

PETITION FOR SPECIAL HEARING 83-85-SPH

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 300.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the use of a stand for the sale of produce, products thereof and flowers as a non-conforming use as shown on the attached Plat to Accompany Special Hearing pursuant to Sec. 104.1

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

I or we agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: Legal Owner(s):
 (Type or Print Name) MARRIOTT CORPORATION
 Signature: Robert E. Koehler
 (Type or Print Name)
 Address: 1 Marriott Drive (301) 897-7582
 City and State: Washington, D. C. 20058
 Attorney for Owner of the Above-Referenced Stand: Julius W. Lichter, Esq.
 (Type or Print Name) 315 W. Chesapeake Ave. Suite 113
 Signature: [Signature] Towson, Maryland 21204
 City and State: Baltimore, Md. 21204
 Attorney's Telephone No.: 321-0600

ORDERED By The Zoning Commissioner of Baltimore County, this 6th day of July, 1982, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 23rd day of September, 1982, at 10:45 o'clock A.M.

[Signature]
 Zoning Commissioner of Baltimore County.

ECO-1

(over)

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

William E. Hammond
 Zoning Commissioner
 Norman E. Gerber, Director
 Office of Planning and Zoning
 SUBJECT: Zoning Petition No. 83-85-SPH
 Marriott Corporation

Date: August 31, 1982

This office does not usually comment on a request to determine non-conforming use status; however, it would appear that the relocation of the produce stand would preclude a finding of non-conformance.

[Signature]
 Norman E. Gerber,
 Director of Planning and Zoning

NEG:JGHalc

cc: Arlene January
 Shirley Hess

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

COUNTY OFFICE BLDG.
 111 W. Chesapeake Ave.
 Towson, Maryland 21204

Nicholas S. Commodari
 Chairman

MEMBERS:
 Bureau of Engineering
 Department of Traffic Engineering
 State Roads Commission
 Bureau of Fire Prevention
 Health Department
 Pro. and Planning
 Building Department
 Board of Education
 Zoning Administration
 Industrial Development

September 15, 1982

Julius W. Lichter, Esquire
 305 W. Chesapeake Avenue
 Suite 113
 Towson, Maryland 21204

RE: Case #83-85-SPH (Item No. 3)
 Petitioner-Marriott Corporation
 Special Hearing Petition

Dear Mr. Lichter:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following 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 suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

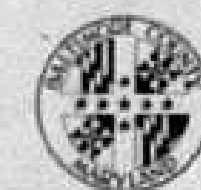
Very truly yours,

[Signature]
 NICHOLAS S. COMMODARI
 Chairman
 Zoning Plans Advisory Committee

ENCLOSURE

Enclosures

cc: D.S. Thaler & Assoc., Inc.
 11 Warren Road
 Baltimore, Maryland 21208



BALTIMORE COUNTY
 DEPARTMENT OF PUBLIC WORKS
 TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.
 DIRECTOR

August 9, 1982

Mr. William E. Hammond
 Zoning Commissioner
 County Office Building
 Towson, Maryland 21204

Re: Item #3 (1982-1983)
 Property Owner: Marriott Corporation
 N/ES Reisterstown Rd. 110' N/W from centerline
 of Walgrove Rd.
 Acres: 1.02 District: 4th

Dear Mr. Hammond:

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 in conjunction with the Zoning Advisory Committee review of this property in connection with Item 8 of Zoning Cycle III (April-October 1972).

Baltimore County highway and utility improvements exist or are as secured by Public Works Agreement 48102, executed in conjunction with the development of this site "Roy Rogers Restaurant (Fosner Property)", BLD. 1576-79 (Project 80048).

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this Item 3 (1982-1983).

Very truly yours,

[Signature]
 ROBERT A. MORTON, P.E., Chief
 Bureau of Public Services

RAM:EAM:PHR:es

cc: Jack Wimbley
 Robert Covashey

T-W Key Sheet
 58 NW 39 & 40 Pos. Sheets
 NW 15 J Topo
 48 Tax Map

Attachment

Baltimore County, Maryland Department of Public Works

COUNTY OFFICE BUILDING
 TOWSON, MARYLAND 21204

April 13, 1972

Bureau of Engineering
 ELLSWORTH H. DIVER, P.E., CHIEF

Mr. Oliver L. Myers, Chairman
 Zoning Advisory Committee
 County Office Building
 Towson, Maryland 21204

Re: Item #8 (Cycle April - October 1972)
 Property Owner: Bernard and Rosalina Fosner
 N/ES Reisterstown Rd., 160' S/E of Chartley Blvd.
 Present Zoning: D.R. 3.5 and D.R. 15
 Proposed Zoning: Reclassification to R.R.
 District: 1th
 No. Acres: 2.21 Acres

Dear Mr. Myers:

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.

Highways:

Reisterstown Road is a State Road; therefore, all improvements, intersection, and entrances on this road will be subject to State Highway Administration requirements.

Storm Drains:

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

Public storm drainage facilities are required between the existing State Highway Administration system discharging into this property and the existing Baltimore County system outletting the drainage from this property, in accordance with the standards of the Department of Public Works.

Onsite drainage facilities serving only areas within the site do not require construction under a County contract. Such facilities are considered private and therefore must conform to the County Plumbing and Building Codes.

Reisterstown Road is a State Road; therefore, drainage requirements as they affect the road come under the jurisdiction of the Maryland State Highway Administration.

Mr. Oliver L. Myers, Chairman
 Zoning Advisory Committee
 Page 2
 April 13, 1972

Re: Item #8 (Cycle April - October 1972)

Sediment Control:

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings below this property. Sediment control is required by State Law. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Water:

Public water facilities are available to benefit this property.

Supplementary fire hydrants and improvements to the public system may be required for adequate protection.

Service within the site from the public system must be in accordance with the Baltimore County Building, Plumbing and Fire Prevention Codes. The service connection to the water shall be in accordance with the standards of the Baltimore County Department of Public Works.

Sanitary Sewer:

Public sanitary sewerage can be made available to serve this property by constructing a public sanitary sewer extension from the existing 8-inch public sanitary sewer in Walgrove Road.

Right-of-way is required through this property for construction and maintenance of public sanitary sewerage. The Petitioner is responsible for the establishment of the right-of-way, and the conveyance thereof, to Baltimore County at no cost to the County.

The Petitioner is entirely responsible for the construction of his onsite private sanitary sewerage, which must conform with the Baltimore County Plumbing Code.

These comments reflect the requirements for development in accordance with the proposed subdivided use. Development, under the existing or proposed zoning, with subdivision may require additional public facilities.

Very truly yours,

[Signature]
 ELLSWORTH H. DIVER, P.E.
 Chief, Bureau of Engineering

END:EAM:CHK:es

NW 15 J Topo Sheet
 T-W Key Sheet
 58 NW 39, 58 NW 40 Position Sheets
 48 Tax Map



Maryland Department of Transportation
 State Highway Administration

Lowell K. Brinwell
 Secretary
 M. S. Calabrese
 Administrator

July 14, 1982

Mr. William Hammond
 Zoning Commissioner
 County Office Bldg.
 Towson, Md. 21204

Attention: Mr. N. Commodari

Re: ZAC Meeting of 7-6-82
 Item: #3
 Property Owner: Marriott Corporation
 Location: N/E side
 Reisterstown Rd., (Route 140)
 110' N/W from centerline of
 Walgrove Rd.
 Existing Zoning: BL & R-o
 Proposed Zoning: Special
 Hearing to approve a use of
 a stand for the sale of
 produce, products thereof
 and flowers as a non-conform-
 ing use.
 Acres: 1.02
 District: 4th

Dear Mr. Hammond:

On review of the revised site plan of March 29, 1982, and field inspection, the State Highway Administration finds the plan generally acceptable.

However, the State Highway Administration strongly recommends that parking be prohibited and discouraged within the existing entrance to the south.

Proper signing within the south entrance and a designated area for produce parking only would help greatly.

Very truly yours,

[Signature]
 Charles Lee, Chief
 Bureau of Engineering
 Access Permits
 By: George Wittman

CL:GW:vd
 cc: Mr. J. Wimbley

My telephone number is (301) 659-1350
 Teletypewriter for impaired hearing or speech
 383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-482-7062 Statewide Toll Free
 P.O. Box 717 707 North Calvert St., Baltimore, Maryland 21203 - 0717

Julius W. Lichter, Esquire
 305 W. Chesapeake Ave.
 Suite 113
 Towson, Md. 21204

D.S. Thaler & Assoc., Inc.
 11 Warren Road
 Baltimore, Md. 21208

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

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

Your Petition has been received and accepted for filing this 6th day of July, 1982.

[Signature]
 WILLIAM E. HAMMOND
 Zoning Commissioner

Petitioner: Marriott Corporation

Petitioner's Attorney: Julius W. Lichter, Esq. Reviewed by: [Signature]
 Nicholas S. Commodari
 Chairman, Zoning Plans
 Advisory Committee

Pursuant to the advertisement, posting of property, and public hearing on the petition and appearing that by reason of the following finding of facts:

1. The petitioner herein seeks to establish the existence of a stand used for the sale of produce, products thereof, and flowers as a nonconforming use.
2. Testimony presented in behalf of the petitioner revealed that Bernard Posner acquired the subject site prior to 1973 and that Case Nos. 73-48-R and 74-186-R granted B.L. (Business, Local) zoning for the entire site. The 1976 Comprehensive Zoning Maps retained the B.L. zoning; however, the 1980 maps changed the eastern portion of the property to R-O (Residential-Office). Mr. Posner sold the tract to the herein petitioner and currently leases approximately 0.33 of an acre on which to operate the produce stand. The stand has operated continuously from 1974 through 1981, i.e., every summer, in the location designated as "ex. produce stand" on the site plan prepared by D.S. Thaler & Associates, Inc., revised March 29, 1982, and marked Petitioner's Exhibit 3. The entrance had been located towards the center of the property as it fronts on Reisterstown Road and parking was provided behind the stand. The site plan prepared by D.S. Thaler & Associates, dated April 6, 1979, and marked Petitioner's Exhibit 13, corroborated this testimony. During the 1982 season, the stand was operated from the location designated as "relocated produce stand" on Petitioner's Exhibit 3. Further testimony indicated that flower sales began at this time.
3. Area residents appearing in opposition to the request testified that the stand was originally located south of the center drive and that parking was provided to the northwest side of the stand. They further contended that the stand had not been operated continuously.
4. The finding of a nonconforming use being conducted on the subject property will not adversely affect the health, safety, and general welfare of the community.

and, therefore,

IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 23rd day of February, 1983, that a nonconforming use for a stand used for the sale of produce and products thereof, in accordance with Petitioner's Exhibit 3, has existed and has been conducted on the subject property since 1974 and, as such, is hereby GRANTED the right to continue from and after the date of this Order, subject, however, to the following restrictions:

1. The abandonment or discontinuance for a period of one year or more shall terminate the nonconforming use.
2. Damage by fire or other casualty of the improvement to the extent of 75% of its replacement cost at the time of such loss shall terminate the nonconforming use.
3. The stand shall display its merchandise and be open to customers only on the side facing the rear (northeast) of the property.
4. Five parking spaces shall be provided to the northeast of the stand and shall be paved with a durable, dustless surface.
5. "No Parking" signs shall be posted on the access road from Reisterstown Road to the entrance of the parking spaces provided for the stand.
6. All signs shall be in compliance with Section 413 of the Baltimore County Zoning Regulations and signage for the stand shall not exceed 25 square feet.
7. No flowers or refrigerated products shall be sold from the stand.
8. At such time as the current tenant (Bernard Posner) ceases to lease the property (Petitioner's Exhibit 3 - Ground Lease), the stand shall be removed.

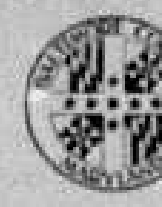
9. A revised site plan, incorporating the restrictions set forth above, shall be submitted for approval by the Maryland Department of Transportation, the Department of Public Works, and the Office of Planning and Zoning, including landscaping required for approval by the Current Planning and Development Division.

ORDER RECEIVED FOR FILING

DATE February 23, 1983

BY John P. Kelly

John M. H. Jones
Deputy Zoning Commissioner of
Baltimore County



BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS
DIRECTOR

August 25, 1982

Mr. William Hammond
Zoning Commissioner
County Office Building
Towson, Maryland 21204

RE: ZAC Meeting of July 6, 1982

Dear Mr. Hammond:

The Department of Traffic Engineering has no comment for items number 1, 2, 3, 5, 6, 7, 9, 10, 11 and 12.

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Engineering Associate II

MSF/rj

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

William E. Hammond, Zoning Commissioner
TO: Office of Planning and Zoning Date: September 10, 1982

FROM: John J. Forrest

SUBJECT: Zoning Variance Items

The Baltimore County Department of Health has reviewed the following zoning variance items, and has no specific comments regarding same:

- Item 3 - Marriott Corporation
- Item #24 - Andrew & Maria Styka
- Item #25 - Samuel J. Salvo
- Item #27 - Virginia L. Baker, et al
- Item #28 - Villa Maria, Incorp.
- Item #29 - Wade J. & Joan B. Webster
- Item #30 - Stanley Larry Posner
- Item #31 - Glenn C. & Karen L. Snyder
- Item #32 - Clay Stanbaugh
- Item #33 - The White Marsh Joint Venture
- Item #34 - Preston C. & Ann D. Shelton
- Item #36 - Gary D. & Leslie P. Plotnick
- Item #43 - Jay I. & Ellen Morestein

John J. Forrest
John J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

JJF/rth

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
NE/S Reisterstown Rd., 110'
NW of centerline of Walgrove Rd., : OF BALTIMORE COUNTY
4th District

MARRIOTT CORPORATION,
Petitioner

Case No. 83-85-SPH

ORDER TO ENTER APPEARANCE

Mr. Commissioner:

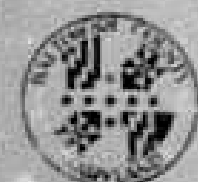
Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefor, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

John W. Hession, III
John W. Hession, III
People's Counsel for Baltimore County
Rm. 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 30th day of August, 1982, a copy of the foregoing Order was mailed to Julius W. Lichter, Esquire, 305 W. Chesapeake Avenue, Suite 113, Towson, Maryland 21204; and Mr. Donald J. Dietz, 125 Duncannon Road, Bel Air, Maryland 21014, who requested notification.

John W. Hession, III
John W. Hession, III



BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204
825-7310

PAUL H. RENCKE
CHIEF

September 1, 1982

Mr. William Hammond
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204
Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Marriott Corporation

Location: NE/S Reisterstown Road 110' N/W from centerline of Walgrove Road

Item No.: 3 Zoning Agenda: Meeting of July 6, 1982

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" 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 100 feet along an approved road in accordance with Baltimore County Standards 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 EXCEEDS the maximum allowed by the Fire Department.
- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- () 5. The buildings and structures existing as proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.
- () 6. The plans are approved, as drawn.
- (X) 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWED: John J. Kelly
Planning Group
Special Inspection Division

Noted and Approved: George McNeagall
Fire Prevention Bureau

JH/mh/cm



BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3900

TED JALOSH, JR.
DIRECTOR

August 9, 1982

Mr. William E. Hammond, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item # 3 Zoning Advisory Committee Meeting: July 6, 1982
are as follows:

Property Owner: Marriott Corporation
Location: NE/S Reisterstown Road 110' N/W from centerline of Walgrove Road
Existing Zoning: R-1
Proposed Zoning: R-1

Acres: 1.02
District: 4th

The items checked below are applicable

- A. All structures shall conform to the Baltimore County Building Code 1981/ Council Bill 100 and other applicable Codes.
- B. A building/ building permit shall be required before beginning construction.
- C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/ is not required.
- D. Commercial: Three sets of construction drawings and anchorage of building against wind overturn shall be required to file a permit application, showing the foundation.
- E. In wood frame construction an exterior wall erected within 6'0" of an adjacent lot line shall be of one hour fire resistive construction; no openings permitted within 1'0" of lot lines. A firewall is required if construction is on the lot line. See Table 101, line 2, Section 1107 and Table 1102.
- F. Requested variance conflicts with the Baltimore County Building Code, Section/s 1107.
- G. A change of occupancy shall be applied for, along with an alteration permit application, and three required sets of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal.
- H. Before this office can comment on the above structure, please have the owner, thru the services of a Registered Architect or Engineer certify to this office that the structure for which a proposed change in use is proposed does comply with the height/area requirements of Table 505 and the required construction classification of Table 101.
- I. Comments

NOTE: These comments reflect only on the information provided by the drawings submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired additional information may be obtained by visiting Room #122 (Fire Review) at 111 West Chesapeake Ave., Towson.

Very truly yours,

Charles E. Burnham, Chief
Charles E. Burnham, Chief
Plans Review

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: July 8, 1982

Mr. William E. Hammond
Zoning Commissioner
Baltimore County Office Building
1111 West Chesapeake Avenue
Towson, Maryland 21204

Z.A.C. Meeting of: July 6, 1982

RE: Item No: 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12
Property Owner:
Location:
Present Zoning:
Proposed Zoning:

District:
No. Acres:

Dear Mr. Hammond:

All of the above have no bearing on student population.

Very truly yours,

Wm. Nick Petrovich
Wm. Nick Petrovich, Assistant
Department of Planning

WNP/bp

IN THE MATTER OF THE
APPLICATION OF
MARRIOTT CORPORATION
FOR PETITION FOR SPECIAL
HEARING
On Property located on the
northeast side of Reisterstown
Road, 110 ft. northwest of the
center line of Walgrove Road
4th District

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 83-85-SPH

OPINION

The above captioned matter came on for hearing on an appeal from the decision of the Deputy Zoning Commissioner dated February 23, 1983, granting a non-conforming use for the sale of produce and products thereof, with restrictions.

The Office of Law stipulated as to the existence of the nonconforming use but did require testimony to establish the exact nature of the use.

The Appellant produced Bernard Posner, who testified as to the continual use of the subject property as a produce stand since at least 1974. In 1974, the subject property was zoned BL. During the comprehensive zoning process of 1980, the subject property was rezoned RO. However, in 1980 and continuing to the present time, the subject property was and is being used as a produce stand.

It is apparent to this Board and this Board does determine, as a fact, that the subject property enjoys the status of a nonconforming use as the sale of produce and related products, in accordance with Petitioner's Exhibit #3, has existed and has been conducted on the subject property at least since 1974. Further, this Board is persuaded that the continued operation of a produce stand at the subject site will not adversely affect the health, safety, and general welfare of the community.

Having thus affirmed the decision of the Deputy Zoning Commissioner with respect to the nonconforming use, the Board next directs its attention to the restrictions imposed by the Deputy Zoning Commissioner.

The Deputy Zoning Commissioner imposed a total of nine (9) restrictions. A review of those restrictions clearly indicates that most of same were matters of law.

Marriott Corporation
Case No. 83-85-SPH

Consequently, this Board is persuaded and does find, as a matter of fact, that once a non-conforming use is established, so long as that use operates within the confines of the law, restrictions cannot be imposed.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 30th day of August, 1983, by the County Board of Appeals, ORDERED that the decision of the Deputy Zoning Commissioner, dated February 23, 1983, be AFFIRMED insofar as the determination of a nonconforming use, however, the nine (9) restrictions imposed by the Deputy Zoning Commissioner in said Order of February 23, 1983, be and hereby are RESCINDED.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hockett
William T. Hockett, Chairman

William R. Evans

Leroy B. Spurrier
Leroy B. Spurrier

D. S. THALER & ASSOCIATES, INC.
11 WARREN ROAD • BALTIMORE, MARYLAND 21208 • (301) 484-4100

DESCRIPTION TO
ACCOMPANY SPECIAL HEARING
FOR POSNER PROPERTY

Beginning for the same on the northeast side of Reisterstown Road 66 feet wide at a point located 110 feet more or less northwest of the centerline of Walgrove Road and running thence on said northeast side of Reisterstown Road, North 43°41'24" West 249.17 feet thence leaving Reisterstown Road, North 45°30'14" East 330.37 feet, thence South 43°41'24" East 253.00 feet, thence South 46°10'06" West 330.34 feet to the place of beginning.

Containing 1.90 acres of land more or less. Saving and excepting therefrom all that area presently zoned BL and containing approximately 1.02 acres more or less.

CIVIL ENGINEERS • SITE PLANNERS

Marriott
corporation

INTERNATIONAL
HEADQUARTERS

Marriott Drive
Washington, D.C. 20058

301/897-9000
TELEX: 8897
MARRCORP BHGA

NOTE TO ACCOMPANY DESCRIPTION TO ACCOMPANY SPECIAL HEARING

Please note that notwithstanding the fact that the attached plat and description thereof make reference to the Posner Property please be aware of the fact that Marriott Corporation is the fee owner of the property located in the Fourth Election District of Baltimore County, State of Maryland, which contains approximately 1.905 acres of land which is located at 607 Reisterstown Road. Pursuant to a Lease dated July 24, 1981 by and between Marriott Corporation and Bernard Posner, Marriott Corporation is leasing to Mr. Posner approximately 0.53 acres of the aforesaid land. The stand in question is located on a part of this 0.53 acres of land. Marriott Corporation is filing this Petition on the basis that it only desires that a determination be made that the subject stand constitutes a non-conforming use if such determination will not, given any rule, regulation or law, affect the operation of the Roy Rogers Restaurant which is located on another portion of the aforesaid 1.905 acres which is not being leased to Bernard Posner. This includes the fact that Marriott Corporation would not want to have the subject stand moved to its prior location, where a driveway is now located, since such subject stand would obstruct access, ingress and egress to and from the Roy Rogers Restaurant and would be in contravention of the aforesaid Lease.



County Board of Appeals of Baltimore County
Room 200 Court House (Hearing Room #218)
Cotson, Maryland 21204
(301) 494-3180

June 20, 1983

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. 83-85-SPH	MARRIOTT CORPORATION
	NE/s of Reisterstown Rd., 110' NW of the c/l of Walgrove Rd.
	4th District
	2/23/83 - D.Z.C.'s Order - GRANTED w/restrictions
	SPH--Use of a stand for the sale of produce
ASSIGNED FOR:	THURSDAY, AUGUST 18, 1983, at 10 a.m.
cc: Julius W. Lichter, Esq.	Counsel for Petitioner
Marriott Corp.	Petitioner
James Gide	Protestant
Edward King	"
Dale Warman	"
Donald Dietz	"
Marian Cooper	"
T.J. Bollinger, Esq.	Office of Law
J. Dyer	"
J. Hoswell	"
J. Jung	"
N. Gerber	"
W. Hammond	"

June Holman, Secy.

6/20/83 - Following were notified of hearing set for Thursday, Aug. 18, 1983, at 10 a.m.:

Julius Lichter, Esq.
Marriott Corp.
James Gide
Ed. King
Dale Warman
Donald Dietz
Marian Cooper
Tom Bollinger
J. Dyer
J. Hoswell
J. Jung
N. Gerber
W. Hammond

83-85-SPH

4th District

NE/s Reisterstown Rd., 110' NW of the c/l of Walgrove Rd.

Marriott Corp.

SIGN

Marriott
corporation

INTERNATIONAL
HEADQUARTERS

Marriott Drive
Washington, D.C. 20058

301/897-9000
TELE: 8897
MARRCORP BHGA

NOTE TO ACCOMPANY DESCRIPTION TO ACCOMPANY SPECIAL HEARING

Please note that notwithstanding the fact that the attached plat and description thereof make reference to the Posner Property please be aware of the fact that Marriott Corporation is the fee owner of the property located in the Fourth Election District of Baltimore County, State of Maryland, which contains approximately 1.905 acres of land which is located at 607 Reisterstown Road. Pursuant to a Lease dated July 24, 1981 by and between Marriott Corporation and Bernard Posner, Marriott Corporation is leasing to Mr. Posner approximately 0.53 acres of the aforesaid land. The stand in question is located on a part of this 0.53 acres of land. Marriott Corporation is filing this Petition on the basis that it only desires that a determination be made that the subject stand constitutes a non-conforming use if such determination will not, given any rule, regulation or law, affect the operation of the Roy Rogers Restaurant which is located on another portion of the aforesaid 1.905 acres which is not being leased to Bernard Posner. This includes the fact that Marriott Corporation would not want to have the subject stand moved to its prior location, where a driveway is now located, since such subject stand would obstruct access, ingress and egress to and from the Roy Rogers Restaurant and would be in contravention of the aforesaid Lease.

THE LAW OFFICES OF
STEINBERG, LICHTER, COLEMAN & ROGERS
305 N. CHESAPEAKE AVENUE, TOWSON, MD. 21204 (301) 371-0600

October 4, 1982

DE REPLY REFER TO

MELVYN A. STEINBERG
JULIUS W. LICHTER
EDWARD L. COLEMAN
RONALD F. ROGERS

Mrs. Jean M. H. Jung
Deputy Zoning Commissioner
Zoning Commissioner's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Special Hearing
Northeast side Reisterstown Road
110 feet Northwest of Walgrove Road
Marriott Corporation Petitioner
Case No. 83-85-SPH (Item #3)

Dear Mrs. Jung:

At the time of the hearing on the above captioned case, you inquired as to whether there was any legal data to support the position of the petitioner for the continuance of the non-conforming use. I would like to direct your attention to the following cases which I have photo copied and marked for your attention:

Nyburg v. Solmonson, 106 A.2d 483; and
Jahnigen v. Staley, 225 A.2d 277.

These cases are Maryland cases heard by the Court of Appeals of Maryland in 1954 and 1967 respectively. I forward these citations to you to substantiate the position of the petitioner to maintain the operation of the produce and allied products business is permitted as a non-conforming use so long as the nature and character of the use is unchanged and substantially the same facilities are used. Both of these cases indicate that non-conforming users can intensify their operations as long as those operations are not expanded.



Re: Petition for Special Hearing
Case No. 83-85-SPH (Item #3)

The evidence is uncontradicted that the use of the property was continuous as a commercial use and is unchanged since substantially the same facilities are being used.

Should you have any further questions, please do not hesitate to call.

Sincerely,

Julius W. Lichter

JWL:lsp

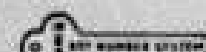
hicle immediately to the rear when there is opportunity to give such signal."

Testimony in behalf of Mrs. Clark was that no signal whatever was given of an intention to turn (Jenkins admitted this) or of an intention to stop or suddenly decrease speed (Jenkins, testifying for the plaintiff as a hostile witness, said he thought it was probable that his brake lights went on—that they worked before and after the accident—but this testimony could at best produce only a question for the jury in view of Christopher's testimony that there was no brake light signal, Bernard v. Roedel, supra, at page 23 of 225 Md., 168 A.2d 886; Cobourn v. Morrison, 227 Md. 96, 173 A.2d 589). The alleged sudden stop without warning occurred in the middle of a block, at a point where a stop or sudden decrease of speed or a turn is not a probability ordinarily to be anticipated. It is clear to us that whether Jenkins was or was not negligent was a matter for the jury to decide. Bernard v. Roedel, supra; Kantor v. Ash, 215 Md. 285, 137 A.2d 661, 69 A.L.R. 2d 595; Baltimore Transit Co. v. Prim, 215 Md. 398, 137 A.2d 700; Braden v. Lorenz, 206 Md. 500, 905-506, 112 A.2d 475; Sietland v. Gallo, 194 Md. 282, 71 A.2d 45; cf. Yellow Cab Co. v. Bonds, Md., 225 A.2d 41, and Hillebrecht v. Stein, Md., 225 A.2d 44, both just decided.

[4,5] The case must be remanded for a new trial. If the evidence as to agency is the same as it was in the first trial, there would have to be, as a matter of law, a finding of non-agency. Grier v. Rosenberg, 213 Md. 248, 254-255, 131 A.2d 737. If there was no agency, it would be immaterial to a determination of Jenkins' liability to Mrs. Clark whether Christopher was or was not contributorily negligent since his negligence would not bind the owner of the car. Price v. Miller, 165 Md. 378, 169 A. 809; 2 Restatement, Torts, § 485; 2 Restatement (Second), Agency, § 317. See also Silar v. Southcomb, 194 Md. 626, 630, 72 A.2d 11. Cf. Shutter v. Jomer, 244 Md. 131, 223 A.2d 141. If on

the new trial agency is found as a matter of law or by the trier of fact, Grier v. Rosenberg, supra, the issue of whether Christopher was following Jenkins too closely or was inattentive or otherwise did not act as a reasonably prudent man would have acted would have to be decided by the trier of fact.

Judgment reversed, with costs, and case remanded for further proceedings.



225 Md. 130
JAHNIGEN v. STALEY
v.
William W. STALEY et al.
No. 531.
Court of Appeals of Maryland.
Jan. 9, 1967.

Proceeding on appeal from a decree of the Circuit Court, Anne Arundel County, George Sachse, J., restricting nonconforming use of marina property fronting on creek. The Court of Appeals, Marbury, J., held that where, prior to comprehensive zoning ordinance placing marina property in agricultural classification, marina owners' predecessor had rented up to seven rowboats, increase in number of rowboats rented thereafter would be intensification of nonconforming use and not extension thereof.

Decree modified, and as modified affirmed.

1. Zoning C-331

Party has standing to contest rezoning decision by appeal to courts if decision affects his specific interest or property

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right in way different from that suffered by public generally, enlargement or extension of prior existing use.

2. Zoning C-371

Owners of property in close proximity to marina property had standing to institute suit to set aside decision rezoning marina property from agricultural use to heavy commercial use.

3. Zoning C-163

Basic premise underlying rezoning regulations is to restrict rather than expand nonconforming uses.

4. Zoning C-331

Intensification of nonconforming use is permissible so long as nature and character of use is unchanged and substantially the same facilities are used.

5. Zoning C-329

Construction of new pier and other facilities and rental of space for dockage or wet storage at facilities other than ninety-foot wharf and T, which were in existence prior to effective date of zoning ordinance placing property in agricultural classification, were invalid extensions of nonconforming use.

6. Zoning C-331

Where, prior to comprehensive zoning ordinance placing marina property in agricultural classification, marina owners' predecessor had rented up to seven rowboats, increase in number of rowboats rented thereafter would be intensification of nonconforming use and not extension thereof.

7. Zoning C-327

Right of landowner to continue same kind of use to which property was devoted on critical date does not confer on him right to subsequently change or add to that use a new and different one amounting to drastic

8. Zoning C-718

In suit seeking injunction limiting nonconforming use of marina property, testimony as to launching of boats was too vague to establish that such use was regularly made before enactment of comprehensive zoning ordinance placing marina property in agricultural classification or that it was carried on thereafter.

9. Zoning C-328

Twenty-five foot strip of land adjacent to marina property purchased subsequent to enactment of comprehensive zoning ordinance placing property in agricultural classification could not be set aside by owners for construction of new launching ramp.

10. Zoning C-323

Intention to use is not sufficient to establish nonconforming use.

11. Zoning C-768

In action seeking injunction limiting nonconforming use of marina property, testimony as to storage, repair and maintenance of boats other than those owned by predecessors in title was too vague and inconclusive to establish that such use was regularly made before date of enactment of comprehensive zoning ordinance placing property in agricultural classification.

Jerome F. Connell, Glen Burnie (Bieser & Connell, Glen Burnie, on the brief), for appellants.

Nicholas Goldsborough, Annapolis, for appellees.

Before HAMMOND, C. J., and MARBURY, OPPEHEIMER, BARNES and FINAN, JJ.

MARBURY, Judge.

This is an appeal from a decree of the Circuit Court for Anne Arundel County, Judge Sachse presiding, which restricted appellants' (William Jahnigen and wife) nonconforming use of their property, fronting on Broad Creek for approximately 263 feet, to the rental of seven rowboats and to the rental of space for the dockage or wet storage of boats at a wharf not exceeding ninety feet of over-all length and six feet in width together with a twenty-four foot long and six foot wide "T" at the end of the wharf. It was also decreed that the launching facility constructed by appellants was an unlawful expansion of a nonconforming use and that they had no right to maintain dry storage or to repair boats, other than the seven rowboats, on their property.

Appellants acquired the waterfront property, approximately four acres in the Third Election District of Anne Arundel County, by deed dated December 14, 1962, from Stanley H. Kirchenbauer and wife, who acquired their title in 1945. In the years prior to February 15, 1949, when the comprehensive zoning ordinance for the Third Election District of Anne Arundel County became effective, placing the property in an agricultural classification, the Kirchenbauers constructed (in 1946) a ninety foot long pier with a twenty-four foot T and ten slips. The zoning ordinance restricted any nonconforming use to those uses in effect prior to the date of its adoption. On July 6, 1951, they were issued a nonconforming use certificate on which was stated, "Hiring of Rowboats." During 1951, they rented out sixteen rowboats and ten slips. In 1952, they increased the slip rental to twenty, but cut down on the renting of rowboats. In that year the Kirchenbauers also built a 104 foot pier, without first securing a permit, parallel to and about thirty-two feet from the shoreline. This pier was connected to the left side of the ninety

foot pier about thirty-two feet from the shore. They built a garage in 1953 and a stable in 1954. They provided no toilet facilities except for those in their home, which they would allow others to use on occasions. Between 1947 and 1952 people would pull their boats upon the property in the winter until about April or May, at various places and at various times. Mr. Kirchenbauer occasionally put his own boats in the garage for repairs, but he did little boat repair work for others. He had no facilities for the launching of boats, and when he did launch them it would not always be at the same place. This was an occasional operation, a dozen times in about fifteen years, and this operation required men to make the boats down the hillside to the water.

In 1962 the Kirchenbauers purchased a twenty-five foot strip of land from a neighbor on the north side of the property, and appellants purchased the entire property from the Kirchenbauers in late 1962. In the advertisement of the property for sale, the advertisement of the property for sale, twenty-five boat slips and nine rowboats were mentioned. In May of 1963, William Jahnigen requested and received a permit to repair ice damage to the existing ninety foot pier with the T. When he applied for the permit, he misrepresented the ninety foot original pier as having been 130 feet, the last forty feet of which he said was damaged by ice and had to be replaced, but the forty feet of pier never existed. In August of that year, the Jahnigen's petitioned the Board of County Commissioners of Anne Arundel County to rezone 1.5 acres of their property from its agricultural use to heavy commercial use, primarily for the purpose of allowing sales of gasoline in connection with the operation of the marina that was already in existence on the property. On August 8, 1964, the Board of County Commissioners granted the petition, and later that month appellants requested and were granted a permit to extend the pier and to construct a travel lift ramp

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for the launching of boats, and gas pumps. In the construction under the permit of August 1963, appellants built two toilets and other improvements, and the pier they actually built here no relation in appearance, size or location to the one for which they received the permit. As the result of the rezoning, some of the appellants filed a bill of complaint in the Circuit Court for Anne Arundel County to set aside the rezoning. The bill of complaint also sought an injunction to limit the nonconforming use and to restrict the property in such a way that the Jahnigen's could only use it for the hiring of rowboats.

For the purpose of clarity, the court below divided the case into two parts. The first part concerned the question of whether the rezoning was valid, and the second part dealt with the extent of the existing nonconforming use. In the trial of the first part, the court below found the rezoning to be null and void. The appellants have not appealed from this finding. Prior to the hearing of the second part of the case on the merits, the appellants filed a motion raising preliminary objection to the right of the appellees to bring such an action. The motion was overruled and the court found in favor of the complainants after the trial on the merits. The appellants contend that the chancellor erred in overruling their motion and in imposing certain restrictions on the nonconforming use of the property.

[1] A party has standing to contest a rezoning decision by appeal to the courts if the decision affects his specific interest or property right in a way different from that suffered by the public generally. Alvey v. Hedin, 243 Md. 334, 221 A.2d 62; DuBois v. Crane, 240 Md. 180, 213 A.2d 40.

[2] It is evident from the record that the appellants are within the class as defined above "because their closeness to the marina property, their special problems with lights and noise as well as with the

refuse emanating from the operation of the marina, make the effect of this commercialization on them different from its effect upon members of the public generally." Alvey v. Hedin, supra, 241 Md. at page 339, 221 A.2d at page 64.

Mr. Edmund Birk, one of the protestants who owns the property adjacent to use Jahnigen property on the south side, testified that the cruisers which were moored at the Jahnigen property pumped their bilges and deteriorated his waterfront property, and that he would not swim in the creek due to the fact that the boats had toilet facilities.

Mr. Otis B. French, another protestant whose property is located 125 feet at the water line from the Jahnigen property, testified that due to the increased facilities and activities, the value of his property deteriorated considerably and that peace and quiet had departed. He testified that he was reluctant to swim in the creek because of the increased summer boat traffic which came very close to the front of his property and because of the increased junk and debris in the water, including beer cans, bottles, spoiled food and other refuse.

Mr. William Staley testified that the increased facilities had devalued his property, which is about 300 yards southwest from the appellants' property, directly across the water. He testified that he had been unable to sell his property, even though it had been on the market for ten months, because of the fact that the marina was operating directly across from his property. He also stated that an extremely bright light from the Jahnigen property shone into his home every night and that the Jahnigen workboats had covered the whole east end of the creek with an oil slick.

An expert real estate appraiser, Maurice C. Ogle, who was thoroughly familiar with the property, was called by the appellees; and he stated that the increased operations

of the appellants had an adverse effect on the value of the surrounding property.

Appellants argued that the amount of water area used by them was less than that used by the Kirchenbauers, the former owners, in that the former owners had several boats tied to buoys off the end of the T on the original ninety foot pier. The appellants contended that the construction of the additional pier facilities constituted a mere intensification of the nonconforming use as opposed to an expansion of the use.

The Anne Arundel County Code (1957 ed., as amended), Section 33-10, § 10, 1962, defines the nonconformance of a nonconforming use as the occupation of the same building area, measured in cubic feet, and the same ground area, or water area, measured in square feet, as was occupied on the effective date of the ordinance. Building area, ground area, and water area are to be considered separately and one may not be substituted for the other. The Kirchenbauers and the appellants increased the nonconformity, use of the piers from 648 square feet, which existed at the time of the effective date of the zoning ordinance, to 2,526 square feet. Whether or not the Jahnigen used less water area, the fact remains that the original nonconforming use was expanded by the extension of the original pier and by the construction of new piers and other facilities. The facts of this case are analogous to those in Orange County v. Grogan, 121 Cal.App.2d 442, 263 P.2d 321 (1953), where defendant, at the time he obtained a nonconforming use, used a field for the feeding of approximately thirty to fifty cattle. He later built permanent feed pens for 200 to 300 cattle. The court said in holding that this was an invalid extension of a nonconforming use:

"It is quite apparent that there was a material change in the condition of the use by the construction of the feeding pens described, by the building of permanent foundations for watering troughs,

and no doubt the number of cattle now confined in the limited quarters where cattle are being fattened for market by feeding the new formula, caused added noises, stench, and disagreeable odors, which disturbed the neighbors and school children. The facts found clearly demonstrate that the present use is such a formidable change and departure from the established use, both in magnitude and character, that it constitutes a wholly new and different use, and an unlawful enlargement or extension of a nonconforming use. . . . 262 P.2d at 323.

[3,4] The basic premise underlying zoning regulations is to restrict rather than expand nonconforming uses. Phillips v. Zoning Commissioner, 225 Md. 102, 169 A.2d 410. Grant v. Mayor and City Council of Baltimore, 212 Md. 361, 129 A.2d 363; Cobalt v. Frost, 186 Md. 623, 47 A.2d 613. However, an intensification of a nonconforming use is permissible so long as the nature and character of the use is unchanged and substantially the same facilities are used. Phillips v. Zoning Commissioner, supra; Nyburg v. Solomon, 205 Md. 159, 166 A.2d 483, 46 A.L.R.2d 1051. In Nyburg the area of the property which was under a prior nonconforming use as a parking area for a garage was not enlarged, but the volume of cars parked thereon was increased from a small number to about thirty to fifty. This was held to be a mere intensification of the nonconforming use, and the restrictions imposed by the zoning board limiting the space used for parking to ten vehicles at one time were struck down.

[5,6] In the case at bar, the chancellor limited the rental of rowboats to seven and restricted the rental of space for the dockage or wet storage of boats at the ninety foot pier with the twenty-four foot T at its end. He also found that in light of Section 35-38(a) (4) of the Anne Arundel County Code, supra, which provides that

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piers for private use are permitted in an agricultural zone only as necessary buildings or uses to the permitted residential use, the 104 foot pier, erected approximately thirty-two feet out from the bulkhead, built in 1952 and attached to the original ninety foot pier, was a reasonable necessary to the part of the appellants' property that was agricultural and for residential use. He ordered that the other piers erected by the appellants be removed. We agree that the construction of new pier and other facilities, and the rental of space for the dockage or wet storage at any facilities other than the ninety foot wharf and T, which were in existence prior to the effective date of the zoning ordinance, were invalid extensions of the nonconforming use. However, we hold that the rental of rowboats can not be so limited. Any increase in the number of rowboats rented would be an intensification of nonconforming use and would not be an extension. Nyburg v. Solomon, supra.

[7-10] The right of a landowner to continue the same kind of use to which the property was devoted on the critical date does not confer on him the right to subsequently change or add to that use a new and different one amounting to a drastic enlargement or extension of the prior existing use. Phillips v. Zoning Commissioner, supra. Appellants argued that the launching of boats by means of a travel lift and ramp was an intensification of the launching that was done by the Kirchenbauers. The evidence showed that only a dozen or more boats were launched in the years prior to the enactment of the ordinance. There was no permanent launching site nor structures to aid in the launchings. Boat launching was performed at no specific place during the years the Kirchenbauers owned the property, and it was so infrequent as not to have been part of the business. The testimony as to the launching of boats was too vague and inconclusive to establish that such use was regularly made before 1949, or that it was carried on thereafter. Boulevard Scrap Co. v.

City of Baltimore, 213 Md. 6, 130 A.2d 745; Daniels v. Board of Zoning Appeals, 205 Md. 56, 166 A.2d 57. The launching ramp was constructed on the twenty-five foot strip which the Kirchenbauers purchased in 1962. The appellants can not set aside that particular portion of their property and construct a launching ramp. Chayt v. Zoning Appeals Board, 177 Md. 426, 9 A.2d 747. Although the Kirchenbauers may have intended to provide such services attendant to a marina, such intention to use is not enough to establish a nonconforming use. Beyer v. City of Baltimore, 182 Md. 444, 34 A.2d 765; Chayt v. Zoning Appeals Board, supra.

[11] As to the storage of boats on the property, there was nothing in the record to show that the former owners allowed individuals other than themselves to store or repair boats on their property, other than at the shoreline, prior to the adoption of the zoning ordinance. After the ordinance was passed a few boats belonging to others were stored on the property, but again the number was insignificant. Also there was little repair work done on boats other than on the ones that were owned by the Kirchenbauers. Again the testimony as to the storage, repair and maintenance of boats other than those owned by the Kirchenbauers was too vague and inconclusive to establish that such use was regularly made before 1949. Boulevard Scrap Co. v. City of Baltimore, and Daniels v. Board of Zoning Appeals, both supra.

We affirm the decree of the chancellor in all respects except that portion thereof which restricted the rental, dry storage, repair or maintenance to the seven rowboats owned by the appellants, which is modified so as to permit the rental of rowboats which appellants might own and the storage, repair, and maintenance of those rowboats.

Decree modified, and as modified affirmed. Costs to be paid by appellants.

NYBURG v. SOLIMONSON et al.
No. 171.
Court of Appeals of Maryland.
June 22, 1964.

Proceeding involving garage owner's nonconforming use of property within residential district. The Board of Municipal and Zoning Appeals entered decision favorable to the garage owner but limited his use of open space before his garage to the parking and storage of not more than 10 vehicles at one time, and the garage owner appealed. The Baltimore City Court, Herman M. Moser, J., struck down the restriction imposed by Board, and a prostrate appealed. The Court of Appeals, Hammond, J., held that evidence sustained Board's finding that garage owner had a nonconforming use as to whole lot upon which garage was located, including the open space in front of garage, and that Board could not properly restrict the use of such open space to the parking and storage of not more than 10 automobiles at one time.

Order affirmed.

1. Parties C-38

Generally, the right to intervene is within discretion of trial court, measured in light of intervenor's interest in subject matter and issues raised by proceedings.

2. Appeal and Error C-38(2)

The exercise of discretion as to right of intervention generally is not subject to appeal, but it may be if action of court amounts to an abuse of discretion.

3. Municipal Corporations C-621.59

Where protestant against landowner's nonconforming use of property had vigorously participated in hearing before Board of Municipal and Zoning Appeals, and was entitled to appeal from decision of Board both as a person aggrieved and as a taxpayer, but protestant attack of the Board's decision by a late appeal and after it was apparent that appeal was to be dismissed.

4. Municipal Corporations C-621.46
Evidence justified finding of Board of Municipal and Zoning Appeals that garage owner, whose garage had been established in residential neighborhood for years before zoning ordinance became effective, had a nonconforming use as to the whole lot upon which the garage was located, including open space in front of the garage, and that the use was continuous, substantial and commercial.

5. Municipal Corporations C-621.40

Evidence before Board of Municipal and Zoning Appeals was insufficient to support protestant's claim that nonconforming use, by garage owner, of open space in front of his garage for unloading and distribution of automobiles was noxious or offensive by reason of emission of odor, dust, smoke, gas, fumes, vibration or noise, and thus constituted a forbidden second commercial use.

6. Municipal Corporations C-621(26)

A garage, a new car sales room and a truck distribution terminal are all permissible uses in a first commercial use district.

7. Municipal Corporations C-621(23)

A nonconforming use may be changed to a use of the same or a higher classification.

8. Municipal Corporations C-621(23)

Where garage owner had a nonconforming use of property for open space in front of his garage, property could properly be used for sale of new cars or as a truck distribution center, which uses are permissible in a first commercial use district.

B. Municipal Corporations C-60(129)

Where garage owner's nonconforming use of open space in front of his garage for parking automobiles increased when garage owner contracted with automobile manufacturer to use open space for storage of new automobiles preliminary to distribution to local dealers, such use of the property did not amount to an extension of a nonconforming first commercial use, but merely an intensification of a long continued use, and Board of Municipal and Zoning Appeals could not properly restrict the use of the open space to the parking and storage of not more than 10 automobiles at one time.

Lawrence I. Weissman, Baltimore, for appellant.

Donald N. Rothman, Baltimore (Gordon & Feinblatt, Baltimore, on the brief), for Sydney Selmon, appellee.

Before BRUNE, C. J. and DELA-PLAINE, COLLINS, HENDERSON and HAMMOND, JJ.

HAMMOND, Judge.

This appeal will end the current battle in a war of neighbors which has been raging intermittently since a garage was built and began operation in 1920 in the residential neighborhood of Baltimore. The present engagement is not an Appellate, may well turn out to be a Gettysburg.

The father of the individual appellee, who will be referred to as the appellee, built the one story brick garage, known as 2413-23 Linden Ave., 102 feet wide by 240 feet deep, in which were stored, serviced and repaired cars of nearby residents. Between the front of the garage and Linden Avenue is, as there has been always, an open area some 164 feet by 129 feet. In 1931, when the Baltimore City Zoning Ordinance became effective, the neighborhood was classified as a residential use district and the garage operations continued without change. At the time the garage was built, there were protests from the neighbors which were

pacified by the assurance that the open area, except that portion of it which comprised a paved U-shaped driveway from the garage to Linden Avenue, would be kept in grass, flowers and shrubs. For a while, this was because the open area was owned by the garage owner, but it became impractical because cars ran over it and parked in the open space. On one occasion, a call station and parking space for taxicabs was provided by the garage owner and the neighbors objected. Later, the owners endeavored to convert the garage into a distribution center for department store deliveries; this brought about renewed neighborhood protestation, and the desired use was turned down by the Board of Municipal and Zoning Appeals. No appeal was taken.

In 1950, the appellee made a contract with Nash-Kelvinator Co. to use the open space in front of the garage for the storage of new cars, preliminary to distribution to local Nash dealers. This use continued for some two years without objection, but in January, 1953, the appellant, who lives diagonally across the street from the garage, complained to the Bureau of Building Inspection that the open space was being used, in violation of the law, for the storage of up to fifty new motor vehicles. The appellee was notified of the complaint and, seeking to establish on the record that there existed a non-conforming use as to the whole lot of ground owned by him, applied for a permit to continue the use of the open space for the parking, storage and washing of motor vehicles, and for the sale of gasoline and accessories. We have held recently that this was a procedure justified by the Zoning Ordinance of Baltimore.

Board of Municipal and Zoning Appeals. Mayor and City Council of Baltimore, Md., 101 A.2d 526. The application was denied, and an appeal was taken to the Board of Municipal and Zoning Appeals. After a hearing at which the appellant was in the van against recognition and continuation of the non-conforming use, the Board, on February 24, 1953, held that the appellee had a non-conforming use for the sale of gasoline and accessories and for the parking and storage of vehicles, but restricted the use of the open area in front of the garage to the extent of the use in 1931, and held

act with in space of garage of appellant, but he lives in the building as being the storage of the cars. The lot and at there to the applied of the age and the sale are held are justifi- cation in the Appeals. Appellant was notified of the Board, appellee sale of parking of the garage and held

that not more than ten vehicles could be stored at any one time upon the lot.

The appellee, in due time, petitioned the Baltimore City Court to entertain an appeal from so much of the decision of the Board as limited the use to not more than ten vehicles. The court ordered the appeal to be entered and the record sent up. After the time allowed for the taking of an appeal from the Board to Court, the appellant filed an appeal from the Board's order of February 24, in the Baltimore City Court. Subsequently, this appeal was dismissed by that court because it was filed too late, and no appeal was taken to this Court.

Some six weeks after the time for an appeal had passed, the appellant filed a petition in the Baltimore City Court in the appeal which had been taken by the appellee, which sought leave to intervene, and file an answer.

On the same day, the court ordered the intervention, and thereupon, the appellant filed an answer in which he alleged that any use of the garage premises, other than residential use, violated the Zoning Ordinance, that no non-conforming use existed as to the open space in front of the building, that if such use ever existed, it had been abandoned, that the 1947 effort of the appellee to use the garage as a distribution center was *res judicata* as to the non-existence of the non-conforming use of the open space, and finally, that even if there existed a non-conforming use of the open space, its present use: " * * * as an interstate trucking depot for new automobiles * * * is offensive because of the odor, dust, gasoline fumes, vibration and noise which result. The prayer of the answer was that the court would eliminate entirely: " * * * a non-conforming use of the Petitioner, in said open space." The appellee, several days later, filed a petition to strike the order making the appellant a party defendant, on the ground that the latter had filed an untimely appeal from the order of the Board of February 24, which he now sought to attack as an intervenor. The trial court reserved decision on the right of the appellant to intervene until a hearing on the merits. After such hearing, the court passed its or-

der, holding: (1) that the action of the Board in finding that there existed a non-conforming use for parking, storing and the repair of motor vehicles in the garage building and for the use of the entire open space in front of the said building for the sale of gasoline, oil and accessories and for parking and storing of motor vehicles is supported by substantial evidence; (2) that the action of the Board which sought to restrict the use of the open space: " * * * to that use which existed in 1931, namely, storage of not more than ten cars or trucks * * * is improper as a matter of law, since it amounted to an attempted prohibition of a legally valid intensification of use; (3) that the appellant, Sidney Nyberg, was not entitled, under the facts of the case, to intervene as a defendant, having taken a late appeal from the decision of the Board of which he now complains.

[1-3] In the briefs and argument here, the parties collide first, and head on, as to whether the court below was right in refusing the appellant leave to intervene as a defendant. The appellant says that the refusal of intervention and refusal to rule on the issue raised by him constituted reversible error. The appellee counters that if one is dissatisfied or aggrieved by the decision of the Zoning Board, he must appeal in due time and may not, by intervention, after the time for appeal has passed, seek to secure affirmative relief. The appellee says further that if appellant be permitted to intervene, he must seek only to uphold the decisions of the Board. Generally, the right to intervene is within the discretion of the trial court measured in the light of the intervenor's interest in the subject matter and the issues raised by the proceedings. The exercise of discretion as to the right of intervention, generally is not subject to appeal; it may be if the action of the court amounts to an abuse of discretion. Conroy v. Southern Maryland Agricultural Ass'n, 165 Md. 494, 169 A. 802; Soia v. Radio-Kelvin-Orpheum Corp., 163 Md. 398, 163 A. 696; Miller's Equity Procedure, Sec. 77-81; and Bauer v. Hamill, 188 Md. 553, 53 A.2d 379. The general

has been applied in zoning cases. In several, this Court has not questioned the action of the lower court in permitting intervention of a neighbor taxpayer, as a party defendant, seeking to uphold the decision of the Board. See Fritz v. City of Baltimore, 202 Md. 265, 96 A.2d 41; Deyer v. Mayor and City Council of Baltimore, 182 Md. 444, 34 A.2d 765; City of Baltimore v. Cohn, Md. 185 A.2d 482. On the other hand, we have approved the action of the lower court in refusing intervention. In Palmist Baptist Church v. Board of Zoning Appeals, 175 Md. 7, 199 A. 815, the appellants, a month after the Baltimore City Court decided a zoning case, filed a petition in that court to reopen the case on the allegation that they had new and additional facts which should be brought to the court's attention. Their petition was dismissed by the lower court and their appeal to this Court from that action was also dismissed. In Mayor and City Council of Baltimore v. Shapiro, 187 Md. 623, 51 A.2d 273, we accepted without question the action of the lower court in refusing permission to protesters to intervene for purposes of appeal to this Court after the decision of the lower court. In Windsor Hills Improvement Ass'n v. Mayor and City Council of Baltimore, 195 Md. 333, 73 A.2d 531, 535, an association appealed to the Baltimore City Court from the decision of the Board, and two months after the time for appeal had expired, one Kairy, a taxpayer and president of the association, was granted leave to intervene as a party plaintiff. The court below dismissed the appeal of the association on the ground that it was not a person nor a taxpayer who was aggrieved or interested. Judge Minkell, in speaking of the lower court's permission to Kairy to intervene, said for the Court: "On the record Kairy is a taxpayer and a party in the lower court and therefore entitled to appeal to this court. We think, however, that his petition for intervention after expiration of the time for appeal could not validate the Association's attempt to appeal and should have been denied." In the case before us, it is clear that the appellant, who had vigorously participated in the hearing

before the Board, was entitled to appeal under the provisions of the Zoning Act and the Zoning Ordinance, both as a person "aggrieved" by a decision of the Board, and as a "taxpayer". He could have made direct attack on the Board's decision and order and, in fact, did so, but by a late appeal. It was only after it was apparent that the appeal was to be dismissed, that the appellant sought by intervention to obtain the relief which he had sought by appeal but lost by his failure to act in time. The court below permitted him to intervene on his *ex parte* application and to participate in the case, ruling only after the case had been fully heard and as part of the final order, that he was not entitled to intervene. Essentially then, the action of the lower court was to forbid the intervention of the appellant for the purposes of appeal to this Court. In both procedure and substance, the case is not unlike Conroy v. Southern Maryland Agricultural Ass'n, supra, and the procedure condemned in Windsor Hills Improvement Ass'n v. Mayor and City Council of Baltimore, supra. We think that the action of the lower court was fully justified under the circumstances of the case and well within the exercise of its sound discretion.

This finding would ordinarily lead to a dismissal of the appeal, since the Mayor and City Council acquiesced in the decision of the lower court and the elimination of Sidney Nyberg would leave no one with standing as an appellant. If the appeal were dismissed, the order of the lower court would, of course, stand and under it, the appellee would have a non-conforming use in the open space without any restrictions as to the number of cars which were to be parked or stored thereon. We feel, however, as the case comes to us, that it would be appropriate to reach the same result by affirmance of the order appealed from. This is because the case was fully argued on the merits in the court below and the appellant was not excluded until and as part of the final decision. The merits were fully briefed and argued by both sides in this

to appeal Act a person and, made direct attack on the Board's decision and order and, in fact, did so, but by a late appeal. It was only after it was apparent that the appeal was to be dismissed, that the appellant sought by intervention to obtain the relief which he had sought by appeal but lost by his failure to act in time. The court below permitted him to intervene on his *ex parte* application and to participate in the case, ruling only after the case had been fully heard and as part of the final order, that he was not entitled to intervene. Essentially then, the action of the lower court was to forbid the intervention of the appellant for the purposes of appeal to this Court. In both procedure and substance, the case is not unlike Conroy v. Southern Maryland Agricultural Ass'n, supra, and the procedure condemned in Windsor Hills Improvement Ass'n v. Mayor and City Council of Baltimore, supra. We think that the action of the lower court was fully justified under the circumstances of the case and well within the exercise of its sound discretion.

lead to a Mayor and decision of ination of one with the appeal over Court, the armng vs restrictions were to be feel, how- at it would e result by from. This a guard on and the ap- and as part were fully des in this

Court and they joined in asking that we pass on the merits.

[4] We agree with the holding of the lower court that there was ample evidence before the Board to justify a finding that the appellee had a non-conforming use as to the whole lot owned by him on Linden Avenue, including the open space in front of the garage. The protesters themselves admit that cars were parked and stored on part of the open area, although they say that they were few in number and that the occurrence was infrequent. The appellee, and witnesses who supported him, gave testimony which fully warranted a finding that all of the area from 1925 on, at least, had been used for the parking, storing, washing and simulating of cars and that part had been used for the sale of gasoline from pumps. One witness said that he and thirty or forty other chauffeurs regularly parked their own and their employers' cars on the open area and that this had been going on for thirty years. The witness referred to occasions when he had gone to Florida and left his car on the lot for weeks and said that others had done the same thing. There was testimony that when the garage was full, persons desiring to park their cars, would be given claim checks and the cars left on the lot until they could be put into the garage. The evidence fully supports a finding that the use was continuous, substantial and commercial. The use meets the test adopted in Chayt v. Board of Zoning Appeals, 177 Md. 426, 434, 9 A.2d 247, of an existing use, that is to say, the utilization of the premises so that they are known in the neighborhood as being employed for the conduct of a given business. The appellant seeks to show that in the 1917 proceedings before the Board of Municipal and Zoning Appeals, the appellee did not make the same claim as to the use of the open space that he now makes. It is clear from the record of those proceedings that the emphasis then was on the change to be made in the use of the building, the open space not being involved, but that the appellee gave brief testimony as to the use of the open space which did not vary signifi-

cantly from his 1953 testimony. Abandonment of the use at the time the garage was leased for four years is claimed but not seriously relied on by the appellant, and the evidence does not support the claim.

[5-8] The appellant seeks to show that the use of the property for the unloading and distribution of Nash cars constitutes a nuisance which is offensive because of noise, dust and fumes. There was testimony from a number of neighbors that this claim was either greatly exaggerated or inaccurate. The appellant carries his contention as to this as far as to say that the use of the open space should be classified as second commercial because it is used for a trade, industry or use: " * * * that is noxious or offensive by reason of the emission of odor, dust, smoke, gas, fumes, vibration or noise," under the provisions of Section 8 (d) 20 of the Baltimore City Zoning Ordinance, and so constitutes a forbidden second commercial use. Neither the Board nor the court on appeal, felt that the claim was justified on the evidence. As a matter of law, a garage, a new car sales room and a true distribution terminal are all permissible uses in a first commercial use district. See City of Baltimore v. Cohn, supra. A non-conforming use may be changed to a use of the same or a higher classification. Thus, if the appellee had a non-conforming first commercial use of the open space in front of the garage, as we hold that he did, the property could have been used for the sale of new cars or as a truck distribution center. See Roach v. Board of Zoning Appeals, 175 Md. 1, 199 A. 812. The noise, dust and fumes normal to the conduct of any such businesses certainly would not be within the ban of Section 8 (d) 20 of the Ordinance. The fact that the first commercial use is a non-conforming one in a residential district, does not compel a test under the ordinance more severe than that which would be applied if the industry, trade or use were being carried on in a first commercial district. If any of the activities of the appellee violate the laws of the State or of the City, because of the time at which, or the manner in which, the

are carried out, the appellant and the other neighbors have the remedies provided for the violations of such laws.

[9] We come then to the claim most seriously relied on by the appellant—that the Board was justified in restricting the use of the open space to the parking and storage of not more than ten cars at one time because the present use of the open space constitutes a prohibited change of use, or as the Board put it, that the use of this lot for parking and storage has increased, beginning in 1950, and: " * * * has changed from parking of cars to practically a new car agency * * *". As we have pointed out, a new car agency is a permissible first commercial use and the appellee, having the right to park and store motor vehicles on the open space, would have the right to use it as a new car agency. The appellant's contention really is that the appellee's use of the property amounts to an extension of a non-conforming first commercial use, and that the Board was justified in refusing such extension on the strength of cases such as Colati v. Jirout, 180 Md. 652, 47 A. 2d 613; Cleland v. Mayor and City Council of Baltimore, 198 Md. 440, 84 A.2d 49; and Fritz v. City of Baltimore, supra. We think that the case before us plainly is different from these cases in that here there is not an extension but merely an intensification of a long continued non-conforming use. In Green v. Garrett, 192 Md. 52, 43 A.2d 326, there was a suit to enjoin the Department of Recreation and Parks and a professional baseball club from entering into an agreement for the use of the Baltimore stadium for the playing of professional baseball at night. Before the Zoning Ordinance was passed in 1931, the stadium had been built and used for professional football games and at least one baseball game. This Court held that it constituted a non-conforming use. It distinguished Colati v. Jirout, supra, and said that it has never been held that: " * * * mere frequent use of a property for a purpose which does not conform to the ordinary restrictions of the neighborhood is an extension of an infrequent use of the same building

for a similar purpose. We do not think such a contention is tenable." [192 Md. 52, 63 A.2d 330.] It was held that although there was no doubt that the game played at the stadium had produced a use greatly in excess of the former use, that intensification was not an extension within the meaning of the Zoning Ordinance.

We think that the present case is controlled by the principle of the Green case and that the court below was right in striking down the restriction which the Board had placed on the use of the open space in front of the garage, and in affirming otherwise the findings of the Board.

Order affirmed, with costs.



MUTUAL CHEMICAL CO. OF AMERICA et al.

PINKNEY, No. 165.

Court of Appeals of Maryland, June 24, 1954.

Proceeding for compensation under the Workmen's Compensation Act for permanent injury to claimant's nose as the result of an occupational disease. From a judgment of the Superior Court of Baltimore City, Michael J. Manley, Jr., for claimant on his appeal from the Industrial Accident Commission's order disallowing the claim as not filed within the time prescribed by the statute, claimant's employee and the surety appealed. The Court of Appeals, Collins, J., held that the claim was barred by the statute of limitations as a matter of law, where claimant admitted that he knew his trouble was caused by his occupation at the time of his discharge by the em-

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
TOWSON, MARYLAND 21204

-Go

Nicholas B. Commodari

Chairman

MEMBERS

Bureau of Engineering

Bureau of Planning

Department of Traffic Engineering

State Roads Commission

Bureau of Fire Prevention

Health Department

Project Planning

Building Department

Board of Education

Zoning Administration

Industrial Development

19

September 15, 1982

Julius W. Lichter, Esquire
305 W. Chesapeake Avenue
Suite 113
Towson, Maryland 21204

RE: Case #83-85-SFH (Item No. 3)
Petitioner-Mariott Corporation
Special Hearing Petition

Dear Mr. Lichter:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following 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 suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

Nicholas B. Commodari
Chairman

Zoning Plans Advisory Committee

NEB:ach

Enclosures

cc: D.S. Thaler & Assoc., Inc.
11 Warren Road
Baltimore, Maryland 21208



BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.
DIRECTOR

August 9, 1982

Mr. William E. Hammond
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #1 (1982-1983)
Property Owner: Marriott Corporation
N/ES Reisterstown Rd. 110' N/W from centerline
of Walgrove Rd.
Acres: 1.02 District: 4th

Dear Mr. Hammond:

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 in conjunction with the Zoning Advisory Committee review of this property in connection with Item 8 of Zoning Cycle III (April-October 1972).

Baltimore County highway and utility improvements exist or are as secured by Public Works Agreement 48102, executed in conjunction with the development of this site "Roy Rogers Restaurant (Posner Property)", BLD. 1576-70 (Project 80048).

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this item 3 (1982-1983).

Very truly yours,

Robert A. Morton, P.E., Chief
Bureau of Public Services

RAM:EAM:FWR:ss

cc: Jack Wimbley
Robert Covahey

7-WW Key Sheet
58 NW 39 & 40 Pos. Sheets
NW 15 J Topo

48 Tax Map

Attachment

Baltimore County, Maryland
Department of Public Works

COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21204

April 13, 1972

Bureau of Engineering
ELLENWORTH N. DIVER, P.E., CHIEF

Mr. Oliver L. Myers, Chairman
Zoning Advisory Committee
County Office Building
Towson, Md. Land 21204

Re: Item #8 (Cycle April - October 1972)
Property Owner: Bernard and Rosalina Posner
N/ES Reisterstown Rd., 160' S/E of Chartley Blvd.
Present Zoning: D.R. 3.5 and D.R. 15
Proposed Zoning: Reclassification to B.R.
District: 4th
No. Acres: 2.21 Acres

Dear Mr. Myers:

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.

Highways

Reisterstown Road is a State Road; therefore, all improvements, intersections and entrances on this road will be subject to State Highway Administration requirements.

Storm Drains

The petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisance or damage to adjacent properties, especially by the concentration of curbs a waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the petitioner.

Public storm drainage facilities are required between the existing State Highway Administration system discharging into this property and the existing Baltimore County system outfalling the drainage from this property, in accordance with the standards of the Department of Public Works.

Sanitary drainage facilities serving only areas within the site do not require construction under a County contract. Such facilities are considered private and therefore must conform to the County Plumbing and Building Codes.

Reisterstown Road is a State Road; therefore, drainage requirements as they affect the road come under the jurisdiction of the Maryland State Highway Administration.

Mr. Oliver L. Myers, Chairman
Zoning Advisory Committee
Page 2
April 13, 1972

Re: Item #8 (Cycle April - October 1972)

Sediment Control

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings below this property. Sediment control is required by State Law. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Water

Public water facilities are available to benefit this property.

Supplementary fire hydrants and improvements to the public system may be required for adequate protection.

Service within the site from the public system must be in accordance with the Baltimore County Building, Plumbing and Fire Prevention Codes. The service connection to the meter shall be in accordance with the standards of the Baltimore County Department of Public Works.

Sanitary Sewer

Public sanitary sewerage can be made available to serve this property by constructing a public sanitary sewer extension from the existing 8-inch public sanitary sewer in Walgrove Road.

Right-of-way is required through this property for construction and maintenance of public sanitary sewerage. The Petitioner is responsible for the establishment of the right-of-way, and the conveyance thereof, to Baltimore County at no cost to the County.

The Petitioner is entirely responsible for the construction of his onsite private sanitary sewerage, which must conform with the Baltimore County Plumbing Code.

These comments reflect the requirements for development in accordance with the proposed unimproved use. Development, under the existing or proposed zoning, with subdivision may require additional public facilities.

Very truly yours,
William H. Diver
WILLIAM H. DIVER, P.E.
Chief, Bureau of Engineering

END:EAM:CMK:es

NW 15 J Topo Sheet
T-M Key Sheet
58 NW 39, 48 NW 40 Position Sheets
48 Tax Map

Maryland Department of Transportation

Lewis K. Bridwell
Secretary
M. S. Caltrider
Administrator

July 14, 1982

Mr. William Hammond
Zoning Commissioner
County Office Bldg.
Towson, Md. 21204

Re: ZAC Meeting of 7-6-82
Item: #3
Property Owner: Marriott Corporation
Location: N/E side Reisterstown Rd. (Route 140) 110' N/W from centerline of Walgrove Rd.
Existing Zoning: BL & R-o
Proposed Zoning: Special
Hearing to approve a use of a stand for the sale of produce, products thereof and flowers as a non-conforming use.
Acres: 1.02
District: 4th

Attention: Mr. N. Commodari

Dear Mr. Hammond:

On review of the revised site plan of March 29, 1982, and field inspection, the State Highway Administration finds the plan generally acceptable.

However, the State Highway Administration strongly recommends that parking be prohibited and discouraged within the existing entrance to the south.

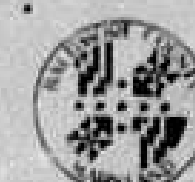
Proper signing within the south entrance and a designated area for produce parking only would help greatly.

Very truly yours,
Charles Lee
Charles Lee, Chief
Bureau of Engineering
Access Permits
By: George Wittman

CL:GW:vid

cc: Mr. J. Wimbley

My telephone number is (301) 659-1350.
Teletypewriter for impaired hearing or speech
383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free
P.O. Box 717 / 707 North Calvert St., Baltimore, Maryland 21203 - 0717



BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204
825-7310

PAUL H. REINCKE
CHIEF

September 1, 1982

Mr. William Hammond
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Marriott Corporation

Location: NE/S Reisterstown Road 110' N/W from centerline of Walgrove Road

Item No.: 3

Zoning Agenda: Meeting of July 6, 1982

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" 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 approved road in accordance with Baltimore County Standards 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 _____ EXCEEDS the maximum allowed by the Fire Department.
- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- () 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 "Life Safety Code", 1976 Edition prior to occupancy.
- () 6. Site plans are approved, as drawn.
- (X) 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWED: *Paul H. Reincke* Planning Group
Special Inspection Division

Noted and

Approved: *George M. Wiegand* Fire Prevention Bureau

JH/mb/cn



BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3900

August 9, 1982

TED ZALUSKI, JR.
DIRECTOR
Mr. William E. Hammond, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item # 3 Zoning Advisory Committee Meeting July 6, 1982

are as follows:

Property Owner: Marriott Corporation
Location: NE/S Reisterstown Road 110' N/W from centerline of Walgrove Road
Existing Zoning: BL & R-o
Proposed Zoning: Special

Acres: 1.02
District: 4th

The items checked below are applicable:

- X A. All structure shall conform to the Baltimore County Building Code 1981/ Council Bill 1-82 and other applicable Codes.
- X B. A building/_____ permit shall be required before beginning construction.
- C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/is not required.
- X D. Commercial: Three sets of construction drawings and anchorage of building against wind overturn.
- E. In wood frame construction an exterior wall erected within 6' of an adjacent lot line shall be of one hour fire resistive construction, an opening permitted within 1'-0" of lot line. A fire wall is required if construction is on the lot line. See Table 401, line 2, Section 1407 and Table 1403.
- F. Requested variance conflicts with the Baltimore County Building Code, Section/_____
- G. A change of occupancy shall be applied for, along with an alteration permit application, and three required sets of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal.
- H. Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that, the structure for which a proposed change in use is proposed can comply with the light/area requirements of Table 505 and the required construction classification of Table 401.
- I. Comments

NOTE: These comments reflect only on the information provided by the drawings submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired additional information may be obtained by visiting Room #122 (Plans Review) at 111 West Chesapeake Ave., Towson.

Very truly yours,

Charles E. Burnham
Charles E. Burnham, Chief
Plans Review

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: July 8, 1982

Mr. William E. Hammond
Zoning Commissioner
Baltimore County Office Building
1111 West Chesapeake Avenue
Towson, Maryland 21204

Z.A.C. Meeting of: July 6, 1982

RE: Item No: 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12
Property Owner:
Location:
Present Zoning:
Proposed Zoning:

District:
No. Acres:

Dear Mr. Hammond:

All of the above have no bearing on student population.

Very truly yours,
W. J. Petrowich
W. J. Petrowich, Assistant
Department of Planning

WJP/bp

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

William E. Hammond, Zoning Commissioner

TO: Office of Planning and Zoning

Date: September 10, 1982

FROM: Ian J. Forrest

SUBJECT: Zoning Variance Items

The Baltimore County Department of Health has reviewed the following zoning variance items, and has no specific comments regarding same:

- Item # 3 - Marriott Corporation
- Item #24 - Andrew & Maria Styka
- Item #25 - Samuel J. Salvo
- Item #27 - Virginia L. Baker, et al
- Item #28 - Villa Maria, Incorp.
- Item #29 - Wade J. & Joan B. Webster
- Item #30 - Stanley Larry Pomeroy
- Item #31 - Glenn C. & Karen L. Snyder
- Item #32 - Clay Stanbaugh
- Item #33 - The White Marsh Joint Venture
- Item #34 - Preston G. & Ann D. Shelton
- Item #36 - Gary D. & Leslie P. Plotnick
- Item #43 - Jay I. & Ellen Morstein

Ian J. Forrest
Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

IJP/fth



BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS
DIRECTOR

August 25, 1982

Mr. William Hammond
Zoning Commissioner
County Office Building
Towson, Maryland 21204

RE: ZAC Meeting of July 6, 1982

Dear Mr. Hammond:

The Department of Traffic Engineering has no comment for items number 1, 2, 3, 5, 6, 7, 9, 10, 11 and 12.

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Engineering Associate II

MSF/tlj

PETITION FOR SPECIAL
HEARING
4th District Board
SCHOOL: Public
LOCATION: Northeast side of Reisterstown Road, 110' N. from centerline of the intersection of Walgrove Road
DATE & TIME: Thursday, September 23, 1982 at 10:00 A.M.
PUBLIC HEARING: Room 106, County Office Building, 1111 W. Chesapeake Avenue, Towson, Maryland
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing.
Petition for Special Hearing under Section 100.3 of the Baltimore County Zoning Regulations. To determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the use of a stand for the sale of produce, products thereof and flowers as a non-conforming use, as shown on the attached and to accompany Special Hearing pursuant to Section 100.3.
All that parcel of land is the Fourth District of Baltimore County. Beginning for the same on the Northeast side of Reisterstown Road 66 feet wide at a point located 110' feet from the intersection of the intersection of Walgrove Road and running thence on said northeast side of Reisterstown Road, North 40° 41' 30" West 268.17 feet thence leaving Reisterstown Road, North 40° 41' 30" West 268.17 feet, thence South 40° 41' 30" East 268.17 feet, thence South 40° 41' 30" East 268.17 feet to the place of beginning.
Containing 1.02 acres of land more or less. Said parcel is presently zoned BL & R-o and containing approximately 1.02 acres more or less. Being the property of Marriott Corporation, as shown on the plan filed with the Zoning Department, Hearing Date: Thursday, September 23, 1982 at 10:00 A.M.
Public Hearing: Room 106, County Office Building, 1111 W. Chesapeake Avenue, Towson, Maryland
By Order of
WILLIAM E. HAMMOND,
Zoning Commissioner
of Baltimore County
Sept. 8

DUPLICATE CERTIFICATE OF PUBLICATION

TOWSON, MD., September 2, 1982

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., ~~2993-29-2993~~ ~~one time~~ ~~successive weeks~~ before the ~~23rd~~ day of ~~September~~ 1982, the first publication appearing on the ~~2nd~~ day of ~~September~~ 1982.

THE JEFFERSONIAN

Charles E. Burnham
Charles E. Burnham, Manager

Cost of Advertisement, \$.....

REISTERSTOWN COMMUNITY TIMES Office of The Carroll County Times

Westminster, Md., Sept. 2, 1982

THIS IS TO CERTIFY that the annexed, P.O. #27027 Reg. 1. 38117

was published for one successive weeks previous to the 2nd day of Sept. 1982, in The Carroll County Times a daily

newspaper published in Westminster, Carroll County, Maryland.

REISTERSTOWN COMMUNITY TIMES
THE CARROLL COUNTY TIMES

Per: Debra Clark
BOOKKEEPER

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

83-85-SPH

District: 4th Date of Posting: Sept 3, 1982

Posted for: Special Hearing

Petitioner: Marriott Corporation

Location of property: N.E. of Reisterstown Road, 1.11' N.W.

of the intersection of Walgrave Road

Location of Signs: N.E. side of Reisterstown Road, adjacent

1.50' North west of Walgrave Road

Remarks:

Posted by: [Signature] Date of return: Sept 10, 1982

Number of Signs: 1

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: William E. Hammond
Zoning Commissioner

FROM: Norman E. Gerber, Director
Office of Planning and Zoning

Date: August 31, 1982

SUBJECT: Zoning Petition No. 83-85-SPH
Marriott Corporation

This office does not usually comment on a request to determine non-conforming use status; however, It would appear that the relocation of the produce stand would preclude a finding of non-conformance.

[Signature]
Norman E. Gerber,
Director of Planning and Zoning

NEG:JGHslc

cc: Arlene January
Shirley Hess

83-85-SPH

Marriott
Corporation

609 Reisterstown Rd Lot 17
S. Side

1250 monthly

Name: Allen Parker

Home: Rev 175 Rd. P.O. Box 175

Phone: 833-4785 Shop: 833-2416

Date started: May 1st 1974

Date Due	Amount	Paid	Date	Bal.
May 1st 1974	1250	1250		
Jun 1st 1974	1250	1250	6/1/74	
Jul 1st 1974	1250	1250	7/1/74	
Aug 1st 1974	1250	1250	8/1/74	
Sep 1st 1974	1250	1250	9/1/74	
Oct 1st 1974	1250	1250	10/1/74	
Nov 1st 1974	1250	1250	11/1/74	
Dec 1st 1974	1250	1250	12/1/74	
Jan 1st 1975	300	300	1/1/75	
Feb 1st 1975	300	300	2/1/75	
Mar 1st 1975				
Apr 1st 1975				
May 1st 1975				
Jun 1st 1975				
Jul 1st 1975				
Aug 1st 1975				
Sep 1st 1975				
Oct 1st 1975				
Nov 1st 1975				
Dec 1st 1975				

1975 609 Reisterstown Rd.
3 side lot
and 1st floor South
no corner

300 monthly
Allen Parker

Home - Box 175 - P.O. Reisterstown
Phone - 833-4785
Shop - 833-2416

Date Due	Amount	Comm.	Date	Bal.
May 1st	300.00	300.00	5/1/75	
Jun 1st	300.00	300.00	6/1/75	
Jul 1st	300.00	300.00	7/1/75	
Aug 1st	300.00	300.00	8/1/75	
Sep 1st	300.00	300.00	9/1/75	
Oct 1st	300.00	300.00	10/1/75	
Nov 1st	300.00	300.00	11/1/75	
Dec 1st	300.00	300.00	12/1/75	
Jan 1st	300.00	300.00	1/1/76	
Feb 1st	300.00	300.00	2/1/76	
Mar 1st	300.00	300.00	3/1/76	
Apr 1st	300.00	300.00	4/1/76	
May 1st	300.00	300.00	5/1/76	
Jun 1st	300.00	300.00	6/1/76	
Jul 1st	300.00	300.00	7/1/76	
Aug 1st	300.00	300.00	8/1/76	
Sep 1st	300.00	300.00	9/1/76	
Oct 1st	300.00	300.00	10/1/76	
Nov 1st	300.00	300.00	11/1/76	
Dec 1st	300.00	300.00	12/1/76	
Jan 1st	300.00	300.00	1/1/77	
Feb 1st	300.00	300.00	2/1/77	
Mar 1st	300.00	300.00	3/1/77	
Apr 1st	300.00	300.00	4/1/77	
May 1st	300.00	300.00	5/1/77	
Jun 1st	300.00	300.00	6/1/77	
Jul 1st	300.00	300.00	7/1/77	
Aug 1st	300.00	300.00	8/1/77	
Sep 1st	300.00	300.00	9/1/77	
Oct 1st	300.00	300.00	10/1/77	
Nov 1st	300.00	300.00	11/1/77	
Dec 1st	300.00	300.00	12/1/77	
Jan 1st	300.00	300.00	1/1/78	
Feb 1st	300.00	300.00	2/1/78	
Mar 1st	300.00	300.00	3/1/78	
Apr 1st	300.00	300.00	4/1/78	
May 1st	300.00	300.00	5/1/78	
Jun 1st	300.00	300.00	6/1/78	
Jul 1st	300.00	300.00	7/1/78	
Aug 1st	300.00	300.00	8/1/78	
Sep 1st	300.00	300.00	9/1/78	
Oct 1st	300.00	300.00	10/1/78	
Nov 1st	300.00	300.00	11/1/78	
Dec 1st	300.00	300.00	12/1/78	
Jan 1st	300.00	300.00	1/1/79	
Feb 1st	300.00	300.00	2/1/79	
Mar 1st	300.00	300.00	3/1/79	
Apr 1st	300.00	300.00	4/1/79	
May 1st	300.00	300.00	5/1/79	
Jun 1st	300.00	300.00	6/1/79	
Jul 1st	300.00	300.00	7/1/79	
Aug 1st	300.00	300.00	8/1/79	
Sep 1st	300.00	300.00	9/1/79	
Oct 1st	300.00	300.00	10/1/79	
Nov 1st	300.00	300.00	11/1/79	
Dec 1st	300.00	300.00	12/1/79	
Jan 1st	300.00	300.00	1/1/80	
Feb 1st	300.00	300.00	2/1/80	
Mar 1st	300.00	300.00	3/1/80	
Apr 1st	300.00	300.00	4/1/80	
May 1st	300.00	300.00	5/1/80	
Jun 1st	300.00	300.00	6/1/80	
Jul 1st	300.00	300.00	7/1/80	
Aug 1st	300.00	300.00	8/1/80	
Sep 1st	300.00	300.00	9/1/80	
Oct 1st	300.00	300.00	10/1/80	
Nov 1st	300.00	300.00	11/1/80	
Dec 1st	300.00	300.00	12/1/80	
Jan 1st	300.00	300.00	1/1/81	
Feb 1st	300.00	300.00	2/1/81	
Mar 1st	300.00	300.00	3/1/81	
Apr 1st	300.00	300.00	4/1/81	
May 1st	300.00	300.00	5/1/81	
Jun 1st	300.00	300.00	6/1/81	
Jul 1st	300.00	300.00	7/1/81	
Aug 1st	300.00	300.00	8/1/81	
Sep 1st	300.00	300.00	9/1/81	
Oct 1st	300.00	300.00	10/1/81	
Nov 1st	300.00	300.00	11/1/81	
Dec 1st	300.00	300.00	12/1/81	
Jan 1st	300.00	300.00	1/1/82	
Feb 1st	300.00	300.00	2/1/82	
Mar 1st	300.00	300.00	3/1/82	
Apr 1st	300.00	300.00	4/1/82	
May 1st	300.00	300.00	5/1/82	
Jun 1st	300.00	300.00	6/1/82	
Jul 1st	300.00	300.00	7/1/82	
Aug 1st	300.00	300.00	8/1/82	
Sep 1st	300.00	300.00	9/1/82	
Oct 1st	300.00	300.00	10/1/82	
Nov 1st	300.00	300.00	11/1/82	
Dec 1st	300.00	300.00	12/1/82	
Jan 1st	300.00	300.00	1/1/83	
Feb 1st	300.00	300.00	2/1/83	
Mar 1st	300.00	300.00	3/1/83	
Apr 1st	300.00	300.00	4/1/83	
May 1st	300.00	300.00	5/1/83	
Jun 1st	300.00	300.00	6/1/83	
Jul 1st	300.00	300.00	7/1/83	
Aug 1st	300.00	300.00	8/1/83	
Sep 1st	300.00	300.00	9/1/83	
Oct 1st	300.00	300.00	10/1/83	
Nov 1st	300.00	300.00	11/1/83	
Dec 1st	300.00	300.00	12/1/83	
Jan 1st	300.00	300.00	1/1/84	
Feb 1st	300.00	300.00	2/1/84	
Mar 1st	300.00	300.00	3/1/84	
Apr 1st	300.00	300.00	4/1/84	
May 1st	300.00	300.00	5/1/84	
Jun 1st	300.00	300.00	6/1/84	
Jul 1st	300.00	300.00	7/1/84	
Aug 1st	300.00	300.00	8/1/84	
Sep 1st	300.00	300.00	9/1/84	
Oct 1st	300.00	300.00	10/1/84	
Nov 1st	300.00	300.00	11/1/84	
Dec 1st	300.00	300.00	12/1/84	
Jan 1st	300.00	300.00	1/1/85	
Feb 1st	300.00	300.00	2/1/85	
Mar 1st	300.00	300.00	3/1/85	
Apr 1st	300.00	300.00	4/1/85	
May 1st	300.00	300.00	5/1/85	
Jun 1st	300.00	300.00	6/1/85	
Jul 1st	300.00	300.00	7/1/85	
Aug 1st	300.00	300.00	8/1/85	
Sep 1st	300.00	300.00	9/1/85	
Oct 1st	300.00	300.00	10/1/85	
Nov 1st	300.00	300.00	11/1/85	
Dec 1st	300.00	300.00	12/1/85	
Jan 1st	300.00	300.00	1/1/86	
Feb 1st	300.00	300.00	2/1/86	
Mar 1st	300.00	300.00	3/1/86	
Apr 1st	300.00	300.00	4/1/86	
May 1st	300.00	300.00	5/1/86	
Jun 1st	300.00	300.00	6/1/86	
Jul 1st	300.00	300.00	7/1/86	
Aug 1st	300.00	300.00	8/1/86	
Sep 1st	300.00	300.00	9/1/86	
Oct 1st	300.00	300.00	10/1/86	
Nov 1st	300.00	300.00	11/1/86	
Dec 1st	300.00	300.00	12/1/86	
Jan 1st	300.00	300.00	1/1/87	
Feb 1st	300.00	300.00	2/1/87	
Mar 1st	300.00	300.00	3/1/87	
Apr 1st	300.00	300.00	4/1/87	
May 1st	300.00	300.00	5/1/87	
Jun 1st	300.00	300.00	6/1/87	
Jul 1st	300.00	300.00	7/1/87	
Aug 1st	300.00	300.00	8/1/87	
Sep 1st	300.00	300.00	9/1/87	
Oct 1st	300.00	300.00	10/1/87	
Nov 1st	300.00	300.00	11/1/87	
Dec 1st	300.00	300.00	12/1/87	
Jan 1st	300.00	300.00	1/1/88	
Feb 1st	300.00	300.00	2/1/88	
Mar 1st	300.00	300.00	3/1/88	
Apr 1st	300.00	300.00	4/1/88	
May 1st	300.00	300.00	5/1/88	
Jun 1st	300.00	300.00	6/1/88	
Jul 1st	300.00	300.00	7/1/88	
Aug 1st	300.00	300.00	8/1/88	
Sep 1st	300.00	300.00	9/1/88	
Oct 1st	300.00	300.00	10/1/88	
Nov 1st	300.00	300.00	11/1/88	
Dec 1st	300.00	300.00	12/1/88	
Jan 1st	300.00	300.00	1/1/89	
Feb 1st	300.00	300.00	2/1/89	
Mar 1st	300.00	300.00	3/1/89	
Apr 1st	300.00	300.00	4/1/89	
May 1st	300.00	300.00	5/1/89	
Jun 1st	300.00	300.00	6/1/89	
Jul 1st	300.00	300.00	7/1/89	
Aug 1st	300.00	300.00	8/1/89	
Sep 1st	300.00	300.00	9/1/89	
Oct 1st	300.00	300.00	10/1/89	
Nov 1st	300.00	300.00	11/1/89	
Dec 1st	300.00	300.00	12/1/89	

PRODUCE STAND 89
11/1/80 start
GLADYS GLADFELTER
Agent 2500 RD #1 HANOVER PA.

DATE DUE	AMT DUE	AMT PAID	DATE BAL
NOV 4 1980	150.00	150.00	11/5/80
DEC 9 1980	150.00	200.00	12/9/80
JAN 4 1981	200.00	100.00	1/4/81

MEGAN SCHROYER
JACK SEYMOUR
JACKS CORN
JUNE 1 1981 200.00 200.00 7/1/81
JULY 1 1981 200.00 200.00 7/31/81
AUG 1 1981 200.00 200.00 8/31/81
SEPT 1 1981 200.00 46.69 9/8/81
10/1/81 9/8/81

609 MAIN ST 91
GARLAND WILLIAMS 8/1/82
GARLANDS INC
1107 INNESIDE AVE 21207
DEPOSIT

DATE DUE	AMT DUE	AMT PAID	DATE BAL
8/1/82	350.00	350.00	8/1/82
9/1/82	350.00	350.00	9/1/82
10/1/82	350.00	350.00	10/1/82

discharge all real property taxes, assessments, duties, impositions and burdens whatsoever (including taxes or excise taxes on rentals), levied, assessed, charged or imposed upon any improvements, now or hereafter erected, on the Demised Premises (hereinafter collectively referred to as "Impositions").

3.2 If any such taxes, assessments, duties or other charges aforesaid for which Tenant is liable during the first and/or last year of the term of this Lease shall be for a period only a portion of which is included within the term of this Lease, then Tenant shall pay only such proportionate part thereof as is included within the term of this Lease.

3.3 Tenant shall have the right to contest, at its own cost, the legality or amount of any Impositions or payment in lieu thereof which it is required to pay under the provisions of this Lease. If Tenant contests same in Landlord's name, Tenant shall indemnify and save harmless the Landlord from any costs incident thereto. Any taxes, charges, interest or penalties paid by Tenant and thereafter refunded as a result of such contest, shall belong to Tenant.

ARTICLE IV - ASSIGNMENT OF LEASEHOLD ESTATE

4.1 Tenant may assign, sublease, mortgage, or hypothecate its leasehold estate without Landlord's consent. Any such mortgage, hypothecation or creation of security for repayment of an indebtedness is hereinafter referred to as a "Leasehold Mortgage" and any holder thereof is hereinafter referred to as a "Leasehold Mortgagee". In the event that Tenant makes an assignment of its leasehold estate in the Demised Premises (other than as security for repayment of indebtedness), after the date of such assignment Tenant shall not be liable for the non-performance or non-observance of any of the terms, covenants or conditions of this Lease, but this exoneration shall be inapplicable as to any liability which accrued prior to the date of such assignment.

4.2 With respect to any Leasehold Mortgage made in accordance with the provisions of this Article IV, the following provisions shall apply:

4.2.1 When giving notice to Tenant with respect to any default under the provisions of this Lease, Landlord shall also serve a copy of such notice upon the Leasehold Mortgagee, provided Landlord shall have been furnished in the manner provided for the giving of notices herein with the name and address of any such Leasehold Mortgagee, and thereafter no such notice to Tenant shall be effective so as to terminate this Lease unless a copy of such notice is so served upon the Leasehold Mortgagee.

4.2.2 The Leasehold Mortgagee will have the same period after the giving of the aforesaid notice to it for remedying the default or causing the same to be remedied as is given Tenant after notice of it.

4.2.3 Upon the happening of any event of default and receipt of notice thereof from Landlord, Tenant will notify the Leasehold Mortgagee of such happening within a reasonable time after receipt of such notice from Landlord.

4.2.4 In case Tenant shall make default under any of the provisions of this Lease, the Leasehold Mortgagee shall have the right to make good such default whether the same consists of the failure to pay rent or the failure to perform any other matter or thing which Tenant is hereby required to do or perform, and Landlord shall accept such performance on the part of the Leasehold Mortgagee as though the same had been done or performed by Tenant.

4.2.5 In the case of any default by Tenant, other than in the payment of money hereunder, Landlord will take no action to effect a termination of the term of this Lease by the service of notice without first giving to the Leasehold Mortgagee reasonable time within which either (i) to obtain possession of the Demised Premises (including possession by receiver) and cure such default in the case of a default which is susceptible of being cured when the Leasehold Mortgagee has obtained possession, or (ii) to institute foreclosure proceedings and complete such foreclosure, or otherwise acquire Tenant's interest under this Lease with diligence and continuity in the case of default which is not so susceptible of being cured by the

GROUND LEASE

THIS GROUND LEASE (hereinafter referred to as "this Lease") is made this 24th day of July, 1981, by and between MARRIOTT CORPORATION, a corporation organized and existing under the law of Delaware (hereinafter referred to as "Landlord"), and BERNARD POSNER (hereinafter referred to as "Tenant").

WITNESSETH:

The Landlord, in consideration of the rent hereinafter reserved, and of the other covenants contained herein, leases to the Tenant, its successors and assigns, and the Tenant does rent from the Landlord, that certain real property located in the 4th Election District of Baltimore County, State of Maryland, consisting of approximately 0.53 acres of land, more or less, as more particularly described by metes and bounds on Exhibit 1 hereof and marked as "Demised Premises" on Exhibit 2 attached hereto and made a part hereof, together with the improvements thereon, and with the use in common of all lanes, alleys, streets and driveways connected with and abutting said property, and easements, rights, privileges, emoluments, and advantages to the said property belonging or in anywise appertaining, upon the terms and conditions below set forth including, but not by way of limitation, all utility rights of way and easements and the right to hook into same crossing and/or benefitting Landlord's retained parcel consisting of approximately 1.375 acres which is marked as "Retained Parcel" on Exhibit 2 (hereinafter referred to as the "Retained Parcel"). The property leased to Tenant is hereinafter referred to as the "Demised Premises". The Retained Parcel and the Demised Premises are hereinafter collectively referred to as the "Entire Tract".

ARTICLE I - TERM OF LEASE

1.1 Initial Term. This Lease shall commence on the date hereof (hereinafter referred to as the "Commencement Date") and shall continue for a term of one hundred (100) years after the Commencement Date, unless sooner terminated in accordance with the provisions of Article XI hereof.

PETITIONER'S
EXHIBIT 5

1.2 Election to Renew. Provided Tenant is not then in default and this Lease is in full force and effect, Tenant is hereby given the right and option to lease the Demised Premises for ten (10) further periods of ten (10) years each, commencing, in each instance, upon the expiration of the then current term. Said options shall be deemed exercised by Tenant unless Tenant notifies Landlord not less than three (3) months prior to the expiration of the original term, or the then current renewal term, whichever is applicable, of Tenant's desire to terminate this Lease. Said renewal terms shall be upon the same terms and conditions as herein set forth for the original term. The word "term" as used herein shall mean the original term and all renewal terms to the extent that the renewal options are exercised.

ARTICLE II - RENT

2.1 During the Term, Tenant shall pay an annual rental of One Dollar (\$1.00), payable annually in advance.

2.2 The rental reserved under this Lease shall be net to the Landlord, other than as herein set forth, and all costs, charges, expenses, obligations and liabilities of every kind relating to the Demised Premises or the use thereof which may arise or become due during the term of this Lease shall be paid by Tenant, including but without limiting the generality of the foregoing, all obligations expressly set forth in this Lease.

ARTICLE III - TAXES AND ASSESSMENTS

3.1 From and after the effective date of any sublease (or assignment or assignee) by Tenant to any subtenant/ (other than a seasonal tenant not making or using any building improvements except the existing open air structure), Tenant shall bear, pay and discharge on or before the due date thereof, twenty-five percent (25%) of all real estate taxes, assessments, duties and impositions levied, assessed, charged or imposed upon the land (expressly excluding herefrom any such taxes and assessments imposed upon any improvements, now or hereafter erected, on Landlord's Retained Parcel), comprising the Entire Tract, by any governmental or other public authority, and Tenant shall bear, pay and

Leasehold Mortgagee; provided, however, that the Leasehold Mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default which would have been the reason for serving such a notice shall be cured within the time period herein provided for curing defaults, and provided further, that nothing herein shall preclude Landlord from exercising any rights or remedies under this Lease with respect to any other default by Tenant during any period of such forbearance.

4.2.6 Any Leasehold Mortgagee may become the legal owner and holder of this Lease by foreclosure of its Leasehold Mortgage or as a result of the assignment of this Lease in lieu of such foreclosure.

4.2.7 In the event of termination of this Lease or of any succeeding lease made pursuant to the provisions of this Lease prior to its stated expiration date, Landlord will enter into a new lease of the Demised Premises with the Leasehold Mortgagee, for the remainder of the term, effective as of the date of such termination, at the rent and additional rent and upon the covenants and agreements, terms, provisions and limitations herein contained, provided --

4.2.7.1 Such Leasehold Mortgagee makes written request upon the Landlord for such new lease within forty (40) days from the date of such termination and such written request is accompanied by payment to Landlord of all amounts then due to Landlord.

4.2.7.2 Such Leasehold Mortgagee pays to Landlord at the time of the execution and delivery of said new lease any and all sums which would at the execution and delivery thereof be due under this Lease but for such termination and pays any and all expenses, including reasonable counsel fees, court costs and disbursements incurred by Landlord in connection with the execution and delivery of such new lease, less the net income collected by Landlord subsequent to the date of termination of this Lease and prior to the execution and delivery of the new lease, any excess of such net income over the aforesaid sums and expenses to be applied in payment of the net rental there-

after becoming due under said new lease.

4.2.7.3 Upon the execution and delivery of such new lease in accordance with the provisions hereof, all sub-leases which theretofore may have been assigned and transferred to Landlord shall thereupon be assigned and transferred without recourse by Landlord to the Leasehold Mortgagee, as the new tenant.

4.3 Any mortgage or mortgages hereafter made by Landlord covering the fee of the Demised Premises shall be subject and subordinate to the Tenant's interest under this Lease and under any succeeding lease made pursuant to the provisions of Section 4.2 above.

4.4 As used herein, the word "mortgage" shall include "deed of trust".

ARTICLE V - COVENANTS

The Demised Premises is hereby subjected to the following covenants running with the land (and, accordingly, to be incorporated in any deed of the Demised Premises executed pursuant to Article XI):

(a) No building shall be erected on the Demised Premises closer to the northeastern right-of-way line of Reisterstown Road than ^{five (5) feet} ~~the distance~~ beyond the access way as referred to in Section 17.3(a) hereof, but in no event shall any building erected on the Demised Premises obstruct the visibility of the sign on the Retained Parcel from vehicles traveling on the Retained Parcel.

(b) No sign shall be erected on said land which shall obstruct the view of the improvements on the Retained Parcel from vehicles traveling on Reisterstown Road.

ARTICLE VI - ESTOPPEL CERTIFICATES

At any time and from time to time, Landlord, on at least fifteen (15) days' prior written request by Tenant, and Tenant, on at least fifteen (15) days' prior written request by Landlord, will deliver to the party making such request a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the same is in full force and effect as modified and stating the modifications and the dates to which the net rent and other charges have been paid and stating whether or not,

to the best knowledge of the party executing such certificate, the party requesting such statement is in default in performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which the executing party may have knowledge).

ARTICLE VII - DEFAULT

Subject to the provisions of Article IV hereof,

7.1 If the rent, taxes or other payments reserved hereunder shall be in arrears, in whole or in part, and if the amount thereof in arrears is not paid in full by Tenant within one (1) month after written notice from Landlord of such arrearage, then and in such event, Landlord shall have the right to distrain therefor.

7.2 (i) If the rent, taxes or other payments due hereunder shall be in arrears, in whole or in part, for one (1) month, or (ii) if the Tenant shall be in default in the performance of any other covenant or condition of this Lease binding or obligatory on Tenant for a period of one (1) month, and if Tenant shall fail to pay such rent, taxes or other payments or remedy or rectify such other default within one (1) month after written notice from Landlord of such arrearage or other default, except that in connection with a default not susceptible of being cured with due diligence within one (1) month, the time of Tenant within which to cure the same shall be extended for such time as may be necessary to cure the same with all due diligence (which one (1) month's notice may be given at any time after the occurrence of such arrearage or other default), then and in such event, Tenant shall be deemed in default of this Lease. In the event of a default by Tenant with respect to Tenant's obligations hereunder, and only in such event, Landlord, or its agent, servants, or representatives, may re-enter and resume possession of the Demised Premises, and remove all persons and property therefrom, either by summary dispossession as applicable to a lease for a term of three (3) months or less or by a suitable action or proceeding at law, or by force or otherwise, without being liable for any damages therefor. No re-entry by Landlord shall be deemed an acceptance of a surrender of this Lease or

a liquidation or satisfaction to any extent whatever of Tenant's liability to pay rent as herein provided.

ARTICLE VIII - QUIET ENJOYMENT

So long as Tenant shall pay the rent and other sums herein set forth and shall perform and observe all of the terms, covenants and conditions on its part to be performed and observed hereunder, Tenant shall peacefully and quietly enjoy the Demised Premises during the term of this Lease without hindrance or disturbance by Landlord or any one claimin by, from or under Landlord, subject to the terms, covenants and conditions of this Lease.

ARTICLE IX - INDEMNIFICATION

Tenant agrees to hold and save harmless the Landlord of and from any and all claims or demands whatsoever arising out of the use and occupancy by the Tenant of the Demised Premises, and any and all improvements thereon; and Tenant shall, at its sole cost and expense, undertake the defense of any such claim, to the end that the Landlord shall suffer no financial liability or loss of any kind by reason of the assertion of any such claim. Tenant covenants and agrees to indemnify the Landlord against all costs and expenses, including reasonable counsel fees, lawfully and reasonably incurred in or about the Demised Premises, or in the defense of any action or proceeding, or in discharging the Demise/ Premises from any lien, charge, or encumbrance arising out of the acts or omissions of the Tenant, or in obtaining possession after default of the Tenant in Tenant's obligation to pay rent hereunder, or the termination of this demise.

Landlord agrees to hold and save harmless the Tenant of and from any and all claims or demands whatsoever arising out of the use and occupancy by the Landlord of the Retained Parcel, and any and all improvements thereon; and Landlord shall, at its sole cost and expense, undertake the defense of any such claim, to the end that the Tenant shall suffer no financial liability or loss of any kind by reason of the assertion of any such claim. Landlord covenants and agrees to indemnify the Tenant against all costs and expenses, including reasonable

counsel fees, lawfully and reasonably incurred in or about the Retained Parcel, or in the defense of any action or proceeding arising out of the acts or omissions of the Landlord.

ARTICLE X - CONSTRUCTION, MAINTENANCE, AND DEMOLITION

Tenant shall maintain the Demised Premises in a condition of good order and repair, at its own expense, and subject to landlord's obligations hereinelsewhere set forth, will comply with all laws and ordinances, and all valid rules and regulations of governmental authorities. Tenant may at any time construct and/or raze or demolish and/or alter any improvements on the Demised Premises.

ARTICLE XI - TENANT'S RIGHT TO ACQUIRE FEE SIMPLE TITLE

Tenant is hereby given the unconditional and irrevocable right to acquire from Landlord the fee simple title to the Demised Premises, provided Tenant gives Landlord not less than thirty (30) days prior written notice of Tenant's desire to exercise said right, upon the terms and conditions below set forth:

11.1 The sole consideration for such acquisition shall be the sum of One Dollar (\$1.00).

11.2 Such consideration shall be paid in cash at closing which shall take place at a time and place in Baltimore, Maryland, designated by the Tenant, upon ten (10) days prior written notice to Landlord.

11.3 Title to the Demised Premises shall be good and merchantable of record and in fact, free of liens and encumbrances except as existing as of the date hereof, and except for liens and encumbrances created or consented to by Tenant. Upon payment as above provided of the unpaid consideration, a deed for the property containing covenants of special warranty and further assurances shall be executed by the Landlord, which shall convey the property to the Tenant.

11.4 All rentals and other monies payable to Landlord under this Lease shall be adjusted and apportioned as of the date of closing between the parties hereto.

11.5 The cost of all documentary stamps, required by law,

*but nothing herein shall be construed to require Landlord to convey a better title than that which it acquired from Tenant.

if any, will paid by Tenant.

11.6 The Landlord and Tenant each understands and agrees that prior to the closing on Tenant's acquisition of the fee simple title to the Demised Premises, a subdivision plat must be recorded among the Land Records of Baltimore County, Maryland, by which the Demised Premises and Retained Parcel are subdivided into two (2) legally separate lots. To that end, Landlord agrees, covenants and undertakes to comply fully and expeditiously with the provisions set forth in Article XII hereof, the parties hereto agreeing that time is of the essence with respect to same.

ARTICLE XII - JOINDER IN APPLICATION

Landlord, as owner of the fee interest in the Entire Tract where required to enable the filing thereof, shall join in, consent to or execute any and all applications and petitions to any governmental or other public agency that Tenant may, from time to time, make in connection with the Demised Premises, including, but not limited to, public works agreements and applications with respect to zoning, subdivision and building permits, provided only that Tenant shall hold Landlord harmless from all costs and expenses incurred in connection therewith.

ARTICLE XIII - SUBORDINATION

13.1 In addition to Tenant's right to encumber its leasehold estate, Tenant shall have the right, subject to the provisions of this Article XIII, to encumber by one or more first mortgages or deeds of trust the fee of the Demised Premises and all buildings and improvements thereon, under which the fee title shall be inferior and subordinate and shall be pledged to the holder of the indebtedness secured by any such mortgage or deed of trust, any such mortgage or deed of trust, including a refinancing thereof, being called, solely for purposes of this Article XIII, a "Fee Mortgage" and the holder of such Fee Mortgage being called the "Lender". The Fee Mortgage may, at Tenant's discretion, be a combined construction - permanent loan, a construction loan which is assigned to a permanent lender, a construction loan which is refinanced by a permanent loan, or a permanent loan.

13.2 From time to time, as requested in writing by Tenant, Landlord shall execute (and procure the execution by all persons claiming any secured interest, including any interest incident to any sale and leaseback, in the Demised Premises under or through Landlord) all such instruments, including the Fee Mortgage, as may reasonably be required by the Lender to evidence such subordination on the following terms and conditions:

13.2.1 Landlord shall not be required to execute any instrument which would obligate Landlord for the payment of any such loan or any part thereof, or obligate Landlord to perform any covenant contained therein;

13.2.2 Tenant shall furnish Landlord with a true copy of the Fee Mortgage, notes secured thereby, and all other instruments required by Lender;

13.2.3 The obligation secured by each such Fee Mortgage shall be payable in full before the expiration of the term or any renewal thereof of this Lease;

13.2.4 Tenant shall deliver to Landlord an instrument reasonably satisfactory in form and substance to Landlord covenanting that all sums which fall due under the note or notes secured by the Fee Mortgage will be paid as and when due and that the mortgagor or grantor will comply with all its obligations under said Fee Mortgage.

13.3 Nothing in this Article XIII shall limit Tenant's rights or the rights of any leasehold mortgagee under Article IV hereof. As further security for the indebtedness secured by any Fee Mortgage created under this Article XIII, Tenant in the same, or in separate instruments, may also grant the Lender a leasehold mortgage pursuant to Article IV. In such event, the instrument or instrument creating said Fee Mortgage and leasehold mortgage shall provide that, upon a default thereunder, the Lender may not enforce its remedies under the Fee Mortgage without prior thereto or simultaneously therewith exercising its remedies, under the Leasehold Mortgage, and that if Lender exercises its remedies under both, there shall be no merger of this Lease nor of the leasehold estate created

by this Lease with the fee estate in the demised land by reason of the fact that the same person, firm, corporation or other entity may acquire, own or hold, directly, or indirectly, Tenant's interest in this Lease and the fee estate in the Demised Premises.

13.4 Any such Fee Mortgage shall provide that notice of any default under the terms thereof shall be given by Lender to Landlord and Landlord shall have the right to (but need not) cure such default, and any sums so expended by Landlord shall be deemed advances made for the benefit of Tenant, which sums shall bear interest at the rate of twelve percent (12%) per annum from the date of such advances until repaid, and shall be payable by Tenant to Landlord as additional rent hereunder.

ARTICLE XIV - NON-DISTURBANCE

Landlord agrees to execute, when requested by Tenant, with subtenants, non-disturbance agreements in a form which conforms to the reasonable requirements of Tenant and said subtenants.

ARTICLE XV - NOTICES

All notices required or permitted under the terms of this Lease to be given by either party to the other shall be in writing and unless and until otherwise specified in writing by the respective parties, or either of them, shall be sent to the respective addresses of the parties as follows:

All notices to Tenant shall be sent to Tenant at 10 Penna South, Apartment 3, Baltimore, Maryland 21208, with copy to Jane E. Sheehan, Esquire, Frank, Bernstein, Conaway & Goldman, 1300 Mercantile Bank & Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201, and to all Leasehold Mortgagees and Lenders. All notices to Landlord shall be sent to Landlord at c/o Marriott Corporation, Marriott Drive, Washington, D.C. 20058, Attention: Myron Walker, Esquire.

All notices shall be deemed to have been properly served if sent by registered or certified mail, return receipt requested, to addresses and addressees designated above. Service of any such notice shall be considered as made on the day after the day of mailing. Either party shall have the right to designate a new

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address or addressee at any time by giving notice thereof in writing to the other party in the manner hereinabove provided.

ARTICLE XVI - BROKERS' COMMISSIONS

Each party warrants and represents that there are no brokerage commissions which may be due on account of this Lease transaction, and each of the parties agrees to indemnify and hold harmless the other from and against any claim for brokerage commissions by any broker or agent who claims to have dealt with such party so indemnifying.

ARTICLE XVII - MISCELLANEOUS

17.1 The terms, conditions and agreements herein contained shall be kept and performed by the respective parties hereto and shall be binding upon and inure to the benefit of the Landlord and Tenant, their respective heirs, personal representatives, successors and assigns.

17.2 No waiver of any breach of any agreement, condition, or covenant herein contained shall be construed to be a waiver of the said agreement, condition, or covenant itself or of any subsequent breach thereof. This Lease may not be modified, altered, amended, or surrendered without the consent of all Leasehold Mortgagees and Lenders.

17.3 Ground Lease.

17.3.1 Landlord reserves unto itself, its successors and assigns, the right during the term of this Lease and the right in perpetuity to be incorporated in any deed of the Demised Premises executed pursuant to Article XI, the following easements in or over the Demised Premises:

(a) An easement for ingress and egress over a driveway to be constructed, initially at Landlord's expense, in the area of the Demised Premises indicated on Exhibit A hereto entitled "Site Plan - Proposed Roy Rogers - Reisterstown Road, dated May 12, 1980" and the location of this easement shall not be changed nor shall the easement be obstructed without Landlord's prior written consent.

(b) Easements for parking in common with Tenant, its successors, subleases and assigns, in the paved areas

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designated by Tenant from time to time for parking on the Demised Premises.

17.3.2 Reciprocally, Landlord grants to Tenant, for Tenant's use and benefit and for the use and benefit of Tenant's successors, sublessees and assigns during the term of this Lease, the following easements:

(a) An easement for ingress and egress over a driveway to be constructed, at Landlord's expense, in the area of the Retained Parcel indicated on Exhibit A hereto.

(b) Easements for parking in common with Landlord, its successors, sublessees and assigns, in those paved areas designated by Landlord from time to time for parking on the Retained Parcel.

(c) An easement for use of the storm water management pond in common with Landlord.

(d) An easement for the installation and maintenance of lines connecting the Demised Premises to water supply and sanitary sewer lines on the Retained Parcel.

The easements so granted to Tenant shall be incorporated as permanent grants of easement in any deed executed pursuant to Article XI hereof.

Landlord undertakes to maintain in a condition of good order and repair all improvements on the Retained Parcel. Tenant undertakes and agrees, from and after the date on which Tenant shall be obligated to reimburse Landlord pursuant to Section 17.4 for one-half of the costs incurred by Landlord for the construction of the storm water management pond, to maintain at Tenant's cost and expense the Demised Premises and all improvements thereon in good order and repair.

As a covenant running with the land, both as to the Retained Parcel and as to the Demised Premises (and, accordingly, to be incorporated in any deed of the Demised Premises pursuant to Article XI), no fence or other barrier shall be erected on either parcel which will impede the flow of traffic on the driveways above referred to, or otherwise prevent the use in common of the parking areas on the respective parcels.

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assigns its interest in the Demised Premises or 17.4 At the earlier to occur of (i) the date Tenant

receives rental income from any subtenant (other than a seasonal tenant not making or using any building improvements except the existing open air structure) occupying the Demised Premises, as improved by Tenant or such subtenant, as contemplated hereunder, or (ii) the date Tenant closes on any sale by Tenant of the Demised Premises, Tenant shall pay to Landlord one-half (1/2) of the cost incurred by Landlord (which one-half cost shall not exceed the sum of Eighteen Thousand Dollars (\$18,000.00)) by reason of its construction of the storm water management pond and sediment trap and the entire cost incurred by Landlord by reason of its construction, at the request of Tenant, of the curb cuts, driveways and paved areas (the cost of which shall not exceed the sum of Eleven Thousand Dollars (\$11,000.00)) located on the Demised Premises.

ARTICLE XVIII - USE

Tenant covenants and agrees that it will not use or occupy or permit the Demised Premises to be used or occupied for other than lawful purposes.

Tenant agrees and covenants that during the term of this Lease and thereafter, in the event Tenant acquires fee simple title to the Demised Premises in accordance with Article XI hereof, provided a Roy Rogers fast food operation is conducted by Landlord on the Retained Parcel, and provided further that Landlord is not in default of this Lease, if same is then in effect, it will not use, lease, sell or permit to be used, leased or sold the Demised Premises for the purpose of a fast food operation similar to the one operated by Landlord on the Retained Parcel, expressly excluding from this restriction, however, any Seven-Eleven or other food market enterprise and any fast food operation which does not directly compete with Landlord's operation because the sale of substantially different products is involved. In the event Tenant sells or subleases all or a portion of the Demised Premises, Tenant shall be deemed to have conclusively performed hereunder if Tenant inserts a restrictive covenant in any such sublease and/or contract of

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sale, preventing the subtenant and/or purchaser thereunder from using any of the Demised Premises for the aforesaid purposes so long as Landlord is operating a Roy Rogers fast food business on the Retained Parcel.

ARTICLE XIX - NON-MERGER

There shall be no merger of this Lease nor of the leasehold estate created hereby with the fee estate in the Demised Premises by reason of the fact that this Lease or the leasehold estate or any interest herein or in the leasehold estate may be held directly or indirectly by or for the account of any person who shall own the fee estate in the Demised Premises or any interest in the fee estate, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Demised Premises and all persons having an interest in this Lease shall join in a written instrument in recordable form effecting such merger.

ARTICLE XX - LANDLORD'S WARRANTIES AND RESTRICTIONS

20.1 Landlord shall not be entitled to restrict or encumber the Demised Premises or create any lien thereon without the prior written consent thereto of Tenant first had and obtained.

20.2 Notwithstanding anything herein to the contrary, Tenant acknowledges and agrees, pursuant to Article XI hereof, at its sole cost and expense, to arrange for, process through to completion, a subdivision of the Demised Premises from the Retained Parcel. Same shall be done at the sole cost and expense of Tenant, and shall contain such easements, rights of way and cross easements as shall be required to afford Tenant and Landlord the full and complete use of their respective parcels for the uses contemplated thereof. Tenant covenants and agrees that while he is pursuing the application for subdivision, he shall keep Landlord advised of all aspects and phases of the subdivision process.

20.3 Pursuant to Article XI hereof, Landlord covenants and agrees to convey the Demised Premises and/or Landlord's interest in this Lease at such time, to Tenant or Tenant's designee and with such affirmative easements, rights of way and the easements contemplated by Section 17.3.2 hereof.

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with the right to tap into the utility easements contemplated and the title as Tenant shall reasonably request. Section 17.3.2 hereof.

20.4 Landlord, as owner of the fee interest in the Entire Tract, undertakes to sign applications for all required building permits, licenses, approvals and/or authorizations relative to preparation of Demised Premises and construction thereon of Tenant's contemplated commercial development, provided Landlord is not subjected to any cost therefor. IN WITNESS WHEREOF, the parties hereto have caused this Lease to be properly executed the day and year first above written.

WITNESSES: MARIOTT CORPORATION

By Michael J. Jones Assistant Secretary (SEAL)

By James R. Calk Vice President (SEAL)

By Bernard Posner Landlord (SEAL)

By Michael J. Jones Assistant Secretary (SEAL)

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address or addressee at any time by giving notice thereof in writing to the other party in the manner hereinabove provided.

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Each party warrants and represents that there are no brokerage commissions which may be due on account of this Lease transaction, and each of the parties agrees to indemnify and hold harmless the other from and against any claim for brokerage commissions by any broker or agent who claims to have dealt with such party so indemnifying.

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As a covenant running with the land, both as to the Retained Parcel and as to the Demised Premises (and, accordingly, to be incorporated in any deed of the Demised Premises pursuant to Article XI), no fence or other barrier shall be erected on either parcel which will impede the flow of traffic on the driveways above referred to, or otherwise prevent the use in common of the parking areas on the respective parcels.

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sale, preventing the subtenant and/or purchaser thereunder from using any of the Demised Premises for the aforesaid purposes so long as Landlord is operating a Roy Rogers fast food business on the Retained Parcel.

ARTICLE XIX - NON-MERGER

There shall be no merger of this Lease nor of the leasehold estate created hereby with the fee estate in the Demised Premises by reason of the fact that this Lease or the leasehold estate or any interest herein or in the leasehold estate may be held directly or indirectly by or for the account of any person who shall own the fee estate in the Demised Premises or any interest in the fee estate, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Demised Premises and all persons having an interest in this Lease shall join in a written instrument in recordable form effecting such merger.

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20.1 Landlord shall not be entitled to restrict or encumber the Demised Premises or create any lien thereon without the prior written consent thereto of Tenant first had and obtained.

20.2 Notwithstanding anything herein to the contrary, Tenant acknowledges and agrees, pursuant to Article XI hereof, at its sole cost and expense, to arrange for, process through to completion, a subdivision of the Demised Premises from the Retained Parcel. Same shall be done at the sole cost and expense of Tenant, and shall contain such easements, rights of way and cross easements as shall be required to afford Tenant and Landlord the full and complete use of their respective parcels for the uses contemplated thereof. Tenant covenants and agrees that while he is pursuing the application for subdivision, he shall keep Landlord advised of all aspects and phases of the subdivision process.

20.3 Pursuant to Article XI hereof, Landlord covenants and agrees to convey the Demised Premises and/or Landlord's interest in this Lease at such time, to Tenant or Tenant's designee and with such affirmative easements, rights of way and the easements contemplated by Section 17.3.2 hereof.

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with the right to tap into the utility easements contemplated and the title as Tenant shall reasonably request. Section 17.3.2 hereof.

20.4 Landlord, as owner of the fee interest in the Entire Tract, undertakes to sign applications for all required building permits, licenses, approvals and/or authorizations relative to preparation of Demised Premises and construction thereon of Tenant's contemplated commercial development, provided Landlord is not subjected to any cost therefor. IN WITNESS WHEREOF, the parties hereto have caused this Lease to be properly executed the day and year first above written.

WITNESSES: MARIOTT CORPORATION

By Michael J. Jones Assistant Secretary (SEAL)

By James R. Calk Vice President (SEAL)

STATE OF MARYLAND: COUNTY OF MONTGOMERY: TO WIT:

I HEREBY CERTIFY that on this 21st day of July, 1981, before me, a Notary Public for the State and County aforesaid, personally appeared James R. Calk, known to me or satisfactorily proven to me to be the person whose name is subscribed to the foregoing instrument, who acknowledged that he is the Vice President of MARIOTT CORPORATION, a corporation organized and existing under the law of Delaware; that he has been duly authorized to execute, and has executed, the foregoing instrument on behalf of the said entity for the purposes therein set forth, and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

James M. Ricci Notary Public

My Commission Expires: 7/1/82

STATE OF MARYLAND: CITY OF BALTIMORE: TO WIT:

I HEREBY CERTIFY that on this 21st day of July, 1981, before me, a Notary Public for the State and County aforesaid, personally appeared Bernard Posner, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, and who signed the same in my presence.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

By Michael J. Jones Assistant Secretary (SEAL)

My Commission Expires: 7/1/82

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EXHIBIT 1

To Ground Lease between Marriott Corporation and Bernard Posner

D. S. THALER & ASSOCIATES, INC.

11 WABLER ROAD • BALTIMORE, MARYLAND 21201 • (410) 381-1100

April 30, 1980

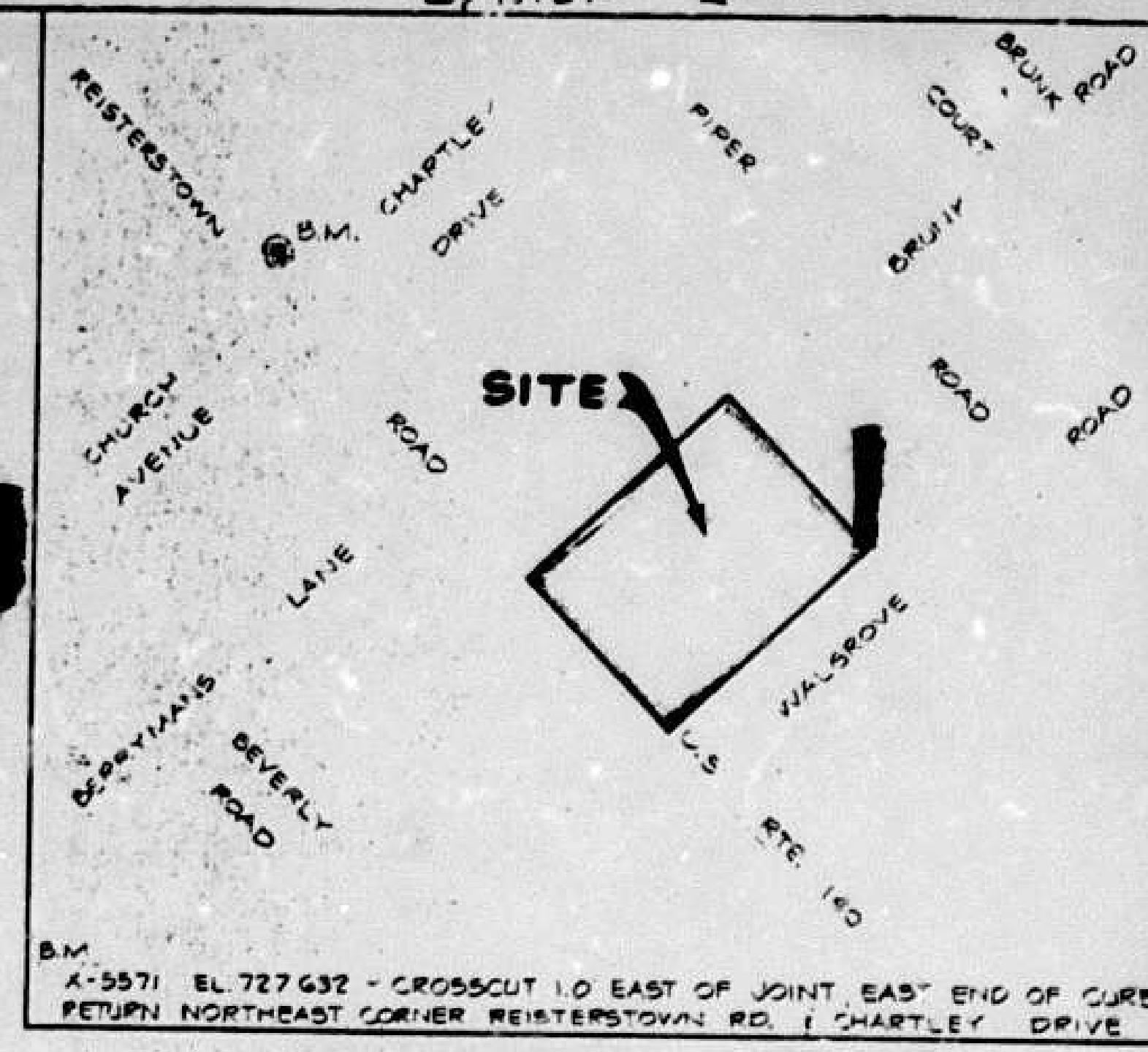
DESCRIPTION TO ACCOMPANY LEASE OF PARCEL KNOWN AS "DEMISED PREMISES"

Beginning for the same at a point on the northeast side of Reisterstown Road, 66 feet wide, and running thence and binding on said northeast side, as now surveyed, North 43°41'24" West 124.58 feet, thence for lines of division the two following courses, as now surveyed, viz: North 45°30'14" East 183.00 feet, thence South 43°49'54" East 126.70 feet to intersect the northern boundary of the land of Leroy J. Shade as recorded in the land records of Baltimore County, Maryland in Liber 3416 folio 587 and running thence and binding on said northern boundary, as now surveyed, South 46°10'06" West 183.30 feet to the place of beginning.

Containing 0.53 Acres of land more or less.



CIVIL ENGINEERS • SITE PLANNERS



LOCATION MAP

DESCRIPTION TO ACCOMPANY LEASE OF PARCEL KNOWN AS "DEMISED PREMISES"

Beginning for the same at a point on the northeast side of Reisterstown Road, 66 feet wide, and running thence and binding on said northeast side, as now surveyed, North 43°41'24" West 124.58 feet, thence for lines of division the two following courses, as now surveyed, viz: North 45°30'14" East 183.00 feet, thence South 43°49'54" East 126.70 feet to intersect the northern boundary of the land of Leroy J. Shade as recorded in the land records of Baltimore County, Maryland in Liber 3416 folio 587 and running thence and binding on said northern boundary, as now surveyed, South 46°10'06" West 183.30 feet to the place of beginning.

Containing 0.53 Acres of land more or less.

DESCRIPTION OF ENTIRE TRACT KNOWN AS "POSNER PROPERTY, REISTERSTOWN ROAD" 4th ELECTION DISTRICT, BALTIMORE COUNTY MARYLAND

Beginning for the same at a point on the northeast side of Reisterstown Road, 66 feet wide, and running thence and binding on said northeast side, as now surveyed, North 43°41'24" West 245.17 feet, thence leaving Reisterstown Road and running along the easternmost boundary of the land of Louise B. Goodwin as recorded in the land records of Baltimore County, Maryland in Liber 402 folio 389, as now surveyed, North 45°30'14" East 330.37 feet, thence southeasterly along the southern boundary of "Section 1, Plat 4 Chartley" as recorded in the land records of Baltimore County, Maryland in Liber G.L.B. 25 folio 62, as now surveyed, South 43°41'24" East 253.00 feet, thence as now surveyed, South 46°10'06" West 330.34 feet to the place of beginning.

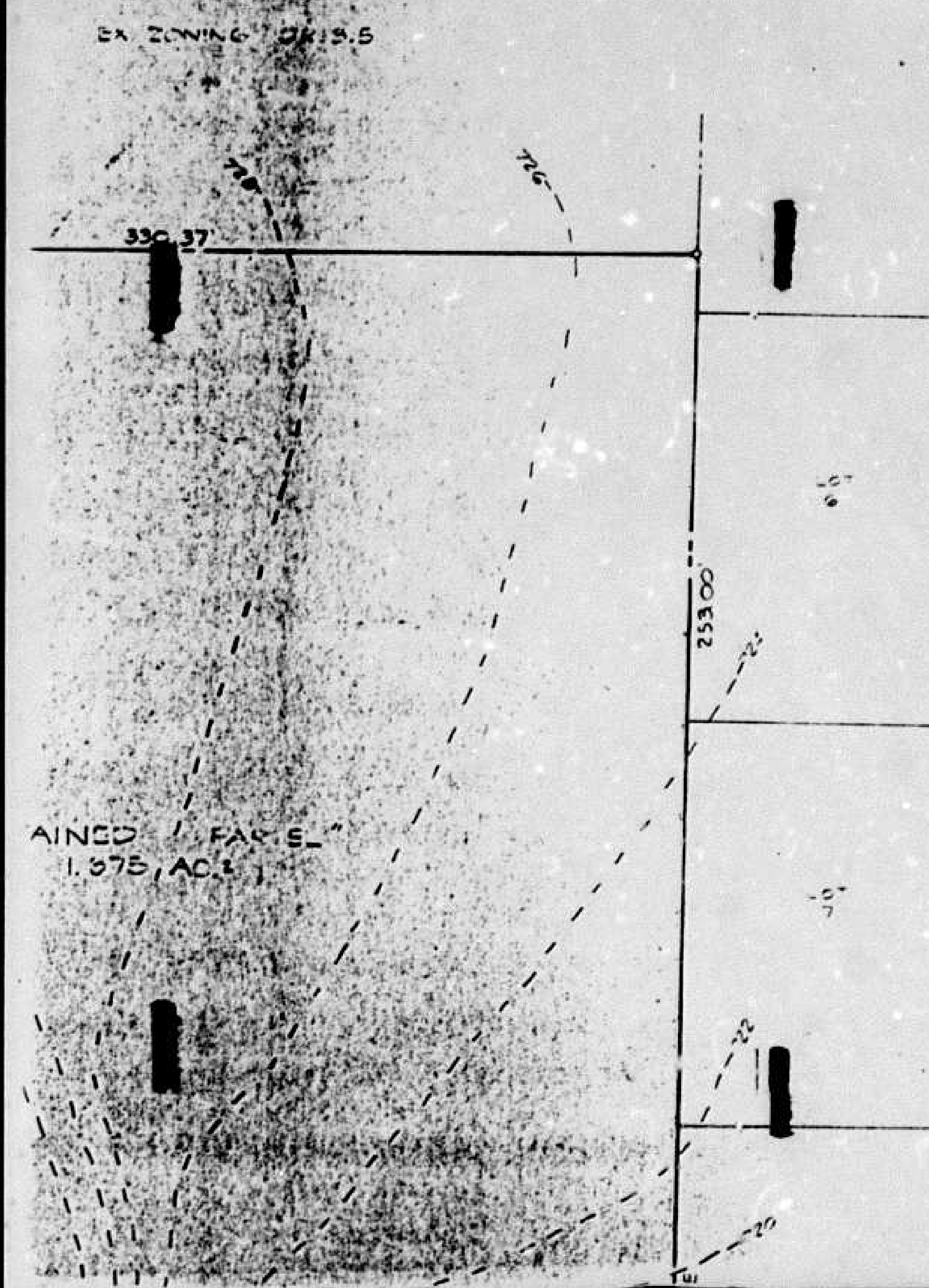
Containing 1.905 Acres of land more or less.

Being the same parcel of ground as described in deeds recorded in the land records of Baltimore County, Maryland in Liber 5356 folio 758 and Liber 5235 folio 202.

GRAPHIC LAND TITLE SURVEY JOY ROGERS - REISTERSTOWN ROAD

4th ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND
MAY 12, 1980

SHEET No. A-1a

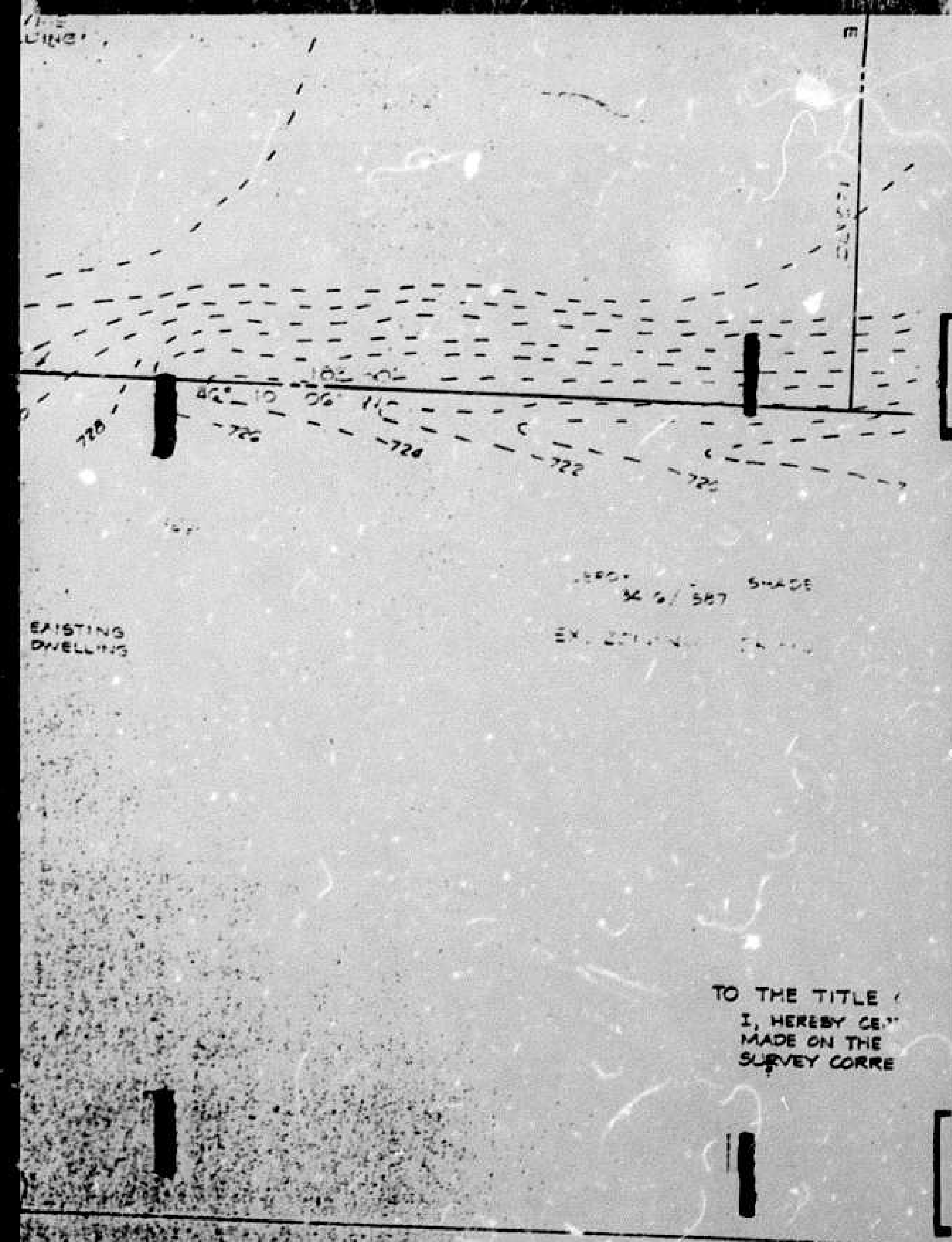
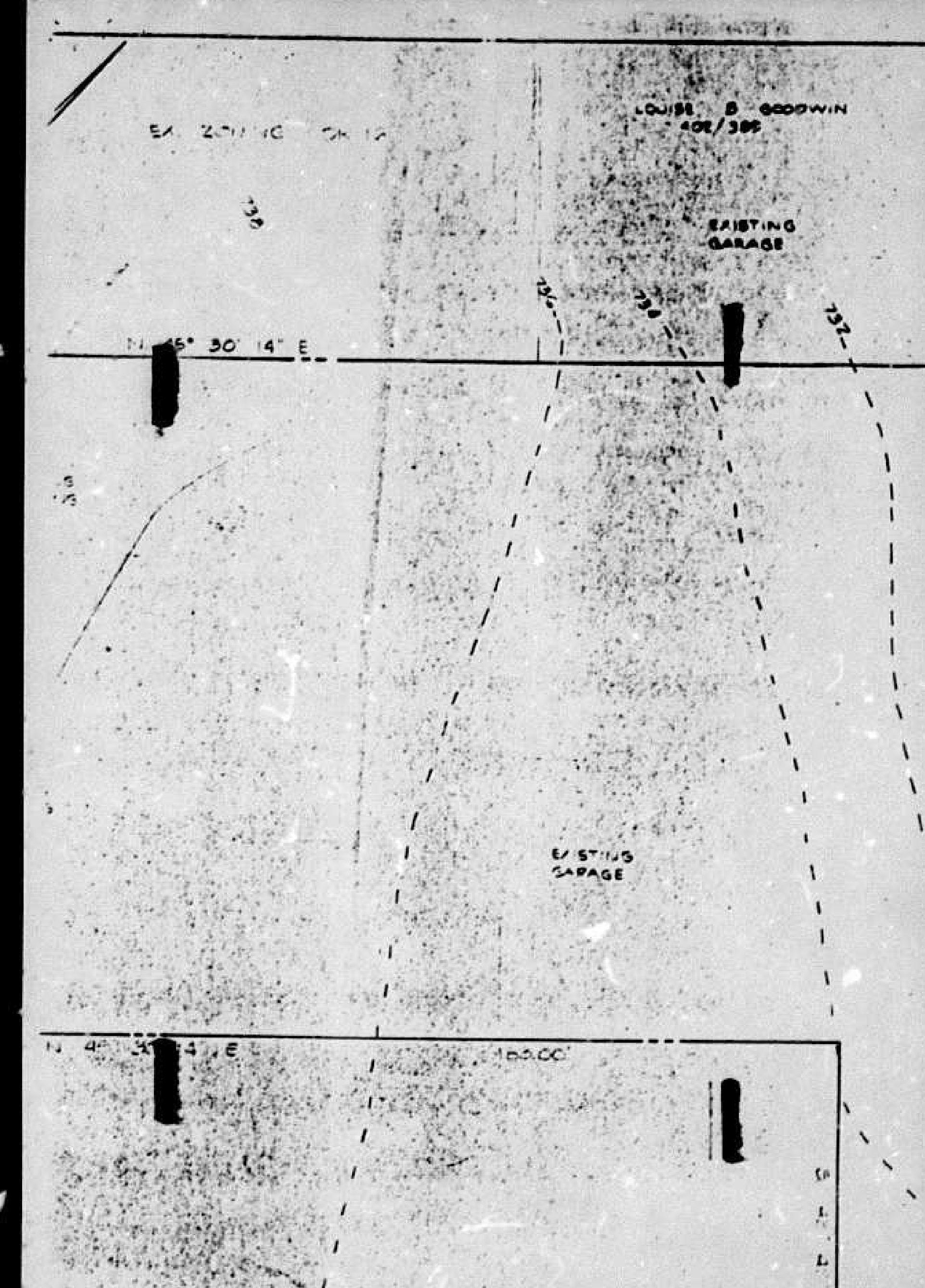


CORPORATION
President
Bernard Posner

COMPANY AND MARRIOTT CORPORATION
THE DATE SHOWN HEREON, A FIELD SURVEY WAS
MADE ON THE RECORD DESCRIPTION, AND THAT THE
LOCATION OF ALL BUILDINGS.

C. M. [Signature] 5-12-80

TO
PROPOSE
4th
SCALE

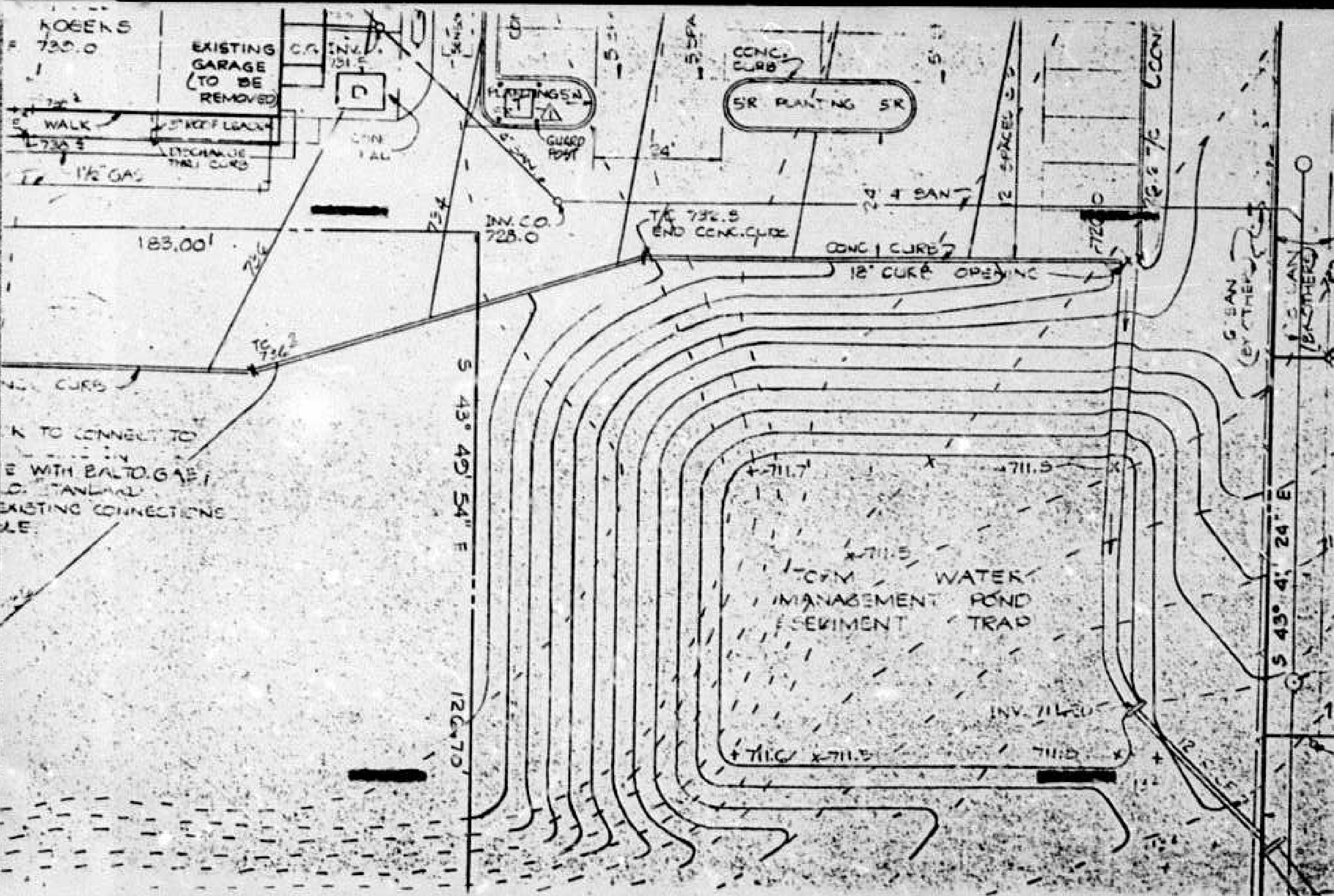


TO THE TITLE
I, HEREBY CE-
MADE ON THE
SURVEY CORRE



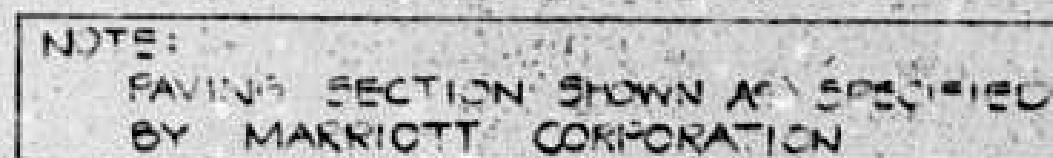
TOTAL AREA CEMENT = 1.00 AC.
 EX. DRAINING = PL
 EX. AREA = 6.0' SIDE RESTAURANT + 60.0 S.F.
 1. PARKING SPACE REQUIRED = 1 SPACE PER 50 S.F. = 52 SPACES
 2. PARKING SPACE REQUIRED = 54 SPACES
 3. UNPAVED SPACE REQUIRED = PROVIDED = 2 SPACES
 4. PAVED SPACE REQUIRED = RESTAURANT
 5. DENOTE TRAFFIC FLOW PATTERN
 6. MAN POWER FOR AS PER UTILITY COMPANY SPECIFICATIONS.

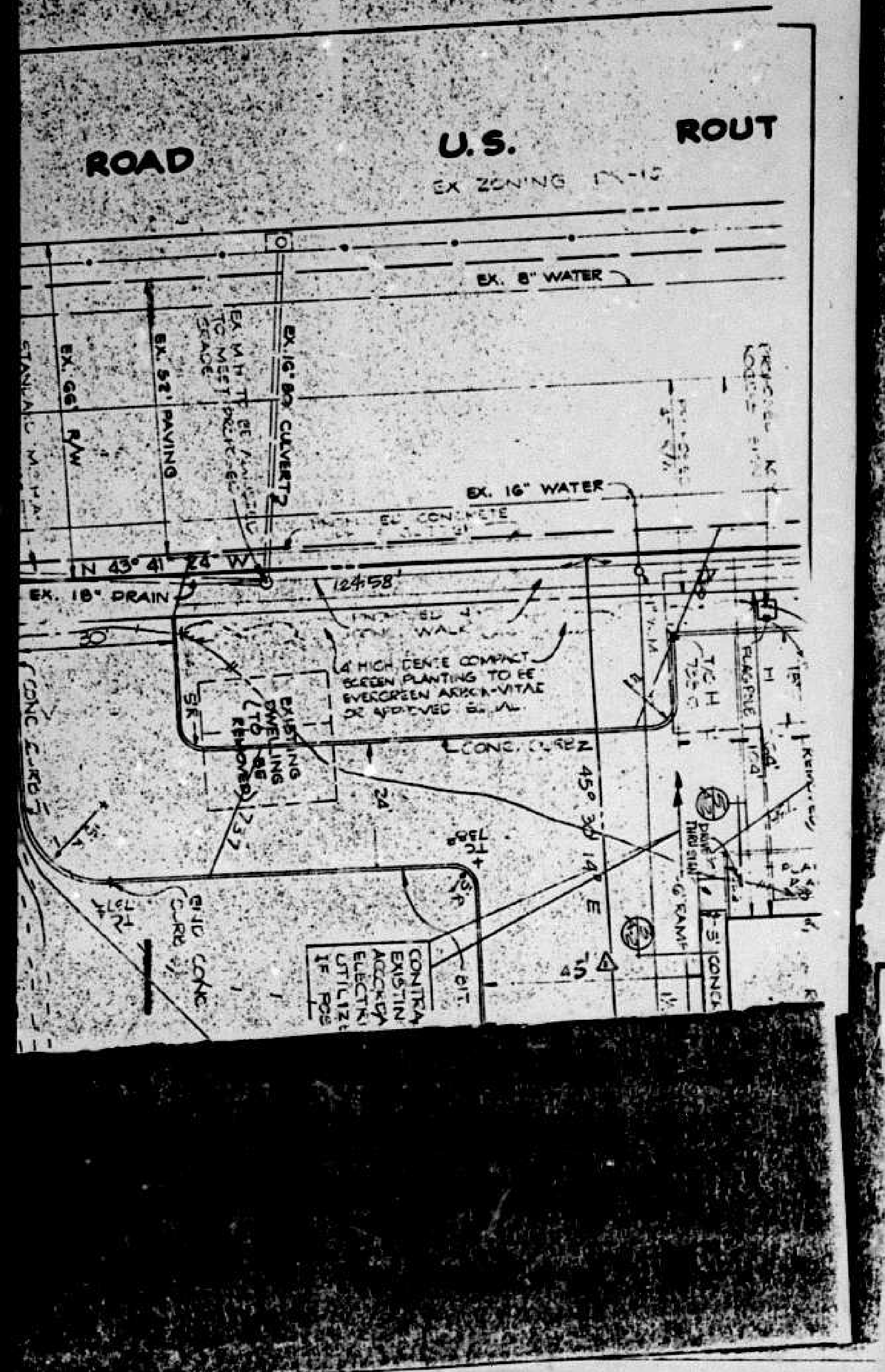
GROUND LEASE BETWEEN
MARRIOTT CORPORATION AND BERNARD POSNER
LANDLORD: ~~Marriott Corporation~~
Stephen A. Posner
Vice President
TENANT: Bernard Posner



SHEET NO. A-1

EXHIBIT A





Maryland Department of Transportation
State Highway Administration

James J. O'Donnell
Administrator

December 7, 1979

Mr. Robert A. Morton, Chief
Bureau of Public Services
County Office Bldg.
Towson, Md. 21204

Re: Comm. Bldg. Appl. #1487-79
Roy Rogers Restaurant
E/S Reisterstown Rd. (Route 140) - 100' N Walgrove Rd.

Dear Mr. Morton:

We have had previous contact with the developer's engineer in which access was discussed. Apparently there has been a misunderstanding. It was our intent to consider two points of access and not three. Under consideration was an entrance at the north property line plus either an entrance at the south property or a directional entrance further to the north. In no event can more than two points of access be considered along this frontage. Ideally, one entrance at the center of the property would best serve the development, however, this is precluded due to inadequate stopping sight distance.

If the entrance at the south property line is retained, it should have a 30' width. A 5' dimension must be noted from the north property line to the beginning of the entrance depression transition.

A dimension must be noted from the centerline to the roadside curb.

It is requested that the subject application be held until the plan is revised, access permit is applied for, and performance bond in the amount of \$8,000.00 is posted with the State Highway Administration to guarantee construction of curbing, paving and new sidewalk.

Very truly yours,
Charles Lee, Chief
Bureau of Engineering

By: John E. Meyers
Access Permits

CL:JEM:vrld A plan
cc: Mr. J.L. Wimbley
Mr. L.T. Bohager

My telephone number is (301) 383-4320

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

B.A.R.D., John Meyers

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

RECEIVED DEC

December 18, 1979

Marriott Corporation
1 Marriott Drive
Washington, D. C. 20013

Re: Comm. Bldg. Appl. C-1487-79
Roy Rogers Restaurant
#607 Reisterstown Road
District 4

Gentlemen:

In addition to comments dated December 6, 1979, this Bureau wishes to convey the following:

STATE HIGHWAY ADMINISTRATION:

We have had previous contact with the developer's engineer in which access was discussed. Apparently, there has been a misunderstanding. It was our intent to consider two points of access and not three. Under consideration was an entrance at the north property line plus either an entrance at the south property or a directional entrance further to the north. In no event can more than two points of access be considered along this frontage. Ideally, one entrance at the center of the property would best serve the development, however, this is precluded due to inadequate stopping sight distance.

If the entrance at the south property line is retained, it should have a 30' width. A 5' dimension must be noted from the north property line to the beginning of the entrance depression transition.

A dimension must be noted from the centerline to the roadside curb.

It is requested that the subject application be held until the plan is revised, access permit is applied for, and Performance Bond in the amount of \$8,000.00 is posted with the State Highway Administration to guarantee construction of curbing, paving and new sidewalk.

Each set of eight (8) revised site plans must be accompanied by eight (8) copies of a cover letter containing the permit number, the control number, the location of the job and a list of all changes that have been made on the site plan. The revised plans and letter are to be delivered to Mr. John France, Department of Permits & Licenses, Room 100, Baltimore County Office Building.

For any additional information you may desire, please contact Mr. John Meyers, State Highway Administration, telephone 363-4321.

A plan of this site has been forwarded to the Office of Planning and Development for comments. When the aforementioned comments are received by this office, they will be forwarded.

PETITIONER'S EXHIBIT 7

Very truly yours,
(SIGNED) ROBERT A. MORTON
ROBERT A. MORTON, P.E., Chief
Bureau of Public Services

cc: D. S. Thaler & Associates, Inc., 11 Warren Road, Baltimore, Maryland 21208
B.A.R.D., John Meyers

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

RECEIVED

Application # 141

Certificate #

1. Address (or other legal description of property/Project name) #605 & #607 Reisterstown Road
POSNER PROPERTY

2. Deed reference: O.T.G. 5235 folio 202 and E.H.K.Jr. 5356 folio 758

3. Owner(s) Bernard Posner

4. Address and phone number of owner 3313 Terrapin Road, Baltimore, Maryland 21208
484-3316

5. Address and phone number of owner's agent D.S. Thaler & Associates, Inc. 484-4100
11 Warren Road, Baltimore, Maryland 21210

6. Status of proposed development

a. Tentative approval - date and number N/A
b. Public Works agreement number and date of issuance N/A
c. Commitment of funds for PWA N/A
d. Record Plat date, folio/tier number N/A
e. Construction status of onsite roads/or utilities N/A
f. DFW Sewer allocation Volume (MGD) N/A date and N/A
g. Special exception - date and number N/A
h. Building Permit Application date N/A

Permit number(s) Application date Issuance date Expiration date
C-1487-79 11-28-79
C-1576-79 12-18-79

7. Description of proposed development

a. Acres 1.9
b. Number of dwelling units N/A
Efficiency 1 BR 2 BR 3 BR & more
c. Retail - gross floor area 5,010 sq. ft. proposed
d. Office - gross floor area N/A
e. Zoning R1

Site contains 10,668 sq. ft. of existing use to be removed to allow for new construction (6,118 sq. ft. retail, 1900 sq. ft. residential, 2,650 sq. ft. garage)

8. Located in Basic Services mapped area
Sewer Gwynns Falls
Water N/A
Date of Fire Flow Test Approval N/A
Transportation 3-B

9. Signature of owner or owner's agent & date
10. Application accepted by CPZ

PETITIONER'S EXHIBIT 8

11. If any information furnished above is inaccurate, this application will be marked, and a new application must be submitted.

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3211

JOHN D. SEYFFERT
DIRECTOR

February 5, 1980

Mr. Bernard Posner
3313 Terrapin Road
Baltimore, Maryland 21208

Dear Mr. Posner:

This is a Reserve Capacity Use Certificate for 605-607 Reisterstown Road in accordance with Paragraph 4A02.3.G of the BCZR. This certificate grants the right to apply for building permits totaling 500 (sq. ft.). This amount represents ALL RESERVE CAPACITY of that requested in the application (7/11) for reserve capacity.

Those projects receiving no allocation or only a portion of that requested, will be reconsidered when additional capacity becomes available. The reconsideration will be based upon the order in which the original application was submitted. Your application has been designated as having a standing of N/A.

This project is "grandfathered" under Sub paragraph 4A02.3.G.7 in that:
Sewer allocations were issued prior to November 19, 1979 or
The Public Works Agreement was funded prior to November 19, 1979 or
Substantial construction of roads and utilities began prior to November 19, 1979 or
Building permits were issued prior to November 19, 1979.

The expiration date of this certificate is:
August 19, 1980 (unless subsequently secured by construction of roads and utilities or issuance of building permits.) All unsecured allocations will be redistributed after August 19, 1980.
X No expiration date
The expiration date of building permits which may be issued after the date of but which are captioned upon this certificate (Nine months from date of this certificate), unless secured by construction of roads and utilities, or issuance of building permits.

PETITIONER'S EXHIBIT 9

John D. Seyffert
Director of Planning and Zoning

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3211

JOHN D. SEYFFERT
DIRECTOR

May 16, 1980

Mr. Bernard Posner
3313 Terrapin Road
Baltimore, Maryland 21208

Re: Reserve Capacity Use Certificate #141
605-607 Reisterstown Road

Dear Mr. Posner:

This letter is to confirm the conversation of today between Messrs Sadler, Bober and Dietz regarding the above property. This office has been informed that 605-607 Reisterstown Road is not connected to the public sewer system. The original application (#141) for a Reserve Capacity Use Certificate was granted with the assumption that the existing buildings which totaled 10,668 square feet, were connected to the public sewer and that these buildings were to be razed and the sewer connections from the original building would be transferred to the proposed use. However, we now understand that the property is not connected to the public sewer, but makes use of a private septic system.

Our findings that your property was grandfathered under the provisions of Bill No. 178-79 are no longer true. Therefore, I must revoke our Reserve Use Capacity Certificate #141 of February 5, 1980. As a result we will not be able to issue a building permit for this property.

Sincerely,
John D. Seyffert
Director of Planning and Zoning

cc: Mr. William Dietz
125 Duncannon Road
Bel Air, Maryland 21014

Mr. Henry Sadler
D. S. Thaler & Associates
11 Warren Road
Baltimore, Maryland 21208

Mr. Eugene A. Bober, Current Planning
Mr. Robert A. Morton, Public Services

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

RECEIVED

Community Times-Reisterstown--Thursday, March 13, 1980

Two stores planned near homes

7-11 Roy Rogers waiting for permits

By Janene Holberg
Times Staff

A 7-11 Store and a Roy Rogers restaurant are planned on the plot, 711 off Main Street, where a Parler Farm produce stand is currently located.

The two businesses would occupy 1.91 acres of land with a zoning classification of BL (business light).

On all sides of the property are homes, a situation which has led the county Office of Planning and Zoning to recommend a change in classification to RO (residential office), in line with other buildings in the vicinity, such as Breadbent Realty.

According to Gene Bober, chief of the current planning and development division of the county planning department, all agencies have given their approval to the plans submitted by property owner Bernard Posner, except the State Highway Administration (SHA).

This agency is working to have the entrance driveway to the site relocated to aid traffic flow in the area, Bober explained.

He said he believes there is no reason why building permits will not be issued, once the State Highway Administration gives its OK.

Calvin Reter, president of Chartley Community Association, said he was unable to comment on the reaction of Piper Road residents, whose homes would back up to the businesses, because he had just learned of the plans.

Pat Lazelle, planning and zoning chairman of the Reisterstown-Owings Mills-Glyndon Coordinating Council (ROG) said that group supports the planning office's recommendation of RO, in keeping with the character of the vicinity.

She noted, though, that Posner's lawyer, Julius Lichter, agreed to work with the community in the design of the structures, due to their close proximity to the Reisterstown Revitalization study area, which ends at Berryman's Lane.

Although recommended for a zoning change, if construction begins before completion of the 1980 comprehensive zoning map process, the request for a reclassification will become void.

PETITIONER'S EXHIBIT 10

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Leonard S. Jackson, County Attorney
Tom Bollinger, Assistant County Attorney Date: March 29, 1983

FROM: Peter Max Zimmerman, Deputy People's Counsel

SUBJECT: Marriott Corporation, Petitioner - Zoning Case No. 83-85-SPH

Enclosed is a notice of appeal sent to this office by the Attorney for the Petitioner. This case was referred to your office on March 1, 1983 since a special hearing upon nonconforming use is within the jurisdiction of your office rather than ours.

Peter Max Zimmerman
Deputy People's Counsel

Enclosure

cc: County Board of Appeals

RECEIVED
BALTIMORE COUNTY
MAR 28 4 45 PM '83
COUNTY BOARD OF APPEALS
BY:

MARRIOTT CORPORATION
1 Marriott Drive
Washington, D. C. 20058
vs.
BALTIMORE COUNTY, MARYLAND
(a Municipal corporation)
and
JEAN M. H. JUNG
Deputy Zoning Commissioner
of Baltimore County



NOTICE OF APPEAL

BERNARD POSNER, Tenant, with the approval of Marriott Corporation, Appellant, by his attorneys, Julius W. Lichter and Steinberg, Lichter, Coleman & Rogers, having been granted in part and denied and/or modified in part the use of a stand for the sale of produce, products thereof and flowers as a non-conforming use pursuant to Section 104.1 by the Deputy Zoning Commissioner, pursuant to an Order of the Deputy Zoning Commissioner dated February 23, 1983 (a copy of which is attached hereto), hereby appeals that denial and or modification for the following reasons:

1. That the findings of the Deputy Zoning Commissioner are not supported by the evidence in the case.
2. That the evidence clearly established that the imposition of restrictions Nos. 2, 4, 6, 7, 8 and 9 of the Order results in practical difficulty and unreasonable hardship upon the Petitioner.
3. That the evidence clearly indicated that recognizing the existence of the non-conforming use without the aforesaid restrictions would not adversely affect the health, safety, and welfare of the community.
4. That the decision of the Deputy Zoning Commissioner is arbitrary and capricious.

9. A revised site plan, incorporating the restrictions set forth above, shall be submitted for approval by the Maryland Department of Transportation, the Department of Public Works, and the Office of Planning and Zoning, including landscaping required for approval by the Current Planning and Development Division.

Mr. M.H. Jung
Deputy Zoning Commissioner of
Baltimore County

5. And for other reasons as may be stated at the time of the hearing on this Appeal.

Julius W. Lichter
Julius W. Lichter
Steinberg, Lichter, Coleman & Rogers
118 Chesapeake Building
305 W. Chesapeake Avenue
Towson, Maryland 21204
(301) 321-0600
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of March, 1983, a copy of the foregoing Notice of Appeal was mailed, postage prepaid, to Mr. James Gide, 612 Piper Road, Reisterstown, MD. 21136; Mr. Edward King, 247 Chartley Road, Reisterstown, MD. 21136; Mr. Dale Warman, 427 Highmeadow Road, Reisterstown, MD. 21136; John W. Hessian, III, Esquire, People's Counsel, Room 223, Court House, Towson, MD. 21204.

Julius W. Lichter
Julius W. Lichter

-2-

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 506.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the use of a stand for the sale of produce, products thereof and flowers as a non-conforming use as shown on the attached Plat to Accompany Special Hearing pursuant to Sec. 104.1.

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

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: _____
(Type or Print Name)
Signature _____
Address _____
City and State _____
Attorney for Owner of the Above-Referenced Stand
Julius W. Lichter, Esq.
(Type or Print Name)
Signature _____
Address 305 W. Chesapeake Ave., Suite 113
Towson, Maryland 21204
City and State _____
Attorney's Telephone No.: 321-0600
Legal Owner(s):
MARRIOTT CORPORATION
(Type or Print Name)
Signature _____
Address 1 Marriott Drive
Washington, D. C. 20058
City and State _____
Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Donald J. Dietz
125 Runyard Rd.
Bel Air, Md. 21014
Phone No. 301-879-6115

ORDERED By The Zoning Commissioner of Baltimore County, this _____ day of _____, 1983, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the _____ day of _____, 1983, at 10:00 o'clock A.M.

James E. Koehler
Zoning Commissioner of Baltimore County.

ECO-801

(over)

Pursuant to the advertisement, posting of property, and public hearing on the petition and it appearing that by reason of the following finding of facts:

1. The petitioner herein seeks to establish the existence of a stand used for the sale of produce, products thereof, and flowers as a nonconforming use.
2. Testimony presented in behalf of the petitioner revealed that Bernard Posner acquired the subject site prior to 1973 and that Case Nos. 73-48-R and 74-186-R (Business, Local) zoning for the entire site. The 1976 Comprehensive Zoning Maps retained the B.L. zoning; however, the 1980 maps changed the eastern portion of the property to R-O (Residential-Office). Mr. Posner sold the tract to the herein petitioner and currently leases approximately 0.53 of an acre on which to operate the produce stand. The stand has operated continuously from 1974 through 1981, i.e., every summer, in the location designated as "ex. produce stand" on the site plan prepared by D.S. Thaler & Associates, Inc., revised March 29, 1982, and marked Petitioner's Exhibit 3. The entrance had been located towards the center of the property as it fronts on Reisterstown Road and parking was provided behind the stand. The site plan prepared by D.S. Thaler & Associates, dated April 6, 1979, and marked Petitioner's Exhibit 13, corroborated this testimony. During the 1982 season, the stand was operated from the location designated as "relocated produce stand" on Petitioner's Exhibit 3. Further testimony indicated that flower sales began at this time.
3. Area residents appearing in opposition to the request testified that the stand was originally located south of the center drive and that parking was provided to the northwest side of the stand. They further contended that the stand had not been operated continuously.
4. The finding of a nonconforming use being conducted on the subject property will not adversely affect the health, safety, and general welfare of the community.

and, therefore,

IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 23rd day of February, 1983, that a nonconforming use for a stand used for the sale of produce and products thereof, in accordance with Petitioner's Exhibit 3, has existed and has been conducted on the subject property since 1974 and, as such, is hereby GRANTED the right to continue from and after the date of this Order, subject, however, to the following restrictions:

1. The abandonment or discontinuance for a period of one year or more shall terminate the nonconforming use.
2. Damage by fire or other casualty of the improvement to the extent of 75% of its replacement cost at the time of such loss shall terminate the nonconforming use.
3. The stand shall display its merchandise and be open to customers only on the side facing the rear (northeast) of the property.
4. Five parking spaces shall be provided to the northeast of the stand and shall be paved with a durable, dustless surface.
5. "No Parking" signs shall be posted on the access road from Reisterstown Road to the entrance of the parking spaces provided for the stand.
6. All signs shall be in compliance with Section 413 of the Baltimore County Zoning Regulations and signage for the stand shall not exceed 25 square feet.
7. No flowers or refrigerated products shall be sold from the stand.
8. At such time as the current tenant (Bernard Posner) ceases to lease the property (Petitioner's Exhibit 3 - Ground Lease), the stand shall be removed.

ZONING VIOLATION INSPECTION RECORD

Date: 2-13-80 Inspector: *Pat Buffin* No. C-80-459

Zoning: B-1 Location: *Reisterstown Rd*

District: 4 Int./Landmark: *Reisterstown Road*

Source: In-Person ☐ Letter ☒ Pick-Up ☐ Structure: Apartment ☐ Dwelling ☐ Other ☒ *Farmer's Stand*

(1) Complainant: *Marianne Dietz* Phone: _____
Address: *114 Chestnut Hill Lane*
Reisterstown, MD 21136

(2) Attorney: *Pat Buffin* Phone: *833-3814*
Address: *11231 Reisterstown Rd* *21136*

() Occupant: _____ Phone: _____
Address: _____

() Owner: *Donald Posner & Richard Posner* Phone: _____
Address: *3313 Seneca Court*
Baltimore, Md 21208

() Attorney: _____ Phone: _____
Address: _____

DETAILS OF COMPLAINT: *Occupancy permit / site plan*

INSPECTOR'S REPORT

INITIAL INSPECTION Day: *Monday* Date: *2-13-80* Time: *8:00 PM*

Probable Violation: Yes ☐ No ☒ Section(s): *413.3, 500.9, 413.4, 230.1*

Non-Conforming Use Claimed: Yes ☐ No ☒ Year: *101 (business vehicles)*

Inspection revealed the lot behind Posner's stand is being used as an open parking lot for cars, trucks, and motorcycles. Inspection also showed illegal occupancy of a stand without advertising signs. Additionally, trucks parked in rear of property were not in compliance with the site plan on file. 3-14-80

Send 30 Day Card - Correction: *see attached* Page 3-14-80 No. Photos: 6

RE-INSPECTION Day: _____ Date: *3-13-80* Time: _____

Inspector: *Pat Buffin* Date: *4-16-80* Time: _____

Inspector found vehicle in photo (marked) remaining set for hearing

No. Photos: _____

RE-INSPECTION Day: _____ Date: *7-14-80* Time: _____

Inspector found no V's on property stand open and in compliance. Close case

No. Photos: _____

SUMMONS () *Pat Buffin*
Inspector

VIOLATION ASSIGNMENT SHEET

CASE NO. C - *80-459*

ELECTION DISTRICT *4th*

LOCATION *Reisterstown Road*

ALLEGED VIOLATION *app. plan / no permit*

SEND ACKNOWLEDGEMENT ☒ PICK-UP () POLICE ()

ASSIGN TO:

() J. B. BYRNES () H. E. PHIPPS
() I. S. ERDMAN () A. E. SORRENTINO
() L. W. FLORA () J. H. THOMPSON
() G. C. FREUND () J. C. REEDY
() A. J. GRIFFIN () *3415*

REFER TO:

() BUILDINGS ENGINEER () HEALTH DEPARTMENT
() FIRE DEPARTMENT () DOG LICENSES
() POLICE DEPARTMENT () OTHER

COMMENTS:

DR 16 Donald Posner 486-2311
Marianne Dietz
Sharon Lee

3-13-80
Police trying to locate owner of V's on
will have towed away
Jackie P. driver will be there this summer

ZONING ENFORCEMENT SECTION

TELEPHONE: 494-3351

CORRECTION NOTICE FOR ALLEGED ZONING VIOLATION

CASE NUMBER C - *80-459* ELECTION DISTRICT: *4*

LOCATION: *Reisterstown Rd* *just North of Welgreen*

DEAR *Mr. & Mrs. Posner*:

PLEASE BE ADVISED THAT AN INSPECTION OF THE ABOVE REFERENCED LOCATION REVEALED:

THERE WAS NO VIOLATION OBSERVED AND THE CASE WILL BE CLOSED

THERE IS AN APPARENT VIOLATION AND THE FOLLOWING CORRECTION IS REQUIRED:

Site plan must be submitted showing existing use, show lot for parking lot, parking spaces, etc. on site. Young's sign, etc. including all pertinent information for site plan checklist which is provided in the County zoning office. Site plan would have been required had the necessary changes of occupancy permit been applied for. Additionally, all illegal signs must be removed. Signs permitted will be by permit only. All illegally tagged or otherwise questionable vehicles must be removed.

COMPLIANCE MUST BE ATTAINED BY: *3-14-80*

COMPLIANCE HAS NOT BEEN ATTAINED AND THE MATTER WILL BE SCHEDULED FOR A VIOLATION HEARING.

COMPLIANCE HAS BEEN ATTAINED AND THE CASE WILL BE CLOSED.

INSPECTOR: *Pat Buffin* DATE: *2-13-80*

DEFENDANT COPY COMPLAINTANT COPY

JOHN D. SEYFFERT
DIRECTOR

February 5, 1980

Mr. Bernard Posner
3313 Terrapin Road
Baltimore, Maryland 21208

Dear Mr. Posner:

This is a Reserve-Capacity-Use Certificate for 605-607 Reisterstown Road. In accordance with Paragraph 4A02.3.G of the BCZR, this certificate grants the right to apply for building permits totaling 5,000 (square ft.). This amount represents ALL/PAVING/NOISE of that requested in the application (1/11) for reserve capacity.

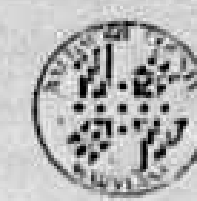
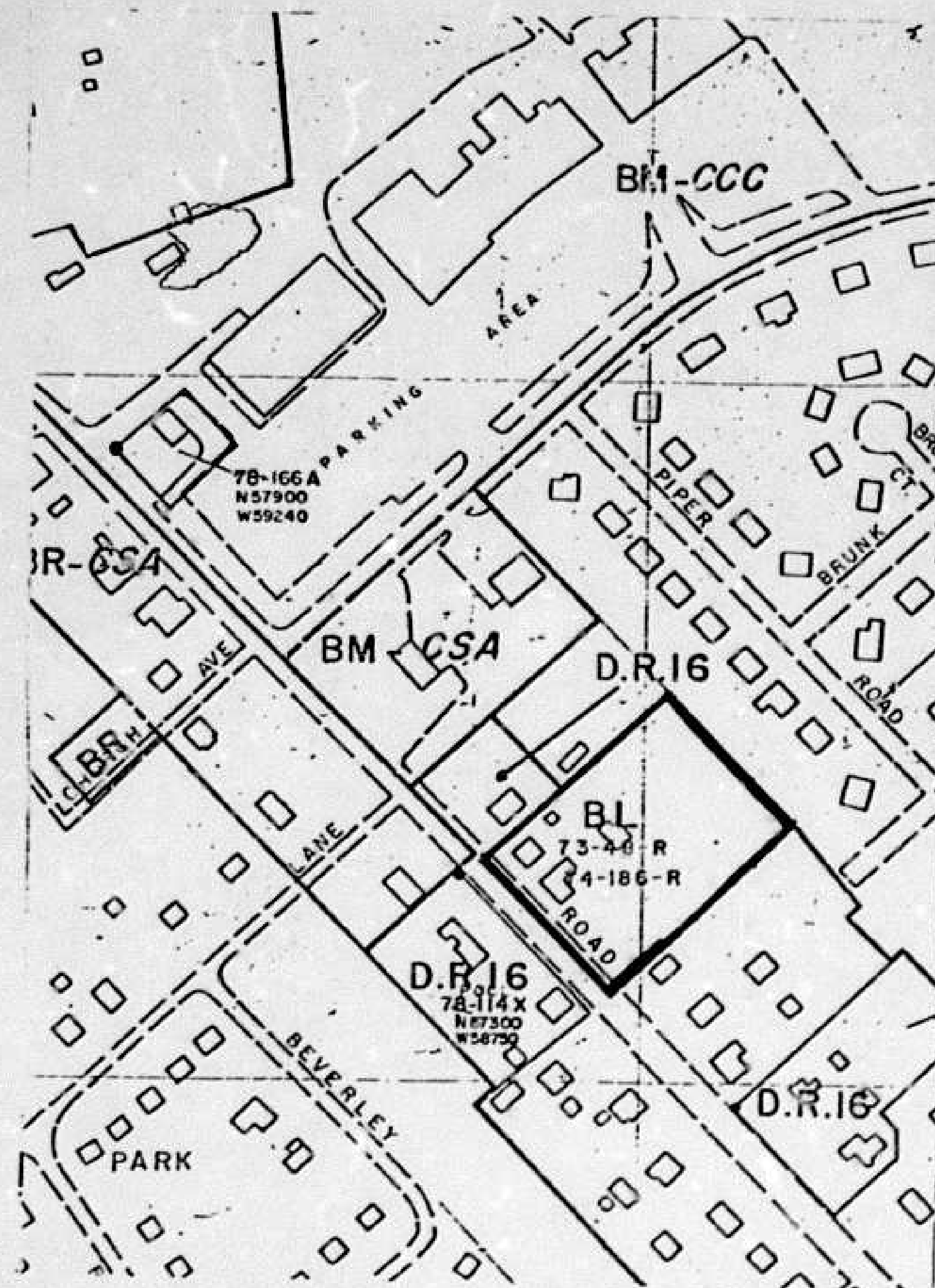
Those projects receiving no allocation or only a portion of that requested, will be reconsidered when additional capacity becomes available. The reconsideration will be based upon the order in which the original application was submitted. Your application has been designated as having a standing of N/A.

This project is "grandfathered" under Sub paragraph 4A02.3.G.7 in that:
Sewer allocations were issued prior to November 19, 1979 or
The Public Works Agreement was funded prior to November 19, 1979 or
Substantial construction of roads and utilities began prior to November 19, 1979 or
Building permits were issued prior to November 19, 1979.

The expiration date of this certificate is:
August 19, 1980 (unless subsequently secured by construction of roads and utilities or issuance of building permits.) All unsecured allocations will be redistributed after August 19, 1980.
☒ No expiration date
The expiration date of building permits which may be issued after the date of but which are conditioned upon this certificate
(Nine months from date of this certificate), unless secured by construction of roads and utilities, or issuance of building permits.

John D. Seyffert
Director of Planning and Zoning

PETITIONER'S
EXHIBIT 9



BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3211

JOHN D. SEYFFERT
DIRECTOR

RECEIVED

BUREAU OF LAND DEVELOPMENT

May 16, 1980

Mr. Bernard Posner
3313 Terrapin Road
Baltimore, Maryland 21208

Re: Reserve Capacity Use Certificate #141
605-607 Reisterstown Road

Dear Mr. Posner:

This letter is to confirm the conversation of today between Messrs. Sadler, Bober and Dietz regarding the above property. This office has been informed that 605-607 Reisterstown Road is not connected to the public sewer system. The original application (#141) for a Reserve Capacity Use Certificate was granted with the assumption that the existing buildings which totaled 10,668 square feet, were connected to the public sewer and that these buildings were to be razed and the sewer connections from the original building would be transferred to the proposed use. However, we now understand that the property is not connected to the public sewer; but makes use of a private septic system.

Our findings that your property was grandfathered under the provisions of Bill No. 178-79 are no longer true. Therefore, I must revoke our Reserve Use Capacity Certificate #141 of February 5, 1980. As a result we will not be able to issue a building permit for this property.

Sincerely,

John D. Seyffert
Director of Planning and Zoning

cc:

Mr. William Dietz
125 Duncannon Road
Bel Air, Maryland 21014

Mr. Henry Sadler
D. S. Thaler & Associates
11 Warren Road
Baltimore, Maryland 21208

Mr. Eugene A. Bober, Current Planning
Mr. Robert A. Morton, Public Services

PETITIONER'S
EXHIBIT 10

STEINBERG, LICHTER, COLEMAN & ROGERS

305 W. CHESAPEAKE AVENUE, TOWSON, MD. 21204 (301) 331-0600

October 4, 1982

IN REPLY REFER TO:

Mrs. Jean M. H. Jung
Deputy Zoning Commissioner
Zoning Commissioner's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Special Hearing
Northeast side Reisterstown Road
110 feet Northwest of Walgrove Road
Marriott Corporation Petitioner
Case No. 83-85-SPH (Item #3)

Dear Mrs. Jung:

At the time of the hearing on the above captioned case, you inquired as to whether there was any legal data to support the position of the petitioner for the continuance of the non-conforming use. I would like to direct your attention to the following cases which I have photo copied and marked for your attention:

Nyburg v. Solmson, 106 A.2d 483; and
Jahnigen v. Staley, 225 A.2d 277.

These cases are Maryland cases heard by the Court of Appeals of Maryland in 1954 and 1967 respectively. I forward these citations to you to substantiate the position of the petitioner to maintain the operation of the produce and allied products business is permitted as a non-conforming use so long as the nature and character of the use is unchanged and substantially the same facilities are used. Both of these cases indicate that non-conforming uses can intensify their operations as long as those operations are not expanded.

Mrs. Jean M. H. Jung
Deputy Zoning Commissioner

Page 2
October 4, 1982

Re: Petition for Special Hearing
Case No. 83-85-SPH (Item #3)

The evidence is uncontradicted that the use of the property was continuous as a commercial use and is unchanged since substantially the same facilities are being used.

Should you have any further questions, please do not hesitate to call.

Sincerely,

Julius W. Lichter

JWL:lsp



NYBURG v. SOLMSON
Cite as 106 A.2d 483

Md. 483

NYBURG v. SOLMSON et al.
No. 171.

Court of Appeals of Maryland.
June 25, 1954.

Proceeding involving garage owner's non-conforming use of property within residential district. The Board of Municipal and Zoning Appeals entered decision favorable to the garage owner but limited his use of open space before his garage to the parking and storage of not more than 10 vehicles at one time, and the garage owner appealed. The Baltimore City Court, Herman M. Moser, J., struck down the restriction imposed by Board, and a protestant appealed. The Court of Appeals, Hammond, J., held that evidence sustained Board's finding that garage owner had a non-conforming use as to whole lot upon which garage was located, including the open space in front of garage, and that Board could not properly restrict the use of such open space to the parking and storage of not more than 10 automobiles at one time.

Order affirmed.
Generally, the right to intervene is within discretion of trial court, measured in light of intervenor's interest in subject matter and issues raised by proceedings.
2. Appeal and Error (C-2)(3)
The exercise of discretion as to right of intervention generally is not subject to appeal, but it may be if action of court amounts to an abuse of discretion.
3. Municipal Corporations (C-2)(3.5)
Where protestant against landowner's nonconforming use of property had vigorously participated in hearing before Board of Municipal and Zoning Appeals, and was entitled to appeal from decision of Board both as a person aggrieved and as a taxpayer, but protestant attacked the Board's decision by a late appeal and, after it was apparent that appeal was to be dismissed,

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4. Municipal Corporations (C-2)(3.5)
Where garage owner had a nonconforming first commercial use of open space in front of his garage, property could properly be used for sale of new cars or as a truck distribution center, which uses are permissible in a first commercial use district.

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Md. Rep. 103-104 A.24-25

Two stores
planned
near homes

7-11 Roy Rogers
waiting for permits

By Janene Holzberg

A 7-11 Store and a Roy Rogers restaurant are planned on the property off Main Street, where a Parker Farm produce stand is currently located.

The two businesses would occupy 191 acres of land with a zoning classification of B1 (business light).

On all sides of the property are homes, a situation which has led the county Office of Planning and Zoning to recommend a change in classification to RO (residential office), in line with other buildings in the vicinity, such as Broadbent Realty.

According to Gene Bober, chief of the current planning and development division of the county planning department, all agencies have given their approval to the plans submitted by property owner Bernard Posner, except the State Highway Administration (SHA).

This agency is working to have the entrance driveways to the site relocated to aid traffic flow in the area, Bober explained.

He said he believes there is no reason why building permits will not be issued, once the State Highway Administration gives its OK.

PETITIONER'S
EXHIBIT 11

Calvin Reter, president of Charley Community Association, said he was unable to comment on the reaction of Piper Road residents, whose homes would back up to the businesses, because he had just learned of the plans.

Pat Larzelle, planning and zoning chairman of the Reisterstown-Owings Mills-Glyndon Coordinating Council (ROG), said that group supports the planning office's recommendation of RO, in keeping with the character of the vicinity.

She noted, though, that Posner's lawyer, Julius Lichter, agreed to work with the community in the design of the structures, due to their close proximity to the Reisterstown Revitalization study area, which ends at Berryman's Lane.

Although recommended for a zoning change, if construction begins before completion of the 1980 comprehensive zoning map process, the request for a reclassification will become void.

that not more than ten vehicles could be stored at any one time upon the lot.

The appellee, in due time, petitioned the Baltimore City Court to entertain an appeal from so much of the decision of the Board as limited the use to not more than ten vehicles. The court ordered the appeal to be entered and the record sent up. After the time allowed for the taking of an appeal from the Board to Court, the appellant filed an appeal from the Board's order of February 24, in the Baltimore City Court. Subsequently, this appeal was dismissed by that court because it was filed too late, and no appeal was taken to this Court.

Some six weeks after the time for an appeal had passed, the appellant filed a petition in the Baltimore City Court in the appeal which had been taken by the appellee, which sought leave to intervene, and file an answer. On the same day, the court ordered the intervention and, thereupon, the appellant filed an answer in which he alleged that any use of the garage premises, other than residential use, violated the Zoning Ordinance, that no non-conforming use existed as to the open space in front of the building, that if such use ever existed, it had been abandoned, that the 1947 effort of the appellee to use the garage as a distribution center was *res judicata* as to the non-existence of the non-conforming use of the open space, and finally, that even if there existed a non-conforming use of the open space, its present use " " " as an interstate trucking depot for new automobiles " " " is offensive because of the odor, dust, gasoline fumes, vibration and noise which result. The prayer of the answer was that the court would eliminate entirely: " " " a non-conforming use of the Petitioner, in said open space." The appellee, several days later, filed a petition to strike the order making the appellant a party defendant, on the ground that the latter had filed an untimely appeal from the order of the Board of February 24, which he now sought to attack as an intervenor. The trial court reserved decision on the right of the appellant to intervene until a hearing on the merits. After such hearing, the court passed its or-

der, holding: (1) that the action of the Board in finding that there existed a non-conforming use for parking, storing and the repair of motor vehicles in the garage building and for the use of the entire open space in front of the said building for the sale of gasoline, oil and accessories and for parking and storing of motor vehicles is supported by substantial evidence; (2) that the action of the Board which sought to restrict the use of the open space " " " to that use which existed in 1931, namely, storage of, not more than ten cars or trucks " " " is improper as a matter of law, since it amounted to an attempt to prohibit of a legally valid intensification of use; (3) that the appellant, Sidney Nyburg, was not entitled, under the facts of the case, to intervene as a defendant, having taken a late appeal from the decision of the Board of which he now complains.

[1-3] In the briefs and argument here, the parties collide first, and head on, as to whether the court below was right in refusing the appellant leave to intervene as a defendant. The appellee says that the refusal of intervention and refusal to rule on the issue raised by him constituted reversible error. The appellee counters that if one is dissatisfied or aggrieved by the decision of the Zoning Board, he must appeal in due time and may not, by intervention, after the time for appeal has passed, seek to secure affirmative relief. The appellee says further that if appellant be permitted to intervene, he must seek only to uphold the decision of the Board. Generally, the right to intervene is within the discretion of the trial court measured in the light of the intervenor's interest in the subject matter and the issues raised by the proceedings. The exercise of discretion as to the right of intervention, generally is not subject to appeal; it may be if the action of the court amounts to an abuse of discretion. Conroy v. Southern Maryland Agricultural Ass'n, 165 Md. 454, 169 A. 802; Strim v. Radio-Keith-Orpheum Corp., 163 Md. 398, 163 A. 696; Miller's Equity Procedure, Sec. 77-81; and Bauer v. Harnett, 188 Md. 553, 53 A.2d 399. The general

test has been applied in zoning cases. In several, this Court has not questioned the action of the lower court in permitting the intervention of a neighbor taxpayer, as a party defendant, seeking to uphold the decision of the Board. See Fritze v. City of Baltimore, 202 Md. 265, 96 A.2d 4; Deyer v. Mayor and City Council of Baltimore, 182 Md. 444, 34 A.2d 745; City of Baltimore v. Cohn, Md. 105, A.2d 482. On the other hand, we have approved the action of the lower court in refusing intervention. In Psalmist Baptist Church v. Board of Zoning Appeals, 175 Md. 7, 199 A. 815, the appellants, a month after the Baltimore City Court decided a zoning case, filed a petition in that court to reopen the case on the allegation that they had new and additional facts which should be brought to the court's attention. Their petition was dismissed by the lower court and their appeal to this Court from that action was also dismissed. In Mayor and City Council of Baltimore v. Shapiro, 187 Md. 623, 51 A.2d 273, we accepted without question the action of the lower court in refusing permission to pro- testants to intervene for purposes of appeal to this Court after the decision of the lower court. In Windsor Hills Improvement Ass'n v. Mayor and City Council of Baltimore, 197 Md. 383, 73 A.2d 531, 535, an association appealed to the Baltimore City Court from the decision of the Board, and two months after the time for appeal had expired, one Kairy, a taxpayer and president of the association, was granted leave to intervene as a party plaintiff. The court below dismissed the appeal of the association on the ground that it was not a person nor a taxpayer who was aggrieved or interested. Judge Markell, in speaking of the lower court's permission to Kairy to intervene, said for the Court: "On the record Kairy is a taxpayer and a party in the lower court and therefore entitled to appeal to this court. We think, however, that his petition for intervention after expiration of the time for appeal could not validate the Association's attempt to appeal and should have been denied." In the case before us, it is clear that the appellant, who had vigorously participated in the hearing

before the Board, was entitled to appeal under the provisions of the Enabling Act and the Zoning Ordinance, both as a person "aggrieved" by a decision of the Board, and as a "taxpayer". He could have made direct attack on the Board's decision and order and, in fact, did so, but by a late appeal. It was only after it was apparent that the appeal was to be dismissed, that the appellant sought by intervention to obtain the relief which he had sought by appeal but lost by his failure to act in time. The court below permitted him to intervene on his *ex parte* application and to participate in the case, ruling only after the case had been fully heard and as part of the final order, that he was not entitled to intervene. Essentially then, the action of the lower court was to forbid the intervention of the appellant for the purposes of appeal to this Court. In both procedure and substance, the case is not unlike Conroy v. Southern Maryland Agricultural Ass'n, supra, and Maryland Agricultural Ass'n v. Windsor Hills Improvement Ass'n v. Mayor and City Council of Baltimore, supra. We think that the action of the lower court was fully justified under the circumstances of the case and well within the exercise of its sound discretion.

This finding would ordinarily lead to a dismissal of the appeal, since the Mayor and City Council acquiesced in the decision of the lower court and the elimination of Sidney Nyburg would leave no one with standing as an appellant. If the appeal were dismissed, the order of the lower court would, of course, stand and under it, the appellee would have a non-conforming use in the open space without any restriction as to the number of cars which were to be parked or stored thereon. We feel, however, as the case comes to us, that it would be appropriate to reach the same result by affirmance of the order appealed from. This is because the case was fully argued on the merits in the court below and the appellant was not excluded, until and as part of the final decision. The merits were fully briefed and argued by both sides in this

Court and they joined in asking that we pass on the merits.

[4] We agree with the holding of the lower court that there was ample evidence before the Board to justify a finding that the appellee had a non-conforming use as to the whole lot owned by him on Linden Avenue, including the open space in front of the garage. The pro- testants themselves admit that cars were parked and stored on part of the open area, although they say that they were few in number and that the occurrence was infrequent. The appellee, and witnesses who supported him, gave testimony which fully warranted a finding that all of the area from 1925 on, at least, had been used for the parking, storing, washing and servicing of cars and that part had been used for the sale of gasoline from pumps. One witness said that he and thirty or forty other chauffeurs regularly parked their own and their employers' cars on the open area and that this had been going on for thirty years. The witness referred to occasions when he had gone to Florida and left his car on the lot for weeks and said that others had done the same thing. There was testimony that when the garage was full, persons desiring to park their cars, would be given claim checks and the cars left on the lot until they could be put into the garage. The evidence fully supports a finding that the use was continuous, substantial and commercial. The use meets the test adopted in Chayt v. Board of Zoning Appeals, 177 Md. 426, 434, 9 A.2d 707, of an existing use; that is to say, the "utilization of the premises so that they are known in the neighborhood as being employed for the conduct of a given business." The appellant seeks to show that in the 1947 proceedings before the Board of Municipal and Zoning Appeals, the appellee did not make the same claim as to the use of the open space that he now makes. It is clear from the record of those proceedings that the emphasis then was on the change to the use of the building, the open space not being involved, but that the appellee gave brief testimony as to the use of the open space which did not vary signifi-

cantly from his 1953 testimony. Abandonment of the use at the time the garage was leased for four years is claimed but not seriously relied on by the appellant, and the evidence does not support the claim.

[5-8] The appellant seeks to show that the use of the property for the unloading and distribution of Nash cars constitutes a nuisance which is offensive because of noise, dust and fumes. There was testimony from a number of neighbors that this claim was either greatly exaggerated or inaccurate. The appellant carries his contention as to this as far as to say that the use of the open space should be classified as second commercial because it is used for a trade, industry or use " " " that is noxious or offensive by reason of the emission of odor, dust, smoke, gas, fumes, vibration or noise." under the provisions of Section 8 (d) 20 of the Baltimore City Zoning Ordinance, and so constitutes a forbidden second commercial use. Neither the Board nor the court on appeal, felt that the claim was justified on the evidence. As a matter of law, a garage, a new car sales room and a truck distribution terminal are all permissible uses in a first commercial use district. See City of Baltimore v. Cohn, supra. A non-conforming use may be changed to a use of the same or a higher classification. Thus, if the appellee had a non-conforming first commercial use of the open space in front of the garage, as we hold that he did, the property could have been used for the sale of new cars or as a truck distribution center. See Roach v. Board of Zoning Appeals, 175 Md. 1, 199 A. 812. The noise, dust and fumes normal to the conduct of any such businesses certainly would not be within the ban of Section 8 (d) 20 of the Ordinance. The fact that the first commercial use is a non-conforming one in a residential district, does not compel a test under the ordinance more severe than that which would be applied if the industry, trade or use were being carried on in a first commercial district. If any of the activities of the appellee violate the laws of the State or of the City, because of the time at which, or the manner in which, they

are carried out, the appellant and the other neighbors have the remedies provided for the violations of such laws.

[9] We come then to the claim most seriously relied on by the appellant—that the Board was justified in restricting the use of the open space to the parking and storage of not more than ten cars at one time because the present use of the open space constitutes a prohibited change of use, or as the Board put it, that the use of this lot for parking and storage has increased, beginning in 1950, and: " " " has changed from parking of cars to practically a new car agency " " " As we have pointed out, a new car agency is a permissible first commercial use and the appellee, having the right to park and store motor vehicles on the open space, would have the right to use it as a new car agency. The appellant's contention really is that the appellee's use of the property amounts to an extension of a non-conforming first commercial use, and that the Board was justified in refusing such extension on the strength of cases such as Colati v. Jirout, 186 Md. 652, 47 A.2d 613; Cleland v. Mayor and City Council of Baltimore, 198 Md. 440, 84 A.2d 49; and Fritze v. City of Baltimore, supra. We think that the case before us plainly is different from those cases in that here there is not an extension but merely an intensification of a long continued non-conforming use. In Green v. Garrett, 192 Md. 52, 63 A.2d 326, there was a suit to enjoin the Department of Recreation and Parks and a professional baseball club from entering into an agreement for the use of the Baltimore stadium for the playing of professional baseball at night. Before the Zoning Ordinance was passed in 1931, the stadium had been built and used for professional football games and at least one baseball game. This Court held that it constituted a non-conforming use. It distinguished Colati v. Jirout, supra, and said that it has never been held that: " " " more frequent use of a property for a purpose which does not conform to the ordinary restrictions of the neighborhood is an extension of an innoxious use of the same building

for a similar purpose. We do not think such a contention is tenable." [192 Md. 52, 63 A.2d 330.] It was held that although there was no doubt that the games played at the stadium had produced a use greatly in excess of the former use, that intensification was not an extension within the meaning of the Zoning Ordinance.

We think that the present case is controlled by the principle of the Green case and that the court below was right in striking down the restriction which the Board had placed on the use of the open space in front of the garage, and in affirming otherwise the findings of the Board.

Order affirmed, with costs.



MUTUAL CHEMICAL CO. OF AMERICA ET AL.
v.
PINCKNEY.
No. 169.

Court of Appeals of Maryland.
June 24, 1954.

Proceeding for compensation under the Workmen's Compensation Act for permanent injury to claimant's nose as the result of an occupational disease. From a judgment of the Superior Court of Baltimore City, Michael J. Manly, Jr., for claimant on his appeal from the Industrial Accident Commission's order disallowing the claim as not filed within the time prescribed by the statute, claimant's employer and the insurer appealed. The Court of Appeals, Collins, J., held that the claim was barred by the statute of limitations as a matter of law, where claimant admitted that he knew his trouble was caused by his occupation at the time of his discharge by the em-

right in way different from that suffered by public generally.

2. Zoning C-571

Owners of property in close proximity to marina property had standing to institute suit to set aside decision rezoning marina property from agricultural use to heavy commercial use.

3. Zoning C-163

Basic premise underlying zoning regulations is to restrict rather than expand nonconforming uses.

4. Zoning C-51

Intensification of nonconforming use is permissible so long as nature and character of use is unchanged and substantially the same facilities are used.

5. Zoning C-329

Construction of new pier and other facilities and rental of space for dockage or wet storage at facilities other than ninety-foot wharf and T, which were in existence prior to effective date of zoning ordinance placing property in agricultural classification, were invalid extensions of nonconforming use.

6. Zoning C-331

Where, prior to comprehensive zoning ordinance placing marina property in agricultural classification, marina owners' predecessor had rented up to seven rowboats, increase in number of rowboats rented thereafter would be intensification of nonconforming use and not extension thereof.

7. Zoning C-147

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

8. Zoning C-718

In suit seeking to enjoin limiting nonconforming use of marina property, testimony as to launching of boats was too vague to establish that such use was regularly made before enactment of comprehensive zoning ordinance placing marina property in agricultural classification or that it was carried on thereafter.

9. Zoning C-328

Twenty-five-foot strip of land adjacent to marina property purchased subsequent to enactment of comprehensive zoning ordinance placing property in agricultural classification could not be set aside by owners for construction of new launching ramp.

10. Zoning C-323

Intention to use is not sufficient to establish nonconforming use.

11. Zoning C-718

In action seeking injunction limiting nonconforming use of marina property, testimony as to storage, repair and maintenance of boats other than those owned by predecessors in title was too vague and inconclusive to establish that such use was regularly made before date of enactment of comprehensive zoning ordinance placing property in agricultural classification.

Jerome F. Connell, Glen Burnie (Bieser & Connell, Glen Burnie, on the brief), for appellants.

Nicholas Goldsborough, Annapolis, for appellees.

Before HAMMOND, C. J., and MARBURY, OPPENHEIMER, BARNES and FINAN, JJ.

JAHNIGEN v. STALEY
Cite as 225 A.2d 277

MARBURY, Judge.

This is an appeal from a decree of the Circuit Court for Anne Arundel County, Judge Schae precluding, which restricted appellants' (William Jahnigen and wife) non-conforming use of their property, fronting on Broad Creek for approximately 263 feet, to the rental of seven rowboats, and to the rental of space for the dockage or wet storage of boats at a wharf not exceeding ninety feet of over-all length and six feet in width together with a twenty-four foot long and six foot wide "T" at the end of the wharf. It was also decreed that the launching facility constructed by appellants was a unlawful expansion of a non-conforming use and that they had no right to maintain dry storage or to repair boats, other than the seven rowboats, on their property.

Appellants acquired the waterfront property, approximately four acres in the Third Election District of Anne Arundel County, by deed dated December 14, 1962, from Stanley H. Kirchenbauer and wife, who acquired their title in 1948. In the years prior to February 15, 1949, when the comprehensive zoning ordinance for the Third Election District of Anne Arundel County became effective, placing the property in an agricultural classification, the Kirchenbauers constructed (in 1946) a ninety foot long pier with a twenty-four foot T and rented up to seven rowboats and approximately ten slips. The zoning ordinance restricted any non-conforming use to those uses in effect prior to the date of its adoption. On July 6, 1951, they were issued a non-conforming use certificate on which was stated, "Hiring of Rowboats." During 1951, they rented out sixteen rowboats and ten slips. In 1952, they increased the slip rental to twenty, but cut down on the renting of rowboats. In that year the Kirchenbauers also built a 104 foot pier, without first securing a permit, parallel to and about thirty-two feet from the shoreline. This pier was connected to the left side of the ninety

foot pier about thirty-two feet from the shore. They built a garage in 1953 and a stable in 1954. They provided no toilet facilities except for those in their home, which they would allow others to use on occasion. Between 1947 and 1952 people would pull their boats upon the property in the winter until about April or May, at various places and at various times. Mr. Kirchenbauer occasionally put his own boats in the garage for repairs, but he did little boat repair work for others. He had no facilities for the launching of boats, and when he did launch them it would not always be at the same place. This was an occasional operation, a dozen times in about fifteen years, and this operation required men to snake the boats down the hillside to the water.

In 1962 the Kirchenbauers purchased a twenty-five foot strip of land from a neighbor on the north side of the property, and appellants purchased the entire property from the Kirchenbauers in late 1962. In the advertisement of the property for sale, the appellants mentioned that they had twenty-five boat slips and nine rowboats. In May of 1963, William Jahnigen requested and received a permit to repair his damage to the existing ninety foot pier with the T. When he applied for the permit, he misrepresented the ninety foot original pier as having been 130 feet, claiming that the original pier was 130 feet, the last forty feet of which he said was damaged by ice and had to be replaced, but the forty feet of pier never existed. In August of that year, the Jahnigen's petitioned the Board of County Commissioners of Anne Arundel County to rezone 15 acres of their property from its agricultural use to heavy commercial use, primarily, for the purpose of allowing sales of gasoline in connection with the operation of the marina that was already in existence on the property. On August 8, 1963, the Board of County Commissioners granted the petition, and later that month appellants requested and were granted a permit to extend the pier and to construct a travel lift ramp

for the launching of boats, and gas pumps. In the construction under the permit of August 1963, appellants built two toilets and other improvements, and the pier they actually built bore no relation to appearance, size or direction to the one for which they received the permit. As the result of the rezoning, some of the appellees filed a bill of complaint in the Circuit Court for Anne Arundel County to set aside the rezoning. The bill of complaint also sought an injunction to limit the non-conforming use and to restrict the property to such a way that the Jahnigen's could only use it for the hiring of rowboats.

For the purpose of this case, the court below divided the case into two parts. The first part concerned the question of whether the rezoning was valid, and the second part dealt with the extent of the existing non-conforming use. In the trial of the first part, the court below found the rezoning to be null and void. The appellees have not appealed from this finding. Prior to the hearing of the second part of the case on the merits, the appellants filed a motion raising preliminary objection to the right of the appellees to bring such an action. The motion was overruled and the court found in favor of the complainants after the trial on the merits. The appellants contend that the chancellor erred in overruling their motion and in imposing certain restrictions on the non-conforming use of the property.

[1] A party has standing to contest a zoning decision by appeal to the courts if the decision affects its specific interest or property right in a way different from that suffered by the public generally. Alvey v. Hedin, 243 Md. 334, 221 A.2d 62; DuBay v. Crane, 240 Md. 180, 213 A.2d 487.

[2] It is evident from the record that the appellants are within the class as defined above "because their closeness to the marina property, their special problems with lights and noise as well as with the

refuse emanating from the operation of the marina, make the effect of this commercialization on them different from its effect upon members of the public generally." Alvey v. Hedin, supra, 243 Md. at page 339, 221 A.2d at page 64.

Mr. Edmund Birk, one of the protestants who owns the property adjacent to the Jahnigen property on the south side, testified that the cranes which were moored at the Jahnigen property pumped their bilges and deteriorated his waterfront property, and that he would not swim in the creek due to the fact that the boats had toilet facilities.

Mr. Otto B. French, another protestant whose property is located 125 feet at the water line from the Jahnigen property, testified that due to the increased facilities and activities, the value of his property deteriorated considerably and if a peace and quiet had departed. He testified that he was reluctant to swim in the creek because of the increased summer boat traffic which came very close to the front of his property and because of the increased junk and debris in the water, including beer cans, bottles, spoiled food and other refuse.

Mr. William Staley testified that the increased facilities had devalued his property which is about 300 yards southwest from the appellants' property, directly across the water. He testified that he had been unable to sell his property, even though it had been on the market for ten months, because of the fact that the marina was operating directly across from a property. He also stated that an extremely bright light on the Jahnigen property shone into his house every night and that the Jahnigen workboats had covered the whole east end of the creek with an oil slick.

An expert real estate appraiser, Maurice C. Ogilvie, who was thoroughly familiar with the property, was called by the appellees; and he stated that the increased operations

of the appellants had an adverse effect on the value of the surrounding property. Appellants argued that the amount of water area used up them was less than that used by the Kirchensbauers, the former owners, in that the former owners had several boats tied to buoys off the end of the T on the original ninety foot pier. The appellants contended that the construction of the additional pier facilities constituted a mere intensification of the non-conforming use as compared to an expansion of the use.

The Anne Arundel County Code (1957 ed. as amended), Section 35-10, page 882, defines the continuance of a non-conforming use as the occupation of the same building area, measured in cubic feet, and the same ground area or water area, measured in square feet, as was occupied on the effective date of the ordinance. Building area, ground area, and water area are to be considered separately and one may not be substituted for the other. The Kirchensbauers and the appellants increased the non-conforming use of the piers from 648 square feet, which existed at the time of the effective date of the zoning ordinance, to 2,326 square feet. Whether or not the Jahnigens used less water area, the fact remains that the original non-conforming use was expanded by the extension of the original pier and by the construction of new piers and other facilities. The facts of this case are analogous to those in Orange County v. Goldring, 121 Cal.App.2d 442, 263 P.2d 321 (1953), where defendant, at the time he obtained a non-conforming use, used a field for the feeding of approximately thirty to fifty cattle. He later built permanent feed pens for 200 to 300 cattle. The court said in holding that this was an invalid extension of a non-conforming use:

"It is quite apparent that there was a material change in the condition of the use by the construction of the feeding pens described, by the building of permanent foundations for watering troughs, 253 A.2d-177."

and no doubt the number of cattle now confined in the limited quarters where cattle are being fattened for market by feeding the new formula, caused added noise, stench, and disagreeable odors, which disturb the near-by residents and school children. The facts found clearly demonstrate that the present use is such a formidable change and departure from the established use, both in magnitude and character, that it constitutes a wholly new and different use, and an unlawful enlargement or extension of a non-conforming use. . . . 262 P.2d at 323.

[3-4] The basic premise underlying zoning regulations is to restrict rather than expand non-conforming uses. Phillips v. Zoning Commissioner, 225 Md. 102, 169 A.2d 410; Grant v. Mayor and City Council of Baltimore, 212 Md. 301, 129 A.2d 363; Colati v. Jirout, 186 Md. 652, 47 A.2d 613. However, an intensification of a non-conforming use is permissible so long as the nature and character of the use is unchanged and substantially the same facilities are used. Phillips v. Zoning Commissioner, supra; Nyburg v. Solmson, 205 Md. 150, 106 A.2d 483, 46 A.L.R.2d 1051. In Nyburg the area of the property which was under a prior non-conforming use as a parking area for a garage was not enlarged, but the volume of cars parked thereon was increased from a small number to about thirty to fifty. This was held to be a mere intensification of the non-conforming use, and the restrictions imposed by the zoning board limiting the space used for parking to ten vehicles at one time were struck down.

[5-6] In the case at bar, the chancellor limited the rental of rowboats to seven and restricted the rental of space for the dockage or wet storage of boats at the ninety foot pier with the twenty-four foot T at its end. He also found that in light of Section 35-38(g) (1) of the Anne Arundel County Code, supra, which provides that

piers for private use are permitted in an agricultural zone only as necessary buildings or uses to the permitted residential use, the 104 foot pier, erected approximately thirty-two feet out from the bulkhead, built in 1952 and attached to the original ninety foot pier, was a reasonable necessary to the part of the appellants' property that was agricultural and for residential use. He ordered that the other piers erected by the appellants be removed. We agree that the construction of new pier and other facilities, and the rental of space for the dockage or wet storage at any facilities other than the ninety foot pier and T, which were in existence prior to the effective date of the zoning ordinance, were invalid extensions of the non-conforming use. However, we hold that the rental of rowboats can not be so limited. Any increase in the number of rowboats rented would be an intensification of non-conforming use and would not be an extension. Nyburg v. Solmson, supra.

[7-10] The right of a landowner to continue the same kind of use to which the property was devoted on the critical date does not confer on him the right to subsequently change or add to that use a new and different one amounting to a drastic enlargement or extension of the prior existing use. Phillips v. Zoning Commissioner, supra. Appellants argued that the launching of boats by means of a travel lift and ramp was an intensification of the launching that was done by the Kirchensbauers. The evidence showed that only a dozen or more boats were launched in the years prior to the enactment of the ordinance. There was no permanent launching site nor structures to aid in the launchings. Boat launching was performed at no specific place during the years the Kirchensbauers owned the property, and it was so infrequent as not to have been part of their business. The testimony as to the launching of boats was too vague and inconclusive to establish that such use was regularly made before 1949, or that it was carried on thereafter. Boulevard Scrap Co. v.

City of Baltimore, 213 Md. 6, 130 A.2d 743; Daniels v. Board of Zoning Appeals, 202 Md. 36, 106 A.2d 57. The launching ramp was constructed on the twenty-five foot strip which the Kirchensbauers purchased in 1952. The appellants can not now set aside that particular portion of their property and construct a launching ramp. Chayt v. Zoning Appeals Board, 177 Md. 426, 9 A.2d 747. Although the Kirchensbauers may have intended to provide such services attendant to a marina, such intention to use is not enough to establish a non-conforming use. Beyer v. City of Baltimore, 182 Md. 444, 31 A.2d 765; Chayt v. Zoning Appeals Board, supra.

We affirm the decree of the chancellor in all respects except that portion thereof which restricted the rental, dry storage, repair or maintenance to the seven rowboats owned by the appellants, which is modified so as to permit the rental of rowboats which appellants might own and the storage, repair, and maintenance of those rowboats.

Decree modified, and as modified affirmed. Costs to be paid by appellants.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 4th Date of Posting: April 8, 1983
Posted for: Appeal
Petitioner: M. J. Smith Corp.
Location of property: N.E. of Reisterstown Road, 110' NW of c/l of Walgrave Road
Location of Signs: N.E. of Reisterstown Road, approx. 150' NW of the centerline of Walgrave Road
Remarks:
Posted by: S. J. Smith
Date of return: April 15, 1983
Number of Signs: 1

PETITION FOR SPECIAL HEARING
Re: Petition for Special Hearing
LOCATION: Northeast side of Reisterstown Road, 110' NW of the centerline of Walgrave Road
DATE & TIME: Thursday, September 22, 1983 at 10:45 A.M.
PUBLIC HEARING: Room 103, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing.
Petition for Special Hearing under Section 207 of the Baltimore County Zoning Regulations, to determine whether or not the zoning ordinance should be amended to permit the use of a stand for the sale of produce, produce stand and farm as a non-conforming use, as shown on the attached plat to accompany Special Hearing pursuant to Section 207.1.
All that parcel of land in the Fourth District of Baltimore County, beginning for the same on the northeast side of Reisterstown Road 88 feet wide at a point located 110 feet more or less northeast of the centerline of Walgrave Road and running thence on said northeast side of Reisterstown Road North 42° 41' 30" West 260.17 feet thence bearing Reisterstown Road North 42° 41' 30" West 260.17 feet thence South 47° 47' 30" East 50.00 feet thence South 47° 10' 00" West 288.34 feet to the place of beginning.
Containing 1.90 acres of land more or less, and containing approximately 24, and containing approximately 1.90 acres more or less.
Being the property of Marriott Corporation, as shown on plat "en filed with the Zoning Department."
Hearing Date: Thursday, September 22, 1983 at 10:45 A.M.
Public Hearing: Room 103, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland
By Order of:
WILLIAM E. HAMMOND,
Zoning Commissioner
of Baltimore County
Rec. 2

CERTIFICATE OF PUBLICATION

TOWSON, MD., September 2, 1982
THIS IS TO CERTIFY that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., on September 2, 1982, before the 23rd day of September, 1982, the first publication appearing on the 2nd day of September, 1982.

TH' JEFFERSONIAN,

Leah Smith
Manager.

Cost of Advertisement, \$

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 4th Date of Posting: Sept 3, 1982
Posted for: Appeal Hearing
Petitioner: M. J. Smith Corp.
Location of property: N.E. of Reisterstown Road, 110' NW of c/l of Walgrave Road
Location of Signs: N.E. of Reisterstown Road, approx. 150' NW of the centerline of Walgrave Road
Remarks:
Posted by: S. J. Smith
Date of return: Sept 10, 1982
Number of Signs: 1

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 117306
DATE: 3/23/83 ACCOUNT: R-01-615-000
AMOUNT: \$80.00
RECEIVED FROM: Julius W. Lichter, Esquire
FOR: Appeal Fee on Case #83-85-SPH (Marriott Corporation)
C 025*****800018 8268A
VALIDATION OR SIGNATURE OF CASHIER

August 25, 1982
Julius W. Lichter, Esquire
305 W. Chesapeake Avenue, Suite 113
Towson, Maryland 21204

NOTICE OF HEARING

Re: Petition for Special Hearing
NE/S of Reisterstown Rd., 110' NW of the centerline of Walgrave Road
Marriott Corporation - Petitioner
Case #83-85-SPH Item #3

TIME: 10:45 A.M.

DATE: Thursday, September 23, 1982

PLACE: ROOM 106 COUNTY OFFICE BUILDING, 111 W. CHESAPEAKE AVENUE,

TOWSON, MARYLAND

cc: Craig Plette
204 Sunny King Drive
Reisterstown, Maryland 21136

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 107940
DATE: 6-22-82 ACCOUNT: 01-662
AMOUNT: \$50
RECEIVED FROM: Julius W. Lichter, Esquire
FOR: Advertising & Posting Fees #83-85-SPH (Marriott Corporation)
C 046*****250018 8228A
VALIDATION OR SIGNATURE OF CASHIER

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3333
WILLIAM E. HAMMOND
ZONING COMMISSIONER

September 16, 1982

Julius W. Lichter, Esquire
305 W. Chesapeake Avenue, Suite 113
Towson, Maryland 21204

Re: Petition for Special Hearing
NE/S of Reisterstown Rd. 110' NW of c/l of Walgrave Road
Marriott Corporation - Petitioner
Case #83-85-SPH Item #3

Dear Mr. Lichter:

This is to advise you that \$60.30 is due for advertising and posting of the above property.

Please make the check payable to Baltimore County, Maryland, and remit to Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Very truly yours,

WILLIAM E. HAMMOND
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 115024
DATE: 2-24-83 ACCOUNT: R-01-615-000
AMOUNT: \$60.30
RECEIVED FROM: Julius W. Lichter, Esquire
FOR: Advertising & Posting Fees #83-85-SPH (Marriott Corporation)
C 014*****800018 8258A
VALIDATION OR SIGNATURE OF CASHIER

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
NE/S Reisterstown Rd., 110' : OF BALTIMORE COUNTY
NW c centerline of Walgrave Rd., : 4th District
MARRIOTT CORPORATION, :
Petitioner : Case No. 83-85-SPH

ORDER TO ENTER APPEARANCE

Mr. Commissioner:

Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefor, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

John W. Hession, III
John W. Hession, III
People's Counsel for Baltimore County
Rm. 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 30th day of August, 1982, a copy of the foregoing Order was mailed to Julius W. Lichter, Esquire, 305 W. Chesapeake Avenue, Suite 113, Towson, Maryland 21204; and Mr. Donald J. Dietz, 125 Duncannon Road, Bel Air, Maryland 21014, who requested notification.

John W. Hession, III
John W. Hession, III

THE LAW OFFICES OF
STEINBERG, LICHTER, COLEMAN & ROGERS
305 W. CHESAPEAKE AVENUE, TOWSON, MD. 21204 (301) 321-0600

February 3, 1983

IN REPLY REFER TO:

SEE ATTACHED

Mrs. Jean M. H. Jung
Deputy Zoning Commissioner
Zoning Commissioner's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Special Hearing
Northeast side Reisterstown Road
110 feet Northwest of Walgrove Road
Marriott Corporation Petitioner
Case No. 83-85-SPH (Item #3)

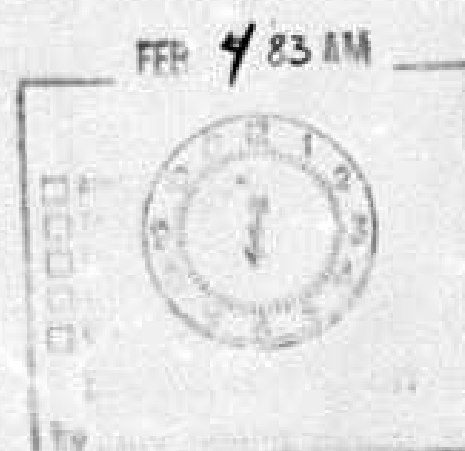
Dear Mrs. Jung:

My client has called me on numerous occasions to inquire as to when a decision might be forthcoming with regard to the above captioned matter. The hearing was held on September 23, 1982 and my client is in serious financial difficulties and is currently going out of business in the men's wear business. He is trying to make arrangements for the coming season for the use of the produce and allied products stand in accordance with the request which is the subject of the special hearing. Your earliest response would be most appreciated by my client and myself. He is in desperate need of an answer as his economic well-being is deteriorating rapidly.

Very truly yours,

Julius W. Lichter

JWL:lsp



LAST DAYS! FINAL REDUCTIONS!
MARC'S MEN AND BOYS' WEAR
GOING OUT OF BUSINESS SALE!

NEW LOWER PRICES
ON AMERICA'S
FINEST MENSWEAR!

MEN'S SUITS GEORGE SANT ANGLO 3 PIECE DESIGNER SUITS \$79 Reg. \$200	JORDACHE 100% WOOL 3 PIECE DESIGNER SUITS \$99 Reg. \$200	FAMOUS PUCCI 100% TEXTURIZED POLYESTER DESIGNER SUITS Reg. \$150. Suits from \$4 to \$8 Reg., 20 to 44 Short and 28 to 34 Long \$69
BOTANY 500 ZIP- LINED HANGCOATS New Only \$69 Reg. \$200	BOTANY 500 WOOL TOPCOATS \$89 Reg. \$200	LEATHER JACKETS Zip Lined or Quilt Lined \$79 Reg. \$200
ALL TIES, SOCKS, BELTS & HATS 1/2 OFF!	DRESS SHIRTS Entire Stock! \$9.99	FLANNEL SPORT SHIRTS \$6.99 Reg. \$15
100% TEXTURIZED POLYESTER SLACKS \$9.99 Reg. \$25	BULKY SWEATERS "V" or Crew Neck \$9.99 and \$12.99	SELECT GROUP OF ASSORTED GLOVES \$2.99
JEANS! JEANS! JEANS!	BLACKBARK DESIGNER DENIM JEANS \$9.99 and \$12.99	JACKIES DE BOON DESIGNER JEANS \$12.99
		CHANDLER, GIVENCHY AND CALVIN KLEIN \$24.99

ALL SALES FINAL! MAJOR CREDIT CARDS & VERIFIED CHECKS ONLY!

Marc's
OPEN MONDAY THRU FRIDAY
10 AM TO 9 PM (SAT. 10 TO 6)
MEN AND BOYS' WEAR
833-1200 REISTERSTOWN SHOPPING CENTER

57

PETITION FOR SPECIAL HEARING

4th Election District

ZONING: Petition for Special Hearing
LOCATION: Northeast side of Reisterstown Road, 110 ft. Northwest of the centerline of Walgrove Road
DATE & TIME: Thursday, September 23, 1982 at 10:45 A.M.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

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

Petition for Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commission - and/or Deputy Zoning Commissioner should approve the use of a stand for the sale of produce, products thereof and flowers as a nonconforming use, as shown on the attached plat to accompany Special Hearing pursuant to Section 104.1

All that parcel of land in the Fourth District of Baltimore County

Being the property of Marriott Corporation, as shown on plat plan filed with the Zoning Department.

Hearing Date: Thursday, September 23, 1982 at 10:45 A.M.
Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

BY ORDER OF
WILLIAM E. HAMMOND
ZONING COMMISSIONER
OF BALTIMORE COUNTY

Case No. 83-85-SPH
Item No. 3
Date: 3/25/83

NE/S of Reisterstown Rd., 110' NW of the
c/l of Walgrove Rd. - 4th Election District
Marriott Corporation - Petitioner

- ☒ 1. Copy of Petition and Order
- ☒ 2. Copy of Description of Property
- ☒ 3. Copy of Certificate of Posting
- ☒ 4. Copy of Certificates of Publication
- ☒ 5. Copy of Zoning Advisory Committee Comments
- ☒ 6. Copy of Comments from the Director of Planning
- ☒ 7. Planning Board Comments and Accompanying Map
- ☒ 8. Copy of Order to Enter Appearance
- ☒ 9. Copy of Order - Zoning/Deputy Zoning Commissioner
- ☒ 10. Copy of Plat of Property
- ☒ 11. 200' Scale Location Plan
- ☒ 12. 1000' Scale Location Plan
- ☒ 13. Memorandum in Support of Petition
- ☒ 14. Letter(s) from Protestant(s)
- ☒ 15. Letter(s) from Petitioner(s) dated October 4, 1982
- ☒ 16. Protestants' Exhibits
- ☒ 17. Petitioners' Exhibits 1 to 13
- ☒ 18. Notice of Appeal

Julius W. Lichter, Esquire
305 W. Chesapeake Avenue
Suite 113
Towson, Maryland 21204
Attorney for Petitioner

Mr. James Gide
612 Piper Road
Reisterstown, Maryland 21136
Protestant

Mr. Edward King
247 Chartley Road
Reisterstown, Maryland 21136
Protestant

Mr. Dale Warman
427 Highmeadow Road
Reisterstown, Maryland 21136
Protestant

John W. Hessian, III, Esquire
James E. Dyer
James Howell
Jean M. H. Jung
Norman E. Gerber
People's Counsel
Request Notification
Request Notification
Request Notification

5. And for other reasons as may be stated at the time of the hearing on this Appeal.

Julius W. Lichter
Steinberg, Lichter, Coleman & Rogers
118 Chesapeake Building
305 W. Chesapeake Avenue
Towson, Maryland 21204
(301) 321-0600
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of March, 1983, a copy of the foregoing Notice of Appeal was mailed, postage prepaid, to Mr. James Gide, 612 Piper Road, Reisterstown, MD. 21136; Mr. Edward King, 247 Chartley Road, Reisterstown, MD. 21136; Mr. Dale Warman, 427 Highmeadow Road, Reisterstown, MD. 21136; John W. Hessian, III, Esquire, People's Counsel, Room 223, Court House, Towson, MD. 21204.

Julius W. Lichter

494-3180

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
August 30, 1983

Julius W. Lichter, Esq.
Suite 113, 305 W. Chesapeake Ave.
Towson, Maryland 21204

Re: Case No. 83-85-SPH
Marriott Corporation

Dear Mr. Lichter:

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

Very truly yours,

June Holmen, Secretary

Encl.
cc: James Gide
Edward King
Dale Warman
Marriott Corp.
Donald J. Dietz
Marion Cooper
T. J. Bollinger, Esq.
J. Dyer
J. Howell
J. Jung
N. Gerber
A. Jablon

MARRIOTT CORPORATION
1 Marriott Drive
Washington, D. C. 20058
vs.
BALTIMORE COUNTY, MARYLAND
(a Municipal corporation)
and
JEAN M. H. JUNG
Deputy Zoning Commissioner
of Baltimore County

BOARD OF APPEALS
FOR
BALTIMORE COUNTY
ZONING DEPARTMENT

NOTICE OF APPEAL

BERNARD POSNER, Tenant, with the approval of Marriott Corporation, Appellant, by his attorneys, Julius W. Lichter and Steinberg, Lichter, Coleman & Rogers, having been granted in part and denied and/or modified in part the use of a stand for the sale of produce, products thereof and flowers as a non-conforming use pursuant to Section 104.1 by the Deputy Zoning Commissioner, pursuant to an Order of the Deputy Zoning Commissioner dated February 23, 1983 (a copy of which is attached hereto), hereby appeals that denial and or modification for the following reasons:

1. That the findings of the Deputy Zoning Commissioner are not supported by the evidence in the case.
2. That the evidence clearly established that the imposition of restrictions Nos. 3, 4, 6, 7, 8 and 9 of the Order results in practical difficulty and unreasonable hardship upon the Petitioner.
3. That the evidence clearly indicated that recognizing the existence of the non-conforming use without the aforesaid restrictions would not adversely affect the health, safety, and welfare of the community.
4. That the decision of the Deputy Zoning Commissioner is arbitrary and capricious.

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

WILLIAM E. HAMMOND
ZONING COMMISSIONER

March 30, 1983

Mr. James Gide
612 Piper Road
Reisterstown, Maryland 21136

Re: Petition for Special Hearing
NE/S of Reisterstown Rd., 110' NW of the
c/l of Walgrove Road
Marriott Corporation - Petitioner
Case No. 83-85-SPH

Dear Mr. Gide:

Please be advised that an appeal has been filed by Julius W. Lichter, Esquire, attorney for the petitioner, from the decision rendered by the Deputy Zoning Commissioner of Baltimore County in the above referenced matter.

You will be notified of the date and time of the appeal hearing when it is scheduled by the County Board of Appeals.

Very truly yours,
William E. Hammond
Zoning Commissioner

WEH:aj

cc: Mr. Edward King
247 Chartley Road
Reisterstown, Maryland 21136
Mr. Dale Warman
427 Highmeadow Road
Reisterstown, Maryland 21136
John W. Hessian, III, Esquire
People's Counsel

Case No. 83-85-SPH
Item No. 3
Date: 3/25/83
SPH-Use of a stand for the sale of produce.

NE/S of Reisterstown Rd., 110' NW of the
c/l of Walgrove Rd. - 4th Election District
Marriott Corporation - Petitioner

- ☒ 1. Copy of Petition and Order
- ☒ 2. Copy of Description of Property
- ☒ 3. Copy of Certificate of Posting
- ☒ 4. Copy of Certificates of Publication
- ☒ 5. Copy of Zoning Advisory Committee Comments
- ☒ 6. Copy of Comments from the Director of Planning
- ☐ 7. Planning Board Comments and Accompanying Map
- ☒ 8. Copy of Order to Enter Appearance
- ☒ 9. Copy of Order ~~XXXXX~~ Deputy Zoning Commissioner-2/23/83-
GRANTED w/restrictions
- ☒ 10. Copy of Plat of Property
- ☐ 11. 200' Scale Location Plan
- ☐ 12. 1000' Scale Location Plan
- ☐ 13. Memorandum in Support of Petition
- ☐ 14. Letter(s) from Protestant(s)
- ☒ 15. Letter(s) from Petitioner(s) dated October 4, 1982
- ☐ 16. Protestants' Exhibits ☐ to ☐
- ☒ 17. Petitioners' Exhibits ☐ to ☐ 13
- ☒ 18. Notice of Appeal by Julius Lichter, Esq., on 3/25/83, counsel for Petitioner

Julius W. Lichter, Esquire
305 W. Chesapeake Avenue
Suite 113
Towson, Maryland 21204

Mr. James Gide
612 Piper Road
Reisterstown, Maryland 21136

Mr. Edward King
247 Chartley Road
Reisterstown, Maryland 21136

Mr. Dale Warman
427 Highmeadow Road
Reisterstown, Maryland 21136

James E. Dyer
James Hoswell
Jean M. H. Jung
Norman E. Gerber
Marriott Corp.
1 Marriott Drive., Wash., D.C. 20058
(Robt. E. Koehler)

Donald J. Dietz
125 Duncannon Rd.
Bel Air, Md. 21014

T. Bollinger, Esq.
Office of Law
Marion Cooper
Community Times
Box 247, Reisterstown

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

WILLIAM E. HAMMOND
ZONING COMMISSIONER

February 23, 1983

Julius W. Lichter, Esquire
305 West Chesapeake Avenue, Suite 113
Towson, Maryland 21204

RE: Petition for Special Hearing
NE/S of Reisterstown Road, 110' NW of the
centerline of Walgrove Road - 4th Election
District
Marriott Corporation - Petitioner
NO. 83-85-SPH (Item No. 3)

Dear Mr. Lichter:

I have this date passed my Order in the above referenced matter in accordance with the attached.

Very truly yours,
Jean M. H. Jung
JEAN M.H. JUNG
Deputy Zoning Commissioner

JMH3/srl

Attachments

cc: Mr. James Gide
612 Piper Road
Reisterstown, Maryland 21136

Mr. Edward King
247 Chartley Road
Reisterstown, Maryland 21136

Mr. Dale Warman
427 Highmeadow Road
Reisterstown, Maryland 21136

John W. Hessian, III, Esquire
People's Counsel

Notify of hearing date:

*Craig Piette
204 Sunny King Dr
Reisterstown 21136*

D. S. THALER & ASSOCIATES, INC.

11 WARREN ROAD • BALTIMORE, MARYLAND 21208 • (301) 481-4100

DESCRIPTION TO
ACCOMPANY SPECIAL HEARING
FOR POSNER PROPERTY

Beginning for the same on the northeast side of
Reisterstown Road 66 feet wide at a point located 110 feet
more or less northwest of the centerline of Walgrove Road
and running thence on said northeast side of Reisterstown
Road, North 43°41'24" West 249.17 feet thence leaving
Reisterstown Road, North 45°10'14" East 330.37 feet, thence
South 43°41'24" East 253.00 feet, thence South 46°10'06"
West 330.34 feet to the place of beginning.

Containing 1.90 acres of land more or less. Saving
and excepting therefrom all that area presently zoned BL
and containing approximately 1.02 acres more or less.

CIVIL ENGINEERS • SITE PLANNERS

Marriott
corporation

INTERNATIONAL
HEADQUARTERS

Marriott Drive
Washington, D.C. 20058

301/697-9000
TELEX 81897
MARCORP BHCA

NOTE TO ACCOMPANY DESCRIPTION TO ACCOMPANY SPECIAL HEARING

Please note that notwithstanding the fact that the
attached plat and description thereof make reference to the
Posner Property please be aware of the fact that Marriott
Corporation is the fee owner of the property located in the
Fourth Election District of Baltimore County, State of
Maryland, which contains approximately 1.905 acres of land
which is located at 607 Reisterstown Road. Pursuant to a
Lease dated July 24, 1981 by and between Marriott Corporation
and Bernard Posner, Marriott Corporation is leasing to
Mr. Posner approximately 0.53 acres of the aforesaid land.
The stand in question is located on a part of this 0.53
acres of land. Marriott Corporation is filing this Petition
on the basis that it only desires that a determination be
made that the subject stand constitutes a non-conforming use
if such determination will not, given any rule, regulation
or law, affect the operation of the Roy Rogers Restaurant
which is located on another portion of the aforesaid 1.905
acres which is not being leased to Bernard Posner. This in-
cludes the fact that Marriott Corporation would not want to
have the subject stand moved to its prior location, where a
driveway is now located, since such subject stand would ob-
struct access, ingress and egress to and from the Roy Rogers
Restaurant and would be in contravention of the aforesaid
Lease.

Julius W. Lichter, Esquire
305 W. Chesapeake Ave
Suite 113
Towson, Md. 21204

D.S. Thaler & Assoc., Inc.
11 Warren Rd
Baltimore, Md. 21205

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your Petition has been received and accepted for filing this 6th day
of July, 1982.

William E. Hammond
WILLIAM E. HAMMOND
Zoning Commissioner

Petitioner: Marriott Corporation

Petitioner's Attorney: Julius W. Lichter, Esq. Reviewed by: *Nicholas B. Commodari*
Nicholas B. Commodari
Chairman, Zoning Plans
Advisory Committee

THE LAW OFFICES OF
STEINBERG, LICHTER, COLEMAN & ROGERS

305 W. CHESAPEAKE AVENUE, TOWSON, MD. 21204 (301) 321-0600

MELVIN A. STEINBERG
EDWARD W. LICHTER
EDWARD L. COLEMAN
DONALD E. ROGERS

February 3, 1983

Mrs. Jean M. H. Jung
Deputy Zoning Commissioner
Zoning Commissioner's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Special Hearing
Northeast side Reisterstown Road
110 feet Northwest of Walgrove Road
Marriott Corporation Petitioner
Case No. 83-85-SPH (Item #3)

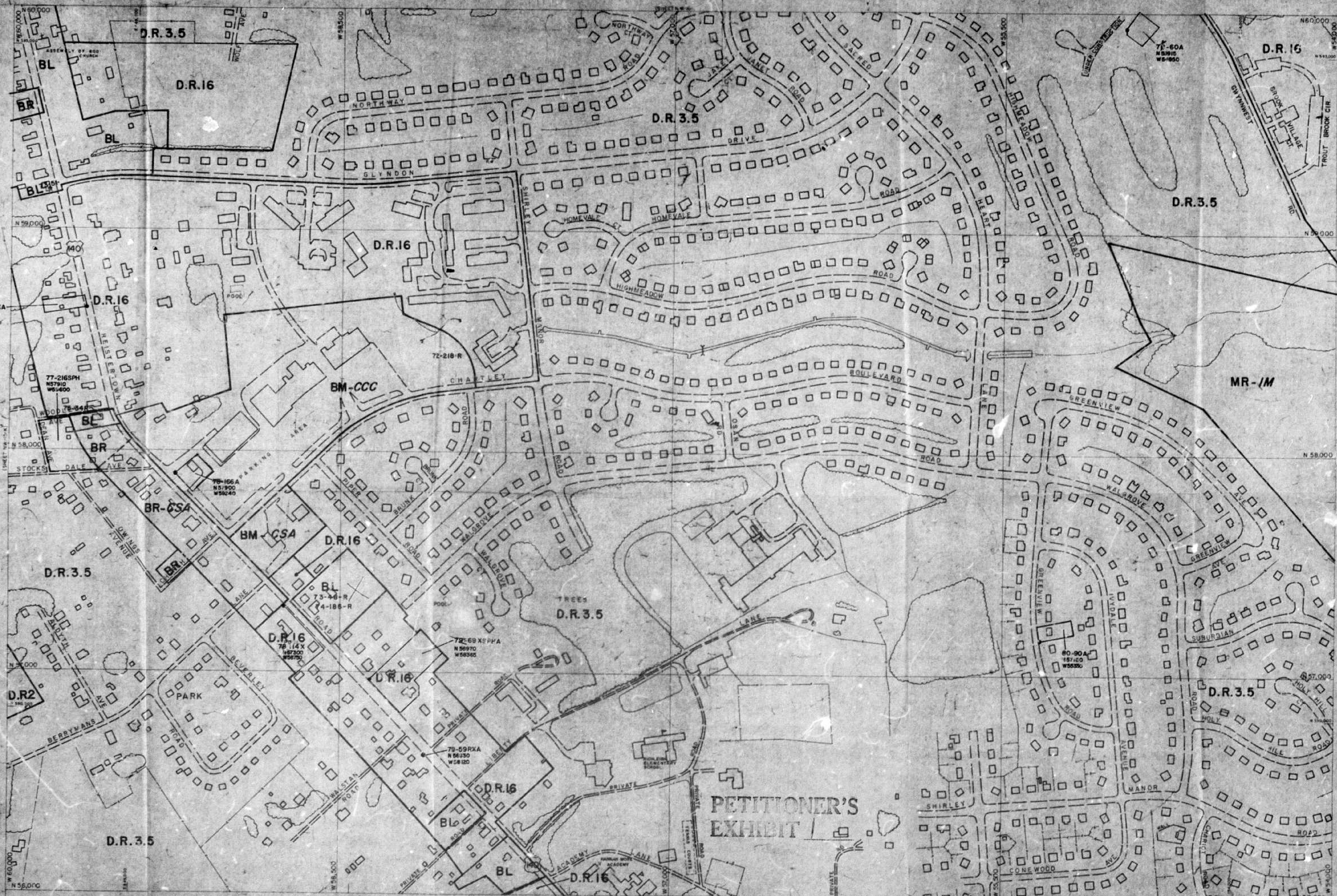
Dear Mrs. Jung:

My client has called me on numerous occasions to inquire
as to when a decision might be forthcoming with regard to the
above captioned matter. The hearing was held on September 23,
1982 and my client is in serious financial difficulties and is
currently going out of business in the men's wear business.
He is trying to make arrangements for the coming season for
the use of the produce and allied products stand in accordance
with the request which is the subject of the special hearing.
Your earliest response would be most appreciated by my client
and myself. He is in desperate need of an answer as his
economic well-being is deteriorating rapidly.

Very truly yours,
Julius W. Lichter
Julius W. Lichter

JWL:lap





1976 COMPREHENSIVE ZONING MAP
 ADOPTED BY THE
 BALTIMORE COUNTY COUNCIL
 OCT. 7, 1976 & OCT. 9, 1976
 BILL NOS. 108-76, 109-76, 110-76, 111-76, 112-76, 113-76, and 114-76

PHOTOGRAMMETRIC MAP OF BALTIMORE COUNTY METROPOLITAN AREA

REVISIONS		DATE	SCALE	LOCATION	SHEET
1	BY	DATE	1" = 200'	REISTERSTOWN AREA	N.W.
2	DATE	11-70	DAF OF PHOTOGRAPHY	DELIGHT	15-J
Compiled by Photogrammetric Methods					
AERO SERVICE CORPORATION-PHILADELPHIA, PA.					

ROUTE 140
U.S. ROAD
REISTERSTOWN

ENGINEERS
D. S. THALER & ASSOCIATES, INC.
17 WARREN ROAD
BALTIMORE, MARYLAND 21205
301-484-4100

TO THE TITLE GUARANTEE COMPANY OF BALTIMORE
MARYLAND AND THE MARRIOTT CORPORATION
I, HEREBY CERTIFY THAT AS OF THE DATE GIVEN HEREON, A FIELD SURVEY WAS
MADE ON THE GROUND, PURSUANT TO THE RECORD DESCRIPTION, AND THAT THE
SURVEY CORRECTLY SHOWS THE LOCATION OF ALL BUILDINGS.

John C. M... 5-12-80

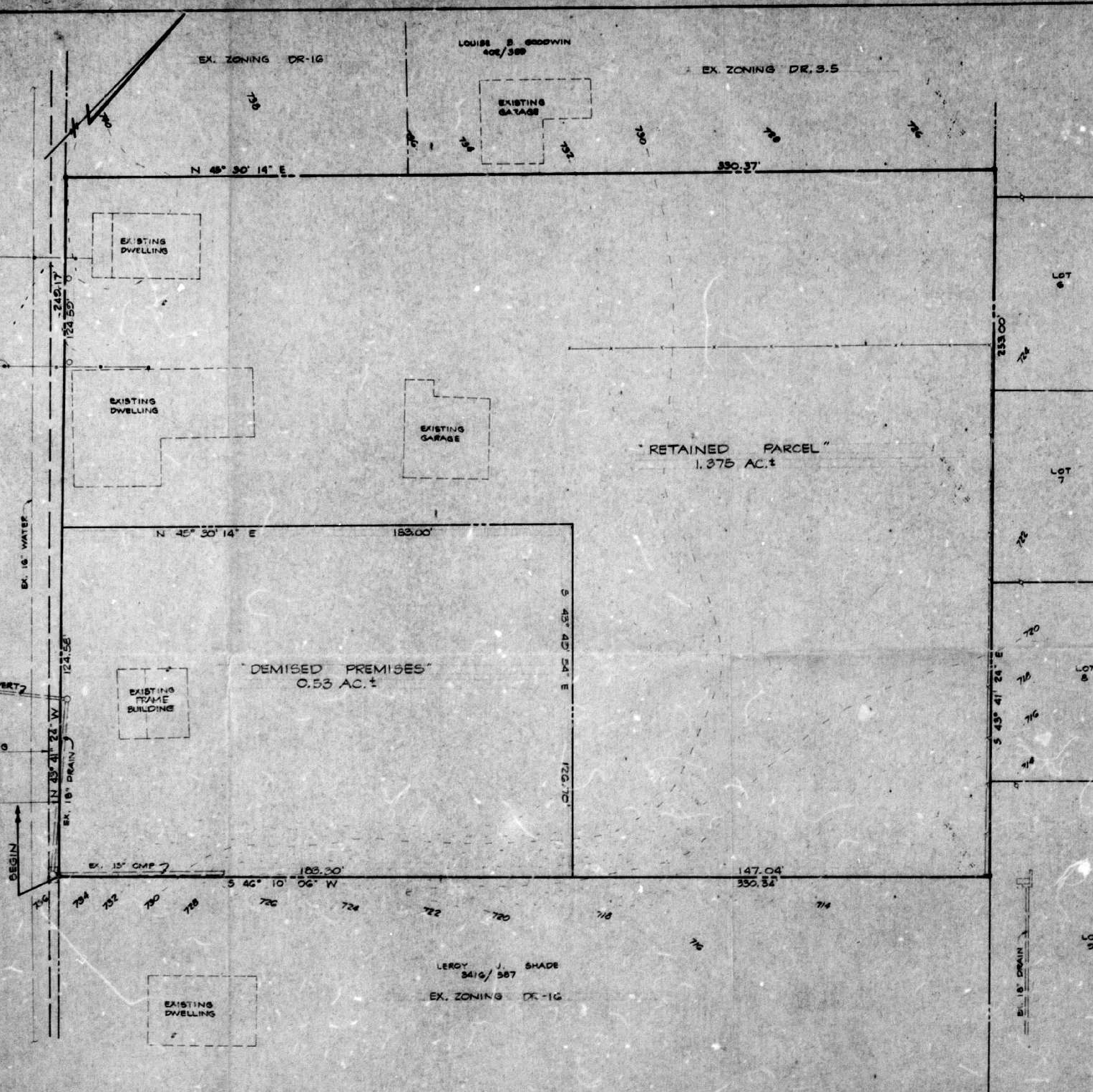
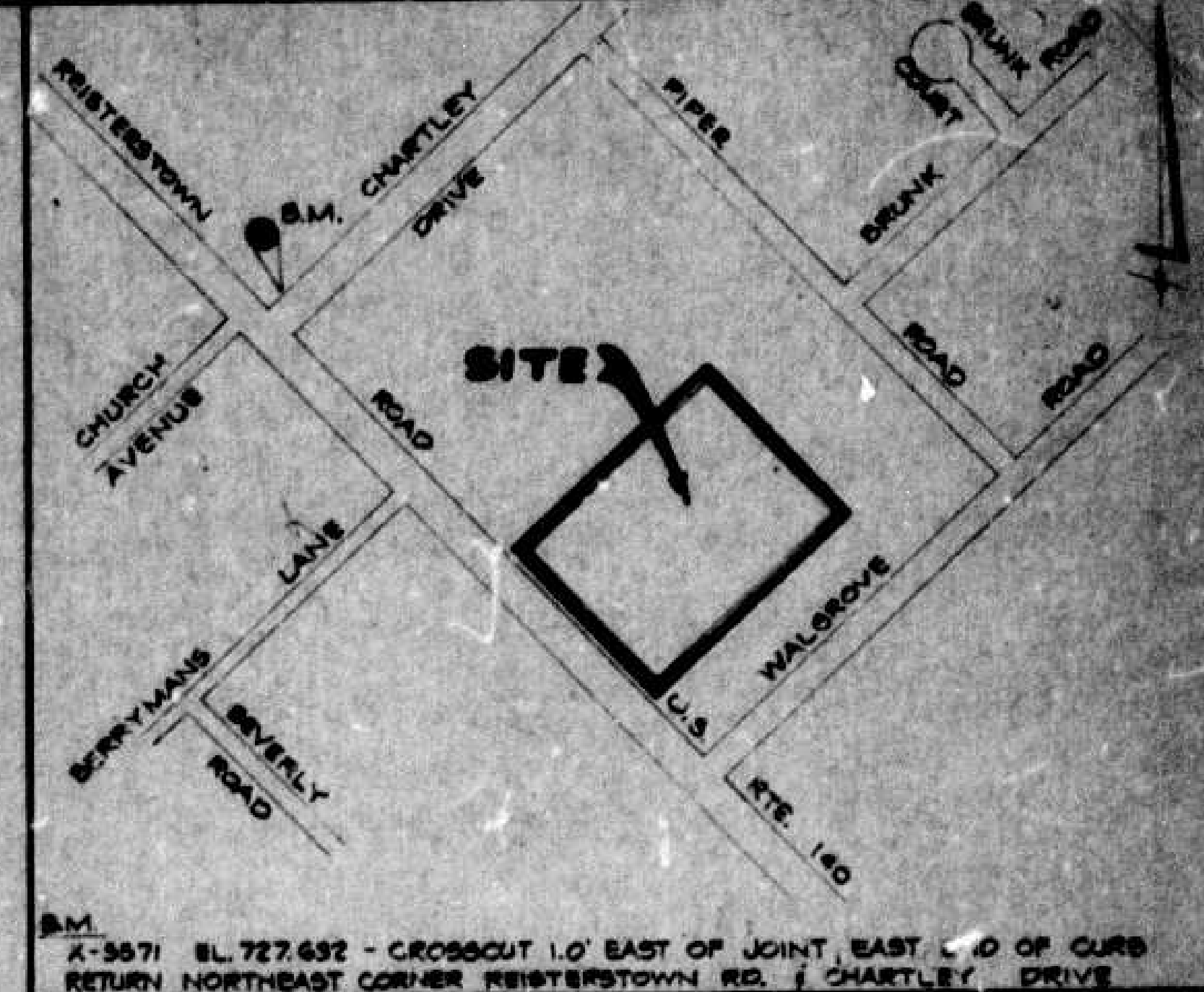


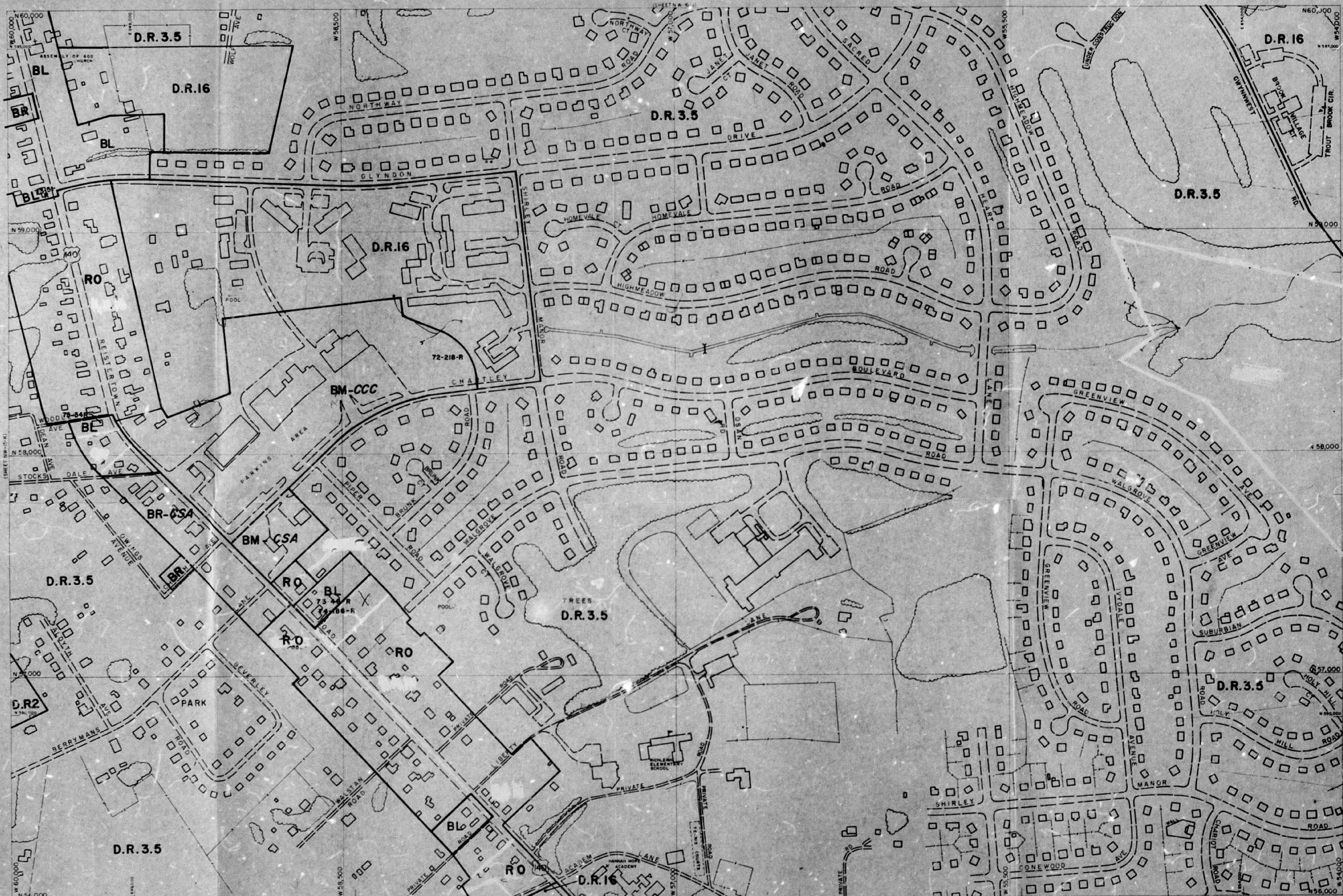
**TOPOGRAPHIC / LAND TITLE SURVEY
PROPOSED ROY ROGERS - REISTERSTOWN ROAD**

4th ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND
SCALE: 1" = 20' MAY 12, 1980

AREA OF ENTIRE TRACT = 1.005 AC. ±
AREA OF "DEMISED PREMISES" = 0.53 AC. ±
AREA OF "RETAINED PARCEL" = 1.375 AC. ±

LOCATION MAP
SCALE 1" = 200'





Y-NE T-NW
X-SE W-SW

1980 COMPREHENSIVE ZONING MAP
ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
OCT. 14, 1980
BILL NOS. 184-80, 185-80, 186-80,
187-80, 188-80, 189-80 AND 190-80

CHAIRMAN, COUNTY COUNCIL

PHOTOGRAMMETRIC MAP OF BALTIMORE COUNTY METROPOLITAN AREA

REVISIONS			SCALE	LOCATION	SHEET
BY	DATE		1" = 200'	REISTERSTOWN AREA DELIGHT	N.W. 15-J
Planimetric	MAPS, INC.	4-11-70			
			DATE OF PHOTOGRAPHY APRIL 1953		
Compiled By Photogrammetric Methods FED SERVICE CORPORATION-PHILADELPHIA, PA					

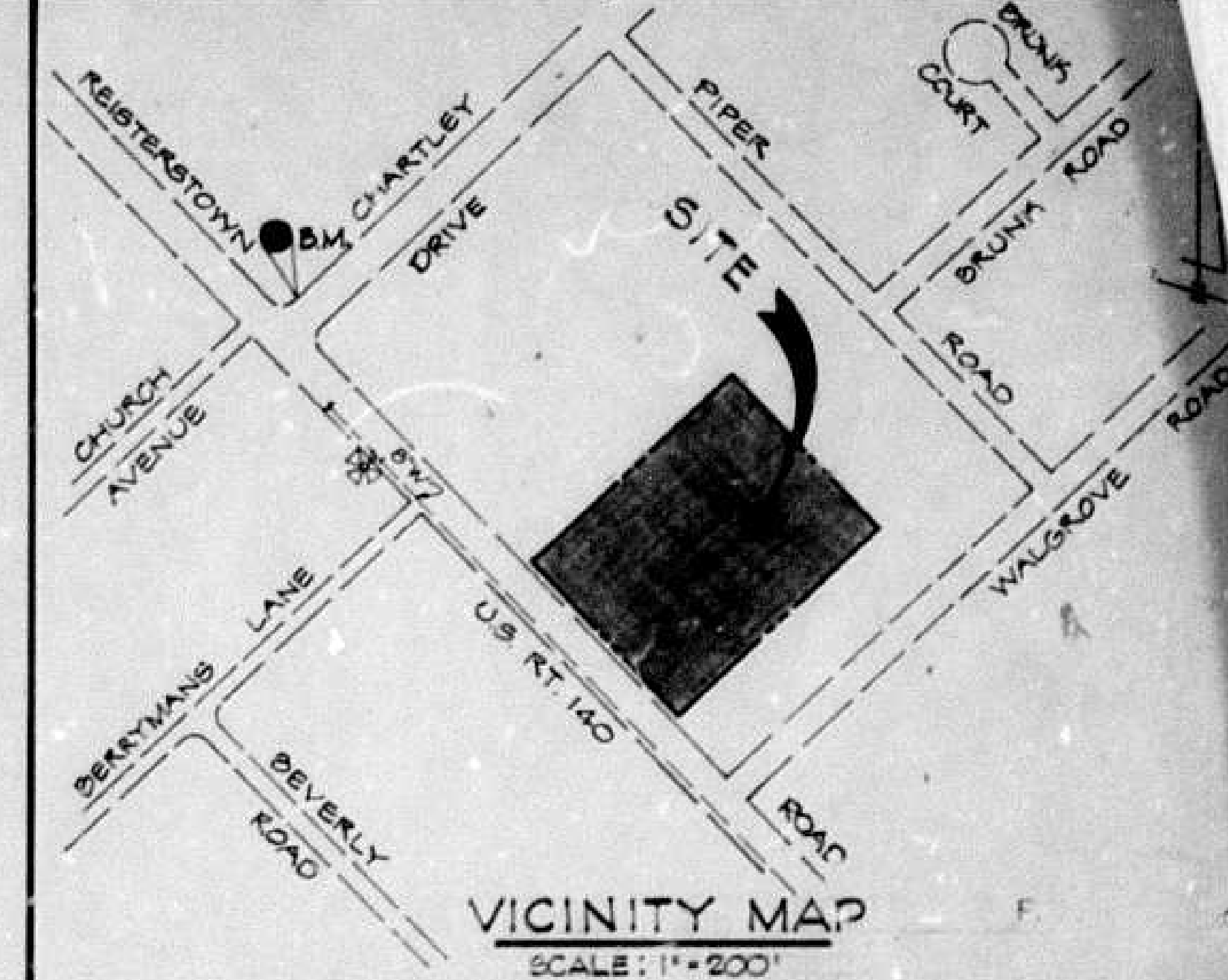
PETITIONER'S
EXHIBIT 2

NOTE:
APPROVAL OF THIS PLAN DOES NOT INCLUDE THE PROPOSED STAND-
PARKING SHOWN IN R.O. ZONE. THIS USE IS THE SUBJECT OF A SPECIAL
HEARING TO ESTABLISH A LEGAL NON-CONFORMING USE.

SEQUENCE OF OPERATIONS

1. Notify Sediment Control Division 48 hours prior to start of operation.
2. Clear and grub for sediment control measures only.
3. Grade for sediment control measures in designated areas.
4. Install sediment control measures & outlet pipe w/inlet for Basin Cutoff.
5. Clear and grub remainder of site.
6. Rough grade site.
7. Stabilize Site.
8. Remove temporary sediment control measures & stabilize after obtaining permission from Sediment Control Inspector.
9. Utilities may be installed at this point.

NOTES:
1-A NCU - Normal Cooling Unit - York No. H2CA000
This unit has a SRN number of 20.
PCU - Pre-Cooling Unit - York No. H2CA120.
This unit has a SRN number of 22.



BM. X-5571 EL. 727.632 - Crosscut 1.0' East of Joint, East end of Curb
Return Northeast Corner Reisterstown Road & Chantley Drive

SEDIMENT CONTROL NOTES

1. REFER TO U.S.D.A. - SOIL CONSERVATION SERVICE STANDARDS AND SPECIFICATIONS FOR SOIL EROSION AND SEDIMENT CONTROL IN DEVELOPING AREAS FOR STANDARD DETAILS AND DETAILED SPECIFICATIONS OF EACH PRACTICE SPECIFIED HEREON.
2. STRUCTURAL MEASURES SUCH AS BERMS, DIKE, TRAPS, BASIN, ETC. WILL BE INSTALLED AND STABILIZED ACCORDING TO THIS PLAN PRIOR TO ANY OTHER GRADING, CLEARING, OR DISTURBANCE OF THE EXISTING SURFACE OF THE SITE.
3. CONTINUAL INSPECTION AND MAINTENANCE OF SEDIMENT CONTROL FACILITIES WILL BE PERFORMED UNTIL PERMISSION FOR THEIR REMOVAL HAS BEEN OBTAINED FROM THE BALTIMORE COUNTY SOIL CONSERVATION INSPECTOR.
4. NOTIFY THE BALTIMORE COUNTY DEPT. OF PERMITS AND LICENSES, SEDIMENT CONTROL INSPECTOR 48 HOURS BEFORE STARTING ANY WORK.
5. ALL SEDIMENT CONTROL MEASURES TO BE ADJUSTED TO MEET FIELD CONDITIONS.
6. ALL SUB-BASE MATERIAL AND STORM DRAIN SYSTEMS TO BE INSTALLED AS SOON AS POSSIBLE AFTER SUBGRADING OPERATION.
7. ALL SLOPES STEEPER THAN 3:1 SHALL BE STABILIZED WITH SOG AS SOON AS POSSIBLE.
8. ALL REMAINING DISTURBED AREAS, NOT TO BE PAVED, SHALL BE STABILIZED WITH PERMANENT SEEDING IN ACCORDANCE WITH PAGE 51.01 OF THE STANDARDS & SPECIFICATIONS FOR SOIL EROSION & SEDIMENT CONTROL IN DEVELOPING AREAS.
9. DURING THE LAYOUT OF SEDIMENT CONTROL PRACTICES REQUIRED ON THIS PLAN, MINOR FIELD ADJUSTMENTS CAN AND WILL BE MADE TO INSURE THE ARREST AND CONTROL OF ANY SEDIMENT BEFORE IT LEAVES THE CONSTRUCTION SITE. CHANGES IN SEDIMENT CONTROL PRACTICES REQUIRE PRIOR APPROVAL OF THE SEDIMENT CONTROL INSPECTOR AND THE BALTIMORE COUNTY SOIL CONSERVATION DISTRICT.
10. AT THE END OF EACH WORKING DAY, ALL SEDIMENT CONTROL PRACTICES WILL BE INSPECTED AND LEFT IN OPERATIONAL CONDITION.
11. ANY DISTURBED EARTH LEFT IDLE FOR PERIODS EXCEEDING 30 DAYS SHALL BE SEEDED AND MULCHED OR COVER OPTIONS PROVIDED ACCORDING TO TEMPORARY STABILIZATION PROCEDURES.
12. ANY CHANGE TO THE GRADING PROPOSED ON THIS PLAN WILL REQUIRE IT TO BE RE-SUBMITTED TO THE SOIL CONSERVATION DISTRICT.

GENERAL NOTES

1. TOTAL AREA OF SITE - 1.9 ACRES ±
2. SITE ZONED - BL & R.O.
3. FLOOR AREA - RESTAURANT - TOTAL 2610 S.F.
4. PARKING REQUIRED, RESTAURANT - 1 SPACE PER 50 S.F. = 52 SPACES
5. PARKING REQUIRED TOTAL = 52 SPACES, INCLUDES 2 HANDICAPPED SPACES
6. PARKING PROVIDED TOTAL = 54 SPACES, INCLUDES 2 HANDICAPPED SPACES
7. PROPOSED USE - RESTAURANT
8. ▲ - DENOTES LIGHT STANDARDS
9. ◀ - DENOTES TRAFFIC FLOW PATTERN
10. ACCESS & SWM, PROVIDED, SHALL SERVICE IN COMMON AREAS ZONED BL & R.O.

NOTE:
All grades, elevations, earth quantities etc. are to be verified by the contractor. Any earth quantities shown or implied are measured to finished grade and are approximate. No allowance has been made for unsuitable material encountered during construction. Stability of soil for use in fill areas or stability of cut areas, compaction etc. should be determined by a soils engineer. Typical paving section shown should be verified by a soils engineer.

PLAT TO ACCOMPANY SPECIAL HEARING

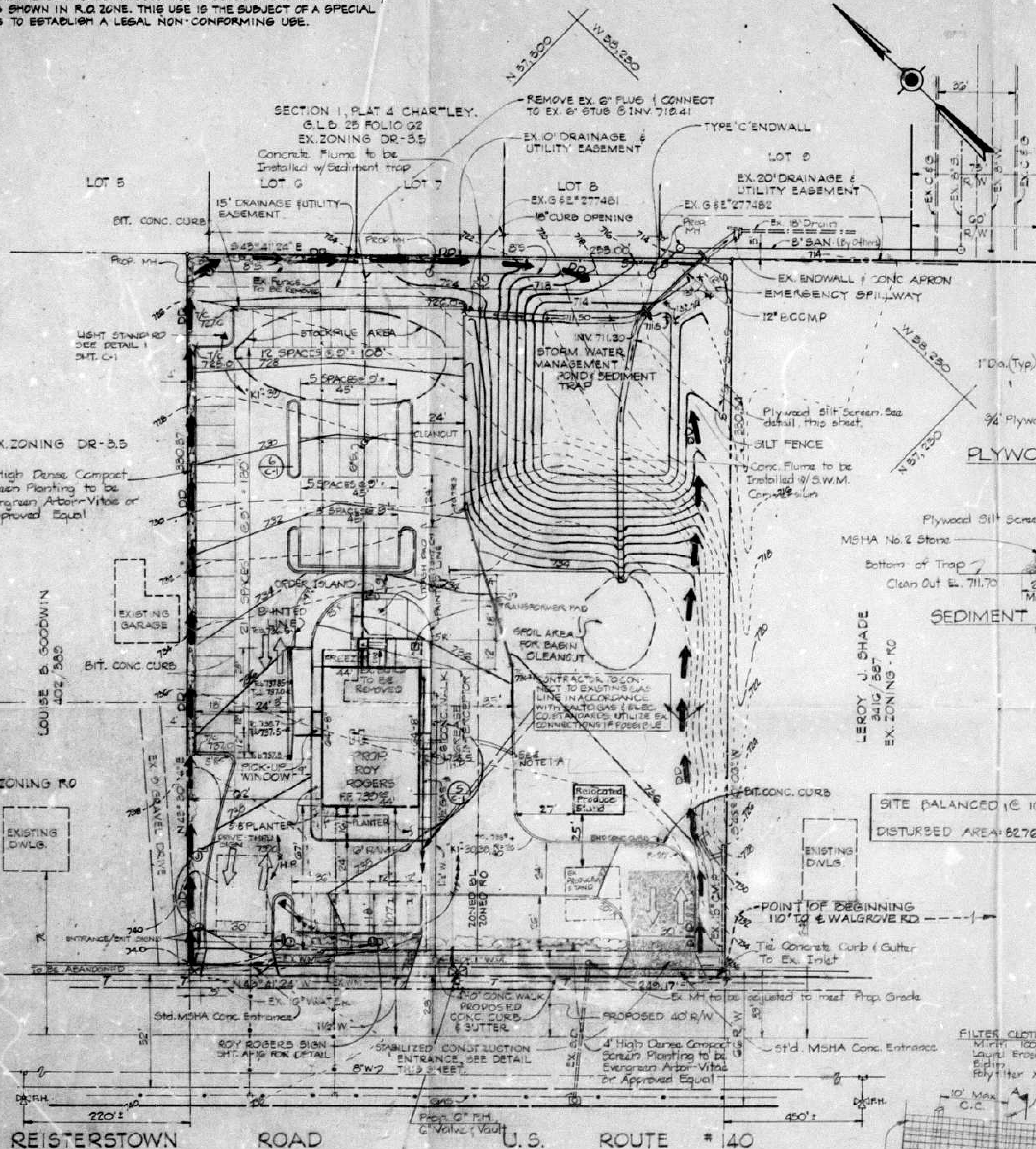
POSNER PROPERTY

4TH ELECTION DISTRICT BALTIMORE COUNTY, MD.
SCALE: 1" = 30'
REVISED OCT. 20, 1981 ***
REVISED NOV. 20, 1981 ***
REVISED MAR. 23, 1982

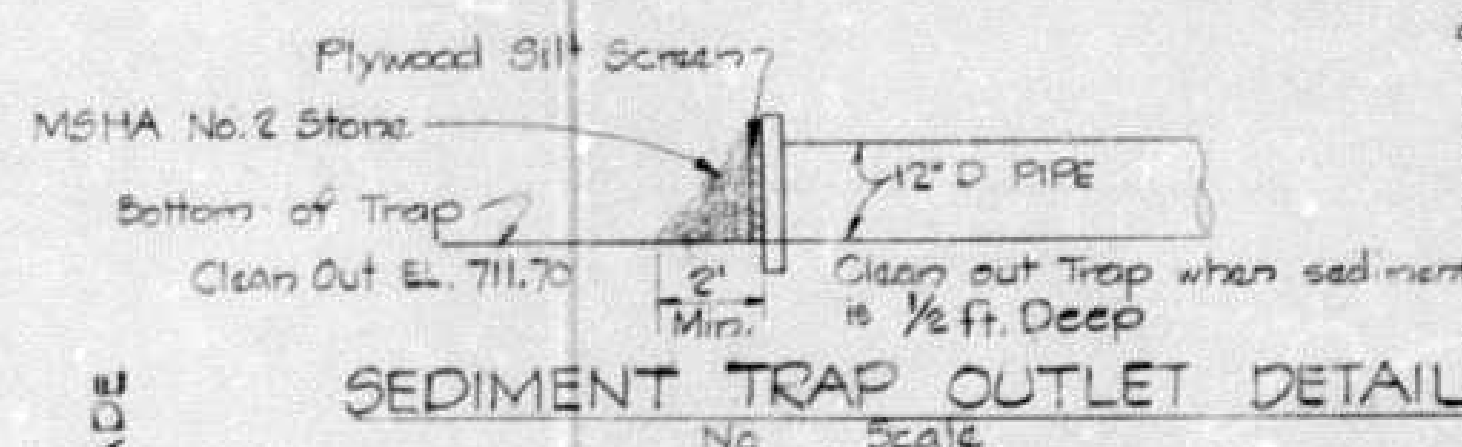
SEPTEMBER 20, 1978
REVISED MAY 7, 1980
REVISED SEPT. 17, 1980
REVISED JUNE 20, 1981 ***
REVISED AUGUST 25, 1981 ***

REVISION: 1. ADDED SANITARY SEWER
2. REMOVED COTIC AREA
3. REMOVED PERC TEST PITS
4. REVISED BLOS. DIMENSIONS

REVISION: 1. REVISED AS PER MARIOTT
SHEET 1 OF 2

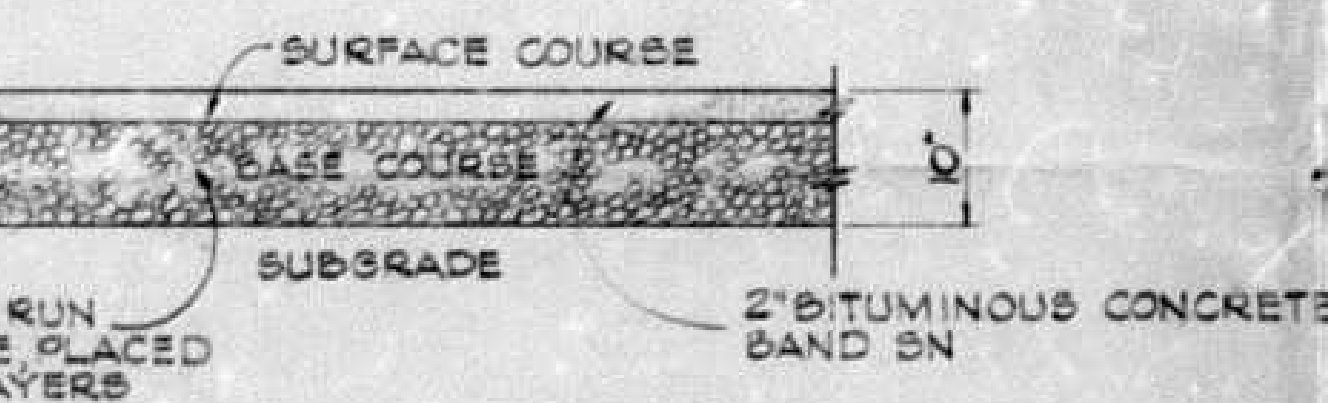


PLYWOOD SILT SCREEN

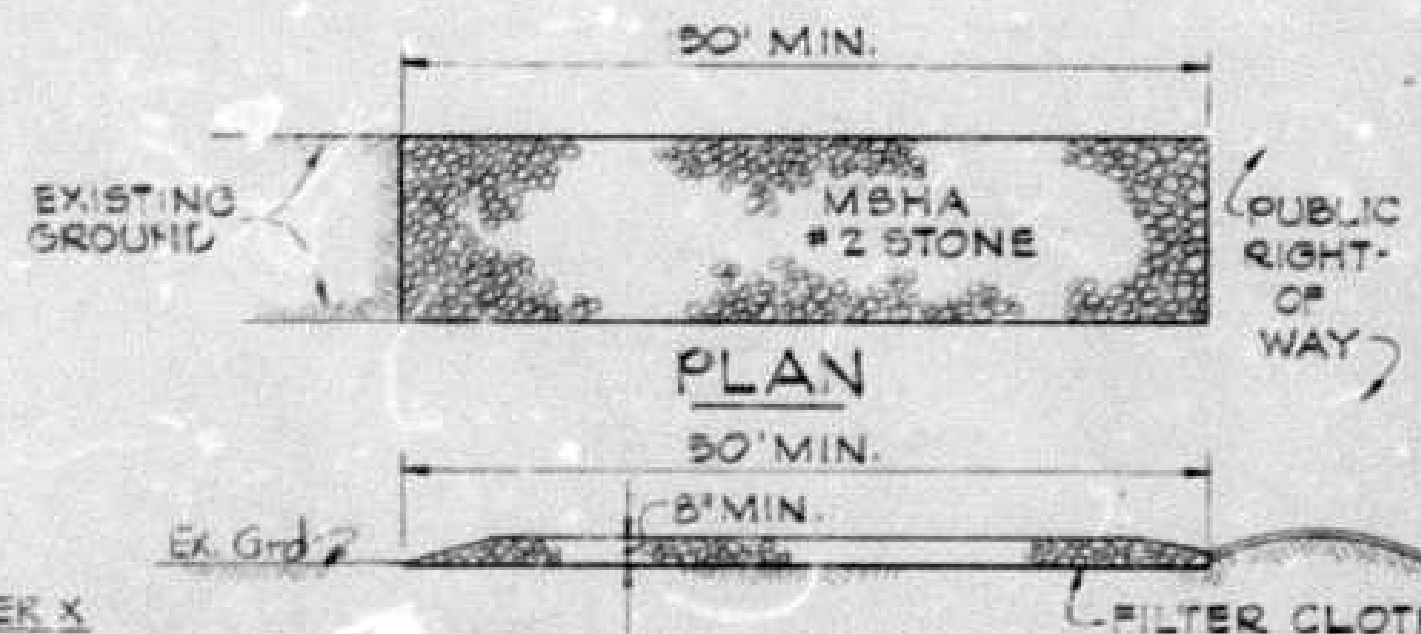


SEDIMENT TRAP DESIGN

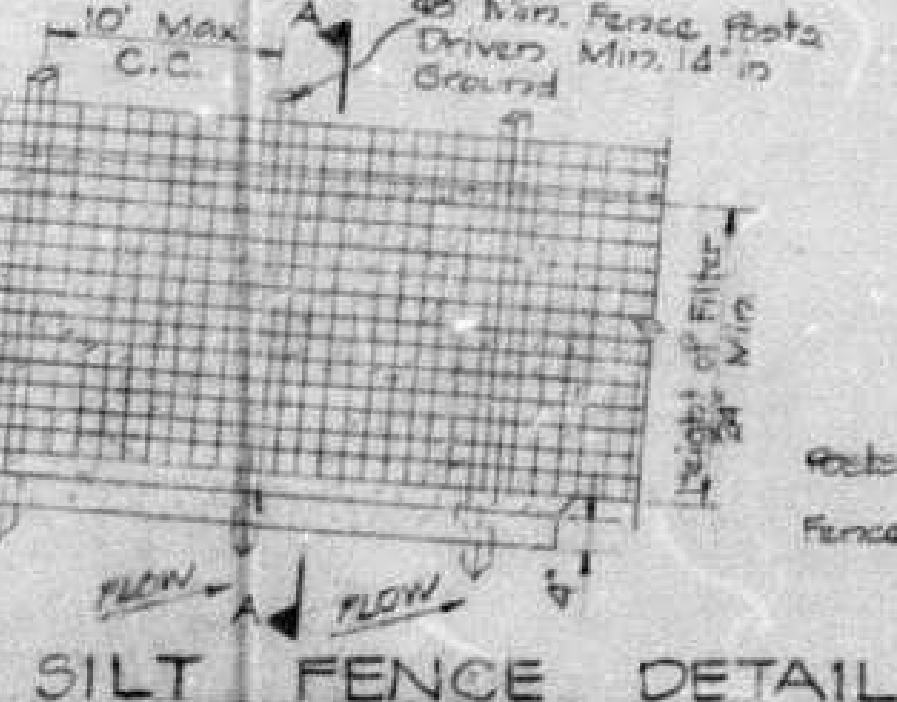
Drainage Area = 1.9 Ac. ±
Rapid Storage = 127 C.Y.
Storage Provided = 380 C.Y. ±
Emergency Spillway Crest



PAVING SECTION



STABILIZED CONSTRUCTION ENTRANCE



SILT FENCE DETAIL

CONCRETE FLUME DETAIL

No Scale

OWNER AND DEVELOPER

BERNARD POSNER
3513 TERRAPIN ROAD
BALTIMORE, MARYLAND 21208

PETITIONER'S EXHIBIT 3

ENGINEERS CERTIFICATION

I CERTIFY THAT THIS PLAN OF DEVELOPMENT AND THIS PLAN OF SILT & EROSION CONTROL, MEET THE REQUIREMENTS, STANDARD / SPECIFICATIONS OF THE SOIL CONSERVATION DISTRICT

D.S. THALER #10,800 DATE 10/15/82

OWNERS CERTIFICATION

LAND CLEARING / CONSTRUCTION OF DEVELOPMENT WILL BE COMPLETED PURSUANT TO THIS PLAN

D. Posner 10/15/79 OWNER DATE

ENGINEERS

D. S. THALER & ASSOCIATES, INC.
11 WARREN ROAD
BALTIMORE, MARYLAND 21208



SECTION ONE, PLAT FOUR

CHARTLEY

G.L.B. 25 FOLIO 62

BLOCK N

LOT 5

LOT 6

LOT 7

LOT 8

PIPE FOUND

-173.25-

N 57554.84
W 35454.294

--S 439.41'-24"E

253.00'

G.E. 277401

G.E. 277402

EXISTING CONDUIT

BALTIMORE COUNTY GRID SYSTEM

LOUISE B. GOODWIN
402/389

BERNARD
POSNER
5356/758
0.463 ACRES

BERNARD POSNER
5235/202
1.442 ACRES

LEROY J. SHADE
3416/587

NOTES

1. BEARINGS AND COORDINATES SHOWN ON PLAT ARE REFERRED TO BALTIMORE COUNTY METROPOLITAN GRID SYSTEM STATIONS: X-2048 AND X-2049.
2. ELEVATIONS SHOWN ON PLAT ARE REFERRED TO BALTIMORE COUNTY BENCH MARK: X-8871.
3. P.S. DENOTES PIPE SET.
4. TOTAL AREA OF 2 PARCELS COMBINED IS EQUAL TO 1.904 ACRES.



D.S. THALER & ASSOCIATES

3800 CLARKS LANE - BALTIMORE, MARYLAND 21215

BOUNDARY & TOPOGRAPHIC SURVEY OF

POSNER PROPERTY

4TH ELECTION DIST. - BALTIMORE CO., MARYLAND

SCALE: 1" = 30'

APRIL 6, 1979

Ref. ex. 13