

IN THE MATTER OF THE APPLICATION OF RANDALL E. MCMONIGLE (RANDY'S LANDSCAPING) FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHWEST SIDE OF LILLIAN HOLT DRIVE, 1,100' SOUTHWEST OF CENTERLINE OF ROSSVILLE BLVD. (7620 LILLIAN HOLT DRIVE) 14TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT

RANDALL E. MCMONIGLE, PLAINTIFF

ZONING CASE NO. 90-219-XA

ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY

BALTIMORE COUNTY

CG Doc. No. 3

Folio No. 195

File No. 91-CV-4763

REMAND ORDER PURSUANT TO ORDER OF THE CIRCUIT COURT FOR BALTIMORE COUNTY

By Remand Order of the Circuit Court for Baltimore County by the Honorable J. Norris Byrnes, Judge, it is this 22ND day of July, 1993, by the County Board of Appeals of Baltimore County

ORDERED that the subject case be and is hereby REMANDED to the Zoning Commissioner for Baltimore County for further determination pursuant to the attached Order of the Circuit Court dated May 19, 1993.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Member H. Sauer

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

July 22, 1993

John L. Calhoun, Esquire
Polack & Calhoun
605 Baltimore Avenue
Towson, Maryland 21204

Re: Case No. 90-219-XA
Randall E. McMonigle (Randy's Landscaping) (Circuit Court File No. 91-CV-4763)

Dear Mr. Calhoun:

Enclosed is a copy of the Remand Order issued this date by the County Board of Appeals in the subject matter, pursuant to the Order of the Circuit Court for Baltimore County.

Sincerely,
Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Robert Polack, Esquire
Mr. Randall E. McMonigle
People's Counsel for Baltimore County
The Honorable J. Norris Byrnes, Judge
Circuit Court for Baltimore County
Copy / Circuit Court File No. 91-CV-4763
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richard, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

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ZADM

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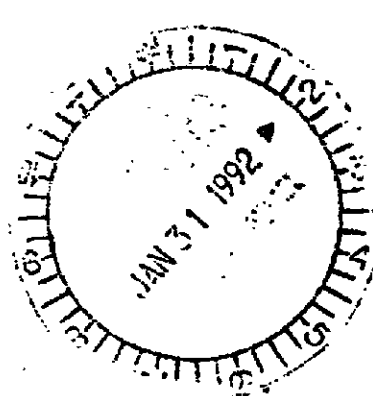
IN THE COURT OF SPECIAL APPEALS

RANDALL E. MCMONIGLE
vs. PHC NO. 972
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

ORDER

Upon the foregoing Motion to Dismiss, and answer thereto, and the docket entries, it is, this 20th day of January, 1992, ordered by the Court of Special Appeals of Maryland that the above-entitled interlocutory appeal be, and hereby is, Dismissed for lack of jurisdiction. Md. Rule 9-608(a)(1).

BY THE COURT



John M. Wilson
Paul E. O'Connell
Judge

IN THE MATTER OF THE APPLICATION OF RANDALL E. MCMONIGLE FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHWEST SIDE OF LILLIAN HOLT DRIVE, 1,100' SOUTHWEST OF CENTERLINE OF ROSSVILLE BLVD (7620) LILLIAN HOLT DRIVE 14TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT

RANDALL E. MCMONIGLE, PLAINTIFF

ZONING CASE NO. 90-219-XA

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

FOR

BALTIMORE COUNTY

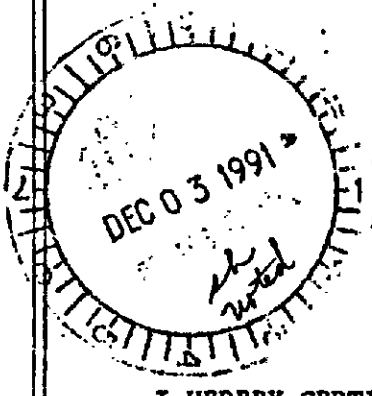
CG DOC. NO. 3

FOLIO NO. 195

FILE NO. 91-CV-4763

NOTICE OF APPEAL

Appellant, Randall E. McMonigle (Plaintiff) by his attorneys, John L. Calhoun and Polack & Calhoun hereby notes an appeal to the Court of Special Appeals from the ruling of November 5, 1991 by the Honorable Dana M. Levitz denying the Plaintiff a jury trial.



John L. Calhoun
John L. Calhoun
Polack & Calhoun
1200 E. Joppa Road
Baltimore, Md 21204
(410) 321-1818

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of November, 1991, I mailed a copy of the foregoing Notice of Appeal, first class mail, postage prepaid to the People's Counsel for Baltimore County, Phyllis C. Friedman, Esquire, Room 304 County Office Building, 111 W. Chesapeake Ave., Towson, Md 21204.

John L. Calhoun
John L. Calhoun

RANDALL E. MCMONIGLE
Appellant
vs.
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
Appellee

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
CASE NO. 91CV4763

ANSWER TO PETITION ON APPEAL

People's Counsel for Baltimore County, Protestant Episcopal Church in Baltimore, Inc., Appellee herein, answers the Petition on Appeal heretofore filed by the Appellant, viz:

1. That Appellee admits the allegations made and contained in the first paragraph of said Petition.
2. That Appellee denies the allegations made and contained in Paragraph 2.(a) through (j) of said Petition.
3. In further answering, Appellee states that the decision of the County Board of Appeals was reasonable and based on legally competent and substantial evidence.

WHEREFORE, Appellee prays that the Court affirm the decision of the County Board of Appeals of Baltimore County.

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

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 304, County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
(301) 887-2188

RECEIVED AND FILED
91 OCT 17 AM 9:43
CLERK OF COURT
BALTIMORE COUNTY

should be paid four-fifths by the Petitioner and one-fifth by Baltimore County.

It is so Ordered this 19th day of May, 1993 by the Circuit Court for Baltimore County, Maryland.

J. Norris Byrnes
Judge

ORDER

This matter came before the Court on Petitioner's appeal from an adverse decision of the Board of Appeals dated August 31, 1991. Petitioner sought permission to erect two signs on property located in the eastern portion of Baltimore County. Since the time of the appeal, the zoning of the property has changed. The parties agree that the changes have an impact on the Board's decision. This Court agrees. Therefore, the Court believes it would serve judicial economy and the interests of justice to remand the case to the Board of Appeals with instructions to remand the case to the Zoning Commissioner for Baltimore County for further determination. It will be up to Petitioner to begin anew the appropriate processes to obtain the requisite permission and authority for the signage.

In view of the posture of the case and having reviewed the complete record, the Court is of the opinion that the open costs

I HEREBY CERTIFY that on this 17th day of October, 1991, a copy of Answer to Petition on Appeal was mailed to Robert E. Polack, Esquire, and John L. Calhoun, Esquire, Polack & Calhoun, 1200 E. Joppa Rd., Suite E, Baltimore, MD 21204, Attorneys for Appellant.

Phyllis Cole Friedman
Phyllis Cole Friedman

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CLERK OF COURT
BALTIMORE COUNTY

APPEAL

Petition for Special Exception and Variance NW/S of Lillian Holt Drive, 1,100' SW of C/L of Rossville Blvd. (7620 Lillian Holt Drive) 14th Election District - 6th Councilmanic District RANDALL E. MCMONIGLE (Randv's Landscaping) - Petitioner Case No. 90-219-XA

- ✓ Petitions for Special Exception and Variance
✓ 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

- Petitioner's Exhibits:
1. Three photographs of signs
2. Highlighted drawing of site
3. Plat to accompany Petitions
4. & 5. Letters from Petitioner stating hardships for Special Exception and Variance
6. & 7. Photocopies of Permits

Zoning Commissioner's Order dated February 20, 1990 (Denied)

Notice of Appeal received March 15, 1990 from Marc N. Peitersen, Attorney on behalf of Petitioner

* John A. Albany, Esquire, Polack & Calloun - Counsel for Appellant
605 Baltimore Ave., Towson, MD 21204
cc - Randall E. McMonigle, 7620 Lillian Holt Drive, Baltimore, Maryland 21237
Marc N. Peitersen, Esquire, 10000 Broadway Boulevard, Suite 124, White Marsh Professional Center, Baltimore, MD 21236

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

Request Notification: P. David Fields, Director of Planning & Zoning
Patrick Keller, Office of Planning & Zoning
J. Robert Haines, Zoning Commissioner
Ann M. Nastarowicz, Deputy Zoning Commissioner
James E. Dyer, Zoning Supervisor
W. Carl Richards, Jr., Zoning Coordinator
Docket Clerk
Arnold Jablon, County Attorney

LAW OFFICES OF POLACK AND CALHOUN

808 BALTIMORE AVENUE
TOWSON, MARYLAND 21286
(301) 251-1818

ROBERT E. POLACK
JOHN L. CALHOUN, P.A.
ATTORNEYS AT LAW

RANDY PROFESSIONAL BUILDING
1300 E. JOHN ROAD
SUITE E
BALTIMORE, MARYLAND 21204
(301) 251-1818
FAX (301) 251-1889

KATY B. SHELOS
LEGAL ASSISTANT

September 5, 1990

Mr. Robert Haines
Zoning Commissioner
111 W. Chesapeake Ave
Room 113
Towson, Maryland 21204

Re: Randy McMonigle/Randv's Landscaping
Case # 90-219 XA

Dear Mr. Haines:

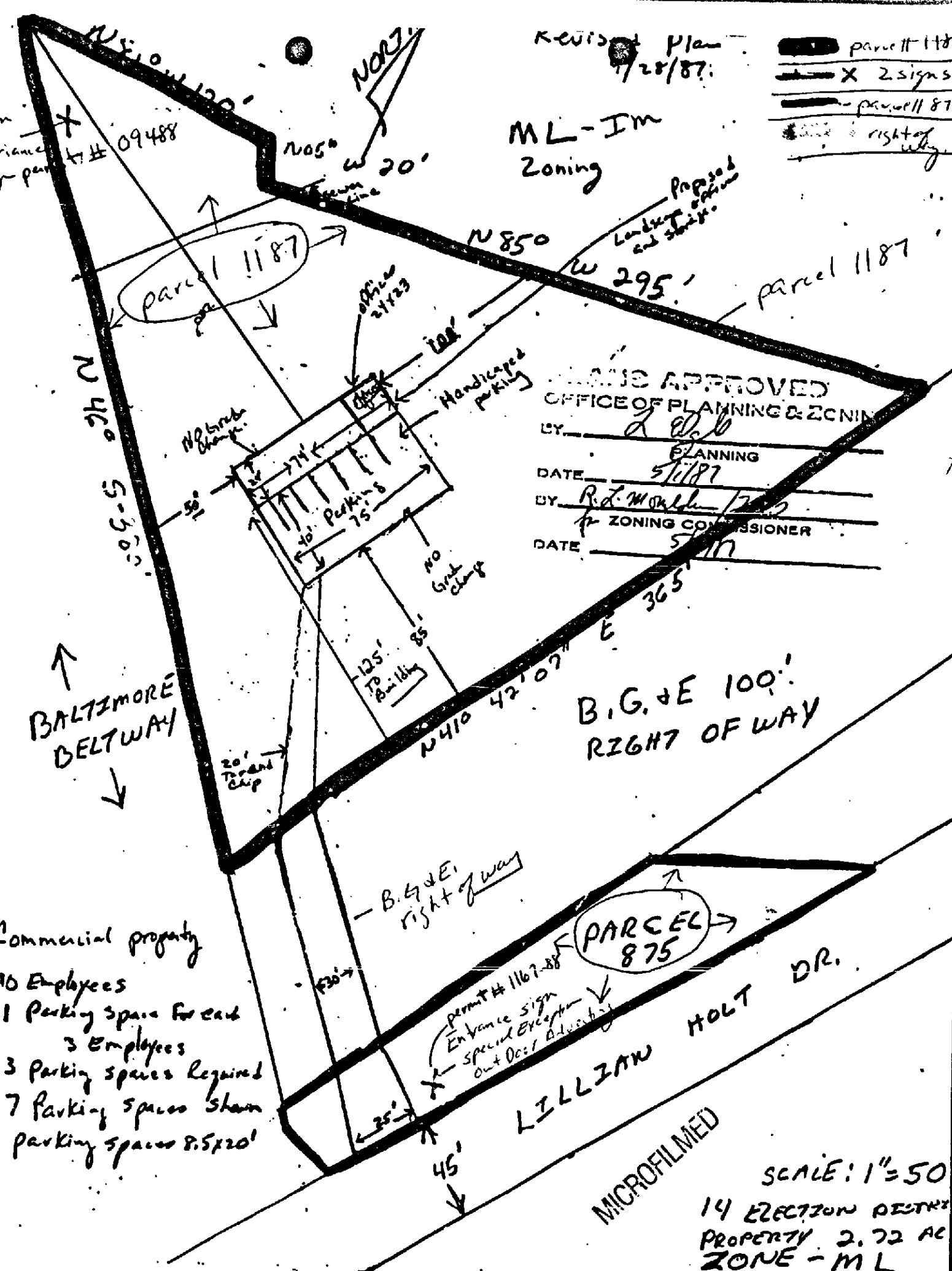
Please forward to this office a copy of any and all tapes pertaining to the above referenced case.

Please bill this office for the cost of recording.

Very truly yours,
Robert E. Polack

REP:ks

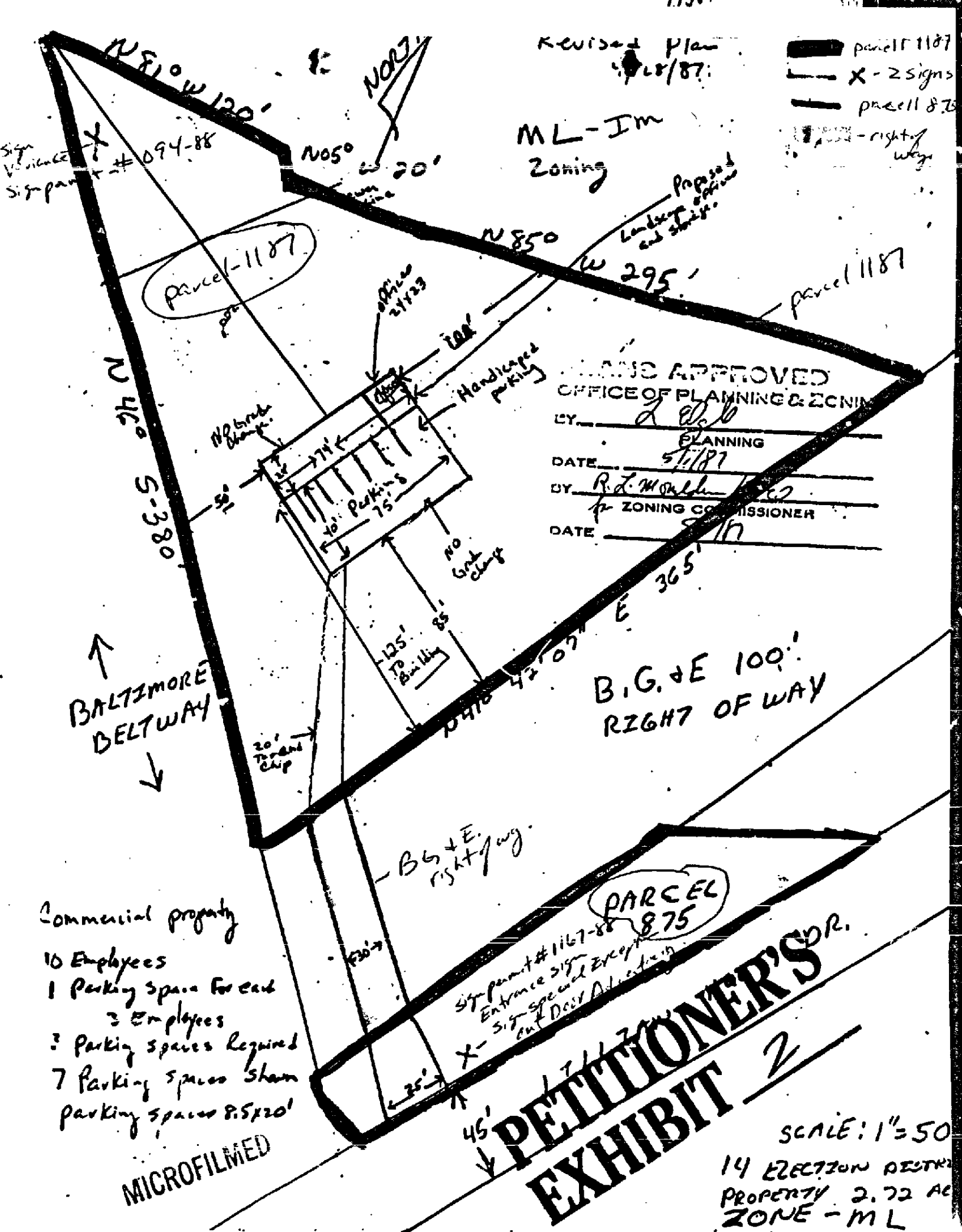
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ZONING OFFICE



Commercial property
10 Employees
1 Parking space for each
3 Employees
7 Parking spaces Required
Parking spaces 25,500'

SCALE: 1"=50'
14 ELECTION DISTRICT
PROPERTY 2, 72 AC
ZONE - ML

PETITIONER(S) EXHIBIT 1



Commercial property
10 Employees
1 Parking space for each
3 Employees
7 Parking spaces Required
Parking spaces 25,500'

SCALE: 1"=50'
14 ELECTION DISTRICT
PROPERTY 2, 72 AC
ZONE - ML

PETITIONER'S EXHIBIT 4

DATE: December 7, 1989
TO: Zoning Commissioner of Baltimore County, Maryland
FROM: Randall E. Mc Monigle
SUBJECT: Case Number 90-219-XA Zoning Variance

On February 13, 1987, I called Robert's Signs, Ethic Advertising, and Signs By Tomorrow to see about having a sign installed. Ethic Advertising got a permit in my name for installing a sign on the lower side of my property. The permit number was 1289-87, issued on April 14, 1987. Due to problems in their work schedule, I had to let Robert's Signs install the sign. Mr. Robert said the sign permit that Ethic Advertising had gotten was for a 25' sign. He showed me by one of my trees the height of a 25' sign. He proved to me that it would not even be visible, because the slope of my land was about 27'. He decided on a 35' sign, so it would be visible. I called Baltimore County, and Mr. Lewis told me that I did not have to cancel the first permit. All I had to do was come in and apply for a new permit for the same thing, and when it was granted, it would cancel out the first permit. I told him that I wanted to raise the sign up 10' higher, and he said fine.

On January 18, 1989, I received my permit, and immediately had my sign installed on the property by Robert's Signs. I paid the contractor in full for the sign, and was very pleased with the look. The cost was about \$12,000.00. Now it was almost a year later, when an inspector came out, and said that he had noticed my sign, and that I did not have a permit for it. I then took him into my office, and showed him the permit. He said he could not believe that they did not have this recorded with Baltimore County, and he would check his files. If it was existing, he said then that the sign was fine. He said if The County has a permit on file, then I am on solid ground, and that nothing could be done with the sign. A couple of days later, the inspector called me back, and said he found the permit for the sign, but it was only supposed to be 6' high. We talked about how at 6' the sign would be 24' below Beltway level, and would not be visible. He felt the best thing to do since someone down at The County had made a mistake, was to have a Zoning Appeal, so that the sign and the permits could be completely final. I agreed with him to do this after contacting my Congressman, Governor Schaefer, and my attorney.

This sign is my life-line for my family operated business. Without it, my business will fail, and my up to 20 employees, and the community I service, and pay taxes in, will loose a vital part of their own life-line. I have followed all the proper steps to secure a permit, and received a permit, then installed my sign. I am asking you now to allow the sign to stand. Not only did I get a sign permit, but Ethic Advertising got a permit for a 25' sign 9 months earlier. I followed the procedures that The County set up to get a permit, received a permit, installed a sign, and started a business. No one has ever complained about the sign, and I paid for the sign, and the permit. The only

7620 Lillian Holt Drive • Baltimore, Maryland 21237 • 301-668-4600
Express Planting Service • Erosion Control • Sodding • Seeding • Mulching • Shrubs and Trees • All Phases of Landscape Work

PETITIONER'S EXHIBIT 5

DATE: December 7, 1989
TO: Zoning Commissioner of Baltimore County, Maryland
FROM: Randall E. McMonigle
SUBJECT: Case Number 90-219-XA Special Exception

I am a young business man, who was forced to move my family operated business out of my Cockeysville, Maryland home, and re-locate. I was promised by The County, that they would do everything possible to help me to re-locate to a commercial area. Upon finding the property known as 7620 Lillian Holt Drive, I immediately contacted the Zoning Board to confirm that this site was acceptable. Mr. Jim Thompson, and his staff were pleased with me for working with The County to re-locate my small business. After purchasing the property, and I followed their proceedings, and was given a sign permit. The sign at the top of my property entrance on Lillian Holt Drive was installed after I first purchased this separate piece of land from the State of Maryland in 1987. It is joined to my building by the main entrance road, but still remains a separate parcel of land with its own folio listing within the records of Baltimore County. The parcel of land which does house my building, is on such a great slope, that from Lillian Holt Drive, it is not visible. Lillian Holt Drive is made up of two other businesses, but no residential dwellings. The Northeast Y.M.C.A., and The Gardens of Faith Cemetery, like myself, have signs on Lillian Holt Drive to survive. I need to have the sign to let people know where the entrance to the property is located. My other problem is that I have only one entrance, and this is somewhat hidden by the bridge on Lillian Holt Drive which crosses over the Baltimore Beltway. The County did install a sign by my entrance to let people know there is a hidden entrance in the area, but because it is hard to see, and because of the great slope of my property, no one can see what is hidden at this entrance. On several occasions I have seen people stop at the top of the entrance on Lillian Holt Drive to see what is below, and what my company offers. This as you can understand is a traffic hazard, especially now that Lillian Holt Drive has been extended into the completion of Perry Hall Boulevard. With this extension now completed, even more traffic passes my property each and every day. People need to know where the entrance to my property, and with meetings through the local community associations, and businesses are. Since we are a nursery and garden center, we service a large community with worth-while products, living things, like trees and shrubs. Through conversations I have had with the neighbors on the streets surrounding my property, and with meetings through the local community associations, and garden clubs in the area that have called me, I have all of their support. To my knowledge, no one has complained to date, about the sign. My sign on Lillian Holt Drive is legal. It was professionally installed, and has stood for almost two years, now I am being asked to prove I had a permit for it. I feel as

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Express Planting Service • Erosion Control • Sodding • Seeding • Mulching • Shrubs and Trees • All Phases of Landscape Work

Permit PETITIONER'S EXHIBIT 6
Baltimore County, Maryland
7620 Lillian Holt Dr.
Owner: Randall E. McMonigle
Address: 1105 Justa Lane
Type of Improvement: Install 1 free standing double face sign...
Fees: \$19.00
Expires: 1/18/91

DP 3
1/79



County Executive
Dennis F. Rasmussen

Permit

NOTE: A SEPARATE PERMIT IS REQUIRED FOR ALL ELECTRICAL & PLUMBING WORK WHICH MUST BE DONE BY AN ELECTRICIAN OR PLUMBER LICENSED IN BALTIMORE COUNTY.

PETITIONER'S EXHIBIT 7

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

TAX ACCOUNT NUMBER		DATE ISSUED	4/26/88
BUILDING ADDRESS	7620 Lillian Hill Dr. Balt. Md 21227	PERMIT NUMBER	11667 08
OWNER'S NAME	Randall E. McManis	DATE OF EXPIRY	14 3
MAILING ADDRESS OF OWNER	7620 Lillian Hill Dr. Balt. Md 21227	EST. COST	4000
BUILDING CONTRACTOR	Randall E. McManis (OWNER)		

TYPE OF IMPROVEMENT: 1 AND 2 FAM CODE BOCA CODE

Erect DF freestanding non-illuminated on front of property. ~~25~~ 25' x 12' sign. License tag must be affixed to sign at all times.

ppr cond plan att

THIS PERMIT EXPIRES ONE YEAR FROM DATE OF ISSUE

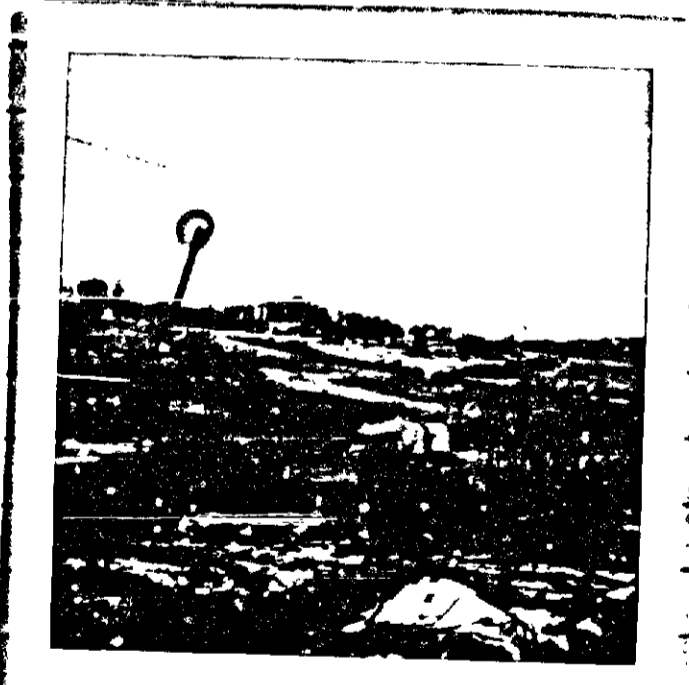
TYPE OF SEWAGE DISPOSAL	TYPE OF WATER SUPPLY
<input checked="" type="checkbox"/> PUBLIC SEWER	<input checked="" type="checkbox"/> PUBLIC SYSTEM
<input type="checkbox"/> PRIVATE SYSTEM	<input type="checkbox"/> PRIVATE SYSTEM
BUILDING SIZE: 25' x 12'	LARGEST OVERALL DIMENSIONS INCLUDING BASEMENT: 5' x 5' x 5'
PROPERTY LINE SETBACKS: FRONT 4'	REAR: 5'
IN LINE WITH EXISTING BLDGS: YES	CORNER LOT: YES
SUBDIVISION NAME: H	LIBER: FOLIO:

Signature of Applicant: Randall E. McManis
Date: 4/26/88
Agency: [Signature]
Approval Signature: [Signature] Date: 4/26/88

White-Permit Green-Inspector, Canary-Assessments
IMPROVED-- CLASS _____ MICROFILMED

THIS PERMIT MUST BE POSTED
SEE OTHER SIDE FOR INSPECTIONS

Bob - LEN took those 12-28-89. Note the shed and trailers.



MICROFILMED

MICROFILMED

ORIGINAL 91ev4763

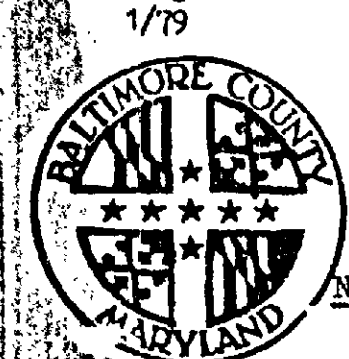
IN THE MATTER OF * BEFORE THE
RANDALL E. McMONIGLE * COUNTY BOARD OF APPEALS
(Randy's Landscaping) * OF BALTIMORE COUNTY
* Case No. 90-219-XA
* August 7, 1991

The above-entitled matter came on for hearing
before the County Board of Appeals of Baltimore County at
the County Office Building, Towson, Maryland 21204 at 10
o'clock a.m., August 7, 1991.

BOARD MEMBERS:
WILLIAM T. HACKETT, Chairman.
LYNNE B. MORELAND
MICHAEL E. SAUER

Reported by:
C.E. Peatt

BOARD OF APPEALS



Permit

NOTE: A SEPARATE PERMIT IS REQUIRED FOR ALL ELECTRICAL & PLUMBING WORK WHICH MUST BE DONE BY AN ELECTRICIAN OR PLUMBER LICENSED IN BALTIMORE COUNTY.

PERMIT BALTIMORE COUNTY MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204
BUILDING ADDRESS: 2620 LILLIAN HOLT DR.
OWNER'S NAME: Randy McMonigle
APPLICANT'S NAME: Randy McMonigle
TYPE OF IMPROVEMENT: Single Face (Free Standing)
Dylon Sign: 5' x 2' = 10 sq ft
3' x 15' = 45 sq ft
3' x 10' = 30 sq ft
ALL signs to be illuminated - Refer to 704 CC-289, previous type. Must be attached to sign as shown on attached plans.

THIS PERMIT MUST BE POSTED
SEE OTHER SIDE FOR INSPECTIONS

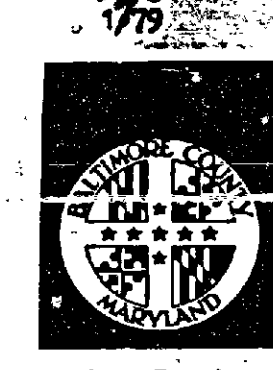
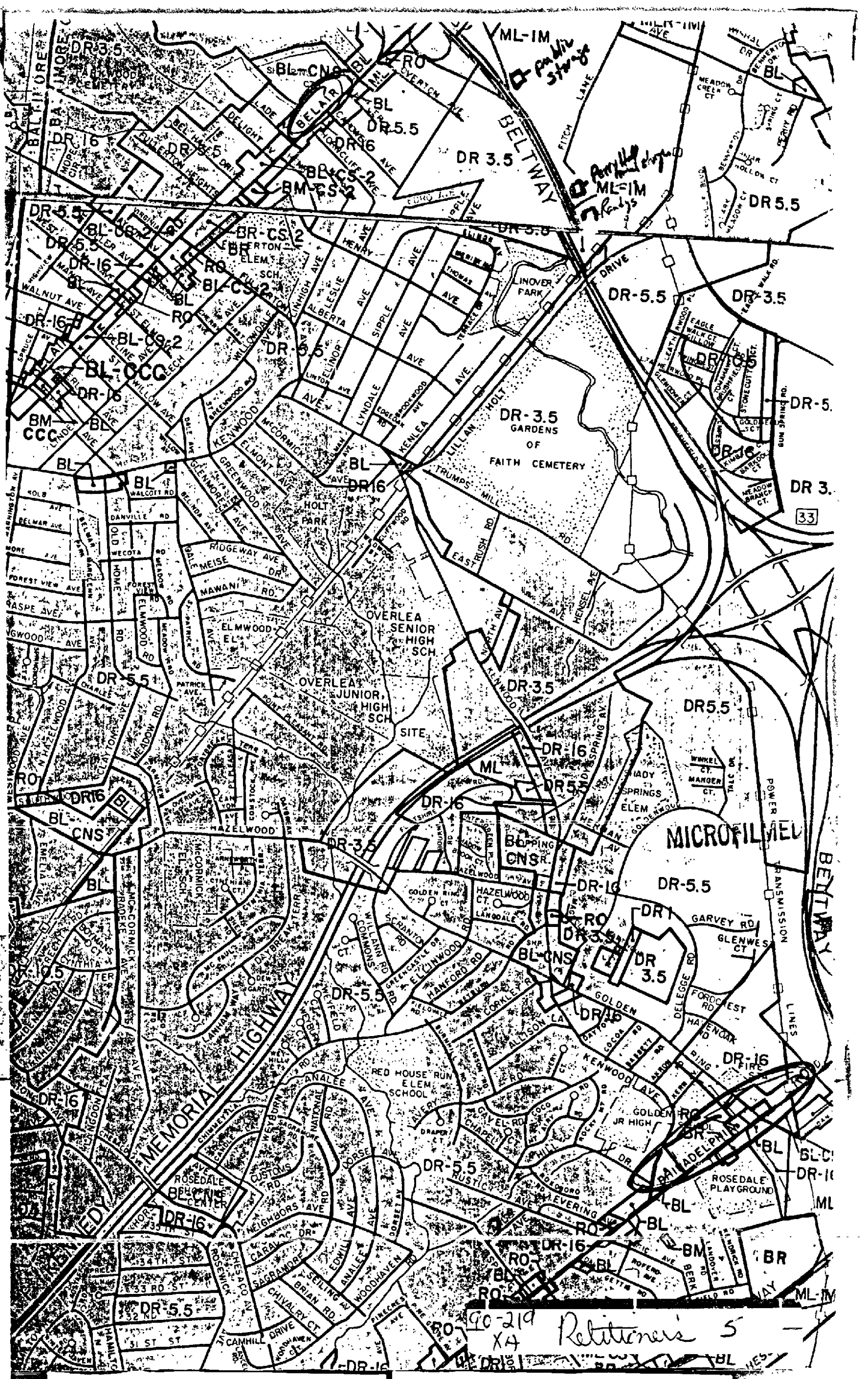


Permit

NOTE: A SEPARATE PERMIT IS REQUIRED FOR ALL ELECTRICAL & PLUMBING WORK WHICH MUST BE DONE BY AN ELECTRICIAN OR PLUMBER LICENSED IN BALTIMORE COUNTY.

PERMIT BALTIMORE COUNTY MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204
BUILDING ADDRESS: 7620 Lillian Holt Dr.
OWNER'S NAME: Randall E. McMonigle
APPLICANT'S NAME: Randall E. McMonigle
TYPE OF IMPROVEMENT: Double Face Illuminated
Sign approximately 5ft. x 10ft. with customer approved copy on 1/4" Plexiglass Panels
Sign to be installed on (2) 8" sq. tub - (8x8x.025) approximately 35ft. to top of sign for the sum of \$400.00.

THIS PERMIT MUST BE POSTED
SEE OTHER SIDE FOR INSPECTIONS



Permit

NOTE: A SEPARATE PERMIT IS REQUIRED FOR ALL ELECTRICAL & PLUMBING WORK WHICH MUST BE DONE BY AN ELECTRICIAN OR PLUMBER LICENSED IN BALTIMORE COUNTY.

PERMIT BALTIMORE COUNTY MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204
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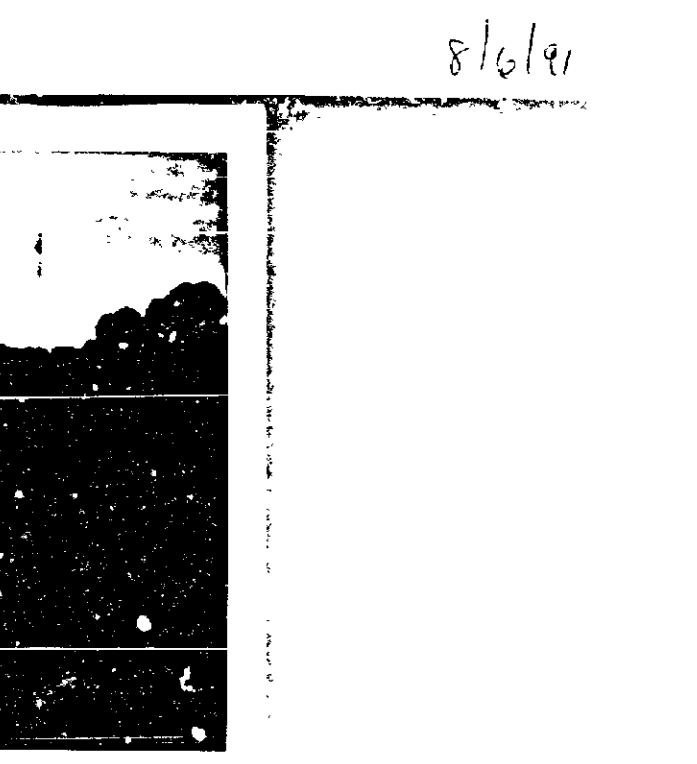
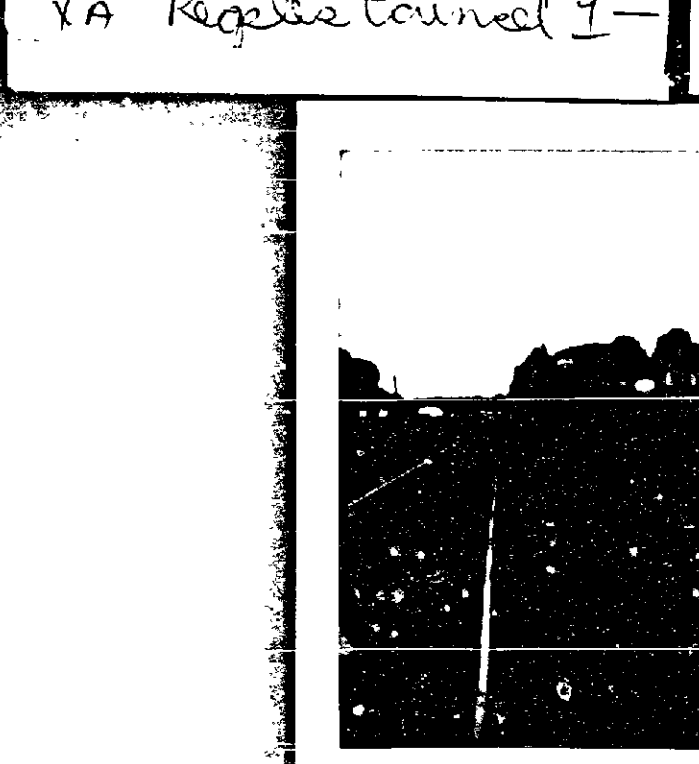
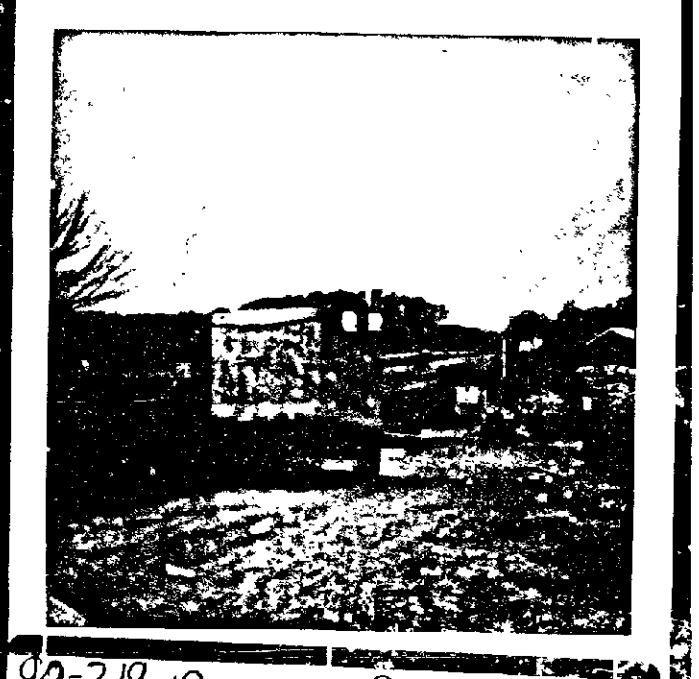
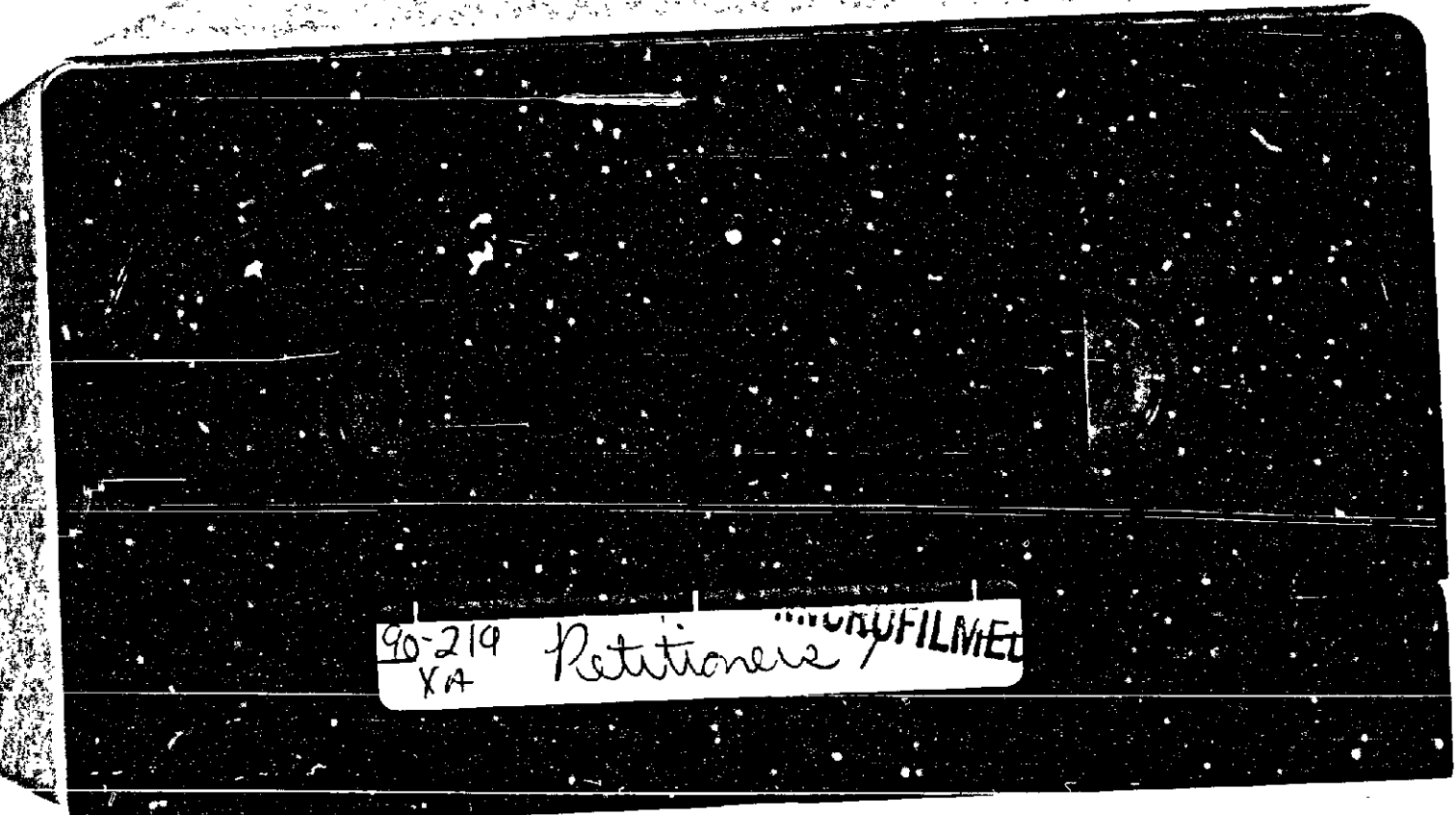
THIS PERMIT MUST BE POSTED
SEE OTHER SIDE FOR INSPECTIONS

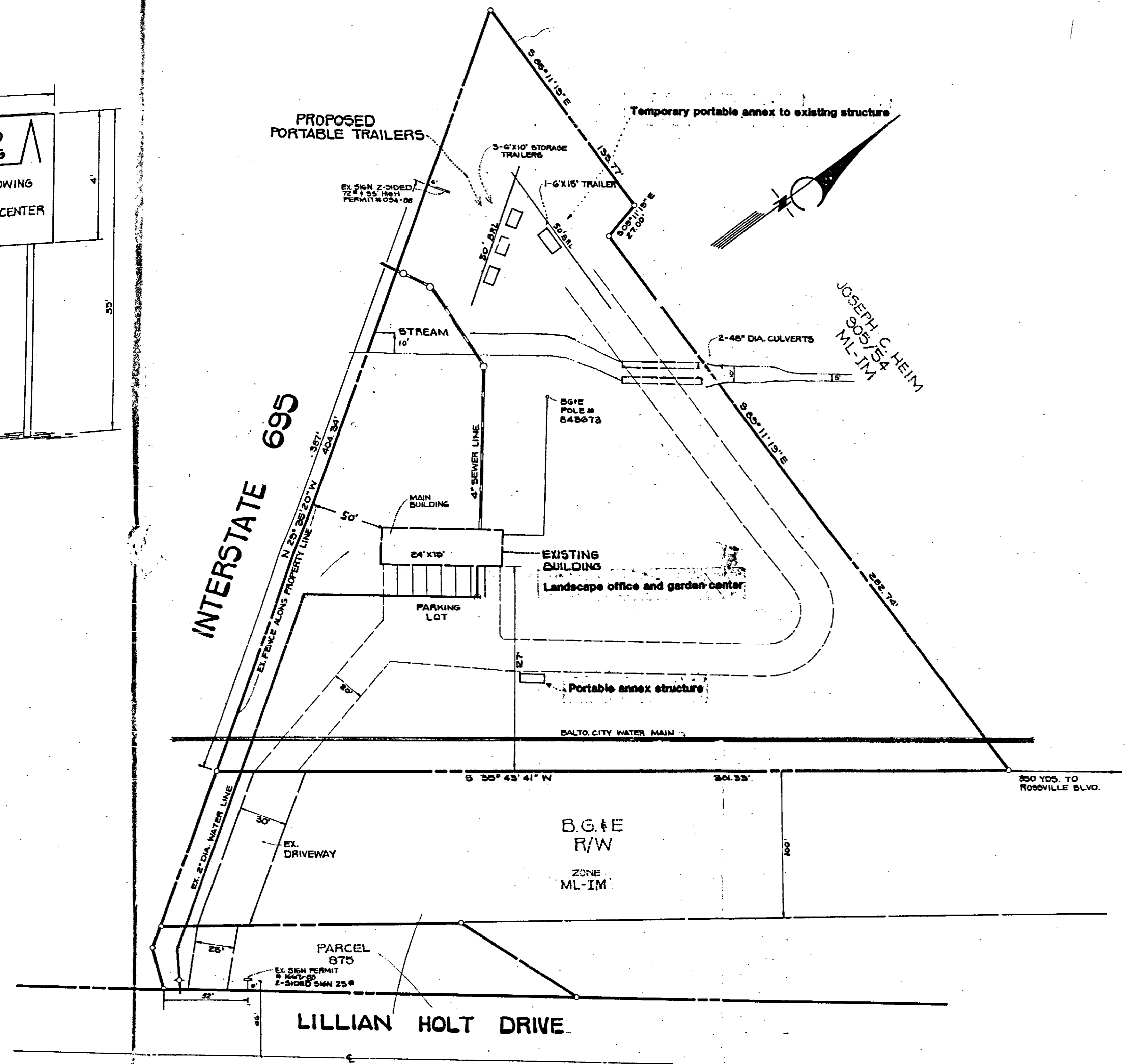
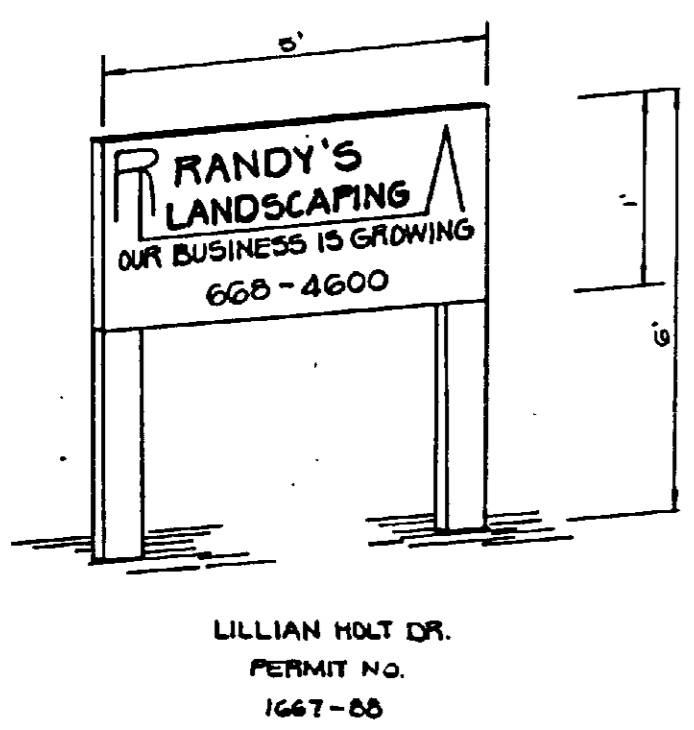
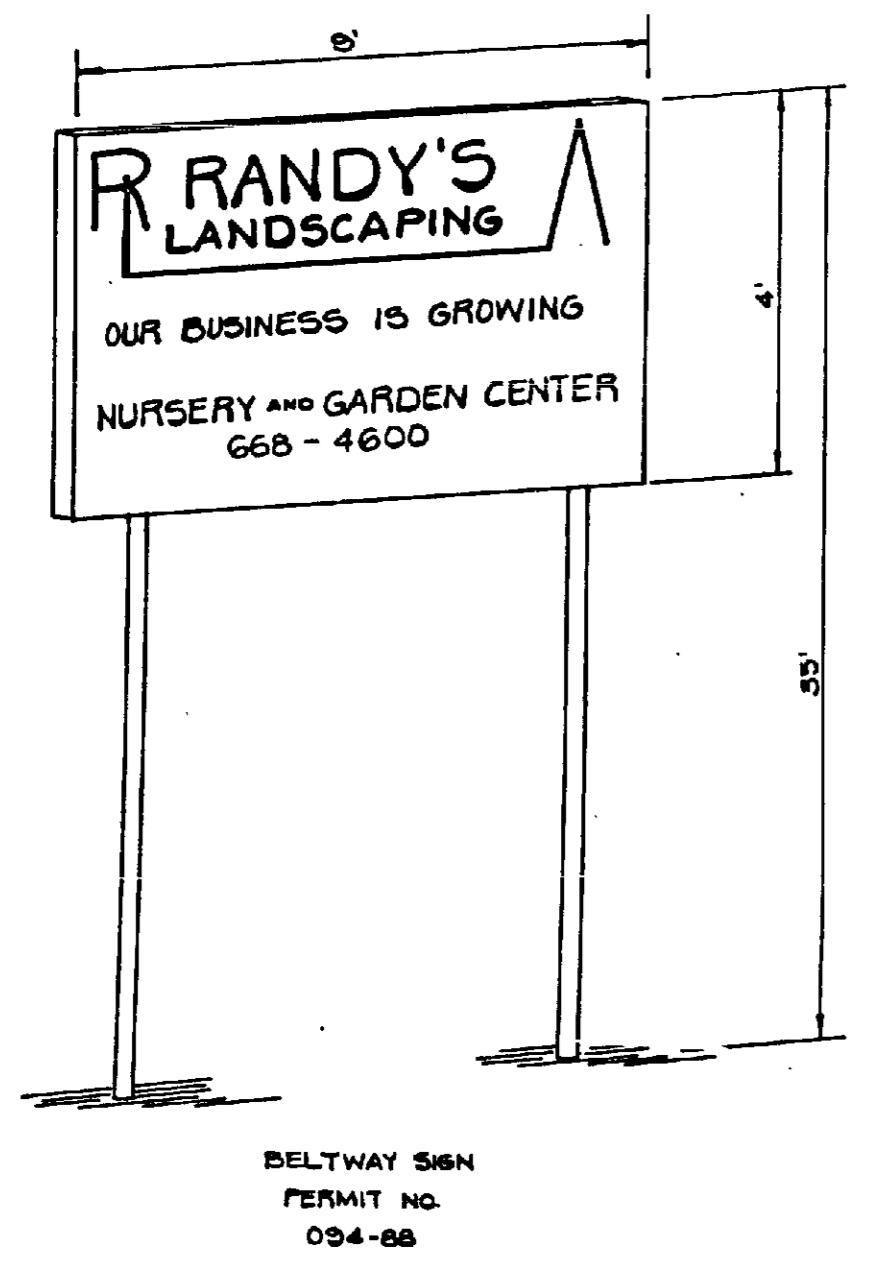
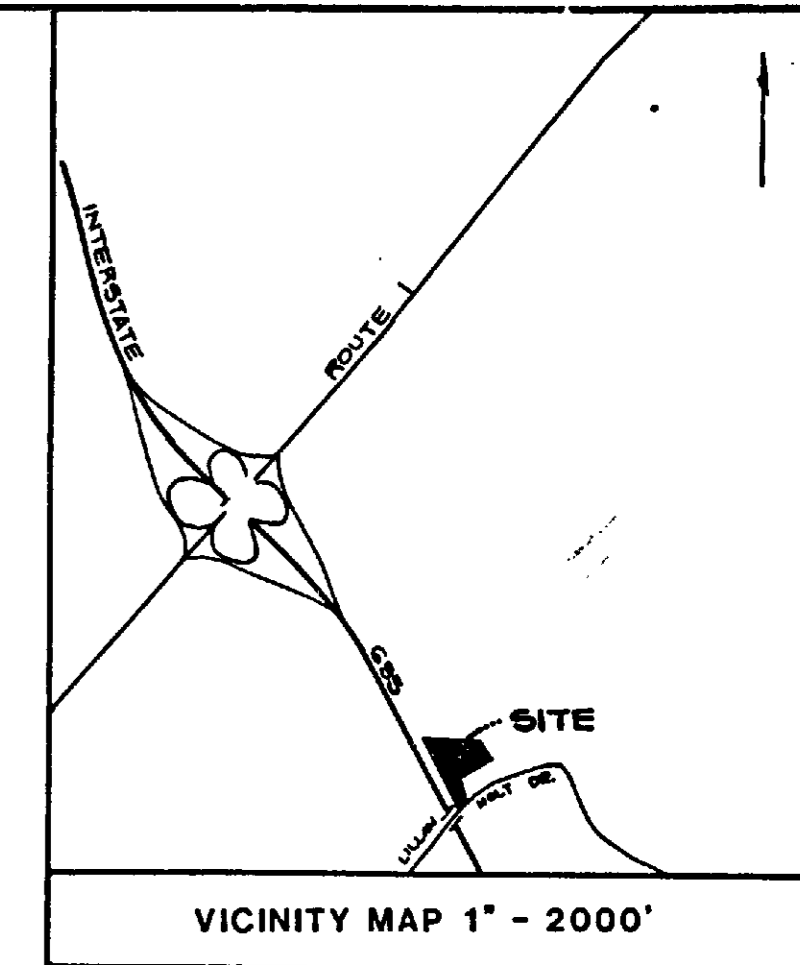
QUOTATION

From: ROBERTS SIGNS & SERVICE
7923 BRIDGES AVE.
BALTIMORE, MD. 21237
391-7073
To: Randy's Landscaping
Lillian Holt Drive.
Baltimore, Md. 21237
668-4600
We are pleased to quote as follows:

Quantity	Description	Price	Unit	Amount
1	To Fabricate and Install (1) Double Face Illuminated Sign approximately 5ft. x 10ft. with customer approved copy on 1/4" Plexiglass Panels. Cost of the sign will be paid by owner. Sign to be installed on (2) 8" sq. tub - (8x8x.025) approximately 35ft. to top of sign for the sum of \$400.00.	\$400.00		

THIS PERMIT MUST BE POSTED
SEE OTHER SIDE FOR INSPECTIONS





NOTE:
 1. NO PARKING REQUIRED FOR PORTABLE STORAGE TRAILER.
 2. ALL SURVEY INFORMATION PROVIDED BY CLIENT.

PETITIONER'S EXHIBIT 3

PLAT FOR ZONING VARIANCE AND SPECIAL EXCEPTION

RANDALL E. McMONIGLE PROPERTY

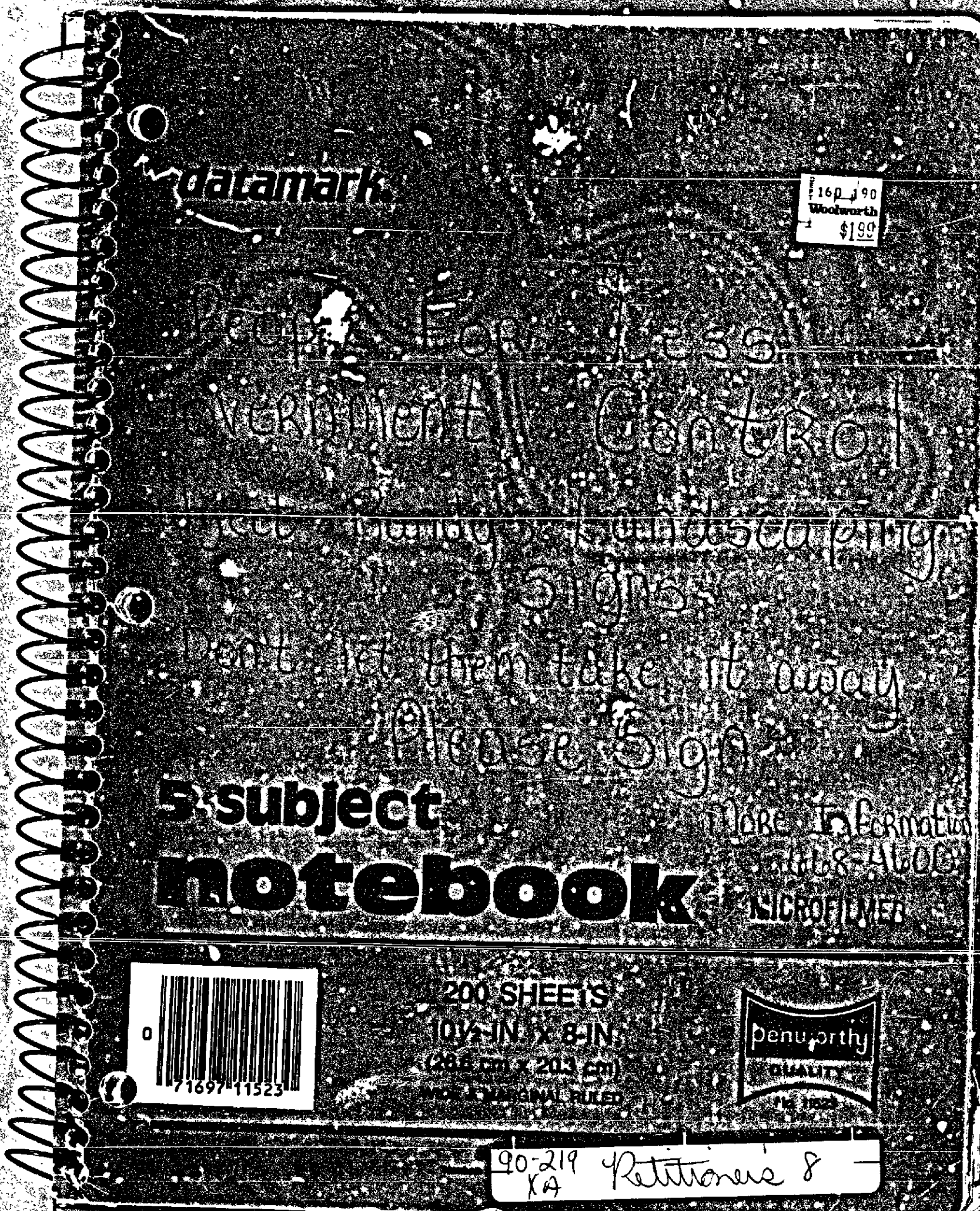
14TH ELEC. DISTRICT ZONED: ML-IM
 SCALE: 1" = 40' PROPERTY 875 .5 ACS.
 L/F 905/54 2.72 ACRES

MICROFILMED 285 90-219-XA
J. P. [Signature]



AMERICAN ENGINEERING & LAND DEVELOPMENT INC.
 9305 FURROW AVENUE
 ELLICOTT CITY, MD 21043
 301-461-0837

26
 26
 2/2
 8/21/12 = [Signature]



BALTIMORE COUNTY, MARYLAND
 CITATION FOR CIVIL ZONING VIOLATION
 111 W. CHESAPEAKE AVENUE
 TOWSON, MARYLAND 21204

NAME OF PERSON(S) CHARGED: RANDALL E. MCMONIGLE
 CURRENT ADDRESS IN FULL: 7620 LILLIAN HOLT DRIVE, BALTIMORE, MD 21237
 OWNER (S) OR OCCUPANT (S) RELATED CITATIONS: 89-0248, C AND D

IT IS FORMALLY CHARGED BY THE ZONING COMMISSIONER OF BALTIMORE COUNTY THAT THE ABOVE NAMED PERSON(S) DID VIOLATE THE PROVISIONS OF THE BALTIMORE COUNTY ZONING REGULATIONS AS FOLLOWS:

SECTION NUMBER(S) VIOLATED: 101 "SIGN, BUSINESS", "CONTRACTOR'S EQUIPMENT STORAGE YARD", "TRAILER"; 102.1; 251; 413.6D; 1.415.2B(1); 415.4A; 500.4; 500.9

NATURE OF VIOLATION: USE ? PROPERTY ZONED R.L. TO COMMIT THE FOLLOWING:
 1. ERECTION OF BUSINESS SIGN IN EXCESS OF THE PERMITTED 1 FOR EACH VEHICULAR ACCESS STREET, 2. ERECTION OF A BUSINESS SIGN MORE THAN 6 FT. ABOVE GRADE LEVEL, 3. OPERATION OF A CONTRACTOR'S EQUIPMENT STORAGE YARD WITHOUT A VALID USE PERMIT, 4. FAILURE TO SUBMIT A REVISED SITE PLAN SHOWING CHANGES IN USE 5. USE OF A TRAILER AS A SMY OFFICE WITHOUT EVIDENCE OF AN ESTABLISHED OCCUPANCY PERMIT.

LOCATION AND DATE(S) OF VIOLATION: 7620 LILLIAN HOLT DRIVE 4/26/88 AND 7/7/88

TO RESPOND TO THE ABOVE CHARGE(S) LOADED AGAINST YOU, YOU MUST CHOOSE ONE OF THE OPTIONS BELOW:
 1) YOU MAY PAY A FINE OF \$2,000.00 (\$1,000.00 FOR EACH ADDITIONAL DAY) BY CHECK OR MONEY ORDER PAYABLE TO THE DIRECTOR OF FINANCE, BALTIMORE COUNTY, MARYLAND, BY RETURNING A COPY OF THIS FORM ALONG WITH PAYMENT TO: DIRECTOR OF FINANCE, 1ST FLOOR, COURT HOUSE, TOWSON, MD 21204. THE PENALTY MUST BE PAID ON OR BEFORE THE 17TH DAY OF AUGUST, 1988.
 2) YOU MAY ELECT TO STAND TRIAL IN THE DISTRICT COURT OF MARYLAND. TO DO THIS, YOU MUST NOTIFY THE BALTIMORE COUNTY ZONING COMMISSIONER BY FILING IN THE ATTACHED PORTION OF THIS CITATION AND RETURNING IT TO THE ZONING COMMISSIONER'S OFFICE AT LEAST FIVE (5) DAYS BEFORE THE PAYMENT DATE AS SET FORTH IN THE FINE PAYMENT SECTION ABOVE. THE DISTRICT COURT WILL NOTIFY YOU OF THE DATE AND TIME OF TRIAL.

IF YOU FAIL TO PAY THE FINE, OR REQUEST A TRIAL BY THE RESPECTIVE DEADLINES, YOU WILL RECEIVE A FORMAL NOTICE OF VIOLATION AFTER WHICH YOU WILL HAVE FIFTEEN (15) DAYS TO PAY THE ORIGINAL FINE. AFTER THAT DATE, THE FINE WILL BE \$4,000.00 (\$2,000.00 FOR EACH ADDITIONAL DAY). IF NOT PAID WITHIN THIRTY-FIVE (35) DAYS FROM THE DATE OF THE FORMAL NOTICE OF VIOLATION, THE DISTRICT COURT MAY SCHEDULE THE CASE FOR TRIAL. IF YOU FAIL TO APPEAR AT THE TRIAL, A BENCH WARRANT WILL BE ISSUED FOR YOUR ARREST.

I DO SOLEMNLY AFFIRM THAT THE CONTENTS STATED ABOVE ARE CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

7-28-88 *Jeffrey Perlow*
 DATE OFFICE OF PLANNING & ZONING REPRESENTATIVE

BASED ON THE STATEMENT OF JEFFREY PERLOW, THIS CITATION IS HEREBY ISSUED THIS 28TH DAY OF JULY, 1988.

M. H. Rasmussen
 DEPUTY ZONING COMMISSIONER

ACKNOWLEDGMENT
 I ACKNOWLEDGE RECEIPT OF A COPY OF THIS CITATION AND HEREBY PROMISE TO PAY THE FINE OR REQUEST A TRIAL DATE AS REQUIRED BY LAW. I UNDERSTAND THAT THE ACCEPTANCE OF THIS CITATION IS NOT AN ADMISSION OF GUILT.

40-219 VA Peoples Council 2a

BALTIMORE COUNTY, MARYLAND
 CITATION NO. 89-0248

NOTICE OF INTENTION TO STAND TRIAL
 CITATION NO. 89-0248
 8/18/88

PERSON TO: ZONING OFFICE
 111 W. CHESAPEAKE AVENUE
 TOWSON, MARYLAND 21204

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:
 I HEREBY ELECT TO STAND TRIAL IN THE DISTRICT COURT OF MARYLAND FOR THE VIOLATION(S) CHARGED ON THE ATTACHED CITATION.

DATE: 8-9-88 SIGNATURE: *Jeffrey Perlow*
 ADDRESS: 7620 LILLIAN HOLT DR.
 Bal. Md 21237

40-219 VA Peoples Council 3b

Baltimore County
 Department of Permits & Licenses
 Towson, Maryland 21204
 494-3610

Ted Zaleski, Jr.
 Director

September 19, 1988

Mr. Randall E. McMonigle
 1105 Justa Lane
 Cockeysville, Maryland 21030

Dennis F. Rasmussen
 County Executive

Re: Sign Permits
 061-88/062-88/1667-88
 7620 Lillian Holt Drive

Dear Mr. McMonigle:

This is to inform you that at the request of the Zoning Office, Sign permits #061-88, 062-88 and 1667-88 have been suspended. No work is to proceed under this permit.

If you have any questions, please contact Mr. John Lewis at 494-3391.

Very truly yours,
 John R. Reisinger, P.E.
 Buildings Engineer

JRR/nmg
 cc: John Lewis
 correspondence
 Rick Wisnom

40-219 VA Petitioner 8

County Board of Appeals of Baltimore County
 COUNTY OFFICE BUILDING, ROOM 315
 111 W. CHESAPEAKE AVENUE
 TOWSON, MARYLAND 21204
 (301) 887-3180

February 5, 1990

Benjamin Bronstein, Esquire
 29 W. Susquehanna Avenue, Suite 205
 Towson, Maryland 21204

Re: Case No. 90-17-SPHXA
 Perry Hall Mini-Storage Co.

Dear Mr. Bronstein:

Enclosed please find a copy of the final opinion and order of this date by the County Board of Appeals in the subject matter.

Sincerely,
Linda Lee M. Kuszman
 Linda Lee M. Kuszman
 Legal Secretary

Enclosure
 cc: Theodore Julio
 Paul T. Muddiman
 Robert F. Bradley
 Mr. and Mrs. Richard D'Ascenzo
 Catherine C. Warfield
 People's Counsel for Baltimore County
 P. David Fields
 Pat Keller
 J. Robert Haines
 Ann M. Nastarowicz
 James E. Dyer
 W. Carl Richards, Jr.
 Docket Clerk - Zoning
 Arnold Jablon, County Attorney

40-219 VA Peoples Council 2

Baltimore County
 Zoning Commissioner
 Office of Planning & Zoning
 Towson, Maryland 21204
 (301) 887-3353

J. Robert Haines
 Zoning Commissioner

September 12, 1989

Benjamin Bronstein, Esquire
 29 W. Susquehanna Avenue, Suite 205
 Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND ZONING VARIANCE
 End of Private Road, 380' +/- SE of the end of Fitch Lane
 (7750 Rossville Boulevard)
 14th Election District - 6th Councilmanic District
 Perry Hall Mini-Storage Company, Inc. - Petitioners
 Case No. 90-17-SPHXA

Dear Mr. Bronstein:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing, Special Exception and Zoning Variance have been granted in part and denied in part in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,
J. Robert Haines
 J. ROBERT HAINES
 Zoning Commissioner
 for Baltimore County

JRH:bjs
 cc: Mr. & Mrs. Richard D'Ascenzo (who is the subject of this case)
 7605 Fitch Lane, Baltimore, Md. 21236
 People's Counsel
 File
 Ms. Catherine C. Warfield
 Department of Public Works

40-219 VA Peoples Council 3a

UNREPORTED
 IN THE COURT OF SPECIAL APPEALS
 OF MARYLAND
 No. 1575
 September Term, 1988

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

v.
 MARTIN'S, INC.

Garryt Bloom
 Fischer, JJ

Per Curiam

Filed: August 15, 1989

40-219 VA Peoples Council 4



County Board of Appeals of Baltimore County
 Room 200 Court House
 Towson, Md., 21284
 (301) 494-3180
 March 26, 1987



Phyllis C. Friedman
 People's Counsel for Baltimore County
 Rm. 223, Court House
 Towson, Md. 21284

Re: Case No. 87-110-A
 S. S. E. Associates Partnership

Dear Mrs. Friedman:

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

Very truly yours,

June Holzen
 June Holzen, Secretary

Encl.
 cc: John B. Howard, Esq.
 Leroy W. Merritt
 Norman E. Gerber
 James Roswell
 Arnold Jablon
 Jean Jung
 James E. Dyer
 Margaret duBots

90-219
 XA People's Counsel 8

IN THE MATTER OF THE APPLICATION OF CARPENTER REALTY CORP. FOR VARIANCE FROM §413.6.D.2 AND §4.3.6.D.1 OF THE BCZ S/S OF EDMONDSON AVE. 400' W. OF C/L OF SOMERSET ROAD 1st DISTRICT

BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

NO. 85-273-A

OPINION

This case comes before the Board on appeal from the decision of the Zoning Commissioner granting the Petitioner a variance, with restrictions, for a business sign. The request is for a business sign 100 feet in lieu of 6 feet and 400 square feet per face in lieu of 25 square feet, on property located on the south side of Edmondson Avenue 400 feet west of the centerline of Somerset Road, in the First Election District of Baltimore County.

The Board heard testimony from Mr. Edgar Lee Poist, General Manager of the 7-Up Bottling Company for forty-nine years. Mr. Poist stated that the reason for the variance request was that a sign of this magnitude is necessary to aid out of state truckers delivering supplies to the plant. According to his testimony, verbal directions to dispatchers have on occasion been insufficient in helping the truckers locate the facility.

Several residents of the area took the stand to object to the erection of the sign. Their testimony indicated that the plant already has a number of signs clearly denoting the facility and that a sign of such magnitude would, in their opinion, be for the purpose of advertising the bottling

90-219
 XA People's Counsel 9

IN THE MATTER OF THE APPLICATION OF JOSEPH R. HEDICK FOR ZONING VARIANCE ON PROPERTY LOCATED AT THE CORNER OF THE SOUTHWEST SIDE OF I-695 AND NORTHWEST SIDE OF THE B & O RR (3901 WASHINGTON BLVD.) - 13th DISTRICT

BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

CASE NO. 87-35-A

OPINION

This matter was heard by the Board of Appeals of Baltimore County and an Opinion and Order issued on March 3, 1987 whereby the Board ordered that the variance for a sign be granted.

A timely appeal was taken by People's Counsel to the Circuit Court for Baltimore County and after argument and memorandum, the Circuit Court, Hinkel, Judge, reversed this Board as follows:

"Therefore, it is this 7 day of August, 1987, ORDERED that the decision of the County Board of Appeals is reversed and the case is remanded with direction to the Board to deny the Petition for Zoning Variance."

In view of this remand and direction by the Circuit Court, the Petition for Zoning Variance will be denied.

ORDER

For the reasons set forth above, it is this 17th day of September, 1987 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Zoning Variance be and the same is hereby DENIED.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

William P. Hackett
 William P. Hackett, Chairman

Thomas J. Hollinger
 Thomas J. Hollinger

Lucia Phipps
 Lucia Phipps

MICROFILMED

90-219
 XA People's Counsel 10

UNREPORTED IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 1284
 September Term, 1988

ROCK CHURCH OF BALTIMORE, INC.

v.

PEOPLES COUNSEL FOR BALTIMORE COUNTY

Gilbert, C. J.,
 Krawacki,
 Wenner,

JJ.

PER CURIAM

Filed: June 20, 1989



MICROFILMED

90-219
 XA People's Counsel 11

UNREPORTED IN THE COURT OF SPECIAL APPEALS OF MARYLAND
 No. 1368
 September Term, 1987

TRIANGLE SIGN AND SERVICE COMPANY

v.

BALTIMORE COUNTY, MARYLAND

CASE NO. CBA-86-155

Garrity,
 Alpert,
 Bell, Rosalyn B.,
 JJ.

PER CURIAM

Filed: May 20, 1988

90-219
 XA People's Counsel 12

APPLICATION FOR PERMIT
 BALTIMORE COUNTY MARYLAND
 OFFICE OF THE BUILDING ENGINEER
 TOWSON, MARYLAND 21284

BUILDING ADDRESS: 7520 LILLIAN HOLT DR.
 OWNER: RANDALL E. MONROIE
 1105 JUSTA LANE COCKEYSVILLE, MD. 21030

PROJECT: HORTON BUILDING 1185 YORK RD. YORK, PA. 17325 MH1012375

OWNER: PEL-MORR V. FRED L. & LOUIS J. 315 SHIPLE AVE. BALTO MD. 21236
 PT. E/8 SHIPLE AVE. N/E KENWOOD AVE.

A. TYPE OF IMPROVEMENT
 RESIDENTIAL
 NEW BUILDING CONSTRUCTION
 ADDITION
 ALTERATION
 REPAIR
 REPAIRS WITH NO NEW MATERIALS
 MAINTENANCE
 OTHER

C. TYPE OF USE
 RESIDENTIAL
 SINGLE-FAMILY RESIDENCE
 MULTIFAMILY RESIDENCE (APARTMENTS)
 INDUSTRIAL STORAGE BUILDING
 STORAGE GARAGE
 STORAGE GARAGE WITH MECHANICAL EQUIPMENT
 STORAGE GARAGE WITH MECHANICAL EQUIPMENT AND MECHANICAL EQUIPMENT

B. OWNERSHIP
 INDIVIDUALLY OWNED
 PARTIALLY OWNED
 COMMONLY OWNED
 TRUST
 OTHER

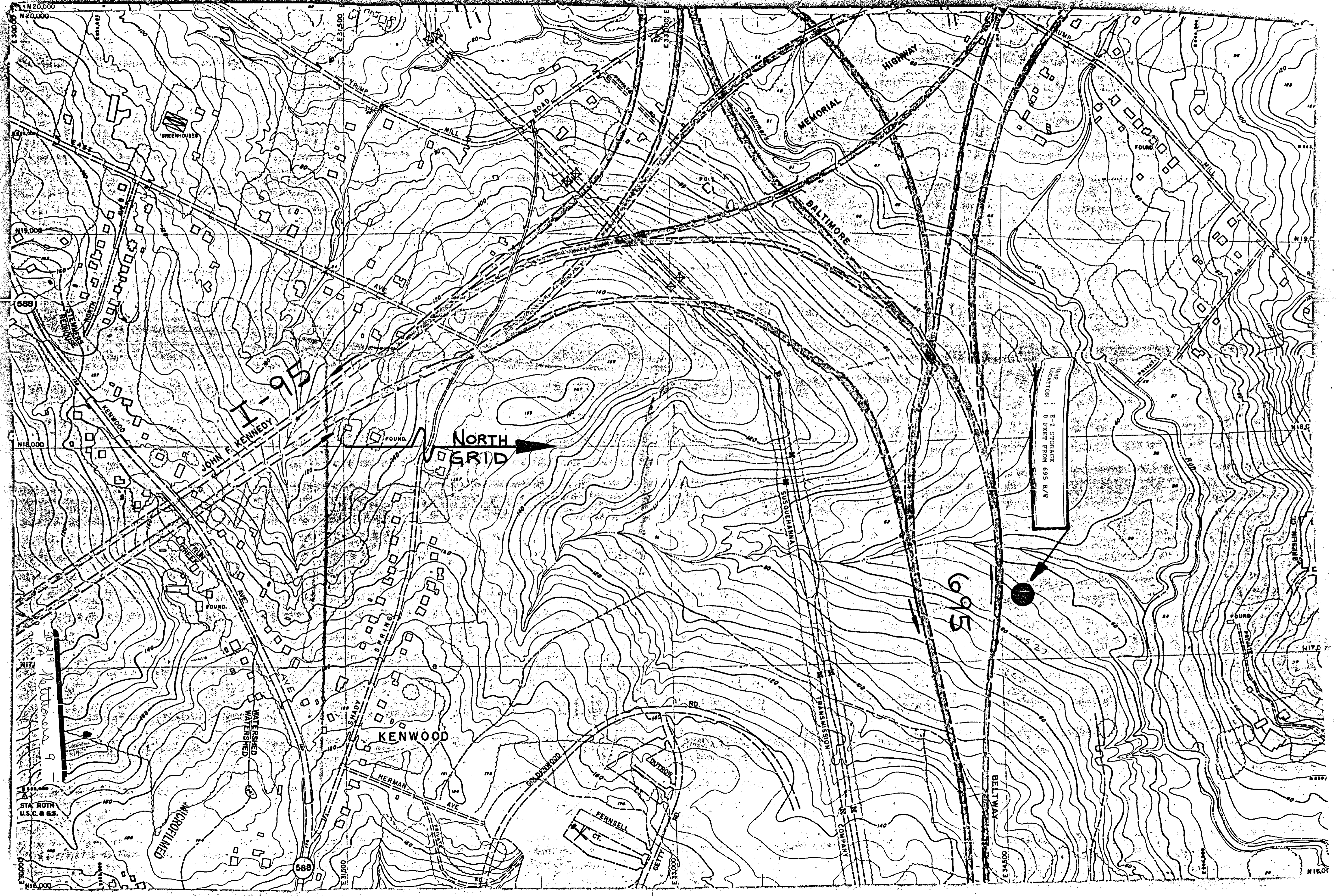
D. TYPE OF CONSTRUCTION
 WOOD FRAME
 CONCRETE
 BRICK
 OTHER

E. RESIDENTIAL ONLY
 SINGLE-FAMILY UNITS
 MULTIFAMILY UNITS
 MULTIFAMILY UNITS HAVE
 STAFFING OR SERVICE BUILDINGS

F. DIMENSIONS - PL. G. RESTROOM NEW MEASUREMENTS

PERMIT TO: RANDOLPH LANDSCAPING INC. 5-1-87
 1105 JUSTA LANE COCKEYSVILLE, MD. 21030
 RANDALL E. MONROIE 252-8890
 \$5.00 REV. 17078 5-1-87

90-219
 XA People's Counsel 13



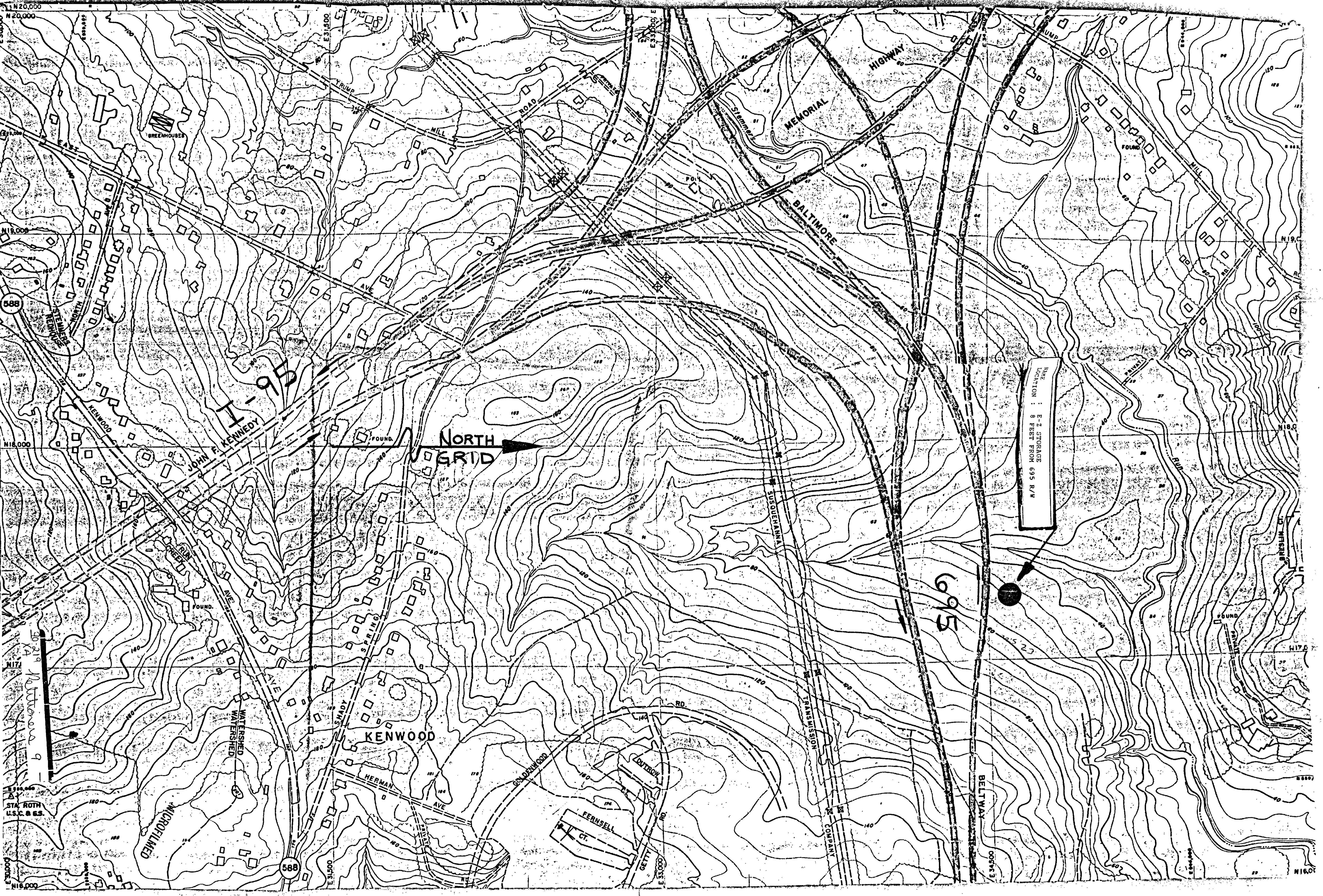
NAME : E-2 STORAGE
LOCATION : 8 FEET FROM 695 R/W

NORTH
GRID

6915

KENWOOD

FERNSELL
CT.



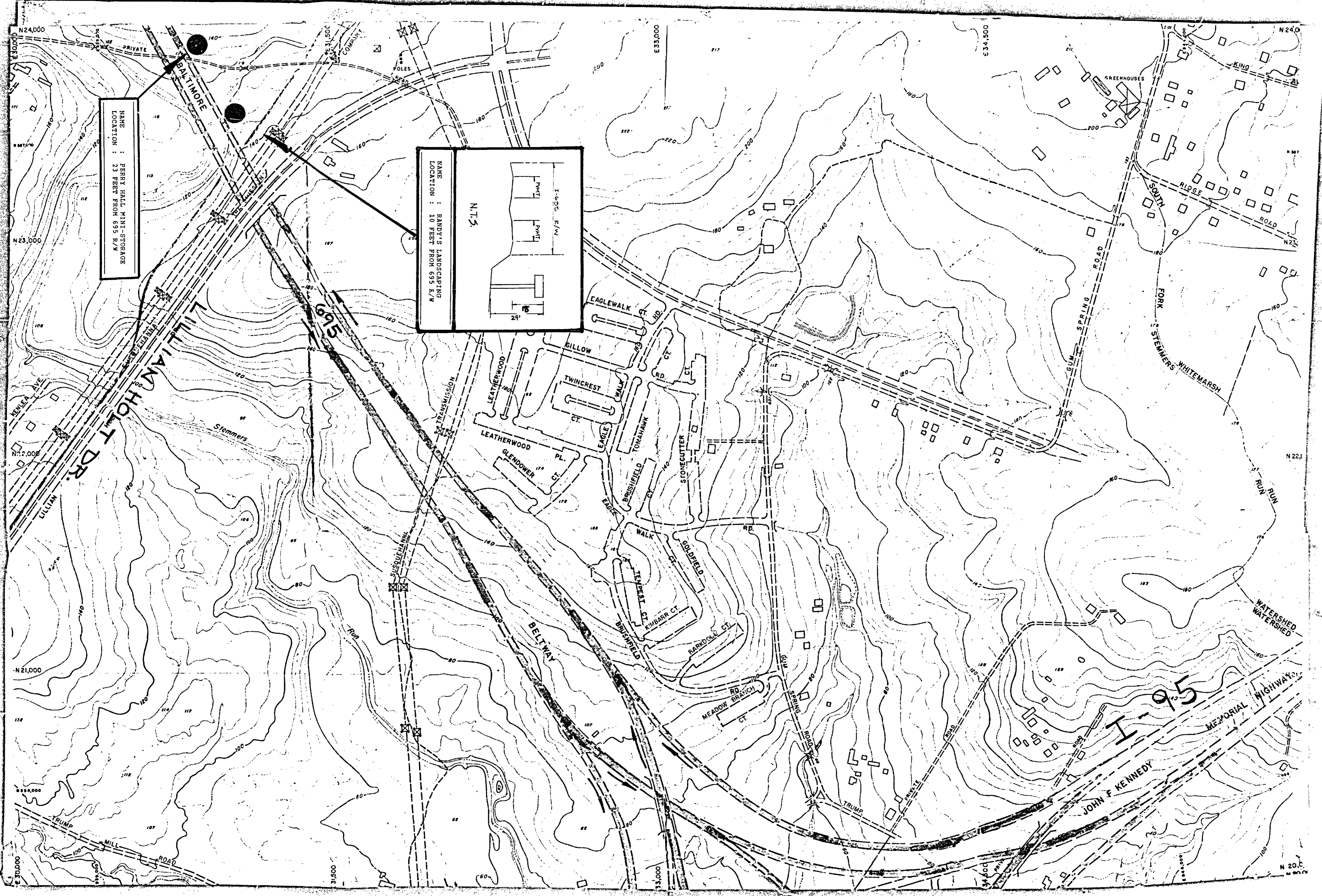
NAME : E-2 STORAGE
LOCATION : 8 FEET FROM 695 R/W

NORTH
GRID

6915

KENWOOD

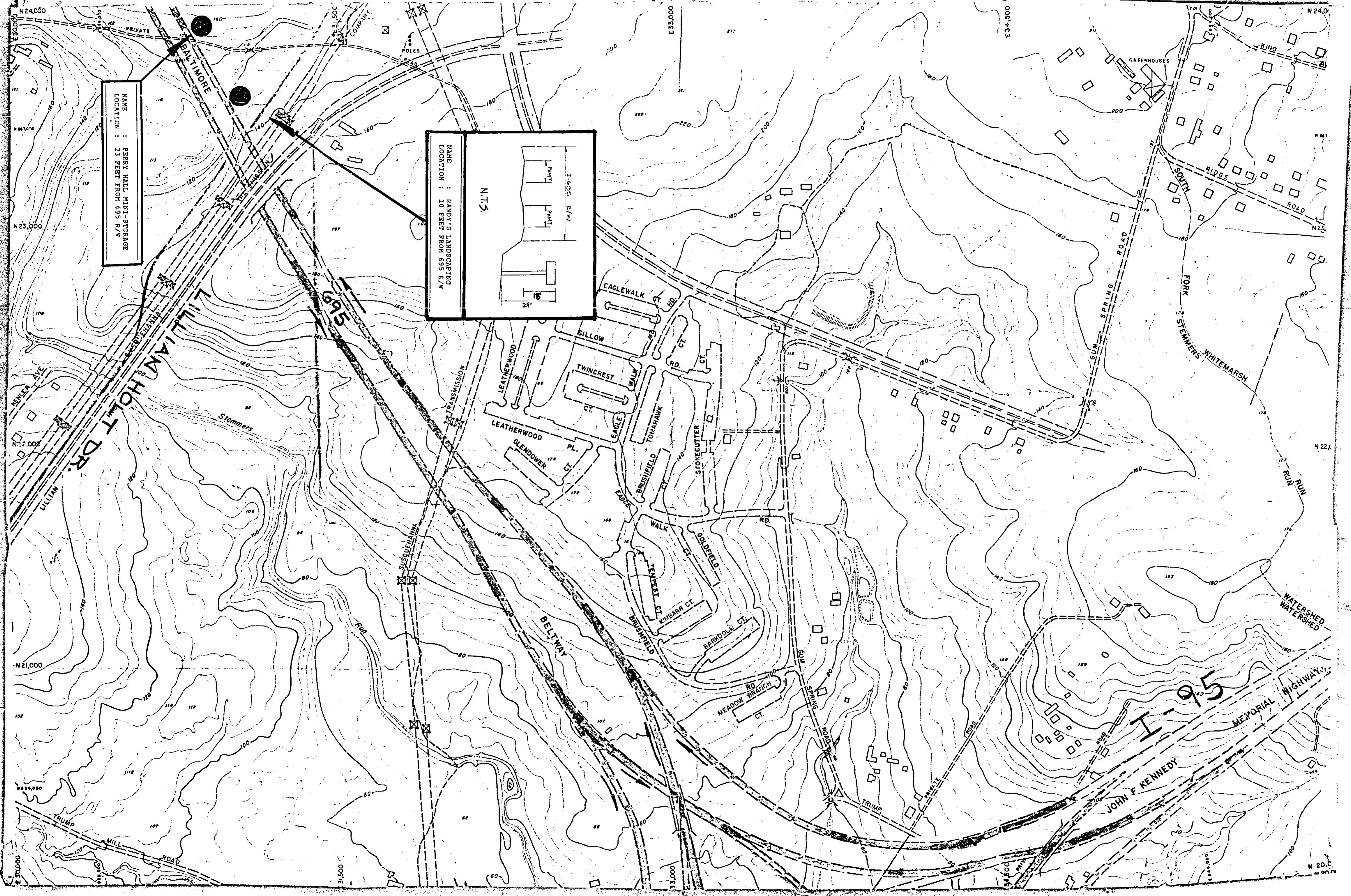
FERNSELL
CT.



NAME : PERRY HALL MINI-STORAGE
LOCATION : 23 FEET FROM 695 R/W

NAME : RANDY'S LANDSCAPING
LOCATION : 10 FEET FROM 695 R/W

N.T.S.



NAME : PERRY HALL MINI-STORAGE
LOCATION : 23 FEET FROM 695 R/W

NAME : RANDY'S LANDSCAPING
LOCATION : 10 FEET FROM 695 R/W

N.T.S.

Baltimore Gas and Electric right of way to the rear portion of the property known as Parcel 1187. This parcel is improved with a metal building. The rear portion of the property is zoned ML-IM. The front portion of the property is zoned D.R.-5.5.

Counsel informed the Board that the front portion of the property was down-zoned in the 1988 Comprehensive Map Process from D.R.-16 to D.R.-5.5. The Board was further informed by Counsel that the Zoning Commissioner in granting the Special Exception for the outdoor advertising sign on the front portion of the property was under the mistaken impression that the property was zoned ML-IM. The only access to the rear parcel where the Petitioner conducts his business is off of Lillian Holt Drive. The rear parcel abuts the Baltimore County Beltway, but has no vehicular access to the Beltway.

Petitioner informed the Board that in January, 1988, he applied for a permit to erect a business sign on the rear parcel which was issued. In March, 1988, he erected a sign. According to his testimony, the sign is 29' above ground level, 18'5" above the grade level of the Beltway, and has an area of 72 sq. ft. In September, 1988, notice was issued by Baltimore County rescinding the permit on the basis that the sign was in violation of zoning ordinances. Photos and a video were offered into evidence depicting the sign and subject site immediately adjacent to the Baltimore Beltway (I-695) which runs along the western boundary of the subject property.

Petitioner stated that the sign was placed in its location alongside the Beltway to advertise the business and to attract customers. He stated that a survey of customers was conducted in the Spring of 1991 and it was determined that 75% of the customers called his business as a result of seeing the sign from the Beltway. In the Petitioner's opinion, the only location for the sign is at its present location because of the topography of the property and that its present height and size were necessary for the sign to be visible by motorists on the Beltway. Petitioner believes that if he were made to move the sign, he would suffer practical difficulty and undue hardship. His business would be impacted adversely and his family and employees would suffer financially.

David C. Woessner, a licensed Professional Engineer, testified on behalf of the Petitioner. He informed the Board that he was familiar with the subject property and that the sign was located in the lowest portion of the property. He stated that if the sign were lowered in height, it would not be visible from the Beltway and that at this location the Beltway was a fill situation when it was constructed. Mr. Woessner also informed the Board that there was no direct access to Petitioner's property from the Beltway.

Petitioner's last witness was Paula Ann Pollay, secretary for Randy's Landscaping. She testified that she conducted the telephone survey and was advised by 75% of the customers calling in that they were attracted to the business by the Beltway sign.

People's Counsel offered testimony in opposition to Petitioner's request. Jeffrey Long, a member of the Office of Planning and Zoning visited the subject site. He informed the Board that there were 2 signs on Lillian Holt Drive and that one of the subject signs on Lillian Holt Drive did not contain any directions or information concerning the Petitioner's business. He characterized it as an "advertising sign". He informed the Board that in his opinion, the Petitioner was conducting a landscaping business at the subject property with equipment being stored. He did not observe any apparent nursery stock at the location. In 1988 under the Comprehensive Map Process, 2 issues were raised concerning this property. The Petitioner requested ML zoning and Councilman Evans requested D.R.-5.5 zoning. The zoning for Parcel 875 was down zoned to D.R.-5.5 from D.R.-16.

On appeal to this Board, Petitioner is requesting Variances and Special Exceptions to legalize the 2 signs which he has erected. Petitioner has not filed a site plan or any scale drawings to assist the Board in determining the exact size, height, area and location of the sign. The Board is relying upon the testimony of the Petitioner and a previously submitted drawing in the Zoning Commissioner's file marked Petitioner's Exhibit No. 2. The testimony of the Petitioner concerning the location, height and area of the 2 signs is lacking as to accuracy and only provides this Board with rough measurements.

The sign request located on Parcel 875 fronting on Lillian Holt Drive must be denied by this Board. Counsel, at the start of

the hearing, informed the Board that the zoning for this parcel is D.R.-5.5 and not ML-IM. This Board has no authority to grant any Variances or Special Exceptions for this sign. The testimony is uncontradicted that the sign is an outdoor advertising sign and as such is not permitted in a DR zone under the Baltimore County Zoning Regulations (BCZR).

With regard to the second sign located on Parcel 1187 adjacent to the Beltway, the Petitioner has requested Variances from sections 413.6.b.1 and 413.6.b.2. Those sections read as follows:

- One stationary freestanding business sign is permitted for each street to which a lot has direct vehicular access, provided that:
 1. Its surface area does not exceed 25 square feet per face; and
 2. No part of the sign is more than six (6) feet above the grade level of the street upon which it faces or six (6) feet above the grade level of the lot on which it is erected, whichever measurement permits the greater elevation of the sign. [Bill No. 7, 1984.] (Emphasis supplied)

Testimony presented before the Board is uncontradicted that the Petitioner's Parcel 1187 upon which the business is located does not have any direct vehicular access to the Beltway.

In reading Section 413.6.b., the Board is of the opinion that the regulation permits a free-standing business sign to face a street when the property has direct vehicular access to that street. In this case there is no direct vehicular access to the street which is the Beltway. The Petitioner obviously reads Section 413.6.b. to permit a business sign for each street for which the lot has direct vehicular access and that the sign does

not have to be placed facing that street. The Board cannot agree with this interpretation of Section 413.6.b.

This Board agrees with the conclusion of law made by the Zoning Commissioner below that Petitioner is requesting a Variance for a sign that he is not entitled to and that the sign was illegally constructed and remains in violation of the BCZR.

Putting aside the issue of the legality of the Beltway sign under Section 413.6.b. and addressing the evidence presented by the Petitioner to support his request for a variance, this Board does not believe that the Petitioner has met the necessary proof required for the granting of a Variance.

Area Variances from zoning regulations are permitted when the application of the zoning regulations would cause practical difficulty or undue hardship to the Petitioner and his property.

The test to be applied in determining whether to grant or deny a Variance is found in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

In reviewing the evidence in this case, the testimony does not support a finding that without the Beltway sign the Petitioner

would be prevented from using his property for a landscaping business. It may be true that without the Beltway sign the Petitioner may experience fewer customers attracted to his business from the Baltimore Beltway resulting in less business and, in turn, less profitability. However, the test is not an economic one to justify granting of a Variance.

ORDER

IT IS THEREFORE this 30th day of August, 1991 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Special Exception from Sections 413.3., 413.3.b. and 413.3.c. to permit an outdoor advertising sign within 50 feet of a controlled access type highway and a 6 foot front yard setback in lieu of the minimum 250 feet and 75 feet, that complies with all other applicable BCZR, be and the same is hereby DENIED; and

IT IS FURTHER ORDERED that the Petition for Zoning Variance from Section 413.6.b.1. and 413.6.b.2. to permit a total surface area of 72 square feet and height of 35 feet in lieu of the maximum 25 square feet and 6 feet be and the same is hereby DENIED; and

IT IS FURTHER ORDERED that the Petitioner shall remove on or before September 30, 1991, all signage affixed to the 2 sign poles indicated on Petitioner's Exhibit No. 1 submitted to the Zoning Commissioner below which is adjacent to the Baltimore Beltway, and shall further remove said sign poles; and

IT IS FURTHER ORDERED that the Petitioner's signage located on Parcel 875 along Lillian Holt Drive does not comply with BCZR and

shall be removed on or before September 30, 1991.

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

Michael B. Saubert
Michael B. Saubert

Lynn B. Moreland
Lynn B. Moreland

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE
7620 Lillian Holt Drive
Baltimore County

Randall E. McMonigle
Petitioner

* IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
* CASE NO. 91CV4763
* 3/195

DEMAND FOR JURY TRIAL

Petitioner requests this Appeal be heard by a jury.

Robert E. Polack
Robert E. Polack

John L. Calhoun
John L. Calhoun
Polack & Calhoun
1200 E. Joppa Rd., Suite E
Baltimore, MD 21204
(301) 371-1618
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of October, 1991, I mailed a copy of the foregoing Demand for Jury Trial, first class mail, postage prepaid, to the County Board of Appeals of Baltimore County, County Office Building, Room 315, 111 W. Chesapeake Ave., Towson, MD 21204, and to People's Counsel, Phyllis C. Friedman, Esquire, Suite 900, 409 Washington Ave., Towson, MD 21204, and to the Baltimore County Zoning Commissioner, Office of Planning & Zoning, Towson, MD 21204.

Robert E. Polack
Robert E. Polack

COUNTY CLERK
91 OCT -7 11:11:32

252 PERMANENT FIN. CORP. v. MONTGOMERY CTY.
(1984 M&Z 239 (1984))

structures" var' from that of the Planning Commission and interested neighbors.

So in that context I think that it is very important to hear, and again, I am characterizing it as an opposing point of view but we are not putting on the gloves and fighting it out because it is the Department's position that both interpretations are reasonable ones. And it is good that this is a de novo type hearing because that is one question that you are going to have to answer.

What is the proper interpretation of those words, and you can see, I do not know whether it is in their Motion to Intervene or in their Motion to Dismiss, the intervenors indicate that they have got a different interpretation and that we misapplied those words. And Mr. Barnhart is here from Park and Planning, I know, and he can state on the record, that Park and Planning feels the same way.

Permanent clearly relied upon the interpretation the County had given to the height limitation in its design of the building. In the initial application for a building permit, Permanent stated the height of the proposed building as "37 + 8." Appellees do not disagree that "37" was a typographical error, and that "35" was intended. Moreover, the measurement of the building as shown on the plans submitted with the application was 43 feet to the top of the fourth floor. We have no doubt that Permanent designed and built its building to a height of 43 feet through the fourth floor in reliance upon the long standing interpretation of the County, and that this interpretation, while subsequently found by the Board of Appeals to be incorrect, was nevertheless reasonable and defensible. Although the issue is somewhat clouded by the fact that the County should not have issued the building permit because of other deficiencies, it is at least clear that this portion of the decision to issue the permit was not the result of oversight by the County, but rather was consistent with its practice. This being the case, and Permanent having expended substantial funds in reliance upon the permit, it

PERMANENT FIN. CORP. v. MONTGOMERY CTY. 253
(1984 M&Z 239 (1984))

would be inequitable to now permit the County to require the removal of the fourth floor.

The Floor Area Ratio

(4) The floor area ratio ("FAR") permitted by the Code for this building is 1.0, meaning that the gross floor area of the building must not exceed the area of the lot upon which it is built. In its application for a building permit, Permanent calculated the gross floor area as 18,700 square feet, which produced an acceptable FAR of .99. This calculation was apparently correct if the area of the penthouse was not included in the computation. In its revised plans submitted six months later, Permanent expanded the area of the first floor. The County now contends that it erroneously failed to include the area of the penthouse when it initially made the computation of gross floor area, and that the inclusion of the penthouse as well as the enlarged portion of the first floor now produces an unacceptable FAR of 1.26. Permanent does not contest the accuracy of the figures, but contends the penthouse need not be included in the computation of gross floor area for purposes of determining the FAR.

Section 59-A-2.1 defines "gross floor area" as follows: The sum of the gross horizontal areas of the several floors of all buildings on the lot, measured from the exterior faces of exterior walls and from the center line of walls separating two buildings. The term gross floor area shall include basements, elevator shafts and stairwells at each story, floor space used for mechanical equipment (with structural headroom of six feet, six inches or more) penthouses, attic space (whether or not a room of six feet, six inches or more), interior balconies and mezzanines. The term "gross floor area" shall not include cellars, outside balconies which do not exceed a projection of six feet beyond the exterior walls of the building, parking or rooftop mechanical structures.

254 PERMANENT FIN. CORP. v. MONTGOMERY CTY.
(1984 M&Z 239 (1984))

We find no ambiguity in this definition, at least as applied to the penthouse that is currently constructed on Permanent's building. While "rooftop mechanical structures" are excluded from the computation, this exclusion obviously does not apply to rooftop mechanical structures enclosed within a penthouse or other enclosure having a structural headroom of six feet, six inches or more. The building exceeds the prescribed FAR, and the County is not estopped to require correction of that deficiency.

The Setback Requirement

(5) Before considering the substantive issues involved in this aspect of the case, we must deal with a threshold procedural question. Appellees contend the administrative appeal was taken only from the initial action of the County in suspending the permit and issuing a stop work order. They point out that this order referred only to violations of the height limitations and the FAR. Appellees acknowledge that later letters from the County to Permanent detailed the alleged setback violations as well, but they note the administrative appeal was taken before those letters were sent. The Board agreed that the question of setbacks was not before it in the administrative appeal, but it did consider Permanent's consolidated request for a variance from required setbacks.

Permanent's appeal was from the action of DEP in issuing a stop work order and suspending the building permit. That action was taken on May 4, 1983, and the appeal was timely filed on June 2, 1983. After the appeal was taken, DEP informed Permanent that it was also relying upon violations of setback requirements. At the initial hearing before the Board on June 22, 1983, the Board discussed with the parties the impact of § 59-C-3.1(a) which mandated a particular procedure when an administrative appeal challenged a calculation of building height or FAR. Because this section required that such appeals be considered according to the provisions governing appeals for a variance rather than according to those governing an administrative

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appeal, and because as a part of that procedure the Board was required to request technical advice from the Planning Commission, the parties and the Board were unsure of how best to proceed. It was ultimately agreed that the County would give formal notice to Permanent of its intent to include alleged setback violations as a reason for its previous action, and that Permanent would file a separate application for variances which would then be consolidated with the administrative appeal. Appellees contend that it was also understood Permanent would file an additional administrative appeal from the notice of inclusion of setback violations, but this is not evident from the record.

Whatever may have been contemplated by the parties, the DEP did issue a new stop work order containing reasons for its action. Rather, it wrote Permanent on June 23 advising of violation of building setbacks, and concluded by stating: These setback violations serve as a basis for this Department's prior suspension of the above referenced building permit. The "stop work order" was previously issued and continues to remain in effect as a necessary consequence of the suspension of the building permit. The practical effect of the procedure employed by the parties was to permit the County to amend the reasons assigned for the actions taken on May 4. Permanent was not required to file a new administrative appeal in order to have the Board consider the alleged setback violations in connection with the stop work order and suspension of permit.

Ordinarily, we would direct that the case be remanded to the Board for initial consideration of the issue by that administrative agency. However, because the question of setbacks was before the Board in connection with Permanent's appeal for a variance, and was fully considered by the Board, we will consider it.

The substantive question is not complicated, and it must be resolved against Permanent. Section 59-C-6.2(b)(2)

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requires a one foot setback from any right-of-way for every six feet of height by which a building exceeds 30 feet. The building as currently constructed is 53 feet high and requires setbacks from the right-of-way lines of three feet, ten inches. As currently constructed, a portion of the cellar wall and portions of the third and fourth floors violate these setback requirements along Wayne Avenue and Cedar Street. Elimination of the penthouse in the computation of the height of the building would have assisted Permanent with its setback problems, but for reasons previously stated the height of the building as now constructed must be computed to the roof of the penthouse.

Laches

(6) Permanent also attempts to set up the doctrine of laches as a bar to the enforcement of the code by the County. What we said about laches in *Lipsitz v. Parr*, supra, 164 Md. at 226-27, 164 A. 743, is apposite:

Laches is an equitable defense. It is an inexcusable delay, without necessary reference to duration, in the assertion of a right. . . . Laches and estoppel possess elements in common, and difficulty is encountered in clearly stating the distinction, particularly as the courts have studiously avoided a general or inflexible definition of laches, in order to be free to apply its principles to the particular circumstances of the instant case. . . .

Unless mounting of the statutory period of limitations, whose application is not denied upon equitable considerations, mere delay is not sufficient to constitute laches, if the delay has not worked a disadvantage to another. The record discloses that the County acted promptly when the violations were brought to its attention by neighboring property owners. The delay alleged is the eight and one-half months during which the building was under construction. The consequences of that delay form an integral part of our earlier consideration of the doctrine of equitable estoppel, and we see no separate ground for the application of laches in this case.

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Denial of Variances

After finding Permanent in violation of height, setback and FAR requirements, the Board denied Permanent's request for a variance from each of those requirements. Acknowledging that the county employees should have detected the errors in the plans, the Board found that Permanent was also the author of its own misfortune in failing to submit properly prepared plans. The Board also found that the code criterion for the grant of a variance had not been met. Section 59-C-3.1(a) provides that the Board of Appeals may grant petitions for variances on proof by a preponderance of the evidence that:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property;
- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions;
- (c) . . .
- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties. . . .

The Board was not clearly in error when it concluded that Permanent had failed to prove those matters legislatively determined to be appropriate conditions for the issuance of a variance.

Conclusion

For the reasons we have outlined, the County is estopped to prevent construction of this building to a height of 43 feet. If the penthouse is modified to fit within the exemptions from height controls, Permanent will have satisfied the height restrictions of the ordinance. However, because the building currently violates height, setback and FAR

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(1984 M&Z 239 (1984))

restrictions, the building permit was properly suspended and the stop work order properly issued.

JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED. COSTS TO BE PAID ONE-HALF BY APPELLANT AND ONE-HALF BY MONTGOMERY COUNTY, MARYLAND.



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
1111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21284
(301) 887-3180

August 30, 1991

John L. Calhoun, Esquire
Polack & Calhoun
605 Baltimore Avenue
Towson, Maryland 21284

Re: Cr e No. 90-219-XA - Randall E. McMonigle (Randy's Landscaping)

Dear Mr. Calhoun:

Enclosed is a copy of the Final Opinion and Order issued this date by the County Board of Appeals in the subject matter.

Sincerely,

Linda Lee M. Kuszmaul
Linda Lee M. Kuszmaul
Legal Secretary

Enclosure

cc: Robert Polack, Esquire
Mr. Randall E. McMonigle
People's Counsel for Baltimore County
P. David Fields
Pat Keller
J. Robert Haines
Timothy M. Kotroco
James E. Dyer
W. Carl Richard, Jr.
Docket Clerk - Zoning
Arnold Jablon - Director of Zoning Administration

IN THE MATTER OF THE APPLICATION OF RANDALL E. MCMONIGLE (RANDY'S LANDSCAPING) FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHWEST SIDE OF LILLIAN HOLT DRIVE, 1,100' SOUTHWEST OF CENTERLINE OF ROSSVILLE BLVD. (7620 LILLIAN HOLT DRIVE) 14TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT

RANDALL E. MCMONIGLE, PLAINTIFF
ZONING CASE NO. 90-219-XA

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

FOR CG Doc. No. 3
Folio No. 195
File No. 91-CV-4763

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Michael B. Sauer and Lynn B. Moreland, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Office of the Zoning Commissioner and the Board of Appeals of Baltimore County:

- September 22, 1989 Petition for Special Exception and Variance to permit an outdoor advertising sign within 50 feet of a controlled access-type highway and a 6 foot front yard setback in lieu of the minimum 250 feet and 75 feet, respectively filed by Randall E. McMonigle.
- November 20 Certificate of Posting of property.
- November 23 Publication in newspapers.
- November 27 Comments of Baltimore County Zoning Plans Advisory Committee.
- December 8 Hearing held on Petition by the Zoning Commissioner.

Randall E. McMonigle (Randy's Landscaping)
Case No. 90-219-XA, File No. 91-CV-4763

- February 20, 1990 Order of the Zoning Commissioner GRANTING Special Exception with restrictions and DENYING Variance.
- March 15 Notice of Appeal received from Marc N. Peitersen, Esquire on behalf of Mr. Monigle, Petitioner/Appellant.
- August 7, 1991 Hearing before the Board of Appeals.
- August 14 Petitioner's Argument filed by Robert E. Polack, Esquire on behalf of Mr. McMonigle.
- August 14 People's Counsel's Memorandum in Lieu of Closing Argument filed.
- August 30 Opinion and Order of the Board DENYING Petitions for Special Exception and Variance and further ordering all signage affixed to the 2 sign poles indicated on Petitioner's Exhibit No. 1 and all signage located on Parcel 875 Lillian Holt Drive to be removed no later than September 30, 1991.
- September 27 Order for Appeal filed in the Circuit Court for Baltimore County by John L. Calhoun, Esquire and Robert Polack, Esquire on behalf of Randall E. McMonigle, Plaintiff.
- October 7 Petition to accompany appeal filed in the Circuit Court for Baltimore County by Messrs. Calhoun and Polack.
- September 30 Certificate of Notice sent to interested parties.
- October 28 Transcript of testimony filed.

- Petitioner's Exhibit No. 1 -Permit for sign, issued 4/14/87 by Epic Sign
- 2 -Permit for sign, issued 1/12/88
- 3 -Permit for sign, issued 1/19/88
- 4 -Quotation from Roberts Signs 2/11/88
- 5 -Baltimore County Comprehensive Zoning Map 1988 Sec. 4B & 4C
- 6 -Photographs A-Three signs at site B "
- 7 -Video tape
- 8 -Spiral notebook "People For Less Government Control"

IN THE MATTER OF THE APPLICATION OF RANDALL E. MCMONIGLE (RANDY'S LANDSCAPING) FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHWEST SIDE OF LILLIAN HOLT DRIVE, 1,100' SOUTHWEST OF CENTERLINE OF ROSSVILLE BLVD. (7620 LILLIAN HOLT DRIVE) 14TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

CG Doc. No. 3

Folio No. 195

File No. 91-CV-4763

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Michael B. Sauer and Lynn B. Moreland, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John L. Calhoun, Esquire and Robert E. Polack, Esquire, Polack & Calhoun, 1200 E. Joppa Road, Suite E, Towson, Maryland 21204, Counsel for Plaintiff; Mr. Randall E. McMonigle, 7620 Lillian Holt Drive, Baltimore, Maryland 21237, Plaintiff; People's Counsel for Baltimore County, Room 304, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Linda Lee M. Kuzmaul
LindaLee M. Kuzmaul, Legal Secretary,
County Board of Appeals, Room 315, County
Office Building, 111 W. Chesapeake Ave.,
Towson, Maryland 21204 (301) 887-3180

Randall E. McMonigle (Randy's Landscaping)
Case No. 90-219-XA, File No. 91-CV-4763

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to John L. Calhoun, Esquire and Robert E. Polack Esquire, Polack & Calhoun, 1200 E. Joppa Road, Suite E, Towson, Maryland 21204, Counsel for Plaintiff; Mr. Randall E. McMonigle, 7620 Lillian Holt Drive, Baltimore, Maryland 21237, Plaintiff; People's Counsel for Baltimore County, Room 304, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204 on this 30th day of September, 1991.

Linda Lee M. Kuzmaul
LindaLee M. Kuzmaul, Legal Secretary,
County Board of Appeals, Room 315, County
Office Building, 111 W. Chesapeake Ave.,
Towson, Maryland 21204 (301) 887-3180



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

September 30, 1991

Phyllis C. Friedman, Esquire
People's Counsel for Baltimore County
Room 304, County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 90-219-XA (Randall E. McMonigle/Randy's Landscaping)

Dear Ms. Friedman:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda Lee M. Kuzmaul
LindaLee M. Kuzmaul
Legal Secretary

Enclosure

cc: P. David Fields
Pat Keller
Lawrence E. Schmidt
Timothy H. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon - Director
Zoning Administration



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

September 30, 1991

John L. Calhoun, Esquire
Polack & Calhoun
1200 E. Joppa Road
Suite E
Towson, Maryland 21204

Re: Case No. 90-219-XA (Randall E. McMonigle/Randy's Landscaping)

Dear Mr. Calhoun:

In accordance with Rule B-7(a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the appeal which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within thirty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit same to the Circuit Court not later than thirty days from the date of any petition you file in Court, in accordance with Rule B-7(a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Linda Lee M. Kuzmaul
LindaLee M. Kuzmaul
Legal Secretary

Enclosure

cc: Robert Polack, Esquire
Mr. Randall E. McMonigle

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE 7620 Lillian Holt Drive Baltimore County, Maryland

Randall E. McMonigle, Property Owner

Petitioner

91-CV-4763
31195

BALTIMORE COUNTY

CASE NO. (Baltimore County Board of Appeals # 90-219-XA)

ORDER FOR APPEAL

To the Clerk:

Please docket an Order of Appeal by the Petitioner from the decision of the Baltimore County Board of Appeals in Case No. 90-219-XA dated August 30, 1991.

John L. Calhoun
John L. Calhoun

Robert E. Polack
1200 E. Joppa Road, Suite E
Baltimore, MD 21204
(301) 321-1818
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of September, 1991, I mailed a copy of the foregoing Order for Appeal, first class mail, postage prepaid to the County Board of Appeals of Baltimore County, County Office Building, Room 315, 111 W. Chesapeake Ave., Towson, MD 21204, and to Peoples' Counsel, Phyllis C. Friedman, Esquire, Suite 900, 409 Washington Ave., Towson, MD 21204, and to the Baltimore County Zoning Commissioner, Office of Planning & Zoning, Towson, MD 21204.

Robert E. Polack
Robert E. Polack

IN THE MATTER OF THE APPLICATION OF RANDALL E. MCMONIGLE (RANDY'S LANDSCAPING) FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE NORTH WEST SIDE LILLIAN HOLT DR., 1100' SOUTHWEST OF CENTERLINE OF ROSSVILLE BLVD. (7620 LILLIAN HOLT DRIVE) 14TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

CASE NO. 90-219-XA

OPINION

This case comes before the Board on appeal from the decision of the Zoning Commissioner dated February 20, 1990, wherein Petitioner's request for a Special Exception to permit an outdoor advertising sign was granted and Petitioner's request for a Variance to permit a free-standing business sign facing the Baltimore Beltway was denied.

The Petitioner appeared and testified before the Board represented by Counsel, Robert E. Polack, Esquire. Phyllis C. Friedman, Esquire, People's Counsel for Baltimore County, participated in the proceedings in opposition to the granting of any Special Exceptions or Variances for either of the two requested signs.

The Petitioner testified that he is the owner/operator of his business known as "Randy's Landscaping". Approximately 4 or 5 years ago, he moved his business from the Cockeysville area to its present location at 7620 Lillian Holt Drive. The subject property is approximately 2.72 acres in size and is triangularly shaped, consisting of 2 parcels separated by a Baltimore Gas and Electric right of way. The front parcel known as Parcel 875 fronts on Lillian Holt Drive with an access driveway which leads through the

Randall E. McMonigle (Randy's Landscaping)
Case No. 90-219-XA

Baltimore Gas and Electric right of way to the rear portion of the property known as Parcel 1187. This parcel is improved with a metal building. The rear portion of the property is zoned ML-IM. The front portion of the property is zoned D.R.-5.5.

Counsel informed the Board that the front portion of the property was down-zoned in the 1988 Comprehensive Map Process from D.R.-16 to D.R.-5.5. The Board was further informed by Counsel that the Zoning Commissioner in granting the Special Exception for the outdoor advertising sign on the front portion of the property was under the mistaken impression that the property was zoned ML-IM. The only access to the rear parcel where the Petitioner conducts his business is off of Lillian Holt Drive. The rear parcel abuts the Baltimore County Beltway, but has no vehicular access to the Beltway.

Petitioner informed the Board that in January, 1988, he applied for a permit to erect a business sign on the rear parcel which was issued. In March, 1988, he erected a sign. According to his testimony, the sign is 29' above ground level, 18'5" above the grade level of the Beltway, and has an area of 72 sq. ft. In September, 1988, notice was issued by Baltimore County rescinding the permit on the basis that the sign was in violation of zoning ordinances. Photos and a video were offered into evidence depicting the sign and subject site immediately adjacent to the Baltimore Beltway (I-695) which runs along the western boundary of the subject property.

Randall E. McMonigle (Randy's Landscaping)
Case No. 90-219-XA

Petitioner stated that the sign was placed in its location alongside the Beltway to advertise the business and to attract customers. He stated that a survey of customers was conducted in the Spring of 1991 and it was determined that 75% of the customers called his business as a result of seeing the sign from the Beltway. In the Petitioner's opinion, the only location for the sign is at its present location because of the topography of the property and that its present height and size were necessary for the sign to be visible by motorists on the Beltway. Petitioner believes that if he were made to move the sign, he would suffer practical difficulty and undue hardship. His business would be impacted adversely and his family and employees would suffer financially.

David C. Woessner, a licensed Professional Engineer, testified on behalf of the Petitioner. He informed the Board that he was familiar with the subject property and that the sign was located in the lowest portion of the property. He stated that if the sign were lowered in height, it would not be visible from the Beltway and that at this location the Beltway was a fill situation when it was constructed. Mr. Woessner also informed the Board that there was no direct access to Petitioner's property from the Beltway.

Petitioner's last witness was Paula Ann Pollay, secretary for Randy's Landscaping. She testified that she conducted the telephone survey and was advised by 75% of the customers calling in that they were attracted to the business by the Beltway sign.

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People's Counsel offered testimony in opposition to Petitioner's request. Jeffrey Long, a member of the Office of Planning and Zoning visited the subject site. He informed the Board that there were 2 signs on Lillian Holt Drive and that one of the subject signs on Lillian Holt Drive did not contain any directions or information concerning the Petitioner's business. He characterized it as an "advertising sign". He informed the Board that in his opinion, the Petitioner was conducting a landscaping business at the subject property with equipment being stored. He did not observe any apparent nursery stock at the location. In 1988 under the Comprehensive Map Process, 2 issues were raised concerning this property. The Petitioner requested ML zoning and Councilman Evans requested D.R.-5.5 zoning. The zoning for Parcel 875 was down zoned to D.R.-5.5 from D.R.-16.

On appeal to this Board, Petitioner is requesting Variances and Special Exceptions to legalize the 2 signs which he has erected. Petitioner has not filed a site plan or any scale drawings to assist the Board in determining the exact size, height, area and location of the sign. The Board is relying upon the testimony of the Petitioner and a previously submitted drawing in the Zoning Commissioner's file marked Petitioner's Exhibit No. 2. The testimony of the Petitioner concerning the location, height and area of the 2 signs is lacking as to accuracy and only provides this Board with rough measurements.

The sign request located on Parcel 875 fronting on Lillian Holt Drive must be denied by this Board. Counsel, at the start of

the hearing, informed the Board that the zoning for this parcel is D.R.-5.5 and not ML-IM. This Board has no authority to grant any Variances or Special Exceptions for this sign. The testimony is uncontradicted that the sign is an outdoor advertising sign and as such is not permitted in a DR zone under the Baltimore County Zoning Regulations (BCZR).

With regard to the second sign located on Parcel 1187 adjacent to the Beltway, the Petitioner has requested Variances from Sections 413.6.b.1 and 413.6.b.2. Those sections read as follows:

One stationary freestanding business sign is permitted for each street to which a lot has direct vehicular access, provided that -

1. Its surface area does not exceed 25 square feet per face; and
2. No part of the sign is more than six (6) feet above the grade level of the street upon which it faces or six (6) feet above the grade level of the lot on which it is erected, whichever measurement permits the greater elevation of the sign. [Bill No. 7, 1984.] (Emphasis supplied)

Testimony presented before the Board is uncontradicted that the Petitioner's Parcel 1187 upon which the business is located does not have any direct vehicular access to the Beltway.

In reading Section 413.6.b., the Board is of the opinion that the regulation permits a free-standing business sign to face a street when the property has direct vehicular access to that street. In this case there is no direct vehicular access to the street which is the Beltway. The Petitioner obviously reads Section 413.6.b. to permit a business sign for each street for which the lot has direct vehicular access and that the sign does

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not have to be placed facing that street. The Board cannot agree with this interpretation of Section 413.6.b.

This Board agrees with the conclusion of law made by the Zoning Commissioner below that Petitioner is requesting a Variance for a sign that he is not entitled to and that the sign was illegally constructed and remains in violation of the BCZR.

Putting aside the issue of the legality of the Beltway sign under Section 413.6.b. and addressing the evidence presented by the Petitioner to support his request for a variance, this Board does not believe that the Petitioner has met the necessary proof required for the granting of a Variance.

Area Variances from zoning regulations are permitted when the application of the zoning regulations would cause practical difficulty or undue hardship to the Petitioner and his property.

The test to be applied in determining whether to grant or deny a Variance is found in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

In reviewing the evidence in this case, the testimony does not support a finding that without the Beltway sign the Petitioner

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would be prevented from using his property for a landscaping business. It may be true that without the Beltway sign the Petitioner may experience fewer customers attracted to his business from the Baltimore Beltway resulting in less business and, in turn, less profitability. However, the test is not an economic one to justify granting of a Variance.

ORDER

IT IS THEREFORE this 30th day of August, 1991 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Special Exception from Sections 413.3., 413.3.b. and 413.3.c. to permit an outdoor advertising sign within 50 feet of a controlled access type highway and a 6 foot front yard setback in lieu of the minimum 250 feet and 75 feet, that complies with all other applicable BCZR, be and the same is hereby DENIED; and

IT IS FURTHER ORDERED that the Petition for Zoning Variance from Section 413.6.b.1. and 413.6.b.2. to permit a total surface area of 72 square feet and height of 35 feet in lieu of the maximum 25 square feet and 6 feet be and the same is hereby DENIED; and

IT IS FURTHER ORDERED that the Petitioner shall remove on or before September 30, 1991, all signage affixed to the 2 sign poles indicated on Petitioner's Exhibit No. 1 submitted to the Zoning Commissioner below which is adjacent to the Baltimore Beltway, and shall further remove said sign poles; and

IT IS FURTHER ORDERED that the Petitioner's signage located on Parcel 875 along Lillian Holt Drive does not comply with BCZR and

shall be removed on or before September 30, 1991.

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

Michael B. Sauer
Michael B. Sauer

Lynn B. Moreland
Lynn B. Moreland

RE: PETITIONS FOR SPECIAL EXCEPTION BEFORE THE
AND ZONING COMMISSION

7620 Lillian Holt Drive * BOARD OF APPEALS
14th Election District * FOR
6th Councilmanic District * BALTIMORE COUNTY
Randall E. McMonigle *
Petitioner * CASE NO. 90-219-XA

PETITIONER'S ARGUMENT

This case is an appeal of the decision of the Baltimore County Zoning Commissioner of February 20, 1990 in which Petitioner requested a special exception involving an outdoor advertising sign adjacent to Lillian Holt Drive and a variance to permit a free-standing business sign facing the Baltimore Beltway and having a total surface area of 72 square feet and height of 35 feet as opposed to 25 square feet per face (50 square feet) and 6 feet above the surface of the Beltway (as provided for in Sections 413.6.b.1. and 413.6.b.2.) The Zoning Commissioner granted the special exception for the outdoor advertising sign and denied Petitioner's variance for the business sign facing the Beltway.

As testimony has shown, the so called Beltway sign is located on parcel 1187 which is the same parcel on which is located the business known as Randy's Landscaping. Testimony also has shown that the zoning of parcel 1187 is M.L.I.M. The sign located on parcel 1187 is therefore a Business Sign and

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not an Outdoor Advertising Sign. The provision of the Baltimore County Zoning Regulations applicable to Business Signs in M.L. zoning are Sections 413.5 and 413.6. Pertinent portions are cited as follows:

"413.5.a.: The surface area of any sign shall include the entire face or faces of the sign, and if the sign is composed of individual letters, figures or designs, the space between and around such letter, figures or designs."

"413.5.d.: No sign erected on ground elevated above the level of the street which it abuts shall exceed 25 feet in height. No sign erected on ground below the level of the street which it abuts shall extend more than 25 feet above the level of the street which it abuts, except that in no case shall the total height of the structure exceed 35 feet."

"413.6.b.: One stationary freestanding business sign is permitted for each street to which a lot has direct vehicular access, provided that-

1. Its surface area does not exceed 25 square feet per face; and
2. No part of the sign is more than six (6) feet above the grade level of the street upon which it faces or six (6) feet above the grade level of the lot on which it is erected, whichever measurement permits the greater elevation of the sign."

Petitioner has testified that the sign on parcel 1187 is 29 feet above the ground level, 18 feet 5 inches above the grade level of the Beltway and has an area of 72 square feet.

This sign complies with the requirements of Section 413.5.d. as to total height but exceeds the 6 foot limitation above the grade of the Beltway as provided in Section

413.6.b.2. and the area limitation in 413.6.b.1. by approximately one-third.

Petitioner testified that a permit (No. 1289-87 dated April 14, 1987) was obtained on his behalf by Ethic Signs who at the time had contracted to erect the Beltway sign. Subsequently due to difficulties with Ethic Signs, second and third permits (Nos. 062-88 and 094-88 dated January 12, 1988 and January 18, 1988 respectively) were obtained so that the sign could be erected by another contractor. Permit No. 094-88 was obtained to increase the height from 25 feet to 35 feet. Petitioner testified that he contracted with Roberts Signs who finished the sign in March of 1988. Testimony by John Lewis, a witness for the Peoples' Counsel, established that the permits were and remained open throughout the period from the issuance of the first permit and until the sign was completed and that a notice rescinding the permits was not issued until September 19, 1988.

In his opinion, the Zoning Commissioner citing Town of Berwyn Heights v. Rogers, 228 Md. 271, 179 A.2d 712 (1962) held that the County is not estopped from denying the requested variance by the fact that permits were issued for the construction of the Beltway sign. That opinion is based on the conclusion that the sign is illegal and therefore the permits

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were also illegal. Both the Zoning Commissioner and Peoples Counsel point to the language in Section 413.6. and have concluded that since there is no "direct vehicular access" to the Beltway the sign is illegal, and the permits were invalid.

There is no exemption per se for the County from the doctrine of estoppel. See Gaver v. Frederick City, 175 Md. 639, 649, 3 A.2d 463, (1939). See also Lipsitz v. Park, 164 Md. 222, 227, 164 A.2d 743 (1933): "...a municipality may be estopped by the acts of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law..." Section 413.6.b. provides for one business sign for "...each street to which a lot has direct vehicular access...". It is neither clear nor compelling to interpret this section to mean that the lot must have access to the street which any such sign faces. Petitioner can reasonably interpret this section to mean that he may have a business sign or as many business signs as the number of streets to which his lot has access. Petitioner and witnesses for People's Counsel have testified that the parcel on which the sign is located has access to Lillian Holt Drive.

The Board must decide if Section 413.6.b. is so worded as to put a reasonable person on notice that the Beltway sign is

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relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

Petitioner has presented testimony that the reduction in height and area of the Beltway sign would have a substantial impact on his business operated on the property. Petitioner's request is not based on convenience but on clear practical difficulty and that the granting of the variance would not do harm to the spirit of the regulation. Randy's Landscaping is a family owned business and the loss of the sign would have a devastating effect on the business, Petitioner's family and the employees of the business. Petitioner's business is located on property that, because of its topography and the vegetation along the Beltway right of way which would obscure a lower sign, creates a requirement for a sign of greater height in order to effectively attract customers. Similarly, the reduction in area of the sign required for compliance would substantially reduce its effectiveness in attracting customers.

Petitioner offered testimony that the sign is responsible for 75% of the business obtained by his business based on a telephone survey conducted by his employee. People's Counsel offered testimony to the effect that the sign does not provide information to the public regarding the location or directions

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illegal or if it would allow a reasonable person to interpret it to allow the sign as now situated. Should the Board allow that this section is open to at least two reasonable interpretations, the County will not be able to hold up the "illegality" of the Beltway sign (and the permits) to prevent the Board from granting the requested variance. See Permanent Fin. Corp. v. Montgomery County, 308 Md. 239, 518 A.2d 123, 128-129 (1986) in which the definition of the term "nonhabitable structures" was open to "...at least two reasonable and debatable interpretations...". See also, Jesse A. Howland & Sons v. Borough of Freehold, 143 N.J. Super. 484, 363 A.2d 913, 916, Cert. Denied, 72 N.J. 466, 371 A.2d 70 (1976) as cited in Permanent Fin. Corp., supra:

"...The requirement we would add...is the necessity for the appearance of an issue of construction of the zoning ordinance or statute, which, although ultimately not too debatable, yet was, when the permit was issued, sufficiently substantial to render doubtful a charge that the administrative official acted without any reasonable basis or that the owner proceeded without good faith."

Petitioner erected the Beltway sign in reliance upon the issuance of three permits spaced nearly a year apart and the alleged "illegality" was not brought to Petitioner's attention until 18 months after the issuance of the first permit. Testimony was also given and uncontroverted that other "Beltway signs" existed at the time of the issuance of the original permit and for properties of identical zoning to Petitioner's

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to "Randy's Landscaping". However, it is clear from the testimony offered by Petitioner and others that it is the recognition of the business name that initiates inquiries by the public. Testimony was offered by Petitioner that telephone inquiries include requests for directions to the business location.

Testimony regarding the topography of the surrounding properties indicated that they are of higher elevations. The restrictions in Section 413.6.b.2. provide for a maximum height of a business sign "...six (6) feet above the grade level of the street upon which it faces or six (6) feet above the grade level of the lot on which it is erected, whichever measurement permits the greater elevation of the sign." To allow a variance for the higher elevation of Petitioner's sign would do no injustice to the neighboring property owners who enjoy higher elevations upon which their signs are erected.

WHEREFORE, Petitioner asks the Board of Appeals to:

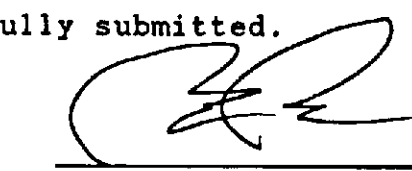
1. Rule that the Beltway sign is in compliance with the applicable regulation as contained in Section 413.5; or
2. Rule that the provisions of Sections 413.5 and 413.6, as previously cited, allow for at least two reasonable and debatable interpretations and that the County is therefore estopped from asserting the invalidity of the permits and Petitioner may keep his sign; or

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property which also do not have "direct vehicular access" to the Beltway. Clearly the interpretation advocated by People's Counsel of Section 413.6.b was not shared by the administrative officials who issued permits for such signs.

Similarly, Section 413.5.d. presents a problem of interpretation, especially when Section 413.5 opens with "...All business or outdoor advertising signs shall be subject to the following conditions." Section 413.6 does not have such pervasive language. Clearly the provisions of Sections 413.5.d. and 413.6.b.2. are incompatible. Both apply to business signs. The permits issued to Petitioner were in compliance with Section 413.5.d. in that the height of the sign is within 35 feet and does not extend more than 25 feet above the street which it abuts. In fact, the third permit issued specifically provided for a 35 foot sign. We would point out that not only were the permits issued with the apparent intention that the sign comply with Section 413.5.d. and therefore the principals of Permanent Fin. Corp. applicable but if the Board holds that Section 413.5.d. is controlling, Section 413.6 does not apply at all, the permits were totally legal when issued, the sign is in compliance and no variance is necessary. Petitioner strongly argues that the word "All" is clear and conclusive evidence of the intention of the drafters that Section 413.5 be controlling. Petitioner would point out

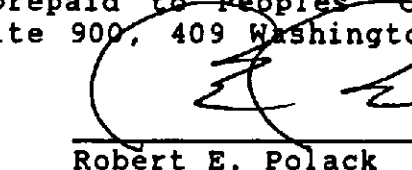
3. Grant the variance as requested; and
4. Grant such other and further relief as the cause of Petitioner may require.

Respectfully submitted,


Robert E. Polack
Polack & Calhoun
1200 E. Joppa Road, Suite E
Baltimore, MD 21204
(301) 321-1818
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of August, 1991, I mailed a copy of the foregoing, Petitioner's Argument, first class mail, postage prepaid to Peoples' Counsel, Phyllis C. Friedman, Esquire, Suite 900, 409 Washington Ave., Towson, MD 21204.


Robert E. Polack

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also, the language in Section 413.6: "Business signs...are permitted in the O.T., M.L.R. and M.L. zones under the following conditions and as limited by section 413.5." (emphasis added)

For the above reasons we submit that the Board is in a position to rule that (1) the sign is legal as it stands and no variance is necessary; or (2) if it determines that Section 413.6 is controlling it is free under the principals of Permanent Fin. Corp. to consider and to grant the requested variance for the Beltway sign, or (3) to rule under the same principals that the County is estopped from asserting the invalidity of the permits since both the legality and the height and size restrictions are subject to different and reasonable interpretations.

The tests to be applied by the Board in determining whether to grant or deny the variance are found in McRae Anderson et al v. Board of Appeals of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220, 226-227 (1974):

"1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, heights, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser

91 AUG 14 PM 3:54
RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE : BEFORE THE COUNTY
NW/S Lillian Holt Drive, 1,100' : BOARD OF APPEALS OF
SW CVL Rowsville Blvd. : BALTIMORE COUNTY
(7620 Lillian Holt Drive) : Case No. 90-219-XA
14th Election District
8th Councilmanic District
RANDALL E. McMONIGLE (Randy's Landscaping), Petitioner

PEOPLE'S COUNSEL'S MEMORANDUM IN LIEU OF CLOSING ARGUMENT

The Petitioner, Randall E. McMonigle, has requested this Board to grant variances and special exceptions in an attempt to legalize two nonpermitted signs.

The first sign is an outdoor advertising sign located on a D.R. 5.5 parcel owned by Petitioner adjacent to Lillian Holt Drive. Since outdoor advertising signs are not permitted in D.R. zones, this Board has no authority to grant any variance or special exception for this sign.

The second sign is a sign described in testimony as measuring roughly 9' x 4' with two faces 35' high. No site plan or scale drawing of the sign or its location was submitted in evidence before this Board. Not only is this not in compliance with Rule 2 of the Zoning Commissioner's Rules, but it makes the request unclear and any Order other than one denying the Petition unenforceable. The second sign is on the rear portion of the property where Randall E. McMonigle the Petitioner, conducts

unofficial

landscaping business which he describes as a "nursery and garden center." This property is zoned M.L.-I.M. and has indirect access to Lillian Holt Drive through a gravel driveway through a parcel owned by BG&S and then through the D.R. 5.5 parcel described above.

Because the sign on the D.R. 5.5 parcel is not permitted under any circumstances, this memorandum will concentrate on the sign requested for the M.L.-I.M. parcel which is sometimes referred to as the "Beltway Sign."

The M.L.-I.M. zone permits business signs under very limited conditions. These conditions are addressed in Section 413.5 and 413.6 of the Baltimore County Zoning Regulations (Attachment 1).

One stationary freestanding business sign is permitted in the M.L.-I.M. zone for each street to which a lot has direct vehicular access provided that (1) Its surface area does not exceed 25 square feet per face; and (2) No part of the sign is more than six (6) feet above the grade level of the street upon which it faces or six (6) feet above the grade level of the lot on which it is erected, whichever measurement permits the greater elevation of the sign. [Bill No. 7, 1984.] (Emphasis supplied.)

In addition, no such sign can exceed 35 feet. (BCZR 113.5 d)

It is undisputed that the property in question does not have direct vehicular access to the Baltimore Beltway. Petitioner himself and his witness, Paula Polley, testified that the purpose of the sign in question is to "advertise" Randy's business.

Both Jeff Long and David Woessner testified that there is no direct access to the property from the beltway and that, in fact,

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if one views the sign from the inner loop of the beltway, one has already passed the beltway exit. Jeff Long testified that in viewing the sign from the outer loop of the beltway, if one had not already known that they were exiting by the time they reached the sign, changing lanes would be highly dangerous. The net effect of all of this testimony is that the sign in question is not directional but merely advertising.

Despite the illegality of this site, Petitioner was able to secure a permit in January, 1988 which was approved by John Lewis on behalf of Zoning. Mr. Lewis testified that he signed this permit when he had been working in the position for only three months and that it was by mistake. By at least May of that year, the county had discovered the error of its ways and advised Petitioner of an apparent violation (P.C.'s Ex. 2), and by July, 1988 had issued a citation for the sign.

Despite the existence of the violation, when the sign face blew out in December, 1988 (P.C.'s Ex. 1), it was replaced. Jeff Long testified that presently not only the sign that is the subject of this petition but also a banner sign and several other rental signs are on the property as well as a sign on the building facing the Beltway identifying the property as "Randy's Landscaping."

Petitioner would now like the county's mistake in issuing the 1988 permit to elevate his illegal sign to a legal status irrespective of the fact that the zone in which it is placed does

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not permit it. This is contrary to law. It is well established that if a county issues permits which are in violation of a zoning ordinance, the county is not estopped from subsequently revoking those permits and enforcing its regulations. See *Town of Parwyn Heights v. Rogers*, 228 Md. 271, 179 A.2d 712 (1962) (Attachment 2); and *Permanent Fin. Corp. v. Montgomery Cty.*, 308 Md. 239, 518 A.2d 123 (1988) (Attachment 3).

While Petitioner would be permitted a freestanding business sign for Lillian Holt Drive if his lot had direct vehicular access (Section 413.6b. BCZR), Petitioner's property is bifurcated so that only the currently zoned D.R. 5.5 parcel has such direct access. The fact is that Petitioner does have a sign, albeit illegal, on Lillian Holt Drive on the D.R. 5.5 parcel. Formalities to legalize that sign which is truly directional are much less objectionable than Petitioner's "Beltway advertising sign" which still would leave him in need of a directional sign on Lillian Holt Drive.

What Petitioner is seeking in this case is a pure, unaltered advertising sign facing the beltway that this Board and the courts have repeatedly denied. See People's Counsel's Exhibits 6 through 12.

In any event, even if a variance could theoretically be granted for a commercial sign in this zoning classification, the request does not come close to satisfying the requirements of BCZR Section 307, as further defined in *McLean v. Solox*, 270 Md.

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208, 310 A.2d 783 (1975). A sign oriented to the beltway is in no way connected to the essential use of the property. In other words, compliance with the law does not unreasonably prevent or hinder the owner in the use of the property. Moreover, there is no justice or compatibility with the spirit of the zoning regulations in the idea of a substantial beltway advertising sign.

The bottom line is that the request is purely a personal and commercial convenience for the Petitioner, so that there is no authority for the Board legally to approve it. When Petitioner applied for his permit he represented to the county that this sign when installed cost \$250.00. See Petitioner's Exhibits 2 and 3. He has gotten more than his money's worth from the county's original mistake.

Petitioner refers vaguely to a Perry Hall Mini Storage sign that is a temporary sign and to "Public Storage" and "Easy Storage" signs for which there is no evidence of a variance or even a legal permit.

It would be an unfortunate precedent to permit this clearly "advertising" sign on the beltway. All the witnesses agreed and this Board can certainly take judicial notice of the high-speed traffic and the dangerous conditions on the beltway. Motorists do not need to have their attention diverted by advertising signs.

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ATTACHMENT 1

Petitioner has shown no hardship or practical difficulty in this matter and for the above reasons, People's Counsel urges this Board to uphold the Zoning Commissioner's Order and deny this petition.

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County
Room 304, County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
(301) 887-2188

I HEREBY CERTIFY that on this 14th day of August, 1991, a copy of the foregoing People's Counsel's Memorandum in Lieu of Closing Argument was mailed to Robert E. Poluck, Esquire, Polack & Calhoun, 805 Baltimore Ave., Towson, MD 21204.

Phyllis Cole Friedman
Phyllis Cole Friedman

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413.4--Miscellaneous temporary signs such as seasonal streamers, banners, and portable signs are permitted subject to the following conditions: [Bill No. 70, 1986.]

- No business shall display such signs for more than 30 continuous days nor more than a total of 60 days in any one year.
- No sign shall be displayed unless a use permit therefor has been issued by the Zoning Commissioner pursuant to Subsection 500.4.
- Every such sign for which a use permit has been issued shall be plainly marked with the number and the expiration date of the use permit. The method and location of this identification shall be as specified by the Zoning Commissioner.
- Such signs are not permitted in residential zones, except as allowed by Section 413.1.

413.5--All business or outdoor advertising signs shall be subject to the following conditions: [B.C.Z.R., 1955.]

- The surface area of any sign shall include the entire face or faces of the sign, and if the sign is composed of individual letters, figures, or designs, the space between and around such letters, figures or designs. [B.C.Z.R., 1955.]
- No sign shall be placed within or project into the street right-of-way. [B.C.Z.R., 1955.]
- Any free-standing or projecting sign within 25 feet of a street right-of-way line shall be so placed as to allow clear and ample visual sight lines for driveways leading into a street, and at intersecting streets and alleys. [B.C.Z.R., 1955.]
- No sign erected on ground elevated above the level of the street which it abuts shall exceed 25 feet in height. No sign erected on ground below the level of the street which it abuts shall extend more than 25 feet above the level of the street which it abuts, except that in no case shall the total height of the structure exceed 35 feet. [B.C.Z.R., 1955.]
- A sign may be illuminated, if illumination is confined to the surface of the sign; the sign shall be so located and arranged as to avoid glare or reflection onto any portion of any adjacent highway, or into the path of oncoming vehicles, or onto any adjacent residential premises. [B.C.Z.R., 1955.]

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413.6--Business signs as defined in Section 101 are permitted in the O.T., M.L.R. and M.L. Zones under the following conditions and as limited by Section 413.5 except as herein modified: [Bills No. 7, 1984; No. 34, 1984.]

- Stationary business signs are permitted on a building, provided that:
 - No sign projects more than twelve (12) inches from the building;
 - No sign extends above the roof line of the building; and
 - The total surface area of signs affixed to each wall of the building does not exceed, in square feet, 1 1/2 times the length of the wall. [Bill No. 7, 1984.]
- One stationary freestanding business sign is permitted for each street to which a lot has direct vehicular access, provided that:
 - Its surface area does not exceed 25 square feet per face; and
 - No part of the sign is more than six (6) feet above the grade level of the street upon which it faces or six (6) feet above the grade level of the lot on which it is erected, whichever measurement permits the greater elevation of the sign. [Bill No. 7, 1984.]
- In addition to the signs permitted in subsection 413.6, paragraph a, one stationary identification sign is permitted at each exterior entrance to a use within a building, provided that:
 - It does not project more than two (2) inches from the building; and
 - Its surface area does not exceed one (1) square foot. [Bill No. 7, 1984.]
- One stationary freestanding sign is permitted at each vehicular entrance to an industrial and/or office park provided that:
 - Its surface area does not exceed fifty (50) square feet per face; and
 - No part of the sign is more than twelve (12) feet above the grade level of the street upon which it faces or twelve (12) feet above the grade level of the lot on which it is erected, whichever measurement permits the greater elevation of the sign. [Bill No. 7, 1984.]
- In addition to the signs permitted in subsection 413.6, paragraphs a, b, c and d, stationary directory signs

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identifying the names and locations of tenants are permitted for each multi-tenant building, provided that--

- 75 percent or more of the tenants identified on the sign(s) have independent outside access;
- The sign(s) are placed within the buildable area of the site and do not project beyond the required minimum building setback line; and
- Lettering indicating names and suite numbers of tenants does not exceed one inch in height and all other lettering does not exceed three inches in height. [Bill No. 7, 1984.]
- One stationary freestanding park identification sign is permitted for any industrial and/or office park provided that its surface area does not exceed one hundred fifty (150) square feet per face. [Bill No. 7, 1984.]
- The light from any one light source permitted by this subsection shall be shielded or directed so that the light intensity or brightness shall not adversely affect surrounding or facing premises. [Bill No. 7, 1984.]

Section 414--TRAILER PARKS [B.C.Z.R., 1955.]

- 414.1--The area of the lot on which such park is to be located shall be not less than 5 acres. [B.C.Z.R., 1955.]
- 414.2--An area of not less than 3,000 square feet shall be allocated to each trailer, which must be connected to sewer, water, and electricity. [B.C.Z.R., 1955.]
- 414.3--Each trailer space shall abut or face on a driveway or unobstructed space of not less than 30 feet in width, which space shall have unobstructed access to a public highway. It shall be hard surfaced and adequately lighted. [B.C.Z.R., 1955.]
- 414.4--No trailer or service building or structure used in connection therewith, shall be placed or permitted within 100 feet of the road or street upon which the lot or area so used for such park fronts, or within 75 feet of any other boundary line of such lot or area. [B.C.Z.R., 1955.]
- 414.5--There shall be a space of not less than 25 feet between each trailer and also a space of not less than 25 feet between any trailer and any service building or structure used in connection with such park. [B.C.Z.R., 1955.]
- 414.6--No such trailer park, nor any service building or structure used in connection therewith shall be established or operated without the approval of and subject to the regula-

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APPROVED JUL 0 1 1989

TOWN OF BERWYN HEIGHTS, Maryland
v.
Philip G. ROGERS,
No. 220.
Court of Appeals of Maryland.
April 10, 1952.

A town brought a suit against the builder of dwellings to enjoin the building of a dwelling on a corner lot, on ground that such construction violated certain provisions of the zoning ordinance for regional district. The Circuit Court for Prince George's County, Roscoe Parker, Jr., rendered an order adverse to the town, and the town appealed. The Court of Appeals, Prescott, J., held that house being built with side yard of width of only 17 feet was being built in violation of zoning ordinance.

Order reversed, and cause remanded for further proceedings.

1. Administrative Law and Procedure §223 Generally, administrative remedy provided by statute must be exhausted before litigant may resort to courts, but there are exceptions.
2. Administrative Law and Procedure §223 General rule that administrative remedies must be exhausted before resort is had to courts does not come into play, where administrative remedies are not exclusive but merely cumulative to or concurrent with judicial remedy.
3. Zoning §277Z Town could maintain suit against builder of dwellings to enjoin erection of dwelling, on ground that such construction violated certain provisions of zoning ordinance for regional district, over objection of builder building permits, where permits were issued in violation of zoning ordinance and were unlawful.

In his brief, the appellee argued that the appeal should be dismissed because the appellant failed to file a supersedeas bond. However, he virtually abandoned the contention at oral argument; hence we do not deem it necessary to consider and determine the same.

III
The appellee further argues that under the rule of contemporaneous construction of statutory enactments, the court properly construed section 275; because there had been "an interpretation by the cognizant body" the appellee had not violated any section of the zoning ordinance and was entitled to proceed with construction. The short answer to this contention is that the rule he attempts to invoke is only applied when there are at least two possible, reasonable interpretations that can be given to a statute, ordinance, regulation, etc. We have already stated we find no ambiguity in the sections of the zoning ordinance involved herein as they apply to the present case; hence there is no occasion to apply the rule of long-continued administrative practice. Where the language is clear, plain and unambiguous, the judicial construction must be controlled by the language itself, not by extraneous considerations. No custom, however long continued, heavy and venerable it may be, can void the plain meaning and purpose of a zoning ordinance. Cf. *Rogan v. Baltimore & O. R. Co.*, 188 Md. 44, 50, 22 A.2d 261, County Treas. etc. v. State Tax Comm., 219 Md. 652, 657, 150 A.2d 452.

V
[8] Finally, the appellee claims, without the citation of authority, that the appellant is estopped from prosecuting the suit by the fact that it and the county issued him building permits, and he has expended substantial amounts of money in partially constructing the dwelling. Some authorities hold that the principle of estoppel does not apply against a city, but the majority rule is to the effect that the doctrine of estoppel in pais is applied to municipal, as well as to private, corporations and individuals, at least where the acts of officers are within the scope of their authority and justice and right require that the public be estopped. *Rose v. Baltimore*, 51 Md. 256; *Clenden Sewer Co. v. Salisbury*, 162 Md. 454, 461, 160 A. 4; 9 McQuillin, Municipal Corporations (3rd ed.), § 2756; 3 Dillon, Municipal Corporations (5th ed.), page 1932; *Anno*, 1 A.L.R.2d 335; cf. *Cootnam v. City of Baltimore*, 182 Md. 370, 35 A.2d 128. And it has been held that municipalities may be estopped by reason of the issuance of permits. The authorities are collected in 2 Metzgerbaum, Law of Zoning, (2nd ed.), beginning at page 1158. However, the cases and text-writers very generally state that a municipality is not estopped to set up the illegality of a permit. *Lipitz v. Parr*, 164 Md. 222, 164 A. 743; 2 Metzgerbaum, op. cit., pp. 1163-1171, 1192; 1 Metzgerbaum, op. cit., pp. 163-171, 256-259, 466, 590, 591; 8 McQuillin, op. cit., § 25153; *Vogt v. Borough of Port Vue*, 170 Pa.Super. 526, 85 A.2d 688; *Adler v. Department of Parks & Public Property*, 20 N.J.Super. 240, 89 A.2d 794. And the issuance of an illegal permit creates no "vested right" in the permittee. 2 Metzgerbaum, op. cit., pp. 1185, 1186, 1193-1195; 8 McQuillin, op. cit., § 25153; *Colonial Beacon Oil Co., Inc. v. Finn*, 245 App.Div. 459, 283 N.Y.S. 384; *Vogt v. Borough of Port Vue*, supra; cf. *Lipitz v. Parr*, supra. We have held above that the permits issued to the appellee were in violation of the zoning ordinance; consequently they were unlawful and did not estop the appellant from prosecuting this suit.

This means that the order must be reversed; but, as the permits were issued and appellee has made substantial improvements as a result thereof, no final injunction should issue at this time. We will, therefore, remand the case for further proceedings without prejudice to the appellee to make application, within a reasonable

Philip J. LaMacchia, Berwyn Heights,
for appellant.
Thomas B. Jewell, Hyattsville (Walsh, Dyer & Lauszar, Hyattsville), on the brief, for appellee.
Before HENDERSON, HAMMOND, PRESOTT, HORNEY and SYBERT, JJ.
PRESOTT, Judge.

The appellant, a municipal corporation, brought suit in the Circuit Court for Prince George's County to enjoin the construction, by the appellee, of a dwelling being erected by him on a lot located in the Maryland-Washington Regional District (District) on the ground that such construction violated certain provisions of the Zoning Ordinance for the District.

There is little, if any, dispute concerning the facts. The appellee, a builder of dwellings, on or about May 7, 1951, began construction of a residence on a corner lot, known as Block 34, Lot 40, in Berwyn Heights, bearing a residential zoning classification of R-53. Appellant's Exhibit No. 1 shows that the lot, 50' x 200' fronts on Edmonston Road and abuts on Pontiac Street along its side street line, and that the rear lot adjoining Lot 40 fronts on Pontiac Street. Exhibit No. 1 further shows that the appellee established a side building line and side yard of 17 feet. The dwelling is 24 feet wide. Construction was begun only after appellee had received building permits from both the appellant's and the county's building inspectors, and construction was in conformity with said permits. However, appellant concluded that a mistake had been made in the issuance of said permits, and placed a stop work order on further construction. Appellant then wrote the County Commissioner, who referred the matter to the Administrator, Department of Licenses and Permits. The Administrator wrote the appellant that the regulations complied with the zoning regulations, and "has approved of all required agencies."

The suit followed.
[1-3] It is a well-established general rule, to which there are exceptions, that where an administrative remedy is provided by statute, such remedy must usually be exhausted before a litigant may resort to the courts. Maryland cases to this effect are collected in 1 M.L.E., Administrative Law and Procedure, §§ 5, 6 and 7. But in the instant case, we think the Legislature, by clear and forceful terms, showed an intention to create alternate and additional remedies to the administrative ones named in the statute and these created by regulations authorized by the statute. The words, "in addition to all other remedies provided by law" are plain and unambiguous, and must

chancellor must refuse a divorce, even though the defense of recrimination is not formally pleaded.
3. Divorce §184(1)
Husband's giving of wrong address for corroborating witness who testified to wife's adultery was not prejudicial, where wife's attorney had correct address a week prior to hearing and had not, upon receiving erroneous address, requested a continuance or objected until late in the hearing, and where giving of erroneous address was not shown to be intentional.

Order reversed, and cause remanded for further proceedings not inconsistent with this opinion; appellee to pay the costs.

228 Md. 308
Doris JEAN PLUM
v.
Raymond FRANK PLUM,
No. 317.
Court of Appeals of Maryland.
April 12, 1952.

Action by wife for divorce a mensa and cross-bill by husband for divorce a vinculo on ground of wife's desertion and adultery. From a decree of the Circuit Court, Baltimore County, John E. Raine, Jr., J., awarding the husband a divorce, the wife appealed. The Court of Appeals, Hammond, J., held that, evidence, including testimony of two disinterested eyewitnesses to wife's adultery, sustained finding of adultery.
Affirmed.

1. Divorce §179(4)
Evidence, including testimony of two disinterested eyewitnesses, sustained finding that wife was guilty of adultery.
2. Divorce §99
Where it appears that complainant seeking divorce is guilty of recrimination,

be given the import that the Legislature intended them to have. Where administrative remedies are not exclusive but merely cumulative to or concurrent with a judicial remedy, the rule that administrative remedies must be exhausted before resort is had to the courts does not come into play. 42 Am.Jur., Public Administrative Law, §§ 159, 232, and 235; 73 C.J.S. Public Administrative Bodies & Procedure, § 41, p. 354; *Scripta Memorial Hospital v. California Emp. Com.*, 24 Cal.2d 609, 151 P.2d 109, 112, 115 A.L.R. 360; *City of Susansville v. Lee C. Hess Company*, 45 Cal.2d 684, 290 P.2d 100, 523; *Freeman v. Baroni*, 209 Md. 244, 249, 121 A.2d 816; *Reed v. McKelvin*, 207 Md. 533, 538, 115 A.2d 281. We hold that the chancellor was correct in assuming jurisdiction.

II
[4] The next question involves an interpretation of several sections of the zoning ordinance. It will be noted that the subject lot is a corner one with its side street line running along Pontiac Street; that the

1. "14.22 Building Line, Side Street as Specified for R-R Zone (See Section 13.22) * * *
- "14.23 Building Line, Side Street * * * Each corner lot shall have a side building line at least twenty-five (25) feet from, and parallel to, the side street line of a proposed side street line, if such corner lot is in a non-residential zone. The side building line of the corner lot shall be a minimum of fifteen (15) feet from, and parallel to, the side street line of proposed side street line."
- "14.22 Each corner lot shall have a side yard along its street side, as specified in Section 13.22."
- "14.23 Corner Lots * * * Each corner lot shall have a side yard along its street side at least twenty-five (25) feet from, and parallel to, the side street line of the lot adjoining and corner lot along the rear line thereof. The side building line of the corner lot shall be a minimum of fifteen (15) feet from, and parallel to, the side street line of proposed side street line."

minimum widths for side yards of corner lots, with exceptions. And section 275 provides for "interpretations and other exceptions." From the above, it seems clear, we think, that minimum set backs of 25 feet for side building lines and minimum widths of 25 feet for side yards of corner lots are required, unless the corner lot qualifies for a different set back or width under one or more of the named exceptions. Hence, it becomes necessary that we determine whether the subject lot comes within the scope of the exceptions. Since the provisions relating to side building lines and side yards (although in practice the same end result is probably reached) are not identical and the real controversy here concerns the provisions concerning side yards, we shall confine our further consideration of this contention to side yards.

We have already stated that the 15 foot exception has no application to the facts of this case. Section 14.22 (by reference to section 13.22), after setting forth the minimum width of 25 feet, further provides: " * * * except when the lot adjoining said corner lot along the rear line thereof does not front on the side street of the corner lot * * * the side yard of the corner lot may be reduced to a minimum of fifteen (15) feet in width, except as provided in Section 27.5." (Emphasis added.)

The italicized language persuaded the chancellor to hold that section 27.5 must be read as an exception to the minimum side yard width requirement of 25 feet called for in section 13.22. He reasoned that inasmuch as the appellee had used a building line of not more than 24 feet and section 27.5 provides that it "shall not be so construed as to reduce to less than twenty-four (24) feet the buildable width of a corner lot," the minimum side yard width requirements of 25 feet had to accede to the overriding provisions of section 27.5. [5] In making this ruling, the chancellor fell into error. It is significant, we

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No. 69, Sept. Term, 1951.
PERMANENT FINANCIAL CORPORATION, Trustee
v.
MONTGOMERY COUNTY, Maryland et al.
No. 69, Sept. Term, 1951.
Court of Appeals of Maryland.
Dec. 5, 1956.

Builder sought judicial review of decision of the county board of appeals denying it relief from suspension and stop work order and refusing to grant variance. The Circuit Court, Montgomery County, Stanley Frosh, J., affirmed, and builder petitioned for certiorari. The Court of Appeals, McCallister, J., held that: (1) penthouses failed to qualify as "roof structure housing mechanical equipment," so that penthouses was not exempted from height control imposed by local zoning ordinance; (2) county was estopped from claiming that fourth floor of building exceeded height controls imposed by local zoning ordinance; (3) structures contained within penthouses did not qualify as "roof-top mechanical structures," under local zoning ordinance providing that area occupied by such mechanical structures is not included in gross floor area of building for purpose of area restrictions; and (4) county was not barred by laches from enforcing local zoning requirements against builder.
Affirmed.

1. Zoning and Planning §253
Penthouses did not have "mansard roof," for purpose of height controls imposed by local zoning ordinance, where roof had no greater slope than was necessary for drainage purposes.
See publication Words and Phrases for other judicial constructions and definitions.

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2. Zoning and Planning ¶253
Penthouse failed to qualify as "roof structure housing mechanical equipment," so that penthouse was not exempted from height controls imposed by local zoning ordinance, where penthouse not only housed various mechanical equipment, but also contained office for janitorial or security personnel.
See publication Words and Phrases for other judicial constructions and definitions.

3. Zoning and Planning ¶762
County was equitably estopped from claiming that building's upper floor exceeded height control imposed by local zoning ordinance, where builder had designed and constructed building in reliance on building permit and on long-standing and reasonable interpretation of county as to how building's height should be calculated.

4. Zoning and Planning ¶253
Structures enclosed within penthouse that had structural head room of six feet, six inches were not "roof-top mechanical structures," under local zoning ordinance providing that area of such mechanical structures is not included in gross floor area of building for purpose of area restrictions.
See publication Words and Phrases for other judicial constructions and definitions.

5. Zoning and Planning ¶254
Court of Appeals would permit builder to argue that building did not violate local setback requirements, though stop work order from which builder appealed referred only to building's alleged violations of local height and area limitations, where county had notified builder subsequent to appeal that its stop work order was also based on building's failure to comply with local setback requirements, and question of setbacks was fully considered by county board of appeals.

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6. Zoning and Planning ¶762
County was not barred by laches from enforcing local zoning requirements against builder, though county had waited more than eight months after it had issued building permit and after construction had begun to issue stop work order, and though builder had by that time spent more than \$2 million on project, where record disclosed that county acted promptly when violations were brought to its attention by neighboring property owners.

Joseph P. Blocker and Larry A. Gordon (Linowes & Blocher, on brief), Silver Spring, for appellant.
Clyde C. Henning, Asst. Co. Atty. (Paul A. McCuckian, Co. Atty. and Alan M. Wright, Sr. Asst. Co. Atty., on brief), Rockville, for Montgomery County, Md., part of appellees.
Nancy M. Floren, Silver Spring (David O. Stewart and Miller, Cassidy, Larroca & Lewin, on brief), Washington, D.C. for the et al. part of the appellees.
Arthur S. Dees, Jr., Kenneth P. Barnhart, Silver Spring, for The Maryland-National Capital Park and Planning Com'n, other appellees.
Argued before MURPHY, C.J., and SMITH,* ELDRIDGE, COLE, RODOWSKY, COUGI, and McAULIFFE, JJ.
McAULIFFE, Judge.

Pursuant to the authority of a building permit issued by Montgomery County, a developer undertook construction of an office building in Silver Spring, Maryland. Eight and one-half months and more than two million dollars later, when the shell of the building was complete, the County suspended the building permit and issued a stop work order on the grounds that the building violated statutory height

* Smith, J., now retired, participated in the hearing and conference of this case while an active member of this Court, after being recalled pursuant to the Constitution, Article IV, Section 2A. He also participated in the decision and adoption of this opinion.

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limitations, setback requirements, and floor area ratio restrictions. The developer appealed to the Montgomery County Board of Appeals ("the Board") and concurrently filed with that body an application for variances to exempt the building from any requirements of the Zoning Code with which it might not comply. The Board denied relief from the suspension and stop work order and refused to grant any variance. The Circuit Court for Montgomery County affirmed, and that action was affirmed by the Court of Special Appeals in an unreported per curiam opinion. We granted certiorari principally to consider the developer's contention that the doctrine of equitable estoppel should be applied against the County. We conclude the County is estopped from contending that the fourth floor of the building violates the height limitations of the Montgomery County Code. We further conclude, however, that the building as constructed is otherwise in violation of the code and that the Board did not err in refusing to set aside a suspension and stop work order or in refusing to grant the requested variances.

Permanent Financial Corporation ("Permanent"), as trustee for others, began the development of this concrete office building by obtaining a building permit from the Montgomery County Department of Environmental Protection (DEP) on January 11, 1982. Six months later Permanent obtained a revision of the permit by which DEP approved an increase in the size of the first floor. The building as erected is on a rectangular lot that comprises an area of 18,750 square feet and has no unusual topographical features. The land is zoned CBD-1, which is a central business district zone intended for use in areas where high density is not appropriate. Montgomery County Code denials are not appropriate. Montgomery County Code (1972, 1977 Repl.Vol.) § 59-C-6.211(b). The building contains four floors above ground office space and a "penthouse" or fifth floor designed primarily to house mechanical

1. Hereinafter all code references are to the Montgomery County Code unless otherwise indicated.

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equipment. Each of the second, third, and fourth floors is larger than the floor beneath it, giving the building a trapezoidal shape.

The Height Limitation
[1] The height limitation for a building erected in the CBD-1 zone under the method of development utilized here is established by § 59-C-6.235. Ordinarily, the maximum permissible building height is 50 feet. However, where the property adjoins or is directly across the street from certain residential zones, as is the case here, the maximum building height is "35 [feet] plus an additional 8 feet for nonhabitable structures." Section 59-A-2.1 specifies how the height of a building is to be determined:
The vertical distance measured from the level of approved street grade opposite the middle of the front of a building to the highest point of roof surface of a flat roof; to the deck line of a mansard roof; and to the mean height level between eaves and ridge of a gable, hip or gambrel roof; except that if a building is located on a terrace, the height above the street grade may be increased by the height of the terrace....

Permanent appears to have abandoned its earlier claim that the building is located on a terrace. In any event, the evidence was sufficient to support the Board's finding that the building is not, and that the beginning point of the measurement is the level of the approved street grade opposite the middle of the front of the building. Using that point of reference, the building measures 43 feet to the top of the fourth floor and 53 feet to the highest point of the roof of the penthouse.

Permanent persists in its claim that the penthouse is a mansard roof, and that the measurement must therefore be made to "the deck line of [the] mansard floor" which made to the deck line of the building. Permanent says it coincides with the roof of the fourth floor. We need not consider Permanent's strained interpretation of what constitutes the deck line of a mansard floor, because the record fully supports the finding of the Board

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that the penthouse does not have a mansard roof. The Montgomery County Zoning Code did not at the time define a mansard roof; however, there was testimony that it is a roof having a double slope on all four sides, the lower slope usually being steeper. The gambrel roof often seen on barns exemplifies the double slope of a mansard roof—the difference being that the gambrel roof has two gable ends as opposed to the double slope configuration of all sides of a mansard roof.

The testimony and exhibits within this record show the penthouse roof as essentially flat, and having a parapet similar to the one on the flat roof of the fourth floor. Any slope the penthouse roof does have is negative, and appears no greater than might be desired for drainage. Although the four walls of the penthouse have a positive slope, it requires at the very least a creative imagination to envision them as the lower slopes of a roof. The Board was not clearly wrong in finding that this penthouse does not have a mansard roof. *Board of Educ., Mont. County v. Paynter*, 303 Md. 22, 491 A.2d 1186 (1985); *Ramsay, Scarlett & Co. v. Comptroller*, 302 Md. 825, 490 A.2d 1206 (1985).

Permanent next contends that even if the measurements show the height of the building to be 53 feet to the top of the penthouse and 43 feet to the top of the fourth floor, there is no violation of the code. Concerning the penthouse, Permanent argues that as a roof structure housing mechanical equipment incident to the use of the building, the penthouse is exempt from height controls. Concerning the fourth floor, Permanent argues that the code permits 55 feet plus 3 feet for nonhabitable structures, and that because the fourth floor will be used for offices rather than

2. Section 59-A-2 was amended March 4, 1986, to provide a definition of a mansard roof, and to further provide that the measurement of height is to be made to the mean height level between the eaves and ridge of a mansard roof.

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living space it is "nonhabitable" within the meaning of the code. We shall examine the contentions separately.

[2] The exemptions from height control existing at the time of the issuance of the building permit in this case were contained in § 59-C-1.1 as follows:

The building height limits set forth in this chapter shall not apply to belfries, chimneys, cupolas, domes, flagpoles, flues, monuments, radio towers, television antennas or conditioning units or similar roof structures and mechanical appendages, except where such structures are located within an airport approach area, as designated on the zoning map. No such roof structure, however, shall have a total area greater than twenty-five percent of the roof area; nor shall such structure be used for any purpose other than a use incidental to the main use of the building.

The penthouse fails to qualify for an exemption in at least two respects. First, the plans show an office in the penthouse for janitorial or security personnel, and an office is not an exempt roof structure. Second, the penthouse occupies forty-six percent of the roof area, nearly double the twenty-five percent coverage permitted by the code. The penthouse, as built, does not conform with the requirements of the code.

[3] The problem presented by the fourth floor is entirely different. As we have noted, § 59-C-6.235 permits a height of 35 feet "plus an additional 8 feet for nonhabitable structures." Permanent views "nonhabitable structures" as the converse of "habitable space," and draws its defini-

3. Permanent suggests that its penthouse structure might lawfully occupy up to thirty-three and one-third percent of the roof area, and its support of this argument cites the definition section of the BOCA Basic Building Code. While this issue is not directly before us, inasmuch as the penthouse as built clearly exceeds even that percentage, we observe that the general definition of a penthouse contained in the BOCA Basic Building Code has no direct applicability to the Zoning Code. See text, *infra*.

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tion of the latter from § 201.0 of the BOCA Basic Building Code, 1981:

Habitable space: Space in a structure for living, sleeping, eating, or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility spaces and similar areas are not considered habitable space.
The BOCA Basic Building Code has been adopted by Montgomery County as its Building Code, Montgomery County Code (1972, 1977 Repl.Vol.) § 8-14, and definitions contained in the BOCA Code therefore apply in the interpretation of the Montgomery County Building Code. This does not mean, as Permanent suggests, that the BOCA Code definitions apply to every other portion of the Montgomery County Code. While the officials of DEP might reasonably be expected to look to a definition contained in other sections of the code for guidance, that definition is not binding.

Appellees, on the other hand, contend that the term "nonhabitable structures" is intended to include only space occupied by water towers, water tanks, air conditioning units or similar mechanical appendages, and that office space cannot properly be considered "nonhabitable."

The record before the Board discloses that the County had consistently applied the interpretation urged by Permanent, and had uniformly permitted a height of 43 feet for office buildings in these circumstances. It further discloses, however, that the Montgomery County Planning Board of the Maryland National Capital Park and Planning Commission held quite a different view. The Board of Appeals concluded that the definition urged by Appellees and the Planning Board was correct, and determined the maximum permitted height of this building to be 53 feet. Abandoning its long standing prior position, the County

4. Section 59-C-6.235 was amended in 1984 to provide that the additional 8 feet was for air conditioners or similar rooftop structures and mechanical appendages....

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now adopts the Board's interpretation as the correct one, and has amended its code accordingly.

We will not disturb the Board's determination of the correct meaning of "nonhabitable structures" as that term is used in § 59-C-6.235. We do not, however, agree with the Board's observation that the section is "quite clear and unambiguous." The ambiguity of *non* of the section is an important consideration in assessing the validity of Permanent's claim of equitable estoppel, to which we now turn.

As we pointed out in *Salisbury Beauty Schools v. St. Bd.*, 268 Md. 32, 300 A.2d 397 (1973), we have said, and continually applied the definition of equitable estoppel set forth at 3 J. Pomeroy, *Equity Jurisprudence*, § 894 (5th ed. 1941), as follows:

Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might have otherwise existed, either of property, or contract, or of remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, or contract, or of remedy.

In *Fitch v. Double "U" Sales Corp.*, 212 Md. 324, 339, 129 A.2d 93 (1957), we said:

Equitable estoppel operates to prevent a party from asserting his rights under a general technical rule of law, when that party has so conducted himself that it would be contrary to equity and good conscience to allow him to do so.

There is no settled rule in this country as to when, and under what circumstances, equitable estoppel is available against a municipal corporation. More than a century ago, in *Rogers v. Burlington*, 70 U.S. (3 Wall) 654, 13 L.Ed. 19 (1865), the United States Supreme Court approved the appli-

5. *Id.*

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cation of an equitable estoppel against the city of Burlington, Iowa. In that case, for the purpose of making a loan in aid of development to the Burlington and Missouri River Railroad Company, the city issued bonds having a face amount of \$15,000 which provided for payment of ten percent per annum interest, and payment of the principal amount after twenty years. Instead of selling the bonds and making a loan of the proceeds to the railroad company, the city elected to issue the bonds to the railroad company for it to sell, and took first mortgage bonds of the company as collateral. Thereafter, when the city refused payment of interest to Rogers, a bona fide purchaser of some of the bonds, he brought suit. The city demurred, claiming it was without authority to issue the bonds, and the issuance was void because it was not for any municipal purpose. Finding against the city, Mr. Justice Clifford said for the Supreme Court:

[T]he rule that a corporation quite as much as an individual is held to fair dealing with other parties, applies with all its force, and we repeat, that corporations cannot by their acts, representations, or silence, involve others in onerous engagements, and be permitted to defeat the calculations and claims which their own conduct has superinduced.

Id. at 667.
A collection of cases dealing with the applicability of the doctrine of estoppel against a municipal corporation may be found at 9A McQuillin, *Municipal Corporations* § 27.56 (3rd ed. rev.), where it is stated:

Although there is authority to the effect that the doctrine of estoppel does not apply as against a city, many decisions have held that the doctrine may be applied to municipal, as well as to private, corporations and citizens, when appropriate circumstances, justice and rights so require. The assertion of the doctrine in proceedings to enjoin the violation or the enforcement of municipal ordinances... is common. However, mere nonaction of municipal officers is not enough to establish an estoppel;

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there must have been some positive acts by such officers that have induced the action of the adverse party. It must appear, moreover, that the party asserting the doctrine incurred a substantial change of position or made extensive expenditures in reliance on the act.

See also 9A McQuillin, *supra*, §§ 26.213 and 26.214. For a more activist position, as well as criticism of this Court and of other courts for imposing certain restrictions upon the use of equitable estoppel against municipal corporations, see 2 Antic, *Municipal Corporation Law* ch. 16A (1986).

Although our predecessors said in *Gover v. Frederick City*, 175 Md. 639, 649, 3 A.2d 463 (1939), that "[t]here is nothing in the nature of a municipal corporation to exempt it from the application of the doctrine of estoppel as it would apply to a natural person or a business corporation," in practice we have applied the doctrine more narrowly. See *City of Hagerstown v. Long Meadow*, 251 Md. 481, 287 A.2d 242 (1972); *Kent County v. Abell*, 246 Md. 395, 228 A.2d 241 (1967); *Berwyn Heights v. Rogers*, 228 Md. 271, 179 A.2d 712 (1962); *Lipsitz v. Parr*, 164 Md. 222, 164 A. 743 (1933). Judge Prescott summarized the principles of law applicable to this type of case in *Berwyn Heights v. Rogers*, *supra*, 228 Md. at 279-80, 179 A.2d 712.

Some authorities hold that the principle of estoppel does not apply against a city, but the majority rule is to the effect that the doctrine of estoppel in pais is applied to municipal, as well as to private, corporations and individuals at least where the acts of its officers are within the scope of their authority and act and right require that the public be estopped.... And it has been held that municipalities may be estopped by reason of the issuance of permits.... However, the cases and text writers very generally state that a municipality is not estopped to set up the illegality of a permit.... And the issuance of an illegal permit creates no "vested rights" in the permittee.... (citations omitted).

In discussing the spectrum of problems that may arise from the revocation of a permit, Judge Weintraub, speaking for

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the Superior Court of New Jersey in *Jantausch v. Borough of Verona*, 41 N.J. Super. 59, 124 A.2d 14, 16-17 (1956), *aff'd*, 24 N.J. 226, 131 A.2d 881 (1957), said:

Our cases clearly settle the controlling principles at the extreme poles of the problem. Where the permit is regularly issued in accordance with the ordinance, it may not be revoked after reliance unless there be fraud. On the other hand, where there is no semblance of compliance with or authorization in the ordinance, the deficiency is deemed jurisdictional and reliance will not bar even a collateral attack....

But what of the intermediate situation in which the administrative official in good faith and within the ambit of his duty makes an erroneous and debatable interpretation of the ordinance and the property owner in like good faith relies thereon?

Although the New Jersey appellate courts did not find it necessary in *Jantausch* to answer the question thus posed, it was later answered in *Jesse A. Howland & Sons v. Borough of Freshfield*, 143 N.J. Super. 484, 363 A.2d 913, 916, cert. denied, 72 N.J. 466, 371 A.2d 70 (1976). There the Superior Court of New Jersey, Appellate Division, held that estoppel would apply in the circumstances described by Judge Weintraub, provided one further condition were met:

The requirement we would add... is the necessity for the appearance of an issue of construction of the zoning ordinance or statute, which, although ultimately not too debatable, yet was, when the permit was issued, sufficiently substantial to render doubtful a charge that the administrative official acted without any reasonable basis or that the owner proceeded without good faith. (emphasis in original).

The development of Maryland law has proceeded along similar lines. We said in *Lipsitz v. Parr*, *supra*, 164 Md. at 227, 164 A. 743, that "[a] municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law." Acknow-

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edging the potential application of the doctrine of estoppel to the "intermediate situation" described by Justice Weintraub, we said in *City of Hagerstown v. Long Meadow*, 254 Md. at 439, 287 A.2d 242:

Nor do we think the facts of this case permit the successful use of the argument that the Building Inspector was following a long standing administrative interpretation when he informed Callas and Long Meadow that no building permit was required. This rule, when applicable, must be bottomed on the need for the interpretation or clarification of an ambiguous statute or ordinance, which latter element is not here present.

In the case before us, we conclude that the definition of "nonhabitable structures" within the meaning of § 59-C-6.235 was open to at least two reasonable and debatable interpretations. We further conclude that the County shared the interpretation given this section by Permanent at the time of the issuance of the building permit, and that the County had consistently applied that interpretation for a significant period of time prior thereto. Indeed, it is apparent that the County persisted in that interpretation well into the hearing of this case by the Board, becoming convinced of the validity of a contrary interpretation only after considering the testimony of the chairman of the Planning Commission or perhaps the decision of the Board. Illustrative of this persistence is the fact that the County's stop work order stated that the building exceeded "the maximum height of 43 feet." Additionally, in response to Permanent's request for specifics, the County wrote that the building's measured height of 53 feet exceeded the maximum allowable height of 43 feet. In a later letter supplementing the reasons for the stop work order, the County included allegations of violation of required building setbacks, but again failed to suggest that the building violated any height restrictions. Finally, at its fourth floor hearing, the assistant county attorney informed the Board that the County's interpretation of "nonhabitable

Randall E. McMonigle (Randy's Landscaping)
Case No. 90-219-XA, File No. 91-CV-4763

Petitioner's Exhibit No. 9-200 Scale County Topographical Map
w/inset schematic

- People's Counsel Exhibit No.
- 1-Photograph 12/6/89 sign damaged by wind
 - 2-Correction Notice for alleged zoning violation 6/10/88
 - 3-A-Citation for Civil Zoning Viol.; B-Notice of Intention to Stand Trial 8/9/88
 - 4-Ltr. 9/19/88 - Reisinger to McMonigle
 - 5-Zoning Commissioner's file
 - 6-Copy Bd. Opinion and Order Perry Hall Mini Storage 90-17-SPHMA; A-Copy Zoning Commissioner's Decision 90-17-SPHMA
 - 7-8/15/89 Court of Special Appeals People's Counsel v. Martins
 - 8-Copy Bd. Opinion & Order 87-110-A
 - 9-Copy Bd. Opinion & Order 85-273-A
 - 10-Copy Bd. Opinion & Order 87-35-A
 - 11-Court of Special Appeals - Rock Church
 - 12-Court of Special Appeals - Triangle Sign
 - 13-Bldg. Permit 96093 5/1/87

October 28 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Respectfully submitted,
Linda M. Kuzmaul
Linda M. Kuzmaul, Legal Secretary,
County Board of Appeals, Room 315, County
Office Building, 111 W. Chesapeake Ave.,
Towson, Maryland 21204 (301) 887-3180

Randall E. McMonigle (Randy's Landscaping)
Case No. 90-219-XA, File No. 91-CV-4763

cc: John L. Calhoun, Esquire and Robert Polack, Esquire
Mr. Randall E. McMonigle
People's Counsel for Baltimore County

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE * BEFORE THE
NW/S Lillian Holt Dr., 1,100' SW * ZONING COMMISSIONER
of c/l Rossville Blvd. * OF BALTIMORE COUNTY
7620 Lillian Holt Drive
14th Election District
6th Councilmanic District * CASE # 90-219-XA
R. McMonigle (Randy's Landscaping)
Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein, pursuant to the Petition for Special Exception from Section 413.3, 413.3.b, and 413.3.c, to permit an outdoor advertising sign within 50 feet of a controlled access-type highway and a 6 foot front yard setback in lieu of the minimum 250 feet and 75 feet respectively; and a Petition for Zoning Variance from Sections 413.6.b.1 and 413.6.b.2 to permit a total surface area of 72 square feet and height of 35 feet in lieu of the maximum 25 square feet and 6 feet, respectively, as more particularly described on Petitioner's Exhibit No. 3.

The Petitioner appeared and testified. People's Counsel, by Phyllis F. Friedman, Esquire, appeared as a Protestant.

This case was presented in a very confusing manner. The Petitions, themselves, are probably legally correct, however, the plans do not closely match the Petitions. The testimony was of little help in clarifying the issues or setting forth the relief requested. The Petitioner was able to explain that the two signs he currently has on the site, (Petitioner's Exhibit No. 1) he wants to keep.

The best that can be understood of the Petitioner's request is that he wants an outdoor advertising sign at the Lillian Holt Drive location which, in its current location, is too close to the Baltimore Beltway right-of-way. He also seems to be requesting a sign along the Beltway as a stationary free-standing business sign under Section 413.6.b.

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Date 10/28/89
By [Signature]

Testimony indicated that the subject property located at 7620 Lillian Holt Drive and known as Randy's Landscaping, consists of 2.72 acres +/-, zoned M.L.-I.M. and is improved with a metal building and portable annex structure as indicated on Petitioner's Exhibit No. 3.

The Petitioner has requested a variance to permit a business/advertising sign which has been erected on the subject site relative to his landscaping business along Interstate 695, the Baltimore Beltway, and a Special Exception to permit an outdoor advertising sign along Lillian Holt Drive.

Testimony indicated that the Petitioner's business is spread over two parcels of property separated by the Baltimore Gas and Electric Company (B.G. & E.) right-of-way and connected by an existing driveway easement as indicated on Petitioner's Exhibit No. 3. In truth, the B.G. & E. right of way is part of a large strip of land owned in fee by B.G. & E. for electric power lines.

The Petitioner testified that he has constructed a 35 ft. high sign adjacent to the Baltimore Beltway (I-695) which is conspicuously located along the western boundary of the subject property. He also testified that he has erected the business sign indicated on Petitioner's Exhibit No. 3 on parcel 875 along Lillian Holt Drive.

The Petitioner testified that the sign located along the Baltimore Beltway was placed in this location to adequately advertise his business. He testified that the cost associated with the purchase and installation of the sign was considerable, and that due to the layout and topography of this property, the current location of the sign is the only practical location for maximum visibility. He claims if he is required to remove the sign, he would suffer an undue hardship and practical difficulty, which he

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contends will adversely impact his business, having a negative impact on his profitability. He also claimed that the 35 ft. high Beltway sign is only 6 feet above the roadway.

A site visit revealed notable inconsistencies between the actual dimensions of this sign and those dimensions represented on Petitioner's Exhibit No. 3. Petitioner's Exhibit No. 3 displays the sign as being 5 ft x 1 ft., 5 square ft. per side for a total of 10 square ft. The actual dimensions of the sign are 8.5 ft. x 4 ft., 34 square feet per side for a total of 68 square ft. The Petitioner's photograph of the subject sign (Petitioner's Exhibit No. 1) shows two signs, neither of which are accurately represented on Petitioner's Exhibit No. 3.

The site visit also indicated, contrary to Petitioner's testimony, that the sign located along the Beltway is significantly higher than 6 ft. above the roadway as claimed by the Petitioner. The Lillian Holt Drive sign is larger than permitted by the B.C.Z.R. and this problem is not addressed by any of the Petitions filed in this matter.

The Petitioner essentially contends, without the citation of authority, that Baltimore County is estopped from denying his requested relief by the fact that the County, on January 18, 1988, issued him a permit (Petitioner's Exhibit No. 6) to construct the subject sign. He claims he relied on that permit and expended substantial amounts of money to purchase and erect the sign.

The correct principal of law to be applied to the instant case was set forth by Judge Prescott in *Town of Berwyn Heights v. Rogers*, 228 Md. 271, 179 A2d, 712 (1962), wherein the property owner had received building permits from the building inspectors of both the Town of Berwyn Heights and Prince Georges County, Maryland. Construction of a dwelling house in viola-

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Date 10/28/89
By [Signature]

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tion of side yard restrictions was well advanced when the injunctive relief was sought. Judge Prescott upholding the County's right to prosecute the subject zoning violation, recognized that a municipality is not estopped to set up the illegality of a permit, and that the issuance of an illegal permit creates no "vested rights" in the permittee. (Emphasis added) (Berwyn, supra.)

The case of *Lipsitz v. Parr*, 164 Md. 222, 164 A2d, 743 (1933), involved the issuance of a building permit authorizing the applicant to construct an ice house in a zone where such a building was specifically prohibited by law. The applicant set up the defense of estoppel against the City's efforts to obtain an injunction to enjoin the work. The Court, speaking through Judge Parke, stated:

"A permit thus issued without the official power to grant does not, under any principle of estoppel, prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality. In the issuance of permits pursuant to the ordinance at bar, the municipality was not acting in any proprietary capacity nor in the exercise of its contractual powers, but in the discharge of a governmental function through its public officers of limited authority, and the doctrine of equitable estoppel cannot be here invoked to defeat the municipality in the enforcement of its ordinances because of an error or mistake committed by one of its officers or agents which has been relied on by the third party to his detriment."

In *Conrum v. Mayor and City Council of Baltimore* 182 Md. 370, 375, 35 A.2d 128, 130 (1943), this Court pointed out that:

"It is a fundamental principle of law that all persons dealing with the agent of a municipal corporation are bound to ascertain the nature and extent of his authority."

In *Baltimore v. Eschbach*, 18 Md. 276 (1862), the Court stated that:

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Date 10/28/89
By [Signature]

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"A municipal corporation cannot be held liable for the unauthorized acts of its agents although done 'officiis colore' without some corporate act of ratification or adoption; and, from considerations of public policy, it seems more reasonable that an individual should occasionally suffer from the mistakes of public agents or officials, than to adopt a rule, which, through improper combinations, and collusion, might be turned to the detriment and injury of the public".

The doctrine of equitable estoppel cannot be invoked by the Petitioner in this matter as the above case law clearly states. The Petitioner claims he has been caused a great deal of expense because of his reliance on the illegal permit. He obtained, however, the sign in question was fully destroyed by wind and other acts of God. Any moneys expended by the Petitioner, subsequent to the destruction of the original sign for the new lighted sign were at the Petitioner's own risk, as he was on notice of the illegality of the permit on which he rests his entire case. Consequently, such expenditures have been lost; not by acts of Baltimore County, but by acts of God. There is no equity in a structure that no longer exists and there is no equitable interest to replace an illegal structure.

The Petitioner has requested a Special Exception regarding the signage located on Parcel 875 along Lillian Holt Drive. The sign, as currently situated on the lot, does not meet the minimum setback requirements as set forth in Section 413. b & c, which reads in pertinent part as follows:

"413.3-Outdoor advertising signs as defined in Section 101 are allowed only in B.L. B.M., M.L., and M.H. zones as Special Exceptions, under the following conditions, as limited by Section 413.5:

a. The total surface area of any such sign, exclusive of structural supports, shall not exceed 300 square feet, except that a hand-painted custom-built sign may have a total surface area of not exceeding 500 square feet. The provisions of this subparagraph referring to hand-painted

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By [Signature]

custom-built signs shall permit only one single face unit.

b. No such sign shall be permitted to front on, face or be located within 250 feet of the right-of-way of any expressway or other controlled-access-type highway, or within 100 feet of the right-of-way of any other dual highway.

c. No such sign shall be located closer to the street right-of-way than the minimum front yard requirement for a commercial building as determined by these Regulations for the zone involved."

The subject sign, as indicated on Petitioner's Exhibit No. 3, is within 52 ft. of the Beltway right-of-way and 6 ft. of Lillian Holt Drive. However, the subject sign does not front or face the Beltway. In fact, the sign is not visible from any point on the Beltway. In view of the unique layout of the Petitioner's property, the Petitioner's "business sign" is technically an "outdoor advertising sign", that serves as a business sign for the Petitioner's landscaping business. Section 101 of the B.C.Z.R. defines "business" and "outdoor advertising" signs as follows:

"Sign, Business: A sign which calls attention to a business, service, industry or other activity conducted on the premises upon which the sign is located."

"Sign, Outdoor Advertising: A sign which calls attention to a business, commodity, service, entertainment, or other activity, conducted, sold, or offered elsewhere than on the premises upon which the sign is located."

Although the subject sign "calls attention" to the Petitioner's business, the sign is not actually located on the parcel supporting the Petitioner's business (See Petitioner's Exhibit No. 1).

The issue in the Special Exception is whether or not the requirements of Section 502 of the B.C.Z.R. have been successfully met by the Petitioner. The cases clearly establish that "... the appropriate standard to

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By [Signature]

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be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show the particular use, proposed at the particular location, would have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 at 1327 (1981).

The Court went on to say in Schultz that,

"... the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But, if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious and illegal." (at pg.1325)

The Petitioner must show to the satisfaction of the Zoning Commissioner that the proposed use would be conducted without real detriment to the community to meet his burden. See, Turner v. Hammond, 270 Md. 41, 310 A.2d 543 (1973). If the Petitioner fails to produce credible and probative evidence on all of the specific issues established by Section 502.1, then the requested special exception must be denied.

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In the opinion of the Zoning Commissioner, the Petitioner has shown that a sign could be located on Parcel No. 875 as indicated on Petitioner's Exhibit No. 1 without real detriment to the community and would not adversely affect the public good, provided such signage meets the height and area requirements promulgated in the B.C.Z.R. However, the Petitioner's sign is in violation of Section 413.6.b.1 of the B.C.Z.R. in that the total square footage of the sign (68 square ft.) exceeds the total square footage permitted by said section (50 square ft.) and, therefore, must be removed. However, recognizing the unique layout of the Petitioner's property, resulting from the B.G. & E. right-of-way, and the fact that the existing sign on Parcel No. 875 is not observable from the Beltway, the Petitioner will be permitted to erect an outdoor advertising sign on Parcel No. 875, provided said sign is in complete compliance with the height and area requirements of the B.C.Z.R. It is the opinion of the Zoning Commissioner that such a sign will not impede safe ingress and egress from the site, nor, in any other way, adversely affect safe vehicular travel along Lillian Holt Drive.

The Petitioner has also requested variances from Sections 413.6.b.1 and 413.6.b.2 regarding the signage adjacent to the Baltimore Beltway.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant, as well as other property owners in the district or whether a lesser relax-

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By J. Robert Haines

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tion than that applied for would give substantial relief; and

3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

Section 413.6.b reads in pertinent part, as follows:

One stationary free-standing business sign is permitted for each street to which a lot has direct vehicular access. . . (emphasis added).

Obviously, the Petitioner has no direct vehicular access to the Beltway. He is, therefore, requesting a variance for a sign that he is not entitled to, a sign that was illegal when constructed, and remains in violation of the B.C.Z.R.

Further, by the Petitioner's own admission, the subject 35 foot high outdoor advertising sign adjacent to the Baltimore Beltway is violative of Sections 413.3.b and 413.3.c of the B.C.Z.R.

The clear and plain language of Section 413.3 of the B.C.Z.R. makes clear the intent of the County Council regarding outdoor advertising signs along the Baltimore Beltway. Subsection (b) of 413.3 states:

"No such sign shall be permitted to front on, face or be located within 250 feet of the right-of-way of any expressway or other controlled-access-type highway, or within 100 feet of the right-of-way of any other dual highway."

Clearly, the purpose of this section is to prevent signs along expressways. The Petitioner has not demonstrated to the satisfaction of the Zoning Commissioner that his property possesses any unique characteristic, different from all other similarly situated properties along the Beltway, that would entitle him to the requested variance relief. In view of the

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Date 2/27/90
By J. Robert Haines

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above, the Petitioner's variance request is, as a practical matter, a nullity; i.e., even if the variance relief were granted, the Petitioner's sign would still be illegal, and, therefore, must be removed.

In reviewing the evidence, there is insufficient evidence to allow a finding that the Petitioner would experience practical difficulty or unreasonable hardship if the requested variance was denied. The testimony presented by the Petitioner was in support of a matter of a preference rather than of the necessity for the variance. The Petitioner has failed to show that compliance would unreasonably prevent the use of the property or be unnecessarily burdensome. Therefore, the variance requested must be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 27th day of February, 1990 that the Petition for Zoning Variance from Sections 413.6.b.1 and 413.6.b.2 to permit a total surface area of 72 square feet and height of 35 feet in lieu of the maximum 25 square feet and 6 feet, in accordance with Petitioner's Exhibit No. 3 be and is hereby DENIED; and,

IT IS FURTHER ORDERED, that the Petition for Special Exception from Sections 413.3, 413.3.b, and 413.3.c, to permit an outdoor advertising sign within 50 feet of a controlled access-type highway and a 6 foot front yard setback in lieu of the minimum 250 feet and 75 feet, that complies with all other applicable B.C.Z.R., be and is hereby GRANTED, subject, however, to the restrictions set forth below which are conditions precedent to the relief granted herein:

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1. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

2. The Petitioner shall submit to the Zoning Commissioner's office by no later than March 15, 1990 a new site plan prepared by a Registered Professional Engineer and/or Land Surveyor, which clearly identifies all buildings and new signage, their area dimensions, their exact location on the subject property, their distances from all property lines, and any other information as may be required to be a certified site plan.

IT IS FURTHER ORDERED that the Petitioner shall remove on or before March 15, 1990 all signage affixed to the two sign poles indicated on Petitioner's Exhibit No. 1 which is adjacent to the Baltimore Beltway, and shall further remove said sign poles; and,

IT IS FURTHER ORDERED that the Petitioner's signage, that does not comply with area requirements of the B.C.Z.R. located on the aforementioned parcel No. 875 along Lillian Holt Drive, shall be removed on or before March 15, 1990.

ORDER RECEIVED FOR FILING
Date 2/27/90
By J. Robert Haines

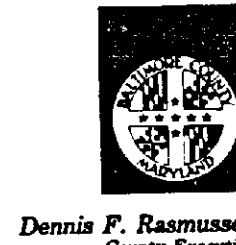
JRH:mmm
cc: Peoples Counsel

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Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353
J. Robert Haines
Zoning Commissioner

February 20, 1990



Dennis F. Ream
County Executive

Mr. Randall E. McMonigle
7620 Lillian Holt Drive
Baltimore, Maryland 21237

RE: Petitions for Special Exception and Variance
Case #90-219-XA
Randy's Landscaping, Petitioner

Dear Mr. McMonigle:

Enclosed please find the decision rendered in the above captioned case. The Petitions for Special Exception and Zoning Variance have been granted in part and denied in part in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,
J. Robert Haines
Zoning Commissioner

JRH:mmm
att:
cc: Peoples Counsel

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RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER
AND VARIANCES : OF BALTIMORE COUNTY
NW/S of Lillian Holt Drive, :
1,100' SW of C/L of Rossville :
Blvd. (7620 Lillian Holt Dr.) :
14th Election District :
6th Councilmanic District :

RANDALL E. McMONIGLE (Randy's : Case No. 90-219-XA
Landscaping), 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 304, County Office Building
Towson, Maryland 21204
887-2188

I HEREBY CERTIFY that on this 27th day of November, 1989, a copy of the foregoing Entry of Appearance was mailed to Randall E. McMonigle, 7620 Lillian Holt Drive, Baltimore, MD 21237, Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman

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LEGAL DESCRIPTION
June 5, 1989

PARCEL # 875

Beginning at point approximately 1600 feet southwest of Rossville Blvd. as conveyed from the State of Maryland to Randy's Landscaping by deed recorded among the Baltimore County Land Records as prepared by the SHA Bureau of Plans and Surveys,

1. North 57 degrees 51 minutes 3 seconds West, 25.41 feet to a point;
2. North 37 degrees 22 minutes 35 seconds West, 7.41 feet to a point;
3. North 35 degrees 29 minutes 48 seconds East, 248.34 feet to a point;
4. North 82 degrees 54 minutes 45 seconds East, 195.57 feet to a point;
5. Hence radial along a curve with a chord bearing of 52 degrees 15 minutes 39 seconds West, with a radius of 1602.95 feet for a length of 395.57 feet to the point of beginning, containing

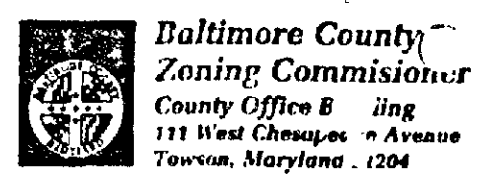
PARCEL "A" Liber/Folio W.P.C. 534/435 (containing the primary structure)

Beginning at point approximately 1850 feet southwest of Rossville Blvd. as conveyed to Randy's Landscaping and as surveyed by AFR Associates Inc.

1. South 35 degrees 47 minutes 41 seconds West, 201.32 feet to a point;
2. North 29 degrees 35 minutes 20 seconds West, 494.74 feet to a point;

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285
90-219-XA



Account: R0014150
Receipt
No: 604
Date: 90-219

DESCRIPTION	QTY	PRICE
PUBLIC HEARING FEES		
000 - POSTING SIGNS / ADVERTISING	1	\$154.00
TOTAL		\$154.00

Cashier Validation: Please make checks payable to: Baltimore County

Baltimore County Zoning Commission
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

DATE: 12/5/89



Dennis F. Rasmussen
County Executive

Randall E. McMonigle
7620 Lillian Holt Drive
Baltimore, Maryland 21237

Re: Petitions for Special Exception and Zoning Variance
CASE NUMBER: 90-219-XA
NW/4 of Lillian Holt Drive, 1,100' SW of the c/l of Rossville Boulevard
7620 Lillian Holt Drive
14th Election District - 6th Councilmanic
Petitioner(s): Randall McMonigle (Randy's Landscaping)
HEARING: FRIDAY, DECEMBER 8, 1989 at 2:00 p.m.

Dear Mr. McMonigle:

Please be advised that \$154.00 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled to begin.

Be advised that should you fail to return the sign & post set(s), there will be an additional \$50.00 added to the above amount for each such set not returned.

Very truly yours,
J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

JRH:gs
cc: File

NOTE: (If "PHASE II" of the "SNOW EMERGENCY PLAN" is in effect in Baltimore County on the above hearing date, the hearing will be postponed. In the event of snow, telephone 887-3391 to confirm hearing date.)

CASE 91-CV-4763
IN THE MATTER OF RANDALL E. MCMONIGLE
RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS, BOARD'S RECORD EXTRACT & TRANSCRIPT FILED IN THE ABOVE-ENTITLED CASE, AND ZONING COMMISSIONER'S FILE & EXHIBITS.
Date: 10/28/91
C. Root
Clerk's Office

LETTERS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record in no order of satisfaction is filed prior to trial.

RE: NOW JURY 91 CV 4763 RANDALL E. MCMONIGLE, VS. PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
HEARING DATE: WEDNESDAY, MAY 12, 1993 @ 9:30 a.m.
ON THE FOLLOWING: APRIL 13 hours
Please see below schedule.

TO: John L. Calhoun, Esq.
Robert E. Polack, Esq.
Phyllis Cole Friedman, Esq.
County Board of Appeals of Baltimore Co. P.R.
Room 49, Court House
Towson, Md 21204

March 18, 1993
Towson, Maryland 21286-6754
PO Box 8754

Form 004
Hans Summers - 887-2860
City of Baltimore
City Manager
City Office Building
401 Carey Avenue
PO Box 8754
Towson, Maryland 21286-6754

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Carey Avenue
PO Box 8754
Towson, Maryland 21286-6754
March 18, 1993

Kathy Ralston - 887-2861
City of Baltimore - Civil
City Manager's Office
City Office Building
401 Carey Avenue
PO Box 8754
Towson, Maryland 21286-6754

Baltimore County Zoning Commission
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353
J. Robert Haines
Zoning Commissioner

07 0 9 1990

NOTICE OF HEARING



Dennis F. Rasmussen
County Executive

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 108 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petitions for Special Exception and Zoning Variance
CASE NUMBER: 90-219-XA
NW/4 of Lillian Holt Drive, 1,100' SW of the c/l of Rossville Boulevard
7620 Lillian Holt Drive
14th Election District - 6th Councilmanic
Petitioner(s): Randall McMonigle (Randy's Landscaping)
HEARING: FRIDAY, DECEMBER 8, 1989 at 2:00 p.m.

Special Exception/Variance: To permit an outdoor advertising sign within 50 feet of a controlled access-type highway and a 6 foot front yard setback in lieu of the minimum 250 feet and 75 feet, respectively.
Variance: To permit a total surface area of 72 square feet and height of 35 feet in lieu of the maximum 25 square feet and 6 feet, respectively.

In the event that this Petition 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 in writing and received in this office by the date of the hearing set above or presented at the hearing.

NOTE: (If "PHASE II" of the "SNOW EMERGENCY PLAN" is in effect in Baltimore County on the above hearing date, the hearing will be postponed. In the event of snow, telephone 887-3391 to confirm hearing date.)

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180
May 7, 1990

HEARING ROOM - Room 301, County Office Bldg.
NOTICE OF ASSIGNMENT
NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-219-XA RANDALL E. MCMONIGLE
NW/4 of Lillian Holt Drive, 1100'
SW of c/l Rossville Blvd. (7620
Lillian Holt Drive)
14th Election District
6th Councilmanic District
SE -Outdoor advertising sign within 50'
of highway & 6' front yard setback in lieu
of 250' & 75'
VAR-surface area
2/20/90 -Z.C.'s Order DENYING Petitioner.

ASSIGNED FOR: FRIDAY, SEPTEMBER 7, 1990 at 10:00 a.m.
cc: Randall E. McMonigle (Randy's Landscaping) - Appellant/Petitioner
Mara N. Peterson, Esquire - Counsel for Appellant/Petitioner
People's Counsel for Baltimore County
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney
LindaLee M. Kuszmaul
Legal Secretary

WJD appears 7/23/90
8/24/90 Applied for stay of Counsel for Appellant/Petitioner for Petitioner's appearance no reset date
John L. Calhoun, Esquire Counsel for Appellant/Petitioner
Centered appearance 8/22/90

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County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180
August 22, 1990

HEARING ROOM - Room 301
County Office Building
NOTICE OF POSTPONEMENT
NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-219-XA RANDALL E. MCMONIGLE (RANDY'S LANDSCAPING)
NW/4 of Lillian Holt Drive, 1100'
SW of c/l Rossville Blvd. (7620 Lillian
Holt Drive)
14th Election District
6th Councilmanic District
SE -Outdoor advertising sign within 50'
of highway & 6' front yard setback in lieu
of 250' & 75'.
VAR-surface area
2/20/90 -Z.C.'s Order DENYING Petitions.

which was scheduled for hearing on September 7, 1990 has been POSTPONED at the request of Counsel for Petitioner/Appellant and will be reset to the next available, appropriate date on the Board's docket.

cc: John L. Calhoun, Esquire Counsel for Petitioner/Appellant
Mr. Randall E. McMonigle " "
People's Counsel for Baltimore County
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney

LindaLee M. Kuszmaul
Legal Secretary

MICROFILMED

Law Office of
Polack and Calhoun

ROBERT E. POLACK
JOHN L. CALHOUN, P.A.
"ATTORNEYS AT LAW"
RAY B. SHIELDS
LEGAL SECRETARY

808 BALTIMORE AVENUE
TOWSON, MARYLAND 21204
HARLEY PROFESSIONAL BUILDING
1200 E. JOPPA ROAD
SUITE C
BALTIMORE, MARYLAND 21204
TELEPHONE (301) 321-1818
FAX (301) 321-1889

LindaLee M. Kuszmaul
Secretary
County Board of Appeals
Room 301
County Office Building
Towson, MD 21204
Re: Randall McMonigle
7620 Lillian Holt Drive
Hearing Date 3/26/91
10:00 A.M.

Dear Ms. Kuszmaul:
Counsel for Petitioner/Appellant requests a postponement of the Board of Appeals hearing scheduled for 10:00 a.m., March 26, 1991 due to a conflict with In Re: Bobbie Dorsey in the U.S. District Court for Maryland, #90-40192, scheduled that same date and time.

Please advise.
Ref: Rule 2 (c)

Very truly yours,
John L. Calhoun
John L. Calhoun

February 5, 1991

ORIGINAL FILED IN
91 FEB - 7 11:03 37

Hearing Room -
 Room 301, County Office Bldg. December 17, 1990

NOTICE OF ASSIGNMENT

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

CASE NO. 90-219-XA RANDALL E. MCMONIGLE (RANDY'S LANDSCAPING)
 NW/4 of Lillian Holt Dr., 1100' SW
 of c/1 Rossville Blvd. (7620 Lillian Holt
 Dr.); 14th Election District
 6th Councilmanic District

SE-Outdoor advertising sign within 50' of
 highway & 6' front yard setback in lieu
 of 250' & 75'.
 VAR-Surface area

2/20/90 - Z.C.'s Order DENYING Petition.

ASSIGNED FOR: TUESDAY, MARCH 26, 1991 at 10:00 a.m.

cc: John L. Calhoun, Esquire Counsel for Petitioner/Appellant
 Mr. Randall E. McMonigle

People's Counsel for Baltimore County
 P. David Fields
 Pat Keller
 Public Services
 J. Robert Haines
 Ann M. Nastarowicz
 James E. Dyer
 W. Carl Richards, Jr.
 Docket Clerk - Zoning
 Arnold Jablon, County Attorney

LindaLee M. Kuszmaul
 Legal Secretary

*Pld on the
 second sheet
 for 8/19/91
 P. 10/20/91*

out per Paula 11/2/91

February 13, 1991

John L. Calhoun, Esquire
 POLACK & CALHOUN
 605 Baltimore Avenue
 Towson, MD 21204

Re: Case No. 90-219-XA
 Randall E. McMonigle

Dear Mr. Calhoun:

The Board is in receipt of your letter of February 5, 1991 requesting a postponement of the subject case set to be heard by this Board on March 26, 1991.

In May of 1990 notices were issued citing a September 7, 1990 hearing date for this case. Your office requested a postponement citing a conflict with a District Court hearing, and the postponement was granted. In December of 1990, a Notice of Assignment was issued by this Board citing the March 26, 1991 hearing date. In view of these circumstances, the Board will rule that no further postponements in this matter be granted.

Therefore, your request for postponement is denied.

Very truly yours,
 William T. Hackett
 William T. Hackett, Chairman
 County Board of Appeals

cc: Randall E. McMonigle
 People's Counsel for Baltimore County

MICROFILMED

Hearing Room -
 Room 301, County Office Bldg. March 26, 1991

NOTICE OF POSTPONEMENT AND REASSIGNMENT

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

CASE NO. 90-219-XA RANDALL E. MCMONIGLE (RANDY'S LANDSCAPING)
 NW/4 of Lillian Holt Dr., 1100' SW
 of c/1 Rossville Blvd. (7620 Lillian Holt
 Dr.); 14th Election District
 6th Councilmanic District

SE-Outdoor advertising sign within 50' of
 highway & 6' front yard setback in lieu
 of 250' & 275'.
 VAR-Surface area

2/20/90 - Z.C.'s Order DENYING Petition.

which was scheduled to be heard on March 26, 1991 has been POSTPONED ON THE RECORD at the request of People's Counsel and has been

REASSIGNED FOR: WEDNESDAY, AUGUST 7, 1991 AT 10:00 a.m.

cc: John L. Calhoun, Esquire Counsel for Petitioner/Appellant

Mr. Randall E. McMonigle

People's Counsel for Baltimore County
 P. David Fields
 Pat Keller
 Public Services
 J. Robert Haines
 Ann M. Nastarowicz
 James E. Dyer
 W. Carl Richards, Jr.
 Docket Clerk - Zoning
 Nancy C. West, Asst. County Attorney
 Arnold Jablon, Chief Deputy County Attorney

LindaLee M. Kuszmaul
 Legal Secretary

NW/4 of Lillian Holt Dr., 1,100' SW of c/1
 of Rossville Blvd. (7620 Lillian Holt Dr.)
 90-219-XA (RANDALL E. MCMONIGLE (Randy's
 Landscaping)
 14th District Appealed: 3/15/90

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

November 27, 1989

Mr. Ronald E. Mongile
 7620 Lillian Holt Drive
 Baltimore, MD 21237

RE: Item No. 285, Case No. 90-219-XA
 Petitioner: Ronald E. McMonigle
 Petition for Zoning Variance and
 Special Exception

Dear Mr. Mongile:

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. 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.

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WINIARSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,
 James E. Dyer
 JAMES E. DYER
 Chairman
 Zoning Plans Advisory Committee

JED:jw

Enclosures

MICROFILMED

Dennis F. Rasmussen
 County Engineer

Your petition has been received and accepted for filing this
 22nd day of September, 1989.

J. Robert Haines
 J. ROBERT HAINES
 ZONING COMMISSIONER

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

Petitioner: Ronald E. McMonigle, et al
 Petitioner's Attorney:

MICROFILMED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

RECEIVED
 OCT 19 1989
 ZONING OFFICE

TO: Zoning Advisory Committee
 FROM: Donald C. Outen

DATE: October 12, 1989

SUBJECT: Case #285
 Randall E. McMonigle
 (Randy's Landscaping)

285. Property Owner: Randall E. McMonigle (Randy's Landscaping)
 Location: NW/4 of Lillian Holt Drive, 1,100' SW of the
 centerline of Rossville Boulevard
 Existing Zoning: M.L.-I.M.
 Proposed Zoning: Special Exception/Variance to permit an
 outdoor advertising sign within 50 feet of a
 controlled access-type highway and a 6 foot
 front yard setback in lieu of the minimum 250
 feet and 75 feet, respectively. Variance to
 permit a total surface area of 72 square feet
 and height of 35 feet in lieu of the maximum 25
 square feet and 6 feet, respectively.
 Area: 3.22 acres
 District: 14th Election District

In reference to the above mentioned property and the proposed zoning request, the Department of Environmental Protection and Resource Management respectfully requests denial of any changes to the existing zoning due to outstanding requirements by this Department concerning previous site improvements.

A requirement set forth by this Department in 1986 to leave wetlands onsite undisturbed was ignored and subsequent wetlands fill took place. Mitigative requirements to restore/replace wetlands onsite were agreed to but have as yet gone unimplemented. Continued storage of tractor-trailers in the area to be planted as mitigative wetlands has resulted in degraded water quality in Stemmers Run which crosses the site.

It is the Department's opinion that these measures should be completed prior to Baltimore County approvals for any requests/improvements onsite.

If you require any further information, please call Ms. Louise Hanson at 887-3980.

MICROFILMED

Donald C. Outen
 Donald C. Outen, A.I.C.P.
 Bureau Chief
 Water Quality & Resource Management

DCO:LN:sp

Richard H. Trainor
 Secretary
 Hal Kassoff
 Administrator

RECEIVED
 SEP 7 1989
 ZONING OFFICE

Mr. J. Robert Haines
 Zoning Commissioner
 County Office Building
 Towson, Maryland 21204
 Attn: Mr. James Dyer

Re: Baltimore County
 Randall E. McMonigle
 Property
 Randy's Landscaping
 Zoning Meeting of 8-29-89
 NW/4 of Rossville
 Blvd., Bordering
 Baltimore Beltway
 (I-695)
 (Item #285)

Dear Mr. Haines:

After reviewing the submittal for a special exception/variance to permit an outdoor advertising sign within 50 feet of a controlled access type highway and a 6' front yard setback in lieu of the minimum 250 feet and 75 feet, respectively, and a variance to permit a total surface area of 72 square feet and heights of 35 feet in lieu of the maximum 25 square feet and 6 feet, we have the following comment.

We have forwarded this plan to our Highway Beautification Section, c/o Mary Benner - 333-1642, for all comments relative to this sign variance.

We are requesting three additional copies of this plan be submitted for review by our Project Development Section concerning any impact to this site from our future beltway improvements.

If you have any questions, please call Larry Brocato at 333-1350.

Very truly yours,

Creston J. Mills, Jr., Chief
 Engineering Access Permits
 Division

MICROFILMED

LB:man
 cc: American Engineering & Land Development, Inc.
 Mr. J. Ogle

My telephone number is (301) 333-1350 (Fax #333-1041)
 Ms. M. Benner (w-attachment)
 Teleprinter for Impaired Hearing or Speech
 383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free
 707 North Calvert St., Baltimore, Maryland 21203-0717



Maryland Department of Transportation
State Highway Administration

Richard M. Trainor
Secretary
Hal Kassoff
Administrator

September 18, 1989

RECEIVED
SEP 19 1989
ZONING OFFICE

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

Re: Sign Location
NW/4 Lillian Holt Drive
1,100' SW of Rossville Blvd.,
Bordering Baltimore Beltway
(I-695)
(Item #285)

Dear Mr. Haines:

I am responding to the letter written to you by Mr. Creston J. Mills, Jr.,
Chief, Engineering Access Permits Division, concerning the above item.

An inspection was made on September 14, 1989 by Mr. George Dawson, the
Highway Beautification Inspector and found he has no objection to
placing the sign as per plans submitted.

The sign cannot be placed on or overhanging the State's Right-of-Way.

Sincerely,

Mary I. Jenner
Mary I. Jenner
Acting Chief
Highway Beautification Section

MIB:jak
cc: Mr. Creston J. Mills, Jr.
Mr. George Dawson

My telephone number is (301) _____
Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 465-0451 D.C. Metro - 1-800-92-5062 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0717

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21284
(301) 887-3554

RECEIVED
AUG 31 1989
ZONING OFFICE

August 25, 1989



Dennis F. Rasmussen
County Executive

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 285, 65, 66, 68, 69, 70, 71, and 72.

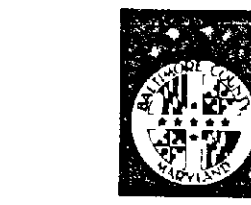
Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Traffic Engineer Associate II

MSF/lw

Baltimore County
Fire Department
800 York Road
Towson, Maryland 21204-2586
(301) 887-4500
Paul H. Reinecke
Chief

August 24, 1989



Dennis F. Rasmussen
County Executive

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

RE: Property Owner: RANDALL E. MCMONIGLE
Location: NW/4 OF LILLIAN HOLT DRIVE
Item No.: 285 Zoning Agenda: AUGUST 29, 1989

Gentlemen:

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

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

REVIEWER: _____ Noted and Approved _____
Planning Group Fire Prevention Bureau
Special Inspection Division

JK/REK

AUG 28 1989

MICROFILMED

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines DATE: December 4, 1989
Zoning Commissioner
FROM: Pat Keller, Deputy Director
Office of Planning and Zoning
SUBJECT: Zoning Petition No. 90-219-XA, Item 285
Randall E. McMonigle

The Petitioner requests a Special Exception for an outdoor
advertising sign within 50 feet of a controlled access-type highway,
and Variances to sign area and height.

In reference to these requests, staff offers the following
comment:

- This office is opposed to any signs whose purpose is to
advertise the business to beltway or expressway traffic.

If there should be any further questions or if this office can
provide additional information, please contact Jeffrey Long in the
Office of Planning at 887-3211.

PK:CR:gg1
90219/ZAC1

MICROFILMED

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3553
J. Robert Haines
Zoning Commissioner

March 21, 1990



Dennis F. Rasmussen
County Executive

Baltimore County Board of Appeals
County Office Building, Room 315
Towson, Maryland 21204

RE: Petition for Special Exception and Zoning Variance
NW/4 Lillian Holt Drive, 1,100' SW of c/l Rossville Boulevard
(7620 Lillian Holt Drive)
14th Election District, 6th Councilmanic District
R. MCMONIGLE (RANDY'S LANDSCAPING) - Petitioner
Case No. 90-219-XA

Dear Board:

Please be advised that an appeal of the above-referenced case was
filed in this office on March 15, 1990 by Marc N. Peitersen, Attorney
on behalf of the Petitioner. 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

J. ROBERT HAINES
Zoning Commissioner

JRH:ccr

Enclosures

cc: Randall E. McMonigle, 7620 Lillian Holt Drive
Baltimore, Maryland 21237

Marc N. Peitersen, 7939 Honeygo Boulevard, Suite 124
White Marsh Professional Center, Baltimore, MD 21236

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

File

MICROFILMED

APPEAL

Petition for Special Exception and Variances
NW/4 of Lillian Holt Drive, 1,100' SW of C/L of Rossville Blvd.
(7620 Lillian Holt Drive)
14th Election District - 6th Councilmanic District
RANDALL E. MCMONIGLE (Randy's Landscaping) - Petitioner
Case No. 90-219-XA

Petitions for Special Exception and Variance

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

Petitioner's Exhibits: 1. Three photographs of signs
2. Highlighted drawing of site
3. Plat to accompany Petitions
4. & 5. Letters from Petitioner stating
hardships for Special Exception and Variance
6. & 7. Photocopies of Permits

Zoning Commissioner's Order dated February 20, 1990 (Denied)

Notice of Appeal received March 15, 1990 from Marc N. Peitersen,
Attorney on behalf of Petitioner

cc: Randall E. McMonigle, 7620 Lillian Holt Drive
Baltimore, Maryland 21237

Marc N. Peitersen, 7939 Honeygo Boulevard, Suite 124
White Marsh Professional Center, Baltimore, MD 21236

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

Request Notification: P. David Fields, Director of Planning & Zoning
Patrick Keller, Office of Planning & Zoning
J. Robert Haines, Zoning Commissioner
Ann M. Nastarowicz, Deputy Zoning Commissioner
James E. Dyer, Zoning Supervisor
M. Carl Richards, Jr., Zoning Coordinator
Docket Clerk
Arnold Jablon, County Attorney

MICROFILMED

5/7/90 - Following parties notified of hearing set for September 7, 1990 at 10:00 a.m.:

Randall E. McMonigle
Marc N. Peitersen, Esquire
People's Counsel
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
M. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon

7/23/90 -Letter from Marc N. Peitersen, Esq. withdrawing appearance as
Attorney for Petitioner; file noted.

8/22/90 - Above parties notified of POSTPONEMENT at request of new Counsel for
Petitioner/Appellant, John L. Calhoun, Esquire. No reset date at this time.

12/17/90 -Above parties notified of hearing set for Tuesday, March 26, 1991 at
10:00 a.m. with following changes:

Delete -Marc N. Peitersen, Esquire (W/drew appearance as Counsel)
Add -John L. Calhoun, Esquire -Counsel for petitioner/Appellant
Bureau of Public Services

February 7, 1991 -Received letter requesting postponement; district court conflict --
from John L. Calhoun on behalf of Petitioner.

2/13/91 -Letter from WTH to Mr. Calhoun DENYING requested postponement.

3/26/91 - Above parties notified of hearing set for August 7, 1991, POSTPONED on
the record 3/26/91. at 10:00 a.m.

RANDALL E. MCMONIGLE (RANDY'S LANDSCAPING)

#90-219-XA

Page 2 of 2

May 19, 1993

Order of the Circuit Court that matter is REMANDED to CBA
for REMAND to Zoning Commissioner for further determination,
based upon change in zoning of property since time of appeal.
Petitioner to begin anew the appropriate processes to obtain
 requisite permission and authority for signage. (Byrnes, J.)

July 22

Remand Order Pursuant to Order of the Circuit Court for
Baltimore County issued by the Board in which matter is REMANDED
to the Zoning Commissioner for further determination pursuant
to said Order of Court.

RANDALL E. MCMONIGLE (RANDY'S LANDSCAPING) #90-219-XA
NW/s of Lillian Holt Dr., 1,100' SW of c/l 14th Election District
of Rossville Blvd. (7620 Lillian Holt Dr.) 6th Councilmanic Dist.

SE & VAR -Outdoor advertising sign within 50 feet of a controlled access-type highway and a 6 foot front yard setback in lieu of the minimum 250 feet and 75 feet, respectively

September 22, 1989 Petition for Special Exception and Variance to permit an outdoor advertising sign within 50 feet of a controlled access-type highway and a 6 foot front yard setback in lieu of the minimum 250 feet and 75 feet, respectively filed by Randall E. McMonigle.

February 20, 1990 Order of the Zoning Commissioner GRANTING Special Exception with restrictions and DENYING Variance.

March 15 Notice of Appeal received from Marc N. Peitersen, Esquire on behalf of Mr. Monigle, Petitioner/Appellant.

August 14, 1991 Petitioner's Argument filed by Robert E. Polack, Esquire on behalf of Mr. McMonigle.

August 14 People's Counsel's Memorandum in Lieu of Closing Argument filed.

August 30 Opinion and Order of the Board DENYING Petitions for Special Exception and Variance and further ordering all signage affixed to the 2 sign poles indicated on Petitioner's Exhibit No. 1 and all signage located on Parcel 875 Lillian Holt Drive to be removed no later than September 30, 1991.

September 27 Order for Appeal filed in the Circuit Court for Baltimore County by John L. Calhoun, Esquire and Robert Polack, Esquire on behalf of Randall E. McMonigle, Plaintiff.

October 7 Petition to accompany appeal filed in the Circuit Court for Baltimore County by Messrs. Calhoun and Polack.

September 30 Certificate of Notice sent to interested parties.

October 28 Transcript of testimony filed; Record of Proceedings filed in the Circuit Court for Baltimore County.

November 30 Notice of Appeal to Court of Special Appeals filed in CCT, BCo by John L. Calhoun, Esq. on behalf of Mr. McMonigle from the ruling of Judge Levitz denying the Plaintiff a jury trial.

January 28, 1992 Dismissed in C. of S.A. for lack of jurisdiction. To be heard in CCT, BCo.

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: William T. Hackett, Chairman Board of Appeals February 5, 1991

FROM: James H. Thompson Zoning Enforcement Coordinator

RE: Case No. 90-219-XA NW/S Lillian Holt Drive, 1100 ft. SW of C/L Rossville Boulevard 7620 Lillian Holt Drive R. McMonigle (Randy's Landscaping) - Petitioner

The above referenced case is scheduled before the Board of Appeals on March 26, 1991 at 10:00 a.m.

The present issue is the total surface area and height of the Randy's Landscaping sign in the vicinity of Interstate 695.

However, this office has determined that the plat prepared for the zoning variance and special exception by American Engineering and Land Development, Inc. does not accurately indicate the zoning for parcel 875. This parcel was granted a special exception from Sections 413.3, 413.3.b and 413.3.c of the Baltimore County Zoning Regulations so as to permit an outdoor advertising sign within 50 feet of a controlled access-type highway and a 6 ft. front yard setback in lieu of the minimum 250 ft. and 75 ft. respectively.

Parcel 875 is zoned D.R. 5.5 (see enclosed 200 scale 1988 Comprehensive Zoning Map, N.E. - 6-F). Under this zoning classification, outdoor advertising signs are not permitted either as a matter of right or by way of special exception. Therefore, that portion of Case No. 90-219-XA that granted the special exception for the outdoor advertising sign should be declared invalid and reversed.

This office will be issuing notification to Randall E. McMonigle as to the removal of the sign.

William T. Hackett
Page 2
February 5, 1991

If further questions exist relative to this matter, please contact this office at 887-3351.

JHT:ljj

Enclosure

cc: Lou Waldner, Executive Aide
Nancy C. West, Office of Law
Randall E. McMonigle

IN THE MATTER OF * BEFORE THE
RANDALL E. MCMONIGLE, Petitioner * COUNTY BOARD OF APPEALS
ZONING CASE NO. 90-219-XA * OF BALTIMORE COUNTY

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Wednesday, August 7, 1991 at Room 304, located at the County Office Building and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: John L. Lewis
Address: Zoning Office
Room 113, County Office Building

Phyllis Cole Friedman
Name: Phyllis Cole Friedman
Firm: People's Counsel for Baltimore County
Address: Rm. 304, County Office Building
Towson, Maryland 21204

The witness named above is hereby ordered to so appear before the County Board of Appeals at 10:00 a.m. Wednesday, August 7, 1991.

Shirley M. Hess
County Board of Appeals of
Baltimore County

I CERTIFY THAT I am over 18 years of age and served the above Subpoena on August 2, 1991.

Shirley M. Hess
Shirley M. Hess

12:41 PM 2-20-91
SUBPOENA FOR APPEARANCE
COURTROOM

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: March 11, 1990
Permits & Development Management

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Closed Files: Case Nos.
90-219-XA /Randall E. McMonigle (Randy's Landscaping)
92-346-XA /Leo J. Umerley, et ux
R-92-241 /Leroy M. Merritt (Windsor Corporate Park)

Since above captioned cases have been completed in the upper courts, we have closed the files and are returning same to you herewith.

Attachment (File Nos. 90-219-XA; 92-346-XA; and R-92-241)

LAW OFFICES OF
KARL H. GOODMAN, P.A.

Karl H. Goodman
Robert M. Hyman
Paul N. Hokfield
Jane Wilzack Schroeder
Zane Garab
Marc Petersen
Dorine E. Perry
Administrator

March 15, 1990

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Petitions for Special Exception and Variance
Case No. : 90-219-XA
Petitioner: Randy's Landscaping, Inc.

TO WHOM IT MAY CONCERN:

Please enter an Appeal of the decision of the Zoning Commissioner in the above captioned case. Enclosed are the appropriate filing fees.

Very truly yours,
Marc N. Peitersen
Marc N. Peitersen

MNP:klc
Enclosures

LAW OFFICES OF
KARL H. GOODMAN, P.A.

Karl H. Goodman
Paul N. Hokfield
John J. Carlin
Marc Petersen
Jane Wilzack Schroeder
Dorine E. Perry
Administrator

July 19, 1990

Baltimore County Board of Appeals
County Office Building, Room 315,
Towson, Maryland 21204

RE: Petition for Special Exception and Zoning Variance
NW/S Lillian Holt Drive, 1,100' SW of c/l Rossville
Boulevard (7620 Lillian Holt Drive)
14th Election District
6th Councilman District
R. McMonigle (Randy's Landscaping), Petitioner
Case No. #: 90-219-XA

To Whom It May Concern:
Please withdraw my appearance as Attorney for Petitioner.

Sincerely,
Marc N. Peitersen
Marc N. Peitersen

MNP:dmk
cc: Randy's Landscaping

Law Offices of
Black and Calhoun

ROBERT E. POLACK
JOHN L. CALHOUN, P.A.
MEMBER OF THE BALTIMORE BAR
KATH B. SHIELDS
LEGAL ASSISTANT

805 BALTIMORE AVENUE
TOWSON, MARYLAND 21204
RANNEY PROFESSIONAL BUILDING
1200 E. JOPPA ROAD
SUITE E
BALTIMORE, MARYLAND 21204
TELEPHONE (301) 381-1818
FAX (301) 381-1889

August 21, 1990

Baltimore County Board of Appeals
Room 315 County Office Building
Towson, MD 21204

Re: Case No. 90-219 XA
Petition for Special Exception
Randall McMonigle (Randy's Landscaping)
Hearing Date 9/7/90

Dear Board:
Please enter my appearance and the appearance of Polack & Calhoun as replacement counsel for the Petitioner.

Please continue the hearing date as counsel has a conflict with a previously scheduled case, Chesapeake Industrial Leasing Co., Inc. v. Superior Services, Inc. District Court for Prince Georges County, set for September 7, 1990.

Very truly yours,
John L. Calhoun
John L. Calhoun

CC: People's Counsel for Baltimore County
Room 304 County Office Building
Towson, MD 21204
Baltimore County Office of Law
Court House
Towson, MD 21204

MICROFILMED

- 876 Reisterstown Road Suite 202 - Park Office Ctr Baltimore MD 21215 301-389-8200 FAX 652-5644
- 7939 Honeygo Boulevard Suite 118 White Marsh Professional Ctr Baltimore MD 21226 301-529-6354 FAX 529-5591
- 3719 Eastern Avenue Baltimore MD 21224 (301) 542-9008 FAX 635-7668
- 848 W. 36th Street Baltimore MD 21211 (301) 467-4040 FAX 467-4596
- 3831 S. Hanover Street Baltimore MD 21225 (301) 584-6150 FAX 254-5110
- 6609 Reisterstown Road Suite 102 Baltimore MD 21215 301-558-8200 FAX 350-3271
- 7998 Honeygo Boulevard Suite 174 White Marsh Professional Ctr Baltimore MD 21226 301-529-6370 FAX 529-6308
- 2719 Eastern Avenue Baltimore MD 21204 301-542-9056 FAX 625-1168
- 3831 S. Hanover Street Baltimore MD 21225 301-584-6150 FAX 254-5110
- 848 W. 36th Street Baltimore MD 21211 301-467-4040 By next only

RECEIVED MAR 15 1990

84-219 02 700 06

PP - see 200
1/25/90
S. Hess

89 AUG 22 AM 11:48
RECEIVED