SEVEN KIDS - ROYAL FARMS

99-199-X

99-199-X

CCT 3-C-00-9923

4-6-01 - CCT AFFIRMS CSA

Appended TO: CSA 5-4-01

(19990199)

ACTIVE AS OF 7/02

ORDERS
OPINIONS
MEMORANDUMS

1

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: January 3, 2003

TO: Arnold Jablon, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton
Board of Appeals

SUBJECT: **Seven Kids**
CBA No.: 99-199-X and CBA-99-127 and CBA-99-128
PDM File Nos.: 99-199-X Sunshine Avenue and Harford Road
Circuit Court Case No.: 03-C-00-9923

Circuit Court issued an Order on 4/6/01 AFFIRMING BOA. The case was then appealed to the Court of Special Appeals. The Court of Special Appeals issued a Mandate on 12/13/02 affirming the judgement. No further appeals have been taken in this matter. The Board of Appeals is closing and returning the file that is attached herewith.

Attachment: SUBJECT FILE ATTACHED

99-199-X

MANDATE

Court of Special Appeals

Maryland Relay Service
1-800-735-2258
TT/VOICE

CBA-99-127
CBA-99-128

No. 00490, September Term, 2001

Seven Kids, LLC et al.
vs.
Greater Kingsville
Civic Association, Inc. et al

JUDGMENT: November 13, 2002: Judgment affirmed; costs to be paid by appellants.
Unreported opinion by Wenner, J.

December 13, 2002: Mandate issued.

From the Circuit Court: for **BALTIMORE COUNTY**
00003C009923

STATEMENT OF COSTS:

Appellant(s):	
Lower Court Costs-	60.00
Steno Costs of Appellant-	172.50
Filing Fee of Appellant-	50.00
Brief of Appellant-	144.00
Record Extract-	1,868.40
Appellee(s):	
Brief of Appellee-PEOPLE'S COUNSEL	162.00
Brief of Appellee-	198.00

RECEIVED
DEC 17 2002
BALTIMORE COUNTY
BOARD OF APPEALS

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this **thirteenth** *day of* **December** **2002**

Leslie D. Gradet
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 490

September Term, 2001

SEVEN KIDS, LLC et al.

v.

GREATER KINGSVILLE CIVIC ASSOCIATION, INC., et al.

Eyler, James R.,
Adkins,
Wenner, William W.
(Ret., specially assigned),

JJ.

Opinion by Wenner, J.

Filed: November 13, 2002

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BALTIMORE COUNTY
BOARD OF APPEALS

#3C009923

This case involves a zoning petition for a special exception filed by appellants, Seven Kids, L.L.C. and Cloverland Farms Dairy, Inc., to permit the construction of a Royal Farm convenience store with fuel pumps on property located in Baltimore County. On 30 April 1999, the Deputy Zoning Commissioner for Baltimore County approved appellants' application for a special exception. Appellees, the Greater Kingsville Civic Association, the Long Green Valley Community Association, and other individual property owners, appealed to the Baltimore County Board of Appeals (hereinafter referred to as the "CBA"). The CBA held nine days of hearings on the special exception. On 31 August 2000, the CBA denied the special exception. The Circuit Court for Baltimore County affirmed the decision of the CBA, and this timely appeal followed.

The sole question presented for our consideration is whether the CBA incorrectly interpreted the statutory concept of "need" in the applicable zoning laws.

FACTUAL BACKGROUND

The subject property is located in Fork at the intersection of Harford Road and Sunshine Avenue. The property is zoned BL-CR (a commercial rural district in a business, local zone). Appellant Cloverland Farms, the contract purchaser of the subject property, is the largest dairy in Baltimore County. It operates numerous Royal Farm stores in Maryland, Delaware, and Virginia. Cloverland sought to develop the subject property as a 3,113

square foot Royal Farm store with five fuel pump islands and ten fueling spaces. The proposed use is permitted in a BL-CR zone only by special exception. To that end, appellants filed an application for a special exception, which was approved, with conditions, by the Deputy Zoning Commissioner for Baltimore County on 30 April 1999.[1] Appellees appealed to the CBA.

The CBA held nine days of hearings on the special exception beginning on 30 September 1999 and ending on 5 April 2000. On 31 August 2000, the CBA issued a written opinion and order denying appellants' petition for a special exception stating, in part, as follows:

> In the present case, the Board finds that the studies on the traffic population presented by the Petitioners do not support the need for an additional gas station at the proposed site. The study by Mr. Cronyn indicates that in 1995 the State Highway Administration conducted a study which showed that there were 8,775 trips per day on Harford Road. There were no counts available for Sunshine Avenue/Fork Road. The study conducted by Traffic Concepts in 1998 indicated that there were approximately 12,000 trips per day on Harford Road and

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[1] On 11 June 1999, the Director of the Department of Permits & Development Management ("DPDM") approved a limited exemption for appellants' original plan with fuel pumps. Shortly thereafter, the DPDM approved an alternate plan without fuel pumps. These approvals were also appealed by appellees to the CBA, which consolidated all of the matters. Arguments on all of the matters were presented at the hearing that began on 30 September 1999. Although the CBA denied the special exception that is the subject of the instant appeal, it upheld the grants by the DPDM of the limited exemptions. The limited exemptions are not at issue in this appeal.

another 5,000 to 6,000 on Sunshine Avenue/Fork Road.

Protestants introduced an exhibit (Protestants' Exhibit No. 1) which consisted of a traffic study of Harford Road conducted by Petitioner's expert, Kenneth Schmid, at the Harford County line on September 20, 1999. This exhibit was a compilation of traffic statistics gathered over a 48-hour period. It showed that traffic was almost non-existent during the middle of the night and was heavy during a 1½-hour morning and evening rush hour. This document showed that the highest number of trips on one day was 9,110.

The study presented by Mr. Cronyn (Petitioner's Exhibit No. 6) indicated that, within a radius of 1.5 miles of the subject site, the population between 1990 and the projected date of 2003 would increase by 81 people. The number of households in the area during the same time period was projected to increase by 48.

Protestants submitted a petition through witness, Carol Shaw, indicating opposition of individuals in the surrounding area to the construction of the proposed Royal Farm Store. Ms. Shaw had done an analysis of the petition and testified that within a one-mile radius around the proposed site approximately 664 adults lived in the area and 223 of them had pro-actively opposed the project by signing the petition.

The Board recognizes that the stifling of competition is no basis for denying a special exception with respect to the question of "need." However, the Board feels that the evidence shows a lack of need for either a convenience store or a gas station at the proposed site. Given the slight increase in the population of the surrounding area, and even assuming an increase of 3,225 trips per day on Harford Road between 1995 and 1998, the Board considers that there is

> no "need" established at the proposed site. This Board feels that the intent of the C.R. overlay district is to "provide opportunities for convenience shopping and personal services that are customarily and frequently needed by the rural residential and agricultural population and tourists." Although, in the course of our deliberations, one of the panel espoused some concern as to whether those commuting past the site could be likened to "tourists" and thereby included in the definition of "need," the Board unanimously agrees that "commercial centers within C.R. districts are not intended to be regional facilities providing specialty goods to a population outside of the rural area." We, therefore, cannot conclude that there is sufficient need shown in the transient population to warrant the granting of this special exception.

Appellants appealed to the circuit court, arguing that the CBA erred as a matter of law in failing to take into consideration commuter traffic on Harford Road in assessing the need for the granting of the special exception. The circuit court rejected this argument, holding that there was substantial evidence in the record to show that the CBA was not persuaded that there was a need for the proposed project. The circuit court wrote:

> Petitioners suggest that the Court should find legal error in the determination by the CBA that commuter traffic should not be part of the equation of need-generating traffic considerations, particularly in view of the apparent split on this issue disclosed during the public deliberation phase of the case. However, the CBA addresses this apparent dichotomy in its Opinion, wherein it determines unanimously that it cannot

> conclude that there is sufficient need shown in the transient population to warrant the granting of the Special Exception. This Court believes that the CBA did consider the existence of commuter traffic, but felt that it should not weigh it heavily in determining need. The CBA's findings of fact and inferences with respect to the absence of need were at the very least, reasonable and are entitled to some deference. The fact that the CBA chose to draw a distinction between commuters and tourists cannot be said to amount to an error of law. The CBA reasonably was not persuaded by the Petitioners, who bore the burden to persuade its members affirmatively of the existence of demonstrable need for the proposed project at the site.

STANDARD OF REVIEW

In *Eastern Outdoor Adver. Co. v. Mayor & City Council of Baltimore*, 128 Md. App. 494, 514-15(1999), *cert. denied*, 358 Md. 163 (2000), we set forth the standard of review applicable to appeals from the decisions of an administrative agency:

> [C]ourts recognize two standards of review of a decision of a zoning board: one for the board's conclusions of law and another for the board's findings of fact or conclusions of mixed questions of law and fact. When reviewing the board's legal conclusions, the court "must determine whether the agency interpreted and applied the correct principles of law governing the case and no deference is given to a decision based solely on an error of law." When reviewing findings of fact and conclusions regarding mixed questions, however, [we] "cannot substitute [our] judgment for that of the agency and must accept the agency's conclusions if they are based on substantial evidence and if reasoning minds could reach the same conclusion based on the record." If a court

> finds no substantial or sufficient evidence to support the factual findings of the Board, the Board's decision will be reversed because it was arbitrary and illegal.

(Citations omitted). Recently, in *Lucas v. People's Counsel for Baltimore County*, ___ Md. App. ____, No. 156, Sept. Term 2001, Slip Op. (filed September 26, 2002), after setting forth the above-quoted standard of review, we discussed further our role in reviewing the grant or denial of a special exception:

> The substantial evidence test is an "assessment of whether the record before the Board contained at least 'a little more than a scintilla of evidence' to support the Board's scrutinized action." *Friends of the Ridge v. Baltimore Gas & Elec. Co.*, 120 Md. App. 444, 466, 707 A.2d 866 (1998), *vacated in part*, 352 Md. 645, 724 A.2d 34 (1999)(citation omitted). The existence of such substantial evidence "pushes the Board's decision into the unassailable realm of a judgment call, one for which we may not substitute our own exercise of discretion." *Friends of the Ridge*, 120 Md. App. at 466.
>
> Because we repeat the reviewing task of the circuit court, this Court reevaluates, under the same standards, the decision of the agency, not that of the circuit court. *Carriage Hill-Cabin John, Inc. v. Maryland Health Resources Planning Comm'n*, 125 Md. App. 183, 211, 724 A.2d 745 (1999). The Court of Appeals has set out the applicable standard of review of the grant or denial of a special exception use:
>
> "The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority

to allow enumerated uses which the legislature has determined to be permissible *absent any fact or circumstance negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal."

Schultz [v. Pritts, 291 Md. 1, 11 (1981)](citations omitted; emphasis in original); see also *Eastern Outdoor [Adver. Co. v. Mayor & City Council of Baltimore*, 2002 Md. App. LEXIS 149, *32-34 (Sept. 6, 2002)].

DISCUSSION

We begin our analysis by examining the relevant statutory provisions. Section 259.2 of the Baltimore County Zoning

Regulations ("BCZR") explains the C.R. (Commercial, Rural) District that is at issue in the instant case:

> 1. The C.R. District is established to provide opportunities for convenience shopping and personal services that are customarily and frequently needed by the rural residential and agricultural population and tourists. It is intended that the C.R. District be applied only to areas where such facilities are not available within a reasonable distance, where sewerage treatment and a potable water supply can be provided without an adverse effect on the environment and neighboring uses, and where public roads are capable of handling the anticipated increase in traffic without adverse impacts on surrounding areas. The commercial centers within C.R. Districts are not intended to be regional facilities providing specialty goods to a population outside of the rural area.

BCZR 259.3.E provides additional requirements for the granting of a special exception in a C.R. District. It states that:

> In addition to the requirements generally imposed in the issuance of special exceptions by Section 502.1, the following requirements shall apply to the granting of special exceptions in C.R. Districts:
>
> 1. The petitioner shall document the need for the development at the proposed location.

"Need" has been defined to mean "expedient, reasonably convenient and useful to the public." *Neuman v. City of Baltimore*, 251 Md. 92, 98-99 (1968); *Baltimore County Licensed Beverage Ass'n v. Kwon*, 135 Md. App. 178, 193-94 (2000).

Appellants' contend that the CBA's refusal to consider the

project's convenience and usefulness to commuter traffic at the proposed location constitutes a legal mistake. Our review of the facts presented to the CBA, and the CBA's decision, leads us to conclude that the CBA did consider commuter traffic. We, therefore, reject appellants' contention.

It is clear from the above-quoted regulations that the requirement of showing need in order to obtain a special exception in a CR district was set forth to limit unnecessary growth in rural areas. Even assuming that the CBA declined to consider commuter traffic in determining need, that decision would have been a reasonable interpretation of legislative intent that would be accorded due deference. We need not linger over the issue of the CBA's interpretation of the zoning regulations, however, because the record clearly demonstrates that the CBA did consider commuter traffic.

In rendering its decision, the CBA specifically commented on the traffic and population studies presented by appellants. That evidence included testimony by Joseph Cronin, a real estate consultant and real estate economist, who testified as an expert in real estate market analysis and economic impact related to real estate. He testified that there are two levels of analysis with respect to whether there was a consumer need for the proposed project -- (1) "the residential market surrounding the particular site" and (2) "the commuter traffic along Harford

Road, which is going to be a major contributor to the retail development site."

Cronin testified that he defined the market area of the proposed project to be a ring about a mile and a half in radius around the proposed site of the convenience store and gas station. According to Cronin, in 1998 there were 2,181 people and 788 households living in that market area. The projected growth between 1998 and 2003 was only 22 households.

Cronin testified about the traffic along Harford Road. In support of his testimony, he relied upon a study conducted in 1998 by Traffic Concepts which indicated there were approximately 11,800 commuter trips a day on Harford Road in front of the proposed site. That study also indicated there were close to 6,000 trips going east and west across Sunshine Avenue and Fork Road in front of the proposed site. Cronin also referenced a 1995 traffic count performed by the State Highway Administration which indicated there were 8,775 trips per day through the intersection.

When asked whether the proposed convenience store and fuel service would be feasible, Cronin testified:

> The conclusions basically are that in the local market area that there's going to be [$]671,000, to $810,000 worth of sales per year from household residents within the market area that we defined. Assuming that we split the market with the existing retailers.

> Then that combined with the $3.7 million in sales that the commuter traffic is likely to generate really make the store work from a financial point of view. There's reasonable customer demand for the site to keep it operating properly, generate the sales volumes that we need.

The evidence presented by Cronin was disputed by several witnesses. Kenneth Schmid, an expert in traffic engineering, testified that Harford Road is a commuter-oriented roadway and that most of the traffic through the subject intersection is commuter traffic. During Schmid's cross-examination, evidence of traffic data collected over a 48-hour period during September 1999 was introduced. That data showed that traffic at the Harford County line of Harford Road was very light except during the morning and evening rush hours.

In addition to this evidence, there was testimony presented by Rozanne DiFonzo to show that the businesses in the immediate area were sufficient to serve the needs of the community. She testified that there is a Citgo gas station and mini-mart on the northeast corner of Harford Road and Sunshine Avenue, and a High's dairy, the Fork Deli and Bakery, and a pizza shop called Johnny Ryan's on the northwest corner of the intersection. DiFonzo also testified about an existing Wa-Wa convenience store and another one that has been approved for development, both located north of the subject site.

Carol Shaw also testified about the two Wa-Wa convenience

stores, stating that both are open twenty-four hours, both sell gasoline, and both have large convenience stores and ATM's. In addition, Shaw conducted a comparison of items sold in four area Royal Farms stores and items sold at the Highs, Fork Deli, Johnny Ryan's, and the Citgo located at the subject intersection. She concluded that there was no degree of difference between the High's store and the four Royal Farms stores she visited. In addition, Shaw testified that there were two other gas and convenience stores available to the immediate population. She identified Petersen's, a combination gas station, convenience store, and liquor store, and a 24-hour Shell gas station and mini-mart. According to Shaw, there are 11 convenience stores and five gas stations within a three-mile radius of the subject site. Shaw further testified that, within a five-mile radius of the subject site, there exist 54 convenience stores, 11 of which operate 24-hours a day, and 30 gas stations, 10 of which operate 24-hours a day.

All of this evidence and the written opinion of the CBA demonstrate that the CBA considered commuter traffic in reaching its conclusion. The evidence presented demonstrates that the issue of need was fairly debatable. There was substantial evidence to support the CBA's conclusion, and reasonable minds could reach the same conclusion, namely, that there was no need for either a convenience store or a gas station at the proposed

site. This determination by the CBA was a factual one which was clearly supported by more than a scintilla of evidence. Accordingly, we shall affirm.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANTS.

5/4/01

PETITION OF SEVEN KIDS, LLC, ET AL. FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE
	*	CIRCUIT COURT
	*	FOR
IN THE MATTER OF THE APPLICATION OF SEVEN KIDS, LLC., LEGAL OWNER, AND CLOVERLAND FARMS DAIRY, INC., CONTRACT PURCHASER, FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE SOUTHWEST CORNER OF SUNSHINE AVENUE AND HARFORD ROAD	*	BALTIMORE COUNTY
	*	
	*	CASE NO. 03-C-00-9923
	*	
	*	
	*	
CBA NO.: CBA-99-199-X	*	

* * * * * * * * *

NOTICE OF APPEAL

Seven Kids, LLC and Cloverland Farms Dairy, Inc., Petitioners/Appellants, by John H. Zink, III, with Venable, Baetjer and Howard, LLP, their attorneys, in accordance with Maryland Rule 8-202, file this Notice of Appeal from the Order of this Court dated April 6, 2001, and the appeal is to the Court of Special Appeals of Maryland.

John H. Zink, III
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517
(410) 494-6200
Attorneys for Petitioners Seven Kids, LLC
And Cloverland Farms Dairy, Inc.

✓

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of May, 2001, a copy of the foregoing Notice of Appeal was mailed to: J. CARROLL HOLZER, ESQUIRE, Holzer and Lee, 508 Fairmount Avenue, Towson, Maryland 21286, Attorney for Appellees; and to KATHLEEN C. BIANCO, Administrator, County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204, and PETER MAX ZIMMERMAN, ESQUIRE, Office of the People's Counsel, Baltimore County, 400 Washington Avenue, Room 47, Towson, Maryland 21204.

John H. Zink, III

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jhzink@venable.com

May 4, 2001

Mr. Tony Greaver
Circuit Court for Baltimore County
County Courts Building, Room M-08
401 Bosley Avenue
Towson, Maryland 21204

Re: Seven Kids, LLC and Cloverland Farms Dairy, Inc.
Case Number: 03-C-00-9923
Appeal to Court of Special Appeals

Dear Mr. Greaver:

I represent Seven Kids, LLC and Cloverland Farms Dairy, Inc., Appellants in the above matter, and a Notice of Appeal from Judge Kahl's Order dated April 6, 2001 has been filed. We are required under Maryland Rule 8-411 to order a transcript of the proceedings conducted on March 19, 2001.

I would appreciate your filing the original transcript with the Clerk of the Circuit Court for inclusion in the record, and I would appreciate receiving a copy of the transcript. It is my understanding that no deposit is required for the preparation of the transcript.

If you have any questions concerning this request, please feel free to give me a call.

Very truly yours,

John H. Zink, III

JHZ/cbm
cc: Clerk, Circuit Court for Baltimore County, Civil Division
Kathleen C. Bianco, Esquire
Carroll J. Holzer, Esquire
Peter Max Zimmerman, Esquire
TO BE INCLUDED IN THE RECORD OF CASE NO. 03-C-00-9923

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PETITION OF SEVEN KIDS, LLC, ET AL. FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE
IN THE MATTER OF THE APPLICATION OF SEVEN KIDS, LLC, LEGAL OWNER, AND CLOVERLAND FARMS DAIRY, INC., CONTRACT PURCHASER FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OF SUNSHINE AVENUE AND HARFORD ROAD	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
	*	Case No. 03-C-00-9923
	*	
	*	
CBA NO.: CBA-99-199-X		

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

COURT OF SPECIAL APPEALS
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OPINION AND ORDER OF COURT

This case arose out of a Petition for Special Exception filed by the owners of the subject property, Seven Kids, LLC, and the contract purchaser Cloverland Farms Dairy, Inc. (hereinafter "Cloverland") to permit an automobile service station to be used in combination with a food store having a sales area larger than 1,500 square feet pursuant to Sec. 405.4.E.1 of the Baltimore County Zoning Regulations (hereinafter "BCZR"). The subject site is located on the southeast corner of Sunshine Avenue and Harford Road in Fork, Maryland.

The property is zoned BL-CR. Cloverland wishes to lease 1.21 acres of a 23.34 acre site to construct a 3,113 square foot Royal Farm convenience store with a sales floor area of 2,799.5 square feet. Cloverland proposes five (5) fuel pump islands with

ten (10) pumps, operating 24 hours a day. The proposed use is permitted in this zone only by Special Exception. The application is governed by the BCZR Special Exceptions, Section 502.1; Section 259, relating to Districts; Section 405, Fuel Service Stations; Section 230 Business, Local Zone; and particularly Sections 259.2A and 259.3, applicable to CR Districts.

The Deputy Zoning Commissioner issued an opinion granting the requested Special Exception with conditions on April 30, 1999. The Protestants appealed to the Baltimore County Board of Appeals (hereinafter "CBA") on May 26, 1999. On June 11, 1999, the Director of the Department of Permits & Development Management (hereinafter "DPDM") approved a limited exemption for Petitioners' original plan with fuel pumps and in early July approved an alternate plan without fuel pumps. These approvals were also appealed by Protestants to the CBA, which elected to consolidate the matters into one hearing, beginning on September 30, 1999 and extending over nine days until concluding on April 5, 2000. Public deliberation was held on June 22, 2000, and on August 31, 2000, the CBA upheld the grants by DPDM of limited exemptions under Section 26-171 of the Baltimore County Code (hereinafter "Code"), but denied the Special Exception in a unanimous Opinion and Order. Petitioners appealed to this Court.

In considering this matter, the Court is aware of its role as expressed by Judge Moylan for the Court of Special Appeals in the recently decided case of Pollard's

Towing, Inc., et al. v. Berman's Body Frame & Mechanical, Inc., T/A Berman's Towing, No. 249, Sept. Term, 2000, filed March 7, 2001. He wrote, at page 13 of the slip opinion, "The decision of the circuit court . . . is before us only in a pro forma capacity, as the necessary procedural conduit by which the decision of the administrative agency gets to us for our review." That admonition notwithstanding, this Court will conduct its otherwise superfluous review in the unlikely event that Judge Moylan's court is denied its opportunity to do so.

SCOPE OF REVIEW

The scope of judicial review is narrow. The Court must affirm the zoning board decision where it is fairly debatable with respect to the agency's findings of facts and inferences drawn therefrom. See Board of Physicians Quality Assurance v. Banks, 354 Md. 59, 67-69 (1999); Board of County Comm'rs. v. Holbrook, 314 Md. 210, 218 (1988); Eger v. Stone, 253 Md. 533, 542 (1969); Snowden v. City of Baltimore, 224 Md. 443, 448 (1961).

The scope of review is likewise narrow with respect to the application of law to the facts and/or to mixed questions of law and fact. Stover v. Prince George's County, 132 Md. App. 373, 380-82 (2000); Caucus Distributors v. Maryland Sec. Comm'r., 105 Md. App. 25, 32-35 (1995); Maryland State Police v. Lindsey, 318 Md. 325, 333-35 (1990); Baltimore Lutheran H.S. v. Employment Sec. Admin., 302 Md. 649, 663 (1985); Ramsay, Scarlett & Co. v. Comptroller, 302 Md. 825, 837 (1985). Even with

regard to matters of legal interpretation, the scope of review remains narrow. In Banks, *supra*, the Court focused on matters of legal interpretation. Judge Eldridge wrote:

> "Even with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts . . . Furthermore, the expertise of the agency in its own field should be respected . . . (legislative delegations of authority to administrative agencies will often include the authority to make 'significant discretionary policy determinations.') . . . ." 354 Md. at 69. (Citations omitted).

Accordingly, where there is room for interpretation, the courts "ordinarily give some weight" to agency construction of the statute. Magan v. Medical Mutual Liab. Ins. Co., 331 Md. 535, 546 (1993). In Magan, Judge McAuliffe wrote:

> "The degree of weight to be given an administrative interpretation varies according to a number of factors, including whether the interpretation has resulted in a contested adversary proceeding or rule-making process, whether the interpretation has been publicly established, and the consistency and length of the administrative interpretation or practice. *Comptroller v. John C. Louis Co.*, 285 Md. 527, 544-45 (1979)."

In administrative proceedings in Maryland concerning the grant of a special exception, the "substantial evidence" and "fairly debatable" standard is applicable. E.g., Schultz v. Pritts, 291 Md. 1 (1981); Turner v. Hammond, 270 Md. 41 (1973). The "fairly debatable" standard was defined in Eger v. Stone, 253 Md. 533, 538 (1969):

> "If the issue before an administrative body is 'fairly debatable,' that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the Court will not substitute its judgment for that of the administrative body, even if the administrative body came to a conclusion which the Court would not have reached on the evidence."

See also Germenko v. County Bd. of Appeals of Baltimore County, 257 Md. 706, 711 (1970). Accord Ginn v. Farley, 43 Md. App. 229 (1979); Board of County Comm'rs for Prince George's County v. Meltzer, 239 Md. 144 (1965).

In Prince George's County v. Meininger, 264 Md. 148, 152 (1972), it was held that the "substantial evidence" requirement in a case of denial was satisfied by little more than a "scintilla of evidence" because the burden of proof is on the appellant. The zoning agency's decision should be affirmed unless there is "no evidence at all" to support the decision. Rockville Fuel & Feed Co. v. Board of Appeals, 257 Md. 183, 193 (1970). These and other cases indicate that an administrative appellant has a very heavy burden to demonstrate as arbitrary an agency finding that the applicant did, or did not sufficiently prove his case.

The Court, in reviewing this case, will, of course, be mindful of its limited role in the zoning process. In Maryland, a court will not overturn zoning decisions which are "fairly debatable." Cox v. Prince George's County, 86 Md. App. 179 (1991); Montgomery County v. National Capital Realty Corporation, 267 Md. 364 (1972); County Council v. Prestwick, 263 Md. 217 (1971). The fairly debatable rule and its

corollary, the substantive evidence rule, mean that the court will not substitute its judgment for the zoning agency's but will sustain any decision which has a reasonable basis in the record. Kirkham v. County Council, 251 Md. 273 (1968), accord, Southland Corp., 7-Eleven Stores v. Mayor & City Council of Laurel, 75 Md. App. 375 (1988).

An agency's decision must be reviewed in the light most favorable to the agency. Coscan Washington, Inc. v. Maryland National Capital Park and Planning Comm'n., 87 Md. App. 602 (1991); Courtney v. Board of Trustees, 285 Md. 356, 362 (1979). A decision of an agency is *prima facie* correct and carries with it the presumption of validity. Cox, *supra* at 187. A court cannot reject the conclusion of an administrative agency if "a reasoning mind reasonably could have reached the factual conclusion the agency reached." Bullock v. Pelham Wood Apartments, 283 Md. 505 (1978), quoting Dickinson-Tidewater v. Supervisor, 273 Md. 245, 256 (1974).

The Court of Appeals has also made very clear that an administrative agency must be afforded great deference.

> "The heart of the fact finding process often is the drawing of inferences from the facts. The administrative agency is the one to whom is committed the drawing of whatever inferences reasonably are to be drawn from the factual evidence. 'The Court may not substitute its judgment on the question of whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness.'"

People's Counsel for Baltimore County v. Mangione, 85 Md. App. 738, 751 (1991),

quoting Snowden v. Mayor and C.C. of Balto., 224 Md. 443, 448 (1961).

Therefore, this Court must give due deference to the right of an administrative agency, such as the Board, to draw reasonable inferences from the facts and circumstances presented before it. Eg., Board of County Comm'rs v. Holbrook, 314 Md. 210, 218 (1988); Mangione, *supra*. The appellate court must also assume the truth of all of the evidence and all of the favorable inferences to support the factual conclusions of the trier of fact. Mercedez-Benz of N. Am., Inc. v. Garten, 94 Md. App. 547 (1993).

DISCUSSION

The opinion of the CBA sets forth a fair and succinct summation of the evidence contained in the record of its proceedings, and this Court will not recount it here. Suffice it to say, the Court has reviewed both the opinion and significant portions of the transcripts thoroughly and finds that the record contains substantial evidence to support the findings of fact made by the CBA. Petitioners urge the Court, however, to find that the CBA erred as a matter of law in, they suggest, failing to take into consideration commuter traffic on Harford Road in assessing need for the granting of their requested Special Exception.

The zoning regulations applicable to a B.L.-C.R. overlay district are those contained in BCZR Sections 230, 259.2A and 259.3. Section 259.2A states:

The C.R. District is established to provide opportunities for convenience

> shopping and personal services that are customarily and frequently needed by the rural residential and agricultural population and tourists... The commercial centers within C.R. Districts are not intended to be regional facilities providing specialty goods to a population outside of the rural area.

Section 259.3E imposes additional requirements for the granting of a Special Exception in a C.R. district, in addition to those requirements generally imposed on the issuance of Special Exceptions by BCZR Section 502.1, and specifically requires that the petitioner shall document the need for the development at the proposed location.

BCZR Section 405 sets forth special regulations governing the location of fuel service stations. Under Section 405.3, zoning authorities are instructed to consider, prior to granting any Special Exception for a fuel service station, the presence of any such locations which have been abandoned in the vicinity of the proposed site. A finding of the presence of one such abandoned station within a one-half mile radius, or two such stations withing a one-mile radius, establishes that there is no need for the proposed use, unless there are such market data to satisfactorily rebut this establishment. The CBA gave Petitioners some relief in refusing to consider the fact that three corners of the intersection of Harford Road and Sunshine Avenue, including the subject site, were occupied by fuel service stations many years ago, but found that there are eleven abandoned fuel facilities within a five-mile radius of the proposed site, and that this fact weighed heavily on the question of need in the area.

Need, of course, does not mean absolute necessity. It means "expedient,

reasonably convenient and useful to the public." Baltimore County Licensed Beverage Assoc., et al. v. Kwon, 135 Md. App 178 (2000), citing Neuman v. Mayor of Baltimore, 251 Md. 92 (1968). The CBA was clearly aware of, and applied this definition in its deliberations. It determined that the evidence offered by the Petitioners of traffic and population data failed to support a conclusion that there is a need at the site for either a convenience store or a gas station, noting that the evidence indicated that within a radius of one and one-half miles of the subject site, population growth between 1990 and the projected date of 2003 would only be 81 persons, with the number of households increasing by 48. The traffic data cited by the CBA indicated that, at most, the number of trips per day in 1998 was only 3,225 more than in 1995, when there were 8,775 trips per day. The fact that the CBA was not persuaded of need for either proposed use is significant in that a convenience store alone, not in combination with a fuel service facility, appears to be a permitted use in the B.L.-C.R. zone without need for a Special Exception.

Petitioners suggest that the Court should find legal error in the determination by the CBA that commuter traffic should not be part of the equation of need-generating traffic considerations, particularly in view of the apparent split on this issue disclosed during the public deliberation phase of the case. However, the CBA addresses this apparent dichotomy in its Opinion, wherein it determines unanimously that it cannot conclude that there is sufficient need shown in the transient population to warrant the

granting of the Special Exception. This Court believes that the CBA did consider the existence of commuter traffic, but felt that it should not weigh it heavily in determining need. The CBA's findings of fact and inferences with respect to the absence of need were at the very least, reasonable and are entitled to some deference. The fact that the CBA chose to draw a distinction between commuters and tourists cannot be said to amount to an error of law. The CBA reasonably was not persuaded by the Petitioners, who bore the burden to persuade its members affirmatively of the existence of demonstrable need for the proposed project at the site.

The case of Pollard's Towing, *supra* is instructive on the issue of persuasion of an administrative body. That case also involved a decision of the CBA, as to the existence of need, vel non, for additional automotive towing licenses in Baltimore County.

> In this case, all that was required was that the Board be **not persuaded** that there was a need for additional towing services. To the extent its findings were weightier than that, the incremental weight was surplusage. Far less is required to support a merely negative instance of non-persuasion than is required to support an affirmative instance of actually being persuaded of something . . . In this case, the Board was not simply **unpersuaded of a need** (a mere state of honest doubt is all that is required for non-persuasion). It was affirmatively **persuaded of no need** (more than it was required to find). There was, moreover, much evidentiary support for the Board's findings in that regard.

In the case at bar, much the same could be said. However, even if there could be argued the absence of persuasion of no need, there was clearly more than enough

substantial evidence in the record to sustain non-persuasion of need.

For the reasons above stated, the decision of the CBA in this matter will be, and it is hereby, **AFFIRMED.**

Christian M. Kahl

April 6, 2001
Date

cc: Peter Max Zimmerman, Esquire, People's Counsel
John Zink, Esquire
J. Carroll Holzer, Esquire
Charlotte E. Radcliff, County Board of Appeals

4/6/01

PETITION OF SEVEN KIDS, LLC, ET AL. FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE
IN THE MATTER OF THE APPLICATION OF SEVEN KIDS, LLC, LEGAL OWNER, AND CLOVERLAND FARMS DAIRY, INC., CONTRACT PURCHASER FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OF SUNSHINE AVENUE AND HARFORD ROAD	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
	*	Case No. 03-C-00-9923
	*	
	*	
CBA NO.: CBA-99-199-X		

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

OPINION AND ORDER OF COURT

This case arose out of a Petition for Special Exception filed by the owners of the subject property, Seven Kids, LLC, and the contract purchaser Cloverland Farms Dairy, Inc. (hereinafter "Cloverland") to permit an automobile service station to be used in combination with a food store having a sales area larger than 1,500 square feet pursuant to Sec. 405.4.E.1 of the Baltimore County Zoning Regulations (hereinafter "BCZR"). The subject site is located on the southeast corner of Sunshine Avenue and Harford Road in Fork, Maryland.

The property is zoned BL-CR. Cloverland wishes to lease 1.21 acres of a 23.34 acre site to construct a 3,113 square foot Royal Farm convenience store with a sales floor area of 2,799.5 square feet. Cloverland proposes five (5) fuel pump islands with

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ten (10) pumps, operating 24 hours a day. The proposed use is permitted in this zone only by Special Exception. The application is governed by the BCZR Special Exceptions, Section 502.1; Section 259, relating to Districts; Section 405, Fuel Service Stations; Section 230 Business, Local Zone; and particularly Sections 259.2A and 259.3, applicable to CR Districts.

The Deputy Zoning Commissioner issued an opinion granting the requested Special Exception with conditions on April 30, 1999. The Protestants appealed to the Baltimore County Board of Appeals (hereinafter "CBA") on May 26, 1999. On June 11, 1999, the Director of the Department of Permits & Development Management (hereinafter "DPDM") approved a limited exemption for Petitioners' original plan with fuel pumps and in early July approved an alternate plan without fuel pumps. These approvals were also appealed by Protestants to the CBA, which elected to consolidate the matters into one hearing, beginning on September 30, 1999 and extending over nine days until concluding on April 5, 2000. Public deliberation was held on June 22, 2000, and on August 31, 2000, the CBA upheld the grants by DPDM of limited exemptions under Section 26-171 of the Baltimore County Code (hereinafter "Code"), but denied the Special Exception in a unanimous Opinion and Order. Petitioners appealed to this Court.

In considering this matter, the Court is aware of its role as expressed by Judge Moylan for the Court of Special Appeals in the recently decided case of Pollard's

Towing, Inc., et al. v. Berman's Body Frame & Mechanical, Inc., T/A Berman's Towing, No. 249, Sept. Term, 2000, filed March 7, 2001. He wrote, at page 13 of the slip opinion, "The decision of the circuit court . . . is before us only in a pro forma capacity, as the necessary procedural conduit by which the decision of the administrative agency gets to us for our review." That admonition notwithstanding, this Court will conduct its otherwise superfluous review in the unlikely event that Judge Moylan's court is denied its opportunity to do so.

SCOPE OF REVIEW

The scope of judicial review is narrow. The Court must affirm the zoning board decision where it is fairly debatable with respect to the agency's findings of facts and inferences drawn therefrom. See Board of Physicians Quality Assurance v. Banks, 354 Md. 59, 67-69 (1999); Board of County Comm'rs. v. Holbrook, 314 Md. 210, 218 (1988); Eger v. Stone, 253 Md. 533, 542 (1969); Snowden v. City of Baltimore, 224 Md. 443, 448 (1961).

The scope of review is likewise narrow with respect to the application of law to the facts and/or to mixed questions of law and fact. Stover v. Prince George's County, 132 Md. App. 373, 380-82 (2000); Caucus Distributors v. Maryland Sec. Comm'r., 105 Md. App. 25, 32-35 (1995); Maryland State Police v. Lindsey, 318 Md. 325, 333-35 (1990); Baltimore Lutheran H.S. v. Employment Sec. Admin., 302 Md. 649, 663 (1985); Ramsay, Scarlett & Co. v. Comptroller, 302 Md. 825, 837 (1985). Even with

regard to matters of legal interpretation, the scope of review remains narrow. In Banks, *supra*, the Court focused on matters of legal interpretation. Judge Eldridge wrote:

> "Even with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts . . . Furthermore, the expertise of the agency in its own field should be respected . . . (legislative delegations of authority to administrative agencies will often include the authority to make 'significant discretionary policy determinations.') . . . ." 354 Md. at 69. (Citations omitted).

Accordingly, where there is room for interpretation, the courts "ordinarily give some weight" to agency construction of the statute. Magan v. Medical Mutual Liab. Ins. Co., 331 Md. 535, 546 (1993). In Magan, Judge McAuliffe wrote:

> "The degree of weight to be given an administrative interpretation varies according to a number of factors, including whether the interpretation has resulted in a contested adversary proceeding or rule-making process, whether the interpretation has been publicly established, and the consistency and length of the administrative interpretation or practice. *Comptroller v. John C. Louis Co.*, 285 Md. 527, 544-45 (1979)."

In administrative proceedings in Maryland concerning the grant of a special exception, the "substantial evidence" and "fairly debatable" standard is applicable. E.g., Schultz v. Pritts, 291 Md. 1 (1981); Turner v. Hammond, 270 Md. 41 (1973). The "fairly debatable" standard was defined in Eger v. Stone, 253 Md. 533, 538 (1969):

> "If the issue before an administrative body is 'fairly debatable,' that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the Court will not substitute its judgment for that of the administrative body, even if the administrative body came to a conclusion which the Court would not have reached on the evidence."

See also Germenko v. County Bd. of Appeals of Baltimore County, 257 Md. 706, 711 (1970). Accord Ginn v. Farley, 43 Md. App. 229 (1979); Board of County Comm'rs for Prince George's County v. Meltzer, 239 Md. 144 (1965).

In Prince George's County v. Meininger, 264 Md. 148, 152 (1972), it was held that the "substantial evidence" requirement in a case of denial was satisfied by little more than a "scintilla of evidence" because the burden of proof is on the appellant. The zoning agency's decision should be affirmed unless there is "no evidence at all" to support the decision. Rockville Fuel & Feed Co. v. Board of Appeals, 257 Md. 183, 193 (1970). These and other cases indicate that an administrative appellant has a very heavy burden to demonstrate as arbitrary an agency finding that the applicant did, or did not sufficiently prove his case.

The Court, in reviewing this case, will, of course, be mindful of its limited role in the zoning process. In Maryland, a court will not overturn zoning decisions which are "fairly debatable." Cox v. Prince George's County, 86 Md. App. 179 (1991); Montgomery County v. National Capital Realty Corporation, 267 Md. 364 (1972); County Council v. Prestwick, 263 Md. 217 (1971). The fairly debatable rule and its

corollary, the substantive evidence rule, mean that the court will not substitute its judgment for the zoning agency's but will sustain any decision which has a reasonable basis in the record. Kirkham v. County Council, 251 Md. 273 (1968), accord, Southland Corp., 7-Eleven Stores v. Mayor & City Council of Laurel, 75 Md. App. 375 (1988).

An agency's decision must be reviewed in the light most favorable to the agency. Coscan Washington, Inc. v. Maryland National Capital Park and Planning Comm'n., 87 Md. App. 602 (1991); Courtney v. Board of Trustees, 285 Md. 356, 362 (1979). A decision of an agency is *prima facie* correct and carries with it the presumption of validity. Cox, *supra* at 187. A court cannot reject the conclusion of an administrative agency if "a reasoning mind reasonably could have reached the factual conclusion the agency reached." Bullock v. Pelham Wood Apartments, 283 Md. 505 (1978), quoting Dickinson-Tidewater v. Supervisor, 273 Md. 245, 256 (1974).

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quoting Snowden v. Mayor and C.C. of Balto., 224 Md. 443, 448 (1961).

Therefore, this Court must give due deference to the right of an administrative agency, such as the Board, to draw reasonable inferences from the facts and circumstances presented before it. Eg., Board of County Comm'rs v. Holbrook, 314 Md. 210, 218 (1988); Mangione, *supra*. The appellate court must also assume the truth of all of the evidence and all of the favorable inferences to support the factual conclusions of the trier of fact. Mercedez-Benz of N. Am., Inc. v. Garten, 94 Md. App. 547 (1993).

DISCUSSION

The opinion of the CBA sets forth a fair and succinct summation of the evidence contained in the record of its proceedings, and this Court will not recount it here. Suffice it to say, the Court has reviewed both the opinion and significant portions of the transcripts thoroughly and finds that the record contains substantial evidence to support the findings of fact made by the CBA. Petitioners urge the Court, however, to find that the CBA erred as a matter of law in, they suggest, failing to take into consideration commuter traffic on Harford Road in assessing need for the granting of their requested Special Exception.

The zoning regulations applicable to a B.L.-C.R. overlay district are those contained in BCZR Sections 230, 259.2A and 259.3. Section 259.2A states:

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> shopping and personal services that are customarily and frequently needed by the rural residential and agricultural population and tourists... The commercial centers within C.R. Districts are not intended to be regional facilities providing specialty goods to a population outside of the rural area.

Section 259.3E imposes additional requirements for the granting of a Special Exception in a C.R. district, in addition to those requirements generally imposed on the issuance of Special Exceptions by BCZR Section 502.1, and specifically requires that the petitioner shall document the need for the development at the proposed location.

BCZR Section 405 sets forth special regulations governing the location of fuel service stations. Under Section 405.3, zoning authorities are instructed to consider, prior to granting any Special Exception for a fuel service station, the presence of any such locations which have been abandoned in the vicinity of the proposed site. A finding of the presence of one such abandoned station within a one-half mile radius, or two such stations withing a one-mile radius, establishes that there is no need for the proposed use, unless there are such market data to satisfactorily rebut this establishment. The CBA gave Petitioners some relief in refusing to consider the fact that three corners of the intersection of Harford Road and Sunshine Avenue, including the subject site, were occupied by fuel service stations many years ago, but found that there are eleven abandoned fuel facilities within a five-mile radius of the proposed site, and that this fact weighed heavily on the question of need in the area.

Need, of course, does not mean absolute necessity. It means "expedient,

reasonably convenient and useful to the public." Baltimore County Licensed Beverage Assoc., et al. v. Kwon, 135 Md. App 178 (2000), citing Neuman v. Mayor of Baltimore, 251 Md. 92 (1968). The CBA was clearly aware of, and applied this definition in its deliberations. It determined that the evidence offered by the Petitioners of traffic and population data failed to support a conclusion that there is a need at the site for either a convenience store or a gas station, noting that the evidence indicated that within a radius of one and one-half miles of the subject site, population growth between 1990 and the projected date of 2003 would only be 81 persons, with the number of households increasing by 48. The traffic data cited by the CBA indicated that, at most, the number of trips per day in 1998 was only 3,225 more than in 1995, when there were 8,775 trips per day. The fact that the CBA was not persuaded of need for either proposed use is significant in that a convenience store alone, not in combination with a fuel service facility, appears to be a permitted use in the B.L.-C.R. zone without need for a Special Exception.

Petitioners suggest that the Court should find legal error in the determination by the CBA that commuter traffic should not be part of the equation of need-generating traffic considerations, particularly in view of the apparent split on this issue disclosed during the public deliberation phase of the case. However, the CBA addresses this apparent dichotomy in its Opinion, wherein it determines unanimously that it cannot conclude that there is sufficient need shown in the transient population to warrant the

granting of the Special Exception. This Court believes that the CBA did consider the existence of commuter traffic, but felt that it should not weigh it heavily in determining need. The CBA's findings of fact and inferences with respect to the absence of need were at the very least, reasonable and are entitled to some deference. The fact that the CBA chose to draw a distinction between commuters and tourists cannot be said to amount to an error of law. The CBA reasonably was not persuaded by the Petitioners, who bore the burden to persuade its members affirmatively of the existence of demonstrable need for the proposed project at the site.

The case of Pollard's Towing, *supra* is instructive on the issue of persuasion of an administrative body. That case also involved a decision of the CBA, as to the existence of need, vel non, for additional automotive towing licenses in Baltimore County.

> In this case, all that was required was that the Board be **not persuaded** that there was a need for additional towing services. To the extent its findings were weightier than that, the incremental weight was surplusage. Far less is required to support a merely negative instance of non-persuasion than is required to support an affirmative instance of actually being persuaded of something . . . In this case, the Board was not simply **unpersuaded of a need** (a mere state of honest doubt is all that is required for non-persuasion). It was affirmatively **persuaded of no need** (more than it was required to find). There was, moreover, much evidentiary support for the Board's findings in that regard.

In the case at bar, much the same could be said. However, even if there could be argued the absence of persuasion of no need, there was clearly more than enough

substantial evidence in the record to sustain non-persuasion of need.

For the reasons above stated, the decision of the CBA in this matter will be, and it is hereby, **AFFIRMED.**

Christian M. Kahl

April 6, 2001
Date

cc: Peter Max Zimmerman, Esquire, People's Counsel
John Zink, Esquire
J. Carroll Holzer, Esquire
Charlotte E. Radcliff, County Board of Appeals

3/20/01

PETITION OF SEVEN KIDS, LLC, ET AL. FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE
	*	CIRCUIT COURT
	*	FOR
IN THE MATTER OF THE APPLICATION OF SEVEN KIDS, LLC., LEGAL OWNER, AND CLOVERLAND FARMS DAIRY, INC., CONTRACT PURCHASER, FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE SOUTHWEST CORNER OF SUNSHINE AVENUE AND HARFORD ROAD	*	BALTIMORE COUNTY
	*	
	*	CASE NO. 03-C-00-9923
	*	
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CBA NO.: CBA-99-199-X	*	

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PETITIONERS' REPLY MEMORANDUM

Seven Kids, LLC ("Owner") and Cloverland Farms Dairy, Inc. ("Contract Purchaser"), Petitioners/Appellants (collectively referred to as "Cloverland"), by John H. Zink, III and Robert A. Hoffman with Venable, Baetjer and Howard, LLP, their attorneys, reply to the Memorandum of Respondents/Appellees, as follows:

I. The Board of Appeals erred by interpreting B.C.Z.R. §259.3.E to exclude commuter traffic in determining "need for the development at the proposed location."

Cloverland's primary argument in this appeal is that the Board of Appeals excluded commuter traffic in determining "need" for Cloverland's "one-stop" development at "the proposed location" (the intersection of Harford Road and Sunshine Avenue in Fork). Cloverland does not dispute the Board's interpretation of "need" as

"expedient, reasonably convenient and useful to the public." Cloverland's contention is that the Board erroneously excluded commuter traffic when defining "the public" traveling through the intersection.

After distilling numerous extraneous facts and arguments from Respondents' Memorandum, this issue is addressed on page 26 of the Memorandum. In brief, Respondents' argument is that the Board "clearly considered traffic flowing from Harford County on Harford Road and found that the amount of commuter traffic, plus the minimal increase of population in the area did not produce a need for the requested gas station and convenience store." Respondents quote a part of the Board's Opinion (at page 13) to support their argument: "Given the slight increase in the population of the surrounding area, and even assuming an increase of 3,225 trips per day on Harford Road between 1995 and 1998, the Board considers that there is no need established at the proposed site."

The actual reasoning and conclusion of the Board, however, requires this quote to be read and interpreted in the actual context used by the Board:

> The Board recognizes that the stifling of competition is no basis for denying a special exception with respect to the question of "need." However, the Board feels that the evidence shows a lack of need for *either* a convenience store *or* a gas station at the proposed site. *Given the slight increase in the population of the surrounding area, and even assuming an increase of 3,225 trips per day on Harford Road between 1995 and 1998, the Board considers that there is no "need" established at the proposed site*. This Board feels that the intent of the CR overlay district is to "provide opportunities for convenience shopping and personal services that are customarily and frequently needed by the rural residents and agricultural population and tourists." Although in the course of our deliberations, *one of the panel espoused some concern as to whether those commuting past the site could be likened to "tourists" and thereby included in the definition of "need," the Board unanimously agrees that*

> *"commercial centers within CR districts are not intended to be regional facilities providing specialty goods to a population outside of the rural area."* We, *therefore*, cannot conclude that there is a sufficient need shown in the transient population to warrant the granting of this special exception. (Board Opinion at page 13, emphasis added).

The correct (and inescapable) interpretation of the Board's Opinion is that, *regardless of* ("even assuming") an increase in commuter traffic, the "intent of the CR overlay district" was to exclude commuter traffic from any determination of "need" because "commercial centers within CR districts are not intended to be regional facilities providing specialty goods to a population outside of the rural area." By eliminating commuter traffic, the Board was able to conclude that the remaining "transient population" (local residents using the intersection) did not have "sufficient need" to "warrant the granting of this special exception."

If the Board's reasoning requires further clarification, Cloverland refers to the Board's "Minutes of Deliberation," attached to this Reply as ***Exhibit 1***:

> "Further discussed meaning of CR overlay—to service the area—discussion also included "commuter traffic"—LMS believed commuter traffic to be included ("significant contact"); *LSW and TPM did not.*" (Emphasis added).

> "Defined 'Rural Area'—and "need" per law; *minimal increase in population of area between 1990 and 1998.*" (Emphasis added).

It follows that the Board limited consideration of "need" to local residents in the area and commuter traffic was excluded.

When writing its Opinion, the Board unanimously agreed that commuter traffic should not be considered because "CR districts are not intended to be regional facilities providing specialties goods to a population outside of the rural area." The Board's

reasoning collapses, of course, because the Cloverland facility certainly is not designed as a "regional facility" to draw an outside population into the CR district. Cloverland's "one-stop shopping" concept is designed and intended to serve the convenience of travelers already using the intersection for commuting purposes.

Simply stated, B.C.Z.R. §259.3.E does not differentiate the local public and the commuting public; it simply references "need" at the location of the development. As clearly articulated by the Court of Appeals in *Neuman v. Mayor of Baltimore City*, 251 Md. 92 (1967), and recognized as the applicable law by the Board, "need" means that which is "expedient, reasonably convenient and useful to the *public*" (emphasis added). Commuters are part of the public. The Board's failure to apply this fact to §259.3.E constitutes an error of law.

II. If the Board had included commuter traffic in its determination of "need," Cloverland proved that its development would be convenient and useful at the proposed location.

In accordance with B.C.Z.R. §259.3.E, "Petitioner shall document the need for the development of the proposed location," as a requirement for the granting of a special exception in a CR district. Cloverland fulfilled this requirement.

As indicated in Cloverland's original Memorandum, the proposed development is designed as a "one-stop" convenience store with gasoline service for the use and convenience of local residents and commuters. John Kempt, a Vice President of Cloverland Farms, explained the concept and value of "one-stop shopping" in the context of consumer services. Joseph Cronyn, an economic and marketing expert, also testified concerning market potential, especially in the context of testimony from Kenneth

Schmid, a traffic engineer, who confirmed substantial use of the intersection by commuter traffic. Certainly, Cloverland "documented" convenience and usefulness to the public. Even Mrs. DiFonzo, a witness for Protestants, conceded that the project would "provide some convenience" for commuters. (T. 1/27/00 pp. 59-61).

The Board of Appeals apparently failed to understand the marketing concept and synergies of combining a comprehensive inventory of convenience products with gasoline service. Instead, the Board concluded that, "the evidence shows a lack of need for *either* a convenience store *or* a gas station at the proposed site." (Board's Opinion, p. 13, emphasis added). In this same context, Protestants emphasize the number of separate convenience stores and gas stations within a five-mile radius of the subject intersection. At the intersection, there is an existing Citgo gas station which basically sells limited food and soft drink items. The other three stores at the intersection also sell limited or specialized inventories (and no gasoline). None of these existing stores, or the Citgo station, fit within the concept of comprehensive "one-stop shopping."

Protestants also identify "two more 'one-stop shopping' gas/convenience store alternatives available to the immediate Fork area population;" i.e., Peterson's, located at a different intersection (Fork Road and Long Green Pike), and a Shell gas station/mini mart at the corner of Belair and Mountain Roads. It is difficult to understand how any of these stores could be reasonably convenient and useful to commuter traffic on Harford Road; it is simply beyond reason to expect commuters to deviate from their direct route of travel to locate a "convenience" store and/or gasoline in some other area.

Protestants attempt to address this issue, however, by referencing "two new WaWa convenience stores/gas stations." (Protestants' Memorandum, p. 31). But these two stores are located in Harford County near Bel Air. Certainly, these stores have little or no relevancy to the question of convenience and usefulness at the intersection of Harford Road and Sunshine Avenue. It is important to remember that the applicable zoning statute references need "at the location" of the proposed Cloverland development. There, the availability of a substantial inventory of convenience products with gasoline service, without requiring any routing deviations, must, by definition, satisfy considerations of both convenience and usefulness to commuter travelers on Harford Road in Baltimore County.

The Board of Appeals recognized this point by limiting the consideration of need to local residents; by implication, very different considerations of convenience and usefulness attend the commuter traffic.

Conclusion

Cloverland agrees with Respondents that the Board of Appeals correctly understood "need" as a matter of reasonable convenience and usefulness to the public. However, Cloverland disagrees with Respondents' argument that the Board of Appeals considered "need" in the context of commuter traffic "at the location" of Cloverland's proposed development. Instead, the Board of Appeals erred by specifically excluding commuter traffic in determining need , and compounded its error by analyzing "need" on the basis of "either" a convenience store "or" a gas station, rather than addressing the

concept of the convenience and usefulness of "one-stop shopping." This error of law requires correction by this Court.

Respectfully submitted,

John H. Zink, III

Robert A. Hoffman BY JHZ

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And Cloverland Farms Dairy, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of February, 2001, a copy of the foregoing Petitioners' Reply Memorandum was mailed to: J. CARROLL HOLZER, ESQUIRE, Holzer and Lee, 508 Fairmount Avenue, Towson, Maryland 21286, Attorney for Appellants; and to KATHLEEN C. BIANCO, Administrator, County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204, and PETER MAX ZIMMERMAN, ESQUIRE, Office of the People's Counsel, Baltimore County, 400 Washington Avenue, Room 47, Towson, Maryland 21204.

John H. Zink, III

IN THE MATTER OF THE APPLICATION OF SEVEN KIDS, LLC –LEGAL OWNER; CLOVERLAND FARMS DAIRY, INC. - CONTRACT PURCHASER FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE SW/C SUNSHINE AVENUE AND HARFORD ROAD AND REQUEST FOR LIMITED EXEMPTION /DRC NO. 02089F AND DRC NO. 07069E 11TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 99-199-X; Case No. CBA-99-127; and Case No. CBA-99-128

* * * * * * * * *

OPINION

This case is before the Board on an appeal by the Greater Kingsville Community Association from a decision of the Deputy Zoning Commissioner issued on April 30, 1999 granting a special exception to permit an automobile service station use in combination with a food store having a sales area larger than 1,500 sq. ft. The Deputy Zoning Commissioner attached 14 conditions and restrictions to the approval. The Greater Kingsville Community Association, herein referred to as the "Protestants," was represented by J. Carroll Holzer, HOLZER AND LEE, and the Petitioner, Seven Kids, LLC /Cloverland Farms Dairy, Inc. (Royal Farm Store), was represented by Robert A. Hoffman and VENABLE, BAETJER AND HOWARD, LLP.

In addition, the case involved the Petitioner's request to the Director of the Department of Permits & Development Management (DPDM) to process its development plan for the Royal Farm Store both in the original form with fuel pumps and in an alternate form without fuel pumps, in accordance with a limited exemption under Section 26-171 of the *Baltimore County Code* ("the Code"). Arnold Jablon, Director of DPDM, approved a limited exemption for the original plan with fuel pumps on June 11, 1999, and also for the alternate plan without fuel pumps on July 2, 1999. These approvals were also appealed by the Protestants to the Board of Appeals. The Board decided to hold one hearing with respect to all three cases.

The Board held nine (9) days of hearing beginning on September 30, 1999, and ending on April 5, 2000.

Special Exception Request

Petitioner's Case

The Petitioner intends to lease 1.21 acres of a 23.34 acre site located at the southeast corner of Harford Road and Sunshine Avenue in Fork, Maryland, to construct a 3,113 sq. ft. Royal Farm convenience store with a sales floor area of 2,799.5 sq. ft. Petitioner also proposes to provide five (5) fuel pump islands with ten fueling spaces. The proposed use is permitted in this zone by special exception.

In support of its position, Petitioner presented John Kemp, Vice President of Cloverland Farms Dairy, Inc., who testified that Cloverland operates 87 Royal Farm stores throughout Maryland, Delaware and Virginia. The consumer demand for "one-stop shopping" has forced the company to combine fuel service with convenience stores in order to serve customer needs and meet competition. Mr. Kemp testified that Cloverland believes this location provides an outstanding opportunity to provide "one-stop shopping" to the surrounding residents as well as the commuters travelling along Harford Road. He stated that the Royal Farm Store will carry an extended grocery line with 5,500 items, including fresh based breads, fried chicken and premium coffees, as compared with a typical convenience store carrying 2,500 items. He contended that there is currently no operation in the area which provides fast and easy one-stop shopping.

Petitioner desired to open the store 24 hours per day to serve its customers. Gasoline deliveries would be made between the hours of 9:00 p.m. and 5:00 a.m., while other deliveries would be during the hours of 7:30 a.m. to 4:00 p.m. Trash removal would be between 7:00 a.m. and 4:00 p.m. The Petitioner stated that the store would be well lit for safety reasons; however,

recessed lighting in the fuel service canopy, the most intensely lit area of the site, would be utilized to minimize the effect of lighting on the surrounding community.

Petitioner also offered the testimony of Joseph Cronyn, an economic and marketing expert. Mr. Cronyn testified with respect to a report he had prepared for the subject site. His report analyzed the "need" of the area, meaning "expedient or reasonably convenient and useful to the public." He analyzed the need in accordance with the local market area and the commuter traffic through the area. The local market area was defined as a 1.5-mile ring around the subject site at Harford and Fork Roads. The commuter traffic raised the question of what is likely to be the consumer demand for the store's goods and services from the traffic flow along Harford Road and Sunshine Avenue /Fork Road.

In analyzing the local market area, Mr. Cronyn used economic and demographic statistics prepared by CACI Marketing Systems. His finding was that the market area was not densely populated and projected modest growth. The statistics showed that the population as of 1990 was 2,140, projected to grow to a figure of 2,221 in the year 2003. This comprised approximately 762 households in 1990, growing to approximately 810 households in the year 2003.

Mr. Cronyn projected that the aggregate spending available to the Royal Farms location would be $517,000.00 to $620,000.00 consumer demand for convenience items and $824,000.00 to $989,000.00 for gasoline service in the market area. He felt that it was reasonable to estimate that the new store would split the local demand equally with a similar business such as High's and Citgo already existing in the intersection.

With respect to the commuter traffic, Mr. Cronyn cited a recent State Highway Administration traffic count performed in 1995 indicating that there was a daily volume of 8,775 trips per day through the intersection. There were no counts available for the Sunshine Avenue

/Fork Road traffic. Mr. Cronyn also cited a study performed by Traffic Concepts of a traffic count on December 11, 1998, showing trips north and south on Harford Road and east and west on Sunshine Avenue and Fork Road. This study was introduced and testified to by Kenneth Schmid, expert in traffic engineering. The total trips through the intersection past the subject site were estimated to range from 17,000 to 17,500 trips per day. Mr. Cronyn estimated that, if the site were to serve an average of 1,000 customers per day, the average sales transaction would probably amount to $10.00 and would conservatively generate $3,650,000.00 in sales annually. He felt that the statistics showed a need in the area for an additional convenience store with gasoline pumps.

Petitioner presented Robert Sheesley, former Director of the Department of Environmental Protection and Resource Management (DEPRM), an expert in environmental science, to provide a history of the site for the Board. The subject site was the site of a former fuel service station and automobile repair shop which was discontinued some time prior to the early 1980s. When the site was being prepared for redevelopment in 1987, it was discovered that the underground storage tanks from the old fuel service station had leaked fuel into the soil. There was no estimate as to how long the tanks had been leaking.

DEPRM became involved, and the leaking storage tanks and the contaminated soil to a depth of 14 feet were removed. Monitoring wells were placed around the site. It was also discovered that the contamination had made its way south of the site into the County Hills Estates neighborhood. It was thought that the contamination had gotten into the aquifer and had flowed through cracks and fissures into the residential wells.

At this point, the Maryland Department of the Environment (MDE) assumed control, and monitoring continued for several years. According to Mr. Sheesley, continued monitoring of the surrounding wells has indicated only residual contamination in the groundwater, and he opined

that there was no active contamination. Contaminants in the monitoring wells have diminished over the years to a point where Mr. Sheesley felt that they were negligible in terms of concentration. Mr. Sheesley confirmed that MDE had approved the site for development as long as certain actions were taken, which Petitioner stated it had agreed to.

Petitioner presented Michael Schammel, an expert in installation and technical requirements for fuel tanks. Mr. Schammel testified with respect to the safety features of the equipment to be installed for the fuel service aspect of the store. These included double-walled tanks in which the interstitial space between the layers is electronically monitored for leakage, double-walled piping, and a contaminant sump that is electronically monitored for leakage, use of double-poppet shear valve, and three methods of release detection (automatic leak detection, electric monitoring of all secondary contaminant devices, and continuous statistical leak detection). Mr. Schammel stated that all employees would be trained in the operation of the fuel service equipment and in monitoring the equipment for any problems. He confirmed that the proposed equipment, installation, inspection and monitoring procedures would meet or exceed the standards dictated by the MDE and the Environment Protection Agency.

On cross-examination, Mr. Schammel indicated that, in addition to the double-walled tanks, there is a type of liner that could be installed in the wall and bottom of the hole in which the gasoline tanks would be placed that would act as a base. He has never installed one of these liners but believes it is the same type that is installed in a landfill. He stated that he was hopeful that the pipes would not leak but, in order to contain any leakage, there was a containment sump, 48 inches by 20 inches by 3 feet deep. If one sump were filled, it would go into other pipes and sumps until the overflow was detected. Mr. Schammel also indicated on cross-examination that, if the electricity at the station went off, you could not pump gas and you could not detect any leakage unless there was a monitor back-up system which was battery-operated.

Mr. Schammel testified that only a very small amount of gasoline would have to leak to set off the sensor switch. An alarm in the box would go off if the sensor were not working. He also stated that his company performs two inspections a year at each Royal Farm location, in addition to routine service calls.

Petitioners also called a Hydrologist, Thomas R. Mills, who described the relevant geology and opined that the risk inherent to the geological water system at the proposed site would have no greater effect here than elsewhere in the zone.

Peter Ratcliffe, a licensed architect, testified as to the aesthetic concerns addressed by the Petitioner, including the scale, materials and appearance of the proposed facility, and maintained that the structure would not be out of character with its rural surroundings.

Petitioner also presented Nicholas J. Brader, a Civil Engineer and expert site planner. Mr. Brader testified as to the size of the sales floor required and the height of the sign which had been reduced from 25 feet to 17 feet. He also noted that there was no population increase as a result of the proposed use and that no overcrowding of land or undue concentration of population would result. He also stated that the stormwater management waiver was granted, and the proposed runoff from the entire site would be less than 10 percent. A "stormceptor" would intercept any water that would have been contaminated by oil or gasoline and would screen the oil and contaminants from the water before it was discharged into the soil. He stated that the "stormceptor" separates grease and other particles out of the wastewater and must be periodically cleaned. He also testified that Baltimore County had not reviewed the stormwater management plan as of that time, since that is normally designed in the final construction phase. Additionally, he confirmed that, as all applicable protective regulations had been met (as set out in Mr. Schammel's testimony), the project would not create a potential hazard from fire, panic or other danger. He further stated that parks and schools would obviously be unaffected by the project;

that the scope of the project would not interfere with adequate light and air; and, since the convenience store was permitted in a B.L.-C.R. zone in conjunction with fuel service (by special exception), that the proposed use was not inconsistent with the zoning regulations.

Kenneth Schmid, a transportation engineer, was called as an expert by the Petitioner. He evaluated the current traffic situation at the site and described the road and traffic changes to be constructed as part of the proposed use of this site. He maintained that the project would not have an adverse impact on the surrounding road system; would not create congestion in the roads surrounding the property; and, in fact, believed that the suggested improvements would actually improve the road network at the site.

Protestants' Case

The Protestants presented a number of witnesses in support of their position that the proposal did not meet any of the additional requirements for the granting of a special exception in a C.R. district (BCZR 259.3.E.1-5). In addition, they felt that the evidence failed to establish that the proposal met the criteria set forth in Section 502.1 of the *Baltimore County Zoning Regulations* (BCZR) in that the site was not unique with respect to a B.L.-C.R. site. In addition, they contended that the Petitioner failed to show the need in the area, and to overcome the effect of the environmental impact on the area. Finally, the Protestants felt that the evidence, with respect to abandoned gas stations in the immediate area which was presented to the Board, met the requirements of BCZR Section 405.3 for the denial of a gasoline station at the proposed site.

Protestants presented Mr. Thomas Russo of 3 Country Hill Court, a resident of Country Hill Estates, to testify with respect to the pollution of his well. Early in 1988, Mr. Russo contacted the County authorities with respect to the water quality in his well from the leaking gasoline tanks at the abandoned station at the subject site. Until Mr. Russo contacted County officials, they had not considered the possibility of off-site contamination of a large number of

wells. Protestants cited the fact that the County has never implemented a cleanup plan for the site. Mr. Russo's well remained contaminated with petroleum by-products above the State of Maryland drinking level standards throughout the entire period of time. It has gone through numerous cyclical fluctuations, but it has never once been shown to be safe to drink according to the State of Maryland standards.

Protestants also presented Ms. Dorothy Foos, President of the Greater Kingsville Association, who testified with respect to the Greater Kingsville Community Plan. She stated that the proposed location is the only location specifically addressed in the plan with regard to a preferred use, e.g., a farmers' market, due to its history of petroleum contamination.

Rosanne DiFonzo, a property owner in the area, presented evidence with respect to the business operations already in the area. She stated that, along with the Fork Citgo Station at the northeast corner of Harford Road and Sunshine Avenue, which also includes a mini-mart and a gas-and-go pump option, there are three other existing convenience stores on the northwest corner of Harford Road and Fork Road—a High's store, Johnny Ryan's, and Fork Deli & Bakery. These businesses are primarily locally owned and limit their hours of operation, opening no earlier than 6:00 a.m. and closing no later than 11:00 p.m. Lights are dimmed at the existing corner gas station at 10:00 p.m. during the weekdays and at 8:00 p.m. on Sundays.

Ms. Carol Shaw presented a number of documents, two of which were market analyses within a 3- and a 5-mile radius of the proposed site. The 3-mile analysis showed that within 3 miles of the site there were 11 convenience stores and 5 gasoline stations. One of the gasoline stations and one of the convenience stores were open 24 hours. Within a 5-mile radius, the analysis showed that there exists 54 convenience stores, 11 of which operate 24 hours, and 30 gas stations, including ten 24-hour businesses. The analysis pointed out that the four convenience stores already in Fork constitute more stores than exist at most rural intersections

within this market radius. Ms. Shaw also presented a comparative market shop analysis (Protestants' Exhibit No. 54) which concluded that a number of the products to be offered by the Royal Farm Store were sold by the various other stores at the shopping center diagonally across from the subject site, as well as at the Citgo store.

Mr. Paul Plowman, a long-time resident of the area, testified to the number and location of abandoned gas stations and pumps within a 2-mile radius of the site based upon his 40 years of residency in the Fork area. He presented a map-based locational analysis combined with photographs and labels indicating that, within a 2-mile radius of the proposed site, there were 11 abandoned or closed gas stations. At one point, all four corners of the intersection of Harford Road and Sunshine Avenue, including the proposed site, had gas stations. The only current service station still in operation is the Fork Citgo on the northeast corner of the intersection.

Protestants also emphasized the fact that the Petitioner's environmental experts agreed that the subject site sits atop a topographical ridge and drainage divide, and is at the center of a large fault that runs through the property from northwest to southeast. Petitioner's expert, Mr. Mills, opined that the direction location of the large fault which was located on the property ran from northeast to southwest. However, both Petitioner's experts, Mr. Sheesley and Mr. Mills, agreed that the water flow was definitely in a southeasterly direction towards Country Hill Estates.

Protestants presented evidence from Mr. Kevin Koepenick, an employee of the Baltimore County Department of Environmental & Resource Management (DEPRM) in the groundwater management section. Mr. Koepenick testified that he was familiar with the "stormceptor" type technology for stormwater management, and that MtBE is an additive used in petroleum products and is water-soluble.

Mr. Tony Okechukwu, also an employee with Baltimore County DEPRM, testified under subpoena for the Protestants. Mr. Okechukwu testified he was familiar with "stormceptor" type technology and stated that during heavy downpours the majority of the rainwater would not be captured by the "stormceptor." In this situation, rainwater, including all petroleum by-products such as benzene and MtBE that become co-mingled, would pass directly through the "stormceptor" chamber without any components being captured. It would then be disbursed into the groundwater and on to the ground surface.

Decision

A. Special Exception

The zoning regulations that apply to a B.L.-C.R. overlay district are contained in Section 230 of the BCZR and Section 259.2A and 259.3. Section 259.2A states:

> The C.R. District is established to provide opportunities for convenience shopping and personal services that are customarily and frequently needed by the rural residential and agricultural population and tourists…The commercial centers with C.R. Districts are not intended to be regional facilities providing specialty goods to a population outside of the rural area.

Section 259.3E provides additional requirements for granting of a special exception in a C.R. District. Among the requirements is the necessity to document the need for the development at the proposed location.

Section 405.3 of the BCZR states that a finding of the presence of one abandoned fuel service station, as defined in Section 405.7, within a one-half-mile radius, or two such stations within a one-mile radius of the proposed fuel service station establishes that there is no need for the proposed use, unless rebutted to the Board's satisfaction by market data. Unfortunately, Section 405.3 does not set forth a valid definition of abandoned gas stations, and the Board does not feel that the three long-abandoned stations at this intersection of Harford and Fork Roads, including the one abandoned at the proposed site, would qualify as abandoned stations within the

meaning of Section 405.3. However, the fact that there are 11 abandoned gas stations within a 5-mile radius of the proposed site does weigh heavily on the question of need in the area.

The Board is aware of the definition of "need" set forth *in Neuman et al v. Mayor and City Council of Baltimore et al*, 251 Md. 92. The Court stated: "...Need has been judicially held to mean 'expedient, reasonably convenient and useful to the public...'" It does not mean absolute necessity. The *Neuman* case involved a decision by the Board of Municipal and Zoning Appeals of Baltimore City, which was affirmed by the Court, allowing a general practitioner of medicine to occupy and use, as a non-resident doctor, an office in one of the large apartment houses on Park Heights Avenue. The doctor had practiced in the apartment house for over two years with another physician who then left the office. The Court found that there was enough evidence to show that there existed a population density within a reasonable distance of the apartments to make it expedient, reasonably convenient and useful for the public that a doctor practice from an office located there. It affirmed the Board of Appeals. The *Neuman* case was decided in 1968.

The subsequent decision of the Court of Appeals cited by the Petitioners, *Lucky Stores v. Board of Appeals*, 270 Md. 513 (1973), was cited for the proposition that the prevention of competition is not a proper element of zoning. The Court cited the *Neuman* case but went on to find that the Petitioner in that case, Memco Stores, a division of Lucky Stores, which proposed to erect a discount gasoline station in an area already served by Giant and Gem, two other discount operations, did not establish a "need" for another discount operation in this area. The Court cited its decision in *American Oil Company v. Board of Appeals of Montgomery County*, 220 Md. 301 (1973) in which it noted that Amoco had offered no studies or reports indicating a possible need by the population in the general neighborhood of the proposed filling station. It stated that the same situation existed in the present case. Memco offered no studies or reports

possibly showing the number of residents in the marketing area, the average number of automobiles per household, the average number gallons of gasoline consumed per vehicle in Maryland, and the indicated desire of a substantial number of residents that a Memco filling station was desired, in order to establish a possible need for an additional filling station at the Memco site. It stated, "Memco clearly had the burden of proof to establish need by a preponderance of the evidence.

In the present case, the Board finds that the studies on the traffic and population presented by the Petitioners do not support the need for an additional gas station at the proposed site. The study by Mr. Cronyn indicates that in 1995 the State Highway Administration conducted a study which showed that there were 8,775 trips per day on Harford Road. There were no counts available for Sunshine Avenue /Fork Road. The study conducted by Traffic Concepts in 1998 indicated that there were approximately 12,000 trips per day on Harford Road and another 5,000 to 6,000 on Sunshine Avenue /Fork Road.

Protestants introduced an exhibit (Protestants' Exhibit No. 1) which consisted of a traffic study of Harford Road conducted by Petitioner's expert, Kenneth Schmid, at the Harford County line on September 20, 1999. This exhibit was a compilation of traffic statistics gathered over a 48-hour period. It showed that traffic was almost non-existent during the middle of the night and was heavy during a 1½-hour morning and evening rush hour. This document showed that the highest number of trips on one day was 9,110.

The study presented by Mr. Cronyn (Petitioner's Exhibit No. 6) indicated that, within a radius of 1.5 miles of the subject site, the population between 1990 and the projected date of 2003 would increase by 81 people. The number of households in the area during the same time period was projected to increase by 48.

Protestants submitted a petition through witness, Carol Shaw, indicating opposition of individuals in the surrounding area to the construction of the proposed Royal Farm Store. Ms. Shaw had done an analysis of the petition and testified that within a one-mile radius around the proposed site approximately 664 adults lived in the area and 223 of them had pro-actively opposed the project by signing the petition.

The Board recognizes that the stifling of competition is no basis for denying a special exception with respect to the question of "need." However, the Board feels that the evidence shows a lack of need for either a convenience store or a gas station at the proposed site. Given the slight increase in the population of the surrounding area, and even assuming an increase of 3,225 trips per day on Harford Road between 1995 and 1998, the Board considers that there is no "need" established at the proposed site. This Board feels that the intent of the C.R. overlay district is to "provide opportunities for convenience shopping and personal services that are customarily and frequently needed by the rural residential and agricultural population and tourists." Although, in the course of our deliberations, one of the panel espoused some concern as to whether those commuting past the site could be likened to "tourists" and thereby included in the definition of "need," the Board unanimously agrees that "commercial centers within C.R. districts are not intended to be regional facilities providing specialty goods to a population outside of the rural area." We, therefore, cannot conclude that there is sufficient need shown in the transient population to warrant the granting of this special exception.

Despite the fact that this Board would not grant the special exception on the basis of need, we unanimously agree that, assuming arguendo that the question of need were to be resolved in favor of the Petitioners, they would meet the requirements of Section 502.1 of the BCZR, if Petitioners met the conditions set forth below. There is great concern for the health, safety and general welfare of the individuals in this locality. Protestants' witness Russo testified

that his well is still contaminated. Both Petitioner's witnesses Sheesley and Mills testified that water flow from the site was definitely in a southeasterly direction toward the development of Country Hill Estates, where Mr. Russo lives. Although Petitioner's expert witness in the installation of fuel tanks, Mr. Schammel, testified that he had never installed a plastic liner for fuel tanks when he has installed double-walled piping and a system such as the type to be installed at the subject site, he did admit that such a liner would be added protection. In the event a special exception were to be granted, this Board would require the installation of such a liner in the ground around the fuel tanks.

Mr. Schammel also testified that the electronic monitoring system would not function during electrical power outages. Protestants' witness, Carol Shaw, testified that power outages of several days were not unusual in the Fork area. Therefore, the Board would require a back-up electrical system powered by a generator or battery for the electrical monitoring system at this site in the event of power outages.

Finally, Protestants' witnesses Koepenick and Okechukwu, Baltimore County employees of DEPRM, testified that petroleum products, such as benzene and MtBE would not be captured by the "stormceptor" to be installed at this site but would pass through the "stormceptor" into the ground water. In view of this testimony, the Board would require that this "stormceptor" be modified or a new type of "stormceptor" be obtained that would ensure that such contaminants as benzene or MtBE would be captured and not released into the ground water.

Finally, as no impermeable surface and retention provisions applied to the project, no inconsistency with the regulations existed in connection with the proposed use.

In all other aspects, this Board finds that the Petitioner would meet the requirements of Section 502.1 B through H, based on the testimony of witnesses Schmid (traffic congestion), Schammel and Mills (potential hazard from panic or other dangers), and Ratcliffe and Braden

(overcrowding land or undue concentration of population, adequate provisions for schools, parks, etc.; interference with adequate light and air; inconsistency with zoning regulations; and inconsistent with impermeable surface vegetation).

Development Exemption

The question of the availability of appeal to exemptions granted under Section 26-171 of the *Baltimore County Code* has long been a subject of discussion and controversy. A rudimentary understanding of the existing development process should be kept in mind throughout this discussion. In its simplest terms, an approved plan is required for all development in Baltimore County, as set out in Section 26-201, et seq, of the Code. A developer prepares a "concept plan" which is informally reviewed through contact with various County agencies and departments, and the resulting plan is presented by the developer at a "community input meeting" for public discussion and comment. Subsequently, after a full review by relevant County agencies and departments, a full public evidentiary hearing is held before a Hearing Officer who grants or denies final approval of the Development Plan. An appeal may be taken from his decision to this Board as authorized in Section 26-209 of the Development Regulations.

Under Section 26-171, certain types of development are entitled to exemption from some or all of this Development Review and Approval Process. A development qualified under Section 26-171(a) is exempted from all requirements of the Development Review and Approval Process as set forth in §26-201 – 26-219; those projects exempted under § 26-171(b) are relieved from the requirements of a community input meeting as well as the Hearing Officer's Hearing.

In an apparent attempt to foster communication in the development process between County agencies, departments, developers and communities, as well as to facilitate the entire development process, the Director of the Department of Permits & Development Management, under the authority granted him in § 26-218(b) of the *Baltimore County Code*, created the

Development Review Committee (DRC). This is an "informal group" consisting of representatives of the Department of Public Works, the Department of Recreation and Parks, the Department of Permits and Development Management (DPDM), the Department of Environmental Protection & Resource Management (DEPRM), and the Office of Planning, and is chaired by a representative of DPDM. The committee reviews preliminary and final development plans, makes comments and suggestions during the development process and formulates recommendations to the Director of the Department of Permits and Development Management as to requests for limited exemptions under § 26-171(a) and (b). These recommendations are reviewed and either adopted or not by the Director.

It is clear by a reading of the *Baltimore County Code,* as well as through the testimony of Donald Rascoe, Development Manager, Division of Development Processing (DPMD), that there is no specific authority for the "DRC" in law. It appears to save time for the various governmental participants by reducing somewhat the individual and interagency mail and phone use during the development process, thus aiding the ultimate decisions made by the Director. However, **it is clear that it has no authority or formal existence whatsoever.**

Until recently, this Board, based primarily upon the decision of the Maryland Court of Appeals in *UPS v. People's Counsel*, 336 Md 569 (1994), maintained that the notification by the Director (Mr. Jablon) of the granting or denying of an exemption under § 26-171 was not a "final" appealable event. The Circuit Court for Baltimore County has nevertheless been divided on the issue. In 1996, Judge Brennan agreed that no such appeal was available In the Matter of *George and Debra Rojek*, Circuit Court Civil Action No. 03-C-95-010618; in the same year, Judge Hinkel found that a decision to grant a limited exemption under § 26-171(a)(7) was a "final decision" and therefore appealable to the Board of Appeals, *Alan N. Kantor and Associates*. Circuit Court Civil Action No. 03-C-95-10094. Most recently, Judge Cahill, after

reviewing and commenting on the contradictory opinions existing, found that a decision of the Director of DPDM adopting recommendations of the DRC was clearly a "final decision" and therefore an appealable event. *Kucera et al vs. UMBC*, Circuit Court Civil Action No. 03-C-98-009243 (1999).

As a result of the decision in *Kucera*, *supra*, the Board reviewed its position relative to the appealability of Orders granting or denying limited exemptions under § 26-171. It determined to treat them henceforth as appealable events. Unfortunately, none of the opinions referred to above shed any light whatsoever on a determination of the standard of review to be applied in such cases. Appeals to the Board are generally heard *de novo* under § 603 of the Baltimore County Charter. In some limited circumstances, including but not limited to appeals of the Hearing Officer's approval of a final development plan under § 26-209 and decisions of the Code Enforcement Official, that appellate standard is altered by specific statutory language. There being no such defining, directing or limiting language as to an appeal of a determination under § 26-171 in either statute or Court decision, the Board decided that it was most appropriate to hear such appeals on a *de novo* basis.

In the instant case, the Petitioner requested an exemption from the entire development process under § 26-171(a)(7) based upon their belief that the project was a "minor commercial structure." It should be noted that the term "minor commercial structure" is not defined within the Code itself. Although we are not privy to the thought process or discussions of the DRC (since as an unofficial body there are no notes or minutes kept), the DRC ultimately reviewed the project and informally recommended that the Director not grant an exemption under (a)(7), but grant a limited exemption under § 26-171(b)(9). Under that exemption, the developer is exempt from the community input meeting and the Hearing Officer's Hearing pursuant to § 26-202 and §

26-206 by virtue of being a "minor development" as defined in § 26-168, "not to exceed a total of three (3) lots."

§ 26-168(cc) states:

"Minor development" means:

(1) A development without a public works agreement;
(2) a residential development with a public works agreement involving only road widenings; or
(3) a development in which the improvements are determined by the director of permits and development management as minimal under § 26-239(b) of this article.

§ 26-239(b) states:

(b)(1) The Director of Permits and Development Management may waive the requirement for a public works agreement if the Director determines that the public improvements are minimal
(2) Minimal public improvements include:
(i) fire hydrants;
(ii) water or sewer extensions;
(iii) storm drain extensions;
(iv) curb, gutter or pavement projects;
(v) traffic control devices; or
(vi) other similar improvements.

Petitioners presented as a witness Nicholas Brader, a licensed professional engineer employed by Matis Warfield, Inc., engineers for the project, who addressed § 26-171. He testified, in light of the omission of a definition of "minor commercial structure" in the *Baltimore County Code* and based upon his prior experience in the development process, an (a)(7) exemption would be appropriate. At the same time, however, he maintained that, since no public works agreement would be required for the project, an exemption under § 26-171(b)(9) could be granted. In fact, he further stated that he had agreed, on behalf of the Petitioner, to the (b)(9) exemption when it was recommended at the June 11, 1999 meeting of the DRC.

The Protestants offered Carol Shaw and Dorothy Foos who testified that it was their belief that the community was entitled, under the circumstances, to a community input meeting

and a Hearing Officer's Hearing to delve into issues (in their view) incompletely or inadequately explored in the pursuit by the Petitioners of the special exception relief required in this case. No testimony was presented on behalf of the Protestants which contradicted specifically the existence or nonexistence of the public works agreement in the project and whether or not the project qualified as a "minor development."

Protestants have argued that the granting of the (b)(9) exemption was not permitted as Petitioner had not only not requested such an exemption but rather had wished to be granted an (a)(7) exemption. They further suggest that the amendment by counsel for the Petitioner during the hearing before the Board, to include the (b)(9) exemption, was an improper and impermissible action.

As previously stated, the DRC does not officially exist. It has neither authority nor official power of any sort or description. It exists only as a so-called "kitchen cabinet" to the present Director, Arnold Jablon. Therefore, no (a)(7) or (b)(9) request was made or could be directed to the DRC. Arnold Jablon, faced with a much broader § 26-171(a)(7) request, determined to grant a more restrictive (b)(9) exemption. Petitioners not only accepted this decision but, as noted herein, filed an alternate (b)(9) request (without gas pumps) which was also subsequently granted by Mr. Jablon.

We find nothing inappropriate in Mr. Jablon's determination to grant less than he was asked to approve by the Petitioners. Moreover, while the Board is content with this conclusion, we believe the amendment by counsel during the course of the Board's hearing to include the (b)(9) request would withstand challenge under the recent decision of Judge Daniels In the Matter of *Ellen Saval, Beth Israel Synagogue, and People's Counsel for Baltimore County*, Circuit Court Civil Action No. 03-C-98-8520, affirming the Board's acceptance of amendments in the course of a hearing.

The Petitioners have established, through undisputed testimony, that this project does not exceed three lots in scope nor will it require a public works agreement. As such, it qualifies as a "minor development" under § 26-168(cc) and therefore the granting of the exemption by Mr. Jablon under § 26-171(b)(9) should and will be unanimously confirmed by this Board.

Having so determined, the Board feels constrained to comment further on the broader issues generated by this case. It is fortuitous that this matter turned on the existence and need for a public works agreement to qualify it as a "minor development" under § 26-168(cc)(1). Had, for instance, the project's status been based on (cc)(3) instead, which states, "a development in which the improvements are **determined by the director** of permits and development management as minimal under § 26-239(b) of this article" (emphasis added), we might not have clearly known the basis upon which Mr. Jablon granted or denied the exemption request. Likewise, if one looks at § 26-239(b), you discover that the Director could determine to waive the requirements as "minimal" under (b)(2)(vi). Since Mr. Jablon's letters of June 11 and July 22, 1999 (the format of which has become standard) give no indication as to his thought processes in the determination made by him, nor the supporting facts and reasoning in granting or denying a (b)(9) exemption, it would be difficult, if not impossible, to determine what basis was adopted by him as dispositive. Not knowing what factors motivated the Director in this kind of circumstance to act pursuant to his "may" (or may not) "waive the requirement for a public works agreement if the Director determines" authority, the Board has no way of knowing what issues are to be heard, even if the appeal is on a *de novo* basis. Only in clear situations such as the case at bar can a *de novo* determination be had of the existence or nonexistence of controlling factors in the exemption question.

Additionally, if an "arbitrary and capricious" standard is utilized, the Board is still unable to review Mr. Jablon's actions in that light, as neither he nor his "kitchen cabinet" provide any

record or written rationale from which to determine the presence or lack of arbitrariness or capriciousness in the decision.

Clearly, the judicially determined right and amenability to appeal from the granting or denial of exemption requests under § 26-171 is in conflict, made more difficult by, or in some scenarios negated completely by, the language previously existing in the Development Regulations. The Board believes that those regulations should legislatively or judicially be reviewed and/or altered to require the Director, at the very least, to state the reasons and rationales supporting a granting or denial of an exemption under § 26-171. If so altered, *de novo* appeals on those issues, or for that matter, appeals based on whether or not the Director was arbitrary or capricious in utilizing or not utilizing those factors in making his decision, could be adequately addressed on appeal by the Board or a reviewing court.

In conclusion, we are not unmindful of the fact that the relevant development regulations in this case, especially those concerning exemptions under § 26-171, were evidently not written with the appeals process in mind. The Board believes that, in light of the imposition by the Circuit Court of a right to appeal the granting or denial of a 26-171 exemption, the appellate process must be reviewed and adjusted by those empowered to do so, to allow appeals to be heard on clearly definable issues and determined according to specific standards.

ORDER

THEREFORE, IT IS THIS 31st day of August, 2000 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Exception for an automobile service station in combination with a convenience store at the subject location be and the same is **DENIED** for the reasons as set forth above; and it is further

ORDERED that the requested limited exemptions, approved by the Development Review Committee (DRC) as set forth and adopted in the June 11, 1999 letter from Arnold Jablon, Director, Department of Permits & Development Management, (Case No. CBA-99-127) and in the July 22, 1999 letter from Arnold Jablon (Case No. CBA-99-128) be and the same are **AFFIRMED**; and it is further

ORDERED that the limited exemption requested in Case No. CBA-99-127 be and the same is **APPROVED**; and it is further

ORDERED that the limited exemption requested in Case No. CBA-99-128 be and the same is **APPROVED.**

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

Lawrence M. Stahl, Chairman

Lawrence S. Wescott

Thomas P. Melvin

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Seven Kids LLC –Legal Owners; Cloverland Farms Dairy, Inc. –CP /Case No. 99-199-X; and Cases No. CBA-99-127 and No. CBA-99-128

DATE : Thursday, June 22, 2000

BOARD /PANEL :
Lawrence M. Stahl (LMS)
Lawrence S. Wescott (LSW)
Thomas P. Melvin (TPM)

SECRETARY : Kathleen C Bianco /Administrator

PURPOSE: To deliberate Case No. 99-199-X /Special Exception request for fuel station in combination with convenience store; CBA-99-127 and CBA-99-128 /DRC approval of limited exemption, one plan with fuel station and one without fuel station.

First issue discussed:

- Special exception – 259.2 and .3; 405.3 and 502.1 of BCZR as to district and overlay; service station permitted as of right in commercial town center; Petitioner's contention that Fork is a commercial town center. Also discussed additional requirements of 405.3 as to "need" -- and 405.7 as to abandoned fuel service stations and fact that this site was abandoned as fuel service station over 8 years ago; all four corners were at one time fuel service stations, but there are no remaining pumps, etc., and one station remains today.

- Also discussed 405.8 which promotes conversion to other uses; if converted, no pumps need be removed; discussed *Warrener* case previously heard by the Board.

- Issue of need consumed much of deliberation – beginning discussion and ending discussion; various cases cited by Petitioners; discussed issue of "competition"; convenient service to public; per CA – meaning of "need" – expedient, convenient to public.

- Further discussed meaning of CR overlay – to service the area – discussion also included "commuter traffic" – LMS believed commuter traffic to be included ("significant contact"); LSW and TPM did not.

- Defined "rural area"—and "need" per law; minimal increase in population of area between 1990 and 1998.

As to special exception:

Petitioner met burden as do 502.1 – unanimous that this was done; SE could be granted with conditions: (1) liner under tanks; (2) backup generator; and (3) Stormceptor system – not found to be satisfactory – to pursue alternative method with DEPRM. However, majority found that Petitioner did not meet 405 as to "need" – therefore could not be granted.

Final vote as to special exception:

✓ LMS: Met burden as to 502.1 with conditions to be imposed; also met 405 as to "need";
✓ LSW: Met burden as to 502.1 with conditions to be imposed; did not meet 405 as to "need";
✓ TPM: Met burden as to 502.1 with conditions to be imposed; did not meet 405 as to "need."

NG&D-Bayonne, N. J.
EXHIBIT
1

By majority decision, special exception is denied; did not meet 405.

As to DRC approval for limited exemption:

- Discussed various upper court orders used as guidance by the Board; Board's decision to accept jurisdiction of DRC appeals, although there is no real authority granted to the Board by statute and no guidance as to burden.

- Discussed Mr. Jablon's role; can affirm /accept DRC "recommendation"; can reject it; can change it, with no reasons or rationale given.

- Discussed *de novo* aspect of appeal – no system set up; amendment of DRC request (upper Court has said it was okay in *Schuster* matter, which was zoning matter with posting and advertising beforehand. No such advertising and posting in this instance; therefore, if the Courts have said it was okay with Schuster, the Board accepted that it was okay at this level with Seven Kids.

As to DRC decision, no PWA; minor development by default. Sufficient showing that it is appropriate.

Decision as to DRC approval of limited exemption in both 99-127 and 99-128:

✓ LMS: Approve limited exemption; appropriate.
✓ LSW: Approve limited exemption; appropriate.
✓ TPM: Approve limited exemption; appropriate.

Unanimous decision that DRC is affirmed; limited exemption request approved by the Board.

As additional discussion, also reviewed 239 – if Developer proved (b)(2) – could Mr. Jablon still deny waiver? According to law as set forth in Code – yes, he could. With no explanation required as to why – law only says what he may do but requires no justification or reasons.

Final Decision: Petition for Special Exception is DENIED (by majority decision /did not meet "need" requirement imposed by CR overlay; could have been granted otherwise with conditions imposed by full Board); affirmed decision of DRC – approved limited exemption with or without fuel station. Majority to issue Opinion/Order denying special exception and approving DRC. LMS to issue dissenting opinion as to special exception denial only.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place this date regarding this zoning case. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted

Kathleen C. Bianco

Kathleen C. Bianco, Administrator
County Board of Appeals

12/28/00

PETITION OF SEVEN KIDS, LLC, ET AL. FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
IN THE MATTER OF THE APPLICATION OF SEVEN KIDS, LLC., LEGAL OWNER, AND CLOVERLAND FARMS DAIRY, INC., CONTRACT PURCHASER, FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE SOUTHWEST CORNER OF SUNSHINE AVENUE AND HARFORD ROAD	*	Case No. 03-C-00-9923
CBA NO.: CBA-99-199-X	*	

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MEMORANDUM OF PETITIONERS IN SUPPORT OF PETITION FOR JUDICIAL REVIEW

Seven Kids, LLC, Legal Owner, and Cloverland Farms Dairy, Inc., Contract Purchaser, Petitioners/Appellants (collectively referred to as "Cloverland"), by John H. Zink, III and Robert A. Hoffman with Venable, Baetjer and Howard, LLP, their attorneys, in accordance with Maryland Rule 7-207, submit their Memorandum in Support of Judicial Review, as follows:

STATEMENT OF THE CASE

This administrative appeal involves a Petition for Special Exception filed by Cloverland to permit construction of a Royal Farm convenience store with fuel pumps on property located at the intersection of Harford Road and Sunshine Avenue in Fork, Maryland, several miles south of the Baltimore/Harford County line. The subject

property is zoned for commercial use; a Commercial, Rural district ("C.R.") in a Business, Local ("B.L.") zone. The B.L. zone is the base zone and is referred to as the "underlying" zone. The C.R. district is the designated Commercial, Rural area which "overlays" the base B.L. zone. Hence, the C.R district is often referred to as the C.R. overlay district. The subject property is zoned, therefore, as B.L-C.R.

The proposed store at the subject property would be open twenty-four hours offering fuel service and the sale of more than 5,500 convenience items. This "one-stop shopping" concept is presently unavailable in the immediate area. This "one-stop shop" would have a sales floor of 2,799.5 square feet with a gas station providing five (5) fuel pump islands. In a B.L.-C.R. overlay district, the combined use of a convenience store larger than 1,500 square feet and a fuel service station is permitted by special exception. On November 4, 1998, the Petitioners, therefore, filed a Petition for Special Exception to the Zoning Commissioner of Baltimore County.

The Deputy Zoning Commissioner for Baltimore County conducted a public hearing on the Petition for Special Exception over a series of three days in early 1999. On April 30, 1999, the Deputy Zoning Commissioner issued a special exception to permit an automobile service station use in combination with a food store having a sales area larger than 1,500 square feet. The Zoning Commissioner attached fourteen (14) conditions and restrictions to the approval. Protestants Long Green Valley Community Association, Greater Kingsville Civic Association, and other individual property owners, appealed this decision to the County Board of Appeals for Baltimore County ("Board of Appeals") on May 26, 1999.

The Board of Appeals held nine (9) days of hearing on the Special Exception beginning on September 30, 1999 and ending on April 5, 2000. On August 31, 2000, the Board of Appeals denied Petitioners request for an automobile service station in combination with a convenience store, holding that the project qualified for a special exception in all respects except for one: "need" for the project at the subject site. On September 25, 2000, Petitioners sought judicial review of the Board's decision by the Circuit Court for Baltimore County.

As discussed in more detail below, the Board applied an incorrect legal standard for determining whether the proposed development was needed. In effect, the Board misinterpreted applicable zoning ordinances and eliminated the substantial commuter traffic on Harford Road from consideration of "need." In addition, the Board erred in determining that the Petitioners failed to prove that there was a need for a combined convenience store and gas station at the proposed site. Petitioners, however, produced relevant and substantial evidence that a combination fuel station and convenience store would be convenient, expedient and useful for local residences and travelers, and, therefore, needed at the proposed site. Protestants failed to rebut the substantial proof that the "one-stop shop" at the subject site would be convenient, expedient and useful for the local residences and travelers along Harford Road. The Board's decision, therefore, is not supported by substantial evidence. For these reasons, the Board's erroneous decision should be reversed.

STATEMENT OF FACTS

Cloverland is the largest dairy in the area, and it operates 87 Royal Farm stores throughout Maryland, Delaware, and Virginia with more than twenty stores in Baltimore County. (T. 9/30/99, pp. 21-22) As John Kemp, Vice-President of Cloverland Farms Dairy, Inc., testified, Cloverland, which started its Royal Farm stores in 1967 as dairy stores, has had to expand the stores and add fuel service to compete with major oil companies, who have added convenience stores to their fuel service stations. (T. 9/30/99, pp. 20-23) Consumer demand for "one-stop shopping" has forced such companies to combine fuel service with convenience stores in order to serve customer needs. (T. 9/30/99, pp. 22-23) Cloverland had an interest in developing the Harford and Sunshine site for commercial purposes as far back as 1987. (T. 9/30/99, pp. 25-28) Cloverland believes this location provides an outstanding opportunity to provide this "one-stop shopping" to the surrounding residences as well as to commuters traveling through the subject location along Harford Road. (T. 9/30/99, pp. 28-29)

Under the Baltimore County Zoning Regulations ("B.C.Z.R."), the use of a convenience store in a B.L.-C.R. district is permitted as a matter of right. See B.L. Section 230.4 and C.R. Section 259.3B.1. In addition, an automotive-service station in a B.L.-C.R. district is permitted by special exception. See B.L. Section 230.13 and C.R. Section 259.3B.2. Under B.C.Z.R. Section 405.4.E.1, a special exception is required for the use of an automotive-service station in combination with a convenience store with a sales floor area greater than 1,500 square feet.

The requirements for the granting of a special exception are set forth in Section 502.1 and 259.3.E. Section 502.1 requires, among others, that the Petitioner establish that the proposed project will not be "detrimental to the health safety, or general welfare of the locality involved." Under Section 259.3.E "need" for the development is a requirement for granting a special exception in a C.R. district:

> E. In addition to the requirements generally imposed in the issuance of special exceptions by Section 502.1, the following requirements shall apply to the granting of special exceptions in C.R. Districts:
>
> 1. The petitioner shall document the need for the development at the proposed location.

In support of the requirement to document the "need" for the proposed development at the subject location, Cloverland presented the testimony of John Kemp, Cloverland's Vice-President, and Joseph Cronyn, expert in real estate market analysis and economic impact analysis. As John Kemp explained, there is great consumer demand for "one-stop shopping" in terms of fuel service, convenience store, and other services, such as an ATM machine. (T. 9/30/99, pp. 22-23) His company is attempting to meet these consumer demands. (T. 9/30/99, pp. 20-23) Cloverland believes the Harford Road/Sunshine Avenue site is an excellent opportunity to provide this "one-stop shopping" to the surrounding residences as well as the commuters traveling along Harford Road. (T. 9/30/99, pp. 28-29)

The Royal Farm store will carry an extended grocery line with over 5,500 items. The Citgo gas station in the area and a potential competitor offers only twelve (12) types of convenience products as compared to at least the one-hundred eleven (111) types to be sold at the Royal Farm Store. (Protestants Ex. 54). As Mr. Kemp explained, the

surrounding area has no other store offering fast and easy "one-stop shopping." (T. 9/30/99, pp. 28-29, 32-34) Therefore, the proposed Royal Farm store will fill a need that is currently unserved or underserved by the neighboring High's store and Citgo fuel service station. (T. 9/30/99, p. 28)

Cloverland also offered the testimony of Joseph Cronyn, an economic and marketing expert. Mr. Cronyn testified, based on his market and economic analysis of the proposed project, that he believes there to be sufficient need for the proposed store in terms of market potential to support the use. (T. 10/07/99, pp. 22-25); Petitioners' Exhibit 6. Based upon his research of the area, Mr. Cronyn was able to draw a 1.5 mile ring around the site as the primary market area for the proposed Royal Farm store. (T. 10/07/99, pp. 14-16) Within this ring, there are 788 households, which serve as the residential market for the site. (T. 10/07/99, pp. 14-16) Factoring in average income and a statistical analysis of how such households spend money, Mr. Cronyn conservatively estimated that sales for the proposed Royal Farm store would produce $671,000-$810,000 in sales from the surrounding residential market area. (T. 10/07/99, pp. 20-23) In addition, these revenue numbers are based on splitting sales with the existing businesses which will continue to be viable. (T. 10/07/99, pp. 23-25)

With respect to the commuter traffic, Mr. Cronyn cited a recent State Highway Administration traffic count performed in 1995 indicating that there was a daily volume of 8,775 trips per day through the intersection. (T. 10/07/99, p. 12). Mr. Cronyn also cited a study performed by Traffic Concepts of a traffic count on December 11, 1998, showing trips north and south on Harford Road and east and west on Sunshine Avenue

and Fork Road. This study was introduced and testified to by Kenneth Schmid, expert in traffic engineering. The total trips through the intersection past the subject site were estimated to be 17,000 trips per day. (T. 10/07/99, p. 12)

Mr. Cronyn then factored in the amount of estimated sales from commuter traffic passing the site. Considering a conservative 5.7% capture rate of the total trips past the site, Mr. Cronyn estimated $3.7 million in sales will be generated by the Royal Farm store from the passing commuter traffic. (T. 10/07/99, pp. 20-23) These figures, in his opinion, support his conclusions that the Royal Farm store will be "reasonably convenient and useful for the public." (T. 10/07/99, p. 24)

Protestants offered the testimony of Rosanne DiFonzo, a property owner in the area, with respect to the business operations already in the area. She stated that the Fork Citgo Station at the northeast corner of Harford Road and Sunshine Avenue offers drinks, coffee and a gas-and-go pump option. (T. 01/27/00, pp. 45, 51). There are three other small stores on the northwest corner of Harford Road and Fork Road – High's Dairy Store, Johnny Ryan's, and Fork Deli & Bakery. (T. 01/27/00, pp. 45-53). These businesses are primarily locally owned. Mrs. DiFonzo expressed concern that the "Royal Farm [Store] is going to cause problems for the existing businesses to the point where one or some might end up going out of business." (T. 01/27/00, p. 53). With regard to commuter needs, Mrs. DiFonzo conceded that the project would "provide some convenience," but she suggested Harford County commuters traveling through the subject property along Harford Road could use the recently opened gas and convenience

store located nine (9) miles north on Route 1 in Harford County. (T. 01/27/00, pp. 59-61).

Ms. Carol Shaw, on behalf of Protestants, presented a market analyses within a 3-and a 5-mile radius of the proposed site. The 3-mile analysis showed that within 3 miles of the site there were 11 convenience stores and 5 gasoline stations. (T. 03/01/00, pp. 65-66) One of the gasoline stations and one of the convenience stores were open 24 hours. (T. 03/01/00, p. 72). Ms. Shaw testified that there exists one (1) combined convenience store (liquor and wine) and gas station: Peterson's, located at Long Green Station in Glen Arm. (T. 3/01/00, p. 73). This witness identified only one combined enlarged convenience store and gas station, the Wawa on Route 1 in Harford County. (T. 03/01/00, p. 34). A second Wawa offering combined services has been proposed for development at the intersection of Harford Road and Route 1 on Benson's Corner in Harford County. *Id.*

Mr. Paul Plowman, a resident, testified for Protestants about the number and location of abandoned gas stations and pumps within a 2-mile radius of the site based upon his 40 years of residency in the Fork area (T. 1/20/00, pp. 106-114). He testified that within a 2-mile radius of the proposed site, there were 11 abandoned or closed gas stations. *Id.*

After the close of all the evidence, the Board requested memoranda from the parties in lieu of closing argument. (T. 04/05/00, p. 119). On August 31, 2000 the Board issued its opinion denying the Petitioners Petition for Special Exception for an automobile-service station in combination with a convenience store at the subject

location, predicating its conclusion solely on the issue of "need," as Cloverland satisfied all other requirements for a Special Exception.

STATEMENT OF THE LEGAL ISSUES

I. Did the Board apply an incorrect legal standard defining need for the development at the proposed location?

II. Did the Board err in determining that the Petitioners failed to prove that there was a need for a combined convenience store and gas station at the proposed location?

STANDARD OF REVIEW

The role of the circuit court in reviewing the Board of Appeals decision is set forth in Md. Code Ann. Art. 25A, § 5(U) (1957, 1987 Repl. Vol.), which provides in pertinent part:

> Any person aggrieved by the decision of the board and a party to the proceeding before it may appeal to the circuit court for the county which shall have power to affirm the decision of the board, or if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing as justice may require. Any party to the proceeding in the circuit court aggrieved by the decision of the said court may appeal from such decision to the Court of Special Appeals. The review proceedings provided by this subsection shall be exclusive.

Hence, the circuit court's standard of review is to determine whether the Board of Appeals decision is or is not "in accordance with the law."

The Court of Appeals has stated that a court may set aside, as "not in accordance with law," a decision of the Board of Appeals which is arbitrary, illegal or capricious. *Levy v. Seven Slade, Inc.* 234 Md. 145, 149, 198 A.2d 267 (1964) (determination of reviewing court's function under § 5(U)). In making a determination of whether the Board of Appeals decision is arbitrary, illegal or capricious, the reviewing court must

decide whether the question before the agency was fairly debatable. *Howard County v. Dorsey*, 45 Md. App. 962, 700, 416 A.2d 23 (1980), rev'd on other grounds, 292 Md. 351, 438-A.2d 1339 (1982). The fairly debatable test is analogous to the clearly erroneous standard under Rule 8-131(c) and a decision is fairly debatable if it is supported by substantial evidence on the record taken as a whole. *Dorsey*, 45 Md. App. at 701, 416 A.2d 23, quoting *Sedney v. Lloyd*, 44 Md. App. 633, 637, 410 A.2d 616 (1980). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Thompson*, 103 Md. App. at 190, 652 A.2d at 1190 (quoting Supervisor of *Assmnts. v. Group Health Ass'n, Inc.*, 308 Md. 151, 159, 517 A.2d 1076 (1980)); see also *Resetar v. State Bd. of Educ.*, 284 Md. 537, 554, 399 A.2d 225, 234 (1975) (quoting *Insurance Comm'r v. National Bureau*, 248 Md. 292, 309-10, 236 A.2d 282 (1967)). The primary role for a reviewing court, is to determine whether there was "substantial evidence" in the record to support the board's factual conclusions and whether the board made any errors of law. *Hoyle v. Board of Liquor License Comm'rs. For Baltimore City*, 115 Md. App. 124, 126, 692 A.2d (1997). The Board of Appeal's decision will be reversed, therefore, if there is not substantial evidence to support its decision based upon the correct standard of law.

The Board's statutory determination of the legal standard of "need" is an interpretation of an issue of law. On review, however, the Board's interpretation of an issue of law ordinarily is not afforded any deference. *Liberty Nursing Center, Inc. v. Department of Health and Mental Hygiene*, 330 Md. 433, 443, 624 A.2d 941, 946 (1993); *Food Lion v. McCall*, 122 Md. App. 429, 433, 712 A.2d 581, 582-83 (1998); *Patten v.*

Board of Liquor License Commissioners for Baltimore City, 107 Md. App. 224, 230, 667 A.2d 940, 943 (1995). Questions of statutory interpretation are questions of law, and an agency's interpretation of a statute normally is given little weight in determining the judicial construction of that statute. *Baltimore Bldg. & Constr. Trades Council AFL-CIO v. Barnes*, 290 Md. 9, 14, 427 A.2d 979, 982 (1981) *Food Lion, supra*, 122 Md. App. At 433, 712 A.2d 582-83. Generally, an agency's determination on a question of law is subject to the substituted judgment test—the reviewing court substitutes its judgment for that of the agency if the court's analysis of the legal issue is different from the agency's analysis. *Carriage Hill Cabin John*, 125 Md. App. at 214-15. 724 A.2d at 761.

When an administrative agency has made an error of law or utilizes an erroneous standard and some evidence exists that could be considered appropriately under the correct standard, the case should be remanded so the agency can reconsider the evidence using the correct standard. *Belvoir Farms Homeowners Ass'n., Inc. v. North,* 734 A.2d 227, 355 Md. 259 (1999). The Court need not remand, however, if modification is so minor as to make remand inappropriate or if remand is otherwise futile. *O'Donnell v. Bassler*, 425 A.2d 1003, 289 Md. 501 (1981).

ARGUMENT

I. The Board Applied An Incorrect Legal Standard To Define "Need" For The Development At The Subject Site.

Cloverland has requested a special exception for the construction of a 3,113 square foot Royal Farm convenience store (with a sales floor area of 2,799.5 square feet) with five (5) fuel pumps islands. Such a use is permitted in the B.L.-C.R. zone by special

exception. Special exceptions generally are approved in accordance with B.C.Z.R. 502.1, and in this case, with the additional requirement of "need" under B.C.Z.R. Section 259.3.E.

According to the well-developed law of Maryland, such a special exception use is *presumed* to be valid and is *presumed* to be consistent with the general welfare. *Schultz v. Pritts*, 291 Md. 1, 11, 432 A.2d 1319 (1981). Therefore, once a petitioner demonstrates that the proposed use satisfies the specific requirements of the applicable ordinances, *i.e.*, B.C.Z.R. Section 259.3.E and B.C.Z.R. Section 502.1, the special exception must be granted unless a protestant produces strong and substantial evidence that placement at this particular location will have adverse effects *above and beyond* those inherently associated with such a special exception use regardless of where it may be located within the zone. *Schultz*, 291 Md. at 14, 22-23. In other words, a protestant must do more than show that the use may have adverse effects that are common to that use generally. *Id. See also Sharp v. Howard County Board of Appeals*, 98 Md. App. 57, 632 A.2d 248 (1993).

The Board of Appeals held that the Petitioners met the special exception requirements of B.C.Z.R. 502.1, but then concluded that Cloverland failed to meet the "need" requirement of B.C.Z.R. Section 259.3.E.

According to Section 259.3.E.1, "the petitioner shall document the need for the development at the proposed location." Although the zoning regulations do not further define the term "need," the Board of Appeals recognized that "need" has been judicially defined to mean "expedient, reasonably convenient and useful to the public." *See* Board

of Appeals Final Opinion, p. 11, citing *Neuman v. Mayor and City Council of Baltimore*, 251 Md. 92, 98-99, 246 A.2d 583 (1968). The Board seemingly agreed that the "need" requirement was satisfied, *if consideration was given to the convenience and usefulness of the project to commuter traffic*. But the Board erroneously interpreted and applied B.C.Z.R. Section 259.2.A to the concept of "need" and then concluded that the "need shown in the transient population [commuters]" could not be included as a part of the "need for the development at the proposed location":

> The Board recognizes that the stifling of competition is no basis for denying a special exception with respect to the question of "need." However, the Board feels that the evidence shows a lack of need for either a convenience store or a gas station at the proposed site. Given the slight increase in the population of the surrounding area, and even assuming an increase of 3,225 trips per day on Harford Road between 1995 and 1998, the Board considers that there is no "need" established at the proposed site. This Board feels that the intent of the C.R. overlay district is to "provide opportunities for convenience shopping and personal services that are customarily and frequently needed by the rural residential and agricultural population and tourists." Although, in the course of our deliberations, one of the panel espoused some concern as to whether those commuting past the site could be likened to "tourists" and thereby included in the definition of "need," *the Board unanimously agrees that "commercial centers within C.R. districts are not intended to be regional facilities providing specialty goods to a population outside of the rural area.*" We, therefore, cannot conclude that there is sufficient need shown in the transient population to warrant the granting of this special exception. (emphasis added)

See Opinion and Order by the Board of Appeals, p.13.

In effect, the Board qualified the definition of "need" under B.C.Z.R. Section 259.3.E by the application of B.C.Z.R. Section 259.2.A, which simply states the legislative intent for creating the C.R. zoning classification:

> The C.R. District is established to provide opportunities for convenience shopping and personal services that are customarily and frequency needed by the rural residential and agricultural population and tourists. It is intended that the C.R. District be applied only to areas where such

> facilities are not available within a reasonable distance, where sewage treatment and a potable water supply can be provided without an adverse effect on the environment and neighboring uses, and where public roads are capable of handling the anticipated increase in traffic without adverse impacts on surrounding areas. The commercial centers with C.R. Districts are not intended to be regional facilities providing specialty goods to a population outside of the rural area.

Contrary to the Board's opinion, a general legislative statement explaining why a C.R. district is established (Section 259.2.A.) does not limit the *specific* uses within a C.R. district as explicitly permitted by the legislature under the zoning regulations (Sections 230.4, 259.3.B.1, 230.13, 259.3.B.2, and 405.4.E.1). "It is a cardinal rule of statutory construction that specific terms prevail over the general language of a statute." *DeJarnette v. Federal Kemer, Inc.*, 299 Md. 708, 718 (1984), and see also, *Eastern Stainless Steele v. Nicholson*, 306 Md. 492, 498 (1986). A convenience store and service station are permitted as a combined use by special exception, and, therefore, such use is presumed to be valid as explained in *Schultz v. Pritts*, 291 Md. 1 (1981). As noted above, the concept of "need" in a zoning ordinance simply refers to convenient public usefulness. Under Section 259.3.E, the "need" for Cloverland's project is determined by the circumstances existing "at the proposed location," including traffic using Harford Road. The Baltimore County Council did not limit "need," as used in Section 259.3.E, by excluding commuter traffic. Therefore, the Board's refusal to consider the project's convenience and usefulness in the context of commuter traffic "at the proposed location" constitutes a legal mistake.

If the Board did not commit error by reading Section 259.2.A as a part of the use and special exception ordinances, however, the Board certainly misinterpreted Section

259.2.A in the context of the proposed convenience store. The Board apparently decided that by serving the needs of the commuters, the store and fuel pumps should be considered a "regional facility" that provided "specialty goods to population outside of the rural area." Simply stated, a convenience store does not sell "specialty goods" designed to entice an "outside population" into the "rural area." It is difficult to imagine a family in Bel Air deciding to travel to Fork for the purpose of using Cloverland's convenience store. In comparison, the White Marsh Mall is an example of a "regional facility" specifically designed to draw consumers from Harford County to Baltimore County for the purpose of shopping. Therefore, the Board's belief that it could not consider commuter traffic on Harford Road within the concept of "need" is based on two mistakes; *i.e.*, (1) Section 259.2.A was misapplied as it does not state any requirements for a special exception, and (2) Cloverland's convenience store is not proposed as a "regional facility." It follows that the Board's decision to discount convenience and usefulness to commuters was based on an erroneous statutory interpretation.

II. The Board Erred In Determining That The Petitioner Failed To Prove That The Development Was Needed At The Proposed Site.

It remains for this Court to apply the correct legal standard for "need" at the proposed site of the Cloverland convenience store. In *Neuman v. Mayor of Baltimore City*, 251 Md. 92 (1967), the location of a doctor's office in a residential area was challenged. The applicable zoning law required evidence of need for such service in the area. The Court of Appeals instructs that, in such context, "need" means that which is "expedient, reasonably convenient and useful to the public." The application of this standard, at the proposed site, certainly leads to the conclusion that a well stocked

convenience store with fuel pumps would be expedient, convenient, and useful to both the rural residents of the area and the numerous commuters using Harford Road at the site of the Cloverland project.

Having determined that "need" in the context of a B.L.-C.R. district involves a standard of convenience to the area, which includes the surrounding residences as well as the commuters traveling along Harford Road, it is clear that Petitioners produced relevant and substantial evidence that the "one stop-shopping" would be convenient, expedient and useful for local residences and travelers, and, therefore, "needed." In response, the Protestants failed to rebut the substantial proof that the "one-stop shop" at the subject site would be convenient, expedient and useful for the local residences and travelers along Harford Road. The Board failed to address, in its decision, why a combination fuel station and convenience store would not be convenient, expedient and useful. Instead, the Board ignored the Petitioners "one-stop shop" evidence and concluded that "the evidence shows a lack of need for *either* a convenience store *or* a gas station at the proposed site." (emphasis added.) See the Board of Appeals Opinion and Order, p. 13.

In so doing, the Board did not address the convenience of "one-stop shopping" at the proposed site. Instead, the Board considered only the number of individual gas stations or convenience stores in the immediate and surrounding area. It does not logically follow from the fact that abandoned fuel stations and the number of individual convenience stores or gas stations operating in the surrounding area, that a "one-stop shop" would not be convenient, expedient and useful for the local residents and travelers

along Harford Road at the subject location. Rather, it follows that the Board used the wrong legal standard and inappropriate factual comparisons in reaching its decision.

The Protestants offered no probative evidence on the lack of need of "one-stop shopping" in the surrounding area to support the Board's decision. Ms. Shaw pointed out three "one-stop shopping" locations in her Market Analysis – (1) Peterson's liquor and gas store; (2) a Wawa convenience store and gas station located on Route 1 "going [north] into Bel Air" passed the Harford Road split with Route 1in Harford County (T. 3/01/00, p. 34, 80); and (3) a Wawa convenience store and gas station that is currently in the approval phases in Harford County (T. 03/01/00, pg. 59-61). *See also* Protestants Memorandum p. 9.

It is simply an unjustifiable leap to conclude that the two Wawa's, one not even approved, and the other beyond Harford Road in Bel Air, will satisfy the needs of commuters using Harford Road and travelling south to the proposed site. Moreover, it does not logically follow from the fact that two existing combined fuel station and convenience stores, one nine miles north and the other located in another town, that a similar one-stop shop in the immediate vicinity of the subject property will not be convenient, expedient and useful for the local residents and travelers along Harford Road. Indeed, the testimony bears no connection whatsoever to the state of affairs at the proposed site and the need for "one-stop shopping."

Even assuming that the commuters' needs should be excluded from consideration of the need for the proposed development, the evidence was not such that the Board reasonably could have concluded that a combined fuel station and convenience store was

not convenient, expedient and useful to the local residences. In fact, the state of affairs at the proposed site evidences a need for "one-stop-shopping." Ms. Shaw's comparative market shop analysis shows that the Citgo provides gas and only eleven (11) percent of the type of items that the proposed Royal Farm Store would minimally offer. The Board, therefore, dismissed the need for true "one-stop shopping" and based its decision on the concept of competition rather than actual convenience to local residents. For example, Mrs. DiFonzo was concerned the proposed development could close present businesses which are locally owned. The prevention of competition, however, is not a proper element of zoning. See, *Lucky Stores v. Board of Appeals*, 270 Md. 513, 312 A.2d 758 (1973).

The Protestants offered no evidence of why increased competition would not, in fact, be in the best interests of the public. The only evidence before the Board that focused on the needs of local residences and/or travelers passing through the area of the proposed site showed that a combined fuel station and convenience store would be reasonably convenient, expedient and useful to them.

CONCLUSION

In reviewing the Petitioners' application for a combination convenience store and gas station, the Board used the wrong legal standard of "need." In effect, the Board concluded that "need" had to be considered only in the context of convenience or usefulness to local residents, rather than including all travelers and potential customers "at the proposed site." The Board erroneously juxtaposed Sections 259.2.A and 259.3.E, concluding that because the Cloverland store could not be a "regional facility" in a C.R.

District, the Board was required to exclude commuter traffic from the consideration of need.

Applying the correct standard for "need", however, Petitioners presented credible, substantial evidence, which was unrebutted, that the "one-stop shopping" – a combination fuel station and convenience store – would be convenient, expedient and useful for local residences and travelers, and therefore, "needed" for the purposes of a special exception. The proposed use is permitted as a matter of right—and presumed valid. The Board's narrow and restricted view of "need" conforms to neither the applicable ordinances nor judicial precedent.

For these reasons, this Court should reverse the decision of the Board of Appeals and grant the Special Exception, or, at the least, this case should be remanded to the Board to reconsider its decision using the correct definition and scope of "need," as used in Section 259.3.E.

Respectfully submitted,

John H. Zink, III

Robert A. Hoffman BY JHZ
Robert A. Hoffman
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517
(410) 494-6200
Attorneys for Petitioners Seven Kids, LLC
And Cloverland Farms Dairy, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of December, 2000, a copy of the foregoing MEMORANDUM OF PETITIONERS IN SUPPORT OF PETITION FOR JUDICIAL REVIEW was mailed to: J. CARROLL HOLZER, ESQUIRE, Holzer and Lee, 508 Fairmount Avenue, Towson, Maryland 21286, Attorney for Appellants; and to KATHLEEN C. BIANCO, Administrator, County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204.

John H. Zink, III

TO1DOCS1/BAZ01/#110006

11/28/00

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF :
SEVEN KIDS, LLC, ET AL *
120 COCKEYSVILLE ROAD
COCKEYSVILLE, MD 21030 *

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE COUNTY BOARD OF APPEALS No. **3-C-00-009923**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF
THE APPLICATION OF *
SEVEN KIDS, LLC – LO; CLOVERLAND FARMS DAIRY, INC. –CP *
FOR A SPECIAL EXCEPTION ON PROPERTY
LOCATED ON THE SOUTHWEST CORNER OF *
SUNSHINE AVENUE AND HARFORD ROAD

*

11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT *

CASE NO. 99-199-X *

* * * * * * * * * * *

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Lawrence M. Stahl, Lawrence S. Wescott, and Thomas P. Melvin, constituting the County Board of Appeals of Baltimore County, and in answer to the Petition for Judicial Review directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY

RECEIVED AND FILED
00 NOV 28 PM 4:03
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

November 10, 1998	Petition for Special Exception filed by Robert A. Hoffman, Esquire, on behalf of Seven Kids, LLC –Legal Owners, and Cloverland Farms Dairy, Inc. –Contract Purchasers; to permit an automobile service station use in combination with a food store having a sales area larger than 1,500 sq. ft.
December 3	Publication in newspaper.
December 6	Certificate of Posting.
December 7	Entry of Appearance filed by People's Counsel for Baltimore County.
December 17	ZAC Comments.
December 22	Hearing held before the Zoning Commissioner
April 30, 1999	Findings of Fact and Conclusions of Law issued by the Deputy Zoning Commissioner -- Petition for Special Exception Hearing is GRANTED subject to terms and restrictions.
May 26	Notice of Appeal filed by J. Carroll Holzer, Esquire, on behalf of Long Green Valley Association, Greater Kingsville Civic Association, and individuals listed and identified on Exhibit A (attached to Appeal).
September 30	Hearing Day #1 held before the Board of Appeals. (Appellants Motion for the CBA to find Jurisdiction in an appeal from the DRC /Motion to Dismiss the Approval of the DRC approving the two site Plans in the above captioned cases submitted by J. Carroll Holzer, Esquire, on behalf of Kingsville, et al and Motion to Dismiss DRC Appeals made at hearing by Robert A. Hoffman, Esquire, on behalf of Seven Kids LLC, et al) The Board ruled in its 8/31/00 opinion that the the DRC decision is an appealable event.
October 7	Hearing Day #2 held before the Board of Appeals.
January 19, 2000	Hearing Day #3 held before the Board of Appeals.
January 20	Hearing Day #4 held before the Board of Appeals.
January 27	Hearing Day #5 held before the Board of Appeals.
February 9	Hearing Day #6 held before the Board of Appeals.
March 1	Hearing Day #7 held before the Board of Appeals.
March 29	Hearing Day #8 held before the Board of Appeals.
April 5	Hearing Day #9 concluded by the Board.

Exhibits submitted at the hearings held by the Board of Appeals:

Petitioner's Exhibit Nos.	1A-Site Plan
	1B-Site Plan
	2-C.U. – Kenneth Schmidt – Traffic Engineer
	3-Traffic Concepts – Report Sept, 1999
	4-Drawing of Road System at Site (Proposed Changes)
	5-Resume Joseph Cronyn
	6-Proposed Royal Farm Store (Market Analysis) 1-28-98
	7-(Neuman Case) –Defining word "need") Page 4
	8-C.U. Peter Ratcliffe
Large – in CBA office	9-Drawing of Proposed Bldg.
	10-A-V Photos
	11-C.V. Robert Sheesley
	12-200 Scale Aerial Photo G.I.S.
	13-Dec. 7, 1998 Letter from Bruce Seeley – Arnold Jablon
	14-Jan. 31, '99 Letter from Sheesley – Ellen Jackson
	15-Feb. 12, '99 Letter from M.D.E. – Sheesley
	16-Fracture Trace Map – Oct. 1, 1999
	17-Report from Nutshell – April 5, '98 (well test)
	18-C.V. – Thomas Mills
	19-Brochure – Double up – Fuel Tank
	20-Brochure – Pisces (Fuel Equipment)
	21-Royal Farms –Equipment Installation Overview
	22-MD Pump, Tank & Electric Co. Sept. 28, '99
	23-C.V. Nicholas Brader
	24-Report Balto. Co. Fire Dept Nov. 29, '98
	25-Pg. 29 –of Greater Kingsville Area Comm. Plan
	26-Map – Proposed Land Use (Map 39)
Large – in CBA office	27-1000 scale Zoning Maps (A thru O) (15)
	28-U.S. Geological 7 ½ minute quadangle maps (A-Y – 25)
	29-Geologic Map of Baltimore County
Large – in CBA office	30-Zoning Map 1D

Petitioner's Exhibits (Exemption Case)	1-DRC file – Case 02089F (Packet)
	2-DRC file – Case 07069E (Packet)
	3-DRC file – from PDM (Rascoe)

Protestants Exhbit Nos.	1-Traffic Count Data 24 Hour period (from Sun. to Thurs.)
	2-June 23, 1988 Report EA Engineering
	3-EA Engineering TOC Elevations
	4-Test Well Monitoring Location (Blue)
	5-St. of MD Environment Report 1/20/90
	6-Photo – nite time Royal Farm Store
Large – in CBA office	7-5 photos – Bldg's –in neighborhood – close to site
Large – in CBA office	8-Photos MD Historical Trust Sites
	9-Villages Brochure
	10-Rule 8 Papers –Greater Kingsville Civil Association
	11-Greater Kingsville Area Community Plan –July 1, '96
	12-Balto. Co. Comp. Zoning Map Issues District 5 11/24/99
	13-July 13, 1988 letter from DEPRM to Mrs. Morley
	14-Aug. 29, 1988 letter from DEPRM to Mr. Hawkins
	15-BGE letter dated Feb. 16, '99
	16-Transcript – 60 minutes show – Jan. 16, 2000
Large-in CBA office	17- Abandoned and closed gas pumps and stations (12 photos)
	18-1st Amended FDP Country Hill Estates July '89
	19-Rule 8 – Long Green Valley (Charlotte Pine)
	20-Balto. Co. Rural Legacy Program Boundary Map
Large-in CBA office	21-ID Photos – Existing Businesses

Large-in CBA office	22-Look of Royal Farms & Abandoned Gas Stations (11 photos)
	23-Aegis Article 1/19/00
Large-in CBA office	24-Traffic Views – Photos (25)
Large-in CBA office	25-Country Hill Views of Site (9 photos)
	26-200' scale topo map
Large in CBA office	27-Chart – Crime Statistics
	28-Report - Robbery –How Yours Business Can Avoid
	29-Police Report (news Release)
	30-Report –Workplace Violence
Large in CBA office	31-Photos – Topography Views (Jan. 2000)
	32-Russo Chronology (9 pages)
	33-Action Report 10-24-87
	34-Packet of Letters from Rasmussen, Collins, etc. to Russo
	35-Site Contamination Assessment Plan 2/2/88
Large in CBA office	36-5 documents
	37-Report of Ground H20 Investigation 1/20/89
	38-EA Engineering –David Huber
	39-June 21, '88 Letter to Russo from DEPRM
	40-Russo Well Sample Analysis History
	41-MDE Report Oct. 8, 1999
	42-March 9, '89 letter from DEPRM
	43-1-31-94 Letter from Dept. of Environment (Jan Norman)
	44-Report –Nutshell April 19, 94 – Ground – Water Investigation
	45-MD Spectral Services 4-5-94 –Analytical Chemistry Services
	46-Dept. Environment 6-13-95 (Report of Observations)
	47-Feb. 12, '98 – Report from Nutshell
	48-Dept. of Environment March 6, '98 – Report
	49-Nutshell Report April 5, '98
	50A-April 29, '98 –OSHA National News Release
	B-July 16, '96 –Violence in the Workplace
	C-July 16, '96 –Violence in the Workplace
	D-OSHA – Workplace Violence
	E-OSHA – Recommendations for Night Retail Workers
	51-Balto. County Rural Legacy Program
	52-Portions of Master Plan 2010 (+Greater Kingsville Comm. Plan)
	53-Amendments to Proposed Mater Plan 2010
	54-Comparative Market Shop –4 area report Feb. 19, '99
	55A-3 mile radius Market Analysis
Large – in CBA Closet	B-Photos & Map – Depicting above
	56A-Five mile radius market analysis
Large –in CBA Closet	B-Map Photo (B & C – put together to make one)
	C-Map Photo (B & C -put together to make one)
	57-Royal Farm Stores Location Analysis – Oct. '99
	58-2 Folders Petitions – Opposition
	59-Analysis of Opposition – To Royal Farm Store
	60-Well Completion Reports (4 pages)
	A-Russo Report
	B-Morley Report
	C-Hawkins Report
	D-Shaw Report
	61-Chart – Domino Chart of Assumptions
	62-Notes of DZC Hearing (from tapes below)
	63-Notes of Ms. Shaw –DZC Hearing (Kemp Testimony)
	64-Diagram Stormceptor
	65-DEPRM File

May 17, 2000	Protestants' Memorandum filed by J. Carroll Holzer, Esquire, on behalf of the Greater Kingsville Community Association, et al.
	Post-Hearing Memorandum filed by Robert A. Hoffman, Esquire, on behalf of Seven Kids LLC and Cloverland Farms Dairy, Inc.
June 22	Public Deliberation concluded by the Board.
August 31	Opinion and Order issued by the Board of Appeals; Petition for Special Exception is DENIED (requested limited exemptions, approved by DRC and adopted in the 6/11/99 letter from Arnold Jablon, Director /PDM and in the 7/22/99 Letter from Arnold Jablon are AFFIRMED) are approved.
September 25	Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County.
October 5	Copy of Petition for Judicial Review retrieved from the Circuit Court for Baltimore County by the Board of Appeals.
October 5	Certificate of Notice sent to interested parties.
November 28, 2000	Transcript of testimony filed.
November 28, 2000	Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board. However, all tangible material or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals office and upon request of the parties or the Court will be transmitted to the Court by whomever institutes the request.

Charlotte E. Radcliffe

Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49 Basement
Old Courthouse, 400 Washington Avenue
Towson, Maryland 21204 (410-887-3180)

c: John H. Zink, Esquire
Patsy A. Malone, Esquire
Seven Kids, LLC, et al
J. Carroll Holzer, Esquire
Greater Kingsville Civic Assn., et al
People's Counsel for Baltimore County
Virginia W. Barnhart, County Attorney

10/5/00

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF :
SEVEN KIDS, LLC, ET AL *
120 COCKEYSVILLE ROAD
COCKEYSVILLE, MD 21030 *

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE COUNTY BOARD OF APPEALS No. **3-C-00-009923**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204
*
IN THE MATTER OF
THE APPLICATION OF *
SEVEN KIDS, LLC – LO; CLOVERLAND FARMS DAIRY, INC. –CP *
FOR A SPECIAL EXCEPTION ON PROPERTY
LOCATED ON THE SOUTHWEST CORNER OF *
SUNSHINE AVENUE AND HARFORD ROAD
*
11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT *

CASE NO. 99-199-X *

* * * * * * * * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Lawrence M. Stahl, Lawrence S. Wescott, and Thomas P. Melvin, constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, John H. Zink, III, Esquire, and Patricia A. Malone, Esquire, VENABLE, BAETJER AND HOWARD, LLP, 210 Allegheny Avenue, Towson, Maryland 21285-5517, Counsel for Petitioners; Seven Kids, LLC, et al, 120 Cockeysville Road, Cockeysville, MD 21230, Petitioners; J. Carroll Holzer, Esquire, HOLZER & LEE, 508 Fairmount Avenue, Towson, MD 21286, Counsel for Protestants; Greater Kingsville Civic Assn., et al, Protestants, and, Peter Max Zimmerman,

RECEIVED AND FILED
00 OCT -5 PM 4:06
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204; a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Charlotte E. Radcliffe

Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Rm. 49-Basement
Old Courthouse, 400 Washington Avenue
Towson, Maryland 21204 (410-887-3180)

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to John H. Zink, III, Esquire, and Patricia A. Malone, Esquire, VENABLE, BAETJER AND HOWARD, LLP, 210 Allegheny Avenue, Towson, Maryland 21285-5517, Counsel for Petitioners; Seven Kids, LLC, et al, 120 Cockeysville Road, Cockeysville, MD 21230, Petitioners; J. Carroll Holzer, Esquire, HOLZER & LEE, 508 Fairmount Avenue, Towson, MD 21286, Counsel for Protestants; Greater Kingsville Civic Assn., et al, Protestants, and, Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204; this 5th day of October, 2000.

Charlotte E. Radcliffe

Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49 Basement
Old Courthouse, 400 Washington Avenue
Towson, Maryland 21204 (410-887-3180)

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

WOL
File

October 5, 2000

J. Carroll Holzer, Esquire
HOLZER and LEE
508 Fairmount Avenue
Towson, MD 21286

RE: Civil Action No. 3-C-00-009923
Seven Kids, LLC, et al /99-199-X

Dear Mr. Holzer:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on September 25, 2000, in the Circuit Court for Baltimore County for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-00-009923.

Enclosed is a copy of the Certificate of Notice, which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

C: Greater Kingsville Civic Assn., et al
Robin Beers
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

October 5, 2000

John H. Zink, III, Esquire
Patricia A. Malone, Esquire
VENABLE, BAETJER AND HOWARD, LLC
210 Allegheny Avenue
Towson, MD 21285-5517

RE: Civil Action No. 3-C-00-9923
Seven Kids, LLC, et al /99-199-X

Dear Counsel:

In accordance with Rule 7-206 (c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: Seven Kids, LLC, et al

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on Recycled Paper

9/25/00

PETITION OF SEVEN KIDS, LLC, ET AL. FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
IN THE MATTER OF THE APPLICATION OF SEVEN KIDS, LLC., LEGAL OWNER, AND CLOVERLAND FARMS DAIRY, INC., CONTRACT PURCHASER, FOR SPECIAL EXCEPTION ON PROPERY LOCATED ON THE SOUTHWEST CORNER OF SUNSHINE AVENUE AND HARFORD ROAD	*	Case No.
CBA No.: CBA-99-199-X	*	

* * * * * * *

PETITION FOR JUDICIAL REVEIW

Petitioners, Seven Kids, LLC, legal owner, and Cloverland Farms Dairy, Inc., contract purchaser, by John H. Zink, III and Patricia A. Malone with Venable, Baetjer and Howard, LLP, their attorneys, in accordance with Maryland Rule 7-202, file this Petition for Judicial Review from the decision of the County Board of Appeals of Baltimore County, dated August 31, 2000, denying the Petition for Special Exception in Case No. CBA-99-199-X for an automobile service station in combination with a convenience store. Petitioners were parties to the agency proceedings.

Respectfully submitted,

John H. Zink, III /PAM

JOHN H. ZINK, III

PATRICIA A. MALONE
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P. O. Box 5517
Towson, Maryland 21285-5517
(410) 494-6200
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of September, 2000, a copy of the foregoing PETITION FOR JUDICIAL REVIEW was mailed to J. Carroll Holzer, Esquire, Holzer and Lee, 508 Fairmount Avenue, Towson, Maryland 21286, Attorney for Appellants; and to Kathleen C. Bianco, Administrator, County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204.

PATRICIA A. MALONE

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8/31/00

IN THE MATTER OF THE APPLICATION OF	*	BEFORE THE
SEVEN KIDS, LLC –LEGAL OWNER; CLOVERLAND FARMS DAIRY, INC. -	*	COUNTY BOARD OF APPEALS
CONTRACT PURCHASER FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON	*	OF
THE SW/C SUNSHINE AVENUE AND HARFORD ROAD AND REQUEST	*	BALTIMORE COUNTY
FOR LIMITED EXEMPTION /DRC NO. 02089F AND DRC NO. 07069E	*	Case No. 99-199-X; Case No. CBA-99-127; and
11TH ELECTION DISTRICT	*	Case No. CBA-99-128
5TH COUNCILMANIC DISTRICT		

* * * * * * * * *

OPINION

This case is before the Board on an appeal by the Greater Kingsville Community Association from a decision of the Deputy Zoning Commissioner issued on April 30, 1999 granting a special exception to permit an automobile service station use in combination with a food store having a sales area larger than 1,500 sq. ft. The Deputy Zoning Commissioner attached 14 conditions and restrictions to the approval. The Greater Kingsville Community Association, herein referred to as the "Protestants," was represented by J. Carroll Holzer, HOLZER AND LEE, and the Petitioner, Seven Kids, LLC /Cloverland Farms Dairy, Inc. (Royal Farm Store), was represented by Robert A. Hoffman and VENABLE, BAETJER AND HOWARD, LLP.

In addition, the case involved the Petitioner's request to the Director of the Department of Permits & Development Management (DPDM) to process its development plan for the Royal Farm Store both in the original form with fuel pumps and in an alternate form without fuel pumps, in accordance with a limited exemption under Section 26-171 of the *Baltimore County Code* ("the Code"). Arnold Jablon, Director of DPDM, approved a limited exemption for the original plan with fuel pumps on June 11, 1999, and also for the alternate plan without fuel pumps on July 2, 1999. These approvals were also appealed by the Protestants to the Board of Appeals. The Board decided to hold one hearing with respect to all three cases.

The Board held nine (9) days of hearing beginning on September 30, 1999, and ending on April 5, 2000.

Special Exception Request

Petitioner's Case

The Petitioner intends to lease 1.21 acres of a 23.34 acre site located at the southeast corner of Harford Road and Sunshine Avenue in Fork, Maryland, to construct a 3,113 sq. ft. Royal Farm convenience store with a sales floor area of 2,799.5 sq. ft. Petitioner also proposes to provide five (5) fuel pump islands with ten fueling spaces. The proposed use is permitted in this zone by special exception.

In support of its position, Petitioner presented John Kemp, Vice President of Cloverland Farms Dairy, Inc., who testified that Cloverland operates 87 Royal Farm stores throughout Maryland, Delaware and Virginia. The consumer demand for "one-stop shopping" has forced the company to combine fuel service with convenience stores in order to serve customer needs and meet competition. Mr. Kemp testified that Cloverland believes this location provides an outstanding opportunity to provide "one-stop shopping" to the surrounding residents as well as the commuters travelling along Harford Road. He stated that the Royal Farm Store will carry an extended grocery line with 5,500 items, including fresh based breads, fried chicken and premium coffees, as compared with a typical convenience store carrying 2,500 items. He contended that there is currently no operation in the area which provides fast and easy one-stop shopping.

Petitioner desired to open the store 24 hours per day to serve its customers. Gasoline deliveries would be made between the hours of 9:00 p.m. and 5:00 a.m., while other deliveries would be during the hours of 7:30 a.m. to 4:00 p.m. Trash removal would be between 7:00 a.m. and 4:00 p.m. The Petitioner stated that the store would be well lit for safety reasons; however,

recessed lighting in the fuel service canopy, the most intensely lit area of the site, would be utilized to minimize the effect of lighting on the surrounding community.

Petitioner also offered the testimony of Joseph Cronyn, an economic and marketing expert. Mr. Cronyn testified with respect to a report he had prepared for the subject site. His report analyzed the "need" of the area, meaning "expedient or reasonably convenient and useful to the public." He analyzed the need in accordance with the local market area and the commuter traffic through the area. The local market area was defined as a 1.5-mile ring around the subject site at Harford and Fork Roads. The commuter traffic raised the question of what is likely to be the consumer demand for the store's goods and services from the traffic flow along Harford Road and Sunshine Avenue /Fork Road.

In analyzing the local market area, Mr. Cronyn used economic and demographic statistics prepared by CACI Marketing Systems. His finding was that the market area was not densely populated and projected modest growth. The statistics showed that the population as of 1990 was 2,140, projected to grow to a figure of 2,221 in the year 2003. This comprised approximately 762 households in 1990, growing to approximately 810 households in the year 2003.

Mr. Cronyn projected that the aggregate spending available to the Royal Farms location would be $517,000.00 to $620,000.00 consumer demand for convenience items and $824,000.00 to $989,000.00 for gasoline service in the market area. He felt that it was reasonable to estimate that the new store would split the local demand equally with a similar business such as High's and Citgo already existing in the intersection.

With respect to the commuter traffic, Mr. Cronyn cited a recent State Highway Administration traffic count performed in 1995 indicating that there was a daily volume of 8,775 trips per day through the intersection. There were no counts available for the Sunshine Avenue

/Fork Road traffic. Mr. Cronyn also cited a study performed by Traffic Concepts of a traffic count on December 11, 1998, showing trips north and south on Harford Road and east and west on Sunshine Avenue and Fork Road. This study was introduced and testified to by Kenneth Schmid, expert in traffic engineering. The total trips through the intersection past the subject site were estimated to range from 17,000 to 17,500 trips per day. Mr. Cronyn estimated that, if the site were to serve an average of 1,000 customers per day, the average sales transaction would probably amount to $10.00 and would conservatively generate $3,650,000.00 in sales annually. He felt that the statistics showed a need in the area for an additional convenience store with gasoline pumps.

Petitioner presented Robert Sheesley, former Director of the Department of Environmental Protection and Resource Management (DEPRM), an expert in environmental science, to provide a history of the site for the Board. The subject site was the site of a former fuel service station and automobile repair shop which was discontinued some time prior to the early 1980s. When the site was being prepared for redevelopment in 1987, it was discovered that the underground storage tanks from the old fuel service station had leaked fuel into the soil. There was no estimate as to how long the tanks had been leaking.

DEPRM became involved, and the leaking storage tanks and the contaminated soil to a depth of 14 feet were removed. Monitoring wells were placed around the site. It was also discovered that the contamination had made its way south of the site into the County Hills Estates neighborhood. It was thought that the contamination had gotten into the aquifer and had flowed through cracks and fissures into the residential wells.

At this point, the Maryland Department of the Environment (MDE) assumed control, and monitoring continued for several years. According to Mr. Sheesley, continued monitoring of the surrounding wells has indicated only residual contamination in the groundwater, and he opined

that there was no active contamination. Contaminants in the monitoring wells have diminished over the years to a point where Mr. Sheesley felt that they were negligible in terms of concentration. Mr. Sheesley confirmed that MDE had approved the site for development as long as certain actions were taken, which Petitioner stated it had agreed to.

Petitioner presented Michael Schammel, an expert in installation and technical requirements for fuel tanks. Mr. Schammel testified with respect to the safety features of the equipment to be installed for the fuel service aspect of the store. These included double-walled tanks in which the interstitial space between the layers is electronically monitored for leakage, double-walled piping, and a contaminant sump that is electronically monitored for leakage, use of double-poppet shear valve, and three methods of release detection (automatic leak detection, electric monitoring of all secondary contaminant devices, and continuous statistical leak detection). Mr. Schammel stated that all employees would be trained in the operation of the fuel service equipment and in monitoring the equipment for any problems. He confirmed that the proposed equipment, installation, inspection and monitoring procedures would meet or exceed the standards dictated by the MDE and the Environment Protection Agency.

On cross-examination, Mr. Schammel indicated that, in addition to the double-walled tanks, there is a type of liner that could be installed in the wall and bottom of the hole in which the gasoline tanks would be placed that would act as a base. He has never installed one of these liners but believes it is the same type that is installed in a landfill. He stated that he was hopeful that the pipes would not leak but, in order to contain any leakage, there was a containment sump, 48 inches by 20 inches by 3 feet deep. If one sump were filled, it would go into other pipes and sumps until the overflow was detected. Mr. Schammel also indicated on cross-examination that, if the electricity at the station went off, you could not pump gas and you could not detect any leakage unless there was a monitor back-up system which was battery-operated.

Mr. Schammel testified that only a very small amount of gasoline would have to leak to set off the sensor switch. An alarm in the box would go off if the sensor were not working. He also stated that his company performs two inspections a year at each Royal Farm location, in addition to routine service calls.

Petitioners also called a Hydrologist, Thomas R. Mills, who described the relevant geology and opined that the risk inherent to the geological water system at the proposed site would have no greater effect here than elsewhere in the zone.

Peter Ratcliffe, a licensed architect, testified as to the aesthetic concerns addressed by the Petitioner, including the scale, materials and appearance of the proposed facility, and maintained that the structure would not be out of character with its rural surroundings.

Petitioner also presented Nicholas J. Brader, a Civil Engineer and expert site planner. Mr. Brader testified as to the size of the sales floor required and the height of the sign which had been reduced from 25 feet to 17 feet. He also noted that there was no population increase as a result of the proposed use and that no overcrowding of land or undue concentration of population would result. He also stated that the stormwater management waiver was granted, and the proposed runoff from the entire site would be less than 10 percent. A "stormceptor" would intercept any water that would have been contaminated by oil or gasoline and would screen the oil and contaminants from the water before it was discharged into the soil. He stated that the "stormceptor" separates grease and other particles out of the wastewater and must be periodically cleaned. He also testified that Baltimore County had not reviewed the stormwater management plan as of that time, since that is normally designed in the final construction phase. Additionally, he confirmed that, as all applicable protective regulations had been met (as set out in Mr. Schammel's testimony), the project would not create a potential hazard from fire, panic or other danger. He further stated that parks and schools would obviously be unaffected by the project;

that the scope of the project would not interfere with adequate light and air; and, since the convenience store was permitted in a B.L.-C.R. zone in conjunction with fuel service (by special exception), that the proposed use was not inconsistent with the zoning regulations.

Kenneth Schmid, a transportation engineer, was called as an expert by the Petitioner. He evaluated the current traffic situation at the site and described the road and traffic changes to be constructed as part of the proposed use of this site. He maintained that the project would not have an adverse impact on the surrounding road system; would not create congestion in the roads surrounding the property; and, in fact, believed that the suggested improvements would actually improve the road network at the site.

Protestants' Case

The Protestants presented a number of witnesses in support of their position that the proposal did not meet any of the additional requirements for the granting of a special exception in a C.R. district (BCZR 259.3.E.1-5). In addition, they felt that the evidence failed to establish that the proposal met the criteria set forth in Section 502.1 of the *Baltimore County Zoning Regulations* (BCZR) in that the site was not unique with respect to a B.L.-C.R. site. In addition, they contended that the Petitioner failed to show the need in the area, and to overcome the effect of the environmental impact on the area. Finally, the Protestants felt that the evidence, with respect to abandoned gas stations in the immediate area which was presented to the Board, met the requirements of BCZR Section 405.3 for the denial of a gasoline station at the proposed site.

Protestants presented Mr. Thomas Russo of 3 Country Hill Court, a resident of Country Hill Estates, to testify with respect to the pollution of his well. Early in 1988, Mr. Russo contacted the County authorities with respect to the water quality in his well from the leaking gasoline tanks at the abandoned station at the subject site. Until Mr. Russo contacted County officials, they had not considered the possibility of off-site contamination of a large number of

wells. Protestants cited the fact that the County has never implemented a cleanup plan for the site. Mr. Russo's well remained contaminated with petroleum by-products above the State of Maryland drinking level standards throughout the entire period of time. It has gone through numerous cyclical fluctuations, but it has never once been shown to be safe to drink according to the State of Maryland standards.

Protestants also presented Ms. Dorothy Foos, President of the Greater Kingsville Association, who testified with respect to the Greater Kingsville Community Plan. She stated that the proposed location is the only location specifically addressed in the plan with regard to a preferred use, e.g., a farmers' market, due to its history of petroleum contamination.

Rosanne DiFonzo, a property owner in the area, presented evidence with respect to the business operations already in the area. She stated that, along with the Fork Citgo Station at the northeast corner of Harford Road and Sunshine Avenue, which also includes a mini-mart and a gas-and-go pump option, there are three other existing convenience stores on the northwest corner of Harford Road and Fork Road—a High's store, Johnny Ryan's, and Fork Deli & Bakery. These businesses are primarily locally owned and limit their hours of operation, opening no earlier than 6:00 a.m. and closing no later than 11:00 p.m. Lights are dimmed at the existing corner gas station at 10:00 p.m. during the weekdays and at 8:00 p.m. on Sundays.

Ms. Carol Shaw presented a number of documents, two of which were market analyses within a 3- and a 5-mile radius of the proposed site. The 3-mile analysis showed that within 3 miles of the site there were 11 convenience stores and 5 gasoline stations. One of the gasoline stations and one of the convenience stores were open 24 hours. Within a 5-mile radius, the analysis showed that there exists 54 convenience stores, 11 of which operate 24 hours, and 30 gas stations, including ten 24-hour businesses. The analysis pointed out that the four convenience stores already in Fork constitute more stores than exist at most rural intersections

within this market radius. Ms. Shaw also presented a comparative market shop analysis (Protestants' Exhibit No. 54) which concluded that a number of the products to be offered by the Royal Farm Store were sold by the various other stores at the shopping center diagonally across from the subject site, as well as at the Citgo store.

Mr. Paul Plowman, a long-time resident of the area, testified to the number and location of abandoned gas stations and pumps within a 2-mile radius of the site based upon his 40 years of residency in the Fork area. He presented a map-based locational analysis combined with photographs and labels indicating that, within a 2-mile radius of the proposed site, there were 11 abandoned or closed gas stations. At one point, all four corners of the intersection of Harford Road and Sunshine Avenue, including the proposed site, had gas stations. The only current service station still in operation is the Fork Citgo on the northeast corner of the intersection.

Protestants also emphasized the fact that the Petitioner's environmental experts agreed that the subject site sits atop a topographical ridge and drainage divide, and is at the center of a large fault that runs through the property from northwest to southeast. Petitioner's expert, Mr. Mills, opined that the direction location of the large fault which was located on the property ran from northeast to southwest. However, both Petitioner's experts, Mr. Sheesley and Mr. Mills, agreed that the water flow was definitely in a southeasterly direction towards Country Hill Estates.

Protestants presented evidence from Mr. Kevin Koepenick, an employee of the Baltimore County Department of Environmental & Resource Management (DEPRM) in the groundwater management section. Mr. Koepenick testified that he was familiar with the "stormceptor" type technology for stormwater management, and that MtBE is an additive used in petroleum products and is water-soluble.

Mr. Tony Okechukwu, also an employee with Baltimore County DEPRM, testified under subpoena for the Protestants. Mr. Okechukwu testified he was familiar with "stormceptor" type technology and stated that during heavy downpours the majority of the rainwater would not be captured by the "stormceptor." In this situation, rainwater, including all petroleum by-products such as benzene and MtBE that become co-mingled, would pass directly through the "stormceptor" chamber without any components being captured. It would then be disbursed into the groundwater and on to the ground surface.

Decision

A. Special Exception

The zoning regulations that apply to a B.L.-C.R. overlay district are contained in Section 230 of the BCZR and Section 259.2A and 259.3. Section 259.2A states:

> The C.R. District is established to provide opportunities for convenience shopping and personal services that are customarily and frequently needed by the rural residential and agricultural population and tourists...The commercial centers with C.R. Districts are not intended to be regional facilities providing specialty goods to a population outside of the rural area.

Section 259.3E provides additional requirements for granting of a special exception in a C.R. District. Among the requirements is the necessity to document the need for the development at the proposed location.

Section 405.3 of the BCZR states that a finding of the presence of one abandoned fuel service station, as defined in Section 405.7, within a one-half-mile radius, or two such stations within a one-mile radius of the proposed fuel service station establishes that there is no need for the proposed use, unless rebutted to the Board's satisfaction by market data. Unfortunately, Section 405.3 does not set forth a valid definition of abandoned gas stations, and the Board does not feel that the three long-abandoned stations at this intersection of Harford and Fork Roads, including the one abandoned at the proposed site, would qualify as abandoned stations within the

meaning of Section 405.3. However, the fact that there are 11 abandoned gas stations within a 5-mile radius of the proposed site does weigh heavily on the question of need in the area.

The Board is aware of the definition of "need" set forth *in Neuman et al v. Mayor and City Council of Baltimore et al*, 251 Md. 92. The Court stated: "...Need has been judicially held to mean 'expedient, reasonably convenient and useful to the public...'" It does not mean absolute necessity. The *Neuman* case involved a decision by the Board of Municipal and Zoning Appeals of Baltimore City, which was affirmed by the Court, allowing a general practitioner of medicine to occupy and use, as a non-resident doctor, an office in one of the large apartment houses on Park Heights Avenue. The doctor had practiced in the apartment house for over two years with another physician who then left the office. The Court found that there was enough evidence to show that there existed a population density within a reasonable distance of the apartments to make it expedient, reasonably convenient and useful for the public that a doctor practice from an office located there. It affirmed the Board of Appeals. The *Neuman* case was decided in 1968.

The subsequent decision of the Court of Appeals cited by the Petitioners, *Lucky Stores v. Board of Appeals*, 270 Md. 513 (1973), was cited for the proposition that the prevention of competition is not a proper element of zoning. The Court cited the *Neuman* case but went on to find that the Petitioner in that case, Memco Stores, a division of Lucky Stores, which proposed to erect a discount gasoline station in an area already served by Giant and Gem, two other discount operations, did not establish a "need" for another discount operation in this area. The Court cited its decision in *American Oil Company v. Board of Appeals of Montgomery County*, 220 Md. 301 (1973) in which it noted that Amoco had offered no studies or reports indicating a possible need by the population in the general neighborhood of the proposed filling station. It stated that the same situation existed in the present case. Memco offered no studies or reports

possibly showing the number of residents in the marketing area, the average number of automobiles per household, the average number gallons of gasoline consumed per vehicle in Maryland, and the indicated desire of a substantial number of residents that a Memco filling station was desired, in order to establish a possible need for an additional filling station at the Memco site. It stated, "Memco clearly had the burden of proof to establish need by a preponderance of the evidence.

In the present case, the Board finds that the studies on the traffic and population presented by the Petitioners do not support the need for an additional gas station at the proposed site. The study by Mr. Cronyn indicates that in 1995 the State Highway Administration conducted a study which showed that there were 8,775 trips per day on Harford Road. There were no counts available for Sunshine Avenue /Fork Road. The study conducted by Traffic Concepts in 1998 indicated that there were approximately 12,000 trips per day on Harford Road and another 5,000 to 6,000 on Sunshine Avenue /Fork Road.

Protestants introduced an exhibit (Protestants' Exhibit No. 1) which consisted of a traffic study of Harford Road conducted by Petitioner's expert, Kenneth Schmid, at the Harford County line on September 20, 1999. This exhibit was a compilation of traffic statistics gathered over a 48-hour period. It showed that traffic was almost non-existent during the middle of the night and was heavy during a 1½-hour morning and evening rush hour. This document showed that the highest number of trips on one day was 9,110.

The study presented by Mr. Cronyn (Petitioner's Exhibit No. 6) indicated that, within a radius of 1.5 miles of the subject site, the population between 1990 and the projected date of 2003 would increase by 81 people. The number of households in the area during the same time period was projected to increase by 48.

Protestants submitted a petition through witness, Carol Shaw, indicating opposition of individuals in the surrounding area to the construction of the proposed Royal Farm Store. Ms. Shaw had done an analysis of the petition and testified that within a one-mile radius around the proposed site approximately 664 adults lived in the area and 223 of them had pro-actively opposed the project by signing the petition.

The Board recognizes that the stifling of competition is no basis for denying a special exception with respect to the question of "need." However, the Board feels that the evidence shows a lack of need for either a convenience store or a gas station at the proposed site. Given the slight increase in the population of the surrounding area, and even assuming an increase of 3,225 trips per day on Harford Road between 1995 and 1998, the Board considers that there is no "need" established at the proposed site. This Board feels that the intent of the C.R. overlay district is to "provide opportunities for convenience shopping and personal services that are customarily and frequently needed by the rural residential and agricultural population and tourists." Although, in the course of our deliberations, one of the panel espoused some concern as to whether those commuting past the site could be likened to "tourists" and thereby included in the definition of "need," the Board unanimously agrees that "commercial centers within C.R. districts are not intended to be regional facilities providing specialty goods to a population outside of the rural area." We, therefore, cannot conclude that there is sufficient need shown in the transient population to warrant the granting of this special exception.

Despite the fact that this Board would not grant the special exception on the basis of need, we unanimously agree that, assuming arguendo that the question of need were to be resolved in favor of the Petitioners, they would meet the requirements of Section 502.1 of the BCZR, if Petitioners met the conditions set forth below. There is great concern for the health, safety and general welfare of the individuals in this locality. Protestants' witness Russo testified

that his well is still contaminated. Both Petitioner's witnesses Sheesley and Mills testified that water flow from the site was definitely in a southeasterly direction toward the development of Country Hill Estates, where Mr. Russo lives. Although Petitioner's expert witness in the installation of fuel tanks, Mr. Schammel, testified that he had never installed a plastic liner for fuel tanks when he has installed double-walled piping and a system such as the type to be installed at the subject site, he did admit that such a liner would be added protection. In the event a special exception were to be granted, this Board would require the installation of such a liner in the ground around the fuel tanks.

Mr. Schammel also testified that the electronic monitoring system would not function during electrical power outages. Protestants' witness, Carol Shaw, testified that power outages of several days were not unusual in the Fork area. Therefore, the Board would require a back-up electrical system powered by a generator or battery for the electrical monitoring system at this site in the event of power outages.

Finally, Protestants' witnesses Koepenick and Okechukwu, Baltimore County employees of DEPRM, testified that petroleum products, such as benzene and MtBE would not be captured by the "stormceptor" to be installed at this site but would pass through the "stormceptor" into the ground water. In view of this testimony, the Board would require that this "stormceptor" be modified or a new type of "stormceptor" be obtained that would ensure that such contaminants as benzene or MtBE would be captured and not released into the ground water.

Finally, as no impermeable surface and retention provisions applied to the project, no inconsistency with the regulations existed in connection with the proposed use.

In all other aspects, this Board finds that the Petitioner would meet the requirements of Section 502.1 B through H, based on the testimony of witnesses Schmid (traffic congestion), Schammel and Mills (potential hazard from panic or other dangers), and Ratcliffe and Braden

(overcrowding land or undue concentration of population, adequate provisions for schools, parks, etc.; interference with adequate light and air; inconsistency with zoning regulations; and inconsistent with impermeable surface vegetation).

Development Exemption

The question of the availability of appeal to exemptions granted under Section 26-171 of the *Baltimore County Code* has long been a subject of discussion and controversy. A rudimentary understanding of the existing development process should be kept in mind throughout this discussion. In its simplest terms, an approved plan is required for all development in Baltimore County, as set out in Section 26-201, et seq, of the Code. A developer prepares a "concept plan" which is informally reviewed through contact with various County agencies and departments, and the resulting plan is presented by the developer at a "community input meeting" for public discussion and comment. Subsequently, after a full review by relevant County agencies and departments, a full public evidentiary hearing is held before a Hearing Officer who grants or denies final approval of the Development Plan. An appeal may be taken from his decision to this Board as authorized in Section 26-209 of the Development Regulations.

Under Section 26-171, certain types of development are entitled to exemption from some or all of this Development Review and Approval Process. A development qualified under Section 26-171(a) is exempted from all requirements of the Development Review and Approval Process as set forth in §26-201 – 26-219; those projects exempted under § 26-171(b) are relieved from the requirements of a community input meeting as well as the Hearing Officer's Hearing.

In an apparent attempt to foster communication in the development process between County agencies, departments, developers and communities, as well as to facilitate the entire development process, the Director of the Department of Permits & Development Management, under the authority granted him in § 26-218(b) of the *Baltimore County Code*, created the

Development Review Committee (DRC). This is an "informal group" consisting of representatives of the Department of Public Works, the Department of Recreation and Parks, the Department of Permits and Development Management (DPDM), the Department of Environmental Protection & Resource Management (DEPRM), and the Office of Planning, and is chaired by a representative of DPDM. The committee reviews preliminary and final development plans, makes comments and suggestions during the development process and formulates recommendations to the Director of the Department of Permits and Development Management as to requests for limited exemptions under § 26-171(a) and (b). These recommendations are reviewed and either adopted or not by the Director.

It is clear by a reading of the *Baltimore County Code,* as well as through the testimony of Donald Rascoe, Development Manager, Division of Development Processing (DPMD), that there is no specific authority for the "DRC" in law. It appears to save time for the various governmental participants by reducing somewhat the individual and interagency mail and phone use during the development process, thus aiding the ultimate decisions made by the Director. However, **it is clear that it has no authority or formal existence whatsoever**.

Until recently, this Board, based primarily upon the decision of the Maryland Court of Appeals in *UPS v. People's Counsel*, 336 Md 569 (1994), maintained that the notification by the Director (Mr. Jablon) of the granting or denying of an exemption under § 26-171 was not a "final" appealable event. The Circuit Court for Baltimore County has nevertheless been divided on the issue. In 1996, Judge Brennan agreed that no such appeal was available In the Matter of *George and Debra Rojek*, Circuit Court Civil Action No. 03-C-95-010618; in the same year, Judge Hinkel found that a decision to grant a limited exemption under § 26-171(a)(7) was a "final decision" and therefore appealable to the Board of Appeals, *Alan N. Kantor and Associates*. Circuit Court Civil Action No. 03-C-95-10094. Most recently, Judge Cahill, after

reviewing and commenting on the contradictory opinions existing, found that a decision of the Director of DPDM adopting recommendations of the DRC was clearly a "final decision" and therefore an appealable event. *Kucera et al vs. UMBC*, Circuit Court Civil Action No. 03-C-98-009243 (1999).

As a result of the decision in *Kucera*, *supra*, the Board reviewed its position relative to the appealability of Orders granting or denying limited exemptions under § 26-171. It determined to treat them henceforth as appealable events. Unfortunately, none of the opinions referred to above shed any light whatsoever on a determination of the standard of review to be applied in such cases. Appeals to the Board are generally heard *de novo* under § 603 of the Baltimore County Charter. In some limited circumstances, including but not limited to appeals of the Hearing Officer's approval of a final development plan under § 26-209 and decisions of the Code Enforcement Official, that appellate standard is altered by specific statutory language. There being no such defining, directing or limiting language as to an appeal of a determination under § 26-171 in either statute or Court decision, the Board decided that it was most appropriate to hear such appeals on a *de novo* basis.

In the instant case, the Petitioner requested an exemption from the entire development process under § 26-171(a)(7) based upon their belief that the project was a "minor commercial structure." It should be noted that the term "minor commercial structure" is not defined within the Code itself. Although we are not privy to the thought process or discussions of the DRC (since as an unofficial body there are no notes or minutes kept), the DRC ultimately reviewed the project and informally recommended that the Director not grant an exemption under (a)(7), but grant a limited exemption under § 26-171(b)(9). Under that exemption, the developer is exempt from the community input meeting and the Hearing Officer's Hearing pursuant to § 26-202 and §

26-206 by virtue of being a "minor development" as defined in § 26-168, "not to exceed a total of three (3) lots."

§ 26-168(cc) states:

"Minor development" means:

(1) A development without a public works agreement;
(2) a residential development with a public works agreement involving only road widenings; or
(3) a development in which the improvements are determined by the director of permits and development management as minimal under § 26-239(b) of this article.

§ 26-239(b) states:

(b)(1) The Director of Permits and Development Management may waive the requirement for a public works agreement if the Director determines that the public improvements are minimal
(2) Minimal public improvements include:
(i) fire hydrants;
(ii) water or sewer extensions;
(iii) storm drain extensions;
(iv) curb, gutter or pavement projects;
(v) traffic control devices; or
(vi) other similar improvements.

Petitioners presented as a witness Nicholas Brader, a licensed professional engineer employed by Matis Warfield, Inc., engineers for the project, who addressed § 26-171. He testified, in light of the omission of a definition of "minor commercial structure" in the *Baltimore County Code* and based upon his prior experience in the development process, an (a)(7) exemption would be appropriate. At the same time, however, he maintained that, since no public works agreement would be required for the project, an exemption under § 26-171(b)(9) could be granted. In fact, he further stated that he had agreed, on behalf of the Petitioner, to the (b)(9) exemption when it was recommended at the June 11, 1999 meeting of the DRC.

The Protestants offered Carol Shaw and Dorothy Foos who testified that it was their belief that the community was entitled, under the circumstances, to a community input meeting

and a Hearing Officer's Hearing to delve into issues (in their view) incompletely or inadequately explored in the pursuit by the Petitioners of the special exception relief required in this case. No testimony was presented on behalf of the Protestants which contradicted specifically the existence or nonexistence of the public works agreement in the project and whether or not the project qualified as a "minor development."

Protestants have argued that the granting of the (b)(9) exemption was not permitted as Petitioner had not only not requested such an exemption but rather had wished to be granted an (a)(7) exemption. They further suggest that the amendment by counsel for the Petitioner during the hearing before the Board, to include the (b)(9) exemption, was an improper and impermissible action.

As previously stated, the DRC does not officially exist. It has neither authority nor official power of any sort or description. It exists only as a so-called "kitchen cabinet" to the present Director, Arnold Jablon. Therefore, no (a)(7) or (b)(9) request was made or could be directed to the DRC. Arnold Jablon, faced with a much broader § 26-171(a)(7) request, determined to grant a more restrictive (b)(9) exemption. Petitioners not only accepted this decision but, as noted herein, filed an alternate (b)(9) request (without gas pumps) which was also subsequently granted by Mr. Jablon.

We find nothing inappropriate in Mr. Jablon's determination to grant less than he was asked to approve by the Petitioners. Moreover, while the Board is content with this conclusion, we believe the amendment by counsel during the course of the Board's hearing to include the (b)(9) request would withstand challenge under the recent decision of Judge Daniels In the Matter of *Ellen Saval, Beth Israel Synagogue, and People's Counsel for Baltimore County*, Circuit Court Civil Action No. 03-C-98-8520, affirming the Board's acceptance of amendments in the course of a hearing.

The Petitioners have established, through undisputed testimony, that this project does not exceed three lots in scope nor will it require a public works agreement. As such, it qualifies as a "minor development" under § 26-168(cc) and therefore the granting of the exemption by Mr. Jablon under § 26-171(b)(9) should and will be unanimously confirmed by this Board.

Having so determined, the Board feels constrained to comment further on the broader issues generated by this case. It is fortuitous that this matter turned on the existence and need for a public works agreement to qualify it as a "minor development" under § 26-168(cc)(1). Had, for instance, the project's status been based on (cc)(3) instead, which states, "a development in which the improvements are **determined by the director** of permits and development management as minimal under § 26-239(b) of this article" (emphasis added), we might not have clearly known the basis upon which Mr. Jablon granted or denied the exemption request. Likewise, if one looks at § 26-239(b), you discover that the Director could determine to waive the requirements as "minimal" under (b)(2)(vi). Since Mr. Jablon's letters of June 11 and July 22, 1999 (the format of which has become standard) give no indication as to his thought processes in the determination made by him, nor the supporting facts and reasoning in granting or denying a (b)(9) exemption, it would be difficult, if not impossible, to determine what basis was adopted by him as dispositive. Not knowing what factors motivated the Director in this kind of circumstance to act pursuant to his "may" (or may not) "waive the requirement for a public works agreement if the Director determines" authority, the Board has no way of knowing what issues are to be heard, even if the appeal is on a *de novo* basis. Only in clear situations such as the case at bar can a *de novo* determination be had of the existence or nonexistence of controlling factors in the exemption question.

Additionally, if an "arbitrary and capricious" standard is utilized, the Board is still unable to review Mr. Jablon's actions in that light, as neither he nor his "kitchen cabinet" provide any

record or written rationale from which to determine the presence or lack of arbitrariness or capriciousness in the decision.

Clearly, the judicially determined right and amenability to appeal from the granting or denial of exemption requests under § 26-171 is in conflict, made more difficult by, or in some scenarios negated completely by, the language previously existing in the Development Regulations. The Board believes that those regulations should legislatively or judicially be reviewed and/or altered to require the Director, at the very least, to state the reasons and rationales supporting a granting or denial of an exemption under § 26-171. If so altered, *de novo* appeals on those issues, or for that matter, appeals based on whether or not the Director was arbitrary or capricious in utilizing or not utilizing those factors in making his decision, could be adequately addressed on appeal by the Board or a reviewing court.

In conclusion, we are not unmindful of the fact that the relevant development regulations in this case, especially those concerning exemptions under § 26-171, were evidently not written with the appeals process in mind. The Board believes that, in light of the imposition by the Circuit Court of a right to appeal the granting or denial of a 26-171 exemption, the appellate process must be reviewed and adjusted by those empowered to do so, to allow appeals to be heard on clearly definable issues and determined according to specific standards.

ORDER

THEREFORE, IT IS THIS 31st day of August, 2000 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Exception for an automobile service station in combination with a convenience store at the subject location be and the same is **DENIED** for the reasons as set forth above; and it is further

ORDERED that the requested limited exemptions, approved by the Development Review Committee (DRC) as set forth and adopted in the June 11, 1999 letter from Arnold Jablon, Director, Department of Permits & Development Management, (Case No. CBA-99-127) and in the July 22, 1999 letter from Arnold Jablon (Case No. CBA-99-128) be and the same are **AFFIRMED**; and it is further

ORDERED that the limited exemption requested in Case No. CBA-99-127 be and the same is **APPROVED**; and it is further

ORDERED that the limited exemption requested in Case No. CBA-99-128 be and the same is **APPROVED.**

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

Lawrence M. Stahl, Chairman

Lawrence S. Wescott

Thomas P. Melvin

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

August 31, 2000

J. Carroll Holzer, P.A.
508 Fairmount Avenue
Towson, MD 21286

RE: In the Matter of Seven Kids LLC –Legal Owner; Cloverland Farms Dairy, Inc. –CP /Case No. 99-199-X; Case No. CBA-99-127; and Case No. CBA-99-128

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.

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*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Charlotte E. Radcliffe

Kathleen C. Bianco
Administrator

Enclosures

c: Greater Kingsville Civic Assn.
et al
Robert A. Hoffman, Esquire
Lauren M. Eby /Seven Kids LLC
John M. Kemp, VP /Cloverland Farms Dairy, Inc.
Nick Brader /Matis & Warfield
Robin Beers
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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5/17/00

RE:	PETITION FOR SPECIAL EXCEPTION Royal Farms Store SE Corner Sunshine Avenue and Harford Road 11th Election District 5th Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY
	Seven Kids, L.L.C. – Owner **Cloverland Farms Dairy, Inc. - Developer** Petitioners	*	Case No. **99-199-X**

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5/17/00

RE:	PETITION FOR SPECIAL EXCEPTION Royal Farms Store SE Corner Sunshine Avenue and Harford Road 11th Election District 5th Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY
	Seven Kids, L.L.C. – Owner **Cloverland Farms Dairy, Inc. - Developer** Petitioners	*	Case No. **99-199-X**

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

PROTESTANTS' MEMORANDUM

STATEMENT OF THE CASE

A. Introduction

On April 30, 1999, Deputy Zoning Commissioner ("DZC") Timothy Kotroco granted Petitioner a special exception to permit an automobile service station use in combination with a food store having a sales area larger than 1,500 square feet, pursuant to Section 405.4.E.1 of the Baltimore County Zoning Regulations (BCZR). He attached fourteen conditions and restrictions to the approval.

On May 26, 1999, Protestants appealed to the County Board of Appeals from the decision rendered by the Zoning Commissioner in the above-captioned matter. Because the appeal is framed in general terms, the entire case comes to the CBA *de novo* under Section 603 of the Baltimore County Charter. There is no restriction as to scope of issues which a party may raise. The hearing proceeds anew, as if the DZC decision were nonexistent. Charter Section 603; Boehm V. Anne Arundel County, 54 Md.App. 497 (1983); Hill V. Baltimore County, 86 Md.App. 642 (1991).

B. Issues

It is helpful to comment on certain legal points in Deputy Zoning Commissioner Kotroco's opinion and certain other testimonial and evidentiary circumstances not presented below

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which must now be considered as a result of the facts presented in this case to the Board.

1) The DZC failed to address Bill 103-88 statutory use restrictions and special exception standards of the C-R (Commercial Rural) Overlay District. (BCZR 259.2, 259.3). The facts before this Board establish that the proposal does not meet any of the Additional Requirements for the granting of a special exception in a CR District (BCZR 259.3, E. 1-5).

2) The DZC failed to focus on the combined, or cumulative impact of the requirements of BCZR 502.1 and failed to take into consideration the "uniqueness" of this BL-CR site. The evidence here establishes that the proposal does not meet the 502.1 criteria and the impact on this community from the proposed development would be greater than in another BL-CR district.

3) The Protestants presented to the DZC neither the amount nor the degree of testimony or evidence, especially in relation to need and environmental impacts that were presented to the CBA. These new facts, analyses and recently developed evidence and testimony presented to the CBA prove the lack of both immediate and general market area "need" and the negative environmental and health impacts.

4) The Protestants did not present to the DZC evidence relating to the abandoned gas stations in the immediate area which was presented to the CBA. With the introduction of this evidence, the proposal clearly does not meet the standards required under BCZR 405.3. See Warrener V. Baltimore County, CBA 99-73-SPHXA (2000).

C. History

The subject property is located at the southeast corner of Harford Road and Sunshine Avenue in Fork, Maryland and consists of a gross area of approximately 1.5 acres, zoned BL-CR. Although currently unimproved, it is the site of both an abandoned gasoline station and a former automobile repair shop. The property is part of an overall tract of land containing 23 acres, more or less. All but an additional 1.5 acres of this total acreage is currently zoned RC-2 and has been cultivated with corn as recently as 1999.

In November 1987, an attempt was made by the then and current owner to develop a strip shopping center on the approximately three acres that are currently zoned BL-CR. The

County Review Group (CRG) had required the removal of underground fuel storage tanks (UST) located on the property. During the excavation process, it was discovered that one gasoline tank had been perforated and had leaked into the surrounding soil.

Three monitoring wells were installed 50' below ground surface and wells on properties at the corner were tested for possible gasoline contamination. Only the well servicing the veterinarian and post office on the southwest corner of the intersection, across Harford Road from the subject site, was found to have petroleum by-products above drinking water standards.

Wells on Country Hill Court, the street due south of the site, were not tested because it was believed by Baltimore County officials that: 1) the underlying topography was not conducive to seepage in that direction and 2) that the distance was too great for the contaminants to have affected the groundwater supplies of these residents.

It was not until Mr. Thomas Russo of 3 Country Hill Court contacted County authorities early in 1988 regarding the quality of his water supply that the County even considered the possibility of offsite contamination of a large number of wells. The Russo well was found to be grossly contaminated with benzene and numerous other petroleum by-products. The Russo family, that included three small children and a baby less than one year, had been drinking and bathing in this water for the several months while they had lived in their recently built house.

Analysis of the domestic water supply from other wells on Country Hill Court showed traces of contamination at 5 Country Hill Court and 7 Country Hill Court. At 4 Country Hill Court, located across the street from the Russo residence, MtBE and other gasoline contaminants were found in concentrations above drinking water standards.

Five additional monitoring wells were subsequently installed, including one on the grounds of the Montessori School on the west side of Harford Road. No deep water monitoring wells were ever installed, however, despite recommendations from County DEPRM employees. Monitoring Well #3 which had been placed at "ground zero" directly above the contamination source was never tested after the early contamination level readings and soil excavation that took place during the removal of the tanks. It was the well which had shown the most contamination.

The owner of the property eventually declared bankruptcy and the property changed hands several times before being bought by the current owner, Seven Kids, L. L. C., which was aware of the ongoing contamination problem when it bought the property. The County has never implemented a clean-up plan for the site even though the County Board of Appeals itself, in its decision in Zinc-Sunshine, CBA-87-151, opined that:

> "...There seems to be no doubt that the contamination is a result of leakage from the petroleum storage tanks which have since been removed. ...Obviously, County officials are aware of the problem and are now taking steps to correct same."

It was not until the Russo's had hired a lawyer who contacted Senator Collins that the State of Maryland Department of the Environment (MDE) entered the case. The Zinc-Sunshine/Russo file was eventually handed over to them by Baltimore County. MDE installed, and has continued to maintain for more than twelve years, a full-house carbon filtration system on the Russo residence. At additional taxpayer expense, the State also tests the Russo water every two to three months, both before and after filtration to determine contamination levels and potability of the filtered water.

The Russo well has remained contaminated with petroleum by-products above State of Maryland drinking level standards throughout this entire period of time. Although the Russo well water has gone through numerous cyclical fluctuations throughout the years with regard to the degree of petroleum contamination, it has never once been shown to be safe to drink according to State of Maryland standards.

STATEMENT OF FACTS

A. The Neighborhood and The Master Plan

This property is situated in the rural, sparsely populated area of Fork in northeast Baltimore County which is served only by private wells and septics. The property is located at the southeast corner of Harford Road (Md. Rt. 147) and Sunshine Avenue, a County road. Both roads are single-lane, rural roads with no shoulders. Sunshine Avenue changes its name to Fork

Road when it crosses Harford Road. The site sits at the top of a topographical knoll, resulting in a sight line that is severely impaired for cars and school buses approaching this intersection from both north and south on Harford Road (Protestants' #24).

The intersection is characterized, in the main, by structures of the type as presented through photographs by Mr. Douglas Behr (Protestants' #4). Royal Farms' proposes to erect a building which would not only include gas pumps that could simultaneously service ten cars (Kemp, pg. 82, l. 20-21; pg.83, l. 1-11) but also include their trademark neon-green canopy over the gas islands (Ratcliff, Royal Farms architect testimony).

Because of the rural and agricultural character of the community and, since it is not a 'rural commercial', or even a 'rural village', area (Shaw, pg. 24, l. 3-21), the primarily-locally owned businesses limit their hours of operation, opening no earlier than 6:00 A. M. and closing no later than 11:00 P.M. Lights are dimmed by 10:00 P.M. at the existing corner gas station, 8:00 P.M. on Sundays (DiFonzo and Snyder testimony). Royal Farms' proposes a 24-hour operation of their facility (Kemp, pg. 35, l. 4-19; pg. 89, l. 21; pg. 90, l. 1-5) with lighting sufficiently bright to deter crime (Kemp, pg. 45, 1. 10-15).

Mrs. Carol Shaw presented evidence that included two maps (#35 and #36) taken from the Baltimore County Master Plan 2010, and a Boundary Map of the Long Green Valley Rural Legacy Program Area (Protestants' #51). These maps show Fork to be in an Agricultural Land Preservation Area and the Long Green Valley Rural Legacy Area. The Long Green Valley Boundary Map shows the four existing rural crossroads - Baldwin, Long Green, Glen Arm and Fork - all of which are too small and rural to meet the standards of any defining description in the Master Plan 2010 (Shaw, pg. 24, l. 3-21).

Mrs. Shaw introduced into evidence selected portions of both the Baltimore County Master Plan and the Greater Kingsville Community Plan (Protestants' #52). These sections addressed Smart Growth, level of services provided to rural areas, the nature of economic development in rural areas, transportation issues in rural areas, groundwater problems and the preservation of historic resources.

Evidence relating to the Greater Kingsville Community Plan was also introduced. The Plan was adopted by the Baltimore County Council in 1996 as part of the Baltimore County Master Plan. Mrs. Dorothy Foos, President of the Greater Kingsville Civic Association, presented testimony to the fact that the proposed location is the only location specifically addressed in the Plan with regard to a preferred use, e.g., a Farmers' Market, due to its history of petroleum contamination (Foos testimony).

Mrs. Shaw presented testimony (Shaw, pg. 32, l. 12-21; pg. 33, l. 1-18; Protestants' #52) relative to the fact that the suggested site is located in the middle of a proposed green way. This green way follows the path of the Sweathouse Branch of the Big Gunpowder River, part of whose headwaters originate on the RC-2 portion of this 23-acre property. It is these headwaters that create the 100-year flood plain that exists on multiple properties adjacent to, and topographically down-gradient from, the proposed Royal Farms' store site (Protestants' #31).

B. Lack of Demonstrated Need for a Convenience Store or Gas Station

With regard to the issue of need, evidence presented by the Protestants shows the facts to be as follows:

1. Lack of Need in the Immediate Area

Mrs. DiFonzo presented testimony and a photographic exhibit (Protestants' #21) documenting the fact that the existing businesses in the immediate area are already sufficient to serve the needs of the Fork community. This was new evidence not presented at the Deputy Zoning Commissioner Hearing. Along with Fork Citgo, at the northeast corner of Harford Road and Sunshine Avenue [which also includes a mini-mart and a gas-and-go pump option], there are three other existing convenience stores on the northwest corner of Harford Road and Fork Road - Highs, Johnny Ryan's and Fork Deli and Bakery (DiFonzo testimony).

Mrs. DiFonzo noted that the combination of these businesses proves that the area is not "under-served" as indicated by Mr. Kemp in his testimony (Kemp, pg. 28, l. 3-5). She testified

that, other than during the 1 ½ morning and evening commuter rush hours, the intersection is quiet during the day and virtually deserted in the evenings, contrary to Mr. Kemp's testimony (Kemp, pg. 28, l. 16-21; pg. 82, l. 17-19). She introduced into evidence a photographic exhibit of traffic taken at various times throughout the day and including not only morning and evening rush hours, but also mid-morning, lunch, mid-afternoon and evening traffic shots, which showed traffic to be extremely light (Protestants' # 24).

Mrs. DiFonzo testified that there are never lines at the existing gas station at this corner, even during rush hours (DiFonzo testimony).

Mrs. Shaw presented a Comparative Market Shop Analysis (Protestants' #54) that she had performed in February 1999 comparing the product line offerings of four area Royal Farms stores with the Highs, Fork Deli, Johnny Ryan's and Citgo Mini-Mart that are already located at the intersection. This was evidence not presented at the Zoning Hearing.

She concluded that there were thirty 'Not Sold' items for the combined Royal Farms stores versus the combination of convenience stores already in existence at the corner while there were only nine 'Not Sold' items for the combined Royal Farms'. No one Royal Farms store sold all nine items. Additionally, she found that if the combined product offerings of the four Royal Farms stores were compared with only the one Fork Highs store, they sold only twelve items that the one Highs did not and the one Highs sold thirteen items that the combined four Royal Farms did not. She concluded that Royal Farms served only to duplicate products already available (Shaw, ph. 50, l. 9-21; pg. 51, l. 1-9)

Mrs. Shaw also presented a Petition opposing this Royal Farms store (Protestants' #58), that had been conducted during January and February 1999, and a Database Analysis of this opposition (Protestants' #59). While the Petition was presented at the Zoning Hearing, the database represented new evidence.

Mrs. Shaw developed a relational database from the 832 'scrubbed' signatories of the petition and found that 770 (92%) of the signers lived in the surrounding area. When she further limited her analysis to signers from Baldwin, Fork, Glen Arm, Hydes and Kingsville, which cor-

responded closely with the two mile radius census data contained in Petitioners' Exhibit #6, she extrapolated that approximately 25% of the total adult population had signed the petition opposing the store. Further analysis of an exact one mile radius around the proposed site showed that, of the 664 adults living in this area, 223 of them (34%) had pro-actively opposed this project. She concluded that the immediate Fork community overwhelmingly saw no need for this particular proposed retail establishment (Protestants' #59; Shaw, pg. 109, l. 3-17; pg. 110, l. 17-21; pg. 111 - 113).

2. Lack of Need, including Commuter Traffic, in the Surrounding Market Area

Mrs. Shaw presented both a 3-Mile Radius Market Analysis and a 5-Mile Radius Market Analysis that she developed. She utilized a concentric ring methodology to analyze the data, the same methodology employed by Mr. Cronyn, the market research consultant hired by Royal Farms (Cronyn, pg. 15, l. 2-8). She performed analyses with radii of three and five miles since Mr. Kemp gave testimony during the Zoning Hearings that he considered his market area in Fork to be five miles (Protestants' #62 and #63, Kemp CBA, pg. 69, l. 8-11).

The 3-Mile Radius Market Analysis (Protestants' #55A & B) presented by Mrs. Shaw consisted of a map-based locational analysis combined with photographic and labeling support. Both the 3-Mile and 5-Mile Analysis represented new evidence not presented below. The analysis showed eleven (11) convenience stores and five (5) gas stations within three miles. Additionally, one of these gas stations and one of these convenience stores is open 24 hours.

The analysis also showed that Fork already has more convenience stores than the other three intersections of Fallston, Kingsville and Long Green that lie within this radius. Additionally, it pointed out that Kingsville and Fallston are on dual lane highways as opposed to Fork which is located on a single lane road (Protestants' #55A & B).

The 5-Mile Radius Market Analysis (Protestants' #56A, B & C) presented by Mrs. Shaw also consisted of a map-based locational analysis combined with photographic and labeling support.

This analysis showed that, within a five-mile radius of the site, there already exists fifty-

four (54) convenience stores, eleven of which operate 24 hours, and thirty (30) gas stations, including ten 24-hour businesses. The analysis also pointed out that the four convenience stores that are already in Fork constitute more stores than exist at most rural intersections within this market radius. Only one other intersection has the same number as currently in Fork (Protestants' #56A, B & C).

Additionally, the analysis showed that there are a lesser number of convenience stores at five busier intersections, e.g., dual lane highway locations. The analysis also shows that one gas station is all most rural intersections have, e.g., that there do not begin to exist multiple gas stations at intersections until one reaches the suburban area of Perry Hall to the southwest, which is serviced by public water and sewer, or the more heavily populated areas of Fallston and Bel Air in Harford County to the northeast which have public sewerage (Protestants' #56A, B & C).

Mrs. Shaw pointed out two locations of particular interest on the 5 Mile Radius Market Analysis - one, an extremely large WaWa convenience store and gas station that opened in the Fall 1999 and the other, a WaWa convenience store and gas station that will anchor a mini-shopping center that is currently in the final approval phases from Harford County (Shaw, pg. 80, l. 7-21; pg. 81; pg. 82, l. 1-8). Neither of these stores was in existence during the Zoning Hearings. These two new WaWa's are, or will be, along the exact traffic pattern routes from which Royal Farms proposes to attract Harford County commuter traffic north and southbound on Harford Road (Petitioners' #6, Kemp, pg. 28, l. 8-15; pg. 35, l. 11-13; Cronyn, pg. 20, l 12-13).

Mrs. Shaw testified that the recently opened WaWa is on the east side of Route #1 and in a prime location to capture evening rush hour traffic that has proceeded north from Harford Road. The other WaWa currently under development will be on the west side of Harford Road where it intersects with Alternate Route #1 and Route #1. She stated that it is in an ideal location to capture morning rush hour traffic heading south from Harford County on to Harford Road. Both WaWa's are located in heavily commercial areas. Both have, or will have, ATM's and both are, or will be, open 24 hours. Mrs. Shaw concluded that, if the issue were to satisfy the needs of Harford County commuters, these two new competitors in and of themselves are suffi-

cient (Shaw, pg. 80, l. 17-21; pg. 81 - 82; pg. 83, l. 1-8).

3. Lack of Need Based on Abandoned Gas Stations in the Area

Mr. Paul Plowman testified to the number and location of abandoned gas stations and pumps within a two-mile radius of the site based upon his 40+ years of residency in the Fork area. Mr. Plowman presented a map-based locational analysis combined with photographic and labeling support (Protestants' #17). Concentric circles were drawn to indicate ½ mile, 1 mile, 1 ½ mile and 2 mile radii around the site. This map analysis represented new evidence not presented below.

Mr. Plowman testified that he could remember when there were gas pumps on all four corners of the intersection in question. He described the operators. The only service station still operating is the Fork Citgo on the northeast corner of the intersection. In all, Mr. Plowman testified to the previous existence of eleven (11) abandoned or closed gas stations within a two-mile radius of the site. Abandoned/closed sites ranged from Baldwin to Long Green to Kingsville to Fork itself (Plowman testimony).

4. Rebuttals of Need Arguments Made by Petitioners

The Petitioners presented testimony from, and a market analysis performed by, Mr. Joseph Cronyn who said that there was a need for another gas station and convenience store. They also presented testimony from Mr. John Kemp, Royal Farms' vice-president, who said that Royal Farms wants a convenience store/gas station in this location and feels there is a need for it. In rebuttal of the testimony given by Royal Farms' witnesses, the Protestants presented evidence and supporting testimony showing that the Petitioners' testimony and analysis were flawed as follows:

- Mr. Kemp testified that no one else in the immediate area sells the same type of products as they do (Kemp, pg. 33, l. 2-4).
- Mr. Kemp testified that they have a "huge array" of products that you cannot get in other convenience stores (Kemp, pg. 34, l. 17-20).

- Mr. Kemp testified during the Zoning Hearings that Highs only stocks 50%-60% of what Royal Farms' stocks (Protestants' #62); he testified during the CBA hearings that Highs only stocks 20%-25% of what Royal Farms stocks (Kemp, pg. 60, l. 12-15).

All of the above are contradicted by Protestants' Market Shop (Protestants' #54).

- Mr. Cronyn testified that he had arbitrarily stopped looking for "competitive alternatives" at the Harford County line to the north (Cronyn, pg. 14, l.10-13). The Protestants showed through the 3-Mile Radius Market Analysis (Protestants' # 55A & B) that, by doing so, he had excluded three gas stations, including one that is open 24-hours and one convenience store that is also open 24-hours - all of which are within the driving patterns cited by the Petitioners as Harford County commuter traffic routes.
- Mr. Cronyn's analysis (Petitioners' # 6) included only three of the four convenience stores located at the Fork cross roads, regardless of the fact that the one he excluded, e.g., Johnny Ryan's is similar in product offerings to Palmisano's in Baldwin which he included in his analysis.
- Mr. Cronyn testified to two convenience stores at Fork Road and Long Green Pike in Baldwin (Cronyn, pg. 40, l. 4-9) and neglected to include a third. He also neglected to include the two gas pumps located at this third convenience store - Petersen's (Protestants' # 55A & B).
- Mr. Cronyn failed to include a convenience store located on Glen Arm Road on the direct route to Towson from Fork (Protestants' # 55A & B) that is within the specified analysis radius that he had selected.
- Mr. Kemp testified that the Fork area is an "under-served area" (Kemp, pg. 28, l. 3-5). The 3-Mile and 5-Mile Radius Market Analyses disprove that contention (Protestants' #55 A & B and #56 A, B & C).
- Mr. Kemp testified that he believes that his store would be both "reasonably convenient and is necessary for the public" at this location (Kemp, pg. 43, l. 6-11). This is disproved

by the Competitive Market Shop, the 3-Mile and 5-Mile Radius Market Analyses and, specifically, and the two new WaWa locations referenced above (Protestants' #54, #55 A & B, #56 A, B & C; Shaw, pg. 80, l. 7-21; pg. 81; pg. 82; pg. 83, l. 1-8).

- Mr. Kemp testified that there is a "huge opportunity" here from the residential community (Kemp, pg. 28, l. 18-19). This is disproved both by the Database Zipcode Analysis which shows the scarcity of roads in the area (Protestants' #59) and by Royal Farms' own market consultant's analysis (Petitioners' #6) which referenced U. S. Census data for the area.
- Mr. Kemp testified that he believes there are a lot of "silent voices" in the community - a lot of people who do not attend community meetings who want this store (Kemp, pg. 43, l8-21). He testified that he believes they will be "openly and warmly" received by the community (Kemp, pg. 98, l. 8-9) and he "doesn't believe the petition is representative of the community" (Kemp, pg. 98, l. 21; pg. 99, l. 1).

All of these statements are disproved by the Database Zipcode Analysis (Protestants' #59).

- Mr. Cronyn, in the market analysis introduced at the DZC Hearing, utilized a set of traffic figures for Harford Road based on the peak-hour turning formula traffic survey taken by Royal Farms' traffic engineer Kenneth Schmid at the intersection of Harford Road and Sunshine Avenue/Fork Road (Petitioners' #3). During his CBA testimony, Mr. Cronyn said that he had changed his characterization of traffic volume changes on Harford Road in his report (Petitioners' #6) because he had not taken into consideration the number of intervening roads between the Harford County line and the Fork intersection (Cronyn, pg.12, l. 13-15).
- Mr. Cronyn said that because of this, it would be comparing "apples to oranges" to compare the 8,775 trips in 1995 recorded by SHA on Harford Road at the Harford County line to the 12,000/day at the Fork intersection as extrapolated through Mr. Schmid's peak

hour turning formula. He said that it "was not material to his argument" however. (Cronyn, pg. 11, l. 14-21; pg. 12; pg. 13, l. 1-2).

- During Mr. Schmid's cross-examination, Protestants took as their exhibit (Protestants' #1) the compilation of traffic statistics that he had gathered over a 48-hour period using a traffic counter at the Harford County line of Harford Road. This data showed traffic to be almost non-existent on Harford Road during the middle of the night and very light at times other than the 1 ½ hour morning and evening rush hours (Protestants' #1). This data rebutted the testimony of Mr. Kemp who said that they wanted to be open 24-hours "in order to assist the demand for the late night hours". (Kemp, pg. 90, l. 4-5).
- In rebuttal of the argument put forth by Mr. Cronyn, Mrs. Shaw testified that rather than there being a number of intervening roads between the Harford County line and Fork, there is in fact only one through road, the others being dead-end country lanes. She concluded that one small road was unlikely to account for 4,000 cars affecting the traffic count at Harford Road and Sunshine Avenue during rush hour (Shaw, pg. 146, l. 4-13).
- Mrs. Shaw further concluded that the peak hour turning formula does not apply in this situation (Shaw, pg. 147, l. 10-16) and that traffic has not increased at all between 1995 and 1999 since the traffic figures quoted by Mr. Cronyn and Mr. Schmid for SHA counts in 1995 correlate closely with the 24-hour counts obtained by Mr. Schmid through his traffic counter in the Fall 1999 (Protestants' #1). She reasoned that the widening of Belair Road in the Kingsville area was the most likely cause of this stability of traffic volume on Harford Road (Shaw, pg. 147, l. 17-21; pg. 148, l. 15).

- Mr. Schmid, Royal Farms' traffic engineer used a mathematical formula supplied by the Institute of Traffic Engineers to arrive at his projected number of customers who would use the convenience store/gas station. On cross-examination, however, he admitted that the formula is based upon the square footage of the store and that his estimate of store traffic would be the same if the store were located on Belair Road or Pulaski Highway.

He further admitted that there is no correlation between his customer trip estimates and his vehicular traffic estimates (Schmid testimony).

C. Demonstrated Risk of Significant and Material Environmental and Health Hazards to the Community

With regard to the issue of dangers posed to the health, safety and general welfare of the community, evidence presented by the Protestants shows the facts to be as follows:

1. Documentation of History of Proven Contamination and its Breadth

It is uncontested by the Petitioners' expert in environmental sciences that the subject site has an extensive and pervasive history of contamination dating back to 1987 when, during a previous attempt to develop this site, it was discovered during the process of removing abandoned underground gasoline storage tanks that one of the tanks had been perforated and had leaked into the surrounding soil (Sheesley, pg. 96, l. 8-21; pg. 97, l. 1-7; pg. 133, l. 4-6).

It is uncontested by the Petitioners' environmental expert that Monitoring Well #3 was located at the epicenter of the contamination; that it showed by far the highest degree of contamination; and, that it has not been tested since 1988 (Sheesley, pg. 166, l. 6-21; pg. 167, l. 1-6).

It is uncontested by the same Petitioners' environmental expert that, in 1987-1988, Baltimore County Department of Environmental Protection, under the directorship of Mr. Robert Sheesley, did not believe that the contamination flow could have reached the Country Hill Estates development given: 1) their interpretation of the topography of the site, e.g., their lack of knowledge at the time of the uniqueness of the site's topography, 2) the distance between the leakage and the community and 3) the data retrieved from their initial three 50' monitoring wells (Sheesley, pg. 98, l. 6-13; pg. 101, l.6-12; pg. 132, l. 1-12; pg. 133, l. 9-21; pg. 134, l. 1-19).

It is uncontested by the Petitioners' environmental expert that the Baltimore County Department of Environmental Protection erred when: 1) it did not drill a deep water, e.g., 200'+ monitoring well between the contamination source and Country Hill Estates and 2) that the Department ignored the opinions of its employees who had suggested that drilling a deep well

would be the prudent course of action (Sheesley, pg. 134, l. 16-21; pg. 135, l. 1-4), leading to the delayed discovery of the major path of contamination flow.

It is uncontested by the Petitioners' environmental expert that the Russo well was grossly contaminated well above State of Maryland health standards with various petroleum by-products (Sheesley, pg. 97, l. 20-21; pg. 98, l. 1-5) and that the contamination of that well was a direct result of the leakage of the underground storage tank on the subject site (Sheesley, pg. 132, l. 21; pg. 132, l. 1-7).

It is also uncontested by both the Petitioners' environmental expert and their hydro-geologic expert, Mr. Thomas Mills, that once contamination gets into the ground water, or the deep ground water, that it can go in many directions (Sheesley, pg. 135, l. 5-18; Mills, pg. 23, l. 20-21; pg. 24, l. 1-6).

It is uncontested by the Petitioners' environmental expert that the Russo well was only one of a number of wells that was found to have varying degrees of petroleum by-product contamination present after the leakage from the underground storage tank (Petitioners' # 2, 3, 4, 37; Sheesley, pg. 143, l. 1-21).

It is also uncontested by the Petitioners' environmental expert that the Russo well remains contaminated, even after twelve years, to the point where its water is still considered unsafe for drinking or bathing according to State of Maryland Department of the Environment health standards (Sheesley, pg. 152, l. 16-20; Protestants' # 40, 41).

It is uncontested by the Petitioners' environmental expert that, given the current level of understanding of the topography of the site, if a petroleum spill or leakage should occur on the site, it is his expert opinion that the direction of the flow of contamination could reach not only Country Hill Estates but also the Montessori School and the post office area on the west side of Harford Road (Sheesley, pg. 157, l. 20-21; pg. 158, l. 1-11).

It is also uncontested by the Petitioners' hydro-geologic expert that the direction of ground water flow is toward Country Hill Estates (Mills, pg. 13, l. 4-10; pg. 20, l. 13-18) and that pollutants released from the subject site would migrate in the ground water toward multiple resi-

dential properties (Mills, pg. 25, l. 20-21; pg. 26, l. 1-10).

Mr. Thomas Russo, the Country Hill Estates property owner whose well is still contaminated twelve years after the leakage that occurred from the subject site, testified and presented evidence documenting:

1) a Maryland Department of the Environment chronology of the history of the subject property from 12/86 - 12/89, including the contamination history of his and other wells
2) actions and/or lack of actions of the Baltimore County governmental agencies
3) actions of State of Maryland elected officials and agencies
4) the site assessment plan
5) actions and/or lack of actions by the previous owner of the property
engineering and ground water surveys done on the property in 1988, 1994 and 1998
6) the contamination history of his well through the periodic MDE testing procdures
7) various other supporting documentation

(Protestants' # 32 - #49)

2. Unique Topography Heightening Potential Danger to the Community

Several topographical elements converge at the subject site and, because of that, render it "unique", thereby heightening the potential environmental and health hazards to the surrounding residential community.

First, the subject property, e.g., the source of the original contamination, sits atop a topographical ridge (Sheesley, pg. 101, l. 6-7) - a drainage divide (Mills, pg. 12, l. 11-14). Second, at the center of the site is a large fault that, accordingly to one of Royal Farms' experts, runs through the property from northwest to southeast (Sheesley, pg. 100, l. 16-19; pg. 135, l. 17-18). According to another of Royal Farms' experts, however, the fault runs from northeast to southwest (Mills, pg. 13, l. 4-10).

Third, despite the fact that Royal Farms' environmental science and hydro-geologic experts could not agree as to the directional location of the large fault that is located on the property, they do agree that contaminated ground water definitely flows/would flow in a south- easterly direction toward Country Hill Estates (Sheesley, pg. 135, l. 5-21; Mills, pg. 13, l. 4-10).

Fourth, the headwaters of an active perennial stream are located on this site (Sheesley, pg.101, l. 2-5). It is these headwaters about which Mrs. Shaw presented testimony (Shaw, pg. 32, l. 12-21; pg. 33, l. 1-18; Protestants' #52) relative to the fact that the suggested site is located on a proposed green way that follows the path of the Sweathouse Branch of the Big Gunpowder River, e.g., these headwaters account for part of the source of the Sweathouse Branch of the Big Gunpowder River.

These headwaters originate on the RC-2 portion of this property and create the 100-year flood plain that exists on multiple properties adjacent to, and topographically down-gradient from, the proposed Royal Farms' store site (Protestants' #31). Mrs. DiFonzo presented a panoramic photographic exhibit (Protestants' #31) that shows the steep gradient of this topographical divide and the resulting flood plain.

Because of the unique topographical aspects of this site, even the County's Department of Environmental Protection did not initially believe that the contamination flow would have moved toward Country Hill Estates (Sheesley, pg. 98, l. 6-13; pg. 101, l. 6-12). It was not until three months after the perforated UST was discovered, when Mr. Russo himself contacted County officials regarding the quality of his well water, that the County belatedly considered the possibility that residential wells in Country Hill Estates could be in the primary path of the leakage from the UST (Protestants' #32).

There now is no question that ground water contamination that has originated, or might in the future originate from the subject site, is seeking the wells of the residents of Country Hill Estates, e.g., that there is an hydrologic connection (Protestants' #38). Royal Farms' hydrogeologic expert agreed that the direction of flow of ground water from the site is toward multiple residential properties in Country Hill Estates (Mills, pg. 13, l.4-10; pg. 20, l. 13-18; pg. 25, l. 20-21; pg. 26, l.1-10).

The Protestants also presented evidence showing that the ground water contamination that continues to affect the Russo well water is in a direct line with the Morley well across the street. Mr. Russo demonstrated how a straight line could be drawn from the location of the

leaking UST down through the Russo well and on to the Morley well (Protestants' #38). He concluded that he is serving as the pumping well to clean up the site for the County and that, should he drill a new well, the Morley well would become contaminated (Russo testimony).

With regard to contamination readings at Country Hill Estates in 1988, excluding the Russo's it was the Morley's whose well showed the highest level of petroleum by-products, e.g., MtBE, toluene, tetrahydrofuran (Protestants' #13, 32, 38) - levels which were above State health standards.

Mr. Russo's assertion was re-enforced by evidence presented by Mrs. Shaw. Mr. Mills, Royal Farms' hydro-geologist, had stated that it is his opinion that the Russo well is more contaminated than either the Hawkins' (5 Country Hill Court) or the Shaw's (7 Country Hill Court) because the maximum depth of their water draw is deeper than the Russo's. (Mills, pg. 13, l. 16-21; pg. 14, l. 1-13).

Mrs. Shaw presented into evidence the well logs of the Russo's, the Morley's, the Hawkins' and the Shaw's (Protestants'#60 A, B, C & D). Mr. Mills had not analyzed the Morley's well log. These logs showed that although the Shaw's and the Hawkins' are drawing water from a somewhat greater depth than the Russo's, the Morley's are drawing from the same depth, e.g., 60'-65'.

Mrs. Shaw concluded that a spill or undetected leak would most certainly contaminate the Morley's water as well as again contaminate the Russo's and, because of the cross-fractures that Mr. Mills admitted did exist, could also pollute, at the very least, the Hawkins' and Shaw's wells (Mills, pg. 25, l. 20-21; pg. 26, l. 1-10; Shaw, pg. 125, l. 5-10).

3. Environmental and Health Hazards Introduced by Storm Water Run-Off

The Petitioners would use a 'Stormceptor' to control the quality of storm water run-off from the proposed gasoline station/convenience store. Mr. Nicholas Brader, Petitioners' civil engineering expert, testified that a Stormceptor intercepts grid particles, oil and grease and passes clean water out from its chamber. He added that it has to be maintained periodically. Under cross-examination, he admitted to not being familiar with the mechanics of the system

even though he was recommending it for use as a storm water management tool. He also admitted that he did not know if gasoline would be separated out, that he would have to read a manual (Brader, pg. 127, l. 2-21; pg. 128, l. 1-16).

Under a subpoena, Protestants presented evidence from Mr. Kevin Koepenick, who is employed by the Baltimore County Department of Environmental Protection and Resource Management (DEPRM) in the Ground Water Management Section. Mr. Koepenick testified that he is generally familiar with Stormceptor-type technology for storm water management. He further testified that MtBE is an additive used in petroleum products and that it is water-soluble (Koepenick testimony). Mr. Koepenick's DEPRM file on this proposed site was admitted into evidence and contains various articles relating to MtBE and its properties (Protestants' #64).

Also under a subpoena, Protestants presented testimony from Mr. Tony Okechukwu, who is employed by Baltimore County DEPRM in the Storm Water Management Section. Mr. Okechukwu testified that he is familiar with 'Stormceptor'-type technology. He stated that, during heavy downpours, the majority of the rainwater would **not** be captured by the Stormceptor. All of this run-off rainwater, including all petroleum by-products such as benzene and MtBE that become co-mingled with it, would pass directly through the Stormceptor chamber without any components being captured. All of this run-off would then be dispersed both into the ground water and on to the ground surface since the primary purpose of the technology is to aid the business owner in maintaining a surface area that is free of standing water. (Okechukwu testimony; Protestants' #64).

Mr. Okechukwu further testified that during light rainfalls, while non-water-soluble pollutants would be captured by the Stormceptor if it were properly maintained, water-soluble pollutants, such as MtBE, would pass through the Stormceptor chamber into the ground water and on to the ground surface (Okechukwu testimony; Protestants' #64). Koepenick also testified that in Maryland, MtBE is used year round and one gallon of gasoline contains 11% MtBE.

According to the site plan submitted by the Petitioners, the Stormceptor would be located at the eastern edge of the BL-CR-zoned 1.5 acres that would be the site of the proposed gasoline

station/convenience store (Petitioners' #1 A&B). It would be located such that run-off from its chamber would flow on to and through the RC-2 zoned portion of 7 Kids' property and thence on to the property owned by the Wilson's and the Shaw's. This was demonstrated through Mrs. DiFonzo's introduction of a 200' scale topographical map of the area (Protestants' #26) and through her introduction into evidence of a topographical photographic panoramic of the area (Protestants' # 31).

Both the topographical map and photographic panoramic show the steep incline of the land as it drops off toward the rear of Country Hill Estates from the top of the knoll upon which the proposed gas station/store would be located. This topography has been discussed previously and is uncontested by the Petitioners' expert environmental witness (Sheesley, pg. 101, l. 6-7).

The topographical map also shows the active perennial stream whose headwaters are located on this site (Protestants' #26). Again this is uncontested by Petitioners' expert witness (Sheesley, pg. 101, l. 2-5). It is these headwaters about which Mrs. Shaw testified with regard to the fact that they account for part of the source of the Sweathouse Branch of the Big Gunpowder River (Shaw, pg. 32, l. 15-21; pg.33, l. 1-8). Mrs. Shaw also testified to the fact that these headwaters form the 100-year flood plain that exists on both her property and that of the Wilson's who own the approximately 14 acres of property located immediately adjacent to that of 7 Kids (Shaw, pg. 33, l. 9-13 and Wilson testimony).

Additionally, Petitioners' expert civil engineering witness testified that the outflow from the Stormceptor would be in a southeasterly direction, continuing on to the existing 100-year flood plain as far as the Shaw property (Brader, pg. 130, l. 16-21; pg. 131, l. 1-14).

Mrs. Shaw concluded that, given the unique topography of the land and the existence of the tributary of the Gunpowder, the proposed location of the Stormceptor would cause it to empty contaminated storm water into this 100-year flood plain, endangering both the ground water supplies of the residential wells and the perennial stream. MtBE contamination has been shown to be a danger to humans through drinking water consumption. (Shaw, pg. 133, l. 14-18).

4. Other Environmental and Health Issues Raised by the Proposed Construction

Despite the fact that he is aware of the history of petroleum contamination at the proposed site, Mr. Michael Shamel, Petitioners' expert in the installation and technical requirements for installation of fuel tanks, testified that he would not be doing anything different at this site than he has done at the other locations where he has installed UST's for Royal Farms (Shamel, pg. 75, l.16-21; pg. 76, l. 1-10). Mr. Shamel testified that he would be using basically the same materials that he would use if the location were on Pulaski Highway rather than in rural Fork. (Shamel, pg. 76, l. 11-16).

Even though it would cost only a little more, and even though Mr. Kemp testified that they would be spending "money for every safeguard that's available in the market..." (Kemp, pg. 41, l. 16-17), Mr. Kemp admitted during cross-examination that they would not be installing a liner to encapsulate the proposed UST's (Kemp, pg. 96, l. 5-10). Mr. Shamel also testified that he would not be using the additional safety guarantee of the geo-membrane liner, which he said is basically equivalent to what is used for landfills (Shamel, pg. 76, l. 17-21; pg. 77, l. 1-11).

This site is being treated no differently by the Petitioners than any other site even though it is located in a rural area that experiences numerous electrical outages. This was testified to by Mrs. Morley (Protestants' #15) and by Mrs. DiFonzo who referenced 1999's Hurricane Floyd and the fact that this corner of Harford Road and Sunshine Avenue - specifically the Citgo service station across the street from the proposed site - was without electricity consistently for over 72 hours during this period (DiFonzo testimony). Mr. Shamel testified that the electrical monitoring device for petroleum leakages is only operational if it is being supplied with electricity. Otherwise, there is no detection system for petroleum leakages (Shamel, pg. 86, l. 9-20).

The Petitioners would treat this site no differently than any other site even though Baltimore County never drilled any deep water, e.g., 200'+, monitoring wells - much less any deep water monitoring wells between the contamination site and Country Hill Estates - regardless of the fact that several employees of Baltimore County suggested that to be the prudent course of

action (Sheesley, pg. 134, l. 16-21; pg. 135, l. 1-4).

Mr. Russo testified that Baltimore County actually recommended to T. Zinc, the former owner, that he drill a deep (200') monitoring well between MW#3 [the source of the contamination] and MW#6 since the ground water flow patterns determined in the EA Engineering report (Protestants' #37) indicated a downward vertical component to the flow beneath MW#6 toward Country Hill Estates (Protestants' #42). Because of this, Mr. Russo concluded that it has never been documented as to how deep the contamination had migrated vertically (Russo testimony).

5. Current Status of Site

Petitioners' witness Mr. Robert Sheesley introduced into evidence a January 31, 1999 letter to Ms. Ellen Jackson, Maryland Department of the Environment (MDE), Waste Management Administration, in which he requested acknowledgment from her Department that "redevelopment of the site is not prohibited by actions from your office" (Petitioners' #14 and Sheesley, pg. 110, l. 17-21). He also introduced into evidence a February 12, 1999 letter from Ms. Jackson stating that MDE "will not prohibit development at this site" with certain conditions (Petitioners' #15, Sheesley, pg. 111, l. 1-15) which Mr. Sheesley said were added because "the case was closed" (Sheesley, pg. 111, l. 15-16).

Ms. Jackson's February 12, 1999 letter to Mr. Sheesley **does not** say that the case is closed, however. Additionally, Protestants' witness Mr. Kevin Koepenick, who is employed by Baltimore County Department of Environmental Protection and Resource Management, Ground Water Management, later testified that he had, over the course of his career, seen numerous 'closure letters'. He further testified that he had read the letter from Ms. Jackson and that, based on his experience, he did **not** consider this to be a closure letter. He stated that, in his experience, closure letters specifically state in their content that they are such (Koepenick testimony).

D. Other 502.1 and C.R. Overlay (259.2/259.3) Criteria Not Satisfied

The preceding facts, and conclusions drawn from them, prove the lack of need for both a convenience store and/or a gas station in the immediate or surrounding market area - a requirement which is necessary for the granting of a special exception in a C.R. District. Additionally,

the facts show the potential for extensive health and environmental risks to the community through development of this type on this uniquely situated piece of land.

The following testimony and evidence show that **none** of the additional requirements for the granting of a special exception in a C.R. District are met by this proposal and that the proposal does not comply with other 502.1 criteria.

1. Historic Sites

Mr. Douglas Behr introduced into evidence a photographic exhibit that showed the location of three buildings that are currently on the Maryland Historic Trust Sites list (Protestants' #8). He testified that currently there is an unimpeded site line among all three. Introduction of a structure of the type envisioned by Royal Farms', complete with its neon-green canopy, would not only obliterate the view of these three historic buildings but would also change the entire character of the Fork intersection (Behr testimony).

In support of Mr. Behr's position, Mrs. Shaw introduced into evidence part of the Baltimore County Master Plan 2010 (Protestants' #52) which outlined the policy to be:

> to "conserve visually-integrated rural historic landscapes so that viewers can appreciate the enticing qualities of continuing rural uses, or of a bygone agricultural era, while still allowing reasonable use of privately-owned land."

2. Current Lack of Area Crime and Lighting Issue

Mrs. DiFonzo introduced into evidence an exhibit that showed comparative crime rates for various areas of Baltimore County. She pointed out that the rural, agricultural area of Fork currently boasts one of the lowest crime rates in the County (Protestants' #27). Mrs. DiFonzo also introduced into evidence an information sheet for businesses furnished by the Baltimore County Police Department (Protestants' #28). She testified that the Police Department points out that convenience stores, especially in rural locations, are prime targets for robberies. (DiFonzo testimony). Mrs. DiFonzo's exhibit directly rebutted Mr. Kemp's assertion that it is his belief that the Fork store would be one of the safest in the chain (Kemp, pg. 103, l. 16-21; pg. 104, l. 1).

Mr. Kemp testified with regard to the lighting that Royal Farms' would use at the Fork

location. In response to cross-examination, he could not give a practical example of the use of this lighting, however, since he said that it is a new product and that they have never used it anywhere (Kemp, pg. 87, l. 10-21; pg. 88, l. 1-7).

Ms. Snyder testified that the proposed convenience store/gas station would be directly across the street from her and her neighbors and that the light would shine directly into bedroom areas. (Snyder testimony). Mrs. DiFonzo testified that Royal Farms' lights would easily be seen from most of the houses in Country Hill Estates since the Citgo lights can be seen and Royal Farms' lighting and signage would be closer. She also pointed out the steep topographical down-gradient between the subject property and the backs of the houses on Country Hill Court (Protestants' #25 & #31; DiFonzo testimony).

3. Traffic Congestion and Pollution Issues

Mrs. DiFonzo offered testimony that traffic at the intersection is already at a dangerous level due to Harford County commuters during the 1 ½ hour weekday rush hours in the mornings and evenings. She stated that, because the intersection is situated at the top of a topographical knoll, the sight line when traveling north on Harford Road just south of the intersection is particularly bad (DiFonzo testimony). She referenced a picture in her Traffic Views exhibit which showed that the traffic light at the intersection is obliterated from view as vehicles approach the Montessori School which would be opposite the Harford Road entrance/exit for the proposed store/gas station (Protestants' #24).

Mrs. Mary Kay Gaver, a member of the Board of Trustees on the Montessori School testified on behalf of the School. She stated that one of their particular concerns centers around the extremely bad sight line on Harford Road where they are located which would be opposite the proposed entrance/exit. She testified that the traffic flow revolving around this abysmal sight line would be made even worse with additional vehicles moving into, and out of, the traffic flow through the addition of the proposed new turning lane. She pointed out that school buses turning north on to Harford Road from the School's parking lot would face an even worst driving scenario from a safety perspective than they currently do. (Gaver testimony).

Mrs. Gaver also testified to the School's concerns with regard to the possibility of a large number of cars idling across the street in front of the Montessori School. She noted that the children's play area includes portions of the front and side of the School that face the proposed entrance/exit. (Gaver testimony). Mr. Kemp had testified that they wanted to be capable of servicing ten cars simultaneously (Kemp, pg. 83, l. 1-11). Petitioners' #1 A&B, the proposed site plan, shows the gasoline islands to be on the Harford Road side of the property in the approximate location of the previously abandoned UST's and across from the Montessori School (Petitioners' 1 A&B). Additionally, Mr. Shamel, Petitioners' UST installer, also located the islands in that vicinity (Shamel, pg. 78, l. 9-19).

Mrs. Shaw introduced into evidence part of the Baltimore County Master Plan 2010 which outlines the policy for rural roads:

> "The transportation system within the rural county largely consists of a road network that was developed at a time when all of Baltimore County was rural. In keeping with the rural tradition, these roads are usually narrow two lane roads without shoulders. They have not been engineered to improve sight distance or capacity, but rather hug the natural terrain.... In addition, commuters living in neighboring jurisdictions overburden roads that were never designed for such intensive use....Increasing the capacity of the existing local road network would result in erosion of rural character and could increase development pressure."

Mrs. Shaw concluded that this policy verbalizes why this proposed location for a convenience store/gas station is incompatible with the County's growth objectives since it would require road widening on a rural stretch of a two lane road with a poor sight line, and that is would encourage additional commuter traffic from other jurisdictions (Shaw, pg. 29, l.3-21; pg. 30, l. 1-4; pg. 31, l. 6-13).

4. Potential for Harm to the Financial Welfare of the Community

Mrs. DiFonzo testified to the already fragile nature of the retail businesses located at the intersection. She stated that the mini-shopping center on the northwest corner has been 50% vacant for over a year since the hardware store closed. She also testified to the fact that, of the existing four convenience store locations at the corner, one - Johnny Ryan's, is the third business in

that storefront and the second convenience facility in three years. Mrs. DiFonzo concluded that a large, ten-pump gasoline station with a large convenience facility would most certainly drive the existing Citgo station out of business as well as at least one of the other three convenience stores, leading to empty storefronts on multiple corners (DiFonzo testimony).

Mr. Kemp acknowledged during cross-examination that Royal Farms' would close a store that was not productive and that they had done so in the past (Kemp, pg. 100, l. 7-18).

Mrs. Shaw introduced into evidence a Royal Farms' Location Analysis that she had conducted (Protestants' # 57) using various Internet search engines and telephone books. Utilizing the MapQuest Internet site, she generated maps of the 87 Royal Farms' locations in Maryland, Delaware and Washington, D.C. From this analysis, Mrs. Shaw concluded that, prior to Royal Farms' decision to attempt to build a store in Fork, all of their other stores have been located either on dual lane highways or in areas with considerably more roads, housing development, and/or commercial activity. (Shaw, pg. 91, l. 14-21; pg. 92, l. 1-8).

Mrs. Shaw further concluded that the proposed Fork location is atypical of their historical ventures and, because of that, Royal Farms' can have little or no historical, empirical data on which a credible protocol model could be developed and analyzed to project the financial viability of opening a store in a location such as Fork (Shaw, pg. 92, l. 9-18).

According to Mr. Cronyn's testimony, his market analysis demonstrated the financial viability of the proposed convenience store/gas station based on "there being a sufficient volume of customers from both sources" [e.g., residential and commuters] (Petitioners' #6). He challenged the Protestants to analyze his statistics (Cronyn, pg. 53, l. 4-15).

In rebuttal of this generic and formula data presented by Mr. Cronyn in an attempt to rationalize financial projections, Mrs. Shaw presented a computer flowchart analysis diagramming how Mr. Cronyn, Royal Farms' market analyst, had used assumption after assumption - layering one on another - to arrive at financial projections which were unsupported by either logic or pri-

mary data (Protestants' #61). Mrs. Shaw stated that credible market analyses interweave relevant, primary data or facts with appropriate assumptions and that the only relevant data in Mr. Cronyn's analysis are the population statistics with which he began (Shaw, pg. 128, l. 6-10).

Mrs. Shaw also concluded that Mr. Cronyn used generic generalizations about possible buying behaviors (Shaw, pg. 128, l. 11-12), again building on only assumptions to reach his final assumption of projected revenue for the proposed store (Shaw, pg. 130, l. 6-10).

5. General Incapatibility with the Legislative Intent of a C.R. District

Mrs. Shaw testified that it is not her understanding that it is the intent of Baltimore County to aid commuters in adjacent counties in obtaining products and services that are readily available in their own jurisdictions by providing them in Baltimore County when the provision of these products and services is detrimental to the residents of rural and agricultural areas (Shaw, pg. 33, l. 19-21; pg. 34, l. 1-4). The C.R. District "is not intended to be a regional facility providing specialty goods to a population outside of the rural area."

E. Uniqueness of Site including Greater Impact on Community

Uniqueness

- This is the only BL-CR site with a proven history of contamination (Protestants' # 32-35; #37-39; #42-46; Sheesley, pg. 96, l. 8-21; pg. 97, l. 1-7; pg. 133, l. 4-6).
- This is the only BL-CR site where there is a proven hydrologic connection between the contamination that originates from the site and neighboring wells (Sheesley, pg. 132, l.21; pg. 133, l. 1-7; Protestants' #32, 38).
- This is the only BL-CR site with a current problem of pollution originally attributed to it (Protestants' # 40, 41; Sheesley, pg. 52, l. 16-20).
- This is the only BL-CR site which, due to the continuing pollution emanating from it, continues to pose a health and safety risk to an adjacent neighborhood (Protestants' #13, 32, 36, 38, 60A - D; Sheesley, pg. 135, l. 5-18; pg. 143, l. 11-21; Mills, pg. 13, l. 16-21; pg. 14, l. 1-13; pg. 23, l. 20-21; pg. 24, l. 1-6; Shaw, pg. 121, l. 9-21; pg. 122, l. 1-6; pg. 123, l. 12-21; pg. 124, l. 1-3, pg. 125, l. 1-10).

- This is the only BL-CR site with a proven fracture that underlies a topographical ridge, a drainage divide (Protestants' #38; Sheesley, pg. 100, l. 16-19; pg. 101, l. 6-9; Mills, pg. 13, l. 4-10).
- This is the only BL-CR site with three historic structures within sight line where the view would be obliterated with a structure of the type proposed (Protestants' #4).
- This is the only BL-Cr site which is known to contain the headwaters of a tributary of a major River, e.g., Big Gunpowder River (Protestants' #52; Sheesley, pg. 101, l. 2-5; Mills, pg. 12, l. 11-14; Shaw, pg. 32, l. 15-21; pg. 33, l. 1-13) and where water polluted with petroleum by-products would flow into it (Protestants' #26, 31, 64; Petitioners' #1A & B; Brader, pg. 130, l. 16-21; pg. 131, l. 1-14; Shaw, pg. 133, l. 14-18; Koepenick testimony; Okechukwu testimony).

Heightened Impact

- This is the only rural crossroads within a three-mile radius of the area that has four currently existing convenience stores, which is more than the others, two of which are on dual lane highways (Protestants #55A & B).
- Of all of the rural intersections within a five-mile radius, this intersection already has more convenience stores than all but one of the other intersections, which has the same (Protestants' #56A, B & C).
- Within a five-mile radius of the intersection, all other rural intersections only have one gas station which is what Fork currently has (Protestants' #56A, B &C).
- This is the only site to be specifically mentioned in the Greater Kingsville Community Plan and with a specific proposed use for it because of its history of contamination (Protestants' #52).
- Within two miles of this site are eleven abandoned gasoline pumps/service stations (Protestants' #52).
- This site is in the middle of a green way proposed in the Baltimore County Master Plan (Protestants' #52).

ARGUMENT

The zoning regulations that apply to a BL-CR overlay district are contained in Section 230 of B.C.Z.R. and Section 259.2A and 259.3. The legislative intent of the CR (Commercial, Rural) district is "to provide opportunities for convenience shopping and personal services that are customarily and frequently needed by the rural residential and agricultural population and tourist ... the commercial centers within CR districts are not intended to be regional facilities providing specialty goods to a population outside of the rural area." Section 259.3E provides additional requirements for granting of a special exception in a CR district. Among the requirements are "to document the need for the development at the proposed location." Likewise, Section 405, and more particularly 405.3, relating fuel service stations suggests that again in addition to the findings required under Section 502.1, prior to granting a special exception for a fuel service station, the CBA should consider the presence of abandoned fuel service station in the vicinity of the proposed site. A finding by the Board of the presence of one abandoned fuel station within one-half mile radius or two such stations within a one mile radius, establishes that there is no need for the proposed use, unless rebutted to the Board's satisfaction by market data. Since abandoned gas stations exist under the definition in the instant case, the Petitioner here has the requirement to rebut the presumption that there is no need for the proposed use. The previous lengthy statement of facts provides the reasoning for the Protestants' position that the burden has not been met by the Petitioner for all of the reasons stated.

I. THE MASTER PLAN AND THE INTENT OF SPECIFIC LEGISLATION (FUEL SERVICE AND CR OVERLAY)

The Petitioner's proposal for a fuel service station and an enlarged convenience store is not consistent, as established by the evidence set forth in the statement of facts, with the Baltimore County Master Plan 2010, the Agriculture Land Preservation Area, the Long Green Valley Rural Legacy Program, and the specific Greater Kingsville Community Plan which shows an agricultural related use for the subject site. Furthermore, an analysis of the intent of the CR overlay district as quoted above reflects the general purpose for the establishment of such a BL-CR dis-

trict on the subject property. Petitioner's proposal does not conform with the intent of the CR overlay proscribing such uses for local needs. Furthermore, the specific legislation addressed under Section 405 dealing with fuel service stations shows an intent by the County Council to severely limit and restrict the establishment of new service station facilities by presumption against such approval where abandoned gas stations exist in the area. The combine legislative intent then of the County Council in enacting the CR overlay, the legislation dealing with fuel service stations, the state legacy programs, and the adoption of the Greater Kingsville Community Plan establishes an intent to place limited types of local uses on the subject property.

While it is recognized that Master Plans are not binding on all zoning determinations, they must be considered guidelines and analyzed and considered by the Board in applying the tests set forth under Baltimore County Zoning Regulations Section 502.1, 405.3, and 259.2 and 259.3.

The combined purposes and legislative intent of all the forgoing clearly call for the rejection of the Petitioner's special exception in this case for all of the reasons articulated in the statement of facts.

II. THE "NEED" ISSUE

Factually, the need issue, or lack of it in this case, has been set forth in the statement of facts.

Since 1967, BCZR Section 405 has included "need" criterion for automotive or fuel service stations. In 1993, Bill 172-93, created a rebuttable presumption that there is "no need for the proposed use where there is abandoned service station within a one-half mile or two such stations within a two mile radius..." BCZR 405.3. BCZR 405.8 states:

> "One of the purposes of this subsection is to promote the conversion of vacated fuel service stations to other uses..."

Concomitantly, BCZR Section 259.3.E.1, the CR district now includes the following requirements for the granting of any special exceptions:

> "1. The Petitioner shall document the <u>need</u> for the development at the proposed loca-

tion."

Here, Petitioner attempted to prove the need for the service station but Protestants submit that its evidence does not overcome the required presumption. As to the need for the fuel service station, the thrust of Petitioner's expert was that there was a demand for gasoline at this location. This testimony was clearly rebutted for the multiple reasons as set forth in our facts. The Board need only look to the Protestant's exhibit establishing the number of fuel facilities within the three and five mile radius of the subject site. As for the convenience store, it is clear that, likewise, the need has for such localized purchases is currently being met. There is a difference between "demand" and "need." Even if we assume a station could profitably sell gasoline, that does not mean that the existing service is inadequate. For a station to succeed here, it would likely cut sharply the sales at the Citgo station directly across the street. It could force existing stations out of business causing blight in the immediate neighborhood. Likewise, as to the convenience store, the items Petitioner proposes to sell are clearly not needed in that they are currently provided by the existing businesses. Again, representatives from Royal Farms, in their testimony before the Board acknowledged that they might possibly force existing local businesses to fold up. That admission runs counter to the intent and purposes of the legislation being addressed herein.

This is a rural area. There has been little population growth in recent years. Future population growth is not projected to be significant due to the zoning in the area. Local residents have the availability of existing shopping which satisfies the intent and purpose of the CR overlay district legislation. The Three and Five Mile analyses performed by the Protestants make clear that multiple convenience stores and fuel service stations are available to the local residents without the need for the additional special exception requested by Royal Farms. The need "re-

quirement" goes hand-in-hand with the legislative intent to convert abandoned service stations to more appropriate uses. Here, the existing site, which was once an auto-repair store and a gasoline service station should be abandoned and converted as proposed by the Kingsville Community Plan.

A recent opinion by this Board, In the Matter of the Application of Donald E. Warrener, Jr., Case No. 99-73-SPHXA, decided on April 14, 2000, addressed similar provisions of the BCZR Section 259.2A and 259.3. In that case, the Board considered the large number of service stations that had existed at the rural Northern Baltimore County site throughout the years and had been "abandoned." The Board there found that the number of current stations available is more than adequate to serve the needs of a rural community (Opinion, page 19). There, as here, the population increases were very modest recognizing the rural nature and zoning of the area. The Board took into account the "**addition of another fuel service station in an area that is sparsely populated could have an impact of the economic viability of the those stations currently servicing the area.**" (emphasis supplied) That is exactly the same situation that exists here in relationship to the Citgo service station across from the street as well as the other convenience stores located in the adjacent shopping center, across from the subject site.

For all of the reasons discussed in the Statement of Facts, Protestants submit that the "need" has not been established by the Petitioner as required under the BCZR.

III. SPECIAL REQUIREMENTS AND "UNIQUENESS"

1. Special Exceptions in the Court of Appeals

Judge Hall Hammond, later Chief Judge for many years, explained the law of special exceptions in Montgomery County v. Merlands Club, Inc., 202 Md. 279 (1953). It is the seminal case. The more recent decisions are actually restatements or reformations of Judge Hammond's

analysis and language. So, in Turner v. Hammond, 270 Md. 41 (1973), Judge McWilliams said:

> "Occasionally the bar and less often the bench lose sight of the concept that the conditional use or special exception, as it is generally called, is part of the comprehensive zoning plan sharing the presumption that as such it is in the interest of the general welfare and, therefore, valid. *Rockville Fuel and Feed Co. v. Board of Appeals of the City of Gaithersburg*, 257 Md. 183, 187 (1970). The special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses the legislature has determined can be allowed, properly albeit *prima facie*, absent any fact or circumstance negating the presumption. *Rockville, supra*. In *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 287 (1953), we said:
>
> > '...The duties given the Board are to judge whether the neighboring properties and the general neighborhood would be adversely affected, and whether the use, in the particular case, is in harmony with the general purpose and intent of the zoning plan.'
>
> While the applicant has the burden of adducing testimony which will show that his use meets the prescribed standard and requirements he does not have the burden of showing affirmatively that his proposed use accords with the general welfare. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses, is, of course, material but if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal. *Rockville, supra." 270 Md. 41.*

There were many Court of Appeals special exception decisions between 1953 and 1973, all of which followed the path between Merlands Club and Turner v. Hammond.

Chief Judge Hammond's 1970 opinion, Rockville Fuel and Feed Co. v. City of Gaithersburg, 257 Md. 183 (1970), is also quoted often. Another case, Redden v. Montgomery County, 270 Md. 668 (1974), analyzed particular problems of a proposal for a facility to house the elderly and handicapped. Special exceptions never were routine nor automatic.

More recently, in Board of County Comm'rs. v. Holbrook, 314 Md. 210 (1988), Judge Harry Cole quoted Judge Rita Davidson's landmark opinion in Schultz v. Pritts, 291 Md. 1 (1981):

" In *Schultz v. Pritts*, *supra*, this Court determined the applicable standard for judicial review of the grant or denial of a special exception use. We observed:
'The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible **absent any fact or circumstance negating the presumption**. The duties given the Board are to judge whether the **neighboring properties in the general neighborhood would be adversely affected** and whether the use in the particular case is in harmony with the general purpose and intent of the plan.'

* * *

'The extent of any harm or disturbance to the neighboring area and uses, is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. *Turner v. Hammond*, 270 Md. 41, 54-55 (1973); *Rockville Fuel and Feed Co. v. Board of Appeals of Gaithersburg*, 257 Md. 183, 187-88 (1970); *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 287 (1953); *Anderson v. Sawyer*, 23 Md. App. 612, 617 (1974).
These standards dictate that if requested special exception use is properly determined to have an adverse effect upon neighbors properties in the general area, it must be denied.' 291 Md. At 11-13, 432 A.2d 1319 [emphasis in original.]

We then defined the specific nature of the requisite adverse impact required to warrant denial of a special exception application:

'[A] special exception use has an adverse effect and must be denied when it is determined from the fact and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is **whether there are facts and circumstances that show that the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.**' 291 Md. At 15 [emphasis supplied]. 314 Md. At 216, 217.

The facts in Holbrook reflect an affirmance by the Court of a denial where the permanent

placement of a mobile home 150 feet from a $147,000 home in an undeveloped wooded residential area would have been a negative visual intrusion and detriment to the character of the neighborhood. If the "uniqueness" was sufficient Holbrook, to deny a special exception, here the reasons given in the Statement of Facts represent important aspects of this site peculiar to only the subject site; that is, the existing contamination, the topography, the defined path of contaminants to adjacent properties, and the geology which permits more danger to these adjacent residents than elsewhere in a BL zone. If Holbrook can deny a special exception because of visual intrusion, the more serious and significant reasons provided in the instant case will certainly allow this Board to deny the Petitioner's special exception request. How much more contamination and threat of contamination must one rural community endure?

It is important to recall what led Judge Davidson to write the Schultz opinion. She wrote to reject the Court of Special Appeals view that a special exception use must be approved if it can be shown that its adverse effects are no worse than some use permitted by right in the zone. Her simple point was that a special exception use could be denied based on particular problems because the legislature intended stricter scrutiny than that provided for permitted uses.

Schultz did not envision routine or semi-automatic approval of special exceptions. The decision remanded the matter for a review of particular access problems. Similarly, Holbrook respected the Zoning Board's administrative denial of a special exception, based just on a particular visual intrusion and detriment to the character of the neighborhood. Here we have much more significant consequences to the approval of this request.

2. Recent Court of Special Appeals' Applications

Since Holbrook, there have been a number of special exception decisions issued by the Court of Special Appeals which apply the above standards and are helpful here.

People's Counsel v. Mangione, 85 Md. App. 738 (1991) sustained this Board's denial of a convalescent home in a residential zone based on particular site problems above the norm for residentially zoned properties. It was off the main road and had poor access on a narrow winding street where children played. It would block out light from the west and exacerbate both drainage and erosion problems.

Mangione, fn. 6, also confirms that under BCZR 502.1:

> "The size and scope of the project are thus relevant considerations. To contend otherwise...is to engage in specious and sophistic reasoning."

The Court likewise sustained a denial of a special exception for a rubble fill. Moseman v. Prince George's County, 99 Md. App. 258 (1994). The factors particular to the site included the presence of an existing rubble fill across the street, a narrow and winding access road, the proximity of single family homes, highly erodible soils, risks to well water, and depreciation of property values.

The Court recognized the unique problem the cumulative impact of two (active) adjacent rubble fills would have on a single community by concluding that "given the existence of the adjoining rubble fill currently in operation, granting the proposed rubble fill would adversely impact the surrounding properties in a manner unique and different from the adverse impact which would otherwise result if a rubble fill were located elsewhere within the O-S zone." The Court cited the residents testimony as to the existence of odor, noise, spillage of debris, and traffic backups, finding that the residents would have to endure two rubble landfills.

There was no indication that the Moseman site was the worst site in Prince George's County. There may have been other sites as bad or worse. There could have been proposed a larger or more hazardous landfill. But the potential for worse case or worst case scenarios did not require approval at this location.

Moreover, the cumulative impact of two rubble fills in the same area was a legitimate factor probative of particular adverse effects above the norm.

The Moseman case was followed three years later by a case arising in the same community from a second effort to locate a rubble fill. In Brandywine v. P.G. County, 117 Md. App. 525 (1997) the Court again addressed two rubble fills located in the same community, only this time there was an inactive landfill and the proposed active full. Again, the Court affirmed the denial of the special exception. The Court found that "even assuming that the rubble fills will not operate simultaneously, the District Council could properly have found that the proposed fill and existing fill will have a cumulative effect upon the nearby residents." Brandywine, at p.538.

These two recent rubble fill cases from Prince George's County were preceded by Entzian v. Prince George's County, 32 Md. App. 256 (1976) in which the Court likewise denied a special exception for a sanitary landfill on the basis that the proposed use "would adversely affect the health, safety, and welfare of the residents in the area and be detrimental to the use and/or development of adjacent properties." The District Council cited impact upon the adjacent wildlife, destruction to both surface and ground water systems and that no matter how well the landfill was operated, leachate would not always be contained on site.

In Mossburg v. Montgomery County, 107 Md. App. 1 (1995), the Court reversed the denial of a special exception for a solid waste transfer station in a heavy industrial zone. Unlike the cases of Mangione, Moseman, and Brandywine, the Southlawn Lane industrial corridor of Rockville at issue was one of only four I-2 heavy industrial zones in the entire county where such a use could be located.

The evidence showed clearly that potential problems associated with this transfer station site were no worse than in any of the other three I-2 zones. The site was on a main road. It

drained into the same general watershed as these other industrial zones. It also adjoined heavier industrial uses which drained into the same creek. Mossburg is the classic case of a proposal which did not pose problems uncommon to the use in the zone generally, unlike the case presently before the Board.

Finally, in Leo J. Umerley v. People's Counsel of Baltimore County, 108 Md. App. 497 (1996), the Court reaffirmed that the Board of Appeals must specifically examine the impact at the particular location. The Court quoted Holbrook:

> In Board of County Commissioners v. Holbrook, 314 Md. 210, 217-18 (1998), Judge Harry Cole summarized the Schultz test, in part, with this key point:
>
> > "...where the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone, the application should be denied."
>
> In Holbrook, a mobile home was visible to a residence 80 to 150 feet away, and there were no trees or topograph to interrupt the line of sight. This contrasted with "countless locations...within the zone" which would not present such a problem of proximity and visibility." 314 Md. at 220. For this reason alone, the special exception was properly denied. The court did not try to justify or require approval on the theory that many other locations would produce similar visibility problems Otherwise stated, it is not necessary to have a worst case scenario and one of a kind in order to deny a special exception. (emphasis supplied)
>
> As Judge Glenn Harrell reminded in Sharp v. Howard County Board of Appeals, 98 Md. App. 57, 85 (1993),
>
> > "The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the

particular case is in harmony with the general purpose and intent of the plan." Citing Schultz. (Emphasis in original).

Wherefore, based upon case law, cited above and the facts as presented to the Board of Appeals by the Protestants' testimony and exhibits, it is clear that the subject site will have a greater impact at its proposed location than any other BL-CR zone elsewhere in the County. This Board should deny the special exception request.

IV. DEMONSTRATED RISK OF SIGNIFICANT AND MATERIAL ENVIRONMENTAL AND HEALTH HAZARDS TO THE COMMUNITY

The Protestants have explained that they believe that the environmental hazards that currently exist on the property and the potential for a fuel service station create a unique situation for the subject site for purposes of the special exception test. In addition to the unique aspect, the proposal for a fuel service station presents serious and significant risks to the community as explained in the statement of facts. Any future spill of petroleum products on the subject site will clearly produce damaging results to the adjacent property owners as established by the testimony relating to the flow of underground water contamination. There is no doubt, nor speculation required, to establish that underground leaks will flow to Russo's and other wells. Any failure of the collection system proposed around the tanks will produce contamination in the adjacent properties. Clearly, Royal Farms refusal to provide a liner which is available to surround these tanks is an example for their disregard for this acknowledged environmentally sensitive site. In addition to the obvious impact on the neighborhood if a spill or leakage does occur, there is the additional issue related to surface water run off related to the proposed "Stormscepter" system. The obvious failure of the "Stormscepter" to control and eliminate MtBEs from the storm water collected on site will affect the surface waters on the Shaw property and is a clear danger to the

health and safety of the adjacent properties. A review of all the testimony as set forth in the Statement of Facts and the documentation from the EPA clearly establish that MtBE contamination is a severe health hazard to adjacent properties. The documents for the "Stormscepter" establish that in a normal flow situation, the MtBEs will not be filtered out by the system and will flow out the exit pipe of the "Stormscepter". In situations where there are heavy rains, the system will simply funnel the contaminated water with MTBEs through the system into the adjacent off site stream. In either event, storm water with MtBE will be commingled with the existing surface water and has the potential for finding its way into the adjacent community's wells. The fact that the Petitioner's engineer didn't even understand how the system he was proposing worked and how it affected potential MtBEs in the storm water illustrates the lack of concern on the part of Royal Farm Store for the adjacent community. It must be clear to anyone that this site, because of its history, demands significant and failsafe protection. That protection is not being afforded by this Petitioner to this rural community.

The potential environmental impacts fall clearly under the requirements of Section 502.1 of the BCZR and afford this Board an additional basis upon which it should deny the Special Exception.

Conclusion

Wherefore, for all of the reasons provided in the Statement of Facts and Legal Arguments, the Protestants believe this Board should deny the request by Royal Farms for an enlarged convenience store and a fuel service operation. The impact on this community will be far above the potential impacts for a like facility in other BL zones in Baltimore County. This case fits clearly under the Court of Appeals' decisions in Holbrook, Mangoine, and clearly under the standard permitted to deny a special exception in Schultz v. Pritts.

Respectfully submitted,

J. Carroll Holzer.
508 Fairmount Ave.
Towson, MD 21286
410-825-6961
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 17th day of May, 2000, a copy of the foregoing Memorandum was mailed first class, postage pre-paid, to Robert Hoffman, Esq., 210 Allegheny Avenue, Towson, Maryland 21204.

J. Carroll Holzer

5/17/00

IN THE MATTER OF SEVEN KIDS, LLC AND CLOVERLAND FARMS DAIRY, INC., SW CORNER OF SUNSHINE AVENUE AND HARFORD ROAD	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	
11th Election District 5th Councilmanic District	*	Case Nos.	99-199-X 99-127 99-128

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PETITIONERS' POST-HEARING
MEMORANDUM

Petitioners Seven Kids, LLC and Cloverland Farms Dairy, Inc., by Robert A. Hoffman with Venable, Baetjer and Howard, LLP, their attorney, respectfully submit this Post-Hearing Memorandum in support of their case, as follows:

INTRODUCTION

This case involves a Petition for Special Exception filed by Petitioners Seven Kids, LLC, owner, and Cloverland Farms Dairy, Inc., contract lessee, (hereinafter "Cloverland") to permit construction of a Royal Farm convenience store with fuel pumps on property located at the intersection of Harford Road and Sunshine Avenue in Fork, Maryland. The Deputy Zoning Commissioner for Baltimore County conducted a public hearing on the Petition for Special Exception over a series of three days in early 1999. On April 30, 1999, the Deputy Zoning Commissioner issued his Findings of Fact and Conclusions of Law, granting the requested special exception with restrictions. Protestants Long Green Valley Community Association, Greater Kingsville Civic

Association, and other individual property owners, appealed this decision to the County Board of Appeals for Baltimore County ("Board of Appeals") on May 26, 1999.

This case also involves Cloverland's request to the Development Review Committee ("DRC") to process its development plan for the Royal Farm store, both in its original form with fuel pumps (February 8, 1999) and in an alternate form without fuel pumps (July 6, 1999), in accordance with a limited exemption under Section 26-171 of the Baltimore County Code. If Cloverland were entitled to a limited exemption, it would be able either to forgo the Development Review and Approval Process completely or to process its development plan without having to attend a community input meeting or a public hearing before the hearing officer, thus greatly shortening the time involved in processing the plan.

The DRC, through Arnold Jablon, Director of the Department of Permits and Development Management, approved a limited exemption for the original plan with fuel pumps on June 11, 1999, and also for the alternate plan without fuel pumps on July 22, 1999. The DRC approvals were also appealed by Protestants to the Board of Appeals. The Board of Appeals decided to hold one hearings on all three cases (Special Exception Appeal: Case No. 99-199-X; DRC Appeals: Case Nos. 99-127 and 99-128).

The hearing before the Board of Appeals on the special exception and the limited exemptions began on September 30, 1999. At the beginning of the hearing, both Cloverland and Protestants made motions with regard to whether the Board of Appeals had jurisdiction to hear the appeals from the DRC: Protestants contended the Board did have jurisdiction, Cloverland maintained that it did not. In order not to split the case for

appeal purposes, the Board deferred its ruling on the jurisdictional issue until the end of the case. Testimony began on the special exception case, was continued on October 7, 1999, and was scheduled to resume on January 19, 1999.

Between the October hearing and the January hearing, however, the Board of Appeals ruled that it did, in fact, have jurisdiction over DRC appeals and that it would hear such appeals *de novo* with the burden on the recipient of a limited exemption to prove its entitlement to that exemption. When the hearing resumed on January 19, 1999, the Board, therefore, instructed counsel in this case to present whatever evidence and testimony they felt necessary to prove their case during the remainder of the hearing. Throughout the rest of the hearing, the Board expressed its desire not to revisit the issue of jurisdiction. Recognizing the case might proceed beyond the Board of Appeals, though, the Board confirmed that it did not intend to preclude counsel from preserving their right to argue these and other related issues if this case were appealed further. At this time, therefore, Cloverland expressly reserves its right to argue that the Board of Appeals erred in finding that it had jurisdiction over appeals from the DRC and also to argue that the DRC did not, in fact, have the authority to act as gatekeeper with regard to limited exemptions under B.C.C. Section 26-171.

STATEMENT OF THE FACTS

Cloverland intends to lease 1.21 acres of a 23.34 acre site located at the southeast corner of Harford Road and Sunshine Avenue in Fork, Maryland to construct a 3,113 square foot Royal Farm convenience store with a sales floor of 2,799.5 square feet. (T. 9/30/99, pp. 25-26) Cloverland also proposes to provide five (5) fuel pump islands with

10 fueling spaces, as shown on the site plan introduced as Petitioners' Exhibits 1A and 1B. The subject property is zoned BL-CR. The proposed use is permitted in this zone by special exception.

Cloverland is the largest dairy in the area, and it operates 87 Royal Farm stores throughout Maryland, Delaware, and Virginia with 22-25 stores in Baltimore County. (T. 9/30/99, pp. 21-22) As John Kemp, Vice-President of Cloverland Farms Dairy, Inc., testified, Cloverland, which started its Royal Farms stores in 1967 as dairy stores, has had to expand the stores and add fuel service to compete with major oil companies, who have added convenience stores to their fuel service stations. (T. 9/30/99, pp. 20-23) Consumer demand for "one-stop shopping" has forced such companies to combine fuel service with convenience stores in order to serve customer needs. (T. 9/30/99, pp. 22-23) Cloverland had an interest in developing a convenience store on the Harford and Sunshine site as far back as 1987. (T. 9/30/99, pp. 25-28) Cloverland believes this location provides an outstanding opportunity to provide this "one-stop shopping" to the surrounding residences as well as to the commuters travelling along Harford Road. (T. 9/30/99, pp. 28-29)

With respect to the proposed Royal Farm store, the store will carry an extended grocery line with 5,500 items, including fresh baked breads, fried chicken, and premium coffees, as compared with a typical convenience store carrying 2,500 items. (T. 9/30/99, p. 34) The proposed store will be clean, modern, and well-lit. (T. 9/30/99, pp. 29, 45-46) In one stop, customers will be able to fill their gas tanks, get a loaf of bread, use the ATM machine, and get a cup of coffee. (T. 9/30/99, pp. 28-29) There will also be restrooms

provided for the public. (T. 9/30/99, pp. 104-105) There is currently no operation in the area which provides fast and easy one-stop shopping. (T. 9/30/99, pp. 28-29, 32-34)

With respect to operation of the store, Cloverland desires to open the store 24 hours to serve its customers. (T. 9/30/99, p. 35) Gas deliveries would be between the hours of 9:00 p.m. and 5:00 a.m. Other deliveries would be during the hours of 7:30 a.m. and 4:00 p.m. Trash removal would be between 7:00 a.m. and 4:00 p.m. (T. 9/30/99, pp. 36-37) While the Royal Farm store must be well-lit for safety reasons, Cloverland will use recessed lighting in the fuel service canopy, the most intensely lit area of the site, to minimize the effect of the lighting on the surrounding community. (T. 9/30/99, pp. 44-45)

With regard to the fuel service operation, Cloverland is committed to providing the latest, most up-to-date safety equipment, all of which exceeds current standards. (T. 1/19/00, pp. 64-73); Petitioners' Exhibits 21 and 22. Cloverland's employees will be trained in the operation and monitoring of the fuel service equipment. (T. 9/30/99, pp. 96-97) Further, technicians are available around the clock to respond to any emergencies. (T. 1/19/99, pp. 99-100)

ARGUMENT

I. Based on the Evidence Presented before the Board of Appeals, Cloverland is Entitled to the Requested Special Exception.

Cloverland has requested a special exception for the construction of a 3,113 square foot Royal Farm convenience store (with a sales floor area of 2,799.5 square feet) with five (5) fuel pumps islands. Such a use is permitted in the CR District on a BL

zoned property by special exception pursuant to Section 259.3 of the Baltimore County Zoning Regulations ("B.C.Z.R."). Because the size of the convenience store sales floor area is greater than 1,500 square feet, under B.C.Z.R. Section 405.4.E.1, a special exception is also required for the combined use of a convenience store and fuel service station. Special exceptions are approved in accordance with B.C.Z.R. 502.1 with the additional requirements of B.C.Z.R. Section 259.3.E.

According to the well-developed law of Maryland, such a special exception use is *presumed* to be valid and is *presumed* to be consistent with the general welfare. Schultz v. Pritts, 291 Md. 1, 11, 432 A.2d 1319 (1981). Therefore, once a petitioner demonstrates that the proposed use satisfies the specific requirements of the applicable ordinances, *i.e.*, B.C.Z.R. Section 259.3.E and B.C.Z.R. Section 502.1, the special exception must be granted unless a protestant produces strong and substantial evidence that placement at this particular location will have adverse effects *above and beyond* those inherently associated with such a special exception use regardless of where it may be located within the zone. Schultz, 291 Md. at 14, 22-23. In other words, a protestant must do more than show that the use may have adverse effects that are common to that use generally. Id. See also Sharp v. Howard County Board of Appeals, 98 Md. App. 57, 632 A.2d 248 (1993).

As outlined below, Cloverland produced sufficient evidence at the hearings before the Board to prove that the requirements of Section 259.3.E and Section 502.1 had, in fact, been met. Although the Protestants raised many concerns about convenience stores

and fuel service stations generally, they were not able to rebut Cloverland's evidence or to demonstrate that such concerns are unique to this site.

A. The Evidence Confirms that the Proposed Plan Complies with B.C.Z.R. Section 259.3.E.

In order to prove its entitlement to the requested special exception, Cloverland first had to demonstrate that the requirements of B.C.Z.R Section 259.3.E were met. Section 259.3.E lists five considerations for the Board, only one of which, need, was challenged by the Protestants.[1]

According to Section 259.3.E.1, "the petitioner shall document the need for the development at the proposed location." While the Baltimore County Zoning Regulations contain no definition of "need," in referring to an element of proof in a special exception case, the term has been judicially defined to mean "expedient, reasonably convenient and useful to the public." Neuman v. Mayor and City Council of Baltimore, 251 Md. 92, 98-99, 246 A.2d 583 (1968). The term does not mean "absolute necessity." Id. Nor does the term suggest the intent to prevent competition or to protect existing businesses. As the Court of Appeals has articulated, the consideration of "need" does not give an administrative agency the power to suppress competition as "the prevention of competition is not a proper element of zoning." Lucky Stores, Inc. v. Board of Appeals of Montgomery County, 270 Md. 513, 528, 312 A.2d 758 (1973). Therefore, the inquiry on need must be focused on whether the proposed facility will offer convenient services to the public and not on whether there will be any potential impact on existing businesses.

[1] Nicholas Brader, Cloverland's expert engineer, covered the remaining four factors in his testimony on January 19, 2000, at pages 109-118.

With this definition of need in mind, Cloverland presented the testimony of John Kemp, Cloverland's Vice-President, and Joseph Cronyn, expert in real estate market analysis and economic impact analysis. As John Kemp explained, there is great consumer demand for "one-stop shopping" in terms of fuel service, convenience store, and other services, such as ATM machine. (T. 9/30/99, pp. 22-23) His company is attempting to keep up in the marketplace by meeting this demand. (T. 9/30/99, pp. 20-23) Cloverland believes the Harford Road/Sunshine Avenue site is an excellent opportunity to provide this "one-stop shopping" to the surrounding residences as well as the commuters travelling along Harford Road. (T. 9/30/99, pp. 28-29)

The Royal Farm store will carry an extended grocery line with over 5,500 items as compared with a typical convenience store, such as the neighboring High's store, which usually carry less than 2,500 items. Royal Farms also offers fresh baked breads, fried chicken, and premium coffees, which other stores in the area do not. (T. 9/30/99, p. 34) In one stop, customers can fill their gas tanks, get a loaf of bread, use the ATM machine, and get a cup of coffee. (T. 9/30/99, pp. 28-29) As Mr. Kemp explained, the surrounding area has no other store offering fast and easy one-stop shopping. (T. 9/30/99, pp. 28-29, 32-34) Therefore, the Royal Farm will fill a need that is currently unserved or underserved by the neighboring High's store and Citgo fuel service station. (T. 9/30/99, p. 28)

Cloverland also offered the testimony of Joseph Cronyn, a economic and marketing expert. Mr. Cronyn testified, based on his market and economic analysis of the proposed project, that he believes there to be sufficient need for the proposed store in

terms of market potential to support the use. (T. 10/07/99, pp. 22-25); Petitioners' Exhibit 6. Based upon his research of the area, Mr. Cronyn was able to draw a 1.5 mile ring around the site as the primary market area for the proposed Royal Farm store. (T. 10/07/99, pp. 14-16) Within this ring, there are 788 households, which serve as the residential market for the site. (T. 10/07/99, pp. 14-16) Factoring in average income and a statistical analysis of how such households spend money, Mr. Cronyn conservatively estimated that sales for the proposed Royal Farm store would produce $671,000-$810,000 in sales from the surrounding residential market area, assuming an even split with the existing businesses. (T. 10/07/99, pp. 20-23)

Mr. Cronyn then factored in the amount of estimated sales from commuter traffic passing the site. Considering a conservative 5.7% capture rate of the total trips past the site, Mr. Cronyn estimated $3.7 million in sales will be generated by the Royal Farm store from the passing commuter traffic. (T. 10/07/99, pp. 20-23) These figures, in his opinion, support his conclusions that the Royal Farm store will be "reasonably convenient and useful for the public." (T. 10/07/99, p. 24)

Cloverland, therefore, presented sufficient evidence demonstrating that the proposed Royal Farm store would be reasonably convenient and useful for the public at the Fork location, the appropriate standard by which to judge "need" in this case, and, therefore, this Board should find Cloverland has satisfied the requirements of B.C.Z.R. Section 259.3.E.

B. The Evidence Confirms that the Proposed Plan Complies with B.C.Z.R. Section 502.1.

In addition to proving the requirements under B.C.Z.R. Section 259.3.E, Petitioners also had to prove that the proposed use complies with B.C.Z.R Section 502.1.

Health, Safety, and General Welfare of the Locality

Nicholas Brader, licensed engineer, confirmed generally that the proposed Royal Farm store would not have an adverse impact on the health, safety, and general welfare of the Fork community. (T. 1/19/00, pp. 118-119) The Protestants expressed concern over several specific issues, though, which could be seen to fall under the ambit of health, safety, and general welfare of the locality:

Environmental Issues: The major concern expressed by most of the Protestants is the potential for contamination from the fuel service station and its underground fuel storage tanks. Cloverland understands the Protestants' concerns, given the past history of the site.

The subject property was the site of a former fuel service station and an automobile repair shop, which uses were discontinued sometime prior to the early 1980's. Robert Sheesley, former Director of the Department of Environmental Protection and Resource Management ("DPRM") and expert environmental scientist, provided a history of the site for the Board. (T. 10/07/99, pp. 95-106) As Mr. Sheesely explained, well before Petitioners involvement with the property, when the site was being prepared for redevelopment in 1987, it was discovered that the underground storage tanks from the old fuel service station had leaked fuel into the soil. (T. 10/07/99, p. 96) No one knows how long the tanks had been leaking. (T. 10/07/99, pp. 150-151)

DPRM became involved, and the leaking storage tanks and the contaminated soil to a depth of 14 feet were removed. (T. 10/07/99, pp. 96-97) Monitoring wells were placed around the site. It was also discovered that the contamination had made its way south of the site into the County Hills Estates neighborhood. (T. 10/07/99, p. 97-98) It is believed that the contamination had gotten into the aquifer and flowed through cracks and fissures and into residential wells. (T. 10/07/99, pp. 100-101)

At this point, the Maryland Department of the Environment ("MDE") assumed control, and monitoring continued for several years. (T. 10/07/99, p. 103) According to Mr. Sheesely, continued monitoring of the surrounding wells has indicated only residual contamination in the groundwater, which means that there is no active contamination. (T. 10/07/99, pp. 104-108, 173) Contaminants in the monitoring wells have diminished over the years to a point where Mr. Sheesley opined they are negligible in terms of concentration. (T. 10/07/99, pp. 107-108) Mr. Sheesley confirmed that MDE, the agency responsible for oversight of this case, has approved the site for development as long as certain actions are taken, which Cloverland has agreed to do. (T. 10/07/99, pp. 108-110); Petitioners' Exhibits 14 and 15.

Cloverland is committed to providing a safe and clean site and will take precautions so that leaks, such as happened in the past with prior owners, will not occur. Michael Schammel, an expert in the installation and technical requirements for fuel tanks, testified in detail regarding the safety features of the equipment to be installed for the fuel service aspect of the store. (T. 1/19/00, pp. 55-64) The safety features include double-wall tanks in which the interstitial space between the layers is electronically monitored

for leakage, double-wall piping and a containment sump that is electronically monitored for leakage, use of double-poppet shear valve, and three methods of release detection (automatic line leak detection, electronic monitoring of all secondary containment devices, and continuous statistical leak detection). Petitioners' Exhibits 21 and 22. Further, Royal Farms' employees will be trained in the operation of the fuel service equipment and in monitoring the equipment for any problems. (T. 9/30/99, pp. 96-97) Mr. Schammel confirmed that the proposed equipment and installation, inspection, and monitoring procedures would meet or exceed the standards dictated by the MDE and the Environmental Protection Agency. (T. 1/19/00, pp. 64-73)

Cloverland presented substantial evidence that all necessary precautions were being taken to ensure that no leaks would occur or that any such leaks would be promptly detected and contained. The Protestants presented no evidence that, if such a leak were to occur, it would have a greater impact at this location than elsewhere in the BL-CR zone. In fact, as Mr. Mills, expert hydrogeologist, testified, because the geology underlying the great majority of the BL-CR zoned land in Baltimore County is fractured rock of one sort or another, a fuel leak anywhere in this zone would send contamination into the water supply and potentially contaminate surrounding wells. (T. 1/19/00, pp. 29-30); (T. 4/05/00, 97-100) Because such a risk is inherent to the use and there was no proof of a greater impact at this location than elsewhere in the zone, Protestants have failed to raise an issue on which the Board of Appeals could properly deny the requested special exception.

Viability of Other Businesses in the Area: Protestants expressed concern that the proposed Royal Farm store would force the other local business to close. Cloverland does not believe that the prevention of competition or protecting of existing businesses is a valid consideration for the Board. See Lucky Stores, Inc. v. Board of Appeals of Montgomery County, 270 Md. 513, 528, 312 A.2d 758 (1973). Without waiving any objections in this regard, there was testimony that the Protestants' concerns were unfounded. As Mr. Kemp explained, each of the other stores had their own followings and a "niche" that would keep them in business. For example, the Royal Farm store certainly could not be expected to compete with and, therefore, would not pose a threat to the independent deli. (T. 9/30/99, pp. 38-40) Another example is the High's store, which sells their own dairy products and offers hand-dipped ice cream, which Royal Farms does not offer. (T. 9/30/99, pp. 38-39) Further, Mr. Cronyn's market analysis was based upon the assumption that, for the surrounding residential market, the convenience and fuel service business would be split evenly between the Royal Farm store, the existing High's store, and the Citgo station. (T. 10/07/99, p. 23) Additionally, with respect to the passing commuter traffic, Mr. Cronyn estimated a capture rate of less then 6%, which leaves plenty of potential customers for the other businesses. (T. 10/07/99, pp. 20-23) When asked directly about the viability of the other businesses in the area, Mr. Cronyn replied "there's no reason to believe that there isn't enough for everyone, assuming good retailing practices on the part of this store and everybody else at this intersection." (T. 10/07/99, p. 25)

Aesthetic Considerations: Protestants raised a concern that the proposed structure would be out of character with the rural surroundings. This concern was addressed by Peter Ratcliffe, licensed architect, who designed the proposed Royal Farm store. As Mr. Ratcliffe explained, the store was designed with a hipped roof and dormers to bring down the scale of the building. (T. 10/07/99, pp. 61-64) Brick and shingle-style roofing materials were chosen for the exterior as well as with trim and mouldings to give the structure a more residential appearance. (T. 10/07/99, pp. 63-66) Lastly, the columns supporting the fuel service canopy would also be of brick. (T. 10/07/99, p. 65) With these features, Mr. Ratcliffe testified that, in his expert opinion, the proposed structure would be in keeping with the architecture in the surrounding community. (T. 10/07/99, p. 64)

General Welfare Concerns: Protestants also raised several issues related to the use of the site such as noise, lights, fumes, and crime that are inherently associated with development or convenience store uses. Other than raising these concerns as issues, Protestants presented no credible evidence that demonstrated that this particular project at this location would have an adverse impact above and beyond that associated with the use generally. The proposed development, located anywhere else in Baltimore County on BL-CR zoned land could potentially have the same alleged adverse impacts. These alleged adverse impacts are not unique to this site. These generalized concerns, therefore, are not a legitimate reason to deny the special exception.

Ultimately, Petitioners produced substantial evidence from credible expert witnesses to demonstrate that the proposed use would not have an adverse impact on the

health, safety, and general welfare of the community above and beyond that inherently associated with this use.

Traffic Congestion

To testify on traffic issues, Cloverland produced the testimony and report of Kenneth Schmid, expert in the area of traffic engineering. Mr. Schmid rendered an opinion, based on his research and investigation of the site, that the proposed Royal Farm store would not have an adverse impact on the surrounding road system and would not tend to create congestion in the roads surrounding the property. (T. 9/30/99, pp. 138-139); Petitioners' Exhibit 3.

As Mr. Schmid explained, Cloverland will be required to make certain road improvements to Harford Road and Sunshine Avenue along the frontage of the property, which include road widenings and associated pavement marking changes. (T. 9/30/99, pp. 130-135, 157); Petitioners' Exhibit 3 (Exhibit 7); Petitioners' Exhibit 4. With these road improvements, even taking into consideration the new use, the road situation will actually improve:

> Lane use changes approved by Baltimore County and the State Highway Administration will result in improved intersection levels of service at the Harford Road @ Sunshine Avenue/Fork Road after the impact of the proposed convenience store is accounted for. The AM level of service will improve from a "D" level of service to a "C" level of service. The PM level of service will improve from a "B" level of service to an "A" level of service. Both site access intersections will operate a "A" levels of service during both the AM and PM peak hours.
>
> Site access driveways have been designed to have minimal impact to the adjacent thru vehicle flows by constructing and marking auxiliary turn lanes where necessary. Sight lines are also adequate to allow safe ingress and egress.

Petitioners' Exhibit 3, Conclusions and Recommendations; (T. 9/30/99, pp. 124-129, 135-135) As Mr. Schmid explained, the Royal Farm store would not generate a significant number of "new" trips, but, instead, would feed off the existing flow of traffic and capture primarily "pass by" traffic. (T. 9/30/99, pp. 119-122) According to Mr. Schmid, the new vehicle trips to the area generated by the Royal Farm store would have minimal impact on the area road system, hence the positive improvement to the road system following the proposed road widenings and remarkings. Petitioners' Exhibit 3.

Potential Hazard from Fire, Panic, or Other Dangers

Michael Schammel, an expert in the installation and technical requirements for fuel tanks, testified in detail regarding the safety features of the equipment being installed for the fuel service aspect of the store. (T. 1/19/00, pp. 55-64) An overview of the equipment to be installed was introduced as Petitioners' Exhibit 21. Mr. Schammel then confirmed that the proposed equipment and installation, inspection, and monitoring procedures would meet or exceed the standards dictated by the Maryland Department of the Environment and the Environmental Protection Agency. (T. 1/19/00, pp. 64-73); Petitioners' Exhibit 22. Mr. Brader confirmed that, in his expert opinion, because the proposed use would meet all applicable regulations, it would not create a potential hazard from fire, panic, or other danger. (T. 1/19/00, pp. 119, 146-147)

Overcrowding of Land or Undue Concentration of Population

Mr. Brader, Cloverland's expert engineer, confirmed that the proposed Royal Farm store would not overcrowd the land or cause an undue concentration of population. (T. 1/19/00, p. 119) In stating this conclusion, Mr. Brader noted that the floor area ratio

of the proposed building floor area (0.06) is a mere fraction of the 0.2 permitted by the zoning. Mr. Brader further recognized that there is no increase in population associated with this use. (T. 1/19/00, p. 119)

Adequate Provisions for Schools, Parks, Etc.

Mr. Brader concluded that, because Cloverland is not a consumer of these services, the proposed use would not interfere with the adequate provision of these services. (T. 1/19/00, pp. 119-120)

Interference with Adequate Light and Air

Mr. Brader likewise testified that the proposed use would not interfere with adequate light and air. His conclusion was based on the fact that the use will be unintensive in terms of building floor area and height of the building. (T. 1/19/00, p. 119-120)

Inconsistency with Zoning Regulations

Mr. Brader confirmed that the use of the subject property for the proposed Royal Farm store is not inconsistent with the property's BL-CR classification, nor is the plan inconsistent with the spirit and intent of the Baltimore County Zoning Regulations generally. (T. 1/19/00, pp. 120-122) In stating this opinion, Mr. Brader took into account that BL-CR zones permit convenience stores as a matter of right and permit fuel service in combination with a convenience stores by special exception, which uses are presumed to be valid. (T. 1/19/00, pp. 120-121) Mr. Brader further noted that the CR District specifically permits fuel service stations to be located in town centers, and, in rendering

his opinion, Mr. Brader considered that this intersection, with the clustered stores and shops, acts as a town center for Fork. (T. 1/19/00, pp. 121-122)

Although Protestants Carol Shaw voiced her opinion that the proposed development was inconsistent with the planning objectives of the Baltimore County Master Plan, Ms. Shaw, on cross-examination, was forced to concede that the Baltimore County Council had recently adopted the Baltimore County Master Plan 2010, which shows the entire intersection of Harford Road and Sunshine Avenue/Fork Road, including the subject property, designated as "commercial," entirely in keeping with this proposed project. (T. 3/01/00, p. 31) (T. 3/29/00, pp. 5-10) Further, as Ms. Shaw acknowledged, Councilman Gardina, the Councilman for the district in which the subject property lies, reviewed and rejected a down-zoning request for this very property in 1996.

Inconsistent with Impermeable Surface/Vegetation

As there are no impermeable surface and vegetative retention provisions of the Zoning Regulations that apply to this site, Mr. Brader rendered an opinion that this factor is satisfied. (T. 1/19/00, p. 122)

II. Cloverland is Entitled to Proceed with its Development Plan under a Limited Exemption in Accordance with Section 26-171 of the Baltimore County Code.

Unless the project is exempted, an approved plan is required for all development in Baltimore County. B.C.C. § 26-201. The process for review and approval of a development plan is governed by B.C.C. Sections 26-201 through 26-219 (the "Development Review and Approval Process"). In the ordinary course of events, for a proposed development project, a developer prepares and submits a concept plan for

preliminary review by the relevant county agencies. B.C.C. § 26-202. The concept plan is then presented at a community input meeting for comment and discussion by any interested persons. B.C.C. § 26-202(i).

After the community input meeting, the developer then prepares and submits a development plan for review and approval. B.C.C. § 26-203(a). The development plan is subject to preliminary and final review by various county agencies and departments. B.C.C. §§ 26-204, 26-205. After such review is complete, a hearing is scheduled before the Hearing Officer. B.C.C. §§ 26-204(c), 26-206(d). A full, public, evidentiary hearing is then held before the Hearing Officer, who decides whether the plan complies with all applicable regulations. B.C.C. § 26-206.

B.C.C Section 26-171 lists certain types of development that are entitled to an exemption from the Development Review and Approval Process. A developer of a qualifying project is entitled to skip certain steps of the process. Section 26-171(a) exempts a qualifying development [defined under subsection (1) through (10)] from all aspects of the Development Review and Approval Process (Section 26-201 through Section 26-219). Section 26-171(b) exempts a qualifying development [defined under subsection (1) through (9)] only from the community input meeting and hearing officer's hearing. Therefore, a developer seeking to construct accessory structures, for example, would be required to prepare and submit a development plan for review and approval by the relevant Baltimore County agencies, but the developer would not be required to attend a community input meeting or a hearing officer's hearing on that plan. B.C.C. §

26-171(b)(7). A limited exemption under Section 26-171(b), therefore, is more restrictive than one granted under Section 26-171(a).

The Baltimore County Code does not provide for the creation of a Development Review Committee ("DRC"). The DRC is the creation of the Director of Permits and Development Management under authority of B.C.C. Section 26-218(b) and Section 2-416. As explained by Donald Rascoe, Development Manager of the Department of Permits and Development Management and Chairman of the DRC, the DRC is chaired by a representative of the Department of Permits and Development Management and is comprised of representatives of the Office of Planning, Department of Public Works, the Department of Recreation and Parks, Zoning Office, and the Department of Enviromental Protection and Resource Management. (T. 3/29/00, p. 109) The DRC acts as gatekeeper with regard to limited exemptions, dictating the process that is to be followed by a developer in having its development approved.

Cloverland filed a request with the DRC on January 25, 1999, for approval of a limited exemption under Section 26-171(a)(7) for a development plan showing a convenience store with fuel pumps. Petitioners' Exhibit 1 (Exemption Case). An (a)(7) exemption for a "minor commercial structure," which is not a defined term in the Baltimore County Code, would allow Cloverland to proceed without the necessity of filing a development plan. As is customary, this request was "tabled" pending the hearing before the Zoning Commissioner on the special exception. Once the Zoning Commissioner rendered his decision, the DRC revisited the issue and approved a (b)(9) exemption, which, as outlined above, requires Cloverland to file a development plan, but

exempts it from the community input meeting and hearing officer's hearing. Petitioners' Exhibit 1 (Exemption Case).

Section 26-171(b)(9) permits a limited exemption for "a minor development, as defined by section 26-168, not to exceed a total of three (3) lots." Minor development is defined by Section 26-168 to be:

(1) a development without a public works agreement;

(2) a residential development with a public works agreement involving only road widenings; or

(3) a development in which the improvements are determined by the director of permits and development management as minimal under § 26-239(b) of this article.

Section 26-239(b)(2) defines minimal public improvements to include "fire hydrants; water or sewer extensions; storm drain extensions; curb, gutter, or pavements projects; traffic control devices; or other similar improvements."

In support of its entitlement to a limited exemption, either under Section 26-171(a)(7) or (b)(9), Cloverland presented the testimony of Nicholas Brader, licensed professional engineer with Matis Warfield, Inc. Mr. Brader first explained why he believed that Cloverland was entitled to an (a)(7) limited exemption for a "minor commercial structure." (T. 4/05/00, pp. 62-69) Because "minor commercial structure" is not defined in the Baltimore County Code, Mr. Brader relied on his knowledge of similar projects and his past experience with the DRC. As Mr. Brader testified, the site was formerly used as a fuel service station, and there is an abandoned structure on the property. The structure is being replaced with a new fuel service station. (T. 4/05/00, p. 68) Based upon his past experience with the DRC and having similar plans and sites

approved, it was his opinion that this project qualified as a "minor commercial structure" and was entitled to an (a)(7) limited exemption. (T. 4/05/00, p. 69)

At the meeting of the DRC on June 11, 1999, Mr. Brader, though, agreed to accept a (b)(9) limited exemption for a "minor development" without a public works agreement instead of the requested (a)(7). (T. 4/05/00, p. 70)[2] As Mr. Brader testified, based upon his discussions with the County agencies, his own experience, and his knowledge of the project, no public works agreement would be required for this project, and a (b)(9) limited exemption was appropriate. (T. 4/05/00, pp. 72-77) This testimony was not refuted by any witness for the Protestants.

Following the DRC's approval of the exemption for the original development plan, Cloverland filed a request for a (b)(9) limited exemption for an alternate development plan for this site with a convenience store with no fuel pumps, which plan would not be contingent upon obtaining any zoning relief. Petitioners' Exhibit 2 (Exemption Case). With the exception of the deletion of the fuel pumps, the plan was identical to the original plan and similarly would not require a public works agreement as Mr. Brader testified. (T. 4/05/00, pp. 72-77) Again, Mr. Brader's testimony was not challenged by any of the Protestants. The alternate plan was reviewed by the DRC on July 22, 1999, and the DRC approved a (b)(9) limited exemption as requested.

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[2] Cloverland submits that Mr. Brader's verbal acceptance of the (b)(9) before the DRC amounts to an amendment of the original request for an (a)(7). However, if the Board of Appeals does not so find, counsel for Cloverland made a formal amendment to the Board, which amendment was accepted by the Chairman. (T. 3/29/00, pp. 175-176) Mr. Holzer has argued that the DRC cannot grant something that was not requested. Relief under Section 26-171(b)(9) is more restrictive than that which was actually requested by Cloverland. The DRC was within their rights to further restrict the relief granted. By way of analogy, Mr. Holzer would agree that the Zoning Commissioner and the Board of Appeals have the authority to

The only statement made by any of the Protestants concerning the issue of the limited exemption is that they believed that public input was important and that a community input meeting or a hearing officer's hearing would provide them a forum for such input. (T. 1/20/00, pp. 22-35) Given the sheer number of hours devoted to public hearings before the Zoning Commissioner (three days) and the Board of Appeals (nine days), the Protestants certainly have had sufficient time to voice their opinions and to ask any questions regarding the project. The Protestants are not prejudiced, in the least, by the grant of the limited exemptions.

Certainly, as indicated above, Cloverland presented substantial evidence as to its entitlement to a limited exemption under either B.C.C. Section 26-171(a)(7) or (b)(9), and the Board of Appeals should rule accordingly.

CONCLUSION

As discussed in detail above, Petitioners Seven Kids, LLC and Cloverland Farms Dairy, Inc. produced strong and substantial evidence to satisfy their burden with regard to the special exception and also to support the grant of the limited exemptions. Therefore, the Board of Appeals should affirm the decisions of the Deputy Zoning Commissioner and the Development Review Committee.

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grant a special exception with restrictions or a variance of a lesser amount than requested. The DRC's decision to grant a more restrictive limited exemption amounts to the same thing.

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Towson, Maryland 21204
(410) 494-6200
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of May, 2000, a copy of the foregoing PETITIONERS' POST-HEARING MEMORANDUM was mailed, first-class delivery, postage prepaid, to J. Carroll Holzer, 508 Fairmount Avenue, Towson, Maryland 21286, Attorney for the Protestants.

ROBERT A. HOFFMAN

TO1DOCS1/96923 v1

5/26/99

IN RE:	**PETITION FOR SPECIAL EXCEPTION**	*	**BEFORE THE**
	Royal Farm Store	*	**DEPUTY ZONING**
	SW Corner Sunshine Avenue and Harford Road	*	**COMMISSIONER OF**
	11th Election District		
	5th Councilmanic District	*	**BALTIMORE COUNTY**
	Seven Kids, L.L.C., Owners	*	
	Cloverland Farms Dairy, Inc.		**Case No. 99-199-X**
	Developer	*	

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

NOTICE OF APPEAL

Long Green Valley Association, Greater Kingsville Civic Association, and individuals listed and identified in **Exhibit A**, attached hereto and incorporated herein Appellants in the above captioned case, 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 of Baltimore County rendered on April 30, 1999, a copy of which is attached hereto as **Exhibit B**.

Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover the costs of the appeal and the posting of the property.

Respectfully submitted,

DEVELOPMENT MANAGEMENT
DEPT. OF PERMITS AND
MAY 26 1999
RECEIVED

J. Carroll Holzer
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Appellants

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of May, 1999, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to Rob Hoffman, Esquire, Venable, Baetjer & Howard, P.O. Box 5517, Baltimore, MD 21285, and the County Board of Appeals, Basement Old Court House, 400 Washington Ave., Towson, MD 21204.

J. Carroll Holzer

NOTICES\A:\Royal.NOA

PROTESTANTS TO CASE #99-199X

Margaret Buterbaugh 1 Country Hill Court Kingsville, Maryland 21087	OK
Richard Buterbaugh 1 Country Hill Court Kingsville, Maryland 21087	OK
Anna Jacobs 2 Country Hill Court Kingsville, Maryland 21087	OK
Ronald Jacobs 2 Country Hill Court Kingsville, Maryland 21087	OK
Thomas Russo 3 Country Hill Court Kingsville, Maryland 21087	OK
Teresa Russo 3 Country Hill Court Kingsville, Maryland 21087	OK
Barbara Morley 4 Country Hill Court Kingsville, Maryland 21087	OK
Paul Morley 4 Country Hill Court Kingsville, Maryland 21087	OK
Robert Langley 5 Country Hill Court Kingsville, Maryland 21087	OK
Irene Langley 5 Country Hill Court Kingsville, Maryland 21087	OK
Sharon Porter 6 Country Hill Court Kingsville, Maryland 21087	OK

PROTESTANTS TO CASE #99-199X

Exh. A

David Porter 6 Country Hill Court Kingsville, Maryland 21087		OK
Carol Shaw 7 Country Hill Court Kingsville, Maryland 21087		OK
Bernard Shaw 7 Country Hill Court Kingsville, Maryland 21087		OK
Rosanne DiFonzo 9 Country Hill Court Kingsville, Maryland 21087		OK
Mario DiFonzo 9 Country Hill Court Kingsville, Maryland 21087		OK
Eleanor DiFonzo 9 Country Hill Court Kingsville, Maryland 21087		OK
Sheila Bender 11 Country Hill Court Kingsville, Maryland 21087		OK
Sheila ~~Charles~~ Bender 11 Country Hill Court Kingsville, Maryland 21087		OK
George Donald 13 Country Hill Court Kingsville, Maryland 21087		OK
Adele Donald 13 Country Hill Court Kingsville, Maryland 21087		OK
Mary Beth Wilson 3944 Forest Valley Road Baltimore, Maryland 21234	(Owner of 12525 Harford Road - 14 acres behind proposed development; breaking ground for house this spring)	OK

PROTESTANTS TO CASE #99-199X

Brett Wilson	(Owner of 12525 Harford Road - 14 acres behind	OK

3944 Forest Valley Road Baltimore, Maryland 21234	proposed development; breaking ground for house this spring)	
Kathleen Snyder 6724 Sunshine Avenue Fork, Maryland 21051		OK
John Gordon 4605 Long Green Road Long Green, Maryland 21092	(Owner of Fork Citgo) 12601 Harford Road Fork, Maryland 21051	OK
Dawn Gordon 4605 Long Green Road Long Green, Maryland 21092	(Owner of Fork Citgo) 12601 Harford Road Fork, Maryland 21051	OK
Edna Mueller 12401 Long Green Pike Glen Arm, Maryland 21057	(Owner of Fork Deli) 12607 Fork Road Fork, Maryland 21051	OK
Charles Mueller 12401 Long Green Pike Glen Arm, Maryland 21057	(Owner of Fork Deli) 12607 Fork Road Fork, Maryland 21051	OK
Richard Bartlett 41 Esperanza Court Baltimore, Maryland 21208	(Owner of FreeState Montessori School) 12536 Harford Road Fork, Maryland 21087	OK
Clair Sarkowski 41 Esperanza Court Baltimore, Maryland 21208	(Owner of FreeState Montessori School) 12536 Harford Road Fork, Maryland 21087	OK

IN RE: PETITION FOR SPECIAL EXCEPTION
SW/Corner Sunshine Avenue and
Harford Road at Fork Avenue
(Royal Farms Store)
11th Election District
5th Councilmanic District

Seven Kids, L.L.C., Owners/
Cloverland Farms Dairy, Inc., Developers

* BEFORE THE

* DEPUTY ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 99-199-X

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of a Petition for Special Exception filed by the owners of the subject property, Seven Kids, L.L.C., by Lauren M. Ebey, and the Contract Lessee, Cloverland Farms Dairy, Inc., by John M. Kemp, Vice President, through their attorney, Robert A. Hoffman, Esquire. The Petitioners request a special exception to permit an automobile service station use in combination with a food store having a sales area larger than 1,500 sq.ft., pursuant to Section 405.4.E.1 of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and relief sought are more particularly shown on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petition were John M. Kemp, Vice President of Cloverland Farms Dairy, Inc., Contract Lessee of the subject property, Ken Schmid, Vice President of Traffic Concepts, a traffic engineering consultant, Nick Brader, Professional Engineer with Matis & Warfield, who assisted in the preparation of the site plan for this property, Peter W. Ratcliffe, Architect, Linda Thea, and Robert A. Hoffman, Esquire, attorney for the Petitioners. Numerous residents of the surrounding community appeared in opposition to the request, all of whom signed the Protestants Sign-In Sheets. J. Carroll Holzer, Esquire appeared on behalf of the Kingsville Community Association and the Long Green Valley Community Association, both of which are opposed to the special exception request.

Exh. B

4/30/99

IN RE: PETITION FOR SPECIAL EXCEPTION SW/Corner Sunshine Avenue and Harford Road at Fork Avenue (Royal Farms Store) 11th Election District 5th Councilmanic District	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY
	*	Case No. 99-199-X
Seven Kids, L.L.C., Owners/ Cloverland Farms Dairy, Inc., Developers	*	

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of a Petition for Special Exception filed by the owners of the subject property, Seven Kids, L.L.C., by Lauren M. Ebey, and the Contract Lessee, Cloverland Farms Dairy, Inc., by John M. Kemp, Vice President, through their attorney, Robert A. Hoffman, Esquire. The Petitioners request a special exception to permit an automobile service station use in combination with a food store having a sales area larger than 1,500 sq.ft., pursuant to Section 405.4.E.1 of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and relief sought are more particularly shown on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

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Date 4/30/99
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Testimony and evidence offered revealed that the property which is the subject of this request consists of a gross area of 1.47 acres, more or less, zoned B.L.-C.R., and is presently unimproved. The property is part of an overall tract of land containing 23.34 acres, located on the southeast corner of the intersection of Sunshine Avenue and Harford Road in Fork. The Petitioners are desirous of developing the property with a Royal Farms Store, including gasoline sales. In support of the request, Mr. Kemp testified that Cloverland Farms Dairy currently operates 86 Royal Farms Stores throughout Maryland, and that approximately 40% of their stores were built with fuel service facilities. Mr. Kemp testified that as a result of the larger oil companies converting their automotive service garage facilities into combination convenience store/fuel sale operations, Royal Farms has had to alter their method of doing business in order to remain competitive. Further testimony revealed that Mr. Kemp has been attempting to locate a Royal Farms Store at the subject location for many years. His first endeavor was in 1987 when he approached the then owners of the property; however, that deal never came to fruition. The property was apparently sold to another party and became available again approximately two years ago. The Petitioners have since contracted to lease the subject property, conditioned upon the approval of the special exception request.

Mr. Kemp testified that the proposed store will have a total sales floor area of 3,100 sq.ft. and will have five (5) fuel pump islands, as shown on Petitioner's Exhibit 1. In addition, the building will be constructed out of brick in accordance with the elevation drawings submitted into evidence as Petitioner's Exhibit 3. Mr. Kemp believes that the market at this location is very strong, given the amount of commuter traffic that passes through this intersection on a daily basis. He further believes that his business will cater to a different clientele than the existing businesses at this intersection and will not detract from their revenue. In his opinion, there are more than enough customers for all businesses to continue to operate at this intersection.

Mr. Kemp further testified concerning the operation of the store. He indicated that he has not yet decided on the hours of operation of this business, but is flexible on this issue. He further testified

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that he also arranges for fuel deliveries and trash removal at times when the store is not busy and when such activities will be least offensive to surrounding residential communities.

Also testifying on behalf of the Petition was Mr. Michael Schammel. Mr. Schammel is President of Maryland Pump and Tank, which sells and installs underground fuel storage tanks. He testified that the Royal Farms Stores exceed the minimum standards required for the types of pumps and pipes used at their fuel service/convenience store facilities. Mr. Schammel testified that Royal Farms propose to utilize double-walled tanks and double-walled pipes at this location. The entire system will have sensor devices that will detect any leaks that might occur. Furthermore, there will be a catch-basin within the filling area of the underground tank to catch any fuel that might spill during deliveries.

This issue was particularly sensitive to surrounding residents, due to the fact that the gasoline service station which previously occupied this site had leaking underground fuel storage tanks causing fuel oil to leak into the groundwater system contaminating the drinking water supply of the Russo family, residents of nearby Country Hill Court. Mr. Schammel assured the Protestants that not only does the proposed facility meet the minimum standards imposed upon them by the Environmental Protection Agency, the Petitioners are taking extra precautions over and above the minimum standards required to protect against any leaks.

Mr. Peter Ratcliffe, the Petitioner's architect, testified concerning the design and appearance of the proposed Royal Farms Store. Mr. Ratcliffe testified that he designed the store to be constructed at the subject location in keeping with its rural setting, utilizing brick, a hip roof and gable windows in order to blend the store into the community. The design of this particular store differs from the typical Royal Farms Store found elsewhere in the Baltimore Metropolitan area. Mr. Ratcliffe worked with the Office of Planning to develop a design that would be in keeping with the rural character and nature of the surrounding locale.

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Also testifying on behalf of the request was Mr. Ken Schmid. Mr. Schmid is Vice President of Traffic Concepts, a traffic engineering firm. Mr. Schmid testified that he performed a traffic analysis of this particular intersection and the surrounding roadways. He testified that the level of service at the traffic light at this intersection is a "B" level. He noted that some minor improvements will be made to Harford Road to assist motorists in entering/exiting the subject site. He further testified that the Royal Farms Store will mostly serve motorists already traveling along the existing roadways and will not generate additional traffic. He therefore classified this use as a traffic interceptor rather than a traffic generator. He opined that this use will not have a detrimental effect on existing traffic patterns.

Next called to testify on behalf of the Petition was Mr. Robert Sheesley. Mr. Sheesley was qualified as an expert in environmental science and is very familiar with the history of this property. Mr. Sheesley was employed by Baltimore County and served as Director of the Department of Environmental Protection and Resource Management (DEPRM) in his past professional career. As an employee of Baltimore County, he was personally involved with the clean-up of the contamination on this site in 1986-1987. Mr. Sheesley testified that this site has been monitored over the past 12-13 years for its ground water contamination. He noted that the Maryland Department of the Environment (MDE) has witnessed a diminishment in the contamination of the soils, the results of which were provided by the many monitoring wells that were installed on this property. Mr. Sheesley also testified concerning the effects that the contamination on this site has had on the Russo property. He also testified that he was aware that a filtration system was installed on the drinking water system on the Russo property in an effort to filter the contamination found in that drinking water. Mr. Sheesley testified that if the Royal Farms Store is permitted to locate to the subject site and install underground tanks, that the MDE and Baltimore County DEPRM representatives will monitor the construction to determine if any contamination or additional contaminants are uncovered.

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Mr. Sheesley further testified that in 1987 the County Board of Appeals approved the development of the subject site with a 3,500 sq.ft. convenience store and a 24,000 sq.ft. retail shopping center, in Case No. CBA 87-151. However, due to financial reasons, and possibly complications from the contamination on the site, the development of the property with the shopping center and convenience store never occurred. The property has remained vacant and unimproved since that time.

On cross-examination, Mr. Sheesley was questioned as to whether the new well proposed for this site might affect other wells on adjacent properties. Mr. Russo was prevented from drilling a new well on his property in order to find potable drinking water, with the explanation from Baltimore County being that the drilling of a new well might divert water flow and cause the contamination to his neighbors. Mr. Russo has been prohibited from drilling a new well on his property for that reason. He therefore questioned Mr. Sheesley as to how Royal Farms could be given approval to drill a new well on their site when such drilling could divert water flow and cause contamination to neighboring wells. Mr. Sheesley testified that before Royal Farms could drill a new well on this site, a fracture analysis would have to be conducted to determine whether the location of the new well for Royal Farms will spark any new contamination to other properties. Only after that analysis has been conducted and submitted for review by the MDE could a new well be drilled on this site. Furthermore, Mr. Sheesley testified that no blasting should take place in the bedrock on the property in that such could cause the existing contamination to be diverted elsewhere in the neighborhood.

As noted above, a great number of residents from the surrounding community appeared in opposition to the special exception request. Ms. Elizabeth Healey, who has lived in the community for the past 30 years and resides on Sunshine Avenue, appeared and testified in opposition to the request. Ms. Healey testified that she and the Kingsville Community Association are concerned about additional traffic being generated by virtue of the proposed development. She is concerned that this new development will jeopardize the rural character of the area. Ms. Healey is also concerned about

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the hours of operation and the amount of lighting proposed for this facility, as well as what effect this new development will have on existing businesses in the area. Ms. Healey testified that she and many others believe that the community is properly served at this time by the existing gasoline service station, convenience store, and other small businesses located at this intersection. They therefore question the need for this additional commercial facility. Ms. Healey further indicated that the committee which developed the Kingsville Plan believes that the most appropriate use for this property would be as a Farmer's Market where local farmers could sell their produce to the general public. However, no one has sought to develop the property as a farmer's market.

Also testifying in opposition to the request was Mr. Tom Russo who resides at 3 Country Hill Court. As noted earlier in this opinion, Mr. Russo's drinking water was contaminated as a result of prior fuel leaks on the subject property. Mr. Russo has resided on his property since 1987. Shortly after moving in, Mr. Russo discovered the contamination in his drinking water. He still experiences detectable levels of contamination in his water, which is filtered in an attempt to remove those contaminants. Mr. Russo's primary concern about the proposed project involves the existing contamination on the property. Mr. Russo has kept a very thorough file on the monitoring and clean-up attempts that have been made to this property. Mr. Russo believes that not enough has been done to remediate the existing contamination. He and his family have suffered the effects of that contamination. Mr. Russo testified that if this property is developed, additional measures should be taken during construction to further evaluate the level of contamination and that efforts to clean up the remaining contamination and monitoring of the property should continue. Mr. Russo questioned how the Royal Farms Store could drill a new well on their property when he was prohibited from doing so on his property.

Also testifying from the Country Hills Estates community was Barbara Morley. Ms. Morley has resided on Country Hill Court for the past 11 years. She has been fortunate in that no

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contamination has been found in her drinking water; however, she believes that the property is still contaminated and is concerned that disturbance of the soil by virtue of the proposed construction will cause additional contamination to leach into the ground water. Ms. Morley also believes that if new gasoline tanks are installed on the property that monitoring should continue to insure that no future contamination occurs. Ms. Morley is also concerned about the proposed 24-hour operation of the store and believes it could be an invitation for crime.

Mr. Brett Wilson who purchased 13.95 acres of land to the south of the subject site, is also concerned over the proposed development. Mr. Wilson intends to develop his property with a single family home; however, his property sits at a lower elevation from the Royal Farms Store site and he is concerned about storm water runoff. He is also concerned about the amount of traffic that will be generated on Harford Road, given that the entrance to his property is situated a short distance south of the proposed development.

Mr. Robert Langley and Ms. Sheila Bender, also residents of Country Hill Court, shared the concerns testified to by Mr. Russo and others. They are concerned about potential traffic and contamination on the property and are opposed to the proposed development.

Ms. Mary Kay Gaber, who is a Board member of the Freestate Montessori School, testified concerning existing traffic on Harford Road. Ms. Gaber is concerned that additional traffic coming in and out of the subject site will hamper the pick-up and delivery of children at the school. She is therefore opposed to the development of this site.

Mr. Douglas Behr, who resides on Bradshaw Road and is a member of the Kingsville Community Association, also appeared in opposition to the Petitioners' request. Mr. Behr is a landscape designer and is concerned about aesthetics of the subject property. He believes that the development is out of character with the rural nature of the surrounding locale and believes that lighting of the subject site will be a problem in that the site sits higher in elevation than any other property in the area. Mr. Behr noted that he has observed gasoline station lighting to be brighter than

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other commercial businesses and believes that such lighting on the subject property will detract from the rural character of this area. Furthermore, he questioned the need for an additional gas station at this location, given the existing Citgo located immediately across the intersection from the subject site. He testified that he has never waited in line for gas at Citgo and questioned the need for an additional gas station.

Ms. Kathy Snyder, who resides on Sunshine Avenue adjacent to the Citgo gasoline service station, also appeared and testified in opposition. Ms. Snyder has lived on her property for the past 52 years. She testified that the spillover of lighting and trash she experiences from the Citgo gas station is very bad and troublesome to her. She testified that an additional commercial entity at this location will bring more light and trash to the area over and above what she is already experiencing. She is therefore opposed to the project.

Ms. Carol Shaw, another resident of Country Hill Court, also appeared and testified in opposition. Ms. Shaw is strongly opposed to the location of a Royal Farms Store on this site and referenced a Petition signed by 841 residents demonstrating their opposition to another gas station coming into their community. Ms. Shaw believes that this convenience store and gas station is not needed, not wanted, and therefore, should not be approved.

The main issues raised by the many citizens who appeared in opposition to the requested special exception involved traffic, existing contamination on the property and the potential for future contamination on adjacent parcels, lighting, landscaping, and aesthetics of the development, and whether the development is actually necessary.

As to the issue of traffic, I find that the development of this property with a Royal Farms Store can be accomplished in a manner that will not adversely affect existing traffic in the area. The Petitioner proposes to add an additional turn lane on Harford Road south of its intersection with Sunshine Avenue and Fork Road which will allow motorists an opportunity to turn into the Royal Farms Store without impeding the flow of traffic. I find that the great majority of motorists

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patronizing the store will be those who are already on the roads. I further believe that the Royal Farms Store will be a traffic interceptor and not a traffic generator, and therefore will not have an adverse effect on existing traffic in the area.

As to the issue concerning the contamination of the property, I am persuaded, based upon the testimony presented by Mr. Russo, that contamination still exists on this property as well as the Russo property. I believe the proposed development represents an opportunity to further remediate the situation and evaluate whether there is any additional contamination on the subject site. Simply passing this development opportunity by and allowing the property to remain dormant will not resolve the existing problems being experienced by Mr. Russo. I shall therefore impose conditions and restrictions upon the Royal Farms Store and the property owners in an attempt to provide additional safeguards and reviews during excavation and development of the site. Those conditions will be contained at the end of this Order.

Additional concerns were expressed regarding the aesthetics of the proposal, particularly the landscaping and lighting proposed for the subject site, as well as the hours of operation for the proposed store. Again, these are valid concerns raised by the citizens that do not justify a denial of the special exception request, but do warrant the imposition of conditions and restrictions. Those concerns shall be addressed at the end of this Order, as provided in the restrictions imposed upon the Petitioners/property owners.

The issue of whether this particular commercial enterprise is needed at this location is not a factor that would justify a denial of the special exception request. Whether the proposed project at the subject location will be a successful venture that will serve the needs of the community as well as the commuters who use Harford Road is a gamble taken by Mr. Kemp as developer of the subject property. Therefore, this issue is not sufficient to warrant a denial of the special exception.

As to the special exception request, it is clear that the B.C.Z.R. permits the use proposed in a B.L.-C.R. zone by special exception. It is equally clear that the proposed use would not be

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detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Section 502.1 are satisfied.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

As noted earlier, this property was approved in 1987 for development with a 24,000 sq.ft. retail shopping center and a 3,500 sq.ft. convenience store. That development never occurred. However, it is unreasonable to assume that this commercial property would remain undeveloped in perpetuity. This is a well-traveled intersection in a growing area of Baltimore County. More and more commuter traffic passes through this intersection each year. Sooner or later this property will be developed. The Royal Farms Store and Mr. Kemp have proven themselves to be responsible developers and business operators. Mr. Kemp has always gone to great lengths to work with the Planning Office and other County agencies, as well as community groups, to design a product that attempts to address their respective concerns. It certainly is not possible to satisfy every concerned citizen; however, this Petitioner, when compared to others who have come before this Deputy Zoning Commissioner, has done a very good job of responding to citizen and County agency concerns. With

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Date 11/21/97
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appropriate conditions and restrictions, I believe the special exception requested can be granted without an adverse impact resulting to the surrounding community.

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 special exception should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 30th day of April, 1999 that the Petition for Special Exception for an automobile service station use in combination with a food store having a sales area larger than 1,500 sq.ft., pursuant to Section 405.4.E.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following terms and 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 hours of operation for the proposed Royal Farms Store shall be limited to 5:30AM to 12:00AM. Given the rural character of the surrounding community, I believe the hours of operation should be restricted in this manner.

3) All lighting on the subject site shall be extinguished once the employee who closes the store leaves the property, which shall be no later than 12:30 AM. Only that lighting necessary for security purposes shall be permitted to remain illuminated.

4) All deliveries and trash removal service shall occur between the hours of 7:00 AM and 4:00 PM, Monday through Friday.

5) The Petitioners shall submit a lighting plan and a landscape plan to Mr. Avery Harden, Landscape Architect for Baltimore County, for review and approval. The rural character and nature of the surrounding community shall be taken into consideration when designing such lighting and landscaping plans.

6) The proposed building shall be constructed consistent with the elevation drawings submitted into evidence as Petitioner's Exhibit 3. The building materials shown and design features, such as brick, hip roof, and gable windows shall be utilized to further the rural character of the surrounding community.

7) The Petitioner shall be required to install double-walled gasoline storage tanks and double-walled pipes between the storage tanks and gasoline dispensers. Furthermore, the pipes and tanks shall be equipped with sensors between the double walls to advise of any potential leaks that might occur.

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8) All gas pumps shall be designed so as to prevent spills with such sensors as are normally required by the EPA.

9) The Petitioner shall be required to perform a fracture analysis prior to the drilling and installation of a well on the subject property. The results of the analysis shall be reviewed by MDE and DEPRM to determine whether a new well can be safely installed on the subject property. In addition, the water found in the well shall be tested for any potential contaminants, the results of which shall be reviewed by MDE and DEPRM, and made available to members of the public.

10) There shall be no blasting of any bedrock on the subject site during the construction phase of this Royal Farms Store.

11) The Petitioners shall be required to notify DEPRM prior to any excavation on the site and during the construction phase and installation of the underground storage tank so that a representative from that agency can be present to take soil samples. In the event contamination is discovered, DEPRM shall immediately notify the Maryland Department of the Environment (MDE).

12) All contaminated soil shall be properly disposed of at an approved soil treatment facility. Manifest receipts must be submitted to the MDE upon completion of contaminated soil removal activities. This information must be made available to members of the public through DEPRM.

13) The Petitioner shall continue to monitor the property for contamination of the soil. The location of the future monitoring well shall be at the discretion of the MDE. It shall also be at their discretion whether a new well is provided or the existing wells will suffice. The wells which have failed in the past and are not functioning at this time shall be capped off and abandoned according to applicable regulations. The Petitioners shall install as many monitoring wells as is necessary, in the discretion of MDE, to appropriately monitor this site.

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

Timothy Kotroco

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

ORDER RECEIVED FOR FILING
Date 4/30/04
By BJS

Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

April 29, 1999

Robert A. Hoffman, Esquire
Venable, Baetjer & Howard
210 Allegheny Avenue
Towson, Maryland 21204

RE: PETITION FOR SPECIAL EXCEPTION (Royal Farms Store)
SW/Corner Sunshine Avenue and Harford Road, across from Fork Avenue
11th Election District – 5th Councilmanic District
Seven Kids, L.L.C., Owners/Cloverland Farms Dairy, Inc., Developers
Case No. 99-199-X

Dear Mr. Hoffman:

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

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Ms. Lauren M. Eby, Seven Kids, LLC, 120 Cockeysville Rd., Cockeysville, Md. 21030
Mr. John M. Kemp, V.P., Cloverland Farms Dairy, Inc., 3611 Roland Ave., Balto., 21211
J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Md. 21286-5448
Mr. & Mrs. Thomas Russo, 3 Country Hill Court, Kingsville, Md. 21087
Mr. & Mrs. Bernie Shaw, 7 Country Hill Court, Kingsville, Md. 21087
Ms. Mary Kay Gaber, 1313 Sorbus Court, Fallston, Md. 21047
Mr. & Mrs. Robert Langley, 5 Country Hill Court, Kingsville, Md. 21087
Ms. Kathleen C. Snyder, 6724 Sunshine Avenue, Fork, Md. 21051
Ms. Barbara Morley, 4 Country Hill Court, Kingsville, Md. 21087
Mr. Douglas Behr, 7451 Bradshaw Road, Kingsville, Md. 21087
DEPRM; People's Counsel; Case File

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[redacted]

12/22/98 - 10 AM - Rm 407 P.P.

1/27/99 - 2PM - Rm 106 Cont'd

2/23/99 - 9AM - Rm 407

APPEAL 5/26/99

MAP NG 16 I

E. D. ____

DATE ____

200 JF

1000 ____

OP ____

99-199-X Item # 199

CERTIFICATE OF POSTING

1) Posted ____ Hearing Date ____

2) Posted 1-11 Hearing Date 1-27

ADS

1) Paper/Date ____ Enc ✓

Paper/Date ____ Enc ____

2) Paper/Date ____ Enc ____

Paper/Date ____ Enc ____

PAY FEES

1) ____

2) ____

COMMENTS

Planning ____ Fire ____ Traffic ____

Critical Area ____ SHA ____ EPA ____

Health ____

Associate Drop-Off/No Review

Zoning Violation # ____

Prior Hearing(s) CBA 87-151

(2)

APPEAL

SE/S Harford Rd., corner SW/S Sunshine Ave.
11th ED - 5th CD

99-199-X

are the

X-661-66 (1999)

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

December 17, 1998

Robert A. Hoffman, Esq.
Venable, Baejter and Howard, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: Item No.: 199
Case No.: 99-199-X
Location: harford Road and
Sunshine Avenue

Dear Mr. Hoffman:

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM), on November 10, 1998.

The Zoning Advisory Committee (ZAC), which consists of representatives from several Baltimore County approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Zoning Supervisor
Zoning Review

WCR:ggs

Enclosures

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on Recycled Paper

BALTIMORE COUNTY, MARYLAND

RECEIVED
JAN 22 1999
ZONING COMMISSIONER

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits and
Development Management

DATE: January 22, 1999

FROM: Arnold F. 'Pat' Keller, III, Director
Office of Planning

SUBJECT: Royal Farm Store-Harford Road at Sunshine Avenue

INFORMATION:

Item Number: 199

Petitioner: Cloverland Farms Dairy, Inc

Zoning: BL-CR

Requested Action: Special Exception

SUMMARY OF RECOMMENDATIONS:

Section 26-282 (2) of The Baltimore County Development Regulations requires the Director of Planning to make compatibility recommendations to the Hearing Officer for development in the CR district. Before a positive recommendation for compatibility can be made the following items must be submitted prior to **development plan approval**.

The following submissions are necessary:

1. Architectural elevations of all building and canopy facades that shall include general massing of the buildings, major facade divisions, size and placement of openings, roof treatment, materials, colors and the design of the canopy.
2. The design and placement of the signage and lighting;

The developer's representatives have been working with staff on the design of the proposed Royal Farm Store. Peter Radcliffe provided an elevation drawing which is acceptable to this office. Approval of the subject requests should be conditioned upon adherence to this design concept. In addition, the following items should be imposed as conditions should the Petition for Special Exception be granted:

1. The piers supporting the canopy and the dumpster enclosure should be constructed of brick to match the building brick.
2. Blank walls should not face the public right of way. The building elevation facing Sunshine Avenue should repeat elements of the front façade, e.g. windows, brick coursing, etc.
3. The amount of lighting required for the number of fuel pump stations and canopy may be excessive for the rural area. Consider reducing the number of fuel pump stations and provide a unique canopy design that is also compatible with the rural character for both lighting and architectural design.
4. Submit a plan, with the locations and details of the proposed lighting and a computerized lighting design with point-by-point calculations that conforms with the *Illumination Engineering Society* (IES) standards, for review and approval by Avery Harden in conjunction with the Final Landscape Plan.

Section Chief: Jeffrey W. Lacy

AFK/JL:

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Management

Date: December 8, 1998

FROM: Robert W. Bowling, Supervisor
Bureau of Developer's Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for November 30, 1998
Item No. 199

The Bureau of Developer's Plans Review has reviewed the subject zoning item. Harford Road Maryland Route 147 is a State road. All improvements, intersections, entrances, drainage requirements and construction affecting a State Road right-of-way are subject to the Standards, specifications and approval of the Maryland State Highway Administration in addition to those of Baltimore County.

Sunshine Avenue is an existing road which shall ultimately be improved as a 50 foot street cross section on a 70 foot right-of-way.

The Developer's responsibilities along the existing road frontage of the subdivision shall be as follows:

The preparation of the right-of-way plat for, and the dedication of any widening and slope easements at no cost to the County.

The relocation of any utilities or poles as required by the road improvements.

The construction of combination curb and gutter in its ultimate location and a maximum of 28.5 feet of paving adjacent thereto along the frontage of the property. The paving thickness shall conform with Baltimore County Standards.

RWB:HJO:jrb

cc: File

ZONE1130.199

Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor
David L. Winstead
Secretary
Parker F. Williams
Administrator

Date: November 25, 1998

Ms. Gwen Stephens
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 199
MD 147
Cloverland Farms Dairy
Mile Post 9.22

Dear Ms. Stephens:

This office has reviewed the referenced Special Exception and have no objection to approval.

However we will require the owner to obtain an access permit. Please have their representative contact this office regarding the roadway improvements conditioned to the permit.

Please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

for Michael M. Lenhart, Acting Chief
Engineering Access Permits Division

LG

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

Date: December 7, 1998

TO: Arnold Jablon

FROM: R. Bruce Seeley RBS

SUBJECT: Zoning Item #199

Harford Road and Sunshine Avenue

Zoning Advisory Committee Meeting of

_____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

_____ The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which environmental regulations apply to the site.

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

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code).

_____ Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).

_____ Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).

__X__ GWM:

1. There is an ongoing Maryland Department of the Environment (MDE) groundwater contamination case on this site. Prior to approval of any plans or permits all issues regarding this case must be resolved.

Zoning Item #199 - (cont'd)

2. The proposed well must be located and tested in accordance with MDE requirements as set forth on June 16, 1995.

3. Prior to permit or plan approval, a water balance assessment and usage letter must be submitted to this office.

4. The septic reserve area must include approved soil percolation tests.

Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
(410)887-4880

November 29, 1998

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

RE: Property Owner: SEVEN KIDS, LLC - 199
VINCENT C. GENTILE AND MARIE GENTILE - 200
AND
RONALD GAJEWSKI, JR. - 202

Location: DISTRIBUTION MEETING OF November 23, 1998

Item No.: 199, 200, AND 202 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.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1994 edition prior to occupancy.

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

cc: File

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on Recycled Paper

RE: PETITION FOR SPECIAL EXCEPTION Harford Road and Sunshine Avenue, SE/S Harford Rd, corner SW/S Sunshine Ave, 11th Election District, 5th Councilmanic	*	BEFORE THE ZONING COMMISSIONER
Legal Owners: Seven Kids, LLC Contract Purchaser: Cloverland Farms Dairy, Inc.	*	FOR BALTIMORE COUNTY
Petitioner(s)	*	Case Number: 99-199-X

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

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 of other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of December, 1998, a copy of the foregoing Entry of Appearance was mailed to Robert A. Hoffman, Esq., Venable, Baetjer & Howard, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

March 1, 1999

«Title» «FirstName» «LastName»
«JobTitle»
«Company»
«Address1»
«City», «State» «PostalCode»

Dear «Title» «LastName»:

Re: Proposed Royal Farm Store, Sunshine Avenue and Harford Road, Case # 99-199X

Your recent letter to Arnold Jablon, Director, Department of Permits and Development Management, concerning the proposed Royal Farm Store and gas station at Sunshine Avenue and Harford Road has been forwarded to me for response.

As you may know, this property and proposed use was recently the subject of a special exception hearing before the deputy zoning commissioner of Baltimore County. That hearing concluded on February 23, 1999.

The request for a convenience store at this location is a matter of right within the zoning regulations of Baltimore County. The special exception for this use is required if the convenience store is larger than 1,500 feet and sells gasoline. That is the case in this matter.

The deputy zoning commissioner, Timothy Kotroco, was the hearing officer in this matter and conducted the quasi-judicial hearing. Mr. Kotroco has yet to release his order in this matter. At this formal hearing, citizens had the opportunity to express their concerns about this use in their neighborhood. The hearing officer is responsible for hearing the evidence from both parties and then decides if the use should be allowed within the scope of the zoning regulations. He will issue a formal decision either granting the use or denying the use. Any party aggrieved by the decision has 30 days in which to appeal that decision to the Baltimore County Board of Appeals.

I understand there is concern for environmental impact from potential leaking gas tanks. There is a multitude of state regulations in effect which regulate underground gasoline tanks. The developer will have to comply with those regulations prior to getting underground tank permits. Other environmental regulations will also have to be complied with prior to building permit approval as well.

The other issues you raise in your letter are covered under the development and permit review process in Baltimore County. Compliance with those regulations is required.

Sincerely,

Donald T. Rascoe
Development Manager

VENABLE, BAETJER AND HOWARD, LLP
Including professional corporations

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517
(410) 494-6200, Fax (410) 821-0147
www.venable.com

OFFICES IN

MARYLAND
WASHINGTON, D.C.
VIRGINIA

VENABLE
ATTORNEYS AT LAW

Writer's Direct Number:
410-494-6201

November 4, 1998

rec'd 11/25/98 pm

HAND DELIVERED
Mr. W. Carl Richards
Department of Permits and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Re: Petition for Special Exception
Applicant: Cloverland Farms Dairy, Inc.
Location: Southeast Corner of Harford Road and Sunshine Avenue

Dear Mr. Richards:

I am drop filing the enclosed Petition for Special Exception for the above-referenced property. This request has not been previously reviewed by your office. This property is not in violation of any zoning laws. With this letter, I have enclosed the following documents:

1. Petition for Special Exception (3)
2. Zoning Description (3)
3. Site Plan (12)
4. 200' Scale Zoning Map (12) one on each site plan
5. Newspaper advertising form (1)
6. Check in the amount of $300.00

If you have any questions or concerns regarding this filing, please give me a call.

Sincerely,

Barbara W. Ormord

Barbara W. Ormord
Legal Assistant

BWO/e
Enclosures
cc: Robert A. Hoffman, Esquire
Patricia A. Malone, Esquire
TO1DOCS1/BAW01/0074064.01

99-199-X

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

November 10, 1998

Robert A. Hoffman, Esquire
Venable, Baetjer and Howard
210 Allegheny Avenue
Towson, MD 21204

Dear Mr. Hoffman:

RE: Drop-Off Petitions, Harford Road & Sunshine Avenue (99-199-X), 1010 Old Eastern Avenue (99-200-SPHXA),

At the request of the attorney/petitioner, the above referenced petitions were accepted for filing without a final filing review by the staff. Once a detailed review has been completed by the staff, those comments will be forwarded to you (hopefully before the hearing).

As Baltimore County is no longer responsible for posting properties, I have enclosed the proper forms pertaining to this. The sign must contain the wording indicated on the "Zoning Notice" form and the certificate of posting must be completed by the poster and returned to this office.

If you have any questions regarding the sign posting, please do not hesitate to contact Sophia Jennings at 410-887-3391.

Very truly yours,

wcr/scj

W. Carl Richards, Jr.
Zoning Supervisor
Zoning Review

WCR:scj

Enclosures

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us
410-887-3391

November 30, 1998

Robert A. Hoffman, Esquire
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
Towson, Maryland 21204

Dear Mr. Hoffman:

RE: Drop-Off Petition Review Case # 99-199-X

At the request of the attorney/petitioner, the above referenced petition was accepted for filing without a final filing review by the staff. The plan was accepted with the understanding that all zoning issues/filing requirements would be addressed. A subsequent review by the staff has revealed unaddressed zoning issues and/or incomplete information. The following comments are advisory and do not necessarily identify all details and inherent technical zoning requirements necessary for a complete application. As with all petitions/plans filed in this office, it is the final responsibility of the petitioner to make a proper application, address any zoning conflicts and, if necessary, to file revised petition materials. All revisions (including those required by the hearing officer) must be accompanied by a check made out to Baltimore County, Maryland for the $100.00 revision fee.

Site Plan comments:

correct zoning is B.L.-C.R./ R.C. -2

If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391..

Sincerely,

Bruno Rudaitis

Bruno Rudaitis
Planner II
Zoning Review

BR:cjs

Enclosure (receipt)

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

June 13, 1999

RECEIVED
COUNTY BOARD OF APPEALS
99 JUN 14 AM 9:25

Robert A. Hoffman, Esquire
Venable, Baetjer and Howard
210 Allegheny Avenue
Towson, MD 21204

Dear Mr. Hoffman:

RE: Petition for Special Exception, Case No. 99-199-X, District: 11c5

Please be advised that an appeal of the above referenced case was filed in this office on May 26, 1999 by J. Carroll Holzer, Esquire, on behalf of Long Green Valley Association, Greater Kingsville Civic Association, and individuals listed and identified in Exhibit A. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to call the Board of Appeals at 410-887-3180.

Sincerely,

Arnold Jablon
Director

AJ:scj

c: J. Carroll Holzer, Esquire
Long Green Valley Association
Greater Kingsville Civic Assocation
Margaret & Richard Buterbaugh, 1 Country Hill Court, Kingsville 21087
Anna & Ronald Jacobs, 2 Country Hill Court, Kingsville 21087
Teresa & Thomas Russo, 3 Country Hill Court, Kingsville 21087
Barbara & Paul Morley, 4 Country Hill Court, Kingsville 21087
Irene & Robert Langley, 5 Country Hill Court, Kingsville 21087
Sharon & David Porter, 6 Country Hill Court, Kingsville 21087
Carol & Bernard Shaw, 7 Country Hill Court, Kingsville 21087
Rosanne & Eleanor & Mario DiFonzo, 9 Country Hill Court, Kingsville 21087
Sheila & Charles Bender, 11 Country Hill Court, Kingsville 21087
Adele & George Donald, 13 Country Hill Court, Kingsville 21087
Mary Beth & Brett Wilson, 3944 Forest Valley Road, Baltimore 21234
Kathleen Snyder, 6724 Sunshine Avenue, Fork 21051
Dawn & John Gordon, 4605 Long Green Road, Long Green 21092

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Edna & Charles Mueller. 12401 Long Green Pike, Gloen Arm 21057
Clair Sarkowski & Richard Bartlett, 41 Esperanza Court, Baltimore 21208
Robert Hoffman, 210 Allegheny Avenue, Towson 21204
Charlotte Pine, 607 Baltimore Avenue, Towson 21204
Alex Dumble, 13127 Bottom Road, Hydes 21032
Joyce & Rick & Richard Beam, 13302 Bottom Road, Hydes 21082
Doug Behr, 7451 Bradshaw Road, Kingsville 21087
Constance Hess, 6511 Brinton Road, Fork 21051
Bob Sheesley, 8354 Chestnut Farm Lane, Ellicott City 21043
Don Smith, 12652 Fork Road, Fork 21051
Robert Jones, 12846 Fork Road, Fork 21051
Kate King, 12910 Fork Road, Baldwin 21013
John Shinners, Jr., 12917 Fork Road, Baldwin 21013
Paul Plowman, 13105 Fork Road, Baldwin 21013
Rosemary Gomez & Sean Thompson, 13218 Fork Road, Baldwin 21013
Alvan Gemmel, 13219 Fork Road, Baldwin 21013
Sharon Rohrbaugh, 13558 Fork Road, Baldwin 21013
David Klapaska, 6242 Glen Arm Road, Hydes 21082
Linda Schott, 12316 Harford Road, Hydes 21082
Eileen O'Brien, 12417 Harford Road, Kingsville 21087
Dolores & James Long, 12510 Harford Road, Hydes 21082
Kay & Thomas Buchanan, 12708 Harford Road, Hydes 21082
Karen Roland & Diana McCann, 12828 Harford Road, Hydes 21032
Francis Snarski, 134 Hopkins Road, Baltimore 21212
Robin Beers, 12442 Jerusalem Road, Kingsville 21087
Steve Feagell, 1002 Klender Court, Bel Air 21014
Dorothy Foos, 6403 Lewis Road, Baldwin 21013
Christine & James Humphreys, 12522 Merritt Avenue, Fork 21051
Patricia L. Garner, 12535 Merritt Avenue, Fork 21051
John Kemp, Jr., 3611 Roland Avenue, Baltimore 21211
Cheryl Reek, 13107 Sanfield Road, Baldwin 21013
Mary Gauer, 1313 Sorbus Court, Fallston
Peter Ratcliffe, 10404 Stevenson Road, 21153
Kathleen Snyder, 6724 Sunshine Avenue, Fork 21051
Elizabeth Healey, 7333 Sunshine Avenue, Kingsville 21087
Ken Schmid, 8258 Veterans Highway, Suite 19A, Millersville 21108
Linda Theos, 11 Vista View Court, Kingsville 21087
Virginia Terhune, Patuxent Publishing Company, 409 Washington Avenue, Towson 21204
Joan Griffith, 12703 Wilson Avenue, Fork 21051
Shirley Mulligan, 12704 Wilson Avenue, Fork 21051
Nick Brader, 6600 York Road, Baltimore 21212
People's Counsel

APPEAL

Petition for Special Exception
SWC Sunshine Avenue and Harford Road
11th Election District – 5th Councilmanic District
Seven Kids, LLC - Legal Owner
Cloverland Farms Dairy, Inc. - Contract Purchaser
Case Number: 99-199-X

RECEIVED
COUNTY BOARD OF APPEALS
99 JUN 14 AM 9:25

- Petition for Special Exception
- Description of Property
- Certificates of Posting (Patrick M. O'Keefe – 12/6/98 & 1/11/99 & 2/18/99)
- Certification of Publication (Jeffersonian – 12/3/98)
- Entry of Appearance by People's Counsel
- Petitioners Sign-In Sheets (2)
- Protestants Sign-In Sheets (4)
- Zoning Advisory Committee Comments

Petitioners' Exhibits:

1. Exhibit of Royal Farm Store by Matis Warfield, Inc. dated December 22, 1998
2A-V. Photographs
3. Elevation Drawings by Donald B. Ratcliffe and Associates dated January 25, 1999 (LARGE - IN CBA CLOSET)
4A. Professional Resume of Kenneth Schmid
4B. Peak Hour Turning Movement Count by Traffic Concepts, Inc. dated December 9, 1998
5. Plat of Area with Zoning
6A. Letter to Ms. Ellen Jackson, Waste Management Administration, Maryland Department of Environment from Robert W. Sheesley dated January 31, 1999
6B. Letter to Mr. Robert Sheesley, EcoSense Inc. from Thomas L. Walter, Regional II Section Head, Compliance/Remediation Division, Oil Control Program, Maryland Department of the Environment dated February 12, 1999
7. Letter to Mr. Herbert Meade, Chief & Ms. Ellen Jackson, Geologist, Compliance/Remediation Division, Oil Control Program, Maryland Department of the Environment from Stephen Saul, Hydrogeologist, Nutshell Enterprises Ltd. Dated April 5, 1998
8. Resume of Joseph M. Cronyn
9. Booklet of Proposed Royal Farm Store prepared by Lipman Frizzell & Mitchell, LLC dated January 27, 1998
10. Resume of Nicholas J. Brader, III, P.E.

Protestants' Exhibits:

1. Letter to Mr. David Huber, Zink Construction Corporation from Fred P. Cocca, Project Geologist & Charles W. Houlik, PhD, Director, Geotechnical Services, EA Engineering, Science, and Technology Inc. dated 23 June, 1998
2. Opinion of County Board of Appeal of Baltimore County for Case No. CBA-87-151 dated June 16, 1998 (Affirmed CRG decision)
3. Letter to Mr. & Mrs. Tom Russo from Paul Certeza, Environmental Specialist, Special Operations Section, Oil Control Program, Maryland Department of the Environment dated December 30, 1998
4. Action Report regarding Goundwater Investigation on Zink Property by a sanitarian dated November 2, 1987
5A. Signed Petitions (Petition Drive January 5 to January 26, 1999) in Opposition to Proposed Development (660 signatures)
5B. Signed Petitions (Petition Drive January 28 to February 22, 1999) in Opposition to Proposed Development (181 signatures)

Letters in Opposition sent by: (21)
Robert Graf
Kathryn Yamamoto
Don & Mary Beers dated December 18, 1998
Charles F. Imhoff, Jr. & Charles F. Imhoff, III dated December 21, 1998
Malcolm M. McKnight dated January 4, 1999
Jacqueline Ratcliffe dated January 26, 1999
Rosanne DiFonzo dated February 6, 1999
Barbara & Paul Morley dated February 6, 1999
Theresa M. Russo & Thomas J. Russo dated February 7, 1999
Liz Healey, President, Greater Kingsville Civic Assoc. dated February 7, 1999
Carol N. Shaw & Bernard L. Shaw dated February 8, 1999
Charles D. Bender, Jr. & Sheila E. Bender dated February 8, 1999
Kate A. King dated February 16, 1999
Eugenia A. Wright & James T. Wright dated February 17, 1999
Kurt S. Willem & Deborah Willem dated February 17, 1999
D. Burke Haskins, M.D. dated February 18, 1999
Ellen Marquardt dated February 18, 1999
Malcolm M. McKnight dated February 19, 1999
Jacqueline Ratcliffe dated February 19, 1999
Daniel & Anne Arnold dated February 22, 1999
Charles & Glenda Arnold dated February 22, 1999

Plat Submitted at Petition Filing, prepared by George William Stephens, Jr. and Associates, Inc. dated November 4, 1998

Notice of Zoning Hearing dated November 23, 1998

Letter to Robert A. Hoffman, Esquire, Venable, Baetjer and Howard from Bruno Rudaitis, Planner II, Zoning Review dated November 30, 1998

Letter to Lawrence Schmidt, Zoning Commissioner from J. Carroll Holzer, Esquire, Holzer and Lee dated December 18, 1998

Letter to Ms. Sophie Jennings, Department of Permits and Development Management from Barbara W. Ormord, Legal Assistant, Venable, Baetjer and Howard dated December 22, 1998

Letter to J. Carroll Holzer, Esquire, Holzer and Lee from Arnold Jablon, Director, Permits and Development Management dated December 23, 1998

Deputy Zoning Commissioner's Order dated April 30, 1999 (Granted with Restrictions)

Notice of Appeal received on May 26, 1999 from J. Carroll Holzer, Esquire on behalf of Long Green Valley Association, Greater Kingsville Civic Association, and individuals listed and identified in Exhibit A

C: Robert A. Hoffman, Esquire
J. Carroll Holzer, Esquire
People's Counsel of Baltimore County, MS #2010
Timothy Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of PDM

Robin Beers 12442 Jerusalem Road Kingsville 21087

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

04/13/01

Case Number: 03-C-00-009923 AE
Date Filed: 09/25/2000
Status: Closed/Inactive
Judge Assigned: To Be Assigned,

In The Matter of: Seven Kids L L C, et al

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Case Folder ID	C00009923V01

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
PET	001	Seven Kids L L C Capacity : Legal Owner		CT DO 04/10/01	09/26/00
	Mail:	120 Cockeysville Rd Cockeysville Hunt Valley, MD 21030	11/30/00		
	Attorney:	0015510 Malone, Patricia Ann Venable, Baetjer & Howard, LLP 210 Allegheny Avenue P O Box 5517 Towson, MD 21285-5517 (410)494-6200		09/26/00	
PET	002	Cloverland Farms Dairy Inc Capacity : Contract Purchaser		CT DO 04/10/01	09/26/00
	Attorney:	0015510 Malone, Patricia Ann Venable, Baetjer & Howard, LLP 210 Allegheny Avenue		09/26/00	

P O Box 5517
Towson, MD 21285-5517
(410)494-6200

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
ITP	001	County Board Of Appeals Of Baltimore County The		CT DO 04/10/01	09/26/00
	Mail:	400 Washington Ave Old Court House Basement Towson, MD 21204	09/26/00		
	Attorney:	0005744 Demilio, Carole 206 Washington Avenue Towson, MD 21204 (410)825-6963		10/16/00	
ITP	002	Greater Kingsville Civic Association Inc		CT DO 04/10/01	10/05/00
	Attorney:	0012186 Holzer, J Carroll Holzer And Lee The 508 Building 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961		10/05/00	
ITP	003	Peoples Counsel For Baltimore County		CT DO 04/10/01	02/02/01
	Attorney:	0005744 Demilio, Carole 206 Washington Avenue Towson, MD 21204 (410)825-6963		02/02/01	
		0029075 Zimmerman, Peter M People's Counsel For Baltimore County Room 47 Courthouse 400 Washington Ave Towson, MD 21204 (410)887-2188		02/02/01	

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec	User ID
03/15/01	09:30A		yes	CIVI	S		TBA	01	/01	VAC	C	12/15/00		P			KLS KLS
03/19/01	09:30A		yes	CIVI	S		CMK	01	/01	CON	C	04/10/01		P			KLS PH

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned.	J	09/26/00	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review Filed by PET001-Seven Kids L L C. , PET002-Cloverland Farms Dairy Inc.	09/26/00	09/26/00	PET001	TBA		04/10/01	PKE PH
0001001	Answer	10/13/00	10/16/00	ITP001	TBA		04/10/01	MJ PH
0002000	Notice of intention to participate	10/02/00	10/05/00	ITP002	TBA		10/05/00	MJ MJ
0003000	Certificate of Notice	10/05/00	10/06/00	ITP001	TBA		04/10/01	DFF PH
0004000	Transcript of Record from Adm Agency	11/28/00	11/30/00	000	TBA		04/10/01	MJ PH
0005000	Notice of Transcript of Record Sent	11/30/00	11/30/00	ITP001	TBA		11/30/00	MJ MJ
0006000	Notice of Transcript of Record Sent	11/30/00	11/30/00	ITP002	TBA		11/30/00	MJ MJ
0007000	Notice of Transcript of Record Sent	11/30/00	11/30/00	PET001	TBA		11/30/00	MJ MJ
0008000	Notice of Transcript of Record Sent	11/30/00	11/30/00	PET002	TBA		11/30/00	MJ MJ
0009000	Scheduling Order	12/15/00	12/15/00	000	TBA		12/15/00	KLS KLS
0010000	Memorandum of Petioners in Support of Petition for Judicial Review Filed by PET001-Seven Kids L L C. , PET002-Cloverland Farms Dairy Inc.	12/28/00	12/29/00	PET001	TBA		12/29/00	MJ MJ
0011000	Line the parties have mutually agreed to extend the time to respond until February 2, 2001.	01/26/01	01/29/01	000	TBA		04/10/01	MJ PH
0012000	Peoples Counsels Memorandum Filed by Peoples Counsel.	02/01/01	02/02/01	000	TBA		02/02/01	JM MJ
0013000	*Memorandum of Respondents/protestants Filed by ITP002-Greater Kingsville Civic Association Inc. , ITP003-Peoples Counsel For Baltimore County.	02/02/01	02/05/01	ITP002	TBA		02/05/01	MJ MJ

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0014000	Reply memorandum	02/20/01	02/21/01	PET001	TBA	02/21/01	PH PH
0015000	Open Court Proceeding March 19, 2001. Hon. Christian M. Kahl. Hearing had. Opinion to be filed.	03/19/01	03/19/01	000	CMK	04/10/01	DM PH
0016000	Order affirming decision of the C B A	04/10/01	04/10/01	000	CMK Granted	04/10/01	PH PH
0017000	Invoice 10643 to Carroll J. Holzer and Carole Demilio	04/13/01	04/13/01	000	TBA		NW NW
0018000	Docket entries sent to Baltimore County Board of Appeals	04/13/01	04/13/01	000	TBA		CAM CAM

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	CLOSED	09/26/01	365	no	no	DAAA	D	000	000
1ANS	1st Answer Tickle	CLOSED	10/13/00	0	no	no	DANS	D	001	001
SLTR	Set List For Trial	DONE	10/13/00	0	yes	yes	1ANS	T	001	001

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 12/15/00 Order Date : 12/15/00
Start Date : 12/15/00 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		12/30/00	04/10/01	CLOSED
All Motions (excluding Motions in Limine		02/03/01	04/10/01	CLOSED
TRIAL DATE is	03/19/01	03/15/01	04/10/01	CLOSED

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

05/05/03

Case Number: 03-C-00-009923 AE
Date Filed: 09/25/2000
Status: Closed/Inactive
Judge Assigned: To Be Assigned,
Location :

In The Matter of: Seven Kids L L C, et al

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Case Folder ID	C00009923V01

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
PET	001	Seven Kids L L C	Party ID: 0386724	CT DO 04/10/01	09/26/00
		Capacity : Legal Owner			
		Mail: 120 Cockeysville Rd Cockeysville Hunt Valley, MD 21030	11/30/00		
		Attorney: 0015510 Malone, Patricia Ann Venable, Baetjer & Howard, LLP 210 Allegheny Avenue P O Box 5517 Towson, MD 21285-5517 (410)494-6200			09/26/00
PET	002	Cloverland Farms Dairy Inc	Party ID: 0386725	CT DO 04/10/01	09/26/00

Capacity : Contract Purchaser
Attorney: 0015510 Malone, Patricia Ann 09/26/00
Venable, Baetjer & Howard, LLP
210 Allegheny Avenue
P O Box 5517
Towson, MD 21285-5517
(410)494-6200

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
ITP	001	County Board Of Appeals Of Baltimore County The	Party ID: 0386728	CT DO 04/10/01	09/26/00
		Mail: 400 Washington Ave Old Court House Basement Towson, MD 21204	09/26/00		
		Attorney: 0005744 Demilio, Carole S 206 Washington Avenue Towson, MD 21204 (410)825-6963			10/16/00
ITP	002	Greater Kingsville Civic Association Inc	Party ID: 0388687	CT DO 04/10/01	10/05/00
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee The 508 Building 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961			10/05/00
ITP	003	Peoples Counsel For Baltimore County	Party ID: 0409569	CT DO 04/10/01	02/02/01
		Attorney: 0005744 Demilio, Carole S 206 Washington Avenue Towson, MD 21204 (410)825-6963			02/02/01
		0029075 Zimmerman, Peter M People's Counsel For Baltimore County Room 47 Courthouse 400 Washington Ave Towson, MD 21204 (410)887-2188			02/02/01

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day Of	Rslt	By	ResultDt	Jdg T	Notice	Rec	User ID
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03/19/01	09:30A	yes		CIVI	S		CMK	01 /01	CON	C	04/10/01	P			KLS

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned.	J	09/26/00	

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Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
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0001001	Answer	10/13/00	10/16/00	ITP001	TBA		04/10/01	MJ PH
0002000	Notice of intention to participate	10/02/00	10/05/00	ITP002	TBA		10/05/00	MJ MJ
0003000	Certificate of Notice	10/05/00	10/06/00	ITP001	TBA		04/10/01	DFF PH
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0005000	Notice of Transcript of Record Sent	11/30/00	11/30/00	ITP001	TBA		11/30/00	MJ MJ
0006000	Notice of Transcript of Record Sent	11/30/00	11/30/00	ITP002	TBA		11/30/00	MJ MJ
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0017000	Invoice 10643 to Carroll J. Holzer and Carole Demilio	04/13/01	04/13/01	000	TBA			NW NW
0018000	Docket entries sent to Baltimore County Board of Appeals	04/13/01	04/13/01	000	TBA			CVM CVM
0019000	*Notice of Appeal to COSA or COA (11/197) Filed by PET001-Seven Kids L L C. , PET002-Cloverland Farms Dairy Inc,	05/04/01	05/04/01	PET001	TBA			MJ MJ
0020000	Pre Trial Hearing Letter Issued	05/04/01	05/04/01	000	TBA		05/04/01	AJ AJ
0021000	*Order to proceed w/out prehearing conf. (Judge James R Eyler 06/05/01); (7/3/01, due 08/03/01)	06/08/01	06/11/01	000	TBA			DR DR
0022000	Original Record sent to COSA OF MARYLAND BY CERTIFIED MAIL NUMBER 7000 0520 0020 9166 2776. ONE VOLUME, ONE TRANSCRIPT AND ONE BOX EXHIBITS MAILED ON JULY 26, 2001.	07/25/01	07/25/01	000	TBA			AJ AJ
0023000	Mandate from COSA affirming judgment	03/18/03	03/18/03	000	TBA			PH PH

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	CLOSED	10/13/00	0	no	no	DANS	D	001	001
1YRT	One Year Tickle (Jud	CLOSED	09/26/01	365	no	no	DAAA	D	000	000

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
SLTR	Set List For Trial	DONE	10/13/00	0	yes	yes	1ANS	T	001	001

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 12/15/00 Order Date : 12/15/00
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Milestone	Scheduled	Target	Actual	Status
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All Motions (excluding Motions in Limine		02/03/01	04/10/01	CLOSED
TRIAL DATE is	03/19/01	03/15/01	04/10/01	CLOSED

STATE COURT OF SPECIAL APPEALS SYSTEM
DAILY CASE EVENTS REPORT Current Date: 11/15/2001

Title: SEVEN KIDS, LLC VS. GREATER KINGSVILLE Term/Case#: 2001 00490

Panel: EYLER ADKINS WENNER Argue Date: 01/08/2002

Trans/ Code	Entry/ Date	EVENT COMMENT DESCRIPTION
TITL	05/16/2001	Seven Kids, LLC et al.
TITV	05/16/2001	vs.
TITL	05/16/2001	Greater Kingsville
TITL	05/16/2001	Civic Association, Inc. et al
LINE	05/16/2001	----------
MOTF	08/17/2001	-Motion to Correct Record on Appeal and to
MOTF	08/17/2001	Present Certain Exhibits at Oral Argument filed
MOTF	08/17/2001	by counsel for the appellees.
COMM	08/30/2001	1 Volume, 1 Box of Exhibits and Adm. Record
COMM	08/30/2001	(No.490/01)
COMM	08/30/2001	SESSION BRIEF NOTICE MAILED
MOTF	09/05/2001	-Motion to Extend Time for Filing Briefs
MOTF	09/05/2001	filed by co. for the appellants.
COMM	09/07/2001	-Letter from ant. co. advising that ee co.
COMM	09/07/2001	Peter Zimmerman consents to mo. to extend.
ORDR	09/20/2001	-Order of this Court that by COB on 10/1/01,
ORDR	09/20/2001	ants show cause in writing why ees' Mo to
ORDR	09/20/2001	Correct Record should not be granted in whole or
ORDR	09/20/2001	in part.
MOTG	10/11/2001	-Mo to Correct Record granted in part and
MOTG	10/11/2001	denied in part.
MOTG	10/16/2001	-Mo to Extend granted (ant 10/9; ee 11/8).
MOTG	10/26/2001	-Mo to Extend granted (ant 10/9; ee 11/29).

Case No. 99-199-X

SE -To permit automobile service station use in combo w/food store having sales area larger than 1,500 sq. ft. (Section 405.4.E.1 BCZR)

4/30/99 -D.Z.C.'s Order in which Petition for Special Exception was GRANTED with restrictions.

6/15/99 - Notice of Assignment for hearing scheduled for Thursday, July 14, 1999 at 10:00 a.m. (Day #1) and Thursday, July 15, 1999 (Day #2) sent to following:

J. Carroll Holzer, Esquire
Long Green Valley Association
and the Greater Kingsville Civic
Association, et al (Copy sent c/o Liz Healey, President
of Greater Kingsville Civic Assn)
Robert A. Hoffman, Esquire
Lauren M. Eby /Seven Kids LLC
John M. Kemp. V.P. /Cloverland
Farms Dairy, Inc.
Nick Brader /Matis & Warfield
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

6/24/99 -Request for PP from C. Holzer -- witnesses on vacation weeks of July 12 and July 26. Requesting end of August or early September. T/C to C. Holzer -- advised Rebecca of 9/30 and 10/07 as available -- Mr. Holzer's calendar (okay per confirmation by S. Leese).
- T/C to R. Hoffman re pp request and available dates; to confirm 9/30 and 10/07 and return call.

6/28/99 -Upon confirmation with counsel, this matter has been reassigned two hearing dates; Thursday, September 30, 1999 at 10:00 a.m. and Thursday, October 7, 1999 at 10:00 a.m.

9/28/99 -Letter from P. Zimmerman - entering appearance as party; may not attend hearing as protestants are represented by counsel (Mr. Holzer); reserves right to submit Memo or make closing argument. (c'd Holzer and Hoffman).

9/29/99 -Letter from C. Holzer - due to scheduled hearing at 6 p.m. in Queen Anne's County, requests that the Board conclude at 3 p.m. on 9/30/99 in this matter to allow time for him to travel to Centreville.

9/30/99 -Day #1 concluded; to Thursday, October 7 for Day #2 as scheduled; also holding Wednesday 1/19/2000 and Thursday 1/20/2000 for days 3 and 4 - see note below.

NOTE: Re related DRC appeals CBA-99-127 and CBA-99-128 APPELLANTS MOTION FOR THE CBA TO FIND JURISDICTION IN AN APPEAL FROM THE DRC /MOTION TO DISMISS THE APPROVAL OF THE DRC APPROVING THE TWO SITE PLANS IN THE ABOVE CAPTIONED CASES filed by J. Carroll Holzer on behalf of The Greater Kingsville Civic Association et al; MOTION TO DISMISS DRC

APPEALS made at hearing by Robert A. Hoffman. Board to hold ruling on all motions until conclusion of case by agreement of parties; Mr. Holzer's Motions (cited above) to be considered part of closing memos to be submitted at conclusion of case).

Days #3 and #4 to be set for Wednesday and Thursday, 1/19/2000 and 1/20/2000; upon confirmation by Mr. Holzer as to availability, notice of assignment to be sent (said Notice of Assignment to be sent for days 3 and 4 at conclusion of day #2).

10/07/99 -Concluded day #2; Notice sent for days 3 and 4 and possible day 5 if needed (1/19/2000 and 1/20/2000, with hold of 1/27/2000). Notice of Assignment sent to parties for Days 3 and 4, Wednesday, January 19, 2000 and Thursday, January 20, 2000 and holding Thursday, January 27, 2000 for day #5 if needed.

1/19/2000 -Concluded Day #3; continued to 1/20 for Day #4.

1/20/2000 -T/C from Charlotte Pine. She will be unable to attend hearing this morning (schools closed due to snow; she watches are granddaughter); Baltimore County courts are open; Baltimore County Government is open; advised her that we would not generally cancel a hearing unless general government offices in Baltimore County were closed, or if the County Cicuit/District Courts were closed. She requested that file be noted.

1/27/00 -Concluded Day #5; continued to 2/09/00 for Day #6 and 3/29/00 for Day #7; Notice of Assignment sent to parties and FYI copy to L.S.M. for days 6 and 7.

2/09/00 -Concluded Day #6; tentatively holding 3/01/00 for Day #7, with 3/29/00 becoming Day #8 and adding 4/05/00 for Day #9. Awaiting confirmation of postponement for case currently scheduled on 3/01/00. Upon receipt of confirmation, Notice of Assignment for days 7, 8 and 9 to be sent to parties.

2/24/00 -Notice of Assignment sent to parties (courtesy copy to Robin Beers); Wednesday, March 1 @ 10:00 a.m. (day #7); Wednesday, March 29 @ 10:00 a.m. (day #8); and Wednesday, April 5, 2000 at 10:00 a.m. (day #9). T/C to LSM to confirm schedule.

3/01/00 - Concluded Day #7; to 3/29/00 for Day #8 (#9 scheduled for 4/05).

3/29/00 -Concluded Day #8; to 4/05 for Day #9.

4/05/00 -Concluded case this date; memos due from Counsel (Messrs. Hoffman and Holzer) by Friday, May 5, 2000; deliberation on 6/14/00.

4/07/00 -Notice of Deliberation sent to parties; copy to L.M.S. Scheduled for Wednesday, June 14, 2000 at 10:00 a.m.

5//09/00 -Letter from J. Carroll Holzer, Esquire confirming extension of time for filing memos now due on Wednesday, May 17th by 12:00 noon.

5/17/00 -Protestants' Memorandum filed by J. Carroll Holzer, Esquire, on behalf of The Greater Kingsville Community Association, et al. (Original and three copies); attachment (copy of transcript portions) to be filed.

- Petitioners' Post-Hearing Memorandum filed by Robert A. Hoffman, Esquire, on behalf of Seven Kids LLC and Cloverland Farms Dairy, Inc. /Petitioners. (Copy of transcript to be provided on 5/18/00 for Board's reference.)

- Copies of memos mailed to L.S.M. this date; advised of anticipated transcript excerpts/copies to be filed.

5/18/00 -Three copies of full transcript provided by R. Hoffman.

-Three copies of referenced portions of transcript provided by C. Holzer. Will hold these here for L.S.M.

5/19/00 -Notice of Deliberation Reassignment to parties; due to schedule conflict on part of Board member, reassigned deliberation to Thursday, June 22, 2000 at 9:00 a.m. Advised Messrs. Hoffman and Holzer by telephone of change and that notice would be sent.

6/22/00 -Deliberation concluded; Special Exception was DENIED as to issue of need only (majority of Wescott and Melvin; Stahl found that need existed); If CR overlay and need were not an issue, the Petitioner met his burden as to 502.1 and request could then have been granted with restrictions as to battery back-up, underground liner under tanks; alternative method other than "Stormceptor" system must be found. Stahl to write dissent as to "need" denial only; would grant special exception completely. Wescott and Melvin to sign majority denial -- no need found to exist. NOTE: As to DRC appeal, (b)(9) limited exemption GRANTED; decision of DRC affirmed; meets 26-171 with or without fuel service per special exception request.

SEVEN KIDS, LLC, ET AL
120 COCKEYSVILLE ROAD
COCKEYSVILLE, MD 21030

99-199-X*

CCt No. **3-C-00-009923**

November 10, 1998	Petition for Special Exception filed by Robert A. Hoffman, Esquire, on behalf of Seven Kids, LLC – Legal Owners, and Cloverland Farms Dairy, Inc. –Contract Purchasers; to permit an automobile service station use in combination with a food store having a sales area larger than 1,500 sq. ft.
December 7	Entry of Appearance filed by People's Counsel for Baltimore County.
December 22	Hearing held before the Zoning Commissioner
April 30, 1999	Findings of Fact and Conclusions of Law issued by the DZC -- Petition for Special Exception Hearing is GRANTED subject to terms and restrictions.
May 26	Notice of Appeal filed by J. Carroll Holzer, Esquire, on behalf of Long Green Valley Association, Greater Kingsville Civic Association, and individuals listed and identified on Exhibit A (attached to Appeal).
September 30	Hearing Day #1 held before the Board of Appeals. (Appellants Motion for the CBA to find Jurisdiction in an appeal from the DRC /Motion to Dismiss the Approval of the DRC approving the two site Plans in the above captioned cases submitted by J. Carroll Holzer, Esquire, on behalf of Kingsville, et al and Motion to Dismiss DRC Appeals made at hearing by Robert A. Hoffman, Esquire, on behalf of Seven Kids LLC, et al) The Board ruled in its 8/31/00 opinion that the the DRC decision is an appealable event.
October 7	Hearing Day #2 held before the Board of Appeals.
January 19, 2000	Hearing Day #3 held before the Board of Appeals.
January 20	Hearing Day #4 held before the Board of Appeals.
January 27	Hearing Day #5 held before the Board of Appeals.
February 9	Hearing Day #6 held before the Board of Appeals.
March 1	Hearing Day #7 held before the Board of Appeals.
March 29	Hearing Day #8 held before the Board of Appeals.
April 5	Hearing Day #9 concluded by the Board.
May 17, 2000	-Protestants' Memorandum filed by J. Carroll Holzer, Esquire, on behalf of the Greater Kingsville Community Association, et al. -Post-Hearing Memorandum filed by Robert A. Hoffman, Esquire, on behalf of Seven Kids LLC and Cloverland Farms Dairy, Inc.
June 22	Public Deliberation concluded by the Board.
August 31	Opinion and Order issued by the Board of Appeals; Petition for Special Exception is DENIED (requested limited exemptions, approved by DRC and adopted in the 6/11/99 letter from Arnold Jablon, Director /PDM and in the 7/22/99 Letter from Arnold Jablon are AFFIRMED) are approved.
Sep. 29, 2000 √E	Petition for Judicial Review filed in the CCt by John Zink, Esquire, on behalf of Seven Kids LLC, et al. (copy received in CBA on 10/5/01). * OF ZONING CASE ONLY
October 5	Certificate of Notice sent to interested parties.
November 28, 2000	Transcript of testimony and Record of Proceedings filed in the Circuit Court for Baltimore County.
April 6, 2001 √E	Opinion and Order of Court issued by Judge Kahl; decision of the CBA is AFFIRMED.
May 4 √E	Notice of Appeal filed in the Court of Special Appeals by John Zink, Esq. on behalf of Seven Kids

IN THE MATTER OF	*	BEFORE THE
Seven Kids, LLC - Owner	*	COUNTY BOARD OF APPEALS
Royal Farm Store, Sunshine Ave.	*	BALTIMORE COUNTY
Granted Spec. X with Restrictions	*	CASE NO. 99-199-X

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

SUBPOENA DUCES TECUM

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, March 1, 2000 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave., Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Kevin Koepenick
Address: DEPRM, County Courts Bldg.
Towson, MD

J. Carroll Holzer, P.A.
508 Fairmount Ave.
Towson, MD 21286

Name: __
Firm: ___
Address: _____
Phone No. 410-825-6961

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.

Charlotte E. Radcliffe
County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19____

Not Served: _____, 19____

Sheriff of Baltimore County
a:\forms\cba.sub

RECEIVED
COUNTY BOARD OF APPEALS
00 FEB 28 AM 10:41

IN THE MATTER OF	*	BEFORE THE
Seven Kids, LLC	*	COUNTY BOARD OF APPEALS
Royal Farm Store	*	BALTIMORE COUNTY
Special Exception	*	CASE NO. 99-199-X

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

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RECEIVED
COUNTY BOARD OF APPEALS
00 MAR 29 AM 8:59

Witness: Tony Okechukwu
DEPRM
SWM
Address: County Courts Bldg.
DEPRM, 4th Floor
Towson, MD

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 508 Washington Ave. Towson, 21286
410-825-6961

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.

Charlotte E. Radcliffe
County Board of Appeals of
Baltimore County

Cost: $_____

Summoned: _____, 19___

Not Served: _____, 19___

Sheriff of Baltimore County
C:\Subpoenas\cba.sub

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF:	Seven Kids LLC –Legal Owners; Cloverland Farms Dairy, Inc. –CP /Case No. 99-199-X; and Cases No. CBA-99-127 and No. CBA-99-128	
DATE :	Thursday, June 22, 2000	
BOARD /PANEL :	Lawrence M. Stahl	(LMS)
	Lawrence S. Wescott	(LSW)
	Thomas P. Melvin	(TPM)
SECRETARY :	Kathleen C Bianco /Administrator	

PURPOSE: To deliberate Case No. 99-199-X /Special Exception request for fuel station in combination with convenience store; CBA-99-127 and CBA-99-128 /DRC approval of limited exemption, one plan with fuel station and one without fuel station.

First issue discussed:

- Special exception – 259.2 and .3; 405.3 and 502.1 of BCZR as to district and overlay; service station permitted as of right in commercial town center; Petitioner's contention that Fork is a commercial town center. Also discussed additional requirements of 405.3 as to "need" -- and 405.7 as to abandoned fuel service stations and fact that this site was abandoned as fuel service station over 8 years ago; all four corners were at one time fuel service stations, but there are no remaining pumps, etc., and one station remains today.

- Also discussed 405.8 which promotes conversion to other uses; if converted, no pumps need be removed; discussed *Warrener* case previously heard by the Board.

- Issue of need consumed much of deliberation – beginning discussion and ending discussion; various cases cited by Petitioners; discussed issue of "competition"; convenient service to public; per CA – meaning of "need" – expedient, convenient to public.

- Further discussed meaning of CR overlay – to service the area – discussion also included "commuter traffic" – LMS believed commuter traffic to be included ("significant contact"); LSW and TPM did not.

- Defined "rural area"—and "need" per law; minimal increase in population of area between 1990 and 1998.

As to special exception:

Petitioner met burden as do 502.1 – unanimous that this was done; SE could be granted with conditions: (1) liner under tanks; (2) backup generator; and (3) Stormceptor system – not found to be satisfactory – to pursue alternative method with DEPRM. However, majority found that Petitioner did not meet 405 as to "need" – therefore could not be granted.

Final vote as to special exception:

- ✓ LMS: Met burden as to 502.1 with conditions to be imposed; also met 405 as to "need";
- ✓ LSW: Met burden as to 502.1 with conditions to be imposed; did not meet 405 as to "need";
- ✓ TPM: Met burden as to 502.1 with conditions to be imposed; did not meet 405 as to "need."

By majority decision, special exception is denied; did not meet 405.

As to DRC approval for limited exemption:

- Discussed various upper court orders used as guidance by the Board; Board's decision to accept jurisdiction of DRC appeals, although there is no real authority granted to the Board by statute and no guidance as to burden.

- Discussed Mr. Jablon's role; can affirm /accept DRC "recommendation"; can reject it; can change it, with no reasons or rationale given.

- Discussed *de novo* aspect of appeal – no system set up; amendment of DRC request (upper Court has said it was okay in *Schuster* matter, which was zoning matter with posting and advertising beforehand. No such advertising and posting in this instance; therefore, if the Courts have said it was okay with Schuster, the Board accepted that it was okay at this level with Seven Kids.

As to DRC decision, no PWA; minor development by default. Sufficient showing that it is appropriate.

Decision as to DRC approval of limited exemption in both 99-127 and 99-128:

✓ LMS: Approve limited exemption; appropriate.
✓ LSW: Approve limited exemption; appropriate.
✓ TPM: Approve limited exemption; appropriate.

Unanimous decision that DRC is affirmed; limited exemption request approved by the Board.

As additional discussion, also reviewed 239 – if Developer proved (b)(2) – could Mr. Jablon still deny waiver? According to law as set forth in Code – yes, he could. With no explanation required as to why – law only says what he may do but requires no justification or reasons.

Final Decision: Petition for Special Exception is DENIED (by majority decision /did not meet "need" requirement imposed by CR overlay; could have been granted otherwise with conditions imposed by full Board); affirmed decision of DRC – approved limited exemption with or without fuel station. Majority to issue Opinion/Order denying special exception and approving DRC. LMS to issue dissenting opinion as to special exception denial only.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place this date regarding this zoning case. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted

Kathleen C. Bianco, Administrator
County Board of Appeals

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: May 18, 2000

TO: L Stahl
L Wescott
T. Melvin

FROM: Kathi

SUBJECT: Case No. 99-199-X and CBA-99-127 and CBA-99-128 /Seven Kids LLC and Cloverland Farms Dairy, Inc. – Memos for review prior to deliberation

The subject case is scheduled for public deliberation on Wednesday, June 14, 2000 at 10:00 a.m. (NOTE: Special Hearing zoning case scheduled for 1:00 pm that day.) The following documents are attached:

1. Protestants' Memorandum filed by J. Carroll Holzer, Esquire, on behalf of The Greater Kingsville Community Association, et al, in Case No. 99-199-X; and a separate Memorandum reference Case No. CBA-99-127 and CBA-99-128; and

2. Petitioners' Post-Hearing Memorandum filed by Robert A. Hoffman, Esquire, on behalf of Seven Kids LLC and Cloverland Farms Dairy, Inc., Petitioners.

Please note that a copy of the full transcript will be provided by Mr. Hoffman for reference by the Board. In addition, Mr. Holzer will be providing copies of those portions of the transcript which he requested and which he references in his memos. This material will be available in the office in a day or so for your review.

Should you have any questions, please call me.

Kathi

Attachments (3)

P.S. – Tom:

Also attached per your request is a copy of the Board's decision in Marvin Goldberg /Amoco Oil Company issued in late 1998 (you, Kris and Harry).

k

FILE

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: May 18, 2000

TO: L Stahl
L Wescott
T. Melvin

FROM: Kathi

SUBJECT: Table of Contents for Mr. Holzer's Memo – Seven Kids /Cloverland Memo filed 5/17/00

The attached *Table of Contents* was dropped off this afternoon by Sterling Leese for Carroll Holzer (to be attached to his Memorandum).

Also left with me today by Sterling were copies of the referenced transcript pages as cited in Carroll's Memo, as well as a full copy of the transcript as provided by Rob Hoffman. These copies are not the Original Transcript of the hearing, but the copies as requested by counsel and provided by Carolyn.

I'll hold the transcript copies for your review and/or pick-up at your convenience. Both Carroll and Rob filed three copies total. Therefore, if and when this case goes up on appeal to the Circuit Court, I would request that at least two of each be returned; one to go with the file to the Circuit Court and one copy of each to remain here.

Please call me to arrange for pick-up, etc.

Kathi



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

April 21, 2000

Robert A. Hoffman, Esquire
VENABLE, BAETJER & HOWARD LLP
210 Allegheny Avenue
Post Office Box 5517
Towson, MD 21285-5517

J. Carroll Holzer, Esquire
HOLZER AND LEE
The Fairmount Building
508 Fairmount Avenue
Towson, MD 21286

RE: In the Matter of Seven Kids LLC /Cloverland Farms Dairy /
Cases Nos. 99-199-X; CBA-99-127; and CBA-99-128
Due Date Extension – Closing Briefs

Dear Counsel:

As a follow up to the voice mail message left for you on Friday, April 21, 2000, please note that the due date for closing briefs in the subject matter has been extended five (5) additional days to Wednesday, May 10th. This was done at Carolyn's request, thereby providing her with the necessary time to work on the transcript.

Accordingly, closing memos are due no later than Wednesday, May 10, 2000 at 3:00 p.m. The date of public deliberation remains unchanged, being assigned for Wednesday, June 14, 2000 at 10:00 a.m.

Should you have any questions, please call me.

Very truly yours,

FILE

Kathleen C. Bianco
Administrator

cc: Ms. Carolyn Peatt

Printed with Soybean Ink
on Recycled Paper

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

September 28, 1999

Charles L. Marks, Chairman
County Board of Appeals
of Baltimore County
401 Washington Avenue, Room 49
Towson, MD 21204

Hand-delivered

RECEIVED
COUNTY BOARD OF APPEALS
99 SEP 28 AM 11:45

Re: Petition for Special Exception
Harford Road and Sunshine Avenue,
SE/S Harford Rd, corner SW/S Sunshine Ave,
11th Election District, 5th Councilmanic
Legal Owner: Seven Kids, LLC
Lessee: Cloverland Farms Dairy, Inc.
Case No.: 99-199-X

Dear Chairman Marks:

This case is an appeal by citizens who oppose a Special Exception for a convenience store and service station. Our office is interested in the case because of the location and the zoning on the site. Please enter the appearance of People's Counsel as a party to the appeal.

The citizens are represented by counsel who will attend the CBA hearing. Therefore, People's Counsel's presence at the hearing may not be necessary for the presentation of evidence.

However, we reserve the right to make a closing argument or submit a Memorandum.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf

cc: Robert A. Hoffman, Esq., Attorney for Petitioners

J. Carroll Holzer, Esq., Attorney for Protestants

December 21st, 1998

Memo To : Hearing Commissioner

Re: HEARING for PROPOSED ROYAL FARM STORE
CORNER OF HARFORD ROAD & SUNSHINE AVENUE

We have just become aware of the following proposed building for this site and wish to strongly voice our disapproval since we are unable to attend the hearing due to prior commitments. Our reasons for disapproving are the following:

1. We believe strongly that this would pose a very serious safety hazard as the volume of traffic on Harford Road has increased greatly. This is especially noted in the mornings & evenings with the many commuters going to and from work. Getting in & out of current establishments can be a hazard at any time of day but is especially noted at the above times even when going with the flow of traffic.

2. Although competition is good, it seems as if another convenience store/gas station only adds duplication to existing services on this corner & in the near by area. It doesn't seem fair to deliberately put existing businesses at risk for failure.

3. Seemingly some real environmental issues must also exist given the fact that everyone in this area has their own water & sewage. What has been done to ensure that no risks exists for the community if a business of this type were to be approved on this corner?

The following has been submitted by Joan Imhoff

Charles F. Imhoff Jr.

Charles F. Imhoff III

6724 Cherry Hill Road
Baldwin, Md. 21013
Phone # 410-592-8600

1/26/99

To whom it May Concern,

The residents of Fork/Kingsville really believe we don't need another gas station/store in the area.

1) We already have 2 empty commercial buildings I believe if this Royal Farm comes there will be several more empty buildings.

2) Harford Road just can't handle anymore traffic we have 35 more houses going up behind us that will add to the already extremely heavy traffic.
Also there has been a increase of serious/fatal accidents due to the volume of traffic and congestion.

3) Also our wells are in jeopardy.

Thank you

Jacqueline Ratcliffe
12545 Harford Road
Hydes, Md 21082

2/6/99

Mr. Arnold Jablon
Director of Dept of Permits
& Development Mgmt
Balto County
Towson, Md 21204

Dear Mr. Jablon,

As residents of 4 County Hill Ct, Balto County, we are writing to state that we are against Balto County granting Royal Farm Store / Cleveland Dairy an exemption to the development review process, and we request they be required to have an official Community Input Meeting.

We have concerns about this development because of continued high levels of contamination in a homeowners well approximately 500' from the proposed site. Balto County and the State of Md have condemned the well water as unsafe to drink, and this problem was caused by the gas tanks on the proposed site.

We are also concerned about traffic issues at the proposed site as

well as disruption to us from the proposed lighting & traffic. The potential for increased crime is also an issue.

Thank you for your consideration.

Barbara Morley
Paul Morley

(BARBARA & PAUL MORLEY)
410 392-3820

RECEIVED
99-334
FEB - 8 1999
PDM

Mr. Arnold Jablon
Director of Department of Permits
and Development Management
Baltimore County
111 West Chesapeake Avenue
Towson, MD 21204

February 7, 1999

Dear Mr. Jablon,

As a resident of a Baltimore County development known as Country Hill Estates in Kingsville, we wish to express our concerns and to formerly declare that we are against the county granting Royal Farm Stores/Cloverland Dairy an exemption to the development review process.

Our objection to this exemption centers on Royal Farms' total disregard of community concerns related to the issues around the location of the Mini-mart/gas station at a previous Zoning meeting on January 27, 1999. Since that hearing, their subsequent request to receive an exemption from having an official Community Input Meeting attests to their arrogance and total disregard for community concerns.

The concerns we wish Royal Farms to address are as follows:

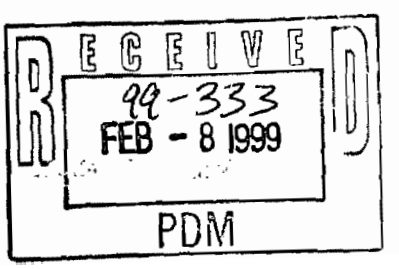
- Continued high levels of gasoline contamination still exist in my well as a direct result of negligence by the previous site owner (Zink Associates) when removing the old storage tanks in 1987.
- There is a concern that additional wells on the development site could lead to contamination of aquifers currently supplying water to neighboring property owners.
- Traffic dangers at the intersection of Harford and Sunshine Avenues due to increased traffic and the lack of turning lanes.
- Disruption to our current rural atmosphere caused by the bright lights and additional traffic.
- Possible spillage of the large number of gasoline tanker trucks required to support a facility with 5 gasoline pumping bays.
- Royal Farms' predatory business practices which could force the current Citgo, Highs and Fork Deli stores out of business adding to the number of vacant stores at this location.

Certainly, if you agree that the above concerns are legitimate and deserve formal and public consideration by Royal Farms, then your ruling against this exemption should prevail.

Theresa M. Russo

Sincerely,

Thomas J. Russo
3 Country Hill Court
Kingsville, Md. 21087


RECEIVED
99-333
FEB - 8 1999
PDM

Greater Kingsville Civic Association
PO Box 221 Kingsville, MD 21087

2/8/99
V
DR?

February 7, 1999

Arnold Jablon
Director of the Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Proposed Royal Farm Store at Sunshine and Harford – DRC# 02089F, zoning case #99199X

Dear Mr. Jablon,

The Royal Farm Store proposed for the corner of Sunshine Avenue and Harford Road in Fork has raised many grave concerns from the adjacent residents and the surrounding community. Some of their concerns include the following:

- the long history of serious groundwater contamination problems both on-site and in at least one neighboring residential well, as a result of the previous gas station's (now abandoned) leaking Underground Storage Tanks
- other environmental concerns, including well, septic, and storm water management issues
- adverse economic impact to the existing businesses and adverse impact to existing residences
- disastrous impact to the rural and historic character of the area
- increased traffic problems at a location with existing problems
- detrimental lighting and aesthetic concerns
- insufficient need for another gas station with one already existing across the street from the proposed location

Due to the extensive amount of concern over this proposal, the Greater Kingsvillle Civic Association would ask that this project be **denied their request for the limited exemption process** (with the Development Review Committee). Also, we adamantly request that this project **be required to hold a Community Input Meeting** and also **be required to go through the Hearing Officer's Hearing process**.

Even though this proposed development is going through the zoning hearing process, that is insufficient to be fair to the community. A CIM would be held at a location in the community in the evening, allowing more access for the community members who work during the day and for older residents who can't easily travel the distance to a zoning hearing in Towson.

The request for a Hearing Officer's Hearing is of equal importance because the zoning hearing is early in the process and only a concept plan is being offered. Due to the extremely grave concerns about this proposed project, the community should be able to have this reviewed to the fullest extent by a Hearing Officer's Hearing with the full development plan.

Thank you for your time and consideration in this critical matter.
Very sincerely yours,

Liz Healey
President, Greater Kingsville Civic Association

RECEIVED

FEB - 8 1999

99-339

DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

February 8, 1999

Mr. Arnold Jablon
Director
Department of Permits and Development Management
Baltimore County, Maryland
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Jablon:

This letter is being written to you because we are strongly opposed to granting Royal Farms Stores/Cloverland Dairy Corporation an exemption to the full Baltimore County development review process which, we are given to understand, includes a community input meeting. It is through the public hearing/community input venue, that is included in the ongoing Zoning Hearing regarding the proposed development of this piece of property, that numerous issues of vital concern to the extended community of Fork, Kingsville and Long Green are being raised.

Because of the complexity and severity of the issues surrounding the proposed development of this piece of property as a service station/convenience store, the Zoning Hearing has been scheduled to continue into a second full day and at least a third half day.

Our concerns are based on very real problems concerning this piece of property, its history and its proposed use. In general, they include:

- pre-existing petroleum contamination of this site
- ongoing petroleum contamination of a private well which in 1988 a Baltimore County Board of Appeals hearing decision linked back to this property
- the desire of the developer and Royal Farms to utilize this property for the same purpose that caused the original contamination but on a much larger scale
- the very real traffic concerns from this site particularly via the proposed Harford Road entrance/exit onto and from a two lane road with a very short sight line which is immediately across from a private pre-school/grade school
- the lack of a storm management plan endangering adjoining wetlands
- the lack of adequate controls regarding possible fuel leakage into street drains servicing the school and private homes within 500 feet
- the building of a structure that is totally at odds through its proposed brick architecture with the true rural ambiance of the Fork intersection
- the very real total lack of need for such a business vis a vis the existing businesses already occupying the intersection
- lighting that will significantly interfere with the privacy rights of numerous individual homes
- a proposed development that is already on record through the ongoing Zoning

Hearing process with numerous instances of decisions that have not yet been made and contradictory decisions which supposedly have already been made

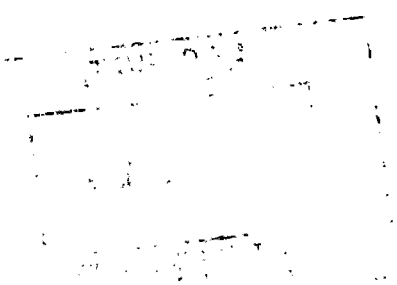
For these and more reasons, we respectfully ask that you disapprove the request of Royal Farms Stores/Cloverland Dairy Corporation for an exemption from a full development review process.

Thank you for your consideration.

Sincerely,

Carol N. Shaw

Bernard L. Shaw
7 Country Hill Court
Kingsville, Maryland 21087
410-592-5670



RECEIVED
99-332
FEB - 8 1999
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

February 8, 1999

11 Country Hill Ct.
Kingsville, Md. 21087

Arnold Jablon
Director of Department of Permits
and Development Management
Baltimore County
111 West Chesapeake Ave.
Towson, MD 21204

Dear Mr. Jablon:

We are residents of the development immediately south of the intersection of Harford Rd. and Sunshine Ave. We are against granting Royal Farm Stores an exemption to the development review process for locating a store with gas pumps at that intersection. We request they be required to have an official Community Input Meeting.

Our concerns include possible contamination of our well, additional light and noise pollution in a basicly rural residential area, and traffic conjestion. This store, while located in our area, would have to derive most of its revenue from commuter traffic while providing no additional benefit to area residents.

Thank you for your consideration.

Sincerely,
Charles D. Bender Jr.
Sheila E. Bende

RECEIVED
99-330
FEB - 8 1999
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

December 21st, 1998

Memo To : Hearing Commissioner

Re: HEARING for PROPOSED ROYAL FARM STORE
CORNER OF HARFORD ROAD & SUNSHINE AVENUE

We have just become aware of the following proposed building for this site and wish to strongly voice our disapproval since we are unable to attend the hearing due to prior commitments. Our reasons for disapproving are the following:

1. We believe strongly that this would pose a very serious safety hazard as the volume of traffic on Harford Road has increased greatly. This is especially noted in the mornings & evenings with the many commuters going to and from work. Getting in & out of current establishments can be a hazard at any time of day but is especially noted at the above times even when going with the flow of traffic.

2. Although competition is good, it seems as if another convenience store/gas station only adds duplication to existing services on this corner & in the near by area. It doesn't seem fair to deliberately put existing businesses at risk for failure.

3. Seemingly some real environmental issues must also exist given the fact that everyone in this area has their own water & sewage. What has been done to ensure that no risks exists for the community if a business of this type were to be approved on this corner?

The following has been submitted by Joan Imhoff

Charles F. Imhoff Jr.

Charles F. Imhoff III

6724 Cherry Hill Road
Baldwin, Md. 21013
Phone # 410-592-8600

Sep 1/27

12801 Harford Road
Fork, Maryland 21051
January 4, 1999

Mr. Timothy M. Kotroco
Deputy Zoning Commissioner
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

RECEIVED
JAN - 8 1999
ZC

Re: Case #99-199X
Royal Farm Store

Dear Mr. Kotroco:

Thank you for meeting with me on the day of the cancelled hearing. As I expect to be out of the country on the new hearing date, I am writing to you with my thoughts on the matter. Any qualification I may have comes from living on Harford Road for the past fifty-one years. I am somewhat neutral on the matter, but would like the final decision to be based on facts. I do belong to my community associations, but sometimes disagree with their views. Below are some facts that may not otherwise come out at a hearing.

1. Fifty years ago there were two full-service grocery stores at this intersection serving the community. One closed about 1970 due to the death of the owner. Both sold produce and fresh meat. Since that time the population has quadrupled. We in fact have less service now than 30-years ago.
2. Fifty years ago the property in question served as a full-service gasoline station. About 1966 the location became the Fork Body & Paint Shop. The location has been vacant since 1970. The existing Citco station receives a significant part of its income from automotive repairs, a serv ice not to be offered by Royal Farm.
3. In 1948 this same corner location contained a two story building housing a small luncheonette and a record store. For a short time in 1968 I rented an office in the building.
4. To the best of my knowledge the owner of the small strip center on the NW corner is not protesting the competition that Royal Farm may bring to his High's Store and Napoli Pizza.
5. It is reputed that the Fork Deli will close in the next 1/2 years because of the retirement of the owners. This should be confirmed however. If they leave, Fork will be drastically underserved.
6. Napoli Pizza has been closed for the past three weeks because of a death in the family. It is uncertain if it will re-open.

I would hope that if the hearing results in the building of a store and station by Royal Farm, that the following would be a condition.

a. That signage be limited and worked out with the Kingsville Community Association,
b. That night lighting be limited as to not take away from the ambiance of the Fork "Village",
c. Six pump islands is excessive for Harford Road in this area and should be limited to only three.
d. Conformance to all fuel storage tank safety and EPA requirements be adheared to.

Respectfully,

Malcolm McKnight

Malcolm M. McKnight

9 Country Hill Court
Kingsville, MD 21087

February 6, 1999

Arnold Jablon
Director of Department of Permits and
Development Management
Baltimore County, Maryland
111 West Chesapeake Avenue
Towson, MD 21204

RE: Royal Farm Stores/Cloverland Dairies Special Exception Request
for location at Harford Road and Sunshine Avenue, Kingsville
Hearing Date, February 8, 1999 @ 1:30 P.M.

Dear Mr. Jablon:

As a citizen who lives in very close proximity to the above location, I am requesting that the special exception at the above hearing not be granted. I believe that a Community Input Meeting should be required for many reasons, some of which are

1. This site is located 500 Feet from the backyards of the houses on Country Hill Court and we have had one family who has a contaminated well from underground tanks from the very site that is proposed for development as a convenience store and gas station. The well was contaminated 11 years ago, when the tanks were pulled and product was spilled into the ground. It cost the County many thousands of dollars for testing and an investigation. The State of Maryland now maintains a very expensive carbon filtration system in the home and the December 1998 test of the water still shows unsafe levels of petroleum distillates. Fear of a leak or a spill from a tanker filling the underground tank is very real.

2. Property values will be affected.

3. Noise, bright lighting, and road congestion will be a nuisance and disruptive.

4. A pre-school is located directly across Harford Road (a two-lane road) from the entrance to the proposed site. The road cannot handle the traffic without posing a danger to the children and the proximity of the tanks to a school can be very dangerous.

5. The noise of delivery trucks behind our homes twice a day (which would have to be the delivery schedule to meet the numbers the Marketing Director of Royal Farm anticipates)

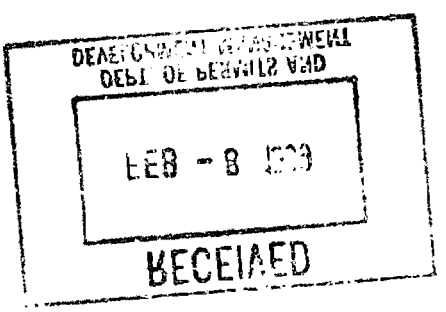
6. There is a large vacant store in the stripmall across the street that is not leased and since the needs of the community and commuters is met by a Citgo station on one corner and a High's

Convenience store, and two carryouts on the other corner, my concern is that other business would be put out of business causing more vacancies and decreased property values.

I thank you for your careful consideration of my request.

Sincerely,

Rosanne DiFonzo



12/18/98

To whom it may concern—
We do not want or need a Royal Farm Store in Fork. We already have a Highs store and gas station and our needs are well served by both. Furthermore, there is already enough traffic and confusion at that corner (Harford + Sunshine Ave) and we do not want more!

Don + Mary Beers
13214 Fork Rd
Baldwin Md 21013

Robert Graf
12704 Fork Rd.
Fork Md. 21051

Mr. Arnold Jablon;

I am writing this letter to you because I am concerned about what the county wants to do at the corner of Fork and Harford. We do not need nor want another gas station on the corner. There is already a gas station and a store to serve our community. There is a strip of empty stores and we do not need more. This is a small community and when the morning and evening traffic is over there is nothing going on and that is how we like it.

We already have concerns about groundwater and our wells and septic problems. We do not need more traffic problems and what that brings with it.

Please say no and let them build some were else.

Thanks for help

Robert Graf

RECEIVED
FEB 24 1999
PDM

Dear Mr Jablon,

I am writing in regard to the proposed Convenience store at Fork + Harford Rds zoning case #99-199x and DRC #02089F

I can see no earthly need for the proposed services as those services already exist not only at that intersection but on the nearby areas.

I am also concerned greatly about traffic in the school area.

Finally, I am certain the impact on all the environmental pieces - such as groundwater, septic, water and so on - would only be significant and injurious.

Don't make a mistake.

A concerned voter,
Kathryn Yamamoto

RECEIVED
FEB 22 1999
99-199
DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

2/17/99
to WDR
for file 2/16/99

Dear Mr. Gablan-

Re Royal Farm Store
Fork Md.
#99199X + DRC020891

I am a resident of the Fork area for 40 yrs. I like rural areas & if this store goes in it will destroy enything. I went to see the Royal Farm at Rosedale. & saw how big it was. It doesnt belong in Fork. We dont live on Rt 7 or Pulaski Hghy. this is a small Community with the school across the street traffic will be terrible. I belive at one time this property did not perk for water for a small mini mall. So how can it be OK now. Also with a bad gasoline leak into neighbors walls.
We have enything we need in Fork-
Please dont put a Royal Farm Store here.

Thank you
Very truly yours
Kate A. King
12910 Fork Rd
Baldwin Md 21013

RECEIVED
99-440
FEB 17 1999
PDM

Wright
6407 Baldwin Gate Rd.
Baldwin, MD 21013
Home Phone 410-592-2807

2/19/99
D
DR + WCA

February 17, 1999

Mr. Arnold Jablon
Director of the Dept. of Permits
and Development Management
111 West Chesapeake Ave.
Towson, MD 21204

Re: Case 99-199X & DRC02089F

Dear Mr. Jablon:,

As residents of the Greater Kingsville area for over twenty-five years, we are concerned about the possibility of a Royal Farms Store and Gas Station being erected on the corner of Harford Road and Sunshire Avenue.

Since we already have a gas station, Highs Store, deli-carry out, and a pizza shop, there really is no need for another similar operation in the area.

We are a rural area that is served very well by the businesses already here. To erect an operation of the type proposed would only change the area for the worst and not necessarily benefit those of us who live here, but those who are just passing through.

It would cause more traffic problems and bring a greater risk of undesirable elements and situations to the area, as well as, change the whole aesthetic make up.

Our concern is also the impact this operation would have on the present businesses and any resulting problems caused by their not being able to continue in business.

Sincerely,

Eugenia A. Wright
James T. Wright

ew

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FEB 19 1999
99-465
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

February 17, 1999

Kurt & Deborah Willem
3116 Harford Road
Hydes, Maryland 21082

Mr. Arnold Jablon
Department of Permits and Developing Management
111 West Chesapeake Avenue
Towson, MD 21204

RE: Zoning Case #99-199X and DRC#02089F
Royal Farm Store Zoning Request at Harford Road and Sunshine Avenue
Fork, Maryland

Mr. Jablon:

I am writing to request that the above-mentioned project be required to hold a Community Input Meeting and that you do everything in your power to stop this project. It is very important that the community get a chance to make their feelings known. I am against the project for the following reasons:

- 1. Fork already has a Deli/Bakery, Sub and Pizza business, Convenience Store and Gas Station all within view of the proposed Royal Farm Store. The Royal Farm Store can offer nothing new that we don't already have.
- 2. The Royal Farm Store will drive the other stores out of business because of their massive buying power and artificially lower prices in the beginning. What will happen when the other stores are forced to close?
- 3. There is no public water or sewerage at the project site. Residential wells could go dry or become contaminated.
- 4. The bright lights and increased traffic will be detrimental to our neighborhood.
- 5. Fork is only 8 miles from the Beltway (I-695) yet has the feel and look of a small town. Isn't this what we are trying to preserve in Baltimore County.
- 6. I've talked to 30 or 40 people and **not one** has endorsed this project.

Sincerely,

Kurt S. Willem
Deborah Willem

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FEB 19 1999
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

Dr. Haskins & Dr. Cook, PA
ORTHOPAEDIC SURGERY

2/24/99 cf To wcr for file

February 18, 1999

Arnold Jablon
Director of Department of
Permits and Development Management
111 West Chesapeake Ave.
Towson, MD 21204

RECEIVED
FEB 23 1999
99-504
PDM

RE: Zoning Case 99-199X and DRC0208

Dear Mr. Jablon:

As a concerned resident of Baltimore County, I am writing this letter with regards to the above captioned cases. I have been a homeowner in the Fork Baldwin area for over twenty years. I am concerned with regards to the request of the Royal Farm Company and their development plans at the corner of Sunshine Avenue and Harford Road.

There are many concerns with regards to this project. Among which are the groundwater contamination, which may already exist, and potentially, the development affecting the homeowners in the immediate area.

Additionally, the increased traffic problems compounded by the topography of the intersection are of a great concern to the local residents. In my opinion, potential hazards exist with regards to ingress and egress to the proposed development and the lack of good visualization which lead to the potential for accidents.

It is my understanding that the structure in which Royal Farms would like to put in place includes a gas and go as well as a convenient store. In the past, their structures have included what many consider to be detrimental lighting and inappropriate buildings to the surrounding rural area. This leads to an aesthetic concern. The Fork area is already served by two gasoline stations; one in Fork and the other approximately two and half miles away in Baldwin. There is no need for a third gasoline station. There already exists in the immediate area of Fork, two convenient stores negating the need, in our opinion, for a third.

We hope that you consider our concerns before issuing a permit to allow this development project to go forward.

Sincerely,

D. Burke Haskins, M.D.

DBH/jjo

February 18, 1999

Mr. Arnold Jablon
Director of the Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, MD 21204

RE: Zoning Case #99-199X and DRC#02089F
Royal Farm Store

Dear Mr. Jablon:

I am writing to express my opposition to the proposed zoning change to allow the building of a Royal Farm Store and gas station at Harford Road and Fork Road/Sunshine Ave. My daughter attends school at Free State Montessori School which is directly across from this proposed development.

I feel that this development would result in making an already busy and dangerous intersection even more dangerous. It is extremely difficult with the traffic, intersection and the grade of the road, to safely make a left turn onto Harford Road from the school parking lot on a daily basis at this time. To add additional traffic turning onto Harford Road from the opposing direction, would make this even more treacherous. In addition there are several convenience stores/coffee stops which are on the right hand side of the road for the bulk of the traffic which travels from Harford County to Baltimore on Harford Road in the morning. Frankly, having traveled this same route to work for many years prior to my daughter attending school at Free State, I would never have considered stopping at a store that was on the left hand side of the road. Not only would time not allow such a stop, but I would never consider attempting to cross traffic on Harford Road at rush hour.

Please do not allow such a development to take place at this intersection. It just does not make sense to add to this already dangerous traffic area for a store that is not needed at this site.

Please have a Community Input Meeting on this issue and also have this go through the Hearing Officer's Hearing process. Thank you for your time and consideration in this matter.

Sincerely,

Ellen Marquardt

Ellen Marquardt
410-838-7781

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FEB 22 1999
99-491
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

2/24/99
&
TO DR
please review -
sounds reasonable -
please respond

12801 Harford Road
Fork, Maryland 21051
February 19, 1999

Mr. Arnold Jablon
Director of Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Zoning Case #99-199X and DRC #02089F

Dear Mr. Jablon:

Attached are my comments on the zoning matter at Fork, Maryland which I forwarded to Mr. Kotroco last month.

While I personally am not concerned at the prospect of the presence of a Royal Farm store, if it is permitted to go to construction, I believe that certain limits can reasonably be placed on the owners. These are outlined at the bottom of the inclosed letter to Mr. Kotroco.

I am concerned that an owner of commercially zoned property should be denied reasonable use of same. Particularly since the plat in question has been zoned as such for many, many years and at one time contained a filling station.

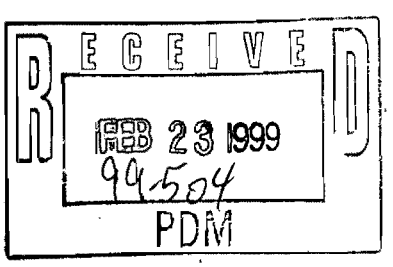
I also question the value of persons living outside the community, and at some distance, signing petitions in opposition or in support of such matters.

As is so often the case in these matters, opponents of the Farm Store have stretched to find reasons for their opposition. Groundwater contamination under current EPA etc. regulations is really a non-issue. The matter of lighting and asthetic consideration can easily be addressed by cooperation between the parties. Certainly there is nothing disastrous to the community that will be brought about by the Farm Store.

Respectfully,

Malcolm McKnight

Malcolm M. McKnight



12801 Harford Road
Fork, Maryland 21051
January 4, 1999

Mr. Timothy M. Kotroco
Deputy Zoning Commissioner
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: Case #99-199X
Royal Farm Store

Dear Mr. Kotroco:

Thank you for meeting with me on the day of the cancelled hearing. As I expect to be out of the country on the new hearing date, I am writing to you with my thoughts on the matter. Any qualification I may have comes from living on Harford Road for the past fifty-one years. I am somewhat neutral on the matter, but would like the final decision to be based on facts. I do belong to my community associations, but sometimes disagree with their views. Below are some facts that may not otherwise come out at a hearing.

1. Fifty years ago there were two full-service grocery stores at this intersection serving the community. One closed about 1970 due to the death of the owner. Both sold produce and fresh meat. Since that time the population has quadrupled. We in fact have less service now than 30-years ago.
2. Fifty years ago the property in question served as a full-service gasoline station. About 1966 the location became the Fork Body & Paint Shop. The location has been vacant since 1970. The existing Citco station receives a significant part of its income from automotive repairs, a serv ice not to be offered by Royal Farm.
3. In 1948 this same corner location contained a two story building housing a small luncheonette and a record store. For a short time in 1968 I rented an office in the building.
4. To the best of my knowledge the owner of the small strip center on the NW corner is not protesting the competition that Royal Farm may bring to his High's Store and Napoli Pizza.
5. It is reputed that the Fork Deli will close in the next 1/2 years because of the retirement of the owners. This should be confirmed however. If they leave, Fork will be drastically underserved.
6. ~~Napoli Pizza has been closed for the past three weeks because of a death in the family. It is uncertain if it will re-open.~~ Has re-opened

I would hope that if the hearing results in the building of a store and station by Royal Farm, that the following would be a condition.

a. That signage be limited and worked out with the Kingsville Community Association,
b. That night lighting be limited as to not take away from the ambiance of the Fork "Village",
c. Six pump islands is excessive for Harford Road in this area and should be limited to only three.
d. Conformance to all fuel storage tank safety and EPA requirements be adheared to.

Respectfully,

Malcolm M. McKnight

UPDATE ON ROYAL FARM STORE

ZONING CASE #99-199X AND DRC #02089F

There was a Development Review Committee hearing on Monday, February 8, 1999 whereby Royal Farm was requesting a limited exemption process in order to bypass the Community Input Meeting and be exempt from a Hearing Officer hearing process with the county. THEIR REQUEST WAS TABLED BY THE HEARING OFFICER until the results of the CONTINUED ZONING HEARING that will be held on Tuesday, February 23 from 9 A.M to 5 P.M., and if needed, Thursday, February 25 from 9 A.M. to 12 P.M. in the County Courts Bldg 401 Bosley Avenue Room 407

The Greater Kingsville Civic Assn and some residents have writted the Director of the Department of Permits and Development Management to adamantly request that this project be required to hold a Community Input Meeting and also be required to go through the Hearing Officer's Hearing process. WE NEED MORE LETTERS TO GO TO THIS OFFICE ASAP.

This is a separate process from the zoning and the more letters that can be a part of this file before the next Development Review Committee hears this case the better! In your letter you can list the many concerns such as groundwater contamination problems, well, septic and storm management issues, increased traffic problems, detrimental lighting and aesthetic concerns, disastrous impact to existing business and residences, insufficient need, etc. and any others that you have concern about. Please sent the letters to:

Mr. Arnold Jablon
Director of the Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, MD 21204

RECEIVED
FEB 22 1999
99-491
DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

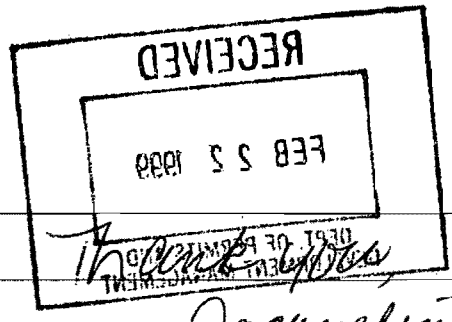
2/19/99

Mr. Arnold Jablon,

This letter is to express my concerns with the proposed building of a royal Farm store on the Corners of Harford + Sunshine Rd.

Traffic is a very big problem we live on Harford Rd in the morning it takes me an average of 7 minutes just to get out of my driveway even when the light turns red there is no relief of traffic the increase of serious/fatal accidents are on the rise in the area.

We already have empty buildings on the corner if this Royal Farm comes I know there will be several other empty buildings This is a farm community we don't need this royal farm. We already have all the stores we need. Also our wells will be at risk. Please do not let this Royal Farm come to our Community



Thank you,

Jacqueline Ratcliffe
12454 Harford Road
Hydes Md 21082

2/22/99
V
DR
please prepare response under your name & send out by end of week!

Daniel & Anne Arnold
12323 Stoney Batter Road
Kingsville, MD 21087-1206
(410) 592-5303

February 22, 1999

By facsimile: (410) 887-5708

Mr. Arnold Jablon
Director
Department of Permits & Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Jablon:

We are writing to you because we are deeply concerned that a Royal Farm Store will be constructed at the intersection of Harford Road and Sunshine Avenue. We are very much against this proposal.

That lot is still damaged from a pre-existing service station. We are concerned about present as well as future groundwater contamination, which can effect wells and septic tanks.

We are also very concerned about increased traffic problems. This is a small, rural area and traffic can already be an issue during peak rush hours. We also do not need additional, detrimental lighting on that corner nor wish to see our neighborhood "built up." Presently we have a service station with a store on one corner and a shopping center with High's Dairy Store and Fork Deli/Bakery on the other corner. This same shopping center is presently half empty. The Royal Farm Store would only harm the presently existing businesses at that intersection. We also presently have another High's Dairy Store, Palmisano's Deli, and a liquor/video store just a couple miles down Fork Road. We do not need additional businesses or construction at that intersection. It will only serve to attract additional traffic, construction, and congestion in our neighborhood. We enjoy living in a rural area without these issues! There is no need for this business to locate here.

We would like to request that this zoning project be required to hold a Community Input Meeting and be required to go through the Hearing Officer's process.

Thank you for your consideration.

Sincerely,

Daniel & Anne Arnold

Daniel & Anne Arnold

99-491

Charles & Glenda Arnold
6703 Lewis Road
Baldwin, MD 21013
(410) 592-3427

February 22, 1999

By facsimile: (410) 887-5708

Mr. Arnold Jablon
Director
Department of Permits & Deve opment Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Jablon:

We are writing to you because e are deeply concerned that a Royal Farm Store will be constructed at the intersection of Harford Road ar 1 Sunshine Avenue. We are very much against his proposal.

That lot is still damaged from a re-existing service station. We are concerned about present as well as future groundwater contaminat n, which can effect wells and septic tanks.

We are also very concerned ab it increased traffic problems. This is a small, rural area and traffic can already be an issue during peak ush hours. Presently we have a service station with a store on one corner and a shopping center with Hig 's Dairy Store and Fork Deli/Bakery on the other corner. This same shopping center is presently ha empty. The Royal Farm Store would only harm the presently existing businesses at that intersection. We also presently have another High's Dairy Store, Deli, and a liquor/video store just a couple miles down ork Road. We do not need additional businesses or construction at that intersection. It will only serve t attract additional traffic, construction, and congestion in our neighborhood. We enjoy living in a rural area without these issues! There is no need for this business to locate here.

We would like to request that t is zoning project be required to hold a Community Input Meeting and be required to go through the Hea ng Officer's process.

Thank you for your considerati n.

Sincerely,

99-491

Charles & Glenda Arnold

PROTESTANTS TO CASE #99-199X

Margaret Buterbaugh — OK
1 Country Hill Court
Kingsville, Maryland 21087

Richard Buterbaugh — OK
1 Country Hill Court
Kingsville, Maryland 21087

Anna Jacobs — OK
2 Country Hill Court
Kingsville, Maryland 21087

Ronald Jacobs — OK
2 Country Hill Court
Kingsville, Maryland 21087

Thomas Russo — OK
3 Country Hill Court
Kingsville, Maryland 21087

Teresa Russo — OK
3 Country Hill Court
Kingsville, Maryland 21087

Barbara Morley — OK
4 Country Hill Court
Kingsville, Maryland 21087

Paul Morley — OK
4 Country Hill Court
Kingsville, Maryland 21087

Robert Langley — OK
5 Country Hill Court
Kingsville, Maryland 21087

Irene Langley — OK
5 Country Hill Court
Kingsville, Maryland 21087

Sharon Porter — OK
6 Country Hill Court
Kingsville, Maryland 21087

PROTESTANTS TO CASE #99-199X

David Porter 6 Country Hill Court Kingsville, Maryland 21087		OK
Carol Shaw 7 Country Hill Court Kingsville, Maryland 21087		OK
Bernard Shaw 7 Country Hill Court Kingsville, Maryland 21087		OK
Rosanne DiFonzo 9 Country Hill Court Kingsville, Maryland 21087		OK
Mario DiFonzo 9 Country Hill Court Kingsville, Maryland 21087		OK
Eleanor DiFonzo 9 Country Hill Court Kingsville, Maryland 21087		OK
Sheila Bender 11 Country Hill Court Kingsville, Maryland 21087		OK
Charles Bender 11 Country Hill Court Kingsville, Maryland 21087		OK
George Donald 13 Country Hill Court Kingsville, Maryland 21087		OK
Adele Donald 13 Country Hill Court Kingsville, Maryland 21087		OK
Mary Beth Wilson 3944 Forest Valley Road Baltimore, Maryland 21234	(Owner of 12525 Harford Road - 14 acres behind proposed development; breaking ground for house this spring)	OK
	PROTESTANTS TO CASE #99-199X	
Brett Wilson	(Owner of 12525 Harford Road - 14 acres behind	OK

3944 Forest Valley Road Baltimore, Maryland 21234	proposed development; breaking ground for house this spring)	
Kathleen Snyder 6724 Sunshine Avenue Fork, Maryland 21051		OK
John Gordon 4605 Long Green Road Long Green, Maryland 21092	(Owner of Fork Citgo) 12601 Harford Road Fork, Maryland 21051	OK
Dawn Gordon 4605 Long Green Road Long Green, Maryland 21092	(Owner of Fork Citgo) 12601 Harford Road Fork, Maryland 21051	OK
Edna Mueller 12401 Long Green Pike Glen Arm, Maryland 21057	(Owner of Fork Deli) 12607 Fork Road Fork, Maryland 21051	OK
Charles Mueller 12401 Long Green Pike Glen Arm, Maryland 21057	(Owner of Fork Deli) 12607 Fork Road Fork, Maryland 21051	OK
Richard Bartlett 41 Esperanza Court Baltimore, Maryland 21208	(Owner of FreeState Montessori School) 12536 Harford Road Fork, Maryland 21087	OK
Clair Sarkowski 41 Esperanza Court Baltimore, Maryland 21208	(Owner of FreeState Montessori School) 12536 Harford Road Fork, Maryland 21087	OK

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Robert Hoffman	210 Allegheny Ave 21204
Ken Schmidt	8258 Veterans Hwy Suite 19A Millersville, Md 21108
John K. Lamp	3611 Roland Avenue Balto MD 21211
Nick Bradek	6600 York Rd. Balto, MD 21212
Linda T Lee	4 Vista Vw Ct 21057

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Petitioner

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~~PROTESTANT~~(S) SIGN-IN SHEET

NAME	ADDRESS
Rob Hoffman	210 Allegheny Ave 21204
John T. Kemp	3611 Roland Avenue
Nick Brader	6600 York Rd Suite 209
Peter W. Ratcliffe	10404 Stevenson Rd 21153
Ken Schmidt	8258 Veterans Hwy, Millersville, MD 21108

Ginny

VIRGINIA TERHUNE
NORTHEAST BOOSTER/ NORTHEAST REPORTER
STAFF WRITER

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410-337-2425
EXT. 3447

email:
vterhune@patuxent.com

PATUXENT PUBLISHING COMPANY

409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

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PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Constance M. Hess	6511 Bordon Rd Fork Md 21051
Eileen O'Brien	12417 Harford Rd 21087
Karen A. Roland	12828 Harford Rd Hydes MD 21082
Diana McCann	12828 Harford Rd Hydes Md 21082
Kate King	12910 FORK RD BALDWIN. md 21013
Allen Dumble	13127 Bottom Rd. Hydes, Md 21082
Joyce Bean	13302 BOTTOM Rd Hydes MD 21082
Rich Bean	13302 Bottom Rd Hydes MD. 21082
Richard Bean	13302 BOTTOM RD HYDES MD 21082
Shirley Mulligan	12704 Wilson Av, Fork MD 21051
Joan Griffith	12703 Wilson Ave Fork Md 21051
Edna R. Mueller	12401 Long Green Pike Glen Arm Md 21057
Dawn L. Gardner	4605 Long Green Rd. Long Green MD 21092
Patricia L Garner	12535 Merritt Ave Fork Md 21051
ROBT. W. JONES	12846 FORK RD FORK MD 21051
JAMES G HUMPHREYS	12533 Merritt Ave Fork Md 21051
Christine Humphreys	12533 Merritt Ave, Fork, Md 21051
RICHARD E. BUTTERBAUGH II	1 COUNTRY HILL COURT KINGSVILLE 21087
Steve Feazell	1002 Kruder Ct. Bel Air MD 21014
ELIZABETH HEALEY	7333 Sunshine Ave Kingsville 21087
Rosemary Gomez	13218 Fork Rd. Baldwin MD 21013
Sean michael Thompson	13218 fork Rd Baldwin md 21013
THOMAS J. RUSSO	3 COUNTRY HILL CT, KINGSVILLE, 21087
ALVAN G E M M EL	13219 FORK Rd BALDWIN MD 21013
MARIO J. DIFONZO	#9 COUNTRY HILL CT. KINGSVILLE MD 21087

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Paul M Plowman	13105 Fork Rd Baldwin 21013
Charlotte Pine	607 Baltimore Ave, Towson Md. 21204
SHARON POHRIBAUGH	13558 FORK RD BALDWIN 21013
Robert Langley	5 Country Hill Ct.
Irene Langley	5 Country Hill Ct
Theresa Russo	3 Country Hill Ct
Barbara Motley	4 Country Hill Ct 21087
Rosanne Ditoro	9 Country Hill Ct 21087
Bernd Shaw	7 Country Hill Ct 21087
Ford N. Shaw	7 Country Hill Ct 21087
Charles Bender	11 Country Hill Ct. 21087
Mary Dilia-Wilson	12525 Harford Rd 21087
Brett S. Wilson	Country Hill Estates
Josephine P. Snyder	6724 Sweaken Ave Fork-MD 21051
Linda Theis	11 Vista View Ct 21087
JOHN E. SHINNERS, JR.	12917 FORK RD 21013
Cheryl A. Reek	13107 Sunfield Rd 21013
Linda A. Schott	12316 Harford Rd. 21082
DOLORES V. LONG	12510 HARFORD RD 21082
JAMES C. LONG	12510 HARFORD RD 21082
JOHN C. Martin	FORK, MD
Ronald Smeak	2 Country Hill Ct
Ann Pagolus	2 Country Hill Ct.
Sharon L. Porter	6 Country Hill Ct.
Thomas B Buchanan	12706 Harford Rd

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
CAROL SHAW	7 Country Hill Ct 21087
ROSANNE DIFONZO	9 COUNTRY HILL CT 21087
KATHY SNYDER	6724 SUNSWING AVE 21051
Kay Buchanan	12708 Harford Rd 21082
Tom Buchanan	12708 HARFORD RD 21082
Dawn Gordon	12401 Harford Rd 21051
Bob Sheesley	8354 Chestnut Farm Lane 21043
Joyce Bean	13302 Bottom Rd 21082
Don Smith	12652 Fork Rd Fork MD 21051
Cheryl Reek	13107 Sanfield Rd. Baldwin 21013
Robert Langley	5 CountryHill Ct 21087
BERNIE Shaw	7 Country Hill Ct 21087
SHARON POTTERBAUGH	13558 FORK RD 21013
RON JACOBS	2 COUNTRY HILL CT 21087
Ann Jacobs	2 Country Hill Ct. 21087
ROBIN BEERS	12442 JERUSALEM RD. KINGSVILLE 21087
PAT BARNER	12535 MERRITT AVE 21051
Sheila Bender	11 Country Hill Ct. 21087
Dorothy E. Foos	6403 Lewis Rd. Baldwin, Md. 21013
Eileen O'Brien	12417 HARFORD Rd 21087
BRETT WILSON	3944 Forest Valley Rd 21234
TOM RUSSO	3 COUNTRY HILL CT, KING. 21087
Terry Russo	3 Country Hill Ct.
FRANCIS P. SNARSKI	134 HOPKINS RD. BALTO. CO. 21212
DOUG BEHR	7451 BRADSHAW RD Kville 21087

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Elizabeth L. HEACEY	7933 Sunshine Ave. Kingsville
BARBARA Morley	4 Country Hill Ct Kingsville
MARIO J. DiFONZO	9 Country Hill Ct. Kingsville
David Klapaska	6242 Glen ARM Rd. Hydes
Mary Kay Gauer	1313 Sorbus Ct. Fallston
Diana McCann	12828 Harford Rd Hyde 21082

Note

Seven Kids

Notes &

Copy of

transcript in

Large Wallet

Drawer.

Verified 10-19-99
Verified 9/30/99

Verified 1/20/2000
Verified 1/27/00
Verified 1/27/2000 at close of meeting

Seven Kids/Cloverland Farms

99-199-X
CBA-99-127
CBA-99-128

Verified 11-27-00 CCK for VERIFIED 3-22-00

PETITIONERS EXHIBITS

Ver. 2/9/00
Ver. 4/4/00
Ver 4/07/00

1A	SITE PLAN	✓ ✓
1B	" "	✓
2	G. U. - KENNETH SCHMID - TRAFFIC ENGINEER	✓ ✓
#3	TRAFFIC CONCEPTS - REPORT - SEPT, 1999	✓ ✓
#4	DRAWING OF ROAD SYSTEM AT SITE (PROPOSED CHANGES)	✓ ✓
#5	Resume JOSEPH CRONYN	✓ ✓
#6	PROPOSED ROYAL FARM STORE (MARKET ANALYSIS)	✓ 2-27-98
#7	(NEUMAN CASE) - DEFINING WORD "NEED" PAGE 4	✓ ✓
#8	G. U. PETER RATCLIFFE	✓ ✓
#9	DRAWING OF PROPOSED BLDG	Large Exhibit - Closet
#10	A-V PHOTOS	✓ ✓
#11	C.V. ROBERT SHEESLEY (Resume)	✓ ✓
#12	200 SCALE AERIAL PHOTO G.I.S.	✓ ✓
#13	DEC 7 1998 LETTER FROM BRUCE SEELEY → ARNOLD JABLON (ZONING ADVISORY COMMITTEE MEETING)	✓ ✓
#14	JAN 31, 99 LETTER FROM SHEELEY → ELLEN JACKSON	✓ ✓
#15	FEB 12, 99 LETTER FROM M.D.E. → JSHEELEY	✓ ✓
#16	FRACTURE TRACE MAP OCT 1. 1999	✓ ✓
17	REPORT FROM NUTSHELL APRIL 5, 98 (WELL TEST)	✓ ✓

Verified 10/07/99

Seven Kids / Cloverland
99-199-X
CBA-99-127
CBA-99-128

Verified 11.27.00 for CCK

Verified 1/20/2000
Verified 1/27/00
verified 1/27/2000 at close of hearing
Verified 2.25.00
Verified 3.22.00
Verified 4-4.00

Verified 9/30/99

PROTESTANTS EXHIBITS

Verified 4-07-00

#1 TRAFFIC COUNT DATA 24 HOUR PERIOD (FROM SUN TO THURS)
#2 JUNE 23, 1988 REPORT EA ENGINEERING
#3 EA ENGINEERING TOC ELEVATIONS
#4 TEST WELL MONITORING LOCATIONS (BLUE)

DAY 3 JAN 19

#5 MO ENVIRONMENT REPORT 1/10/90
#6 PHOTO - NITE TIME ROYAL FARM STORE 8 MILE AWAY
#7 5 PHOTOS - BLDG'S - IN NEIGHBORHOOD - CLOSE TO SITE Large Exhibit
#8 PHOTOS MO. HISTORICAL TRUST SITES Large Exhibit (IN Closet) 7 and 8
#9 VILLAGES BROCHURE

DAY 4 JAN 20

#10 RULE 8 PAPERS - GREATER KINGSVILLE CIVIC ASSOCIATION
#11 GREATER KINGSVILLE AREA COMMUNITY PLAN JULY 1-96
#12 B. COUNTY COMP. ZONING MAP ISSUES DISTRICT 5 11/24/99
#13 JULY 13, 1988 LETTER FROM O.E.P.R. TO MRS MORLEY
#14 AUG 29, 1988 LETTER " " TO MR HAWKINS
#15 B.G.E LETTER DATED FEB 16, 99
#16 TRANSCRIPTS - 60 MINUTES SHOW - JAN 16, 2000
#17 ABANDONED AND CLOSED GAS PUMPS AND STATIONS (12 PHOTOS) IN Large Exh. closet
#18 1ST AMENDED FINAL ORDP PLAN COUNTY ESTATES Jay

Jay

Seven Kids
99- 199-X
CBA- 99-127
CBA 99-128

Verified 11.27.00 BC CK (Sheet 2)

PROTESTANTS EXHIBIT

DAY 5 - 1/27/00

#19 Role 8 - Hong Green Valley (Charlotte Pine)

1.0 20 BALT COUNTY RURAL LEGACY PROGRAM BOUNDARY MAP

* (WILL SUBSTITUTE WITH ORIGINAL)

LARGE 21 PHOTOS - EXISTING BUSINESSES (IN EXHIBIT CLOSET)

LARGE 22 LOOK OF ROYAL FARMS & ABANDONED GAS STATIONS (IN EXH. CLOSET)
(11 PHOTOS)

1.0 23 AEGIS ARTICLE

LARGE 24 TRAFFIC VIEWS - PHOTOS (25) (IN Exhibit Closet)

LARGE 25 COUNTRY HILL VIEWS OF SITE (9 PHOTOS) (IN Exh. Closet)

26 200 SCALE TOPO MAP

LARGE 27 CHART - CRIME STATISTICS (IN Exhibit Closet)

28 ROBBERY - HOW YOUR BUSINESS CAN AVOID IT (10 PAGES)

1.0 29 POLICE REPORT (NEWS RELEASE) (NOT ADMITTED)

1.0 30 REPORT ON WORKPLACE VIOLENCE (1. 1 ")

ORANGE PAPER EXHIBIT 31 PHOTOS - TOPOGRAPHY VIEWS (JAN 2000) (IN Exh. Closet)

DAY 6- FEB 9

32 RUSSO CHRONOLOGY (9 PAGES)

33 ACTION REPORT 10-24-87- DEPRM

34 PACKET OF LETTERS FROM RUSSO → RASMUSSEN, COLLINS ETC. TO RUSSO

35 SITE CONTAMINATION ASSESMENT PLAN 2/2/88

LARGE POSTER 1.0 36 5 DOCUMENTS IN CLOSET (Large Exhibit)

37 REPORT OF GROUND H_2O INVESTIGATION 1/20/89

38 EA ENGINEERING → OAHU HUBER JUNE 23, 88

39 JUNE 21, 88 LETTER TO RUSSO FROM D. EPRM.

EUGENE SI

Seven Kids

99- 199-*

CBA 99- 127

CBA 99- 128

PROTESTANTS EXHIBITS (SHEET #3)

DAY 6- CONTINUED

40 RUSSO WELL SAMPLE ANALYSIS HISTORY ✓ ✓

(*) (NEED SUPPLIMENTAL DOCUMENTATION) NEXT HEARING

41 MOE REPORT OCT 8, 1999 ✓ ✓

42 MARCH 9, 89 LETTER FROM DEPRM → MR ZINK ✓ ✓

43 1-31-94 LETTER FROM DEPT OF ENVIRONMENT (JANN NORMAN ✓

44 REPORT - NUTSHELL APRIL 19, 94 ✓

GROUND - WATER - INVESTIGATION

45 MO SPECTRAN SERVICES 4-5-94 ANALYTICAL CHEMISTRY SERVICES ✓ ✓

46 DEPT ENVIRONMENT 6-13-95 (REPORT OF OBSERVATIONS) ✓ ✓

47 FEB 12 98- REPORT FROM NUTSHELL ✓ ✓

48 DEPT OF ENVIRONMENT MARCH 6, 98- REPORT ✓ ✓

49 NUTSHELL REPORT APRIL 5, 98 ✓ ✓

50 A APR 29 98 OSHA NATIONAL NEWS RELEASE ✓ ✓

B JULY 16 96 VIOLENCE IN THE WORKPLACE —

" " " RISK FACTORS —

C OSHA - WORKPLACE VIOLENCE —

D OSHA - RECOMMENDATIONS FOR NIGHT RETAIL WORKERS —

99-199-X
Cloverland
Verified 3/01/00

Verified 4-4-00

PROTESTANTS EXHIBITS (SHEET #4)

DAY 7

#51 ✓ BALT COUNTY RURAL LEGACY PLAN.
(MAP 35 - RURAL LAND MGMT. AREA)
INCLUDES 2010 MASTER PLAN

52 ✓ PORTIONS OF MASTER PLAN 2010 + (GREATER KINGSVILLE COMM. PLAN)

53 ✓ AMENDMENTS TO PROPOSED MASTER PLAN 2010

54 ✓ COMPARATIVE MARKET SHOP - 4 AREA REPORT FEB 19 99
ROYAL FARM STORES ETC.

55A 3 MILE RADIUS MARKET ANALYSIS ✓

55B LARGE BOARD - PHOTOS & MAP - DEPICTING ABOVE ~~EXHIBIT~~ LARGE EXHIBIT (IN closet)

56 A-FIVE MILE RADIUS MARKET ANALYSIS

Large 56B - LARGE BOARD - MAP PHOTOS > (PUT 2 TOGETHER TO MAKE 1)
" "
C

57 ROYAL FARM STORES LOCATION ANALYSIS - OCT. 99

58 2 FOLDERS - PETITIONS - OPPOSITION ✓

59 ANALYSIS OF OPPOSITION - TO ROYAL FARM STORE ✓

60 WELL COMPLETION REPORTS (4 PAGES) ✓
A RUSSO
B MORLEY REPORT
C HAWKINS
D SHAW

61 CHART - ~~ATTACH~~ DOMINO CHART OF ASSUMPTIONS ✓

DAY 8

62 NOTES OF D.L.C. HEARING - (FROM TAPES BELOW) ✓

63 NOTES OF MS SHAW - D.L.C. HEARING (KEMP TESTIMONY)

64 DIAGRAM STORM CENTER

65 DEPTH FILE

Verified 4/4/00
Verified 4/07/00

Verified
11-27-00
80 CCX

Exemption Case

(Day 8) Petitioners Exhibits (D.R.C.)

#1 D R C - File Case # 02089 F (Packet)

#2 D. R. C. File Case 07069 E (")

Day 8 #3 D. R. C. - File From D. R. C. (Rascoe)

Seven Kids

DAY 9 PETITIONERS EXHIBITS

Large roll #27 1000 SCALE ZONING MAPS Closet (A THRU O) (15)

#28 U.S. GEOLOGICAL 7½ MINUTE QUADRANGLE MAPS 1" = 2000 SQ FT (4) (25)

Large roll #29 GEOLOGIC MAP OF BALTIMORE COUNTY

Large roll #30 ZONING MAP 1 D Closet

Verified
11-27-00
for cat

PETITIONERS EXHIBITS

DAY 3 - JAN 19

#18 C.U. THOMAS MILLS

#19 BROCHURE - DOUBLE OP - FUEL TANK

#20 BROCHURE - PISCES (FUEL EQUIPMENT)

#21 ROYAL FARMS - EQUIPMENT INSTALLATION OVERVIEW

#22 MD PUMP, TANK & ELECTRIC CO. SEPT 28, 99

#23 C.V. NICHOLAS BRADEN

#24 REPORT BALT COUNTY FIRE DEPT. NOV 29, 98

DAY 4 JAN 20

#25 PG. 29 OF GREATER KINGSVILLE AREA COMM. PLAN

DAY 8

#26 MAP - PROPOSED LAND USE (MAP 39) MASTER PLAN

#27 EXPLANATION

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at Harford Road and Sunshine Avenue

which is presently zoned BL-CR

This Petition shall be filed with the Department of Permits & 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 part of hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

Section 405.4.E.1 of the Baltimore County Zoning Regulations to permit an automobile service station in combination with a food store with a sales area larger than 1,500 square feet.

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 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:

Cloverland Farms Dairy, Inc.
(Type or Print Name)

John M. Kemp V.P.
Signature: John M. Kemp, Vice-President

3611 Roland Avenue
Address

Baltimore | MD | 21211
City | State | Zipcode

Attorney for Petitioner:

Robert A. Hoffman
Venable, Baetjer and Howard, LLP
(Type or Print Name)

Signature

210 Allegheny Avenue | (410) 494-6200
Address | Phone No

Towson | MD | 21204
City | State | Zipcode

Legal Owner(s):

~~Frank Commercial Property c/o International Custom Tailors, Inc.~~ Seven Kids, LLC
(Type or Print Name)

Lauren M. Eby
Signature: ~~Charles J. Frank~~ LAUREN M. EBY
Title: MEMBER

(Type or Print Name)

Signature

120 Cockeysville Road | (410) 771-8400
Address | Phone No.

Cockeysville | MD | 212030
City | State | Zipcode

Name, Address and phone number of legal owner, contract purchaser or representati to be contacted.

Robert A. Hoffman
Venable, Baetjer and Howard, LLP
Name

210 Allegheny Avenue, Towson, MD 21204 | (410) 494-6200
Address | Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

unavailable for Hearing the following dates _____
Next Two Months
ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

ORDER RECEIVED FOR FILING
Date 11/10/98
By

99-199-X

FROM THE OFFICE OF
GEORGE WILLIAM STEPHENS, JR., & ASSOCIATES, INC.
ENGINEERS
658 KENILWORTH DRIVE, SUITE 100, TOWSON, MARYLAND 21204

Description to Accompany A Petition for
A Special Exception

September 4, 1998

Beginning for the same at a point in or near the centerline of Harford Road (Maryland State Road 147) at the beginning of the 2nd or South 55° 11' 30" East 805.97' line of that parcel of land described in a deed dated June 29, 1989 between Sunshine Avenue Corporation and International Custom Tailors, Inc., recorded among the Land Records of Baltimore County, Maryland in Liber S.M. 8216 folio 826, running thence leaving said Harford Road, binding on part of said 2nd line and running in the bed of Sunshine Avenue,

1.) South 55° 11' 30" East 293.09' to a point in the bed of said Sunshine Avenue, running thence leaving said Sunshine Avenue and said 2nd line, running through that parcel of land described in said Deed (S.M. 8216/826), the three following courses:

2.) South 48° 13' 28" West 96.04'

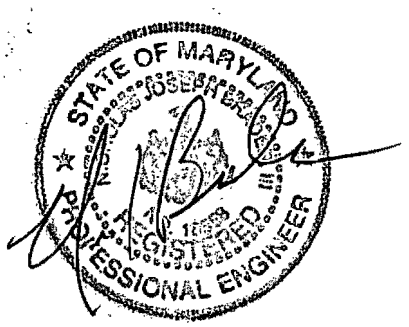
3.) South 55° 04' 16" West 177.85'

4.) North 35° 26' 35" East 284.85' to a point in or near the center of Harford Road and to intersect the 1st line of said Deed (S.M. 8216/826), running thence binding in or near the center of said Harford Road and binding on part of said 1st line,

5.) North 54° 33' 25" East 174.26' to the point of beginning.

Containing 1.47 acres of land more or less.

THIS DESCRIPTION COMPILED FOR ZONING PURPOSES ONLY AND NOT INTENDED TO BE USED FOR CONVEYANCES OR AGREEMENTS



410-825-8120 • FAX 410-583-0288

99-199-X

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 061029

DATE 11/10/98 ACCOUNT 001-6150

AMOUNT $ 300.00 (WCR)

RECEIVED FROM: Venable, Baetjer & Howard

FOR: SPECIAL EXCEPTION

Harford Road & Sunshine Avenue
Drop-Off -- No Review Case #99-199-X

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT
PROCESS ACTUAL TIME
11/12/1998 11/10/1998 15:47:37
REG WS03 CASHIER PWES PEW DRAWER 3
5 MISCELLANOUS CASH RECEIPT
Receipt # 065645 OFLN
CR NO. 061029
300.00 CHECK
Baltimore County, Maryland

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 067057

DATE 5/27/99 ACCOUNT 001-6150

AMOUNT $ 285.00

RECEIVED FROM: J. Carroll Holzer

FOR: APPEAL & SIGN

#99-199-X

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

PROCESS	ACTUAL	TIME
5/28/1999	5/27/1999	15:58:58

REG WS03 CASHIER PWES PEW DRAWER 3
Dept 5 528 ZONING VERIFICATION
Receipt # 086884 OFLN
CR # 0. 067057
Recpt Tot 285.00
285.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

BUILDING PERMIT PROCESSING
CASH SLIP RECEIPT

No. A 378525 B369629

BALTIMORE COUNTY
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 100
TOWSON, MARYLAND 21204

PAID RECEIPT

PROCESS	ACTUAL	TIME
3/03/1999	3/02/1999	16:01:45

REG WS02 CASHIER JRIC JMR DRAWER 2
2 PERMITS & DEVELOPMENT MGT
Receipt # 082604 OFLN
DOCUMENT # A378525
65.00 CASH
Baltimore County, Maryland

OFFICE OF FINANCE USE ONLY

APPLICANT Vicki Baller

ADDRESS 2801 Linganore Ave ZIP CODE 21234

CHECK ITEM	ITEMS	PAY CODE	G/L ACCOUNT NUMBER	FEE
	ABANDONED WATER METER APPLICATION	200	231-2874	
	APPEAL PROCESS FEE	204	001-006-6150	
✓	BUILDING PERMIT APPLICATION 6043	209	001-006-2510	65.
	CHANGE OF OCCUPANCY	210	001-006-2520	
	COUNTY FINANCING APPLICATION	211	231-006-7120	
	ELECTRICAL ADMINISTRATIVE BOARD EXAM FEE	212	001-006-6090	
	ELECTRICAL ADMINISTRATIVE BOARD LICENSE	213	001-006-2210	
	ELECTRICAL PERMIT	214	001-006-2600	
	FIRE HYDRANT METER	217	231-006-6180	
	FIRE INSPECTION	246	001-006-6019	
	GAS PERMIT APPLICATION	220	001-006-2420	
	MASTER'S FEE	249	001-006-6135	
	PERCOLATION TEST	224	001-006-6750	
	PHOENIX WATER CHARGE	248	030-006-6133	
	PLUMBING BOARD LICENSE	225	001-006-2220	
	PLUMBING PERMIT APPLICATION	226	001-006-6220	
	SEPTIC TANK PERMIT	228	001-006-2430	
	SEWER PROPERTY CONNECTION APPLICATION	229	231-006-6051	
	SEWER SERVICE CHARGE, PRORATED	230	030-006-6012	
	SEWER SYSTEM CHARGE	231	231-006-6141	
	STORM DRAIN CONNECTION	233	001-006-2440	
	SUB-SOIL DRAIN INSTALLATION	234	001-006-6220	
	WASTEWATER DISCHARGE PERMIT	240	030-006-2630	
	WATER DISTRIBUTION	241	030-006-6043	
	WATER METER APPLICATION	242	231-006-6060	
	WATER METER FEE	243	231-2874	
	WATER SURCHARGE	244	231-006-6151	
	WATER SYSTEM CHARGE	245	231-006-6151	

CHECK/MONEY ORDER PAYABLE TO BALTIMORE COUNTY, MARYLAND TOTAL 65

DESCRIPTION: Cost

PREPARER'S NAME Sylvia A. DL DATE 3-2-99

THIS IS NOT A PERMIT OR LICENSE AND DOES NOT AUTHORIZE CONSTRUCTION OF ANY KIND. NO BUILDING, PLUMBING, OR ELECTRICAL PERMIT FEE IS REFUNDABLE.

WHITE-AGENCY YELLOW-APPLICANT PINK-FINANCE

REV 1/97

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #99-199-X
SE/S Harford Road, corner SW/S Sunshine Avenue
11th Election District
5th Councilmanic District
Legal Owner(s): Seven Kids, LLC
Contract Purchaser: Cloverland Farms Dairy, Inc.

Special Exception: to permit an automobile service station in combination with a food store with a sales area larger than 1,500 square feet.

Hearing: Tuesday, December 22, 1998 at 10:00 a.m., in Room 407, County Courts Bldg., 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call (410) 887-3353.
(2) For information concerning the File and/or Hearing, Please Call (410) 887-3391.

12/034 Dec. 3 C277175

CERTIFICATE OF PUBLICATION

TOWSON, MD., 12/3, 1998

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 12/3, 1998.

THE JEFFERSONIAN,

A. Henrickson

LEGAL AD. - TOWSON

Jem 12/22

RE: Case No.: 99-199-X

Petitioner/Developer: CLOVERLAND FARM, ETAL
C/O R. HOFFMAN, ESQ

Date of Hearing/Closing: 12/22/98
@ 10 AM
RM 407
CCB

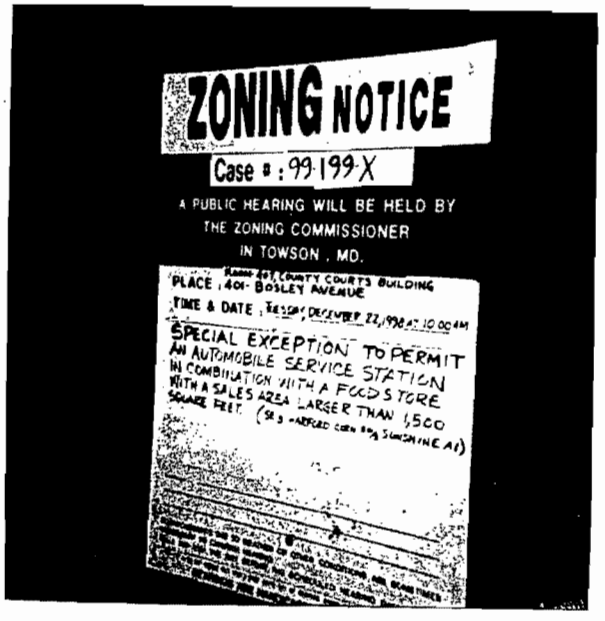
Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at SE/S HARFORD RD. @ SUNSHINE AVE.

The sign(s) were posted on 12/6/98
(Month, Day, Year)



Sincerely,

Patrick M O'Keefe 12/10/98
(Signature of Sign Poster and Date)

PATRICK M. O'KEEFE
(Printed Name)

523 PENNY LANE
(Address)

HUNT VALLEY, MD. 21030
(City, State, Zip Code)

410-666-5366 ; CELL-410-905-8571
(Telephone Number)

CERTIFICATE OF POSTING

RE: Case No. 99-199-X

Petitioner/Developer: NEW DATE
BY J. CARROLL HOLZER, ESQ

Date of Hearing/Closing: 1/27/99

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at SE COR. SUNSHINE AVE & HARFORD ROAD – 2 SIGNS REPOSTING

The sign(s) were posted on 1/11/99
(Month, Day, Year)

Sincerely,

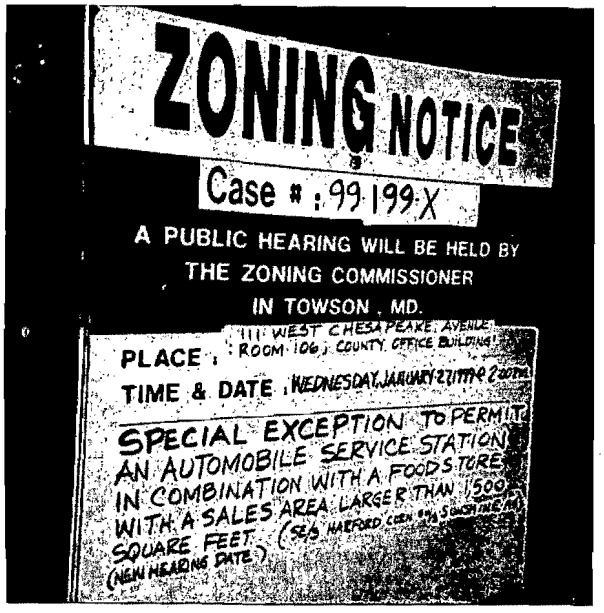
Patrick M. O'Keefe 1/14/99
(Signature of Sign Poster and Date)

PATRICK M. O'KEEFE
(Printed Name)

523 PENNY LANE
(Address)

HUNT VALLEY, MD. 21030
(City, State, Zip Code)

410-666-5366 ; CELL-410-905-8571
(Telephone Number)



99-199-X
HARFORD & SUNSHINE
W-1/27/99

CERTIFICATE OF POSTING

X CONTINUED 1/99

RE: Case No. 99-188-X

Petitioner/Developer ROYAL FARMS, ETAL
C/O R. HOFFMAN, ESQ

Date of Hearing/Closing 2/23 & 2/25/99
CONT'N.

F-821-0147

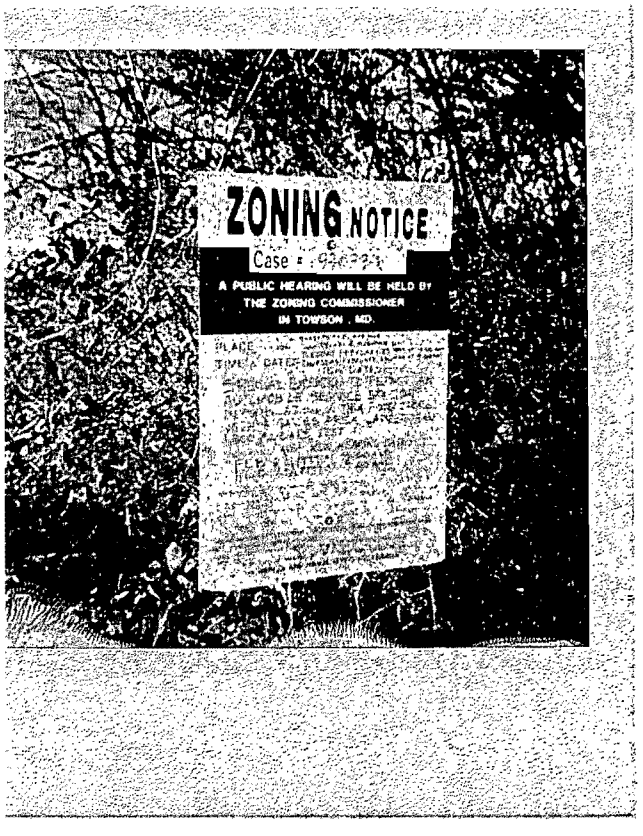
Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at SE/C HARFORD RD @ SUNSHINE AVE
2- LOCATIONS

The sign(s) were posted on 2/8/99
(Month, Day, Year)



Sincerely,

Patrick M. O'Keefe 2/18/99
(Signature of Sign Poster and Date)

PATRICK M. O'KEEFE
(Printed Name)

523 PENNY LANE
(Address)

HUNT VALLEY, MD. 21030
(City, State, Zip Code)

410-666-5366 ; CELL-410-905-8571
(Telephone Number)

CERTIFICATE OF POSTING

RE: Case No.: 99-199-X

Petitioner/Developer:

CLOVERLAND FARMS

Date of Hearing/Closing: _____

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at [redacted].

S/E COR. HARFORD & SUNSHINE

The sign(s) were posted on 7/7/99
(Month, Day, Year)

Sincerely,

7/7/99
(Signature of Sign Poster and Date)

(Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number)

Exhibit B

Request for Zoning: Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than _____.

Format for Sign Printing, Black Letters on White Background:

ZONING NOTICE

Case No.: 99-199-X

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD

PLACE: _____

DATE AND TIME: _____

REQUEST: SPECIAL EXCEPTION TO PERMIT AN AUTOMOBILE SERVICE STATION IN COMBINATION WITH A FOOD STORE WITH A SALES AREA OF LARGER THAN 1,500 SQUARE FEET.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) 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 (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: _____

Petitioner: Cloverland Farms Dairy, Inc.

Address or Location: SE corner of Harford Rd and Sunshine Avenue

PLEASE FORWARD ADVERTISING BILL TO:

Name: BARBARA W. ORMORD, LEGAL ASSISTANT

Address: VENABLE, BAETJER & HOWARD, LLP
210 ALLEGHENY AVENUE
TOWSON, MARYLAND 21204

Telephone Number: 410-494-6201

Revised 2/20/98 - SCJ

99-199-X

TO: PATUXENT PUBLISHING COMPANY
December 3, 1998 Issue – Jeffersonian

Please forward billing to:
Barbara W. Ormord, Legal Assistant 410-494-6201
Venable, Baetjer and Howard
210 Allegeheny Avenue
Towson, MD 21204

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER 99-199-X
SE/S Harford Road, corner SW/S Sunshine Avenue
11th Election District – 5th Councilmanic District
Legal Owner: Seven Kids, LLC
Contract Purchaser: Cloverland Farms Dairy, Inc.

Special Exception to permit an automobile service station in combination with a food store with a sales area larger than 1,500 square feet.

HEARING: Tuesday, December 22, 1998 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Lawrence E. Schmidt
SC)

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 410-887-3391.

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

November 23, 1998

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER 99-199-X
SE/S Harford Road, corner SW/S Sunshine Avenue
11th Election District – 5th Councilmanic District
Legal Owner: Seven Kids, LLC
Contract Purchaser: Cloverland Farms Dairy, Inc.

Special Exception to permit an automobile service station in combination with a food store with a sales area larger than 1,500 square feet.

HEARING: Tuesday, December 22, 1998 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon
Director

c: Robert A. Hoffman, Esquire
Seven Kids, LLC
Cloverland Farms Dairy, Inc.

NOTES: (1) **YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY DECEMBER 7, 1998.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 410-887-3391.

Printed with Soybean Ink on Recycled Paper

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
J. HOWARD HOLZER
1907-1989
THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING
508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET

Tim 12/22

December 18, 1998

HAND DELIVERED
Lawrence Schmidt
Zoning Commissioner
Suite 405
401 Bosley Avenue
Towson, Md. 21204

Granted per Smith 12/18/98

RECEIVED 18

Re: Petition for Special Exception
Case No. 99-199-X

Dear Zoning Commissioner:

Late Thursday afternoon, December 17, I was contacted by the Greater Kingsville Civic Association to represent their interests in the above referenced case that apparently is scheduled for a hearing on Tuesday, December 22, 1998 in the County Courts building Hearing Room at 10:00 a.m. My clients only became aware of the hearing on Monday or Tuesday of this week when they saw a posted sign on the subject property. Because of their late awareness of this case and insufficient time to provide their counsel with information on the hearing, my clients respectfully request a postponement of the case to a mutually agreeable time.

I appreciate your prompt attention in this matter and can be reached at 410-825-6961.

Very truly yours,

J. Carroll Holzer

JCH:clh

VENABLE, BAETJER AND HOWARD, LLP
Including professional corporations

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517
(410) 494-6200, Fax (410) 821-0147
www.venable.com

OFFICES IN

MARYLAND
WASHINGTON, D.C.
VIRGINIA

VENABLE
ATTORNEYS AT LAW

Writer's Direct Number:
410-494-6201

December 22, 1998

Ms. Sophie Jennings
Department of Permits and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Re: Zoning Case No. 99-199-X
Petitioner: Cloverland Farms Dairy, Inc.

Dear Sophie:

As you know, the above-captioned matter, which had been set in for Tuesday, December 22, 1998, has been postponed. The Zoning Commissioner's Office informed me that they will be returning the file to you for rescheduling. If possible, we would request that the hearing be set in for either January 19, 20 or 28, 1999. Our date of preference would be January 28, 1999.

Please give me a call once the hearing has been rescheduled, or if you have any questions.

Sincerely,

Barbara

Barbara W. Ormord,
Legal Assistant

BWO/e
cc: Robert A. Hoffman, Esquire

TO1DOCS1/erl01/#76578 v1

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

December 23, 1998

J. Carroll Holzer, Esquire
Holzer and Lee
The 508 Building
508 Fairmount Avenue
Towson, MD 21286

Dear Mr. Holzer:

RE: Case Number 99-199-X, Harford Road and Sunshine Avenue

The above matter, previously assigned to be heard on Tuesday, December 22, 1998 (which was postponed by the Deputy Zoning Commissioner) has been **rescheduled for Wednesday, January 27, 1999 at 2:00 p.m. in Room 106, County Office Building, 111 West Chesapeake Avenue.**

As the person requesting the postponement, you are now responsible for affixing the new hearing date and time to the hearing notice sign posted on the property as soon as possible.

If you need further information or have any questions, please do not hesitate to contact Sophia Jennings at 410-887-3391.

Very truly yours,

Arnold Jablon
Director

AJ:scj

c: Robert A. Hoffman, Esquire
Seven Kids, LLC
Cloverland Farms Dairy, Inc.

Printed with Soybean Ink
on Recycled Paper

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

June 15, 1999

NOTICE OF ASSIGNMENT

CASE #: 99-199-X

IN THE MATTER OF: SEVEN KIDS, LLC -OWNER; CLOVERLAND FARMS DAIRY, INC. -Developer (Royal Farm Store) SW/cor Sunshine Ave & Harford Road
11th Election District; 5th Councilmanic

(D.Z.C. GRANTED special exception with restrictions.)

ASSIGNED FOR: **THURSDAY, JULY 15, 1999 at 10:00 a.m. /Day #1**
and **THURSDAY, JULY 29, 1999 at 10:00 a.m. /Day #2**

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

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

pp'd @ request of Counsel for Appellants - received 9/30 & 10/07/99.

cc: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Greater Kingsville Civic Assn c/o Liz Healey, President, and Long Green Valley Assocation, et al

Counsel for Petitioners : Robert A. Hoffman, Esquire
Petitioners : Lauren M. Eby /Seven Kids LLC
John M. Kemp. V.P. /Cloverland Farms Dairy, Inc.

Nick Brader /Matis & Warfield

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
J. HOWARD HOLZER
1907-1989
THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING
508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET

June 23, 1999
7118

Kathleen Bianco, Administrator
County Board of Appeals
Old Courthouse, Room 49
400 Washington Ave.
Towson, MD 21204

Re: Royal Farm Store, SW/Corner Sunshine Ave. & Harford Rd.
Case No. 99-199-X

Dear Ms. Bianco:

After notifying my clients of the hearing dates before the Board of Appeals in the above captioned matter, I was informed that several of the witnesses would not be available the week of July 12 and 26. Therefore, I respectfully request that the above hearing be set for the end of August or early September.

I appreciate your attention in this matter and am available to discuss alternative dates with the CBA and Rob Hoffman, counsel for Royal Farm Store, as soon as possible.

Very truly yours,

J. Carroll Holzer

J. Carroll Holzer

JCH:clh

cc: LGVA
GKCA
Rob Hoffman, Esq.

C: CBA Royal Farm Store

RECEIVED
COUNTY BOARD OF APPEALS
99 JUN 24 PM 1:46

CH ✓
Poss 9/30 & 10/07 RH —

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

June 28, 1999

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 99-199-X

IN THE MATTER OF: SEVEN KIDS, LLC -OWNER; CLOVERLAND FARMS DAIRY, INC. -Developer (Royal Farm Store) SW/cor Sunshine Ave & Harford Road
11th Election District; 5th Councilmanic

(D.Z.C. GRANTED special exception with restrictions.)

which was assigned to be heard on July 15, 1999 and July 29, 1999 has been **POSTPONED** at the request of Counsel for Appellants due to witness unavailability and reassigned upon confirmation of availability; and has been

REASSIGNED FOR: **THURSDAY, SEPTEMBER 30, 1999 at 10:00 a.m. /Day #1**
and **THURSDAY, OCTOBER 7, 1999 at 10:00 a.m. /Day #2**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

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: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Greater Kingsville Civic Assn c/o Liz Healey, President, and Long Green Valley Assocation, et al

Counsel for Petitioners : Robert A. Hoffman, Esquire
Petitioners : Lauren M. Eby /Seven Kids LLC
John M. Kemp. V.P. /Cloverland Farms Dairy, Inc.

Nick Brader /Matis & Warfield

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

August 13, 1999

NOTICE OF ASSIGNMENT

CASE #: CBA-99-127
and CBA-99-128

IN THE MATTER OF: SEVEN KIDS, LLC -OWNER; CLOVERLAND FARMS DAIRY, INC. -Developer (Royal Farms -Fork)
Harford Road and Sunshine Avenue
11th Election District; 5th Councilmanic

(DRC File No. 02089F and DRC File No. 07069E -Grant of Limited Exemption)

NOTE: The above two DRC appeals have been scheduled for hearing, by copy of this Notice, on the same date and time as Case No. 99-199-X / Petition for Special Exception /Royal Farms -Fork (note that two dates have been assigned in the matter of the special exception); and have been

ASSIGNED FOR: **THURSDAY, SEPTEMBER 30, 1999 at 10:00 a.m.**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

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: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Greater Kingsville Civic Assn c/o Liz Healey, President, and Long Green Valley Assocation, et al

Counsel for Petitioners : Robert A. Hoffman, Esquire
Petitioners : Lauren M. Eby /Seven Kids LLC
John M. Kemp. V.P. /Cloverland Farms Dairy, Inc.

Nick Brader /Matis & Warfield

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
J. HOWARD HOLZER
1907-1989
THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING
508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET

September 27, 1999
#7118

County Board of Appeals of
Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204
Mr. Charles Marks, Chairman

COUNTY BOARD OF APPEALS RECEIVED
99 SEP 29 AM 11:59

Re: Case No. CBA-99-127 and CBA-99-128
In the Matter of Seven Kids (Royal Farms – Fork)

Dear Mr. Marks:

The above captioned matter is currently assigned for hearing before the Board of Appeals on Thursday, September 30, 1999 at 10:00 a.m. I would like to inform the Board and counsel for Royal Farms Store, Rob Hoffman, that last Thursday, September 23, 1999 I began a hearing before the Board of Appeals of Queen Anne's County in Centreville, Maryland in regard to an application for conditional use for a rubble fill. See case citation Board of Appeals No. CU-285, Days Cove Reclamation Company. That hearing, which began at 6:00 p.m. on September 23rd, did not conclude until 11:00 p.m. that evening. At the conclusion of the hearing, the Board determined to reconvene and continue case on Thursday, September 30th beginning at 6:00 p.m. in Centreville.

In order for me to be in Centreville before the start of the hearing at 6:00 p.m., I must leave Towson around 3:00 p.m. on the 30th. I would, therefore, respectfully request that the Board conclude its hearing of the above captioned case at 3:00 p.m. on that date. If I can provide any further information please feel free to contact me.

Very truly yours,

J. Carroll Holzer

cc: Rob Hoffman, Esq.
CKCA, Carol Shaw

C:\My Documents\Letters\CBA- Royal Farms Store.doc

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

October 7, 1999

NOTICE OF ASSIGNMENT Days 3, 4 and 5

CASE #: 99-199-X

IN THE MATTER OF: SEVEN KIDS, LLC -OWNER; CLOVERLAND FARMS DAIRY, INC. -Developer (Royal Farm Store) SW/cor Sunshine Ave & Harford Road
11th Election District; 5th Councilmanic

(D.Z.C. GRANTED special exception with restrictions.)

Continuing from 10/07/99

ASSIGNED FOR: WEDNESDAY, JANUARY 19, 2000 at 10:00 a.m. /Day #3
THURSDAY, JANUARY 20, 2000 at 10:00 a.m. /Day #4
and holding THURSDAY, JANUARY 27, 2000 at 10:00 a.m. /Day #5
(Day #5 assigned if needed only.)

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

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: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Greater Kingsville Civic Assn c/o Liz Healey, President, and Long Green Valley Assocation, et al

Counsel for Petitioners : Robert A. Hoffman, Esquire
Petitioners : Lauren M. Eby /Seven Kids LLC
John M. Kemp. V.P. /Cloverland Farms Dairy, Inc.

Nick Brader /Matis & Warfield

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

January 27, 2000

NOTICE OF ASSIGNMENT Days 6 and 7

CASE #: 99-199-X

IN THE MATTER OF: SEVEN KIDS, LLC -OWNER; CLOVERLAND FARMS DAIRY, INC. -Developer (Royal Farm Store) SW/cor Sunshine Ave & Harford Road
11th Election District; 5th Councilmanic

(D.Z.C. GRANTED special exception with restrictions.)
(Also reference CBA-99-127 and CBA-99-128 /DRC appeals)

Continuing from 1/27/2000

ASSIGNED FOR: **WEDNESDAY, FEBRUARY 9, 2000 at 10:00 a.m. /Day #6**
Day 7 = 3/01/2000 **WEDNESDAY, MARCH 29, 2000 at 10:00 a.m. /Day #7** 8

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

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

See notice dtd 2/24/00 **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: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Greater Kingsville Civic Assn c/o Liz Healey, President, and Long Green Valley Assocation, et al

Counsel for Petitioners : Robert A. Hoffman, Esquire
Petitioners : Lauren M. Eby /Seven Kids LLC
John M. Kemp. V.P. /Cloverland Farms Dairy, Inc.

Nick Brader /Matis & Warfield

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

February 24, 2000

NOTICE OF ASSIGNMENT Days 7, 8 and 9

CASE #: 99-199-X

IN THE MATTER OF: SEVEN KIDS, LLC -OWNER; CLOVERLAND FARMS DAIRY, INC. -Developer (Royal Farm Store) SW/cor Sunshine Ave & Harford Road
11th Election District; 5th Councilmanic

(D.Z.C. GRANTED special exception with restrictions.)
(Also reference CBA-99-127 and CBA-99-128 /DRC appeals)

Continuing from 2/09/00
ASSIGNED FOR:

WEDNESDAY, MARCH 1, 2000 at 10:00 a.m. /Day #7
WEDNESDAY, MARCH 29, 2000 at 10:00 a.m. /Day #8 and
WEDNESDAY, APRIL 5, 2000 at 10:00 a.m. /Day #9

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

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).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

---

cc: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Greater Kingsville Civic Assn c/o Liz Healey, President, and Long Green Valley Assocation, et al

Counsel for Petitioners : Robert A. Hoffman, Esquire
Petitioners : Lauren M. Eby /Seven Kids LLC
John M. Kemp. V.P. /Cloverland Farms Dairy, Inc.

Nick Brader /Matis & Warfield

Robin Beers
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

pp'd and messenger to 6/2 x 100 @ 9:00 am Notice sent.

April 7, 2000

NOTICE OF DELIBERATION

IN THE MATTER OF:

SEVEN KIDS, LLC –Legal Owner;
CLOVERLAND FARMS DAIRY, INC. –C.P.
Case No. 99-199-X; Case No. CBA-99-127; and Case No. CBA-99-128

Having concluded this matter after 9 days of hearing (9/30/99; 10/07/99; 1/19/00; 1/20/00; 1/27/00; 2/09/00; 3/01/00; 3/29/00; and 4/05/00), the following date /time has been scheduled for deliberation of the subject matter:

DATE AND TIME : **WEDNESDAY, JUNE 14, 2000 at 10:00 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

NOTE: CLOSING BRIEFS ARE DUE FROM COUNSEL BY 4:00 p.m. ON FRIDAY, MAY 5, 2000 (Original and three (3) copies).

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Greater Kingsville Civic Assn., c/o Liz Healey, President; and Long Green Valley Assn., et al

Counsel for Petitioners : Robert A. Hoffman, Esquire
Petitioners : Lauren M. Eby /Seven Kids LLC
John M. Kemp, V.P. /Cloverland Farms Dairy, Inc.

Nick Brader /Matis & Warfield

Robin Beers
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart

c: L.M.S.

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HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
J. HOWARD HOLZER
1907-1989
THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING
508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET

May 9, 2000
#7118

RECEIVED
COUNTY BOARD OF APPEALS
00 MAY 11 PM 12:44

VIA FAX 410-887-3182
Kathleen Bianco, Administrator
County Board of Appeals
Old Courthouse, Room 49
400 Washington Ave.
Towson, Maryland 21204

Re: In the Matter of Seven Kids LLC/Royal Farms Store
Case Nos. 99-199-X; CBA-99-127 and CBA-99-128
Extension of Filing Memos

Dear Ms. Bianco:

As a result of the conversation you had with Sterling yesterday regarding extending the time for the filing of final memoranda in the above matter to Wednesday May 17, or one week later, we also spoke with Rob Hoffman yesterday who said that he would not object to the extension as long as the Deliberation by the Board of Appeals would not be adversely affected. You responded that you believed that the Board would agree that filing memos one month prior to the Deliberation would be adequate.

Consequently, I will file my memo with the Board of Appeals before noon on May 17 and Rob Hoffman will also file his on the same day. If you have any questions, please call me at 410-825-6961.

Very truly yours,

J. Carroll Holzer

JCH:clh

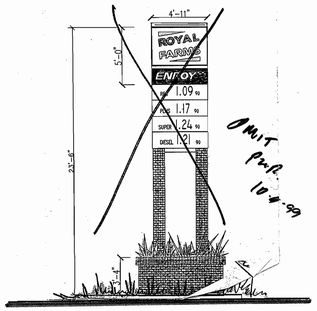
cc: Rob Hoffman, Esq.

C:Letters\Bianco-Extension Royal Farms

Z:\Letters\Bianco - Extension Royal Farms.doc

Petitioner's #3

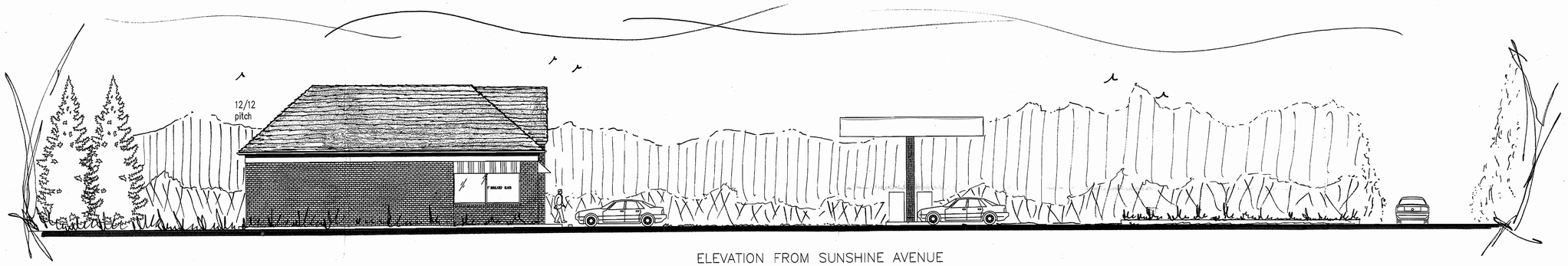
CBA #9



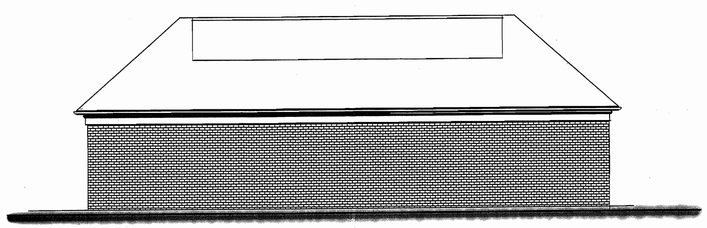
PROPOSED POLE SIGNAGE
HARFORD ROAD



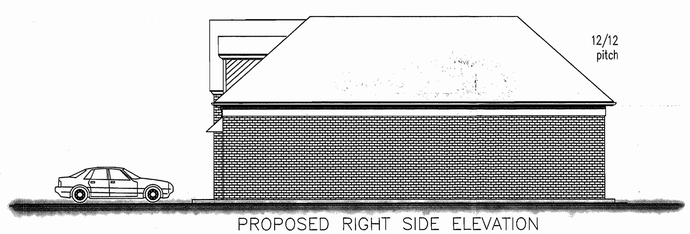
PROPOSED FRONT ELEVATION
HARFORD ROAD AND SUNSHINE AVENUE
("F" PROTOTYPE FLOORPLAN)



ELEVATION FROM SUNSHINE AVENUE



PROPOSED REAR ELEVATION



PROPOSED RIGHT SIDE ELEVATION

✱ **ALL SIGNAGE SHALL MEET BALTIMORE COUNTY ZONING REQUIRMENTS**

DONALD B. RATCLIFFE & ASSOC.
ARCHITECTS AND PLANNERS
10404 Stevenson Road, Stevenson, Maryland 21153
484-7010

ROYAL FARMS

SUNSHINE AVENUE AND HARFORD ROAD
BALTIMORE COUNTY, MARYLAND

Case 99-199-X

PROTO TYPE "F"

CONTENT:
ELEVATIONS

REVISED:

#	date	#	date

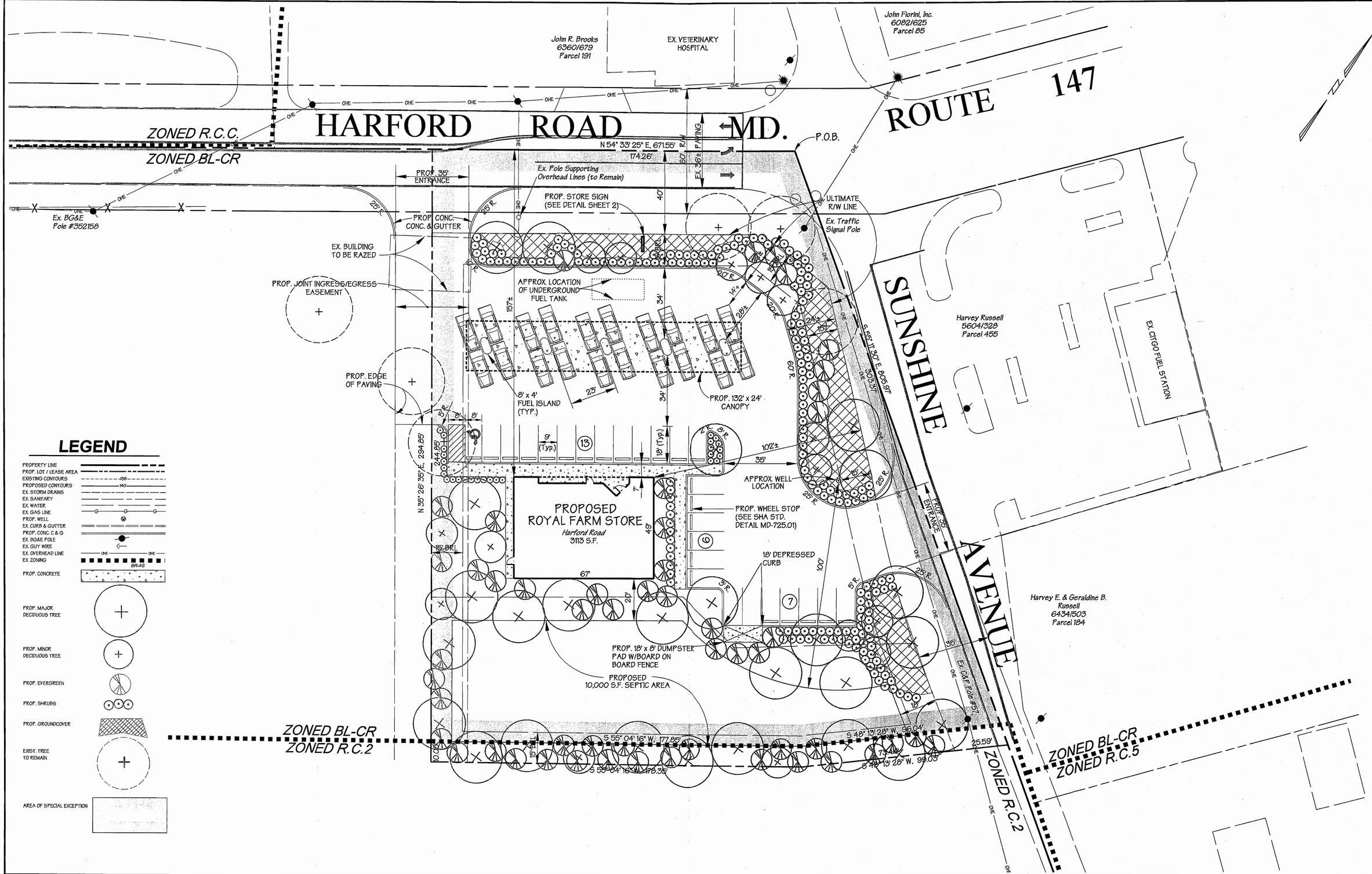
DATE: 1/25/99

SCALE:

DRAWN BY: P.W.R.

E1

SHEET ___ OF ___



LEGEND

- PROPERTY LINE
- PROP. LOT / LEASE AREA
- EXISTING CONTOURS
- PROPOSED CONTOURS
- EX. STORM DRAINS
- EX. SANITARY
- EX. WATER
- EX. GAS LINE
- PROP. WELL
- EX. CURB & GUTTER
- PROP. CONC. C & G
- EX. BG&E POLE
- EX. GUY WIRE
- EX. OVERHEAD LINE
- EX. ZONING
- PROP. CONCRETE
- PROP. MAJOR DECIDUOUS TREE
- PROP. MINOR DECIDUOUS TREE
- PROP. EVERGREEN
- PROP. SHRUBS
- PROP. GROUNDCOVER
- EXIST. TREE TO REMAIN
- AREA OF SPECIAL EXCEPTION

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
658 KENILWORTH DRIVE, SUITE 100
TOWSON, MARYLAND 21204
(410) 825-8120

STATE OF MARYLAND — PROFESSIONAL ENGINEER

OWNER
Seven Kids, L.L.C.
c/o Lauren M. Ebey
120 Cockeysville Road
Suite 205
Cockeysville, Maryland 21030
(410) 771-8400

DEVELOPER
Cloverland Farms Dairy, Inc.
3611 Roland Avenue
Baltimore, Maryland 21211
(410) 889-0200

SPECIAL EXCEPTION REQUESTED

> Special Exception to permit an automotive station in combination with a food store with a sales area larger than 1500 S.F. [Section 405.4.E.1]

Plan to Accompany Petitions for A Special Exception with Conceptual Landscaping

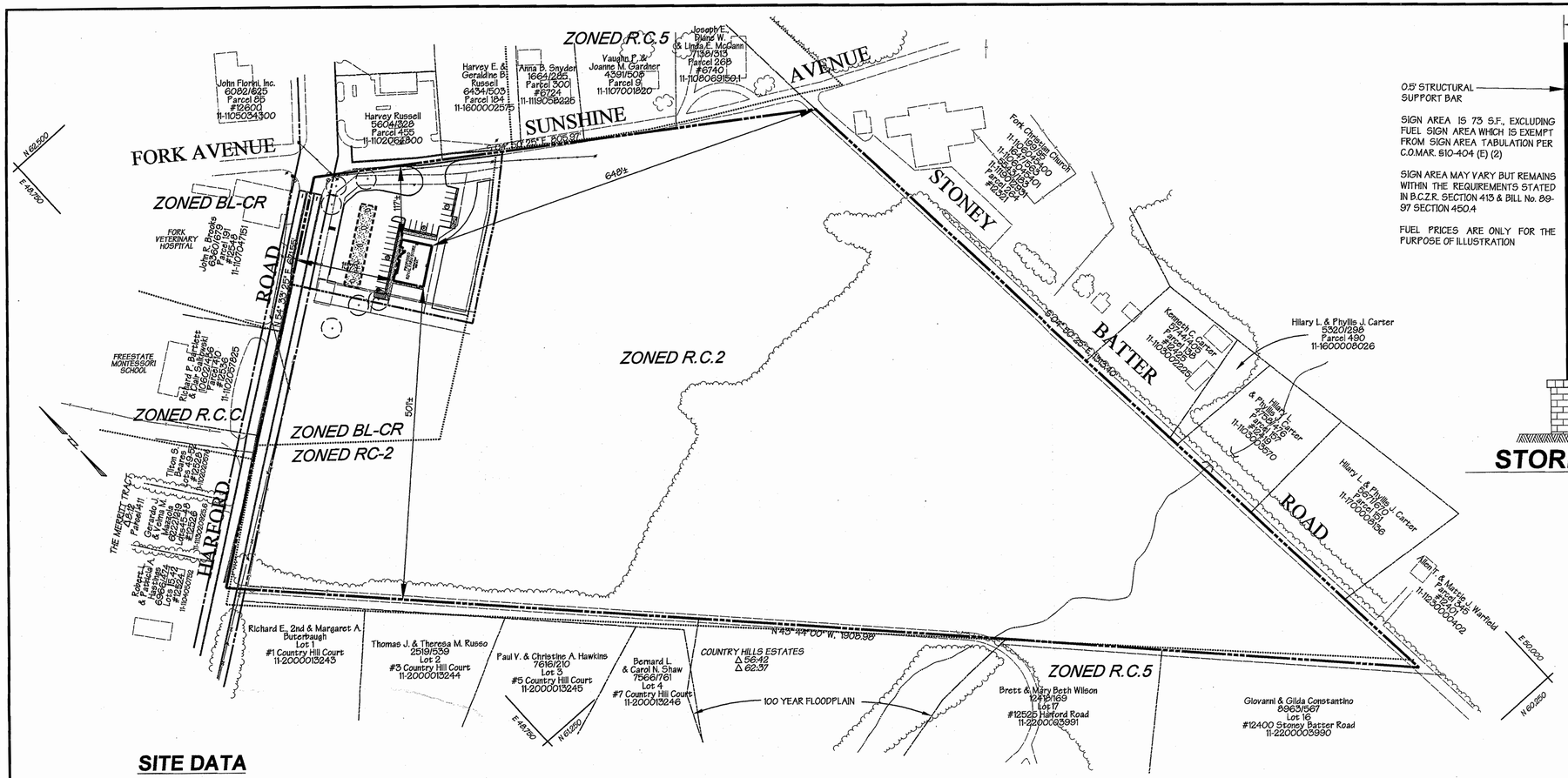
ROYAL FARM STORE

Harford Road @ Sunshine Avenue
Baltimore County, Maryland

Election District 11 — #99 — Tax Map 54 - Parcel 48
Councilmanic District 5 — November 4, 1998
Scale: 1" = 20' — Sheet 2 of 2

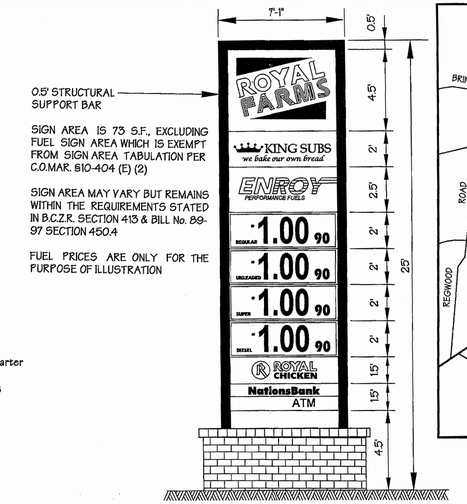
FILENAME: 8693zoningplan.s01

P.N. 8693



GROSS AREA MAP

SCALE: 1" = 100'



0.5' STRUCTURAL SUPPORT BAR

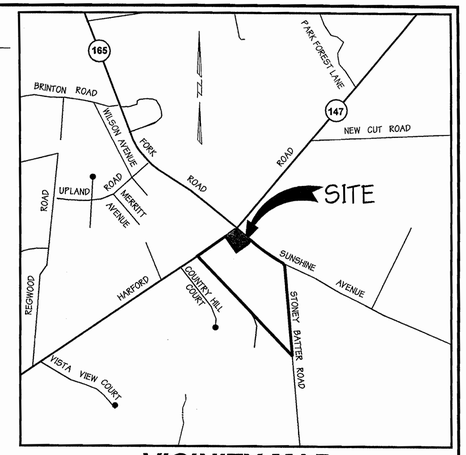
SIGN AREA IS 73 S.F., EXCLUDING FUEL SIGN AREA WHICH IS EXEMPT FROM SIGN AREA TABULATION PER C.O.MAR. §10-404 (E) (2)

SIGN AREA MAY VARY BUT REMAINS WITHIN THE REQUIREMENTS STATED IN B.C.Z.R. SECTION 413 & BILL No. 89-97 SECTION 450.4

FUEL PRICES ARE ONLY FOR THE PURPOSE OF ILLUSTRATION

STORE SIGN DETAIL

NO SCALE



VICINITY MAP

SCALE: 1" = 1000'

SITE DATA

Site Area ..... 1,016,726.84 S.F. (23.34 Ac.±)
Proposed Lot 1 or Lease Area. ..... 52,788.30 S.F. (1.21 Ac.±)
Existing Zoning ..... BL-CR
Existing Use ..... Abandoned Fuel Service Building
Proposed Use ..... Convenience Store w/Fuel Pumps
Deed Reference 8216/826
Tax Account Number 11-1117010175
Ancillary Uses ..... Minor ancillary uses as permitted in Section 405.4.D. of the B.C.Z.R. (No additional square footage required)

Proposed Building Floor Area:
Total ..... 3113 S.F.
Sales Floor Area ..... 2180 S.F.
Floor Area Ratio ..... 3113 S.F. ÷ 52,788 = 0.06 (0.2 permitted)
Existing Building Height ..... 14'±
Proposed Building Height ..... 14'±

AREA REQUIRED FOR COMBINATION USE
10 Servicing Spaces x 1500 S.F. .. 15,000
Additional Site Area Factor:
4 x 2180 (Sales Area). 8720
Total Site Area Required ..... 23,720 S.F.
Total Site Area Provided ..... 52,788 S.F.
Area of Special Exception ..... 52,788 S.F.

PARKING SPACES
Fuel Service w/Combination Use:
3113 S.F. @ 5/1000 = 16
maximum employee shift 3
air 1
ATM 1
Total Required 21
Total Provided 26
PARKING SPACE DIMENSIONS:
Typical Space ..... 9' x 18'
Handicap Space ..... 16' x 18'
(All spaces to be permanently striped)

ROYAL FARM STORE	
Hours of Operation	24 Hours/7 Days per Week
Max. Number of Employees	15-20
Max. Number of Employees/Shift	Morning/Afternoon = 3 Afternoon/Evening = 3 Night = 2

GENERAL NOTES

1. All work shall conform to Baltimore County standard specifications and details or as shown on these approved plans.
2. The contractor shall notify Miss Utility 1-800-257-7777 five days prior to starting work.
3. It is the responsibility of the contractor to investigate for underground gas and/or electric lines.
4. No wastes or by-products will be produced on the Site.
5. The dumpster shall be screened.
6. See architectural plans for exact building dimensions.
7. All fixtures used to illuminate the off-street parking area shall be so arranged as to reflect the light away from residential sites and public streets.
8. The proposed sign is to conform with B.C.Z.R.
9. Stormwater management waiver is to be applied for.
10. Any underground fuel tanks are to be installed with all local, state and federal regulations.
11. The site shall comply with all applicable sections of the Fire Prevention Code prior to occupancy or beginning of operation.
12. All curb radii are 5' unless otherwise noted.

ZONING HISTORY

CBA - 87 - 151 (6/16/88) Affirmed appeal decision to construct a 24,000 S.F. strip shopping center and convenience store

LANDSCAPING CALCULATIONS

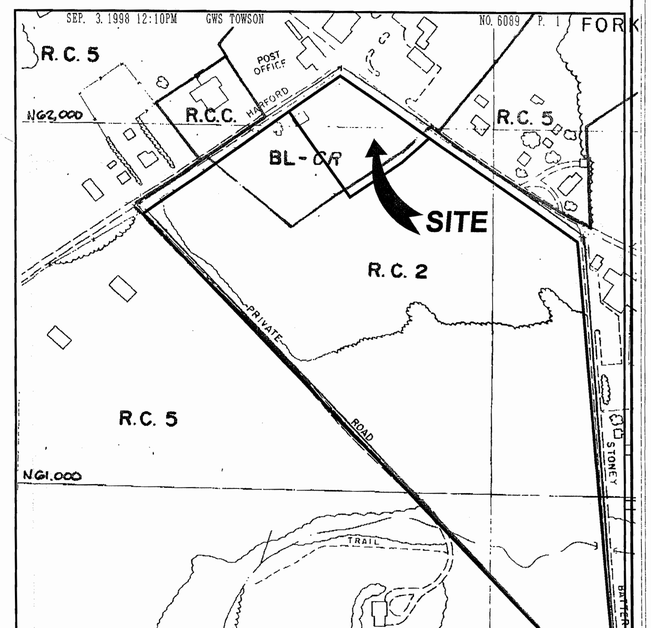
REQUIRED PLANTING UNITS

ADJACENT ROADS	@1 P.U. / 40 L.F.	5.33 L.F. / 40	= 10.38 P.U.
INTERIOR ROADS	@1 P.U. / 20 L.F.	113 L.F. / 20	= 5.65 P.U.
SCREENING	@1 P.U. / 15 L.F.		
SERVICE STATION - CLASS A		496.68 L.F. / 10	= 49.67 P.U.
SERVICE STATION - PUBLIC R/W		365 L.F. / 10	= 36.5 P.U.
PARKING LOTS	@1 P.U. / 12 P.S.	30 P.S. / 12	= 2.5 P.U.
1 TREE / 8 P.S. PER CR ZONE REGULATIONS			= 3.3 P.U.
		TOTAL REQUIRED	= 108.0 P.U.

7% LANDSCAPED AREA IN PARKING LOT
12,360 S.F. x .07 = 865 S.F.

PLANTING UNITS PROVIDED		EXISTING	NEW	
MAJOR DECIDUOUS	@ 1:1	3	26	= 29 P.U.
MINOR DECIDUOUS	@ 2:1	0	15	= 7.5
EVERGREEN	@ 2:1	0	51	= 25.5
SHRUB	@ 5:1	0	214	= 42.8
GROUNDCOVER	@ 500:1	0	1720	= 3.4
			TOTAL P.U. PROVIDED	= 108.2

7% LANDSCAPED AREA IN PARKING LOT
TOTAL S.F. PROVIDED = 870 (= 7%)



PART OF 1996 ZONING MAP NE 16-I

SCALE: 1" = 200'

99-199-X

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
658 KENILWORTH DRIVE, SUITE 100
TOWSON, MARYLAND 21204
(410) 825-8120

OWNER
Seven Kids, L.L.C.
c/o Lauren M. Ebey
120 Cockeysville Road
Suite 205
Cockeysville, Maryland 21030
(410) 771-8400

DEVELOPER
Cloverland Farms Dairy, Inc.
3611 Roland Avenue
Baltimore, Maryland 21211
(410) 889-0200

SPECIAL EXCEPTION REQUESTED

» Special Exception to permit an automotive station in combination with a food store with a sales area larger than 1500 S.F. [Section 405.4.E.1]

Gross Area Plan to Accompany Petitions for A Special Exception

ROYAL FARM STORE

Harford Road @ Sunshine Avenue
Baltimore County, Maryland

Election District 11 #99 Tax Map 54 - Parcel 48
Councilmanic District 5 November 4, 1998
Scale: 1" = 80' Sheet 1 of 2

FILENAME: 8693grossareazoneplan.s01

SIDER v. SIDER
EC[illegible]DES v. SIDE[illegible]
No. 1853
Sent. Term [illegible]2
Hearing: [illegible]/9/93
CSA [illegible] Alnert, J.

PETITIONER'S EXHIBITS

Smead®
No. 516C
HARTFORD, MN
LOS ANGELES-CHICAGO-LOGAN, OH
MCGREGOR, TX-LACEY-LAKEWOOD, NJ
LITHIA SPRINGS-DUNCAN, OK
PHOENIX, AZ

(3)

(199901991)

Exhibits
2A - 2V
photographs
99-199-X


Quik Mart


12'99





2C


Quik Mart

2D






NO
STOPPING
ANY
TIME
79







JH
















CITGO
95
1.07
1.10
119

we



JN


Auto Care
ICE

oe



je


147
12'93




JCT
147
12'99





25



∂T




Quik Mart

Pet. #2

Professional Resume
of
Kenneth W. Schmid
11022 Pfeffers Road
Kingsville, MD 21087

Experience:

January 1993 - Present

Traffic Concepts, Inc.
Brightview Business Center
8258 Veterans Highway, Suite 19A
Millersville, MD 21108

Owner, Vice-President

Provide traffic engineering consultant services to the public and private sectors including:
Expert Testimony before the County Zoning Officer and Board of Appeals for Special Exception and Rezoning cases. Development of Feasibility Analysis including access alternatives and the assessment of the impact of pertinent Adequate Public Facilities legislation of local governments on potential development sites. Development of Traffic Impact Studies including critical lane, highway capacity and signal warrant analysis, recommendations of road improvements necessary to meet various Adequate Public Facility criteria and leading negotiations with government agencies to secure waivers to Adequate Public Facilities legislation. Design and preparation of traffic signal, maintenance of traffic, pavement marking and road improvement concept plans. Preparation of technical and price proposals.

December 1989 - January 1993

Ronald W. Johnson Associates, Inc.
Building 400, Suite 420
2661 Riva Road
Annapolis, MD 21401

Chief - Traffic Engineering Section

Started and developed the traffic engineering section at this consulting firm. Duties included:
Directing the activities of the Traffic Engineering Section. Providing expert testimony at over 30 Special Exception, Rezoning and Appeal cases. Development of more than 130 Feasibility and Traffic Impact Studies. Design and Preparation of traffic signal design, maintenance of traffic and road improvement concept plans.

Pet #3

TRAFFIC BRIEF

ROYAL FARM STORE
MD 147 @ Sunshine Ave/Fork Rd
Baltimore County, Maryland

September, 1999

Prepared By

TRAFFIC CONCEPTS, INC.
Brightview Business Center
8258 Veterans Highway
Suite 19A
Millersville, Maryland 21108
Ph. 410-987-0427
FAX 410-987-4718

Pet Ex #4A

Professional Resume
of
Kenneth W. Schmid
11022 Pfeffers Road
Kingsville, Maryland

Experience:

January 1993 - Present

Traffic Concepts, Inc.
Brightview Business Center
8258 Veterans Highway, Suite 19A
Millersville, MD 21108

Owner, Vice-President

Provide traffic engineering consultant services to the public and private sectors including:

Expert Testimony before the County Zoning Officer and Board of Appeals for Special Exception and Rezoning cases. Development of Feasibility Analysis including access alternatives and the assessment of the impact of pertinent Adequate Public Facilities legislation of local governments on potential development sites. Development of Traffic Impact Studies including critical lane, highway capacity and signal warrant analysis, recommendations of road improvements necessary to meet various Adequate Public Facility criteria and leading negotiations with government agencies to secure waivers to Adequate Public Facilities legislation. Design and preparation of traffic signal, maintenance of traffic, pavement marking and road improvement concept plans. Preparation of technical and price proposals.

December 1989 - January 1993

Ronald W. Johnson Associates, Inc.
Building 400, Suite 420
2661 Riva Road
Annapolis, MD 21401

Chief - Traffic Engineering Section

Started and developed the traffic engineering section at this consulting firm. Duties included:

Directing the activities of the Traffic Engineering Section. Providing expert testimony at over 30 Special Exception, Rezoning and Appeal cases. Development of more than 130 Feasibility and Traffic Impact Studies. Design and Preparation of traffic signal design, maintenance of traffic and road improvement concept plans.

Pet Ex #4B

PEAK HOUR TURNING MOVEMENT COUNT

INTERSECTION: MD 147 @ FORK RD. **COUNTY:** BALTIMORE

COUNT BY: J. CAREY **DATE:** DECEMBER 9, 1998

WEATHER: CLEAR **DAY:** WEDNESDAY

	MD 147 NORTHBOUND			MD 147 SOUTHBOUND			FORK RD. EASTBOUND			SUNSHINE AVE. WESTBOUND			
TIME	LEFT	THRU	RIGHT	LEFT	THRU	RIGHT	LEFT	THRU	RIGHT	LEFT	THRU	RIGHT	TOTAL
AM													
7:00-7:15	4	36	4	2	189	24	12	32	11	34	44	1	393
7:15-7:30	4	45	5	3	175	35	16	38	10	30	40	2	403
7:30-7:45	5	49	7	5	180	26	18	35	19	35	49	3	431
7:45-8:00	5	36	4	3	211	39	13	45	19	34	54	3	466
8:00-8:15	5	41	6	2	216	44	14	29	13	24	46	1	441
8:15-8:30	6	36	6	5	191	21	16	32	19	17	37	4	390
8:30-8:45	13	53	15	2	147	20	11	28	18	26	26	2	361
8:45-9:00	6	36	7	4	106	15	12	30	21	12	29	6	284
PEAK HR 7:15-8:15 TOTALS	19	171	22	13	782	144	61	147	61	123	189	9	
PM													
4:00-4:15	11	114	7	6	47	17	27	35	5	11	33	10	323
4:15-4:30	14	121	7	9	51	18	30	32	5	31	38	9	365
4:30-4:45	15	114	19	3	44	13	21	38	10	31	38	8	354
4:45-5:00	13	121	16	6	33	11	36	31	6	24	40	8	345
5:00-5:15	14	121	17	8	48	11	39	41	6	23	45	8	381
5:15-5:30	8	172	16	3	46	21	49	40	7	31	48	4	445
5:30-5:45	9	153	15	4	49	15	46	52	5	16	24	9	397
5:45-6:00	15	113	10	7	39	11	40	43	8	27	18	4	335
PEAK HR 4:45-5:45 TOTALS	44	567	64	21	176	58	170	164	24	94	157	29	

TRAFFIC CONCEPTS, INC.
8258 VETERANS HIGHWAY, SUITE 19A
MILLERSVILLE, MARYLAND 21108
(410) 987-0427
FAX (410) 987-4718

A:\98-499\count1

Pet Ex 6A

January 31, 1999

Ms. Ellen Jackson
Waste Management Administration
Maryland Department of Environment
2500 Broening Highway
Baltimore, Md 21224

Dear Ms. Jackson:

This correspondence is in regards to my request for notification from the Department to terminate pollution monitoring on the property located at the corner of Harford and Sunshine Roads, in Baltimore County.

The property, known as the Frank property, had been monitored for petroleum contamination since 1987 when a release was discovered from an abandoned gasoline service station located on the site. The old leaking storage tanks have been removed from the area of contamination and the contaminated soil was removed from under the tanks. Monitoring of the site for the past several years has indicated a continual decline of contaminants in the ground water under the site. Recent water samples from monitoring wells has indicated that contaminants are only present in trace amounts.

My client is intending to redevelop the site at the corner of the two roads. I would like to receive acknowledgment from your office that redevelopment of the site is not prohibited by actions from your office. Also, I would like to know if it is prudent to remove the observations wells from the site as part of that redevelopment. I would recommend leaving one well for future monitoring, if necessary. The community may prefer such an arrangement since they have concerns regarding the planned use of the property which will be a convenience store and a gas and go

I appreciate you assistance in this matter. Please contact me at 410-750-9925 if you have any questions.

Best regards,

Robert W. Sheesley

Pet Ex 6B

MARYLAND DEPARTMENT OF THE ENVIRONMENT

2500 Broening Highway • Baltimore Maryland 21224
(410) 631- 3000 • 1- 800 -633-6101 • http:// www. mde. state. md. us

Parris N. Glendening
Governor

Jane T. Nishida
Secretary

February 12, 1999

Mr. Robert Sheesley
EcoSense, Inc.
8354 Chestnut Farm Lane
Ellicott City MD 21043

RE: Case No. 8-0919 BA1
Zinc Sunshine
Harford Road & Sunshine Avenue
Fork, Maryland

Dear Mr. Sheesley:

The Waste Management Administration's Oil Control Program has reviewed your letter of January 31, 1999 concerning the above-referenced site. The Administration will not prohibit development at this site; however, the following actions are required:

(1) A licensed well driller must properly abandon all monitoring wells on site, including off-site well MW-7.

(2) If a domestic well is drilled at the site for a water supply, the owner is responsible for sampling the water for volatile organic compounds. If volatile organic compounds are detected in the water collected from the new domestic well, the owner will be responsible for maintaining a filtration system and for collecting and sampling pre-, mid-, and post-filter samples on a regular basis.

(3) If oil-contaminated soil is encountered during construction, the Administration must be notified immediately. All oil-contaminated soil must be properly disposed at an approved soil treatment facility. Manifest receipts must be submitted to the Administration upon completion of soil removal activities.

(4) The Administration does not require a replacement monitoring well at the site. However, if the community or other requests that the owner install a monitoring well as part of the development agreement, the location of the well must be approved by the Administration. In addition, the well must be installed and developed in accordance with the Oil Control Program's specifications. The soil log, a well completion report, and any analytical sampling data must be submitted to the Administration for review. Please notify Ms. Ellen Jackson, project geologist, at least 72 hours prior to domestic or monitoring well installations, well development, or sampling activities

You indicate that your client is proposing to use the property as a convenience store with the sale of gasoline. The Administration recommends all underground storage systems installed at this location be double-walled and equipped with a continuous leak detection system. Please contact me, Ms. Jackson, or Inspector Michael Frank if you have any questions at 410-631-3442.

Sincerely,

Thomas L. Walter/nlb

Thomas L. Walter, Region II Section Head
Compliance/Remediation Division
Oil Control Program

TLW/nlb

cc: Mr. Richard Collins
Mr. Herbert Meade

Pet Ex #7

Environmental
Consulting,
Engineering and
Construction

Nutshell
ENTERPRISES, LTD.

4059 Norrisville Road
Jarrettsville, MD 21084
Phone: (410) 557-7583
Fax: (410) 557-8804

Mr. Herbert Meade, Chief &
Ms. Ellen Jackson, Geologist
Compliance/Remediation Division
Oil Control Program
Maryland Department of the Environment
Waste Management Administration
2500 Broening Highway
Baltimore, MD 21224

April 5, 1998

RECEIVED
APR - 7 1998
CHARLES J. FRANK, INC.

RE: Ground Water Sampling Report
MDE Case #9-0826 BC
Frank Property
Harford Road & Sunshine Road
Fork, Maryland

Dear Mr. Meade & Ms. Jackson,

Nutshell Enterprises is working on this project on behalf of Charles J. Frank, Inc. On March 23, 1998 ground water samples were collected from the site wells and analyzed for BTEX and MTBE. Portions of this fieldwork were observed by Ellen Jackson (Geologist) and Mike Frank (Inspector) of the MDE. The following is a report of the observations and results of the sampling event.

WELLS

There are currently six monitoring wells at the site. One of these monitoring wells, MW-2, has a damaged well casing which appears to have allowed the entrance of some surface debris into the well. A seventh monitoring well, MW-3, was destroyed sometime prior to the 1994-sampling event. An unused water supply well, identified in this report as Well 8, is also located on the property.

During this sampling event the well depths were measured and the tops of the well casings were surveyed relative to an arbitrary datum. All of the monitoring wells are approximately 50 feet deep. Well 8 is approximately 88 feet deep. The depth measurements and casing elevations are presented on Table 1. The locations of the wells are shown on Figure 1.

Pet Ex #8

JOSEPH M. CRONYN
Resume

Joseph Cronyn has a broad professional background in real estate research, sales and marketing, development, financing and appraisal. His experience includes market and financial feasibility analyses of major real estate projects; land acquisition and marketing for residential development; tax-motivated and conventional financing for single family and multi-family residential projects; and advising public, non-profit and private clients concerning real estate decision-making.

PROFESSIONAL EXPERIENCE

Lipman Frizzell & Mitchell, LLC, Baltimore, MD (1997 - present)
Senior Associate

Conducts market feasibility analyses for commercial and residential real estate projects throughout the Mid-Atlantic area. Analyzes commercial real estate markets and specializes in determining the economic and fiscal outcomes of real estate decision-making. Building on strong skills in economic and demographic research, also advises clients on economic development, public sector housing policy, historic preservation and fiscal impact issues. Recent assignments include:

- Convention Center Hotel Feasibility, Baltimore City
- Owings Mills Metro Station Master Redevelopment Plan, Baltimore County
- National Business Park Feasibility, Anne Arundel County
- Springfield State Hospital Redevelopment, Carroll County
- State Housing Needs Assessment: Delaware, Maryland and Louisiana
- Golf Course/Residential P.U.D. Feasibility, Appleton, Wisconsin
- Medical Office Building Market & Financial Feasibility, Montgomery County
- Class B Office Conversion to Apartments Feasibility, Baltimore City
- For-Sale Residential Feasibility in Bolton Hill, Baltimore City
- Retail Market Feasibility: Baltimore, Carroll, Harford, Howard Counties
- Annexation Feasibility and Fiscal Impact, City of Laurel
- Planning & Zoning Testimony, Washington-Baltimore Area
- Historic Preservation Legislation: Fiscal and Economic Impacts - Baltimore City and State of Maryland

Pet Ex #9

PROPOSED ROYAL FARM STORE

Sunshine Ave. at Harford Rd.

FORK, MARYLAND

Prepared by:
LIPMAN FRIZZELL & MITCHELL, LLC
1400 Front Avenue
Suite 300
Lutherville, MD 21093-5331

January 27, 1998

Pet Ex #10

Nicholas J. Brader, III, P.E.

Education : Bachelor's of Civil Engineering,
University of Delaware,
June 1986

Work Experience : June 1986 to November 1998
George W. Stephens, Jr. & Assoc.,Inc.
Position: Senior Associate
Resposibilities: Take projects in all Baltimore metropolitan counties from conception to construction, including Zoning approvals and testimony, waivers, construction plans. Extensive experience in commercial and industrial projects.

November 1998 to Present
Matis Warfield, Inc.
Position: Senior Engineer
Responsibilities:Take projects in all Baltimore metropolitan counties from conception to construction, including Zoning approvals and testimony, waivers, construction plans. Train staff and assist in engineering and design.

Professional Registration : Registered Professional Engineer
State of Maryland
February 1991

Petitions #1A

HARFORD ROAD MD. 147

ROUTE 147

SUNSHINE AVENUE

ZONED R.C.C.

ZONED BL-CR

John R. Brooks
6360/679
Parcel 191

EX. YETERINARY HOSPITAL

John Fiorini, Inc.
6082/625
Parcel 85

Harvey Russell
5604/328
Parcel 455

EX. CITGO FUEL STATION

Harvey E.& Geraldine B. Russell
6434/503
Parcel 184

P.O.B.

N 54° 33' 25" E, 671.55'

174.26'

EX. 36'± PAVING

50' R/W

PROP. 35' ENTRANCE

Ex. Pole Supporting Overhead Lines (to Remain)

PROP. STORE SIGN (SEE DETAIL SHEET 2)

ULTIMATE R/W LINE

Ex. Traffic Signal Pole

Ex. BG&E Pole #352158

PROP. CONC. CONC. & GUTTER

EX. BUILDING TO BE RAZED

PROP. JOINT INGRESS/EGRESS EASEMENT

APPROX. LOCATION OF UNDERGROUND FUEL TANK

PROP. EDGE OF PAVING

8' x 4' FUEL ISLAND (TYP.)

PROP. 132' x 24' CANOPY

S 55° 11' 30" E, 805.97'

303.57'

PROPOSED ROYAL FARM STORE
Harford Road
3113 S.F.
F.F. = 125.00

N 35° 26' 35" E, 294.85'

APPROX. WELL LOCATION

PROP. WHEEL STOP (SEE SHA STD. DETAIL MD-725.01)

18' DEPRESSED CURB

PROP. 18' x 8' DUMPSTER PAD W/BOARD ON BOARD FENCE

PROPOSED 10,000 S.F. SEPTIC AREA

Ex. CATV Pole #57

S 55° 04' 16" W, 177.85'

S 55° 04' 16" W, 178.35'

S 48° 13' 28" W, 96.04'

S 48° 13' 28" W, 99.03'

ZONED BL-CR
ZONED R.C.2

ZONED BL-CR
ZONED R.C.5

ZONED R.C.2

LEGEND

PROPERTY LINE
PROP. LOT / LEASE AREA
EXISTING CONTOURS 150
PROPOSED CONTOURS 140
EX. STORM DRAINS
EX. SANITARY
EX. WATER
EX. GAS LINE
PROP. WELL
EX. CURB & GUTTER
PROP. CONC. C & G
EX. BG&E POLE
EX. GUY WIRE
EX. OVERHEAD LINE
EX. ZONING BR-AS
PROP. CONCRETE
PROP. MAJOR DECIDUOUS TREE
PROP. MINOR DECIDUOUS TREE
PROP. EVERGREEN
PROP. SHRUBS
PROP. GROUNDCOVER
EXIST. TREE TO REMAIN
AREA OF SPECIAL EXCEPTION

MATIS WARFIELD, INC.
CONSULTING ENGINEERS
6600 York Road, Suite 209
Baltimore, Maryland 21212
Phone: (410) 377-7596
Fax: (410) 377-7657

STATE OF MARYLAND — PROFESSIONAL ENGINEER — REGISTERED

OWNER
Seven Kids, L.L.C.
c/o Lauren M. Ebey
120 Cockeysville Road
Suite 205
Cockeysville, Maryland 21030
(410) 771-8400

DEVELOPER
Cloverland Farms Dairy, Inc.
3611 Roland Avenue
Baltimore, Maryland 21211
(410) 889-0200

SPECIAL EXCEPTION REQUESTED

» Special Exception to permit an automotive station in combination with a food store with a sales area larger than 1500 S.F. [Section 405.4.E.1]

Plan to Accompany Petitions for A Special Exception with Conceptual Landscaping

ROYAL FARM STORE

Harford Road @ Sunshine Avenue
Baltimore County, Maryland

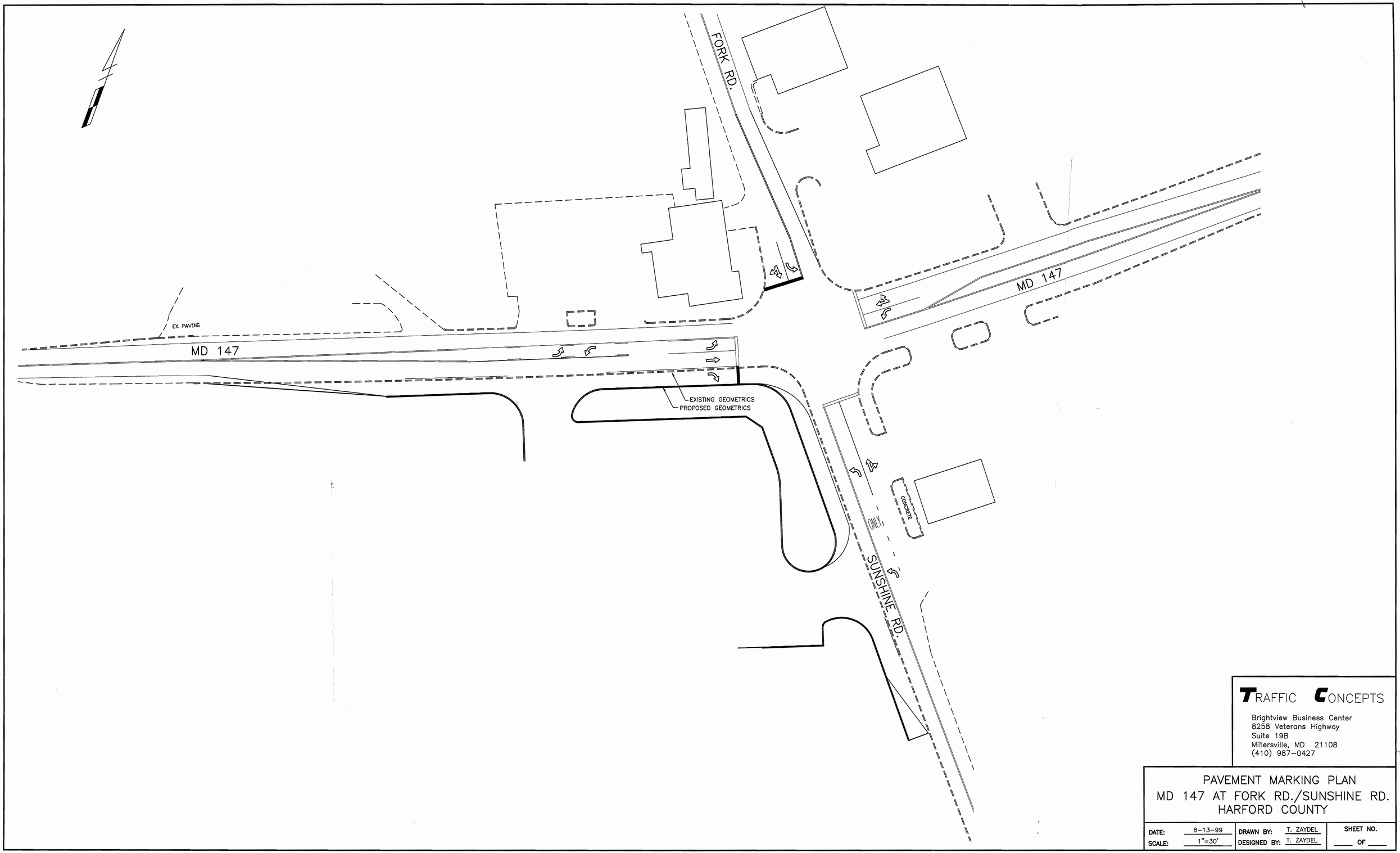
Election District 11 — #99 — Tax Map 54 - Parcel 48
Councilmanic District 5 — November 4, 1998
Scale: 1" = 20' — Sheet 2 of 2

CBA – Petitioners #12

Petitioners Ex. 5



Petitioners #4



TRAFFIC CONCEPTS
Brightview Business Center
8258 Veterans Highway
Suite 19B
Millersville, MD 21108
(410) 987-0427

PAVEMENT MARKING PLAN
MD 147 AT FORK RD./SUNSHINE RD.
HARFORD COUNTY

DATE:	8-13-99	DRAWN BY:	T. ZAYDEL	SHEET NO.	
SCALE:	1"=30'	DESIGNED BY:	T. ZAYDEL	____ OF ____	

HARFORD ROAD MD. ROUTE 147

ZONED R.C.C.
ZONED BL-CR

John R. Brooks
6360/679
Parcel 191

EX. VETERINARY HOSPITAL

John Fiorini, Inc.
6082/625
Parcel 85

N 54° 33' 25" E, 671.55'
174.26'

60' R/W

EX. 30' PAVING

Ex. Pole Supporting Overhead Lines (to Remain)

Ex. BG&E Pole #352158

EX. BUILDING TO BE RAZED

PROP. JOINT INGRESS/EGRESS EASEMENT

APPROX. LOCATION OF UNDERGROUND FUEL TANK

ULTIMATE R/W LINE

Ex. Traffic Signal Pole

SUNSHINE AVENUE

S 55° 11' 30" E, 805.97'
503.37'

Harvey Russell
5604/328
Parcel 455

EX. CITGO FUEL STATION

Petitioners #1

N 35° 26' 35" E, 294.85'
244.85'

PROPOSED ROYAL FARM STORE
Harford Road
3113 S.F.

APPROX. WELL LOCATION

PROPOSED 10,000 S.F. SEPTIC AREA

S 55° 04' 16" W, 177.85'

S 55° 04' 16" W, 178.35'

S 48° 13' 28" W, 99.03'

Ex. C&P Pole #57

25.59'

Harvey E. & Geraldine B. Russell
6434/503
Parcel 184

ZONED BL-CR
ZONED R.C.2

ZONED BL-CR
ZONED R.C.5

ZONED R.C.2

LEGEND

- PROPERTY LINE
- PROP. LOT / LEASE AREA
- EXISTING CONTOURS 130
- PROPOSED CONTOURS 140
- EX. STORM DRAINS
- EX. SANITARY
- EX. WATER
- EX. GAS LINE G G G
- PROP. WELL W
- EX. CURB & GUTTER
- PROP. CONC. C & G
- EX. BG&E POLE
- EX. GUY WIRE
- EX. OVERHEAD LINE OHE OHE
- EX. ZONING BR-AS
- PROP. CONCRETE
- PROP. MAJOR DECIDUOUS TREE
- PROP. MINOR DECIDUOUS TREE
- PROP. EVERGREEN
- PROP. SHRUBS
- PROP. GROUNDCOVER
- EXIST. TREE TO REMAIN

MATIS WARFIELD, INC.
CONSULTING ENGINEERS

6600 York Road, Suite 209
Baltimore, Maryland 21212

Phone: (410) 377-7596
Fax: (410) 377-7657

OWNER
Seven Kids, L.L.C.
c/o Lauren M. Ebey
120 Cockeysville Road
Suite 205
Cockeysville, Maryland 21030
(410) 771-8400

DEVELOPER
Cloverland Farms Dairy, Inc.
3611 Roland Avenue
Baltimore, Maryland 21211
(410) 889-0200

Exhibit

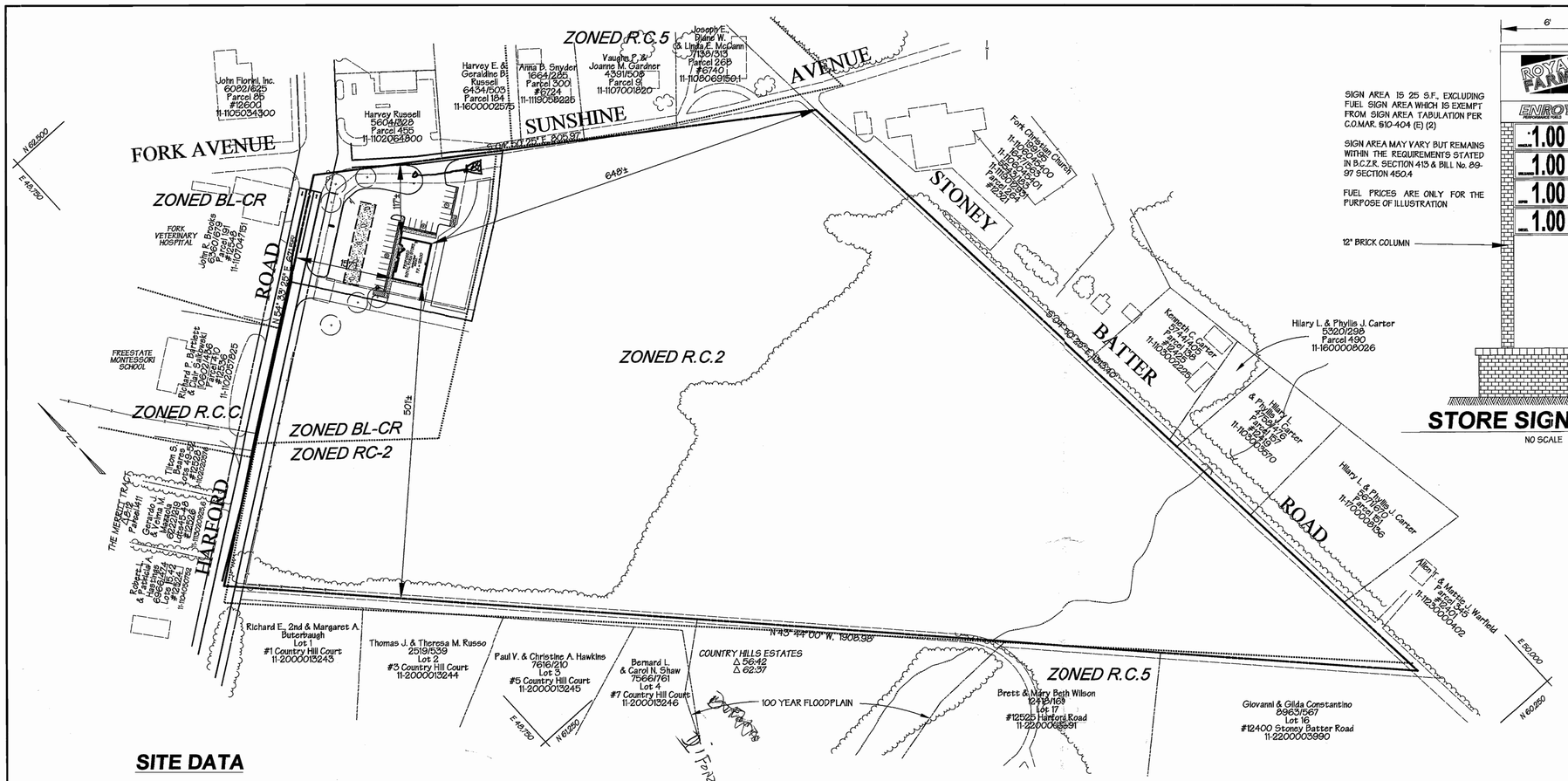
ROYAL FARM STORE

Harford Road @ Sunshine Avenue
Baltimore County, Maryland
#99

Election District 11
Councilmanic District 5
Scale: 1" = 20'

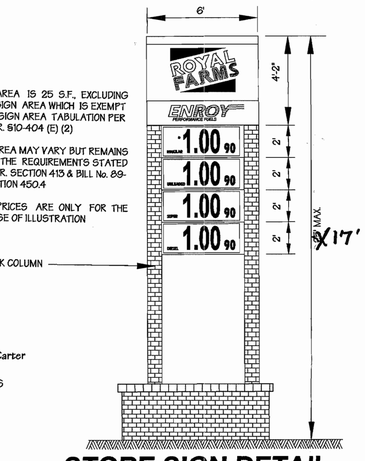
Tax Map 54 - Parcel 48
December 22, 1998
Sheet 1 of 1

FILENAME: forkexhibit.s01



GROSS AREA MAP

SCALE: 1" = 100'



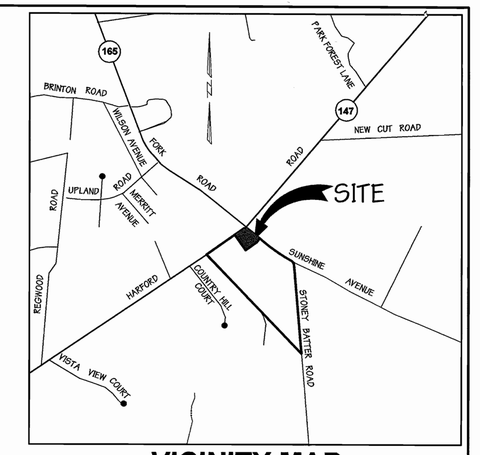
SIGN AREA IS 25 S.F. EXCLUDING FUEL SIGN AREA WHICH IS EXEMPT FROM SIGN AREA TABULATION PER C.O.MAR. §10-404 (E) (2)

SIGN AREA MAY VARY BUT REMAINS WITHIN THE REQUIREMENTS STATED IN B.C.Z.R. SECTION 413 & BILL No. 89-97 SECTION 450.4

FUEL PRICES ARE ONLY FOR THE PURPOSE OF ILLUSTRATION

STORE SIGN DETAIL

NO SCALE



VICINITY MAP

SCALE: 1" = 1000'

Petitioner's #1B

SITE DATA

Site Area	1,016,726.84 S.F. (23.34 Ac.±)
Proposed Lot 1 or Lease Area	52,788.30 S.F. (1.21 Ac.±)
Existing Zoning	BL-CR
Existing Use	Abandoned Fuel Service Building
Proposed Use	Convenience Store w/Fuel Pumps
Deed Reference	8216/826
Tax Account Number	11-1117010175
Ancillary Uses	Minor ancillary uses as permitted in Section 405.4.D. of the B.C.Z.R. (No additional square footage required)
Proposed Building Floor Area:	
Total	3113 S.F.
Sales Floor Area	~~2180~~ S.F. 2799.5
Floor Area Ratio	3113 S.F. ÷ 52,788 = 0.06 (0.2 permitted)
Existing Building Height	14'±
Proposed Building Height	14'±

AREA REQUIRED FOR COMBINATION USE

10 Servicing Spaces x 1500 S.F. ... 15,000

Additional Site Area Factor:

2799.5 4 x ~~2180~~ (Sales Area) ... ~~8720~~ 11198

Total Site Area Required ... ~~23,720~~ S.F. 27,198

Total Site Area Provided ... 52,788 S.F.

Area of Special Exception ... 52,788 S.F.

PARKING SPACES

Fuel Service w/Combination Use:	
3113 S.F. @ 5/1000	= 16
maximum employee shift	3
air	1
ATM	1
Total Required	21
Total Provided	26
PARKING SPACE DIMENSIONS:	
Typical Space	9' x 18'
Handicap Space	16' x 18'
(All spaces to be permanently striped)	

ROYAL FARM STORE	
Hours of Operation	24 Hours/7 Days per Week
Max. Number of Employees	15-20
Max. Number of Employees/Slift	Morning/Afternoon = 3 Afternoon/Evening = 3 Night = 2

GENERAL NOTES

1. All work shall conform to Baltimore County standard specifications and details or as shown on these approved plans.
2. The contractor shall notify Miss Utility 1-800-257-7777 five days prior to starting work.
3. It is the responsibility of the contractor to investigate for underground gas and/or electric lines.
4. No wastes or by-products will be produced on the Site.
5. The dumpster shall be screened.
6. See architectural plans for exact building dimensions.
7. All fixtures used to illuminate the off-street parking area shall be so arranged as to reflect the light away from residential sites and public streets.
8. The proposed sign is to conform with B.C.Z.R.
9. A stormwater management waiver has been approved.
10. Any underground fuel tanks are to be installed with all local, state and federal regulations.
11. The site shall comply with all applicable sections of the Fire Prevention Code prior to occupancy or beginning of operation.
12. All curb radii are 5' unless otherwise noted.

ZONING HISTORY

CBA - 87 - 151 (6/16/68) Affirmed appeal decision to construct a 24,000 S.F. strip shopping center and convenience store

LANDSCAPING CALCULATIONS

REQUIRED PLANTING UNITS

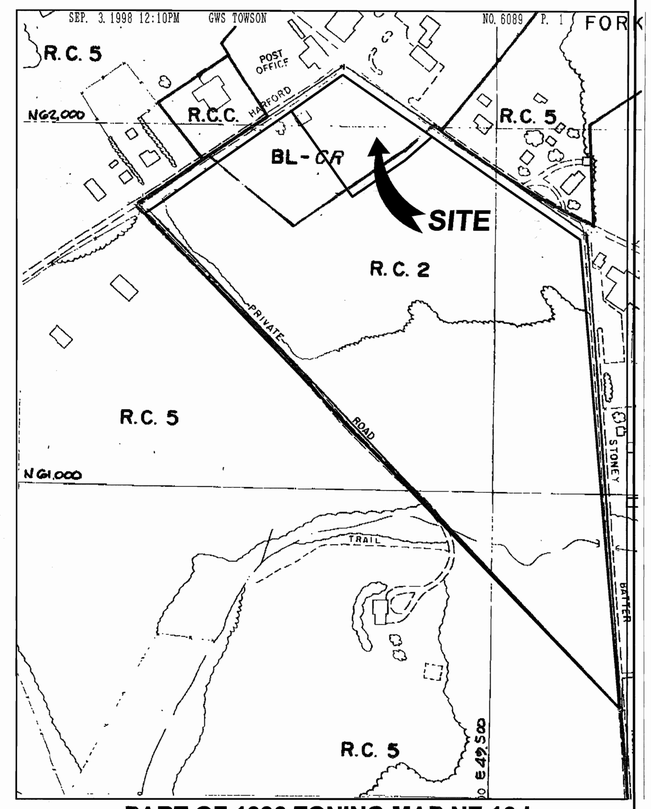
ADJACENT ROADS	@1 P.U. / 40 L.F. 5.33 L.F. / 40	= 10.38 P.U.
INTERIOR ROADS	@1 P.U. / 20 L.F. 113 L.F. / 20	= 5.65 P.U.
SCREENING	@1 P.U. / 15 L.F.	
SERVICE STATION - CLASS A	496.68 L.F. / 10	= 49.67 P.U.
SERVICE STATION - PUBLIC R/W	365 L.F. / 10	= 36.5 P.U.
PARKING LOTS	@1 P.U. / 12 P.S. 30 P.S. / 12	= 2.5 P.U.
1 TREE / 8 P.S. PER CR ZONE REGULATIONS		= 3.3 P.U.
	TOTAL REQUIRED	= 108.0 P.U.

7% LANDSCAPED AREA IN PARKING LOT 12,360 S.F. x .07 = 865 S.F.

PLANTING UNITS PROVIDED		EXISTING	NEW	
MAJOR DECIDUOUS	@ 1:1	3	26	= 29 P.U.
MINOR DECIDUOUS	@ 2:1	0	15	= 7.5
EVERGREEN	@ 2:1	0	51	= 25.5
SHRUB	@ 5:1	0	214	= 42.8
GROUNDCOVER	@ 500:1	0	1720	= 3.4
			TOTAL P.U. PROVIDED	= 108.2

7% LANDSCAPED AREA IN PARKING LOT

TOTAL S.F. PROVIDED = 870 (= 7%)



PART OF 1996 ZONING MAP NE 16-I

SCALE: 1" = 200'

MATIS WARFIELD, INC.
CONSULTING ENGINEERS
6600 York Road, Suite 209
Baltimore, Maryland 21212
Phone: (410) 377-7596
Fax: (410) 377-7657

STATE OF MARYLAND — MATIS WARFIELD — REGISTERED PROFESSIONAL ENGINEER

OWNER
Seven Kids, L.L.C.
c/o Lauren M. Ebey
120 Cockeysville Road
Suite 205
Cockeysville, Maryland 21030
(410) 771-8400

DEVELOPER
Cloverland Farms Dairy, Inc.
3611 Roland Avenue
Baltimore, Maryland 21211
(410) 889-0200

SPECIAL EXCEPTION REQUESTED

» Special Exception to permit an automotive station in combination with a food store with a sales area larger than 1500 S.F. [Section 405.4.E.1]

REVISED 9/29/99 UPDATE GENERAL NOTE # 9 AND ADD CORRECT SIGN DETAIL

Gross Area Plan to Accompany Petitions
for A Special Exception

ROYAL FARM STORE

Harford Road @ Sunshine Avenue
Baltimore County, Maryland

Election District 11 #99 Tax Map 54 - Parcel 48
Councilmanic District 5 November 4, 1998
Scale: 1" = 80' Sheet 1 of 2

PROTESTANT'S EXHIBITS

(4)

Exhibits-Protestants

2 of 3

99-199-X

Weather :
Counted by:
Board # :
Other : Channel 1 -NB
Street name :MD 147

TASPLUS Software
Copyright (C) 1990, 1994
JAMAR Technologies, Inc.

Site Code : 000000000000
Start Date: 09/20/1999
File I.D. : MD147
Direction 1

Begin	Mon. 09/27		Tues.		Wed.		Thur.		Fri.		Sat.		Sun.		Week Avg.	
Time	1	2	1	2	1	2	1	2	1	2	1	2	1	2	1	2
12:00 am	20	6	17	6	*	*	*	*	*	*	*	*	*	*	18	6
01:00	7	2	14	6	*	*	*	*	*	*	*	*	*	*	10	4
02:00	2	4	8	3	*	*	*	*	*	*	*	*	*	*	5	4
03:00	2	12	3	13	*	*	*	*	*	*	*	*	*	*	2	12
04:00	8	44	8	41	*	*	*	*	*	*	*	*	*	*	8	42
05:00	27	132	27	134	*	*	*	*	*	*	*	*	*	*	27	133
06:00	75	584	80	655	*	*	*	*	*	*	*	*	*	*	78	620
07:00	183	960	191	951	*	*	*	*	*	*	*	*	*	*	187	956
08:00	219	577	223	583	*	*	*	*	*	*	*	*	*	*	221	580
09:00	148	230	146	305	*	*	*	*	*	*	*	*	*	*	147	268
10:00	149	175	179	185	*	*	*	*	*	*	*	*	*	*	164	180
11:00	152	194	199	198	*	*	*	*	*	*	*	*	*	*	176	196
12:00 pm	188	166	203	199	*	*	*	*	*	*	*	*	*	*	196	182
01:00	186	191	212	189	*	*	*	*	*	*	*	*	*	*	199	190
02:00	263	232	258	230	*	*	*	*	*	*	*	*	*	*	260	231
03:00	462	232	482	244	*	*	*	*	*	*	*	*	*	*	472	238
04:00	591	197	653	224	*	*	*	*	*	*	*	*	*	*	622	210
05:00	787	205	798	204	*	*	*	*	*	*	*	*	*	*	792	204
06:00	422	179	*	*	*	*	*	*	*	*	*	*	*	*	422	179
07:00	197	103	*	*	*	*	*	*	*	*	*	*	*	*	197	103
08:00	139	90	*	*	*	*	*	*	*	*	*	*	*	*	139	90
09:00	103	82	*	*	*	*	*	*	*	*	*	*	*	*	103	82
10:00	70	41	*	*	*	*	*	*	*	*	*	*	*	*	70	41
11:00	58	14	*	*	*	*	*	*	*	*	*	*	*	*	58	14
Totals	4458	4652	3701	4370	0	0	0	0	0	0	0	0	0	0	4573	4765
	9110		8071		0		0		0		0		0		9338	
Avg. Day	97.4%	97.6%	80.9%	91.7%	.0%	.0%	.0%	.0%	.0%	.0%	.0%	.0%	.0%	.0%		
AM Peaks	08:00	07:00	08:00	07:00											08:00	07:00
Volume	219	960	223	951											221	956
PM Peaks	05:00	02:00	05:00	03:00											05:00	03:00
Volume	787	232	798	244											792	238

ADTs

PROT #1

Prot Ex #2

IN THE MATTER OF ZINK-SUNSHINE	:	BEFORE
LOCATED ON THE SOUTHEAST SIDE OF HARFORD ROAD; SOUTHWEST SIDE	:	COUNTY BOARD OF APPEALS
OF SUNSHINE AVENUE; AND WEST SIDE OF STONEY BATTER ROAD	:	OF
RE: CRG DECISION	:	BALTIMORE COUNTY
11th ELECTION DISTRICT 5th COUNCILMANIC DISTRICT	:	CASE NO. CBA-87-151
	:	

: :

O P I N I O N

This matter comes before the Board as an appeal from the decision of the County Review Group (CRG) which granted the property owner's plan for development as revised in accordance with comments as contained within the minutes of the CRG meetings.

The developer proposes to construct a 24,000 square-foot strip shopping center and convenience store on the east side of Harford Road, south of the intersection with Sunshine Avenue. Neighboring residents have filed this appeal seeking a reversal of the CRG's approval.

Numerous witnesses appeared on behalf of the protestants. They included Paul Plowman, who lives approximately 1 mile from the site on Fork Road. He was particularly concerned about the traffic which would be generated by this development and testified as to the dangerous intersection which exists at Harford Road and Sunshine Avenue. He also voiced concerns regarding the storm water management plan and the proposed entrance to the site, both of which he claimed would be disrupted in the event of a subdivision of lots 1 and 2.

Nancy Hastings of Kingsville also testified in opposition to the development. Although she does not live in the immediate vicinity, she was concerned about the side yard setback to various neighboring residential properties and the impact of this development on the Harford Road corridor.

Prof Ex #3

MDE

MARYLAND DEPARTMENT OF THE ENVIRONMENT
2500 Broening Highway • Baltimore Maryland 21224
(410) 631- 3000 • 1- 800 -633-6101 • http:// www. mde. state. md. us

Parris N. Glendening
Governor

Jane T. Nishida
Secretary

December 30, 1998

Mr. and Mrs. Tom Russo
3 County Hill Court
Kingsville MD 21087

Dear Mr. and Mrs. Russo:

On December 9, 1998, a representative from the Waste Management Administration's Oil Control Program performed routine sampling of the groundwater from your domestic well prior to, in between, and after water circulated through the two granular-activated carbon (GAC) treatment tanks. Enclosed are the laboratory results for the groundwater samples collected from your residence. Water samples collected before filter, mid-filter, and after the two carbon filters are designated by the initials PRE, MID, and POST-GAC respectively in the client sample ID category.

Analytical results for the water samples collected indicate that dissolved petroleum contaminants were detected in your domestic well. Contaminant levels were below the United States Environmental Protection Agency's (USEPA) drinking water standards after treatment with the granular-activated carbon treatment system. Based on these results we will resample your GAC system within three (3) months.

If you have any questions please feel free to contact me at (410) 631-4152.

Sincerely,

Paul Certeza, Environmental Specialist
Special Operations Section
Oil Control Program

PC:rjm
Enclosure
cc: Mr. Richard Collins
Mr. Herbert Meade

Prot Ex #4

Memo

OK to File CH
Follow-up date

ACTION REPORT

spection
elephone

Baltimore County Department of Environmental Protection and Resource Management

Date 11-24-87
Time

GROUNDWATER INVESTIGATION ZUK PROPERTY

Dist.

FILE LOCATION: ~~Hunt Timonal~~ 4607 Sunshine Rd and Harford Rd

PERSON CONTACTED: Al Shamblin Zuk Properties
(name and title)

ADDRESS: Phone # 761-0370

REASON FOR INSPECTION: tank removal

RECORD OF ACTION: On this date I inspected removal of tanks at Zuk Property located on the SE corner of Harford & Sunshine Rds. The tanks were removed at a former body shop and had been abandoned approx 15 years ago. Two 550 gallon and 2 - 200 gallon tanks were removed. All the tanks were in very poor condition. Some were completely rusted through. One tank appeared to have contained product which smelled like paint thinner and had obviously leaked. Per directive to Mr Al Shamblin with Zuk Properties, the tank was pumped out prior to removal. Odor of thinner could also be detected in the tank pit. No leak appeared on one of the 550 gallon tanks. The

RECOMMENDATIONS:

DATE: 11-2-87 SANITARIAN T Bodney

REFERRED TO: FOR

DATE: BY

COPY TO

these other tanks appeared to be abandoned no indication of having contained product for some time. I advised Mr Shanklin to leave the tank pit open and that a joint inspection would be conducted with the State & DOE Official on 10-30-87 at which time locations for ~~the~~ monitoring wells will be marked.

I contacted Ms Maria Horton at DOE and scheduled an inspection for 10-30-87.

10-30-87 I met with Ms Horton from DOE and with Mr Shanklin with Zink construction. Location for 3 observation wells were picked out around the tank field. Mr Shanklin will contact this office when the 3 wells are completed to schedule sampling. This ~~is~~ is an private water supply area with the nearest private water supply located at least 100 + ft upgradient + across the street from the tank field. Domestic wells in the area will be sampled pending sampling results of observation wells. ... Two production wells are to be installed on the property and are to be monitored for six months.

12-2-87 Information update: The facility was Fork Sand & Gravel in the 1960s. owned by Bob McElwee, currently owner of Town Country Sports Cars 2705 Belair Rd Fallston 21047

Phot #5 1.D Attachment 8

RD

State of Maryland
Department of the Environment
Hazardous and Solid Waste Management Administration
2500 Broening Highway, Baltimore, Maryland 21224

CASE # 8-0919 BA

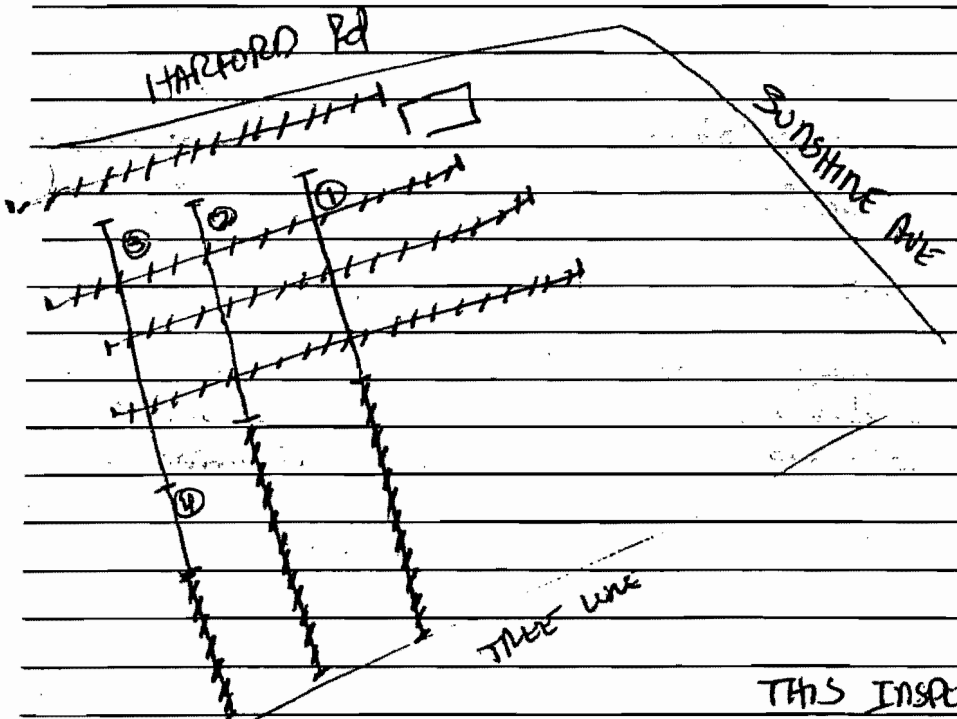
Report of Observations

Type of Inspection/Observation : FRACTURE TRACING Date 1 / 10 / 90

Facility Name : ZINK - SUNSHINE PROPERTY

Remarks :

THIS OBSERVER AND SCOTT TRETHEWAY STOPPED AT THE ABOVE LOCATION TO MAP FRACTURE TRACES AT THE ZINK SUNSHINE PROPERTY UTILIZING THE "WADI". THE THREE EAST-WEST LINES, WHICH WERE TRACED ON 1/5/90, WERE EXTENDED AND MAPPED. FOUR NORTH-SOUTH LINES WERE FLAGGED, APPROXIMATE 90 FEET APART, AND FRACTURE TRACING OPERATIONS WERE PERFORMED.



THIS INSPECTOR STOPPED AT THE RUSSO RESIDENCE AND SPOKE TO MR. RUSSO CONCERNING THE FILTRATION SYSTEM. MR RUSSO INDICATED THAT HE WAS WORRIED ABOUT HIS DRINKING WATER BECAUSE AN ULTRA-VIOLET LIGHT WAS NOT UTILIZED TO TREAT THE WATER AFTER EXITING THE CARBON TANKS. THIS INSPECTOR WILL RELAY MR. RUSSO'S CONCERNS TO MR DEMARCO (CHIEF-WST DIV). THIS INSPECTOR ALSO OBTAINED MR. RUSSO'S SIGNATURE ON A "RIGHT OF ENTRY" FORM. INFORMED MR. RUSSO THAT FRACTURE TRACINGS WOULD PROBABLY BE PERFORMED ON HIS PROPERTY

TIME IN : 0830 TIME OUT : 1230

Observer : Paul Certa Person Interviewed :

Prot #6

Royal Farm Convenience Store
And Gas Station
Old Philadelphia Road

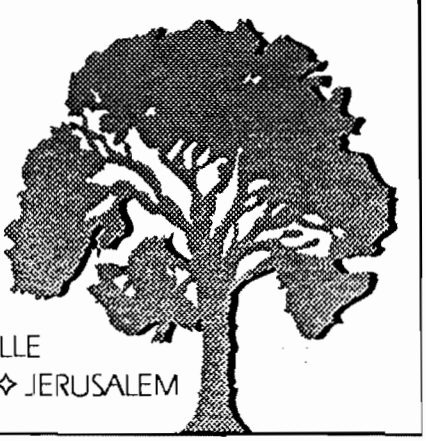
Picture taken by Carl Slaw
January, 1999
- at night
- in middle of winter
- from across the street
- WITH NO FLASH



PROT #9

Villages

OF NORTHEAST BALTIMORE COUNTY



BRADSHAW ✧ FRANKLINVILLE ✧ CARNEY ✧ FORK
FULLERTON ✧ GERMANTOWN ✧ GLEN ARM ✧ CUB HILL
LORELEY ✧ PERRY HALL ✧ UPPER FALLS ✧ RECKORDVILLE
JERICHO ✧ OVERLEA ✧ INDIAN ROCK ✧ NECKER ✧ KINGSVILLE
PUTTY HILL ✧ MOUNT VISTA ✧ PARKVILLE ✧ GREENWOOD ✧ JERUSALEM

Fork

by Joseph H. Smith

Fork is situated at the intersection of Harford Road, Fork Road (west) and Sunshine Avenue (east), one mile south of the Little Gunpowder Falls.

The Harford Road was the Philadelphia-Baltimore Turnpike – one of two roads heading north; the other being Philadelphia Road.

Virtually all country towns had a church, school, store, blacksmith shop and hardware shop, and most were self-supporting. Staples were generally tobacco, coffee, tea, sugar, hominy and kerosene. Beef, hogs and chickens were raised for meat. Milk, eggs, lard and leather were products from these animals. Metal parts for wagons, sleighs, hinges, horseshoes, chains and tools were made by blacksmiths. Much of the iron needed was received from overseas in the early days – at least until ore was foundried and smelted here.

Prior to 1800, this village was occupied by Indian tribes. Just a few hundred yards south of Fork; a small spring-fed stream originates – now known as Sweathouse Branch. The name came from a log and rock building, now gone, where Indians used to heat granite and flint rocks common to this area. They would then pour water over them causing steam – like a sauna.

This are was excellent for hunting deer, rabbits, coon and ground hogs, and the wild game was plentiful. Fish were nearby from the headwaters of the Big and Little Gunpowder. Many fish used these waters for spawning – herring, shad, white and yellow perch, bass and rock. The proof of an Indian village was upheld by the finding of hundreds of artifacts – arrow heads, axes, bone knives, grinding tools, etc.

The name of the village came from its location. In time of floods from the two Gunpowder Falls, travelers had to go to the Fork of the Falls to continue their journey.

The area was a grant from King George III of ENgland to Charles Gorsuch. The grant included about 200 acres. The Gorsuch and Onion families owned much of this property. League, Clayton, Dilworth, Mast, Wisnom, Carter, Willick, Burton and Smith were some of the first inhabitants.

The post office was first located in the Building Association structure at Stoney Batter

Road and Sunshine Avenue. Many organizations started here, i.e. Fork School, Fork Christian Church and a meeting center.

The Fork Methodist Church was our earliest religious representative – about 1771. Member or not, we must be proud of the heritage.

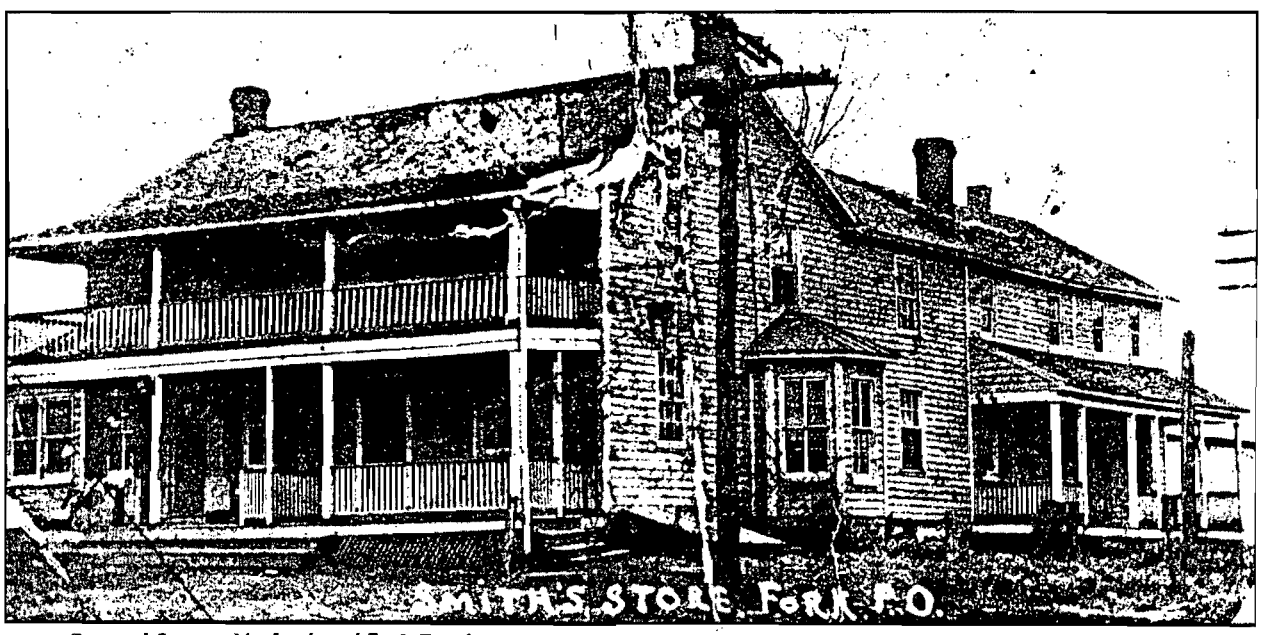
The first home was on Charlesborough, so named for Charles Gorsuch. It is believed that the second home was the Burton place. Third was Fork Methodist Church. The fourth building was the Association Building and the fifth was Fork Meeting House.

Roads were a very great necessity. Woods and forests were removed; generally where Indian trails and footpaths existed. These were paid for in tolls, collected at booths and gates. A wagon with narrow wheels that cut ridges in the road bed paid 8 cents while a wide wheeled vehicle that helped a trail only paid a nickel. Patterson Road, Fork Road, Sunshine Avenue and Bradshaw Road all connect into a single road named Joppa. It was a rolling road over which wagons of hay, cotton, vegetables, animals and fowl traversed. Large hogsheads of tobacco were rolled from farms to Joppa, which had wharves and shops to carry supplies to England.

Farming was the chief industry and the mainstay of the economy. Large houses and barns were built to house the people and animals and also to store hay and grain.

Fork became a village because of its location. Harford Road (Baltimore Turnpike) and Fork Road (Joppa Road) were cross roads where much traffic moved through. A hotel, hardware store, wheelwright, blacksmith shop and general store soon were built to accommodate these transits. Post office, telephone office, churches and schools were soon to follow.

Edgar Gorsuch built the first meeting house (Dampmans Hotel) – Fork Store. On the



General Store – Harford and Fork Roads

Fork

southwest corner, a house, a store and a bar were erected. The same property had a garage to repair a growing automobile business. Fork Christian Church was built in 1893. Fork School started at the Building Association structure, but was soon to move into the schoolhouse at the end of Stoney Batter Road, northeast side of Sunshine Avenue.

The families were very prosperous with much land, slaves and large farms. They owned stage coaches, wagons, buggies and many horses and cows. Dr. James J.R. Gorsuch lived on a part of Charlesborough from 1850 to 1937.

John Arthur, a blacksmith, wheelwright, and buggy and wagon builder bought the building on the northwest corner. Many buggies, sleighs, plows and barrows carried John's name. His only son, Clarence, went to Undertaker's school and became Fork's Funeral Director for many years, Clarence also had the Hardware store which sold animal feed, tack and farm equipment.

J. Lester Smith operated a general store in Fork from 1893 to 1950. At one given time he was storekeeper and postmaster. He owned Fork Meeting House at the crossroads of Fork and Harford Roads which housed the store, post office, a two-lane bowling alley, and feed and grain concerns. Twenty-three rooms were in the the building.

Lester operated the telephone company switchboard for the Maryland Telephone Company and C&P Telephone. On the property was a large barn and resting shed for horses and wagons traveling north and south on the Baltimore Turnpike (Harford Road). A large scale for weighing freight wagons was adjacent to the barn – you needed a weight ticket for the toll gates; one at Mt. Vista and one at Reckord.

Original Post Offices

	ESTABLISHED	DISCONTINUED	CHANGED TO
Baldwin No. 1	October 12, 1871	September 15, 1896	
Baldwin No. 2	October 12, 1896		
Bradshaw	June 18, 1887	June 31, 1972	Upper Falls
(rescinded no change)			
Carney	September 13, 1888	August 15, 1895	Cub Hill
Carney	August 15, 1895	October 14, 1905	
(reestablished)			
Costa	March 4, 1886	January 25, 1887	Perry Hall
Cub Hill	December 31, 1840	August 25, 1857	Lutherville
Cub Hill	December 10, 1857	August 26, 1858	Lutherville
Cub Hill	December 12, 1861	January 19, 1863	Lutherville
Cub Hill	May 14, 1863	August 1, 1877	Lutherville
Cub Hill	January 15, 1878	June 17, 1896	Carney
Fork Meeting House	July 16, 1839	May 31, 1880	Fork (first use of original Fork School Bldg)
(formerly Kings Tavern from Kingsville)			
Franklinville	July 16, 1841	November 28, 1844	Jerusalem Mills
Franklinville	August 24, 1887	July 31, 1910	Bradshaw
Fullerton	August 18, 1883	July 16, 1961	Perry Hall
Glen Arm	October 3, 1883	April 29, 1895	
Glenarm	April 29, 1895	January 1, 1966	Glen Arm
Greenwood	February 16, 1859	January 15, 1908	Glen Arm
Gunpowder No. 1	December 10, 1816	December 26, 1826	
Gunpowder No. 2	May 12, 1880	May 11, 1889	Bradshaw
(formerly Gunpowder-Joppa Cross Roads)			
Gwinn	December 13, 1883	October 12, 1896	Baldwin
Hartley	March 6, 1898	January 15, 1908	Glen Arm
Joppa Cross Roads	December 14, 1816	May 18, 1829	Little Gunpowder
King's Tavern	January 29, 1829	January 8, 1830	Kingsville
Kingsville No. 1	January 8, 1830	July 6, 1839	Fork Meeting House
(formerly King's Tavern)			
Kingsville No. 2	July 14, 1819		
Lavender Hill	May 15, 1876	February 12, 1887	Parkville
Little Gunpowder	May 18, 1829	May 12, 1880	Gunpowder
(formerly Joppa Cross Roads)			
Loreley	October 3, 1890	March 15, 1928	Fullerton
Morrison	June 18, 1887	October 3, 1890	Loreley
Mount Vista	February 14, 1902	September 15, 1911	Glen Arm
Necker	October 11, 1886	January 3, 1906	Fullerton
Perry Hall	August 1, 1887	April 1, 1906	Fullerton
(reverted back to Perry Hall July 16, 1961)			
Reckord	June 24, 1880	April 15, 1909	Hydes
Upper Falls	December 26, 1851		

PROJ #10

RESOLUTION

Greater Kingsville Civic Association ASSOCIATION

RESOLVED: That at the September, 1999 meeting of the Greater Kingsville Civic Association Association held on September, 1999, it was decided by the Association that the responsibility for review and action on all zoning matters for the period September 1999 - September, 2000 be placed in the (Board of Directors) (Zoning Committee) consisting of the following members:

Dorothy E. Foos
Douglas Behr
Robin Beers
Charlotte Pine
Carol Shaw

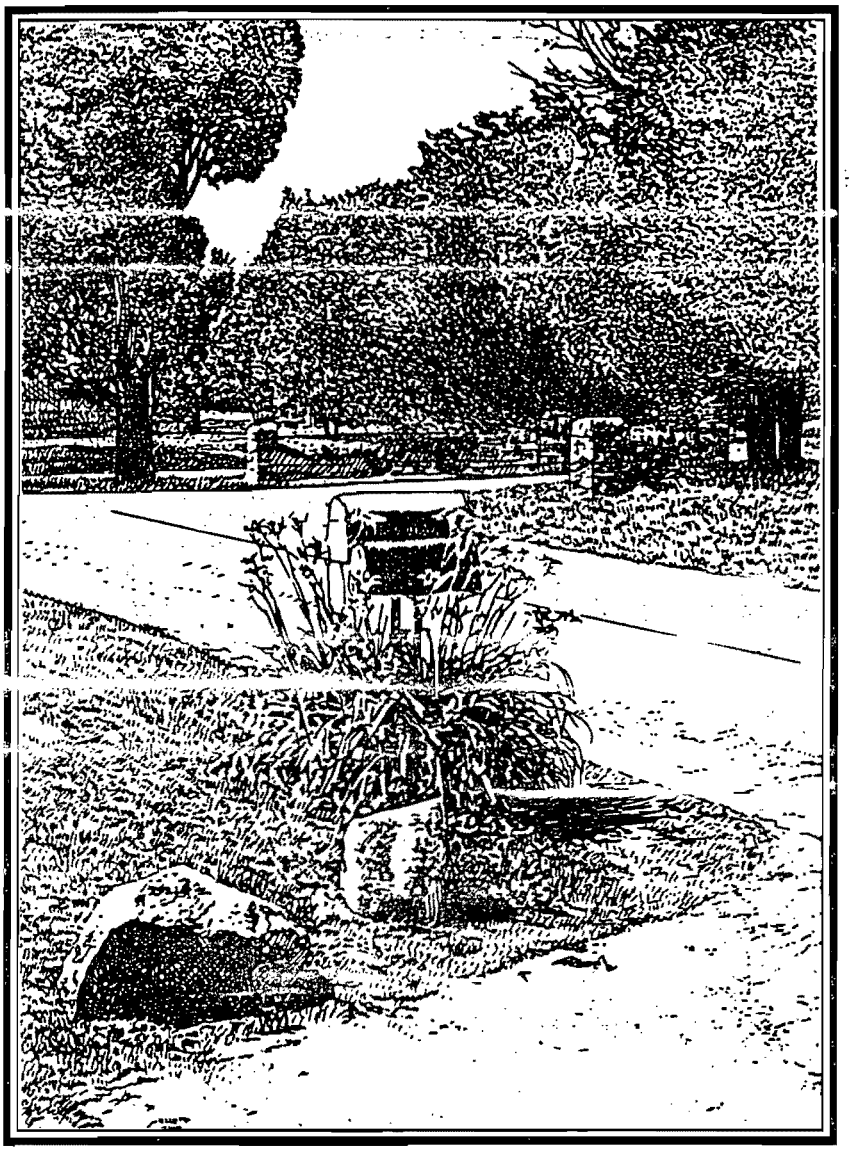
AS WITNESS our hands and seal this 30 day of September, 1999.

ATTEST:

Leigh A. Keller
SECRETARY

Dorothy E. Foos
PRESIDENT

PROT #11



• Baltimore County • Focus on Community •

GREATER KINGSVILLE AREA COMMUNITY PLAN

As adopted by the Baltimore County Council
July 1, 1996

Baltimore County 2000 Comprehensive Zoning Map Issues District 5 as of 11/24/99

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres		Requested Zoning and Acres		Comments
5-062	Spellman, Larson & Associates	Northside of Carroll Island Rd, 190' west of Bowleys Quarters Rd					
			DR 3.5	3.2	BL	5.4	
			CB	2.2	Total	5.4	
			Total	5.4			
5-063	Seven Kids LLC	Intersection of Harford Rd and Sunshine Ave					
			RC 2	20.6	RC 5	19.1	
			Total	20.6	BL CR	1.5	
					Total	20.6	
5-064	Scott Welsh	10403 Vincent Farm Rd, 120' south to Pine Hill Rd					
			RC 3	0.8	DR 3.5	11.1	
			RC 2	10.3	Total	11.1	
			Total	11.1			
5-065	Albert C. Barnhart & Kathryn Earnshaw	6313 Hutschenreuter Rd, 2100' east of Harford Rd					
			RC 2	4.0	RC 5	4.0	
			Total	4.0	Total	4.0	
5-066	John Trueschler	11055 Philadelphia Rd, opposite Joppa Rd					
			DR 5.5	5.7	ML	5.7	
			Total	5.7	Total	5.7	
5-067	Lettie Hack	11801 Belair Rd near Goettner Ave					
			RCC	1.5	BL	1.5	
			Total	1.5	Total	1.5	
5-068	William Otto Schmidbauer	9431 Belair Rd near Halbert Ave					
			ROA	0.4	BLR	0.4	
			Total	0.4	Total	0.4	
5-069	Robert Waldhouser	55 Marlyn Ave, south west of Sandalwood Rd					
			DR 3.5	17.0	BL	3.5	
			Total	17.0	DR 5.5	13.5	
					Total	17.0	
5-070	Wayne Knight	8814 Cowenton Ave at Philadelphia Rd					
			DR 5.5	4.2	BM AS	39.5	
			RO	0.4	Total	39.5	
			ML	1.4			
			SE	33.5			
			Total	39.5			
5-071	Diana M. Kotroco & Theresa A. Carr	9223 Belair Rd, north of Penn Ave					
			DR 5.5	0.5	RO	0.5	
			Total	0.5	Total	0.5	
5-072	White Marsh Partnership LLP	Northwest corner of New Forge Rd and Philadelphia Rd					
			BM	4.2	BM AS	4.2	
			Total	4.2	Total	4.2	
5-073	Raymond H. & Elinor L. Holter	5907 Allender Rd, south of Pulaski Hwy					
			ML	1.4	BR	1.4	
			Total	1.4	Total	1.4	

Plot #12

Baltimore County 2000 Comprehensive Zoning Map Issues District 5 as of 11/24/99

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Comments
5-074	Greater Kingsville Civic Association	Harford Rd at southeast corner of Sunshine Ave			
			BL CR 3.2	RC 2 3.2	
			Total 3.2	Total 3.2	
5-075	White Marsh Assoc LLC	East side of Mohrs Ln 550' west of Pulaski Hwy			
			ML IM 12.7	BM IM 12.7	
			Total 12.7	Total 12.7	
5-076	George W. Yutzy	East side of Mohrs Ln, 900' east of Philadelphia Rd			
			ML IM 3.5	BM IM 3.5	
			Total 3.5	Total 3.5	
5-077	George W. Yutzy	1465 Mohrs Ln, north side of Mohrs Ln at northeast corner of Philadelphia Rd			
			ML IM 11.5	BM IM 12.7	
			RO 1.8	CB 0.6	
			Total 13.3	Total 13.3	
5-078	Staff	Northwest corner of Schroeder Ave and Belair Rd			
			BL 1.6	BM	
			Total 1.6	BL or 1.6	
				Total 1.6	
5-079	Cloverland Farms Dairy, Inc	311 Back River Neck Rd south of Middleborough Rd			
			BL 0.8	BL AS 0.8	
			Total 0.8	Total 0.8	
5-080	Back River Neck Peninsula Comm Assoc	Chesapeake Sr. High School, Pottery Farm Park Back River Recreation Site			
			DR 3.5 83.5	RC 20 83.5	
			Total 83.5	Total 83.5	
5-081	Back River Neck Peninsula Comm Assoc	Community of East Riverside Ave, east of Back River Neck Rd			
			DR 5.5 24.0	DR 3.5 24.8	
			BLR 0.8	Total 24.8	
			Total 24.8		
5-082	Back River Neck Peninsula Comm Assoc	Community of Cherry Gardens, east of Back River Neck Rd			
			DR 5.5 40.5	DR 3.5 40.5	
			Total 40.5	Total 40.5	
5-083	Schimunek Funeral Home, Inc	9705 Belair Rd, south corner of Belair Rd and Forge Rd			
			DR 3.5 6.7	BM 0.8	
			Total 6.7	RO 5.9	
				Total 6.7	
5-084	Honeygo Run Reclamation Center, Inc	5210-5214 Silver Spring Rd, 2300' west of Philadelphia Rd			
			DR 3.5 6.3	MLR 6.3	
			Total 6.3	Total 6.3	
5-085	James H. Howdyshell, Jr	5510 Lloyd Rd, 900' to Philadelphia Rd			
			DR 2 H 2.4	DR 5.5 2.4	
			Total 2.4	Total 2.4	

PROT #13

Baltimore County
Department of Environmental Protection
& Resource Management
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
494-3733

Robert W. Sheesley
Director

Dennis F. Rasmussen
County Executive

July 13, 1988

Mrs. Barbara Morley
4 Country Hill Court
Fork, Maryland 21051

Dear Mrs. Morley:

Enclosed is a copy of the volatile organic analysis results of a sample from your water supply taken on May 27, 1988 by this office. The results reveal the presence of a volatile organic chemical in the drinking water supply. This chemical, "Methyl tert butyl ether", is a gasoline additive and may indicate the beginning of a more serious gasoline contamination problem in your water supply. The level detected, however, is less than the Maryland State Interim Maximum Contaminant Level Drinking Water Standard of 50 ppb, (parts per billion) and as a result, no restriction in the use of your water supply is recommended at this time.

Additional sampling will be conducted by this office to further evaluate your water supply.

Please contact Mr. Thomas Bodrogi, of this office at 494-3745 should you have any questions concerning this matter.

Very truly yours,

Eugene G. Siewierski

Eugene G. Siewierski
Supervisor
Waste Management Section

EGS:mmh

Enclosure

cc: Mr. Robert W. Sheesley
Mr. J. James Dieter
Mr. Robert Aschenbrenner

PROT #14

Baltimore County
Department of Environmental Protection
& Resource Management
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
494-3733

Robert W. Sheesley
Director

August 29, 1988

Dennis F. Rasmussen
County Executive

Mr. Paul Hawkins
5 Country Hill Court
Fork, Maryland 21051

Dear Mr. Hawkins:

Enclosed is a copy of the volatile organic analysis results of a sample from your water supply taken on July 20, 1988 by this office. The results reveal the presence of two volatile organic chemicals in the drinking water supply.

The first chemical, "chloroform", was introduced into the water supply as a result of chlorination and will dissipate as the system is used. The level detected, is less than the US EPA's Maximum Contaminant Level Drinking Water Standard of 100 ppb, (parts per billion).

The second chemical, "1,2 Dichloropropane", is a gasoline additive. While no drinking water standard currently exists for this chemical, the concentration found in your water supply is at the limit of detection and below drinking water standards for similar chemicals.

As a result, no restrictions in use of the water, nor any water treatment measures are recommended by this office at this time. Additional sampling will be conducted to further evaluate your water supply.

Please contact Mr. Thomas Bodrogi, of this office at 494-3745 should you have any questions concerning this matter.

Very truly yours,

Eugene G. Siewierski

Eugene G. Siewierski
Supervisor
Waste Management Section

EGS/bac
Enclosure

cc: Mr. J. James Dieter
Mr. Robert Aschenbrenner

Plot #15

NORTH/EAST CUSTOMER OPERATIONS

Baltimore Gas and Electric Company
1068 N. Front Street
Baltimore, Maryland 21202

February 16, 1999

Paul V. Morley, Jr.
4 Country Hill Court
Kingsville MD 21087

Dear Mrs. Morley:

Your request for information regarding electric interruptions to your home for the past 3 years has been referred to my attention.

Our records indicate there has been 8 electric outages since January 1, 1996. We show 2 in 1996, 1 in 1997, 4 in 1998, and 1 in 1999. The majority of these outages were tree and adverse weather related.

This opportunity to be of service is appreciated. If I can be of any further service, please call me at 410-291-3740.

Sincerely,

C E Morris

C. E. Morris
Customer Service Investigator

PROT ~~PET~~ 16 (1.0.)

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*****

SHOW: 60 Minutes

DATE: January 16, 2000

MTBE

STEVE KROFT, co-host

MTBE is shorthand for a chemical called methyl tertiary butyl ether. If you don't know about it yet, you will. It's a gasoline additive that is contaminating drinking water from Maine to California and has been called the biggest environmental crisis of the next decade. How did MTBE end up in gasoline? Well, 10 years ago, Congress told the oil companies to put it there, either MTBE or some other oxygenate that would make gasoline burn cleaner. It was supposed to clean up the air. But now MTBE is turning up in lakes and underground aquifers, and in 20 percent of the nation's urban wells, forcing some cities to shut down local water supplies. It seems to be turning up wherever people look for it. And no one was even looking for it until it turned up in Santa Monica, California, a few years ago.

(Footage of Santa Monica; people on beach; people on sidewalk; people in-line skating; surfer in ocean; water treatment facility; Craig Perkins and Kroft)

KROFT: (Voiceover) Santa Monica, California, is a beach community west of Los Angeles. Ninety thousand people live here because they like the environment. You can stroll on the outdoor promenade. You can Rollerblade on the boardwalk. You can swim in the ocean. But you haven't been able to drink the water here for nearly four years. That's when the city discovered that 70 percent of its wells were contaminated with MTBE. Craig Perkins is director of public works for Santa Monica.

Mr. CRAIG PERKINS: The first that I heard about MTBE was early March of 1996, when my water managers came to me and said, `We believe we have to start

Baltimore County
Department of Environmental Protection
& Resource Management
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
494-3733

Robert W. Sheesley
Director

Hech

Dennis F. Rasmussen
County Executive

June 21, 1988

Mr. Thomas Russo
3 Country Hill Court
Fork, Maryland 21051

Dear Mr. Russo:

Enclosed is a copy of the most recent volatile organic analysis results of the sample obtained from your well water supply on May 31, 1988. The results continue to indicate contamination at levels in excess of the US EPA Maximum Contaminant Level Drinking Water Standards of 5 ppb for Benzene and, 5 ppb for 1,2, Dichloroethane.

Based on these results, your water supply is still considered unsafe for human consumption and bathing. It continues to be recommended that a filtration or treatment system designed to remove such contaminants be installed. If you choose to install such a system, please contact this office to set up an appointment for sampling.

If you have any questions concerning this matter, please contact Mr. Thomas Bodrogi of this office at 494-3745.

Very truly yours,

Eugene G. Siewierski
Supervisor
Waste Management Section

EGS/mmh

Encl.

cc: Mr. Robert W. Sheesley
Mr. J. James Dieter
Mr. Robert J. Aschenbrenner
Ms. Karen Merrey
Mr. Bernard Bigham
Maryland State Department of
the Environment
Mr. Robert S. Magnuson, Blanton & McCleary

STATE OF MARYLAND
DE[illegible]TMENT OF HEALTH AND MENTAL HYGI[illegible]
Laboratories Administration
201 W. Preston Street
J. Mahsen Joseph, Ph.D., Director

TRACE ORGANICS LABORATORY
VOLATILE ORGANICS ANALYSIS

BOTTLE NUMBER RV-3 COLLECTOR T. Badorf Baltimore County

SOURCE OF SAMPLE Thomas Russo

(Include Address) 3 Country Hill Ct

SAMPLE TYPE: Community ____ Noncommunity ____ Comestic ✓ STP Station ____

Observation Well ____ Stream ____ Tidal Waters ____ Industrial Effluent ____

Other (Specify) ____

Preservative Used ____

IMPORTANT: First time sampled ~~3-17-88~~ Last known sampling date 5-9-88

Reason for submitting sample: Survey ____ Suspected Petroleum Contamination ✓

Suspected Industrial Chemical Contamination ____ Other (Specify) ____

CHAIN OF CUSTODY: From: Tom Badorf To: ____

From: ____ To: ____

REMARKS: ____

1	2 3	4 5 6 7	8 9 10 11	12 13 14 15 16 17	18 19
	03			05 31 88	
TRANS TYPE	COUNTY	PLANT NO.	SAMPLING STATION	DATE COLLECTED	CARD NO.

20 21 22		23 24		25 26
FIELD pH	FIELD RESID. CHLORINE: FREE		TOTAL	

Purgeable Halocarbons (EPA 601)				Other Purgeables	
Chloromethane	<5	trans-1,3-Dichloropropene	<1	Benzene	357
Bromomethane	<1	Trichloroethene		Toluene	3
Dichlorodifluoromethane		Dibromochloromethane		Ethylbenzene	8
Vinyl choride		1,1,2-Trichloroethane		Total Xylenes	47
Chloroethane		cis-1,3-Dichloropropene		Total Purgeable Hydrocarbons	[illegible]
Methylene chloride		2-Chloroethylvinylether	<10	Tetrahydrofuran	
Trichlorofluoromethane		Bromoform	<1	(2-Butanone MEK)	
1,1-Dichloroethene		1,1,2,2-Tetrachloroethene		Methylisobutylketone (MIBK)	
1,1-Dichloroethane		Tetrachloroethene		Acrolein	
trans-1,2-Dichloroethene		Chlorobenzene	✓	Acrylonitrile	
Chloroform	✓	Total Trihalomethanes		Carbon Disulfide	
1,2-Dichloroethane	25	Other Purgeable Organics:		Vinyl Acetate	
1,1,1-Trichloroethane	<1			Acetone	
Carbon Tetrachloride				2-Hexanone	
Bromodichloromethane				Styrene	
1,2-Dichloropropane	✓				
				methyl-tert-butyl-ether	28

Results reported in micrograms per ✓ (parts per ~~million~~/billion)

DATE RECEIVED JUN 01 1988 DATE REPORTED JUN 14 1988 CHEMIST [signature] LAB. NO. 885284

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO File Date June 10, 1988

FROM Eugene G. Siewierski EGS

SUBJECT Groundwater Investigation
Zink - Sunshine Site

This office was contacted on June 9, 1988 by Mr. Thomas Zink and advised that his company may be willing to supply potable water to the Russo residence in the interim period, untill the groundwater contamination problem can be resolved. Mr. Zink requested a cost figure, however.

Mrs. Thomas Russo was then contacted on June 9, 1988 and informed. Mrs. Russo stated that her family currently spends $24.00 per/week for bottled water for drinking and cooking, @ 60¢ per gallon. Mrs. Russo had no idea on the quantity of water the family uses for bathing, or the cost which would be associated with providing bottled water for bathing. Mrs. Russo stated that her family is using the contaminated water for bathing, in spite of our recommendation against it, because of the inconvinence of bathing elsewhere. Mrs. Russo further stated that she had received an estimate of $1,800 from a water treatment contractor, for installation of a filteration system. This cost does not include periodic replacement of filters.

Mr. Timothy Hearn, of Zink Construction Company was then contacted on June 9, 1988 and informed. Mr. Hearn agreed to discuss the possibility of providing bottled water and agreed to contact this office on June 10, 1988. Mr. Hearn further stated that his company is also exploring the feasibility of installing a "community well" on their site, which could be used to provide water to the Russo residence. E A Engineering has been selected to survey the site for such a well. (The two wells which were proposed for the development of the site are located in an area of the site which is believed to be contaminated). Mr. Hearn also stated that a plan, incorporating the site assessment work described in the previous correspondence from this office, as well as this additional work, is being prepared and is expected to be completed and submitted to this office by June 23, 1988. Also being prepared, is a report which will describe the party or parties responsible for the contamination problem. This too is expected to be completed by June 23, 1988.

EGS/mmh

cc: Mr. Robert W. Sheesley
Mr. J. James Dieter

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO File Date June 9, 1988

FROM Eugene G. Siewierski

SUBJECT Groundwater Investigation
Zink - Sunshine Site

This office was contacted by Mr. Thomas Zink, of the Zink construction Company (561-0370) on June 8, 1988 and advised that his company feels that they are not responsible for the contamination problem and will provide a report to this office by June 23, 1988 describing the identity of who they beleive are the responsible party or parties.

At my request, Mr. Zink agreed to discuss with his attorney the feasibility of providing an interim supply of water to the Russo family, without assuming responsibility for the contamination problem. Mr. Zink will contact this office again on June 9, 1988 after discussion with the attorney.

EGS/mmh

cc: Mr. Robert W. Sheesley
Mr. J. James Dieter

ZINK
CONSTRUCTION CORPORATION

Received
JUN 9 1988
Waste Management

June 7, 1988

Mr. Eugene G. Siewierski
Supervisor, Waste Management Section
Baltimore County Department of Environmental
Protection & Resource Management
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Dear Mr. Siewierski,

Confirming our conversation of today, we are unable to respond to your request as stated in your letter of May 18, 1988, before July 1, as stated in Venable, Baetjer and Howard's letter of June 1, 1988.

If this is unacceptable to you, please advise us of your intented action.

Should you have any questions, please feel free to contact me.

Very truly yours,

David M. Huber

David M. Huber,
Construction Vice President

DMH/jp

cc: Brigid E. Kenney

1927 YORK ROAD, TIMONIUM, MARYLAND 21093 · 301-561-0370

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO File Date June 8, 1988

FROM Eugene G. Siewierski

Groundwater Investigation
SUBJECT Zink - Sunshine Site

This office was contacted on June 8, 1988 by Mr. David Huber, of the Zink Construction Company and advised that they continue to feel that more time will be needed to develope a plan.

Mr. Huber further stated that it is expected that the plan will be ready by July 1, 1988.

Mr. Huber was advised that such a delay could result in the further spread of contamination.

Mr. Huber asked that he be contacted should the County initiate any legal action in the interim.

EGS:mmh

cc: Mr. Robert W. Sheesley
Mr. J. James Dieter

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO File Date June 7, 1988

FROM Eugene G. Siewierski

SUBJECT Groundwater Investigation
Zink - Sunshine Site

This office was cantacted on June 6, 1988 by Mr. David Huber, of the Zink Construction Company, and advised that the services of an attorney have been engaged for help in response to the groundwater contamination issue on the Harford Road site: Mr. Huber further stated that the timetable set forth in our correspondence of May 18, 1988, could not, as a result, be met.

Mr. Huber was advised that any significant delays could result in the further spread of contamination to other area homes, and that as a result, this office would be forced in initate appropriate legal proceedings. Mr. Huber was further advised that legal action could also be initated by the State of Maryland, should significant delays be imposed.

EGS:mmh

cc: Mr. Robert W. Sheesley
Mr. J. James Dieter

Baltimore County
Department of Environmental Protection
& Resource Management
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
494-3733

Robert W. Sheesley
Director

Dennis F. Rasmussen
County Executive

June 6, 1988

Mr. Thomas Russo
3 Country Hill Road
Fork, Maryland 21051

Dear Mr. Russo :

Enclosed is a copy of the volatile organic analysis results of the sample obtained from your well water supply on 5/9/88. The results continue to indicate contamination at levels in excess of the US EPA Maximum Contaminant Level Drinking Water Standard of 5 ppb for Benzene and, 5 ppb for 1,2, Dichloroethane.

Based on these results, your water supply is still considered unsafe for human consumption and bathing. It is recommended that a filtration or treatment system designed to remove such contaminants be installed. If you choose to install such a system, please contact this office to set up an appointment for sampling.

If you have any questions concerning this matter, please contact Mr. Thomas Bodrogi of this office at 494-3745.

Very truly yours,

Eugene G. Siewierski
Supervisor
Waste Management Section

EGS:mh

Encl.

cc: Mr. Robert W. Sheesley
Mr. J. James Dieter
Mr. Robert J. Aschenbrenner
Ms. Karen Merrey
Mr. Bernard Bigham
Maryland State Department
of the Environment

VENABLE, BAETJER AND HOWARD
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

WASHINGTON, D.C. OFFICE
SUITE 1200
1301 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004
(202) 962-4300

1800 MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201
(301) 244-7400

VIRGINIA OFFICES
PLAZA SUITE THREE
4141 NORTH HENDERSON ROAD
ARLINGTON, VIRGINIA 22203
(703) 243-3000

SUITE 300
2000 CORPORATE RIDGE
McLEAN, VIRGINIA 22102
(703) 749-3500

RICHARD H. VENABLE (1839-1910)
EDWIN G. BAETJER (1868-1947)
CHARLES McH. HOWARD (1870-1942)

BRIGID E. KENNEY

WRITER'S DIRECT NUMBER IS
244-7487

June 1, 1988

RECEIVED
JUN 2 1988
WASTE AND WATER QUALITY MANAGEMENT

Mr. Eugene G. Siewierski
Supervisor, Waste Management Section
Baltimore County Department of Environmental
Protection & Resource Management
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: Property at Harford Road and Sunshine Avenue

Dear Mr. Siewierski:

The Sunshine Avenue Corporation recently engaged me as its lawyer regarding environmental problems at and around the above-referenced property. As I am sure you can understand, it will take some time for me to review the facts and help the company formulate a systematic approach to the problems presented by the apparent contamination. For this reason, we will be unable to respond to your letter of May 18, 1988 within the time period you requested. We are working toward resolving the issues, and we expect to be in touch with your office on or before July 1.

Please continue to address future correspondence in this matter to David Huber, but please add my name to the list of cc's. Thank you for your cooperation in this matter.

Very truly yours,

Brigid E. Kenney

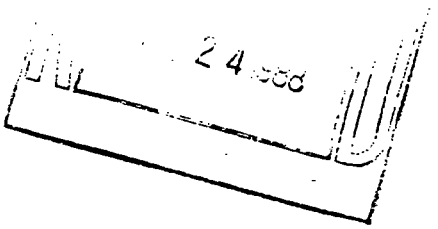
Brigid E. Kenney

BEK:ltm
7474L/8

8-1662 BA

ENVIRONMENTAL TANK TESTING INC.

CERTIFIED TANK TESTING



May 20, 1988

Water Resources Administration
Tawes State Office Building
Annapolis, MD 21401-9974
Attn: Mr. Ed Weber

Dear Sir:

I am contacting you in regards to a precision test that was performed as follows and was determined as a failure by NFPA guidelines:

LOCATION: Fork Service Center
Harford Road and Sunshine Avenue

DATE PERFORMED:	05/19/88
TANK:	(2) 6,000 gallon gasoline (Manifolded).
LEAKAGE RATE:	-.339 gallons per hour.
CERTIFIED TECHNICIAN:	Robert Stockard, #MD 0044

These results were reported to the Department of Natural Resources, Oil Control Division, as required by law, on the date the tests were completed.

Sincerely,

Robert Stockard
Certified Technician

RS/hlg

WASTE MANAGEMENT ADMINISTRATION
OIL CONTROL DIVISION
INITIAL REPORT OF OIL SPILL

CASE NO. 8-1662-BA

CALLER

1. Name of WMA personnel taking report: Tom Walter

2. Date of Report: 5/19/88 3. Time of Report: ____ ____ ____ ____ 24 HOUR

4. Name of Caller: Robert Stakard 5. Telephone #: _____

6. What Agency or Company is Caller with: EVTT

****

7. Date of Spill: 5/19/88 8. Time of Spill: ____ ____ ____ ____ 24 HOUR

DETAILS OF SPILL

9. Precise Location of the Spill or Incident: 10. Tank Test Failure? YES ___ NO ___

Forks Service Center — Sunshine Ave Harford Rd

_____ County: BA

11. Nearest Crossroad or other identifing mark: _____

12. Type of Product Involved: Gas Reg Leaded

13. Quantity on Board: _____ 14. Amount Spilled: _____

15. Details of the Spill: Below Ground tanks failed the precision test, 2-6000 gal manifolded systems also there was a visible leak in Submersible pump riser. Leakrate - .339 GP

16. Has Product Entered Water: ___ Yes ___ No 17. Name of Waterway: _____

****

SPILLER

18. Spillers Name: Carroll Independent — Dave Phelps (Contact person)

19. Spillers Address: _____

20. Spillers Telephone Number: 253-1666

21. Has Spiller taken any action to control the problem: _____Yes _____No

22. If yes, What: _____

****

ACTION TAKEN

_____ TRANSFERRED CALL TO: _____ Time: ____ ____ ____ ____ 24 HOUR

_____ DISPATCHED: _____ Date: ____/____/____

_____ NO RESPONSE: Explain Why _____

_____ OTHER: _____ INITIALS: _____

Baltimore County
Department of Environmental Protection
& Resource Management
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
494-3733

Robert W. Sheesley
Director

Dennis F. Rasmussen
County Executive

May 19, 1988

Mr. Thomas Russo
3 Country Hill Court
Fork Md 21051

Dear Mr. Russo:

Enclosed are copies of the volatile organic analysis results of the samples obtained from your well water supply on 4/18/88 & 4/26/88. The results continue to indicate contamination at levels in excess of the US EPA Maximum Contaminant Level Drinking Water Standards. The results also reveal that the level of contamination is increasing.

Based on these results, your water supply is considered unsafe for human consumption and bathing. Additional sampling of your water supply will be conducted by this office.

If you have any questions concerning this matter, please contact Mr. Thomas Bodrogi of this office at 494-3745.

Very truly yours,

Eugene G. Siewierski
Supervisor
Waste Management Section

EGS:mh
cc: Robert W. Sheesley
J. James Dieter
Robert J. Aschenbrenner
Karen M. Merrey

STATE OF MARYLAND
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
Laboratories Administration
201 W. Preston Street
J. Hahnen Joseph, Ph.D., Director

TRACE ORGANICS LABORATORY
VOLATILE ORGANICS ANALYSIS

BOTTLE NUMBER 3 R P
TWO (2) VIALS

BALTIMORE
Name of County

SOURCE OF SAMPLE 3 COUNTRY HILL COURT COLLECTOR BRUCE SEELEY 494-3768

SAMPLE TYPE: _____ DISTRIBUTION ✓ SOURCE _____ OTHER (specify) _____

Community _____ noncommunity _____ private ✓

Landfill observation well _____ stream _____ tidal waters _____

Industrial effluent _____ STP sampling station _____ STP effluent _____

Chlorinated _____ preserved with thiosulfate _____

Reason for submitting sample: Trihalomethane Survey _____

Suspected Industrial Chemical Contamination _____

Suspected Petroleum (gasoline, etc.) Contamination ✓

Other (specify) RETEST

REMARKS: SCREEN FOR PRIORITY VOLATILE POLLUTANTS

1	2 3	4 5 6 7	8 9 10 11	12 13 14 15 16 17	18 19
TRANS TYPE	COUNTY: 03	PLANT NO.	SAMPLING STATION	DATE COLLECTED: 04 1 8 8 8	CARD NO.

FIELD pH: 20 21 22 = 5 8 FIELD RESID. CHLORINE: FREE 23 24 = 0 0 TOTAL 25 26

Purgeable Halocarbons (EPA 601)				Purgeable Aromatics	
Chloromethane	<5	trans-1,3-Dichloropropene	<1	Benzene	<1
Bromomethane	<1	Trichloroethene		Toluene	
Dichlorodifluoromethane		Dibromochloromethane		Ethylbenzene	
Vinyl chloride		1,1,2-Trichloroethane		Total Xylenes	<2
Chloroethane		cis-1,3-Dichloropropene		Total Purgeable Hydrocarbons	
Methylene chloride		2-Chloroethylvinylether	<10	Tetrahydrofuran	N.D.
Trichlorofluoromethane		Bromoform	<1	(2-Butanone) (MEK)	
1,1-Dichloroethene		1,1,2,2-Tetrachloroethane		Methylisobutylketone (MIBK)	
1,1-Dichloroethane		Tetrachloroethene		Acrolein	
trans-1,2-Dichloroethene		Chlorobenzene		Acrylonitrile	
Chloroform		Total Trihalomethanes			
1,2-Dichloroethane	5	**Other Purgeable Organics: N.D.**			
1,1,1-Trichloroethane	<1				
oon Tetrachloride					
Bromodichloromethane					
1,2-Dichloropropane					

Results reported in micrograms per liter (parts per billion)

DATE RECEIVED APR 19 1988 DATE REPORTED MAY 03 1988 CHEMIST _____ LAB. NO. 884602

DHMH 749 11/86

STATE OF MARYLAND
DEP. MENT OF HEALTH AND MENTAL HYGIEN
Laboratories Administration
201 W. Preston Street
J. Mahsen Joseph, Ph.D., Director

TRACE ORGANICS LABORATORY
VOLATILE ORGANICS ANALYSIS

BOTTLE NUMBER TA-3
TWO (2) VIALS

BALTIMORE
Name of County

SOURCE OF SAMPLE 3 COUNTRY HILL COURT COLLECTOR BRUCE SEELEY 494-3746

SAMPLE TYPE: _____ DISTRIBUTION ✓ SOURCE _____ OTHER _____ (specify)

Community _____ noncommunity _____ private ✓

Landfill observation well _____ stream _____ tidal waters _____

Industrial effluent _____ STP sampling station _____ STP effluent _____

Chlorinated _____ preserved with thiosulfate _____

Reason for submitting sample: Trihalomethane Survey _____

Suspected Industrial Chemical Contamination _____

Suspected Petroleum (gasoline, etc.) Contamination ✓

Other (specify) SECOND RE-TEST

REMARKS: SCREEN FOR PRIORITY VOLATILE POLLUTANTS.
A STRONG SOLVENT-LIKE ODOR WAS DETECTED.

1	2 3	4 5 6 7	8 9 10 11	12 13 14 15 16 17	18 19
TRANS TYPE	COUNTY: 03	PLANT NO.	SAMPLING STATION	DATE COLLECTED: 042688	CARD NO

FIELD pH: 20 21 22 — 5 6

FIELD RESID. CHLORINE: FREE: 23 24 — 0 0 TOTAL: 25 26

Purgeable Halocarbons (EPA 601)				Purgeable Aromatics	
Chloromethane	<1	trans-1,3-Dichloropropene	<1	Benzene	320
Bromomethane		Trichloroethene		Toluene	2
Dichlorodifluoromethane		Dibromochloromethane		Ethylbenzene	4
Vinyl chloride		1,1,2-Trichloroethane		Total Xylenes	89
Chloroethane		cis-1,3-Dichloropropene		Total Purgeable Hydrocarbons	569
Methylene chloride		2-Chloroethylvinylether		Tetrahydrofuran	N.D.
Trichlorofluoromethane		Bromoform		(2-Butanone) (MEK)	
1,1-Dichloroethene		1,1,2,2-Tetrachloroethane		Methylisobutylketone (MIBK)	
1,1-Dichloroethane		Tetrachloroethene		Acrolein	
trans-1,2-Dichloroethene		Chlorobenzene	✓	Acrylonitrile	✓
Chloroform	✓	Total Trihalomethanes			
1,2-Dichloroethane	13	**Other Purgeable Organics:**			
1,1,1-Trichloroethane	<1	methyl-tert-butyl-ether	28		
Carbon Tetrachloride					
Bromodichloromethane					
1,2-Dichloropropane	✓				

Results reported in micrograms per liter (parts per billion)

DATE RECEIVED April 27, 1988 DATE REPORTED MAY 12 1988 CHEMIST _____ LAB. NO. 884790

DHMH 749 11/86

Prot #37

EA Project 10309.01

REPORT OF GROUND-WATER INVESTIGATION OF THE SERVICE STATION AT THE INTERSECTION OF HARFORD ROAD AND SUNSHINE AVENUE

Prepared for

Sunshine Avenue Corporation
22 West Allegheny Avenue
Towson, Maryland

Prepared by

EA Engineering, Science, and Technology, Inc.
Sparks, Maryland 21152

Fred Cocca — 20JAN 89
Fred Cocca — Date
Project Geologist

Paul Caprio — 1/20/89
Paul Caprio — Date
Project Manager

January 1989

PROT # 19

RESOLUTION

Long Green Valley ASSOCIATION

RESOLVED: That at the Annual meeting of the Long Green Valley Association held on May 13, 1999, it was decided by the Association that the responsibility for review and action on all zoning matters for the period one year be placed in the (Board of Directors) (~~Zoning Committee~~) consisting of the following members:

any & all members of the Board
see attached.

AS WITNESS our hands and seal this 30th day of September, 1999.

ATTEST:

Carol L. Gale
SECRETARY

Charlotte W. Pierce
PRESIDENT

AFFIDAVIT

STATE OF MARYLAND:
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the (Board of Directors) (~~Zoning Committee~~) of the Long Green Valley Association.

ATTEST:

Carol G. Gorke
SECRETARY

Charlotte W. Pine
PRESIDENT

Post #20

Executive Summary Criteria

Long Green Valley
Rural Legacy Application

On the move

The Aegis
Wed., 1/19/00

Convenient food...

By Patrick Grant
Aegis staff

One of the most ubiquitous changes in Harford County's landscape over the past 15 years is the proliferation of convenience stores to provide basic daily necessities, such as food and gasoline, to the county's highly mobile population that is constantly on the go.

Most of the intersections joining two major roads in the county already have become the site of at least one convenience store with gas pumps or of a gas station with a snack shop. Some intersections have more than one such store, and those that don't are likely to get theirs in the next five years, as major regional and national gasoline and convenience store firms vie for the remaining prime locations.

Baltimore based Cloverland Farms Dairy, owner of the Royal Farms convenience store chain, is a prime example of how convenience and gasoline store operators have moved into Harford

Please see **CONVENIENCE, A16**

...and conversation

By Allan Vought
Aegis staff

Wireless communications towers are expensive to locate and build, relatively cheap to operate and, although their presence generates some revenue for the Harford County government, the county's main incentive for approving new towers would appear to be one of public accommodation.

Representatives of cellular telephone companies, the principal but by no means the only users of the towers and their close cousins, monopoles, say they only build more towers to keep up with the demands for improved service made by their customers.

The investment in a single monopole, the most cost-effective way to develop an antenna carrier, can run into several hundred thousand dollars, according to Norman Ray, a Harford County-based consultant who works with wireless communications companies in finding and developing tower sites. A structural steel tower can cost $500,000 or more to locate and build, Ray said.

Please see **CELL TOWERS, A16**

Plot #23 (1.0.)

Protestants #28

Robbery - How Your Business Can Avoid it

ROB- To take property from a person or persons illegally, by using or threatening to use violence or force.
American Heritage Dictionary of the English Language

Let's face it, anyone who owns a business and has been robbed doesn't need to know the meaning of the word, they've experienced it. There are people out there who want something from you and will do anything to achieve their goal, even if it means killing you.

Here is a brief list of the reasons why your shop could be a target.

1. Money - Too much on hand
2. Security - Minimal
3. Personnel - Not enough on hand
4. Location - Too remote

Here are some positive things you can do to stop that would-be robber from getting your money and more importantly, harming employees and customers.

1. Money - Limit your cash to $80.00 and use a drop safe with a timer. If the clerk can't get to the money neither can the robber!

2. Security - Good lighting is a must. Lights should encompass the outside of your store - that means the parking lot too! Video cameras should be directed at the entrance as well as the counter area. Let customers and robbers alike see themselves as they walk in the entrance. Put up a sign letting all who enter know they are being monitored. Honest people aren't intimidated. Don't forget to change the video tape after you've taped over it 8-10 times. A fuzzy, blurry tape offers little help in catching and identifying the culprit. Keep windows clear of posters and merchandise. Customers should be able to see into the store and your employees should be able to see out. Your store office should be open for all to see. This deters would-be robbers when they realize that another employee in the back can see the front of the store.

3. Personnel - BEST DETERRENT - TWO EMPLOYEES ON DUTY.

4. Location, Location, Location - Businesses in remote areas are more susceptible to robberies. That includes strip malls. The more traffic the less likely a robbery. A convenience store shouldn't be convenient for a robber. However, if this is unavoidable, ask yourself if it is necessary to be open 24 hours a day. If you are not sure, why not close at midnight? Statistics show 65% of robberies

happen between the hours of 11pm and 6am. Worth thinking about!

5. Education - Teach you employees to be aware of their surroundings. Tell them what to do in a dangerous situation. Tell them not to resist. No life is worth a bag of money!

Here's some more advice. Get to know your neighbors. You can help each other by forming a group dedicated to make your shopping area safer for you, your employees and your customers. For more information on the subject, contact your local precinct's Business Watch/Outreach. They'll be glad to help.

For more information on business security, call 410-887-5901

Police Need Public's Help in Identifying Armed Robbery Suspect

Baltimore County police are asking for the public's help in identifying a suspect responsible for four armed robberies in two days.

Detectives said that on December 9, 1999, at 2:22 a.m. the Royal Farm store in the 1600-block Middleborough Road was robbed. That same day, at 12:10 p.m. Ballard liquors on Ballard Avenue was the victim of an attempted armed robbery. On December 10, 1999 at 1:02 a.m. Dunkin Donuts in the 1600-block Eastern Boulevard was robbed. A few hours later at 4:50 a.m the. Royal Farm store in the 1300-block Windlass Drive was robbed. All four robberies have the same suspect description and method of operation. The suspect approaches the counter, hides his hand in his jacket implying he has a gun, and demands money.

The suspect is described as a white male 5'8" to 5'10" tall, thin build with brown shoulder length hair and a large nose. He was wearing dark jeans, a blue denim "Hard Rock Café" jacket and a bandana over his head.

Anyone with information regarding the suspect's identity is asked to call Baltimore County police at 410-887-2198.
December 15

Suspicious Death Ruled a Homicide
Body of Owings Mills Woman Was Found on Monday, December 13

The State Medical Examiner today ruled that the death of 27-year-old Annelise Hyang Suk Lee was a homicide. An autopsy found that the woman died of blunt force trauma and strangulation. She lived in the unit-block of Hartley Circle in Owings Mills.

Lee's body was found by a building maintenance worker at about 10:10 a.m. on Monday at the door of the bedroom in her apartment. The apartment was checked at the request of Lee's employer who was worried when the victim did not arrive at work and he couldn't reach her over the telephone.

The victim was last seen alive at 7:30 p.m. on Friday at her workplace. Detectives have interviewed neighbors, and crime lab specialists have gone over the area for evidence, but investigators need the public's help in developing additional information. Ms. Lee had no family members in the Baltimore area. Police would like to hear from any friends or acquaintances who might shed additional light on this case.

Anyone with information about Ms. Lee or this crime is asked to call the Baltimore County Police Department at 410-887-2198.
December 14

Workplace Violence:

PROT 30 1.0.

What is It and How to Prevent It

According to some experts, workplace violence has become epidemic. That may seem a bit overstated, but violence at work is growing significantly. So significantly, that Occupational Safety and Health Administration (OSHA) has now recognized violence as an occupation hazard and has developed guidelines to prevent it.

The Bureau of Labor Statistics reports that homicides were the second leading cause of all death in the workplace in 1992, up from third in 1989. For women, since 1980, homicide has been the leading cause of occupational death. One out of every four American workers will be attacked, threatened or harassed at work in their lifetime. The Department of Justice reports that one-million individuals become victims of violent crime each year while working or on duty.

Along with physical injuries, violent, abusive or threatening behavior in the workplace can lead to serious and disabling psychological damage. Often, victims will suffer post traumatic stress disorder, similar to what combat veterans experience. This can lead to loss of sleep, depression, and a decreased ability to cope both at work and at home. Workplace violence is not exclusive of any single profession or type of business.

However, several risk factors have been associated with increased risk. The National Institute of Occupational Health and Safety has identified six risk factors that increase the risks of homicide and injury at work: the exchange of money with the public, working alone or in small groups, working late night or early morning hours, working in high crime areas, guarding valuable property or possessions, working in community settings (e.g. police, fire, public transportation). These risk factors are commonly found at businesses especially susceptible to violence such as health care and social services, liquor stores, jewelry stores, gas stations, groceries, convenience stores, hotels/motels and restaurants.

However, violence can occur in any business at any time. As with other workplace injuries, prevention is always less costly in time and money. Therefore, companies should initiate programs to prevent workplace violence prior to its occurrence. Although not required, the California OSHA recommends incorporating workplace violence prevention plans in the company's Injury and Illness Prevention Program. Cal/OSHA has divided workplace violence into three major categories. Type I involves a violent act by a person with no legitimate relationship to the workplace (e.g. a robber, burglar). Type II involves a violent act by an individual who is a client, patient, customer or similar type of person receiving services from the business.

Type III involves acts committed by an individual who has some employment-related involvement with the workplace, such as: employees, an employee's spouse and delivery people. The kind of business you are in dictates where your efforts toward reducing workplace violence should occur. For instance, individuals working at convenience stores, gas stations and restaurants are more likely to encounter Type I violence. Health care workers, government agencies dealing with the public (e.g., Department of Motor Vehicles, Social Security, Employment Development offices) have a high incidence of Type II

violence. Type III violence can occur in any business at any time.

The first step in reducing workplace violence is to identify the risk factors. In Type I cases, violence occurs most often in the types of businesses mentioned above but also more often when these businesses have the following characteristics: located in remote areas, having easy access/getaway, only one clerk working, lots of easily accessible cash and no back room where another employee may be out of view. In jails, mental hospitals and other businesses where Type II violence is common, risk factors include employees in close confinement with patients/residents, no easily accessible escape for the employee and poor entrance/exit controls.

In Type III violence, high employee dissatisfaction, downsizing, poor management/labor relations are common risk factors. Type III violence pervades all businesses and is best controlled through administrative policies. Companies should attempt to reduce stress in the workplace. Although some stress is healthy, too much stress leads to depression, resentment and a feeling of being out of control.

Other steps to prevent workplace violence:

- Establish a policy that incorporates employee training and mechanisms for reporting threats.
- A "zero tolerance" policy should be diligently enforced. All threats should be taken seriously with reports of violence and threats immediately addressed and resolved.
- Identify and work at reducing risk factors to a minimum. Involve front-line employees in discussions on ways to reduce the chance of violence. Let employees know they are valuable and their work is appreciated.

As with any occupational safety program, the goal of a workplace violence-prevention program is to reduce or eliminate worker exposure to locations, individuals or circumstances that may lead to death or injury. Addressing the issue directly with open communication and management commitment is the first step to keeping you and your employees safe.

For more information on government agencies, programs, policies and other topics related to workplace violence, try entering "workplace violence" on one of the World Wide Web's search engines or contact the above mentioned agencies directly. *Joe Donahue, is the Occupational Safety Director for Donahue & Associates Physical Therapy. Located in Santa Barbara, Donahue & Associates provides ergonomic, injury prevention and other occupational safety consultation services statewide. Donahue can be reached at (805) 967-4031 or by e-mail at jdonahue@silcom.com.*

BUSINESS Digest CLICK HERE TO GO HOME

#10

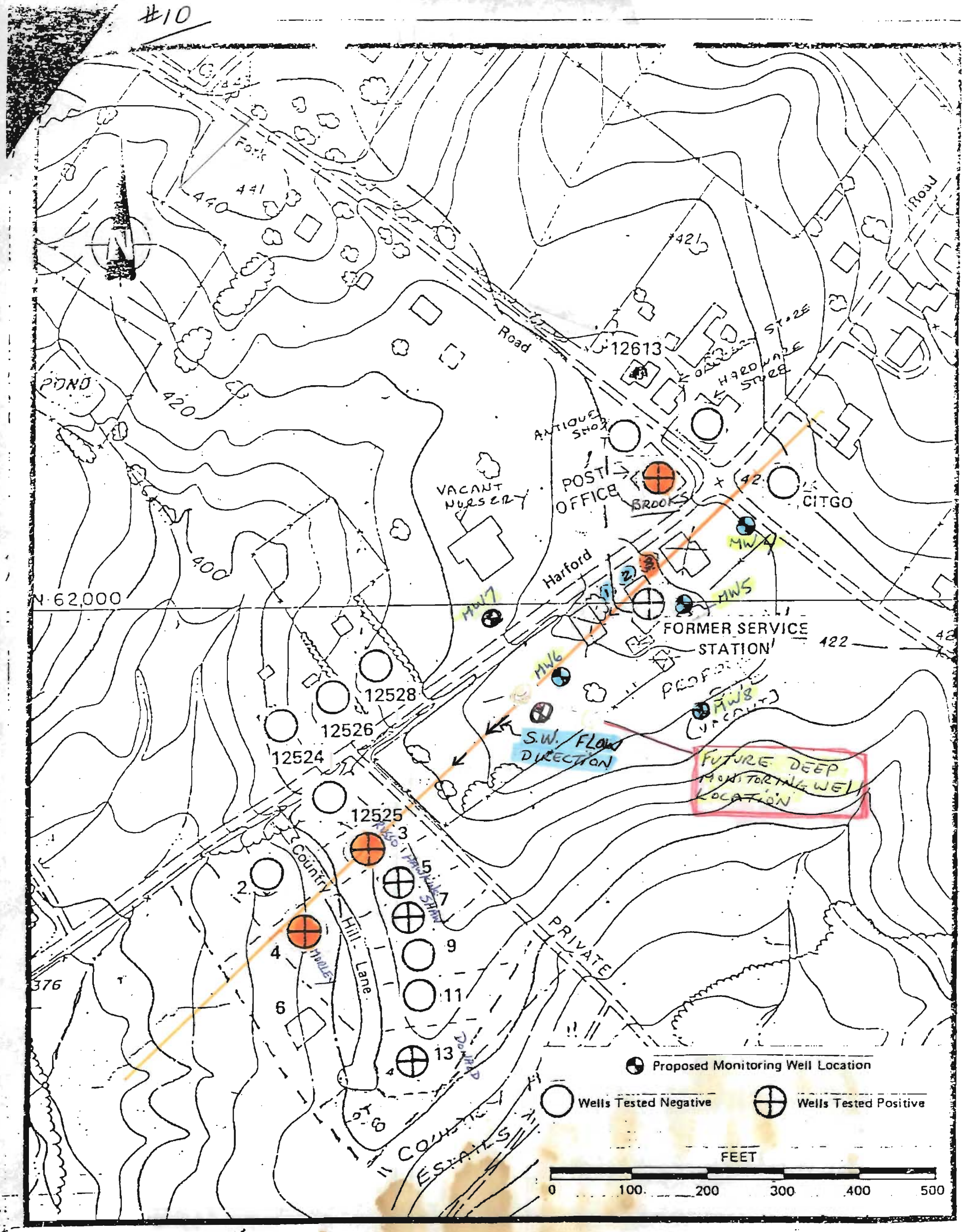
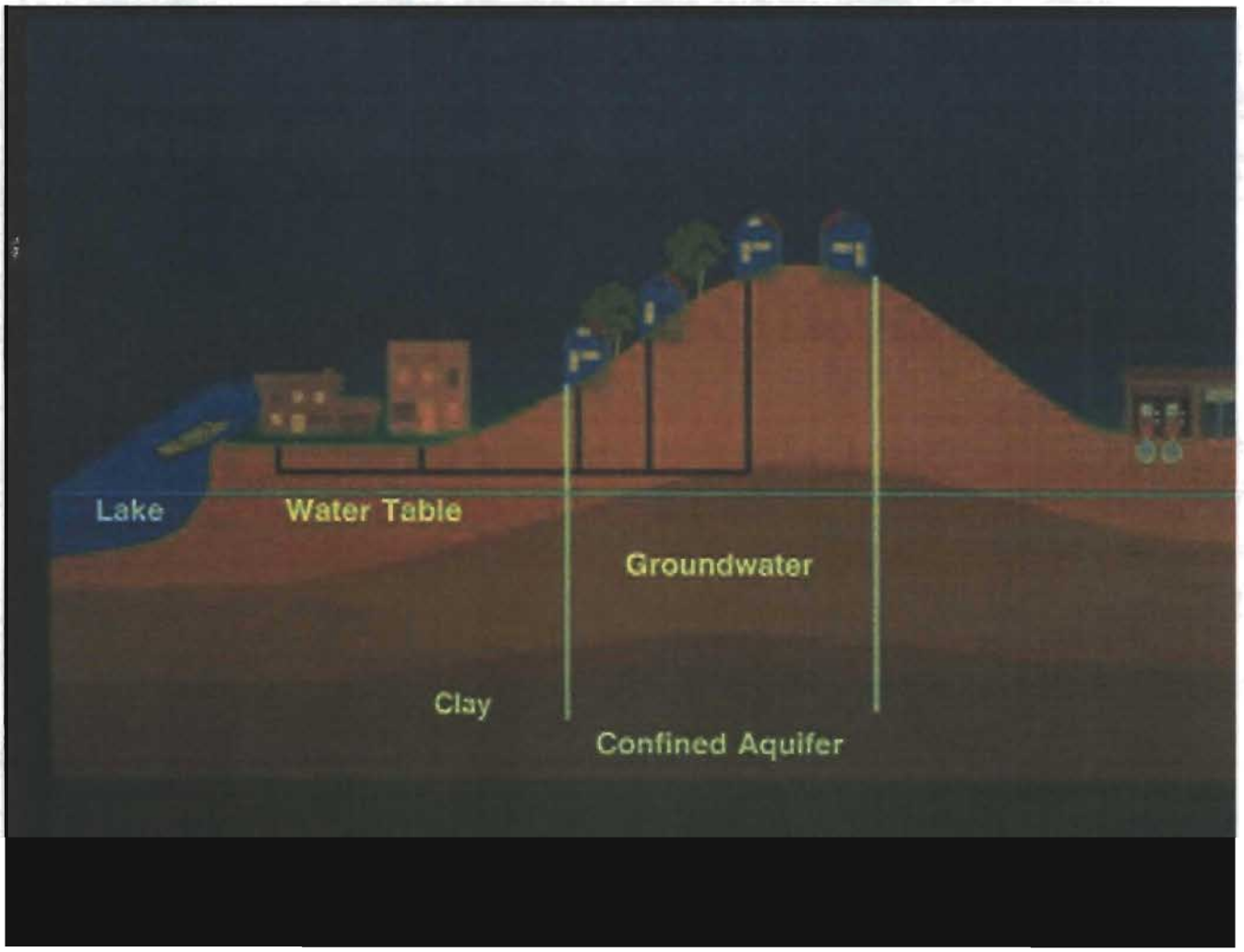
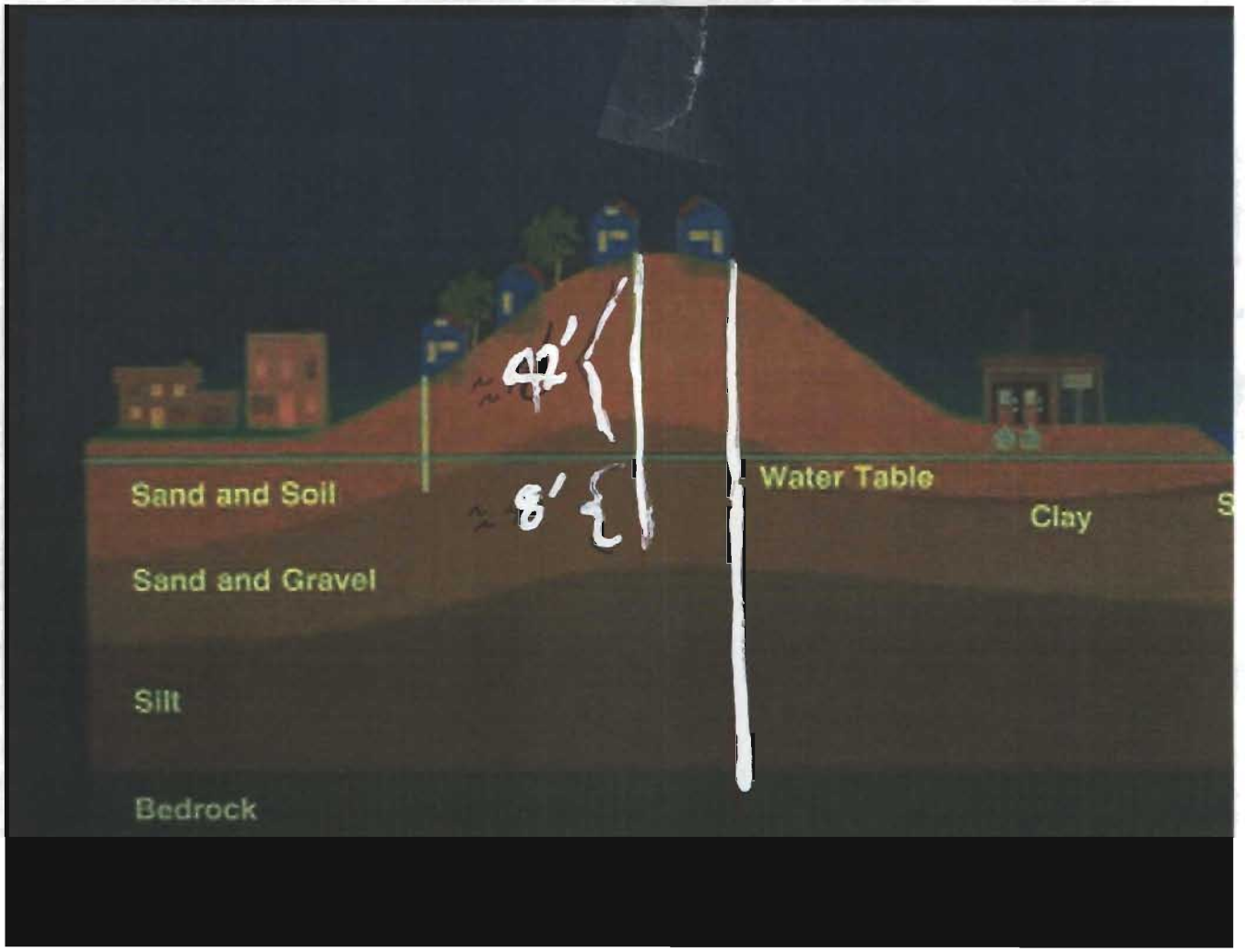


Figure 1. Former service station and environs. Sampled well locations are keyed to results provided by Baltimore County in Table 1-1.

Topography Views

Prot Ex #31


Lake
Water Table
Groundwater
Clay
Confined Aquifer


42'
8'
Water Table
Sand and Soil
Clay
Sand and Gravel
Silt
Bedrock


WILSON HOUSE SITE
100YR WETLAND
WILSON LAND
STREAM
DiFONZO 9 CH Ct


SNYDER
HOUSE
(SUNSHINE)
SHAW
TECH CT
RF SI
1



Plot #32

RUSSO CHRONOLOGY

12/86 Zink Construction Corporation bought a 4.52 acre property on the corner of Harford Road and Sunshine Avenue. Subdivision name is Zink-Sunshine and developer is Sunshine Associates (Zink Construction Corporation).

8/26/87 County review group (CRG) required removal of underground storage tanks on Zink-Sunshine property prior to the development of retail and convenience stores.

10/29/87 Baltimore County Department of Environmental Protection and Resource Management (DEPRM) Mr. Tom Bodrogi observed the underground storage tank (UST) removal. Four UST's excavated: 2-550 gallon UST's and 2-200 gallon UST's. One 550 gallon gasoline UST observed to contain product and visible perforations were noticed. All UST's buried about six feet below grade. UST's abandoned (last known use) since 1976. Soils in tank pit excavated to a depth of 14 feet. Mr. Al Shamblin of Zink Construction Corporation (Sunshine Associates) witnessed UST removal. Baltimore County DEPRM notified MDE's UST Division.

10/30/87 Ms. Maria Horton (UST Div.) arrived on-site and observed excavation pit which was not backfilled the previous day. Instructions were given by Baltimore County and MDE to Mr. Al Shamblin to install three groundwater monitoring wells.

11/30/87 Three monitoring wells (M.W.) installed by Jones Well Drilling, Inc. about 50 feet below grade.

12/8/87 Monitoring well sampled at Zink-Sunshine property. Mr. Tom Bodrogi, Baltimore County DEPRM and Mr. Paul Caprio, Project Geologist, EA Engineering, bailed, collected and split water samples (MW #2 and #3 contaminated with gasoline constituents, acetone and MTBE).

1/6/88 Meeting held between MDE and Baltimore County DEPRM. Discussed contamination problem at Zink-Sunshine property and what further groundwater investigation would be required by Sunshine Associates.

1/11/88 Letter sent by Baltimore County DEPRM to Mr. David Huber, construction vice president for Zink Construction Corporation. Required Zink Corporation to submit a plan for investigation of sub-surface contamination at Zink-Sunshine property.

Photocopy | PROT 33

Attachment 2

Memo

OK to file 5/4/
Follow-up date

ACTION REPORT

spection
elephone

Baltimore County Department of Environmental Protection and Resource Management

Date 11-27-87
Time

GROUNDWATER INVESTIGATION ZUK PROPERTY

Dist.

FILE LOCATION: ~~Tank removal 1987~~
Sunshine Rd and Hanford Rd

PERSON CONTACTED: M Shanahan Zuk Properties
(name and title)

ADDRESS: Phone # 561-0370

REASON FOR INSPECTION: tank removal

RECORD OF ACTION On this date I inspected removed tanks at Zuk Property located on the SE corner of Hanford & Sunshine Rds. The tanks were removed at a former body shop and had been abandoned approx 15 years ago. Two 550 gallon and 2 - 200 gallon tanks were removed. All the tanks were in very poor condition, ~~with~~ some were completely rusted through. One tank appeared to have contained product which smelled like paint thinner and had obviously leaked. A reading of 0 ppm with the HNu was noted by Zuk Properties & the tank was pumped out prior to removal. Odor of thinner could also be detected in the tank pit. The leak appeared on one of the 550 gallon tanks. No

RECOMMENDATIONS:

DATE: 11-2-87 SANITARIAN V Bochenny

REFERRED TO: FOR

DATE: BY

COPY TO

these other tanks appeared to be clean with no indication of having contained product for some time. I advised Mr Shanahan to leave the tank pit open and that a joint inspection would be conducted with the State DOE Official on 10-30-87 at which time locations for monitoring wells will be marked.

I contacted Ms Anna Horton at DOE and scheduled an inspection for 10-30-87.

10-30-87 I met with Ms Horton from DOE and with Mr Shanahan with tank excavation. location for 3 observation wells were picked out around the tank field. Mr Shanahan will contact this office when the 3 wells are completed to schedule sampling. This is a private water supply and with the nearest private water supply located at least 100 + ft upgradient + down the street from the tank field. Domestic wells in the area will be sampled pending sampling results of observation wells. — Two production wells are to be installed on the property and are to be monitored for six months.

12-2-87 Information update: The facility was Fork Sand + Gravel in the 1960s owned by Bob McElwee, currently owner of Town Country Sports Cars 2705 Belair Rd Fallston 21047

MICHAEL J. COLLINS
FIRST LEGISLATIVE DISTRICT
BALTIMORE COUNTY

MEMBER
ECONOMIC AND ENVIRONMENTAL
AFFAIRS COMMITTEE

2A

DISTRICT OFFICE
315 EASTERN BOULEVARD
BALTIMORE, MARYLAND 21221
PHONE 391-7800

CAPITAL OFFICE
211 JAMES BUILDING
ANNAPOLIS, MARYLAND 21401-1991
PHONE 841-3642

SENATE OF MARYLAND

ANNAPOLIS, MARYLAND 21401-1991

Prot 34

May 19, 1988

Hon. Dennis F. Rasmussen
Baltimore County Executive
Court House Mezzanine
Baltimore, MD 21204

Dear Dennis:

re: Thomas Russo
3 Country Hill Court
Kingsville, MD 21087
Telephone: 592-7896 (home) 388-6358 (work)

Mr. Russo has contacted me for assistance in dealing with a serious problem he is experiencing. He purchased his home about six months ago. At that time there was a problem of gasoline contamination of the groundwater in the neighborhood. It was known at that time that his neighbors' water supply was contaminated, but no one from the County Government investigated the conditions on Mr. Russo's property.

The Department of Environmental Protection has now prohibited the use of Mr. Russo's water supply for any residential purpose. With a wife and young children to provide for, he must bear the burden of providing an alternative supply of water for their needs, and this is working a great hardship on the family.

Mr. Russo has sought cooperation from Baltimore County in dealing with this problem, because he feels strongly that he is a victim of negligence on the part of government in protecting him from this situation. He has been in contact with Bob Sheesley on several occasions, but to date has not been satisfied with the results of those contacts.

I would appreciate your looking into this matter and any assistance and information you can provide to help resolve Mr. Russo's difficulties.

Very truly yours,

Michael J. Collins

MJC:kmk

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

FOR YOUR INFORMATION
COUNCILMAN NORMAN W. LAUENSTEIN

TO The Honorable Norman W. Lauenstein Date August 29, 1988

FROM Robert W. Sheesley

SUBJECT County Hill Estates

On March 10, 1988, Mr. Thomas Russo of 3 Country Hill Lane, Country Hill Estates Subdivision, contacted this Department regarding gasoline odors in his water supply. Samples of Mr. Russo's water were collected on March 17, 1988 and analysis of those samples confirmed the presence of gasoline. Contaminant concentrations in the well were above the appropriate drinking water standards and the Russos were advised that their water supply was considered unsafe for human consumption or bathing.

The Russo water supply was resampled and "first round" samples were collected from all residences in the subdivision at that time. Enclosed is a chart showing the dates and results of residential sample analyses to date. Review of that table shows significant amounts of gasoline constituents in the Russo well. While low levels of other compounds (i.e. tetrahydrofuran [THF] acetone and toluene) were identified in other supply wells they are thought to be associated with glues used in the installation of plumbing to the new homes. Those compounds usually dissipate from the system quickly. Monitoring of all water supplies in the subdivision is continuing.

The investigation at Country Hill Estates is part of a larger DEPRM investigation being conducted near the intersection of Harford Road and Sunshine Avenue. Underground storage tanks located at the former service station, now owned by the Sunshine Corporation were excavated October 29, 1987. Inspection of the excavated tanks revealed evidence of tank failure and product loss and, as a result, groundwater monitoring wells were installed. Sample results from those wells indicated both gasoline and solvent contamination in groundwater. At that time water supplies from residences and businesses adjacent to the tank field area were sampled and the results of the evaluation revealed no evidence of significant contamination, until the discovery of contamination in the Russo well approximately 500 feet south of the tank area.

The Department of Environmental Protection and Resource Management is currently working with the Maryland Department of the Environment to accurately characterize the situation and to develop a groundwater remediation program. Short and long term strategies have been developed. In the short term, the State of Maryland will be funding the installation of an activated carbon filtration system on the Russo water supply. In the long term, additional monitoring wells have been ordered and pump tests will be conducted that will identify well sites capable of halting plume migration, and extracting and cleaning groundwater.

#3 PROT #35

EA Project INK81A

SITE CONTAMINATION ASSESSMENT PLAN FOR THE FORMER SERVICE STATION AT THE INTERSECTION OF HARFORD ROAD AND SUNSHINE AVENUE (ZINK CONSTRUCTION CORPORATION PROPERTY)

Prepared for

Zink Construction Corporation
Timonium, Maryland

Prepared by

EA Engineering, Science, and Technology, Inc.
Sparks, Maryland

Paul Caprio 2/2/88
J. Paul Caprio Date
Project Geologist

C.W. Houlik 02-02-88
C.W. Houlik, Jr., Ph.D., P.G. Date
Director, Geotechnical Services

January 1988

EPA

National Water Quality Inventory

1996 Report to Congress

Groundwater Chapters

Prof Ex #36



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Underground Storage Tanks

Leaking USTs were cited as the highest priority contaminant source of concern to States in 1996 (Figure 6). The high priority assigned to leaking USTs in 1996 is consistent with information reported by States during previous 305(b) cycles.

Although USTs are found in all populated areas, they are generally most concentrated in the more heavily developed urban and suburban areas of a State. USTs are primarily used to hold petroleum products such as gasoline, diesel fuel, and fuel oil. Because they are buried underground, leakage can be a significant source of ground water contamination that can go undetected for long periods of time (Figure 7).

States report that the organic chemicals associated with petroleum products are one of the most common ground water contaminants. Petroleum-related chemicals have adversely affected ground water quality in aquifers across the Nation. The most significant affects generally occur in the uppermost aquifer, which is frequently shallow and often used for domestic purposes. Petroleum-related chemicals threaten the use of ground water for human consumption because some (e.g., benzene) are known to cause cancer even at very low concentrations.

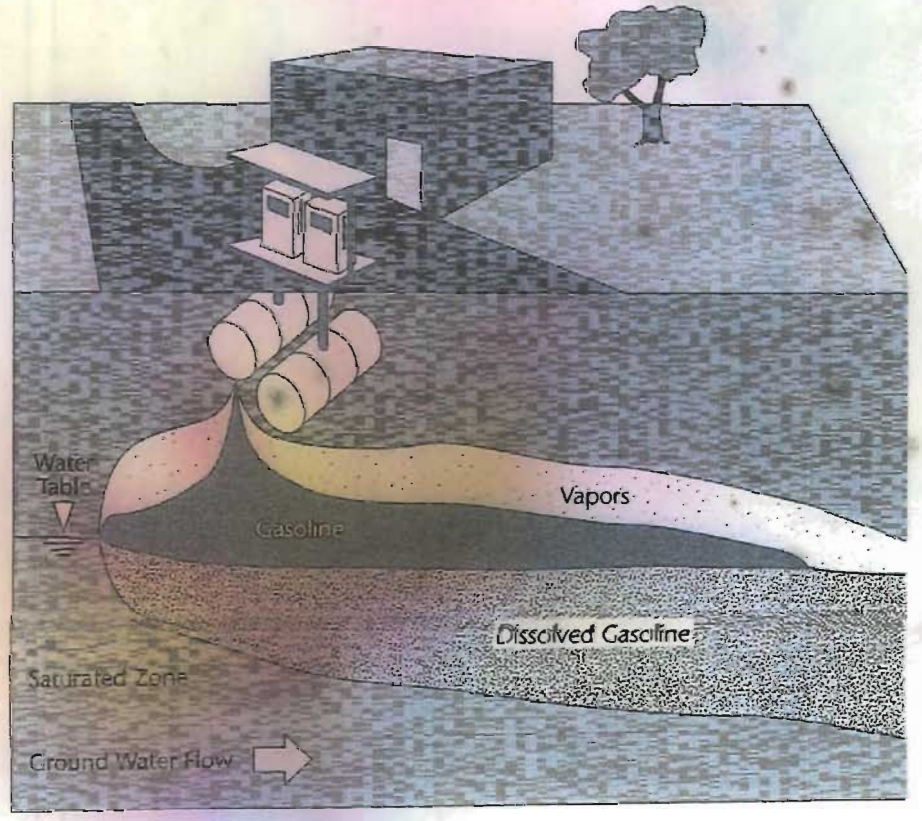
The primary causes of leakage in USTs are faulty installation and corrosion of tanks and pipelines. As of March 1996, more than 300,000 releases from USTs had been confirmed. EPA estimates that nationally 60% of these leaks have impacted ground water quality and, in some States, the percentage is as high as 90%.

In general, the threat from USTs was determined primarily based on the sheer number of leaking USTs.

- There were almost 61,000 facilities containing 155,308 registered USTs in Texas in 1994. During that same year, 4,894 cases of ground water contamination were documented as being under enforcement by the Texas Natural Resource Conservation Commission. Fifty-two percent of the contamination cases are within the 10 most populous

Figure 7

Ground Water Contamination as a Result of Leaking Underground Storage Tanks



Attachment 4 PHOT 38
(WIT

EA ENGINEERING, SCIENCE, AND TECHNOLOGY, INC.

Mid-Atlantic Regional Operations
Hunt Valley/Loveton Center
15 Loveton Circle
Sparks, Maryland 21152
(301) 771-4950

23 June 1988

Mr. David Huber
Zink Construction Corporation
1922 York Road
Timonium, Maryland 21093

- locks for monitoring wells

Dear Mr. Huber:

At your request, EA has obtained ground-water quality data from wells near the intersection of Harford Road and Sunshine Avenue that was reported by the Baltimore County Department of Environmental Protection and Resource Management. Samples from wells in the site vicinity are reported to contain the following constituents:

- 1,2 Dichloroethane
- acetone
- benzene
- cyclohexane
- E & B (ethylbenzene)
- MTBE
- tetrahydrofuran
- toluene
- total hydrocarbons
- trichloroethane
- xylenes

- sample agreement
- agreed sampling for new wells & monitoring
- time frame
  1. 30 days for last wells site

Currently available analytical data appear in tabular form in the enclosed report. Please note that wells sampled are keyed to locations on Figure 1.

EA evaluated these data in light of our 27 January 1988 Site Contamination Assessment Plan and 14 April 1988 Report of Ground-Water Sampling and Analysis. A discussion which includes our evaluation is presented herewith, followed by recommendations.

Shallow and deeper water-bearing zones documented on drilling logs of wells near the site provide multiple potential migration pathways for contaminants in ground water. A review of local geology indicates that a significantly fractured northeast-southwest oriented zone of rock runs across the site. An assessment of the influence this feature on local migration pathways could aid an understanding of plume configuration. The linear extent of this feature is approximately 2.5 mi in either direction from the site.

The attribution of MTBE detected in some samples to the former service station onsite appears inconsistent with what is currently known about that operation. It is reported that operations there ceased prior to

#5 PROT 39

Tech

Baltimore County
Department of Environmental Protection
& Resource Management
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
494-3733

Robert W. Sheesley
Director

Dennis F. Rasmussen
County Executive

June 21, 1988

Mr. Thomas Russo
3 Country Hill Court
Fork, Maryland 21051

Dear Mr. Russo:

Enclosed is a copy of the most recent volatile organic analysis results of the sample obtained from your well water supply on May 31, 1988. The results continue to indicate contamination at levels in excess of the US EPA Maximum Contaminant Level Drinking Water Standards of 5 ppb for Benzene and, 5 ppb for 1,2, Dichloroethane.

Based on these results, your water supply is still considered unsafe for human consumption and bathing. It continues to be recommended that a filtration or treatment system designed to remove such contaminants be installed. If you choose to install such a system, please contact this office to set up an appointment for sampling.

If you have any questions concerning this matter, please contact Mr. Thomas Bodrogi of this office at 494-3745.

Very truly yours,

Eugene G. Siewierski
Supervisor
Waste Management Section

EGS/mmh

Encl.

cc: Mr. Robert W. Sheesley
Mr. J. James Dieter
Mr. Robert J. Aschenbrenner
Ms. Karen Merrey
Mr. Bernard Bigham
Maryland State Department of
the Environment
Mr. Robert S. Magnuson, Blanton & McCleary

EB

Russo Well Sample Analysis History

PROT #40

DATE	FILTER	BENZENE	TOLUENE	ETHYLBENZ	XYLENE	NAPTHLENE	MTBE	DICHLOROIZ	COMMENT
12/10/97	BF	17	0	0	0	1	0	6	
12/10/97	MF	0	0	0	0	0	0	0	
12/10/97	AF	0	0	0	0	0	0	0	
03/09/98	BF	26	0	0	0	0	0	24	CC 3/24
03/09/98	MF	0	0	0	0	0	0	22	
03/09/98	AF	0	0	0	0	0	0	7	
06/04/98	BF	18	0	0	0	0	0	0	
06/04/98	MF	1	1	0	1	0	0	2	
06/04/98	AF	0	0	0	0	0	0	0	7/98 CC
10/14/98	BF	10	0	0	0	0	0	3	
10/14/98	MF	0	0	0	0	0	0	0	
10/14/98	AF	0	0	0	0	0	0	0	

12/09/98	BF	12		
1/13/99		12		
3/31/99		6		
7/30/99		8	.8	
10/1/99		11.3	1.0	
1/2000		13.7	—	5

MARYLAND DEPARTMENT OF THE ENVIRONMENT
2500 Broening Highway • Baltimore Maryland 21224
(410) 631- 3000 • 1- 800 -633-6101 • http:// www. mde. state. md. us

Parris N. Glendening
Governor

Jane T. Nishida
Secretary

#18

October 8, 1999

PROT #41

Mr. and Mrs. Tom Russo
3 County Hill Court
Kingsville MD 21087

Dear Mr. and Mrs. Russo:

On September 22, 1999, a representative from the Waste Management Administration's Oil Control Program performed routine sampling of the groundwater from your domestic well prior to, in between, and after water circulated through the two granular-activated carbon (GAC) treatment tanks. Enclosed are the laboratory results for the groundwater samples collected from your residence. Water samples collected before filter, mid-filter, and after the two carbon filters are designated by the initials TRBF, TRMF, and TRAF respectively in the bottle number/sample name category.

Analytical results for the water samples collected indicate that two dissolved petroleum contaminants, Benzene and Naphthalene, were detected in your domestic well. The contaminant level for Benzene is above the United States Environmental Protection Agency's (USEPA) drinking water standard of 5 parts per billion (ppb). No contaminants were detected in between or after treatment with the GAC system. Based on these results we will resample your GAC system within three (3) months.

If you have any questions please feel free to contact me at (410) 631-4152.

Sincerely,

Paul Certeza, Environmental Specialist
Special Operations Section
Oil Control Program

PC:rjm
Enclosure
cc: Mr. Richard Collins
Mr. Mick Butler
Mr. Gregory Sonberg

Attachment 9

PROT #42

Baltimore County
Department of Environmental Protection
& Resource Management
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
(301) 887-3733

Robert W. Sheesley
Director

Dennis F. Rasmussen
County Executive

March 9, 1989

Mr. Thomas Zink, Jr.
Sunshine Avenue Corporation
1927 York Road
Timonium, Maryland 21093

RE: GROUNDWATER INVESTIGATION
Sunshine Avenue and Harford Road

Dear Mr. Zink:

Reference is made to the latest groundwater investigation report as submitted in January, 1989 by E A Engineering, Science and Technology, for review by this office. This report has been reviewed and the following comments and recommendations are here made:

1. The statement that contaminant concentrations have decreased "an order of magnitude" over time should be amended to reflect the data. This data actually indicates a decrease of approximately 50% in contaminant levels in MW-6 and an increase of 600% in contaminant levels in MW-1.

2. An additional deep monitoring well is recommended in the vicinity of MW-6 to be positioned in a direct line between MW-3 and the well at 3 Country Hill Court. Well depth should be a minimum of 200 feet deep and steel casing should be extended through the saprolite and sealed in the bedrock. This well is necessary because groundwater flow patterns as identified in the E A groundwater contours and noted in their report, indicate a downward verticle component to flow beneath the site. Although there is little apparent contaminant migration through the saprolite, contamination from the suspected source could be migrating vertically downward and flowing beneath MW-6.

3. Additionally, when the new well has been completed and developed, another complete round of sampling of all on site monitoring wells, off-site MW-7 and the well on the Post Office property should be scheduled. This office is available to provide assistance in this sampling effort. The information gathered from (2) and (3) will help to completely define the areal extent of contamination.

Should you have any questions concerning the above comments, please contact the Mr.Jeff Jollie at 887-3980.

Very truly yours,

Eugene G. Siewierski

Eugene G. Siewierski
Supervisor
Waste Management Section

CC: David Filbert
Jeff Jollie
Bernard Bigham, MDE
Fred Cocoa, E A Engineering, Science & Technology
Edward L. Blanton, Jr.

EGS:bac

#11

Plot 43

MARYLAND DEPARTMENT OF THE ENVIRONMENT
Waste Management Administration
Oil Control Program

MEMORANDUM

Copies:

To File From Jann Norman Date 1/31/94

Subject Zinc Construction. Fork Md. Baltimore County

This writer called Nutshell Enterprises and spoke with Mr. Shellhouse regarding sampling of the wells on the property. Mr. Shellhouse was told that I would like to see current sample results from the wells prior to any discussion or meeting regarding our decisions for further action on this site. Mr. Shelhouse agreed to talk to the current owner about sampling the monitoring wells. According to Mr. Shelhouse property is currently owned by a Mr. John Day. Mr. Day bought the property at a public auction. He plans to use the property for residential and commercial use. Houses will be built to the rear property, while the section at the corner of Harford and Sunshine Roads will be used for a small shopping center. If the property can not be used as above, then he would like to turn the property into a Driving Range or a Nursery. I expressed my concern to Mr. Shellhouse that the deep aquifer may have been comprimised based on the contamination present in the Russo's domestic wells.

#12

PHOT 44

Nutshell Enterprises, Ltd.
4059 Norrisville Road · Jarrettsville, Maryland 21084
Phone: (410) 557-7583 · Fax: (410) 557-8804

REPORT OF GROUND-WATER INVESTIGATION

Facility Location

**HARFORD ROAD AT THE INTERSECTION
OF
SUNSHINE AVENUE
BALTIMORE, COUNTY MARYLAND**

Prepared For

**Charles J. Frank, Inc.
Suite 205
120 Cockeysville Road
Hunt Valley, MD 21030**

Prepared by: Arthur A. Shellhouse
Environmental Consultant
MD #3109

Date: April 19, 1994

#13A

Prot 45

Maryland spectral Services, NC

Analytical Chemistry Services

APR 7 1994

5 April 1994

Mr. Herbert Meade, Chief
Compliance/Remediation Division
Oil Control Program
Maryland Department of the Environment
Building #40
2500 Broening Highway
Baltimore, Maryland 21224

Dear Herb:

We are pleased to report results of analysis of water samples collected in support of your Zinc, Harford Road and Sunshine project 1 April 1994 by Ms. Jann Normann of your staff.

We present the results in Sample Data Summary Package format described by the USEPA Contract Laboratory Program.

Of course, should any question arise, please do not hesitate to contact us. We appreciate the opportunity to work with your group.

Sincerely yours,

Kenneth K. Gill, Jr.

Enclosure

1500 Caton Center Drive, Suite G, Baltimore, Maryland 21227
(410) 247-7600

PROT #47

Environmental
Consulting,
Engineering and
Construction

Nutshell
ENTERPRISES, LTD.

4059 Norrisville Road
Jarrettsville, MD 21084
Phone: (410) 557-7583
Fax: (410) 557-8804

RECEIVED
FEB 17 1998
CONTROL PROGRAM

15

February 12, 1998

Maryland Department of the Environment
Waste Management Administration
2500 Broening Highway
Baltimore, Maryland 21224

Attn: Mr. Herbert Meade, Chief
Compliance/Remediation Division
Oil Control Program

Re: MDE Case #9-0826 BC
Harford Road & Sunshine Road
Fork, Maryland

Dear Mr. Meade:

As we recently discussed on the telephone, Nutshell Enterprises is working on this project on behalf of Charles J. Frank, Inc., who is currently considering the development of the above referenced property.

This letter is written with regard to the issue of the groundwater contamination, which has previously been identified at this site and with respect to the future development of a potable water supply source for the property. In a letter dated June 16, 1995, your Administration presented requirements to evaluate the placement of a new potable supply well on the property. These requirements focused on the use of geophysical survey methods to attempt to delineate the locations of water-bearing fractures both on-site and in the area of several residences south of the property.

Nutshell Enterprises subsequently solicited a proposal from ERM, Inc. to conduct a geophysical survey of the property. The estimated cost of this survey was on the order of $7000.00. Given the inherent uncertainty of such a geophysical survey in identifying water bearing fractures, if present, and the fact that the future location of a supply well on the property will largely be dictated by setback requirements, the locations of structures and the septic system. Nutshell Enterprises has considered other options which may be more cost effective and provide more definitive results with respect to developing a potable water supply well on the property. The following are our recommendations

#14 PROT 46

State of Maryland
Department of the Environment
Waste Management Administration
2500 Broening Highway, Baltimore, Maryland 21224

CASE # 9-919 BA

Report of Observations FACILITY I.D. #

Type of Inspection/Observation: Meeting Date 6/13/95

Facility Name: Zinc-Sunshine

Remarks:

Mr. Bud Frank ~~and Mr~~, owner of the above referenced property, and Mr. Art Shilhouse, of Nutshell Enterprises met with me and Herb Meade

Issues discussed:

1. Mr Frank plans to install a 4 to 5 store strip Mall on the front of the property leaving the rear ~~of~~ undeveloped.
2. He plans to install at least 1 Domestic well on the property
3. I expressed my concerns about the contamination in the deeper (fractured) aquifer. The same aquifer where the Russo's home well gets its water.
4. I required a geophysical survey to define the fractures before a new domestic well is installed.
5. See letter that follows up the meeting for the ~~the~~ requirements for this site.

TIME IN : TIME OUT :

Observer: Lynn Kramer Person Interviewed:

MARYLAND DEPARTMENT OF THE ENVIRONMENT
2500 Broening Highway • Baltimore Maryland 21224
(410) 631- 3000 • 1- 800 -633-6101 • http:// www. mde. state. md. us

Parris N. Glendening
Governor

Jane T. Nishida
Secretary

March 6, 1998

#48
Phot (16)

Mr. Arthur A. Shellhouse
Nutshell Enterprises, Ltd.
4059 Norrisville Road
Jarrettsville MD 21084

RE: **Case No. 8-0919 BA1**
Harford & Sunshine Roads
Fork, Maryland

Dear Mr. Shellhouse:

The Waste Management Administration's Oil Control Program has reviewed your letter concerning the installation of a groundwater supply well and future development of the property. The following are the Administration's comments for each of the recommendations proposed in your letter dated February 12, 1998.

(1) The Administration recognizes that the Baltimore County Department of Environmental Protection and Resource Management (DEPRM) will be involved in selecting a suitable location for a domestic well. The Administration also acknowledges that DEPRM will be notified of plans for development and of the proposed groundwater investigation.

(2) In addition to surveying and gauging each monitoring well, the depth of each well should be measured. The depth to the bottom of each well should be compared with well logs to assess if sediment/debris have entered the well. Historical observation reports indicate that at one time wells may have had missing caps and/or locks. I conducted a recent site visit (March 2, 1998) and noticed one well contained a broken PVC riser below the surface, potentially creating a pathway for sediment/debris to enter the well.

The condition of each well should also be noted (i.e., steel casing broken, missing lock, missing or broken well cap, etc.) during the gauging event. The Administration is unclear how many wells, and which ones will be included in this investigation.

Although the water table gradient is toward the south, the underlying bedrock (schist) typically contains fractures that are orientated in the NE/SW direction. Thus, there is no guarantee that a domestic well drilled at a northeast location on-site may not be affected from historical releases.

Phot 49

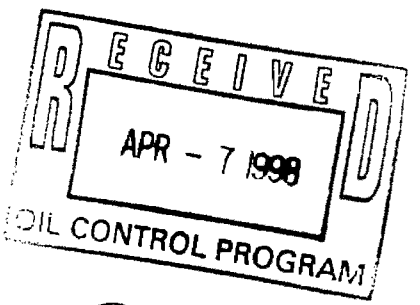
Environmental
Consulting,
Engineering and
Construction

Nutshell
ENTERPRISES, LTD.

4059 Norrisville Road
Jarrettsville, MD 21084
Phone: (410) 557-7583
Fax: (410) 557-8804

April 5, 1998

Mr. Herbert Meade, Chief &
Ms. Ellen Jackson, Geologist
Compliance/Remediation Division
Oil Control Program
Maryland Department of the Environment
Waste Management Administration
2500 Broening Highway
Baltimore, MD 21224



See Table 2

47

RE: Ground Water Sampling Report
MDE Case #9-0826 BC
Frank Property
Harford Road & Sunshine Road
Fork, Maryland

Dear Mr. Meade & Ms. Jackson,

Nutshell Enterprises is working on this project on behalf of Charles J. Frank, Inc. On March 23, 1998 ground water samples were collected from the site wells and analyzed for BTEX and MTBE. Portions of this fieldwork were observed by Ellen Jackson (Geologist) and Mike Frank (Inspector) of the MDE. The following is a report of the observations and results of the sampling event.

WELLS

There are currently six monitoring wells at the site. One of these monitoring wells, MW-2, has a damaged well casing which appears to have allowed the entrance of some surface debris into the well. A seventh monitoring well, MW-3, was destroyed sometime prior to the 1994-sampling event. An unused water supply well, identified in this report as Well 8, is also located on the property.

During this sampling event the well depths were measured and the tops of the well casings were surveyed relative to an arbitrary datum. All of the monitoring wells are approximately 50 feet deep. Well 8 is approximately 88 feet deep. The depth measurements and casing elevations are presented on Table 1. The locations of the wells are shown on Figure 1.

PROT 50 A

OSHA National News Release

U.S. Department of Labor
Office of Public Affairs

News Release USDL 98-179
Tuesday, April 28, 1998
Contact: Bonnie Friedman (202) 219-8151
Al Belsky (202) 219-8211

DEPARTMENT OF LABOR'S OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) ISSUES RECOMMENDATIONS FOR WORKPLACE VIOLENCE PREVENTION IN LATE-NIGHT RETAIL ESTABLISHMENTS

Calling for an end to killings of workers in late-night retail establishments, U.S. Secretary of Labor, Alexis M. Herman today released recommendations by the Occupational Safety and Health Administration (OSHA) that could significantly reduce the number of employees murdered or injured on the job during robberies and other violence acts.

"OSHA's Recommendations for Workplace Violence Prevention Programs in Late-Night Retail Establishments provide a common sense approach to stemming the risks and hazards too often associated with late night jobs," Herman said. "These guidelines can help employees and their employers avoid being victims."

Herman added, "The statistics are shocking. Homicide is the number one killer of women in the workplace, and the second leading cause for all American workers. And 48% of all homicides in the workplace occur in retail. The risk is apparently greater for those who work at night in convenience stores, liquor stores and gasoline stations. We must do all we can to insure the safety of all of America's workers as they strive to make a decent wage to sustain themselves and their families." OSHA's research shows that employees are at greater risk of homicide or assault if they are involved in the exchange of money, have routine contact with the public, work alone or in small numbers, work late or very early hours and work in high crime areas. According to data recently released by the Centers for Disease Control in Atlanta, murders accounted for 13.5% of occupational-related deaths between 1980 and 1994.

"Some industries, unions and advocacy groups are taking the lead in fighting back to reduce the risks of violence in the workplace. But we can do more," Herman said. "I urge all late night retail employers, whether large or small, to consider these recommendations and implement them to enhance the safety of their workers and their customers."

Herman stressed that the recommendations are not "a one size fits all" approach. But suggest that employers tailor a prevention program specific to their needs.

The recommendations have five key elements to an effective violence prevention program: (1) management commitment and employee involvement; (2) worksite analysis; (3) hazard prevention and control; (4) training and education; and (5) evaluation.

OSHA Administrator Charles N. Jeffress said, "Our recommendations are not a new standard or regulation nor a substitute for any current standards. They are tools that we hope will raise the awareness of employers and provide them with the information they need to help protect their employees."

Jeffress outlined some of the report's objectives. The first objective is to prevent violence, which

PROT 50 B

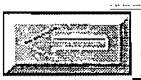


INTRODUCTION

Recently, violence in the workplace has received considerable attention in the popular press and among safety and health professionals. Much of the reason for this attention is the reporting of data by the National Institute for Occupational Safety and Health (NIOSH) and others regarding the magnitude of this problem in U.S. workplaces. Unfortunately, sensational acts of coworker violence (which form only a small part of the problem) are often emphasized by the media to the exclusion of the almost daily killings of taxicab drivers, convenience store clerks and other retail workers, security guards, and police officers. These deaths often go virtually unnoticed, yet their numbers are staggering: 1,071 workplace homicides occurred in 1994. These homicides included 179 supervisors or proprietors in retail sales, 105 cashiers, 86 taxicab drivers, 49 managers in restaurants or hotels, 70 police officers or detectives, and 76 security guards [BLS 1995]. An additional 1 million workers were assaulted each year. These figures indicate that an average of 20 workers are murdered and 18,000 are assaulted each week while at work or on duty. Death or injury should not be an inevitable result of one's chosen occupation, nor should these staggering figures be accepted as a cost of doing business in our society.



Table of Contents

 Previous page | Next page 

NIOSH NIOSH home page | CDC home page CDC

This page last updated on July16, 1996

Plot 50 C



RISK FACTORS AND PREVENTION STRATEGIES

Risk Factors

A number of factors may increase a worker's risk for workplace assault, and they have been described in previous research [Collins and Cox 1987; Davis 1987; Davis et al. 1987; Kraus 1987; Lynch 1987; NIOSH 1993; Castillo and Jenkins 1994]. These factors include the following:

Contact with the public

Exchange of money

Delivery of passengers, goods, or services

Having a mobile workplace such as a taxicab or police cruiser

Working with unstable or volatile persons in health care, social service, or criminal justice settings

Working alone or in small numbers

Working late at night or during early morning hours

Working in high-crime areas

Guarding valuable property or possessions

Working in community-based settings

Prevention Strategies

Environmental Designs

Commonly implemented cash-handling policies in retail settings include procedures such as using locked drop safes, carrying small amounts of cash, and posting signs and printing notices that limited cash is available. It may also be useful to explore the feasibility of cashless transactions in taxicabs and retail settings through the use of machines that accommodate automatic teller account cards or

PROT 50 0

WORKPLACE VIOLENCE

Workplace violence has emerged as an important safety and health issue in today's workplace. It's most extreme form, homicide, is the second leading cause of fatal occupational injury in the United States. Nearly 1,000 workers are murdered, and 1.5 million are assaulted in the workplace each year. According to the BLS Census of Fatal Occupational Injuries (CFOI), there were 709 workplace homicides in 1998, accounting for 12% of the total 6,026 fatal work injuries in the United States. ([1-2]) Environmental conditions associated with workplace assaults have been identified and control strategies implemented in a number of work settings. OSHA has developed guidelines and recommendations to reduce worker exposures to this hazard but is not initiating rulemaking at this time.

HAZARD DESCRIPTION

Non-fatal assaults

According to the Department of Justice's National Crime Victimization Survey (NCVS), assaults and threats of violence against Americans at work number almost 2 million a year.

The most common type of workplace violent crime was simple assault with an average of 1.5 million a year. There were 396,000 aggravated assaults, 51,000 rapes and sexual assaults, 84,000 robberies, and 1,000 homicides.

Again, according to the NCVS, retail sales workers were the most numerous victims, with 330,000 being attacked each year. They were followed by police, with an average of 234,200 officers victimized. The risk rate for various occupations was as follows: (per 1,000)

Police officers	306
Private security guards	218
Taxi drivers	184
Prison guards	117
Bartenders	91
Mental health professionals	80
Gas station attendants	79
Convenience, liquor store clerks	68
Mental health custodial workers	63
Junior high/middle school teachers	57
Bus drivers	45
Special education teachers	41

PROT 9 E

OSHA Speeches
Recommendations for Night Retail Workers -- Worker Memorial Day.

OSHA Speeches - Table of Contents

- **Record Type:** Speech
- **Subject:** Recommendations for Night Retail Workers -- Worker Memorial Day.
- **Information Date:** 04/28/1998
- **Presented To:** Press Conference
- **Speaker:** Jeffress , Charles N.

Charles N. Jeffress
Press Conference Releasing the Recommendations
for Night Retail Workers
Worker Memorial Day
April 28, 1998

- On Worker Memorial Day we remember those who have lost their lives on the job. And we at OSHA rededicate ourselves to our mission of preventing those tragedies.

- Since OSHA was created 27 years ago, workplace fatalities have been cut in half. That's good news. Yet last year, more than 6,100 workers died in the workplace. Even one life lost is too many. Our mission -- and we join with our industry, labor and public partners in this -- is to prevent deaths on the job.

- Toward that end, today we want to talk about preventing workplace homicides -- the second leading cause of death in the workplace. Homicide is the number one cause of death for women on the job.

- Many of you in this room have helped in this effort. And we'll be introducing a number of people later.

- Although workplace murders declined somewhat in 1996, they still represented 15 percent of all deaths. That's more than 900 workers who went to work but never came home. And 80 percent of them died at the hands of robbers or other criminals.

- Almost half of workplace homicides occur in the retail industry, where those working late at night are particularly vulnerable. That is why our recommendations for preventing workplace violence focus on these establishments.

- I want you to know we are not helpless in this battle against crime in the workplace. It is possible to frustrate the plans of would-be criminals. It is possible to keep employees safe. We can get tough on those who are up to no good-and protect those who are just doing their jobs.

- First, let me say that the recommendations we are announcing today are voluntary and advisory in nature. We're not offering a new standard or regulation or substitute for a standard, just common sense recommendations.

- We're also not offering a fixed list of one-size-fits-all solutions. Instead, we're giving employers a "toolbox" of options.

- We have put together an educational document designed to raise awareness about violence and outline a variety of measures to prevent it. By making it available, OSHA's goal is to reduce the number of homicides in late night retail as employers give careful thought to these suggestions and implement those that make sense for their worksites.

- According to the Department of Justice, between 1987 and 1992, nearly one million people annually were victims of violent crime at work. Though much of the violence may appear random, many incidents can be anticipated and avoided.

- We're recommending that late night retail operators develop violence prevention programs based on the major components of effective safety and health programs: management commitment and employee involvement; worksite analysis; hazard prevention and control; safety and health training; and evaluation.

- I want to emphasize that we are providing an array of possible strategies. These are practical, concrete steps. The ideas we're providing have come from convenience stores, gas stations, liquor stores and other facilities. Some are suggestions from law enforcement officials. None of them are brand new. Each has proven useful to other employers in similar facilities.

- Employers and employees will want to examine their operations from a variety of perspectives-from work practices to physical barriers to employee training. The options they select to reduce the risk of violence will depend upon their individual circumstances.

- For example, a gas station may find pass-through windows with bullet-resistant glass, increased lighting inside the station and over the pumps, and clearing windows of signs to permit an unobstructed view for police officers in the street to be useful measures.

- A convenience store might use video surveillance equipment, combined with an alarm system, convex mirrors in the store, and drop safes to foil would-be thieves.

- A liquor store in a high crime area might increase staffing levels at night and restrict customer access to only one door.

- A facility that backs up to a wooded area might increase lighting at the rear of the store, lock rear doors at night, and limit deliveries to daytime hours.

- All these facilities might find it helpful to train employees in emergency procedures to use in case of potential violence. Employees may also benefit from training in handling aggressive or abusive customers.

- OSHA's recommendations are not a fixed formula, but rather a listing of common sense strategies and practices that can help stop thieves. By making cash more difficult to get, store owners will discourage potential criminals and protect innocent employees....

- No one knows better how to do that than Wayland Clifton, former Police Chief from Gainesville, Florida. Wayland has joined us today to speak about the success he had in implementing workplace violence prevention programs....

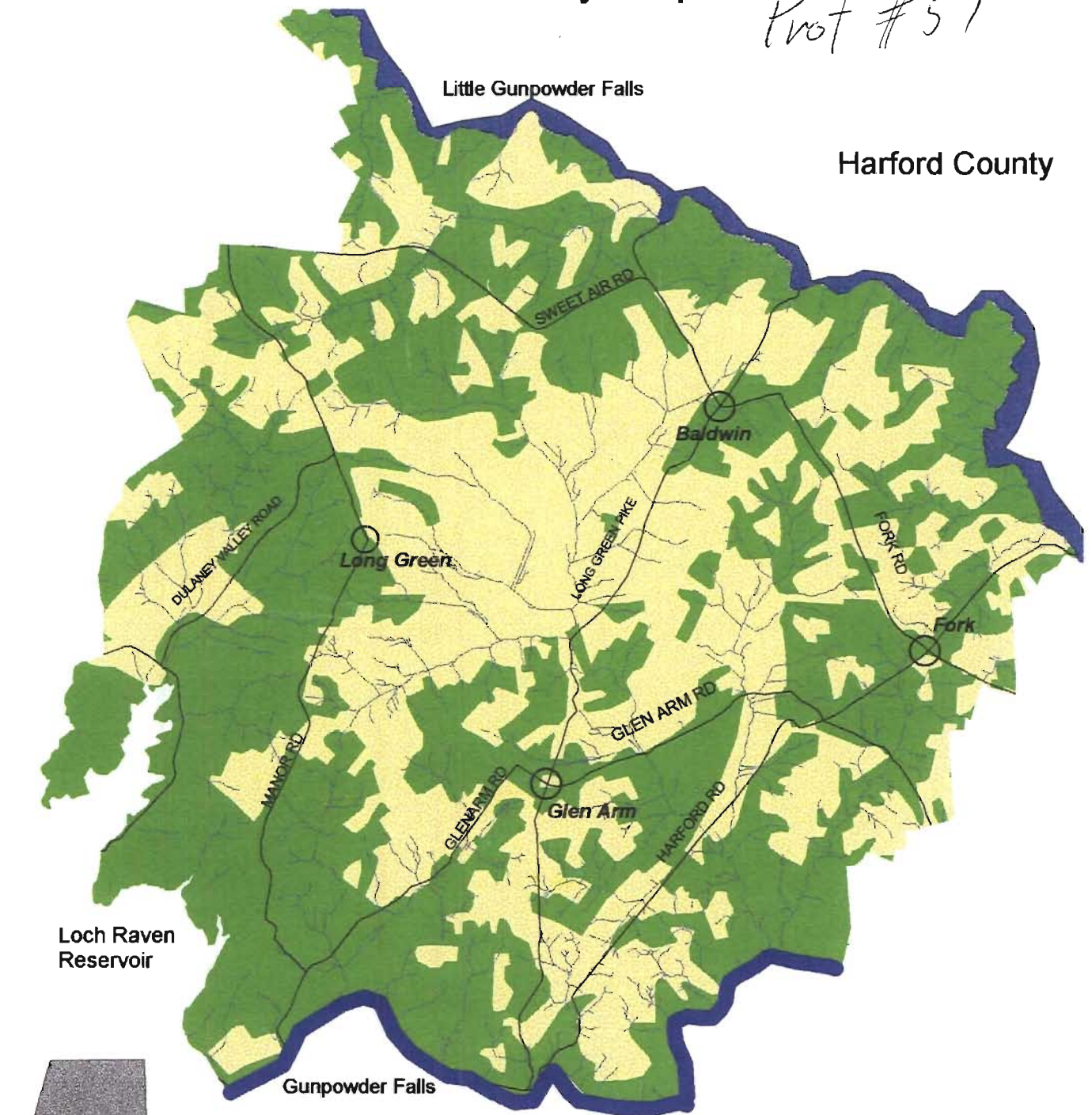
◀ OSHA Speeches - Table of Contents

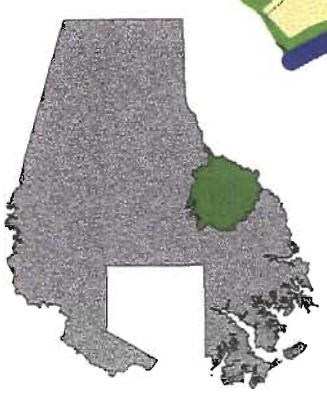
BALTIMORE COUNTY RURAL LEGACY PROGRAM

Long Green Valley Conservancy Rural Legacy Area

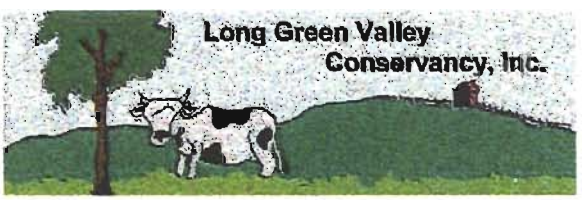
Boundary Map

Prot #51





Sponsored By Baltimore County and
Long Green Valley Conservancy



PHOT 52

THE ROLE OF THE MASTER PLAN

The county executive and the county council have recognized the master plan as an important advisory tool for ensuring that the growth of Baltimore County is managed in an orderly and rational manner. Many of the activities of government encourage conformance with the master plan, such as the capital improvement program, the water and sewer master plan, and the various zoning map processes. Proposed regulations and standards are reviewed to determine if they conform with the master plan. While formally adopted regulations must take precedence over the advisory status of the master plan, it has an influential role in providing guidance in a number of regulatory and fiscal decision-making processes.

An important part of the county's land use regulations is zoning. It consists of the regulatory text, known as the *Baltimore County Zoning Regulations*, and the "Baltimore County Zoning Map." Zoning can be changed by amending the zoning text or map. All zoning text changes and most zoning map changes are made through the adoption of a county council ordinance. While text amendments are initiated from time to time as deemed necessary, the zoning map is most often amended through the formal CZMP, which occurs at regular four-year intervals. During the tenure of *Master Plan 2010*, Baltimore County will conduct a CZMP in the years 2000, 2004 and 2008. While zoning is one of the most important tools used to implement the master plan, the zoning text and map always take legal precedence over master plan recommendations, guidelines, and maps.

The master plan also provides guidance in the development of community plans. Over the last ten years, 20 community plans and development strategies have been adopted as amendments to the current master plan. They serve as supplements and additions, making detailed recommendations for individual communities. *Master Plan 2010* provides recommendations for additional community plans to be undertaken in the next ten years.

SMART GROWTH

The Maryland Economic Growth, Resource Protection, and Planning Act of 1992 was enacted with the intent of encouraging economic growth, limiting sprawl development, and protecting the state's natural resources. This act requires that county plans implement and establish policies based on the following "Seven Visions":

1. Development is concentrated in suitable areas.
2. Sensitive areas are protected.
3. In rural areas, growth is directed to existing population centers and resource areas are protected.
4. Stewardship of the Chesapeake Bay and the land is a universal ethic.
5. Conservation of resources, including a reduction in resource consumption, is practiced.
6. To assure the achievement of one through five above, economic growth is encouraged and regulatory mechanisms are streamlined.
7. Funding mechanisms are addressed to achieve these visions.

In 1997, additional state legislation enacted the Smart Growth and the Rural Legacy programs and established priorities for state spending in an effort to preserve existing neighborhoods as

Proof 453

AMENDMENTS TO PROPOSED MASTER PLAN 2010 AS ADOPTED BY THE BALTIMORE COUNTY PLANNING BOARD

SEPTEMBER 23, 1999

This document contains amendments made by the Baltimore County Planning Board to *Proposed Master Plan 2010* dated May 1999. Inserted text is presented in **bold type** while deleted text is ~~struck through~~. Typographical or grammatical errors that may have been made in *Proposed Master Plan 2010* have not been corrected here. Those errors will be corrected in the final *Master Plan 2010* adopted by the Baltimore County Council.

TABLE OF CONTENTS

A. Rewrite "African American Communities" under "Part 4 – The Urban County" as follows:

Historically African American Communities

PART 1 – INTRODUCTION

A. Move the URDL line in the southwest area of Baltimore County on Map 1 p. 2 and all other countywide maps to the northern border of the Patapsco Valley State Park. The URDL line will then identify the park as being outside the URDL and therefore in the rural area of the county. In addition, change the underlying zoning within the park from DR to RC.

B. Delete the 1st paragraph and add the following as the 1st and subsequent paragraphs under "Master Plan 2010" on p. 3:

~~*Master Plan 2010* endorses the continued preservation of rural areas and the exploration of new concepts to achieve that goal. The master plan also recognizes that Baltimore County's sustained prosperity will require continued reinvestment in its urban areas.~~

As the twentieth century draws to a close, Baltimore County is facing challenges and opportunities unique in its history. The growth management policies launched with the creation of the URDL have been refined over the years and are now in their final phases of implementation. Baltimore County continues to evolve and change, and as such must identify and address the land use challenges of the next decade with greater sophistication. Within the URDL, traditional growth is slowing as the designated growth areas and remaining infill sites become fully developed. Traditional master plan issues such as transportation, zoning, environment, and recreation have changed dramatically. More sophisticated approaches to addressing issues that go beyond zoning, but affect land use are required. Trends such as a diversity in income, an aging population, and deteriorating housing and infrastructure need to

PROT #54

COMPARATIVE MARKET SHOP OF FOUR AREA ROYAL FARMS STORES & EXISTING COMPETITION AT PROPOSED LOCATION OF THE CORNER OF HARFORD ROAD AND SUNSHINE/FORK AVENUES

Conducted
by Carol Shaw
February 19, 1999

PROT #55 A

THREE MILE RADIUS

COMPETITIVE MARKET

ANALYSIS

OF FORK, MARYLAND

Prepared by:
Carol N. Shaw

ANALYSIS AND METHODOLOGY

Methodology

- Pictures taken by Carol Shaw, Bernard Shaw and Rosanne DiFonzo during January, 1999
- Radius developed using ADC Street Map Books. A radius was drawn on a small scale ADC map and transposed to the larger scale maps which were then copied.
- Stores and gas stations were located by driving the major streets in the area, combined with the personal knowledge of Carol and Bernard Shaw and Rosanne DiFonzo.

Analysis

- Within a three mile radius of the intersection defining Fork, Maryland where the proposed Royal Farm gas station/convenience store would be located, there already exist:
  - 11 convenience stores of which one(1) is a 24 hour operation
  - 5 gas stations of which one(1) is a 24 hour operation

- There also exist within a slightly more than two mile radius eleven (11) closed/abandoned gas stations/pumps.

- This rural Fork crossroads already has more convenience store locations than the other three 'rural commercial'/'rural village'/'rural crossroads' intersections shown within this radius in Fallston, Kingsville and Long Green.

- Additionally, Fork is located on Harford Road, within both a Maryland Agricultural Land Preservation Zone and a Rural Legacy area. Harford Road is a single lane road. Kingsville and Fallston however, where two other commercial intersections exist within this three mile radius, are in rural commercial areas on dual lane highways. Belair Road was just recently widened to better accommodate the commuter traffic that transverses northeast Baltimore County en-route from Harford County to points south, southeast and southwest.

- The recently re-opened convenience store located on the northwest corner of this intersection, Johnny Ryan's Sub Shop, has such constricted demand that it is now closed on Mondays versus the seven day operation with which it began. It replaced a previous sub/convenience store that closed after two years.

PROT 56 A

FIVE MILE RADIUS

COMPETITIVE MARKET

ANALYSIS

OF FORK, MARYLAND

Prepared by:
Carol N. Shaw

ANALYSIS AND METHODOLOGY

Methodology

- Pictures taken by Carol Shaw, Bernard Shaw and Rosanne DiFonzo primarily during January and February 1999. Some pictures were re-taken during September, 1999 to enhance brightness or obtain closer views.
- Radius developed using ADC Street Map Books. A radius was drawn on a small scale ADC map and transposed to the larger scale maps which were then copied.
- Stores and gas stations were located by driving the major streets in the area, combined with the personal knowledge of Carol and Bernard Shaw and Rosanne DiFonzo.

Analysis

- Within a five mile radius of the intersection defining Fork, Maryland where the proposed Royal Farm gas station/convenience store would be located, there already exist:
  - 54 convenience stores including 11 which operate 24 hours.
  - 30 gas stations including 10 which operate 24 hours.

- Four (4) convenience stores are already in business at this intersection and, as shown on the map, that is more than at most rural intersections within this market radius, e.g., there are less than four convenience stores at all rural intersections except at Baldwin Mill Road which has four (4), the same as currently in Fork. There are less at Long Green. And there are less at Fallston and Kingsville - two rural commercial centers/villages much busier than Fork.

- There are a *lesser* number of convenience stores at busier intersections within this 5 mile radius - much busier than Fork due to their locations on dual lane highways or at dual lane highway intersections, e.g., 1) Mountain and Belair Roads, 2) Franklinville and Mountain Roads with its existing *Royal Farm*, 3)Philadelphia and Mountain Roads, 4) Pulaski Highway and Mountain Roads and 5) Pulaski Highway and Ebenezer Road.

- One gas station is all most rural intersections have as shown on the map, e.g., 1) Long Green Pike and Fork Road, 2) Baldwin Mill Road and Fallston Road and 3) Fallston Road and Pleasantville Road.
  - As shown on the map, there do not begin to exist multiple gas stations at intersections until you move southwest into the suburban area of Perry Hall or northeast into the much more heavily populated areas of Fallston and Bel Air.
  - It is precisely the Fallston/Bel Air areas that Royal Farms says they are seeking to attract but these areas already show a number of gas station choices.
  - Additionally, there are two new WaWa's - one that opened in the Fall, 1999 and one that is under development now. One is on the east side of Route #1 going into BelAir and the other is on the west side of Harford Road coming out of BelAir. Both are very large; both have gas stations; and both are open/will be open 24 hours. These two new WaWa's are more than sufficient, combined with all of the other options, to service the needs of the Harford County commuters traveling Harford Road even assuming that you were to presume that Baltimore County has undertaken the responsibility to service the needs of Harford County residents at a rural crossroads like Fork.
- The Map Analysis shows that, contrary to Royal Farms' testimony during the Zoning Hearings that "there is very little competition within five miles", the opposite is true.

PROT 57

ROYAL FARM STORES

LOCATION ANALYSIS

Prepared by:
Carol N. Shaw
October, 1999

Case # 99-199-X

CBA
Prot #58

Prot CP SA

Petition Drive
3 Weeks
(1/5/99 - 1/26/99)
660 SIGNATURES

Opposition to Proposed Development of SE Corner of Harford Road & Sunshine Ave.

CITIZENS PETITION REGARDING ZONING NOTICE CASE # 99-199-X
(Special Exception to permit an automobile service station in combination with a food store with a sales area larger than 1500 square feet)

We, the undersigned, as registered voters of Baltimore County sign this petition to voice our strenuous objection to the proposed commercial development of the property located at the southeast corner of Harford Road and Sunshine Avenue. We strongly oppose development that would allow to be built a second gas station and a third grocery/convenience store at this rural intersection. Not only are another gas station and convenience store unneeded and unwanted by the community but they would serve to significantly undermine and damage the future viability of the pre-existing businesses. Additionally, rush hour traffic at this corner has already reached a danger point not only for pedestrians but also for moving vehicles entering and exiting existing commercial establishments.

These arguments are in addition to the environmental problem plaguing the community caused by the previous attempt at commercialization of this corner, e.g., the ongoing benzene contamination of a well on Country Hill Court. The need to find an uncontaminated well location, combined with the need to sink new gas tanks on the proposed property location, raises significant dangers and brings to the forefront multiple issues regarding the possible 1) re-contamination of the already contaminated well, 2) future contamination of any or all of the other wells in Country Hill Estates and/or those in the vicinity of the southwest corner of Harford Road and Sunshine Avenue and 3) re-direction of underground aquifers supplying any or all of these wells, negatively affecting their water supplies.

	FIRST/LAST NAME	ADDRESS	ZIPCODE
1	CAROL N. SHAW	7 COUNTRY HILL CT	21087
	SIGNATURE	REGISTERED VOTER OF BALTIMORE COUNTY, MD	
		Yes / No (Circle one)	
2	FIRST/LAST NAME	ADDRESS	ZIPCODE
	BERNARD SHAW	7 COUNTRY HILL CT	21087
	SIGNATURE	REGISTERED VOTER OF BALTIMORE COUNTY, MD	
		Yes / No (Circle one)	
3	FIRST/LAST NAME	ADDRESS (6000 New Cut Rd)	ZIPCODE
	Pat Swiacki	P.O Box 148	21087
	SIGNATURE	REGISTERED VOTER OF BALTIMORE COUNTY, MD	
	Pat Swiacki	Yes / No (Circle one)	
4	FIRST/LAST NAME	ADDRESS	ZIPCODE
	Jim Peeling	12326 Harford Rd	21082
	SIGNATURE	REGISTERED VOTER OF BALTIMORE COUNTY, MD	
	James R. Peeling, Jr.	Yes / No (Circle one)	
5	FIRST/LAST NAME	ADDRESS	ZIPCODE
	Elizabeth L. Mansfield	11945 Jerusalem Rd	21087
	SIGNATURE	REGISTERED VOTER OF BALTIMORE COUNTY, MD	
	Elizabeth L. Mansfield	Yes / No (Circle one)	
6	FIRST/LAST NAME	ADDRESS	ZIPCODE
	Mike Girvin	11122 Sheradale Dr	21087
	SIGNATURE	REGISTERED VOTER OF BALTIMORE COUNTY, MD	
	Mike Girvin	Yes / No (Circle one)	
7	FIRST/LAST NAME	ADDRESS	ZIPCODE
	Paula D. Wine	12 Fork Springs Ct	21013
	SIGNATURE	REGISTERED VOTER OF BALTIMORE COUNTY, MD	
		Yes / No (Circle one)	

PROT #59

ANALYSIS OF OPPOSITION

TO PROPOSED ROYAL FARM

GAS STATION/CONVENIENCE STORE

IN FORK, MARYLAND

Prepared by:
Carol N. Shaw

Spreadsheet/Graphical Analysis

Appendix

Site Pics

Immediate Area 2 Mile Analysis

Summary/Analysis

PLOT #60

FILL IN THIS FORM COMPLETELY
PLEASE PRINT OR TYPE

COUNTY NUMBER

TYPE NUMBER IS TO BE PUNCHED IN COLS. 3-6 ON ALL CARDS)

DATE RECEIVED

DATE WELL COMPLETED 03 18 87

DEPTH OF WELL 160 (TO NEAREST FOOT)

PERMIT NO. FROM "PERMIT TO DRILL WELL" BA-81-836 2

OWNER RUSSO, THOMAS J.

STREET OR RFD 2658 Fork Rd. TOWN Fork

SUBDIVISION Country Hill Estates SECTION LOT 2

WELL LOG
(not required for driven wells)

STATE THE KIND OF FORMATIONS PENETRATED, THEIR COLOR, DEPTH, THICKNESS AND IF WATER BEARING

DESCRIPTION (use reasonable words if needed)	FEET FROM	FEET TO	Check if water bearing
brown dirt	0	1	
soft brown rock	1	32	
sand/hard brown rock	32	37	
hard grey rock	37	60	
sand brown rock	60	65	
soft brown rock	65	66	
sand/hard brown rock	66	70	
hard grey rock	70	74	
hard brown rock	74	78	
sand brown rock	78	80	
hard brown/grey rock	80	86	
hard grey rock	86	125	
sand brown rock	125	126	
hard grey rock	126	160	
150' dry hole abandoned & sealed			

CIRCLE APPROPRIATE LETTER
A THEN AND ABANDONED AND SEALED
B WHEN WELL WAS CONSTRUCTED
C QUESTIONABLE (EXPLAIN)
D WELL NOT LOCATED (EXPLAIN)

GROUTING RECORD
WELL HAS BEEN GROUTED (Circle Appropriate Box) yes Y no N
TYPE OF GROUTING MATERIAL
CEMENT CM BENTONITE CLAY BC
NO. OF BAGS 10 NO. OF POUNDS 1000
GALLONS OF WATER 60
DEPTH OF GROUT SEAL (TO NEAREST FOOT)
FROM 0 FT. TO 39 FT.
(ENTER 0 IF FROM SURFACE)

CASING RECORD
casing types (insert appropriate code below)
ST STEEL CO CONCRETE
PL PLASTIC OT OTHER

MAIN CASING TYPE	nominal diameter top (main) casing (nearest inch)	Total depth of main casing (nearest foot)
PL	6	40

OTHER CASING (if used)
	diameter inch	depth (feet) from	to
CASING			

SCREEN RECORD
screen type or open hole (insert appropriate code below)
ST STEEL BR BRASS BRONZE HO OPEN HOLE
PL PLASTIC OT OTHER

C 2

DEPTH (NEAREST FT.)
FROM 39 TO 160

SLOT SIZE
DIAMETER OF SCREEN NEAREST INCH

GRAVEL PACK
WELL [ ] YES [ ] NO
FLOWING WELL [ ]

C 3

PUMPING TEST
HOURS PUMPED (nearest hour) 3
PUMPING RATE (gal. per min to nearest gal.) 15
METHOD USED TO MEASURE PUMPING RATE TIMER
WATER LEVEL (distance from land surface)
BEFORE PUMPING 28
WHEN PUMPING 51

TYPE OF PUMP USED (for test)
A air P piston T turbine
C centrifugal R rotary O other (describe below)
J jet S submersible

PUMP INSTALLED
DRILLER WILL INSTALL PUMP (CIRCLE) (YES or NO) YES NO
IF DRILLER INSTALLS PUMP, THIS SECTION MUST BE COMPLETED FOR ALL WELLS EXCEPT HOME USE
TYPE OF PUMP INSTALLED PLACE (A,C,J,P,R,S,T,O) IN BOX - SEE ABOVE
CAPACITY: GALLONS PER MINUTE (to nearest gallon)
PUMP HORSE POWER
PUMP COLUMN LENGTH (nearest ft.)
CASING HEIGHT (circle appropriate box and enter casing height) + above - below LAND SURFACE 1 (NEAREST FOOT)

LOCATION OF WELL ON LOT
SHOW PERMANENT STRUCTURE SUCH AS BUILDING, SEPTIC TANKS, AND/OR LANDMARKS AND INDICATE NOT LESS THAN TWO DISTANCES (MEASUREMENTS TO WELL)

Real
12' 40' 12'
13'

APPROVED TO FILE APR 15 1987
BALTO. CO. HEALTH DEPT.
FINAL APPROVED PLAN 4/23/87

EX DIRT ROAD

LOT 1

NOTES
AREA OF LOT = 1.15 Ac.±
DIST. ZONING "RC-5"
T HAS APPROVED
L TESTS
T RECORDED ON
T OF COUNTRY HILL
TATES, SM 56-42 FOS

410
286.52'
S 45°42'59" W
400
10'
S 44°17

STATE OF MARYLAND
No. 10618
REGISTERED
PROFESSIONAL ENGINEER

COUNTRY

PLOT PLAN
No 9
COUNTRY HILL

PROT 61

A DOMINO GAME OF ASSUMPTIONS

ASSUMPTION
Rural Residents work in the same places as suburban & urban residents thereby using more gasoline

ASSUMPTION
Rural residents lack timely access to full-service grocery stores thereby using convenience stores more

ASSUMPTION
Rural Fork residents will spend 20% more than suburban & urban residents on convenience store & gasoline purchases

ASSUMPTION
ALL residents within 1 ½ miles of Fork currently spend ALL of their convenience store & gasoline dollars in Fork

ASSUMPTION
Royal Farm will split ALL convenience store & gasoline revenue available to Fork residents with Highs & Citgo

Prot 62 K. Snyder

J. KEMP
Vice President

Q. Information on Royal Farm Stores
A. Locally-owned Baltimore Base - since 1928
Sub of Cloverland/Green Spring Dairy
Convenience Store w/gas pumps
Currently 86 stores, 75 in Maryland
40% full service
Acquire property to accommodate gas

Q. Interest in site
A. Originally in 1987 when we contacted the owner
Contract was for purchase
Owner defaulted during contract period - Property went to auction
Commercial corridor - Commercially zoned
Available again about two years ago
Contacted another real estate agent to see who owned property
Now under lease - store with gas lanes
Size: 3100 square feet store
5 pump islands

Q. Why interest at this location
A. Customer demand for one-stop shop
One stop shop for customer convenience
Provide added services to customer base

Q. Market Availability
A. There is a strong market
Employees travel Harford Road corridor for access to Baltimore
Traffic heavy throughout corridor
Not a lot of competition
Believe we can provide products and services under one roof
Rural location
Tremendous potential there

Q. Services in area (comparison Royal Farm with community)
A. Royal Farm Store
R-F Store offers:
Wide assortment of products
Sandwiches
Gas

Different & wider assortment of products

Fork Community
Full service **Citgo Station** (garage & gas pumps) w/small convenience store

High's (strong dairy/ convenience)

1

Prot 63 Highlighted

Carol Shaw's Notes from January Hearing

1. John Kemp - VP - Royal Farms
   - 86 locations
   - approximately 75 in Maryland
   - all new stores have fuel
   - 40% of existing stores have gas
   - been interested in site since 1987 when property was known as Zinc/Sunshine
   - currently lease property
   - planning convenience store of 3100 square feet
   - 5 double pumps for gas
   - "part of commercial corridor"
   - why they want a convenience store with a gas station - "customer's want one-stop shopping"
   - believe this is a strong market
     - strong commuter area (Harford County)
     - "heavy traffic"
     - "more rural"
     - "not a lot of competition in the area"
   - consider themselves the equivalent of the Citgo Station on the corner
   - consider Highs a "dairy store"
   - see this as an upscale location and an "outstanding" location
   - consider the trade area to be commuters
   - see their market area to be 5 miles
   - no formal market analysis; seat of the pants; no real analysis
   - selling fuel absolutely necessary
   - originally had 6 double pumps
   - want public bathrooms - inside the store
   - plan a NationsBank ATM
   - plan 2 pay phones - on the exterior - away from the building
   - said that their new store on Philadelphia Road across from the hospital and near Golden Ring Mall is the same size as this would be

UNITED STATES GEOLOGICAL SURVEY

Occurrence of the Gasoline Oxygenate MTBE and BTEX Compounds in Urban Stormwater in the United States, 1991-95

Prot #65

Water-Resources Investigations Report 96-4145

By Gregory C. Delzer, John S. Zogorski, Thomas J. Lopes, *and* Robin L. Bosshart

Abstract

Methyl *tert*-butyl ether (MTBE) is a gasoline oxygenate. Oxygenates such as MTBE, when added to gasoline, increase the gasoline's oxygen level and decrease vehicular carbon monoxide emissions and ozone levels in the atmosphere. MTBE disperses rapidly in water, was the second most frequently detected volatile organic compound (VOC) in a study of shallow urban ground water, and is less biodegradable than common gasoline compounds, such as benzene, toluene, ethylbenzene, and total xylene (BTEX). Urban stormwater is a possible source of MTBE found in shallow ground water.

The U.S. Geological Survey (USGS) sampled stormwater in 16 cities and metropolitan areas that are required to obtain permits to discharge stormwater from their municipal storm-sewer system into surface water. Concentrations of 62 VOCs, including MTBE and BTEX compounds, were measured in 592 stormwater samples collected in these cities and metropolitan areas from 1991 through 1995. Concentration data for MTBE and BTEX compounds in stormwater were compiled and analyzed, and the findings are summarized in this report. This effort was part of an interagency assessment of the scientific basis and effectiveness of the Nation's oxygenated fuel program and was coordinated by the Office of Science and Technology Policy, Executive Office of the President.

MTBE was the seventh most frequently detected VOC in urban stormwater, following toluene, total xylene, chloroform, total trimethylbenzene, tetrachloroethene, and naphthalene. MTBE was detected in 6.9 percent (41 of 592) of stormwater samples collected. When detected, concentrations of MTBE ranged from 0.2 to 8.7 micrograms per liter (µg/L), with a median of 1.5 µg/L. All detections of MTBE were less than the lower limit of the U.S. Environmental Protection Agency (EPA) draft lifetime health advisory (20 µg/L) for drinking water. Eighty-three percent of all detections of MTBE in stormwater were in samples collected during the October through March season of each year (1991-95), which corresponds with the expected seasonal use of oxygenated gasoline in areas where carbon monoxide exceeds established air-quality standards. The median concentration of MTBE and benzene for all samples was statistically different and higher in samples collected during the October through March season than samples collected during the April through September season. Sixty-six percent of all MTBE detections occurred with BTEX compounds, and a proportionate increase in concentrations was found when these compounds occurred together. The proportionate increase could indicate a common source of MTBE and BTEX for those samples. Toluene and total xylene were the most frequently detected BTEX compounds and the most frequently detected VOCs in these investigations. Detected concentrations of toluene and total xylene ranged from 0.2 to 6.6 µg/L and 0.2 to 15 µg/L with median concentrations of 0.3 and 0.4 µg/L, respectively.

Introduction

The Clean Air Act amendments of 1990 mandate seasonal or year-round use of oxygenated compounds (oxygenates) in gasoline in specific parts of the United States. Oxygenates are added to gasoline to increase the oxygen level, which enhances combustion and decreases vehicular carbon monoxide emissions. Oxygenates also reduce the need for benzene and other ozone-forming, aromatic compounds in gasoline. Oxygenates are added to gasoline during the winter months (October through March) in areas where winter concentrations of carbon monoxide exceed established air-quality standards. In select areas, oxygenates also are added to gasoline to abate ozone pollution during the summer months (April through September) as well as carbon monoxide pollution during the winter months. MTBE is the most commonly used oxygenate and is synthesized from methanol and isobutylene. MTBE is a VOC that is liquid at room temperature and is soluble in water, alcohol, and gasoline.

Oxygenated gasoline and reformulated gasoline are two classes of gasoline that contain different amounts of oxygenated compounds. Oxygenated gasoline contains no less than 2.7 percent oxygen by weight, or 14.8 percent MTBE by volume. Reformulated gasoline contains no less than 2.0 percent oxygen by weight, or 11 percent MTBE by volume. Officials have voluntarily chosen to use oxygenated gasoline to improve air quality in many areas of the United States that are in compliance with air-quality standards. MTBE and other oxygenates also have been used to enhance octane levels of gasoline since the late 1970's; however, the amount of oxygenate used is less than the amount stipulated by the Clean Air Act.

Of 60 VOCs measured in 1993 and 1994 as part of the USGS's National Water-Quality Assessment Program, MTBE was the second most frequently detected VOC in ground water sampled from 210 shallow wells and springs in 8 urban areas (Squillace and others, 1996). MTBE concentrations exceeded 20 µg/L in 3 percent of the samples. The EPA has issued a draft lifetime health advisory for

Prof. Exh 26

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY, MARYLAND

REVISIONS BY	DATE	SCALE	LOCATION	SHEET
		1" = 200'	FORK	N. E. 16-1

DATE OF PHOTOGRAPHY APRIL 1958

Topography Compiled By Photogrammetric Methods
MAPS, INCORPORATED – BALTIMORE 22, MARYLAND

UU-SE
Q →E

SOUTH BOUND OF SITE = 424 - 422 LEVEL to WILSON ROAD (382) STRAIGHT LINE = 600 FT ANGLE 800 FT

NORTH BOUND OF SITE = 424 to 420 to 400 IN 400 FT

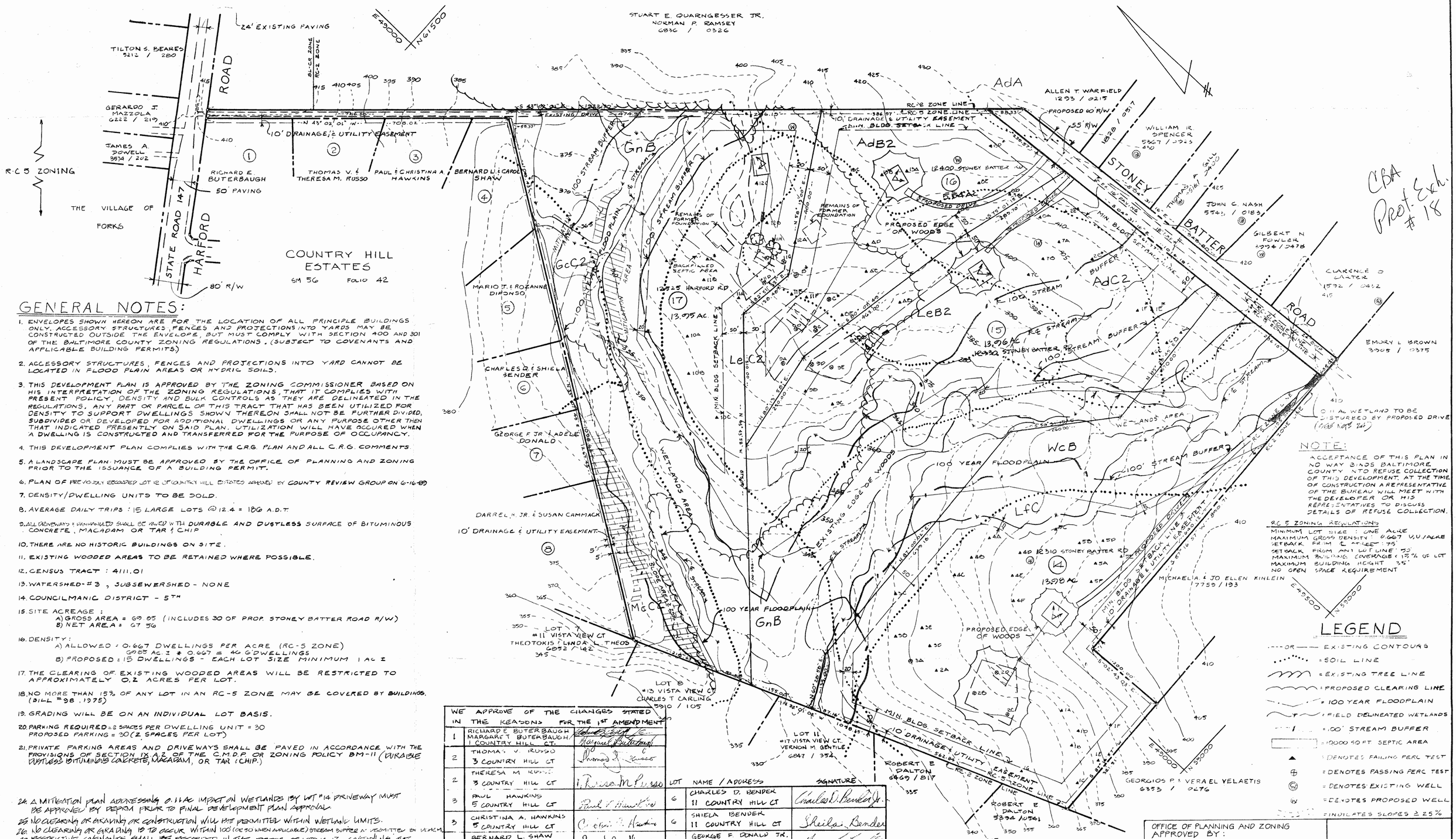
RUSSO WELL 600 FT

TO #1-5 COUNTRY HILL (403)

TO #7-11 COUNTRY HILL (380)

Montessori School 400 feet S from INTERSECTION

RF Extension Approximately 150 Feet from RF Extension



GENERAL NOTES:

1. ENVELOPES SHOWN HEREON ARE FOR THE LOCATION OF ALL PRINCIPLE BUILDINGS ONLY. ACCESSORY STRUCTURES, FENCES AND PROJECTIONS INTO YARDS MAY BE CONSTRUCTED OUTSIDE THE ENVELOPE, BUT MUST COMPLY WITH SECTION 400 AND 301 OF THE BALTIMORE COUNTY ZONING REGULATIONS. (SUBJECT TO COVENANTS AND APPLICABLE BUILDING PERMITS)
2. ACCESSORY STRUCTURES, FENCES AND PROJECTIONS INTO YARD CANNOT BE LOCATED IN FLOOD PLAIN AREAS OR HYDRIC SOILS.
3. THIS DEVELOPMENT PLAN IS APPROVED BY THE ZONING COMMISSIONER BASED ON HIS INTERPRETATION OF THE ZONING REGULATIONS, THAT IT COMPLIES WITH PRESENT POLICY, DENSITY AND BULK CONTROLS AS THEY ARE DELINEATED IN THE REGULATIONS. ANY PART OR PARCEL OF THIS TRACT THAT HAS BEEN UTILIZED FOR DENSITY TO SUPPORT DWELLINGS SHOWN THEREON SHALL NOT BE FURTHER DIVIDED, SUBDIVIDED OR DEVELOPED FOR ADDITIONAL DWELLINGS OR ANY PURPOSE OTHER THEN THAT INDICATED PRESENTLY ON SAID PLAN. UTILIZATION WILL HAVE OCCURED WHEN A DWELLING IS CONSTRUCTED AND TRANSFERRED FOR THE PURPOSE OF OCCUPANCY.
4. THIS DEVELOPMENT PLAN COMPLIES WITH THE C.R.G. PLAN AND ALL C.R.G. COMMENTS.
5. A LANDSCAPE PLAN MUST BE APPROVED BY THE OFFICE OF PLANNING AND ZONING PRIOR TO THE ISSUANCE OF A BUILDING PERMIT.
6. PLAN OF PREVIOUSLY RECORDED LOT 12 OF COUNTRY HILL ESTATES APPROVED BY COUNTY REVIEW GROUP ON 6-16-89
7. DENSITY/DWELLING UNITS TO BE SOLD.
8. AVERAGE DAILY TRIPS : 15 LARGE LOTS @ 12.4 = 186 A.D.T.
9. ALL DRIVEWAYS & UNPAVED SHALL BE PAVED WITH DURABLE AND DUSTLESS SURFACE OF BITUMINOUS CONCRETE, MACADAM OR TAR & CHIP.
10. THERE ARE NO HISTORIC BUILDINGS ON SITE.
11. EXISTING WOODED AREAS TO BE RETAINED WHERE POSSIBLE.
12. CENSUS TRACT : 4111.01
13. WATERSHED-#3 , SUBSEWERSHED - NONE
14. COUNCILMANIC DISTRICT - 5TH
15. SITE ACREAGE :
    A) GROSS AREA = 69.05 (INCLUDES 3.0 OF PROP. STONEY BATTER ROAD R/W)
    B) NET AREA = 67.36
16. DENSITY :
    A) ALLOWED : 0.667 DWELLINGS PER ACRE (RC-5 ZONE)
       50.03 AC. I * 0.667 = 46 DWELLINGS
    B) PROPOSED : 15 DWELLINGS - EACH LOT SIZE MINIMUM 1 AC ±
17. THE CLEARING OF EXISTING WOODED AREAS WILL BE RESTRICTED TO APPROXIMATELY 0.2 ACRES PER LOT.
18. NO MORE THAN 15% OF ANY LOT IN AN RC-5 ZONE MAY BE COVERED BY BUILDINGS. (BILL #98, 1975)
19. GRADING WILL BE ON AN INDIVIDUAL LOT BASIS.
20. PARKING REQUIRED = 2 SPACES PER DWELLING UNIT = 30
    PROPOSED PARKING = 30 (2 SPACES PER LOT)
21. PRIVATE PARKING AREAS AND DRIVEWAYS SHALL BE PAVED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 1B A.2 OF THE C.M.D.P. OR ZONING POLICY BM-11 (DURABLE DUSTLESS BITUMINOUS CONCRETE, MACADAM, OR TAR & CHIP.)
24. A MITIGATION PLAN ADDRESSING 0.11AC IMPACT ON WETLANDS BY LOT #14 DRIVEWAY MUST BE APPROVED BY DEPRM PRIOR TO FINAL DEVELOPMENT PLAN APPROVAL
25. NO CLEARING OR GRADING OR CONSTRUCTION WILL BE PERMITTED WITHIN WETLAND LIMITS.
26. NO CLEARING OR GRADING IS TO OCCUR WITHIN 100' (OR 50' WHEN APPLICABLE) STREAM BUFFER AS PERMITTED BY DEPRM
27. RESTRICTIVE COVENANTS SHALL BE RECORDED IN THE DEEDS OF LOTS 14-17, GOVERNING THE USE OF WETLANDS AND STREAM BUFFERS.
28. SHOWN LOCATIONS OF PROPOSED CLEARING, HOUSES AND PAVED DRIVEWAYS ARE SUBJECT TO LOT OWNERS DISCRETION AND MAY CHANGE ACCORDINGLY
29. THIS DEVELOPMENT IS IN CLOSE PROXIMITY TO ACTIVE AGRICULTURAL OPERATIONS. IT IS THE DEVELOPERS RESPONSIBILITY TO ADVISE FUTURE HOMEOWNERS THAT AGRICULTURE HAS A PREFERRED USE STATUS AND THAT DUCKS, DUST, FARM EQUIPMENT, LIVESTOCK AND THE USE OF AGRICULTURAL CHEMICALS (PESTICIDES, FERTILIZER, HERBICIDES, AND OTHER CONTROL AGENTS) ARE IN ACTIVE USE
30. THIS PROPERTY MAY BE SUBJECT TO GROUNDWATER CONTAMINATION PROBLEMS ORIGINATING ON THE ADJACENT "LINK-ANN" PROPERTY. PRELIMINARY WELL TESTING FOR LOTS 3 AND 4 IS REQUIRED BY DEPRM PRIOR TO RECORD PLAT PER SECTION 22-95 OF BALTIMORE COUNTY DEVELOPMENT REGULATIONS

WE APPROVE OF THE CHANGES STATED IN THE REASONS FOR THE 1ST AMENDMENT		LOT	NAME / ADDRESS	SIGNATURE
1	RICHARD E BUTERBAUGH / MARGARET BUTERBAUGH / 1 COUNTRY HILL CT.	6	CHARLES D. BENDER 11 COUNTRY HILL CT	
2	THOMAS V. RUSSO 3 COUNTRY HILL CT	6	SHIELA BENDER 11 COUNTRY HILL CT	
2	THERESA M. RUSSO 3 COUNTRY HILL CT	7	GEORGE F. DONALD JR. 13 COUNTRY HILL CT.	
3	PAUL HAWKINS 5 COUNTRY HILL CT	7	ADELE DONALD 13 COUNTRY HILL CT	
3	CHRISTINA A. HAWKINS 5 COUNTRY HILL CT	8	DARREL R CAMMACK JR. 15 COUNTRY HILL CT	
4	BERNARD L. SHAW 7 COUNTRY HILL CT	8	SUSAN CAMMACK 15 COUNTRY HILL CT	
4	CAROL SHAW 7 COUNTRY HILL CT			
5	MARIO T. DIPONSO 9 COUNTRY HILL CT			
5	ROZANNE DIPONSO 9 COUNTRY HILL CT			

REASON FOR AMENDMENT : (DATE: 6/13/90)

TO CREATE 4 LOTS OUT OF PREVIOUSLY RECORDED LOT 12. SEE SIGNATURE BLOCK TO THE LEFT. BESIDES THE SIGNED & LISTED LOTS, NO OTHER LOTS HAVE BEEN SOLD WITHIN THE PROPOSED CHANGES.

NOTE:

ACCEPTANCE OF THIS PLAN IN NO WAY BINDS BALTIMORE COUNTY NTO REFUSE COLLECTION OF THIS DEVELOPMENT. AT THE TIME OF CONSTRUCTION A REPRESENTATIVE OF THE BUREAU WILL MEET WITH THE DEVELOPER OR HIS REPRESENTATIVES TO DISCUSS DETAILS OF REFUSE COLLECTION.

R.C.5 ZONING REGULATIONS

MINIMUM LOT SIZE : ONE ACRE
MAXIMUM GROSS DENSITY : 0.667 D.U./ACRE
SETBACK FROM ℄ ARE : 75'
SETBACK FROM ANY LOT LINE : 75'
MAXIMUM BUILDING COVERAGE : 15% OF LOT
MAXIMUM BUILDING HEIGHT : 35'
NO OPEN SPACE REQUIREMENT

LEGEND

- ---100--- EXISTING CONTOURS
- ..... = SOIL LINE
- = EXISTING TREE LINE
- = PROPOSED CLEARING LINE
- = 100 YEAR FLOODPLAIN
- = FIELD DELINEATED WETLANDS
- = 100' STREAM BUFFER
- = 10000 SQ FT SEPTIC AREA
- ▲ = DENOTES FAILING PERC TEST
- ⊕ = DENOTES PASSING PERC TEST
- (W) = DENOTES EXISTING WELL
- W = DENOTES PROPOSED WELL
- = INDICATES SLOPES ≥ 25%

OFFICE OF PLANNING AND ZONING APPROVED BY:

DIRECTOR OF PLANNING DATE

ZONING COMMISSIONER DATE

CBA Prof. Exh. #18

Drafting	JFB JR	DATE	REVISIONS
Check	SBS	3/27/90	RELOCATED WETLAND MITIGATION
Design	JMC	3/21/90	REVISE TITLE BLOCK
Check	KAD	6-4-90	UPDATE NOTES TO CLEAR WITH DEPRM

137423

A &E INC. BALTIMORE

DEVELOPMENT ENGINEERING CONSULTANTS, INC.
SITE ENGINEERS & SURVEYORS
BALTIMORE 6603 YORK ROAD (301)377-2600 MARYLAND

OWNER/DEVELORER:
MR. GARY SPERL
3034 EAST AVENUE
BALTIMORE, MD. 21234
(301) 882-2185

PREVIOUSLY RECORDED
S.M. 56 FOLIO 42
LOT 12 - COUNTRY HILL ESTATES

FIRST AMENDED FINAL DEVELOPMENT PLAN
COUNTRY HILL ESTATES
ELECTION DISTRICT #11 BALTIMORE COUNTY, MD

SHEET	DATE	CONTRACT NUMBER
2 OF 2	JULY, 89	89100
	SCALE 1" = 100'	

CCT CIVIL ACTION # 3-C-00-9923

IN THE MATTER OF

SEVEN KIDS, LLC-I

CLOVERLAND FARMS

DAIRY, INC-CP

PETITIONERS

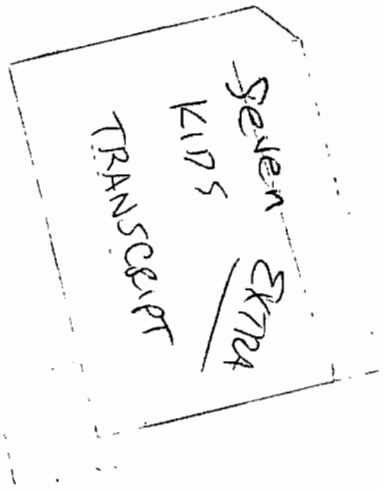
TRANSCRIPTS

(5)

PDM CASE # 99-199-X

In the Matter of: Seven Kids, LLC and Royal Farms Dairy, Inc. (Harford Road and Sunshine Avenue)

Transcripts of Hearing before Board of Appeals



1. September 30, 1999 -- Petitioners' Case
   Witnesses: John Kemp and Ken Schmid

2. October 7, 1999 -- Petitioners' Case
   Witnesses: Joseph Cronin, Peter Radcliffe, and Robert Sheesley

3. January 19, 2000

   Petitioners' Case
   Witnesses: Thomas Mills, Michael Shamel, and Nicholas Brader

   Protestants' Case
   Witnesses: Doug Behr

4. January 20, 2000 -- Protestants' Case
   Witnesses: Dorothy Foos, Barbara Morley, Paul Plowman, Kathleen Snyder, and Brent Wilson

5. January 27, 20000 -- Protestants' Case
   Witnesses: Mary Kay Gaver, Charlotte Pine, and Rozanne DiFonzo

6. February 9, 2000 -- Protestants' Case
   Witnesses: Thomas Russo and Charlotte Pine

In the Matter of: Seven Kids, LLC and
Royal Farms Dairy, Inc.
(Harford Road and Sunshine Avenue)

Transcripts of Hearing before Board of Appeals

7. February 22, 2000 -- Protestants' Case
   Witnesses: Carol Shaw

8. March 29, 2000

   Protestants' Case
   Witnesses: Carol Shaw, Kevin Koepenick,
   Okechukwu Ezirike, and Rosanne DiFonzo

   Petitioners' Rebuttal Case
   Witnesses: Donald Rascoe

9. April 5, 2000 -- Petitioners' Rebuttal Case
   Witnesses: Donald Rascoe, Nicholas Brader, and
   Thomas Mills

Multi-Page™

Seven Kids, LLC

9/30/99

ORIGINAL

Baltimore County Board of Appeals

410-887-3180

TOWSON REPORTING COMPANY
600 Baltimore Avenue, Suite 201, Towson, Maryland 21204
(24 Hrs./7 Days)
410-828-4148 • 800-734-5292
Affiliated With Gore Brothers Reporting & Video Company, Inc.

(24 Hrs./7 Days)
410-828-4148 • 800-734-5292
Affiliated With Gore Brothers Reporting & Video Company, Inc.

IN THE MATTER OF:	*	BEFORE THE
SEVEN KIDS, LLC - Owner	*	BOARD OF APPEALS
CLOVERLAND FARMS DAIRY, INC.	*	OF BALTIMORE COUNTY
Developer	*	CASE NO. 99-199-X
Royal Farm Store	*	October 7, 1999
SW Corner Sunshine Ave. &	*	(Day Two)
Harford Road	*	
11th Election District	*	
5th Councilmanic District	*	

ORIGINAL

* * * * *

The above-entitled matter came on for hearing before the Board of Appeals at the Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204, at 10:00 a.m. on October 7, 1999.

ACTING CHAIRPERSON: LAWRENCE M. STAHL

APPEARANCES:

ROBERT A. HOFFMAN, ESQUIRE
On behalf of Petitioners

J. CARROLL HOLZER, ESQUIRE
On behalf of Contestants

REPORTED BY: Ronda J. Thomas, RPR

TOWSON REPORTING COMPANY
600 Baltimore Avenue, Suite 201, Towson, Maryland 21204

IN THE MATTER OF:	* BEFORE THE
SEVEN KIDS, LLC - Owner	* BOARD OF APPEALS
CLOVERLAND FARMS DAIRY, INC.	* OF BALTIMORE COUNTY
Developer	* CASE NO. 99-199-X
Royal Farm Store	* January 19, 2000
SW Corner Sunshine Ave. &	* (Day Three)
Harford Road	*
11th Election District	*
5th Councilmanic District	*

ORIGINAL

* * * * *

The above-entitled matter came on for hearing before the Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland, 21204, at 10 a.m., January 19, 2000.

* * * * *

Reported by:

C.E. Peatt

(24 Hrs./7 Days)
410-828-4148 • 800-734-5292
Affiliated With Gore Brothers Reporting & Video Company, Inc.

TOWSON REPORTING COMPANY
600 Baltimore Avenue, Suite 201, Towson, Maryland 21204

IN THE MATTER OF:	* BEFORE THE
SEVEN KIDS, LLC - Owner	* BOARD OF APPEALS
CLOVERLAND FARMS DAIRY, INC.	* OF BALTIMORE COUNTY
Developer	* CASE NO. 99-199-X
Royal Farm Store	* January 20, 2000
SW Corner Sunshine Ave. &	* (Day Four)
Harford Road	*
11th Election District	*
5th Councilmanic District	*

ORIGINAL

* * * * *

The above-entitled matter came on for hearing before the Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland, 21204, at 10 a.m., January 20, 2000.

* * * * *

Reported by:

C.E. Peatt

TOWSON REPORTING COMPANY
400 Baltimore Avenue, Suite 201, Towson, Maryland 21204
410-828-4148 • 800-734-5292 (24 Hrs./7 Days)
Affiliated With Gore Brothers Reporting & Video Company, Inc.

IN THE MATTER OF:	* BEFORE THE
SEVEN KIDS, LLC - Owner	* BOARD OF APPEALS
CLOVERLAND FARMS DAIRY, INC.	* OF BALTIMORE COUNTY
Developer	* CASE NO. 99-199-X
Royal Farms Store	* January 27, 2000
SW Corner Sunshine Ave. &	* (Day Five)
Harford Road	*
11th Election District	*
5th Councilmanic District	*

ORIGINAL

* * * * *

The above-entitled matter came on for hearing before the Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland, 21204, at 10 a.m., January 27, 2000.

* * * * *

Reported by:

C.E. Peatt

(24 Hrs./7 Days)
410-828-4148 • 800-734-529
Affiliated With Gore Brothers Reporting & Video Company, Inc.
TOWSON REPORTING COMPANY
600 Baltimore Avenue, Suite 201, Towson, Maryland 21204

IN THE MATTER OF:	* BEFORE THE
SEVEN KIDS, LLC - Owner	* BOARD OF APPEALS
CLOVERLAND FARMS DAIRY, INC.	* OF BALTIMORE COUNTY
Developer	* CASE NO. 99-199-X
Royal Farms Store	* February 9, 2000
SW Corner Sunshine Ave. &	* (Day Six)
Harford Road	*
11th Election District	*
5th Councilmanic District	*

ORIGINAL

* * * * *

The above-entitled matter came on for hearing before the Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland, 21204, at 10 a.m., February 9, 2000.

* * * * *

Reported by:

C.E. Peatt

(24 Hrs./7 Days)
410-828-4148 • 800-734-5292
Affiliated With Gore Brothers Reporting & Video Company, Inc.

TOWSON REPORTING COMPANY
600 Baltimore Avenue, Suite 201, Towson, Maryland 21204

IN THE MATTER OF: * BEFORE THE

SEVEN KIDS, LLC - Owner * BOARD OF APPEALS

CLOVERLAND FARMS DAIRY, INC. * OF BALTIMORE COUNTY

Developer * CASE NO. 99-199-X

Royal Farms Store * March 1, 2000

SW Corner Sunshine Ave. & * (Day Seven)

Harford Road *

11th Election District *

5th Councilmanic District *

ORIGINAL

* * * * *

The above-entitled matter came on for hearing before the Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland, 21204, at 10 a.m., March 1, 2000.

* * * * *

Reported by:

C.E. Peatt

TOWSON REPORTING COMPANY
600 Baltimore Avenue, Suite 201, Towson, Maryland 21204
(24 Hrs./7 Days) 410-828-4148 • 800-734-5292
Affiliated With Core Brothers Reporting & Video Company, Inc.

IN THE MATTER OF:	* BEFORE THE
SEVEN KIDS, LLC - Owner	* BOARD OF APPEALS
CLOVERLAND FARMS DAIRY, INC.	* OF BALTIMORE COUNTY
Developer	* Case No. CBA-99-199-X
Royal Farms Store	* March 29, 2000
SW Corner Sunshine Ave. &	*
Harford Road	*
11th Election District	*
5th Councilmanic District	*

ORIGINAL

* * * * *

The above-entitled matter came on for hearing before the Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland, 21204, at 10 a.m., March 29, 2000.

* * * * *

Reported by:

C.E. Peatt

TOWSON REPORTING COMPANY, INC.
600 Baltimore Avenue, Suite 201
Towson, Maryland 21204-1034
(410) 828-4148
FAX (410) 321-0272
Court and General Reporting

IN THE MATTER OF:	* BEFORE THE
SEVEN KIDS, LLC - Owner	* BOARD OF APPEALS
CLOVERLAND FARMS DAIRY, INC.	* OF BALTIMORE COUNTY
Developer	* Case No. CBA 99-199-X
Royal Farms Store	* April 5, 2000
SW Corner Sunshine Ave. &	*
Harford Road	*
11th Election District	*
5th Councilmanic District	*

ORIGINAL

* * * * *

The above-entitled matter came on for hearing before the Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland, 21204, at 10 a.m., April 5, 2000.

* * * * *

Reported by:

C.E. Peatt

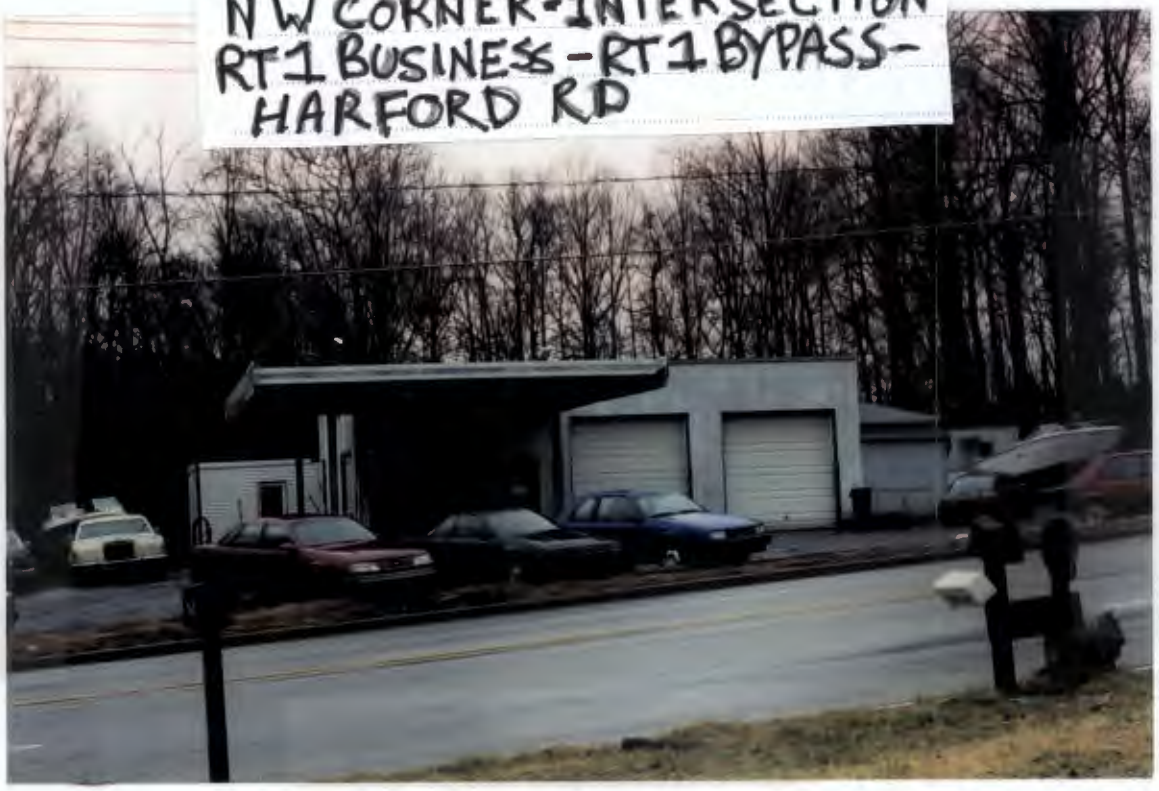
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TOWSON REPORTING COMPANY
600 Baltimore Avenue, Suite 201, Towson, Maryland 21204


Hereford/Maryland Line
Prettyboy
Sparks
Jacksonville
Fowblesburg
Cockeysville/Timonium
Fork
Chestnut Ridge
Kingsville
Reisterstown/Owings Mills
Lutherville
Parkville
Pikesville
Ruxton
Towson
Perry Hall/Whitemarsh
Randallstown
Rossville
Windlass
Harrisonville
Lochearn
Overlea
Middle River
Rosedale
Security
Essex
North Point
Catonsville
Dundalk/Turners Station
Arbutus/Lansdowne
Edgemere

Item # 199

B

ABANDONED GAS STATION
NW CORNER-INTERSECTION
RT1 BUSINESS-RT1 BYPASS-
HARFORD RD

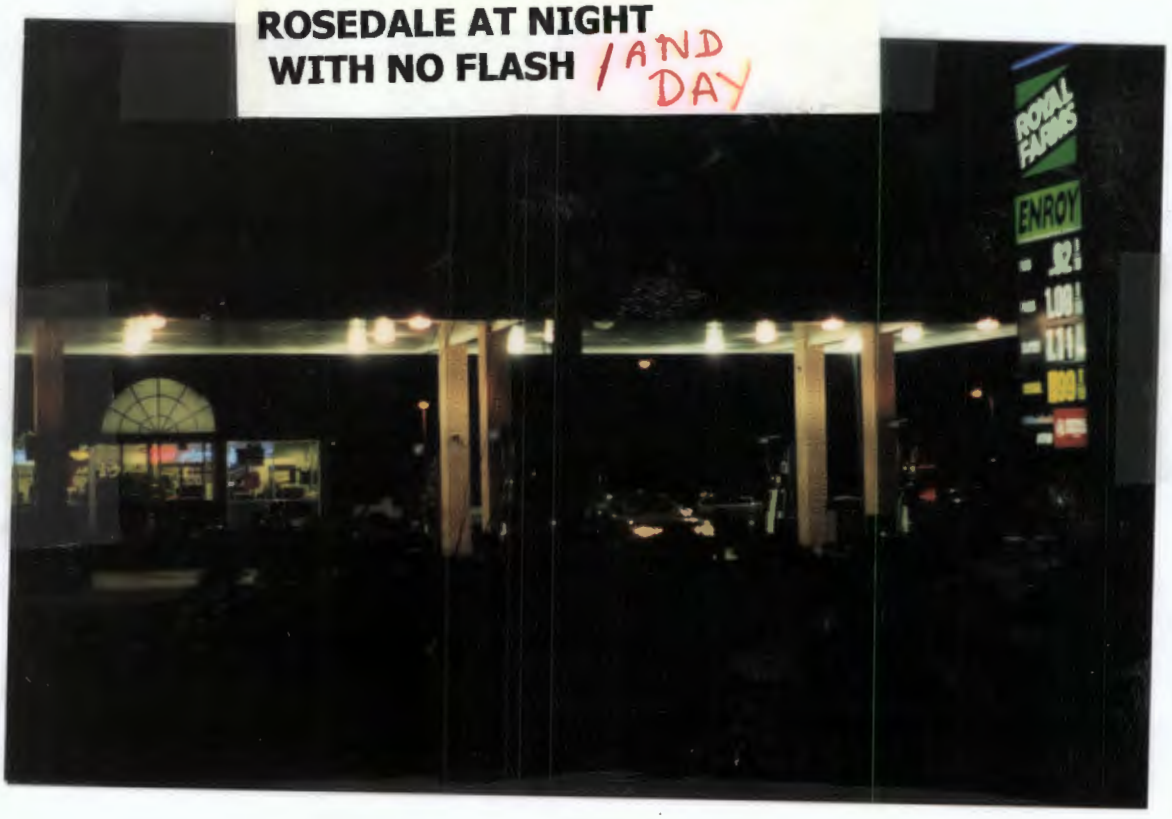


ABANDONED GAS STATION
NE CORNER-INTERSECTION OF
RT1 BUSINESS-RT1 BYPASS-
HARFORD ROAD



C

3 ISLAND ROYAL FARM STORE
ROSEDALE AT NIGHT
WITH NO FLASH / AND DAY



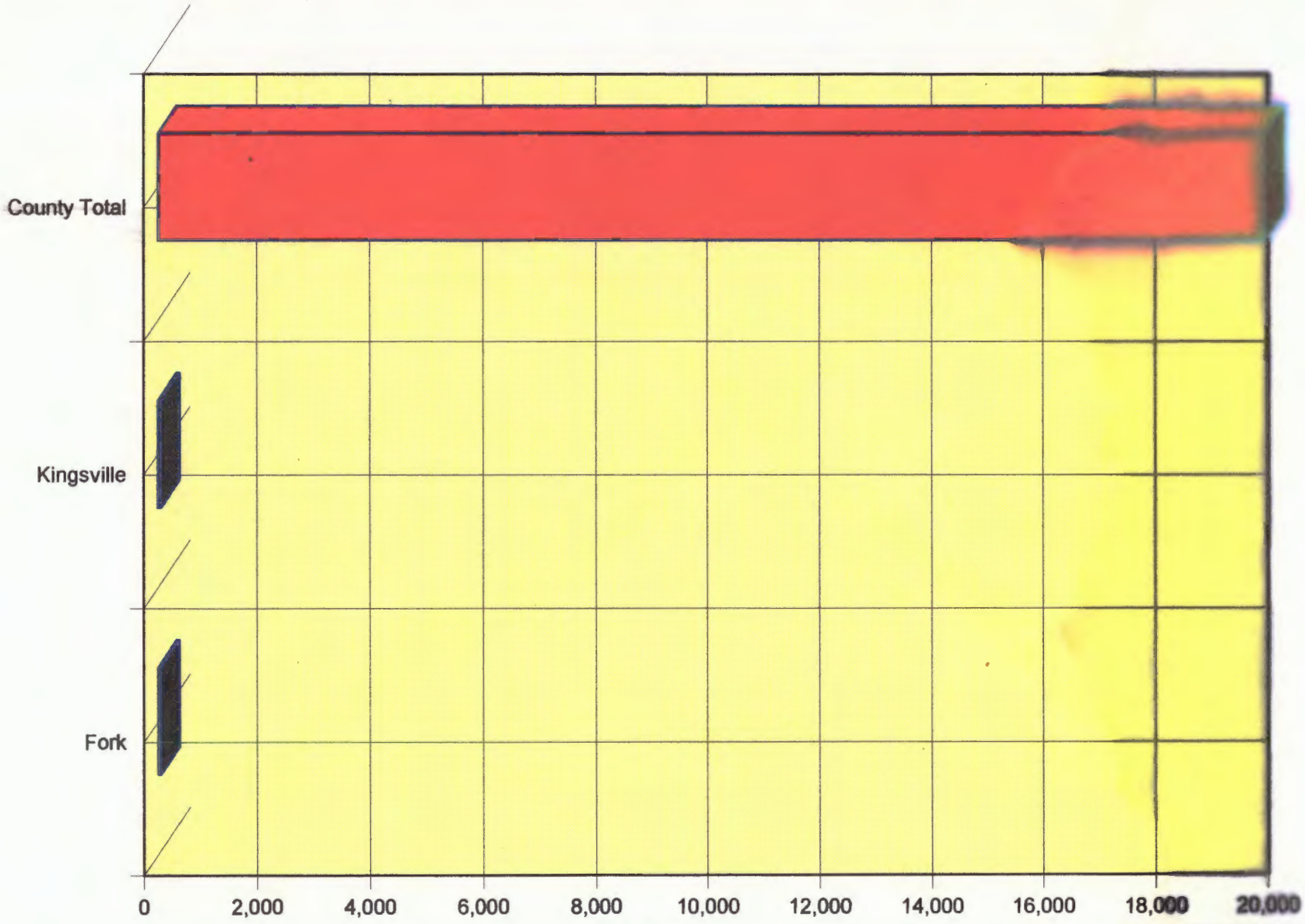
EXAMPLE OF 5 ISLAND GAS
STATION/CONVENIENCE STORE



	Homicide	Rape	Robbery	Aggravated Assault	Breaking & Entering	Theft	Vehicle Theft	Arson	Drug Incidents	TOTAL
Arbutus/Lansdowne	2	2	50	138	208	567	102	4	151	1,224
Catonsville	1	4	31	50	114	394	53	4	178	829
Chestnut Ridge	0	0	2	3	35	45	4	0	4	93
Cockeysville/Timonium	0	1	19	49	74	505	29	3	64	744
Dundalk/Turners Station	0	7	60	220	289	717	120	13	262	1,688
Edgemere	0	1	2	19	40	90	12	0	11	175
Essex	0	8	55	228	219	569	99	17	303	1,498
Fork	0	1	0	2	9	26	1	0	5	44
Fowblesburg	0	0	0	3	17	20	3	0	6	49
Harrisonville	0	1	0	5	15	15	0	3	11	50
Hereford/Maryland Line	0	1	2	10	25	60	4	0	6	108
Jacksonville	0	0	0	5	11	26	5	3	3	53
Kingsville	0	0	2	4	11	21	6	1	6	51
Lochearn	2	6	84	226	250	546	156	6	234	1,510
Lutherville	0	0	12	15	52	210	25	0	16	330
Middle River	1	5	22	99	119	342	48	7	47	690
North Point	0	4	28	120	142	586	60	6	159	1,105
Overlea	0	1	22	45	58	139	45	3	35	348
Parkville	0	1	37	66	76	493	47	2	70	792
Perry Hall/Whitemarsh	0	3	15	57	103	359	44	4	60	645
Pikesville	0	4	31	48	129	468	54	3	92	829
Prettyboy	0	0	1	1	10	12	1	0	5	30
Randallstown	0	5	39	82	127	282	48	6	57	646
Reisterstown/Owings Mills	0	6	33	95	114	676	88	8	72	1,092
Rosedale	0	1	15	35	53	134	39	3	95	375
Rossville	0	6	18	33	73	451	40	2	90	713
Ruxton	0	0	5	4	13	25	1	0	4	52
Security	0	9	84	114	182	825	145	6	113	1,478
Sparks	0	0	0	8	17	44	6	3	5	83
Towson	0	6	95	154	239	1,097	147	12	258	2,008
Windlass	0	4	11	37	68	203	23	7	26	379
TOTAL	6	87	775	1,975	2,892	9,947	1,455	126	2,448	19,711

Item #199

BALTIMORE COUNTY CRIME STATISTICS - 1/1/99-6/30/09



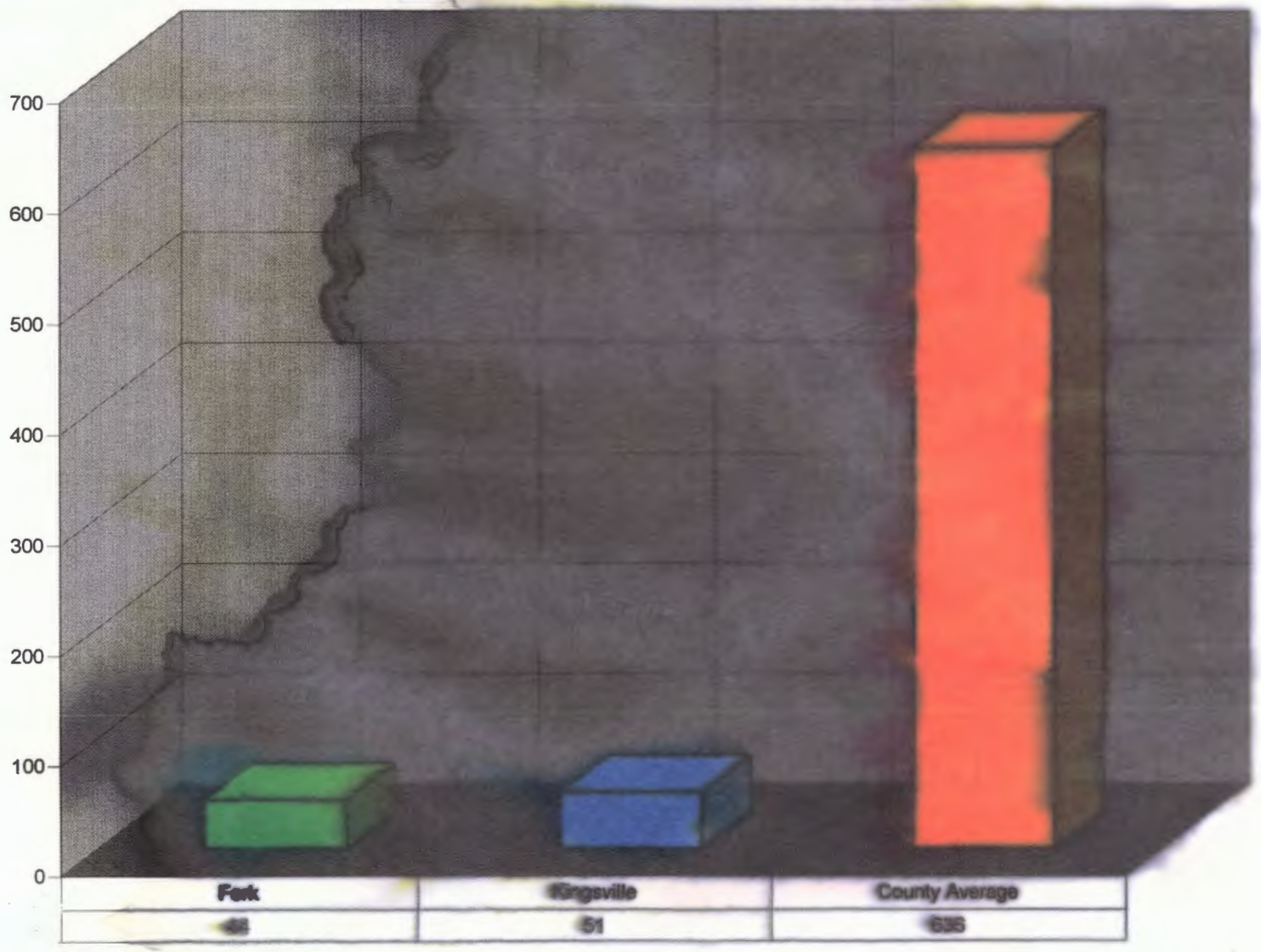
Fork	Kingsville	County Total
44	51	19,710

Source: Web Site Baltimore County Maryland Police Department; Crime Statistics by Community

Item #199

CRIME STATISTICS: COUNTY AVERAGE VS. FORK, KINGSVILLE

FORK KINGSVILLE COMBINED 1/1/99 TO 6/30/99



Source: Web Site Baltimore County, Maryland Police Department; Crime Statistics by Community

Item #199





Item # 199





Item # 199

Maryland Historic Trust sites



Looking east on Fork Road at original Dampman's Hotel (1850) toward proposed site + orignal Fork school/Church + 2nd school



Looking west on Sunshine Avenue from 2nd Fork School (early 1890s) to proposed site with Dampman's beyond + original school to south

Item #199

Maryland Historic Trust Sites



Looking North from Fork Road to Second Fork School (early 1900's) from land between original Fork School/Church + proposed site



Looking west from proposed site to original Pampman's Hotel (1850-1855) on southwest corner of Harford Road and Fork Road

Item #199

Maryland Historic Trust Sites



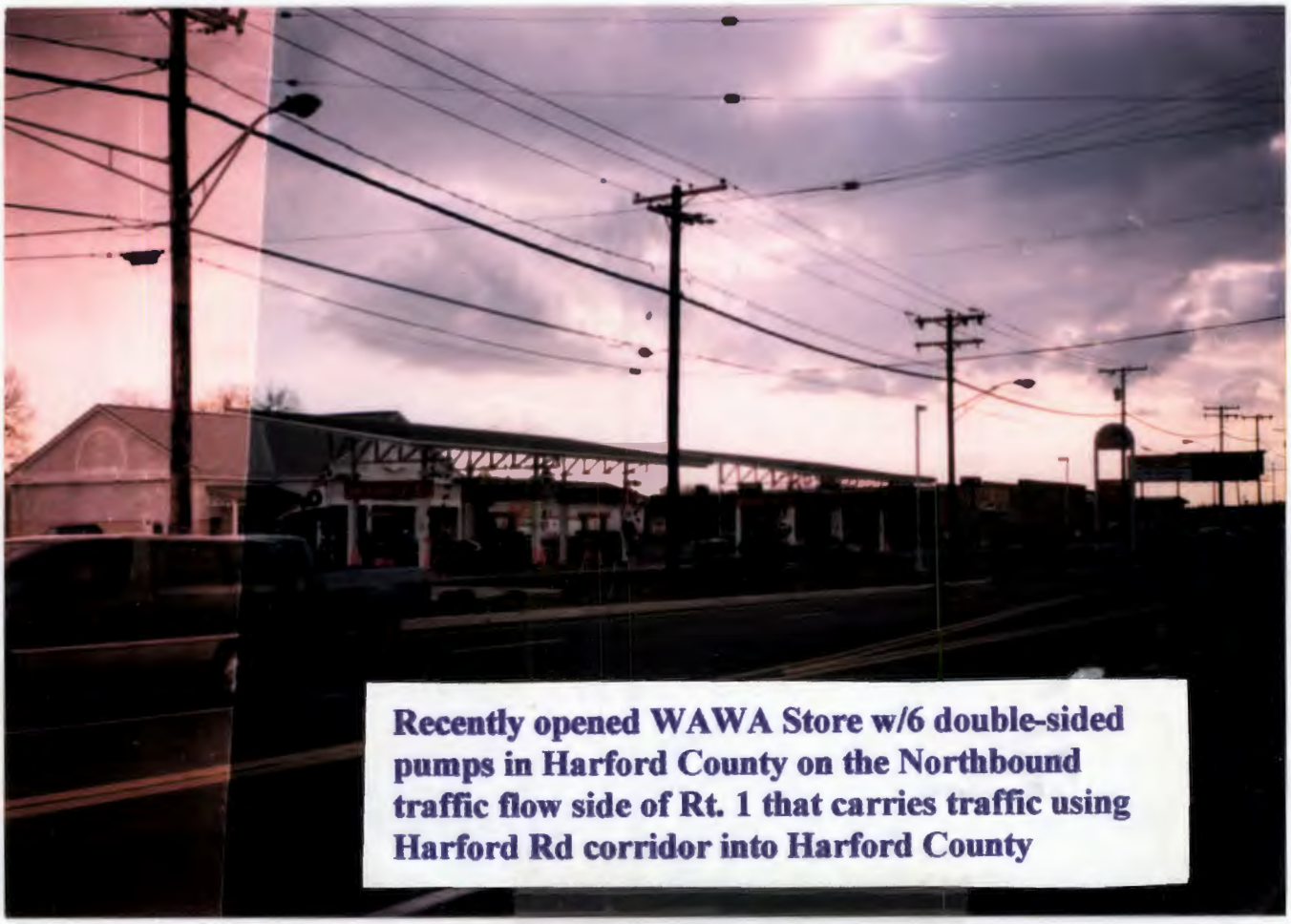
Looking South on Stoney Batter Road at site of original Fork School (1862) to become original Fork Christian Church (1893)



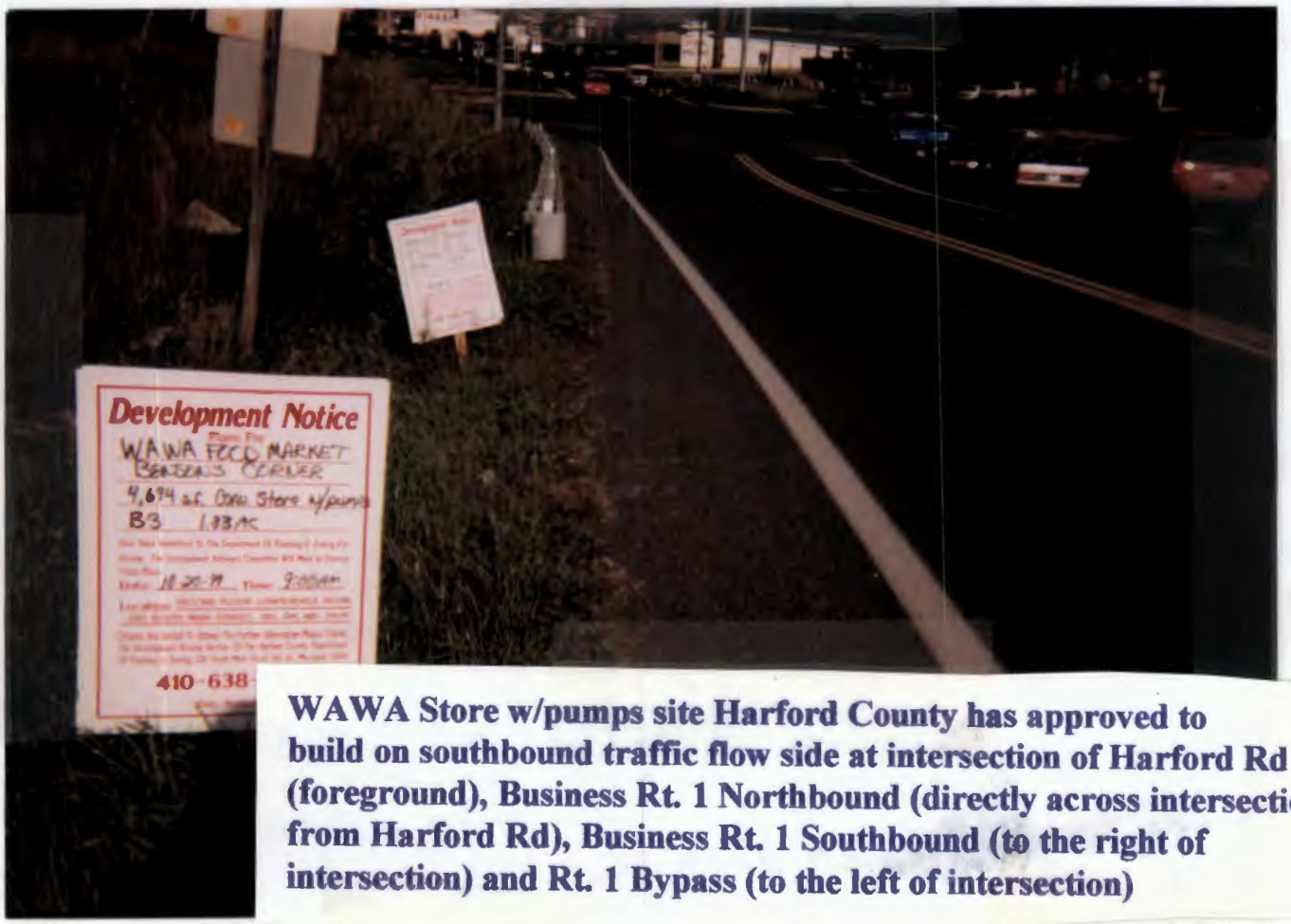
Looking West from original Fork School (1862) + original Fork Christian Church (1893) onto proposed site for Royal Farm

Item #199

Prot #22 A



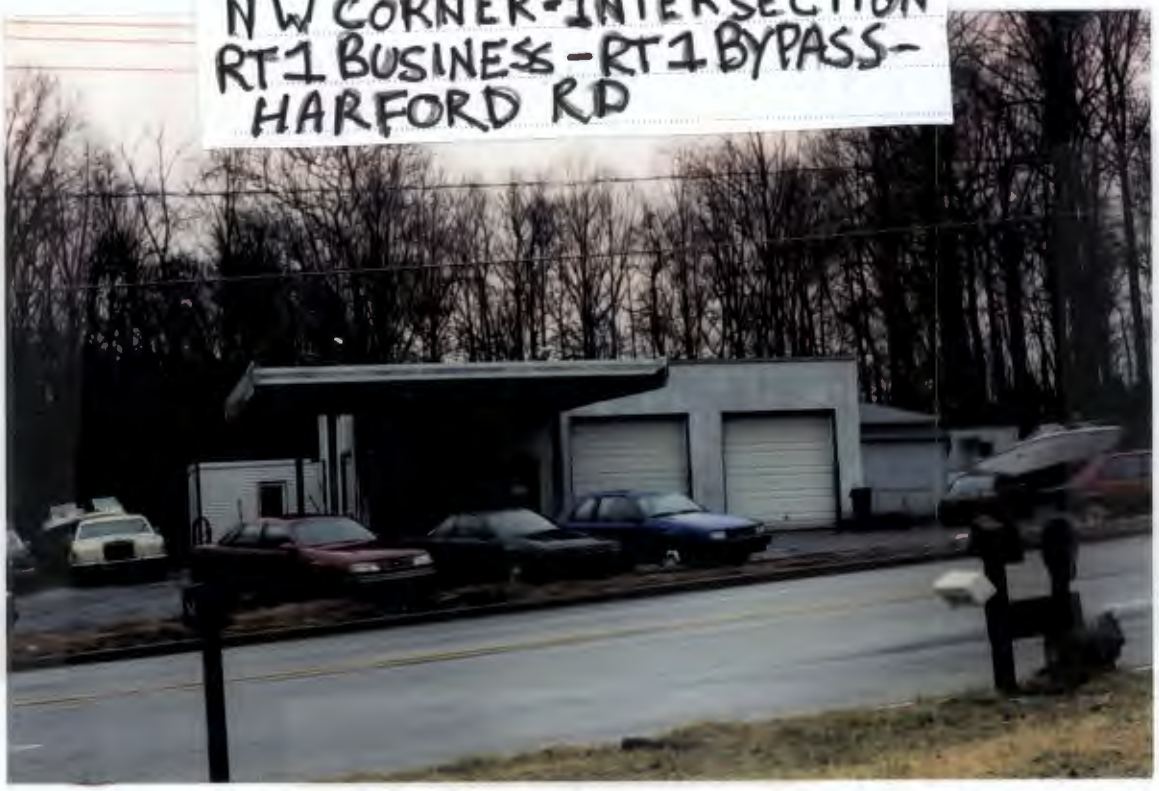
Recently opened WAWA Store w/6 double-sided pumps in Harford County on the Northbound traffic flow side of Rt. 1 that carries traffic using Harford Rd corridor into Harford County



WAWA Store w/pumps site Harford County has approved to build on southbound traffic flow side at intersection of Harford Rd (foreground), Business Rt. 1 Northbound (directly across intersection from Harford Rd), Business Rt. 1 Southbound (to the right of intersection) and Rt. 1 Bypass (to the left of intersection)

B

ABANDONED GAS STATION
NW CORNER-INTERSECTION
RT1 BUSINESS-RT1 BYPASS-
HARFORD RD

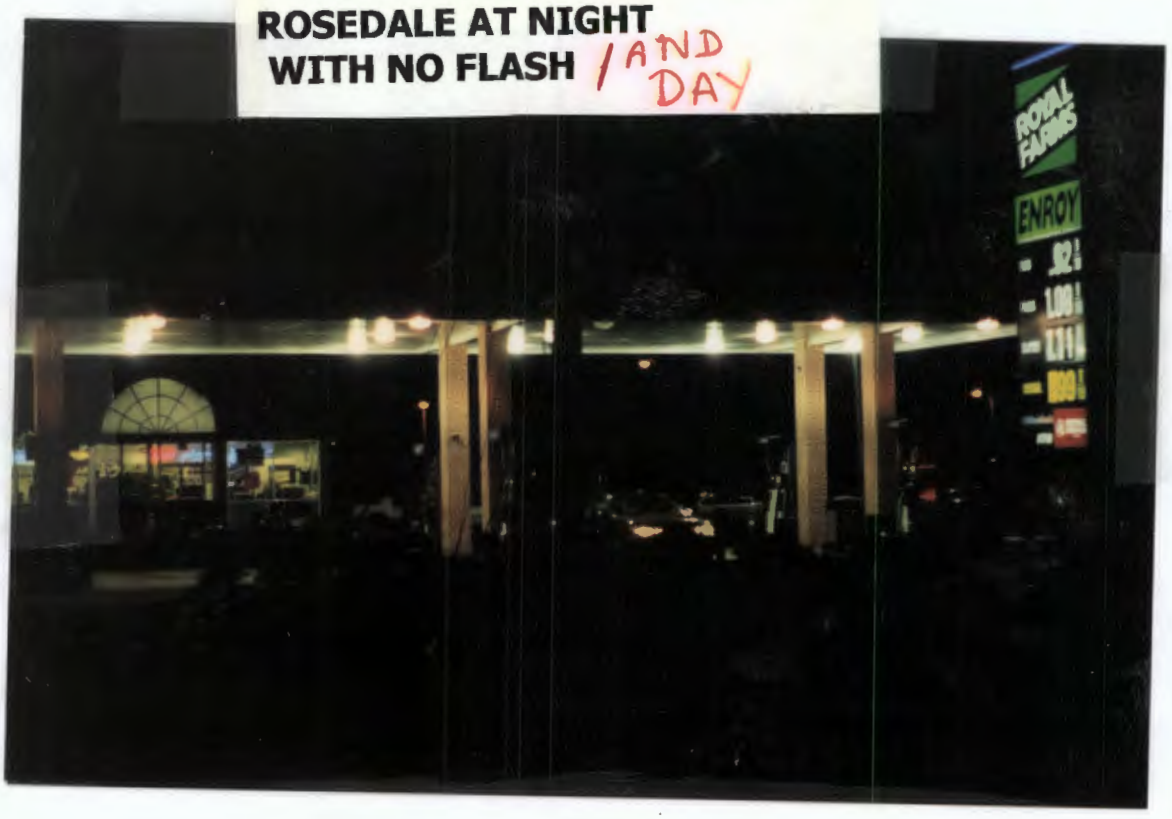


ABANDONED GAS STATION
NE CORNER-INTERSECTION OF
RT1 BUSINESS-RT1 BYPASS-
HARFORD ROAD



C

3 ISLAND ROYAL FARM STORE
ROSEDALE AT NIGHT
WITH NO FLASH / AND DAY



EXAMPLE OF 5 ISLAND GAS
STATION/CONVENIENCE STORE



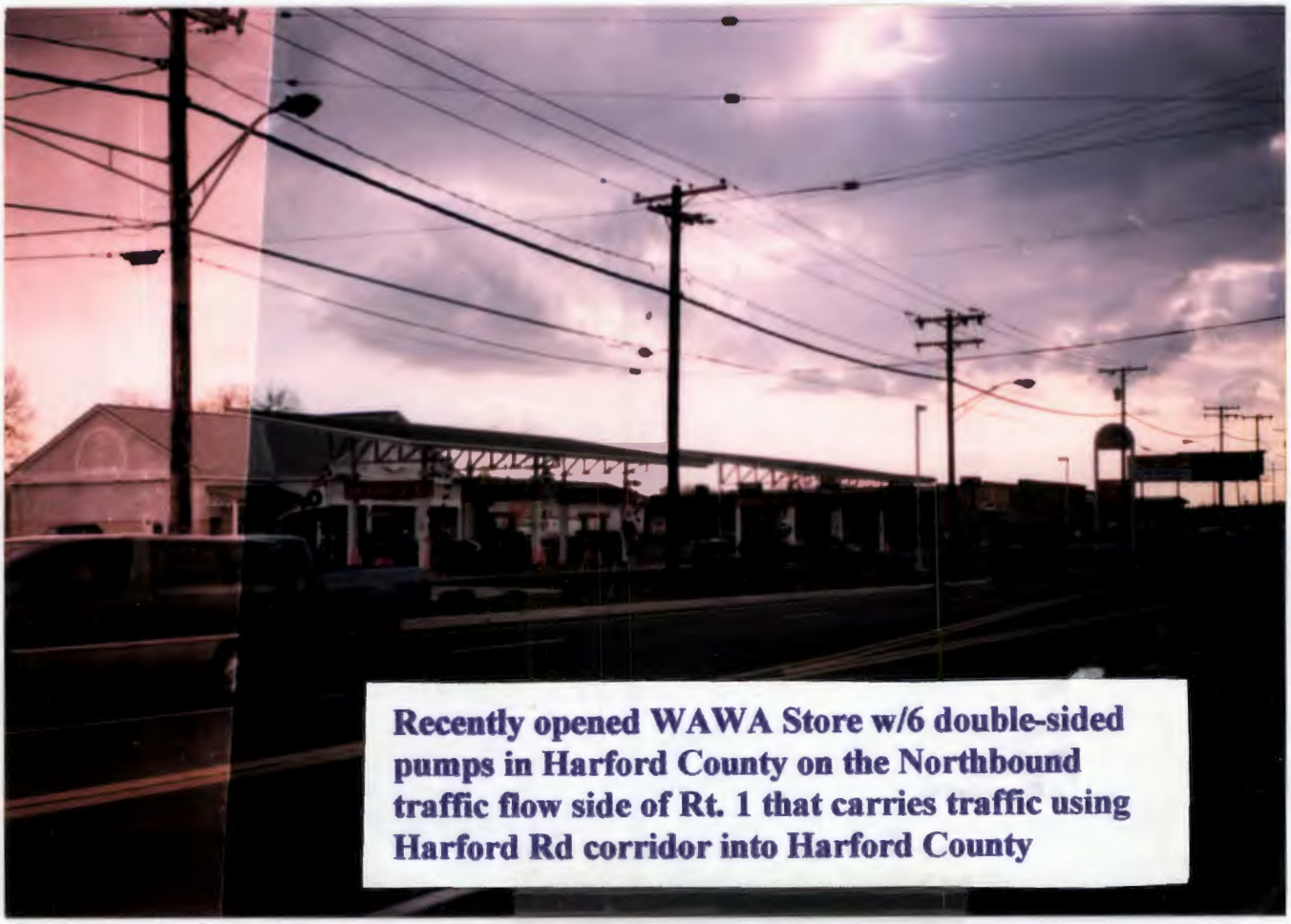
Royal Farms Store &
Vacant WaWa Store at
Joppa & Old Harford Roads

D

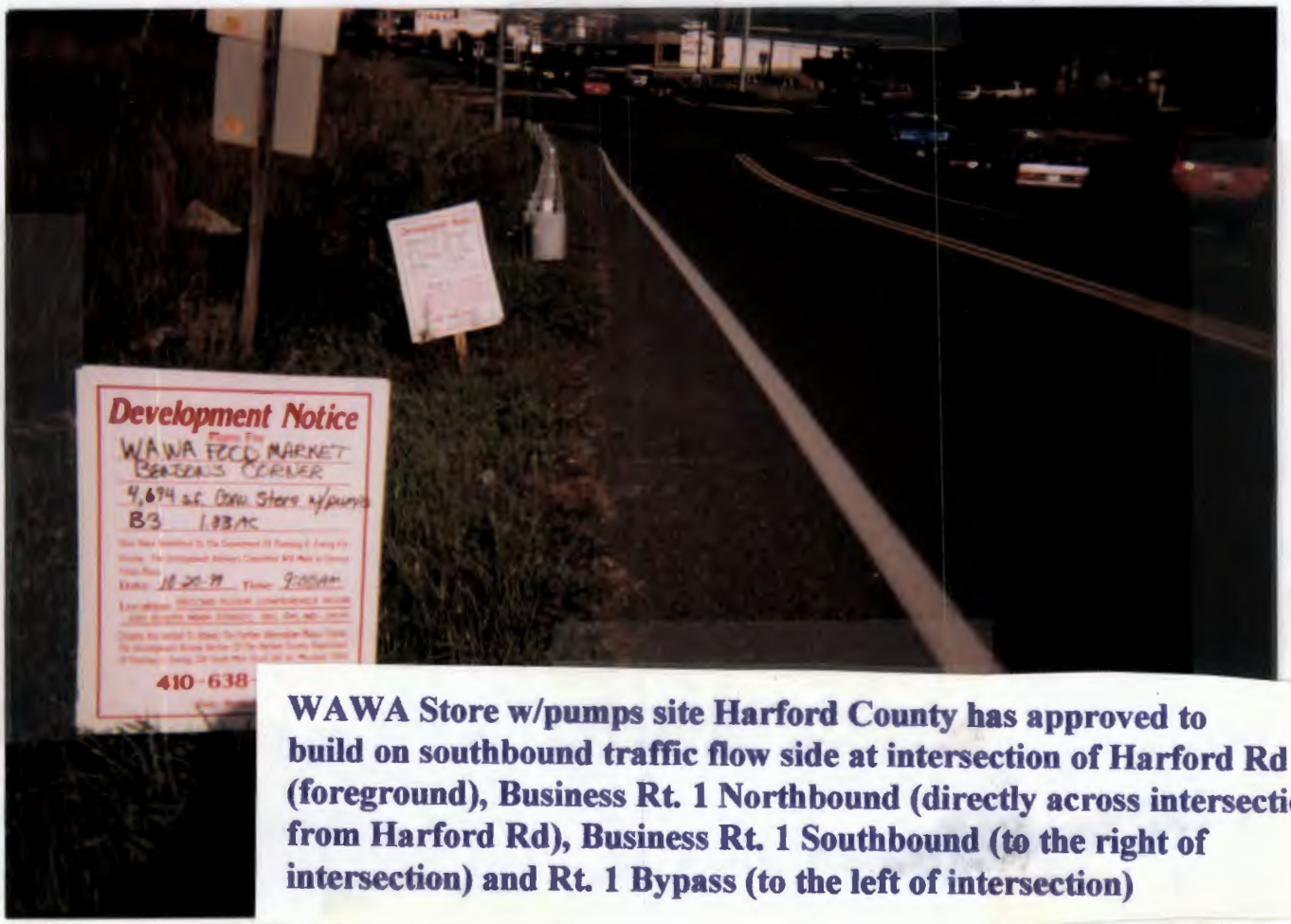




Prot #22 A



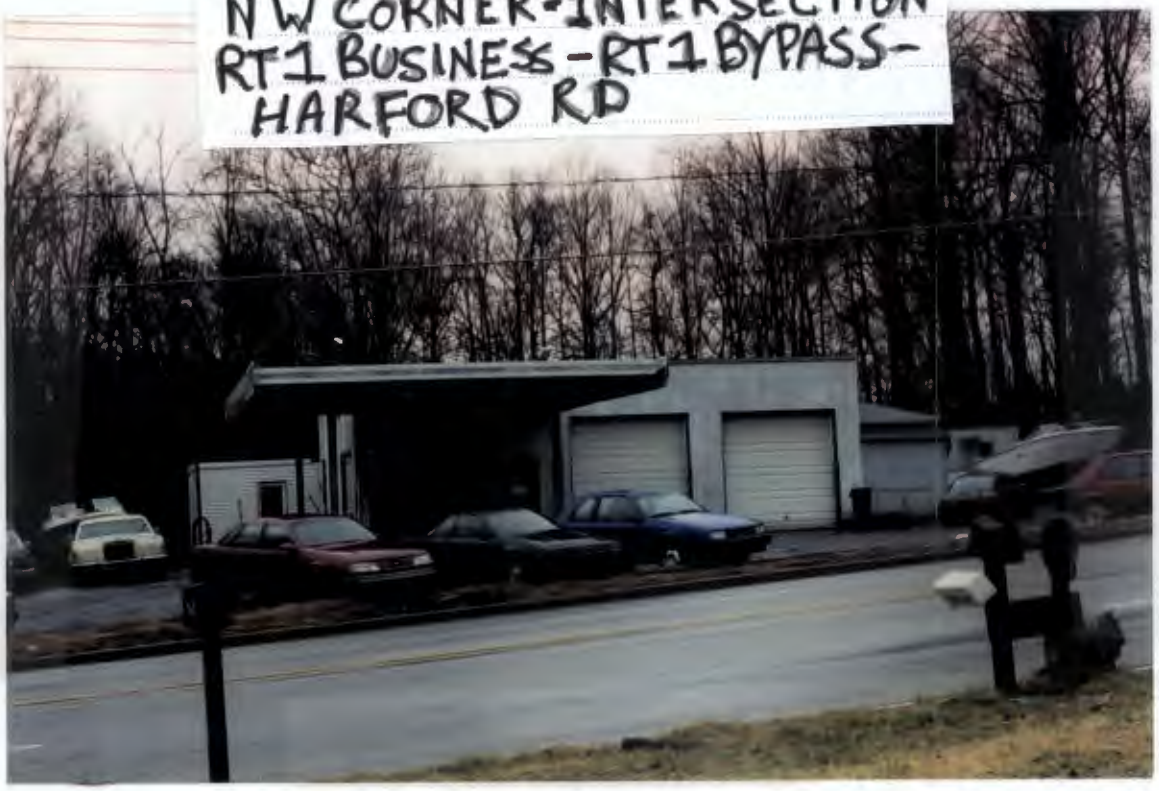
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B

ABANDONED GAS STATION
NW CORNER-INTERSECTION
RT1 BUSINESS-RT1 BYPASS-
HARFORD RD

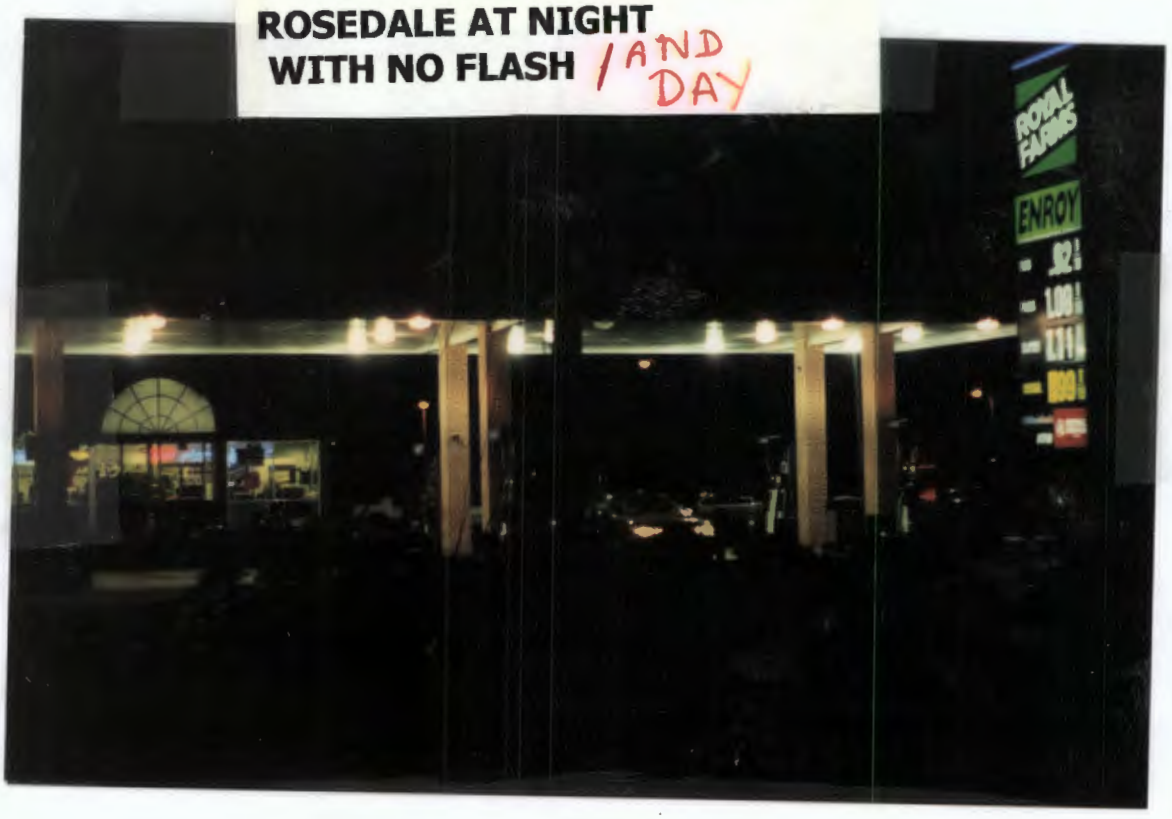


ABANDONED GAS STATION
NE CORNER-INTERSECTION OF
RT1 BUSINESS-RT1 BYPASS-
HARFORD ROAD



C

3 ISLAND ROYAL FARM STORE
ROSEDALE AT NIGHT
WITH NO FLASH / AND DAY



EXAMPLE OF 5 ISLAND GAS
STATION/CONVENIENCE STORE



Royal Farms Store &
Vacant WaWa Store at
Joppa & Old Harford Roads

D





January 2000

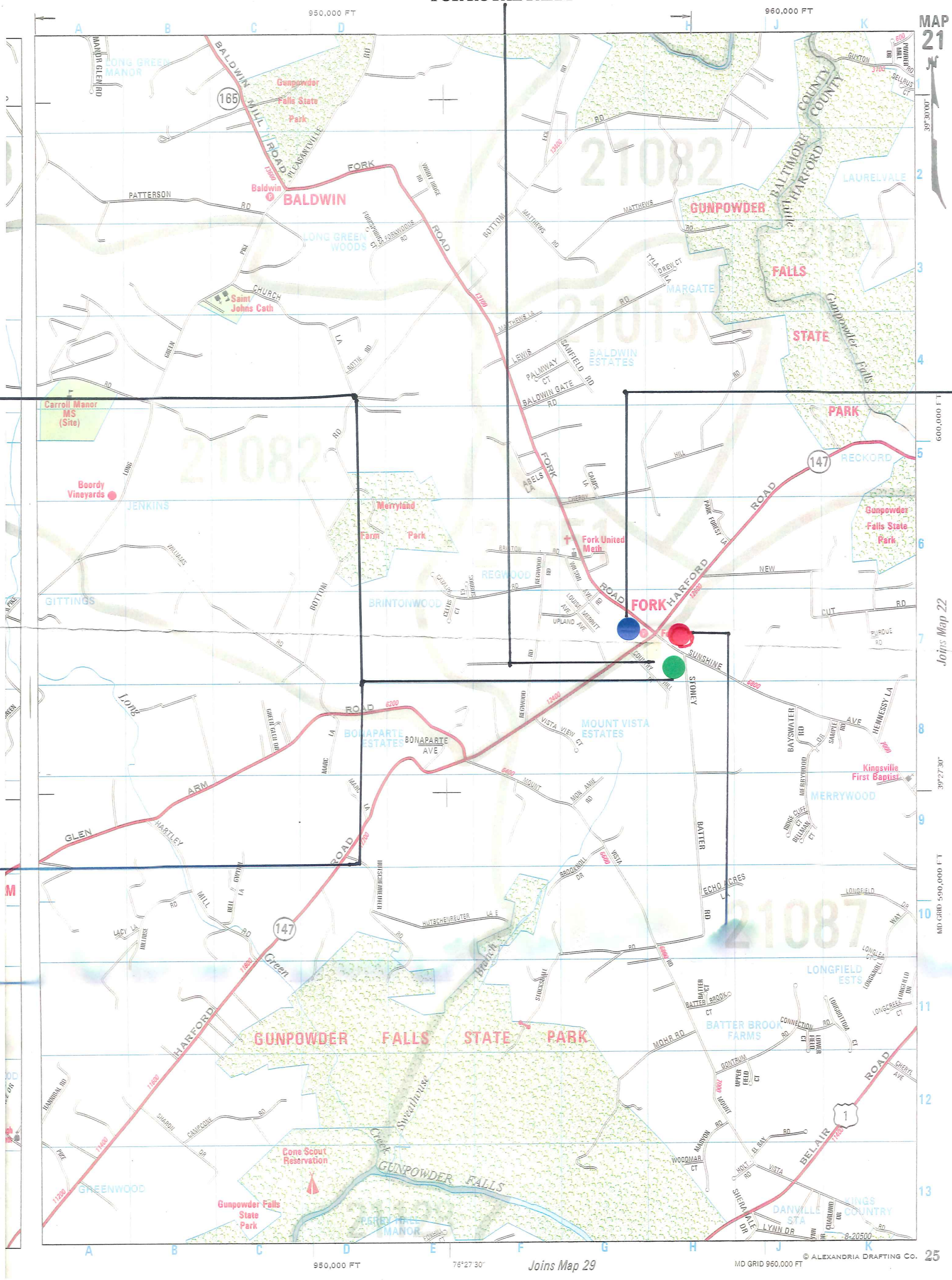
E






ROYAL FARMS
ENROY
REG .94 9/10
PLUS 105 9/10
SUPER 109 9/10
DIESEL 103 9/10
ATM
ENROY
ENROY
FARMS

PROPOSED SITE FOR ROYAL FARM



#1999-0199-X