the area's roadways. In this regard, it should be mentioned that the Petitioners have agreed to exit from and enter into the operation only from the intersection of Allender Road and Loreley Beach Road, thus, leaving untouched a major portion of the area's roadways. It is also

RE: PETITION FOR SPECIAL
EXCEPTION FOR CONTROLLED
EXCAVATION UNDER SECTION
403 OF THE Zoning Regulations -
Inc. of Allender and Loreley Beach
Roads, 11th Dist., Nottingham
Farms, Inc., Petitioner

BEFORE
DEPUTY ZONING
COMMISSIONER
OF
BALTIMORE COUNTY
No. 5109-X

NOTICE OF APPEAL

Please enter an appeal in the above-entitled case to the Board of Appeals from the Order of the Deputy Zoning Commissioner of Baltimore County, dated November 21, 1960.

E. Scott Moore
Duncan Building
Towson 4, Maryland
VAS-4511
Attorney for Protestants



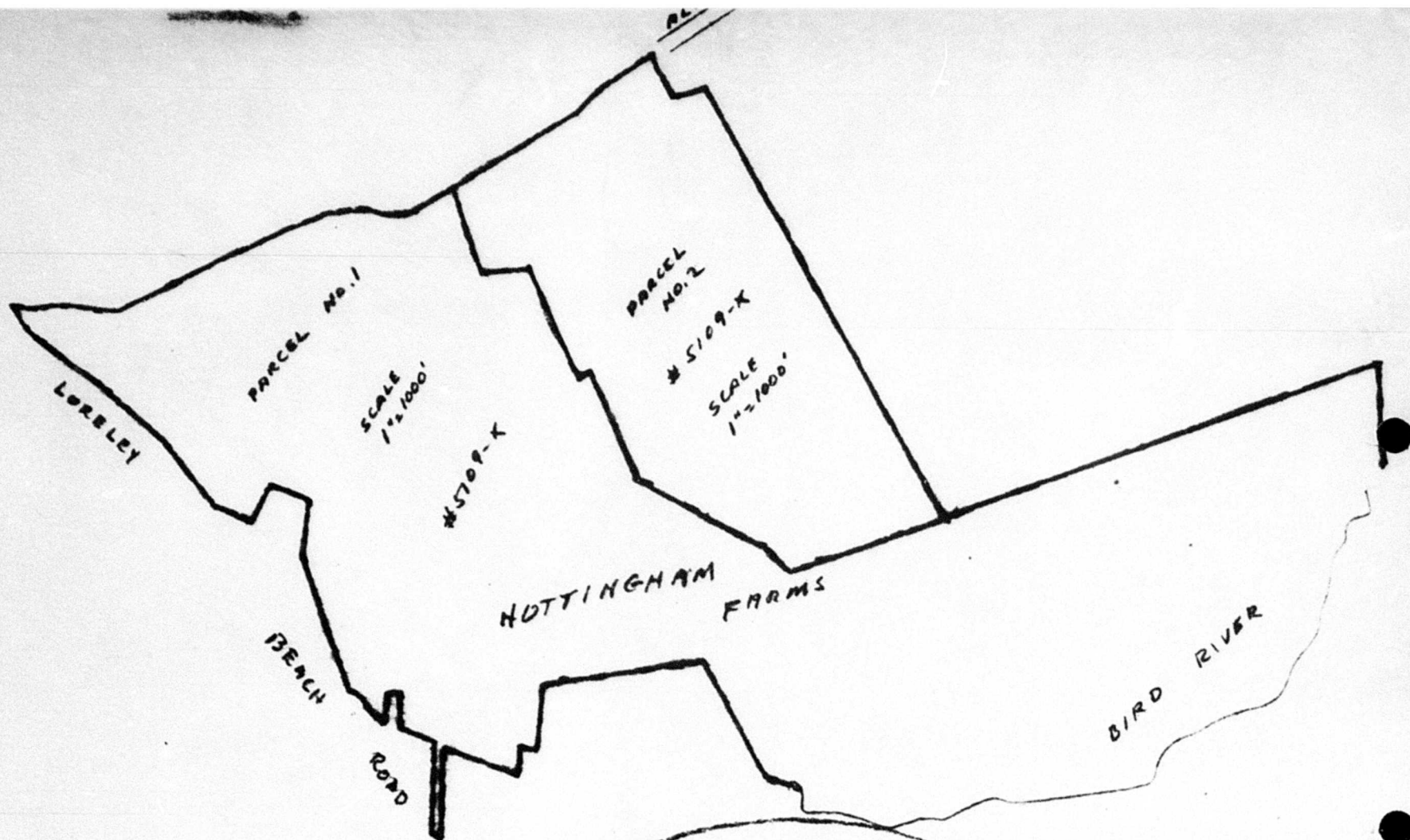
worthy of note that vehicles used in the operation travel a scant one-quarter of a mile before reaching Pulaski Highway, one of this area's major arterial highways. In our opinion, this brief one-quarter of a mile, through undeveloped land until a major highway is reached, represents one of the safest operations available. Certainly, there are few, if any, locations in our County where such distance is traversed from the excavation area to a major road network. It is also important to recall that an expert produced by the protestants testified as to the dozens of entrances to Pulaski Highway within one mile of the Allender Road entrance. Certainly, a vehicle entering Pulaski Highway from Allender Road is no different than any vehicle entering Pulaski Highway from any of the numerous intersecting streets, driveways, parking lot entrances, etc., within one mile of Allender Road.

In our opinion, the area's residents' opposition to the request for Special Exception was unavailing by Mr. Brown while under interrogation by the Board. Mr. Brown let it be known that as an area resident, he does not desire to see the property used for commercial, industrial or residential purposes. He did state somewhat reluctantly that he would like to see it turned into a park, but, in response to a direct question from the Board, his true sentiments were expressed, to wit, "I'd like to see this property stay just as it is..." Nothing more need be said about the propriety or fairness of such an attitude.

In conclusion, we ask you to remember that when procuring materials necessary for road building and construction, such as sand and gravel, it is not possible to select the procurement site. The operator must, by virtue of geological facts, perform his operations where the material exists. Since it has been demonstrated that the Special Exception would not be in contravention of the dictates of Section 302.1 of the Zoning Regulations, we respectfully request that the Board grant the same.

Very truly yours,
W. Lee Thomas
Attorney for
Nottingham Farms, Inc.

MLT:JK



#5709-X

MAP

#11-C

"X"



