

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Estate of Ida E. Surguy, 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, and (2) that the zoning status of the herein described property be reclassified pursuant to the Zoning Law of Baltimore County, and (3) that the zoning status of the herein described property be reclassified pursuant to the Zoning Law of Baltimore County.

See attached description

For a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for... excavation and removal of sand and related materials.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, 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 purchase
Address: P. O. Box 236
Aberdeen, Maryland

Petitioner's Attorney
Address: P. O. Box 236
Aberdeen, Maryland

Protestant's Attorney
Address: P. O. Box 236
Aberdeen, Maryland

ORDERED By The Zoning Commissioner of Baltimore County, this 12th day of July, 1974, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation through Baltimore County, that property be posted, and 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 12th day of August, 1974, at 1:00 o'clock P.M.

Zoning Commissioner of Baltimore County.

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE



PETITION AND SITE PLAN EVALUATION COMMENTS

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

July 17, 1974

John W. Hardwicke, Esq.
10 E. Baltimore Street
Baltimore, Maryland 21202

RE: Special Exception Petition
Item 7
Estate of Ida E. Surguy -
Petitioner

Dear Mr. Hardwicke:

The Zoning Advisory Committee has reviewed the plans submitted with the above referenced petition and has made an on site field inspection of the property. The following comments are a result of this review and inspection.

These 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 with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the appropriateness of the requested zoning.

The subject property is located on the north of Ebenezer Road and the east side of Bird River Beach Road. It comprises a total of 129 acres and is relatively flat. There is an existing woods that surround a large portion of this property, however, approximately half of that area will be the subject of the quarrying operation. There is some residential development along both Bird River Beach Road and Ebenezer Road. The prime use of the area surrounding the site is farming. There are no curb and gutters existing along Bird River Beach Road or Ebenezer Road at this location.

This petition is accepted for filing on the date of the enclosed filing certificate. Notice of the hearing date and time, which will be held not

John W. Hardwicke, Esq.
Re: Item 7
July 17, 1974

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less than 16, nor more than 90 days after the date on the filing certificate, will be forwarded to you in the near future.

Very truly yours,

James B. Byrnes, III
Chairman,
Zoning Advisory Committee

JWB:JD

Enclosure

cc: George William Stephens, Jr.
and Associates, Inc.
P. O. Box 628
Towson, Maryland 21204

Baltimore County, Maryland Department of Public Works COUNTY OFFICE BUILDING TOWSON, MARYLAND 21204

July 30, 1974

Mr. S. Eric DiNenna
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #7 (1974-1975)
Property Owner: August Frederick, Matthew George and William G. Surguy (Estate of Ida E. Surguy)
N/S Ebenezer Rd., 2100' S. of Bird River Beach Rd.
Existing Zoning: R.D.P.
Proposed Zoning: Special Exception for excavation and removal of sand and related materials
No. of Acres: 129.14 District: 15th

Dear Mr. DiNenna:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

Comments were supplied by the Zoning Advisory Committee for this site in connection with Item #127 (1971-1972). Those comments are referred to for your consideration.

Very truly yours,

James B. Byrnes, III
Chief, Bureau of Engineering

END:BAW:PAR:SS

cc: J. Tremmer

W-2W Key Sheet
25, 26 & 27 NE 43 & 44 Pos. Sheets
NE 7 & 8 L Topo
93 Tax Map

BALTIMORE COUNTY, MARYLAND JEFFERSON BUILDING TOWSON, MARYLAND 21204

DEPARTMENT OF TRAFFIC ENGINEERING EUGENE J. CLIFFORD, P.E. DIRECTOR

July 24, 1974

Mr. S. Eric DiNenna
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item 7 - ZAC - July 9, 1974
Property Owner: August Frederick, Matthew George, and William G. Surguy
N/S Ebenezer Road, 2100 feet E of Bird River Beach Road
Special Exception for excavation and removal of sand and related materials
District 15

Dear Mr. DiNenna:

This petition is for a special exception for excavation and removal of sand and other related materials. To remove these materials, the petitioner would have to use Bird River Beach Road and Ebenezer Road. These roads were not designed for, and cannot adequately accommodate large trucks.

Very truly yours,

Michael S. Flanagan
Traffic Engineer Associate

MSF/pk

Baltimore County Fire Department



Towson, Maryland 21204

J. Austin Deitz
Chief

Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Mr. Jack Dillon, Chairman
Zoning Advisory Committee

Re: Property Owner: August Frederick, Matthew George & William G. Surguy
(Estate of Ida E. Surguy)
Location: N/S Ebenezer Road, 2100' E of Bird River Beach Road
Item No. 218
Zoning Agenda July 9, 1974

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with a "Y" are applicable and required to be corrected or incorporated into the final plans for the property.

1. Fire hydrants for the referenced property are required and shall be located at intervals of feet along an as published by the Department of Public Works.
2. A second means of vehicle access is required for the site.
3. The vehicle dead-end condition shown at
4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operations.
5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "The Life Safety Code", 1970 Edition prior to occupancy.
6. Site plans are approved as drawn.
7. The Fire Prevention Bureau has no comments at this time.

Reviewed: [Signature] Noted and Approved: [Signature]
Planning Group Deputy Chief
Special Inspection Division Fire Prevention Bureau

mls
4/16/73

Maryland Department of Transportation State Highway Administration

Harry R. Hughes
Secretary
Bernard M. Evans
Administrator

July 8, 1974

Mr. S. Eric DiNenna
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Att: Mr. James B. Byrnes III

Item: 218
S.A.C. Meeting, July 9, 1974
Re: Property Owner: August Frederick, Matthew George & William G. Surguy (Estate of Ida E. Surguy)
Location: N/S Ebenezer Road, 2100' E of Bird River Beach Road
Existing Zoning: R.D.P.
Proposed Zoning: Special Exception for excavation & removal of sand & related materials.
No. of Acres: 129.14
District: 15th
Windlass Freeway

Dear Mr. DiNenna:

On May 17, 1972, the State Highway Administration made comments to your office that the subject site was effected by the proposed Windlass Freeway. Subsequent to that date, the section of the project through this area has been eliminated from the Twenty Year Highway Needs Study, therefore this office has no further comment.

Very truly yours,

Charles Lee, Chief
Bureau of Engineering
Access Permits
By: John E. Mayers

CLH:JG

cc: Mr. Edward A. McDonough
Mr. John L. Wibley



July 31, 1974

Mr. S. Eric DiNenna
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Attn: Mr. James B. Byrnes, III

Re: Item 218, Z.A.C. meeting, July 9, 1974. Property Owners: Estate of Ida E. Surguy.
Location: N/S Ebenezer Road, 2100' E. of Bird River Beach Road, Windlass Freeway

Dear Mr. DiNenna:

Subsequent to our letter to you of July 8, 1974, we were advised that Windlass Freeway, in the area of the subject property, has not been eliminated from the Twenty Year Highway Needs Study but has been placed in the non-critical section. The property is still affected as indicated in our comments of May 17, 1972.

Very truly yours,

Charles Lee, Chief
Bureau of Engineering
Access Permits
John E. Meyers
John E. Meyers

CLJ:EH:jn

cc: Mr. Edward A. McDonough
Mr. John L. Wimbley

P.O. Box 717 / 300 West Preston Street, Baltimore, Maryland 21203



INDUSTRIAL DEVELOPMENT COMMISSION BALTIMORE COUNTY, MARYLAND

July 9, 1974

Mr. S. Eric DiNenna
Zoning Commissioner, Baltimore County
Towson, Maryland 21204

Dear Mr. DiNenna:

Re: ZAC Agenda - July 9, 1974
Item 7 - Owner: August Frederick, et al
(Estate of Ida E. Surguy)
Location: N/S Ebenezer Road, 2100' east
of Bird River Beach Road
Existing Zoning: R.D.P.
Proposed Zoning: Special exception
for excavation and removal
of sand and related materials
No. of Acres: 129.14
District: 15th

This office has reviewed the subject site and offers the following comments:

The need for sand and gravel in the construction industry in the area is constantly increasing. Where deposits of such materials exist as a natural resource, excavation should be permitted if it is in the best interest of the region. Further, we believe that the existing roads in the area are sufficient to handle any traffic that may be generated by the proposed operation.

This office feels that the request for a special exception should be given favorable consideration.

Sincerely,

H. B. Staab

H. B. STAAB
Director



JEFFERSON BUILDING
TOWSON, MARYLAND 21204

July 16, 1974

DONALD J. ROOP, M.D., M.P.H.
DEPUTY STATE AND COUNTY HEALTH OFFICER

Mr. S. Eric DiNenna, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. DiNenna:

Comments on Item 7, Zoning Advisory Committee Meeting, July 9, 1974, are as follows:

Property Owner: August Frederick, Matthew George & William G. Surguy (Estate of Ida E. Surguy)
Location: N/S Ebenezer Road, 2100' E of Bird River Beach Road
Existing Zoning: R.D.P.
Proposed Zoning: Special Exception for excavation & removal of sand & related materials.
No. of Acres: 129.14
District: 15th

Complete soil evaluation must be completed and potable water supply must be provided prior to approval or issuance of any permit.

Air Pollution Comments: The building or buildings on this site may be subject to registration and compliance with the Maryland State Health Air Pollution Control Regulations. Additional information may be obtained from the Division of Air Pollution, Baltimore County Department of Health.

Department of Water Resources Comments: This operation may require a Water Resources permit.

Very truly yours,

Thomas H. Devlin
Thomas H. Devlin, Director
BUREAU OF ENVIRONMENTAL SERVICES

NVB/mcg

CC--W.L. Phillips

WILLIAM G. FROMM
DIRECTOR
S. ERIC DINENNA
ZONING COMMISSIONER



July 24, 1974

Mr. S. Eric DiNenna: Zoning Commissioner
Zoning Advisory Committee
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. DiNenna:

Comments on Item 7, Zoning Advisory Committee Meeting, July 9, 1974, are as follows:

Property Owner: August Frederick, Matthew George & William G. Surguy (Estate of Ida E. Surguy)
Location: N/S Ebenezer Road, 2100' E of Bird River Beach Road
Existing Zoning: R.D.P.
Proposed Zoning: Special Exception for excavation and removal of sand and related materials
No. of Acres: 129.14
District: 15th

This office has reviewed the subject petition and offers the following comments. These comments are not intended to indicate the appropriateness of the zoning in question, but are to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

This concurs with the comments of the Bureau of Engineering and the Department of Traffic Engineering, that the roads leading to the site may not be adequate to handle the equipment necessary for the proposed operation.

This office feels that landscaping or screening should be provided to keep the commercial-industrial aspect of the use from intruding on the residential character of the neighborhood.

Any future development of the land must be in accordance with the Baltimore County Subdivision Regulations.

Very truly yours,

William G. Fromm
WILLIAM G. FROMM, Director
BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
SUITE 301 JEFFERSON BUILDING 105 WEST CHESAPEAKE AVENUE TOWSON, MARYLAND 21204
AREA CODE 301 PLANNING 484-2811 ZONING 484-2821

BOARD OF EDUCATION OF BALTIMORE COUNTY

TOWSON, MARYLAND 21204

Date: July 11, 1974

Mr. S. Eric DiNenna
Zoning Commissioner
Baltimore County Office Building
Towson, Maryland 21204

Z.A.C. Meeting of: July 9, 1974

Re: Item 218

Property Owner: August Frederick, Matthew George & William G. Surguy (Estate of Ida E. Surguy)

Location: N/S Ebenezer Road, 2100' E. of Bird River Beach Road

Present Zoning: R.D.P.

Proposed Zoning: Special Exception for excavation and removal of sand and related materials.

District: 15th

No. Acres: 129.14

Dear Mr. DiNenna:

No adverse effect on student population.

WGP/al

W. G. FROMM, Director
ERIC C. HESS, Assistant
MRS. ROBERT L. GERVY

WILLIAM G. FROMM
JUDITH M. WHEELER, Superintendent

Very truly yours,
W. Rick Petrovich
W. Rick Petrovich,
Field Representative.

March 3, 1976

John W. Hardwick, Esq.
10 E. Baltimore Street
Baltimore, Maryland 21202

Re: Estate of Ida E. Surguy (Stancil)
File No. 75-18-X

Dear Mr. Hardwick:

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

Very truly yours,

Marion E. Buddemeier

Encl.

cc: Mr. David H. deVilliers, Jr.

Mr. William T. Hackett

Mr. S. E. DiNenna

Mr. W. D. Fromm

John W. Hession, III, Esq.

Mr. James Howell

Board of Education

November 25, 1974

John W. Hardwick, Esquire
10 East Baltimore Street
Baltimore, Maryland 21202

RE: Petition for Special Exception
NE/corner of Ebenezer Road and
Bird River Beach Road - 15th
Election District
Estate of Ida E. Surguy - Petitioner
NO. 75-18-X (Item No. 7)

Dear Mr. Hardwick:

I have this date passed my Order in the above referenced matter. Copy of said Order is attached.

Very truly yours,

S. Eric DiNenna
S. ERIC DINENNA
Zoning Commissioner

SED/ew

Attachments

cc: Mr. William T. Hackett, President
Bird River Civic Association
Chase, Maryland 21027

RE: PETITION FOR SPECIAL EXCEPTION
BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY

The Petitioner requests a Special Exception for Controlled Excavation (excavation and removal of sand and related materials) on a parcel of property containing 129.14 acres of land, more or less, located on the northeast corner of Ebenezer Road and Bird River Beach Road, in the Fifteenth Election District of Baltimore County.

Previously, under Case No. 72-244-X, this Zoning Commissioner denied the Special Exception for a sand and gravel quarry, in an Order dated November 6, 1972. Many residents of the area, both in protest and in favor of that Petition, had appeared and testified at that time. The subject hearing of August 12, 1974, had no residents of the area appear, either in protest or in favor of said Petition.

At the outset of the public hearing, John W. Hardwicke, Esquire, counsel for the Petitioner, moved to incorporate the testimony under Case No. 72-244-X and make same a part hereof. Mr. Hardwicke indicated that his request was different than that of the aforementioned previous case. He stipulated that conditions in the community and Ebenezer Road have not substantially changed and that the subject Petition represents a modified request. Said motion was granted.

Mr. Jerry Stancill, officer of the Contract Purchaser, Stancill Construction Company, testified that the excavation of sand and gravel from the subject property would be considerably less than as originally requested in 1972 in that

only 1,000 tons would be excavated per day instead of 2,000 tons and that only 50 truckloads would emanate from the subject property per day instead of 100 truckloads. These and other differences were supported by the Petitioner's Exhibit A.

Mr. Hardwicke further proffered that one condition is new in that public water is now available to the subject property. Water will be in the vicinity of Mr. Hackett's property, the adjoining property owner, within the very near future.

Without reviewing the testimony presented in both cases further in detail but based on all the testimony presented at the hearings, in the judgment of the Zoning Commissioner, the prerequisites of Section 502.1 have not been met.

In order for an administrative body to change a previous decision, it is incumbent upon the Petitioner to show that there has been a change in circumstances warranting the reversal of the previous decision. In the instant case, this burden has not been met.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 25th day of November, 1974, that a Special Exception for Controlled Excavation be and the same is hereby DENIED.

[Signature]
Zoning Commissioner of
Baltimore County

-2-

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



March 28, 1974

DESCRIPTION TO ACCOMPANY ZONING PETITION
SPECIAL EXCEPTION FOR QUARRYING OPERATIONS
IN AN EXISTING R.D.P. ZONE

Beginning for the same at a point in the center of Ebenezer Road approximately 2100 feet east of Bird River Beach Road, thence running and binding along the center of Ebenezer Road the four following courses and distances, viz: (1) North 79°04'21" West 86.48 feet, (2) North 86°12'40" West 151.33 feet, (3) South 88°06'24" West 363.20 feet, and (4) South 79°06'40" West 858.20 feet, thence leaving said road North 26°58'30" West 137.56 feet, South 63°01'30" West 148.00 feet, South 76°31'30" West 152.50 feet, and South 76°31'30" West 322.60 feet, thence running and binding with Bird River Beach Road the five following courses and distances, viz: (1) North 25°58'30" West 1428.17 feet, (2) North 63°46'30" East 30.50 feet, (3) North 17°58'30" West 69.00 feet, (4) North 26°43'30" West 350.00 feet, and (5) North 23°58'30" West 150.00 feet, thence leaving said road North 27°58'30" West 200.00 feet, North 11°58'30" West 40.00 feet, North 3°31'30" East 100.00 feet, North 8°46'30" East 100.00 feet, North 22°16'30" East 50.00 feet, North 33°16'30" East 84.00 feet, North 16°46'30"

March 28, 1974

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DESCRIPTION TO ACCOMPANY ZONING PETITION
SPECIAL EXCEPTION FOR QUARRYING OPERATIONS
IN AN EXISTING R.D.P. ZONE

East 90.00 feet, North 24°46'30" East 100.00 feet, North 2°58'30" West 16.00 feet, North 60°46'30" East 20.25 feet, North 53°21'30" East 1401.00 feet, and South 28°43'30" East 3625.77 feet to the place of beginning.

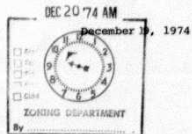
Containing 129.14 acres of land, more or less.

JOHN W. HARDWICKE
SUITE 710
THE W. B. CHASE & CO. BUILDING
BALTIMORE & CHARLES STREETS
BALTIMORE, MARYLAND 21202

TELEPHONE
(302) 686-1757

ATTORNEY

S. Eric DiNenna
Zoning Commissioner
Baltimore County
County Office Building
Towson, Maryland 21204



Re: Petition for Special Exception
NE/corner of Ebenezer Road and
Bird River Beach Road - 15th
Election District - Estate of
Ida F. Surguy-Petitioner
NO. 75-18-X (Item No. 7)

Mr. Commissioner:

Please note that the Estate of Ida F. Surguy, Petitioner and Stancill's, Inc. contract purchaser from Petitioner, in the above captioned case, do hereby take an appeal from the findings contained in your Order dated November 25, 1974.

The grounds for this Appeal are that the decision did not take into account the expert testimony presented by Petitioner and did not take into account the willingness of Petitioner to accept as conditions of its request certain restrictions with respect to the usage of roads and with respect to one well which might have been adversely affected by mining operations. The decision, in addition, did not take into account changes in the application of Petitioner made since the time of the last opinion, nor did it take into

JOHN W. HARDWICKE

S. Eric DiNenna
Zoning Commissioner
Baltimore County
December 9, 1974

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account changes in certain circumstances and conditions occurring since such time and for other reasons which Petitioner may wish to advance in a hearing on the matter.

I am enclosing herewith check in the amount of .70.00 which is required for the filing of this Appeal.

Very truly yours,

[Signature]

Enclosure

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: S. Eric DiNenna, Zoning Commissioner Date: August 7, 1974

FROM: William D. Fromm, Director of Planning

SUBJECT: Petition #75-18-X, Northeast corner of Ebenezer Road and Bird River Beach Road.
Petition for Special Exception for Excavation, Controlled.
Petitioner - Estate of Ida F. Surguy

15th District

HEARING: Monday, August 12, 1974 (1:00 P.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition and has the following comments to offer.

The subject site lies in an area which is identified on the 1980 Guideplan as rural in character and beyond the 1980 Urban Rural Demarcation Line. The 1974 Water and Sewer Plan, adopted by the County Council August 5, indicates that the area will have water and sewerage service extended into it within a 11 to 20 year period. There are no programmed improvements to the road network in this area.

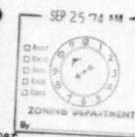
The plan submitted does not indicate what processing operations the petitioner intends to carry on here, (washing plants, truck storage, etc.) or what operational buildings he plans to build. Therefore, it is not possible to adequately assess the impact of the proposed operation on the surrounding community.

The staff shares the concern of the Traffic Engineering representative on the Zoning Advisory Committee about the potential overload of the existing roads in the area by heavy trucks.

The staff suggests that the hearing be continued until such time as the proposed operations are more clearly defined so that appropriate conditions can be recommended.

[Signature]
William D. Fromm, Director of Planning

WDP:INQ:lv



September 25, 1974

Mr. S. DiNenna
Zoning Commissioner
Baltimore County
Towson, Maryland 21204

Dear Mr. DiNenna:

The Bird River Civic Association unanimously requested at our regular meeting, held on September 23, 1974, that I write this letter to you confirming the community's opposition to the granting of special exception 75-18-X for controlled excavation on the Ida F. Surguy property.

We as a group and I, as an individual, wish to apologize to you for our negligence in not seeing the advertisement in the local papers and not properly presenting our views at the scheduled hearing on August 12, 1974. We also wish to emphasize that at no time were any signs visible on the Surguy property. Over one hundred (100) local residences surround this property, and, so far, not one person has seen a notice posted. We feel sure that your man erected them, as this is his job, but they mysteriously, immediately disappeared.

Actually, nothing has changed in the neighborhood since Mr. Stancill first applied for this special exception. The roads are still normal country type roads, and the bridges are unchanged. The only change really is that the traffic on these roads has materially increased as it has everywhere else. We still feel sinking sump for our sewage and well water, and create tremendous problems for us. The danger from run-off water into the river still exists and, in general, we feel, just as before, that this is an extremely undesirable use of this land.

Thank you very much for any consideration you can afford us in this matter. It will be truly appreciated by our entire community.

Respectfully submitted,

BIRD RIVER CIVIC ASSOCIATION

[Signature]

William T. Hackett
President

Chairman, P.D. 21207

REQUEST FOR CONDITIONAL USE

SURGUY PROPERTY - 15th ELECTION DISTRICT, BALTIMORE COUNTY

OLD REQUEST	NEW REQUEST
44 acres	38 acres
to Bird River Beach Road	200 feet back from Bird River Beach Road
90 feet deep from present surface	40 feet from surface
2,000 tons per day	1,000 tons per day
100 truck loads per day	50 truck loads per day
33 to Eastern Avenue	30 to Eastern Avenue
67 to Pulaski Highway	20 to Pulaski Highway

Re: Case No. 75-18-X
Estate of Ida F. Surguy
(Stancill Contracting Co.
c.p.)
NE corner Ebenezer Road
and Bird River Beach
Road, 15th District

BALTIMORE COUNTY
BOARD OF
APPEALS

Mr. Clerk:

Please issue for the following witnesses to testify for the Petitioner in the above matter, and make the writ returnable on Tuesday, December 9, 1975, at 10:00 a.m. in the Hearing Room of the Board, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Name	Address
Karen R. Kuff	Maryland Geological Survey Latrobe Hall, Johns Hopkins University, Homewood Campus Baltimore, Maryland 21218
Richard Moore, Traffic Engineer	Traffic Engineering Office Room 234, Jefferson Building Chesapeake Avenue Towson, Maryland 21204
Mr. John D. Beck	Materials Testing Laboratory Division, Baltimore County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204
Frank Balcer Chief, Purchasing	Highways Department 111 West Chesapeake Avenue Towson, Maryland 21204
Paul J. Solomon	Baltimore County Office of Planning and Zoning Jefferson Building Towson, Maryland 21204
Harold Wiltse	Baltimore County Office of Planning and Zoning Jefferson Building Towson, Maryland 21204

and bring any and all data, reports, memoranda and other writings

SHERIFF'S FEE

including maps, charts, studies surveys pertaining to producers and production of sand and gravel in Baltimore County; traffic studies, surveys, traffic counts, etc. of Ebenezer Road, at the intersection of Route 40 and Eastern Avenue; names and locations of producers of washed sand and gravel; proposals and results for the purchase of sand, gravel and stone in Baltimore County for the past three years; information concerning recent conservation legislation for Baltimore County, all pertaining to the "Surguy" property at the captioned location.

John W. Hardwicke
Suite 1100, W. R. Grace & Co.
Building
10 East Baltimore Street
Baltimore, Maryland 21202
685 1717

Counsel for Petitioner.

Rec'd 12/5/75
10:15 a.m.

Mr. Sheriff:

Please issue summons in accordance with the above.

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary
County Board of Appeals of Baltimore County

COST \$ 10.00
SUMMONED 175 19
NON EST 175 19
NON SURT 175 19
COPY LEFT 175 19

Re: Case No. 75-18-X
Estate of Ida F. Surguy
(Stancill Contracting Co.
c.p.)
NE corner Ebenezer Road
and Bird River Beach
Road, 15th District

BALTIMORE COUNTY
BOARD OF
APPEALS

Mr. Clerk:

Please issue for the following witnesses to testify for the Petitioner in the above matter, and make the writ returnable on Tuesday, December 9, 1975, at 10:00 a.m. in the Hearing Room of the Board, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Name	Address
Karen R. Kuff	Maryland Geological Survey Latrobe Hall, Johns Hopkins University, Homewood Campus Baltimore, Maryland 21218
Richard Moore, Traffic Engineer	Traffic Engineering Office Room 234, Jefferson Building Chesapeake Avenue Towson, Maryland 21204
Mr. John D. Beck	Materials Testing Laboratory Division, Baltimore County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204
Frank Balcer Chief, Purchasing	Highways Department 111 West Chesapeake Avenue Towson, Maryland 21204
Paul J. Solomon	Baltimore County Office of Planning and Zoning Jefferson Building Towson, Maryland 21204
Harold Wiltse	Baltimore County Office of Planning and Zoning Jefferson Building Towson, Maryland 21204

and bring any and all data, reports, memoranda and other writings

including maps, charts, studies surveys pertaining to producers and production of sand and gravel in Baltimore County; traffic studies, surveys, traffic counts, etc. of Ebenezer Road, at the intersection of Route 40 and Eastern Avenue; names and locations of producers of washed sand and gravel; proposals and results for the purchase of sand, gravel and stone in Baltimore County for the past three years; information concerning recent conservation legislation for Baltimore County, all pertaining to the "Surguy" property at the captioned location.

John W. Hardwicke
Suite 1100, W. R. Grace & Co.
Building
10 East Baltimore Street
Baltimore, Maryland 21202
685 1717

Counsel for Petitioner.

In Re: Case No. 75-18-X
Estate of Ida F. Surguy
(Stancill Contracting Co.,
c.p.) NE corner Ebenezer
Road and Bird River Beach
Road, 15th District

BALTIMORE COUNTY
BOARD OF
APPEALS

Mr. Clerk:

Please issue for the following witnesses to testify for the Petitioner in the above matter, and make the writ returnable on Tuesday, August 26, 1975 at 10:00 a.m. in the Hearing Room of the Board at 111 W. Chesapeake Avenue, Towson, Maryland 21204.

NAME	ADDRESS
Mr. H. B. Staab	Director, Industrial Development Commission County Office Building Towson, Maryland 21204
Dr. Jonathan Edwards, Jr.	1206 Culvert Road Towson, Maryland 21204

and bring any and all data, reports, memoranda and other writings pertaining to the availability of sand and gravel deposits in the Baltimore Metropolitan Area, including but not limited to Baltimore County; and any and all data, reports, memoranda and other writings pertaining to the need for construction materials, including sand and gravel and related materials in Baltimore County; and any and all data, reports, memoranda and other writings pertaining to Surguy Property at the captioned address.

Mr. Sheriff:

Please issue summons in accordance with the above.

John W. Hardwicke
710 W. R. Grace & Co. Building
10 East Baltimore Street
685 1717
Baltimore, Maryland 21202

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary
County Board of Appeals of Balto. Co.

Counsel for Petitioner

Rec'd 8/18/75
10:30 a.m.

Re: Case No. 75-18-X
Estate of Ida F. Surguy
(Stancill Contracting Co.,
c.p.)
NE corner Ebenezer Road
and Bird River Beach Road,
15th District

BALTIMORE COUNTY
BOARD OF
APPEALS

Mr. Clerk:

Please issue for the following witnesses to testify for the Petitioner in the above matter, and make the writ returnable on Tuesday, August 26, 1975 at 10:00 a.m. in the Hearing Room of the Board at 111 W. Chesapeake Avenue, Towson, Maryland 21204.

NAME	ADDRESS
Paul J. Solomon	Baltimore County Office of Planning and Zoning Jefferson Building Towson, Maryland 21204
Harold Wiltse	Baltimore County Office of Planning and Zoning Jefferson Building Towson, Maryland 21204

and bring any and all data, reports, memoranda and other writings pertaining to the availability of sand and gravel deposits in the Baltimore Metropolitan Area, including but not limited to Baltimore County; and any and all data, reports, memoranda and other writings pertaining to the need for construction materials, including sand and gravel and related materials in Baltimore County; and any and all data, reports, memoranda and other writings pertaining to the "Surguy" property at the captioned location.

Mr. Sheriff:

Please issue summons in accordance with above.

John W. Hardwicke
710 W. R. Grace & Co. Building
10 East Baltimore Street
Baltimore, Maryland 21202
685 1717

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary
County Board of Appeals

Counsel for Petitioner

Rec'd 8/21/75
9:45 a.m.

In Re: Appeal for Special Exception
NE corner Ebenezer Road
and Bird River Beach Road
15th District

BALTIMORE COUNTY
BOARD OF APPEALS

Petitioner: Estate of
Ida F. Surguy
(Stancill Contracting Co.,
c.p.)

Mr. Clerk:

Please issue for the following witnesses to testify for the Petitioner in the above matter, and make the writ returnable on Tuesday, March 11, 1975 at 10:00 a.m. in the Hearing Room of the Board, 111 W. Chesapeake Avenue, Towson, Maryland.

NAME	ADDRESS
Dr. Jonathan Edwards, Jr.	1206 Culvert Road Towson, Maryland 21204

COST \$ 10.00
SUMMONED 175 19
NON EST 175 19
NON SURT 175 19
COPY LEFT 175 19

and bring any and all data, reports, memoranda and other information in their possession relating to the above Appeal.

Mr. Sheriff:

Please issue summons in accordance with above.

John W. Hardwicke
710 W. R. Grace & Co. Building
10 East Baltimore Street
Baltimore, Maryland 21202

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary
County Board of Appeals

Attorney for Petitioner

Rec'd 3/7/75
9:45 am

RE: PETITION FOR SPECIAL EXCEPTION :
for Excavation, Controlled :
NE corner of Ebenezer Road and :
Bird River Beach Road :
15th District :
OF :
Estate of Ida F. Surguy :
Petitioner :
Stancill Contracting Company :
Contract Purchaser :
BALTIMORE COUNTY :
No. 75-18-X

OPINION

This case comes before the Board on an appeal by the Petitioner from a decision of the Zoning Commissioner, which denied a requested special exception for the subject property. This property is located at the northeast corner of Ebenezer Road and the Bird River Beach Road, in the 15th Election District of Baltimore County.

At the outset of this hearing the original petition was amended to reflect the now fee simple owner of the subject property. Originally this case was filed by the estate of Ida F. Surguy, with the Stancill Contracting Company as contract purchaser. In 1974 the Stancill Contracting Company completed the purchase of the subject and is now the owner of same. Hence the petition was amended accordingly and the case before the Board is brought by the Petitioner, the Stancill Contracting Company. It was stipulated by the parties to this case that the land is zoned R.D.P. The Petitioner seeks a special exception for a controlled excavation, namely, the excavation of sand and gravel. The Zoning Commissioner denied the request for the special exception. This case comes de novo before the Board of Appeals, and the Petitioner must evidence to the Board that the use sought via the special exception will not violate any of the sections and/or provisions of Section 502.1 of the Baltimore County Zoning Regulations. In furtherance of this burden the Petitioner presented seven witnesses to the Board. This Opinion will not attempt to detail the testimony of each of these witnesses; however, it will summarize those witnesses which most significantly contributed to the burden of proof.

Terry Stancill, the Secretary-Treasurer of the Stancill Contracting Company, described to the Board the proposal of the Petitioner at the subject property. The subject property is approximately 129 acres in size, and it is the intention to mine approxi-

Ida F. Surguy - No. 75-18-X

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mately 45 acres of this area. The product sought is a clean silical type sand and the excavation would reach a depth of approximately 75 feet. At the termination of and all during the mining process a lake would fill the mine area. Mr. Stancill told the Board that preliminary tests indicated that the 45 acres mentioned is the only area of the subject property which might be anticipated to yield the quality and quantity of sand sought for commercial use. He said that this was an excellent sand deposit and did not contain much gravel. He felt that the life of this deposit was approximately fifteen years, and a conservative estimate of the quantity was approximately eight million tons.

Although the testimony throughout the case was not totally consistent concerning the amount of production, Mr. Stancill did indicate that while the market place dictates the production schedules, that it could be anticipated that about 800,000 to 500,000 tons per year would be taken from the subject property. The production could be anticipated five and one-half days per week, with about 2000 tons per work day being produced. As to the truck traffic, the Petitioner indicated the capacity per truck was about 20 tons, and that there would be about 75 to 100 loads per day, and therefore approximately 150 to 200 trips per day at the subject site. A plant would be built for the washing and grading of the sand and the silting material produced would be at a minimum. A six foot high berm around the mine area, with screening atop same is proposed. The only entrance to the subject mining area would be from Ebenezer Road; there would be no entrance from the Bird River Beach Road. This particular entrance was selected as same provided the best sight clearance, and hence the best location for ingress and egress to and from the subject property.

Further noting the planned operation, Mr. Stancill said that same would be a recirculating fresh water system and that the actual mining would be by dragline to pull the material up from below the water table. He did indicate that as the mining approached the 75 foot depth that perhaps different types of dragline equipment would be required. This testimony was rather vague and refuted in part by a subsequent expert witness for the protestants. Mr. Stancill spoke of dust control provisions for the entrance roads and planned treatment for these roads to keep the dust problem as minimal as

Ida F. Surguy - No. 75-18-X

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possible. He felt that noise from the operation would be well buffered by the woods that would surround same, and he noted that it was proposed that the processing plant would be constructed in these woods. The nearest home to the plant would be approximately 1350 feet away. As to the traffic leaving the site from Ebenezer Road, the Petitioner felt that about sixty-five percent would go to Route 40.

The Petitioner felt that the proposed operation would satisfy all the provisions of Section 502.1. On cross-examination the Petitioner acknowledged that Petitioner's Exhibit No. 1 had not yet been offered to the Planning and Zoning Departments of Baltimore County. Since the Board must specifically look at the proposal of the Petitioner when judging Section 502.1 against the proposed use of the special exception, the fact that the Planning Staff could not have a specific and detailed plan with which to make further recommendations to this Board makes somewhat more difficult the decision to be rendered in this instance.

Mr. Stancill noted that the employees of the plant would be protected, as the operation would be under the scrutiny of the "Federal Mining Enforcement and Safety Administration." Some insight into the magnitude of this project was provided to this Board when the Petitioner noted that one-half of the Baltimore area market for sand and gravel could be supplied from the subject property.

William Sudeck, an engineer associated with the G.W. Stephens Engineering firm, testified for the Petitioner. Mr. Sudeck's testimony located the closest residence to the proposed mining operation. That residence is the property of William T. Hackett. Same is about 130 feet from the center line of Bird River Beach Road and about 270 feet from the edge of the mining operation itself, and ultimately the proposed lake.

(NOTE: William T. Hackett, the owner of the above described nearby residence, was appointed as a Democratic alternate member of this Board of Appeals in January of 1975. The date of his appointment, of course, followed the Zoning Commissioner's decision and the subsequent appeal by the Petitioner to this Board. Mr. Hackett and his wife have been protestants ab initio in this case. Mr. Hackett has taken no part in this case before the Board, either as a member of some or as a protestant. Mrs. Hackett likewise offered no testimony in this case.)

Mr. Sudeck noted that as far back as 1966 he prepared studies for the replacement of the culverts on Ebenezer Road over Windless Run. The same were never installed, although they have been scheduled in the 1977-78 capital budget period.

Ida F. Surguy - No. 75-18-X

4.

James Humphreville, a consulting geologist from Lancaster, Pennsylvania, offered expert testimony for the Petitioner. This expert conducted studies upon the subject property in 1972 and in March and August of 1975. Exhibits summarizing his efforts are part of this record. In general, his conclusion as to the effect of the subject petition upon wells in the area was that the "Hackett's well" would be adversely affected. However, no other wells in the area would be so affected.

David Mangan, a traffic expert with MCA Engineering Corporation, presented the usual traffic testimony on behalf of the Petitioner. The 3.8 mile length of Ebenezer Road between Route 40 and Eastern Avenue is the traffic to be analyzed. He noted that this road had a 35 mile an hour speed limit for the entire 3.8 mile length, and that it was basically a straight road with excellent site distances and a collector highway in this area. As to the level of service theory, Mr. Mangan said that the subject road was at level of service "D" during the peak hours only period. Mr. Mangan went into some detail about the anticipated traffic from the subject site if the mining operations are approved. This quantity of traffic did not exactly coincide with the previous testimony of Mr. Stancill but was basically sufficient to give this Board some idea as to the traffic that would be existing from the subject site if the special exception for the sand and gravel operation would be permitted. The road width was described to be about 24 feet paved and the road was described as presenting no particular undue hazards. The conclusion of this witness was that the mining operation and its resultant traffic would have no operational effect on the Ebenezer Road. On cross-examination Mr. Mangan stated that his studies were done in August of 1975, and that they were based on traffic as it existed today, with the addition of the mining operation, but really did not take into consideration potential new residential development in the area.

The last witness for the Petitioner was William H. Baldwin, a real estate expert, who told the Board that it was his judgment that the mining operation would have no depreciating effect on the surrounding residential properties.

Protestants and People's Counsel presented four expert witnesses and a number of neighborhood residents who were in opposition to the granting of this special exception.

Ida F. Surguy - No. 75-18-X

5.

Carl W. A. Supp, a professional engineer and geologist, testified for the Protestants. He testified at length and presented to this Board detailed technical testimony concerning the effect or possible effect of the proposed petition upon the surrounding property owners. In summary, Mr. Supp described how the water supply from the various wells in this area could significantly and adversely be affected by the mining operation at the subject property. Noting that it was the petitioner's intent to mine at an approximate depth of 75 feet, Mr. Supp's proposal restricting the operation to the Patapocus aquifer could not be accomplished if the 75 foot depth was sought. In the mind of this expert witness, the operation at the subject property could diminish the water in some of the surrounding wells and/or could pollute the water in some of the surrounding wells. With the resulting lake, the witness pointed out that there was the ever present possibility of the dumping of foreign materials and/or chemicals into the lake, with the result being that same would eventually pollute the lower wells in the subject area. Because of the nature of the wells in the subject area, and the extent of the proposal of the mining operation at the subject property, this witness concluded that the area water supply could be significantly and adversely affected by the Petitioner's proposal.

Norman Garber, a planner for Baltimore County, told the Board that the 1974 plan called for the installation of public water in the subject area somewhere in the eleven to thirty year plan.

Michael Flanigan, a traffic expert in the employ of Baltimore County, presented testimony to the Board. He told the Board of the traffic counts on Ebenezer Road, and also of the incident of traffic accidents on said road. It was Mr. Flanigan's opinion that Ebenezer Road is insufficient for the existing traffic. He estimated the paved width of Ebenezer Road to be approximately 20 to 22 feet.

Ernest Radoci, the Chief for bridges in Baltimore County, also testified. It is his duty to inspect all bridges in the County at least every two years, and along Ebenezer Road there are two bridges between Eastern Avenue and U.S. Route 40. These bridges traverse White Marsh Run and Windless Run and each has a rating of a 20 ton limit. He described existing bridges and noted that there were plans to eventually replace both of these bridges. At the present time construction was planned for 1980.

Ida F. Surguy - No. 75-18-X

6.

Mr. William Barkula, an area resident since 1941, told the Board various reasons as to why he is opposed to the granting of this petition. This witness lives about 1500 feet from the subject property and it was his opinion that if this petition be granted his property values would be seriously affected. This witness felt that the noise, the air pollution, the effect upon his private water supply, and the safety hazards presented by the trucks from the subject property would each contribute detrimentally to his property and to his enjoyment or same. This witness reviewed the potential of the subject site over its fifteen year life, and felt that this 100 truck per day impact upon his property and himself would be devastating. He noted that it was logical to think that the trucks would be concentrated in the morning and afternoon as they went about the normal course of coming in and out of the sand and gravel operation. This witness was not happy with the potential safety problem, which would result after the mining operation was finished and the lake would be present. He also noted that to him the existing truck traffic often attempted to intimidate other drivers on the road and to him represented the worst sort of traffic increase that could result.

The additional neighborhood witnesses each described to the Board the particular effect that the subject petition might have on their properties. Basically and summarily the objections centered around noise, dust, traffic, safety and potential adverse effect upon their private water supplies. As cited previously in this Opinion, the sole question to be decided by this Board is whether the proposal of the Petitioner can satisfy Section 502.1 of the Baltimore County Zoning Regulations. The petitioned special exception is allowable in the R.D.P. zoning if the Petitioner can evidence compliance with said Section. Section 502.1 of the Zoning Regulations cites:

"Be detrimental to the health, safety, or general welfare of the locality involved;"

It is the judgment of the Board that the Petitioner has not evidenced that his proposal will satisfy this subsection.

As to the private water supplies at the subject property, there are opinions of two experts in this case; one for the Petitioner and one for the Protestants. At best, the Petitioner's expert's conclusion is that but one well will be detrimentally affected

Ida F. Surguy - No. 75-18-X

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by the Petitioner's proposal, this being the well of William T. Hackett. This would not in and of itself be sufficient to deny the special exception in this instance, as the Board feels it must weigh carefully the provisions of Section 502.1 against the principal of "sub generis" and of the uncontradicted need for the most efficient method of saving and utilizing the minerals of the County. The need for this product is also uncontradicted. However, the Board is not sure that just one well might be affected. In reviewing the testimony of the Protestants' geologist, Mr. Supp, the Board can not be convinced that it is possible that many more private water supply systems in the area could be adversely affected by this planned mining operation. Note that the effect could be both a lowering or diminishing of the available capacity of these wells, as well as the possibility of polluting of said wells by foreign matter introduced into the lake of the mining operation.

Furthermore, the Petitioner's explanation for the operation was not specific. There was offered little testimony concerning the day to day protection of this property.

In an area which has some density (more than a hundred homes within close proximity to the subject property), the Board feels that the Petitioner has not sufficiently evidenced protective procedures that would insure the community that the operation of the large quarry and subsequent lake would not prove to be an attractive area which would lend itself to potential problems to the younger members of the community, as far as safety and their general welfare might be concerned. Of course, the Board could envision policing and fencing that might minimize this problem. However, suffice it to say the Petitioner's day in court has come and gone and the question has not been answered, so that the Board might feel comfortable in granting a special exception, particularly as same might go to the protection of the community from this particular safety and general welfare aspect of the proposed mining operation.

The Petitioner's testimony as to whether or not the operation would have a detrimental effect upon surrounding property owners was minimal. There was no specific evidence presented to the Board concerning this factor. There was nothing by way of comparison to other mining operations in and around the Baltimore metropolitan area that might indicate to the Board whether or not surrounding property values have been detrimentally

Ida F. Surguy - No. 75-18-X

8.

affected by such a quarrying business. Likewise, the statements of the surrounding property owners that they felt their land would be depreciated by this operation is really not backed up with any concrete evidence one way or the other. Since the Petitioner must carry the burden of satisfying the provisions of Section 502.1 at the very best, the Board is forced to say it really has no specific evidence before it as to whether or not the proposed operation would in fact have a detrimental effect on the surrounding property values. Hence one is forced to say that this burden as to the general welfare of the locality involved must be left unanswered and therefore unproven. Noting that the operation is planned to last at least fifteen years, it would seem reasonable for the Petitioner to have evidenced some sort of comparisons as to the effect that this operation might specifically have on surrounding property owners.

Section 502.1 b. states: "Tend to create congestion in roads, streets, or alleys therein;"

A review of the traffic testimony again leaves before the Board contradictory testimony, the Petitioner claiming that the additional trucks on the road would not, in fact, tend to create congestion, while the Traffic Engineer for Baltimore County testified on behalf of the Protestants and indicated an opposite effect.

There were no projections made based upon the existing zoning in the area and its potential development over the next fifteen or so years in which this project would operate on Ebenezer Road. The Petitioner's expert also indicated that Ebenezer Road at peak hours operated at traffic level "D". This level is barely acceptable, if, in fact, it is acceptable as a level of traffic movement. Considering this existing traffic level "D", the calculable increase of heavy truck traffic from the subject property and the lack of projection for added traffic to the existing road as a result of development in the subject area on the lands as now zoned, it seems to the Board rather obvious that the petition must be considered as one which, in fact, would cause or tend "to create congestion in the road".

Other factors presented in this case which might be deemed as detrimental to the general welfare of the locality involved were the elements concerning the noise, air

pollution and storm water runoff pollution of the nearby existing streams and river.

Before concluding, the Board would cite that it has carefully weighed the testimony and evidence presented in this instance. Particularly considering that the nature of a special exception is that it is allowable within this zoning classification, provided all sections of 502.1 have been satisfied. Also present in this instance is the nature of the special exception sought herein. One must carefully consider the need that would be satisfied by the minerals that apparently lie beneath the surface at the subject site, and this fact of their presence here, and only in certain given limited locations, such as the subject property, one must add to the final judgment, consideration of the principal of sui generis in that the mining of these minerals must take place where they exist.

Having carefully weighed these elements against the testimony and evidence presented as applicable to Section 502.1, the Board's decision is that the Petitioner has failed in his burden of proof. The Petitioner has not evidenced to this Board that, in fact, the granting of this petition would not "be detrimental to the health, safety and general welfare of the locality involved" (Section 502.1 a.); nor has the testimony in evidence proved to the Board that the granting of the special exception would not "tend to create congestion in the roads" (Section 502.1 b.).

Therefore, for the reasons set out above, the Board, in the Order which follows, will deny the Petitioner's special exception.

ORDER

For the reasons set forth in the foregoing Opinion, the Board affirms the Order of the Zoning Commissioner of Baltimore County dated November 25, 1974, and it is this 3rd day of March, 1976, by the County Board of Appeals ORDERED, that the Special Exception petitioned for be and the same is hereby DENIED.

Any appeal from this decision must be in accordance with Rules 8-1 to 8-12 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Walter A. Reiter, Jr.
Walter A. Reiter, Jr., Chairman
Robert L. Gifford
Robert L. Gifford
John A. Miller
John A. Miller

RE: PETITION FOR SPECIAL EXCEPTION for Excavation, Controlled NE corner of Ebenezer Road and Bird River Beach Road 15th District

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY

Estate of Ida F. Surguy
Petitioner
Stancill Contracting Company, Contract Purchaser
No. 75-18-X

ORDER FOR APPEAL BY STANCILL CONTRACTING COMPANY

Mr. Clerk:

Please enter an appeal to the Circuit Court of Baltimore County on behalf of STANCILL CONTRACTING COMPANY, from the Order of the Board of Appeals of Baltimore County, passed in the above captioned case on March 3, 1976.

John W. Hardwicke
John W. Hardwicke
Suite 1100, W. R. Grace & Co. Building
10 East Baltimore Street
Baltimore, Maryland 21202
685 1717
Attorney for Stancill Contracting Company

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY, That a copy of the above Order for Appeal was served on the Board of Appeals of Baltimore County at County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204 on March 25, 1976.

John W. Hardwicke
John W. Hardwicke

Rec'd 3/26/76
10 am

RE: PETITION FOR SPECIAL EXCEPTION for Excavation, Controlled NE corner of Ebenezer Road and Bird River Beach Road 15th District

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY

Estate of Ida F. Surguy
Petitioner
Stancill Contracting Company
Contract Purchaser
No. 75-18-X

PETITION

COMES NOW, Stancill Contracting Company, by John W. Hardwicke, its attorney, pursuant to the provisions of Rule B2e of the Maryland Rules of Procedure, and petitions the Court to grant relief from the action of the Board of Appeals of Baltimore County in denying Petitioner's request for a Special Exception, and as reason therefor, states:

1. That the action of the Board of Appeals did not take into account evidence presented by Petitioner which was sufficient and adequate for the purpose of causing Petitioner's property to be given a Special Exception zoning.
2. That there was no evidence presented by any protestant or other party which was sufficient to cause the Board to deny Petitioner's request.
3. That the only reasonable use of Petitioner's property is for the quarrying of sand and the denial of such use is the taking of Petitioner's property without compensation and without due process of law.
4. That the property of Petitioner is presently

Rec'd 3/26/76
10 am

zoned R.D.P. and that the use of Petitioner's property for any purpose permitted under its present zoning would more adversely affect the community and area in which the property is situated than would the Special Exception for Excavation, Controlled that is sought.

5. That the action of the Board of Appeals in denying Petitioner's request is arbitrary, capricious and unreasonable.

6. And such other reason or reasons as Petitioner shall present in a proper hearing before the Court.

WHEREFORE, Petitioner requests this Honorable Court:

- a. To reverse the Order of the Board of Appeals of Baltimore County and to grant the Special Exception for Excavation, Controlled sought, or alternatively;
- b. To remand the case to the Board of Appeals with instructions for the Board to consider such evidence as this Court may deem relevant or pertinent; and
- c. For such other and further relief as the Court may deem appropriate.

John W. Hardwicke
John W. Hardwicke
Suite 1100, W. R. Grace & Co. Building
10 East Baltimore Street
Baltimore, Maryland 21202
685 1717

Attorney for Stancill Contracting Company

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY, That a copy of the above Petition was served on the Board of Appeals of Baltimore County, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204 this 25th day of March, 1976.

John W. Hardwicke
John W. Hardwicke
Attorney for Stancill Contracting Company

RE: PETITION FOR SPECIAL EXCEPTION : IN THE
for Excavation, Controlled :
NE corner of Ebenezer Road and : CIRCUIT COURT
Bird River Beach Road :
15th District : FOR
Estate of Ida F. Surguy : BALTIMORE COUNTY
Petitioner :
Stancill Contracting Company : AT LAW
Contract Purchaser :
Appellants : Misc. Docket No. 10
File No. 75-18-X : Folio No. 196
: File No. 5889

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2 (d) of the Maryland Rules of Procedure; Walter A. Reiter, Jr., Robert L. Gifford and John A. Miller, 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, John W. Hardwicke, Esquire, 10 East Baltimore Street, Baltimore, Maryland 21202, Attorney for the Petitioners, and Mr. William T. Hackett, President, Bird River Civic Association, Chase, Maryland 21027, Protestant, and Mr. David H. de Villiers, Jr., Caledon Development Corporation, 608 Basley Avenue, Towson, Maryland 21204, and John W. Hession, III, Esquire, County Office Building, Towson, Maryland 21204, People's Counsel, a copy of which notice is attached hereto and prayed that it may be made a part thereof.

Edith T. Eisenhart
Edith T. Eisenhart, Administrative Secretary
County Board of Appeals of Baltimore County
Room 219, Court House
Towson, Maryland 21204
494-3180

I hereby certify that a copy of the foregoing Certificate of Notice has been mailed to John W. Hardwicke, Esquire, 10 East Baltimore Street, Baltimore, Maryland 21202, Attorney for the Petitioners, and Mr. William T. Hackett, President, Bird River Civic Association, Chase, Maryland 21027, Protestant, and Mr. David H. de Villiers, Jr., Caledon Development Corporation, 608 Basley Avenue, Towson, Maryland 21204, and John W. Hession, III, Esquire, County Office Building, Towson, Maryland 21204, People's Counsel, on this 30th day of March, 1976.

Edith T. Eisenhart
Edith T. Eisenhart, Administrative Secretary
County Board of Appeals of Baltimore County

Appealed 3/26/76

cc: Mr. S. E. DiNenna
Mr. W. D. Francis
Mr. J. Howell
Mrs. B. Anderson

RE: PETITION FOR SPECIAL EXCEPTION : IN THE
for Excavation, Controlled :
NE corner of Ebenezer Road and : CIRCUIT COURT
Bird River Beach Road :
15th District : FOR
Estate of Ida F. Surguy : BALTIMORE COUNTY
Petitioner :
Stancill Contracting Company : AT LAW
Contract Purchaser :
Appellants : Misc. Docket No. 10
File No. 75-18-X : Folio No. 196
: File No. 5889

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Walter A. Reiter, Jr., Robert L. Gifford and John A. Miller, 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. 75-18-X

- July 12, 1974 Petition of Estate of Ida F. Surguy (Stancill Contracting Company, contract purchaser) for Special Exception for excavation, controlled, on property located on the northeast corner of Ebenezer Road and Bird River Beach Road, 15th District - filed
- * 12 Certificate of Zoning Commissioner directing advertisement and posting of property - date of hearing set for August 12, 1974 at 1:00 p.m.
 - * 17 Comments of Baltimore County Zoning Planning Advisory Committee filed
 - * 25 Certificate of Posting of property - filed
 - * 28 Certificate of Publication in newspaper - filed
 - Aug. 7 Comments of Director of Planning - filed
 - * 12 At 1:00 p.m. hearing held on petition by Zoning Commissioner - case held sub curia

Nov. 25, 1974 Order of Zoning Commissioner denying special exception

Dec. 20 Order of Appeal to County Board of Appeals from Order of Zoning Commissioner

Aug. 26, 1975 Hearing on appeal before County Board of Appeals

Dec. 9 Continued hearing " " " " " - case held sub curia

Mar. 3, 1976 Order of County Board of Appeals denying special exception

" 26 Order for Appeal filed in Circuit Court for Baltimore County

" 26 Petition to accompany Order for Appeal filed in the Circuit Court for Baltimore County

" 30 Certificate of Notice sent to all interested parties

Apr. 22 Petition to extend time for filing record to May 26, 1976

May 18 Transcript of testimony filed - 2 volumes

Petitioner's Exhibit No. 1 - Plat of subject property, rev. 8/25/75 (O. W. Stephans)

" 2 - Map of subject property (C.B.A. closest)

" 3 - Reel of "Land Use Planning and the Sand and Gravel Producer"

" 4 - Letter dated 3/22/72 from Dept. of Water Resources to Mr. John Dillon

" 5 - Plat - cross-section

" 6 - Traffic study, MCA, 8/24/75

" 7 - Cross-section, North side (CBA closest)

" 8 - " " " " " East side (CBA closest)

" 9 - " " " " " West side (CBA closest)

" 10 - Letter, Michael R. Pugh, 12/8/75

" 11 - Letter, John D. Cook, 12/9/75

" 12 - Letter, Marvyn G. Thompson, 12/8/75

Protestants' Exhibit A - List of Protestants present

People's Counsel Exhibit No. 1 - A-G, 3/75 - Series of aerial photos of subject property

" 2 - A-F, 3/75, Series of aerial photos of Pet. operation in Abundant, Harford County

People's Counsel Exhibit No. 3 - Aerial photo of subject property - Balto. Co. 200' scale

" 4 - Aerial photo of subject property, 4/18/75 (Balto. Co. 200' scale)

" 5 - Geological map

" 6 - 200' scale Photogrammetric showing walls in vicinity of subject property

" 7 - Tabulation of wall data (accompanies P.C. Ex. No. 4)

" 8 - Cross-section of ground through subject property (red line on P.C. Ex. 4)

" 9 - Schematic of ground water relationships

" 10 - Maryland Geological Survey, 1966

" 11 - A-G, Series of photos

" 12 - Letter, 11/18/75, from Attorney Gen'l. (Identification only)

" 13 - Bill of Complaint 22852-26/267, Harford County (Identification only)

" 14 - Bill of Complaint 22851-26/266, Harford County (Identification only)

May 26, 1976 Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County, as are also the use district maps, and your respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will produce any and all such rules and regulations, together with the zoning use district maps of the hearing on this petition, or whenever directed to do so by this Court.

Respectfully submitted,

Muriel E. Buddmeier
County Board of Appeals of
Baltimore County

cc: John W. Hardwick, Esq.
John W. Hession, III, Esq.
Mr. Raymond Reiner

RE: PETITION FOR SPECIAL EXCEPTION
for Easement, Controlled
NE corner of Ebenezer Road and
Bird River Beach Road
15th District

Estate of Ida F. Surguy, Petitioner
Stancill Contracting Company,
Contract Purchaser, Appellants

File No. 75-18-X

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Misc. Docket No. 10
Folio No. 196
File No. 5889

ANSWER TO PETITION ON APPEAL

The Answer of the People's Counsel for Baltimore County, a party to this proceeding, to the Petition to Accompany Order for Appeal respectfully shows:

1. That the matters, facts, and allegations made and alleged in the first through sixth paragraphs of said Petition are denied.

2. Further and generally answering said Petition, it is respectfully suggested that the County Board of Appeals did in fact have before it credible, probative evidence upon which it legally could and did properly make its decision in this case pertaining to the matter of pollution of water supply upon which neighboring homes depend, pollution of the air in the neighborhood through the creation of dust, disturbance of the residential tranquility of the neighborhood through noise, and, of equal importance, the creation of problems for the neighborhood and for Baltimore County by way of additional vehicular traffic hazards and the carrying of tonnage in excess of that for which the County has provided bridging on the adjacent roads.

WHEREFORE, it is respectfully submitted that the decision of the County Board of Appeals herein be sustained.

AND AS IN DUTY BOUND, etc.,

John W. Hession, III
People's Counsel

Charles E. Kautz, Jr.
Deputy People's Counsel
County Office Building
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that a copy of the foregoing Answer was mailed this 29th day of April, 1976 to John W. Hardwick, Esquire, Suite 1100, 10 East Baltimore Street, Baltimore, Maryland 21202, Attorney for Stancill Contracting Company, Appellant.

John W. Hession, III

Rec'd 5:37 PM
330 PM

LAW OFFICES
FRANK, BERNSTEIN, CONAWAY & GOLDMAN

1300 MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201

TELEPHONE: 333-1111
FAX: 333-1111

December 23, 1977

The Honorable John E. Raine, Jr.
Circuit Court for Baltimore County
Courthouse
Towson, Maryland 21204

Re: Estate of Ida F. Surguy
v. Stancill's Contracting
Co., Contract Purchaser
Miscellaneous Docket No. 10/196
File No. 5889

Dear Judge Raine:

We have entered our appearance on behalf of Stancill's Contracting Company, appellant, in the above-captioned case. I write to Your Honor to request that the matter be set in for hearing in about one month's time, so that we will be able to brief the issues involved in the case.

Thank you for your consideration of this request.

Very truly yours,

Robert B. Levin
Robert B. Levin

RBL/pr

cc: John W. Hession, III, Esquire
Muriel Buddmeier

Rec'd 12:51 PM
11.13.77

ESTATE OF IDA F. SURGUY

Petitioner

v.

STANCILL CONTRACTING CO.,
CONTRACT PURCHASER,
Appellants

IN THE

CIRCUIT COURT

FOR BALTIMORE COUNTY

AT LAW

Miscellaneous Docket No. 10/196
File No. 5889

ENTRY OF APPEARANCE

MR. CLERK:

Please enter the appearance of George W. Liebmann, Robert B. Levin, and Frank, Bernstein, Conaway & Goldman, as counsel for appellants in the above-captioned case.

George W. Liebmann
George W. Liebmann

Robert B. Levin
Robert B. Levin

Frank, Bernstein, Conaway & Goldman
Frank, Bernstein, Conaway & Goldman
1300 Mercantile Bank & Trust
Building
2 Hopkins Plaza
Baltimore, Maryland 21201
547-0500

Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Entry of Appearance was mailed to John W. Hession, III, 102 West Pennsylvania Avenue; Charles E. Kautz, Jr., 224 Hammond Perry Road, Baltimore, Maryland, 21227; and to Muriel Buddmeier, County Board of Zoning Appeals, 111 West Chesapeake Avenue, Towson, Maryland 21204, this 23rd day of December, 1977.

Robert B. Levin
Robert B. Levin

PETITION FOR SPECIAL EXCEPTION IN THE
OF ESTATE OF IDA F. SURGUY, CIRCUIT COURT
PETITIONER, AND FOR BALTIMORE COUNTY
STANCILL CONTRACTING COMPANY AT LAW
CONTRACT PURCHASER Baltimore County
Misc. No. 5889

PETITION FOR MANDAMUS AND ANCILLARY RELIEF

Stancill's Contracting Corporation and Southern Four, Inc., Plaintiffs, by George W. Liebmann and Robert B. Levin, their attorneys, respectfully allege as follows:

1. Plaintiffs are the owners of a piece of property located at the northeast corner of Ebenezer Road and the Bird River Beach Road, in the Fifteenth Election District of Baltimore County.

2. Defendants are the members of the Baltimore County Board of Appeals (hereinafter the "Board"), and

Defendants are sued individually and as such Board.

3. On March 3, 1976, the Board affirmed an Order of the Zoning Commissioner of Baltimore County denying a Petition for Special Exception filed by the Stancill Contracting Corporation.

4. An appeal to the Circuit Court for Baltimore County was filed by Stancill Contracting Corporation captioned "Petition for Special Exception of Estate of Ida F. Surguy, Petitioner and Stancill Contracting Company, Contract Purchaser" Miscellaneous No. 5889.

5. The appeal in miscellaneous No. 5889 was heard on February 13, 1978.

6. On March 23, 1978, the Circuit Court for Baltimore County (per Raine, C. J.) reversed the Board which had denied Stancill's Contracting Corporation a special exception for surface mining. By its Opinion dated March 23, 1978, the Circuit Court for Baltimore County held as follows:

"The Order of the Board of Appeals is REVERSED, and the case is REMANDED so that the Board may take additional testimony if it desires and impose such reasonable restrictions on the applicants further use of the property under the Special Exception as permitted by Zoning Regulation 502.2." (Emphasis in original).

7. A copy of the March 23, 1978 Opinion of the Circuit Court for Baltimore County is attached hereto as Exhibit A and is incorporated by reference herein.

By letter dated May 10, 1978, counsel for Plaintiffs requested the Board to set in promptly for hearing the question whether conditions should be imposed by the Board upon the Special Exception and the character of such conditions. A copy of said letter is attached hereto as Exhibit B. Because

Plaintiffs are precluded from the use of the property prior to the Board's considering the matter of conditions, an early hearing was requested.

9. Although an appeal has been taken from the decision of the Court in Miscellaneous No. 5889, no order staying the effect of the judgment of reversal and order to remand to the Board has been entered, nor has any application for stay or for supercedas bond been filed.

10. On April 17, 1978, Plaintiffs herein moved to dissolve an injunction entered by Judge DeWaters in a case captioned Zoning Commissioner v. Stancills Contracting Co., Equity No. 92557 in which Plaintiffs had been enjoined from the proposed use of their property by reason of their failure to obtain required zoning. Subsequently Judge DeWaters denied the Motion to Lift Injunction in an undated Opinion, taking the view that lifting of the injunction was inappropriate until the Board had an opportunity to impose any necessary conditions. His Opinion is annexed hereto as Exhibit C. Despite Judge DeWaters' Opinion, the Board has failed to schedule a hearing or impose conditions.

11. Despite the clear order of the Circuit Court for Baltimore County in Miscellaneous No. 5889 reversing the Board and remanding this matter to the Board so that the Board might take additional testimony and impose such reasonable restrictions on the applicants' further use of the property, the Board has deliberately, arbitrarily, intentionally, unreasonably and in violation of the imperative duty imposed on it by the Circuit Court for Baltimore County, failed and re-

fused and continues to fail and refuse to conduct the hearing on and consider the issue of restrictions on Plaintiffs' use of the property as mandated by this Court's Opinion and Order dated March 23, 1978, and as contemplated by Judge DeWaters' Opinion attached as Exhibit C.

12. Plaintiffs allege they have a real interest in the subject property and a clear legal right to a hearing by the Board in this matter, by virtue of their status as owners of the subject property and parties in Miscellaneous No. 5889.

WHEREFORE, Plaintiffs pray that this Court a) grant a Writ of Mandamus directing the Defendants within seven days to hold a hearing to take additional testimony if it desires and within such time to impose or decline to impose such reasonable restrictions on the applicants' further use of the property under the Special Exception as permitted by Zoning Regulation 502.2, and b) in aid of such writ, dissolve the injunction obtained by the Board in Equity No. 92557.

VERIFICATION

STATE OF MARYLAND } to wit:
COUNTY OF }

I HEREBY CERTIFY that on this 1st day of June, 1978, before me, a Notary Public for said State and County, personally appeared JERRY STANCILL, and made oath in due form of law that he is the Vice President of Stancills Contracting Corporation and Secretary of Southern Four, Inc., Plaintiffs and on behalf of said corporations that the matters and facts set forth in the foregoing Petition for Mandamus are

true to the best of his knowledge, information and belief.

Terry B. Stancill
Terry B. Stancill
Notary Public
My Commission Expires: July 78
George W. Liebmann
George W. Liebmann

Robert B. Levin
Robert B. Levin
Frank, Bernstein, Conaway & Goldman
1300 Mercantile Bank & Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201
547-0500
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of June, 1978, a copy of the foregoing Petition for Mandamus and Ancillary Relief was mailed to John W. Hessien, III, Esquire, Peoples' Counsel, County Office Building, Towson, Maryland 21204.

George W. Liebmann
George W. Liebmann

IN RE PETITION FOR SPECIAL EXCEPTION OF ESTATE OF IDA F. SURGUY, PETITIONER AND STANCILL CONTRACTING CORPORATION, CONTRACT PURCHASER

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY MISC. NO. 5889

MOTION FOR LEAVE TO FILE CLAIM FOR MANDAMUS AND ANCILLARY RELIEF

Stancill Contracting Corporation, Petitioner, by George W. Liebmann and Robert B. Levin, its attorneys moves pursuant to Maryland Rule 84 for leave to file the Petition for Writ of Mandamus and for Ancillary Relief, attached hereto as Exhibit A, for the reasons set forth in the attached Petition.

A form of Order granting the relief prayed is attached hereto for the convenience of the Court.

STATEMENT OF POINTS AND AUTHORITIES

Maryland Rule 84.0.

Respectfully submitted,

George W. Liebmann
George W. Liebmann

Robert B. Levin
Robert B. Levin
Frank, Bernstein, Conaway & Goldman
1300 Mercantile Bank & Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201
(301) 547-0500

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of June, 1978, a copy of the foregoing Motion for Leave to File Claim for Mandamus and Ancillary Relief was mailed, U.S. postage prepaid to John W. Hessien, III, Esquire, Peoples' Counsel, County Office Building, Towson, Maryland 21204.

George W. Liebmann
George W. Liebmann

IN RE PETITION FOR SPECIAL EXCEPTION OF ESTATE OF IDA F. SURGUY, PETITIONER AND STANCILL CONTRACTING CORPORATION, CONTRACT PURCHASER

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY MISC. NO. 5889

ORDER

Upon the foregoing Motion of Stancills Contracting Corporation, Petitioner, for Leave to File Claim for Mandamus and Ancillary Relief, it is this day of June, 1978, ORDERED that said Motion is hereby granted and Petitioner's Petition for Writ of Mandamus and Ancillary Relief is deemed filed nunc pro tunc.

Chief Judge, Circuit Court for Baltimore County

IN RE PETITION FOR SPECIAL EXCEPTION OF ESTATE OF IDA F. SURGUY, PETITIONER AND STANCILL CONTRACTING CORPORATION, CONTRACT PURCHASER

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY MISC. NO. 5889

WRIT OF MANDAMUS

Upon the foregoing Petition for Mandamus and Defendants' Response thereto, it is ORDERED by this Court a) that Defendants, in their official capacity constituting the Baltimore County Board of Appeals, within seven days schedule a hearing upon the question whether conditions should be imposed by the Board of Appeals upon the Special Exception and the character of such conditions and b) that the injunction obtained by said Board against Plaintiffs in Equity No. 92557 be and is hereby dissolved.

IT IS FURTHER ORDERED that Defendants forthwith file a certificate stating that they have fully complied with this Writ.

Chief Judge, Circuit Court for Baltimore County

RE: PETITION FOR SPECIAL EXCEPTION OF ESTATE OF IDA F. SURGUY, PETITIONER AND STANCILL CONTRACTING CORPORATION, CONTRACT PURCHASER

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW Misc. Docket No. 10 Folio No. 196 File No. 5889

MOTION TO STRIKE OR, IN THE ALTERNATIVE, ANSWER TO MOTION FOR LEAVE TO FILE CLAIM FOR MANDAMUS AND ANCILLARY RELIEF

The People's Counsel for Baltimore County moves to strike or, in the alternative, answers the Motion for Leave to File a Claim for Mandamus and Ancillary Relief, as follows:

- The Petition for Mandamus is defective on its face in that it is directed against the County Board of Appeals, which is not a party to this action. Moreover, the County Board of Appeals is not represented by the People's Counsel.
- The request for ancillary relief, dissolving an Injunction Order issued in Equity No. 92557, is defective because it constitutes an attempt improperly to utilize the Law Court to attack collaterally an Order of the Equity Court. Any remedy with reference to the Order of the Court in Equity No. 92557 would be by way of appeal from the Injunction Order in that case. Having failed so to appeal, Petitioner is precluded from filing the herein Petition.
- The present Petition is inappropriate on its face while an appeal is pending in the instant case because:
 - The Circuit Court does not have jurisdiction in the instant case while the matter is on appeal, within the jurisdiction of the Court of Special Appeals of Maryland.
 - The Board of Appeals for Baltimore County likewise does not have jurisdiction to hear any matter pertaining to the above case while jurisdiction is in the Courts.

(c) Even assuming arguendo the Board of Appeals had jurisdiction, the matter of scheduling is within the discretion of the Board of Appeals. It would be within the Board's discretion to await a determination of the matter by the Court of Special Appeals before scheduling an additional hearing, in order to protect the public safety, health, and welfare.

4. The remedy of mandamus is particularly unavailable when sought to be employed as a means to avoid conditions of appellate review relating both to the present case and Equity No. 92557.

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

John W. Hession, III
John W. Hession, III
People's Counsel
County Office Building
Towson, Maryland 21204
494-2188

STATEMENTS OF POINTS AND AUTHORITIES

1. Rules BE 40-46 of the Maryland Rules of Procedure.
2. Long v. Catterton, 267 Md. 268 (1972).
3. Maryland Annotated Code, Courts and Judicial Proceedings Article 12-303 (c) (1974).
4. Harford County Education Association v. Board of Education of Harford County, 281 Md. 574 (1977).
5. A. S. Abell Co. v. Sweeney, 274 Md. 715 (1975).

I HEREBY CERTIFY that a copy of the foregoing Motion was mailed this _____ day of June, 1978, to George W. Liebmman, Esquire and Robert S. Levin, Esquire, Frank, Bernstein, Conway & Goldman, 1300 Mercantile Bank & Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201.

Peter Max Zimmerman
Peter Max Zimmerman

PETITION FOR SPECIAL EXCEPTION
OF ESTATE OF IDA F. SURGUY,
PETITIONER, AND
STANCILL CONTRACTING COMPANY
CONTRACT PURCHASER

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
MISC. NO. 5889

OPINION

On March 3, 1976 the County Board of Appeals affirmed an Order of the Zoning Commissioner of Baltimore County denying Petition for a Special Exception filed by the Stancill Contracting Company. An appeal to this Court was timely filed and argument of counsel was heard on February 13, 1978.

This property is located at the northeast corner of Ebenezer Road and the Bird River Beach Road, in the 15th election district of Baltimore County. The parties stipulated that the property is zoned Rural-Deferred Planning. (The property has subsequently been placed in a Rural Conservation Zone but this does not affect this appeal). The Petitioner seeks a special exception for a controlled excavation of sand and gravel. Controlled excavations are permitted uses in a R.C. 2 Zone. It should be stated initially that the mechanism for special exceptions is a part of the comprehensive zoning plan sharing the presumption that as such, it is in the interest of the general welfare and therefore valid. Turner v. Hammond, 270 Md 41 at page 54 (1973).

The Board correctly stated that the Petitioner must show that the use sought will not violate the provisions of Section 502.1 of the Baltimore County Zoning Regulations. This burden is stated in Miller v. Kiwanis Club of Loch Raven, 29 Md App. 285 (1975) at page 289; "....the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community....." If he shows to the satisfaction of the Board that the proposed use would be conducted without real

RE: PETITION FOR SPECIAL
EXCEPTION for Excavation,
Controlled NE corner of
Ebenezer Road and Bird
River Beach Road -
15th District

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Misc. Docket No. 10
Folio No. 196
File No. 5889

MOTION FOR EXTENSION OF TIME TO SUBMIT RECORD OF PROCEEDINGS

STANCILL CONTRACTING COMPANY, Appellant, by John W. Hardwicke, its attorney, moves, pursuant to Maryland Rule 87.b. to extend the time for submitting the record in the above captioned matter and as reason therefor, states:

1. The Court Reporter has communicated with the attorney for Appellant and stated, "Due to the backlog of cases, the reporter will not have the transcript completed in time."
2. The Court Reporter has not stated a date on which the transcript will be completed, but suggests an additional period of 30 days, that is "May 26th".

John W. Hardwicke
John W. Hardwicke
Suite 1100, 10 East Baltimore Street
Baltimore, Maryland 21202
685 1717
Attorney for Stancill Contracting
Company, Appellant

*Rec'd 4-22-78
10:35 am*

detriment to the neighborhood and would not actually adversely affect the public interest, he has ... his burden."

To meet its burden, Petitioner produced several witnesses. The testimony of William Sudeck, an engineer associated with the G.W. Stephens Engineering firm, testified that in his opinion the mining operation would have no adverse effect on the health, safety, or general welfare of the inhabitants of the surrounding area. James Humphreville, a consulting geologist, offered expert testimony on the effect of the operation on the water supply. His conclusion was that only one well in the area would be adversely effected. David Mongon, a traffic expert, concluded that the mining operation and its resultant traffic would have no significant effect on Ebenezer Road. The last witness was William H. Baldwin, a real estate expert who testified that the operation would have no depreciating effect on the value of surrounding properties. Despite this testimony the Board concluded that petitioner had failed to meet its burden and therefore denied the petition. The Board apparently felt that petitioner in addition to adducing testimony to show that his use met prescribed standards was also required to refute all possible adverse consequences as adduced by the testimony of protestants. This placed too heavy a burden on the petitioner.

As stated in Turner v. Hammond, supra, substantial evidence is needed to support the findings of the Board. One basis for the denial of the special exception was reliance upon the testimony of Protestant witness, Carl W. J. Supp, a professional engineer and geologist. Mr. Supp's testimony concerned the possibility of pollution by the dumping of foreign matter in the lake created by the mining operation. He also pointed out that water supply could be adversely effected. It is clear that what could happen or might happen is not substantial evidence and therefore not adequate as a basis for denial of a special exception. Miller v. Kiwanis, supra, Montgomery County v. Merlands Club, 202 Md. 279 (1953).

Michael Flanigan, a Traffic Engineer for Baltimore County, testified for Protestants that Ebenezer Road would be insufficient for the existing traffic. He was offered as an expert. The record

CERTIFICATE OF SERVICE

I Heroby Certify that a copy of the foregoing Motion For Extension of Time To Submit Record of Proceedings has been mailed to Mr. William T. Hackett, President, Bird River Civic Association, Chase, Maryland 21027, Protestant, and Mr. David H. de Villiers, Jr., Caledon Development Corporation, 608 Bosley Avenue, Towson, Maryland 21204, and John W. Hession, III, Esquire, County Office Building, Towson, Maryland 21204, People's Counsel and to Edith T. Eisenhart, Administrative Secretary, County Board of Appeals of Baltimore County, Room 219, Court House, Towson, Maryland 21204, this 21st day of April, 1978.

John W. Hardwicke
John W. Hardwicke

- 2 -

RE: PETITION FOR SPECIAL
EXCEPTION for Excavation,
Controlled NE corner of
Ebenezer Road and Bird
River Beach Road -
15th District

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Misc. Docket No. 10
Folio No. 196
File No. 5889

ORDER

Upon the motion of Appellant Stancill Contracting Company, it is this _____ day of _____, 1978

ORDERED by the Court that the time for submitting the record of proceedings is extended to May 26, 1978.

JUDGE

contains no indication of the basis for his opinion other than his conclusion that Ebenezer Road was not wide enough for truck traffic and an increase in truck traffic would increase the risk of accidents. There is no indication that trucks are prohibited from traveling on Ebenezer Road. The Court of Special Appeals has said ".....unsupported conclusions of witnesses to the effect that a proposed use will or will not result in harm amount to nothing more than vague and generalized expressions of opinion which are lacking in probative value." Anderson v. Sawyer, 23 Md App 612 (1974) page 619. Ernest Rodaci, Chief for bridges in Baltimore County, stated that the bridges on Ebenezer Road have a twenty ton limit. It is unclear from the Board's opinion whether this was a basis for denying the special exception but it is within the Board's discretion to set conditions prerequisite to granting a special exception. There was also testimony from Mr. Rodaci that new bridges were planned for construction in 1980. It was assumed that proposed new roads would alleviate congestion in Bowie v. Board, 253 Md 602 (1969) at page 58 and by analogy it could be assumed here that any new bridge would be sufficient to accommodate truck traffic from the mining operation.

Opinions of lay witnesses concerning adverse effects on property values are likewise unsubstantiated and therefore suffer the same deficiencies as mentioned above.

"If there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal." Miller v. Kiwanis, supra.

Sand and gravel are needed minerals and can only be mined where they exist. The qui generis nature of this case weighs heavily in favor of the Exception. This Court has not considered any possible protection that may be afforded the Protestants under the recently enacted statute relating to surface mining. Annotated Code, 1977 Cumulative Supplement, Natural Resources, Title 7, Sub-title 6A.

March 23, 1978

John E. Rame Jr.
JOHN E. RAME, JR.
CHIEF JUDGE

Plaintiffs
v.
STANCILLS CONTRACTING CORP.
and
SOUTHERN FOUR, INC.
Defendants

IN THE CIRCUIT COURT
FOR
BALTIMORE COUNTY
IN EQUITY
CASE NO. 92557

OPINION

Judge William R. Buchanan, at the request of Baltimore County, signed an ex parte order in the above case while acting as Chambers Judge having done so in the performance of his chambers judge duties. This Court later heard argument on the Motion of Stancills Contracting Corporation to dissolve the said ex parte injunction. After argument and after considering the case the court granted Baltimore County a temporary injunction prohibiting surface mining by Stancills Contracting Corporation. The court ruled that the state statute regulating surface mining did not preempt Baltimore County's right to establish zoning. Subsequently, in a separate proceeding seeking zoning, Judge John E. Raine, Jr. reversed a decision of the Board of Appeals for Baltimore County which had denied Stancills Contracting Corporation a special exception for surface mining. Judge Raine remanded the case to the Baltimore County Board of Appeals to have that board place such conditions and restrictions as they felt necessary under Zoning Regulation 502.2.

Stancills Contracting Corporation has now filed with the court a Motion to Dissolve the Injunction because they contend that they now have the zoning in addition to a

permit from the State Regulatory Agency. In the meantime, John W. Hession, III, Esq., People's Counsel for Baltimore County, has filed an appeal with the Court of Special Appeals in the case decided by Judge Raine involving the zoning.

The court finds that there are two elements which Stancills Contracting Corporation must have satisfied in order to have proper zoning for surface mining in this case pursuant to Judge Raine's rulings:

- 1) A special exception, and
- 2) Any conditions and/or restrictions attached to the special exception by the Board of Appeals for Baltimore County under Zoning Regulation 502.2.

The Court finds that clearly the second element enumerated above has not been complied with and accordingly, denies the Motion to Dissolve the Injunction.

In view of the Court's finding, the Court has not considered the various procedural matters raised by Baltimore County at the time of argument on April 26, 1978.

Edward A. DeWaters, Jr.
Judge

EAD/vc

cc: J. Carroll Holzer, Esq.
Harry S. Shapiro, Esq.
Jack R. Sturgill, Jr., Esq.
George W. Liekmann, Esq.
Warren K. Rich, Esq.

2.

RE: PETITION FOR SPECIAL EXCEPTION
for Excavation, Controlled
NE corner of Ebenezer Road and
Bird River Beach Road
15th District

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW

Estate of Ida F. Surguy
Petitioner
Stancill Contracting Company
Contract Purchaser
Appellants

Misc. Docket No. 10
Folio No. 196
File No. 5889

File No. 75-18-X

ORDER FOR APPEAL

Mr. Clerk:

Please note an appeal to the Court of Special Appeals of Maryland from the decision of the Circuit Court for Baltimore County in this case, dated March 23, 1978, and forward all papers in connection with said case to the Clerk of the Court of Special Appeals of Maryland in accordance with the Maryland Rules.

Raymond M. Reiner, President
Bird River Improvement Association
7410 Greenbank Road
Baltimore, Maryland 21220

John F. Droyer
6531 Ebenezer Road
Baltimore, Maryland 21220

Anne M. Hockett
Bird River Beach Road
Chase, Maryland 21027

William A. Barkuloo
6612 Blackhead Road
Baltimore, Maryland 21220

John W. Hession, III
People's Counsel

Peter Max Zimmerman
Deputy People's Counsel
County Office Building
Towson, Maryland 21204
494-2168

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 383

September Term, 1978

75-18-X

WILLIAM A. BARKULOO, et al.

v.

STANCILL CONTRACTING COMPANY

Davidson
Couch
MacDaniel, JJ.

Per Curiam

Filed: December 26, 1978

1.

The appellants, William A. Barkuloo, et al.,¹ contest the decision of the Circuit Court for Baltimore County which reversed the denial by the Zoning Commissioner of Baltimore County and the County Board of Appeals of the petition by Stancill Contracting Company, the appellee, for a special exception for a sand and gravel quarry in a R.D.P. (rural deferred planning) zone.² The property is located at the northeast corner of Ebenezer and Bird River Beach Roads, in the 15th Election District of Baltimore County.

1. The appellants include area residents and People's Counsel. The office of People's Counsel was established in 1974 and is embodied in § 524.1(b) of the Baltimore County Charter. His duties include, in part:

"He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, and the courts on behalf of the interests of the public in general, to defend the comprehensive zoning maps as adopted by the county council, and in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may deem the public interest to be involved. He shall have in such appearance, all the rights of counsel for a party in interest, including but not limited to the right to present his case, to cross examine, to object, to be heard, and to file and prosecute an appeal in his capacity as people's counsel from any order or act of the zoning commissioner of Baltimore County or his deputy, or of the county board of appeals to the courts as an aggrieved party pursuant to the provisions of section 604 of this Charter to promote and protect the health, safety and general welfare of the community."

2. The quarry is considered a "controlled excavation" as currently designated in the regulations governing land use in R.C. 2 (resource conservation) zones. The R.C. 2 designation replaced a prior R.D.P. (rural deferred planning) designation following the passage of Bill 98-75 and the 1976 comprehensive zoning map, enacted pursuant to Baltimore County Code Sections 22-20, et seq. Both the R.C. 2 and R.D.P. designations list uses permitted "as of right" and then list uses permitted by special exception.

2.

On November 6, 1972, the Zoning Commissioner of Baltimore County denied the petition of the appellee's predecessor, Ida Surguy, for a special exception for a sand and gravel quarry in the R.D.P. zone. The Commissioner found that the petitioner had not sustained the burden of proving, pursuant to Section 502 of the Baltimore County Zoning Regulations (hereinafter "BCZR"),³ that, *inter alia*, the proposed use would not adversely affect the public health, safety, and general welfare. This decision was not appealed.

3. Section 502 of the Baltimore County Zoning Regulations provides, in part:

"In granting any Special Exception, the Zoning Commissioner and the Board of Zoning Appeals, upon appeal, shall be governed by the following principles and conditions. [B.C.Z.R., 1955]

502.1--Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not: [B.C.Z.R., 1955.]

- a. Be detrimental to the health, safety, or general welfare of the locality involved; [B.C.Z.R., 1955.]
- b. Tend to create congestion in roads, streets or alleys therein; [B.C.Z.R., 1955.]
- c. Create a potential hazard from fire, panic or other dangers; [B.C.Z.R., 1955.]
- d. Tend to overcrowd land and cause undue concentration of population; [B.C.Z.R., 1955.]
- e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements; [B.C.Z.R., 1955.]
- f. Interfere with adequate light and air. [B.C.Z.R., 1955.] (Footnote omitted.)

- 2 -

I HEREBY CERTIFY that a copy of the foregoing Order for Appeal was mailed this 20th day of April, 1978 to George W. Liebmann, Esquire, Frank, Bernstein, Conway & Goldman, 1300 Mercantile Bank & Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201, Counsel for the Petitioner herein.

John W. Hession, III

3.

On November 25, 1974, a similar petition by the Estate of Ida Surguy was denied by the Baltimore County Zoning Commissioner. This time, the decision was appealed to the County Board of Appeals by the Stancill Contracting Company, the purchaser of the subject property.

In the *de novo* hearing before the County Board of Appeals, the following evidence was introduced by the petitioner. Terry Stancill, Secretary-Treasurer of Stancill Contracting Company, described the proposed mining operation at the subject property. The property contains 129 acres, and approximately 45 acres would be mined to a maximum depth of about 75 feet, eventually creating a lake. A plant would be built for washing and grading the sand, and a six-foot-high earthen screening barrier planted with pine trees is proposed. The nearest home is 1,350 feet from the proposed plant.

The mining, at a rate of approximately 2,000 tons per work day, would last for about 15 years, and at the end of that time the tract would be developed residentially. Stancill testified that the capacity of the trucks to be used for hauling is approximately 20 tons, and that there would be about 75 to 100 loads per day, resulting in approximately 150 to 200 one-way trips per day at the site. Stancill also indicated that one-half of the Baltimore-area market for sand and gravel could be supplied from this property and that a quarrying operation at this site would be particularly desirable because of the high quality of the sand and gravel and its close proximity to the Baltimore market.

William Sudeck, an engineer, testified that the nearest home, referred to above, is about 270 feet from the edge of the mining operation itself. He also stated that the truck traffic would not tend to create congestion in the roads and that the adverse effect of

the quarry under the BCER 502.1 criteria would not be greater than that of full residential development, a use permitted as of right in the R.D.P. zone.

James Humphreville, a consulting geologist, gave expert testimony that only one well, that of the nearest home, would be adversely affected by the quarrying.

David Mongan, a traffic expert, testified that the proposed use would not create more traffic congestion than the permitted residential development and that, based on accident statistics, the truck traffic would not be hazardous.

Finally, William H. Baldwin, a real estate expert, testified, without stating reasons, that in his opinion the mining operation would not depreciate the values of the surrounding residential properties.

On behalf of the protestants, four expert witnesses and a number of neighborhood residents testified. Carl W. A. Supp, a professional engineer and geologist, testified that it was "possible" that the lake would become polluted and that the polluted water could possibly enter wells in the area. Nathan Gerber, a planner for Baltimore County, indicated that the provision of public water to the area was planned for in about eleven to thirty years.

Michael Flanigan, a traffic engineer employed by Baltimore County, testified that Ebenezer Road is hazardous for trucks because it is of insufficient width. Ernest Radoci, Chief of the Structural Design and Approval Section of the Department of Public Works, testified that the two bridges on Ebenezer Road have 20-ton limits and that the replacement of these bridges and widening of Ebenezer Road was contemplated, the former for fiscal year 1980, the latter in the

indefinite future.

The neighborhood witnesses testified that they felt that the quarry would depreciate property values in the area and that the increased truck traffic would create safety problems. They indicated that accident statistics did not reflect the number of accidents actually caused by trucks in the past because the truck accidents had not been reported to the police. They were also concerned about the danger of the unfenced lake to children, the harmful effect of the quarry on their water supply and dust and noise pollution.

The County Board of Appeals denied the requested special exception on the ground that the petitioner had failed to satisfy BCER Section 502.1. The petitioner appealed to the Circuit Court for Baltimore County. That court reversed the order of the County Board of Appeals, stating that there was no probative evidence of harm from the proposed use. The court added:

"Sand and gravel are needed materials and can only be mined where they exist. The sui generis nature of this case weighs heavily in favor of the Exception."

We will reverse the decision of the circuit court and reinstate the order of the County Board of Appeals.

I

The appellee has moved to dismiss the present appeal on the ground that none of the appellants has standing to prosecute an appeal to this Court. This motion is denied.

The appellee argues, first, that the individual appellants (that is, area residents) were not proper parties and that the proposed special exception would not have sufficient adverse effect on them to give them standing in the case. Because these questions

could have been raised in the court below, but were not, they cannot now be raised on appeal. Maryland Rule 1085.

In addition, the appellee argues that People's Counsel does not have standing to appeal any case beyond the circuit court level. Section 524.1(b) of the Baltimore County Charter, *supra*, gives People's Counsel

"... all the rights of counsel for a party in interest, including but not limited to the right to present his case, to cross examine, to object, to be heard, and to file and prosecute an appeal in his capacity as people's counsel from any order or act of the zoning commissioner of Baltimore County or his deputy, or of the county board of appeals to the courts as an aggrieved party" (Emphasis added.)

The appellee argues that, based on the italicized language above, this provision authorizes only a single appeal, which would be to the circuit court. We disagree. People's Counsel is clearly authorized to act as any aggrieved party, and he has the same rights of appeal. The language of the provision makes it clear that those rights would include appeals to this Court.

Next, the appellee argues that any right of People's Counsel to appeal to this Court under Section 524.1(b) violates Section 5(U) of Article 25A of the Annotated Code of Maryland,⁴ which limits the

4. Section 5(U) of Article 25 A, of the Annotated Code of Maryland lists the express powers of the counties respecting County Boards of Appeal. It provides, in pertinent part:

"Any person aggrieved by the decision of the board and a party to the proceeding before it may appeal to the circuit court Any party to the proceeding in the circuit court aggrieved by the decision of the said court may appeal from such decision to the Court of Special Appeals."

when the area residents testified to that effect. In this State the testimony of area residents regarding effects of proposed changes on land values is considered of some weight even though their testimony is not based on any particular expertise. See *Whittle v. Board of Zoning Appeals*, 211 Md. 36, 47 (1956). We note that the appellee's real estate expert did not explain the basis for his belief that real estate values would not be adversely affected. Thus, there was no particular reason for the County Board of Appeals to give more weight to the testimony of the appellee's witness than to that of the area residents.

The appellee correctly argues that the testimony of Mr. Supp regarding "possible" pollution of area wells should not have been considered by the County Board of Appeals in reaching its decision. As this Court stated in *Miller v. Kiwanis Club of Loch Raven, Inc.*, 29 Md. App. 285, 296 (1975), where

"there is no evidence that those feared conditions presently exist, nor indeed that there is more than a possibility (as opposed to probability) that they will ever exist ... such fears cannot be deemed substantial or probative evidence supporting the Board's denial of the special exception." (Citation omitted.)

We feel that, disregarding the evidence of possible pollution, there was substantial evidence of the harmful effect of the proposed sand and gravel quarry. We note that it is not necessary that there be substantial evidence of every possible harm, but only that there be substantial evidence of some harm listed in BCER 502.1.

Because the zoning power has been delegated to the counties,⁵

5. For a history of the delegation of the zoning power to the counties in Maryland, see *Turf Valley Associates v. Zoning Board*, 262 Md. 632, 639 (1971).

taking of appeals from decisions of county boards of appeal to "aggrieved parties." The appellee argues that People's Counsel is not an aggrieved party. We disagree. As indicated above, People's Counsel has been appointed as an aggrieved party to protect the public interest.

II

The appellant argues that the circuit court judge did not correctly apply the applicable standard of review to the decision of the County Board of Appeals and that that board's decision not to grant the special exception should not have been reversed. We agree.

This Court discussed the role of the special exception mechanism in zoning in *Anderson v. Sawyer*, 23 Md. App. 612, 617 (1974), where we said:

"The conditional use or special exception is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan."

The burden is on the applicant for the special exception to

"... [show] to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest..." *Anderson v. Sawyer*, 23 Md. App. at 617.

The applicant's burden is satisfied, and the special exception must be granted, if there is

"... no probative evidence at all of harm or dis-

turbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan ..." *Rockville Fuel and Feed Company, Inc. v. Board of Appeals of Gaithersburg*, 257 Md. 183, 191 (1970).

Thus, the standard of judicial review which the circuit court should have applied to the decision of the County Board of Appeals is:

"... whether the issue before the administrative body is 'fairly debatable,' that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions. If the questions involved are fairly debatable and the facts presented are sufficient to support the Board's decision, it must be upheld, ..." (Citations omitted.) *Sembly v. County Bd. of Appeals of Baltimore County*, 269 Md. 177, 182 (1973).

As the Court of Appeals said in *Brouillett v. Eudowood Shopping Plaza*, 249 Md. 606, 608 (1968):

"The zoning authority is presumed to possess the expertise necessary for deciding the matters brought before it and if its decision is based on substantial evidence then the courts may not substitute their judgment for that of the zoning authority."

Regarding the type of evidence which may properly be the basis for a decision by the County Board of Appeals, the technical common law rules of evidence are not binding. The standard is that of "basic fairness," and the role of the circuit court in reviewing the proceedings before the County Board of Appeals is to "... verify that [the appellee] had received substantial justice during the deliberative period." *Entzian v. Prince George's Co.*, 32 Md. App. 256, 270 (1976).

Turning, now, to the evidence presented to the County Board of Appeals, we find that the evidence made the question of the harmfulness of the proposed use under the special exception "fairly

debatable" and that the circuit court should not have reversed the board's decision.

The appellants, as indicated above, presented substantial evidence that the additional truck traffic would be detrimental to health, safety, and general welfare (see BCER 502.1 a, *supra*, footnote 3) and that it would tend to create congestion (see BCER 502.1 b, *supra*, footnote 3).

The appellee questions the substantiality of this evidence on the ground that the appellants' traffic witness, Michael Flanigan, was not specifically designated as an "expert." The appellee refers to the extensive qualifications of the traffic expert in *Dundalk Holding Company v. Horn*, 266 Md. 280, 291 (1972), and complains that Mr. Flanigan was not as qualified. We do not believe, however, that in an administrative hearing a witness must be specifically designated as an "expert." Nor do we believe that only a particular background qualifies a witness to express his opinion. It is clear from the record that Mr. Flanigan had some expertise, and it was up to the County Board of Appeals to determine how much weight should be given to his opinion.

The appellee seems to discount the importance of the testimony of the other witnesses regarding the truck traffic problem. We believe, however, that the testimony that Ebenezer Road and the affected bridges would not be immediately improved was significant. In addition, the area residents' testimony regarding truck accidents was significant because of the light it sheds on the appellee's otherwise impressive accident statistics.

The appellants also presented significant evidence of the adverse effect of the proposed special exception on surrounding land values

the only criteria to be considered in determining whether to grant a special exception are those specified by a county. We note that BCER 502.1, *supra*, does not list "need" as one of the criteria. Accordingly, evidence of need for sand and gravel quarries is not material to this case, and it should not have been weighed against the evidence of resulting harm.

We concluded, therefore, that the circuit court erred in reversing the decision of the County Board of Appeals not to grant the requested special exception. There was substantial evidence supporting its decision and the question was "fairly debatable."

MOTION TO DISMISS DENIED.
JUDGMENT REVERSED.
COSTS TO BE PAID BY APPELLEE.



Baltimore County, Maryland

PEOPLE'S COUNSEL
COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21204

JOHN W. HESSIAN, III
People's Counsel
PETER MAX ZIMMERMAN
Deputy People's Counsel

TEL. 484-2188

June 23, 1978

George W. Liebmann, Esquire
Frank, Bernstein, Conaway & Goldman
1300 Marconville Bank & Trust Bldg.
2 Hopkins Plaza
Baltimore, Maryland 21201

RE: Barkuloo, et al v. Stancill
Contracting Co., No. 383,
September Term, 1978

Dear Mr. Liebmann:

In accordance with the Maryland Rules, Appellants hereby designate for inclusion in the record extract in the above case the following:

1. Order of Zoning Commissioner dated November 6, 1972.
2. Order of Zoning Commissioner dated November 25, 1974.
3. Transcript of hearing, before Board of Appeals of Baltimore County dated August 26, 1975 and December 9, 1975, including testimony of the following witnesses:

- a. Terry Stancill
- b. William R. Sudeck
- c. James A. Humphreysville
- d. David Mangon
- e. Carl W. A. Supp
- f. Norman E. Garber
- g. Michael Flanigan
- h. Ernest Radocy
- i. William Barkuloo
- j. William Seaby
- k. William H. Sunderland
- l. Alexander R. Near
- m. Harry M. Schleicher.

In addition, there will be included the following exhibits:

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George W. Liebmann, Esquire

June 23, 1978

- a. People's Counsel Exhibit No. 4 aerial photograph.
 - b. People's Counsel Exhibit No. 10 records of wells and springs in Baltimore County, Maryland.
 - c. People's Counsel Exhibit No. 12 letter from Lawson to Chilcote dated November 18, 1975.
 - d. People's Counsel Exhibit Nos. 13 and 14 civil actions in Circuit Court for Harford County Nos. 22851 and 22852.
 - e. Exhibits from photographs in order to show site and area location.
4. Opinion of County Board of Appeals of Baltimore County dated March 3, 1976.
 5. Petition of Stancill Contracting Co. dated March 25, 1976; Answer to Petition on Appeal dated April 29, 1976.
 6. Opinion of Circuit Court for Baltimore County dated March 27, 1978.

Sincerely yours,

Peter Max Zimmerman
Deputy People's Counsel

PMZ:sh

MANDATE

Court of Special Appeals of Maryland

No. 383, September Term, 1978

William A. Barkuloo et al
vs.
Stancill Contracting Company

December 26, 1978 - Per Curiam filed.
Motion to Dismiss denied. Judgment
reversed. Costs to be paid by
appellee.

January 25, 1979 - Mandate issued.

STATEMENT OF COSTS:

In Circuit Court for Baltimore County

Record 25.00
Stenographer's Costs

In Court of Special Appeals:

Filing Record on Appeal 30.00
Printing Brief for Appellant & Record Extract 2287.00
Reply Brief 296.50
Portion of Record Extract - Appellant
Printing Brief for Cross-Appellee

Printing Brief for Appellee 309.72
Portion of Record Extract - Appellee
Printing Brief for Cross-Appellant

STATE OF MARYLAND, Sec:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this twenty-fifth day of January A.D. 1979

Handwritten Signature
Clerk of the Court of Special Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE.

Baltimore County, Maryland

PEOPLE'S COUNSEL
COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21204

JOHN W. HESSIAN, III
People's Counsel
PETER MAX ZIMMERMAN
Deputy People's Counsel

TEL. 484-2188

February 22, 1979

Mr. James H. Norris, Jr.
Clerk, Court of Appeals of Maryland
Courts of Appeals Building
361 Rowe Boulevard
Annapolis, Maryland 21401

RE: Barkuloo, et al v. Stancill
Contracting Co., Petition
Docket No. 461, September
Term, 1978

Dear Mr. Norris:

Enclosed for filing please find an original and seven copies of Answer to Petition for Writ of Certiorari and Conditional Cross-Petition for Writ of Certiorari in the above-entitled case. A check for \$20.00 is enclosed in connection with the Conditional Cross-Petition.

Very truly yours,

Handwritten Signature
John W. Hessian, III
People's Counsel

Enclosures

JWH:sh

cc: George W. Liebmann, Esquire

IN THE

COURT OF APPEALS OF MARYLAND

Petition Docket No. 461

September Term, 1978

WILLIAM A. BARKULOO, et al

vs.

STANCILL CONTRACTING COMPANY

ANSWER TO PETITION FOR WRIT OF CERTIORARI
AND CONDITIONAL CROSS-PETITION FOR WRIT OF CERTIORARI
TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

JOHN W. HESSIAN, III,
People's Counsel for
Baltimore County
PETER MAX ZIMMERMAN
Deputy People's Counsel
County Office Building
Towson, Maryland 21204

Attorneys for Respondents

ANSWER TO PETITION FOR WRIT OF CERTIORARI AND CONDITIONAL CROSS-PETITION FOR WRIT OF CERTIORARI

William A. Barkuloo, et al, Respondents, answer the Petition for Writ of Certiorari and file a Conditional Cross-Petition for Writ of Certiorari, in the above-entitled case, as follows:

I. INTRODUCTION

This Special Exception case arose in the normal course of the zoning process in Baltimore County. Upon appeal from denial by the Zoning Commissioner, the board of Appeals held a *de novo* hearing. Neighboring property owners appeared as parties in opposition to the petition. In addition, as is now customary pursuant to Section 524.1(b) of the Baltimore County Charter, the People's Counsel represented the public interest and also appeared as a party-opponent.

The respective sides presented evidence, of a fairly debatable nature, regarding impact on traffic, water supply, property values and the character of the neighborhood. The Board of Appeals, in a thorough opinion, a copy of which is attached hereto as Exhibit 1, weighed the evidence, including that of need for sand and gravel, and struck the balance on the side of denying the petition at this time because of the adverse environmental impact.

Upon further appeal, the Circuit Court reversed, taking the view that the Board had overstated the environmental problems and that the factor of need required the balance to be struck in favor of the Special Exception. But, the Court of Special Appeals, in its *per curiam* opinion, concluded that the Circuit Court failed to adhere

- 2 -

to the "substantial evidence" rule and exceeded the well-established limitations upon judicial review of administrative decisions.

Coincidentally, the Court of Appeals of Maryland recently issued an exhaustive opinion pertaining to the scope of review of local administrative decision-making in a similar environmental context. The Mayor and Aldermen of the City of Annapolis, et al v. Annapolis Waterfront Company, et al, Md. (No. 6, September Term, 1978, Opinion dated January 24, 1979). It, therefore, appears that the Court of Special Appeals here was on target in its approach.

Nevertheless, Petitioner contends that still further appellate review is in the public interest on the dual grounds of need for extraction of natural resources and determination of the right of the People's Counsel to appeal from the Circuit Court to the Court of Special Appeals. A careful review of the record indicates that determination of the questions presented for review cannot affect the result in the case. Moreover, the issues, as presented, rest on false factual and legal premises.

II. APPLICABLE CONSTITUTIONAL AND LEGISLATIVE PROVISIONS

The Petition for Certiorari fails to give a complete and accurate summary of applicable law. Accordingly, Respondents have included a more complete summary in the Appendix to this Answer.

III. SPECIFIC REASONS FOR DENYING WRIT

1. The decision of the Court of Special Appeals was unreported, based on a standard application of the "substantial evidence" rule, and hardly will affect

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this heavily traveled path of administrative law.

2. The *per curiam* opinion, by its nature, cannot be cited as precedent. Petitioner's mention of the People's Counsel having "cited" this case for its precedential value in another case pending in the Circuit Court for Baltimore County is most disturbing in that he makes the statement having absolutely no insight as to the circumstances under which the existence of the Court of Special Appeals' holding was mentioned to and discussed by and between the Circuit Court and all counsel. When Petitioner for the first time raised the issue of the standing of the People's Counsel, in his brief to the Court of Special Appeals, People's Counsel acting in fairness to local members of the Bar having cases then in the process of being appealed to the Circuit Court, advised them that the issue had been raised and suggested that they, for their protection, file Motions to Dismiss based on similar grounds so that they would not find themselves in an embarrassing position in the event that Petitioner prevailed. The theory to which all counsel were adhering was that their cases would then await the result of Petitioner's thrust in the present case. Because there was a backlog on the Motion Docket in Baltimore County, the Chief Judge of this Court assigned the Honorable W. Albert Manchine, lately retired from the Court of Special Appeals of Maryland (and herein lies the irony of Petitioner's mentioning the "citing" of this case, because of all people, Judge Manchine certainly appreciates the difference between a "reported" and "unreported" Court of Special Appeals of Maryland Opinion), whose assignment was of limited tenure and for the purpose of breaking that logjam. Bureaucratic technology selected a zoning appeal in which a Motion questioning the

standing of the People's Counsel was pending for assignment before Judge Menchine. People's Counsel, having heard from the Attorney General's Office that Petitioner was seeking support from the State agencies for his argument on Certiorari, was therefore reasonably certain that his Petition to this Court was in fact going to be filed and mentioned the existence of this case, coupled with the reasonably felt view that Petition for Certiorari would be filed, to Judge Menchine, so that he might, should he desire, remove the Motion pending before him from his hearing schedule rather than invest the judicial time torturing the question on a parallel track with the Court of Special Appeals of Maryland and this Court. Judge Menchine made an initial, verbal observation that he preferred to do exactly as was suggested. On the day of the hearing of the Motion, however, the Petitioner in that case brought in outside counsel who were unfamiliar with the background of the Motion, and who made the usual strenuous representation of all Petitioners that judicial speed was in the very essence of their case. Judge Menchine thereupon agreed to decide the issue and thereafter quite independently of the "unreported" case arrived at the conclusion and handed down his written opinion to the effect that People's Counsel did have standing and thus dismissed the Motion.

3. The issue of "need" pertains to dictum and is not dispositive of the case. As Petitioner concedes (p. 9), the Board of Appeals gave Petitioner full benefit by weighing the need or "sui generis" factor in his favor, notwithstanding conflicting evidence. Therefore, even assuming arguendo that the Court of Special Appeals took an unduly narrow approach to the relevance of need, such error would be harmless dictum. The conclusion would remain that there was substantial evidence of adverse environmental impact to support the Board's denial, and that the Petitioner

A. Need: The evidence of need was fairly debatable. Stancill, following a conclusory and self-serving declaration of need, conceded on cross-examination that there are a number of other suppliers in the Baltimore region, and could identify no shortage. Stancill withheld geologic data, thereby precluding more detailed examination, not only of quantity and quality of deposits, but also of potential water pollution.

B. Traffic: The evidence of county experts Michael Flanigan and Ernest Radoci, admitted without objection, clearly showed that the area of Ebenezer Road between Pulaski Highway and Bird River Beach Road, was too narrow for the heavy truck traffic and included two bridges inadequate to support the traffic. Both Flanigan and neighborhood residents provided substantial evidence, by statistics and personal observation, of truck and other accidents on the narrow stretch of road.

Moreover, there were no road improvements planned in the foreseeable future which might correct the problem. There were indefinite plans to widen Ebenezer Road from Pulaski Highway to Bird River Road, but even these indefinite plans, if executed, would leave a dangerous stretch of several miles between Bird River Road and Bird River Beach Road, where the trucks would turn to and from the site. The Circuit Judge, in minimizing the traffic problem, apparently confused Bird River Road with Bird River Beach Road, an understandable but crucial mistake. As to the bridges, they were planned for improvement, respectively, in 1980, and in the indefinite future.

C. Subsurface Water Pollution: The evidence of subsurface water pollution was fairly debatable. Supp, for the Protestants, expressed a reasonable concern for potential groundwater and well pollution for a neighborhood of approximately 100 homes. The County Master Water and Sewer Plan showed this area as not scheduled for provision

received substantial justice.

4. The evidence of "need" for sand and gravel from Petitioner's property, itself, was debatable. There was substantial evidence that the region was already being well served. Moreover, Petitioner deliberately failed to disclose any data concerning the quantity and quality of the deposits.

5. The Board's decision does not permanently preclude extraction of sand and gravel, but merely indicates that extraction cannot be permitted until consistent with the public safety, health, and welfare, as described more particularly in Section 502.1 of the Baltimore County Zoning Regulations.

6. Petitioner's assertion of need is further shown to be illusory by the Petitioner's own delay and casual approach to the proceedings, begun in 1972, involving pursuit of the special exception at a snail's pace during a period of over six years.

7. And, finally, as to the "need" issue, notwithstanding the selective editing of correspondence from state and federal agencies, Petitioner has cited no case law to challenge the observation of the Court of Special Appeals, albeit in dictum, that, in connection with the delegation of the zoning power to the counties, the local legislature has validly chosen not to include generalized "need" as one of the criteria.

8. As to the issue of the authority of the People's Counsel to appeal, this too is not dispositive of the present case. The Court of Special Appeals concluded that the neighboring property owners had standing to appeal, and this conclusion is not challenged by Petitioner. Therefore, once again, any error in the per curiam opinion would be harmless dictum.

of public water supply until eleven to thirty years in the future. These homes thus comprise an isolated residential community dependent on local water resources.

D. Character of the Neighborhood; Depreciation of Property Values: The evidence here indicated substantial adverse effect. Petitioner's real estate expert was purely conclusory in his opinion that values would not depreciate. On the other hand, neighboring residents gave persuasive evidence of the effect of the proposal in reducing property values, which included aerial photographs of similar operations in Cecil County, showing the impact of a huge quarry operation on an adjacent residential community.

VII. ARGUMENT

A. The "Need" Issue and the Scope of Judicial Review:

Petitioner's discussion necessarily appears as reargument of fairly debatable issues which were resolved by the Board. In this context, Petitioner's efforts at underlining state and federal agency correspondence, injected for the first time on Petition, are merely a distraction. After all, the Board gave Petitioner the full benefit of the doubt on the "need" issue, even if the Court of Special Appeals properly declined to do so in its unreported dictum. At the same time, the Court of Special Appeals gave Petitioner the benefit of excluding evidence of the reasonable possibility of pollution of the water supply. Given the broadening judicial perception of long-term environmental effects, it seems unreasonable to hold that an expert land use agency may not weigh evidence of grave potential contamination of the water supply. Cf. Frances B. Hairig v. Johns Manville Products Corp., ___ Md. ___, 394 A.2d 299 (1978).

And, as to traffic, depreciation of property values, and effect on the character of the neighborhood, the evidence was too strong to ignore.

9. In any event, following the recent decision of the Court of Appeals in Ritchmount Partnership v. Board of Supervisors, 283 Md. 48 (1978), Article XI-A, Section 1 of the Maryland Constitution, the Home Rule Amendment, confers upon each charter county the power to establish and organize local government. Each charter county further has the power, pursuant to Article 25A, Section 5(S) of the Maryland Annotated Code, the Express Powers Act, to enact such legislation,

"...as may be proper in executing and enforcing any of the powers enumerated in this section or elsewhere in this article, as well as such ordinances as may be deemed expedient in maintaining the peace, good government, health and welfare of the county."

The charter authority of the People's Counsel to defend the laws and ordinances of Baltimore County relating to planning and zoning is amply sustained by the aforesaid fundamental organizational and legislative powers.

IV. CONDITIONAL CROSS-QUESTION PRESENTED FOR REVIEW

While it is submitted that the Petition for Certiorari should be denied, Respondents request, in the event that the Petition is granted, certification of the following question:

Whether, in a Special Exception case, the zoning authority may validly consider evidence of the "reasonable possibility" of "potential" pollution of the local water supply of a residential community, such evidence being more than speculation and giving cause for substantial concern without necessarily rising to the level of "probability?"

V. REASON FOR CERTIFYING CROSS-QUESTION

The evidence in the case included a detailed analysis by a consulting geologist of the potential pollution of the ground water in the neighborhood. The testimony included a description of subsurface conditions and the manner in which, based on experience, biochemical pollution could travel through the quarry pond, into the water table, and eventually to neighboring wells. While phrased in terms of "possibility" or "potential," the evidence had a basis in logic and experience. The Board weighed this evidence, together with other factors, in denying the petition. But the Circuit Court and Court of Special Appeals disagreed, excluding any evidence not rising to the level of "probability."

In the case of State Department of Health and Mental Hygiene, 281 Md. 148 (1977), the Court of Appeals said that a State agency considering an application for a landfill permit was entitled to satisfy itself that there was no "reasonable possibility" of water pollution. It is submitted that by analogy, in Special Exception cases involving complex environmental phenomena, the reasonable possibility of pollution may be a valid consideration where, as here, the potential consequences are grave, and difficult to detect and correct.

VI. STATEMENT OF FACTS

The Petitioner's Statement of Facts constitutes a series of selective, inaccurate, and argumentative misrepresentations. The Respondents, without undertaking a detailed summary of all the evidence, as briefed in the Court of Special Appeals, would make the following points:

Partnership v. Board, 283 Md. 48, 388 A.2d 523 (1978). The People's Counsel represents simply the choice of the people of Baltimore County as the designated instrumentality to enforce in the public interest the law of the Comprehensive Plan and Zoning Map in Baltimore County.

This constitutional authority is sufficient to legitimize the establishment of the People's Counsel, independent from any issue pertaining to the Express Powers Act, which defines the legislative powers of charter counties. Nevertheless, an examination of that Act, and particularly Article 25A, Section 5(S), of the Maryland Annotated Code, demonstrates that a charter county may,

"...pass all ordinances, resolutions, or bylaws...as may be proper in executing and enforcing any of the powers enumerated in this section or elsewhere in this article, as well as such ordinances as may be deemed expedient in maintaining the peace, good government, health and welfare of the county."

It defies logic to believe that the General Assembly would empower a charter county to develop comprehensive plans and zoning maps, but preclude the use of a public office dedicated to defense and enforcement thereof.

The people of Baltimore County, in designating the People's Counsel as the defender of the public interest have authorized the office to appear in planning and zoning proceedings in the same manner as "an aggrieved party," that is to say, with "all the rights of counsel for a party in interest" including the right of appeal "to the courts as an aggrieved party." Section 524.1(b) of the Baltimore County Charter. This section is less the source of his authority than it is the direction as to the procedure that he shall follow in exercise of the authority.

In this context, the granting of the Petition for Certiorari would simply bring forward a repetitive exercise in the application of the "substantial evidence" rule.

B. The "People's Counsel" Issue:

The issue regarding the authority of the People's Counsel to appeal should, it is submitted, await a case where the issue is dispositive and where the substantive issues raised are also dispositive and important. In the present unreported case, the discussion of the People's Counsel is dictum, there being neighbors with standing, and the substantive issues are otherwise undeserving of the extraordinary writ. Nevertheless, we shall set forth here also the argument in support of the challenged authority of the People's Counsel.

The function of the People's Counsel for Baltimore County is to exercise for Baltimore County part of its constitutional privilege and obligation to defend its laws and ordinances. The public purpose upon which the function is based is hardly novel. The mechanics involved are merely the transfer by Charter action of a portion of the duties formerly assigned to the County Solicitor and the Office of Law to the People's Counsel. The Comprehensive Zoning Maps and the appertinent regulations are ordinances of Baltimore County and therefore fall within the category of those legislative matters which the County has an obligation to defend. The source of the authority of a charter county to establish and organize its government to make laws, and take such steps as are necessary and appropriate to their execution and enforcement, is Article XI-A, Section 1, of the Maryland Constitution, the Home Rule Amendment. The scope of this authority was defined and confirmed in Ritchmount

The General Assembly, by public local law, has established an office of people's counsel for zoning proceedings in Kent County, a code county, Kent County Code, Article 15, Section 475-D (1968, 1975 Supp. as amended), Laws of Maryland 1977, Chapter 733. The Kent County Act, in those portions which deal with the authority of the Kent County People's Counsel, is substantially identical to that of the Baltimore County Charter section. The fact that the Legislature of the State of Maryland vested in a public officer the ability to function as an "aggrieved party" would foreclose debate on this question. It follows that a charter county such as Baltimore County has powers equal to or greater than a code county with reference to the establishment of such an office.

The people of Baltimore County established in the 1974 general election the office of People's Counsel, embodied in Section 524.1(b) of the Charter. The section was amended, and the responsibilities of the office expanded, by Bill 90-78, adopted by the voters on November 7, 1978, a copy of which is attached hereto as Exhibit 2. His mandate is to defend, on behalf of Baltimore County, the comprehensive plan and zoning maps enacted by the Baltimore County Council (County Code Sections 22-20, et seq.), to represent the public interest of the County in reclassification, special exception, and variance proceedings before the Zoning Commissioner, the Board of Appeals, and the Courts, and to appear before agencies and courts in cases affecting the land, air, and water resources of the County. There can be no doubt, moreover, that, in specifically empowering the People's Counsel to "appeal to the courts," the Charter language and purpose was to afford complete and full appellate rights, consistent with the Maryland Rules, suitable to an effective office of public advocacy.

Petitioner nevertheless argues that the People's Counsel cannot qualify as an "aggrieved person," entitled to appeal decisions of the Board of Appeals. To this, we submit that the nature of home rule, under the Maryland Constitution, the provisions of the Express Powers Act (Section 5(S), 5(U), and 5(X)), and analogous state legislation on zoning in non-charter counties, proceedings before state administrative agencies, and the People's Counsel of the Public Service Commission, independently and/or collectively, support the proposition that the people of Baltimore County could validly designate the People's Counsel to represent their collective interest as a party and an aggrieved person in the context of the prescriber county zoning cases.

The Court of Appeals gave its clearest expression of the history, purpose and structure of Home Rule in *Ritchmount Partnership v. Board*, 283 Md. 48, 388 A.2d 523 (1978). In evaluating the referendum provisions of the Anne Arundel County Charter applied to the comprehensive zoning process, the Court came to the foundation of local self-government in Maryland counties, Article XI-A of the State Constitution, the Home Rule Amendment, particularly Section 1. This Amendment implicitly "reserves to the people of this state the right to organize themselves into semi-autonomous political communities for the purpose of instituting self-government within the territorial limits of the several counties." 283 Md. at 58. The Charter is the means to this end, being a local constitution "which requires no implementing legislation to render it operative." And, as the expression of the "popular will," the Charter may make provision "for any form of government (the people) deem suitable for their needs, so long as they do not run afoul of the letter and spirit of the Federal and State Constitutions." 283 Md., at 59.

The power to form and establish local government is distinct from the power to enact local law. So, the Court of Appeals drew a two-step process for assessing the validity of a local charter provision. If the provision flows from the basic organizational powers implied in Article XI-A, Section 1, then the Court need look no further. If, on the other hand, the provision is deemed outside the scope of basic organization, the Court must determine whether it constitutes a valid exercise of the legislative power. To this latter end, the analysis proceeds to the Express Powers Act, Article 25A of the Maryland Annotated Code.

In *Ritchmount*, the Court of Appeals had no difficulty in concluding that the referendum power, a basic instrument of democratic government, a "coordinate legislative entity," affected the form or structure of local government. Here, the structural effect is different, but no less significant. In establishing the office of People's Counsel, the voters of Baltimore County have sought further expression of their will, by extending the reach of the planning and zoning process. This office is particularly designed to enforce the will of the people by an institutional presence before the administrative agencies and courts.

In its mandate, to defend the comprehensive plan and zoning map, it is guided by the law made by the legislative and executive branches of government. At the same time, by virtue of its independence, it represents the public interest, under law, free from any political influence, or appearance thereof, that otherwise might attend particular planning and zoning cases. The office is different from that of the companion charter office of County Solicitor (Section 507) in that the occupant is not subject to removal by the executive alone.

We believe, therefore, that the office of People's Counsel constitutes an expression of the local popular will regarding the form and structure of government in a home rule county. Even assuming *arguendo*, however, that the legitimacy of the office is considered pursuant to Article 25A of the Maryland Annotated Code, the Express Powers Act, as an expression of legislative power, we believe there is ample authority.

Supplementing the enumerated legislative powers afforded charter counties, Article 25A, Section 5(S) provides:

"The foregoing or other enumeration of powers in this article shall not be held to limit the power of the county council, in addition thereto, to pass all ordinances, resolutions or bylaws, not inconsistent with the provisions of this article or the laws of the State, as may be proper in executing and enforcing any of the powers enumerated in this section or elsewhere in this article, as well as such ordinances as may be deemed expedient in maintaining the peace, good government, health and welfare of the county."

In defining the scope of the legislative power, the Court of Appeals said, in the landmark case of *Montgomery Citizens League v. Greenhalgh*, 253 Md. 151, 52 A.2d 242, 247 (1949),

"Grantification would not be afforded the purpose of home rule or the reasons which prompted it if the language of § 5(S) of Art. 25A were not to be construed as a broad grant of power to legislate on matters not specifically enumerated in Art. 25A and the language of that section clearly indicates that such a construction is sound."

There, the Court upheld the enactment by Montgomery County of a fair housing law notwithstanding the absence of any specifically enumerated power.

In the present case, the general welfare clause, subsection 5(S), should be read together with subsection 5(U), enabling home rule counties to provide for boards of appeals and appeals therefrom, and subsection 5(X), affording home rule counties full control of "planning and zoning."

To fulfill the purposes of home rule, in the interest of general welfare, effective functioning of the Board of Appeals, and sound planning and zoning, the people of Baltimore County surely may designate the People's Counsel as the advocate to represent the public interest in the same manner as an "aggrieved person" and thereby fill a felt need to further execution and enforcement of enumerated powers regarding planning and zoning.

The concept of "aggrievedness," herein adopted by the people of a home rule county, reflects the concept of aggrievedness adopted by the General Assembly in defining the mandate of the People's Counsel for the Public Service Commission. Indeed, an examination of Section 524.1(b) of the County Charter shows the language to parallel that of Md. Ann. Code Art. 78, Sec. 15 (1976) which currently provides, in subsection (c),

"If (the office of people's counsel) shall appear before the commission and courts on behalf of those users in all matters or proceedings over which the commission has original jurisdiction and in which the office of people's counsel deems their interest to be involved.... It shall have, in such appearances, all the rights of counsel for a party to the proceeding...."

In this connection, that office of people's counsel appeared as a party before the Court of Appeals in *Potomac Edison Co. v. P.S.C.*, 279 Md. 573, 369 A.2d 1035 (1977). Said office may also appear "before any federal or State agency as necessary

to protect the interests of residential and noncommercial users." Md. Ann. Code, Art. 78, Sec. 15(a).

Analogously, with reference to state proceedings under the Administrative Procedure Act, Md. Ann. Code Art. 41, Sec. 256A declares,

"...the political subdivisions of this State and their agencies and instrumentalities have the status of an interested person, petitioner, or party, as the case may be, in all matters including appeal."

Further, reference to zoning proceedings indicates that a charter county may appear as a party appellant in the appellate courts. In *McKamy v. Baltimore County*, 39 Md. App. 257, 385 A.2d 96 (1978), the County, represented by its office of law in a violation proceeding, appeared in a case originating with the Zoning Commissioner, and thence proceeding to the Board of Appeals and Circuit Court.

By local law, the people of Harford County similarly, by charter amendment, have established an office of people's counsel. See Harford County Code Secs. 2-30.1, 2-30.2, titled "People's Counsel" and "People's Counsel Citizens' Advisory Board," (Bill No. 76-103). In addition, mention already has been made of the Kent County public local law.

Accordingly, we believe that the office of People's Counsel finds its source of legitimacy in the legislative power as well as the basic organizational power afforded the people of Home Rule Counties.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari filed in the above-entitled case should be denied. However, if granted, the Conditional Cross-Petition for Writ of Certiorari should also be granted.

Respectfully submitted,

JOHN W. HESSIAN, III,
People's Counsel for Baltimore County

PETER MAX ZIMMERMAN
Deputy People's Counsel
Attorneys for Respondents

I HEREBY CERTIFY that on this 22nd day of February, 1979, a copy of the foregoing Answer to Petition for Writ of Certiorari and Conditional Cross-Petition for Writ of Certiorari was mailed to George W. Liebmann, Esquire, Frank, Bernstein, Conway & Goldman, 1300 Mercantile Bank & Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201.

John W. Hessian, III

APPENDIX I

Applicable Charter, Statute, and Ordinance Provisions:
Baltimore County Charter, Section 524.1(b):

Sec. 524.1 Appointment and removal of director and deputy director of planning, zoning commissioner, deputy zoning commissioner and people's counsel.

(a) Notwithstanding any other provision of this Charter, the county executive shall appoint this director of planning, subject, however, to confirmation by the county council, and such person so appointed shall continue to serve as director of planning until such time as he or she shall resign or be removed pursuant to the provisions of this section. The director of planning may appoint a deputy director of planning. The director of planning may be removed from office at any time on the recommendation of the county executive and with the affirmative vote of not less than five members of the county council. The county executive shall appoint the zoning commissioner and deputy zoning commissioner, subject, however, to confirmation by the county council, to serve for a term which shall expire on June 1, 1963 and on June 1 of every fourth year thereafter or until their successors are appointed and confirmed. The zoning commissioner or his deputy may be removed from office at any time on the recommendation of the county executive and with the affirmative vote of not less than five members of the county council. Within thirty days after the effective date of this Charter amendment, the county executive shall appoint the first director of planning, the first zoning commissioner, and deputy zoning commissioner to hold office hereunder, subject, however, to confirmation of such appointments by the county council. The persons holding offices at the effective date of this Charter amendment shall continue in such offices until their successors are appointed and confirmed.

(b) Notwithstanding any other provision of this Charter, within thirty (30) days after the effective date of this charter amendment, the county executive shall appoint a people's counsel who shall represent the interests of the public in general in zoning matters as hereinafter set forth, subject, however, to confirmation by the county council, and such person so appointed shall continue to serve as people's counsel until such time as he or she resigns or has been removed pursuant to the provisions herein contained.

(1) Qualifications: The people's counsel shall be a resident of Baltimore County, a member in good standing of the Maryland Bar, and actively engaged in the general practice of law for at least five (5) years prior to his appointment.

(2) Removals: The people's counsel may be removed at any time on the recommendations of the county executive and with the affirmative vote of not less than five (5) members of the county council.

(3) Powers and duties: The people's counsel shall have the following powers and duties:

A. He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, and the courts on behalf of the interests of the public in general, to defend the comprehensive zoning maps as adopted by the county council, and in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may deem the public interest to be involved. He shall have in such appearance, all the rights of counsel for a party in interest, including but not limited to the right to present his case, to cross-examine, to object, to be heard, and to file and prosecute an appeal in his capacity as people's counsel from any order or act of the zoning commissioner of Baltimore County or his deputy, or of the county board of appeals to the courts as an aggrieved party pursuant to the provisions of section 604 of this Charter to promote and protect the health, safety and general welfare of the community.

B. He shall make such investigations as he may deem necessary to the intelligent performance of the duties imposed by subparagraph (A) of this section.

C. He shall have full access to the records of all county agencies, shall be entitled to call upon the assistance of county employees, and shall have the benefit of all other facilities or information of the county in carrying out his duties.

(4) Employment of experts: This people's counsel may hire from time to time, as needed, in connection with specific proceedings before the above-named bodies, experts in the fields of planning, zoning, traffic, engineering, ecology and architecture, to the extent that county personnel cannot be utilized, and to expend such sums for compensation and/or expenses of these experts as shall be provided in the annual budget.

(Bill No. 104, 1960; No. 61-74, sec. 1.)

(Approved by voters November 5, 1974. Effective December 5, 1974.)

Constitution of Maryland:

ARTICLE XI-A

Local Legislation, Section 1:

Section 1. Charter board's preparation and adoption of charter.

On demand of the Mayor of Baltimore and City Council of the City of Baltimore, or on petition bearing the signatures of not less than 20% of the registered voters of said

City or any County (Provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition), the Board of Election Supervisors of said City or County shall provide at the next general or congressional election, occurring after such demand or the filing of such petition, for the election of a charter board of eleven registered voters of said City or five registered voters in any such Counties. Nominations for members for said charter board may be made not less than forty days prior to said election by the Mayor of Baltimore and City Council of the City of Baltimore or the County Commissioners of such County, or not less than twenty days prior to said election by petition bearing the signatures written in their own handwriting (and not by their mark) of not less than 5% of the registered voters of the said City of Baltimore or said County provided, that in any case two thousand signatures of registered voters shall be sufficient to complete any such nominating petition, and if not more than eleven registered voters of the City of Baltimore or not more than five registered voters in any such County are so nominated their names shall not be printed on the ballot, but said eleven registered voters in the City of Baltimore or five in such County shall constitute said charter board from and after the date of said election. At said election the ballot shall contain the names of said nominees in alphabetical order without any indication of the source of their nomination, and shall also be so arranged as to permit the voter to vote for or against the creation of said charter board, but the vote cast against said creation shall not be held to bar the voter from expressing his choice among the nominees for said board, and if the majority of the votes cast for and against the creation of said charter board shall be against said creation the election of the members of said charter board shall be void; but if such majority shall be in favor of the creation of said charter board, then and in that event the eleven nominees of the City of Baltimore or five nominees in the County receiving the largest number of votes shall constitute said charter board, and said charter board, or a majority thereof, shall prepare within twelve months from the date of said election a charter or form of government for said city or such county and present the same to the Mayor of Baltimore or President of the Board of County Commissioners of such county, who shall publish the same in at least two newspapers of general circulation published in the City of Baltimore or County within thirty days after it shall be reported to him. Such charter shall be submitted to the voters of said City or County at the next general or Congressional election after the report of said charter to said Mayor of Baltimore or President of the Board of County Commissioners and if a majority of the votes cast for and against the adoption of said charter shall be in favor of such adoption, the said charter from and after the thirtieth day from the date of such election shall become the law of said City or County, subject only to the Constitution and Public General Laws of this State, and any public local laws inconsistent with the provisions of said charter and any former charter of the City of Baltimore or County shall be hereby repealed. (1914, ch. 416, ratified Nov. 2, 1915; 1963, ch. 192, ratified Nov. 3, 1964.)

(4) He shall have the authority to conduct such investigations as he may deem appropriate to enable him to intelligently perform his other duties and functions.

(5) He shall have full access to the records of all County Agencies, be entitled to call upon the assistance of all County Agencies, and shall be accorded the assistance and benefits of all County Agencies who receive or disburse County funds, and their facilities and employees in carrying out his powers, duties and functions.

(6) The People's Counsel may hire from time to time, as necessary for specific proceedings, persons to testify as expert witnesses to the extent that employees of County agencies who receive or disburse County funds cannot be utilized and to expend such funds for compensation for these persons as are provided by appropriation ordinance.

(7) Under no circumstances can the People's Counsel be considered by private parties as representing or protecting the interests of private parties insofar as those interests are different from the general public's interest. However, this does not preclude the People's Counsel from advancing arguments of private parties or having private parties listed as parties to a case or proceeding if it furthers the interests of the public in general. A determination of a court or administrative agency to the contrary shall not be a ground for denying standing of, or relief requested by, the People's Counsel.

Section 2-30-2, "People's Counsel Citizens Advisory Board,"

(a) There is hereby established a People's Counsel Citizens Advisory Board consisting of seven (7) members to be appointed by the County Council. A Chairman shall be designated by the members of the Board. The members of the Board shall serve a term coterminous with that of the Council that appoints them. A member of the Board may be removed only for cause by a majority vote of the Council. Vacancies on the Board shall be filled for the unexpired term in the manner of the original appointment. Members of the Board shall be broadly representative of all segments of the County's population.

(b) The Board may hold such meetings as necessary to perform their functions and shall meet as requested by the People's Counsel. The Board shall adopt such rules and regulations as necessary in the manner provided by Section 807 of the Charter.

(c) The Board may provide guidance to and make recommendations to the People's Counsel regarding any matter referred to them by the People's Counsel, County Council, or as requested by any citizen or group of citizens of Harford County. The Board need only record and file with the Secretary of the Council those recommendations they make to the People's Counsel.

Maryland Annotated Code:

Article 25A, Section 5 (5):

(5) Amendment of County Charter

To pass any ordinance facilitating the amendment of the county charter by vote of the electors of the county and agreeable to Article XIX of the Constitution.

The foregoing or other enumeration of powers in this article shall not be held to limit the power of the county council, in addition thereto, to pass all ordinances, resolutions or bylaws, not inconsistent with the provisions of this article or the laws of the State, as may be proper in executing and enforcing any of the powers enumerated in this section or elsewhere in this article, as well as such ordinances as may be deemed expedient in maintaining the peace, good government, health and welfare of the country.

Provided, that the powers herein granted shall only be exercised to the extent that the same are not provided for by public general law; provided, however, that no power to legislate shall be given with reference to licensing, regulating, prohibiting or submitting to local option, the manufacture or sale of malt or spirituous liquors.

Article 25A, Section 5 (U):

(U) County Board of Appeals

To enact local laws providing (1) for the establishment of a county board of appeals whose members shall be appointed by the county council; (2) for the number, qualifications, terms, and compensation of the members; (3) for the adoption by the board of rules of practice governing its proceedings; and (4) for the decision by the board on petition by any interested person and after notice and opportunity for hearing and on the basis of the record before the board, of such of the following matters arising (either originally or on review of the action of an administrative officer or agency) under any law, ordinance, or regulation of, or subject to amendment or repeal by, the county council, as shall be specified from time to time by such local laws enacted under this subsection: An application for a zoning variance or exception or amendment of a zoning ordinance map; the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order; and the assessment of any special benefit tax. Provided, that upon any decision by a county board of appeals it shall file an opinion which shall include a statement of the facts found and the grounds for its decision. Any person aggrieved by the decision of the board and a party to the proceeding before it may appeal to the circuit court for the county which shall have power to affirm the decision of the board, or if such

(d) When requested, the Board may by a majority vote of the entire membership, direct the People's Counsel to enter his appearance in a particular matter, case or proceedings to protect the interest of the public in general.

Kent County Code, Article 15, Public Local Laws of Maryland, Section 475-D.

Section 1. Be it enacted by the General Assembly of Maryland that new Section 475-D and it is hereby added to the Public Local Laws of Kent County being Article 15 of the Public Local Laws of Maryland (1968 Edition and 1975 Supplement as Amended) to read as follows:

Article 15, 475-D (A). The County Commissioners shall appoint a People's Counsel who shall represent the interests of the public in general in zoning matters as hereinafter set forth in this section.

(1) The People's Counsel shall be a resident of Kent County, a member in good standing of the Maryland Bar and actively engaged in the general practice of law for at least five years prior to his appointment.

(2) The People's Counsel shall serve at the pleasure of the County Commissioners. He may serve until he resigns or he may be removed by the County Commissioners at any time.

(3) The People's Counsel shall have the following powers and duties:

(i) He shall appear as a party before the zoning authority of Kent County, the County Board of Appeals and the courts on behalf of the interests of the public in general to defend the comprehensive planning and zoning maps as adopted by the County Commissioners, and in any matter or proceeding now pending or hereafter brought involving zoning reclassification, variance or special exception under the Kent County Zoning Regulations, in which he may deem the public interest to be involved. He shall have in the appearance, all the rights of counsel for a party in interest, including the right to present his case, to cross-examine, to object, to be heard, and to file and prosecute an appeal in his capacity as People's Counsel from any order or act of the zoning authority of Kent County, or of the County Board of Appeals to the courts as an aggrieved party to promote and protect the health, safety, and general welfare of the community.

(ii) He shall make investigations as he may deem necessary to the intelligent performance of the duties imposed by subparagraph (i) of this section.

decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing as justice may require. Any party to the proceeding in the circuit court aggrieved by the decision of the said court may appeal from such decision to the Court of Special Appeals. The review proceedings provided by this subsection shall be exclusive.

Article 25A, Section 5 (X):

(X) Planning and Zoning

To enact local laws, for the protection and promotion of public safety, health, morals, and welfare, relating to zoning and planning including the power to provide for the right of appeal of any matter arising under such planning and zoning laws to the circuit court except as is provided in § 5 (u) of this article. Any decision of the circuit court may be appealed to the Court of Special Appeals.

Article 41, Section 256A. Status of political subdivisions and their agencies and instrumentalities.

For the purposes of this subtitle, the political subdivisions of this State and their agencies and instrumentalities have the status of an interested person, petitioner, or party, as the case may be, in all matters including appeals. (1972, ch. 449.)

Article 78, Section 15(i):

§ 15. Powers and duties.

(a) Generally. - The office of people's counsel shall evaluate all matters pending before the Commission to determine if the interests of residential users of gas, electricity, telephone, or water and sewerage or of noncommercial users of other regulated services (hereinafter referred to as residential and noncommercial users) are affected. It shall appear before the Commission and the courts on behalf of those users in all matters or proceedings over which the Commission has original jurisdiction and in which the office of people's counsel deems their interest to be involved including, but not limited to, proceedings with regard to the rates, service, or practices of any public service company or any violation of the provisions of this article. It shall have, in such appearances, all the rights of counsel for a party to the proceeding, including but not limited to those specified in § 82. The people's counsel may appear before any federal or State agency as necessary to protect the interests of residential and noncommercial users.

(iii) He shall have access to the records of County agencies. He shall be entitled to call upon the assistance of County employees. He shall have the benefit of other facilities or information of the County in carrying out his duties.

(4) The People's Counsel may hire from time to time as needed in connection with specific proceedings before the above-named bodies, experts in the fields of planning, zoning, traffic, engineering, ecology and architecture, to the extent that County personnel cannot be utilized, and to expend such sums for compensation and expenses of these experts as shall be provided in the annual budget.

(5) He shall receive an annual salary in sums as may be needed to carry out the powers and duties set forth herein as provided in the annual budget.

Section 2. And be it further enacted that this Act shall take effect July 1, 1977.

Harford County Code:

Section 2-30-1, "People's Counsel,"

(a) With the approval of a majority of the Council, a People's Counsel, and such assistance as may be necessary, shall be employed by the Council Attorney to represent the interests of the public in all matters and proceedings preliminary to a rising out of or affecting the zoning classification or reclassification of land in Harford County. Persons employed as People's Counsel shall serve as People's Counsel until such time as they resign or have been removed pursuant to the provisions stated herein. Except as provided for below, the People's Counsel shall, at all times, be free to make an independent determination as to the matters and proceedings in which he shall participate and the conduct of the affairs of his position in performing his duties and functions.

(b) The People's Counsel shall have been a member in good standing of the Maryland Bar for a period of at least five (5) years prior to his appointment. He may not practice law before any County agency except to perform his duties and functions as People's Counsel.

(c) The People's Counsel may be removed for cause by the Council on the recommendation of the County Executive, Council President or by a majority vote of the entire membership of the People's Counsel Citizens Advisory Board but only upon the affirmative vote of not less than five (5) members of the Council.

(d) In performing his functions, the People's Counsel shall have the following powers and duties:

(1) He shall have the authority to appear before any governmental agency on behalf of the Citizens of Harford County in all matters and proceedings related to planning, zoning, and other land use and development matters and proceedings and he shall have standing as an aggrieved party.

(2) He shall have the authority to appear as a party in interest before any State or Federal court on behalf of the Citizens of Harford County in all matters and proceedings related to planning, zoning and other land use and development matters and proceedings and he shall have standing as an aggrieved party.

(3) He shall have standing to appear as an aggrieved party before the Zoning Hearing Examiners, Board of Appeals and County Council of Harford County on behalf of the Citizens of Harford County in any matter or proceeding now pending or hereafter instituted before and under the jurisdiction of those officers or bodies in which he may deem the public interest to be affected.

STANCILL CONTRACTING
COMPANY

In the
Court of Appeals
of Maryland

Petition Docket No. 461
September Term, 1978
(No. 383, September Term, 1978
Court of Special Appeals)

WILLIAM A. BARKULOO et al.

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of
Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and
it is hereby, denied as there has been no showing that review by certiorari is desirable
and in the public interest.
Judge Davidson did not participate in the consideration
of this petition.

/s/ Robert C. Murphy
Chief Judge

Date: March 7, 1979.

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 15125

DATE August 8, 1978 ACCOUNT 01-662

AMOUNT \$66.12

WHITE - CASHIER DISTRIBUTION PINK - AGENCY YELLOW - CUSTOMER

Stancill's Inc.
Aberdeen, Md.
To Pay 256
Investing and posting of property for Estate of
Ida F. Surguy

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 15353

DATE 4/13/78 ACCOUNT 01,712

AMOUNT \$31.00

WHITE - CASHIER DISTRIBUTION PINK - AGENCY YELLOW - CUSTOMER

John W. Hardwick, Esq.
10 East Baltimore Street
Baltimore, Md. 21202
Cost of certified documents in
Case #75-18-X, Estate of Ida F.
Surguy (Stancill Contracting
Co., Contract Purchaser)

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 17412

DATE January 2, 1978 ACCOUNT 01-662

AMOUNT \$70.00

WHITE - CASHIER DISTRIBUTION PINK - AGENCY YELLOW - CUSTOMER

John W. Hardwick, Esquire
Cost of Filing of an Appeal on Case No. 75-18-X (Item
No. 7)
NE/corner of Ebenezer Road and Bird River Beach Road -
15th Election District
Estate of Ida F. Surguy - Petitioner

LAW OFFICES
FRANK, BERNSTEIN, CONAWAY & GOLDMAN
1300 MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201

CABLE ADDRESS AREA CODE 301
FRANKCO 847-1000

May 10, 1978

Board of Zoning Appeals
for Baltimore County
Room 219
Court House
Towson, Maryland 21204

Re: Estate of Ida Surguy -
Stancill Contracting Company

Gentlemen:

This will confirm my telephone conversation of last week in
which I requested that the above matter, which is on remand
from a decision of Judge Raine reversing the denial of a
special exception, be set in promptly for hearing on the
question whether conditions should be imposed by the Board
upon the special exception and the character of such con-
ditions. Because the property owner is precluded from the
use of the property prior to the Board's considering the mat-
ter of conditions, an early hearing is requested.

My client is anxious to cooperate with the Board to stipulate
to any reasonable conditions that will make possible his
recommencement of work. Although an appeal has been taken
from the decision of Judge Raine, no order staying the effect
of that judgment has been entered, and it is desirable that
the matter of conditions be settled promptly.

With thanks for your attention, I am,

Sincerely yours,

George W. Liebmann
George W. Liebmann

GWL/du

cc: Mr. Jerry Stancill

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

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

Your Petition has been received * this 31st day of

May 1978. Item #

H. R. Denina
S. Eric Denina
Zoning Commissioner

Petitioner: Surguy Submitted by Hardwick

Petitioner's Attorney Hardwick Reviewed by G. Barnes

* This is not to be interpreted as acceptance of the Petition for
assignment of a hearing date.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

#75-18-X

District: 15K Date of Posting: 7-25-78

Posted for: Hearing Monday, Aug. 12, 1978 @ 1:00 P.M.

Petitioner: Estate of Ida F. Surguy

Location of property: NE/cor. of Ebenezer Rd. & Bird River Beach Rd.

Location of Sign: 1. 100 ft. on Ebenezer Rd. on Bird River Beach Rd.

Remarks: Bird River Beach Rd.

Posted by: M. L. H. Nass

Date of return: 8-1-78

George W. Liebmann, Esquire
1300 Mercantile Bank & Trust Building
Two Hopkins Plaza
Baltimore, Maryland 21201

Re: Southern Four, Inc.

Dear Mr. Liebmann:

I am forwarding you an application for a State surface
mining permit; however, I am advising the Water Resources
Administration that that permit will not be processed, nor
will an amendment be processed until you satisfy the Balti-
more County Zoning Ordinance.

Yours very truly,

Warren K. Rich

cc: Mr. Sturgill
Mr. Lewandowski
Mr. Ports

RECEIVED
OCT 31 1977
OFFICE OF LAW

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

#75-18-X

District: 15K

Date of Posting: 1/16/78

Posted for:

Petitioner: Est. of Ida F. Surguy, Attn: Stancill Contracting Co.

Location of property: NE/cor. of Ebenezer Rd. & Bird River Beach Rd.

Location of Sign: 1 Sign posted on Bird River Beach Rd. 300 ft. from Ebenezer Rd.

Remarks: 1 Sign posted on Ebenezer Rd. 300 ft. from Bird River Beach Rd.

Posted by: M. L. H. Nass

Date of return: 1/23/78

PETITION MAPPING PROGRESS SHEET

FUNCTION	Wall Map		Original		Duplicate		Tracing		200 Sheet	
	date	by	date	by	date	by	date	by	date	by
Descriptions checked and outline plotted on map										
Petition number added to outline										
Denied										
Granted by ZC, BA, CC, CA										
Reviewed by: <u>G. Barnes</u>	Revised Plans:					Change in outline or description				
Previous case: <u>72-241-X</u>						Map # <u>40</u>				

#75-18-X
Baltimore County Circuit Court
You are hereby summoned to attend this Court, at TOWSON, BALTIMORE COUNTY, MD.
on Monday the 9th day of Dec, 1978
at 9:30 o'clock A.M. to testify as Petitioner
I am not present in attendance or you will be attached.
Wm 218

Circuit Court of Baltimore County
Report to Central Assignment Office
Term, 1978
Mr. [Signature] vs. [Signature]
[Signature] (Plaintiff) vs. [Signature] (Defendant)

By order of the Court,
GEORGE W. FRIEBENGER, Sheriff of Baltimore City
(By this summons with you.)
Deputy No. 218

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 15102
DATE July 18, 1978 ACCOUNT 01-662
AMOUNT \$50.00
DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER
John W. Hardwick, Esq.
V.L. Grosse & Co. Building
Suite 710
Baltimore, Md. 21202
Petition for Special Exception for Estate of Ida Surguy
#75-18-X

CERTIFICATE OF PUBLICATION

ROSEDALE, MD., July 29, 1978

THIS IS TO CERTIFY, that the annexed advertisement was
published in THE OBSERVER, a weekly newspaper published
in Rosedale, Baltimore County, Md. one time before the
12th day of August 1978 the publication
appearing on the 25th day of July 1978

THE OBSERVER,
Robert A. Luebke
Advertising Mgr.

Cost of Advertisement \$29.12

PETITION FOR SPECIAL
EXCEPTION
15TH DISTRICT

ZONING: Petition for Special Ex-
ception for Excavation, Controlled
LOCATION: Northeast corner of
Ebeneser Road and Bird River
Beach Road.
DATE & TIME: Monday, August 12,
1974 at 1:00 P.M.
PUBLIC HEARING: Room 106, Coun-
ty Office Building, 111 W. Ches-
apeake Avenue, Towson, Maryland.

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

Petition for Special Exception for
Excavation, Controlled.

All that parcel of land in the Fif-
teenth District of Baltimore County
Beginning for the same at a point
in the center of Ebeneser Road ap-
proximately 2100 feet east of Bird
River Beach Road, thence running
and binding along the center of
Ebeneser Road the four following
courses and distances, viz: (1)
North 78° 04' 24" West 26.43 feet,
(2) North 54° 12' 49" West 121.23
feet, (3) South 88° 06' 24" West
203.20 feet, and (4) South 78° 04'
40" West 83.20 feet, thence leaving
said road North 24° 58' 30" West
127.50 feet, South 65° 01' 30" West
148.00 feet, South 76° 21' 30" West
122.00 feet, and South 74° 21' 30"
West 222.00 feet, thence running
and binding with Bird River Beach
Road the five following courses and
distances, viz: (1) North 25° 58' 30"
West 145.77 feet, (2) North 63°
16' 49" East 30.50 feet, (3) North
17° 58' 30" West 69.00 feet, (4)
North 24° 41' 30" West 210.00 feet,
and (5) North 23° 58' 30" West 150-
00 feet, thence leaving said road
North 27° 58' 30" West 200.00 feet,
North 11° 58' 30" East 100.00 feet,
North 3° 31' 30" East 100.00 feet,
North 8° 46' 30" East 100.00 feet,
North 23° 16' 30" East 100.00 feet,
North 33° 10' 30" East 54.00 feet,
North 16° 46' 30" East 90.00 feet,
North 24° 46' 30" East 100.00 feet,
North 27° 58' 30" West 160.00 feet,
North 00° 46' 30" East 20.50 feet,
North 58° 21' 30" East 1401.00 feet,
and South 21° 18' 30" East 923.77
feet to the place of beginning.

Containing 129.14 acres of land,
more or less.

Being the property of the Estate
of Ida F. Surgy, as shown on plat
plan filed with the Zoning Depart-
ment.

Hearing Date: Monday, August 12,
1974 at 1:00 P.M.

Public Hearing: Room 106, Coun-
ty Office Building, 111 W. Ches-
apeake Avenue, Towson, Md.

By order of
S. ERIC DINENNA,
Zoning Commissioner of
Baltimore County.

July 25.

CERTIFICATE OF PUBLICATION

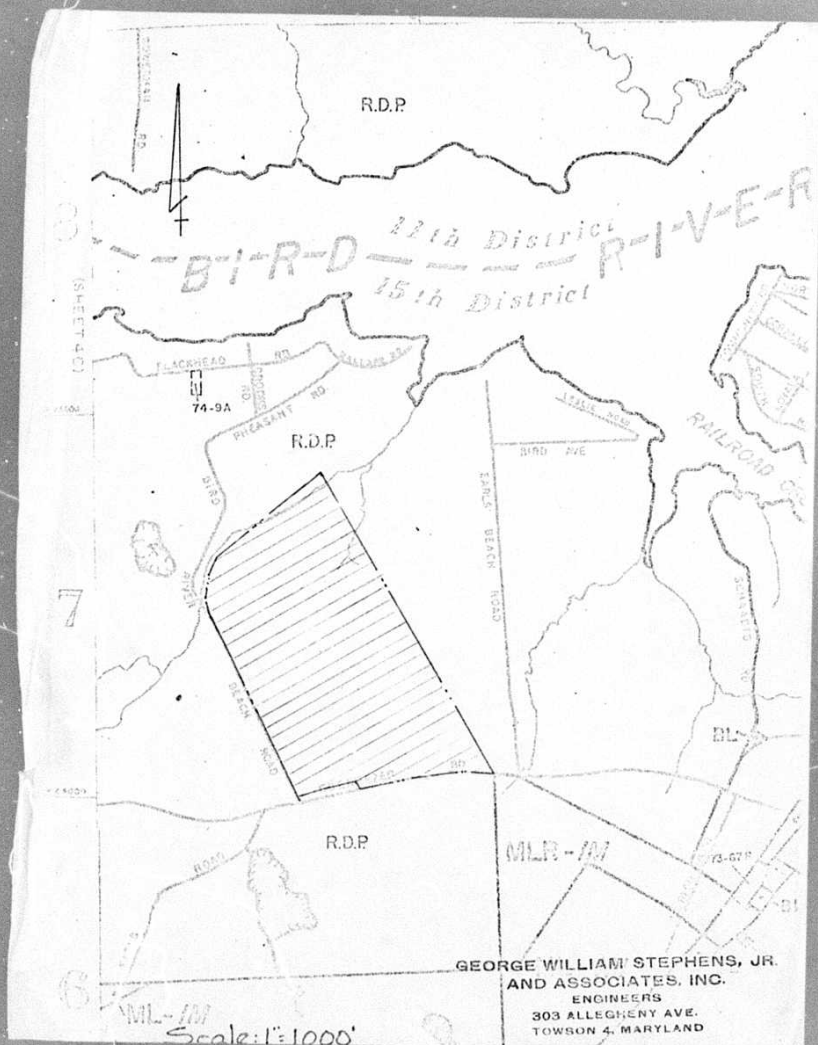
TOWSON, MD.-----July 25-----, 1974.

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 one time~~ ~~successive weeks~~ before the-----12th-----
day of-----August-----, 1974, the first publication
appearing on the-----25th-----day of-----July-----
1974.

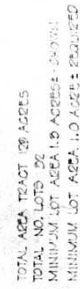
THE JEFFERSONIAN,

G. Frank Smith
Manager.

Cost of Advertisement, \$-----



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



ELECTION DISTRICT #16
SCALE: 1"=200'
BALTIMORE CO., MD.
DATE: 8/23/02

