

IN RE: PETITION FOR SPECIAL HEARING  
 NW/8 Philadelphia & Forge Roads  
 (11818 Philadelphia Road)  
 11th Election District  
 5th Councilmanic District  
 Big Falls Inn, Inc.  
 Petitioner

BEFORE THE  
 DEPUTY ZONING COMMISSIONER  
 OF BALTIMORE COUNTY  
 Case No. 90-227-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The petitioner herein requests a special hearing to approve the nonconforming use of the subject property as a restaurant/tavern in accordance with Petitioner's Exhibit 1.

The Petitioner, by Jerry Shepard, President, appeared, testified, and was represented by Robert W. Taylor, Jr., Esquire. Also appearing on behalf of the Petition was Arthur Grinath, Fritz Holtzner and James D. Blades, nearby property owners. There were no Protestants.

Testimony indicated that the subject property, known as 11818 Philadelphia Road, consists of 4 acres more or less zoned D.R. 2 and is improved with a one story building used as a restaurant/tavern, known as the Big Falls Inn. Mr. Shepard testified his corporation has owned the property since January 1984 and that its operation under the new ownership has been continuous and without interruption. Testimony indicated Petitioner is desirous of constructing an 18' x 38' addition to the existing restaurant building as set forth in Petitioner's Exhibit 1. Petitioner and his Counsel were advised that the proposed expansion would be permitted pursuant to Section 104.1 since it is less than 25% of the ground floor area of the building. However, Petitioner must provide additional parking spaces as required prior to the issuance of any permits, and that compli-

ance with any other applicable zoning regulations regarding the addition would be necessary for approval.

Mr. Holtzner testified he resides approximately 3/4 of a mile east of the subject site and has resided at this location since 1932. He testified that the tavern was constructed sometime between 1933 and 1935 and has operated continuously and without interruption, since that time. Mr. Grinath, who resides approximately 1/2 mile from the subject site, testified that he moved to the area in 1949 and that a tavern existed on the site in the location shown in Petitioner's Exhibit 1. He further testified that the tavern has operated continuously and without interruption since his move to the area. Mr. Blades, who resides approximately 3 to 4 miles from the subject site, testified that he moved to the area in 1950 and that a tavern has existed on the site continuously and without interruption since his move to the area. All three gentlemen testified that they have frequented the tavern over the years on a regular basis and have personal knowledge as to its continuous operation.

As with all non-conforming use cases, the first task is to determine what lawful non-conforming use existed on the subject property prior to January 2, 1945, the effective date of the adoption of the Zoning Regulations and the controlling date for the beginning of zoning.

The second principle to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different use, and therefore, breaks the continued nature of the non-conforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered non-conforming. See *McKemy v. Baltimore County, Md.*, 39 Md. App. 257, 385 A2d.

96 (1978). The testimony presented indicated there has been no change in use.

After due consideration of the testimony and evidence presented, it is clear that a restaurant/tavern has been operated from the subject property continuously and without interruption since prior to the zoning regulations, and as such, a legal nonconforming use exists.

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

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 27th day of December, 1989 that the Petition for Special Hearing to approve the nonconforming use of the subject property as a restaurant/tavern, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

- 1) The 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) Prior to the issuance of any building permits, Petitioner shall submit a revised site plan depicting the existing parking spaces and the additional parking spaces required to accommodate the proposed addition.
- 3) When applying for a building permit, the site plan and landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

ANN M. NASTAROWICZ  
 Deputy Zoning Commissioner  
 for Baltimore County

ANN:bjs

Baltimore County  
 Zoning Commissioner  
 Office of Planning & Zoning  
 Towson, Maryland 21284  
 (301) 887-3333  
 J. Robert Haines  
 Zoning Commissioner

December 27, 1989

Robert W. Taylor, Esquire  
 401 Allegheny Avenue  
 Towson, Maryland 21284

RE: PETITION FOR SPECIAL HEARING  
 NW/8 Philadelphia and Forge Roads  
 (11818 Philadelphia Road)  
 11th Election District - 5th Councilmanic District  
 Big Falls Inn, Inc. - Petitioner  
 Case No. 90-227-SPH

Dear Mr. Taylor:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been granted 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,

ANN M. NASTAROWICZ  
 Deputy Zoning Commissioner  
 for Baltimore County

ANN:bjs

cc: People's Counsel

File

ORDER RECEIVED FOR FILING

Date: 12/27/89

By: J. Robert Haines

ORDER RECEIVED FOR FILING

Date: 12/27/89

By: J. Robert Haines

ORDER RECEIVED FOR FILING

Date: 12/27/89

By: J. Robert Haines

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 504.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the establishment of an existing non-conforming use of the property, as a restaurant/tavern.

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

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

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

Contract Purchaser:	Legal Owner(s):	MAP NEW
N/A	Big Falls Inn, Inc.	EA
(Type or Print Name)	(Type or Print Name)	11A
Signature	Signature	DATE 12/29/89
		COO
Address	(Type or Print Name)	1000
	Jerry Shepard	CP
City and State	Signature	
	Jerry Shepard, President	
Attorney for Petitioner:		
Robert W. Taylor, Jr.	11818 Philadelphia Road	
(Type or Print Name)	Address	Phone No.
	White Marsh, Maryland 21162	
Signature	City and State	
401 Allegheny Avenue	Name, address and phone number of legal owner, contract purchaser or representative to be contacted	
Address		
Towson, Maryland 21284		(301) 256-5637
City and State		(301) 256-2110
Attorney's Telephone No.: (301) 337-0900	Address	Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 29 day of Sept, 1989, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 13 day of Dec, 1989, at 11 o'clock A.M.

J. Robert Haines  
 Zoning Commissioner of Baltimore County

ESTIMATED LENGTH OF HEARING - 1/2 HR.  
 AVAILABLE FOR HEARING  
 MON. - FRI. - 10 AM TO 12 PM  
 ALL OTHER DAYS - 10 AM TO 12 PM  
 REVIEWED BY: [Signature] DATE: 12/29/89

Zoning Description  
 Property Known As Lot 1 "Glen Oak"  
 Also Known As Big Falls Inn, Philadelphia Road

beginning at a point at the intersection of the center line of Philadelphia Road, 66 feet wide, with the center line of Forge Road, 50 feet wide, and running the following courses and distances:

- 1) North 29 degrees 09 minutes West, 62.86 feet
- 2) By a curve to the right with a radius of 160 feet the distance of 139.83 feet.
- 3) North 20 degrees 57 minutes East, 82.27 feet.
- 4) By a curve to the left with a radius of 120 feet the distance of 71.71 feet.
- 5) North 24 degrees 57 minutes East, 510 feet.
- 6) South 60 degrees 01 minutes 40 seconds East 382.04 feet.
- 7) South 35 degrees 11 minutes West, 50 feet.
- 8) By a curve to the right with a radius of 432.63 feet the distance of 132.45 feet.
- 9) South 52 degrees 53 minutes West, 130.41 feet.
- 10) By a curve to the left with a radius of 783.00 feet the distance of 261.01 feet.
- 11) South 33 degrees 41 minutes West, 245.82 feet to the place of beginning, containing 4 acres of land more or less located in the 14th Election District of Baltimore County, Maryland.



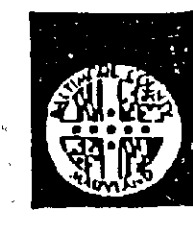
CERTIFICATE OF POSTING  
 ZONING DEPARTMENT OF BALTIMORE COUNTY  
 Towson, Maryland

District: 11A  
 Posted for: Special Hearing Date of Posting: 11/27/89  
 Petitioner: Big Falls Inn, Inc.  
 Location of property: NW/8 Phil & Forge Rd.  
11818 Phil Rd.  
 Location of Sign: Sign on lot & Phil Rd. corner 20' from driveway  
posted on sign of site - owned by owner.  
 Remarks:  
 Posted by: [Signature] Date of return: 12/1/89  
 Number of Signs: 1

Baltimore County  
 Zoning Commissioner  
 Office of Planning & Zoning  
 Towson, Maryland 21284  
 (301) 887-3333

J. Robert Haines  
 Zoning Commissioner

DATE: DEC 12 1989



Dennis F. Rasmussen  
 County Executive

Big Falls Inn, Inc.  
 11818 Philadelphia Road  
 White Marsh, Maryland 21162

ATTN: JERRY SHEPARD

Re: Petition for Special Hearing  
 CASE NUMBER: 90-227-SPH  
 NW/8 Philadelphia and Forge Roads  
 11818 Philadelphia Road  
 11th Election District - 5th Councilmanic  
 District - Big Falls Inn, Inc.  
 HEARING: WEDNESDAY, DECEMBER 13, 1989 at 11:00 a.m.

Gentlemen:

Please be advised that \$ 111.09 is due for advertising and posting of the above captioned property.

Baltimore County  
 Zoning Commissioner  
 County Office Building  
 111 West Chesapeake Avenue  
 Towson, Maryland 21284  
 Account # 0014150  
 No. 637

receipt

Date: 12/13/89  
 PUBLIC HEARING FEES: \$111.09  
 OBO - POSTING SIGNS / ADVERTISING: \$0.00  
 TOTAL: \$111.09  
 LAST NAME OF OWNER: BIG FALLS INN INC.  
 8833\*\*\*\*\*110918 2132F  
 Please make checks payable to Baltimore County

Baltimore County  
 Zoning Commissioner  
 Office of Planning & Zoning  
 Towson, Maryland 21284  
 (301) 887-3333

J. Robert Haines  
 Zoning Commissioner

November 15, 1989

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

Petition for Special Hearing  
 CASE NUMBER: 90-227-SPH  
 NW/8 Philadelphia and Forge Roads  
 11818 Philadelphia Road  
 11th Election District - 5th Councilmanic  
 District - Big Falls Inn, Inc.  
 HEARING: WEDNESDAY, DECEMBER 13, 1989 at 11:00 a.m.

Special Hearings to approve the establishment of an existing nonconforming use of the property as a restaurant/tavern.

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.

(If "PHASE III" of the "SLOW 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  
 ZONING COMMISSIONER  
 BALTIMORE COUNTY, MARYLAND

cc: Big Falls Inn, Inc.  
 Robert W. Taylor, Jr., Esq.  
 File

ORDER RECEIVED FOR FILING

Date: 12/29/89

By: J. Robert Haines



Baltimore County  
Fire Department  
800 York Road  
Towson, Maryland 21204-2586  
(301) 887-4500

Paul H. Reincke  
Chief

September 15, 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: BIG FALLS INN, INC.  
Location: #11818 PHILADELPHIA ROAD  
Item No.: 85 Zoning Agenda: AUGUST 19, 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.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

REVIEWER: *Capt. [Signature]* 9-14-89  
Planning Group  
Special Inspection Division

Noted and Approved  
*Capt. [Signature]*  
Fire Prevention Bureau

JK/KEK

BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL  
PROTECTION AND RESOURCE MANAGEMENT

10-3-89  
Date

OCT 05 1989

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

Zoning Item # 85, Zoning Advisory Committee Meeting of 8-19-89  
Property Owner: Big Falls Inn, Inc.  
Location: NWC Philadelphia & Forge Aves District: 11  
Water Supply: private Sewage Disposal: private  
COMMENTS ARE AS FOLLOWS:

- (✓) Prior to approval of a Building Permit for construction, renovation and/or installation of equipment for any existing or proposed food service facility, complete plans and specifications must be submitted to the Plans Review Section, Bureau of Regional Community Services, for final review and approval.
- ( ) Prior to new installation(s) of fuel burning equipment, the owner shall contact the Bureau of Air Quality Management, 887-3775, to obtain requirements for such installation(s) before work begins.
- ( ) A permit to construct from the Bureau of Quality Management is required for such items as spray paint processes, underground gasoline storage tank(s) (5,000 gallons or more) and any other equipment or process which exhausts into the atmosphere.
- ( ) A permit to construct from the Bureau of Air Quality Management is required for any charbroiler generation which has a total cooking surface area of five (5) square feet or more.
- ( ) Prior to approval of a Building Permit Application for renovations to existing or construction of new health care facilities, complete plans and specifications of the building, food service area and type of equipment to be used for the food service operation must be submitted to the Plans Review and Approval Section, Division of Engineering and Maintenance, State Department of Health and Mental Hygiene for review and approval.
- ( ) Prior to any new construction or substantial alteration of public swimming pool, wading pool, bathhouse, saunas, whirlpools, hot tubs, water and sewerage facilities or other appurtenances pertaining to health and safety; two (2) copies of plans and specifications must be submitted to the Baltimore County Department of Environmental Protection and Resource Management for review and approval. For more complete information, contact the Water Quality Monitoring Section, Bureau of Regional Community Services, 687-6500 x 315.
- ( ) Prior to approval for a nursery school, owner or applicant must comply with all Baltimore County regulations. For more complete information, contact the Division of Maternal and Child Health.
- ( ) If lubrication work and oil changes are performed at this location, the method providing for the elimination of waste oil must be in accordance with the State Department of the Environment.
- ( ) Prior to razing of existing structure(s), petitioner must contact the Division of Waste Management at 887-3745, regarding removal and/or disposal of potentially hazardous materials and solid wastes. Petitioner must contact the Bureau of Air Quality Management regarding removal of asbestos, 887-3775.
- ( ) Any abandoned underground storage tanks containing gasoline, waste oil, solvents, etc., must have the contents removed by a licensed hauler and tank removed from the property or properly backfilled. Prior to removal or abandonment, owner must contact the Division of Waste Management at 887-3745.
- ( ) Soil percolation tests, have been \_\_\_\_\_, must be \_\_\_\_\_, conducted.  
( ) The results are valid until \_\_\_\_\_  
( ) Soil percolation test results have expired. Petitioner should contact the Division of Water and Sewer to determine whether additional tests are required.
- ( ) Where water wells are to be used as a source of water supply, a well meeting the minimum Baltimore County Standards must be drilled.
- ( ) In accordance with Section 13-117 of the Baltimore County Code, the water well yield test  
( ) shall be valid until \_\_\_\_\_  
( ) is not acceptable and must be retested. This must be accomplished prior to conveyance of property and approval of Building Permit Applications.
- ( ) Prior to occupancy approval, the potability of the water supply must be verified by collection of bacteriological and chemical water samples.
- ( ) If submission of plans to the County Review Group is required, a Hydrogeological Study and an Environmental Effects Report must be submitted. For more information contact the Division of Environmental Management at 887-3980.
- ( ) In order to subdivide this property, the owner or developer will be required to comply with the subdivision regulations of the State of Maryland and Baltimore County. If there are any questions regarding the subdivision process, please contact the Land Development Section at 887-2762.
- (✓) Others the building permit for the proposed addition will be denied by this office due to documented evidence of a failing sewage disposal system on-site and no means to correct same. Extension of public sewer to the site will be required prior to approval.

*L. R. [Signature]*  
BUREAU OF WATER QUALITY AND RESOURCE  
MANAGEMENT

Baltimore County  
Department of Public Works  
Bureau of Traffic Engineering  
Courts Building, Suite 405  
Towson, Maryland 21204  
(301) 887-3554

RECEIVED  
SEP 14 1989  
ZONING OFFICE

Dennis F. Rasmussen  
County Executive

September 12, 1989

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

Dear Mr. Haines:

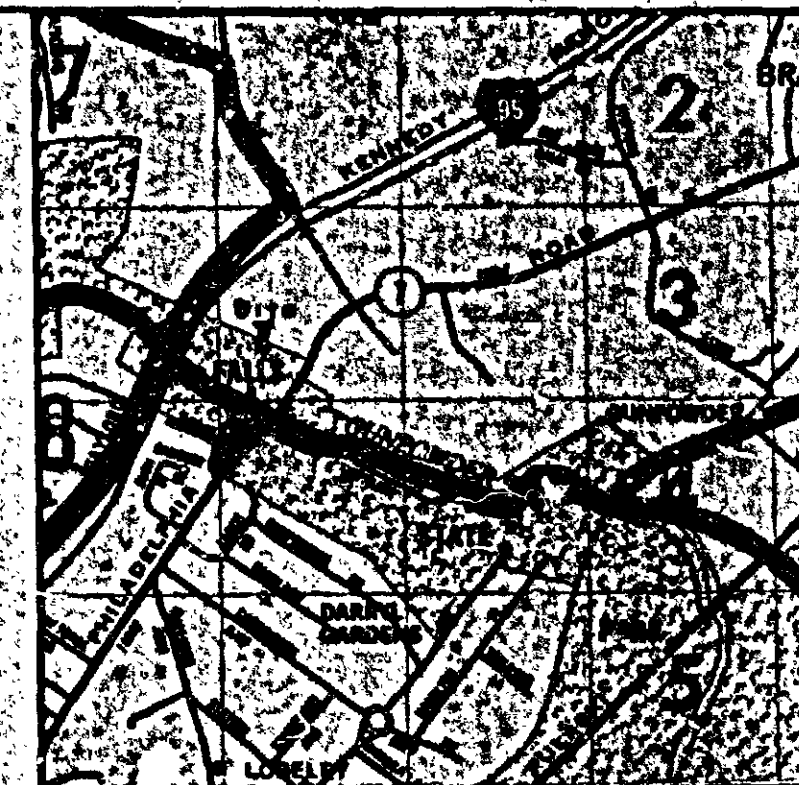
The Bureau of Traffic Engineering has no comments for items number 83, 84, 85, 86, 88, 89, 90, 92, and 93.

Very truly yours,

*Michael S. Flanigan*  
Michael S. Flanigan

MSF/efm

SEP 19 1989



VICINITY MAP  
SCALE: 1" = 2000'

**PARKING TABULATION**

(SQ/1000 GROSS FLOOR AREA)

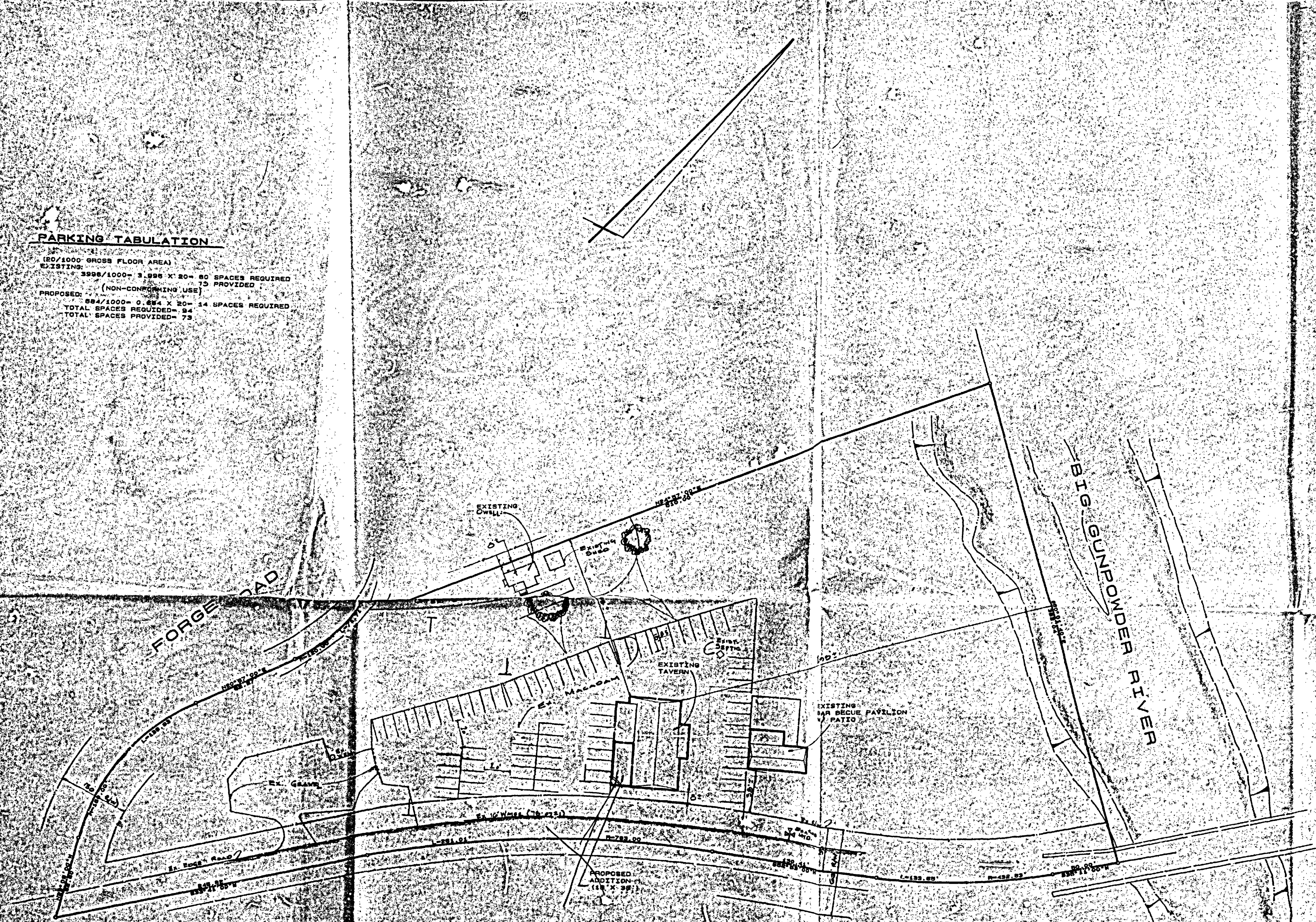
EXISTING	3998/1000 = 3.998 X 20 = 80 SPACES REQUIRED	79 PROVIDED
(NON-CONFORMING USE)		
PROPOSED	684/1000 = 0.684 X 20 = 14 SPACES REQUIRED	
TOTAL SPACES REQUIRED	= 94	
TOTAL SPACES PROVIDED	= 79	

**GENERAL NOTES:**

- 1) ZONING ..... DR-2
- 2) AREA OF TRACT ... 4 AC. MORE OR LESS (DEED)
- 3) TOTAL PARKING REQUIRED ..... 94  
TOTAL PARKING PROVIDED ..... 79  
(NON-CONFORMING USE)
- 4) EXISTING USE ..... TAVERN  
PROPOSED USE ..... TAVERN
- 5) EXISTING BUILDING AREA ..... 5998 SQ. FT.  
PROPOSED ADDITION AREA ..... 684 SQ. FT.
- 6) BOUNDARY PLOTTED BY AVAILABLE RECORDS
- 7) UTILITIES: WATER ..... PRIVATE  
SEWER ..... PRIVATE
- 8) BUILDING SETBACKS:
 

	REQUIRED	PROVIDED
* FRONT	40	8'
SIDE	15/40	295'
REAR	40	135'

 \* (NON-CONFORMING USE)



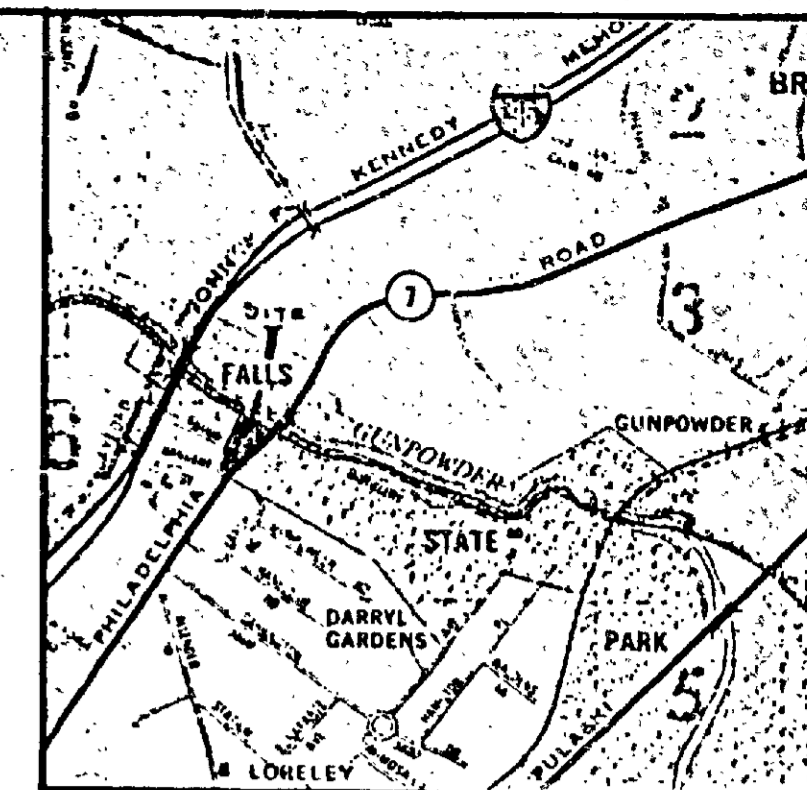
PHILADELPHIA ROAD  
(MARYLAND RTE. 7)

#85  
90-227-SPH

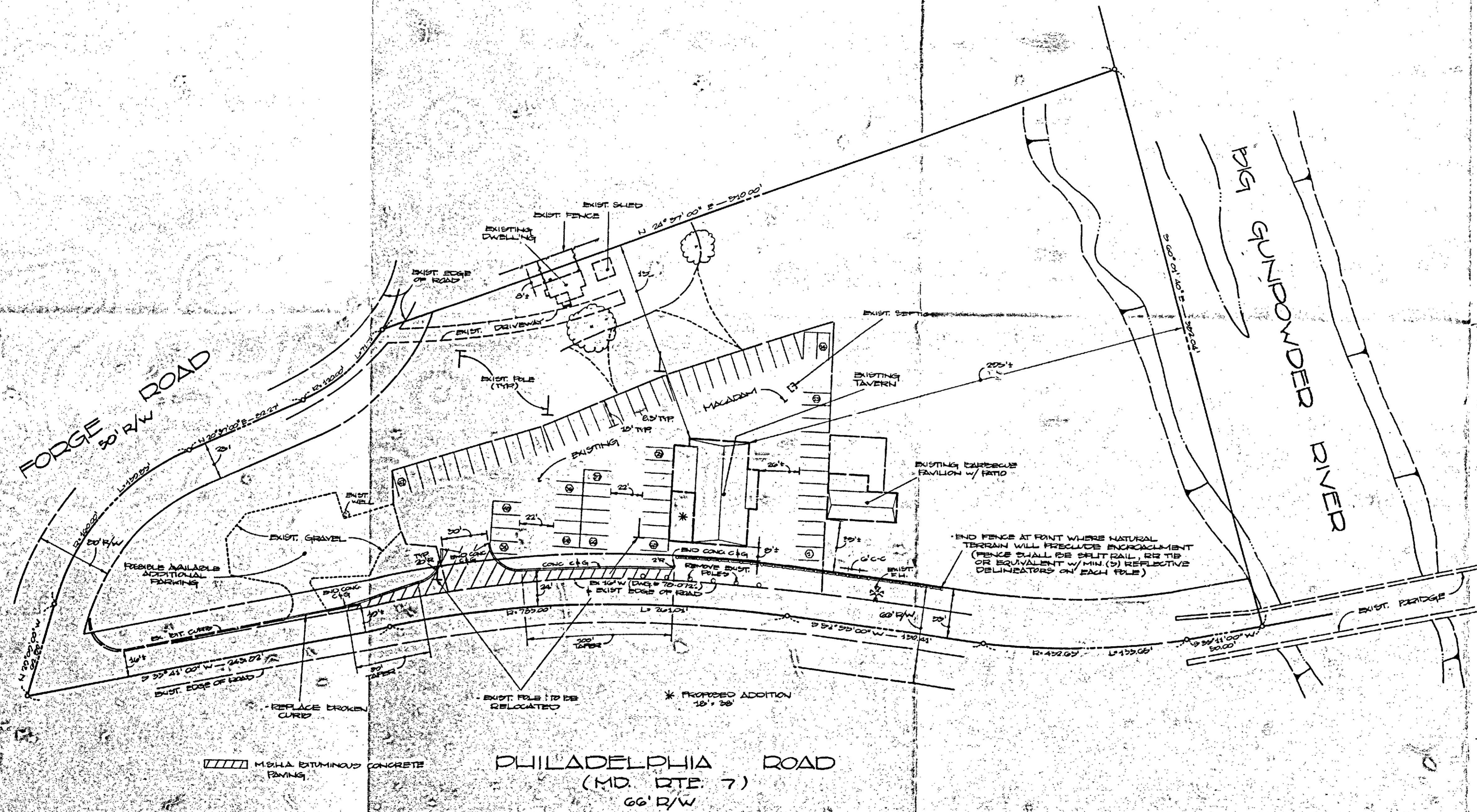
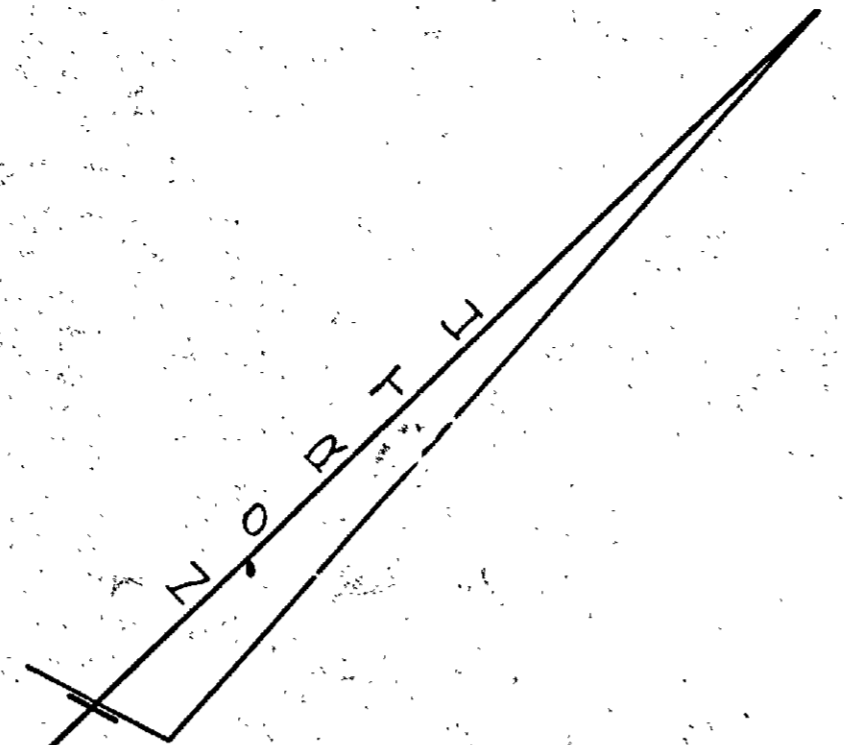
COLBERT ENGINEERING INC.  
115 SUDBROOK LANE, SUITE 208  
BALTIMORE, MARYLAND 21208  
PHONE (301) 653-3838



PLAT TO ACCOMPANY SPECIAL HEARING  
PHILADELPHIA ROAD  
(BIG FALLS INN)  
14TH ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND  
SCALE: 1" = 40' DATE: 7-28-1989



VICINITY MAP  
SCALE: 1" = 2000'



- GENERAL NOTES:**
- ZONING.....DR-2
  - AREA OF TRACT...4 AC. MORE OR LESS (DEED)
  - TOTAL PARKING REQUIRED.....94  
TOTAL PARKING PROVIDED..... (EXISTING)  
(EXISTING NON-CONFORMING)
  - EXISTING USE.....TAVERN  
PROPOSED USE.....TAVERN
  - EXISTING BUILDING AREA.....3996 SQ. FT.  
PROPOSED ADDITION AREA.....684 SQ. FT.
  - BOUNDARY PLOTTED FROM AVAILABLE RECORDS.
  - UTILITIES:  
WATER.....PRIVATE (EXISTING)  
SEWER.....PRIVATE (EXISTING)
  - BUILDING SETBACKS:  

REQUIRED	PROVIDED
* FRONT 40	8±
SIDE 15/40	295±
REAR 40	135±
- \*(EXISTING NON-CONFORMING)

**PARKING TABULATION**

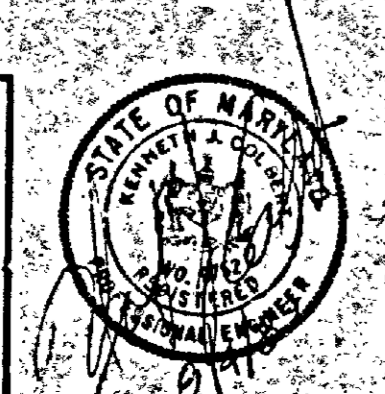
PARKING REQUIREMENTS:  
20/1000 GROSS FLOOR AREA

EXISTING BUILDING:  
3996/1000 = 3.996 X 20 = 80 SPACES REQUIRED

PROPOSED ADDITION:  
684/1000 = 0.684 X 20 = 14 SPACES REQUIRED

TOTAL SPACES REQUIRED = 94  
TOTAL SPACES PROVIDED = TO BE SHOWN THUSLY ⊙

COLBERT ENGINEERING, INC.  
115 Sudbrook Lane  
Baltimore, Maryland 21208  
(301) 653-3838



**PETITIONER'S EXHIBIT 1**  
**PLAN TO ACCOMPANY SPECIAL HEARING**

**11818 PHILADELPHIA ROAD**  
(A.K.A. BIG FALLS INN)

14<sup>TH</sup> ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND  
SCALE: 1" = 40' DATE: 7-28-89