

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

Angelo D'Anna and
I, or we, Angelo D'Anna, legal owner of the property
situated in Baltimore County and which is described in the description and
plot attached hereto and made a part hereof, hereby petition for a Special
Hearing under Section 505.7 of the Zoning Regulations of Baltimore County,
to determine whether or not the Zoning Commissioner and/or Deputy Zoning
Commissioner should approve the existence as a non-conforming use of a
dairy bar (Section 230.4) or pizza snack bar restaurant (Section 230.4)
in an R-10 zone on the parcel of land on the westerly side of Rolling
Road north of the intersection of Valley Road, shown on the attached
drawing, the same having been used for restaurant milk bar purposes
since prior to January 2, 1945; and to determine whether a food and
non-alcoholic beverage bar or short-order restaurant selling pizza
products constitutes a continuation of a lawful non-conforming use
of the premises.

See attached description
Property is to be posted and advertised as prescribed by Zoning
Regulations.
I, or we, agree to pay expenses of above Special Hearing 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
Address: 10 Light Street, 20th Floor
Baltimore, Maryland 21202
339-2125
Petitioner's Attorney

ORDERED By the Zoning Commissioner of Baltimore County, this 12 day of September, 1968, that the subject matter of this petition be
advised, as required by the Zoning Law of Baltimore County, in two
newspapers of general circulation throughout Baltimore County, that
property be posted, and that the public hearing be held before the Zoning
Commissioner of Baltimore County in Room 104, County Office Building in
Towson, Baltimore County, on the 25 day of October, 1968,
at 10:30 o'clock a.m.

Zoning Commissioner of Baltimore County
(over)

MICROFILMED
10/30/68
10/9/68
12/2/68

BALTIMORE COUNTY MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner
FROM: George E. Gavrellis, Director of Planning

SUBJECT: Petition #69-87-SPH, Southwest side of Rolling Road 520 feet Northwest of
Valley Rd. Petition for Special Hearing for non-conforming use of a dairy
bar or pizza snack bar restaurant in an R-10 Zone and to determine whether
a food and non-alcoholic beverage bar or short-order restaurant selling pizza
products.

Angelo D'Anna - Petitioner
1st District

HEARING: Wednesday, October 9, 1968 (10:30 A.M.)

The planning staff of the Office of Planning and Zoning will offer no
comment on the subject petition.

SEP 27 '68 AM

SEP 27 '68 AM

SEP 27 '68 AM

SEP 27 '68 AM

69-87-SPH
1
ANGLO D'ANNA
10/30/68
10/9/68
12/2/68
69-87-SPH
HMS-SPH

ZONING FILE #69-87-SPH

RICHARD P. MUELLER, et al.
vs.
WILLIAM S. BALDWIN, et al.,
constituting the County
Board of Appeals of
Baltimore County.

OPINION

THE COURT: On August 20, 1968, Angelo D'Anna
(Petitioner) filed a Petition with the Zoning Commissioner of
Baltimore County, in which he asked the Zoning Commissioner to
approve the use of the subject property as a dairy bar (Sec.230.4
of the Zoning Regulations of Baltimore County) or for a pizza
snack bar restaurant (Sec. 230.4 of such Regulations), contend-
ing that the property could be used for those purposes, as a
lawful nonconforming use (Section 104 of such Regulations).

On December 10, 1968, the Zoning Commissioner ordered,
"that the subject premises may have a major use of a Milk Bar
with a minor use for the sale of hamburgers, sandwiches, cream
soups, etc." I don't know what the etc. covered. An Appeal by
Petitioner was taken to the County Board of Appeals, and on July
1, 1969, that Board passed an order "that the existence as a non-
conforming use is confirmed on the parcel of land on the westerly
side of Rolling Road north of the intersection of Valley Road;
and it is further determined that a food and non-alcoholic bever-
age operation or short order restaurant selling pizzas, among
other things, constitutes a continuation of the existing lawful
nonconforming use." Protestants took an Appeal from this order
to the Circuit Court for Baltimore County.

Examination of the record discloses that the premises
were not used for any purpose from either late December 1967 or
MICROFILMED

MICROFILMED

July 1, 1969 Order of County Board of Appeals confirming use of property as non-
conforming use for sale of food and non-alcoholic beverage operation
and short order restaurant.

" 21 Order for appeal filed in the Circuit Court for Baltimore County by
Richard D. Payne, Esq., attorney for protestants-appellants

" 23 Certificate of Notice sent to all interested parties

Aug. 14 Petition to extend time for filing record to October 20, 1969

Oct. 17 Transcript of testimony filed - 1 volume

Petitioners' Exhibit No. 1 - Plat of subject 7/30/68, revised 8/1/68

" 2 - Entire Zoning Commissioner File on
#68-87-SPH

Protestants' Exhibit "A" - Photo of subject

" " "B" - Photo of Mike's Pizza Shop in Arbutus

early January 1968, at least down to the date of the order of the
County Board of Appeals of July 1, 1969. No effort was made by
Petitioner-Owner during that period to conduct any business what-
soever on the subject property although, for the record, it is
clear that he could have at least used the premises for the pur-
poses delineated in the order of Zoning Commissioner Rose.

Section 104 of the Zoning Regulations of Baltimore
County, among other things, provides that, " * * * upon * * * any
abandonment or discontinuance of such nonconforming use for a
period of one year or more * * * the right to continue or resume
such nonconforming use shall terminate." It is my judgment that
this provision applies to this case, and that whatever nonconform-
ing use may have applied to the property prior to late December
1967 or early January 1968, was lost by October 1, 1969.

In passing it should be noted that by letter addressed
to the Court, under date of October 24, 1969, by Roger K. Gar-
fink, attorney for Petitioner, the Court was advised that "We
have been instructed by our clients not to proceed in the de-
fense of this Appeal and to advise you that neither this office
nor our clients will appear to argue the issues before the Court
in this proceeding." The Court has also been advised by counsel
for Protestants that Petitioner has sold his interest in the
property and that he, therefore, has no legal right to seek re-
zoning in this case.

In view of these facts, it is the judgment of the
Court that this case is in all probability moot. However, the
Court is not basing the decision on that technical legal ground,
but on that set forth above, viz, abandonment of a nonconforming
use.

MICROFILMED
12/15/69

JUDGE

RE: PETITION FOR SPECIAL HEARING
FOR NON-CONFORMING USE
of a Dairy Bar or Pizza Snack Bar
Restaurant in an R-10 zone
(Sec. 230.4 of the Baltimore
County Zoning Regulations)
Southwest Side of Rolling Road 520
feet Northwest of Valley Road
1st District

Angelo D'Anna, et al
Petitioners

No. 69-87-SPH
Richard P. Mueller, et al
Protestants-Appellants

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

AT LAW
Misc. Docket No. 8
Folio No. 461
File No. 4267

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule 1101-8(4) of the Maryland Rules of
Procedure, William S. Baldwin, W. Giles Parker and John A. Slowik, constituting the
County Board of Appeals of Baltimore County, have given notice by mail of the filing of
the appeal to the representative of every party to this proceeding before it; namely, Robert
L. Weinberg, Esq., 10 Light Street, Baltimore, Maryland, 21201, Attorney for the Petitioners,
and Richard D. Payne, Esq., 26 W. Pennsylvania Avenue, Towson, Maryland, 21204,
Attorney for the Protestants, a copy of which Notice is attached hereto and prayed that
it may be made a part thereof.

Muriel E. Buddemeier
County Board of Appeals of Baltimore County
County Office Building, Towson, Md. 21204
VALEY 3-3000, Ext. 370

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Misc. Docket No. 8
Folio No. 461
File No. 4267

TO THE HONORABLE, THE JUDGE OF SAID COURT:
And now come William S. Baldwin, W. Giles Parker and John A. Slowik,
constituting the County Board of Appeals of Baltimore County, and in answer to the
Order for Appeal directed against them in this case, herewith return the record of pro-
ceedings had in the above entitled matter, consisting of the following certified copies
or original papers on file in the office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER
OF BALTIMORE COUNTY

No. 69-87-SPH
Aug. 20, 1968 Petition of Angelo D'Anna, et al for Special Hearing for non-conform-
ing use of a Dairy Bar or Pizza Snack Bar Restaurant (Sec. 230.4) in
an R-10 zone, on property located on the southwest side of Rolling
Road 520 feet northwest of Valley Road, 1st District - filed

" " Order of Zoning Commissioner directing advertisement and posting of
property - date of hearing set for October 9, 1968 at 10:30 a.m.

Sept. 19 Certificate of Posting of property - filed
" " Certificate of Publication in newspaper - filed

Oct. 9 At 10:30 a.m. hearing held on petition by Zoning Commissioner - case
held sub curia

Dec. 10 Order of Zoning Commissioner granting major use of milk bar, with
minor use for sale of hamburgers, etc.

" 12 Amended Order of Zoning Commissioner

Mar. 18, 1969 Hearing on appeal before County Board of Appeals - case held sub
curia

August 26, 1968

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

Robert L. Weinberg, Esq.,
10 Light Street, 20th Floor
Baltimore, Maryland 21202

SUBJECT: Special Hearing for a non-conforming
use for Angelo D'Anna, located
SW/4 of Rolling Road, 520' NW of Valley Road
1st District
(Item 45, August 20th, 1968)

Dear Sirs:
The Zoning Advisory Committee has reviewed the subject petition and
has the following comments to offer:

HEALTH DEPARTMENT:
Prior to construction, renovation and/or installation of equipment for this
food service facility complete plans and specifications must be submitted to
the Division of Food Control, Baltimore County Department of Health, for review
and approval.

An eating and drinking establishment permit must be obtained from the Health
Department prior to opening.

STATE ROADS COMMISSION:
The existing entrance channelization is acceptable to this office.

ZONING ADMINISTRATION DIVISION:
If the petition is granted, no occupancy may be made until such time as plans have
been submitted and approved and the property inspected for compliance to the
approved plan.

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 on the
appropriateness of the requested zoning 10 days before the Zoning Commission's
hearing.

The following members had no comment to offer:

Project Planning Division
Bureau of Traffic Engineering
Bureau of Engineering
Bureau of Fire Prevention
Building Engineer
Bureau of Education
Industrial Development

Very truly yours,
JAMES E. OYER, Zoning Supervisor

JENO
cc: William Greenwalt-Health Dept.
John Meyers-State Roads Commission

PETITION FOR SPECIAL HEARING

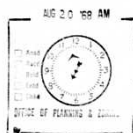
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Angelo D'Anna and the 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 for a special hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the existence as a non-conforming use of a dairy bar (Section 230.4) or pizza snack bar restaurant (Section 230.4) in an R-10 zone on the parcel of land on the westerly side of Rolling Road north of the intersection of Valley Road, shown on the attached drawing, the same having been used for restaurant milk bar purposes since prior to January 2, 1945; and to determine whether a food and non-alcoholic beverage bar or short-order restaurant selling pizza products constitutes a continuation of a lawful non-conforming use of the premises.

See attached description
Property is to be posted and advertised as prescribed by Zoning Regulations.
I, or we, agree to pay expenses of above Special Hearing 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
Address: Angelo D'Anna, Partner
7183 Holabird Avenue
Baltimore, Maryland 21222
Legal Owner
Address: Robert L. Weinberg and
Weinberg and Green
10 Light Street, 20th Floor
Baltimore, Maryland 21202
Petitioner's Attorney
Address: Richard D. Payne
26 W. Pennsylvania Avenue
Towson, Maryland 21204
Protestant's Attorney

ORDERED By the Zoning Commissioner of Baltimore County, this 27 day of September, 1968, 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 property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 27 day of October, 1968, at 10:30 o'clock A.M.



Zoning Commissioner of Baltimore County

(over)

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner
FROM: George E. Gavrelis, Director of Planning
SUBJECT: Petition #69-87-SPH. Southwest side of Rolling Road 520 feet Northwest of Valley Road. Petition for Special Hearing for non-conforming use of a dairy bar or pizza snack bar restaurant in an R-10 Zone; and to determine whether a food and non-alcoholic beverage bar or short-order restaurant selling pizza products.
Angelo D'Anna - Petitioner

1st District
HEARING: Wednesday, October 9, 1968 (10:30 A.M.)

The planning staff of the Office of Planning and Zoning will offer no comment on the subject petition.



ZONING FILE #69-87-SPH

RICHARD P. MUELLER, et al. IN THE CIRCUIT COURT
vs. FOR BALTIMORE COUNTY
William S. Baldwin, et al., Misc. Case No. 4267
constituting the County Board of Appeals of Baltimore County.
Docket 8, Folio 461

OPINION

THE COURT: On August 20, 1968, Angelo D'Anna (Petitioner) filed a Petition with the Zoning Commissioner of Baltimore County, in which he asked the Zoning Commissioner to approve the use of the subject property as a dairy bar (Sec. 230.4 of the Zoning Regulations of Baltimore County) or for a pizza snack bar restaurant (Sec. 230.4 of such Regulations), contending that the property could be used for those purposes, as a lawful nonconforming use (Section 194 of such Regulations).

On December 10, 1968, the Zoning Commissioner ordered, "that the subject premises may have a major use of a Milk Bar with a minor use for the sale of hamburgers, sandwiches, cream soups, etc." I don't know what the etc. covered. An Appeal by Petitioner was taken to the County Board of Appeals, and on July 1, 1969, that Board passed an order "that the existence as a non-conforming use is confirmed on the parcel of land on the westerly side of Rolling Road north of the intersection of Valley Road; and it is further determined that a food and non-alcoholic beverage operation or short order restaurant selling pizzas, among other things, constitutes a continuation of the existing lawful nonconforming use." Protestants took an Appeal from this order to the Circuit Court for Baltimore County.

Examination of the record discloses that the premises were not used for any purpose from either late December 1967 or

early January 1968, at least down to the date of the order of the County Board of Appeals of July 1, 1969. No effort was made by Petitioner-Owner during that period to conduct any business whatsoever on the subject property although, for the record, it is clear that he could have at least used the premises for the purposes delineated in the order of Zoning Commissioner Rose.

Section 104 of the Zoning Regulations of Baltimore County, among other things, provides that, "upon any abandonment or discontinuance of such nonconforming use for a period of one year or more * * * the right to continue or resume such nonconforming use shall terminate." It is my judgment that this provision applies to this case, and that whatever nonconforming use may have applied to the property prior to late December 1967 or early January 1968, was lost by October 1, 1969.

In passing it should be noted that by letter addressed to the Court, under date of October 24, 1969, by Roger K. Garfink, attorney for Petitioner, the Court was advised that "We have been instructed by our clients not to proceed in the defense of this Appeal and to advise you that neither this office nor our clients will appear to argue the issues before the Court in this proceeding." The Court has also been advised by counsel for Protestants that Petitioner has sold his interest in the property and that he, therefore, has no legal right to seek rezoning in this case.

In view of these facts, it is the judgment of the Court that this case is in all probability moot. However, the Court is not basing the decision on that technical legal ground, but on that set forth above, viz. abandonment of a nonconforming use.

12/15/69.

JUDGE

Appeal

PETITION FOR SPECIAL HEARING FOR NON-CONFORMING USE of a Dairy Bar or Pizza Snack Bar Restaurant in an R-10 zone (Sec. 230.4 of the Baltimore County Zoning Regulations) Southwest Side of Rolling Road 520 feet Northwest of Valley Road 1st District
Angelo D'Anna, et al. Petitioners
No. 69-87-SPH
Richard P. Mueller, et al. Protestants-Appellants
IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW Misc. Docket No. Folio No. 461 File No. 4267

CERTIFICATE OF NOTICE

Mr. Clerk: Pursuant to the provisions of Rule 1101-8(4) of the Maryland Rules of Procedure, William S. Baldwin, W. Giles Parker and John A. Slowik, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Robert L. Weinberg, Esq., 10 Light Street, Baltimore, Maryland, 21201, Attorney for the Petitioner, and Richard D. Payne, Esq., 26 W. Pennsylvania Avenue, Towson, Maryland, 21204, Attorney for the Protestants, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Muriel E. Buddenmeyer
County Board of Appeals of Baltimore County
County Office Building, Towson, Md. 21204
Valley 3-3000, Ext. 570

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Robert L. Weinberg, Esq., 10 Light Street, Baltimore, Maryland, 21201, Attorney for the Petitioner, and Richard D. Payne, Esq., 26 W. Pennsylvania Avenue, Towson, Maryland, 21204, Attorney for the Protestants, on this 22nd day of July, 1969.

Muriel E. Buddenmeyer
County Board of Appeals of Baltimore County

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

Robert L. Weinberg, Esq., 10 Light Street, 20th Floor Baltimore, Maryland 21202
SUBJECT: Special Hearing for a non-conforming use for Angelo D'Anna, located SW 1/4 of Rolling Road, 520' NW of Valley Road 1st District (Item 45, August 20th, 1968)

Dear Sirs:

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

HEALTH DEPARTMENT:
Prior to construction, renovation and/or installation of equipment for this food service facility, complete plans and specifications must be submitted to the Division of Food Control, Baltimore County Department of Health, for review and approval.

An eating and drinking establishment permit must be obtained from the Health Department prior to opening.

STATE ROADS COMMISSION:
The existing entrance channelization is acceptable to this office.

ZONING ADMINISTRATION DIVISION:
If the petition is granted, no occupancy may be made until such time as plans have been submitted and approved and the property inspected for compliance to the approved plan.

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 on the appropriateness of the requested zoning 10 days before the Zoning Commissioner's hearing.

The following numbers had no comment to offer:

Project Planning Division
Bureau of Traffic Engineering
Bureau of Engineering
Bureau of Fire Prevention
Building Engineer
Bureau of Education
Industrial Development

Very truly yours,

JAMES E. DYER, Zoning Supervisor

JED:JO
cc: William Greenwalt-Health Dept.
John Meyers-State Roads Commission

RE: PETITION FOR SPECIAL HEARING FOR A NON-CONFORMING USE of a Dairy Bar or Pizza Snack Bar Restaurant in an R-10 zone (Sec. 230.4 of the Baltimore County Zoning Regulations) Southwest Side of Rolling Road 520 feet Northwest of Valley Road 1st District
Angelo D'Anna, et al. Petitioners
No. 69-87-SPH
Richard P. Mueller, et al. Protestants-Appellants
IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW Misc. Docket No. Folio No. 461 File No. 4267

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William S. Baldwin, W. Giles Parker and John A. Slowik, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

No. 69-87-SPH
Aug. 20, 1968 Petition of Angelo D'Anna, et al for Special Hearing for non-conforming use of a Dairy Bar or Pizza Snack Bar Restaurant (Sec. 230.4) in an R-10 zone, on property located on the southwest side of Rolling Road 520 feet northwest of Valley Road, 1st District - filed
Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for October 9, 1968 at 10:30 a.m.
Sept. 19 Certificate of Posting of property - filed
Certificate of Publication in newspaper - filed
Oct. 9 At 10:30 a.m. hearing held on petition by Zoning Commissioner - case held sub curia
Dec. 10 Order of Zoning Commissioner granting major use of milk bar, with minor use for sale of hamburgers, etc.
12 Amended Order of Zoning Commissioner
Mar. 18, 1969 Hearing on appeal before County Board of Appeals - case held sub curia

FROM THE OFFICE OF GEORGE WILLIAM STEPHENS, JR. & ASSOCIATES, INC. ENGINEERS P.O. BOX #6828, TOWSON, MD. 21204

Description to Accompany Zoning Petition of the Property of Angelo D'Anna at SW Rolling Road, Catonsville, Maryland July 30, 1968

Beginning for the acre at a point on the southwest Right-of-Way line of Rolling Road at a distance of 520 feet, more or less, northwesterly from the intersection of said southwest Right-of-Way line with the centerline of Valley Road, extended southwesterly, running thence and binding on the southwest Right-of-Way line of Rolling Road the four following courses, viz: First, North 51° 32' 12" West 116.61 feet; second, North 55° 00' 24" West 57.62 feet; third, North 54° 03' 04" West 44.54 feet; and fourth, North 50° 35' 30" West 51.18 feet; thence leaving Rolling Road and running the three following courses, viz: First, South 38° 27' 48" West 156.78 feet; second, South 51° 32' 12" East 270.00 feet; and third, North 38° 27' 48" East 163.40 feet to the point of beginning.

Containing 1.000 Acres of land more or less.



RE: SPECIAL HEARING FOR NON-CONFORMING USE OF A DAIRY BAR OR PIZZA SNACK BAR RESTAURANT (Section 230.4 of the Baltimore County Zoning Regulations) in an R-10 Zone Southwest Side of Rolling Road 520 feet Northwest of Valley Road 1st District
Angelo D'Anna, et al
Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 69-87-SPH

OPINION

This petition may be described as the case of the "changing menu". It comes before the Board as an appeal from the Zoning Commissioner's Order on a petition for a special hearing as to the existence of a non-conforming use on a parcel of land on the westerly side of Rolling Road north of the intersection of Valley Road. The land has been zoned R-10 since the adoption of the map on April 5, 1960, and also as to its use antedating the original zoning map of January 2, 1945.

It was stipulated that Mr. D'Anna owns the property in question. This property was originally owned by the Knapp family, who operated the Hilton Farm Dairy and have had a drive-in dairy business at this location since 1939, during which time it was testified by Mr. Alfred M. Knapp, Jr. that they sold sandwiches, hot dogs, soups, ice cream, etc., and that cooking had been done on the premises, at which were installed a grill and oven.

A picture of the building appears as Protestants' Exhibit A. This was used and operated by the Knapp family until 1945, at which time it was leased to others, and has been continuously used for the sale of food and drinks of various kinds. It was sold to Mr. D'Anna in 1965. The various proprietors of the business have always had meat and milk licenses and a soda fountain. However, Mr. D'Anna now intends to change the menu so as to serve pizzas, which are apparently his specialty, and as to which the Board understands there is a current substantial demand, teenage tastes having changed from hamburgers and hot dogs to the more pungent Italian delicacy.

Angelo D'Anna, et al

- 2 -

When Mr. D'Anna applied for permits to improve and modernize his establishment it was referred to the Zoning office, as a result of which he filed the within petition for a special hearing. On this state of facts the Zoning Commissioner found that there was no evidence that the milk bar and food sales use of the property was ever abandoned, but in his Opinion the sale of pizzas and spaghetti did amount to an "intensification of use", and his Order states: "ORDERED that the subject premises may have a major use of a Milk Bar with a minor use for the sale of hamburgers, sandwiches, creamed soups, etc."

The Board is unable to follow this reasoning, as we believe the nature of the menu is a matter of personal taste, both of the proprietor and the customers of the establishment, and we therefore find that there is a long existing and continuing non-conforming use of this property for the purposes of selling food and beverages (non-alcoholic), which will, of course, have to be operated in accordance with all of the rules and regulations of the Baltimore County Zoning Laws and those of the Health Department, and with proper licensing.

It is therefore determined by the Board that a non-conforming use for present and proposed purposes, that is of selling food and drinks, is in existence at and on the subject property, and there is no reason why the petitioner should not have the right to continue in this lawful non-conforming use.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 1st day of July, 1969, by the County Board of Appeals ORDERED, that the existence as a non-conforming use is confirmed on the parcel of land on the westerly side of Rolling Road north of the intersection of Valley Road; and it is further determined that a food and non-alcoholic beverage operation or short order restaurant selling pizzas, among other things, constitutes a continuation of the existing lawful non-conforming use.

Any appeal from this decision must be in accordance with Chapter 1100,

Angelo D'Anna, et al

- 3 -

subtitle B of the Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman
W. Giles Parker
John A. Slowik

Re: Petition for Special Hearing :
S/W Side Rolling Road 520' :
N/W Valley Road, 1st Dist., :
Angelo D'Anna and Carmen :
D'Anna, Petitioners :
Zoning Commissioner
of
Baltimore County
No. 69-87-
SPH

AMENDED ORDER

Mr. Robert Weinberg, Attorney for the Petitioners, cited the following information which was entered in the opinion incorrectly.

Page 2 of the Order under Cases Cited, should read as follows:

"This situation can be likened to that in Nyburg v. Solmsen 205 Md. 150 (1954). In that case, prior to 1953, the open area in front of the building was used for parking and storage of not more than ten automobiles as part of a nonconforming use in a residential zone. In 1953, Solmsen leased the open space for storage of up to 50 motor vehicles. The Board of Municipal and Zoning Appeals of Baltimore City ruled that the use of the open area in front of the garage was restricted to the extent of its use at the time of the enactment of the zoning ordinance, and limited the number of motor vehicles that could be parked on the lot at any one time to ten."

The Maryland Court of Appeals reversed this action, on the ground that the Board's ruling would amount to an attempted prohibition of a legally valid intensification of a nonconforming use as set down in the case of Green v. Garrett, 192 Md. 52 (1948). The holding in Nyburg v. Solmsen was followed by the Court of Appeals in Jahngen v. Staley, 245 Md. 130 (1965), dealing with a nonconforming use of waterfront land for the docking of boats."

John A. Slowik
Zoning Commissioner of
Baltimore County

Date: December 12, 1968

RE: Petition for Special Hearing :
S/W Side Rolling Road 520' :
N/W Valley Road, 1st Dist., :
Angelo D'Anna and Carmen :
D'Anna, Petitioners :
Zoning Commissioner
of
Baltimore County
No. 69-87-
SPH

The petitioners filed a petition for a Special Hearing to determine whether or not the Zoning Commissioner of Baltimore County or the Deputy Zoning Commissioner, should approve the existence as a nonconforming use of a Dairy Bar, (Section 230.4) or Pizza Snack Restaurant (Section 230.4) in an R-10 Zone, on property located on the westerly side of Rolling Road north of the intersection of Valley Road, the same having been used for Restaurant Milk Bar purposes since prior to January 2, 1945; and to determine whether a food and nonalcoholic beverage bar or short order restaurant, selling pizza products constitutes a continuation of a lawful non-conforming use of the premises.

FACTS: A stone building is located on North Rolling Road and was formerly part of the Hilton Farm. The cottage was built in 1919 by George W. Knapp. William Knapp and Alfred Knapp; the cottage was primarily an adjunct of Hilton Farm, and the major uses consisted of the sale of ice cream. Alfred M. Knapp, Jr., supervised the overall operation of the cottage and kept the books from 1939 to 1945 or 1946. The business operated from 9:00 a.m. to midnight seven days a week. The business had a meat, milk and traders license, there was no soda fountain in the building until a Mr. and Mrs. Bartlett took over which was subsequent to the enactment of the Baltimore County Zoning Regulations, at which time a soda fountain license was obtained. There was a turnaround for vehicles in front of the building and a place for deliveries in the rear of the building.

The primary use of the dairy cottage was as a Milk Bar plus sandwiches, hamburgers, cheeseburgers, hot dogs and soups.

During the period from 1939 until 1945 a very modest business was conducted on the property. In the beginning Mr. Knapp hired people to work on the premises, then after that the property was leased to Mr. Howard Kuhn, then a Mr. and Mrs. Benning, a Mr. Lumpkin and finally a Mr. and Mrs. Fred. Bartlett. The Bartletts were in possession when the property was sold to Angelo D'Anna and Carmen D'Anna.

CASES CITED:

Nyburg v. Solmsen, 205 Md. 150 (1954)

In that case, prior to 1953, the open area in front of the building was used for the parking and storage of not more than ten automobiles as part of a nonconforming use in a residential zone. In 1953, Solmsen leased the open space for storage of up to 50 motor vehicles. The Board of Municipal and Zoning Appeals of Baltimore City ruled that the use of the open area in front of the garage was restricted to the extent of its use at the time of the enactment of the zoning ordinance, and limited the number of vehicles that could be parked on the lot at any one time to ten.

Green v. Garrett, 192 Md. 52 (1948).

The holding in Nyburg v. Solmsen was followed by the Court of Appeals in Jahngen v. Staley, 245 Md. 130 (1965), dealing with a nonconforming use of waterfront land for the docking of boats).

Cleland v. Mayor and City Council of Baltimore, 198 Md. 440 (1951).

Board of Zoning Appeals of Baltimore County v. Gue, 217 Md. 16 (1958).

Borough of Cheswick v. Beckman, 262 Pa. 79 42A 2nd 60 (1945), which allowed a prior nonconforming use to be carried on by more modern equipment; and see also Trustees of Ossining v. Meredith, 73 NYS 2d 897 (1942), as modified in 88 NYS 2d 775 (1949); Mulliner Co. v. Wagner 376 Pa. 575, 103 A 2d 417 (1954).

LAW - Sec. 104 - NONCONFORMING USES

104.1 -- A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75) per cent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No non-

conforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used.

Our Court of Appeals has consistently held as follows:

"It is generally accepted that a few nonconforming buildings and uses, allowed to continue as exceptions to the regulations in order to avoid injustice, will not be a substantial injury to the community if they are not allowed to multiply where they are harmful or improper; but nonconforming uses should not be perpetuated any longer than necessary and the Zoning Board should make constant efforts to move them into the use districts where they properly belong". Bassett on Zoning, 106, 109, Colati v. Jiron, 47 A 2d. 513, 136 Md. 652.

As expressed in Siefert v. Collins, 207 A 2d. 489, 237 Md. 601, it is a matter of legislative policy that:

"nonconforming uses are usually allowed to continue with the expectation that they will eventually disappear, the objective being to extinguish them as early as possible with due regard to lawful interest of those entitled to such use."

Jahngen v. Staley 225 A 2d. 277 245 Md. 130. The Court said:

"The facts found clearly demonstrate that the present use is such a formidable change and departure from the established use, both in magnitude and character, that it constitutes a wholly new and different character use, and an unlawful enlargement or extension of a nonconforming use."

"The basic premise underlying zoning regulations is to restrict rather than to expand nonconforming uses."

"The right of a landowner to continue the same kind of use to which the property was devoted on the critical date does not confer on him the right to subsequently change or add to that use a new and different use amounting to a drastic enlargement or extension of the prior existing use."

Fritze v. City of Baltimore, 202 Md. 265, 96 A 2d 4.

OPINION:

From a study of the above it is obvious that from the period 1939 to January 2, 1945 the subject property was used as a

Milk Bar and there is no evidence to indicate that the Milk Bar portion of the use was ever abandoned. It is difficult to know ahead of time exactly what the new owners intend to do but from the testimony of Michael Joseph Tiao, to whom they propose to lease the property for use as a Pizza and Spaghetti type Restaurant, it is obvious that there would be intensification of use far beyond the use that was in existence from 1939 to 1965. Instead of working toward the elimination of this nonconforming use such an operation would tend to prolong the nonconforming use. Such prolongation is not the intent of Section 104.1 of the Baltimore County Zoning Regulations.

For the above reasons it is this 10th day of December, 1968, by the Zoning Commissioner of Baltimore County, ORDERED that the subject premises may have a major use of a Milk Bar with a minor use for the sale of hamburgers, sandwiches, creamed soups, etc.

John A. Slowik
Zoning Commissioner of
Baltimore County

Description to Accompany Zoning Petition
of the Property of Angelo D'Anna et ux.
Rollins Road, Catonsville, Maryland

Beginning for the same at a point on the southwest Right-of-Way line of Rolling Road at a distance of 520 feet, more or less, northwesterly from the intersection of said southwest Right-of-Way line with the centerline of Valley Road, extended southwesterly, running thence and binding on the southwest Right-of-Way line of Rolling Road the four following courses, viz: first, North 31° 32' 12" East 116.61 feet; second, North 55° 00' 26" East 57.82 feet; third, North 54° 03' 04" East 44.54 feet; and fourth, North 50° 35' 30" East 51.18 feet, thence leaving Rolling Road and running the three following courses, viz: first, South 38° 27' 48" East 156.78 feet; second, South 51° 32' 12" East 270.00 feet; and third, North 38° 27' 48" East 163.40 feet to the point of beginning.

Containing 1,000 Acres of land more or less.



LAW OFFICES
RICHARD D. PAYNE
THE LAW BUILDING
26 W. PENNSYLVANIA AVENUE
BOWSON, MARYLAND 21204

RICHARD D. PAYNE
ROBERT A. DiCICCO

March 17, 1969

County Board of Appeals
County Office Building
Towson, Maryland 21204

re: Case No. 69-87-SPH
Angelo D'Anna, et al

Gentlemen:

Gentlemen:

Please be advised that I, as attorney for the
Protestants, represent the following:

Oak Springs Improvement Assoc
Catonsville, Maryland 21228

Mr. Ray N. Norris
114 Glenrae Drive
Catonsville, Maryland 21228

Mr. Bernard Hynson
415 Monemar Avenue
Baltimore, Maryland 21228

Mr. Homer Shelton
535 Forest Lane
Catonsville, Maryland 21228

Mr. Herbert F. Willis
430 Bloomsbury Avenue
Catonsville, Maryland 21228

Mr. Richard P. Mueller
523 S. Rolling Road
Catonsville, Maryland 21228

Mr. Freeman J. Fruge
221 Glenrae Drive
Catonsville, Maryland 21228

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. John G. Rose, Zoning Commissioner Date September 27, 1968

George E. Gavrells, Director of Planning

SUBJECT: Petition #69-87-SPH. Southwest side of Rolling Road 520 feet Northwest of Valley Rd. Petition for Special Hearing for non-conforming use of a dairy bar or pizza snack bar restaurant in an R-10 Zone; and to determine whether a food and non-alcoholic beverage bar or short-order restaurant selling pizza products.

Annelo D'Anna - Petitioner

1st District

HEARING: Wednesday, October 9, 1968 (10:30 A.M.)

The planning staff of the Office of Planning and Zoning will offer no comment on the subject petition.

OFFICE OF
THE CATONSVILLE **TIMES**

CATONSVILLE, MD. 21228 Sept. 25, 1968

THIS IS TO CERTIFY, that the annexed advertisement of
John G. Rose, Zoning Commissioner of
Baltimore County
was inserted in THE CATONSVILLE TIMES, a weekly newspaper pub-
lished in Baltimore County, Maryland, once a week for One
~~successive~~ week before the day of Sept., 1968, that is to say
the same was inserted in the issue of Sept. 18, 1968.

STROMBERG PUBLICATIONS, Inc.

B. Ruth Morgan

[illegible]

CERTIFICATE OF PUBLICATION

TOWSON, MD. SEP 19 1968

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each of ----- 1 time ----- ~~successive weeks~~ before the ----- 9th ----- day of ----- October -----, 19-- ~~63~~ the ~~last~~ publication appearing on the ----- 19th ----- day of ----- September -----.

1968
THE JEFFERSONIAN,
L. Frank Strickland
Manager

Cost of Advertisement, \$.....

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 104 Date of Posting: 9-19-68
 Posted for: Special Hearing
 Petitioner: Angela L. Mann
 Location of property: Sw 1/4 of Rolling Road ex. NW 1/4 of Valley Rd
 Location of Signs: 690' E 1/4 of Valley Rd on SW 1/4 of Rolling Rd
 Remarks: AKA Date of return: 7-21-68
 Posted by: AKA

TELEPHONE
823-3006
EXT. 387

INVOICE

BALTIMORE COUNTY, MARYLAND

OFFICE OF FINANCE

Division of Collection and Receipts

COURT HOUSE
TOWSON, MARYLAND 21204

No. 60736

DATE Mar. 10, 1964

To: **Wesley, Weinberg and Green**
10 Light Street
Baltimore, Md. 21202

BILLED BY:
Arming Dept. of Balto. Co.

DEBIT TO ACCOUNT NO. 01-622	RETURN THIS PORTION WITH YOUR REMITTANCE DETACH ALONG PERFORATION & FILL IN THIS PORTION FOR YOUR RECORDS	TOTAL AMOUNT PAID
QUANTITY	DESCRIPTION	COST
4	Advertising and posting of property for Angela S/Hume 409-57-976	\$20.00

RECEIVED

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND

MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON, MARYLAND 21204

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Robert L. Weinberg, Esq.,
19 Light Street, 25th Floor
Baltimore, Maryland 21202

Your Petition has been received and accepted for filing this
____ day of _____, 1968.

[Signature]
JOHN G. ROSE,
Zoning Commissioner

Petitioner: Wesley B. Ross

Petitioner's Attorney: Robert L. Weinberg, Esq. Reviewed by: John G. Rose
Chairman of
Advisory Committee

TELEPHONE 525-3000 EXT. 387		INVOICE BALTIMORE COUNTY, MARY AND OFFICE OF FINANCE Division of Collection and Receipts COURT HOUSE TOWSON, MARYLAND 21201		No. 57819 DATE 7/29/69	
TO: Richard D. Payne, Esq. 26 W. Pennsylvania Avenue Towson, Maryland 21204		BILL TO: County Board of Assessors (Zoning)			
REPORT TO ACCOUNT NO. 01.712		RETURN THIS PORTION WITH YOUR REMITTANCE		TOTAL AMOUNT DUE \$12.00	
QUANTITY		DETAILED LONG PERFORMANCE AND KEEP THIS PORTION FOR YOUR RECORD		COST	
1		Cost of certified documents - Case No. 69-07-65M Angelo D'Amico 59/5 Bellows Rd. 599 NW of Valley Rd. 1st District		12.00	

TELEPHONE 825-3000 EXT. 287	INVOICE BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE <i>Division of Collection and Receipts</i> COURT HOUSE TOWSON, MARYLAND 21204	NO. 60763 DATE: 3/68
TO: Robert L. Weinberg, Esq. 10 Light Street, Baltimore, Md. 21202	FILED Office of Planning & Zoning 115 County Office Bldg., Towson, Md. 21204	
AMOUNT TO ACCOUNT FOR 01-622	REIFY THIS PORTION WITH YOUR REMITTANCE	TOTAL AMOUNT \$35.00
COUNTY	DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS	DATE
Cost of appeal - property of Angela D'Anna, et al No. 69-87-SPH		\$35.00

TELEPHONE 832-3000 EXT. 387	INVOICE BAL. MORE COUNTY, MAR. LAND OFFICE OF FINANCE Division of Collection and Receipts COURT HOUSE TOWSON, MARYLAND 21204	No. 56295 DATE DEC 17, 1961
To: Senators, Wabash and Charn 18 Light Street Baltimore, Md. 21201		PAID Seating Dept. of Edita. Co.
SUBMIT TO ACCOUNT NO. 68-422		RETURN TO A PORTION WITH YOUR RECEIPTANCE
QUANTITY	DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS	USE NO. 68-422
1 10 250 C 4	Position for Speed Hearing for Angelo P/Ann 68-57-29	250 C 4
IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON, MARYLAND		

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

Date of Posting: 1-16-69

District: 1st

Posted for: Appeal

Petitioner: A. D'ANNA

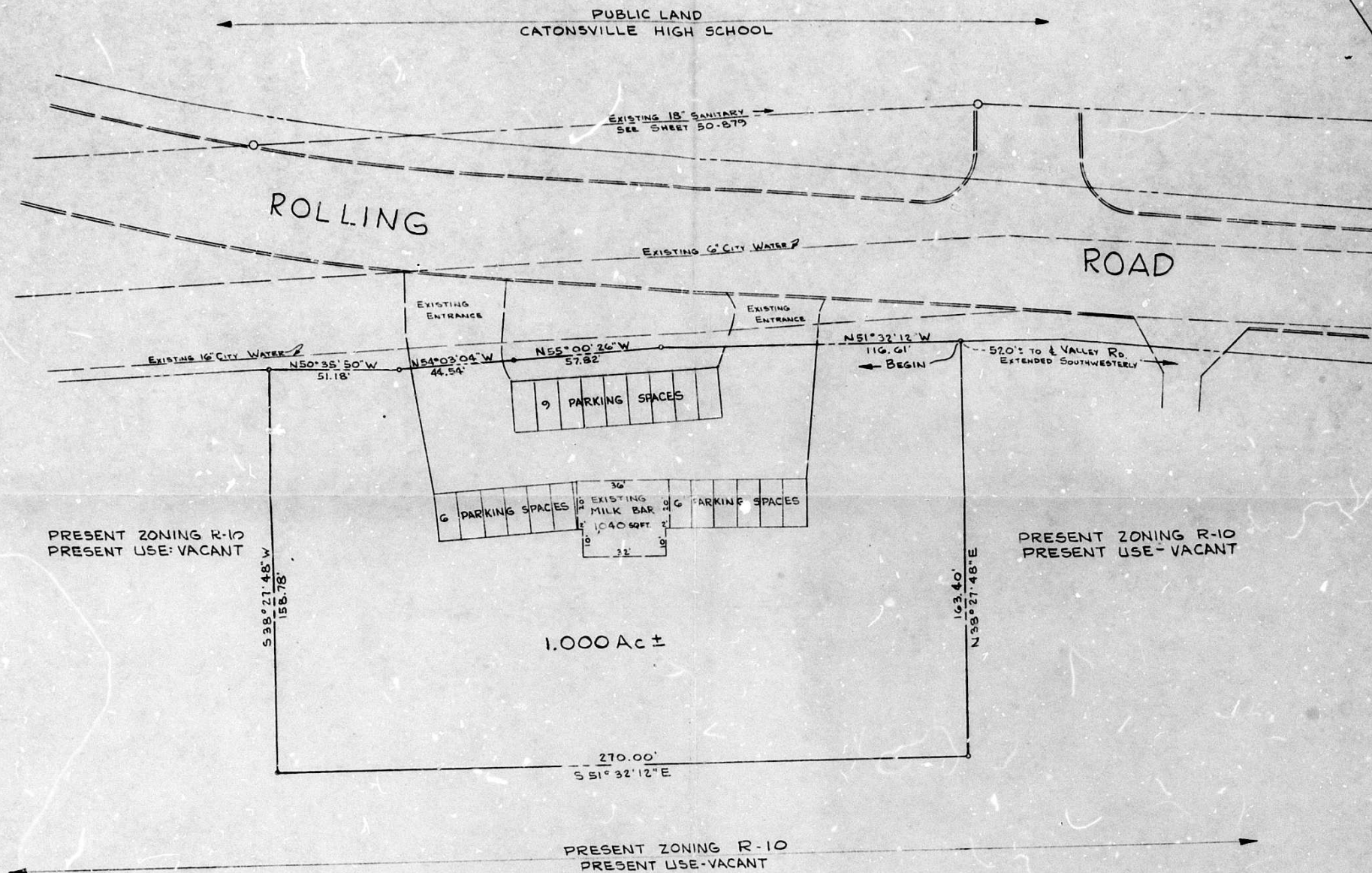
Location of property: 545 S. of Rolling Rd - 520 NW of Valley Rd

Location of Signs: 535 S. of Valley Rd on 545 S. of Rolling Rd

Remarks: _____

Posted by: SEB

Date of return: 1-23-69



ZONING STATUS

PRESENT ZONING: R-10
 PRESENT USE: MILK BAR RESTAURANT
 PROPOSED USE: DAIRY BAR OR PIZZA
 SNACK BAR RESTAURANT

PARKING

TOTAL FLOOR AREA OF PROPOSED RESTAURANT = 1,040 SQ. FT.
 PARKING SPACES REQUIRED @ 1 SPACE PER 50 SQ. FT. = 21 SPACES
 TOTAL PROPOSED PARKING = 21 SPACES

PLAT TO ACCOMPANY ZONING PETITION FOR THE PROPERTY OF **ANGELO D'ANNA ET UX**

BALTIMORE COUNTY, MD.
 SCALE: 1"=30'

ELECTION DISTRICT No. 1
 DATE: JULY 30, 1968



GEORGE WILLIAM STEPHENS, JR.
 AND ASSOCIATES, INC.
 ENGINEERS
 303 ALLEGHENY AVE.
 TOWSON 4, MARYLAND

James O. Dimmock, Jr.
 2086