

TELEPHONE 823-3000	BALTIMORE COUNTY, MARYLAND		NO. 21627
	OFFICE OF FINANCE		DATE 2/27/04
	Division of Collection and Receipts		
	COURT HOUSE		
	TOWSON 4, MARYLAND		
To: Mr. Wm. T. Blarum 508 Quarry Road Timonium, Md.	BILLED BY	Zoning Department of Baltimore County	
01/22	DEPOSIT TO ACCOUNT NO.		
QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE		845-00
Petition for Special Hearing			COST
			25.00
PAID - Baltimore County, Md. - Office of Finance			
2-C804 6 9 8 • 21627 • TIP-		25.00	
2-L804 0 0 0 • 21627 • TIP-		25.00	
3 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.			

RE: PETITION FOR SPECIAL HEARING :
J. E. Side Southwestern Rebe-
yard 386.32' N. of Knecht Ave., :
11th District - Wm. T. Biermann :
and Florence C. Biermann :
Petitioners - No. 64-96-SPH :

BEFORE :
ZONING COMMISSIONER :
OF :
BALTIMORE COUNTY :
No. 64-96-SPH :

Mr. and Mrs. William T. Biermann, owners of the lot of ground located on the southeast side of Southeastern Boulevard, approximately 386.32 feet, more or less, north-east of Knecht Avenue, in the 11th District of Baltimore County, have petitioned for permission to use a portion of such property for erection of a small warehouse and for above ground storage of fuel oil and incidental appurtenances thereto. The property is presently improved in part with a gasoline filling station located approximately on the front half thereof.

The property is now and has been for many years used as a Manufacturing-Light. The front half thereof has been a Special exception for a gasoline filling station since 1949.

The petitioners presented evidence showing manner and method of ingress and egress, the type and quantity of construction proposed, and the safety features incorporated therein. They also presented evidence concerning the activity proposed for such site, no part of which appears harmful or injurious to the surrounding area, the nearby residents, or nearby business establishments.

It was brought out by the Petitioners that they expect to continue the filling station use on the front portion of the property but desire in addition to use the rear one-half of the property for the purposes above mentioned. Such purposes are all permitted uses in a Manufacturing-Light zone, in accordance with Section 253.4 of the Baltimore County Zoning Regulations.

For the above reasons the action requested in a petition received by this Office on February 7, 1964 is confirmed.

It is this 14th day of April, 1964, by the Zoning Commissioner of Baltimore County, ORDERED that the petitioners request to use a portion of such property for a small warehouse and for above ground storage of fuel oil and incidental appurtenances, is hereby granted.

Zoning Commissioner of
Baltimore County

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

We, William T. Biermann and Florence C. Biermann, legal owners of the property situate in Baltimore County which is described in the description and outlined on the plat attached hereto and made a part hereof, hereby petition for a special hearing to confirm and allow Petitioners' use of a portion of such property as a small warehouse, above ground storage in accordance with Section 253.4 of the Baltimore County Zoning Regulations, and pertinent structures.

The Petitioners represent that all of such real property is in a Manufacturing-Light zoning classification; that on November 14, 1949, a Special Exception for a gasoline filling station was granted as to such real property, and that a portion of such real property is still so used for gasoline filling station use.

The Petitioners further represent that they intend to continue such filling station on a portion of the tract of such real property and to utilize the remainder of such real property for the above ground storage of fuel oil, as allowed by Section 253.4 of the Baltimore County Zoning Regulations, small warehouse use, and pertinent structures.

We agree to pay all of the expenses of the above special hearing, upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

William T. Biermann
Florence C. Biermann
Petitioners
W. Lee Thomas, Attorney for
Campbell Building
Towson 4, Maryland
508 Surrey Road
Timonium, Maryland
1038 Oakdale
12th

CHARLES D. GRACE
PROFESSIONAL ENGINEER & LAND SURVEYOR
141 ALLEGANY AVENUE
TOWSON, MD. 21204
VALLEY 8-8080

BEGINNING for the same at a point on the Southeast side right of way line of the new State Road, known as Wilkens Avenue extended (said place of beginning being situated Southeastwesterly forty-six and three one hundredths feet along the second line of the whole lot in a deed from Willie E. Myers, Trustee, to Mrs. H. O. Benson, dated October 24, 1930 and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 841, folio 180, and running thence from said place of beginning with said second line South sixty-one degrees forty-seven minutes twenty seconds East one hundred sixty-two and thirty-two one hundredths feet to an iron pipe, thence binding on the outline of said lot as now surveyed North thirty-three degrees thirty-one minutes forty seconds East two hundred and seventy-seven one hundredths feet to an iron pipe situated South thirty-three degrees thirty-one minutes forty seconds West forty-two and three one hundredths feet from a stone at the end of said line, thence leaving said outline and running and binding on the second line of the parcel described in a deed from George Benson to George J. Arnold, et al. as recorded in the Land Records of Baltimore County in Liber L.M.L.M. No. 543, folio 86, North sixty-one degrees forty-seven minutes twenty seconds West one hundred eighty-one and seventy-seven one hundredths feet to the Southeast side of the present State Road right of way, thence binding on said State Road, known as Wilkens Avenue extended, South twenty-seven degrees fifty-seven minutes forty seconds West two hundred and fifteen one hundredths feet to the place of beginning; subject to an assessment as established by deed from Raymond E. Crouse, et al. to the State Roads Commission of Maryland, recorded among the Land Records of Baltimore County in Liber T.B.S.

2/27/64

RE: PETITION FOR SPECIAL HEARING :
35/5 Southwestern Boulevard, :
386.32' N. of Knecht Avenue, :
11th District :
William T. Biermann, et al, :
Petitioners :

BEFORE :
COUNTY BOARD OF APPEALS :
OF :
BALTIMORE COUNTY :
No. 63-80-SPH :
No. 64-96-SPH :

OPINION

The history of this case might be classified as a minor comedy of errors. The property involved is classified as Manufacturing Light (M-L). This classification has been in effect for many years and the particular property involved has had the benefit of a special exception 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 unused by the gasoline station operation 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, 1963, and on January 6, 1964 affirmed the denial of the building permit saying: "The Board is of the opinion that the special exception granted for the entire tract precludes its use for any purpose other than that for which the special exception was requested and granted." This decision is in line with precedents established in previous decisions of the Board; the present Board concurs.

Pending the decision in the above case the owner of the property filed with the Zoning Commission an application for hearing dated July 29, 1963. In a letter the property owner stated that "On November 14, 1949 a special exception for all of the below described property as a gasoline service station was granted by the Zoning Authorities of Baltimore County. I, as owner, hereby abandon the granted 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 the land he proposed to use for the fuel oil storage.

Upon this application a hearing was held by Mr. Edward D. Handasy, Deputy Zoning Commissioner, and on the 9th of October, 1963 he ordered that the petition should be denied stating as 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 streets are 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. Gavrelli, Deputy Director, offered no adverse comment as to the land use, and despite the fact that the Baltimore County Fire Bureau memo from Paul H. Reincke, Captain, had stated that there was no objection to the use assuming that the owner operated within the "stringent regulations" required by the Fire Code.

An appeal was taken from Mr. Handasy's decision to the Board on October 14, 1963. Before this appeal could be heard the property owner filed another petition on February 7, 1964 with the Zoning Commission for a special hearing which represented that all of the property was in an "M-L" 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 253.4 of the Baltimore County Zoning Regulations and that such use should be allowed without a special exception under the basic zoning.

A hearing was conducted on this petition by Mr. John G. Rose, Zoning Commissioner, and on April 16, 1964 an order was passed by him that "the petitioner's request to use a portion of such property for a small warehouse and for above ground storage of fuel oil and incidental appurtenances, is hereby granted", from his opinion, for the reason that such was a permitted use under Section 253.4 and only part of the total parcel of land was actually in use for the gasoline station allowed by the special exception.

Protestants entered on appeal from this decision on May 13, 1964 and this Board combined the two present appeals for a hearing on August 18, 1964 at which time testimony was heard from experts 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 502.1 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 Rose and also wrote a letter to the Zoning Commissioner objecting to the last appeal being

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.

The Board must disagree with the petitioner on his first two contentions in view of previous rulings of the Board in other cases. We have consistently held that while a special exception may be abandoned voluntarily, or even in fact abandoned by non use, this can only be done as to the whole tract for which the special exception was granted and not for part of the same. This Board has also ruled in previous cases that the granting of a special exception not only may, but does restrict the usage of land to the particular use granted for the special exception which would bar other uses even though such were completely allowable under the use regulations for the basic zoning. There is no doubt that in the instant case if there had been no special exception it would not have been necessary for the petitioner to make any application to the zoning authorities for the projected use, and there would have been no case before us. This we feel is a necessary result of the zoning regulations with respect to special exceptions because many special exceptions are granted with imposed conditions, restrictions, and regulations as set out in Section 502.2 of the zoning rules which might be, in some cases, avoided by the allowance of partial abandonment.

As to the third point raised by the petitioner, it is the Board's opinion that we do have the jurisdiction or authority under the zoning regulations to modify an existing special exception not only as to conditions or restrictions, but as to changes concerned with actual portions or parts of land tract so zoned. 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 gasoline station which can continue its present operation on the portion of the total area it presently occupies without violating any zoning restrictions or rules and we, therefore, modify the previous special exception to the extent of removing therefrom the area shown on the plat filed in this case and also shown on a map and boundary description, both of which documents are attached hereto (together with a map and boundary description of the portion which will remain under the special exception) and are to be taken as a part of this opinion and order. This decision is based upon the following findings of fact:

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 almost no fire hazard whatever.
2. We further find from the testimony that no congestion would be created by the requested modification in the adjoining roads.

No. 1478, folio 298, etc.

BEING part of all that lot or parcel of ground described in a Deed from Daniel Baer and Clara S. Baer, his wife, to the Grantors hereto, dated August 9, 1948 and recorded among the Land Records of Baltimore County in Liber T.B.S. No. 1793, folio 5.

This description is a copy of a deed on record in Baltimore County and not an actual survey.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 27th 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 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.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle B of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Acting Chairman
W. Giles Foster

Notes: Mr. Austin did not sit at this hearing.

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

BEGINNING for the same at the beginning of 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. No. 1794 folio 169 etc. was conveyed by Nathan R. Johnson et al to Wm. T. Biermann et al said point being at the beginning of said conveyance 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, thence running with and binding on the Southeast side of Wilkens Ave. extended North 27 degrees 57 minutes 40 seconds East 137.65 feet, more or less, to the Northernmost edge of the existing asphalt pavement thence leaving said line and running for lines of division the two following courses and distances South 61 degrees 47 minutes 20 seconds East 50 feet, and South 27 degrees 57 minutes 40 seconds West 31.50 feet to a prolongation Northwesterly of the face of the Northerly wall of the Service Station building erected on a portion of said conveyance of which this description is a part, thence for a line of division and binding reversely on said prolongation Southeasterly and on or near the said face of said wall South 61 degrees 47 minutes 20 seconds East 35 feet, more or less, to a point on the prolongation Northeasterly of the face of the rear (or easterly) wall of the same Service Station building, thence for a line of division and binding reversely on said prolongation Northeasterly and on or near the said face of said wall Southwesterly South 27 degrees 57 minutes 40 seconds West 106 feet to a point in the first or South 61 degrees 47 minutes 20 seconds East 162.32 foot line above mentioned, said point being at the intersection of such prolongation and the first line or South 61 degrees 47 minutes 20 seconds East 162.32 feet of the hereinbefore referred to deed from Johnson to Biermann, thence binding reversely on such first line North 61 degrees 47 minutes 20 seconds West 85.25 feet to the place of beginning.

99-ΣL#

PLANS APPROVED
OFFICE OF PLANNING & ZONING
BY: W. D. D. D.
DATE: 2/16/16

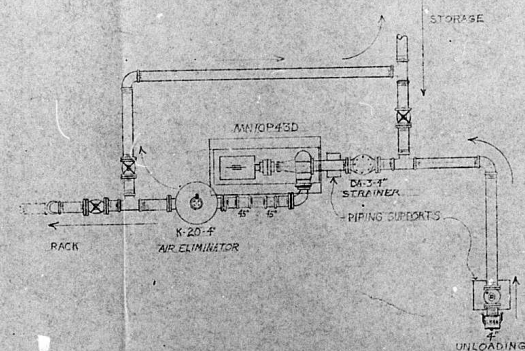
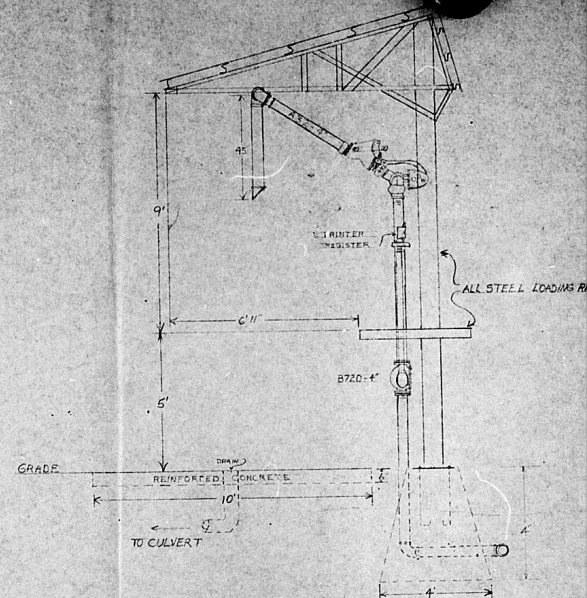
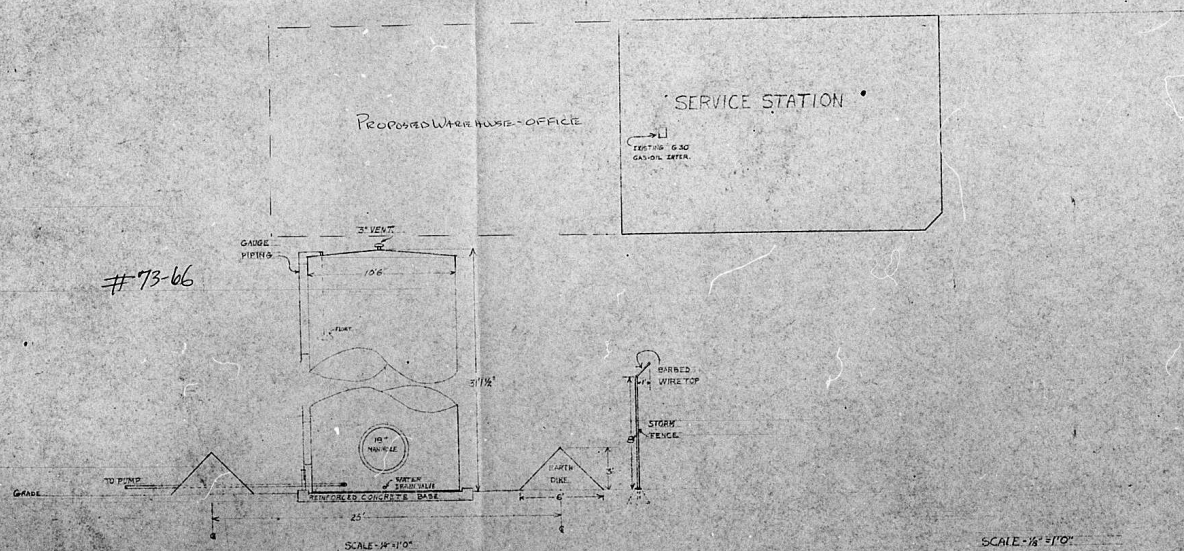
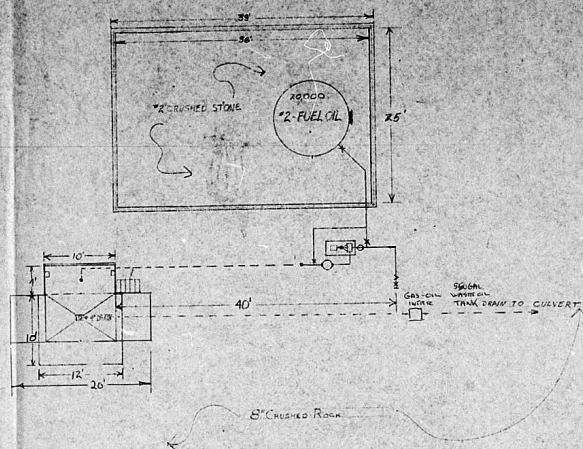
PLANS APPROVED
OFFICE OF PLANNING & ZONING
BY: *[Signature]* PLANNING
DATE: *[Signature]* 7/16/66
BY: *[Signature]* ZONING COMMISSIONER
DATE: *[Signature]* 7-16-1966

[illegible]

FOR BIDS	 PHILLIPS PETROLEUM CO BARTLESVILLE, OKLAHOMA		A/E NO.
FOR APPR.			SCALE 1/8" = 1'-0"
FOR CONST.	JOBBER BUILT BULK PLANT FILL PLANT SOUTHWESTERN BLVD NE KENNET AVE BALTIMORE CO, MD		UNLESS NOTED OTHERWISE
DESIGN			DWG. NO. MD9971-20
DRAWN			SH. 1-4
CHECKED			
APPROVED			

PLANS APPROVED
OFFICE OF PLANNING & ZONING
BY: Ad. Dugan
DATE: 2/16/66

PLANS APPROVED
OFFICE OF PLANNING & ZONING
BY [Signature] PLANNING
DATE 2/6/66
BY [Signature] ZONING COMMISSIONER
DATE Feb 6, 1966



SCALE - 1/2" = 1'0"

PUMPE TANK
CO., INC.
AUG. 8-2-65
BALTIMORE, MD.

MARYLAND PETROLEUM COMPANY
BULK PLANT
SOUTHWESTERN BLVD.
BALTIMORE, MD.