

IN RE: PETITION FOR SPECIAL HEARING
SE/3 Bird River Road opposite
Reams Road
(10101 Bird River Road)
15th Election District
5th Councilmanic District
Joseph E. Smith, et ux
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 91-135-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve an amendment to the site plan and Order previously approved by the Board of Appeals in Case No. 88-274-SPH by removing Restriction No. 1, in accordance with Petitioner's Exhibit 1.

The Petitioners appeared, testified, and were represented by John B. Gontum, Esquire. Also appearing on behalf of the Petition were Bernard Linsenmeyer and Diane Scott. Appearing as Protestants in the matter were Walter K. and Diane Frazier, and Leo Rohe, Jr.

Testimony indicated that the subject property, known as 10101 Bird River Road, consists of 8.00 acres more or less zoned D.R. 2 and is improved with a single family dwelling, detached garage, and shed in accordance with Petitioner's Exhibit 1. Said property was the subject matter of previous Case No. 88-274-SPH in which Petitioners were denied approval by the Deputy Zoning Commissioner of the nonconforming use of the subject property as a contractor's equipment storage yard. Petitioners appealed the decision to the County Board of Appeals, who, on December 15, 1988, granted the Petitioners a nonconforming use to park or store commercial vehicles on the property, subject to restrictions. Petitioners are now requesting removal of Restriction 1 of said Order, which states as follows:

"The Petitioner will be allowed to park and/or store only the following commercial vehicles: one

dump truck, one tagalong trailer, and one tractor on site at any given time. The Petitioner can park his own automobiles and pickup trucks used for personal, noncommercial uses."

At the hearing, Petitioners, through Counsel argued that this restriction was invalid and unenforceable and as such, should be modified. Petitioners argued that the Board attempted to regulate the intensity and not the nonconforming use.

To support Petitioners' case, Counsel cited the decision of the Court of Appeals in the case of Nyburg vs. Solmson, et al, 106 A2d 483, 1954. In that case, the Court of Appeals held that a garage owner had a nonconforming use for parking and storage of vehicles on the whole lot on which the garage was located, including the open space in front of the garage, and that the Board of Municipal and Zoning Appeals could not properly restrict the use of open space to the parking/storage of not more than ten (10) automobiles at one time. The Court of Appeals found that the parking of additional vehicles did not amount to an extension of a nonconforming commercial use but merely an intensification of the use and as such, was permitted.

In this instance, the Petitioners argued that the entire 8.00 acres enjoyed the nonconforming use for parking of commercial vehicles, and as such, the attempt by the Board to limit the number of vehicles parked on the site was improper. Petitioners, however, voluntarily agreed at this time to limit the area in which said vehicles would be parked and to fence the property to screen said commercial vehicles from the surrounding neighbors when parked. Petitioners further agreed that Restrictions 2 and 3 of the Board's decision were proper and would remain in effect as they dealt with the character of the nonconforming use.

- 2 -

The Protestants' position at the hearing was that Restriction 1 should not be modified.

At the close of the hearing, Petitioners indicated they would like an opportunity to submit to the Protestants a site plan of the area and the proposed fencing. Subsequent to the hearing, Petitioners submitted a revised site plan dated January 10, 1991, marked Petitioner's Exhibit A, which denotes the proposed parking area. Correspondence received thereafter from the Protestants clearly indicates that the Petitioners and the Protestants could not come to an agreement.

After reviewing the testimony and the legal arguments presented, it appears that the relief requested in the Petition for Special Hearing should be granted. It is the opinion of the Deputy Zoning Commissioner that Restriction 1 of the Board of Appeals' Order dated December 15, 1988 is contrary to case law and unenforceable as argued by Petitioners. The Court of Appeals' decision in Nyburg vs. Solmson et al, supra, is controlling law today. Petitioner has voluntarily agreed to limit the nonconforming use area to the proposed gravel parking area noted on Petitioner's Exhibit A and to fence that area. Said voluntary agreement will be incorporated herein.

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 7th day of March, 1991, that the Petition for Special Hearing to remove Restriction 1 of the Board of Appeals' Order in previous Case No. 88-274-SPH dated December 15, 1988 be and the same is

- 3 -

hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

- 1) The Petitioners are hereby made aware that proceeding at this time is at their 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 Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- 2) The parking and/or storage of commercial vehicles on the subject property shall be limited to the fenced in area marked "proposed gravel parking area" on Petitioner's Exhibit A.
- 3) The proposed fence shall be of such materials that the vehicles stored inside the fenced in area will not be visible from the outside. Petitioners shall install the subject fence after obtaining the requisite permits within sixty (60) days of the date of this Order.
- 4) Except as herein modified, the Board of Appeals' Order in Case No. 88-274-SPH dated December 15, 1988 shall remain in full force and effect, including, but not limited to, Restrictions 2 and 3 thereof.
- 5) When applying for any permits, the site 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

- 4 -

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

March 7, 1991

John B. Gontum, Esquire
814 Eastern Boulevard
Baltimore, Maryland 21221

RE: PETITION FOR SPECIAL HEARING
SE/3 Bird River Road opposite Reams Road
(10101 Bird River Road)
15th Election District - 5th Councilmanic District
Joseph E. Smith, et ux - Petitioners
Case No. 91-135-SPH

Dear Mr. Gontum:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing 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.

It should be noted that the photographs introduced indicate that the property may be in violation, including but not limited to, the parking of unlicensed/inoperable vehicles and placement of debris about the property. Please advise your clients that an inspector will be sent to the property on or about forty-five (45) days from the date of this Order to inspect the property to determine whether or not any violations exist.

Very truly yours,

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

cc: Mr. & Mrs. Walter K. Frazier
1013 Rohe Farm Lane, Baltimore, Md. 21220
Mr. Leo Rohe, Jr.
1014 Rohe Farm Lane, Baltimore, Md. 21220
People's Counsel; James H. Thompson; File

PETITION FOR SPECIAL HEARING TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 91-135-SPH

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve

an Amendment to the Site Plan and Order approved in previous Case No.: 88-274-SPH by removing restriction No: 1 set forth in the aforesaid Order.

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

Contract Purchaser:	Legal Owner(s):
(Type or Print Name)	Joseph Smith
Signature	<i>Joseph E. Smith</i>
Address	Mary Smith
City and State	(Type or Print Name)
Attorney for Petitioner:	10101 Bird River Road 686-9275
Nancy E. Dwyer	Address Phone No.
(Type or Print Name)	Baltimore, Maryland 21220
Signature	City and State
814 Eastern Boulevard	Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Address	Joseph Smith
Baltimore, Maryland 21221	Name
City and State	10101 Bird River Road 686-9275
Attorney's Telephone No.: 686-8274	Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 19 day of Sept, 1991, 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 108, County Office Building in Towson, Baltimore County, on the 20 day of Nov, 1991, at 2 o'clock

J. Robert Haise
Zoning Commissioner of Baltimore County

(over)

TerraPlan, Inc.

ZONING DESCRIPTION
of Changed Area

JOSEPH AND MARY SMITH PROPERTY

Beginning at the northwest corner of a proposed gravel parking area, said point of beginning being the following two courses from the south side of Bird River Road, 30 feet wide, at a distance of 75 feet Easterly of the centerline and opposite from its intersection with Reams Road, North 41 degrees 38 minutes East 68 feet and North 48 degrees 22 minutes West 174 feet thence from the beginning;

- 1) South 38 degrees 09 minutes 46 seconds East 100 feet, thence
- 2) South 51 degrees 50 minutes 14 seconds West 50 feet, thence
- 3) North 38 degrees 09 minutes 46 seconds West 80 feet, thence
- 4) North 57 degrees 01 minutes 54 seconds East 11.04 feet, thence
- 5) North 38 degrees 09 minutes 46 seconds West 21 feet, thence
- 6) North 51 degrees 50 minutes 14 seconds East 39 feet to the point of beginning.

Containing 4774 square feet, more or less.

Also known as 10101 Bird River Road in the 15th Election District of Baltimore County.

78

120 Cockeysville Road / Suite 105 / Hunt Valley, Maryland 21030 / (301) 785-2300

TerraPlan, Inc.

91-135-SPH

ZONING DESCRIPTION of Overall Property

Joseph and Mary Smith Property

Deed Ref. 1786/316

Beginning on the South side of Bird River Road, 30 feet wide, at a distance of 75 feet Easterly of the centerline and opposite from its intersection with Reams Road, thence binding on the South side of Bird River Road, South 54 degrees 51 minutes West, 208.58 feet, thence leaving said road South 38 degrees 30 minutes East, 879.17 feet, thence North 51 degrees 30 minutes East, 774.25 feet, thence North 06 degrees 17 minutes East, 115.00 feet, thence South 75 degrees 45 minutes West, 606.38 feet and thence North 48 degrees 22 minutes West, 344.08 feet to the point of beginning. Also known as 10101 Bird River Road in the 15th Election District of Baltimore County.

78

120 Cockeysville Road / Suite 105 / Hunt Valley, Maryland 21030 / (301) 785-2300

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 15th Date of Posting: 11/9/90
Posted for: Special Hearing
Petitioner: Joseph Smith, et ux
Location of property: 10101 Bird River Rd., opposite Reams Rd.
10101 Bird River Rd.
Location of Signs: Facing Bird River Rd., across 10' E. 2nd City
on property of Baltimore
Remarks: None
Posted by: [Signature] Date of return: 11/9/90
Number of Signs: 1

CERTIFICATE OF PUBLICATION

TOWSON, MD., 11-26-90
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 10-25-90

THE JEFFERSONIAN,

S. Zake Orlean
Publisher

\$ 34.16

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:
Petition for Special Hearing
CASE NUMBER: 91-135-SPH
SE/S Bird River Road, opposite Reams Road
10101 Bird River Road
15th Election District - 5th Councilmanic
Petitioner(s): Joseph Smith, et ux
HEARING: TUESDAY, NOVEMBER 20, 1990 at 2:00 p.m.
Special Hearing: An Amendment to the Site Plan and Order approved in previous Case NO. 88-274-SPH by removing restriction No. 1 set forth in the aforesaid Order.
J. Robert Haines
Zoning Commissioner of Baltimore County

The Times

Middle River, Md., Oct 26 1990

This is to Certify, That the annexed

Notice

was inserted in The Times, a newspaper printed

and published in Baltimore County, once in each

of one successive

weeks before the 26th day of

Oct, 1990

\$31.50

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

J. Robert Haines
Zoning Commissioner

October 3, 1990

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Petition for Special Hearing
CASE NUMBER: 91-135-SPH
SE/S Bird River Road, opposite Reams Road
10101 Bird River Road
15th Election District - 5th Councilmanic
Petitioner(s): Joseph Smith, et ux
HEARING: TUESDAY, NOVEMBER 20, 1990 at 2:00 p.m.

Special Hearings An Amendment to the Site Plan and Order approved in previous Case No. 88-274-SPH by removing restriction No. 1 set forth in the aforesaid Order.

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

cc: Joseph Smith
Nancy E. Dwyer, Esq.

J. Robert Haines
Zoning Commissioner

October 30, 1990

Nancy E. Dwyer, Esquire
814 Eastern Avenue
Baltimore, MD 21221

RE: Item No. 78, Case No. 90-135-SPH
Petitioner: Joseph Smith
Petition for Special Hearing

Dear Ms. Dwyer:

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 WINDARSKI. 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

cc: Mr. & Mrs. Joseph Smith
10101 Bird River Road
Baltimore, MD 21220

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account: R-001-6150
Number

No 3257

Date 6/22/90

H910007B

PUBLIC HEARING FEES	QTY	PRICE
040 - SPECIAL HEARING (OTHER)	1 X	\$175.00
LAST NAME OF OWNER: SMITH		TOTAL: \$175.00

040048007HICHR
BA C011:05AK08-23-90 \$175.00

Please make checks payable to: Baltimore County

Cashier Validation:

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account: R-001-6150
Number

No 3925

Date

M9100437

PUBLIC HEARING FEES	QTY	PRICE
050 - POSTING SIGNS / ADVERTISING	1 X	\$90.66
LAST NAME OF OWNER: SMITH		TOTAL: \$90.66

040048013SNICHR
BA C012:58PML1-20-90 \$90.66

Please make checks payable to: Baltimore County

Cashier Validation:

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

DATE 11-16-90

Mr. & Mrs. Joseph Smith
10101 Bird River Road
Baltimore, Maryland 21220

Re: Petition for Special Hearing
CASE NUMBER: 91-135-SPH
SE/S Bird River Road, opposite Reams Road
10101 Bird River Road
15th Election District - 5th Councilmanic
Petitioner(s): Joseph Smith, et ux
HEARING: TUESDAY, NOVEMBER 20, 1990 at 2:00 p.m.

Dear Petitioners:

Please be advised that \$ 90.66 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 \$90.00 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: Nancy E. Dwyer, Esq.

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner

DATE: October 25, 1990

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Joseph Smith, Item No. 78

The Petitioner requests a Special Hearing to amend the site plan order approved in previous Case No. 88-274-SPH by removing restriction Number One set forth in the aforesaid order.

In reference to this request, staff provides the following comments:

- On June 13, 1988, the deputy zoning commissioner denied the Petitioner's request for a Special Exception. At the time of the hearing, the protestants offered their opposition to the use of trucks in connection with the excavating business. An appeal was taken of the deputy zoning commissioner's decision, and in its order of December 15, 1988, the Board of Appeals granted a special hearing to approve of a nonconforming use subject to restrictions. The restriction which the Petitioner wishes to remove involves the storage of commercial vehicles. The Board's order states the following:

The Petitioner will be allowed to park and/or store only the following commercial vehicles: one dump truck, one tag-along trailer, and one tractor on site at any given time. The Petitioner can park his own automobiles and pickup trucks, used for person, noncommercial uses.

The Office of Planning and Zoning has consistently recommended denial for any request to store commercial vehicles on residentially zoned land. Therefore, staff opposes the Petitioner's request.

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/JL/cwn

ITEM78/ZAC1

received
10/26/90

Baltimore County
Fire Department
700 East Joppa Road, Suite 901
Towson, Maryland 21204-5500
(301) 887-4500
Paul H. Reincke
Chief

September 19, 1990



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: JOSEPH SMITH
Location: 10101 BIRD RIVER ROAD
Item No.: 78 Zoning Agenda: SEPTEMBER 18, 1990

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: *Capt. Kelly 9-19-90* Noted and Approved *Captain J.F. Brady Jr.*
Planning Group Fire Prevention Bureau
Special Inspection Division

JK/KEK

RECEIVED 9/21/90

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE
SEPTEMBER 13, 1990

TO: J. ROBERT HAINES, ZONING COMMISSIONER, DEPARTMENT ZONING
FROM: CHARLES E. BURNHAM, PLANS REVIEW CHIEF, DEPARTMENT OF PERMITS & LICENSES
SUBJECT: ZONING ITEM # 78
PROPERTY OWNER: Joseph Smith, et ux
LOCATION: SE/S Bird River Road, opposite Reams Road
(10101 Bird River Road)
ELECTION DISTRICT: 15th
COUNCILMANIC DISTRICT: 5th

A REVIEW OF THE SITE PLAN FOR THE ABOVE ZONING ITEM INDICATES THE FOLLOWING:

- () PROPOSED SITE PLAN DOES, DOES NOT, COMPLY TO STATE CODE OF MARYLAND REGULATION 05.01.07, MARYLAND BUILDING CODE FOR THE HANDICAPPED.
- () PARKING LOCATION () RAMPS (degree slope)
- () NUMBER PARKING SPACES () CURB CUTS
- () BUILDING ACCESS () SIGNAGE
- () PLAN DOES, DOES NOT COMPLY TO SET BACKS FOR EXTERIOR FIRE SEPARATION DISTANCE OF ARTICLE 5 AND ARTICLE 9 OF THE CURRENT BALTIMORE COUNTY BUILDING CODE.
- () A BUILDING PERMIT IS REQUIRED BEFORE ANY CONSTRUCTION CAN BEGIN. SECTION 111.1 OF ARTICLE 1. CONSTRUCTION DRAWINGS MAY BE REQUIRED.
- () A CHANGE OF OCCUPANCY PERMIT IS REQUIRED TO CHANGE THE EXISTING USE OF THE STRUCTURE TO THE PROPOSED USE. SEE ARTICLE THREE AND ARTICLE ONE, SECTION 103.2 ALTERATIONS MAY BE NECESSARY BY CODE TO COMPLY TO NEW USE REQUIREMENTS.
- () STRUCTURE IS SUBJECT TO FLOOD PLAIN LIMITATIONS, SECTION 516.0 COUNCIL BILL #159-88 (BALTIMORE COUNTY BUILDING CODE).
- (X) OTHER - No Comment on proposed amendment.

PERMITS MAY BE APPLIED FOR 8 ROOM 100, 111 WEST CHESAPEAKE AVENUE, TOWSON, MARYLAND 21204 - PHONE - 887-3900.

THIS REVIEW COVERS ONLY MAJOR ITEMS ASSOCIATED WITH THE SITE PLAN, A FULL REVIEW MAY BE CONDUCTED WHEN THE PERMIT APPLICATION AND PLANS ARE SUBMITTED.

APPLICABLE CODE: 1987 NATIONAL BUILDING CODES AS ADOPTED BY COUNCIL BILL #158-88.

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Zoning Advisory Committee DATE: September 14, 1990
FROM: Robert W. Bowling, P.E.
RE: Zoning Advisory Committee Meeting
for September 18, 1990

The Developers Engineering Division has reviewed the subject zoning items and we have no comments for Items 78, 80, 83, 84, 85, 86 and 87.

Item 82 is subject to the previous County Review Group comments. From a point 185 feet northeast of Stonewall Road the panhandle to Lot 3 is a single panhandle and as per the Highway Comments, should be 20 feet wide in this area. The increase in panhandle width will impact the setbacks for Lots 1 and 2.

We also recommend the disposition of the remaining parcel on Stonewall Road be noted as it will be below standard for DR-2.

Robert W. Bowling
ROBERT W. BOWLING, P.E., Chief
Developers Engineering Division

RWB:s

Walter K. Frazier
1013 Rowe Farm Lane
Baltimore, Maryland 21220
January 11, 1991

RECEIVED
JAN 14 1991
ZONING OFFICE

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

RE: Case No. 91-135-SPH
SE/S Bird River Road, Opposite Reams Road
10101 Bird River Road

Dear Ms. Nastarowicz:

As per our conversation of January 11, 1991, I would like to notify you that the correspondence which was mailed to your office from the council representing the Smith family in case 91-135-SPH is incorrect. As of this date I have had no discussion with the Smith's concerning the issues of this case. The Smith's lawyer contacted me by telephone on December 31, 1990 but the community has not changed its position. A fence in the area will be approved only if the present vehicle restrictions remain. Currently the zoning allows for 1 large dump truck, 1 small truck and 1 trailer. No other vehicles are allowed.

The community appreciates the decision to fence in the parking area. We do not approve of this plan and we will not consent if additional vehicles are allowed to be parked.

If you have any questions or wish to discuss this matter, please feel free to contact me at my office, 488-8690.

Best regards,

Walter K. Frazier
Walter K. Frazier

1013 Rowe Farm Lane
Baltimore, Maryland 21220
February 15, 1991

John B. Gontrum
Romadka, Gontrum & Hennegan, P.A.
814 Eastern Blvd.
Baltimore, Maryland 21221

Dear Mr. Gontrum:

In response to your letter of February 5, 1991 regarding the property of Mrs. Smith on Bird River Road, I want to be clear on the following: First of all, as if you hadn't been made aware of it previously, we do not want a "Truck Stop" in our back yard. I hope this is finally clear! Frankly, the idea that Mrs. Smith wishes a "Truck Stop" in her back yard really astounds the rest of the community.

If they do, in fact, erect this privacy fence to the specifications you applied for, it doesn't take a mental giant to realize that a fenced in area of this size will only accommodate 2 to 3 trucks. Since the Smith's intent is to, in fact, add to their collection of trucks, where will they put them? My guess is outside the fence! Since Mr. Smith has been in violation since day "One", it would appear that he is going to try to extend his truck allowance, agree to erect the privacy fence and then proceed to do whatever he feels like doing—just as he has always done.

I do not believe his motives indicate "Good Will" as I do not believe that all of his trucking "stuff" will be behind that fence.

Additionally, if the county agrees to his attempt to make his property "esthetically pleasing", what do they purpose to do about the "Noise & Air Pollution"? A fenced in "Truck Stop" is not acceptable in a quiet residential area.

Anxiously awaiting your reply.

Sincerely,

Diane Frazier
Diane Frazier
DE/me

cc: Ann Nastarowicz

RECEIVED
FEB 19 1991
ZONING OFFICE

LAW FIRM

Romadka, Gontrum & Hennegan, P.A.

814 EASTERN BOULEVARD
ESSEX, MARYLAND 21221
TELEPHONE (301) 686-8274
FAX # 686-0118

ROBERT J. ROMADKA
JOHN B. GONTRUM
JOHN O. HENNEGAN

DONALD H. SHEFFY
NANCY E. DWYER
SHARON R. GAMBLE
MARY H. BUCHANAN

*Also admitted in Florida

January 10, 1991

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

Re: Case No: 91-135-SPH
SE/S Bird River Road, Opposite Reams Road
10101 Bird River Road
15th Election District - 5th Councilmanic
Petitioner(s): Joseph Smith et ux

Dear Ms. Nastarowicz:

At a Special Hearing before you on November 20, 1990, the Petitioners requested an amendment to the site plan and Order approved in a previous case no: 88-274-SPH, removing the restriction limiting the number of commercial vehicles parked or stored on site. Mr. Walt Fraizer attended said hearing and stated his objection to Mr. Smith's request. However, subsequent to the hearing, the parties discussed the possibility of Petitioners placing a fence around the area to be used for storage of commercial vehicles and equipment and an agreement was reached on this issue. Accordingly, the site plan submitted at the hearing is being amended to reflect the fenced in area and will be forwarded to your office upon our receipt.

If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,

Nancy E. Dwyer
Nancy E. Dwyer

NED/ej

cc: Walt Fraizer
Joseph and Mary Smith

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

MARY M. SMITH
JOSEPH E. SMITH
BERNARD L. MUSEMEYER
Diane Scott

10101 BIRD RIVER RD
" "
120 COCKSPURVE RD #705
10342 BIRD RIVER RD

445-
1488
21236

PROTESTANT(S) SIGN-IN SHEET

NAME

ADDRESS

Shirley Fraizer
Walt Fraizer
Walter K. Frazier

1013 Rowe Farm Lane
1013 Rowe Farm Lane
1013 Rowe Farm Lane

NYBURG v. SOLIMSON

ME 458

NYBURG v. SOLIMSON et al.
No. 171.
Court of Appeals of Maryland.
June 23, 1994.

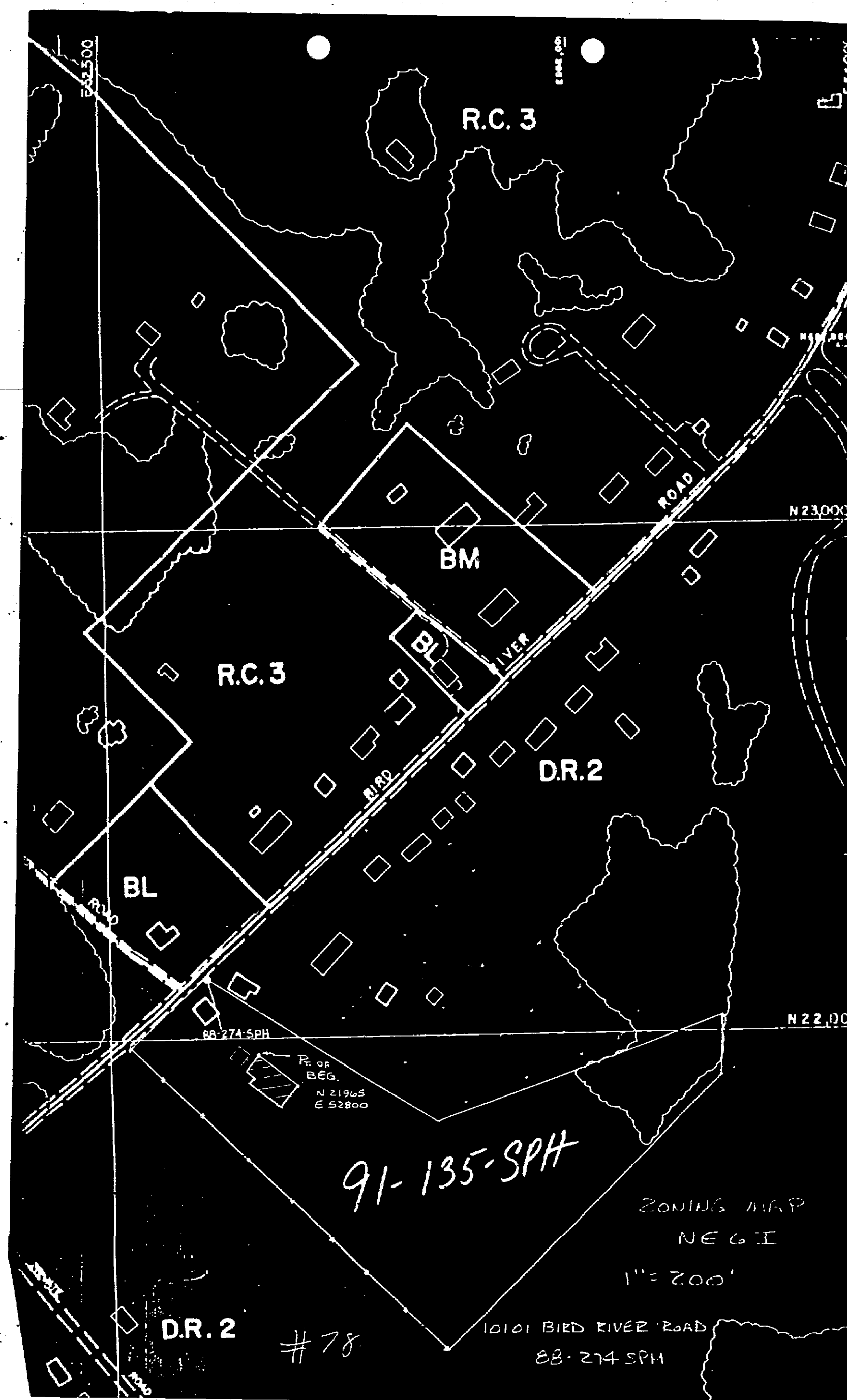
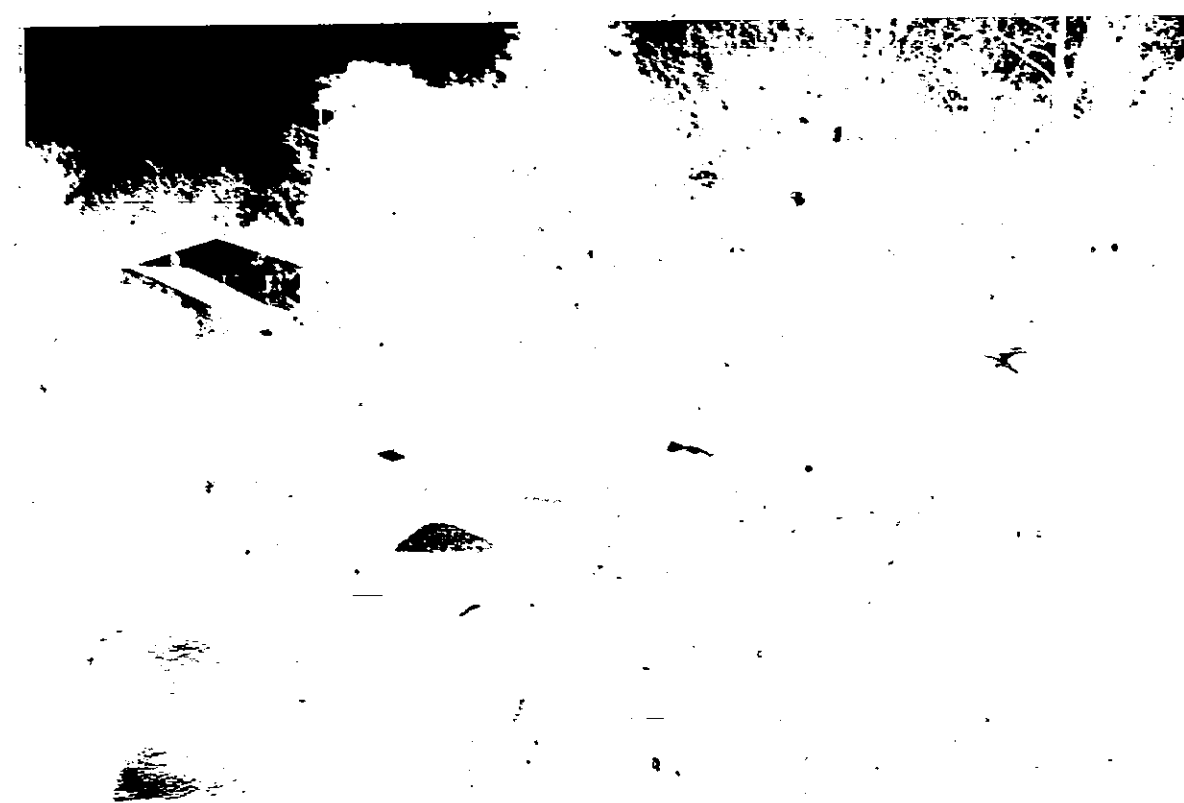
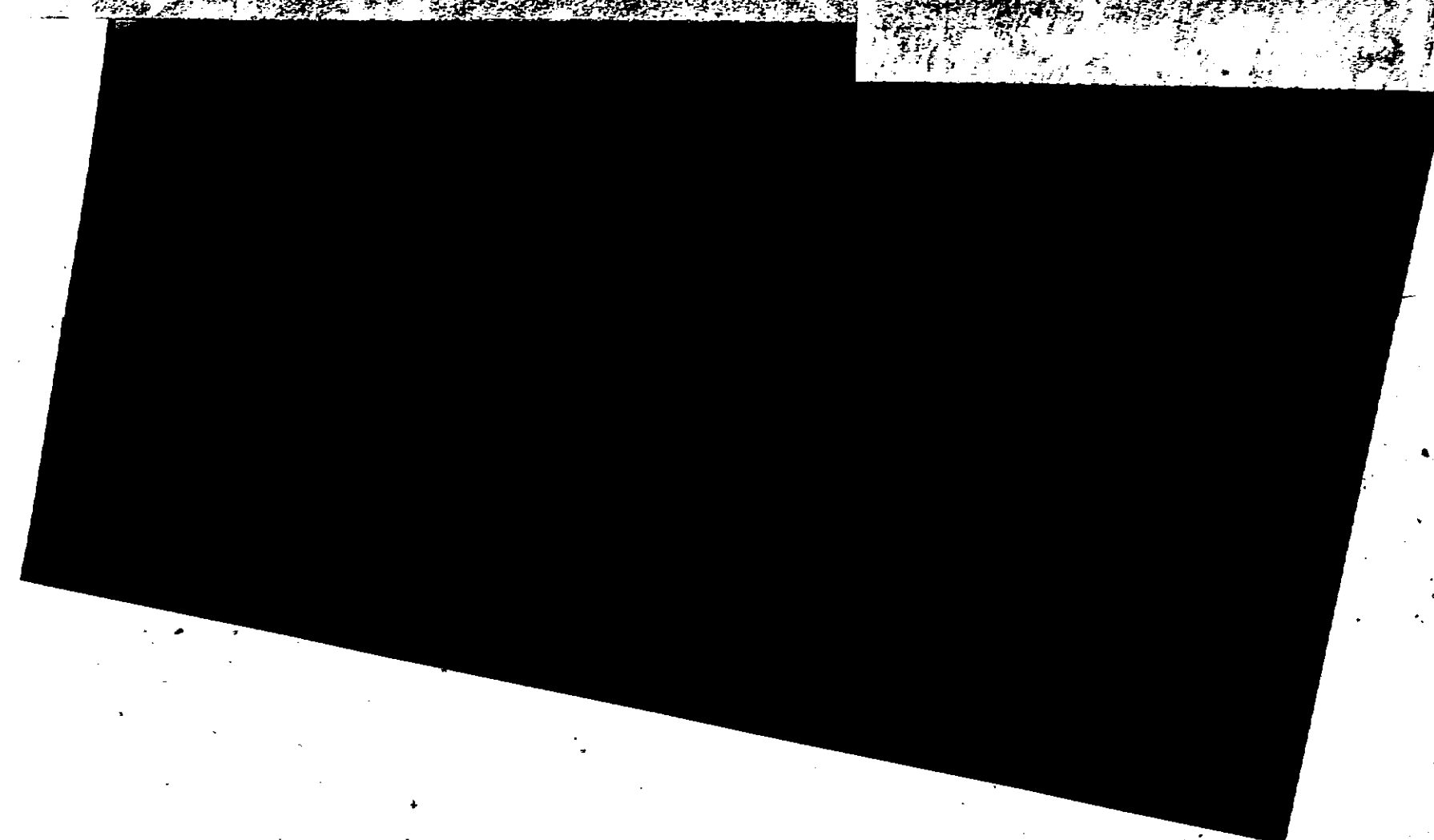
Proceeding involving garage owner's non-conforming use of property within residential district. The Board of Municipal and Zoning Appeals entered decision favorable to the garage owner but limited his use of open space before his garage to the parking and storage of not more than 10 vehicles at one time,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

Order affirmed.
1. Parties (2) 38
Generally, the right to intervene is within discretion of trial court, measured in light of intervenor's interest in subject matter and issues raised by proceedings.
2. Appeal and Error (2) 39
The exercise of discretion as to right of intervention generally is not subject to appeal, but it may be if action of court amounts to an abuse of discretion.
3. Municipal Corporations (2) 40
Where protestant against landowner's nonconforming use of property had vigorously participated in hearing before Board of Municipal and Zoning Appeals, and was entitled to appeal from decision of Board both as a person aggrieved and as a taxpayer, but protestant attacked the Board's decision by a late appeal and, after it was apparent that appeal was to be dismissed, tried.

4. Municipal Corporations (2) 41
Evidence justified finding of Board of Municipal and Zoning Appeals that garage owner, whose garage had been established in residential neighborhood for years before zoning ordinance became effective, had a nonconforming use as to the whole lot upon which the garage was located, including open space in front of the garage, and that the use was continuous, substantial and commercial.
5. Municipal Corporations (2) 42
Evidence before Board of Municipal and Zoning Appeals was insufficient to support protestant's claim that nonconforming use, by garage owner, of open space in front of his garage for unloading and distribution of automobiles was noxious or offensive by reason of emission of odor, dust, smoke, gas, fumes, vibration or noise, and thus constituted a forbidden second commercial use.
6. Municipal Corporations (2) 43
A garage, a new car sales room and a truck distribution terminal are all permissible uses in a first commercial use district.
7. Municipal Corporations (2) 44
A nonconforming use may be changed to a use of the same or a higher classification.

8. Municipal Corporations (2) 45
Where garage owner had a nonconforming first commercial use of open space in front of his garage, property could properly be used for sale of new cars or as a truck distribution center, which uses are permissible in a first commercial use district.
9. Municipal Corporations (2) 46
Where protestant against landowner's nonconforming use of property had vigorously participated in hearing before Board of Municipal and Zoning Appeals, and was entitled to appeal from decision of Board both as a person aggrieved and as a taxpayer, but protestant attacked the Board's decision by a late appeal and, after it was apparent that appeal was to be dismissed, tried.

PROTESTANT(S) EXHIBIT (1)



ORDER

Therefore, it is this 15th day of December, 1988 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Special Hearing seeking approval of the nonconforming use be and is hereby GRANTED subject to the following restrictions:

- (1) The Petitioner will be allowed to park and/or store only the following commercial vehicles: one dump truck, one tag-along trailer, and one tractor on site at any given time. The Petitioner can park his own automobiles and pickup trucks, used for personal, noncommercial uses.
- (2) There shall be no excavation business on site.
- (3) There shall be no storage of any property and/or material hauled in connection with the Petitioner's business on site other than that property and/or material within the truck or tag-along trailer parked on site.

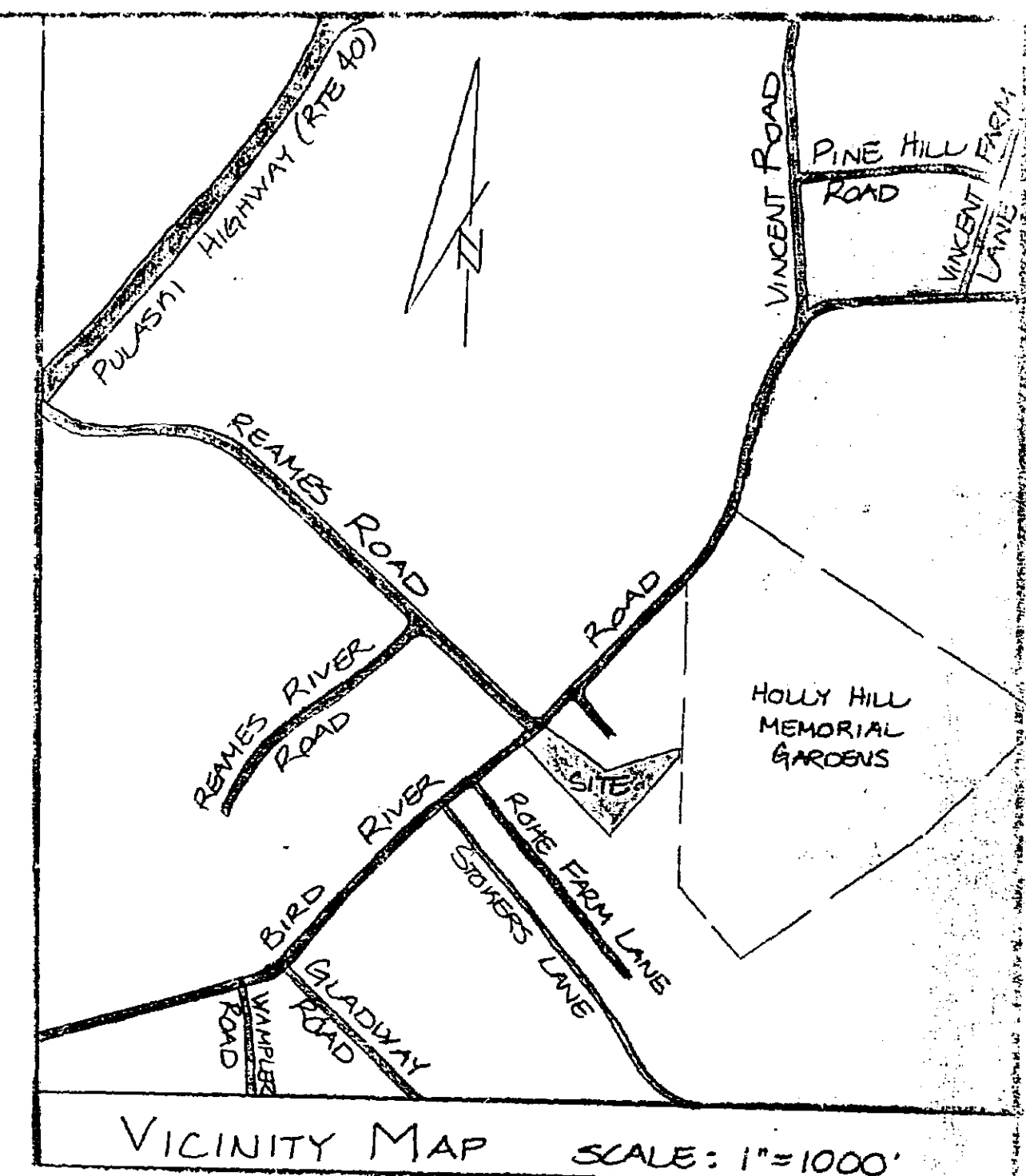
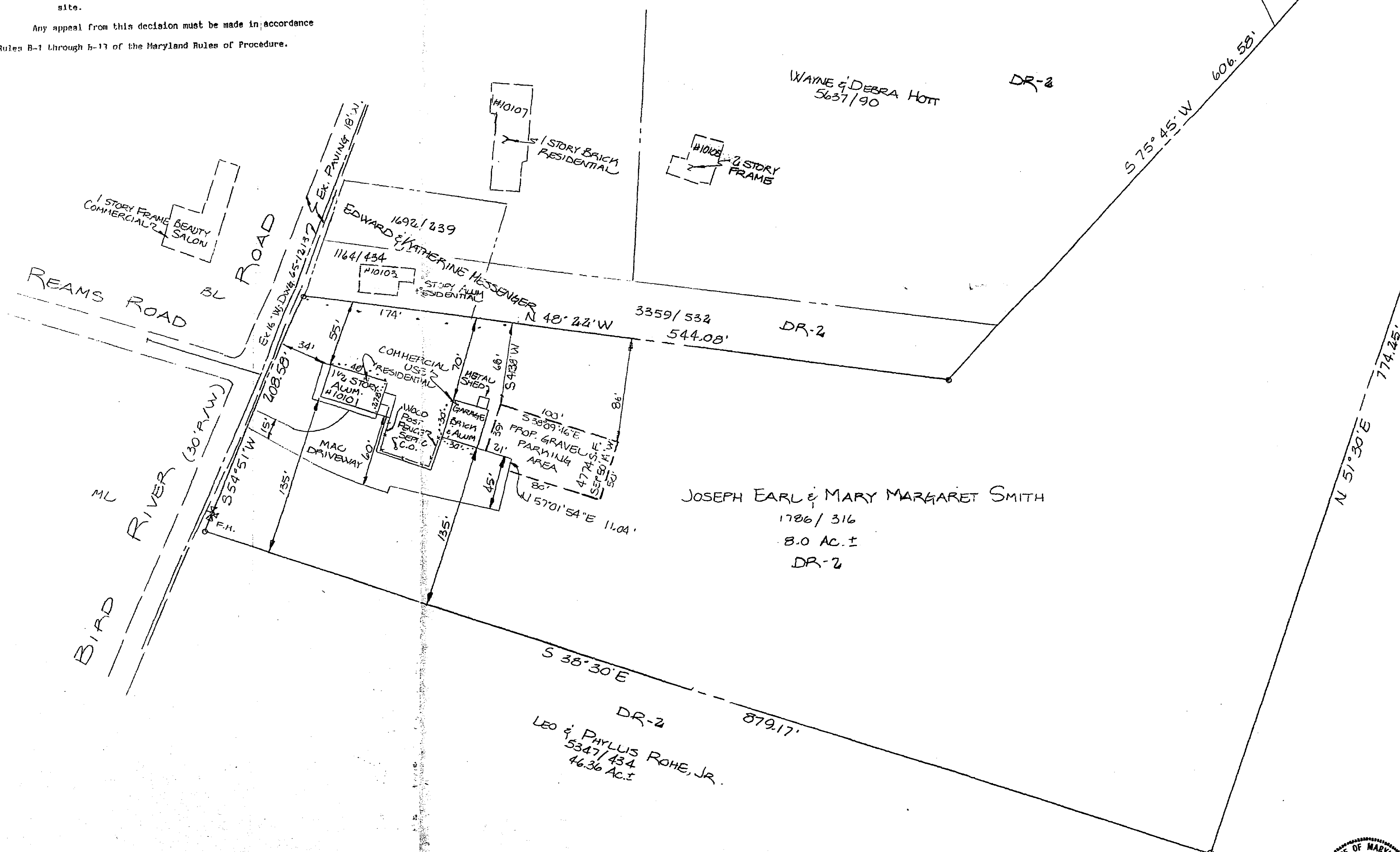
Any appeal from this decision must be made in accordance with Rules B-1 through B-11 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

Arnold G. Foreman

Henry H. Lewis

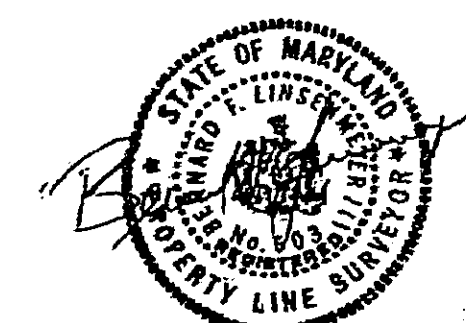


Leo & Phyllis Rohe, Jr.
5347/434
46.36 Ac.±

10101 BIRD RIVER ROAD
PLAT TO ACCOMPANY
PETITION FOR SPECIAL HEARING TO AMEND
THE SITE PLAN IN ORDER APPROVED IN
CASE NO. 88-274SPH.

JOSEPH & MARY SMITH PROPERTY
DISTRICT 15-C5 BALTIMORE COUNTY, MD.
SCALE: 1"=50' DATE: JUNE 26, 1990

91-135-SPH



TERRAPLAN, INC.
120 COCKEYSVILLE ROAD
SUITE 105
HUNT VALLEY, MD. 21030
(301) 785-2300

#78

EXHIBIT 1