

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 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the proposed incinerator expansion by MARYLAND MEDICAL LABORATORY, INC. AT 1901 S. SULPHUR SPRING ROAD AS BEING A PERMITTED ACCESSORY USE TO THE EXISTING USE ON THE SITE.

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.

OWNER

MARYLAND MEDICAL LABORATORY, INC.

(Type or Print Name)

1901 Sulphur Spring Road

Baltimore, Maryland 21227

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Attorney's Telephone No.:

LEGAL OWNER: PETITIONER:

KATHLEEN GOODMAN (L. WIDOW)

(Type or Print Name)

Signature

Address

City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

JOHN V. MURPHY, ESQUIRE

Name

32 LIGHT STREET SECOND FLOOR

Address

City and State

ORDERED By The Zoning Commissioner of Baltimore County, this 5th day of June, 1987, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 16th day of July, 1987, at 10:00 o'clock A.M.

ESTIMATED LENGTH OF HEARING - 1/2HR. (over)
AVAILABLE FOR HEARING
MON./TUES./WED. - NEXT TWO MONTHS
ALL OTHER DATE 5/1/87
REVIEWED BY: [Signature] DATE 5/1/87

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

C. Richard Moore
Acting Director

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

The Department of Traffic Engineering has no comments for items number 439, 440, 441, and 450.

Very truly yours,

[Signature]
Michael S. Flannigan
Traffic Engineer Associate II

MSF:lt

June 2, 1987

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204

Building Address: 1901 SULPHUR SPRING RD
Owner Name: PATHOLOGY BLDG. PARTNERSHIP
Mailing Address: 1901 SULPHUR SPRING RD. BALTO. MD. 21227
Date Issued: 6/13/87

1. NAME: MARYLAND MEDICAL LABORATORY
2. TYPE OF CONSTRUCTION: NOT SELECTED
3. OWNER: LEVIN BROWN & ASSOC. INC. 17 WARREN RD. 7A BALTO. MD. 21208
4. DESCRIPTION: 12,145 S. SULPHUR SPRING RD. 550 S/E BALTO-DETWAY

A. TYPE OF IMPROVEMENT
1. NEW BUILDING CONSTRUCTION
2. ADDITION
3. ALTERATION
4. REPAIR
5. WAREHOUSING ENTER NO. UNITS DEDUCTED
6. MOVING
7. OTHER

B. TYPE OF CONSTRUCTION
1. MASONRY
2. WOOD FRAME
3. CONCRETE
4. STEEL
5. OTHER

C. TYPE OF USE
1. RESIDENTIAL
2. COMMERCIAL
3. INDUSTRIAL
4. OFFICE
5. OTHER

D. TYPE OF WATER SUPPLY
1. PUBLIC SYSTEM
2. PRIVATE SYSTEM
3. OTHER

E. RESIDENTIAL ONLY
1. TOTAL NO. OF B. UNITS
2. HOW MANY APARTMENTS HAVE
3. EFFICIENCY AND SEPARATE BEDROOMS
4. ONE BEDROOM
5. TWO BEDROOMS
6. THREE BEDROOMS OR MORE
7. TOTAL NO. OF APARTMENTS

F. DIMENSIONS
1. LOT AREA
2. LOT WIDTH
3. LOT DEPTH
4. LOT COVERAGE
5. LOT AREA
6. LOT WIDTH
7. LOT DEPTH
8. LOT COVERAGE

G. PLANS
1. FLOOR PLAN
2. ELEVATION
3. SECTION
4. OTHER

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Baltimore County
Fire Department
Towson, Maryland 21204-2586
494-4500

Paul H. Reinke
Chief

May 13, 1987

Mr. Arnold Jablon
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

Re: Property Owner: Maryland Medical Laboratory

Location: S/S Sulphur Spring Road, NE of I-95

Item No.: 450

Zoning Agenda: Meeting of 5/12/87

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.
7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: [Signature] 5/13/87 Noted and
Approved: [Signature] Fire Prevention Bureau
Special Inspection Division

/s/

APPLICANT COMPLETE ALL APPLICABLE SPACES ON THIS FORM - TYPE OR PRINT CLEARLY

APPLICATION FOR PERMIT BY
BALTIMORE COUNTY MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204

Building Address: 1901 SULPHUR SPRING RD.
Owner Name: PATHOLOGY BUILDING PARTNERSHIP
Mailing Address: 1901 SULPHUR SPRING RD. BALTO. MD. 21227
Date Issued: 6/13/87

1. NAME: MARYLAND MEDICAL LABORATORY INC.
2. TYPE OF CONSTRUCTION: 33823
3. OWNER: SIMONDS MANUFACTURING CORP. 304 PROGRESS RD. AUBURNDALE, FLORIDA
4. DESCRIPTION: LEVIN BROWN & ASSOC. 17 WARREN RD. SUITE 7-B BALTO. MD. 21208

A. TYPE OF IMPROVEMENT
1. NEW BUILDING CONSTRUCTION
2. ADDITION
3. ALTERATION
4. REPAIR
5. WAREHOUSING ENTER NO. UNITS DEDUCTED
6. MOVING
7. OTHER

B. OWNERSHIP
1. PRIVATELY OWNED
2. PUBLICLY OWNED

C. TYPE OF USE
1. RESIDENTIAL
2. COMMERCIAL
3. INDUSTRIAL
4. OFFICE
5. OTHER

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon
TO: Zoning Commissioner Date: June 12, 1987
FROM: Norman E. Gerber, AICP, Director
SUBJECT: Zoning Petition No. 88-16-SFH

In view of the subject of this petition, this office offers no opinion as to the matter before the Zoning Commissioner. It should be noted, however, that the County Council has scheduled a public hearing this month on proposed legislation that entails consideration of a moratorium on this type of facility.

[Signature]
Norman E. Gerber, AICP
Director

NEG:JGH:sib

RECEIVED
JUN 15 1987

ZONING OFFICE

Case No. 88-16-SFH

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 5th day of June, 1987.

[Signature]
ARNOLD JABLON
Zoning Commissioner

Petitioner: Maryland Medical Lab
Petitioner's Attorney: John V. Murphy, Esquire

Received by: James E. Dyer
Chairman, Zoning Plans Advisory Committee

From the desk of:
ARNOLD JABLON

Pathology Bldg. features
1901 Sulphur Sp. Rd.
incinerator
see 4th floor

DO NOT APPROVE
M.L. ARNOLD STATED
A SPECIAL HEARING
would be required
to determine the
applicability of the

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

June 19, 1987

John V. Murphy, Esquire
32 Light Street, 2nd Floor
Baltimore, Maryland 21202

RE: Item No. 450 - Case No. 88-16-SFH
Petitioner: Maryland Medical Lab.
Petition for Special Hearing

Dear Mr. Murphy:

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,
James E. Dyer, Jr.
Chairman
Zoning Plans Advisory Committee

JED:bjs

Enclosures

cc: File

Mr. Carl Richards
April 14, 1987
Page 3

off-site removal is costly and inefficient, and potentially poses health risks which are minimized by incineration.

The use of the incinerator is subordinate to and serves the laboratory operation. The use of an incinerator as accessory to the laboratory has been approved by your office in the past and is permitted by the Zoning Regulations. See Sec. 101, B.C.Z.R. The use is subordinate to the principal use, is subordinate in area, extent and purpose to the laboratory, is located on the same lot and contributes to the convenience and necessity of the lab.

Furthermore, it is important to note that under the guideline promulgated by the Maryland Department of Health and Mental Hygiene, infectious waste should be disposed of by incinerator and the incinerator must be on the site of generation. (See attached "Amended Guidelines for the Disposal of Infectious Waste.") The use as proposed and as regulated by Maryland law is consistent with an accessory use under Baltimore County Zoning Regulations. It would be a hardship to impose a requirement for a hearing for a permitted accessory use where "at use is one mandated by State law. Furthermore, the permit process, initiated in January, should not become so extended and costly as to discourage or impede compliance with the health regulations as promptly as possible.

I have enclosed pertinent documents for your review and have available a copy of a report prepared by William Harrington and Associates, Inc., "Infectious Waste Incinerator Permit Application Report, March, 1987," in support of the air quality construction permit application submitted to the Health Department. In addition, I have requested that Mark Levin, architect for Maryland Medical Laboratories, transmit to you directly a copy of the site plan as you requested.

I also wish to advise you that pursuant to the Health Department permit application, a public hearing has been advertised and scheduled for April 29, 1987 at the Arbutus Middle School.

Based on the factual background and the applicable regulations, we submit that no public hearing is required under B.C.Z.R. for the proposed incinerator, but that the use is permitted as an accessory use to the laboratory.

Mr. Carl Richards
April 14, 1987
Page 4

If you concur with our interpretation that a hearing before the Zoning Commissioner is not required, please indicate by signing the attached copy of this letter and returning it to me as soon as possible. Thank you for your attention to this matter.

Sincerely,

Deborah C. Dopkin
Deborah C. Dopkin

DCD/pat

cc: Sylvan Passen, M.D.
Mark Levin, A.I.A.
Paul Dorf, Esq.
Mr. David Filbert
Mr. Michael Kendall
Mr. Robert Hannon
Herbert R. O'Connor, III, Esq.

ACKNOWLEDGED THIS _____ DAY OF _____, 1987:

BALTIMORE COUNTY ZONING OFFICE

By _____
Carl Richards

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3333

Arnold Jablon
Zoning Commissioner

17 April 1987

Deborah C. Dopkin, Esq.
Cook, Howard, Downes & Tracy
210 Allegheny Ave.
P. O. Box 5517
Towson, Maryland 21204



Re: Maryland Medical Labs

Dear Ms. Dopkin:

I am in receipt of a letter, dated 14 April 1987, to Carl Richards of this office. I have carefully reviewed your letter and am unclear as to the following statement: "MML provides laboratory services to the hospitals, but in no case does MML transport waste materials from the hospital for incineration or disposal other than specimens for analysis." (underlining supplied). I am not sure what this means. Are specimens from the hospital placed into the incinerator? Will the amount of waste incinerated increase from the amount now being burned? Are the bulk requirements changing and if so, from what to what?

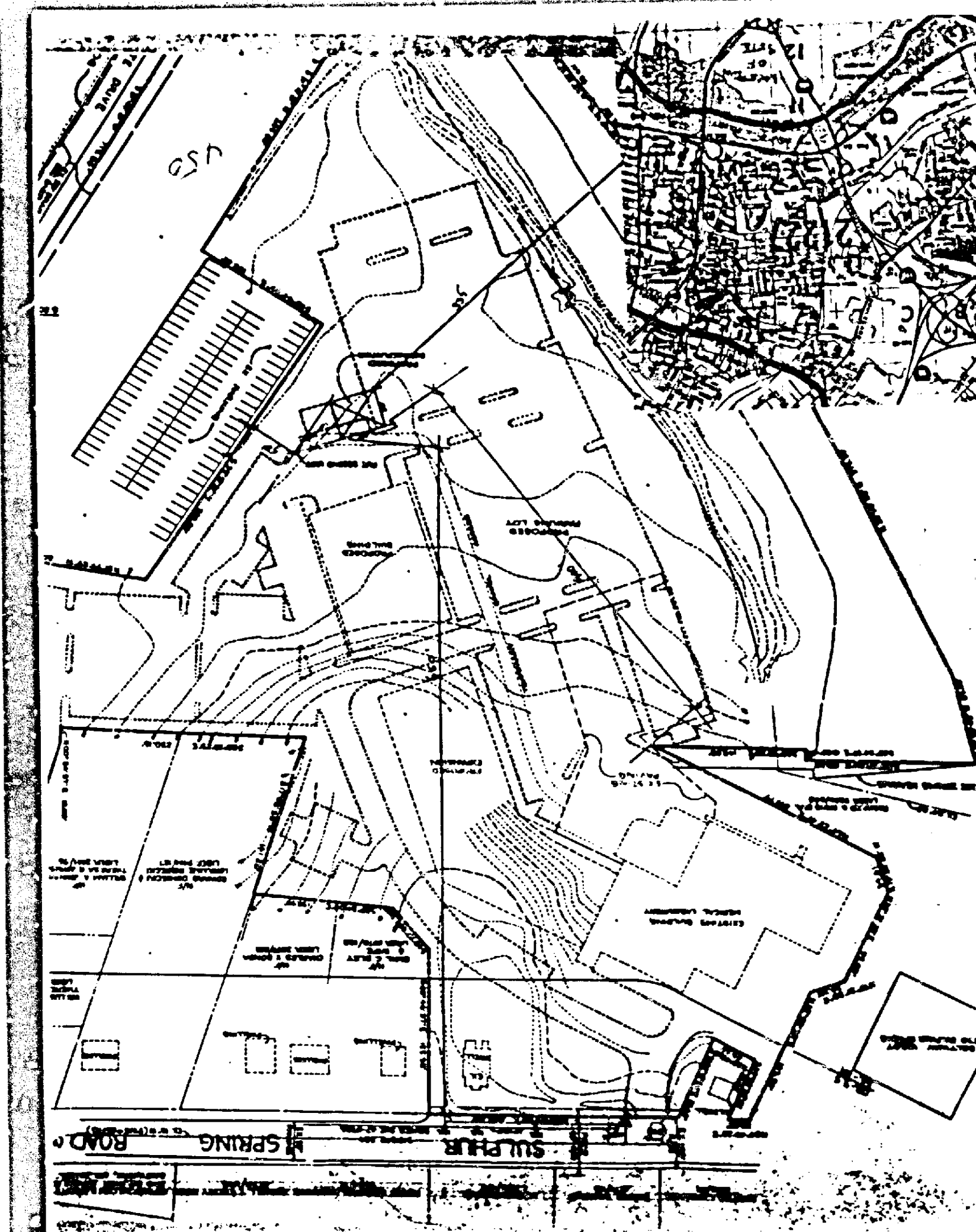
Please respond in writing.

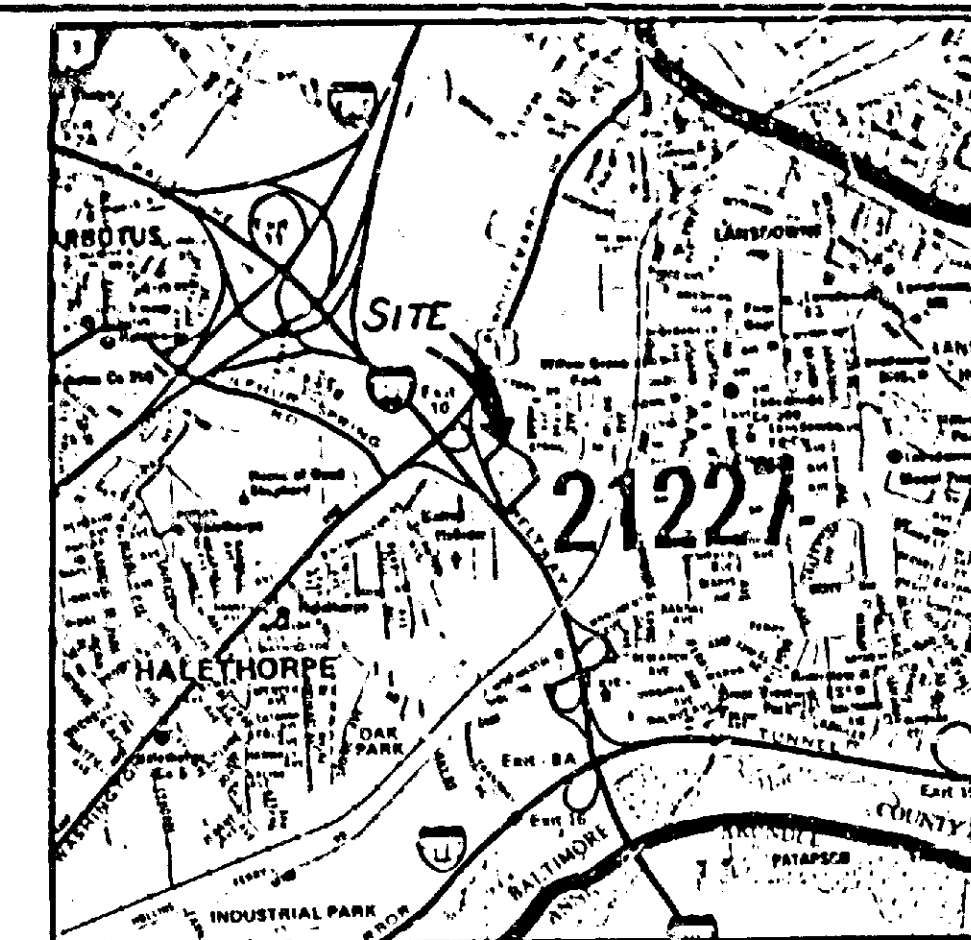
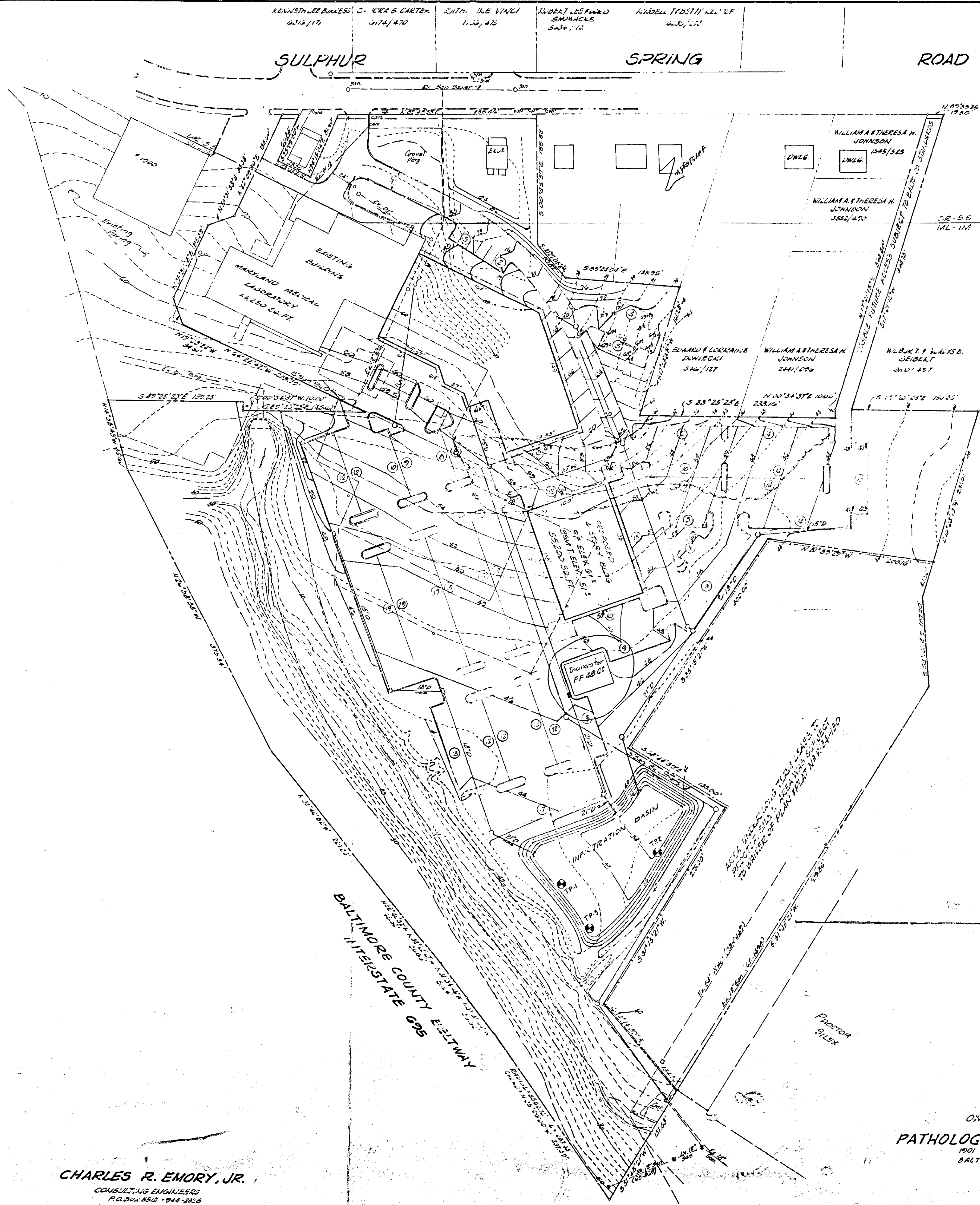
Sincerely,

/s/

Arnold Jablon

AEJ/aj





VICINITY MAP
Scale: 1"=2000'

Respondent's Ex #1

CHARLES R. EMORY, JR.
CONSULTING ENGINEERS
P.O. BOX 5518 - 944-2818
BALTIMORE, MARYLAND 21204

OWNER/DEVELOPER
PATHOLOGY BUILDING PARTNERSHIP
1901 SULPHUR SPRING ROAD
BALTIMORE, MARYLAND 21227
247-9100

1/17/81
PATHOLOGY
ELECTION DISTRICT
SCALE: 1"=50'

BUILDING
BALTO. CO. MD.
DATE:

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

6-3-87
Date
BALTIMORE COUNTY DEPARTMENT OF HEALTH
RECEIVED
JUN 11 1987
ZONING OFFICE
Zoning Item # 450 Zoning Advisory Committee Meeting of 5-12-87
Property Owner: Hayland Medical Laboratory
Location: S.F. Sulphur Spring Rd. District 13
Water Supply meter Sewage Disposal meter

- COMMENTS ARE AS FOLLOWS:
- () Prior to approval of a Building Permit for construction, renovation and/or installation of equipment for any existing or proposed food service facility, complete plans and specifications must be submitted to the Plans Review Section, Environmental Support Services, for final review and approval.
 - () Prior to new installation/s of fuel burning equipment, the owner should contact the Division of Air Pollution Control, 494-3775, to obtain requirements for such installation/s before work begins.
 - (V) A permit to construct from the Division of Air Pollution Control is required for such items as spray paint processes, underground gasoline storage tank/s (5,000 gallons or more) and any other equipment or process which exhausts into the atmosphere.
 - () A permit to construct from the Division of Air Pollution Control is required for any charbroiler operation which has a total cooking surface area of five (5) square feet or more.
 - () Prior to approval of a Building Permit Application for renovations to existing or construction of new health care facilities, complete plans and specifications of the building, food service area and type of equipment to be used for the food service operation must be submitted to the Plans Review and Approval Section, Division of Engineering and Maintenance, State Department of Health and Mental Hygiene for review and approval.
 - () Prior to any new construction or substantial alteration of public swimming pool, wading pool, bathhouse, saunas, whirlpools, hot tubs, water and sewerage facilities or other appurtenances pertaining to health and safety; two (2) copies of plans and specifications must be submitted to the Baltimore County Department of Health for review and approval. For more complete information, contact the Recreational Hygiene Section, Division of Environmental Support Services.
 - () Prior to approval for a nursery school, owner or applicant must comply with all Baltimore County regulations. For more complete information, contact the Division of Maternal and Child Health.
 - () If lubrication work and oil changes are performed at this location, the method providing for the elimination of waste oil must be in accordance with Water Resources Administration requirements.

WWQ 1 4/86

Zoning Item # 450 Zoning Advisory Committee Meeting of 5-12-87
Page 2

- () Prior to razing of existing structure/s, petitioner must contact the Division of Water Quality and Waste Management at 494-3768, regarding removal and/or disposal of potentially hazardous materials and solid wastes.
- () Any abandoned underground storage tanks containing gasoline, waste oil, solvents, etc., must have the contents removed by a licensed hauler and either be removed from the property or properly backfilled. Prior to removal or abandonment, owner must contact the Division of Water Quality and Waste Management at 494-3768.
- () Soil percolation tests (have been/must be) conducted.
 - { } The results are valid until
 - { } Soil percolation test results have expired. Petitioner should contact the Division of Environmental Support Services to determine whether additional tests are required.
- () Where water wells are to be used as a source of water supply, a well meeting the minimum Baltimore County Standards must be drilled.
- () In accordance with Section 13-117 of the Baltimore County Code, the water well yield test
 - { } shall be valid until
 - { } is not acceptable and must be retested. This must be accomplished prior to conveyance of property and approval of Building Permit Applications.
- () Prior to occupancy approval, the potability of the water supply must be verified by collection of bacteriological and chemical water samples.
- () If submission of plans to the County Review Group is required, a Hydrogeological Study and an Environmental Effects Report must be submitted.
- (V) Others the subject of incinerator expansion is presently under study by the Bureau.

A building permit to construct will not be approved at this time.

San J. Morris
San J. Morris, Director
BUREAU OF ENVIRONMENTAL SERVICES

WWQ 2 4/86

WILLIAM M. HARRINGTON, JR. P.E.
ENVIRONMENTAL DIVISION

EDUCATION
BSME: University of Maryland 1950
REGISTRATION
Professional Engineer, Civil and Mechanical

PROFESSIONAL HISTORY
Mr. Harrington has over 35 years of experience in environmental engineering studies and facility design with special emphasis on Mechanical Systems and Solid Waste Management Engineering. His solid waste engineering experience began in 1954, with assignment as Resident Engineer for construction of incinerator No. 4, in Baltimore City, Maryland. This was followed by responsibility for studies and design of several landfill projects, municipal incinerator designs for up to 1400 tons/day capacity with and without energy recovery; special waste incinerators; sludge incineration; reports on community solid waste disposal requirements; transfer stations, Baltimore City Pyrolysis Plant modifications, the design of facilities to recover materials for recycling, hazardous waste engineering and all aspects of waste water sludge management.

FIELDS OF SPECIAL COMPETENCE
Mr. Harrington's technical capabilities include all aspects of environmental engineering, sanitary landfill, resource recovery systems, incinerator design, beneficial sludge use, process mechanical systems, hazardous waste engineering, and construction administration.

EXPERIENCE
Prior to founding the Environmental Division, Mr. Harrington's individual experience included institutional steam generating facility design complete with auxiliaries. His recent experience includes the responsibility for planning studies and project management of large solid waste to energy facilities using waterwall furnaces, waste heat boilers, turbine generators, condensers and system controls.

He has also served as a consultant to the Office of Solid Waste of the U.S. Environmental Protection Agency and provides continuing services to the Pan American Health Bureau, World Health Organization, for Solid Waste Management Engineering in Mexico, Republic of Trinidad and Tobago, W.I., Jamaica, the Bahamas and Caribbean Commonwealth Community of Island Countries.

PROFESSIONAL AFFILIATIONS
Diplomate: American Academy of Environmental Engineers
ASPE, ASME, ASCE, APWA, NAEP, ESR, ACEG, Water Pollution Control Federation, Institute for Solid Wastes of APWA, International Solid Wastes and Public Cleansing Association, Past Chairman - ASME Solid Waste Processing Division, member of Anne Arundel County Executive's Solid Waste Commission.

AUTHOR
Papers on various aspects of Solid Waste Management

PAPERS PRESENTATIONS

by

William M. Harrington, Jr.

1. "Some Operating Experiences at a Municipal Refuse Incinerator"
Co-authored with J. D. Paulus
ASME Winter Annual Meeting in 1961
2. "Utilization of Incinerator Ash as Landfill Cover Material"
Co-authored with G. J. Reardon
1962 APWA Congress and Equipment Show - Published in 1962 APWA Yearbook
3. "Refuse Could Bury You"
Maryland-Delaware Water Pollution Control Association 1964 Annual Meeting
Published in September 1964 issue of the National County Officer
4. "The Sewer and Water Program"
Western Maryland Group ASME Dinner Meeting in March, 1965
5. "Public Relations Considerations in Incinerator Plant Location"
1966 National Incinerator Conference - Published in Conference Proceedings
6. "Modern Refuse Disposal"
Cumberland, Maryland Rotary Club Luncheon in 1966
7. "New vs. Old Type Incinerators"
62nd Annual Convention of the Virginia Municipal League in 1967
8. "Engineering Aspects of Sanitary Landfilling"
Alban Tractor Company Refuse Disposal Workshop for City and County Officials in July, 1967
9. "The Solid Waste Problem"
Charles County Chamber of Commerce Dinner Meeting in March, 1969
10. "Sanitary Landfill Design Considerations to Protect Water Supplies"
Chesapeake Section, AWWA Meeting in Ocean City, Maryland, September 10, 1970 - Published in April 1971 issue of Willing Water
11. "Review of Milled Refuse Evaluation Study"
at Madison, Wisconsin for EPA - U.S., January, 1971
12. "Incineration and the Air Pollution Problem"
1971 APWA Congress and Equipment Show, Philadelphia, Pa., Sept. 16, 1971

Page 2
Papers Presentations
by W. M. Harrington, Jr.

13. "Solid Waste Planning, Design and Operation"
County Engineers' Association of Maryland - 18th Annual Fall Conference in Ocean City, Maryland, September 17, 1971
14. "Municipal Incineration in Modern Solid Waste Management"
Chesapeake Chapter of the Institute of Environmental Sciences' Symposium on Systems Management of Solid Waste at Catonsville Community College, June 15, 1972
15. "The Solution to the Solid Waste Problem"
Medical Society of the District of Columbia, October, 1972
16. "Sludge Tilling, Land Application Technology"
ARC, Beltsville, Maryland, October 18, 1972
17. "Layout and Engineering of Sanitary Landfill Sites"
NSWMA Congress, Kansas City, November 14-15, 1972
18. "Sanitary Landfills - Design and Operations"
ESB Solid Waste Seminar, Baltimore, Maryland, April 24, 1975
19. "Disposal - From Dump to Sanitary Landfill"
APWA Congress and Equipment Show - 1978

bb/4/28/75

ORAL PRESENTATIONS

by

William M. Harrington, Jr.

1. Incinerator Operation, Incinerator Design, Sanitary Landfill Design and Solid Waste Management Policy
for USPHS pilot courses in 1968-69
2. Sanitary Landfill Design
at Charles County Community College short course in March, 1969
3. Incineration
at Engineering Society of Baltimore, Solid Waste Disposal course in April, 1970
4. Solid Waste Management Regulations - Specifications or Performance
at The George Washington University, Washington, D. C., November 10, 1970
5. Application of Environmental Research and Development on the Land Disposal of Solid Wastes
Engineering Foundation Conference, 1970
6. Solid Waste Disposal and Water Quality - Present Practices and Future Trends
at the Tenth Symposium on Water Quality, sponsored by the Maryland Water Resources Commission and the Johns Hopkins University, June 14, 1971
7. The Place for Incineration - Now - In 1980 - In 1990 - In 2000
at the Engineering Foundation Research Conference, Deerfield Academy, Deerfield, Massachusetts, August 23, 1971
8. Long Haul Solid Waste Disposal Systems
University of Illinois, January, 1972
9. Evaluation of Sanitary Design and Operating Practices - Subsurface Implications
Engineering Foundation Conference, 1972
10. Solid Waste Disposal Site Selection
George Washington University, March 26-29, 1974
11. Solid Waste Facility Requirements and Configuration
George Washington University, December 2, 1974
12. Sewage Sludge Disposal - The State of the Art
Maryland Chapter of ASCE

mv/4/15-75

BLANTON & MCCLEARY
ATTORNEYS AT LAW
SUITE 200 BOWLEY BUILDING
210 ALLEGANY AVENUE
TOWSON, MARYLAND 21204

RECEIVED
JUL 13 1987
ZONING OFFICE

July 13, 1987

Mr. Arnold Jablon
Zoning Commission
Baltimore County Office of Planning & Zoning
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Maryland Medical Laboratories, Inc.
Petition for Special Hearing
Case No. 88-16-SPH

Dear Mr. Jablon:

In accordance with our conversation please enter my appearance in the above captioned case for an additional petitioner, Mary E. Zentgraf, 2021 Sulphur Spring Road, Baltimore, Maryland 21227. Mr. Murphy will remain in the case on behalf of Kathleen Goodwin. The parties to be notified, including Ms. Lowry and Ms. Parker, remain the same.

I would additionally like to request that the matter be postponed as we discussed. I would like time to prepare for the case, and I additionally have vacation plans which conflict with the presently scheduled hearing date. I also feel that it is an inappropriate waste of resources, of which the community has few, to spend a lot of time interpreting law that may very well change before the termination of the present six-month moratorium.

If I can provide further information, please let me know. I will anticipate hearing from your office with regard to any rescheduling. Thank you very much.

Very truly yours,

Standish McCleary, III
Standish McCleary, III

SMC/mat

cc: Deborah C. Dopkin, Esquire
John V. Murphy, Esquire
Ms. Theresa Lowry
Mr. William Donaldson
Ms. Mary Zentgraf



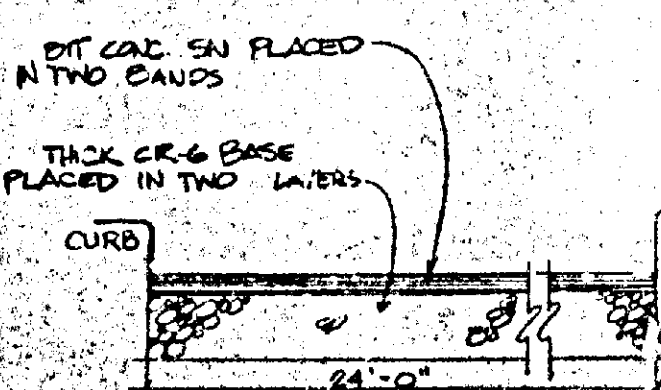
GEOLOGIC MAP

The site consists of highly variable, intercalated sand, gravel, silt and clay with limestone cements. Sands and gravels are typically quartzose and well-sorted, a buff kaolinitic clay-quartz silt matrix is common throughout the formation. Sediments are organized into fining-upward packages (3-5 meters thick) with planar bedded gravels and clay clasts or cross-bedded sands at the base to laminated or massive silt-clay at the top. Elsewhere vertical sequences show abrupt sediment size changes and erosive contacts. The heavy mineral suite is characterized by staurolite, sillimanite, tourmaline and kyanite. Sparse silicified, and abundant pseudomorphs of cycloids and conifers are present throughout the formation. These sediments were deposited in a high gradient braided and meandering stream complex.

NOTE: SEE ZONING HEARING

- 64-105-R.A. - Reelass 86 to M.L. - Denied
- 6/19/64 Special off-street parking permit granted variances from Sections 243.4, 243.3, 243.6 and 243.5 granted.
- 68-306-A - 255.2 (243.1) Front yard variance granted.
- 6/27/68 J.C.R.
- 72-119-A - 255.1 (238.2) Side yard variance granted.
- 11/4/71 J.E.D.

NOTE: PAVED PAVING SPEC TO BE DETERMINED BY A SOILS ENGINEER



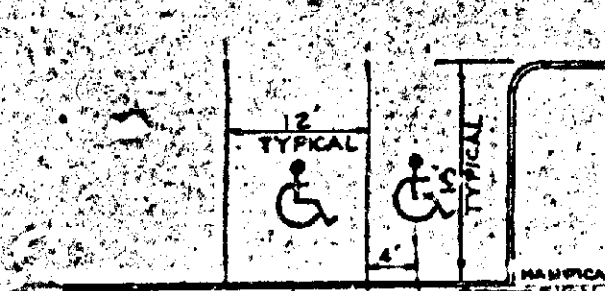
TYPICAL PAVING SECTION NO SCALE

DETAIL - TYPICAL PARKING

NO SCALE

SOIL TYPE	AREA	HYDROLOGICAL SOIL GROUP	STREET & PKG LIMITATION BONESITES W/BASIN LIMITATION	USDA TEXTURE
Lys	5.8 AC	C	SEVERE SHRINKAGE, INSTABILITY*	SANDY LOAM CLAY, SILTY CLAY
Lyd	4.5 AC	C	SEVERE SHRINKAGE, INSTABILITY*	SANDY LOAM CLAY, SILTY
Lu	1.9 AC	C	SEVERE FLOODING HAZARD*	SILT LOAM CLAY, SANDY LOAM
Lob	1.2 AC	D	SEVERE HIGH WATER TABLE*	LOAM SILT LOAM CLAY, SILTY CLAY LOAM

*MITIGATIVE MEASURES WILL BE TAKEN TO PROTECT BUILDINGS LOCATED IN AREAS OF SEVERE HIGH WATER TABLE AND INSTABILITY.

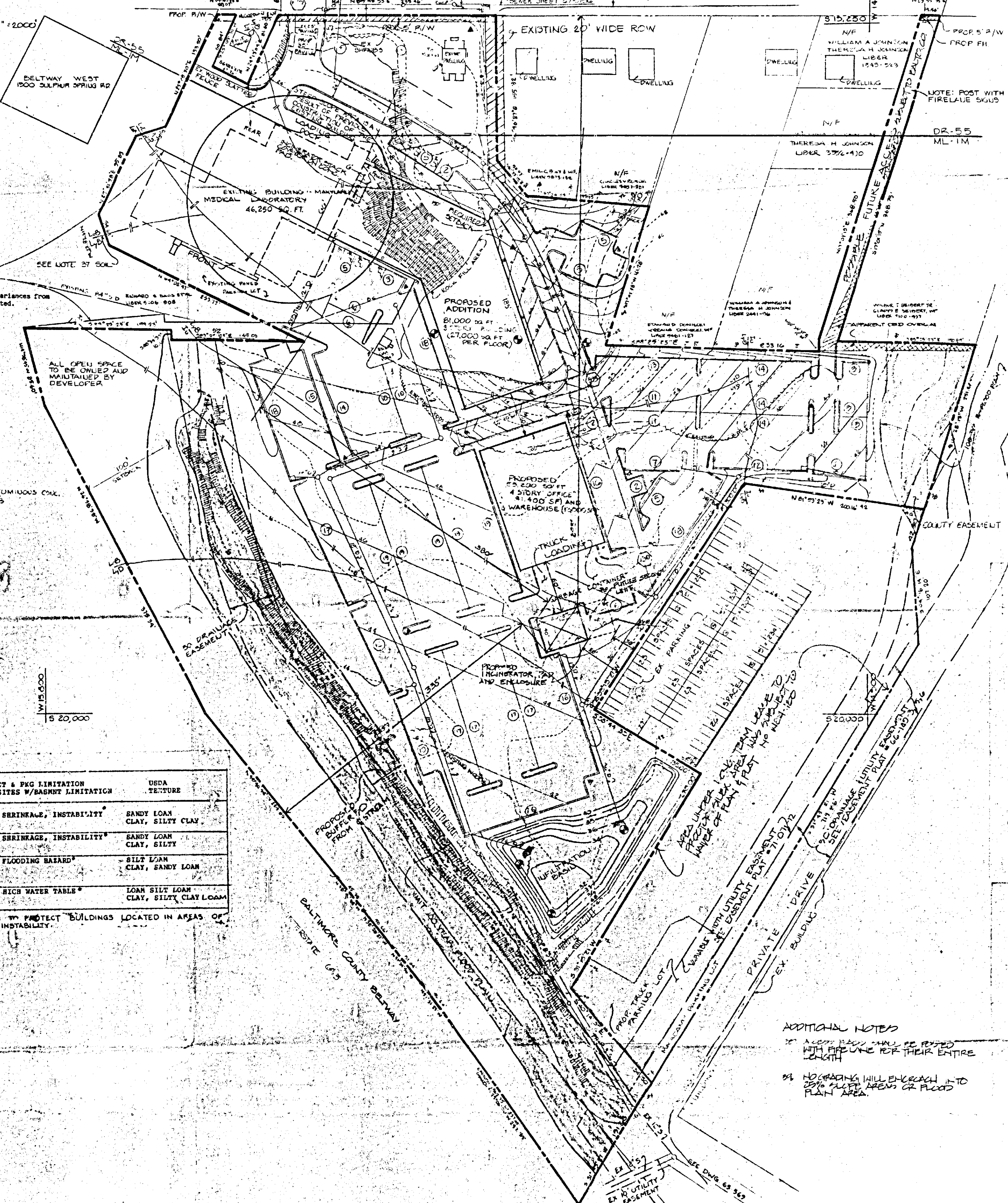


DETAIL - HANDICAPPED PARKING (NOT TO SCALE)

NOTE: BOUNDARY & TOPOGRAPHIC SURVEY PREPARED BY W.T. SADLER - SURVEYORS MAY 26 1985

CIVIL ENGINEERS, LANDSCAPE ARCHITECTS & SURVEYORS
D.S. THALER & ASSOCIATES INC.
WARREN ROAD
BALTIMORE, MARYLAND 21208
301-484-4100

SULPHUR SPRING ROAD (70' POST ROW)



ADDITIONAL NOTES

- 1. 10' ACROSS ROAD SHALL BE PAVED WITH ASPHALT FOR THEIR ENTIRE LENGTH
- 2. NO GRADING WILL ENCROACH INTO PLANT AREA

GENERAL NOTES CONT'D

- 3. RETAIN A GEOTECHNICAL ENGINEER TO REVIEW GRADING PLANS IN THESE AREAS. PROVIDE QUOTE INSPECTION AS REQUIRED TO INSURE COMPLIANCE WITH THE ABOVE AND TO PROVIDE DESIGN ASSISTANCE FOR ANY SPECIAL CONDITIONS THAT MAY DEVELOP DURING GRADING OPERATIONS.

OWNER & DEVELOPER
PATHOLOGY BUILDING PARTNERSHIP
1901 SULPHUR SPRING ROAD
BALTIMORE, MARYLAND 21221
247-9100

REVISED 5/18/7 INCINERATOR, INCINERATOR PAD, INCINERATOR ENCLOSURE
INCINERATOR RELOCATION FOR MD MEDICAL LAB



LOCATION MAP SCALE: 1"=2000'

USE	AREA	PARKING REQ'D	PARKING PRV.
EXISTING OFFICE	40,000 SQ. FT.	147 SPACES	120
OFFICE ADDITION	81,000 SQ. FT.	280 SPACES	120
OFFICE/WAREHOUSE	27,000 SQ. FT.	95 SPACES	27
TOTAL		522 SPACES	

* TOTAL SPACES INCLUDE REAR HANDICAPPED

GENERAL NOTES:

1. Election District: #13
2. Councilman District: 1
3. Census Tract: 111
4. Watershed: 29; Subwatershed: 73
5. Zoning - ML-IM; DR-55
6. Site Acreage: GROSS 16.255 ACRES & NET 16.107 ACRES
7. Local Open Space requirements: N/A
8. Parking Required: 81,000 square feet of office addition & 27,000 square feet of warehouse/office 220 required parking. TOTAL REQUIRED = 330 SPACES. PROVIDED = 522 SPACES, OF WHICH 12 ARE HANDICAP SPACES. (SEE CHART ABOVE)
9. Employees in Warehouse = 10
10. FAR ALLOWED: 7.0
FAR Proposed: 134,200 SF + 709,723 SF = .19
11. Landscape Planting Required: (see attached Landscape plan)
Total amount of trees proposed = 198
148 trees: One tree per 20 linear feet of road (50% major deciduous)
50 trees: One major deciduous tree per 12 parking spaces.
12. There are no well areas proposed on this site, public water will be provided.
13. There are no proposed septic areas, public sewerage will be provided.
14. Location of proposed planting indicated on LANDSCAPE PLAN.
15. There is an existing stream on the western side of the property.
16. There is a 0.12 Acre marsh area on the eastern side of the site.
17. All interior roadways to be privately owned and maintained.
18. Existing Topography & surface conditions shown herein is taken from a survey by W.T. Sadler Inc., dated May 26, 1985.
19. ADT - 72,1000 sq. ft. of offices = 1545 ADT
5/1000 sq. ft. of warehouse = 90 ADT
1995 ADT
20. Parking spaces shown thusly: (2)
21. Lighting shown thusly: A
22. ADT shown thusly: (2)
23. There are no historic sites, critical areas, sites, endangered species habitats, or hazardous materials
24. Tax account number 190000.597
25. Dev. of Ownership: 6868/406
26. Buffer areas shall contain one tree or shrub for every 12 feet of the total length and width of the buffer area. At least 70% of the buffer area will be evergreen trees at least 6' in height.
27. Open Space Required - 20% of the property
Open Space Provided - 20% of the property
28. Soil borings shown thusly: (2)
29. Slopes greater than 25% shall be revegetated.
30. ALL PROPOSED GRADING SHALL BE SHOWN IN SCHEMATIC ONLY
31. THERE ARE NO UNDER OR ABOVE GROUND CHEMICAL AND PETROLEUM PRODUCTS STORAGE TANKS WITHIN 200' OF THE PROPERTY, AND NO EXISTING OR ABANDONED GAS STATUSES WITHIN ONE QUARTER MILE OF THE PROPERTY
32. SITE DISTANCE AT THE ENTRANCE TO SULPHUR SPRING ROAD SHALL NOT BE IMPAIRED BY GRADING, LANDSCAPING OR SIGNAGE
33. EXISTING COUNTOURS SHOWN THUSLY: (2)
34. PROPOSED COUNTOURS SHOWN THUSLY: (2)
35. THE STORM WATER MANAGEMENT FACILITIES WILL BE OBTAINED FOR INSTALLATION BASED ON GEOTECHNICAL INFORMATION LOCATED BY WAPORAL ENGINEERING JANUARY 28, 1985
36. EXISTING VEGETATION IN THE OPEN SPACE AND OTHER UNDEVELOPED AREAS WILL BE USED TO SUPPLEMENT THE PLANTING WITHIN THE AREA OF BALTIMORE COUNTY
37. THE DEVELOPER WILL DO THE FOLLOWING IN THOSE AREAS WHERE SOIL EXISTS:
a. EROSION CONTROL SHALL BE PROVIDED TO PREVENT EROSION FROM INCREASE IN RUNOFF THAT WILL INCREASE DRAINAGE TO THE POND AND WATERSHED AND DRIVES TO STORM DRAINS AND/OR STORM WATER MANAGEMENT SYSTEMS

PLAT TO ACCOMPANY PETITION FOR ZONING VARIANCE & CRG PLAN
PATHOLOGY BUILDING
ELECTION DISTRICT NO 13
SCALE: 1"=50'

PUBLIC SERVICES
CRG NO 65306
PLANNING
DATE: SEPT 10, 1985

27-2232

16487

RECEIVED
APR 23 1987
ZONING OFFICE

LAW OFFICES
COOK, HOWARD, DOWNES & TRACY
210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

JAMES D. C. DOWNES
(1806-1879)
TELEPHONE
(301) 823-4111
TELECOPIER
(301) 821-0147

April 21, 1987

HAND DELIVERED

Arnold Jablon, Zoning Commissioner
Baltimore County Office of Planning
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Maryland Medical Laboratories, Inc.

Dear Mr. Jablon:

Thank you for your letter of April 17. I have consulted with Dr. Selvin Passen of Maryland Medical Laboratories, Inc. ("MML") who provided the following information in response to your questions.

MML provides a contracted service within Kernan, Children's and Howard County General Hospitals and at the Liberty Medical Center. (Lutheran Hospital, the fifth hospital where services had been provided, has closed.) On site at each hospital, MML maintains an immediate care ("stat") laboratory for analyzing samples relating to the immediate care of patients being admitted. Samples that are not of an immediate nature are brought to MML's central facility for analysis, and the infectious waste generated from these samples are to be burned in the incinerator. This handling is no different than that for any samples from MML's satellite operations and physicians offices which are transported to the laboratory for analysis. Infectious waste generated from testing in the MML stat lab on site at each hospital is disposed of by the hospital, not by MML.

The amount of waste being generated by the proposed incinerator will not increase over the amount previously burned, nor will there be any increase in the amount of bulk being incinerated. Naturally, if over time the business of the laboratory grows, there will be an increase in volume

Arnold Jablon, Zoning Commissioner
April 21, 1987
Page 2

relative to and as a result of that business growth. Such growth is anticipated to come from MML's satellites and physician's offices other than hospitals, since no growth is expected within the hospitals unless admissions and bed capacity should increase, an unlikely occurrence at this time.

I am enclosing the "Infectious Waste Incinerator Permit Application Report" prepared by William Harrington & Associates, Inc., March 1987, and direct your attention to pages II-1 through II-6 for further information. (I would appreciate your returning this report to me at your earliest convenience.)

MML has been working closely with County health officials to get the new incinerator built and operating. As you are aware, the permit process has been an attenuated one (in processing since last November), both time consuming and expensive. It has been a frustrating experience for MML whose use of an incinerator on site has been treated as a permitted accessory use. We are anxious to bring this matter to a resolution.

I look forward to hearing from you. Thank you.

Very truly yours,

Deborah C. Dopkin
Deborah C. Dopkin

DCD/nms
Enclosure
cc: Selvin Passen, M.D.
Mark Levin, I.A.
Paul Drif, Esquire
Herbert R. O'Connor, III, Esquire

RECEIVED
JUN 13 1987
ZONING OFFICE

LAW OFFICES
COOK, HOWARD, DOWNES & TRACY
210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

HAND DELIVERY

June 19, 1987

Betty DuBois
Baltimore County Zoning Office
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Special Hearing
Item 450

Dear Ms. DuBois:

I have been in contact with John V. Murphy, attorney for the petitioner in connection with the above referenced petition, and have received his approval to authorize you to reschedule the hearing on the above. Please reschedule the hearing to the afternoon of July 20th in lieu of July 16th at 10:00 a.m.

Thank you.

Very truly yours,

Alice A. Malinowski
Alice A. Malinowski
Legal Assistant

AAM:bw
cc: John B. Howard, Esquire
Deborah C. Dopkin, Esquire

RECEIVED
SEP 25 1987

IN THE MATTER OF THE APPLICATION FOR BUILDING PERMIT OF MARYLAND MEDICAL LABORATORIES, BEFORE THE ZONING COMMISSION OF BALTIMORE COUNTY Case No.: 88-16-SPH

PETITIONERS MEMORANDUM

Now comes, Kathleen Goodwin, Mary Zantgref and other Protestants, by Standish McCleary, III, Esquire and John V. Murphy, Esquire, their attorneys, who respectfully request that the Zoning Commissioner deny the Building Permit for the Maryland Medical Laboratories infectious waste incinerator for the following reasons:

QUESTIONS

1. Is an incinerator of infectious wastes an accessory use under the Baltimore County Zoning Regulations in an M.L.-1M zone?
2. Is a smoke stack for discharging waste products of combustion an accessory use of a laboratory in an M.L.-1M zone?

FACTS

The Petitioners are adjacent land owners to the property owned by Maryland Medical Laboratories located at 1901 Sulpaur Spring Road. These landowners' properties are zoned D.R.5.5. The Maryland Medical Laboratories property is zoned M.L.-1M.

Maryland Medical Laboratories proposes to build an incinerator facility for disposing of infectious wastes on their property which will include a building housing the wastes burner and 70 foot smoke stack. The property presently contains a medical laboratory which tests samples for infectious diseases such as AIDS, hepatitis, etc. Consequently the materials and samples handled are extremely hazardous to the health and safety of the employees at the laboratory and the adjacent and surrounding property owners unless these materials are professionally handled for disinfection and disposal.

Maryland Medical Laboratories has applied to the State of Maryland for a permit to discharge the products of combustion through the smoke stack, and non-combustible materials in a solid waste facility off site. Their proposal involves transporting approximately 500 pounds per week of infectious wastes from satellite laboratories throughout Maryland to be burned at the incinerator, in addition to disposing of office wastes and infectious wastes generated on site. Testimony indicated 60% of the 2500 - 3000 lbs. of daily waste to be incinerated would be regular office refuse.

The Petitioners reside a few hundred feet from the proposed incinerator in adjacent D.R.5.5. zones that surround the subject property on 3 sides. A previous incinerator, torn down over a year ago after a few months of dismal operation, spewed ash and oily particles on the Protestants' property. Fall out is projected and calculated at 600 feet, sufficient to easily reach

the Protestants' property.

Testimony indicated there are no free-standing medical laboratories existing in Maryland (located outside of hospitals) that utilize on-site incineration for disposal of infectious or other wastes. The representative of the Company manufacturing the proposed Simonds infectious waste incinerator, who has designed and installed 500 infectious waste and other incinerators all over the world, for hospitals, factories, universities, and government agencies, has yet to have any incinerator customer proposing to operate as an independent, free-standing medical laboratory. Testimony from Dr. Passan acknowledged the existence of alternatives to on-site infectious waste incineration, including both autoclaving (steam sterilization) and subsequent off-site disposal by landfilling or incineration, and off-site incineration at facilities licensed, designed, and equipped to do it properly. Non-infectious waste may be disposed of by off-site incineration or landfilling.

Testimony also indicated that infectious waste disposal practices are a matter of serious concern, with some jurisdictions requiring the same control technology as for incinerating hazardous wastes. The County has passed a moratorium to allow time to examine the issue more thoroughly from a land-use planning perspective, and the State Department of Health and Mental Hygiene has convened a task force to study the subject and promulgate regulations on infectious waste handling and disposal particularly.

The Protestants generally indicated that they viewed this proposed incinerator as unhealthy, unsightly, inconsistent with adjacent residential use, and very likely to diminish both the value of their property and their enjoyment of their property, based upon both past and anticipated experience. They also expressed concern that several food industries and interstate highways were located in the immediate vicinity.

ARGUMENT

The proposed use is not allowed as of right or by Special Exception under the Baltimore County Zoning Regulations, M.L.-1M zone (See Sections 253.5C2R). As such the building permit application to construct this facility should be rejected by the County.

Maryland Medical Laboratories suggests that the incinerator is an "accessory use" under Section 253.1.C.6.F. of the M.L.-1M zone which is reprinted as follows:

- F. Accessory uses or structures, including but not limited to:
1. Incidental sales (wholesale or retail)
 2. Living quarters for watchmen or caretakers and their families, and accessory uses of building subsidiary thereto
 3. Trailers for temporary use, as permitted under Section 415
 4. Industrial medical clinics
 5. Employees' recreation facilities
 6. Excavations, uncontrolled
 7. Parking spaces (see Section 409)
 8. Signs (see Section 413).

Since the proposal does not remotely conform to any listed accessory use Maryland Medical Laboratories relies on the catch

all phrase "including but not limited to". Under this proposal a major waste disposal operation handling infectious materials and generating air borne wastes is likened to the above listed accessory uses. The Petitioners respectfully suggest the proposition is absurd.

The Baltimore County Zoning Regulations, Section 101 defines Accessory Use or structure as follows:

Accessory use or structure: A use structure which - (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent, or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure; and (d) contributes to the comforts, convenience, or necessity of occupants, business, or industry in the principal use or structure served. An accessory building, as defined above, shall be considered an accessory structure. A trailer may be an accessory use or structure is hereinafter so specified. An ancillary use shall be considered as an accessory use; however, a use of such a nature or extent as to be permitted as a "use in combination" (with a service station) shall be considered a principal use. (Bill No. 100, 1970.)

a) Customarily Incident and Subordinate to the principal

USE.

The principal use allowed in the zoning regulations is a laboratory. We are asked to believe that laboratories customarily have regional infectious or other waste disposal systems attached to them. There is simply no credible evidence that this is true and in fact every witness for Maryland Medical Laboratories indicated this would be the first such disposal system in the State. Laboratories vary widely in product and procedure. Electronic laboratories, metallurgical laboratories,

medical laboratories, etc., have few common features from which one might glean what are customary incident and subordinate laboratory uses, but there is no evidence incinerators are included among them. Perhaps employee benefit uses could be customary which exceed Employee recreational facilities. Perhaps security facilities beyond "having quarters for watchman, . . ." could be customary. But surely, infectious waste disposal systems are neither customarily incident and subordinate to laboratories in general and under the facts presented, subordinate in scope. Facilities for washing or servicing a business's cars or trucks cannot even be constructed without a special exception in this zone. Even antennas higher than 50 feet require a special exception. Waste disposal by on-site incineration is not a minor, accessory adjunct to this or any laboratory, particularly for highly controversial infectious wastes.

b) Subordinate in area, extent or purpose to the principal use.
The smoke stack will be the highest structure in the area and will dominate the countryside much less the principal use. Its exhaust fumes will according, to Maryland Medical Laboratories, reach the ground some 600 feet away from the stack. These fumes will touch ground primarily in the residential area of Landsdowne but depending on the wind could extend the effects of this proposal for great distances. This is hardly a subordinate use in area or extent to the existing laboratory.

- 6 -

c) It is located on the same lot as the principal use.
This requirement clearly forbids the regional pick up, transportation and disposal of infectious wastes from satellite Laboratories as proposed by Maryland Medical Laboratories.
d) Contributes to the convenience of the business in the principal use or structure served:

Again, the regional transport and storage of infectious wastes clearly violates the requirement that the accessory use contribute to the principal use or structure on the site. The existing laboratory does not need nor in anyway benefit from depositing of infectious wastes from the satellite operations.

The Courts of Maryland have construed the term accessory use in two principal cases. In Arundel Supply Corporation, et al vs. Cason, 265 Md. 371, 289 A.2d 585 (1979), the Court of Appeals looked squarely at the idea of an accessory use accommodating a regional business and flatly rejected the idea. Arundel conducted a washing and screening operation on a 16 acre tract. Originally they processed only materials mined on the property but after a year or two, Arundel began to fetch to the property materials mined in other locations. The Court held at p. 378 "Whether the washing and screening of the sand and gravel extracted from the 16 acre tract in 1946 was an accessory use we shall not undertake to say. We do not think, however, that washing, screening and batching of materials 'trucked in' from other places was an accessory use and we so hold". This case is exactly on point and forbids the trucking in of infectious wastes

- 7 -

to be processed on this site.

In Kolaski v. Lamar, 25 Md.App. 493, 334 A.2d 536 (1975) the Court of Special Appeals looked at the broader question of accessory uses as they relate to uses permitted as of right or by special exceptions. In this case a vacant property zoned residential was periodically used for commercial fishing. The Baltimore County Board of Appeals had held that the uses complained of did not constitute a boatyard or commercial business. The Court of Special Appeals overturned the Board of Appeals and reiterated the long held rule at page 498 that the zoning regulations "... established that the only uses permitted in the R.D.P. zone are those designated as uses permitted as of right and uses permitted by special exception. Any other than those permitted and being carried on as of right or by special exception is prohibited." The Court found at page 540 that "there is not an iota of evidence to show that the uses complained of do or can constitute any use permitted as of right other than as an accessory use." The Court then reviewed the definition of accessory use and found that the uses complained of were not accessory. The Court said that the Board of Appeals answered the wrong question. The issue was not whether the uses constituted commercial uses but whether the uses were permitted at all. In the case at Bar the question is not whether Maryland Medical Laboratories has a good idea but whether the use proposed is specifically permitted.

The Baltimore County Zoning Regulations, Section 600 -

- 8 -

Interpretation, makes this idea clear:

In their interpretation and application, these Regulations shall be held to be the minimum requirements for the promotion of the public health, safety, convenience, and general welfare. Where these Regulations impose a greater restriction on the use of buildings or land or on the height of buildings, or require larger yards, courts, or other open spaces, or impose other higher standards than are imposed by the provisions of any law, ordinance, regulation or private agreement, these Regulations shall control. When greater restrictions are imposed by any law, ordinance, regulation, or private agreement than are required by these Regulations such greater restrictions shall not be affected by these Regulations.

Zoning is unlike many fields of law which permit an activity unless specifically prohibited. The Zoning Regulations set "minimum requirements" that must be met by anyone proposing to use land in Baltimore County.

The burden is on those who have a proposed use to show that that use meets the zoning regulations, and not on the County or Petitioners to show that the use violates some specific portion of the Zoning Regulations. Maryland Medical Laboratories must show positively that an infectious waste disposal system is a permitted use. It is insufficient to merely call it an accessory use, saying it is not specifically forbidden, under the catch-all accessory use clause "including but not limited to (enumerated accessory uses)". The Petitioners respectfully contend there is not an iota of evidence shown by Maryland Medical Laboratories to meet this positive burden. Their proposal is without precedent, regardless of any debate over whether it constitutes a very good or very bad idea.

- 9 -

If a private waste disposal system is an accessory to a laboratory then it is accessory to the other ninety six uses allowed as of right and twenty eight uses permitted under special exception in an M.L. zone. Obviously each use generated waste. Consequently this would mean that under zoning law each could have its own smoke stack and incinerator to burn its own trash on site, as proposed by Maryland Medical Laboratories. Each could "truck in" trash from satellite businesses in the state to burn as well.

If the above holds for M.L. zone it holds for all industrial zones. And why not office zones? Offices generate waste and need to rid themselves of it. Surely each office should be able to burn its own trash and have a smoke stack to match the way Maryland Medical Laboratories wants to dispose of its trash. Office trash constitutes most of what would be burned by Maryland Medical Laboratories. And why not residential zones? Residences generate wastes and surely each residence should be able to burn its own wastes and have their own smoke stack. Residences would no doubt benefit from such smoke stacks to mount satellite dish antennae as well.

To say that incineration or other disposal of wastes of any kind, much less infectious wastes, could be handled as an aside under the catch-all accessory use "but not limited to" goes against all the experience of our society in the past half century. Testimony at the Zoning Commissioners hearing indicated some states treat infectious waste as hazardous wastes.

- 10 -

Baltimore County Zoning Regulation allows waste disposal under only the most tightly controlled conditions. It is interesting to note that sanitary landfills become uses of right in the heaviest industrial zone, M.H., but incinerators for sludge for disposing of human wastes remain tightly controlled under special exception under all zoning classifications. One can have steel mills, chemical plants, and meat packing plants as of right in M.H. zones but incinerators still require a special exception. Clearly the County Council never intended that an infectious waste disposal systems could somehow slide thru, between the lines of the zoning law as an accessory use. By Council Bill 87-87, a special definition now exists in the zoning regulations for infectious waste incinerators, the matter should be properly deemed to require explicit rather than implicit land use treatment.

For the reasons stated the Petitioners respectfully request that the proposed infectious waste disposal system be held not to be permitted under the Baltimore County Zoning Regulations and the building permit be denied.

Respectfully submitted,

Standish McCleary, III
Standish McCleary, III, Esquire
Suite 210
210 Allegheny Avenue
Towson, Md. 21204

- 11 -

John V. Murphy
John V. Murphy, Esquire
16 East Lombard Street
Baltimore, Maryland 21202
837-0215
Attorneys for Petitioners

IN THE MATTER OF * BEFORE THE
PETITION FOR SPECIAL HEARING * ZONING COMMISSIONER OF
CONCERNING BUILDING PERMIT OF * BALTIMORE COUNTY
MARYLAND MEDICAL LABORATORIES * Case No.: 88-16-SPH
S/S Sulphur Spring Road NE of *
I-695 (1901 Sulphur Spring Road) *
13th Election District, *
1st Councilmanic District *
Petitioners: Kathaleen Goodwin *
Mary Zentgraf *

REPLY MEMORANDUM OF PETITIONERS

Maryland Medical Laboratories, Inc. ("MML"), essentially argues in their Memorandum that State law demands on-site incineration, there exists precedent for labs having on-site incinerators, and it is a good idea anyway. These assertions are respectfully suggested to be without foundation in law or fact. There exists no legal requirement for such a treatment method, even if the existing Department of Health and Mental Hygiene guidelines were to be mistaken for regulations. There exists no precedent for an independent laboratory to have an on-site incinerator, regardless of hospital precedent. It is moreover an idea of highly questionable and debatable merit as a matter of zoning and land use planning, were the merits of the idea even relevant as a matter of zoning law.

RECEIVED
OCT 9 1987
ZONING OFFICE

- 12 -

I. The Facts

Dr. Passen acknowledged the availability of other disposal options, including landfilling autoclaved wastes, and general incineration at licensed facilities in Maryland and Virginia. He acknowledged pollution problems with a previous incinerator operated by MML. He stated infectious wastes are received from satellite facilities from Baltimore and Laurel. He stated his preference for incineration over the legally available alternatives, and his preference for on-site incineration, if he could do it. He acknowledged that no other independent lab has even considered on-site incineration, however, reasoning that only MML has enough waste volume.

Dr. Harrington had no knowledge of any independent labs using on-site incinerators. He was aware only that hospitals sometimes have them for incineration of wastes generated at the hospital. His testimony addressing incinerators as accessory to medical labs was entirely directed to incinerators as accessory to hospitals, for waste generated in the hospitals.

Mr. Booth, the president of the manufacturer of the proposed incinerator, testified that it was his understanding that incineration is the better technology for infectious waste disposal. Despite extensive, even international, experience, he had no knowledge of any independent laboratory with an on-site incinerator, however, although he has designed them for hospitals. Pointing out that hospital wastes have similar B.T.U. content to

-2-

laboratory waste, though less plastic, he stated his view that it was a good idea to incinerate.

II. The Law

State Law, Department of Health and Mental Hygiene Guidelines.

Contrary to repeated assertions of MML, state law is utterly devoid of any requirement that laboratory wastes be incinerated, much less incinerated on-site. The only relevant statute indicates that infectious wastes must not be landfilled unless first disinfected (Environmental Article §9-227; formerly Health Environmental Article §9-210). There are no regulations at this time. Guidelines issued by the Department of Health and Mental Hygiene, utterly without force of law, and presently undergoing substantive revision by a department task force scheduled to propose regulations for promulgation by November or December, otherwise address infectious waste disposal. The Department of Health and Mental Hygiene proposed the subject guidelines as administrative regulations (with minor revisions) on August 29, 1986 (13:18 Md. R. 2025-26). State authorities have one year from the date of publication of the proposed regulations within which to take final action. The regulations were withdrawn, and remain under study by the Department of Health and Mental Hygiene's task force on infectious waste handling. As MML acknowledges, the guidelines have never been adopted under the State Documents Law, State Government Article Title 10, Subtitle 1. Guidelines may purport to act as policy, but they lack the

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force of law unless they are duly promulgated under the procedures established in the Administrative Procedure Act, including publication in the Maryland Register, holding a public hearing, seeking and obtaining approval by the Attorney General's office, etc. (State Government Article 10-110 et seq.). Consequently, the guidelines "impose" nothing, "mandate" nothing, "require" nothing, and closely viewed, inferably "prefer" quite a bit less than contended. The guidelines suggest that laboratory wastes be either autoclaved or incinerated before removal for off-site disposition. This approach is not suggested for hospital infectious wastes, was attacked vehemently in a September, 1986 hearing, and will in all likelihood not remain in the revised regulations, counsel has been advised. This procedure is moreover not being followed by MML anyway, as Dr. Passen acknowledged, so it is interesting that the guidelines would be characterized as "requirements". The guidelines further suggest disposal by one of several alternatives, of which incineration is one, and autoclaving is subsequently listed as another alternative. Any inferable suggestion of preference for any particular method would be generally absent from the new regulation proposals, counsel is advised.

Even were incineration to be inferably preferred for some or all types of infectious wastes, on-site incineration is

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nowhere suggested to be necessary. This argued inference comes solely from Section III of the guidelines, which suggest that the waste be rendered non-infectious in some manner (not necessarily incinerated) before transportation. Any treatment method used must naturally be proposed and approved, including the method of autoclaving, though it could scarcely be argued that incineration is not subject to by far the most rigorous scrutiny and caution. Thus, while incineration is one of the suggested approaches to infectious waste disposal under the suggested guidelines, it is hardly imposed or required in any way, either on or off-site.

County Law

Since an on-site incinerator is not a necessary part of the lab under any existing state or county requirements, it is not as argued by MML integral to the operation by the force of law. The proposed incinerator also does not meet the standards for an accessory use under County zoning law. The repeated inappropriate use of the words "mandated" or "required" cannot elevate a unique, unprecedented proposal to the status of a customarily incidental usage, the first listed standard. Until meeting this test, one does not even reach other issues concerning the scope and purpose of the proposed accessory use. Hospital custom notwithstanding, the proposal of this laboratory must meet the independent, separate, distinct test of whether it is a customary, incidental usage for independent medical labs to have on-site incinerators. Courts that have examined the word

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"customarily" have concluded that although the word is used in zoning and other ordinances as a modifier of "incidental", it should be applied as a separate and distinct test. In Lawrence v. Zoning Board of Appeals of Town of North Branford, 158 Conn. 509, 164 A.2d 552 (1969), the Court borrowed freely from Anderson's and Zathkoff's zoning treatises, opining:

"... Courts have often held that use of the word 'customarily' places a duty on the board or court to determine whether it is usual to maintain the use in question in connection with the primary use of the land. . . . The use must be further scrutinized to determine whether it has commonly, habitually, and by long practice been established as reasonably associated with the primary use. . . . In applying the test of custom, we feel that some of the factors which should be taken into consideration are the size of the lot in question, the nature of the primary use, the use made of the adjacent lots by neighbors and the economic structure of the area. As for the actual incidence of similar uses on other properties, geographical distances should be taken into account, and the use should be more than unique or rare, even though it is not necessarily found on a majority of similarly situated properties. See 1 Rathkopf, [The Law of Zoning and Planning, 15-] 23-25, 23-26.

Similarly, in New Hampshire: "an accessory use must, in addition to its subordinate character, be customarily associated with the principal use; a rare association of uses cannot qualify as customary, although the uses need not be joined in a majority of instances of the principal use." Town of Salem v. Durrett, 125 N.H. 29, 480 A.2d 9 (1984). This laboratory's proposed accessory use of an on-site incinerator is, however, quite unique. Also, in New Jersey: "the word 'customarily' as employed by the definition of 'accessory use' in the Land Use Ordinance means

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that the use must be scrutinized to determine whether it has commonly, habitually, and by long practice been established as reasonably associated with the primary use." Charlie Brown of Chatham, Inc. v. Board of Adjustment for Chatham, Tp. 202 N.J. Super. 312, 495 A.2d 119 (1985). Were the applicant a hospital, there would clearly be a far better argument, for customary usage, particularly if hospitals were permitted as of right in an ML zone, which is, however, not the case.

The Pennsylvania case cited by MML, Red Cheek, Inc. v. Supervisor of Raccoon Manor, 364 A.2d 543 (1976), requires a closer look. Principally, the case arose in a context where the apple juice company and other food processing industries were specifically permitted by the town's zoning law provided "public [or private] sanitary sewage facilities are furnished." A fruit wastewater lagoon proposed by the apple juice company was considered a form of sewage facility, necessarily linked to the principal industry as an accessory use, as opposed to being a principal or primary use. The distinction was important in that case since it had been claimed that the lagoon use had been illegally excluded from the zoning law as a primary use. The court stated in dicta that a factory's "pollution devices required by law" could be considered accessory uses. In the context of that case and in the example given in dicta the treatment method was legally mandated as a part of the use in question - hence the repeated, strained assertions of legal "necessity" by MML.

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Naturally, were this proposal a lagoon of apple juice, there might be less opposition, too; different waste treatment methods have different land use impacts. While a required anti-pollution device (like a stack scrubber) might be integral or accessory, more optional methods serving the perceived convenience of an industry at the expense and risk of a surrounding community should not be so considered. Nor do the Baltimore County Zoning Regulations reflect any inclination towards allowing landfilling or industrial sludge disposal and handling as accessory waste handling methodologies; they are both special exception uses in ML zones (BCZR 253.2(4), (5A)).

The Petitioners agree that this issue is solely a zoning question. Whether the incinerator is a good idea, or a horribly located, ill-conceived, health risk, is not directly relevant. The incinerator's abstract design capability, in the event it might be properly run, such design obliged to be reviewed independently by the appropriate environmental authorities, is not directly relevant. The fact that the incinerator would have to be twenty times larger in design capacity (5 tons/hr., instead of 400 lbs/hr.) to be state permitted for the burning of simple refuse (Comar 10.18.05.03 C(1)) is not directly relevant. The Zoning Commissioner is free to apply the accessory use law directly to the facts, which compel a conclusion that this is a unique, unprecedented proposal that is hardly customarily incidental to an independent laboratory, nor sufficiently limited in area, extent, and purpose to be considered a permissible accessory use.

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Respectfully submitted,

John V. Murphy
John V. Murphy
16 East Lombard Street
Baltimore, Maryland 21202
(301) 837-0215

Stanish McCleary, III
Stanish McCleary, III
Booley Building, Suite 210
210 Allegheny Avenue
Towson, Maryland 21204
(301) 296-8160

Attorneys for Petitioners

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this 9th day of October, 1987, a copy of the foregoing Reply Memorandum of Petitioners was mailed, postage prepaid, to John B. Howard, Esquire, Robert A. Hoffman, Esquire and Judith A. Arnold, Esquire, Cook, Howard, Downes & Tracy, 210 Allegheny Avenue, Towson, Maryland 21204, Attorneys for Maryland Medical Laboratory, Inc.

Stanish McCleary, III
Stanish McCleary, III

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IN RE: PETITION FOR SPECIAL HEARING *
5/8 Sulphur Spring Road, NE *
1-695 (1901 Sulphur Spring Rd) *
13th Election District *
1st Councilmanic District *
Maryland Medical Laboratories *
Kathleen Goodwin *
Petitioner *

BEFORE THE *
ZONING COMMISSIONER *
OF BALTIMORE COUNTY *

Case No. 88-16SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein has filed a Petition for Special Hearing to determine whether or not approval of a proposed incinerator expansion by Maryland Medical Laboratories, Inc. at 1901 Sulphur Spring Road is a permitted accessory use to be allowed on the subject site. The subject site is more clearly defined on Respondent's Exhibit 1.

This matter arises as a result of Maryland Medical Laboratories, Inc. intention to construct a new infectious waste incinerator. Maryland Medical Laboratories is not the Petitioner in this matter and is referred to herein as either MML or Respondent.

MML owns and operates a medical laboratory and maintains its corporate headquarters on the subject site. Although a typical situation would have the landowner, MML, filing for the Petition, this matter was forced to issue by an affected landowner. The Petitioner was represented by John A. Murphy, Esquire. They were joined at the hearing in this matter by Co-Petitioner, Mary E. Zentgraf, and she was represented by Standish McCleary III, Esquire of Blanton and McCleary. Maryland Medical Labs, Inc. was represented by John B. Howard, Robert A. Hoffman and Judy A. Arnold of Cook, Howard, Downes and Tracy.

The Petitioner and Co-Petitioner both appeared. Their testimony was proffered by their attorney. Maryland Medical Labs, Inc. (MML) appeared and

testified through Dr. Selvin Passen, the President of MML. MML was supported by the testimony of Mr. William M. Harrington, Jr. and Mr. C. Michael Booth. Mr. Harrington was qualified as a professional engineer in environmental engineering. Mr. Booth is the President of Simonds Manufacturing Corporation, the producer of Hazardous Waste Incinerator Systems. The Petitioners were supported by the proffered testimony of Paul Reincke and by Theresa Lowry of Maryland Citizens for the Environment, Inc.

At the hearing on this matter, it was agreed by the parties that for purposes of expediency and clarity that the case of Maryland Medical Laboratories, Inc. would be presented first. MML reserved their right to respond.

The testimony tends to indicate that Maryland Medical Labs, Inc. owns and operates a medical laboratory and has its main headquarters on the subject property which is commonly known as 1901 Sulphur Spring Road in the Lansdowne section of Baltimore County. The issue developed during the testimony dealt with the proposed construction and operation of an on-site infectious waste incinerator. There has been a long running disagreement between MML and some of its residential neighbors over the appropriateness of operating such a facility at this location. The arguments of counsel for the Petitioner contends that an infectious waste incinerator is first, not permitted as a matter of right in an M.L.-I.M. zone and/or, second, that an infectious waste incinerator is not permitted as an accessory use to the particular operation in question in this Petition.

MML argues that an infectious waste incinerator is permitted as a matter of right, at this site, pursuant to Section 253.1.A.27 of the Baltimore County Zoning Regulations (B.C.Z.R.). Additional, MML argues the incinerator is permitted as a matter of right, pursuant to Section 253.1.F of the B.C.Z.R., as an accessory use or structure.

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The testimony and exhibits presented in this matter tend to establish that the subject property consists of approximately 16 acres of ground with nearly 250 feet of frontage along Sulphur Spring Road. The subject property has a common boundary with the Baltimore Beltway (Interstate 695). Part of the subject property shares a common boundary with some residential neighborhoods. The majority of the subject property is zoned M.L.-I.M. and a remaining small portion is zoned D.R.5.5., as shown on Respondent's Exhibit 1.

MML has, in the recent past, operated a hazardous waste incinerator. It was closed after only a few months of operation. The evidence is conflicting as to whether or not the operation was closed by the owner of MML, or whether or not the operation was forced closed by a State or local governmental agency. The issue is not dispositive of the matter and, therefore, no finding on that issue need be made by the Zoning Commissioner.

As stated above, the testimony of the witnesses for MML was placed into the record, first, by agreement of the parties. This testimony tends to establish that a free standing medical laboratory and corporate headquarters is maintained on the subject site. MML does diagnostic testing at the site on a seven (7) day a week, 24 hour basis, 52 weeks a year. MML employs approximately 500 individuals in various capacities.

The heart of the operation conducted by MML is the processing of biological materials to determine whether or not they are diseased and/or infectious. Waste products, both in the biological form and from the testing materials are produced on site. Also, there is waste from the ordinary office operations. MML is a large operation when compared to other free standing medical laboratories in the State of Maryland and is comparable in size to many laboratories attached to the hospital operations in the State of Maryland.

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Dr. Passen testified at length as to MML's continuing problems in disposing of the hazardous waste materials and/or the infectious waste materials generated from this site and from other sites owned by MML. The result of that testimony was to establish that MML has attempted to dispose of these materials in other ways and to employ other methodologies. These other methodologies are costly and, in the opinion of Dr. Passen, not as efficient and effective as the development of an on-site incineration facility. There was also testimony by Dr. Passen as to the nature, style and operating technology of the new proposed incinerator.

Dr. Passen testified that, in his opinion, on-site infectious waste incineration is absolutely necessary to MML's continuing profitable operations. He testified at great length to the potential liability problems of generating on-site infectious waste and transporting that waste to other disposal sites. Dr. Passen testified that, in his opinion, incineration of infectious waste is the preferable and mandated methodology.

Dr. Passen testified that, in his opinion, the other forms of hazardous waste handling, such as autoclaving and/or chemical treatment are not reliable and too costly to be considered for use with his operation. He testified that he was unwilling to continually rely on other outside incineration facilities such as the facility known as Med-Wet. It was his opinion that relying on other organizations was not a sound business decision when dealing with hazardous waste disposal.

MML has over 50 satellite facilities around the State of Maryland and infectious waste materials are produced at all of those locations. Dr. Passen testified that it is his intention to construct this hazardous waste incinerator and bring all of the hazardous waste materials from the Baltimore area satellite facilities to this location for incineration. He testified

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that it was not his intention to bring the materials from the Eastern Shore of the State of Maryland to this facility, due to the prohibitive cost of transportation of the materials. Dr. Passen stated that it was not his intention to allow MML to accept any infectious waste materials from any other medical organization, laboratory or hospital for disposal in the incinerator.

The testimony of MML's supporting witnesses indicates that it is not permissible for medical laboratories to dispose of infectious waste in landfills or municipal incinerators. That MML has made efforts to obtain permission to dispose of its infectious waste at other area hospital incinerators, however, the large volume of infectious waste prevents the arrangement of such contracts. At the present time, MML's infectious waste are transported to a Virginia Crematorium and/or to the Med-Wet facility. In the opinion of Dr. Passen, on-site infectious waste incineration is absolutely necessary to MML's continued operations. Dr. Passen acknowledged that, under Maryland Regulations, autoclaving and chemical treatment of infectious waste is also permitted, as is the transporting of such materials to already existing infectious waste incinerators.

Dr. Passen testified that there are no other free-standing medical laboratories in the State of Maryland with on-site infectious waste incinerators. However, he said many hospitals have them connected to their operations. Dr. Passen stated that it is his opinion that these other hospital infectious waste incinerators are comparable to his own operation due to the comparable size of their operations and the volume of materials produced by hospital operations and MML's operation.

Mr. Harrington described the operations of such hazardous waste incinerators like the one proposed for MML. He also testified that, in his professional expert opinion, incineration is the preferable way of disposing

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of hazardous materials. Mr. Harrington stated that, in his view, an infectious waste incinerator is both customarily incident and subordinate to the operation of a medical research laboratory.

Mr. Booth testified that his company has installed hazardous waste incinerators at approximately 480 locations within the United States, the vast majority of which are associated with hospitals. In his opinion, there are no such operations connected to independent free-standing laboratories like MML.

Mr. Booth stated that, of the approximately 480 incinerator systems his company has installed, none of them had been in a facility such as MML's. He also testified that, to the best of his knowledge, no free-standing medical laboratory in the United States has its own hazardous waste incinerator. Likewise, Dr. Passen testified that he knew of no medical laboratory that is similar in type and/or scope of operation to MML with a hazardous waste incinerator.

Mr. Harrington stated that he had analyzed MML's waste stream and had concluded that the incinerator being proposed by MML would be most appropriate to handle the waste stream of MML. Mr. Harrington admitted that he had no specific experience in working on the waste disposal problems of any independent medical laboratory.

The Petitioners are adjacent landowners to the property owned by MML located at 1901 Sulphur Spring Road. The term "adjacent" is not meant to mean sharing actual common property boundary lines, but is used to identify individuals in the affected neighborhoods around the MML property. The Petitioners properties are zoned D.R.5.5 and are located in residential neighborhoods.

MML has, previous to this hearing, applied to the State of Maryland for permit to construct a hazardous waste incinerator to dispose of the waste

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products from the operation of its medical laboratories and the daily waste products from ordinary office and testing facilities. The information is that something around 600 of the 2,500 pounds of daily waste to be incinerated at the MML location is ordinary office refuse. Additionally, approximately 500 pounds per week of the infectious waste to be incinerated is to be obtained from MML's other satellite operations.

The general contention of the Petitioners is that the proposed hazardous waste incinerator is unhealthy, unsightly, and inconsistent with the adjacent residential uses. The Petitioners indicate that they believe that the proposed hazardous waste incinerator at MML would diminish both the value of their property and the enjoyment of their residential property. They firmly believe that the proposed incinerator will be a negative influence upon their community and harmful to the general health and welfare of the area.

The evidence in the record and the proffered testimony taken from both Petitioners, Mary Zentgraf and Kathleen Goodwin indicate that neither of the Petitioners live within 500 feet of the proposed hazardous waste incinerator site. Respondent's Exhibit 1 has been marked by both Petitioners indicating the location of their residence. The Petitioners' homes are well in excess of 500 feet from the proposed hazardous waste incinerator as customarily measured upon a 200 scale site plan.

There has been a great deal of disagreement between the parties over the exact volume of hazardous waste to be disposed of in this particular proposed incinerator.

The evidence before the Zoning Commissioner is unclear. However, the volume listed above is taken from the hearing. The precise answer to the issue of the volume of hazardous waste and the amount of non-hazardous waste burned in this particular facility is open to debate. However, the precise

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volume numbers are in conflict, but the percentages seem to remain constant. There is, therefore, no need to develop the precise usage factors since the overall volume considerations from both on and off site and hazardous and non-hazardous materials is consistent and the amounts do not resolve this case. The issue of a hazardous waste incinerator is not controlled by the actual amount of waste, but is an incinerator allowed and whether all waste is from on-site, or not.

The answers are clear. The waste comes from both on-site and off-site and all the waste belongs to MML. Both the hazardous waste and non-hazardous will be burned in the incinerator. I do not believe it is necessary to make any further finding on this issue.

Another issue raised by Dr. Passen is the problem of transporting hazardous waste which MML says is illegal. MML argues that transporting hazardous waste is cost prohibitive and not an acceptable business decision. MML also argues that it is their intention to transport hazardous waste from its satellite operations to the main location on the subject property.

The arguments of MML clearly demonstrate that hazardous waste can be transported and that it is not illegal to not incinerate on site. Dr. Passen's testimony is that on-site incineration is more convenient and will save him money, but his own testimony disproves his argument that on-site incineration is legally required. MML is not proposing to build a hazardous waste incinerator at everyone of its locations in Maryland.

Therefore, the incinerator is not a requirement of the non-transporting ability of hazardous waste under state law, and not an accessory use as required by State law. The non-transportability argument is one based on a preferred business decision and not a legal requirement.

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There has also been a great deal of debate between the parties over the issue of whether or not Maryland State law requires MML to incinerate its infectious waste on site. MML has maintained throughout the hearing process and during briefing that incineration of hazardous waste is required by either State law or State regulation. The Petitioners have maintained that Maryland State law is utterly devoid of any such requirement and, furthermore, that incineration is not required by any State regulation. The Petitioners maintain that the only statutory provision dealing with infectious waste requires that the infectious waste not be landfilled, unless it has first been disinfected. The Petitioners also argue that the Department of Health and Mental Hygiene's guidelines are presently only recommendations and have not been promulgated as actual administrative regulations.

It is my opinion that the State of Maryland does not, absolutely, as a matter of law require the on-site incineration of hazardous waste at a medical laboratory. Likewise, I find that there are numerous methodologies for the handling of hazardous waste, such as incineration, autoclaving and chemical treatment which have been equally accepted as effective and efficient means of handling infectious waste. These proposed guidelines are simply the present policies of the State of Maryland, Department of Health and Mental Hygiene and are not regulatory law in the State of Maryland. However, these guidelines equally indicate that all three forms of treatment of hazardous waste are acceptable. By definition, if more than one form of treatment methodology is acceptable, then no one form can be the absolute mandated form of hazardous waste treatment.

Likewise, the issue of on-site incineration is simply not addressed in any of the regulations or guidelines quoted by either party. If incineration is equal in acceptance to the autoclaving and the chemical treatment processes

and none is the required form of treatment of hazardous waste, then it is likewise true that incineration is not necessarily required to take place on the site of the hazardous waste production.

Furthermore, MML contends that an infectious waste incinerator is an integral part of the principal use of its property and its medical laboratories. MML states that any medical laboratory produces infectious waste as a normal and unavoidable incident of its operation. State law requires that all hazardous waste be disposed of in a manner that prevents them from harming the public health and welfare. MML argues that since a medical laboratory produces hazardous waste and the State requires that hazardous waste be disposed of; therefore, a hazardous waste incinerator is automatically required on MML's property.

This argument simply is not dispositive of the issue. As stated above, hazardous waste incineration is not the only required form of disinfection of hazardous waste.

Therefore, there is no basis to determine that a hazardous waste incinerator is permitted as a matter of right pursuant to Section 253.1.A.27 of the Baltimore County Zoning Regulations. A Hazardous Waste Incinerator is simply not a laboratory in and of itself and, therefore, is not permitted as a matter of right. The definition of a laboratory in the regulations does not envision the operation of hazardous waste incinerator in and of itself. MML's argument that a hazardous waste incinerator is a laboratory and permitted as a matter of right is not meritorious and, therefore, rejected.

MML argues, in the alternative, that a hazardous waste incinerator is an accessory use to a laboratory. Therefore, it is permitted as a matter of right as an accessory use and/or structure, pursuant to the relevant sections

of the Baltimore County Zoning Regulations. Clearly, this argument on its face is without merit.

A list of accessory structure within the ML zone is found in Section 253.1.F of the B.C.Z.R. None of the specifically listed eight accessory uses or structures can remotely be argued to be a hazardous waste incinerator. MML argues that a hazardous waste incinerator is an acceptable accessory use and/or structure under the catch-all phrase "... including, but not limited to: ...". This argument carries with it the possibility of successful conclusion, if one accepts that a hazardous waste incinerator operating as part of a free standing medical laboratory complies with the requirements of an accessory use or structure as set forth in Section 101 of the B.C.Z.R.

The incinerator proposed by MML is argued to be clearly subordinate to and serves the principal use of their operation. At first glance, this argument appears correct, however, that review is too simplistic.

The regulations require that an accessory use or structure must be customary incidental to or subordinate to and serve a principal use or structure. (Section 101, B.C.Z.R.) The evidence does not establish that a hazardous waste incinerator is customary incidental to a free standing medical laboratory.

The testimony is that MML operates more than 50 medical laboratories and none of these have incinerators. The evidence, clearly, shows that there is no known free-standing medical laboratory in the United States of America with a hazardous waste incinerator. The evidence does not indicate that hazardous waste incinerators are ever attached to free-standing medical laboratories. The truth of the matter is that there is nothing customary about hazardous waste incinerators being attached to free standing medical laboratories not incorporated into a hospital operation.

The testimony is that no witness has ever heard of a free-standing medical laboratory operating a hazardous waste incinerator. The argument of MML that the incinerator meets Section 101 for an accessory structure is not correct. The incinerator is not customarily incidental to and/or subordinate to a free standing medical laboratory and, therefore, the incinerator fails to comply with the first requirement of the definition for an accessory use or structure.

There is no need to review the remaining four requirements of the accessory definition, because the incinerator fails to meet the first element of the test of an accessory use or structure and, therefore, the inquiry need be pursued no further.

Pursuant to the advertisement, posting of property, and public hearing held and, for the reasons given above, the relief requested should not be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 6th day of January 1988 that the approval of the proposed incinerator by Maryland Medical Laboratory, Inc., at 1901 Sulphur Spring Road, pursuant to the Petition for Special Hearing, be and is hereby DENIED, from and after the date of this Order.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER OF
BALTIMORE COUNTY

RDH:ma
cc: John B. Murphy, Esquire
cc: Standish McCleary III, Esquire
cc: John S. Howard, Esquire
cc: Robert A. Hoffman, Esquire
cc: Judy A. Arnold, Attorney
cc: Peoples Counsel

ZONING DESCRIPTION

Located on the S/S of Sulphur Spring Road N.E. of I-695. Also Known as Maryland Medical Laboratory, 1901 Sulphur Spring Road in the 13th. Election District and the 1 st. Councilmanic District. Containing 16.293 Ac.

#450

PETITION FOR SPECIAL HEARING
13th Election District - 1st Councilmanic District
Case No. 88-16-SPH

LOCATION: South Side of Sulphur Spring Road, Northeast of I-695 (1901 Sulphur Spring Road)
DATE AND TIME: Thursday, July 16, 1987, at 10:00 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:
of Kathleen Goodwin
Petition for Special Hearing/to determine whether or not the proposed incinerator expansion by Maryland Medical Laboratory, Inc. at 1901 Sulphur Spring Road is a permitted accessory use to the existing use on the site

Being the property of Maryland Medical Laboratory, as shown on plat plan filed with the Zoning Office.

In the event that this Petition(s) is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

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

No. 35976

DATE 7/20/87 ACCOUNT 8-01-015-000

SIGN & POST
NOT RETURNED - TO AMOUNT \$ 73.50
RETURNED BY

RECEIVED FROM: PETITIONER Md. Citizens for the Environment, P.O. Box 2222, Baltimore, Md. 21204
FOR: (Parker)
ADVERTISING & POSTING COSTS RE CASE #87-16-SPH

VALIDATION OR SIGNATURE OF CARRIER



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

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JANG
DEPUTY ZONING COMMISSIONER

July 15, 1987

Mrs. Kathleen Goodwin
1933 Sulphur Spring Road
Baltimore, Maryland 21227

RE: PETITION FOR SPECIAL HEARING
S/S Sulphur Spring Rd., NE of I-695
(1901 Sulphur Spring Rd.)
13th Election District - 1st Councilmanic District
Owner: Maryland Medical Laboratory
Petitioner: Kathleen Goodwin
Case No. 88-16-SPH

Dear Mrs. Goodwin:

This is to advise you that \$73.50 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

THIS FEE MUST BE PAID AND THE ZONING SIGN AND POST RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Do not remove sign from property from the time it is placed by this office until the day of the hearing itself.

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

Sincerely,

Arnold Jablon
Arnold Jablon
Zoning Commissioner

AJ:med

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
S/S Sulphur Spring Rd., NE of : OF BALTIMORE COUNTY
I-695 (1901 Sulphur Spring :
Rd.), 13th District
MARYLAND MEDICAL LABORATORY, : Case No. 88-16-SPH
Petitioner

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 12th day of June, 1987, a copy of the foregoing Entry of Appearance was mailed to John V. Murphy, Esquire, 32 Light St., Second Floor, Baltimore, MD 21202, Attorney for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman

CERTIFICATE OF PUBLICATION

TOWSON, MD., June 25, 1987
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, MD, appearing on June 25, 1987.

THE JEFFERSONIAN,

Susan Sluder Osbeck
Publisher

PETITION FOR SPECIAL HEARING
S/S Sulphur Spring Rd., NE of I-695 (1901 Sulphur Spring Rd.), 13th District
Case No. 88-16-SPH
LOCATION: South Side of Sulphur Spring Road, Northeast of I-695 (1901 Sulphur Spring Road), 13th District
DATE AND TIME: Monday, July 20, 1987, at 10:00 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 of Kathleen Goodwin's Petition for Special Hearing to determine whether or not the proposed incinerator expansion by Maryland Medical Laboratory, Inc. at 1901 Sulphur Spring Road is a permitted accessory use to the existing use on the site.
Being the property of Maryland Medical Laboratory, as shown on plat plan filed with the Zoning Office.
In the event that this Petition(s) is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.
By Order Of:
ARNOLD JABLON
Zoning Commissioner
of Baltimore County
6/24 June 25, 1987

PUBLIC NOTICE

PETITION FOR SPECIAL HEARING
S/S Sulphur Spring Rd., NE of I-695 (1901 Sulphur Spring Rd.), 13th District
Case No. 88-16-SPH
LOCATION: South Side of Sulphur Spring Road, Northeast of I-695 (1901 Sulphur Spring Road), 13th District
DATE AND TIME: Monday, July 20, 1987, at 10:00 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 of Kathleen Goodwin's Petition for Special Hearing to determine whether or not the proposed incinerator expansion by Maryland Medical Laboratory, Inc. at 1901 Sulphur Spring Road is a permitted accessory use to the existing use on the site.
Being the property of Maryland Medical Laboratory, as shown on plat plan filed with the Zoning Office.
In the event that this Petition(s) is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.
By Order Of:
ARNOLD JABLON
Zoning Commissioner
of Baltimore County
6/24 June 25, 1987

THIS IS TO CERTIFY, that the annexed advertisement of
PETITION FOR SPECIAL HEARING

was inserted in the following:
☐ Catonsville Times
☒ Arbutus Times

weekly newspapers published in Baltimore County, Maryland once a week for one successive weeks before the 26 day of June 1987, that is to say, the same was inserted in the issues of

June 24, 1987

PATUXENT PUBLISHING CORP.
By *[Signature]*

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY IN EQUITY

Plaintiff

vs.

Defendant

CERTIFICATE OF PUBLICATION OF

22.84

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 13th Date of Posting: July 3, 1987
Posted for: Special Hearing
Petitioner: Kathleen Goodwin
Location of property: S/S Sulphur Spring Rd., NE of I-695 (1901 Sulphur Spring Rd.)
Location of Sign: S/S of Sulphur Spring Rd. in front of subject property
Remarks: Post first notice, further notice placed on sign 8-12-87.
Posted by: S. J. Blanton Date of return: July 8, 1987
Number of Signs: 1

RECEIVED
SEP 25 1987

IN THE MATTER OF * BEFORE THE ZONING OFFICE
PETITION FOR SPECIAL HEARING * ZONING COMMISSIONER OF
S/S Sulphur Spring Rd. NE of * BALTIMORE COUNTY
1-695 (1901 Sulphur Spring Rd.)
13th Election District,
1st Councilmanic District *
Petitioner: Kathaleen Goodwin *
* * * * *

MEMORANDUM OF MARYLAND MEDICAL LABORATORY, INC.
IN SUPPORT OF PROPOSED INCINERATOR USE

Maryland Medical Laboratory, Inc. ("MML"), which operates a laboratory and maintains its headquarters on the property involved in this case, by John B. Howard, Robert A. Hoffman, Judith A. Arnold, and Cook, Howard, Downes & Tracy, its attorneys, files this Memorandum in support of its proposal to construct and operate an on-site infectious waste incinerator on the property. MML submits that such action would be entirely consistent with the Baltimore County Zoning Regulations ("BCZR") in that an infectious waste incinerator is either an integral part of a medical laboratory, permitted as of right in an ML zone, or a permitted accessory use to such a medical laboratory.

While County Council Bill Number 87-87, enacted on July 6, 1987, temporarily prohibits the Zoning Commissioner from approving any application for a building permit to construct an infectious waste incinerator, the Bill has no

effect on the status of MML's proposed incinerator as a permitted use, and it should therefore have no effect on the determination of this case. When and if State or County authorities in the future adopt additional zoning or other restrictions on infectious waste incinerators, the parties can and will deal with those restrictions. However, this case must be decided under the zoning regulations currently in effect.

I. Introduction

The land involved in this case consists of slightly more than 16 acres, located on the south side of Sulphur Spring Road, just east of the Washington Avenue exit from the Baltimore Beltway, and west of the community of Lansdowne. The tract has approximately 255 feet of frontage on Sulphur Spring Road and is bounded on the southwest by the right-of-way of the Beltway. The property is zoned ML-IM, except for a small portion approximately 150 feet deep along its frontage on Sulphur Spring Road, which is zoned DR-5.5. The proposed location of MML's incinerator is well within the ML-IM portion of the tract, and more than 500 feet from the nearest existing dwelling.¹

¹ Although there was some testimony by neighboring property owners at the September 4, 1987 hearing in

Footnote 1 continued on page 3.

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Under §253.1.A.27, BCZR, laboratories are uses permitted as of right in an ML zone. Accessory uses or structures are also permitted as of right in such a zone. See §235.1.F, BCZR.

It is MML's position that these provisions of the County Zoning Regulations clearly permit the construction and operation of the incinerator proposed by MML.

II. The Testimony

At the September 4, 1987 hearing in this case, MML produced three witnesses to substantiate its position that an on-site infectious waste incinerator is an integral part of, or at the very least an accessory use to, a medical laboratory in Maryland.

The first witness for MML was Dr. Selvin Passen, a physician who specializes in pathology and serves as the president and medical director of MML. Dr. Passen testified as to the background of MML, noting that it commenced operating at the Sulphur Spring Road site in March, 1976. According to Dr. Passen, MML does diagnostic testing at the site on a seven-day-a-week, round-the-clock basis; it also employs 500 to 600 employees at the site.

¹ This case to the effect that the proposed incinerator location is only several hundred feet from nearby residences, this is belied by Respondent's Exhibit 1, a plat drawn to scale and showing the proposed incinerator location, as well as existing on-site and off-site dwellings.

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Dr. Passen next reviewed the history of MML's waste disposal practices. Before 1984, wastes were separated, and infectious wastes were shipped to the Pulaski Highway municipal incinerator. After changes in the law in 1984, MML could no longer dispose of infectious wastes in landfills or municipal incinerators.² At that point, MML made efforts to obtain permission to dispose of its infectious wastes at area hospitals; these efforts were unsuccessful, primarily because of the large volume of MML's infectious wastes. Eventually, MML made arrangements to ship the vast majority of its infectious wastes to a Virginia crematorium; and about six to eight months ago, MML began to dispose of those infectious wastes at the Med Net facility at Hawkins Point.³ (The Med Net facility is

² At the hearing, the Zoning Commissioner asked for a copy of the 1984 statute. Chapter 307 of the Laws of Maryland 1984, originally codified at §9-210(g) of the Health-Environmental Article, was revised and recodified by Chapter 612 of the Laws of Maryland 1987. The amended law now appears as §9-227 of the Health-Environmental Article. A copy is attached to this Memorandum as Exhibit A. Although the law did not itself prohibit the disposal of infectious wastes in municipal incinerators, that practice was prohibited by Part II C of the 1984 "Amended Guidelines" attached to this Memorandum as Exhibit B.

³ Dr. Passen explained that a small proportion of MML's infectious wastes, including all wastes generated in connection with AIDS testing, is autoclaved on-site before being transported from MML's Sulphur Spring Road headquarters for final disposal.

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the only commercial facility in Maryland authorized to accept and dispose of infectious wastes.)

Dr. Passen explained that MML had installed an incinerator at its Sulphur Spring Road site in 1985. That incinerator was operated on an intermittent basis for several months, but because of problems with its operation that the manufacturer and installer were never able to correct, MML closed it down and had it removed. Dr. Passen made it clear in uncontradicted testimony that this previous on-site incinerator had been removed at MML's initiative, rather than as a result of State directives.

Dr. Passen described the dual-chamber incinerator that MML now proposes to install. It will be an advanced technology piece of equipment that will not only involve primary burning of infectious wastes themselves, but also secondary burning of the gases emitted by the primary process. Dr. Passen explained that MML had carefully chosen a Simonds incinerator after checking with many Simonds customers around the country who were uniformly satisfied with their experience with similar model incinerators.

Dr. Passen stated that an on-site infectious waste incinerator is absolutely necessary to MML's continuing operations. He noted the tremendous liability to which MML is exposed as a generator of infectious wastes. Because of

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that potential liability, it is important that MML use a reliable, proven disposal method and that it keep the disposal of infectious wastes within its own control, insofar as possible. Although Dr. Passen acknowledged that, under Maryland law and regulations, there are three possible ways (incineration, autoclaving, and chemical treatment) to dispose of infectious wastes, he testified that incineration is the preferred method, both from the State's and from an industry viewpoint. According to Dr. Passen, MML could not and would not rely on autoclaving to render its infectious wastes non-infectious, both because of the large volume of MML's wastes and because of the relative unreliability of autoclaving when its effectiveness is compared with that of incineration. MML is also unwilling to rely on the Med Net facility as a long-range solution to MML's infectious waste disposal problems; MML does not want to be "at the mercy" of a third party that is itself susceptible to labor unrest, governmental regulation, and other possibly disruptive factors.

Dr. Passen explained that MML has over 50 satellite facilities around the State and that infectious wastes from some of those facilities would be sent to the company's Sulphur Spring Road headquarters for disposal. At the same time, Dr. Passen made it clear that infectious wastes from satellite facilities located far from Baltimore

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County (e.g., on the Eastern Shore) would not be shipped to the proposed Sulphur Spring Road incinerator. It is also clear that MML would not be accepting infectious wastes from other generators for disposal at the proposed incinerator.

Because of questions raised by counsel for the Petitioner when other witnesses draw an analogy between MML and a medical laboratory operating in connection with a hospital, Dr. Passen testified in rebuttal that other "free-standing" medical laboratories in Maryland are much smaller than MML. According to Dr. Passen, the total volume of infectious waste generated by all other independent medical laboratories in Maryland is probably not equal to the volume generated by MML.

Also testifying on behalf of MML at the September 4 hearing were two technical experts, Mr. William M. Harrington, Jr. and Mr. C. Michael Booth. Mr. Harrington is a professional engineer with over 35 years' experience in environmental engineering studies and facility design, with special emphasis on mechanical systems and solid waste management engineering. The parties stipulated as to Mr. Harrington's expertise in the field of solid waste disposal. Mr. Booth is the president of Simonds Manufacturing Corporation, which has placed in operation some 500 incinerator systems, most of them intended for the disposal of infectious wastes.

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Mr. Harrington named some of the projects on which he has worked, including the Med Net facility and incinerators at the sites of Maryland hospitals and their associated medical laboratories.⁴ He then explained that he had analyzed MML's waste stream and had concluded that the incinerator being proposed by MML would be appropriate to handle that waste stream. Mr. Harrington testified that, in his experience, an on-site infectious waste incinerator is a common incident of a hospital and its associated medical laboratory. Indeed, according to Mr. Harrington, hospitals have long been required to build on-site infectious waste incinerators in order to obtain federal funds under the Hill-Burton Act. Mr. Harrington stated that, in his view, an infectious waste incinerator "is customarily incident and subordinate to and serves" a medical laboratory, "is subordinate in area, extent, or purpose to" a medical laboratory, and "contributes to the comfort, convenience, or necessity" of the activity conducted in a medical laboratory.

Mr. Booth testified that, of approximately 480 incinerator systems his company has installed in the United States, about 90% are associated with hospitals. The

⁴ In response to questioning by the Zoning Commissioner, Mr. Harrington admitted that he had no specific experience in working on the waste disposal problems of any independent medical laboratory other than MML.

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11/7/87

John V. Murphy, Esquire
32 Light Street
Second Floor
Baltimore, Maryland 21202

June 5, 1987

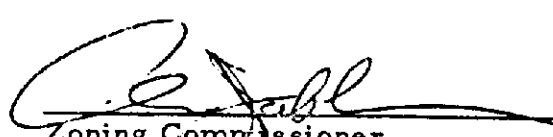
NOTICE OF HEARING

RE: PETITION FOR SPECIAL HEARING
S/S Sulphur Spring Rd., NE of I-695
(1901 Sulphur Spring Rd.)
13th Election District
Maryland Medical Laboratory - Petitioner
Case No. 88-16-SPH

TIME: 10:00 a.m.

DATE: Thursday, July 16, 1987

PLACE: Room 106, County Office Building, 111 West Chesapeake
Avenue, Towson, Maryland


J. ROBERT HAINES
Zoning Commissioner
of Baltimore County

AJ:med

ccs: Maryland Medical Laboratory
1901 Sulphur Spring Road
Baltimore, Maryland 21227

Mrs. Kathleen Goodwin
1933 Sulphur Spring Road
Baltimore, Maryland 21227

Mrs. Kathleen Goodwin
1933 Sulphur Spring Road
Baltimore, Maryland 21227

June 9, 1987

REVISED
NOTICE OF HEARING

RE: PETITION FOR SPECIAL HEARING
S/S Sulphur Spring Rd., NE of I-695
(1901 Sulphur Spring Rd.)
13th Election District - 1st Councilmanic District
Owner: Maryland Medical Laboratory
Petitioner: Kathleen Goodwin
Case No. 88-16-SPH

TIME: 10:00 a.m.

DATE: Thursday, July 16, 1987

PLACE: Room 106, County Office Building, 111 West Chesapeake
Avenue, Towson, Maryland


J. ROBERT HAINES
Zoning Commissioner
of Baltimore County

AJ:med

ccs: Deborah C. Dopkin, Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Avenue, P.O. Box
5517, Towson, Md. 21204

Maryland Medical Laboratory
1901 Sulphur Spring Road
Baltimore, Maryland 21227

Mrs. Theresa Lowry
2517 Hammonds Ferry Road
Baltimore, Maryland 21227

Mr. David Filbert, Environmental
Services, Air Pollution,
Health Department
M.S. 3404

Ms. Gladys Parker
2608 Myrtle Avenue
Baltimore, Maryland 21227

John V. Murphy, Esquire
32 Light Street
Second Floor
Baltimore, Maryland 21202

Mrs. Kathleen Goodwin
1933 Sulphur Spring Road
Baltimore, Maryland 21227

June 25, 1987

SECOND REVISED
NOTICE OF HEARING

RE: PETITION FOR SPECIAL HEARING
S/S Sulphur Spring Rd., NE of I-695
(1901 Sulphur Spring Rd.)
13th Election District - 1st Councilmanic District
Owner: Maryland Medical Laboratory
Petitioner: Kathleen Goodwin
Case No. 88-16-SPH

TIME: 2:00 p.m.

DATE: Monday, July 20, 1987

PLACE: Room 106, County Office Building, 111 West Chesapeake
Avenue, Towson, Maryland


J. ROBERT HAINES
Zoning Commissioner
of Baltimore County

AJ:med

ccs: Deborah C. Dopkin, Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Avenue, P.O. Box
5517, Towson, Md. 21204

Maryland Medical Laboratory
1901 Sulphur Spring Road
Baltimore, Maryland 21227

Mrs. Theresa Lowry
2517 Hammonds Ferry Road
Baltimore, Maryland 21227

Mr. David Filbert, Environmental
Services, Air Pollution,
Health Department
M.S. 3404

Ms. Gladys Parker
2608 Myrtle Avenue
Baltimore, Maryland 21227

John V. Murphy, Esquire
32 Light Street
Second Floor
Baltimore, Maryland 21202

Mrs. Kathleen Goodwin
1933 Sulphur Spring Road
Baltimore, Maryland 21227

August 10, 1987

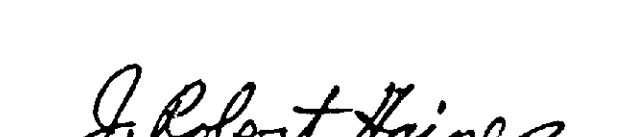
NOTICE OF HEARING

RE: PETITION FOR SPECIAL HEARING
S/S Sulphur Spring Rd., NE of I-695
(1901 Sulphur Spring Rd.)
13th Election District - 1st Councilmanic District
Owner: Maryland Medical Laboratory
Petitioner: Kathleen Goodwin
Case No. 88-16-SPH

TIME: 10:30 a.m.

DATE: Thursday, August 27, 1987

PLACE: Room 106, County Office Building, 111 West Chesapeake
Avenue, Towson, Maryland


J. ROBERT HAINES
Zoning Commissioner
of Baltimore County

JRH:med

ccs: Robert Hoffman, Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Avenue, P.O. Box 5517
Towson, Maryland 21204

Maryland Medical Laboratory
1901 Sulphur Spring Road
Baltimore, Maryland 21227

Mrs. Theresa Lowry
2517 Hammonds Ferry Road
Baltimore, Maryland 21227

Mr. David Filbert, Environmental
Services, Air Pollution
Health Dept., M.S. 3404

Ms. Gladys Parker
2608 Myrtle Avenue
Baltimore, Maryland 21227

Mr. Steve Wallis
Public Services, M.S. 1301

Standish McCleary, III, Esquire
Suite 210 Bosley Building
210 Allegheny Avenue
Towson, Maryland 21204

John V. Murphy, Esquire
32 Light Street, Second Floor
Baltimore, Maryland 21202

See page 2

ccs: Mr. Mike Kendall
Air Quality
M.S. 3404

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

No. 36030

DATE: 8-1-87 ACCOUNT: 01-615-000

AMOUNT: \$ 100.00

RECEIVED FROM: Law & Justice Sup. Assoc.

FOR: Sph # 450 Md. Medical Lab

8 8031*****100000 8045F

VALIDATION OR SIGNATURE OF CASHIER

Mrs. Kathleen Goodwin
1933 Sulphur Spring Road
Baltimore, Maryland 21227

August 20, 1987

REVISED
NOTICE OF HEARING

RE: PETITION FOR SPECIAL HEARING
S/S Sulphur Spring Rd., NE of I-695
(1901 Sulphur Spring Rd.)
13th Election District - 1st Councilmanic District
Owner: Maryland Medical Laboratory
Petitioner: Kathleen Goodwin
Case No. 88-16-SPH

TIME: 9:30 a.m.

DATE: Friday, September 4, 1987

PLACE: Room 106, County Office Building, 111 West Chesapeake
Avenue, Towson, Maryland


J. ROBERT HAINES
Zoning Commissioner
of Baltimore County

JRH:med

ccs: Robert Hoffman, Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Avenue, P.O.
Box 5517, Towson, Md. 21204

Maryland Medical Laboratory
1901 Sulphur Spring Road
Baltimore, Maryland 21227

Mrs. Theresa Lowry
2517 Hammonds Ferry Road
Baltimore, Maryland 21227

Mr. David Filbert, Environmental
Services, Air Pollution
Health Dept., M.S. 3404

Ms. Gladys Parker
2608 Myrtle Avenue
Baltimore, Maryland 21227

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Standish McCleary, III, Esquire
Suite 210 Bosley Building
210 Allegheny Avenue
Towson, Maryland 21204

John V. Murphy, Esquire
32 Light Street, Second Floor
Baltimore, Maryland 21202

ccs: Mr. Mike Kendall
Air Quality
M.S. 3404

- 2 -

remaining 10% are installed at industrial operations, Drug Enforcement Administration laboratories, and other miscellaneous facilities. According to Mr. Booth, the U.S. Environmental Protection Agency has expressed its preference for incineration as the best method for disposing of infectious wastes. This makes an incinerator an integral part of any operation that generates infectious wastes, whether that operation is a hospital laboratory or a free-standing laboratory. Mr. Booth testified that the appropriateness of incineration as a waste disposal method depends on the composition of the waste stream, rather than on the label applied to the waste generator; and independent laboratories produce waste streams that are in no material respect different from those produced by hospital laboratories.

While testimony of three Lansdowne residents-- Mrs. Zentgraf, Mr. Reinke, and Mrs. Lowery--was proffered on behalf of the Petitioner in this case, none of this testimony had any bearing whatsoever on the issue now before the Zoning Commissioner. According to the proffer, the residents would have testified about problems associated with MML's previous, now-dismantled incinerator and about their concerns as to the possible effect of MML's proposed new incinerator on public health, air quality, and neighborhood land values. Mrs. Lowery would have expressed her opinion that MML ought to either autoclave its infectious wastes or ship them off-site for incineration.

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III. The Law

All of the testimony produced at the September 4 hearing and summarized above must, of course, be viewed in the context of applicable State and local laws and regulations. The Zoning Commissioner acknowledged as much when he requested that each party separately brief the pertinent legal provisions. Although the Commissioner and both parties ultimately agreed that each party should brief the law as a distinct part of a single Memorandum containing that party's final argument, MML suggests that the law is indeed dispositive and that it dictates a decision in favor of MML.

A. As a Matter of State Law, an Infectious Waste Incinerator is an Integral Part of a Medical Laboratory; Under the BCZR, It Is Therefore Permitted as of Right in an ML Zone.

As its primary position, MML contends that the infectious waste incinerator it is proposing will be an integral part of the principal use of its property as a medical laboratory. As stated in Part II of this Memorandum, this position was supported by the testimony of witnesses for MML at the hearing before the Zoning Commissioner. Any medical laboratory produces infectious wastes as a normal and unavoidable incident of its operations. Under State law and regulations, these wastes must be disposed of in such a way that they do not harm public health. Indeed, any medical laboratory operating

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within Maryland must develop and maintain a laboratory safety manual, including a description of its policies on infectious waste disposal. Code of Maryland Regulations ("COMAR") 10.10.01.06A.

Incinerators and other refuse disposal systems generally, and infectious waste disposal in particular, as well as medical laboratories, are regulated by the State of Maryland. E.g., COMAR 10.10.01, 10.17.11, 10.18.02, and 10.18.08; "Amended Guidelines for the Disposal of Infectious Waste" (Maryland Department of Health and Mental Hygiene, July 1, 1984) (copy attached to this Memorandum as Exhibit B). The Maryland Department of Health and Mental Hygiene ("State Health Department") and the State's new Department of the Environment are charged, among other things, with safeguarding the public health, preventing the spread of communicable diseases, and preventing water and air pollution. E.g., Health-General Article, §§17-202 and 18-102; Health-Environmental Article, §§2-301, 2-302, 2-401, 9-204, and 9-227.⁵

⁵ Health-Environmental Article, Title 9, Subtitle 2 was revised by Chapter 612 of the Laws of Maryland 1987. Revised §9-204 authorizes the Secretary of Health and Mental Hygiene to regulate the installation, alteration, and extension of water supply systems, sewerage systems, and refuse disposal systems for public use, and revised §9-227 defines "infectious waste" and forbids disposal of infectious waste in a landfill system. The portion of Chapter 612 that amended §9-227 is attached to this Memorandum as Exhibit A.

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In pursuance of these responsibilities, the State Health Department has issued "Amended Guidelines for the Disposal of Infectious Waste".⁶ These guidelines apply to any "facility which generates infectious waste", including specifically a laboratory. The guidelines specify and define three types of infectious waste, one type being "laboratory waste".

The Health Department guidelines go on to impose a general requirement that generators of infectious waste dispose of the infectious waste "by incineration", either on-site or off-site, but not in a municipal waste incinerator. This general requirement is varied by exceptions in Part III of the guidelines. The exceptions allow a generator of infectious waste to by-pass the general incineration requirement if the generator satisfactorily renders his wastes non-infectious through the use of an autoclave or other approved method. However, the guidelines include cautionary language with respect to these less-preferred alternatives to incineration.⁷

⁶ The guidelines, in a slightly modified form, were proposed for formal adoption as regulations of the State Health Department in August, 1986, 13:18 Maryland Register, p. 2025 (August 29, 1986). However, they have not been adopted under the State Documents Law, State Government Article, Title 10, Subtitle 1.

⁷ If the waste generator chooses to use the autoclave method, he must make available and use written

Footnote 7 continued on page 13.

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Part III of the guidelines contains a special restriction on laboratory waste that is not imposed on other infectious waste; laboratory waste must be either incinerated or rendered non-infectious on-site (i.e., it may not be shipped off-site in an infectious state for incineration at another location).⁸ Thus, the State guidelines on their face manifest a clear preference for on-site incineration of laboratory wastes. Indeed, they offer clear support for MML's argument that an on-site

⁷ procedures and a quality control program that specify the conditions or operating parameters to be maintained in the autoclaving process. If the generator wants to use another method of treatment to render his wastes non-infectious, he must obtain specific approval from the State Health Department after demonstrating the effectiveness of the proposed treatment method.

⁸ The regulations formally proposed in August of 1986 were even more insistent than the 1984 "Amended Guidelines" in keeping infectious laboratory waste on-site. Proposed Regulation 10.01.12.04A(2) would have permitted disposal of infectious waste in an on-site or off-site incinerator, except as provided in Regulations 10.01.12.04B(3) and 10.01.12.06C [sic .06D]. Both of those latter regulatory provisions would have forbidden a generator of laboratory waste to transport the waste off-site for treatment or disposal without first having rendered it non-infectious. Furthermore, proposed Regulation 10.01.12.05B would have permitted generators of other types of infectious waste, but not generators of laboratory waste, to escape State requirements by disposing of their waste out-of-State.

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infectious waste incinerator is an integral part of any medical laboratory in Maryland.⁹

B. If an Infectious Waste Incinerator Is Not an Integral Part of a Medical Laboratory, Under the BCZR It Is an Accessory Use to Such a Laboratory.

If the Zoning Commissioner is not prepared to hold that an infectious waste incinerator is so integral to MML's medical laboratory as to be part of the principal permitted use, the Commissioner should unquestionably hold that the proposed incinerator is a permitted accessory use.

Section 101 of the BCZR defines "accessory use or structure" in relevant part as follows:

A use or structure which--(a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent, or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience, or necessity of occupants, business, or industry in the principal use or structure served.

MML's proposed incinerator satisfies each of the criteria stated in this definition.

First, Part III A of this Memorandum, which is reinforced by the testimony described in Part II, explains

⁹ The Court of Appeals of Maryland has held that, when a proposed use or structure is an integral part of the principal use or structure on a property, it is not properly characterized as an "accessory" use or structure. *Carney v. City of Baltimore*, 201 Md. 130, 135-6 (1952) (bedroom and bath addition to a residence was not permissible as an accessory building).

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why the law makes an on-site infectious waste incinerator a customary--indeed, a State-mandated--incident to a medical laboratory in Maryland. The incinerator proposed by MML will also clearly be subordinate to and serve the principal use. Testimony indicates that the proposed incinerator will receive infectious waste only from MML's main facility and satellites; MML does not propose to accept wastes from other generators or to receive income from the operation of the proposed incinerator.

The proposed incinerator will unquestionably be subordinate in area, extent, and purpose to the main MML facility on Sulphur Spring Road; Respondent's Exhibit 1 shows that the incinerator will cover less than 5,000 square feet, whereas MML's existing laboratory building covers approximately 54,000 square feet. The waste disposal purpose of the incinerator will also be subordinate to the main purpose of the laboratory, which is to service laboratory clients.

As to the final two requirements, there can be no dispute that the proposed incinerator will be located on the same lot as the principal use (see Respondent's Exhibit 1). Also, the incinerator will obviously contribute to the convenience and necessity of the main medical laboratory facility; it will enable MML to satisfy the State

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requirements described in Part III A of this Memorandum. In sum, MML's proposed incinerator, if it is not an integral part of MML's main facility, falls, without doubt, into the BCZR's definition of an accessory use.

The previous Zoning Commissioner formally recognized the fact that an incinerator is ordinarily an accessory use. Policy A-14 in the Zoning Commissioner's Policy Manual states, with respect to an industrial zone, that an incinerator will be considered as an accessory structure, provided that it is incidental to the principal use and satisfies principal building requirements.

There is also case law to support MML's position. That law indicates that, where a permitted use as of right customarily generates waste products, the disposal of those waste products is an integral part of, or an accessory to, the principal use. An illustrative case is *Red Cheek, Inc. v. Supervisor of Ruscomb Manor*, 364 A.2d 542 (Pa. Cmwlth. 1976). There, Red Cheek, a fruit-processing plant, proposed to dispose of fruit wastes by pumping them to off-site lagoons in residential districts of neighboring townships. Zoning authorities in the neighboring townships refused to permit this means of disposal, and Red Cheek appealed. The trial court dismissed the appeals, and the Commonwealth Court affirmed.

16

11/7/87

The trial judge concluded that Red Cheek's proposed method of waste disposal was accessory to the principal use of fruit-processing. Because that principal use could not be carried on in the residential zones where Red Cheek proposed to locate its lagoons, neither could the accessory use. In explaining its agreement with the trial court, the appellate court observed that the zoning ordinance of one of the neighboring townships defined an accessory use as one "customarily incidental and subordinate to and located on the same lot occupied by the principal use to which it relates"; this definition, the appellate court concluded, "certainly . . . includes an on-site sewage disposal plant" comparable to the lagoons proposed by Red Cheek.

Commenting further, the appellate court noted that Red Cheek proposed to pump its fruit wastes by pipes from its main plant to the proposed lagoons. Thus, the proposed waste disposal system was a part of Red Cheek's primary enterprise. The appellate court reasoned:

Indeed a strong argument could be made that the waste disposal plant was in fact an integral part of Red Cheek's industrial enterprise. . . . A factory's sophisticated and expensive anti-pollution devices now required by law could as readily be considered integral parts of the enterprise's principal operations as merely accessory [sic] uses of its land.

364 A.2d at 544.

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IV. The Issue Before the Zoning Commissioner Is Solely a Land Use Issue.

Part III A of this Memorandum set forth citations to statutes and regulations evidencing the State's comprehensive authority and responsibility with respect to refuse disposal systems, incinerators, infectious waste disposal, air pollution, and medical laboratories. In this case, State authorities have examined the plans for MML's proposed incinerator and have indicated that they find no public health or air quality problems that would prevent the issuance of permits for the construction and operation of the facility. Likewise, the Bureau of Environmental Services within Baltimore County's Health Department has reviewed the plans and given its approval. See Baltimore County Code, §13-49 (requiring County permit for establishment or operation of an incinerator or other waste disposal site). The only open question to be determined here is not a public health, but a land use one; it is whether the proposed incinerator is an integral part of, or an accessory use to, a medical laboratory.

In Hardy v. Zoning Board of Review, 382 A.2d 520 (R.I. 1977), a building inspector had to decide whether to issue permits for the erection of two restroom buildings and one restroom-office building at a campsite located in a rural residential zone. A seasonal camping area was a permitted use in such a zone, and the building inspector

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concluded that the proposed buildings were accessory uses. Before the building inspector issued building permits, the State Health Department had approved blueprints for the proposed buildings.

In upholding the action of the building inspector, the Supreme Court of Rhode Island wrote:

Thus, since the record shows (1) that use of the premises as a seasonal camping area was a permitted use under the Coventry Zoning Ordinance, (2) that toilet and washing facilities are "accessory" to such a camping area, (3) that under health department regulations no camp can be licensed to operate without approved sanitary facilities, and (4) that the health department had inspected the plans for the sanitary facilities and approved them before the building permits were issued, the building inspector had no choice but to issue the permits.

Likewise, the circumstances of this case leave the Zoning Commissioner no choice but to decide the issue here in favor of MML.

Conclusion

Both the testimony produced at the September 4 hearing and the applicable legal authorities support a decision by the Zoning Commissioner that the incinerator proposed by MML is permitted by the BCZR. Any medical laboratory in Maryland, whether or not it is associated with a hospital, must, as a condition of its right to operate, satisfy the State Health Department that it is

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disposing of infectious wastes in a manner that will not threaten public health. The State Health Department has expressed a clear preference for on-site incineration of infectious laboratory wastes. Indeed, hospital medical laboratories, the only medical laboratory facilities in Maryland that generate volumes of infectious waste comparable to the volumes produced by MML, commonly include on-site infectious waste incinerators.¹⁰ Many of these incinerators have been operating, without significant problems and without public objection, for years.

Technical experts working for MML have analyzed the wastes currently being produced by MML and have agreed that the Simonds incinerator being proposed for the Sulphur Spring Road site will be the best method of safely and effectively disposing of those wastes. They are unanimous in their view that an on-site infectious waste incinerator is an integral part of MML's operation as a medical laboratory. Their views are entirely consistent with policies reflected in Maryland law, in State Health Department regulations and guidelines, in case law, and in the former Zoning Commissioner's Policy Manual.

For all of the reasons stated above, whether the Zoning Commissioner chooses to regard MML's proposed

¹⁰ Witnesses at the September 4 hearing noted particularly the incinerators at St. Agnes and Provident Hospitals.

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incinerator as an integral part of MML's medical laboratory or as an accessory use, there can be no doubt that it is a permitted use under current Baltimore County Zoning Regulations. Therefore, the law requires the Zoning Commissioner to decide this case in favor of MML.

Respectfully submitted,

John B. Howard
John B. Howard
Robert A. Hoffman
Robert A. Hoffman
Judith A. Arnold
Judith A. Arnold

JOHN B. HOWARD, DOWNES & TRACY
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301-823-4111

Attorneys for Maryland Medical Laboratory, Inc.

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CERTIFICATION OF SERVICE

I HEREBY CERTIFY that, on this 25th day of September, 1987, I caused the foregoing Memorandum of Maryland Medical Laboratory, Inc. in Support of Proposed Incineration Use to be hand-delivered or served by mail, first-class postage prepaid, on Standish McCleary, III, Esquire, Suite 210, 210 Allegheny Avenue, Towson, MD 21204, and John V. Murphy, Esquire, 16 East Lombard Street, Baltimore, MD 21202, Attorneys for Petitioners.

Judith A. Arnold
Judith A. Arnold

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IN THE MATTER OF * BEFORE THE ZONING OFFICE
PETITION FOR SPECIAL HEARING * ZONING COMMISSIONER
S/S Sulphur Spring Rd. * OF
NE of I-695 * BALTIMORE COUNTY
(1901 Sulphur Spring Road)
13th Election District * Case No.: 88-16-EPH
1st Councilmanic District
Petitioner: Kathleen Goodwin*

REPLY MEMORANDUM OF MARYLAND MEDICAL LABORATORY, INC.

Maryland Medical Laboratory, Inc. ("MML"), by its attorneys, John B. Howard, Robert A. Hoffman, Judith A. Arnold, and Cook, Howard, Downes & Tracy, submits this Reply Memorandum in response to the Petitioners' Memorandum filed on or about September 24, 1987.

The Nature of the Proceedings

MML would first like to clarify the nature of these proceedings. This case arises as a result of a Petition for Special Hearing filed by Petitioner Kathleen Goodwin. The Petition asked that the Zoning Commissioner determine whether the incinerator proposed by MML is a permitted accessory use in the ML-IM zone where it would be located.¹ After the Petition was filed, Standish

¹ The Petition did not ask separately whether the smoke stack that is part of the proposed incinerator would

McCleary, III, Esquire entered his appearance in the case on behalf of Mary Zentgraf, an additional Petitioner. Contrary to various references in Petitioners' Memorandum, this case does not arise out of an application for a building permit.

MML'S Proposed Incinerator Location and Surrounding Uses

The Petitioners' Memorandum misstates facts relating to the distance between MML's proposed incinerator site and the Petitioners' residences and other residences nearby, as well as to the zoning that surrounds the MML property. MML refers the Zoning Commissioner to the plan that was filed as Respondent's Exhibit 1 at the September 4, 1987 hearing. That plan was marked by Petitioner Mary Zentgraf to show the location of her home at 2021 Sulphur Spring Road. Ms. Goodwin's home address was stated on the Petition to be 1933 Sulphur Spring Road. The plan shows that neither Petitioners' residences, nor any other residences, lie within 500 feet of the proposed site of the MML incinerator.

The plan also shows that the MML property is not, as the Petitioners assert, surrounded on three sides by DR

¹ (continued) be an accessory use in and of itself. Furthermore, there was no evidence or argument presented on that point at the September 4, 1987 hearing. Accordingly, MML does not feel it necessary to address the matter here.

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5.5 zones. The only DR 5.5 zone immediately adjoining MML's property lies to the north, along Sulphur Spring Road. Although there is some DR 5.5 zoning to the south, it is separated from the MML property by the Beltway. The majority of the property surrounding the MML location is zoned for manufacturing or business uses.

On page 2 of their Memorandum, Petitioners state that MML "has applied to the State of Maryland for a permit to discharge the products of combustion through the smoke stack, and non-combustible materials in a solid waste facility off site." This sentence is materially incorrect. In fact, MML has applied for and received an incinerator permit from the State Air Management Administration. MML is not required to apply, and has not applied, for permission to dispose of non-combustible materials in a solid waste facility off site.

Also on page 2 of their Memorandum, Petitioners give figures for the volume of waste transported weekly from satellite laboratories to MML's Sulphur Spring Road headquarters and for the volume of waste to be incinerated daily. MML does not believe that there was any testimony on these volumes at the September 4, 1987 hearing. In a March, 1987 report that MML filed with the State Air Management Administration to support its application for an incinerator permit, MML estimated that the volume of waste transported weekly from satellites would be from

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250-500 pounds and that the total volume of waste to be incinerated daily would be 2,349-2,723 pounds. MML does not dispute that the majority of the material to be burned in its incinerator would be regular, non-infectious office refuse.

At the bottom of page 2 and the top of page 3 of their Memorandum, Petitioners assert that fall-out from MML's proposed incinerator "is projected and calculated at 600 feet, sufficient to easily reach the Protestants' property." Again, on page 6, Petitioners indicate that, "according to Maryland Medical Laboratories, [exhaust fumes will] reach the ground some 600 feet away from the stack," and that "[t]hese fumes will touch ground primarily in the residential area of Landsdowne [sic]." There was absolutely no evidence at the September 4, 1987 hearing to support these statements. Although the State did do a ground dispersion study, any figures resulting from that study were the State's and not MML's. Furthermore, assuming, solely for the sake of argument, that any emissions from MML's proposed incinerator would reach to a distance of 600 feet, Respondent's Exhibit 1 demonstrates that they would not reach to more than a handful of residences. Rather than falling "primarily in the residential area of Landsdowne," the emissions would be contained largely within the limits of MML's own property; those few emissions reaching off-site would

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spread over other industrially-zoned properties to the east or over the Beltway. Even more important, by granting a permit for the MML incinerator, the State Air Management Administration has determined that emissions will not be detrimental to public health, safety, or welfare.

At several points in their Memorandum, Petitioners have inappropriately characterized as "testimony" certain statements or assertions made by Mr. McCleary at the September 4, 1987 hearing. It is untrue that "[t]estimony . . . indicated that . . . some jurisdictions requir[e] the same control technology [for infectious waste disposal] as for incinerating hazardous wastes" (Petitioners' Memorandum, p. 3). Likewise, the last sentence on page 10 of the Petitioners' Memorandum is untrue.² The only testimony on these points came from Respondent's expert witness, C. Michael Booth, who strongly disputed Mr. McCleary's assertions.

Petitioners' Legal Arguments

- A. MML Produced Evidence at the Hearing to Show that an On-Site Infectious Waste Incinerator is an Integral Part of or a Customary Incident to a Large Medical Laboratory.

Petitioners argue that, since there are no other free-standing medical laboratories in Maryland comparable

² The sentence reads, "Testimony at the Zoning Commissioners hearing indicated some states treat infectious waste as hazardous wastes."

in size to MML, it is impossible for the Zoning Commissioner to determine whether an infectious waste incinerator is "customarily incident and subordinate to" such a medical laboratory. MML strongly disagrees.

Both expert witnesses who testified for MML at the hearing in this case made it clear that infectious waste incinerators are frequently located on the sites of large medical laboratories attached to hospitals. The experts explained that they had had extensive experience with such incinerators. Mr. Harrington testified that, in his view, an infectious waste incinerator "is customarily incident and subordinate to" a medical laboratory. Mr. Booth testified that the waste stream produced by a medical laboratory attached to a hospital is in no material respect different from the waste stream produced by a large, independent medical laboratory like MML. In both cases, on-site incineration is, according to Mr. Booth, the preferred method of disposing of the waste stream.

In addition to this testimony, MML pointed out at length in its original Memorandum that applicable State law, regulations, and guidelines make on-site incineration a preferred, if not a mandatory, method for disposing of the wastes from any medical laboratory in Maryland. These authorities do not permit the conclusion that an on-site infectious waste incinerator is not "customarily incident"

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to a medical laboratory in this State, whether the laboratory is free-standing or attached to a hospital.

- B. The Incinerator Proposed by MML Will Be "Subordinate in Area, Extent, or Purpose to the Principal Use" at the Sulphur Spring Road Site, Even Under Petitioners' Expanded View of Area or Extent.

Petitioners suggest that, in order to determine whether any use that involves emissions (presumably of harmful or non-harmful gases, of noise, of odors, etc.) is subordinate in area or extent to another, principal use, one must measure the area over which the emissions may extend. They have cited no authority for this novel proposition, and MML does not believe that it is a valid or logical one.

Whether it is nor not, however, the Zoning Commissioner need not determine, because even if MML's proposed incinerator is not subordinate in area or extent to the principal laboratory use,³ it is subordinate in purpose. The Baltimore County Zoning Regulations ("BCZR") definition of "accessory use or structure" uses the disjunctive "or" to separate area, extent, and purpose

³ As MML stated in its original Memorandum, the proposed incinerator is subordinate in area or extent to the principal laboratory use, in that it would occupy no more than 5,000 square feet, whereas the existing laboratory building contains approximately 54,000 square feet.

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from one another. Accordingly, it is only necessary to show that an asserted accessory use is subordinate in one respect. The purpose of disposing of infectious wastes produced as a result of medical testing and diagnosis is unquestionably subordinate to the purpose of conducting the tests and diagnoses themselves.

- C. The Fact that MML Proposes to Include a Very Small Percentage of Wastes Brought in from Satellite Laboratories as a Part of the Material to Be Burned at Its Proposed Incinerator Does Not Alter the Accessory Nature of the Incinerator Use.

The Petitioners contend that MML's plans to burn some infectious waste from satellites at its proposed Sulphur Spring Road incinerator mean that the incinerator will not be an accessory to the main laboratory facility or site. Again, MML strongly disagrees.

According to the Petitioners' own figures, the volume of waste coming to the Sulphur Spring Road site from MML satellites would amount to 500 pounds per week, whereas the total volume of waste burned would be 2,500-3,000 pounds per day. Thus, the percentage of total waste burned that would come from satellites would be less than 3%.⁴ This situation is far different from the one before the Maryland Court of Appeals in *Arundel*.

⁴ Under the more accurate volume estimates included in MML's report to the State Air Management Administration, the percentage would be even less.

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Supply Corporation v. Arundel, 265 Md. 371 (1972). There, Arundel had exhausted on-site supplies of sand and gravel and was using its washing and screening facility entirely to process materials trucked in from other locations.

- D. It Does Not Follow that, if an Infectious Waste Incinerator is an Accessory to a Medical Laboratory, Any Private Waste Disposal System Must Be Accessory to Any Light Manufacturing, Other Industrial, Office, or Residential Use.

Petitioners advance the *reductio ad absurdum* argument that, if the Zoning Commissioner finds that an infectious waste incinerator is an accessory to a medical laboratory, he must also permit every occupant of an ML, other industrial, office, or residential zone to operate an incinerator with a smoke stack. While creative, this argument is hardly compelling.

The question before the Zoning Commissioner in any accessory use case is whether the proposed use fits the definition of an "accessory use or structure" contained in Section 101 of the BCZR. In some cases, an incinerator will qualify as an accessory use; in others, it will not. Certainly, it would be difficult for the Zoning Commissioner to conclude that an incinerator and smoke stack are "customarily incident" to a single-family residence. By the same token, other kinds of waste disposal facilities, such as trash dumpsters, would very

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likely be found "customarily incident" to offices, restaurants, or apartment buildings. As MML pointed out in its original Memorandum, the previous Zoning Commissioner's Policy Manual formally recognized that an incinerator is ordinarily an accessory use.

- E. The BCZR Do Not Treat Incinerators Generally in the Same Manner as They Treat Sanitary Landfills and Sludge Disposal Facilities.

The Petitioners contend that the Zoning Commissioner must look to the restrictions placed by the BCZR on sanitary landfills and on sludge disposal facilities for guidance on the issue now before him. MML believes that it would be error for the Commissioner to do so. Restrictions applicable to landfills and to sludge disposal facilities were narrowly crafted to address the particular problems created by these activities. The Zoning Commissioner has no basis whatsoever for unilaterally concluding that similar problems are associated with infectious waste incinerators or that similar restrictions ought to be imposed.

At this point, the BCZR contain no restrictions on any incinerators other than those used for the disposal of sludge. Indeed, the Zoning Commissioner's long-time policy has been to hold that incinerators are ordinarily permissible accessory uses.

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Conclusion

Although there are many other points raised by the Petitioners with which MML would take exception, we do not believe that it is necessary to prolong this Reply Memorandum. We submit that the facts summarized, the arguments raised, and the authorities cited in MML's original Memorandum compel the conclusion that, under the Baltimore County Zoning Regulations, the incinerator proposed by MML is either an integral part of MML's principal laboratory use or a permissible accessory use.

For these reasons, MML requests that the Zoning Commissioner issue a determination in its favor.

Respectfully submitted,

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John B. Howard

Robert A. Hoffman
Robert A. Hoffman

Judith A. Arnold
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Attorneys for Maryland Medical Laboratory, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 9th day of October, 1987, I caused a copy of the foregoing Reply Memorandum of Maryland Medical Laboratory, Inc. to be hand-delivered to or served by mail, first-class postage prepaid, on Standish McCleary, III, Esquire, Suite 210, 210 Allegheny Avenue, Towson, Maryland 21204, and John V. Murphy, Esquire, 16 East Lombard Street, Baltimore, Maryland 21202, Attorneys for Petitioners.

Judith A. Arnold
Judith A. Arnold

EXHIBIT A

WILLIAM DONALD SCHAEFER, Governor Ch. 612

In subsection (a) of this section, "[o]n request of the Secretary" is substituted for the former reference to "on demand", for clarity in accordance with administrative practice.

In subsections (a) and (b) of this section, the former references to "manufacturing ... establishment" are deleted as unnecessary in light of the references to "industrial establishment".

In subsection (d) of this section, "waste" is substituted for the former term "trades wastes", for clarity.

9-225. LANDFILL NEAR HOSPITAL PROHIBITED
UNLESS A PERSON APPLIED FOR THE PERMIT BEFORE OCTOBER 1, 1981, THE SECRETARY MAY NOT ISSUE A PERMIT FOR A PROPOSED LANDFILL THAT WOULD BE WITHIN ONE-HALF MILE OF ANY HOSPITAL.

REVISOR'S NOTE: This section is new language derived without substantive change from former HE § 9-210(d).

The term "landfill" is substituted for the former term "landfill system" to conform to the practice of the Department. No substantive change is intended.

9-226. CERTIFICATE OF PUBLIC NECESSITY REQUIRED FOR HAZARDOUS WASTE LANDFILL SYSTEM
IF A LANDFILL SYSTEM FOR HAZARDOUS WASTES DOES NOT QUALIFY FOR A CERTIFICATE OF PUBLIC NECESSITY UNDER § 3-105(d)(2) OF THE NATURAL RESOURCES ARTICLE, THE SECRETARY MAY NOT ISSUE A PERMIT FOR THE SYSTEM.

REVISOR'S NOTE: This section is new language derived without substantive change from former HE § 9-210(f).
The word "proposed", which formerly modified the term "landfill system", is deleted because the referenced § 3-105(d)(2) of the Natural Resources Article applies only to hazardous waste landfill systems operating on July 1, 1980.

9-227. INFECTIOUS WASTE IN LANDFILL SYSTEM PROHIBITED.

(a) DEFINITIONS.

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "CLINIC" HAS THE MEANING GIVEN BY THE REGULATIONS OF THE DEPARTMENT.

Ch. 612 LAWS OF MARYLAND

(3) (i) "INFECTIOUS WASTE" MEANS ANY WASTE THAT COMES FROM A HOSPITAL, CLINIC, OR LABORATORY AND THAT IS KNOWN OR SUSPECTED TO BE CONTAMINATED WITH ORGANISMS CAPABLE OF PRODUCING DISEASE OR INFECTION IN HUMANS.

(ii) "INFECTIOUS WASTE" INCLUDES:

1. DISPOSABLE EQUIPMENT, INSTRUMENTS, AND UTENSILS;
2. CONTAMINATED NEEDLES, SCALPES, AND RAZOR BLADES;
3. HUMAN TISSUE AND ORGANS THAT RESULT FROM SURGERY, OBSTETRICS, OR AUTOPSY;
4. FECES, URINE, VOMITUS, AND SUCTIONINGS;
5. LIVE VACCINES FOR HUMAN USE;
6. BLOOD AND BLOOD PRODUCTS; AND
7. LABORATORY SPECIMENS, SUCH AS TISSUES, BLOOD ELEMENTS, EXCRETA, AND SECRECTIONS.

(b) --SCOPE OF SECTION.
THIS SECTION DOES NOT PREVENT A PERSON FROM DISPOSING OF INFECTIOUS WASTE OR CAUSING INFECTIOUS WASTE TO BE DISPOSED OF, IN AN INCINERATOR.

(c) [B] DISPOSAL OF INFECTIOUS WASTE IN LANDFILL SYSTEM.
A HOSPITAL, CLINIC, OR LABORATORY MAY NOT DISPOSE OF INFECTIOUS WASTE, OR CAUSE INFECTIOUS WASTE TO BE DISPOSED OF, IN A LANDFILL SYSTEM IN THIS STATE.

(d) [C] SECRETARY TO ASSIST IN MONITORING AND ENFORCEMENT OF SECTION.

THE SECRETARY IS RESPONSIBLE WITH LAW ENFORCEMENT PERSONNEL IN THIS STATE FOR MONITORING AND ENFORCING SUBSECTION (c) [B] OF THIS SECTION.

REVISOR'S NOTE: This section is new language derived without substantive change from former HE § 9-210(g).

The General Assembly may wish to consider amending the definition of "infectious waste" in subsection (a)(3) of this section to take into account other relevant factors. For example, the United States Environmental Protection Agency has a lengthy definition of

EXHIBIT B 840131 6.5.4.1

State of Maryland
OFFICE OF THE SECRETARY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
201 WEST PRESTON STREET • BALTIMORE, MARYLAND 21201

July 1, 1984

TO: Generators of Infectious Waste
FROM: Adele Wilzack, R.N., M.S., Secretary of Health and Mental Hygiene
SUBJECT: Amended Guidelines for the Disposal of Infectious Waste

The purpose of this Guideline is to set forth certain basic concepts and procedures for the handling and disposal of infectious waste from any facility which generates infectious waste such as acute and chronic health care and related facilities, laboratories, and research facilities.

It is the intent of these Guidelines to establish certain minimum requirements including a definition of infectious waste while allowing professional judgment and some flexibility on the part of the persons within the facility having the responsibility for the handling of infectious waste.

This Guideline should be used in conjunction with existing regulations, program guides, or any other Department requirements affecting the handling of infectious waste from these facilities. Compliance with this Guideline does not excuse any facility from complying with all other local, state, and federal requirements including environmental regulations affecting disposal equipment, licensing, or permitting requirements.

I. Definitions

"Infectious waste" means equipment, instruments, utensils, and fomites of a disposable nature known or suspected to be contaminated with organisms capable of producing disease in humans. Also, included in the category of infectious waste is pathological, biological and laboratory waste as defined below, and disposable fomites (any substance that may harbor or transmit pathogenic organisms) attendant to that; and animal contact items such as bedding contaminated with organisms that may be pathogenic to humans. This term shall include sharps, such as contaminated needles, scalpels and razor blades.

"Pathological waste" means human tissues (excluding blood and blood products) and organs which emanate from surgery, obstetrics and autopsy, and animal carcasses and parts, which have been exposed to pathogens capable of producing disease in humans. Although pathological waste may not always contain pathogens, for the purposes of this Guideline it will be treated as infectious waste.

"Biological waste" means feces, urine, vomitus, suctionings, live vaccines for human or animal use, and blood and blood products other than laboratory specimens.

"Laboratory waste" includes specimens such as tissues and blood elements, excreta, secretions, and disposable fomites attendant to these specimens.

II. Disposal of Infectious Waste

A. Facilities generating infectious waste shall maintain written procedures for the purpose of implementing these guidelines.

B. All infectious waste shall be disposed of by incineration except as otherwise provided in part III. On-site or off-site incineration is acceptable provided that the incinerator has been designed and approved for that purpose. State regulations prohibit the landfilling of infectious waste.

C. A municipal waste incinerator is not acceptable equipment for the incineration of infectious waste.

III. Exceptions

A. All infectious waste, except pathological waste, may be rendered non-infectious by use of an autoclave. Waste rendered non-infectious with an autoclave is not subject to the incinerator requirements of part II provided that written procedures and a quality control program are available and utilized to specify the conditions or operating parameters to be maintained to adequately render the waste non-infectious. Waste that is treated by this method must be packaged and labeled as non-infectious waste.

B. Laboratory waste must be incinerated or autoclaved on the site of generation.

C. Other methods of rendering waste non-infectious such as chemical or mechanical treatment may be approved by the Department on a case by case basis. The treated waste will not be subject to the incinerator requirements of part II upon proper demonstration that the alternative method has rendered

the waste non-infectious if an exception has been granted by the Department. Such waste must be labeled and identified as non-infectious, prior to disposal as general refuse.

D. When the practice is consistent with all other local, state, or federal requirements, biological waste may be flushed into the sanitary sewer.

IV. Packaging, Handling and Transportation of Infectious Waste

A. Prior to disposal, the waste must be secured in waterproof, rodent and insect proof containers with limited access, and appropriately labeled.

B. The transportation of infectious waste to an off-site incinerator is permissible, provided that:

1. The waste is packaged in a single plastic bag of at least 3 mil thickness or in two (2) plastic bags each at least 1.5 mil thick and appropriately sealed to prevent spilling while awaiting transport.

2. The waste is transported in a manner so as to maximize containment (e.g., closed vehicle or rigid containers) and the container is appropriately labeled so as to identify the material being transported.

C. Personnel handling infectious waste must be instructed in proper hygiene and waste management techniques.

V. Non Compliance

When non-compliance is anticipated due to an emergency, or for some reason beyond the control of the facility, the facility should notify the Department of the existing conditions, and the proposed alternate means of disposing of infectious waste during the interim period.

To whom it may concern:

Please be advised that at the Annual meeting of the Citizens for the Environment Incorporated, according to Baltimore County Code section 2-40 Article V - Rules of Practice and Procedures; this Council group took the action to elect a president, who then became a member of the Board of Directors and Chairperson of the Board of Directors, by this action of total consent.

The Chairperson of the Board represents this Council group by the action taken at the annual meeting and thereby represents this Council in any and all matters relative to zoning hearings; appeal, or appeals; zoning proceedings and all legal matters relating to same.

This action of this Council is attested to by the Secretary and approved by the body of this Council by voice vote at this annual meeting.

This Council group represents the section of Southwest Baltimore known as Lansdowne; Baltimore Highlands; English Council; Arbutus; Reby; St. Dennis; Halethorpe; Catonsville; Anne Arundel County section known as Glen Burnie; Ferndale; Linthicum, and Baltimore City.

The person who duly represents this Council group is Theresa Mary Lowry, in its Zoning Proceedings and all legal matters both at the county and state levels.

Respectfully,

Virginia Wunder
Virginia Wunder

cc: Board Members
cc: Theresa Mary Lowry
cc: Zoning File
cc: Zoning Committee
cc: Legal Committee

EXHIBIT 2

CRG Comments

BALTIMORE COUNTY, MARYLAND

SUBJECT: COUNTY REVIEW GROUP COMMENTS DATE: February 27, 1986

FROM: ZONING OFFICE

PROJECT NAME: PATHOLOGY BUILDING PLAN: 9/18/85

LOCATION: S/S Sulphur Spring Road W of Myrtle Avenue DEVELOPMENT PLAN:

DISTRICT: 13th Election District PLAT:

- The office building "Beltway West" on the W/S of the property #1900, should be shown on the plan. The property that this building is situated on was once part of the pathology building property. Show the intervening property line and list the 3 zoning hearings that apply to this property outline on the plan:
 - 64-165-R.A. - Reclass R6 to M.L. - Denied
 - 6/19/64 Special off-street parking permit granted variances from Sections 243.4, 243.3, 243.6 and 243.5 granted.
 - 68-306-A - 255.2 (243.1) Front yard variance granted.
 - 6/27/68 J.G.R.
 - 72-119-A - 255.1 (238.2) Side yard variance granted.
 - 11/4/71 J.E.D.
- Correct the M.L.-I.M./D.R.5.5 zoning line to 155 feet S of the centerline of Sulphur Spring Road. The existing medical laboratory building is partially in the residential zone as shown.
- Within 100 feet of the D.R.5.5 zoning line the M.R. use and area regulations apply:
 - Section 243.1 - Required 75 feet front setback; 50 feet setback scaled to the existing building lot line in front of the existing laboratory building.
- The distance between buildings S.255.1 (238.2, 102.2) maximum required 60 feet, shown 45 feet. (not dimensioned)
- Dimension the required side yard setback of 50 feet adjoining the Emil C. Bley property.
- Breakdown parking data by building, use and floor.
- Is Sulphur Spring Road shown correctly on the plan? Shouldn't there be a P.C. in front of #1900 adjoining on the W/S?

COUNTY REVIEW COMMENTS
PATHOLOGY BUILDING
(continued)

-2-

February 27, 1986

- This office would only recommend plan approval conditioned on the resolution of the setback deficiencies and the existing building in the residential zone.

W. C. Richards, Jr.
W. CARL RICHARDS, JR.
Zoning Coordinator

WCR:bq

BALTIMORE COUNTY, MARYLAND

SUBJECT: COUNTY REVIEW GROUP COMMENTS
FROM: OFFICE OF PLANNING AND ZONING

DATE: February 26, 1986

PROJECT NAME: PATHOLOGY BUILDING PLAN: XXXXX
COUNCIL & ELECTION DISTRICT XIII-108 PLAN EXTENSION:
REVISED PLAN:
PLAT:

The Office of Planning has reviewed the subject plan dated September 18, 1985 and submits the following comments:

- The proposed building addition is situated in an area of unstable soils. This soil represents severe limitations for development. Special engineering and construction techniques will be required to ensure that these conditions are mitigated. Since the steep slope area is an artificial slope, additional mitigation measures, other than for the poor soils, should not be necessary.
- The 20' future access can not be used as access to the site until it is made acceptable to Baltimore County.
- The plan should clarify the status of the easement area. Is this area leased or has it been sold to Proctor-Sixler?
- An 8' minimum width planting area is required along all property lines abutting residential zones or premises.
- A final landscape plan prepared by a registered landscape architect must be approved by this office prior to issuance of building permits.

Gary Kerns
GARY KERNS
Current Planning and Development

D. S. THALER & ASSOCIATES, INC.

11 WARREN ROAD • BALTIMORE, MARYLAND 21206 • (301) 484-4100

May 2, 1986

Baltimore County, Maryland
Baltimore County Office Building
Towson, Maryland

ATTN: Mr. Carl W. Richards, Jr.
Department of Planning and Zoning

RE: Pathology Building
Partnership

Gentlemen:

You may recall that during the CRG process for the Pathology Building Partnership located along Sulphur Spring Road a question arose as to whether there was an encroachment of the existing office building upon the DR 5.5 line. We have researched this situation and we find that an encroachment does not exist.

You will find enclosed herewith a plat entitled "Plat Showing the Property of Pathology Building Partnership" prepared by W. T. Sadler, Surveyors and revision dated April 22, 1986. You will note that this plat is a field survey of the property in question which indicates that there is no encroachment.

Accordingly, we will not be filing for a variance. Please correct your records accordingly.

Please feel free to contact me if you have any questions.

Very truly yours,

D.S. THALER & ASSOCIATES, INC.

David S. Thaler, P.E., L.S.
President

cc: Susan Carrell
Bob Covahay, P.E.
Selvin Passen, MD
Bennett G. Gaines, Esquire
Bill Sadler

Talked to DST 5/6
will supply us with a
coordinated plat

CIVIL ENGINEERS • SITE PLANNERS • SURVEYORS • LANDSCAPE ARCHITECTS

LAW OFFICES

COOK, HOWARD, DOWNES & TRACY
10 ALLEGHENY AVENUE
P.O. BOX 597

TOWSON, MARYLAND 21204

JAMES H. COOK
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HAND DELIVERED

January 13, 1987

Ian J. Forrest, R.S.
Director
Baltimore County Department of Health
Bureau of Environmental Services
Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: Maryland Medical Laboratory, Inc.
Construction Permit Regarding Incinerator

Dear Mr. Forrest:

Thank you very much for meeting with my clients and me yesterday regarding the above-captioned matter. I think it was very helpful to get together and address these issues face-to-face.

Enclosed is a new application for an incinerator permit for the Maryland Medical Laboratory, Inc. incinerator facility at 1901 Sulphur Spring Road, Baltimore County, Maryland. As we explained, this incinerator is strictly for the purpose of burning the waste generated by Maryland Medical Laboratory and its satellite offices. This is strictly an accessory use for the private purposes of Maryland Medical Laboratory. Unfortunately, Simonds Manufacturing Corporation, the supplier in Florida, incorrectly completed the original application to indicate commercial incineration. The enclosed application will correct that unfortunate mistake. We have also corrected items 11, 12, 14 and 15 on the application.

Ian J. Forrest, R.S.
January 13, 1987
Page 2

We are now working on a response to your letter of January 8, 1987 to Dr. Selvin Passen, Director of the laboratory. I anticipate that we will have a response to you within a few days. In the meantime, if you have any questions, please do not hesitate to call me.

Very truly yours,

Deborah C. Dopkin
Deborah C. Dopkin

DCD/nms
Enclosure
cc: Dr. Selvin Passen
Mark Levin
Bennett Gaines, Esquire
Dave Filbert

STATE OF MARYLAND - DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Office of Environmental Programs
A : Management Administration
201 W. Preston Street
Baltimore, Maryland 21201

APPLICATION FOR INCINERATORS:

1. Owner of Installation or Company Name MARYLAND MEDICAL LABORATORY, INC.		Date of Application 9/25/86		Permit to Construct ☒ Registration ☐	
2. Mailing Address 1901 SULPHUR SPRING ROAD		City BALTIMORE		State MD	
3. Premises Name if Different from Above		City, Town, County BALTIMORE, MD		Zip Code 21227	
4. Incinerator Location if Different from Above		City, Town, County BALTIMORE, MD		Zip Code 21227	
5. Owner, Agent or Authorized Company Official PHILIP HOWARD		Signature <i>Philip Howard</i>		Date 9/25/86	
6. New Construction Only Begin		48. Existing Installation Initial Operation Date		Registration Number	
7. Incinerator or Contractor (New or Replacement Only)		SIMONDS MANUFACTURING CORPORATION		P.O. Box 1443 AUBURNDALE, FL 33823 813/967-8566	
8. Equipment Manufacturer SIMONDS MFG. CORP.		Manufacturer's Serial or Catalog No. AF28		7. Total Number of Incinerators of Identical Design & Capacity at This Location NONE	
9. Major Activity at This Location - Auto Dealer, Hospital, Apartment House, etc. DIAGNOSTIC MEDICAL LABORATORY		8. Rated Capacity of Incinerator in Lbs. per hour 4,500		11. Incinerator Type (Mark only one with X) Single Chamber ☐ Multiple Chamber ☒ Auxiliary Burner ☐	
12. Frequency of Burning Hours/Day ☒ 10 Days/Week ☒ 6 Amount ☒ 1200-1500 Units, tons No. ☒ 3 Manual ☐ Auto ☒		13. Kind of Burning Material Household ☐ Industrial ☒ Municipal ☐ Other ☐		14. Type of Waste (Mark all that apply with X) Trash ☒ 100% Dry ☐ Refuse ☒ 70% Garbage ☐ 50% Garbage ☐ Garbage ☐ Animal or Animal Parts ☒ Municipal Refuse ☐ Infectious Pathologic ☒	

11/7/87

2

15. Total Annual Auxiliary Fuels Used

DIESEL 30,000 (Gallons) 2912 M(FUTURE FUEL) X

16. Stack Information

Height Above Ground (ft) 35 Inside Diameter at Top (in) 24 Exit Temperature (°F) 1825 Gas Exit Velocity (ft/min) 2064

17. Emission Control Devices—Gas Cleaning Form AM-6 Must be Completed for Each Device Used & Attached to this Application.

None ☒ Scumming Chamber or Settles ☐ Simple Cyclone ☐ Multiple Cyclone ☐ Scrubber ☐ Venturi Scrubber ☐ Electrostatic Precipitator ☐ Bag House ☐ After Burner ☐ Other ☐ Specify Type: 117-118

DO NOT WRITE BELOW THIS LINE

18. Actual Stack Emissions in Pounds per Operating Day.

Particulate Matter ☐ Oxides of Sulfur ☐ Oxides of Nitrogen ☐

Carbon Monoxide ☐ Volatile Organic Compounds ☐ Other Pollutants Specify: Type/Amount

19. Inventory Date

20. Method Used to Determine Emissions

Particulate Matter Estimate ☐ Emission Factor ☐ Stack Test ☐ Other ☐

Oxides of Nitrogen Estimate ☐ Emission Factor ☐ Stack Test ☐ Other ☐

Carbon Monoxide Estimate ☐ Emission Factor ☐ Stack Test ☐ Other ☐

Volatile Organics Estimate ☐ Emission Factor ☐ Stack Test ☐ Other ☐

21. Premises Information

Premises Name: 307

Census Tract: 243 244 245 246 247 248 249 250 251 252

SIC No.: 299 298 297 296 295 294 293 292 291 290

MD Grid East: 253 254 255 256 257 258 259 260

MD Grid North: 237 238 239 240

Owner: Private ☐ Local ☐ State ☐ Federal ☐

Date Completed: Completed By:

SECTION II

Waste Quantity, Characteristics and Unit Capacity Evaluation

Source of Waste

The waste to be burned at this facility includes infectious waste from the main laboratory complex and from several satellite laboratory locations owned and operated by Maryland Medical Laboratory, Inc. In addition, general office, non-infectious waste generated at the main laboratory complex on Sulphur Spring Road will be mixed with the infectious waste in a controlled procedure to provide uniformity of waste burning and to satisfy the waste disposal needs of the medical facility. This concept provides an additional degree of safety in that all wastes from the main laboratory facility are disposed of on-site and eliminates the need for off-site transport.

Waste Quantity

The total waste quantities generated by the main facility and the infectious waste quantities from the satellite facilities have been estimated based on a short term weighing of the total waste load, within the last few weeks. Because of the nature of the satellite operations, it is a practical impossibility to determine the specific breakdown of actual weights from each satellite until the incinerator facility becomes operative and the internal manifest system is implemented.

For purposes of evaluating the incinerator capacity, the total waste load is adequate. However, in an attempt to further refine the source of the wastes, the MML staff has estimated that each of the satellite facilities generates from 5 to 10 pounds of infectious waste per week. The

11-1

satellite infectious waste consists primarily of needles, sharps and some small quantity of gauze. Consequently, satellite wastes are considered to be in the "glass" category.

Fifty of the fifty-three total satellite facilities operated by MML will be serviced by this planned facility. This indicates an estimated quantity of from 250 to 500 pounds of infectious waste per week. On a seven day per week basis the satellite waste quantity becomes approximately 36 to 70 pounds per day.

The following total waste quantities were developed from the short term weighing program and include the satellite infectious wastes.

Waste Description	Daily Quantity (Avg) (in pounds)	Daily Quantity (peak) (in pounds)
infectious glass	382	454
general infectious	767	869
office general waste	1200	1400
Total	2349	2723

The infectious waste quantities include the storage containers consisting of double plastic bags and rigid corrugated paperboard boxes.

Waste Characteristics

The waste quantities represent the total wastes generated at the main laboratory complex at Sulphur Spring Road and the infectious wastes generated at satellite laboratory facilities, listed as Appendix 6 in this report. The general office waste is non-infectious and will be mixed with the infectious waste as charges are weighed and placed in the charging carts or will be burned without mixing, if required, to accomplish the daily disposal task.

11-2

Once sealed in the rigid containers, the waste remains at the point of generation for scheduled removal to either the incinerator facility or to intermediate storage, in the event the incinerator is inoperative.

At the satellite facilities the same basic procedures are followed in that infectious waste is separated into glass and non-glass categories and placed into double biohazard-bag-lined rigid corrugated paperboard containers. When the containers are from 1/2 to 3/4 full, or prior to the scheduled collection, the bags are closed and sealed; then the rigid containers are closed and sealed.

At all locations, the source of the waste, the date and the designation as infectious waste are shown on the exterior of the rigid containers.

Infectious waste handlers at satellite facilities follow the same protocol, dress and precautions used at the main facility.

Any Aids related infectious waste is autoclaved for sterilization prior to being packaged for transport to final disposal.

Non-infectious Waste

Non-infectious waste consists of general office waste and some small quantity of food wastes from the employee food service canteen operation. This material is segregated from infectious waste by maintaining plastic trash bag-lined waste baskets throughout the facility and larger lined waste receptacles in the canteen area. In non-infectious activity areas, there is no exposure of the general waste stream to infectious wastes. In the laboratory areas, the placement of the special infectious waste containers at the points of generation, employee training and primary operating protocol have all been developed to minimize the potential for contaminating

VI-2

As set forth under a previous section of this report, the incinerator has been modified for infectious waste burning to allow a minimum of 2 seconds detention time in the high temperature secondary combustion chamber, to meet current criteria for organism destruction.

Prevention of Water Pollution

The collection vehicle transporting the waste between points of generation and the incinerator will be enclosed to prevent spilling and will be unloaded at the point of weighing at the incinerator. If any spill should occur at this location, it will be cleaned, disinfected with chemical cleaners, picked up and incinerated.

Upon completion of the second phase construction of the building to house the incinerator, sanitary waste will be discharged into the soon-to-be-constructed sanitary sewer.

All storm water from the site will be isolated from the waste operation by the building and will be managed as part of the total site storm water management plan. While little or no spillage of waste is anticipated, the grounds around the unit will be regularly policed of any waste materials which may occur.

Process water associated with the incinerator consists primarily of ash residue quenching and wash down water from house keeping. Wash down water will be diverted to the sanitary sewer. Because the ash quenching operation is a net water using process, the only anticipated contaminated process water occurs during the infrequent periods of ash quench trough repair, when the quench water must be pumped to waste. If this occurs prior to the installation of the on-site sewer connection, it will be pumped into a contractor-provided tank truck and hauled off-site to approved disposal.

111-3

and either existing or planned future building development. A stack height of 62 feet is considered adequate to meet this requirement. A stack height of 62 feet above a foundation elevation of approximately 49 feet offers at top of stack elevation of 111 feet, or approximately equal to the top of the nearest planned future building. A stack height of 62 feet above grade offers an effective stack height of approximately 73 feet or an elevation of plume of approximately 122 feet. The closest existing on-site building is approximately 470 feet from the planned stack location and the closest planned future building, if actually constructed, will be approximately 70 feet away from the planned stack location. The top of the stack at 111 feet elevation exceeds the maximum height of any obstruction to air currents within several hundred feet of its planned location.

While the only expected emissions from the stack, under planned operating conditions consist primarily of carbon dioxide and water vapor, the stack height has been selected to provide for high level mixing and dispersion to provide a further degree of safety to the surrounding area.

The stack height evaluation is contained in Section VIII of this report.

Containment and Destruction of Organisms

All infectious waste delivered to the incinerator will be contained in approved, sealed containers as discussed hereinafter under waste stream control. The units will be sealed at the point of generation within the laboratory facilities and carefully handled during loading and transportation, to maintain the integrity of the container until it is charged into the incinerator. The incinerator charging operation has been designed to allow the containers to be charged into the furnace without being opened.

111-2

b) peak non-infectious waste quan. = 1400 pounds per day
estimated heat content = 8500 BTU per pound
adjusted unit rated capacity = 510 pounds per hour
required operating hours = 1400 : 510 = 2.75 hours
Total daily operating hours = 3.14 + 2.75 = 5.89 hours

As can be seen from the above, the operating hours required range from 5.14 hours to 5.72 hours under the normally anticipated operating mode for average to peak daily generation rates. For the separate burning operating mode, the equivalent range of operating hours for average to peak generation rates is from 5.07 to 5.89 hours.

The selected unit provides adequate capacity, regardless of the operating mode selected, to burn the present estimated MML infectious and non-infectious waste stream within a single 8 hour shift, including the necessary start-up and shut-down time. Consequently, the second operating shift is available to accommodate future waste quantities associated with growth of the MML facility, without encroaching on the third daily shift, reserved for continued unit maintenance.

11-6

Because this is a seven day per week operation, no adjustment has been made in the daily waste generation quantities to accommodate shorter periods of incinerator operation.

Using the average higher heating values of the two types of wastes in the fuel mixture, the heating values of the mixed waste stream have been calculated to be 9234 BTU per pound, for average generation rates and 8862 BTU per pound for estimated maximum generation rates.

Copies of the heating value computations are included in Appendix 7 of this report.

Adjusted Unit Capacity

Because the incinerator unit has been pre-selected to meet the present and planned future expansion disposal needs of Maryland Medical Laboratory, the unit rated capacities must be adjusted to determine the operating hours required to accommodate the waste disposal requirement.

The Simonds published rated capacity of the unit is 450 pounds per hour at a waste heat content of 9380 BTU per pound and 510 pounds per hour at a waste heat content of 8500 BTU per pound. Adjusting the capacity for the maximum anticipated infectious waste heat content of 10,000 BTU per pound derates the unit to 422 pounds per hour. At an estimated mixed waste heat content of 8862 BTU per pound at maximum generation rates provides a unit capacity of 476 pounds per hour. For average generation rates, the estimated heat content of 9234 BTU per pound provides a unit capacity of 457 pounds per hour. For periods when only general office waste would be burned with an average heat content of 8500 BTU per pound, the unit capacity is 510 pounds per hour, as published in the Simonds literature.

11-3

Theresa M. Lowry
2517 Hammonds Ferry Rd
Baltimore 21207, Md
President
Lansdowne Improvement Assoc., Inc.

Radys Parker
2608 Myrtle Ave
Baltimore 21207, Md
Vice-President

Please notify the above resident
of the area, of the status of
this case.

Thank you.

May 8, 1987

Deborah C. Dopkin, Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
Towson, Maryland 21204

RE: Maryland Medical Laboratories, Inc.

Dear Ms. Dopkin:

In response to your letter dated April 21, 1987, I have reviewed carefully and with deliberation your comments on the subject and the accompanying document.

I have sufficient concern about the extent of the proposed operation to require a public hearing to determine whether the incinerator is indeed an accessory use to the principal laboratory.

I want to emphasize that I take no position as to whether it is a legitimate use, but I feel it is only appropriate to require exploration at a public hearing, as prescribed by Section 500.7 of the BCZR. Therefore, I will not approve the permit now filed.

If you have any further questions on the subject, please do not hesitate to call this office.

Very truly yours,

ARNOLD JARLON
Zoning Commissioner

Ajtjs
cc: File

cc: The Honorable Dennis F. Rasmussen
The Honorable Ronald B. Hickernell

ENVIRONMENTAL ALERT!!!

MARYLAND MEDICAL LABORATORY IS PLANNING TO INSTALL AN INCINERATOR - A HUGE BURNING SMOKESTACK FOR THE AREAS OF SULPHUR SPRING ROAD AND VICTORY DRIVE ADJACENT TO WASHINGTON BLVD. AND THE BALTIMORE BELTWAY EXIT 9.....INFECTIOUS DISEASES AND THE TRASH THEIR RESEARCH WILL INVOLVE WILL BE BURNED IN THIS INCINERATOR.

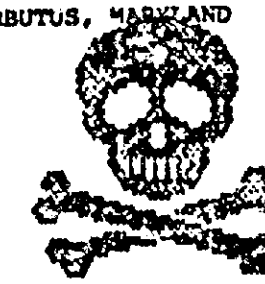
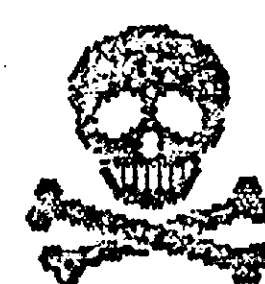
THERE ARE THOUSANDS OF RESIDENTS WHO WILL BE AFFECTED AND/OR INFECTED WITHIN THIS AREA OF LANSOWNE, ARBUTUS, RELAY, BALTIMORE HIGHLANDS, RIVERVIEW, LINTHICUM, BALTIMORE CITY AND THE GLEN BURNIE AREAS WILL ALSO BE AFFECTED. THE AIR QUALITY WITHIN THIS AREA IS AT THIS POINT A CRITICAL AREA OF CONCERN....IF YOU ARE A WORKER IN THIS AREA, AND/OR TRAVEL THE PUBLIC ROADWAYS WITHIN THIS AREA, YOU COULD BE CARRYING A MAJOR ILLNESS HOME TO YOUR FAMILY FROM PARTICLES THAT WILL LAND UPON YOUR CAR... IF YOU ARE CONCERNED, PLEASE ATTEND THE TWO PUBLIC HEARINGS ON THIS CRITICAL ISSUE.

APRIL 21, 1987
TUESDAY TIME 7:00 P.M.

ARBUTUS MIDDLE SCHOOL 5525 SHELBOURNE ROAD
ARBUTUS, MARYLAND
INFORMATION MEETING

APRIL 29, 1987 - STATE PERSONNEL WILL BE PRESENT
WEDNESDAY TIME 7:00 P.M.

ARBUTUS MIDDLE SCHOOL 5525 SHELBOURNE ROAD
ARBUTUS, MARYLAND



State of Maryland
OFFICE OF THE SECRETARY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
231 WEST PRESTON STREET • BALTIMORE, MARYLAND 21201

July 1, 1984

TO: Generators of Infectious Waste

FROM: Adele Wilzack, R.N., M.S.
Secretary of Health and Mental Hygiene

SUBJECT: Amended Guidelines for the Disposal of Infectious Waste

The purpose of this Guideline is to set forth certain basic concepts and procedures for the handling and disposal of infectious waste from any facility which generates infectious waste such as acute and chronic health care and related facilities, laboratories, and research facilities.

It is the intent of these Guidelines to establish certain minimum requirements including a definition of infectious waste while allowing professional judgment and some flexibility on the part of the persons within the facility having the responsibility for the handling of infectious waste.

This Guideline should be used in conjunction with existing regulations, program guides, or any other Department requirements affecting the handling of infectious waste from these facilities. Compliance with this Guideline does not excuse any facility from complying with all other local, state, and federal requirements including environmental regulations affecting disposal equipment, licensing, or permitting requirements.

383-2600

I. Definitions

"Infectious waste" means equipment, instruments, utensils, and fomites of a disposable nature known or suspected to be contaminated with organisms capable of producing disease in humans. Also, included in the category of infectious waste is pathological, biological and laboratory waste as defined below, and disposable fomites (any substance that may harbor or transmit pathogenic organisms) attendant to that; and animal contact items such as bedding contaminated with organisms that may be pathogenic to humans. This term shall include sharps, such as contaminated needles, scalpels and razor blades.

"Pathological waste" means human tissues (excluding blood and blood products) and organs which emanate from surgery, obstetrics and autopsy, and animal carcasses and parts, which have been exposed to pathogens capable of producing disease in humans. Although pathological waste may not always contain pathogens, for the purposes of this Guideline it will be treated as infectious waste.

"Biological waste" means feces, urine, vomitus, suctionings, live vaccines for human or animal use, and blood and blood products other than laboratory specimens.

"Laboratory waste" includes specimens such as tissues and blood elements, excreta, secretions, and disposable fomites attendant to these specimens.

II. Disposal of Infectious Waste

A. Facilities generating infectious waste shall maintain written procedures for the purpose of implementing these guidelines.

B. All infectious waste shall be disposed of by incineration except as otherwise provided in part III. On-site or off-site incineration is acceptable provided that the incinerator has been designed and approved for that purpose. State regulations prohibit the landfilling of infectious waste.

C. A municipal waste incinerator is not acceptable equipment for the incineration of infectious waste.

III. Exceptions

A. All infectious waste, except pathological waste, may be rendered non-infectious by use of an autoclave. Waste rendered non-infectious with an autoclave is not subject to the incinerator requirements of part II provided that written procedures and a quality control program are available and utilized to specify the conditions or operating parameters to be maintained to adequately render the waste non-infectious. Waste that is treated by this method must be packaged and labeled as non-infectious waste.

B. Laboratory waste must be incinerated or autoclaved on the site of generation.

C. Other methods of rendering waste non-infectious such as chemical or mechanical treatment may be approved by the Department on a case by case basis. The treated waste will not be subject to the incinerator requirements of part II upon proper demonstration that the alternative method has rendered

the waste non-infectious if an exception has been granted by the Department. Such waste must be labeled and identified as non-infectious, prior to disposal as general refuse.

D. When the practice is consistent with all other local, state, or federal requirements, biological waste may be flushed into the sanitary sewer.

IV. Packaging, Handling and Transportation of Infectious Waste

A. Prior to disposal, the waste must be secured in waterproof, rodent and insect proof containers with limited access, and appropriately labeled.

B. The transportation of infectious waste to an off-site incinerator is permissible, provided that:

1. The waste is packaged in a single plastic bag of at least 3 mil thickness or in two (2) plastic bags each at least 1.5 mil thick and appropriately sealed to prevent spilling while awaiting transport.

2. The waste is transported in a manner so as to maximize containment (e.g., closed vehicle or rigid containers) and the container is appropriately labeled so as to identify the material being transported.

C. Personnel handling infectious waste must be instructed in proper hygiene and waste management techniques.

V. Non Compliance

When non-compliance is anticipated due to an emergency, or for some reason beyond the control of the facility, the facility should notify the Department of the existing conditions, and the proposed alternate means of disposing of infectious waste during the interim period.

AW:ame

LAW OFFICES
COOK, HOWARD, DOWNES & TRACY
210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

April 14, 1987

HAND DELIVERED

Mr. Carl Richards
Office of Zoning
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Maryland Medical Laboratories

Dear Mr. Richards:

This firm is acting as co-counsel with Adelberg, Rudow, Dorf, Hendler and Sameth on behalf of Maryland Medical Laboratories, Inc. ("MML") in connection with its application for permits to construct an incinerator in Baltimore County.

As you know, MML has operated an incinerator on its site at 1901 Sulphur Spring Road in connection with its laboratory operation. As in the past, the proposed incinerator is accessory to the laboratory, and will be used only to dispose of infectious waste and refuse from that operation.

The prior incinerator on the site did not function in a manner satisfactory to the Baltimore County and the State of Maryland Health Departments. Working with the County Health Department, MML has agreed to replace the old incinerator with a new, more efficient system. In November of 1984, MML, through its incinerator contractor and its architect, submitted applications to the Baltimore County Health Department and to the Baltimore County Department of Licenses and Permits to construct the new incinerator.

Unfortunately, the application to the Health Department was submitted by the incinerator contractor (Simonds Manufacturing

Mr. Carl Richards
April 14, 1987
Page 2

Corporation) and contained inaccurate information. In particular, the application stated that the incinerator was for commercial use. Clearly, this was not and is not the intent nor actual use by MML. However, MML was not aware of the inaccuracy until it was called to our attention in early January by Ian Forrest, Director of Environmental Services. MML immediately withdrew the inaccurate permit application and resubmitted a corrected one. However, before MML learned of the error, the Health Department had notified the Zoning Office of the commercial use (though stated incorrectly) on the first application, and the zoning file thereafter contained a notation regarding the possible need for a hearing. Though the application was corrected with the Health Department, no message was conveyed to zoning reversing the earlier communication. (See attached letter and permit application.)

You have asked that I describe the operation at MML and the use of the incinerator so you may make a recommendation whether a public hearing is required under the Baltimore County Zoning Regulations ("B.C.Z.R.").

MML is a laboratory which analyzes medical and biological samples, whose laboratory and main office are located at 1901 Sulphur Spring Road. The site is classified Manufacturing-Light (M-L). The company maintains 50 satellite facilities where blood, urine and other samples are collected and transported for analysis at the laboratory on Sulphur Spring Road. Of the satellite offices, 5 are located within hospitals, and in these cases, MML rents space within the hospital, but maintains and operates its services independent of the hospital's own operation. MML provides laboratory services to the hospitals, but in no case does MML transport waste materials from the hospital for incineration or disposal other than specimens for analysis.

As proposed, MML will be burning infectious and biological waste materials analyzed on site. In order to operate the incinerator efficiently and at a sufficiently high temperature to meet health standards, a quantity of refuse (trash, rubbish and the like) must be burned at the same time to add bulk.

Unless MML can incinerate the waste materials on site, it must contract for removal of its infectious waste materials even though the Health Department does not consider transporting these materials the most desirable method of disposal, but favors incineration as proposed. In addition,