

§ 506.10
§ 26-132, BCC

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF		
WIL-KEL LLC -LEGAL OWNER;	*	COUNTY BOARD OF APPEALS
MCDONALD'S CORP.-CONTRACT PURCHASER		
FOR SPECIAL EXCEPTION AND VARIANCE	*	OF
ON PROPERTY LOCATED ON THE NEC		
PULASKI HIGHWAY AND 66TH STREET	*	BALTIMORE COUNTY
(7500 PULASKI HIGHWAY)		
15TH ELECTION DISTRICT	*	CASE NO. 98-263-XA
7TH COUNCILMANIC DISTRICT		

* * * * *

RULING ON MOTION TO DISMISS

This case comes to the Board of Appeals of Baltimore County based on an appeal from a decision of the Zoning Commissioner in which Petitions for Special Exception and Variance were granted by Order dated March 20, 1998. A public hearing took place on July 1, 1998. This appeal relates to the granting of the special exception only. The Appellants, John-Michael Fleig and Edward J. Unitas, appeared pro se. The Petitioner was represented by Stanley S. Fine, Esquire.

Because the Appellants were present without counsel, the Board permitted a much freer exchange between the parties in order to provide a forum wherein all sides of the issues could be heard and addressed.

Counsel for Petitioner had filed a pre-hearing "Motion to Dismiss" a copy of which was forwarded to the Appellants at the address stated on the appeal check for \$275.00 paid at the time the appeal was filed. In his "Motion to Dismiss," Mr. Fine requested dismissal of the appeal based on two factors:

1. The appeal was defective on its face by virtue of Rule 3a. of the Rules of Practice and Procedure of this Board that require that the names and addresses of persons taking an appeal must appear on the notice. Since the Appellants did not conform with this requirement,

Petitioners requested a dismissal; and

2. The Appellants lack standing based on case law outlined in the motion, that the Appellants were not "aggrieved or feeling aggrieved" by the decision of the Zoning Commissioner. (Baltimore County Code Section 26-127(d)(3); see also id. Section 26-132.)

As to the first issue, while it is true that the Appellants did not specifically state their addresses, their names are stated on the appeal petition, and the check for \$275.00 clearly shows Mr. Unitas's signature and his business address as "Unitas, Inc. t/a Rosedale Texaco, 7514 Pulaski Highway, Baltimore, MD 21237 (phone 410-866-8720)." The Appellants testified that they believed the filing of the form and payment of the costs were sufficient to comply with Rule 3a. While technically not correct, the Board has examined the file and but for omission of addresses the appeal is in compliance with Rule 3a. It is in writing, signed by the Appellants, properly directed to the Department of Permits & Development Management, and accompanied by the cost of appeal for at least the question of the special exception.

It was the conclusion of the Board that the requirements for noting an appeal had been substantially complied with and that the failure to provide addresses is a technical irregularity which, on that basis alone, does not warrant a dismissal of the proceedings. To dismiss these proceedings for such a technical irregularity would only serve to deprive the Appellants of their legal rights to entertain such an appeal.

In the Town of Somerset v. Montgomery County Board of Appeals,

245 Md. 52, 225 A2d 294 decided in 1966 by the Maryland Court of Appeals, that court held:

"Where there is compliance with the substance of the requirements of statutes or rules and the other parties have not been prejudiced, technical irregularities cannot be made the basis for depriving persons of the opportunity to assert their legal rights."

As to the second issue of standing, both Mr. Unitas and Mr. Fleig had the opportunity to present their reasons as to why they felt "aggrieved" by the decisions made by the Zoning Commissioner in granting the special exception, and while not appealed, the variances which were granted. It was their contention that the property had not been adequately posted, and that two separate signs should have been posted in more conspicuous locations to alert the community as to the conditions that were being requested. The law requires only one sign, and the file clearly indicates that the posting took place at 7500 Pulaski Highway, which is the legal address of the subject site, reciting the case number, time, and place of the Zoning Commissioner's hearing.

Mr. Fleig acknowledged that he was not a property owner but was the "heir apparent" of his grandmother's property located at 1511 Odell Avenue. His grandmother was not present at the hearing, nor did Mr. Fleig have any papers authorizing him to speak on behalf of his grandmother.

Mr. Unitas also acknowledged that he was not the property owner of the Texaco station, but operated it at 7514 Pulaski Highway. The station itself is owned by a subsidiary company of Texaco. Mr. Fleig cited concerns of the community relative to traffic, safety, environmental concerns, and the fact that the site

was not, in his opinion, appropriate for the type of operation proposed. Mr. Unitas also cited similar concerns and denied that the appeal was based on what would be increased competition of the gas sales on the subject site as proposed by the Petitioner.

Both Appellants stated that the local community associations had not had ample opportunity to express their concerns about the proposed McDonald's and gas sales on the site. Neither acknowledged they were authorized to represent the two local community associations (Rosedale Improvement Association and the Chesaco Improvement Association), nor did they have Rule 8 representation authority. Both gentlemen felt that the zoning process was flawed, and that Pulaski Highway was already saturated with commercial activities and did not need another such venture.

Mr. Fine outlined the procedures taken in compliance with the zoning regulations, and that he had met with representatives of the local community association concerning the site plans and of working with the community to develop suitable signage that would direct traffic on Route 40 to the residential area. The Board's file indicates the presence of a sign-in sheet at the Zoning Commissioner's hearing, but does not represent any Protestants. The property was clearly advertised in The Jeffersonian newspaper, the first publication appearing on February 5, 1998.

Section 26-132 of the Baltimore County Code provides that:

a. Any person or persons jointly or severally, or any taxpayer aggrieved or feeling aggrieved by any decision or order of the Zoning Commissioner or the director of zoning administration and development management shall have the right to appeal therefrom to the County Board of Appeals."

Section (b) proceeds to define duly constituted civic, improvement

or community associations as coming within the "aggrieved" definition provided certain standards are satisfied. Since the latter was not evident in this case, the Board is left to determine whether the Appellants are "aggrieved" or "feeling aggrieved."

While Maryland law is generally lenient as to administrative bodies and the right of appeal, nevertheless the Board has an obligation not to entertain appeals that are without merit and the Appellants lack standing. The Maryland Court of Appeals has provided guidelines to determine whether or not a party is in fact "aggrieved." The Appellants have not stated any significant factors not already taken into consideration by the Zoning Commissioner, nor did not allege any in their notice of appeal. Neither Appellant is an adjoining, confronting or nearby property owner, and as such cannot be deemed to be specifically damaged, and therefore not a person aggrieved. Neither Appellant was able to establish that their personal or property rights were specifically, especially, or adversely affected by the zoning decision.

Reaching its decision, the Board must be governed by the determination of whether a person aggrieved and therefore entitled to appeal is a different determination from the result on the merits of the case itself. The essential question is whether the property owner may be thought to be specially damaged. To be specially damaged, the person bringing the appeal must suffer a wrong differing in character and kind from that suffered by the general public. In this case, the Appellants have not established to the Board by the weight of any testimony or evidence that they have such distinguishing interests.

While the Board takes a liberal view of what constitutes an "aggrieved" person, it must also consider the rights of the parties against whom the alleged grievance is directed. To be "aggrieved" one must have "cause for just complaint." To be "aggrieved" or "feeling aggrieved" requires a wrong or suffering that is different in character or kind from that suffered by the general public. Are the property rights of that individual person adversely affected in a manner different than those of the public generally? While the Appellants alleged defective notice, the facts are quite clear that the sign was posted in a conspicuous place on the legal address of the property. The two local community associations did not register any complaints relative to the matters referenced therein. The Petitioner has offered to place a community sign which will properly traffic on Route 40 to the residential community, and identify the Rosedale residential area.

The issues raised by the Appellants concerning site design /plan, traffic, health, safety and general public welfare are all adequately covered in the Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. While this is a de novo hearing, neither Protestant had any substantive facts that would establish any injury or harm to the community or themselves that would give serious contention to their appeal. Mr. Unitas acknowledged that the increased competition to his gasoline station was not an issue. Neither Appellants were property owners. The mere fact that both individuals were of the opinion that the proposed facility does not belong in the area is not sufficient grounds to file an appeal.

Having publicly deliberated this matter at the conclusion of this Motion hearing on July 1, 1998, and for the reasons stated above, the Board hereby unanimously grants Petitioner's Motion to Dismiss and will so order.

O R D E R

IT IS THEREFORE THIS 30th day of July, 1998
by the County Board of Appeals of Baltimore County

ORDERED that Petitioner's Motion to Dismiss, having been heard, argued, considered, and publicly deliberated, be and is hereby GRANTED; and it is further

ORDERED that the captioned appeal be and is hereby DISMISSED.

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.

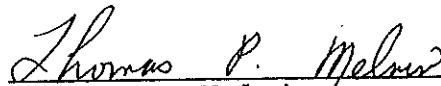
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY



Charles L. Marks, Panel Chairman



Harry E. Buchheister, Jr.



Thomas P. Melvin



County Board of Appeals of Baltimore County

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

10CR

June 23, 1998

John-Michael Fleig
1511 Odell Avenue
Baltimore, MD 21237

Edward J. Unitas
Texaco Station
7514 Pulaski Highway
Baltimore, MD 21237

Stanley S. Fine, Esquire
ROSENBERG PROUTT FUNK & GREENBERG, LLP
2115 First Maryland Building
25 S. Charles Street
Baltimore, MD 21201

RE: Case No. 98-263-XA
Wil-Kel, LLC /McDonald's Corp.

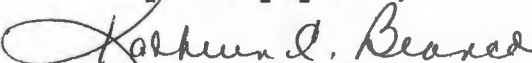
Gentlemen:

The subject matter is scheduled before the Board of Appeals for a motion only hearing on Wednesday, July 1, 1998 for the purpose of receiving oral argument on Petitioner's Motion to Dismiss.

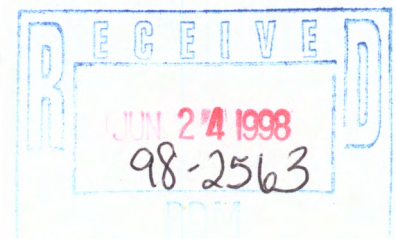
The Board is also holding Thursday, August 27, 1998, for hearing on the merits of this case depending upon the outcome of the above-referenced motion hearing. Please be sure your calendars are marked for both the July 1st motion hearing and the additional date of August 27th in the event this case does go forward on the merits.

Should you have any questions, please call me at 410-887-3180.

Very truly yours,


Kathleen C. Bianco
Administrator

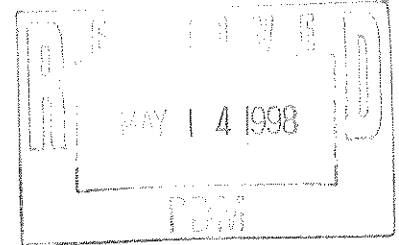
cc: McDonald's Corporation /Messrs. Charles
Twill, Jim Frattini and Bharat Parikh
Mary E. Mullan /Mullan Enterprises, Inc.
David Martin /G.W. Stephens, Jr. and Assoc., Inc.
People's Counsel for Baltimore County
Pat Keller /Planning Director
Lawrence E. Schmidt /Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney





County Board of Appeals of Baltimore County

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



Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

May 13, 1998

NOTICE OF ASSIGNMENT /MOTION HEARING

CASE #: 98-263-XA

IN THE MATTER OF: WIL-KEL LLC -Legal Owner;
MCDONALD'S CORP. -Contract Purchaser -Petitioners
7500 Pulaski Highway 15th E; 7th C
(Petitions for Special Exception & Variance
GRANTED; appeal as to special exception only.)

Has been scheduled for a MOTION ONLY HEARING for argument on a Motion to Dismiss filed by Counsel for Petitioner; and has been

ASSIGNED FOR: WEDNESDAY, JULY 1, 1998 @ 9:00 a.m.

NOTICE: This matter has been scheduled for the purpose of receiving oral argument only on Petitioner's Motion to Dismiss.

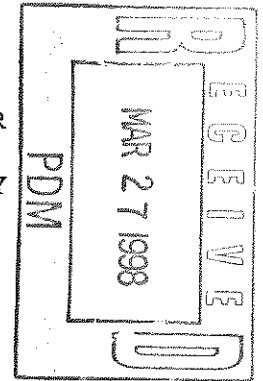
Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

cc: Appellants /Protestants : John-Michael Fleig and Edward J. Unitas
Counsel for Petitioner : Stanley S. Fine, Esquire
Petitioner : McDonald's Corporation /Messrs. Charles
Twill, Jim Frattini and Bharat Parikh
Mary E. Mullan /Mullan Enterprises, Inc.
David Martin /G.W. Stephens, Jr. and Associates, Inc.
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

IN RE: PETITIONS FOR SPECIAL EXCEPTION * BEFORE THE
AND VARIANCE - NE/Corner Pulaski * ZONING COMMISSIONER
Highway and 66th Street * OF BALTIMORE COUNTY
(7500 Pulaski Highway) * Case No. 98-263-XA
15th Election District *
7th Councilmanic District *
Wil-Kel, LLC, Property Owner; *
McDonald's Corp., Contr. Lessee *



* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Exception and Variance filed by the owner of the subject property, Wil-Kel, LLC, by Mary Ellen Mullan of Mullan Enterprises, Inc., Member, and the Contract Lessee, McDonald's Corporation, by Charles Twill, Real Estate Manager, through their attorney, Stanley S. Fine, Esquire. The Petitioners request a special exception to permit an automotive fuel service station use in combination with a fast food restaurant, pursuant to Section 405.4.E.10 of the Baltimore County Zoning Regulations (B.C.Z.R.), and variance relief from the B.C.Z.R. as follows: 1) From Section 405.4.A.2.b to permit a landscape transition area of 1 foot in lieu of the required 10 feet; 2) from Section 409.8.A.4 to permit a set back from a public street right-of-way line to a parking space of 5 feet in lieu of the required 10 feet; 3) from Section 450.4.I.5.II.b.V to permit two freestanding signs, each with 141.84 sq.ft. total in lieu of the maximum permitted 100 sq.ft. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petitions were Charles T. Bogdanowicz, a representative of Amoco Oil Company, Jim Frattini and Bharat Parikh, representatives of McDonalds Corporation, David Martin,

Landscape Architect with George W. Stephens, Jr. and Associates, Inc., who prepared the site plan for this property, and Stanley S. Fine, Esquire, attorney for the Petitioners.

Testimony and evidence offered revealed that the subject property consists of a gross area of 2.12 acres, more or less, zoned B.R.-A.S., and is located in a highly commercial/industrial area on Pulaski Highway, not far from the Baltimore City line. The property has frontage along both Philadelphia Road (northwest side) and Pulaski Highway (southeast side). Previously, the property was occupied by the Pulaski Lumber company which has since left the site and the existing building remains vacant. The Petitioners propose razing the existing building and constructing a combination McDonald's restaurant/Amoco Oil gasoline station on the subject property. As shown on the site plan, a new building of 4640 sq.ft. will be constructed which will contain both the restaurant and gasoline sales facility, which will include the sale of convenience items. The Amoco Oil operation will occupy 1470 sq.ft. of that total, and the McDonald's restaurant, 3,170 sq.ft. Additionally, a new parking lot will be constructed providing 61 parking spaces. There is no variance requested as to the number of parking spaces provided for this site. There will be two curb cuts to provide vehicular access to the site from Pulaski Highway, and an additional two curb cuts from Philadelphia Road.

Further testimony and evidence offered revealed that the combination use approach is rapidly expanding nationwide and more particularly in the Baltimore-Metropolitan area. This will be the second combination McDonald's/gasoline service station in the Baltimore-Metropolitan area. The first is located in Baltimore City and photographs of that site were submitted at the hearing. The focus of this marketing approach is to

provide the public with one-stop convenience shopping, wherein gasoline, convenience items, and fast food can be purchased at one site.

As to the Petition for Special Exception, it is to be noted that the property is located immediately across from the Rosedale Industrial Park, a major manufacturing/employment center. The majority of the properties that abut this site are zoned either M.L. or a business zone (i.e., B.L., and/or B.R.). In my judgment, it is clear that the Petition for Special Exception should be granted. The proposed use is entirely appropriate at this location and will cause no detrimental impacts on the health, safety or general welfare of the surrounding locale. To the contrary, the use proposed represents an upgrade to this community and an opportunity to improve and utilize a long-vacant property. The Petitioners have presented sufficient evidence to satisfy the burdens set forth in Section 502.1 of the B.C.Z.R. For all of these reasons, the Petition for Special Exception should be granted.

As noted above, three variances were requested. Two of the variances relate to setback distances to the landscape transition area and the distance between the parking lot and a public street. These variances are justified based upon the unique characteristics of the property. An examination of the site plan shows that the property is indeed unique, by virtue of its unusual shape. More importantly, the property's location between two major roads is a significant factor. The layout of the proposed improvements, including the parking lot is appropriate. It is also to be noted that these two variances are supported by the Office of Planning.

The final variance relates to signage on the subject site. This variance is not supported by the Office of Planning. As shown on the site plan, the Petitioner proposes constructing two freestanding signs advertis-

ing the Amoco and McDonald's operations. One of the signs would be located facing traffic on Pulaski Highway, and the second sign, facing traffic on Philadelphia Road.

Again, the uniqueness of this property as it relates to its location between two major roadways is a persuasive factor in the granting of this variance. It is to be noted that a business located immediately north of the subject site (Texaco) uses a similar sign package. That is, photographs submitted at the hearing show a Texaco sign facing traffic on Pulaski Highway, and a second similar sign facing traffic on Philadelphia Road. The unusual configuration of the property, and the fact that access thereto would be from both Philadelphia Road and Pulaski Highway, are compelling factors. Thus, the variance as to the signs proposed shall also be granted.

It is also to be noted that a small portion of this site abuts 66th Street (Summit Avenue) a small roadway that leads from Pulaski Highway towards the residential community of Rosedale, located on the other side of Philadelphia Road. The Petitioner indicated that preliminary negotiations had been initiated with the community association about the construction of a community sign on that portion of the subject property. This community sign would direct traffic on Pulaski Highway to the residential community and identify the entrance thereto. In my judgment, the construction of such a sign is entirely appropriate and should be permitted.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons set forth above, I am persuaded that the relief requested should be granted, subject to the terms and conditions set forth below.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 20th day of March, 1998 that the Petition for Special Exception to permit an automotive fuel service station use in combination with a fast food restaurant, pursuant to Section 405.4.E.10 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from the B.C.Z.R. as follows: 1) From Section 405.4.A.2.b to permit a landscape transition area of 1 foot in lieu of the required 10 feet; 2) from Section 409.8.A.4 to permit a setback from a public street right-of-way line to a parking space of 5 feet in lieu of the required 10 feet; and, 3) from Section 450.4.I.5.II.b.V to permit two freestanding signs, each 141.84 sq.ft. total in lieu of the maximum permitted 100 sq.ft., in accordance with Petitioner's Exhibits 1 and 2, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

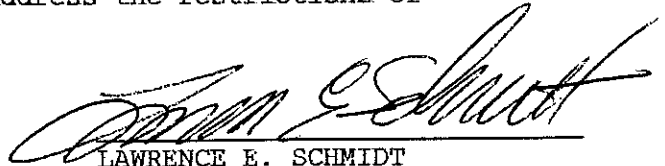
2) The relief granted here is limited to development of the site in accordance with the site plan submitted into evidence as Petitioner's Exhibit 1.

3) Landscaping of the property shall be in accordance with the landscape plan submitted into evidence as Petitioner's Exhibit 2.

4) There shall be no signs on the property other than those shown on the site plan/landscape plan. Specifically, after the businesses on the property have been open for a period of thirty (30) days, the Petitioners shall not be permitted to employ any banners, balloons, or other means of advertising, but for those signs permitted. This restriction is intended to eliminate any temporary signs on the site except as

may be allowed under the B.C.Z.R. Obviously, this restriction is not intended to restrict the Petitioners' ability to construct the signs shown on the site plan nor interfere with permanent signs affixed to the building and pump islands.

5) When applying for a building permit, the site plan and/or landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt", is written over a horizontal line.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs



Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at

7500 Pulaski Highway

which is presently zoned

BR-AS

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 Exception under the Zoning Regulations of Baltimore County, to use the herein described property for an automotive fuel service station in combination with a fast food restaurant per Section 405.4.E.10 BCZR.

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

I, or we, agree to pay expenses of above Special Exception 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:

McDonald's Corporation

(Type or Print Name)

By:

Signature CHARLES TWILL, REAL ESTATE MANAGER

250 W. Pratt Street, 17th Floor

Address

Baltimore

MD

21201

City

State

Zipcode

Attorney for Petitioner:

Stanley S. Fine

(Type or Print Name)

Signature Stanley S. Fine

25 S. Charles St., Suite 2115

Address

Baltimore

MD

21201

City

State

Zipcode

Phone No. (410) 727-6600

Legal Owner(s):

Wil-Kel, LLC

(Type or Print Name)

Signature MARY ELLEN MULLAN, MEMBER

(Type or Print Name)

Signature

2330 W. Joppa Road (410) 494-9200

Address

Phone No.

Lutherville

MD

21093

City

State

Zipcode

Name, Address and phone number of representative to be contacted.

David Martin, c/o G.W. Stephens & Assoc.

Name

658 Kenilworth Dr., Towson, MD 21204

Address

Phone No.

(410) 825-8120

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates Next Two Months

ALL OTHER

REVIEWED BY: DATE

DROP OFF
NO REVIEW

1/14/98 uer

98-263-XA



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at

7500 Pulaski Highway

which is presently zoned

BR-AS

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 Variance from Section(s) 405.4.A.2.b - to permit a landscape transition area of 1' in lieu of the required 10'; 409.8.A.4 - to permit a 5' setback from a public street right of way line to a parking space in lieu of the required 10'; 450.4 Permanent Signs Table Section 5(b) - to permit two freestanding signs each with 141.84 sq. ft. in lieu of the required 100 sq. ft.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

Abandoned facility on property being razed and replaced with new facility. Size, shape and location of lot make the compliance with the regulations a hardship and practical difficulty.

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

I, or we, agree to pay expenses of above Variance 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.

(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:

McDonald's Corporation
(Type or Print Name)

By: Charles Will
Signature CHARLES WILL, REAL ESTATE MANAGER

250 W. Pratt Street, 17th Floor
Address

Baltimore MD 21201
City State Zipcode

Attorney for Petitioner:

Stanley S. Fine
(Type or Print Name)

Stanley S. Fine
Signature

25 S. Charles St., Suite 2115
Address
Baltimore MD (410) 727-6600
City State Zipcode

**DROP OFF
NO REVIEW**
Printed with Soybean Ink
on Recycled Paper
1/14/98
402

Legal Owner(s):

Wil-Kel, LLC
(Type or Print Name)

May Ellen Mullan
Signature MAY ELLEN MULLAN, MEMBER

(Type or Print Name)

Signature

2330 W. Joppa Road (410) 494-9200
Address Phone No.

Lutherville MD 21093
City State Zipcode
Name, Address and phone number of representative to be contacted.

David Martin, c/o G.W. Stephens & Assoc
Name

658 Kenilworth Dr., Towson, MD 21204
Address
(410) 825-8120 Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING
unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

98-263-XA

Department of Permits and Development Management

Development Processing
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204



Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Korman, Director

October 23, 2003

GILDEA, LLC
Sebastian A. Cross
301 North Charles Street
Suite 900
Baltimore, Maryland 21201

Re: B/P Fuel Service Station
7500 Pulaski Highway
15th Election District

Dear Mr. Cross:

This letter responds to your request for a determination that changes in the sign approved under zoning variance case number 98-263-A be approved as being within the spirit and intent of the approved order and plan.

Staff has reviewed your plan and provided information and the following has been determined: the replacement of the sign area of the face to a 140.3 square foot area (a reduction from the 141.84 square foot existing sign) is approved. Signs A (9 square feet) and C (19.36 square feet) as shown on your plan are likewise approved all as being within the spirit and intent of the previously referenced zoning case. Also, note in 1/4 inches high letter on the plans that the signs are subject to the abatement provisions of Section 450.8 of the Baltimore County Zoning Regulations.

This response and a copy of the original zoning order must be included verbatim on 3 revised site plans. These plans must be provided to me with a copy of this letter for inclusion in the zoning office files. When applying for any permits provide a copy of these revised plans.

Visit the County's Website at www.baltimorecountyonline.info

Department of Permits and Development Management

Development Processing
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204



Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Korman, Director

October 23, 2003
Sebastian A. Cross
Page 2

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-387-3391.

Sincerely,

John L. Lewis

John L. Lewis
Planner II
Zoning Review

JLL/tjc

Visit the County's Website at www.baltimorecountyonline.info

IN RE: PETITIONS FOR SPECIAL EXEMPTION AND VARIANCE - NE/CORNER Pulaski Highway and 66th Street (7500 Pulaski Highway) 15th Election District 7th Councilmanic District

BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

Case No. 98-263-VA

Will-Kel, LLC, Property Owner;
McDonald's Corp., Contr. Lessee

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Exemption and Variance filed by the owner of the subject property, Will-Kel, LLC, by Mary Ellen Mullan of Mullan Enterprises, Inc., Member, and the Contract Lessee, McDonald's Corporation, by Charles Twill, Real Estate Manager, through their attorney, Stanley S. Fine, Esquire. The Petitioners request a special exemption to permit an automotive fuel service station use in combination with a fast food restaurant, pursuant to Section 405.4.3.10 of the Baltimore County Zoning Regulations (B.C.Z.R.), and variance relief from the B.C.Z.R. as follows: 1) From Section 405.4.4.2.b to permit a landscape transition area of 1 foot in lieu of the required 10 feet; 2) from Section 409.8.4.4 to permit a setback from a public street right-of-way line to a parking space of 5 feet in lieu of the required 10 feet; 3) from Section 450.4.1.5.II.b.V to permit two freestanding signs, each with 141.84 sq.ft. total in lieu of the maximum permitted 100 sq.ft. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petitions were Charles T. Bogdanowicz, a representative of Amoco Oil Company, Jim Fratinni and Bhaskar Parikh, representatives of McDonalds Corporation, David Martin,

ing the Amoco and McDonald's operations. One of the signs would be located facing traffic on Pulaski Highway, and the second sign, facing traffic on Philadelphia Road.

Again, the uniqueness of this property as it relates to its location between two major roadways is a persuasive factor in the granting of this variance. It is to be noted that a business located immediately north of the subject site (Texaco) uses a similar sign package. That is, photographs submitted at the hearing show a Texaco sign facing traffic on Pulaski Highway, and a second similar sign facing traffic on Philadelphia Road. The unusual configuration of the property, and the fact that access thereto would be from both Philadelphia Road and Pulaski Highway, are compelling factors. Thus, the variance as to the signs proposed shall also be granted.

It is also to be noted that a small portion of this site abuts 66th Street (Summit Avenue) a small roadway that leads from Pulaski Highway towards the residential community of Rosedale, located on the other side of Philadelphia Road. The Petitioner indicated that preliminary negotiations had been initiated with the community association about the construction of a community sign on that portion of the subject property. This community sign would direct traffic on Pulaski Highway to the residential community and identify the entrance thereto. In my judgment, the construction of such a sign is entirely appropriate and should be permitted.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and for the reasons set forth above, I am persuaded that the relief requested should be granted, subject to the terms and conditions set forth below.

Landscape Architect with George W. Stephens, Jr. and Associates, Inc., who prepared the site plan for this property, and Stanley S. Fine, Esquire, attorney for the Petitioners.

Testimony and evidence offered revealed that the subject property consists of a gross area of 2.12 acres, more or less, zoned B.R.-A.S., and is located in a highly commercial/industrial area on Pulaski Highway, not far from the Baltimore City line. The property has frontage along both Philadelphia Road (northwest side) and Pulaski Highway (southeast side). Previously, the property was occupied by the Pulaski Lumber company which has since left the site and the existing building remains vacant. The Petitioners propose razing the existing building and constructing a combination McDonald's restaurant/Amoco Oil gasoline station on the subject property. As shown on the site plan, a new building of 4640 sq.ft. will be constructed which will contain both the restaurant and gasoline sales facility, which will include the sale of convenience items. The Amoco Oil operation will occupy 1470 sq.ft. of that total, and the McDonald's restaurant, 3,170 sq.ft. Additionally, a new parking lot will be constructed providing 61 parking spaces. There is no variance requested as to the number of parking spaces provided for this site. There will be two curb cuts to provide vehicular access to the site from Pulaski Highway, and an additional two curb cuts from Philadelphia Road.

Further testimony and evidence offered revealed that the combination use approach is rapidly expanding nationwide and more particularly in the Baltimore-Metropolitan area. This will be the second combination McDonald's/gasoline service station in the Baltimore-Metropolitan area. The first is located in Baltimore City and photographs of that site were submitted at the hearing. The focus of this marketing approach is to

provide the public with one-stop convenience shopping, wherein gasoline, convenience items, and fast food can be purchased at one site.

As to the Petition for Special Exemption, it is to be noted that the property is located immediately across from the Rosedale Industrial Park, a major manufacturing/employment center. The majority of the properties that abut this site are zoned either M.L. or a business zone (i.e., B.L., and/or B.R.). In my judgment, it is clear that the Petition for Special Exemption should be granted. The proposed use is entirely appropriate at this location and will cause no detrimental impacts on the health, safety or general welfare of the surrounding locale. To the contrary, the use proposed represents an upgrade to this community and an opportunity to improve and utilize a long-vacant property. The Petitioners have presented sufficient evidence to satisfy the burdens set forth in Section 502.1 of the B.C.Z.R. For all of these reasons, the Petition for Special Exemption should be granted.

As noted above, three variances were requested. Two of the variances relate to setback distances to the landscape transition area and the distance between the parking lot and a public street. These variances are justified based upon the unique characteristics of the property. An examination of the site plan shows that the property is indeed unique, by virtue of its unusual shape. More importantly, the property's location between two major roads is a significant factor. The layout of the proposed improvements, including the parking lot is appropriate. It is also to be noted that these two variances are supported by the Office of Planning.

The final variance relates to signage on the subject site. This variance is not supported by the Office of Planning. As shown on the site plan, the Petitioner proposes constructing two freestanding signs advertising

WHEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 20th day of March, 1998 that the Petition for Special Exemption to permit an automotive fuel service station use in combination with a fast food restaurant, pursuant to Section 405.4.3.10 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from the B.C.Z.R. as follows: 1) From Section 405.4.4.2.b to permit a landscape transition area of 1 foot in lieu of the required 10 feet; 2) from Section 409.8.4.4 to permit a setback from a public street right-of-way line to a parking space of 5 feet in lieu of the required 10 feet; and, 3) from Section 450.4.1.5.II.b.V to permit two freestanding signs, each 141.84 sq.ft. total in lieu of the maximum permitted 100 sq.ft., in accordance with Petitioner's Exhibits 1 and 2, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) The relief granted here is limited to development of the site in accordance with the site plan submitted into evidence as Petitioner's Exhibit 1.
- 3) Landscaping of the property shall be in accordance with the landscape plan submitted into evidence as Petitioner's Exhibit 2.
- 4) There shall be no signs on the property other than those shown on the site plan/landscape plan. Specifically, after the businesses on the property have been open for a period of thirty (30) days, the Petitioners shall not be permitted to employ any banners, balloons, or other means of advertising, but for those signs permitted. This restriction is intended to eliminate any temporary signs on the site except as

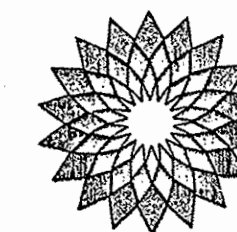
may be allowed under the B.C.Z.R. Obviously, this restriction is not intended to restrict the Petitioners' ability to construct the signs shown on the site plan nor interfere with permanent signs affixed to the building and pump islands.

5) When applying for a building permit, the site plan and/or landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

LES/bjs

Lawrence E. Schmidt
Lawrence E. Schmidt
Zoning Commissioner
for Baltimore County

CLIENT:



1 W. PENNSYLVANIA AVENUE, SUITE 900
TOWSON, MARYLAND

ALLIANCE ENGINEERING CONSULTANTS

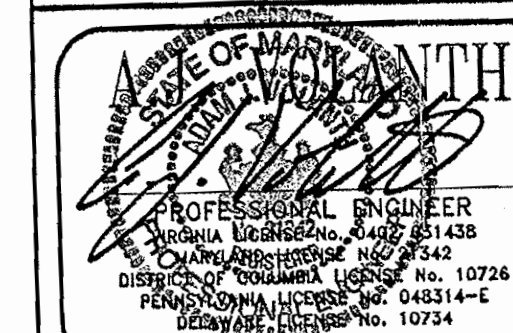


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DEVELOPMENT INFORMATION

SIGNAGE PERMIT PLAN
BP AMOCO
RE-IMAGING
PROGRAM

SITE ADDRESS

7500 PULASKI HIGHWAY
DISTRICT 15, TAX MAP 95
BALTIMORE COUNTY, MARYLAND 21212

BP STORE # 13405

SCALE:	AS SHOWN	ALLIANCE ZONE:	J.L.
DATE:	11/05/03	BP REPLY:	J.B.
DESIGNED BY:	M.J.G.	ALLIANCE PM:	M.S.
DRAWN BY:	T.A.C.	CAD #:	M37000.69
CHECKED BY:	A.J.V.	JOB #:	M0037000

DRAWING TITLE

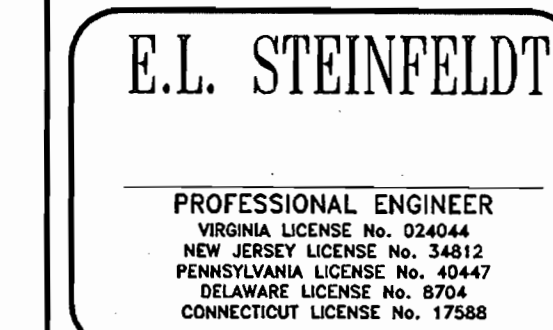
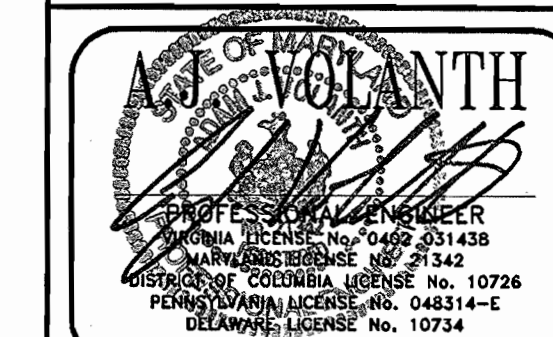
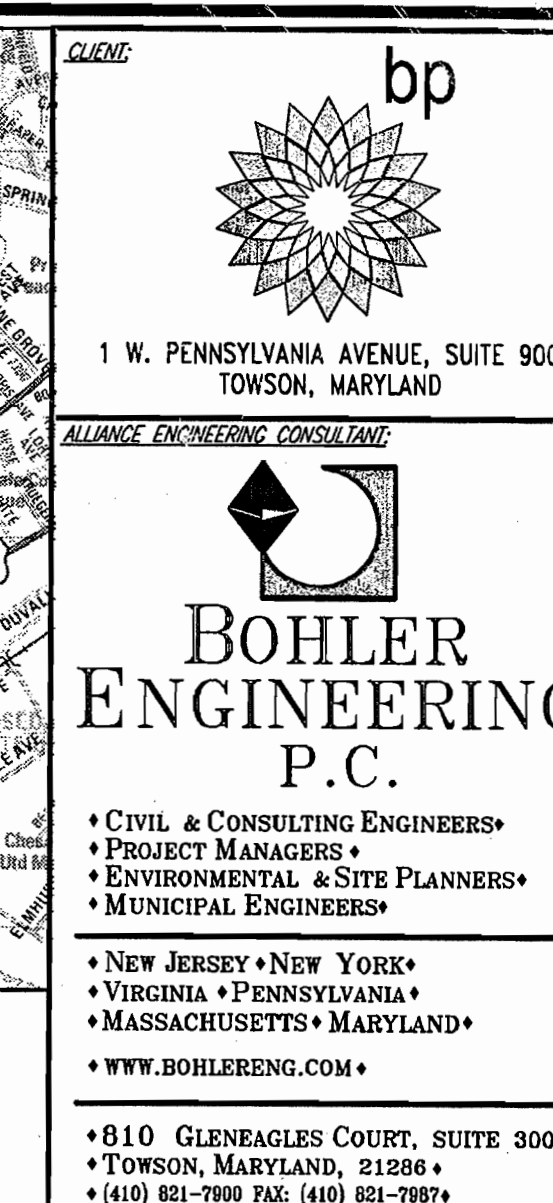
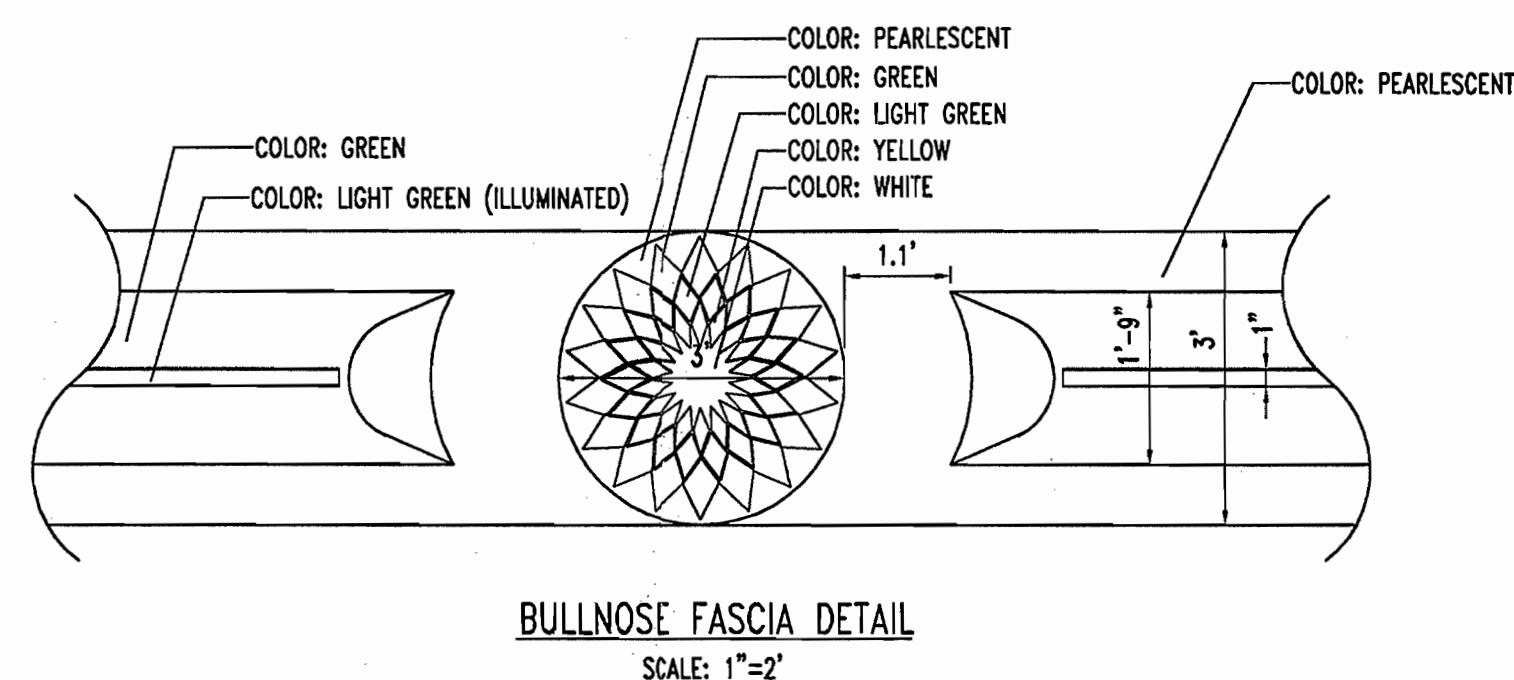
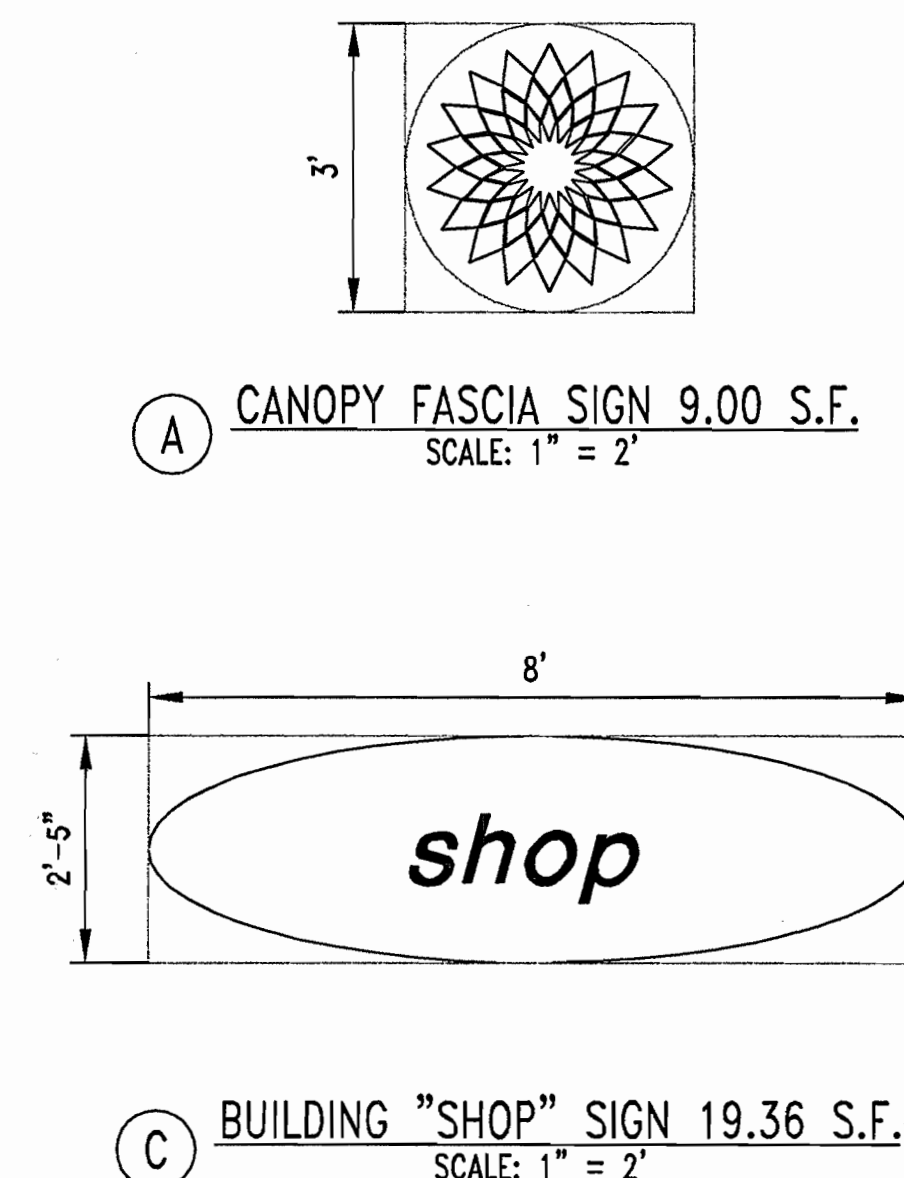
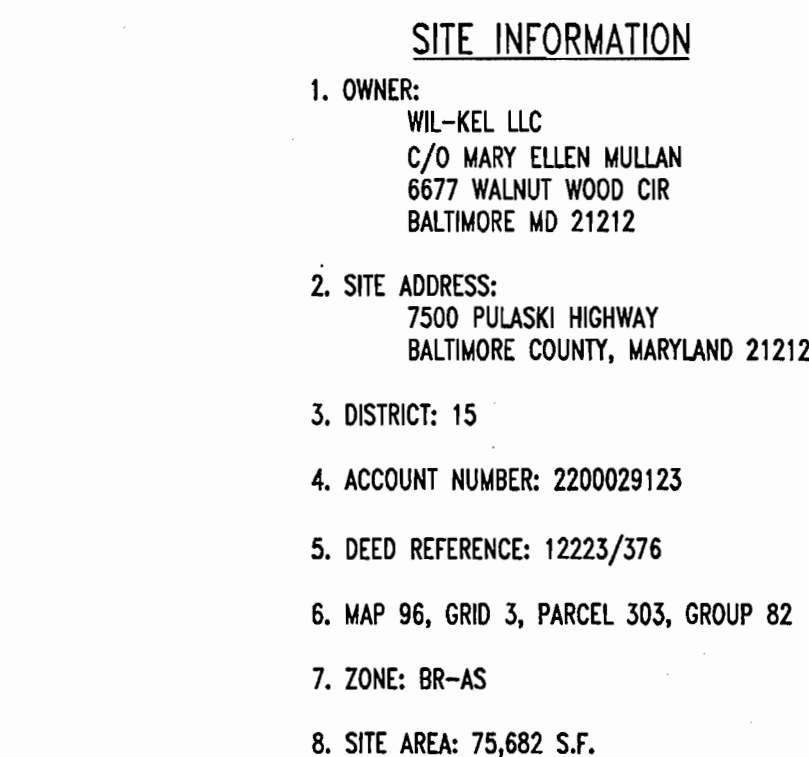
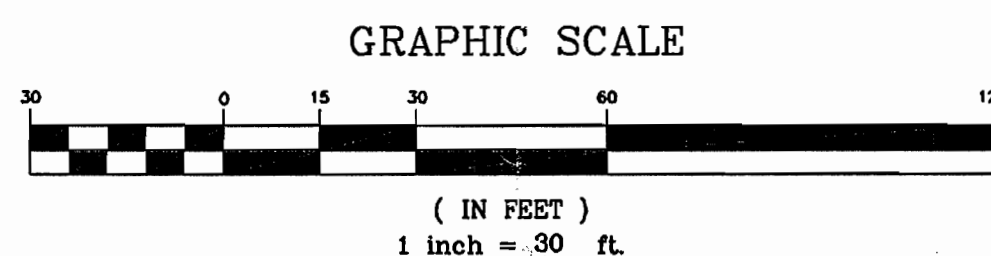
DECISION AND ORDER

SHEET NO.

2

OF 2

REV. No.



NO.	DATE	REVISION DESCRIPTION
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SITE ADDRESS:

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DISTRICT 15, TAX MAP 96
BALTIMORE COUNTY, MARYLAND 21212

BP STORE # 1340

SCALE: 1" = 30'	ALLIANCE Z&DM: J.L.
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DATE: 6/10/03	BP REP#: J.B.
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DESIGNED BY:	M.J.G.	ALLIANCE PM:	M.S.
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DRAWN BY:	R.S.S.	CAD /:	M37000.
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CHECKED BY:	A.J.V.	JOB #:	MD037000
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DRAWING TITLE:

SIGNAGE PLAN

SHEET NO:

1

OF 2 REV. No.

"THESE SIGNS WILL BE SUBJECT TO THE ABATEMENT PROVISIONS OUTLINED IN SECTION 450.8.D OF THE BALTIMORE COUNTY ZONING REGULATIONS"