

10-13-70

ZONING DESCRIPTION

BEGINNING for the site at the intersection of Berryman's Lane and Nicodemus Road, said point of beginning being at the end of the 1st line of the land which by deed dated March 15, 1937 and recorded among the Land Records of Baltimore County in Liber CNE, Jr. 994, Folio 280, was conveyed by Sebastian Raffi and wife to Edward H. Burke, thence leaving the outline of the aforesaid deed and running in Nicodemus Road the two following courses and distances: (1) S67°42'E 315.45' and (2) S59°50'E 254.00' to the westernmost edge of Nicodemus Road and to intersect the 12th line in the aforesaid deed at the distance of 127.00' from the end of said 12th line, said point being also at the beginning of the 3rd or S56°21'E 935.00' line of the land which by deed dated May 8, 1964 and recorded among the Land Records of Baltimore County in Liber RRG 4303, Folio 376, was conveyed by The A. A. Dyer Company to Frank P. Dyer and Alexis A. Dyer, Jr., running thence and binding on the westernmost side of Nicodemus Road and on the 2nd line in the last mentioned deed, S56°21'E 935.00', thence leaving Nicodemus Road and binding on the 4th to the 11th lines inclusive of the last mentioned deed, the eight following courses and distances: (1) S30°19'W 660.00'; (2) S56°21'E 667.00'; (3) S50°19'W 660.00'; (4) S56°21'E 660.00'; (5) S53°01'W 603.00'; (6) S16°47'E 139.40'; (7) S87°28'W 224.71'; (8) N71°50'W 695.00' to the east edge of Berryman's Lane, thence leaving the outline of the aforesaid deed, Dyer to Dyer and running and binding on the east edge of Berryman's Lane, N12°15'E 50.00' to the end of the 4th or N70°33'W 407.70' line of the land which by deed dated July 10, 1959 and recorded among the Land Records of Baltimore County in Liber GLB 2227, Folio 187, was conveyed by The A. A. Dyer Company to Joseph D. McKean and wife, thence leaving Berryman's Lane and binding reversely on the 4th line of the last mentioned deed, S70°33'E 400.00', thence binding reversely on the 3rd line in the last mentioned deed and binding on the 1st line of the land which by deed dated October 3, 1955 and recorded among the Land Records of Baltimore County in Liber GLB 2790, Folio 273, was conveyed by The A. A. Dyer Company to Louis E. Lawrence and wife, N13°38'E 350.00' total distance in all of 350.00', thence binding on the

SURVEYED BY: JAMES E. TOPP, JR. LOCATION: CONTRACTORS SERVICE - BARRINGTON DESIGN AND LANDSCAPE, INC.
ROADS: CHESAPEAKE AVENUE, TOWSON, MARYLAND 21204. WATER: CONING PLATE DESCRIPTIONS AND TESTIMONY.

3rd line of the last mentioned deed and continuing the same course to the center of Berryman's Lane N70°33'W 415.00', running thence in Berryman's Lane the thirteen following courses and distances: (1) N12°15'E 120.30'; (2) N37°50'E 485.00'; (3) N13°34'W 135.00'; (4) N7°56'W 80.26'; (5) N20°09'W 104.14'; (6) N25°57'W 99.99'; (7) N27°50'W 97.32'; (8) N30°48'W 95.49'; (9) N37°49'W 702.00'; (10) N36°37'W 151.13'; (11) N21°35'W 146.60'; (12) N19°15'W 660.00'; (13) N24°07'30"E 1204.5' to the place of beginning, as shown on the accompanying plat.
CONTAINING 244.45 acres of land more or less.
BEING part of the land which by deed dated November 22, 1955 and recorded among the Land Records of Baltimore County in Liber GLB 2842, Folio 5, was conveyed by Elizabeth C. Burke to Frank P. Dyer and wife and being also part of the land which by deed dated May 8, 1964 and recorded among the Land Records of Baltimore County in Liber RRG 4303, Folio 376, was conveyed by The A. A. Dyer Company to Frank P. Dyer and Alexis A. Dyer, Jr.
SAVING and excepting from the above described property the land which lies east of the proposed relocation of Nicodemus Road, as shown on the plat accompanying this petition.
SAVING and excepting the land which by deed dated March 10th and 18, 1960 and recorded among the Land Records of Baltimore County in Liber WJR 3582, Folio 4.3, was conveyed by The A. A. Dyer Company to the Baltimore Gas and Electric Company.

A. J. Muller #1391

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ROADS: CHESAPEAKE AVENUE, TOWSON, MARYLAND 21204. WATER: CONING PLATE DESCRIPTIONS AND TESTIMONY.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner Date: June 10, 1965
FROM: George E. Gavett, Director
SUBJECT: Petition No. 65-378-RX, R-40 to M-H Zone, Special Exception for Controlled Excavation with use of explosives and the right to erect and operate buildings, machinery, and equipment, Southeast corner of Berryman's Lane and Nicodemus Road, Being the property of Frank P. Dyer, et al.

4th District

HEARING: Wednesday, June 23, 1965 (2:00 P.M.)

The planning staff of the Office of Planning and Zoning has reviewed the subject petition and offers the following comments:

- 1 - An earlier, similar petition (#4296) requested that a portion of the subject property be reclassified from R-40 to M-H. This petition was denied by the Zoning Commission level and denied initially by the County Board of Appeals. The Board decision was appealed to the Court and the case was remanded to the Board, which reversed its decision and granted rezoning with modifications. After submission to the County Council, however, the matter was tabled, and the entire property remains zoned R-40.

Subsequent to remanding the petition to the Board and pursuant to a request by the Board for clarification, the Circuit Court, on December 5, 1958, stated in a supplemental opinion that "The location of quarry is fixed by nature. They are, in a sense, unique and this aspect of the matter justifies unique treatment by the zoning authorities and by the Courts." It was on this basis, and to provide for a "black-top" plant, that the Board granted M-H zoning on a portion of this property. (The quarry operation itself is a non-conforming use, which, of course, is permitted to continue.)

The present petition requests M. H. zoning over a much larger area of land.

- 2 - There are essentially two ways of treating quarries under the Zoning Regulations. They can be permitted in residence zones by special exception or in industrial zones as of right, with the addition of a special exception when explosives are used. The special exception in the R-40 Zone allows quarry-related activities (the right to erect and operate buildings, machinery and equipment for a temporary period, consistent with other provisions of the Order of the Zoning Commission...); the M-H Zone, requested here, allows not only quarry-related activities as of right - with the exception of blasting by explosives - but the entire range of permitted industrial uses.

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October 8, 1968

County Board of Appeals
County Office Building
Towson, Maryland 21204

Attention: William S. Baldwin, Chairman

Re: Case No. 65-378-RX
Petition for Reclassification from R-40 to M-H and for Special Exception for Controlled Excavation

Dear Mr. Baldwin:

On behalf of the Petitioners herein, it is respectfully requested that the within Petition be amended so as to reduce the area requested to be reclassified from R-40 to M-H to 130.18 acres, more or less, and to reduce the area to be covered by the special exception for controlled excavation to 54.137 acres, more or less, as set forth more particularly on the enclosed plat, and the meter and bounds descriptions prepared by George William Stephens, Jr. & Associates on September 18, 1968.

In each instance, that is, the land embodied in the requested M-H and in the requested special exception, lies within, and is a lesser area than, the land covered by the original petition, and that granted by the Zoning Commission in his Order of July 22, 1965.

Respectfully,

Donald Schaub
Attorney for Petitioners

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**County Board of Appeals
COUNTY OFFICE BUILDING
111 CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204**

July 3, 1969

Richard C. Murray, Esq.
Loyola Building
Towson, Maryland 21204

Re: Frank P. Dyer, et al
File No. 65-378-RX

Dear Mr. Murray:

Enclosed herewith is a copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith T. Eisenhart, Secretary

Encl.
cc: James H. Cook, Esq.
G. Donald Schaub, Esq.
Robert L. Weinberg, Esq.
Michael I. Gordon, Esq.
Harold I. Glaser, Esq.
Mr. Solomon Rosen, Citizens Comm.
Lefay M. Spangler, Esq.
Mr. J. Warren Farrah
Mr. Thomas M. Delan
Mr. Sanford Katzen
Temple Cheb-Malen
Mr. William C. MacDonald
The Honorable Clarence D. Long
Harry B. Marcolis, Esq.
Mr. Schaefer L. Wiley
Mr. John G. Rose
Mr. George E. Gavett
Mr. Charles B. Wheeler
Mr. H. B. Stubb
Baltimore County Health Dept.
Board of Education

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**BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21204**

May 14, 1965

G. Donald Schaub, Esq.
501 St. Paul Place
Baltimore, Maryland 21202

Dear Sirs:

SUBJECT: Reclassification from an R-40 to an M-H zone, and a Special Exception for controlled excavation for Frank P. Dyer, et al

The Zoning Advisory Committee has reviewed the subject petition and makes the following comments:

BUREAU OF TRAFFIC ENGINEERING: This Bureau will review the proposed development plan and the surrounding traffic circulation and submit comments at a later date, if necessary.

STATE PLANS COMMISSION: This Commission will review and submit any necessary comments at a later date.

OFFICE OF PLANNING AND ZONING: No comment.

BUREAU OF ENGINEERING:

Utilities: Water and Sewer not available.
Roads: Nicodemus Road and Berryman's Lane to be developed on minimum 60' right of way. Cherry Hill Road to be developed on a minimum 70' right of way.

The above comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties are made aware of plans or problems that may have a bearing on this case. The Director and/or the Deputy Director of the Office of Planning and Zoning will submit recommendations on the appropriateness of the requested zoning 10 days before the Zoning Commission's hearing.

The following members had no comment to offer:

Board of Education
Fire Bureau
Health Department
Industrial Development Commission
Buildings Department

Yours very truly,

James H. Dyer, Esq.
Petition and Permit Processing

cc: Mr. Moore, Tr. Eng.
Mr. Dwyer, State Roads
Mr. Mulvey, Pl. & Zoning
Mr. Brown, Hrs. & Eng.

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John Rose, Zoning Commissioner Date: June 11, 1965
FROM: Mr. H. B. Staab, Zoning Advisory Hearing, Zoning Advisory Hearing, May 11, 1965 - Item 3
SUBJECT: Petition 65-378-RX, Dyer Quarry

After consultation with the offices of Planning and Zoning regarding the subject site and interpretation of Section 403, excavations, controlled, it appears that the existing use can continue as a special exception and does not require a change of zone.

The Industrial Development Commission recommends that this operation be granted a special exception and be permitted to continue operations as a controlled excavation as specified in Section 403.

H. B. STAAB, Director
Industrial Development Commission

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. George G. Hall, Industrial Development Commission Date: June 9, 1965
FROM: Donald W. Johnson
SUBJECT: Delight Quarry

Petition 65-378-RX requests M. H. zoning, previously to accommodate the Dyer (or "Delight") Quarry, at Berryman's Lane and Nicodemus Road. The petition also requests a special exception to use explosives. As noted the Zoning Regulations, however, all operations of the quarry can be accommodated by a special exception in the present R-40 Zone. (See 200.15, 200.70, and 402.)

Les Greif says we have not been contemplating establishment of Industrial Zoning in the quarry vicinity - particularly, of course, since the zoning does not seem to be required to permit expansion of quarrying activities.

Donald W. Johnson
Planner II
Office of Planning and Zoning

RECEIVED
JUN 11 1965
DEVELOPMENT COMMISSION

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RE: PETITION FOR RECLASSIFICATION
FROM R-40 ZONE TO M-1 ZONE
Special Exception for
Controlled Excavation,
S/E Corner Berryman Lane
and Nicodemus Road, 4th Dist.
FRANK P. DYER, et al
Petitioners
THE ARUNDEL CORPORATION
Lessee

BEFORE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY
No. 65-378-IX

This is a petition by Frank P. Dyer, Mary W. Dyer, Alexis A. Dyer and Mary J. Dyer, legal owners, and The Arundel Corporation, Lessee, for a reclassification from an R-40 zone to an M-1 zone, and a Special Exception for controlled excavation, with use of explosives, and the right to erect and operate buildings, machinery and equipment.

Frank P. Dyer, et al, requested a reclassification from R-40 zone to M-1 zone, and the matter was set for hearing on November 27, 1957.

Contradictory positions have been taken from that day to this.

On December 4, 1957 John D. Rose, Deputy Zoning Commissioner for Baltimore County, denied the petition on the basis that no changes had taken place since the adoption of the Comprehensive Zoning Plan as approved January 15, 1957.

On May 15, 1958 a two-man County Board of Appeals, consisting of Spiro T. Agnew and Nathan H. Kaufman, Jr., gave the following opinion and Order:

"The petitioner herein seeks to reclassify an R-40 Zone to an M-1 Zone (17.7 acres of his 300 acre tract located south of Nicodemus Road and east of Berryman Lane. The purpose of the requested reclassification is to allow the 17.7 acres, which is immediately adjacent to a quarry operated by the petitioner, to be used in conjunction with block-topping operations. The petitioner claims that he is unable to remain competitive in the quarry business unless his business can be reclassified by the addition of this heavy industrial use.

"Each testimony was proffered by the petitioner for the purpose of showing that the 'M-1' zoning was given to other quarry operators throughout the County, and that because such zoning was not afforded him, he was discriminated against. Such testimony was alleged to

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be for the purpose of showing an error in the original zoning.

"The Board is of the opinion that it has no jurisdiction to consider in this case the merit or lack of merit of the zoning of other quarry locations. We are concerned only with (1) whether there has been a substantial change in the neighborhood to justify the reclassification or (2) whether the original zoning at this particular location was in error.

"The petitioner's own witness testified that there has been no change in the residential character of the existing neighborhood and the Board finds no error in the original zoning. Consequently, upon motion of the petitioners and upon the petitioners' case alone, and without the necessity for hearing testimony from the petitioners present we deny this reclassification.

ORDER

"For the reasons set forth in the foregoing Opinion it is this 15th day of May, 1958, by the County Board of Appeals (ORDERS) that the aforesaid petition for reclassification from an 'R-40' Zone to an 'M-1' Zone, be and the same is hereby denied."

The matter was appealed to the Circuit Court for Baltimore County, and the following is a Memorandum Opinion of Judge John L. Ratne, Jr., dated November 6, 1958:

"This is a petition for a zoning reclassification of seventeen acres of the Petitioner's property at a location where the petitioner has a non-conforming use for the quarrying of stone. The petitioner seeks a reclassification from an R-40 zone to an M-1 industrial zone so that he can use the subject property for the production of 'black-top'. The petitioner proposes to have tar brought to the property and there mixed with stone from his quarry to produce the material used extensively in modern road construction. This is economically preferable to taking tar and stone to the site of road construction and mixing it on the scene. It is conceded that since this area was zoned R-40 there has been no change in the character of the neighborhood and reclassification can only be granted if the original zoning was erroneous.

"The petitioner sought to offer evidence that other quarries in the county had been zoned 'M-1' but the Board refused to consider evidence that was proffered regarding the zoning of other quarry locations. The Court feels that the Board's action was erroneous. If the petitioner could show that in other locations substantially similar to the petitioner's property the properties were placed in an 'M-1' category by the zoning authorities, that evidence would be relevant on the question as to the existence of error when the same zoning treated the petitioner's property differently. The County Board of Appeals should have allowed the petitioner to demonstrate that there was no basis for the different treatment of the different quarry locations. The Court will therefore Order that the case be remanded to the County Board of Appeals for further proceedings. As indicated to counsel, the Court would prefer to limit the scope of the further proceedings, but does not have the power to do so under Section 532 H of Title 30 of the Baltimore County Code (see Board of Zoning Appeals vs. Baltimore, 215 Md. 42, page 536 at page 540).

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"IT IS THEREFORE this 6th day of November, 1958 ORDERED that the above entitled case is hereby remanded to the County Board of Appeals for further proceedings."

This was followed by a Supplemental Opinion by Judge John L. Ratne, Jr. on December 5, 1958:

"Pursuant to the statutory provisions this Court, after hearing argument of counsel, remanded the case to the County Board of Appeals for further hearing, a Memorandum Opinion being filed at that time.

"The County Board of Appeals has informally requested clarification of the Opinion and the Order for Remand. The Court does not intend that its action in this case shall be interpreted in such a way as to permit applicants for reclassification in all cases to offer evidence comparing one location with another, and seeking to show that an area in one part of the county was reclassified in a given manner, and therefore all similar properties throughout the county should be classified or reclassified in the same manner.

"The Court's ruling in this case is specifically confined to the facts of this case, where we are dealing with property immediately adjacent to a stone quarry. A quarry area, unlike group housing areas, is not generally. The location of quarries is fixed by nature. They are, in a sense, unique and this aspect of the matter justifies unique treatment by the zoning authorities and by the Courts."

On June 11, 1959 the County Board of Appeals, sitting as a two-man Board consisting of Charles Steinbock, Jr. and Spiro T. Agnew, gave the following Opinion and Order:

"On May 15, 1958, based on the testimony then before it, the Board denied reclassification of the above property on the basis there was no error in the original zoning. Whether or not there had been a change in the neighborhood was not at issue. In deciding that there had been no error in the original zoning, the Board relied heavily on the testimony of Mr. Bruce A. Watts, an associate planner of Baltimore County, who stated that heavy manufacturing had never been contemplated for the subject property and the failure of the Office of Planning to provide for such use was not an oversight. We quote from Page 52 of the transcript of Mr. Watts' testimony on March 27, 1958:

"Q. (By Mr. Tabler)

"But in any event, the fact that on your present map, this is not indicated or was not recommended as a heavy industrial area, was in no way a mistake as far as the Planning Commission was concerned, was it?"

"A. The proposed map, as presented to the Planning Board, by the staff of the Office of Planning did not recommend that area to be zoned industrial."

"Mr. Watts went on to say on Page 59 of the transcript, that he had discussed this particular reclassification with Mr. Bill Just prior to the hearing and that (on Page 55) the property should not be zoned manufacturing heavy. We quote:

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"Q. What is the position of the Office of Planning now?"

"A. We feel that the Regulations, as set up, are not able to handle this case as it is being appealed, in that the use, the plan for the use is for the quarry operation, and just for the quarry operation alone, restricting against any other manufacturing use, once the area is zoned. If that is the case, then we feel that it should not be zoned heavy manufacturing, but only be zoned for the extension of the quarry operation as it has been existing.

"Mr. Watts was then informed that it was impossible to limit the heavy industrial zoning to the quarry use alone and, in response to the questioning by the Board, testified as follows:

"We feel any zoning at this particular location, heavy industrial, which is being asked for, should only be for the quarry use and not heavy industrial."

(By Mr. Agnew)

"Q. Knowing we can't do it, what is your position?"

"A. We would recommend it isn't zoned then. I am speaking for myself, as my interpretation of our understanding at that discussion.

"Subsequent to the Board's refusal of the reclassification the Petitioner appealed to the Circuit Court for Baltimore County. On November 6, 1958, the Court remanded the case to the Board for further proceedings on the question of error in the original zoning, directing the Board to receive certain evidence which the Board had previously refused to admit relating to similar operations by other principals at other locations.

"The matter was reopened by the Board on February 25, 1959 and additional testimony was taken on that date and on two days thereafter in March and April. On March 15, 1959, Mr. Malcolm D. Dill, Director of the Office of Planning, under examination by a Board member, reversed the position of the Office of Planning as previously given by Mr. Watts and stated that the failure to allow heavy manufacturing at the subject location was an error caused by the unfamiliarity of his office with the subject location at the time of the original hearing. An extract of his testimony on March 15 is as follows:

"Mr. Agnew: Mr. Dill, let me ask you a question. I am a little confused as to one thing, based on your present knowledge, which I believe you stated is more detailed than it was at the time Mr. Watts testified, and it was also more detailed when the map was adopted, would you at the time the map was adopted, or had you then had your present detailed information, would you have recommended some industrial zoning for the Dyer property?"

"A. I think that if we had known the relationship, known the specific use of the quarry, that it is as distinguished from the many quarries in the County that are simply rock ex-

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1 - Based on our opinion in the earlier case, we would have no objection to the granting of M-1 zoning on the portion of the property to be used for quarrying as shown on the petitioner's map. We do not feel that it would be proper to create industrial zoning where no actual quarry use is anticipated or indicated on the plan.

4 - From a planning viewpoint, industrial zoning here should be considered as no more than a recognition of an existing use, not an entering wedge for yet other changes in the zoning for areas west of the Northwest Expressway."

Special Exception:

"Section 403 - EXCAVATION, CONTROLLED

"Applications for Special Exceptions hereunder, accompanied by five sets of detailed plans showing proposed use of land under excavation and grading plans after excavation shall be directed to the Zoning Commissioner. Any Special Exception granted hereunder may include the right to erect and operate buildings, machinery, and equipment for a temporary period, consistent with other provisions of the order of the Zoning Commissioner, or the County Board of Appeals, on appeal. All pertinent requirements of the Baltimore County Health Department Regulations and the Baltimore County Building Code shall be incorporated by the Zoning Commissioner and the County Board of Appeals, on appeal, in issuing any application hereunder."

The above is permitted in the R-40, R-20, R-10, R-5, R-4, R-3, R-2, R-1, B-1, B-2, B-3, B-4, B-5, B-6, and M-1 zones.

In the M-1 zone no special exception is required, but the following is a permitted use:

Excavations, Controlled, exclusive of those embodying use of explosives (see Section 403 quoted above).

In the M-1 zone there is a permitted use as follows:

Excavation, Controlled, exclusive of those embodying use of explosives (see Section 403 quoted above).

In the M-1 zone, by virtue of a Special Exception, the following is permitted:

Excavations, Controlled, when explosives are used (see Section 403 quoted above).

The use of explosives is mandatory in the proposed operations.

Mr. Anthony J. Petro, Vice President, Abrasive Engineers, Incorporated, testified and submitted the following information:

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PURPOSE

The purpose of this study was to measure the vibration effects from the primary blast at the above named operation on July 6, 1965 and to determine the possible effect of these vibrations on structures at the instrument stations, in the vicinity of the stations, or beyond the stations.

THE BLAST

This blast consisted of 12 holes, 3 1/2 inches in diameter, drilled to an average depth of 39 feet. Average spacing and burden of the holes was 8 x 8 feet with an average of 8 feet of stemming material confining the charge in each hole. The total load of 2950 pounds of Dupont Powder Company's 800 Delta #1, and Feltitol explosives was detonated in 5 separate firing periods by means of Dupont Powder Company's MS Delay Caps #0 thru #4. Time of detonation was 3:22 P.M.

WEATHER CONDITIONS

1. Type of day - Fair
2. Wind direction - From the Northeast
3. Temperature - Approximately 80°F

SEISMOGRAPH STATIONS

For registration of the vibration effects from the subject blast three Vibrolog 3-component Portable Seismographs were employed.

Station #1: Seismograph #2722 was set on the wood floor in the front living room of the Hevett Steel Residence, Corner of Nicodemus and Cherry Hill Roads, Reisterstown, Maryland. The instrument was located approximately 2500 feet East Northeast of the blast.

Station #2: Seismograph #1430 was set on the mezzanine of Berrymans Lane in front of the C. W. Purcell Residence, Reisterstown, Maryland. The instrument was located approximately 3000 feet West Southwest of the blast.

Station #3: Seismograph #141 was set on the wood floor in the hall in the C. Turnbaugh Residence, Berrymans Lane, Reisterstown, Maryland. The instrument was located approximately 3000 feet Southwest of the blast.

THE SEISMOGRAPH RECORD

The Seismograph record represents a photographic enlargement of 50 times the actual motion of the surface on which the instrument is sitting at the recording location in the form of 3 lines. The top line (longitudinal) represents horizontal motion on a line joining the blast and the recording location; the bottom line (transverse) represents horizontal motion at right angles to this; and the middle line represents vertical motion. Deviations of these lines from their positions of rest amount to the exact motion of the ground magnified 50 times. Thus these waves can be directly measured in thousandths of an inch by use of an engineer's scale with 20 divisions to the inch. Vertical lines on the record indicate the passage of time

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connection with the Special Exception herein granted; and also, in and to any use of the M.H. zone which is allied in any way with the said Special Exception.

Zoning Commissioner of Baltimore County

in 1/50th of a second between each line. This record may be measured directly for displacements and frequencies. The slopes of the traces may also be measured to determine velocities in inches per second.

RESULTS

Recent studies by the United States Bureau of Mines and other Authorities in the field of blast vibrations and their effects on structures have resulted in a new criteria based on velocity in inches per second. Below is a table of standards based on a velocity criteria.

VELOCITY	PROBABLE DEGREE OF DAMAGE
Below 0.20 inches per second	Recommended safe vibration level.
Above 0.20 inches per second	Threshold - very minor perceptible damage; plaster cracks, dislodgment of loose objects, etc.
Above 0.5 inches per second	Minor - no apparent weakening of the structures glass, plaster, masonry damage.
Above 1.0 inches per second	Major - serious structural failure through cracking distortion or shifting.

The above table is based on the Maximum Velocity on any one component of an instrument measuring motion in three mutually perpendicular planes.

Tabulated below are the measurements resulting from this blast.

INSTRUMENT STATION	TYPE OF MOTION	COMPONENT	MAXIMUM VELOCITY (in/sec)
Steel Residence	Ground	Longitudinal	0.08
		Vertical	0.13
		Transverse	0.07
Front of Purcell Residence	Ground	Longitudinal	0.04
		Vertical	0.04
		Transverse	0.03
Turnbaugh Residence	Ground	Longitudinal	0.04
		Vertical	0.04
		Transverse	0.03
Air Borne		Longitudinal	0.02
		Vertical	0.03
		Transverse	0.03

Notes: The safety of the recorded vibration effects is further substantiated by the New Jersey and Massachusetts Quarry Blasting Codes.

When recording was made, in the Steel Residence near the seismograph, of the instrument operator rising on toes and dropping back on heels on the living room floor. Below is the result of this test as compared to the displacements caused by the blast in the Steel Residence.

Maximum Resultant Displacement from the blast ----- 0.0009"

Maximum Resultant Displacement from the Heel-Toe Test 0.011"

Displacements caused by the Heel-Toe Test in the Steel Residence were over twelve times as much as displacements caused by the blast in the same location.

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CONCLUSIONS

According to all recognized damage indices, the recorded vibration effects from the subject blast were well below that necessary to cause structural damage to even old pre-stressed plaster, normally the weakest material of construction, at the seismograph stations, in the immediate vicinity of the stations, or beyond the stations.

REMARKS

The blast in question could have been fired within 200 feet of any of the structures, with a resulting vibration intensity below a damage to structures level.

At the same location as this blast, the amount of explosives could have been increased approximately 20 times, with a resulting vibration intensity below a damage to structures level."

Donald S. Kennedy, Property Manager for The Arundel Corporation, and Nelson M. Schofield, Vice President, testified that The Arundel Corporation was founded in 1915 and has been quarrying since 1921. They described their operations at the Greenspring Quarry and the Woodberry Quarry, and explained what could be expected at the subject sites. Some items covered were screening, dust collecting and noise control.

Mr. Schofield reduced the request for 244 acres of M.H. zoning to 196.7 acres but retained the request for 64.5 acres as a Special Exception.

The Protestants were represented by Richard C. Murray, Esquire, and no testimony was given by the Protestants.

G. Donald Schaub, Esquire, represented the Petitioners.

The Dyer family has operated the present quarry in excess of thirty years, thereby having a legal non-conforming use.

Zoning should abhor a non-conforming use as nature abhors a vacuum.

In reality the question of reclassification from R-40 to M.H. was decided based on error on June 11, 1959. It is regrettable that the Baltimore County Council did not complete action on the matter at its meeting of November 3, 1959, or at a subsequent meeting.

The Zoning Commissioner reaffirms the reclassification from R-40 zone to M.H. zone for reasons of error in the original zoning, as set forth in Opinion and Order of Charles Steinbeck, Jr. and Spiro T. Agnew, dated June 11, 1959. It is the intent here that no further industrial or commercial zones

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shall be created in the surrounding residential area using the reclassification herein granted as a reason for a subsequent reclassification.

The Petitioners have complied with Section 502.1 of the Baltimore County Zoning Regulations, and the Special Exception should be granted.

It is this 10th day of July, 1965, by the Zoning Commissioner of Baltimore County, ORDERED that the herein described property or area should be and the same is hereby reclassified from an R-40 zone to an M.H. zone, as described in Exhibit "A", which is made a part hereof and attached hereto; and that a Special Exception for Controlled Excavation, with use of explosives, and the right to erect and operate buildings, machinery and equipment, as described in Exhibit "B", which is made a part hereof and attached hereto, should be granted from and after the date of this Order, subject to compliance with the following:

1. Site plan approval by the Office of Planning and Zoning shall be marked Exhibit "C" and made a part hereof and attached hereto.
2. Dust control, subject to requirements of Baltimore County Buildings Engineer. A violation of the Buildings Engineer's order in connection with dust control shall be a violation of this Order.
3. A permanent record of all explosions must be kept subject to inspection by the Buildings Engineer.
4. When buildings are to be constructed for use in connection with the quarry, site plans must be approved by the Director of Planning and the Zoning Commissioner.
5. Stock pile areas must be approved by the Director of Planning and the Zoning Commissioner.

In view of a recent decision of the Baltimore County Circuit Court, the Zoning Commissioner specifically retains jurisdiction and all powers delegated to him by the Baltimore County Council and by the Baltimore County Charter insofar as the protection of the public welfare is concerned in

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PETITION NO. 65-378-RX
Petition of Frank P. Dyer, et al
Southeast corner of Berrymans Lane
and Nicodemus Road 4th District

ORDER FOR APPEAL

MR. COMMISSIONER:

Please enter an appeal from the order in the above entitled case on behalf of the Contestants to the County Board of Appeals.

RICHARD C. MURRAY
606 Loyola Federal Building
21 W. Pennsylvania Avenue
Towson, Md., Maryland
VA. 5-1515



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Mr. John G. Rose
Petition #65-378-RX

June 10, 1965

- 3 - Basing our opinion on the earlier case, we would have no objection to the granting of M. H. zoning to the portion of the property to be used for quarrying as shown on the petitioner's plat. We do not feel that it would be proper to create industrial zoning where no actual quarry use is anticipated or indicated on the plat.
- 4 - From a planning viewpoint, industrial zoning here should be considered as more than a continuation of an existing use, not an entering wedge for yet other changes in the zoning for areas west of the Northwest Expressway.

BALTIMORE COUNTY, MARYLAND **INTER-OFFICE CORRESPONDENCE**

TO: Mr. John Rose
Zoning Commissioner
FROM: Mr. B. Staab
Zoning Advisory Hearing
SUBJECT: Map 4, 1965 - Item 3
Petition 65-378-RX
Dyer Quarry

Date: June 11, 1965

After consultation with the offices of Planning and Zoning regarding the subject site and interpretation of Section 403, conclusions, construction, it appears that the existing use can continue as a special exception and does not require a change of zone.

The Industrial Development Commission recommends that this operation be granted a special exception and be permitted to continue operations as a controlled excavation as specified in Section 403.

M. B. STAAB, Director
Industrial Development
Commission

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10-13-76

RE: PETITION FOR RECLASSIFICATION
from an R-40 zone to an M.H. zone,
SPECIAL EXCEPTION for
Controlled Excavation
SE corner Berryman Lane
and Nicodemus Road,
4th District
Frank P. Dyer, et al,
Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 65-378-RX

OPINION

This case is an appeal from an Order of the Zoning Commissioner denying a reclassification of the petitioner's property from an R-40 to an M.H. (Manufacturing Heavy) zone, and a special exception for Controlled Excavation. The property is situated at the southeast corner of Berryman Lane and Nicodemus Road, in the Fourth Election District of Baltimore County.

The original petition filed with the Zoning Commissioner and granted by the Zoning Commissioner, requested a reclassification of a tract of land owned by the petitioner of approximately 244 acres, from an R-40 to an M.H. zone and a special exception for a Controlled Excavation to permit the petitioner to continue his quarry use of the subject property. On the opening day of the hearing of this case before the Board, and prior to the taking of any testimony, the petitioner amended his original request, deleting approximately 100 acres from the original petition, and amending the petition so that the request before the Board is for a reclassification from an R-40 to an M.H. zone of approximately 130 acres of property (Petitioner's Exhibit 1-B), and a special exception for a Controlled Excavation on 54 acres of the subject property (Petitioner's Exhibit 1-C), which is included in and is part of the 130 acre parcel on which the reclassification is requested.

The appeal from the Zoning Commissioner's Order was taken by various residents of the neighborhood. However, by the time of the Board's hearing on this case apparently all but one of the appellants had reached an agreement with the petitioner as to the use of the property, and the attorney taking the appeal on their behalf advised the Board by letter on October 9, 1968 that, with the exception of Mr. and Mrs. Marcolpas, the persons taking the appeal from the Zoning Commissioner's Order no longer have any objection to the reclassification and special exception requested by the petitioner.

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Frank P. Dyer - #65-378-RX

It might be well for the Board, before going into the testimony in the case, to recite a brief history of the litigation that has been fought through the years over the subject property before both the zoning authorities of Baltimore County and the Circuit Court. The property has been used continuously as a quarry for more than forty years. The uncontested testimony before the Board was that the property has been used as a stone quarry continuously since approximately 1925, and is still being so used by the Arundel Corporation, who is the lessee under a lease from Frank P. Dyer, et al, the property owners. The subject property has a long history of zoning battles fought over it. Frank P. Dyer, et al, filed a petition in 1957 for a reclassification of a portion of the subject property from an R-40 to an M.H. zone. On December 4, 1957 the Deputy Zoning Commissioner denied the petition on the basis that no change had taken place since the adoption of the comprehensive zoning map on January 18, 1957. On May 15, 1958 the Board of Appeals affirmed the Order of the Zoning Commissioner and denied the requested reclassification, giving as a reason therefore that there was not sufficient evidence of error in the original zoning, nor sufficient evidence of substantial change in the character of the neighborhood to justify the petition. The Board's Order was subsequently appealed to the Circuit Court for Baltimore County, and the Circuit Court, by John E. Raine, Jr., J., in an Opinion dated November 6, 1958, remanded the case to the Board of Appeals for further proceedings. On December 5, 1958, Judge Raine filed a Supplemental Opinion clarifying his original Order of Remand, and ruled that the Board erred in not admitting testimony proffered by the applicant showing that his quarry had been placed in a different classification from that of other similar quarries throughout the County. It is interesting to note that in Judge Raine's Opinion he stated:

" * * * A quarry area, unlike group housing, is sui generis. The location of quarries is fixed by nature; they are, in a sense, unique and this aspect of the matter justifies unique treatment by the zoning authorities and by the Courts."

Again, on May 15, 1958, the Board of Appeals denied the reclassification on the basis that there was not sufficient showing of error in the original zoning. This denial was again appealed to the Circuit Court for Baltimore County. On November 6, 1958 the case

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was again remanded to the Board for further proceedings on the question of error in the original zoning, and the Order directed the Board to admit certain evidence which the Board had previously refused to admit relating to similar operations by other principals at other locations. The case was reheard by the Board on the Remand Order on February 23, 1959, and testimony was taken on that date and two subsequent dates. On June 11, 1959, the Board of Appeals reversed its original Order (the Planning Department having apparently taken a different view of the matter than they took in the original hearing), and granted the reclassification from an R-40 to an M.H. zone. Under the then existing law (which has since been amended and is no longer the law) it was a requirement that the decisions of the Board of Appeals had to be presented to the County Council in the form of a Bill for approval or disapproval. The Minutes of the twenty-seventh meeting of the Baltimore County Council held on November 3, 1959, Legislative Day #14, disclosed that the County did neither, but instead tabled the entire matter and consequently the final zoning of the property was never accomplished. The matter then apparently lay dormant until May 4, 1965 when the subject petition was filed with the Zoning Commissioner.

In the subject case, the petitioner bases his request for a reclassification on the theory that the Dyer Quarry was treated differently by Baltimore County than other similarly situated quarries throughout the County when the comprehensive map was adopted, in that other similarly situated quarries were placed by the County on various comprehensive maps as M.H., while the subject tract was placed in an R-40 category. The petitioner further contends (though without quite the same vigor) there have been substantial changes in the character of the neighborhood that justify his request for rezoning to M.H., and also that the reclassification and special exception would not depreciate residential property values in the area. The protestants' arguments mainly are based upon dust which they contend emanates from the quarry; trucks using the rural road hauling the processed stone from the quarry; the blasting that goes on at the quarry; and the general feeling that a reclassification of the subject property to M.H. could open the door to widespread industrial zoning in what they regard as basically a rural area. One witness opposing the reclassification, apparently based her opposition primarily on a fear that a reclassification

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of this property would interfere with a current proposal to acquire a public park in the Soldier's Delight area. The Board cannot see how the subject property could possibly affect the proposal for a park at Soldier's Delight as the subject property is not in any part of the land that is proposed to be acquired for the park, and is indeed some distance removed from the property proposed to be acquired for park purposes.

Mr. James T. Pettigrew, Operations Manager for the Arundel Corporation, testified that Arundel took over the Dyer Quarry in 1964 on a lease with a purchase option agreement; that the operation of the quarry now is the same as it was in 1964 when Arundel took over; and that no changes have been made in the location of the operation, although they have demolished approximately two-thirds of the crushing plant as it existed in 1964. They plan to continue the quarry and crushing operation, and to update the stone processing equipment by the purchase of new equipment. The reserves in stone in the area petitioned for in the special exception is 7 to 7-1/2 million tons. In 1968 Arundel excavated 150,000 tons of stone from the property, and they intend to expand their operation to quarry approximately 300,000 tons of stone per year. He further testified that there are no future plans for any new access roads into the property; there are no planned buildings within 300 to 500 feet of the property line; and that the blasting taking place on the property is done only once a week. He stated that the existing asphalt plant on the subject property operated by Dyer will be closed.

G. Donald Schaub, a lawyer and Assistant Secretary of Arundel Corporation, testified that Arundel had entered into a land lease with Dyer on June 24, 1964 with an option to purchase the property at any time during the lease. The witness stated on cross-examination that the option to purchase expires in June, 1969, and the company, at the time of his testimony, intended to purchase the property whether or not they are successful in this zoning petition, and operate it, if necessary, as a nonconforming use. At the time of the writing of this Opinion, it is unknown to the Board whether or not the option to purchase has been exercised.

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Arthur Bulli, who has been with the Arundel Corporation for thirty years and is the Superintendent of quarry operations in charge of three of Arundel's quarries; Woodbury, Greenspring, and Delight, gave extensive testimony as to the blasting that occurred on the subject property since he has been familiar with the operation. He stated that the earliest blast is not made before 10 a.m., and the latest blast in the afternoon is always before 5 p.m. He testified extensively as to the types of blasts; the dates of each blast; the amount of explosive in each hole; the delays; etc.

His testimony was followed by Anthony J. Petro, a Vice President of Vibratone Engineers, Inc. He testified that he had visited the quarry to test the blasting procedures used; that he had observed the blasting procedures, and set up seismographs at three different locations in order to test the vibrations emanating from the blasting at the quarry. He gave extensive testimony as to the tests conducted, the location of the seismographs, and the vibrations caused by each blast. Without going into great detail in this Opinion, he stated that in his opinion, based upon the tests conducted by him the blasting at the quarry cannot cause damage to nearby structures; that under the standards of the U. S. Bureau of Mines, which are accepted in the industry and by law in some states, the Bureau of Mines has set a standard of 2" per second maximum as a safe standard. He also stated that this standard has a built-in safety factor in it, and the maximum vibration caused by any of the blasts in the tests conducted by him was .13" per second. He further stated that he conducted an additional test at location #1, with a heel and toe test on the floor of the building at this location. The vertical displacement of the floor caused by the heel and toe test was .0113, while the vertical displacement caused by the blast was .0009, or in other words, twelve times as much floor displacement was caused by the heel and toe test as by the blast on the quarry premises. The witness went into extensive detail with regard to the blast tests, including the number of holes, depth of holes, spacing of the shots, total explosive use, the delay period, etc. It would serve no purpose in this Opinion to go into great detail as to his testimony in this regard.

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as the important thing to the Board is the result of the tests, since the Board is satisfied that the tests were conducted in an exhaustive and proper manner. Mr. Petro stated that in his opinion, and as a result of the tests conducted on nearby properties, the blasting at the quarry could possibly cause windows or dishes in the nearby houses to rattle, but could not in his opinion cause any structural damage or cracking of plaster, etc. He calculated that the blasts would have to be increased in intensity to fifteen times the present intensity to even reach the caution point.

Bernard Willemain, a well-qualified expert in the field of land planning and city planning, and a former Deputy Director of Planning for Baltimore County, testifying on behalf of the petitioner, stated that he had been familiar with the area for more than twenty years, and that his initial study of the property began in 1957 in connection with the prior Dyer petition for reclassification. He stated that in his opinion, since the quarry had been in operation since 1925 or thereabouts, the County should have properly zoned it M. H. when the comprehensive map for this area was adopted in January of 1957. In his opinion the R-40 zoning on the property is erroneous in that; one, the County should have recognized the quarry use and placed the subject property on the map in a manufacturing zone to legalize the nonconforming use of the property; two, that the Planning Staff had not visited the quarry prior to the adoption of the map and apparently was not aware of its existence; three, that other similarly situated quarries were recognized by the Baltimore County Planning Staff and when maps were adopted these quarries were placed in the proper M.H. zone. He cited as examples, the Greenspring Quarry, owned by the Arundel Corporation, which was zoned M.H. on the map when it was adopted in 1957; the Marlottsville Quarry, owned by the Campbell Company, which was zoned M.H. on the map in 1957; and the Texas Quarry, also owned by Campbell, which was placed on the Eighth District map as M.H. when it was adopted in 1955. In his opinion this property had been discriminated against by the County in failing to place it in an M.H. zone, while other similarly situated quarries were recognized and properly placed in an M.H. zone by the County authorities. He felt this is especially true, as in his opinion there is no

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other possible use for the property other than its present use as that of a stone quarry. He also gave testimony with regard to zoning changes in the immediate area since the adoption of the map; he cited Case #5216, a special exception for a cemetery on an eighty acre parcel granted in 1961; Case #68-150, a special exception for another forty-two acre cemetery; Case #64-98-R, the petition of M. P. Smith for a thirty acre parcel from R-20 to R-10 granted in April of 1964 approximately one-half mile away; Case #67-32, another petition for a forty-nine acre cemetery; Case #65-146, granted in August of 1966 across the subject farm property from an R-20 zone to an R-A zone, and from an R-20 zone to an R-4 zone, of sixty acres of land; and Case #4296, which was the previous Dyer zoning case involving the subject property which was originally denied by the Board of Appeals, was remanded by the Circuit Court twice, and subsequently the Board reversed its earlier decision and granted the requested M.H. zoning. He also testified that in his interpretation of the zoning regulations, the only legal way the existing quarry could be continued is by obtaining a special exception for a controlled excavation using explosives under Section 256.4 of the Zoning Regulations, and that in his opinion the granting of the special exception for the controlled excavation petitioned for would not violate any of the requirements of Section 502.1 of the Zoning Regulations. Section 502.1 is as follows:

- 502.1 -- Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not:
- Be detrimental to the health, safety, or general welfare of the locality involved;
 - Tend to create congestion in roads, streets or alleys therein;
 - Create a potential hazard from fire, panic or other dangers;
 - Tend to overcrowd land and cause undue concentration of population;
 - Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
 - Interfere with adequate light and air.

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The petitioner produced an expert witness in the field of real estate and real estate appraising, Mr. Hugh E. Gelston, who testified that he is thoroughly familiar with the area and has made many appraisals in the area for various clients, and that he has appraised portions of the proposed Soldier's Delight Park for the Department of Recreation. He had visited the quarry while it was in operation, and described the general area where the quarry is situated as rural. He testified that it is extremely difficult to even see the quarry operation from the roads in the neighborhood, and the petitioner, through this witness, introduced into evidence photographs #A through #F, which pictured houses, roads, and intersections in the general area in close proximity to the property. He stated that in his opinion the reclassification and special exception would have no adverse effect on surrounding properties. In support of his opinion that the petition would have no adverse effect on the surrounding residential properties, he testified that he had checked housing sales in the area, and he found that the prices obtained for properties in close proximity to the quarry are the same as prices obtained for properties that are further removed from the quarry. He further stated that this opinion is bolstered by the fact that ninety percent of the homes in the area have been built since 1922, after the quarry had been opened and in operation, and that the \$6,000 lot price he established for this area is the same as for other similar areas throughout the County. In his opinion the highest and best use for the property is for a quarry operation because the stone is there, and the operation cannot be picked up and moved elsewhere, and it is highly unlikely that the property will be or could be used for anything other than a stone quarry. Backing up his opinion with regard to the effect of quarries in general on surrounding areas, he cited as an example the many new apartments built within one-quarter of a mile of the Campbell's Texas quarry in the Cockeysville area of Baltimore County, and the many fine homes that have a direct view of the quarry. On cross-examination he stated that in studying the effect of the Campbell quarry at Texas on the surrounding properties, he had found that the apartment land near the quarry sold for the same price as apartment land almost five miles away, and in regard to the possible use of this property as an industrial park that in his

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experience, again in the Cockeysville area, residential home values have risen since the Greater Baltimore Industrial Park has been constructed, as the natural tendency of persons is to live in close proximity to their place of employment.

Two witnesses for the protestors, Mrs. Mary Lou Johnson and Mrs. Margaret McAllister, both of whom live on Cherry Hill Road, stated that they hear noise from the quarry, and occasionally get dust on their property which they assume comes from the quarry, and both witnesses particularly objected to the trucks going to and from the quarry using the roads in their neighborhood, and dropping stones from their loads along the edge of the road.

Mr. M. J. Bradie, a qualified land planner, was called by the protestors, and he testified in opposition to the subject petition. He stated that in his opinion the reclassification to M.H. would have a definite detrimental effect on the character of the neighborhood, the character of the neighborhood in his opinion now being definitely residential. He stated that he felt the County had two choices in zoning the property when the map was adopted: the first was to recognize the quarry and zone it for industrial use and build the necessary access roads for industrial use; the second choice was to leave the quarry in its present nonconforming use. He did admit, however, that both the Greenspring and Monticello quarries, cited above, were quite similar to this quarry when the M.H. zoning was placed on them by the County.

Joel Simonds, a resident of the neighborhood who lives approximately one-quarter to one-half mile from the property on Church Road, introduced a resolution of the Reisterstown Jaycees opposing the petition, and stated that he was personally opposed in that he feels that the reclassification to M.H. will open the door to widespread industrial zoning in the neighborhood. He had purchased his lot in 1961 or 1962, and began construction of his house in 1966 after the subject petition had been filed in this case.

Mary Vincent, who lives on Chromine Road, three-quarters of a mile from the subject property, objected to the petition generally, stating that she did not want to see any heavy industry move into what she considers (and the Board agrees) a "lovely residential area". Miss Vincent stated that she felt the reclassification to M.H. would

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bring additional industry into the area.

The protestors called to the stand Carl Heimmüller, Jr., a well-qualified realtor and real estate appraiser. He stated that he had studied the neighborhood, checked the zoning files, and in his opinion does not believe that zoning changes in themselves constitute a change in the character of the neighborhood, and that he could not see any substantial change in the character of the neighborhood since the map's adoption in 1957. In his opinion the neighborhood constituted the land southwest of the proposed Northwestern Expressway to the Soldier's Delight area, and that the northeast side of the proposed route of the Northwestern Expressway is an entirely different neighborhood. He further stated that the proposed route of the Northwestern Expressway is the line of demarcation between zones, everything south of the proposed route is zoned R-40, while the properties north of it are zoned R-20 and R-10, and that any changes northeast of the proposed expressway route do not in his opinion affect the subject property, nor do any of the special exceptions granted for cemetery use close to the subject property have any effect on the subject property. He stated that in his opinion there was no error committed in originally zoning the property R-40. He believes that M.H. zoning would be completely incompatible with the residential properties nearby, and thereby would reduce property values. In support of this position, he pointed out that there are no utilities available to the property, nor are the roads in the area adequate for an industrial park. On cross-examination the witness stated that he felt it would be correct to grant the special exception for the controlled excavation, but that the request for M.H. zoning should be denied. He stated that in his opinion he felt that the petitioner should be allowed to continue his present quarry operation, but that this could be done by the granting of the special exception, and the petitioner does not need manufacturing heavy zoning to allow him to do this.

Jerome A. Tirillo, a protestant who resides at 602 Church Road, one-quarter of a mile from the subject property, objected to the noise of the stone crusher being operated on the property in the early morning hours, and stated that in his opinion

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the roads in the area are not adequate to carry the truck traffic to and from the quarry. He also testified that he had lived in the area for eight years, but wasn't aware of the quarry's existence until approximately two or three years ago. When he originally moved into the area his house was farther removed from the quarry, however, his present residence is located closer to the quarry than his original residence. He also stated that he cannot see the quarry from his present residence.

Two other witnesses testified for the protestors; a Mr. Jack A. Abbott, Cherry Hill Road, and Harry B. Marcapas, both of whom live in close proximity to the property, and both objected to any increased activity at the quarry, and specifically to truck traffic on the roads, and the reclassification to M.H. which would possibly bring more industry into the area. Mr. Marcapas in particular agreed with Mr. Heimmüller's opinion as to the proper zoning for the property.

This is one of the most difficult cases the Board has had to decide in recent years. The subject property has been an operating quarry since at least the mid-1920s and therefore the owner has a legal nonconforming use to continue to use the property for a stone quarry. The petitioner urges the Board to reclassify the property to M.H., with a special exception for a controlled excavation using explosives under Section 256.4 of the Regulations. The petitioner argues that the granting of the special exception on the property without Manufacturing Heavy zoning does not allow him to erect buildings, and install machinery to process the stone that is quarried on the subject property. The Board does not agree with this contention. Under the Regulations a controlled excavation is defined as "all types of excavations other than those defined above as excavations uncontrolled". It is clear from an examination of the definition that quarries fall within the definition of excavations, controlled. A controlled excavation is allowable as a special exception in every zone in Baltimore County except that a controlled excavation in an M.L., M.H. or M.L.R. zone is allowed as a matter of right without a special exception if explosives are not used. Where explosives are used, a special exception must be obtained under Section 403 of the Zoning Regulations. Section 403 says:

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* * * Any special exception granted hereunder may include the right to erect and operate buildings, machinery, and equipment for a temporary period, consistent with other provisions of the Order of the Zoning Commissioner, or the County Board of Appeals on appeal. * * *

The Board's interpretation of the Regulations is that under Section 403 the granting of a special exception on the subject property without the requested Manufacturing Heavy zoning will allow the petitioner to quarry the property, erect buildings on the property, and install stone processing equipment, etc.

With regard to the request for reclassification from an R-40 to an M.H. zone, the Board finds that there have not been substantial changes in the character of the neighborhood since the adoption of the comprehensive map in 1957 to justify the reclassification requested by the petitioner. With regard to the petitioner's contention of error in the original zoning, the petitioner's contention of error has considerable merit as there is no question that the subject property was treated differently than other similarly situated quarries throughout Baltimore County, and both the Courts and the Board of Appeals apparently were of the same opinion in the prior Dyer case involving this property. This theory could well justify the reclassification of the property to M.H. but does not compel it, and since the Board is of the opinion that the granting of a special exception without the reclassification will allow the petitioner to continue his quarry operations without the necessity of M.H. zoning, we feel that the request for reclassification should be denied.

Reviewing all of the testimony of the witnesses, both for the petitioner and the protestors, the Board finds as a fact that the granting of the special exception would not be detrimental to the health, safety, or general welfare of the locality involved. The Board would like to emphasize the testimony of the protestors' expert real estate witness who stated that he felt that the petitioner should be allowed to continue his present quarry operation, and that in his expert opinion it would be correct for the Board to grant the special exception requested by the petitioner for a controlled excavation. While the roads in the area are certainly inadequate to serve a major industrial park, the roads have in fact been carrying the traffic from the existing quarry apparently without a great deal of

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difficulty for some years, and, therefore, the Board finds that the granting of the special exception will not create congestion in the roads or streets of the nearby neighborhood. The Board further finds that the granting of the special exception could not create any potential hazard from fire panic or other dangers, or tend to overcrowd the land, or interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, nor could it interfere with adequate light and air of the surrounding community. Testimony before the Board indicates that it will take approximately twenty years to quarry the stone remaining in the 54 acre parcel on which the special exception is requested based on the proposed 300,000 ton per year taking by the petitioner and, therefore, it seems reasonable to the Board to grant the requested special exception for a fifteen (15) year period to allow the quarrying of the remaining stone, with the right reserved to the petitioner, under the presently existing law, to have the temporary permit extended at the end of this period in the event that at that time there is still unmined stone remaining in the quarry.

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Frank P. Dyer, et al - #65-378-RX

ORDER

For the reasons set forth in the foregoing Opinion, it is this 3rd day of July, 1969, by the County Board of Appeals ORDERED, that the petitioner's request for a reclassification from an R-40 zone to an M.H. zone be and the same is hereby DENIED; and it is

FURTHER ORDERED, that the petitioner's request for a special exception for a controlled excavation, with the use of explosives for the fifty-four (54) acre parcel, as described in Petitioner's Exhibit 1-C, a copy of which is made a part hereof and attached hereto, is GRANTED for the period of fifteen (15) years from the date of this Order; and it is

FURTHER ORDERED, that the petitioner shall have the right to erect buildings and to install and operate machinery and equipment for such period necessary for the processing of stone quarried on the subject property, subject to compliance with the Baltimore County Building Code and all other applicable State and County regulations governing such building construction and/or equipment installation.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman

W. Otter Parker

John A. Slawik

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AGREEMENT

THIS AGREEMENT, Made this 24th day of June, 1964, by and between THE ARUNDEL CORPORATION, a corporation duly organized and existing under and by virtue of the laws of the State of Maryland, its principal place of business being 501 St. Paul Place, Baltimore, Maryland 21202, hereinafter referred to as "Arundel," party of the first part; and ALEXIUS A. DYER, of Baltimore City, Maryland, and FRANK P. DYER, of Baltimore County, Maryland, individually, and as copartners, trading as A. A. Dyer Stone Company, hereinafter referred to as "Dyers," parties of the second part; and MARY J. DYER, wife of Alexius A. Dyer, party of the third part; and MARY W. DYER, wife of Frank P. Dyer, party of the fourth part.

WHEREAS, the Dyers are the owners in fee simple of certain tracts of land in the Fourth Election District of Baltimore County, Maryland, as more fully hereinafter described and hereinafter sometimes referred to as "the quarry land," and

WHEREAS, Dyers operate a stone quarry on the said tracts and Alexius A. Dyer operates thereon a "Black-top" plant; and

WHEREAS, Arundel has agreed to buy from Dyers certain assets hereinafter set forth, and to rent the quarry land, with option to purchase; and

WHEREAS, a purchase price of \$100,000.00 has been agreed upon between Arundel and Dyers for the acquisition of the said assets by Arundel; and

WHEREAS, Arundel has agreed to rent the farm property (hereinafter sometimes referred to as the "farmland"), adjacent to the said quarry land, from the owners thereof, Frank P. Dyer and Mary W. Dyer, his wife, with option to purchase said farmland; and

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WHEREAS, a letter agreement dated May 2, 1964, generally setting forth the above recitals, provides that a formal contract be executed, and it is the intent of the parties hereto that this instrument be and shall constitute said formal contract to set forth the terms and conditions of the understanding between the parties.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that for and in consideration of the payments herein stipulated and of the covenants, terms and conditions to be kept by the parties hereto, the said parties have agreed as follows:

1. Dyers do hereby bargain and sell, grant and convey unto Arundel the following items of equipment located on or about the said quarry land, situated in the Fourth Election District of Baltimore County, on Nicodemus Road, west of Reisterstown Road, near Delight, Maryland:

a. Mobile equipment group, consisting of five Mack Model B-81 Dump Trucks, two Mack 30-ton "Off-the-Road" Trucks, and two Caterpillar, Model No. 944A, Front End Loaders.

b. The office, scale, garage, dynamite house, welder, pumps, one Northwest Quarry Shovel, one Lorain Quarry Shovel, one Link-Belt Drop Ball Crane, other quarry equipment, and miscellaneous spare parts.

c. Stockpiled inventory of processed stone.

d. Crushing and screening plant complete in place.

2. The purchase price for the acquisition of the above items shall be the lump sum price of \$100,000.00 payable as follows:

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3. As promptly as possible, following the execution of this Agreement, and not later than fifteen (15) days from the date hereof, there shall be prepared by Dyers and Arundel an accurate schedule or inventory of the items listed in Paragraph 1 above, which schedule shall show the specific designation of the items of equipment and of the structures, together with serial numbers, if any, and which schedule shall be signed by the parties hereto. An estimate of the quantity of stockpiled inventory of processed stone shall be contained in said schedule or inventory. Said schedule or inventory shall form a part of a bill of sale to be executed by Dyers, dated July 31, 1964, the date of settlement provided for in this Agreement. Dyers may continue to operate the plant and produce and sell crushed stone at the quarry land prior to July 1, 1964, with consequent changes in inventory of stockpiled finished materials on hand during the period of their operation, provided that the quantities of processed stockpiled stone in inventory at the end of their operation shall be approximately the same as the quantities were as of the time of the letter agreement, dated May 2, 1964.

4. Dyers hereby lease to Arundel the items of property described in Paragraph 1 hereof at a rental of \$1.00 for the period from July 1, 1964 to July 31, 1964, and Arundel shall also be permitted to commence quarrying operations on the said quarry land as of July 1, 1964. Dyers will discontinue quarry operations on the quarry land on or before June 30, 1964, and any tools and equipment not purchased by Arundel pursuant to Paragraph 1 hereof and not removed from the premises by Dyers on or before August 31, 1964 will be presumed abandoned by Dyers and may be thereafter removed or otherwise disposed of by Arundel without liability to Dyers.

5. The items of property above described to be transferred to Arundel on July 31, 1964, shall be so transferred by good and merchantable title, free and clear of all liens and encumbrances, to the end that Arundel shall then own them absolutely. For the purpose of this Agreement, any of the above items

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which are in the nature of buildings and/or structures shall not be regarded as fixtures and may be dismantled and removed from the premises by Arundel at any time after July 31, 1964, without penalty or liability to account therefor.

6. Dyers hereby lease to Arundel the tract of land containing approximately 143 acres and known as the said "quarry land" as more fully shown outlined in blue on the reduced plat attached hereto and made a part hereof and entitled "For Frank P. Dyer, Fourth District, Baltimore County, Maryland, Scale 1" = 200', September 5, 1957, C. A. Myers, Surveyor, Upperco, Maryland, Phone, Worthington 756W1," commencing on July 1, 1964 and continuing for a term of five years, for which Arundel shall pay Dyers rental at the rate of \$1.00 per year, in equal quarterly installments in advance, beginning as of July 1, 1964, said rental of

per year to be net of all taxes (other than income taxes against the rental) and other charges including insurance, against the land or the quarry operations to be conducted by Arundel. Arundel shall be permitted to operate a quarry on the land, including, without limitation, the taking, mining, hauling, crushing, grading, storing, selling, and transporting of stone or other materials, and all other functions normally associated with a quarry business, without accounting to anyone by way of waste or otherwise, for such operation, other than to Dyers, and then only to the extent of the payment of rental as herein provided. Dyers do jointly and severally warrant that, with regard to zoning laws, there is an existing valid, transferable and continuing nonconforming use running with and fully permitting the use of such land as a quarry, that there is pending no protest, litigation or other objection, private or public, challenging said right so to use, and Dyers, as their respective interests may appear, do hereby assign, transmit, convey and deliver over to Arundel such continuing nonconforming use and all rights to be derived thereunder. At any time during the term of the lease of said quarry land, Arundel

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shall be entitled to acquire the fee simple interest in said property by good and merchantable title, free and clear of all liens and encumbrances, and is granted an option to so acquire this property at a price of

Upon the exercise of said option and effective from the date of settlement thereof, no further rental shall be paid or payable by Arundel to Dyers on account of the afore said lease. The option to purchase, if exercised, must be exercised by written notice from Arundel to the Dyers, by delivery thereof, or by mailing the same to either of the Dyers, which notice shall contain the date of settlement for the property. Dyers warrant that they are the owners of legal title to the property hereby leased and optioned so as to fully empower them to execute and consummate this Agreement.

8. Dyers agree that they will not, during the period from the date of this Agreement until the expiration date of the lease aforesaid or of the exercise of the option herein granted for the quarry land, assign any of the rights herein to them granted nor sell, lease, option or in any way encumber the said real property, without the prior written consent of Arundel.

9. In the event that Arundel exercises this option hereinabove granted, it is agreed that the following shall apply:

a. All state and federal documentary stamps are to be borne equally by Dyers and Arundel, and all payments of transfer or recordation taxes, ground rent, rent, water rent, and State and County Real Estate Taxes (including Metropolitan District Charges for sewer and water, if any), and all other public charges against the premises shall be borne by Arundel.

b. The deed conveying the land shall contain a warranty as to the existence of, and shall convey to Arundel, the nonconforming use to conduct a quarry operation on the said quarry land.

c. The deed conveying the land shall also describe the land by metes and bounds developed as a result of a survey to be made of the land as soon after the notice of exercise of the option as is possible. The cost of the survey is to be borne by Arundel.

10. Frank P. Dyer and Mary W. Dyer, his wife, hereby lease to Arundel for a term of five (5) years beginning July 1, 1964, at the rate of \$1.00 per year rental, payable in equal quarterly installments in

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advance, the afore said farmland presently owned by them and consisting of approximately 150 acres, more or less, adjacent to the aforesaid quarry land, and shown outlined in red on the reduced plat attached hereto. The payment of rental on this property shall be net to Frank P. Dyer and his said wife over and above all taxes (other than income taxes on the said rental) and other charges assessable against the said property. Arundel is hereby granted an option to purchase, by good and merchantable title and free and clear of all liens and encumbrances, at any time during the said five-year term the house comprising the main residence on the farmland, together with three acres of land surrounding same and the use of the access road from the nearest highway to the house property over the remainder of the land at a price of

and the remaining acreage and improvements thereon at a price of \$100,000.00. Said options may not be exercised by Arundel separately or at different times, it being the intent of this Agreement that neither of the options set forth in this paragraph shall be exercised without simultaneously exercising the other. Upon notice by Arundel of intent to exercise said options, the aforesaid rental shall terminate as of the settlement date designated in said notice.

11. The terms, warranties, and conditions set forth above in paragraphs 7, 8 and 9 with regard to the quarry land, relative to the exercise of option, nonconformity, title, settlement, etc., including division of stamps, survey and description by metes and bounds, shall likewise apply to the conditions, warranties, and division of the costs, charges, etc., applicable to the farmland.

12. Dyers covenant to furnish Arundel on or before June 30, 1964, with a complete list of its customers, during the year 1963, and all current customers for the purchase of stone from the stone quarry.

13. Arundel will permit Frank P. Dyer and Mary W. Dyer, his wife, to have free use of the farmland, including the main residence and other structures, during the five-year rental period mentioned above, or until Arundel exercises

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its option to purchase the said farmland, during which time they shall be entitled to receive all income, if any, from the farmland. Arundel may make such tests of the earthen materials in the farmland as it deems necessary, including removal by excavation, core drilling, or otherwise, in order to determine the nature, extent, quantity, and quality of the various materials and minerals in said land.

14. Arundel hereby agrees to permit Alexius A. Dyer to continue to operate the black-top plant now located on the quarry land at a minimal rental of \$1.00 per year on a year-to-year basis, beginning July 1, 1964. This license includes the right of Alexius A. Dyer, his employees, agents, suppliers, contractors, and customers to have access to and from the black-top plant over the existing access road from Nicodemus Road, or, in the event Arundel relocates the access road, over the new access road. For this purpose of this Agreement, the said black-top plant shall not be construed as a fixture and may be removed from the premises by Alexius A. Dyer at any time. Alexius A. Dyer agrees to be responsible for injuries to persons and damage to property caused by his operations and to defend, indemnify, and save Arundel harmless from claims or demands against Arundel, arising or resulting from such injuries, damage and/or zoning disputes and/or litigation, resulting from the above-stated operations of said black-top plant.

15. Arundel agrees to be liable for any damage to the property described in Paragraph 1 hereof and caused by Arundel's use thereof during the period from July 1, 1964 to July 31, 1964, and further agrees to be responsible for injuries to persons and damage to property, if any, caused by its operation of the quarry from and after July 1, 1964, and to defend, indemnify and save harmless the Dyers from any claims and demands against Dyers arising or resulting from such injuries or damage.

16. Dyers agree that any insurance policies on the property described in Paragraph 1 will be immediately assigned to Arundel to protect the interest of Arundel in same.

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17. The respective owners of the quarry land, or of the farmland, shall immediately notify Arundel in writing whenever said owners have received notice of intent to acquire any part of either tract from any governmental or private agency, in condemnation, or under threat of same, so that Arundel will have opportunity to exercise either option herein granted and thereby receive the entire proceeds from such acquisition. If Arundel declines not to exercise such option, the respective owners will be entitled to receive such proceeds, provided, however, that the rental on the balance of the land will continue as if no part had been so acquired, and provided, further, that, if Arundel exercises its option subsequent to such acquisition and payment to such respective owners, the option purchase price shall be reduced by the amount so paid to the respective owners, but in no event shall said reduction be greater than at the rate of \$1.00 for each acre so acquired.

18. Dyers agree that neither they nor any member of their immediate families will either directly or indirectly engage in competition with Arundel as owner, partner, or substantial stockholder of the business of quarrying stone for a period of ten years from the date hereof in the area lying within a 50-mile radius from the office building on the quarry land hereinabove described. Dyers further agree, jointly and severally, to be jointly and severally liable to Arundel and to indemnify Arundel for any breach of this Agreement.

19. Dyers further agree to defend, indemnify and save Arundel harmless from and against any and all losses, injuries, claims, demands, expenses, liens, causes of action, and judgments, including legal expense, of whatever kind and nature and by whomsoever made, arising from or in any manner directly or indirectly growing out of, or caused by, persons, lawfully or unlawfully, upon the premises or damage to property resulting from the condition, or lack of repairs to said premises, herein anywhere described in this Agreement, or the use of same, and is resulting from the operations in business of Dyers or either of them to the date of July 1, 1964, except as provided otherwise in this Agreement.

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20. Frank P. Dyer and Mary W. Dyer agree that, during the period in which they are paid rental on the farmland and while they have the right of use and occupancy of, and income from the same, they will, at their expense, maintain and keep the dwellings thereon in good repair so that the dwellings will, at the time of the termination of their occupancy, be in the same good condition as at the date of this Agreement, less ordinary wear and tear. It is further agreed that Arundel will provide, at its expense, fire and extended insurance on the structures on the farmland, the said structures being at the approximate locations and the coverage being in the amounts as set forth on the reduced plat attached hereto and made a part hereof. The proceeds of any claim under said insurance coverage shall be made payable to Frank P. and Mary W. Dyer provided, however that, if Arundel exercises its option to purchase the farmland subsequent to the cause of any such claim, the amount of such insurance proceeds shall be deducted from the option purchase price, if said proceeds have not been used to repair the damaged structure.

21. The benefits, obligations, covenants and conditions herein contained shall be binding upon and inure to the benefit of the parties signatory hereto, their respective heirs, administrators, executors, successors, and assigns.

22. It is agreed that the payments required under Paragraph 2 hereof, totaling shall be

made jointly to Dyer; that the rental payments for the quarry land shall be made jointly to Dyer;

that the rental payments for the farmland shall be made to Frank P. Dyer; and that payments made as above shall constitute payments to all parties thereto entitled.

23. All notices required or contemplated by this Agreement may be given by delivering the same personally to the person entitled to the same, or, if mailed, by mailing such notice to Arundel at 301 St. Paul Place, Baltimore,

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Maryland 21202, to Frank P. Dyer at R.F.D. #2, Nicodemus Road, Reisterstown, Baltimore County, Maryland, or to Alexis A. Dyer at 107 Goodale Road, Baltimore, Maryland 21212, or at such other address as may from time to time be designated in writing to the other parties by the party entitled to such notice.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

ATTEST: THE ARUNDEL CORPORATION
By: *[Signature]* (SEAL)
Alexis A. Dyer

WITNESS: *[Signature]* (SEAL)
Alexis A. Dyer

TEST: *[Signature]* (SEAL)
Frank P. Dyer

Individually, and as Copartners,
trading as A. A. Dyer Stone Company

TEST: *[Signature]* (SEAL)
Mary J. Dyer

[Signature] (SEAL)
Mary W. Dyer

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Pet: EXH-4

THIS AGREEMENT, executed this 9th day of October, 1968, by and between The Arundel Corporation, a body corporate of the State of Maryland hereinafter called "Party of the First Part" and Donald G. Richardson and M. Vivian Richardson, his wife, *[Signature]*, *[Signature]*, Charles Purcell and Thelma Purcell, his wife, Carl Porter and *[Signature]* Porter, his wife, *[Signature]*, *[Signature]* and The Obad Shalom Congregation of Baltimore City, a religious corporation, hereinafter respectively and collectively called "Parties of the Second Part", WITNESSETH:

WHEREAS, The Party of the First Part has heretofore leased two certain tracts of land, situate, lying and being in the Fourth Election District of Baltimore County, Maryland, one tract of which, herein referred to as the "farm property", being leased from Frank P. Dyer, et al., and the other tract, herein referred to as the "quarry property", being leased from Frank P. Dyer and Alexis A. Dyer, all substantially as shown on the attached reduced plat marked EXHIBIT A, and

WHEREAS, the said lease still has an unexpired term and grants to the Party of the First Part the unexpired option to purchase either or both of the said tracts, and

WHEREAS, the Party of the First Part as lessee and optionee in a heretofore caused to be filed with the Zoning Authorities of Baltimore County, Maryland, a petition to reclassify a portion of the two tracts, so leased to it, and subject to the aforesaid options to buy, from an R-46 zoning classification to an M. H. zoning classification with respect to 196.64 acres, more or less, thereof, lying on the southwesterly side of Nicodemus Road and lying on the northeasterly side of Berryman's Lane together with an application for a special exception for controlled excavation for 64.50 acres, more or less, thereof, which said petition is known and identified as Petition No. 65-378-RX among the zoning records for Baltimore County, Maryland, (to which, proceed-

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ing reference is made for the further identification and description of the property included) and which petition was heretofore granted in part by the Zoning Commissioner of Baltimore County, Maryland, and

WHEREAS, the Parties of the Second Part have heretofore caused an appeal to be entered from the abovementioned decision of the Zoning Commissioner of Baltimore County to the County Board of Appeals of Baltimore County, Maryland, and

WHEREAS, representatives of the Party of the First Part and representatives of the Parties of the Second Part have met with one another in an effort to plan for the orderly development of said property in such a manner as to protect the surrounding properties, including those of the Parties of the Second Part, in order that land values in the area may be stabilized and protected, and

WHEREAS, the Parties hereto desire to avoid the expense, delay and uncertainty of further litigation between them and recognize that each of them would have the right of further appeal from any decision of said County Board of Appeals of Baltimore County, Maryland, adverse to their respective positions, including the right of appeal to the Circuit Court of Baltimore County and a further right of appeal to the Court of Appeals of Maryland, and as a result thereof they desire to reconcile their differences and have reached an agreement as hereinafter set forth.

NOW THEREFORE, in consideration of the sum of \$1.00 in hand paid by the Party of the First Part unto the Parties of the Second Part and in consideration of the sum of \$1.00 in hand paid by the Parties of the Second Part unto the Party of the First Part, the receipt of the same being hereby mutually acknowledged from each to the other, and in further consideration of the mutual covenants, agreements, forebearances and restrictions hereafter set forth by and between them, the aforesaid Parties of the First and Second Parts do hereby agree as follows:

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1. The Parties hereto will jointly propose to the County Board of Appeals hereinafter called the "Board" that the area for M. H. zoning be reduced by moving the northeasterly boundary line of the proposed M. H. zone to coincide with the northeasterly boundary of the said quarry property as shown substantially on the reduced plat attached hereto marked EXHIBIT B.

2. The Parties hereto will jointly propose to the Board that the request for a special exception for controlled excavation be reduced by moving the northwesterly boundary line thereof to coincide with the northwesterly boundary of said quarry property as shown substantially on the reduced plat attached hereto marked EXHIBIT B.

3. The M. H. zone and special exception area referred to in paragraphs 1 and 2 above will each be described by metes and bounds and shown upon an appropriate plat or plats to be filed with the County Board of Appeals of Baltimore County.

4. The Party of the First Part agrees to exercise promptly after the effective date hereof, its option to purchase the said quarry property of Frank P. Dyer and Alexis A. Dyer and upon settlement for the same will cause this Agreement to be recorded among the Land Records for Baltimore County at its sole expense.

5. That for a period of ten years from the effective date hereof the Party of the First Part will erect no improvements within an area inside the said quarry property that is less than 300 feet from the boundaries of said quarry property and the said 300 foot area will be maintained in its present natural condition except for any clearing of undergrowth, trash and debris as may be desired by the Party of the First Part. In particular, the Party of the First Part covenants and agrees that all trees (other than undergrowth and saplings) within the said 300 foot area shall be left undisturbed for the aforesaid period of ten years. Upon the expiration of said ten years, the Party of the First Part shall be entitled to use the said 300 foot area in accordance with its then zoning classification and the zoning regulations then in

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6. The Party of the First Part does hereby agree that it will cause, promptly after the effective date hereof, to be planted within the quarry property three staggered rows of evergreen seedlings along the northeasterly boundary of the said quarry property extending from Berryman's Lane to Nicodemus Road, except in areas where trees are presently existing, the first row to be not less than three feet from the said boundary line and the other two rows to be reasonably near the first row, the purpose of said plantings to be to provide a screen of trees along said boundary line in such fashion as to permit the ultimate maximum height and growth of said trees. Any seedlings which may die or be otherwise destroyed within five years shall be replaced promptly with seedlings of the same type as the original.

7. The Party of the First Part does hereby covenant and agree that no new buildings or structures will be erected within a period of one year from the effective date hereof within the said quarry property, provided, however, that additions to, or replacements of, the stone crushing and conveying and processing plant and equipment at or reasonably near to the present location of the existing plant may be made at any time.

8. The Party of the First Part does hereby agree that for a period of five years from the effective date hereof stockpiling of material will be confined to the area around the location of the present plant and/or an area south of the transmission line shown on EXHIBIT B, subject nevertheless to the provisions of paragraph 3 above.

9. The Party of the First Part does covenant and agree after the effective date hereof, that it will cause the operations of the existing brick top plant, presently being conducted by Alexis A. Dyer upon any portion of the quarry property to be terminated as soon as the existing lease to Alexis A. Dyer can be legally terminated.

10. The Party of the First Part does hereby covenant and agree that in the event it or its successors and assigns shall lease, purchase or otherwise acquire any interest directly or indirectly in the remaining property of Frank

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reduced plat attached hereto marked EXHIBIT A that the same will be used solely for agricultural purposes and/or individual detached homes and for no other purpose or use for a period of twenty-five (25) years from the date hereof.

11. In consideration of the covenants and agreements set forth above the Parties of the Second Part and each of them do hereby covenant and agree as follows:

(a) That they will not oppose or contest, either directly or indirectly through others, or testify against the granting of the reclassification and special exception by the Board of the areas set forth in paragraphs 1 and 2 above and as to be described in detail as set forth in paragraph 3 above.

(b) That they will not appeal, directly or indirectly, any order or orders of the Board entered in the abovementioned zoning case known and identified as Petition No. 65-378-RX nor will they participate in any such appeal in any manner including financial assistance or assistance of any other nature.

12. Paragraphs 1, 2, 3, 10 and 11 of this Agreement shall take effect immediately upon the execution of this Agreement by the Parties hereto. Paragraphs 4 through 9 shall take effect upon, and the phrase "effective date" as used in therein shall be construed to mean, the first to happen of the following events:

(a) An order or orders of the Board granting the reclassification and special exception of the area described in paragraphs 1 and 2 above without any appeal therefrom being filed in the time limited by law,

(b) An appeal or appeals of the Circuit Court for Baltimore County resulting in said reclassification and special exception being granted,

(c) A decision of the Court of Appeals of Maryland, as evidenced by a mandate of said Court, resulting in said reclassification and special exception being granted,

PROVIDED, NEVERTHELESS, that said reclassification and special exception shall be finally granted and/or affirmed on or before June 30, 1969 or during

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any extension of the lease and option of the aforesaid quarry property obtained by the Party of the First Part. It is the intent of the Parties that the special exception be not finally granted unless affirmed within said time. The Parties of the First Part agree that it will discontinue its use of the said quarry property on or before July 1, 1969 or at the end of any extension period and will also take all reasonable steps to withdraw its request for said reclassification and special exception. It is the intention of the Parties that they shall be bound by paragraphs 1, 2, 3, 10 and 11 without regard to the outcome of the aforesaid Petition No. 65-378-RX and that the Party of the First Part shall become bound to the performance of paragraphs 4 through 9 if it shall obtain a final, unappealed order in its favor either from the Board, the Circuit Court for Baltimore County or the Court of Appeals of Maryland within the time set forth herein.

13. Each and every of the covenants, promises and agreements herein contained upon the part of the Party of the First Part shall run with the said quarry property in accordance with the terms hereof and any of the Parties of the Second Part and their respective heirs, successors and assigns shall be entitled to prosecute proceedings at law or in equity to enforce the same and/or to recover damages for any violation or violations hereof without the necessity of joinder of the remaining Parties of the Second Part. Any failure or failures to insist upon strict compliance of a covenant, promise or agreement hereunder contained and any failure or failures to prosecute any breach or breaches of the terms hereof shall not be construed to be a waiver or release of any such covenant, promise or agreement for the future.

14. This Agreement and each and every term and condition hereof shall be binding upon the Parties hereto, their respective heirs, successors, assigns, personal representatives and executors.

WHEREFORE, the Parties have caused this Agreement to be executed the day and year first above written.

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65-378 R

CERTIFICATE OF POSTING
JUDICIAL DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 4TH Date of Posting: Sept. 4, 1965

Post(s) for: Apparel

Petitioner: Frank P. Hyman, et al.

Location of property: St. Charles, Bergmann Lane & McDermans Rd.

Location of Signs: O. St. Ch. St. Bergmann Lane & McDermans Rd. @ NW 1/4
Bergmann Lane SE. N.N. of Hyman, Mr. B. St. McDermans Rd. 2000'

Remains: SE of Bergmann Lane

Posted by: [Signature] Date of return: Sept. 2, 1965

3 Signs MICROFILMED

ENGINEERS INCORPORATED

The Arundel Corporation
501 St. Paul Place
Baltimore 2, Maryland

July 7, 1965

VIBRATION STUDY FOR THE ARUNDEL CORPORATION
Primary Blast - Delite Quarry
Baltimore County, Maryland
East Face, 2nd Level
July 6, 1965

COPY NUMBER 4 OF 5

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Pet
XB 6

Haitian, Penna.
July 7, 1965

VIBRATION STUDY
FOR
THE ARUNDEL CORPORATION
Primary Blast - Delite Quarry
Baltimore County, Maryland
East Face, 2nd Level
July 6, 1965

PURPOSE

The purpose of this study was to measure the vibration effects from the primary blast at the above named operation on July 6, 1965 and to determine the possible effect of these vibrations on structures at the instrument stations, in the vicinity of the stations, or beyond the stations.

THE BLAST

This blast consisted of 32 holes, 3 1/2 inches in diameter, drilled to an average depth of 39 feet. Average spacing and burden of the holes was 8 x 8 feet with an average of 8 feet of stemming material confining the charge in each hole. The total load of 2500 pounds of Dupont Powder Company's 60% Gelatin #1, and Palladium amp/vials was detonated in 5 separate firing periods by means of Dupont Powder Company's M Delay Caps 90 thru 94. Time of detonation was 3:22 P.M.

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The Arundel Corp. Report

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July 7, 1965

WEATHER CONDITIONS

1. Type of day - Fair
2. Wind direction - From the Northwest
3. Temperature - Approximately 80°F

INSTRUMENTATION

For registration of the vibration effects from the subject blast three Vibro-Log 3-Component Portable Seismographs were employed.

Station #1:

Seismograph #1723 was set on the wood floor in the front living room of the Havest Steel Residence, Corner of Woodman and Cherry Hill Roads, Beltsville, Maryland. The instrument was located approximately 2500 feet East Northwest of the blast.

Station #2:

Seismograph #1433 was set on the mezzanine of Berryman Lane in front of the C. V. Purnell Residence, Beltsville, Maryland. The instrument was located approximately 3000 feet West Southwest of the blast.

Station #3:

Seismograph #141 was set on the wood floor in the hall in the C. Turckhugh Residence, Berryman Lane, Beltsville, Maryland. The instrument was located approximately 3000 feet Southwest of the blast.

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The Arundel Corp. Report

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July 7, 1965

RESULTS SUMMARY

Tabulated below are the measurements resulting from this blast.

INSTRUMENT STATION	TYPE OF MOTION	COMPONENT	MAXIMUM VELOCITY (in/sec)
Steel Residence	Ground	Longitudinal	0.08
		Vertical	0.13
		Transverse	0.07
Front of Purnell Residence	Ground	Longitudinal	0.04
		Vertical	0.04
		Transverse	0.03
Turckhugh Residence	Ground	Longitudinal	0.04
		Vertical	0.04
		Transverse	0.03
	Air borne	Longitudinal	0.03
		Vertical	0.03
		Transverse	0.03

Note: The safety of the recorded vibration effects is further substantiated by the New Jersey and Massachusetts Quarry Blasting Codes.

A recording was made, in the Steel Residence near the seismograph, of the instrument operator rising on toes and dropping back on heels on the living room floor. Below is the result of this test as compared to the displacements caused by the blast in the Steel Residence.

Maximum Resultant Displacement from the blast ----- 0.009"

Maximum Resultant Displacement from the Heel-Toe Test --- 0.0115"

Displacements caused by the Heel-Toe Test in the Steel Residence were over twelve times as much as displacements caused by the blast in the same location.

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The Arundel Corp. Report

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July 7, 1965

ADDITIONAL RESULTS

According to all recognized design indices, the recorded vibration effects from the subject blast were well below that necessary to cause structural damage to even old pre-stressed plaster, normally the weakest material of construction, at the seismograph stations, in the immediate vicinity of the stations, or beyond the stations.

ADDITIONAL

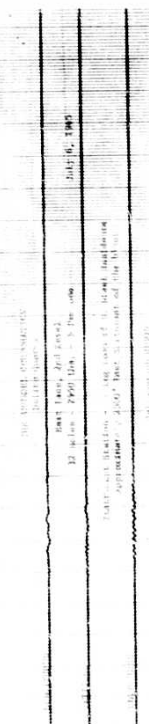
The blast in question could have been fired within 200 feet of any of the structures, with a resulting vibration intensity below a damage to structures level.

At the same location as this blast, the amount of explosives could have been increased approximately 20 times, with a resulting vibration intensity below a damage to structure level.

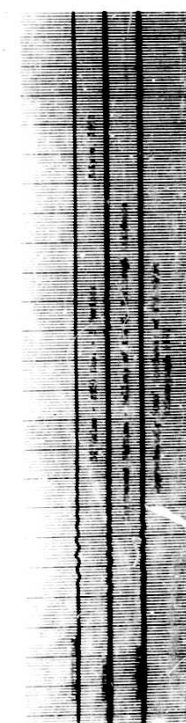
Respectfully submitted,
VIBRATION ENGINEERS, INC.

by *[Signature]*
Anthony J. Russo, P. E.
Vice President

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ENGINEERS INCORPORATED

The Arundel Corporation
301 E. Main Place
Baltimore 2, Maryland

October 23, 1968

VIBRATION STUDY FOR THE ARUNDEL CORPORATION
Delight Quarry - Baltimore County, Maryland
Primary Blast - Bottom Level, West Face
October 23, 1968

COPY NUMBER 2 OF 5

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Harleton, Penna.
October 23, 1968

VIBRATION STUDY
FOR
THE ARUNDEL CORPORATION
Delight Quarry - Baltimore County, Maryland
Primary Blast - Bottom Level, West Face
October 23, 1968

TERMS

The purpose of this study was to ascertain by means of a seismograph recording the capacity of the vibration effects from the primary blast on October 23, 1968 at the above named operation to cause structural damage at the seismograph station, in the immediate vicinity of the station, or at points further distant.

THE BLAST

This blast consisted of 35 vertical holes, 3 1/2 inches in diameter, drilled to an average depth of 38 feet. The bottoms of the holes extended approximately 2 feet below the quarry floor. Average spacing and burden of the holes was 9 x 4 feet with an average of 10 feet of stemming material confining the charge in each hole.

Also included in this blast were 15 - 2" holes in the toe of the shot. These holes were 2' to 4' deep and were variably spaced. The toe holes contained 10 pounds of explosives detonated on an instant cap.

The total load of 4600 pounds of Dupont Powder Company's Pourvea, Tonal, and HOP Primer Explosives was detonated in 12 separate firing periods by means of Primacord and 11 - 5 MS Primacord Connectors. Maximum amount of explosives on any one delay period was 420 pounds. Time of detonation was 12:30 P. M.

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WEATHER CONDITIONS

1. Type of day - Fair
2. Wind direction - From the Northwest - Approximately 20 mph
3. Temperature - Approximately 10°F.

SEISMOGRAPH STATION

For registration of the vibration effects from the subject blast, our Vibra-Log 3-Component Direct Velocity Seismograph #100 (1.0 Range) was set on the ground at the Southeast Boundary of the Arundel Property. The instrument was in line with the blast and the Mailster Residence, Cherry Hill Road, approximately 1000 feet Southeast of the blast.

THE SEISMOGRAPH RECORD

The seismograph record represents a photograph of the velocity of vibrations of the surface on which the instrument is sitting, at the recording location, in the form of 3 lines. The bottom line (longitudinal) represents horizontal velocity in a line joining the blast and the recording location; the top line (transverse) represents velocity at right angles to this; and the middle line represents vertical velocity. Deviations of these lines from their positions of rest amount to the velocity of the ground magnified by an instrument factor depending on the range used for the seismograph test. In this case the range was set at 1.0 and the velocities were obtained by measuring the deviations of the traces in inches and dividing by the proper calibration factor. Vertical lines on the record indicate the passage of time in 0.02 seconds, with every second being indicated by an instant mark.

DISCUSSION

Recent studies by the United States Bureau of Mines and other Authorities in the field of blast vibrations and their effects on structures have resulted in a new criteria based on velocity in inches per second, below is a table of standards based on a velocity criteria.

VELOCITY	CHARACTER INDEX OF DAMAGE
Below 2.0 inches per second	Recommended safe vibration level.
Above 2.0 inches per second	Threshold - very minor perceptible damage; plaster cracking, dislodgment of loose objects, etc.
Above 5.0 inches per second	Minor - no apparent weakening of the structure; glass, plaster, masonry damage.
Above 7.5 inches per second	Major - serious structural failure through cracking, distortion or shifting.

The above table is based on the Maximum Velocity on any one component of an instrument measuring motion in three mutually perpendicular planes.

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RESULTS CONTINUED

Tabulated below are the measurements resulting from this blast.

COMPONENT	MAXIMUM PARTICLE VELOCITY (in/sec)
Transverse	0.08
Vertical	0.08
Longitudinal	0.09

Note: The safety of the recorded vibration effects is further substantiated by the New Jersey, Massachusetts and Pennsylvania Quarry Blasting Regulations.

CONCLUSIONS

The recorded vibration effects from the subject blast were, according to all recognized damage indices, below that necessary to cause structural damage at the seismograph station, in the vicinity of the station or beyond the station.

Respectfully submitted,
VIBRA-TECH ENGINEERS, INC.
Anthony J. Petto
Anthony J. Petto, P. E.
Vice President

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BLAST AND SEISMOGRAPHIC REPORT

Client THE ARUNDEL CORPORATION Operation DELIGHT QUARRY
(Job Location)
Specific Blast Location BOTTOM LEVEL - WEST FACE
Blast No. Date OCTOBER 23, 1968 Time of Blast 12:30 PM
No. of Vertical Holes 35 Hole Diameter 3 1/2" Average Depth 37-78'
(does not one) Burden 9'
Average Subgrade Drilling 2' Hole Spacing 9' Duration 9'
Average Stemming to Top Charge 9-10' Type and Delay No. Used PRIMACORD 11-MS CONNECTORS
Decking Information (if any) NONE 12 FOLLY PERIODS
Total Weight of Explosives 4600 lbs. Average Explosives Load per Hole 140 lbs.
Make and Type of Explosives PRIMACORD - (10/25000 - 11/25000) TOTAL 25000
HOP PRIMERS
Maximum Amount of Explosives Per Firing Period 420 lbs.

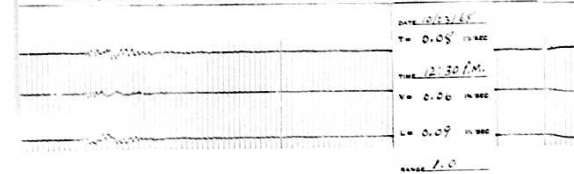
If Supplementary Holes, Snake Holes, etc. were used give information as above.

3 KINDS OF VERTICAL HOLES ON TOP
15 - 2" HOLES IN TOE 2 TO 4' VARIABLE SPACINGS - ON INST PERIOD
10" OF EXPLOSIVES

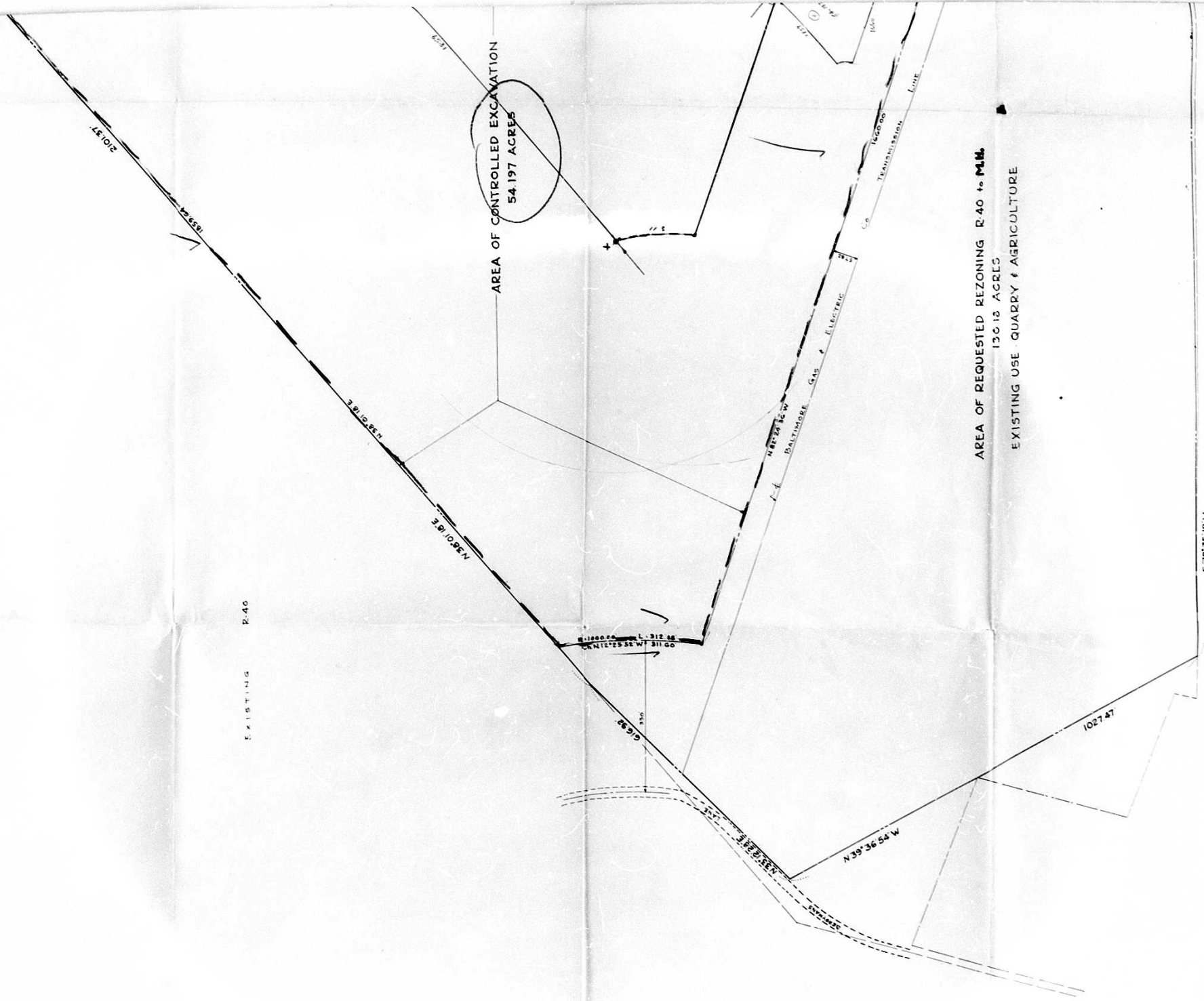
Weather and Sky Conditions FAIR Wind from the NORTHWEST - APPROX 20 MPH
Temperature 10°F Relative Humidity

Instrument Location ON GROUND AT S.E. BOUNDARY OF ARUNDEL PROPERTY
IN LINE WITH THE MAILSTER RESIDENCE ON CHERRY HILL ROAD
Instrument Located Approximately 1000 Feet SOUTHEAST from the Blast
APPROX. (Direction)
Remarks if Blast produced any unusual effects

Seismograph No. 146 Camera NONE I.D. Operated by ANTHONY J. PETTO



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AREA OF CONTROLLED EXCAVATION
54.197 ACRES

AREA OF REQUESTED REZONING R-40 to MM
130.13 ACRES
EXISTING USE QUARRY & AGRICULTURE

EXISTING R-40

EXISTING R-40



GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.
SURVEYORS
800 ALLEGANY AVE.
POTOMAC, MARYLAND



F-1



EXISTING R. 40

65-378RX

1-C
OFFICE
COMP

SEE
DESCRIPTION
T-1-C
T-1-C
T-1-C

DATED -- 9/26/68

NAP #4

SEC. 1-D

SEC. 1-C

NW-14K

NW-13K

X

NW-13-J

NW-14-J

EXISTING R. 40

BALTO GAS & ELECTRIC CO.

EXPRESSWAY INTERCHANGE

NORTHWESTERN

ALIGNMENT SUBJECT

TENTATIVE

PROPOSED RIGHT OF WAY LINE

PROPOSED RIGHT OF WAY LINE

PROPOSED RIGHT OF WAY LINE

PROPOSED RIGHT OF WAY LINE

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PROPOSED RIGHT OF WAY LINE

Ref 10

PLAT TO ACCOMPANY
ZONING PETITION APPEAL
DELIGHT QUARRY PROPERTY

THE ARUNDEL CORPORATION
BALTIMORE, MARYLAND

BALTO. CO., MD.
ELECT. DIST. NO. 4
DATE: SEPT. 18, 1968
SCALE: 1"=100'

F-2



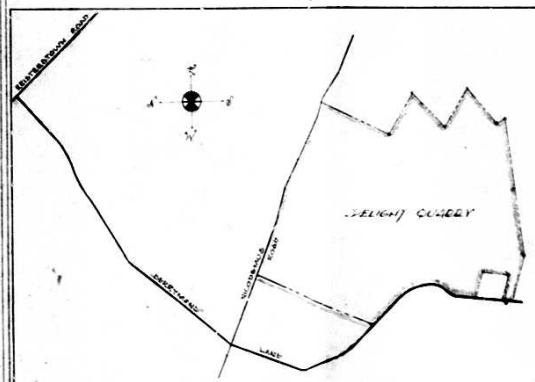
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NOTES:
AREA OF PROPERTY = 16.64 ACRES
ZONING FOR PROPERTY = R-100 (20' LOT &
PROPOSED LOTZ OF PROPERTY) = CONTROLLED EXCAVATION
EXIST'NG ZONING OF PROPERTY = R-100
THAT PROPOSED ZONING OF LOT & LOTZ = M-10 (AREA = 16.64 ACRES) WITH SP EXCEPT.
FOR CONTROLLED EXCAVATION (AREA = 6450 ACRES)

 BLOCK # 101 g

 • SECURITY LINE

 • BOD'S DAYBARK LINE
***** • TARE GREEN TOE PLANTS



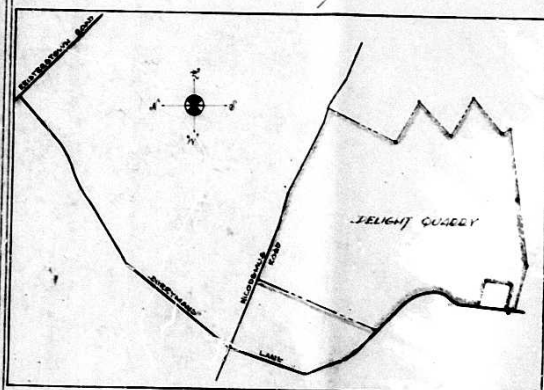
VICINITY MAP

"DELIGHT QUARELY PROPERLY"

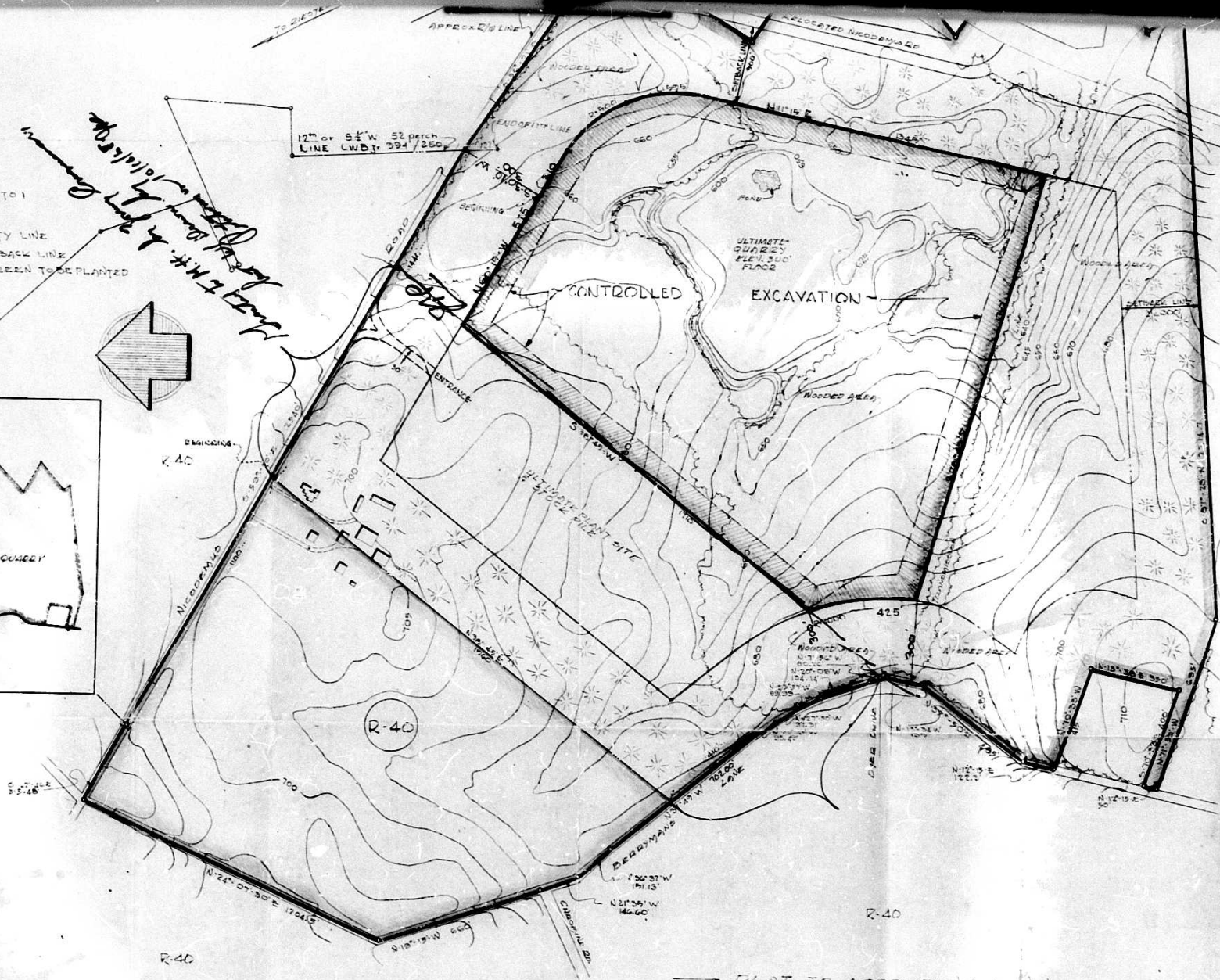
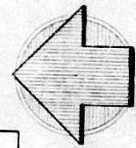
DELIGHT 4th ELECTION DISTRICT BALTO. CO., MD

LEGEND

- SLOPE 4 TO 1
- PROPERTY LINE
- 300' SETBACK LINE
- TREE GREEN TO BE PLANTED



VICINITY MAP



2-40

MULLER RAPHEL & ASSOCIATES, INC.
 registered professional engineers & land surveyors
 201 COURTLAND AVENUE
 TOWSON, 4, MARYLAND

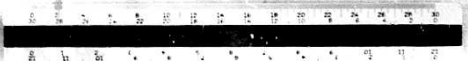
— PLAT TO ACCOMPANY ZONING PETITION —
 "DELIGHT QUARRY PROPERTY"
 DELIGHT-4th ELECTION 2 DISTRICT BALTO. CO. MD

SCALE: 1"=200'

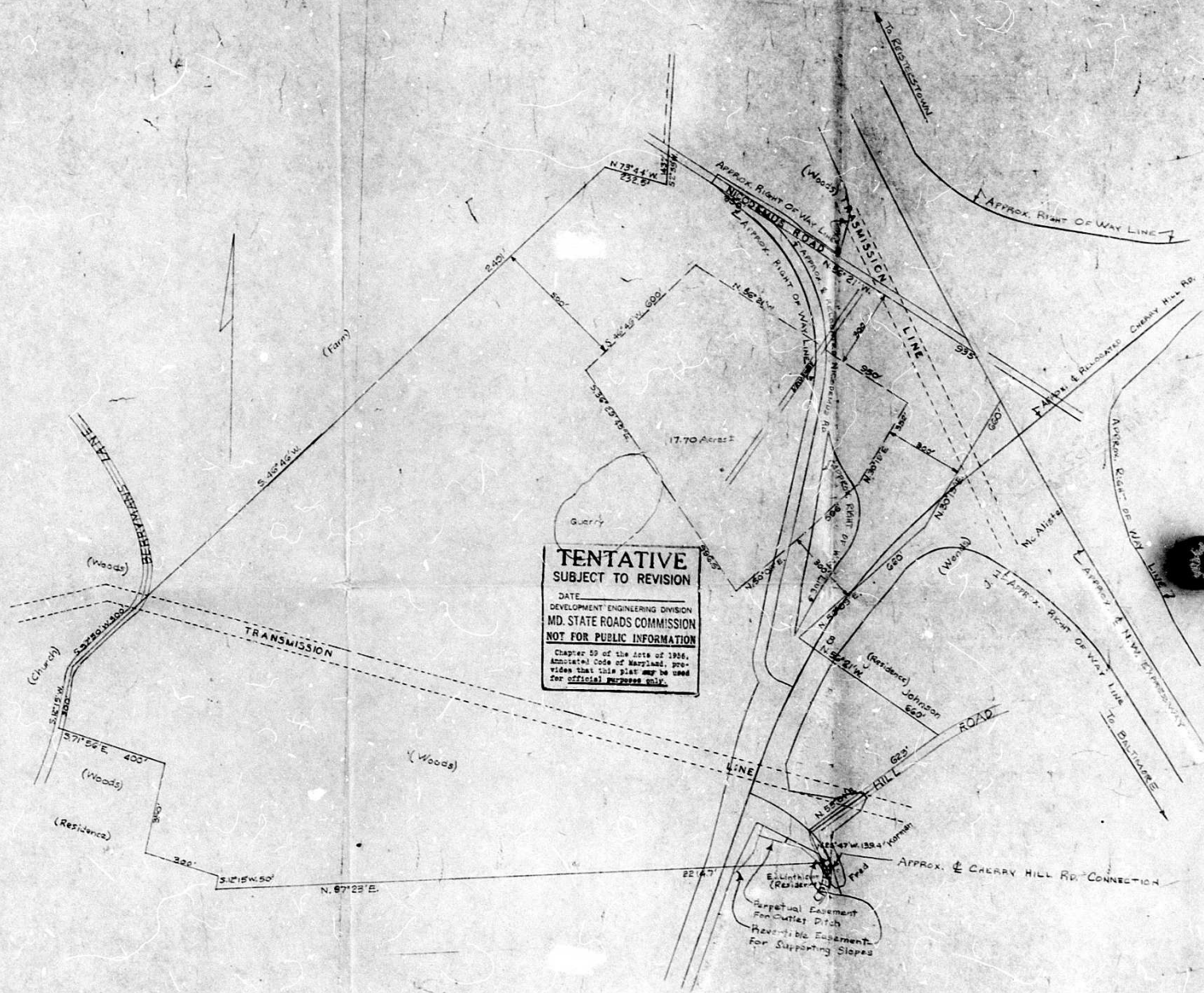
DATE: APRIL 28, 1965
 REVISION: JUNE 28, 1965
 REVISION: JUNE 28, 1965

465-378

Notes:
 This Plat is to be used for zoning only.
 Not to be used for conveyance.



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**TENTATIVE
NOT FINAL
FOR PRELIMINARY STUDY ONLY
OFFICE OF SPECIAL SERVICES ENGINEER**

NOTE:
Outline of properties shown hereon are taken from old deeds & plats and not from a survey by me.



FOR
FRANK P. DYER
4th DISTRICT, BALTIMORE COUNTY, MD.
SCALE 1"=200'

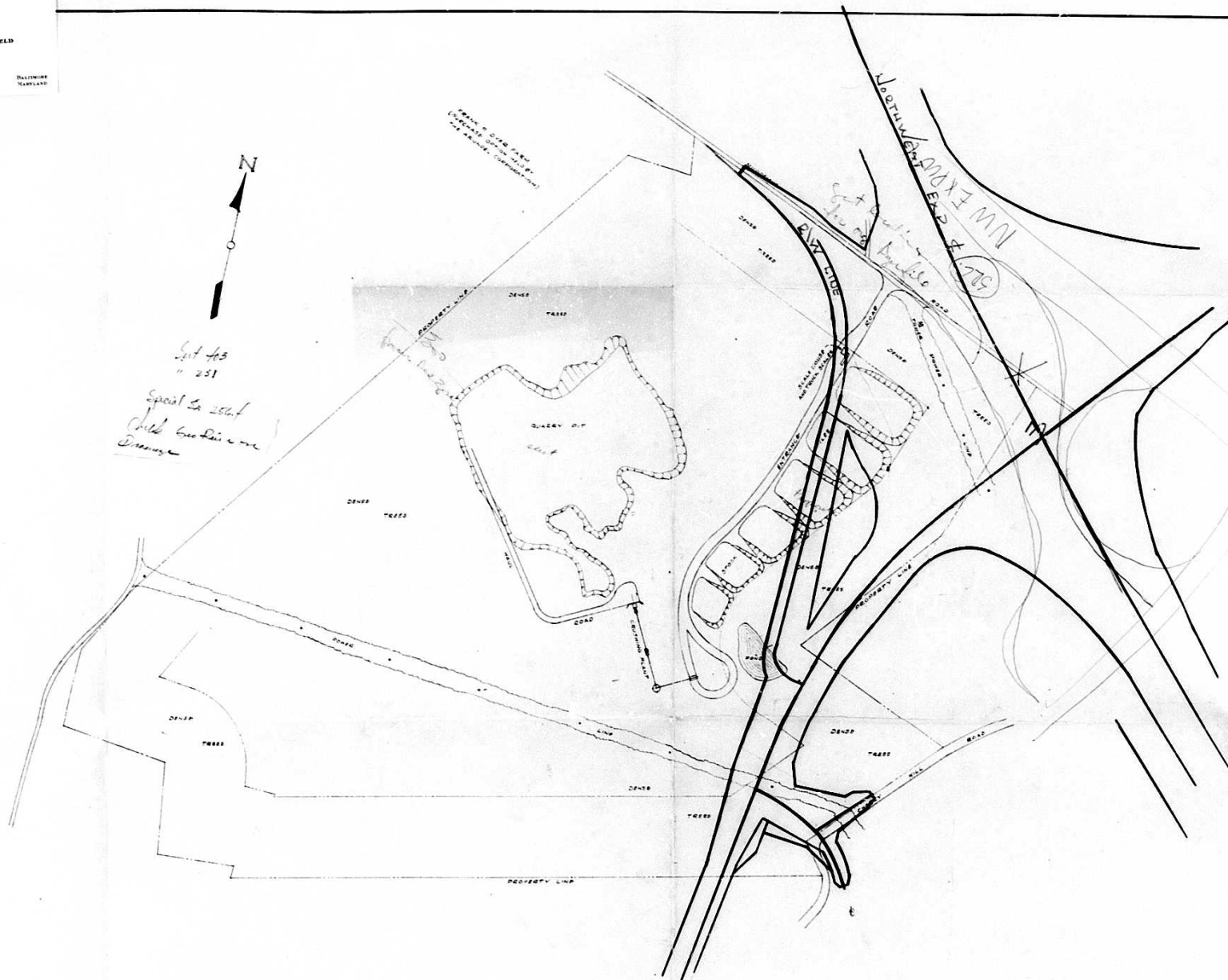
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MARION M. SCHOOLFIELD

THE PROJECT
PROPERTY DIVISION
ARUNDEL CORPORATION

BALTIMORE
MARYLAND

N
Spt 403
" 251
Spt 2a 254f
Child Garden
Drawing



4290

MARION M. SCHOOLFIELD
ARUNDEL CORP.
75R-7120

DELIGHT QUARRY
CRUSHING PLANT
LAYOUT

THE ARUNDEL CORPORATION
BALTIMORE, MD.

SCALE: 1" = 100' FEET	DRAWN: M.S.
DATE: Feb 1, 1968	TRACED: M.S.
	CHECKED: M.S.
	APPROVED: M.S.

65 D 001

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