

IN THE MATTER OF
THE APPLICATION OF
JOSEPH COOPER, ET UX
FOR A SPECIAL HEARING FOR
NONCONFORMING USE ON PROPERTY
LOCATED ON THE SOUTHEAST SIDE OF
RAILWAY AVENUE, NE OF SNYDER AVENUE
(7103 RAILWAY AVENUE)
12th Election District
7th Councilmanic District

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
CASE NO. 88-350-SPH

OPINION

This case comes before the Board on appeal from the decision of the Zoning Commissioner of Baltimore County denying the Appellant a nonconforming use as to a delicatessen and grocery store.

The Board heard testimony in this de novo appeal which in summary enables us to find as a fact that a grocery store has existed at 7103 Railway Avenue since 1941 or 1942. This store was operated continuously until 1986, when the present owners purchased the store.

There is some disagreement among the witnesses as to whether or not the store was closed and the use nonexistent for a period in excess of one year in the vicinity of October of 1986 until July of 1987. The Board has evaluated the testimony of all of the witnesses and finds as a fact that the store did not intentionally cease total operation for a period in excess of one year and thus a nonconforming use does exist.

The protestants argued to this Board, in addition, that the use has expanded and that it is a change in use. The Board finds as a fact that there was a grocery store operated out of this building in 1941, and in 1988 it is still a grocery store being operated out of this building, and the fact that video movies and coldcut sandwiches are sold on the premises is merely, to quote our Chairman, "an osmosis of the years." The Board does not find that

Case No. 88-350-SPH
Joseph Cooper, et ux

there is a different character or nature or kind, or an intensification changing the original nonconforming use.

The Board has reviewed all of the testimony and the exhibits in this case and considered that evidence in relation to the four factors to be reviewed in determining the scope of an activity in a nonconforming use as articulated by the Maryland Court of Special Appeals in McKemy v. Baltimore County, Maryland 30 Md. App. 257, 385 A2d (1978). In so reviewing all of this evidence, we have determined:

- 1) That the current use of the property reflects the original nature and purpose of the original nonconforming use;
- 2) That the current use is merely a different manner of utilizing the original nonconforming use and it does not constitute a use different in character, nature, and kind;
- 3) That the current use does not have a substantially (emphasis added) different effect upon the neighborhood; and
- 4) That the current use is not a drastic enlargement or extension of the original use in 1941.

In view of all of the above, this Board finds as a fact that the Appellants have shown that they have a nonconforming use as to a delicatessen and grocery store on the property known as 7103 Railway Avenue in the Twelfth Election District of Baltimore County.

Case No. 88-350-SPH
Joseph Cooper, et ux

ORDER

It is therefore this 16th day of September, 1988 by the County Board of Appeals of Baltimore County ORDERED that a nonconforming use as to a delicatessen and grocery store hereby exists on the property known as 7103 Railway Avenue in Baltimore County, and the Petition for Special Hearing for approval of a nonconforming use is hereby GRANTED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Henry H. Lewis
Henry H. Lewis

Thomas J. Bollinger
Thomas J. Bollinger

2099y
KRW/cjc
08/30/88

IN RE: SE/S RAILWAY AVE.,
NE Snyder Avenue (7103 Railway
Avenue)
12th Election District
7th Councilmanic District

BEFORE THE
COUNTY BOARD OF
APPEALS FOR
BALTIMORE COUNTY
Case No. 88-350-SPH

APPELLEES' OBJECTIONS TO EXHIBITS

Appellees, by their attorney, Keith R. Truffer, object to certain exhibits contained in the zoning file for this appeal and say:

1. Baltimore County Zoning Regulations, §22-28 provides that all documents and exhibits described in Baltimore County Zoning Regulations, §22-27 "shall be considered in evidence by the board without testimony thereto, absent objection by any party to the case. If such objection is made, the item shall be entered by testimony of a proper witness, who shall be notified by the Board."
2. Baltimore County Zoning Regulations, §22-27(3) states that the zoning file which is transmitted to the Board of Appeals shall contain "any exhibits introduced in evidence at the hearing."
3. At the hearing before the Zoning Commissioner on this matter, the Appellants submitted the following exhibits, among others, into evidence:
 - 3) Copy of certification verifying use of location. - Margaret D. Cooper
 - 4) Copy of certification verifying use of location. - Mary E. Frye

ROYSTON, MUELLER,
MCLEAN & REID
SUITE 800
102 W. PENN. AVE.
TOWSON, MARYLAND
21204-6878
410-283-1800

- 5) Copy of certification verifying use of location. - Joseph J. Cooper
- 6) Petition of 165 signatures to keep Deli and Grocery Store Open.
- 7) Copy of Assessment for Deli & Grocery Store.
- 9) Copies of Assessments for Markets.

Pursuant to Baltimore County Zoning Regulations, §22-28, the Appellees object to the admission or consideration of these items in evidence without the testimony of a proper witness.

Keith R. Truffer
Keith R. Truffer
Royston, Mueller, McLean & Reid
102 W. Pennsylvania Avenue
Towson, Maryland 21204
(301) 823-1800

Attorney for Appellees

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 21st day of August, 1988, a copy of the foregoing Appellees' Objections to Exhibits was mailed by first class postage prepaid, to David A. Rogers, Esq., 19 E. Fayette Street, Baltimore, Maryland 21202, attorney for Appellants.

Keith R. Truffer
Keith R. Truffer



County Board of Appeals of Baltimore County
Baltimore County Office Building
Towson, Maryland 21204
(301) 494-3180

September 16, 1988

David A. Rodgers, Esquire
19 E. Fayette Street, Suite 201
Baltimore, MD 21202

RE: Case No. 88-350-SPH
Joseph Cooper, et ux

Dear Mr. Rodgers:

Enclosed is a copy of the final Opinion and Order issued this date by the County Board of Appeals regarding the subject case.

Sincerely,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Mr. & Mrs. Joseph Cooper
Keith R. Truffer, Esquire
Mrs. George Panzer
Mr. Leonard Thomas
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk - Zoning
Arnold Jablon, County Attorney

IN RE: PETITION FOR SPECIAL HEARING
SE/S Railway Ave. 150' NE c/l
Snyder Ave. (7103 Railway Ave)
12th Election District
7th Councilmanic District

BEFORE THE

ZONING COMMISSIONER

OF BALTIMORE COUNTY

Case No. 88-350-SPH

Joseph Cooper, et ux
Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein request approval, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) of a nonconforming use for a delicatessen and grocery store on the subject property as more particularly described in Petitioner's Exhibit 1.

The Petitioner appeared, testified and was represented by David A. Rogers, Esquire. The contract purchasers of the subject grocery store, Mr. and Mrs. Perez appeared, testified and were also represented by David A. Rogers, Esquire.

There were four Protestants, Mr. and Mrs. Panzer, Mr. Thomas and Mr. Kempa, and they all testified. They were not represented by counsel.

The testimony tends to indicate that the subject property has been used most recently as a grocery store and/or delicatessen.

The Petitioner testified that she and her husband purchased the subject business interest at 7103 Railway Avenue on July 6, 1987. They began operation of the delicatessen and grocery store on a conditionally approved trader's license on January 23, 1988. The subject property is owned by the Coopers and was operated as a grocery store by the Coopers from 1967 until 1973. The grocery store is operated out of second building which could be considered a garage located on the rear of the subject parcel.

The entire property is zoned D.R. 5.5 and is claimed to be a nonconforming use existing prior to the 1945 zoning regulations.

Further testimony by Mrs. Perez indicates that the present operation is a small grocery store with a delicatessen counter that includes no fresh cooked foods and no carryout.

The testimony of both Mr. and Mrs. Cooper, the listed Petitioners and owners of the fee simple property indicates that a grocery store has been operated at this location since 1967 until present. Upon cross examination, there is substantial debate as to whether or not the grocery store operation remained in continuous activity during the period October 14, 1986 through and until January 23, 1988. The Petitioners claim that the store operation was in existence, however, there was no commercial activity taking place from the property during that period of time.

The testimony of Mr. and Mrs. Panzer indicates that they have lived at 7106 Railway Avenue for 36 years. They have used the store during the entire period of time they lived there. Their testimony is that the store was in existence when they purchased their home and has been used as a grocery store until the operation closed on October 14, 1986. Mrs. Panzer stated that there has not been any retail or wholesale business transpired on the subject location from October 14, 1986 through and until the property was reopened by Mr. and Mrs. Perez on January 23, 1988.

There was extensive testimony by all of the Protestants that the property is a source of truck traffic that is undesirable to the neighborhood. As emphasized by Mr. Kempa, the store causes the alley, which is a common alley between his property and the store property, to be congested with vehicles and trucks. This has led to a litter problem on both Railway Avenue and in the alley. The store has led to a parking problem on those same streets.

Both Mr. Thomas and Mr. Kampa testified that they have lived either across the alley from the subject store or across Railway Avenue from the subject store during the period, October 14, 1986 through January 22, 1988. They know that no retail or wholesale activity took place from the location during that period of time.

The Baltimore County Zoning Regulations (B.C.Z.R.) establishes a nonconforming use in Section 104.11:

"A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used." (B.C.Z.R., 1955; Bill No. 18, 1976)

The Maryland Court of Special Appeals in *McKany v. Baltimore County, Maryland* 39 Md. App. 257, 385 A2d (1978) has established that the following factors should be reviewed in determining the scope of an activity in a nonconforming use case:

- (1) to what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;
- (2) is the current use merely a different manner of utilizing the original, nonconforming use or does it constitute a use different in character, nature, and kind;
- (3) does the current use have a substantially different effect upon the neighborhood;
- (4) is the current use a "drastic enlargement or extension" of the original nonconforming use."

- 3 -

The facts in the record tend to indicate that the subject site has always been zoned residential. However, there is no definitive evidence in the case file nor was any present at the hearing that, clearly, establishes the history of the zoning of this parcel. It is assumed from the testimony that the property has always been zoned residential and has never been afforded the privilege of a commercial zoning which would have permitted the subject grocery store and/or delicatessen as a matter of right. To be a nonconforming commercial use, the subject site must have been used as a grocery store since before January 1, 1945, until present, without any discontinuance of the use of one year or more. The Zoning Commissioner must test the evidence to determine if there are any lapses or discontinuance of the use. There must be clear evidence that the use must have begun before January 1, 1945 and continued every year thereafter.

The testimony, clearly, establishes that from 1967 until October of 1986 a commercial establishment, loosely referred to as a grocery store, has been in operation at this location. The only evidence in the record concerning the period 1945 until 1967, when the property was purchased by the Petitioners, are several affidavits, one of which is for Ms. Mary E. Frye. This affidavit indicates that the property has been used continuously without interruption as a deli and grocery store business since before the applicable zoning regulations were established in 1945.

There are also affidavits for Petitioners, Mr. and Mrs. Cooper. Mr. and Mrs. Cooper, also, testified and, based upon that testimony, there is no doubt in my mind that the grocery store was operated from 1967 until 1986. However, there was no evidence that there was any delicatessen operation during that period of time. The testimony of Mr. and Mrs. Cooper, clearly, establishes that they have no actual knowledge of any commercial operation on the subject

- 4 -

site during the period 1945 thru 1967. Given the fact that the identical affidavits were signed by Mr. and Mrs. Cooper and they had no personal knowledge of this property prior to 1967, it is my opinion that this matter cannot be resolved based on these affidavits.

The only other evidence concerning the time period 1945 thru 1967 is the affidavit of Mary E. Frye, Petitioner's Exhibit 4. The fact is that this affidavit is identical to the affidavits of Mr. and Mrs. Cooper which are incorrect. I cannot accept this untested affidavit as the only evidence to substantiate the 22 years of continuing operation. I have no way of testing Ms. Frye's knowledge, memory or truthfulness.

Therefore, the proof of a continuous commercial operation from before 1945 thru 1967 is incomplete and unconvincing. It is equally clear to me that the commercial use of the subject property ceased most recently on October 14, 1986. There were no commercial sales from the property from October 14, 1986 until the grocery store/ delicatessen was reopened on January 23, 1988.

I have no choice but to find that the commercial operation (grocery store) at 7103 Railway Avenue has ceased during the period, October 14, 1986 through January 23, 1988. As required by Section 104 of the B.C.Z.R., this succession of business use ends the nonconforming status of this property and, thereby, the relief requested must be denied.

It is equally clear to me that there was not a delicatessen operation on this site for the period 1967 thru 1986. The Petition for nonconforming status for a delicatessen, which is an extension of the requested nonconforming use for a grocery store must be denied.

Lastly, this Petition must be denied because there is no credible evidence that can substantiate that a grocery store was in operation prior to 1945. There is no evidence of a continuous operation, with no interruptions

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of more than one year. There is a period of time of 22 years that is simply not addressed by adequate affirmative documentary evidence and/or live testimonial evidence that can be reviewed and evaluated by the Zoning Commissioner in his capacity as the Hearing Officer and judge of credibility and truthfulness.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the requested approval of a nonconforming use for a delicatessen and grocery store should be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 22nd day of March, 1988 that the approval for continuance of a nonconforming use as to a delicatessen and grocery store, be and the same is hereby DENIED from and after the date of this order.

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

JRH:mm
cc: Peoples Counsel

- 6 -

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 Continuation of a non-conforming use as to a delicatessen and grocery store.

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

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

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

Contract Purchaser: (Type or Print Name) Signature Address City and State	Legal Owner(s): (Type or Print Name) Signature (Type or Print Name) Signature Address City and State Name, address and phone number of legal owner, contract purchaser or representative to be contacted Name Address Phone No.
David A. Rodgers 19 E. Fayette St., Suite 201 Baltimore, Maryland 21202 City and State Attorney's Telephone No. 625-2100	Joseph Cooper Margaret Cooper Margaret Cooper 7103 Railway Avenue Baltimore, Maryland 21222 City and State Name, address and phone number of legal owner, contract purchaser or representative to be contacted Name Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 29th day of March, 1988, 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 11th day of March, 1988, at 2 o'clock.

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner of Baltimore County

AZIMUTH CONSULTANTS

ZONING DESCRIPTION

Beginning on the Southeast side of Railway Avenue, a 50 foot right-of-way, at a distance of 125 feet Northeastly from its intersection with Snyder Avenue, a 50 foot right-of-way, thence running with the edge of said Railway Avenue, 1) South 52 degrees 13 minutes West, 41 feet 2) South 37 degrees 54 minutes East, 50 feet 3) North 52 degrees 13 minutes East, 41 feet to the East side of a 10 foot alley, thence with said alley 4) North 37 degrees 54 minutes West, 50 feet to the point of beginning.

Containing 2,050 S.F. or 0.0471 Acres of land, more or less. Also known as 7103 Railway Avenue in the 12th Election District.

Also being the Northeastly 41 foot portion of Lots 1 and 2, Block 'O' as recorded among the Land Records of Baltimore County in Liber W.P.C. No. 6, folio 100.

120 Ladysville Road / Suite 105 / Hunt Valley, Maryland 21031 / (301) 785-9300

APPEAL

Petition for Special Hearing
SE/S Railway Avenue, NE Snyder Avenue
7103 Railway Avenue
12th Election District - 7th Councilmanic District
Joseph Cooper, et ux - Petitioner
Case No. 88-350-SPH

SPH - Continuation of a nonconforming use as to a delicatessen and grocery store.

Petition for Special Hearing

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments (None submitted)

- Petitioner's Exhibits:
- 1) Plat of Property
 - 2) Broker's Listing of location for sale
 - 3) Copy of certification verifying use of location
 - 4) Copy of certification verifying use of location
 - 5) Copy of certification verifying use of location
 - 6) Petition of 165 signatures to keep Deli & Grocery Store open
 - 7) Copy of Assessment for Deli & Groc. Store
 - 8) Trader's License
 - 9) Copies of Assessments for Markets

Zoning Commissioner's Order dated March 22, 1988

Notice of Appeal received from David A. Rodgers, Attorney for Petitioners, on behalf of Petitioners.

APPEAL
Petition for Special Hearing
Case No.: 88-350-SPH
Page 2

Mrs. George Panzer
7106 Railway Avenue
Baltimore, MD 21222
Protestant

Mr. Leonard Thomas
7108 Railway Avenue
Baltimore, MD 21222
Protestant

Joseph Cooper, et ux, Petitioners
7103 Railway Ave. (21222)

Counsel for Appellees/Protestants:
Keith R. Truffer, Esquire
102 W. Pennsylvania Ave. Ste 600
Towson, MD 21204

19 E. Fayette St., St. 201, (21202)
David A. Rodgers, Attorney for Petitioners
Peoples Counsel, Phyllis C. Friedman, et ux, Shirley - nonconforming use, new office

Request Notification: P. David Fields, Director of Planning & Zoning
James Howell, Office of Planning & Zoning
J. Robert Haines, Zoning Commissioner
Ann M. Nastarowicz, Deputy Zoning Commissioner
James E. Dyer, Zoning Supervisor
Docket Clerk

Arnold Jablon, County Attorney

CERTIFICATE OF PUBLICATION

TOWSON, MD.

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 Feb. 18, 1988.

THE JEFFERSONIAN

Publisher

32.18

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-5553

Date: MAR 02 1988

Mr. & Mrs. Joseph Cooper
7103 Railway Avenue
Baltimore, Maryland 21222

Re: Petition for Special Hearing
Case number: 88-350-SPH
SE/S Railway Avenue, 150' NE c/l Snyder Ave.
(7103 Railway Avenue)
12th Election Dist. - 7th Councilmanic Dist.
Inventor: Joseph Cooper, et ux
DATE/TIME: FRIDAY, MARCH 11, 1988 at 2:00 p.m.

Dear Mr. & Mrs. Cooper:

Please be advised that \$2.18 is due for advertising and posting of the above-referenced property. All advertising and posting fees must be paid prior to the hearing. Do not remove the sign(s) from the property from the time it posted by this office until the day of the hearing itself.

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.

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 50267
DATE 3-11-88 ACCOUNT 801-615-000
AMOUNT \$ 82.18
RECEIVED FROM Joseph Cooper, et ux
FOR 3-11-88 hearing
B 09466666221815 51187
VALIDATION OR SIGNATURE OF CARRIER
File

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1224 Date of Posting: 3/2/88
Posted for: Special Hearing
Petitioner: Joseph Cooper, et ux
Location of property: SE/S Railway Ave, 150' NE/Snyder Ave.
7103 Railway Ave.
Location of Sign: Facing Railway Ave, across 15' E. roadway, on property of R. H. Hines
Remarks: Attached to fence - No pole used
Posted by: [Signature] Date of return: 3/2/88
Number of Signs: 1

CERTIFICATE OF PUBLICATION

OFFICE OF
Dundalk Eagle

4 N. Center Place
P.O. Box 8936
Dundalk, Md. 21222 February 18, 1988

THIS IS TO CERTIFY, that the annexed advertisement of J. Robert Haines in the matter of Zoning Hrgs. Case #88-350-SPH - P.O. #97464 - REQ. #M11715. 70 lines of \$35.00 was inserted in The Dundalk Eagle a weekly newspaper published in Baltimore County, Maryland, once a week for one successive weeks before the 19th day of February 1988; that is to say, the same was inserted in the issues of Feb. 18, 1988

RECEIVED
FEB 22 1988

Kimbel Publication, Inc.
ZONING OFFICE per Publisher.

By K.C.O.

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-5553

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Special Hearing
Case number: 88-350-SPH
SE/S Railway Avenue, 150' NE c/l Snyder Ave.
(7103 Railway Avenue)
12th Election Dist. - 7th Councilmanic Dist.
Petitioner: Joseph Cooper, et ux
DATE/TIME: FRIDAY, MARCH 11, 1988 at 2:00 p.m.

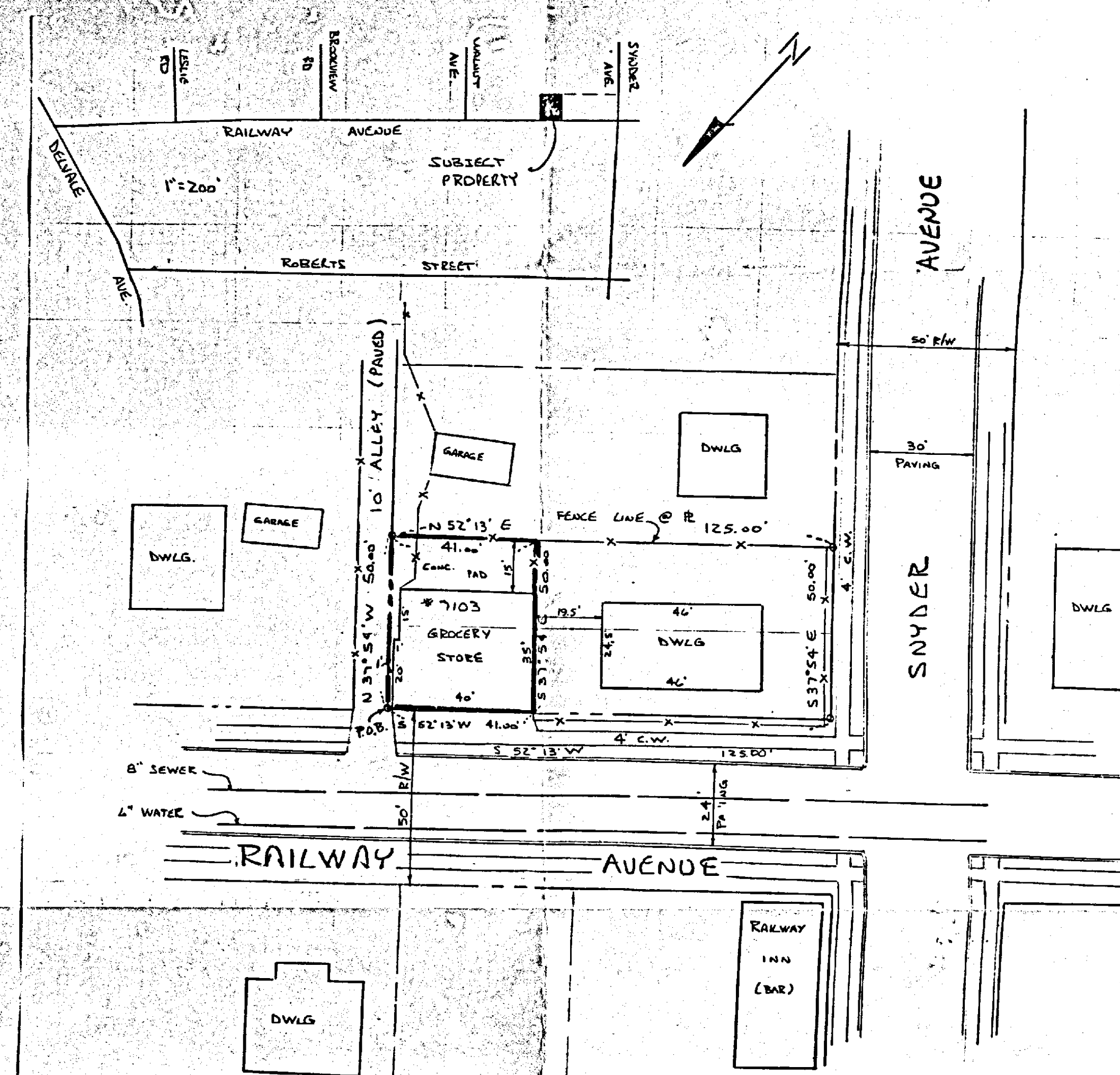
Special Hearing: Continuance of a non-conforming use as to a delicatessen and grocery store.

(FOR SHOW DATE CALL - 494-3391)

In the event that a

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 45678
DATE 11/20/87 ACCOUNT 801-615-000
AMOUNT \$ 100.00
RECEIVED FROM David A. Rogers
FOR SpH #191
B 01100000000000 2351
VALIDATION OR SIGNATURE OF CARRIER

permit may be issued within one year, however, entertain during this period for good red in this office by the date



TOTAL (lots 1+2) SIZE 50' x 125' = 6,250 S.F.
0.144 Ac.
ZONING LOT SIZE 41' x 50' = 2,050 S.F.
0.047 Ac.
OWNERS: JOSEPH & MARGARET COOPER



ALZIMUTH CONSULTANTS
SUITE 105
120 COCKENSHULE ROAD
HUNT VALLEY, MD 21031
785-2300

SPECIAL HEARING PLAT

7103 RAILWAY AVENUE
P/O LOTS 1+2, BLOCK 'O'
'FAIRLAWN' Plat Book 6 Folio 100
12TH ELECTION DISTRICT BALTO. CO., MD
ZONING - DE S.S.

1" = 30'
Nov. 9, 1987
REV. - Nov. 16, 1987

**PETITIONER'S
EXHIBIT 1**

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
494-3554

You petition has been received and accepted for filing this
231 December 9, 1987

J. Robert Haines
J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

Petitioner: Joseph Cooper, et ux
Petitioner's Attorney: David A. Rodgers, Esquire

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 1234
Posted for: Joseph Cooper, et ux
Location of property: SE/S Railway Avenue, NE/Snyder Ave.
703 Railway Ave.
Location of Sign: Railway Avenue, corner of Snyder Ave.
Remarks: Property of Baltimore
Posted by: [Signature]
Date of return: 6/1/88
Number of Signs: 1

ROYSTON, MUELLER, MCLEAN & REID
ATTORNEYS AT LAW
SUITE 600
102 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4575
(410) 823-1800
TELECOMPAR FAX (410) 828-7859

August 30, 1988

BAND DELIVERED
County Board of Appeals
of Baltimore County
Room 200, Court House
Towson, Maryland 21204

Re: In Re: SE/S Railway Avenue, NE Snyder Avenue
(7103 Railway Avenue)
Case No. 88-350-SPH

Sir:
I enclose Appellees' Objections to Exhibits to be filed in
a case.
Thank you for your assistance in this matter.
Sincerely,
Keith R. Truffer
Keith R. Truffer

KRT/cjc
11/09/88
enclosure

cc: David A. Rodgers, Esq.
Mr. & Mrs. George Panzer
Mr. Leonard Thomas

RECEIVED
11/15/88
6:09 PM

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE
February 25, 1988

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

David A. Rodgers, Esquire
19 E. Fayette Street, Suite 201
Baltimore, Maryland 21202

RE: Item No. 191 - Case No. 88-350-SPH
Petitioner: Joseph Cooper, et ux
Petition for Special Hearing

Dear Mr. Rodgers:

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
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:kbb
Enclosures

cc: Azimuth Consultants
120 Cockeysville Road, Suite 105
Hunt Valley, Maryland 21031

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
494-3554

December 14, 1987

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 184, 185, 186, 187, 188, 189, 190, 191, 192, and 193.

Very truly yours,
Michael S. Flanagan
Michael S. Flanagan
Traffic Engineer Associate II

MSF:eb

RECEIVED
JAN 20 1988
ZONING OFFICE

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

Paul H. Reincke
Chief

December 9, 1987

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

Re: Property Owner: Joseph Cooper, et ux
Location: SE/S Railway Avenue, 150' NE c/l Snyder Avenue
Item No.: 191 Zoning Agenda: Meeting of 12/1/87

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 or 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.
- (X) 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.

Noted and
REVIEWER: [Signature] Approved: [Signature]
Planning Group Fire Prevention Bureau
Special Inspection Division

7/1

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3553

J. Robert Haines
Zoning Commissioner

May 21, 1988

Baltimore County Board of Appeals
Old Courthouse, Room #205
Towson, Maryland 21204

RE: Petition for Special Hearing
SE/S Railway Avenue, N.E. Snyder Avenue
7103 Railway Avenue
12th Election District, 7th Councilmanic District
Joseph Cooper, et ux - Petitioners
Case No. 88-350-SPH

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on April 21, 1988 by David A. Rodgers, Attorney for petitioners, on behalf of petitioners. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,
J. ROBERT HAINES
Zoning Commissioner

JRH:cer
Enclosures

cc: David A. Rodgers, Attorney for Petitioner
Peoples Counsel
File

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3553

J. Robert Haines
Zoning Commissioner

December 14, 1987

David A. Rogers, Esquire
19 E. Fayette Street, Suite 201
Baltimore, Maryland 21202

RE: Traders License Denial for 7103 Railway Avenue
Zoning Item No. 191

Dear Mr. Rogers:

The Zoning Commissioner, Mr. J. Robert Haines, has referred your letter of December 4, 1987 on the subject matter to me for investigation and response.

As you are aware, a public hearing is necessary to determine if approval should be granted to the non-conforming use of the subject property as a deli and grocery store. We were unable to schedule the hearing until the appropriate Petition forms and all necessary documents had been submitted. In this instance, the documents were not received until the middle of November. Accordingly, the earliest date we were able to schedule the hearing is for March 11, 1988.

In response to your request for a conditional approval permit pending the outcome of the public hearing, it will be necessary for you to submit the following documents in advance:

- 1) Two notarized affidavits by individuals having personal knowledge that the subject property has been used continuously and without interruption as a deli and grocery store business since before the applicable zoning regulations were established (whether that be 1954 or 1945?).
- 2) Copies of the records of Baltimore County which you believe indicate the delicatessen has existed at this location since before the applicable zoning regulations were established.
- 3) A letter from the adjoining property owners stating that they have no objection to the issuance of a conditional approval permit to allow the deli/grocery store to reopen.

Upon receipt and review of the aforementioned information, a decision will be made as to whether a conditional permit should be issued. If a conditional permit is issued and it is later determined at the public hearing that the Petitioners are not able to establish the legal non-conforming use of the subject property, the Petitioners must cease operation of the business as of the date of the final written Order.

If you have any further questions on the subject, please do not hesitate to call this office at 494-3553.

Very truly yours,
Ann M. Nastarowicz
ANN M. NASTAROWICZ
Deputy Zoning Commissioner
of Baltimore County

[illegible]

RAILWAY DELI AND GROCERY INC.
7103 Railway Avenue
Baltimore, Maryland 21222
Brenda M. Perez
Vice-President
(301) 633-2892

Ann M. Nastarowicz
Baltimore County Zoning
Commissioner Office of
Zoning and Planning
Towson, Maryland 21204

Dear Ms. Nastarowicz:

Please find enclosed the documents and information requested for review for the issuance of a conditional approval permit to allow our business to reopen.

In response to the items requested:

- 1) Notarized affidavits by Joseph J. Cooper and Margaret D. Cooper stating that the property has been used continuously and without interruption as a grocery and deli since before 1945.
- 2) Copies of tax records made available to me by Tax Assessments in Towson. These are the oldest records that they could provide me with and the records do show that the taxes were for a dwelling and grocery store. These were made available to me by the landlord of this building. Unfortunately the landlord does not have any other records as they were destroyed. Since I need to provide proof of the existence of the business as a grocery store and deli since 1945, I contacted one of the residents that has lived next to the store since 1942. Her name is Mary E. Frye, and she has signed an affidavit stating that the store has been operating as a grocery and deli without interruption since before the zoning laws took effect in 1945.
- 3) You will find letters from the adjoining property owners on both sides of the store stating they have no objection to the store being reopened as a grocery and deli.

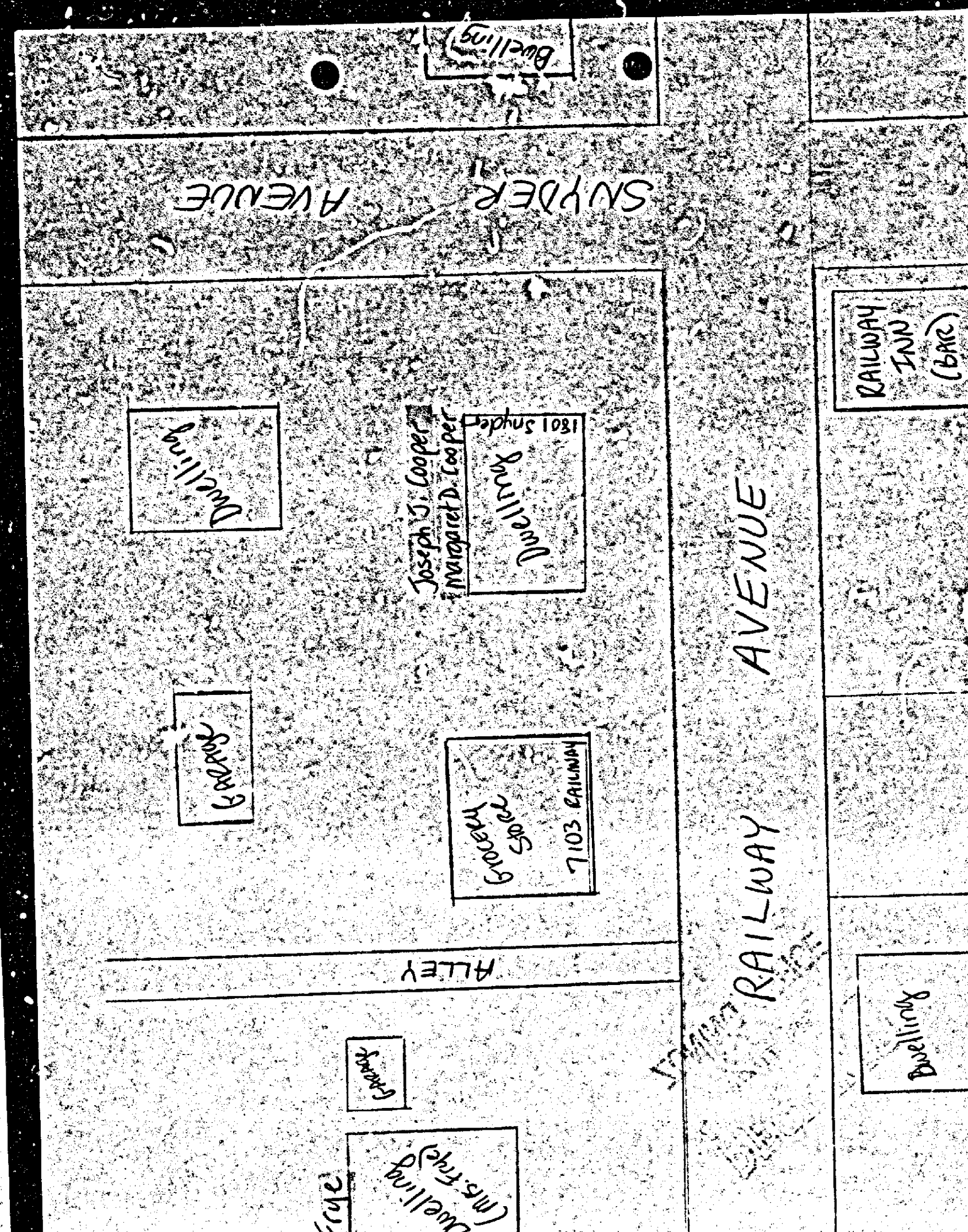
Please review this information and contact me with your decision. If any other information is needed, I will be glad to provide whatever I can to help.

Thank you for your consideration and time.

Very truly yours,

Brenda M. Perez

RECEIVED
JAN 11 1988
ZONING OFFICE



Ann M. Nastarowicz
Deputy Zoning Commissioner
of Baltimore County
Office of Planning and Zoning
Towson, Maryland 21204

Dear Ms. Nastarowicz:

I am the owner of the property at 1800 WALNUT AVENUE and have agreed to sign this letter stating that I have no objections to the issuing of a conditional approval permit to allow Railway Deli and Grocery Inc. to reopen the store.

Thank you,

Mary E. Frye

Ann M. Nastarowicz
Deputy Zoning Commissioner
of Baltimore County
Office of Planning and Zoning
Towson, Maryland 21204

Dear Ms. Nastarowicz:

I am the owner of the property at 1801 SNYDER AVENUE and have agreed to sign this letter stating that I have no objections to the issuing of a conditional approval permit to allow Railway Deli and Grocery Inc. to reopen the store.

Thank you,

Margaret D. Cooper
J. J. Cooper

STATE OF MARYLAND
COUNTY OF BALTIMORE

S.S.:

I, Margaret D. Cooper, residing at 6701 Railway Avenue, do certify that the property located at 7103 Railway Avenue has been used continuously and without interruption as a deli and grocery store business since before the applicable zoning regulations were established in 1945.

Margaret D. Cooper
Margaret D. Cooper

Sworn to before me this 11th day of January, 1988.

E. Laverne Lauback
My Commission expires 7/1/92

RECEIVED
JAN 11 1988
ZONING OFFICE

STATE OF MARYLAND
COUNTY OF BALTIMORE

S.S.:

I, Joseph J. Cooper, residing at 6701 Railway Avenue, do certify that the property located at 7103 Railway Avenue has been used continuously and without interruption as a deli and grocery store business since before the applicable zoning regulations were established in 1945.

Joseph J. Cooper
Joseph J. Cooper

Sworn to before me this 11th day of January, 1988.

STATE OF MARYLAND
COUNTY OF BALTIMORE

S.S.:

I, MARY E. FRYE, residing at 1800 WALNUT AVE, do certify that the property located at 7103 Railway Avenue has been used continuously and without interruption as a deli and grocery store business since before the applicable zoning regulations were established in 1945.

Mary E. Frye

Sworn to before me this 11th day of January, 1988.

E. Laverne Lauback
My Commission expires 7/1/92

RECEIVED
JAN 11 1988
ZONING OFFICE

THIS LICENSE MUST BE PUBLICLY DISPLAYED

STATE OF MARYLAND
BALTIMORE COUNTY
This is to Certify

No. 50780

Traders LICENSE (25C)
both this day been granted

In accordance with the provisions of Article 58 of the Code of Public General Laws of the State of Maryland.
THIS LICENSE TO CONTINUE IN FORCE UNTIL THE FIRST DAY OF MAY NEXT.

DATE OF LICENSE	CLERK'S FEE	PENALTY	TOTAL	DAY	MONTH	YEAR
5/1/80	20.00	1.00	21.00	5/1/80		

R12
Kellner, Margaret
1/2 Kellner's Grocery
7103 Railway Ave.
Baltimore 22, Md.

TEST:
Walter J. Rasmussen
WALTER J. RASMUSSEN
CLERK OF THE CIRCUIT COURT

EACH PLACE OF BUSINESS MUST BE LICENSED SEPARATELY

THIS LICENSE MUST BE PUBLICLY DISPLAYED

STATE OF MARYLAND
BALTIMORE COUNTY
This is to Certify

No. 61021

Traders LICENSE (25C)
both this day been granted

In accordance with the provisions of Article 58 of the Code of Public General Laws of the State of Maryland.
THIS LICENSE TO CONTINUE IN FORCE UNTIL THE FIRST DAY OF MAY NEXT.

DATE OF LICENSE	CLERK'S FEE	PENALTY	TOTAL	DAY	MONTH	YEAR
5/1/83	20.00	1.00	21.00	5/1/83		

12-B
Kellner, Margaret
Kellner's Grocery
7103 Railway Ave.
Balto. 22, Md.

TEST:
Robert R. Gull
ROBERT R. GULL
CLERK OF THE CIRCUIT COURT

THIS LICENSE MUST BE PUBLICLY DISPLAYED

STATE OF MARYLAND
BALTIMORE COUNTY
This is to Certify

No. 73216

Traders LICENSE (25C)
both this day been granted

In accordance with the provisions of Article 58 of the Code of Public General Laws of the State of Maryland.
THIS LICENSE TO CONTINUE IN FORCE UNTIL THE FIRST DAY OF MAY NEXT.

DATE OF LICENSE	CLERK'S FEE	PENALTY	TOTAL	DAY	MONTH	YEAR
5/1/84	20.00	1.00	21.00	5/1/84		

12-B
Kellner, Margaret
Kellner's Grocery
7103 Railway Ave
Baltimore, Md. 21222

TEST:
Robert R. Gull
ROBERT R. GULL
CLERK OF THE CIRCUIT COURT

EACH PLACE OF BUSINESS MUST BE LICENSED SEPARATELY

THIS LICENSE MUST BE PUBLICLY DISPLAYED

STATE OF MARYLAND
BALTIMORE COUNTY
This is to Certify

No. 73217

Cigarette LICENSE (25C)
both this day been granted

In accordance with the provisions of Article 58 of the Code of Public General Laws of the State of Maryland.
THIS LICENSE TO CONTINUE IN FORCE UNTIL THE FIRST DAY OF MAY NEXT.

DATE OF LICENSE	CLERK'S FEE	PENALTY	TOTAL	DAY	MONTH	YEAR
5/1/84	25.00	1.00	26.00	5/1/84		

12-B
Kellner, Margaret
Kellner's Grocery
7103 Railway Ave
Baltimore, Md. 21222

TEST:
Robert R. Gull
ROBERT R. GULL
CLERK OF THE CIRCUIT COURT

EACH PLACE OF BUSINESS MUST BE LICENSED SEPARATELY

NAME	COOPER, JOSEPH J		COOPER, MARGARET D		BUSINESS		ACCOUNT NO. 12/03 005110	
	COOPERS GROCERY							
TRADE NAME								
ADDRESS								
MAILING ADDRESS	7103 RAILWAY AV BALTIMORE MD 21222							
PHONE								

SCHEDULE REMY	RETURN DATE	SCHEDULE RETURNED	ASSESSMENT NOTICE DATE	EXPIRATION DATE	ESTIMATED NOTICE DATE	CORRECTED NOTICE DATE	P/A (MINUS) FINAL DATE	FINAL DATE
		MAR 2 0 78						
JAN 14 '78	FEB 14 '78	MAR 28 '78	JUL 12 '78					
JAN 5 '78	FEB 5 '78	APR 5 '78	JUL 16 '78					

LICENSE CHECKED	CERTIFICATION NUMBER	DATE	DECREASE NUMBER	INCREASE NUMBER	REMARKS:
	147	7-31-73			See letter re: trying to cancel.
	303	8-14-74			
	297	8-18-75			

VOID - 1976-77

TFD - Sherman's Food
Market, Inc.

License checked 10/21/79

FRANKS MEAT MARKET		BUSINESS		12 15 1964					
JAMES ADDRESS									
7113 RAILWAY AV		BALTIMORE, MD		21222					
PROPERTY									
SCHEDULE SENT	RETURN DATE	SCHEDULE RETURNED	ASSESSMENT NOTICE DATE	PROTEST DATE	ESTIMATED NOTICE DATE	CORRECTED NOTICE DATE	N/A	REPAIR DATE	FIN DATE
JAN 4 1960		2-16-63	5-5-63						
JAN 4 1964									
LICENSE CHECKED	CERTIFICATION NUMBER	DATE	DECREASE NUMBER	INCREASE NUMBER	REMARKS:				
2-7-83	138	6-20-83			3684 84-05				
2-6-84					VOID				
					TRD TO Mammes,				
					Josephine T.A. Kark				
					400 Hilli Murt				
					12-05-000340				
FM Delite 3684									

NAME FIRM ADDRESS	F. J. MOORE, Josephine		TYPE	ACCOUNT NO.				
	Kwik Stop Deli Mart		Business	12 08 300340				
MAILING ADDRESS	1464 64th Ave. E. on Sag							
PROPERTY	1801 Snyder Ave.,		21222					
PROPERTY	SPCOC, Francis C. Jr.		12-19-011110	83-84				
SCHEDULE NUMBER	RETURNED DATE	SCHEDULE RETURNED	ASSESSMENT NOTICE DATE	PROPERTY DATE	ESTIMATED NOTICE DATE	CORRECTED NOTICE DATE	PAID DATE	FINAL DATE
	3-6-84	5-35-84	6-14-84	2301				
JAN 9 1985				2301	6-20-84			
JAN 3 1985				6-17-84	6-20-84	8-2-84		
2-10-87				6-20-84	6-20-84	8-2-84		
CHECKED	CERTIFICATION NUMBER	DATE	DECREASE NUMBER	INCREASE NUMBER	REMARKS			
3-6-84					6/17/85 543	288-6128		
3-9-84	135	6-13-84			3540 5/23/84			
2-15-85	71	9-8-85			22-E7-25-73			
2-3-86	97	2-28-86			on the 2nd year			

[illegible][illegible][illegible][illegible][illegible][illegible]

THIS LICENSE MUST BE PUBLICLY DISPLAYED

STATE OF MARYLAND
BALTIMORE COUNTY

No. 50780

1962

Traders LICENSE

both this day been granted

in accordance with the provisions of Article 58 of the Code of Public General Laws of the State of Maryland

EXP THIS LICENSE TO CONTINUE IN FORCE UNTIL THE FIRST DAY OF MAY NEXT

FEES PAID			DATE ISSUED	
COPY OF LICENSE	CLERK'S FEE	TOTAL	DAY	MONTH
\$ 20.00	1.00	\$ 21.00		

PETITIONER'S EXHIBIT

Walter J. Rasmussen

WALTER J. RASMUSSEN
CLERK OF THE CIRCUIT COURT

EACH PLACE OF BUSINESS MUST BE LICENSED SEPARATELY

THIS LICENSE MUST BE PUBLICLY DISPLAYED

STATE OF MARYLAND
BALTIMORE COUNTY

No. 61021

1963

Traders LICENSE

both this day been granted

in accordance with the provisions of Article 58 of the Code of Public General Laws of the State of Maryland

EXP THIS LICENSE TO CONTINUE IN FORCE UNTIL THE FIRST DAY OF MAY NEXT

FEES PAID			DATE ISSUED	
COPY OF LICENSE	CLERK'S FEE	TOTAL	DAY	MONTH
\$ 20.00	1.00	\$ 21.00	5/1/63	

TEST:

Robert R. Gill

ROBERT R. GILL
CLERK OF THE CIRCUIT COURT

EACH PLACE OF BUSINESS MUST BE LICENSED SEPARATELY



County Board of Appeals of Baltimore County
Room 200 Court House
Catowen, Maryland 21204
(301) 494-3180

June 30, 1988

RELOCATION

PLEASE NOTE:

Effective July 11, 1988, all cases scheduled to be heard before the County Board of Appeals in Hearing Room 218 of the Old Courthouse will be heard in ROOM 301, THIRD FLOOR, COUNTY OFFICE BUILDING (111 W. Chesapeake Avenue--across the street from the Old Courthouse). Scheduled date and time remain the same.

In addition, the administrative offices of the Board will relocate on Friday, July 1, 1988 to Room 315, County Office Building.

If you have any questions, please call 494-3180 (the telephone number will remain the same).

Kathleen C. Weidenhammer
Administrative Secretary

1980y
KRW/cjc
07/20/88

IN RE: SE/S RAILWAY AVE., * BEFORE THE
NE Snyder Avenue (7103 Railway * COUNTY BOARD OF
Avenue) *
12th Election District * APPEALS FOR
7th Councilmanic District * BALTIMORE COUNTY
* Case No. 88-350-SPH
* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of Keith R. Truffer as attorney
for Leonard Thomas and Mr. and Mrs. George Panzer, Appellees, in
this case.

Keith R. Truffer
Royston, Mueller, McLean & Reid
102 W. Pennsylvania Avenue
Towson, Maryland 21204
(301) 823-1800

Attorney for Leonard Thomas and
Mr. & Mrs. George Panzer,
Appellees

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 21st day of July, 1988, a
copy of the foregoing Entry of Appearance was mailed, by first
class, postage prepaid, to David A. Rogers, Esq., 19 E. Fayette
Street, Baltimore, Maryland 21202, attorney for Appellants.

Keith R. Truffer

ROYSTON, MUELLER,
MCLEAN & REID
SUITE 600
102 W. PENN. AVE.
TOWSON, MARYLAND
21204-4878
800-1608

RECEIVED
JUL 21 1988
CBA
OK

16593
CSS/cjc
08/30/88

IN RE: SE/S RAILWAY AVE., * BEFORE THE
NE Snyder Avenue (7103 Railway * COUNTY BOARD OF
Avenue) * APPEALS FOR
12th Election District * BALTIMORE COUNTY
7th Councilmanic District * Case No. 88-350-SPH

* * * *

ORDER FOR SUBPOENA

Please issue a Subpoena to the following persons, returnable to Hearing Room #218, Board of Appeals for Baltimore County, Court House, Towson, Maryland 21204, at 10:00 a.m. on Thursday, September 1, 1988:

Mr. Joseph J. Cooper and
Mrs. Margaret D. Cooper
c/o David A. Rogers, Esq.
19 E. Fayette Street
Baltimore, Maryland 21202

The Subpoena should command both parties to appear and to testify at a hearing in the above-captioned proceeding and to bring with them copies of their personal income tax returns for the years 1985, 1986 and 1987.

By request of,


Keith R. Truitt
Royston, Mueller, McLean & Reid
102 W. Pennsylvania Avenue
Towson, Maryland 21204
(301) 823-1800

Attorney for Appellant

TOYSTON, MUELLER,
MCLEAN & REID
SUITE 400
102 W. PENN. AVE.
TOWSON, MARYLAND
812-86-1878
812-1800

