

R. DONALD KIRK, and VIRGINIA A. KIRK, his wife
 ROLAND B. KIRK, and ANNA E. KIRK, his wife

vs.

WILLIAM S. BALDWIN, W. GILES PARKER and R. BRUCE ALDERMAN, being and constituting the COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW Misc. Docket No. 8 Folio No. 113 File No. 3572

ORDER

The appeal from the County Board of Appeals of Baltimore County in denying the special exception having come on for hearing, and counsel having been heard, and an Opinion and Order rendered by this Court on July 10, 1967, it is this day of July, 1967, ORDERED that the action of the County Board of Appeals of Baltimore County in denying the special exception be and is hereby reversed in accordance with the Opinion and Order of this Court of July 10, 1967.

65-381-RX
 R. DONALD KIRK, ET AL. SW/4 LIBERTY ROAD 299.79' SE OF MILFORD MILL ROAD
 BALTIMORE COUNTY
 65-381-RX

RE: PETITION FOR RECLASSIFICATION : BEFORE
 from an R-A zone to a B-L zone and SPECIAL EXCEPTION for a Gasoline Service Station SW/4 Liberty Road 299.79' SE of Milford Mill Road, 2nd District : COUNTY BOARD OF APPEALS
 R. Donald Kirk, et al, Petitioners : OF BALTIMORE COUNTY
 No. 65-381-RX

OPINION

The petitioners, R. Donald Kirk and Roland B. Kirk, seek a reclassification from an R-A zone to a B-L zone and a special exception for a gasoline service station on a parcel of ground approximately eight-tenths of an acre in size on the south side of Liberty Road approximately 300 feet east of the Milford Mill Road. A small portion of the west side of the property (.089 acres) is presently zoned B-L and the balance of the tract owned by the Kirk's is zoned R-A.

To the west of the property, on the south side of Liberty Road, is a large parcel of B-L zoning which is developed as the Milford Mill Shopping Center. Practically all of the property on the south side of Liberty Road westerly to Rolling Road is zoned commercial, either B-L or B-R. There is a small parcel of R-A east of the subject tract in another ownership, and then a larger parcel of B-L extending easterly to Abbie Place. The land directly across the street from the subject tract is zoned R-6, however, the properties approximately 100 feet to the east on the opposite side of Liberty Road are zoned B-L, as are all the properties again easterly to Abbie Place. On the north side of Liberty Road starting from a point approximately fifty to seventy-five feet west of the subject tract, all of the properties are zoned either B-L or B-R and apparently developed commercially.

The petitioners, through various expert witnesses and most particularly an expert realtor, Mr. Carl Heinmuller, Jr., produced testimony as to numerous changes in zoning and uses of property along this portion of the Liberty Road which have occurred since the adoption of the map in 1962. He testified to eleven reclassifications or special exceptions granted in the immediate vicinity since the adoption of the map in 1962 and verified, as an examination of the zoning map will show, that practically all of the property on both sides of the Liberty Road from Abbie Place westerly to Rolling Road, a distance of approximately 3500 feet, is zoned commercial with the exception of the small piece of R-A land of which the subject tract is a portion. He particularly noted petitions #63-165-R and #64-173-R which were reclassifications from R-6 to B-L almost directly across from the subject tract both of which occurred in 1964. In addition to the numerous changes, the witness stated that, in his opinion, the existing R-A zoning is improper and illogical in that he does not think it is logical to sandwich residential uses between commercial uses on both sides, and that the best use of this property would be for some type of

R. Donald Kirk, et al - #65-381-RX

retail business. He further stated that, in his opinion, it would be logical to zone all the Liberty Road frontage commercial from Rolling Road to Abbie Place, and that Abbie Place would be a logical stopping point for commercial zoning because of the existing residential developments to the east of it.

George F. Gavelis, Director of Planning for Baltimore County, testified in opposition to the petition, and his comments and testimony would seem to indicate that his primary opposition is to the use of the property as a filling station.

The Board cannot agree with Mr. Gavelis' comments, in that it does not seem proper to us to insert an R-A zone, with only 470 feet of frontage, between two large commercial tracts, and indeed is the only property that is not zoned commercially for approximately three-quarters of a mile along the south side of Liberty Road from Abbie Place to the Rolling Road. The Board agrees with the petitioners' contention that the only feasible use of this property is for some type of commercial development and that (1) it was an error to zone this property in a residential classification in 1962 and (2) even if it were not an error there have been substantial changes in the character of the neighborhood to warrant the rezoning of this property.

With regard to the petitioners request for a special exception for a gasoline service station, the Board feels constrained to follow the decision in case #58-48-X, the petition of Hammond B. Pierpont, et al, for a special exception for a service station approximately 200 feet west of the subject tract which was denied by the Zoning Commissioner and the Board of Appeals, and subsequently the denial was affirmed by the Circuit Court for Baltimore County in case #2975, Miscellaneous Docket #7, Folio 363. In that case the petition for special exception was denied apparently primarily on the ground that it would violate Section 502.1 (b) of the Regulations in that it would tend to create congestion on the Liberty Road.

The testimony of Jerome Wolff, a traffic engineer testifying on behalf of the petitioners, was that the Liberty Road is presently congested. However, this congestion should be alleviated by the widening of Liberty Road at this location which will apparently take place within the next year. At the present time the Liberty Road is the same two lane highway that existed on February 20, 1964 when the Board (differently constituted) denied the Pierpont petition. It may well be that when the actual widening and reconstruction of the Liberty Road takes place that the same traffic condition would not exist. However, with regard to the petition here, we must decide the case on the facts as they presently exist and, therefore, will follow the Pierpont decision with regard to the special exception.

R. Donald Kirk, et al - #65-381-RX

For the foregoing reasons, the petition for reclassification from an R-A zone to a B-L zone will be granted, and the special exception for a gasoline service station will be denied.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 16th day of June, 1966 by the County Board of Appeals. ORDERED that the reclassification petitioned for, be and the same is hereby GRANTED, and the special exception petitioned for, be and the same is hereby DENIED.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle 3 of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

William S. Baldwin, Chairman
 W. Giles Parker
 R. Bruce Alderman

Maryland Surveying and Engineering Co., Inc.

101 N. CALVERT STREET
 Baltimore, Maryland 21202
 Phone MUbbury 5048-0470

REGISTERED
 Maryland - New York
 Pennsylvania - Delaware

65-381-RX

MAP #2-B WESTERN AREA NW-6-G RL 6/11/65

ZONING DESCRIPTION
 RECLASSIFICATION R.A. TO B.L.
 8026 - 8033 Liberty Road
 for
 Humble Oil & Refining Company

BEGINNING for the same at a point on the Southwest side of Liberty Road, said point being situated Southeasterly 399.79 feet from the intersection formed by the Southwest side of Liberty Road and the Southeast side of Milford Mill Road; thence leaving the said point of beginning and running on the Southwest side of Liberty Road 399.79 feet South 65 degrees 48 minutes 38 seconds East, 175.73 feet; thence leaving the Southwest side of Liberty Road and running South 26 degrees 32 minutes 11 seconds West, 110.87 feet; thence South 60 degrees 56 minutes 16 seconds East, 38.30 feet; thence South 40 degrees 07 minutes 14 seconds West, 77.00 feet; thence North 53 degrees 52 minutes 16 seconds West 167.12 feet; thence North 55 degrees 19 minutes 46 seconds West, 65.00 feet; thence running and binding North 39 degrees 43 minutes 09 seconds East, 169.12 feet to the place of beginning. Containing 0.089 Acres, more or less.

Saving and excepting from reclassification that parcel of land which is presently zoned B-L, said parcel being more particularly described as follows: beginning for the same at that same point of beginning hereinbefore described; thence South 24 degrees 11 minutes 22 seconds West, 171.32 feet; thence North 55 degrees 19 minutes 46 seconds West, 46.04 feet; thence North 39 degrees 43 minutes 09 seconds East, 169.12 feet to the place of beginning. Containing 0.089 Acres, more or less.

Signed This 27th day of April 1965
 J. Robert Caswell

SCALE 1/4" = 1' each
 File No. 1805-35

RE: PETITION FOR RECLASSIFICATION : BEFORE
 from an R-A zone to a B-L zone, and SPECIAL EXCEPTION for a Gasoline Service Station, SW/4 Liberty Road 299.79' SE of Milford Mill Road, 2nd District : COUNTY BOARD OF APPEALS
 R. Donald Kirk, et al, Petitioners : OF BALTIMORE COUNTY
 No. 65-381-RX

OPINION

This case was originally heard by the Board of Appeals on March 1, 1966, and the Board signed an Order on June 16, 1966 granting the reclassification from an R-A zone to a Business Local zone, and denying the Special Exception for a gasoline service station. An appeal to the Circuit Court from the Board's Order was taken by both sides in this case, the petitioner appealing from the Board's denial of the Special Exception, and the protestant appealing from the Board's Order granting the reclassification to a B-L zone. On October 3, 1966 the Circuit Court for Baltimore County by W. Albert Menchine, Judge, assigned an Order of Remand remanding the case to the Board for further proceedings, and directed the Board to take further testimony "if it chooses to do so, dealing with the question whether actual construction by widening of Liberty Road does or does not influence the decision of the County Board of Appeals with respect to the subject reclassification and Special Exception."

Pursuant to Judge Menchine's Order of Remand the Board held a hearing on December 6, 1966 and heard the testimony of Mr. George R. Gorsuch, an Engineer for the State Roads Commission. Mr. Gorsuch's testimony in brief was that the contract for the widening of Liberty Road had been let on September 7, 1966, and that the construction had begun in the form of staking out and stripping sod and laying storm drain pipes along portions of the road that is to be widened. He further stated that the contractor is allowed three hundred and twenty-five working days to complete his contract, and that on his normal estimates the actual widening of Liberty Road would not be completed for at least a year and a half. He also stated that some gas and electric under-

R. Donald Kirk, et al - #65-381-RX

ground utility lines had been moved by the Gas & Electric Company, but that the paving as it now exists is the same as it was on March 1, 1966.

It is apparent from Mr. Gorsuch's testimony that the completion of the widening of Liberty Road in proximity to the subject property will take approximately one and one-half years from September of 1966, or, in other words, it is highly unlikely that the widening of the road would be completed prior to March of 1968. The Petitioner presented no testimony to change the minds of the Board, and the Board feels now as it did in March of 1966, that there is no essential difference in the width and alignment of Liberty Road between the time of the hearing of the Pierpont case, No. 58-48-X (Circuit Court Case No. 2975, Miscellaneous Docket 7, Folio 362) and the present time.

Further, it is the opinion of the Board that we cannot tell at this time whether there would or would not be a traffic problem when this road is actually widened, since there is no testimony whatever before the Board that if the widening were completed the traffic would be alleviated. Hence it appears to the Board that the granting of the Special Exception based upon the future widening of Liberty Road, would be too speculative.

For the reasons given above, the Order of the Board of Appeals dated June 16, 1966 is reaffirmed.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

William S. Baldwin, Chairman
 W. Giles Parker
 R. Bruce Alderman

Dated: Dec 30 1966

BALTIMORE COUNTY, MARYLAND JUN 14 '65 M

INTER-OFFICE CORRESPONDENCE



TO: Mr. John G. Rose, Zoning Commissioner Date: June 10, 1965

FROM: George E. Gavelis, Director ZONING DEPARTMENT

SUBJECT: Petition No. 65-381-RX, "R.A. to B-L Zone, Special Exception for Filling Station," Southwest side of Liberty Road 399.79 feet Southeast of Milford Mill Road. Being the property of R. Donald Kirk, et al."

2nd District

HEARING: Thursday, June 24, 1965 (1:00 P.M.)

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

1. What? Another gas station?
2. The intent of the Comprehensive Rezoning Map for the Western Planning Area with respect to the subject property was to provide for possible office-use, a transition between the commercial property to the northwest and additional residential property on the southeasterly side. The zoning was also intended to arrest the spread of strip commercial development. Recent staff studies made in connection with preparing the Composite Guideplan have affirmed both the purposes and approximate extent of the present zoning.
3. By a guide in the zoning-boundary description, the boundary does not coincide with the northwesterly lot line; part of the smaller lot in the subject parcel is thus zoned B-L. This is of no bad consequence, however, since the Zoning Regulations permit development to the same R.A. use potential in the B-L portion as is permitted on the rest of the lot.
4. Reclassification with the special exception requested would cause some question as to subdivision aspects, particularly regarding access to property in this rear.
5. We feel that one good reason to deny the special exception would be to avoid a multiplicity of entrances and exits on Liberty Road.

MARTIN SCHWARTZ,
MERIAN MARQUARDT
and WALTER DORN

Petitioners

vs.

WILLIAM S. BALDWIN
and R. BRUCE ALDERMAN
constituting the
County Board of Appeals
of Baltimore County

Defendants

ORDER FOR APPEAL

Mr. Clerk:

Please note an appeal on behalf of Martin Schwartz, Merian Marquardt and Walter Dorn, from the County Board of Appeals of Baltimore County to the Circuit Court for Baltimore County in the matter of a petition for Reclassification from an R-A Zone to a B-L Zone of property located on the southwest side of Liberty Road, 299.79' southeast of Milford Hill Road, in the Second Election District of Baltimore County. This appeal is from the decision of Petition No. 65-381RX of the County Board of Appeals of Baltimore County dated June 16, 1966, granting the requested reclassification. This appeal is filed pursuant to the provisions of Maryland Rules 82 and 84.

Harry S. Swartzwelder, Jr.
1763 Munsey Building
Baltimore, Maryland 21202
727-4929
Attorney for Protestants

I HEREBY CERTIFY that on this _____ day of July, 1966, a copy of the foregoing Order for Appeal was mailed to Austin W. Brizendine, Esquire, 21 W. Pennsylvania Avenue, Towson, Maryland, 21204, and to the Baltimore County Board of Appeals.

Harry S. Swartzwelder, Jr.

30 30 '65

PETITION FOR RECLASSIFICATION, from an R.A. to B.L. Zone, Special Exception for Filling Station--SW/S of Liberty Road 299.79' SE of Milford Hill Road 2nd District R. Donald Kirk-Petitioner No. 65-381-RX

BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

Mr. Commissioner:

Please enter an appeal to the County Board of Appeals from the decision of the Deputy Zoning Commissioner denying the above Application.

NOTICE OF APPEAL

Austin W. Brizendine
Austin W. Brizendine
606 Loyola Federal Building
Towson 4, Maryland
WA. 3-1818
Attorney for Petitioner

I HEREBY CERTIFY that a copy of the foregoing Notice to Appeal was mailed this 30th day of July, 1966, to Harry S. Swartzwelder, Esquire, Munsey Building, Baltimore, Maryland 21202.

Austin W. Brizendine
Austin W. Brizendine

PETITION FOR ZONING RECLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:
R. Donald Kirk, Virginia A. Kirk
I or we, Mr. R. Kirk, Anna M. Kirk, legal owner, of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an R.A. Zone to a B.L. Zone, and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for a Filling Station.

1. Error or mistake in original zoning.
2. Genuine change in conditions.

See attached description

Property is to be posted and advertised as prescribed by Zoning Regulations 1 or we agree to pay expenses of above reclassification and/or Special Exception advertising, posting, etc. upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract purchaser: *Ronald Kirk*
Address: 8033 Liberty Road RIX
229 E 31 Liberty Road RIX

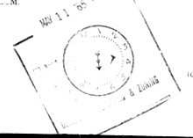
Legal Owner: *Ronald Kirk*
Address: 8033 Liberty Road RIX
229 E 31 Liberty Road RIX

Austin W. Brizendine
Petitioner's Attorney

Protestant's Attorney

Address: 606 Loyola Federal Building
Towson 4, Maryland

ORDERED By The Zoning Commissioner of Baltimore County, this _____ day of _____, 1966, that the subject matter of this petition be advertised as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the _____ day of _____, 1966, at _____ o'clock P.M.



Zoning Commissioner of Baltimore County.

BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY

NO: Petition for Reclassification :
R.A. to B.L. Zone, Special Exception :
for Filling Station SW/S of :
Liberty Road 299.79' SE of Milford :
Hill Road - 2nd District :
R. Donald Kirk-Petitioner :

BALTIMORE COUNTY
No. 65-381-RX

The petitioner has requested a Reclassification and a Special Exception to use his property for a gasoline filling station. The property is located on the South side of Liberty Road, 400 feet East of Milford Hill Road.

The same set of circumstances in this case were also present in the Pierpont case, which involved a request for a Special Exception for a gasoline station on the tract located just east of the subject property. In view of the decision in the Pierpont matter (Circuit Court for Baltimore County at Law, Miscellaneous Docket 7- Folio 363, Case No. 2/75), the Deputy Zoning Commissioner is constrained to deny the subject Petition.

For the foregoing reasons, it is ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 7th day of July, 1966, that the above reclassification be and the same is hereby DENIED and that the above described property or area be and the same is hereby continued as and to remain an R-A Zone, and the Special Exception for a gasoline service station be and the same is hereby DENIED.

Harry S. Swartzwelder, Jr.
Harry S. Swartzwelder, Jr.
Deputy Zoning Commissioner of Baltimore County

July 10, 1967

Before: HONORABLE JOHN GRASON TURNBULL, Judge

APPEARANCES:

Austin W. Brizendine, Esquire
on behalf of R. Donald Kirk, et al.
Harry S. Swartzwelder, Jr., Esquire,
on behalf of Martin Schwartz, et al.

Reported by: Paul G. Griffin
Official Court Reporter
In the Circuit Court for Baltimore County

THE COURT: All right. Miscellaneous 3570, application is made on behalf of R. Donald Kirk, Virginia A. Kirk, his wife, Roland B. Kirk and Anna M. Kirk, his wife, to intervene as parties appellees. The motion is granted, with leave to file an answer within ten days, the answer to be non pro tunc as of August 1, 1966. The same application, Mr. Campbell, in 3572, except that in 3572 the application is made on behalf of Martin Schwartz, Merian Marquardt and Walter Dorn, and the same leave is granted, an answer to be filed within ten days as of August 1, 1966.

MR. BRIZENDINE: If your Honor please, I think the numbers are reversed; 3570 is the one filed by Schwartz.

THE COURT: Well, Kirk is granted leave to intervene in the Schwartz case, and Schwartz and others are granted leave to intervene in the Kirk case.

Now, Mr. Swartzwelder, your appeal was filed three days prior to Mr. Brizendine's appeal, so I will hear from you first.

(Counsel made argument to the Court.)

THE COURT: Gentlemen, on the petitioners' exhibit one, which is a plat prepared by Maryland Surveying and Engineering Company, Incorporated, and attested to by J. Robert Cassell, registered engineer. It appears that a portion of the property here in dispute is zoned B. L., and a portion zoned R. A., is that correct?

MR. BRIZENDINE: That's correct, your Honor.

MR. SWARTZWELDER: Yes, your Honor.

THE COURT: In an appeal from the County Board of Appeals from its decision involving a zoning matter, it is unusual, to say the least, that counsel for all parties feel that the Board was arbitrary and unreasonable. Mr. Swartzwelder thinks they are arbitrary and unreasonable in granting a B. L. classification, and Mr. Brizendine thinks they are arbitrary and unreasonable and illegal because they denied a special exception. So, we do have at least unanimity of opinion that the Board was arbitrary and unreasonable and illegal.

It is perfectly apparent from the record gentlemen, that there was an original error in the zoning of a portion of the Kirk property, because the portion zoned B. L. comes down to such a point that it appears from this plat that the B. L. frontage is so minimal that the property could not possibly be used for B. L. purposes, that is to say, that portion which is zoned B. L. Now, the balance of it was zoned R. A.. Of course, a filling station or other commercial uses are not permitted in an R. A. zone, except those listed for special exceptions under Section 215.3, which does allow by special exception for certain commercial uses in an R. A. zone. In a B. L. zone it is possible to use a portion of a property for a residential use permitted, and as limited in the residential zone immediately

adjoining under Section 230.1. So that there arises no question, at least in my opinion, no question of the zoning being confiscatory, because the portion used as B. L. could be used for filling out an apartment area. But I reiterate, that obviously the zoning was in error when they chopped up a piece of property in that fashion, and when it was obvious at the time the zoning was enacted that the section zoned B. L. could not possibly be used for any B. L. purposes. So, it had to be in error.

Now, reference has been made to the Rohde case. There, as we all know, the Court of Appeals affirmed a re-classification on the premise that there were final plans for Goucher Boulevard, which constituted a change, which warranted a reclassification. There is also the case of White vs. the Board of Appeals, off Thornton Road in the Ruxton area of Baltimore County, where the Court of Appeals sustained the Board of Appeals in granting the reclassification because the evidence was that sewerage facilities were in the final planning stage, although not constructed, and that such facilities would take care of the residences, the additional residences authorized by the reclassification. So that in at least those two cases, the Court of Appeals has said that final plans justify the zoning authorities to act.

Now, in this case you have not only final plans, but under the testimony taken in the second hearing you have before the board that

actual construction has been started, and that the final contract had been let for the widening of Liberty Road. So that following the Rohde and the White cases, I hold that that is an element to be considered in determining whether or not there has been change. As Mr. Swartzwelder very properly points out with regard to the question of change, the petitioners' case pretty much has to stand or fall on the testimony of Mr. Heinmuller. The Board accepted Mr. Heinmuller's testimony, and the Board, in its original opinion said, referring to Mr. Heinmuller, "He testified to eleven re-classifications or special exceptions granted in the immediate vicinity since the adoption of the map in 1962, and verified that an examination of the zoning map would show practically all the property on both sides of Liberty Road, from Abbey Place westerly to Rolling Road, a distance of approximately thirty-five hundred feet, is zoned commercial, with the exception of the small piece of R. A. land, of which the subject tract is a portion." That, in my opinion, differentiates this petition from the Elliott vs. Joyce case, because Judge Prescott, in the opinion of the Court of Appeals, referred to Mr. Cavrell's testimony in Elliott vs. Joyce, that commercial changes in the area had been confined to the Security Boulevard, a street some eighteen hundred to two thousand feet south of the property involved in Elliott vs. Joyce. Whereas the Board finds, on the basis of Mr. Heinmuller's testimony, that there were changes within, to paraphrase

the Board's language, within a stone's throw of this particular property. So that, insofar as the reclassification is concerned, the Court finds that there was substantial, believable evidence upon which the Board could reach the conclusion which it did reach.

Now, gentlemen, in dealing with special exceptions, as we all know, there are certain criteria which must be met before a special exception can be granted. The only contention made as to the special exception seems to be that the granting of the special exception would tend to create congestion in roads, streets or alleys, because there is no testimony in this record that I saw that the granting of the special exception would be detrimental to the health, safety or general welfare, except insofar as traffic is concerned, or would create a potential hazard, fire panic, or other dangers, overcrowded land, and cause undue concentration in population, interfere with adequate provisions for schools, parks, water, sewerage, and so forth, or interfere with light or air. So, the question really comes down to the question as to whether or not the granting of the special exception will tend to cause congestion in the streets, roads or alleys.

Now, gentlemen, having determined that the Board had before it evidence upon which it could reach a conclusion as to the reclassification, then we consider as to whether or not the special exception would cause such congestion in the streets, roads or alleys as to warrant its denial.

Now, when you consider the testimony of the gentleman from Humble Oil, I forget his name at the moment, and the testimony of Mr. Wolff relative to the number of traffic movements which normally would be expected by a station at this site, and compare that with uses, such as a lobby bar, a restaurant, a bank, building and loan association, private colleges, nursery, dancing schools, fraternity and sorority houses, dormitories, business and trade schools, alcoholic beverage package stores, automobile parking lots, and many others which are permitted without special exception in the zone, and taking into consideration the evidence before the Board, and particularly the fact that the only real contention that is made is about traffic, I do not see how the Board could reasonably deny this special exception solely on the basis of added traffic movements. The only people who testified who could remotely be considered to be traffic experts would be Mr. Wolff and Mr. Cavrell. As I read Mr. Wolff's testimony, it is his opinion that while turning movements, left turning movements might cause some problem, that a filling station of itself does not generate traffic, but is used by traffic which is already on the highway; whereas, if any of these other permitted uses under B. L. came into existence, there are all types of enterprises which would indeed generate traffic and add to traffic congestion problems instead of existing and feeding itself on traffic which is going to use that road anyway.

So, it is the Court's opinion that the Board acted in an arbitrary fashion when it refused the application for a special permit, because the only way that it could refuse it would be on the basis of traffic, and the Board seemed to feel that it was bound by the decision of a prior Board and by Judge Jenifer on an application by someone named Pierpont, which was refused. But, as pointed out in argument, first of all, that was a different property, and each property has its own specific characteristics; secondly, that record is not before me. I think it is inescapable that one must conclude from this record that at the time the Pierpont matter was settled, that no construction whatsoever as to the widening of Liberty Road had been started, so that when the Board considers it is bound by the Pierpont decision, which was made by a Board which was constituted, to some extent at least, of other members, when the Board says that it considers itself to be bound by Pierpont, it seems to me it completely ignores the fact that as of the date of the last hearing construction had actually started on the widening of Liberty Road.

So, gentlemen, I affirm the Board in its granting of the petition for reclassification, I reverse the Board on its denial of the Application for a special permit for a gasoline filling station, and I will sign an appropriate order to that effect.

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21284

May 11, 1965

Austin W. Brizandine, Esquire
606 Loyola Federal Building
Towson, Maryland 21284

Subject: Reclassification from an R. A. zone to a B. L. zone, and special exception for a filling station for R. Donald Kirk, et al, located on the Southeast side of Liberty Road 100' Southeast of Millford Hill Road.

Dear Sir:

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

STATE BOARD COMMISSION: In the event that the subject zoning is granted, it is requested that plans be made subject to the approval of this Commission.

OFFICE OF PLANNING AND ZONING: The development plans for the gasoline station utilize only a portion of the entire tract as requested for B. L. zoning. If the petitioner has plans for the undeveloped portion, these plans should be submitted to this office prior to the hearing.

BUREAU OF ENGINEERING:

Utilities: Water - Existing 12" water in Liberty Road
Sewer - Existing 8" sewer in Liberty Road
Adequacy of existing water and sewer to be determined by developer or his engineer.

The above comments are not intended to indicate the appropriateness of the zoning action requested, but to assure 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 in the appropriateness of the requested zoning ten days before the Zoning Commission's hearing.

The following members had no comment to offer:

Bureau of Traffic Engineering
Fire Bureau
Health Department
Building Department
Industrial Development Commission
Board of Education

Yours very truly,

James S. Davis
James S. Davis, Chief
Petition and Permit Processing

cc: Mr. J. Duffry, St. Hds. Com.
Mr. A. Quisby, Pl. & Zoning
Mr. C. Brown, Engineering

TELEPHONE 823-3000

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21284

INVOICE No. 31935
DATE 7/6/65

To: Mr. Stewart A. Bain
1115 Meadow Lark Dr.
Baltimore 27, Md.

BILLED BY: Zoning Dept. of Balto. Co.

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT \$64.50 COST
1	Advertising and posting for Donald Kirk, et al #65-381-EX	62.50
	7-660 4305 * 31935 TIP-	2.00
		62.50

DEPOSIT TO ACCOUNT NO. 01-622

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

TELEPHONE 823-3000

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21284

INVOICE No. 38967
DATE 10/17/65

To: Harry S. Swartzwelder, Jr., Esq.
1709 Munsey Building
Baltimore, Maryland 21202

BILLED BY: County Board of Appeals (Zoning)

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT \$4.00 COST
1	Cost of certified documents - No. 65-381-EX R. Donald Kirk, et al SW/5 Liberty Road 299.79' SE of Millford Hill Road 2nd District	\$4.00
	10-2046 415 * 38967 TIP-	0.00
		4.00

DEPOSIT TO ACCOUNT NO. 01-712

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

TELEPHONE 823-3000

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

INVOICE No. 30648
DATE 6/1/65

To: Austin W. Brizandine, Esq.
22 West Penna. Ave.
Towson, Md. 21284

BILLED BY: Zoning Dept. of Balto. Co.

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT \$50.00 COST
1	Petition for Reclassification & Special Exception for R. Donald Kirk, et al #65-381-EX	50.00
	6-1-65 4305 * 30648 TIP-	0.00
		50.00

DEPOSIT TO ACCOUNT NO. 01-712

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

TELEPHONE 823-3000

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21284

INVOICE No. 38758
DATE 7/29/66

To: Austin W. Brizandine, Esq.
Loyola Building
Towson, Maryland 21284

BILLED BY: County Board of Appeals (Zoning)

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT \$6.00 COST
1	Cost of Certified Documents - No. 65-381-EX R. Donald Kirk, et al SW/5 Liberty Road 299.79' SE of Millford Hill Road 2nd District	\$6.00
	7-29-66 4305 * 38758 TIP-	0.00
		6.00

DEPOSIT TO ACCOUNT NO. 01-712

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

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

65-381-RX

District: 2ND Date of Posting: Aug. 7, 1965

Posted for: R. Donald Kirk, Jr.

Petitioner: R. Donald Kirk, Jr.

Location of property: sw/3 Liberty Rd. 297.79' SE of Milford Mill Rd.

Location of Sign: sw/3 Liberty Rd. 300' SE of Milford Mill Rd.

Remarks: _____

Posted by: J. G. Rose Signature Date of return: Aug. 12, 1965

PETITION FOR RECLASSIFICATION AND SPECIAL EXCEPTION 2ND DISTRICT

ZONING: From R.A. to B.L.
Petition for Special Exception for Filing Station
LOCATION: Southwest side of Liberty Road 398.79 feet Southeast of Milford Mill Road
DATE & TIME: THURSDAY, JUNE 24, 1965 at 1:00 P.M.
PUBLIC HEARING: Room 109, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

The Zoning Commissioner of Baltimore County, in accordance with the provisions of the Baltimore County Zoning Ordinance, hereby certifies that the following petition for Special Exception for Filing Station is in compliance with the provisions of the Baltimore County Zoning Ordinance.

Proposed Zoning R.A.
All that parcel of land in the County of Baltimore County, Maryland, containing 0.689 Acres, more or less, bounded as follows: North 117.32 feet, thence South 55 degrees 18 minutes 46 seconds West 187.12 feet, thence North 53 degrees 52 minutes 46 seconds East 61.00 feet, thence South 60 degrees 56 minutes 48 seconds East 35.30 feet, thence South 40 degrees 07 minutes 14 seconds West 99.00 feet, thence North 53 degrees 52 minutes 46 seconds West 187.12 feet, thence North 55 degrees 19 minutes 46 seconds West, 61.00 feet, thence running and binding North 39 degrees 43 minutes 00 seconds East, 169.12 feet to the place of beginning. Containing 0.689 Acres, more or less.

Saving and excepting from reclassification that parcel of land which is presently zoned B.L., said parcel being more particularly described as follows: beginning for the same at that same point of beginning hereinafter described; thence South 24 degrees 11 minutes 22 seconds West 177.32 feet, thence North 55 degrees 18 minutes 46 seconds West, 46.04 feet, thence North 39 degrees 43 minutes 00 seconds East, 169.12 feet to the place of beginning. Containing 0.689 Acres, more or less.

Being the property of R. Donald Kirk, et al as shown on plot plan filed with the Zoning Department.

Hearing Date: Thursday, June 24, 1965 at 1:00 P.M. Public Hearing Room 109, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

By Order of:
John G. Rose
Zoning Commissioner of Baltimore County

CERTIFICATE OF PUBLICATION

TOWSON, MD. June 14, 1965

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md. successively on the 11th, 18th, 25th, and 30th days of June, 1965, the 1965 publication appearing on the 14th day of June, 1965.

THE JEFFERSONIAN,
B. Paul Smith
Manager.

Cost of Advertisement: \$ _____

TELEPHONE 822-3000

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204

No. 32018
DATE 5/2/65

To: Humble Oil & Refining Co.,
7200 York Road,
Towson, Maryland 21204

BILLED TO: Office of Planning & Zoning
119 County Office Bldg.
Towson, Maryland 21204

QUANTITY	DEBIT TO ACCOUNT NO. 01-522	DEBIT OFFER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT
		Cost of appeal - R. Donald Kirk, petitioner \$ 70.00	
		No. 65-381-RX Posting 5.00	\$75.00
			75.00

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

Austin W. Brizendine, Esq.
606 Loyola Federal Building
Towson, Md. 21204

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

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

Your petition has been received and accepted for filing this

11 day of MAY, 1965

Owners Name: R. Donald Kirk
Reviewed by: John G. Rose

John G. Rose
JOHN G. ROSE
Zoning Commissioner

PETITION FOR RECLASSIFICATION AND SPECIAL EXCEPTION 2ND DISTRICT

ZONING: From R.A. to B.L.
Petition for Special Exception for Filing Station
LOCATION: Southwest side of Liberty Road 398.79 feet Southeast of Milford Mill Road
DATE & TIME: THURSDAY, JUNE 24, 1965 at 1:00 P.M.
PUBLIC HEARING: Room 109, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

The Zoning Commissioner of Baltimore County, in accordance with the provisions of the Baltimore County Zoning Ordinance, hereby certifies that the following petition for Special Exception for Filing Station is in compliance with the provisions of the Baltimore County Zoning Ordinance.

Proposed Zoning R.A.
All that parcel of land in the County of Baltimore County, Maryland, containing 0.689 Acres, more or less, bounded as follows: North 117.32 feet, thence South 55 degrees 18 minutes 46 seconds West 187.12 feet, thence North 53 degrees 52 minutes 46 seconds East 61.00 feet, thence South 60 degrees 56 minutes 48 seconds East 35.30 feet, thence South 40 degrees 07 minutes 14 seconds West 99.00 feet, thence North 53 degrees 52 minutes 46 seconds West 187.12 feet, thence North 55 degrees 19 minutes 46 seconds West, 61.00 feet, thence running and binding North 39 degrees 43 minutes 00 seconds East, 169.12 feet to the place of beginning. Containing 0.689 Acres, more or less.

Saving and excepting from reclassification that parcel of land which is presently zoned B.L., said parcel being more particularly described as follows: beginning for the same at that same point of beginning hereinafter described; thence South 24 degrees 11 minutes 22 seconds West 177.32 feet, thence North 55 degrees 18 minutes 46 seconds West, 46.04 feet, thence North 39 degrees 43 minutes 00 seconds East, 169.12 feet to the place of beginning. Containing 0.689 Acres, more or less.

Being the property of R. Donald Kirk, et al as shown on plot plan filed with the Zoning Department.

Hearing Date: Thursday, June 24, 1965 at 1:00 P.M. Public Hearing Room 109, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

By Order of:
John G. Rose
Zoning Commissioner of Baltimore County

CERTIFICATE OF PUBLICATION

BALTIMORE COUNTY, MD. June 3, 1965

THIS IS TO CERTIFY, that the annexed advertisement was published in THE TIMES, a weekly newspaper printed and published in Baltimore County, Md. once in each of successive weeks before the 19th day of June, 1965, the first publication appearing on the 3rd day of June, 1965.

THE TIMES
Manager
June 3, 1965

Cost of Advertisement: \$ 27.00

Registration Under 49716
(Registration No. 7410)

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

65-381-RX

District: 2ND Date of Posting: June 5, 1965

Posted for: Return from R.A. to B.L. & Spec. Except. Liberty Sta.

Petitioner: R. Donald Kirk

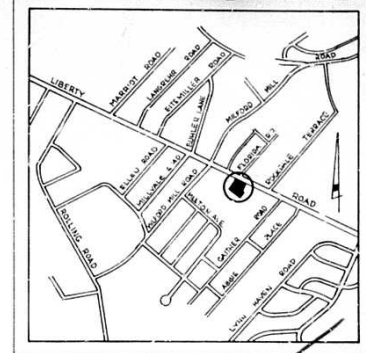
Location of property: sw/3 Liberty Rd. 297.79' SE of Milford Mill Rd.

Location of Sign: Opposite South Head Road, Florida Ave. sw/3 Liberty Rd.

Remarks: _____

Posted by: J. S. Brice Signature Date of return: June 8, 1965

2 Signs



LOCATION MAP
Scale 1"=100'

65-281RX
2-B
WESTERN
AREA
NW-6-G

MILLFORD MILL SHOPPING CENTER
ZONED GL

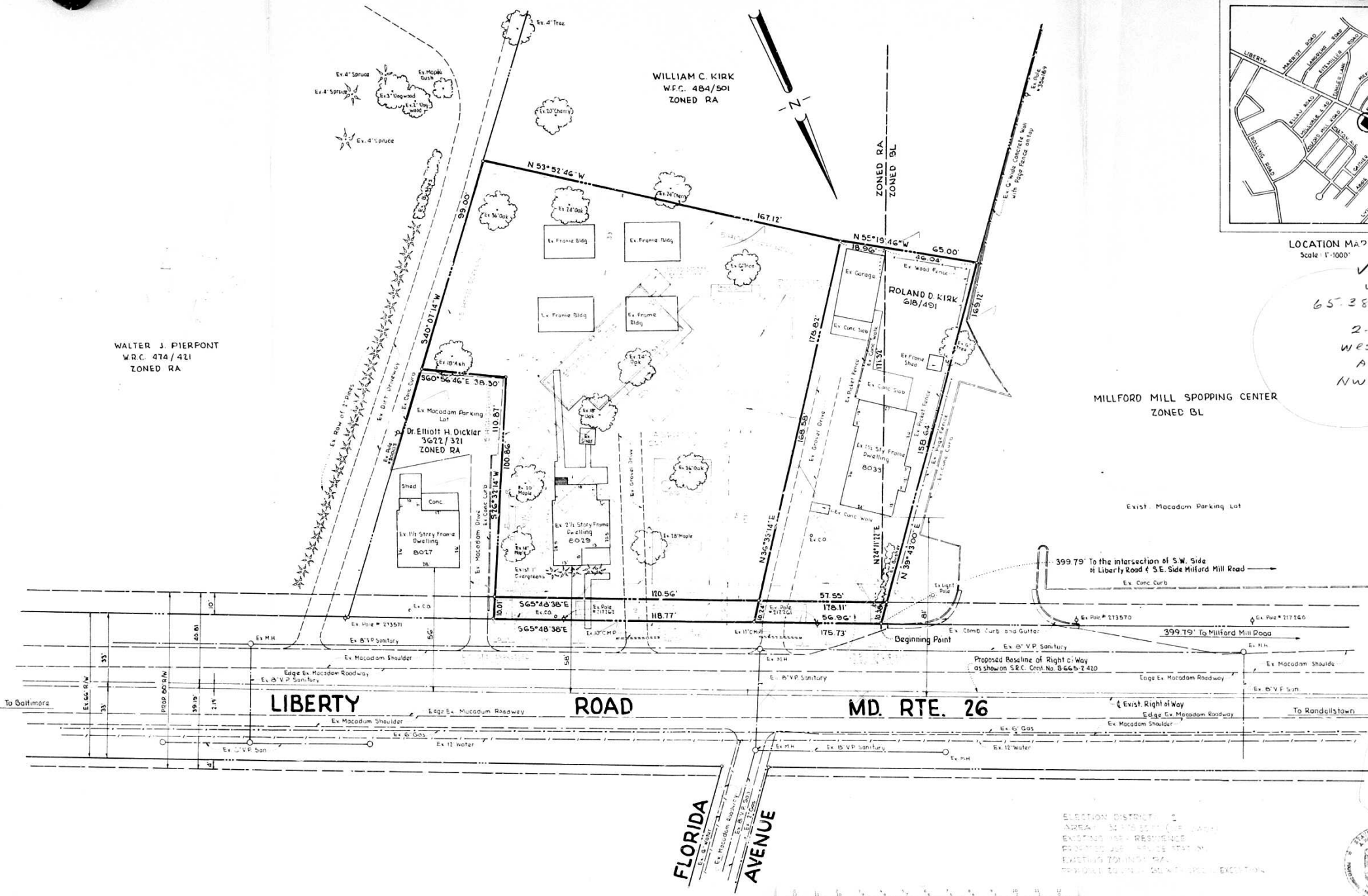
Exist. Macadam Parking Lot

399.79' To the intersection of S.W. Side
of Liberty Road & S.E. Side Millford Mill Road

399.79' To Millford Mill Road

Proposed Baseline of Right of Way
as shown S.E.C. Cert. No. 666-2410

Exist. Right of Way
Edge Ex. Macadam Roadway



WALTER J. PIERPONT
W.R.C. 474/421
ZONED RA

WILLIAM C. KIRK
W.F.C. 484/501
ZONED RA

ROLAND D. KIRK
G18/491

Dr. Elliott H. Dickler
3672/371
ZONED RA

LIBERTY

ROAD

MD. RTE. 26

FLORIDA
AVENUE

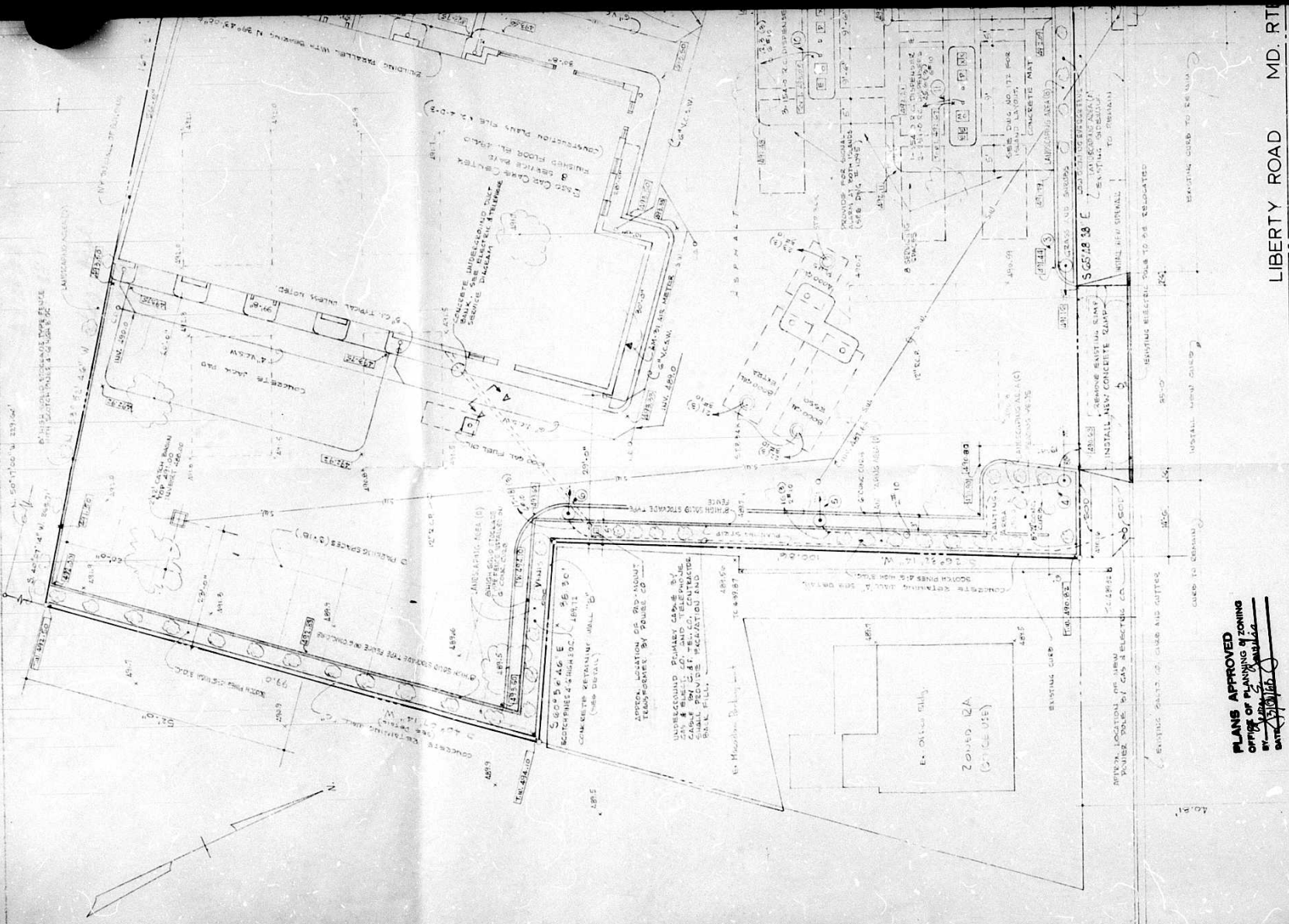
ELECTION DISTRICT 2
AREA 31 1/2 AC (2.2 AC) (SEE MAP)
EXISTING 1884 RESIDENCE
EXISTING 1928 RESIDENCE
EXISTING 1930 RESIDENCE
EXISTING 1930 RESIDENCE
PROPOSED 1884 RESIDENCE

65-381
MAP
2-B
WESTERN
AREA
NW-6-G



J. Robert Russell

REVISIONS: BY: _____ DATE: _____	PREPARED BY: MARYLAND SURVEYING AND ENGINEERING CO., INC. 1701 NORTH CALVERT STREET BALTIMORE, MARYLAND 21202 M.U. 5-0469	FILE NO. 1805-35 HUMBLE OIL & REFINING CO. 7720 YORK ROAD TOWSON, MARYLAND 21204	DRAWN BY: G.P.P. CHECKED BY: _____ SCALE: 1"=50'	ZONING PLAT 6029 & 8033 LIBERTY ROAD 400' EAST OF MILLFORD MILL ROAD BALTIMORE CO. MD. DISTRICT NO. 2	DATE: MARCH 1, 1984 FILE NO.: _____ DWG. NO.: _____
--	--	--	--	---	---



PLANS APPROVED
 OFFICE OF PLANNING & ZONING
 BY: *[Signature]*
 DATE: *[Date]*

HUMBLE OIL &
 7720
 TOWSON

LIBERTY ROAD MD. RT 100

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: George J. Gavrells Date: March 7, 1968
 FROM: Office of Law
 SUBJECT: Kirk v. Baltimore County Board of Appeals of Baltimore County

This case involved an appeal to the Circuit Court for Baltimore County pertaining to an application for reclassification from an R-A zone to a B-L zone and a special exception for a gasoline service station on a parcel of ground approximately .8 of an acre in size on the southside of Liberty Road approximately 300 feet east of Milford Mill Road.

On July 24, 1967 the Circuit Court for Baltimore County entered an order reversing the previous order of the County Board of Appeals of Baltimore County in this matter.

Notwithstanding the fact that Bill No. 40 had been passed by the County Council prior to the date of this court order, the court reversed the aforesaid decision and no further appeal was taken to the Court of Appeals of Maryland. Under these judicial circumstances, it is the opinion of this office that the applicant in question is entitled to the effect of the aforesaid order of court dated July 24, 1967.

[Signature]
 Harry S. Shapiro
 Chief, Trial Division

HSS/get

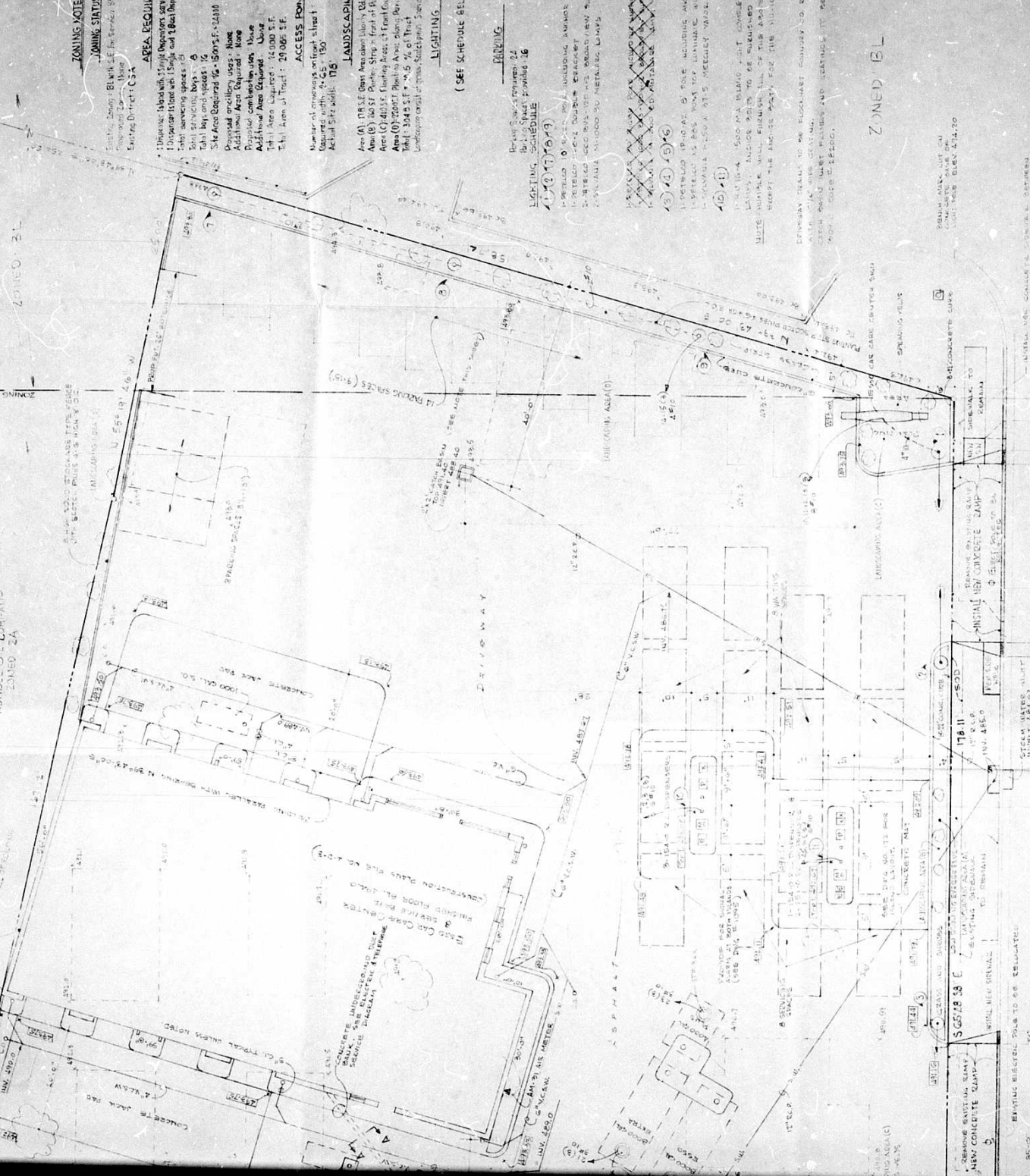
RECEIVED
 MAR 7 - 1968
 BALTIMORE
 OFFICE OF P

REVISIONS:
 PLAN COMPLETED FOR CONSTRUCTION.
 SURPLUS PROPERTY REMOVED

REMOVE EXISTING DRIVEWAY
 INSTALL NEW CONCRETE DRIVEWAY
 REVISIONS ELECTRICAL TO BE RELOCATED
 EXISTING CURB TO BE MAINTAINED
 INSTALL NEW CURB
 EXISTING ELECTRICAL TO BE RELOCATED
 EXISTING CURB TO BE MAINTAINED
 INSTALL NEW CURB

PROPOSED ZONE WITH SPECIAL EXCEPTION FOR OFFICE USE

OWNED BY
HUMBLE OIL COMPANY
ZONED ZA



ZONED ZB

ZONING NOTES:
ZONING STATUS:
AREA REQUIREMENTS:

LANDSCAPING:
LANDSCAPING:

ACCESS ROADS:

LIGHTING:
(SEE SCHEDULE BELOW)

PARKING:
PARKING SCHEDULE

1. Drive way 16' wide with 2" concrete top, 2" curbs on one side
2. 10' concrete sidewalk with 1 1/2" curb and 2" curb
3. 2" concrete sidewalk with 1 1/2" curb and 2" curb
4. 2" concrete sidewalk with 1 1/2" curb and 2" curb
5. 2" concrete sidewalk with 1 1/2" curb and 2" curb

Area (A) 175,500 SF
Area (B) 200,000 SF
Area (C) 200,000 SF
Total Area 575,500 SF

Number of employees on first shift 120
Actual Site 150

Area (A) 175,500 SF
Area (B) 200,000 SF
Area (C) 200,000 SF
Total Area 575,500 SF

Area (A) 175,500 SF
Area (B) 200,000 SF
Area (C) 200,000 SF
Total Area 575,500 SF

Area (A) 175,500 SF
Area (B) 200,000 SF
Area (C) 200,000 SF
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Area (C) 200,000 SF
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Area (B) 200,000 SF
Area (C) 200,000 SF
Total Area 575,500 SF

Area (A) 175,500 SF
Area (B) 200,000 SF
Area (C) 200,000 SF
Total Area 575,500 SF

Area (A) 175,500 SF
Area (B) 200,000 SF
Area (C) 200,000 SF
Total Area 575,500 SF

MEETINGS:
1. SEE HARRY'S POSITION, DISCUSSION ON UTILITIES AND DRAINAGE
2. VEGETATION CONSERVATION
3. ALL UTILITIES SHALL BE MAINTAINED 1' TO 6" CLEAR WITH
4. ALL UTILITIES SHALL BE MAINTAINED 1' TO 6" CLEAR WITH
5. ALL UTILITIES SHALL BE MAINTAINED 1' TO 6" CLEAR WITH
6. ALL UTILITIES SHALL BE MAINTAINED 1' TO 6" CLEAR WITH

KEY:
EXISTING STRUCTURE - 00000
PROPOSED STRUCTURE - 00000

LIBERTY ROAD MD. RTE. 26

HUMBLE OIL & REFINING CO.
7720 YORK ROAD
TOWSON, MARYLAND 21204

DATE: 9.5.67
JOB NO: 5756

DESIGNED BY: [Signature]
DRAWN BY: [Signature]
CHECKED BY: [Signature]

OWNER: HUMBLE OIL COMPANY
PROJECT: 7720 YORK ROAD
ADDRESS: TOWSON, MARYLAND
COUNTY: BALTIMORE COUNTY
CITY: TOWSON

