

CIRCUIT COURT FOR BALTIMORE COUNTY  
CIVIL CATEGORY 94CV0405/71/89 JUDICIAL REVIEW

PETITION OF PEOPLE'S COUNSEL FOR BALTO. CO.  
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEAL OF BALTO. CO.  
IN THE CASE OF: IN THE MATTER OF LEO J. UMERLEY, ET UX FOR SPECIAL EXCEPTION AND VARIANCES ON PROPERTY LOCATED ON THE SOUTHEAST SIDE OF PHILADELPHIA RD., 138', +/- SOUTH OF C/L OF HAYWOOD RD. (9813 PHILADELPHIA RD.) 11th ELECTION DISTRICT, 6th CONGRESSIONAL DISTRICT Case No. 92-346-XA

ATTORNEYS  
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Ste. 700, Court Towers  
210 W. Pennsylvania Ave.  
Towson MD 21204

TRANSCRIPT IN BASEMENT  
LOCATION: [redacted]

- PH (1) Jan. 13, 1994 - Petition for Judicial Review fd. Notice Sent.
- PH (2) Feb 1, 1994 Rec'd 1/19/94 Certificate of mailing, fd.
- PH (3) Feb 4, 1994 Motion of Peoples Council to Transfer all pleadings from case 94CV-557 to case 94CV-405, fd.
- sw (4) Feb. 18, 1994 Response of Mr. and Mrs. Leo J. Umerley re Petition for Judicial Review, fd. (received 2/8/94)
- PH (5) Mar 4, 1994 Order of Court directing Clerk to transfer all pleadings from case # 94CV-557 to case # 94CV-405 and all pleadings shall be filed in case # 94CV-405, fd. (JTS, JR)
- if (6) March 10, 1994 - Transcript of Record fd.
- if (7) March 10, 1994 - Notice of Filing of Record fd. Copies Sent.
- 8) Apr. 7, 1994 Memorandum of Petitioners PEOPLE'S COUNSEL FOR BALTIMORE COUNTY fd. (rec'd 4-6-94)
- if (9) April 11, 1994 - Memorandum of PEOPLE'S COUNSEL fd.
- h (10) May 18, 1994, Memorandum of appellees in opposition to appeal, fd. (rec'd 5/16/94)

3/1/96 / Leo J. Umerley, et ux  
CSA AFFIRMED CDR (CCR  
reversed CRA; denied  
SE and VAR)  
(Moylan, Bishop, Eyer, JJ.)  
92-346-XA

REPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND  
No. 802  
September Term, 1995

LEO J. UMERLEY, et ux.

v.

PEOPLE'S COUNSEL FOR  
BALTIMORE COUNTY, et al.

Moylan,  
Bishop,  
Eyer,  
JJ.

Opinion by Bishop, J.

Filed: March 1, 1996

- rs\*(11) June 15, 1994 PEOPLE'S COUNSEL'S Supplemental Memorandum fd. (rec'd 6-13-94)
- CASE NO. 94CV405
- sw\*(12) July 11, 1994 Supplemental Memorandum of Appellees in Opposition to Appeal fd. (rec'd 7-1-94)
- as (13) March 23, 1995 Memorandum Opinion and Order of Court REVERSING the decision of the Board of Appeals dated 12-22-93, etc., fd. (JNB)
- jm\*(14) March 30, 1995, Correspondence, fd.
- jh\*(15) April 17, 1995, Defd's Leo J. Umerley and Wanda Umerley, Notice of Appeal to The Court of Special Appeal, fd. (rec'd 4/17/95)(7/120)
- April 21, 1995. Hon. J. Norris Byrnes. Hearing had. Court rules in event there is need for a Stay - Parties will have to go to the Court of Special Appeals.
- \*(16) May 30, 1995 Order from the Court of Special Appeals that the Appeal proceed without a Prehearing Conference, fd.
- jc\*(17) May 31, 1995 Motion of Leo J. Umerley and Wanda Umerley to stay Proceedings Pending Appeal, fd.
- jc\*(18) June 29, 1995 Response of Baltimore County, Maryland to Motion to Stay Proceedings Pending Appeal, with request for hearing, fd. (Rec'd 6/19/95)
- as\*(19) July 5, 1995 Order of Court STAYING all proceedings relating to this case pending resolution of this case in the Court of Special Appeals provided that the petitioners post a supersedeas bond in the amount of \$30,000.00, etc., fd. (JNB)
- PH Jun 30, 1995 Hon.B.K.Howe- Motion to Stay is Denied. Notices sent
- jh\*(20) July 7, 1995, People's Counsel's Answer To Motion To Stay Proceedings Pending Appeal, fd. (rec'd 6/19/95)
- G\*(21) July 18, 1995 Correspondence, fd.
- JULY 21, 1995 - ORIGINAL RECORD AND PROCEEDINGS SENT TO THE COURT OF SPECIAL APPEALS OF MARYLAND BY CERTIFIED MAIL.
- df (22) April 17, 1996 - Original Papers & Mandate from the Court of Special Appeals Received & DISPOSITION OF APPEAL IN COURT OF SPECIAL APPEALS:  
March 1, 1996: Opinion by Bishop, J. Judgment affirmed. Appellants to pay the Costs.  
April 1, 1996: Mandate Issued.
- KP (23) April 26, 1996-Petition for Writ of certiorari filed from the Court of Special Appeals.
- jh(24) July 30, 1996, Notice from Court of Appeal that Writ of Certiorari is DENIED, FD. (rec'd 7/25/96) (RCH)

Appellants, Leo and Wanda Umerley, filed a petition requesting that the zoning commissioner of Baltimore County grant a special exception for a Class II Trucking Facility and certain variances. The Commissioner denied the petition for a special exception and dismissed the variances.

The Umerleys filed a timely appeal to the Board of Appeals of Baltimore County. After a de novo hearing, the Board of Appeals granted the requested special exception and variances.

Appellees, the People's Counsel for Baltimore County, the Nottingham Improvement Association, residents of the Nottingham neighborhood, and Gary Hoffman, owner of a business property adjacent to that of the Umerleys, filed an appeal of the Board of Appeals's decision to the Circuit Court for Baltimore County. Following oral argument, the circuit court reversed the Board of Appeals's decision, and the Umerleys noted an appeal to this Court.

ISSUE

The Umerleys raise a single issue on appeal, which we subdivide and rephrase:

I. Did the Board of Appeals properly grant the variances?

II. Did the Board of Appeals properly grant the special exception?

FACTS

The subject of this appeal consists of 8.5 acres that were acquired by the Umerleys over a period of thirty-one years. The property lies northeast of Baltimore City, and is bordered by Philadelphia Road to the north, by a line of the Baltimore & Ohio Railroad to the south, and by unimproved, wooded property to the

- rs\*(11) June 15, 1994 PEOPLE'S COUNSEL'S Supplemental Memorandum fd. (rec'd 6-13-94)
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- PH Jun 30, 1995 Hon.B.K.Howe- Motion to Stay is Denied. Notices sent
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east and west. The property is primarily zoned Manufacturing Light, Industrial Major ("M.L.-I.M."), and lies directly across Philadelphia Road from the residential neighborhood of Nottingham. Philadelphia Road itself is a two-lane artery that lies between U.S. Interstate 95 and U.S. Route 40 (Pulaski Highway); the land to its north is generally zoned for residential use, while the land to its south is zoned for industrial use.

The Umerleys acquired the first part of the 8.5 acre parcel in the mid-1950s. That lot, which consists of 2.5 acres, was improved by a two-bay garage in 1958. In 1961, the garage was expanded to four bays, and in 1982, an office complex was constructed next to the garage. The lot is mostly paved and is used for "employee automobile parking, truck parking, and frontage landscaping."

In 1982, the Umerleys acquired the second part of the 8.5 acre parcel. That lot, which consists of 2.8 acres, is almost entirely paved and is used for truck and trailer parking.

In 1989, the Umerleys acquired the third part of the 8.5 acre parcel. That lot consists of 3.2 acres and is vacant and wooded.

In 1976, the Baltimore County Council passed regulations designed to minimize the impact of trucking facilities on environmentally sensitive and residential areas. Recognizing the adverse effect of the regulations on existing trucking facilities, the council included provisions that allowed such trucking facilities to exempt themselves from the new laws. We paraphrase these exemptions as follows:

1) All existing Class II trucking facilities had to file plans demonstrating their "layout

LEO J. UMERLEY et ux.

v.

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY et al.

In the  
Court of Appeals  
of Maryland  
Petition Docket No. 94, Sept. Term 1996  
(No. 802, Sept. Term 1995, Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, and the answer filed thereto in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ ROBERT C. MURPHY  
Chief Judge

Date: July 24, 1996

and operation of use" with the county within one year of the passage of the law. (BCZR 410A.1.A.1, 410A.1.A.2, 410A.1.C.1.)

2) Within one year of the date those plans were filed, the Zoning Commissioner was required to determine if they complied with selected provisions of the new regulations, or whether they were permissibly exempt from those regulations. (BCZR 410A.1.B.1, 410A.1.B.2, 410A.1.B.3.)

3) If the Zoning Commissioner determined that the filed plans did not comply with the appropriate regulations, and were not permissibly exempt from those regulations, the trucking facility was required to file:

a) a program of compliance showing that the appropriate regulations would be met within twenty-seven months (BCZR 410A.1.C.1); or

b) a petition requesting that the facility not be required to meet the appropriate regulations because "conformance with the provision would cause undue hardship and would not be in the general interest of the community . . ." (BCZR 410A.1.C.2.)

4) Failure of a trucking facility to file plans with the county at all (in conformance with BCZR 410A.1.B.1 or 410A.1.B.2) meant that the facility lost the right to exist as a trucking facility three years from the date the new law was passed. (BCZR 410A.1.D.1 and 410A.1.D.2). Failure of a nonconforming trucking facility to file either a program of compliance or a petition for noncompliance (in conformance with BCZR 410A.1.C.1 or 410A.1.C.2) meant that the facility lost its right to exist as a trucking facility three years after the determination of noncompliance by the Zoning Commissioner (BCZR 410A.1.D.3). If a trucking facility failed to comply with the applicable exemption provisions and thus lost the right to exist as a trucking facility, it could only continue operations by qualifying as a new use.

VII. The Philadelphia Road Corridor Study:  
Zoning and the Master Plan

Petitioner has suggested that the placement of M.L. zoning on the site, up to the Philadelphia Road boundary, implies some sort of approval of this facility. This is not true. The law of the M.L. zone requires a special exception, and the law of trucking facilities sets the locational standards. There is no escape from compliance.

In this context, there was a lot of testimony about the Philadelphia Road Corridor Study. On January 21, 1992, the County Council adopted this study as a part of the Master Plan, with amendments. This means that it plays an advisory role in special exception cases, but is not mandatory. People's Counsel v. Webster, 65 Md. App. 694 (1988).

Here, the Study describes Nottingham Village as "suburban residential" and "a relatively low density development of detached, single family homes." P. 22. Additionally, the Study recommends a variety of measures to give further protection to the residential areas from the impact of industrial uses on the east side of the road. These include a special overlay zoning district or the application of the M.L.R. (Manufacturing Light Restricted) and S.E. (Service Employment) zones.

In the case of the Userley property, the trucking facilities legislation already provides the necessary protection, so long as it is followed here. Whether or not the County Council chooses to add an overlay district or some revised zoning remains to be

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MODIFIED

In any event, an important goal of the Philadelphia Road corridor study is to protect residential areas from nearby incompatible industrial uses. This goal can be accomplished here simply by denying the petitions, which squarely contradict the specific requirements of the law.

CONCLUSION

For the foregoing reasons, the petition for special exception and variances should and must be denied.

Respectfully submitted,

*Peter Max Zimmerman*  
Peter Max Zimmerman  
People's Counsel for Baltimore County

*C. S. Deshler*  
Carole S. Deshler  
Deputy People's Counsel  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-2188

I HEREBY CERTIFY that on this 8th day of November, 1993, a copy of the foregoing People's Counsel's Memorandum was mailed to Newton A. Williams, Esquire, and Stephen J. Nolan, Esquire, Nolan, Plumhoff & Williams, Chtd., Suite 700, Court Towers, 210 W. Pennsylvania Ave., Towson, MD 21204-5340, Attorneys for Petitioner; Gary R. Hoffman, President, General Services Engineering, Inc., 9729 Philadelphia Rd., Baltimore, MD 21237;

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Mrs. Marie Q. Simoes, President, Nottingham Community Assn., 1314 Spotswood Rd., Baltimore, MD 21237; and Mr. John Marazzano, 9909 Philadelphia Rd., Baltimore, MD 21237.

*Peter Max Zimmerman*  
Peter Max Zimmerman

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Exhibit A  
(Userley Brief)

APP. 140

BALTIMORE COUNTY  
ZONING REGULATIONS

ADOPTED BY  
COUNTY COMMISSIONERS  
OF  
BALTIMORE COUNTY

March 30, 1955, in accordance with Title 30, Section 532 (c) of the Code of Public Local Laws of Baltimore County (1955 Edition).

1955

Michael J. Birmingham  
President

Robert B. Hamill  
Augustine J. Muller  
County Commissioners of Baltimore County

Francis T. Peach  
County Solicitor

George M. Berry  
Deputy Solicitor

Wilsie H. Adams  
Zoning Commissioner

APP. 141

B. R. Zone—Business, Roadside

Section 236—USE REGULATIONS

The following uses only are permitted:

236.1—Uses permitted and as limited in B. M. Zone.

236.2—Bottling establishment, soft drink, Greenhouse, Laboratory, Motel or motor court, Printing, lithographing, or publishing plant, employing over 25 persons, Volunteer fire company.

236.3—The following uses when located at least 50 feet from the residential zone boundaries at the ends of the commercially zoned frontage:

Building materials storage and sales yard; Farm implements, sales and service; Feed and grain sales and storage; Kennel; Lumber yard; Public utility storage yard; Stone or monument works; Storage of inflammable liquids and gases underground (for requirements see Baltimore County Building Code); Tire retreading or recapping.

236.4—Special Exceptions—The following uses when permitted as Special Exceptions (see Sections 270 and 502):

Airport; Amusement park; Boat yard and/or marine railway; Bus terminal; Cemetery (see Section 401); Contractor's equipment storage yard; Excavations, controlled (see Section 403); Filling station (see Section 405); Golf driving range, miniature golf, and baseball batting range; Hospital Class B (see Section 407); Living quarters in a commercial building; Poultry, commercial killing of; Public utility uses other than those noted in Sections 200.11, 230.9 and 236.3 (see Section 411); Race track, commercial;

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APP. 142

B. R. ZONE

Riding stable, commercial; Sanitary landfill; Shooting range; Storage of inflammable liquids and gases above ground (for requirements see Baltimore County Building Code); Theatre, drive-in; Trailer park (see Section 414); Truck terminal; Used motor vehicle outdoor sales area, separated from sales agency building; Wireless transmitting and receiving structure.

Section 237—HEIGHT REGULATIONS

Same as in B. L. Zone.

Section 238—AREA REGULATIONS

Minimum requirements, except as provided in ARTICLE 3, shall be as follows:

238.1—Front Yard—For residences, as in Sections 302 and 303.1; for commercial buildings the front building line shall be not less than 50 feet from the front property line if on a dual highway; and not less than 25 feet from the front property line and not less than 50 feet from the center line of any other street, except as specified in Section 303.2.

238.2—Side and Rear Yards—For residences, as in Section 302; for other buildings, 30 feet;

238.3—Parking Areas and Loading Space—In accordance with the provisions of Section 405;

238.4—Storage and display of materials, vehicles and equipment are permitted in the front yard but not more than 15 feet in front of the required front building line.

M. R. Zone—Manufacturing, Restricted

Section 250—USE REGULATIONS

250.1—In order to provide greater freedom in the selection of industrial areas and at the same time to secure and maintain effective control over the location, type, and arrangement of industrial uses and to protect the uses in neighboring residential zones, areas for Restricted Manufacturing Zones may be designated on the zoning map and/or may be created by petition in accordance with the procedure outlined in the following sections.

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APP. 143

M. L. Zone—Manufacturing, Light

Section 253—USE REGULATIONS

The following uses only are permitted:

253.1—Non-residential uses permitted and as limited in B. R. Zone, excluding: kennels, theatres, drive-in theatres, funeral establishments, and the uses permitted in Sections 230.7 and 230.8.

253.2—Residential uses as follows: Dwellings, one-family or two family on lots of record before March 30, 1955, but new subdivisions for residential development are prohibited; Farm (see Section 404); Living quarters for watchmen and caretakers and their families employed and living on the premises, in connection with any lawful use in the M. L. Zone.

253.3—Uses permitted in M. R. Zone.

253.4—The following uses when located at least 100 feet from any contiguous residence zone:

Assembly of automobiles and airplanes; Boat yard and/or marine railway; Bus terminal; Carpet, rug cleaning; Cleaning and dyeing; Concrete products, including concrete and/or cinder block manufacture; Contractor's equipment storage yard; Creamery; Enameling, japanning, lacquering, galvanizing and plating, when merely accessory to other permitted uses; Excavations, controlled, exclusive of those embodying use of explosives (see Section 403); Grain, processing of, provided equipment is installed for effective precipitation and recovery of dust;

Ice, manufacture of; Milk pasteurization and distributing stations; Non-liquid fuel storage and sale (for requirements see Baltimore County Building Code); Poultry, commercial killing of; Storage of inflammable liquids and gases above ground (for requirements see Baltimore County Building Code);

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M. L. ZONE

more County Building Code); Vegetable canning or packing house.

253.5—Special Exceptions—The following uses when permitted as Special Exceptions (see Sections 270 and 502):

Cemetery; Excavations, controlled, when explosives are used (see Section 403); Filling station (see Section 405); Sanitary landfill (see Section 412); Shooting range; Signs, outdoor advertising (see Section 413.3); Trailer Park (see Section 414); Truck terminal; Wireless transmitting and receiving structure.

Section 254—HEIGHT REGULATIONS

Height unlimited except that no building hereafter erected on a lot which abuts a residence or business zone shall exceed a height of 40 feet or 3 stories, if any part of said building is within 100 feet of the boundary line of said residence or business zone (see Section 300).

Section 255—AREA REGULATIONS

Same as in B. R. Zone, Section 238.

M. H. Zone—Manufacturing, Heavy

Section 256—USE REGULATIONS

The following uses only are permitted:

256.1—Uses permitted in M. R. Zone, Section 250.6, and in Section 253.4 of the M. L. Zone; Living quarters for watchmen and caretakers and their families employed and living on the premises, in connection with any lawful use in the M. H. Zone; Storage of inflammable liquids and gases underground (for requirements see Baltimore County Building Code); Volunteer fire company.

256.2—The following uses when located at least 300 feet from any residence zone or 200 feet from any business zone:

Bag cleaning; Bituminous concrete mixing plant; Brewing and distilling of beer, ale or liquor, malt manufacture;

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M. H. ZONE

Chemical fertilizer manufacture; Enameling, japanning, lacquering, galvanizing, and plating; Excavations, controlled, exclusive of those embodying use of explosives (see Section 403); Gravel processing; Hot rolling mills; Manufacture of airplanes, automobiles, trailers, trucks, railway cars, locomotives, and other vehicles; Manufacture of felt and shoddy provided equipment is installed for effective precipitation and recovery of dust; wool pulling and scouring; Manufacture of pickles, sauerkraut, vinegar, yeast, soda and soda compounds; Manufacture of structural clay products, babbit metal and other nonferrous alloys; Manufacture or processing of meat products, except slaughter houses; Processing, fabricating, and assembling of metals, including foundries, forging and casting shops, structural steel or pipe works, large stamping shops; Railroad classification yards and round house; Sand, processing of; Sanitary landfill; Shipbuilding and repair; Steam power plants; Stone, crushing and processing of; Testing of components or equipment manufactured or used in conjunction with heavy manufacturing or assembly; Truck terminal.

256.3—Any other industrial or manufacturing use, except those in Section 256.4, when located at least 1000 feet from any other zone.

256.4—Special Exceptions—The following uses only when permitted as Special Exceptions (see Sections 270 and 502):

- Cemetery; Excavations, controlled, when explosives are used (see Section 403); Explosives;

APP. 146

Filling station; Heavy chemical manufacture; Junk yard; Oil refinery; Open dump; Organic fertilizer manufacture; Reduction of dead animals, fish, garbage, or offal; Shooting range; Signs, outdoor advertising (see Section 413.3); Slaughterhouse; Trailer Park (see Section 414); Wireless transmitting and receiving structure.

Section 257—HEIGHT REGULATIONS  
Same as in M. L. Zone, Section 254.

Section 258—AREA REGULATIONS  
Same as in B. R. Zone, Section 238.

APP. 147

Section 270—SCHEDULE OF SPECIAL EXCEPTIONS (See Section 502)

S.E.: Use permitted by Special Exception only.  
—: Use permitted without Special Exception.  
x: Use prohibited.

Table with columns for USE, R40, R20, R10, R5, R3, R2, R1, B, L, M, B, R, M, L, M, H. Rows include Airport, Amusement park, Boarding house, Boat yard, Bus terminal, Cemetery, Conservatory, Music & Arts, Contractor's equipment storage yard, Convent house, Conversion of dwelling, Elevator apartment with Accessory Business uses, Excavations, controlled, Filling station, Funeral establishment, Garage, service, Golf driving range, Heavy manufacturing uses, Hospital, Class B, Hotel, Junk yard, Kennel, Laboratory, Living quarters in a commercial building, Marine railway, Motel or motor court, Offices and office buildings, Open dump.

Note: \*On farm only—that is, 3 acres or more. †Special Exception only when explosives are used, otherwise permitted without Special Exception.

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Section 270—SCHEDULE OF SPECIAL EXCEPTIONS (See Section 502)

S.E.: Use permitted by Special Exception only.  
—: Use permitted without Special Exception.  
x: Use prohibited.

Table with columns for USE, R40, R20, R10, R5, R3, R2, R1, B, L, M, B, R, M, L, M, H. Rows include Poultry, commercial killing of; Private colleges, history or dancing schools, dorms, hotels, fraternity and sorority houses, but excluding business or trade schools; Public utility uses in Section 200, excluding service centers and storage yards; Public utility service center; Public utility storage yard; Race track, commercial; Radio studio; Riding stable, commercial; Rooming house; Sanitary landfill; Shooting range; Signs, outdoor advertising; Storage of inflammable liquids and gases above ground; Television studio; Theatre, drive-in; Theatre, excluding drive-in; Tourist home; Trailer park; Truck terminal; Used motor vehicle sales area (separate from building); Volunteer fire company; Wireless transmitting and receiving structure.

Note: \*On farm only—that is, 3 acres or more. †Special Exception only when explosives are used, otherwise permitted without Special Exception.

Exhibit B (Umerley Brief)

APP. 149

1969 ZONING LAW

BALTIMORE COUNTY  
ZONING REGULATIONS  
1969

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This is the property of:

Name: JAMES G. HOSWELL  
Address: Baltimore County Office of Planning & Zoning, Towson, 212  
Phone: 494-3480

DEFINITIONS APP. 150

Tourist Home: A rooming house primarily for transient guests.

Town Center: A locality designated and delimited as a town center by the Planning Board to serve as the primary center of commercial (including supporting commercial) and high-density residential development for an area having a population of approximately 100,000 or more persons, and meeting criteria or guidelines adopted and published by the Planning Board. Industrial, lower-density residential, and institutional uses are not excluded from town centers (when allowed under the regulations for the zones in which they are located). [Bill No. 40, 1967]

Town-center distributor-bypass road: An arterial street which is designed to distribute traffic to a town center as well as to carry traffic around and away from such a center, and which is designated by the Planning Board as a town-center distributor-bypass road. [Bill No. 40, 1967]

Trailer (or Mobile Home): Any of the various types of vehicles or mobile homes, with or without motive power, including small structures transportable by a pickup truck or similar vehicle, which are used for human habitation or for business purposes, but excluding vehicles used only for transportation of materials, products, or animals. A trailer (or mobile home) shall still be regarded as such even though its mobility may have been eliminated by removing its wheels, or otherwise, and placing it on a stable foundation, or rigid supports. [Revised by Resolution, March 1955; Bill No. 109, 1965]

Trailer Park: A tract of land specifically planned and equipped to accommodate residential trailers for temporary or continuing occupancy, including all buildings, structures, tents, vehicles, utilities, and accessories used or intended as equipment for such trailer park.

Truck Terminal: Any building, other structure, and/or land devoted primarily to the transfer of merchandise from one truck or truck trailer to another or devoted to the lay-over parking of trucks or truck trailers. A truck terminal may include sleeping quarters for trucking personnel, recreation lounges and eating facilities for such personnel, other facilities to serve personnel or vehicles on the premises for the primary purpose of merchandise transfer or vehicle lay-over, and necessary incidental warehouse space for the storage of transitory freight. [Bill No. 61, 1967]

Urban-rural demarcation line: A boundary line established by the Planning Board, dividing that portion of Baltimore County considered as "urban" from that portion of the County considered as "rural." In establishing or relocating such line, the Planning Board shall consider population density, existing public water-supply and sewerage facilities, other existing public facilities, and public facilities scheduled for planning or construction in the Capital Budget and Five-Year Capital Program. [Bill No. 40, 1967]

APP. 151

M. L. Zone—Manufacturing, Light

Section 253—USE REGULATIONS

The following uses only are permitted, subject to the provisions of Section 253.6: [Revised by Bill No. 85, 1967]

253.1—Non-residential uses permitted and as limited in B. R. Zone, excluding pet shop, residential art salon, drive-in theatres, funeral establishments, and the uses permitted in Sections 230.7 and 230.8. As used herein, the word "theatre" is not meant to exclude a tent theatre operated solely as a music fair for the presentation of musical comedies, operettas and legitimate dramatic productions, during a period not to exceed 120 days between the months of May and September, inclusive, which use is permitted. [Revised by Bill No. 64, 1960 and by Bill No. 85, 1967]

253.2—Residential uses as follows:

- Dwellings, one-family or two-family on lots of record before March 30, 1955, but new subdivisions for residential development are prohibited; [Revised by Resolution, November 21, 1956]
- Farm (see Section 404);
- Living quarters for watchmen and caretakers and their families employed and living on the premises, in connection with any lawful use in the M. L. Zone.

253.3—Uses permitted in M. R. Zone.

253.4—The following uses when located at least 100 feet from any contiguous residence zone (see also Section 255.1): [Revised by resolution, November 21, 1952 and by Bill No. 56, 1961]

- Assembly of automobiles and airplanes;
- Boat yard; [Revised by Bill No. 64, 1963]
- Bus terminal;
- Carpet, rug cleaning;
- Cleaning and dyeing;
- Concrete products, including concrete and/or cinder block manufacture;
- Contractor's equipment storage yard;
- Crematory;
- Enameling, japanning, lacquering, galvanizing and plating, when merely accessory to other permitted uses;
- Excavations, controlled, exclusive of those embodying use of explosives (see Section 403);
- Grain, processing of, provided equipment is installed for effective precipitation and recovery of dust;
- Helipart, Type I; [Bill No. 85, 1967]
- Helipart, Type II; [Bill No. 85, 1967]
- Ice, manufacture of;
- Milk pasteurization and distributing stations;

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M. L. ZONE

Non-liquid fuel storage and sale (for requirements see Baltimore County Building Code); Poultry, commercial killing of; Storage of inflammable liquids and gases above ground (for requirements see Baltimore County Building Code); Vegetable canning or packinghouse (see also Section 255.1). [Revised by Bill No. 85, 1967]

253.5—Special Exceptions—The following uses when permitted as Special Exceptions (see Sections 270 and 502):

- Automotive-service station, subject to the provisions of Section 405; [Bill No. 40, 1967]
- Crematory;
- Excavations, controlled, when explosives are used (see Section 403); ["Filling station", etc. - deleted by Bill No. 40, 1967]
- Kennel; [Bill No. 85, 1967]
- Sanitary landfill (see Section 412);
- Shooting range;
- Signs, outdoor advertising (see Section 413.3);
- Trailer Park (see Section 414);
- Truck Terminal;
- Wireless transmitting and receiving structure, except as a minor accessory use or structure (which is permitted without a special exception); provided that, for the purposes of this subsection, no exterior antenna greater than 50 feet above grade level shall be considered as an accessory use or structure. [Revised by Bill No. 61, 1967]

253.6—Within 100 feet of any residential zone boundary or the right of way of any street abutting such a boundary, or within 100 feet of the right of way of an existing or proposed interstate highway, other freeway, or expressway which motorway is officially so designated by the State Roads Commission and/or the County, there shall be permitted only passenger-automobile accessory parking and those uses permitted in M. R. Zone, as limited by the use regulations in Section 241. [Bill No. 85, 1967]

Section 254—HEIGHT REGULATIONS

Height unlimited except that no building hereafter erected on a lot which abuts a residence or business zone shall exceed a height of 40 feet or 3 stories, if any part of said building is within 100 feet of the boundary line of said residence or business zone (see Section 255.1 and 300). [Revised by Bill No. 56, 1961]

Section 255—AREA REGULATIONS

255.1—The area regulations in M. L. Zone shall be the same as those in B. R. Zone unless such B. R. Zone regulations conflict with the provisions of Section 255.2. [Revised by Bill No. 56, 1961; Bill No. 85, 1967]

The Umerleys operated a trucking facility on the original 2.5 acre parcel at the time the 1976 regulations were passed; and their facility violated those regulations. The Umerleys never complied with the exemption provisions of the new law, and lost the right to maintain a trucking facility on the property. In spite of this fact, the Umerleys never shut down their facility; they actually expanded it in 1982 and 1988. For the 1982 expansion, the Umerleys obtained a permit from the county's Department of Permits and Licenses. On the application for that permit, the Umerleys represented that the land was to be used for the operation of a contracting business, rather than a trucking facility.

In the late 1980s, as a result of complaints from nearby businesses and residents, the county authorities finally noted the Umerleys' zoning violations. In response, the Umerleys moved to legalize the use of their land by filing a petition for the following:

- 1) A special exception to allow a Class II trucking facility in the M.L.-I.M. zone. (BCZR 253.2.A.6, 410, 410A).
- 2) A variance to allow a trucking facility within 300 feet of residential zones or residences. (BCZR 410A.2).
- 3) A variance to allow a trucking facility within 200 feet of wetlands. (BCZR 410A.2).
- 4) A variance to allow a trucking facility within 200 feet of Philadelphia Road. (BCZR 253.4).
- 5) A variance to allow automobile parking within 25 feet of a residential zone. (BCZR 410A.2).

any other variances. Before granting any variance, the zoning commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the zoning commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance.

In the appeal before the circuit court, the parties clashed over the following question: whether the regulations from which the Umerleys seek variances are "height and area" regulations or "use" regulations. Under BCZR 307.1, a variance may only be granted from "height and area" regulations. "Height and area" regulations establish "area, height, density, setback, or sideline restrictions," while "use" regulations restrict the use to which a piece of property may be put. *Anderson v. Board of Appeals*, 22 Md. App. 28, 37-38 (1974). The circuit court ruled that there was substantial evidence to support a finding by the Board of Appeals that the regulations from which the Umerleys seek variances are "height and area" regulations. An examination of the requested variances reveals that there is substantial evidence to support the Board of Appeals' conclusion that the subject regulations are "height and area" regulations. Thus, we turn to the question of whether the Board of Appeals properly granted the requested variances.

A variance may only be granted after a two-step inquiry. First, the zoning authority must determine whether the subject property is unique and unusual in a manner different from the

- 6) A variance to allow the percentage of the facility devoted to truck and trailer parking to be 35.5 percent of the site used for trucking operations as opposed to the required 75 percent. (BCZR 410A.3.B.3).
- 7) A variance requesting a reduction of the sideyard building setback from fifty feet to seven feet within the increased setback area. (BCZR 243.2).

As stated *supra*, the zoning commissioner denied the Umerleys' petition, but the Board of Appeals of Baltimore County reversed that decision after a *de novo* hearing, and the Circuit Court for Baltimore County reversed the Board of Appeals' decision.

DISCUSSION  
Standard of Review

The order of a county zoning authority "must be upheld on review if it is not premised upon an error of law and if [its] conclusions 'reasonably may be based upon the facts proven.'" *Ad + Soil, Inc. v. County Commissioners of Queen Anne's County*, 307 Md. 307, 338 (1986) (citing *Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 399 (1979)). See also *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 287 (1953) (zoning authority must properly construe controlling law); *Northampton Corp. v. Prince George's County*, 273 Md. 93, 101 (1974) (action of zoning authority is "fairly debatable" if based on substantial evidence); *Board of County Commissioners v. Holbrook*, 314 Md. 210, 218 (1988) (fairly debatable test "accords with the general standard for judicial review of the ruling of an administrative agency, which [is] defined as 'whether a reasoning mind reasonably could have reached the factual conclusion the agency reached; this need not and must

nature of the surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to have a disproportionate impact on the property. *Cromwell v. Ward*, 102 Md. App. 691, 721 (1995). If such a finding is made, the zoning authority must then determine whether an unreasonable hardship results from the disproportionate impact of the ordinance. *Id.* These general rules are recognized by BCZR 307.1, which provides that a variance may only be granted if there are "special circumstances or conditions . . . peculiar to the land . . . and [if] strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship."

The "uniqueness" requirement has a rather specialized meaning. As this Court established in *Worth v. St. Mary's County*, 99 Md. App. 502 (1994),

the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e. its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

*Id.* at 514.

A reading of the Board of Appeals' opinion shows that it failed to apply properly the law governing variances. On pages

not be either judicial fact-finding or a substitution of judicial judgment for agency judgment." *Ocean Hideaway Condominium Ass'n. v. Boardwalk Plaza Venture*, 68 Md. App. 650, 665 (1986) (no substantial evidence to support factual findings of zoning authority; because of the lack of substantial evidence, zoning authority's decision was not fairly debatable, and thus was "arbitrary, capricious and a denial of due process of law.").

An application of the above standard requires that we undertake the three-step analysis set forth by this Court in *Comptroller v. World Book Childcraft*, 67 Md. App. 424 (1986):

1. First, the reviewing court must determine whether the agency recognized and applied the correct principles of law governing the case. The reviewing court is not constrained to affirm the agency where its order "is premised solely upon an erroneous conclusion of law."
2. Once it is determined that the agency did not err in its determination or interpretation of the applicable law, the reviewing court next examines the agency's factual findings to determine if they are supported by substantial evidence, i.e., by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
3. Finally, the reviewing court must examine how the agency applied the law to the facts. This, of course, is a judgmental process involving a mixed question of law and fact, and great deference must be accorded to the agency. The test of appellate review of this function is "whether . . . a reasoning mind could reasonably have reached the conclusion reached by the [agency], consistent with a proper application of the [controlling legal principles]."

*Id.* at 438-39 (citations omitted).

sixteen and seventeen, the Board sets forth, verbatim, the requirements of BCZR 307.1—the regulation governing the granting of variances in Baltimore County. But then the Board goes on to ignore the first prong of the variance test—whether the subject property is unique and unusual in a manner different from the nature of the surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to have a disproportionate effect on the property. For each of the requested variances, the Board only addresses whether the Umerleys' compliance with the applicable regulation would cause them practical difficulty or undue hardship—the second prong of the variance test.

Ordinarily, the Board of Appeals' failure to consider the first prong of the regulation would mandate that we vacate and remand for further proceedings. We shall assume, however, that the Board of Appeals did find, implicitly, that there was sufficient evidence to support uniqueness, and, for that reason, moved on to consider the second prong of the variance test. Our review of the evidence that was produced before the Board and the considerable amount of argument presented by the parties in this appeal on the issue of uniqueness convinces us, as a matter of law, that there is no substantial evidence to support a finding of uniqueness; and, therefore, it cannot be said that such a finding would be "fairly debatable." As this Court said in *Ocean Hideaway Condominium Ass'n. v. Boardwalk Plaza Venture*, 68 Md. App. 650 (1986), "[W]hen a Board's finding cannot be said to be 'fairly debatable,' it is

Also, unlike our review of a trial court's judgment, we will only uphold the decision of an agency on the basis of the agency's reasons and findings. *United Steel Workers of America AFL-CIO v. Bethlehem Steel Corp.*, 298 Md. 665, 679 (1984). We may search the record for evidence to support a trial court's judgment; and we may sustain that judgment for a reason plainly appearing on the record, even if the reason was not relied on by the trial court. *Id.* But we may not uphold an agency's decision "unless it is sustainable on the agency's findings and for the reasons stated by the agency." *Id.*

I. Variances

The zoning commissioner of Baltimore County and the Board of Appeals of Baltimore County are given the power to grant variances by BCZR 307.1, which provides as follows:

The zoning commissioner of Baltimore County and County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations and from sign regulations, only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the zoning regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking, or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. They shall have no power to grant

arbitrary, capricious and a denial of due process of law." *Id.* at 665. As in *Ocean Hideaway*, in which the record clearly indicated that the special exception should not have been granted, we hold that the requirements of Maryland law on variances were not met, and the circuit court was correct in reversing the Board's decision.

As the Umerleys correctly assert, our inquiry on this issue focuses on whether there is substantial evidence in the record to support a finding that the subject property is "unique." See *Cromwell*, 102 Md. App. at 726 (zoning authority held to have erred in granting variance when no evidence submitted to indicate that subject property was "unique"). In their briefs, the Umerleys fail to point to any evidence that would support a finding that their property is "unique" within the meaning of Maryland case law and BCZR 307.1. The Umerleys only point to evidence that shows that their operations predate the 1976 trucking facility regulations, that their facility has always been in violation of those regulations, that their operations cannot comply with those regulations, and that their operation is important to the economy of both Baltimore County and the State of Maryland. Because the uniqueness requirement mandates that the subject property "have an inherent characteristic not shared by other properties in the area," such evidence cannot support a finding that the Umerleys' property is unique within the meaning of Maryland law. A review of the record fails to reveal any other evidence that would support such a finding.

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255.2—Within 100 feet of any residential zone boundary or the right of way of any street abutting such a boundary, or within 100 feet of the right of way of an existing or proposed interstate highway, other freeway, or expressway which motorway is officially so designated by the State Road Commission and/or the County, the front, side, and rear yards shall be as required in M.R. Zone (see Sections 243.1, 243.2 and 243.3). [Bill No. 65, 1967]

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Final Report of the  
Baltimore County Planning Board  
Adopted February 19, 1976

PROPOSED ZONING AMENDMENTS:  
TRUCKING FACILITIES

Baltimore County Office of Planning and Zoning  
Towson, Maryland 21204

APP 112

PROPOSED ZONING AMENDMENTS:  
TRUCKING FACILITIES

A Final Report of the Baltimore County Planning Board\*

DISCUSSION At this point in history, the trucking industry might be described as the life-blood system of American commerce. Trucks move goods with flexibility unmatched by any other present mode of transportation.

Unfortunately, the facilities that serve and are served by the trucking industry are frequently incompatible with other business and industrial establishments. And, needless to say, they are totally inappropriate in or near residential areas: while most citizens have probably come to accept the noise and fumes of large tractor-trailers driving along major highways, they cannot find it so easy to accept the concentration of these factors at a truck terminal or truck yard operating day and night close to their homes.

The fact is, however, that a number of trucking facilities have been established too close to the homes of Baltimore County citizens over the years, especially in communities near major industrial areas. And it is not only the on-premise truck operations that have caused problems, for the facilities are frequently so situated that trucks must gain access to them by way of small, residential streets.

By and large, the trucking facilities causing these problems have been established in accordance with present zoning regulations. It has become apparent that those regulations are inadequate in many respects—not just in their lack of safeguards for the welfare of residential areas adjacent to trucking-facility sites, but also in their failure to prescribe modern development standards.

It is the purpose of the regulations proposed here to remedy those deficiencies, both in terms of control over the development of new facilities and in terms of remedial measures applicable to existing ones.

The proposed regulations are based to a large extent on recommendations of the special Citizens Task Force on Truck Terminals, appointed by County Executive Theodore G. Venetoulis and chaired by Councilman John W. O'Rourke. The Planning Board has reviewed the Task Force proposal over a period of several months, has revised it, and has held a public hearing on the revised proposal. Now the Board has again revised the recommendations and offers them, in this final report, for consideration by the County Council.

NOTE: The appendix to this report indicates the zoning classifications under which various truck-oriented uses would be permitted as of right, allowable by special exception, or prohibited under the proposed legislation.

\*Adopted February 19, 1976.

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Wetland: A private wetland or a state wetland as defined in Section 9-101 of the Natural Resources article of the Annotated Code of Maryland, 1974, and, if a private wetland, as delineated under Section 9-301 of that article.

2. In Section 101, revise the definitional entry beginning "Automotive service station" to read as follows:

Automotive service station: A structure or land used or intended to be used primarily for the retail sale of automotive fuel, but not a truck stop.

3. In Section 101, revise the definitional entry beginning "Nonconforming Use" to read as follows:

Nonconforming use: A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use.

4. Delete the definitional entry beginning "Truck Terminal" from Section 101.

5. Revise that part of Section 104 that precedes the semicolon to read as follows:

Section 104—NONCONFORMING USES

A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations

6. Revise the final entry of Subsection 233.2 to read as follows:

Warehouses

7. In Subsection 236.4, delete the entry "Truck terminal," and insert the following entries in alphabetical order:

Moving and storage establishments  
Truck stops

8. Delete the final entry in Subsection 241.1 and substitute the following entries therefor:

Warehouses  
Accessory uses

9. In Paragraph 253.2.A, delete Item 6 and insert the following in numerical order:

3A. Moving and storage establishments  
6. Trucking facilities (see Sections 410 and 410A)  
6A. Truck stops

10. In Subsection 256.2, delete the entry "Truck terminal," and insert the following entries in alphabetical order:

Moving and storage establishments  
Trucking facilities (see Sections 410 and 410A)

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11. In Subsection 256.4, immediately after the entry "Trailer Park (see Section 414)", insert the following entry:

Truck stops

12. In Article 4, immediately after the title of the article, substitute the following section designation and title for the present subtitle, "Statement of Purpose":

Section A400—PURPOSE

13. In Article 4, immediately preceding Section 400, add the following new section:

Section B400—APPLICATION OF THIS ARTICLE'S PROVISIONS

The provisions of this article apply only to principal uses except as otherwise specified (as in Item 405.4.C.12) or unless the provision implicitly relates to accessory usage (as in Section 405A).

14. In Paragraph 409.2.b, immediately after the third word, substitute "uses" for "buildings".

15. In Subparagraph 409.2.b(7), immediately after the words "commercial use", add a comma and the words "except trucking facilities".

16. In Paragraph 409.2.b, immediately after Subparagraph (7), insert the following new subparagraphs:

(8) Trucking facilities, Class I.....5 plus 1 for each 2 employees in the largest shift

(9) Trucking facilities, Class II.....1 for each 2 employees in the largest shift, or 1 for each 3000 square feet of total area devoted to parking of truck tractors, truck trailers, or tractor-trailers (not including truck maneuvering area or loading area), but in no case less than 10

17. In Article 4, immediately after Section 409, add the following new sections:

Section 410—CLASS I TRUCKING FACILITIES (TRUCK TERMINALS)

410.1—Nonconforming and other existing Class I trucking facilities. The provisions of this subsection apply to Class I trucking facilities existing on the effective date of this section.

A. Plans.

1. In the case of any Class I trucking facility for which approved plans are not on file with the Office of Planning and Zoning or the

T. No amendment of Section 270 is recommended in this report. That section appears to be superfluous and, in view of that and of the fact that numerous entries in Section 270 conflict with other, more-specific provisions of the Zoning Regulations, the Planning Board

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Department of Permits and Licenses on the effective date of this section, the owner or authorized agent for the trucking facility must file plans of the facility with the Zoning Commissioner within one year after that date. (See Subparagraph 410.3.C.1 for requirements. See also Subparagraph 2, below.) Where the plans for a Class I trucking facility are on file with the Office of Planning and Zoning or the Department of Permits and Licenses but, in the judgment of the Zoning Commissioner, are in insufficient detail to afford the proper administration of these Regulations with respect to that facility, the Zoning Commissioner may require that the owner or authorized agent file sufficiently detailed plans within the 1-year period. (The mere submission of plans under this subparagraph will not establish the legality of any Class I trucking facility.)

2. Within 30 days after the effective date of this section, the Zoning Commissioner shall publish a checklist of requirements for plans submitted pursuant to Subparagraph 1, above. The checklist must indicate, among other things, 1 or more acceptable scales to which plans must be drawn.

B. Rulings etc. as to nonconformance with respect to certain provisions.

1. Within 1 year after the date the Zoning Commissioner accepts plans for a trucking facility as required under Subparagraph 410.1.A.1, he shall review them and issue a ruling whether or not the facility conforms with the provisions listed in Subparagraph 2 and, if not conforming with any such provision, whether the nonconformance may be allowed to stand under the provisions of Subparagraph 3. If the provision requires the recommendation or approval of authorities other than the Zoning Commissioner, the ruling with respect to conformance with that provision may be made only upon such recommendation or approval.

2. The provisions with respect to which the Zoning Commissioner shall issue rulings under Subparagraph 1 are the following:

Subparagraph 409.2.b(8) (automobile parking)  
Subparagraph 410.3.A.1 (access to streets)  
Subparagraph 410.3.B.3 (layout such as not to cause congestion)  
Subparagraph 410.3.B.5 (fencing etc.)  
Subparagraph 410.3.B.6 (wheel stops etc.)  
Subparagraph 410.3.B.7 (paving and curbing)  
Subparagraph 410.3.B.8 (drainage)  
Subparagraph 410.3.B.9 (rest rooms and other conveniences)  
Subparagraph 410.3.C.2 (concealment of automotive parts)

3. A trucking facility's nonconformance with Subparagraph 409.2.b(8) shall be allowed to stand if a variance to that subparagraph is granted pursuant to Section 307 of these Regulations and Section 22-23 of the Baltimore County Code 1968, as amended by Bill No. 72, 1969. Nonconformance with Subparagraph 410.3.A.1 shall be allowed to stand if the site of the trucking facility does not abut a street on which access is

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permitted under that subparagraph or, if it does abut such a street, the County trucking-facilities-development officials determine that the length of the coextensive street line and site boundary is insufficient to permit proper access from that street. However, in any case where access that is not in accordance with Subparagraph 410.3.A.1 is allowed to remain, the Zoning Commissioner shall have the power to prescribe the route that trucks must use in reaching or on leaving the site, in accordance with a recommendation of the County trucking-facilities-development officials.

C. Procedure etc. in case of nonconformance with respect to certain provisions. If the Zoning Commissioner, under Subparagraph 410.1.B.1, rules that a trucking facility does not conform with a provision listed in Subparagraph 410.1.B.2 and if the nonconformance with that provision is not allowed to stand under Subparagraph 410.1.B.3, one or both of the courses of action set forth in Subparagraphs 1 and 2, below, must be followed.

1. Within 90 days of the date of the Zoning Commissioner's ruling, the owner or agent must file with the Zoning Commissioner an acceptable program of compliance, showing that conformance with each provision in question will be achieved within 27 months after the date of the ruling. The program must include, among other things that the Zoning Commissioner may reasonably require, a) a plan of the trucking facility as it will be upon conformance as required and b) the schedule under which conformance will be achieved. The Zoning Commissioner may refuse to accept any such program that, in his judgment, does not show that approximately half of all the work to be completed under the program will be done by the end of the 15th month after the date of the ruling or does not meet other requirements of these Zoning Regulations. The trucking facility covered by a program of compliance submitted pursuant to this subparagraph must be in partial compliance with the provisions in question by the end of the 15th month after the date of the ruling, as shown in the program, and must be in full compliance with all such provisions at the end of the 27th month after the date of the ruling. Or,

2. Within 90 days after the date of the Zoning Commissioner's ruling, the owner or agent must file with the Zoning Commissioner a petition requesting that the facility not be required to conform with a provision in question, the petition to be advertised and heard in accordance with the provisions of Subsection 500.7. No relief may be granted under this subparagraph, however, unless the petitioner shows that conformance with the provision would cause undue hardship and would not be in the interest of the general welfare of the community, with particular consideration given to any dwellings within 300 feet of the facility. Such relief may be granted to the extent necessary to eliminate undue hardship, and only to that extent, and only in keeping with the intent of these Zoning Regulations in general and this section in particular; relief may not be granted to an extent detrimental to the general welfare of the community. Where relief is sought but not

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granted under this subparagraph, the Zoning Commissioner shall require a program of compliance such as that provided for under Subparagraph 1, above, and shall provide for enforcement of that program. In any case, the trucking facility must conform with any provision from which relief is not granted under this subparagraph within 27 months of the date of the Zoning Commissioner's ruling pursuant to Subparagraph 410.1.B.1.

D. Effects of failure to comply.

1. The failure of an owner of or authorized agent for a Class I trucking facility to comply with an applicable requirement of Paragraph A or C, above, or failure to comply with an order by the Zoning Commissioner prescribing a truck route as provided in Subparagraph 3 of Paragraph B, shall constitute a violation of these Zoning Regulations.

2. The right to continue any Class I trucking facility that was established before the effective date of this section and whose owner or agent has failed to comply with an applicable requirement of Paragraph A shall cease 3 years after that date, unless the facility conforms or has been changed to conform with all provisions of these Zoning Regulations, as if it were a new use.

3. The right to continue any Class I trucking facility that was established before the effective date of this section and whose owner or agent has complied with the applicable requirements of Paragraph A but has failed to comply with an applicable requirement of Paragraph C shall cease 3 years after the date of the Zoning Commissioner's ruling issued pursuant to Subparagraph 1 of Paragraph B, unless the facility conforms or has been changed to conform with all provisions of these Zoning Regulations, as if it were a new use.

E. Expansion of nonconforming Class I trucking facilities. Any contrary provision of Section 104 notwithstanding, the site, structures, and paved areas of a nonconforming Class I trucking facility may not be expanded unless the use is made to conform in all respects with these Zoning Regulations, except that expansion to the minimum extent necessary to comply with the standards of Subsection 410.3 may be allowed by the Zoning Commissioner provided that the expansion is not in excess of that allowed under Section 104 and that, in the judgment of the Zoning Commissioner, the expansion would be in the interest of the general welfare of the community, with particular consideration given to any dwellings within 300 feet of the trucking facility.

F. With the exception of plans for conforming Class I trucking facilities in M. H. zones, plans approved under this subsection may be amended only by special exception.

G. Public information program on provisions of this section and Section 410A. For the period from the beginning of the 2nd month to the end of the 12th month after the date of enactment of this section, the Zoning Commissioner shall implement a program of public information regarding

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sufficiently detailed plans within the 1-year period. (The mere submission of plans under this subparagraph will not establish the legality of any Class II trucking facility.)

2. Within 30 days after the effective date of this section, the Zoning Commissioner shall publish a checklist of requirements for plans submitted pursuant to Subparagraph 1, above. The checklist must indicate, among other things, 1 or more acceptable scales to which plans must be drawn.

B. Rulings etc. as to nonconformance with respect to certain provisions.

1. Within 1 year after the date the Zoning Commissioner accepts plans for a trucking facility as required under Subparagraph 410A.1.A.1, he shall review them and issue a ruling whether or not the facility conforms with the provisions listed in Subparagraph 2 and, if not conforming with any such provision, whether the nonconformance may be allowed to stand under the provisions of Subparagraph 3. If the provision requires the recommendation or approval of authorities other than the Zoning Commissioner, the ruling with respect to conformance with that provision may be made only upon such recommendation or approval.

2. The provisions with respect to which the Zoning Commissioner shall issue rulings under Subparagraph 1 are the following:

- Subparagraph 409.2.b(9) (automobile parking)
- Subparagraph 410A.3.A.1 (access to streets)
- Subparagraph 410A.3.B.2 (layout such as not to cause congestion)
- Subparagraph 410A.3.B.4 (fencing etc.)
- Subparagraph 410A.3.B.5 (wheel stops etc.)
- Subparagraph 410A.3.B.6 (paving and curbing)
- Subparagraph 410A.3.B.7 (drainage)
- Subparagraph 410A.3.B.8 (rest rooms and other conveniences)
- Subparagraph 410A.3.C.2 (concealment of automotive parts)

3. A trucking facility's nonconformance with Subparagraph 409.2.b(9) shall be allowed to stand if a variance to that subparagraph is granted pursuant to Section 307 of these Regulations and Section 22-23 of the Baltimore County Code 1968, as amended by Bill No. 77, 1969. Nonconformance with Subparagraph 410A.3.A.1 shall be allowed to stand if the site of the trucking facility does not abut a street on which access is permitted under that subparagraph or, if it does abut such a street, the County trucking-facilities-development officials determine that the length of the coextensive street line and site boundary is insufficient to permit proper access from that street. However, in any case where access that is not in accordance with Subparagraph 410A.3.A.1 is allowed to remain, the Zoning Commissioner shall have the power to prescribe the route that trucks must use in reaching or leaving the site, in accordance with a recommendation of the County trucking-facilities-development officials.

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the provisions of this section and Section 410A, with emphasis on the provisions of this subsection and Subsection 410A.1. In particular, he shall endeavor to ensure that any party responsible for complying with these sections is informed of the provisions therein. (However, the failure of the Zoning Commissioner to inform any party of the provisions of these sections will not constitute a legal justification for that party's failure to comply with them.)

410.2—Location. No Class I trucking facility or part thereof (including any access point or driveway) established on or after the effective date of this section may be located within 200 feet of a wetland or, with the exception of accessory passenger-automobile parking areas, within 300 feet of a dwelling or a residential zone. No passenger-automobile parking area or part thereof accessory to a Class I trucking facility may be located within 25 feet of a dwelling or a residential zone.

410.3—Site and development standards; plans; operation. The standards of this subsection apply to Class I trucking facilities established on or after the effective date hereof, to conforming Class I trucking facilities established before that date and hereafter expanded or otherwise changed, and, to the extent specified in Subsection 410.1, to nonconforming Class I trucking facilities.

A. Access points.

1. Any point of access to a public street must be on a public industrial service road, on an arterial street, or on a major collector street, except that—

a. No access point on a public industrial service road is permitted unless the service road has direct access to an arterial street, an expressway, or a freeway, and unless the place of that access is closer to the use in question than any point of access the service road may have to a roadway other than an arterial street, an expressway, or a freeway; and

b. No access point on a major collector street is permitted unless the access point is within a travel distance of ½ mile from the major collector street's access to an arterial street, an expressway, or a freeway.

2. The curb tangent length between access points must be at least 100 feet, except that a shorter length may be allowed or greater length required by the Zoning Commissioner on recommendation of the County trucking-facilities-development officials. The number, widths, and channelization (if any) of access points shall be as required by the Zoning Commissioner, after recommendation of the County trucking-facilities-development officials and, in the case of access points on a State-maintained highway, recommendation of the State Highway Administration.

B. Other site and development standards.

C. Procedure etc. in case of nonconformance with respect to certain provisions. If the Zoning Commissioner, under Subparagraph 410A.1.B.1, rules that a trucking facility does not conform with a provision listed in Subparagraph 410A.1.B.2 and if the nonconformance with that provision is not allowed to stand under Subparagraph 410A.1.B.3, 1 or both of the courses of action set forth in Subparagraphs 1 and 2, below, must be followed.

1. Within 90 days of the date of the Zoning Commissioner's ruling, the owner or agent must file with the Zoning Commissioner an acceptable program of compliance, showing that conformance with each provision in question will be achieved within 27 months after the date of the ruling. The program must include, among other things that the Zoning Commissioner may reasonably require, a) a plan of the trucking facility as it will be upon conformance as required and b) the schedule under which conformance will be achieved. The Zoning Commissioner may refuse to accept any such program that, in his judgment, does not show that approximately half of all the work to be completed under the program will be done by the end of the 15th month after the date of the ruling or does not meet other requirements of these Zoning Regulations. The trucking facility covered by a program of compliance submitted pursuant to this subparagraph must be in partial compliance with the provisions in question by the end of the 15th month after the date of the ruling, as shown in the program, and must be in full compliance with all such provisions at the end of the 27th month after the date of the ruling. Or,

2. Within 90 days after the date of the Zoning Commissioner's ruling, the owner or agent must file with the Zoning Commissioner a petition requesting that the facility not be required to conform with a provision in question, the petition to be advertised and heard in accordance with the provisions of Subsection 500.7. No relief may be granted under this subparagraph, however, unless the petitioner shows that conformance with the provision would cause undue hardship and would not be in the interest of the general welfare of the community, with particular consideration given to any dwellings within 300 feet of the facility. Such relief may be granted to the extent necessary to eliminate undue hardship, and only to that extent, and only in keeping with the intent of these Zoning Regulations in general and this section in particular; relief may not be granted to an extent detrimental to the general welfare of the community. Where relief is sought but not granted under this subparagraph, the Zoning Commissioner shall require a program of compliance such as that provided for under Subparagraph 1, above, and shall provide for enforcement of that program. In any case, the trucking facility must conform with any provision from which relief is not granted under this subparagraph within 27 months of the date of the Zoning Commissioner's ruling pursuant to Subparagraph 410A.1.B.1.

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1. Unless the lot on which the facility is situated lies within a planned industrial park, the net area of the lot must be at least 3 acres and its diagonal dimension must be at least 150 feet. (This subparagraph does not limit the number of trucking facilities that may be situated on a lot of the minimum size.)

2. Contrary provisions of these regulations notwithstanding, the trucking facility's floor area ratio may not exceed 0.1.

3. The layout of improvements must be such as to provide for convenient forward movement of vehicles leaving or entering the site and such as to preclude any likelihood that trucks will be unable to gain immediate access onto the site at any time, as determined by the Zoning Commissioner after recommendation by the County trucking-facilities-development officials.

4. The minimum area of the surface that must be provided for parking of truck tractors and trailers on the site, not including maneuvering area, is 1,320 square feet per loading berth. However, a lesser area may be allowed or greater area required by the Zoning Commissioner after recommendation by the County trucking-facilities-development officials. (See Section 409 for automobile-parking requirements.)

5. That part of the site devoted to trucking operations (not including the automobile-parking area) must be surrounded by security fencing at least 6 feet high. Further, except for approved access points, the site as a whole must be enclosed or partially enclosed by opaque fencing, walls, or living screen planting to visually screen the use and its accessory uses from residential zones, from residential premises, or from churches, schools, hospitals, or other, similar institutional uses, and to prevent possible extension of uses beyond the site boundaries. The height of the visual screening must be at least 6 feet, except that screen planting may be as low as 3 feet from the ground at the time of planting if it is of such a variety that it can reasonably be expected to be at least 6 feet high no more than 2 years after it is planted. In any case, screen planting must be such as to provide full screening effect within 2 years after it is planted and must be maintained in good condition. Further, all fencing and screening must be in accordance with adopted design provisions (as defined in Section 101).

6. Wheel stops or other means must be provided to protect walls, fencing, or screen planting.

7. All parking, loading, and maneuvering areas must be paved in accordance with adopted design provisions (as defined in Section 101). Curbing at the edges of paved areas must be provided if required by the Zoning Commissioner, on recommendation of the County trucking-facilities-development officials.

D. Effects of failure to comply.

1. The failure of an owner of or authorized agent for a Class II trucking facility to comply with an applicable requirement of Paragraph A or C, above, or failure to comply with an order by the Zoning Commissioner prescribing a truck route as provided in Subparagraph 3 of Paragraph B, shall constitute a violation of these Zoning Regulations.

2. The right to continue any Class II trucking facility that was established before the effective date of this section and whose owner or agent has failed to comply with an applicable requirement of Paragraph A shall cease 3 years after that date, unless the facility conforms or has been changed to conform with all provisions of these Zoning Regulations, as if it were a new use.

3. The right to continue any Class II trucking facility that was established before the effective date of this section and whose owner or agent has complied with the applicable requirements of Paragraph A but has failed to comply with an applicable requirement of Paragraph C shall cease 3 years after the date of the Zoning Commissioner's ruling issued pursuant to Subparagraph 1 of Paragraph B, unless the facility conforms or has been changed to conform with all provisions of these Zoning Regulations, as if it were a new use.

E. Expansion of nonconforming Class II trucking facilities. Any contrary provision of Section 104 notwithstanding, the site, structures, and paved areas of a nonconforming Class II trucking facility may not be expanded unless the use is made to conform in all respects with these Zoning Regulations, except that expansion to the minimum extent necessary to comply with the standards of Subsection 410A.3 may be allowed by the Zoning Commissioner, under an order issued pursuant to Paragraph B, C, or D of this subsection, provided that the expansion is not in excess of that allowed under Section 104 and that, in the judgment of the Zoning Commissioner, the expansion would be in the interest of the general welfare of the community.

F. With the exception of plans for conforming Class II trucking facilities in M. H. zones, plans approved under this subsection may be amended only by special exception.

410A.2—Location. Proximity to residential zone or wetland. No Class II trucking facility or part thereof (including any access point or driveway) established on or after the effective date of this section may be located within 200 feet of a wetland or, with the exception of accessory passenger-automobile parking areas, within 300 feet of a dwelling or a residential zone. No passenger-automobile parking area or part thereof accessory to a Class II trucking facility may be located within 25 feet of a dwelling or a residential zone.

410A.3—Site and development standards; plans; operation. The standards of this subsection apply to Class II trucking facilities established on or after the effective date hereof, to conforming Class II trucking facilities established before that date and hereafter expanded or otherwise changed, and, to the extent specified in Subsection 410A.1, to nonconforming Class II trucking facilities.

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8. Proper drainage of the entire site must be provided for. On-site storm-water-detention or controlled-release facilities may be required by the Department of Public Works.

9. Adequate rest-room facilities (for both sexes), a drivers' room, and telephone service for the truck drivers and other personnel must be provided on the site.

C. Plans and operation.

1. The plans for a Class I trucking facility submitted in or with an application to Baltimore County for any permit to establish or alter such a facility, or submitted in pursuance of any provision of these Zoning Regulations, must show the layout and operation of the use in detail that is sufficient for the Zoning Commissioner to determine whether and in what manner the facility will meet the requirements of these Zoning Regulations and must be certified by a professional engineer (registered as such under the provisions of Article 75 of the Annotated Code of Maryland, 1957, 1975 Replacement Volume 7A) or by a professional who is not an engineer but who is registered under law as competent to certify the accuracy of the plans. The operation, as well as the development, of the use must be in accord with the approved plans. In particular, the number of vehicles (including trailers) on the site must not at any time exceed the number provided for by the plans.

2. Automotive parts must be concealed from off-site view. Junk vehicles may not be stored or otherwise situated on the site.

3. In the granting of a special exception authorizing the establishment of a Class I trucking facility, the Zoning Commissioner may impose (in addition to any other reasonable restriction) reasonable limitations on hours of operation.

Section 410A—CLASS II TRUCKING FACILITIES (TRUCK YARDS ETC.)

Section 410A.1—Nonconforming and other existing Class II trucking facilities. The provisions of this subsection apply to Class II trucking facilities existing on the effective date of this section.

A. Plans.

1. In the case of any Class II trucking facility for which approved plans are not on file with the Office of Planning and Zoning or the Department of Permits and Licenses on the effective date of this section, the owner of or authorized agent for the trucking facility must file plans of the facility with the Zoning Commissioner within 1 year after that date. (See Subparagraph 410A.3.C.1 for requirements. See also Subparagraph 2, below.) Where the plans for a Class II trucking facility are on file with the Office of Planning and Zoning or the Department of Permits and Licenses but, in the judgment of the Zoning Commissioner, are in insufficient detail to afford the proper administration of these Regulations with respect to that facility, the Zoning Commissioner may require that the owner or authorized agent file

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410A.3—Site and development standards; plans; operation. The standards of this subsection apply to Class II trucking facilities established on or after the effective date hereof, to conforming Class II trucking facilities established before that date and hereafter expanded or otherwise changed, and, to the extent specified in Subsection 410A.1, to nonconforming Class II trucking facilities.

A. Access points.

1. Any point of access to a public street must be on a public industrial service road, on an arterial street, or on a major collector street, except that—

a. No access point on a public industrial service road is permitted unless the service road has direct access to an arterial street, an expressway, or a freeway, and unless the place of that access is closer to the use in question than any point of access the service road may have to a roadway other than an arterial street, an expressway, or a freeway; and

b. No access point on a major collector street is permitted unless the access point is within a travel distance of ½ mile from the major collector street's access to an arterial street, an expressway, or a freeway.

2. The curb tangent length between access points must be at least 100 feet, except that a shorter length may be allowed or greater length required by the Zoning Commissioner on recommendation of the County trucking-facilities-development officials. The number, widths, and channelization (if any) of access points shall be as required by the Zoning Commissioner, after recommendation of the County trucking-facilities-development officials and, in the case of access points on a State-maintained highway, recommendation of the State Highway Administration.

B. Other site and development standards.

1. Unless the lot on which the facility is situated lies within a planned industrial park, the net area of the lot must be at least 5 acres and its diagonal dimension must be at least 150 feet. (This subparagraph does not limit the number of trucking facilities that may be situated on a lot of the minimum size.)

2. The layout of improvements must be such as to provide for convenient forward movement of vehicles leaving or entering the site and such as to preclude any likelihood that trucks will be unable to gain immediate access onto the site at any time, as determined by the Zoning Commissioner after recommendation by the County trucking-facilities-development officials.

3. At least 75 per cent of that part of the site devoted to trucking operations must be devoted to parking of truck tractors and trailers, not including maneuvering area. (See Section 409 for automobile-parking requirements.)

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- That part of the site devoted to trucking operations (not including the automobile-parking area) must be surrounded by security fencing at least 6 feet high. Further, except for approved access points, the site as a whole must be enclosed or partially enclosed by opaque fencing, walls, or living screen planting to visually screen the use and its accessory uses from residential zones, from residential premises, or from churches, schools, hospitals, or other, similar institutional uses, and to prevent possible extension of uses beyond the site boundaries. The height of the visual screening must be at least 6 feet, except that screen planting may be as low as 3 feet from the ground at the time of planting if it is of such a variety that it can reasonably be expected to be at least 6 feet high no more than 2 years after it is planted. In any case, planting must be such as to provide full screening effect within 2 years after it is planted and must be maintained in good condition. Further, all fencing and screening must be in accordance with adopted design provisions (as defined in Section 101).
  - Wheel stops or other means must be provided to protect walls, fencing, or screen planting.
  - All parking, loading, and maneuvering areas must be paved in accordance with adopted design provisions (as defined in Section 101). Curbing at the edges of paved areas must be provided if required by the Zoning Commissioner, on recommendation of the County trucking-facilities-development officials.
  - Proper drainage of the entire site must be provided for. On-site storm-water-detention or controlled-release facilities may be required by the Department of Public Works.
  - Adequate rest-room facilities (for both sexes), a drivers' room, and telephone service for the truck drivers and other personnel must be provided on the site.
  - Plans and operation.
    - The plans for a Class II trucking facility submitted in or with an application to Baltimore County for any permit to establish or alter such a facility, or submitted in pursuance of any provision of these Zoning Regulations, must show the layout and operation of the use in detail that is sufficient for the Zoning Commissioner to determine whether and in what manner the facility will meet the requirements of these Zoning Regulations and must be certified by a professional engineer or other competent professional (as described in Subparagraph 410.3.C.1). The operation, as well as the development, of the use must be in accord with the approved plans. In particular, the number of vehicles (including trailers) on the site must not at any time exceed the number provided for by the plans.

Class II Trucking Facility, and certain variances covering the 8.5 acre property. More specifically, the variances requested are as follows:

- From Section 410.A.2 to permit a trucking facility within 300 feet of a residential zone and within 200 feet of wetlands, and parking within 25 feet of a residential dwelling or zone;
  - From Section 253.4 to permit trucking facility parking within 100 feet of Philadelphia Road, because Philadelphia Road abuts a residential boundary;
  - From Section 410.A.3.B.3 to permit 35.5% of the subject site to be devoted to parking trucks and trailers in lieu of the 75% required;
  - From Section 410.A.3.B.5 to permit the elimination of required wheel stops, which variance request was subsequently waived at the Board level; and
  - From Section 243.2 to permit a minimum building setback of 7 feet in lieu of the required 50 feet.
- All of these variances are shown in detail on Petitioners' Exhibit 1, the revised site plan prepared by KLS Consultants, Inc., as revised September 21, 1993.

At the Zoning Commissioner level, an additional item of relief, namely a Special Hearing to determine whether the Petitioners' operation constitutes a construction equipment and storage yard (which is permitted as a matter of right in the ML Zone applicable) was added, but this relief was not pursued at the Board level.

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- Automotive parts must be concealed from off-site view. Junk vehicles may not be stored or otherwise situated on the site.
  - In the granting of a special exception authorizing the establishment of a Class II trucking facility, the Zoning Commissioner may impose (in addition to any other reasonable restriction) reasonable limitations on hours of operation.
18. In Subsection 500.7, add the following paragraph immediately after the second sentence:
- With respect to any zoning petition other than a petition for a special exception, variance, or reclassification, the Zoning Commissioner shall schedule a public hearing for a date not less than 30 days after the petition is accepted for filing. If the petition relates to a specific property, notice of the time and place of the hearing shall be conspicuously posted on the property for a period of at least 15 days before the time of the hearing. Whether or not a specific property is involved, notice shall be given for the same period of time in at least two newspapers of general circulation in the County. The notice shall describe the property, if any, and the action requested in the petition. Upon establishing a hearing date for the petition, the Zoning Commissioner shall promptly forward a copy thereof to the Director of Planning (or his deputy) for his consideration and for a written report containing his findings thereon with regard to planning factors.
- NOTE: The Planning Board agrees with the Citizens Task Force on Truck Terminals that a zoning code is not an appropriate context for provisions such as the following, which, nevertheless, have been suggested by the Task Force. The Board neither recommends nor opposes the enactment of these provisions. The Board does recommend, however, that the County Council consult with the Department of Traffic Engineering, the Industrial Development Commission, the Office of Law, and the Office of Planning and Zoning to determine how the objectives of the provisions can best be met—whether through law, administrative regulation, or a combination of the two.
- Use of Streets and Property by Large Trucks
- Truck parking. No truck tractor, truck trailer, or tractor-trailer may be parked off-site within 1,000 feet of a trucking facility, as defined in the Baltimore County Zoning Regulations, 1955, as amended, except that a tractor-trailer may be parked off-site within that distance for the sole principal purpose of loading or unloading goods at other premises and only for the time necessary for that purpose.
  - Truck operation limited to certain streets. Except as provided below or for the purposes described in Paragraph A, no truck tractor or tractor-trailer may be driven on any street other than an arterial street or a major collector street, as those terms are defined in the Baltimore County Zoning Regulations, 1955, as amended, or a public industrial service road. However, such a vehicle may be driven on a street other than one of those if it must do so, and only to the extent that it must do so, to gain access to a trucking facility or other establishment at which such vehicles are normally and legally stationed and which does not abut one of those streets.

Following two days of hearings, namely June 19, 1992, and September 22, 1992, Zoning Commissioner Schmidt, by his Findings of Fact and Conclusions of Law dated December 15, 1992, denied the Special Exception for Class II Trucking Facility, denied the Special Hearing as to the construction equipment and storage yard, as well as dismissing the cited variances, which were, of course, dependent upon the granting of the Special Exception for the Class II Trucking Facility.

At the Zoning Commissioner level, the Petitioners were represented by John B. Gontrum, Esquire. The case was subsequently appealed at the Zoning Commissioner level in a timely matter to the County Board of Appeals, which held two full days of hearings, namely Wednesday, September 21, and Thursday, September 22, 1993. At this hearing the Petitioners are represented by Stephen J. Nolan, Newton A. Williams and Nolan, Plumhoff & Williams, Chartered.

Before the Board of Appeals, the Petitioners presented their own individual testimony, as well as expert testimony, which will be discussed hereinafter in this Memorandum. Various protestants, as well as the Nottingham Improvement Association, Inc., appeared, testified, and offered two experts through their counsel, the People's Counsel for Baltimore County. At the close of the second day of hearings, the Board agreed to receive simultaneous Memoranda from counsel, originally due October 29, 1993, and subsequently extended to November 5th at the People's Counsel's request, as agreed to by Petitioners' counsel.

APPENDIX APP 129

ALLOWANCE OF TRUCK-ORIENTED USES UNDER PRESENT ZONING REGULATIONS AND REGULATIONS PROPOSED BY BALTIMORE COUNTY PLANNING BOARD

Symbols: + Allowed as of right  
+C Allowed subject to conditions of development-plan approval  
S.E. Allowable by special exception  
(X) Prohibited

	B.L.	B.M.	B.R.	M.R.	M.L.R.	M.L.	M.H.
Present regulations:							
Moving and storage establishments	(X)	+	+	+C	+	+	+
Truck stops	Treated as automotive service stations (allowance depends on district classification and other factors)						
Truck terminals (Class I trucking facilities)	(X)	(X)	S.E.	(X)	(X)	S.E.	+1
Truck yards etc. (Class II trucking facilities)	(X)	(X)	S.E.	(X)	(X)	S.E.	+1
Warehouses	(X)	+	+	+C	+	+	+
Proposed regulations:							
Moving and storage establishments	(X)	(X)	S.E.	(X)	(X)	S.E.	+1
Truck stops	(X)	(X)	S.E.	(X)	(X)	S.E.	S.E.
Truck terminals (Class I trucking facilities)	(X)	(X)	(X)	(X)	(X)	S.E.2	+2
Truck yards etc. (Class II trucking facilities)	(X)	(X)	(X)	(X)	(X)	S.E.2	+2
Warehouses	(X)	+	+	+C	+	+	+

Distances of 300 feet from a residential zone and 200 feet from a business zone required.  
Distances of 300 feet from a dwelling or a residential zone and 200 feet from a wetland required.

STATEMENT OF THE ISSUES

- THE PETITIONERS HAVE PROVEN THAT THE SUBJECT PROPERTY MEETS THE REQUIREMENTS OF BALTIMORE COUNTY ZONING REGULATIONS SECTION 502.1 AND THE SPECIAL EXCEPTION FOR A CLASS II TRUCKING FACILITY IN AN ML-IM ZONE SHOULD BE GRANTED.
- THE PETITIONERS HAVE MET THE REQUIREMENTS OF BALTIMORE COUNTY ZONING REGULATIONS SECTION 307 AND THE REQUESTED VARIANCES SHOULD BE GRANTED.
  - THE REQUESTED VARIANCES ARE NOT PROSCRIBED "USE" VARIANCES, BUT ARE "AREA" VARIANCES AND CAN BE VARIANCED UNDER THE REGULATIONS, INCLUDING SECTION 307.
  - THE PETITIONERS' SITUATION DOES NOT REPRESENT "SELF INFLICTED" HARDSHIP, BUT RATHER IS THE RESULT OF "SPECIAL CIRCUMSTANCES OR CONDITIONS THAT ARE PECULIAR TO THE LAND AND STRUCTURE IN QUESTION."

STATEMENT OF THE FACTS

The Property

In order to properly understand the case, it is important to understand the order in which Mr. and Mrs. Umerley acquired a series of properties on the east side of Philadelphia Road in the White Marsh area. The order is as follows:

- In the 1950's, by a deed recorded in the Land Records of Baltimore County at Liber 3322, folio 300, the Umerleys acquired a 2.5 acre parcel which is the core of this operation, now containing a two story brick and block building which includes executive offices, staff offices and a four bay truck service garage, as well as a scale house. The original office and garage were constructed in about 1957. This first parcel is identified as Lot 2 on Petitioners' Exhibit 1, which lot is paved in large part and used for truck parking,

In Re: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCES SE/S OF PHILADELPHIA ROAD 138' S OF THE C/L OF Ravenwood Road (1913 Philadelphia Road) 11th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT

LEO J. UMERLEY and WANDA UMERLEY

Petitioners

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 92-346-XA

PETITIONERS' POST-HEARING MEMORANDUM IN SUPPORT OF ZONING REQUESTS

LEO J. UMERLEY and WANDA UMERLEY, his wife, property owners and Petitioners, by Stephen J. Nolan, Newton A. Williams and Nolan, Plumhoff & Williams, Chartered, their attorneys, offer this Petitioners' Memorandum for the consideration of the County Board of Appeals, (the Board):

STATEMENT OF CASE

Leo J. Umerley, and Wanda Umerley, his wife, are the owners of an 8.5 plus acre property on the east side of Maryland Route 7, Philadelphia Road, assuming that Philadelphia Road runs north and south, just to the west of Ravenwood Road, which is the subject of this special exception and variances case. In fact, the Umerley's ownership is larger, which will be discussed later in this Memorandum, but the 8.5 acre portion is the subject of these petitions.

In early 1992, the Petitioners filed with the Zoning Commissioner's office petitions for a Special Exception for

automobile parking, and frontage grass and landscaping. This tract is zoned almost entirely ML-IM.

2. Subsequently, by deed recorded at Liber 6413, folio 799, the Umerley's acquired title to a 2.8 acre lot immediately behind Lot 2, identified as Lot 5 on Petitioners' Exhibit 1, which is largely paved and used for truck and trailer parking, and it is zoned ML-IM.

3. Subsequently, in the mid to late 1980's, by deed recorded at Liber 7862, folio 52, the Umerley's obtained title to a 5.3 acre parcel identified as Lot 1 on Petitioners' Exhibit 1, which parcel lies to the west of Lots 2 and 5, and which abuts the General Services Engineering firm, owned, and represented by Mr. Gary Hoffman at the Hearing. This parcel is zoned D.R.5.5 on the frontage and ML-IM for the majority of the parcel back to the CSX Railroad.

4. Finally, by deed recorded at Liber 8118, folio 162, the Petitioners' obtained title to Lot 3 of 2.3 acres on the east side of Philadelphia Road, which property is improved by a two story brick and block building and an existing macadam parking lot, and presently occupied by Long Fence Company. Lot 3 is zoned D.R.5.5 on the frontage and ML-IM in the rear. By the same deed, namely 8118, folio 162, the Umerley's acquired title to Lot 6 of 1.9 acres zoned ML-IM, and Lot 8 of 1.5 acres lying behind the Long Fence Company Parcel, also zoned ML-IM. Lots 3, 6 and 8 all lie on the north of the main trucking parcels, Lots 2 and 5.

The property which is the subject of these Petitions

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is comprised of Lots 2, 5, 6 and 8, totalling in all 8.5 acres, and shown in heavy outline on Petitioners' Exhibit One, the XLS site plan. The trucking operation has approximately 230 feet of frontage on the east side of Philadelphia Road, with a slightly uneven depth of approximately 1200 feet, running easterly to the CSX Railroad right of way which forms its eastern boundary. As shown on the site plan, Petitioners' Exhibit 1, the trucking operation is insulated on the south side by Lot 1, which is partially wooded, and on the north side by Lot 3, rented by Long Fence, as well as by Lots 6 and 8, also largely wooded.

#### The Uses

Mr. Umerley testified that following his service in the armed forces in World War II, he returned to Baltimore and went into the construction business. In about 1958, after being located in Baltimore City for a number of years, he moved to the subject property at 9813 Philadelphia Road, namely Lot 2. Initially, he occupied the front 2.5 acres. The office and shop building has always been located in its present location, but it was enlarged in the 1980's by an attractive office addition to the front of the building, under a Baltimore County building permit.

In 1982 or so, Mr. Umerley obtained a building permit, Petitioners' Exhibit 7, to enlarge the office and garage, which permit was granted by Baltimore County. On that permit, a part of the Zoning Commissioner's file, Mr. Umerley listed the use as a "construction equipment storage yard", which use Mr. Umerley still believes that he is.

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As for the total number of trucks, trailers and equipment on the site, the testimony by the Petitioner was that by about 1958 he had twenty items of construction and trucking equipment, and by 1964 that roster had grown to about thirty-five trucks, totalling perhaps fifty to sixty items, recalling that a tractor and trailer form two pieces. His 1964 equipment roster is borne out by Petitioners' Exhibit 9, an aerial photo taken about that time showing the site, building and his trucking and construction equipment.

Mr. Umerley testified that he presently has about fifty trucks on the road, and that the total items of trucking and construction equipment include truck tractors and trailers, flat bed trailers, tank trailers for bulk material, and dump trucks, as well as several front end loaders and graders. In all, there may be as many as one hundred fifty items of equipment, between tractors, (that is the truck that pulls the trailer), trailers, tow trucks, loaders, etc.

There is a security fence running around the perimeter of Lots 1, 2, 6 and 8 and along the railroad right of way in the rear. As for paving, Mr. Umerley testified that the paved area was enlarged in the early 1980's, about 1982 or so, with black top toward the front of the property and tar and chip in the rear on Lot 5. The paving is shown on the XLS site plan, Petitioners' Exhibit 1.

#### Employees and Operations

Mr. Umerley currently employs approximately seventy persons including fifty plus drivers and office personnel,

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mechanics, and lot men. Mr. Umerley testified that the yearly payroll is in excess of Two and One-Half to Three Million Dollars. As for hours and days of operation, the property is active five and one-half days per week, namely Monday through Friday, with operations closing down toward mid-afternoon on Saturdays. The exception to these hours is when Mr. Umerley is delivering salt to salt domes on an emergency storm basis, during the winter time. Basically the operation is from 7:00 a.m. to 3:30 or 4:00 p.m., with some evening and overnight departures. Petitioners' Exhibit 10 is a list of Umerley's ten primary customers, an examination of which highlights the ideal location of the subject property to reach and serve these customers via the Beltway and the interstate highway system.

As to evening and night departures, Mr. Umerley pointed out that a number of his customers require deliveries to be made to a construction job site or to a distant location early in the morning, and, thus, it is necessary that a certain number of trucks depart between 11:30 p.m. when most of the operation closes down, and 7:00 a.m. or 7:30 a.m. when things begin in earnest again. To substantiate this position, Mr. Umerley also submitted as Petitioners' Exhibit 11 a series of invoices, evidencing many required early morning, distant deliveries. In such cases, the testimony was that the driver would pick the load up the day before, leave it in the yard in a flat bed truck or in a tank type trailer, and at some time between midnight and 7:00 a.m. depending upon the early morning delivery time take the delivery out.

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As for mechanical work on the site, there is a four bay truck service garage and office building on the front of the property on Lot 2 which is shown on the photographs, Petitioners' Exhibit 8, among others. This garage is utilized only for work on Umerley trucks. Mr. Umerley is not a public service garage and does not work on trucks or vehicles owned by other parties. The repair work is done by six mechanics, working in two shifts, one from 7:30 a.m. to 4:00 p.m., and a second from 3:00 p.m. to 11:30 p.m. At night and during times of low activity, particularly from 11:30 p.m. to 7:30 a.m., the gate and yard are locked, as well as on weekends.

As for some of the economic benefits to the County, the State and the area, in addition to the Two and One-Half Million Dollar (\$2,500,000.00) plus payroll, substantial property taxes are paid, perhaps as much as Fifty-Two Thousand Dollars (\$52,000.00), although this may include other off site properties, as well as yearly fuel taxes in excess of One Million Dollars (\$1,000,000.00) paid to the State of Maryland, which go toward the maintenance of State and Interstate Highways. In addition, Mr. Peter Swanson of the Department of Economic Development testified that the Umerley operation is an important part of the economy of the County, particularly the southeastern County, and supports the construction industry.

#### Access and Traffic

As can be seen on the customer list, Petitioners' Exhibit 10, many of the locations that Umerley serves, including White Marsh, Ponca Street, New Kirk Street and other

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locations make this Philadelphia Road location an ideal one. As is shown on the map of the Philadelphia Road Corridor Study, Petitioners' Exhibit, the Umerley operation enjoys excellent Beltway access to Baltimore County, Baltimore City and the surrounding areas, in and out of State, by means of proceeding westerly on Philadelphia Road to the Beltway. Mr. Guckert testified that 75 per cent of the site trips go toward the Beltway, away from the Nottingham Community.

According to Mr. Wes Guckert of the Traffic Group, as well as according to others, Philadelphia Road is the only means of access for the industrial properties, commercial properties and residential properties in this transportation corridor. Further, a letter dated July 26, 1993 from Mr. Pat Keller, Deputy County Director of the Office of Planning and Zoning to Mr. George L. Good, Jr., of Frank's Pallet Service indicates that Baltimore County has no plans to extend Yellow Brick Road, an industrial service road lying between Route 40 and Philadelphia Road beyond the King Avenue area, a substantial distance to the south of the subject property. See Petitioner's Exhibit 13 on this point, the letter, which shows that Philadelphia Road must continue to function as a minor arterial in the area, including truck and commercial traffic as an industrial service road.

#### Nearby Uses and Existing Zoning

As for noise in the area, it should be noted that the Umerley property is located between I-95 to the west, and the B&O Railroad and Route 40 to the east. This property is also

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underneath a portion of the Martin State Airport flight path, and there are literally hundreds of flights per day in and out of the airport, and hundreds of thousands of flights per year. Further, Peter Swanson of Economic Development testified that the CSX Railroad, the successor to the B&O, runs at least twenty trains per day by the rear of the Umerley site. In addition Swanson testified that in 1992, the Martin State Airport handled about 128,000 flights during that year, or an average of about 350 flights per day.

As for the zoning of the property, Petitioner's Exhibit 1 and the testimony of Mr. Kearney, the engineer, indicates that virtually the entire property is zoned ML-IM, including the entire Philadelphia Road frontage, with the exception of a small triangle of D.R.5.5 property in the front adjoining Lot 1. This is also shown on Petitioner's Exhibit 18, a portion of the 200 Scale Zoning Map for the area. Furthermore, it was testified that the 1948 zoning map showed the property in a light industrial zone, one of the two industrial zones available under the 1948 Zoning Regulations.

I.

**THE PETITIONERS HAVE PROVEN THAT THE SUBJECT PROPERTY MEETS THE REQUIREMENTS OF SECTION 502.1 OF THE BALTIMORE COUNTY ZONING REGULATIONS, AND THE SPECIAL EXCEPTION FOR A CLASS II TRUCKING FACILITY IN AN ML-IM ZONE SHOULD BE GRANTED.**

#### Historical Evidence

In order to consider the special exception, it is appropriate to briefly review the recent history of truck terminal legislation in Baltimore County. As testified to by

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Mr. Norman Gerber, the former Director of the Office of Planning and Zoning, trucking terminals, particularly those on the North Point Peninsula, were causing a great deal of problems in the 1970's. A Truck Task Force was formed, and eventually this group made recommendations to the Planning Board and to the County Council. These recommendations led to legislation which now forms Section 410 and 410A, Class I and Class II Truck terminals, respectively, of the Baltimore County Zoning Regulations. These regulations have their basis in Bill No. 18, adopted in 1976.

The Baltimore County Zoning Regulations distinguish between two types of facilities, namely, the Class I Trucking Facility, Section 410, which basically is a transfer operation where goods are delivered on larger, primarily interstate trucks, and are transferred to smaller trucks for local delivery. Recently, the UPS Facility above Hunt Valley was found to be such an operation, a Class I Truck Facility.

The second class of facility under the truck terminal legislation is a so-called "Class II Trucking Facility", covered by Section 410A. These basically consist of truck yards, where trucks and trailers, that is, vehicles in excess of 10,000 pounds gross vehicle weight, are kept, or stored. The Umerley operation on Philadelphia Road does constitute such a Class II Trucking Facility under Section 101 of the Regulations, relating to definitions.

As was discussed by Mr. Gerber in his testimony, the 1976 trucking legislation, Bill No. 18-76, contains provisions for a registration period of one year for then existing

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non-conforming trucking facilities from the effective date of the legislation. A second period of time, on the order of twenty-seven months, was provided for the Commissioner to rule on the extent to which the registered terminal complied with the requirements of Section 410A.1B. of the Regulations. Section 410A.1C. provided a period of up to twenty-seven months for a non-conforming truck terminal to be brought into conformity, as much as possible, after a ruling by the Commissioner. Under Section 410A.1D.2. a non-conforming terminal which had not filed plans would be required to cease operations within three years from the bill's registration period.

A public information program was specifically mandated by the provisions of Section 410.1G., relating to an effort from the second month to the twelfth month of the first year of the bill's effectiveness, requiring the Zoning Commissioner to implement a public information and notification program regarding the legislation. The section specifically provides in part, "in particular, he shall endeavor to ensure that any party responsible for complying with these sections is informed of the provisions therein." The "he" referred to in this subsection is the Baltimore County Zoning Commissioner; but, as the People's Counsel has noted, there is a specific provision immediately following that sentence providing as follows:

"However, the failure of the Zoning Commissioner to inform any party of the provisions of these sections will not constitute a legal justification for that party's failure to comply with them."

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Mr. Gerber testified that, he obtained lists of suspected trucking persons and groups notified by the Zoning Commissioner's Office, and the Umerley operation was not contained on that 1976 list. In like manner, Mr. Umerley testified and confirmed that his company was never notified. Thus, the net effect of the legislation is that Mr. Umerley must seek a new Special Exception for a Class II Trucking Facility, with such variances as may be required to accommodate it. It is for these purposes that the case was filed, and that we have appeared before the Board of Appeals.

#### Relevant Evidence

Before addressing the specific special exception requirements of Section 502.1, it should first be noted that Philadelphia Road, Maryland route 7, constitutes an arterial highway, lying within the core of the major transportation corridor serving the northeastern United States from Boston to Richmond, Virginia. This major transportation corridor, discussed extensively in testimony during the case, consists of Interstate 95 to the west of the subject property, Philadelphia Road itself which serves the property, the CSX Railroad immediately to the rear, Route 40 East, and the Conrail line, the former Penn Central Railroad, in the vicinity of Martin's, and the Martin State Airport, all to the east of the site. Also, as previously mentioned, the Martin State Airport, to the east, has a flight path passing directly over this property and neighborhood. That the Umerley operation lies within this transportation corridor must be carefully considered in

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evaluating the subject property's proposed usage for a Class II Truck Facility. Also, this transportation corridor and all of its effects bears directly on the Nottingham Community located between Philadelphia Road and I-95.

It is important to note that the Council has zoned this property for manufacturing light use since at least the 1940's. The Councils have repeatedly reaffirmed that industrial zoning in 1971, 1976, 1980, 1984, 1988 and the Council has again retained the Umerley tract in an ML-IM Zone as recently as the 1992 zoning maps, underlining the site's industrial nature.

Counsel for all parties, as well as the Board, are well aware of the holding in the landmark Maryland case *Schultz v. Pritts*, 291 Md. 1 (1981). Among other points made in *Schultz* by Judge Davidson, is the fact that the legislative body, in this case, the County Council, in adopting this special exception for trucking facilities in an ML Zone considered the usual effects of a truck terminal, and after such consideration, had determined that truck terminals are appropriate in the ML-IM Zone. Further, *Schultz* holds that the standard of review is that a special exception should be granted absent some fact or factor which distinguishes the location in question from other like locations in the district. In fact, as the *Schultz* opinion points out at page 14, there is a presumption that the general welfare of the community is promoted by the allowance of the special exception in question, namely, a funeral home. That presumption cannot

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be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses located anywhere in the district.

We respectfully submit that there is nothing unique about the Umerley property, located in a traditionally transportation oriented corridor, and zoned Manufacturing Light since the 1940's.

It is counsels' recollection of the testimony of Mr. Dennis Wertz of OPZ, that he could not distinguish the Umerley site from numerous other M.L.-I.M. sites between Philadelphia Road and the CSX Railroad. He acknowledged that many of them had some wetlands, and that numerous sites in the southeastern County coastal plain have wetlands. He also acknowledged the correctness of the Petitioners' Exhibit that illustrated the so-called "utopian truck facility", and the difficulty inherent in locating such a site without the need for variances as to homes, residential zones and wetlands in the Philadelphia Road Corridor and the southeastern County. Thus, the Umerley site meets the Section 307 criteria for variances, as well as the Section 502.1 criteria for a special exception for a Class II Truck Facility.

Every one of us, including those involved in this case, daily uses goods and materials brought to us by truck transportation. Railroads, trucks and air transportation form the backbone of the American economy. In this particular case,

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the representative from the Department of Economic Development testified that the Umerley trucking operation is a vital mainstay of the economy of the southeastern County, and most particularly, the ten major industrial and construction customers that it serves. This Memorandum already has noted the seventy employees, the property taxes, the fuel taxes, and the other general economic benefits to the County, State and area, all of which contribute to the public welfare of the County.

#### THE SPECIAL EXCEPTION CRITERIA

In evaluating this special exception request, let us consider Section 502.1 of the Regulations in detail, sub part by sub part, as follows:

1. As to "health", the subject property is no more a health hazard than any like truck terminal, and it, and the trucks are subject to the State and Federal air regulations. Further, the site is served by public water and public sewer. As to dust, Mr. Umerley has agreed to employ a sweeping machine more often than the present once monthly, and also to utilize a water truck to keep the dust down. The Council was certainly aware that trucks which serve the construction industry become dusty with dirt, concrete dust, salt dust, etc. This dust is a normal part of a terminal serving the construction trades. It is certainly less dusty than the quarry and surface mining operation north of the Nottingham community.

2. As for "safety", pursuant to the State Highway Administration and Baltimore County comments, Mr. Umerley has

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agreed to widen Philadelphia Road on his side in front of the site, and this widening has also been echoed by the testimony of our traffic engineer, Mr. Wes Guckert, and is adopted and contained in Mr. Guckert's report, Petitioners' Exhibit 15. Since 1958, Mr. Umerley testified, there has only been one accident in front of the site. A car ran into the rear of an Umerley truck, and it was not the fault of the driver. The widening will act to help prevent a repetition of such an accident.

3. As for "general welfare", the subject property is located in an ML-IM zone, in a transportation corridor, with three major roads, two railroads, and an airport, and it has been in its present location since 1958. Also, the public welfare benefits have been enumerated above.

4. As for "congestion in roads, streets or alleys", Mr. Guckert's report was offered as Petitioner's Exhibit 15, and Mr. Guckert counted the existing traffic from the site, and he determined that Philadelphia Road can adequately handle it, as it has been doing well since 1958. At page 4 of the Guckert report, Mr. Guckert's study found that the site is only generating approximately 250 trips per day, including the ingress and egress of employees. Of these 250 trips, only 25 to 30 trips are taken in the morning or evening peak hours. Furthermore, the report concluded that approximately 75 percent of the trips either came from, or proceeded toward the Beltway southward along Maryland Route 7, Philadelphia Road, and only 25 percent of the trips or less passed the adjoining community

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of Nottingham, accessed by Ravenwood Road by proceeding northward toward White Marsh. Truck trips form a minority of these total daily trips past Nottingham.

5. As for "fire, panic and other dangers", the site has public water, and there is a fire hydrant located on Philadelphia Road opposite the site. Furthermore, there are a number of fire departments serving the area, including the volunteers in White Marsh, and the full time station in the Golden Ring Road area.

6. As for "overcrowding land and causing undue concentration of population", the overall site has very low coverage, with the building occupying only a very small area, and the 8-1/2 acres are buffered on both sides, that is, to the east and west, by other Umerley ownerships as shown on the Site Plan.

7. As for "adequate provisions for public facilities", there is no statement whatsoever in the zoning file, or any comment from any public agency, stating that this facility will interfere with any such public need. In fact, the site's reliance on Philadelphia Road has been underlined by the termination of Yellow Brick Road at King Avenue well short of this site. See the Keller letter, Petitioners' Exhibit 13.

8. Insofar as "adequate light and air" are concerned, the property is not shading anyone. As for dust, it will be dealt with by means of a sweeper truck and a water truck as previously outlined. With regard to diesel fumes, the Council is well aware that large trucks have significant exhaust

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emissions. This is part and parcel of a truck terminal operation. There was no testimony that Mr. Umerley's trucks are in violation of state or federal exhaust regulations.

Also, they are maintained on a regular basis in the four bay garage by the six full time mechanics.

9. As for "consistency with the zone in which it is located", as previously stated a truck facility is specifically allowed by special exception in the ML-IM zone, and indeed, it is one of the favored locations in the county for such facilities.

10. Finally, the site will serve the "vegetative retention requirements" since additional landscaping is proposed for this use. Also, of the overall ownership, only 8.5 acres are included in the special request, and only less than five of those acres are paved. The bulk of the other three lots, including virtually the entirety of Lot One, almost all of Lot Six and almost all of Lot Eight are not paved but are tree covered. Furthermore, Mr. Umerley is in the process of developing a storm water management system with Baltimore County through his engineers at KLS Consultants, Inc., as was noted during the course of the case.

#### OTHER SITE FACTORS AND THE SPECIAL EXCEPTION

Mr. Umerley testified that over the years he has acquired additional parcels, as shown on the site plan, Petitioner's Exhibit 1, to supplement the initial parcel of 2.5 acres. In this regard please note that Section 410 A.3.B.1., specifically requires that a Class II Truck Facility have a net

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area of at least 5 acres, and be capable of containing a 150 foot diametral, that is a 150 foot circle. The Umerley site with Lots 2 and 5 meets this 5 acre minimum standard, as well as the diametral standard, particularly at the front on the Philadelphia frontage which is over 230 feet in width. With the addition of the widening lane, the site will more than meet Section 410A.3.B.2. which requires an ability to accommodate "convenient forward movement of vehicles leaving or entering the site".

As for the "maneuvering area" variance, Section 410.A.3.B.3. requires that at least 75% of the site devoted to trucking operations must be devoted to parking of truck tractors and trailers, and we have requested a variance on this point. Please note that on the Site Plan, the Petitioner's Exhibit 1, this variance makes a great deal of sense in order to allow a tractor or trailer to back out and maneuver without the danger of colliding with another closely parked row of trucks and trailers opposite it.

Also, the Umerley site meets the fencing requirement of Section 410A.3.B.4., in that the trucking operations are entirely surrounded by a six foot high security fence. This same Section requires that landscaping be provided and landscaping is to be supplemented along the frontage, while Lots 1, 3, 6 and 8 all act to provide natural screening on both sides of the trucking site from adjoining properties.

Further, as specifically stated on the record at the hearing, and as reaffirmed by this Memorandum, the Umerleys

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have dropped the request for a variance from the wheel stop requirement, and Mr. Umerley is proposing to comply with Section 410A.3.B.5. to provide wheelstops to protect the adjoining properties and the screening, as required.

For these and other reasons, we know that the Umerley site more than meets the criteria for a special exception for a Class II Trucking Facility, and, indeed, it is a better site than many other ML-IM sites in the district. It is a very unusual situation to see a 5 acre site in effect buffered on both sides, north and south by similar, largely undeveloped common ownership property, and buffered at the rear by a railroad. The only point of confrontation between the ML-IM zoning and the residential zoning of the Nottingham Community on the opposite side of Philadelphia Road is at the frontage of this site.

As to the frontage, as shown on our photographs, Petitioners' Exhibit 8, the front of this site contains a very attractive, well maintained executive office building with a service garage attached behind it. The Long Fence operation on Lot 3, which was a former trucking operation, is now a less intensive use, and it also acts as a visual and auditory screen between the community of Nottingham and the majority of this terminal site. As for Mr. Hoffman at the General Services Engineering Operation to the west, this property is buffered entirely by Lot 1, which extends the full length from Philadelphia Road with about 245 feet in frontage width to the CSX (B&O Railroad) in the rear, with about 155 feet of rear lot

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width buffering the two sites. Mr. Hoffman testified that his complaints and concerns about the security fence have been resolved, with Mr. Umerley paying to connect to his fence; and his drainage concerns will be addressed by the storm water management facility, now under design by KLS Consultants.

Since the hearing, storm water management plans have been submitted to Baltimore County by KLS. This storm water management facility, as well as all other improvements on the site, will be done under Baltimore County inspection and permits, and this inspection and permits process will act to assure that this work is properly done and then maintained. For instance the storm water work is reviewed by the County; then the work is done in an approved fashion under full bond; after completion the facility is inspected after the first year; and the bond then released upon approval. After that the SWM facility is inspected on a 3-year continuing basis.

There is nothing unique about the Umerley site on Philadelphia road to disqualify it from truck terminal usage in the ML-IM Zone. The Umerley operation has the usual attributes of a terminal, and it is more attractive than the majority of such terminals when viewed from Philadelphia Road. This appearance is required to be further improved with additional landscaping, and it will be provided. The special exception for a Class II Trucking Facility should be granted, and they have been granted over the year since 1976.

II.

THE PETITIONERS HAVE MET THE REQUIREMENTS OF SECTION 307 OF THE BALTIMORE COUNTY ZONING REGULATIONS AND THE REQUESTED VARIANCES SHOULD BE GRANTED.

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A. THE REQUESTED VARIANCES ARE NOT PROSCRIBED "USE" VARIANCES, BUT ARE AREA VARIANCES AND CAN BE VARIANCED UNDER THE REGULATIONS, INCLUDING SECTION 307.

At the conclusion of the Hearing before the Board in this matter, one of the Board Members requested that any Memorandum from both parties address the issue of "self inflicted hardship" and this will be addressed in this part of the Memorandum. Also, the Peoples Counsel during the same discussion made a comment that in his view the requested variances are "forbidden use variances", rather than area variances, which area variances, of course, can be granted under our Section 307 of the Regulations.

Section 307.1 in pertinent part provides as follows:

"The zoning commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances of height and area regulations, from off street parking regulations and from sign regulations, ..."

This Board and counsel for all parties in this matter have been involved in numerous variance cases arising under the Baltimore County Zoning Regulations.

Further, it is the information of Petitioner's counsel that variances have been granted by the Zoning Commissioner, and possibly by the Board of Appeals, from various parts of the Trucking Regulations, including Section 410A.3.A. relating to access points, and Section 410A.3.B.1 to 9 relating to various site standards. Of course, in the present case, Mr. and Mrs. Umerley are asking for variances from various portions of this Section 410A.3.B. relating to site standards, as well as

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Section 253.4, relating to uses within 100 feet of a residential zone boundary or the right of way of any street abutting such a boundary, as set out in the Statement of the Case.

Subsection 410A.3.B.1. to 9. is entitled "Other Site and Development Standards". In dealing with a Trucking Facility, it is not easy for a legislative draftsman to speak in terms of side yards, rear yards, front yards, etc., and thus the Section in question speaks in terms of distances, acreages, diametral requirements, percentages, rather than the more usual statements as to side, rear and front yards, or a height limitation which we are all familiar with. The fact that the Council in Bill 18-76, adopted these site and development standards in this way, does not make them any the less height and area regulations. According to the OPZ staff, these standards have been variances in other cases over the years.

In Anderson v. Board of Appeals, 22 Md.App.28 at p.38, Judge Davidson speaks in the following terms in describing a use variance:

the Court of Appeals has recognized a distinction between a use variance, which changes the character of the zoned district, and an area variance, which does not. Judge Davidson at the previous page, page 37, states 'an area variance' (a variance for area, height, density, setback, or side line restrictions, such as a variance of a distance required between buildings) and not a 'use variance' (a variance which permits a use other than that permitted in the particular district by the ordinance, such as a variance for an office or commercial use in a zone restricted to residential uses).

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In the present case, the Council, by adopting Bill 18-76, and other relevant portions of the Regulations, (including the special exception provision in the ML Zone, namely Section 253.2A.6. entitled "Trucking Facilities", with a specific reference to Sections 410 and 410A of the Regulations, showing an origin from Bill 18-76), has specifically said that trucking facilities both Class I and Class II are appropriate in the ML Zone, and are permitted by special exception in the ML Zone.

The Council was well aware in 1976 that it would be difficult to locate either an ML or an MH site that did not lie within 300 feet of a dwelling in the M1 or MH zone, or within 300 feet of a residential zone, or within 200 feet of a wetland, as required by Section 410A.2 with regard to Class II Trucking Facilities. The Board will recall the Petitioner's offered a hand drawn exhibit by counsel that demonstrated that in order to acquire a 2.5 acre site it would be necessary to control, and indeed, perhaps to own as much as 20+ acres to obtain the required distances from a usable core to a home, residential zone or a wetland. Mr. and Mrs. Umerley own and control a total of over 15 acres, and they still have problems with nearby homes, wetlands and residential zones.

Bill 18-76 does not demonstrate any intent on the part of the Council to outlaw trucking facilities, of either Class I or II, but rather, demonstrates an intention to regulate such sites within Baltimore County. The distance requirements in question, namely within 300 feet of a residential zone, and

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within 200 feet of wetlands, are height and area regulations which can be, and have been variances before, and should be variances in this case.

Quite likely the objection that Peoples Counsel may raise is the fact that parts of this site lie within 100 feet of Philadelphia Road, which abuts a residential boundary, namely the DR Zoning on the west side of Philadelphia Road, the Nottingham Development. See Section 253.4 of the Zoning Regulations on this point.

The Petitioners' have no proscribed uses within 100 feet of Philadelphia Road, since a measurement on the site plan, Petitioner's Exhibit 1, shows that the firm's offices and automobile parking are within 100 feet of Philadelphia Road, but that the garage and the other portions are not. Also, only automobile parking is shown within that restricted 100 foot area, and this restriction could be made a condition of the special exception by the Board.

Perhaps Peoples Counsel is relying on the last sentence of Section 253.4 which states:

Notwithstanding the foregoing, no trucking facility or part of the trucking facility may be established within 100 feet of such a right of way.

A reading of this section reveals that the right of way referred to in the last section of Section 253.4 is "an existing or proposed freeway or expressway so designated by the Planning Board. . ." Philadelphia Road is not such a designated freeway or expressway.

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The Board can also rely, and should rely on the fact that these offices and parking areas have been in this location since 1958, and treat them as conforming uses. Further, in 1982, Baltimore County granted the Petitioners' a building permit to expand the company offices toward Philadelphia Road. See Petitioners' Exhibit 7, which has a site plan attached to it. The use of the property on the site plan is noted as "contractors storage yard", which Mr. Umerley believed it to be at the time.

Recall, also, that both Mr. Umerley and Mr. Gerber testified that Baltimore County had not notified the Umerley company of the passage of Bill 18-76 during the required publicity period. Mr. Umerley is running a business day-to-day, and he is not following the County Council's actions. He was not warned, and, thus, this application should be viewed in the light most favorable to him and to this site continued use for a vital business.

In 1982, Mr. Umerley legitimately believed that his operation was a contractor's storage yard, and based upon the belief he added attractive executive offices to the front of the building. Based upon this good faith reliance, Mr. Umerley's frontage office and automobile parking should not be disturbed. These uses for offices and automobile parking are permitted M.R. uses under the Regulations, and are permitted within 100 feet of Philadelphia Road as a part of a special exception for Class II Trucking Facility as well.

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#### CONSTITUTIONAL CONSTRAINTS

In addition to the concerns expressed here and above, the Umerleys have other constitutional concerns with the treatment of their property under the Baltimore County Zoning Regulations. Simply expressed they are as follows:

1. That the Baltimore County Zoning Regulations, and more particularly the trucking facilities provisions found in Sections 410.1 and 410.1.A. unlawfully discriminate against trucking facilities as compared to other facilities with an equal or greater number of trucks and trucking activities provided those trucks and trucking activities are accessory to a lawful primary use, such as warehouse, quarry, sand and gravel operation, contractors storage yard, etc.

Section 1. of the Fourteenth Amendment to the United States Constitution provides in pertinent part as follows:

nor shall any State deprive any person of life, liberty, or property, with due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

In like manner, Article 24 of the Maryland Declaration of Rights, entitled "Due Process," and a part of the Maryland Constitution provides as follows:

that no man ought to be taken or imprisoned or disseized of his free hold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the Land.

According to the case notes in the Annotated Code of Maryland, Constitutions Article, at page 117, the Maryland Court of Appeals has construed "Law of the Land," as used in

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this Article, to be synonymous with "Due Process of Law" as that phrase is used in the Fourteenth Amendment. See McIver v. Russell, 264 F. Supp. 22(D.Md. 1967). In the same McIver Case, the Maryland Court of Appeals has held that in construing Article 24, that the decisions of the Supreme Court concerning the Fourteenth Amendment to the Federal Constitution are to be treated as "practically direct authorities."

The Court of Appeals, in discussing Article 24 of the Declaration of Rights in State v. Good Samaritan Hospital, 299 Md. 310, 473 A.2d 892, (1984), has stated that while the Maryland Constitution does not contain an express equal protection clause, the concept of equal protection is embodied in this Article. See also Murphy v. Edmonds, 325 Md. 342, 601 A.2d 102 (1992).

In like manner, Section 253.1B.15. permits "storage, warehousing, or wholesale distribution of any product whose sale (retail or wholesale) or final processing or production is permitted as of right as a principal use in M.L. Zones; public warehousing". That is to say, on 8.5 acres of M.L. land, numerous products are allowed to be manufactured or processed, and they can then be distributed using hundreds of large and small trucks, employing numerous employees, all with far greater impact upon the community with regard to traffic, noise, and all of the other incidents of manufacturing activity, much to the detriment of the community, while at the same time trucking facilities are allowed only by special exception, and are heavily regulated as to site standards

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paving, landscaping, etc. This treatment is unlawfully discriminatory and unconstitutional.

Also, the Zoning Regulations permit, as a matter of right, in the M.L. Zone, a contractor's storage yard, with extremely large equipment, very large trucks, trailers, and much greater activity than is inherent in the Umerley operation. Such a yard site would not be regulated to nearly the same, or comparable extent as to automobile parking, access to streets, layout, fencing, wheel stops, paving and curbing, drainage, and landscaping and screening. Any rational observer looking at this situation impartially cannot justify all of these truck facility controls, and, indeed, virtual exclusionary controls for trucking facilities, while at the same time permitting heavier, more intensive uses as a principal use, with trucking activity as an accessory use without the same degree of regulation.

B. THE PETITIONERS' SITUATION DOES NOT REPRESENT "SELF INFLICTED" HARDSHIP, BUT RATHER IS THE RESULT OF "SPECIAL CIRCUMSTANCES OR CONDITIONS THAT ARE PECULIAR TO THE LAND AND STRUCTURES IN QUESTION".

The Petitioners are aware that the provisions of Bill 18-76 require that this property be treated as if it were a completely new facility seeking a new special exception. In this regard, it would be very difficult, but perhaps possible, to locate a 5 plus acre site in the Philadelphia Road corridor that is not within 300 feet of a residential zone, or within 300 feet of a residence actually existent in the zone.

In like manner, it would be difficult to locate a 5 plus acre site anywhere in the southeastern County zoned M.L.,

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eligible for trucking facility use, that does not either have a wetland existent on the site, or within 200 feet of the site. Mr. Dennis Wertz, the area planner, acknowledged that there are numerous wetlands existent in southeastern Baltimore County, which affect various sites, just as the wetlands affect this site.

First of all as to the residential zoning, please note that there is a D.R.5.5 Zone on each side of the subject property, that is, a D.R.5.5 Zone both on Lot 1 and Lot 3 flanking the south and north side of the site respectively, as well as the D.R.5.5 Zone across the street. Virtually any site along Philadelphia Road in this transportation oriented corridor would find itself in the same situation, particularly since many portions of the west side of Philadelphia Road are zoned residential, while the east side is zoned primarily industrial, with some strips of D.R.5.5 along the roadway on the east side.

Also, as shown on the site plan, Petitioners' Exhibit 1, there is an existing residential dwelling on Lot 7, a 1.9 acre parcel lying to the north of Lot 6. That parcel is insulated from the paved portions of the Umerley site by Lot 6 which is primarily wooded, and which is shown in the various photographs, including the aerials, have such insulating woodland. Notably that particular property owner did not appear in opposition to a request for variance on this issue. Virtually any of the other numerous M.L.-I.M. uses that could be placed on this tract would be within 300 feet of a

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residence, within 200 feet of a wetland, and be required to access through the frontage within 100 feet of Philadelphia Road. One has only to look at the numerous heavier uses permitted in the M.L.-I.M. Zone to realize that many of these uses could be far more objectionable from the point of view of building coverage, traffic, noise, and other attributes than this proposed trucking facility.

As far as the 7 foot building setback for a required 50 foot setback, the portion of the building that is 7 feet away from the property line to the south has been there since 1958. Once again, Lot 1 of 5.3 acres is owned by Mr. Umerley, and adjoins this setback area. The front portion of this two story brick and block building is the area which Baltimore County granted a permit to improve in 1982, which permit is included as Petitioners' Exhibit 7. It is difficult to see how any harm will come from the allowance of the continuance of an existing condition, particularly when this building is buffered by a 5.3 acre parcel to the south which is between 155 feet in width on the railroad side in the rear, and 245 feet in width on the Philadelphia Road side. If the Umerley operation was more clearly a direct contracting operation, then no special exception would be required for a contractor's equipment storage yard in the M.L.-I.M. Zone, and virtually the same number, or more trucks could come and go, more employees could come and go and yet the Umerley organization is criticised because it is lumped into the truck terminal category. Although there was testimony that the former Campbell Sand and

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Gravel, now Genstar, operation is scaling back at White Marsh on Philadelphia Road, a significant number of trucks will still come and go from that site on a continuing basis.

#### SUMMARY

The Umerley organization is a vital part of the construction industry in Baltimore County. The operation is located in a traditionally transportation oriented corridor between I-95 and the Conrail Railroad. It employs over seventy people each year with a tremendous payroll and other benefits. It pays property taxes and fuel taxes in excess of One Million Dollars (\$1,000,000.00) per year.

The property generates a mere two hundred and fifty vehicle trips per day, a very low figure for a 8.5 acre M.L.-I.M. site. It is buffered on both sides by its own ownerships, with a railroad at the rear. The property has no choice but to access and use Philadelphia Road, which is an arterial street also serving in part as an industrial service road in part. This road will be improved in front of the site with a widening lane as described by Mr. Guckert and as described in the zoning comments. The Umerley site is well located with regard to its customers, and with regard to the transportation network of the area. As Mr. Guckert pointed out, three-quarters of the trips go toward the Beltway, that is, away from the Nottingham community and only one-quarter of the trips pass Ravenwood Road to the north of the site.

The M.L.-I.M. Zone permits trucking facilities by special exception, and we respectfully submit that this site is

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ideally suited to serve as a trucking facility, and that in order to do so it can be and should be granted the requested variances. Without these variances practical difficulty or unreasonable hardship will be sustained by the Umerleys. These variances can be granted without substantial harm to the health safety and welfare of this area.

If we want trucks, we must have truck terminals. If we want trains, we must have railroad right of ways. If we want planes, we need airports, and these types of facilities are most appropriately located in transportation corridors such as this one.

For all of these reasons, we respectfully ask that the Board grant the requested Special Exception for Class II Trucking Facility, with the attached, dependent variances.

Respectfully submitted,

Stephen J. Nolan  
Stephen J. Nolan

Newton A. Williams  
Newton A. Williams  
and  
Nolan, Plumhoff & Williams, Chtd.  
700 Court Towers  
210 W. Pennsylvania Avenue  
Towson, Maryland 21204  
Attorneys for Petitioners

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#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24 day of October, 1993, a copy of the foregoing Petitioners' Memorandum was mailed postage prepaid to Peter J. Zimmerman, Esquire, Peoples Counsel, Old Court House, Ground Floor, 400 Washington Avenue, Towson, Maryland 21204.

Newton A. Williams  
NEWTON A. WILLIAMS

5511C

IN THE MATTER OF : BEFORE THE COUNTY BOARD OF APPEALS  
LEO J. UMERLEY, Petitioner : OF BALTIMORE COUNTY  
ZONING CASE NO. 92-346-XA :

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 Thursday, July 8, 1993 at Room 48, located at the Courthouse and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Dennis E. Wertz  
Address: Office of Planning and Zoning  
Fourth Floor, Courts Building

Peter Max Zimmerman  
Name: Peter Max Zimmerman  
People's Counsel for Baltimore County  
Room 47, Courthouse, 400 Washington Ave.  
Towson, Maryland 21204

The witness named above is hereby ordered to so appear before the County Board of Appeals at 10:00 a.m. Thursday, July 8, 1993.

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 July 1, 1993.

Shirley M. Hess  
Shirley M. Hess

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Further, the CSX Railroad, the successor to the B&O, runs at least 20 trains per day by the rear of the Umerley site. The Martin State Airport handled about 128,000 flights during that year, or an average of about 350 flights per day.

Virtually the entire subject site is zoned M.L.-I.M., including the entire Philadelphia Road frontage, with the exception of a small triangle of D.R. 5.5 property in the front adjoining Lot 1.

The special exception requested pertains to four of the six lots on the site. The subject site sits amid the following:

- (1) D.R. 3.5, D.R. 2 and D.R. 5.5 improved by residential dwellings to the northwest, west and north across Philadelphia Road.
- (2) M.L.-I.M. improved by an office building; R.O. improved by a residential dwelling; and D.R. 5.5 improved by residences; and nonconforming residences in the M.L. zone on the same side of Philadelphia Road, all to the southwest.
- (3) D.R. 3.5 and M.L.-I.M. to the immediate northeast improved by residences and nonconforming residences in the M.L. zone on the same side of Philadelphia Road.

There are residences in D.R. 2 and D.R. 3.5 zones on Philadelphia Road immediately across from the facility, and additional residences to each side of the site. Philadelphia Road is part of a 60-foot-wide right-of-way. Wetlands exist on the site, being primarily on Lot 1, adjacent to Lot 5. Lot 5 is part of the special exception and one-half of it is within 200 feet of the wetlands. Other than the wetlands, the subject site does not have any geographic or topographic constraints to restrict or

has revised the recommendations and offers them, in this final report, for consideration by the County Council.

NOTE: The appendix to this report indicates the zoning classifications under which various truck-oriented uses would be permitted as of right, allowable by special exception, or prohibited under the proposed legislation.

BCZR 410A sets the requirements for Class II trucking facilities. The law establishes substantive requirements in two main categories: location (BCZR 410A.2) and site and development standards, plans, and operation (410A.3). Because many existing facilities were nonconforming, the law provided a procedure for the filing of plans (410A.1A). These facilities, subject to approval at a public hearing, would have to be brought up to 410A.3 site and development standards unless a "variance" were granted (410A.1B). Properly approved nonconforming facilities would not have to meet the locational requirements of 410A.2.

If an existing facility failed to file plans, it would be in violation and would have to cease operations within three (3) years, unless approved as a new use (BCZR 410A.1.D). Although the law provided a public information program to attempt notification to affected parties, any failure of notice was not legal justification or excuse for failure to comply (410.1G).

The locational standards are in BCZR 410A.2. They must be met by any new facility or by any approved nonconforming facility. (BCZR 410A.1E). BCZR 410A.2 states:

- 2. If approved plans of a Class I trucking facility are not on file with the Office of Planning and Zoning or the Department of Permits and Licenses on the effective date of this Section, or if the Zoning Commissioner is not notified under Subparagraph 1, the owner of or authorized agent for the trucking

prevent development for other uses allowed in the M.L.-I.M. zone. The original area of use, and also the tripling expansion, violated the distance standards from residences and wetlands contained in the Trucking Facilities law.

The Nottingham Improvement Association, a community association, represents approximately 70 homes and the boundaries are both sides of the 9700 to 10,000 blocks of Philadelphia Road, a stable residential community with industrial uses located on Philadelphia Road.

The Protestants hear disturbing loud banging and other truck-generated noise from the trucking company at all hours of the night, that the facility operates 6 days a week and 24 hours a day as well as frequent Sundays, and are affected by dust from the site which is offensive. They described the traffic on Philadelphia Road as heavy, and that the ingress and egress of the trucks from the site clog traffic and create hazardous parking and unsafe conditions for residential traffic since the present layout of Philadelphia Road cannot accommodate the turning radii for Umerley's tractor trailers going to and from the site. They believe that the general welfare is disturbed by the noises generated and their health is adversely affected by the fumes and dust.

The applicable law must be applied to those facts, and other facts as stated below. Truck uses have a long history as principal uses in the Baltimore County Zoning Regulations (BCZR). The 1945 regulations included truck gardens in residential zones. In 1955, the use "truck terminal" came into being as a special exception in the B.R. (Business Roadside) and M.L. zones, and by right in M.H.

facility must file plans of the facility, meeting the requirements of subparagraph 410.3.C.1, within 1 year after that date. [Bill No. 18, 1976.]

In the M.L. zone, BCZR 253.2A.6 allows a trucking facility by special exception, subject to BCZR 410, 410A. Even in the M.H. zone, BCZR 256.2 allows a trucking facility by right only if 300 feet from a residence zone.

Finally, BCZR 410A.4 addresses the consistency of actions of county officials. 410A.4A states:

- A. Consistency of actions with purposes. Whenever the Zoning Commissioner, the County trucking-facilities-development officials, or any other County official or officials take an action pursuant to the provisions of this section, that action must, where applicable, be as consistent as is feasible with the purposes of this section, as set forth in Paragraph B, below, and elsewhere in this section, and with the other purposes of these regulations, in general (including the purposes set forth in Title 22 of the Baltimore County Code 1968). [Bill No. 18, 1976.]

410A.4B lists a number of additional purposes, including BCZR 410A.4B.7:

- 7. In general, to accommodate trucking activities, in recognition of their importance to the economy of the County and the nation. While minimizing the impact of existing and future Class II trucking facilities on the environment and achieving an optimum level of compatibility between such facilities and nearby uses, especially dwellings and institutional uses. [Bill No. 18, 1976.]

In the typical special exception case, the question is whether the use presents adverse effects over and above those ordinarily associated with the use in the zoning district. Schultz v. Pritts, 291 Md. 1 (1981); Board of County Commissioners v. Holbrook, 314 Md. 214 (1988); People's Counsel v. Mangione, 85 Md. App. 738 (1991).

In the parlance found in Schultz, the fact that the

zones (Manufacturing Heavy). This use pattern survives to the present in the manufacturing zones only.

In 1967, Bill 61 defined "truck terminal," to take its place in BCZR 101. In 1976, with Bill 18, the terminology changed. The County Council adopted the specific and functional definition of trucking facilities, defining two (2) types and establishing for the first time a detailed set of additional restrictions. BCZR 410, 410A.

The new BCZR 101 definition is set forth in BCZR 101:

Trucking Facility: A structure or land used or intended to be used primarily (a) to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types, in order to facilitate the transportation of such goods or chattels; or (b) for truck or truck-trailer parking or storage. A trucking facility may include, as incidental uses only, sleeping quarters and other facilities for trucking personnel, facilities for the service or repair of vehicles or necessary space for the transitory storage of goods or chattels. The term "trucking facilities" includes facilities for the storage of freightshipping containers designed to be mounted on chassis for part or all of their transport, but does not include a warehouse, moving and storage or repair of trucks used as an accessory to a lawful business or industrial use of the land that such parking or storage area forms a part of shall not be considered a trucking facility within the meaning of this definition. As used in this definition, the terms "trucks," "truck-trailers," and "truck tractors" do not include any vehicle whose maximum gross weight is 10,000 pounds or less, as rated by the State Motor Vehicle Administration. (Bill No. 18, 1976; Bill No. 218, 1980.)

The legislation came after work of a Citizens Task Force and Planning Board Report entitled Proposed Zoning Amendments: Trucking Facilities. The dominant purpose was to prevent the placement of such facilities at locations incompatible with nearby business and industrial areas, and, in any event, near residential areas. The

legislative body, in this case, the County Council, adopted this special exception for trucking facilities in an M.L. zone, having considered the usual effects of a truck terminal, and after such consideration, determining that truck terminals are appropriate in the M.L.-I.M. zone. Further, Schultz holds that the standard of review is that a special exception should be granted absent some fact or factor which distinguishes the location in question from other like locations in the district. In fact, as the Schultz opinion points out at page 14, there is a presumption that the general welfare of the community is promoted by the allowance of the special exception in question. That presumption cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses located anywhere in the district.

We cannot distinguish the Umerley site from numerous other M.L.-I.M. sites between Philadelphia Road and the CSX Railroad. Numerous sites in the southeastern County coastal plain have wetlands, as shown by the testimony of the land planners. A difficulty inherently exists in locating such a site without the need for variances as to homes, residential zones and wetlands in the Philadelphia Road Corridor and the southeastern County. Furthermore, the ill effects of the Umerley trucking operation appear to be no worse than those expected with any trucking facility.

In evaluating this special exception request, let us consider Section 502.1 of the Regulations in detail, sub part by sub part, as follows:

County Council enacted the legislation, which included, in substance, the provisions of the Planning Board Report. This Report, dated February 19, 1976, contains a discussion which is so important that it is reproduced here in full:

PROPOSED ZONING AMENDMENTS: TRUCKING FACILITIES

A Final Report of the Baltimore County Planning Board

DISCUSSION At this point in history, the trucking industry may be described as the life-blood system of American commerce. Trucks move goods with flexibility unmatched by any other present mode of transportation.

Unfortunately, the facilities that serve and are served by the trucking industry are frequently incompatible with other business and industrial establishments. And, needless to say, they are totally inappropriate in or near residential areas: while most citizens have probably come to accept the noise and fumes of large tractor-trailers driving along major highways, they cannot find it so easy to accept the concentration of these factors at a truck terminal or truck yard operating day and night close to their homes.

The fact is, however, that a number of trucking facilities have been established too close to the homes of Baltimore County citizens over the years, especially in communities near major industrial areas. And it is not only the on-premise truck operations that have caused problems, for the facilities are frequently so situated that trucks must gain access to them by way of small, residential streets.

By and large, the trucking facilities causing these problems have been established in accordance with present zoning regulations. It has become apparent that those regulations are inadequate in many respects - not just in their lack of safeguards for the welfare of residential areas adjacent to trucking-facility sites, but also in their failure to prescribe modern development standards.

It is the purpose of the regulations proposed here to remedy those deficiencies, both in terms of control over the development of new facilities and in terms of remedial measures applicable to existing ones.

The proposed regulations are based to a large extent on recommendations of the special Citizens Task Force on Truck Terminals, appointed by County Executive Theodore G. Venetoulis and chaired by Councilman John W. O'Rourke. The Planning Board has reviewed the Task Force proposal over a period of several months,

1. As to "health," the subject property is no more a health hazard than any like truck terminal, and it and the trucks are subject to the State and Federal regulations. Further, the site is served by public water and public sewer. As to dust, Mr. Umerley has agreed to employ a sweeping machine more often than the present once monthly, and also to utilize a water truck to keep the dust down. The Council was certainly aware that trucks which serve the construction industry become dusty with dirt, concrete dust, salt dust, etc. This dust is a normal part of a terminal serving the construction trades.

2. As for "safety," pursuant to the State Highway Administration and Baltimore County comments, Mr. Umerley has agreed to widen Philadelphia Road on his side in front of the site, and this widening has also been echoed by the testimony Mr. Wes Guckert, traffic engineer, and is adopted and contained in Mr. Guckert's report, Petitioners' Exhibit 15. Since 1958, Mr. Umerley testified, there has only been one accident in front of the site. A car ran into the rear of an Umerley truck, and it was not the fault of the driver. The widening will act to help prevent a repetition of such an accident.

3. As for "general welfare," the subject property is located in an M.L.-I.M. zone, in a transportation corridor, with three major roads, two railroads, and an airport, and it has been in its present location since 1958.

4. As for "congestion in roads, streets or alleys," Mr. Guckert's report was offered as Petitioners' Exhibit 15, and Mr. Guckert counted the existing traffic from the site, and he determined that Philadelphia Road can adequately handle it, as it

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE - 38/5 of Philadelphia Road, 131' S of the c/1 of Ravenwood Road (9813 Philadelphia Road) 11th Election District 6th Councilmanic District  
Leo J. Umerley  
Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as Petitions for Special Exception and Zoning Variance filed by the owner of the subject property, Leo J. Umerley, by and through his attorney, John B. Gontrum, Esquire. The Petitions, as originally filed, requested a special exception to permit a Class II Trucking Facility on the subject property, zoned M.L., and variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: From Section 410.A.2 to permit a trucking facility within 300 feet of a residential zone, within 200 feet of wetlands, and parking within 25 feet of a residential dwelling or zone; from Section 253.4 to permit trucking facility parking within 100 feet of Philadelphia Road, said road abutting a residential boundary; from Section 410.A.3.B.3 to permit 35.5% of the subject site to be devoted to parking of trucks and trailers in lieu of the 75% required; from Section 410.A.3. B.5 to permit the elimination of required wheelstops; and from Section 243.2 of the B.C.Z.R. to permit a minimum building setback of 7 feet in lieu of the required 50 feet; all as more particularly described on Petitioner's Exhibit 1, the site plan to accompany the Petitions.

On the first hearing day for this matter, April 20, 1992, the Petitioner appeared, and through Counsel, added an additional request to the relief sought. Specifically, the Petitioner requested that a determination

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nation be made of the nature of the use that occurs on the subject property. The Petitioner alleged that the use may constitute a construction equipment storage yard, which is permitted as of right in an M.L. zone. The case was subsequently reconvened and two additional hearing days were conducted on June 19, 1992 and September 22, 1992.

Appearing in support of the Petitions were Leo J. Umerley, property owner, and his wife, Wanda Umerley. Mr. & Mrs. Umerley were represented by John B. Gontrum, Esquire. Also appearing on behalf of the Petitions was Ronald M. Kearney, the Registered Property Line Surveyor who prepared the original site plan submitted as Petitioner's Exhibit 1. The amended plan which will be described herein was ultimately submitted into evidence as Petitioner's Exhibit 5. Also appearing in support of the Petition were Joseph DiCara with the Baltimore County Office of Economic Development, Ray Piechocki and Barbara A. Daly. Appearing in opposition to the Petitioner's requests were numerous residents of the neighboring community known as Nottingham. The Office of People's Counsel also participated in opposition to the Petitions.

The subject property, known as 9813 Philadelphia Road, is located near the intersection of Philadelphia Road and Mohrs Lane. To the northwest of this site are the residential communities of White Marsh including a subdivision known as Nottingham which is located immediately across from the subject site on Philadelphia Road. To the southeast of the site, the property is bordered by the CSX Railroad and beyond that, Pulaski Highway (Maryland Route 40). To the west is the Baltimore Beltway (I-695). Said property is also located within the Chesapeake Bay Critical Areas near Bird River.

Presently, the business has grown so that now there are approximately 160 pieces of equipment stored on the property. Mr. Umerley also testified that he employs approximately 100 persons during the peak season and from 75 to 80 people during off-peak times of the year. He indicated that the Philadelphia Road site serves as his corporate headquarters, although he owns property in the Jacksonville and Phoenix sections of Baltimore County. Presently, the equipment utilized at the subject site includes tractor trailers, loaders, dump trucks, bulldozers, and other construction and trucking equipment. Mr. Umerley indicated that he does not transfer goods from one truck to another at this location and does not store goods on-site. Rather, the use of the subject property is as a storage and service location for his trucks. The hours of operation of the business are 24-hours per day, Monday through Friday, except for a skeleton crew which is on-site on Saturdays.

Mr. Umerley also testified that most of the traffic exiting from his facility turns south on Philadelphia Road and proceeds to the intersection of Philadelphia Road with I-695. Very little of the traffic proceeds northerly on Philadelphia Road. He also noted his business has maintained an excellent safety record.

On cross-examination, Mr. Umerley further described his business and the machinery used therein. He indicated that he maintains approximately 4 bulldozers and 4 front-end loaders. However, the majority of the vehicles maintained are clearly trucks, including 70 different trailers. He also admitted that many of the trucks leave the site during the early morning hours from midnight to 6:00 AM. Apparently, these trucks leave at that time to serve Mr. Umerley's clients during the work day. Most then

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return by 6:00 PM and from 6:00 PM to 12:00 AM, maintenance is performed within the brick and block building on site.

Also testifying in favor of the Petition was Ronald M. Kearney, who prepared the site plan identified herein as Petitioner's Exhibit 5. Mr. Kearney fully described the Umerley property as set forth above. He corroborated Mr. Umerley's testimony that there would be no construction on Lots 6 and 8 and that said lots are wooded. He confirmed the accuracy of the information contained on the site plan, including the notation that up to 100 trucks would exit/enter the property per day. As to the variances, he believes that they should be granted. He indicated that the variances were necessary due to the topography of the land and the location of existing buildings thereon. In this respect, he observed that the buildings on-site have been in place for many years and were originally constructed and added onto under permits indicating the use as a construction equipment storage yard.

As to the Petition for Special Exception, Mr. Kearney also testified in favor thereof. He noted that the lots on which the special exception is proposed are narrow, yet deep, and that most of the activity involving the business at the facility occurs on the rear of the tract, away from the residential community of Nottingham located across Philadelphia Road. In his view, continued use of the property in the present manner would not be detrimental to the health, safety or general welfare of the locale.

Also testifying in favor of the Petitions was Joseph DiCara of the Baltimore County Office of Economic Development. Mr. DiCara testified that the Umerley operation was an important and viable business for Baltimore

An understanding of the gross tract owned by the Petitioners and the portion thereof devoted to the proposed use is necessary in order to evaluate the relief requested. Mr. Umerley actually owns a number of contiguous lots at the subject location. These lots are identified on the site plan as Lots 1, 2, 3, 5, 6 and 8. The southernmost lot is designated on the plan as Lot 1. Lot 1 is an unimproved parcel which contains wetlands and extends along the entire southern boundary of the involved lots. This Lot is not part of the properties for which the instant Petitions were filed. At the other end of the tract on the north side is a parcel known as Lot 3. This lot also abuts Philadelphia Road and is not part of the special exception use. However, unlike Lot 1, Lot 3 does not extend as far easterly as the railroad tracks to the rear of the site. Lot 3 is improved with a two-story brick and block building which is used for an unrelated office use. The property which is the subject of the instant Petitions involves the remaining lots, identified as Lots 2, 5, 6 and 8 on Petitioner's Exhibit 5. Lot 2 is situated between Lots 1 and 3. It immediately abuts Philadelphia Road and extends southeasterly towards the rear of this site. Thereafter, the property merges into Lot 5 which continues in an easterly direction until it ends at the railroad tracks. North of Lot 5, and to the east (rear) of Lot 3, are Lots 6 and 8. Presently, these are unimproved. As indicated, the proposed use is confined to Lots 2, 5, 6 and 8. In area, these four lots encompass 8.5 acres. They are zoned M.L.-I.M., but for a small sliver on the southwest corner of Lot 2, which is zoned D.R. 5.5.

A review of the testimony is also helpful in understanding the issues presented. Mr. Umerley, legal owner and proprietor of the business which operates on this site, testified that he originally purchased Lot 2

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more County which provided needed jobs, especially to those residents on the eastern side of Baltimore County.

Testifying in opposition to the Petitions filed were numerous witnesses, including Gary Hoffman with General Services Engineering, a business which is also located on Philadelphia Road and immediately adjoins Lot 1. Mr. Hoffman commented on what he perceives to be an obnoxious use on the Umerley property. He is particularly upset with the amount of dust which is generated on-site. He complained that much of this dust filters across vacant Lot 1 onto his property and produced pictures in support of this contention. Mr. Hoffman further believes, notwithstanding the Petitioner's offer to install a durable and dust-free surface, that dust would continue to be generated because of the nature of the traffic and business on the site. Mr. Hoffman also objects to the use of the property and potential environmental hazards. He noted that once an oil spill occurred on the wetlands that traverse his property. Although the source of the spill was never found, he believes that the chemicals involved came from the Umerley lot. In his view, additional environmental hazards could result if the Petitioner's business were allowed to continue.

Also testifying in opposition was John Morazzano who lives immediately across from the subject site. Mr. Morazzano testified that the operation which Mr. Umerley conducts has markedly changed in the past six years. Specifically, he noted that Mr. Umerley's operation used to involve dump trucks, back-hoes, and other construction equipment. He testified that within the last six years, more and more 18-wheelers and heavy-duty trucks and trailers have appeared at the site.

Also appearing in opposition was Marie Simoes of the Nottingham Improvement Association. Ms. Simoes objects to the use on the Umerley

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in 1958 and constructed a two-story building thereon. This building serves as the office/headquarters for his business known as Leo J. Umerley, Inc., trading as Umerley Trucking Co. In 1961, an addition was added on to the building. In 1962, another addition was added and Mr. Umerley purchased Lot 5, located to the rear of Lot 2. Shortly thereafter, he acquired the unimproved parcel known as Lot 1 and in 1989, he acquired Lots 3, 6 and 8 from John Dudley. Mr. Umerley indicated that, although they are part of the special exception tract, he does not intend to improve Lots 6 and 8, but rather will keep them in their natural state. Further, Lot 1, which is not subject to this Petition, and contains wetlands, will likewise not be disturbed. A storm water management pond is to be located on that lot, however.

As to the history of his operation, Mr. Umerley indicated that he originally went into the business in 1946 when he started as a building contractor. At that time, his only vehicular equipment consisted of two dump trucks and a back-hoe. By 1958, the business had grown and approximately 25 pieces of equipment were owned. Through the 1960s, the business continued to prosper. Mr. Umerley described his business during that time as that of a salt contractor, a transportation business, and land development. A major part of his business involved the hauling of salt from a warehouse facility in the Port of Baltimore to the various State and County roadside facilities located throughout the Baltimore-Metropolitan area and adjacent to arterial and major roads. Specifically, Mr. Umerley contracted with the State and County to transport salt and chemicals from the supplier's warehouse to various locations for use by State and County road crews during inclement weather.

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property for a number of reasons. First, she believes that serious traffic congestion has resulted due to the use on site and that this problem will exacerbate as the business grows. She also noted a number of environmental problems, particularly the noise generated from this site on a 24-hour per day basis. She believes that the hours of operation are too long.

Although not entirely comprehensive, the above reflects a general summary of the testimony presented. In addition to the testimony and evidence produced at the hearing, I also made an inspection of the property and vicinity during a site visit. The first issue to be addressed is the additional relief requested on the first hearing day. As indicated above, the Petitioner avers that the use on the subject property is a construction equipment storage yard, and therefore, is permitted as of right. The Petition specifically relies on Mr. Umerley's testimony in this respect. In this regard, the property owner's testimony was that although the business has been enlarged, it is basically the same today as was originally begun on the property in 1958. That is, Mr. Umerley insists that although he has obtained more equipment, the nature of the use has not changed.

A construction equipment storage yard, which indeed is permitted as of right in an M.L. zone, is defined in Section 101 of the B.C.Z.R. as "The use of any space, whether inside or outside a building, for the storage of construction equipment or machinery, including landscaping equipment and associated materials." (Bill 149-87).

People's Counsel and the neighbors disagree with Mr. Umerley's assertion. They believe that the property is not used as a construction equipment storage yard. To the contrary, they allege that the use is a trucking facility which requires a special exception in an M.L. zone. A

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trucking facility is likewise defined in Section 101 of the B.C.Z.R. as: "A structure or land used or intended to be used primarily, a) to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or vehicles of other types in order to facilitate the transportation of such goods or chattels; or, b) for truck or truck trailer parking or storage." The definition thereafter goes on to fully delineate the types of uses that may encompass a trucking facility. The B.C.Z.R. goes on to delineate two types of trucking facilities; namely, a Class I use and a Class II facility. A Class II Trucking Facility, which is what is requested within the Petition for Special Exception, is defined as "A trucking facility other than a Class I trucking facility, including a truck yard (the primary purpose of which is to accommodate the parking or storage of trucks, truck trailers, or truck tractors.) (Bill No. 18-76, 1976)."

Based upon the evidence presented, it is clear that the use on this site constitutes that of a trucking facility. Although Subsection "a" of the trucking facility definition cited above does not apply to the use on site, Subsection "b" is clearly applicable. That is, there can be no doubt that both the structure and land on the Umerley site are used for truck or truck trailer parking or storage. The testimony of all of the witnesses was clear that this property serves as the base for the Umerley trucking business. Trucks are stored and repaired on this site during much of the day. When not so stored, they are in the service of the business and work for Mr. Umerley's clients. Although there are a few pieces of non-trucking construction equipment on the site, including back-hoes and bulldozers, the number of those pieces of equipment is minimal. The tractor trailers and large trucks kept on this site cannot in any stretch of

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the imagination be considered construction equipment. The present use is a trucking facility, plain and simple.

Additionally, notwithstanding Mr. Umerley's assertions, it appears that the nature of the use conducted on site has changed over the years. Although the evidence was insufficient to affix any percentage basis, it appears that at one time a large portion of the business was devoted to land development and the storage of construction equipment on-site. This clearly is no longer a significant part of the business. Although there is some construction equipment on-site, there is no doubt that this business has evolved to a full-scale trucking operation.

Having therefore identified the activity on the property as a trucking facility, as that term is defined in the B.C.Z.R., attention is next turned to the merits of the Petition for Special Exception. Clearly, a trucking facility is permitted at this site only by special exception. In fact, Section 253, et sec. of the B.C.Z.R. delineates uses permitted in an M.L. zone. That section defines uses which are permitted as of right, as well as those which are allowed by special exception. Pursuant to Section 253.2.A.6, a trucking facility is permitted only by special exception. In fact, as originally filed, the Petitioner sought a special exception for a Class II trucking facility.

With regard to the history of this site about which much testimony has been presented, it is significant to note Section 410.A of the B.C.Z.R. This section, entitled Class II Trucking Facilities, was enacted by the Baltimore County Council in Bill No. 18-76. The obvious purpose of the Bill was to identify and regulate trucking facilities within Baltimore County. In essence, the Bill provided a mechanism for owners/operators of Class II Trucking Facilities to register their facilities with the Zoning

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Office to legitimize same. That is, Section 410.A establishes a grandfathering procedure by which the owners of Class II Trucking Facilities could register their property/use with the County and legitimize their businesses. A specific scheme was established for this registration procedure.

It is further to be noted that certain penalties for a property owner failing to comply with the registration process are set forth within the language of the Bill. Specifically, Section 410.A.1.d states that an owner of a Class II Trucking Facility who fails to comply with the applicable provisions of said Bill will result in the property being considered as a use in violation of the Zoning Regulations. Further, the legislation states that if an existing Class II Trucking Facility is not registered, the right to use same will cease three years after the date of the enactment of the Bill. In addition, failure to register the existing use will cause a forfeiture of the right of that use and application to continue the use will be considered as if it were a new use.

Inexplicably, the testimony and evidence presented indicate that Mr. Umerley did not avail himself of the opportunity presented by this legislation. Thus, the subject property is not registered as an approved Class II Trucking Facility in Baltimore County. Therefore, consideration of the instant Petition must be given as if the use does not exist and that same is proposed. It is indeed unfortunate that Mr. Umerley did not take advantage of this legislation. Perhaps he believed that his facility was not a Class II Trucking Facility, but a construction equipment storage yard, which, as indicated above, is permitted as of right. However, whatever the reason, the decision before me must be evaluated within the context as if the use did not exist. Therefore, issues as to the Petitioner's investment, the loss of existing jobs, etc., as testified to by Mr. DiCara, cannot be considered.

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Having therefore determined that the instant Petition must be treated without regard to Section 410.A, consideration must then be given to the merits of the proposed special exception. The concept of a special exception has been well-defined by the Maryland Courts. In Anderson v. Sawyer, 23 Md. App. 612, 329 A2d 716, the Court of Special Appeals noted that, "The special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible, absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan." Anderson, supra, Page 720.

Thus, the special exception use is presumptively valid. It should not be permitted only upon a showing that the use adversely impacts the surrounding locale in a manner over and above the inherent impact of the use. In Deen v. Baltimore Gas and Electric Company, 240 Md. 317, 214 A2d 146, the Court considered a request for a special exception to permit high tension transmission lines above-ground. The Court noted that there must be some showing that the proposed special exception use would produce an adverse impact unique to the subject locale. The Court noted, "Section 502.1 implies that the effect on health, safety or general welfare (of the proposed use) must be in some sense unique or else a special exception could never be granted in such an area for the above-ground location of high tension wires." Deen, supra, Page 331. As was well-stated by the

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Court of Special Appeals in the landmark decision, Schultz v. Pritts, 291, Md. 1, 432 A2d 1319, "Thus, these cases establish that the appropriate standard to 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 that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use, irrespective of its location within the zone." Page 1327. In fact, the Court of Special Appeals again recently considered Baltimore County's special exception statute in People's Counsel for Baltimore County v. Nicholas D. Mangione, 85 Md. App. 738, 584 A2d. 1318 (1991). In that case, the developer proposed construction of a nursing home in a residential community in Lutherville. The Court observed the nature of a special exception use and prior court decisions as set forth above. In Mangione, the Court noted that testimony was presented that the proposed use was to be nestled within a residential community. It was observed that the proposed use would block light and prevailing breezes from the west, would create storm water runoff, and potentially cause traffic congestion in the residential neighborhood. In reversing the Circuit Court's decision and denying the special exception, the Court affirmed a decision of the County Board of Appeals and held that these factors were sufficient to support the Board's finding that the developer had failed to meet his burden under Section 502.1 of the B.C.Z.R. Thus, in Mangione, the presumptive validity of the special exception use was invalidated upon the showing that the surrounding locale would be adversely affected in a unique fashion by the proposed use.

Section 502.1 establishes the standards which the Petitioner must

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satisfy for a special exception to be granted. That Section provides that:

"Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:

- a) be detrimental to the health, safety or general welfare of the locality involved;
- b) tend to create congestion in roads, streets or alleys therein;
- c) create a potential hazard from fire, panic or other dangers;
- d) tend to overcrowd land and cause undue concentration of population;
- e) interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
- f) interfere with adequate light and air;
- g) be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor
- h) be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations." (Bill No. 45-82).

In considering the application of the standards set forth in Section 502.1 to this case, a discussion of the locale is appropriate. From a Planning sense, the zoning classifications which about one another appear inconsistent. The Umerley property to the southwest side of Philadelphia Road is zoned M.L., a classification which permits light manufacturing uses. In fact, the M.L. regulations prescribe a vast majority of industrial, transportation and retail uses which are permitted as of right. These include such diverse uses as concrete products manufacturing, freight and building materials storage, and certain food and liquor stores. In contrast, the D.R. zoning across the street encourages the

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residential community therein. In fact, the D.R. zoning classification was specifically established to promote a variety of housing and residential uses (See Sections 1800.1 and 1800.2). Clearly, by their very nature, these zones are incompatible and the uses thereon inconsistent. It is indeed unfortunate that a different zoning classification is not assigned to this locale to allow a buffer of the incompatible uses presented.

As to the special exception use, testimony was presented that the operation is ongoing 24 hours a day. Further, although no specific traffic counts were done, the site plan submitted reflects that up to 100 truck trips are generated by this site on a daily basis. From the residential community's standpoint, the most obnoxious effect of the Umerley operation arises during the repair and maintenance operation of the vehicles stored on-site. Testimony was that when the vehicles are returned to the property after a full day in service, they are repaired and tested during the early morning hours. Testimony and evidence was presented by the Protestants that loud engine noises could be heard throughout the community, even during the early morning hours. Additionally, there was substantial testimony regarding the adverse traffic impact caused by the facility, as well as the dust and airborne debris generated by the use at this site.

Recognizing these problems, the Petitioner offered to reduce the impact of the operation by imposing several restrictions thereon. This included the preservation of Lots 1, 3 and 8 as a buffer, a proposal to widen Philadelphia Road in front of the property, and to install a durable and dustless surface to prevent dust and other airborne particulate. However, Mr. Umerley did indicate that the hours of operation could not be adjusted from the 24-hour basis presently employed.

Although I am appreciative of the Petitioner's well-meaning offer

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to limit his use, his voluntary restrictions do not go far enough. Particularly, the buffering of the business by Lots 1, 3 and 8 (on the north and south sides of the property) provides no relief to the residential neighbors on the other side (west) of Philadelphia Road. Further, even with the installation of a durable and dustless surface, the vehicles themselves generate dust and smoke when returning from their job sites. I do not believe that there are any restrictions which could sufficiently soften the impact of this business on the surrounding community.

In considering all of the testimony and evidence presented, I am persuaded that the Petitioner has failed to meet his burden and that the Petition must therefore be denied. As indicated within the discussion above, I am particularly persuaded to reach this result because of the character of the surrounding locale and the nature of this business. This neighborhood, where residential communities abut an M.L. zone, convinces me that the presumptive validity of the special exception use proposed must be negated in this instance. Further, the scope of the business (number of trucks, hours of operation, size of vehicles used, etc.), convinces me that this unique use is detrimental at this particular location. I reach this conclusion fully aware of the existing use on site, the history thereof, and the impact of my decision on the economic viability of this business. To those considerations, I can only again reference Section 410.A of the B.C.Z.R. and the Petitioner's failure to obtain proper grandfathering for his business. Treating this facility as if same were proposed, the facts and evidence presented do not support a conclusion that the Petitioner has satisfied his burden and that the operation can be conducted without significant detriment to the surrounding locale. Simply stated, a 24-hour trucking facility at this location, immediately adjacent

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to a residential community is so incompatible that it cannot be permitted.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons given above, the relief requested in the Petitions for Special Hearing and Special Exception must be denied. Further, having reached this conclusion, the relief requested in the Petition for Zoning Variance shall be dismissed as moot.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 15th day of December, 1992 that the Petition for Special Hearing (submitted at the hearing) to approve the use of the subject property as a construction equipment storage yard, in accordance with Petitioner's Exhibit 5, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a Class II Trucking Facility on the subject property zoned M.L., be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Zoning Variance seeking relief from the B.C.Z.R. as follows: From Section 410.A.2 to permit a trucking facility within 300 feet of a residential zone, within 200 feet of wetlands, and parking within 25 feet of a residential dwelling or zone; from Section 253.4 to permit trucking facility parking within 100 feet of Philadelphia Road, said road abutting a residential boundary; from Section 410.A.3.B.3 to permit 35.5% of the subject site to be devoted to parking of trucks and trailers in lieu of the 75% required; from Section 410.A.3.B.5 to permit the elimination of the required wheelstops; and from Section 243.2 of the B.C.Z.R. to permit a minimum building setback of 7 feet in lieu of the required 50 feet; in accordance with Petitioner's Exhibit 5, be and is hereby DISMISSED.

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LES:bjjs

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LAWRENCE E. SCHMIDT  
Zoning Commissioner  
- 17 - for Baltimore County

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER  
AND VARIANCE  
SE/S Philadelphia Rd., 138' S of : OF BALTIMORE COUNTY  
C/L of Ravenwood Road  
11th Election District  
6th Councilmanic District  
LEO J. UMERLEY, Petitioner : Zoning Case No. 92-346-XA

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 47, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204-4606  
(410) 887-2188

I HEREBY CERTIFY that on this 2nd day of April, 1992, a copy of the foregoing Entry of Appearance was mailed to John B. Gontrum, Esquire, 814 Eastern Blvd., Baltimore, MD 21221, Attorney for Petitioner; and Gloria Turner, President, Nottingham Improvement Assn., 9226 Ravenwood Rd., Baltimore, MD 21237.

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Phyllis Cole Friedman  
Phyllis Cole Friedman

APPEAL

Petition for Special Exception and Zoning Variance  
SE/S of Philadelphia Road, 138' S of the c/l of Ravenwood Road  
(9813 Philadelphia Road)  
11th Election District - 6th Councilmanic District  
LEO J. UMERLEY-PETITIONER  
Case No. 92-346-XA

- Petition(s) for Special Exception and Zoning 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 (Included with ZAC Comments)
- Petitioner(s) and Protestant(s) Sign-In Sheets

- Petitioner's Exhibits:
- 1. Plat to accompany Petition
  - 2. Study Area Boundaries Map
  - 3. Photographs of site
  - 4. Copy of Zoning Map, NE-6H
  - 5. Plat to accompany Petition
  - 6. Copy of Traffic Volume Map
  - 7. Copy of 1971 Zoning Map
  - 8. Copy of Application for Permit
  - 9. Eleven Photographs of site
  - 10. 1992 Log Book

- Protestant's Exhibits:
- 1. Six Photographs of site.
  - 2. One Photograph of dust problem
  - 3. Four Photographs of site
  - 4. One Photograph of site
  - 5. Aerial Photograph of neighborhood
  - 6. Six Photographs of neighborhood
  - 7. One Photograph of site
  - 8. One Photograph of site.

Zoning Commissioner's Order dated December 15, 1992 (Denied)

Notice of Appeal received on January 5, 1993 from John B. Gontrum

cc: LEO J. Umerley, 9813 Philadelphia Road, Baltimore, MD 21237  
John B. Gontrum, Esquire, 814 Eastern Blvd., Baltimore, MD 21221 w/d rec  
Mr. Gary R. Hoffman, 9729 Philadelphia Road, Baltimore, MD 21237  
Mr. John Morazzano, 9909 Philadelphia Road, Baltimore, MD 21237  
Ms. Marie Simoes, 1314 Spotswood Road, Baltimore, MD 21237  
People's Counsel of Baltimore County  
Old Courthouse, 400 Washington Avenue, Towson, MD 21204

Request Notification: P. David Fields, Director of Planning & Zoning  
Patrick Keller, Office of Planning & Zoning  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy M. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Coordinator  
Docket Clerk  
Arnold Jablon, Director of ZADM  
Public Services

w/d  
appeal  
re entered  
12/10/92  
w/d 1/20/93

E

The Umerleys make much of the fact that their operation contributes substantially to the area economy, and that they will be forced to close their business if the requested variances and special exception are not granted. They also make much of the fact that the Baltimore County Council explicitly stated that part of the purpose of the 1976 trucking facility regulations is to "accommodate trucking activities, in recognition of their importance to the economy of the County and the nation." BCZR 410A.4.B.7. The Umerleys argue that this provision shows that the Baltimore County Council did not intend to force trucking operations out of business with the 1976 regulations, and that we should effectuate that intent by upholding the Board of Appeals's ruling.

We agree that the Baltimore County Council did not intend to drive legitimate trucking operations out of business with the 1976 trucking regulations. That is why it included the exemption provisions in those regulations. The Umerleys failed to take advantage of the window of opportunity opened by those exemption provisions; as a result, their operation has been in violation of the law for the past seventeen years. The only way for them to comply with the law is to petition for variances and a special exception. Because the Umerleys failed to produce substantial evidence showing that their property is "unique" within the meaning of applicable Maryland law, their variance requests must be denied.

As a final matter, we note that the Umerleys might have been able to undertake their 1980s expansion activities legally had they

properly complied with the exemption provisions of the 1976 regulations. Under BCZR 410A.1.E.1, a nonconforming trucking facility that existed at the time the 1976 regulations were passed and that properly complied with the applicable exemption provisions is allowed to expand its activities "to the minimum extent necessary to comply with the standards of Subsection 410A.3" as long as the zoning commissioner determines that "the expansion would be in the interest of the general welfare of the community. . . ." Regulation 410A.3 provides, in relevant part, that all trucking facilities must be located on lots that are at least five acres (BCZR 410A.3.B.1), and that all trucking facilities must contain "adequate rest-room facilities, a drivers' room, and telephone service for the truck drivers and other personnel. . . ." BCZR 410A.3.B.8. In the 1980s, the Umerleys: 1) expanded their lot on which they conducted their trucking operations from 2.5 acres to 5.3 acres; and 2) constructed a two-story office building on the original 2.5 acre site. Given the provisions of BCZR §§ 410A.1.E.1, 410A.3.B.1, and 410A.1.B, such activities might have been proper had the Umerleys properly complied with the exemption provisions of the 1976 regulations.

II. Special Exception

When a use district is established, applicable regulations allow two types of uses: 1) those permitted as of right; and 2) those permitted only on a showing that certain conditions have been met. *Schultz v. Pritts*, 291 Md. 1, 20-21 (1981). A person wishing to engage in the latter type of use must petition the appropriate

zoning authority in order to do so, and the petition must show that all of the applicable conditions are met. *Id.* If all of the required conditions are satisfied, the petitioner is given permission, otherwise known as a special exception, to engage in the conditional use. *Id.*

The difference between a special exception and a variance lies in the legislative approval of the underlying use. A special exception grants permission to engage in a use that the appropriate legislative authority has sanctioned under certain conditions. The special exception is an acknowledgement by the appropriate zoning authority that those conditions have been met. A variance, by contrast, grants permission to engage in a use that the appropriate legislative authority has otherwise proscribed. It represents a determination by the appropriate zoning authority that adherence to the letter of the applicable zoning regulations would result in extreme hardship to the property owner. See *Cromwell*, supra, 102 Md. App. at 699-703.

In the case *sub judice*, the Umerleys petitioned for a special exception to operate a Class II trucking facility on the subject property. For such a special exception to be granted, the Umerleys must show that all of the conditions established by the Baltimore County Council for operation of a Class II trucking facility are met.

The Umerleys cannot meet several of the applicable conditions. Accordingly, they have applied for variances from those conditions. As noted in the preceding section, however, the petition for those

variances will not be successful. As stated *supra*, because the Umerleys failed to produce substantial evidence showing that the subject property is "unique," their variance requests must fail.

Whether the Umerleys could have obtained the special exception had they succeeded in obtaining the variances is an interesting question, and one that we recently noted. See *Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 324, 336 (1995) (asking, "Does the legislative intent that the [conditional] use be permitted remain if the conditions are not met but are eliminated by an administrative body granting a variance?"; also noting that, under such circumstances, "the presumption that a conditional use is permitted may well fall by the wayside."). In *Chester Haven*, however, we did not reach that question because the petitioner was unable to acquire the requested variances. We said that, once "the variance process fails, the entire application fails." *Id.*

In the case *sub judice*, the Umerleys have failed in their attempt to acquire variances from the restrictions that must be met in order to operate a Class II trucking facility. Accordingly, their petition for a special exception to operate such a facility must also fail.

JUDGMENT AFFIRMED.  
APPELLANTS TO PAY THE COSTS.

92-346-XA / Leo J. Umerley  
ET REVERSES majority CBA  
Hon. J. Norris Byrnes- 3/22/95

IN THE MATTER OF UMERLEY \* IN THE CIRCUIT COURT  
\* FOR BALTIMORE COUNTY  
\* Case No. 94CV-00450

MEMORANDUM OPINION AND ORDER

This is an appeal by Nottingham Improvement Association, Gary Hoffman and the People's Counsel for Baltimore County, (Appellants) from a decision of the County Board of Appeals, granting Petitioner Leo J. Umerley's, request for a special exception and variances to operate a Class II truck facility on Philadelphia Road in Baltimore County.

Petitioner has been operating a trucking facility at 9813 Philadelphia Road since the late 1950's. Over the years, the business has increased in size and scope. For the last sixteen years, he has been operating his facility in violation of the Baltimore County Zoning Regulations (BCZR).

The site in question lies to the northeast of Baltimore City between and parallel to U.S. Interstate 95 and U.S. 40. The zoning and uses in the area are mixed. On the north side of Philadelphia Road, a two-lane arterial road, there are residential zones; the south side is generally zoned industrial. The subject property is on the south side of Philadelphia Road and is zoned ML-IM. The property, which was acquired over a number of years, consists of 8.5 acres. It

contains some wetlands and is within 300 feet of residential property. It is across the street from the Nottingham residential area, which is zoned DR-2.

In 1976, as a result of a number of complaints about "wild cat" truckers, the Baltimore County Council adopted Bill 18-76, which sought to regulate trucking facilities in Baltimore County. All trucking facilities were given a three year window of opportunity in which to comply with the new law. Petitioner did not do so. Because he did not, he is now required "to conform with all provisions of [the] zoning regulations as if there were a new use." BCZR §410-A-I-D.

The Zoning Commissioner denied Petitioner's request for a special exception for a Class II trucking facility as well as a request that the use in question comprises a construction equipment and storage yard. Petitioner appealed to the Board of Appeals. Following two days of hearings in September of 1993, the request for special exception for a Class II trucking facility on ML property, as well as a request for a number of variances, subject to certain conditions, were granted.

QUESTIONS PRESENTED

1. ARE THE VARIANCES FROM THE WETLANDS AND RESIDENTIAL USE PROPERTY "HEIGHTENED AREA" REGULATIONS WHICH MAY BE THE SUBJECT OF A ZONING VARIANCE?
2. IF THE ANSWER TO QUESTION ONE IS YES, DO THE VARIANCES MEET APPLICABLE REQUIREMENTS OF THE BALTIMORE COUNTY ZONING REGULATION?

3. WAS THERE SUFFICIENT EVIDENCE BEFORE THE BOARD OF APPEALS TO PERMIT THE GRANTING OF A SPECIAL EXCEPTION FOR A CLASS II TRUCKING FACILITY IN ML, ZONE 2?

SCOPE OF REVIEW

[T]he order of an administrative agency must be upheld on judicial review, if it is not based on error of law, and if the agency's conclusion reasonably may be based upon the fact proven. But a reviewing court is under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law. *People's Counsel v. Maryland Marine* 316 Md. 491, 496-97 (1989).

If there is substantial evidence, that is to say relevant evidence, that a reasonable mind might accept as adequate to support such a conclusion, this Court must accept it and may not substitute its judgment for the expertise of those persons who constitute the administrative agency from which the appeal is taken. *Bernstein v. Real Estate Commission*, 21 Md. 221 (1959); *Younkers v. Prince George's County*, 333 Md.14 (1993). With this admonition in mind, the Court turns to the question whether the requested variances are "use" variances or "area" variances.

VARIANCES

An area variance is one involving a variance from height, density, set back or side line restrictions. A use variance is one that permits a use other than that permitted in a particular district, such as a variance to permit a commercial use in a residential district. *Anderson v. Board of Appeals*, 22 Md. App., 28, (1974).

Appellants argue that the requested variances are use variances while Petitioner contends they are area variances.

The authority for the Board to grant a variance is found in section 307.1 of the Baltimore County Zoning Regulations, which specifically grants:

"the power to grant variance from height and area regulation being from off-street parking regulation, only in a case where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requested where strict compliance with the zoning regulations from Baltimore County would result in practical difficulty or unreasonable hardship. . . no increase in residential density beyond that otherwise allowable by the Zoning Regulation shall be permitted as a result of any such grant of a variance from height or area regulation. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulation, and only in such manner as to grant relief without injury to public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the zoning commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the zoning commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such a variance. (BCZR, 95; Bill No. 107, 1963; No. 32, 1988; Bill No. 2, 1992)."

The use of the property is governed by the Baltimore County Zoning Regulations and, depending upon the classification, there are permitted uses and uses that may be allowed through a special exception. As noted, area variances do just what the term implies: dictate distances up or down and side to side. The Board found the variances requested here are area variances and not use variances. There was substantial evidence before the Board to support this conclusion. *Bernstein Supra*.





**Baltimore County Zoning Administration & Development Management**  
111 West Chesapeake Avenue  
Towson, Maryland 21286

**receipt**

Account: R-001-6199  
Number: **92-346XA**

Date: 1/14/93

APPEAL FEES	QTY	PRICE
120 -OF A SPECIAL EXC. ORDER	1 X	\$250.00
140 -OF ALL OTHER ORDERS	1 X	\$125.00
150 -POSTING SIGNS / ADVERTISING	1 X	\$85.00
<b>TOTAL:</b>		<b>\$460.00</b>

LAST NAME OF OWNER: UMERLEY

DA04#0094NICRC \$460.00  
BA C011#02AMD1-14-93

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Please Make Checks Payable To: Baltimore County

**Baltimore County Zoning Commissioner**  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21286

**receipt**

Account: R-001-6190  
Number: **92-346**

Date: 1/14/93

DA04#0121NICRC \$102.19  
BA C010#21AMD5-05-92

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**Baltimore County Zoning Commissioner**  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21286

**receipt**

Account: R-001-6199  
Number: **92-346**

Date: 1/14/93

PUBLIC HEARING FEES	QTY	PRICE
100 -POSTING SIGNS / ADVERTISING	1 X	\$102.19
<b>TOTAL:</b>		<b>\$102.19</b>

LAST NAME OF OWNER: UMERLEY

DA04#0121NICRC \$102.19  
BA C010#21AMD5-05-92

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Please Make Checks Payable To: Baltimore County

LAW OFFICES / ROMADKA, GONTRUM & McLAUGHLIN

CHECK 20872

DATE	DESCRIPTION	INVOICE #	AMOUNT	DEDUCTION	NET AMOUNT
1/14/93	Baltimore Co. T		425		425

CHECK DATE	CONTROL NUMBER	TOTALS

**CERTIFICATE OF POSTING**  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

92-346-XA

District: **14** Date of Posting: **01/14/93**

Posted for: **Appeal**

Petitioner: **Leo J. Umerley**

Location of property: **5616 Phil. Rd. (9213) 13F-3/Romney Rd.**

Location of Sign: **From road view, on property of Petitioner**

Remarks: **Notice**

Posted by: **Notice** Date of return: **2/4/93**

Number of Signs: **1**

**Baltimore County Zoning Commissioner**  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21286

**receipt**

Account: R-001-6199  
Number: **92-346-XA**

Date: 1/14/93

PUBLIC HEARING FEES	QTY	PRICE
100 -ZONING VARIANCE (OTHER)	1 X	\$125.00
150 -SPECIAL EXCEPTION	1 X	\$87.00
<b>TOTAL:</b>		<b>\$212.00</b>

LAST NAME OF OWNER: UMERLEY

DA04#0121NICRC \$212.00  
BA C011#02AMD1-14-93

**MICROFILMED**

Please Make Checks Payable To: Baltimore County

Baltimore County Government  
Office of Zoning Administration and Development Management  
Office of Planning & Zoning

111 West Chesapeake Avenue  
Towson, MD 21204 (410) 887-3353

DATE: **3/30/92**

Leo J. Umerley  
9613 Philadelphia Road  
Baltimore, Maryland 21287

RE:  
CASE NUMBER: 92-346-XA  
81/2 Philadelphia Road, 138' S of 47th Rowwood Road  
9613 Philadelphia Road  
11th Election District - 6th Councilmanic  
Petitioner(s): Leo J. Umerley

Dear Petitioner(s):

Please be advised that \$102.19 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID. ALSO, THE SIGNING SIGN & POST SET(S) MUST BE 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 forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204. It should have your own number noted thereon and be made payable to Baltimore County, Maryland. In order to prevent delay of the issuance of proper credit and/or your Order, immediate attention to this matter is suggested.

*Bill John*

WORLD JAMES  
DIRECTOR

cc: John B. Gontrum, Esq.

**MICROFILMED**

PETITION OF: People's Counsel for B. J. Co.  
CIVIL ACTION # 71/143/94-CV-00405  
IN THE MATTER OF LEO J. UMERLEY ET UX

RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS, BOARD'S RECORD EXTRACT & TRANSCRIPT FILED IN THE ABOVE-ENTITLED CASE, AND ZONING COMMISSIONER'S FILE AND EXHIBITS

*Angela Lee*  
Clerk's Office

Date: **3/10/94**

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning  
111 West Chesapeake Avenue  
Towson, MD 21204 (410) 887-3353

MARCH 20, 1992

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 118, Baltimore County Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 92-346-XA  
SE/3 Philadelphia Road, 138' S of c/1 Ravenswood Road  
9813 Philadelphia Road  
11th Election District - 6th Councilmanic District  
Petitioner(s): Leo J. Umerley  
HEARING: WEDNESDAY, MARCH 20, 1992 at 10:30 a.m.

Special Exception for a Class II Trucking Facility.  
Variances to permit a trucking facility within 300 ft. of residential zones and roadways, within 200 ft. of wetlands, for parking within 25 ft. of a residential dwelling or more; to allow a trucking facility within 100 ft. of Philadelphia Road; to permit 20.5% of site to be devoted to parking of trucks and trailers in line of the 7th roadway; to permit elimination of required wheel stops; and to permit minimum building setback of 7 ft. in lieu of the required 10 ft.

*Lawrence E. Schmidt*  
Lawrence E. Schmidt  
Zoning Commissioner  
BALTIMORE COUNTY

Noting Commissioner of Baltimore County

cc: Leo J. Umerley  
John B. Gontrum, Esq.

NOTE: HEARINGS ARE RECORDED SEPARATELY; FOR SPECIAL ASSIGNMENTS PLEASE CALL 887-3353.

MICROFILMED

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning  
111 West Chesapeake Avenue  
Towson, MD 21204 887-3353  
*May 20, 1992*

NOTICE OF REASSIGNMENT  
CONTINUED HEARING

CASE NUMBER(S): 92-346-XA  
LEGAL OWNER: Leo J. Umerley  
LOCATION: 9813 Philadelphia Road

HEARING OF THE ABOVE MATTER WILL TAKE PLACE AS FOLLOWS:

JUNE 19, 1992 at 9:00 a.m.

IN THE BALTIMORE COUNTY ROOM 106, COUNTY OFFICE BUILDING, 111 W. CHESAPEAKE AVENUE, TOWSON, MARYLAND 21204.

*Lawrence E. Schmidt*  
Lawrence E. Schmidt  
Zoning Commissioner  
BALTIMORE COUNTY

cc: Leo J. Umerley  
John B. Gontrum, Esq.  
People's Counsel

*Additional/Corrections made to original copies mailed.*

*Postponement requested by Leo due to medical. Committed to by people; Counsel + hotel stay. To be set before LES.*

MICROFILMED

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning  
111 West Chesapeake Avenue  
Towson, MD 21204 (410) 887-3353

AUGUST 5, 1992

NOTICE OF REASSIGNMENT

CASE NUMBER(S): 92-346-XA  
LEGAL OWNER: LEO J. UMERLEY  
LOCATION: 9813 PHILADELPHIA ROAD

HEARING OF THE ABOVE MATTER WILL TAKE PLACE AS FOLLOWS:

THURSDAY, SEPTEMBER 17, 1992 at 9:00 a.m.  
IN ROOM 118, OLD COURTHOUSE, 400 WASHINGTON AVENUE, TOWSON, MD.

*Lawrence E. Schmidt*  
Lawrence E. Schmidt  
Zoning Commissioner  
BALTIMORE COUNTY

cc: Leo J. Umerley  
John B. Gontrum, Esq.  
Gary and Barbara Hoffman  
Jean Chryet  
Ann DeWitt  
Hunter Bush  
Richard DeSimone  
Gloria J. Turner  
Marie Simoes  
John Morazzano  
Tom Coyle

MICROFILMED

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning  
111 West Chesapeake Avenue  
Towson, MD 21204 (410) 887-3353

AUGUST 10, 1992

NOTICE OF REASSIGNMENT

CASE NUMBER(S): 92-346-XA  
LEGAL OWNER: LEO J. UMERLEY  
LOCATION: 9813 PHILADELPHIA ROAD

HEARING OF THE ABOVE MATTER WILL TAKE PLACE AS FOLLOWS:

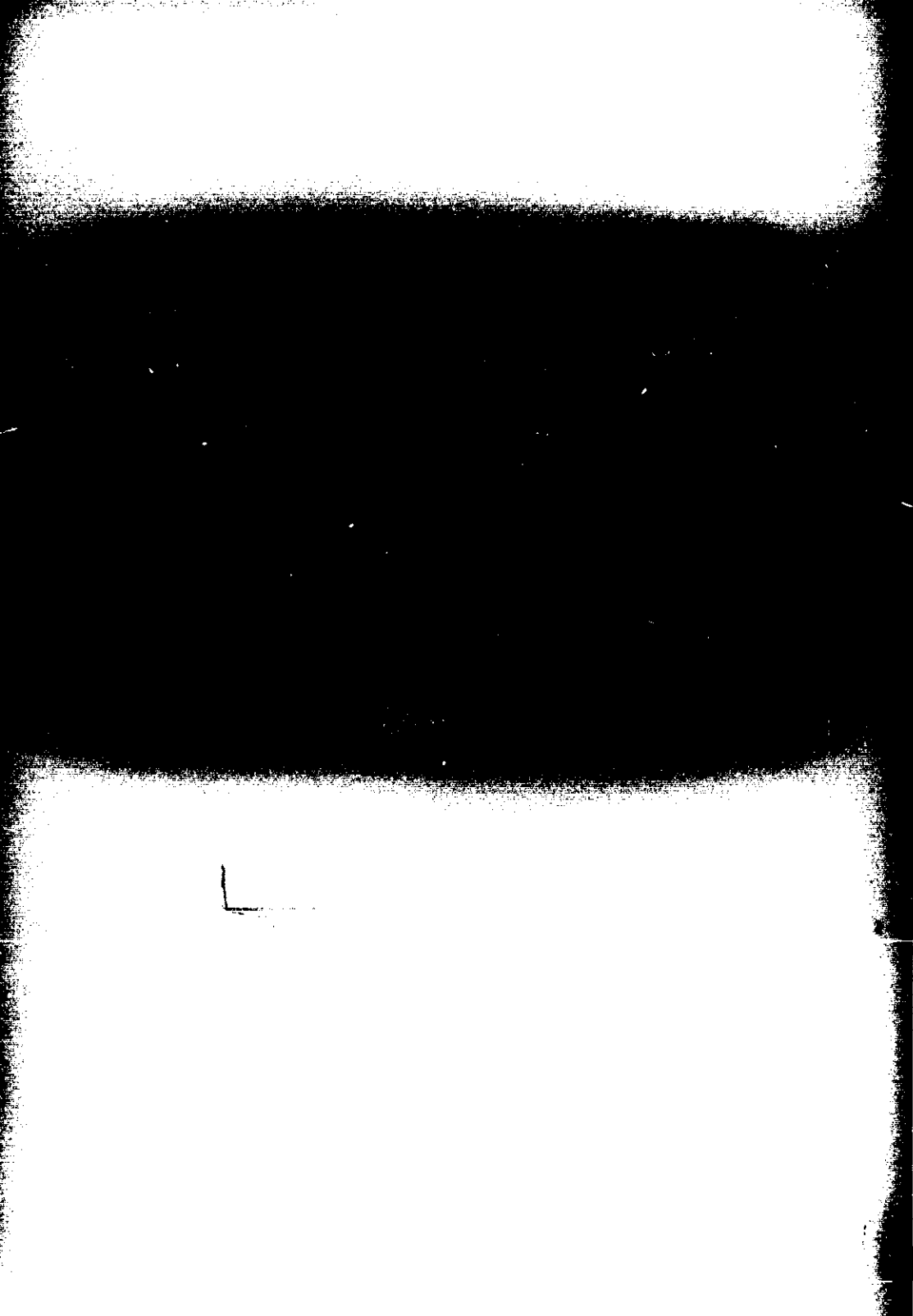
TUESDAY, SEPTEMBER 22, 1992 at 9:00 a.m.  
IN ROOM 118, OLD COURTHOUSE, 400 WASHINGTON AVENUE, TOWSON, MD.

*Lawrence E. Schmidt*  
Lawrence E. Schmidt  
Zoning Commissioner  
BALTIMORE COUNTY

cc: Leo J. Umerley  
John B. Gontrum, Esq.  
Gary and Barbara Hoffman  
Jean Chryet  
Ann DeWitt  
Hunter Bush  
Richard DeSimone  
Gloria J. Turner  
Marie Simoes  
John Morazzano  
Tom Coyle

MICROFILMED

Form CAD  
Jury Summons - 887-3888  
Civil Assignment Commissioner  
ASSIGNMENT OFFICE  
COUNTY COURTS BUILDING  
401 Bostley Avenue  
P.O. Box 6754  
Towson, Maryland, 21285-6754  
March 30, 1994  
Kathy Rushion - 887-3888  
Jury Assignments - Civil  
Jan Dockman - 887-3881  
Non-Jury Assignments - Civil  
PETER MAX ZIMMERMAN, ESQ.  
CAROLE S. DRICHELIO, ESQ.  
STEPHEN J. WOLAN, ESQ.  
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY  
RM. 49 COURTHOUSE  
TOWSON, MD 21204  
RE: Non-Jury 94 CY 405 - PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY FOR JUDICIAL REVIEW IN THE MATTER OF LEO J. UMERLEY, ET AL  
HEARING DATE: Appeal: 1-2 Hours Monday, June 20, 1994, @ 9:30 a.m.  
WITH THE EXCEPTION OF DOMESTIC CASES, COURT COSTS MUST BE PAID ON THE DATE OF SETTLEMENT CONFERENCE OR TRIAL, UPON SETTLEMENT OF THE CASE.  
POSTPONEMENT POLICIES:  
UPON RECEIPT OF THIS NOTICE, Counsel shall contact each other to confirm calendar for the above date(s).  
A request for postponement MUST BE MADE IN WRITING to the Assignment Office with a copy to all counsel involved.  
COUNSEL MUST NOTIFY THE CIVIL ASSIGNMENT OFFICE WITHIN 14 DAYS OF RECEIPT OF THIS NOTICE AS TO ANY CONFLICTS THAT MAY EXIST WITH THE ABOVE REFERENCED DATES. OTHERWISE, IT WILL BE ASSUMED THAT THESE DATES ARE VALID AND NO POSTPONEMENT WILL BE GRANTED.  
TTY for Deaf 383-7555 VOICE/TDD Md. Relay Service 1-800-735-2238



County Board of Appeals of Baltimore County  
OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180  
Hearing Room - Room 48  
Old Courthouse, 400 Washington Avenue  
May 10, 1993  
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. 92-346-XA LEO J. UMERLEY  
SE/s of Philadelphia Road, 138' S of the c/1 of Ravenswood Road (9813 Philadelphia Road) 11th Election District 6th Councilmanic District  
SE -Class II Trucking Facility; VAR -Location to residential community; setbacks, etc.  
12/15/92 -E.C.'s Order in which Petition for Special Exception is DENIED; Petition for Variances DISMISSED.  
ASSIGNED FOR: THURSDAY, JULY 8, 1993 AT 10:00 a.m.  
cc: John B. Gontrum, Esquire Counsel for Appellant /Petitioner  
Leo J. Umerley Appellant /Petitioner  
Gary R. Hoffman  
John Morazzano  
Marie Simoes  
People's Counsel for Baltimore County  
P. David Fields  
Lawrence E. Schmidt  
Timothy H. Rotroco  
W. Carl Richards, Jr.  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM  
Kathleen C. Weidenhammer  
Administrative Assistant

County Board of Appeals of Baltimore County  
OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180  
Hearing Room - Room 48  
Old Courthouse, 400 Washington Avenue  
July 8, 1993  
NOTICE OF 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. 92-346-XA LEO J. UMERLEY  
SE/s of Philadelphia Road, 138' S of the c/1 of Ravenswood Road (9813 Philadelphia Road) 11th Election District 6th Councilmanic District  
SE -Class II Trucking Facility; VAR -Location to residential community; setbacks, etc.  
12/15/92 -E.C.'s Order in which Petition for Special Exception is DENIED; Petition for Variances DISMISSED.  
which was scheduled to be heard on July 8, 1993 was POSTPONED on the record this date at the request of Counsel for Petitioner and reassigned to the following agreed-upon dates; and has been  
REASSIGNED FOR: WEDNESDAY, SEPTEMBER 22, 1993 AT 10:00 a.m.; THURSDAY, SEPTEMBER 23, 1993 AT 10:00 a.m.; and FRIDAY, SEPTEMBER 24, 1993 AT 10:00 a.m.  
cc: John B. Gontrum, Esquire Counsel for Appellant /Petitioner  
Leo J. Umerley Appellant /Petitioner  
Gary R. Hoffman  
John Morazzano  
Marie Simoes  
People's Counsel for Baltimore County  
P. David Fields  
Lawrence E. Schmidt  
Timothy H. Rotroco  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM  
Kathleen C. Weidenhammer  
Administrative Assistant



111 West Chesapeake Avenue  
Towson, MD 21204

April 6, 1992

(410) 887-3353

John B. Contrum, Esquire  
814 Eastern Blvd  
Baltimore, MD 21221

RE: Item No. 364, Case No. 92-346-SHA  
Petitioner: Leo J. Umerley  
Petition for Zoning Variance and  
Special Hearing

Dear Mr. Contrum:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, 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.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a review by Zoning personnel.

Zoning Plans Advisory Committee Comments  
Date: April 6, 1992  
Page 2

2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.

3) Attorneys and/or engineers who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the loss of filing fee.

Very truly yours,  
*W. Carl Richards, Jr.*  
W. Carl Richards, Jr.  
Zoning Coordinator

WCR:jw

Enclosures

cc: Mr. Leo J. Umerley  
9813 Philadelphia Road  
Baltimore, MD 21227

Zoning Plans Advisory Committee Comments  
Date: April 6, 1992  
Page 2

2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.

3) Attorneys and/or engineers who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the loss of filing fee.

Very truly yours,  
*W. Carl Richards, Jr.*  
W. Carl Richards, Jr.  
Zoning Coordinator

WCR:jw

Enclosures

cc: Mr. Leo J. Umerley  
9813 Philadelphia Road  
Baltimore, MD 21227



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

Your petition has been received and accepted for filing this 12th day of March, 1992.

*Arnold Jablon*  
ARNOLD JABLON  
DIRECTOR

Received By:  
*W. Carl Richards, Jr.*  
Chairman,  
Zoning Plans Advisory Committee

Petitioner: Leo J. Umerley

Petitioner's Attorney: John B. Contrum

MICROFILMED

DATE: April 8, 1992

TO: Mr. Arnold Jablon, Director  
Office of Zoning Administration  
and Development Management

FROM: Rahee J. Famili

SUBJECT: Z.A.C. Comments

Z.A.C. MEETING DATE: March 24, 1992

This office has no comments for item numbers 356, 357, 358, 359, 360, 361 and 364.

*Rahee J. Famili*  
Rahee J. Famili  
Traffic Engineer II

RJF/lvd

RECEIVED  
MAR 26 1992  
ZONING OFFICE

MICROFILMED

BALTIMORE COUNTY, MARYLAND  
INTER OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: March 24, 1992  
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E.

RE: Zoning Advisory Committee Meeting  
for March 24, 1992

The Developers Engineering Division has reviewed the subject zoning items and we have no comments for Items 354, 358, 358, 359, 360, 361 and 365.

For Items 357 and 364, these sites must be submitted through the new subdivision process for review and comments.

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

RWB:s

RECEIVED  
MAR 26 1992  
ZONING OFFICE

MICROFILMED

O. James Lighthizer  
Secretary  
Hal Kassoff  
Administrator

March 25, 1992

Mr. Arnold Jablon, Director  
Zoning Administration and  
Development Management  
County Office Building  
Towson, Maryland 21204

Re: Baltimore County  
Zoning Meeting of  
March 24, 1992  
Leo J. Umerley  
9813 Philadelphia Rd.  
MD 7

Attn: Ms. Julie Winiarski

Dear Mr. Jablon:

In response to the site plan for the above referenced property, which we received on March 19th, we offer the following comments:

- We strongly recommend the owner contact this office to request a permit for improvements to be made along the property frontage to accommodate large trucks turning into the site as well as exiting onto MD 7.
- If, in the future, any improvements or additions are made to the property, an access permit will be required for frontage improvements prior to the issuance of any building permits from Baltimore County.

If you have any questions concerning this information, please contact Peggy Blank of this office at 333-1350.

Very truly yours,  
*John Costello*  
John Costello, Chief  
Engineering Access Permits  
Division

PB:maw

cc: K.L.S. Consultants, Inc.  
Mr. Leo Umerley

RECEIVED  
MAR 26 1992  
ZONING OFFICE

My telephone number is 301-333-1350 (Fax# 333-1041)

Teletypewriter for Impaired Hearing or Speech  
383-7555 Baltimore Metro - 563-0451 D.C. Metro - 1-800-492-2082 Statewide Toll Free  
707 North Calvert St., Baltimore, Maryland 21203-0717



700 East Joppa Road Suite 901  
Towson, MD 21204-5500

(301) 887-4500

MARCH 31, 1992

Arnold Jablon  
Director  
Zoning Administration and  
Development Management  
Baltimore County Office Building  
Towson, MD 21204

RE: Property Owner: LEO J. UMERLEY

Location: #9813 PHILADELPHIA ROAD

Item No.: 364 Zoning Agenda: MARCH 24, 1992

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: *Carl Jerry Pfeiffer* Noted and Approved  
Planning Group Special Inspection Division Fire Prevention Bureau

JP/KEK

92-346-XA 4/20  
4/14/92 4/28/92  
6

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director  
Zoning Administration and  
Development Management  
DATE: April 7, 1992

FROM: Ervin McDaniel, Chief  
Office of Planning and Zoning  
Development Review Section

SUBJECT: Leo J. Umerley, Item No. 364

SUMMARY AND RECOMMENDATIONS:

The Office of Planning and Zoning does not object to the continued use of this property as a lawfully established trucking facility. However, we question whether a special exception should be granted for the existing business. The following comments are offered for consideration.

The existing use is not in conformance with the 1989 Master Plan which designates the front half of the site as "Office/Industrial". A trucking facility is not a nuisance free use and can create a visually unattractive area, especially in areas where the predominant use is residential. The sole means of access into this site is off of Philadelphia Road directly opposite a residential area.

The land area on the southeast side of Philadelphia Road, in the area of the subject site, is mostly zoned R-1M. The corresponding land on the opposite side of Philadelphia Road is mostly zoned residential. Granting a special exception would possibly establish a precedent for allowing additional trucking facilities in that area which would be detrimental to the residential neighborhood.

If the special exception is granted, then this facility should be made to comply, to the maximum extent possible, with the Zoning Regulations. Additionally, the plan should show the reservation of a 70 foot right-of-way for Yellow Brick Road. Public Works will determine the exact location of the right of way. Furthermore, the plan should be revised to show Philadelphia Road as an 80 foot ultimate right-of-way.

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

EM/PM/rdn  
364.ZAC/ZAC1

RECEIVED  
APR 9 1992

MICROFILMED

ZONING OFFICE

ZONING ENFORCEMENT  
Baltimore County  
Zoning Office  
Towson, Maryland 21284

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: Larry E. Schmidt  
Zoning Commissioner  
DATE: June 23, 1992

FROM: James H. Thompson  
Zoning Enforcement Coordinator

SUBJECT: CASE NO. 92-346-XA  
9813 PHILADELPHIA ROAD  
UMERLEY - PETITIONER  
15TH ELECTION DISTRICT

Please be advised that the above referenced public hearing is subject to a Zoning Enforcement case (No. 92-225). This case had been scheduled on July 1, 1992. However, we have requested that the case be postponed for a period of at least 90 days to allow you the opportunity to rule on the operation of the truck facility. Enclosed you will find a copy of the trial notice, postponement letter to Leo Thomson and Citation No. 92-225 that pertains to this site.

The Enforcement Division has no record of notification that the property owners, Leo J. and Wanda Umerley had finally filed for the public hearing or even that this matter was addressed before you by Attorney John B. Gontrom. I am not pleased with this development noting that on March 1, 1990 before then Zoning Commissioner, J. Robert Haines, Mr. Gontrom stated he would be seeking the route of a public hearing to hopefully resolve the outstanding zoning problems at 9813 Philadelphia Road. The time element towards bringing this site into compliance with the Baltimore County Zoning Regulations (B.C.Z.R.) has been quite lengthy (December 6, 1989). Therefore, please take into consideration in scheduling and rendering a decision in this instance.

If further questions remain as to the Zoning Enforcement file, please contact either Inspector Gary Freund or myself at 887-3351.

JT:car

cc: Inspector Gary Freund

ZONING ENFORCEMENT  
Baltimore County  
Zoning Office  
Towson, Maryland 21284

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: Lee Thomson  
Assistant County Attorney  
Office of Law  
DATE: June 22, 1992

FROM: James H. Thompson  
Zoning Enforcement Coordinator  
Zoning Enforcement Office

RE: Case No. SP00771-92  
Case No. 92-225  
9813 Philadelphia Road  
Umerley--Defendant

The above referenced case is scheduled for district court on July 1, 1992, at 1:30 P.M. Please reset the date at least 90 days forward since the case is presently at public hearing (Case No. 92-346-XA). Zoning Commissioner Lawrence E. Schmidt is addressing the matter of the operation of a truck facility, which relates directly to the citation.

JHT/cm

c: David M. Meadows, Esquire  
John B. Gontrom, Esquire  
Bernard J. Rolak, Sr.  
Inspector Gary Freund

MICROFILMED



DISTRICT COURT OF MARYLAND FOR BALTIMORE COUNTY  
111 ALLEGHENY AVENUE (N)  
TOWSON MD 21284 0884

BALTIMORE COUNTY, MARYLAND VS. UMERLEY, LEO J  
IN THE CIVIL CASE: SP00771 - 92 COMPLAINT: 001

TO: BALTIMORE COUNTY, MARYLAND  
92-225  
111 W CHESAPEAKE AVE  
TOWSON MD 21204

DATE: 04/23/92

HEARING/TRIAL NOTICE

THE COMPLAINT MERIT TRIAL IN THE CASE REFERENCED ABOVE IS SET FOR JULY 01, 1992, AT 01:30 PM AT THE LOCATION SHOWN ABOVE. ANY REQUEST FOR POSTPONEMENT MUST COME TO THIS COURT IN WRITING (REFERENCING ABOVE CASE NUMBER) IMMEDIATELY. PLEASE PROVIDE COURT WITH ESTIMATED TIME FOR TRIAL.

RECEIVED  
APR 27 1992

ZONING OFFICE

C2  
005345A

MICROFILMED

ZONING ENFORCEMENT  
Baltimore County  
Zoning Office  
Towson, Maryland 21284

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: Joseph T. O'Melia  
Administrative Clerk  
DATE: April 8, 1992

FROM: Baltimore County, Maryland

RE: Request for Trial

CASE NO. Case No. 92-225

LOCATION OF VIOLATION: 9813 Philadelphia Road Baltimore, MD 21237

DEFENDANT: Leo J. and Wanda Umerley  
Tenants by Entireties

ADDRESS: Blenheim Road Phoenix, MD 21131

In accordance with the established procedures, the enclosed zoning please find the citation referenced above, with the specified zoning violations(s).

As you will note, the witnesses and counsel in the above referenced case are listed below:

COUNSEL

Gary C. Freund  
Zoning Enforcement Section  
Zoning Inspector

Bernard J. Rolak, Sr.  
9727 Philadelphia Road  
Baltimore, MD 21237

/car

cc: H. Emalie Parks, Esquire  
County Attorney  
Office of Law.

Lee F. Thomson, Esquire  
Office of Law  
Counsel for Baltimore County

David M. Meadows, Esquire  
Moore, Carney, Ryan & Lattanzi  
4111 E. Joppa Road  
Baltimore, MD 21236

John B. Gontrom, Esquire  
Rasmussen, Gontrom & Hennegan  
814 Eastern Boulevard  
Baltimore, Maryland 21221

ON THE FOLLOWING RESIDENT NOTICE (DATE OFFICER (IF APPLICABLE):

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

CITATION NO. 92-225

NAME OF PERSON(S) CHARGED: LEO J. AND WANDA UMERLEY - TENANTS BY ENTIRETIES

CURRENT ADDRESS IS FULL: BLENHEIM ROAD PHOENIX, MD 21131

OWNER (S) OR OCCUPANT (S) RELATED CITATIONS:

IT IS HEREBY CHARGED BY BALTIMORE COUNTY THAT THE ABOVE NAMED PERSON(S) DID VIOLATE THE PROVISIONS OF THE BALTIMORE COUNTY ZONING REGULATIONS AND/OR THE BALTIMORE COUNTY CODE AS FOLLOWS:

SECTION NUMBER(S) VIOLATED: 101 "CLASS II TRUCK FACILITY" 102.11 251.28

NATURE OF VIOLATION: USE OF PROPERTY AS A TRUCK FACILITY

1. OPERATION OF A CLASS II TRUCKING FACILITY WITHOUT A SPECIAL EXCEPTION

LOCATION AND DATE(S) OF VIOLATION: 9813 PHILADELPHIA ROAD DECEMBER 6, 1989 (AND CONTINUING TO PRESENT)

TO RESPOND TO THE ABOVE CHARGE(S) LEGAL NOTICE YOU MUST CHOOSE ONE OF THE OPTIONS BELOW:

1) YOU MAY PAY A FINE OF \$200.00 (\$200.00 FOR EACH ADDITIONAL DAY) BY CHECK OR MONEY ORDER PAYABLE TO THE DIRECTOR OF PUBLICS, BALTIMORE COUNTY, MARYLAND, BY RETURNING A COPY OF THIS FORM ALONG WITH PAYMENT TO: DIRECTOR OF PUBLICS, 1ST FLOOR, COURT HOUSE, TOWSON, MD 21204. THE PENALTY MUST BE PAID ON OR BEFORE THE 15th DAY OF MARCH, 1992.

2) YOU MAY ELECT TO STAND TRIAL IN THE DISTRICT COURT OF MARYLAND. TO DO THIS, YOU MUST NOTIFY THE BALTIMORE COUNTY OFFICE OF ZONING ADMINISTRATION BY FILING IN THE APPOINTED PORTION OF THIS CITATION AND RETURNING IT TO THE ZONING ADMINISTRATION OFFICE AT LEAST FIVE (5) DAYS BEFORE THE PAYMENT DUE DATE AS SET FORTH IN THE FINE PAYMENT SECTION ABOVE. THE DISTRICT COURT WILL NOTIFY YOU OF THE DATE AND TIME OF TRIAL.

IF THE FINE REMAINS UNPAID BY THE EXPIRATION OF THE TWENTY-FIVE (25) DAYS FROM THE DATE OF THE CITATION, THE ZONING ADMINISTRATION MAY REQUEST ADJUDICATION OF THE CASE IN DISTRICT COURT, AT WHICH TIME THE PERSON IS LIABLE FOR AN ADDITIONAL FINE NOT TO EXCEED TWICE THE ORIGINAL FINE. IF YOU FAIL TO APPEAR AT THE TRIAL, A DEFERRED WARRANT WILL BE ISSUED FOR YOUR ARREST.

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

2-28-92  
Gary C. Freund  
OFFICE OF ZONING ADMINISTRATION REPRESENTATIVE

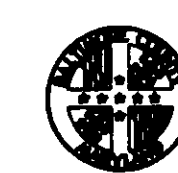
BASED ON THE STATEMENT OF GARY C. FREUND, THIS CITATION IS HEREBY ISSUED THIS 28th DAY OF FEBRUARY, 1992.

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.

DATE

SIGNATURE



County Board of Appeals of Baltimore County

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

November 17, 1993

NOTICE OF DELIBERATION

With all Post-Hearing Memoranda having been filed, the County Board of Appeals has scheduled the following date and time for deliberation in the matter of: LEO J. UMERLEY, ET UX -PETITIONER  
CASE NO. 92-346-XA

DATE AND TIME : Wednesday, December 8, 1993 at 9:00 a.m.

LOCATION : Room 48, Basement, Old Courthouse

cc: Stephen J. Nolan, Esquire Counsel for Petitioner

Newton A. Williams, Esquire

Mr. Leo J. Umerley Petitioner

Mr. Gary R. Hoffman

Ms. Marie Simoes

Mr. John Morazzano

James Earl Kraft  
People's Counsel for Baltimore County

P. David Fields

Lawrence E. Schmidt

Timothy H. Kotrocco

W. Carl Richards, Jr. /ZADM

Docket Clerk /ZADM

Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer  
Administrative Assistant

MICROFILMED

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Leo J. Umerley, et ux  
Case No. 92-346-XA

DATE : December 8, 1993

BOARD /PANEL : William T. Hackett, Chairman (WTH)  
C. William Clark (CWC)  
S. Diane Levero (SDL)

SECRETARY : Kathleen C. Weidenhammer  
Administrative Assistant

Those present included Newton A. Williams, Esquire, Counsel for Petitioners, who indicated that he was in attendance in lieu of Stephen J. Nolan, Esquire; and People's County and Deputy People's Counsel for Baltimore County; in attendance also were Gloria June Turner and Marie Simoes, parties/protestants.

PURPOSE --to deliberate issues and matter of petitions for special exception and variances presented to the Board; testimony and evidence taken on September 22 and September 23, 1993. Opinion and Order to be issued by Board setting forth written findings of fact.

Opening statement by Chairman Hackett included recitation of case number, name and subject of petitions filed.

CWC: Briefly reviewed history of case as further detailed in proposed findings of fact and conclusions of law which he had prepared prior to this deliberation (a copy was distributed at this time to each of the other two Board members).

Read in great detail from his prepared notes; cited basic facts of case; as first part of findings of fact, found that requirements of 502.1 have been met as to special exception requested. Proceeded to review each variance requested and how each could be granted in to what degree.

All issues reviewed by Mr. Clark to be included in detail in written findings of fact, either as majority opinion or dissent.

Petitions should be granted, with restrictions and as detailed on site plan.

Minutes of Deliberation /Leo J. Umerley, et ux 92-346-KA

SDL: Briefly reviewed testimony/evidence as presented through her written notes; disagrees with Mr. Clark; believes this should be treated as new trucking facility; while special arguments of petitioners were strong and persuasive, fails to meet requirements regarding residential zone and wetlands; fails to meet requirements of variance law; believes special exception cannot be granted without variances and therefore special exception and variances must be denied.

Petitions should be denied.

WTH: Studied exhibits and memorandums filed by parties; is in agreement with Mr. Clark with reservations; reviewed trucking facilities act, purpose, etc.; issue before Board is petition for special exception and variances; believes that dividing line is down center of Route 7; if strict compliance observed, industrial/manufacturing area is almost forbidden. Upon consideration of facts, would grant special exception and variances, also with restrictions, to be strictly enforced with full and firm understanding that if they are not complied with, special exception automatically and immediately becomes void and would have to be moved elsewhere.

Petitions should be granted with restrictions.

Closing statement by Chairman Hackett; majority opinion of Board that Petitions for Special Exception and Variances are GRANTED with restrictions; written opinion and order to be issued by the Board reflecting that decision, with dissenting opinion to be issued by Ms. Levero.

Respectfully submitted,

Kathleen C. Weidenhammer  
Kathleen C. Weidenhammer  
Administrative Assistant

2

5/11/93 -Notice of Assignment for hearing scheduled for Thursday, July 8, 1993 at 10:00 a.m. sent to following:

John B. Gontrum, Esquire  
Leo J. Umerley  
Gary R. Hoffman  
John Morazzano  
Marie Simoes  
People's Counsel for Baltimore County  
Lawrence E. Schmidt  
Timothy H. Kotroco  
W. Carl Richards, Jr.  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM

6/23/93 -Ltr from J. Gontrum, Esquire --withdrawing appearance as Counsel for Petitioner pursuant to letter addressed to Mr. Umerley from Mr. Gontrum dated June 4, 1993 (attached to Mr. Gontrum's letter of withdrawal).

7/02/93 - Ltr from J. Gontrum, Esquire -- requesting postponement and possible re-entry of appearance

7/06/93 - Ltr from Nottingham Improvement Association, Inc. --objecting posteaent request by J. Gontrum. (Objecting the granting of...)

7/06/93 --Conference call /C. W. Clark, J. Gontrum, P. Zimmerman, K. Weidenhammer -- to discuss above request from Mr. Gontrum. Per conversation, Acting Chairman Clark inclined to grant request; however, will commit parties to agreed-upon dates (next dates on schedule would be in September); inclined to grant same most particularly since the matter will more than likely require more than one hearing day, and second day would not be available until in September; therefore, matter could not be concluded until then, with expanse of several months between day #1 and day #2. Parties will be here on Thursday, July 8, to put request on record, etc.

7/08/93 --Postponed above matter in open hearing on the record; to be reset to three consecutive days in September (9/22; 9/23; 9/24/93), said dates reached in open hearing; notice to be sent.

- Notice of Reassignment sent to above parties; matter reset to Wednesday, September 22; Thursday, September 23; and Friday, September 24, 1993.

8/23/93 -Ltr from Stephen Nolan, Esquire --entering his appearance as counsel for Mr. Umerley and requesting postponement for September 21 and 22 due to asbestos litigation proceedings.

-P. Zimmerman requested orally that decision re postponement be held for short period until he can provide Board with a response to above request.

8/25/93 -Letter from Marie O. Simoes, Protestant, indicating objection to above request for postponement; Board granted previous postponement over objection of citizen with assurance by Acting Chairman Clark that no further postponements would be granted in this case.

CONTINUED TO PAGE 2

APPEAL

Petition for Special Exception and Zoning Variance  
SE/S of Philadelphia Road, 138' S of the c/l of Ravenwood Road  
(9813 Philadelphia Road)  
11th Election District - 6th Councilmanic District  
LEO J. UMERLEY-PETITIONER  
Case No. 92-346-KA

Petition(s) for Special Exception and Zoning 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 (Included with ZAC Comments)

Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits: 1. Plat to accompany Petition  
2. Study Area Boundaries Map  
3. Photographs of site  
4. Copy of Zoning Map, NE-GH  
5. Plat to accompany Petition  
6. Copy of Traffic Volume Map  
7. Copy of 1971 Zoning Map  
8. Copy of Application for Permit  
9. Eleven Photographs of site  
10. 1992 Log Book

Protestant's Exhibits: 1. Six Photographs of site.  
2. One Photograph of dust problem  
3. Four Photographs of site  
4. One Photograph of site  
5. Aerial Photograph of neighborhood  
6. Six Photographs of neighborhood  
7. One Photograph of site  
8. One Photograph of site.

Zoning Commissioner's Order dated December 15, 1992 (Denied)

Notice of Appeal received on January 5, 1993 from John B. Gontrum

cc: Leo J. Umerley, 9813 Philadelphia Road, Baltimore, MD 21237  
John B. Gontrum, Esquire, 814 Eastern Blvd, Baltimore, MD 21221  
Mr. Gary R. Hoffman, 9729 Philadelphia Road, Baltimore, MD 21237  
Mr. John Morazzano, 9909 Philadelphia Road, Baltimore, MD 21237  
Ms. Marie Simoes, 1314 Spotswood Road, Baltimore, MD 21237  
People's Counsel of Baltimore County  
Old Courthouse, 400 Washington Avenue, Towson, MD 21204

Request Notification: P. David Fields, Director of Planning & Zoning  
Patrick Keller, Office of Planning & Zoning  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy H. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Coordinator  
Docket Clerk  
Arnold Jablon, Director of ZADM  
Public Services

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
BOARD OF A



93 JAN 27 AM 10

111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

January 26, 1993

Baltimore County Board of Appeals  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, Maryland 21204

RE: Petition for Special Exception and Zoning Variance  
SE/S of Philadelphia Road, 138' S of the c/l of Ravenwood Road  
(9813 Philadelphia Road)  
11th Election District, 6th Councilmanic District  
LEO J. UMERLEY-PETITIONER  
Case No. (92-346-KA)

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on January 5, 1993 by John B. Gontrum. 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,

Arnold Jablon - Director  
Zoning Administration and  
Development Management

AJ:ccr

Enclosures

cc: Leo J. Umerley, 9813 Philadelphia Road, Baltimore, MD 21237  
John B. Gontrum, Esquire, 814 Eastern Blvd, Baltimore, MD 21221  
Mr. Gary R. Hoffman, 9729 Philadelphia Road, Baltimore, MD 21237  
Mr. John Morazzano, 9909 Philadelphia Road, Baltimore, MD 21237  
Ms. Marie Simoes, 1314 Spotswood Road, Baltimore, MD 21237  
People's Counsel of Baltimore County  
Old Courthouse, 400 Washington Avenue, Towson, MD 21204

File

APPEAL

Petition for Special Exception and Zoning Variance  
SE/S of Philadelphia Road, 138' S of the c/l of Ravenwood Road  
(9813 Philadelphia Road)  
11th Election District - 6th Councilmanic District  
LEO J. UMERLEY-PETITIONER  
Case No. 92-346-KA

Petition(s) for Special Exception and Zoning 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 (Included with ZAC Comments)

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4. One Photograph of site  
5. Aerial Photograph of neighborhood  
6. Six Photographs of neighborhood  
7. One Photograph of site  
8. One Photograph of site.

Zoning Commissioner's Order dated December 15, 1992 (Denied)

Notice of Appeal received on January 5, 1993 from John B. Gontrum

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John B. Gontrum, Esquire, 814 Eastern Blvd, Baltimore, MD 21221  
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Ms. Marie Simoes, 1314 Spotswood Road, Baltimore, MD 21237  
People's Counsel of Baltimore County  
Old Courthouse, 400 Washington Avenue, Towson, MD 21204

Request Notification: P. David Fields, Director of Planning & Zoning  
Patrick Keller, Office of Planning & Zoning  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy H. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Coordinator  
Docket Clerk  
Arnold Jablon, Director of ZADM  
Public Services

u/d  
re 1/15/93  
u/d 8/20/93  
E!

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: Pat Sheeder  
District Court

DATE: January 12, 1994

FROM: Lee S. Thomson  
Office of Law

SUBJECT: Zoning Citation No. 93-372  
9825 Philadelphia Road

I attach hereto correspondence and attachments forwarded to the Court relating to the above-captioned matter by the Baltimore County Office of Zoning Enforcement on July 12, 1993 and for which no notice of trial date has been received in this office or in the Zoning Office.

Would you please check to determine whether or not the enclosed documents were received by the clerk's office and a case established. I would appreciate a call at your convenience.

Thank you again for your continued assistance in these matters.

LSJ/jd

Attachments

RECEIVED  
JAN 13 1994  
ZADM

MICROFILMED

Page 2

Leo J. Umerley /continued

8/26/93 -Letter from Peter Max Zimmerman --oppose request for postponement made by Steve Nolan for reasons as delineated in letter, citing Board's previous granting of postponement and rescheduling to 3 full days so no further delays would be encountered.

9/01/93 -Letter from Chairman Hackett to S. Nolan, Esquire --request for postponement is DENIED; postponed on the record 7/08/93 despite opposition to same; reassigned to three consecutive dates for reasons as stated on record and in Chairman's letter; Board indicated that no further postponements would be granted. Therefore, this request must be denied.  
Copy to: P. Zimmerman; Petitioner; and M. Simoes, Nottingham Imp. Assn.

9/23/93 -Umerley case concluded; memos due Friday, 10/29/93. 11/05/93 by extension requested and granted.  
People's Counsel 11/08/93  
Williams/Nolan 11-85-93

10/26/93 -T/C from N. Williams, Esq. --conversation with Carole Demilio; PC will be requesting one-week extension for filing of memos due to illness of Legal Assistant; Newton has no objection to the Board's granting this extension request.  
Messages left for Carole D. --Board will need request in writing, indicating no objection by N. Williams. Also advised N. Williams that there's no problem with moving the date to Friday, 11/05/93; however, we will need something in writing, whereupon I'll confirm in writing with both him and Carole that the date has been extended by one week.

10/27/93 -Letter from C. Demilio requesting joint extension.

10/28/93 -Letter from WTH to C. Demilio, copies to N. Williams and S. Nolan -- requested extension GRANTED; Memoranda due no later than Friday, 11/05/93.

11/05/93 -Petitioners' Post-Hearing Memorandum in Support of Zoning Requests filed by Newton Williams, Esquire.

11/08/93 -People's Counsel's Memorandum filed.

11/17/93 -Notice of Deliberation sent to parties; scheduled for Wednesday, December 8, 1993 at 9:00 a.m.

11/23/93 -People's Counsel's Supplemental Memorandum filed

12/08/93 -Matter deliberated in open session (H.C.M.). Special exception and variances granted with restrictions by majority opinion (H & C); M dissented.  
Written findings of fact and order to be issued by Board with dissent to be written by Ms. Levero. Appellate period to run from date of issuance of Board's written Opinion and Order.

has been doing well since 1958. At page 4 of the Guckert report, Mr. Guckert's study found that the site is only generating approximately 250 trips per day, including the ingress and egress of employees. Of these 250 trips, only 25 to 30 trips are taken in the morning or evening peak hours. Furthermore, the report concluded that approximately 75 percent of the trips either came from, or proceeded toward, the Beltway southward along Maryland Route 7, Philadelphia Road, and only 25 percent of the trips or less passed the adjoining community of Nottingham, accessed by Ravenwood Road by proceeding northward toward White Marsh. Truck trips form a minority of these total daily trips passed Nottingham.

5. As for "fire, panic and other dangers," the site has public water, and there is a fire hydrant located on Philadelphia Road opposite the site.

6. As for "overcrowding land and causing undue concentration of population," the overall site has very low coverage, with the building occupying only a very small area, and the 8-1/2 acres are buffered on both sides, that is, to the east and west, by other Umerley ownerships as shown on the Site Plan.

7. As for "adequate provisions for public facilities," there is no statement whatsoever in the zoning file, or any comment from any public agency, stating that this facility will interfere with any such public need. In fact, the site's reliance on Philadelphia Road has been underlined by the termination of Yellow Brick Road at King Avenue well short of this site. (See the Keller letter, Petitioners' Exhibit 13.)

8. Insofar as "adequate light and air" are concerned, the property is not shading anyone. As for dust, it will be dealt with

has been held to be the lesser of the two standards stated. In order to determine whether relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured, one needs to examine the purposes of the act and its requirements. Many of those purposes are found in Section 410A.4B. One of the express purposes is to, in general, accommodate trucking facilities in recognition of their importance to the economy of the County and the nation, while minimizing the impact of existing and future Class II trucking facilities on the environment, while also achieving an optimum level of compatibility between such facilities and nearby uses, especially dwellings.

As for some of the economic benefits to the County, the State and the area, in addition to the Two and One-Half Million Dollar (\$2,500,000.00) plus payroll, substantial property taxes are paid, perhaps as much as Fifty-Two Thousand Dollars (\$52,000.00), although this may include other off site properties, as well as yearly fuel taxes in excess of One Million Dollars (\$1,000,000.00) paid to the State of Maryland, which go toward the maintenance of State and Interstate Highways. In addition, Mr. Peter Swanson of the Department of Economic Development testified that the Umerley operation is an important part of the economy of the County, particularly the southeastern County, and supports the construction industry.

Additionally, People's Counsel supplied the final report of the Baltimore County Planning Board that preceded the Trucking Facilities Act. We note from review of the report and the cited section of the Code that no purpose is expressed for the requirement of the 200-foot distance between the trucking facility

by means of a sweeper truck and a water truck as previously outlined. With regard to diesel fumes, the Council is well aware that large trucks have significant exhaust emissions. This is part and parcel of a truck terminal operation. There was no testimony that Mr. Umerley's trucks are in violation of state or federal exhaust regulations.

9. As for "consistency with the zone in which it is located," as previously stated a truck facility is specifically allowed by special exception in the M.L.-I.M. zone, and indeed, it is one of the favored locations in the county for such facilities.

10. Finally, the site will serve the "vegetative retention requirements" since additional landscaping is proposed for this use. Also, of the overall ownership, only 8.5 acres are included in the special request, and only less than 5 of those acres are paved. The bulk of the other three lots, including virtually the entirety of Lot 1, almost all of Lot 6 and almost all of Lot 8 are not paved but are tree covered. Furthermore, Mr. Umerley is in the process of developing a storm water management system with Baltimore County through his engineers at KLS Consultants, Inc., as was noted during the course of the case. Thus, the Umerley site meets the Section 502. 1 criteria for a special exception for a Class II Truck Facility.

The requested variance to put this facility right next to residences (and the wetland) is at the heart of this case because of the specific legislative purpose. Other variances are also requested, such as to minimize the percentage of parking area. BCZR 307 states in its first sentence:

307.1--The zoning commissioner of Baltimore County

and the existence of wetlands, other than a general requirement of considering the impact on the environment. In applying the three-prong test as explained in McLean v. Soley, compliance with the strict letter of the 200-foot distance with regard to Petitioners' site would result in Lots 2 and 5, which otherwise could be used for the parking and storage of trucks, to be configured in a serpentine manner, allowing only a ribbon of usable area for such a purpose, snaking its way through the length of this lot. Certainly it seems that one implied purpose of setting these activities back from the wetlands is to prevent the accidental dumping of materials from the trucks into or in such proximity to the wetlands that construction-type materials, as well as other materials, could be leached into the soil by direct contact with water. The requirement that the entire area used for trucking operations be fenced and also the requirement that wheel stops be provided so as to prevent the trucks from leaving their parking spaces would tend to militate against any such event occurring. No proof exists in this case that the airborne fumes from diesel motors would be assimilated into the ground through the wetlands and we can't presume that such harm might occur. Under the circumstances, we believe that strict compliance would unreasonably prevent the Petitioners from using the property for a permitted purpose and would render conformity with such restrictions unnecessarily burdensome. We do believe, however, that a lesser relaxation than that applied for would give substantial relief to the Petitioners and be more consistent with justice to other property owners, although we note that the closest point of the wetlands which give rise to this problem exists on land owned by

and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations and from sign regulations, only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship. (Emphasis supplied)

In dealing with a Trucking Facility, the Section in question speaks in terms of distances, acreages, diametrical requirements, percentages, rather than the more usual statements as to side, rear and front yards, or a height limitation with which we are all familiar. The fact that the Council, in Bill 18-76, adopted these site and development standards in this way, does not make them any the less height and area regulations.

In Anderson v. Board of Appeals, 22 Md. App. 28 at p.38, Judge Davidson speaks in the following terms in describing a use variance:

[T]he Court of Appeals has recognized a distinction between a use variance, which changes the character of the zoned district, and an area variance, which does not.

Judge Davidson at the previous page, page 37, distinguishes them in this way:

'an area variance' (a variance for area, height, density, setback, or side line restrictions, such as a variance of a distance required between buildings) and not a "use variance" (a variance which permits a use other than that permitted in the particular district by the ordinance, such as a variance for an office or commercial use in a zone restricted to residential uses).

The Council must have been aware in 1976 that it would be difficult to locate either an M.L. or an M.H. site and a trucking facility that did not lie within 300 feet of a dwelling in the M.L.

the Petitioners. While this will cause a reduction in the number of spaces that the Petitioners would have for the parking and loading of trucks, we will grant a variance to locate the trucking facility and operations, with the exception of the automobile car parking and the use of the two-story brick and block building as an office and garage, and fencing, to a distance of no less than 75 feet from the nearest point of wetlands as outlined on Petitioners' Exhibit 1 to the boundaries of Lots 2 and 5. Furthermore, this Board finds that special circumstances exist that are peculiar to the land and structure which is the subject of the variance request in that in 1982, when the Petitioners applied for a permit from Baltimore County to expand the office facilities, such a permit was granted by the government to expand an office facility for what clearly was then a trucking facility, and which violated distance requirements of the Trucking Facilities Act. We believe it would constitute undue hardship to require the Petitioners to remove that facility or the expanded portion built after the enactment of the Trucking Facilities Act when he applied for and obtained the government's authority to do so.

With regard to the 300-foot distance required to be maintained between a trucking facility and a dwelling or a residential zone, again applying the three-prong test and in examining the purposes of the statute, as well as considering the final Planning Board report, the particular problem noticed prior to the enactment of these provisions is stated in the Planning Board report as follows:

"The fact is, however, that a number of trucking facilities have been established too close to the homes of Baltimore County citizens over the years,

or M.H. zone, or within 300 feet of a residential zone, or within 200 feet of a wetland, as required by Section 410A.2 with regard to Class II Trucking Facilities.

Bill 18-76 does not demonstrate any intent on the part of the Council to outlaw trucking facilities, of either Class I or II, but rather, demonstrates an intention to regulate such sites within Baltimore County. The distance requirements in question, namely within 300 feet of a residential zone, and within 200 feet of wetlands, are height and area regulations which can be the subject of a variance.

Section 307.1 sets forth the three-prong test in order to justify the grant of a variance. McLean v. Soley set forth the criteria and explained them as follows:

"1) Whether compliance with the strict letter of the restrictions governing various variances 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 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." McLean v. Soley, 270 Md. 216, 1973

It is important to note that the applicant for a variance must prove practical difficulty or undue hardship. The test in the Baltimore County Code being in the disjunctive. The need for the variance must also be substantial and urgent and not merely for the convenience of the applicant. The practical difficulty standard

especially in communities near major industrial areas. And it is not only the on-premise truck operations that have caused problems, for the facilities are frequently so situated that trucks must gain access to them by way of small, residential streets."

It is clear from the testimony presented in this case that the predominant traffic pattern of the Petitioners' trucks does not require them to gain access to the facility by way of small, residential streets, but rather by Philadelphia Road, which is described as an artery serving an industrial and transportation corridor. Clearly, Philadelphia Road serves as the dividing line between predominantly residential uses on one side of the road and industrial and manufacturing uses on the other side. Although a small triangle of residential zoning exists on one portion of Lot 2 on the subject site, and residential zoning exists across most of the front of Lot 3 within the 300-foot distance requirement, those facts don't concern us greatly since they are on property owned by the Petitioners. However, this Board is concerned about four dwellings that face on Philadelphia Road and are within the 300-foot distance required between a dwelling and the existence of a trucking facility. People's Counsel argued that neither the 200-foot wetlands distance nor the 300-foot distance could be the subject of a variance. As we have previously explained, this Board believes that they can be the subject of a variance, and suggest the same is implied from reading, among other things, the provisions in Sections 410A.1B.3 and 410A.1C which provide that a trucking facility does not have to conform to certain standards contained in the trucking facilities law provided that relief is sought from the Zoning Commissioner and that the test therein

LEO J. UMERLEY, ET UX  
813 Philadelphia Road, 138' +/-  
S of c/l Ravenwood Road  
(9813 Philadelphia Road)

892-346-XA  
11th Election District  
6th Councilmanic District

SE - Class II Trucking Facility; VAR - distances, parking, setbacks, etc.

March 16, 1992 Petition for Special Exception to permit a Class II trucking facility on the subject property and Petition for Variance to permit trucking facility within 300 ft. of residential zone, within 200 ft. of wetlands and parking within 25 ft. of residential dwelling; to permit trucking facility within 100 ft. of Philadelphia Road; to permit 35.5% of subject site devoted to parking of trucks and trailers; to permit elimination of wheelstop; and to permit minimum building setback of 7 ft. filed by John B. Gontrum, Esquire, in behalf of Leo J. Umerley and Wanda Umerley, Petitioners.

December 15 Order of the Zoning Commissioner in which Petition for Special Hearing (submitted at hearing) to approve use of subject property as construction equipment storage yard is DENIED; Petition for Special Exception is DENIED; and Petition for Variance is DISMISSED.

January 5, 1993 Order of Appeal filed by John B. Gontrum, Esquire, on behalf of Petitioners.

September 22 Hearing before the Board of Appeals.

September 23 Hearing concluded before the Board of Appeals.

December 22 Majority Opinion and Order of the Board in which the Petition for Special Exception and Petition for Zoning Variance GRANTED with restriction (Hackett and Clark) Dissenting Opinion issued by Laverso.

January 13, 1994 Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County /94-CV-00405.

January 19 Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

January 19 Certificate of Notice sent to interested parties.

January 24 Petition for Judicial Review filed in the Circuit Court for Baltimore County by Nottingham Improvement Assn., Inc. and General Services Engineering, Inc. /94-CV-00557.

January 25 Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

January 26 Certificate of Notice sent to interested parties.

February 3 Motion to Transfer Petition for Judicial Review filed in Case No. 94-CV-00557, Docket 71, Page 241 to Case No. 94-CV-00405, Docket 71, Page 89 filed by People's Counsel in the Circuit Court for Baltimore County.

March 4 Order signed by Judge James T. Smith, Jr., Circuit Court for Baltimore County, granting the Motion to Transfer the Petition for Judicial Review filed by People's Counsel.

March 10 Transcript of testimony and Record of Proceedings filed in the Circuit Court for Baltimore County.

March 22, 1995 Order issued by the CCL for Balto. County; decision of CBA to grant Petition for Special Exception REVERSED.

Notice of Appeal filed in the Court of Special Appeals by

March 1, 1996 Order issued by the CSA; decision of CCL AFFIRMED (Moylan, Bishop, Ryler, JJ)



County Board of Appeals of Baltimore County

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

March 18, 1993

Ms. Marie Simoes  
1314 Spotswood Road  
Baltimore, MD 21237

Re: Appearance before Board of Appeals /  
Rule 8 Documents

Dear Ms. Simoes:

As promised, enclosed is a copy of the packet prepared by the Office of People's Counsel which includes those documents to be filed in accordance with Rule 8 of the Rules of Practice and Procedure of the County Board of Appeals.

Should you have any additional questions, you may either call this office at 887-3180, or the Office of People's Counsel at 887-2188.

Very truly yours,

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant

Enclosure

MICROFILMED



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL  
Room 47, Old Courthouse  
400 Washington Ave.  
Towson, MD 21204  
(410) 887-2188

PETER MAX ZIMMERMAN  
People's Counsel

August 28, 1993

The Honorable  
William T. Hackett, Chairman  
County Board of Appeals  
Room 49, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204

RE: Leo J. Umerley, Petitioner  
Case No. 92-346-XA  
8813 Philadelphia Road

Dear Chairman Hackett:

This office is in receipt of a letter from Steven J. Nolan, Esquire, dated August 20, 1993, pertaining to the aforementioned matter. Mr. Nolan has entered his appearance on behalf of Mr. Umerley and requested a postponement of the case scheduled for hearing on September 22, 23 and 24, 1993.

Traditionally, the Office of People's Counsel has been amenable to reasonable requests for postponements by Petitioners or their counsel. However, in light of the facts of this case and previous rescheduling requests, we must oppose this most recent request for a postponement.

This position is based on the following facts:

(1) The Petition for a Special Exception and related variances for a Class II trucking facility was filed in March 1992; prior to that time and continuing to the present, Mr. Umerley has continuously operated a trucking facility without the necessary legal approval.

(2) At the hearing before the Zoning Commissioner in April, 1992, the Petitioner, for the first time, requested additional relief necessitating a continuance of the hearing to two scheduled dates, June 18, 1992 and September 22, 1992.

(3) On June 18, 1992, the Petitioner requested a postponement of the June 18th hearing for medical reasons.

CAROLE S. DEMILIO  
Deputy People's Counsel  
COUNTY BOARD OF APPEALS  
59 AUG 26 PM 2:46

The Honorable  
William T. Hackett, Chairman  
County Board of Appeals

August 28, 1993

Under these circumstances, the Petitioner's decision to employ new counsel is part of a delaying pattern and is not in the interest of justice. Therefore, the Office of People's Counsel must respectfully oppose the postponement request of the Petitioner in this matter.

Very truly yours,

*Peter Max Zimmerman*  
Peter Max Zimmerman  
People's Counsel for Baltimore County  
*Carole S. Demilio*  
Carole S. Demilio  
Deputy People's Counsel

cc: Steven J. Nolan, Esquire  
Marie Q. Simoes  
Gary R. Hoffman  
John Norazzano

Baltimore County Government  
Office of Planning and Zoning

401 Bosley Avenue  
Towson, MD 21204

887-3211  
Fax 887-5862

July 26, 1993

Mr. George L. Good, Jr.  
Frank's Pallet Service  
Pallet Acquisitions, Inc.  
8865 Kelso Drive  
Baltimore, MD 21221

Dear Mr. Good:

Per your request, I am writing concerning the status of the planned extension of Yellow Brick Road through the Sappington property on the north side of Middle River Road.

As you are aware, the Baltimore County Master Plan 1989-2000 proposes a northeasterly extension of Yellow Brick Road which would connect with future Campbell Boulevard between Philadelphia Road (Rt. 7) and Pulaski Highway (Rt. 40). However, the Philadelphia Road Corridor Study, adopted January 21, 1992 as an amendment to the Baltimore County Master Plan, does not recommend construction of Yellow Brick Road between King Avenue and Campbell Boulevard. Consequently, the previously planned extension of Yellow Brick Road north of King Avenue and Middle River Road has been deleted from the Master Plan as a required road improvement. In the event that a development plan is submitted for the Sappington property on Middle River Road, this office will not ask for the reservation or dedication of any right-of-way for Yellow Brick Road.

If you have any questions regarding this matter, please contact Dennis Wertz at 887-3480.

Sincerely,

*Paul Keller*  
Paul Keller  
Deputy Director

PK:lw  
DWG/D/TXLLP



County Board of Appeals of Baltimore County

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

September 1, 1993

Stephen J. Nolan, Esquire  
WOLAN, PLUMHOFF & WILLIAMS, CHTD.  
Suite 700, Court Towers  
210 W. Pennsylvania Avenue  
Towson, MD 21204

Re: Case No. 92-346-XA /Leo J. Umerley

Dear Mr. Nolan:

We are in receipt of your letter dated August 20, 1993 requesting a postponement of the subject matter scheduled for hearing on three consecutive days; namely, September 22, 23, and 24, 1993. The Board is also in receipt of letters of opposition to this request from both the Office of People's Counsel and the President of the Nottingham Improvement Association.

On May 11, 1993, Notice of Assignment was sent to all parties indicating that this case was scheduled to be heard on July 8, 1993. On July 2, 1993, the Board received a request for postponement from the Petitioner through his Counsel. On July 8th, in open session and on the record, the postponement was granted, although there was much opposition and concern expressed with regard to the Board's granting of same. However, since it was agreed by all parties that the hearing could very likely require more than one day, and, further, since the next open date on the Board's docket was in September 1993, the above-referenced three dates were selected by joint agreement of all parties, and schedules adjusted accordingly. At that time the Board indicated that no further postponements would be granted.

In light of the above, the Board must therefore deny your request for postponement. The subject matter will be heard as scheduled beginning Wednesday, September 22, 1993, at 10:00 a.m.

Very truly yours,

*William T. Hackett*  
William T. Hackett, Chairman  
County Board of Appeals

WTH:KCV

cc: Peter Max Zimmerman  
People's Counsel for Baltimore County  
Mr. & Mrs. Leo J. Umerley  
Ms. Marie Q. Simoes, President  
Nottingham Improvement Assn., Inc.

MICROFILMED



County Board of Appeals of Baltimore County

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

September 3, 1993

Gary R. Hoffman, President  
General Services Engineering, Inc.  
9279 Philadelphia Road  
Baltimore, MD 21237

RE: Leo J. Umerley  
Case No. 92-346-XA

Dear Mr. Hoffman:

In response to your letter dated August 31, 1993 regarding the subject case, enclosed for your information is a copy of the Board's response to Mr. Nolan's request for postponement in which that request has been denied.

Accordingly, this matter is scheduled to be heard beginning Wednesday, September 22, 1993 at 10:00 a.m.

Very truly yours,

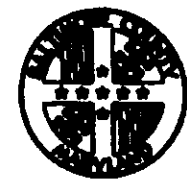
*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant

encl.

cc: Stephen J. Nolan, Esquire  
Peter Max Zimmerman  
People's Counsel for Baltimore County

MICROFILMED





**Baltimore County, Maryland**  
 OFFICE OF PEOPLE'S COUNSEL  
 Room 47, Old Courthouse  
 400 Washington Ave.  
 Towson, MD 21204  
 (410) 887-2188

PETER MAX ZIMMERMAN  
 People's Counsel

CAROLE S. DEMILIO  
 Deputy People's Counsel

October 27, 1993

The Honorable  
 William T. Hackett, Chairman  
 Baltimore County Board of Appeals  
 Room 49, Old Courthouse  
 400 Washington Avenue  
 Towson, Maryland 21204

RE: LEO J. UMERLEY, Petitioner  
 Case No. 92-346-XA

Dear Chairman Hackett:

I respectfully request a joint extension for both parties to file Memoranda in lieu of closing argument until Friday, November 5, 1993. Newton A. Williams, Esquire agreed to this extension.

Thank you for your consideration of this matter.

Sincerely yours,  
  
 Carole S. Demilio  
 Deputy People's Counsel

cc: Newton A. Williams, Esquire  
 Stephen J. Nolan, Esquire

CSD:sh

COUNTY BOARD OF APPEALS  
 OCT 27 AM 9:33



**County Board of Appeals of Baltimore County**  
 OLD COURTHOUSE, ROOM 49  
 400 WASHINGTON AVENUE  
 TOWSON, MARYLAND 21204  
 (410) 887-3180

October 28, 1993

Carole S. Demilio  
 Deputy People's Counsel  
 for Baltimore County  
 Room 47, Old Courthouse  
 400 Washington Avenue  
 Towson, MD 21204

Re: Case No. 92-346-XA  
 Leo J. Umerley - Petitioner

Dear Ms. Demilio:

The Board is in receipt of your letter dated October 27, 1993 in which you request a joint extension for both parties to file Memoranda in the subject matter.

We have reviewed your letter and will grant the requested one-week extension, Memoranda now being due no later than Friday, November 5, 1993.

Very truly yours,

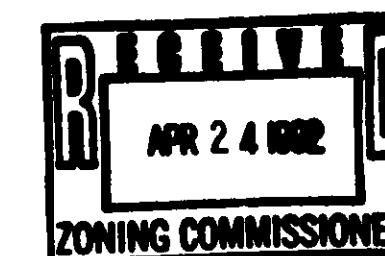
William T. Hackett, Chairman  
 County Board of Appeals

cc: Newton A. Williams, Esquire  
 Stephen J. Nolan, Esquire

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 on Recycled Paper

CASE 92-346-XA

APRIL 24, 1992



TO: HEARING OFFICER

SORRY I'M A BIT LATE ON THESE COMMENTS. THIS SITE HAS BEEN IN FOR

REVIEW SEVERAL TIMES IN THE LAST 18-24 MONTHS. EACH TIME OUR COMMENTS

LEAD TO IMPROVED REVISIONS BUT THE LAST TIME WE SAW THIS PLAN WE STILL

HAD MULTIPLE COMMENTS ON NECESSARY INFORMATION. THESE WERE NEVER

SATISFIED AND THE PLAN WAS FILED WITHOUT FINAL REVIEW OF THESE UNRESOLVED

ISSUES WHICH HAS LEAD TO PROBLEMS WHICH YOU CAN FIND LISTED IN MY ACCOMPANYING

LETTER TO JOHN B. CONTRUM, ESQUIRE.

JOHN L. LEWIS  
 PLANNER II

MICROFILMED

Baltimore County Government  
 Zoning Commissioner  
 Office of Planning and Zoning

Suite 113 Courthouse  
 400 Washington Avenue  
 Towson, MD 21204

January 22, 1993

(410) 887-4386

Mr. & Mrs. George E. Chryst  
 9911 Philadelphia Road  
 Baltimore, Maryland 21237

RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE  
 SE/S Philadelphia Road, 138' S of the c/l of Ravenwood Road  
 (9813 Philadelphia Road)  
 11th Election District - 8th Councilmanic District  
 Leo J. Umerley - Petitioner  
 Case No. 92-346-XA

Dear Mr. & Mrs. Chryst:

In response to your letter dated January 13, 1993 concerning the use of the subject property and buffering areas in the above-referenced case, the following comments are offered.

As you know, I denied the relief requested by the Petitioner in the above-captioned matter by Order issued December 15, 1992. As a result, Mr. Umerley has filed an appeal to the County Board of Appeals for a de novo hearing. That is, the Board will hold its own hearing at which new testimony and evidence can be presented, and a decision will be made by the Board based on its own findings of facts and conclusions of law. In that an appeal has been filed, my decision has no bearing on the use of the subject property or buffering areas pending the outcome of the Board's hearing. Therefore, I find it unnecessary to issue a revised opinion in this matter.

In the event you have any further questions on the subject, please feel free to call this office.

Very truly yours,

LAWRENCE E. SCHMIDT  
 Zoning Commissioner  
 for Baltimore County

LES:bjjs

cc: Case File

Baltimore County Government  
 Office of Zoning Administration  
 and Development Management  
 Office of Planning & Zoning



111 West Chesapeake Avenue  
 Towson, MD 21204

(410) 887-3353

April 24, 1992

John B. Contrum, Esquire  
 814 Eastern Boulevard  
 Baltimore, MD 21221

RE: Preliminary Petition Review  
 Item #364; Case #92-346-XA  
 Legal Owner: Leo J. Umerley  
 9813 Philadelphia Road  
 15th Election District

Dear Mr. Contrum:

This correspondence is in reference to a petition filed at the request of the petitioner/attorney without the normal petition review. All revisions must be accompanied by a \$100.00 revision fee.

Section 410.A.3.C.1 (B.C.Z.R.) requires, in part, that sufficient information be provided for a determination whether and in what manner the facility will meet the requirements of the B.C.Z.R. The following comments are advisory in nature and are an attempt by this office to list obvious deficiencies in the plan. They do not necessarily identify all details and inherent technical zoning requirements necessary in order to determine final compliance with the B.C.Z.R. It is the responsibility of the owner, developer or developer's engineer to identify and rectify any zoning conflicts.

- Plan variance references numbers 2, 3, 4, 5 do not identify the minimum distance to be variances. These should be clearly listed and their location identified and keyed to the variance notes.
- Section 410.A.3.B.4 (B.C.Z.R.) - Indicate detailed compliance with the requirements for the security fence, opaque fencing or visual screening, etc. The note 19 reference on the plan is not sufficient for determination of actual compliance.

MICROFILMED

John B. Contrum, Esquire  
 April 24, 1992  
 Page 2

3. Section 410.A.3.B.5 (B.C.Z.R.) - Plan note 8 references a variance request from the anchored wheel stop requirement. Wheel stops and details are shown on the plan. Clarification of the owner's intent should be made.

4. Section 410.A.3.B.6 (B.C.Z.R.) requires Section 409 (B.C.Z.R.) compliance. No compliance is shown with Section 409.B.D. PAVING Standards for Trucking Facility Sites or for Section 409.S.A. (B.C.Z.R.) requirements as to lighting, dead-end aisle turnarounds (for the area on the plan where the paving stops) or striping. The number of employee parking spaces in plan note 17 is deficient since Section 409.6 (B.C.Z.R.) requires one parking space for each employee on the largest shift.

Any unresolved issues concerning the Baltimore County Zoning Regulations will require additional public hearings.

If you need further information or have any questions, please do not hesitate to contact John Lewis at 887-3391.

Very truly yours,

W. Carl Richards, Jr.  
 Zoning Coordinator  
 By   
 John L. Lewis  
 Planner II

JLL:scj

MICROFILMED



Baltimore County  
 Department of Permits and  
 Development Management

Director's Office  
 County Office Building  
 111 West Chesapeake Avenue  
 Towson, Maryland 21204  
 (410) 887-3353  
 Fax: (410) 887-5708

August 6, 1996

Ms. Marie Q. Simoes  
 Nottingham Improvement Association, Inc.  
 1314 Spotswood Road  
 Baltimore, Maryland 21237

RE: Umerley Trucking Facility  
 9825 Philadelphia Road  
 14th Election District  
 1574

Dear Ms. Simoes:

I am in receipt of your letter, dated July 29, 1996, in which you wish confirmation that this department will do what is necessary to ensure Mr. Umerley's compliance with the zoning regulations.

Please be advised that I have already requested that the Office of Law follow through by the preparation of the appropriate injunctive relief paperwork, and, if necessary, proceed to request that a judge order compliance. Many months ago, this department initiated a zoning citation in district court, which was stayed by the circuit court as a result of the appeals to the appellate courts. Now that the court of appeals has spoken, I have also requested that the Office of Law set this in for trial.

I previously warned Mr. Umerley that, should the court of appeals deny certiorari, he would have thirty days to bring his property into conformance. I fully intend to follow through; however, I must emphasize that I do not have contempt power. I must request that the courts enforce the order, if Mr. Umerley fails to comply. Only the court has the power to send someone to jail for refusal to obey a court's order. At the end of the thirty days, if Mr. Umerley fails to drastically reduce the scope of his present business, we will be back into court asking that a judge find him in contempt and to impose sanctions, including jail.

I did not say that by moving trucks to the rear of the property, he would be in compliance. I did say that a contractor's equipment storage yard is a permissible use; a trucking facility is not. The difference should be dramatic. I must also point out that egress and ingress onto Philadelphia Road cannot be prohibited. There will still be truck traffic, but the traffic will not be the result of a trucking facility.

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Ms. Marie Q. Simoes  
 Page 2  
 August 6, 1996

Mr. Umerley is still permitted as of right to operate a business from his property, but any such business must satisfy the uses delineated as of right in the zone which his property is designated. One use it cannot be is a trucking facility.

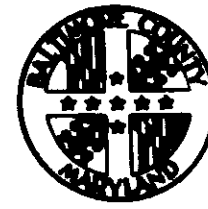
If you have any questions, please feel free to contact me.

Sincerely,

ARNOLD JABLON  
 Director

AJ:ljb

cc: Margaret E. Kelly, Administrative Officer  
 Councilman Joseph Bartenfelder  
 Councilman Vincent J. Gardina



Baltimore County  
Department of Permits and  
Development Management

Director's Office  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204  
(410) 887-3353  
Fax: (410) 887-5708

August 8, 1996

Stephen J. Nolan, Esquire  
Suite 700, Court Towers  
210 West Pennsylvania Avenue  
Towson, Maryland 21204-5340

RE: Umerley Trucking Facility  
9825 Philadelphia Road  
15th Election District

Dear Mr. Nolan:

I have recently received notification that the court of appeals has denied certiorari to review the decision of the court of special appeals in the matter of Umerley v. People's Counsel.

The purpose of this letter is to renew my warning to Mr. Umerley given to him some months ago, as I am sure you remember. I said then, and warn now, that Mr. Umerley must bring his property into compliance with the Baltimore County Zoning Regulations within thirty days of the date of the order denying certiorari.

On September 1, 1996, an inspector will visit the property. If at that time a trucking facility is still operating, I will request the Office of Law to immediately initiate contempt proceedings and to schedule the district court charges for trial.

I will move vigorously to enforce the courts' orders. It is my firm belief that this matter could have, should have, been resolved many years ago. Mr. Umerley cannot now be disingenuous and plead for more time to comply.

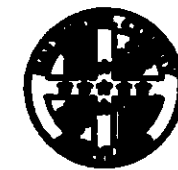
If you have any questions, please feel free to contact me.

Sincerely,

*Arnold Jablon*  
ARNOLD JABLON  
Director

cc: Leo J. Umerley

MICROFILMED



Baltimore County, Maryland

PEOPLE'S COUNSEL  
Room 47, Courthouse  
400 Washington Avenue  
TOWSON, MARYLAND 21204  
887-488-2188

PHYLLIS COLE FRIEDMAN  
People's Counsel

PETER MAX ZIMMERMAN  
Deputy People's Counsel

September 23, 1992

The Honorable  
Lawrence E. Schmidt  
Zoning Commissioner  
Room 113, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204

RE: Leo J. Umerley, Petitioner  
Zoning Case No. 92-346-XA

Dear Commissioner Schmidt:

As I indicated in my closing argument in the above-referenced case, I am enclosing a copy of the unreported decision in John J. Laskey, et al. v. Bethlehem Steel Corporation, et al., No. 18, September Term, 1979, September 26, 1979, and the Final Report of the Baltimore County Planning Board regarding the Proposed Zoning Amendments: Trucking Facilities.

I hope these will be of assistance in your deliberations. Thank you for your consideration in this matter.

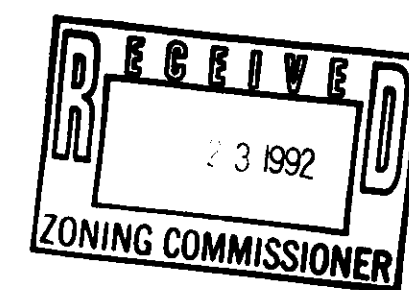
Sincerely yours,

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

Enclosures

cc: John B. Gontrum, Esquire

PCF:sh



MICROFILMED

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

September Term, 1979

No. 18

JOHN J. LASKEY, et al.,

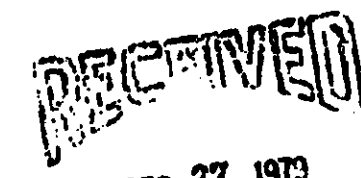
v.

BETHLEHEM STEEL  
CORPORATION, et al.

Gilbert, C.J.  
Wilner  
Couch,  
JJ.

PER CURIAM

Filed: September 26, 1979



SEP 27 1979  
V. BETHLEHEM STEEL CORP. ET AL.  
TRIPLE 5, 10, 4, 11

LAW FIRM  
Romadka, Gontrum & McLaughlin, P.A.

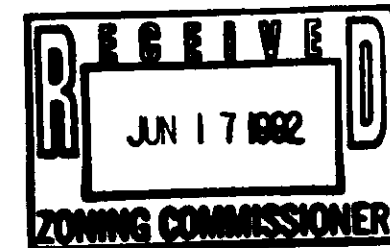
814 EASTERN BOULEVARD  
ESSEX, MARYLAND 21221  
TELEPHONE: (410) 686-8274  
FAX # 686-8118

ROBERT J. ROMADKA  
JOHN B. GONTRUM  
J. MICHAEL McLAUGHLIN, JR.\*

DONALD H. SHEFFY  
NANCY E. DWYER\*\*  
ELIZABETH A. VANNI  
MARY H. BUCHANAN  
SHARON R. GAMBLE

\*Also admitted to District of Columbia  
\*\*Also admitted in Florida

June 16, 1992



Mr. Lawrence E. Schmidt  
Zoning Commissioner of Baltimore County  
Old Court House  
Towson, Maryland 21204

Re: Case No. 92-346-XA  
Leo J. Umerley

Dear Mr. Schmidt:

On behalf of my client, Leo J. Umerley, I would like to request a continuance from our case scheduled for June 19, 1992 at 9:00 a.m. I understand that this date was acceptable to all parties at the time of the first day of hearing in the above referenced matter, but Mr. Umerley has been scheduled for emergency dental surgery for that date as a result of an accident last week. Because of the incident, Mr. Umerley and I have been unable to get together in order to finalize preparations for Friday's hearing and he has been informed by the oral surgeon that the surgery should occur as quickly as possible and Friday was the earliest date for which it could be scheduled. Your understanding with respect to this matter would be much appreciated.

Very truly yours,

*John B. Gontrum*  
John B. Gontrum

JBG/ej

cc: Phyllis Cole Friedman  
People's Counsel For Baltimore County  
Mr. and Mrs. George Chryst  
Mr. Leo J. Umerley, Sr.

MICROFILMED

LAW FIRM  
Romadka, Gontrum & McLaughlin, P.A.

814 EASTERN BOULEVARD  
ESSEX, MARYLAND 21221  
TELEPHONE: (410) 686-8274  
FAX # 686-8118

ROBERT J. ROMADKA  
JOHN B. GONTRUM  
J. MICHAEL McLAUGHLIN, JR.\*

DONALD H. SHEFFY  
ELIZABETH A. VANNI  
MARY H. BUCHANAN  
SHARON R. GAMBLE

\*Also admitted to District of Columbia

November 4, 1992

The Honorable Lawrence E. Schmidt  
Zoning Commissioner  
400 Washington Avenue  
Courthouse, Room 113  
Towson, Maryland 21204

Re: Leo J. Umerley, Sr.

Dear Commissioner Schmidt:

As a result of the Comprehensive Zoning Map Process, I wish to bring to your attention the fact that the Zoning was changed on adjoining property owned by Mr. Umerley, but not part of the Zoning Hearing. The portion of the property which Mr. Umerley owns to the North of the property for which he is seeking approval of the trucking facility or contractor's equipment storage yard was partially rezoned from D.R. 3.5 to M.L. The zoning line was moved fifty feet closer to the road thereby taking a portion of the adjacent building out of the residential zone and placing it in the manufacturing zone. I bring this to your attention because obviously some of the zoning setbacks were taken from the D.R. 3.5 line. This reduces the amount of variance which is necessary from that line.

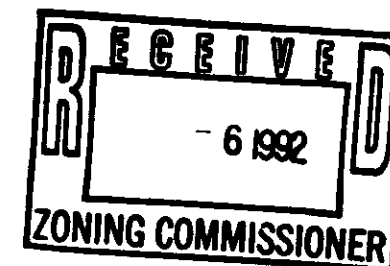
If you have any questions, please do not hesitate to contact me.

Very truly yours,

*John B. Gontrum*  
John B. Gontrum

JBG/ej

cc: Peter Max Zimmerman, Esquire  
Ms. Marie Simoes  
Mr. Leo J. Umerley, Sr.



MICROFILMED

LAW FIRM  
Romadka, Gontrum & McLaughlin, P.A.

814 EASTERN BOULEVARD  
ESSEX, MARYLAND 21221  
TELEPHONE: (410) 686-8274  
FAX # 686-8118

ROBERT J. ROMADKA  
JOHN B. GONTRUM  
J. MICHAEL McLAUGHLIN, JR.\*

DONALD H. SHEFFY  
ELIZABETH A. VANNI  
MARY H. BUCHANAN  
SHARON R. GAMBLE

\*Also admitted to District of Columbia

January 5, 1993

To The Board of Appeals of Baltimore County

Re: Petitions For Special Hearing, Special Exception  
& Zoning Variance  
Leo J. Umerley  
Case No. 92-346-XA

Dear Sir/Madam:

Please be advised that I wish to Appeal the Order dated December 15, 1992 on the herein above mentioned case.

Thank you for your consideration in this matter.

Very truly yours,

*John B. Gontrum*  
John B. Gontrum

JBG/em

RECEIVED ZONING OFFICE  
DATE: 01/05/93

MICROFILMED

LAW OFFICES  
NOLAN, PLUMHOFF & WILLIAMS

CHARTERED  
SUITE 700, COURT TOWERS  
210 WEST PENNSYLVANIA AVENUE  
TOWSON, MARYLAND 21204-5340

(410) 823-7800  
TELEFAX: (410) 286-2765

August 20, 1993

NEWTON A. WILLIAMS  
THOMAS J. REEDER  
WILLIAM P. ENGLEHART, JR.  
STEPHEN J. NOLAN  
ROBERT L. HANLEY, JR.  
ROBERT R. GUSHAWK  
STEPHEN M. SCHENNING  
DOUGLAS L. BURGESS  
ROBERT E. CHANELL, JR.  
E. BRUCE JONES\*\*  
J. JOSEPH CURRAN, III  
CHRISTINE H. MASHERRY

\*\*ALSO ADMITTED IN D.C.  
\*\*ALSO ADMITTED IN NEW JERSEY

JAMES D. NOLAN  
(DECEASED 1980)  
J. EARLE PLUMHOFF  
(1940-1988)  
RALPH E. DEITZ  
(1918-1980)  
OF COUNSEL  
T. BAYARD WILLIAMS, JR.  
WRITERS DIRECTOR DIAL  
#82

7853

Mr. William T. Hackett  
Chairman  
Ms. Kathleen C. Wiedenhammer  
Administrative Assistant  
County Board of Appeals  
Old Courthouse  
Towson, MD 21204

Re: Leo J. Umerley, Case No. 92-346-XA  
9813 Philadelphia Road, Scheduled for  
September 21 and 22, 1993

Dear Chairman Hackett and Ms. Wiedenhammer:

Please enter my appearance, and our firm, Nolan, Plumhoff & Williams, Chartered, on behalf of the Petitioner, Leo J. Umerley, in this case.

Mr. Umerley has just brought the case in, and unfortunately, the scheduled trial dates in September conflict with presently scheduled, and previously scheduled proceedings in asbestos litigation in which I have been involved for a number of years.

Accordingly, I would respectfully request that this matter be postponed for September 21 and 22, 1993, and not be reset without checking with my office in order that a new conflict situation not arise.

By a carbon copy of this letter, I am informing the Peoples Counsel for Baltimore County, Mr. Zimmerman, of the requested postponement, and I would have informed the parties on the notice of reassignment, but I do not have all of their addresses. Thanking you and your staff for your kind attention

COUNTY BOARD OF APPEALS  
SEP 23 11:11:39

Mr. William T. Hackett  
Chairman  
Ms. Kathleen C. Weidenhammer  
Administrative Assistant  
County Board of Appeals  
August 20, 1993  
Page Two

to this entry of appearance and request for postponement, I am,

Respectfully,  
*Steph J. Nolan*  
Stephen J. Nolan

SJW:med

ccs: Mr. and Mrs. Leo J. Umerly  
9813 Philadelphia Road  
Baltimore, MD 21237  
John B. Gontrum, Esquire  
Romadka, Gontrum & McLaughlin, P.A.  
814 Eastern Boulevard  
Essex, MD 21221  
Peter Zimmerman, Esquire  
Peoples Counsel of Baltimore County

0003A(98)

8/23/93

P. Zimmerman to prepare response to attached request for postponement; requests that Board defer making decision re postponement until he can provide that letter.

k

L.S.  
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LAW OFFICE  
*Darryl G. Fletcher, P.A.*  
8806 HANFORD ROAD  
BALTIMORE, MARYLAND 21234  
301 882-2000

April 15, 1992

Lawrence E. Schmidt,  
Zoning Commissioner of Baltimore County  
Office of Zoning Administration  
and Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204

Re: Case No.: 92-346-XA

Dear Commissioner Schmidt:

This letter is written on behalf of my clients, General Services Engineering, Inc., (GSEI), whose property is located immediately south of the Umerly property. My client is opposed to the granting of the special exceptions requested in this hearing, especially since GSEI is being asked to approve a lower level zoning by Baltimore County.

It is not our intention to put Mr. Umerly out of business, but merely that he use the property within the limits of the applicable zoning laws.

We are further opposed to the special exceptions, inasmuch as we do not want to create any precedent or further development by Mr. Umerly. There is a substantial tract of land owned by Mr. Umerly of about five (5) acres which he has backfilled between the existing parking area, and the property of GSEI.

We would strongly urge the Commission to restrict the use of the subject property, and require them to be in conformance with the 1989 Master Plan for zoning in that area. This twenty-four (24) hour a day facility adjacent to residential and other ML zoning, far exceeds the intended use, and has grown from a modest contractors' facility to a major trucking terminal.

For these and other reasons to be set forth at the hearing, we would request that the Commission deny the requested variances,

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ZONING OFFICE

Lawrence E. Schmidt,  
Zoning Commissioner of Baltimore County  
RE: Case No.: 92-346-XA  
April 15, 1992  
Page 2

and/or to impose substantial restrictions on the use, and certainly any growth or expansion of this facility by Leo J. Umerly.

Very truly yours,  
*Darryl G. Fletcher*  
Darryl G. Fletcher

DGF:lcd

ROMADKA, GONTRUM & McLAUGHLIN, P.A.

814 Eastern Boulevard  
Baltimore, Maryland 21221  
TELEPHONE: (410)886-8274  
FAX: 886-0118

ROBERT J. ROMADKA  
JOHN B. GONTRUM  
J. MICHAEL McLAUGHLIN, JR.

ELIZABETH A. VANNI  
\*ALSO ADMITTED IN D.C.

CERTIFIED MAIL # P 255 301 261  
Return Receipt Requested

Leo Umerly  
9813 Philadelphia Road  
Baltimore, Md 21237

RE: 9813 Philadelphia Road  
RGM File No.: 11.3032

Dear Mr. Umerly:

As of this date I have received no response to the two letters sent to you. In addition numerous phone calls to you have gone unanswered. I am greatly concerned over our ability to effectively handle the July 8, 1993 Board of Appeals hearing due to this lack of communication.

As you know, I have repeatedly recommended that we do not go into this hearing without a land use planner to speak in favor of the site and current use.

Quite frankly, I think we are running out of time to present your case. I will be out of town for 2 weeks in mid June and consequently will not be able to consult with you until the end of the month. Unless I hear from you upon receipt of this letter or by June 9, 1993 I will proceed to withdraw my appearance before the Board. In addition, I am most discouraged that you are not paying anything on your bill which has been outstanding for many months. It is unfair to expect us to represent you for free with no commitment on your part.

Very truly yours,  
*John B. Gontrum*  
John B. Gontrum

JBG/hjb

cc: Leo Umerly (First Class Mail)

MICROFILMED

ROMADKA, GONTRUM & McLAUGHLIN, P.A.

814 Eastern Boulevard  
Baltimore, Maryland 21221  
TELEPHONE: (410)886-8274  
FAX: 886-0118

ROBERT J. ROMADKA  
JOHN B. GONTRUM  
J. MICHAEL McLAUGHLIN, JR.

ELIZABETH A. VANNI

\*ALSO ADMITTED IN D.C.

County Board of Appeals of Baltimore County  
Old Courthouse, Room 49  
400 Washington Ave.  
Towson, MD 21204

Attn: Kathleen C. Weidenhammer  
Administrative Assistant

RE: Case No.: 92-346-XA  
Assignment set for July 8, 1993 @ 10:00 a.m.  
RGM File No.: 11.3032

Dear Ms. Weidenhammer:

Please withdraw my appearance on behalf of Petitioner, Mr. Leo J. Umerly. Notice has been given per the enclosed copy of letter dated June 4, 1993.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

*John B. Gontrum*  
John B. Gontrum

JBG/hjb  
Enclosure

cc: Leo J. Umerly  
Peoples Counsel for Baltimore County

ROMADKA, GONTRUM & McLAUGHLIN, P.A.

814 Eastern Boulevard  
Baltimore, Maryland 21221  
TELEPHONE: (410)886-8274  
FAX: 886-0118

ROBERT J. ROMADKA  
JOHN B. GONTRUM  
J. MICHAEL McLAUGHLIN, JR.

ELIZABETH A. VANNI

\*ALSO ADMITTED IN D.C.

County Board of Appeals of Baltimore County  
Old Courthouse, Room 49  
400 Washington Ave.  
Towson, MD 21204

Attn: Mr. William Hackett  
Chairman

RE: Case No.: 92-346-XA  
Hearing date: July 8, 1993 @ 10:00 a.m.  
RGM File No.: 11.3032

Dear Chairman Hackett:

I have been requested by Mr. Leo Umerly and Leo J. Umerly, Inc. to become associated with their pending Appeal to the County Board of Appeals. Mr. Umerly and our office have reached an agreement, but I am unable to try this case on the scheduled July 8, 1993 date. In the event that this case cannot be postponed from that date I will be precluded from entering my appearance.

I am familiar with this case as I have represented Mr. Umerly over the years, and I believe this case to be a major matter not only to Mr. Umerly and Leo J. Umerly, Inc., but also to the employees. The fundamental issue as I perceive it in this case is whether the existing use can remain. I feel it is important for both sides to be adequately prepared in order to present to the Board all of the issues necessary for a considered determination. Given the issues which were raised in the previous case, I cannot see how this can be done in the time now afforded.

I recognize that a postponement would be an inconvenience and hardship for the Board and the community as well as the Office of People's Counsel, which I am sure has already been preparing extensively. I would be willing to define agreed trial dates as I feel this case will take several days of testimony.

ROMADKA, GONTRUM & McLAUGHLIN, P.A.

814 Eastern Boulevard  
Baltimore, Maryland 21221  
TELEPHONE: (410)886-8274  
FAX: 886-0118

ROBERT J. ROMADKA  
JOHN B. GONTRUM  
J. MICHAEL McLAUGHLIN, JR.

ELIZABETH A. VANNI

\*ALSO ADMITTED IN D.C.

County Board of Appeals of Baltimore County  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, Md 21204

Attn: Mr. William Hackett  
Chairman

Re: Leo J. Umerly  
Case No.: 92-346-XA  
RGM File No.: 11.3032

Dear Mr. Hackett:

I have been advised by my client that he no longer wishes me to represent him in the referenced case at this time or at the hearing scheduled for September 22, 23 and 24, 1993. He has advised me that he is aware of these hearings on these dates. Accordingly, please withdraw my appearance.

Thank you for your prompt attention to this matter.

Very truly yours,  
*John B. Gontrum*  
John B. Gontrum

JBG/hjb

cc: Leo J. Umerly  
Peoples Counsel for Baltimore County

Nottingham Improvement Association, Inc.

(NOTTINGHAM)  
Baltimore, Maryland 21237

1314 Spotswood Road  
Baltimore, MD 21237  
July 3, 1993

Chairman  
Baltimore County Board of Appeals  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, MD 21204

Re: Case Number 92-346-XA Leo J. Umerly 9813 Philadelphia Road

Dear Sir:

The community of Nottingham wishes to express its strong objection to the postponement of the hearing scheduled for Thursday, July 8, 1993 at 10:00 a.m. for this case.

All the parties involved in this hearing were notified on May 10, 1993 of the scheduled date. Residents of Nottingham have altered vacation plans and made arrangements with employers to attend the hearing on July 8. We respect the time and efforts of the members of the Board of Appeals; therefore, we have prepared our case to meet the requirements of your schedule.

We do not feel that Leo J. Umerly and his attorney, John Gontrum, are demonstrating that same respect in requesting a postponement. Mr. Gontrum represented Mr. Umerly at the first hearing on this case on April 20, 1992. According to Mr. Arnold Jablon of ZADM, he filed an appeal on January 5, 1993. Therefore, John Gontrum has been involved with the issues of this case for over a year. He and his client have had considerable time to prepare for the hearing of July 8. They certainly have had sufficient time to settle any financial matters between them.

We in the community of Nottingham do not feel that the basis for this request constitutes an emergency matter requiring a postponement. We view Mr. Gontrum's request at the last minute as an insult not only to our community but also to the Board of Appeals. Therefore, we support a denial of the request for a postponement.

Sincerely,

*Marie Quintana Simoes*  
Marie Quintana Simoes  
President

cc: Peoples Counsel

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COUNTY BOARD OF APPEALS  
93 JUL 30 AM 11:39

The next question for this Court to determine is whether there was substantial evidence before the Board that the requested variances met the applicable requirement of the BCZR.

"Where property due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions. . . hardship arises. . . The restrictions of the ordinance taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship. . . [T]he hardship, arising as a result of the act of the owner. . . will be regarded as having been self-created, barring relief. . ." 2 Rathkopf, The Law of Zoning and Planning Sec. 48-1.

In North v. St. Mary's County, 99 Md. Ap., (1994) at 514, the Court of Special Appeals held

"in the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstruction) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls."

In sum then, the granting of a variance is a two step process. Initially there is a requirement that the property is in and of itself unique and unusual in a manner different from the nature of surrounding properties. Absent this finding, the process ends. David Cromwell et al v. Arthur Thomas Ward III Ct. of Sp. Appeals No. 617 (Sept. Term 1974).

In Cromwell, Supra the Court of Special Appeals reviewed a number of zoning cases from other jurisdictions. Xanthos v. Bd. of Adjustment 685 P 2nd 1032 (Utah 1984).

-5-

Chambers v. Smithfield City 714 P 2nd 1133 (Utah 1986) Prince William County Bd. of Zoning Appeals Bond 300 S.E. 2nd 781 (in 1983) Richardson v. Town of Salisbury 455 A 2nd 1059, (N.H. 1983).

These cases stand for the proposition that property owners must comply with the law and that "hardship" must be from special conditions unique to the subject property. Uniqueness cannot be created by the owner. Certainly it cannot arise out of a violation of the existing law by the owner. It must "relate to the special character of the land rather than to the personal circumstances of the landowner." Richardson Supra at 1061.

Petitioner seeks a variance from Section 410(a). 2 to permit a trucking facility within 200 feet of wetlands. The Board opined that the purpose of the restriction was to assure against the leakage of toxic material into the wetlands, and it found that in this case, the danger does not really exist. And so, the Board reasoned, to require Petitioner to comply would be unreasonable "and unnecessarily burdensome" (Op. 20). It also pointed out that the County had permitted an expansion of the site in 1982 "for what clearly was then a trucking facility, and which violated distance requirements of the Trucking Facilities Act" (Op. p 21).

The Board concluded that it would constitute "undue hardship to require Petitioners to remove that facility or the expanded portion built after the enactment of the Trucking Facility Act when he applied for and obtained the governments authority to do so" (Op. 21).

-6-

Petitioner also seeks a variance from the 300 foot distance required between the facility and a residential zone or dwelling. The Board again expressed its sympathy for Petitioner's plight. It found that the trucks entering and exiting the site did not use residential streets and as part of the order expressly prohibited such a traffic pattern. Again the Board, in granting the variances, although to a lesser degree than that requested, opined that the granting of the variances "would give substantial relief to the owner and the property involved, and be more consistent to the justice of the other property owners, [if] granted in such a fashion that the spirit of the ordinance would be observed and public safety and welfare secured. . .", (Op. 24).

Petitioner also sought and was granted a variance to allow a trucking facility within 100 feet of Philadelphia Road. Section 253.4 holds

"notwithstanding the foregoing, no trucking facility or part of the trucking facility may be established within 100 feet of such a right of way."

The Board found that Petitioners had no proscribed use within 100 feet of Philadelphia Road. The Board found that while Petitioner's office and automobile parking were within 100 feet of Philadelphia Road, it further found that the garage and other portions of the operation were not. It also found that Philadelphia Road was not a designated freeway or expressway.

The Board's reading of 253.4 was myopic. As the Court reads 253.4, it prohibits the operation of a trucking facility or any

-7-

part of a trucking facility within 100 feet of a residential zone or the right of way of any street abutting any residential zone boundary, or the right of way of any street abutting such a boundary. It seems fairly clear from the exhibits that Philadelphia Road is a right of way abutting a residential boundary. It seems equally clear that the offices of the trucking operation would constitute a "part of a trucking facility."

Petitioners also sought relief from Section 4103 (b). 3 to permit 35 percent of the site to be devoted to parking trucks and trailers in lieu of the required 75 percent. The Board in essence found that it would be inconvenient and expensive to require Petitioner to conform to this requirement. This is clearly not what practical difficulty is all about. Petitioner further seeks relief from Section 243.2, to permit a minimum building set back of 70 feet in lieu of the required 50. Again, the Board reasoned that since the area was fenced, to require Petitioner to comply with this section would require a "reworking not only of the fenced area but also relocating a significant portion of the presently erected two-story brick and block building . . ." The Board found that this would constitute a practical difficulty.

It is interesting to note that in its opinion the Board, in discussing the relaxation of the 200' minimum setback from the wetlands and the 300' minimum setback from a residential zone, opined that, because of the shape and configuration of lots 2 and 5 to require full compliance would leave Petitioner with "only a

-8-

ribbon of useable area" for parking and storing trucks (Op. p.20) and would be "unnecessarily burdensome" (Op. 23). It further found a special circumstance in that the County had, in 1982, issued a permit allowing Petitioner to expand his operation.

There is nothing unusual about the shapes of lots 2 and 5. They are rectangles. What the Board is really saying is that, absent the grant of the variances, lots 2 and 5 would be unique and unusual. This reverses the process.

There is nothing unique about the subject property. Any hardship imposed on the property in requiring the owner to conform it to the law is in large part self imposed.

It is fundamental that the difficulties or hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions to particular property and not general in character. . . . [I]t is not uniqueness of the plight of the owner, but uniqueness of the land causing the plight, which is the criterion. If the hardship is common to the whole neighborhood, it may be ground for an exception or special use permit [if the statute so provides]. . . . [T]he hardship [in order to justify a variance, however,] . . . must relate to the particular property of the applicant. . . . 8 Eugene McQuillin, Municipal Corp. 325.167 (3d ed. rev. 1991).

Petitioner argues that this property is unique because it is buffered by other property of Petitioner. Unfortunately, the buffer is not quite large enough. He argues that the site is unique because it contains no wetlands. Again, the problem is that it is within 200' of wetlands.

There was a time, 1976-1979, when Petitioner had the opportunity to place this square peg in a round hole. He missed

-9-

it, exacerbated the problem in 1982 and 1988 and cannot now claim uniqueness or hardship.

In each instance the Board's finding of "uniqueness" or "undue hardship" resulted either from Petitioner's failure to follow the law or out of sympathy for Petitioner and the economic benefits to the State and County.

What is unusual is that Petitioner has operated this facility in contravention of the Zoning Laws for many years. He did not seek relief under the TFA and indeed, expanded the use in 1982 by suggesting that the use was something other than a trucking facility. As noted, the Board found the use "clearly was. . . a trucking facility". What has occurred over time is that Petitioner has done business his way and is now asking for a legal imprimatur.

The Board's findings with respect to the requested variances are bottomed on a misunderstanding of the variance process and are erroneous as a matter of law.

#### SPECIAL EXCEPTION

Most of the subject property is zoned ML-1M. The special exception request involves four of the five lots that make up the site. As the Board pointed out, "The original area of use, and also the tripling expansion, violated the distance standards from residences and wetlands contained in the Trucking Facilities Law." (Op. p. 5).

In general, when a legislative body permits a use in a particular zone by special exception, there is a presumption in favor of the use, absent circumstances showing that the use in a

-10-

particular location would have adverse effects over and above those ordinarily associated with the use in the zoning district. Schultz v. Pritts 291 Md. 1 (1981).

But the use is a conditional use. It is presumptively permitted and may be allowed ". . . absent any fact or circumstances in a particular case which would change this presumptive finding." Rockville Fuel & Feed Co. v. Board of Appeals of the City of Gaithersburg 257 Md. 183, 188 (1970). The Board evaluated the proposal request in detail, addressing each of the requirements of BCZR502.1 It concluded that the proposal measured up in all respects.

"The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan." Schultz v. Pritts, 291 Md. 1, 11 (1981).

Of course in order for the Board to grant the Special Exception, the site had to conform to all of the requirements of the BCZR. In order to accomplish this, it necessarily follows that Petitioner had to prevail on his requested variances.

This situation was present in Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County, In the Court of Special Appeals No. 794 (Sept. Term 1994). In that

-11-

case, the Appellant was seeking approval to permit a variance in the number of units per "cluster" in a proposed residential development. In order to qualify for the conditional use, Appellant needed a variance from the six units per cluster condition, as well as other variances. The Appellants in Chester Haven, like Petitioner here, was attempting to eliminate the conditions through the use of variances.

"The attempt to follow this procedure creates fundamental and conceptual problems with the generally accepted proposition that, if the express conditions necessary to obtain a conditional use are met, it is a permitted use because the legislative body has made that policy decision. Does the legislative intent that the use be permitted remain if the conditions are not met but are eliminated by an administrative body granting a variance? Upon such an occurrence, the application for a conditional use becomes dependent upon the granting of the variances. Under those circumstances, the presumption that a conditional use is permitted may well fall by the wayside. The policy that establishes certain uses as permitted is predicated upon the satisfaction, not avoidance, of conditions. Conditions the legislative body attaches to the granting of a conditional use normally must be met in accordance with the statute - not avoided. In any event, even if such a procedure would pass muster, if the variance process fails, the entire application fails. Slip. Op. p. 11-12.

Since Petitioner cannot satisfy the requirement of BCZR 307.1 it follows that the granting of the Special Exception must also be reversed.

Accordingly it is this 22nd day of March 1995 by the Circuit Court for Baltimore County

ORDERED that the decision of the Board of Appeals dated December 22, 1993 granting Petitioner's requests for variance

-12-

**Nottingham Improvement Association, Inc.**

(NOTTINGHAM)  
Baltimore, Maryland 21237

1314 Spotswood Road  
Baltimore, MD 21237  
August 23, 1993

William T. Hackett, Chairman  
Baltimore County Board of Appeals  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, MD 21204

Dear Mr. Hackett:

Re: Case Number 92-346-XA Leo J. Umerley 9813 Philadelphia Road

The community of Nottingham has been informed of a request for postponement of the hearing scheduled for September 22, 23, 24, 1993 at 10:00 A.M. by Stephen J. Nolan, Plumbhoff, and Williams. We wish to express our strong objection to a postponement of this hearing.

This hearing was originally scheduled for July 8, 1993. At that time, the community of Nottingham expressed its opposition to a postponement by both a letter and testimony. When the postponement was granted, we were assured by C. William Clark, chairman, that another postponement would not occur.

At this time, Mr. Leo J. Umerley has chosen to select a new attorney. Mr. Stephen J. Nolan has chosen to accept Mr. Umerley's case. These choices were made with the knowledge of the dates for the hearing scheduled by the Board of Appeals. These dates were selected on July 8 through the cooperative efforts of the Board, People's Counsel, Mr. Umerley's attorney, and community representatives. We do not feel that the personal choices of two individuals should dictate changing a schedule mandated by an earlier postponement and developed by several parties.

Mr. Nolan has the options of changing the date of his other commitment or excusing himself from one of the cases requiring his participation. The community of Nottingham and the Board of Appeals should not have to accommodate every request made by this client and his attorney.

We shall respectfully accept your decision on this matter. However, we recommend a denial of the request for a postponement.

Sincerely,

*Marie Quintana Simoes*  
Marie Quintana Simoes  
President

cc: People's Counsel

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COUNTY BOARD OF APPEALS  
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MICROFILMED

**Nottingham Improvement Association, Inc.**

(NOTTINGHAM)  
Baltimore, Maryland 21237

1314 Spotswood Road  
July 29, 1996

Mr. Arnold Jablon  
Director, Office of Permits and Dev. Management  
Baltimore County Office Building  
111 W. Chesapeake Avenue  
Towson, MD 21204

Dear Mr. Jablon:

Enclosed is a copy of the Court of Appeals' decision to deny Leo Umerley's petition for a writ of certiorari to the Court of Special Appeals.

The community of Nottingham wishes to commend the office of People's Counsel for their outstanding representation of Baltimore County's zoning legislation regarding Trucking II facilities in residential areas. This case has taken almost ten years to settle.

For twenty years, the community of Nottingham has endured a twenty-four hour, seven-day trucking operation of 150 eighteen-wheelers of every variety operating across the street. One would suppose that our living in a DR-2 residential area would provide a safe, quiet, and healthy environment. Instead, Umerley Trucking has made millions in profit at the expense of our quality of life.

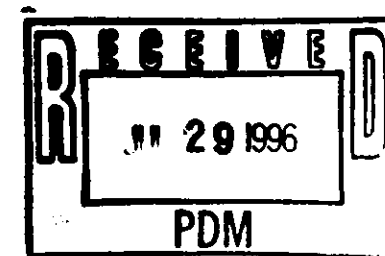
In a recent article in the SUN, you stressed that Umerley Trucking would have to cease operation within 30 days of the decision of the Court of Appeals OR to move its trucks to the back of the property. We are hoping that you will clarify how moving the trucks to the back will prevent their entrance and exit on Philadelphia Road within 300 feet of our community and will end a 24-hour, 7-day trucking operation.

We appreciate your assistance in this matter and hope to hear from you soon regarding its resolution.

Sincerely,

*Marie Q. Simoes*  
Marie Q. Simoes  
President

cc: Mr. Marreen Kelly  
Councilman Joseph Bartenfelder  
Councilman Vincent Gardina



96-477

7/29/96  
q

**GENERAL SERVICES ENGINEERING, INC.**

9729 PHILADELPHIA ROAD • BALTIMORE, MARYLAND 21237 • (410)774-5525

August 31, 1993

Mr. William T. Hackett  
County Board of Appeals  
400 Washington Avenue  
Old Courthouse  
Towson, MD 21204

Subject: Leo J. Umerley, Case No. 92-346-XA

Dear Mr. Hackett:

It is our understanding that a request to postpone the September 21 and 22 hearing has been filed by Mr. Stephen J. Nolan.

I would like to point out that Mr. Clark had publicly stated that there would be no more delays or postponements granted.

We at General Services Engineering, Inc. respectfully request that the postponement be denied.

Very truly yours,

*Gary R. Hoffman*  
Gary R. Hoffman  
President

cc: Peter Zimmerman  
People's Counsel

RECEIVED  
COUNTY BOARD OF APPEALS  
93 SEP 2 2 43 65  
94-11-11-11-11

11/15/93 93-250  
to LES

9911 Philadelphia Rd.  
Baltimore, Maryland 21237  
January 13, 1993

Mr. Lawrence E. Schmidt  
Zoning Commissioner for Baltimore County  
County Office Building  
Towson, Maryland 21204

Re: Leo J. Umerley's petition for Special Exception and Zoning Variances - Case No. 92-346-XA which was heard before you at public hearings on June 19, 1992 and September 22, 1992 and which we attended.

Dear Commissioner Schmidt:

We have obtained a copy of your findings and decision on the case (dated December 15, 1992).

This letter is to bring to your attention that, in the findings, there appears to be an error which is of concern to us and to request that a correction be made.

The error:

On page #15 (line 22) and on page #16 (line 2), it is stated that lots #1, 3 and 8 would be preserved as buffering areas whereas page #4 (lines 8, 9, 10 and 11) states correctly that Mr. Umerley intends to keep lots #1, 6 and 8 in their natural state.

In the interest of accuracy and to eliminate the inconsistency described above, corrections could be made in pages #15 and #16 to identify lots #1, 6 and 8 as buffering areas (NOT lots #1, 3 and 8).

Note that as stated on page #3 of the findings, lot #3 is not part of the properties for which the petitions were filed.

Our Concern:

Our residence is within 20 feet of the north boundary of Umerley lot #6.

In the event of an appeal and in the event your decision is overturned following said appeal, we would like some assurance that lot #6 in particular would remain as a buffering area. We believe that corrections as suggested above, would provide us with such assurance and alleviate our apprehension over the future possibility of trucking activities within 20 feet of our house.



MICROFILMED

ZONING OFFICE

DATE: 7-8-93

**PEOPLE'S COUNSEL'S SIGN-IN SHEET**

CASE: 92-346-XA Umerley Trucking

The Office of People's Counsel was created by County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns if they do not have their own attorney. If you wish to be assisted by People's Counsel, please sign below.

Check if you wish to testify.	Name/Address Phone No.	Community Group You Represent? Basis of Your Concerns
<input checked="" type="checkbox"/>	Marie Q. Simoes 1314 Spotswood Rd. 687-3581	Nottingham Improvement Assoc, Inc.
<input type="checkbox"/>	Mr. and Mrs. Cheyft Philadelphia Rd. 21237	"
<input type="checkbox"/>	Mr. and Mrs. M... Philadelphia Rd. 21237	"
<input type="checkbox"/>	Mr. and Mrs. Chaplain Ravenwood Rd. 21237	"
<input type="checkbox"/>	Mr. and Mrs. Bellitt Ravenwood Rd. 21237	"
<input type="checkbox"/>	Mr. Fred Shaver Nottinghamwood Rd. 21237	"
<input type="checkbox"/>	Mr. E. Bennett Nottinghamwood Rd. 21237	"
<input type="checkbox"/>	Mrs. S. Rucker Nottinghamwood Rd. 21237	"
<input type="checkbox"/>	Mrs. M. Devlin Philadelphia Rd. 21237	"
<input type="checkbox"/>	Mrs. Gloria Jo Turner 9226 Ravenwood Rd. 21237	"
<input type="checkbox"/>	Mr. and Mrs. Zarr Nottinghamwood Rd. 21237	"
<input type="checkbox"/>	Mr. Hunter Bush Ravenwood Rd. 21237	"
<input type="checkbox"/>	Mr. and Mrs. G. Hoffman 6094-6273, 578-5525 General Services Engineering, Inc. 9729 Philadelphia Rd. 21237	"
<input type="checkbox"/>	Mr. and Mrs. ... White Marsh Civic Assoc.	"
<input type="checkbox"/>	Mr. Tom ... Court 21237 Franklin Ridge Comm. Assoc.	"

PLEASE PRINT CLEARLY

**PETITIONER(S) SIGN-IN SHEET**

NAME	ADDRESS
<i>Barbara A. Shaly</i>	2 Stone Row Ct 2030
<i>Wanda Umerley</i>	13207 Blakely Rd. 21031
<i>Ronald M. Kearney</i>	102 N. Main St. Bel Air 21034
<i>John J. Carr</i>	Bulk G. E. O. C.
<i>Ray Mechuck</i>	214 DEEP DAVE DR TIMONUM 21093

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**PETITIONER(S) SIGN-IN SHEET**

NAME	ADDRESS
<i>Leo Umerley</i>	9813 Phil. Rd. Baltimore 21237
<i>Ronald M. Kearney</i>	102 N. Main St. Bel Air, MD 21034

MICROFILMED

PLEASE PRINT CLEARLY

**PROTESTANT(S) SIGN-IN SHEET**

NAME	ADDRESS
<i>Gary R. Hoffman GSEI</i>	9729 Philadelphia Road
<i>John Chryst</i>	9911 Philadelphia Rd. 21237
<i>Ann DeWitt</i>	9806 Phila. Rd. 21237
<i>Hunter E. Bush</i>	9223 Ravenwood Rd 21237
<i>Richard DeSimone</i>	9207 Nottinghamwood Rd 21237
<i>Gloria J. Turner</i>	9226 Ravenwood Rd 21237
<i>Marie Q. Simoes</i>	1314 Spotswood Rd. 21237
<i>John Moraz-Zarr</i>	9209 Philadelphia R.R.
<i>Barbara Hoffman</i>	9729 Philadelphia Road
<i>Tom Cash</i>	4 Cantrell Ct.

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
HUNTER E. BUSH	7223 RAVENWOOD RD 21237
GLORIA J. TURNER	9226 RAVENWOOD RD 21237
BARBARA HOFFMAN	9729 PHILADELPHIA RD 21237
Ray R. Hoffmann	9727 Philadelphia Rd 21237
E. L. CHAPLINI	7263 RAVENWOOD RD 21237
DEBORAH CHAPLINI	" " " "
Sandra Hinnegans	9909 Philadelphia Rd
John Murgano	" " " "
Marie Q. Simms	1314 Spetwood Road 21237
JEAN & GEORGE CHRYST	9911 PHILADELPHIA RD. 21237

ORIGINAL

1 IN THE MATTER OF \* BEFORE THE  
 2 LEO J. UMERLEY, ET UX \* COUNTY BOARD OF APPEALS  
 3 FOR SPECIAL EXCEPTION AND \* OF BALTIMORE COUNTY  
 4 VARIANCES ON PROPERTY \* Case No. 92-346-XA  
 5 LOCATED ON THE SOUTHEAST \* September 22, 1993  
 6 SIDE PHILADELPHIA ROAD, 138'  
 7 SOUTH OF THE CENTERLINE \*  
 8 OF RAVENWOOD ROAD \*  
 9 (9813 PHILADELPHIA ROAD) \*  
 10 11TH ELECTION DISTRICT \*  
 11 6TH COUNCILMANIC DISTRICT \*  
 12 \* \* \* \* \*  
 13 The above-entitled matter came on for hearing  
 14 before the County Board of Appeals of Baltimore County at  
 15 the Old Courthouse, Room 49, 400 Washington Avenue,  
 16 Towson, Maryland 21204 at 10 o'clock a.m., September 22,  
 17 1993.  
 18 \* \* \* \* \*  
 19  
 20 Reported by:  
 21 C.E. Peatt

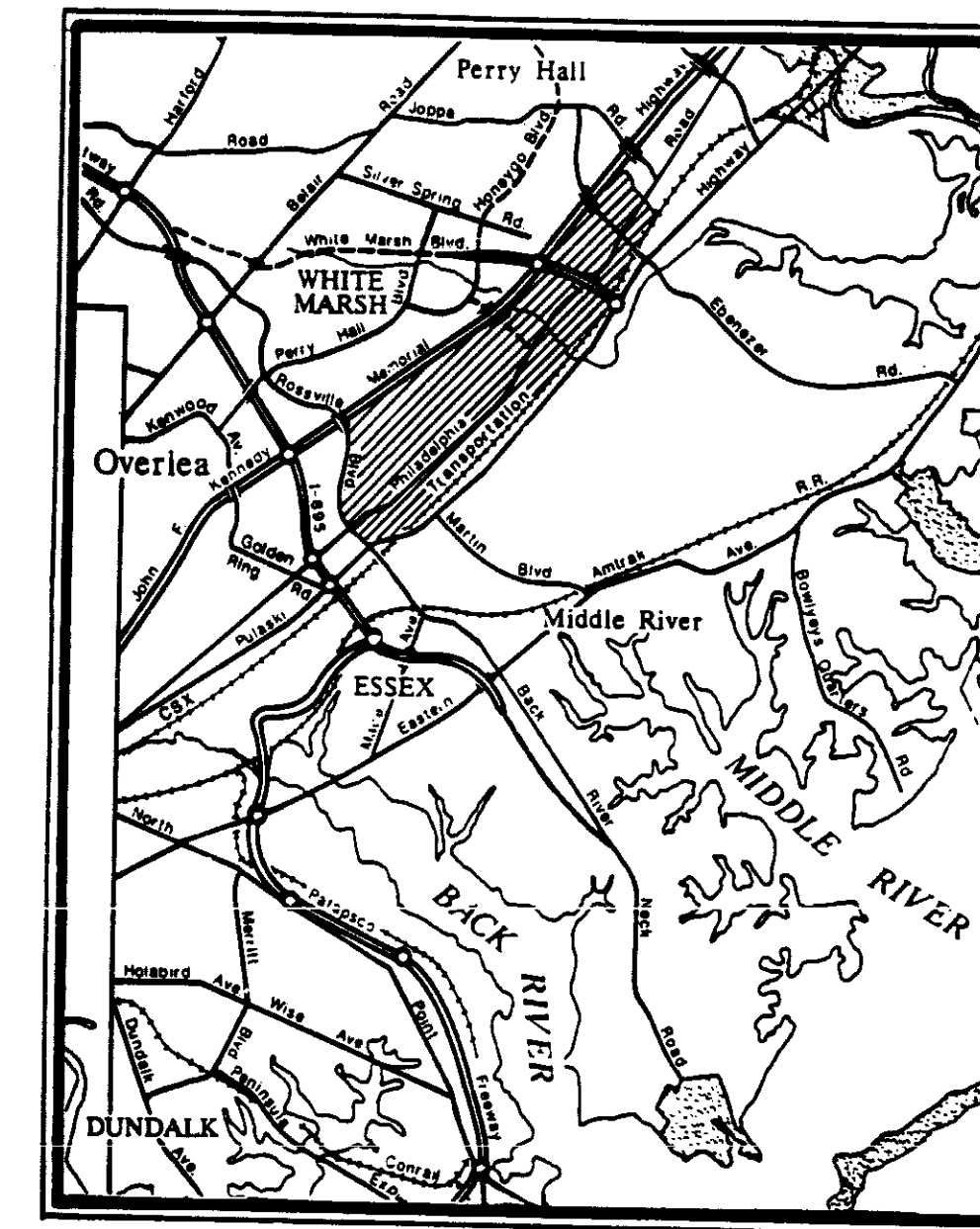
BOARD OF APPEALS

MICROFILMED

ORIGINAL

1 VOLUME II of TWO VOLUMES  
 2 IN THE MATTER OF \* BEFORE THE  
 3 LEO J. UMERLEY, ET UX \* COUNTY BOARD OF APPEALS  
 4 FOR SPECIAL EXCEPTION AND \* OF BALTIMORE COUNTY  
 5 VARIANCES ON PROPERTY \* Case No. 92-346-XA  
 6 LOCATED ON THE SOUTHEAST \* September 23, 1993  
 7 SIDE PHILADELPHIA ROAD, 138'  
 8 SOUTH OF THE CENTERLINE \*  
 9 OF RAVENWOOD ROAD \*  
 10 (9813 PHILADELPHIA ROAD) \*  
 11 11TH ELECTION DISTRICT \*  
 12 6TH COUNCILMANIC DISTRICT \*  
 13 \* \* \* \* \*  
 14 The above-entitled matter came on for hearing  
 15 before the County Board of Appeals of Baltimore County at  
 16 the Old Courthouse, Room 49, 400 Washington Avenue,  
 17 Towson, Maryland 21204 at 10 o'clock a.m., September 23,  
 18 1993.  
 19 \* \* \* \* \*  
 20 Reported by:  
 21 Susan Smith, CSR

TOWSON REPORTING COMPANY, INC.



People's Counsel Ex. 1

Baltimore County • Focus on Community •

PHILADELPHIA ROAD CORRIDOR STUDY

As Adopted By The Baltimore County Council on January 21, 1992 with Amendments

PC #2

DATE: 9/22/93

PEOPLE'S COUNSEL'S SIGN IN SHEET

CASE: 92-346-XA/LEO J. UMERLEY

The Office of People's Counsel was created by County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns if they do not have their own attorney. If you wish to be assisted by People's Counsel, please sign below.

Check if you wish to testify.	Name/Address Phone No.	Community Group You Represent? Basis of Your Concerns
✓	L86-7920 9233 RAVENWOOD RD HUNTER BUSH	NOTTINGHAM VILLAGE
✓	GLORIA JUNE TURNER 6072465 9226 RAVENWOOD RD 21237	" "
✓	Marie Quintana Simms 6913581 1314 Spetwood Road 21237	" "
	W. M. George CHRYST 686-7289 9911 Philadelphia Rd. 21237	" "
	Wilbur C. Chryst 9206 RAVENWOOD RD 21237	" "
✓	ERNEST L. CHAPLINI 7263 RAVENWOOD RD 21237	" "
	DEBORAH E. CHAPLINI 9909 PHILADELPHIA RD 21237	" "
	R. C. Hoffmann 60211234 60211234	GEN. SERVICES. EAG. INC
✓	CAROL R. HOFFMANN 9729 PHILADELPHIA RD 574-5525	" " " "
	Barbara Hoffman 9729 Philadelphia Rd. 574-5525	" " " "
	E. L. CHRYST'S DMC 4930 PHILADELPHIA RD 920-0115	NOTTINGHAM VILLAGE

People's Counsel Ex. 3

CURRICULUM VITAE

Thomas E. Robbins, M.D., F.A.C.P.

**Birth:** December 7, 1939; New York City  
**Home Address:** 915 Poplar Hill Road Baltimore, Maryland 21210 (301) 433-3371  
**Business addresses:**  
 Thomas E. Robbins, M.D., P.C. Maryland Sleep Disorders Center, Inc.  
 Ruxton Towers, Suite 217, Ruxton Towers, Suite 211  
 8415 Bellona Lane 8415 Bellona Lane  
 Baltimore, Maryland 21204 Baltimore, Maryland 21204  
 (301) 494-1110 (301) 494-9773

**Degrees:**  
 A.B. University of Pennsylvania 1961  
 M.D. Hahnemann Medical College 1965

**Medical Licenses:**  
 State of Maryland, Certificate No. D14511

**Postgraduate Education:**  
 Hospital of the University of Pennsylvania, Rotating Internship 1965-1966  
 National Institutes of Health, Division of Biological Standards  
 Laboratory of Viral Immunology, Staff Associate 1966-1969  
 University of Washington, Seattle, Medical Residency 1969-1971  
 Hospital of the University of Pennsylvania, Pulmonary Fellow 1971-1972

**Postgraduate Courses:**  
 Human Dimensions in Medical Education, 5-Day Program 1973  
 ACR sponsored "Teaching of Pneumoconiosis" 1974  
 Human Dimensions in Medical Education, 10-Day Program 1975  
 Course in Bronchoscopy, University of Iowa 1976  
 ACR sponsored "Radiology of Pneumoconiosis" 1985  
 Clinical Polysomnography and Sleep Disorders Medicine, Stanford University 1989

**Past Appointments:**  
 University of Maryland, Assistant Professor of Medicine 1972-1983  
 Director, Medical Intensive Care Unit, University of Maryland 1973-1976  
 Director, Sleep Disorders Laboratory, University of Maryland 1974-1985  
 Medical Director, Respiratory Therapy, University of Maryland 1975-1985  
 Acting Chief, Division of Pulmonary Diseases, Department of Medicine, University of Maryland 1983-1984  
 University of Maryland, Associate Professor of Medicine 1983-1985  
 Secretary, Steering Committee, Prospective Investigation of Pulmonary Embolism Diagnosis 1984-1990

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**Community Services:**

Member, American Lung Association/American Thoracic Society Component Committee on Research Review	1978-1979
Board Member, Baltimore City Unit, American Cancer Society	1977-1979
Board Member, American Lung Association of Maryland, Program & Budget Committee	1981-1989
Environmental and Occupational Health Committee	1985-1989
Government Relations Committee	1989-1991
Board Member, Friends School of Baltimore	1981-1988
Baltimore Physicians for Social Responsibility, Steering Com.	1987-
Chair, Program Committee	1987-1989
Vice President	1988-1989
President	1989-
Governor's Indoor Air Quality Task Force	1989-1990
Maryland Department of the Environment, Diesel Exhaust Advisory Panel	1991-

People's Counsel 4

NOTTINGHAM IMPROVEMENT ASSOCIATION, INC.

RESOLVED: That the position of the NOTTINGHAM IMPROVEMENT Association as adopted by the (Board of Directors) and (Zoning Committee) on the zoning matter known as:

CASE NO. 92-346-XA (Leo J. Umerley)

is that:

The operation by Leo J. Umerley of a 24-hour trucking facility at 9813 Philadelphia Road (zoned ML), immediately adjacent to the residential community of Nottingham (zoned DB2), has detrimental impacts on the surrounding locale.

AS WITNESS OUR HANDS AND SEAL THIS 27th day of June, 1993.

ATTEST: NOTTINGHAM IMPROVEMENT Association, INC.

Eileen C. Afanador, Secretary; Marie Quintana Simoes, President

MICROFILMED.

AFFIDAVIT

STATE OF MARYLAND BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the (Board of Directors) and (Zoning Committee) of the NOTTINGHAM IMPROVEMENT Association, INC.

ERNEST L. CHAPOLINI

MARIE QUINTANA SIMOES

GLORIA JUNE TURNER

ATTEST:

NOTTINGHAM IMPROVEMENT Association, INC.

Eileen C. Afanador, Secretary; Marie Quintana Simoes, President

DATE: 7-3-93

NOTTINGHAM IMPROVEMENT ASSOCIATION, INC.

RESOLVED: That at the general meeting of the NOTTINGHAM IMPROVEMENT Association held on February 25, 1993, it was decided by the Association that responsibility for review and action on all zoning matters for the period 1993-1996 be placed in the (Board of Directors) (Zoning Committee) consisting of the following members:

ERNEST L. CHAPOLINI

MARIE QUINTANA SIMOES

GLORIA JUNE TURNER

AS WITNESS OUR HANDS AND SEAL THIS 27th day of June, 1993.

ATTEST: NOTTINGHAM IMPROVEMENT Association, INC.

Eileen C. Afanador, Secretary; Marie Quintana Simoes, President

EXHIBIT A

Final Report of the Baltimore County Planning Board Adopted February 19, 1976

APP-111

People's Counsel Ex. 8

PROPOSED ZONING AMENDMENTS: TRUCKING FACILITIES

Baltimore County Office of Planning and Zoning Towson, Maryland 21204

APP-112

APP-113

PROPOSED ZONING AMENDMENTS: TRUCKING FACILITIES

A Final Report of the Baltimore County Planning Board\*

DISCUSSION At this point in history, the trucking industry might be described as the life-blood system of American commerce. Trucks move goods with flexibility unmatched by any other present mode of transportation.

Unfortunately, the facilities that serve and are served by the trucking industry are frequently incompatible with other business and industrial establishments. And, needless to say, they are totally inappropriate in or near residential areas: while most citizens have probably come to accept the noise and fumes of large tractor-trailers driving along major highways, they cannot find it so easy to accept the concentration of these factors at a truck terminal or truck yard operating day and night close to their homes.

The fact is, however, that a number of trucking facilities have been established too close to the homes of Baltimore County citizens over the years, especially in communities near major industrial areas. And it is not only the on-premise truck operations that have caused problems, for the facilities are frequently so situated that trucks must gain access to them by way of small, residential streets.

By and large, the trucking facilities causing these problems have been established in accordance with present zoning regulations. It has become apparent that these regulations are inadequate in many respects—not just in their lack of safeguards for the welfare of residential areas adjacent to trucking-facility sites, but also in their failure to prescribe modern development standards.

It is the purpose of the regulations proposed here to remedy those deficiencies, both in terms of control over the development of new facilities and in terms of remedial measures applicable to existing ones.

The proposed regulations are based to a large extent on recommendations of the special Citizens Task Force on Truck Terminals, appointed by County Executive Theodore G. Venetoullis and chaired by Councilman John W. O'Rourke. The Planning Board has reviewed the Task Force proposal over a period of several months, has revised it, and has held a public hearing on the revised proposal. Now the Board has again revised the recommendations and offers them, in this final report, for consideration by the County Council.

NOTE: The appendix to this report indicates the zoning classifications under which various truck-oriented uses would be permitted as of right, allowable by special exception, or prohibited under the proposed legislation.

\*Adopted February 19, 1976.

Published by the Baltimore County Office of Planning and Zoning Towson, Maryland 21204

Printed by Central Reproduction Services Division, Baltimore County Office of Central Services

February, 1976

APP-114

RECOMMENDATIONS

It is recommended that the Baltimore County Zoning Regulations\* be amended as set forth below:

1. In Section 101, insert the following definitional entries, in alphabetical order:

Collector street, major: A street, or part of one, that is intended for travel between neighborhoods or between neighborhoods and other places, but not for travel within neighborhoods; is not an arterial street; and has been designated as a major collector street by the Planning Board by the same method used to designate freeways, expressways, and arterial streets.

County trucking-facilities-development officials: The Directors of Planning, Public Works, and Traffic Engineering and of the Industrial Development Commission.

Trucking facility: A structure or land used or intended to be used primarily for trucking operations or truck or truck-trailer parking or storage, other than a warehouse, moving and storage establishment, or truck stop. A trucking facility may include, as incidental uses only, sleeping quarters and other facilities for trucking personnel, facilities for the service or repair of vehicles, or necessary space for the temporary storage of goods or chattels. As used in this definition, neither the term "trucks" nor the term "truck trailers" includes any vehicle whose maximum gross weight is 10,000 pounds or less, as rated by the State Motor Vehicle Administration.

Trucking facility, Class I (truck terminal): A trucking facility whose primary purpose is to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types, in order to facilitate the transportation of such goods or chattels.

Trucking facility, Class II: A trucking facility other than a Class I trucking facility, including a truck yard (the primary purpose of which is to accommodate the parking or storage of trucks or truck trailers).

Truck stop: A structure or land used or intended to be used primarily for the sale of fuel for trucks and, usually, incidental service or repair of trucks; or a group of facilities consisting of such a use and attendant eating, sleeping, or truck-parking facilities. As used in this definition, the term "trucks" does not include any vehicle whose maximum gross weight is 10,000 pounds or less, as rated by the State Motor Vehicle Administration.

Warehouse: A building or part of a building used or intended to be used primarily for the storage of goods or chattels that are to be sold retail or wholesale from other premises or sold wholesale from the same premises; for the storage of goods or chattels to be shipped on rail order; for the storage of equipment or materials to be used or installed at other premises by the owner or operator of the warehouse; or for similar storage purposes. (The term "warehouse" does not include a retail establishment whose primary purpose is for the sale of goods or chattels stored on the premises; however, nothing in this definition is meant to exclude purely incidental retail sales in warehouses. Further, the term does not include a truck terminal, at which any storage is minor, transitory, and merely incidental to the purpose of facilitating transportation of goods or chattels.)

\*Latest edition: 1975.

APP-115

Wetland: A private wetland or a state wetland as defined in Section 9-101 of the Natural Resources article of the Annotated Code of Maryland, 1974, and, if a private wetland, as delineated under Section 9-301 of that article.

2. In Section 101, revise the definitional entry beginning "Automotive service station" to read as follows:

Automotive service station: A structure or land used or intended to be used primarily for the retail sale of automotive fuel, but not a truck stop.

3. In Section 101, revise the definitional entry beginning "Nonconforming Use" to read as follows:

Nonconforming use: A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use.

4. Delete the definitional entry beginning "Truck Terminal" from Section 101.

5. Revise that part of Section 104 that precedes the semicolon to read as follows:

Section 104—NONCONFORMING USES

A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations

6. Revise the final entry of Subsection 233.2 to read as follows:

Warehouses

7. In Subsection 236.4, delete the entry "Truck terminal;" and insert the following entries in alphabetical order:

Moving and storage establishments

Truck stops

8. Delete the final entry in Subsection 241.1 and substitute the following entries therefor:

Warehouses

Accessory uses

9. In Paragraph 253.2.A, delete Item 6 and insert the following in numerical order:

3A. Moving and storage establishments

6. Trucking facilities (see Sections 410 and 410A)

6A. Truck stops

10. In Subsection 256.2, delete the entry "Truck terminal;" and insert the following entries in alphabetical order:

Moving and storage establishments

Trucking facilities (see Sections 410 and 410A)

11. In Subsection 256.4, immediately after the entry "Trailer Park (see Section 414)", insert the following entry:

Truck stops

12. In Article 4, immediately after the title of the article, substitute the following section designation and title for the present subtitle, "Statement of Purpose":

Section A400—PURPOSE

13. In Article 4, immediately preceding Section 400, add the following new section:

Section B400—APPLICATION OF THIS ARTICLE'S PROVISIONS

The provisions of this article apply only to principal uses except as otherwise specified (as in Item 405.4, C.12) or unless the provision implicitly relates to accessory usage (as in Section 405A).

14. In Paragraph 409.2.b, immediately after the third word, substitute "uses" for "buildings".

15. In Subparagraph 409.2.b(7), immediately after the words "commercial use", add a comma and the words "except trucking facilities".

16. In Paragraph 409.2.b, immediately after Subparagraph (7), insert the following new subparagraphs:

(8) Trucking facilities, Class I.....5 plus 1 for each 2 employees in the largest shift

(9) Trucking facilities, Class II.....1 for each 2 employees in the largest shift, or 1 for each 3000 square feet of total area devoted to parking of truck tractors, truck trailers, or tractor-trailers (not including truck maneuvering area or loading area), but in no case less than 10

17. In Article 4, immediately after Section 409, add the following new sections:

Section 410—CLASS I TRUCKING FACILITIES (TRUCK TERMINALS)

410.1—Nonconforming and other existing Class I trucking facilities. The provisions of this subsection apply to Class I trucking facilities existing on the effective date of this section.

A. Plans.

1. In the case of any Class I trucking facility for which approved plans are not on file with the Office of Planning and Zoning or the

1. No amendment of Section 270 is recommended in this report. That section appears to be superfluous and, in view of that and of the fact that numerous entries in Section 270 conflict with other, more-specific provisions of the Zoning Regulations, the Planning Board recommended its repeal.

Department of Permits and Licenses on the effective date of this section, the owner of or authorized agent for the trucking facility must file plans of the facility with the Zoning Commissioner within one year after that date. (See Subparagraph 410.3.C.1 for requirements. See also Subparagraph 2, below.) Where the plans for a Class I trucking facility are on file with the Office of Planning and Zoning or the Department of Permits and Licenses but, in the judgment of the Zoning Commissioner, are in insufficient detail to afford the proper administration of these Regulations with respect to that facility, the Zoning Commissioner may require that the owner or authorized agent file sufficiently detailed plans within the 1-year period. (The mere submission of plans under this subparagraph will not establish the legality of any Class I trucking facility.)

2. Within 30 days after the effective date of this section, the Zoning Commissioner shall publish a checklist of requirements for plans submitted pursuant to Subparagraph 1, above. The checklist must indicate, among other things, 1 or more acceptable scales to which plans must be drawn.

B. Rulings etc. as to nonconformance with respect to certain provisions.

1. Within 1 year after the date the Zoning Commissioner accepts plans for a trucking facility as required under Subparagraph 410.1.A.1, he shall review them and issue a ruling whether or not the facility conforms with the provisions listed in Subparagraph 2 and, if not conforming with any such provision, whether the nonconformance may be allowed to stand under the provisions of Subparagraph 3. If the provision requires the recommendation or approval of authorities other than the Zoning Commissioner, the ruling with respect to conformance with that provision may be made only upon such recommendation or approval.

2. The provisions with respect to which the Zoning Commissioner shall issue rulings under Subparagraph 1 are the following:

- Subparagraph 409.2.b(8) (automobile parking)
Subparagraph 410.3.A.1 (access to streets)
Subparagraph 410.3.B.3 (layout such as not to cause congestion)
Subparagraph 410.3.B.5 (fencing etc.)
Subparagraph 410.3.B.6 (wheel stops etc.)
Subparagraph 410.3.B.7 (paving and curbing)
Subparagraph 410.3.B.8 (drainage)
Subparagraph 410.3.B.9 (rest rooms and other conveniences)
Subparagraph 410.3.C.2 (concealment of automotive parts)

3. A trucking facility's nonconformance with Subparagraph 409.2.b(8) shall be allowed to stand if a variance to that subparagraph is granted pursuant to Section 307 of these Regulations and Section 22-23 of the Baltimore County Code 1968, as amended by Bill No. 72, 1969. Nonconformance with Subparagraph 410.3.A.1 shall be allowed to stand if conformance with Subparagraph 410.3.A.1 does not abut a street on which access is

permitted under that subparagraph or, if it does abut such a street, the County trucking-facilities-development officials determine that the length of the coextensive street line and site boundary is insufficient to permit proper access from that street. However, in any case where access that is not in accordance with Subparagraph 410.3.A.1 is allowed to remain, the Zoning Commissioner shall have the power to prescribe the route that trucks must use in reaching or on leaving the site, in accordance with a recommendation of the County trucking-facilities-development officials.

C. Procedure etc. in case of nonconformance with respect to certain provisions. If the Zoning Commissioner, under Subparagraph 410.1.B.1, rules that a trucking facility does not conform with a provision listed in Subparagraph 410.1.B.2 and if the nonconformance with that provision is not allowed to stand under Subparagraph 410.1.B.3, one or both of the courses of action set forth in Subparagraphs 1 and 2, below, must be followed.

1. Within 90 days of the date of the Zoning Commissioner's ruling, the owner or agent must file with the Zoning Commissioner an acceptable program of compliance, showing that conformance with each provision in question will be achieved within 27 months after the date of the ruling. The program must include, among other things that the Zoning Commissioner may reasonably require, a) a plan of the trucking facility as it will be upon conformance as required and b) the schedule under which conformance will be achieved. The Zoning Commissioner may refuse to accept any such program that, in his judgment, does not show that approximately half of all the work to be completed under the program will be done by the end of the 15th month after the date of the ruling or does not meet other requirements of these Zoning Regulations. The trucking facility covered by a program of compliance submitted pursuant to this subparagraph must be in partial compliance with the provisions in question by the end of the 15th month after the date of the ruling, as shown in the program, and must be in full compliance with all such provisions at the end of the 27th month after the date of the ruling. Or,

2. Within 90 days after the date of the Zoning Commissioner's ruling, the owner or agent must file with the Zoning Commissioner a petition requesting that the facility not be required to conform with a provision in question, the petition to be advertised and heard in accordance with the provisions of Subsection 500.7. No relief may be granted under this subparagraph, however, unless the petitioner shows that conformance with the provision would cause undue hardship and would not be in the interest of the general welfare of the community, with particular consideration given to any dwellings within 300 feet of the facility. Such relief may be granted to the extent necessary to eliminate undue hardship, and only to that extent, and only in keeping with the intent of these Zoning Regulations in general and this section in particular; relief may not be granted to an extent detrimental to the general welfare of the community. Where relief is sought but not

granted under this subparagraph, the Zoning Commissioner shall require a program of compliance such as that provided for under Subparagraph 1, above, and shall provide for enforcement of that program. In any case, the trucking facility must conform with any provision from which relief is not granted under this subparagraph within 27 months of the date of the Zoning Commissioner's ruling pursuant to Subparagraph 410.1.B.1.

D. Effects of failure to comply.

1. The failure of an owner of or authorized agent for a Class I trucking facility to comply with an applicable requirement of Paragraph A or C, above, or failure to comply with an order by the Zoning Commissioner prescribing a truck route as provided in Subparagraph 3 of Paragraph B, shall constitute a violation of these Zoning Regulations.

2. The right to continue any Class I trucking facility that was established before the effective date of this section and whose owner or agent has failed to comply with an applicable requirement of Paragraph A shall cease 3 years after that date, unless the facility conforms or has been changed to conform with all provisions of these Zoning Regulations, as if it were a new use.

3. The right to continue any Class I trucking facility that was established before the effective date of this section and whose owner or agent has failed to comply with the applicable requirements of Paragraph C shall cease 3 years after the date of the Zoning Commissioner's ruling issued pursuant to Subparagraph 1 of Paragraph B, unless the facility conforms or has been changed to conform with all provisions of these Zoning Regulations, as if it were a new use.

E. Expansion of nonconforming Class I trucking facilities. Any contrary provision of Section 104 notwithstanding, the site, structures, and paved areas of a nonconforming Class I trucking facility may not be expanded unless the use is made to conform in all respects with these Zoning Regulations, except that expansion to the minimum extent necessary to comply with the standards of Subsection 410.3 may be allowed by the Zoning Commissioner provided that the expansion is not in excess of that allowed under Section 104 and that, in the judgment of the Zoning Commissioner, with particular consideration given to any dwellings within 300 feet of the trucking facility.

F. With the exception of plans for conforming Class I trucking facilities in M.H. zones, plans approved under this subsection may be amended only by special exception.

G. Public information program on provisions of this section and Section 410A. For the period from the beginning of the 2nd month to the end of the 12th month after the date of enactment of this section, the Zoning Commissioner shall implement a program of public information regarding

the provisions of this section and Section 410A, with emphasis on the provisions of this subsection and Subsection 410A.1. In particular, he shall endeavor to ensure that any party responsible for complying with these sections is informed of the provisions therein. (However, the failure of the Zoning Commissioner to inform any party of the provisions of these sections will not constitute a legal justification for that party's failure to comply with them.)

410.2—Location. No Class I trucking facility or part thereof (including any access point or driveway) established on or after the effective date of this section may be located within 200 feet of a wetland or, with the exception of accessory passenger-automobile parking areas, within 300 feet of a dwelling or a residential zone. No passenger-automobile parking area or part thereof accessory to a Class I trucking facility may be located within 25 feet of a dwelling or a residential zone.

410.3—Site and development standards; plans; operation. The standards of this subsection apply to Class I trucking facilities established on or after the effective date hereof, to conforming Class I trucking facilities established before that date and hereafter expanded or otherwise changed, and, to the extent specified in Subsection 410.1, to nonconforming Class I trucking facilities.

A. Access points.

1. Any point of access to a public street must be on a public industrial service road, on an arterial street, or on a major collector street, except that—

a. No access point on a public industrial service road is permitted unless the service road has direct access to an arterial street, an expressway, or a freeway, and unless the place of that access is closer to the use in question than any point of access the service road may have to a motorway other than an arterial street, an expressway, or a freeway; and

b. No access point on a major collector street is permitted unless the access point is within a travel distance of 1/4 mile from the major collector street's access to an arterial street, an expressway, or a freeway.

2. The curb tangent length between access points must be at least 100 feet, except that a shorter length may be allowed or greater length required by the Zoning Commissioner on recommendation of the County trucking-facilities-development officials. The number, width, and channelization (if any) of access points shall be as required by the Zoning Commissioner, after recommendation of the County trucking-facilities-development officials and, in the case of access points on a State-maintained highway, recommendation of the State Highway Administration.

B. Other site and development standards.

1. Unless the lot on which the facility is situated lies within a planned industrial park, the net area of the lot must be at least 3 acres and its diagonal dimension must be at least 150 feet. (This subparagraph does not limit the number of trucking facilities that may be situated on a lot of the minimum size.)

2. Contrary provisions of these regulations notwithstanding, the trucking facility's floor area ratio may not exceed 0.1.

3. The layout of improvements must be such as to provide for convenient forward movement of vehicles leaving or entering the site and such as to preclude any likelihood that trucks will be unable to gain immediate access onto the site at any time, as determined by the Zoning Commissioner after recommendation by the County trucking-facilities-development officials.

4. The minimum area of the surface that must be provided for parking of truck tractors and trailers on the site, not including maneuvering area, is 1,320 square feet per loading berth. However, a lesser area may be allowed or greater area required by the Zoning Commissioner after recommendation by the County trucking-facilities-development officials. (See Section 409 for automobile-parking requirements.)

5. That part of the site devoted to trucking operations (not including the automobile-parking area) must be surrounded by security fencing at least 6 feet high. Further, except for approved access points, the site as a whole must be enclosed or partially enclosed by opaque fencing, walls, or living screen planting to visually screen the use and its accessory uses from residential zones, from residential premises, or from churches, schools, hospitals, or other, similar institutional uses, and to prevent possible extension of uses beyond the site boundaries. The height of the visual screening must be at least 6 feet, except that screen planting may be as low as 3 feet from the ground at the time of planting if it is of such a variety that it can reasonably be expected to be at least 6 feet high no more than 2 years after it is planted. In any case, planting must be such as to provide full screening effect within 2 years after it is planted and must be maintained in good condition. Further, all fencing and screening must be in accordance with adopted design provisions (as defined in Section 101).

6. Wheel stops or other means must be provided to protect walls, fencing, or screen planting.

7. All parking, loading, and maneuvering areas must be paved in accordance with adopted design provisions (as defined in Section 101). Curbing at the edges of paved areas must be provided if required by the Zoning Commissioner, on recommendation of the County trucking-facilities-development officials.

8. Proper drainage of the entire site must be provided for. On-site storm-water-detention or controlled-release facilities may be required by the Department of Public Works.

9. Adequate rest-room facilities (for both sexes), a drivers' room, and telephone service for the truck drivers and other personnel must be provided on the site.

C. Plans and operation.

1. The plans for a Class I trucking facility submitted in or with an application to Baltimore County for any permit to establish or alter such a facility, or submitted in pursuance of any provision of these Zoning Regulations, must show the layout and operation of the use in detail that is sufficient for the Zoning Commissioner to determine whether and in what manner the facility will meet the requirements of these Zoning Regulations and must be certified by a professional engineer (registered as such under the provisions of Article 753 of the Annotated Code of Maryland, 1957, 1975 Replenishment Volume 7A) or by a professional who is not an engineer but who is registered under law as competent to certify the accuracy of the plans. The operation, as well as the development, of the use must be in accord with the approved plans. In particular, the number of vehicles (including trailers) on the site must not at any time exceed the number provided for by the plans.

2. Automotive parts must be concealed from off-site view. Junk vehicles may not be stored or otherwise situated on the site.

3. In the granting of a special exception authorizing the establishment of a Class I trucking facility, the Zoning Commissioner may impose (in addition to any other reasonable restriction) reasonable limitations on hours of operation.

Section 410A—CLASS II TRUCKING FACILITIES (TRUCK YARDS ETC.)

Section 410A.1—Nonconforming and other existing Class II trucking facilities. The provisions of this subsection apply to Class II trucking facilities existing on the effective date of this section.

A. Plans.

1. In the case of any Class II trucking facility for which approved plans are not on file with the Office of Planning and Zoning or the Department of Permits and Licenses on the effective date of this section, the owner of or authorized agent for the trucking facility must file plans of the facility with the Zoning Commissioner within 1 year after that date. (See Subparagraph 410A.3.C.1 for requirements. See also Subparagraph 2, below.) Where the plans for a Class II trucking facility are on file with the Office of Planning and Zoning or the Department of Permits and Licenses but, in the judgment of the Zoning Commissioner, are in insufficient detail to afford the proper administration of these Regulations with respect to that facility, the Zoning Commissioner may require that the owner or authorized agent file

sufficiently detailed plans within the 1-year period. (The mere submission of plans under this subparagraph will not establish the legality of any Class II trucking facility.)

2. Within 30 days after the effective date of this section, the Zoning Commissioner shall publish a checklist of requirements for plans submitted pursuant to Subparagraph 1, above. The checklist must indicate, among other things, 1 or more acceptable scales to which plans must be drawn.

B. Rulings etc. as to nonconformance with respect to certain provisions.

1. Within 1 year after the date the Zoning Commissioner accepts plans for a trucking facility as required under Subparagraph 410A.1.A.1, he shall review them and issue a ruling whether or not the facility conforms with the provisions listed in Subparagraph 2 and, if not conforming with any such provision, whether the nonconformance may be allowed to stand under the provisions of Subparagraph 3. If the provision requires the recommendation or approval of authorities other than the Zoning Commissioner, the ruling with respect to conformance with that provision may be made only upon such recommendation or approval.

2. The provisions with respect to which the Zoning Commissioner shall issue rulings under Subparagraph 1 are the following:

- Subparagraph 409.2.b(9) (automobile parking)
Subparagraph 410A.3.A.1 (access to streets)
Subparagraph 410A.3.B.2 (layout such as not to cause congestion)
Subparagraph 410A.3.B.4 (fencing etc.)
Subparagraph 410A.3.B.5 (wheel stops etc.)
Subparagraph 410A.3.B.6 (paving and curbing)
Subparagraph 410A.3.B.7 (drainage)
Subparagraph 410A.3.B.8 (rest rooms and other conveniences)
Subparagraph 410A.3.C.2 (concealment of automotive parts)

3. A trucking facility's nonconformance with Subparagraph 409.2.b(9) shall be allowed to stand if a variance to that subparagraph is granted pursuant to Section 307 of these Regulations and Section 22-23 of the Baltimore County Code 1968, as amended by Bill No. 72, 1969. Nonconformance with Subparagraph 410A.3.A.1 shall be allowed to stand if the site of the trucking facility does not abut a street on which access is permitted under that subparagraph or, if it does abut such a street, the County trucking-facilities-development officials determine that the length of the coextensive street line and site boundary is insufficient to permit proper access from that street. However, in any case where access that is not in accordance with Subparagraph 410A.3.A.1 is allowed to remain, the Zoning Commissioner shall have the power to prescribe the route that trucks must use in reaching or on leaving the site, in accordance with a recommendation of the County trucking-facilities-development officials.



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C. Procedure etc. In case of nonconformance with respect to certain provisions. If the Zoning Commissioner, under Subparagraph 410A.1.B.1, rules that a trucking facility does not conform with a provision listed in Subparagraph 410A.1.B.2 and if the nonconformance with that provision is not allowed to stand under Subparagraph 410A.1.B.3, 1 or both of the courses of action set forth in Subparagraphs 1 and 2, below, must be followed.

- 1. Within 90 days of the date of the Zoning Commissioner's ruling, the owner or agent must file with the Zoning Commissioner an acceptable program of compliance, showing that conformance with each provision in question will be achieved within 27 months after the date of the ruling. The program must include, among other things that the Zoning Commissioner may reasonably require, a) a plan of the trucking facility as it will be upon conformance as required and b) the schedule under which conformance will be achieved. The Zoning Commissioner may refuse to accept any such program that, in his judgment, does not show that approximately half of all the work to be completed under the program will be done by the end of the 15th month after the date of the ruling or does not meet other requirements of these Zoning Regulations. The trucking facility covered by a program of compliance submitted pursuant to this subparagraph must be in partial compliance with the provisions in question by the end of the 15th month after the date of the ruling, as shown in the program, and must be in full compliance with all such provisions at the end of the 27th month after the date of the ruling. Or,
2. Within 90 days after the date of the Zoning Commissioner's ruling, the owner or agent must file with the Zoning Commissioner a petition requesting that the facility not be required to conform with a provision in question, the petition to be advertised and heard in accordance with the provisions of Subsection 500.7. No relief may be granted under this subparagraph, however, unless the petitioner shows that conformance with the provision would cause undue hardship and would not be in the interest of the general welfare of the community, with particular consideration given to any dwellings within 300 feet of the facility. Such relief may be granted to the extent necessary to eliminate undue hardship, and only to that extent, and only in keeping with the intent of these Zoning Regulations in general and this section in particular; relief may not be granted to an extent detrimental to the general welfare of the community. Where relief is sought but not granted under this subparagraph, the Zoning Commissioner shall require a program of compliance such as that provided for under Subparagraph 1, above, and shall provide for enforcement of that program. In any case, the trucking facility must conform with any provision from which relief is not granted under this subparagraph within 27 months of the date of the Zoning Commissioner's ruling pursuant to Subparagraph 410A.1.B.1.

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D. Effects of failure to comply.

- 1. The failure of an owner or of authorized agent for a Class II trucking facility to comply with an applicable requirement of Paragraph A or C, above, or failure to comply with an order by the Zoning Commissioner prescribing a truck route as provided in Subparagraph 3 of Paragraph B, shall constitute a violation of these Zoning Regulations.
2. The right to continue any Class II trucking facility that was established before the effective date of this section and whose owner or agent has failed to comply with an applicable requirement of Paragraph A shall cease 3 years after that date, unless the facility conforms or has been changed to conform with all provisions of these Zoning Regulations, as if it were a new use.
3. The right to continue any Class II trucking facility that was established before the effective date of this section and whose owner or agent has complied with the applicable requirements of Paragraph A but has failed to comply with an applicable requirement of Paragraph C shall cease 3 years after the date of the Zoning Commissioner's ruling issued pursuant to Subparagraph 1 of Paragraph B, unless the facility conforms or has been changed to conform with all provisions of these Zoning Regulations, as if it were a new use.
E. Expansion of nonconforming Class II trucking facilities. Any contrary provision of Section 104 notwithstanding, the site, structures, and paved areas of a nonconforming Class II trucking facility may not be expanded unless the use is made to conform in all respects with these Zoning Regulations, except that expansion to the minimum extent necessary to comply with the standards of Subsection 410A.3 may be allowed by the Zoning Commissioner, under an order issued pursuant to Paragraph B, C, or D of this subsection, provided that the expansion is not in excess of that allowed under Section 104 and that, in the judgment of the Zoning Commissioner, the expansion would be in the interest of the general welfare of the community.
F. With the exception of plans for conforming Class II trucking facilities in M. H. zones, plans approved under this subsection may be amended only by special exception.

410A.2—Location. Proximity to residential zone or wetland. No Class II trucking facility or part thereof (including any access point or driveway) established on or after the effective date of this section may be located within 200 feet of a wetland or, with the exception of accessory passenger-automobile parking areas, within 300 feet of a dwelling or a residential zone. No passenger-automobile parking area or part thereof accessory to a Class II trucking facility may be located within 25 feet of a dwelling or a residential zone.

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410A.3—Site and development standards; plans; operation. The standards of this subsection apply to Class II trucking facilities established on or after the effective date hereof, to conforming Class II trucking facilities established before that date and hereafter expanded or otherwise changed, and, to the extent specified in Subsection 410A.1, to nonconforming Class II trucking facilities.

A. Access points.

- 1. Any point of access to a public street must be on a public industrial service road, on an arterial street, or on a major collector street, except that—
a. No access point on a public industrial service road is permitted unless the service road has direct access to an arterial street, an expressway, or a freeway, and unless the place of that access is closer to the use in question than any point of access the service road may have to a motorway other than an arterial street, an expressway, or a freeway; and
b. No access point on a major collector street is permitted unless the access point is within a travel distance of 1/4 mile from the major collector street's access to an arterial street, an expressway, or a freeway.
2. The curb tangent length between access points must be at least 100 feet, except that a shorter length may be allowed or greater length required by the Zoning Commissioner on recommendation of the County trucking-facilities-development officials. The number, width, and channelization (if any) of access points shall be as required by the Zoning Commissioner, after recommendation of the County trucking-facilities-development officials and, in the case of access points on a State-maintained highway, recommendation of the State Highway Administration.

B. Other site and development standards.

- 1. Unless the lot on which the facility is situated lies within a planned industrial park, the net area of the lot must be at least 5 acres and its diametral dimension must be at least 150 feet. (This subparagraph does not limit the number of trucking facilities that may be situated on a lot of the minimum size.)
2. The layout of improvements must be such as to provide for convenient forward movement of vehicles leaving or entering the site and such as to preclude any likelihood that trucks will be unable to gain immediate access onto the site at any time, as determined by the Zoning Commissioner after recommendation by the County trucking-facilities-development officials.
3. At least 75 per cent of that part of the site devoted to trucking operations must be devoted to parking of truck tractors and trailers, not including maneuvering area. (See Section 409 for automobile-parking requirements.)

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- 4. That part of the site devoted to trucking operations (not including the automobile-parking area) must be surrounded by security fencing at least 6 feet high. Further, except for approved access points, the site as a whole must be enclosed or partially enclosed by opaque fencing, walls, or living screen planting to visually screen the use and its accessory uses from residential zones, from residential premises, or from churches, schools, hospitals, or other, similar institutional uses, and to prevent possible extension of uses beyond the site boundaries. The height of the visual screening must be at least 6 feet, except that screen planting may be as low as 3 feet from the ground at the time of planting if it is of such a variety that it can reasonably be expected to be at least 6 feet high no more than 2 years after it is planted. In any case, planting must be such as to provide full screening effect within 2 years after it is planted and must be maintained in good condition. Further, all fencing and screening must be in accordance with adopted design provisions (as defined in Section 101).
5. Wheel stops or other means must be provided to protect walls, fencing, or screen planting.
6. All parking, loading, and maneuvering areas must be paved in accordance with adopted design provisions (as defined in Section 101). Curbing at the edges of paved areas must be provided if required by the Zoning Commissioner, on recommendation of the County trucking-facilities-development officials.
7. Proper drainage of the entire site must be provided for. On-site storm-water-detention or controlled-release facilities may be required by the Department of Public Works.
8. Adequate rest-room facilities (for both sexes), a drivers' room, and telephone service for the truck drivers and other personnel must be provided on the site.

C. Plans and operation.

- 1. The plans for a Class II trucking facility submitted in or with an application to Baltimore County for any permit to establish or alter such a facility, or submitted in pursuance of any provision of these Zoning Regulations, must show the layout and operation of the use in detail that is sufficient for the Zoning Commissioner to determine whether and in what manner the facility will meet the requirements of these Zoning Regulations and must be certified by a professional engineer or other competent professional (as described in Subparagraph 410.3.C.1). The competent professional (as described in Subparagraph 410.3.C.1), the operation, as well as the development, of the use must be in accord with the approved plans. In particular, the number of vehicles (including trailers) on the site must not at any time exceed the number provided for by the plans.

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- 2. Automotive parts must be concealed from off-site view. Junk vehicles may not be stored or otherwise situated on the site.
3. In the granting of a special exception authorizing the establishment of a Class II trucking facility, the Zoning Commissioner may impose (in addition to any other reasonable restriction) reasonable limitations on hours of operation.

18. In Subsection 500.7, add the following paragraph immediately after the second sentence:

With respect to any zoning petition other than a petition for a special exception, variance, or reclassification, the Zoning Commissioner shall schedule a public hearing for a date not less than 30 days after the petition is accepted for filing. If the petition relates to a specific property, notice of the time and place of the hearing shall be conspicuously posted on the property for a period of at least 15 days before the time of the hearing. Whether or not a specific property is involved, the action requested in the petition. The notice shall describe the property, if any, and the action requested in the petition. Upon establishing a hearing date for the petition, the Zoning Commissioner shall promptly forward a copy thereof to the Director of Planning (or his deputy) for his consideration and for a written report containing his findings thereon with regard to planning factors.

NOTE: The Planning Board agrees with the Citizens Task Force on Truck Terminals that a zoning code is not an appropriate context for provisions such as the following, which, nevertheless, have been suggested by the Task Force. The Board does recommend, however, that the County Council consult with the Department of Traffic Engineering, the Industrial Development Commission, the Office of Law, and the Office of Planning and Zoning to determine how the objectives of the provisions can best be met—whether through law, administrative regulation, or a combination of the two.

Use of Streets and Property by Large Trucks

- A. Truck parking. No truck tractor, truck trailer, or tractor-trailer may be parked off-site within 1,000 feet of a trucking facility, as defined in the Baltimore County Zoning Regulations, 1955, as amended, except that a tractor-trailer may be parked off-site within that distance for the sole principal purpose of loading or unloading goods at other premises and only for the time necessary for that purpose.
B. Truck operation limited to certain streets. Except as provided below or for the purposes described in Paragraph A, no truck tractor or tractor-trailer may be driven on any street described in Paragraph A, no truck tractor or tractor-trailer may be driven on any street other than an arterial street or a major collector street, as those terms are defined in the Baltimore County Zoning Regulations, 1955, as amended, or a public industrial service road. However, such a vehicle may be driven on a street other than one of those if it must do so, and only to the extent that it must do so, to gain access to a trucking facility or other establishment at which such vehicles are normally and legally stationed and which does not abut one of those streets.

\* These have been somewhat modified by the Board.

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APPENDIX

ALLOWANCE OF TRUCK-ORIENTED USES UNDER PRESENT ZONING REGULATIONS AND REGULATIONS PROPOSED BY BALTIMORE COUNTY PLANNING BOARD

Symbols: + Allowed as of right
+C Allowed subject to conditions of development-plan approval
S.E. Allowable by special exception
(X) Prohibited

Table with columns for zoning types (B.L., B.M., B.R., M.R., M.L.R., M.L., M.H.) and rows for Present regulations (Moving and storage establishments, Truck stops, Truck terminals, Truck yards etc., Warehouses) and Proposed regulations (Moving and storage establishments, Truck stops, Truck terminals, Truck yards etc., Warehouses).

- 1. Distances of 300 feet from a residential zone and 200 feet from a business zone required.
2. Distances of 300 feet from a dwelling or a residential zone and 200 feet from a wetland required.

People's Council Ex. 1

DATE: 9-23-93

PEOPLE'S COUNSEL'S SIGN IN SHEET

CASE: 92-346-XA/Leo J. Umerley

The Office of People's Counsel was created by County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns if they do not have their own attorney. If you wish to be assisted by People's Counsel, please sign below.

Table with columns: Check if you wish to testify, Name/Address/Phone No., Community Group You Represent?, Basis of Your Concerns. Includes names like Marie S. Simoes, Charles Bell, George Chryst, Jean Chryst, Dorothy B. Charpentier, ENEE L. CHARPENTIER, Mary R. Hoffmann, R.C. Hoffman, E. B. Smith, and Barbara Hoffmann.

People's Council Ex. 12 For Identifications Only

BALTIMORE COUNTY, MARYLAND Inter-Office Correspondence

TO: File
FROM: Robert C. Merrey, Jr.
DATE: July 7, 1992
SUBJECT: Umerly Trucking

At the request of several residents near the Umerly Trucking Company at 9813 Philadelphia Road, we conducted a site evaluation on 6/23/92 for noise and dust. We found that the portion of the lot described on the plan as "existing macadam" and designated for heavy truck parking, was in fact a pulverized, extremely dusty surface. Our passenger vehicle, traveling at a slow rate of speed, generated a large cloud of dust. No macadam was observed in this area. On 6/25/92, sound level measurements were conducted on a residential property across Philadelphia Road, approximately 250-300 feet from the trucking company. The sound levels recorded between 5:00 and 5:30 a.m. were clearly in excess of Maryland nighttime standards (10:00 p.m. to 7:00 a.m.). The measured levels were representative of normal activities and reflected the noise levels produced by a single truck operating on the facility's property. If operations begin prior to 7:00 a.m., violations of the nighttime standard would be expected to occur routinely.

RCH/mdb UMERLY/xtmdb

Handwritten initials and date stamp.

Microfilm

stated is met. Certainly since nonconformance can be permitted, a variance that meets the legal test can also be permitted. Additionally, with regard to nonconformance, relief can be granted by the Zoning Commissioner if the failure to do so would cause undue hardship, and would not be in the interest of the general welfare after particular consideration is given to any dwellings within the 300 feet of the facility. No variance is needed to allow a passenger automobile parking area within 275 feet of a dwelling or a residential zone. However, because of the existence of the residential zone on Petitioners' property, Petitioners need a variance to allow those uses. Compliance with the strict letter of the restrictions (requiring 300 feet from a residence or dwelling) because of the shape and configuration of Petitioners' Lots 2 and 5, and the existence of residential zoning on one small triangle of Lot 2 and across the front of Lots 1 and 3, would unreasonably prevent Petitioners from using the property for a permitted purpose, and would render conformity with the restrictions unnecessarily burdensome in that it would prevent a large portion of the front part of the lot, including the area where Petitioners' fuel pumps are presently located, as well as the repair garage. We infer from the testimony, since this operation has existed since 1958, that well in advance of the existence of the Trucking Facilities Act fuel pumps were located on the property, and more likely than not, were located at their present locations. It appears from the photographs which pre-date the passage of these statutes that that is the case. Reconfiguring the lot to comply with the distance setbacks would require moving the underground tanks.

required; and to permit a minimum sideyard building setback of 7 feet in lieu of the required 50 feet be and are hereby GRANTED, pursuant to compliance with Petitioners' Exhibit 1, the site plan to accompany the Petitions; and subject to the following restriction:

- 1. Petitioners shall purchase a water truck to be used as often as necessary to control the dust generated by the operation of this facility.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

William T. Hackett, Chairman

C. William Clark

Accordingly, we believe that the first prong of McLean v. Soley is met. Again, we believe that a lesser relaxation than that applied for would give substantial relief to the owner and the property involved, and be more consistent to the justice of the other property owners, and be granted in such a fashion that the spirit of the ordinance would be observed and public safety and welfare secured, if no portion of the trucking operations is permitted within 300 feet of the nearest building used as a residential dwelling, which we take to be the homes located across Philadelphia Road from the access to the subject site, with the exception of that portion of the (1) office and garage that would fall within that distance; and (2) parking for automobile passenger cars and such other activities that are inherently necessary to accomplish the use of the garage, office and automobile parking. Additionally, we would direct, as is permitted by Section 410A.3A and as is inferred from Section 410A.1B.3 that the Petitioners not allow any their trucks to use any route other than Philadelphia Road in reaching or on leaving the site, and that no such trucks be permitted to use Ravenwood Road, Nottingham Road, or any other street within the territory of the Nottingham Improvement Association, except Philadelphia Road.

Petitioner also requests a variance to allow a trucking facility within 100 feet of Philadelphia Road. Section 253.4 states:

Notwithstanding the foregoing, no trucking facility or part of the trucking facility may be established within 100 feet of such a right of way.

The Petitioners have no proscribed uses within 100 feet of Philadelphia Road, since a measurement on the site plan,

IN THE MATTER OF THE APPLICATION OF LEO J. UMERLEY, ET UX FOR SPECIAL EXCEPTION AND VARIANCES ON PROPERTY LOCATED ON THE SOUTHEAST SIDE OF PHILADELPHIA ROAD, 138' SOUTH OF THE CENTERLINE OF RAVENWOOD ROAD (9813 PHILADELPHIA ROAD) 11TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT

DISSENTING OPINION

I respectfully dissent from the majority opinion. I cannot agree that the Appellant should be granted a variance from Section 410A.2 to permit a trucking facility within 300 feet of a residential zone.

The Petitioner has acknowledged that the Umerley facility is a Class II trucking facility as defined under Baltimore County Zoning Regulations Section 101. However, the Appellant failed to comply with BCZR Section 410A within the prescribed three-year period after passage of the new trucking facility regulations in 1976 and thus legitimize and obtain proper grandfathering for the facility. Therefore, the facility legally must be treated as a new use.

This case, in my opinion, hinges on whether the above-mentioned location requirement can be varnaced. I find that it cannot. A principal intent of the 1976 Trucking Facilities law, as discussed in the final report to the Planning Board by the Citizens Task Force which drew up the legislation, is to avoid having trucking facilities located too close to residential areas. A variance from the 300-foot distance requirement of Section 410A.2 would strike at the very core of the intent of this law; therefore, the aforesaid distance requirement is integral to the law and is not subject to variance.

McLean v. Soley, 270 MD 208 (1973) states that "a variance should be granted only if in strict harmony with the spirit and intent of the zoning regulations; and only in such a manner as to grant relief without substantial injury to the public health, safety and general welfare."

People's Counsel, in his Supplemental Memorandum in this case, has cited several cases supporting the proposition that variances may not be granted contrary to the spirit and intent of zoning regulations. Among those cited were the Court of Appeals case of Easter v. City of

Petitioners' Exhibit 1, shows that the firm's offices and automobile parking are within 100 feet of Philadelphia Road, but that the garage and the other portions are not. Also, only automobile parking is shown within that restricted 100-foot area, and this restriction could be made a condition of the special exception by the Board. A reading of this section reveals that the right of way referred to in the last section of Section 253.4 is "an existing or proposed freeway or expressway so designated by the Planning Board..." Philadelphia Road is not such a designated freeway or expressway.

Furthermore, Petitioners request a variance to allow the percentage of a trucking facility devoted to truck-tractor and trailer parking, not including the macadam area, to be not less than 35.5 percent of the operation. Since this will serve to confine the operation to only that area presently utilized and which is presently surrounded by fencing, this Board finds the test of practical difficulty met since it would require reworking the entire site and utilizing much more of the subject site than is necessary to accomplish Petitioners' purposes.

Finally, Petitioners request a variance from the minimum sideyard setback restriction within the 100-foot use and increased setback restriction area pursuant to Section 243.2 of the BCZR. Since, again, this area is presently fenced and it would require reworking not only the fenced area but also relocating a significant portion of the presently erected two-story brick and block building, and since the setbacks will affect only those lots presently owned by the Petitioners, we find as a fact that the practical difficulty test has been met and the variance should be

Baltimore, 195 Md. 395 (1950), which demonstrates that a variance may not be granted in contravention of the specific legislative intent to provide a minimum building distance from the front of the lot. Similarly, in Board of Education v. Wolf, 199 N.Y.S. 2d 44 (1960), the court held that a zoning law establishing a 200-foot minimum distance requirement for a gas station from a public school was not intended to be subject to variance.

Moreover, I find that the Appellant has failed to meet the requirements of the variance law, Section 307.1, which states that variances can be granted "only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request, and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship." (Emphasis added.)

Although the Appellant pointed out the practical difficulty of finding an ML or MH site that does not lie within 300 feet of a residential zone in the Philadelphia Road corridor area, he failed to show any special circumstances or conditions that are peculiar to the subject property, as specifically required by Section 307.1, that would justify the above-mentioned requested location variance. Strict compliance with this location requirement would indeed result in practical difficulty and hardship, because the facility cannot legally operate without the location variance. But the Appellant could have complied with the law within three years of its passage and legitimized the facility as a nonconforming use; therefore, the practical difficulty and hardship is self-imposed. As noted in Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A2d 810 (1965), self-inflicted hardship cannot be the basis for granting a variance.

For these reasons, and after due consideration of the testimony and evidence presented, I would deny the above-mentioned variance, which denial would render the request for a Special Exception and the requests for the remainder of the variances to be moot.

S. Diane Levero, S. Diane Levero

Date: December 22, 1993

granted. Accordingly, this Board finds that the Special Exception and variances as explained should be granted with restrictions, and subject to compliance with all the notes contained in Petitioners' Exhibit 1, and will so order.

ORDER

IT IS THEREFORE this 22nd day of December, 1993 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Exception to permit a Class II Trucking Facility on the subject property, zoned M.L. be and the same is here GRANTED; and it is further

ORDERED that the requested variances to permit a trucking facility within 300 feet of the nearest building used as a residential dwelling for that portion of the office and garage that falls within that distance and for the parking of automobile passenger cars and such other activities that are inherently necessary to accomplish the use of the garage, office and automobile parking; to permit a trucking facility to be located to a distance of no less than 75 feet from the nearest point of wetlands, with the exception of the automobile car parking and the use of the two-story brick and block building as an office and garage and fencing, as outlined on Petitioners' Exhibit 1 to the boundaries of Lots 2 and 5; to permit automobile parking within 25 feet of a residential zone; to permit trucking facility within 100 feet of Philadelphia Road, said road abutting a residential boundary; to permit 35.5 percent of the subject site to be devoted to parking of trucks and trailers in lieu of the 75 percent

County Board of Appeals of Baltimore County, OLD COURTHOUSE, ROOM 49, 400 WASHINGTON AVENUE, TOWSON, MARYLAND 21284, (410) 587-5180

December 22, 1993

Stephen J. Nolan, Esquire, NOLAN, PLUMHOFF & WILLIAMS, CHTD., Suite 700, Court Towers, 210 W. Pennsylvania Avenue, Towson, MD 21204

RE: Case No. 92-346-XA, Leo J. Umerley, et ux

Dear Mr. Nolan:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter. Also enclosed is the Dissenting Opinion of Ms. Levero.

Very truly yours, Kathleen C. Weidenhammer, Administrative Assistant

encl.

- cc: Newton A. Williams, Esquire, Mr. Leo J. Umerley, Mr. Gary R. Hoffman, Ms. Marie Simoes, Mr. John Morazzano, James Earl Kraft, People's Counsel for Baltimore County, P. David Fields, Lawrence E. Schmidt, Timothy W. Kotzoco, W. Carl Richards, Jr. /ZADM, Docket Clerk /ZADM, Arnold Jablon, Director /ZADM

(A) GSEI PROPERTY People's Counsel Ex. 10  
 9729 PHILADELPHIA RD.  
 SW ADJACENT TO UMERLEY PROPERTY

RAIL ROAD  
 PHILADELPHIA ROAD

UMERLEY PROPERTY

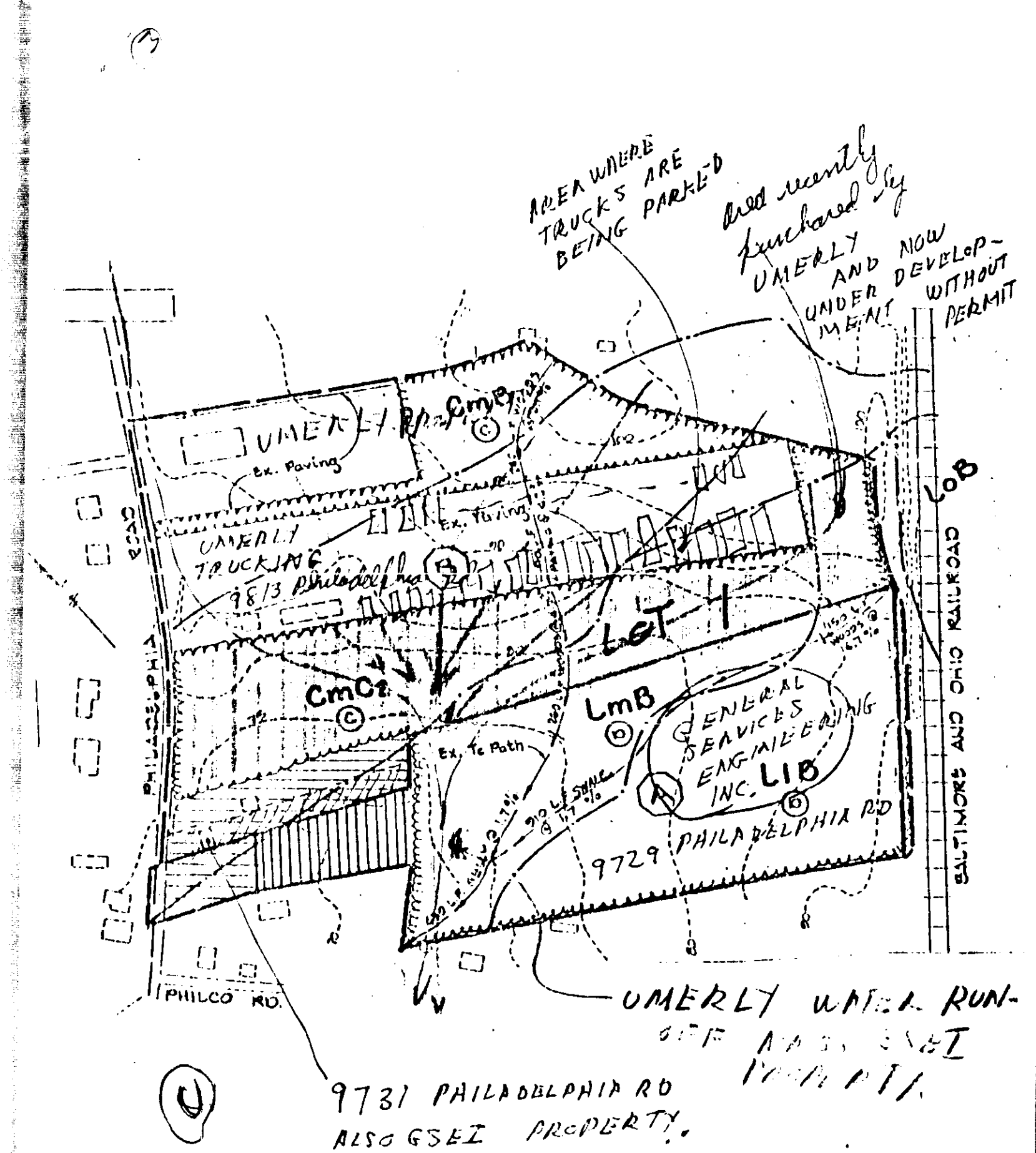
(B) UMERLEY PROPERTY 3:30 PM JUNE 24 1993

NOTE: THAN AROUND IS TYPICALLY USED FOR PARKING!

PHILADELPHIA RD.  
 RAIL RD.

FENCE LINE  
 GSEI PROPERTY

ALL GSEI PROPERTY IS DOWN HILL FROM UMERLEY.  
 UMERLEY OPERATIONS ADMIT TO 2150 PCS. OF EQUIPMENT  
 THIS PICTURE WAS TAKEN ABOUT 3:30 PM WHILE MANY TRUCKS WERE ON THE ROAD. LOT IS USUALLY FULL ON SUNDAY.  
 OIL SPILL STREAM BED CROSSES GSEI PROPERTY.  
 LOT 1 DEVELOPED WITHOUT PERMITS AND IS BEING USED AS SHOWN ABOVE.



FUEL OIL SPILL, ABSORBENT MATERIAL OR DUMPING

ON UMERLEY PROPERTY AT GSEI FENCE.  
 OIL SOAKED PILLOWS, STILL NOT CLEANED UP!  
 AS OF 9-23-93

(D) KINGS COURT STREAM BED AT PHIL. ROAD.  
 OIL SOAKED MATERIAL STILL NOT CLEANED UP!  
 - 21 JULY 1 1992 PHOTO -

PHOTOS SHOW DUST STORMS

PARTIAL SOURCE OF DUST STORMS

(C) LOT 1

NOTE: PILES OF PRODUCT BEING DUMPED ON BLACKTOP NOTE DOZER IS EMPTY.

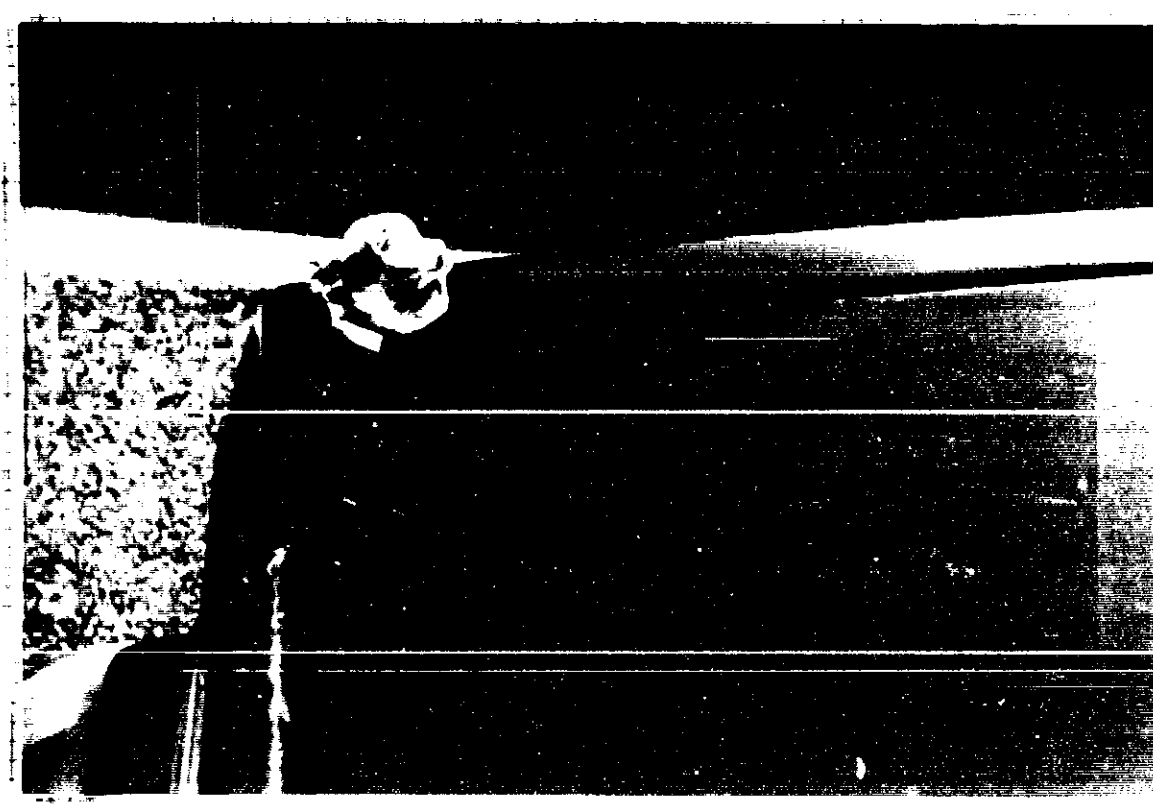
(E) DOZER BUCKET IN FULL AND IS PUSHING PILES AROUND TO SPREAD PRODUCT OVER BLACKTOP SURFACE  
 6-29-93 PHOTO

DRAIN OIL DUMPING

DRAIN OIL BEING DUMPED ON LOT 1 REAR CRUSHER RUN IN HEAVILY OCCUPIED AREA.  
 DUMP AREAS AS LARGE AS TRUCKS

(S) NOTE: GLARE FROM SUN AT THIS ANGLE!  
 JUNE 24 1993 PHOTO

TYPICAL DUST EFFECT



WHEN THE WIND IS IN THE RIGHT DIRECTION, THIS CAN DEVELOP IN ONE DAY.

1792 PICTURE

GENERAL SERVICES ENGINEERING, INC.

9729 PHILADELPHIA ROAD - BALTIMORE, MARYLAND 21237 - (301) 574-5525  
June 12, 1992

Baltimore County Board of Appeals  
Mr. William Hackett  
Chairman of the Board of Appeals  
Old Court House  
Towson, MD 21204

Dear Mr. Hackett:

The following list has been prepared to show justification for the denial of a special exception and continued operation of the Umerley Trucking Company at its present location.

Since 1986, it has been our experience that the Umerley Trucking Company has acted only in their own interests and without regard to their neighbors or the community in general.

These experiences are as follows:

- (1) Clearing land without permits.
- (2) Grading without permits.
- (3) Development without Sediment Control Plan.
- (4) Development without Storm Water Management Plan or silt control.
- (5) Development without State Roads or Baltimore County Zoning approval.
- (6) Constructed storm water berms without plans, soil testing, compaction or soil approval. Top soil berms were constructed. These top soil berms, when wet, will easily squash out of the way of a runaway truck. Wheel stops should be required. Additionally, Mr. Umerley's lawyer stated that Mr. Umerley intends to sell the land (containing the berms).
- (7) Extensive back-fill without permits; thousands of tons of fill have been transported onto the site for the development of parking areas.
- (8) Hundreds of loads of crusher-run were brought in to develop new truck parking areas on newly purchased land without permits or zoning approved expansion.

Mr. William Hackett  
Baltimore County Board of Appeals  
June 12, 1992  
Page 2

- (9) Occupancy has been taken on the newly developed land without an occupancy permit, and it is not understood why Baltimore County authorities have tolerated this occupancy. The new land being occupied is located along the south edge and rear of the previously established site.
  - (10) The five acres of neighboring woods which were cleared without permit had served as a filter for diesel soot and cement dust emanating from the Umerley cement trucks. This pollution is so bad that at times a haze can be seen covering the newly cleared land.
  - (11) Diesel exhaust soot build-up on our property, cars and outdoor picnic tables, etc. is much worse since the neighboring land was cleared.
  - (12) Run-off of storm water has become worse since the neighboring land was cleared by Umerley.
  - (13) Umerley operations placed fence posts on GSEI land without our permission and attached fences to our fences, on GSEI land, without asking permission.
  - (14) GSEI had to hire an attorney to resolve the fence problem.
  - (15) By fence contract, Umerley is responsible for maintaining GSEI land along the fence; an obligation which has been ignored to date.
  - (16) Most recently, Umerley Trucking Company has contaminated the environment with an oil spill of several hundred gallons of diesel fuel. The stream which runs through GSEI property, as well as the neighborhood has been contaminated.
- Umerley violated EPA regulations by failing to notify the EPA within 2 hours of the spill, as required, demonstrating a continuing cavalier attitude towards the laws, a potentially dangerous situation, environmental damage and the well-being of the community.

Mr. William Hackett  
Baltimore County Board of Appeals  
June 12, 1992  
Page 3

According to Mr. Swann from the State of Maryland Department of the Environment, the fuel oil spill could easily have been confined to Umerley property.

Water samples taken from the stream show a sixteenth of an inch of fuel oil on top of the samples.

It will be some time before it is known how much damage has been sustained to our trees and property.

The spill occurred before noon on June 5, 1992. Fuel oil odor was first detected around noon. Authorities were notified by GSEI at approximately five o'clock in the evening, when water samples containing oil were taken from the stream. Photographs are attached.

As a result of these experiences and the significant continuing disregard for the neighboring lands and community, it is our position that Umerley operations be forced to comply with all laws and, therefore, be forced to move their operations to an area which is zoned for their type of business. The Umerley land and buildings located on Philadelphia Road could obviously continue to be used for office space and other support functions of their business.

There is no justification for a special exception or special consideration from Baltimore County. General Services Engineering shall pursue all legal avenues available in an effort to safeguard the best interests of GSEI and the surrounding community.

Very truly yours,  
*Gary R. Hoffman*  
Gary R. Hoffman  
President

GRH/klc

Enclosures

cc: Ms. Phyllis Cole Friedman (Peoples Council)  
Mr. William A. Howard IV (Baltimore County Councilman)  
Ms. Gloria Turner



UMERLEY PROPERTY. FUEL PUMPS ARE ON THE LEFT. UMERLEY BUILDING IS ON THE RIGHT. THE SPILL IS BELIEVED TO FLOW FROM THE PUMP ON THE LEFT PAST THE BUILDING ON THE RIGHT.

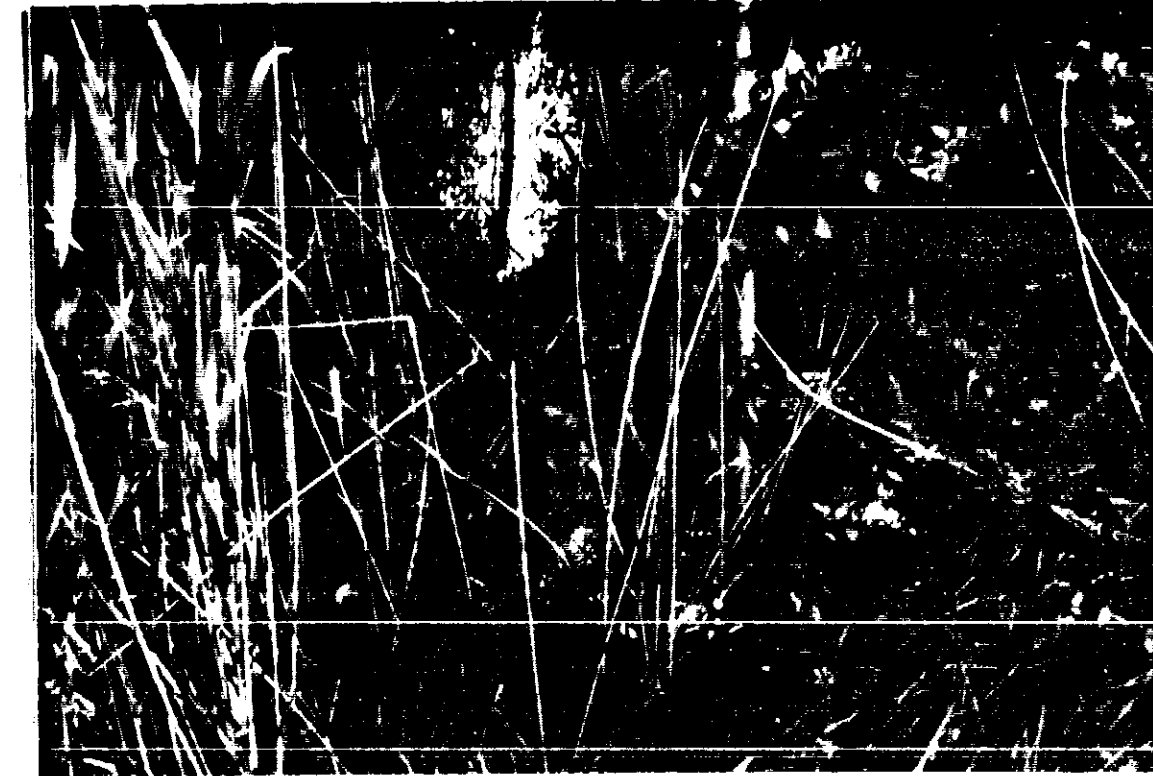


GSEI PROPERTY. THE STREAM FLOWS ALONG THE FENCE LINE UNDER THE DRIVEWAY, FROM LEFT TO RIGHT.

"A"



AN ABSORBENT PILLOW-LIKE MATERIAL IS PLACED IN THE STREAM BY CLEAN AMERICA. THIS IS ON UMERLEY PROPERTY AT THE UMERLEY/GSEI FENCE APPROXIMATELY 300-400 FEET AWAY FROM THE SPILL.

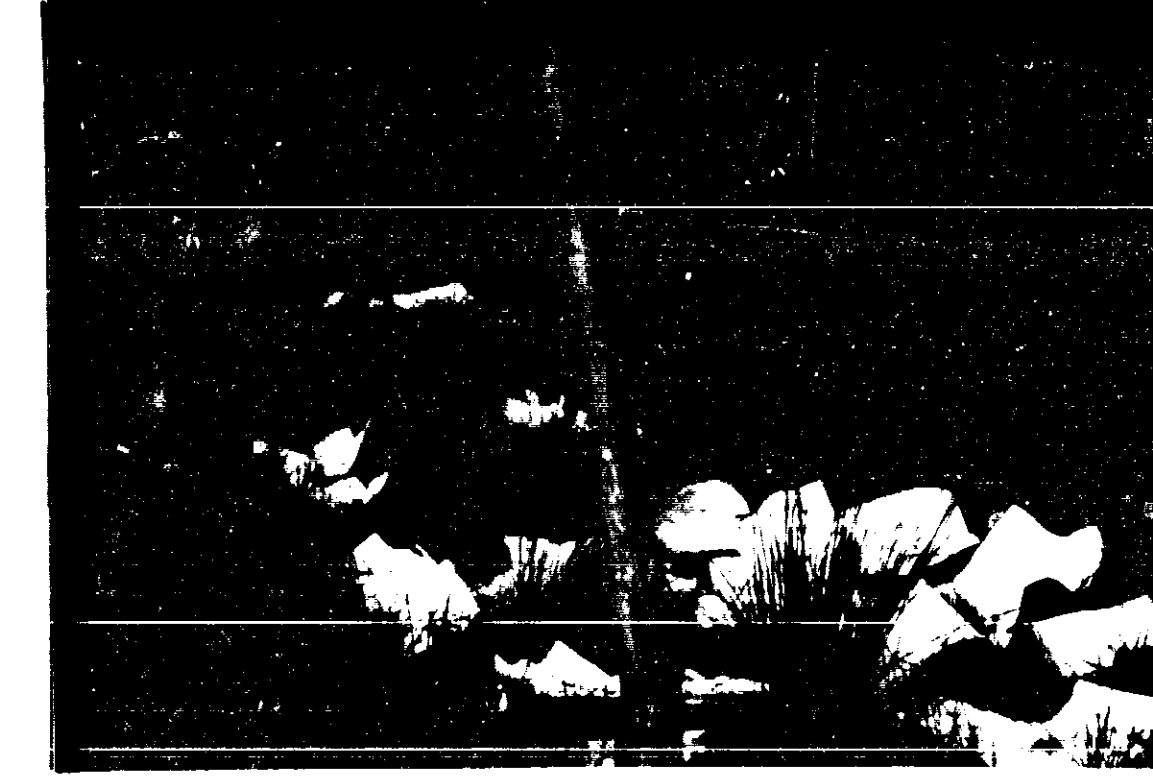


GSEI FENCE AT UMERLEY/GSEI PROPERTY LINE. THE PHOTO WAS TAKEN FROM THE GSEI PROPERTY.

"B"



ABSORBENT MATERIAL IN STREAMBED BETWEEN UMERLEY LINE AND THE GSEI DRIVEWAY



GSEI STREAMBED. THE PIPES IN THE UPPER LEFT RUN UNDER THE GSEI DRIVEWAY

"C"



WIRE SCREEN PLACED IN STREAMBED TO RETAIN OIL-ABSORBENT MATERIAL AT THE GSEI DRIVEWAY.

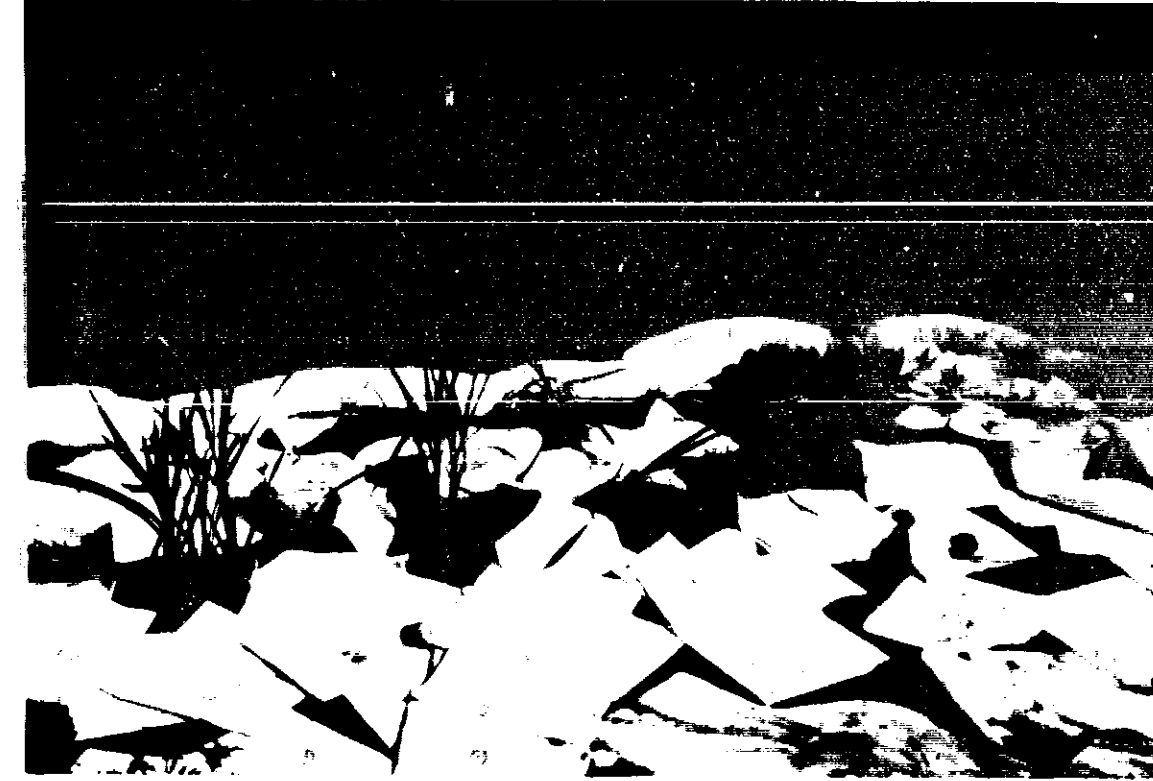


STRANDED WIRE SCREEN OIL-ABSORBENT TRAP, PLACED ON GSEI SOUTH EDGE PROPERTY LINE AT PERMA-LITE.

"D"



LEFT IS PHILADELPHIA ROAD. THIS STREAMBED IS LOCATED AT KING'S COURT, APPROXIMATELY 1/2 MILE AWAY FROM UMERLEY SPILL.



CLOSE-UP OF THE ABOVE PHOTO ON THE NORTH SIDE OF PHILADELPHIA ROAD NEAR KING'S COURT.

"E"



CLEAN AMERICA TRUCK (ABOVE) AND CLEAN-UP CREW (BELOW) ON GSEI PROPERTY.



PHOTOGRAPHS WERE TAKEN MONDAY, JUNE 8, 1992. CLEAN-UP WILL CONTINUE FOR SOME TIME.

"F"

Michael W. Kendall, R.S.  
Division of Waste Management - Solid Waste Section

Baltimore County  
Department of Environmental Protection  
Resource Management  
401 Bosley Avenue  
Towson, Maryland 21284  
(301) 587-3745, Fax (301) 887-4804

STATE OF MARYLAND  
DEPARTMENT OF THE ENVIRONMENT  
Hazardous and Solid Waste Management Admin.

Robert J. Swann  
Emergency Response Program  
Training and Safety Division

OFFICE  
100 F. Maguire Blvd.  
4th Floor, MD 21202-3114  
(410) 333-2900 • Fax (410) 333-3738

24 Hours  
To Report Emergencies (301)  
(410) 374-3551

COUNTY AND STATE REPRESENTATIVES WHO INVESTIGATED THE SPILL.

"G"

Phot 1



1a

In the above photograph, the dust has not fully settled from the last truck that went through the Umerley parking lot.



1b

This photograph was taken a few minutes later, just after another truck went through the parking lot.

Phot 1



1c

Similarly, these photographs were taken the same day, a few minutes later but more toward the rear of the parking lot.



1d

On especially windy days, the trees and trucks are essentially blanked out with Umerley air pollution.

1e



The above air pollution is not from parking lot crusher-run, since Mr. Umerley's attorney, Mr. Gontrum, has stated that the parking lot is paved. This is true, except for the newly-developed land. The clouds of dust must, therefore, be product hauled in and/or on the various trucks. The chemical nature of the product is not known.

NOTE: Regardless of the exact nature of the product, it is clear that diesel soot and this dust like this is unhealthy and is being breathed into the lungs of the people in the community.

PHOTO ON THE RIGHT.



GSEI PROPERTY. THE STREAM FLOWS ALONG THE FENCE LINE UNDER THE DRIVEWAY, FROM LEFT TO RIGHT.

"A"

Phot No 4



ORDER NO. 937498 CUSTOMER P.O. NO. BU152619

STRAIGHT BILL OF LADING - SHORT FORM - ORIGINAL NOT NEGOTIABLE CUST # X93A001

ALLIED BLDG PRODUCTS CORP 11 CADILLAC RD BURLINGTON NJ 08016

ALLIED BLDG PRODUCTS CORP 11 CADILLAC RD BURLINGTON (609) 386-5500 NEW JERSEY 08016

SHIPMENT DATE: 09 / 02 / 93 DEPT OFFICE: FREDERICK COMMON CARRIER

TRUCKER: D.M. ROWMAN TRUCK LINES CONTRACT NUMBER: 1018 SPLIT LOAD NUMBER: 07:00 AM

PRODUCT NUMBER	PRODUCT DESCRIPTION	QUANTITY
220451	FIRST GLASS-SEAL-PASTEL GREEN	112.00
220521	FIRST GLASS-SEAL-TWEED BLEND	56.00
060301	FIRST SAT FELT #30 REG 2SQ UL	100.00
060155	FIRST SAT FELT #15 REG 4SQ UL	100.00
776777	PALLETS, 3 X 3	12.00
789777	PALLETS, 47 X 47	8.00

PRODUCT WEIGHT 46380 PALLET WEIGHT 1216 TOTAL WEIGHT 47596

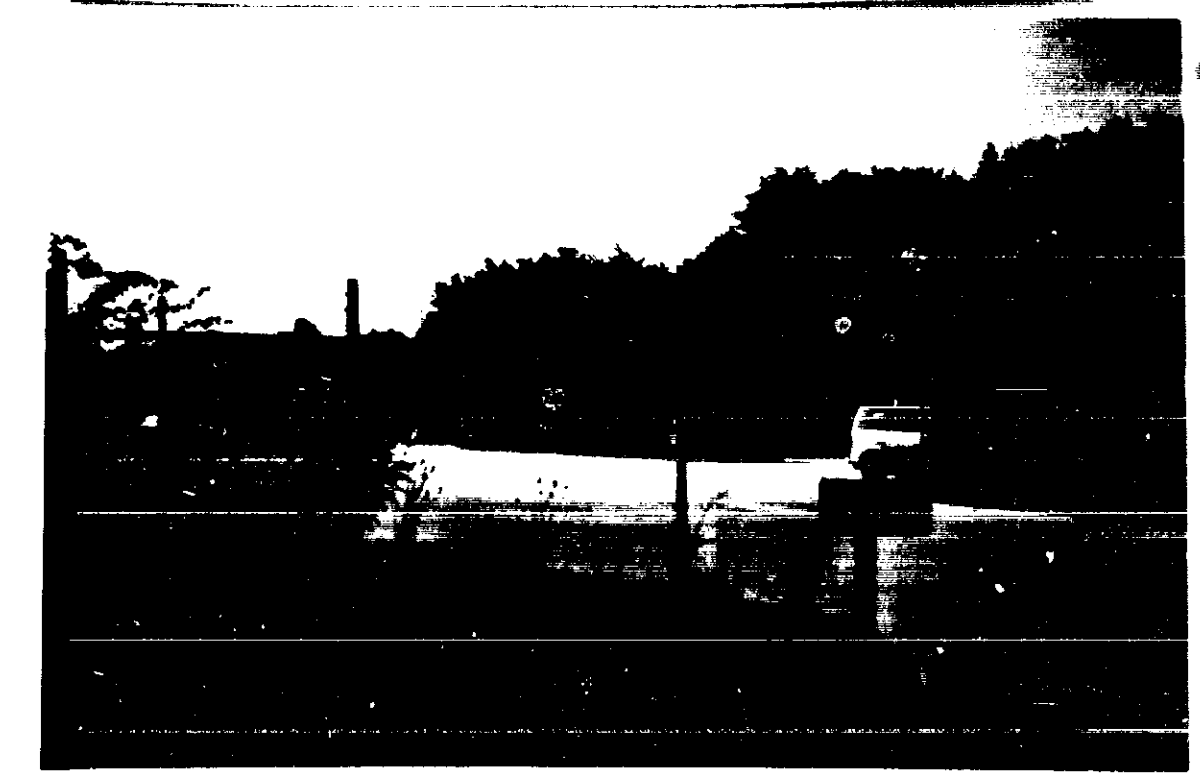
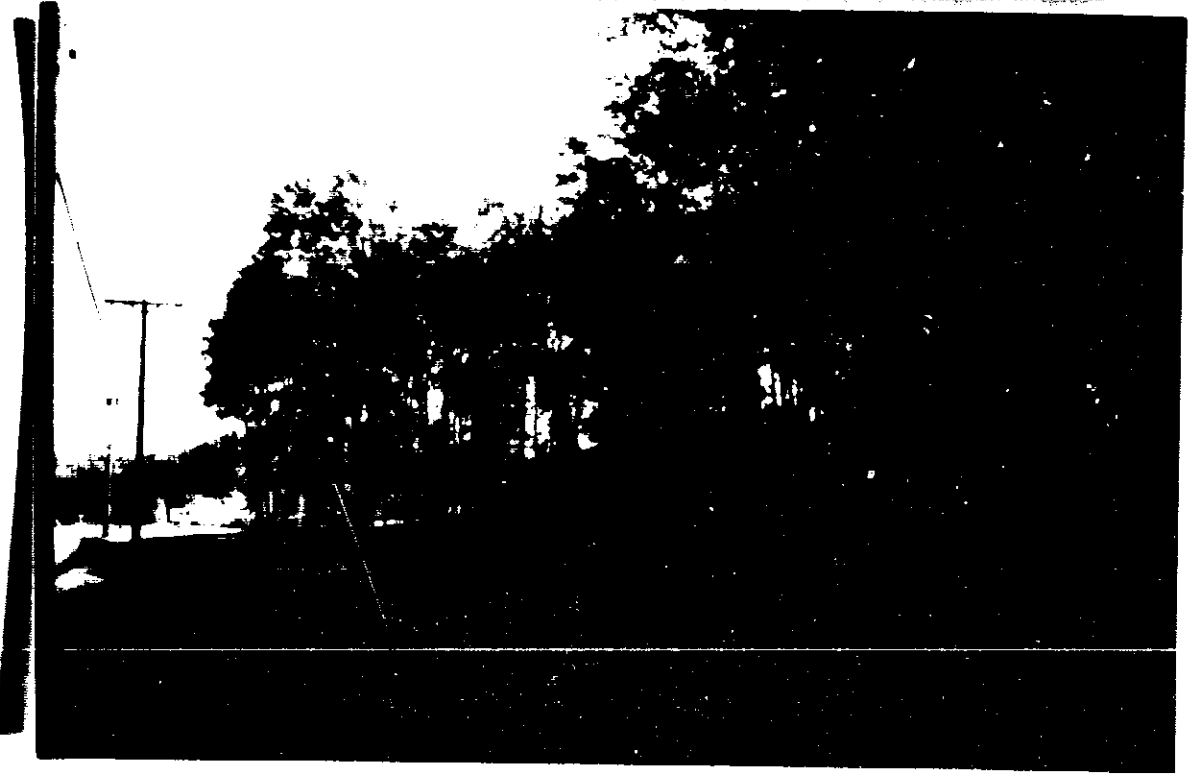
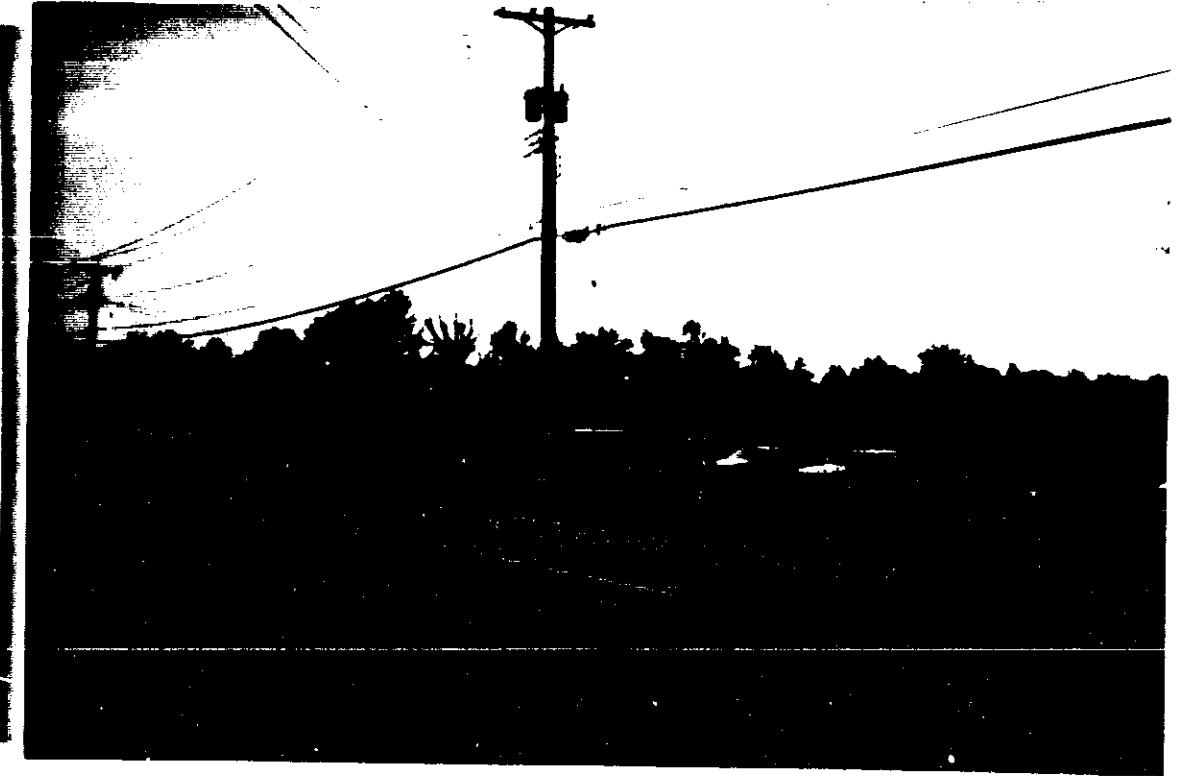
COMMENTS: \*\*\* ALL OUTBOUND LOADS MUST BE FULLY TARPED \*\*\*  
 \*\*\* LOAD BAGGIES \*\*\*  
 \*\*\* DRIVER MUST CALL FOR DELIVERY APPOINTMENT \*\*\*

Signature: David Yates

TAMKO ASPHALT PRODUCTS, INC. 1000 W. 10TH ST. WYOMING, NE 68192

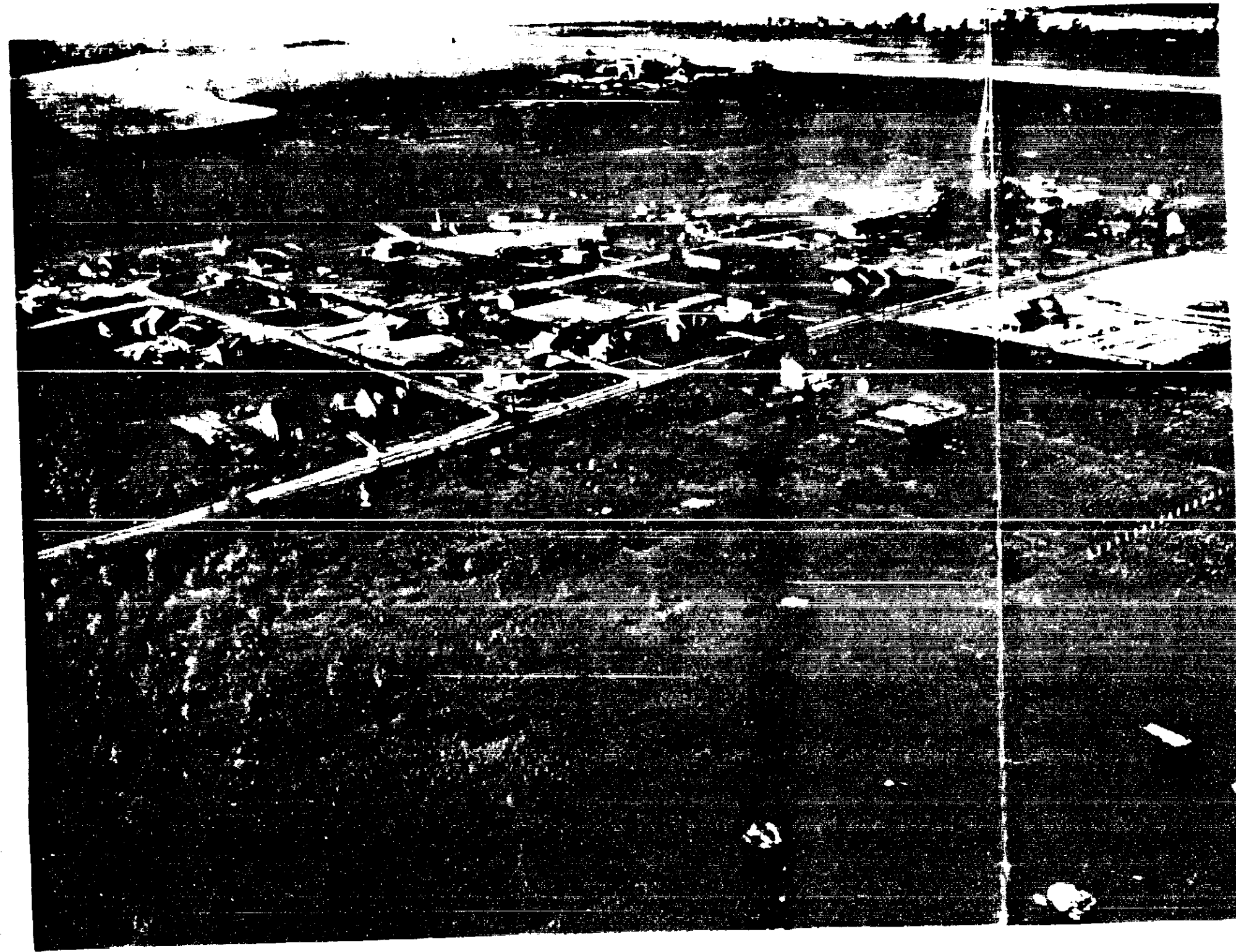
Signature of Carrier: \_\_\_\_\_ Signature of Driver: \_\_\_\_\_ Signature of Customer: \_\_\_\_\_

CARRIER COPY





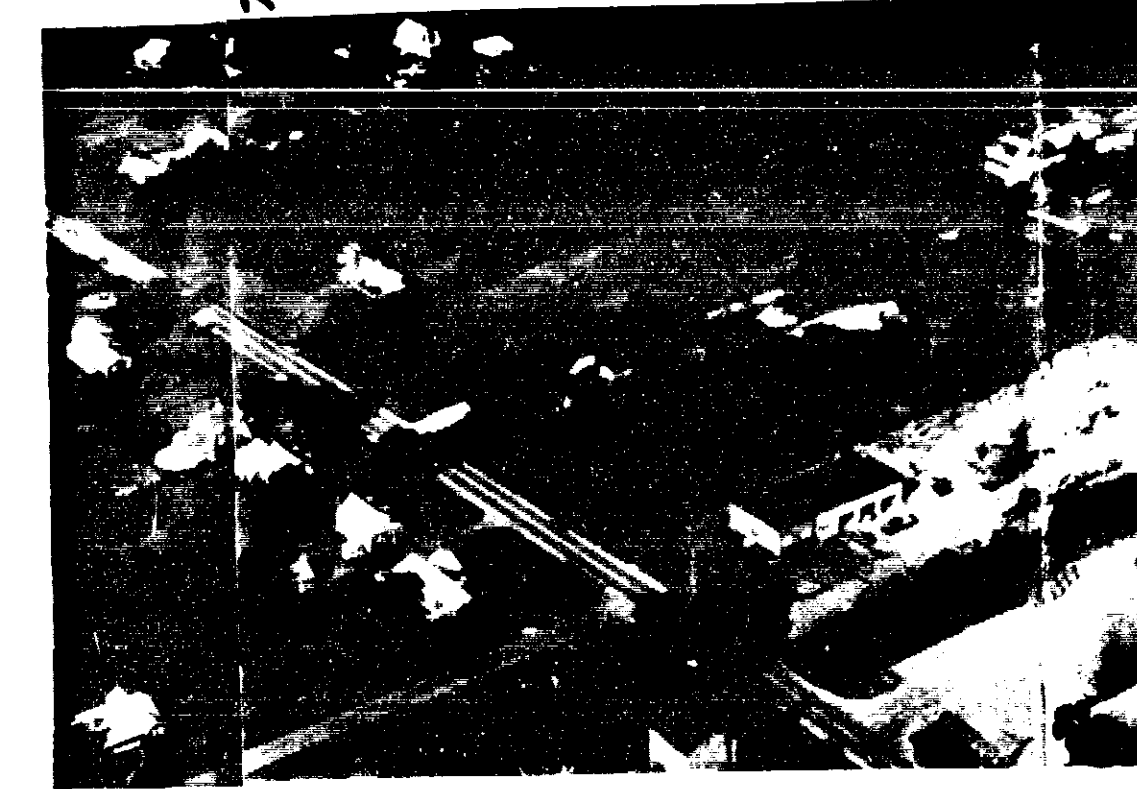




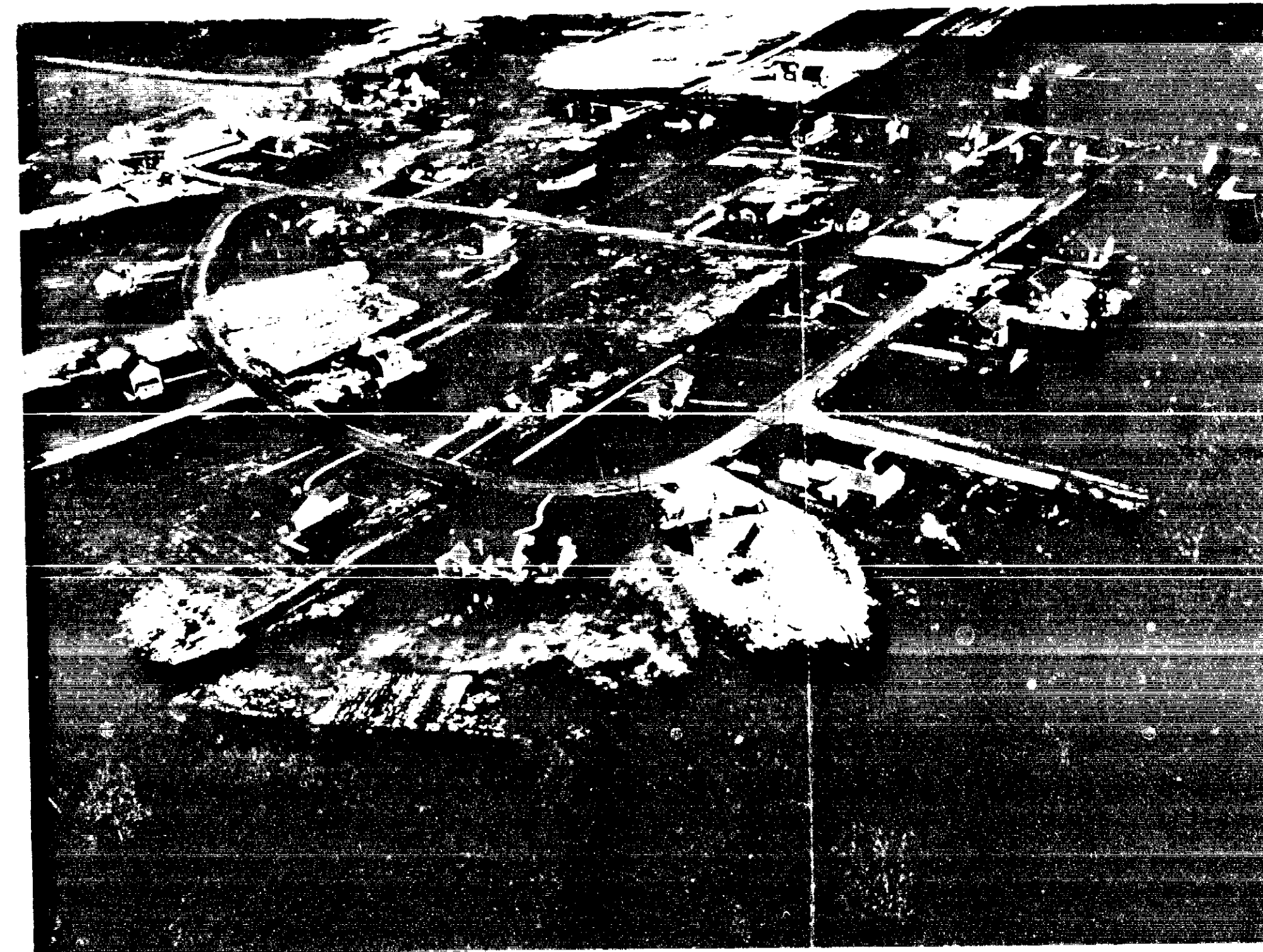
A 1954 - FOREGROUND - UNDEVELOPED BUT DESIGNATED RESIDENTIAL



K 1993 - SOUTH SIDE OF NOTTINGHAM



L 1993 - NORTH AND SOUTH SIDES OF NOTTINGHAM AT PHILL RD. LOWER RIGHT CORNER - UMERLEY SITE



F 1954 - EARLY DEVELOPMENT OF HOMES - NORTH AND SOUTH OF PHILL RD

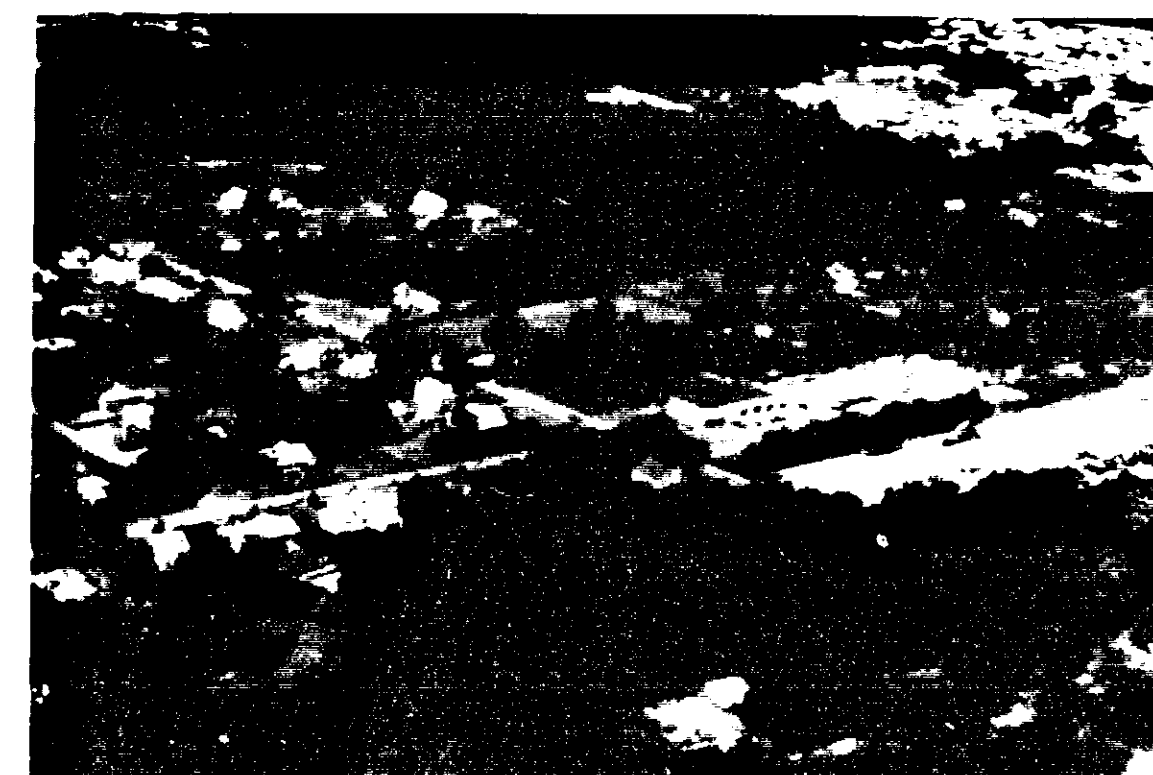


B UMERLEY SITE FACING SOUTH



C UMERLEY SITE FACING SOUTHEAST NOTE PROXIMITY OF ADJACENT HOMES.

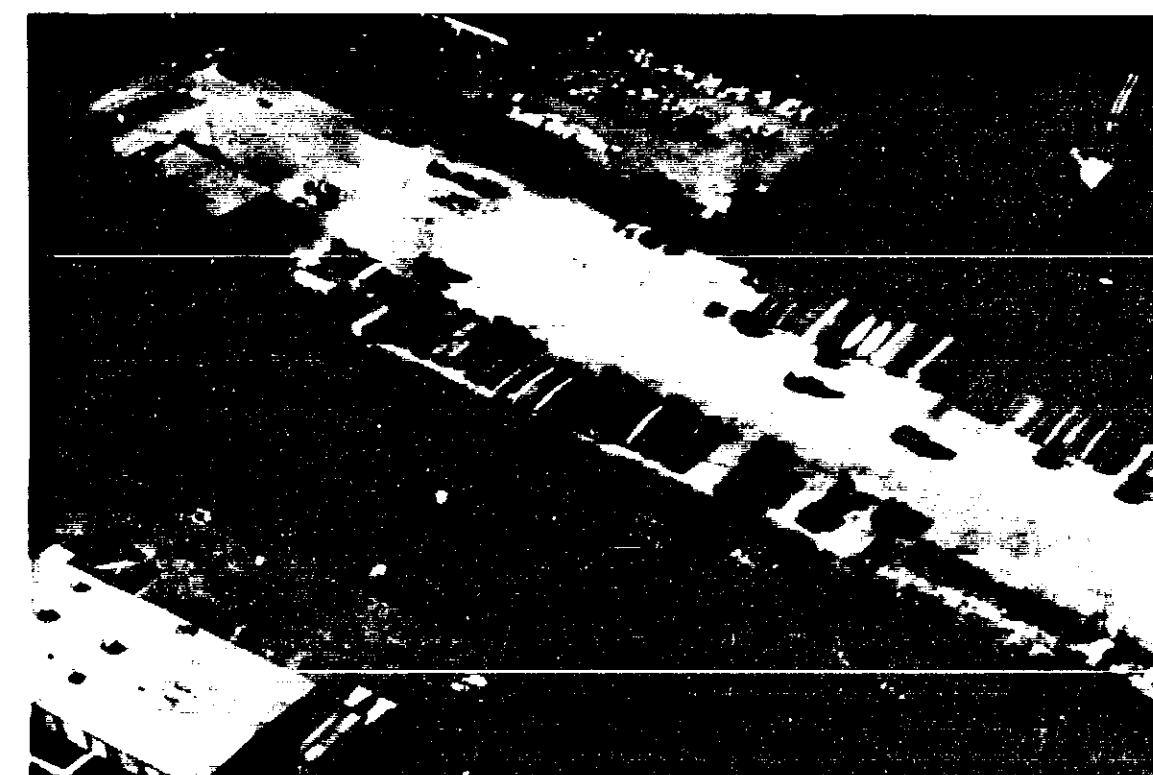
Aerial View of Nottingham



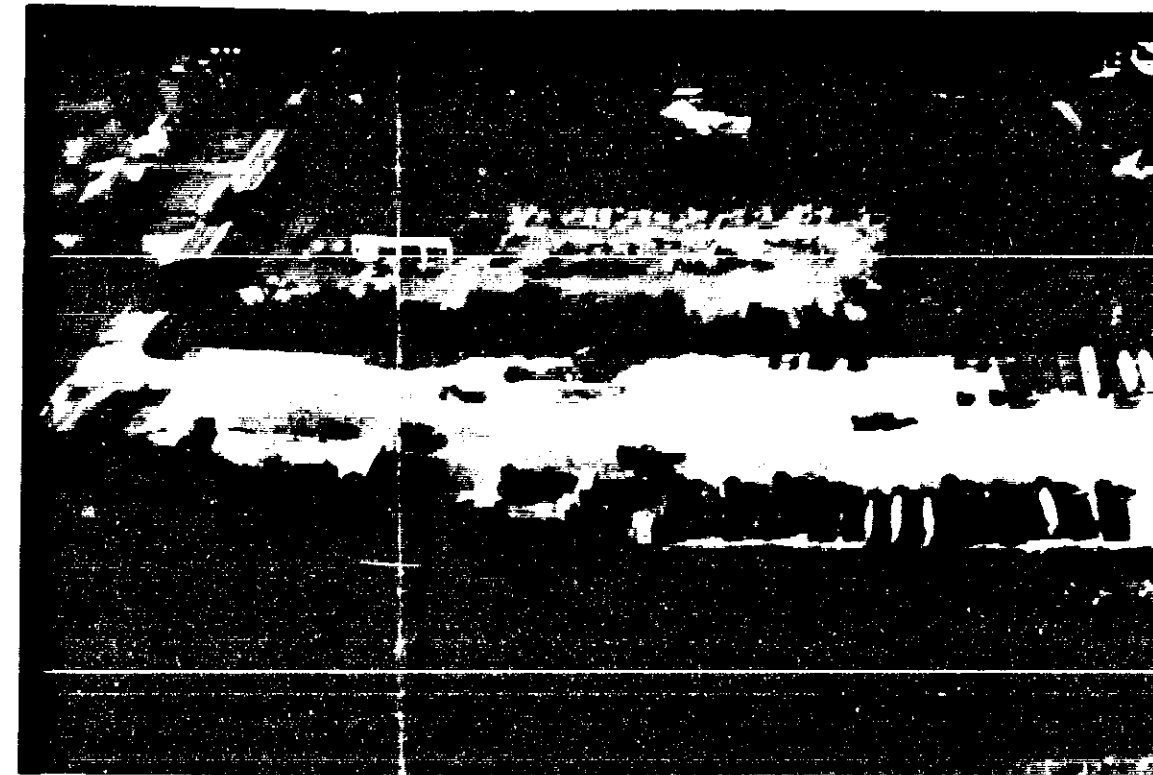
G 1993 - UMERLEY SITE AT ANGLE



H NOTTINGHAM HOMES FACING SOUTH NOTE PROXIMITY OF UMERLEY SITE.



D UMERLEY SITE FACING EAST LOWER LEFT - GEN. ENGINEERING

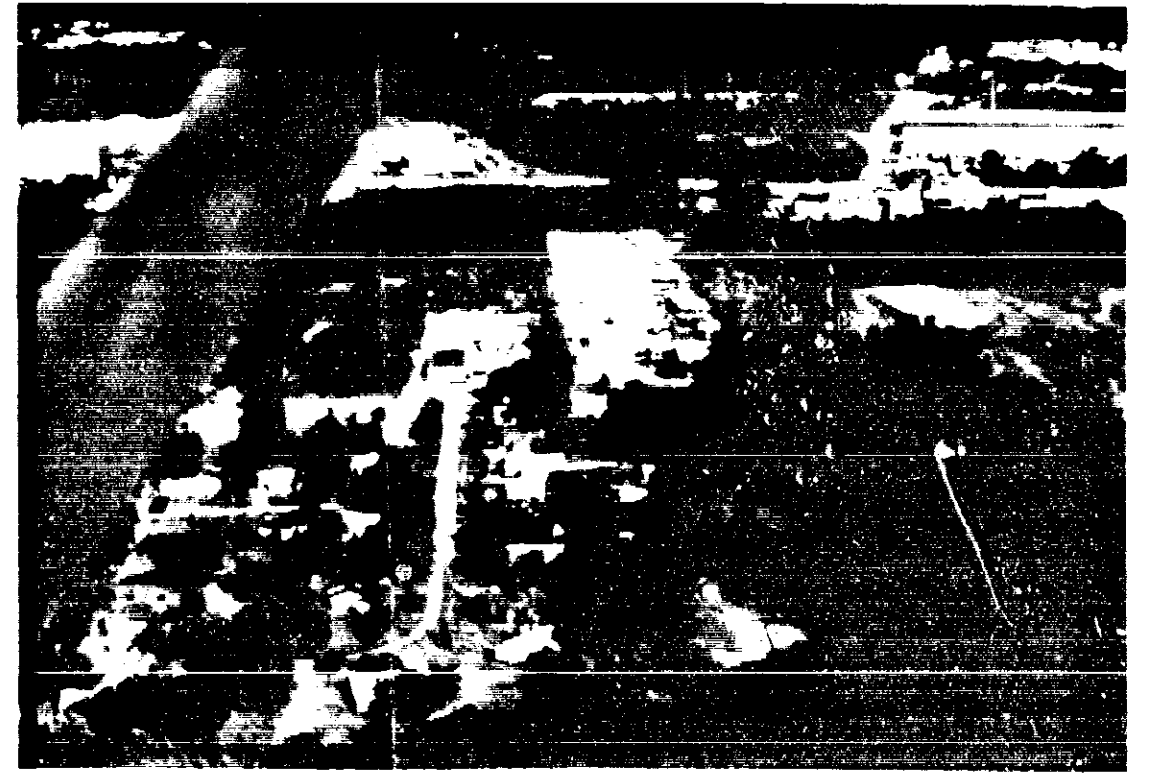


E UMERLEY SITE FACING EAST NOTE PROXIMITY OF ADJACENT HOMES.

Past and Present 1954 and 1993



I 1993 - UMERLEY SITE BORDERING PHILADELPHIA ROAD



J 1993 - UMERLEY SITE BORDERING PHILADELPHIA ROAD



A SITE OF UMERLEY TRUCKING CO. VIEW OF OFFICE BUILDING FROM PHILADELPHIA ROAD.



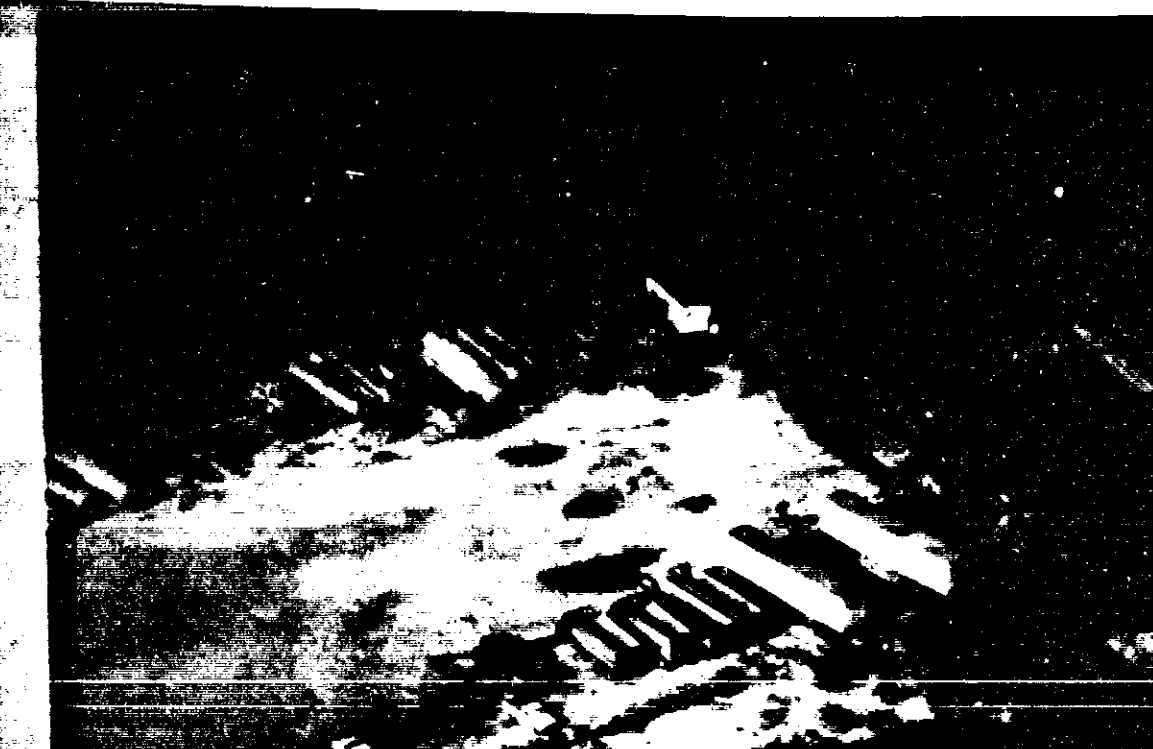
B VIEW OF PHILADELPHIA ROAD AND UMERLEY SITE FROM NOTTINGHAM.



C 9877 PHILADELPHIA ROAD VIEW OF TRUCKS, GAS PUMPS, PAVING FROM PHILADELPHIA ROAD.



D REAR OF UMERLEY SITE FACING WATER. NOTICE THE LACK OF PROPER SURFACE ON LOT FOR TRUCK MOVEMENT.



E AERIAL VIEW OF UMERLEY SITE - SOCIAL SITE, STORAGE AND COLLECTION OF JUNK VEHICLES.



F 9205 NOTTINGHAM ROAD DRIVEWAY AND GRAVEL CREATED BY TRUCKS.



G CLOSE-UP OF JUNK VEHICLES AND VARIOUS PARTS IN THE REAR OF UMERLEY SITE.



H GENERAL ENGINEERING SITE PLAN. OFFICE NEAR CLOUDS OF UMERLEY SITE.

Views of Umerley Trucking ←

Views of Nottingham Residences →



J 9215 NOTTINGHAM ROAD FROM UMERLEY.



K 9205 NOTTINGHAM ROAD FACING SOUTH, ONE BLOCK FROM UMERLEY.



L 9909 PHILADELPHIA ROAD SOUTH SIDE OF PHILADELPHIA ROAD, 1 1/2 BLOCKS FROM UMERLEY.



M 9205 NOTTINGHAM ROAD FACING NORTH, ONE BLOCK FROM UMERLEY.



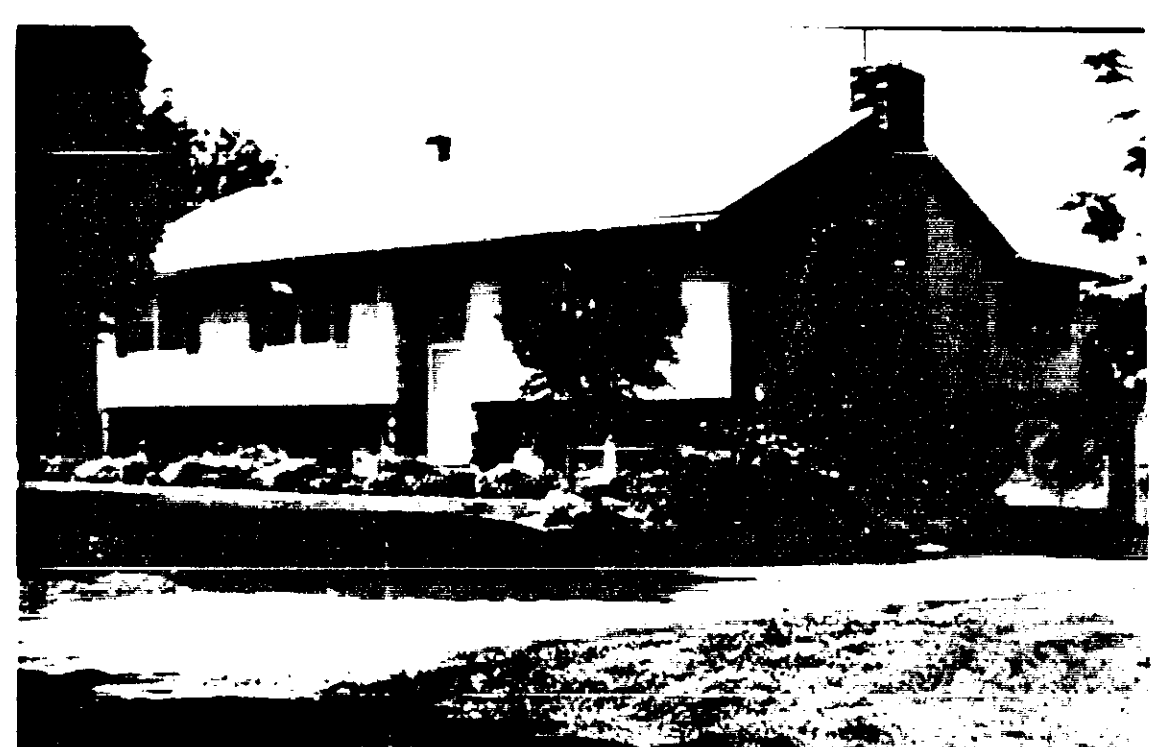
N 9205 NOTTINGHAM ROAD FACING WEST, LESS THAN A BLOCK FROM UMERLEY.



O 9205 NOTTINGHAM ROAD FACING EAST, ONE BLOCK FROM UMERLEY.



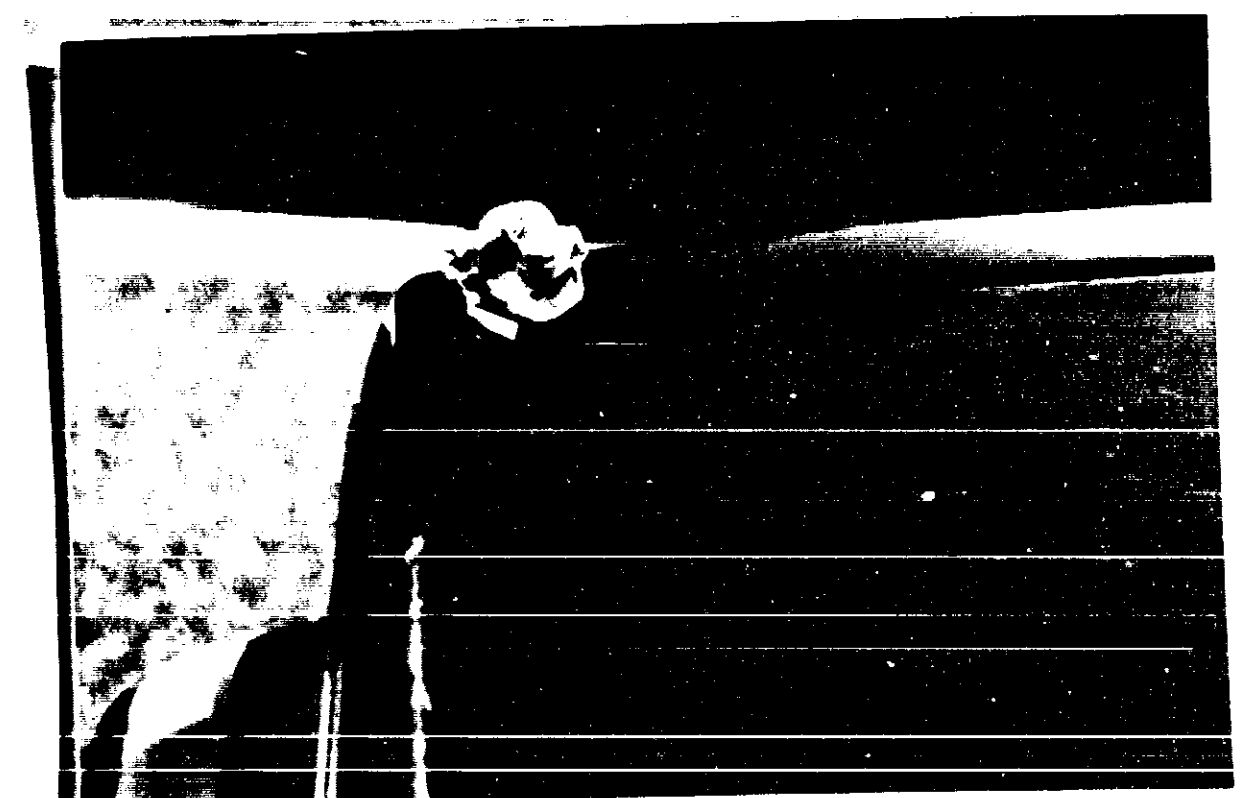
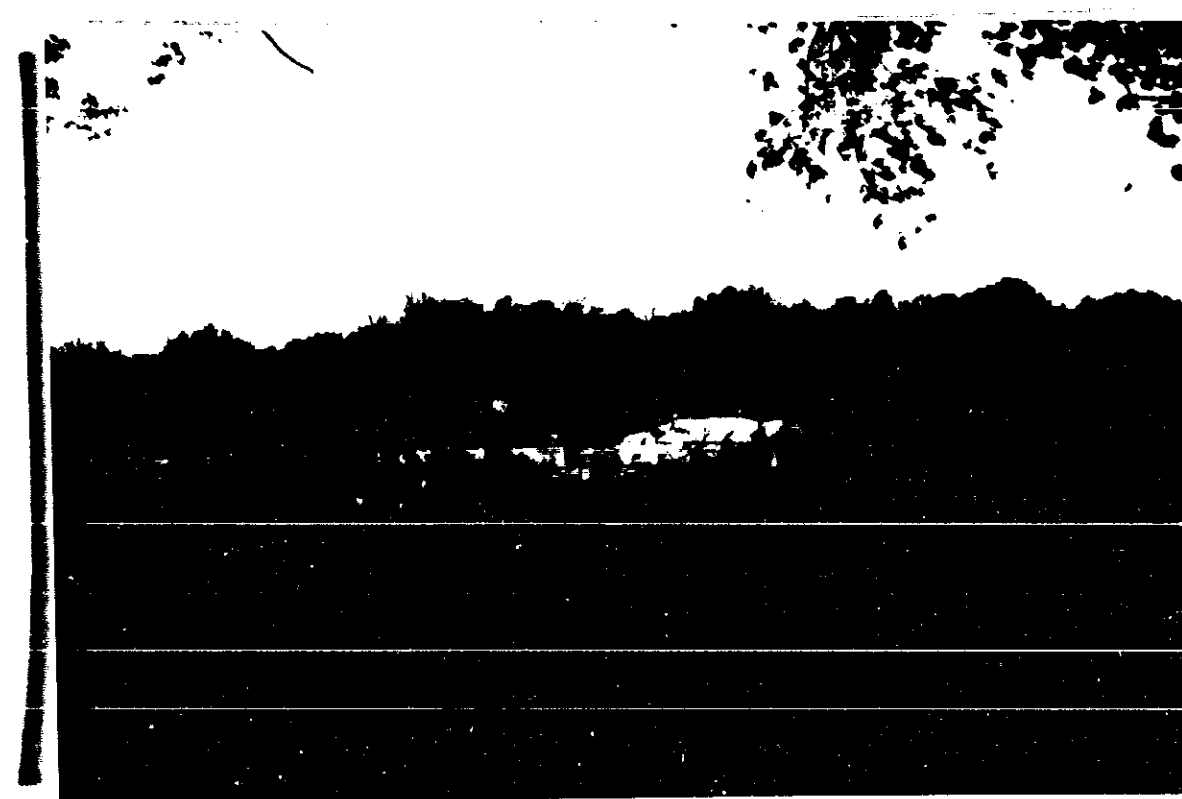
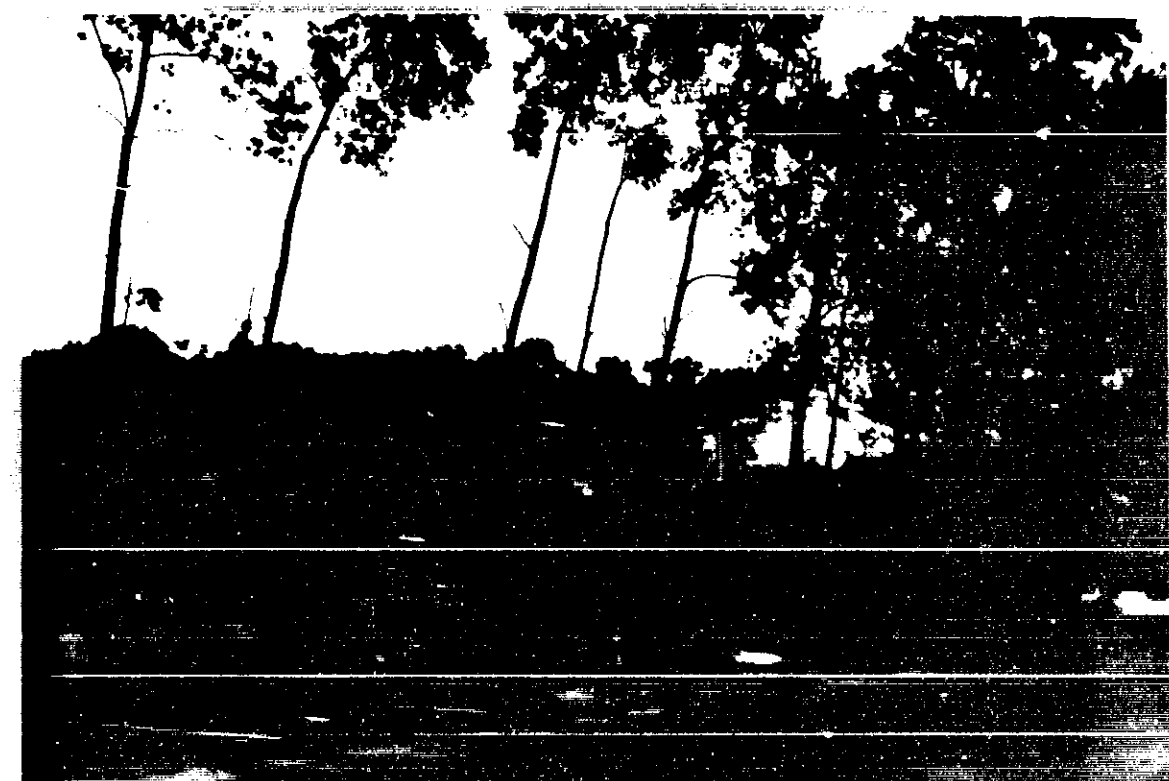
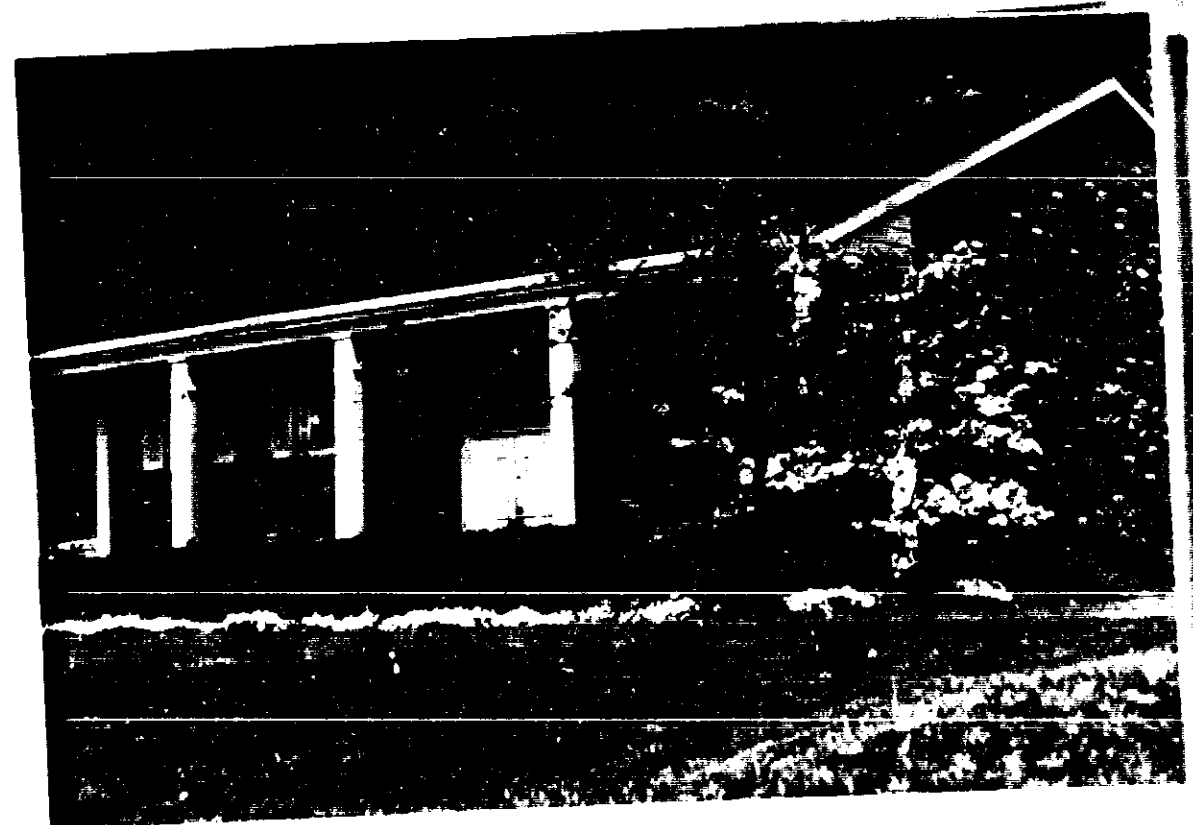
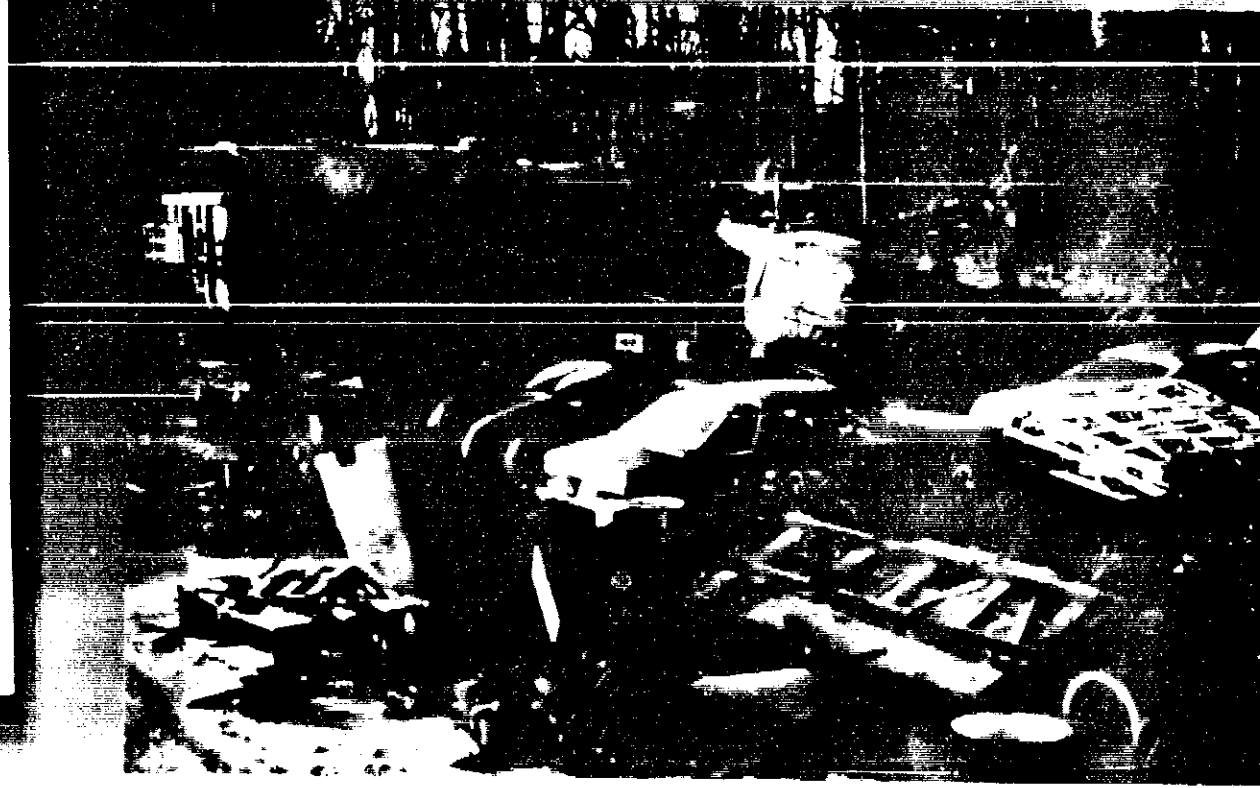
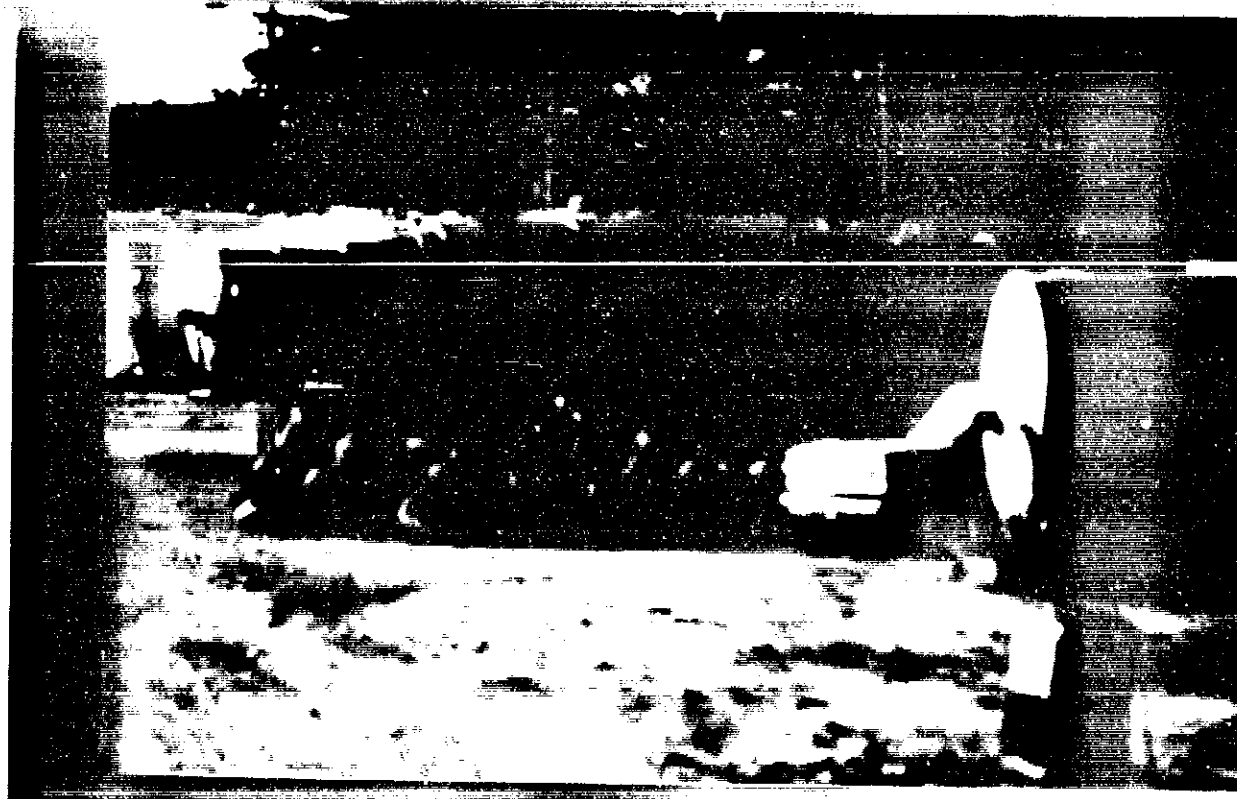
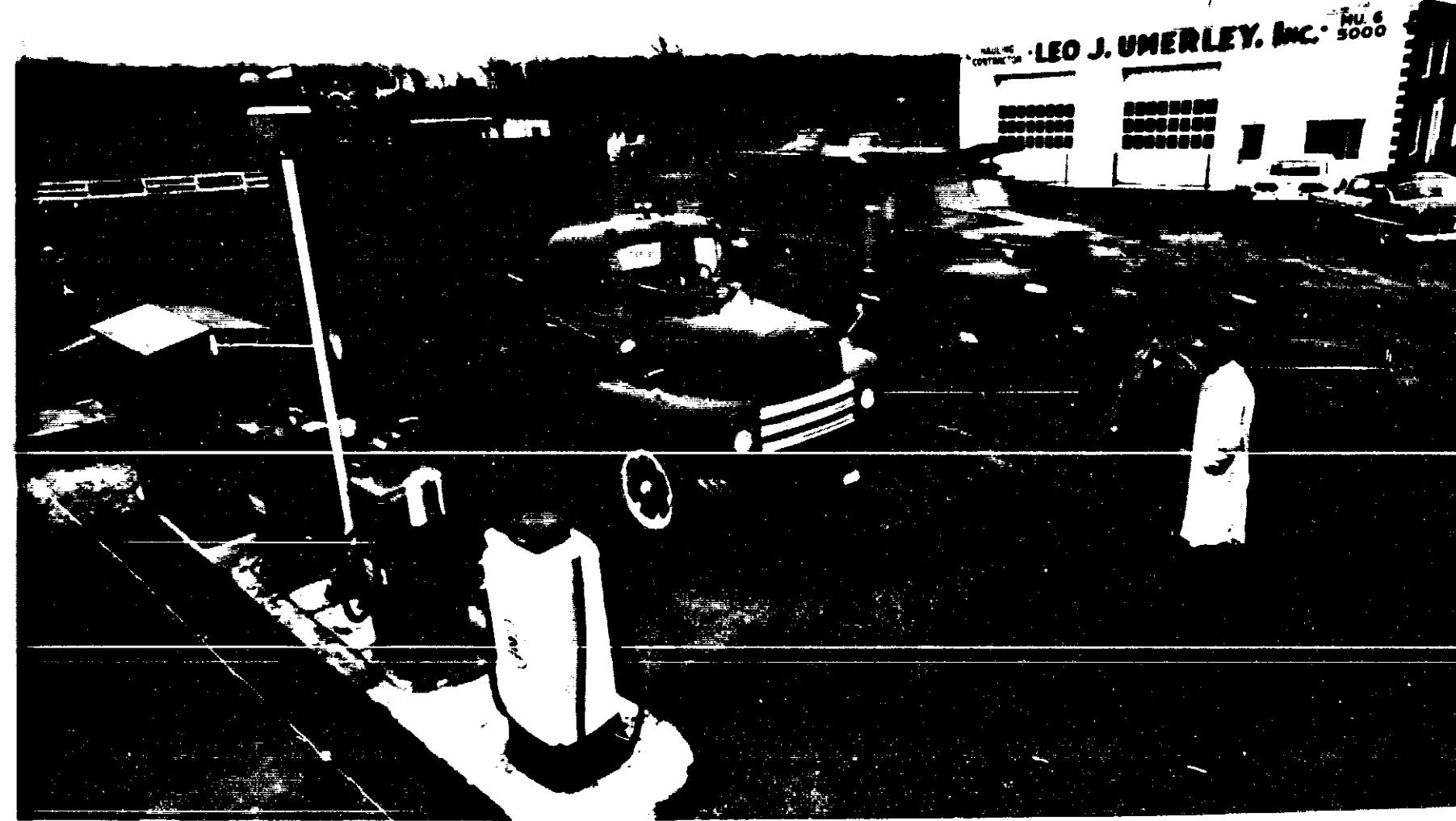
P 9229 EASTWOOD ROAD FACING NORTH, TWO BLOCKS FROM UMERLEY.



Q 9215 NOTTINGHAM ROAD FACING NORTH, ONE BLOCK FROM UMERLEY.

PC#6

Pet. Ex. 2





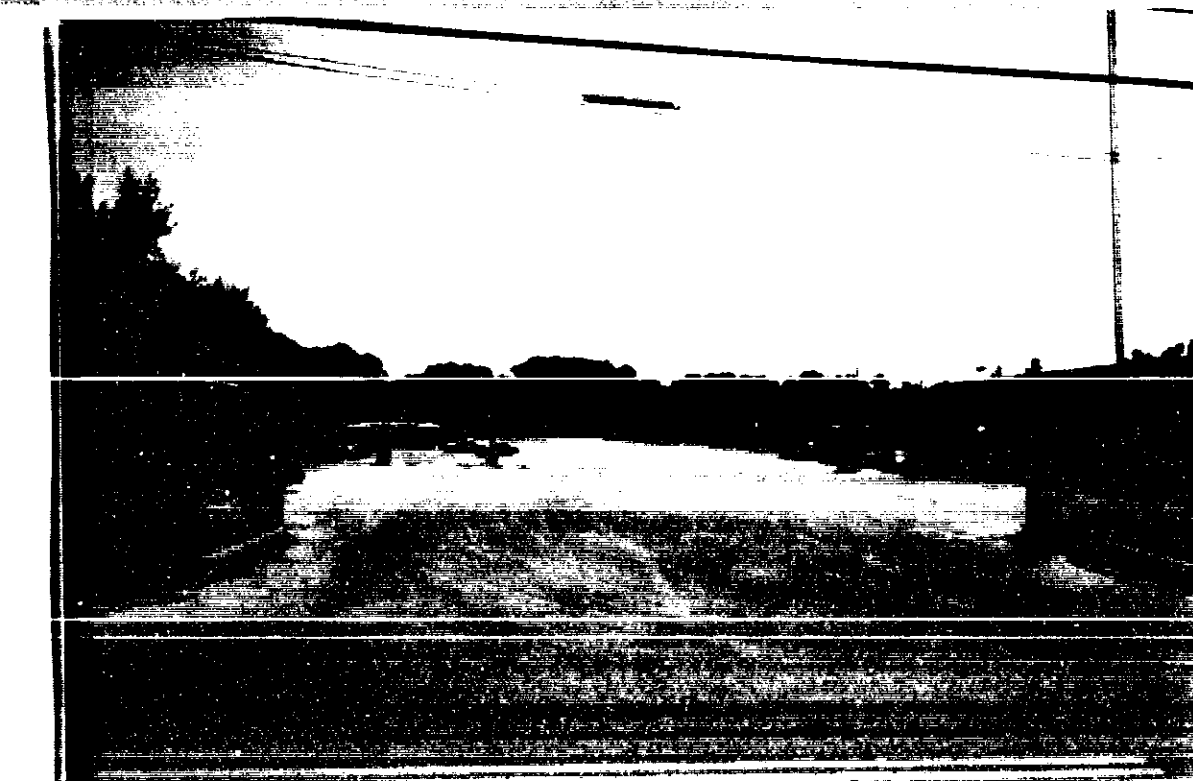
A. Umerly frontage on SE 1/3 of Philadelphia Road.



B. Looking W on Route 7 from Umerly Property. 9813 Philadelphia Rd.



C. Front of site looking East on Route 7



D. Present, channelized SHA entrance to site

8A-85



E. Looking SW from Route 7 at Office and Garage Bldg.



F. On site - Umerly - 8513 Phila. Rd.



G. Four Bay Truck Garage on site



H. Truck entering site from Philadelphia Rd.

8E

8G

IN THE MATTER OF THE APPLICATION : BEFORE THE BOARD  
FOR SPECIAL EXCEPTION AND ZONING : OF APPEALS  
VARIANCES, SE/5 PHILADELPHIA ROAD : OF BALTIMORE COUNTY  
138' S OF C/L RAVENWOOD ROAD : (1913 PHILADELPHIA ROAD)  
(1913 PHILADELPHIA ROAD) : OF BALTIMORE COUNTY  
11TH ELECTION DISTRICT : CASE NO. 92-346-XA  
6TH COUNCILMANIC DISTRICT :  
LEO J. UMERLEY AND WANDA UMERLEY, :  
PETITIONERS :

PEOPLE'S COUNSEL'S SUPPLEMENTAL MEMORANDUM

This memorandum includes several significant cases on the variance issue as well as some comment on the Petitioner's newly raised claim of denial of equal protection.

I. Variance Law

The Court of Appeals case of *Easter v. City of Baltimore*, 195 Md. 395 (1950), attached, demonstrates that a variance may not be granted in contravention of the specific legislative intent to provide a minimum building distance from the front of the lot. There, petitioner advanced equitable arguments for the construction of a one-story and basement addition to the front of a store and dwelling, and there was no apparent specific health and safety or nuisance problem identified. The court nevertheless held that the facts were legally insufficient to support a variance.

Otherwise, one departure from the legislative scheme "serves as jurisdiction for another." 195 Md. 401. The present case, moreover, involves a severe nuisance and offense to the neighborhood.

10-14-82 23 23 23 23

Similarly, in *Board of Education v. Wolf*, 199 N.Y.S. 2d 44 (1960), attached, the court held that a zoning law establishing a 200 foot minimum distance requirement for a gas station from a public school was not intended to be subject to variance. The same principle is at work in *Sherrill v. Town of Rightsville Beach*, 334 SE 2d 103 (NC App. 1985, attached; duplexes in low-density residential area.

Another case is *State v. Board of Zoning Adjustments*, 197 S 2d 918 (La. 1967), attached, involving a request for construction of a building separated from the main building. The Petitioner claimed that if a variance were denied, all of the property owners in the French Quarter would be unable to construct such separate buildings, and that this was unreasonable, unfair, and discriminatory. The court rejected this argument, noting both that Petitioner's situation was neither "unusual" nor "particular" to him, but that it applied generally in the French Quarter. As a result, there was no legal entitlement to the requested variance.

Remarkably, in both the Baltimore and New Orleans cases, zoning legislation established new standards which had significant effects on existing property owners, who claimed that the laws were unfair. But it is in the nature of zoning to establish restrictions. If these restrictions are thought to be too burdensome, it is for the legislature to change the legislation, not for the Board of Appeals.

II. The Petitioners' Equal Protection Argument is Without Merit

The Supreme Court in *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974), established the "rational basis" test for zoning laws under the Fourteenth Amendment. Such laws are to be upheld so long as fairly debatable, with deference due to the legislative judgment. In Maryland, the Court of Appeals employed this standard in *Creative Country Day School v. Montgomery County Board of Education*, 242 Md. 552 (1968). Here, the statement of legislative purpose, the legislative history, and the facts of the case all demonstrate overwhelmingly the reasonableness and necessity of specific legislation to protect residential areas from the detrimental effects of trucking facilities.

Indeed, trucking facility legislation is found in other areas of Maryland, as well as around the United States. For other Maryland cases involving a trucking facility, see *Miller v. Pinta*, 305 Md. 398 (1986), and *U.P.S. v. People's Council*, 93 Md. App. 59 (1982).

Peter Max Zimmerman  
Peter Max Zimmerman  
People's Counsel for Baltimore County  
Carole S. Paeillo  
Deputy People's Counsel  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 687-2186

I HEREBY CERTIFY that on this 23rd day of November, 1980, a copy of the foregoing People's Counsel's Supplemental Memorandum was mailed to Stephen J. Nolan, Esquire, and Newton A. Williams, Esquire, Nolan, Plumhoff & Williams, Chfd., 700 Court Tower, 210 W. Pennsylvania Ave., Towson, MD 21204. Attorneys for Petitioners.

Peter Max Zimmerman  
Peter Max Zimmerman

394 WINDSOR HILLS IMP. ASS'N v. BALTO.

Opinion of the Court. [195 Md.]  
The Association in its petition for appeal, "on its behalf and on behalf of protesting residents and any other persons aggrieved and interested in the \* \* \* matter \* \* \*" says it "represents taxpayers and property owners" near the property in question. In the lower court Westchester denied that the Association had any interest in the Board's decision because (A) it was not in existence at the time of the decision and (B) it is not a "person aggrieved" or a taxpayer, and moved to rescind leave to Kairys to intervene, because he was too late. The lower court in effect overruled these objections and treated them as "waived" in the interest of a prompt decision on the merits. In this court Westchester moved to dismiss the appeal for the same reasons. As to the Association the motion must be granted. *Norwood Heights Improvement Ass'n v. Mayor and City Council of Baltimore*, 195 Md. 1, 8, 72 A. 2d 1, 4; *Same v. Same*, 195 Md. 368, 73 A. 2d 529. A corporation is not sufficiently "interested" to sue, or "aggrieved" to appeal, merely because its members are "interested" or "aggrieved". *Dvorine v. Castleberg Naturopathic Ass'n v. Kloman*, 191 Md. 626, 62 A. 2d 618. Either a "person aggrieved" or a taxpayer may appeal. The Association is neither. On the record Kairys is a taxpayer and a party in the lower court and therefore entitled to appeal to this court. We think, however, that his petition for intervention after expiration of the time for appeal could not validate the Association's attempt to appeal and should have been denied. The right to appeal is conferred by statute and cannot be created by waiver when it is not exercised in accordance with the statute. Nor do we mean, by discussing questions of illegality in this opinion, to sanction disregard of the statutory requirement of "specifying the grounds of the illegality" in the petition for appeal, or to weaken or qualify what we have so recently said on this subject in the second and third *Norwood* cases. *Norwood Heights Improvement Ass'n v. Mayor*

EASTER v. CITY OF BALTIMORE 395

Syllabus. [195 Md.]  
*and City Council of Baltimore*, 195 Md. 1, 4, 72 A. 2d 1, 3; *Same v. Same*, 195 Md. 368, 73 A. 2d 529.  
Appellants' last—and perhaps least—complaint is that the lower court imposed costs on Westchester alone and not on the City. There was no legal obligation to impose costs on the City and no abuse of discretion in not doing so. If the appeal proceedings had been dismissed, as they properly might have been, costs might properly have been imposed on appellants.

Appeal dismissed as to the Association; order affirmed as to Kairys; costs to be paid by appellants.

EASTER v. MAYOR AND CITY COUNCIL OF BALTIMORE ET AL.

[No. 176, October Term, 1949.]  
*Zoning—Special Exceptions or Variances—In Granting, Board of Municipal and Zoning Appeals Must Consider Factors Set Out in Zoning Ordinance—Action Must Be Reasonable in Light of These and Other Pertinent Facts—Power of Board to Grant Exceptions Must Be Strictly Construed—Burden of Showing Facts to Justify Exceptions or Variances Rests upon Applicant—Must Show That Hardship Affects Particular Premises—Not Common to Other Property in Neighborhood—Fact That Granting of Variance Would Make Property More Profitable—Not Sufficient—Prior Exceptions—In Themselves Not Controlling—If Advised or Illegal Variances Furnish No Grounds for Repetition of Wrong—Annulment of Zoning—Legislative Function—Beyond Domain of Zoning Board—Non-Conforming Uses—Zoning Ordinance Tolerates Their Continuance—Looks Towards Their Ultimate Elimination—Same Principle Applies to Special Exceptions—Similar Extensions in Other Cases—Approval of, Raises No Estoppel Against Board—Area and Setback Rules—Facts Did Not Justify Exception to.*

396 EASTER v. CITY OF BALTIMORE

Syllabus. [195 Md.]  
The Board of Municipal and Zoning Appeals must consider the factors set out in Baltimore City Ordinance No. 1247 (1930-1931), par. 32 (1), in granting an exception or variance, and its action must be reasonable in the light of these and all other pertinent facts. p. 399  
The power of the Board of Municipal and Zoning Appeals to grant exceptions under Baltimore City Ordinance No. 1247 (1930-1931), par. 33 (c), must be strictly construed. pp. 399-400

The burden of showing facts to justify an exception or variance under the Zoning Ordinance, Baltimore City Ordinance No. 1247 (1930-1931), par. 33 (c), rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood. p. 400

The mere fact that the granting of a variance under the Zoning Ordinance, Baltimore City Ordinance No. 1247 (1930-1931), par. 33 (c), would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements. p. 400

Prior exceptions to zoning requirements are not in themselves controlling. If advised or illegal variances do not furnish grounds for a repetition of the wrong. The annulment of zoning is a legislative function that is beyond the domain of the zoning board. p. 400

In the case of non-conforming uses the Zoning Ordinance, Baltimore City Ordinance No. 1247 (1930-1931), tolerates their continuance, but looks towards their ultimate elimination. The same principle applies to special exceptions. p. 401

No estoppel can be raised against the Board of Municipal and Zoning Appeals, Baltimore City Ordinance No. 1247 (1930-1931), par. 33 (c), by an applicant for an exception or variance from the Ordinance, because of the Board's approval of similar extensions in other cases. p. 401

In the case at bar an appeal was taken from a judgment of the Baltimore City Court affirming the action of the Board

EASTER v. CITY OF BALTIMORE 397

Syllabus. [195 Md.]  
The Board of Municipal and Zoning Appeals in granting a permit for the construction of a one-story and basement addition on the front of a store and dwelling. Although the permit allowed the store front to be brought out to the building line in contravention of the Zoning Ordinance, Baltimore City Ordinance No. 1247 (1930-1931), par. 24, and of the percentage of occupancy requirements under par. 21, the permit was granted under par. 33 (c), on the ground that due to the peculiar location and surroundings the case was one of practical difficulty and hardship, because a tavern located next to the store and dwelling obstructed the view of the store where the addition was proposed. In reversing the judgment of the lower court, the Court of Appeals held that the facts did not justify an exception to the area and setback rules. The fact that the lot was irregular had no bearing on the question, nor was it material that three buildings, some distance away, extended to the building line. The existence of an exception on the adjoining lot, where the tavern was located, although detrimental to the applicant, did not justify the action of the Board in granting the permit. pp. 398-401

J. E. B.  
Decided May 12, 1950.  
Appeal from the Baltimore City Court (NILES, J.).

Petition by Andrew J. Easter for appeal from the action of the Board of Municipal and Zoning Appeals in granting a permit for the construction of a one-story and basement addition on the front of a store and dwelling owned by John P. Easter and Annie C. Easter, his wife. From a judgment affirming the action of the Board, petitioner appeals.

Judgment reversed.  
The cause was argued before MARRY, C. J., DELA-PLAINE, COLLINS, GRASON, HENDERSON and MARKELL, JJ.

John F. Heath for the appellant.

398 EASTER v. CITY OF BALTIMORE

Opinion of the Court. [195 Md.]  
*Benjamin Koss and Malcolm J. Coan* for the appellants, John P. Easter and Annie C. Easter, his wife. Submitted on brief by *Thomas N. Bidston, City Solicitor of Baltimore, Edwin Harlan, Deputy City Solicitor, and Hamilton O'Dunne, Assistant City Solicitor*, for the appellee, the Mayor and City Council of Baltimore.

HENDERSON, J., delivered the opinion of the Court. This appeal is from a judgment of the Baltimore City Court affirming the action of the Board of Municipal and Zoning Appeals in granting a permit for the construction of a one-story and basement addition on the front of a store and dwelling at 6418 Belair Road, owned by John P. Easter. The only protestant, Andrew J. Easter, is a brother of the permittee, residing at 6420 Belair Road, where he conducts a tavern.

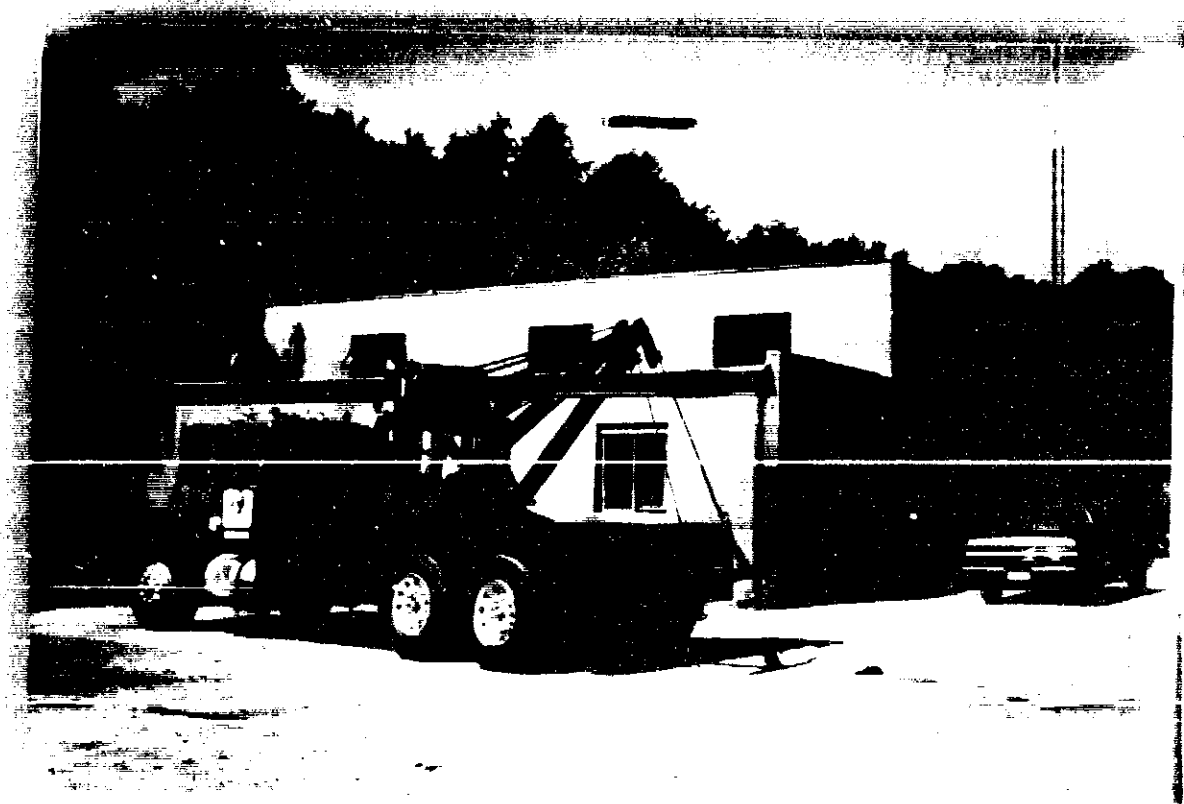
As stated by the trial Court, "The property is in a First Commercial Use, C. Area District, and the permit would allow the store front to be brought out to the building line, in contravention of paragraph 24 of the Zoning Ordinance, which requires a 10-foot minimum depth of front yard in the area in question, and of the percentage of occupancy requirements under paragraph 21, bringing the percentage of occupancy to 85% as opposed to 60%, as provided in the Ordinance. The Board of Municipal and Zoning Appeals granted the permit under the provision of Paragraph 33 (c) on the ground that \* \* \* due to its peculiar location and surroundings it is a case of practical difficulty and unnecessary hardship, since the Tavern already obstructs the view of the store where the addition is now proposed. The court thought there was 'evidence sufficient to support the legal definition of a hardship and \* \* \* in fact, it would be a hardship to allow one brother to have a tavern all the way out to the street, and to deny the other brother the right to build his store out to the same line as the tavern.'"

The Board found that the store was "on the west side of Belair Road, 105 feet south of Easter Terrace. \* \* \*

EASTER v. CITY OF BALTIMORE 399

Opinion of the Court. [195 Md.]  
Adjacent to the premises under appeal is a building containing a tavern which is built out to the front line of the lot. To the north between Easter Avenue and Kemwood Avenue there are several buildings constructed to the front lines of the lot and the proposed addition would not affect access of light and air to any neighboring properties, nor would it even cut off the view up and down the street. The lot in question is of very shallow depth and irregular in shape \* \* \*. The store and tavern were built as semi-detached buildings. In 1935 Andrew J. Easter obtained a permit to build a sort of covered entrance-way out to the building line. John P. Easter did not object, and there were no protests. In his present application John P. Easter states that since his brother "has built out in front of us it has hid our store making it difficult to rent." There is a small triangular vacant lot to the south of 6418, and a church property adjoining to the south, across an alley laid out but apparently not opened. The church is set back the required distance. Andrew J. Easter has applied for a permit, and obtained the approval of the Board, to develop the land to the north, comprising about six acres, as a shopping center with off-street parking facilities and the required set-back. If this project is carried out, he states that he proposes to remove the entrance in front of his tavern.

We may assume here, as we have assumed in previous cases, that the delegation to the Board of Zoning Appeals of the power to make special exceptions or variances is valid, and that the standards set up in Section 32 (1) are adequate. *Colati v. Jross*, 186 Md. 652, 656, 47 A. 2d 813; *Heath v. Mayor and City Council of Baltimore*, 187 Md. 286, 49 A. 2d 799; *Heath v. Mayor and City Council of Baltimore*, 190 Md. 478, 483, 58 A. 2d 896, 898. The Board must consider the factors set out in that section and "its action must be reasonable in the light of these and all other pertinent facts." *Heath v. Mayor and City Council of Baltimore*, *supra*, (187 Md. 305, 49 A. 2d 804). The power to grant exceptions



I. Tow Truck and SE/S of Garage



J. Looking SE toward rear of site



K. Employee parking along NE/S of Site



L. Looking SW across lot toward adjoining ML-17 use



O. Looking at SW end of site toward CSX RR.



P. Looking from rear of site toward front of site



M. Looking NW at lot 1 from Subject Site



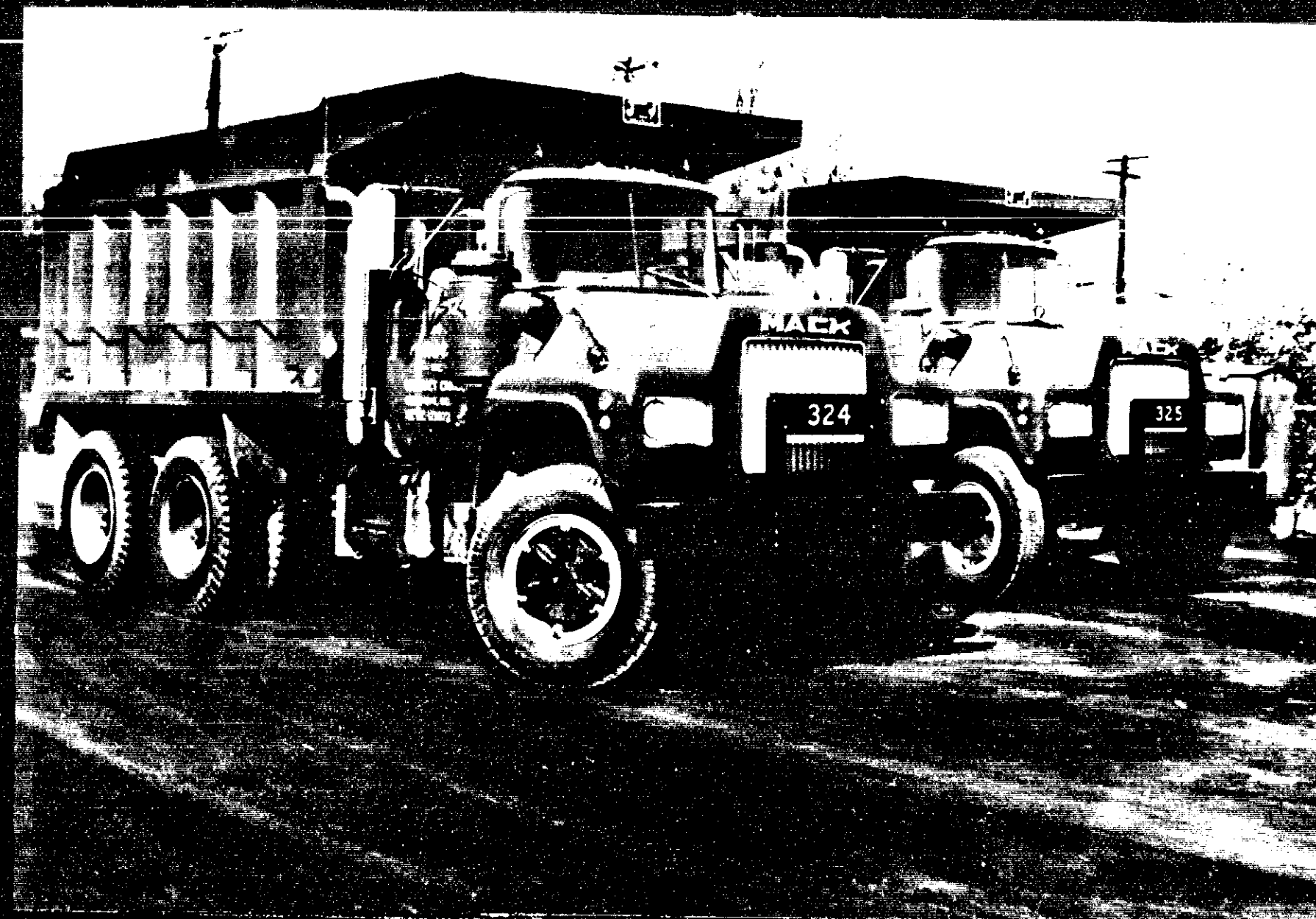
N. Cement Tankers stored toward rear of site



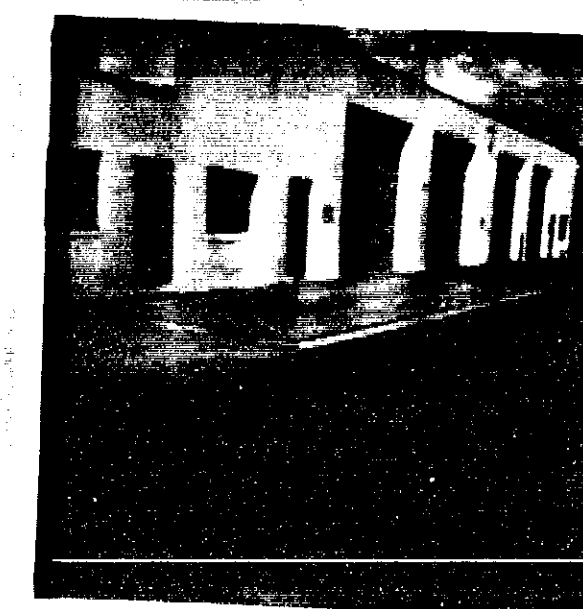
Q. Construction equipment at rear of site



R. Looking from rear of site



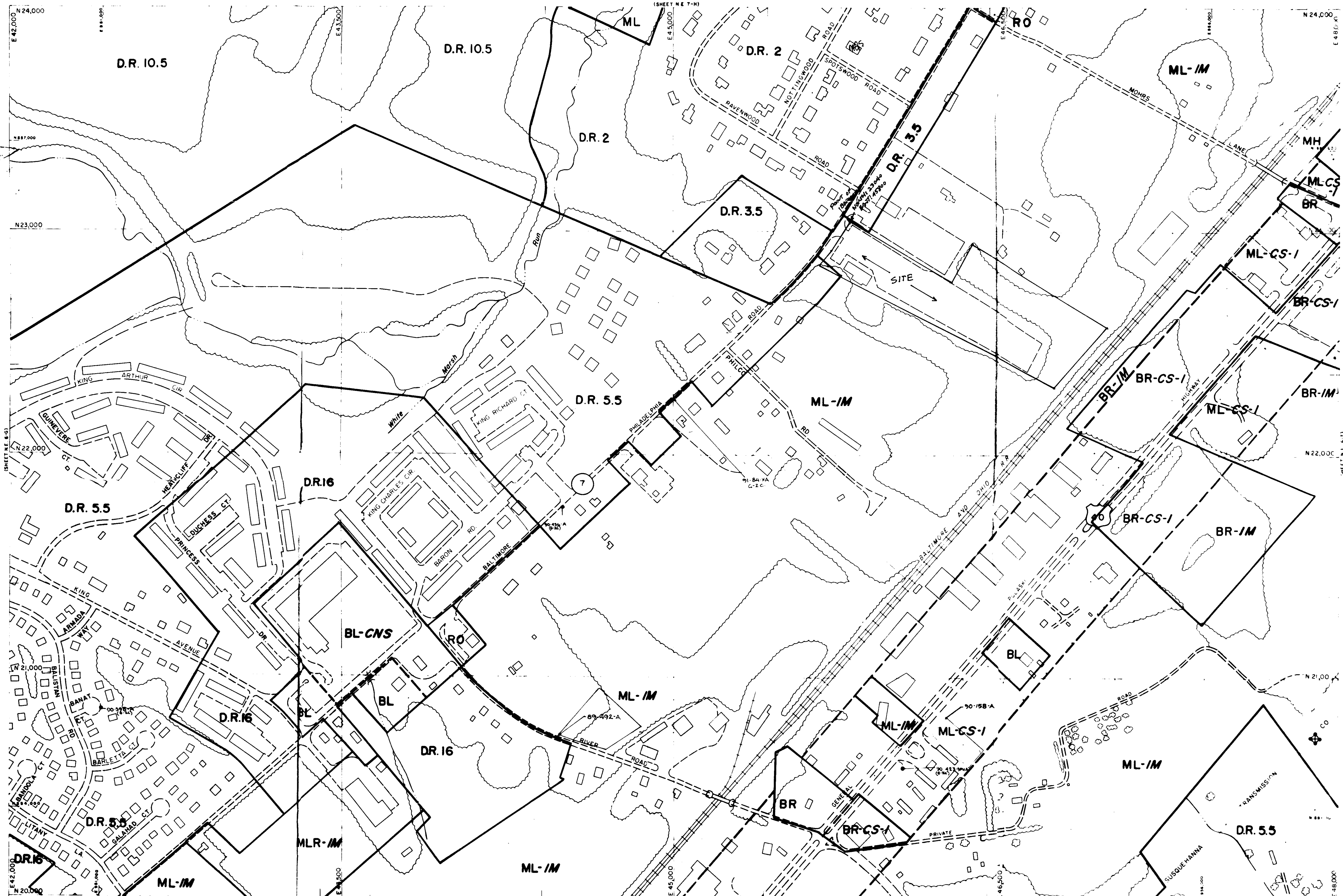
S. Long Fence on Lot 3 adjoining the site











M - SW M - SE  
 I - NW I - NE  
**92-346-XA**  
 COMPREHENSIVE ZONING MAP  
 adopted by the Baltimore County Council  
 Oct. 13, 1988  
 Ord. Nos. 144-88, 145-88, 146-88, 147-88, 148-88, 149-88, 150-88  
 Chairman, County Council

BALTIMORE COUNTY  
 OFFICE OF PLANNING AND ZONING  
**OFFICIAL ZONING MAP**

**PETITIONER'S  
 EXHIBIT** No. 4

SCALE  
 1" = 200'  
 DATE  
 OF  
 PHOTOGRAPHY  
 JANUARY  
 1986

LOCATION  
 SHEET  
 POPLAR  
**364**  
 N.E  
 6-H



ORDER

IT IS HEREBY ORDERED this 30th day of February, 1994, by the Circuit Court for Baltimore County that the Petition for Judicial Review filed in Case No. 94 CV 557 shall be transferred to Case No. 94 CV 00405; and is further

Ordered that one record of the proceedings before the County Board of Appeals, including transcript of testimony therein, shall be required to be transmitted to the Circuit Court for Baltimore County and that all pleadings pertinent to this case shall be filed in Docket 71, Page 89, Case No. 94-CV-00405.

Judge signature and name: JAMES D. NOLAN

c:\lps1\data\pc-ord.doc

BALTIMORE COUNTY, MARYLAND \* IN THE DISTRICT COURT
v. \* OF
LEO J. UMERLEY \* MARYLAND FOR BALTIMORE COUNTY

Case No.: SP01390-93
Trial Date: March 2, 1994
at 1:00 p.m.

DEFENDANT'S REQUEST FOR POSTPONEMENT

Defendant, Leo J. Umerley, by his undersigned attorney hereby requests a postponement of the hearing in the above-referenced case.

- 1. The hearing in this case was originally set for November 24, 1993 but was postponed by the Court.
2. Mr. Umerley desires that Stephen J. Nolan, his undersigned attorney, handle this matter personally.
3. Mr. Nolan represents several plaintiffs in an asbestos class action suit in the U.S. District Court for the Eastern District of Pennsylvania, Case Number 93-CV-0215. Trial has begun in this case and Mr. Nolan will be required to appear in Federal Court in Philadelphia on behalf of his clients on March 2, 1994.
4. Mr. Nolan has an irreconcilable scheduling conflict.
5. Baltimore County does not object to the postponement.

WHEREFORE, because of the facts outlined above, Defendant respectfully requests a postponement of the hearing scheduled for March 2, 1994.

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

BALTIMORE COUNTY, MARYLAND \* IN THE DISTRICT COURT
v. \* OF
LEO J. UMERLEY \* MARYLAND FOR BALTIMORE COUNTY

Case No.: SP01390-93

ORDER

IT IS HEREBY ORDERED, on this \_\_\_ day of \_\_\_, 1994 that Defendant's Request for Postponement is GRANTED and this case is continued until \_\_\_.

Judge

MODIFIED

February 25, 1994

Stephen J. Nolan signature and address: NOLAN, PLUMHOFF & WILLIAMS, CHTD, Suite 700, Court Towers, 210 West Pennsylvania Avenue, Towson, Maryland 21204, (410) 823-7800

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of February, 1994, a copy of the foregoing Defendant's Request for Postponement With Consent was mailed, postage prepaid, to Lee Thomson, Esquire, Assistant County Attorney, 400 Washington Avenue, Office of Law, Towson, Maryland 21204 and to Mr. Gary Freund, Zoning Enforcement Section, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Stephen J. Nolan signature and name

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

NEWTON A. WILLIAMS, THOMAS J. BENNER, WILLIAM H. ENGLISH, JR., STEPHEN J. NOLAN, ROBERT L. HANLEY, JR., ROBERT S. OLIVANOVICH, STEPHEN H. SCHENKHOFF, DOUGLAS L. BURGES, ROBERT E. CAGELL, JR., E. BRUCE JONES, JR., J. JOSEPH CURRAN, III, CHRISTINE K. MCHERRY

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5340
(410) 823-7800
TELEFAX: (410) 296-2765
WRITER'S DIRECT MAIL
923

JAMES D. NOLAN, RETIRED 1980, J. EARLE PLUMHOFF, 1950-1980, RALPH E. DEITZ, 1918-1980, T. BAYARD WILLIAMS, JR., WRITER'S DIRECT MAIL 923

February 25, 1993

Clerk, District Court of Maryland
111 Allegheny Avenue
Towson, Maryland 21204

re: Baltimore County v. Leo J. Umerley
Case No.: SP01390-93

Dear Sir or Madam:

Enclosed for filing please find a Request for Postponement in the above-referenced case. If the court grants this postponement please be advised that defendant has been scheduled for a hearing before this court on April 6, 1994 at 1:30 in Case No.: SPO2494-93.

It may be more time-efficient for the court, the County and the defendant if this case was set for hearing at that time. Thank you for your attention to this matter.

Very truly yours,

Kristin L. Kremer
Legal Assistant

cc: Lee Thomson, Esquire
Assistant County Attorney
Gary Freund
Zoning Enforcement Office
Mr. Leo J. Umerley

RECEIVED
FEB 28 1994

ZADM

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
PETITION OF NOTTINGHAM IMPROVEMENT
ASSOCIATION, INC.
and
GENERAL SERVICES ENGINEERING, INC.
FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF
LEO J. UMERLEY, ET UX
Case No. 92-346 XA

PETITION OF PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY
FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY
IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF
LEO J. UMERLEY, ET UX
Case No. 92-346 XA

CIVIL
ACTION
Case No. 94 CV 557
Docket 71
Page 241

CIVIL
ACTION
Case No.
94-CV-00405
Docket 71
Page 89

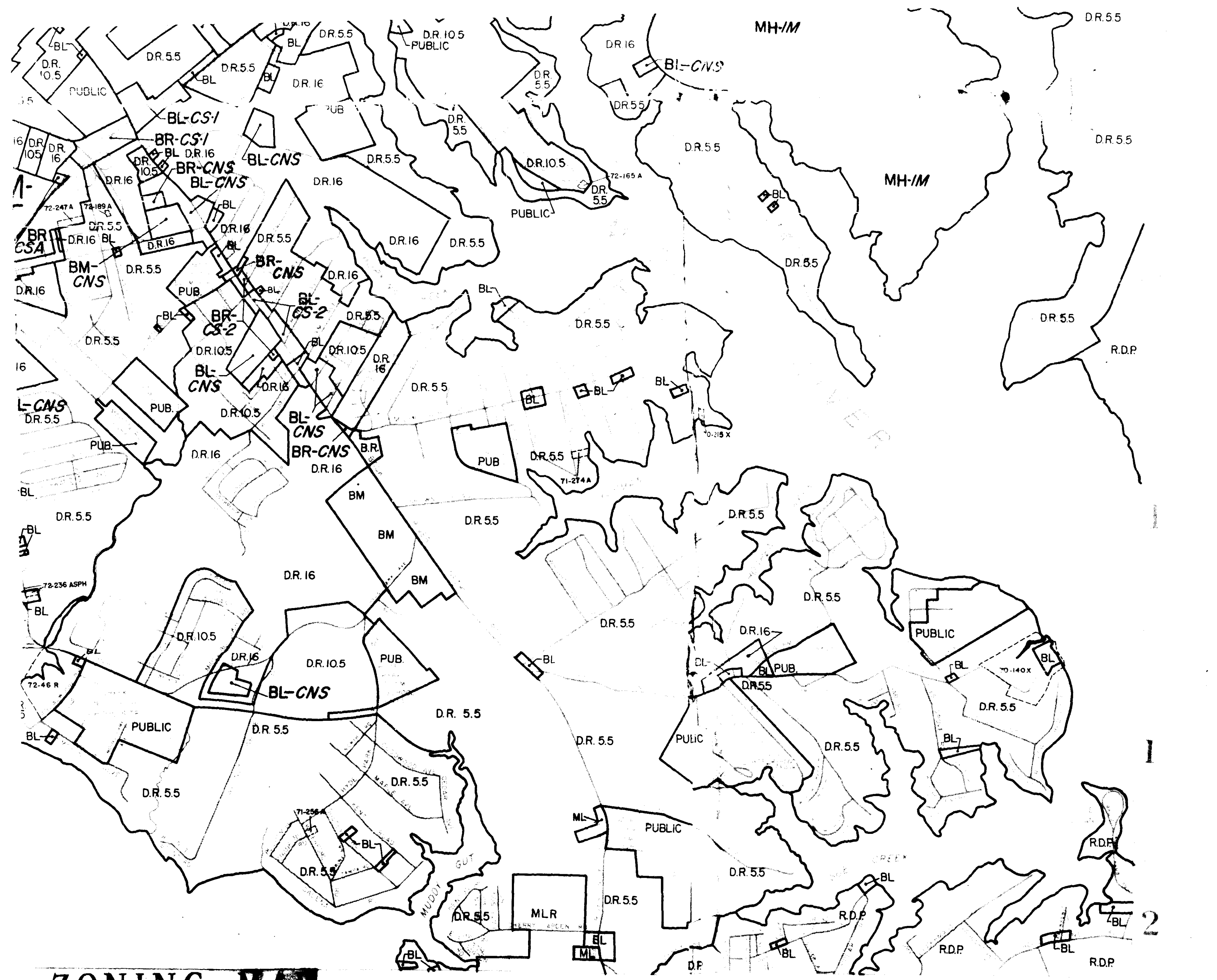
94 FEB -3 1994

MOTION TO TRANSFER

The People's Counsel of Baltimore County hereby moves to transfer the Petition for Judicial Review filed in Case No. 94CV557, Docket 71, Page 241 to Case No.94 CV 00405, Docket 71, Page 89. The grounds for the Motion are as follows:

- 1. An Order of the County Board of Appeals In The Matter of Leo J. Umerley was issued on December 22, 1993 after a two day hearing on the merits.
2. Pursuant to Maryland Rule 7-203(a), People's Counsel for Baltimore County, on January 13, 1994, filed a timely Petition for Judicial Review of said Order; said Petition for Judicial Review was docketed as Case No. 94 CV 00405.
3. Pursuant to Maryland Rule 7-203(b), Nottingham Improvement Association by Marie Quintana Simoes and General Services Engineering, Inc., on January 17, 1994, also filed a timely Petition for Judicial Review of the aforesaid Order of the County Board of Appeals in the matter of Leo J. Umerley; said Petition for Judicial Review was inadvertently docketed as a separate Case No. 94 CV 557, Docket 71, Page 241.
4. A Petition for Judicial Review of an Administrative Order may be filed by more than one party as provided in Maryland Rule 7-203(b); the Rule does not direct nor indicate that each said Petition for Judicial Review shall be treated as a separate case.

- 5. Maryland Rule 7-206(a) provides that the Record of the agency proceeding, (in this case the Baltimore County Board of Appeals), including exhibits, papers filed and the transcript of the testimony, shall be transmitted to the Circuit Court; said Rule further states that the first Petitioner to file for Judicial Review shall bear the cost of transcribing the testimony unless otherwise ordered by the Court; thus only one complete Record must be transmitted to the Circuit Court regardless of the number of Petitions for Judicial Review filed.
6. In the cases at hand, if the two Petitions for Judicial Review were maintained as separate cases, a copy of the record of the proceedings before the County Board of Appeals, including all exhibits, papers and a transcript of the testimony, must be filed in each case, creating an unnecessary expense for the parties and a hardship for the County Board of Appeals which would be required to provide an extra set of all exhibits filed.
7. That as provided in Maryland Rule 7-208, one date for a hearing on the merits would be set for all Petitions for Judicial Review filed in the matter, and all parties and counsel would be heard in a single hearing; a duplicate of the Record and proceedings of the County Board of Appeals would not be required, nor assist the Circuit Court in reaching a decision in this matter.



**ZONING MAP**  
 ADOPTED BY THE  
 COUNTY COUNCIL  
 CH 24, 1971  
 §§. 28, 29, 30, 31, and 32

ESSEX-MIDDLE RIVER

4B

BALTIMORE COUNTY BASE MAP SERIES -

WLO

**F1/4**

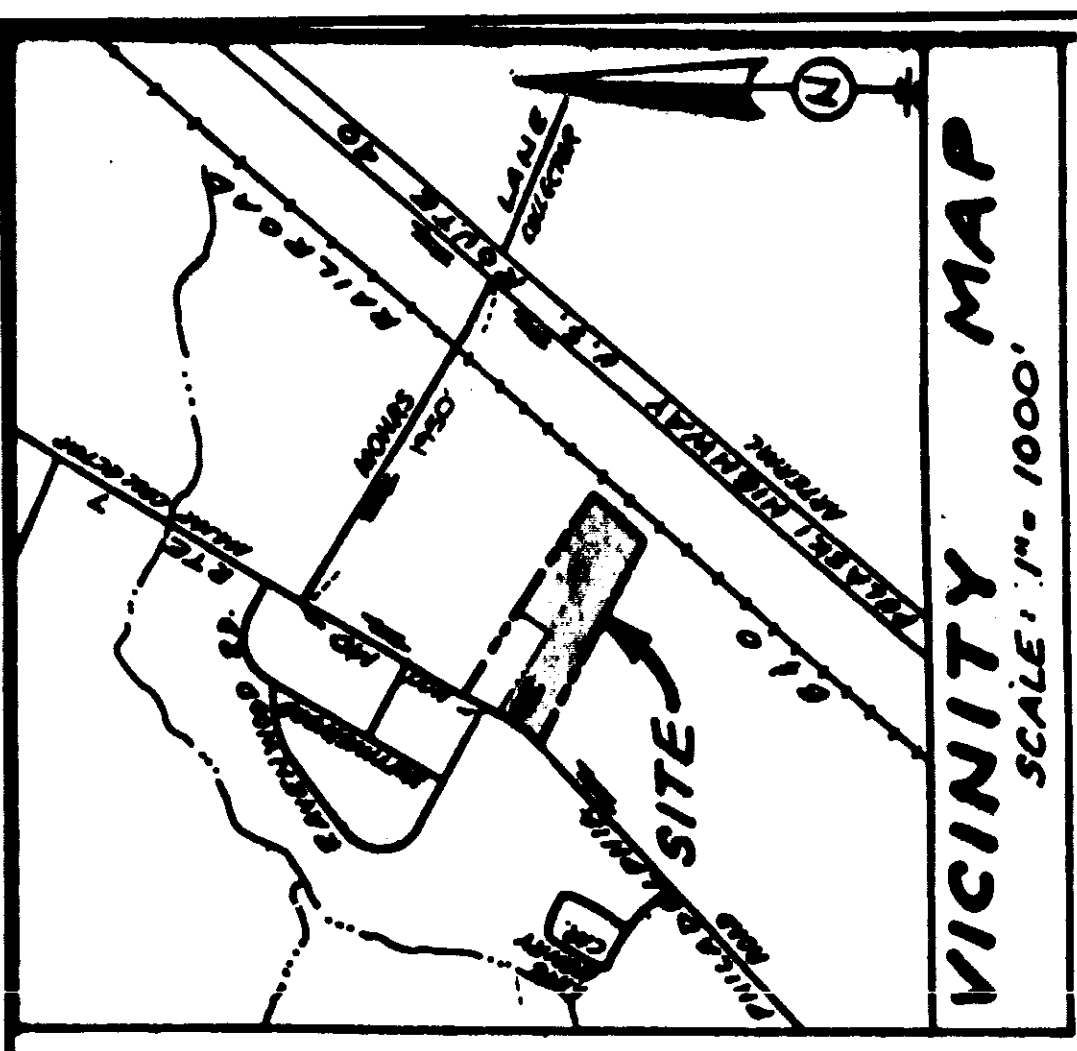




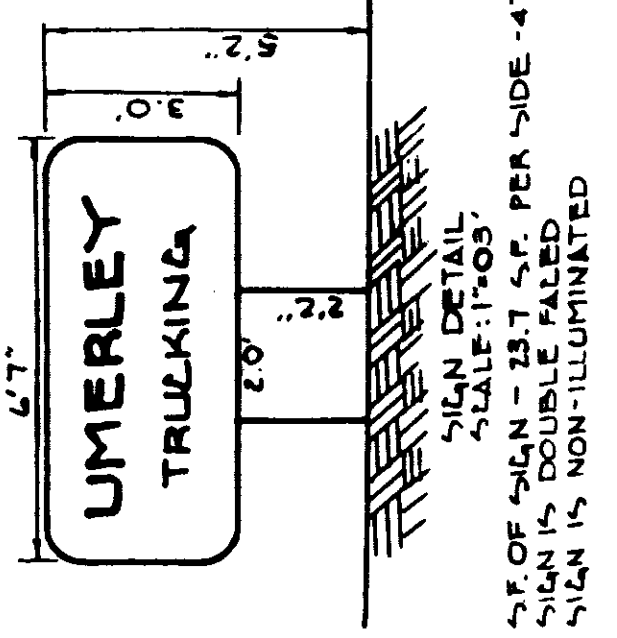




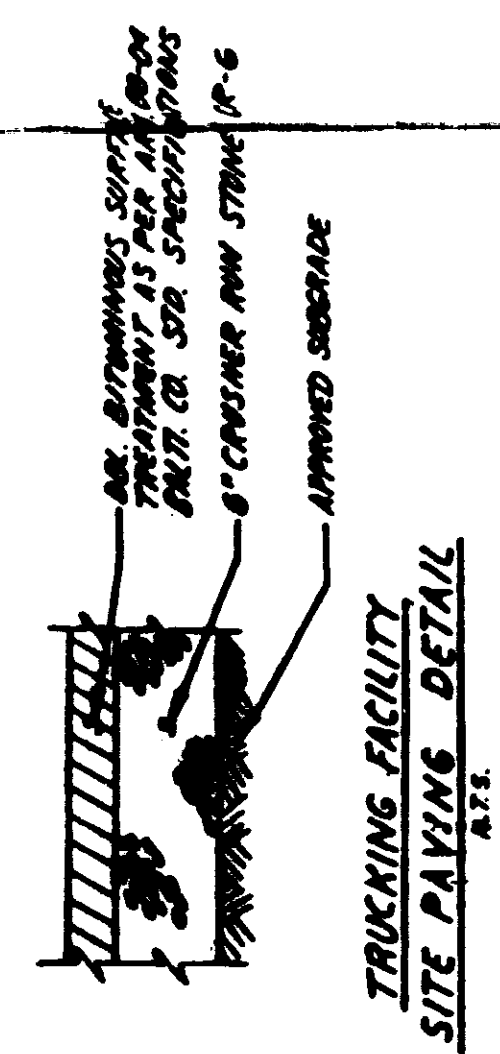




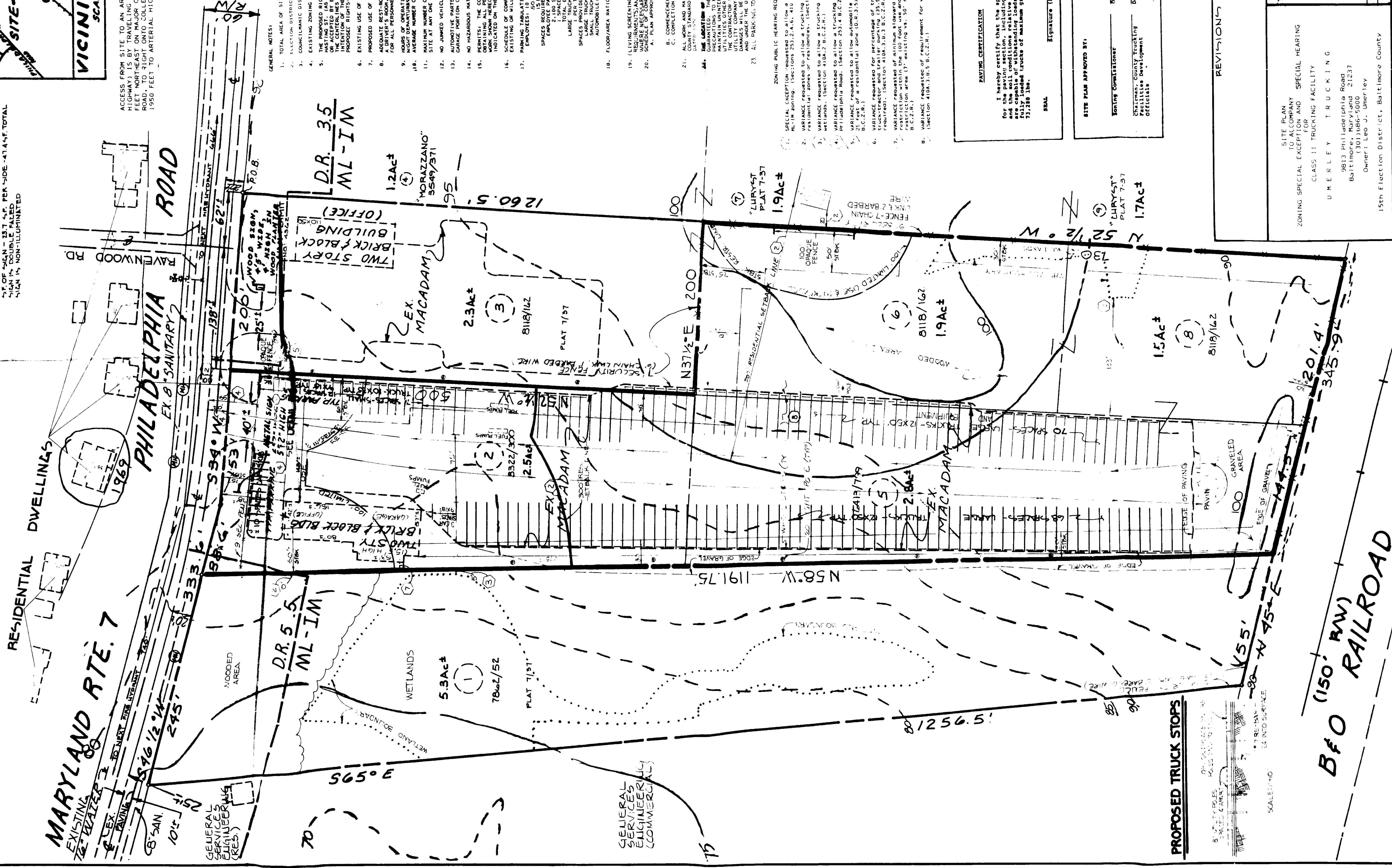
ACCESS FROM SITE TO AN ARTERIAL HIGHWAY (RT. 40, PULASKI HIGHWAY) IS BY TRAVELING COLLECTOR ROAD RT. 7, PHILADELPHIA ROAD, TO RIGHT ONTO COLLECTOR ROAD MOHRS LANE, TO APPROX. 1950 FEET TO ARTERIAL HIGHWAY RT. 40, PULASKI HIGHWAY.



8" X 48" SIGN 2 1/2" X 4" PER SIDE - 41.4" TOTAL SIGN IS NON-ILLUMINATED



TRUCKING FACILITY SITE PAVING DETAIL



D.R. 3.5 ML-IM

D.R. 5.5 ML-IM

D.R. 1.5 ML-IM

D.R. 1.5 ML-IM

D.R. 3.5 ML-IM

1.2Ac± (1) MORAZZANO 5549/371

2.3Ac± (3) 8118/162

2.5Ac± (2) 8322/300

5.3Ac± (1) 7862/52

1.9Ac± (6) 8118/162

1.5Ac± (8) 8118/162

1.7Ac± (5) 8118/162

1.9Ac± (4) 8118/162

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GENERAL NOTES

- TOTAL AREA OF SITE: 8.50 AC. (LOTS 2, 3, 4 & 8)
- CONCESSION DISTRICT: 67R
- EXISTING ZONING OF PROPERTY: ML-1M / DR 5.5
- PROPOSED ZONING OF PROPERTY: ML-1M / DR 5.5
- EXISTING ST. (AS SHOWN ON PLAT 7/37) WERE NEVER DEDICATED TO THE PUBLIC AND THE CENTRAL LINES OF THE PROPOSED R/W'S ARE TO BE THE CENTRAL LINES OF THE PROPOSED R/W'S. IT IS THE INTENTION OF THE PROPERTY OWNER TO CANCEL THE EXISTING ST. AND TO DEDICATE THE R/W'S TO THE PUBLIC.
- EXISTING USE OF PROPERTY: TRUCKING FACILITY
- PROPOSED USE OF PROPERTY: TRUCKING FACILITY
- ADJACENT RESTROOM FACILITIES SHALL BE PROVIDED FOR ALL PERSONNEL IN THE EXISTING BUILDING.
- ADJACENT RESTROOM FACILITIES SHALL BE PROVIDED FOR ALL PERSONNEL IN THE EXISTING BUILDING.
- HOURS OF OPERATION WILL BE 16 HOURS A DAY, WITH SOME VARIATION AS REQUIRED BY THE CUSTOMERS.
- AVERAGE NUMBER OF VEHICLES EXPECTED TO BE PARKED ON SITE AT ANY ONE TIME WILL BE 50.
- MAXIMUM NUMBER OF VEHICLES EXPECTED TO BE STORED ON SITE.
- NO JUNKED VEHICLES WILL BE STORED ON THE SITE.
- ALL AUTOMOTIVE PARTS, IF ANY, SHALL BE STORED WITHIN THE GARAGE PORTION OF THE EXISTING BUILDING.
- NO HAZARDOUS MATERIALS SHALL BE STORED ON SITE.
- PERMITS: THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL PERMITS AND FEES REQUIRED AS A RESULT OF THE WORK INDICATED ON THESE PLANS.
- SCHEMATIC OF COMPLETE WORK SHALL BE SUBMITTED TO THE ZONING COMMISSIONER BY JANUARY 27, 2000.
- COMPLETION OF WORK SHALL BE COMPLETED BY JANUARY 27, 2000.
- EMPLOYEES: 10 OFFICE (8 HR/DAY), 15 MECHANICS AND SERVICE EMPLOYEES
- SPACES: 25 SPACES FOR OFFICE VEHICLES, 25 SPACES FOR MECHANICS AND SERVICE EMPLOYEES
- EMPLOYEE PARKING: 25 SPACES FOR OFFICE VEHICLES, 25 SPACES FOR MECHANICS AND SERVICE EMPLOYEES
- TRUCK PARKING: 25 SPACES FOR TRUCKS PER SHIFT, 25 SPACES FOR TRUCKS PER SHIFT, 25 SPACES FOR TRUCKS PER SHIFT, 25 SPACES FOR TRUCKS PER SHIFT
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- FLOOR/AREA RATIO: BLDG. AREA = 7,832 SF, PARCEL AREA = 3,700 SQ. FT., 0.02 FAR
- EXISTING UTILITIES: ALL UTILITIES SHALL BE MAINTAINED AND PROTECTED. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL PERMITS AND FEES REQUIRED AS A RESULT OF THE WORK INDICATED ON THESE PLANS.
- ALL WORK AND MATERIALS SHALL BE IN ACCORDANCE WITH THE COUNTY STANDARD SPECIFICATIONS AND DETAILS FOR CONSTRUCTION.
- THE LOCATION OF EXISTING UTILITIES SHOWN HEREON IS NOT GUARANTEED. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING UNINTERRUPTED SERVICE TO ALL UTILITIES AND FOR THE PROTECTION OF ALL UTILITIES. THE CONTRACTOR SHALL IMMEDIATELY NOTIFY THE APPROPRIATE AGENCIES AND THE UTILITY COMPANY OF ANY DAMAGE TO UTILITIES AND UNDER THE DIRECTION OF THE UTILITY COMPANY.
- ALL PARKING TO BE SURFED.

ZONING PUBLIC HEARING REQUESTS

- SPECIAL EXCEPTION requested to allow a trucking facility in the ML-1M zoning. (Section 410.3.1.5 B.C.Z.R.)
- VARIANCE requested to allow a trucking facility within 200 feet of residential zoning. (Section 410.3.1.5 B.C.Z.R.)
- VARIANCE requested to allow a trucking facility within 200 feet of residential zoning. (Section 410.3.1.5 B.C.Z.R.)
- VARIANCE requested to allow a trucking facility within 200 feet of residential zoning. (Section 410.3.1.5 B.C.Z.R.)
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I hereby certify that the specifications and the soil conditions relative to this site, as shown on these plans, are in accordance with the specifications of the Department of Public Works, Baltimore County, Maryland.

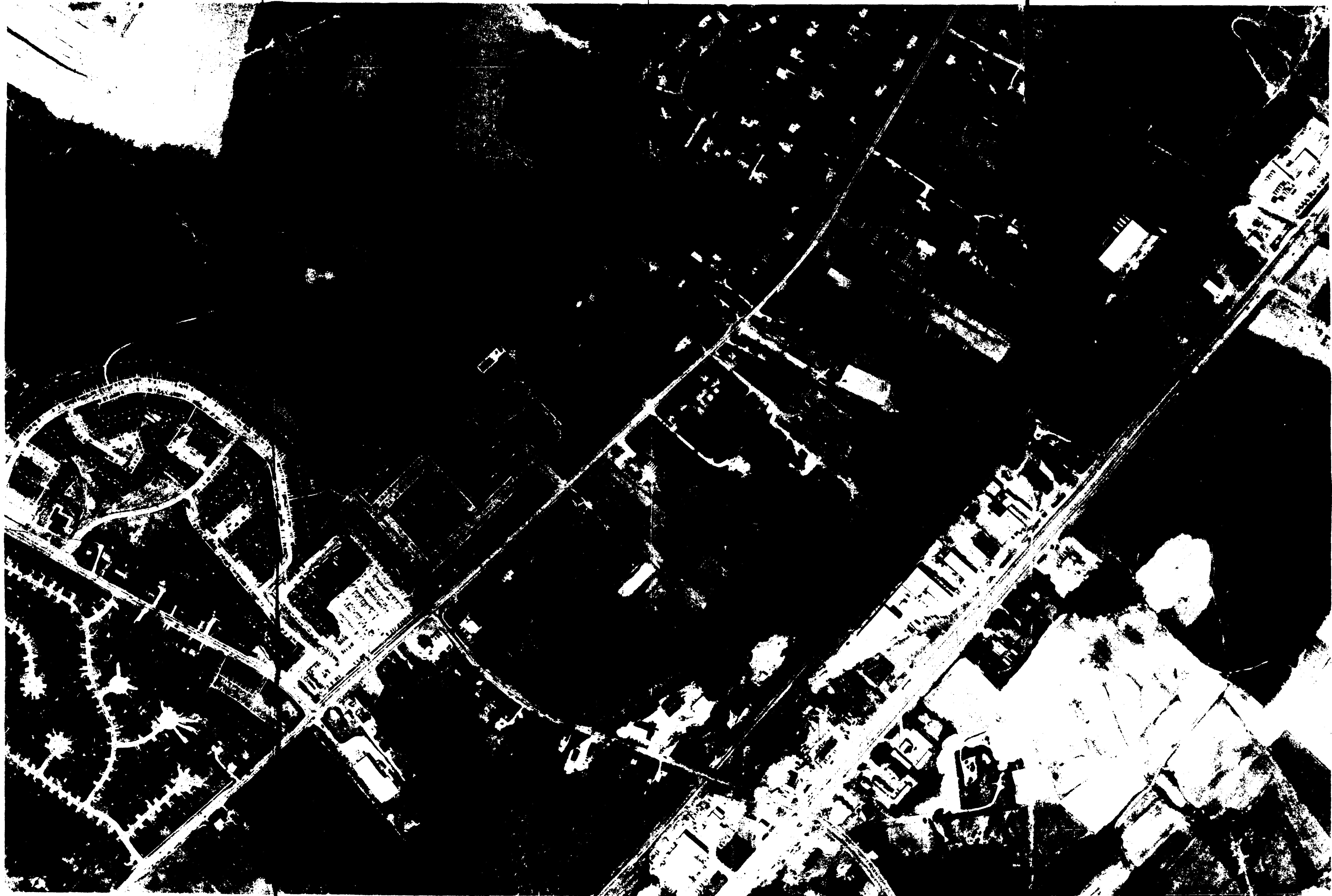
DATE: 12-19-00  
SCALE: 1" = 50'  
FILE NO.: 192-00-002

REVISIONS

SITE PLAN TO ACCOMPANY SPECIAL HEARING FOR ZONING SPECIAL EXCEPTION AND CLASS II TRUCKING FACILITY UMERLEY TRUCKING 9813 Philadelphia Road Baltimore 21137 Owner: Leo J. Umerley 15th Election District, Baltimore County

K. L.S. CONSULTANTS, INC.  
ENGINEERS & SURVEYORS  
102 N. MAIN STREET  
BALTIMORE, MD 21201  
(410) 528-1441



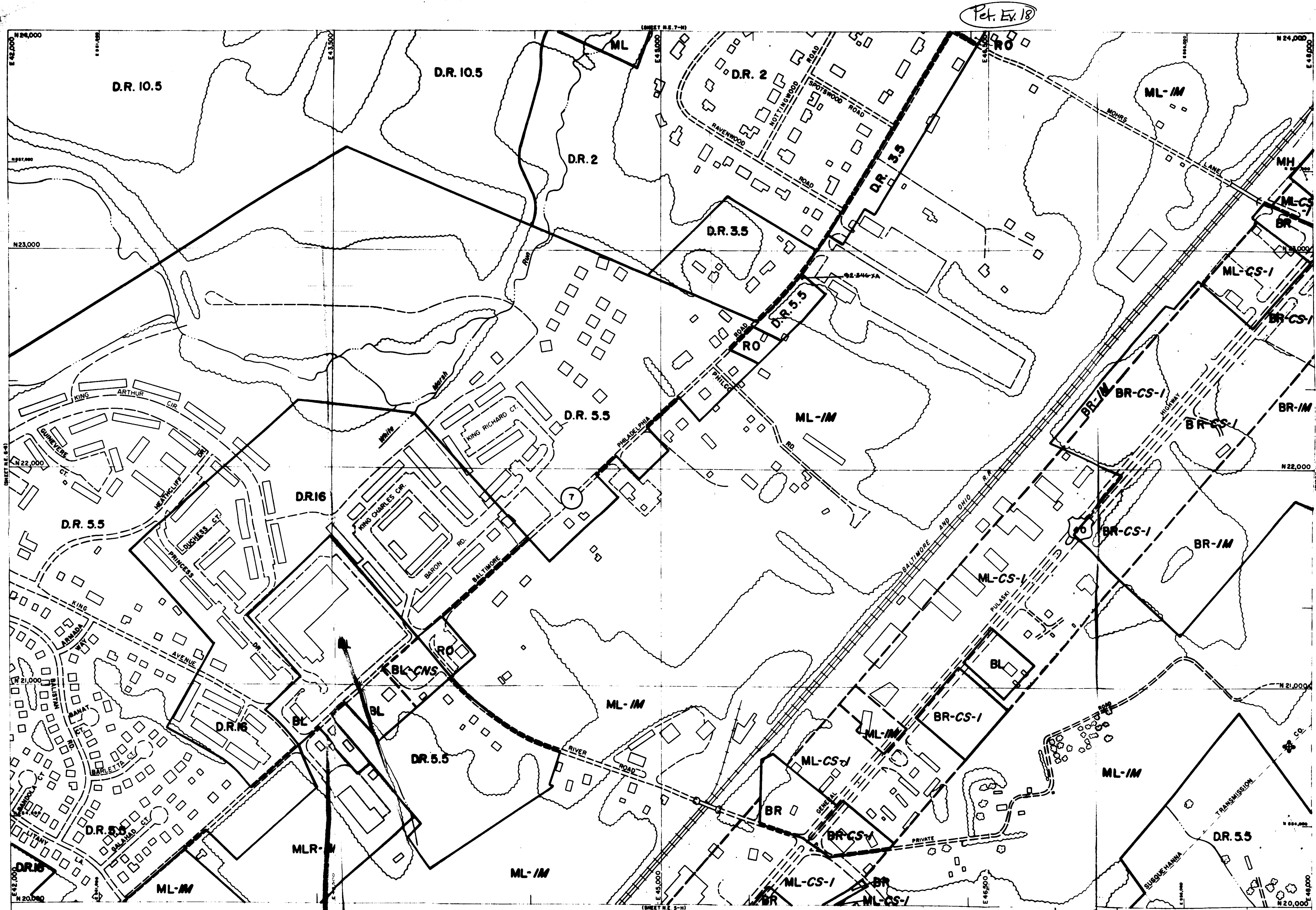


PREPARED BY AIR PHOTOGRAPHICS, INC.  
MARTINSBURG, W.V. 25401

BALTIMORE COUNTY  
OFFICE OF PLANNING AND ZONING  
PHOTOGRAPHIC MAP

*Pet.  
Ex 17*

SCALE	LOCATION	SHEET
1" = 200' ±	POPLAR	NE
DATE OF PHOTOGRAPHY JANUARY 1986	MICROFILMED	6-H



Pet. Ex. 18

M - SW M - SE  
I - NW I - NE

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.  
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS  
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

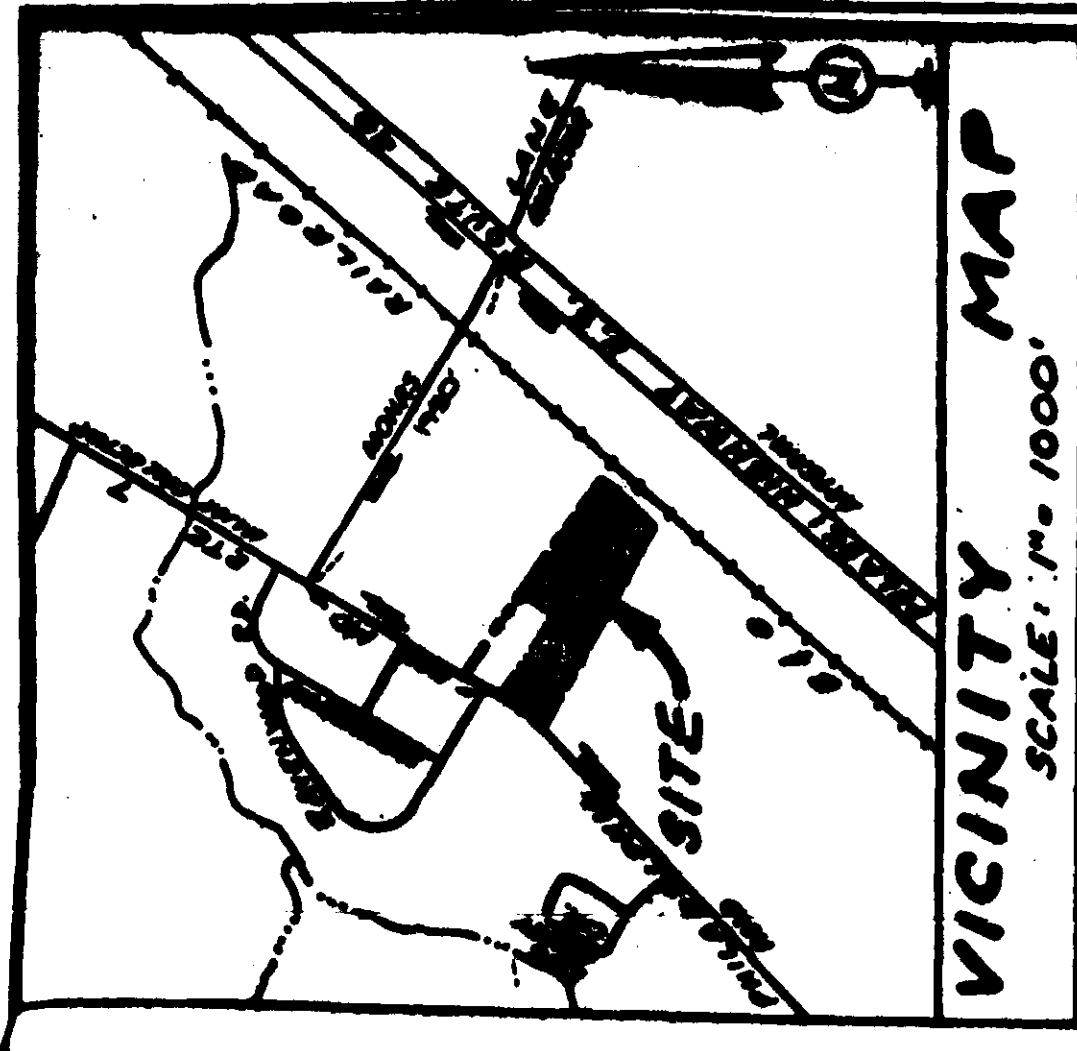
BALTIMORE COUNTY  
OFFICE OF PLANNING AND ZONING  
OFFICIAL ZONING MAP

1992 COMPREHENSIVE ZONING MAP  
Adopted by the Baltimore County Council  
Oct. 15, 1992

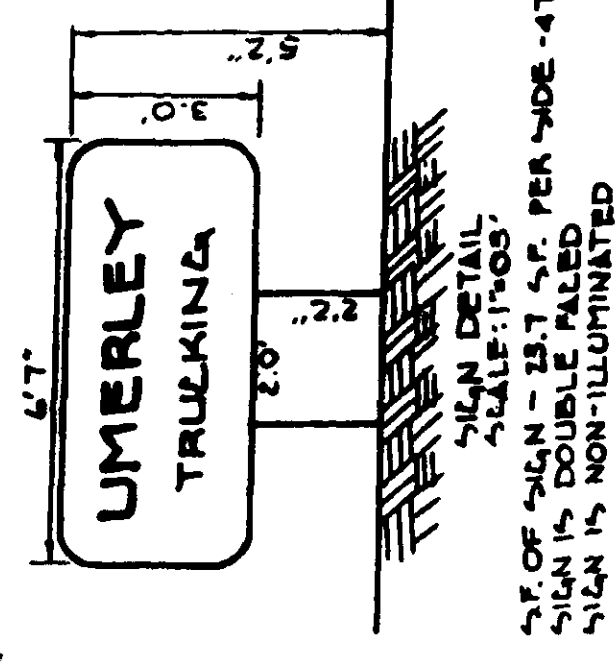
SCALE  
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DATE OF PHOTOGRAPHY  
JANUARY 1986

LOCATION	SHEET
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*William A. Howard, III*  
Chairman, County Council

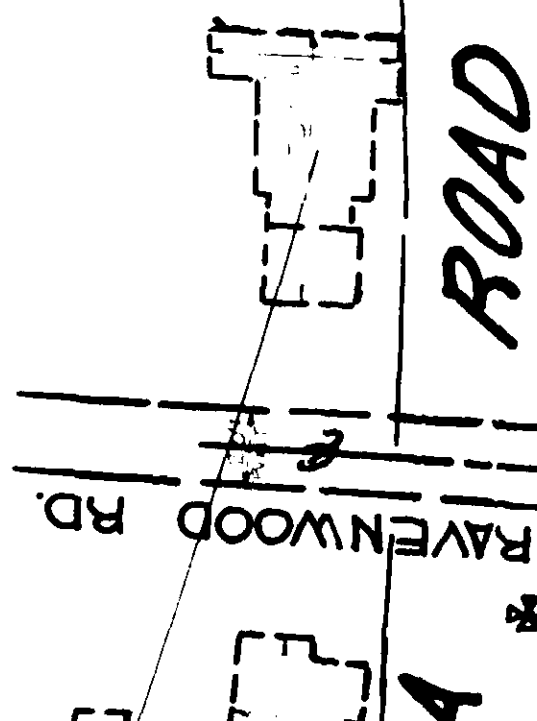


ACCESS FROM SITE TO AN ARTERIAL HIGHWAY (RT. 40, PULASKI HIGHWAY) IS BY TRAVELING FROM THE SITE APPROXIMATELY 1100 FEET TO COLLECTOR ROAD (PHILADELPHIA ROAD), TO RIGHT ONTO COLLECTOR ROAD, TO RIGHT ONTO ARTERIAL HIGHWAY RT. 40, PULASKI HIGHWAY, 1950 FEET TO ARTERIAL HIGHWAY RT. 40, PULASKI HIGHWAY.



5' OF SIGN - 24" W.P. PER SIDE - 47.45' TOTAL SIGN IS DOUBLE SIDED SIGN IS NON-ILLUMINATED

TRUCKING FACILITY SITE PARKING DETAIL



RESIDENTIAL DWELLINGS PHILADELPHIA ROAD



BRICK BLDG (2 STY) BRICK BLDG (2 STY) BRICK BLDG (2 STY)

1.2Ac<sup>3</sup> MORAZZANO 5547/ST 95

1.9Ac<sup>3</sup> CHURCH PLAT 7-57

1.9Ac<sup>3</sup>

1260.5'

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565° E

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8. That People's Counsel consulted with Steven J. Nolan, the attorney for Leo J. Umerley who has consented to the relief requested in this Motion to Transfer Case No. 94 CV 557 to Case No. 94 CV 00405; that said counsel is in accord with the request that only one Record of the proceedings before the County Board of Appeals, including the transcript of testimony, shall be required to be transmitted to the Circuit Court.

9. That Nottingham Improvement Association, by Marie Quintana Simoes and General Services Engineering Inc. are in accord with the grounds for this Motion and the relief requested.

*Peter Max Zimmerman*  
PETER MAX ZIMMERMAN  
People's Counsel for  
Baltimore County

*Carole S. Demilio*  
CAROLE S. DEMILIO  
Deputy People's Counsel  
for Baltimore County

**STATEMENT OF AUTHORITY**

Maryland Rule 2-311.

4

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 26 day of February, 1994, a copy of the foregoing Motion To Transfer was mailed, postage prepaid to: Stephen J. Nolan, Esquire and Newton Williams, Esquire, Court Towers, Suite 700, 210 W. Pennsylvania Avenue, Towson, Maryland 21204, and Marie Quintana Simoes, 1314 Spotswood Road, Baltimore, Maryland 21237, and Gary R. Hoffman of General Services Engineering, Inc., 9729 Philadelphia Road, Baltimore, Maryland 21237.

*Carole S. Demilio*  
CAROLE S. DEMILIO

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IN THE CIRCUIT COURT \*  
FOR BALTIMORE COUNTY \*  
PETITION OF NOTTINGHAM IMPROVEMENT \*  
ASSOCIATION, INC. \*  
and \*  
GENERAL SERVICES ENGINEERING, INC. \*  
FOR JUDICIAL REVIEW OF THE \* CIVIL  
DECISION OF THE COUNTY BOARD OF \* ACTION  
APPEALS OF BALTIMORE COUNTY \* Case No. 94 CV 557  
Docket 71  
Page 241

IN THE CASE OF: IN THE MATTER OF \*  
THE APPLICATION OF \*  
LEO J. UMERLEY, ET UX \*  
Case No. 92-346 XA \*  
\* \* \* \* \*

PETITION OF PEOPLE'S COUNSEL \* CIVIL  
FOR BALTIMORE COUNTY \* ACTION  
FOR JUDICIAL REVIEW OF THE \* Case No.  
DECISION OF THE COUNTY BOARD \* 94-CV-00405  
OF APPEALS OF BALTIMORE COUNTY \* Docket 71  
Page 89

IN THE CASE OF: IN THE MATTER OF \*  
THE APPLICATION OF \*  
LEO J. UMERLEY, ET UX \*  
Case No. 92-346 XA \*  
\* \* \* \* \*

**ORDER**

IT IS HEREBY ORDERED this \_\_\_\_ day of February, 1994, by the Circuit Court for Baltimore County that the Petition for Judicial Review filed in Case No. 94 CV 557 shall be transferred to Case No. 94 CV 00405; and is further

Ordered that one record of the proceedings before the County Board of Appeals, including transcript of testimony therein, shall be required to be transmitted to the Circuit Court for Baltimore County and that all pleadings pertinent to this case shall be filed in Docket 71, Page 89, Case No. 94-CV-00405.

JUDGE

cr:\wp51\data\lpc-ord.ord

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IN THE CIRCUIT COURT \*  
FOR BALTIMORE COUNTY \*  
PETITION OF NOTTINGHAM IMPROVEMENT \*  
ASSOCIATION, INC. \*  
1314 Spotswood Road \*  
Baltimore, MD 21237 AND \*  
GENERAL SERVICES ENGINEERING, INC. \*  
9729 Philadelphia Road \*  
Baltimore, MD 21237 \*  
FOR JUDICIAL REVIEW OF THE DECISION OF \* CIVIL  
THE COUNTY BOARD OF APPEALS \* ACTION  
OF BALTIMORE COUNTY \* No. 94-CV-00557  
Room 49, Old Courthouse, 400 Washing- \* 7/1/241  
ton Avenue, Towson, MD 21204 \*  
IN THE CASE OF: IN THE MATTER OF \*  
LEO J. UMERLEY, ET UX \*  
FOR A SPECIAL EXCEPTION AND VARIANCES \*  
ON PROPERTY LOCATED ON THE SOUTHEAST \*  
SIDE OF PHILADELPHIA ROAD, 138' +/- \*  
SOUTH OF C/L OF RAVENWOOD ROAD \*  
(9813 PHILADELPHIA ROAD) \*  
11TH ELECTION DISTRICT \*  
6TH COUNCILMANIC DISTRICT \*  
CASE NO. 92-346-XA \*  
\* \* \* \* \*

**CERTIFICATE OF NOTICE**

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, William T. Hackett and C. William Clark, constituting a majority of the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Marie Quintana Simoes, President, Nottingham Improvement Association, Inc., 1314 Spotswood Road, Baltimore, MD 21237 and Gary R. Hoffman, President, General Services Engineering, Inc., 9729 Philadelphia Road, Baltimore, MD 21237, Petitioners; Stephen J. Nolan, Esquire, NOLAN, PLUMHOFF & WILLIAMS, CHTD., Suite 700, Court Towers, 210 West Pennsylvania Avenue, Towson, MD 21204-5340, Counsel for Leo J. Umerley, et ux; Mr. and Mrs. Leo J. Umerley, 9813 Philadelphia Road, Baltimore, MD

92-346-XA, Leo J. Umerley, et ux 2  
File No. 94-CV-00557/71/241

21237; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant  
County Board of Appeals, Room 49 -Basement  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Marie Quintana Simoes, President, Nottingham Improvement Association, Inc., 1314 Spotswood Road, Baltimore, MD 21237 and Gary R. Hoffman, President, General Services Engineering, Inc., 9729 Philadelphia Road, Baltimore, MD 21237, Petitioners; Stephen J. Nolan, Esquire, NOLAN, PLUMHOFF & WILLIAMS, CHTD., Suite 700, Court Towers, 210 West Pennsylvania Avenue, Towson, MD 21204-5340, Counsel for Leo J. Umerley, et ux; Mr. and Mrs. Leo J. Umerley, 9813 Philadelphia Road, Baltimore, MD 21237; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, this 26th day of January, 1994.

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant  
County Board of Appeals, Room 49 -Basement  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410) 887-3180



**County Board of Appeals of Baltimore County**

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

January 26, 1994

Marie Quintana Simoes, President Gary R. Hoffman, President  
Nottingham Improvement Assn., Inc. General Services Eng., Inc.  
1314 Spotswood Road 9729 Philadelphia Road  
Baltimore, MD 21237 Baltimore, MD 21237

RE: Civil Action No. 94-CV-00557  
Leo J. Umerley, et ux

Dear Petitioners:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty 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 the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

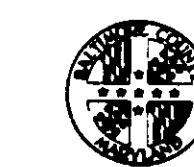
Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant

Enclosure

Printed with Soy-based Ink on Recycled Paper



**County Board of Appeals of Baltimore County**

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

January 26, 1994

Peter Max Zimmerman  
People's Counsel  
for Baltimore County  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

RE: Civil Action No. 94-CV-00557  
Leo J. Umerley, et ux

Dear Mr. Zimmerman:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on January 13, 1994 in the Circuit Court for Baltimore County from the majority decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

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

Very truly yours,

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant

Enclosure

cc: Stephen J. Nolan, Esquire  
Mr. Leo J. Umerley  
Mr. John Morazzano  
James Earl Kraft  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards  
Docket Clerk /ZADM  
Arnold Jablon /ZADM

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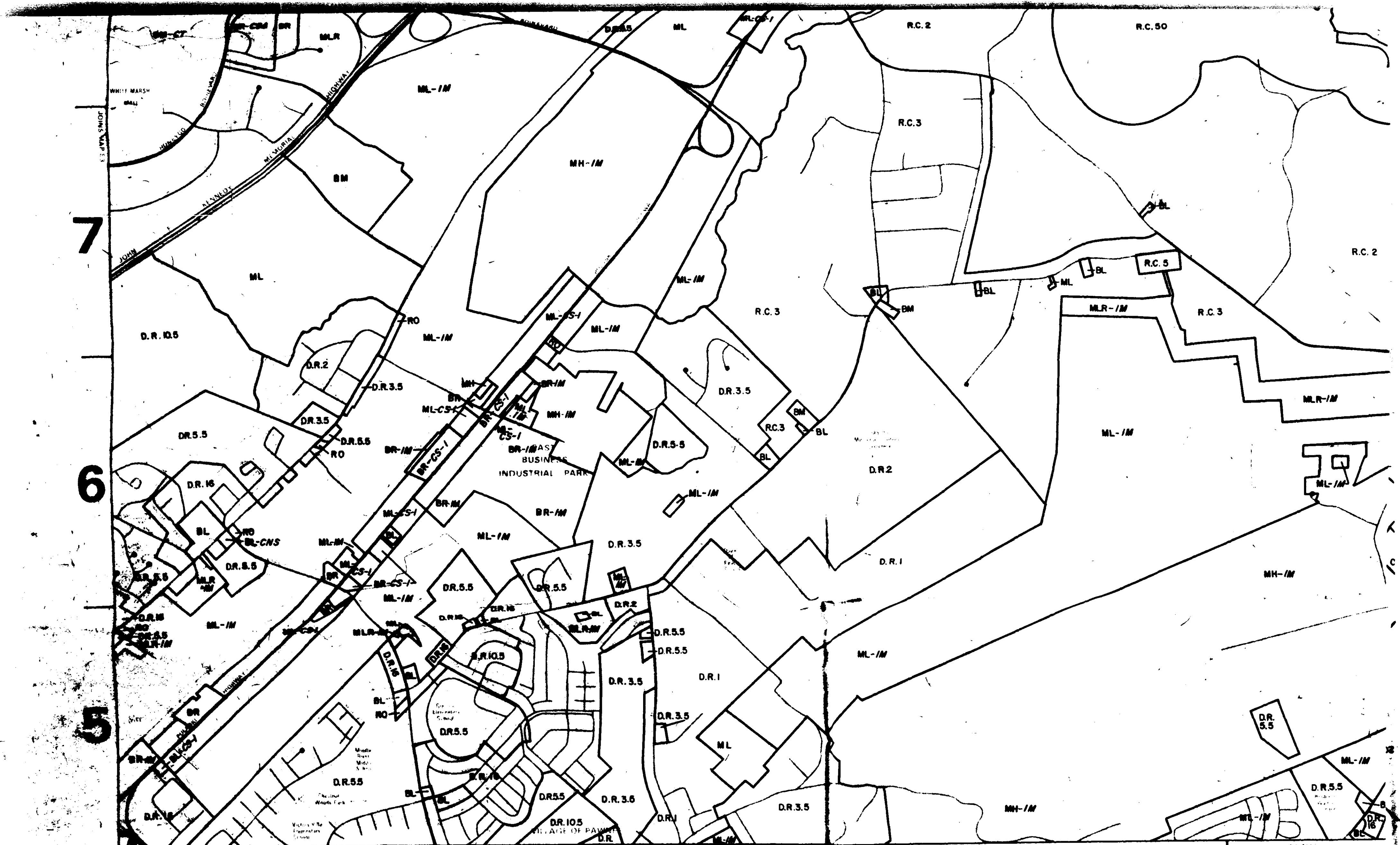
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Petitioner's Exhibit  
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PLANNING BOARD  
BALTIMORE COUNTY  
JAN 15 1988

Baltimore County,

F 3 / 4

ment, 198 La. 832, 839, 5 So.2d 129, 130. And the Zoning Ordinance, which contains regulations pertaining only to the Vieux Carré and zones that area into three districts, H-1 Vieux Carré Residential, H-2 Vieux Carré Commercial and H-3 Vieux Carré Industrial, requires the issuance of a special permit by the Vieux Carré Commission in certain cases in each District, whereas, under the same circumstances, no such special permit is required in other parts of the city. It is also true that in other parts of the city zoned H-2 Commercial, an applicant could remove the existing structure and erect an apartment building on its lot, an action it cannot take in the Vieux Carré.

[5] But under the specific quoted provisions of the Zoning Ordinance the Board has authority to grant a variance only when there is "unusual" or "particular" hardship imposed on the property owner seeking the same. And here the hardship referred to, the requirement of conformity to two separate and sometimes conflicting standards of construction, is neither "unusual" nor "particular" to Mercer. It is common to all property owners in the zoning district in which Mercer's lot is located and therefore is not a hardship which justifies the granting of a variance. To hold otherwise would have the effect of destroying the zoning district. 100 C.J.S. Zoning § 291; 38 Am. Jur. § 203, 204; 2 Ratkopf, op cit supra § 45-3.

We are also of the opinion that the Board did not have authority to grant the variance because: (1) as mentioned above, the lots in the Vieux Carré do have slave quarter buildings which, with the principal structure, contain two or more main buildings on a single lot; and (2) the lots on both sides of the subject property each contain two main structures.

[6,7] Clearly, the Board does not have authority to amend or change the Zoning Ordinance by granting a variance or in any other manner. See State ex rel. Harris v. Zoning Board of Appeal and Adjustment, 221 La. 941, 60 So.2d 889; Onesto v. Kossigot, 217 La. 751, 47 So.2d 489; State ex rel. Hare v. City of New Orleans, 216 La. 809, 44 So.2d 889. And the fact that the Board may have granted similar relief in other cases, none of which appear to have been subjected to judicial review, cannot change this. The Board cannot, by its own unauthorized acts, acquire authority it does not possess.

[8,9] Most of the nonconforming buildings in the Vieux Carré are of ancient vintage and antedate the Zoning Ordinance by many years. Obviously, the framers of the present 1953 Ordinance and the City Council were aware of this fact, and of the additional fact that some lots without nonconforming buildings contained lots containing such buildings, at the time the ordinance was drafted and adopted. As has already been pointed out, they were careful to insure protection of the French Quarter. Yet they put into the Ordinance the above quoted Article V, § 1 (2), which prohibits more than one main building on one lot and made no exception applicable to the Vieux Carré. Under these circumstances, the Board's action in permitting construction of the proposed new building because of preponderance of nonconforming buildings and the presence of such buildings on lots adjoining Mercer's property, necessarily is a matter to be considered by the framers and adoptors of the Ordinance prior to and at the time of its adoption, has the effect of deterring Article V, § 1 (2) from the ordinance as the same applies to the Vieux Carré. Whether or not the provision in question is wise or unwise is a matter which

addresses itself to the proper legislative body and not to the Board.

The judgment appealed from is affirmed. Rehearing denied.

SAMUEL, J., is of the opinion that a hearing should be granted.

Succession of ARNOLD V. GUYARD, No. 2552.

Successor of ARNOLD V. GUYARD, No. 2552. Court of Appeal of Louisiana, Fourth Circuit, April 10, 1967.

Ancillary succession proceedings. The Civil District Court for the Parish of Orleans, No. 418-274, Division "D", S. Samuel Levy, J., rendered judgment and appeal was taken. The Court of Appeal, Chamber J., held that under statute providing that if deceased was not domiciled in state at time of his death his succession may be opened in district court of any parish where immovable property of deceased is situated, where deceased was domiciled in Missouri at time of his death and possessed immovable property in St. Tammany Parish and Jefferson Parish but none in Orleans Parish, Civil District Court for Parish of Orleans was without jurisdiction to administer succession and all proceedings taken therein were null and void. LSA-C.C.P. arts. 2811, 3401.

Judgment annulled and set aside. Donald W. Krasak, New Orleans, for Alice Cannon, plaintiff-appellant.

Succession: Laws governing place of opening successions are not rules of venue. 191 So. 2d 383.

but rules of jurisdiction rationae materiae. LSA-C.C.P. arts. 2811, 3401.

1. Executors and Administrators 4912

Succession: Under statute providing that if deceased was not domiciled in state at time of his death his succession may be opened in district court of any parish where immovable property of deceased is situated, where deceased was domiciled in Missouri at time of his death and possessed immovable property in St. Tammany Parish and Jefferson Parish but none in Orleans Parish, Civil District Court for Parish of Orleans was without jurisdiction to administer succession and all proceedings taken therein were null and void. LSA-C.C.P. arts. 2811, 3401.

2. Appeal and Error 4913

Reviewing court can notice ex proprio motu a lack of jurisdiction rationae materiae in lower court and render judgment annulling lower court's judgment for want of such jurisdiction.

3. Courts 4917(1)

Court's lack of jurisdiction over subject matter may not be waived by failure to object. LSA-C.C.P. art. 44.

4. Courts 4918

Jurisdiction over subject matter may not be questioned by plaintiff. LSA-C.C.P. art. 3.

Succession: Laws governing place of opening successions are not rules of venue, applicables.

191 So. 2d 383.

IN THE MATTER OF THE APPLICATION FOR SPECIAL EXCEPTION AND VARIANCES

BEFORE THE COUNTY BOARD OF APPRAISALS OF BALTIMORE COUNTY SE/S Philadelphia Rd., 138' S of C/L Ravenwood Rd., 11th Election District, 8th Councilmanic District: Zoning Case No. 92-346-XA

LEO J. UMERLEY, Petitioner

PEOPLE'S COUNSEL'S MEMORANDUM

INTRODUCTION

The legislative purpose forcefully expressed in the 1976 Baltimore County Trucking Facilities legislation prohibits the approval of the combination of special exception and variances for the trucking facility in this case. In other words, based on the material undisputed facts, the County Board of Appeals must deny the petitions as a matter of law.

The crucial undisputed facts involve the location of residences, residential zones, and wetlands, both immediately across Philadelphia Road from the Umerley Trucking Company, as well as on both sides of the operation. But the fundamental premise of the legislation, set forth in Baltimore County Zoning Regulations (BCZR) Section 410A.2, is that a trucking facility must be at least 300 feet from a residence or residential zone and 200 feet from a wetland. The intent is that there shall be no variance. Even were a variance theoretically possible, there is no legally sufficient evidence which satisfies the recognized legislative standard for a variance.

92-346-XA-ADM 66

10/17/76

The majority of the site is zoned M.L.-I.M. with a small portion zoned D.R. 5.5. The special exception pertains to four of the six lots on the site. The Petitioner has also requested seven variances, one of which, to permit the elimination of required wheelstops, has been withdrawn. Four of the remaining six variances seek relief from the Trucking Facilities legislation. The subject site sits amid the following:

- (1) D.R. 3.5, D.R. 2 and D.R. 5.5 improved by residential dwellings to the northwest, west and north across Philadelphia Road.
(2) M.L.-I.M. improved by an office building; R.O. improved by a residential dwelling; and D.R. 5.5 improved by residences; and nonconforming residences in the M.L. zone on the same side of Philadelphia Road, all to the southwest.
(3) D.R. 3.5 and M.L.-I.M. to the immediate northeast improved by residences and nonconforming residences in the M.L. zone on the same side of Philadelphia Road.

The Petitioners presented the following witnesses: Leo J. Umerley, the Petitioner and property owner; Ronald Carney, surveyor; Wesley Guckert of the Traffic Group; Peter Swanson of Economic and Community Development; Norman Gerber, land planner, Ward Kenney, customer of Umerley Trucking Co.; and John DiPaula of Long Fence Co., a tenant at the site.

Leo J. Umerley described how his trucking company expanded in size and area. The pictures, particularly Pet. Ex. 2, reveal hauling trucks and a sign at the site, "hauling contractor," in

1958. Mr. Umerley stated he was always a contractor carrier. He presently owns at least 150 vehicles most of which are large vehicles which haul sand, gravel, stone and concrete blocks. He agreed that his trucks are larger today than earlier models he used. The business hauls sand and salt for use on Baltimore County roads in inclement weather. Mr. Umerley stated he no longer stores sand at his site. Mr. Umerley testified that he initially purchased about three acres in 1958 and added two bays and an office in 1981. An aerial photograph, Pet. Ex. 5, shows a small building and parked hauling trucks in 1983. In 1982, Mr. Umerley purchased additional acreage and constructed a new and larger office building. In 1988, he purchased an additional 5.3 acres, and he purchased 2.3 acres in 1989.

He now owns 18 acres at this site. Mr. Umerley admitted his business was called the Umerley Trucking Company as early as 1974. He did not register his trucking business as required by Section 410 of the BCZR. He did not think or know he had to do so, he claims.

Mr. Umerley described the operation. He employs drivers, mechanics and a few office workers. They generally work two shifts, morning and afternoon and afternoon and night, Monday through Friday, and until 2:00 p.m. on Saturdays. His drivers must be on site early in order to meet delivery deadlines. His trucks operate interstate as well as in Maryland. Mr. Umerley admitted that his operation generates dust and that he does not utilize but intends to purchase a water truck.

Ronald M. Carney, the surveyor, described the site plan, which he prepared. Pet. Ex. 12. The plan shows spaces for 138 large trucks. It includes a variance to reduce the percentage of space for parking trucks in order to have a turn-around area and to do mechanical work. Only 4.8 of the 8.5 acres for this special exception are paved. The M.L. zone on which the trucking company operates extends to Philadelphia Road. There are residences in D.R. 2 and D.R. 3.5 zones on Philadelphia Road immediately across from the facility, and additional residences to each side of the site. Philadelphia Road is part of a sixty-foot wide right-of-way. Mr. Carney also described the wetlands on the site, being primarily on Lot 1, adjacent to Lot 5. Lot 5 is part of the special exception and one-half of it is within 200 feet of the wetlands. There was no testimony from Mr. Carney that the subject site has any geographic or topographic constraints to restrict or prevent development for other uses allowed in the M.L.-I.M. zone. He also admitted, on cross-examination, that not only the original area of use, but also the tripling expansion, violated the distance standards from residences and wetlands.

Norman Gerber testified as an expert land planner. He defined the boundaries of the primary neighborhood of the trucking company as Kennedy Highway to the west, Interstate 695 to the south, Pulaski Highway to the east, and the Gunpowder Falls to the north. He considered the secondary neighborhood to extend to Belair Road and the Antrak line. Mr. Gerber considered

As a result, this case is not susceptible to balance, compromise, or conditions. Anything other than a complete denial would be a legal error.

In any event, the evidence pertinent to the operation reveals overwhelmingly precisely the types of adverse effects which the legislature intended to prevent. The County Council intended to protect residential areas from the disturbance of nearby trucking facilities. It accomplished this purpose by specific provisions. Those provisions disallow this trucking facility.

Following a review of the facts, we shall demonstrate this point by careful analysis of the language, structure, and history of the legislation. We will also review the legislative standards and case law pertinent to special exceptions and variances.

STATEMENT OF FACTS

The subject property has 18.1 acres in six separate lots accumulated since 1958. It is on the southeast side of Philadelphia Road near Mohrs Lane. The site is improved by two buildings, one housing the offices of Umerley Trucking Company (the second used by a tenant, Long Fence Company, on Lot 3). The property use is indisputably a trucking facility and has expanded significantly, specifically in 1982 and 1988. The facility has operated without the required special exception, or even any registration under the 1976 Trucking Facilities legislation, and thus has operated with disregard for the law.

the predominant uses on the east side of Philadelphia Road to be industrial. However, he acknowledged the mixed use of the area which is also reflected in and fostered by the Master Plan and the Philadelphia Road Corridor Plan adopted on January 21, 1992. Mr. Gerber acknowledged the intentions of the overlay districts proposed for the area to protect residential uses, but stated that these districts were not yet imposed. Mr. Gerber considered Philadelphia Road as a major industrial and/or transportation corridor in this area and therefore concluded that it was a good site for a trucking company. He was somewhat familiar with the Trucking Facilities legislation of 1976. He recalled notices may have been sent by the Zoning Office to some potential registrants but not others. However, he admitted that while those who were notified did not constitute all regulated facilities, a provision in the legislation clearly stated that lack of notice does not justify noncompliance.

Mr. Ward Keeney, a customer, stated that Mr. Umerley has had the same type of business for many years. He indicated his building company requires deliveries of materials from Mr. Umerley's trucks as early as dawn.

John DiPaula, vice president of tenant, Long Fence Company, stated that his company assembles and installs fences. He operates from an office building on Lot 3 at the site. The Long Fence Company and Mr. Umerley as property owner, were cited for zoning violations in another matter. Mr. DiPaula stated he intends to rectify these violations.









A Truckload Carrier

1813 PHILADELPHIA ROAD • BALTIMORE, MARYLAND 21227

410-585-9900  
1-800-547-6166

- 1.) Cinder & Concrete Block--1947 to present - COCKEYSVILLE
- 2.) Genstar (formerly Harry T. Campbell & Sons)--1947-present - COCKEYSVILLE AND WHITE MARSH
- 3.) Cargill Salt (formerly Watkins Salt Co.)--1963-present - WHITE MARSH
- 4.) Lehigh--1975-present - WESTMINSTER
- 5.) Owens Corning Fiberglass Corp.--1975-present - JESSUP
- 6.) GAF Corp.--1976-present - POWCA STREET
- 7.) Tamko Corp.--1984-present - FREDERICK
- 8.) Chesapeake Lumber Co.--1986-present - ELKTON
- 9.) J.E. Baker--1986-present - YORK
- 10.) Gold Bond Corp.--1990-present - YORK

MICROFILMED

**NATIONAL GYPSUM COMPANY**  
GOLD BOND BUILDING PRODUCTS

National Gypsum Company certifies that all goods covered by this order have been produced in compliance with the requirements of the "Fair Labor Standards Act of 1938" as amended.

This document confirms the contract for sale of the goods described herein. Such contract is subject to and includes Gold Bond's General Terms and Conditions of Sale, previously furnished to or made available to the Customer.

Order No: 1029  
Ship Date: 09/16/93  
Ship Time: 8AM  
Destination: VERBAL ED 4065  
Customer: UNRESALELERS INC 854 NELSON ROAD P.O. BOX 848 FORT WAYNE IN 46801

QTY	DESCRIPTION	UNIT	PRICE	TOTAL
367480	GYF-BD TPD REG 1/2X4X12 FT	4000	91.50	33,600.00
157170	GYF-BD TPD REG 1/2X4X12 FT	4000	91.50	14,362.50

Customer phone: 317-231-3131

**NATIONAL GYPSUM COMPANY**  
GOLD BOND BUILDING PRODUCTS

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Order No: 1032  
Ship Date: 09/15/93  
Ship Time: EARLY AM  
Destination: 3267  
Customer: LUMBERMANS WTR LANDSCAPE CORP 1100 RIVES ROAD P.O. BOX 6790 WAYNE PA 19087 B 990

QTY	DESCRIPTION	UNIT	PRICE	TOTAL
518270	GYF-BD TPD REG 1/2X4X12 FT	4000	91.50	47,407.50

Customer phone: 610-238-2322

**NATIONAL GYPSUM COMPANY**  
GOLD BOND BUILDING PRODUCTS

National Gypsum Company certifies that all goods covered by this order have been produced in compliance with the requirements of the "Fair Labor Standards Act of 1938" as amended.

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Order No: 1038  
Ship Date: 09/16/93  
Ship Time: 7AM  
Destination: 3310  
Customer: UNRESALELERS INC 854 NELSON ROAD P.O. BOX 848 FORT WAYNE IN 46801

QTY	DESCRIPTION	UNIT	PRICE	TOTAL
367480	GYF-BD TPD REG 1/2X4X12 FT	4000	91.50	33,600.00

Customer phone: 317-231-3131

**NATIONAL GYPSUM COMPANY**  
GOLD BOND BUILDING PRODUCTS

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Order No: 1034  
Ship Date: 09/20/93  
Ship Time: 4:30 AM  
Destination: 1865  
Customer: L & M DRYWALL & INSULATION 929 PROFESSIONAL PLACE CHESAPEAKE VA 23320

QTY	DESCRIPTION	UNIT	PRICE	TOTAL
14400	PERFECT STRAY (CONTROL) 40 LB	4000	130.00	1,872.00
11650	PERFECT STRAY (CONTROL) 40 LB	4000	100.00	1,165.00

Customer phone: 804-327-5484

**NATIONAL GYPSUM COMPANY**  
GOLD BOND BUILDING PRODUCTS

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Order No: 1028  
Ship Date: 09/15/93  
Ship Time: 7AM  
Destination: 3094  
Customer: UNRESALELERS INC 854 NELSON ROAD P.O. BOX 848 FORT WAYNE IN 46801

QTY	DESCRIPTION	UNIT	PRICE	TOTAL
2800	GYF-BD TPD REG 1/2X4X12 FT	4000	91.50	256.20

Customer phone: 317-231-3131

**NATIONAL GYPSUM COMPANY**  
GOLD BOND BUILDING PRODUCTS

National Gypsum Company certifies that all goods covered by this order have been produced in compliance with the requirements of the "Fair Labor Standards Act of 1938" as amended.

This document confirms the contract for sale of the goods described herein. Such contract is subject to and includes Gold Bond's General Terms and Conditions of Sale, previously furnished to or made available to the Customer.

Order No: 1035  
Ship Date: 09/20/93  
Ship Time: 8AM  
Destination: 5472  
Customer: REHER INDC PRODUCTS 205 WOOD LANE INDUSTRIAL PARK FREDERICK MD 21701

QTY	DESCRIPTION	UNIT	PRICE	TOTAL
2400	PERFECT STRAY (CONTROL) 40 LB	4000	130.00	312.00

Customer phone: 304-464-5000

ORDER NO: 937498  
CUSTOMER P.O. NO: BU152619  
STRAIGHT BILL OF LADING - SHORT FORM - ORIGINAL NOT NEGOTIABLE  
CUST # X93A001

ALLIED BLDG PRODUCTS CORP 11 CADILLAC RD BURLINGTON NJ 08901  
ALLIED BLDG PRODUCTS CORP 11 CADILLAC RD BURLINGTON NJ 08901 (609) 386-5500

SHIP DATE: 09/02/93  
SHIP TIME: 09/10/93  
SHIP FROM: FREDERICK  
SHIP TO: COMMON CARRIER

PRODUCT NUMBER	PRODUCT DESCRIPTION	QUANTITY
220451	FIRST GLASS-SEAL-PASTEL GREEN	112.00
220521	FIRST GLASS-SEAL-TWEE BLEND	56.00
060301	FIRST SAT FELT #30 REG 28Q UL	100.00
060155	FIRST SAT FELT #15 REG 48Q UL	100.00
776777	PALLETS, 3 X 3	12.00
789777	PALLETS, 4 X 4	8.00

PRODUCT WEIGHT: 46380  
PALLET WEIGHT: 1216  
TOTAL WEIGHT: 47596

Comments: \*\*\* ALL OUTBOUND LOADS MUST BE FULLY TARPED \*\*\*  
\*\*\* DRIVER MUST CALL FOR DELIVERY APPOINTMENT \*\*\*

Signature: David Yates

Baltimore County Government  
Office of Planning and Zoning

401 Bosley Avenue  
Towson, MD 21284

887-3211  
Fax 887-5862

Pet. Ex. 13

July 26, 1993

Mr. George L. Good, Jr.  
Frank's Pallet Service  
Pallet Acquisitions, Inc.  
8855 Kalso Drive  
Baltimore, MD 21221

Dear Mr. Good:

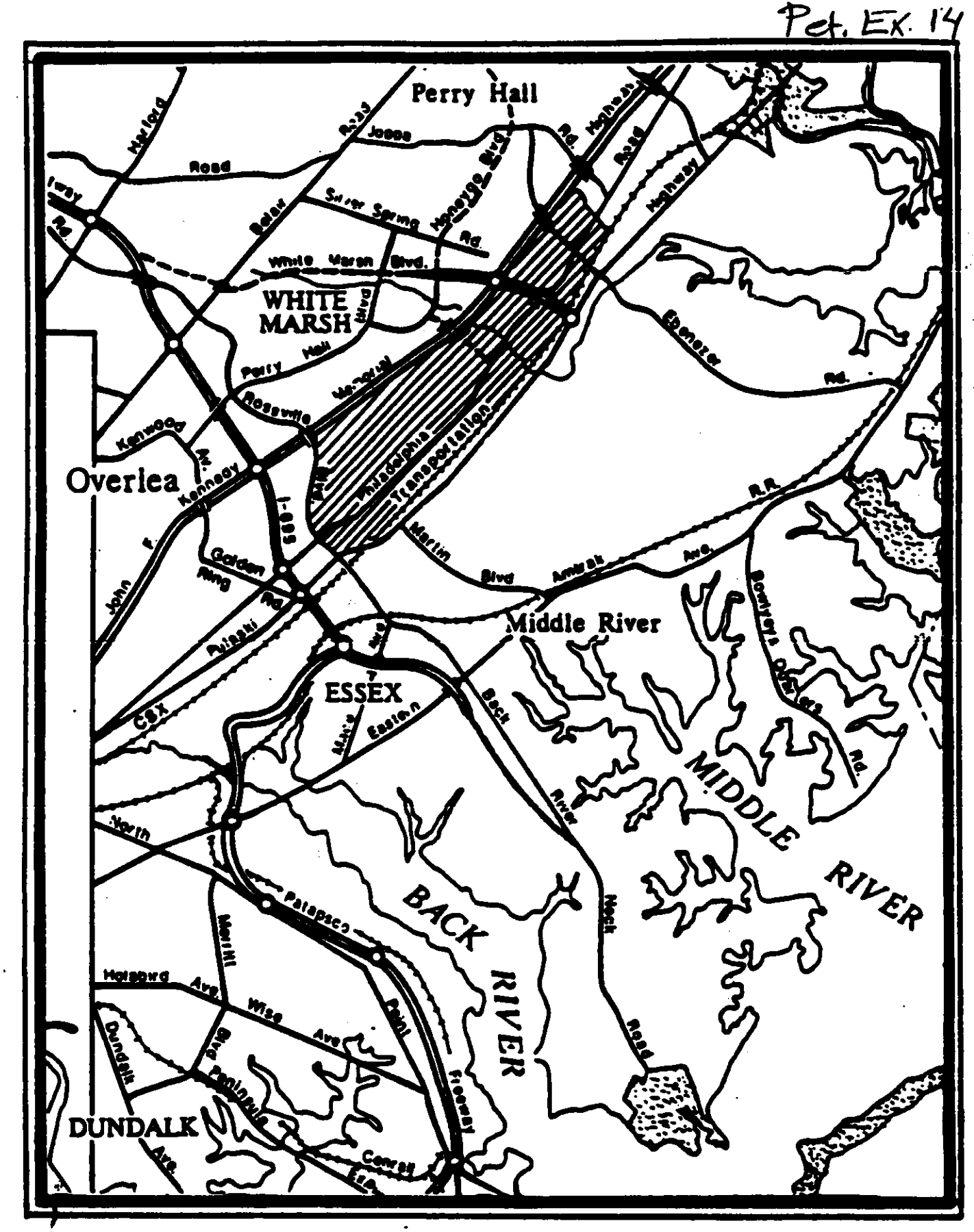
Per your request, I am writing concerning the status of the planned extension of Yellow Brick Road through the Sappington property on the north side of Middle River Road.

As you are aware, the Baltimore County Master Plan 1989-2000 proposes a northeasterly extension of Yellow Brick Road which would connect with Future Campbell Boulevard between Philadelphia Road (Rt. 7) and with Future Pulaski Highway (Rt. 40). However, the Philadelphia Road Corridor Study, adopted January 21, 1992 as an amendment to the Baltimore County Master Plan, does not recommend construction of Yellow Brick Road between King Avenue and Campbell Boulevard. Consequently, the Road between King Avenue and Middle River Road has been deleted from the Master Plan as a required road improvement. In the event that a development plan is submitted for the Sappington property on Middle River Road, this office will not ask for the reservation or dedication of any right-of-way for Yellow Brick Road.

If you have any questions regarding this matter, please contact Dennis Wertz at 887-3480.

Sincerely,  
*Sam L. Keller*  
Pat Keller  
Deputy Director

PK:lw  
DWDGCD/TEXTILE



Front of Philadelphia Rd  
Corridor Study

MICROFILMED

EXAMPLES OF PLACES WHERE  
MR. GUCKERT HAS QUALIFIED  
AS AN EXPERT WITNESS

- Maryland**  
Allegany County Planning Board  
Anne Arundel County, Board of Appeals, Circuit Court, Zoning Hearing Examiner  
Anne Arundel County M-NCPPC (Planning Board)  
City of Annapolis City Council, Planning Commission  
Baltimore City Board of Zoning Appeals, City Council, Federal District Court, Planning Commission  
Baltimore County Board of Appeals, Circuit Court, County Council, Planning Board, Zoning Commissioner  
Baltimore County Board of Appeals, Circuit Court, County Council, Planning Board, Zoning Commissioner  
Town of Bel Air Board of Appeals, Planning Board, Town Commissioners  
Carroll County Board of Appeals, County Commissioners, Planning Board  
Charles County Town of Indian Head Mayor and City Council  
Charles County Board of Appeals, County Commissioners, Planning Board  
City of Frederick Board of Appeals, City Council, Planning Commission  
Frederick County Board of Appeals, County Commissioners, Planning Board  
Hartford County Planning Commission, Zoning Hearing Examiner  
Howard County Board of Appeals, Planning Board, Zoning Board
- Montgomery County Board of Appeals, County Council, Zoning Hearing Examiner**  
Montgomery County M-NCPPC (Planning Board)  
Prince George's County Council, Zoning Hearing Examiner  
Prince George's County M-NCPPC (Planning Board)  
St. Mary's County Planning Board  
Washington County Board of Appeals
- New Jersey**  
Holmdel Township Planning Board
- Virginia**  
Arlington County Board of Supervisors  
Loudoun County Planning Board  
Prince William County Planning Board and Board of Supervisors
- Pennsylvania**  
West Whiteland Township Planning Board, Town Council  
City of Scranton-Board of Appeals, Planning Board

REPRESENTATIVE LIST  
OF PROJECTS AND STUDIES

- Retail Projects**  
Annapolis Plaza and Restaurant Park, Anne Arundel Co.  
Annapolis Mall, Anne Arundel Co.  
Braniff Mall, Myrtle Beach, South Carolina  
Cranberry Mall, Carroll Co.  
Diamond Point Mall, Baltimore Co.  
Festival at Riva, Anne Arundel Co.  
Festival at Waldorf, Charles Co.  
Great Mall of the Bay Area, Milpitas, California  
The Mall at Seasmontown, Scranton, Pennsylvania  
Montgomery Mall, Montgomery Co.  
Potomac Mills, Pr. George's Co.  
Sam's Club, Anne Arundel Co.  
Township Centers, Baltimore Co.  
Wal-Mart Store, Anne Arundel Co.  
Wheaton Plaza, Montgomery Co.  
Yorkshire Shopping Center, Baltimore Co.
- Residential Projects**  
Villages of Belmont, Pr. George's Co.  
Villages of Marlborough, Pr. George's Co.  
White Marsh, Baltimore Co.  
Woodbridge, Hartford Co.  
Villages of Elk Neck, Cecil Co.  
Waverly Woods, Howard Co.
- Mixed-Use Projects**  
Bowie New Town Center, Pr. George's Co.  
Chapman's Landing PUD, Charles Co.  
Piney Orchard PUD, Anne Arundel Co.  
Riverside PUD, Howard Co.
- Institutional Projects**  
Bryn Mawr School, Baltimore City  
GIMC, Baltimore Co.  
Friends School, Baltimore City  
McDonough School, Baltimore Co.  
St. Joseph's Hospital, Baltimore City  
UMAB, Baltimore City  
Union Memorial Hospital, Baltimore City  
University of Maryland, Pr. George's Co.  
Villa Julie College, Baltimore Co.
- Office Projects**  
BWI Commerce Park, Anne Arundel Co.  
Collington Corp. Cir., Pr. George's Co.  
Green Spring Station, Baltimore Co.  
National Business Park, Anne Arundel Co.  
Owens Mills Corp. Campus, Baltimore Co.  
PortAmerica, Pr. George's Co.  
Presidential Corp. Centre, Pr. George's Co.  
USF&G, Baltimore City

The Traffic Group, Inc. Suite 600 40 W. Chesapeake Avenue Towson, Maryland 21284 (410) 583-8405 Fax (410) 321-8458

EXAMPLES OF PLACES WHERE  
MR. GUCKERT HAS QUALIFIED  
AS AN EXPERT WITNESS

- Maryland**  
Allegany County Planning Board  
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Baltimore City Board of Zoning Appeals, City Council, Federal District Court, Planning Commission  
Baltimore County Board of Appeals, Circuit Court, County Council, Planning Board, Zoning Commissioner  
Baltimore County Board of Appeals, Circuit Court, County Council, Planning Board, Zoning Commissioner  
Town of Bel Air Board of Appeals, Planning Board, Town Commissioners  
Carroll County Board of Appeals, County Commissioners, Planning Board  
Charles County Town of Indian Head Mayor and City Council  
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Frederick County Board of Appeals, County Commissioners, Planning Board  
Hartford County Planning Commission, Zoning Hearing Examiner  
Howard County Board of Appeals, Planning Board, Zoning Board
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Prince George's County M-NCPPC (Planning Board)  
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Washington County Board of Appeals
- New Jersey**  
Holmdel Township Planning Board
- Virginia**  
Arlington County Board of Supervisors  
Loudoun County Planning Board  
Prince William County Planning Board and Board of Supervisors
- Pennsylvania**  
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Cranberry Mall, Carroll Co.  
Diamond Point Mall, Baltimore Co.  
Festival at Riva, Anne Arundel Co.  
Festival at Waldorf, Charles Co.  
Great Mall of the Bay Area, Milpitas, California  
The Mall at Seasmontown, Scranton, Pennsylvania  
Montgomery Mall, Montgomery Co.  
Potomac Mills, Pr. George's Co.  
Sam's Club, Anne Arundel Co.  
Township Centers, Baltimore Co.  
Wal-Mart Store, Anne Arundel Co.  
Wheaton Plaza, Montgomery Co.  
Yorkshire Shopping Center, Baltimore Co.
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Villages of Marlborough, Pr. George's Co.  
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Woodbridge, Hartford Co.  
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GIMC, Baltimore Co.  
Friends School, Baltimore City  
McDonough School, Baltimore Co.  
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UMAB, Baltimore City  
Union Memorial Hospital, Baltimore City  
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Villa Julie College, Baltimore Co.
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Green Spring Station, Baltimore Co.  
National Business Park, Anne Arundel Co.  
Owens Mills Corp. Campus, Baltimore Co.  
PortAmerica, Pr. George's Co.  
Presidential Corp. Centre, Pr. George's Co.  
USF&G, Baltimore City

The Traffic Group, Inc. Suite 600 40 W. Chesapeake Avenue Towson, Maryland 21284 (410) 583-8405 Fax (410) 321-8458



Traffic Impact Analysis  
for  
**Leo J. Umerley Trucking Company**  
Baltimore County, Maryland

Prepared for  
Leo J. Umerley, Inc.

September 29, 1993

Pet. Ex. 16

TRUCK TERMINAL HEARINGS

TV#	LOCATION	DEFENDANT/S
V 77-1-TV	2000 Hammond Ave	Conrad's Supermarket
V 77-2-TV	5105 Chesapeake Hwy	Demaris, Demaris
V 77-3-TV	8701-8709 Chesapeake Road	Walter E. Hickey
V 77-4-TV	1825 Chesapeake Road	Raymond C. Carlson
V 77-5-TV	1185 Chesapeake Road	Thomas H. Hester
V 77-6-TV	1115 Chesapeake Road	Thomas H. Hester
V 77-7-TV	4117 Arca Pike Blvd	Updell & Puchinski
V 77-8-TV	4260 Arca Pike Blvd	Updell & Puchinski
V 77-9-TV	4231 Arca Pike Blvd	Updell & Puchinski
V 77-10-TV	8211 Belton Road	Russell Siegel
V 77-11-TV	8210 Belton Road	Olaf Blom
V 77-12-TV	4054 Old North Port Rd	Walter M. Sigmond, Russ
V 77-13-TV	4010 Old North Port Rd	Walter M. Sigmond
V 77-14-TV	4208 Terra Beach Blvd	Olaf Blom
V 77-15-TV	189 Terra Beach	William D. Veltrop
V 77-16-TV	184 Terra Beach	William D. Veltrop
V 77-17-TV	1823 04 Old Chesapeake Road	Samuel A. Barrow
V 77-18-TV	1100 Chesapeake Road	E. James Ott
V 77-19-TV	1310 Chesapeake Road	E. James Ott
V 77-20-TV	7020 Chesapeake Road	D. A. Reault
V 77-21-TV	7000 Chesapeake Road	Ed. J. Feltner, Jr., Charles
V 77-22-TV	201 Terra Beach Road	Charles B. Brennan
V 77-23-TV	1804-2010 Chesapeake Road	Olaf Blom
V 77-24-TV	1919 Willow Spring Road	Olaf Blom
V 77-25-TV	1811 Willow Spring Rd	Olaf Blom
V 77-26-TV	7001 Chesapeake Road	Ed. J. Feltner, Jr., Charles
V 77-27-TV	7001 Chesapeake Road	Ed. J. Feltner, Jr., Charles
V 77-28-TV	1201 Terra Beach	Samuel A. Barrow
V 77-29-TV	1201 Terra Beach	Samuel A. Barrow
V 77-30-TV	1201 Terra Beach	Samuel A. Barrow
V 77-31-TV	1201 Terra Beach	Samuel A. Barrow
V 77-32-TV	1201 Terra Beach	Samuel A. Barrow
V 77-33-TV	1201 Terra Beach	Samuel A. Barrow
V 77-34-TV	1201 Terra Beach	Samuel A. Barrow
V 77-35-TV	1201 Terra Beach	Samuel A. Barrow
V 77-36-TV	1201 Terra Beach	Samuel A. Barrow

19

MICROFILMED

TRUCK TERMINAL HEARINGS

TV#	LOCATION	DEFENDANT/S
V 77-37-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-38-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-39-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-40-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-41-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-42-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-43-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-44-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-45-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-46-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-47-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-48-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-49-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-50-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-51-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-52-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-53-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-54-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-55-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-56-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-57-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-58-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-59-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-60-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-61-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-62-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-63-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-64-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-65-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-66-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-67-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-68-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-69-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-70-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-71-TV	7131 Pulaski Hwy	Agnes Sellen
V 77-72-TV	7131 Pulaski Hwy	Agnes Sellen

TRUCK TERMINAL HEARINGS

TV#	LOCATION	DEFENDANT/S
V 77-73-TV	7131 Pulaski Hwy 11421	Olaf Blom
V 77-74-TV	7131 Pulaski Hwy	Olaf Blom
V 77-75-TV	7131 Pulaski Hwy	Olaf Blom
V 77-76-TV	7131 Pulaski Hwy	Olaf Blom
V 77-77-TV	7131 Pulaski Hwy	Olaf Blom
V 77-78-TV	7131 Pulaski Hwy	Olaf Blom
V 77-79-TV	7131 Pulaski Hwy	Olaf Blom
V 77-80-TV	7131 Pulaski Hwy	Olaf Blom
V 77-81-TV	7131 Pulaski Hwy	Olaf Blom
V 77-82-TV	7131 Pulaski Hwy	Olaf Blom
V 77-83-TV	7131 Pulaski Hwy	Olaf Blom
V 77-84-TV	7131 Pulaski Hwy	Olaf Blom
V 77-85-TV	7131 Pulaski Hwy	Olaf Blom
V 77-86-TV	7131 Pulaski Hwy	Olaf Blom
V 77-87-TV	7131 Pulaski Hwy	Olaf Blom
V 77-88-TV	7131 Pulaski Hwy	Olaf Blom
V 77-89-TV	7131 Pulaski Hwy	Olaf Blom
V 77-90-TV	7131 Pulaski Hwy	Olaf Blom
V 77-91-TV	7131 Pulaski Hwy	Olaf Blom
V 77-92-TV	7131 Pulaski Hwy	Olaf Blom
V 77-93-TV	7131 Pulaski Hwy	Olaf Blom
V 77-94-TV	7131 Pulaski Hwy	Olaf Blom
V 77-95-TV	7131 Pulaski Hwy	Olaf Blom
V 77-96-TV	7131 Pulaski Hwy	Olaf Blom
V 77-97-TV	7131 Pulaski Hwy	Olaf Blom
V 77-98-TV	7131 Pulaski Hwy	Olaf Blom
V 77-99-TV	7131 Pulaski Hwy	Olaf Blom
V 77-100-TV	7131 Pulaski Hwy	Olaf Blom
V 77-101-TV	7131 Pulaski Hwy	Olaf Blom
V 77-102-TV	7131 Pulaski Hwy	Olaf Blom
V 77-103-TV	7131 Pulaski Hwy	Olaf Blom
V 77-104-TV	7131 Pulaski Hwy	Olaf Blom
V 77-105-TV	7131 Pulaski Hwy	Olaf Blom
V 77-106-TV	7131 Pulaski Hwy	Olaf Blom
V 77-107-TV	7131 Pulaski Hwy	Olaf Blom
V 77-108-TV	7131 Pulaski Hwy	Olaf Blom



TRUCK TERMINALS HEARINGS

TV#	LOCATION	DEFENDANT'S
77-109-TV	Wright Court	Equitax & Insurance
77-110-TV	1510 W. Niagara Road	Amway Int'l. Inc.
77-111-TV	2230 W. Niagara Road	Amway Int'l. Inc.
(A) 77-112-TV	2230 W. Niagara Road	Amway Int'l. Inc.
77-113-TV	340 Main Street	Ward Brothers
77-114-TV	Crane Court	Ward Brothers
77-115-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-116-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-117-TV	4700 Niagara Ave.	Amway Int'l. Inc.
77-118-TV	420 White Lead Court	Equitax & Insurance
77-119-TV	3933 Washington Blvd.	Equitax & Insurance
77-120-TV	3523 Danvers Court	Equitax & Insurance
77-121-TV	1910 1/2 E. 1st St.	Equitax & Insurance
77-122-TV	1910 1/2 E. 1st St.	Equitax & Insurance
77-123-TV	1910 1/2 E. 1st St.	Equitax & Insurance
77-124-TV	3500 Danvers Court	Equitax & Insurance
77-125-TV	4450 Danvers Court	Equitax & Insurance
77-126-TV	3510 Danvers Court	Equitax & Insurance
77-127-TV	1514 Hillside Ave. E.	Equitax & Insurance
77-128-TV	4601 Hillside Ave. E.	Equitax & Insurance
77-129-TV	4615 Hillside Ave. E.	Equitax & Insurance
77-130-TV	2015 Danvers Ave.	Equitax & Insurance
77-131-TV	1415 Danvers Court	Equitax & Insurance
77-132-TV	1415 Danvers Court	Equitax & Insurance
77-133-TV	1415 Danvers Court	Equitax & Insurance
77-134-TV	1415 Danvers Court	Equitax & Insurance
77-135-TV	1415 Danvers Court	Equitax & Insurance
77-136-TV	1415 Danvers Court	Equitax & Insurance
(A) 77-137-TV	1415 Danvers Court	Equitax & Insurance
77-138-TV	1415 Danvers Court	Equitax & Insurance
(A) 77-139-TV	1415 Danvers Court	Equitax & Insurance
77-140-TV	1415 Danvers Court	Equitax & Insurance
77-141-TV	1415 Danvers Court	Equitax & Insurance
(A) 77-142-TV	1415 Danvers Court	Equitax & Insurance
77-143-TV	1415 Danvers Court	Equitax & Insurance
77-144-TV	1415 Danvers Court	Equitax & Insurance

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77-145-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-146-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-147-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-148-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-149-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-150-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-151-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-152-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-153-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-154-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-155-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-156-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-157-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-158-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-159-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-160-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-161-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-162-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-163-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-164-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-165-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-166-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-167-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-168-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-169-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-170-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-171-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-172-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-173-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-174-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-175-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-176-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-177-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-178-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-179-TV	1500 W. Niagara Road	Amway Int'l. Inc.
77-180-TV	1500 W. Niagara Road	Amway Int'l. Inc.







IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF NOTTINGHAM IMPROVEMENT  
ASSOCIATION, INC.  
1314 Spotswood Road  
Baltimore, MD 21237 AND  
GENERAL SERVICES ENGINEERING, INC.  
9729 Philadelphia Road  
Baltimore, MD 21237

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE COUNTY BOARD OF  
APPEALS OF BALTIMORE COUNTY  
Room 49, Old Courthouse,  
400 Washington Avenue  
Towson, MD 21204

IN THE CASE OF: IN THE MATTER OF  
THE APPLICATION OF  
LEO J. UMERLEY, ET UX  
FOR SPECIAL EXCEPTION AND  
VARIANCES ON PROPERTY  
LOCATED ON THE SOUTHEAST SIDE  
PHILADELPHIA ROAD, 138' SOUTH  
OF THE CENTERLINE OF RAVENWOOD  
ROAD  
(9813 PHILADELPHIA ROAD)  
11TH ELECTION DISTRICT  
6TH COUNCILMANIC DISTRICT  
CASE NO. 92-346-XA

**PETITION FOR JUDICIAL REVIEW**

Nottingham Improvement Association, Inc. and General Services

CIVIL  
ACTION

NO. 94CV0557/1/1/89

COURT FILED  
94 JAN 25 11:12:38

FILED JAN 24 1994

Engineering, Inc. hereby request judicial review of the  
decision of the County Board of Appeals. In the Case of:  
In the Matter of the Application of Leo J. Umerley, et ux  
for a Special Exception and Variances, Case No. 92-346-XA.  
Nottingham Improvement Association, Inc. and General Services  
Engineering, Inc. were parties to the proceeding before the  
County Board of Appeals of Baltimore County in these matters.

*Marie Quintana Simoes*  
Marie Quintana Simoes  
President, Nottingham  
Improvement Association, Inc.  
1314 Spotswood Road  
Baltimore, MD 21237  
*Gary R. Hoffman*  
Gary R. Hoffman  
President, General Services  
Engineering, Inc.  
9729 Philadelphia Road  
Baltimore, MD 21237

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Petition  
for Judicial Review has been mailed to Stephen J. Nolan, Esquire,  
NOLAN, PLUMHOFF & WILLIAMS, CHTD., Suite 700, Court Towers,  
210 W. Pennsylvania Avenue, Towson, MD 21204, Counsel for  
Mr. Umerley.

*Marie Quintana Simoes*  
Marie Quintana Simoes  
Notary Public

9911 Philadelphia Rd.  
Baltimore, MD 21237  
February 4, 1994

Ms. Kathleen C. Weidenhammer  
Administrative Assistant  
County Board of Appeals of Baltimore County  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, Maryland 21204

Re: Case No. 92-346-XA  
Leo J. Umerley, et ux

Dear Ms. Weidenhammer:

We are in possession of the Board of Appeals final Opinion  
and Order issued 12-22-1993 in the subject matter.

We note that the Order grants a number of individually  
specified variances, none of which involve the proximity  
of the Umerley Trucking facility to the Chryst dwelling  
situated within twenty (20) feet of the northern boundary  
of Lot #6.

We conclude therefore, that the 300 feet restriction  
continues to apply as regards the Chryst dwelling.

We would appreciate receiving from the Board their written  
confirmation that the Order, as written, indeed reflects  
concurrence with our own aforementioned conclusion.

Please be advised that we do not object to the existing  
circumstances (as regards to the proximity of the Umerley  
operations to our dwelling).

Our only concern is toward the possibility of a future  
Umerley expansion of their trucking activities that would  
encompass Lot #6. Lot #6 is currently serving as a satis-  
factory buffer zone.

Sincerely,

*George E. Chryst*  
George E. Chryst

*Lenoria B. Chryst*  
Lenoria B. Chryst



County Board of Appeals of Baltimore County  
OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

February 24, 1994

George E. and Lenoria B. Chryst  
9911 Philadelphia Road  
Baltimore, MD 21237

Re: Case No. 92-346-XA  
Leo J. Umerley -Petitioner

Dear Mr. & Mrs. Chryst:

The Board is in receipt of your letter dated February 4, 1994  
wherein you have requested that we make additional comment  
concerning our final Order dated December 22, 1993 in the subject  
matter.

The Order speaks for itself. It is final in nature, and the  
Board further points out to you that this matter has been appealed  
to the Circuit Court for Baltimore County.

For the above reasons, the Board has no further comment.

Very truly yours,

*William T. Hackett*  
William T. Hackett, Chairman  
County Board of Appeals

/kcv

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IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL FOR  
BALTIMORE COUNTY  
Room 47, Old Courthouse, 400 Washing-  
ton Avenue, Towson, Maryland 21204

FOR JUDICIAL REVIEW OF THE DECISION OF  
THE COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
Room 49, Old Courthouse, 400 Washing-  
ton Avenue, Towson, MD 21204

IN THE CASE OF: IN THE MATTER OF  
LEO J. UMERLEY, ET UX  
FOR A SPECIAL EXCEPTION AND VARIANCES  
ON PROPERTY LOCATED ON THE SOUTHEAST  
SIDE OF PHILADELPHIA ROAD, 138' +/-  
SOUTH OF C/L OF RAVENWOOD ROAD  
(9813 PHILADELPHIA ROAD)  
11TH ELECTION DISTRICT  
6TH COUNCILMANIC DISTRICT  
CASE NO. 92-346-XA

**CERTIFICATE OF NOTICE**

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland  
Rules of Procedure, William T. Hackett and C. William Clark,  
constituting a majority of the County Board of Appeals of Baltimore  
County, have given notice by mail of the filing of the Petition for  
Judicial Review to the representative of every party to the  
proceeding before it; namely, Peter Max Zimmerman, PEOPLE'S COUNSEL  
FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington  
Avenue, Towson, MD 21204, Petitioner; Stephen J. Nolan, Esquire,  
NOLAN, PLUMHOFF & WILLIAMS, CHTD., Suite 700, Court Towers, 210  
West Pennsylvania Avenue, Towson, MD 21204-5340, Counsel for Leo  
J. Umerley, et ux; and Mr. and Mrs. Leo J. Umerley, 9813  
Philadelphia Road, Baltimore, MD 21237, a copy of which Notice is  
attached hereto and prayed that it may be made a part  
hereof.

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant  
County Board of Appeals, Room 49 -Basement  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

92-346-XA, LEO J. Umerley, et ux.  
File No. 94-CV-00405/71/89

I HEREBY CERTIFY that a copy of the foregoing Certificate of  
Notice has been mailed to Peter Max Zimmerman, PEOPLE'S COUNSEL FOR  
BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue,  
Towson, MD 21204, Petitioner; Stephen J. Nolan, Esquire, NOLAN,  
PLUMHOFF & WILLIAMS, CHTD., Suite 700, Court Towers, 210 West  
Pennsylvania Avenue, Towson, MD 21204-5340, Counsel for Leo J.  
Umerley, et ux; and Mr. and Mrs. Leo J. Umerley, 9813 Philadelphia  
Road, Baltimore, MD 21237, this 19th day of January, 1994.

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant  
County Board of Appeals, Room 49 -Basement  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

County Board of Appeals of Baltimore County

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

January 19, 1994

Peter Max Zimmerman  
People's Counsel  
for Baltimore County  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

RE: Civil Action No. 94-CV-00405  
Leo J. Umerley, et ux

Dear Mr. Zimmerman:

In accordance with Rule 7-206(c) of the Maryland Rules of  
Procedure, the County Board of Appeals is required to submit the  
record of proceedings of the petition for judicial review which you  
have taken to the Circuit Court for Baltimore County in the above-  
entitled matter within sixty 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 the same to the Circuit Court within sixty  
days, in accordance with Rule 7-206(c).

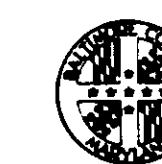
Enclosed is a copy of the Certificate of Notice which has been  
filed in the Circuit Court.

Very truly yours,

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant

Enclosure

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on Recycled Paper



County Board of Appeals of Baltimore County  
OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

January 19, 1994

Stephen J. Nolan, Esquire  
NOLAN, PLUMHOFF & WILLIAMS, CHTD.  
Suite 700, Court Towers  
210 W. Pennsylvania Avenue  
Towson, MD 21204

RE: Civil Action No. 94-CV-00405  
Leo J. Umerley, et ux

Dear Mr. Nolan:

Notice is hereby given, in accordance with the Maryland Rules  
of Procedure, that a Petition for Judicial Review was filed on  
January 13, 1994 in the Circuit Court for Baltimore County from the  
majority decision of the County Board of Appeals rendered in the  
above matter. Any party wishing to oppose the petition must file  
a response within 30 days after the date of this letter, pursuant  
to Rule 7-202(d)(2)(B).

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

Very truly yours,

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant

Enclosure

cc: Mr. Leo J. Umerley  
Mr. Gary R. Hoffman  
Mr. John Morazzano  
Ms. Marie Simoes  
James Earl Kraft  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotrocco  
W. Carl Richards  
Docket Clerk /ZADM  
Arnold Jablon /ZADM

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The Protestants/People's Counsel witnesses who testified were Dennis Wertz from OPZ; Thomas Hobbins, M.D.; Eugene G. Siewierski from DEPRM; Marie Simoes; Gloria June Turner; and Ernest L. Chapolini, who are residents of the area and members of the Nottingham Improvement Association, Inc., and Gary Hoffman, President of General Services Engineering, Inc., which is located adjacent to the subject site. The nearby residents and owners testified from personal observation of the facility, spanning forty years.

Dennis Wertz offered testimony as a land planner for the area encompassing the subject site. He is both generally familiar with the area and specifically familiar with the Umerley property. Mr. Wertz testified that in preparation for this hearing he visited the site, reviewed the applicable zoning maps, the Master Plan, and the Philadelphia Road Corridor Study, the BCZR and, specifically, the Trucking Facilities legislation. He described the neighborhood and pointed out the proximity of the residential community to the subject site, the facility being located within 300 feet of both a residential zone and residences in violation of Section 410A.2 of the BCZR.

Mr. Wertz opposed its location as too close to the residences, and presenting all the problems (noise, dust, lights and intrusiveness) for which legal standards were established to protect residences. He pointed out that other sites existed in the Rossville Industrial Park that would be more suitable for a trucking facility. Mr. Wertz also took particular note of the

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traffic caused by the large tractor-trailers entering and exiting the site. Mrs. Turner has observed activity at the trucking company in evenings and on weekends, as well as weekdays. Mrs. Turner was able to describe how the trucking facility grew in the last ten years and how this growth represents an unwelcome intrusion of noise, gas fumes, uncommonly large vehicles, and traffic congestion, dust and odor into the residential neighborhood and the community at large. She reiterated that no other use in the immediate area, including Genstar Quarry and Glenn L. Martin airport, represents as great a nuisance and disturbance as the trucking facility.

Another neighbor, a CSX engineer, lives across Philadelphia Road a short distance to the north. As a railroad engineer, he focused on the extraordinary noisy and persistent nighttime mechanical and operational activities at the site.

The Protestants also presented Doctor Thomas F. Hobbins, a medical doctor with an expertise in pulmonary diseases. Dr. Hobbins is a member of the Diesel Exhaust Advisory Panel of the Maryland Department of the Environment and a member of the American Thoracic Society. Dr. Hobbins was familiar with the effects of diesel fuel emissions on the health of the general population and the particular ill effects on children and individuals with lung disease. Dr. Hobbins testified that emissions are more concentrated and potentially more dangerous the closer one is to the discharge point. The doctor also stated that idling engines emit a greater volume of concentrated

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Planning Board report and history accompanying the 1976 legislation.

Eugene Siewierski from DEPRM testified as to the oil spill on the subject site caused by the trucking company. He noted that the property owner was notified and commenced clean up operations at which time the clean up was taken over by the State Department of the Environment.

Marie Simoes, President of the Nottingham Improvement Association, Inc., testified at length on her own behalf as well as for the association. The community association represents approximately 70 homes and the boundaries are both sides of the 9700 to 10,000 blocks of Philadelphia Road. Mrs. Simoes described the stable residential community with business and industrial uses located on Philadelphia Road. Mrs. Simoes underlined that none of the other businesses or industrial establishments (which included a 7-11 and a Royal Farms Store, Genstar Quarry, Glenn L. Martin Airport, office buildings and other retail uses), created such nuisance and disturbance to the residential community as the Umerley Trucking Company.

Mrs. Simoes is a long-time resident of Nottingham and gave an apt description of the growth of the trucking company. She indicated the facility was hardly noticeable and not intrusive until rapid expansion began in the early 1980's. In 1982 and 1989, with additional acreage, size, and trucks, a marked increase in truck traffic as well as noise was readily apparent. Mrs. Simoes testified that repeated letters to Mr. Umerley from

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emission than vehicles traveling at higher speeds on roadways. Dr. Hobbins also noted that direct molecules tend to attach themselves to other pollutant particles, thus compounding the amount of harmful air inhaled. Dr. Hobbins clearly stated that the proximity of the residences to the subject site would increase the chances of breathing polluted air.

Mr. Gary Hoffman, President of GSE, Inc., located adjacent and south of Umerley Trucking Company, testified to his experiences with and observations of the site. Mr. Hoffman is the owner of property improved by an office building in which GSE, Inc. is located, and a residence. Mr. Hoffman described the Petitioner's disregard for both the law and the negative impact of the facility on the residents and businesses in the surrounding area. Mr. Hoffman testified to illegal expansion of the facility, activities causing adverse effects on the environment, lack of a storm water management plan, clearing and grading without a permit, disregard of boundary lines by erecting a fence on Mr. Hoffman's property, the existence of a fuel spill in June, 1992, and other oil spillage, and the dust emanating from the site onto Mr. Hoffman's property. Mr. Hoffman also testified as to the offensive noise caused by the facility and indicated he has spent evenings and overnights at the house located on his property.

#### ARGUMENT

##### I. Introduction: The Legislative Purpose Requires Denial.

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the community were ignored by him. He ignored requests to join the Association and filed the present petition for a special exception only after notice from Zoning Enforcement.

Mrs. Simoes located her residence on the site plan and testified that she hears disturbing loud banging and other truck generated noise from the trucking company at all hours of the night. She observed that the facility operates six days a week and 24 hours a day as well as frequent Sundays. Mrs. Simoes indicated she observes and is affected by dust from the site which is offensive. She also described the traffic on Philadelphia Road as heavy. She believes the ingress and egress of the trucks from the site clog traffic and create hazardous parking and unsafe conditions for residential traffic since the present layout of Philadelphia Road cannot accommodate the turning radii for Umerley's tractor trailers going to and from the site. Mrs. Simoes concluded that the site is unique in its proximity to residences whose general welfare is disturbed by the noises generated therefrom and whose health is adversely affected by the fumes and dust. For all of these reasons, she concluded that a trucking facility is inappropriate at this location.

Ernest Chapolini is a 40 year resident of the Nottingham Community, located 450 feet away. He testified as to the disturbing growth in the size of the facility, the number and size of the trucks and the growth in the general operation of the trucking company. Mr. Chapolini testified that the facility and its entrance are visible from his residence. There is only one

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This extraordinary case is driven by the comprehensive and specific provisions of the Baltimore County Trucking Facilities legislation. The clearly stated legislative purpose to protect residential communities requires denial of this special exception. Moreover, the specific mechanism of locational standards (minimum distance from residences, residential zones, and wetlands) indicates that a variance violates the fundamental legislative threshold and is unavailable. Even were it available in theory, as an area variance, it is not available here because the request does not meet or fit the traditional law of area variances. On top of this, the facts presented - by the articulate neighboring residents and industrialist, as well as Philadelphia Road area planner, Dennis Wertz - demonstrate that this site has already generated precisely the disturbance and interference which the law was intended to prevent. In other words, in the context of this legislation, the material undisputed facts require denial. It is not even a matter of debate or judgment, as would normally be the situation with special exceptions and variances.

##### II. The History of Trucking Facilities Legislation

Truck uses have a long history as principal uses in the Baltimore County Zoning Regulations (BCZR). The 1945 regulations included truck gardens in residential zones. In 1955, the use "truck terminal" came into being, as a special exception in the B.R. (Business Roadside) and M.L. zones, and by right in M.H.

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ingress and egress to the trucking company which is directly on Philadelphia Road and secured by a gate. The witness observed that when the gate is closed there, the trucks must stop at docking lanes across Philadelphia Road, stopping all other traffic on the roadway. There is an extremely high noise of traffic both northbound and southbound on Philadelphia Road and the traffic generated by the trucking facility is usually highest during peak traffic hours which exacerbates the traffic problem. The witness testified that all of these factors adversely affected the safety of the residents of the area who use Philadelphia Road and that the trucking company was an intrusion with the residential aspects of the area.

Mrs. Gloria June Turner, another long-time resident of the community, provided numerous photographs of the residential community from its inception to the present day. She presented a history of the Nottingham Community, a planned community established in the 1950's. It was land only intended for development of single family homes and, in fact, developed in that manner. Today it consists of approximately 80 single family homes, some of which front on Philadelphia Road. In the 1950's, the site presently occupied by the Umerley Trucking Company was advertised as future residential development.

Mrs. Turner described the surrounding areas along the Philadelphia Road Corridor as mixed use of residential, office, retail and light industrial. She also described the volume of traffic on Philadelphia Road and the impediments to the flow of

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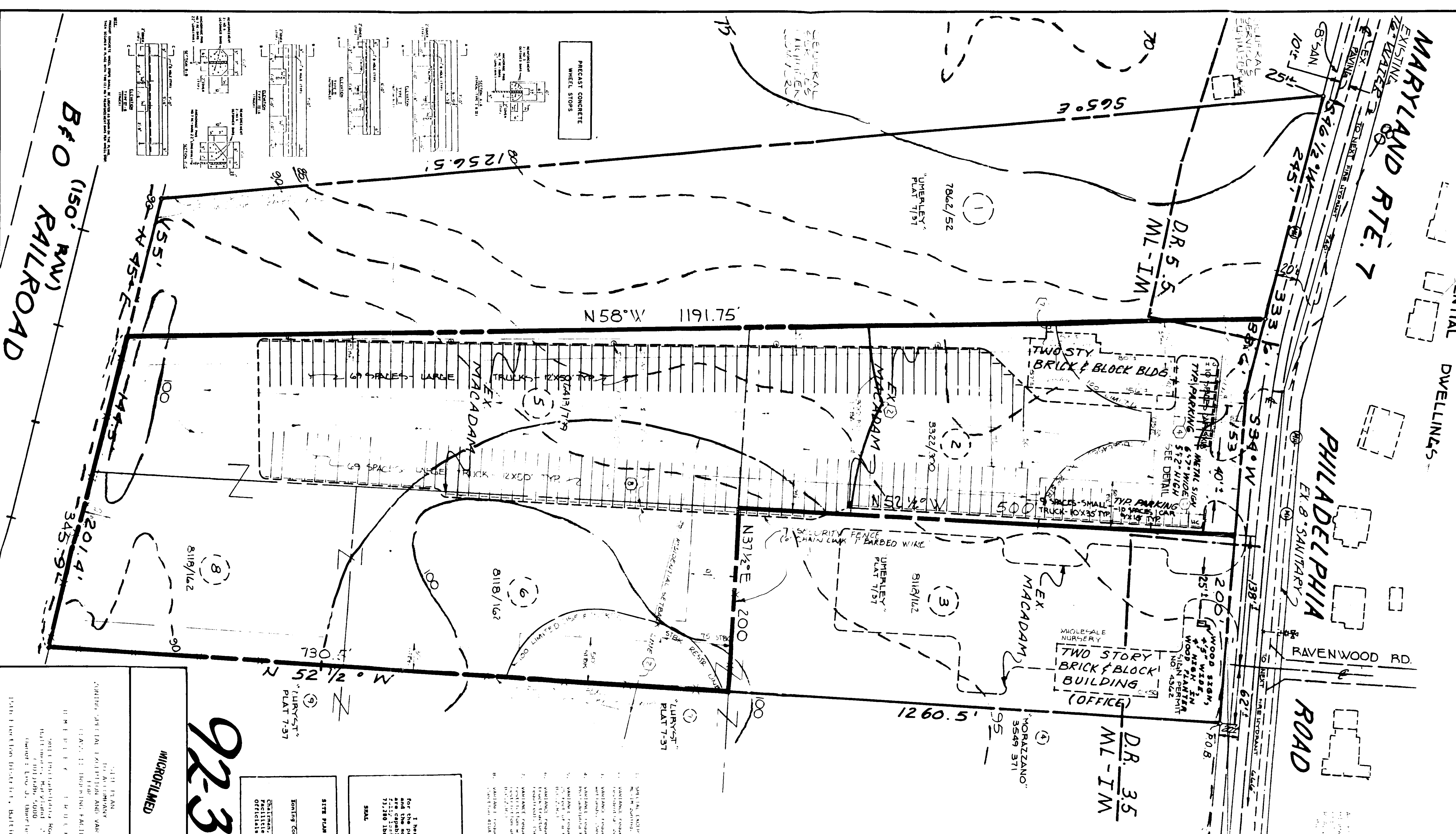
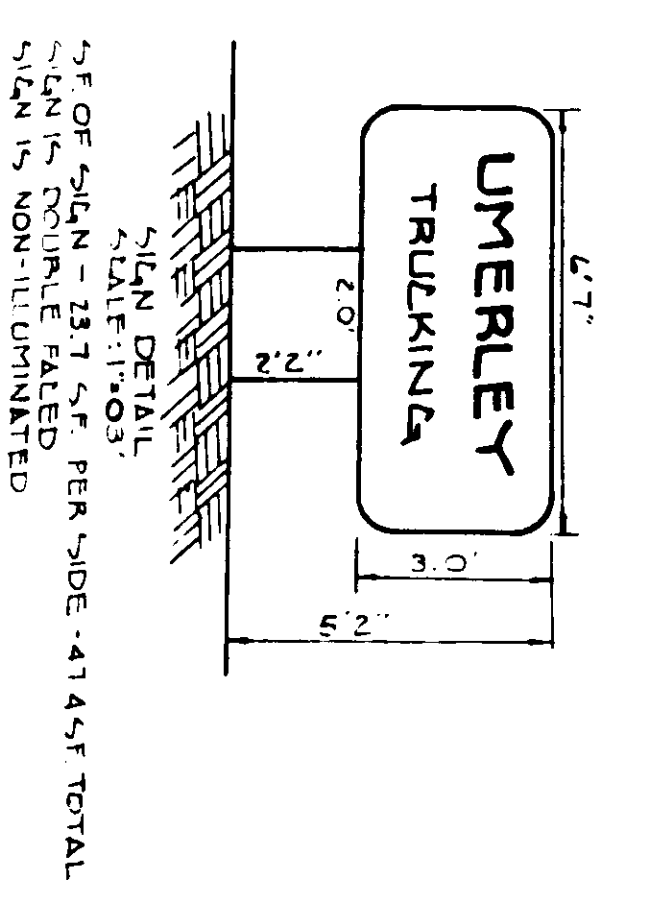
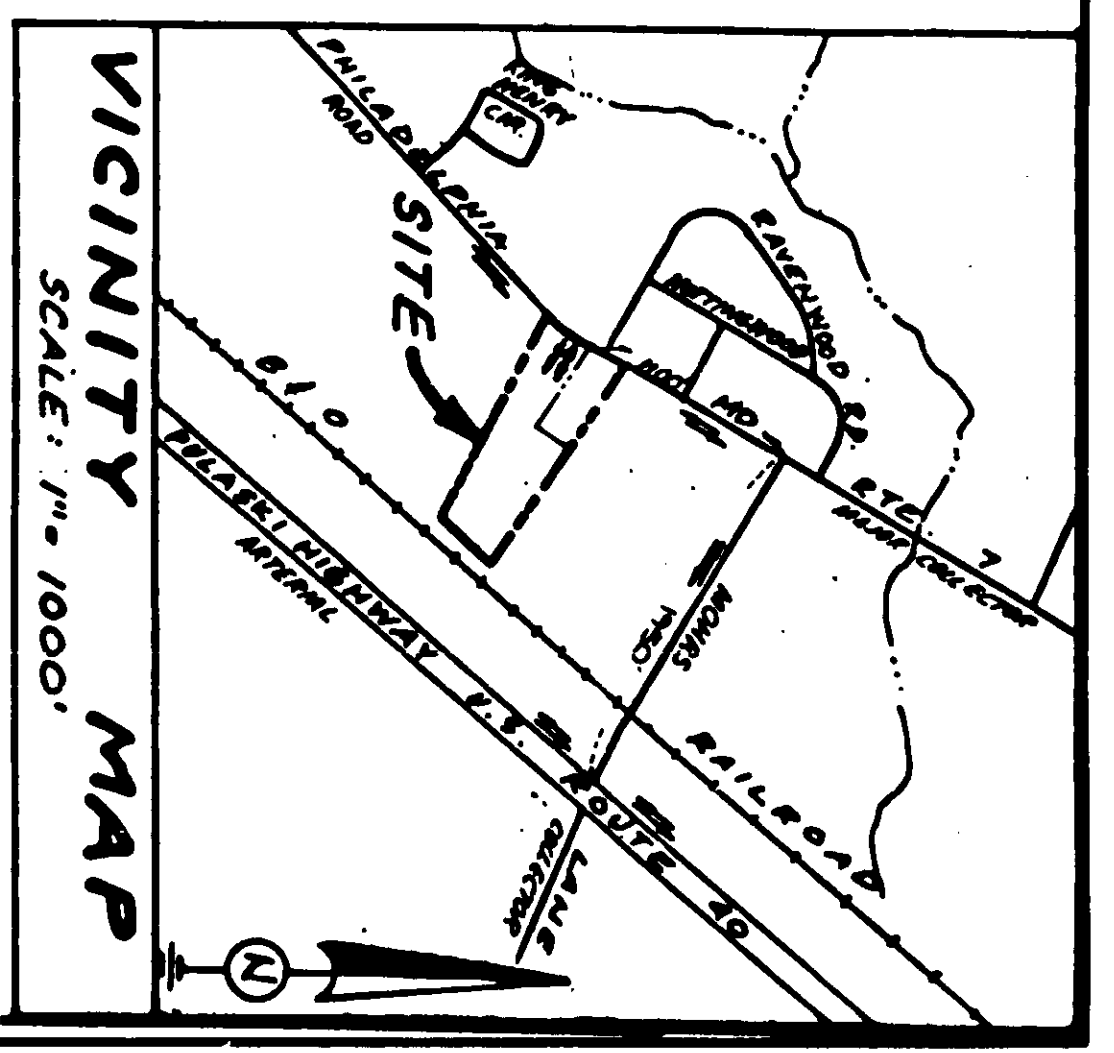
zones (Manufacturing Heavy) (Exhibit A). This use pattern survives to the present in the manufacturing zones only.

In 1967, Bill 61 defined "truck terminal," to take its place in BCZR 101 (Exhibit B). In 1976, with Bill 18, the terminology changed. The County Council adopted the specific and functional definition of trucking facilities, defining two (2) types and establishing for the first time a detailed set of additional restrictions. BCZR 410, 410A.

The new BCZR 101 definition is set forth in BCZR 101:

**Trucking Facility:** A structure or land used or intended to be used primarily (a) to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types, in order to facilitate the transportation of such goods or chattels; or (b) for truck or truck-trailer parking or storage. A trucking facility may include, as incidental uses only, sleeping quarters and other facilities for trucking personnel, facilities for the service or repair of vehicles or necessary space for the transitory storage of goods or chattels. The term "trucking facilities" includes facilities for the storage of freight-shipping containers designed to be mounted on chassis for part or all of their transport, but does not include a warehouse, moving and storage or repair of trucks used as an accessory to a lawful business or industrial use of the land that such parking or storage area forms a part of shall not be considered a trucking facility within the meaning of this definition. As used in this definition, the terms "trucks," "truck-trailers," and "truck tractors" do not include any vehicle whose maximum gross weight is 10,000 pounds or less, as rated by the State Motor Vehicle Administration. (Bill No. 18, 1976; Bill No. 218, 1980.)

14



- GENERAL NOTES:
1. TOTAL AREA OF SITE: 8.50 AC. (500' x 500' x 400')
  2. ELECTION DISTRICT: 11th
  3. EXISTING ZONING OF PROPERTY: R-1M 7.0B 5.5
  4. THE PROPOSED PLANS OF THIS PROJECT ARE IN ACCORDANCE WITH THE ZONING ORDINANCES OF CAMDEN COUNTY, NEW JERSEY, AND THE CITY OF PHILADELPHIA, PENNSYLVANIA, AND THE CITY OF CAMDEN, NEW JERSEY, AS APPLICABLE TO THIS PROJECT.
  5. THE CITY OF PHILADELPHIA, PENNSYLVANIA, HAS REVIEWED AND APPROVED THE PLANS FOR THE CITY OF PHILADELPHIA, PENNSYLVANIA.
  6. EXISTING USE OF PROPERTY: TRUCKING FACILITY
  7. PROPOSED USE OF PROPERTY: TRUCKING FACILITY
  8. ASSOCIATE RESIDUAL FACILITIES FROM BOTH JURISDICTIONS ARE BEING MAINTAINED AND WILL REMAIN IN USE.
  9. HOURS OF OPERATION WILL BE 24 HOURS A DAY.
  10. AVERAGE NUMBER OF VEHICLES PER DAY IS 50. (CONGESTION/ACCIDENTS)
  11. MAXIMUM NUMBER OF VEHICLES EXPECTED TO BE PARKED ON SITE AT ANY ONE TIME WILL BE 100.
  12. NO LOADED VEHICLES WILL BE STORED ON THE SITE.
  13. ALL VEHICLES WILL BE STORED WITHIN THE AUTOMATIC FIRE ZONE.
  14. NO HAZARDOUS MATERIALS SHALL BE STORED ON SITE.
  15. REPORTING THE CONSTRUCTION SHALL BE RESPONSIBLE FOR OBTAINING ALL PERMITS NECESSARY FOR CONSTRUCTION OF ALL STRUCTURES AND UTILITIES AS A RESULT OF THE WORK PERFORMED ON THIS PROJECT.
  16. SCHEDULE OF CONSTRUCTION: ALL WORK SHALL BE COMPLETED BY JANUARY 21, 2000.
  17. EXISTING UTILITIES: ALL UTILITIES SHALL BE MAINTAINED AND PROTECTED AT ALL TIMES.
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  22. THE LOCATION OF EXISTING UTILITIES SHOWN HEREON IS NOT GUARANTEED AND THE CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES AND UNDER THE DIRECTION OF THE UTILITY COMPANIES.
  23. EXISTING UTILITIES: ALL UTILITIES SHALL BE MAINTAINED AND PROTECTED AT ALL TIMES.
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**PAVING CERTIFICATION**

I hereby certify that the specifications for the paving of this site, including but not limited to the materials, methods, and all other conditions relating to this site, have been approved by me, the undersigned, as being in accordance with the provisions of the applicable laws, rules, and regulations of the State of New Jersey, and the City of Philadelphia, Pennsylvania, and the City of Camden, New Jersey, and that the paving of this site shall be completed in accordance with the specifications and conditions set forth herein.

Signature: [Signature]

DATE: [Date]

**SITE PLAN APPROVED BY:**

ENGINEER: [Signature]

DATE: [Date]

CHAIRMAN, COUNTY ZONING FACILITIES DEVELOPMENT OFFICIALS: [Signature]

**92-346-XA**

REVISIONS: 364

MICROFILMED



**K.L.S. CONSULTANTS, INC.**

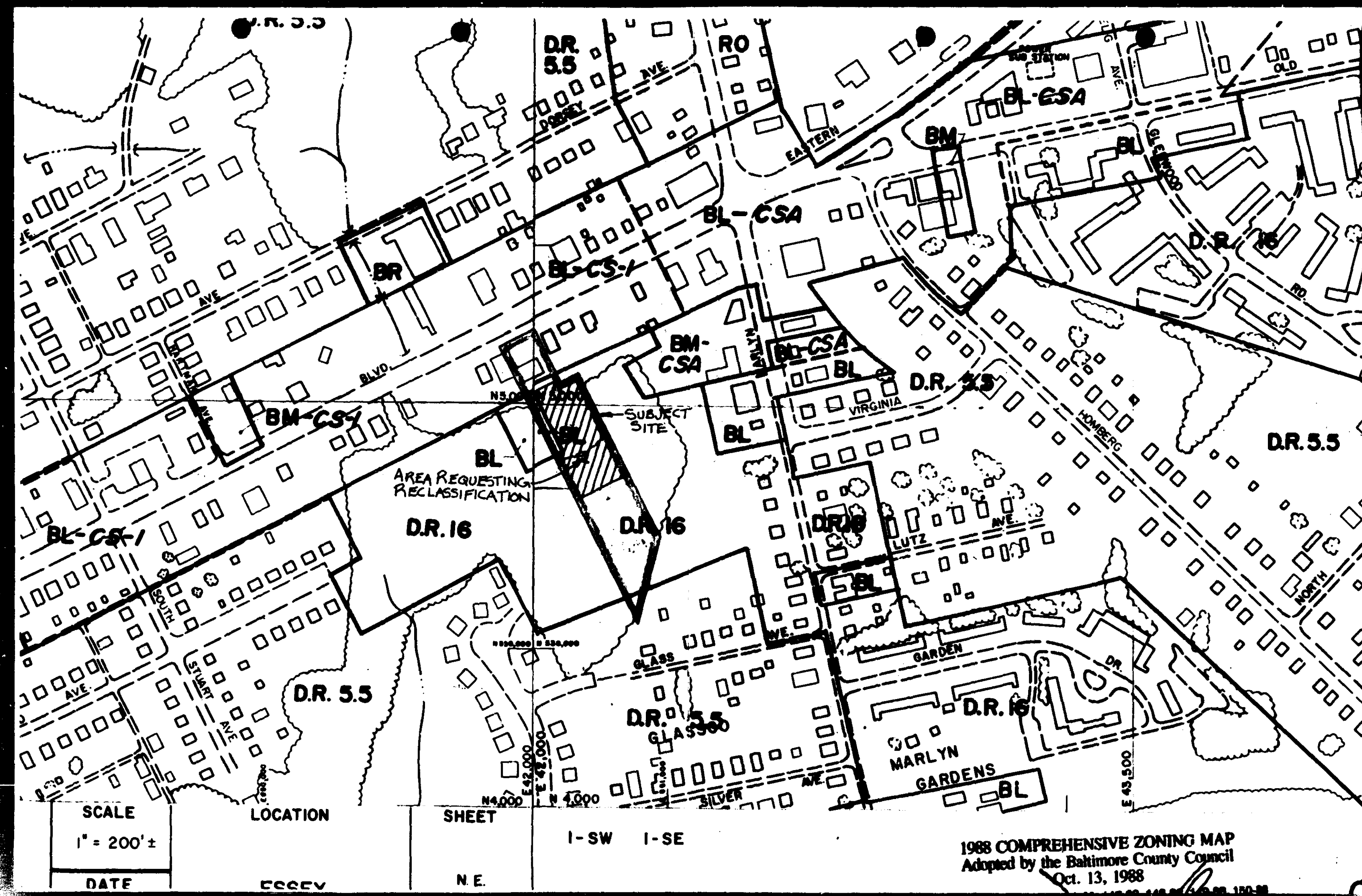
ENGINEERING & SURVEYING


102 N. MAIN STREET  
 4TH FLOOR  
 PHILADELPHIA, PA 19106  
 (215) 561-1000

DATE: 12-15-99 SCALE: AS SHOWN FILE NO: 1426








 Baltimore County Zoning Commissioner  
Office of Planning and Zoning  
111 West Chesapeake Avenue  
Towson, Maryland 21284

The First National Bank of Maryland  
P. O. Box 1586  
Baltimore, Maryland 21203  
ATTN: ALAN W. KEMPSKE

 Baltimore County Zoning Commissioner  
Office of Planning and Zoning  
111 West Chesapeake Avenue  
Towson, Maryland 21284

Newton A. Williams, Esq.  
700 Court Towers  
210 W. Pennsylvania Avenue  
Towson, Maryland 21284

PETITION OF PEOPLE'S COUNSEL  
FOR BALTIMORE COUNTY  
Room 47, Old Courthouse  
Towson, Maryland 21204

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE COUNTY BOARD OF  
APPEALS OF BALTIMORE COUNTY  
Room 49, Old Courthouse  
400 Washington Avenue  
Towson, Maryland 21204

IN THE CASE OF: IN THE MATTER OF  
LEO J. UMERLEY, ET UX  
FOR SPECIAL EXCEPTION AND VARIANCES  
ON PROPERTY LOCATED ON THE SOUTHEAST  
SIDE OF PHILADELPHIA ROAD, 138', +/-  
SOUTH OF C/L OF RAVENWOOD ROAD  
(9813 PHILADELPHIA ROAD)  
11TH ELECTION DISTRICT  
6TH COUNCILMANIC DISTRICT  
CASE NO. 92-346-XA

\* IN THE CIRCUIT COURT  
\* FOR BALTIMORE COUNTY

\* CIVIL ACTION  
NO: 79CV00905/71/87

92 JAN 13 AM 11:54

PETITION FOR JUDICIAL REVIEW

People's Counsel for Baltimore County hereby requests judicial review  
of the decision of the County Board of Appeals, dated December 22, 1993.

In the Case of: In the Matter of Leo J. Umerley, et ux for Special Excep-  
tion and Variances, Case No. 92-346-XA. People's Counsel was a party to  
and participated in the proceeding before the County Board of Appeals of  
Baltimore County in this matter.

Peter Max Zimmerman  
People's Counsel for  
Baltimore County

Carole S. Demillo  
Deputy People's Counsel for  
Baltimore County  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31<sup>st</sup> day of January, 1994, a copy of  
the foregoing Petition for Judicial Review has been mailed to Stephen J.  
Nolan, Esquire, Nolan, Plumhoff and Williams, CHTD, Suite 700, Court Tow-  
ers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204, Counsel for Peti-  
tioners.

Carole S. Demillo

IN THE MATTER  
OF THE APPLICATION OF  
LEO J. UMERLEY, ET UX  
FOR SPECIAL EXCEPTION AND  
VARIANCES ON PROPERTY  
LOCATED ON THE SOUTHEAST  
SIDE PHILADELPHIA ROAD, 138'  
SOUTH OF THE CENTERLINE OF  
RAVENWOOD ROAD  
(9813 PHILADELPHIA ROAD)  
11TH ELECTION DISTRICT  
6TH COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. 92-346-XA

OPINION

Leo J. Umerley, and Wanda Umerley, his wife, are the owners  
of an 8.5 plus acre property on the east side of Maryland Route 7,  
Philadelphia Road, assuming that Philadelphia Road runs north and  
south, just to the west of Ravenwood Road, which is the subject of  
this special exception and variances case.

In early 1992, the Petitioners filed with the Zoning  
Commissioner's office petitions for a Special Exception for Class  
II Trucking Facility, and certain variances covering the 8.5 acre  
property. More specifically, the variances requested are as  
follows:

1. From Section 410A.2 to permit a trucking facility within  
300 feet of a residential zone and within 200 feet of wetlands, and  
parking within 25 feet of a residential dwelling or zone;
2. From Section 253.4 to permit trucking facility parking  
within 100 feet of Philadelphia Road, because Philadelphia Road  
abuts a residential boundary;
3. From Section 410A.3B.3 to permit 35.5 percent of the  
subject site to be devoted to parking trucks and trailers in lieu  
of the 75 percent required;
4. From Section 410A.3B.5 to permit the elimination of  
required wheel stops, which variance request was subsequently

Case No. 92-346-XA Leo J. Umerley, et ux

waived at the Board level; and

5. From Section 243.2 to permit a minimum building setback  
of 7 feet in lieu of the required 50 feet.

All of these variances are shown in detail on Petitioners' Exhibit  
1, the revised site plan prepared by KLS Consultants, Inc., as  
revised September 21, 1993.

Before the Board of Appeals, the Petitioners presented their  
own individual testimony, as well as expert testimony. Various  
protestants, as well as the Nottingham Improvement Association,  
Inc., appeared, testified, and offered two experts through their  
counsel, the People's Counsel for Baltimore County. From the  
testimony and exhibits, we find the facts as follows.

In the 1950's, the Umerleys acquired a 2.5 acre parcel which  
is the core of this operation, now containing a two-story brick and  
block building which includes executive offices, staff offices and  
a four-bay truck service garage, as well as a scale house. The  
original office and garage were constructed in about 1957. This  
first parcel is identified as Lot 2 on Petitioners' Exhibit 1,  
which lot is paved in large part and used for truck parking,  
automobile parking, and frontage grass and landscaping. This tract  
is zoned almost entirely M.L.-I.M.

Subsequently, the Umerleys acquired title to a 2.8 acre lot  
immediately behind Lot 2, identified as Lot 5 on Petitioners'  
Exhibit 1, which is largely paved and used for truck and trailer  
parking, and it is zoned M.L.-I.M.

Subsequently, in the mid- to late-1980's, the Umerleys  
obtained title to a 5.3 acre parcel identified as Lot 1 on  
Petitioners' Exhibit 1, which parcel lies to the west of Lots 2 and

Case No. 92-346-XA Leo J. Umerley, et ux

5, and which abuts the General Services Engineering firm, owned and  
represented by Mr. Gary Hoffman at the Hearing. This parcel is  
zoned D.R. 5.5 on the frontage and M.L.-I.M. for the majority of  
the parcel back to the CSX Railroad.

Finally, the Petitioners obtained title to Lot 3 of 2.3  
acres on the east side of Philadelphia Road, which property is  
improved by a two-story brick and block building and an existing  
macadam parking lot, and presently occupied by Long Fence Company.  
Lot 3 is zoned D.R. 5.5 on the frontage and M.L.-I.M. in the rear.  
By the same deed, the Umerleys acquired title to Lot 6 consisting  
of 1.9 acres zoned M.L.-I.M., and Lot 8 of 1.5 acres lying behind  
the Long Fence Company Parcel, also zoned M.L.-I.M. Lots 3, 6 and  
8 all lie on the north of the main trucking parcels, Lots 2 and 5.

The property which is the subject of these Petitions is  
comprised of Lots 2, 5, 6 and 8, totalling in all 8.5 acres, and  
shown in heavy outline on Petitioners' Exhibit 1, the KLS site  
plan. The trucking operation has approximately 230 feet of  
frontage on the east side of Philadelphia Road, with a slightly  
uneven depth of approximately 1200 feet, running easterly to the  
CSX Railroad right of way which forms its eastern boundary. As  
shown on the site plan, Petitioners' Exhibit 1, the trucking  
operation is bounded on the south side by Lot 1, which is partially  
wooded, and on the north side by Lot 3, rented by Long Fence, as  
well as by Lots 6 and 8, also largely wooded.

In about 1958, after being located in Baltimore City for a  
number of years, Umerley moved to the subject property at 9813  
Philadelphia Road, namely Lot 2. Initially, he occupied the front  
2.5 acres. The office and shop building has always been located in

Case No. 92-346-XA Leo J. Umerley, et ux

its present location. In 1982 or so, Mr. Umerley obtained a  
building permit, Petitioners' Exhibit 7, to enlarge the office and  
garage, which permit was granted by Baltimore County. On that  
permit, a part of the Zoning Commissioner's file, Mr. Umerley  
listed the use as a "construction equipment storage yard."

By 1958, he had 20 items of construction and trucking  
equipment, and by 1964 that roster had grown to about 35 trucks,  
totalling perhaps 50 to 60 items, recalling that a tractor and  
trailer form two pieces. His 1964 equipment roster is borne out by  
Petitioners' Exhibit 9, an aerial photo taken about that time  
showing the site, building and his trucking and construction  
equipment.

Mr. Umerley initially purchased about 3 acres in 1958 and  
added two bays and an office in 1961. An aerial photograph,  
Petitioners' Exhibit 5, shows a small building and parked hauling  
trucks in 1963. Mr. Umerley admitted his business was called the  
Umerley Trucking Company as early as 1974. He did not register his  
trucking business as required by Section 410 of the BCZR. He did  
not think or know he had to do so, he claims.

Mr. Umerley presently has about 50 trucks on the road, and  
that the total items of trucking and construction equipment include  
truck tractors and trailers, flat bed trailers, tank trailers for  
bulk material, and dump trucks, as well as several front end  
loaders and graders. In all, there may be as many as 150 items of  
equipment, between tractors, (i.e., the truck that pulls the  
trailer), trailers, tow trucks, loaders, etc.

Mr. Umerley admitted that his operation generates dust and  
that he does not utilize but intends to purchase a water truck.

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There is a security fence running around the perimeter of Lots 1,  
2, 6 and 8 and along the railroad right-of-way in the rear. As for  
paving, Mr. Umerley testified that the paved area was enlarged in  
the early 1980's, about 1982 or so, with black top toward the front  
of the property and tar and chip in the rear on Lot 5. The paving  
is shown on the KLS site plan, Petitioners' Exhibit 1.

As for hours and days of operation, the property is active  
5-1/2 days per week, namely Monday through Friday, with operations  
closing down toward mid-afternoon on Saturdays. The exception to  
these hours is when the Company delivers salt to salt domes on an  
emergency storm basis, during the winter time. Basically the  
operation is from 7:00 a.m. to 3:30 or 4:00 p.m., with some evening  
and overnight departures.

A number of Umerley's customers require deliveries to be  
made to a construction job site or to a distant location early in  
the morning, and, thus, a certain number of trucks depart between  
11:30 p.m. when most of the operation closes down, and 7:00 a.m. or  
7:30 a.m. when things begin in earnest again. Petitioners' Exhibit  
11, a series of invoices, evidences many required early morning,  
distant deliveries.

The site contains a four-bay truck service garage and office  
building on the front of the property on Lot 2 which is shown on  
the photographs, Petitioners' Exhibit 8, among others. This garage  
is utilized only for work on Umerley trucks. Mr. Umerley does not  
operate a public service garage and does not work on trucks or  
vehicles owned by other parties. The repair work is done by six  
mechanics, working in two shifts, one from 7:30 a.m. to 4:00 p.m.,  
and a second from 3:00 p.m. to 11:30 p.m. At night and during

Case No. 92-346-XA Leo J. Umerley, et ux

times of low activity, particularly from 11:30 p.m. to 7:30 a.m.,  
the gate and yard are locked, as well as on weekends.

The property use is indisputably a trucking facility and has  
expanded significantly, specifically in 1982 and 1988. The  
facility has operated without the required special exception, or  
even any registration under the 1976 Trucking Facilities  
legislation, and thus has operated without compliance with the law.

As is shown on the map of the Philadelphia Road Corridor  
Study, Petitioners' Exhibit 14, the Umerley operation enjoys  
excellent Beltway access to Baltimore County, Baltimore City and  
the surrounding areas, in and out of State, by means of proceeding  
westerly on Philadelphia Road to the Beltway. Approximately 75 per-  
cent of the site trips go toward the Beltway, away from the  
Nottingham Community.

Philadelphia Road is the main means of access for the  
industrial properties, commercial properties and residential  
properties in this transportation corridor. Further, a letter  
dated July 26, 1993 from Mr. Pat Keller, Deputy County Director of  
the Office of Planning and Zoning, to Mr. George L. Good, Jr., of  
Frank's Pallet Service (Petitioners' Exhibit 13), indicates that  
Baltimore County has no plans to extend Yellow Brick Road, an  
industrial service road lying between Route 40 and Philadelphia  
Road beyond the King Avenue area, a substantial distance to the  
south of the subject property.

The Umerley property is located between I-95 to the west,  
and the B&O Railroad and Route 40 to the east. This property is  
also underneath a portion of the Martin State Airport flight path,  
and there are many flights per day in and out of the airport.

The legislation came after work of a Citizens Task Force and Planning Board Report entitled Proposed Zoning Amendments, Trucking Facilities. (Exhibit C). The dominant purpose was to prevent the placement of such facilities at locations incompatible with nearby business and industrial areas, and, in any event, near residential areas. The County Council enacted the legislation, which included, in substance, the provisions of the Planning Board report. This Report, dated February 19, 1978, contains a discussion which is so important that it is reproduced here in full:

PROPOSED ZONING AMENDMENTS:  
TRUCKING FACILITIES

A Final Report of the Baltimore County  
Planning Board\*

DISCUSSION At this point in history, the trucking industry may be described as the life-blood system of American commerce. Trucks move goods with flexibility unmatched by any other present mode of transportation.

Unfortunately, the facilities that serve and are served by the trucking industry are frequently incompatible with other business and industrial establishments. And, needless to say, they are totally inappropriate in or near residential areas: while most citizens have probably come to accept the noise and fumes of large tractor-trailers driving along major highways, they cannot find it so easy to accept the concentration of these factors at a truck terminal or truck yard operating day and night close to their homes.

The fact is, however, that a number of trucking facilities have been established too close to the homes of Baltimore County citizens over the years, especially in communities near major industrial areas. And it is not only the on-premise truck operations that have caused problems, for the facilities are frequently so situated that trucks must gain access to them by way of small, residential streets.

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By and large, the trucking facilities causing these problems have been established in accordance with present zoning regulations. It has become apparent that those regulations are inadequate in many respects - not just in their lack of safeguards for the welfare of residential areas adjacent to trucking-facility sites, but also in their failure to prescribe modern development standards.

It is the purpose of the regulations proposed here to remedy those deficiencies, both in terms of control over the development of new facilities and in terms of remedial measures applicable to existing ones.

The proposed regulations are based to a large extent on recommendations of the special Citizens Task Force on Truck Terminals, appointed by County Executive Theodore G. Venetoulis and chaired by Councilman John W. O'Rourke. The Planning Board has reviewed the Task Force proposal over a period of several months, has revised the recommendations and offers them, in this final report, for consideration by the County Council.

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NOTE: The appendix to this report indicates the zoning classifications under which various truck-oriented uses would be permitted as of right, allowable by special exception, or prohibited under the proposed legislation.

\*Adopted February 19, 1978.

III. The Structure of the Trucking  
Facilities Legislation.

BCZR 410A sets the requirements for Class II trucking facilities. The law establishes substantive requirements in two main categories: location (BCZR 410A.2) and site and development standards, plans, and operation (410A.3). Because many existing facilities were nonconforming, the law provided a procedure for the filing of plans. 410A.1A. These facilities, subject to approval at a public hearing, would have to be brought up to 410A.3 site and development standards unless a "variance" were

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granted. 410A.1B. Properly approved nonconforming facilities would not have to meet the locational requirements of 410A.2.

If an existing facility failed to file plans, it would be in violation and would have to cease operations within three (3) years, unless approved as a new use. BCZR 410A.1D. Although the law provided a public information program to attempt notification to affected parties, any failure of notice was not legal justification or excuse for failure to comply. 410.1G. In any event, the law was well publicized.

The crucial locational standards are in BCZR 410A.2. They must be met by any new facility or by any approved nonconforming facility. BCZR 410A.1E. BCZR 410A.2 states:

2. If approved plans of a Class I trucking facility are not on file with the Office of Planning and Zoning or the Department of Permits and Licenses on the effective date of this Section, or if the Zoning Commissioner is not notified under Subparagraph 1, the owner of or authorized agent for the trucking facility must file plans of the facility, meeting the requirements of subparagraph 410.3.C.1, within 1 year after that date. [Bill No. 18, 1978.]

In the M.L. zone, BCZR 253.2A.6 allows a trucking facility by special exception, subject to BCZR 410. 410A. Even in the M.H. zone, BCZR 258.2 allows a trucking facility by right only if 300 feet from a residence zone. Trucking facilities are no longer permitted in B.R. zones. BCZR 238.4.

Finally, BCZR 410A.4 addresses the consistency of actions of county officials. 410A.4A states:

A. Consistency of actions with purposes. Whenever the Zoning Commissioner, the County trucking-facilities-development officials, or any other County official or officials take an action pursuant to the provisions of

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this section, that action must, where applicable, be as consistent as is feasible with the purposes of this section, as set forth in Paragraph B, below, and elsewhere in this section, and with the other purposes of these regulations, in general (including the purposes set forth in Title 22 of the Baltimore County Code 1968). [Bill No. 18, 1978.]

410A.4B lists a number of additional purposes, including BCZR 410A.4B.7:

7. In general, to accommodate trucking activities, in recognition of their importance to the economy of the County and the nation, while minimizing the impact of existing and future Class II trucking facilities on the environment and achieving an optimum level of compatibility between such facilities and nearby uses, especially dwellings and institutional uses. [Bill No. 18, 1978.]

IV. The Uerley Facility

There is no dispute that the Uerley Trucking Company is operating a trucking facility. Legally, it must be treated as a new use.

Although the 2.5 acre lot use on Philadelphia Road predates the 1978 trucking facilities law, there was never any filing of plans or approval of a nonconforming facility. Nor was there any prior approval under the 1967 law. Moreover, when the use tripled in size after 1982, there was no regard for any legal requirement or approval. The trucking facility law is clearly defined; even assuming Mr. Uerley received no letter from the Zoning Commissioner, he was not excused from compliance. Moreover, he never testified that he was unaware of the law, just that he didn't believe he had to comply. Otherwise stated, there is no equitable argument available; even so, the continuing theme is the Petitioner's indifference to legal requirements.

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As to the location, the critical problem is that the facility is surrounded by residential zoning and/or residences, and does not come close to meeting the law. Immediately across Philadelphia Road lie the established homes in Nottingham, zoned residential. On each side of the property are homes, two in front of General Services Engineering zoned residential and several on the other side, zoned M.L. One could hardly find a location more incompatible with the heart of the law. On top of this, the use runs parallel to the wetlands within 200 feet, on a separate lot belonging to the Petitioner.

As might be expected, the legal problem is not merely academic. There was the overwhelming testimony of the disturbance of both residents and nearby manufacturing uses in terms of noise, lights, pollution, traffic, oil spills, filling and visual intrusion. The aerial photographs depicted graphically the unsuitability of the site in the context of the surrounding neighborhood.

V. Legislative Purpose:  
The Special Exception.

In the typical special exception case, the question is whether the use presents adverse effects over and above those ordinarily associated with the use in the zoning district. Schultz v. Pritts, 291 Md. 1 (1981); Board of County Commissioners v. Holbrook, 314 Md. 214 (1988); People's Counsel v. Mangione, 85 Md. App. 738 (1991). But BCZR 502.1g also states that a special exception shall not:

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g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor [Bill No. 45, 1982.]

As shown, the County Council has expressed an overriding purpose to protect residential communities. It adopted the legislation upon review of the Planning Board report to that effect. It provided for the specific locational standards, without variance. It gave relief to properly approved nonconforming facilities, along with the potential for site plan variance relief in limited situations. But no variance was provided for new facilities. Moreover, although the law recognizes the importance of trucking to the economy, it underlines repeatedly the more specific purpose of protecting nearby residential uses. (Planning Board Report, BCZR 410A.2, BCZR 410A.4B.7.) In other words, the specific locational standards are paramount.

Philadelphia Road may be, in part, an industrial corridor; other industrial properties along the east (south) side of Philadelphia Road may also face residential areas. But these are not justifications to displace the specific legislative intent. The immediate neighborhood, with mixed residential/light industrial use in close proximity, is unsuitable for trucking facilities because of conflict with the legislation. Rather, trucking facilities must locate in M.H. and M.L. zones with the minimum distance. Dennis Wertz stated that the Rossville Industrial Park, for example, would appear to be a suitable location.

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VI. Legislative Purpose: The Variance

It is impossible to speak of the special exception without mention of the locational standard. The requested variance to put this facility right next to residences (and the wetland) is at the heart of this case because of the specific legislative purpose. Nor should it be forgotten that other variances are requested, such as to minimize the percentage of parking area. BCZR 410A.3B.3.

The combination of variances with a special exception is often a signal that the special exception is inappropriate. But in this case the situation goes further than that. The locational standard, being specific to trucking facilities and fundamental to the legislative purpose is not subject to variance. Indeed, even a facility permitted by right in the M.H. zone would have to meet the requirements. This is not a situation, as with the usual area variance, where a standard set for a generic group of uses (residential, commercial, industrial) is impractical for a particular property because of unique topographic or other characteristics of the property. There is nothing extraordinary about the subject property topographically or otherwise. It is simply too close to residential uses, zones, and wetlands. If a variance were granted here, there would be no way, in principle, to deny one anywhere.

A review of variance law proves the point. BCZR 307 states in its first sentence:

307.1--The zoning commissioner of Baltimore County and

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the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations and from sign regulations, only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship. (Emphasis supplied)

In McLean v. Solex, 270 Md. 208 (1973), the court affirmed a setback variance for apartments in order to save significant trees, topography, natural growth, terrain, and drainage area peculiar to the site. In Loyola Federal Savings & Loan v. Buschmann, 227 Md. 43 (1961), the court affirmed a height variance for an office building because a subterranean water condition prevented underground parking and forced Loyola to use the rear of its lot for parking. As a result, there could not be, as might normally have been expected, a lower building covering more of the lot. Finally, in Red Roof Inns v. People's Counsel, 96 Md. App. 219 (1993), the court reviewed sign variances in the context of the distinct condition of the site.

The issue of "practical difficulty" unique or peculiar to the site makes sense when the context is an area or height standard generic to a broad category of uses. But it does not apply to a use-specific locational standard. In the present case, there is no way to grant a variance without, in effect, destroying or repealing the standard. Absent this critical variance issue, the case would be more like the typical special exception. But the variance sets it apart.

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