SAVE OUR STREAMS

258 Scotts Manor Drive * Glen Burnie, MD 21061
(410) 969-0084 * (800) 448-5826 * Fax (410) 969-0135

3rd '94

7/5/94

Board of Directors

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Executive Director

TO: Timothy Kotroko
Deputy Zoning Commissioner
Baltimore County Court House
111 West Chesapeake Avenue
Towson, Maryland 21204

RECEIVED
JUL 5 1994
ZADM

FROM: Board of Directors
Baltimore Delegation
Save Our Streams

DATE: July 1,1994

RE: Deny Request of Zoning Special Exception
Case No. 94-437-SPH 2815 Merryman's Mill Road

Save Our Streams is a citizen action group concerned with helping individual citizens learn how to protect our streams and water supply.

We urge you to deny this request for a trucking facility, Class II and office at 2815 Merryman's Mill Rd., on residentially zoned (RC4) land.

Our reasons are:

1) Such use should not be allowed so close to the reservoir. The parcel lies on the south side of Merryman's Mill Road and is with-in 200 feet of a tributary of Loch Raven drinking water reservoir;

2) This land was zoned RC4 (watershed protection) in the 1992 zoning cycle. It should not be converted to urban use. Such a conversion of residential to urban use in the watershed would contradict the intent of the "Reservoir Management Agreement",

3) The owner has allowed a former, non-conforming use to lapse since the 1992 zoning as RC4.

Therefore, we urge that you deny this zoning request for a trucking facility, Class III at 2815 Merryman's Mill Rd., for the preservation of drinking water quality and to avoid setting a precedent on watershed RC4 zones.

RECEIVED
6 1994
ZONING COMMISSIONER

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SAVE OUR STREAMS

258 Scotts Manor Drive * Glen Burnie, MD 21061
(410) 969-0084 * (800) 448-5826 * Fax (410) 969-0135

Board of Directors

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kathleen kennedy townsend
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Dr. Polly Walker Worth
Director
Robert A. Mills, III
Director
Charles Tucker
Director
Barbara Taylor
Executive Director

THE PRESIDENT'S ENVIRONMENT AND CONSERVATION CHALLENGE AWARD 1992

TO: County Board of Appeals, Baltimore County
Old Court House, Room 49
400 Washington Avenue
Towson, Maryland 21204

FROM: Board of Directors, Baltimore Delegation
Save Our Streams

DATE: December 7, 1994

RE: Deny Request of Zoning Special Exception
Case No. 94-437-SPH 2815 Merryman's Mill Road

Save Our Streams is a citizen action group concerned with helping individual citizens learn how to protect our streams and water supply.

We urge you to deny this request for a trucking facility, Class II and office at 2815 Merryman's Mill Rd., on residentially zoned (RC4) land.

Our reasons are:

1) Such use should not be allowed so close to Loch Raven Reservoir. The parcel lies on the south side of Merryman's Mill Road and is within 200 feet of a tributary of Loch Raven drinking water reservoir. In addition to the stream, several springheads and small associated non-tidal wetlands exist within 200 feet of the subject facility and downslope of it;

2) This land was zoned RC4 (watershed protection) in the 1992 zoning cycle. It should not be converted to urban use. Such a conversion of residential to urban use in the watershed would contradict the intent of the "Reservoir Management Agreement";

3) The owner has allowed a former, non-conforming use to lapse since the 1992 zoning as RC4.

Therefore, we urge that you deny this zoning request for a trucking facility, Class II at 2815 Merryman's Mill Rd., for the preservation of drinking water quality and to avoid setting a precedent on watershed RC4 zones.

D:\WP\WINS\ADMIN SOS\MERRYMAN.LTR December 6, 1994 AM

printed on recycled paper

531 Hampton Lane
Towson MD 21286
June 27, 1994

94-437-SPH

Mr. Timothy M. Kotroco
Deputy Zoning Commissioner
400 Washington Avenue
Towson MD 21204

RECEIVED
JUN 29 19[illegible]
ZONING COMMISSIONER

Dear Mr. Kotroco:

As someone who is very interested for many reasons in the well being of the Loch Raven watershed I must comment on the continued pressure presented by the Clark family interests on their Merryman's Mill Road property. For 40 years they have had the opportunity to use their property for their profit, certainly not an issue to criticize them for. They seem to have managed their business and acreage very well.

However, there was always that threat of an oil spill. We are very fortunate not to have had to meet that emergency. Therefore, in the light of the removal of the large threat posed by oil storage tanks it seems unwise to allow the possibility once again with the introduction of a "trucking facility". Is there any assurance that trucks of the thousands of gallons capacity do not come to the facility and inadvertently spill large quantities of oil? And then, what is the result over a period of years of the accumulative effect of small spills so close to the watershed?

I applauded the removal of the Clark Oil Co storage tanks as assurance that our county planners are serious about providing water of superior quality to the Baltimore metropolitan area. I interpreted their decision as also reflecting their serious preservation of plant and animal habitat in the natural areas surrounding the reservoir. The well being of the reservoir and its watershed is more fragile than it was 40 years ago. More people are dependent on it; more wildlife is dependent on it for space to maintain the biological diversity of the region.

Therefore, I ask that you do not grant permission for a class 2 trucking facility and office in the residential zone on Merryman's Mill Road, formerly the Clark Oil Company.

Thank you for your attention.

Sincerely,
Joy Wheeler

2619 Merrymans Mill Road
Phoenix, Maryland 21131
15 June 1994

Subject: Zoning Change Request
Case #94-437-SPH (Item #421)

Zoning Commissioner
Baltimore County
400 Washington Avenue
Towson, Maryland 21204

Dear Sir,

As home owners of 2619 Merrymans Mill Rd, we believe that a zoning classification change should not be granted for 2815 Merrymans Mill Rd.

After deciding to move to Maryland in 1992, we made an extensive search and selected our present home. The general landscape, location and appearance of other residences along the road were deciding factors.

A trucking facility as proposed, would change the appearance of the neighborhood and set a precedent which might be used for future requests. The result could be a depreciation of property values and suitability.

We trust you will give serious consideration to our views. Thank you.

Sincerely,
William R. BENN
W.illiam R. BENN

PROTESTANT

NAME	ADDRESS	PHONE
Joy Wheeler	531 Hampton Lane, Towson 21131	
Beverly C. Crook	2529 Merrymans Mill Rd., Phoenix	
Anneke Davis	2226 Crett Road, Baltimore 21209	367-0567
	for Greater Baltimore Environmental Center	
* William W. Leaman	19 Gerrhterr Drive Phoenix 21131	592-6533
	For G.B.A. Neutral Position - Information for Association	
Clyde E. Martin & Alice J. Martin	14908 Mount Nye, Phoenix, MD, 21131	472-2128
H. Calvin Huether	13805 Summer Hill Drive Phoenix, MD 21131	667-0431
William R. Benn	2619 Merrymans Mill Rd. Phoenix MD 21131	667-9141
Robert M. Thomas	2720 Merrymans Mill Rd. Phoenix MD 21131	666-2175
Hugh W. Anders Jr.	13704 Princess Anne Way Phoenix MD 21131	666-2734
Bruce R. Traggorth	13707 Manda Mill Ln Phoenix 21131	666-2565
Mrs. Frank Bond (Sheila)	13414 Blythewood Rd. Phoenix, MD. 21131	628-3910
Wm. H. Hopkins	13401 Bladon Rd. Phoenix, MD. 21131	667-6754
Mrs. Marguerite Hopkins	13401 Bladon Rd. Phoenix, MD 21131	667-6754
Allen Tracey	13408 Blythewood Rd Phoenix MD 21131	628 0814
Grace Anecharico	2600 Merrymans Mill Rd Phoenix Md 21131	666-9426
Frank Anecharico	2600 Merrymans Mill Rd. Phoenix Md 21131	666-9426
Robert S. Brown	2515 Merrymans Mill Rd Phoenix Md 21131	666-3046
John L. Zeman	13600 Jarretts View Terr. Phoenix MD 21131	666-1068
Myrna A. Zeman	13601 Jarrettsville Pike, Phoenix, MD. (In Phoenix Card)	General Community Interest 666-1068
Katherine Clark	2826 Merrymans Mill Rd, Phoenix, MD	666-7639
Russell May	13700 Killarney Ct. Phoenix	667-4746
Bill Brooks	13412 Blythewood Road Phoenix	683-1834
Patrick Pike	2501 Garden Court, Phoenix	666-5670
J. Owen	308 Merrie Hunt Drive, Lutherville 21093 Untamed Creation Coalition, Inc.	252-5575

- over -

Paul A. Davalos 13806 Princess Anne Way Phoenix MD 683-1747

PETITIONER

NAME	ADDRESS	PHONE #
J. Finley Penrose	1 Sunnyview Dr Phoenix MD 21131	666-7498
David B. Morrison	14803 Jarrettsville Pike P.O. Box 149 Phoenix MD	667-4984

hydro-geologist tested the soil and found that it has one of the most rapid "draw-down" rates in the county. That is, anything spilled on the surface will immediately go into the groundwater and then into the reservoir. (Copy submitted for file.)

In spite of all this, the councilman refused a zoning change.

In 1992, there was again support for RC4 zoning. But by then, Clark Oil had been sold, the storage tanks pulled out of the ground, and there was no excuse for keeping ML zoning, so it was returned to RC4.

In addition to the public's efforts to do something about the inappropriate zoning at the Clarks, I filed a personal complaint in 1984, stating that the Clark business did not conform to ML regulations. There was a hearing before then-Zoning Commissioner Arnold Jablon and this became Case C-84-718.

I was present at the hearing with my lawyer, and the Clarks were represented by their son, who was then president of the company and who is now deceased, and by their lawyer.

My lawyer and I contended that the business did not have the required setbacks, that it was too close to residential property, and a number of other irregularities. But one point that we stressed was that we believed the Clarks were operating a Class II Trucking Facility and under ML regulations, they needed a special exception for that. The Clarks argued that they did not have a trucking facility.

On July 24, 1984, Mr. Jablon issued his decision and ruled

that the Clarks were in compliance with ML requirements on all points, except they did not have impervious paving. On the matter of the trucking facility, Mr. Jablon wrote: "...I conclude that the Defendant is not conducting a Class II trucking facility, which is defined by the BCZR as: 'a trucking facility other than a Class I...including a truck yard (the primary purpose of which is to accommodate the parking or storage of trucks, truck trailers, or truck tractors.'

Mr. Jablon further concluded, "There is no question that if the business, as existing, is a permitted use in the ML zone, the use of the trucks, as described in testimony, are accessory to the operation of the business, and therefore permitted pursuant to Section 253.1F, (BCZR). As for the garage (machine-shop), it also does not violate the regulations. After a review of the testimony and site plan, it is true that the garage is within 100 feet of the residential zone boundary. However, Section 253.4, BCZR, allows in addition to passenger-automobile accessory parking, those uses permitted in an MR zone, subject to the limitations of Section 241. The garage, and the expanded paved area, represent accessory uses which are permitted in the MR zone. The garage is used solely for the maintenance and repair of company equipment and vehicles. There is no violation." (end of quote.)

According to this ruling, there was never a trucking facility on the Clark property. The trucks and the buildings were all accessories of the oil business, which has now ended.

Therefore it seems to me that this hearing isn't for a special exception, but is a request for new zoning -- and, of course, this is not the forum for that.

From the very beginning, zoning on the Clark property has been purely for the benefit of one property owner without any consideration of its impact on neighboring properties, the community, or the watershed. Now that the zoning is finally back to RC4, it should stay residential -- with no exceptions!

Thank you.

RESERVOIR WATERSHED PROTECTION PROGRAM
c/o Baltimore Metropolitan Council
601 North Howard Street
Baltimore, Maryland 21201

RECEIVED
ZONING COMMISSIONER

July 6, 1994

Mr. Timothy Kotroco
Deputy Zoning Commissioner
Baltimore County
400 Washington Avenue
Towson, MD 21204

RE: Case Number 94-437
2815 Merrymans Mill Road

Dear Mr. Katroco:

The Reservoir Watershed Protection Program has been advised of the above referenced case involving a non-conforming use in the Loch Raven Reservoir drainage area.

The following comments are offered for your consideration as you review this request. First some background information is given on the purpose and goal of the Reservoir Watershed Management Agreement. Then reservoir protection action strategies relating to zoning are cited.

All three of Baltimore's major water supply reservoirs-- Loch Raven, Prettyboy, and Liberty-- were found in the early 1970s to be suffering from high levels of nutrients. Phosphorus from sewage treatment plants, agriculture and urban development was causing excessive growth of algae. Concern over the quality and long term health of the region's water supply led to the 1984 Reservoir Watershed Management Agreement. Goals adopted by the Agreement are to:

Immediately prevent increased phosphorus and sediment loading to all three reservoirs; and

Reduce phosphorus levels in the reservoirs to acceptable levels as soon as possible.

Continued nutrient reductions are essential to preserve the region's water supply. Other pollutants-- such as sediments, metals, and volatile organic compounds-- are also of concern. Since zoning influences the type and intensity of future land uses and resultant pollutant loadings, the 1990 Action Strategy lists several policies agreed to by the signatories which address zoning:

Conservation and agricultural zoning of the reservoir watershed areas should be maintained at its present extent and not reduced.

Baltimore and Carroll Counties will protect the reservoir watersheds by limiting in so far as possible additional urban development zoning within the reservoir watersheds.

Increased emphasis will be given to protection of forest land and tree stands to protect reservoirs, streams and the Chesapeake Bay.

The reason why the above policies are important is that, if they are followed along with the other action strategies, pollutants flowing into the reservoirs in the future will be reduced or minimized.

We understand, however, that the subject property is already zoned RC-4 so the above recommendations do not directly apply in this case, and that non-conformance is a legal issue rather than a rezoning issue. Nevertheless, we urge that they be considered to the extent they are applicable in this case.

Sincerely,

Jack Anderson
Coordinator
Reservoir Watershed
Protection Program

cc: Members
Reservoir Watershed Protection Subcommittee

WATERSHED PROTECTION COALITION, INC.
P.O. BOX 212, TIMONIUM, MD. 21094-0212
252-5515

RECEIVED
24
ZONING COMMISSIONER

August 22, 1994

Deputy Zoning Commissioner
Timothy M. Kotroco
Suite 113, Courthouse
400 Washington Avenue
Towson, Maryland 21204

Dear Mr. Kotroco:

RE: Case No 94-437-SPH, Thomas G. Clark, et ux

The Board of the Watershed Protection Coalition, Inc. is shocked and dismayed by the decision rendered on July 29th relating to the property at 2815 Merryman's Mill Road. We, therefore, fully support the appeal of this decision by Ms. Beverly Crook.

This decision, based on legal zoning technicalities, ignore environmental realities of this case. RC-4 zoning belongs on this property and should be maintained.

Allowing this abuse of RC-4 zoning now is to encourage further abuses of this Resource Conservation Zoning designed to protect Baltimore County's water supply - the City-Owned Reservoir Watersheds.

This decision also challenges the validity of expert planning by our Planning Department whose efforts are directed to protecting Reservoir Watersheds through Baltimore County's adopted Master Plan.

Executive Hayden and numerous Baltimore County officials reiterated their commitment to protecting the Loch Raven Reservoir Watershed recently as they supported our Coalition's efforts opposing development by the Baltimore Municipal Golf Corporation in the Loch Raven Reservoir Watershed because it was an inappropriate land use that threatened water quality.

The Chesapeake Bay Foundation, in its letter of April 4, 1994, to City Council President, Mary Pat Clarke, stated, "The restoration of the Chesapeake Bay can only succeed if government provides protection for the watersheds which feed it." Loch Raven's waters feed into the Chesapeake Bay.

Protecting water quality is more imperative than ever before. Predicted growth demands that greater vigilance and more protection to our drinking water supplies is needed - not less.

Prolonged efforts through the years to rightfully restore this property to RC-4 have been costly in time, effort and money. A trucking facility has no place within sight of

Loch Raven's waters. The opportunity to protect the reservoir and to restore proper designated zoning to this property is NOW.

The July 29th decision casts a serious cloud on Baltimore County's stewardship partnership with Baltimore City and Carrol County to protect the Reservoir Watersheds. Our Watershed Protection Coalition, Inc., therefore, supports Ms. Beverly Crook's appeal of the decision on this case.

Sincerely,

for the Coalition Board of Directors

Copy to: Executive Roger Hayden
People's Council Peter Max Zimmerman
Councilman Dutch Ruppersberger
Mr. James Dieter
Mr. Ralph Cullison
Mr. Tom McClurkin
Mr. Jack Anderson
Ms. Beverly Crook

WATERSHED PROTECTION COALITION, INC.
P.O. BOX 212, TIMONIUM, MARYLAND 21094-0212
252-5515

December 7, 1994

County Board of Appeals
of Baltimore County
Arnold Jablon, Director / ZADM

Re: Case No. 94-437-SPH – William T. Hackett

Baltimore County has no water supply system of its own. The three City-owned reservoir-watersheds exist mainly in Baltimore County; the water supply system is owned and controlled by Baltimore City.

Loch Raven Reservoir Watershed is the most threatened and most often polluted of the three City Owned Reservoir Watersheds. Development surrounding the reservoir watershed in Baltimore County, sediment run-off, chemical pollution, excessive nutirents and distructive behaviour by recreational users all contribute to the degradation of our drinking water - most of it contributed by people of Baltimore County..

Baltimore County's Resource Conservation -4 (RC-4) Zoning is the only weapon in place to prevent this degradition to our drinking water supply in the Loch Raven Reservoir.

Mrs. Crook has fought valiantly through many years to have Baltimore County restore the rightful and necessary RC-4 zoning on the Clark Oil Property and to correct the misapplied and incorrect zoning condoned in the past on this property. To allow the previous zoning abuse of this Resource Conservation area to continue in any form would be irresponsible and unconscionable on the part of Baltimore County .

It behooves Baltimore County to recognize its role in protecting Loch Raven Reservoir and enforcing RC-4 in accordance with its Master Plan as well as its agreement with Baltimore City, Howard and Carroll Counties in the Watershed Management Agreement.

The Watershed Protection Coalition, therefore, earnestly requests that no Class II Trucking Facility be allowed on this location and that RC-4 be enforced.

Sincerely,

The Watershed Protection Coalition

Copy to: Hon. Dutch Ruppersberger
Reservoir Watershed Protection Subcommittee
Baltimore County DEPRM

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: W. T. Hackett
C. W. Clark
J. H. Lipowitz

DATE: December 30, 1994

FROM: kathi

SUBJECT: Case No. 94-437-SPH /Thomas G. Clark, et ux

Regarding the subject matter, scheduled for public deliberation on Thursday, January 5, 1995 at 1:30 p.m., attached for your information and review are copies of the following:

1) Post Hearing Memorandum filed December 29, 1994 by Conwell F. Sapp, Esquire, on behalf of Petitioners, Thomas and Edith Clark.

2) Protestants' Memorandum in Lieu of Final Argument filed by J. Carroll Holzer, Esquire, on behalf of Protestants /Appellants, Beverly C. Crook, et al.

3) Memorandum of People's Counsel filed December 30, 1994.

A copy of the final Deliberation Notice was forwarded to you on December 21, 1994.

Should you have any questions regarding the above, please call me.

Attachments

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

September 23, 1994

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. 94-437-SPH

THOMAS G. CLARK, ET UX
S/s Merryman's Mill Road, 285' SW of c/l of Killarney Court (2815 Merryman's Mill Road)
10th Election District
3rd Councilmanic District

SPH -To approve Class II Trucking Facility with office on residentially-zoned property as nonconforming use

7/29/94 -Z.C.'s Order in which Petition for Special Hearing was GRANTED with restrictions.

ASSIGNED FOR: WEDNESDAY, DECEMBER 7, 1994 at 10:00 a.m.

cc: J. Carroll Holzer, Esquire — Counsel for Appellants /Protestants
Beverly C. Crook, et al — Appellants /Protestants

Conwell F. Sapp, Esquire — Counsel for Petitioners
Mr. & Mrs. Thomas Clark — Petitioners

Robert R. Bowie, Jr., Esquire — Counsel for Protestant
Katherine Clark — Protestant

Mr. J. Finely Ransone
Mr. Patrick Pike
Ms. Josephine Owen

People's Counsel for Balto. County
Pat Keller
Lawrence E. Schmidt
Timothy H. Kotroco — Docket Clerk /ZADM
W. Carl Richards, Jr. /ZADM — Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer
Administrative Assistant

PLEASE RETURN SIGN AND POST TO ROOM 49 ON DAY OF HEARING.

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

December 15, 1994

NOTICE OF DELIBERATION

Having concluded this case on December 7, 1994, the County Board of Appeals has scheduled the following date and time for deliberation in the matter of:

THOMAS G. CLARK, ET UX - Petitioner
CASE NO. 94-437-SPH

PLEASE NOTE THAT MEMORANDUMS ARE DUE FRIDAY, DECEMBER 30, 1994 (Original and three copies).

DATE AND TIME : Thursday, January 5, 1995 at 9:00 a.m.

LOCATION : Room 48, Basement, Old Courthouse

cc: J. Carroll Holzer, Esquire — Counsel for Appellants /Protestants
Beverly C. Crook, et al — Appellants /Protestants

Conwell F. Sapp, Esquire — Counsel for Petitioners
Mr. & Mrs. Thomas Clark — Petitioners

Katherine Clark
Mr. J. Finely Ransone
Mr. Patrick Pike
Ms. Josephine Owen

People's Counsel for Balto. County
Pat Keller
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer
Administrative Assistant

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

December 21, 1994

AMENDED NOTICE OF DELIBERATION /(Change in Time)

Having concluded this case on December 7, 1994, the County Board of Appeals had scheduled the following date for deliberation. However, please note that the time has been changed to 1:30 p.m. for the deliberation in the matter of:

THOMAS G. CLARK, ET UX - Petitioner
CASE NO. 94-437-SPH

PLEASE NOTE THAT MEMORANDUMS ARE DUE FRIDAY, DECEMBER 30, 1994 (Original and three copies).

DATE AND TIME : Thursday, January 5, 1995 at 1:30 p.m.

LOCATION : Room 48, Basement, Old Courthouse

cc: J. Carroll Holzer, Esquire — Counsel for Appellants /Protestants
Beverly C. Crook, et al — Appellants /Protestants

Conwell F. Sapp, Esquire — Counsel for Petitioners
Mr. & Mrs. Thomas Clark — Petitioners

Katherine Clark
Mr. J. Finely Ransone
Mr. Patrick Pike
Ms. Josephine Owen

People's Counsel for Balto. County
Pat Keller
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clark /ZADM
Arnold Jablon, Director /ZADM

FYI copies to: W. T. Hackett
C. W. Clark
J. H. Lipowitz

Kathleen C. Weidenhammer
Administrative Assistant

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

December 15, 1994

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

Conwell F. Sapp, Esquire
REESE AND CARNEY
10715 Charter Drive
Columbia, MD 21044

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

RE: Case No. 94-437-SPH
Thomas G. Clark, et ux

Dear Counsel:

This letter will confirm my conversation with you this date regarding written memorandums (original and three copies) which are now due in the Board's office by Friday, December 30, 1994, as opposed to the date originally set at the conclusion of the hearing on December 7th.

Also, open deliberation in this matter has been scheduled for Thursday, January 5, 1995 at 9:00 a.m. (see enclosed copy of Notice of Deliberation).

Very truly yours,

Kathleen C. Weidenhammer
Administrative Assistant

Enclosure

Printed with Soybean Ink on Recycled Paper

June 18, 1994

TO: Mr. Timothy Kotroco
Deputy Zoning Commissioner, Baltimore County

FROM: Beverly C. Crook
2829 Merryman's Mill Road
Phoenix, Maryland 21131

RE: Case #94-437-SPH, Item 421

Enclosed is the statement that I read at the Special Hearing for the above case on June 17, 1994. Thank you for entering it into the file.

Regardless of how this matter turns out, I felt that you handled the hearing in a fair and even-handed manner and that was also the consensus among those present. We are grateful for your patience.

I should appreciate it if you will send me a copy of your decision, so that I can pass it along to the various groups that are concerned about zoning on this site.

Thank you.

CASE #94-437-SPH, Item 421

June 17, 1994

SPECIAL HEARING - Re. Class II Trucking Facility & Office at 2829 Merryman's Mill Road, Phoenix, Md. 21131

TESTIMONY by Beverly C. Crook
2829 Merryman's Mill Road
Phoenix, Maryland 21131

(This property joins the Clark property on the East.)

I've lived on Merryman's Mill Road for over forty years, but in recent years, commercial activity at the Clarks has become a serious problem that has eroded not only the quality of life on my property, but also its value. Since I'm very familiar with the history of this zoning, I'd like to explain what has happened on this property so that you can put this latest zoning request into perspective.

When my husband and I moved to Merryman's Mill Road, Mr. Clark was operating a little one-man heating oil business that we were scarcely aware of, because it was small, and because of the thick woods separating us. We thought that expansion of the business was impossible, since the property is, quite literally, on the banks of Loch Raven and on two streams feeding into the reservoir.

However, in the late 70's, Mr. Clark turned the business over to his three children, and they began to expand it. They built a two-story office building and a garage/machine shop large enough to service tank trucks. They also conducted fill operations beside a stream to create more useable land, and cut

trees so that the business became visible from my property. And all of this was done without a change in the RC4 zoning.

But instead of being penalized for illegal development, the Clarks were given "Industrial Zoning", ML, to cover up the illegalities. This was done during the Comprehensive rezoning of 1980, but without going through the regular process. At that time, a zoning loophole allowed Council members to slip in last-minute zoning changes without telling anyone. In this case, not even the Planning Dept. knew about it.

When the new zoning was finally discovered, people were outraged by the way it had been done, but we were told that no action could be taken except during the 4-year Comprehensive Rezoning cycle.

So in 1984, 5 community associations and 7 environmental groups requested a change back to RC4 zoning. This would not have put the Clarks out of business, but it would have curbed expansion. The issue was supported through four public hearings without one word of opposition, not even from the Clarks. Yet the district Councilman would not agree to a zoning change. Then at the last minute, and through another loophole, he did return some land to RC4. But, as it turned out, this land was in a ravine, while ML remained on all level land.

During the next 4-year rezoning, in 1988, community and environmental groups again requested a return of RC4, and this time they were joined by Baltimore City, the Regional Planning Council, and Baltimore County's Environmental Dept. The County's

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

August 30, 1994

Conwell F. Sapp, Esquire
Reese and Carney
10715 Charter Drive
Columbia, Maryland 21044

RE: Petition for Special Hearing
S/S Merryman's Mill Road
285' SW of c/l of Killarney Court
(2815 Merryman's Mill Road)
10th Election District
3rd Councilmanic District
Thomas G. Clark, et ux - Petitioner
Case No. 94-437-SPH

Dear Mr. Sapp:

Please be advised that an appeal of the above-referenced case was filed in this office on August 24, 1994 by J. Carroll Holzer, P.A., on behalf of appellants Beverly Crook, Individually, and Greater Cambria Association, Inc.; Watershed Protection Coalition, Inc.; and Baltimore Bird Club. All materials relative to the case have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Helene Kehring at 887-3351.

Sincerely,

ARNOLD JABLON
Director

AJ:hek

cc: Mr. and Mrs. Thomas Clark
Mr. J. Finley Ransone
Robert R. Bowie, Esquire
Mr. Patrick Pike
Ms. Josephine Owen
People's Counsel

94 AUG 31 P1:12:43

94-437-SPH

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APPEAL

Petition for Special Hearing
S/S Merryman's Mill Road
285' SW of c/l of Killarney Court
(2815 Merryman's Mill Road)
10th Election District - 3rd Councilmanic District
Thomas G. Clark, et ux - PETITIONER
Case No. 94-437-SPH

Petition(s) for Special Hearing

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

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

Miscellaneous Correspondence (5)

Two Citations for Civil Zoning Violations - Case Nos. 94-197A & 94-197B (3/18/94)

Testimony by Beverly C. Crook (6/17/94)

Post Hearing Memorandum - Submitted by Conwell F. Sapp (Certificate of Service 6/23/94)

Post Hearing Reply Memorandum of Law on behalf of Katherine Clark Submitted by Robert R. Bowie, Jr. (Certificate of Service 7/1/94) With attached memo from J. Lawrence Pilson, DEPRM, (6/17/94)

Petitioner's Exhibits:
1A-R - Copy of 19 photographs
2A-Z - 26 Photographs
3 - Plat to accompany petition (12/29/93)
4 - Photogrammetric Map of Merrymans Mill Rd. Adopted by the Baltimore County Council (10/14/80)
5 - Photogrammetric Map of Merrymans Mill Rd. Adopted by the Baltimore County Council (11/13/84)
6 - Comprehensive Zoning Map (10/13/88) Adopted by the Baltimore County Council
7 - Comprehensive Zoning Map (10/15/92) Adopted by the Baltimore County Council
8 - Photogrammetric Map of Merrymans Mill Rd. Adopted by the Baltimore County Council (10/7/76 & 10/8/76)
9 - Photogrammetric Map of Merrymans Mill Rd. Adopted by the Baltimore County Council (3/24/71)
10 - Use Restrictions signed by Thomas G. Clark and Edith P. Clark (10/11/88)

Protestant's Exhibits:
1 - Five copies of microfilm of pertinent correspondence, petitions and zoning commissioner's order (85-222-XSP)
2 - Memo to J. James Dieter (2/19/88)
3 - Testimony by Mrs. J. Owen (6/17/94)

Zoning Commissioner's Order dated July 29, 1994 (Granted)

Notice of Appeal received on August 24, 1994 from J. Carroll Holzer, P.A., on behalf of Beverly Crook, Greater Cambria Assoc., Inc., Watershed Protection Coalition, Inc.; and Baltimore Bird Club

cc: J. Carroll Holzer, Holzer & Lee, 305 Washington Ave., Suite 502 Towson, Maryland 21204
Conwell F. Sapp, Esquire, Reese & Carney, 10715 Charter Dr. Columbia, MD 21044
Mr. and Mrs. Thomas Clark, 2815 Merrymans Mill Rd., Phoenix, MD 21131
Mr. J. Finley Ransone, P.O. Box 10160, Towson, MD 21285-0160
Robert R. Bowie, Jr., Esquire, Bowie and Jenson 29 W. Susquehanna Ave., Towson, MD 21204
Patrick Pike, 2501 Carsden Ct., Phoenix, MD 21131
Ms. Josephine Owen, 308 Merrie Hunt Dr., Lutherville, MD 21093
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Patrick Keller, Director, Planning & Zoning
Timothy M. Kotroco, Deputy Zoning Commissioner
W. Carl Richards, Jr., Zoning Manager
James H. Thompson, Zoning Supervisor
Docket Clerk
Arnold Jablon, Director of ZADM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

DATE: March 31, 1995

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Closed File: Case No. 94-437-SPH
THOMAS G. CLARK, ET UX
10th E; 3rd C

As no further appeals have been taken regarding the subject case, we are closing the file and returning same to you herewith.

Attachment

County Board of Appeals of Baltimore County

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

March 31, 1995

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Case No. 94-437-SPH
THOMAS G. CLARK, ET UX

Dear Mr. Holzer:

As no further appeals have been taken regarding the subject matter, we have closed the file and returned same to the Office of Zoning Administration and Development Management (ZADM), along with any exhibits entered in this matter. The Zoning Office maintains the permanent file.

Anyone interested in this case can contact Gwen Stephens in Zoning Administration at 887-3391 upon receipt of this letter. By copy of this letter, all parties of record that may have an interest in this file have been notified. Please note that exhibits will not be released by ZADM until after the file has been microfilmed. Therefore, there may be a considerable time lapse between the date of this letter and actual retrieval of any exhibits.

Sincerely,

Charlotte E. Radcliffe
Legal Secretary

cc: Beverly C. Crook, et al
Conwell F. Sapp, Esquire
Mr. & Mrs. Thomas Clark
Katherine Clark
People's Counsel for Baltimore County

Printed with Soybean Ink on Recycled Paper

9/23/94 -Notice of Assignment for hearing scheduled for Wednesday, December 7, 1994 at 10:00 a.m. sent to following:

J. Carroll Holzer, Esquire
Beverly C. Crook, et al
Conwell F. Sapp, Esquire
Mr. & Mrs. Thomas Clark
Robert R. Bowie, Jr., Esquire
Katherine Clark
Mr. J. Finely Ransone
Mr. Patrick Pike
Ms. Josephine Owen
People's Counsel for Balto. County
Pat Keller
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clark /ZADM
Arnold Jablon, Director /ZADM

12/07/94 -Hearing concluded before Board; memos due from counsel Friday, ~~January 6, 1995~~; deliberation to be scheduled. (H.C.L.)

12/30/94 Holzer 12/27/94
Sapp 12/27/94
PC 12/27/94

12/15/94 - Date for memos moved to Friday, December 30, 1994 (one week earlier); T/C to S. Leese for C. Holzer; and Connie Sapp regarding change in date; also spoke with C. Demilio & F. Zimmerman regarding change.

To schedule for deliberation on Thursday, January 5, 1995 at 9:00 a.m.; Notice of helibreration sent to parties; confirmed availability of Board (H.C.L.) on 1/05/95.

-Letter to parties confirming change in due date for memos.

12/21/94 -Amended Notice of Deliberation sent to parties; matter reset for deliberation / same date (1/05/95) at 1:30 p.m. in lieu of morning hour originally assigned. Copy also sent to Board members.

12/30/94 -All memos having been filed, copies were sent out to each Board member (Hackett, Clark, Lipowitz).

1/05/95 -Public deliberation held and concluded; petition for special hearing for nonconforming use granted.; Written Opinion and Order to be issued by Board; Appellate period to run from date of that written Order. (H.C.L.)

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Thomas G. Clark, et ux
Case No. 94-437-SPH

DATE : January 5, 1995 @ 1:30 p.m.

BOARD /PANEL : William T. Hackett (WTH)
C. William Clark (CWC)
Judson H. Lipowitz (JHL)

SECRETARY : Kathleen C. Weidenhammer
Administrative Assistant

PURPOSE --to deliberate issues and matter presented to the Board; testimony and evidence taken at hearing on December 3, 1994. Written Opinion and Order to be issued by the Board.

Those present at the deliberation included Conwell F. Sapp, Esquire, Counsel for Petitioners; Bruce Clark, and Thomas Clark, Petitioner; People's Counsel for Baltimore County and Deputy People's Counsel; and Sterling Leese.

Chairman Hackett: We are here as scheduled for the public deliberation of Case No. 94-437-SPH, Thomas G. Clark, et ux, Merryman's Mill Road in Baltimore County. The matter before the Board concerns a trucking facility on residentially-zoned property and its nonconforming use.

WTH: In my estimation, the first witness that we had that I was particularly impressed with was Mr. Clark. Mr. Clark testified that in 1935 he started Clark Oil Company; had lived on property 56 years; had been in family ownership approximately 100 years; went through litany of proofs of oil company's use of this piece of property as storage area, oil trucks, and generally speaking, testified to use of property as oil distributing business; does not necessarily classify as a Class II trucking facility; in 1992 his son operated Bruce Clark Fuel Company and used site for storing of some of his trucks; he also testified as to his use of the site off and on over his entire lifetime as an adjunct to his business /fuel delivery business. Finley Ransone rented office space recently and used all office space there; testimony from Douglas Lee, Mr. Shadinger, Jerry Heacock, Dean Ayres, Ben Apicello, and David Morrison was received; all these people testified that a continuous use had existed; was well-maintained; no detriment to the area; no problems; been there for many years. Protestants testifying included Dr. Polly Worth, member of Save Our Streams; but no testimony as to what damage could be done; Ann Garrett opposed to trucking facility; Joy Wheeler, Baltimore Bird Club, viewed use as step

backward; also testifying in opposition were Josephine Owens, Anica Davis, and Donald Outen; Bevery Crook, nearest neighbor to oppose it. Bruce Clark's testimony was that he used site even though his father was no longer in business; Mr. Clark testified as to planting of trees; not Class II trucking facility; never has been; never should be. But has enjoyed a nonconforming use in conjunction with a family business; the delivery of oil; well-maintained; would approve it as a nonconforming use.

Summary: Nonconforming use should be approved.

JHL: Agrees with conclusions of WTH; it's obvious that the facts in case do not support a finding of a Class II trucking facility; Petitioner is not claiming it's a Class II trucking facility; issue raised about the way the petition was worded; special hearing for Class II trucking facility as nonconforming use; unfortunate that it was mispled, so to speak, but substance should prevail over form. We don't approve classes as nonconforming uses; we approve uses as nonconforming uses; testimony was clear; summarized WTH in going through names of witnesses who testified; zoning changed in 1992; use has not expanded or been enlarged; no substantial change of the use; use of property remained; is nonconforming use; Petition subject to change on Class II trucking facility should be granted.

Summary: Petition should be granted.

CWC: Difficulty with case stems from fact that if this were new application for use, it could be viewed as Class II trucking facility; would require special exception which has not been applied for; this use historically existed; use has not expanded; in fact, it has decreased; key testimony in case is for how long use, as it has existed, had ceased; whether it had ceased for more than one year or been abandoned for more than one year; from testimony I find that it did not; nonconforming use, whatever it may have been, did not cease its operation for more than one year so that it fits within the definition of nonconforming use under 104.1 of the BCZR; whether it's technically Class II trucking facility or not, or would be viewed as one today if it came in fresh, is not what case turns on; in my mind, the fact is that Mr. Clark had historically operated and used this property for same use for which its presently being used, although he had used it for more uses prior to this; parking of trucks overnight has not been interrupted for more than one year and so therefore I believe the Petitioner has established a nonconforming use,

and the Petition should be granted to allow the operation of Bruce Clark's continued use of the property to park and store his trucks and in fashion which he has; office use also clearly had been there; part of property had been used as office all along, albeit it has different tenant; but use of portion of property for business did not cease for more than one year. So again, whatever it may have been classified now if it came in as new application is one thing, but the fact that this use has continued historically allows it to be viewed as a nonconforming use and will approve use.

Summary: Petition should be granted as nonconforming use.

Closing statement Chairman Hackett: Board will issue written Opinion and Order in which the nonconforming use of property will be affirmed.

NOTE: Appellate period to run from date of Board's written Opinion and Order and not from today's date.

Respectfully submitted,

Kathleen C. Weidenhammer
Administrative Assistant

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

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

June 17, 1994

FROM: J. Lawrence Pilson JLP
Development Coordinator, DEPRM

SUBJECT: Zoning Item #SPH 94-437 - Clark Property
2815 Merrymans Mill Road
Zoning Advisory Committee Meeting of May 16, 1994

RECEIVED

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

Environmental Impact Review

1. Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains.

2. Zoning Regulation 410A.2 states that no Class II trucking facility or part thereof established on or after the effective date of this section may be located within 200' of a wetland. (Bill No. 18, 1976). A stream, several springheads and small associated non-tidal wetlands exist within 200' of the subject facility and down slope of it.

3. The parking areas of the subject facility drain to a storm drain inlet. An apparent overflow from the inlet structure outfalls to within 172' of a Tributary of Oversluk Run, itself a tributary of the Loch Raven Reservoir. Should the continued use be allowed and because of the close proximity of this operation to the watershed, this Department has concerns that petroleum based or other pollutants may enter the reservoir. It is requested that provisions are made to assure this will not occur. We recommend that a spill-contingency plan be available (such as: absorbent materials and containment barriers on site, and an empty truck [or reservoir] to pump oil into from any truck that may develop a leak).

   Special measures in addition to the treatment of stormwater runoff, could involve prohibitions on the types of products transported by trucks parked at the facility. The facility would also likely require an NPDES - Storm Water Discharge Permit.

4. The maximum permitted coverage of impervious areas is 28,203 sq. ft. or 10% of the gross area of 6.4746 AC.±.

   Please provide information to indicate the percentage of impervious acreage of site.

Air Quality

Because of noise standards for residential neighborhoods scheduled to go into effect on July 1, 1994, should this project be approved, we recommend that all trucking operations be restricted to daylight hours.

In Summary, the scope and nature of the project as submitted in the Special Exception application package are unclear. Uses associated with a Class II trucking facility are inconsistent with the goals of the Watershed Management Agreement.

Without additional information, this Department cannot recommend approval of the Special Exception at this time.

JLP:EG:WL:SR:sp

CLARK/DEPRM/TXTSBP

TO: Office of Planning & Zoning

DATE: November 5, 1987
*March 3, 1988

RE: Zoning Issue Comments
Project No. 3-235

REVIEWER: Environmental Protection & Resource Management

XXX The Department has no comments on the proposal.

____ The proposal is consistent with the goals of the department and meets regulatory requirements.

____ The project raises concerns in certain environmental areas, but is generally consistent with departmental goals (see comments).

*XXX The project raises substantial concerns which do not conform with the goals of the department (see comments).

____ The project would violate regulatory requirements and should be denied (see comments).

Petitioner Contact: _____

Date: _____

Field Inspection: _____

Date: _____

Comments: After the initial first cut inquiry into open enrollment issues, this Department has completed comprehensive assessments of certain environmentally sensitive issues. The Clark Oil Company property is located just north of Loch Raven Reservoir. The potential for serious contamination of the Reservoir from leaks or spillage at the facility raises substantial concern for this Department. The technical basis for concern is outlined in the attached memorandum from the staff hydrogeologist, Mr. Jeffrey Jollie.

This type of operation is inconsistent with the Watershed Management Agreement and by today's criteria for watershed protection should not be sited in this location. Non-conforming use in an RC-4 zone would limit expansion of the operation.

*Current amended position

Signature: [signature]
Title: Director
Agency: Dept. of Environmental Protection and Resource Management

RE: PETITION FOR SPECIAL HEARING
S/S Merrymans Mill Road,
285' SW of Killarney Court
(2815 Merrymans Mill Road),
10th Election Dist., 3rd
Councilmanic Dist.

THOMAS G. CLARK, et al.
Petitioners

BEFORE THE

ZONING COMMISSIONER

OF BALTIMORE COUNTY

Case No. 94-437-SPH

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

[signature]
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

[signature]
CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of May, 1994, a copy of the foregoing Entry of Appearance was mailed to J. Finley Ransone, P. O. Box 10160, Towson, MD 21285-0160, Representative for Petitioners.

[signature]
PETER MAX ZIMMERMAN

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

CITATION NO. 94-197A

ITEM # 421
94-437
SPH

NAME OF PERSON(S) CHARGED: THOMAS G. CLARK

CURRENT ADDRESS IN FULL: 2815 MERRYMANS MILL ROAD PHOENIX, MD 21131

OWNER (X) OR OCCUPANT ( ) RELATED CITATIONS :

IT IS FORMALLY 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-HOME OCCUPATION, TRUCKING FACILITY, CLASS II, OFFICE; 102.1; 1A03.3A; 410A.1

NATURE OF VIOLATION: USE OF PROPERTY ZONED R.C.4 TO COMMIT THE FOLLOWING:
1. OPERATION OF TRUCKING FACILITY, CLASS II 2. OPERATION OF AN OFFICE OR RESIDENTIALLY ZONED PROPERTY

LOCATION AND DATE(S) OF VIOLATION: 2815 MERRYMANS MILL ROAD 11/3/93 AND 3/7/94

TO RESPOND TO THE ABOVE CHARGE(S) LODGED AGAINST YOU, YOU MUST CHOOSE ONE OF THE OPTIONS BELOW:

1) YOU MAY PAY A FINE OF $800.00 ($400.00 FOR EACH ADDITIONAL DAY) BY CHECK OR MONEY ORDER PAYABLE TO THE DIRECTOR OF FINANCE, BALTIMORE COUNTY, MARYLAND, BY RETURNING A COPY OF THIS FORM ALONG WITH PAYMENT TO: DIRECTOR OF FINANCE, 1ST FLOOR, COURT HOUSE, TOWSON, MD 21204. THE PENALTY MUST BE PAID ON OR BEFORE THE 7TH DAY OF APRIL, 1994.

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 FILLING IN THE ATTACHED 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 AT THE EXPIRATION OF THE THIRTY-FIVE (35) DAYS FROM THE DATE OF THE CITATION , THE ZONING ADMINISTRATOR 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 BENCH WARRANT WILL BE ISSUED FOR YOUR ARREST.

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

3/18/94 [signature]
DATE OFFICE OF ZONING ADMINISTRATION REPRESENTATIVE

BASED ON THE STATEMENT OF DANIELA THOMPSON , THIS CITATION IS HEREBY ISSUED THIS 18TH DAY OF MARCH, 1994.

[signature]
DIRECTOR OF ZONING ADMINISTRATION

ACKNOWLEDGEMENT

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.

3-25-94 Thomas P. Clark
DATE SIGNATURE

ITEM # 421
94-437
SPH

NOTICE OF INTENTION TO STAND TRIAL

CITATION NO. 94-197A

APRIL 22, 1994

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

DATE 3-25-94 SIGNATURE Thomas P. Clark

ADDRESS: 2815 MERRYMAN MILL ROAD
PHOENIX, MD. 21131

RETURN TO:

DIRECTOR OF ZONING ADMINISTRATION
ZONING OFFICE
111 W. CHESAPEAKE AVENUE, ROOM 109
TOWSON, MARYLAND 21204

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

CITATION NO. 94-197B

ITEM # 421
94-437-SPH

NAME OF PERSON(S) CHARGED: J. FINLEY RANSOME

CURRENT ADDRESS IN FULL: J. FINLEY RANSOME ASSOC. 2815 MERRYMANS MILL ROAD PHOENIX, MD 21131

OWNER ( ) OR OCCUPANT (X) RELATED CITATIONS :

IT IS FORMALLY 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-HOME OCCUPATION, OFFICE; 102.1; 1A03.3A

NATURE OF VIOLATION: USE OF PROPERTY ZONED R.C.4 TO COMMIT THE FOLLOWING:
OPERATION OF AN OFFICE OR RESIDENTIALLY ZONED PROPERTY

LOCATION AND DATE(S) OF VIOLATION: 2815 MERRYMANS MILL ROAD 11/3/93 AND 3/7/94

TO RESPOND TO THE ABOVE CHARGE(S) LODGED AGAINST YOU, YOU MUST CHOOSE ONE OF THE OPTIONS BELOW:

1) YOU MAY PAY A FINE OF $400.00 ($200.00 FOR EACH ADDITIONAL DAY) BY CHECK OR MONEY ORDER PAYABLE TO THE DIRECTOR OF FINANCE, BALTIMORE COUNTY, MARYLAND, BY RETURNING A COPY OF THIS FORM ALONG WITH PAYMENT TO: DIRECTOR OF FINANCE, 1ST FLOOR, COURT HOUSE, TOWSON, MD 21204. THE PENALTY MUST BE PAID ON OR BEFORE THE 7TH DAY OF APRIL, 1994.

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 FILLING IN THE ATTACHED 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 AT THE EXPIRATION OF THE THIRTY-FIVE (35) DAYS FROM THE DATE OF THE CITATION , THE ZONING ADMINISTRATOR 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 BENCH WARRANT WILL BE ISSUED FOR YOUR ARREST.

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

3/8/94 [signature]
DATE OFFICE OF ZONING ADMINISTRATION REPRESENTATIVE

BASED ON THE STATEMENT OF DANIELA THOMPSON , THIS CITATION IS HEREBY ISSUED THIS 18TH DAY OF MARCH, 1994.

[signature]
DIRECTOR OF ZONING ADMINISTRATION

ACKNOWLEDGEMENT

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.

MARCH 29, 1994 [signature]
DATE SIGNATURE

ITEM # 421
94-437-SPH

NOTICE OF INTENTION TO STAND TRIAL

CITATION NO. 94-197B

APRIL 22, 1994

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

DATE 3/29/94 SIGNATURE [signature]

ADDRESS: PO Box 10160
Towson, MD 21285-0160

RETURN TO:

DIRECTOR OF ZONING ADMINISTRATION
ZONING OFFICE
111 W. CHESAPEAKE AVENUE, ROOM 109
TOWSON, MARYLAND 21204

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

1) Posting fees will be accessed and paid to this office at the time of filing.

2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 421

Petitioner: N/E 9/ABS THOMAS G. CLARK

Location: SOUTH SIDE MERRYMANS MILL RD, WEST OF KILLARNEY COURT

PLEASE FORWARD ADVERTISING BILL TO:

NAME: J. FINLEY RANSONE & ASSOCIATES

ADDRESS: PO BOX 10160

TOWSON, MD 21285-0160

PHONE NUMBER: 666-7448

*MUST BE SUPPLIED

TO: PATUXENT PUBLISHING COMPANY
May 19, 1994 Issue - Jeffersonian

Please foward billing to:

J. Finley Ransone & Associates
P. O. Box 10160
Towson, Maryland 21285-0160
666-7448

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 NUMBER: 94-437-SPH (Item 421)
2815 Merrymans Mill Road
S/S Merrymans Mill Road, 285' SW of c/l Killarney Court
10th Election District - 3rd Councilmanic
Petitioner(s): Thomas G. Clark and Edith P. Clark
HEARING: FRIDAY, JUNE 17, 1994 at 2:00 p.m. in Rm. 106 County Office Bldg.

Special Hearing to approve the non-conforming uses of the subject property specifically, the operation of a trucking facility, Class II, and the operation of an office on residentially zoned property.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

MAY 12, 1994

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 NUMBER: 94-437-SPH (Item 421)
2815 Merrymans Mill Road
S/S Merrymans Mill Road, 285' SW of c/l Killarney Court
10th Election District - 3rd Councilmanic
Petitioner(s): Thomas G. Clark and Edith P. Clark
HEARING: FRIDAY, JUNE 17, 1994 at 2:00 p.m. in Rm. 106 County Office Bldg.

Special Hearing to approve the non-conforming uses of the subject property specifically, the operation of a trucking facility, Class II, and the operation of an office on residentially zoned property.

Arnold Jablon
Director

cc: Thomas and Edith Clark
J. Finley Ransone
Mark. T. Jensen
Katherine Clark

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

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Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

June 8, 1994

Mr. and Mrs. Thomas G. Clark
2815 Merryman's Mill Road
Phoenix, Maryland 21131

RE: Case No. 94-437-SPH, Item No. 421
Petitioner: Thomas G. Clark, et ux.
Petition for Special Hearing

Dear Mr. and Mrs. Clark:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above-referenced petition, which was accepted for filing on May 4, 1994 and scheduled for a hearing accordingly. Any attached comments from a 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.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the hearing file.

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.

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Zoning Plans Advisory Committee Comments
Mr. and Mrs. Thomas G. Clark
Date: June 8, 1994
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, engineers and applicants 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 forfeiture loss of the filing fee.

If you have any questions concerning the enclosed comments, please feel free to contact Charlotte Minton in the zoning office at 887-3391 or the commenting agency.

Sincerely,

W. Carl Richards, Jr.
Zoning Supervisor

WCR:cmm
Enclosures

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration and
Development Management

DATE: May 18, 1994

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

SUBJECT: Petitions from Zoning Advisory Committee

The Office of Planning and Zoning has no comments on the following petition(s):

Item Nos. 401, 403, 408, 413, 415, 416, 417, 418, 419, 421, 422, 425 and 426.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

Prepared by: Jeffrey W. Long

Division Chief: Carl L. Lewis

PK/JL:lw

ZAC.401/PZONE/ZAC1

Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

5-17-94

Ms. Charlotte Minton
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: #421 (JCT)

Dear Ms. Minton:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,
Bob Small
for DAVID N. RAMSEY, ACTING CHIEF
~~John Contestable, Chief~~
Engineering Access Permits
Division

BS/

My telephone number is _____
Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

Baltimore County Government
Fire Department

700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 05/17/94

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

LOCATION: SEE BELOW

Item No.: SEE BELOW Zoning Agenda:

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.

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:411, 421, 424, 426, AND 427.

REVIEWER: LT. ROBERT F. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

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forming use into any of the wooded areas depicted on the site plan and any use of the wooded areas of the site shall be in strict compliance with the R.C.4 zoning requirements.

Furthermore, it is necessary to identify the type of business for which the granting of this nonconforming use applies. The testimony and evidence revealed that the Petitioner has been storing six (6) trucks on the premises. Mr. Bruce Clark identified in his testimony that he stored four (4) oil trucks and two (2) tank trailers on the subject property. Testimony was that there are no underground storage tanks for fuel oil on the subject site, nor are there any above-ground storage tanks for fuel oil on the property. Therefore, the Petitioner is forever prohibited from installing any above-ground or underground storage tanks for fuel oil on the subject property. The Petitioner shall only be permitted to store four (4) fuel oil trucks and two (2) tank trailers on the property. These trucks may contain either fuel or water. In addition, the Petitioner may locate an office for his fuel oil business on the property. Furthermore, Mr. Ransone shall be permitted to maintain his office on the premises in its present fashion as a nonconforming use.

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

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 29th day of July, 1994 that the storage and parking of four (4) fuel oil/water trucks and two (2) tank trailers containing fuel oil or water on the subject property, zoned R.C. 4, be and is hereby approved as a legal, nonconforming use, in accordance with Petitioner's

ORDER RECEIVED FOR FILING
Date 7/29/94
By BJS

Exhibit 3, and as such, the Petition for Special Hearing is GRANTED, subject to the restrictions set forth hereinafter; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking approval of an office on the subject property, in accordance with Petitioner's Exhibit 3, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

2) The nonconforming use granted herein is limited to that area depicted on Petitioner's Exhibit 3 which contains the existing improvements on the site, including the four structures and the macadam driveway and parking area. In addition, the nonconforming use granted herein shall include the business offices of J. Finley Ransone, Registered Land Surveyor. There shall be no expansion or enlargement of the nonconforming use into any of the wooded areas depicted on the site plan.

3) In the event the uses on the property as set forth in Restriction No. 2 above should terminate or cease operating for a period of one year or more, the relief granted herein for same shall be rescinded.

4) There shall be no above-ground or underground storage tanks for fuel oil on the subject property.

5) Upon request and reasonable notice, Petitioners shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order in the event it becomes necessary to do so as a result of a complaint.

6) When applying for any permits, the site plan and/or landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

Timothy M. Kotroco
TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

ORDER RECEIVED FOR FILING
Date 7/29/94
By BJS

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

July 29, 1994

(410) 887-4386

Conwell F. Sapp, Esquire
Reese and Carney
10715 Charter Drive
Columbia, Maryland 21044

RE: PETITION FOR SPECIAL HEARING
S/S Merryman's Mill Road, 285' SW of c/l of Killarney Court
(2815 Merryman's Mill Road)
10th Election District - 3rd Councilmanic District
Thomas G. Clark, et ux - Petitioners
Case No. 94-437-SPH

Dear Mr. Sapp:

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 the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

Timothy M. Kotroco
TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs
cc: Mr. & Mrs. Thomas Clark
2815 Merryman's Mill Road, Phoenix, Md. 21131

Mr. J. Finley Ransone, P.O. Box 10160, Towson, Md. 21285-0160

Robert R. Bowie, Jr., Esquire
Bowie and Jenson, 29 W. Susquehanna Avenue, Towson, Md. 21204

Patrick Pike, 2501 Garsden Court, Phoenix, Md. 21131
Ms. Beverly Crook, 2829 Merryman's Mill Road, Phoenix, Md. 21131
Ms. Josephine Owen, 308 Merrie Hunt Drive, Lutherville, Md. 21093

People's Counsel; File

94-437-SPH

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 2815 Merryman's Mill Road
which is presently zoned RC-4

This Petition shall be filed with the Office of Zoning Administration & Development Management.
The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve the non-conforming uses on the subject property. Specifically, the operation of a trucking facility, Class II, and the operation of an office on residentially zoned property.

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.

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

Contract Purchaser/Lessee:
(Type or Print Name)
Signature
Address
City State Zipcode
Attorney for Petitioner:
(Type or Print Name)
Signature
Address Phone No.
City State Zipcode

Legal Owner(s):
Thomas G. Clark
(Type or Print Name)
Thomas G. Clark
Signature
Edith E. Clark
(Type or Print Name)
Edith E. Clark
Signature
2815 Merryman's Mill Rd. 666-1844
Address Phone No.
Phoenix, MD 21131
City State Zipcode
Name, Address and phone number of representative to be contacted.
J. Finley Ransone
Name
~~P.O. Box 10160 Towson, MD 21285-0160~~
~~Phone No.~~
OFFICE USE ONLY 666-7448
ESTIMATED LENGTH OF HEARING
unavailable for Hearing
the following dates Next Two Months
ALL OTHER
REVIEWED BY: R.T. DATE 5/4/94

ITEM #421

ORDER RECEIVED FOR FILING
Date 7/29/94
By BJS

94-437-SPH

ZONING DESCRIPTION
CLARK PROPERTY
2815 Merrymans Mill Road
Tenth Election District
Baltimore County Maryland

BEGINNING at a point on the southerly side of Merrymans Mill Road, 50 feet wide, at the distance of 285 feet southwesterly from the centerline of Killarney Court, 50 feet wide; and running thence and binding on the southerly side of Merrymans Mill Road, and binding on the outlines of the property of the petitioners herein; South 75 degrees 06 minutes 48 seconds West, 389.99 feet, thence leaving said road, and continuing to bind on the outlines of the property of the petitioners herein; South 14 degrees 53 minutes 12 seconds East, 541.53 feet; thence North 79 degrees 06 minutes 48 seconds East, 621.91 feet; and thence North 36 degrees 23 minutes 12 seconds West, 628.65 feet to the place of beginning.

CONTAINING 6.4746 acres of land more or less.

ITEM #421

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY 94-437-SPH
Towson, Maryland

District 10th Date of Posting 9/11/94
Posted for: Appeal
Petitioner: Thomas G. Clark, et ux
Location of property: 2815 Merrymans Mill Rd, S/S
Location of Signs: Facing road way on property being sprealed for hearing
Remarks:
Posted by [signature] Date of return: 9/23/94
Signature
Number of Signs: 1

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY 94-437-SPH
Towson, Maryland

District 10th Date of Posting 5/27/94
Posted for: Special Hearing
Petitioner: Thomas & Edith Clark
Location of property: 2815 Merrymans Mill Rd, S/S
Location of Signs: Facing roadway on property by entry road
Remarks:
Posted by [signature] Date of return: 6/3/94
Signature
Number of Signs: 1

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case Number: 94-437-SPH (Item #421)
2815 Merrymans Mill Road
S/S Merrymans Mill Road, 285' SW of c/l Killarney Ct.
10th Election District
3rd Councilmanic District
Petitioner(s): Thomas G. Clark, et ux
HEARING: Thursday, June 16, 1994 at 10:00 a.m.

Special Hearing to approve the non-conforming uses on the subject property. Specifically, the operation of a trucking facility, Class II, and the operation of an office on residentially zoned property.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at 887-4386.
(2) For information concerning the File and/or Hearing, Please Call 887-3391.

May 19.

CERTIFICATE OF PUBLICATION

TOWSON, MD., 5/20, 1994

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 5/19, 1994.

THE JEFFERSONIAN,

A. Henrikson
LEGAL AD. - TOWSON

94-437-SPH
receipt

Baltimore County
Zoning Administration &
Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150
Number 421
R.T

Date 5/4/94

THOMAS CLARK
2815 MERRYMANS MILL RD.

040 - SPH ---- $ 250.00
080 - SIGN ---- $ 35.00
TOTAL - $ 285.00

03A03#0015MICHRC $285.00
BA CASHIER
Please Make Checks Payable To: Baltimore County

Cashier Validation

J. FINLEY RANSONE & ASSOCIATES, INC.

94-437 SPH CHECK 1685

5/03/94	FILING FEE - CLARK PROPERTY SPECIAL HEARING	$285.00

CHECK DATE	CONTROL NUMBER	TOTALS	
5/03/94	506000	▶	$285.00

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

No. 9568

DATE August 30, 1994 ACCOUNT R-001-6150
AMOUNT $ 210.00
RECEIVED Beverly C. Crook
FOR 94-437-SPH - Special Hearing Appeal

01A01#0187MICHRC $210.00

VALIDATION OR SIGNATURE OF CASHIER

CASH FIELD VENDOR - CUSTOMER

seen the property used for the storage of trucks until the fall of 1993, well over a year after Clark Oil Company had been sold and the property had been abandoned by it. Mr. Clark testified that almost immediately after Clark Oil Company stopped using the property his son continued the use of the property for the storage of fuel and water trucks. The testimony also revealed that a subpart of the property had been leased to J. Finley Ranson Assoc. where it was operating a commercial business with between a half dozen to a dozen and a half employees, depending upon the season. The surrounding properties are residential and zoned R.C.4. These residential neighborhoods abut the Loch Raven Watershed and are part of the run off system that leads to the Chesapeake Bay. There are at least five reasons why the alleged nonconforming use by Thomas Clark, the landowner, and J. Finley Ranson, the tenant, should be terminated by order of the Office of Zoning for Baltimore County.

1. The Subdivision of the Property for Use as an Office Violates the R.C.4 Zoning Limitations and is Outside any Prior Nonconforming Use.

There is no evidence in the record to indicate that the property was granted nonconforming use status for commercial office buildings. Although Clark Oil Company operated out of the site, the office facilities were part of the overall use of land by the oil company. The first subdivision of the land for use as commercial office space occurred after February 1992. Mr. Ranson's own testimony indicated that he did significant changes to the buildings on the property in order to prepare for his company's use

under his new lease with Mr. Clark. This use of the property is a new use that violates the limitations on R.C.4 zoned land.

2. There Has Been an Extension of the Nonconforming Use Beyond the 25% Allowed by Law.

A nonconforming use (as defined by Section 101 of B.C.Z.R.) is permitted unless specifically excluded by Section 104.1 et seq. Section 104.3, permits the nonconforming use of "building[s], structure[s], [and] parcel[s] of land unless the nonconforming use "has been extended more than 25%". The uncontradicted testimony of both Thomas Clark and Bruce Clark established that the use of the property by Clark Oil Company increased steadily from 1938 to February 1992, when the assets of Clark Oil were sold. The testimony was that this increase was demonstrated by the amount of fuel trucks using the property, the amount of buildings and out buildings constructed and the lateral area upon which the nonconforming uses were practiced. In fact, both Thomas Clark and Bruce Clark admitted in their testimony that the nonconforming uses had been extended for more than the 25% and one estimate of the two was as much as 100%. For these reasons alone the nonconforming uses should be terminated.

3. There is No Evidence in the Record That Mr. Clark Complied With the 1976 Condition Precedent Amendments to the Zoning Code Pertaining to Class II Trucking Facilities.

In 1976, by enacting Section 410-Class II Trucking Facilities (truckyards, etc.) of the Baltimore County Zoning Regulations, the Baltimore County Council reconfigured nonconforming uses for Class II Trucking Facilities. Subsection 410-A.1 Nonconforming and other

existing Class II trucking facilities, provides that "the provisions of this subsection apply to Class II trucking facilities existing on the effective date of this legislation. Clark has argued that the nonconforming use started in 1938. The effective date of the legislation was 1976. There is nothing in the record that indicates that Clark took any action to comply with this 1936 legislation. The legislation required in subparagraph (A) and (B), that Class II trucking facilities register within one year with the Office of Planning and Zoning. The burden of compliance, registration and filing under subparagraph (A), (B) and (C) was placed on the landowner. Since there is no evidence that throughout the continued nonconforming use of the property that these provisions were complied with and thus the sanctions of subpart D apply. Subparagraph (D)(2) specifies that failure to comply with the applicable regulations of Paragraph A, mandates the cessation of the nonconforming use of Class II trucking facilities within three (3) years after the effective date of the legislation. Three years after the effective date would be 1979. The Section in total states:

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. [Bill No. 18, 1976.]

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. [Bill No. 18, 1976.]

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 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. [Bill No. 18, 1976.]

Since the hearing, Thomas Clark has not submitted any evidence that the requirements of the 1976 legislation had been satisfied nor is there apparently such records in the County files and thus, the nonconforming use is by operation of law terminated.

4. The Impact Study Required by Section 104.5 Disapproves of the Continued Use.

For continued use of a nonconforming use within the Chesapeake Bay Critical Area, Section 104.5 of the Baltimore County Zoning Regulations requires that a Section 307.2 critical area impact study be submitted to the Commissioner. Section 307.2 grants the Zoning Commissioner the power to "authorize the expansion of those uses in existence at the time of the effective date..."; 1988, but such expansion shall be justified by findings of fact outlined in the seven points of that section. None of the seven points can be justified in light of the testimony received at the hearing. In fact, the provisions of Section 500.14, of the Baltimore County

Zoning Regulations, referenced in subpart (7) of the findings of fact, requires in subpart (a) that "no decision may be rendered by the zoning commissioner, on...special hearing unless the zoning commissioner has received from the director of environmental protection and resource management, written recommendations..." The written recommendations dated June 17, 1994, from Lawrence Pilson, Development Coordinator, Department Environmental Protection and Resource Management, DEPRM, (attached hereto), specifically states in its summary, "without additional information, this Department cannot recommend approval of the Special Exception at this time."

5. The Nonconforming Use Has Been Abandoned.

Section 104.1 states, "a nonconforming use (as defined in Section 101), may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever" and goes on further to indicate, "or any abandonment or discontinuance of such nonconforming use for a period of one (1) year or more, the right to continue or resume such nonconforming such shall terminate." (Emphasis Added). The nonconforming use has been changed to a Class II trucking facility and thus, because the storage of trucks was ancillary to the overall business activities of Clark Oil Company, this secondary use is a change in the nonconforming use and the termination should occur. Also, there is testimony in the record that the property was not used for a period in excess of one year as a nonconforming use. Katherine Clark testified that she

saw no truck traffic or storage for in excess of fourteen (14) months after February 1992, the date Clark Oil sold its assets. There was conflicting testimony on this point in that Thomas Clark, Bruce Clark and their tenant all indicated some use during that time period. It is within the discretion of the zoning commissioner to make its decision based on the credibility of the witnesses.

CONCLUSION

For the reasons set forth above, the nonconforming use at issue should be terminated.

Respectfully submitted,

Robert R. Bowie, Jr.
Bowie & Jensen
29 W. Susquehanna Avenue
Suite 600
Towson, Maryland 21204
(410) 583-2400
Attorney for Katherine Clark

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 1st day of July, 1994, a copy of the foregoing Post Hearing Reply Memorandum of Law of Katherine Clark was mailed, postage prepaid, to:

(a) Conwell Sapp, Esquire, Reese & Carney, 10715 Charter Drive, Columbia, Maryland 21044;
(b) Mr. Timothy Kotroco, Deputy Zoning Commissioner, Baltimore County, 400 Washington Avenue, Towson, MD 21204;

Robert R. Bowie, Jr.

IN RE: PETITION FOR SPECIAL HEARING
S/S Merryman's Mill Road, 285' SW of c/l of Killarney Court (2815 Merryman's Mill Road)
10th Election District
3rd Councilmanic District

Thomas G. Clark, et ux
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 94-437-SPH

* * * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing for that property known as 2815 Merryman's Mill Road, located in the Phoenix area of northern Baltimore County. The Petition was filed by the owners of the property, Thomas G. and Edith R. Clark. The Petitioners seek approval of a Class II Trucking facility with an office on the subject property, residentially zoned, as a legal, nonconforming use. The subject property and relief sought are more particularly described on the plat submitted into evidence as Petitioner's Exhibit 3.

Appearing on behalf of the Petition were Thomas G. Clark, property owner, his son, Bruce Clark, J. Finley Ransone, Registered Land Surveyor, David B. Morrison, nearby property owner, and Conwell F. Sapp, Esquire, attorney for the Petitioners. Appearing as Protestants in the matter were many residents of the surrounding community, all of whom signed the Protestant's Sign-In Sheet. Among them was Katherine Clark, who was represented by Robert R. Bowie, Jr., Esquire.

Testimony and evidence presented revealed that the subject property consists of 6.4746 acres, more or less, zoned R.C. 4, and is located on the south side of Merryman's Mill Road, near its intersection with Killarney Court. The property is improved with a two-story frame dwelling and one-story frame garage on the front portion of the site, and a one-sto-

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Date 7/29/94
By [illegible]

ry frame office building with basement level and one-story frame shop building towards the rear of the site. In addition, a macadam driveway extends from the front entrance to the site towards the rear of the property where it expands to provide truck and trailer parking near the office and shop buildings. A site plan of the property and improvements thereon was submitted into evidence as Petitioner's Exhibit 3. In addition, numerous photographs submitted into evidence as Petitioner's Exhibits 2A through 2Z more particularly describe the property and its improvements. Also offered into evidence as Petitioner's Exhibits IA through IS, were a series of photographs depicting the historical appearance of the property since 1935. As noted above, the Petitioners seek approval of the subject property as a nonconforming Class II trucking facility with an office and accessory parking area.

Appearing and testifying on behalf of the Petition was Thomas Clark, property owner. Mr. Clark testified that this property has been in his family for over 100 years and that he has resided in the dwelling on the property for the past 56 years. He testified that he began operating a fuel oil business from the site in 1938 and that the business he started, known as Clark Oil, disbanded in 1992. Mr. Clark testified that from that point forward, his son, Bruce Clark, formed and has operated Bruce Clark Oil from the subject site since 1992.

On cross-examination, Mr. Clark offered additional testimony as to the improvements on the site. He testified that the office building was built some time in the 1970s and that at one time there were underground storage tanks which were used to store fuel oil on the property and that these have since been removed. Mr. Clark also testified as to the zoning of the subject property. He testified that the property was zoned M.L. -

ORDER RECEIVED FOR FILING
Date 7/29/94
By [illegible]

II

THOMAS AND EDITH CLARK OWN A VESTED NONCONFORMING USE FOR THEIR PROPERTY

Testimony from Petitioner and photographic exhibits indicated that the fuel oil business was begun on the Merryman's Mill property in 1938. Zoning regulations did not begin in Baltimore County until January 2, 1945. In the absence of zoning this was a lawful use of the property.

> If a property is used for a factory, and thereafter the neighborhood in which it is located is zoned residential, if such regulations applied to the factory it would cease to exist, and the zoning regulation would have the effect of confiscating such property and destroying a vested right therein of the owner. Manifestly this cannot be done, because it would amount to a confiscation of the property, and nonconforming use is a vested right and entitled to constitutional protection. Amereihn v Kotras, 194 Md. 591, 71 A. 2d at 869 (1950)

In Amereihn v Kotras 194 Md. 591, 71 A.2d 865 (1950) the property owners in Baltimore County had a non-conforming use for light manufacturing. After zoning regulations were instituted the owner desired to place an addition on his factory. The court held that while a building permit was required there was no requirement for zoning approval. There was no charge in land use and no requirement for zoning approval. The office and the repair shop of Mr. Clark had the same requirements. Building permits were necessary but these uses were only incidental and accessory to his fuel oil business. There was no change in land use and no impermissible expansion.

III

THERE HAS BEEN NO DISCONTINUATION OF USE

There was conflicting testimony regarding the continued use of the property following the sale of Clark Oil Co. in February of 1992. Thomas Clark, owner of the property, stated that there was no interruption of use and that Bruce Clark Fuel Oil Co. used the property immediately following the sale and continuously ever since although in a less intense manner. The testimony was supported by Bruce Clark who is using the property for parking and truck repairs. This was further corroborated by Finley Ransome who has been leasing office space on the site since April of 1992.

Differing testimony, which was not corroborated, was presented by Katherine Clark who stated that no trucks used the Thomas Clark property from February, 1992, until September, 1993, a period of approximately 18 months. Her later testimony indicated that portions of the Thomas Clark property are not visible to her when leaves are on the trees. The photographs admitted into evidence indicate that the area in which the trucks are parked is considerably below the grade of the road and are not visible from road level. Katherine Clark's property is on a hill on the opposite side of the road, consequently, knowledge would be limited to the trucks ingress and egress and not to trucks which remained parked on the property. Trees and topography prevent that view.

Katherine Clark also testified that she was concerned about herself and possible economic harm which she might suffer as a result of an environmental claim from such use of the property. That testimony and the hostility among family members tends to undermine her credibility in this instance.

At older common law, abandonment of nonconforming use required a showing of an intent to abandon, Vogl v City of Baltimore, 228 Md. 283, 179A.2d 693 (1962). There was no intent shown on the part of the property owner to abandon his use.

IV

NONCONFORMING USE RUNS WITH THE LAND

A nonconforming use applies to the land not the owner. The property may change hands and if there is no discontinuance, the use continues. Kastendike v. Baltimore Association for Retarded Children, Inc., 267 Md. 389, 297 A.2d 745 (1972). The fact that the Clark property is being used in the same manner by a different entity is not relevant.

V

ENVIRONMENT

Concerns about the environment surrounding the watershed are very sincere and well intentioned. However, none of the testimony could show that in the more than 50 years that the business has operated in this location had there ever been any environmental damage whatsoever. While legitimate, such concerns are only speculative. The underground fuel tanks are no longer on the site. No fuel is delivered to the site. Protection through existing berms and a restricted drainage system are already in place.

Counsel for protestant suggested that the Baltimore County Zoning regulations were preempted by State and Federal regulation concerning Loch Raven Reservoir. The provisions, cited by counsel, of state law Md. Envir. Code Annotated art. 4, subtitle 3 refer specifically to the Patuxent River Watershed and the Severn River Watershed neither of which are related to Loch Raven. There was also a reference to the Chesapeake Bay

Critieral Area and the associated regulations. The Clark property is not within a Chesapeake Bay Criterial Area.

VI

THERE IS NO STATE OR FEDERAL LAW PREEMPTING THE AUTHORITY OF LOCAL ZONING LAWS

An argument was presented at the hearing on this matter which stated that State and Federal environmental laws preempted the county zoning authority. This is erroneous. Preemption of state general public laws over public local laws of chartered counties only occurs if there is express preemption in the field or if the Court of Appeals determines an implied preemption. Express preemption occurs very seldom; education and campaign finance are two fields expressly legislatively preempted. State and Local Legislative Powers: An Analysis of the Conflict and Preemption Doctrines in Maryland, 8 Balt. L. Rev. 300 (1979). There has been no express preemption in the environmental field.

The implied preemption requires that a court determine that the legislature intended to reserve a field exclusively to itself. The intent of the General Assembly must be examined by looking at the scope of the legislative scheme, language and legislative history among other factors. Domestic relations is a field which the General Assembly has impliedly preempted. None of the indicia of preemption are shown by environmental laws.

There are few areas in which local municipal authority is stronger than in zoning. Environmental authority of state and federal laws are concurrent with zoning laws. There

is no preemption. See generally, No Mans Landfill: An Analysis of the Roles of Federal, State and Local Government in Nonhazardous Solid and Hazardous Waste Management in Maryland 17 Balt. L. Rev. 114 (1987)

Counsel for protestant suggested that prior to a ruling on the non-conforming use the petition be presented to environmental authority. This is contrary to statute. Insertion of another authority in a zoning decision would be a derogation of county control and not permissible.

CONCLUSION

The testimony and exhibits presented at the hearing on June 17, 1994, clearly indicate that Thomas and Edith Clark have a valid non-conforming use on their property which should be recognized by the zoning authority. The standards applied in McKemy v Baltimore County, 39 Md. App. 257, 385 A.2d 96 (1978) should be applied to the facts as presented.

Respectfully submitted,

Conwell F. Sapp
REESE AND CARNEY
10715 Charter Drive
Columbia, Maryland 21044
(410) 740-4600
Attorney for Defendants

CERTIFICATE OF SERVICE

On this ____ day of June, 1994, I hereby certify that I mailed a copy of the aforegoing Post Hearing Memorandum, postage prepaid to the following:

Via Esquire Courier Overnight Service:

1. Mr. Timothy Kotroco
   Deputy Zoning Commissioner
   Baltimore County
   400 Washington Avenue
   Towson, MD 21204

2. Robert R. Bowie, Jr., Esquire
   Bowie and Jenson
   Suite 600
   29 W. Susquehanna Avenue
   Towson, MD 21204

Via First Class Mail:

3. Mr. Patrick Pike, Esquire
   Smith, Somerville & Case
   100 Light Street
   Baltimore, MD 21212

4. Mr. & Mrs. Thomas Clark
   2815 Merrymans Road
   Phoenix, MD 21131

5. Mr. Bruce Clark
   226 Cockeysville Road
   Cockeysville, MD 21030

Conwell F. Sapp

REESE AND CARNEY
ATTORNEYS AT LAW
10715 CHARTER DRIVE
COLUMBIA, MARYLAND 21044
(410) 740-4600
WASHINGTON AREA
(301) 621-5255
BALTIMORE FAX (410) 730-7729
WASHINGTON FAX (301) 621-5273

DAVID A. CARNEY
DANIEL H. SCHERR
DAVID C. HJORTSBERG
LAURENCE B. RABER
KEVIN J. KELEHAN
JUDITH B. BRESLER
JEFFREY A. KREW
MICHAEL S. MOLINARO
L. ROLAND STURM
JOAN M. BECKER
CONWELL F. SAPP
BETH JACKSON YEAGER
SUSAN E. BEASLEY
CATHLEEN F. WARD

OF COUNSEL
CHARLES A. REESE

255 N. WASHINGTON STREET
SUITE 309
ROCKVILLE, MARYLAND 20850
(301) 762-5210

June 23, 1994

VIA ESQUIRE COURIER SERVICE

Mr. Timothy Kotroco
Deputy Zoning Commissioner
Baltimore County
400 Washington Avenue
Towson, MD 21204

RE: 2815 Merrymans Mill Road
SPH No. 94-437

Dear Mr. Katroco:

Enclosed is the Post Hearing Memorandum for the above referenced case.

Should you have any questions regarding the enclosed please call me at your convenience.

Very truly yours,

REESE AND CARNEY

Conwell F. Sapp

CFS/mw
enclosure
cc: Robert R. Bowie, Jr., Esquire
Patrick M. Pike, Esquire
Mr. & Mrs. Thomas Clark
Mr. Bruce Clark

KOTROCO.LTR

IN THE MATTER OF:
Thomas & Edith Clark

RE: 2815 Merrymans Mill Road
S/S Merrymans Mill Road,
285' SW of c/l KILARNEY COURT
10th Election District
3rd Councilmanic

* BEFORE THE
* ZONING COMMISSIONER
* OF
* BALTIMORE COUNTY
* Case No.: 94-437-SPH

POST HEARING REPLY MEMORANDUM OF LAW ON BEHALF OF KATHERINE CLARK

Katherine Clark, submits this Post Hearing Reply Memorandum of Law and states:

INTRODUCTION

On March 18, 1994, the Baltimore County Office of Zoning filed Citation No. 94-197A and Citation No. 94-197B against Thomas G. Clark and J. Finley Ranson charging the former with 1) operation of a Class II, Trucking Facility, and 2) the operation of an office on residentially zoned property and the latter with the operation of an office on residentially zoned property. Thomas G. Clark is the landowner and J. Finley Ranson is his tenant on the property which is zoned R.C.4 and located at 2815 Merrymans Mill Road, Baltimore County. On June 17, 1994, a hearing was held before Deputy Zoning Commissioner Timothy Kotroco. The charges were principally defended by both Mr. Clark and Mr. Ranson with the argument that the property had been used since 1938 as a trucking facility while Clark Oil Company used the property; however, Clark Oil Company was sold by asset sale in February, 1992 and at that time Clark Oil Company ceased using the property. The property owner who lives across the street from the property, Kay Clark, the former President of Clark Oil Company, testified

RECEIVED
JUN 24 1994
ZONING COMMISSIONER

REESE AND CARNEY

DAVID A. CARNEY
DANIEL M. SCHERR
DAVID C. HORTSBERG
LAURENCE B. RABER
KEVIN J. KELEHAN
JUDITH S. BRESLER
JEFFREY A. KREW
MICHAEL S. MOLINARO
L. ROLAND STURM
JOAN M. BECKER
CONWELL F. SAPP
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WASHINGTON FAX (301) 621-5273

OF COUNSEL
CHARLES A. REESE

255 N. WASHINGTON STREET
SUITE 305
ROCKVILLE, MARYLAND 20850
(301) 762-8210

December 29, 1994

DELIVERED BY MESSENGER

Board of Appeals for
Baltimore County
Old Courthouse
400 Washington Avenue, Rm. 49
Towson, MD 21204

RE: Thomas G. Clark and Edith Clark
Case No. 94-437-SPH

Dear Sir/Madam:

Enclosed for filing is an original and three copies of the Post Hearing Memorandum in connection with the above referenced case.

Thank you for your attention to this matter.

Very truly yours,

REESE AND CARNEY

Conwell F. Sapp

CFS/mw
cc: Mr. & Mrs. Thomas Clark
J. Carroll Holzer, Esquire
Deputy People's Counsel for Baltimore County, Carole S. Demilio

IN THE MATTER OF * BEFORE THE
Thomas G. Clark, et ux * BOARD OF APPEALS
2815 Merryman's Mill Rd. * BALTIMORE COUNTY
SPH Approving Class II Truck Facility * CASE NO. 94-437-SPH
* * * * * * * * * * * * *

AFFIDAVIT OF SERVICE

I, the undersigned, certify that on November 29, 1994, I effected service of process by personally serving a Subpoena upon Don Outen, Larry Pilson & Tom Vidmar at DEPRM, County Courts Bldg., Towson

to appear before the County Board of Appeals of Baltimore County.

I further certify that I am over the age of 18 and am not a party to this action.

I solemnly affirm under penalty of perjury that the contents of this Affidavit are true and correct to my knowledge.

Name: Sterling Leese, Jr.
Firm:
Address: 305 Washington Ave. #502
Towson, MD 21204

IN THE MATTER OF * BEFORE THE
Thomas G. Clark, et ux * COUNTY BOARD OF APPEALS
2815 Merryman's Mill Rd. * BALTIMORE COUNTY
SPH Approving Class II Truck Facility * CASE NO. 94-437-SPH
* * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Wednesday Dec. 7, 1994 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Don Outen, Chief
Address: Bureau of Water Quality, DEPRM
County Courts Bldg. Towson, MD

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

IN THE MATTER OF * BEFORE THE
Thomas G. Clark, et ux * COUNTY BOARD OF APPEALS
2815 Merryman's Mill Rd. * BALTIMORE COUNTY
SPH Approving Class II Truck Facility * CASE NO. 94-437-SPH
* * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Wednesday Dec. 7, 1994 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Tom Vidmar
Address: DEPRM, Environmental Impact
County Courts Bldg., Towson

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

IN THE MATTER OF * BEFORE THE
Thomas G. Clark, et ux * COUNTY BOARD OF APPEALS
2815 Merryman's Mill Rd. * BALTIMORE COUNTY
SPH Approving Class II Truck Facility * CASE NO. 94-437-SPH
* * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Wednesday Dec. 7, 1994 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: J. Lawrence Pilson, Development Coordinator
Address: DEPRM
County Courts Bldg., Towson

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

IN RE: PETITION FOR SPECIAL HEARING
S/S Merryman's Mill Rd., 285' SW of c/l of Killarney Court (2818 Merryman's Mill Rd.)
3rd Councilmanic District
Thomas G. Clark, et ux
Petitioners

* BEFORE THE DEPUTY
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 94-437-SPH

* * * * * * * * * * * * *

NOTICE OF APPEAL

Appellants Beverly Crook, individually, and Greater Cambria Association, Inc.; Watershed Protection Coalition, Inc.; and Baltimore Bird Club by and through their attorney J. Carroll Holzer and Holzer and Lee, hereby note an appeal to the County Board of Appeals from the decision of the Deputy Zoning Commissioner rendered on July 29, 1994.

J. Carroll Holzer, P.A.
Holzer and Lee
305 Washington Ave., Suite 502
Towson, Maryland, 21204
825-6961

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August, 1994, a copy of the foregoing Notice of Appeal was mailed postage pre-paid to the County Board of Appeals, basement, Old Courthouse, Towson, Maryland, 21204.

J. Carroll Holzer

RECEIVED PAYMENT
8/24/94 SLEX
ZONING OFFICE

LAW OFFICE
HOLZER AND LEE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204

(410) 825-6961
FAX (410) 825-4923

BEFORE THE ZONING COMMISSION OF BALTIMORE COUNTY

IN THE MATTER OF *
THOMAS AND EDITH CLARK *
*
* SPH Case No. 94-437

* * * * * * * * * * * * * * * * * * * *

POST HEARING MEMORANDUM

FACTS

Thomas and Edith Clark have owned the property at 2815 Merrymans Mill Road since 1938. Prior to their ownership the property and that surrounding it had been in the family of Edith Clark for over 100 years, much before the advent of the Loch Raven Reservoir. Thomas Clark had an existing fuel oil business which he transferred to Merrymans Mill Road when he and his wife moved there. Mr. Clark operated this business until the late 1970's when for health reasons he transferred it to his children, although he remained as a consultant.

In 1980 at the request of Mr. Clark, the property was rezoned to a ML, Manufacturing Light, designation. In 1984, the M L designation was amended so that the existing woods were placed in RC-4. This followed a hearing before Arnold Jablon in which it was determined that the Clark's use was in conformity with existing zoning regulations. In 1985, a variance was requested to pave a portion of their property. At that time the Clarks entered into an agreement with their neighbor, Mrs. Crook, which prohibited further business expansion. In 1988, an agreement was entered with the Summerhill Community Association under which the Clarks voluntarily placed covenants on this property which contained further restrictions.

As a part of the 1992 comprehensive rezoning, without the Clark's agreement, the property designation was changed to RC-4. Katherine Clark brought a complaint for a zoning violation which in turn brought Thomas and Edith Clark before the Zoning Commissioner on June 17, 1994 to recognize a non-conforming use.

ARGUMENT

I

THERE HAS BEEN NO CHANGE IN USE WHICH WOULD END THE NONCONFORMING STATUS

The property, since 1938, has been used as a trucking facility for fuel oil trucks with office space and repair facilities as accessory uses. The property is currently being used for parking and repair of fuel oil and water tanker trucks. Bruce Clark is using a portion of the office space for the trucking business, the remainder of the office is being rented. Case law indicates that a use change within a classification is permitted. Kastendike v Balt. Ass. for Retarded Children, Inc., 267 Md. 389, 297 A. 2d 745 (1972) permitted a non-conforming use change from a nursing home to a home for retarded children. Cited in that case are a line of cases which permitted inter alia change from a dairy farm to a riding stable. The Court concluded that the similarities in use were greater than the differences.

exalt form over substance. The long-standing use of the property is not within the definition of a Trucking Facility.

Non-Conforming Use

Mr. Clark began his fuel oil business in 1938 prior to any zoning regulations. The use of office space, minor truck repair and truck parking were accessory uses. These uses have continued with no interruption since that time.

In 1980 Mr. Clark received a ML zoning designation. With some modification, that continued until the 1992 comprehensive zoning when it was changed to RC-4. The change occurred without the agreement of the Clarks.

Zoning regulations create a tension between a private property owner and controls placed on property for the public welfare. Non-conforming uses are an historical part of the law to alleviate the tension, to protect existing uses so that new regulations do not put individuals out of business.

In viewing the request of the Clarks for a non-conforming use, the Board of Appeals should apply the test set forth in McKemy v. Baltimore County, 39 Md. App. 257, 385 A. 2d 96 (1978).

(1) to what extent does the current use of these lots reflect the nature and purpose of the original non-conforming use;

Whether the use of the Clark property is considered from 1938 or from 1992 at the time of the comprehensive rezoning the nature and purpose is the same. There was a fuel oil business then and there is a fuel oil business now. There was an office then and an office now.

(2) is the current use merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature, and kind;

The office has a different tenant but it is still an office. The character and nature of the use is identical.

(3) does the current use have a substantially different effect upon the neighborhood;

The use has less effect on the neighborhood because the underground storage tanks have been removed and the fuel oil business is smaller.

(4) is the current use a 'drastic enlargement or extension' of the original non-conforming use.
The answer is clearly no.

The cross examination of Bruce Clark, President of Bruce Clark Fuel Company and direct testimony of Beverly Crook appeared to focus on the fact that Bruce Clark rents space at another location. If this was intended to indicate that Bruce Clark has no need for his father's property for his business purposes, it is not relevant. The purpose of the hearing concerned the non-conforming use of the property. Bruce Clark could be using his father's property and many other sites and it would still not be relevant. In fact, Bruce Clark has no garage facilities on his rented space but his need or lack thereof has no relationship to the property use.

The environmental concerns are certainly well intentioned, however, with the removal of the fuel oil storage tanks, the continuous careful maintenance of the property, and absolutely no history of any leakage or spills, the concerns are only speculative. There was testimony concerning the four (4) foot earthen berm

and the catch basin built into the parking area. These protections, plus the fact that no oil is transferred between trucks on the Clark site, should allay all fears.

Thomas and Edith Clark have always attempted to be good neighbors and will continue to do so. Mr. Clark, as a small businessman, has no pension on which he can rely. The rental income he receives from the office on his property is important to him. Sharing in his son's fuel oil business is also important to him. His valid non-conforming use for his property should be granted.

Conwell F. Sapp
REESE AND CARNEY
10715 Charter Drive
Columbia, Maryland 21044
(410) 740-4600

Certificate of Service

I hereby certify, that on this 21st day of December, 1994, a copy of the Post Hearing Memorandum was mailed, first-class, postage prepaid, to:

J. Carroll Holzer, Esquire
305 Washington Avenue, Suite 305
Towson, Maryland, 21204

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

Conwell F. Sapp

EXHIBIT A

11/18/93 (C) 9/158-93

Baltimore County
Zoning Enforcement
Attn: D. Thompson

Nov 9, 1993

Re: Case # C-94-529

Dear Ms. Thompson:

I have placed a complaint with this office concerning the parking of [illegible] yard and general use of all trucks on the premises of property located at 2815 Merrymans Mill Road.

Clark Oil Company had operated at the site from approximately 1935 - 1992. The operation of this company started before the present zoning laws were in effect and at a later date would probably not be granted with the acquiescence of the county council and Councilman Ruppersberger is being able to operate at this location only as long as Clark Oil Company operated.

My office does not have copies of the pertinent zoning agreements by lawyer Mark Jones, 4th Floor, 29 W. Susquehanna Ave, Towson, Maryland 21204 may have them or file as does Councilman Ruppersberger.

On February 19, 1992 Clark Oil Company was sold and ceased all

EXHIBIT B

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

CITATION NO. 94-197A

NAME OF PERSON(S) CHARGED: THOMAS G. CLARK

CURRENT ADDRESS IN FULL: 2815 MERRYMANS MILL ROAD PHOENIX, MD 21131

OWNER (X) OR OCCUPANT ( ) RELATED CITATIONS :

IT IS FORMALLY 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-HOME OCCUPATION, TRUCKING FACILITY, CLASS II, OFFICE; 102.1; 1A03.3A; 410A.1

NATURE OF VIOLATION: USE OF PROPERTY ZONED R.C.4 TO COMMIT THE FOLLOWING:
1. OPERATION OF TRUCKING FACILITY, CLASS II 2. OPERATION OF AN OFFICE ON RESIDENTIALLY ZONED PROPERTY

LOCATION AND DATE(S) OF VIOLATION: 2815 MERRYMANS MILL ROAD 11/3/93 AND 3/7/94

TO RESPOND TO THE ABOVE CHARGE(S) LODGED AGAINST YOU, YOU MUST CHOOSE ONE OF THE OPTIONS BELOW:

1) YOU MAY PAY A FINE OF $800.00 ($400.00 FOR EACH ADDITIONAL DAY) BY CHECK OR MONEY ORDER PAYABLE TO THE DIRECTOR OF FINANCE, BALTIMORE COUNTY, MARYLAND, BY RETURNING A COPY OF THIS FORM ALONG WITH PAYMENT TO: DIRECTOR OF FINANCE, 1ST FLOOR, COURT HOUSE, TOWSON, MD 21204. THE PENALTY MUST BE PAID ON OR BEFORE THE 7TH DAY OF APRIL, 1994.

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 FILLING IN THE ATTACHED 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 AT THE EXPIRATION OF THE THIRTY-FIVE (35) DAYS FROM THE DATE OF THE CITATION , THE ZONING ADMINISTRATOR 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 BENCH WARRANT WILL BE ISSUED FOR YOUR ARREST.

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

3/18/94 — Daniela Thompson
DATE — OFFICE OF ZONING ADMINISTRATION REPRESENTATIVE

BASED ON THE STATEMENT OF DANIELA THOMPSON , THIS CITATION IS HEREBY ISSUED THIS 18TH DAY OF MARCH, 1994.

DIRECTOR OF ZONING ADMINISTRATION

ACKNOWLEDGEMENT

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.

3-25-94 — Thomas G. Clark
DATE — SIGNATURE

EXHIBIT C

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 2815 Merryman's Mill Road
which is presently zoned RC-4

This Petition shall be filed with the Office of Zoning Administration & Development Management.
The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve the non-conforming uses on the subject property. Specifically, the operation of a trucking facility, Class II, and the operation of an office on residentially zoned property.

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.

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

Contract Purchaser/Lessee:
(Type or Print Name)
Signature
Address
City State Zipcode
Attorney for Petitioner
(Type or Print Name)
Signature
Address Phone No.
City State Zipcode

Legal Owner(s):
Thomas G. Clark (Type or Print Name)
Thomas G. Clark (Signature)
Edith E. Clark (Type or Print Name)
Edith E. Clark (Signature)
2815 Merryman's Mill Rd. 666-1844
Address Phone No.
Phoenix, MD 21131
City State Zipcode
Name, Address and phone number of representative to be contacted.
J. Finley Ransone
Name
~~P.O. Box 10160 Towson, MD 21285-0160~~
Phone No.
OFFICE USE ONLY 666-7448
ESTIMATED LENGTH OF HEARING
unavailable for Hearing
the following dates Next Two Months
ALL OTHER
REVIEWED BY: DATE

EXHIBIT D

IN RE: ALLEGED ZONING VIOLATION
2815 Merrymans Mill Road
10th Election District

Clark Oil Company
c/o T. Richard Clark, President
2815 Merrymans Mill Road
Phoenix, Maryland 21131
Defendant

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. C-84-718

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This hearing was held at the request of the Protestant who disagreed with the findings issued by the Zoning Enforcement Section after an investigation of alleged violations by the Defendant of the zoning laws of Baltimore County.

The violations presented by the Protestant are that the Defendant (1) has a garage within 100 feet of a residential zone; (2) is utilizing his property as a Class II trucking facility; (3) has retail sales on the property; (4) has not paved his off-street parking area; (5) has improperly directed his lighting in the direction of the Protestant; and (6) is illegally selling fuel oil from the property. The Defendant denies all allegations.

Appearing were Beverly Crook, the Protestant, who was represented by Counsel, and T. Richard Clark, President of Clark Oil Company, the Defendant, who was also represented by Counsel.

Testimony indicated that in 1938 Mr. Clark's father initiated the business at the present location. In the 1940's, a tank farm was placed on the site, which, then and now, consisted of tanks below ground for the storage of fuel oil with only the pumps and loading arms seen above ground. The tank farm has been approved by the State. In 1958, the Defendant started his service facility on the site. The business itself is a heating and gas operation that buys fuel from a terminal, primarily at Curtis Bay, and provides such fuel directly to homes and service

EXHIBIT E

IN RE: PETITION FOR SPECIAL HEARING
S/S Merryman's Mill Road, 280' SW of c/l of Killarney Court
(2815 Merryman's Mill Road)
10th Election District
3rd Councilmanic District

Thomas G. Clark, et ux
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 94-437-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing for that property known as 2815 Merryman's Mill Road, located in the Phoenix area of northern Baltimore County. The Petition was filed by the owners of the property, Thomas G. and Edith E. Clark. The Petitioners seek approval of a Class I Trucking Facility with an office on the subject property, residentially zoned, as a legal, nonconforming use. The subject property and relief sought are more particularly described on the plat submitted into evidence as Petitioner's Exhibit 1.

Appearing on behalf of the Petition were Thomas G. Clark, property owner, his son, Bruce Clark, J. Finley Ransone, Registered Land Surveyor, David B. Morrison, nearby property owner, and Conwell F. Sapp, Esquire, attorney for the Petitioners. Appearing as Protestants in the matter were many residents of the surrounding community, all of whom signed the Protestant's Sign-In Sheet. Among them was Katherine Clark, who was represented by Robert R. Bowie, Jr., Esquire.

Testimony and evidence presented revealed that the subject property consists of 6.4746 acres, more or less, zoned R.C. 4, and is located on the south side of Merryman's Mill Road, near its intersection with Killarney Court. The property is improved with a two-story frame dwelling and one-story frame garage on the front portion of the site, and a one-sto-

Baltimore County, 39 Md. App. 257 (1978), further articulates this reasoning. Finally, various cases cited within 61 Al.R. 4th 902 confirm that the appropriate analysis for a non-conforming use would require that the non-conforming use at least be legal prior to the time that it becomes non-conforming.

In the McKemy case, the Court of Special Appeals found that the non-conforming use must be "a lawful one" existing on the effective date of the [new] regulations.

Non-conforming uses are generally viewed with disfavor by the Courts and the right to continue a non-conforming use does not include the right to extend or enlarge it. See Anderson's American Law of Zoning, Section 6.45. In an analysis of cases resulting from a change in the type of activity of a non-conforming use, all of the cases presuppose that the non-conforming use must be a lawful and legal use at the time they became non-conforming. See 61 ALR 4th, 902 Zoning-Activity type.

Finally, it is non contended by the Appellants that any existing non-conforming use was abandoned or discontinued for a period of one year or more as contained in Baltimore County Zoning Regulations, Section 104.1 and found cited in the CBA decision in case Number V93442-SPH, In the Matter of N.B.S. Inc. and Hi Caliber; further discussed in Canada's Tavern, Inc., et al., v. Town of Glen Echo, 260 Md. 206 (1970).

Rather Appellants rest their opposition upon the facts before the CBA that an illegal use existed on the subject property after March 1992 relating to the storage and parking of trucks and that

such illegal use can not be the basis for a finding of a continuation of a non-conforming use by this Board.

By way of illustration, Appellants submit that the 1992 comprehensive re-zoning is not the key element for the CBA in arriving at a decision in this case. If the permitted use ceased (that is, the Clark Oil Company fuel business), and the use which takes its place is an illegal one (that is, a class II trucking facility--parking and storage of trucks), then that illegal use continued until the October 1992 comprehensive re-zoning. If the ML zone on the property had continued beyond October 1992, the Petitioner here would have been able to resolve the illegality perhaps by applying for a Special Exception, and if he met all of the criteria for a class II trucking facility, and gained approval by this Board, then the use would be legitimate. The action of the Baltimore County Council in October 1992 in re-zoning the property RC 4, in effect means that the Petitioner can no longer rectify his illegal use by applying for a Special Exception. Appellants submit that the Petitioners here, by their own testimony, have established that the use of the subject site was an illegal one falling under the definition of a class II trucking facility. As such, since they are unable to petition for a Special Exception any longer, this Board should find that there is no non-conforming use issue; that the Petitioners' use is illegal and not permitted under the RC-4 zone.

Finally, even if this Board comes to the conclusion that the parking and storage of Petitioner's trucks was somehow non-

conforming, it may not find the continuation of a non-conforming use in this case where there is a substantial change in non-conforming use (see 61 ALR 4th 902). There is clearly a substantial difference in the use by the Clark Oil Company of the subject site in terms of the running of the operation of the fuel oil business from the site to include the office, fuel tanks, fuel pumping, maintenance, and dispatching of the trucks as contrasted with the use by Bruce C. Clark Oil Company of the Merryman's Mill site simply for the storage and parking of those trucks. On the one hand, in the words of the Zoning Commissioner in 1984, you had a lawful fuel oil business with trucks being incidental to the legitimate business; on the other you have the parking and storage of trucks and tractor trailers not incidental or accessory to any business being run from the Merryman's Mill site. As such, the current use exceeds any non-conforming use by the Clark Oil Company, which may be found by this Board to be in existence prior to October 1992.

Finally, it goes without saying that unless the Petitioner's use was lawful prior to October 1992, it may not be the subject of this Board's blessing for non-conforming use status on the site.

Secondly, insofar as the office use, Appellants must acknowledge that the rental of the office to Mr. Ransone existed before October 1992 and may have been a lawful use under ML zoning, Section 253.1(a.33). As such, the office use alone may have been a non-conforming use which could be permitted in an RC-4 zone.

WHEREFORE, Appellants respectfully request this Honorable Board to find that no non-conforming uses existed on the subject property with the exception of the office building; clearly, the use by the Petitioner for parking, storage, and maintenance and repair of the trucks was a class II trucking facility illegally being operated in October 1992, and therefore not a proper subject for a finding as a non-conforming use.

Respectfully submitted,

J. Carroll Holzer
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 29th day of December 1994, a copy of the foregoing Memorandum in Lieu of Final Argument was mailed, postage pre-paid, to Conwell F. Sapp, Attorney for the Petitioner, Reese & Carney, 10715 Charter Drive, Columbia, Maryland, 21044; and Carole DeMilio, Deputy People's Counsel, Basement, Old Courthouse, Towson, Maryland, 21204.

J. Carroll Holzer

memo8\Crook.mem

IN RE:	*	BEFORE THE
	*	
THOMAS G. CLARK and EDITH CLARK	*	BOARD OF APPEALS FOR
	*	
2815 Merrymans Mill Road Phoenix, Maryland	*	BALTIMORE COUNTY
	*	
	*	Case No. 94-437-SPH

* * * * * * * * * * * * *

POST HEARING MEMORANDUM

Facts of the Case

A disgruntled daughter-in-law filed a zoning complaint against Thomas and Edith Clark (attached as Exhibit A). Her environmental concerns are suspect because she had served as the President of Clark Oil Company which used the site for many years for a fuel oil business until she sold the business in February, 1992. Nevertheless, the complaint caused a citation to be issued. (Attached as Exhibit B). The zoning inspector notified the Clarks that a petition for nonconforming use was required. Mr. Clark, who is 81 years old, went to the zoning office to file the petition. After inquiry to the counter personnel he was given the wording as it appears on the petition. (Attached as Exhibit C). The wording mirrors that on the citation. Mr. Clark, without counsel at that time, signed and filed the petition himself.

A special hearing was scheduled for June 17, 1994, before the Deputy Zoning Commissioner Timothy Kotroco. Katherine Clark, the daughter-in-law, was joined in her opposition by Beverly Crook, a neighbor and members of a variety of environmental groups. Testimony was taken and the non-conforming use was granted. Mrs. Crook, timely noted an appeal. Katherine Clark chose not

to proceed further. On December 7, the case was heard before the Baltimore County Board of Appeals.

Argument

Class II Trucking Facility

A Class II Trucking Facility is defined in the regulations in Section 100 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.

A Class I Trucking Facility is defined as:

> 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 is defined 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 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 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 establishment, or truck stop. **Land used for the parking, 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. (Emphasis supplied)

The use of the land of Thomas and Edith Clark is for a fuel oil business which is incidentally hauled in trucks. The primary function is not trucking which would involve a variety of cargo. These trucks are dedicated to either fuel oil or water and no other. The product that is sold is the fuel oil. It is not a hauling service available to various shippers.

In 1984, in another zoning hearing brought at the behest of Mrs. Crook, before Zoning Commissioner, Arnold Zablon, it was determined that the use was not that of a Class II Trucking Facility (Findings of Fact and Conclusions of Law attached as Exhibit D) Mr. Kotroco came to the same conclusion is his decision of July 19, 1994 (Attached as Exhibit E)

The zoning enforcement officer chose the category of Class II Trucking Facility on the citation. The Baltimore County Zoning Office counter personnel, who offered to aid Mr. Clark in the preparation of the petition for a hearing, compounded the error. A petition for non-conforming use cannot be granted for a use that never existed. It can only apply to a use to which the property has actually been put.

Although it is unfortunate that the petition was not formally amended and counsel for Mr. and Mrs. Clark regrets that error, the facts of the case would be no different. It would be unfair to penalize the Clarks for something that would

The case was heard before the CBA on December 7, 1994, at which time evidence was produced by both parties.

STATEMENT OF FACTS

Before the CBA, the Petitioner, in his Counsel's opening statement, acknowledged that the activity which had been conducted on the subject site did not constitute activity which would permit the CBA to find that a lawful non-conforming use for a trucking facility, class II, existed on the site prior to the rezoning of the property to RC-4. With that acknowledgement, Appellants submit that the CBA is not permitted to determine that a lawful class II trucking facility existed prior to the re-zoning of the subject site in 1992 as RC-4. Four of the Petitioner's tank trucks are utilized in the fuel oil delivery business of Bruce C. Clark, the son of Thomas G. Clark, and two tractor trailers are utilized to deliver water for the filling of swimming pools. In addition to the parking of these vehicles on the subject site, the Petitioner desires to utilize the maintenance garage on the site for repair and maintenance of these vehicles. In addition, the Petitioner also seeks to permit the leasing of the office building in its entirety to J. Findley Ransone, who conducts a land surveying and land development business from the site.

The evidence presented by the Petitioners themselves supports the Appellants' case that there is no non-conforming use which is permitted to exist on the subject site after the 1992 comprehensive re-zoning by Baltimore County, which eliminated the ML zone, which existed on a portion of the overall site.

The Petitioners presented the testimony of Thomas Clark, the owner of the property in question. Mr. Clark testified that his family has owned the property for over a hundred years and he has lived there for in excess of fifty years. He acknowledged that he retired and terminated the Clark Oil Company, which had been utilizing the subject site up until that time. He testified that the Clark Oil Company, which he owned and operated up until March 1992 contained an office building which he utilized solely for the purpose and operation of the Clark Oil Company. That office is currently being leased to Mr. Ransone. Prior to March 1992, it was not leased and was entirely used to direct the operations of the Clark Oil Company. In addition, Thomas Clark testified that the Clark Oil Company trucks which were parked on the subject site were also loaded from underground tanks contained on the site and from pumps which extended above ground to service the tank trucks. In March 1992, those underground tanks were removed along with the above-ground structures utilized to fill them. All of the stock of the Clark Oil Company was sold, and the business terminated as of March 1992. Mr. Clark further testified that up until March 1992, Mr. Ransone was not on the subject site and that Ransone currently rents 100% of the office building for his land surveying business. Clark further testified that at the time the Clark Oil Company was in operation prior to March 1992, that his son, Bruce Clark, for at least two years, was operating a competitive business called Bruce Clark Oil Company from a location in Cockeysville. Thomas Clark further testified that his son does not use the office building as

the office of the Bruce Clark Oil Company, although he has a telephone in the service garage; he further acknowledged that Bruce Clark simply stores vehicles on the subject site and occasionally works on those trucks. Thomas Clark further testified that any customers of his son do not come to the Merryman's Mill Road site but rather deal with the Bruce Clark Oil Company in Cockeysville.

Bruce Clark testified on behalf of himself and the Bruce Clark Oil Company. He acknowledged that he parks four tank trucks and two tractor trailer trucks for water for swimming pools on the site and occasionally works on them in the maintenance garage. He also on occasion permits other persons to park trucks on the subject site as well to work on their vehicles in his garage. Bruce Clark acknowledged that the Bruce Clark Oil Company is operated from his office and storage yard in Cockeysville, specifically at 226 Cockeysville Road. Appellants presented evidence by way of newspaper advertisements and telephone directory establishing that location as the principal office for Bruce Clark Oil (see Protestants' Exhibits 1 - 3 and 4A - G). Bruce Clark acknowledged that his tank trucks are filled at the Cockeysville address, that his office business is conducted from Cockeysville, as well as his one secretary employee being located in Cockeysville. Bruce Clark acknowledged that he has been leasing the Cockeysville site since 1989.

Finally, J. Findley Ransone testified that he is currently leasing 100% of the office building on the subject site.

The Appellants presented a number of witnesses, including Dr. Polly Wirth, Mrs. Ann Garrett, Ms. Joy Wheeler, Ms. Jo Owen, and Ms. Anneke Davis, all of whom objected to an expansion or legalization of any class II trucking facility on the subject site due to multiple environmental concerns.

The Appellants also called Donald Outen, representative of DEPRM, who acknowledged his department's position in Protestants' Exhibit Number Seven. It was clear from Outen's testimony that if the property were to be used as a class II trucking facility, much more supportive evidence would be necessary for DEPRM to come to a conclusion as to the permissibility of this function in view of the environmental problems and constraints on the site. Outen testified that there are outfalls from the property which go directly into the Loch Raven Reservoir and that the parking area for these vehicles is only 175 feet from a wetland. Outen's testimony reflects the confusion engendered in the County's Review staff by the request of the Petitioner in this case for a class II trucking facility. Certainly, approval of any operation or approval of existing operations should be subject to all environmental requirements and regulations imposed by DEPRM.

Finally, Mrs. Beverly Crook testified as to her opposition to any finding by the CBA that a non-conforming use for a class II trucking facility is acceptable. She also testified that in her opinion the non-conforming use for the parking or storage of any trucks on this site expired with the 1992 comprehensive zoning change.

Finally, Protestants submitted, as a Protestants' Exhibit, the decision of the then-Zoning Commissioner, Arnold Jablon, in Case Number C-84-718, decided on July 24, 1984. This decision is important in the respect that it characterizes the activity of the Clark Oil Company prior to 1992. In that decision, the Zoning Commissioner found that the operation of the Clark Oil Company on the subject site was a legitimate operation under the ML zoning of an oil company, in which the parking of the trucks was accessory. He did not find, contrary to the position of the Appellant in that case, that the trucks were being operated as part of a class II trucking facility. That argument was rejected by the Zoning Commissioner. Thus, as of October 1992, when the comprehensive re-zoning took place, putting all of the subject property in RC 4, the Clark Oil Company had a fuel business being operated from the subject site in which the office was totally utilized for the Clark Oil business and the parking, storage, and maintenance of vehicles was accessory and incidental to the operation of the oil company. There is no evidence in the record of this case that prior to October 1992, the Petitioner ever requested a Special Exception for a "Class II Trucking Facility."

LEGAL ARGUMENT

Appellants submit that it is a misnomer to analyze the facts of this case in the context of a non-conforming use case. The analysis of the Deputy Zoning Commissioner that the uses of the subject site for an office rental and the parking and storage of fuel oil trucks was permitted by way of non-conforming use is not

a clear analysis of the facts and the principles of law which should be applied here. Nor is the Petitioner correct when he requests the continuation of a non-conforming use for parking his trucks. Petitioner never had a lawful non-conforming use for a Class II Trucking Facility.

This case is really concerned with the termination of a lawful use and its substitution by an unlawful one; that is to say, a lawful fuel oil business permitted, not as non-conforming, but as a matter of right under the Zoning Regulations in an ML zone. The parking of trucks was permitted as an accessory use to a lawful business. The Clark Oil Company, as found by Zoning Commissioner Jablon in his decision in 1984, was a permitted use and a lawful one in an ML zone, in which the use, the parking and storage of fuel oil trucks was incidental and accessory to the permitted use. In March 1992, the Clark Oil Company was operating lawfully, not as a non-conforming use, on the subject site; however, that use ceased upon the sale of the stock and business by Mr. Thomas Clark as testified by him. Clearly, the Clark Oil Company went out of business in March 1992, along with the fuel tanks and fuel pumps and the entire fuel oil business as then constituted. According to the testimony of Mr. Thomas Clark, as well as his son, Bruce Clark, within a few weeks, the Clark Oil Company was replaced by the operation of Bruce Clark Oil Company, not as a fuel company operating from the subject site, but simply as a place to park, store, and repair his vehicles. Those vehicles include four fuel

oil trucks and two tractor trailer tank trucks for swimming pool operation.

It is uncontested by both Clarks that the Bruce Clark Oil company is a different entity from the Clark Oil Company, with its office and headquarters located in Cockeysville. The fuel trucks are no longer loaded at the subject site, are no longer dispatched from the subject site, the public does not call the subject site, and the office is no longer located on the subject site. For all intents and purposes, the Bruce Clark Oil Company is completely operated out of 226 Cockeysville Road in Cockeysville. The Cockeysville address is the main site of operation of the Bruce Clark fuel business as advertised in the telephone directory and the newspapers. The subject site on Merryman's Mill Road is simply left as a place to store, park, and repair trucks. From March 1992, the Merryman's Mill site was used as a class II trucking facility as defined by the Baltimore County Zoning Regulations, Section 101. Contained in Section 101, the definition of the operation conducted by the Bruce Clark Oil Company on the Merryman's Mill Road site fits the definition of Trucking Facility, Class II, which is:

> "a trucking facility other than a Class I trucking facility, including a truckyard (the primary purpose of which is to accommodate the parking or storage of trucks, truck trailers, or truck tractors).

It is clear in this case from the testimony of Bruce Clark, that the Merryman's Mill site has as its primary purpose the accommodation for parking and storage of trucks, truck trailers, or truck tractors. The testimony of Bruce Clark and his father,

Thomas Clark, confirm the actual use of the property as a class II trucking facility between the months of March 1992 and the enactment of the new comprehensive zoning reclassification in October 1992.

The record is clear that in an ML zone, a class II trucking facility is only permitted by a Special Exception under Baltimore County Zoning Regulation 253.2(a.6). In this case, no Special Exception had been applied for between March and October of 1992. Additionally, no "use" permit had been issued by the County for this operation between March and October 1992.

Therefore, the parking of the trucks of the Bruce Clark Oil Company, as well as the swimming pool tank trucks, was an illegal use even under the ML zoning as existed prior to October 1992. As a result, it is clear that an illegal use may not become a non-conforming one after the change in zoning of this property from split ML/RC-4 to RC-4.

Non-conforming uses are found in Section 104 of the Baltimore County Zoning Regulations. Section 104.1 BCZR indicates that "a non-conforming use (as defined in Section 101) may continue..." In turning to Section 101, the definition of a non-conforming use is provided as follows:

> "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...."

It can be seen from the very definition of the regulations that the non-conforming use existing on the effective date of the adoption of the regulations must be a lawful one. The case of McKemy v.

the Petitioner filed a Petition for Special Exception for a 240-bed nursing home. The Zoning Commissioner's hearing was based on this request, as was the CBA appeal hearing. The Petition was denied at both levels and initially affirmed on appeal at the Circuit Court. When the Petitioner filed a Motion to Alter or Amend with the Circuit Court, the request was amended for a 120-bed facility. The Circuit Court granted the Motion and remanded to the CBA for an evidentiary hearing to determine "what Appellant is seeking in terms of the size of the nursing home." The Court of Special Appeals held the Circuit Court's modification and remand "was not warranted." Id. at 744. The Court noted that a Petition for a 120-bed facility was never filed with the zoning agency. Likewise, the Zoning Commissioner and CBA acted on a 240-bed facility. In reversing the Circuit Court, the Court noted, "The record reflects that at no time was an application for a 120-bed facility ever filed with the administrative agency. Nor is there any record that the original 240-bed facility was downsized by proper amendment." Id. at 747.

Case Law

The legal reasoning to permit a nonconforming use is perhaps best explained in a Colorado case citing Anderson, American Law of Zoning (1st Edition), Section 6.58:

> "If a property owner has invested money in improvements to put his property to a use which is lawful at the time, and if that use is subsequently outlawed by a zoning ordinance, he loses not only the potential use but the value of his investment. To impose this additional loss upon him is unreasonable. Therefore, he is entitled to continue the use of his property as he did before. However, if the improvements are destroyed or abandoned, he has lost the value of his investment independently of the zoning ordinance and there is no reason why he should continue his use of the property." Service Oil Co. v. Rhodus, 179 Colo. 335, 500 P.2d 807 (1972).

An abandonment is determined if the nonconforming business was sold (see Beyer v. Baltimore City, 182 Md. 444 (1943)), or if the equipment essential to the continuance of the nonconforming use was removed (see Stieff v. Collins, 237 Md. 601 (1965), where the machinery used for a dairy and bakery were removed from the plant and the buildings were sporadically used for storage).

Maryland courts have recognized that while a nonconforming use may be allowed by statute, "Such nonconforming uses pose a formidable threat to the success of zoning". County Council of Prince George's County v. E.L. Gardiner, 293 Md. 259, 267 (1982). Thus, ordinances to limit expansion of nonconforming uses or to eliminate these uses within a reasonable time and with the use of an amortization scheme have been upheld. See Harris v. Mayor and City Council of Baltimore, 35 Md.App. 572 (1977) and County Comm'rs of Carroll County v. Uhler, 78 Md.App. 140 (1989). In National Insts. of Health Fed. Credit Union v. Hawk, 47 Md.App. 189 at 200 (1980), the Court stated:

> "Maryland case law permits continuing a nonconforming use, but does not permit the transmogrification of an approved nonconforming use into a new and different use. The latter constitutes an unlawful extension, even if there is no outward change in the appearance of the facility being used."

In that case, the change in use from a scientific society headquarters into a credit union was not permitted. Also, in Wilson v. Mayor & Comm'rs of Town of Elkton, 35 Md.App. 417 (1977), the Court did not permit the unlawful extension of a nonconforming multi-family structure from two to three units. The Court reiterated its support for zoning regulations that restrict rather than expand nonconforming uses.

The prohibited change can also extend to an expanded accessory use. In Anderson, American Law of Zoning (3rd Edition), Section 6.65, in which a New York case was noted, it was stated:

> "The nonconforming use of land established by occupation of a house trailer on the effective date of a restrictive ordinance is not continued in an unbroken sequence when a new trailer is acquired for living purposes and the nonconforming one is maintained as an accessory use." Gardner v. Phillips, 301 NYS.2d 332 (1969).

The expansion of an accessory use is also discussed in Anderson, American Law of Zoning (3rd Edition) at Section 6.41:

> "Attempts have frequently been made to effect what amounts to a change of use by expanding an accessory or incidental use of the premises. The Courts are not sympathetic toward property owners who employ this means of changing a nonconforming use. Thus, a garage with incidental storage of gasoline, oil and parts was not entitled to expand its storage facility into a warehouse use. A private garage, accessory to a residence, may not be expanded and used to store commercial vehicles, and a gasoline station which parked some trailers may not expand the incidental trailer use to a main use for a trailer park. Attempts to change or expand a nonconforming use through the expansion of an accessory use frequently have been disapproved." (Citations omitted).

In a 1953 Kentucky case similar in facts to the instant case, the court did not permit a garage, used to store and recondition trucks for a dairy, to be used to recondition cars for a used car business located in another part of the city. Feldman v. Hesch, 254 SW.2d 914.

Maryland case law is consistent with other jurisdictions that permit nonconforming uses out of fairness to the property owner. Once the use ceases, however, the property must be used in conformity with the current zoning in order to protect the integrity of land use plans. Likewise, attempts to expand or to substitute a new use for the original, are unreasonable expansions of the protection required by a property owner and will not be permitted.

Conclusion

In summary, the Petitioner cannot skirt the logical application of the zoning regulations in order to legitimize the use of the site. The

Petitioner is asking the CBA to ignore many gaps in his burden of proof in order to obtain the relief requested. Such gaps include:

a. Failure to establish a nonconforming fuel oil business at 2815 Merrymans Mill Road operated by Bruce Clark.

b. Failure to establish the granting of a special exception for a Class II Trucking Facility for the site.

c. Failure to rebut the uncontroverted testimony of Thomas Clark that the Clark Fuel Oil Company was sold and ceased to operate at the site in 1992.

d. Failure to rebut the uncontroverted testimony that Bruce Clark was prevented by Mrs. Richard Clark from parking his trucks at the site prior to 1992.

e. Failure to provide evidence that Bruce Clark operated his fuel oil company at 2815 Merrymans Mill Road at any time other than to park and store his trucks on the site after Clark Fuel Oil was sold in 1992.

It is thus apparent that the Petitioner's belated suggestion of shelter as a nonconforming use is a desperate afterthought, a trial tactic and rationalization. The truth is in the concession of the original petition that the current land use fits the functional definition of a trucking facility. The consequence in the R.C.-4 watershed protection zone is that the use lacks any legal basis and is disallowed.

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of December, 1994, a copy of the foregoing Memorandum of People's Counsel was mailed to Conwell F. Gapp, Esquire, Reese and Carney, 10715 Charter Drive, Columbia, MD 21044, attorney for Petitioner, and to J. Carroll Holzer, Esquire, Holzer and Lee, 305 Washington Avenue, Suite 502, Towson, MD 21204, attorney for Protestants.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

Section 104--NONCONFORMING USES [B.C.Z.R., 1955.]

104.1--A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate. [B.C.Z.R., 1955; Bill No. 18, 1976; Bill No. 124, 1991.]

104.2--A structure damaged to any extent or destroyed by fire or other casualty may be restored within two years after such destruction or damage but may not be enlarged. In the case of residentially used structures which are nonconforming in density, the number of dwelling units or density units rebuilt may be equal to but may not exceed the number of units which existed before the casualty. (Bill No. 124, 1991.)

104.3--No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of the building so used. This provision does not apply to structures or uses restored pursuant to Section 104.2, except as authorized by the zoning commissioner pursuant to Section 307. (Bill No. 124, 1991.)

104.4--Exception. Any contrary provision of these regulations notwithstanding, an office building that was authorized by grant of a special exception and that becomes damaged to any extent or destroyed by casualty may be fully restored in accordance with the terms of the special exception. [Bill No. 167, 1980; Bill No. 124, 1991.]

104.5--Any use which becomes or continues to be nonconforming which exists within the Chesapeake Bay Critical Area on or after the effective date of this subsection is subject to the provisions of Section 104.1, Section 104.2 and Section 104.3 above, and to the provisions of Section 307.2, BCZR. [Bill No. 32, 1988; Bill No. 124, 1991.]

104.6--A striptease business lawfully operating prior to the effective date of this legislation that is in violation of the requirements contained herein shall be deemed a nonconforming use. A striptease business which is a nonconforming use:

1. shall be permitted to continue for a period not to exceed one (1) year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more; and

2. shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. [Bill No. 137, 1990.]

REV 5/92

IN THE MATTER OF THOMAS G. CLARK, ET UX S/s Merryman's Mill Road, 285' SW of c/l of Killarney Ct. (2815 Merryman's Mill Road) 10th Election District 3rd Councilmanic District SPH - To approve Class II Trucking Facility with Office on Residentially zoned property as non-conforming use	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 94-437-SPH

* * * * * * * * * * * * * *

PROTESTANTS' MEMORANDUM

IN LIEU OF FINAL ARGUMENT

Beverly C. Crook, et al., Protestants/Appellants, through their attorney, J. Carroll Holzer and Holzer and Lee, hereby submit this Memorandum in Lieu of Final Argument as requested by the Board.

STATEMENT OF THE CASE

This matter came to the attention of the Baltimore County Zoning Officials by way of a citizen complaint that the owner of the subject property, Thomas Clark, was utilizing it in a manner that violated the Baltimore County Zoning Regulations. Specifically, on March 18, 1994, the Baltimore County Office of Zoning filed Citation Number 94-197A and Citation Number 94-197B against Thomas G. Clark and J. Findley Ransone, charging the former (Clark) with: 1) operation of a Class II trucking facility, and 2) the operation of an office on residentially zoned property; and the latter (Ransone) with the operation of an office on residentially zoned property. Thomas G. Clark is the landowner,

LAW OFFICE
HOLZER AND LEE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204
(410) 825-6961
FAX (410) 825-4923

and J. Findley Ransone is his tenant on the property located at 2815 Merryman's Mill Road in northern Baltimore County. All of the property is currently zoned RC-4.

Subsequent to that, the property owner filed a Petition for Special Hearing designated as Case Number 94-437-SPH, in which he acknowledged that the property is presently zoned RC-4 and requested the Zoning Commissioner to approve "the non-conforming uses on the subject property. Specifically, the operation of a trucking facility, Class II, and the operation of an office on residentially zoned property."

The case was heard before the Deputy Zoning Commissioner of Baltimore County and on July 29, 1994, in his Findings of Fact and Conclusion of Law, the Deputy Zoning Commissioner found that the storage of fuel trucks on the subject site did not constitute a "Trucking Facility, Class II." However, he apparently found that the property had been operated by the Clark Oil Company as a matter of right from 1980 until 1992. He also found that the property had been utilized for this business since prior to 1992, which was the year the property zoning classification changed and made the use illegal. He also determined that there was no abandonment of the storage of these trucks on the property and that the trucks have in fact been stored on the property since prior to October 1992 without interruption. He therefore found a non-conforming use of the subject property for storage and parking of fuel oil trucks existed. From that decision, the Appellants appealed.

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management
June 17, 1994

FROM: J. Lawrence Pilson JLP/lmms
Development Coordinator, DEPRM

SUBJECT: Zoning Item #SPH 94-437 - Clark Property
2815 Merrymans Mill Road
Zoning Advisory Committee Meeting of May 16, 1994

Post-it® Fax Note 7671 — Date 6/17 — From J. Pilson — Co. Zoning — Phone # — Fax #

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

Environmental Impact Review

1. Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains.

2. Zoning Regulation 410A.2 states that no Class II trucking facility or part thereof established on or after the effective date of this section may be located within 200' of a wetland. (Bill No. 18, 1976). A stream, several springheads and small associated non-tidal wetlands exist within 200' of the subject facility and down slope of it.

3. The parking areas of the subject facility drain to a storm drain inlet. An apparent overflow from the inlet structure outfalls to within 172' of a Tributary of Overshot Run, itself a tributary of the Loch Raven Reservoir. Should the continued use be allowed and because of the close proximity of this operation to the watershed, this Department has concerns that petroleum based or other pollutants may enter the reservoir. It is requested that provisions are made to assure this will not occur. We recommend that a spill-contingency plan be available (such as: absorbent materials and containment barriers on site, and an empty truck [or reservoir] to pump oil into from any truck that may develop a leak).

   Special measures in addition to the treatment of stormwater runoff, could involve prohibitions on the types of products transported by trucks parked at the facility. The facility would also likely require an NPDES - Storm Water Discharge Permit.

4. The maximum permitted coverage of impervious areas is 28,203 sq. ft. or 10% of the gross area of 6.4746 AC.±.

   Please provide information to indicate the percentage of impervious acreage of site.

Petition Ack. 94-437-SPH 11/94

933-95

3/16/95

March 2, 1995

TO: Office of Arnold Jablon, Director of Zoning
111 W. Chesapeake Avenue
Room 109
Towson, Maryland 21204

Attention: Julie

FROM: Beverly C. Crook
2829 Merryman's Mill Road
Phoenix, Maryland 21131
(410) 666-1163

RE: Exhibits from case #94-437 SPH before Baltimore County Board of Appeals on January 5. 1995, Room 48, Old Courthouse.

Will you please arrange for me to pick up the photographs that were used in the appeal of case 94-437 on January 5? There was one very large picture (14x24?) -- an aerial view of property at 2815 Merryman's Mill Road (former Clark Oil Co.) Also another aerial view about 8x11. The rest of the photographs were smaller and mostly showed the Bruce Clark Oil Company on Cockeysville Road.

I should appreciate it if you will call me at the above phone number when you have located these pictures. Thank you.

Beverly C. Crook

RECEIVED
MAR 6 1995
ZADM

AGREEMENT

THIS AGREEMENT MADE THIS 11th DAY OF MARCH, 1985 by and between Beverly C. Crook, hereinafter referred to as "Mrs. Crook" and the Clark Oil Company, a Maryland Corporation, and Thomas G. Clark and Edith P. Clark, hereinafter referred to as "the Clarks", witnesseth:

WHEREAS, Mrs. Crook has heretofore filed a zoning violation complaint against the Clarks with regard to their underground storage of inflammable liquids and maintenance of a fuel delivery business on property at 2815 Merryman Mill Road, Phoenix, Baltimore County Maryland consisting of 6.217 acres of land more or less which is zoned Manufacturing Light in part and R.C. 4 in part and

WHEREAS Mrs. Crook is the owner of residential improved property at 2829 Merryman Mill Road binding on the eastern boundary line of the Clark's property and

WHEREAS there is pending before the Board of Appeals of Baltimore County an appeal from the Zoning Commissioner's decision dated July 24, 1984 finding the Clarks in conformance with the Baltimore County Zoning Regulations except for its failure to pave the parking area on its property in compliance with section 409.2.c of said regulations, the Clarks having applied for a variance from the aforesaid regulation with respect to paving of its parking area and

WHEREAS the parties hereto are desirous of settling their differences and protecting their respective property rights.

THEREFORE in consideration of the foregoing and other good and lawful consideration the parties hereto have mutually agreed and covenanted as follows:

1. Mrs. Crook shall dismiss with prejudice her appeal before the Board of Appeals of Baltimore County in case No. C-84-718 ;

2. The Clarks shall make no further application for expansion of its existing ML zoning as established by ordinance of the Baltimore County Council in the 1984

Petition Ack. 11 94-437-SPH

IN RE: ALLEGED ZONING VIOLATION
2815 Merrymans Mill Road
10th Election District

Clark Oil Company
c/o T. Richard Clark, President
2815 Merrymans Mill Road
Phoenix, Maryland 21131
Defendant

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. C-84-718

* * * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This hearing was held at the request of the Protestant who disagreed with the findings issued by the Zoning Enforcement Section after an investigation of alleged violations by the Defendant of the zoning laws of Baltimore County.

The violations presented by the Protestant are that the Defendant (1) has a garage within 100 feet of a residential zone; (2) is utilizing his property as a Class II trucking facility; (3) has retail sales on the property; (4) has not paved his off-street parking area; (5) has improperly directed his lighting in the direction of the Protestant; and (6) is illegally selling fuel oil from the property. The Defendant denies all allegations.

Appearing were Beverly Crook, the Protestant, who was represented by Counsel, and T. Richard Clark, President of Clark Oil Company, the Defendant, who was also represented by Counsel.

Testimony indicated that in 1938 Mr. Clark's father initiated the business at the present location. In the 1940's, a tank farm was placed on the site, which, then and now, consisted of tanks below ground for the storage of fuel oil with only the pumps and loading arms seen above ground. The tank farm has been approved by the State. In 1958, the Defendant started his service facility on the site. The business itself is a heating and gas operation that buys fuel from a terminal, primarily at Curtis Bay, and provides such fuel directly to homes and service

Petition Ack. 94-437-SPH

CLARK OIL.

Project Manager - Please SEE INFO

the Council Man -

USE RESTRICTIONS

These Use Restrictions (the "Restrictions") are made and imposed this 11th day of October, 1988, by Thomas G. Clark and Edith P. Clark, his wife, herein called the "Clarks", or the "Owners", interchangeably, in regards to those 6.217 acres of land, located on the south side of Merrymen's Mill Road, a portion of which is zoned M.L., manufacturing light, which is more specifically described in a deed recorded among the Land Records of Baltimore County at Liber 3093, Folio 92.

The Restrictions contained herein shall bind and run with the property, may not be unilaterally either revoked or in anyway diminished by the Clarks, their successors, or assigns, without the written consent of the beneficiary hereto as more specifically defined below, and shall restrict the property under the specific terms and conditions and for the specific time, described below. These restrictions shall, inure to the benefit the GREATER SUMMERHILL ASSOCIATION, INC., a body corporate of the State of Maryland, herein after called "Summerhill".

RECITALS

Whereas the Clarks property presently has the zoning classification of M.L., as presently shown on the 1984 Comprehensive Zoning Map of Baltimore County;

Whereas an adjoining neighbor has petitioned the Baltimore County Council, to rezone the Clarks property to an RC-4 Zone in the 1988 Comprehensive Zoning Map Procedure;

Whereas the Clarks wish to provide certain irrevocable assurances and protection to the Summerhill Association in regards to the use of the Clark's property;

Now, therefore, in consideration of the retention of the M.L. zoning classification in the 1988 comprehensive rezoning process, Clarks, for themselves, their successors, assigns, and any tenants or users of the Property, hereby imposes the following restrictions on the property to the benefit of the Summerhill Association.

RESTRICTIONS

USES: That the subject property shall continue to be used as oil company offices, bulk fuel storage area, with below ground tanks only, a heating and air conditioning operation, as an accessory use to the main use for the sale and storage of heating oils, kerosine and gasoline to individual, commercial and gasoline service station customers, fuel storage and sales, associated truck storage and service incidental for said uses, and the combination of the above. That in return for the

- 1 -

PETITIONER'S EXHIBIT NO. 1

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO J. James Dieter Date February 19, 1988

FROM Jeffrey B. Jollie

SUBJECT Zoning Reclassification/ Clark Oil Co., Merryman's Mill Rd.

I have reviewed the zoning reclassification petition 3-035, which proposes to restore a RC4 classification to a parcel of property now classified as ML. The property is owned by Clark Oil Company, and is located along Merryman's Mill Road.

The Clark Oil property is underlain by the Loch Raven Schist, and approximately 4,000 ft. from Loch Raven Reservoir. Preliminary results of the Chestnut Ridge/Worthington Valley groundwater study indicates that Loch Raven Schist has some of the most rapid perc-test drawdown rates in the county. It is assumed that quick drawdown rates indicate an increased potential for groundwater contamination. Further, the underground storage tanks are seated below the silt/clay layer where groundwater pollution potential increases considerably. Given the proximity of the nearby stream to the underground storage tanks, groundwater would be expected to occur between 10 and 20 feet of the ground surface. Some of the underground storage tanks were replaced in 1987. Unfortunately, even with new underground storage tank regulations leaks to groundwater can go undetected for some time.

In addition, it is conceivable that surface spills could eventually make their way to the reservoir despite the fact that berms have been constructed to prevent that from happening. Please note that surface spills also have significant potential to contaminate groundwater.

In the interest of ground and surface water protection, I am in support of the rezoning classification. Surrounding parcels are classified as RC4 water shed protection. The current Clark Oil property classification of ML is inconsistent with surrounding classifications. Restoring the classification of RC4 would enable this Department to apply restrictions to expansion of the Clark Oil operation on Merryman's Mill Road.

Jeffrey B. Jollie

JBJ:as

PROTESTANT'S EXHIBIT NO. 2

WATERSHED PROTECTION COALITION, INC.
P.O. BOX 212, TIMONIUM, MARYLAND 21094-0212
252-5515

June 17, 1994

Case #94-437-SPH,Item 421

Testimony by Mrs. J. Owen

I am Josephine Owen, 308 Merrie Hunt Drive, Timonium, Maryland 21093, and I speak for the Watershed Protection Coalition, Inc. We represent approximately 20,000 City and County residents, Environmental Groups, Neighborhood Associations and Councils all concerned about the Loch Raven Reservoir/Watershed, the drinking water supply for over one million citizens in the metropolitan area.

Our coalition's purpose is to protect the City-owned watersheds, and it supports responsible public policy for the long term stewardship of all Baltimore Municipal Watersheds.

Responsible stewardship of the Loch Raven Reservoir/Watershed was vividly demonstrated recently by Mayor Kurt Schmoke by his prudent and judicious decision to deny the expansion of Pine Ridge for environmental reasons.

But growth and development in Baltimore County has contributed and continues to contribute to the degradation of the Loch Raven Reservoir/Watershed through pollution and sediment run-off.

Baltimore County depends on Baltimore City for its water supply, and because of its location in Baltimore County, stewardship of this body of water is also Baltimore County's responsibility. RC-4 zoning and its enforcement by Baltimore County is imperative if we are to insure the protection of Loch Raven's waters and assume our share in the stewardship of this resource.

Our coalition asks that this requested special exception for a trucking facility be DENIED because it poses a serious threat to Loch Raven's waters. The repair of and keeping of oil trucks on this property, the disposal of motor oil, gasoline, fuel oil, diesel fuel from parked and or stored vehicles, and repairs done to said vehicles so near the reservoir, in addition to the increase in large truck traffic on a narrow and dangerous road, can only negatively impact our drinking water supply.

Because protecting our drinking water supplies is a regional concern, we ask that any decision to the contrary made today first be submitted to the Baltimore Metropolitan Council's Watershed Protection Committee for its review and determination.

Watershed Protection Coalition Board of Directors

PROTESTANT'S EXHIBIT NO. 3

OIL-OILS 687

Bruce Clark Fuel Co.

FUEL OIL & DIESEL

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Protestant Exh 2 94-437-SPH 1/7/94

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Protestant Exh 3 94-437SPH

SAVE OUR STREAMS

258 Scotts Manor Drive * Glen Burnie, MD 21061
(410) 969-0084 * (800) 448-5826 * Fax (410) 969-0135

Board of Directors

TO: County Board of Appeals, Baltimore County
Old Court House, Room 49
400 Washington Avenue
Towson, Maryland 21204

FROM: Board of Directors, Baltimore Delegation
Save Our Streams

DATE: December 7, 1994

RE: Deny Request of Zoning Special Exception
Case No. 94-437-SPH 2815 Merryman's Mill Road

Save Our Streams is a citizen action group concerned with helping individual citizens learn how to protect our streams and water supply.

We urge you to deny this request for a trucking facility, Class II and office at 2815 Merryman's Mill Rd., on residentially zoned (RC4) land.

Our reasons are:

1) Such use should not be allowed so close to Loch Raven Reservoir. The parcel lies on the south side of Merryman's Mill Road and is within 200 feet of a tributary of Loch Raven drinking water reservoir. In addition to the stream, several springheads and small associated non-tidal wetlands exist within 200 feet of the subject facility and downslope of it;

2) This land was zoned RC4 (watershed protection) in the 1992 zoning cycle. It should not be converted to urban use. Such a conversion of residential to urban use in the watershed would contradict the intent of the "Reservoir Management Agreement";

3) The owner has allowed a former, non-conforming use to lapse since the 1992 zoning as RC4.

Therefore, we urge that you deny this zoning request for a trucking facility, Class II at 2815 Merryman's Mill Rd., for the preservation of drinking water quality and to avoid setting a precedent on watershed RC4 zones.

Submitted by
Dolly Walker Wirth
Board of Directors

Community Streams...Community Choices
Established 1970

Protestant Exh 5 94-437-SPH

WATERSHED PROTECTION COALITION, INC.
P.O. BOX 212, TIMONIUM, MARYLAND 21094-0212
252-5515

December 7, 1994

County Board of Appeals
of Baltimore County
Arnold Jablon, Director / ZADM

Re: Case No. 94-437-SPH C. William Clark

Baltimore County has no water supply system of its own. The three City-owned reservoir-watersheds exist mainly in Baltimore County; the water supply system is owned and controlled by Baltimore City.

Loch Raven Reservoir Watershed is the most threatened and most often polluted of the three City Owned Reservoir Watersheds. Development surrounding the reservoir watershed in Baltimore County, sediment run-off, chemical pollution, excessive nutrients and distructive behaviour by recreational users all contribute to the degradation of our drinking water - most of it contributed by people of Baltimore County..

Baltimore County's Resource Conservation -4 (RC-4) Zoning is the only weapon in place to prevent this degradition to our drinking water supply in the Loch Raven Reservoir.

Mrs. Crook has fought valiantly through many years to have Baltimore County restore the rightful and necessary RC-4 zoning on the Clark Oil Property and to correct the misapplied and incorrect zoning condoned in the past on this property. To allow the previous zoning abuse of this Resource Conservation area to continue in any form would be irresponsible and unconscionable on the part of Baltimore County .

It behooves Baltimore County to recognize its role in protecting Loch Raven Reservoir and enforcing RC-4 in accordance with its Master Plan as well as its agreement with Baltimore City, Howard and Carroll Counties in the Watershed Management Agreement.

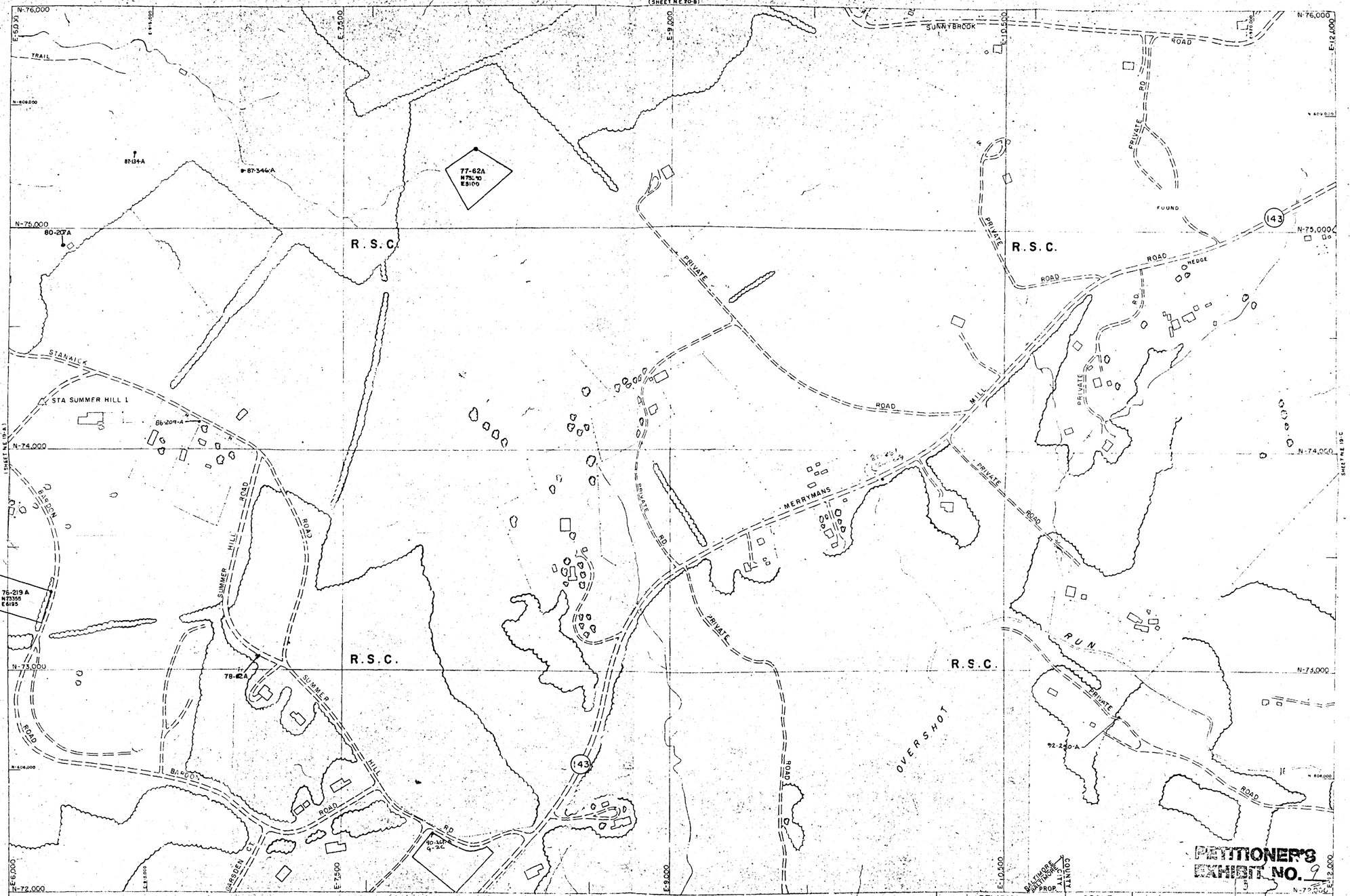
The Watershed Protection Coalition, therefore, earnestly requests that no Class II Trucking Facility be allowed on this location and that RC-4 be enforced.

Sincerely,

The Watershed Protection Coalition

Copy to: Hon. Dutch Ruppersberger
Reservoir Watershed Protection Subcommittee
Baltimore County DEPRM

Protestant Exh 6 94-437-SPH



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ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
MARCH 24, 1971
BY BILLS NOS. 28, 29, 30, 31, and 32

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY, MARYLAND
OFFICIAL ZONING MAP

REVISIONS	BY	DATE

SCALE: 1" = 200'

DATE OF PHOTOGRAPHY: APRIL 1958

Compiled By Photogrammetric Method
MAPS, INCORPORATED - BALTIMORE 22, MARYLAND

LOCATION: MERRYMANS MILL ROAD

SHEET: N.E. 19-B

PETITIONER'S EXHIBIT NO. 9

Manufacturing Light from 1980 until 1992 at which time the property was rezoned to R.C. 4.

Entered into evidence as Petitioner's Exhibit 4 is the official Baltimore County Zoning Map of 1980 which depicts the subject property as being entirely zoned M.L. Submitted into evidence as Petitioner's Exhibit 5 is the 1984 Comprehensive Zoning Map depicting the property as being split zoned M.L. and R.C. 4. That portion of the property containing the business is zoned M.L. and the remaining wooded area is zoned R.C. 4. Also entered into evidence as Petitioner's Exhibit 6 is the 1988 Comprehensive Zoning Map for Baltimore County, once again depicting the property as being split zoned M.L. and R.C. 4, with the uses in each zone remaining the same as they did in 1984. The 1992 Comprehensive Zoning Map, which was entered into evidence as Petitioner's Exhibit 7, shows that the property was rezoned in its entirety to R.C. 4.

Bruce Clark appeared and testified on behalf of the Petition. He testified that he operates Bruce Clark Oil from the subject site and that in addition to fuel trucks being stored on the property, he also stores water trucks that are used to fill swimming pools in this rural area of Baltimore County.

On cross-examination Mr. Clark testified that he actually began operating his business from the subject site prior to the termination of his father's company, Clark Oil, in 1992. Mr. Clark testified that he has utilized the subject property for the storage of fuel oil trucks and water trucks since prior to February 1992 until the present date.

Also testifying on behalf of the Petition was J. Finley Ransone, a Registered Land Surveyor, who was responsible for preparing the site plan submitted into evidence as Petitioner's Exhibit 3. Mr. Ransone testi-

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Date 7/29/94
By [illegible]

fied that he has had an office on the subject property since April 1992. He testified that he has had as many as 17 employees or as little as 5 employees working on the site, depending on the time of year, and the amount of business he has at the time. Mr. Ransone testified that since he began operating his business on the property, there have always been fuel oil and water trucks stored on the premises.

Appearing and testifying in opposition to the Petitioners' request was Beverly Crook, an adjacent property owner. Ms. Crook testified that she has lived on the adjoining property for the past 40 years. She stated that in the late 1970s, the Clark Oil business began to expand and additional buildings were constructed on the site. She testified that there was an attempt to change the zoning of the property from M.L. to R.C. 4 in the 1984 and 1988 zoning reclassification process; however, the County Council kept the M.L. zoning in tact for the Clark Oil business. Mrs. Crook further testified that in 1992, the community was successful in having the zoning changed back to all R.C. 4.

Ms. Katherine Clark also testified in opposition to the Petitioners' request. She testified that she married Richard Clark in 1968 and began working as the office manager for Clark Oil in 1979. She testified that in February, 1992, the shareholders sold Clark Oil to Carroll Independent Fuel Company and that all trucks and equipment were moved from the premises at that time. Ms. Clark further testified that there was no activity on the subject site from February 1992 until September 1993 and that by virtue of this gap in usage of the property, there was an abandonment of its use for the storage of fuel oil trucks.

Also appearing in opposition to the Petitioners' request was Mrs. Josephine Owen, who appeared on behalf of the Watershed Protection Coali-

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tion, Inc. Mrs. Owen submitted as Protestant's Exhibit 3 a written statement presenting her opposition to the Petitioners' request for a trucking facility. Therein, she cites the need to protect and insure water quality due to this property being located in close proximity to the Loch Raven Reservoir. She fears that this type of business taking place in close proximity to the watershed could pose a potential health hazard to those individuals who obtain their drinking water from the Loch Raven Reservoir.

Also testifying in opposition to the Petitioners' request was Paul Dobolose. Mr. Dobolose is a representative of the Greater Summerhill Community Association and lives in close proximity to the subject site. He is opposed to any nonconforming use of the subject site and believes that the R.C. 4 zoning was put into place to protect this property from such uses.

Ms. Anneke Davis, a resident of Baltimore City, but a representative of the Greater Baltimore Environmental Center, testified in opposition to the Petitioners' request. Ms. Davis testified that she has been involved with this property since 1980 and is very concerned over the possible detrimental effect this use might have on the Loch Raven Watershed. She testified that she was happy to see the underground storage tanks being removed from the subject property, but is still concerned over the storage of large trucks containing fuel oil on the property.

At the close of taking testimony on this case, lawyers for both the Petitioners and the Protestants requested that they have an opportunity to submit written memoranda setting forth their positions regarding the relief requested. Those Memoranda have been read and considered prior to the issuance of this Order.

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By [illegible]

Pursuant to the Petition for Special Hearing, the Petitioners have requested that they be granted a nonconforming use for what they characterize as being a Class II Trucking Facility, and the use of an office on residentially zoned property. I do not agree with the Petitioners' classification that the storage of these fuel oil trucks constitute a Trucking Facility, Class II. Section 101 of the B.C.Z.R. defines a trucking facility 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 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 establishment, or truck stop. Land used for the parking, 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."

That definition clearly states that "Land used for the parking, 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." The testimony offered at the hearing demonstrated that the storage of these fuel oil trucks was, in fact, accessory to the Clark Fuel

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By [illegible]

Oil Company, which operated from the premises. Given this fact, the storage of these trucks, cannot, by definition, be considered a trucking facility.

Further testimony revealed that the subject property was rezoned in 1980 from residential to manufacturing light. In my opinion, the Baltimore County Council rezoned this property to M.L. to make the zoning consistent with the type of use that was being conducted thereon. The testimony clearly supported the fact that the Petitioners used the property from 1938 until the time the property was rezoned in 1980 as a business engaged in the sale and storage of fuel oil. This type of business is permitted in an M.L. zone and explains why the Baltimore County Council rezoned the property to M.L. in 1980. That M.L. zoning stayed with the business portion of the site through the next two zoning classification cycles. In 1984 and 1988, the business portion of the property continued with the M.L. zoning. It was not until 1992 that the property was rezoned to R.C. 4. However, given the zoning on the property, the Clark Oil company operated as a matter of right from 1980 until 1992. In 1992, when the property was changed to R.C. 4, the business use of the property then became illegal. Therefore, it is incumbent upon the Petitioners through their testimony and evidence to prove that the subject property has been utilized for the purpose of fuel oil storage since prior to 1992. It is not necessary that the Petitioners prove the subject property has been utilized as a fuel oil business since as far back as 1938. In my opinion, the testimony need only show that the property has been utilized for this business since prior to 1992, which is the year the property's zoning classification changed and made the use illegal.

The Petitioners also requested a special hearing to approve the office building on the subject site as a nonconforming use. It is also

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Date 7/29/94
By [illegible]

noted that the Manufacturing Light zone permits offices as a matter of right. Therefore, as in the case with the fuel oil business, the Petitioners need only demonstrate that the office has been located on the property since 1992 which is the time the property was rezoned from M.L. to R.C. 4.

The testimony offered by Mr. Ransone was that he has operated his offices from the subject site since April 1992. Mr. Ransone is a registered Land Surveyor who has employed as many as 17 employees in his business. It is clear that in April 1992, the subject property was still zoned M.L. which permitted that use as of right. The change of zoning from M.L. to R.C. 4 occurred by action of the County Council in October 1992. Therefore, it is clear that this office use is permitted to remain on the site as a nonconforming use.

Furthermore, the testimony of Mr. Bruce Clark was that he has been operating his oil business on the subject property since February 1992 and that his fuel oil trucks have been stored on the site continuously and without interruption since that time. He testified that he has four (4) oil trucks and two (2) tank trailers stored on the subject property. The testimony regarding the continuous storage of these trucks on the subject site was corroborated by Mr. Ransone, who has witnessed the storage of these trucks on the subject property since he began operating his business on the subject site in April 1992.

There was testimony offered by Katherine Clark, who married into the Clark family in 1968 and was associated with Clark Oil in a full-time capacity as the office manager from 1979 until the business disbanded in 1992, that there was an abandonment of the storage of these fuel oil trucks from February 1992 until September 1993. Her testimony was that she did not see the storage of any fuel oil trucks on the property during

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that 18-month period of time. She, therefore, argues that the nonconforming use was abandoned by virtue of there being no storage of fuel oil trucks on the premises for more than one year.

The testimony concerning the storage of these fuel oil trucks is conflicting. Mrs. Clark stated that there had been an abandonment for a period of approximately 18 months. However, Mr. Ransone and Mr. Bruce Clark testified that the storage of trucks on the property has been continuous, even during the time that Mrs. Clark testified that there was an abandonment. Inasmuch as Mr. Ransone was physically on the property and witnessed the storage of these trucks as well as their movement to and from the site, I am inclined to give greater weight to his testimony. I find that there was no abandonment of the storage of these trucks on the property and that the trucks have, in fact, been stored on the property since prior to October 1992 (the date that the zoning of the property changed from M.L. to R.C.4) continuously and without interruption until the present time. Therefore, it appears that a nonconforming use of the subject property for the storage and parking of fuel oil trucks exists.

As with all nonconforming use cases, the first task is to determine whether a lawful nonconforming use existed on the subject property prior to the date/year in which a change in the zoning regulations caused the use of the property to become illegal. The controlling date in this case is October, 1992, the date the zoning maps became effective.

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 origi-

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nal 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.

As stated previously, I am persuaded by the testimony presented that the Petitioner has established a nonconforming use of the subject property.

It should be noted that the nonconforming use granted herein is not for the entire 6.4746 acres of land but is limited to that area depicted on Petitioner's Exhibit 3 which contains the existing improvements, including the four structures and the entire macadam driveway and parking area. The wooded areas have never been utilized as part of the nonconforming use, and therefore, shall not be approved as a part of the relief granted herein. There shall be no expansion or enlargement of the noncon-

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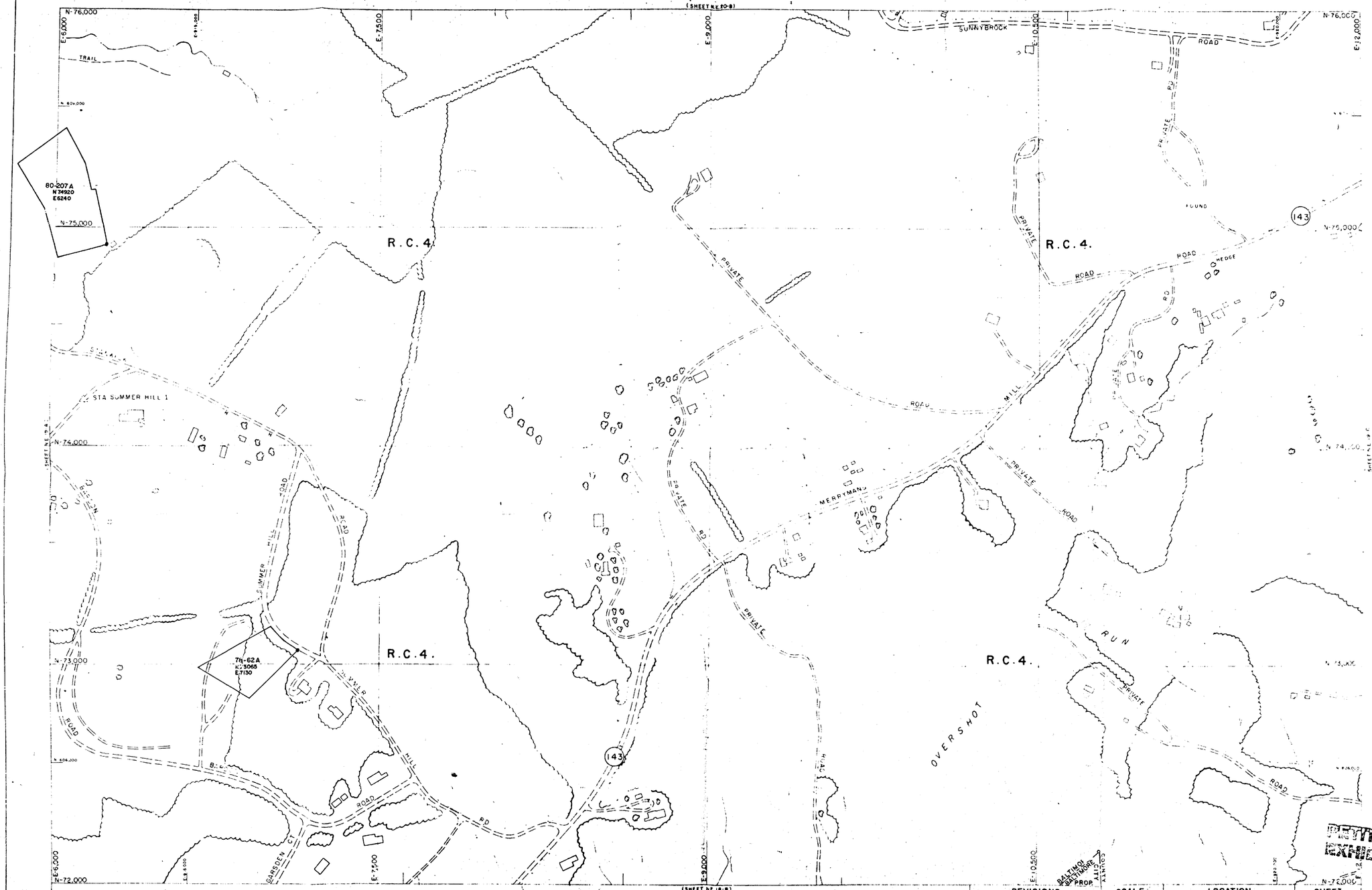


U-NW

76 COMPREHENSIVE ZONING MAP
ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
OCT. 7, 1976 & OCT. 6, 1976
BILL NOS. 108-76, 109-76, 110-76, 111-76
112-76, 113-76, and 114-76

CHAIRMAN COUNTY COUNCIL

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY, MARYLAND
OFFICIAL ZONING MAP

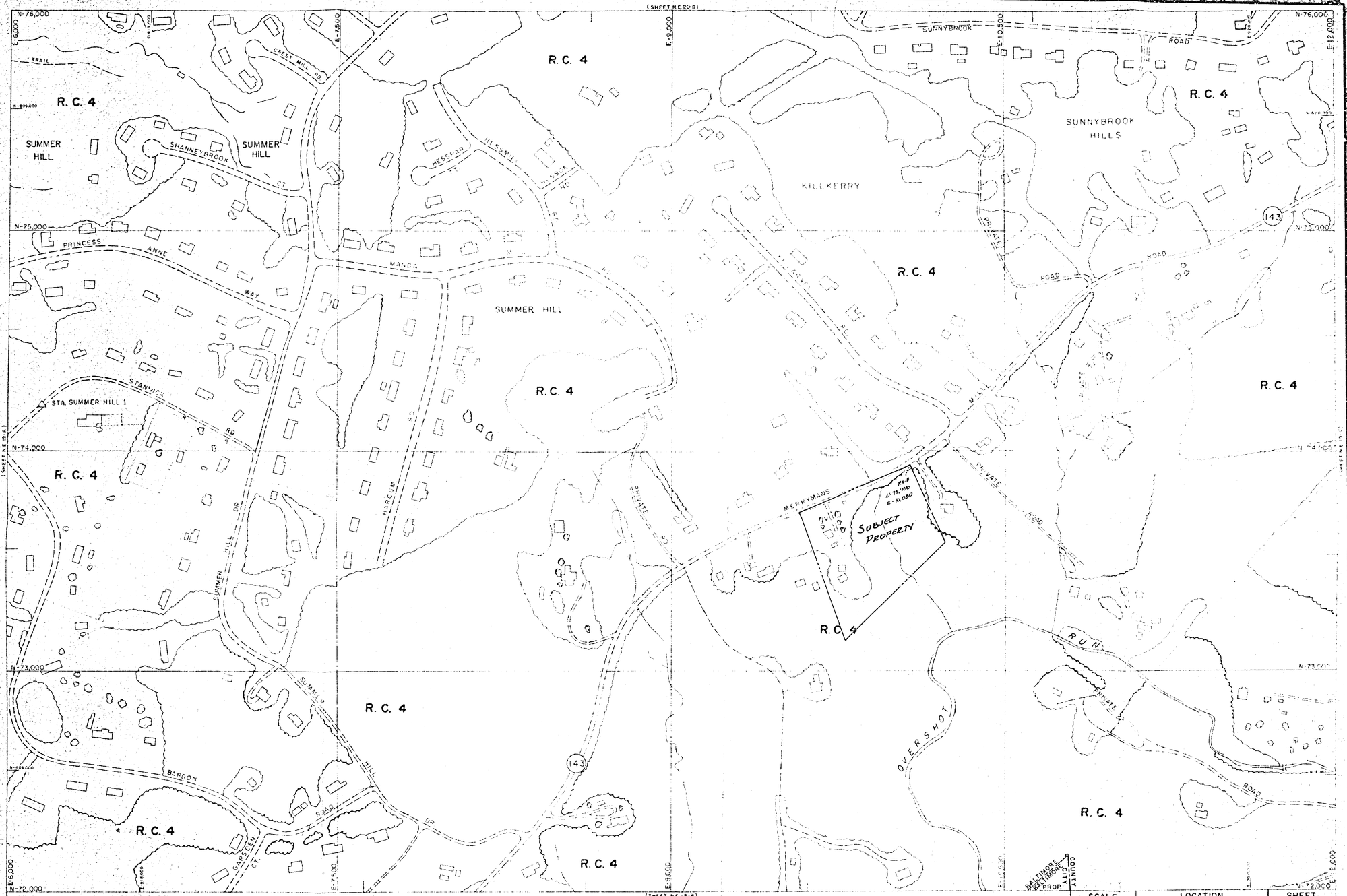
REVISIONS		
	BY	DATE

Compiled By Photogrammetric Method
MAPS, INCORPORATED - BALTIMORE 22, MARYLAND

SCALE	LOCATION	SHEET
1" = 200'	MERRYMANS MILL ROAD	N.E. 19-B

DATE OF PHOTOGRAPHY
APRIL 1958

PETITIONER'S EXHIBIT NO. 8



U-NW

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
Bill Nos. 183-92, 184-92, 185-92, 186-92, 187-92, 188-92, 189-92

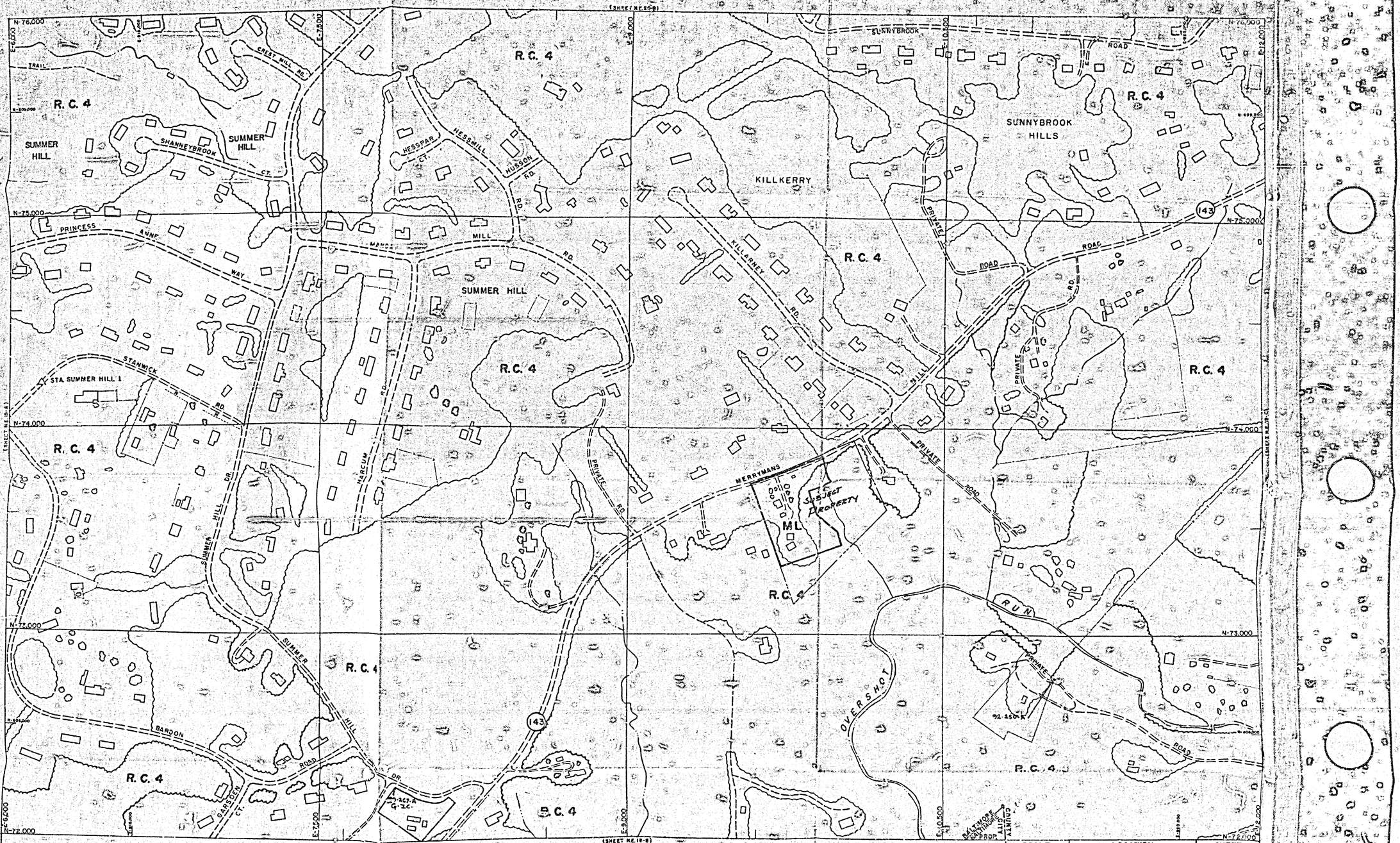
William A. Howard III
Chairman, County Council

BALTIMORE COUNTY / BALTIMORE CITY PROP.

SCALE	LOCATION	SHEET
1" = 200'	MERRYMANS MILL ROAD ITEM #421	N.E. 19-B
DATE OF PHOTOGRAPHY: JANUARY 1986		

94-437-SPH

PETITIONER'S EXHIBIT NO. 7



U-NW

1988 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 13, 1988
Bill Nos. 144-83, 145-83, 146-83, 147-83, 148-83, 149-83, 150-83

County Council

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

SCALE	LOCATION	SHEET
1" = 200'±	MERRYMANS MILL ROAD	N.E. 19-8
DATE OF PHOTOGRAPHY JANUARY 1986		

PETITIONER'S EXHIBIT NO. 6

R.C.4

R.C.4

R.C.4

R.C.4

R.C.4

ML

87-134-A

87346-A

86-209-A

MANDA MILL RD.

PRINCESS ANNE WAY

MERRYMANS MILL ROAD

PRIVATE

N.75,000

N.74,000

N.73,000

N.72,000

E.49,000

E.49,500

E.50,000

143

1984 COMPREHENSIVE ZONING MAP
ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
NOV. 13, 1984
BILL NOS. 132-84 - 134-84, 135-84
136-84, 137-84 AND 139-84

CHAIRMAN, COUNTY COUNCIL

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY, MARYLAND
OFFICIAL ZONING MAP

REVISIONS | BY | DATE

SCALE 1" = 200'

DATE OF PHOTOGRAPHY APRIL 1984

LOCATION MERRYMANS MILL ROAD

SHEET N.E.

PETITIONER'S EXHIBIT NO. 5

R C 4

R C 4

R C 4

R C 4

M L

PETITIONER'S EXHIBIT NO. 2

1980 COMPREHENSIVE ZONING MAP
ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
OCTOBER 1980
BILL NO. 178-80

CHAIRMAN, COUNTY COUNCIL

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY, MARYLAND
OFFICIAL ZONING MAPS

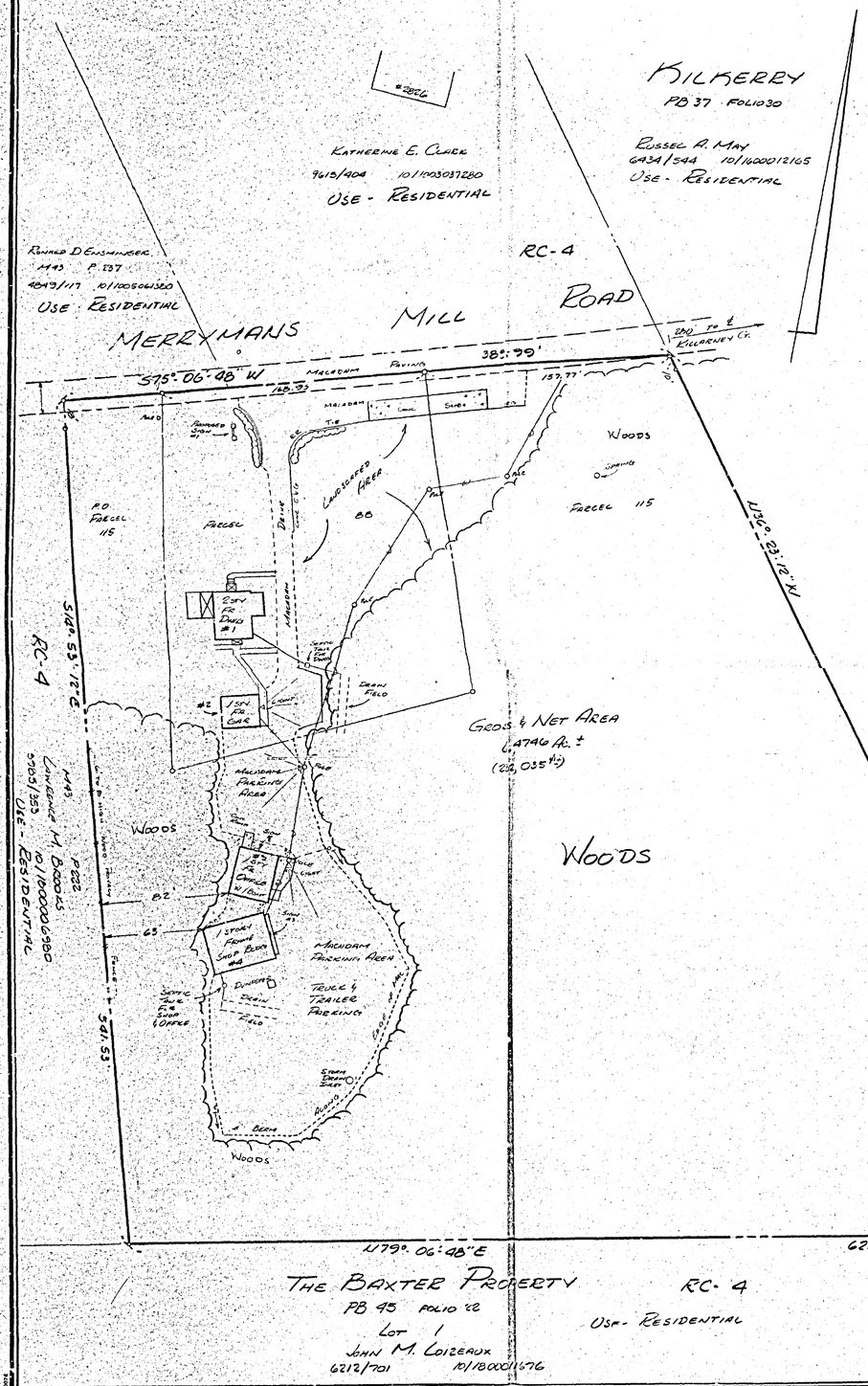
REVISIONS

SCALE 1:200

LOCATION MERRYMANS MILL ROAD

SHEET 19-B

AERIAL SURVEY CORPORATION OF BALTIMORE, MARYLAND



ZONING HISTORY

1932	No zoning	1980	ML & RC-4
1945	Residential A or B	1984	ML & RC-4 (ML Amended)
1971	RSC	1985	Case 85-221
1976	RC - 4	1988	Same as 1984 - Covenents recorded
1992	ML deleted - Entire tract RC-4 (Covenants volded)		

GENERAL NOTES

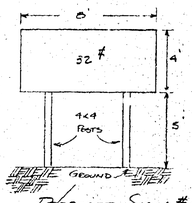
1: Deed Reference: Liber 3093 folio 92
2.Tax Map 43 Grid 10 Parcel 88 Tax Acc No. 1003037075
3.Tax Map 43 Grid 10 Parcel 115 Tax Acc No. 1003037076
4. Councilmanic District 3 Regional Planning District 305
Census Tract 4101
5. Current Zoning RC-4 Proposed Zoning RC-4
6. Building Inventory & Uses

BLDG No.	TYPE	USE
1	2 sty frame /w bsmt	Primary residence of petitioner
2	1 sty frame	Garage accessory to dwelling
3	1 sty frame /w bsmt	Office
4	1 sty frame	Truck Maintenance & repair shop

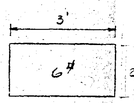
7. Floor Area Ratio Calculations:

Office:	26.2' X 30.3' X 2	=	1588 sq. ft.
Shop	30.2' X 40.2'	=	1214 sq. ft.
TOTAL			2802 sq. ft.

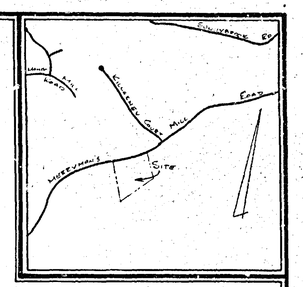
FAR 2802 ÷ 282035 = 0.0099



PROPOSED SIGN #1
FREE STANDING
DOUBLE FACE
NON ILLUMINATED



PROPOSED SIGNS
2 @
SINGLE FACE
ATTACHED TO BLDING
NON ILLUMINATED



VICINITY MAP
1" = 1000'

Plat To Accompany Petition For

SPECIAL HEARING TO DETERMINE NONCONFORMING USE IN RC-4 ZONE

For the Property Located at 2815 Merryman's Mill Road

Tenth Elevtion District Baltimore County

Owner - Petitioner
Mr. & Mrs. Thomas G. Clark
Merryman's Mill Road
Phoenix, MD 21131

Phone: 666-1844

PETITIONER'S EXHIBIT NO. 3

94-437-SPH Item # 421

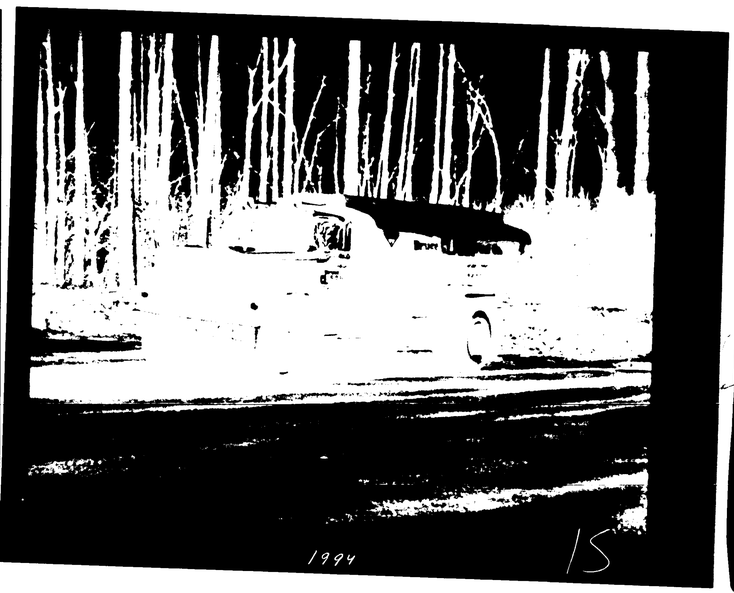
SCALE: 1" = 90' | DATE: Dec. 29, 1993

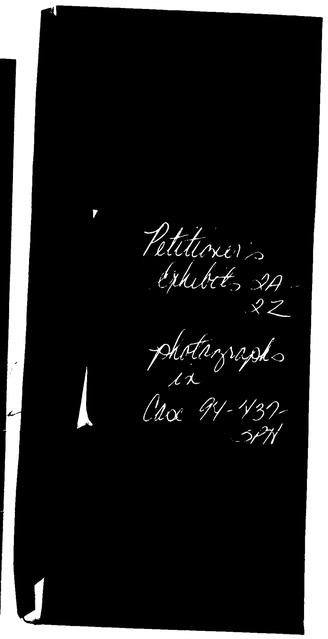
J. FINLEY RANSONE & ASSOCIATES
REGISTERED
LAND SURVEYORS
P.O. BOX 10160
TOWSON, MARYLAND
21285-0160
666-7448

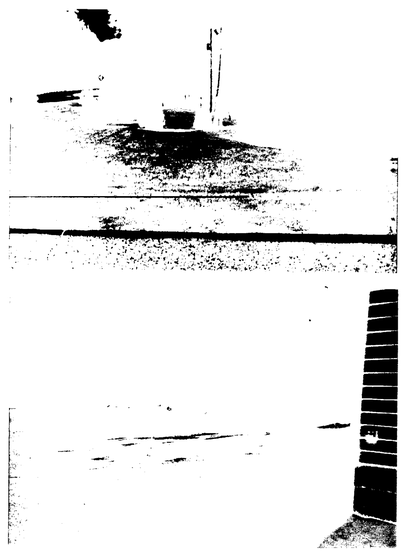
J# 9203-916 | F# 100-130

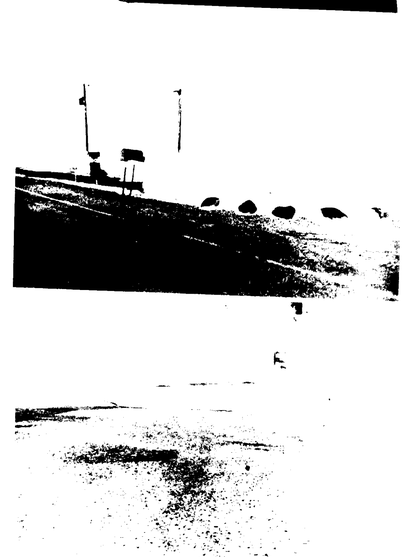
1992
1Q

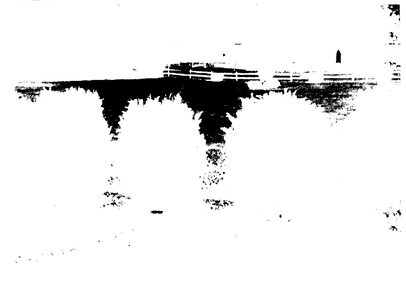
1994
1R

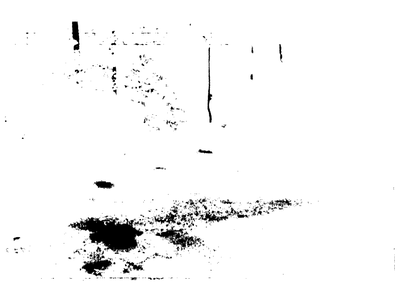

1994
1S


Petitioner's
Exhibits 2A-
2Z
photographs
in
Case 94-1132-
SPH









Argument

The legal issues in this case are numerous and will be framed and analyzed in this Memorandum in an outline format for the sake of clarity. The facts are especially significant as they define the actual use of the subject site, rather than the nomenclature bestowed by counsel for the Petitioner.

The issues raised in this case and the positions of People's Counsel are as follows:

1. **Whether 2815 Merrymans Mill Road was used primarily, prior to the sale of the Clark Oil Company in 1992, as a Class II Trucking Facility? If yes, was this use permitted by right, special exception, or as a nonconforming use?**

At no time during the existence of the Clark Oil Company at 2815 Merrymans Mill Road did the Petitioner operate a Class II Trucking Facility. The primary purpose of such a facility as defined in BCZR is the parking and storage of trucks. There was no evidence from the Petitioner that the primary use of the site and purpose of the business operation conducted on site from 1938 until 1992 was to park and store trucks.

In 1976, the Baltimore County Council passed a comprehensive law regulating existing and future Class II trucking facilities. (See generally BCZR 410A). The provisions of this legislation required the following of existing trucking facilities: (a) Verify that approved plans of the facility are on file with the Office of Planning and Zoning or Office of Permits and Licenses (BCZR 410A.1A.1); or (b) if no such plans exist or the owner fails to notify the Offices of Zoning or Permits, a plan meeting the requirements of this law was required for filing within one year. (BCZR 410.A.1A.2). Rulings were then to be

issued on the adequacy of previously filed plans or the required changes. (BCZR 410A.1B). Failure to register plans or comply with the ruling constituted a zoning violation (BCZR 410A.1D) and mandated that such facilities must cease operation within three years from the effective date of the law.

The Petitioner offered no evidence of compliance with these regulations. Thus he was not operating as a nonconforming Class II Trucking Facility.

Under BCZR Section 253.2A.6, a trucking facility is permitted in an ML zone by special exception but not as of right. The Petitioner offered no evidence that a special exception was obtained for 2815 Merrymans Mill Road.

In addition, following an evidentiary hearing, the Zoning Commissioner for Baltimore County ruled in 1985 that the Clark Fuel Oil Company was not a trucking facility (See Protestants' Exhibit #1).

2. **Whether 2815 Merrymans Mill Road is currently and since the sale of Clark Oil Company in 1992, used primarily as a Class II Trucking Facility? If yes, is this use permitted by right, special exception, or as a nonconforming use?**

The evidence clearly shows that since Clark Oil Company was sold in 1992, Bruce Clark has utilized the subject site to park and store the vehicles used in his fuel oil business located offsite. He testified his trucks are not filled at Merrymans Mill and that they are parked there when they are serviced or until picked up by his drivers. The site, in addition to the residence, is obviously being used in an industrial or business manner. There is no other use defined in BCZR which describes Bruce Clark's use of the site other than as a Class II trucking facility.

The use of the site in this manner by Bruce Clark commenced in 1992. The property was zoned R.C.-4 and such a use is not permitted. Nor is it nonconforming since it did not exist prior to the rezoning in 1992 nor comply with the provisions of the 1976 trucking facility law. Likewise, there is no evidence that the site was approved by special exception as a trucking facility when it was zoned ML.

3. **Whether 2815 Merrymans Mill Road was used primarily, prior to the sale of Clark Oil Company in 1992, for fuel storage and sale of solid or gaseous fuels? If yes, was this use permitted by right, special exception, or as a nonconforming use?**

The following chronology, based on the testimony, evidence and the record pertaining to the site, and Baltimore County Zoning Regulations and zoning law is relevant to the prior use of the property:

1938 - Mr. Thomas Clark begins to operate a fuel oil delivery business from 2815 Merrymans Mill Road, which is also his place of residence.

1955 - Baltimore County Zoning laws enacted; subject site zoned residential.

1980 - 2815 Merrymans Mill rezoned to Manufacturing Light ("ML" Section 253 of BCZR).

1984 - Zoning complaint filed by residents against site alleging violations for use and expansions; Zoning Commissioner ruled, inter alia, that Clark Fuel Oil Company is not a Class II Trucking Facility; determined that trucks on site used in the business are accessory to the operation of the fuel oil business (BCZR, Section 253.1.B.9 refers to "Fuel storage and sale, of solid or gaseous fuels" as one of "transportation, storage, or quasi-public uses or utilities" permitted as of right; BCZR Section 253.1.F.7 refers to "Parking spaces (see Section 409) as accessory uses or structures in an ML zone.")

1989 - Mr. Bruce Clark starts a fuel oil delivery business, owned solely by him, at 226 Cockeysville Road.

1990 - Mr. Thomas Clark retires from Clark Oil Company and divides his stock among his three children; subsequently one son, Richard, dies and his wife inherits his share and continues the business.

1992 - All the stock of Clark Oil Company is sold to Carroll Fuel Oil Company; the buyer does not operate from 2815 Merrymans Mill Road; the fuel tanks and pumps are removed from the site.

1992 - Mr. Thomas Clark testified at the Board of Appeals hearing that Mrs. Richard Clark would not permit her brother-in-law Bruce to park his trucks at Merrymans Mill; subsequent to the sale of the business Bruce Clark begins to park his trucks there.

Clearly, the Clark Fuel Oil Company operated from the subject site as a "fuel storage and sale" operation. Between 1955 and 1980 that portion of the property used in the business operated as a nonconforming use in a residential zone. In 1980, the same use was permitted as of right in a Manufacturing Light zone. In 1992, it ceased operation. When the site was zoned R.C.-4 in its entirety in 1992, the fuel oil business was not permitted at the site as of right, special exception, or nonconforming use.

4. **Whether 2815 Merrymans Mill Road is used primarily, since the sale of Clark Oil Company in 1992, for fuel storage and sale of solid or gaseous fuels? If yes, is this use permitted by right, special exception, or as a nonconforming use?**

There is no definition of a fuel oil business in BCZR Section 101. No use akin to this use is permitted in any fashion in an R.C.-4, business or manufacturing zone except as a permitted storage or utility use permitted in ML by BCZR Section 253.1B.9 as aforesaid. The

evidence in the instant case is undisputed that no storage or sale of fuel oil has occurred at the site since 1992. Nor does Bruce Clark allege that he stores or sells from Merrymans Mill. In fact, he testified that his trucks at the subject site are empty. Since the property is used in some fashion in addition to residential, its current use must be evaluated by the evidence before the CBA and is not controlled by a designation of the Petitioner.

Regardless of the manner in which the Petitioner wishes to depict Bruce Clark's use of the site, it is clearly a Class II trucking facility. Not only does the evidence conclude this use, but it was obvious to the zoning office who assisted in the preparation of the Petition for Special Hearing based on the facts presented to them.

5. **Whether the storage and maintenance of trucks at 2815 Merrymans Mill Road, prior to the sale of Clark Oil Company in 1992, was a permitted ancillary or accessory use to the primary use of a fuel oil business?**

A service garage is permitted in an ML zone only as auxiliary to a permitted or special exception use provided the area is a planned industrial park of 25 acres or an I.M. district. (BCZR Section 253.2.B.3 and 253.2.E). Parking spaces are permitted in an ML zone as accessory uses. (BCZR Section 253.1.F.7). The definition of an "accessory use" as found in BCZR Section 101 requires that it is "incidental to and serves the principal use, and contributes to the convenience or necessity of the business or industry that is the principal use. The storage and maintenance of trucks of the Clark Oil Company on the site prior to the sale of the business would appear as reasonably accessory to the principal use. (But, see BCZR Section 253.4 which permits "only passenger automobile accessory parking" within 100 feet of a residential zone boundary in an ML zone).

6. **Whether an ancillary or accessory use, the storage and maintenance of trucks, may be continued at 2815 Merrymans Mill Road following the sale of the Clark Oil Company in 1992?**

The storage of trucks in an ML zone is permitted by special exception for a trucking facility. (BCZR 253.2.A.6). No such use is permitted by right in ML as a permitted use or auxiliary use under BCZR Sections 253.1 A, B, or C. Parking spaces are permitted only as accessory uses. The parking and storage of trucks is not permitted at all in an R.C.-4 zone.

7. **Whether an accessory or ancillary use, the parking and maintenance of fuel oil trucks, may be conducted at 2815 Merrymans Mill Road if the primary use, the Bruce Clark Fuel Oil Company, is conducted at a separate location?**

An accessory use does not become a legitimate primary use merely because it remains as the only use on the site. The accessory use, by its very definition, must have a legal primary use on site to support it. (See BCZR Section 101, which requires an accessory use to be located on the same lot as the principal use served). Both uses must be on the same site. (Note the exception for offsite parking in a residential zone to support an industrial use would not apply to the instant case. BCZR Section 409.8.B.2.a.b. and c. requires, "the land so used must adjoin or be across an alley or street from the business or industry involved"... "Only passenger vehicles...may use the parking facility... No loading... or any use other than parking shall be permitted.").

Mr. Bruce Clark clearly conducts his fuel oil business from 226 Cockeysville Road. Any uses accessory or auxiliary to that use must be on the same lot.

8. **Whether a use ancillary or accessory to a nonconforming use at 2815 Merrymans Mill Road may legally exist if the primary use ceases to exist?**

In order to classify the fuel oil business at Merrymans Mill Road as "nonconforming", it must have continued in 1992 after the property was rezoned to R.C.-4. (As noted above, the fuel oil business is a permitted use in an ML zone). The evidence concerning the use of the site since Clark Oil Company was sold contradicts this assumption. Nonetheless, even if nonconforming, the change from a nonconforming fuel oil business to a primary use for the parking and storage of trucks is not permitted under BCZR Section 104.1 which states that "upon any change from such nonconforming use to any other use whatsoever,... the right to continue or resume such nonconforming use shall cease." [Emphasis added]. As stated above, the parking of trucks accessory to the fuel oil business requires a primary use on site. If the nonconforming primary use ceases, the nonconforming accessory use cannot continue.

9. **Whether a use ancillary or accessory to a use permitted by right or special exception at 2815 Merrymans Mill Road may legally exist as a nonconforming use if the primary use ceases to exist?**

An accessory use by definition is "subordinate in... purpose to the principal use..." (BCZR Section 101). Thus, it cannot stand as a primary use when the principal use ceases, unless permitted in the zone by right or special exception. As explained above, while the subordinate parking and storage of trucks may be accessory to a fuel oil business as restricted by the zoning regulations, the use in and of itself is a Class II trucking facility permitted by special exception in an ML zone. A "nonconforming use" is defined in BCZR Section 101 as "a legal use that does not conform to a use regulation for the zone in which it is located..." This definition, as well as its use in BCZR Section 104 implies that the nonconforming use is the principal or

primary use of the site. There is no allowance for an independent "nonconforming accessory use" with a nonconforming primary use.

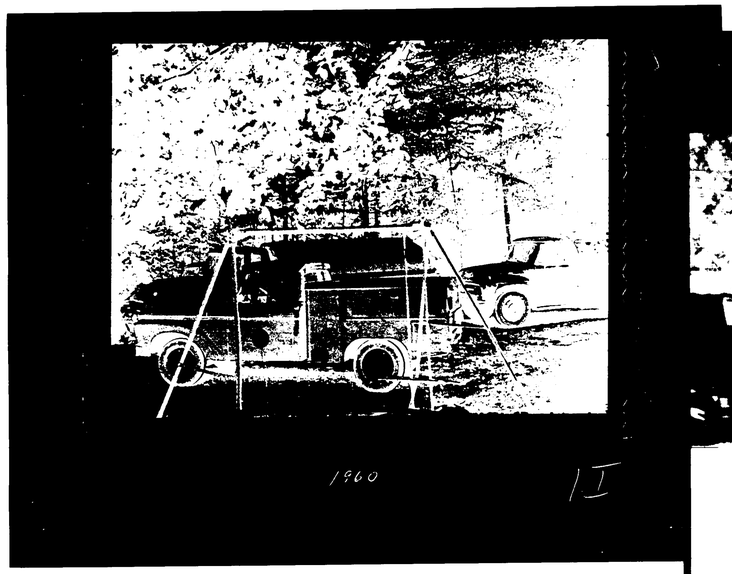
10. **Whether the Petitioner is permitted to amend his Petition for a Special Hearing from a Class II Trucking Facility to a Nonconforming Use at the hearing on appeal at the County Board of Appeals?**

The Petitioner proposes approval of the relief requested under a totally different legal theory than presented at the Zoning Commissioner's hearing and contained in his Petition for Special Hearing. Opposing counsel objected to amending the Petition at this stage in the proceedings.

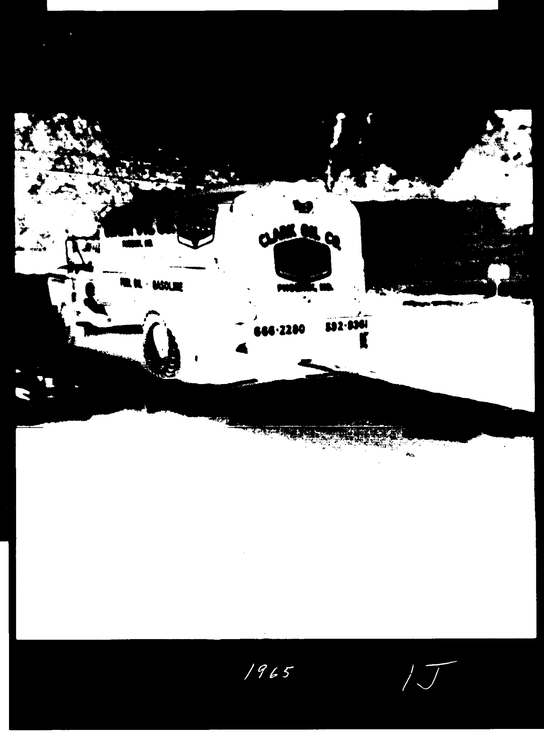
BCZR, Appendix G, Rule 3 provides for Appeals, and Rule 4 provides for the Conduct of Hearings before the Board of Appeals. There is no provision for amendments at the hearing, although Rule 4b. provides that the Chairman "shall rule upon... modifications... during the course of the hearing..." Although heard de novo, the CBA zoning hearing is an appeal of the decision of the Zoning Commissioner rendered after the filing of a Petition, the posting on the site of a notice of the Petition and hearing information, and the newspaper publication of the notice. The notice requirements for the CBA as provided in BCZR Section 500.11 and Rule 2e. of Appendix G apply to the parties of record at the zoning hearing. To permit a significant amendment of substance at the CBA hearing could adversely affect parties who would have no notice of the change in relief requested.

An amendment at this stage of the proceedings may prevent the opposing parties and their counsel from adequately preparing their case. BCZR Appendix G and Rule 2 a. require a ten-day notice to all parties prior to scheduling a hearing.

This issue was also discussed by the Court of Special Appeals in People's Counsel v. Mangione, 85 Md.App. 735 (1991). In that case,



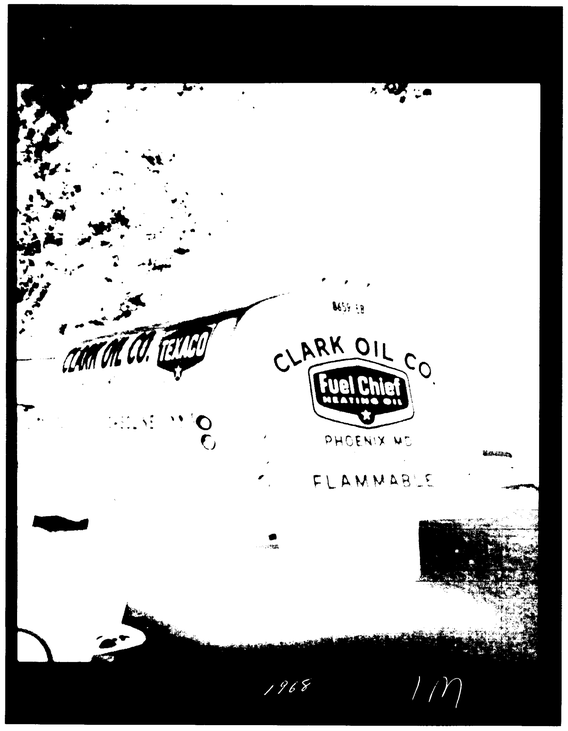
1960 1I



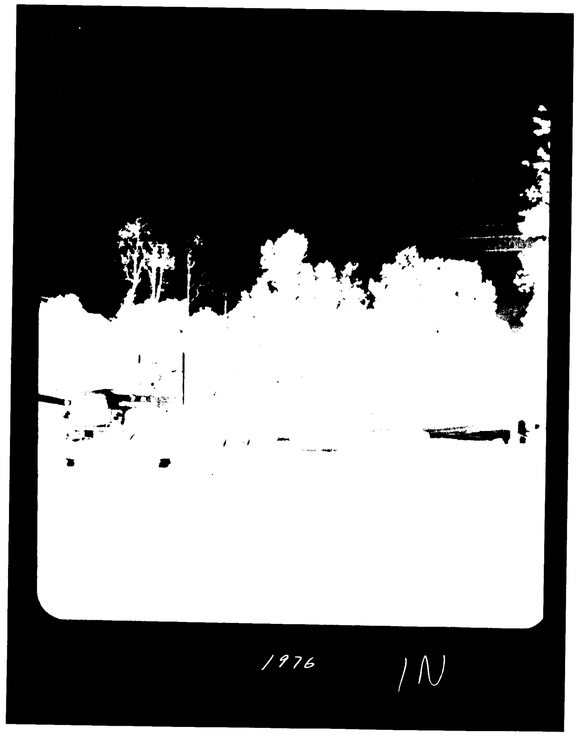
1965 1J

1965 1K

1968 1L

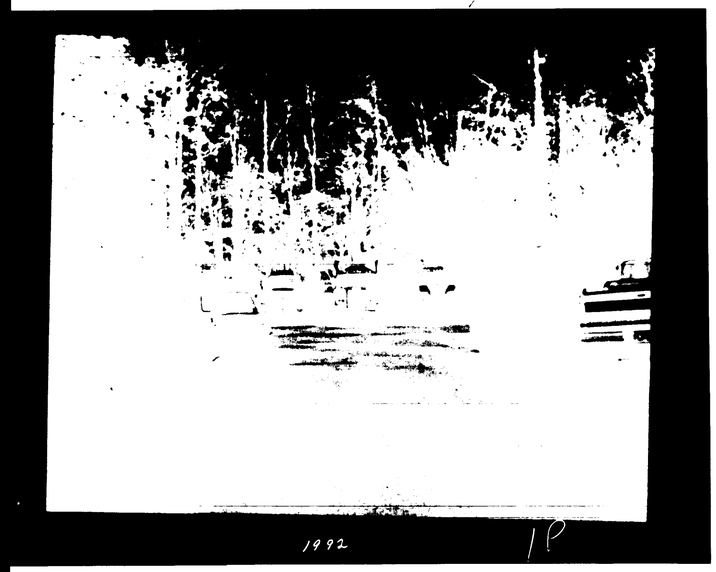


1968 1M



1976 1N

1976 1O



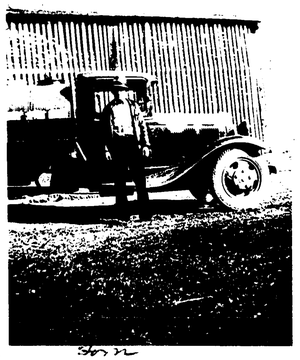
1992 1P

-222 XASPH

SPHA

ALTIMORE COUNTY, MARYLAND

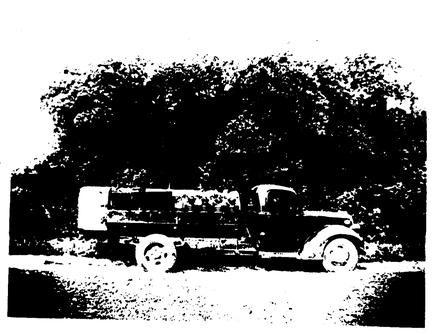
INTER-OFFICE CORRESPONDENCE



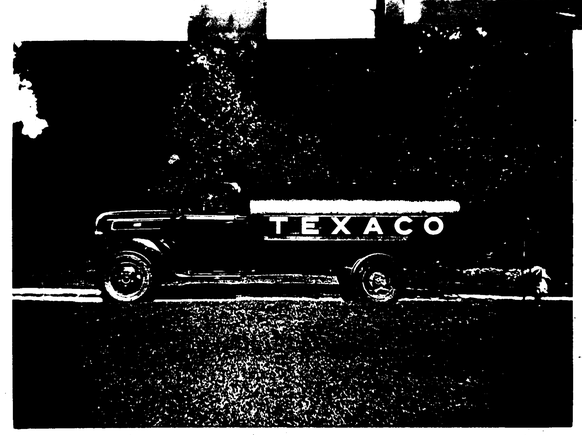
1935

PETITIONER'S EXHIBIT NO. 1A

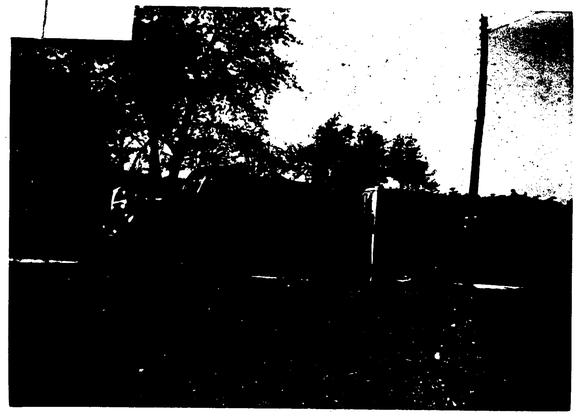
94-427SPHA
Exh. 1A-1R
1-14-94



1938 1B



1944 1C

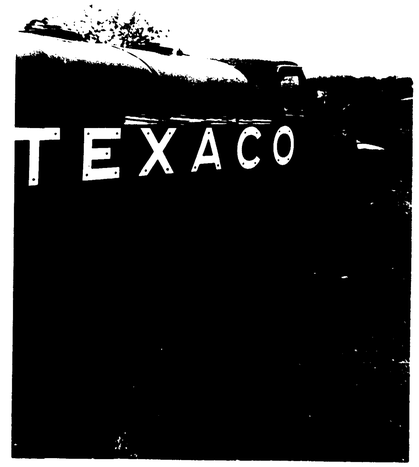


1944 1D

1944 1E

1953 1F

1954 1G



1954 1H

IN THE MATTER OF THE APPLICATION OF THOMAS G. CLARK, ET UX FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTH SIDE MERRYMAN'S MILL ROAD, 285' SOUTHWEST OF CENTERLINE OF KILLARNEY COURT (2815 MERRYMAN'S MILL ROAD) 10TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT * BEFORE THE * COUNTY BOARD OF APPEALS * OF * BALTIMORE COUNTY * CASE NO. 94-437-SPH *

* * * * * * * * *

O P I N I O N

This case comes before this Board on appeal from a decision of the Zoning Commissioner in which the Petition for Special Hearing was granted with restrictions. The first order of business in this case is to correct the wording in the Petition. The Petition designates the special hearing as to approve a Class II Trucking Facility on this site, and Petitioner emphatically denies any desire to have a Class II Trucking Facility use granted this site. Petitioner just as emphatically wants the use of the property designated as a nonconforming use in association with an oil delivery business conducted on this site for many, many years.

The first witness who testified in support of the Petition was the Petitioner himself, Thomas G. Clark. Mr. Clark testified that he had personally lived on the site for 56 years, conducted some fuel oil business on this site for 56 years, and that the property itself was in the Clark family ownership for more than 100 years. He testified that he began the Clark Oil Company in 1935, and that the continuous use from 1935 through today was never interrupted. He submitted Petitioners' Exhibits 1A through 1R, showing the business and the condition of the site as he testified to. When

Mr. Clark was no longer able to operate the fuel oil business, his son, Bruce Clark, continued the use of the property for this purpose. Bruce Clark testified as to the use that has continuously taken place on this site, and that he personally conducted the business from 1992 through the present date. He specifically noted that a 4-foot berm surrounds the parking lot as a protection against possible spills, and that no loading or unloading of fuel oil takes place on this site, but is all conducted from his Cockeysville location.

Further testimony as to the continuous incidental use of this property in the fuel oil business was presented the Board through the testimony of: Finley Ransone, who used the office area on the site for his business; Douglas Lee; Mr. Shedinger; Jerry Heacock; George Batters; Dean Ayres; Ben Apecillo; and David Morrison. All testified that, to their knowledge, the use the property now enjoys is the same use that it has enjoyed for over 50 years, and that the property is well-maintained and that the said use has no detrimental effect on the neighborhood.

Testifying in opposition to the Petition was Dr. Polly Worth, a member of Save Our Streams, who testified to her concerns of the possible effects of this business on a stream on the site and some spring heads. Her main concern was that this not be designated as a Class II Trucking Facility. Further testimony in opposition to the Petition was offered to the Board from Ann Garrett, of the Greater Cambria Association, objecting to the Petition; Joy Wheeler, a member of the Baltimore Bird Club, objecting to the use

as a trucking facility; Josephine Owens, Anica Davis, Donald Outen, and Beverly C. Crook who testified in opposition to the designation of the property for use as a Class II Trucking Facility.

In light of the testimony from the property owner that his main concern is that his property be declared a nonconforming use so that he can be allowed to continue the use that has been in existence since 1935 in varying degrees, the testimony presented in this case overwhelmingly indicates that the use connected with the fuel oil business has been in existence far longer than the law requires, that it has been well-maintained, that it has had no detrimental effect on anyone, anywhere, and that all the testimony and evidence indicates that the nonconforming use as requested by the Petitioner should be allowed; and the Board, in consideration of all this testimony and evidence, will find as a fact that the nonconforming use has existed without interruption and without detriment to anyone, and therefore should be granted and will so order.

O R D E R

IT IS THEREFORE this 10th day of January, 1995 by the County Board of Appeals of Baltimore County

ORDERED that the storage and parking of four (4) fuel oil/water trucks and two (2) tank trailers containing fuel oil or water on the subject property, zoned R.C. 4, be and is hereby approved as a legal, nonconforming use, in accordance with Petitioners' Exhibit 3, and as such, the Petition for Special Hearing is **GRANTED**, subject to the restrictions set forth

hereinafter; and, it is further

ORDERED that the Petition for Special Hearing seeking approval of an office on the subject property, in accordance with Petitioners' Exhibit 3, be and is hereby **GRANTED**.

1. There shall be no above-ground or underground storage tanks for fuel oil on the subject property;
2. Upon request and reasonable notice, Petitioners shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order in the event it becomes necessary to do so as a result of a complaint; and
3. When applying for any permits, the site plan and/or landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

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

William T. Hackett, Chairman

C. William Clark

Judson H. Lipowitz

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

January 10, 1995

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Case No. 94-437-SPH
Thomas G. Clark, et ux

Dear Mr. Holzer:

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.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Beverly C. Crook, et al
Conwell F. Sapp, Esquire
Mr. & Mrs. Thomas Clark
Katherine Clark
J. Finely Ransone
Patrick Pike
Josephine Owen
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /ZADM
James Thompson /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Printed with Soybean Ink on Recycled Paper

RE: PETITION FOR SPECIAL HEARING
2815 Merrymans Mill Road, S/S Merrymans Mill Road, 285' SW of c/l Kilarney Court
10th Election Dist., 3rd Councilmanic

THOMAS G. CLARK, et ux
Petitioners

* BEFORE THE
* BOARD OF APPEALS
* OF BALTIMORE COUNTY
* CASE NO.: 94-437-SPH

* * * * * * * * * * *

MEMORANDUM OF PEOPLE'S COUNSEL

Statement of Facts

A Petition for Special Hearing was filed by the property owners, Thomas and Edith Clark, to approve as a nonconforming use a Class II Trucking Facility with an office. The subject site is located at 2815 Merrymans Mill Road. The subject site is zoned R.C.-4.

The Petitioner seeks to use the site to store and perform maintenance on fuel trucks and a water tank truck owned by his son who operates a fuel oil company and a water supply company offsite at 226 Cockeysville Road.

All or a portion of the subject site was zoned ML until rezoned R.C.-4 in the 1992 Comprehensive Map Process.

The undisputed testimony indicated Thomas Clark, who also resides on the property, operated his business, Clark Oil Company, a heating oil delivery company, from 2815 Merrymans Mill Road from approximately 1938 until the business was sold to Carroll Fuel Company in 1992. Mr. Thomas Clark testified his business was incorporated and one hundred percent of the stock was sold to the purchaser. The Clark Oil Company stored heating oil in underground tanks at the Merrymans Mill location. The oil was pumped into the company's fuel trucks from these tanks and delivered directly to the customers. Mr. Clark purchased his oil

96 DEC 23 PM 1:30

supply from Texaco for over forty years, and later from Phillips and Getty. In 1992 when the business was sold, the underground oil tanks and fuel pumps were removed. No fuel trucks were ever loaded from the site again.

The office building on the site was the office for Clark Oil Company. The site also contains a frame building used as the business' maintenance garage.

Mr. Bruce Clark, the son of Thomas Clark, testified that he is the founder and sole owner of the Bruce Clark Oil Company. This business began operating in approximately 1989 and has been located since that time at 226 Cockeysville Road, just west of York Road and south of the Hunt Valley Industrial Park. He leases this site which consists of an office building for his business, and 6 to 8 large above-ground fuel tanks, each holding approximately 20,000 gallons, and open space where Mr. Clark parks his trucks. He testified he owns six tank trucks, four of which are used for fuel deliveries and two for water deliveries for swimming pools. The fuel trucks are loaded from the storage tanks at this site. His office staff works exclusively at Cockeysville Road, except for an answering service in Bel Air. He purchases his oil from several different wholesale suppliers.

For several years, Bruce Clark and the Clark Oil Company were competitors. Mr. Thomas Clark testified that ill-health forced him to divide his stock among his three children. The business was run by one son, Richard. At his death, his stock was inherited by Richard's wife who then operated the fuel oil company. Mrs. Richard Clark sold the company to Carroll Fuel Company in 1992. After the Clark Oil Company

was sold in 1992, Mr. Bruce Clark occasionally parked some of his trucks (3 on an average) at Merrymans Mill Road, where he would also perform maintenance work on these vehicles. While parked at Merrymans Mill, the trucks were empty and his drivers would need to fill them from the Cockeysville site tanks.

Recently, the office building at Merrymans Mill has been rented to Finley Ransome, a land surveyor and developer. Mr. Ransome testified that Mr. Bruce Clark allows Mr. Ransome and his employees to utilize the service garage and shop for maintenance work on their personal vehicles.

Mr. Bruce Clark indicated he wishes to use the Merrymans Mill site to park his trucks used in his business and to perform maintenance service on them at the garage on this site.

At the hearing in this matter, the attorney for the Petitioner proposed to amend the Petition for a Special Hearing from a Class II Trucking Facility to a nonconforming use. Objections were noted by counsel for the Protestants and Deputy People's Counsel. The Petitioner's attorney indicated that in filling out the Petition they were guided by the Zoning Office for Baltimore County who described the proposed use as a Class II Trucking Facility, described in the Baltimore County Zoning Regulations (hereinafter "BCZR") Section 101 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, 1976]." BCZR Section 104 regulates Nonconforming Uses and is attached hereto.

SAVE OUR STREAMS

258 Scotts Manor Drive * Glen Burnie, MD 21061
(410) 969-0084 * (800) 448-5826 * Fax (410) 969-0135

3rd '94

7/5/94

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Director
Robert A. Mills, III
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Charles Tucker
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Barbara Taylor
Executive Director

TO: Timothy Kotroko
Deputy Zoning Commissioner
Baltimore County Court House
111 West Chesapeake Avenue
Towson, Maryland 21204

RECEIVED
JUL 5 1994
ZADM

FROM: Board of Directors
Baltimore Delegation
Save Our Streams

DATE: July 1,1994

RE: Deny Request of Zoning Special Exception
Case No. 94-437-SPH 2815 Merryman's Mill Road

Save Our Streams is a citizen action group concerned with helping individual citizens learn how to protect our streams and water supply.

We urge you to deny this request for a trucking facility, Class II and office at 2815 Merryman's Mill Rd., on residentially zoned (RC4) land.

Our reasons are:

1) Such use should not be allowed so close to the reservoir. The parcel lies on the south side of Merryman's Mill Road and is with-in 200 feet of a tributary of Loch Raven drinking water reservoir;

2) This land was zoned RC4 (watershed protection) in the 1992 zoning cycle. It should not be converted to urban use. Such a conversion of residential to urban use in the watershed would contradict the intent of the "Reservoir Management Agreement",

3) The owner has allowed a former, non-conforming use to lapse since the 1992 zoning as RC4.

Therefore, we urge that you deny this zoning request for a trucking facility, Class III at 2815 Merryman's Mill Rd., for the preservation of drinking water quality and to avoid setting a precedent on watershed RC4 zones.

RECEIVED
6 1994
ZONING COMMISSIONER

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SAVE OUR STREAMS

258 Scotts Manor Drive * Glen Burnie, MD 21061
(410) 969-0084 * (800) 448-5826 * Fax (410) 969-0135

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Dr. Polly Walker Worth
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Robert A. Mills, III
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Charles Tucker
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Barbara Taylor
Executive Director

THE PRESIDENT'S ENVIRONMENT AND CONSERVATION CHALLENGE AWARD 1992

TO: County Board of Appeals, Baltimore County
Old Court House, Room 49
400 Washington Avenue
Towson, Maryland 21204

FROM: Board of Directors, Baltimore Delegation
Save Our Streams

DATE: December 7, 1994

RE: Deny Request of Zoning Special Exception
Case No. 94-437-SPH 2815 Merryman's Mill Road

Save Our Streams is a citizen action group concerned with helping individual citizens learn how to protect our streams and water supply.

We urge you to deny this request for a trucking facility, Class II and office at 2815 Merryman's Mill Rd., on residentially zoned (RC4) land.

Our reasons are:

1) Such use should not be allowed so close to Loch Raven Reservoir. The parcel lies on the south side of Merryman's Mill Road and is within 200 feet of a tributary of Loch Raven drinking water reservoir. In addition to the stream, several springheads and small associated non-tidal wetlands exist within 200 feet of the subject facility and downslope of it;

2) This land was zoned RC4 (watershed protection) in the 1992 zoning cycle. It should not be converted to urban use. Such a conversion of residential to urban use in the watershed would contradict the intent of the "Reservoir Management Agreement";

3) The owner has allowed a former, non-conforming use to lapse since the 1992 zoning as RC4.

Therefore, we urge that you deny this zoning request for a trucking facility, Class II at 2815 Merryman's Mill Rd., for the preservation of drinking water quality and to avoid setting a precedent on watershed RC4 zones.

D:\WP\WINS\ADMIN SOS\MERRYMAN.LTR December 6, 1994 AM

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531 Hampton Lane
Towson MD 21286
June 27, 1994

94-437-SPH

Mr. Timothy M. Kotroco
Deputy Zoning Commissioner
400 Washington Avenue
Towson MD 21204

RECEIVED
JUN 29 19[illegible]
ZONING COMMISSIONER

Dear Mr. Kotroco:

As someone who is very interested for many reasons in the well being of the Loch Raven watershed I must comment on the continued pressure presented by the Clark family interests on their Merryman's Mill Road property. For 40 years they have had the opportunity to use their property for their profit, certainly not an issue to criticize them for. They seem to have managed their business and acreage very well.

However, there was always that threat of an oil spill. We are very fortunate not to have had to meet that emergency. Therefore, in the light of the removal of the large threat posed by oil storage tanks it seems unwise to allow the possibility once again with the introduction of a "trucking facility". Is there any assurance that trucks of the thousands of gallons capacity do not come to the facility and inadvertently spill large quantities of oil? And then, what is the result over a period of years of the accumulative effect of small spills so close to the watershed?

I applauded the removal of the Clark Oil Co storage tanks as assurance that our county planners are serious about providing water of superior quality to the Baltimore metropolitan area. I interpreted their decision as also reflecting their serious preservation of plant and animal habitat in the natural areas surrounding the reservoir. The well being of the reservoir and its watershed is more fragile than it was 40 years ago. More people are dependent on it; more wildlife is dependent on it for space to maintain the biological diversity of the region.

Therefore, I ask that you do not grant permission for a class 2 trucking facility and office in the residential zone on Merryman's Mill Road, formerly the Clark Oil Company.

Thank you for your attention.

Sincerely,
Joy Wheeler

2619 Merrymans Mill Road
Phoenix, Maryland 21131
15 June 1994

Subject: Zoning Change Request
Case #94-437-SPH (Item #421)

Zoning Commissioner
Baltimore County
400 Washington Avenue
Towson, Maryland 21204

Dear Sir,

As home owners of 2619 Merrymans Mill Rd, we believe that a zoning classification change should not be granted for 2815 Merrymans Mill Rd.

After deciding to move to Maryland in 1992, we made an extensive search and selected our present home. The general landscape, location and appearance of other residences along the road were deciding factors.

A trucking facility as proposed, would change the appearance of the neighborhood and set a precedent which might be used for future requests. The result could be a depreciation of property values and suitability.

We trust you will give serious consideration to our views. Thank you.

Sincerely,
William R. BENN
W.illiam R. BENN

PROTESTANT

NAME	ADDRESS	PHONE
Joy Wheeler	531 Hampton Lane, Towson 21131	
Beverly C. Crook	2529 Merrymans Mill Rd., Phoenix	
Anneke Davis	2226 Crett Road, Baltimore 21209	367-0567
	for Greater Baltimore Environmental Center	
* William W. Leaman	19 Gerrhterr Drive Phoenix 21131	592-6533
	For G.B.A. Neutral Position - Information for Association	
Clyde E. Martin & Alice J. Martin	14908 Mount Nye, Phoenix, MD, 21131	472-2128
H. Calvin Huether	13805 Summer Hill Drive Phoenix, MD 21131	667-0431
William R. Benn	2619 Merrymans Mill Rd. Phoenix MD 21131	667-9141
Robert M. Thomas	2720 Merrymans Mill Rd. Phoenix MD 21131	666-2175
Hugh W. Anders Jr.	13704 Princess Anne Way Phoenix MD 21131	666-2734
Bruce R. Traggorth	13707 Manda Mill Ln Phoenix 21131	666-2565
Mrs. Frank Bond (Sheila)	13414 Blythewood Rd. Phoenix, MD. 21131	628-3910
Wm. H. Hopkins	13401 Bladon Rd. Phoenix, MD. 21131	667-6754
Mrs. Marguerite Hopkins	13401 Bladon Rd. Phoenix, MD 21131	667-6754
Allen Tracey	13408 Blythewood Rd Phoenix MD 21131	628 0814
Grace Anecharico	2600 Merrymans Mill Rd Phoenix Md 21131	666-9426
Frank Anecharico	2600 Merrymans Mill Rd. Phoenix Md 21131	666-9426
Robert S. Brown	2515 Merrymans Mill Rd Phoenix Md 21131	666-3046
John L. Zeman	13600 Jarretts View Terr. Phoenix MD 21131	666-1068
Myrna A. Zeman	13601 Jarrettsville Pike, Phoenix, MD. (In Phoenix Card)	General Community Interest 666-1068
Katherine Clark	2826 Merrymans Mill Rd, Phoenix, MD	666-7639
Russell May	13700 Killarney Ct. Phoenix	667-4746
Bill Brooks	13412 Blythewood Road Phoenix	683-1834
Patrick Pike	2501 Garden Court, Phoenix	666-5670
J. Owen	308 Merrie Hunt Drive, Lutherville 21093 Untamed Creation Coalition, Inc.	252-5575

- over -

Paul A. Davalos 13806 Princess Anne Way Phoenix MD 683-1747

PETITIONER

NAME	ADDRESS	PHONE #
J. Finley Penrose	1 Sunnyview Dr Phoenix MD 21131	666-7498
David B. Morrison	14803 Jarrettsville Pike P.O. Box 149 Phoenix MD	667-4984

hydro-geologist tested the soil and found that it has one of the most rapid "draw-down" rates in the county. That is, anything spilled on the surface will immediately go into the groundwater and then into the reservoir. (Copy submitted for file.)

In spite of all this, the councilman refused a zoning change.

In 1992, there was again support for RC4 zoning. But by then, Clark Oil had been sold, the storage tanks pulled out of the ground, and there was no excuse for keeping ML zoning, so it was returned to RC4.

In addition to the public's efforts to do something about the inappropriate zoning at the Clarks, I filed a personal complaint in 1984, stating that the Clark business did not conform to ML regulations. There was a hearing before then-Zoning Commissioner Arnold Jablon and this became Case C-84-718.

I was present at the hearing with my lawyer, and the Clarks were represented by their son, who was then president of the company and who is now deceased, and by their lawyer.

My lawyer and I contended that the business did not have the required setbacks, that it was too close to residential property, and a number of other irregularities. But one point that we stressed was that we believed the Clarks were operating a Class II Trucking Facility and under ML regulations, they needed a special exception for that. The Clarks argued that they did not have a trucking facility.

On July 24, 1984, Mr. Jablon issued his decision and ruled

that the Clarks were in compliance with ML requirements on all points, except they did not have impervious paving. On the matter of the trucking facility, Mr. Jablon wrote: "...I conclude that the Defendant is not conducting a Class II trucking facility, which is defined by the BCZR as: 'a trucking facility other than a Class I...including a truck yard (the primary purpose of which is to accommodate the parking or storage of trucks, truck trailers, or truck tractors.'

Mr. Jablon further concluded, "There is no question that if the business, as existing, is a permitted use in the ML zone, the use of the trucks, as described in testimony, are accessory to the operation of the business, and therefore permitted pursuant to Section 253.1F, (BCZR). As for the garage (machine-shop), it also does not violate the regulations. After a review of the testimony and site plan, it is true that the garage is within 100 feet of the residential zone boundary. However, Section 253.4, BCZR, allows in addition to passenger-automobile accessory parking, those uses permitted in an MR zone, subject to the limitations of Section 241. The garage, and the expanded paved area, represent accessory uses which are permitted in the MR zone. The garage is used solely for the maintenance and repair of company equipment and vehicles. There is no violation." (end of quote.)

According to this ruling, there was never a trucking facility on the Clark property. The trucks and the buildings were all accessories of the oil business, which has now ended.

Therefore it seems to me that this hearing isn't for a special exception, but is a request for new zoning -- and, of course, this is not the forum for that.

From the very beginning, zoning on the Clark property has been purely for the benefit of one property owner without any consideration of its impact on neighboring properties, the community, or the watershed. Now that the zoning is finally back to RC4, it should stay residential -- with no exceptions!

Thank you.

RESERVOIR WATERSHED PROTECTION PROGRAM
c/o Baltimore Metropolitan Council
601 North Howard Street
Baltimore, Maryland 21201

RECEIVED
ZONING COMMISSIONER

July 6, 1994

Mr. Timothy Kotroco
Deputy Zoning Commissioner
Baltimore County
400 Washington Avenue
Towson, MD 21204

RE: Case Number 94-437
2815 Merrymans Mill Road

Dear Mr. Katroco:

The Reservoir Watershed Protection Program has been advised of the above referenced case involving a non-conforming use in the Loch Raven Reservoir drainage area.

The following comments are offered for your consideration as you review this request. First some background information is given on the purpose and goal of the Reservoir Watershed Management Agreement. Then reservoir protection action strategies relating to zoning are cited.

All three of Baltimore's major water supply reservoirs-- Loch Raven, Prettyboy, and Liberty-- were found in the early 1970s to be suffering from high levels of nutrients. Phosphorus from sewage treatment plants, agriculture and urban development was causing excessive growth of algae. Concern over the quality and long term health of the region's water supply led to the 1984 Reservoir Watershed Management Agreement. Goals adopted by the Agreement are to:

Immediately prevent increased phosphorus and sediment loading to all three reservoirs; and

Reduce phosphorus levels in the reservoirs to acceptable levels as soon as possible.

Continued nutrient reductions are essential to preserve the region's water supply. Other pollutants-- such as sediments, metals, and volatile organic compounds-- are also of concern. Since zoning influences the type and intensity of future land uses and resultant pollutant loadings, the 1990 Action Strategy lists several policies agreed to by the signatories which address zoning:

Conservation and agricultural zoning of the reservoir watershed areas should be maintained at its present extent and not reduced.

Baltimore and Carroll Counties will protect the reservoir watersheds by limiting in so far as possible additional urban development zoning within the reservoir watersheds.

Increased emphasis will be given to protection of forest land and tree stands to protect reservoirs, streams and the Chesapeake Bay.

The reason why the above policies are important is that, if they are followed along with the other action strategies, pollutants flowing into the reservoirs in the future will be reduced or minimized.

We understand, however, that the subject property is already zoned RC-4 so the above recommendations do not directly apply in this case, and that non-conformance is a legal issue rather than a rezoning issue. Nevertheless, we urge that they be considered to the extent they are applicable in this case.

Sincerely,

Jack Anderson
Coordinator
Reservoir Watershed
Protection Program

cc: Members
Reservoir Watershed Protection Subcommittee

WATERSHED PROTECTION COALITION, INC.
P.O. BOX 212, TIMONIUM, MD. 21094-0212
252-5515

RECEIVED
24
ZONING COMMISSIONER

August 22, 1994

Deputy Zoning Commissioner
Timothy M. Kotroco
Suite 113, Courthouse
400 Washington Avenue
Towson, Maryland 21204

Dear Mr. Kotroco:

RE: Case No 94-437-SPH, Thomas G. Clark, et ux

The Board of the Watershed Protection Coalition, Inc. is shocked and dismayed by the decision rendered on July 29th relating to the property at 2815 Merryman's Mill Road. We, therefore, fully support the appeal of this decision by Ms. Beverly Crook.

This decision, based on legal zoning technicalities, ignore environmental realities of this case. RC-4 zoning belongs on this property and should be maintained.

Allowing this abuse of RC-4 zoning now is to encourage further abuses of this Resource Conservation Zoning designed to protect Baltimore County's water supply - the City-Owned Reservoir Watersheds.

This decision also challenges the validity of expert planning by our Planning Department whose efforts are directed to protecting Reservoir Watersheds through Baltimore County's adopted Master Plan.

Executive Hayden and numerous Baltimore County officials reiterated their commitment to protecting the Loch Raven Reservoir Watershed recently as they supported our Coalition's efforts opposing development by the Baltimore Municipal Golf Corporation in the Loch Raven Reservoir Watershed because it was an inappropriate land use that threatened water quality.

The Chesapeake Bay Foundation, in its letter of April 4, 1994, to City Council President, Mary Pat Clarke, stated, "The restoration of the Chesapeake Bay can only succeed if government provides protection for the watersheds which feed it." Loch Raven's waters feed into the Chesapeake Bay.

Protecting water quality is more imperative than ever before. Predicted growth demands that greater vigilance and more protection to our drinking water supplies is needed - not less.

Prolonged efforts through the years to rightfully restore this property to RC-4 have been costly in time, effort and money. A trucking facility has no place within sight of

Loch Raven's waters. The opportunity to protect the reservoir and to restore proper designated zoning to this property is NOW.

The July 29th decision casts a serious cloud on Baltimore County's stewardship partnership with Baltimore City and Carrol County to protect the Reservoir Watersheds. Our Watershed Protection Coalition, Inc., therefore, supports Ms. Beverly Crook's appeal of the decision on this case.

Sincerely,

for the Coalition Board of Directors

Copy to: Executive Roger Hayden
People's Council Peter Max Zimmerman
Councilman Dutch Ruppersberger
Mr. James Dieter
Mr. Ralph Cullison
Mr. Tom McClurkin
Mr. Jack Anderson
Ms. Beverly Crook

WATERSHED PROTECTION COALITION, INC.
P.O. BOX 212, TIMONIUM, MARYLAND 21094-0212
252-5515

December 7, 1994

County Board of Appeals
of Baltimore County
Arnold Jablon, Director / ZADM

Re: Case No. 94-437-SPH – William T. Hackett

Baltimore County has no water supply system of its own. The three City-owned reservoir-watersheds exist mainly in Baltimore County; the water supply system is owned and controlled by Baltimore City.

Loch Raven Reservoir Watershed is the most threatened and most often polluted of the three City Owned Reservoir Watersheds. Development surrounding the reservoir watershed in Baltimore County, sediment run-off, chemical pollution, excessive nutirents and distructive behaviour by recreational users all contribute to the degradation of our drinking water - most of it contributed by people of Baltimore County..

Baltimore County's Resource Conservation -4 (RC-4) Zoning is the only weapon in place to prevent this degradition to our drinking water supply in the Loch Raven Reservoir.

Mrs. Crook has fought valiantly through many years to have Baltimore County restore the rightful and necessary RC-4 zoning on the Clark Oil Property and to correct the misapplied and incorrect zoning condoned in the past on this property. To allow the previous zoning abuse of this Resource Conservation area to continue in any form would be irresponsible and unconscionable on the part of Baltimore County .

It behooves Baltimore County to recognize its role in protecting Loch Raven Reservoir and enforcing RC-4 in accordance with its Master Plan as well as its agreement with Baltimore City, Howard and Carroll Counties in the Watershed Management Agreement.

The Watershed Protection Coalition, therefore, earnestly requests that no Class II Trucking Facility be allowed on this location and that RC-4 be enforced.

Sincerely,

The Watershed Protection Coalition

Copy to: Hon. Dutch Ruppersberger
Reservoir Watershed Protection Subcommittee
Baltimore County DEPRM

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: W. T. Hackett
C. W. Clark
J. H. Lipowitz

DATE: December 30, 1994

FROM: kathi

SUBJECT: Case No. 94-437-SPH /Thomas G. Clark, et ux

Regarding the subject matter, scheduled for public deliberation on Thursday, January 5, 1995 at 1:30 p.m., attached for your information and review are copies of the following:

1) Post Hearing Memorandum filed December 29, 1994 by Conwell F. Sapp, Esquire, on behalf of Petitioners, Thomas and Edith Clark.

2) Protestants' Memorandum in Lieu of Final Argument filed by J. Carroll Holzer, Esquire, on behalf of Protestants /Appellants, Beverly C. Crook, et al.

3) Memorandum of People's Counsel filed December 30, 1994.

A copy of the final Deliberation Notice was forwarded to you on December 21, 1994.

Should you have any questions regarding the above, please call me.

Attachments

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

September 23, 1994

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. 94-437-SPH

THOMAS G. CLARK, ET UX
S/s Merryman's Mill Road, 285' SW of c/l of Killarney Court (2815 Merryman's Mill Road)
10th Election District
3rd Councilmanic District

SPH -To approve Class II Trucking Facility with office on residentially-zoned property as nonconforming use

7/29/94 -Z.C.'s Order in which Petition for Special Hearing was GRANTED with restrictions.

ASSIGNED FOR: WEDNESDAY, DECEMBER 7, 1994 at 10:00 a.m.

cc: J. Carroll Holzer, Esquire — Counsel for Appellants /Protestants
Beverly C. Crook, et al — Appellants /Protestants

Conwell F. Sapp, Esquire — Counsel for Petitioners
Mr. & Mrs. Thomas Clark — Petitioners

Robert R. Bowie, Jr., Esquire — Counsel for Protestant
Katherine Clark — Protestant

Mr. J. Finely Ransone
Mr. Patrick Pike
Ms. Josephine Owen

People's Counsel for Balto. County
Pat Keller
Lawrence E. Schmidt
Timothy H. Kotroco — Docket Clerk /ZADM
W. Carl Richards, Jr. /ZADM — Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer
Administrative Assistant

PLEASE RETURN SIGN AND POST TO ROOM 49 ON DAY OF HEARING.

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

December 15, 1994

NOTICE OF DELIBERATION

Having concluded this case on December 7, 1994, the County Board of Appeals has scheduled the following date and time for deliberation in the matter of:

THOMAS G. CLARK, ET UX - Petitioner
CASE NO. 94-437-SPH

PLEASE NOTE THAT MEMORANDUMS ARE DUE FRIDAY, DECEMBER 30, 1994 (Original and three copies).

DATE AND TIME : Thursday, January 5, 1995 at 9:00 a.m.

LOCATION : Room 48, Basement, Old Courthouse

cc: J. Carroll Holzer, Esquire — Counsel for Appellants /Protestants
Beverly C. Crook, et al — Appellants /Protestants

Conwell F. Sapp, Esquire — Counsel for Petitioners
Mr. & Mrs. Thomas Clark — Petitioners

Katherine Clark
Mr. J. Finely Ransone
Mr. Patrick Pike
Ms. Josephine Owen

People's Counsel for Balto. County
Pat Keller
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer
Administrative Assistant

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

December 21, 1994

AMENDED NOTICE OF DELIBERATION /(Change in Time)

Having concluded this case on December 7, 1994, the County Board of Appeals had scheduled the following date for deliberation. However, please note that the time has been changed to 1:30 p.m. for the deliberation in the matter of:

THOMAS G. CLARK, ET UX - Petitioner
CASE NO. 94-437-SPH

PLEASE NOTE THAT MEMORANDUMS ARE DUE FRIDAY, DECEMBER 30, 1994 (Original and three copies).

DATE AND TIME : Thursday, January 5, 1995 at 1:30 p.m.

LOCATION : Room 48, Basement, Old Courthouse

cc: J. Carroll Holzer, Esquire — Counsel for Appellants /Protestants
Beverly C. Crook, et al — Appellants /Protestants

Conwell F. Sapp, Esquire — Counsel for Petitioners
Mr. & Mrs. Thomas Clark — Petitioners

Katherine Clark
Mr. J. Finely Ransone
Mr. Patrick Pike
Ms. Josephine Owen

People's Counsel for Balto. County
Pat Keller
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clark /ZADM
Arnold Jablon, Director /ZADM

FYI copies to: W. T. Hackett
C. W. Clark
J. H. Lipowitz

Kathleen C. Weidenhammer
Administrative Assistant

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

December 15, 1994

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

Conwell F. Sapp, Esquire
REESE AND CARNEY
10715 Charter Drive
Columbia, MD 21044

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

RE: Case No. 94-437-SPH
Thomas G. Clark, et ux

Dear Counsel:

This letter will confirm my conversation with you this date regarding written memorandums (original and three copies) which are now due in the Board's office by Friday, December 30, 1994, as opposed to the date originally set at the conclusion of the hearing on December 7th.

Also, open deliberation in this matter has been scheduled for Thursday, January 5, 1995 at 9:00 a.m. (see enclosed copy of Notice of Deliberation).

Very truly yours,

Kathleen C. Weidenhammer
Administrative Assistant

Enclosure

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June 18, 1994

TO: Mr. Timothy Kotroco
Deputy Zoning Commissioner, Baltimore County

FROM: Beverly C. Crook
2829 Merryman's Mill Road
Phoenix, Maryland 21131

RE: Case #94-437-SPH, Item 421

Enclosed is the statement that I read at the Special Hearing for the above case on June 17, 1994. Thank you for entering it into the file.

Regardless of how this matter turns out, I felt that you handled the hearing in a fair and even-handed manner and that was also the consensus among those present. We are grateful for your patience.

I should appreciate it if you will send me a copy of your decision, so that I can pass it along to the various groups that are concerned about zoning on this site.

Thank you.

CASE #94-437-SPH, Item 421

June 17, 1994

SPECIAL HEARING - Re. Class II Trucking Facility & Office at 2829 Merryman's Mill Road, Phoenix, Md. 21131

TESTIMONY by Beverly C. Crook
2829 Merryman's Mill Road
Phoenix, Maryland 21131

(This property joins the Clark property on the East.)

I've lived on Merryman's Mill Road for over forty years, but in recent years, commercial activity at the Clarks has become a serious problem that has eroded not only the quality of life on my property, but also its value. Since I'm very familiar with the history of this zoning, I'd like to explain what has happened on this property so that you can put this latest zoning request into perspective.

When my husband and I moved to Merryman's Mill Road, Mr. Clark was operating a little one-man heating oil business that we were scarcely aware of, because it was small, and because of the thick woods separating us. We thought that expansion of the business was impossible, since the property is, quite literally, on the banks of Loch Raven and on two streams feeding into the reservoir.

However, in the late 70's, Mr. Clark turned the business over to his three children, and they began to expand it. They built a two-story office building and a garage/machine shop large enough to service tank trucks. They also conducted fill operations beside a stream to create more useable land, and cut

trees so that the business became visible from my property. And all of this was done without a change in the RC4 zoning.

But instead of being penalized for illegal development, the Clarks were given "Industrial Zoning", ML, to cover up the illegalities. This was done during the Comprehensive rezoning of 1980, but without going through the regular process. At that time, a zoning loophole allowed Council members to slip in last-minute zoning changes without telling anyone. In this case, not even the Planning Dept. knew about it.

When the new zoning was finally discovered, people were outraged by the way it had been done, but we were told that no action could be taken except during the 4-year Comprehensive Rezoning cycle.

So in 1984, 5 community associations and 7 environmental groups requested a change back to RC4 zoning. This would not have put the Clarks out of business, but it would have curbed expansion. The issue was supported through four public hearings without one word of opposition, not even from the Clarks. Yet the district Councilman would not agree to a zoning change. Then at the last minute, and through another loophole, he did return some land to RC4. But, as it turned out, this land was in a ravine, while ML remained on all level land.

During the next 4-year rezoning, in 1988, community and environmental groups again requested a return of RC4, and this time they were joined by Baltimore City, the Regional Planning Council, and Baltimore County's Environmental Dept. The County's

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

August 30, 1994

Conwell F. Sapp, Esquire
Reese and Carney
10715 Charter Drive
Columbia, Maryland 21044

RE: Petition for Special Hearing
S/S Merryman's Mill Road
285' SW of c/l of Killarney Court
(2815 Merryman's Mill Road)
10th Election District
3rd Councilmanic District
Thomas G. Clark, et ux - Petitioner
Case No. 94-437-SPH

Dear Mr. Sapp:

Please be advised that an appeal of the above-referenced case was filed in this office on August 24, 1994 by J. Carroll Holzer, P.A., on behalf of appellants Beverly Crook, Individually, and Greater Cambria Association, Inc.; Watershed Protection Coalition, Inc.; and Baltimore Bird Club. All materials relative to the case have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Helene Kehring at 887-3351.

Sincerely,

ARNOLD JABLON
Director

AJ:hek

cc: Mr. and Mrs. Thomas Clark
Mr. J. Finley Ransone
Robert R. Bowie, Esquire
Mr. Patrick Pike
Ms. Josephine Owen
People's Counsel

94 AUG 31 P1:12:43

94-437-SPH

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APPEAL

Petition for Special Hearing
S/S Merryman's Mill Road
285' SW of c/l of Killarney Court
(2815 Merryman's Mill Road)
10th Election District - 3rd Councilmanic District
Thomas G. Clark, et ux - PETITIONER
Case No. 94-437-SPH

Petition(s) for Special Hearing

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

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

Miscellaneous Correspondence (5)

Two Citations for Civil Zoning Violations - Case Nos. 94-197A & 94-197B (3/18/94)

Testimony by Beverly C. Crook (6/17/94)

Post Hearing Memorandum - Submitted by Conwell F. Sapp (Certificate of Service 6/23/94)

Post Hearing Reply Memorandum of Law on behalf of Katherine Clark Submitted by Robert R. Bowie, Jr. (Certificate of Service 7/1/94) With attached memo from J. Lawrence Pilson, DEPRM, (6/17/94)

Petitioner's Exhibits:
1A-R - Copy of 19 photographs
2A-Z - 26 Photographs
3 - Plat to accompany petition (12/29/93)
4 - Photogrammetric Map of Merrymans Mill Rd. Adopted by the Baltimore County Council (10/14/80)
5 - Photogrammetric Map of Merrymans Mill Rd. Adopted by the Baltimore County Council (11/13/84)
6 - Comprehensive Zoning Map (10/13/88) Adopted by the Baltimore County Council
7 - Comprehensive Zoning Map (10/15/92) Adopted by the Baltimore County Council
8 - Photogrammetric Map of Merrymans Mill Rd. Adopted by the Baltimore County Council (10/7/76 & 10/8/76)
9 - Photogrammetric Map of Merrymans Mill Rd. Adopted by the Baltimore County Council (3/24/71)
10 - Use Restrictions signed by Thomas G. Clark and Edith P. Clark (10/11/88)

Protestant's Exhibits:
1 - Five copies of microfilm of pertinent correspondence, petitions and zoning commissioner's order (85-222-XSP)
2 - Memo to J. James Dieter (2/19/88)
3 - Testimony by Mrs. J. Owen (6/17/94)

Zoning Commissioner's Order dated July 29, 1994 (Granted)

Notice of Appeal received on August 24, 1994 from J. Carroll Holzer, P.A., on behalf of Beverly Crook, Greater Cambria Assoc., Inc., Watershed Protection Coalition, Inc.; and Baltimore Bird Club

cc: J. Carroll Holzer, Holzer & Lee, 305 Washington Ave., Suite 502 Towson, Maryland 21204
Conwell F. Sapp, Esquire, Reese & Carney, 10715 Charter Dr. Columbia, MD 21044
Mr. and Mrs. Thomas Clark, 2815 Merrymans Mill Rd., Phoenix, MD 21131
Mr. J. Finley Ransone, P.O. Box 10160, Towson, MD 21285-0160
Robert R. Bowie, Jr., Esquire, Bowie and Jenson 29 W. Susquehanna Ave., Towson, MD 21204
Patrick Pike, 2501 Carsden Ct., Phoenix, MD 21131
Ms. Josephine Owen, 308 Merrie Hunt Dr., Lutherville, MD 21093
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Patrick Keller, Director, Planning & Zoning
Timothy M. Kotroco, Deputy Zoning Commissioner
W. Carl Richards, Jr., Zoning Manager
James H. Thompson, Zoning Supervisor
Docket Clerk
Arnold Jablon, Director of ZADM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

DATE: March 31, 1995

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Closed File: Case No. 94-437-SPH
THOMAS G. CLARK, ET UX
10th E; 3rd C

As no further appeals have been taken regarding the subject case, we are closing the file and returning same to you herewith.

Attachment

County Board of Appeals of Baltimore County

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

March 31, 1995

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Case No. 94-437-SPH
THOMAS G. CLARK, ET UX

Dear Mr. Holzer:

As no further appeals have been taken regarding the subject matter, we have closed the file and returned same to the Office of Zoning Administration and Development Management (ZADM), along with any exhibits entered in this matter. The Zoning Office maintains the permanent file.

Anyone interested in this case can contact Gwen Stephens in Zoning Administration at 887-3391 upon receipt of this letter. By copy of this letter, all parties of record that may have an interest in this file have been notified. Please note that exhibits will not be released by ZADM until after the file has been microfilmed. Therefore, there may be a considerable time lapse between the date of this letter and actual retrieval of any exhibits.

Sincerely,

Charlotte E. Radcliffe
Legal Secretary

cc: Beverly C. Crook, et al
Conwell F. Sapp, Esquire
Mr. & Mrs. Thomas Clark
Katherine Clark
People's Counsel for Baltimore County

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9/23/94 -Notice of Assignment for hearing scheduled for Wednesday, December 7, 1994 at 10:00 a.m. sent to following:

J. Carroll Holzer, Esquire
Beverly C. Crook, et al
Conwell F. Sapp, Esquire
Mr. & Mrs. Thomas Clark
Robert R. Bowie, Jr., Esquire
Katherine Clark
Mr. J. Finely Ransone
Mr. Patrick Pike
Ms. Josephine Owen
People's Counsel for Balto. County
Pat Keller
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clark /ZADM
Arnold Jablon, Director /ZADM

12/07/94 -Hearing concluded before Board; memos due from counsel Friday, ~~January 6, 1995~~; deliberation to be scheduled. (H.C.L.)

12/30/94 Holzer 12/27/94
Sapp 12/27/94
PC 12/27/94

12/15/94 - Date for memos moved to Friday, December 30, 1994 (one week earlier); T/C to S. Leese for C. Holzer; and Connie Sapp regarding change in date; also spoke with C. Demilio & F. Zimmerman regarding change.

To schedule for deliberation on Thursday, January 5, 1995 at 9:00 a.m.; Notice of helibreration sent to parties; confirmed availability of Board (H.C.L.) on 1/05/95.

-Letter to parties confirming change in due date for memos.

12/21/94 -Amended Notice of Deliberation sent to parties; matter reset for deliberation / same date (1/05/95) at 1:30 p.m. in lieu of morning hour originally assigned. Copy also sent to Board members.

12/30/94 -All memos having been filed, copies were sent out to each Board member (Hackett, Clark, Lipowitz).

1/05/95 -Public deliberation held and concluded; petition for special hearing for nonconforming use granted.; Written Opinion and Order to be issued by Board; Appellate period to run from date of that written Order. (H.C.L.)

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Thomas G. Clark, et ux
Case No. 94-437-SPH

DATE : January 5, 1995 @ 1:30 p.m.

BOARD /PANEL : William T. Hackett (WTH)
C. William Clark (CWC)
Judson H. Lipowitz (JHL)

SECRETARY : Kathleen C. Weidenhammer
Administrative Assistant

PURPOSE --to deliberate issues and matter presented to the Board; testimony and evidence taken at hearing on December 3, 1994. Written Opinion and Order to be issued by the Board.

Those present at the deliberation included Conwell F. Sapp, Esquire, Counsel for Petitioners; Bruce Clark, and Thomas Clark, Petitioner; People's Counsel for Baltimore County and Deputy People's Counsel; and Sterling Leese.

Chairman Hackett: We are here as scheduled for the public deliberation of Case No. 94-437-SPH, Thomas G. Clark, et ux, Merryman's Mill Road in Baltimore County. The matter before the Board concerns a trucking facility on residentially-zoned property and its nonconforming use.

WTH: In my estimation, the first witness that we had that I was particularly impressed with was Mr. Clark. Mr. Clark testified that in 1935 he started Clark Oil Company; had lived on property 56 years; had been in family ownership approximately 100 years; went through litany of proofs of oil company's use of this piece of property as storage area, oil trucks, and generally speaking, testified to use of property as oil distributing business; does not necessarily classify as a Class II trucking facility; in 1992 his son operated Bruce Clark Fuel Company and used site for storing of some of his trucks; he also testified as to his use of the site off and on over his entire lifetime as an adjunct to his business /fuel delivery business. Finley Ransone rented office space recently and used all office space there; testimony from Douglas Lee, Mr. Shadinger, Jerry Heacock, Dean Ayres, Ben Apicello, and David Morrison was received; all these people testified that a continuous use had existed; was well-maintained; no detriment to the area; no problems; been there for many years. Protestants testifying included Dr. Polly Worth, member of Save Our Streams; but no testimony as to what damage could be done; Ann Garrett opposed to trucking facility; Joy Wheeler, Baltimore Bird Club, viewed use as step

backward; also testifying in opposition were Josephine Owens, Anica Davis, and Donald Outen; Bevery Crook, nearest neighbor to oppose it. Bruce Clark's testimony was that he used site even though his father was no longer in business; Mr. Clark testified as to planting of trees; not Class II trucking facility; never has been; never should be. But has enjoyed a nonconforming use in conjunction with a family business; the delivery of oil; well-maintained; would approve it as a nonconforming use.

Summary: Nonconforming use should be approved.

JHL: Agrees with conclusions of WTH; it's obvious that the facts in case do not support a finding of a Class II trucking facility; Petitioner is not claiming it's a Class II trucking facility; issue raised about the way the petition was worded; special hearing for Class II trucking facility as nonconforming use; unfortunate that it was mispled, so to speak, but substance should prevail over form. We don't approve classes as nonconforming uses; we approve uses as nonconforming uses; testimony was clear; summarized WTH in going through names of witnesses who testified; zoning changed in 1992; use has not expanded or been enlarged; no substantial change of the use; use of property remained; is nonconforming use; Petition subject to change on Class II trucking facility should be granted.

Summary: Petition should be granted.

CWC: Difficulty with case stems from fact that if this were new application for use, it could be viewed as Class II trucking facility; would require special exception which has not been applied for; this use historically existed; use has not expanded; in fact, it has decreased; key testimony in case is for how long use, as it has existed, had ceased; whether it had ceased for more than one year or been abandoned for more than one year; from testimony I find that it did not; nonconforming use, whatever it may have been, did not cease its operation for more than one year so that it fits within the definition of nonconforming use under 104.1 of the BCZR; whether it's technically Class II trucking facility or not, or would be viewed as one today if it came in fresh, is not what case turns on; in my mind, the fact is that Mr. Clark had historically operated and used this property for same use for which its presently being used, although he had used it for more uses prior to this; parking of trucks overnight has not been interrupted for more than one year and so therefore I believe the Petitioner has established a nonconforming use,

and the Petition should be granted to allow the operation of Bruce Clark's continued use of the property to park and store his trucks and in fashion which he has; office use also clearly had been there; part of property had been used as office all along, albeit it has different tenant; but use of portion of property for business did not cease for more than one year. So again, whatever it may have been classified now if it came in as new application is one thing, but the fact that this use has continued historically allows it to be viewed as a nonconforming use and will approve use.

Summary: Petition should be granted as nonconforming use.

Closing statement Chairman Hackett: Board will issue written Opinion and Order in which the nonconforming use of property will be affirmed.

NOTE: Appellate period to run from date of Board's written Opinion and Order and not from today's date.

Respectfully submitted,

Kathleen C. Weidenhammer
Administrative Assistant

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

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

June 17, 1994

FROM: J. Lawrence Pilson JLP
Development Coordinator, DEPRM

SUBJECT: Zoning Item #SPH 94-437 - Clark Property
2815 Merrymans Mill Road
Zoning Advisory Committee Meeting of May 16, 1994

RECEIVED

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

Environmental Impact Review

1. Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains.

2. Zoning Regulation 410A.2 states that no Class II trucking facility or part thereof established on or after the effective date of this section may be located within 200' of a wetland. (Bill No. 18, 1976). A stream, several springheads and small associated non-tidal wetlands exist within 200' of the subject facility and down slope of it.

3. The parking areas of the subject facility drain to a storm drain inlet. An apparent overflow from the inlet structure outfalls to within 172' of a Tributary of Oversluk Run, itself a tributary of the Loch Raven Reservoir. Should the continued use be allowed and because of the close proximity of this operation to the watershed, this Department has concerns that petroleum based or other pollutants may enter the reservoir. It is requested that provisions are made to assure this will not occur. We recommend that a spill-contingency plan be available (such as: absorbent materials and containment barriers on site, and an empty truck [or reservoir] to pump oil into from any truck that may develop a leak).

   Special measures in addition to the treatment of stormwater runoff, could involve prohibitions on the types of products transported by trucks parked at the facility. The facility would also likely require an NPDES - Storm Water Discharge Permit.

4. The maximum permitted coverage of impervious areas is 28,203 sq. ft. or 10% of the gross area of 6.4746 AC.±.

   Please provide information to indicate the percentage of impervious acreage of site.

Air Quality

Because of noise standards for residential neighborhoods scheduled to go into effect on July 1, 1994, should this project be approved, we recommend that all trucking operations be restricted to daylight hours.

In Summary, the scope and nature of the project as submitted in the Special Exception application package are unclear. Uses associated with a Class II trucking facility are inconsistent with the goals of the Watershed Management Agreement.

Without additional information, this Department cannot recommend approval of the Special Exception at this time.

JLP:EG:WL:SR:sp

CLARK/DEPRM/TXTSBP

TO: Office of Planning & Zoning

DATE: November 5, 1987
*March 3, 1988

RE: Zoning Issue Comments
Project No. 3-235

REVIEWER: Environmental Protection & Resource Management

XXX The Department has no comments on the proposal.

____ The proposal is consistent with the goals of the department and meets regulatory requirements.

____ The project raises concerns in certain environmental areas, but is generally consistent with departmental goals (see comments).

*XXX The project raises substantial concerns which do not conform with the goals of the department (see comments).

____ The project would violate regulatory requirements and should be denied (see comments).

Petitioner Contact: _____

Date: _____

Field Inspection: _____

Date: _____

Comments: After the initial first cut inquiry into open enrollment issues, this Department has completed comprehensive assessments of certain environmentally sensitive issues. The Clark Oil Company property is located just north of Loch Raven Reservoir. The potential for serious contamination of the Reservoir from leaks or spillage at the facility raises substantial concern for this Department. The technical basis for concern is outlined in the attached memorandum from the staff hydrogeologist, Mr. Jeffrey Jollie.

This type of operation is inconsistent with the Watershed Management Agreement and by today's criteria for watershed protection should not be sited in this location. Non-conforming use in an RC-4 zone would limit expansion of the operation.

*Current amended position

Signature: [signature]
Title: Director
Agency: Dept. of Environmental Protection and Resource Management

RE: PETITION FOR SPECIAL HEARING
S/S Merrymans Mill Road,
285' SW of Killarney Court
(2815 Merrymans Mill Road),
10th Election Dist., 3rd
Councilmanic Dist.

THOMAS G. CLARK, et al.
Petitioners

BEFORE THE

ZONING COMMISSIONER

OF BALTIMORE COUNTY

Case No. 94-437-SPH

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

[signature]
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

[signature]
CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of May, 1994, a copy of the foregoing Entry of Appearance was mailed to J. Finley Ransone, P. O. Box 10160, Towson, MD 21285-0160, Representative for Petitioners.

[signature]
PETER MAX ZIMMERMAN

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

CITATION NO. 94-197A

ITEM # 421
94-437
SPH

NAME OF PERSON(S) CHARGED: THOMAS G. CLARK

CURRENT ADDRESS IN FULL: 2815 MERRYMANS MILL ROAD PHOENIX, MD 21131

OWNER (X) OR OCCUPANT ( ) RELATED CITATIONS :

IT IS FORMALLY 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-HOME OCCUPATION, TRUCKING FACILITY, CLASS II, OFFICE; 102.1; 1A03.3A; 410A.1

NATURE OF VIOLATION: USE OF PROPERTY ZONED R.C.4 TO COMMIT THE FOLLOWING:
1. OPERATION OF TRUCKING FACILITY, CLASS II 2. OPERATION OF AN OFFICE OR RESIDENTIALLY ZONED PROPERTY

LOCATION AND DATE(S) OF VIOLATION: 2815 MERRYMANS MILL ROAD 11/3/93 AND 3/7/94

TO RESPOND TO THE ABOVE CHARGE(S) LODGED AGAINST YOU, YOU MUST CHOOSE ONE OF THE OPTIONS BELOW:

1) YOU MAY PAY A FINE OF $800.00 ($400.00 FOR EACH ADDITIONAL DAY) BY CHECK OR MONEY ORDER PAYABLE TO THE DIRECTOR OF FINANCE, BALTIMORE COUNTY, MARYLAND, BY RETURNING A COPY OF THIS FORM ALONG WITH PAYMENT TO: DIRECTOR OF FINANCE, 1ST FLOOR, COURT HOUSE, TOWSON, MD 21204. THE PENALTY MUST BE PAID ON OR BEFORE THE 7TH DAY OF APRIL, 1994.

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 FILLING IN THE ATTACHED 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 AT THE EXPIRATION OF THE THIRTY-FIVE (35) DAYS FROM THE DATE OF THE CITATION , THE ZONING ADMINISTRATOR 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 BENCH WARRANT WILL BE ISSUED FOR YOUR ARREST.

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

3/18/94 [signature]
DATE OFFICE OF ZONING ADMINISTRATION REPRESENTATIVE

BASED ON THE STATEMENT OF DANIELA THOMPSON , THIS CITATION IS HEREBY ISSUED THIS 18TH DAY OF MARCH, 1994.

[signature]
DIRECTOR OF ZONING ADMINISTRATION

ACKNOWLEDGEMENT

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.

3-25-94 Thomas P. Clark
DATE SIGNATURE

ITEM # 421
94-437
SPH

NOTICE OF INTENTION TO STAND TRIAL

CITATION NO. 94-197A

APRIL 22, 1994

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

DATE 3-25-94 SIGNATURE Thomas P. Clark

ADDRESS: 2815 MERRYMAN MILL ROAD
PHOENIX, MD. 21131

RETURN TO:

DIRECTOR OF ZONING ADMINISTRATION
ZONING OFFICE
111 W. CHESAPEAKE AVENUE, ROOM 109
TOWSON, MARYLAND 21204

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

CITATION NO. 94-197B

ITEM # 421
94-437-SPH

NAME OF PERSON(S) CHARGED: J. FINLEY RANSOME

CURRENT ADDRESS IN FULL: J. FINLEY RANSOME ASSOC. 2815 MERRYMANS MILL ROAD PHOENIX, MD 21131

OWNER ( ) OR OCCUPANT (X) RELATED CITATIONS :

IT IS FORMALLY 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-HOME OCCUPATION, OFFICE; 102.1; 1A03.3A

NATURE OF VIOLATION: USE OF PROPERTY ZONED R.C.4 TO COMMIT THE FOLLOWING:
OPERATION OF AN OFFICE OR RESIDENTIALLY ZONED PROPERTY

LOCATION AND DATE(S) OF VIOLATION: 2815 MERRYMANS MILL ROAD 11/3/93 AND 3/7/94

TO RESPOND TO THE ABOVE CHARGE(S) LODGED AGAINST YOU, YOU MUST CHOOSE ONE OF THE OPTIONS BELOW:

1) YOU MAY PAY A FINE OF $400.00 ($200.00 FOR EACH ADDITIONAL DAY) BY CHECK OR MONEY ORDER PAYABLE TO THE DIRECTOR OF FINANCE, BALTIMORE COUNTY, MARYLAND, BY RETURNING A COPY OF THIS FORM ALONG WITH PAYMENT TO: DIRECTOR OF FINANCE, 1ST FLOOR, COURT HOUSE, TOWSON, MD 21204. THE PENALTY MUST BE PAID ON OR BEFORE THE 7TH DAY OF APRIL, 1994.

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 FILLING IN THE ATTACHED 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 AT THE EXPIRATION OF THE THIRTY-FIVE (35) DAYS FROM THE DATE OF THE CITATION , THE ZONING ADMINISTRATOR 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 BENCH WARRANT WILL BE ISSUED FOR YOUR ARREST.

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

3/8/94 [signature]
DATE OFFICE OF ZONING ADMINISTRATION REPRESENTATIVE

BASED ON THE STATEMENT OF DANIELA THOMPSON , THIS CITATION IS HEREBY ISSUED THIS 18TH DAY OF MARCH, 1994.

[signature]
DIRECTOR OF ZONING ADMINISTRATION

ACKNOWLEDGEMENT

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.

MARCH 29, 1994 [signature]
DATE SIGNATURE

ITEM # 421
94-437-SPH

NOTICE OF INTENTION TO STAND TRIAL

CITATION NO. 94-197B

APRIL 22, 1994

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

DATE 3/29/94 SIGNATURE [signature]

ADDRESS: PO Box 10160
Towson, MD 21285-0160

RETURN TO:

DIRECTOR OF ZONING ADMINISTRATION
ZONING OFFICE
111 W. CHESAPEAKE AVENUE, ROOM 109
TOWSON, MARYLAND 21204

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

1) Posting fees will be accessed and paid to this office at the time of filing.

2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 421

Petitioner: N/E 9/ABS THOMAS G. CLARK

Location: SOUTH SIDE MERRYMANS MILL RD, WEST OF KILLARNEY COURT

PLEASE FORWARD ADVERTISING BILL TO:

NAME: J. FINLEY RANSONE & ASSOCIATES

ADDRESS: PO BOX 10160

TOWSON, MD 21285-0160

PHONE NUMBER: 666-7448

*MUST BE SUPPLIED

TO: PATUXENT PUBLISHING COMPANY
May 19, 1994 Issue - Jeffersonian

Please foward billing to:

J. Finley Ransone & Associates
P. O. Box 10160
Towson, Maryland 21285-0160
666-7448

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 NUMBER: 94-437-SPH (Item 421)
2815 Merrymans Mill Road
S/S Merrymans Mill Road, 285' SW of c/l Killarney Court
10th Election District - 3rd Councilmanic
Petitioner(s): Thomas G. Clark and Edith P. Clark
HEARING: FRIDAY, JUNE 17, 1994 at 2:00 p.m. in Rm. 106 County Office Bldg.

Special Hearing to approve the non-conforming uses of the subject property specifically, the operation of a trucking facility, Class II, and the operation of an office on residentially zoned property.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

MAY 12, 1994

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 NUMBER: 94-437-SPH (Item 421)
2815 Merrymans Mill Road
S/S Merrymans Mill Road, 285' SW of c/l Killarney Court
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Petitioner(s): Thomas G. Clark and Edith P. Clark
HEARING: FRIDAY, JUNE 17, 1994 at 2:00 p.m. in Rm. 106 County Office Bldg.

Special Hearing to approve the non-conforming uses of the subject property specifically, the operation of a trucking facility, Class II, and the operation of an office on residentially zoned property.

Arnold Jablon
Director

cc: Thomas and Edith Clark
J. Finley Ransone
Mark. T. Jensen
Katherine Clark

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

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Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

June 8, 1994

Mr. and Mrs. Thomas G. Clark
2815 Merryman's Mill Road
Phoenix, Maryland 21131

RE: Case No. 94-437-SPH, Item No. 421
Petitioner: Thomas G. Clark, et ux.
Petition for Special Hearing

Dear Mr. and Mrs. Clark:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above-referenced petition, which was accepted for filing on May 4, 1994 and scheduled for a hearing accordingly. Any attached comments from a 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.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the hearing file.

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.

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Zoning Plans Advisory Committee Comments
Mr. and Mrs. Thomas G. Clark
Date: June 8, 1994
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, engineers and applicants 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 forfeiture loss of the filing fee.

If you have any questions concerning the enclosed comments, please feel free to contact Charlotte Minton in the zoning office at 887-3391 or the commenting agency.

Sincerely,

W. Carl Richards, Jr.
Zoning Supervisor

WCR:cmm
Enclosures

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration and
Development Management

DATE: May 18, 1994

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

SUBJECT: Petitions from Zoning Advisory Committee

The Office of Planning and Zoning has no comments on the following petition(s):

Item Nos. 401, 403, 408, 413, 415, 416, 417, 418, 419, 421, 422, 425 and 426.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

Prepared by: Jeffrey W. Long

Division Chief: Carl L. Lewis

PK/JL:lw

ZAC.401/PZONE/ZAC1

Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

5-17-94

Ms. Charlotte Minton
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: #421 (JCT)

Dear Ms. Minton:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,
Bob Small
for DAVID N. RAMSEY, ACTING CHIEF
~~John Contestable, Chief~~
Engineering Access Permits
Division

BS/

My telephone number is _____
Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

Baltimore County Government
Fire Department

700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 05/17/94

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

LOCATION: SEE BELOW

Item No.: SEE BELOW Zoning Agenda:

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.

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:411, 421, 424, 426, AND 427.

REVIEWER: LT. ROBERT F. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

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forming use into any of the wooded areas depicted on the site plan and any use of the wooded areas of the site shall be in strict compliance with the R.C.4 zoning requirements.

Furthermore, it is necessary to identify the type of business for which the granting of this nonconforming use applies. The testimony and evidence revealed that the Petitioner has been storing six (6) trucks on the premises. Mr. Bruce Clark identified in his testimony that he stored four (4) oil trucks and two (2) tank trailers on the subject property. Testimony was that there are no underground storage tanks for fuel oil on the subject site, nor are there any above-ground storage tanks for fuel oil on the property. Therefore, the Petitioner is forever prohibited from installing any above-ground or underground storage tanks for fuel oil on the subject property. The Petitioner shall only be permitted to store four (4) fuel oil trucks and two (2) tank trailers on the property. These trucks may contain either fuel or water. In addition, the Petitioner may locate an office for his fuel oil business on the property. Furthermore, Mr. Ransone shall be permitted to maintain his office on the premises in its present fashion as a nonconforming use.

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

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 29th day of July, 1994 that the storage and parking of four (4) fuel oil/water trucks and two (2) tank trailers containing fuel oil or water on the subject property, zoned R.C. 4, be and is hereby approved as a legal, nonconforming use, in accordance with Petitioner's

ORDER RECEIVED FOR FILING
Date 7/29/94
By BJS

Exhibit 3, and as such, the Petition for Special Hearing is GRANTED, subject to the restrictions set forth hereinafter; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking approval of an office on the subject property, in accordance with Petitioner's Exhibit 3, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

2) The nonconforming use granted herein is limited to that area depicted on Petitioner's Exhibit 3 which contains the existing improvements on the site, including the four structures and the macadam driveway and parking area. In addition, the nonconforming use granted herein shall include the business offices of J. Finley Ransone, Registered Land Surveyor. There shall be no expansion or enlargement of the nonconforming use into any of the wooded areas depicted on the site plan.

3) In the event the uses on the property as set forth in Restriction No. 2 above should terminate or cease operating for a period of one year or more, the relief granted herein for same shall be rescinded.

4) There shall be no above-ground or underground storage tanks for fuel oil on the subject property.

5) Upon request and reasonable notice, Petitioners shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order in the event it becomes necessary to do so as a result of a complaint.

6) When applying for any permits, the site plan and/or landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

Timothy M. Kotroco
TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

ORDER RECEIVED FOR FILING
Date 7/29/94
By BJS

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

July 29, 1994

(410) 887-4386

Conwell F. Sapp, Esquire
Reese and Carney
10715 Charter Drive
Columbia, Maryland 21044

RE: PETITION FOR SPECIAL HEARING
S/S Merryman's Mill Road, 285' SW of c/l of Killarney Court
(2815 Merryman's Mill Road)
10th Election District - 3rd Councilmanic District
Thomas G. Clark, et ux - Petitioners
Case No. 94-437-SPH

Dear Mr. Sapp:

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 the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

Timothy M. Kotroco
TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs
cc: Mr. & Mrs. Thomas Clark
2815 Merryman's Mill Road, Phoenix, Md. 21131

Mr. J. Finley Ransone, P.O. Box 10160, Towson, Md. 21285-0160

Robert R. Bowie, Jr., Esquire
Bowie and Jenson, 29 W. Susquehanna Avenue, Towson, Md. 21204

Patrick Pike, 2501 Garsden Court, Phoenix, Md. 21131
Ms. Beverly Crook, 2829 Merryman's Mill Road, Phoenix, Md. 21131
Ms. Josephine Owen, 308 Merrie Hunt Drive, Lutherville, Md. 21093

People's Counsel; File

94-437-SPH

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 2815 Merryman's Mill Road
which is presently zoned RC-4

This Petition shall be filed with the Office of Zoning Administration & Development Management.
The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve the non-conforming uses on the subject property. Specifically, the operation of a trucking facility, Class II, and the operation of an office on residentially zoned property.

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.

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

Contract Purchaser/Lessee:
(Type or Print Name)
Signature
Address
City State Zipcode
Attorney for Petitioner:
(Type or Print Name)
Signature
Address Phone No.
City State Zipcode

Legal Owner(s):
Thomas G. Clark
(Type or Print Name)
Thomas G. Clark
Signature
Edith E. Clark
(Type or Print Name)
Edith E. Clark
Signature
2815 Merryman's Mill Rd. 666-1844
Address Phone No.
Phoenix, MD 21131
City State Zipcode
Name, Address and phone number of representative to be contacted.
J. Finley Ransone
Name
~~P.O. Box 10160 Towson, MD 21285-0160~~
~~Phone No.~~
OFFICE USE ONLY 666-7448
ESTIMATED LENGTH OF HEARING
unavailable for Hearing
the following dates Next Two Months
ALL OTHER
REVIEWED BY: R.T. DATE 5/4/94

ITEM #421

ORDER RECEIVED FOR FILING
Date 7/29/94
By BJS

94-437-SPH

ZONING DESCRIPTION
CLARK PROPERTY
2815 Merrymans Mill Road
Tenth Election District
Baltimore County Maryland

BEGINNING at a point on the southerly side of Merrymans Mill Road, 50 feet wide, at the distance of 285 feet southwesterly from the centerline of Killarney Court, 50 feet wide; and running thence and binding on the southerly side of Merrymans Mill Road, and binding on the outlines of the property of the petitioners herein; South 75 degrees 06 minutes 48 seconds West, 389.99 feet, thence leaving said road, and continuing to bind on the outlines of the property of the petitioners herein; South 14 degrees 53 minutes 12 seconds East, 541.53 feet; thence North 79 degrees 06 minutes 48 seconds East, 621.91 feet; and thence North 36 degrees 23 minutes 12 seconds West, 628.65 feet to the place of beginning.

CONTAINING 6.4746 acres of land more or less.

ITEM #421

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY 94-437-SPH
Towson, Maryland

District 10th Date of Posting 9/11/94
Posted for: Appeal
Petitioner: Thomas G. Clark, et ux
Location of property: 2815 Merrymans Mill Rd, S/S
Location of Signs: Facing road way on property being sprealed for hearing
Remarks:
Posted by [signature] Date of return: 9/23/94
Signature
Number of Signs: 1

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY 94-437-SPH
Towson, Maryland

District 10th Date of Posting 5/27/94
Posted for: Special Hearing
Petitioner: Thomas & Edith Clark
Location of property: 2815 Merrymans Mill Rd, S/S
Location of Signs: Facing roadway on property by entry road
Remarks:
Posted by [signature] Date of return: 6/3/94
Signature
Number of Signs: 1

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case Number: 94-437-SPH (Item #421)
2815 Merrymans Mill Road
S/S Merrymans Mill Road, 285' SW of c/l Killarney Ct.
10th Election District
3rd Councilmanic District
Petitioner(s): Thomas G. Clark, et ux
HEARING: Thursday, June 16, 1994 at 10:00 a.m.

Special Hearing to approve the non-conforming uses on the subject property. Specifically, the operation of a trucking facility, Class II, and the operation of an office on residentially zoned property.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at 887-4386.
(2) For information concerning the File and/or Hearing, Please Call 887-3391.

May 19.

CERTIFICATE OF PUBLICATION

TOWSON, MD., 5/20, 1994

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 5/19, 1994.

THE JEFFERSONIAN,

A. Henrikson
LEGAL AD. - TOWSON

94-437-SPH
receipt

Baltimore County
Zoning Administration &
Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150
Number 421
R.T

Date 5/4/94

THOMAS CLARK
2815 MERRYMANS MILL RD.

040 - SPH ---- $ 250.00
080 - SIGN ---- $ 35.00
TOTAL - $ 285.00

03A03#0015MICHRC $285.00
BA CASHIER
Please Make Checks Payable To: Baltimore County

Cashier Validation

J. FINLEY RANSONE & ASSOCIATES, INC.

94-437 SPH CHECK 1685

5/03/94	FILING FEE - CLARK PROPERTY SPECIAL HEARING	$285.00

CHECK DATE	CONTROL NUMBER	TOTALS	
5/03/94	506000	▶	$285.00

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

No. 9568

DATE August 30, 1994 ACCOUNT R-001-6150
AMOUNT $ 210.00
RECEIVED Beverly C. Crook
FOR 94-437-SPH - Special Hearing Appeal

01A01#0187MICHRC $210.00

VALIDATION OR SIGNATURE OF CASHIER

CASH FIELD VENDOR - CUSTOMER

seen the property used for the storage of trucks until the fall of 1993, well over a year after Clark Oil Company had been sold and the property had been abandoned by it. Mr. Clark testified that almost immediately after Clark Oil Company stopped using the property his son continued the use of the property for the storage of fuel and water trucks. The testimony also revealed that a subpart of the property had been leased to J. Finley Ranson Assoc. where it was operating a commercial business with between a half dozen to a dozen and a half employees, depending upon the season. The surrounding properties are residential and zoned R.C.4. These residential neighborhoods abut the Loch Raven Watershed and are part of the run off system that leads to the Chesapeake Bay. There are at least five reasons why the alleged nonconforming use by Thomas Clark, the landowner, and J. Finley Ranson, the tenant, should be terminated by order of the Office of Zoning for Baltimore County.

1. The Subdivision of the Property for Use as an Office Violates the R.C.4 Zoning Limitations and is Outside any Prior Nonconforming Use.

There is no evidence in the record to indicate that the property was granted nonconforming use status for commercial office buildings. Although Clark Oil Company operated out of the site, the office facilities were part of the overall use of land by the oil company. The first subdivision of the land for use as commercial office space occurred after February 1992. Mr. Ranson's own testimony indicated that he did significant changes to the buildings on the property in order to prepare for his company's use

under his new lease with Mr. Clark. This use of the property is a new use that violates the limitations on R.C.4 zoned land.

2. There Has Been an Extension of the Nonconforming Use Beyond the 25% Allowed by Law.

A nonconforming use (as defined by Section 101 of B.C.Z.R.) is permitted unless specifically excluded by Section 104.1 et seq. Section 104.3, permits the nonconforming use of "building[s], structure[s], [and] parcel[s] of land unless the nonconforming use "has been extended more than 25%". The uncontradicted testimony of both Thomas Clark and Bruce Clark established that the use of the property by Clark Oil Company increased steadily from 1938 to February 1992, when the assets of Clark Oil were sold. The testimony was that this increase was demonstrated by the amount of fuel trucks using the property, the amount of buildings and out buildings constructed and the lateral area upon which the nonconforming uses were practiced. In fact, both Thomas Clark and Bruce Clark admitted in their testimony that the nonconforming uses had been extended for more than the 25% and one estimate of the two was as much as 100%. For these reasons alone the nonconforming uses should be terminated.

3. There is No Evidence in the Record That Mr. Clark Complied With the 1976 Condition Precedent Amendments to the Zoning Code Pertaining to Class II Trucking Facilities.

In 1976, by enacting Section 410-Class II Trucking Facilities (truckyards, etc.) of the Baltimore County Zoning Regulations, the Baltimore County Council reconfigured nonconforming uses for Class II Trucking Facilities. Subsection 410-A.1 Nonconforming and other

existing Class II trucking facilities, provides that "the provisions of this subsection apply to Class II trucking facilities existing on the effective date of this legislation. Clark has argued that the nonconforming use started in 1938. The effective date of the legislation was 1976. There is nothing in the record that indicates that Clark took any action to comply with this 1936 legislation. The legislation required in subparagraph (A) and (B), that Class II trucking facilities register within one year with the Office of Planning and Zoning. The burden of compliance, registration and filing under subparagraph (A), (B) and (C) was placed on the landowner. Since there is no evidence that throughout the continued nonconforming use of the property that these provisions were complied with and thus the sanctions of subpart D apply. Subparagraph (D)(2) specifies that failure to comply with the applicable regulations of Paragraph A, mandates the cessation of the nonconforming use of Class II trucking facilities within three (3) years after the effective date of the legislation. Three years after the effective date would be 1979. The Section in total states:

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. [Bill No. 18, 1976.]

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. [Bill No. 18, 1976.]

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 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. [Bill No. 18, 1976.]

Since the hearing, Thomas Clark has not submitted any evidence that the requirements of the 1976 legislation had been satisfied nor is there apparently such records in the County files and thus, the nonconforming use is by operation of law terminated.

4. The Impact Study Required by Section 104.5 Disapproves of the Continued Use.

For continued use of a nonconforming use within the Chesapeake Bay Critical Area, Section 104.5 of the Baltimore County Zoning Regulations requires that a Section 307.2 critical area impact study be submitted to the Commissioner. Section 307.2 grants the Zoning Commissioner the power to "authorize the expansion of those uses in existence at the time of the effective date..."; 1988, but such expansion shall be justified by findings of fact outlined in the seven points of that section. None of the seven points can be justified in light of the testimony received at the hearing. In fact, the provisions of Section 500.14, of the Baltimore County

Zoning Regulations, referenced in subpart (7) of the findings of fact, requires in subpart (a) that "no decision may be rendered by the zoning commissioner, on...special hearing unless the zoning commissioner has received from the director of environmental protection and resource management, written recommendations..." The written recommendations dated June 17, 1994, from Lawrence Pilson, Development Coordinator, Department Environmental Protection and Resource Management, DEPRM, (attached hereto), specifically states in its summary, "without additional information, this Department cannot recommend approval of the Special Exception at this time."

5. The Nonconforming Use Has Been Abandoned.

Section 104.1 states, "a nonconforming use (as defined in Section 101), may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever" and goes on further to indicate, "or any abandonment or discontinuance of such nonconforming use for a period of one (1) year or more, the right to continue or resume such nonconforming such shall terminate." (Emphasis Added). The nonconforming use has been changed to a Class II trucking facility and thus, because the storage of trucks was ancillary to the overall business activities of Clark Oil Company, this secondary use is a change in the nonconforming use and the termination should occur. Also, there is testimony in the record that the property was not used for a period in excess of one year as a nonconforming use. Katherine Clark testified that she

saw no truck traffic or storage for in excess of fourteen (14) months after February 1992, the date Clark Oil sold its assets. There was conflicting testimony on this point in that Thomas Clark, Bruce Clark and their tenant all indicated some use during that time period. It is within the discretion of the zoning commissioner to make its decision based on the credibility of the witnesses.

CONCLUSION

For the reasons set forth above, the nonconforming use at issue should be terminated.

Respectfully submitted,

Robert R. Bowie, Jr.
Bowie & Jensen
29 W. Susquehanna Avenue
Suite 600
Towson, Maryland 21204
(410) 583-2400
Attorney for Katherine Clark

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 1st day of July, 1994, a copy of the foregoing Post Hearing Reply Memorandum of Law of Katherine Clark was mailed, postage prepaid, to:

(a) Conwell Sapp, Esquire, Reese & Carney, 10715 Charter Drive, Columbia, Maryland 21044;
(b) Mr. Timothy Kotroco, Deputy Zoning Commissioner, Baltimore County, 400 Washington Avenue, Towson, MD 21204;

Robert R. Bowie, Jr.

IN RE: PETITION FOR SPECIAL HEARING
S/S Merryman's Mill Road, 285' SW of c/l of Killarney Court (2815 Merryman's Mill Road)
10th Election District
3rd Councilmanic District

Thomas G. Clark, et ux
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 94-437-SPH

* * * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing for that property known as 2815 Merryman's Mill Road, located in the Phoenix area of northern Baltimore County. The Petition was filed by the owners of the property, Thomas G. and Edith R. Clark. The Petitioners seek approval of a Class II Trucking facility with an office on the subject property, residentially zoned, as a legal, nonconforming use. The subject property and relief sought are more particularly described on the plat submitted into evidence as Petitioner's Exhibit 3.

Appearing on behalf of the Petition were Thomas G. Clark, property owner, his son, Bruce Clark, J. Finley Ransone, Registered Land Surveyor, David B. Morrison, nearby property owner, and Conwell F. Sapp, Esquire, attorney for the Petitioners. Appearing as Protestants in the matter were many residents of the surrounding community, all of whom signed the Protestant's Sign-In Sheet. Among them was Katherine Clark, who was represented by Robert R. Bowie, Jr., Esquire.

Testimony and evidence presented revealed that the subject property consists of 6.4746 acres, more or less, zoned R.C. 4, and is located on the south side of Merryman's Mill Road, near its intersection with Killarney Court. The property is improved with a two-story frame dwelling and one-story frame garage on the front portion of the site, and a one-sto-

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Date 7/29/94
By [illegible]

ry frame office building with basement level and one-story frame shop building towards the rear of the site. In addition, a macadam driveway extends from the front entrance to the site towards the rear of the property where it expands to provide truck and trailer parking near the office and shop buildings. A site plan of the property and improvements thereon was submitted into evidence as Petitioner's Exhibit 3. In addition, numerous photographs submitted into evidence as Petitioner's Exhibits 2A through 2Z more particularly describe the property and its improvements. Also offered into evidence as Petitioner's Exhibits IA through IS, were a series of photographs depicting the historical appearance of the property since 1935. As noted above, the Petitioners seek approval of the subject property as a nonconforming Class II trucking facility with an office and accessory parking area.

Appearing and testifying on behalf of the Petition was Thomas Clark, property owner. Mr. Clark testified that this property has been in his family for over 100 years and that he has resided in the dwelling on the property for the past 56 years. He testified that he began operating a fuel oil business from the site in 1938 and that the business he started, known as Clark Oil, disbanded in 1992. Mr. Clark testified that from that point forward, his son, Bruce Clark, formed and has operated Bruce Clark Oil from the subject site since 1992.

On cross-examination, Mr. Clark offered additional testimony as to the improvements on the site. He testified that the office building was built some time in the 1970s and that at one time there were underground storage tanks which were used to store fuel oil on the property and that these have since been removed. Mr. Clark also testified as to the zoning of the subject property. He testified that the property was zoned M.L. -

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Date 7/29/94
By [illegible]

II

THOMAS AND EDITH CLARK OWN A VESTED NONCONFORMING USE FOR THEIR PROPERTY

Testimony from Petitioner and photographic exhibits indicated that the fuel oil business was begun on the Merryman's Mill property in 1938. Zoning regulations did not begin in Baltimore County until January 2, 1945. In the absence of zoning this was a lawful use of the property.

> If a property is used for a factory, and thereafter the neighborhood in which it is located is zoned residential, if such regulations applied to the factory it would cease to exist, and the zoning regulation would have the effect of confiscating such property and destroying a vested right therein of the owner. Manifestly this cannot be done, because it would amount to a confiscation of the property, and nonconforming use is a vested right and entitled to constitutional protection. Amereihn v Kotras, 194 Md. 591, 71 A. 2d at 869 (1950)

In Amereihn v Kotras 194 Md. 591, 71 A.2d 865 (1950) the property owners in Baltimore County had a non-conforming use for light manufacturing. After zoning regulations were instituted the owner desired to place an addition on his factory. The court held that while a building permit was required there was no requirement for zoning approval. There was no charge in land use and no requirement for zoning approval. The office and the repair shop of Mr. Clark had the same requirements. Building permits were necessary but these uses were only incidental and accessory to his fuel oil business. There was no change in land use and no impermissible expansion.

III

THERE HAS BEEN NO DISCONTINUATION OF USE

There was conflicting testimony regarding the continued use of the property following the sale of Clark Oil Co. in February of 1992. Thomas Clark, owner of the property, stated that there was no interruption of use and that Bruce Clark Fuel Oil Co. used the property immediately following the sale and continuously ever since although in a less intense manner. The testimony was supported by Bruce Clark who is using the property for parking and truck repairs. This was further corroborated by Finley Ransome who has been leasing office space on the site since April of 1992.

Differing testimony, which was not corroborated, was presented by Katherine Clark who stated that no trucks used the Thomas Clark property from February, 1992, until September, 1993, a period of approximately 18 months. Her later testimony indicated that portions of the Thomas Clark property are not visible to her when leaves are on the trees. The photographs admitted into evidence indicate that the area in which the trucks are parked is considerably below the grade of the road and are not visible from road level. Katherine Clark's property is on a hill on the opposite side of the road, consequently, knowledge would be limited to the trucks ingress and egress and not to trucks which remained parked on the property. Trees and topography prevent that view.

Katherine Clark also testified that she was concerned about herself and possible economic harm which she might suffer as a result of an environmental claim from such use of the property. That testimony and the hostility among family members tends to undermine her credibility in this instance.

At older common law, abandonment of nonconforming use required a showing of an intent to abandon, Vogl v City of Baltimore, 228 Md. 283, 179A.2d 693 (1962). There was no intent shown on the part of the property owner to abandon his use.

IV

NONCONFORMING USE RUNS WITH THE LAND

A nonconforming use applies to the land not the owner. The property may change hands and if there is no discontinuance, the use continues. Kastendike v. Baltimore Association for Retarded Children, Inc., 267 Md. 389, 297 A.2d 745 (1972). The fact that the Clark property is being used in the same manner by a different entity is not relevant.

V

ENVIRONMENT

Concerns about the environment surrounding the watershed are very sincere and well intentioned. However, none of the testimony could show that in the more than 50 years that the business has operated in this location had there ever been any environmental damage whatsoever. While legitimate, such concerns are only speculative. The underground fuel tanks are no longer on the site. No fuel is delivered to the site. Protection through existing berms and a restricted drainage system are already in place.

Counsel for protestant suggested that the Baltimore County Zoning regulations were preempted by State and Federal regulation concerning Loch Raven Reservoir. The provisions, cited by counsel, of state law Md. Envir. Code Annotated art. 4, subtitle 3 refer specifically to the Patuxent River Watershed and the Severn River Watershed neither of which are related to Loch Raven. There was also a reference to the Chesapeake Bay

Critieral Area and the associated regulations. The Clark property is not within a Chesapeake Bay Criterial Area.

VI

THERE IS NO STATE OR FEDERAL LAW PREEMPTING THE AUTHORITY OF LOCAL ZONING LAWS

An argument was presented at the hearing on this matter which stated that State and Federal environmental laws preempted the county zoning authority. This is erroneous. Preemption of state general public laws over public local laws of chartered counties only occurs if there is express preemption in the field or if the Court of Appeals determines an implied preemption. Express preemption occurs very seldom; education and campaign finance are two fields expressly legislatively preempted. State and Local Legislative Powers: An Analysis of the Conflict and Preemption Doctrines in Maryland, 8 Balt. L. Rev. 300 (1979). There has been no express preemption in the environmental field.

The implied preemption requires that a court determine that the legislature intended to reserve a field exclusively to itself. The intent of the General Assembly must be examined by looking at the scope of the legislative scheme, language and legislative history among other factors. Domestic relations is a field which the General Assembly has impliedly preempted. None of the indicia of preemption are shown by environmental laws.

There are few areas in which local municipal authority is stronger than in zoning. Environmental authority of state and federal laws are concurrent with zoning laws. There

is no preemption. See generally, No Mans Landfill: An Analysis of the Roles of Federal, State and Local Government in Nonhazardous Solid and Hazardous Waste Management in Maryland 17 Balt. L. Rev. 114 (1987)

Counsel for protestant suggested that prior to a ruling on the non-conforming use the petition be presented to environmental authority. This is contrary to statute. Insertion of another authority in a zoning decision would be a derogation of county control and not permissible.

CONCLUSION

The testimony and exhibits presented at the hearing on June 17, 1994, clearly indicate that Thomas and Edith Clark have a valid non-conforming use on their property which should be recognized by the zoning authority. The standards applied in McKemy v Baltimore County, 39 Md. App. 257, 385 A.2d 96 (1978) should be applied to the facts as presented.

Respectfully submitted,

Conwell F. Sapp
REESE AND CARNEY
10715 Charter Drive
Columbia, Maryland 21044
(410) 740-4600
Attorney for Defendants

CERTIFICATE OF SERVICE

On this ____ day of June, 1994, I hereby certify that I mailed a copy of the aforegoing Post Hearing Memorandum, postage prepaid to the following:

Via Esquire Courier Overnight Service:

1. Mr. Timothy Kotroco
   Deputy Zoning Commissioner
   Baltimore County
   400 Washington Avenue
   Towson, MD 21204

2. Robert R. Bowie, Jr., Esquire
   Bowie and Jenson
   Suite 600
   29 W. Susquehanna Avenue
   Towson, MD 21204

Via First Class Mail:

3. Mr. Patrick Pike, Esquire
   Smith, Somerville & Case
   100 Light Street
   Baltimore, MD 21212

4. Mr. & Mrs. Thomas Clark
   2815 Merrymans Road
   Phoenix, MD 21131

5. Mr. Bruce Clark
   226 Cockeysville Road
   Cockeysville, MD 21030

Conwell F. Sapp

REESE AND CARNEY
ATTORNEYS AT LAW
10715 CHARTER DRIVE
COLUMBIA, MARYLAND 21044
(410) 740-4600
WASHINGTON AREA
(301) 621-5255
BALTIMORE FAX (410) 730-7729
WASHINGTON FAX (301) 621-5273

DAVID A. CARNEY
DANIEL H. SCHERR
DAVID C. HJORTSBERG
LAURENCE B. RABER
KEVIN J. KELEHAN
JUDITH B. BRESLER
JEFFREY A. KREW
MICHAEL S. MOLINARO
L. ROLAND STURM
JOAN M. BECKER
CONWELL F. SAPP
BETH JACKSON YEAGER
SUSAN E. BEASLEY
CATHLEEN F. WARD

OF COUNSEL
CHARLES A. REESE

255 N. WASHINGTON STREET
SUITE 309
ROCKVILLE, MARYLAND 20850
(301) 762-5210

June 23, 1994

VIA ESQUIRE COURIER SERVICE

Mr. Timothy Kotroco
Deputy Zoning Commissioner
Baltimore County
400 Washington Avenue
Towson, MD 21204

RE: 2815 Merrymans Mill Road
SPH No. 94-437

Dear Mr. Katroco:

Enclosed is the Post Hearing Memorandum for the above referenced case.

Should you have any questions regarding the enclosed please call me at your convenience.

Very truly yours,

REESE AND CARNEY

Conwell F. Sapp

CFS/mw
enclosure
cc: Robert R. Bowie, Jr., Esquire
Patrick M. Pike, Esquire
Mr. & Mrs. Thomas Clark
Mr. Bruce Clark

KOTROCO.LTR

IN THE MATTER OF:
Thomas & Edith Clark

RE: 2815 Merrymans Mill Road
S/S Merrymans Mill Road,
285' SW of c/l KILARNEY COURT
10th Election District
3rd Councilmanic

* BEFORE THE
* ZONING COMMISSIONER
* OF
* BALTIMORE COUNTY
* Case No.: 94-437-SPH

POST HEARING REPLY MEMORANDUM OF LAW ON BEHALF OF KATHERINE CLARK

Katherine Clark, submits this Post Hearing Reply Memorandum of Law and states:

INTRODUCTION

On March 18, 1994, the Baltimore County Office of Zoning filed Citation No. 94-197A and Citation No. 94-197B against Thomas G. Clark and J. Finley Ranson charging the former with 1) operation of a Class II, Trucking Facility, and 2) the operation of an office on residentially zoned property and the latter with the operation of an office on residentially zoned property. Thomas G. Clark is the landowner and J. Finley Ranson is his tenant on the property which is zoned R.C.4 and located at 2815 Merrymans Mill Road, Baltimore County. On June 17, 1994, a hearing was held before Deputy Zoning Commissioner Timothy Kotroco. The charges were principally defended by both Mr. Clark and Mr. Ranson with the argument that the property had been used since 1938 as a trucking facility while Clark Oil Company used the property; however, Clark Oil Company was sold by asset sale in February, 1992 and at that time Clark Oil Company ceased using the property. The property owner who lives across the street from the property, Kay Clark, the former President of Clark Oil Company, testified

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JUN 24 1994
ZONING COMMISSIONER

REESE AND CARNEY

DAVID A. CARNEY
DANIEL M. SCHERR
DAVID C. HORTSBERG
LAURENCE B. RABER
KEVIN J. KELEHAN
JUDITH S. BRESLER
JEFFREY A. KREW
MICHAEL S. MOLINARO
L. ROLAND STURM
JOAN M. BECKER
CONWELL F. SAPP
BETH JACKSON YEAGER
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BALTIMORE FAX (410) 730-7729
WASHINGTON FAX (301) 621-5273

OF COUNSEL
CHARLES A. REESE

255 N. WASHINGTON STREET
SUITE 305
ROCKVILLE, MARYLAND 20850
(301) 762-8210

December 29, 1994

DELIVERED BY MESSENGER

Board of Appeals for
Baltimore County
Old Courthouse
400 Washington Avenue, Rm. 49
Towson, MD 21204

RE: Thomas G. Clark and Edith Clark
Case No. 94-437-SPH

Dear Sir/Madam:

Enclosed for filing is an original and three copies of the Post Hearing Memorandum in connection with the above referenced case.

Thank you for your attention to this matter.

Very truly yours,

REESE AND CARNEY

Conwell F. Sapp

CFS/mw
cc: Mr. & Mrs. Thomas Clark
J. Carroll Holzer, Esquire
Deputy People's Counsel for Baltimore County, Carole S. Demilio

IN THE MATTER OF * BEFORE THE
Thomas G. Clark, et ux * BOARD OF APPEALS
2815 Merryman's Mill Rd. * BALTIMORE COUNTY
SPH Approving Class II Truck Facility * CASE NO. 94-437-SPH
* * * * * * * * * * * * *

AFFIDAVIT OF SERVICE

I, the undersigned, certify that on November 29, 1994, I effected service of process by personally serving a Subpoena upon Don Outen, Larry Pilson & Tom Vidmar at DEPRM, County Courts Bldg., Towson

to appear before the County Board of Appeals of Baltimore County.

I further certify that I am over the age of 18 and am not a party to this action.

I solemnly affirm under penalty of perjury that the contents of this Affidavit are true and correct to my knowledge.

Name: Sterling Leese, Jr.
Firm:
Address: 305 Washington Ave. #502
Towson, MD 21204

IN THE MATTER OF * BEFORE THE
Thomas G. Clark, et ux * COUNTY BOARD OF APPEALS
2815 Merryman's Mill Rd. * BALTIMORE COUNTY
SPH Approving Class II Truck Facility * CASE NO. 94-437-SPH
* * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Wednesday Dec. 7, 1994 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Don Outen, Chief
Address: Bureau of Water Quality, DEPRM
County Courts Bldg. Towson, MD

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

IN THE MATTER OF * BEFORE THE
Thomas G. Clark, et ux * COUNTY BOARD OF APPEALS
2815 Merryman's Mill Rd. * BALTIMORE COUNTY
SPH Approving Class II Truck Facility * CASE NO. 94-437-SPH
* * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Wednesday Dec. 7, 1994 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Tom Vidmar
Address: DEPRM, Environmental Impact
County Courts Bldg., Towson

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

IN THE MATTER OF * BEFORE THE
Thomas G. Clark, et ux * COUNTY BOARD OF APPEALS
2815 Merryman's Mill Rd. * BALTIMORE COUNTY
SPH Approving Class II Truck Facility * CASE NO. 94-437-SPH
* * * * * * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Wednesday Dec. 7, 1994 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: J. Lawrence Pilson, Development Coordinator
Address: DEPRM
County Courts Bldg., Towson

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 305 Washington Ave. #502
Towson, MD 825-6961

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not served: _____, 19____

Sheriff of Baltimore County

IN RE: PETITION FOR SPECIAL HEARING
S/S Merryman's Mill Rd., 285' SW of c/l of Killarney Court (2818 Merryman's Mill Rd.)
3rd Councilmanic District
Thomas G. Clark, et ux
Petitioners

* BEFORE THE DEPUTY
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 94-437-SPH

* * * * * * * * * * * * *

NOTICE OF APPEAL

Appellants Beverly Crook, individually, and Greater Cambria Association, Inc.; Watershed Protection Coalition, Inc.; and Baltimore Bird Club by and through their attorney J. Carroll Holzer and Holzer and Lee, hereby note an appeal to the County Board of Appeals from the decision of the Deputy Zoning Commissioner rendered on July 29, 1994.

J. Carroll Holzer, P.A.
Holzer and Lee
305 Washington Ave., Suite 502
Towson, Maryland, 21204
825-6961

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August, 1994, a copy of the foregoing Notice of Appeal was mailed postage pre-paid to the County Board of Appeals, basement, Old Courthouse, Towson, Maryland, 21204.

J. Carroll Holzer

RECEIVED PAYMENT
8/24/94 SLEX
ZONING OFFICE

LAW OFFICE
HOLZER AND LEE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204

(410) 825-6961
FAX (410) 825-4923

BEFORE THE ZONING COMMISSION OF BALTIMORE COUNTY

IN THE MATTER OF *
THOMAS AND EDITH CLARK *
*
* SPH Case No. 94-437

* * * * * * * * * * * * * * * * * * * *

POST HEARING MEMORANDUM

FACTS

Thomas and Edith Clark have owned the property at 2815 Merrymans Mill Road since 1938. Prior to their ownership the property and that surrounding it had been in the family of Edith Clark for over 100 years, much before the advent of the Loch Raven Reservoir. Thomas Clark had an existing fuel oil business which he transferred to Merrymans Mill Road when he and his wife moved there. Mr. Clark operated this business until the late 1970's when for health reasons he transferred it to his children, although he remained as a consultant.

In 1980 at the request of Mr. Clark, the property was rezoned to a ML, Manufacturing Light, designation. In 1984, the M L designation was amended so that the existing woods were placed in RC-4. This followed a hearing before Arnold Jablon in which it was determined that the Clark's use was in conformity with existing zoning regulations. In 1985, a variance was requested to pave a portion of their property. At that time the Clarks entered into an agreement with their neighbor, Mrs. Crook, which prohibited further business expansion. In 1988, an agreement was entered with the Summerhill Community Association under which the Clarks voluntarily placed covenants on this property which contained further restrictions.

As a part of the 1992 comprehensive rezoning, without the Clark's agreement, the property designation was changed to RC-4. Katherine Clark brought a complaint for a zoning violation which in turn brought Thomas and Edith Clark before the Zoning Commissioner on June 17, 1994 to recognize a non-conforming use.

ARGUMENT

I

THERE HAS BEEN NO CHANGE IN USE WHICH WOULD END THE NONCONFORMING STATUS

The property, since 1938, has been used as a trucking facility for fuel oil trucks with office space and repair facilities as accessory uses. The property is currently being used for parking and repair of fuel oil and water tanker trucks. Bruce Clark is using a portion of the office space for the trucking business, the remainder of the office is being rented. Case law indicates that a use change within a classification is permitted. Kastendike v Balt. Ass. for Retarded Children, Inc., 267 Md. 389, 297 A. 2d 745 (1972) permitted a non-conforming use change from a nursing home to a home for retarded children. Cited in that case are a line of cases which permitted inter alia change from a dairy farm to a riding stable. The Court concluded that the similarities in use were greater than the differences.

exalt form over substance. The long-standing use of the property is not within the definition of a Trucking Facility.

Non-Conforming Use

Mr. Clark began his fuel oil business in 1938 prior to any zoning regulations. The use of office space, minor truck repair and truck parking were accessory uses. These uses have continued with no interruption since that time.

In 1980 Mr. Clark received a ML zoning designation. With some modification, that continued until the 1992 comprehensive zoning when it was changed to RC-4. The change occurred without the agreement of the Clarks.

Zoning regulations create a tension between a private property owner and controls placed on property for the public welfare. Non-conforming uses are an historical part of the law to alleviate the tension, to protect existing uses so that new regulations do not put individuals out of business.

In viewing the request of the Clarks for a non-conforming use, the Board of Appeals should apply the test set forth in McKemy v. Baltimore County, 39 Md. App. 257, 385 A. 2d 96 (1978).

(1) to what extent does the current use of these lots reflect the nature and purpose of the original non-conforming use;

Whether the use of the Clark property is considered from 1938 or from 1992 at the time of the comprehensive rezoning the nature and purpose is the same. There was a fuel oil business then and there is a fuel oil business now. There was an office then and an office now.

(2) is the current use merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature, and kind;

The office has a different tenant but it is still an office. The character and nature of the use is identical.

(3) does the current use have a substantially different effect upon the neighborhood;

The use has less effect on the neighborhood because the underground storage tanks have been removed and the fuel oil business is smaller.

(4) is the current use a 'drastic enlargement or extension' of the original non-conforming use.
The answer is clearly no.

The cross examination of Bruce Clark, President of Bruce Clark Fuel Company and direct testimony of Beverly Crook appeared to focus on the fact that Bruce Clark rents space at another location. If this was intended to indicate that Bruce Clark has no need for his father's property for his business purposes, it is not relevant. The purpose of the hearing concerned the non-conforming use of the property. Bruce Clark could be using his father's property and many other sites and it would still not be relevant. In fact, Bruce Clark has no garage facilities on his rented space but his need or lack thereof has no relationship to the property use.

The environmental concerns are certainly well intentioned, however, with the removal of the fuel oil storage tanks, the continuous careful maintenance of the property, and absolutely no history of any leakage or spills, the concerns are only speculative. There was testimony concerning the four (4) foot earthen berm

and the catch basin built into the parking area. These protections, plus the fact that no oil is transferred between trucks on the Clark site, should allay all fears.

Thomas and Edith Clark have always attempted to be good neighbors and will continue to do so. Mr. Clark, as a small businessman, has no pension on which he can rely. The rental income he receives from the office on his property is important to him. Sharing in his son's fuel oil business is also important to him. His valid non-conforming use for his property should be granted.

Conwell F. Sapp
REESE AND CARNEY
10715 Charter Drive
Columbia, Maryland 21044
(410) 740-4600

Certificate of Service

I hereby certify, that on this 21st day of December, 1994, a copy of the Post Hearing Memorandum was mailed, first-class, postage prepaid, to:

J. Carroll Holzer, Esquire
305 Washington Avenue, Suite 305
Towson, Maryland, 21204

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

Conwell F. Sapp

EXHIBIT A

11/18/93 (C) 9/158-93

Baltimore County
Zoning Enforcement
Attn: D. Thompson

Nov 9, 1993

Re: Case # C-94-529

Dear Ms. Thompson:

I have placed a complaint with this office concerning the parking of [illegible] yard and general use of all trucks on the premises of property located at 2815 Merrymans Mill Road.

Clark Oil Company had operated at the site from approximately 1935 - 1992. The operation of this company started before the present zoning laws were in effect and at a later date would probably not be granted with the acquiescence of the county council and Councilman Ruppersberger is being able to operate at this location only as long as Clark Oil Company operated.

My office does not have copies of the pertinent zoning agreements by lawyer Mark Jones, 4th Floor, 29 W. Susquehanna Ave, Towson, Maryland 21204 may have them or file as does Councilman Ruppersberger.

On February 19, 1992 Clark Oil Company was sold and ceased all

EXHIBIT B

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

CITATION NO. 94-197A

NAME OF PERSON(S) CHARGED: THOMAS G. CLARK

CURRENT ADDRESS IN FULL: 2815 MERRYMANS MILL ROAD PHOENIX, MD 21131

OWNER (X) OR OCCUPANT ( ) RELATED CITATIONS :

IT IS FORMALLY 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-HOME OCCUPATION, TRUCKING FACILITY, CLASS II, OFFICE; 102.1; 1A03.3A; 410A.1

NATURE OF VIOLATION: USE OF PROPERTY ZONED R.C.4 TO COMMIT THE FOLLOWING:
1. OPERATION OF TRUCKING FACILITY, CLASS II 2. OPERATION OF AN OFFICE ON RESIDENTIALLY ZONED PROPERTY

LOCATION AND DATE(S) OF VIOLATION: 2815 MERRYMANS MILL ROAD 11/3/93 AND 3/7/94

TO RESPOND TO THE ABOVE CHARGE(S) LODGED AGAINST YOU, YOU MUST CHOOSE ONE OF THE OPTIONS BELOW:

1) YOU MAY PAY A FINE OF $800.00 ($400.00 FOR EACH ADDITIONAL DAY) BY CHECK OR MONEY ORDER PAYABLE TO THE DIRECTOR OF FINANCE, BALTIMORE COUNTY, MARYLAND, BY RETURNING A COPY OF THIS FORM ALONG WITH PAYMENT TO: DIRECTOR OF FINANCE, 1ST FLOOR, COURT HOUSE, TOWSON, MD 21204. THE PENALTY MUST BE PAID ON OR BEFORE THE 7TH DAY OF APRIL, 1994.

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 FILLING IN THE ATTACHED 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 AT THE EXPIRATION OF THE THIRTY-FIVE (35) DAYS FROM THE DATE OF THE CITATION , THE ZONING ADMINISTRATOR 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 BENCH WARRANT WILL BE ISSUED FOR YOUR ARREST.

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

3/18/94 — Daniela Thompson
DATE — OFFICE OF ZONING ADMINISTRATION REPRESENTATIVE

BASED ON THE STATEMENT OF DANIELA THOMPSON , THIS CITATION IS HEREBY ISSUED THIS 18TH DAY OF MARCH, 1994.

DIRECTOR OF ZONING ADMINISTRATION

ACKNOWLEDGEMENT

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.

3-25-94 — Thomas G. Clark
DATE — SIGNATURE

EXHIBIT C

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 2815 Merryman's Mill Road
which is presently zoned RC-4

This Petition shall be filed with the Office of Zoning Administration & Development Management.
The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve the non-conforming uses on the subject property. Specifically, the operation of a trucking facility, Class II, and the operation of an office on residentially zoned property.

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.

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

Contract Purchaser/Lessee:
(Type or Print Name)
Signature
Address
City State Zipcode
Attorney for Petitioner
(Type or Print Name)
Signature
Address Phone No.
City State Zipcode

Legal Owner(s):
Thomas G. Clark (Type or Print Name)
Thomas G. Clark (Signature)
Edith E. Clark (Type or Print Name)
Edith E. Clark (Signature)
2815 Merryman's Mill Rd. 666-1844
Address Phone No.
Phoenix, MD 21131
City State Zipcode
Name, Address and phone number of representative to be contacted.
J. Finley Ransone
Name
~~P.O. Box 10160 Towson, MD 21285-0160~~
Phone No.
OFFICE USE ONLY 666-7448
ESTIMATED LENGTH OF HEARING
unavailable for Hearing
the following dates Next Two Months
ALL OTHER
REVIEWED BY: DATE

EXHIBIT D

IN RE: ALLEGED ZONING VIOLATION
2815 Merrymans Mill Road
10th Election District

Clark Oil Company
c/o T. Richard Clark, President
2815 Merrymans Mill Road
Phoenix, Maryland 21131
Defendant

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. C-84-718

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This hearing was held at the request of the Protestant who disagreed with the findings issued by the Zoning Enforcement Section after an investigation of alleged violations by the Defendant of the zoning laws of Baltimore County.

The violations presented by the Protestant are that the Defendant (1) has a garage within 100 feet of a residential zone; (2) is utilizing his property as a Class II trucking facility; (3) has retail sales on the property; (4) has not paved his off-street parking area; (5) has improperly directed his lighting in the direction of the Protestant; and (6) is illegally selling fuel oil from the property. The Defendant denies all allegations.

Appearing were Beverly Crook, the Protestant, who was represented by Counsel, and T. Richard Clark, President of Clark Oil Company, the Defendant, who was also represented by Counsel.

Testimony indicated that in 1938 Mr. Clark's father initiated the business at the present location. In the 1940's, a tank farm was placed on the site, which, then and now, consisted of tanks below ground for the storage of fuel oil with only the pumps and loading arms seen above ground. The tank farm has been approved by the State. In 1958, the Defendant started his service facility on the site. The business itself is a heating and gas operation that buys fuel from a terminal, primarily at Curtis Bay, and provides such fuel directly to homes and service

EXHIBIT E

IN RE: PETITION FOR SPECIAL HEARING
S/S Merryman's Mill Road, 280' SW of c/l of Killarney Court
(2815 Merryman's Mill Road)
10th Election District
3rd Councilmanic District

Thomas G. Clark, et ux
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 94-437-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing for that property known as 2815 Merryman's Mill Road, located in the Phoenix area of northern Baltimore County. The Petition was filed by the owners of the property, Thomas G. and Edith E. Clark. The Petitioners seek approval of a Class I Trucking Facility with an office on the subject property, residentially zoned, as a legal, nonconforming use. The subject property and relief sought are more particularly described on the plat submitted into evidence as Petitioner's Exhibit 1.

Appearing on behalf of the Petition were Thomas G. Clark, property owner, his son, Bruce Clark, J. Finley Ransone, Registered Land Surveyor, David B. Morrison, nearby property owner, and Conwell F. Sapp, Esquire, attorney for the Petitioners. Appearing as Protestants in the matter were many residents of the surrounding community, all of whom signed the Protestant's Sign-In Sheet. Among them was Katherine Clark, who was represented by Robert R. Bowie, Jr., Esquire.

Testimony and evidence presented revealed that the subject property consists of 6.4746 acres, more or less, zoned R.C. 4, and is located on the south side of Merryman's Mill Road, near its intersection with Killarney Court. The property is improved with a two-story frame dwelling and one-story frame garage on the front portion of the site, and a one-sto-

Baltimore County, 39 Md. App. 257 (1978), further articulates this reasoning. Finally, various cases cited within 61 Al.R. 4th 902 confirm that the appropriate analysis for a non-conforming use would require that the non-conforming use at least be legal prior to the time that it becomes non-conforming.

In the McKemy case, the Court of Special Appeals found that the non-conforming use must be "a lawful one" existing on the effective date of the [new] regulations.

Non-conforming uses are generally viewed with disfavor by the Courts and the right to continue a non-conforming use does not include the right to extend or enlarge it. See Anderson's American Law of Zoning, Section 6.45. In an analysis of cases resulting from a change in the type of activity of a non-conforming use, all of the cases presuppose that the non-conforming use must be a lawful and legal use at the time they became non-conforming. See 61 ALR 4th, 902 Zoning-Activity type.

Finally, it is non contended by the Appellants that any existing non-conforming use was abandoned or discontinued for a period of one year or more as contained in Baltimore County Zoning Regulations, Section 104.1 and found cited in the CBA decision in case Number V93442-SPH, In the Matter of N.B.S. Inc. and Hi Caliber; further discussed in Canada's Tavern, Inc., et al., v. Town of Glen Echo, 260 Md. 206 (1970).

Rather Appellants rest their opposition upon the facts before the CBA that an illegal use existed on the subject property after March 1992 relating to the storage and parking of trucks and that

such illegal use can not be the basis for a finding of a continuation of a non-conforming use by this Board.

By way of illustration, Appellants submit that the 1992 comprehensive re-zoning is not the key element for the CBA in arriving at a decision in this case. If the permitted use ceased (that is, the Clark Oil Company fuel business), and the use which takes its place is an illegal one (that is, a class II trucking facility--parking and storage of trucks), then that illegal use continued until the October 1992 comprehensive re-zoning. If the ML zone on the property had continued beyond October 1992, the Petitioner here would have been able to resolve the illegality perhaps by applying for a Special Exception, and if he met all of the criteria for a class II trucking facility, and gained approval by this Board, then the use would be legitimate. The action of the Baltimore County Council in October 1992 in re-zoning the property RC 4, in effect means that the Petitioner can no longer rectify his illegal use by applying for a Special Exception. Appellants submit that the Petitioners here, by their own testimony, have established that the use of the subject site was an illegal one falling under the definition of a class II trucking facility. As such, since they are unable to petition for a Special Exception any longer, this Board should find that there is no non-conforming use issue; that the Petitioners' use is illegal and not permitted under the RC-4 zone.

Finally, even if this Board comes to the conclusion that the parking and storage of Petitioner's trucks was somehow non-

conforming, it may not find the continuation of a non-conforming use in this case where there is a substantial change in non-conforming use (see 61 ALR 4th 902). There is clearly a substantial difference in the use by the Clark Oil Company of the subject site in terms of the running of the operation of the fuel oil business from the site to include the office, fuel tanks, fuel pumping, maintenance, and dispatching of the trucks as contrasted with the use by Bruce C. Clark Oil Company of the Merryman's Mill site simply for the storage and parking of those trucks. On the one hand, in the words of the Zoning Commissioner in 1984, you had a lawful fuel oil business with trucks being incidental to the legitimate business; on the other you have the parking and storage of trucks and tractor trailers not incidental or accessory to any business being run from the Merryman's Mill site. As such, the current use exceeds any non-conforming use by the Clark Oil Company, which may be found by this Board to be in existence prior to October 1992.

Finally, it goes without saying that unless the Petitioner's use was lawful prior to October 1992, it may not be the subject of this Board's blessing for non-conforming use status on the site.

Secondly, insofar as the office use, Appellants must acknowledge that the rental of the office to Mr. Ransone existed before October 1992 and may have been a lawful use under ML zoning, Section 253.1(a.33). As such, the office use alone may have been a non-conforming use which could be permitted in an RC-4 zone.

WHEREFORE, Appellants respectfully request this Honorable Board to find that no non-conforming uses existed on the subject property with the exception of the office building; clearly, the use by the Petitioner for parking, storage, and maintenance and repair of the trucks was a class II trucking facility illegally being operated in October 1992, and therefore not a proper subject for a finding as a non-conforming use.

Respectfully submitted,

J. Carroll Holzer
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 29th day of December 1994, a copy of the foregoing Memorandum in Lieu of Final Argument was mailed, postage pre-paid, to Conwell F. Sapp, Attorney for the Petitioner, Reese & Carney, 10715 Charter Drive, Columbia, Maryland, 21044; and Carole DeMilio, Deputy People's Counsel, Basement, Old Courthouse, Towson, Maryland, 21204.

J. Carroll Holzer

memo8\Crook.mem

IN RE:	*	BEFORE THE
	*	
THOMAS G. CLARK and EDITH CLARK	*	BOARD OF APPEALS FOR
	*	
2815 Merrymans Mill Road Phoenix, Maryland	*	BALTIMORE COUNTY
	*	
	*	Case No. 94-437-SPH

* * * * * * * * * * * * *

POST HEARING MEMORANDUM

Facts of the Case

A disgruntled daughter-in-law filed a zoning complaint against Thomas and Edith Clark (attached as Exhibit A). Her environmental concerns are suspect because she had served as the President of Clark Oil Company which used the site for many years for a fuel oil business until she sold the business in February, 1992. Nevertheless, the complaint caused a citation to be issued. (Attached as Exhibit B). The zoning inspector notified the Clarks that a petition for nonconforming use was required. Mr. Clark, who is 81 years old, went to the zoning office to file the petition. After inquiry to the counter personnel he was given the wording as it appears on the petition. (Attached as Exhibit C). The wording mirrors that on the citation. Mr. Clark, without counsel at that time, signed and filed the petition himself.

A special hearing was scheduled for June 17, 1994, before the Deputy Zoning Commissioner Timothy Kotroco. Katherine Clark, the daughter-in-law, was joined in her opposition by Beverly Crook, a neighbor and members of a variety of environmental groups. Testimony was taken and the non-conforming use was granted. Mrs. Crook, timely noted an appeal. Katherine Clark chose not

to proceed further. On December 7, the case was heard before the Baltimore County Board of Appeals.

Argument

Class II Trucking Facility

A Class II Trucking Facility is defined in the regulations in Section 100 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.

A Class I Trucking Facility is defined as:

> 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 is defined 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 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 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 establishment, or truck stop. **Land used for the parking, 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. (Emphasis supplied)

The use of the land of Thomas and Edith Clark is for a fuel oil business which is incidentally hauled in trucks. The primary function is not trucking which would involve a variety of cargo. These trucks are dedicated to either fuel oil or water and no other. The product that is sold is the fuel oil. It is not a hauling service available to various shippers.

In 1984, in another zoning hearing brought at the behest of Mrs. Crook, before Zoning Commissioner, Arnold Zablon, it was determined that the use was not that of a Class II Trucking Facility (Findings of Fact and Conclusions of Law attached as Exhibit D) Mr. Kotroco came to the same conclusion is his decision of July 19, 1994 (Attached as Exhibit E)

The zoning enforcement officer chose the category of Class II Trucking Facility on the citation. The Baltimore County Zoning Office counter personnel, who offered to aid Mr. Clark in the preparation of the petition for a hearing, compounded the error. A petition for non-conforming use cannot be granted for a use that never existed. It can only apply to a use to which the property has actually been put.

Although it is unfortunate that the petition was not formally amended and counsel for Mr. and Mrs. Clark regrets that error, the facts of the case would be no different. It would be unfair to penalize the Clarks for something that would

The case was heard before the CBA on December 7, 1994, at which time evidence was produced by both parties.

STATEMENT OF FACTS

Before the CBA, the Petitioner, in his Counsel's opening statement, acknowledged that the activity which had been conducted on the subject site did not constitute activity which would permit the CBA to find that a lawful non-conforming use for a trucking facility, class II, existed on the site prior to the rezoning of the property to RC-4. With that acknowledgement, Appellants submit that the CBA is not permitted to determine that a lawful class II trucking facility existed prior to the re-zoning of the subject site in 1992 as RC-4. Four of the Petitioner's tank trucks are utilized in the fuel oil delivery business of Bruce C. Clark, the son of Thomas G. Clark, and two tractor trailers are utilized to deliver water for the filling of swimming pools. In addition to the parking of these vehicles on the subject site, the Petitioner desires to utilize the maintenance garage on the site for repair and maintenance of these vehicles. In addition, the Petitioner also seeks to permit the leasing of the office building in its entirety to J. Findley Ransone, who conducts a land surveying and land development business from the site.

The evidence presented by the Petitioners themselves supports the Appellants' case that there is no non-conforming use which is permitted to exist on the subject site after the 1992 comprehensive re-zoning by Baltimore County, which eliminated the ML zone, which existed on a portion of the overall site.

The Petitioners presented the testimony of Thomas Clark, the owner of the property in question. Mr. Clark testified that his family has owned the property for over a hundred years and he has lived there for in excess of fifty years. He acknowledged that he retired and terminated the Clark Oil Company, which had been utilizing the subject site up until that time. He testified that the Clark Oil Company, which he owned and operated up until March 1992 contained an office building which he utilized solely for the purpose and operation of the Clark Oil Company. That office is currently being leased to Mr. Ransone. Prior to March 1992, it was not leased and was entirely used to direct the operations of the Clark Oil Company. In addition, Thomas Clark testified that the Clark Oil Company trucks which were parked on the subject site were also loaded from underground tanks contained on the site and from pumps which extended above ground to service the tank trucks. In March 1992, those underground tanks were removed along with the above-ground structures utilized to fill them. All of the stock of the Clark Oil Company was sold, and the business terminated as of March 1992. Mr. Clark further testified that up until March 1992, Mr. Ransone was not on the subject site and that Ransone currently rents 100% of the office building for his land surveying business. Clark further testified that at the time the Clark Oil Company was in operation prior to March 1992, that his son, Bruce Clark, for at least two years, was operating a competitive business called Bruce Clark Oil Company from a location in Cockeysville. Thomas Clark further testified that his son does not use the office building as

the office of the Bruce Clark Oil Company, although he has a telephone in the service garage; he further acknowledged that Bruce Clark simply stores vehicles on the subject site and occasionally works on those trucks. Thomas Clark further testified that any customers of his son do not come to the Merryman's Mill Road site but rather deal with the Bruce Clark Oil Company in Cockeysville.

Bruce Clark testified on behalf of himself and the Bruce Clark Oil Company. He acknowledged that he parks four tank trucks and two tractor trailer trucks for water for swimming pools on the site and occasionally works on them in the maintenance garage. He also on occasion permits other persons to park trucks on the subject site as well to work on their vehicles in his garage. Bruce Clark acknowledged that the Bruce Clark Oil Company is operated from his office and storage yard in Cockeysville, specifically at 226 Cockeysville Road. Appellants presented evidence by way of newspaper advertisements and telephone directory establishing that location as the principal office for Bruce Clark Oil (see Protestants' Exhibits 1 - 3 and 4A - G). Bruce Clark acknowledged that his tank trucks are filled at the Cockeysville address, that his office business is conducted from Cockeysville, as well as his one secretary employee being located in Cockeysville. Bruce Clark acknowledged that he has been leasing the Cockeysville site since 1989.

Finally, J. Findley Ransone testified that he is currently leasing 100% of the office building on the subject site.

The Appellants presented a number of witnesses, including Dr. Polly Wirth, Mrs. Ann Garrett, Ms. Joy Wheeler, Ms. Jo Owen, and Ms. Anneke Davis, all of whom objected to an expansion or legalization of any class II trucking facility on the subject site due to multiple environmental concerns.

The Appellants also called Donald Outen, representative of DEPRM, who acknowledged his department's position in Protestants' Exhibit Number Seven. It was clear from Outen's testimony that if the property were to be used as a class II trucking facility, much more supportive evidence would be necessary for DEPRM to come to a conclusion as to the permissibility of this function in view of the environmental problems and constraints on the site. Outen testified that there are outfalls from the property which go directly into the Loch Raven Reservoir and that the parking area for these vehicles is only 175 feet from a wetland. Outen's testimony reflects the confusion engendered in the County's Review staff by the request of the Petitioner in this case for a class II trucking facility. Certainly, approval of any operation or approval of existing operations should be subject to all environmental requirements and regulations imposed by DEPRM.

Finally, Mrs. Beverly Crook testified as to her opposition to any finding by the CBA that a non-conforming use for a class II trucking facility is acceptable. She also testified that in her opinion the non-conforming use for the parking or storage of any trucks on this site expired with the 1992 comprehensive zoning change.

Finally, Protestants submitted, as a Protestants' Exhibit, the decision of the then-Zoning Commissioner, Arnold Jablon, in Case Number C-84-718, decided on July 24, 1984. This decision is important in the respect that it characterizes the activity of the Clark Oil Company prior to 1992. In that decision, the Zoning Commissioner found that the operation of the Clark Oil Company on the subject site was a legitimate operation under the ML zoning of an oil company, in which the parking of the trucks was accessory. He did not find, contrary to the position of the Appellant in that case, that the trucks were being operated as part of a class II trucking facility. That argument was rejected by the Zoning Commissioner. Thus, as of October 1992, when the comprehensive re-zoning took place, putting all of the subject property in RC 4, the Clark Oil Company had a fuel business being operated from the subject site in which the office was totally utilized for the Clark Oil business and the parking, storage, and maintenance of vehicles was accessory and incidental to the operation of the oil company. There is no evidence in the record of this case that prior to October 1992, the Petitioner ever requested a Special Exception for a "Class II Trucking Facility."

LEGAL ARGUMENT

Appellants submit that it is a misnomer to analyze the facts of this case in the context of a non-conforming use case. The analysis of the Deputy Zoning Commissioner that the uses of the subject site for an office rental and the parking and storage of fuel oil trucks was permitted by way of non-conforming use is not

a clear analysis of the facts and the principles of law which should be applied here. Nor is the Petitioner correct when he requests the continuation of a non-conforming use for parking his trucks. Petitioner never had a lawful non-conforming use for a Class II Trucking Facility.

This case is really concerned with the termination of a lawful use and its substitution by an unlawful one; that is to say, a lawful fuel oil business permitted, not as non-conforming, but as a matter of right under the Zoning Regulations in an ML zone. The parking of trucks was permitted as an accessory use to a lawful business. The Clark Oil Company, as found by Zoning Commissioner Jablon in his decision in 1984, was a permitted use and a lawful one in an ML zone, in which the use, the parking and storage of fuel oil trucks was incidental and accessory to the permitted use. In March 1992, the Clark Oil Company was operating lawfully, not as a non-conforming use, on the subject site; however, that use ceased upon the sale of the stock and business by Mr. Thomas Clark as testified by him. Clearly, the Clark Oil Company went out of business in March 1992, along with the fuel tanks and fuel pumps and the entire fuel oil business as then constituted. According to the testimony of Mr. Thomas Clark, as well as his son, Bruce Clark, within a few weeks, the Clark Oil Company was replaced by the operation of Bruce Clark Oil Company, not as a fuel company operating from the subject site, but simply as a place to park, store, and repair his vehicles. Those vehicles include four fuel

oil trucks and two tractor trailer tank trucks for swimming pool operation.

It is uncontested by both Clarks that the Bruce Clark Oil company is a different entity from the Clark Oil Company, with its office and headquarters located in Cockeysville. The fuel trucks are no longer loaded at the subject site, are no longer dispatched from the subject site, the public does not call the subject site, and the office is no longer located on the subject site. For all intents and purposes, the Bruce Clark Oil Company is completely operated out of 226 Cockeysville Road in Cockeysville. The Cockeysville address is the main site of operation of the Bruce Clark fuel business as advertised in the telephone directory and the newspapers. The subject site on Merryman's Mill Road is simply left as a place to store, park, and repair trucks. From March 1992, the Merryman's Mill site was used as a class II trucking facility as defined by the Baltimore County Zoning Regulations, Section 101. Contained in Section 101, the definition of the operation conducted by the Bruce Clark Oil Company on the Merryman's Mill Road site fits the definition of Trucking Facility, Class II, which is:

> "a trucking facility other than a Class I trucking facility, including a truckyard (the primary purpose of which is to accommodate the parking or storage of trucks, truck trailers, or truck tractors).

It is clear in this case from the testimony of Bruce Clark, that the Merryman's Mill site has as its primary purpose the accommodation for parking and storage of trucks, truck trailers, or truck tractors. The testimony of Bruce Clark and his father,

Thomas Clark, confirm the actual use of the property as a class II trucking facility between the months of March 1992 and the enactment of the new comprehensive zoning reclassification in October 1992.

The record is clear that in an ML zone, a class II trucking facility is only permitted by a Special Exception under Baltimore County Zoning Regulation 253.2(a.6). In this case, no Special Exception had been applied for between March and October of 1992. Additionally, no "use" permit had been issued by the County for this operation between March and October 1992.

Therefore, the parking of the trucks of the Bruce Clark Oil Company, as well as the swimming pool tank trucks, was an illegal use even under the ML zoning as existed prior to October 1992. As a result, it is clear that an illegal use may not become a non-conforming one after the change in zoning of this property from split ML/RC-4 to RC-4.

Non-conforming uses are found in Section 104 of the Baltimore County Zoning Regulations. Section 104.1 BCZR indicates that "a non-conforming use (as defined in Section 101) may continue..." In turning to Section 101, the definition of a non-conforming use is provided as follows:

> "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...."

It can be seen from the very definition of the regulations that the non-conforming use existing on the effective date of the adoption of the regulations must be a lawful one. The case of McKemy v.

the Petitioner filed a Petition for Special Exception for a 240-bed nursing home. The Zoning Commissioner's hearing was based on this request, as was the CBA appeal hearing. The Petition was denied at both levels and initially affirmed on appeal at the Circuit Court. When the Petitioner filed a Motion to Alter or Amend with the Circuit Court, the request was amended for a 120-bed facility. The Circuit Court granted the Motion and remanded to the CBA for an evidentiary hearing to determine "what Appellant is seeking in terms of the size of the nursing home." The Court of Special Appeals held the Circuit Court's modification and remand "was not warranted." Id. at 744. The Court noted that a Petition for a 120-bed facility was never filed with the zoning agency. Likewise, the Zoning Commissioner and CBA acted on a 240-bed facility. In reversing the Circuit Court, the Court noted, "The record reflects that at no time was an application for a 120-bed facility ever filed with the administrative agency. Nor is there any record that the original 240-bed facility was downsized by proper amendment." Id. at 747.

Case Law

The legal reasoning to permit a nonconforming use is perhaps best explained in a Colorado case citing Anderson, American Law of Zoning (1st Edition), Section 6.58:

> "If a property owner has invested money in improvements to put his property to a use which is lawful at the time, and if that use is subsequently outlawed by a zoning ordinance, he loses not only the potential use but the value of his investment. To impose this additional loss upon him is unreasonable. Therefore, he is entitled to continue the use of his property as he did before. However, if the improvements are destroyed or abandoned, he has lost the value of his investment independently of the zoning ordinance and there is no reason why he should continue his use of the property." Service Oil Co. v. Rhodus, 179 Colo. 335, 500 P.2d 807 (1972).

An abandonment is determined if the nonconforming business was sold (see Beyer v. Baltimore City, 182 Md. 444 (1943)), or if the equipment essential to the continuance of the nonconforming use was removed (see Stieff v. Collins, 237 Md. 601 (1965), where the machinery used for a dairy and bakery were removed from the plant and the buildings were sporadically used for storage).

Maryland courts have recognized that while a nonconforming use may be allowed by statute, "Such nonconforming uses pose a formidable threat to the success of zoning". County Council of Prince George's County v. E.L. Gardiner, 293 Md. 259, 267 (1982). Thus, ordinances to limit expansion of nonconforming uses or to eliminate these uses within a reasonable time and with the use of an amortization scheme have been upheld. See Harris v. Mayor and City Council of Baltimore, 35 Md.App. 572 (1977) and County Comm'rs of Carroll County v. Uhler, 78 Md.App. 140 (1989). In National Insts. of Health Fed. Credit Union v. Hawk, 47 Md.App. 189 at 200 (1980), the Court stated:

> "Maryland case law permits continuing a nonconforming use, but does not permit the transmogrification of an approved nonconforming use into a new and different use. The latter constitutes an unlawful extension, even if there is no outward change in the appearance of the facility being used."

In that case, the change in use from a scientific society headquarters into a credit union was not permitted. Also, in Wilson v. Mayor & Comm'rs of Town of Elkton, 35 Md.App. 417 (1977), the Court did not permit the unlawful extension of a nonconforming multi-family structure from two to three units. The Court reiterated its support for zoning regulations that restrict rather than expand nonconforming uses.

The prohibited change can also extend to an expanded accessory use. In Anderson, American Law of Zoning (3rd Edition), Section 6.65, in which a New York case was noted, it was stated:

> "The nonconforming use of land established by occupation of a house trailer on the effective date of a restrictive ordinance is not continued in an unbroken sequence when a new trailer is acquired for living purposes and the nonconforming one is maintained as an accessory use." Gardner v. Phillips, 301 NYS.2d 332 (1969).

The expansion of an accessory use is also discussed in Anderson, American Law of Zoning (3rd Edition) at Section 6.41:

> "Attempts have frequently been made to effect what amounts to a change of use by expanding an accessory or incidental use of the premises. The Courts are not sympathetic toward property owners who employ this means of changing a nonconforming use. Thus, a garage with incidental storage of gasoline, oil and parts was not entitled to expand its storage facility into a warehouse use. A private garage, accessory to a residence, may not be expanded and used to store commercial vehicles, and a gasoline station which parked some trailers may not expand the incidental trailer use to a main use for a trailer park. Attempts to change or expand a nonconforming use through the expansion of an accessory use frequently have been disapproved." (Citations omitted).

In a 1953 Kentucky case similar in facts to the instant case, the court did not permit a garage, used to store and recondition trucks for a dairy, to be used to recondition cars for a used car business located in another part of the city. Feldman v. Hesch, 254 SW.2d 914.

Maryland case law is consistent with other jurisdictions that permit nonconforming uses out of fairness to the property owner. Once the use ceases, however, the property must be used in conformity with the current zoning in order to protect the integrity of land use plans. Likewise, attempts to expand or to substitute a new use for the original, are unreasonable expansions of the protection required by a property owner and will not be permitted.

Conclusion

In summary, the Petitioner cannot skirt the logical application of the zoning regulations in order to legitimize the use of the site. The

Petitioner is asking the CBA to ignore many gaps in his burden of proof in order to obtain the relief requested. Such gaps include:

a. Failure to establish a nonconforming fuel oil business at 2815 Merrymans Mill Road operated by Bruce Clark.

b. Failure to establish the granting of a special exception for a Class II Trucking Facility for the site.

c. Failure to rebut the uncontroverted testimony of Thomas Clark that the Clark Fuel Oil Company was sold and ceased to operate at the site in 1992.

d. Failure to rebut the uncontroverted testimony that Bruce Clark was prevented by Mrs. Richard Clark from parking his trucks at the site prior to 1992.

e. Failure to provide evidence that Bruce Clark operated his fuel oil company at 2815 Merrymans Mill Road at any time other than to park and store his trucks on the site after Clark Fuel Oil was sold in 1992.

It is thus apparent that the Petitioner's belated suggestion of shelter as a nonconforming use is a desperate afterthought, a trial tactic and rationalization. The truth is in the concession of the original petition that the current land use fits the functional definition of a trucking facility. The consequence in the R.C.-4 watershed protection zone is that the use lacks any legal basis and is disallowed.

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of December, 1994, a copy of the foregoing Memorandum of People's Counsel was mailed to Conwell F. Gapp, Esquire, Reese and Carney, 10715 Charter Drive, Columbia, MD 21044, attorney for Petitioner, and to J. Carroll Holzer, Esquire, Holzer and Lee, 305 Washington Avenue, Suite 502, Towson, MD 21204, attorney for Protestants.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

Section 104--NONCONFORMING USES [B.C.Z.R., 1955.]

104.1--A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate. [B.C.Z.R., 1955; Bill No. 18, 1976; Bill No. 124, 1991.]

104.2--A structure damaged to any extent or destroyed by fire or other casualty may be restored within two years after such destruction or damage but may not be enlarged. In the case of residentially used structures which are nonconforming in density, the number of dwelling units or density units rebuilt may be equal to but may not exceed the number of units which existed before the casualty. (Bill No. 124, 1991.)

104.3--No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of the building so used. This provision does not apply to structures or uses restored pursuant to Section 104.2, except as authorized by the zoning commissioner pursuant to Section 307. (Bill No. 124, 1991.)

104.4--Exception. Any contrary provision of these regulations notwithstanding, an office building that was authorized by grant of a special exception and that becomes damaged to any extent or destroyed by casualty may be fully restored in accordance with the terms of the special exception. [Bill No. 167, 1980; Bill No. 124, 1991.]

104.5--Any use which becomes or continues to be nonconforming which exists within the Chesapeake Bay Critical Area on or after the effective date of this subsection is subject to the provisions of Section 104.1, Section 104.2 and Section 104.3 above, and to the provisions of Section 307.2, BCZR. [Bill No. 32, 1988; Bill No. 124, 1991.]

104.6--A striptease business lawfully operating prior to the effective date of this legislation that is in violation of the requirements contained herein shall be deemed a nonconforming use. A striptease business which is a nonconforming use:

1. shall be permitted to continue for a period not to exceed one (1) year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more; and

2. shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. [Bill No. 137, 1990.]

REV 5/92

IN THE MATTER OF THOMAS G. CLARK, ET UX S/s Merryman's Mill Road, 285' SW of c/l of Killarney Ct. (2815 Merryman's Mill Road) 10th Election District 3rd Councilmanic District SPH - To approve Class II Trucking Facility with Office on Residentially zoned property as non-conforming use	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 94-437-SPH

* * * * * * * * * * * * * *

PROTESTANTS' MEMORANDUM

IN LIEU OF FINAL ARGUMENT

Beverly C. Crook, et al., Protestants/Appellants, through their attorney, J. Carroll Holzer and Holzer and Lee, hereby submit this Memorandum in Lieu of Final Argument as requested by the Board.

STATEMENT OF THE CASE

This matter came to the attention of the Baltimore County Zoning Officials by way of a citizen complaint that the owner of the subject property, Thomas Clark, was utilizing it in a manner that violated the Baltimore County Zoning Regulations. Specifically, on March 18, 1994, the Baltimore County Office of Zoning filed Citation Number 94-197A and Citation Number 94-197B against Thomas G. Clark and J. Findley Ransone, charging the former (Clark) with: 1) operation of a Class II trucking facility, and 2) the operation of an office on residentially zoned property; and the latter (Ransone) with the operation of an office on residentially zoned property. Thomas G. Clark is the landowner,

LAW OFFICE
HOLZER AND LEE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204
(410) 825-6961
FAX (410) 825-4923

and J. Findley Ransone is his tenant on the property located at 2815 Merryman's Mill Road in northern Baltimore County. All of the property is currently zoned RC-4.

Subsequent to that, the property owner filed a Petition for Special Hearing designated as Case Number 94-437-SPH, in which he acknowledged that the property is presently zoned RC-4 and requested the Zoning Commissioner to approve "the non-conforming uses on the subject property. Specifically, the operation of a trucking facility, Class II, and the operation of an office on residentially zoned property."

The case was heard before the Deputy Zoning Commissioner of Baltimore County and on July 29, 1994, in his Findings of Fact and Conclusion of Law, the Deputy Zoning Commissioner found that the storage of fuel trucks on the subject site did not constitute a "Trucking Facility, Class II." However, he apparently found that the property had been operated by the Clark Oil Company as a matter of right from 1980 until 1992. He also found that the property had been utilized for this business since prior to 1992, which was the year the property zoning classification changed and made the use illegal. He also determined that there was no abandonment of the storage of these trucks on the property and that the trucks have in fact been stored on the property since prior to October 1992 without interruption. He therefore found a non-conforming use of the subject property for storage and parking of fuel oil trucks existed. From that decision, the Appellants appealed.

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management
June 17, 1994

FROM: J. Lawrence Pilson JLP/lmms
Development Coordinator, DEPRM

SUBJECT: Zoning Item #SPH 94-437 - Clark Property
2815 Merrymans Mill Road
Zoning Advisory Committee Meeting of May 16, 1994

Post-it® Fax Note 7671 — Date 6/17 — From J. Pilson — Co. Zoning — Phone # — Fax #

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

Environmental Impact Review

1. Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains.

2. Zoning Regulation 410A.2 states that no Class II trucking facility or part thereof established on or after the effective date of this section may be located within 200' of a wetland. (Bill No. 18, 1976). A stream, several springheads and small associated non-tidal wetlands exist within 200' of the subject facility and down slope of it.

3. The parking areas of the subject facility drain to a storm drain inlet. An apparent overflow from the inlet structure outfalls to within 172' of a Tributary of Overshot Run, itself a tributary of the Loch Raven Reservoir. Should the continued use be allowed and because of the close proximity of this operation to the watershed, this Department has concerns that petroleum based or other pollutants may enter the reservoir. It is requested that provisions are made to assure this will not occur. We recommend that a spill-contingency plan be available (such as: absorbent materials and containment barriers on site, and an empty truck [or reservoir] to pump oil into from any truck that may develop a leak).

   Special measures in addition to the treatment of stormwater runoff, could involve prohibitions on the types of products transported by trucks parked at the facility. The facility would also likely require an NPDES - Storm Water Discharge Permit.

4. The maximum permitted coverage of impervious areas is 28,203 sq. ft. or 10% of the gross area of 6.4746 AC.±.

   Please provide information to indicate the percentage of impervious acreage of site.

Petition Ack. 94-437-SPH 11/94

933-95

3/16/95

March 2, 1995

TO: Office of Arnold Jablon, Director of Zoning
111 W. Chesapeake Avenue
Room 109
Towson, Maryland 21204

Attention: Julie

FROM: Beverly C. Crook
2829 Merryman's Mill Road
Phoenix, Maryland 21131
(410) 666-1163

RE: Exhibits from case #94-437 SPH before Baltimore County Board of Appeals on January 5. 1995, Room 48, Old Courthouse.

Will you please arrange for me to pick up the photographs that were used in the appeal of case 94-437 on January 5? There was one very large picture (14x24?) -- an aerial view of property at 2815 Merryman's Mill Road (former Clark Oil Co.) Also another aerial view about 8x11. The rest of the photographs were smaller and mostly showed the Bruce Clark Oil Company on Cockeysville Road.

I should appreciate it if you will call me at the above phone number when you have located these pictures. Thank you.

Beverly C. Crook

RECEIVED
MAR 6 1995
ZADM

AGREEMENT

THIS AGREEMENT MADE THIS 11th DAY OF MARCH, 1985 by and between Beverly C. Crook, hereinafter referred to as "Mrs. Crook" and the Clark Oil Company, a Maryland Corporation, and Thomas G. Clark and Edith P. Clark, hereinafter referred to as "the Clarks", witnesseth:

WHEREAS, Mrs. Crook has heretofore filed a zoning violation complaint against the Clarks with regard to their underground storage of inflammable liquids and maintenance of a fuel delivery business on property at 2815 Merryman Mill Road, Phoenix, Baltimore County Maryland consisting of 6.217 acres of land more or less which is zoned Manufacturing Light in part and R.C. 4 in part and

WHEREAS Mrs. Crook is the owner of residential improved property at 2829 Merryman Mill Road binding on the eastern boundary line of the Clark's property and

WHEREAS there is pending before the Board of Appeals of Baltimore County an appeal from the Zoning Commissioner's decision dated July 24, 1984 finding the Clarks in conformance with the Baltimore County Zoning Regulations except for its failure to pave the parking area on its property in compliance with section 409.2.c of said regulations, the Clarks having applied for a variance from the aforesaid regulation with respect to paving of its parking area and

WHEREAS the parties hereto are desirous of settling their differences and protecting their respective property rights.

THEREFORE in consideration of the foregoing and other good and lawful consideration the parties hereto have mutually agreed and covenanted as follows:

1. Mrs. Crook shall dismiss with prejudice her appeal before the Board of Appeals of Baltimore County in case No. C-84-718 ;

2. The Clarks shall make no further application for expansion of its existing ML zoning as established by ordinance of the Baltimore County Council in the 1984

Petition Ack. 11 94-437-SPH

IN RE: ALLEGED ZONING VIOLATION
2815 Merrymans Mill Road
10th Election District

Clark Oil Company
c/o T. Richard Clark, President
2815 Merrymans Mill Road
Phoenix, Maryland 21131
Defendant

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. C-84-718

* * * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This hearing was held at the request of the Protestant who disagreed with the findings issued by the Zoning Enforcement Section after an investigation of alleged violations by the Defendant of the zoning laws of Baltimore County.

The violations presented by the Protestant are that the Defendant (1) has a garage within 100 feet of a residential zone; (2) is utilizing his property as a Class II trucking facility; (3) has retail sales on the property; (4) has not paved his off-street parking area; (5) has improperly directed his lighting in the direction of the Protestant; and (6) is illegally selling fuel oil from the property. The Defendant denies all allegations.

Appearing were Beverly Crook, the Protestant, who was represented by Counsel, and T. Richard Clark, President of Clark Oil Company, the Defendant, who was also represented by Counsel.

Testimony indicated that in 1938 Mr. Clark's father initiated the business at the present location. In the 1940's, a tank farm was placed on the site, which, then and now, consisted of tanks below ground for the storage of fuel oil with only the pumps and loading arms seen above ground. The tank farm has been approved by the State. In 1958, the Defendant started his service facility on the site. The business itself is a heating and gas operation that buys fuel from a terminal, primarily at Curtis Bay, and provides such fuel directly to homes and service

Petition Ack. 94-437-SPH

CLARK OIL.

Project Manager - Please SEE INFO

the Council Man -

USE RESTRICTIONS

These Use Restrictions (the "Restrictions") are made and imposed this 11th day of October, 1988, by Thomas G. Clark and Edith P. Clark, his wife, herein called the "Clarks", or the "Owners", interchangeably, in regards to those 6.217 acres of land, located on the south side of Merrymen's Mill Road, a portion of which is zoned M.L., manufacturing light, which is more specifically described in a deed recorded among the Land Records of Baltimore County at Liber 3093, Folio 92.

The Restrictions contained herein shall bind and run with the property, may not be unilaterally either revoked or in anyway diminished by the Clarks, their successors, or assigns, without the written consent of the beneficiary hereto as more specifically defined below, and shall restrict the property under the specific terms and conditions and for the specific time, described below. These restrictions shall, inure to the benefit the GREATER SUMMERHILL ASSOCIATION, INC., a body corporate of the State of Maryland, herein after called "Summerhill".

RECITALS

Whereas the Clarks property presently has the zoning classification of M.L., as presently shown on the 1984 Comprehensive Zoning Map of Baltimore County;

Whereas an adjoining neighbor has petitioned the Baltimore County Council, to rezone the Clarks property to an RC-4 Zone in the 1988 Comprehensive Zoning Map Procedure;

Whereas the Clarks wish to provide certain irrevocable assurances and protection to the Summerhill Association in regards to the use of the Clark's property;

Now, therefore, in consideration of the retention of the M.L. zoning classification in the 1988 comprehensive rezoning process, Clarks, for themselves, their successors, assigns, and any tenants or users of the Property, hereby imposes the following restrictions on the property to the benefit of the Summerhill Association.

RESTRICTIONS

USES: That the subject property shall continue to be used as oil company offices, bulk fuel storage area, with below ground tanks only, a heating and air conditioning operation, as an accessory use to the main use for the sale and storage of heating oils, kerosine and gasoline to individual, commercial and gasoline service station customers, fuel storage and sales, associated truck storage and service incidental for said uses, and the combination of the above. That in return for the

- 1 -

PETITIONER'S EXHIBIT NO. 1

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO J. James Dieter Date February 19, 1988

FROM Jeffrey B. Jollie

SUBJECT Zoning Reclassification/ Clark Oil Co., Merryman's Mill Rd.

I have reviewed the zoning reclassification petition 3-035, which proposes to restore a RC4 classification to a parcel of property now classified as ML. The property is owned by Clark Oil Company, and is located along Merryman's Mill Road.

The Clark Oil property is underlain by the Loch Raven Schist, and approximately 4,000 ft. from Loch Raven Reservoir. Preliminary results of the Chestnut Ridge/Worthington Valley groundwater study indicates that Loch Raven Schist has some of the most rapid perc-test drawdown rates in the county. It is assumed that quick drawdown rates indicate an increased potential for groundwater contamination. Further, the underground storage tanks are seated below the silt/clay layer where groundwater pollution potential increases considerably. Given the proximity of the nearby stream to the underground storage tanks, groundwater would be expected to occur between 10 and 20 feet of the ground surface. Some of the underground storage tanks were replaced in 1987. Unfortunately, even with new underground storage tank regulations leaks to groundwater can go undetected for some time.

In addition, it is conceivable that surface spills could eventually make their way to the reservoir despite the fact that berms have been constructed to prevent that from happening. Please note that surface spills also have significant potential to contaminate groundwater.

In the interest of ground and surface water protection, I am in support of the rezoning classification. Surrounding parcels are classified as RC4 water shed protection. The current Clark Oil property classification of ML is inconsistent with surrounding classifications. Restoring the classification of RC4 would enable this Department to apply restrictions to expansion of the Clark Oil operation on Merryman's Mill Road.

Jeffrey B. Jollie

JBJ:as

PROTESTANT'S EXHIBIT NO. 2

WATERSHED PROTECTION COALITION, INC.
P.O. BOX 212, TIMONIUM, MARYLAND 21094-0212
252-5515

June 17, 1994

Case #94-437-SPH,Item 421

Testimony by Mrs. J. Owen

I am Josephine Owen, 308 Merrie Hunt Drive, Timonium, Maryland 21093, and I speak for the Watershed Protection Coalition, Inc. We represent approximately 20,000 City and County residents, Environmental Groups, Neighborhood Associations and Councils all concerned about the Loch Raven Reservoir/Watershed, the drinking water supply for over one million citizens in the metropolitan area.

Our coalition's purpose is to protect the City-owned watersheds, and it supports responsible public policy for the long term stewardship of all Baltimore Municipal Watersheds.

Responsible stewardship of the Loch Raven Reservoir/Watershed was vividly demonstrated recently by Mayor Kurt Schmoke by his prudent and judicious decision to deny the expansion of Pine Ridge for environmental reasons.

But growth and development in Baltimore County has contributed and continues to contribute to the degradation of the Loch Raven Reservoir/Watershed through pollution and sediment run-off.

Baltimore County depends on Baltimore City for its water supply, and because of its location in Baltimore County, stewardship of this body of water is also Baltimore County's responsibility. RC-4 zoning and its enforcement by Baltimore County is imperative if we are to insure the protection of Loch Raven's waters and assume our share in the stewardship of this resource.

Our coalition asks that this requested special exception for a trucking facility be DENIED because it poses a serious threat to Loch Raven's waters. The repair of and keeping of oil trucks on this property, the disposal of motor oil, gasoline, fuel oil, diesel fuel from parked and or stored vehicles, and repairs done to said vehicles so near the reservoir, in addition to the increase in large truck traffic on a narrow and dangerous road, can only negatively impact our drinking water supply.

Because protecting our drinking water supplies is a regional concern, we ask that any decision to the contrary made today first be submitted to the Baltimore Metropolitan Council's Watershed Protection Committee for its review and determination.

Watershed Protection Coalition Board of Directors

PROTESTANT'S EXHIBIT NO. 3

OIL-OILS 687

Bruce Clark Fuel Co.

FUEL OIL & DIESEL

RESIDENTIAL & COMMERCIAL
WHOLESALE & RETAIL REASONABLY PRICED
SALES & DELIVERY
100 GALLON MINIMUM
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OIL BURNER SERVICE • FURNACES INSTALLED
HEATING & COOLING SYSTEMS • WATER HEATERS
SERVING BALTIMORE COUNTY & HARFORD COUNTY
AUTOMATIC OR WILL CALL DELIVERY • RADIO DISPATCHED
SERVICE CONTRACTS • BUDGET PLANS
SENIOR CITIZENS DISCOUNT
527-0403
226 COCKEYSVILLE RD HUNT VALLEY
ASK ABOUT OUR POOL WATER DELIVERY

OIL BURNERS
WEBSTER ENGINEERING – AUTHORIZED REPRESENTATIVES
CHASNEY & COMPANY INC 433-1600
Oil Change & Lubricating Service
OIL & GAS EXPLORATION & DEVELOPMENT
MG Refining & Marketing 893 6236
MG Refining & Marketing Inc 838 0237 893 6200
Oil & Grease Removal
Oil & Lubricating Service
National Oil Co 254 4100
Oil Tanks
Oil Tanks Removing & Repairing
Essential Products Of America 800 822 9698
OILS-FUEL
BEEBE FUEL OIL INC

Issued by Jackson National Life Insurance Co Home Office: Lansing, MI Penalty for early surrender

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call us about the Heat Pump Helper
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Senior Citizens Discount
BUDGET PLANS AVAILABLE
AIR CONDITIONING SERVICE • POOL WATER
Bruce Clark Fuel Co.
Quality • Service • Dependability
CALL US for a comparative price!
We believe you'll be pleased!
226 Cockeysville Road
P.O. Box 992
Hunt Valley, MD 21030
527-0403
*We are not affiliated with any other oil company.

letters from
Orphans' Court. The
Court, or probate co
with the administr
wills, estates and g
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have many assets to
the Orphans' Cour
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Gifts & Collectables
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Protestant Exh 2 94-437-SPH 1/7/94

Free Estimates | Full Service Plumber
Residential | Commercial
WE REPAIR OR INSTALL...
• Water Heaters • Sump Pumps • Boilers
• Well Pumps • Faucets • Tubs
• Drain Cleaning • Commodes • Sinks
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A Program of the Better Business Bureau®
Michael Gerspica
Over 17 years experience
lic. & insured MD. State lic. #6312
POOL WATER
• Heating Oil
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BRUCE CLARK FUEL CO.
Not Affiliated With Any Other Oil Company
226 Cockeysville Rd. ◊ P.O. Box 992
Hunt Valley, MD 21030
527-0403

Protestant Exh 3 94-437SPH

SAVE OUR STREAMS

258 Scotts Manor Drive * Glen Burnie, MD 21061
(410) 969-0084 * (800) 448-5826 * Fax (410) 969-0135

Board of Directors

TO: County Board of Appeals, Baltimore County
Old Court House, Room 49
400 Washington Avenue
Towson, Maryland 21204

FROM: Board of Directors, Baltimore Delegation
Save Our Streams

DATE: December 7, 1994

RE: Deny Request of Zoning Special Exception
Case No. 94-437-SPH 2815 Merryman's Mill Road

Save Our Streams is a citizen action group concerned with helping individual citizens learn how to protect our streams and water supply.

We urge you to deny this request for a trucking facility, Class II and office at 2815 Merryman's Mill Rd., on residentially zoned (RC4) land.

Our reasons are:

1) Such use should not be allowed so close to Loch Raven Reservoir. The parcel lies on the south side of Merryman's Mill Road and is within 200 feet of a tributary of Loch Raven drinking water reservoir. In addition to the stream, several springheads and small associated non-tidal wetlands exist within 200 feet of the subject facility and downslope of it;

2) This land was zoned RC4 (watershed protection) in the 1992 zoning cycle. It should not be converted to urban use. Such a conversion of residential to urban use in the watershed would contradict the intent of the "Reservoir Management Agreement";

3) The owner has allowed a former, non-conforming use to lapse since the 1992 zoning as RC4.

Therefore, we urge that you deny this zoning request for a trucking facility, Class II at 2815 Merryman's Mill Rd., for the preservation of drinking water quality and to avoid setting a precedent on watershed RC4 zones.

Submitted by
Dolly Walker Wirth
Board of Directors

Community Streams...Community Choices
Established 1970

Protestant Exh 5 94-437-SPH

WATERSHED PROTECTION COALITION, INC.
P.O. BOX 212, TIMONIUM, MARYLAND 21094-0212
252-5515

December 7, 1994

County Board of Appeals
of Baltimore County
Arnold Jablon, Director / ZADM

Re: Case No. 94-437-SPH C. William Clark

Baltimore County has no water supply system of its own. The three City-owned reservoir-watersheds exist mainly in Baltimore County; the water supply system is owned and controlled by Baltimore City.

Loch Raven Reservoir Watershed is the most threatened and most often polluted of the three City Owned Reservoir Watersheds. Development surrounding the reservoir watershed in Baltimore County, sediment run-off, chemical pollution, excessive nutrients and distructive behaviour by recreational users all contribute to the degradation of our drinking water - most of it contributed by people of Baltimore County..

Baltimore County's Resource Conservation -4 (RC-4) Zoning is the only weapon in place to prevent this degradition to our drinking water supply in the Loch Raven Reservoir.

Mrs. Crook has fought valiantly through many years to have Baltimore County restore the rightful and necessary RC-4 zoning on the Clark Oil Property and to correct the misapplied and incorrect zoning condoned in the past on this property. To allow the previous zoning abuse of this Resource Conservation area to continue in any form would be irresponsible and unconscionable on the part of Baltimore County .

It behooves Baltimore County to recognize its role in protecting Loch Raven Reservoir and enforcing RC-4 in accordance with its Master Plan as well as its agreement with Baltimore City, Howard and Carroll Counties in the Watershed Management Agreement.

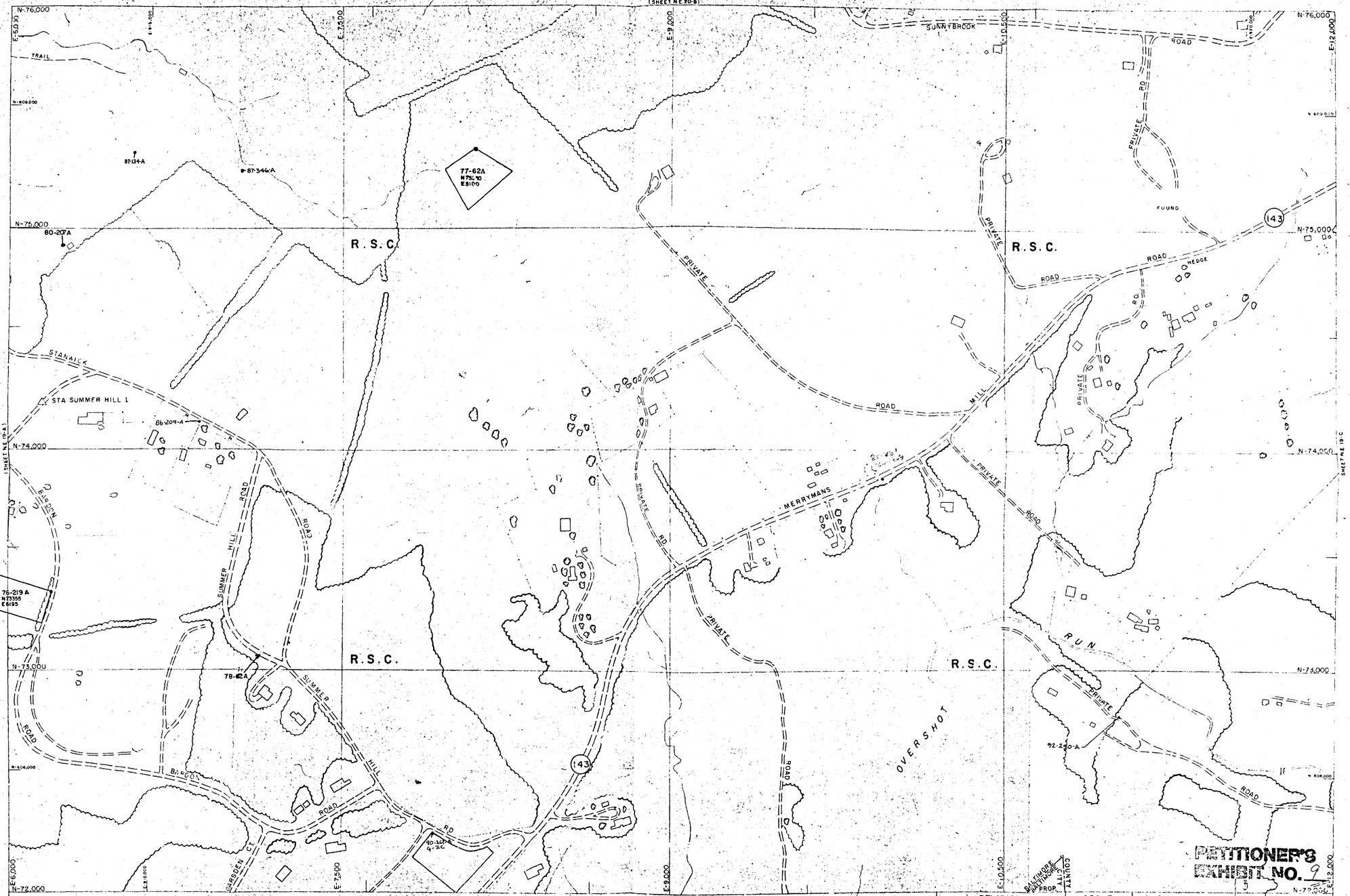
The Watershed Protection Coalition, therefore, earnestly requests that no Class II Trucking Facility be allowed on this location and that RC-4 be enforced.

Sincerely,

The Watershed Protection Coalition

Copy to: Hon. Dutch Ruppersberger
Reservoir Watershed Protection Subcommittee
Baltimore County DEPRM

Protestant Exh 6 94-437-SPH



U-NW

ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
MARCH 24, 1971
BY BILLS NOS. 28, 29, 30, 31, and 32

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY, MARYLAND
OFFICIAL ZONING MAP

REVISIONS	BY	DATE

SCALE: 1" = 200'

DATE OF PHOTOGRAPHY: APRIL 1958

Compiled By Photogrammetric Method
MAPS, INCORPORATED - BALTIMORE 22, MARYLAND

LOCATION: MERRYMANS MILL ROAD

SHEET: N.E. 19-B

PETITIONER'S EXHIBIT NO. 9

Manufacturing Light from 1980 until 1992 at which time the property was rezoned to R.C. 4.

Entered into evidence as Petitioner's Exhibit 4 is the official Baltimore County Zoning Map of 1980 which depicts the subject property as being entirely zoned M.L. Submitted into evidence as Petitioner's Exhibit 5 is the 1984 Comprehensive Zoning Map depicting the property as being split zoned M.L. and R.C. 4. That portion of the property containing the business is zoned M.L. and the remaining wooded area is zoned R.C. 4. Also entered into evidence as Petitioner's Exhibit 6 is the 1988 Comprehensive Zoning Map for Baltimore County, once again depicting the property as being split zoned M.L. and R.C. 4, with the uses in each zone remaining the same as they did in 1984. The 1992 Comprehensive Zoning Map, which was entered into evidence as Petitioner's Exhibit 7, shows that the property was rezoned in its entirety to R.C. 4.

Bruce Clark appeared and testified on behalf of the Petition. He testified that he operates Bruce Clark Oil from the subject site and that in addition to fuel trucks being stored on the property, he also stores water trucks that are used to fill swimming pools in this rural area of Baltimore County.

On cross-examination Mr. Clark testified that he actually began operating his business from the subject site prior to the termination of his father's company, Clark Oil, in 1992. Mr. Clark testified that he has utilized the subject property for the storage of fuel oil trucks and water trucks since prior to February 1992 until the present date.

Also testifying on behalf of the Petition was J. Finley Ransone, a Registered Land Surveyor, who was responsible for preparing the site plan submitted into evidence as Petitioner's Exhibit 3. Mr. Ransone testi-

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Date 7/29/94
By [illegible]

fied that he has had an office on the subject property since April 1992. He testified that he has had as many as 17 employees or as little as 5 employees working on the site, depending on the time of year, and the amount of business he has at the time. Mr. Ransone testified that since he began operating his business on the property, there have always been fuel oil and water trucks stored on the premises.

Appearing and testifying in opposition to the Petitioners' request was Beverly Crook, an adjacent property owner. Ms. Crook testified that she has lived on the adjoining property for the past 40 years. She stated that in the late 1970s, the Clark Oil business began to expand and additional buildings were constructed on the site. She testified that there was an attempt to change the zoning of the property from M.L. to R.C. 4 in the 1984 and 1988 zoning reclassification process; however, the County Council kept the M.L. zoning in tact for the Clark Oil business. Mrs. Crook further testified that in 1992, the community was successful in having the zoning changed back to all R.C. 4.

Ms. Katherine Clark also testified in opposition to the Petitioners' request. She testified that she married Richard Clark in 1968 and began working as the office manager for Clark Oil in 1979. She testified that in February, 1992, the shareholders sold Clark Oil to Carroll Independent Fuel Company and that all trucks and equipment were moved from the premises at that time. Ms. Clark further testified that there was no activity on the subject site from February 1992 until September 1993 and that by virtue of this gap in usage of the property, there was an abandonment of its use for the storage of fuel oil trucks.

Also appearing in opposition to the Petitioners' request was Mrs. Josephine Owen, who appeared on behalf of the Watershed Protection Coali-

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By [illegible]

tion, Inc. Mrs. Owen submitted as Protestant's Exhibit 3 a written statement presenting her opposition to the Petitioners' request for a trucking facility. Therein, she cites the need to protect and insure water quality due to this property being located in close proximity to the Loch Raven Reservoir. She fears that this type of business taking place in close proximity to the watershed could pose a potential health hazard to those individuals who obtain their drinking water from the Loch Raven Reservoir.

Also testifying in opposition to the Petitioners' request was Paul Dobolose. Mr. Dobolose is a representative of the Greater Summerhill Community Association and lives in close proximity to the subject site. He is opposed to any nonconforming use of the subject site and believes that the R.C. 4 zoning was put into place to protect this property from such uses.

Ms. Anneke Davis, a resident of Baltimore City, but a representative of the Greater Baltimore Environmental Center, testified in opposition to the Petitioners' request. Ms. Davis testified that she has been involved with this property since 1980 and is very concerned over the possible detrimental effect this use might have on the Loch Raven Watershed. She testified that she was happy to see the underground storage tanks being removed from the subject property, but is still concerned over the storage of large trucks containing fuel oil on the property.

At the close of taking testimony on this case, lawyers for both the Petitioners and the Protestants requested that they have an opportunity to submit written memoranda setting forth their positions regarding the relief requested. Those Memoranda have been read and considered prior to the issuance of this Order.

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Pursuant to the Petition for Special Hearing, the Petitioners have requested that they be granted a nonconforming use for what they characterize as being a Class II Trucking Facility, and the use of an office on residentially zoned property. I do not agree with the Petitioners' classification that the storage of these fuel oil trucks constitute a Trucking Facility, Class II. Section 101 of the B.C.Z.R. defines a trucking facility 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 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 establishment, or truck stop. Land used for the parking, 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."

That definition clearly states that "Land used for the parking, 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." The testimony offered at the hearing demonstrated that the storage of these fuel oil trucks was, in fact, accessory to the Clark Fuel

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By [illegible]

Oil Company, which operated from the premises. Given this fact, the storage of these trucks, cannot, by definition, be considered a trucking facility.

Further testimony revealed that the subject property was rezoned in 1980 from residential to manufacturing light. In my opinion, the Baltimore County Council rezoned this property to M.L. to make the zoning consistent with the type of use that was being conducted thereon. The testimony clearly supported the fact that the Petitioners used the property from 1938 until the time the property was rezoned in 1980 as a business engaged in the sale and storage of fuel oil. This type of business is permitted in an M.L. zone and explains why the Baltimore County Council rezoned the property to M.L. in 1980. That M.L. zoning stayed with the business portion of the site through the next two zoning classification cycles. In 1984 and 1988, the business portion of the property continued with the M.L. zoning. It was not until 1992 that the property was rezoned to R.C. 4. However, given the zoning on the property, the Clark Oil company operated as a matter of right from 1980 until 1992. In 1992, when the property was changed to R.C. 4, the business use of the property then became illegal. Therefore, it is incumbent upon the Petitioners through their testimony and evidence to prove that the subject property has been utilized for the purpose of fuel oil storage since prior to 1992. It is not necessary that the Petitioners prove the subject property has been utilized as a fuel oil business since as far back as 1938. In my opinion, the testimony need only show that the property has been utilized for this business since prior to 1992, which is the year the property's zoning classification changed and made the use illegal.

The Petitioners also requested a special hearing to approve the office building on the subject site as a nonconforming use. It is also

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By [illegible]

noted that the Manufacturing Light zone permits offices as a matter of right. Therefore, as in the case with the fuel oil business, the Petitioners need only demonstrate that the office has been located on the property since 1992 which is the time the property was rezoned from M.L. to R.C. 4.

The testimony offered by Mr. Ransone was that he has operated his offices from the subject site since April 1992. Mr. Ransone is a registered Land Surveyor who has employed as many as 17 employees in his business. It is clear that in April 1992, the subject property was still zoned M.L. which permitted that use as of right. The change of zoning from M.L. to R.C. 4 occurred by action of the County Council in October 1992. Therefore, it is clear that this office use is permitted to remain on the site as a nonconforming use.

Furthermore, the testimony of Mr. Bruce Clark was that he has been operating his oil business on the subject property since February 1992 and that his fuel oil trucks have been stored on the site continuously and without interruption since that time. He testified that he has four (4) oil trucks and two (2) tank trailers stored on the subject property. The testimony regarding the continuous storage of these trucks on the subject site was corroborated by Mr. Ransone, who has witnessed the storage of these trucks on the subject property since he began operating his business on the subject site in April 1992.

There was testimony offered by Katherine Clark, who married into the Clark family in 1968 and was associated with Clark Oil in a full-time capacity as the office manager from 1979 until the business disbanded in 1992, that there was an abandonment of the storage of these fuel oil trucks from February 1992 until September 1993. Her testimony was that she did not see the storage of any fuel oil trucks on the property during

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By [illegible]

that 18-month period of time. She, therefore, argues that the nonconforming use was abandoned by virtue of there being no storage of fuel oil trucks on the premises for more than one year.

The testimony concerning the storage of these fuel oil trucks is conflicting. Mrs. Clark stated that there had been an abandonment for a period of approximately 18 months. However, Mr. Ransone and Mr. Bruce Clark testified that the storage of trucks on the property has been continuous, even during the time that Mrs. Clark testified that there was an abandonment. Inasmuch as Mr. Ransone was physically on the property and witnessed the storage of these trucks as well as their movement to and from the site, I am inclined to give greater weight to his testimony. I find that there was no abandonment of the storage of these trucks on the property and that the trucks have, in fact, been stored on the property since prior to October 1992 (the date that the zoning of the property changed from M.L. to R.C.4) continuously and without interruption until the present time. Therefore, it appears that a nonconforming use of the subject property for the storage and parking of fuel oil trucks exists.

As with all nonconforming use cases, the first task is to determine whether a lawful nonconforming use existed on the subject property prior to the date/year in which a change in the zoning regulations caused the use of the property to become illegal. The controlling date in this case is October, 1992, the date the zoning maps became effective.

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 origi-

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Date 7/29/94
By [illegible]

nal 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.

As stated previously, I am persuaded by the testimony presented that the Petitioner has established a nonconforming use of the subject property.

It should be noted that the nonconforming use granted herein is not for the entire 6.4746 acres of land but is limited to that area depicted on Petitioner's Exhibit 3 which contains the existing improvements, including the four structures and the entire macadam driveway and parking area. The wooded areas have never been utilized as part of the nonconforming use, and therefore, shall not be approved as a part of the relief granted herein. There shall be no expansion or enlargement of the noncon-

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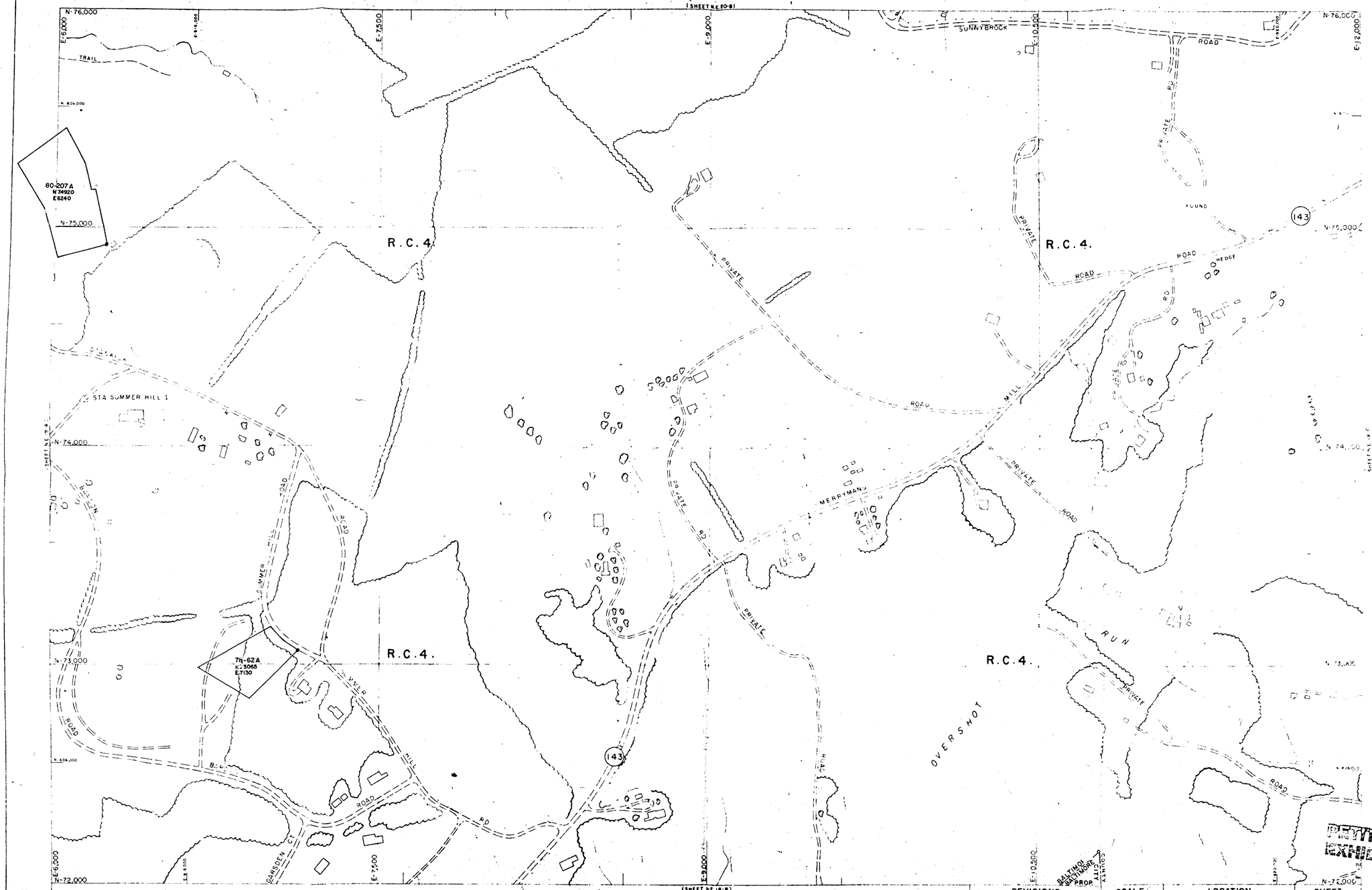
Date 7/29/94
By [illegible]



U-NW

76 COMPREHENSIVE ZONING MAP
ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
OCT. 7, 1976 & OCT. 6, 1976
BILL NOS. 108-76, 109-76, 110-76, 111-76
112-76, 113-76, and 114-76

CHAIRMAN COUNTY COUNCIL

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY, MARYLAND
OFFICIAL ZONING MAP

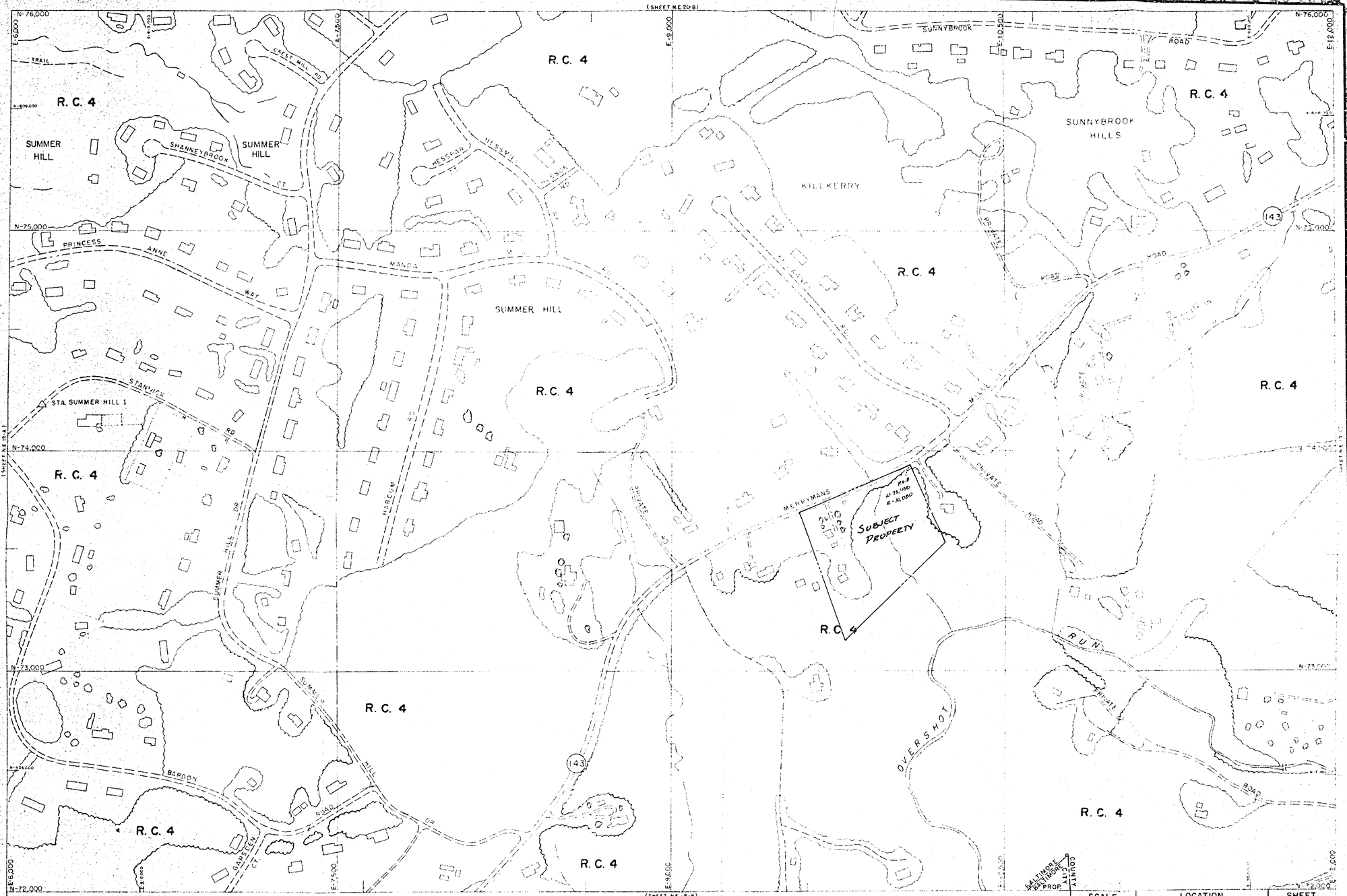
REVISIONS		
	BY	DATE

Compiled By Photogrammetric Method
MAPS, INCORPORATED - BALTIMORE 22, MARYLAND

SCALE	LOCATION	SHEET
1" = 200'	MERRYMANS MILL ROAD	N.E. 19-B

DATE OF PHOTOGRAPHY
APRIL 1958

PETITIONER'S EXHIBIT NO. 8



U-NW

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
Bill Nos. 183-92, 184-92, 185-92, 186-92, 187-92, 188-92, 189-92

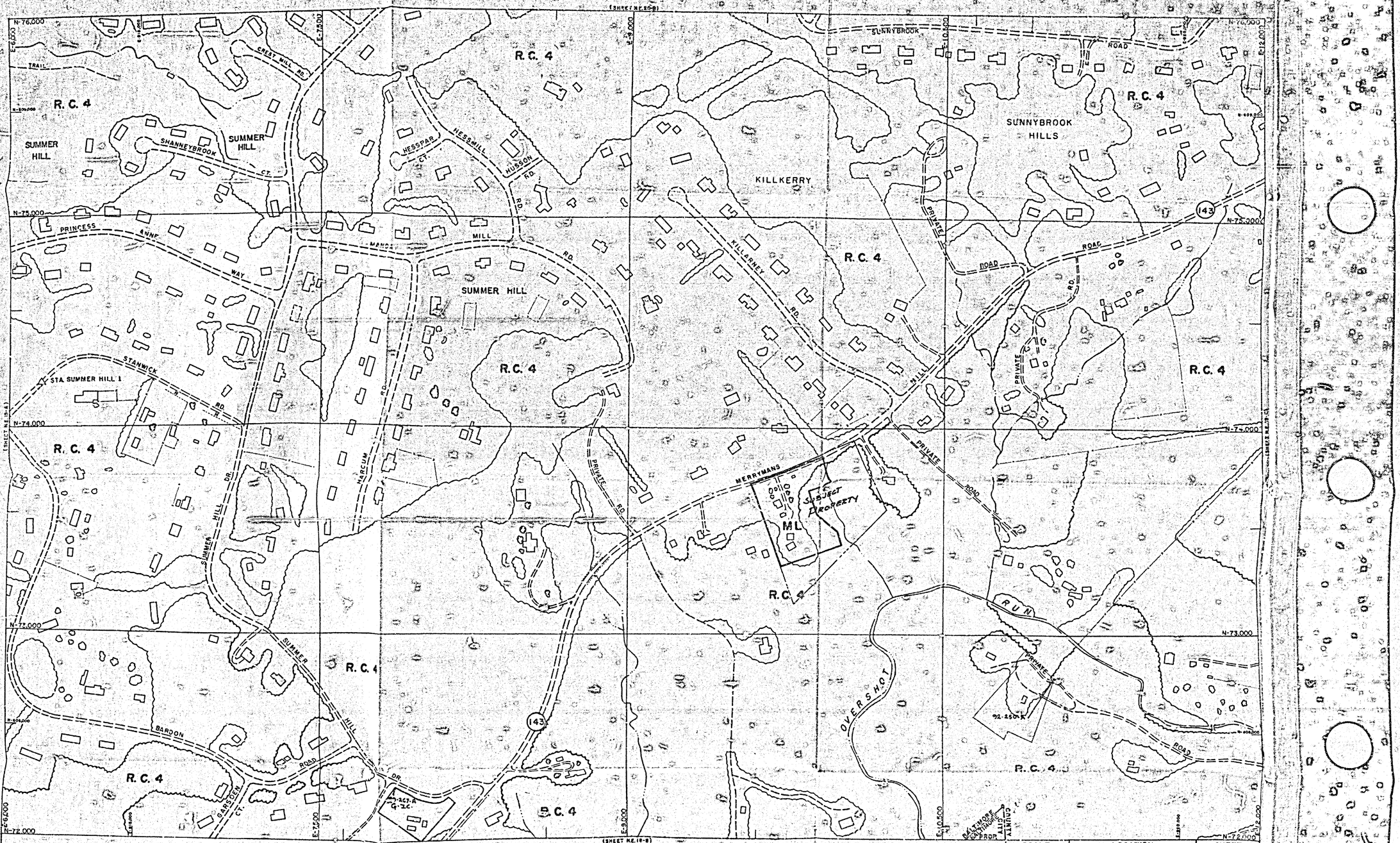
William A. Howard III
Chairman, County Council

BALTIMORE COUNTY / BALTIMORE CITY PROP.

SCALE	LOCATION	SHEET
1" = 200'	MERRYMANS MILL ROAD ITEM #421	N.E. 19-B
DATE OF PHOTOGRAPHY: JANUARY 1986		

94-437-SPH

PETITIONER'S EXHIBIT NO. 7



U-NW

1988 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 13, 1988
Bill Nos. 144-83, 145-83, 146-83, 147-83, 148-83, 149-83, 150-83

County Council

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

SCALE	LOCATION	SHEET
1" = 200'±	MERRYMANS MILL ROAD	N.E. 19-8
DATE OF PHOTOGRAPHY JANUARY 1986		

PETITIONER'S EXHIBIT NO. 6

R.C.4

R.C.4

R.C.4

R.C.4

R.C.4

ML

87-134-A

87346-A

86-209-A

MANDA MILL RD.

PRINCESS ANNE WAY

MERRYMANS MILL ROAD

PRIVATE

N.75,000

N.74,000

N.73,000

N.72,000

E.49,000

E.49,500

E.50,000

143

1984 COMPREHENSIVE ZONING MAP
ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
NOV. 13, 1984
BILL NOS. 132-84 - 134-84, 135-84
136-84, 137-84 AND 139-84

CHAIRMAN, COUNTY COUNCIL

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY, MARYLAND
OFFICIAL ZONING MAP

REVISIONS | BY | DATE

SCALE 1" = 200'

DATE OF PHOTOGRAPHY APRIL 1984

LOCATION MERRYMANS MILL ROAD

SHEET N.E.

PETITIONER'S EXHIBIT NO. 5

R C 4

R C 4

R C 4

R C 4

M L

PETITIONER'S EXHIBIT NO. 2

1980 COMPREHENSIVE ZONING MAP
ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
OCTOBER 1980
BILL NO. 178-80

CHAIRMAN, COUNTY COUNCIL

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY, MARYLAND
OFFICIAL ZONING MAPS

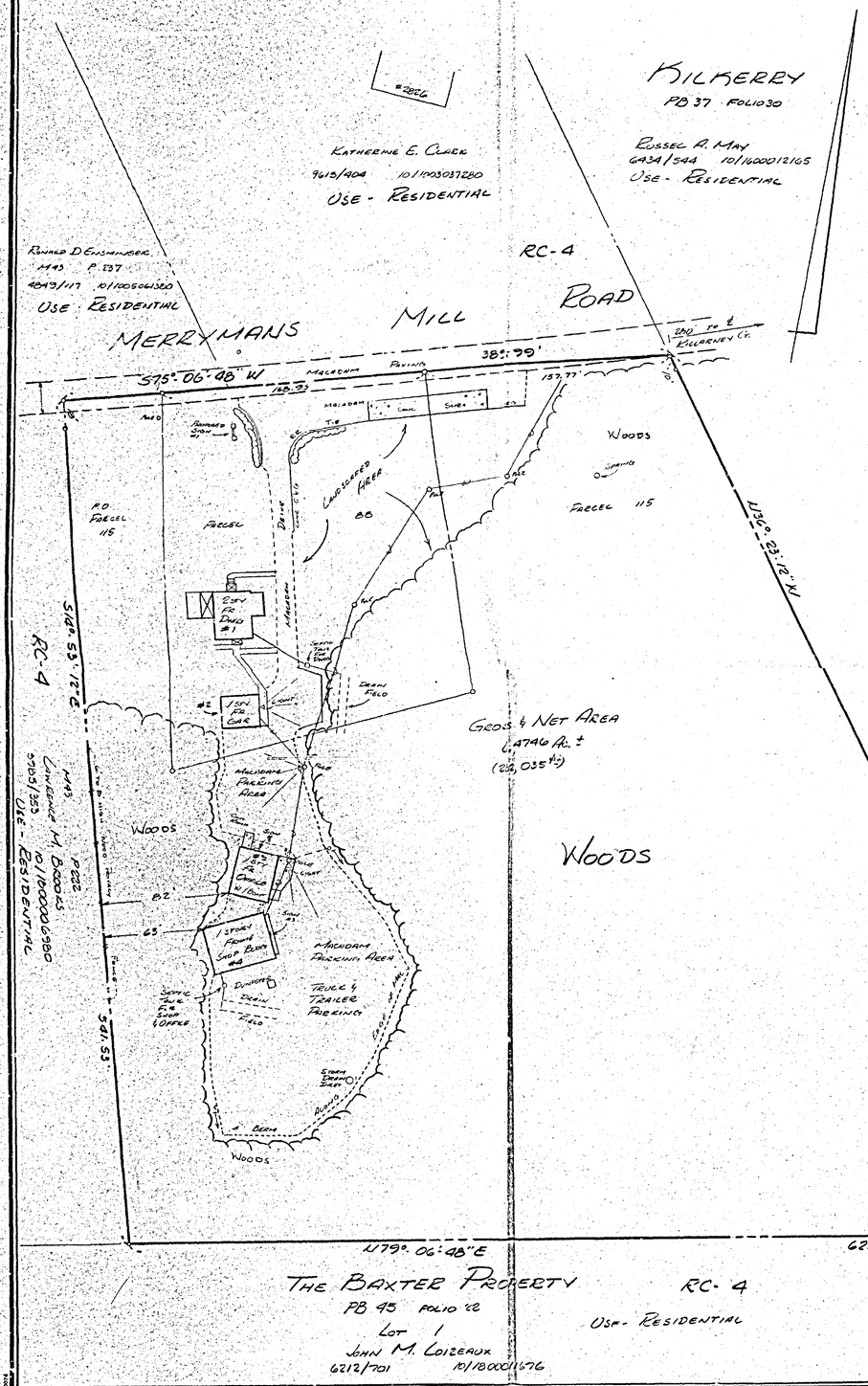
REVISIONS

SCALE 1:200

LOCATION MERRYMANS MILL ROAD

SHEET 19-B

AERIAL SURVEY CORPORATION OF BALTIMORE, MARYLAND



ZONING HISTORY

1932	No zoning	1980	ML & RC-4
1945	Residential A or B	1984	ML & RC-4 (ML Amended)
1971	RSC	1985	Case 85-221
1976	RC - 4	1988	Same as 1984 - Covenents recorded
1992	ML deleted - Entire tract RC-4 (Covenants volded)		

GENERAL NOTES

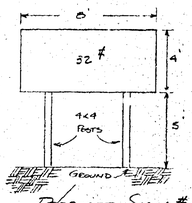
1: Deed Reference: Liber 3093 folio 92
2.Tax Map 43 Grid 10 Parcel 88 Tax Acc No. 1003037075
3.Tax Map 43 Grid 10 Parcel 115 Tax Acc No. 1003037076
4. Councilmanic District 3 Regional Planning District 305
Census Tract 4101
5. Current Zoning RC-4 Proposed Zoning RC-4
6. Building Inventory & Uses

BLDG No.	TYPE	USE
1	2 sty frame /w bsmt	Primary residence of petitioner
2	1 sty frame	Garage accessory to dwelling
3	1 sty frame /w bsmt	Office
4	1 sty frame	Truck Maintenance & repair shop

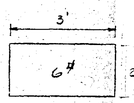
7. Floor Area Ratio Calculations:

Office:	26.2' X 30.3' X 2	=	1588 sq. ft.
Shop	30.2' X 40.2'	=	1214 sq. ft.
TOTAL			2802 sq. ft.

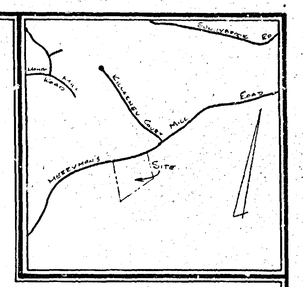
FAR 2802 ÷ 282035 = 0.0099



PROPOSED SIGN #1
FREE STANDING
DOUBLE FACE
NON ILLUMINATED



PROPOSED SIGNS
2 @
SINGLE FACE
ATTACHED TO BLDING
NON ILLUMINATED



VICINITY MAP
1" = 1000'

Plat To Accompany Petition For

SPECIAL HEARING TO DETERMINE NONCONFORMING USE IN RC-4 ZONE

For the Property Located at 2815 Merryman's Mill Road

Tenth Elevtion District Baltimore County

Owner - Petitioner
Mr. & Mrs. Thomas G. Clark
Merryman's Mill Road
Phoenix, MD 21131

Phone: 666-1844

PETITIONER'S EXHIBIT NO. 3

94-437-SPH Item # 421

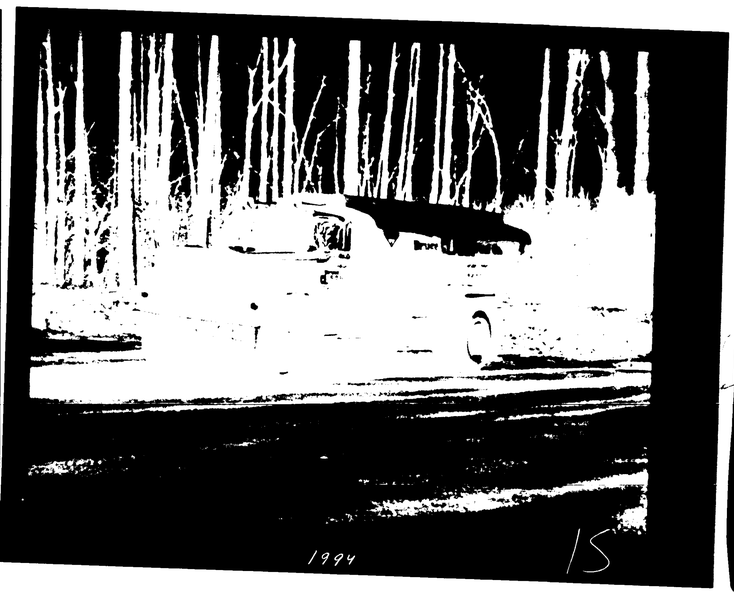
SCALE: 1" = 90' | DATE: Dec. 29, 1993

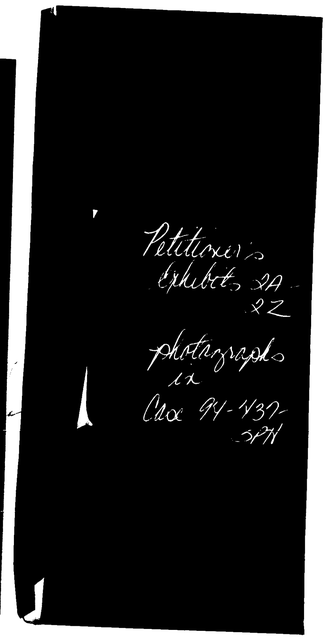
J. FINLEY RANSONE & ASSOCIATES
REGISTERED
LAND SURVEYORS
P.O. BOX 10160
TOWSON, MARYLAND
21285-0160
666-7448

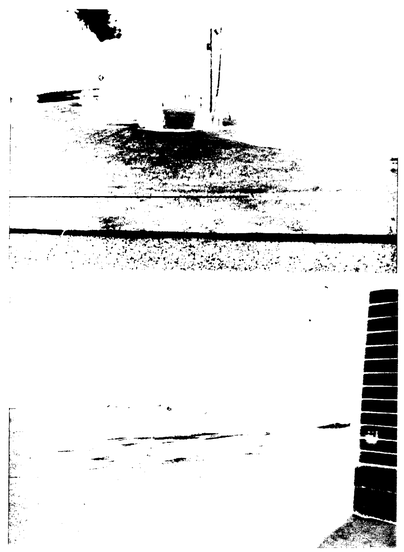
J# 9203-916 | F# 100-130

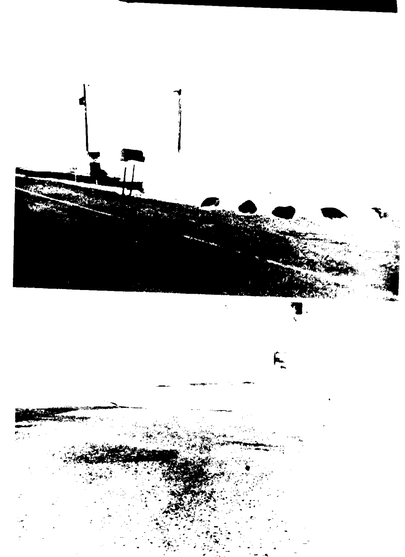
1992
1Q

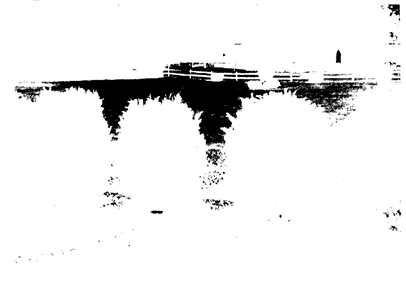
1994
1R

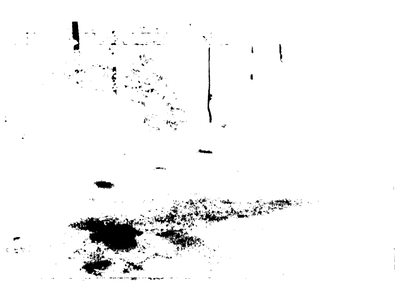

1994
1S


Petitioner's
Exhibits 2A-
2Z
photographs
in
Case 94-1132-
SPH









Argument

The legal issues in this case are numerous and will be framed and analyzed in this Memorandum in an outline format for the sake of clarity. The facts are especially significant as they define the actual use of the subject site, rather than the nomenclature bestowed by counsel for the Petitioner.

The issues raised in this case and the positions of People's Counsel are as follows:

1. **Whether 2815 Merrymans Mill Road was used primarily, prior to the sale of the Clark Oil Company in 1992, as a Class II Trucking Facility? If yes, was this use permitted by right, special exception, or as a nonconforming use?**

At no time during the existence of the Clark Oil Company at 2815 Merrymans Mill Road did the Petitioner operate a Class II Trucking Facility. The primary purpose of such a facility as defined in BCZR is the parking and storage of trucks. There was no evidence from the Petitioner that the primary use of the site and purpose of the business operation conducted on site from 1938 until 1992 was to park and store trucks.

In 1976, the Baltimore County Council passed a comprehensive law regulating existing and future Class II trucking facilities. (See generally BCZR 410A). The provisions of this legislation required the following of existing trucking facilities: (a) Verify that approved plans of the facility are on file with the Office of Planning and Zoning or Office of Permits and Licenses (BCZR 410A.1A.1); or (b) if no such plans exist or the owner fails to notify the Offices of Zoning or Permits, a plan meeting the requirements of this law was required for filing within one year. (BCZR 410.A.1A.2). Rulings were then to be

issued on the adequacy of previously filed plans or the required changes. (BCZR 410A.1B). Failure to register plans or comply with the ruling constituted a zoning violation (BCZR 410A.1D) and mandated that such facilities must cease operation within three years from the effective date of the law.

The Petitioner offered no evidence of compliance with these regulations. Thus he was not operating as a nonconforming Class II Trucking Facility.

Under BCZR Section 253.2A.6, a trucking facility is permitted in an ML zone by special exception but not as of right. The Petitioner offered no evidence that a special exception was obtained for 2815 Merrymans Mill Road.

In addition, following an evidentiary hearing, the Zoning Commissioner for Baltimore County ruled in 1985 that the Clark Fuel Oil Company was not a trucking facility (See Protestants' Exhibit #1).

2. **Whether 2815 Merrymans Mill Road is currently and since the sale of Clark Oil Company in 1992, used primarily as a Class II Trucking Facility? If yes, is this use permitted by right, special exception, or as a nonconforming use?**

The evidence clearly shows that since Clark Oil Company was sold in 1992, Bruce Clark has utilized the subject site to park and store the vehicles used in his fuel oil business located offsite. He testified his trucks are not filled at Merrymans Mill and that they are parked there when they are serviced or until picked up by his drivers. The site, in addition to the residence, is obviously being used in an industrial or business manner. There is no other use defined in BCZR which describes Bruce Clark's use of the site other than as a Class II trucking facility.

The use of the site in this manner by Bruce Clark commenced in 1992. The property was zoned R.C.-4 and such a use is not permitted. Nor is it nonconforming since it did not exist prior to the rezoning in 1992 nor comply with the provisions of the 1976 trucking facility law. Likewise, there is no evidence that the site was approved by special exception as a trucking facility when it was zoned ML.

3. **Whether 2815 Merrymans Mill Road was used primarily, prior to the sale of Clark Oil Company in 1992, for fuel storage and sale of solid or gaseous fuels? If yes, was this use permitted by right, special exception, or as a nonconforming use?**

The following chronology, based on the testimony, evidence and the record pertaining to the site, and Baltimore County Zoning Regulations and zoning law is relevant to the prior use of the property:

1938 - Mr. Thomas Clark begins to operate a fuel oil delivery business from 2815 Merrymans Mill Road, which is also his place of residence.

1955 - Baltimore County Zoning laws enacted; subject site zoned residential.

1980 - 2815 Merrymans Mill rezoned to Manufacturing Light ("ML" Section 253 of BCZR).

1984 - Zoning complaint filed by residents against site alleging violations for use and expansions; Zoning Commissioner ruled, inter alia, that Clark Fuel Oil Company is not a Class II Trucking Facility; determined that trucks on site used in the business are accessory to the operation of the fuel oil business (BCZR, Section 253.1.B.9 refers to "Fuel storage and sale, of solid or gaseous fuels" as one of "transportation, storage, or quasi-public uses or utilities" permitted as of right; BCZR Section 253.1.F.7 refers to "Parking spaces (see Section 409) as accessory uses or structures in an ML zone.")

1989 - Mr. Bruce Clark starts a fuel oil delivery business, owned solely by him, at 226 Cockeysville Road.

1990 - Mr. Thomas Clark retires from Clark Oil Company and divides his stock among his three children; subsequently one son, Richard, dies and his wife inherits his share and continues the business.

1992 - All the stock of Clark Oil Company is sold to Carroll Fuel Oil Company; the buyer does not operate from 2815 Merrymans Mill Road; the fuel tanks and pumps are removed from the site.

1992 - Mr. Thomas Clark testified at the Board of Appeals hearing that Mrs. Richard Clark would not permit her brother-in-law Bruce to park his trucks at Merrymans Mill; subsequent to the sale of the business Bruce Clark begins to park his trucks there.

Clearly, the Clark Fuel Oil Company operated from the subject site as a "fuel storage and sale" operation. Between 1955 and 1980 that portion of the property used in the business operated as a nonconforming use in a residential zone. In 1980, the same use was permitted as of right in a Manufacturing Light zone. In 1992, it ceased operation. When the site was zoned R.C.-4 in its entirety in 1992, the fuel oil business was not permitted at the site as of right, special exception, or nonconforming use.

4. **Whether 2815 Merrymans Mill Road is used primarily, since the sale of Clark Oil Company in 1992, for fuel storage and sale of solid or gaseous fuels? If yes, is this use permitted by right, special exception, or as a nonconforming use?**

There is no definition of a fuel oil business in BCZR Section 101. No use akin to this use is permitted in any fashion in an R.C.-4, business or manufacturing zone except as a permitted storage or utility use permitted in ML by BCZR Section 253.1B.9 as aforesaid. The

evidence in the instant case is undisputed that no storage or sale of fuel oil has occurred at the site since 1992. Nor does Bruce Clark allege that he stores or sells from Merrymans Mill. In fact, he testified that his trucks at the subject site are empty. Since the property is used in some fashion in addition to residential, its current use must be evaluated by the evidence before the CBA and is not controlled by a designation of the Petitioner.

Regardless of the manner in which the Petitioner wishes to depict Bruce Clark's use of the site, it is clearly a Class II trucking facility. Not only does the evidence conclude this use, but it was obvious to the zoning office who assisted in the preparation of the Petition for Special Hearing based on the facts presented to them.

5. **Whether the storage and maintenance of trucks at 2815 Merrymans Mill Road, prior to the sale of Clark Oil Company in 1992, was a permitted ancillary or accessory use to the primary use of a fuel oil business?**

A service garage is permitted in an ML zone only as auxiliary to a permitted or special exception use provided the area is a planned industrial park of 25 acres or an I.M. district. (BCZR Section 253.2.B.3 and 253.2.E). Parking spaces are permitted in an ML zone as accessory uses. (BCZR Section 253.1.F.7). The definition of an "accessory use" as found in BCZR Section 101 requires that it is "incidental to and serves the principal use, and contributes to the convenience or necessity of the business or industry that is the principal use. The storage and maintenance of trucks of the Clark Oil Company on the site prior to the sale of the business would appear as reasonably accessory to the principal use. (But, see BCZR Section 253.4 which permits "only passenger automobile accessory parking" within 100 feet of a residential zone boundary in an ML zone).

6. **Whether an ancillary or accessory use, the storage and maintenance of trucks, may be continued at 2815 Merrymans Mill Road following the sale of the Clark Oil Company in 1992?**

The storage of trucks in an ML zone is permitted by special exception for a trucking facility. (BCZR 253.2.A.6). No such use is permitted by right in ML as a permitted use or auxiliary use under BCZR Sections 253.1 A, B, or C. Parking spaces are permitted only as accessory uses. The parking and storage of trucks is not permitted at all in an R.C.-4 zone.

7. **Whether an accessory or ancillary use, the parking and maintenance of fuel oil trucks, may be conducted at 2815 Merrymans Mill Road if the primary use, the Bruce Clark Fuel Oil Company, is conducted at a separate location?**

An accessory use does not become a legitimate primary use merely because it remains as the only use on the site. The accessory use, by its very definition, must have a legal primary use on site to support it. (See BCZR Section 101, which requires an accessory use to be located on the same lot as the principal use served). Both uses must be on the same site. (Note the exception for offsite parking in a residential zone to support an industrial use would not apply to the instant case. BCZR Section 409.8.B.2.a.b. and c. requires, "the land so used must adjoin or be across an alley or street from the business or industry involved"... "Only passenger vehicles...may use the parking facility... No loading... or any use other than parking shall be permitted.").

Mr. Bruce Clark clearly conducts his fuel oil business from 226 Cockeysville Road. Any uses accessory or auxiliary to that use must be on the same lot.

8. **Whether a use ancillary or accessory to a nonconforming use at 2815 Merrymans Mill Road may legally exist if the primary use ceases to exist?**

In order to classify the fuel oil business at Merrymans Mill Road as "nonconforming", it must have continued in 1992 after the property was rezoned to R.C.-4. (As noted above, the fuel oil business is a permitted use in an ML zone). The evidence concerning the use of the site since Clark Oil Company was sold contradicts this assumption. Nonetheless, even if nonconforming, the change from a nonconforming fuel oil business to a primary use for the parking and storage of trucks is not permitted under BCZR Section 104.1 which states that "upon any change from such nonconforming use to any other use whatsoever,... the right to continue or resume such nonconforming use shall cease." [Emphasis added]. As stated above, the parking of trucks accessory to the fuel oil business requires a primary use on site. If the nonconforming primary use ceases, the nonconforming accessory use cannot continue.

9. **Whether a use ancillary or accessory to a use permitted by right or special exception at 2815 Merrymans Mill Road may legally exist as a nonconforming use if the primary use ceases to exist?**

An accessory use by definition is "subordinate in... purpose to the principal use..." (BCZR Section 101). Thus, it cannot stand as a primary use when the principal use ceases, unless permitted in the zone by right or special exception. As explained above, while the subordinate parking and storage of trucks may be accessory to a fuel oil business as restricted by the zoning regulations, the use in and of itself is a Class II trucking facility permitted by special exception in an ML zone. A "nonconforming use" is defined in BCZR Section 101 as "a legal use that does not conform to a use regulation for the zone in which it is located..." This definition, as well as its use in BCZR Section 104 implies that the nonconforming use is the principal or

primary use of the site. There is no allowance for an independent "nonconforming accessory use" with a nonconforming primary use.

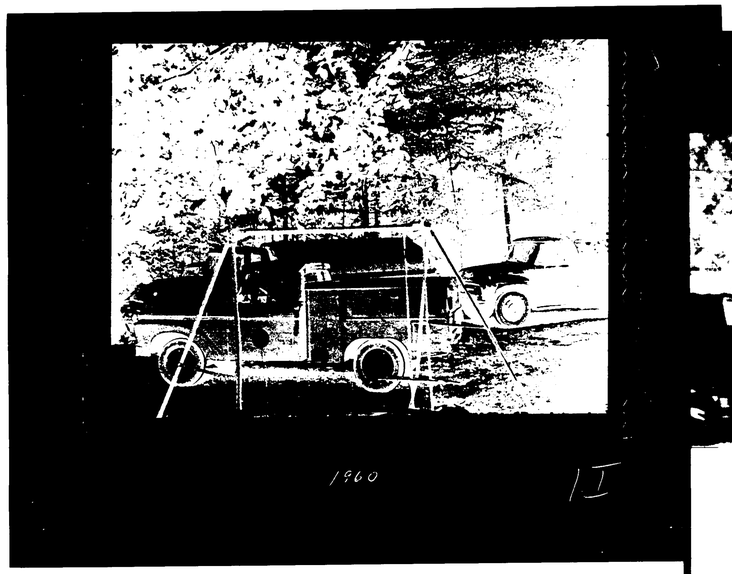
10. **Whether the Petitioner is permitted to amend his Petition for a Special Hearing from a Class II Trucking Facility to a Nonconforming Use at the hearing on appeal at the County Board of Appeals?**

The Petitioner proposes approval of the relief requested under a totally different legal theory than presented at the Zoning Commissioner's hearing and contained in his Petition for Special Hearing. Opposing counsel objected to amending the Petition at this stage in the proceedings.

BCZR, Appendix G, Rule 3 provides for Appeals, and Rule 4 provides for the Conduct of Hearings before the Board of Appeals. There is no provision for amendments at the hearing, although Rule 4b. provides that the Chairman "shall rule upon... modifications... during the course of the hearing..." Although heard de novo, the CBA zoning hearing is an appeal of the decision of the Zoning Commissioner rendered after the filing of a Petition, the posting on the site of a notice of the Petition and hearing information, and the newspaper publication of the notice. The notice requirements for the CBA as provided in BCZR Section 500.11 and Rule 2e. of Appendix G apply to the parties of record at the zoning hearing. To permit a significant amendment of substance at the CBA hearing could adversely affect parties who would have no notice of the change in relief requested.

An amendment at this stage of the proceedings may prevent the opposing parties and their counsel from adequately preparing their case. BCZR Appendix G and Rule 2 a. require a ten-day notice to all parties prior to scheduling a hearing.

This issue was also discussed by the Court of Special Appeals in People's Counsel v. Mangione, 85 Md.App. 735 (1991). In that case,



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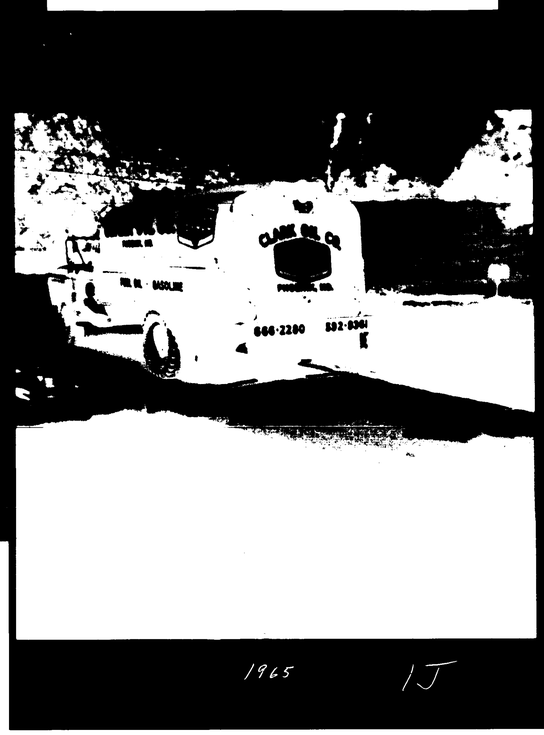
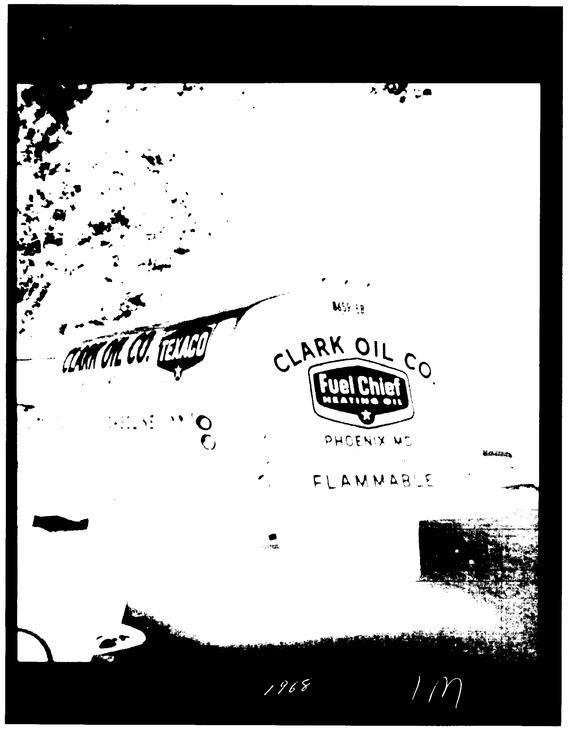


1965 1J

1965 1K

1968 1L



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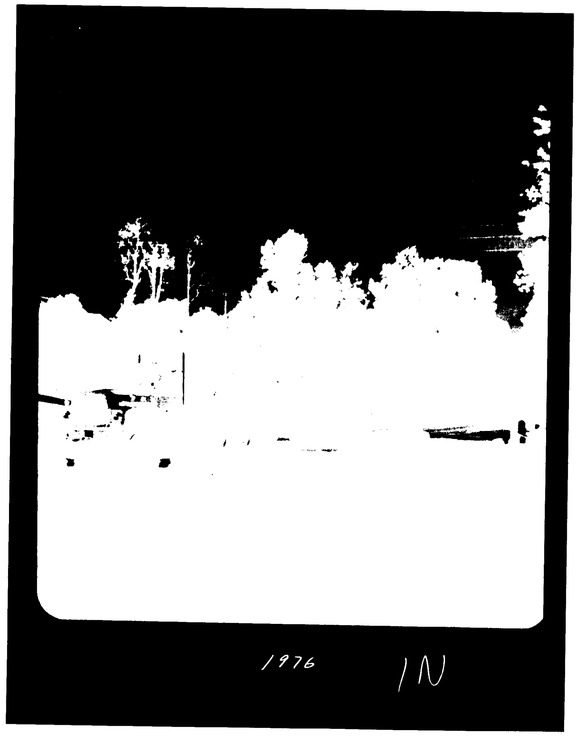
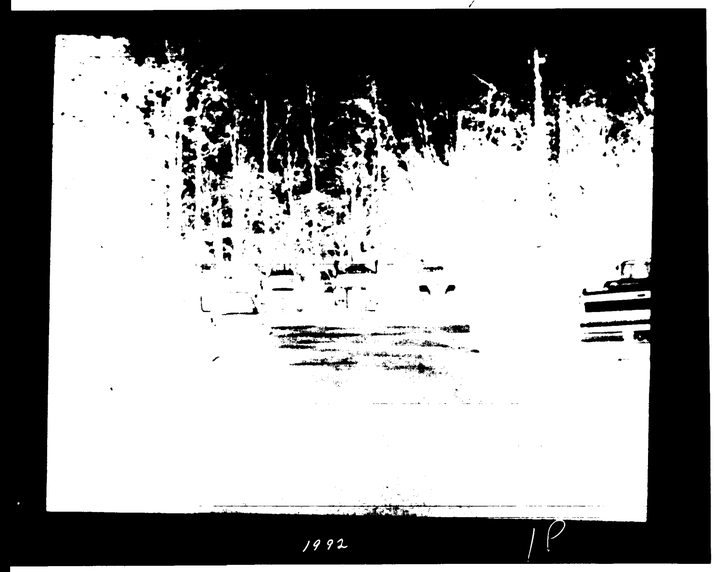


1976 1N

1976 1O



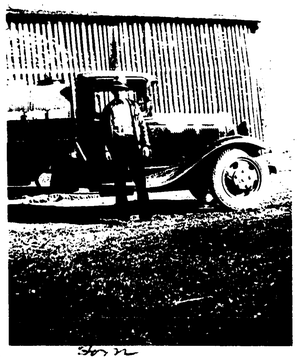
1992 1P

-222 XASPH

SPHA

ALTIMORE COUNTY, MARYLAND

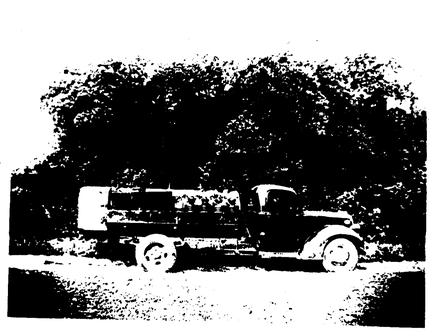
INTER-OFFICE CORRESPONDENCE



1935

PETITIONER'S EXHIBIT NO. 1A

94-427SPHA
Exh. 1A-1R
1-14-94



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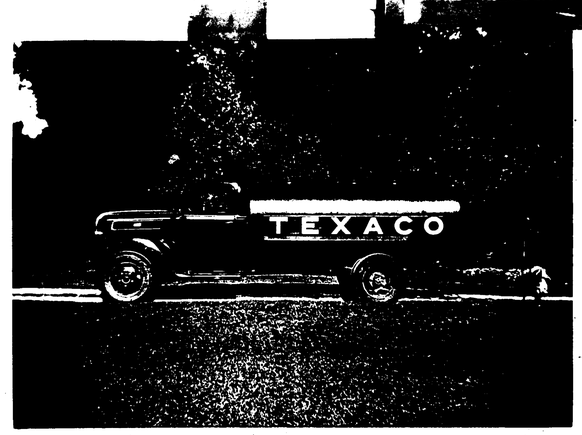
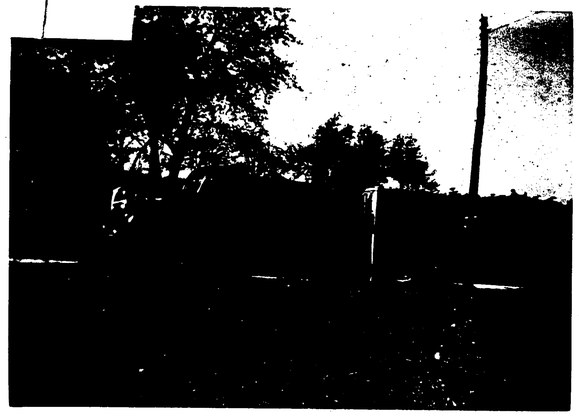


1944 1C

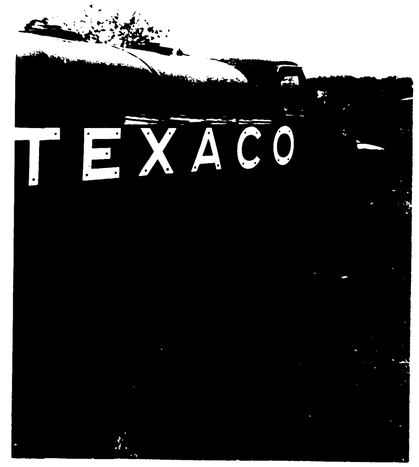


1944 1D

1944 1E

1953 1F

1954 1G



1954 1H

IN THE MATTER OF THE APPLICATION OF THOMAS G. CLARK, ET UX FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTH SIDE MERRYMAN'S MILL ROAD, 285' SOUTHWEST OF CENTERLINE OF KILLARNEY COURT (2815 MERRYMAN'S MILL ROAD) 10TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT * BEFORE THE * COUNTY BOARD OF APPEALS * OF * BALTIMORE COUNTY * CASE NO. 94-437-SPH *

* * * * * * * * *

O P I N I O N

This case comes before this Board on appeal from a decision of the Zoning Commissioner in which the Petition for Special Hearing was granted with restrictions. The first order of business in this case is to correct the wording in the Petition. The Petition designates the special hearing as to approve a Class II Trucking Facility on this site, and Petitioner emphatically denies any desire to have a Class II Trucking Facility use granted this site. Petitioner just as emphatically wants the use of the property designated as a nonconforming use in association with an oil delivery business conducted on this site for many, many years.

The first witness who testified in support of the Petition was the Petitioner himself, Thomas G. Clark. Mr. Clark testified that he had personally lived on the site for 56 years, conducted some fuel oil business on this site for 56 years, and that the property itself was in the Clark family ownership for more than 100 years. He testified that he began the Clark Oil Company in 1935, and that the continuous use from 1935 through today was never interrupted. He submitted Petitioners' Exhibits 1A through 1R, showing the business and the condition of the site as he testified to. When

Mr. Clark was no longer able to operate the fuel oil business, his son, Bruce Clark, continued the use of the property for this purpose. Bruce Clark testified as to the use that has continuously taken place on this site, and that he personally conducted the business from 1992 through the present date. He specifically noted that a 4-foot berm surrounds the parking lot as a protection against possible spills, and that no loading or unloading of fuel oil takes place on this site, but is all conducted from his Cockeysville location.

Further testimony as to the continuous incidental use of this property in the fuel oil business was presented the Board through the testimony of: Finley Ransone, who used the office area on the site for his business; Douglas Lee; Mr. Shedinger; Jerry Heacock; George Batters; Dean Ayres; Ben Apecillo; and David Morrison. All testified that, to their knowledge, the use the property now enjoys is the same use that it has enjoyed for over 50 years, and that the property is well-maintained and that the said use has no detrimental effect on the neighborhood.

Testifying in opposition to the Petition was Dr. Polly Worth, a member of Save Our Streams, who testified to her concerns of the possible effects of this business on a stream on the site and some spring heads. Her main concern was that this not be designated as a Class II Trucking Facility. Further testimony in opposition to the Petition was offered to the Board from Ann Garrett, of the Greater Cambria Association, objecting to the Petition; Joy Wheeler, a member of the Baltimore Bird Club, objecting to the use

as a trucking facility; Josephine Owens, Anica Davis, Donald Outen, and Beverly C. Crook who testified in opposition to the designation of the property for use as a Class II Trucking Facility.

In light of the testimony from the property owner that his main concern is that his property be declared a nonconforming use so that he can be allowed to continue the use that has been in existence since 1935 in varying degrees, the testimony presented in this case overwhelmingly indicates that the use connected with the fuel oil business has been in existence far longer than the law requires, that it has been well-maintained, that it has had no detrimental effect on anyone, anywhere, and that all the testimony and evidence indicates that the nonconforming use as requested by the Petitioner should be allowed; and the Board, in consideration of all this testimony and evidence, will find as a fact that the nonconforming use has existed without interruption and without detriment to anyone, and therefore should be granted and will so order.

O R D E R

IT IS THEREFORE this 10th day of January, 1995 by the County Board of Appeals of Baltimore County

ORDERED that the storage and parking of four (4) fuel oil/water trucks and two (2) tank trailers containing fuel oil or water on the subject property, zoned R.C. 4, be and is hereby approved as a legal, nonconforming use, in accordance with Petitioners' Exhibit 3, and as such, the Petition for Special Hearing is **GRANTED**, subject to the restrictions set forth

hereinafter; and, it is further

ORDERED that the Petition for Special Hearing seeking approval of an office on the subject property, in accordance with Petitioners' Exhibit 3, be and is hereby **GRANTED**.

1. There shall be no above-ground or underground storage tanks for fuel oil on the subject property;
2. Upon request and reasonable notice, Petitioners shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order in the event it becomes necessary to do so as a result of a complaint; and
3. When applying for any permits, the site plan and/or landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

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

William T. Hackett, Chairman

C. William Clark

Judson H. Lipowitz

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

January 10, 1995

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Case No. 94-437-SPH
Thomas G. Clark, et ux

Dear Mr. Holzer:

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.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Beverly C. Crook, et al
Conwell F. Sapp, Esquire
Mr. & Mrs. Thomas Clark
Katherine Clark
J. Finely Ransone
Patrick Pike
Josephine Owen
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /ZADM
James Thompson /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Printed with Soybean Ink on Recycled Paper

RE: PETITION FOR SPECIAL HEARING
2815 Merrymans Mill Road, S/S Merrymans Mill Road, 285' SW of c/l Kilarney Court
10th Election Dist., 3rd Councilmanic

THOMAS G. CLARK, et ux
Petitioners

* BEFORE THE
* BOARD OF APPEALS
* OF BALTIMORE COUNTY
* CASE NO.: 94-437-SPH

* * * * * * * * * * *

MEMORANDUM OF PEOPLE'S COUNSEL

Statement of Facts

A Petition for Special Hearing was filed by the property owners, Thomas and Edith Clark, to approve as a nonconforming use a Class II Trucking Facility with an office. The subject site is located at 2815 Merrymans Mill Road. The subject site is zoned R.C.-4.

The Petitioner seeks to use the site to store and perform maintenance on fuel trucks and a water tank truck owned by his son who operates a fuel oil company and a water supply company offsite at 226 Cockeysville Road.

All or a portion of the subject site was zoned ML until rezoned R.C.-4 in the 1992 Comprehensive Map Process.

The undisputed testimony indicated Thomas Clark, who also resides on the property, operated his business, Clark Oil Company, a heating oil delivery company, from 2815 Merrymans Mill Road from approximately 1938 until the business was sold to Carroll Fuel Company in 1992. Mr. Thomas Clark testified his business was incorporated and one hundred percent of the stock was sold to the purchaser. The Clark Oil Company stored heating oil in underground tanks at the Merrymans Mill location. The oil was pumped into the company's fuel trucks from these tanks and delivered directly to the customers. Mr. Clark purchased his oil

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supply from Texaco for over forty years, and later from Phillips and Getty. In 1992 when the business was sold, the underground oil tanks and fuel pumps were removed. No fuel trucks were ever loaded from the site again.

The office building on the site was the office for Clark Oil Company. The site also contains a frame building used as the business' maintenance garage.

Mr. Bruce Clark, the son of Thomas Clark, testified that he is the founder and sole owner of the Bruce Clark Oil Company. This business began operating in approximately 1989 and has been located since that time at 226 Cockeysville Road, just west of York Road and south of the Hunt Valley Industrial Park. He leases this site which consists of an office building for his business, and 6 to 8 large above-ground fuel tanks, each holding approximately 20,000 gallons, and open space where Mr. Clark parks his trucks. He testified he owns six tank trucks, four of which are used for fuel deliveries and two for water deliveries for swimming pools. The fuel trucks are loaded from the storage tanks at this site. His office staff works exclusively at Cockeysville Road, except for an answering service in Bel Air. He purchases his oil from several different wholesale suppliers.

For several years, Bruce Clark and the Clark Oil Company were competitors. Mr. Thomas Clark testified that ill-health forced him to divide his stock among his three children. The business was run by one son, Richard. At his death, his stock was inherited by Richard's wife who then operated the fuel oil company. Mrs. Richard Clark sold the company to Carroll Fuel Company in 1992. After the Clark Oil Company

was sold in 1992, Mr. Bruce Clark occasionally parked some of his trucks (3 on an average) at Merrymans Mill Road, where he would also perform maintenance work on these vehicles. While parked at Merrymans Mill, the trucks were empty and his drivers would need to fill them from the Cockeysville site tanks.

Recently, the office building at Merrymans Mill has been rented to Finley Ransome, a land surveyor and developer. Mr. Ransome testified that Mr. Bruce Clark allows Mr. Ransome and his employees to utilize the service garage and shop for maintenance work on their personal vehicles.

Mr. Bruce Clark indicated he wishes to use the Merrymans Mill site to park his trucks used in his business and to perform maintenance service on them at the garage on this site.

At the hearing in this matter, the attorney for the Petitioner proposed to amend the Petition for a Special Hearing from a Class II Trucking Facility to a nonconforming use. Objections were noted by counsel for the Protestants and Deputy People's Counsel. The Petitioner's attorney indicated that in filling out the Petition they were guided by the Zoning Office for Baltimore County who described the proposed use as a Class II Trucking Facility, described in the Baltimore County Zoning Regulations (hereinafter "BCZR") Section 101 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, 1976]." BCZR Section 104 regulates Nonconforming Uses and is attached hereto.