

William T. Biermann, et al
SE/S of Southwestern Blvd. 386.32' NE of Knecht Ave.
SH to eliminate a Special Exception in part

October 9, 1963	Denied by Deputy Zoning Commissioner
" 16	Appealed to Board of Appeals
August 18, 1964	Hearing before Board (also case No. 64-96-SPH)
October 29,	Order of Board covering both cases:

"ORDERED that the special exception presently in existence on the subject property be modified to eliminate from the said special exception the area described by metes and bounds in the attached document headed "DESCRIPTION OF AREA FOR WHICH MODIFICATION OF SPECIAL EXCEPTION APPLICABLE" and as shown on the plat attached hereto."

December 1	Appealed to Circuit Court (PAPERS NOT FILED)
January 13, 1965	Motion to Dismiss Appeal granted by Judge Raine

GRANTED

3. We further do not find, upon the evidence, that it will be a detriment to the public safety or the general welfare of the government if property involved which property is an what essential to an industrial backbone and leads up against a railroad line.
4. Nor do we find that the provisions have presented any evidence to support the possible failure of any of the conditions set forth by Section 302.1 for the modification of the existing special regulations which allows a higher use under the zoning regulations and which use, under ordinary conditions, could not even be the subject of a protest.

It is, therefore, determined by the Board that the existing special exception should be modified as stated above, and it is further found that such modification permits the requested use of the property described in the attached documents without further authorization by this Board or the Zoning Commissioner but, of course, subject to all rules and regulations of the Baltimore County Building Code and all other appropriate restrictions as to fire, traffic and safety.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 29th day of October, 1964 by the County Board of Appeals, **ORDERED** that the special exception presently in existence on the subject property be modified to eliminate from the said special exception the area described by notes and branch in the attached document headed "DESCRIPTION OF AREA FOR WHICH MODIFICATION OF SPECIAL EXCEPTION APPLICABLE" and as shown on the plat attached hereto.

Any appeal from this decision must be in accordance with Chapter 110B, section 5 of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin
William S. Baldwin, Acting Chairman

W. Oliver Parker
Oliver Parker

NOTE: Mr. Justice did not sit at this hearing.

RE: PETITION FOR SPECIAL HEARING
50 1/2 Southwestern Boulevard,
285-32nd N. of Kanesha Avenue,
12th District
William T. Starnes, et al,
Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY

No. 63-88-SPH
No. 64-96-SPH

OPINION

The history of this case might be classified as a minor case of own. The property involved is classified as Manufacturing Light (4-1). This classification has been in effect for many years and the particular property involved has had the benefit of a special exemption for a gasoline service station since November 14, 1949, and a portion of the property is and has been, since that date, used for this purpose.

The owner of the property applied for a building permit to use the portion of the property owned by the gasoline station operator for the storage of fuel oil above ground and the operation of a fuel oil delivery business. This building permit was denied by the Department of Permits and Licenses on the advice of the Department of Planning and Zoning. An appeal was taken from such denial to the Board of Appeals which had a hearing on November 21, 1960, and on January 6, 1964 affirmed "the denial of the building permit saying: "The Board is of the opinion that the special exemption granted for the active use precludes its use for any purpose other than that for which the special exemption was requested and granted." This decision is in line with precedents established in previous decisions of the Board on the second Board appeal.

Pending the decision in the above case the owner of the property filed with the Zoning Commission an application for hearing dated July 27, 1965. In a letter the property owner stated that "On November, 14, 1960 a special exception for use of the below described property as a gasoline service station was granted by the Zoning Authority of Baltimore County. I, as owner, hereby demand the greatest special exception as to such real property described below. I do not abandon the special exception as to any other real property, parcel of land or part thereof covered by the mentioned special exception and not described below", and appended a description of this land he proposed to use for the fuel oil storage.

Upon this application a hearing was held by Mr. Edward D. Hardesty, Deputy Zoning Commissioner, and on the 9th of October, 1963 he ordered that the petition should be denied stating in his reasons therefore, "It is the opinion of the Deputy Zoning Commissioner that the proposed bulk storage facilities would create an imminent fire hazard in the

immediate neighborhood and that the existing street is totally inadequate to handle additional truck traffic. This, despite the fact that the Planning staff of the Department of Planning and Zoning in a memo from Mr. George E. Gosselin, Deputy Director, issued an informal comment on the last one, and despite the fact that the Baltimore County Fire Bureau by memo from Paul H. Scholze, Captain, had stated that there was no objection to the use assuming that the cover operated within the "stringent regulations" required by the Fire Code.

An appeal was taken from Mr. Hester's decision by the Board on October 14, 1965. Before this appeal could be heard the property owner filed another petition on February 7, 1966 with the Zoning Commission for a special hearing which requested that all of the property be an "A-1" zone; that only a portion of the property was being used for the gas station special exception; and that the proposed utilization of the remainder of the property was an allowed use under Section 202.4 of the Baltimore County Zoning Regulations and that such use should be allowed without a special exception under the laws zoning.

A hearing was conducted on this petition by Mr. John G. Rao, Zoning Commissioner, and on April 14, 1964 an order was passed by him that "the petitioner's request to use a portion of such property for a small residence and for above ground storage of fuel oil and mechanical equipment, is hereby granted", from his opinion, for the reason that such use is permitted use under Section 232-A and only part of the total parcel involved was actually to be used for the gasoline station allowed by the special exception.

Protestants entered an appeal from this decision on May 12, 1964 and this Board combined the two present appeals for a hearing on August 10, 1964 at which time testimony was heard from a majority and others resulting in the present decision.

The petitioners have filed a Memorandum of Law in which the petitioners' counsel makes three contentions:

1. That the rights conferred by a special exception may be abandoned voluntarily, either in part or in whole
2. That the granting of a special exception does not alter, modify or supersede the basic zoning of the land, nor does it restrict usage of such land as permitted under the basic zoning classification.
3. The use here contemplated by petitioners does not violate any of the requirements of Section 202.1 of the zoning regulations and should be allowed as a modification of the alleged existing special exception.

It is to be noted that none of the cases cited involve an application or petition, specifically, in so many words, asking for a modification although the last petition could possibly be construed to be broad enough to include such a request.

Counsel for the protestants objected to the hearing before Commissioner Ruse and also wrote a letter to the Zoning Commissioner objecting to the last appeal being

CONSOLIDATED CASES NUMBERS
63-80-SPH and 64-96-SPH
William T. Biermann, et ux.
Petitioners

DESCRIPTION OF AREA FOR WHICH MODIFICATION
OF SPECIAL EXCEPTION APPLICABLE

[illegible]

PROCTOR, ROYSTON & MUELLEN
ATTORNEYS AT LAW
CAMPELL BUILDING
TOWNS IN MARYLAND 21204

October 5, 1964

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

Attention: Messrs. Baldwin and Parker
Gentlemen:

I am enclosing two property descriptions in re the Biernmann matter on Southwestern Blvd. In accordance with my conversation with Mr. Parker, the first description covers that area now used and which will continue to be used as a gasoline service station; the second description covers the remaining of the Biernmann tract and is the area for which the modification is requested.

Thank you for your cooperation.

Very truly yours,

 W. Lee Thomas

WLT:jek
enc.

received while the first appeal was still pending. The Board would be inclined to say that these objections were well founded, however, the Board determined to hear both at the same time without objection from counsel at the time of the hearing.

[illegible]

As to the third point raised by the petitioner, it is to the latter's credit that we have the jurisdiction to exclude under the passing regulations the matter relating to whether spatial conception can only be ascribed to animals or vegetals, but to be changed somewhat in content portion or parts of land into matter. We find, as a fact, that the portion of the land for which the modification is to be granted is not needed for the satisfactory operation of the gasolin station which can operate by present operation in the portion of the total area it presently occupies without violating any existing regulations or rules and we, therefore, modify the previous spatial conception to the extent of reserving therefor the area shown on the plan filed in this case and also shown on a map and layout description, both of which documents are attached herewith. Together with a map and layout description of the portion which still remains under the spatial conception) and are to be taken as a part of this opinion and order. This disclaimer is based upon the following findings of facts:

1. From the evidence we find that the requested modification does not constitute any fire hazard greater than normal for such use and in fact, if normal precautions are observed and it conforms with the regulations of the Fire Bureau (which we must presume will be enforced by that department) it would be about as fire hazard whatever.
2. We further find from the testimony that no objection would be created by the requested modification in the adjoining cases.

CONSOLIDATED CASES NUMBERS
63-80-SPH and 64-96-SPH
William T. Biermann, et ux.
Petitioners

DESCRIPTION OF AREA TO REMAIN SUBJECT TO
SPECIAL EXCEPTION FOR GASOLINE SERVICE STATION

[illegible]

KEVIN C. PROCTOR
CARROLL W. KENTON
W. LEE THOMAS
KIMBERLY L. KIRBY, JR.
W. THOMAS MURPHY
KIMBERLY A. KIRBY
CARROLL W. KENTON
E. HARRISON STONE

PROCTOR, ROYSTON & MUELLER
ATTORNEYS AT LAW
COLUMBIA BUILDING
TOWSON 4, MARYLAND

October 14, 1963



Mr. John G. Rose, Zoning Commissioner
Baltimore County Office of Planning and Zoning
111 W. Chesapeake Avenue
Towson 4, Maryland

Re: Petition for a Special Hearing
to eliminate a Special Exception
in part - 386.32' NE of Knecht Avenue-
13th District- William Biermann-
Petitioner Case No. 63-80-SPH

Dear Mr. Rose:

Please enter an Appeal to the Board of Appeals for
Baltimore County from the decision of Edward D. Pardesty,
Deputy Zoning Commissioner, delivered on October 9, 1963,
in the above entitled special hearing.

A check in the amount of \$35.00 is enclosed herewith.

Very truly yours,

W. Lee Thomas

WLT:jek
enc.

RECEIVED
DEPUTY ZONING COMMISSIONER
OF
BALTIMORE COUNTY
Case No. 63-80-SPH

Subject property is now used as a gasoline service station.
The petitioner requested a Special Hearing with a purpose of eliminating that
part of the Special Exception applicable to the rear portion of the lot.

The petitioner testified that he wanted to use the rear
portion of the lot for installation of bulk storage area. This project would
include five separate 10,000 gallon storage tanks with plans for the future
installation of two additional 10,000 gallon storage tanks. The tanks would
be eleven feet in diameter but the testimony was that to the height of
the proposed tanks. The tanks would be filled with fuel oil. The proposed
project in effect would be a distribution center for transit of fuel oil to
project in effect would be a distribution center for transit of fuel oil to
residential and commercial outlets in the surrounding area. The petitioner
stated it might be necessary to replace the storage tanks twice a week which
means that there would be probably 200,000 gallons of fuel oil disbursed
each week from the center.

Various residents in the area testified in opposition to
the proposed project. They were mainly concerned about the creation of a
fire hazard. They were also concerned about the adequacy of the surrounding
streets to handle heavy truck traffic. There are numerous homes in the
immediate area.

It is the opinion of the Deputy Zoning Commissioner that the
proposed bulk storage facilities would create an imminent fire hazard in
the immediate neighborhood and that the existing streets are totally
inadequate to handle additional truck traffic. For these reasons the
petition to eliminate the Special Exception in part on the rear portion
of subject tract must be DENIED.

It is ORDERED by the Deputy Zoning Commissioner this 9
day of October, 1963, that the above petition should be and the same is
herewith DENIED.

Edward D. Pardesty
Deputy Zoning Commissioner

PETITION FOR A SPECIAL HEARING

In the Matter of :
Petition of :
ZONING COMMISSIONER
OF BALTIMORE COUNTY

For a Special Hearing
To the Zoning Commissioner of Baltimore County

William T. Biermann
Petitioner

herely petition for a Special Hearing, under the Zoning Law and
Regulations of Baltimore County, to determine whether or not the
Zoning Commissioner of Baltimore County should approve an application
to eliminate special exception
in part

Location of property: 4305 Southwestern Blvd.
S.E. side of Southwestern Blvd. 386.32 Feet
N.E. of Knecht Ave.

See Attached Description



William T. Biermann
Petitioner

William T. Biermann
Petitioner
505 Loring Road
Address: Towson 4, Maryland

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. George D. Rose, Zoning Commissioner Date: September 13, 1963

FROM: Mr. George E. Jayrala, Deputy Director

SUBJECT: 603-80 SPH. Special Hearing to eliminate a Special Exception
in part. South east side of Southwestern Boulevard 386.32
feet Northeast of Knecht Avenue. Being property of William
Biermann.

13th District

HEARING: Thursday, September 26, 1963 (11:00 A.M.)

The Planning staff will offer no adverse comment with respect
to the subject petition.

CE:mas

INTER-OFFICE CORRESPONDENCE
DEPARTMENT OF PUBLIC SAFETY
Baltimore County, Maryland
FIRE BUREAU
Towson 4, Maryland

Date: August 12, 1963

TO: Mr. James Uyer
FROM: Capt. Paul H. Reinko
SUBJECT: Proposed Zoning presented 8/16/63

Mr. James A. Lisowski petitioned for a special exception for offices and
variances to Sect. 609.2(b)(4); 217.2; and 217.3. A recent inspection of the premises
located at 1145 1/2 of Hartford Road and 32nd Avenue in the 14th District was made
by Inspector Edward J. Reinko. No recommendations of any consequence were necessary,
therefore our bureau endorses Mr. Lisowski's petition.

Mr. William Biermann operates a Mobil Oil service station on the SE 1/4 of
Southwestern Boulevard, 386.32' NE of Knecht Ave. in District 13. He requests a special
hearing to eliminate special exception in part to allow for the installation of a
bulk fuel storage aboveground.

The fire prevention bureau notified Mr. Biermann, stringent regulations are
required under the code we are empowered to enforce, during his visit at our
headquarters. After this discussion we notified the zoning department our interest
had been satisfied and written comments will follow.

Our plans review section shall have an opportunity to evaluate this proposed
bulk plant if and when this exception is granted.

Respectfully yours,

Paul H. Reinko
Paul H. Reinko, Captain
Baltimore County Fire Bureau

CHARLES D. GRACE
PROFESSIONAL ENGINEER & LAND SURVEYOR
181 ALLEGANY AVENUE
TOWSON 4, MARYLAND
VALLEY #8000

-2-

CONTAINING 0.40 Acres of land more or less.

BEING part of that tract of land which by deed dated October 4, 1949 and
recorded among the Land Records of Baltimore County in Liber T.B.S. #1794
folio 169 etc. was conveyed by Nathan R. Johnson et al to Wm. T. Biermann et al.

Charles D. Grace

Notarized by the Notary Public of Baltimore County, this _____ day of _____, 1963, that the subject matter of the foregoing advertisement, as
submitted by the filing party to the Baltimore County, in two consecutive general elections through-
out Baltimore County, that property be posted, and that the public hearing be held before the Zoning
Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore
County, on the _____ day of _____, 1963, at _____ o'clock
P.M. 2:00 September 3 11:00
Aa
Zoning Commissioner of Baltimore County.

CHARLES D. GRACE
PROFESSIONAL ENGINEER & LAND SURVEYOR
181 ALLEGANY AVENUE
TOWSON 4, MARYLAND
VALLEY #8000

BEGINNING for the same at a point in the first or South 61 degrees 47
minutes 20 seconds East 162.32 foot line of that tract of land which by deed dated
October 4, 1949 and recorded among the Land Records of Baltimore County in
Liber T.B.S. #1794 folio 169 etc. was conveyed by Nathan R. Johnson et al to
Wm. T. Biermann et al said point being distant 85.25 feet South 61 degrees 47
minutes 20 seconds East from the beginning of said conveyance the beginning of said
conveyance being on the Southeast side of the new right of way of Wilkens Avenue
extended (now known as Southwestern Boulevard) and distant 386.32 feet measured
Northeasterly along the said Southeast side of said right of way from the Northeast
side of Knecht Avenue said point of beginning being also at the intersections of the
prolongation Southwesterly of the face of the rear wall of an existing Esso Service
Station building erected on the remaining portion of said conveyance of which
this conveyance is a part and said first line, thence running with and binding on part
of said first line and on the second and part of the third lines of said conveyance
the three following courses and distances South 61 degrees 47 minutes 20 seconds
East 77.07 feet, North 33 degrees 31 minutes 40 seconds East 200.77 feet and North
61 degrees 47 minutes 20 seconds West 96.52 feet to the intersection formed by
the prolongation Northeasterly of the said face of the rear wall of said building and
said third line, thence for a line of division and binding reversely on said prolongation
Northeasterly and on or near the said face of said wall and on said prolongation
Southwesterly South 27 degrees 57 minutes 40 seconds West 200.15 feet to the
place of beginning.

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

No. 19958
DATE 10/10/63

TO: Messrs. Secretary, Register & Notary,
Circuit Court Building
Towson 1, Md.

BILLED BY: Office of Planning & Zoning
320 County Office Bldg.
Towson 4, Md.

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT COST
1	Appeal fee - Matter of Special Hearing - Mr. T. Bierman No. 63-80-078 PMD - Baltimore County, Md. - Office of Finance	\$35.00
1	10-2563 2458 * * * TIL -	\$500

IMPORTANT! MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

No. 20127
DATE 9/20/63

TO: Mr. William Bierman
508 Surrey Rd.
Timonium, Md.

BILLED BY: Zoning Department of
Baltimore County

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT COST
1	Advertising and posting of your property PMD - Baltimore County, Md. - Office of Finance	\$6.50
1	9-2063 4017 * * * TIL -	\$250

IMPORTANT! MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

No. 19228
DATE 7/29/63

TO: Cash

BILLED BY: Zoning Department of
Baltimore County

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT COST
1	Petition for Special Hearing for Mr. T. Bierman PMD - Baltimore County, Md. - Office of Finance	\$25.00
1	1-4262 1800 * 19228 * TIL -	\$500

IMPORTANT! MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Mr. Charles B. Winkler,
Baltimore Register

FROM: John G. Rose

SUBJECT: Re Application of Applicant Petroleum Products

Re # 63-80

The Maryland Petroleum Products requested a building permit for a warehouse and office on the northeast side of Southwestern Boulevard 344' north South Street, also permit for the lights and loading platform.

On October 9, 1963 the Zoning Commission denied a request to allow a portion of a special exception for a gasoline service station located on the subject's property. Therefore, all the subject's property is still a part of a special exception for a gasoline service station and no other use may exist on the property at the present time.

For the above reason the building permit was disapproved by Andrew A. Raphael, Jr., Zoning Hearing Examiner.

Copy of Petition No. 63-80-078 enclosed

PETITION FOR A SPECIAL HEARING
18th District

CONCERNING: Petition for a Special Hearing to Reconsider a Special Exception in part.

LOCATION: Southeast side of Southwestern Boulevard 380.32 feet Northeast of Kitch Avenue.

DATE & TIME: THURSDAY, SEPTEMBER 26, 1963 at 11:00 A.M.

PUBLIC HEARING: Room 109, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Concerning all that parcel of land in the Thirteenth District of Baltimore County, BEGINNING for the same as a point in the first or South 61 degrees 47 minutes 20 seconds East 162.32 feet line of that tract of land which by deed dated October 4, 1949 and recorded among the Land Records of Baltimore County in Liber T.B.S. #1794 folio 169 etc. was conveyed by Nathan R. Johnson et al to Wm. T. Bierman et al said point being distant 85.25 feet South 61 degrees 47 minutes 20 seconds East from the beginning of said conveyance the beginning of said conveyance being on the Southeast side of the new right of way of Wilkens Avenue extended (now known as Southwestern Boulevard) and distant 380.32 feet measured Northwesterly along the said Southeast side of said right of way from the Northeast side of Kitch Avenue said point of beginning being also at the intersection of the prolongation Southwesterly of the face of the rear wall of an existing Line Service Station building erected on the remaining portion of said conveyance of 1/4 acre, said conveyance is a parcel, said first line thence running with and binding on part of said first line and on the second and part of the third lines of said conveyance the three following courses and distances South 61 degrees 47 minutes 20 seconds East 7.00 feet, North 33 degrees 11 minutes 40 seconds East 200.77 feet and North 61 degrees 47 minutes 20 seconds West 96.32 feet to the intersection formed by the prolongation Northwesterly of the said face of the rear wall of said building and said third line, thence for a line of division and binding reverently on said prolongation Northwesterly and on or near the said face of said wall and on said prolongation Southwesterly South 27 degrees 27 minutes 40 seconds West 200.15 feet to the place of beginning.

CONTAINING: 0.40 Acres of land more or less.

BEING: part of that tract of land which by deed dated October 4, 1949 and recorded among the Land Records of Baltimore County in Liber T.B.S. #1794 folio 169 etc. was conveyed by Nathan R. Johnson et al to Wm. T. Bierman et al.

Being the property of William T. Bierman and Florence C. Bierman, as shown on plat plan filed with the Zoning Department.

BY ORDER OF
JOHN G. ROSE
ZONING COMMISSIONER OF BALTIMORE COUNTY.
Sept. 6, 1963.

OFFICE OF THE BALTIMORE COUNTIAN

THE COMMUNITY NEWS
Ridgely, Md.

THE COMMUNITY PRESS
Dundalk, Md.

THE HERALD - ARGUS
Catonsville, Md.

No. 1 Newburg Avenue CATONSVILLE, MD.

Sept. 9, 1963.

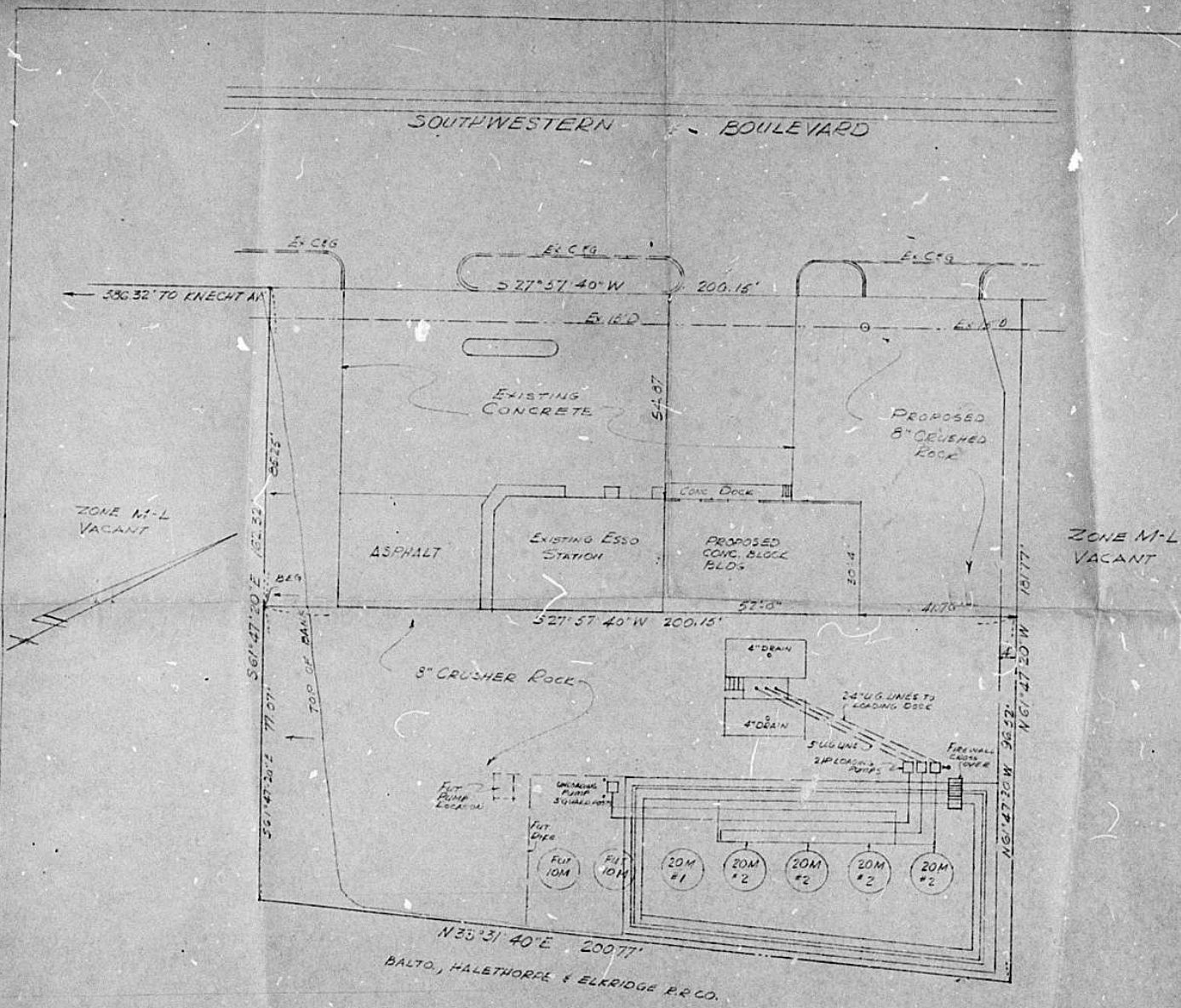
THIS IS TO CERTIFY, that the annexed advertisement of John G. Rose, Zoning Commissioner of Baltimore County

was inserted in THE BALTIMORE COUNTIAN, a group of three weekly newspapers published in Baltimore County, Maryland, once a week for One Week, ~~between~~ before the 9th day of September, 1963, that is to say the same was inserted in the issues of

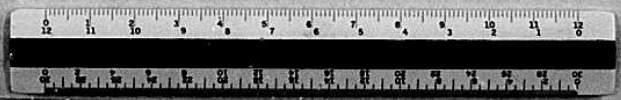
September 6, 1963.

THE BALTIMORE COUNTIAN

By Paul J. Morgan
Editor and Manager



13TH ELECTION DISTRICT, BALTO. CO, MD
 0.40 ACRES
 PRESENT USE: SERVICE STATION
 PROPOSED USE: BULK STATION
 PRESENT ZONING - M-L
 Scale 1"=20'
 July 26, 1963



Charles D. Grace

CHARLES D. GRACE
 ENGINEER & SURVEYOR
 121 Allegheny Ave.
 TOWSON, MD.