

IN RE: PETITION FOR SPECIAL HEARING
E/S Back River Neck Road at
NE Corner Holly Neck Road
(1015 & 1017 Back River Neck Road)
15th Election District
5th Councilmanic District

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY

Case No. 93-10-SPH
Petitioner
Eugene C. Salvo

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing filed by the legal owner of the subject property, Eugene C. Salvo. The Petitioner requests approval of the nonconforming use of an existing convenience/grocery store located on the subject property, zoned R.C. 20, as more particularly described on Petitioner's Exhibit 1.

Appearing on behalf of the Petition were Eugene C. Salvo, property owner, Kirk A. Salvo, Petitioner's nephew, Wendy H. Donars, who operates the business on the site known as Chesapeake Mini-Mart, and Doris Gryetz, a resident of the area. There were no Protestants.

Testimony indicated that the subject property, known as 1015 and 1017 Back River Neck Road, consists of 3.899 acres, more or less, zoned R.C. 20. The property at 1015 Back River Neck Road is improved with a one-story brick building which houses a mini-mart. The adjoining property at 1017 Back River Neck Road is improved with a two-story frame dwelling which is used for residential purposes. Said property is located within the Chesapeake Bay Critical Areas. Testimony indicated that the subject property was down-zoned to an R.C. 20 classification from a D.R. 5.5 zone and previously had been zoned B.L. The R.C. 20 classification was adopted to implement the Chesapeake Bay Critical Areas criteria. Within the County's present cyclical zoning process, the property owner is seeking a

reclassification of the subject property to split zone, same to D.R. 3.5 for the dwelling at 1017 Back River Neck Road, and B.L. for the commercial use at 1015 Back River Neck Road.

As to the history of the subject site, testimony indicated that Wendy Donars has operated the Chesapeake Mini-Mart at 1015 Back River Neck Road since October 1988. Immediately prior to that use, this property was used to support a similar business known as Charlie's Market for nine years. In fact, there was testimony and evidence that 1015 Back River Neck Road has been the site of a convenience/grocery store since approximately the mid-1940s.

Petitioner's Exhibit 1 depicts the subject property as it exists today and the proposed improvements to bring it into compliance with the Zoning Plans Advisory Committee comments submitted by the Department of Traffic Engineering, dated July 17, 1992. Specifically, the property owner plans to construct islands and reconfigure the parking lot area.

As with all nonconforming use cases, the first task is to determine what lawful nonconforming use existed on the subject property prior to the change in this property's zoning classification which prohibited the subject use.

The second principle to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different use, and therefore, breaks the continued nature of the nonconforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered nonconforming. See *McKemy v. Baltimore County, Md.*, 39 Md. App.257, 385 A2d. 96 (1978).

When the claimed nonconforming use has changed, or expanded, then the Zoning Commissioner must determine whether or not the current use represents a permissible intensification of the original use or an actual change from the prior legal use. In order to decide whether or not the current activity is within the scope of the nonconforming use, the Zoning Commissioner should consider the following factors:

"(a) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;

(b) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature, and kind;

(c) Does the current use have a substantially different effect upon the neighborhood;

(d) Is the current use a "drastic enlargement or extension" of the original nonconforming use."

McKemy v. Baltimore County, Md., Supra.

After due consideration of the testimony and evidence presented, it is clear that the subject property has been used continuously and without interruption as a convenience/grocery store since prior to the effective date of the zoning regulations (1945), and as such, has enjoyed a legal nonconforming use. Clearly, the current use predates the property's zoning change which prohibited such use. Furthermore, pursuant to the comments submitted by the Department of Environmental Protection and Resource Management (DEPRM) dated August 25, 1992, the subject property is in compliance with Chesapeake Bay Critical Areas requirements as no intensification or expansion of the use is planned.

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

WHEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 11th day of September, 1992 that the Petition for Special Hearing to approve the nonconforming use of an existing convenience/grocery store on the subject property, zoned R.C. 20, in accordance with the Petitioner's Exhibit 1, be and is hereby GRANTED.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 9/11/92
By [Signature]

ORDER RECEIVED FOR FILING
Date 9/11/92
By [Signature]

ORDER RECEIVED FOR FILING
Date 9/11/92
By [Signature]

ORDER RECEIVED FOR FILING
Date 9/11/92
By [Signature]

Suite 113, Courthouse
400 Washington Avenue
Towson, MD 21204

September 11, 1992

(410) 887-4386

Mr. Eugene C. Salvo
1595 Hyde Park Road
Baltimore, Maryland 21221

RE: PETITION FOR SPECIAL HEARING
E/S Back River Neck Road at NE/Corner Holly Neck Road
(1015 Back River Neck Road)
15th Election District - 5th Councilmanic District
Eugene C. Salvo - Petitioner
Case No. 93-10-SPH

Dear Mr. Salvo:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3351.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Chesapeake Bay Critical Areas Commission
45 Calvert Street, 2nd Floor, Annapolis, Md. 21401

DEPRM

People's Counsel

File



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 1015 Back River Neck Road
which is presently zoned RC 20

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

the non-conforming use of a convenience/grocery store
(@ 3,800 sq ft) in a residential zone.

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

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

Contract Purchaser/Lessee

(Type or Print Name)

Signature

Address

City

State

Zipcode

Agency for Petitioner

(Type or Print Name)

Signature

Address

City

State

Zipcode

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

Legal Owner(s)

Eugene C. Salvo

(Signature)

(Type or Print Name)

Signature

Address

City

State

Zipcode

Agency for Petitioner

(Type or Print Name)

Signature

Address

City

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Agency for Petitioner

(Type or Print Name)

Signature

Address

City

receipt

Account # 80614180
Number

RECEIPT DATED 7/17/92

Item No. 18

HEARING FEES	QTY	PRICE
SPECIAL HEARING (OTHER)	1 X	\$250.00
TOTAL:		\$250.00

NAME OF OWNER: SALVO

Please Make Checks Payable To: Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 124125

DATE 8-21-92 ACCOUNT R-001-6150

AMOUNT \$ 69.79

RECEIVED FROM HCLLY, INC (SALVO)

FOR PIA 9310-SPH 8-26-92 HEARING

VALIDATION OR SIGNATURE OF CASHIER

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: 8-4-92

Re: Eugene Salvo
1595 Hyde Park Road
Baltimore, Maryland 21221

Case #93-10-SPH
8/8 Back River Neck Road, MC Holly Neck Road
1015 Back River Neck Road (Chesapeake Mini Mart)
15th Election District - 5th Councilmanic
Petitioner(s): Eugene C. Salvo
HEARING: WEDNESDAY, AUGUST 26, 1992 at 9:00 a.m. in Rm. 106, Office Building.

Dear Petitioner(s):

Please be advised that \$ 69.79 is due for advertising and posting of the above captioned property and hearing date.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED. 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 106, Towson, Maryland 21204. Place the case number on the check and make same payable to Baltimore County, Maryland. In order to avoid delay of the issuance of proper credit and/or your Order, immediate attention to this matter is suggested.

ARNOLD JABLON
DIRECTOR

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

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

JULY 21, 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 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case #93-10-SPH
8/8 Back River Neck Road, MC Holly Neck Road
1015 Back River Neck Road (Chesapeake Mini Mart)
15th Election District - 5th Councilmanic
Petitioner(s): Eugene C. Salvo
HEARING: WEDNESDAY, AUGUST 26, 1992 at 9:00 a.m. in Rm. 106, Office Building.

Special Hearing for the non-conforming use of a convenience/grocery store.

cc: Eugene Salvo
Kirk Salvo

NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

Lawrence E. Schmidt
Zoning Commissioner of Baltimore County

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

111 West Chesapeake Avenue
Towson, MD 21204 August 6, 1992 (410) 887-3353

Mr. Eugene C. Salvo
1595 Hyde Park Road
Baltimore, MD 21221

RE: Item No. 18, Case No. 93-10-SPH
Petitioner: Eugene C. Salvo
Petition for Special Hearing

Dear Mr. Salvo:

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 indicate the appropriateness of the zoning action requested, but 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 preliminary review by Zoning personnel.

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

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

Your petition has been received and accepted for filing this 18th day of July, 1992

Arnold Jablon
DIRECTOR

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

Petitioner: Eugene C. Salvo
Petitioner's Attorney:

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E.

RE: Zoning Advisory Committee Meeting
for August 3, 1992
Work No. 8

The Developers Engineering Division has reviewed the subject zoning item and we recommend that this site be brought into compliance with the landscape manual.

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

RWB:DAK:s

7-27-92
JW

RECEIVED
AUG 4 1992
ZONING OFFICE

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration and Development Management

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

SUBJECT: PETITIONS FROM ZONING ADVISORY COMMITTEE
August 3, 1992

The Office of Planning and Zoning has NO COMMENTS on the following petitions:

Item No. 18 Eugene C. Salvo
Item No. 20 James & Terry Hooke
Item No. 21 Arthur & Helen Magamen

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.

EMCD:FM:bjs

RECEIVED
AUG 11 1992
ZONING OFFICE

BLANKET.17M/ZAC1

BALTIMORE COUNTY, MARYLAND
OFFICE OF PLANNING AND ZONING
New Courts Building
401 Bosley Avenue
Towson, MD 21204

MEMORANDUM

TO: Arnold Jablon, Director - Zoning Administration & Development Management

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

DATE: August 3, 1992

SUBJECT: PETITIONS FROM ZONING ADVISORY COMMITTEE - July 27, 1992

The Office of Planning and Zoning has no comments on the following petitions:

Eugene C. Salvo - 1015 Back River Neck Rd - Item 18

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

7-27-92.txt
Petitns.txt

RECEIVED
AUG 4 1992
ZONING OFFICE

BUREAU OF TRAFFIC ENGINEERING
DEPARTMENT OF PUBLIC WORKS
BALTIMORE COUNTY, MARYLAND

DATE: July 17, 1992

TO: Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management
FROM: Rabee J. Famili
SUBJECT: Z.A.C. Comments

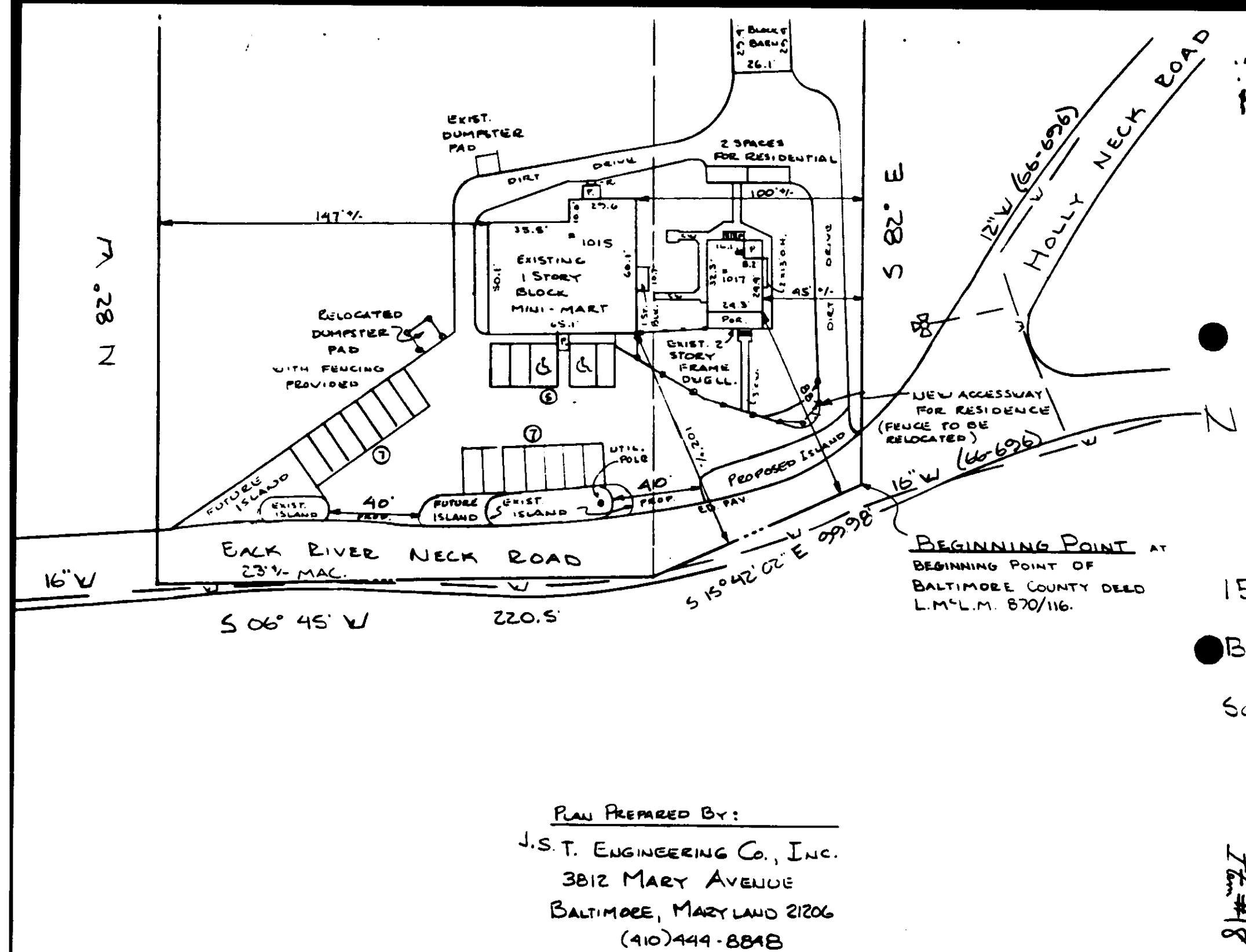
Z.A.C. MEETING DATE: July 27, 1992
ITEM NUMBER: 18

The plan needs to be revised according to the attached sketch.

Rabee J. Famili
Rabee J. Famili
Engineer II

WJS/EP

RECEIVED
AUG 11 1992
ZONING OFFICE



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

JULY 23, 1992

(410) 887-4500

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

RE: Property Owner: EUGENE C. SALVO

Location: #1015 BACK RIVER NECK ROAD - CHESAP. MINI MART
Item No.: + WORK #8 (LJG) Zoning Agenda: JULY 27, 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: *Capt. Jerry D. [Signature]* Noted and Approved
Planning Group Fire Prevention Bureau
Special Inspection Division

JP/KEK

RECEIVED
JUL 27 1992
ZONING OFFICE

Department of Recreation and Parks
Development Review Committee Response Form
Authorized signature *[Signature]* Date 8/15/92

Project Name Waiver Number Zoning Issue Meeting Date
File Number Theresa A. Mahstedt 7-13-92

DED DEPRM RP STP No Comment

COUNT 1

The Marsden Chevrolet, Inc. 15 7-27-92

RP STP No Comment

Baltimore County General Hospital, Inc. 16

RP STP No Comment

John R. and Mary A. Wortman 17

DEPRM RP STP No Comment

Eugene C. Salvo 18

DEPRM RP TE No Comment

COUNT 4

Lois L. Ruckman 10 8-3-92

DED DEPRM RP STP TE No Comment

Colonial Village Company 19

DED DEPRM RP STP TE No Comment

James W. Jr. and Terry A. Hooke 20

DED DEPRM RP STP TE No Comment

Arthur G. and Helen P. Magsamen 21

DED DEPRM RP STP TE No Comment

Fuchs Spices, U.S.A., Inc. 22

DED DEPRM RP STP TE No Comment

Susan J. Blum 23

DED DEPRM RP STP TE No Comment

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold E. Jablon, Director
Office of Zoning Administration
and Development Management
DATE: August 24, 1992
FROM: J. James Dieter
SUBJECT: Petition for Zoning Variance - Item 18
Salvo Property
Chesapeake Bay Critical Area Findings

SITE LOCATION

The subject property is located at 1015 Back River Neck Road. The site is within the Chesapeake Bay Critical Area and is classified as a Resource Conservation Area (RCA).

APPLICANT'S NAME Mr. Eugene Salvo

APPLICANT PROPOSAL

The applicant has requested a Special Hearing to determine the "non-conforming use of a convenience/grocery store (at 3,500 square feet) in a residential zone".

GOALS OF THE CHESAPEAKE BAY CRITICAL AREA PROGRAM

In accordance with the Chesapeake Bay Critical Area Program, all project approvals shall be based on a finding which assures that proposed projects are consistent with the following goals of the Critical Area Law:

1. "Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;
2. Conserve fish, wildlife and plant habitat; and
3. Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts." <COMAR 14.15.10.01.D>

Mr. Arnold E. Jablon
August 24, 1992
Page 2

Regulation: Grandfathering. After program approval, local jurisdictions shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of program approval. <COMAR 14.15.02.07.A>

Finding: If this use is determined to be a non-conforming use then its continuation shall be allowed. However, any intensification or expansion shall have to comply with all Critical Area requirements. This property is also currently in the Growth Allocation process. This is the process by which property owners may apply for a change in the zoning and Critical Area classification of properties within the Chesapeake Bay Critical Area. If this property is awarded Growth Allocation then its zoning will be returned to its former BL zone.

CONCLUSION

The Zoning Variance shall be conditioned so the project proposal is in compliance with the Chesapeake Bay Critical Area Regulations and Findings listed above. This proposal does comply with Chesapeake Bay Critical Area Regulations and is therefore approved. If there are any questions, please contact Ms. Patricia M. Farr at 887-2904.

J. James Dieter
J. James Dieter, Director
Department of Environmental Protection
and Resource Management

JJD:MSP:ju

c: Mr. Eugene Salvo
Mr. Kirk Salvo

SALVO/TXTNNS

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management
DATE: August 25, 1992
FROM: J. Lawrence Pilson
Development Coordinator, DEPRM

SUBJECT: Zoning Item #18
#1015 Back River Neck Road
Chesapeake Mini Mart

Zoning Advisory Committee Meeting of July 27, 1992

The Department of Environmental Protection and Resource Management offers the following comments on the above referenced zoning item.

See attached Chesapeake Bay Critical Area Findings.

JLP:ju

JABLON/S/TXTJEU

RECEIVED
AUG 28 1992
ZONING COMMISSIONER

RECEIVED
AUG 26 1992
ZONING OFFICE

93-10-SPH 8-26

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration & Development Management

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

DATE: September 15, 1992

SUBJECT: 110 Back River Neck Road

INFORMATION:
Item Number: 37

Petitioner: Salvo Auto Parts, Inc.

Property Size: 9986 Square Feet

Zoning: BL-CS-2

Requested Action: Special Exception

Hearing Date: 9/15/92

SUMMARY OF RECOMMENDATIONS:
This petitioner is requesting a special exception for one 12' x 25' illuminated double face advertising sign structure.

The Office of Planning and Zoning recommends DENIAL of the petitioner's request.

Located 150 feet from the proposed outdoor advertising sign are existing residences on both sides of Hopewell Avenue. A 25 feet high, illuminated sign would be very visible to these residents from that location and would be a detriment and a distraction to those residents.

Prepared by: *Francis Mulvey*

Division Chief: *Emir McDaniil*

PK/ENC/D/FM:rdn

37.ZAC/ZAC1

