6/1/00

IN THE MATTER OF THE APPLICATION OF BALTIMORE GAS & ELECTRIC CO - LEGAL OWNER; THE WESTMORELAND CO, INC. –C.P. FOR SPECIAL EXCEPTION AND VARIANCE RELIEF ON PROPERTY LOCATED ON THE NEC YELLOW BRICK ROAD AND LENNINGS LANE EXTENSION (9114-9200 YELLOW BRICK ROAD) 15TH Election District 5th Councilmanic District	* * * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 99-390-XA

* * * * * * * * *

ORDER OF DISMISSAL OF PETITION

This case comes to the Board on appeal filed by Richard Burch, Esquire, and Douglas W. Biser, Esquire, on behalf of James F. Knott Realty Group, James F. Knott Development Corporation, JFK Family Partnership, and Oz Ltd., from the June 23, 1999 Order of the Zoning Commissioner in which the instant Petition for Special Exception was granted subject to terms and conditions as stated therein. It is to be noted that there was no appeal taken from the Zoning Commissioner's denial of the Petition for Variance; therefore, the only issue on appeal before this Board was the granting of Petitioner's special exception request.

WHEREAS, the Board is receipt of a letter of withdrawal of the Petition for Special Exception filed May 23, 2000 via facsimile by G. Scott Barhight, Esquire, Counsel for The Westmoreland Company, Inc., Petitioner (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said Counsel for Petitioner requests that the Petition filed in the above-referenced matter be withdrawn, as of May 23, 2000,

IT IS THEREFORE. this 1st day of June, 2000, by the County Board of Appeals of Baltimore County

ORDERED that said Petition for Special Exception filed in Case No. 99-390-XA is **WITHDRAWN AND DISMISSED,** and that that portion of the Zoning Commissioner's Order of June 23, 1999 granting said Petition for Special Exception, including any and all relief granted to Petitioner therein, is rendered **null and void.**

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott

Margaret Worrall

Charles L. Marks

County Board of Appeals of Baltimore County

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

June 1, 2000

Richard C. Burch, Esquire
MUDD, HARISON & BURCH
105 W. Chesapeake Avenue
Suite 300
Towson, MD 21204

RE: In the Matter of Baltimore Gas & Electric Co –
Legal Owner; The Westmoreland Co., Inc. –
Contract Purchaser /Petitioner Case No. 99-390-XA
(Appealed as to Petition for Special Exception Only)

Dear Mr. Burch:

Enclosed please find a copy of the Order of Dismissal of Petition issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Very truly yours,

Charlotte E. Radcliffe for
Kathleen C. Bianco
Administrator

Enclosure

cc: Douglas Biser, Esquire
James F. Knott Development, et al
David Devilliers /Oz Ltd.
G. Scott Barhight, Esquire
Julie DiGrigoli, Esquire
Greg Martin, VP /BGE
Jada Leo, President
The Westmoreland Co., Inc.
David Martin /George W. Stephens, Jr.
Tim Madden /Morris & Ritchie
Wes Guckert /The Traffic Group
Ed Chase /Rossville Community Assn.
Case Mason Filling
John H. Harland Co.
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt, ZC
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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May 23, 2000

Via Facsimile
Chairman Lawrence M. Stahl
c/o Ms. Kathleen Bianco
County Board of Appeals of Baltimore County
Old Courthouse
400 Washington Avenue
Towson, MD 21204

Re: Property located at 9114-9200 Yellow Brick Road
Zoning Case No. 99-390-XA

Dear Mr. Stahl and Ms. Bianco,

On behalf of Petitioner, The Westmoreland Company, Inc. ("Westmoreland"), please accept this letter as Westmoreland's formal withdrawal of its Petitions for Special Exception and Variance (Case No. 99-390-XA), which are the subject of the instant appeal.

In light of the Petitioner's withdrawal of the above-described Petitions, the appeal noted by Appellants/ Protestants, James F. Knott Realty Group, et al, is now moot. Therefore, I respectfully request that the Board of Appeals enter an Order dismissing this action.

Please contact me or Julie DiGrigoli if you have any questions or

comments regarding my request.

Very truly yours,

G. Scott Barhight

ccs: Department of Permits and Development Management, Zoning Review (via facsimile)
Richard Burch, Esquire (via facsimile)
Mr. Jada Leo, The Westmoreland Company, Inc. (via facsimile)
Julie A. DiGrigoli, Esquire

wtp

7/23/99

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE – N/E Corner Yellow Brick Road and Lemmings Lane Extension (9114-9200 Yellow Brick Road) 15TH Election District 5th Councilmanic District	* * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 99-390-XA
Baltimore Gas & Electric Co., Owner The Westmoreland Co., Inc., Contract Purchaser	* *	

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

NOTICE OF APPEAL

Appellants/Protestants James F. Knott Realty Group, James F. Knott Development Corporation, JFK Family Partnership, all of 110 West Road, Suite 203, Towson, Maryland 21204, and Oz Ltd., by Richard C. Burch and Douglas W. Biser with Mudd, Harrison and Burch, their attorneys, pursuant to Section 26-132 of the Baltimore County Code, hereby note this appeal from the June 23, 1999 final decision of the Zoning Commissioner granting the Petition for Special Exception only. No appeal is being taken by these Appellants/Protestants from the Zoning Commissioner's denial of the Petitioners' request for a variance.

Richard C. Burch, Esq.

Douglas W. Biser, Esq.
Mudd, Harrison and Burch
105 West Chesapeake Ave.
Suite 300
Towson, MD 21204
(410) 828-1335
Attorneys for Appellants

RECEIVED
JUL 23 1999
DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

cc: G. Scott Barhight, Esquire

Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

July 30, 1999

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

Dear Mr. Barhight:

RE: Case No. 99-390-XA, 9114 – 9200 Yellow Brick Road

Please be advised that an appeal of the above referenced case (for the special exception only) was filed in this office on July 23, 1999 by Richard C. Burch, Esquire and Douglas W. Biser, Esquire on behalf of James F. Knott Realty Group, James F. Knott Development Corporation, JFK Family Partnership, and Oz Ltd.. 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

c: Baltimore Gas & Electric Co., Greg Martin, Vice President, 39 W. Lexington St., Baltimore 21201
The Westmoreland Co., Inc., Jada Leo, President, 200 Randolph Avenue, Huntsville, AL 35801
Richard Burch, Esq. & Douglas Biser, Esq., Mudd, Harrison & Burch, 105 W. Chesapeake Ave.,Suite 300, Towson 21204
R. Peter, BHS Corrugated, 9103 Yellow Brick Road, Baltimore 21237
James & Carroll Knott, 110 West Road, Suite 203, Towson 21204
David Devilliers, 9104/9108 Yellow Brick Road, Baltimore 21237
Tim Madden, Morris & Ritchie, 110 West Road, Towson 21204
C. Richard Moore, Wells & Assoc., 420 Virginia Avenue, Towson 21286
John Harland Co., 9006 Yellow Brick Road, Baltimore 21237
Case Mason Filling, 9101C Yellow Brick Road, Baltimore 21237
Ed Chase, Rossville Community Assoc., 9510 Lennings Lane, Baltimore 21237
Tim Hastings, 110 West Road, Suite 203, Towson 21204
02 Ltd., 9104, 9108 Yellow Brick Road, Baltimore 21237
Marguerite Strobel, BGE, 39 W. Lexington Street, Baltimore 21201
James F. Knott Realty Group, James F. Knott Development Corp., JFK Family Partnership,9003, 4, 6, 9100, 01, 03 Yellow Brick Road, Baltimore 21237
Art Miller & Associates, Suite 700, 29 W. Susquehanna Ave., Towson 21204
Richard Ransom, BGE, 39 W. Lexington Street, Baltimore 21201
Ken Schmid, 8258 Veterans Highway, Suite 19A, Millersville 21108
Stephen Roth, BGE-Dir RE, 7152 Windsor Boulevard, Baltimore 21244
Kathleen Lewis, Balto. Co. Gov., 400 Washington Ave., Towson 21204
Wes Guckert, 40 W. Chesapeake Ave., Towson 21204
David Martin, 658 Kenilworth Drive, Towson 21204
Tuck Taylor, BGE Property Agent, 7152 Windsor Blvd., Baltimore 21244
Julie DiGrigoli, Court Towers, W. Penn. Ave., Towson 21204
People's Counsel

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6/23/99

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE – NE/Corner Yellow Brick Road and Lennings Lane Extension (9114 – 9200 Yellow Brick Road) 15th Election District 5th Councilmanic District	*	BEFORE THE
	*	ZONING COMMISSIONER
	*	OF BALTIMORE COUNTY
	*	Case No. 99-390-XA
Baltimore Gas & Electric Co., Owners; The Westmoreland Co. Inc., Contract Pur.	*	

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Exception and Variance filed by the owners of the subject property, Baltimore Gas and Electric Company, by Greg C. Martin, Vice President, and the Contract Purchaser, The Westmoreland Co., Inc., by Jada Leo, President, through their attorney, G. Scott Barhight, Esquire. The Petitioners request a special exception for a Class I Trucking Facility on the subject property, and a variance from Section 410.3.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a floor area ratio (FAR) of .24 in lieu of the maximum allowed .10. The subject property and relief sought are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

A public hearing was held on the matter on May 10, 1999. When the hearing could not be concluded on that date, the proceedings were continued and additional testimony and evidence was received on June 2, 1999. Moreover, at the request of the parties, written memoranda in lieu of closing argument were received from each side on June 11, 1999. This decision follows, based upon the testimony, evidence and argument offered.

Appearing at the hearing in support of the requests were Richard A. Ransom, Marguerite Strobel, Stephen Roth and Tuck Tyler, representatives of BGE, Owners of the subject property, and Jada M. Leo, President, The Westmoreland Company, Inc., Contract Purchaser. Also appearing in support of the request were David Martin, Landscape Architect with George W. Stephens, Jr. & Associates, Inc., who prepared the site plan for this property, Wes Guckert, Traffic Engineering expert

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and principal of The Traffic Group, and Kathleen A. Lewis, a representative of the Baltimore County Department of Economic Development. The Petitioners were represented by G. Scott Barhight, Esquire. Appearing as Protestants in the matter were James F. Knott Realty Group, James F. Knott Development Corporation, JFK Family Partnership, and Oz Ltd. These Protestants were represented by Douglas W. Biser, Esquire. Either believing that the Petitioners had not met their burden of proof and/or wishing to save their resources for yet another day's battle, the Knott Protestants, through Mr. Biser, produced no witnesses. Also appearing as interested parties were representatives of Fate Mason Filling, John H. Harland Company, and BHS Corrugated, all nearby property owners, and Ed Chase, who appeared on behalf of the Rossville Community Association.

Testimony and evidence offered revealed that the subject property is an irregular shaped parcel of land located within the Rossville Industrial Park in eastern Baltimore County. The property contains approximately 12.0729 acres, more or less, zoned M.L.-I.M. and is accessed by way of Yellow Brick Road, which presently terminates immediately adjacent to the property. The Rossville Industrial Park is a large industrial/commercial/office complex containing nearly one million sq.ft. of leased area. Yellow Brick Road, characterized during the hearing as a "spine road" and/or a lengthy cul-de-sac, provides access to the industrial park from Rossville Boulevard and serves the developed lots within the park.

The Westmoreland Company, Inc. is generally in the business of acquiring and developing sites for the business known as the RPS Company. Westmoreland has indeed entered into a long-term lease agreement with RPS for the subject site, once same is acquired from BGE and the requisite governmental/zoning approvals are obtained. RPS proposes to construct a 110,000 sq.ft. facility on the subject property for use as a distribution center in its package handling business. The business of RPS is not unlike that of UPS, Federal Express, and similar carriers. However, RPS generally serves business and commercial customers as opposed to residential clients. As is the case with the other carriers mentioned above, RPS step-vans deliver and pick up packages from clients throughout the Baltimore area. The packages will be routed through the proposed facility on the subject site, where they are sorted for delivery to the company's clients. Additionally, many of the outgoing packages will

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be transported by tractor-trailer to RPS' "hub" in Harrisburg, PA. These tractor-trailers will also deliver packages to the subject site from Harrisburg, PA.

Westmoreland has filed a Petition for Special Exception, pursuant to Sections 410 and 502 of the B.C.Z.R., to permit a Class I Trucking Facility on this site. Westmoreland also filed a Petition for Variance seeking relief from Section 410.3.B.2 to allow a greater floor area ratio than that permitted. Numerous questions were presented, both within the Memoranda submitted by opposing Counsel, and raised at the hearing. For ease of discussion, the issues are addressed sequentially.

1) Standing of the Protestants: BGE and Westmoreland object to the participation of the Knott Protestants in the instant case. As more fully set forth in their memorandum, the Petitioners allege that these Protestants lack standing. Specifically, it is argued that the Protestants are not an "aggrieved party" as defined and required by Maryland law.

In support of this argument, Petitioners cite Bryniarski v. Montgomery Co. Board of Appeals, 247 Md. 137 (1967) and Kreatchman v. Ramsburg, 224 Md. 209 (1961). A review of those cases; however, reveals that both addressed the standing of a party on appeal. Obviously, the hearing before the Zoning Commissioner is the first step in what apparently will be on-going litigation in this case. The parties do not appear before me as appellants/appellees. Mine is original jurisdiction, not appellate. More importantly, neither the County Charter (which establishes the Office of the Zoning Commissioner), the Baltimore County Code, or the B.C.Z.R., specify any requirements for the parties appearing in those proceedings before me or require them to be "aggrieved".

As importantly, it is the Petitioners' burden of proof to obtain the special exception and variance relief which is being sought. The Petitioners must prove their case whether any Protestants appear or not.

In this matter, I do not find error in the Protestants' participation in this case. The matter must be adjudged based upon the cumulative testimony and evidence offered. As noted above, the Protestants offered no witnesses. For these reasons, I decline to enter a finding that the Protestants lack standing. Even if the Protestants lack standing, the Petitioners' memorandum suggests no sanction which could be imposed. Instead, as set forth hereinafter, I will evaluate the testimony and evidence

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offered in this case to determine whether relief can be granted as requested by the Petitioners in accordance with the relevant provisions of the B.C.Z.R. and case law.

2) Characterization of Proposed Facility as a Warehouse and/or Class I Trucking Facility: Like the swallows to Capistrano, a designation of the land use of a package distribution center returns to me for consideration. The record of the case, as particularly contained within Mr. Leo's testimony, fully sets out the nature of the RPS business. His testimony will not be repeated herein. Suffice it to say that the business of RPS is to deliver packages. The property is to be used as a parcel distribution center. Essentially, packages are delivered to the center, either by way of tractor-trailer or step-van, sorted, then reloaded on trucks for delivery to other locations. The business of RPS is substantially similar to that of United Parcel Service. While a member of the Board of Appeals of Baltimore County, I took an active role in the lengthy litigation involving the UPS package distribution center located in Loveton in northern Baltimore County. In fact, I authored the dissenting opinion issued by the Board, which characterized the operation as a trucking facility, as opposed to a warehouse. My lengthy dissenting opinion was ultimately adopted on appeal by the Circuit Court of Baltimore County and affirmed in a reported decision before the Court of Special Appeals of Maryland (See UPS v. People's Counsel of Balto. Co., MD, 93 Md. App. 611 (1992). Ultimately, that decision was reversed by the Court of Appeals on other grounds at UPS v. People's Counsel of Baltimore County, Md., 336 Md. 569 (1994). The Court of Appeals decision did not reverse the findings of the Circuit Court as to the nature of the business activity at Loveton. Thus, the Circuit Court's finding on that issue remains good law. I am obligated to follow same.

Although I recognize that RPS is not UPS and vice versa, I easily find that the proposed business to be operated at the subject location is that of a trucking facility, as defined in Section 101 of the B.C.Z.R. Thus, special exception relief is necessary for the use to be permitted. Despite the applicants' arguments to the contrary, the use is neither a warehouse, nor a combination of permissible uses which might be permitted as of right.

3) Petition for Special Exception: Having determined that special exception relief is necessary, attention is next turned to the Petition for Special Exception and the criteria set out in

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Sections 410 and 502.1 of the B.C.Z.R. It need be initially noted that witnesses on this issue were offered only by the Petitioners; no witnesses were called by the Protestants. Thus, I can rely only on the testimony elicited during the examination and cross-examination of Mr. Leo, Mr. Martin, and Mr. Guckert.

In evaluating the special exception, I am mindful of the appellate courts' treatment of special exceptions/conditional uses in Schultz v. Pritts, 291 Md. 1 (1981), Mossberg v. Montgomery Co., 107 Md. App. 1 (1995), and Umerley v. People's Counsel for Baltimore Co., et al, 108 Md. App. 497 (1996). In Umerley, I was the Zoning Commissioner when the Petition was filed. I denied the Petition for Special Exception therein, concluding that the requirements of Section 502.1 of the B.C.Z.R. were not met and that the use would be detrimental to the health, safety and general welfare of the locale.

In considering those cases, it is to be noted that the Court of Special Appeals has characterized special exception uses as presumptively permissible, as part of the overall zoning scheme. Moreover, it is not whether the special exception use will cause adverse impact; such impact is assumed by virtue of the fact that the use is classified as a special exception use in the first instance as opposed to a use permitted by right; but, whether such adverse impact at a particular location is greater than the effect ordinarily associated with the use. (See Mossberg, Pg. 8-9) That is, the Zoning Commissioner must determine whether the adverse impact of the proposed facility at the subject location is worse than the impact associated with such a use elsewhere in the zone.

The overwhelming weight of the testimony and evidence presented in this case was that the special exception should be granted. I easily find that the Petitioners have met their burden in this regard. Obviously, a primary impact of the proposed use is on traffic and the road system in the area. Unlike Umerley, the subject site enjoys excellent access to the major road systems in Eastern Baltimore County; i.e, I-95 and I-695. This is not a case where the truck traffic generated by the use would impact residential streets or further crowd roads which are already at or over capacity. To the contrary, Mr. Guckert's testimony was persuasive that the existing road system could easily accommodate the anticipated traffic. Additionally, tractor trailers arriving/departing to or from the site

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do so at non-peak hours. This factor is significant. For all of these reasons, I find no detrimental impact on the surrounding traffic patterns or road systems.

The other elements set out in Section 502.1 are also satisfied. The project will not overburden public utilities, cause an impermissible overcrowding of the land, nor result in any impacts which would cause detriment to the health, safety or general welfare of the locale. The expert testimony offered by Mr. Martin, as well as the factual testimony provided by Mr. Leo, were persuasive. In sum, I believe that scarcely could a better site be imagined for the proposed use. As noted above, it enjoys excellent access to major roadways and will not cause adverse impacts to the surrounding locale.

4) Imposition of Conditions: The Zoning Commissioner has the authority to condition the approval of any special exception, pursuant to Section 502.2 of the B.C.Z.R., and any special exception for a trucking facility in particular, pursuant to Section 410.3.C.3 of the B.C.Z.R. Conditions can be imposed as are deemed necessary and advisable for the protection of surrounding and neighboring properties.

Although the proposed size of the building cannot be permitted without a variance, the Petitioner argued that the design of the structure is appropriate under the circumstances of RPS' business and the impact of that business upon the surrounding locale. Specifically, unlike a typical trucking facility with outside loading bays, the sophisticated nature of the RPS sorting process requires that the step-van vehicles be located inside the building during their loading and unloading. Moreover, the sophisticated sorting process, which features a series of inter-connected conveyor belts, must also be located inside the building and not outdoors.

More importantly, from the perspective of imposing any conditions, enclosing this activity reduces its impact on the surrounding locale. I conducted a site visit subsequent to the hearing and viewed the property from Yellow Brick Road and also from the rear of the properties which front Philadelphia Road. The property is indeed visible from those residentially used properties. Owing to the business of RPS, much of the sorting and traffic is generated during the evening hours. Therefore, the Petitioner proposes enclosing the operation to prevent noise, lights and other impacts from

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detrimentally impacting surrounding properties. That is, the Petitioner argues that, as a condition of approval of the special exception, that the area of the building as shown on the plan be permitted to reduce/eliminate impact on adjacent properties. Such an approach indeed has practical merit.

Although I admire the Petitioner's innovative approach, I do not believe that their suggestion is lawful. I cannot, through the imposition of a condition, circumvent the variance process. Although the Petitioner may wish to come through the back door, it cannot do so. Such an approach violates the spirit and intent of the B.C.Z.R., even if the end result does not. An applicant can simply not accomplish by condition that which requires variance relief.

5) Floor Area Ratio Variance: As noted above, the Petitioners also seek a FAR variance to permit an FAR of .24 in lieu of the maximum allowed .10. Testimony was offered on this issue, primarily through David Martin, Landscape Architect who prepared the site plan. Unlike special exceptions which the appellate courts have treated as a presumptively permissible part of the zoning scheme, the appellate courts view applications for variance relief in an unfavorable light. A seminal case on this subject is the oft-cited Cromwell v. Ward, 102 Md. App. 691 (1995). Cromwell came to the appeals Court from Baltimore County and dealt with the requirements for variance relief as set out in Section 307 of the B.C.Z.R. Essentially, Cromwell set out a two-step test for the consideration of any variance application. First, the Petitioner/Property Owner must show that the property at issue is unique in a manner which drives the need for the variance. If a finding of uniqueness is reached, the zoning authority must then determine if a practical difficulty would arise if variance relief were not granted. I would add, as a third requirement, that Section 307 then also mandates a finding that relief cannot be granted without detrimental impact upon neighboring properties.

The standard set out in Cromwell is indeed harsh. Many, including this Zoning Commissioner, believe that the strict standard enunciated in Cromwell is at odds with the practical application of Section 307 of the B.C.Z.R. Nonetheless, the Court has articulated its view of Section 307 and that is the law of this County. Moreover, even when given an opportunity to retreat from this standard, the Court of Special Appeals declined to do so. In Friends of the Ridge, et al, v. BGE, 120

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Md. App. 444 (1998), the Court, although granting a variance, affirmed the mandate set out in Cromwell. The Court stated again that the grant of the variance should be a rare circumstance indeed.

I have reviewed carefully the transcript of the testimony of Mr. Martin, including his cross-examination. He described three factors which he believes make the property unique, including its location adjacent to non-industrial uses, its shape and topography. However, when pressed by Counsel for the opponents, his testimony was not persuasive that need for relief from the strict application of the regulation springs from that uniqueness. That is, Cromwell requires that the uniqueness cause the need for variance relief from the practical difficulty which will be suffered. The mere fact that a property is different (e.g., indeed no property is identical to another) is insufficient to justify a finding of uniqueness sufficient to satisfy the criteria in Cromwell.

In this case, I am not persuaded by the testimony of the Petitioners' witnesses. I do not believe that the testimony and evidence offered was sufficient to support a finding of uniqueness which would thereafter drive the need for the variance. Thus, the variance must be denied.

I also note in passing that a variance from the floor area requirements is, by definition, difficult to justify. Floor Area Ratio is driven by the size of the building vs. the size of the lot. Thus, by making any building smaller, variance relief would not be necessary. I questioned Counsel about this point at the conclusion of the hearing. Within their memorandum, Counsel for the Protestants did cite a circumstance, e.g., the bearing capacity of soil, which could constitute a unique characteristic sufficient to justify a variance from floor area requirements. I concur that such a factual scenario could support a variance and there may be others. However, in this case, there was no such testimony.

In sum, I am persuaded to grant the Petition for special Exception for the reasons set forth herein. The proposed use is entirely appropriate at this location and the Knott Protestants' objections are of a dubious nature. Nonetheless, variance relief cannot be justified in this case, based upon the testimony and evidence offered. The burden established in Cromwell is a difficult one, and it is not met here. Simply stated, the building is too large for this site and justification does not exist to variance the size limitations imposed by the B.C.Z.R.

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By

Pursuant to the advertisement, posting of the property and public hearing held thereon, and for the reasons set forth herein, the special exception shall be granted and the variance relief denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 23rd day of June, 1999 that the Petition for Special Exception for a Class I Trucking facility on the subject property, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following terms and conditions:

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) Prior to the issuance of any permits, the Petitioner shall submit an amended plan pursuant to the findings in this Opinion. That is, the new plan shall show a building which complies with the FAR requirements.

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

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 410.3.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a floor area ratio (FAR) of .24 in lieu of the maximum allowed .10, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 6/23/99
By

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G. SCOTT BARHIGHT
DIRECT NUMBER
410 832-2050
gbarhight@wtplaw.com

June 15, 1999

RECEIVED
JUN 15

Via Hand Delivery

The Honorable Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
400 Washington Avenue
Towson, MD 21204

Case 99-390-XA

Dear Mr. Schmidt:

Please be advised that the word "no" was inadvertently omitted from page 8, line 15 of Westmoreland Company, Inc.'s ("Westmoreland") Post-Hearing Memorandum. Line 15 was intended to read as follows:

> "There is ***no*** evidence, not even a scintilla, that the proposed RPS Facility will create an adverse impact."

I have enclosed a corrected copy of page 8 of Westmoreland's Post-Hearing Memorandum for your convenience. I greatly appreciate your acceptance of the above-referenced amendment to Westmoreland's Memorandum.

Sincerely,

G. Scott Barhight

cc: Douglas Biser, Esquire

GSB:jad

6/11/99

IN THE MATTER OF	*	BEFORE THE
THE WESTMORELAND COMPANY	*	ZONING COMMISSIONER
PETITIONS FOR VARIANCE AND	*	OF BALTIMORE COUNTY
SPECIAL EXCEPTION	*	
NEC Yellow Brick Road and Lennings Lane (Extended)	*	
(9114-9200 Yellow Brick Road)	*	CASE NO. 99-390-XA
15th Election District - 5th Councilmanic District	*	
Baltimore Gas & Electric Co., Owners The Westmoreland Co., Inc., Contract Lessee	*	
	*	
v.		
	*	
JAMES S. KNOTT REALTY GROUP; JAMES S. KNOTT DEVELOPMENT CORPORATION; J. S. K. FAMILY PARTNERSHIP AND OZ LIMITED	*	

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POST-HEARING MEMORANDUM

Petitioner, Westmoreland, Inc. ("Westmoreland"), by and through its attorneys, G. Scott Barhight, Julie A. DiGrigoli and Whiteford, Taylor & Preston L.L.P. submits the instant memorandum in support of its position and avers as follows:

I. STATEMENT OF FACTS

The instant action involves Westmoreland's proposal to construct an RPS facility on 12.0729 acres located in the ML-IM zone. The subject property is located within the Rossville Industrial Park at 9114-9200 Yellow Brick Road. Rossville Industrial Park currently contains roughly three-quarters of a million to a million square feet of

improved buildings, including various warehousing and office facilities. 5/10/99 Zoning Commissioner Hearing Transcript (T.) 30.

Westmoreland has entered into a long-term leasing arrangement with RPS Company (hereinafter "RPS") for the subject property. 5/10/99 T. 25-26. RPS proposes to construct a 110,000 square foot facility on the subject property. 5/10/99 T. 25-26, 30. RPS intends to use the facility in its package-handling business. 5/10/99 T. 25. The proposed RPS facility will operate primarily with step-vans performing pickup and delivery activities starting in the morning and returning in the afternoon. RPS' facilities are uniquely designed to allow step-vans to pull inside the warehouse and back up to a conveyor system which carries packages to the tractor trailers for loading and unloading . The tractor trailers travel to RPS' hub in Harrisburg where the packages are further sorted and sent for final distribution. 05/10/99 T. 46-47.

Westmoreland has filed a Petition for Special Exception, pursuant to §§410 and 502 of the Baltimore County Zoning Regulations (BCZR), to permit a Class I trucking facility in an ML-IM zone. In order to enclose RPS' step van loading and unloading operations within the proposed facility, Westmoreland has also filed a Petition for Variance seeking relief from BCZR Section 410.3.B.2 to allow a floor area ratio (FAR) of 0.24 in lieu of the permitted 0.1.

Located on the North [1] side of Yellow Brick Road, just to the West of the subject property, are a pair of buildings owned by FRP approximately 90,600 sq. feet in size with an FAR of 0.40 and 97,000 sq. feet in size with an FAR of 0.43. 6/2/99 T. 91. The

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1 Yellow Brick Road runs in an east/west direction for purposes of this comparison.

buildings share a common paved court and contain 13 and 15 truck loading bays respectively. 6/2/99 T. 125. Located on the South side of Yellow Brick Road, just West of the subject site are two long, rectangular shaped buildings owned by a James Knott entity which are approximately 165,000 sq. feet in size with an FAR of 0.55 and 213,800 sq. feet in size with an FAR of 0.57. 6/2/99 T. 126, 128-129. Significantly, the Knott buildings share a common multi-purpose paved court area and contain 24 and 48 truck loading bays respectively. 6/2/99 T. 129.

A combined Hearing was held on Westmoreland's Petitions for Special Exception and Variance before Zoning Commissioner Lawrence E. Schmidt on May 10, 1999. Due to the length of the proceedings and scheduling conflicts, the Hearing was continued until June 2, 1999 and June 3, 1999. The testimony in the case was ultimately completed on June 2, 1999. The Protestants failed to present any testimony or evidence whatsoever. Following the conclusion of the Hearing, the Zoning Commissioner ordered post-hearing memorandums be submitted on or before June 11, 1999.

II. QUESTIONS PRESENTED

A. Whether The Proposed RPS Facility Meets The Special Exception Requirements For A Class I Trucking Facility.

B. Whether The Zoning Commissioner Has The Authority To Condition Approval Of Westmoreland's Petition For Special Exception On The Enclosure Of The Proposed RPS Facility.

C. Whether The Uniqueness of the Subject Property and The Practical Difficulty and/or Irreparable Harm That Will Result To Westmoreland If The Requested Variance Is Not Granted Mandates The Granting Of A Floor-Area Ratio Variance.

D. Whether The Baltimore County Zoning Regulations Envisioned The Variancing Of The Floor Area Ratio.

E. Whether The Proposed RPS Facility Should be Characterized As A Warehouse Or A Class I Trucking Facility As Currently Defined Under Baltimore County Zoning Regulations.

F. Whether The Protestants Lack Standing To Oppose Westmoreland's Proposed Development Project.

III. ARGUMENT

A. The Proposed RPS Facility Meets The Special Exception Requirements for A Class I Trucking Facility.

The evidence presented during the Hearing of this matter demonstrates that the proposed RPS facility meets all of the Special Exception conditions of a Class I Trucking Facility, as set forth in §§ 410 and 502.1 of the Baltimore County Zoning Regulations, except the floor-area ratio (FAR) requirement in which Westmoreland has sought a variance. Even if it is determined that the proposed RPS facility is a Class I Trucking Facility, rather than a warehouse facility, Westmoreland's proposed use of the subject property is permitted by Special Exception.

The Maryland Court of Special Appeals has held that "[a] special exception . . . is expressly permissible" and that "a special exception/conditional use in a zoning ordinance recognizes that the legislative body of a representative government has made a policy decision for all of the inhabitants of the particular governmental jurisdiction, and that the exception or use is desirable and necessary in its zoning planning provided certain standards are met". Mossburg v. Montgomery County, 107 Md. App. 666 A.2d 1263 (1995). The proper inquiry for whether a use is permissible by special exception is

not "whether a use permitted by way of special exception will have adverse effects . . . [but 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". Id. at 9 *quoting* Schultz v. Pritts, 291 Md. 1, 15 (1981) (emphasis added).

Pursuant to § 502.1 of the Baltimore County Zoning Regulations, a Special Exception will not be granted unless it can be shown that the request use will not:

> A. Be detrimental to the health, safety or general welfare of the locality involved;
>
> B. Tend to create congestion in roads, streets or alleys therein;
>
> C. Create a potential hazard from fire, panic or other danger;
>
> D. Tend to overcrowd land and cause undue concentration of population;
>
> E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
>
> F. Interfere with adequate light and air;
>
> G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor
>
> H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

BCZR §502.1

In addition to the conditions set forth in §502.1, a Class I trucking facility must also meet the special regulations delineated in §410 of the Zoning Regulations before a Special Exception may be granted.

Mr. David Martin, the director of land planning and landscape architecture for G.W. Stephens & Associates, testified that the impacts that would typically be generated by a trucking facility would include noise, tractor trailer traffic and visual impacts. 6/2/99 T. 93- 94. The testimony of both Mr. Martin and Mr. Wes Guckert, President of The Traffic Group, addressed these impacts in relation to the proposed RPS facility.

There was uncontroverted testimony by Mr. Guckert and Mr. Martin that the proposed RPS Facility will tend not to create congestion in the roads, streets or alleys, greater than or above and beyond the congestion inherent with a trucking facility. 6/2/99 T. 133-134, 6/2/99 T. 23, 26-27. Specifically, Mr. Guckert testified that 85% of the peak-hour traffic generated by the proposed RPS facility would pass through the intersection of Yellow Brick Road and Rossville Boulevard. 6/2/99 T. 22. Mr. Guckert also testified that the capacity analyses undertaken demonstrated that the intersection is currently operating at an "A" level of service and would continue to operate at an "A" level of service even with the RPS facility. 6/22/99 T. at 22-23, 27-28. Thus, it was Mr. Guckert's opinion that "with the primary intersection continuing to operate at a level of service A during the peak hours, . . . there would not be an adverse effect on traffic created by this facility." 6/2/99 T. 23, 24, 27-28 . In fact, Mr. Guckert testified that

because Yellow Brick Road is a 50-foot wide industrial street, with good levels of service, he couldn't imagine a better location for such a facility. 6/2/99 T. at 23,24.

Mr. Martin testified that the proposed RPS Facility will not tend to create potential hazards from fire, panic or other dangers or tend to overcrowd the land and cause undue concentration of the population greater than or above and beyond the potential hazards normally inherent with a trucking facility. 6/2/99 T. 134, 135. Mr. Martin also testified that the proposed RPS Facility will not interfere with adequate provisions for schools, parks, water and sewerage, and transportation, greater than or above and beyond the adverse effects normally inherent with a trucking facility. 6/2/99 T. 135-136. Furthermore, Mr. Martin testified that the proposed RPS facility will not interfere with adequate light and air above and beyond the effects normally inherent with a trucking facility as the RPS facility is a single-story building with a height of 20-30 feet. 6/2/99 T. 136-137. Additionally, he testified that the proposed RPS facility is consistent with the permeable surface and vegetation retention of Baltimore County's Zoning Regulations. 6/2/99 T. 138.

There was uncontroverted testimony from Mr. Martin that the proposed Class I trucking facility is consistent with the purpose of the ML-IM zoning classification and the spirit and intent of the Zoning Regulations. 6/2/99 T. 137. Section 410.4 of the Zoning Regulations provides that the purpose of the special regulations surrounding Class I trucking facilities is "to assure that the improvements of the sites of existing and future ***Class I trucking facilities are of such design,*** quality or character that they will

not be likely to deteriorate in such a way that public nuisance would be created or that the *public interest would otherwise be adversely affected."* BCZR §410.4.B.2 (emphasis added). In addition, the Regulations seek to "accommodate trucking activities, in recognition of their importance to the economy of the county and the nation, while minimizing the impact of . . . future Class I trucking facilities on the environment and *achieving an optimum level of compatibility between such facilities and nearby uses, especially dwellings and institutional uses."* BCZR §410.4.B.7.

Lastly, there is uncontroverted testimony from both Mr. Martin and Mr. Guckert that the proposed RPS facility will not have any greater detrimental effect on the health, safety, and general welfare of the locality than that normally associated with a trucking facility. 6/2/99 T. 140. In fact, the evidence demonstrates that the impact of this proposed RPS Facility is far less than a typical trucking facility since a vast majority of the facilities' operations will be enclosed. 6/2/99 T. 118

It is hard to imagine a better location for a Class I trucking facility than the proposed location. There is no evidence, not even a scintilla, that the proposed RPS Facility will create any adverse impact. In the absence of harm, the Special Exception must be approved.

B. The Zoning Commissioner Has the Authority To Condition Approval Of Westmoreland's Petition For Special Exception On The Enclosure of The Proposed RPS Facility

The Hearing Officer has the authority to condition approval of Westmoreland's Petition for Special Exception on the enclosure of the proposed RPS facility. Baltimore

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County Zoning Regulations §502.2 specifically provides that "[i]n granting any special exception, the Zoning Commissioner . . . ***shall impose*** such ***conditions***, restrictions or regulations as may be ***deemed necessary or advisable for the protection of surrounding and neighboring properties***." (emphasis added). Similarly §410.3.C.3 provides that the Zoning Commissioner may impose reasonable restrictions on a Class I trucking facility when granting a special exception. Clearly, the thrust of the regulations governing trucking facilities was to encourage well-designed facilities which minimize the impacts such facilities inherently have on neighboring properties. See 6/2/99 T. 117.

In addition to the plain language of the Zoning Regulations, the Maryland Court of Special Appeals has specifically held that the granting of a special exception may be conditioned. In J. Roland Dashiell Realty Company v. Wicomico County, 122 Md. App. 239, 712 A.2d 104, 107 (1998), the Court reasoned that since a special exception "authorize[s] uses which otherwise would not be permitted. . . . the [county] must have the power to limit those uses to protect the health, safety and welfare of the community."

As discussed herein, the subject property is unique based on its close proximity to residential properties, which based on the topography of the land will have the proposed RPS facility in their direct view shed. Thus, conditioning approval of Westmoreland's Petition for Special Exception on the enclosure of the proposed RPS facility is clearly advisable, if not necessary, in order to adequately protect the neighboring residential property owners and neighboring mental health rehabilitation

facility. Specifically, such a condition would serve to protect the residential properties and the mental health rehabilitation facility from the adverse impacts, relating to view shed and noise, which are typically associated with a Class I trucking facility whose operations are exposed.

Conditioning the granting of Westmoreland's Special Exception, on the enclosure of the facility, is especially important in light of the subject property's close proximity to Alliance, a mental health rehabilitation facility. In light of the sensitive nature of Alliance's operations, efforts must be taken to minimize any noise and disruptive activities which may adversely effect care in the facility. Significantly, Kali Mallik, the President of Alliance, Inc., acknowledged the facility's special needs in his June 1, 1999 letter to the Zoning Commissioner. In his letter, Mr. Mallik stated that "West Moreland Corporation is very sensitive to our needs as such they propose to not only have the trucks come during the off hours but ***also have them park under the roof. . . .***" June 1, 1999 Letter from Kali Mallik, President, Alliance, Inc. to Zoning Commissioner Lawrence E. Schmidt.

C. The Uniqueness of the Subject property and the Practical Difficulty and/or Irreparable Harm that Will Result to Westmoreland If The Requested Variance Is Not Granted Mandates The Granting Of A Floor-Area Ratio Variance.

The uniqueness of the subject property and the practical difficulty and/or irreparable harm that would result if Westmoreland is not granted a variance of the required floor-area ratio (FAR) mandates the granting of a variance in this case. In order to support a petition for variance, an applicant must show that the subject

property is unique and that the denial of the requested variance would impose undue hardship on the applicant. Cromwell v. Ward, 102 Md. App. 691, 651 A.2d 424 (1995). The Court in Cromwell defined the term "uniqueness" for zoning purposes as "an inherent characteristic not shared by other properties in the area, i.e. its shape, topography, . . . ***practical restrictions imposed by abutting properties*** . . . or other similar restrictions." Id. at 433 (emphasis added). In its opinion, the Court held that "the restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship". Id. at 431. After an applicant has established the uniqueness requirement, the applicant must prove that the zoning ordinance imposes practical difficulty and/or unreasonable hardship on the applicant/property owner. Id. at 431,436.

Mr. Martin testified in the present case, that the subject property is unique in relation to neighboring properties in the Rossville Industrial Park in several ways. First, the subject property is the only site within the Rossville Industrial Park which is situated within close proximity and in the direct view shed of several residential properties. 6/2/99 T. 101-102. Exhibit 7a, 7b. Further, the subject property is the only property in the Industrial Park situated immediately adjacent to a mental health rehabilitation facility which among other things, provides overnight living quarters for juvenile patients. Exhibit 7a, 7b. The proximity of the mental health rehabilitation facility and several residential properties to the subject property is significant based on the topography of the land. The neighboring mental health rehabilitation facility and

residential properties are situated at an elevation of approximately 120 square feet above sea level whereas the subject property is located only approximately 96 square feet above sea level. 6/2/99 T. 102-103. Thus, the topography of the land is such that the residences and mental health rehabilitation facility look down onto the site. As a result those property's view shed will be directly impacted by any development on the subject property. In addition to potential visual impacts, an exposed RPS facility would have noise impacts on the neighboring mental health rehabilitation facility and the neighboring residences like those typically generated by a trucking facility.

In addition to the uniqueness of the property, both Mr. Martin and Mr. Jada Leo, President of Westmoreland Company, Inc., testified to the unique operation of the proposed RPS facility. Unlike a typical trucking facility, the entire operations of the proposed RPS facility are enclosed within a building thereby minimizing the visual and noise impact the facility has on neighboring properties. 6/2/99 T. 114. Furthermore, as highlighted by Mr. Guckert's testimony, from a traffic impact standpoint the proposed RPS facility is unique in that it will generate relatively low volumes of traffic when compared to other types of commercial uses, including "typical trucking facilities". 6/2/99 T. at 24-25.

In addition to the negative impact the residences will suffer if the floor-area ratio variance is not granted, Westmoreland will unquestionably suffer unreasonable hardship if the variance is denied. Mr. Leo testified that there are fundamental reasons why RPS needs the variance to enclose its operations under roof. 5/10/99 T. 52.

Specifically, the enclosure of the building ensures the safety and security of RPS' personnel and protect its packages and equipment from harmful exposure to the weather. 5/10/99 T. 52, 154. Mr. Leo testified based on his experience with "typical trucking facilities" that such facilities have continual problems if their operations are exposed. 5/10/99 T. 155.

Cromwell permits the uniqueness to relate to restrictions imposed by abutting properties. In the present case, the proximity to residences and Alliance mental health rehabilitation facility uniquely restrict all the operations of the proposed RPS Facility. A clear hardship will be imposed upon not only Westmoreland, but the neighbors, if the floor-area ratio Variance is not granted. The purpose of the BCZR and the trucking facility ordinance is to protect the surrounding community. Failure to allow this facility to be built in a fashion that will protect the community would be a violation of the spirit and intent of the regulations.

D. As Evidenced By the Expressed and Implied Purposes of Baltimore County Zoning Regulations, the Legislators Intended to Allow The Variance Of The Floor Area Ratio Requirement.

Reading §410 in its entirety, it is apparent that §410.3 governing floor area ratio is a bulk regulation which may be varianced. This characterization of §410 is supported by the legislator's deliberate separation of §410.2, restricting use or where Class I trucking facilities can be located and §410.3, regulating merely the design of a trucking facility, including floor area ratio. Such a characterization is also supported by the very definition of "floor area ratio" which provides that the floor-area ratio requirement is

merely a function of the ***size of the structure*** in relation to the size of the parcel of land upon which it will sit and has no bearing on the permissibility of the use.

As evidenced by §410.1.E.2., variancing the floor area ratio was clearly the intent of the local legislators if it was in the best interest of the community. Section 410.1.E.2 permits the enclosure of an existing, but non-conforming trucking facility's operations despite the fact that the necessary construction of buildings or enlargement of existing buildings would exceed maximums size limitations, including floor-area ratio. However, §410.1.E.2 provides that before such enclosure will be permitted, the "enclosure [must] . . . lessen the net overall environmental impact of the facility and . . . ***otherwise be in the interest of the general welfare of the community.***" (emphasis added).

In the present case, Westmoreland does not seek to variance the "use" restrictions of Baltimore County Zoning Regulations, rather it merely seeks to variance §410.3's bulk restriction. The variancing of the floor-area ratio is necessary in order for the express and implied purposes of §410.4, discussed in subsection "C" herein, to be satisfied. Specifically, for the protection of the surrounding community.

E. The RPS Facility Proposed By Westmoreland Is More Accurately Characterized As A Warehouse, Rather Than A Trucking Facility As Currently Defined By Baltimore County Zoning Regulations.

The proposed RPS facility is more accurately characterized as a warehouse, rather than a trucking facility, as currently defined by §101 of Baltimore County's Zoning Regulations. The determination of whether the proposed RPS facility is by

definition actually a warehouse is of paramount importance as a Petition for Special Exception would not be required for a warehouse located in the ML-IM zone. Further, if the proposed RPS Facility is not a Class I trucking facility, then the floor-area ratio variance requested would also not be required.

Baltimore County Zoning Regulations §101 defines a "Trucking Facility" as a facility "whose ***primary purpose*** is to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types, in order to ***facilitate the transportation of such goods*** or chattels". BCZR §101 (emphasis added). The definition further provides that "land used for the parking storage, or repair of trucks used as an accessory . . . to [an] industrial use of the land . . . shall not be considered a trucking facility". BCZR §101

The Zoning Regulations define a "Class I (Truck Terminal) Trucking Facility as "a trucking facility whose ***primary purpose*** is to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types, in order to ***facilitate the transportation of such goods or chattels.***" BCZR §101 (emphasis added).

In contrast, Baltimore County Zoning Regulations define "Warehouse" as "[a] building or part of a building used or intended to be used primarily for the storage of goods ors chattels that are to be sold retail or wholesale from other premises . . .for the storage of goods or chattels to be shipped on mail order, for the storage of equipment or

materials to be used or installed at other premises by the owner or operation of the warehouse; or for similar storage purposes." BCZR §101.

The issue of whether a use was characterized as a warehouse or trucking facility was presented in United Parcel Service, Inc. v. People's Counsel for Baltimore County, 93 Md.App. 59, 611 A.2d 993 (1992); 336 Md. 569, 640 A.2d 226 (1994);. In UPS, the Baltimore County Zoning Commissioner was faced with whether the proposed UPS facility was a warehouse, permitted as a matter of right in the ML zone, or a trucking facility, permitted only by Special Exception, under Baltimore County's Zoning Regulations. See 611 A.2d 993. The Zoning Commissioner ultimately concluded that UPS' proposed parcel distribution facility was more like a warehouse, rather than a trucking facility and thus, did not require a Special Exception. UPS, 611 A.2d at 995, 650A.2d at 227. The Zoning Commissioner reasoned that the proposed UPS facility was merely one branch in "an elaborate deliver system consisting of fifty-eight districts . . . [with each district] establish[ing] a network of package centers and 'hubs' the latter of which [were] the major sorting centers that service the smaller package centers". UPS, 611 A.2d at 998. In essence, the Zoning Commissioner found that the proposed UPS facility was a "hub" which was primarily being used for the ***transfer of packages*** to other locations for final distribution and that such a use was characteristic of a warehousing operation. UPS, 611 A.2d at 998. The Board of Appeals affirmed the Zoning Commissioner's characterization of the use on Appeal and held that the facility's "trucking use" was merely ***accessory*** to a combination of nine permitted uses:

1) fluid storage, 2) freight carrier usage, 3) fuel storage, 4) storage, 5) utility service, 6) utility storage, 7) parking lot and garage, 8) repair establishment, and 9) paint shop. Id. UPS, 611 A.2d at 998, 1000; UPS, 650 A.2d at 229 .[2]

Similar to the facility in UPS, the primary use of the proposed RPS facility is not that of a trucking facility, but that of: (i) a sorting center , (ii) a utility storage, (iii) a repair establishment and (iv) a parking lot and garage facility. The function of the proposed RPS facility is to sort packages for final distribution from the RPS facility in Harrisburg. Thus, although the use of trucks is incorporated into RPS' operation, such use is merely "accessory".

F. The Protestants Lack Standing To Oppose Westmoreland's Proposed Development Project

The Protestants lack standing to oppose the proposed RPS facility as they are not an "aggrieved party" as defined by Maryland law. The Court of Appeals of Maryland has held that an aggrieved person is one whose personal or property rights are adversely affected in a way different from that suffered by the public generally. Bryniarski v. Montgomery County Board of Appeals, 247 Md. 137, 230 A.2d 289 (1967). The Court of Appeals of Maryland has held that a person who objects for the sole purpose of preventing competition with his established business is not a person "aggrieved". Kreatchman v. Ramsburg, 224 Md. 209, 167 A.2d 345 (1961).

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[2] The Board of Appeals' decision in UPS was ultimately reversed by the Maryland Court of Appeals on the sole basis that the Board of Appeals did not have jurisdiction to entertain the appeal and thus, should have immediately dismissed the appeal. UPS v. People's Counsel for Baltimore County, 336 Md. 569, 650 A.2d 226.

The petitioner in Kreatchman, filed an action with the Board of County Commissioners of Howard County ("the Board") requesting the rezoning of a tract of land in order to build a shopping center. Id. at 346. After review of petitioner's request, the Planning Commissioner of Howard County recommended to the Board that the property not be rezoned. Id. Following the Planning Commissioner's adverse recommendation, the petitioner filed a bill in equity to restrain the County Commissioners from interfering with his use of the property. Id. at 347. Mr. Kreatchman, the lessee of a projected package liquor store, in a proposed shopping center less than a mile and half from the petitioner's property, motioned to intervene in the action "stating his interest . . . [as] a resident, citizen, taxpayer of Howard County". Id. The Board of County Commissioners permitted Mr. Kreatchman to intervene as a defendant. Id. At the hearing, Mr. Kreatchman's sole objection to the petitioner's proposed project was that the shopping center would provide "unwanted competition." Id. at 350.

On Appeal, the Maryland Court of Appeals concluded that Mr. Kreatchman's interest as a taxpayer and resident were insufficient to sustain his intervention where his sole objection was to prevent competition. Id. at 349-350. The Court reasoned that it could not believe that "a person is aggrieved within the meaning of the [zoning] statute . . . merely because a variance, even if improvidently granted, will increase competition in business". Id. at 351. The Court concluded that "the only point at which it is proper in zoning . . . to consider the economic effects is the point at which the economic effects

reach into the general welfare." Id. at 352. The Court ultimately concluded that "[a]part from the zoning laws, he would have no ground upon which to enjoin the [protestants'] use of their land for shopping center purposes [because] . . . the zoning laws give him no standing to do so, where the sole basis for invoking them is the prevention of competition." Id. In reaching its decision, the Court stated that there was no evidence of any injury or any depreciation in the value of Kreatchman's property which would otherwise entitle Mr. Kreatchman to intervene and invoke the aid of equity. Id. at 350, 352.

Similarly in Loughborough Development Corporation v. Rivermass Corporation, 213 Md. 239, 131 A.2d 461 (1957), the owner of property half a mile away from a tract of land subject to a bill in equity attempted to intervene on the grounds that the increased traffic would depreciate the value of his lots. Kreatchman, 167 A.2d at 350 quoting Loughborough, 214 Md. at 241, 131 A.2d at 462. The Court of Appeals held that the increase in traffic in which the property owner complained of was highly conjectural and that his interest was simply insufficient to maintain the suit. Kreatchman at 350.

It is Westmoreland's belief that the evidence in this matter would show that James F. Knott personally, as well as entities related and controlled by him (hereinafter collectively referred to as "Knott"), have and continue to intentionally interfere with BGE's existing contract with Westmoreland for the purchase of the subject property. Westmoreland asserts that the sole purpose behind Knott's objections are to eliminate Westmoreland as competition for the purchase and development of the subject

property. Similar to the Court of Appeals' decisions in Kreatchman and Loughborough, Knott's objections are highly conjectural and unsupported by the record. Furthermore, there is absolutely no evidence on the record that Knott has standing based on an existing or future injury suffered as a result of Westmoreland's proposed development project.

At no time during the proceedings did Knott introduce any evidence to support that Knott was aggrieved in any way. The record is devoid of any assertion by Knott's counsel that any harm would come to Knott or Knott's property should the proposed RPS Facility be developed.

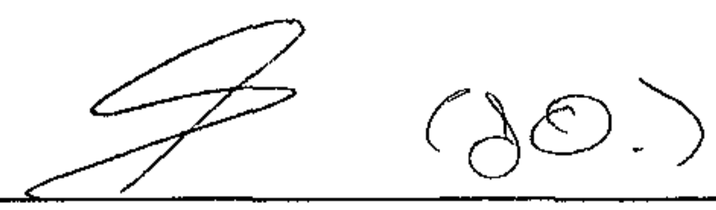
The fundamental basis of standing is that a party is "aggrieved". In the present case there is neither evidence of, or even the assertion, of any aggrievement. To permit Knott to participate in this proceeding makes a mockery of the administrative process. Knott's failure to articulate any rationale for opposing the proposed RPS Facility is an insult to the Petitioner and the Office of the Zoning Commissioner. Such wanton disregard for even a bald assertion of aggrievement should not be permitted, encouraged or rewarded.

IV. CONCLUSION

The Westmoreland has presented an undisputed case in support of its Petitions for Special Exception and Variance. There can be no question that the Special Exception requirements have been met and Westmoreland's Petition for Special Exception should be granted. It is equally as clear that the Variance should be granted, or, in the

alternative, that the enclosure of the operations should be a condition of the Special Exception Approval. On the other hand, we have a commercial protestant, lacking standing, asserting no evidence of harm, who is merely trying to misuse the Zoning Process for its own competitive advantage. This unfortunate and intolerable circumstance should be remedied by dismissing the protestants' opposition for lack of standing.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of June 1999, a copy of Petitioner's Post-Hearing Memorandum was mailed to the following:

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Edward Chase
Rossville Community Association
2906 O'Donnell Street
Baltimore, MD

G. Scott Barhight

10/11/99

PETITION FOR VARIANCE TO	*	
THE ZONING COMMISSIONER OF	*	
BALTIMORE COUNTY FOR THE	*	
PROPERTY LOCATED AT 9114	*	Case No. 99390-XA
THROUGH 9200 YELLOW BRICK ROAD	*	
	*	

JUN 1 1

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PROTESTANTS' MEMORANDUM IN OPPOSITION
TO THE PETITION FOR SPECIAL EXCEPTION
AND PETITION FOR ZONING VARIANCE

James F. Knott Realty Group, James F. Knott Development Corporation, JFK Partnership, and Oz Limited, some of the Protestants, hereinafter collectively called "Protestants," by their attorney, Douglas W. Biser and Mudd, Harrison & Burch, file this Memorandum in support of their opposition to the Petition for Special Exception and Petition for Zoning Variance filed by the Westmoreland Company.

PENDING PETITIONS

The Petitioner, the Westmoreland Company, Inc., is a contract purchaser for the property known as 9114 through 9200 Yellow Brick Road located in White Marsh, Maryland. This property is presently owned by Baltimore Gas & Electric Company. The property is vacant and has a gross area of 12.0729 acres. The existing zoning is ML-IM. The proposed use of the property by the Petitioner is as a Class One trucking facility. The Petitioner has filed a Petition for a Variance, requesting relief from Section 410.3, ¶B.2 of the Baltimore County Zoning Regulations to permit a floor area ratio (FAR) of .25 in lieu of the permitted .01. The Petitioner has also filed a Petition for

Special Exception, as referred to in Section 410 of the Baltimore County Zoning Regulations, to permit a Class One trucking facility in an ML-IM zone.

INTENDED USE OF THE PROPERTY

Jada Reinhart Leo, president of Westmoreland Company, Inc., the contract purchaser, testified that his company is in the business of locating, purchasing and developing properties and then leasing them back to their clients. See May 10, 1999 Transcript, p. 24. At the hearing, up until that point, Mr. Leo testified that Westmoreland had completed twenty-two projects, including eighteen trucking facilities for RPS. RPS is in the package handling business and was formerly known as the Roadway Package System. RPS is a company similar to UPS, with an emphasis on commercial and industrial customers. The proposed trucking facility at the subject location includes a building of approximately 110,000 square feet, which is designated as Phase 1, with Phase 2 expansion of an additional 20,000 square feet. The operations of the trucking facility will be around-the-clock with substantial traffic generated by step-vans, tractor trailers and automobiles. The design of the proposed building calls for the numerous step-vans to be parked and loaded inside the building. The reason RPS chooses to load its packages in such a manner is to prevent the packages from being exposed to weather, to contain any sound within the building itself, and to provide for safety and security of its personnel. See May 10, 1999 Transcript, pp. 52, 53.

STANDARD OF REVIEW FOR VARIANCE

The Petitioner has the burden of overcoming the presumption that the proposed use is unsuitable. See White v. North, 121 Md. App. 191 (1998). "The burden on the petitioner is indeed heavy and springs from a recognition that variances permit uses that are prohibited and presumed to

be in conflict with the ordinance." Evans v. Shore Communications, Inc., 112 Md. App. at 309 (1996). The Petitioner has a heavy burden to adduce facts that not only meet the standard of "substantial evidence," but that also overcome the presumption that the proposed use is unsuitable. North v. St. Mary's County, 99 Md. App. at 510 (1994). It is not enough to demonstrate that the proposed use is undesirable or would do no harm. See Kennedy v. Mayor of Baltimore, 247 Md. 601 (1967). In the present case, for the reasons set forth below, the Petitioner has not and cannot meet the burden of proof.

THE EVIDENCE PRODUCED BY THE PETITIONER IS LEGALLY INSUFFICIENT TO JUSTIFY A VARIANCE

A variance essentially involves a minor adjustment due to extraordinary property conditions, that allows a property owner a reasonable use of the property consistent with the purpose of the zoning district. It is not designed to permit uses significantly different in location, size and/or scale from that allowed by the relevant standards. Professor Robert Anderson, in the Second Edition of his treatise, 3 American Law of Zoning, Second Section 18.02 at 137 (1997), stated as follows:

> The underlying purposes of administrative relief have been discussed in an earlier chapter, but specifically with respect to variances, it is said that a variance is "designed as an escape hatch from the literal terms of the ordinance, which, if strictly applied, would deny a property owner all the beneficial use of his property and thus amount to a confiscation." A variance is granted to render justice in unique and individual cases of practical difficulty or an unnecessary hardship resulting from a literal application of the zoning ordinance. It is designed to correct maladjustments and inequities in operation of general regulations.

The present Petition for Variance does not qualify. The expansion of the floor area ratio from .10 to .24 substantially increases its size for the sole purpose of RPS' business plan and market conditions. Mr. Leo readily admitted that the only thing special or unique about the site was the

relative size of the land to the building and the building's design. Mr. Leo testified..."The variance that we need here is because of the design we have." May 10, 1999 Transcript, p. 87, lines 5-6.

In the case of Cromwell v. Ward, 102 Md. App. 691 (1955), the Court of Special Appeals addressed, among other things, the requirement of "uniqueness" before a variance can be granted. In Cromwell, the Court of Special Appeals stated that the granting of a variance is at least a two-step process. Judge Castle stated:

> "The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is – in and of itself – unique and unusual in a manner different from the nature of surrounding properties such that uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property." 101 Md. App. 102 at 694.

In North v. St. Mary's County, 99 Md. App. at 512, the Court of Special Appeals discussed the meaning of unique as follows:

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

The variance, which is the subject of this case, is requested so that RPS can meet its business needs and not as a result of any unique or special circumstances or conditions peculiar to the land in question. The same floor area ratio variance would be needed by the Petitioner for any twelve acre parcel. Westmoreland has developed eighteen similar projects around the country ranging in size from 12,000 square feet to 80,000 square feet. The facility which is the subject of the present case will be the largest of such facilities developed and leased by Westmoreland. See May 10, 1999 Transcript, pp.54-55. Mr. Leo admitted that the other facilities, all of which are smaller, have

similar functions, operations and are internally contained. See May 10, 1999 Transcript, pp. 56, 59, 60. Mr. Leo admitted that there were no unusual architectural or engineering aspects of the proposed building requiring the variance for the FAR. See May 10, 1999 Transcript, pp. 81-82. In fact, Mr. Leo admitted that the size of the building is based on business considerations, and has nothing to do with the property itself. Mr. Leo, in addressing this issue, stated as follows:

> "What's driving the size of the building is the growth and development of business within this marketplace for RPS, and what happens is that as part of their current business level and their projected growth level within the industry, they designed a facility that they believe meets their, basically, their ten-year criteria with the ability to expand to meet a fifteen-year criteria. This facility meets those criteria on the front-end.
>
> The other factor that's driving that equation, too, is that there are some locations that have what they call more in-bound activity versus outbound activity.
>
> For example, there may be more packages, for example, going out of Baltimore than coming into Baltimore but the problem is that in order to balance that out, you have to have, for example, maybe additional load and load doors to satisfy that requirement. So those are all the factors that drive the size and the configuration of the building, but this size meets the criteria for the conceivable future for RPS."
> See May 10, 1999 Transcript, p. 85, lines 7-21, p. 86, lines 1-8.

Under further questioning, Mr. Leo admitted that, if they had found a larger site, they would not need the variance and that the only thing special or unique about the site that required the variance was the relative size of the land to the building and the design of the building as proposed. See May 10, 1999 Transcript, p. 86, lines 10-19. Later on, Mr. Leo stated as follows: "Well, the variance that we need here is because of the design we have..." See May 10, 1999 Transcript, p. 87, lines 5, 6.

The Petitioner called as one of its expert witnesses David Martin, a professional land planner. Martin testified that 99% of the time that he has testified as an expert witness, it has been on behalf of the petitioner. Martin's experience with Class One trucking facilities is extremely limited in that, on only one occasion four years ago, did he have any involvement with a Class One

trucking facility. See June 2, 1999 Transcript, pp. 73-74. When Martin was asked what was unique about the subject property (in what was obviously strained testimony), he stated that the property was located on Yellow Brick Road, which is a "spine" road, that the property was abnormally shaped, that the subject property had split zoning, that the subject property has a lower elevation than some surrounding residential property, and that there was a proposed intersecting road adjacent to the subject property called Lennings Lane. None of the "unique" characteristics have anything to do with the request for the variance from the FAR requirement nor were they really unique.

There was no testimony that the shape of the property had anything to do with the variance. In fact, all Mr. Martin could say on this issue was that the property was "a little bit abnormally shaped..." See June 2 Transcript, p. 100, line 20. In the present case, the shape of the property has nothing to do with the proposed variance, and Mr. Martin admitted as much when he testified as follows:

> Q. So you think just the mere shape of this property requires the variance?
>
> A. No. That was one of the things that I testified to.
>
> Q. The shape of the property doesn't require the variance, isn't the thing that requires the variance; correct?
>
> A. I was testifying as to what distinguishes this property from other properties adjoining to it. It wasn't just the shape of the property.
>
> Q. But, Mr. Martin, as an expert testifying on variances, the shape of this property doesn't require a variance as long as the building is smaller; correct?
>
> A. I would concede that that's true...

See June 2, 1999 Transcript, p. 164, lines 4-17.

> Q. Yes, Mr. Martin, you were explaining how the shape of this property is unique. But, in fact, all property is unique in that regard, is it not?
>
> A. I would say that all properties are unique in some way.

Q. And the uniqueness and shape of this property doesn't require, doesn't mandate, that a variance be issued; correct?

A. The mere shape of it? No, not necessarily.

Q. And as evidence of that, you would agree that this facility can be built without a variance as long as the building is smaller?

A. I believe I stated exactly that.

(June 2, 1999 Transcript, p. 165, lines 12-21 and p. 166, lines 1-3).

Mr. Martin also attempted to argue that the property's relationship to certain residential areas was a unique characteristic. Mr. Martin, however, readily admitted that this relationship to residential properties had nothing to do with the variance for the FAR and a downsized building could be built, notwithstanding the location of the residences. Mr. Martin, under cross-examination, stated as follows:

Q. You could build this facility smaller and comply with the FAR, even though the residential areas are in the same place; right?

A. Yes, you could do that.

(June 2, 1999 Transcript p. 166, lines 17-20)

Q. So if, again, the building was smaller even though the residences are in the same location, this variance would not be required?

A. That's correct.

(June 2, 1999 Transcript, p. 167, lines 10-13)

Mr. Martin could not and did not testify to any unique aspects of the property that would require the variance. In fact, Mr. Martin, in the following colloquy, conceded that a trucking facility like the one in question could be built without the need for a variance if the facility was smaller:

Q. Now, the facility, a facility, a trucking facility like this facility, could be built on this site without the need for a variance; it would just have to be a smaller facility; correct?

A. When you say a smaller facility, do you mean the building envelope, the building walled in area?

Q. This facility, in order to meet the floor area ratio, could be constructed; it would just have to be smaller; correct?

A. I think what I stated and will state again is that the building as it related to the FAR calculation could be reduced without the need for a variance and still have the same exact trucking facility operating occurring, the number of step vans shown on the plan, the number of truck door docks that service the long-haul semi tractor trailers that have been discussed in the previous testimony.
(June 2, 1999 Transcript, p. 159, lines 6-21, p. 160, line 1)

Q. So the enclosure can be built smaller so that the variance would not be needed?

A. That is correct.
(June 2, 1999 Transcript, p. 161, lines 18-20)

Interestingly, Mr. Martin also calculated that the building could be approximately 60,000 square feet and not need an FAR variance. This is within the range of sizes of the other eighteen facilities that have been developed by Westmoreland, belying its claim that any unique characteristics of the subject property require a facility in the size proposed.

As can be seen from the testimony of Mr. David Martin, the Petitioner's expert land planner, the subject property has no unique characteristics that relate in any way to the requested variance.

In the present case, the Petitioner has failed to set forth the uniqueness required by Cromwell. In fact, if anything, the Petitioner's witness, David Martin, established that all or many of the properties along Yellow Brick Road are similar to the subject property: all of the properties are on a "spine" road; all of the properties are in close proximity to the planned Lennings Lane; and all of the properties are in somewhat close proximity to surrounding residential properties. The plat accompanying the Petition for Special Exception shows similarly sized and located properties adjacent to and in close proximity to the subject property that share the same or similar characteristics described by David Martin.

The Court of Special Appeals was faced with a variance request for a trucking facility in the case of Umerley v. People's Counsel, 108 Md. App. 497 (1996), wherein it upheld the denial of a variance. In Umerley, as in the present case, the Court was faced with a claim of uniqueness that did not exist. The Court stated "...The uniqueness requirement mandates that the subject property 'have an inherent characteristic not shared by other properties in the area....." None of the claimed unique features for the present property are "unique" within the meaning of the case law as set forth in Cromwell, Umerley, and North.

Not only did the Petitioner fail to show or prove the uniqueness of the property, it also failed to meet the second step in the variance process enunciated in Cromwell as follows:

> If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, i.e., a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance caused by the property's uniqueness exists." (Emphasis in original, footnotes omitted).

In the present case, the only hardship that can possibly be shown by the Petitioner, if the variance is not granted, is that the facility would either not be built or would have to be built smaller than designed. See May 10, 1999 Transcript, p. 88, lines 20-21, p. 89, lines 1-5. This is the same impact a denial of the requested variance would have on any twelve acre parcel, and it is not the type of hardship or practical difficulty required in the ordinance or by Cromwell. The size of the Petitioner's building is a result of the Petitioner's business plan. Its intended use has nothing to do with the property and how it could be used by others. The Court in Cromwell quoted, with approval, Robert M. Anderson, American Law of Zoning, §14.55 (1968) as follows:

> It follows that the unnecessary hardship... must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance....
>
> At §18.30, Anderson states:

> The most important part of the law of variances depends upon a distinction between two kinds of hardship. In one type of case, hardship is developing a given lot...arises from circumstances peculiar to that lot...; and in that case the appropriate remedy is...a variance....In the other type of cases, the hardship...may arise because of conditions which are general in the neighborhood;...it is often that the appropriate remedy is a change in zoning...the courts have usually (but not always) held that variances are appropriate in that situation.

In the present case, the variance requested by the Petitioner is only needed because of how RPS runs its particular business. See May 10, 1999 Transcript, p. 86, lines 10-14. Nothing about the variance is peculiar to the piece of property in question, nor does it arise from any unique aspect of the property. The variance arises from the sole fact that the Petitioner desires, because of business reasons, to put a larger building on the site than is allowed under the current regulations. No facts exist that in any way show that the subject property is peculiar or unique when compared to other properties in the neighborhood such that the FAR requirement and its impact upon the subject property is any different than for neighboring properties. The Petitioner would need the same variance for any similarly zoned twelve acre parcel and, as such, the variances requested must be denied.

THE DENIAL OF THE VARIANCE REQUIRES THAT THE SPECIAL EXCEPTION REQUESTED ALSO BE DENIED

The Petitioner has filed both a Petition for Variance and a Special Exception. Because the Special Exception is a conditional use, "[T]he [rebuttable] presumption that a conditional use is permitted may well fall by the wayside." Chesterhaven, LP v. County Board of Appeals, 103 Md. App. 324 at 336 (1995). See Umerley v. People's Counsel, 108 Md. 497 (1996). A request for a variance denotes a failure to meet the applicable conditions. This in and of itself is a disqualifying factor for the special exception. The failure of the variance makes unnecessary the review of the special exception. The variance is so intertwined with the special exception that the failure of the

variance will cause the special exception to fall of its own weight. For this reason, we focus on the variance.

WHEN DOES THE ZONING COMMISSIONER EVER HAVE POWER TO GRANT A VARIANCE FOR FLOOR AREA RATIO

At the end of the hearing, the Zoning Commissioner posed the question as to when, if ever, a variance can be granted for floor area ratio. There are factual scenarios where properties are so unique that such a variance may be granted. For instance, if the bearing capacity of soil was so poor as to require a building and its footings to be spread out and cover an area beyond that allowed by the applicable FAR to achieve proper bearing capacity, that property may be considered so unique as to justify a variance. While admittedly this situation may not occur frequently, it and other situations could occur where a variance for floor area ratio would need to be considered. As such, the power to grant a variance for FAR exists under appropriate, although limited, circumstances.

PETITIONER IS PRECLUDING FROM RAISING NEW ISSUES

At the end of the hearing (June 2, 1999 Transcript, p. 93-94), the Petitioner raised a new issue as to whether the proposed facility is a trucking facility requiring a special exception. This issue was never raised in either the Petition filed for Special Exception and/or Variance, and the Petitioner should not be allowed to raise this issue for the first time at the end of the hearing after all evidence was presented. At the beginning of the case, the undersigned counsel argued that the petitions filed did not adequately set forth the relief requested or the reasons for such relief. In response, counsel for the Petitioner stated, "...Counsel for the Protestants has had more than adequate time to understand the nature of the variance and special exception request, that we've identified the request before you today." At no time did counsel for the Petitioner ever raise a

question or argue that the facility was not a trucking facility. In fact, all the evidence and testimony presented by the Petitioner admitted this very fact. This belated attempt to "sandbag" the Protestants should not be allowed, and the Commissioner should find that the issue was waived and that the facility in question is a Class One trucking facility.

CONCLUSION

In conclusion, the Petitioner has utterly failed to meet the basic requirements for a variance. It has failed to meet its heavy burden to show any unique characteristics about the property that would allow a variance to be granted and further has failed to show any practical difficulty or unreasonable hardship as a result of any such unique characteristic.

Douglas W. Biser
Mudd, Harrison & Burch
300 Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204
(410) 828-1335
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Memorandum was mailed, postage prepaid, this 11th day of June, 1999, to G. Scott Barhight, Esquire, Court Towers, 210 West Pennsylvania Avenue, Suite 400, Towson, Maryland 21204.

Douglas W. Biser

MUDD, HARRISON & BURCH
ATTORNEYS AT LAW
105 WEST CHESAPEAKE AVENUE
300 JEFFERSON BUILDING
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(410) 828-1335
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JOHN E. MUDD
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DOUGLAS W. BISER
H. PATRICK STRINGER, JR.
ANDREW JANQUITTO

T. ROGERS HARRISON
(1940-1995)

JAMES R. ANDERSEN
MATTHEW P. LALUMIA
NANCY C. HOPKINS

OF COUNSEL
WILLIAM T. RUSSELL, JR

June 11, 1999

RECEIVED
JUN 1 1

Mr. Lawrence Schmidt
Zoning Commissioner
Office of Planning and Zoning
401 Bosley Avenue
Towson, Maryland 21204

Re: Case No. 99390-XA

Dear Mr. Schmidt:

Enclosed please find Protestants' Memorandum in Opposition to the Petition for Special Exception and Petition for Zoning Variance in the above matter.

Very truly yours,

Douglas W. Biser

DWB:sw
Enclosure

Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

May 12, 1999

G. Scott Barhight, Esquire
Julie DiGrigoli, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, 4th Floor
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL EXCEPTION & VARIANCE
NE/Corner Yellow Brick Road and Lennings Lane (Extended)
(9114 – 9200 Yellow Brick Road)
15th Election District – 5th Councilmanic District
Baltimore Gas & Electric Co., Owners; The Westmoreland Co., Inc., Contract Lessee
Case No. 99-390-XA

Dear Mr. Barhight & Ms. DiGrigoli:

This letter is to confirm that the above-captioned matter has been continued to Wednesday, June 2, 1999 with a second hearing date of Thursday, June 3, 1999. The hearing will commence on both days at 9:00 AM in Room 106 of the County Office Building. By copy of this letter, all parties present at the original hearing held on May 10, 1999 will be notified of the continued hearing dates and times. It will not be necessary for you to re-post the property.

Should you have any questions concerning the rescheduled hearing dates, please do not hesitate to contact my office.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs
cc: Attached List
People's Counsel; Case File

Printed with Soybean Ink
on Recycled Paper

Addressees:

Mr. Greg C. Martin, V.P., BG&E
39 W. Lexington Street, Baltimore, Md. 21201

Mr. Jada Leo, President, The Westmoreland Co., Inc.
2822 Lafayette Drive, Huntsville, Ala. 35801

Mr. David Martin, G.W.Stephens, Jr. & Assoc., Inc.
658 Kenilworth Drive, Towson, Md. 21204

Mr. Ken Schmid, 8558 Veterans Highway, Suite 19A, Millersville, Md. 21108
Mr. Dick Ransom, BG&E Legal Dept., 59 W. Lexington Street, Baltimore, Md. 21201
Messrs. Stephen Ritter and Tuck Tyler, BGE, 7152 Windsor Boulevard, Baltimore, Md. 21244

Mr. Ed Chase, Rossville Comm. Assoc., 9150 Lennings Lane, Rossville, Md. 21237

Douglas Biser, Esquire, 105 W. Chesapeake Avenue, Suite 300, Towson, Md. 21204
Mr. C. Richard Moore, Wells & Assoc., 420 Virginia Avenue, Towson, Md. 21286
Mr. Tim Madden, Morris & Ritchie, 110 West Road, Towson, Md. 21204

O2 Limited, 9104/9108 Yellow Brick Road, Baltimore, Md. 21221
Faze Mason Filling, 9101-C, Yellow Brick Road, Baltimore, Md. 21221
John H. Harland Co., 9006 Yellow Brick Road, Baltimore, Md. 21221
Mr. David H. diVilliers, 9104/9108 Yellow Brick Road, Baltimore, Md. 21221

Ms. Kathleen A. Lewis, Baltimore County Department of Economic Development

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 9114 through 9200 Yellow Brick Road

which is presently zoned ML-IM

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

410.3.B.2 of the BCZR to allow a floor area ratio (FAR) of .24 in lieu of the permitted .1

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)

to be presented at hearing

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded 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:

The Westmoreland Company, Inc.
Name - Type or Print

Signature By: Jada Leo, President

200 Randolph Avenue
Address — Telephone No.

Huntsville, Alabama 35801
City — State — Zip Code

Legal Owner(s):

Baltimore Gas & Electric Company
Name - Type or Print

X
Signature

GREG C. MARTIN, VICE PRESIDENT
Name - Type or Print

Signature

39 W. Lexington Street
Address — Telephone No.

Baltimore, MD 21201
City — State — Zip Code

Attorney For Petitioner:

G. Scott Barhight
Name - Type or Print

Signature

Whiteford, Taylor & Preston
Company

210 W. Pennsylvania Ave (410) 832-2050
Address — Telephone No.

Towson, MD 21204
City — State — Zip Code

Representative to be Contacted:

G. Scott Barhight (410) 832-2050
Name

210 W. Pennsylvania Ave
Address — Telephone No.

Towson, MD 21204
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____
Reviewed By _____ Date _____

Case No. 99-390-XA

REV 9/15/98

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 9114 through 9200 Yellow Brick Road

which is presently zoned ML-IM

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

a Class I trucking facility

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Exception, advertising, posting, etc. and further agree to and are to be bounded 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:

The Westmoreland Company, Inc.
Name - Type or Print

Signature By: Jada Leo, President

200 Randolph Avenue
Address — Telephone No.

Huntsville, Alabama 35801
City — State — Zip Code

Legal Owner(s):

Baltimore Gas & Electric Company
Name - Type or Print

X
Signature

GREG E. MARTIN, VICE PRESIDENT
Name - Type or Print

Signature

39 W. Lexington Street
Address — Telephone No.

Baltimore, MD 21201
City — State — Zip Code

Attorney For Petitioner:

G. Scott Barhight
Name - Type or Print

Signature

Whiteford, Taylor & Preston
Company

210 W. Pennsylvania Ave (410) 832-2050
Address — Telephone No.

Towson, MD 21204
City — State — Zip Code

Representative to be Contacted:

G. Scott Barhight (410) 832-2050
Name

210 W. Pennsylvania Ave
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Towson, MD 21204
City — State — Zip Code

ORDER RECEIVED FOR FILING
Date 4/23/99
By

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ESTIMATED LENGTH OF HEARING 3HRS

UNAVAILABLE FOR HEARING

Reviewed By JL Date 4/2/99

SEE DON RASCOE

Case No. 99-390 XA

REV 09/15/98

390

FROM THE OFFICE OF
GEORGE WILLIAM STEPHENS, JR., & ASSOCIATES, INC.
ENGINEERS
658 KENILWORTH DRIVE, SUITE 100, TOWSON, MARYLAND 21204

STATE OF MARYLAND
DAVID LLOYD MARTIN
LANDSCAPE ARCHITECT

Zoning Description
April 1, 1999

Description to accompany Special Exception and Variance Requests
9114 Thru 9200 Yellow Brick Road
North East corner of Yellow Brick Road and Lennings Lane Extension
Baltimore County, Maryland
Election District 15, Councilmanic District 5
Tax Map 90 – Parcel 906

Beginning at a point located at the centerline intersections of Yellow Brick Road, 70 feet wide, and Lennings Lane Extension, 60 feet wide at the said intersection, thence N 04 degrees 24 minutes 08 seconds E, 65.52 feet to a Point of Beginning at the South West corner of the property, thence the following courses:

N 29 degrees 50 minutes 13 seconds W, 19.27 feet, thence by a curve to the right having a radius 350.00 feet for a distance of 261.90 feet, said curve being subtended by a chord bearing N 08 degrees 55 minutes 17 seconds E, 250.54 feet, thence N 24 degrees 52 minutes 03 seconds E, 148.62 feet, thence N 29 degrees 46 minutes 15 seconds E, 141.86 feet, thence N 45 degrees 15 minutes 39 seconds E, 456.01 feet, thence S 48 degrees 11 minutes 45 seconds E, 483.11 feet, thence S 41 degrees 48 minutes 15 seconds W, 163.59 feet, thence S 12 degrees 54 minutes 52 seconds W, 90.27 feet, thence by a curve to the right having a radius 635.00 feet for a distance of 388.57 feet, said curve being subtended by a chord bearing N 61 degrees 05 minutes 07 seconds E, 382.54 feet, thence N 87 degrees 38 minutes 40 seconds E, 113.71 feet, thence by a curve to the left having a radius 705.00 feet for a distance of 280.53 feet, said curve being subtended by a chord bearing N 76 degrees 46 minutes 37 seconds E, 271.50 feet, thence N 72 degrees 29 minutes 45 seconds W, 40.66 feet back to the point of beginning.

Containing 11.3741 acres (495,455.8) square feet of land more or less.

NOTE: the above description is for zoning purposes only and is not intended to be used for conveyances or agreements.

410-825-8120 • FAX 410-583-0288

99-390-XA

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: 99-390-XA

Petitioner: BOE

Address or Location: 9114-9200 YELLOW BRICK ROAD

PLEASE FORWARD ADVERTISING BILL TO:

Name: WHITEFORD, TAYLOR, & PRESTON

Address: 210 W. PENNSYLVANIA AVENUE
TOWSON, MD 21204

Telephone Number: 410-832-2050

Revised 2/20/98 - SCJ

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 06982

DATE 7-23-99 ACCOUNT R-001-6150

AMOUNT $ ~~250.00~~ 285.00

RECEIVED FROM: Auld, Harrison, and Beck

FOR: Special Exception Appeal
Sign Fee
99-390-XA

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

PROCESS	ACTUAL	TIME
7/26/1999	7/23/1999	15:04:22

REG 4501 CASHIER JRIG JNR DRAWER 1
Dept 5 528 ZONING VERIFICATION
Rcpt # 109953 01LN
T.R.N. 069823
Rcpt Tot 285.00
285.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

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

April 13, 1999

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: 99-390-XA
9114-9200 Yellow Brick Road
NEC of intersection Yellow Brick Road and Lennings Lane
15th Election District – 6th Councilmanic District
Legal Owner: Baltimore Gas & Electric Company
Contract Purchaser: The Westmoreland Company, Inc.

Special Exception for a Class I trucking facility. Variance to allow a floor area ratio (FAR) of .24 in lieu of the permitted .1.

HEARING: Monday, May 10, 1999 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon
Director

c: G. Scott Barhight, Esquire
Baltimore Gas & Electric Company
The Westmoreland Company, Inc.

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY APRIL 25, 1999.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed with Soybean Ink on Recycled Paper

Alliance, Inc.

Rehabilitation . . . Achievement . . . Independence

MAIN OFFICE:

7701 Wise Avenue, Suite 206
Baltimore, MD 21222-3228

(410) 282-5900
TDD: (410) 282-0613
FAX: (410) 282-3083
email: main@allianceinc.org

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EX-OFFICIO MEMBER

Kali Mallik
President

June 1, 1999

Commissioner Lawrence E. Schmidt
Zoning Commissioner Baltimore County
400 Washington Avenue
Towson, MD 21204

RE: Rossville Industrial Park Development

Dear Commissioner Schmidt:

It is with a great deal of pleasure and excitement to know that the aforementioned industrial park is about to go through a development phase to house a small package distribution center. I had the privilege to meet with BGE's (current owner of the property) representative Mr. Tuck Tyler, Jr. and Kathleen Lewis of Baltimore County Economic Development Department to review the plan of the facility and the program proposed by the West Moreland Corporation. On behalf of the Alliance, I support the program for the following reasons:

1. Alliance's one of six facilities is located nearby (9201 Philadelphia Road, intersection of Lennings Lane & Philadelphia Road) where over 100 people with disabilities are trained for community integration including employment. Many of these individuals will have the potential to be employed by such a facility.

2. Alliance originally purchased the land from BGE in 1991 and built 12,000 sq.ft. rehabilitation facility. BGE is a strong supporter of the Alliance both financially as well as programmatically since our inception in 1983. As such we trust their judgement and support for the community.

3. West Moreland Corporation is very sensitive to our needs as such they propose to not only have the trucks come during the off hours but also have them park under the roof. This positively enhances the aesthetic value to the neighbors.

ALLIANCE, INC. Fax:410-2823083 Jun 2 1999 12:42 P.02

In view of this, I strongly support the project which will hire over 100 employees and as such enhance the economic constraints to the eastern part of Baltimore County. If you need any further information, please contact me (410) 282-5900 Ext. 3004.

Sincerely,

Kali Mallik

Kali Mallik,
President

KM/tmh

cc: L.F. Tuck Tyler, Jr., CCIM - BGE
Steven C. Roth - BGE
K. Donald Vrooman - BGE
Kathleen A. Lewis - Baltimore County
Vincent J. Gardina
Robert L. Hannon

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

30 COLUMBIA CORPORATE CENTER
10440 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044
TELEPHONE 410 884-0700
FAX 410 884-0719

JULIE A. DIGRIGOLI
DIRECT NUMBER
410 832-2084
jdigrigoli@wtplaw.com

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

May 26, 1999

Carol Knott
Suite 203
110 West Road
Towson, MD 21204

Re: 9114-9200 Yellow Brick Road

Dear Ms. Knott:

Enclosed please find a subpoena signed and issued by the Zoning Commissioner for Baltimore County summonsing you and commanding you to personally appear in Room 106 of the County Office Building on Wednesday, June 2, 1999 at 9:00 a.m. and continuing from day to day until the completion of the proceedings to testify.

Very truly yours,

Julie A. DiGrigoli

JAD:lgs

Enclosure

cc: Douglas Biser, Esquire
The Hon. Lawrence E. Schmidt, Zoning Commissioner
for Baltimore County

RECEIVED
JUN - 1
ZONING COMMISSIONER

IN RE: PETITION FOR SPECIAL EXCEPTION AND VARIANCE 9114-9200 Yellow Brick Road NEC of Intersection Yellow Brick Road and Lennings Lane 15th Election District, 6th Councilmanic District Legal Owner: Baltimore Gas & Electric Company Contact Purchaser: The Westmoreland Co., Inc.	* * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No.: 99-390-XA

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

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: James F. Knott
110 West Road
Suite 203
Towson, MD 21204

YOU ARE HEREBY SUMMONSED AND COMMANDED TO: (X) Personally appear; ( ) Produce documents and/or objects only; ( ) Personally appear and produce documents or objects;

in Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, MD 21204 on Wednesday, the 2nd day of June, 1999, at 9:00 a.m., and continuing from day to day until completed, regarding the above-captioned case, for the purpose of testifying at the request of Petitioner, The Westmoreland Co., Inc.

Mr. Sheriff/Private Process Server:

Please process in accordance with Zoning Commissioner's Rule IV(c).

Timothy Kotroco

Lawrence E. Schmidt
Zoning Commissioner for
Baltimore County

Issued: 5/25/99

168332

IN RE: PETITION FOR SPECIAL EXCEPTION AND VARIANCE 9114-9200 Yellow Brick Road NEC of Intersection Yellow Brick Road and Lennings Lane 15th Election District, 6th Councilmanic District Legal Owner: Baltimore Gas & Electric Company Contact Purchaser: The Westmoreland Co., Inc.	* * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No.: 99-390-XA

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

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: Carol Knott
110 West Road
Suite 203
Towson, MD 21204

YOU ARE HEREBY SUMMONSED AND COMMANDED TO: (X) Personally appear; ( ) Produce documents and/or objects only; ( ) Personally appear and produce documents or objects;

in Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, MD 21204 on Wednesday, the 2nd day of June, 1999, at 9:00 a.m., and continuing from day to day until completed, regarding the above-captioned case, for the purpose of testifying at the request of Petitioner, The Westmoreland Co., Inc.

Mr. Sheriff/Private Process Server:

Please process in accordance with Zoning Commissioner's Rule IV(c).

Timothy Kotroco
Zoning Commissioner/Deputy Zoning Commissioner for Baltimore County

Issued: _____

168332

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
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410 832-2000
FAX 410 832-2015
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FAX 410 752-7092

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FAX 410 884-0719

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WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

G. SCOTT BARHIGHT
DIRECT NUMBER
410 832-2050
jdigrigoli@wtplaw.com

August 20, 1999

Mr. Charles L. Marks
Chairman
Baltimore County Board of Appeals
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Petition for Special Exception
Case No. 99-390-XA
The Westmoreland Co., Inc.

Dear Mr. Marks:

Please enter the appearance of G. Scott Barhight and Julie A. DiGrigoli, Whiteford, Taylor & Preston, L.L.P., on behalf of The Westmoreland Co., Inc., in the above-referenced matter. Our representation of The Westmoreland Co., Inc. began before the Zoning Commissioner of Baltimore County in the instant matter and will continue through the Board of Appeals hearing.

Sincerely,

G. Scott Barhight

RECEIVED
COUNTY BOARD OF APPEALS
99 AUG 20 PM 3: 15

cc: Douglas Biser, Esquire

JAD:lgs

Case No. 99-390-XA SE -For a Class I Trucking Facility; and
VAR -to permit floor area ratio (FAR) of .24 ilo maximum allowed .10.

6/23/99 -Z.C.'s Order in which Petition for Special Exception was GRANTED; Petition for Variance DENIED.

10/12/99- Notice of Assignment for hearing scheduled for Wednesday, February 16, 2000 at 10:00 a.m. (Day #1) and Thursday, February 17, 2000 (Day #2) sent to following:

Richard Burch, Esquire
Douglas Biser, Esquire
James F. Knott Development Corporation, et al
David Devilliers /Oz Ltd.
G. Scott Barhight, Esquire
Greg Martin, VP /BGE
Jada Leo, President
The Westmoreland Co., Inc.
David Martin /George W. Stephens, Jr.
Tim Madden /Morris & Ritchie
Wes Guckert /The Traffic Group
Ed Chase /Rossville Comm. Assn.
Case Mason Filling
John H. Harland Co.
R. Peter /BHS Corrugated
Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

2/09/00 -Letter from G. Scott Barhight, Esquire, by FAX, requesting 60-day postponemen of 2/16 and 2/17/00 hearing.

2/10/00 -Supplement to above letter filed by Mr. Barhight setting forth reason for postponement request (contract issues). T/C to Messrs Burch /Biser regarding this request.

2/11/00 -T/C from Doug Biser, Esquire - No objection to requested postponement. T/C to Mr. Barhight - PP granted; however, earliest dates available would be 5/24 and 5/25/00. Notice of PP and Reassignment sent to parties for Wednesday, May 24, 2000 at 10:00 a.m. /Day #1 and Thursday, May 25, 2000 at 10:00 a.m. /Day #2. FYI copy to counsel this afternoon by FAX.

5/23/00 -T/C from J. DiGrigoli, Esquire -- letter to be faxed withdrawing Petitions in this matter. Letter followed withdrawing petitions. T/C to Ms. DiGrigoli, acknowledging receipt of withdrawal, and to Mr. Burch confirming his receipt of same. T/Cs to panel members and court reporter. Hearing (2 days) pulled. Notice of Dismissal /Withdrawal of Petition to be issued by Board.

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 11, 2000

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 99-390-XA

IN THE MATTER OF: BALTIMORE GAS & ELECTRIC CO.
-Legal Owner; THE WESTMORELAND CO, INC. -C.P.
9114-9200 Yellow Brick Road
15th Election District; 5th Councilmanic

(Z.C. GRANTED special exception; DENIED variance relief.)

which was scheduled for hearing on 2/16 and 2/17/00 has been **POSTPONED** at the request of Counsel for Petitioner, without objection by opposing counsel, and has been

REASSIGNED FOR: WEDNESDAY, MAY 24, 2000 at 10:00 a.m. /Day #1
and THURSDAY, MAY 25, 2000 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).
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: Richard Burch, Esquire
Douglas Biser, Esquire
Appellants /Protestants: James F. Knott Development Corporation, et al
David Devilliers /Oz Ltd.
Counsel for Petitioners : G. Scott Barhight, Esquire
Petitioners /Owners : Greg Martin, VP /BGE
Jada Leo, President
The Westmoreland Co., Inc.
David Martin /George W. Stephens, Jr.
Tim Madden /Morris & Ritchie
Wes Guckert /The Traffic Group

Ed Chase /Rossville Comm. Assn.
Case Mason Filling
John H. Harland Co.
R. Peter /BHS Corrugated
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Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co Atty

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TRANSMISSION VERIFICATION REPORT

TIME: 02/11/2000 17:36
NAME: BOARD OF APPEALS
FAX : 4108873182
TEL : 4108873180

DATE,TIME	02/11 17:35
FAX NO./NAME	94108281042
DURATION	00:00:42
PAGE(S)	01
RESULT	OK
MODE	STANDARD ECM

Copy of PP notes
BGE/Westmoreland
to R. Burch/D. Bisset
2/11/00

TRANSMISSION VERIFICATION REPORT

TIME: 02/11/2000 17:40
NAME: BOARD OF APPEALS
FAX : 4108873182
TEL : 4108873180

DATE,TIME	02/11 17:39
FAX NO./NAME	34108322015
DURATION	00:00:42
PAGE(S)	01
RESULT	OK
MODE	STANDARD

Copy of PP notice
B&E/Statement
to Bachelor 2/11/00

County Board of Appeals of Baltimore County

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TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

October 12, 1999

NOTICE OF ASSIGNMENT

CASE #: 99-390-XA

IN THE MATTER OF: BALTIMORE GAS & ELECTRIC CO. - Legal Owner; THE WESTMORELAND CO, INC. -C.P.
9114-9200 Yellow Brick Road
15th Election District; 5th Councilmanic

(2.d. GRANTED special exception; DENIED variance relief.)

pp'd to 5/24 & 5/25

ASSIGNED FOR: WEDNESDAY, FEBRUARY 16, 2000 at 10:00 a.m. /Day #1
and THURSDAY, FEBRUARY 17, 2000 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: Richard Burch, Esquire
Douglas Biser, Esquire
Appellants /Protestants: James F. Knott Development Corporation, et al
David Devilliers /Oz Ltd.

Counsel for Petitioners : G. Scott Barhight, Esquire
Petitioners /Owners : Greg Martin, VP /BGE
Jada Leo, President
The Westmoreland Co., Inc.

David Martin /George W. Stephens, Jr.
Tim Madden /Morris & Ritchie
Wes Guckert /The Traffic Group

Ed Chase /Rossville Comm. Assn.
Case Mason Filling
John H. Harland Co.

Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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FAX 202 331-0573

111 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5747
FAX 703 836-0265

G. SCOTT BARHIGHT
DIRECT NUMBER
410 832-2050
gbarhight@wtplaw.com

February 10, 2000

Via Facsimile
Chairman Charles Marks
c/o Ms. Kathleen Bianco
County Board of Appeals of Baltimore County
Old Courthouse
400 Washington Avenue
Towson, MD 21204

Re: Appeal from Case No. 99-390-XA
The Westmoreland Company

Dear Mr. Marks and Ms. Bianco,

Please accept this letter as a supplement to The Westmoreland Company's ("Westmoreland") February 9, 2000 request for a sixty (60) day postponement in this matter. Westmoreland requests this postponement on the grounds that contract issues have arisen between Westmoreland and the property's legal owner. At this time, it is unclear whether the Hearing in this matter may be moot. In the interest of judicial economy, Westmoreland requests that a postponement be granted.

Thank you in advance for your kind attention to this matter. Please contact me if you have any questions or comments regarding my request.

Very truly yours,

G. Scott Barhight

WHITEFORD, TAYLOR & PRESTON
L.L.P.

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 547-8700
FAX 410 752-7092

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000

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FAX 202 331-0375

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ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

FACSIMILE TRANSMITTAL

FAX NUMBERS

(410) 832-2015
(410) 832-2199

TOTAL PAGES (including cover sheet): 3	Date: 2/ /00
FIRM NAME: Board of Appeals	File No.: 7505/1
SENT TO: Chairman Charles Marks c/o Kathleen Parsons	FAX # 410-887-3182
FROM: G. Scott Barhight	
RE: West Mallard	
SPECIAL INSTRUCTIONS:	
HARD COPY WILL FOLLOW: YES ____ NO X	

PRIVILEGED AND CONFIDENTIAL: All information transmitted hereby is intended only for the use of the addressee(s) named above. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient(s), please note that any distribution or copying of this communication is strictly prohibited. Anyone who receives this communication in error should notify us immediately by telephone and return the original message to us at the above address via the U.S. mail.

WHITEFORD, TAYLOR & PRESTON
L.L.P.

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FAX 410 832-2015
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FAX 202 331-0573

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ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

G. SCOTT BARHIGHT
DIRECT NUMBER
410 832-2050
gbarhight@wtplaw.com

February 9, 2000

Via Facsimile
Chairman Charles Marks
c/o Ms. Kathleen Bianco
County Board of Appeals of Baltimore County
Old Courthouse
400 Washington Avenue
Towson, MD 21204

Re: Appeal from Case No. 99-390-XA
The Westmoreland Company

Dear Mr. Marks and Ms. Bianco,

The Hearing in the above-referenced matter has been scheduled for Wednesday, February 16 , 2000 and Thursday, February 17, 2000. Appellee, The Westmoreland Company, respectfully requests a sixty (60) day postponement of the Hearing in this matter.

Thank you in advance for your kind attention to this matter. Please contact me if you have any questions or comments regarding my request.

Very truly yours,

G. Scott Barhight

RECEIVED
COUNTY BOARD OF APPEALS
00 FEB -9 AM 11:55

cc: Richard Burch, Esquire

Mr. Jada Leo

wtp

TRANSMISSION VERIFICATION REPORT

TIME: 02/09/2000 12:54
NAME: BOARD OF APPEALS
FAX : 4108873182
TEL : 4108873180

DATE,TIME	02/09 12:53
FAX NO./NAME	94108215537
DURATION	00:00:46
PAGE(S)	01
RESULT	OK
MODE	STANDARD ECM

5/10/99

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Jada Lee	2822 Lafayette Dr. HSV, Al 35801
Julie DiGrigoli	Court Towers W. Penn Ave, Towson
DAVID MARTIN	658 KENILWORTH DR. TOWSON, MD 21204
Ken Schmid	8258 Veterans Hwy Suite 19A Millersville, Md 21108
Dick Ransom	BGE Legal Dept 39 W Lexington St Baltimore, Md 21201
Stephen C Rohl ROTH	BGE-DIR. RE. - 7152 Windsor Blvd Balt. MD 21244
Tuck Tyler	BGE Property Asset 7152 WINDSOR BLVD BALTO MD 21244
Kathleen A. Lewis	Balto. Co. Gov. 400 Washington Ave. Towson, MD 21204

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MUDD, HARRISON & BURCH
ATTORNEYS AT LAW
105 WEST CHESAPEAKE AVENUE
300 JEFFERSON BUILDING
TOWSON, MARYLAND 21204
(410) 828-1335
FAX (410) 828-1042

JOHN E. MUDD
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.
ANDREW JANQUITTO

T. ROGERS HARRISON
(1949-1995)

JAMES R. ANDERSEN
MATTHEW P. LALUMIA
ANNA L. DAVIS
MICHELLE J. MARZULLO
DENISE E. MOBLEY

OF COUNSEL
WILLIAM T. RUSSELL, JR.

May 24, 2000

HAND DELIVERY

Chairman Lawrence M. Stahl
Ms. Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: **Property located at 9114-9200 Yellow Brick Road**
Zoning Case No. 99-390-XA

Dear Mr. Stahl and Ms. Bianco:

This correspondence replies to Mr. Barhight's of May 23, 2000 and follows my telephone conversation of late yesterday afternoon with Ms. Bianco. As I advised Ms. Bianco, Mr. Barhight's correspondence misspeaks with respect to the subject matter of the appeal in the captioned matter, which was scheduled for today.

As the Board's file reflects, my clients took an appeal from the June 23, 1999 Order of the Zoning Commissioner for Baltimore County, but only as to the granting of the Petition for Special Exception. No appeal was noted by any party from the denial of the Petition for Variance. Accordingly, the Petition for Variance was not a "subject of the instant appeal" as suggested by Mr. Barhight. The Order denying the variance became final once the time for a seasonable appeal expired (i.e., July 23, 1999).

As Ms. Bianco and I discussed, the Order from the Board of Appeals should simply reflect that the Petitioner withdrew its Petition for Special Exception and thereby rendered my clients' appeal "moot." In order to be most precise and accurate, I respectfully submit that the Board's Order should also state something to the effect of: "No appeal having been taken from the June 23, 1999 Order of the Zoning Commissioner for Baltimore County, which denied Petitioner's Petition for Variance, said Order is and remains final as to the Petition for Variance."

00 MAY 24 PM 3:51
RECEIVED
COUNTY BOARD OF APPEALS

I hope that you understand and appreciate that I am simply attempting to ensure that the record in this case does not inadvertently and/or inaccurately suggest that the Petitioner voluntarily withdrew its Petition for Variance before it was concluded by a final Order.

Thank you for your attention to this matter.

Very truly yours,

Richard C. Burch

RCB/lfc

cc: G. Scott Barhight, Esquire (By facsimile 410-832-2015)
Department of Permits & Development Management, Zoning Review
Mr. James F. Knott (w/encl.)

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015
www.wtplaw.com

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

10 COLUMBIA CORPORATE CENTER
10440 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044
TELEPHONE 410 884-0700
FAX 410 884-0719

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2938
TELEPHONE 703 836-5742
FAX 703 836-8265

G. SCOTT BARHIGHT
DIRECT NUMBER
410 832-2050
gbarhight@wtplaw.com

May 25, 2000

Via Facsimile
Chairman Lawrence M. Stahl
c/o Ms. Kathleen Bianco
County Board of Appeals of Baltimore County
Old Courthouse
400 Washington Avenue
Towson, MD 21204

Re: Property located at 9114-9200 Yellow Brick Road
Zoning Case No. 99-390-XA

Dear Mr. Stahl and Ms. Bianco,

This letter is in response to Richard Burch's letter dated May 24, 2000. Please be advised that the Petitioner, The Westmoreland Company, Inc. ("Westmoreland"), has no objection to Mr. Burch's request that the Order of Dismissal in this matter state that Westmoreland's Petition for Variance was denied and that no appeal was taken from such denial.

Please contact me or Julie DiGrigoli if you have any questions or comments regarding my request.

Very truly yours,

G. Scott Barhight

RE: PETITION FOR SPECIAL EXCEPTION PETITION FOR VARIANCE 9114 - 9200 Yellow Brick Road, NEC intersection Yellow Brick Rd and Lennings Ln, 15th Election District, 6th Councilmanic	* * *	BEFORE THE ZONING COMMISSIONER FOR
Legal Owners: BG&E Contract Purchaser: The Westmoreland Co., Inc. Petitioner(s)	* *	BALTIMORE COUNTY Case Number: 99-390-XA

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

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 15th day of ~~March,~~ April 1999, a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman
PETER MAX ZIMMERMAN

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

April 13, 1999

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: 99-390-XA
9114-9200 Yellow Brick Road
NEC of intersection Yellow Brick Road and Lennings Lane
15th Election District – 6th Councilmanic District
Legal Owner: Baltimore Gas & Electric Company
Contract Purchaser: The Westmoreland Company, Inc.

Special Exception for a Class I trucking facility. Variance to allow a floor area ratio (FAR) of .24 in lieu of the permitted .1.

HEARING: Monday, May 10, 1999 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon
Director

c: G. Scott Barhight, Esquire
Baltimore Gas & Electric Company
The Westmoreland Company, Inc.

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY APRIL 25, 1999.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed with Soybean Ink on Recycled Paper

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: #99-390-XA
9114-9200 Yellow Brick Road
NEC of intersection Yellow Brick Road and Lennings Lane
15th Election District
6th Councilmanic District
Legal Owner: Baltimore Gas & Electric Company
Contract Purchaser: The Westmoreland Company, Inc.

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Hearing: Monday, May 10, 1999 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

4/418 April 22 C306858

CERTIFICATE OF PUBLICATION

TOWSON, MD., 4/22/, 1999

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 4/22/, 1999.

THE JEFFERSONIAN,

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: CASE # 99-390-XA
PETITIONER/DEVELOPER:
(Westmoreland Co. Inc.)
DATE OF Hearing
(May 10, 1999)

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Ave.
Towson, Maryland 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 9114-9200 Yellow Brick Road Baltimore, Maryland 21237_____

The sign(s) were posted on_____ 4-23-99 _____
(Month, Day, Year)

Sincerely,

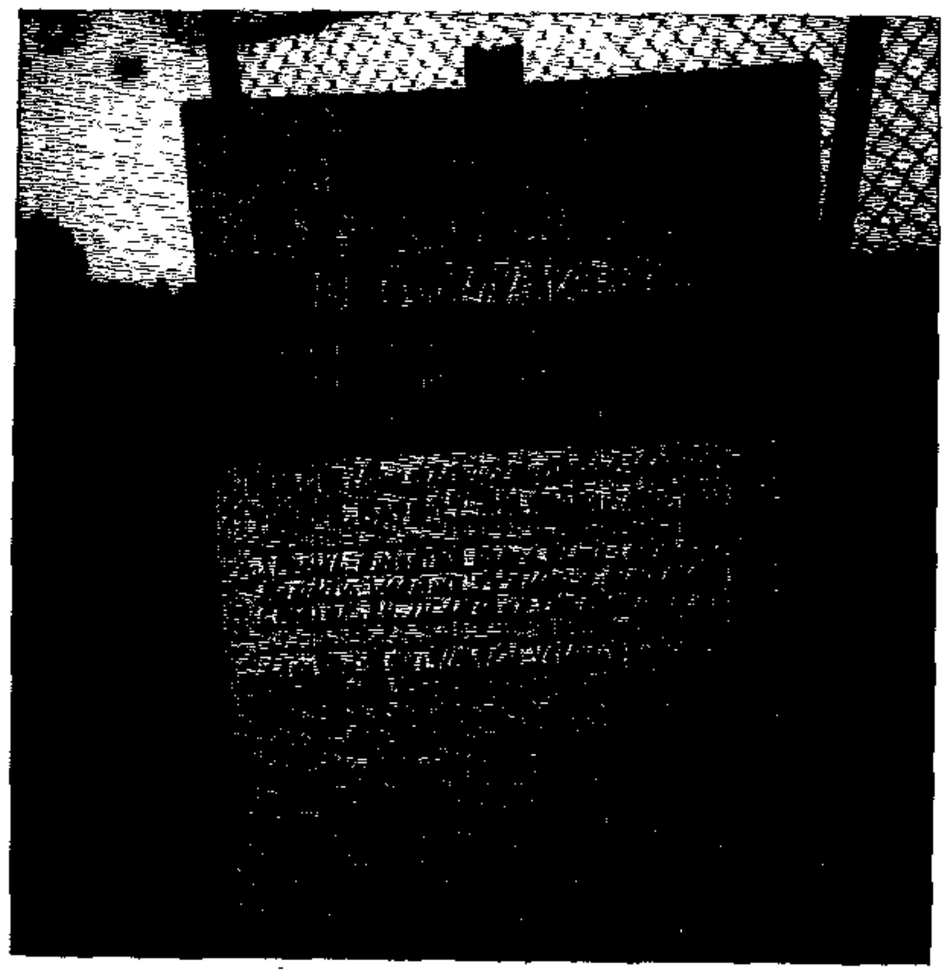
4/23/99
(Signature of Sign Poster & Date)

_____Thomas P. Ogle, Sr._____

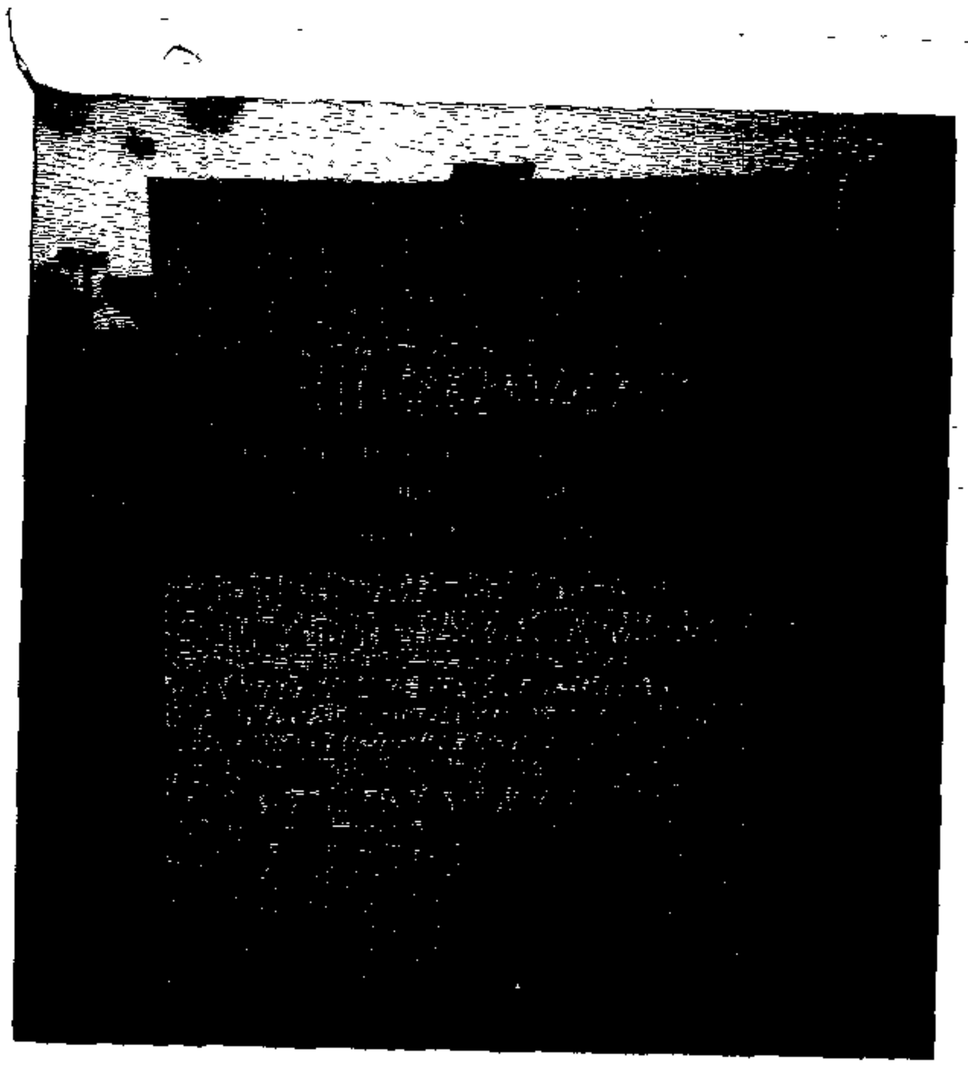
_____325 Nicholson Road_____

___Baltimore, Maryland 21221___

_____(410)-687-8405_____
(Telephone Number)



YELLOW BRICK RD.



RT#7 & LENNINGS LANE

TO: PATUXENT PUBLISHING COMPANY
April 22, 1999 Issue – Jeffersonian

Please forward billing to:
Whiteford, Taylor & Preston 410-832-2050
210 W. Pennsylvania 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: 99-390-XA
9114-9200 Yellow Brick Road
NEC of intersection Yellow Brick Road and Lennings Lane
15th Election District – 6th Councilmanic District
Legal Owner: Baltimore Gas & Electric Company
Contract Purchaser: The Westmoreland Company, Inc.

Special Exception for a Class I trucking facility. Variance to allow a floor area ratio (FAR) of .24 in lieu of the permitted .1.

HEARING: Monday, May 10, 1999 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Lawrence E. Schmidt

54

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

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.: 99-390-XA

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD

PLACE: _____

DATE AND TIME: _____

REQUEST: A SPECIAL EXCEPTION TO PERMIT A CLASS I TRUCKING FACILITY AND VARIANCES TO ALLOW A FLOOR AREA RATIO OF .24 IN LIEU OF THE MAXIMUM OF .1

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

9/96
post.4.doc

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

May 6, 1999

G. Scott Barhight, Esq.
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

RE: Case No.: 99-390-XA
Petitioner: BGE/Westmoreland Co.
Location: 9114 -9200 Yellow Brick Rd.

Dear Mr. Barhight:

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM), on April 2, 1999.

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

Come visit the County's Website at www.co.ba.md.us

Printed with Soybean Ink
on Recycled Paper

Baltimore County
Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4500

April 19, 1999

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

RE: Property Owner: BALTIMORE GAS & ELECTRIC COMPANY

Location: DISTRIBUTION MEETING OF APRIL 12, 1999

Item No.: 390 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.

1. Fire hydrants for the referenced property are required and shall be located at proper intervals, along an approved road in accordance with Baltimore County Standard Design Manual Sec. 2.4.4 Fire Hydrants, as published by the Department of Public Works.

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

Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits and
Development Management

DATE: April 19, 1999

FROM: Arnold F. 'Pat' Keller, III, Director
Office of Planning

SUBJECT: 9114-9200 Yellow Brick Road

INFORMATION:

Item Number: 390

Petitioner: The Westmoreland Company, Inc

Zoning: ML-IM

Requested Action: Special Exception and Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning supports the applicant's request for a Class I trucking facility as the proposed use will provide a significant number of jobs paying a family-supporting wage. In addition, the location of the property is suitable for use as a trucking facility.

Section Chief: Jeffrey W. Long

AFK/JL

C:\JEFF_L\390.doc

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

Date: April 27, 1999

TO: Arnold Jablon

FROM: R. Bruce Seeley RBS/gp

SUBJECT: Zoning Item #390

BGE - Yellow Brick Road

Zoning Advisory Committee Meeting of April 12, 1999

_____ 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).

_____

C:\MSOFFICE\WINWORD\DOCS\BGE.DOC

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Management

Date: April 22, 1999

FROM: Robert W. Bowling, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for April 19, 1999
Item Nos. 380, 383, 385, 387, 389,
390, 391, 392, and 393

The Bureau of Development Plans Review has reviewed the subject zoning items, and we have no comments.

RWB:HJO:jrb

cc: File

ZAC0419.NOC

Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 4·16·99

Ms. Gwen Stephens
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 390 JLL

Dear. Ms Stephens:

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

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

L. J. Gredlein

for Michael M. Lenhart, Acting Chief
Engineering Access Permits Division

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

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

APPEAL

Petition for Special Exception and Variance
(Appeal for Special Exception Only)
9114-9200 Yellow Brick Road
NEC Yellow Brick Road and Lennings Lane Extension
15th Election District – 5th Councilmanic District
Baltimore Gas & Electric Company - Legal Owner
The Westmoreland Company, Inc.- Contract Purchaser
Case Number: 99-390-XA

Petition for Special Exception

Petition for Variance

Description of Property

Notice of Zoning Hearing

Certificate of Posting (Thomas P. Ogle, Sr. – 4/23/99)

Certification of Publication (The Jeffersonian – 4/22/99)

Entry of Appearance by People's Counsel

Petitioner(s) Sign-In Sheets (2)

Protestant(s) Sign-In Sheets (2)

Zoning Advisory Committee Comments

Petitioners' Exhibits: (taken from "Docket Sheet for Petitioner's (Developer's) Exhibits")

1A - 1C	Photos
2	Interior Building Plat
3	Expected Traffic Flow Chart
4	2-Page Plat – sheet 1 has info & sheet 2 has grading
5	Colored Plan
6	Map called Site Context Map
7A & B	Photos
8	Photo of Knott Building

Protestants' Exhibits: (taken from "Docket Sheet for Protestant's Exhibits")

1	Photos #1-19
2	Photo Orientation Plat Condition Diagram
3	Vehicle Turning Movement summary
4	Trip Distribution for RPS
5	Summary of Traffic on Rossville – 5 pgs
6	Trip Generation Rates – comparison of 3 uses out of ITE manual
7	Appendix B – Intersection Capacity Worksheets
8	Full Phase Expected Traffic Flows
9	Existing Use, Peak Vol., Total Volumes

Misc. (not marked as exhibits):

Letter to G. Scott Barhight, Esquire from Lawrence E. Schmidt dated 5/12/99.
Letter, with subpoena, to Carol Knott from Julie DIGrigoli dated 5/26/99.
Letter, with subpoena, to James F. Knott from Julie DiGrigoli dated 5/26/99.
Letter to Commissioner Lawrence Schmidt from Kali Mallik, President of Alliance, Inc. dated 6/1/99.
Letter, with Protestants' Memorandum in Opposition, to Lawrence Schmidt from Douglas W. Biser dated 6/11/99.
Transcript from hearing on 5/10/99, taken by Art Miller & Associates
Transcript from hearing on 6/2/99, taken by Art Miller & Associates

Zoning Commissioner's Order dated June 23, 1999 (Granted in part, Denied in part)

Notice of Appeal (for the Special Exception only) was received on July 23, 1999 from Richard C. Burch, Esquire and Douglas W. Biser, Esquire on behalf of James F. Knott Realty Group, James F. Knott Development Corporation, JFK Family Partnership and Oz Ltd.

C: G. Scott Barhight, Esquire – Whiteford, Taylor & Preston
Baltimore Gas & Electric Company
The Westmoreland Company, Inc.
Richard Burch, Esquire & Douglas Biser, Esquire – Mudd, Harrison & Burch
People's Counsel of Baltimore County, MS #2010
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

June 22, 1999

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL EXCEPTION & VARIANCE
NE/Corner Yellow Brick Road and Lennings Lane Extension
(9114-9200 Yellow Brick Road)
15th Election District – 5th Councilmanic District
BGE, Co., Owners; The Westmoreland Co., Inc., Contr.Pur. – Petitioners
Case No. 99-390-XA

Dear Mr. Barhight:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Exception has been granted and the Petition for Variance has been denied, 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,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: See Attached List
People's Counsel; Case File

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on Recycled Paper

Copy of Order sent to Following:

Mr. Greg C. Martin, V.P., BGE Co.
39 W. Lexington Street, Baltimore, Md. 21201
Mr. Jada Leo, President, The Westmoreland Co., Inc.
200 Randolph Avenue, Huntsville, Alabama 35801
Mr. David Martin, G.W.Stephens, Jr., & Assoc.
658 Kenilworth Drive, Towson, Md. 21204
Ms. Marguerite Strobel and Messrs. Richard Ransom, Stephen Roth, Tuck Tyler, BGE
7152 Windsor Boulevard, Baltimore, Md. 21244
Mr. Wes Guckert, The Traffic Group, 42 W. Chesapeake Avenue, Towson, Md. 21204
Mr. Ken Schmid, 8558 Veterans Highway, Suite 19A, Millersville, Md. 21108
Mr. Dick Ransom, BG&E Legal Dept., 59 W. Lexington Street, Baltimore, Md. 21201

Mr. Ed Chase, Rossville Comm. Assoc., 9150 Lennings Lane, Rossville, Md. 21237

Douglas Biser, Esquire, 105 W. Chesapeake Avenue, Suite 300, Towson, Md. 21204
Mr. C. Richard Moore, Wells & Assoc., 420 Virginia Avenue, Towson, Md. 21286
Mr. Tim Madden, Morris & Ritchie, 110 West Road, Towson, Md. 21204

Oz Limited, 9104/9108 Yellow Brick Road, Baltimore, Md. 21221
Faze Mason Filling, 9101-C, Yellow Brick Road, Baltimore, Md. 21221
John H. Harland Co., 9006 Yellow Brick Road, Baltimore, Md. 21221
Mr. David H. diVilliers, 9104/9108 Yellow Brick Road, Baltimore, Md. 21221

Ms. Kathleen A. Lewis, Baltimore County Department of Economic Development

Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

July 30, 1999

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

Dear Mr. Barhight:

RE: Case No. 99-390-XA, 9114 – 9200 Yellow Brick Road

Please be advised that an appeal of the above referenced case (for the special exception only) was filed in this office on July 23, 1999 by Richard C. Burch, Esquire and Douglas W. Biser, Esquire on behalf of James F. Knott Realty Group, James F. Knott Development Corporation, JFK Family Partnership, and Oz Ltd.. 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

c: Baltimore Gas & Electric Co., Greg Martin, Vice President, 39 W. Lexington St., Baltimore 21201
The Westmoreland Co., Inc., Jada Leo, President, 200 Randolph Avenue, Huntsville, AL 35801
Richard Burch, Esq. & Douglas Biser, Esq., Mudd, Harrison & Burch, 105 W. Chesapeake Ave.,Suite 300, Towson 21204
R. Peter, BHS Corrugated, 9103 Yellow Brick Road, Baltimore 21237
James & Carroll Knott, 110 West Road, Suite 203, Towson 21204
David Devilliers, 9104/9108 Yellow Brick Road, Baltimore 21237
Tim Madden, Morris & Ritchie, 110 West Road, Towson 21204
C. Richard Moore, Wells & Assoc., 420 Virginia Avenue, Towson 21286
John Harland Co., 9006 Yellow Brick Road, Baltimore 21237
Case Mason Filling, 9101C Yellow Brick Road, Baltimore 21237
Ed Chase, Rossville Community Assoc., 9510 Lennings Lane, Baltimore 21237
Tim Hastings, 110 West Road, Suite 203, Towson 21204
02 Ltd., 9104, 9108 Yellow Brick Road, Baltimore 21237
Marguerite Strobel, BGE, 39 W. Lexington Street, Baltimore 21201
James F. Knott Realty Group, James F. Knott Development Corp., JFK Family Partnership,9003, 4, 6, 9100, 01, 03 Yellow Brick Road, Baltimore 21237
Art Miller & Associates, Suite 700, 29 W. Susquehanna Ave., Towson 21204
Richard Ransom, BGE, 39 W. Lexington Street, Baltimore 21201
Ken Schmid, 8258 Veterans Highway, Suite 19A, Millersville 21108
Stephen Roth, BGE-Dir RE, 7152 Windsor Boulevard, Baltimore 21244
Kathleen Lewis, Balto. Co. Gov., 400 Washington Ave., Towson 21204
Wes Guckert, 40 W. Chesapeake Ave., Towson 21204
David Martin, 658 Kenilworth Drive, Towson 21204
Tuck Taylor, BGE Property Agent, 7152 Windsor Blvd., Baltimore 21244
Julie DiGrigoli, Court Towers, W. Penn. Ave., Towson 21204
People's Counsel

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on Recycled Paper

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AUG 13 1999
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

July 30, 1999

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

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RE: Case No. 99-390-XA, 9114 – 9200 Yellow Brick Road

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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

c: Baltimore Gas & Electric Co., Greg Martin, Vice President, 39 W. Lexington St., Baltimore 21201
The Westmoreland Co., Inc., Jada Leo, President, 200 Randolph Avenue, Huntsville, AL 35801
Richard Burch, Esq. & Douglas Biser, Esq., Mudd, Harrison & Burch, 105 W. Chesapeake Ave.,Suite 300, Towson 21204
R. Peter, BHS Corrugated, 9103 Yellow Brick Road, Baltimore 21237
James & Carroll Knott, 110 West Road, Suite 203, Towson 21204
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C. Richard Moore, Wells & Assoc., 420 Virginia Avenue, Towson 21286
John Harland Co., 9006 Yellow Brick Road, Baltimore 21237
Case Mason Filling, 9101C Yellow Brick Road, Baltimore 21237
Ed Chase, Rossville Community Assoc., 9510 Lennings Lane, Baltimore 21237
Tim Hastings, 110 West Road, Suite 203, Towson 21204
02 Ltd., 9104, 9108 Yellow Brick Road, Baltimore 21237
Marguerite Strobel, BGE, 39 W. Lexington Street, Baltimore 21201
James F. Knott Realty Group, James F. Knott Development Corp., JFK Family Partnership,9003, 4, 6, 9100, 01, 03 Yellow Brick Road, Baltimore 21237
Art Miller & Associates, Suite 700, 29 W. Susquehanna Ave., Towson 21204
Richard Ransom, BGE, 39 W. Lexington Street, Baltimore 21201
Ken Schmid, 8258 Veterans Highway, Suite 19A, Millersville 21108
Stephen Roth, BGE-Dir RE, 7152 Windsor Boulevard, Baltimore 21244
Kathleen Lewis, Balto. Co. Gov., 400 Washington Ave., Towson 21204
Wes Guckert, 40 W. Chesapeake Ave., Towson 21204
David Martin, 658 Kenilworth Drive, Towson 21204
Tuck Taylor, BGE Property Agent, 7152 Windsor Blvd., Baltimore 21244
Julie DiGrigoli, Court Towers, W. Penn. Ave., Towson 21204
People's Counsel

Printed with Soybean Ink
on Recycled Paper

99-390-XA

RECEIVED
AUG - 9 1999
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

AX-OPE-PP

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Permits & Development Management

DATE: November 6, 2000

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Closed Files (7):
99-390-XA /Baltimore Gas & Electric Co.-LO (WITH WALLET)
The Westmoreland Co., Inc. -CP
99-481-SPH /303 N. Rolling Road Partnership
99-525-A /Lori Mercer
00-003-A /Thomas A. Reed
00-035-A /Pamela & William Parsons
00-057-A /Pamela & Carl Steele, Sr.
00-181-SPH /Koinonia Partnership (Gramercy)

Since no further action was taken in the above captioned cases, we are hereby closing the files and returning same to you herewith.

Attachment -(7-CBA Case Files)

CERTIFICATE OF POSTING

RE: Case No.: 99-390-XA

Petitioner/Developer: BGE &
WESTMORELAND COMPANY

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 END OF YELLOW BRICK RD.
9114-9200 YELLOW BRICK RD.

The sign(s) were posted on 8/27/99
(Month, Day, Year)

Sincerely,

Gary C. Freund 8/27/99
(Signature of Sign Poster and Date)

GARY C. FREUND
(Printed Name)

_____
(Address)

_____
(City, State, Zip Code)

_____
(Telephone Number)

9/96
cert.doc

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
James F. Knott Realty Group	9003, 9004, 9006, 9100, 9101, 9103 Yellow Brick Rd
James F. Knott Development Corp	"
JFK Family Partnership	"
O2 Ltd.	9104, 9108 Yellow Brick Rd
TIM HASTINGS	110 West Rd., Suite 203 21204
DAVID H. deVilliers O2 Ltd.	9104, 9108 Yellow Brick Rd.

6/2/99

PLEASE PRINT CLEARLY

PETITIONER SHEET

~~BALTIMORE COUNTY REPRESENTATIVES~~

SIGN-IN SHEET

NAME	ADDRESS
[illegible]	2822 Lafayette Ave., HSU, Md 35201
Richard A. Ransom	BGE 39 W Lexington St Baltimore, MD 21201
Marguerite Strobel	BGE 39 W. Lexington St. Balto. MD 21201
Stephen Roth	BGE 7152 Windsor Blvd. Balt. MD. 21244
Tuck Tyler	BGE 7152 Windsor Blvd. Balt. MD. 21244
DAVID MARTIN -	GWS. 658 KENILWORTH DR. - TOWSON 21204
WES GUCKERT	40 W - CNOS. MD 21204
Kathleen A. Lewis	Balto County Dept. Economic Develpt. 400 Washington Ave, Courthouse Mezzanine, Towson, MD 21204

ART MILLER & Associates
COURT REPORTERS & VIDEOGRAPHERS

BALTIMORE (410) 367-3838
TOWSON (410) 494-8300
COLUMBIA (410) 461-5750
WASHINGTON, D.C. (202) 234-8300
FAX (410) 367-3883

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- Courtesy Conference Rooms
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Suite 2700 • 111 S. Calvert St. Baltimore, Maryland 21202
Suite 700 • 29 W. Susquehanna Ave. Towson, Maryland 21204
Suite 300 • 10440 Little Patuxent Pky. Columbia, Maryland 21045
Suite 300 • 1155 Connecticut Ave. Washington, D.C. 20036
Correspondence Address: P.O. Box 5337, Baltimore, MD 21209

NATALIE C. PRUNTY, RPR

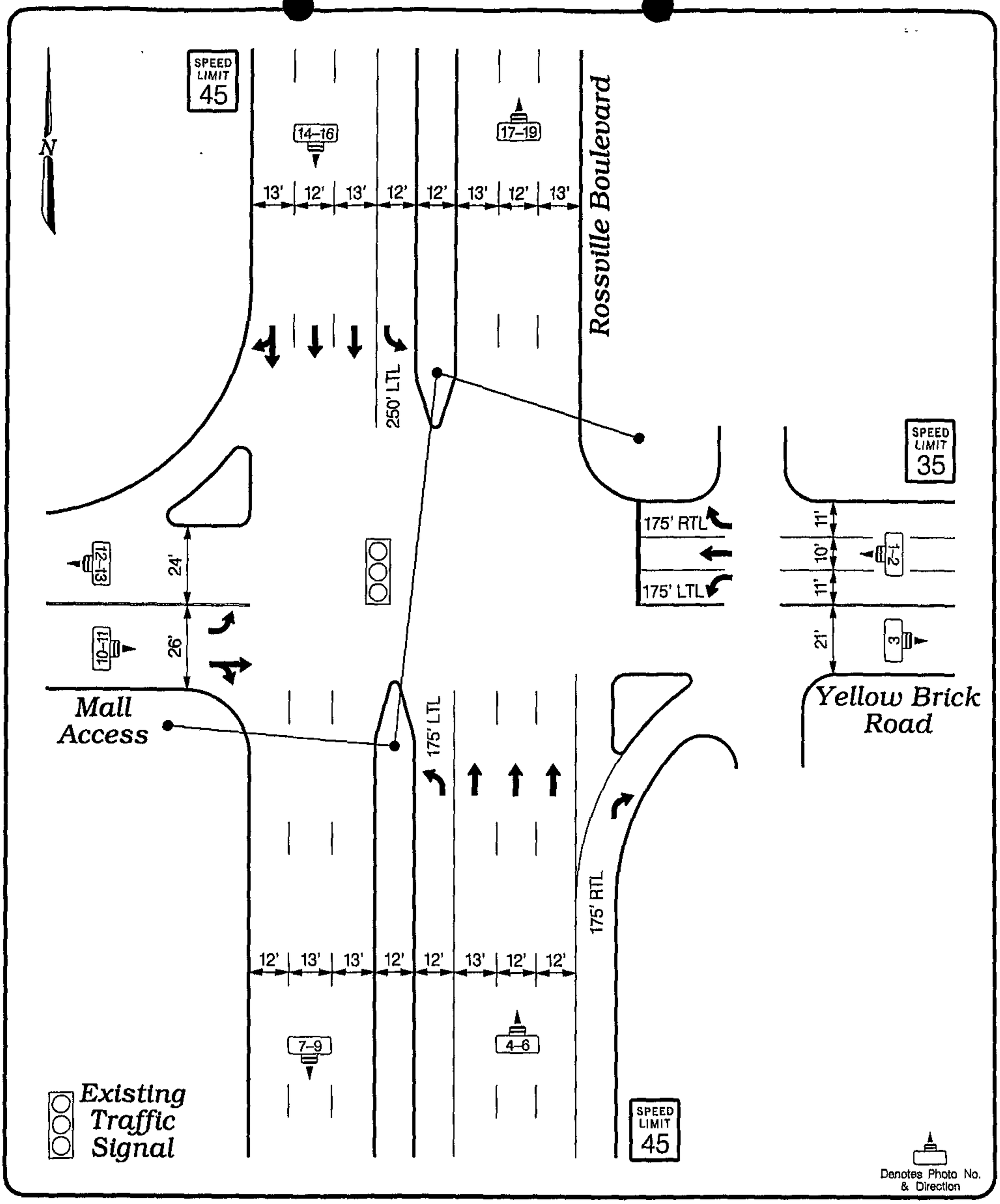
"DEDICATED TO SERVICE"

5/10/99

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
ED CHASE	9150 LENNINGS LA
ROSSVILLE COMMUNITY ASSOC.	21237
James F. Knott Realty Group	9003, 4, 6, 9100, 01, 03 Yellow Brick Rd
James F. Knott Development Corp	"
JFK Family Partnership	"
O2 Ltd	9104, 9108 Yellow Brick Rd
Kane Mason Filling	9101C Yellow Brick Rd
John H Harland Co. (J Cunningham)	9006 Yellow Brick Rd
Brian Wenner Knott Development	
R. Peter BHS Corrugated	9103 Yellow Brick Rd
B Peter BHS Corrugated	9103 Yellow Brick Rd.
C. Richard Moore Wells & Assoc.	420 Virginia Ave 21286
Tim Madden, Morris & Ritchie	110 West Rd Towson 21204
David H. deVilliers	9104/9108 Y. Brick Rd.
James L. Knott	110 West Rd. Suite 203
Carroll E Knott	" " "
Tim Hastings	110 West Rd. Suite 203 21204



The Traffic Group

Rossville Boulevard at Yellow Brick Road/ Mall Access

FIELD WORK BY: S. Scalzo
DRAWN BY: S. Langley
DATE: May, 1999
SCALE: N/A

JOB NO.: 990321-02
DWG NAME: CD2.DGN
LOCATION: Baltimore Co., MD
SHEET NO.: 2 OF 2

Protestant's Exhibit #2 to ID

VEHICLE TURNING MOVEMENT COUNT - SUMMARY

Counted by: SS,KC

Intersection of: Rossville Blvd.
and: Yellow Brick Rd./Mall Access
Location: Balto.Co.,Md.

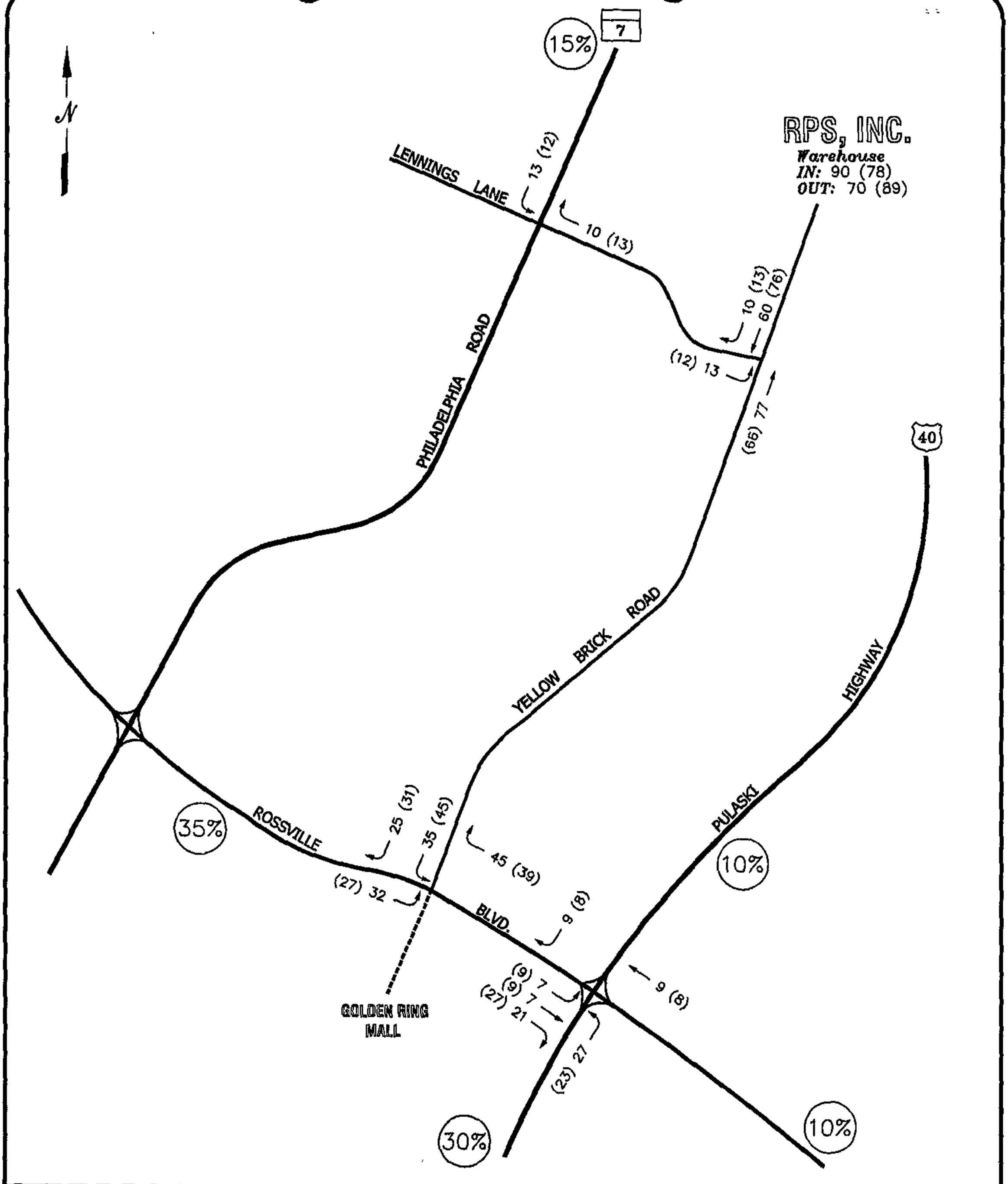
Date: May 25, 1999
Weather: Fair,Cool
Entered by: SB

Day: Tuesday

The Traffic Group

TIME	TRAFFIC FROM NORTH on: Rossville Blvd.					TRAFFIC FROM SOUTH on: Rossville Blvd.					TRAFFIC FROM EAST on: Yellow Brick Rd.					TRAFFIC FROM WEST on: Mall Access					TOTAL N + S + E + W
	RIGHT	THRU	LEFT	U-TN	TOTAL	U-TN	LEFT	THRU	RIGHT	TOTAL	RIGHT	THRU	LEFT	U-TN	TOTAL	U-TN	LEFT	THRU	RIGHT	TOTAL	
AM																					
07:0-15	14	176	52	0	242	0	15	161	52	228	25	5	33		63		2	3	3	8	541
15-30	14	190	57	0	261	1	4	181	52	238	15	4	28		47		3	2	4	9	555
30-45	13	196	62	0	271	1	8	232	80	321	25	2	22		49		4	8	4	16	657
45-00	9	180	55	1	245	1	16	217	80	314	16	5	30		51		4	6	1	11	621
08:0-15	13	143	62	0	218	0	12	228	55	295	32	2	30		64		1	4	6	11	588
15-30	4	162	65	0	231	2	13	207	62	284	40	6	31		77		5	4	6	15	607
30-45	9	151	52	0	212	3	9	192	43	247	21	5	32		58		5	4	1	10	527
45-00	8	136	43	0	187	0	20	169	58	247	23	5	31		59		4	1	4	9	502
2 Hr Totals	84	1334	448	1	1867	8	97	1587	482	2174	197	34	237	0	468	0	28	32	29	89	4598
1 Hr Totals																					
07-08	50	742	226	1	1019	3	43	791	264	1101	81	16	113	0	210	0	13	19	12	44	2374
715-815	49	709	236	1	995	3	40	858	267	1168	88	13	110	0	211	0	12	20	15	47	2421
730-830	39	681	244	1	965	4	49	884	277	1214	113	15	113	0	241	0	14	22	17	53	2473
745-845	35	636	234	1	906	6	50	844	240	1140	109	18	123	0	250	0	15	18	14	47	2343
08-09	34	592	222	0	848	5	54	796	218	1073	116	18	124	0	258	0	15	13	17	45	2224
PEAK HOUR																					
730-830	39	681	244	1	965	4	49	884	277	1214	113	15	113	0	241	0	14	22	17	53	2473
PM																					
04:0-15	14	177	24	1	216	1	31	180	48	260	62	14	63		139		9	8	26	43	658
15-30	10	237	30	2	279	1	27	223	32	283	73	16	71		160		13	10	30	53	775
30-45	12	207	32	1	252	2	22	226	26	276	67	29	78		174		15	3	28	46	748
45-00	14	252	32	1	299	2	24	243	35	304	77	20	76		173		17	3	23	43	819
05:0-15	16	218	18	0	252	3	38	273	32	346	78	21	76		175		16	2	25	43	816
15-30	15	247	14	0	276	0	24	251	30	305	56	19	57		132		17	1	26	44	757
30-45	14	213	13	0	240	1	28	240	25	294	45	7	42		94		22	3	22	47	675
45-00	13	199	21	0	233	0	21	222	23	266	34	11	31		76		18	3	34	55	630
2 Hr Totals	108	1750	184	5	2047	10	215	1858	251	2334	492	137	494	0	1123	0	127	33	214	374	5878
1 Hr Totals																					
04-05	50	873	118	5	1046	6	104	872	141	1123	279	79	288	0	646	0	54	24	107	185	3000
415-515	52	914	112	4	1082	8	111	965	125	1209	295	86	301	0	682	0	61	18	106	185	3158
430-530	57	924	96	2	1079	7	108	993	123	1231	278	89	287	0	654	0	65	9	102	176	3140
445-545	59	930	77	1	1067	6	114	1007	122	1249	256	67	251	0	574	0	72	9	96	177	3067
05-06	58	877	66	0	1001	4	111	986	110	1211	213	58	206	0	477	0	73	9	107	189	2878
PEAK HOUR																					
415-515	52	914	112	4	1082	8	111	965	125	1209	295	86	301	0	682	0	61	18	106	185	3158

Protestant Ex # 3 for ID



NOT TO SCALE

The Traffic Group

00 – MORNING PEAK HOUR
(00) – EVENING PEAK HOUR

EXHIBIT 5
TRIP DISTRIBUTION AND
ASSIGNMENT FOR RPS, INC.

Protestant Bx #4 for ID

SUMMARY OF TRAFFIC CONDITIONS

ALONG YELLOW BRICK ROAD

NORTH OF ROSSVILLE BOULEVARD

- ***6,700 trips/day (counted Thursday/Friday 5/27 to 5/28/99)***
- ***AM peak hour is 7-8 AM - 609 vehicles (9% of ADT)***
- ***PM peak hour is 4-5 PM - 614 vehicles (9% of ADT)***
- ***AM peak hour tractor trailers - 25***
- ***PM peak hour tractor trailers - 49***
- ***Daily % of tractor trailers - 5.75%***

The Traffic Group, Inc.

June 1, 1999

(990321/wp/summary)

THE TRAFFIC GROUP INC.

TOWSON,MARYLAND

05-28-1999 Volume by Type by Lane Report - D0527001.PRN 14:40 Pg 1

Sta: 111111111111 Id: 000000000110 CId: 01 Fmt: 300 - Imperial Int: 60 Min.

Start: Thu - May 27, 1999 at 12:00 End: Fri - May 28, 1999 at 12:00

City/Town: County: Baltimore

Location: Yellow Brick Rd North of Rosseville Blvd File: D0527001.PRN

Ln1-NORTH Ln2-SOUTH

Thu - May 27, 1999

Type		Cycle	Cars	2A-4T	Buses	2A-SU	3A-SU	4A-SU	4A-ST	5A-ST	6A-ST	5A-MT	6A-MT	7A-MT	None	Other	Total
13:00																	
Lane	1	0	190	54	6	10	4	0	6	11	0	0	0	0	0	3	284
	2	0	168	55	6	11	8	0	8	8	0	0	0	0	0	3	267
Lane	1-2	0	358	109	12	21	12	0	14	19	0	0	0	0	0	6	551
14:00																	
Lane	1	0	161	59	8	14	3	3	5	9	0	0	0	2	0	0	264
	2	0	133	33	8	21	2	2	7	6	0	0	0	0	0	0	212
Lane	1-2	0	294	92	16	35	5	5	12	15	0	0	0	2	0	0	476
15:00																	
Lane	1	1	128	39	2	14	1	0	4	2	0	0	0	1	0	3	195
	2	0	138	47	1	14	0	1	11	7	0	1	0	0	0	0	220
Lane	1-2	1	266	86	3	28	1	1	15	9	0	1	0	1	0	3	415
16:00																	
Lane	1	1	175	51	6	16	4	1	10	15	0	0	0	0	0	3	282
	2	0	181	44	5	14	2	1	9	2	0	0	0	1	0	2	261
Lane	1-2	1	356	95	11	30	6	2	19	17	0	0	0	1	0	5	543
17:00																	
Lane	1	0	114	31	5	7	0	0	9	7	0	0	0	1	0	3	177
	2	0	319	62	4	14	2	2	13	15	1	0	0	3	0	2	437
Lane	1-2	0	433	93	9	21	2	2	22	22	1	0	0	4	0	5	614
18:00																	
Lane	1	1	70	18	3	4	0	1	2	5	0	0	0	0	0	0	104
	2	0	295	43	2	5	0	4	8	5	0	0	0	0	0	1	363
Lane	1-2	1	365	61	5	9	0	5	10	10	0	0	0	0	0	1	467
19:00																	
Lane	1	0	64	17	0	9	1	0	3	2	0	0	0	1	0	0	97
	2	0	131	27	2	7	1	1	5	0	0	0	0	0	0	0	174
Lane	1-2	0	195	44	2	16	2	1	8	2	0	0	0	1	0	0	271
20:00																	
Lane	1	1	37	9	2	4	0	0	0	0	0	0	0	0	0	1	54
	2	0	74	19	1	1	1	0	1	2	0	0	0	0	0	0	99
Lane	1-2	1	111	28	3	5	1	0	1	2	0	0	0	0	0	1	153
21:00																	
Lane	1	0	32	8	1	1	0	0	3	0	0	0	0	0	0	0	45
	2	0	46	13	1	3	0	0	1	0	0	0	0	0	0	0	64
Lane	1-2	0	78	21	2	4	0	0	4	0	0	0	0	0	0	0	109
22:00																	
Lane	1	0	14	2	0	1	1	0	2	1	0	0	0	0	0	0	21
	2	0	35	6	0	1	0	0	0	0	0	0	0	0	0	0	42
Lane	1-2	0	49	8	0	2	1	0	2	1	0	0	0	0	0	0	63

THE TRAFFIC GROUP INC.
TOWSON,MARYLAND

05-28-1999 Volume by Type by Lane Report - D0527001.PRN 14:40 Pg 2

Thu - May 27, 1999

Type		Cycle	Cars	2A-4T	Buses	2A-SU	3A-SU	4A-SU	4A-ST	5A-ST	6A-ST	5A-MT	6A-MT	7A-MT	None	Other	Total
23:00																	
Lane	1	0	8	6	0	4	0	0	0	1	0	0	0	0	0	0	19
	2	0	26	6	2	0	0	0	2	0	0	0	0	0	0	0	36
Lane	1-2	0	34	12	2	4	0	0	2	1	0	0	0	0	0	0	55
24:00																	
Lane	1	0	35	3	0	2	0	0	0	0	0	0	0	0	0	0	40
	2	0	33	5	0	1	0	0	0	1	0	0	0	0	0	0	40
Lane	1-2	0	68	8	0	3	0	0	0	1	0	0	0	0	0	0	80
Daily Totals		4	2607	657	65	178	30	16	109	99	1	1	0	9	0	21	3797
Percentages		0.11	68.66	17.30	1.71	4.69	0.79	0.42	2.87	2.61	0.03	0.03	0.00	0.24	0.00	0.55	

Fri - May 28, 1999

01:00																	
Lane	1	0	7	0	0	1	0	0	1	1	0	0	0	0	0	0	10
	2	0	36	8	1	0	0	0	2	0	0	0	0	0	0	0	47
Lane	1-2	0	43	8	1	1	0	0	3	1	0	0	0	0	0	0	57
02:00																	
Lane	1	0	8	2	0	0	0	0	0	1	0	0	0	0	0	0	11
	2	0	17	2	0	0	0	0	0	0	0	0	0	0	0	0	19
Lane	1-2	0	25	4	0	0	0	0	0	1	0	0	0	0	0	0	30
03:00																	
Lane	1	0	3	5	0	0	0	0	0	1	0	0	0	0	0	0	9
	2	0	8	4	0	0	0	0	0	2	0	0	0	0	0	0	14
Lane	1-2	0	11	9	0	0	0	0	0	3	0	0	0	0	0	0	23
04:00																	
Lane	1	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2
	2	1	3	2	0	0	0	0	0	0	0	0	0	0	0	0	6
Lane	1-2	1	5	2	0	0	0	0	0	0	0	0	0	0	0	0	8
05:00																	
Lane	1	0	17	3	0	0	1	0	1	0	0	0	0	0	0	0	22
	2	0	4	0	0	1	0	0	1	0	0	0	0	0	0	0	6
Lane	1-2	0	21	3	0	1	1	0	2	0	0	0	0	0	0	0	28
06:00																	
Lane	1	0	79	21	0	1	1	0	0	4	0	0	0	0	0	0	106
	2	0	10	11	2	2	0	0	3	1	0	0	0	0	0	0	29
Lane	1-2	0	89	32	2	3	1	0	3	5	0	0	0	0	0	0	135
07:00																	
Lane	1	0	223	50	1	6	1	1	0	8	0	0	0	0	0	0	290
	2	0	40	12	3	12	0	0	3	1	0	0	0	0	0	1	72
Lane	1-2	0	263	62	4	18	1	1	3	9	0	0	0	0	0	1	362

THE TRAFFIC GROUP INC.

TOWSON,MARYLAND

05-28-1999 Volume by Type by Lane Report - D0527001.PRN 14:40 Pg 3

Fri - May 28, 1999

Type		Cycle	Cars	2A-4T	Buses	2A-SU	3A-SU	4A-SU	4A-ST	5A-ST	6A-ST	5A-MT	6A-MT	7A-MT	None	Other	Total
08:00																	
Lane	1	0	340	66	2	14	2	2	4	12	1	0	0	0	0	2	445
	2	1	90	46	5	10	3	1	2	5	0	0	0	1	0	0	164
Lane	1-2	1	430	112	7	24	5	3	6	17	1	0	0	1	0	2	609
09:00																	
Lane	1	1	286	48	4	11	1	2	1	9	0	0	0	1	0	1	365
	2	0	103	51	5	16	2	0	5	7	1	0	1	0	0	4	195
Lane	1-2	1	389	99	9	27	3	2	6	16	1	0	1	1	0	5	560
10:00																	
Lane	1	0	130	49	2	10	3	0	3	9	0	0	0	0	0	1	207
	2	0	108	50	3	22	2	0	10	9	0	0	0	0	0	1	205
Lane	1-2	0	238	99	5	32	5	0	13	18	0	0	0	0	0	2	412
11:00																	
Lane	1	0	96	37	4	18	3	0	4	9	1	0	0	0	0	0	172
	2	0	94	43	3	25	1	2	7	4	0	0	0	2	0	1	182
Lane	1-2	0	190	80	7	43	4	2	11	13	1	0	0	2	0	1	354
12:00																	
Lane	1	0	91	41	1	17	1	1	5	11	1	0	0	0	0	0	169
	2	0	87	39	1	23	1	1	5	7	0	0	0	2	0	1	167
Lane	1-2	0	178	80	2	40	2	2	10	18	1	0	0	2	0	1	336
Daily Totals		3	1882	590	37	189	22	10	57	101	4	0	1	6	0	12	2914
Percentages		0.10	64.58	20.25	1.27	6.49	0.75	0.34	1.96	3.47	0.14	0.00	0.03	0.21	0.00	0.41	

THE TRAFFIC GROUP INC.
TOWSON,MARYLAND

05-28-1999 Volume by Type by Lane Report - D0527001.PRN 14:40 Pg 4

Sta: 111111111111 Id: 000000000110 CId: 01 Fmt: 300 - Imperial Int: 60 Min.
Start: Thu - May 27, 1999 at 12:00 End: Fri - May 28, 1999 at 12:00
City/Town: County: Baltimore
Location: Yellow Brick Rd North of Rosseville Blvd File: D0527001.PRN
Ln1-NORTH Ln2-SOUTH

Station Data Summary

Type	Cycle	Cars	2A-4T	Buses	2A-SU	3A-SU	4A-SU	4A-ST	5A-ST	6A-ST	5A-MT	6A-MT	7A-MT	None	Other	Total
Grand Totals	7	4489	1247	102	367	52	26	166	200	5	1	1	15	0	33	6711
Percentages	0.10	66.89	18.58	1.52	5.47	0.77	0.39	2.47	2.98	0.07	0.01	0.01	0.22	0.00	0.49	

Lane	1	2	Total
Grand Totals	3390	3321	6711
Percentages	50.51	49.49	

Am/Pm Peak Hour Totals

Type	Cycle	Cars	2A-4T	Buses	2A-SU	3A-SU	4A-SU	4A-ST	5A-ST	6A-ST	5A-MT	6A-MT	7A-MT	None	Other	Total
Am Hour 7-8	1	430	112	7	24	5	3	6	17	1	0	0	1	0	2	609
Percentages	14.29	9.58	8.98	6.86	6.54	9.62	11.54	3.61	8.50	20.00	0.00	0.00	6.67	0.00	6.06	9.07
Pm Hour 16-17	0	433	93	9	21	2	2	22	22	1	0	0	4	0	5	614
Percentages	0.00	9.65	7.46	8.82	5.72	3.85	7.69	13.25	11.00	20.00	0.00	0.00	26.67	0.00	15.15	9.15

TRIP GENERATION RATES

LAND USE	FORMULA	DISTRIBUTION
Warehousing (ksf, ITE-150)		
	Ln(Morning Trips) = 0.707 x Ln(ksf) + 1.148	82/18
	Ln(Evening Trips) = 0.754 x Ln(ksf) + 0.826	24/76
	Daily Trips = 3.676 x ksf + 350.266	
General Light Industrial (ITE-110)		
	Morning Trips = 1.183 x ksf + -89.275	87/13
	Evening Trips = 1.433 x ksf + -163.421	15/85
	Daily Trips = 7.468 x ksf + -101.921	
Truck Terminal (ITE-030)		
	Morning Trips = 0.90 x ksf	40/60
	Evening Trips = 0.82 x ksf	47/53
	Daily Trips = 9.85 x ksf	

TRIP GENERATION TOTALS

	MORNING PEAK HOUR			EVENING PEAK HOUR			WEEK
	IN	OUT	TOTAL	IN	OUT	TOTAL	DAY
129,200 sf Warehousing	80	18	98	21	68	89	825
129,200 sf General Light Industrial	56	8	64	3	19	22	863
129,200 sf Truck Terminal	46	70	116	50	56	106	1273

The Traffic Group

Rot Ex 6 for PD
~~Ex 6~~

APPENDIX B

Intersection Capacity Analysis Worksheets

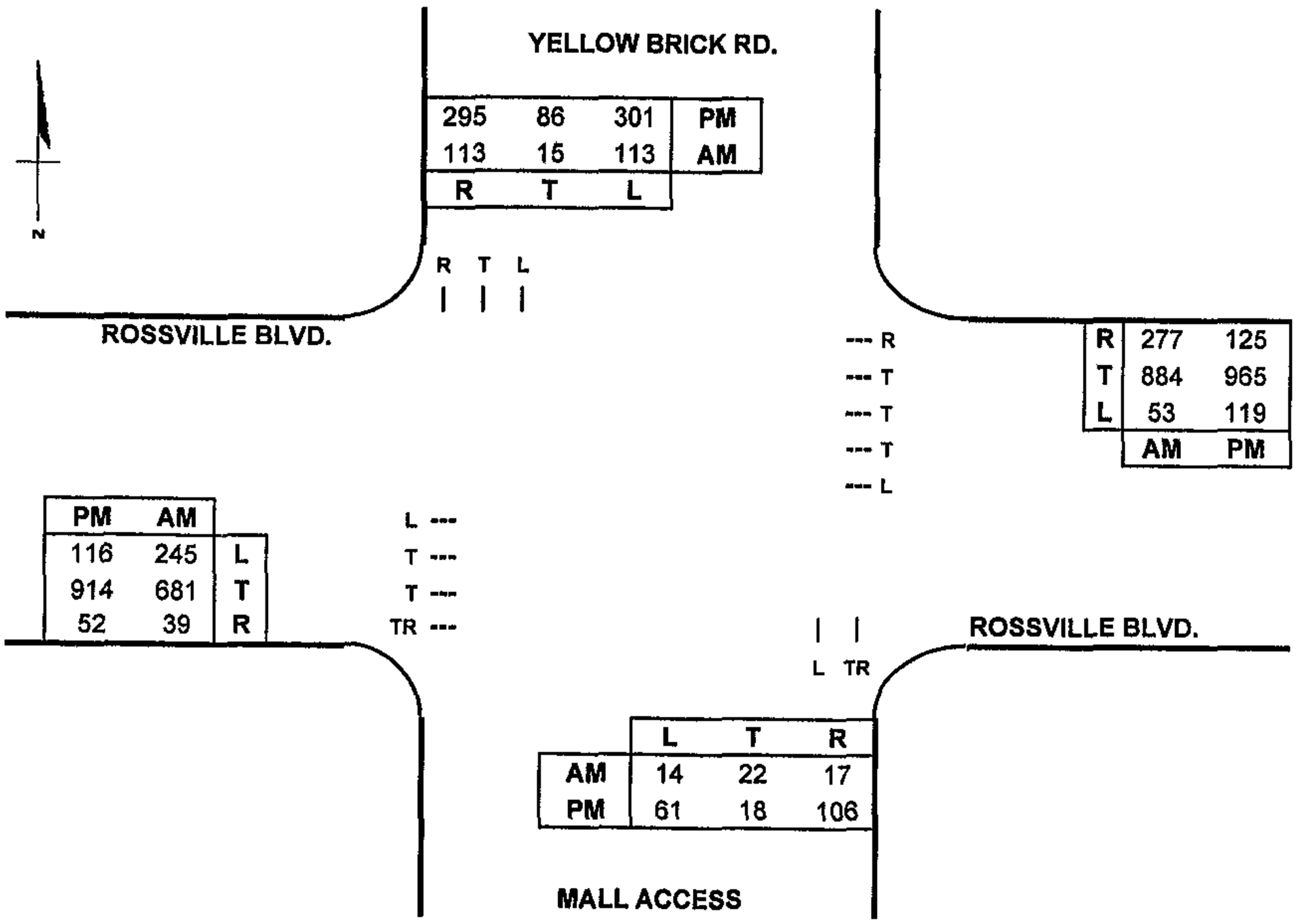
Protestant 1st # 7
for IP

CRITICAL LANE VOLUME (CLV) METHODOLOGY
for MSHA

Intersection of: YELLOW BRICK RD.
and: ROSSVILLE BLVD.
Conditions: EXISTING TRAFFIC

Date of Count: May 25, 1999
Day of Week: Tuesday
Analyst: Reddy Venna

Lane Use + Traffic Volumes



Capacity Analysis

Morning Peak Hour

Dir	Thru Volumes VOL	x LUF	= Total	+ Opposing Lefts VOL	x LUF	= Total	AM CLV
NB	39	1	39	113	1	113	152
SB	15	1	15	14	1	14	
EB	720	0.4	288	53	1	53	599
WB	884	0.4	354	245	1	245	

CLV TOTAL= **751**
Level of Service (LOS)= **A**

Evening Peak Hour

Dir	Thru Volumes VOL	x LUF	= Total	+ Opposing Lefts VOL	x LUF	= Total	PM CLV
NB	124	1	124	301	1	301	425
SB	179	1	179	61	1	61	
EB	966	0.4	386	119	1	119	505
WB	965	0.4	386	116	1	116	

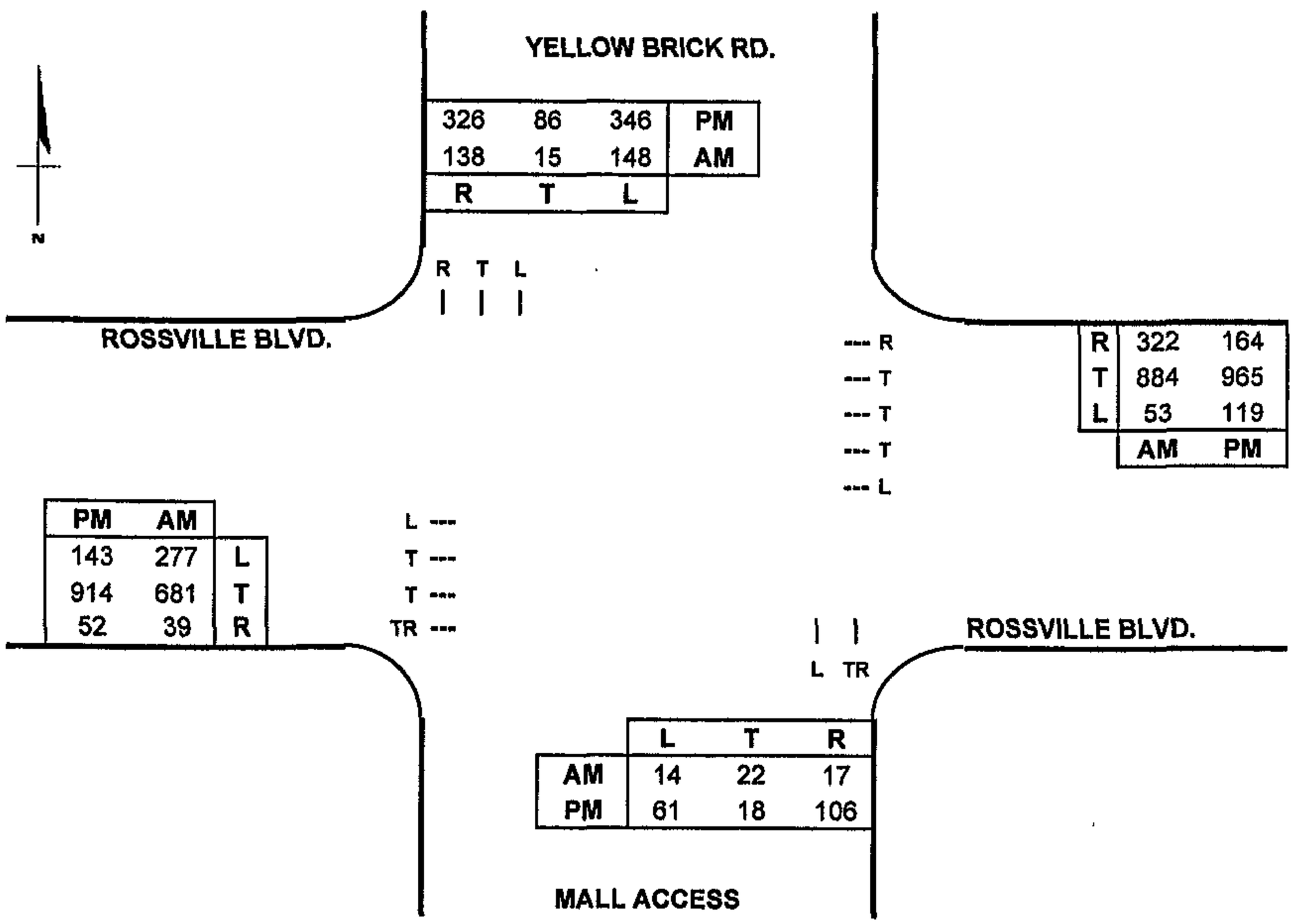
CLV TOTAL= **930**
Level of Service (LOS)= **A**

June 1, 1999

CRITICAL LANE VOLUME (CLV) METHODOLOGY
for MSHA

Intersection of: YELLOW BRICK RD. **Date of Count:** May 25, 1999
and: ROSSVILLE BLVD. **Day of Week:** Tuesday
Conditions: TOTAL TRAFFIC **Analyst:** Reddy Venna

Lane Use + Traffic Volumes



Capacity Analysis

Morning Peak Hour

Dir	Thru Volumes VOL	x LUF	= Total	+ Opposing Lefts VOL	x LUF	= Total	AM CLV
NB	39	1	39	148	1	148	187
SB	15	1	15	14	1	14	
EB	720	0.4	288	53	1	53	631
WB	884	0.4	354	277	1	277	

CLV TOTAL= **818**
Level of Service (LOS)= **A**

Evening Peak Hour

Dir	Thru Volumes VOL	x LUF	= Total	+ Opposing Lefts VOL	x LUF	= Total	PM CLV
NB	124	1	124	346	1	346	470
SB	183	1	183	61	1	61	
EB	966	0.4	386	119	1	119	529
WB	965	0.4	386	143	1	143	

CLV TOTAL= **999**
Level of Service (LOS)= **A**

RPS, Inc.

Full Phase Expected Traffic Flows for the Baltimore-MD Terminal

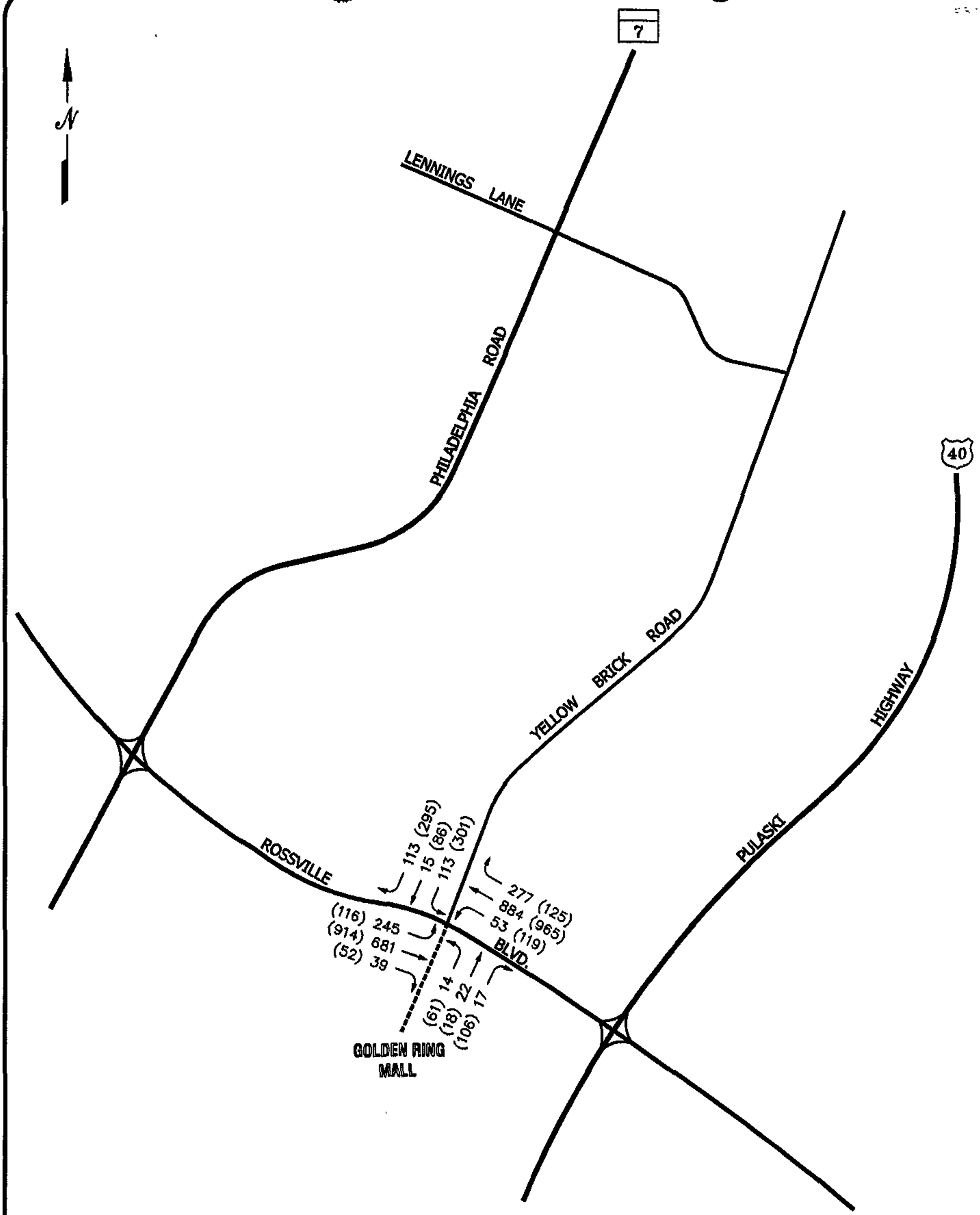
	Automobile Full Phase		P&D Van Full Phase		Linehaul Full Phase		Total Vehicle Flow Full Phase	
	Arrive	Depart	Arrive	Depart	Arrive	Depart	Arrive	Depart
00:01 - 01:00								
01:01 - 02:00								
02:01 - 03:00					3		3	
03:01 - 04:00		5			9		9	5
04:01 - 05:00		22			12	8	12	30
05:01 - 06:00	5	31				11	5	42
06:01 - 07:00	79	31		60			79	91
07:01 - 08:00	90	10		60			90	70
08:01 - 09:00								
09:01 - 10:00								
10:01 - 11:00								
11:01 - 12:00								
12:01 - 13:00	5						5	
13:01 - 14:00	9						9	
14:01 - 15:00								
15:01 - 16:00								
16:01 - 17:00		75	60				60	75
17:01 - 18:00	18	89	60				78	89
18:01 - 19:00								
19:01 - 20:00								
20:01 - 21:00								
21:01 - 22:00	23					2	23	2
22:01 - 23:00	31	24				3	31	27
23:01 - 24:00	40	13					40	13
Total	**300**	**300**	**120**	**120**	**24**	**24**	**444**	**444**

8

The Traffic Group

EXHIBIT 4
TRIP GENERATION TABLE
FOR RPS, INC.

Protestant 後 #8 for



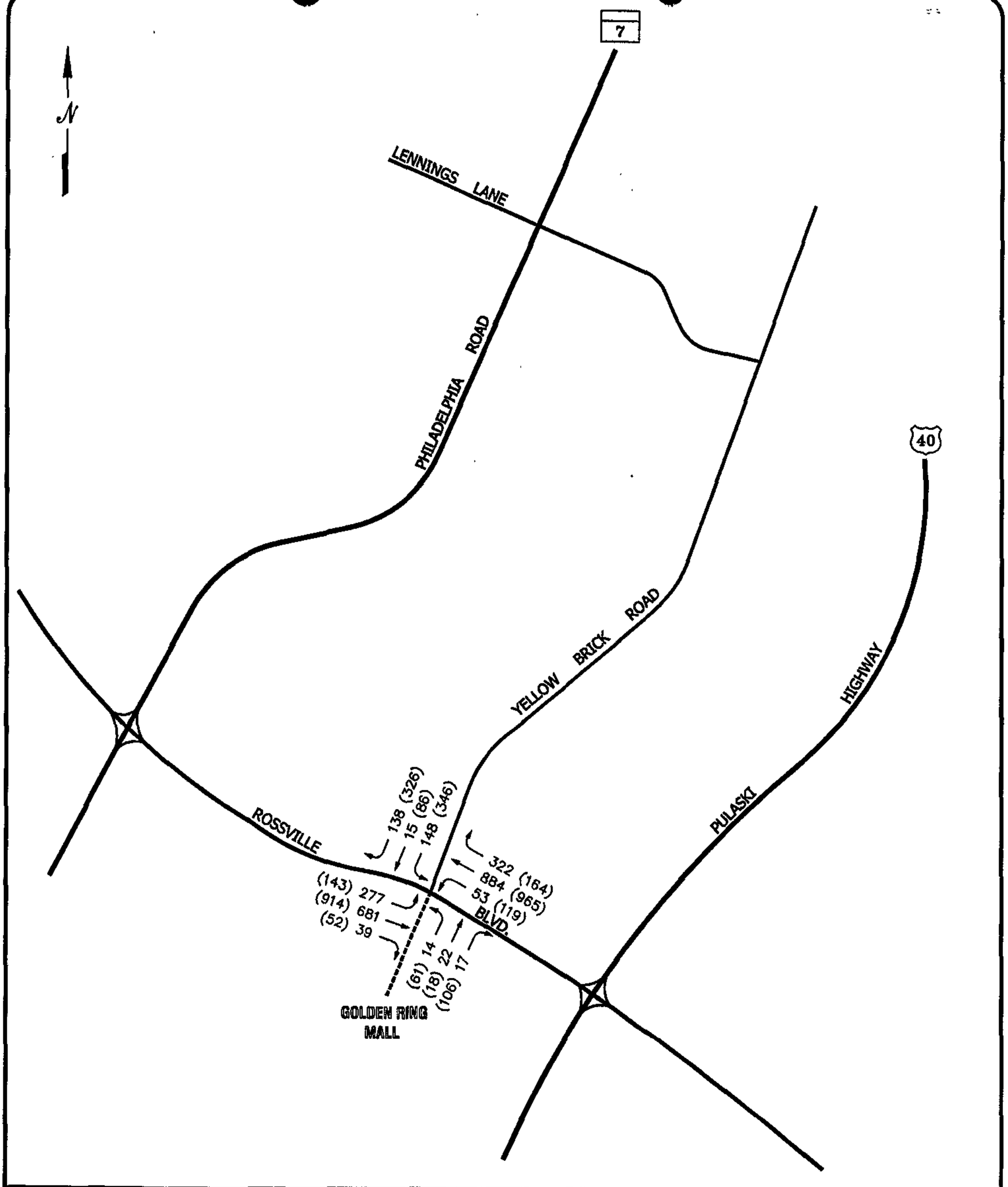
NOT TO SCALE

The Traffic Group

00 – MORNING PEAK HOUR
(00) – EVENING PEAK HOUR

EXHIBIT 3
EXISTING PEAK HOUR
TRAFFIC VOLUMES

p. 2 of 3



NOT TO SCALE

The Traffic Group

00 – MORNING PEAK HOUR
(00) – EVENING PEAK HOUR

EXHIBIT 6
TOTAL PEAK HOUR
TRAFFIC VOLUMES

p. 3 of 3

Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

May 12, 1999

G. Scott Barhight, Esquire
Julie DiGrigoli, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, 4th Floor
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL EXCEPTION & VARIANCE
NE/Corner Yellow Brick Road and Lennings Lane (Extended)
(9114 – 9200 Yellow Brick Road)
15th Election District – 5th Councilmanic District
Baltimore Gas & Electric Co., Owners; The Westmoreland Co., Inc., Contract Lessee
Case No. 99-390-XA

Dear Mr. Barhight & Ms. DiGrigoli:

This letter is to confirm that the above-captioned matter has been continued to Wednesday, June 2, 1999 with a second hearing date of Thursday, June 3, 1999. The hearing will commence on both days at 9:00 AM in Room 106 of the County Office Building. By copy of this letter, all parties present at the original hearing held on May 10, 1999 will be notified of the continued hearing dates and times. It will not be necessary for you to re-post the property.

Should you have any questions concerning the rescheduled hearing dates, please do not hesitate to contact my office.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs
cc: Attached List
People's Counsel; Case File

Printed with Soybean Ink
on Recycled Paper

Addressees:

Mr. Greg C. Martin, V.P., BG&E
39 W. Lexington Street, Baltimore, Md. 21201

Mr. Jada Leo, President, The Westmoreland Co., Inc.
2822 Lafayette Drive, Huntsville, Ala. 35801

Mr. David Martin, G.W.Stephens, Jr. & Assoc., Inc.
658 Kenilworth Drive, Towson, Md. 21204

Mr. Ken Schmid, 8558 Veterans Highway, Suite 19A, Millersville, Md. 21108
Mr. Dick Ransom, BG&E Legal Dept., 59 W. Lexington Street, Baltimore, Md. 21201
Messrs. Stephen Ritter and Tuck Tyler, BGE, 7152 Windsor Boulevard, Baltimore, Md. 21244

Mr. Ed Chase, Rossville Comm. Assoc., 9150 Lennings Lane, Rossville, Md. 21237

Douglas Biser, Esquire, 105 W. Chesapeake Avenue, Suite 300, Towson, Md. 21204
Mr. C. Richard Moore, Wells & Assoc., 420 Virginia Avenue, Towson, Md. 21286
Mr. Tim Madden, Morris & Ritchie, 110 West Road, Towson, Md. 21204

102 Limited, 9104/9108 Yellow Brick Road, Baltimore, Md. 21221
Faze Mason Filling, 9101-C, Yellow Brick Road, Baltimore, Md. 21221
John H. Harland Co., 9006 Yellow Brick Road, Baltimore, Md. 21221
Mr. David H. diVilliers, 9104/9108 Yellow Brick Road, Baltimore, Md. 21221

Ms. Kathleen A. Lewis, Baltimore County Department of Economic Development

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

390 JL

No. 065435

DATE 4/2/99

ACCOUNT R001 6150

AMOUNT $ 550.00

RECEIVED FROM: WT+P

FOR: XA

99-390-XA

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PROCESS ACTUAL TIME
4/02/1999 4/02/1999 08:44:24
REG W001 CASHIER JRIC JNP DRAWER 1
5 MISCELLANEOUS CASH RECEIPT
Receipt # 094988 OFLN
CR NO. 065435
Recpt Tot 550.00
550.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

DOCKET SHEET FOR PETITIONER'S (DEVELOPER'S) EXHIBITS

Ex.No. 1A – 1C photos

Ex.No. 2 Interior Building Plat

Ex.No. 3 Expected traffic flow chart

Ex.No. 4 2 page plat – sheet 1 of 2 has info + sheet 2 has grading

Ex.No. 5 colouyed plan –

Ex.No. 6 Map called Site Context Map

Ex.No. 7 A-1B photos

Ex.No. 8 photo of Knott Bldg

Ex.No.

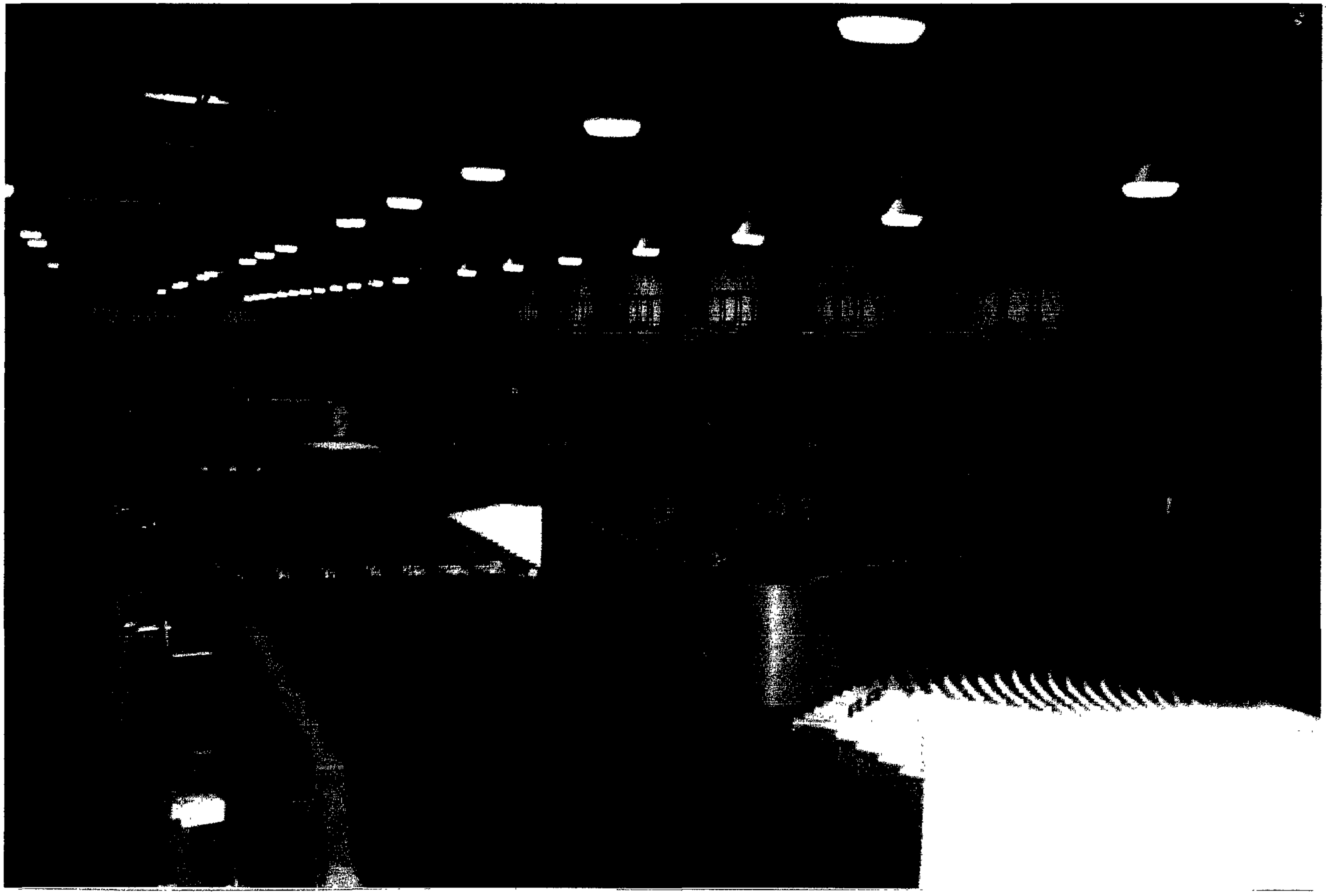
Ex.No.

Ex.No.

I hereby certify that on this _____ day of _____, 19___, the date upon wich this file was transferred to the Office of Zoning Administration and Development Management (ZADM); that the exhibits listed on this docket sheet were actually contained in and/or attached to the case and were transmitted to the care, custody and possession of the Office of ZADM for their safekeeping.

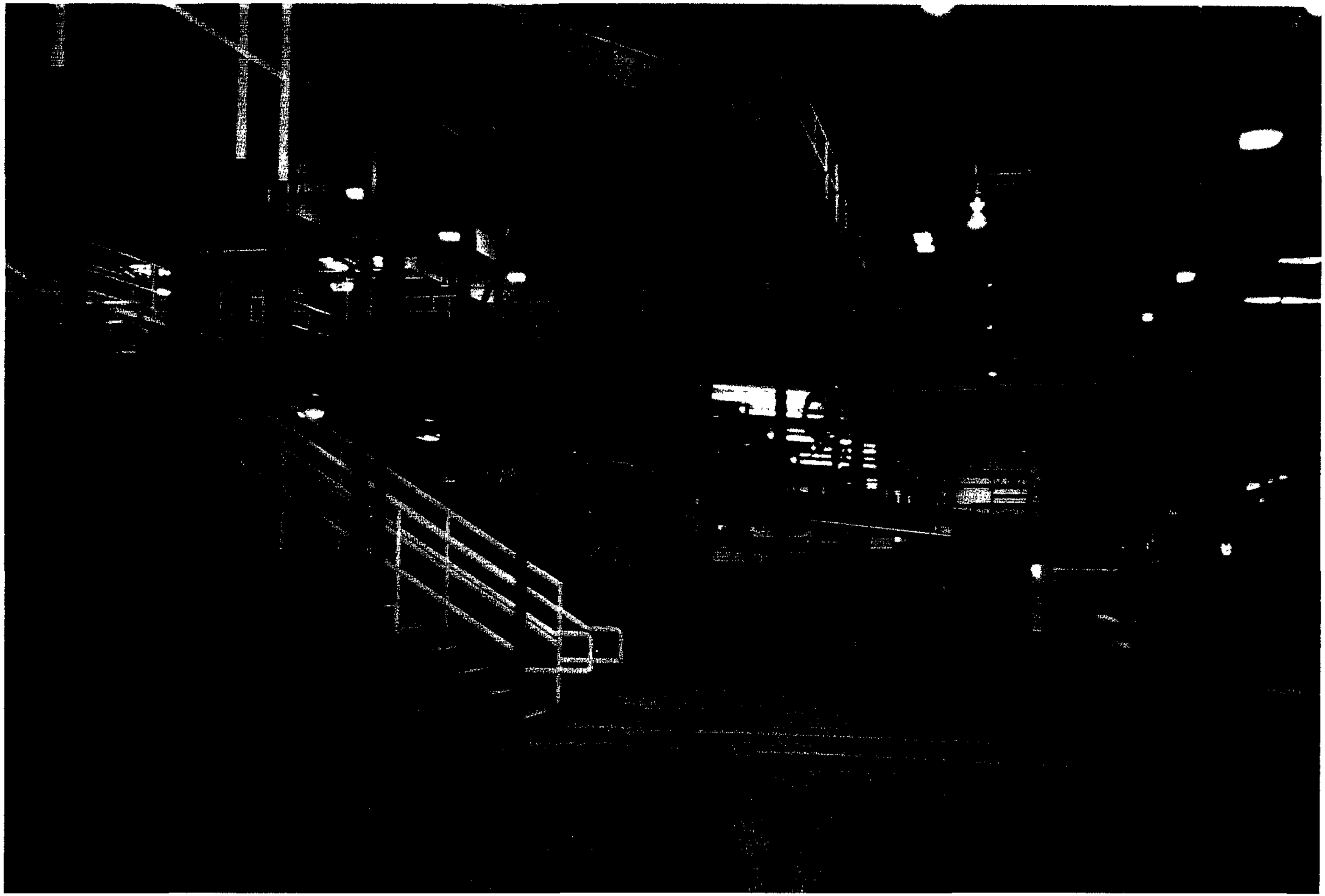
Zoning Commissioner/Deputy
Zoning Commissioner/Hearing
Officers

Pct X 1A



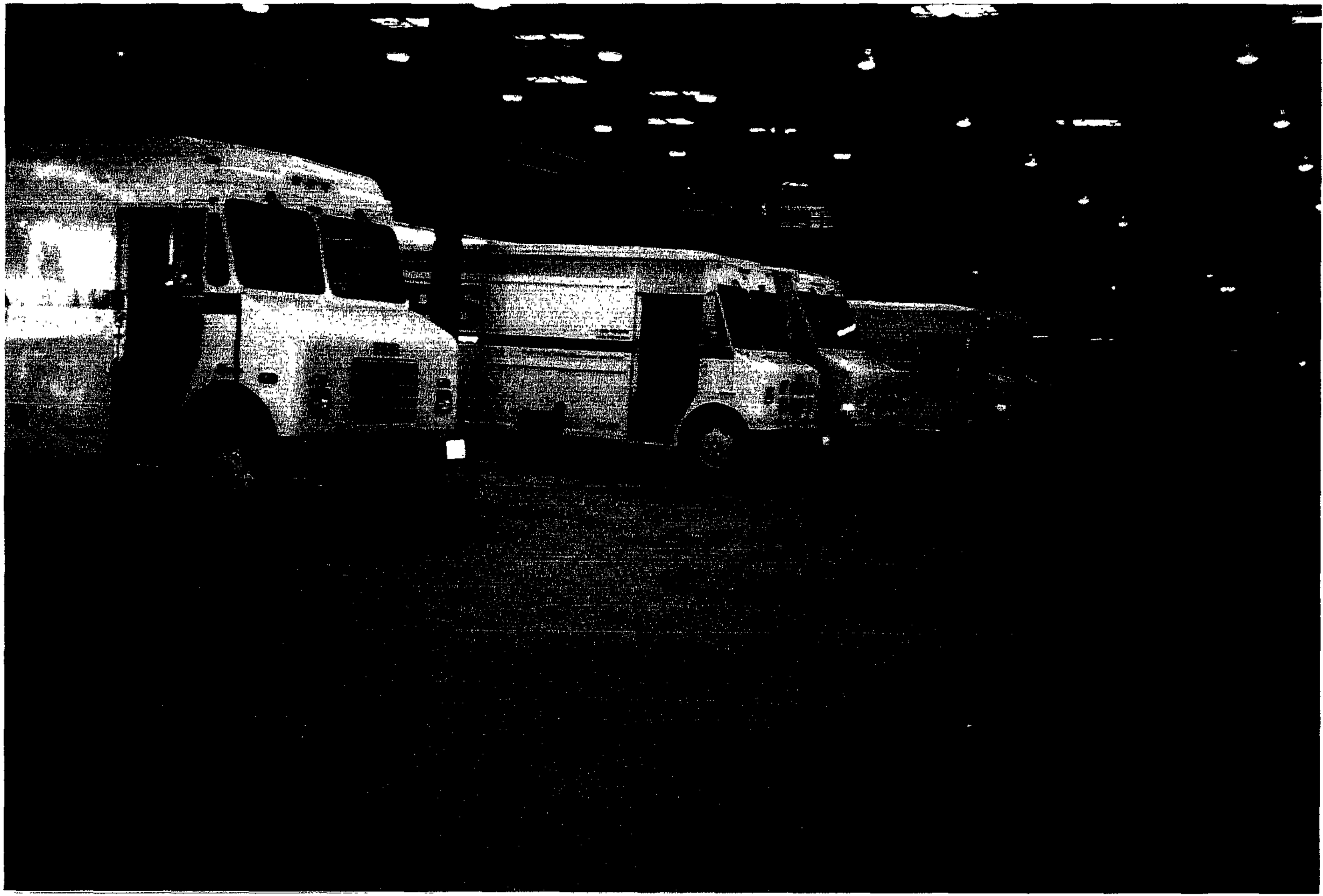
RPS – PACKAGE DISTRIBUTION EQUIPMENT: SORTING AND DISTRIBUTING OPERATIONS

Pex 10



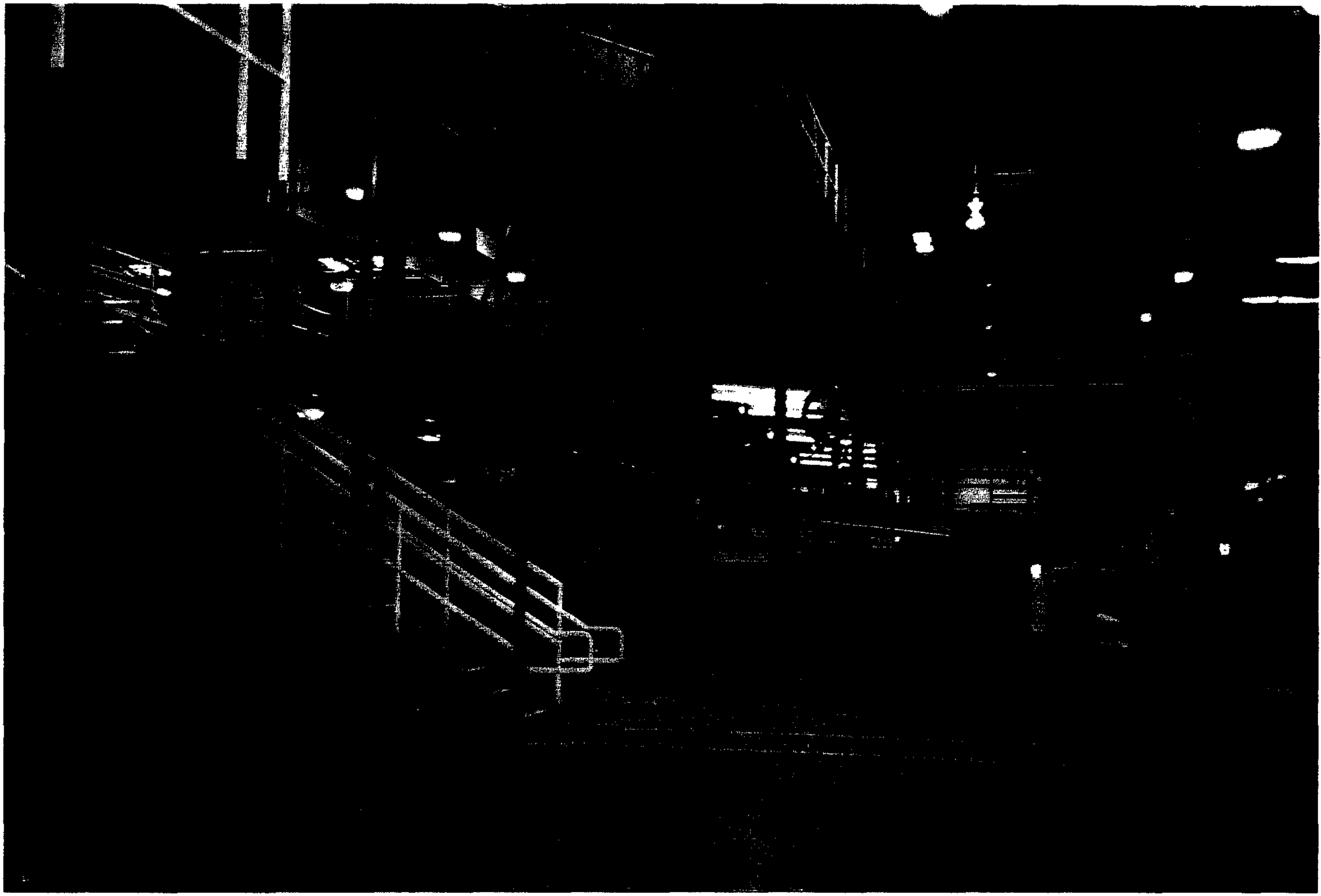
RPS – PACKAGE DISTRIBUTION EQUIPMENT: SORTING AND DISTRIBUTING OPERATIONS

Pos 1C

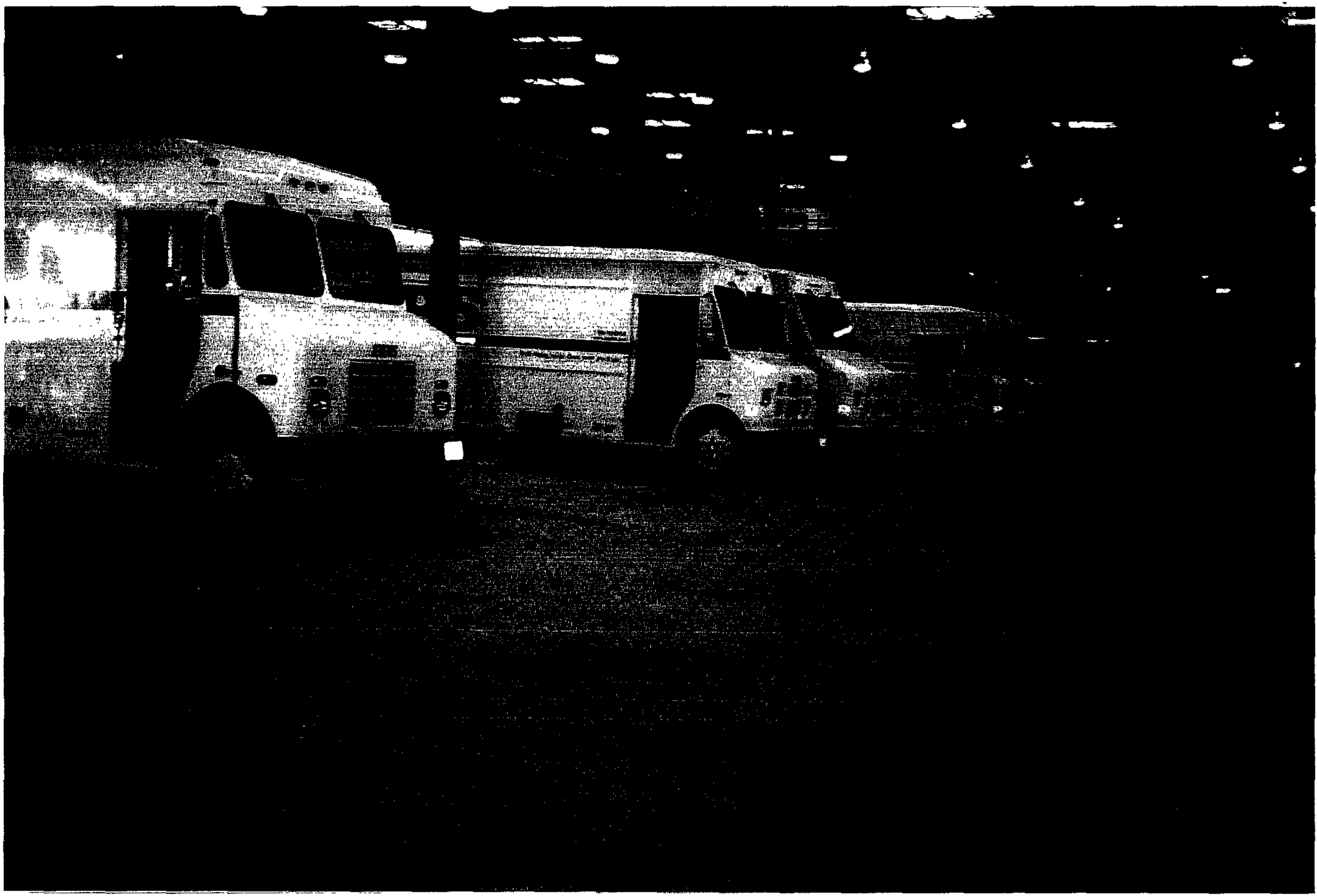


RPS – PACKAGE DISTRIBUTION CENTER: TYPICAL PACKAGE DELIVERY VANS

RPS – PACKAGE DISTRIBUTION EQUIPMENT: SORTING AND DISTRIBUTING OPERATIONS



RPS – PACKAGE DISTRIBUTION EQUIPMENT: SORTING AND DISTRIBUTING OPERATIONS



RPS – PACKAGE DISTRIBUTION CENTER: TYPICAL PACKAGE DELIVERY VANS

DOCKET SHEET FOR PROTESTANT'S EXHIBITS

Ex.No. 1 Photos #1 - 19 (ID)

Ex.No. 2 Photo orientation plot condition diagram (ID)

Ex.No. 3 vehicle turning movement summary (ID)

Ex.No. 4 Trip distribution for RPS (ID)

Ex.No. 5 Summary of traffic on Rossville 5 pgs (ID)

Ex.No. 6 Trip generation rates (ID) Comparison of Buses and of ITE manual

Ex.No. 7 Appendix B - intersection capacity worksheets

Ex.No. 8 full phase expected traffic flows

Ex.No. 9 existing use, peak and total volumes

Ex.No. _____

_____

I hereby certify that on this _____ day of _____, 19___, the date upon wich this file was transferred to the Office of Zoning Administration and Development Management (ZADM); that the exhibits listed on this docket sheet were actually contained in and/or attached to the case and were transmitted to the care, custody and possession of the Office of ZADM for their safekeeping.

_____
Zoning Commissioner/Deputy
Zoning Commissioner/Hearing
Officers

Ex No

Ex No

Ex No

Ex No

Ex No

Protestant
別件1 for ID

4

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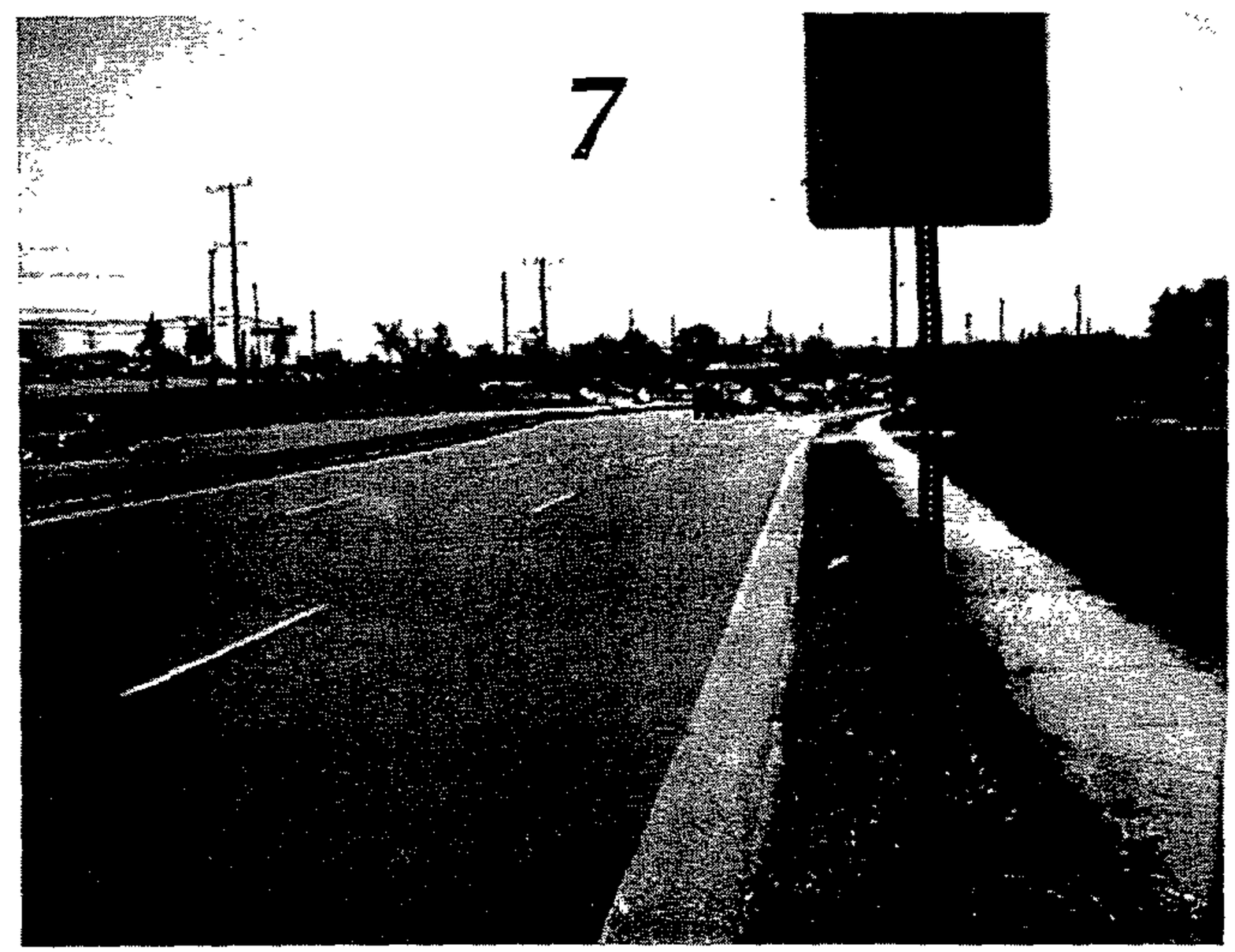
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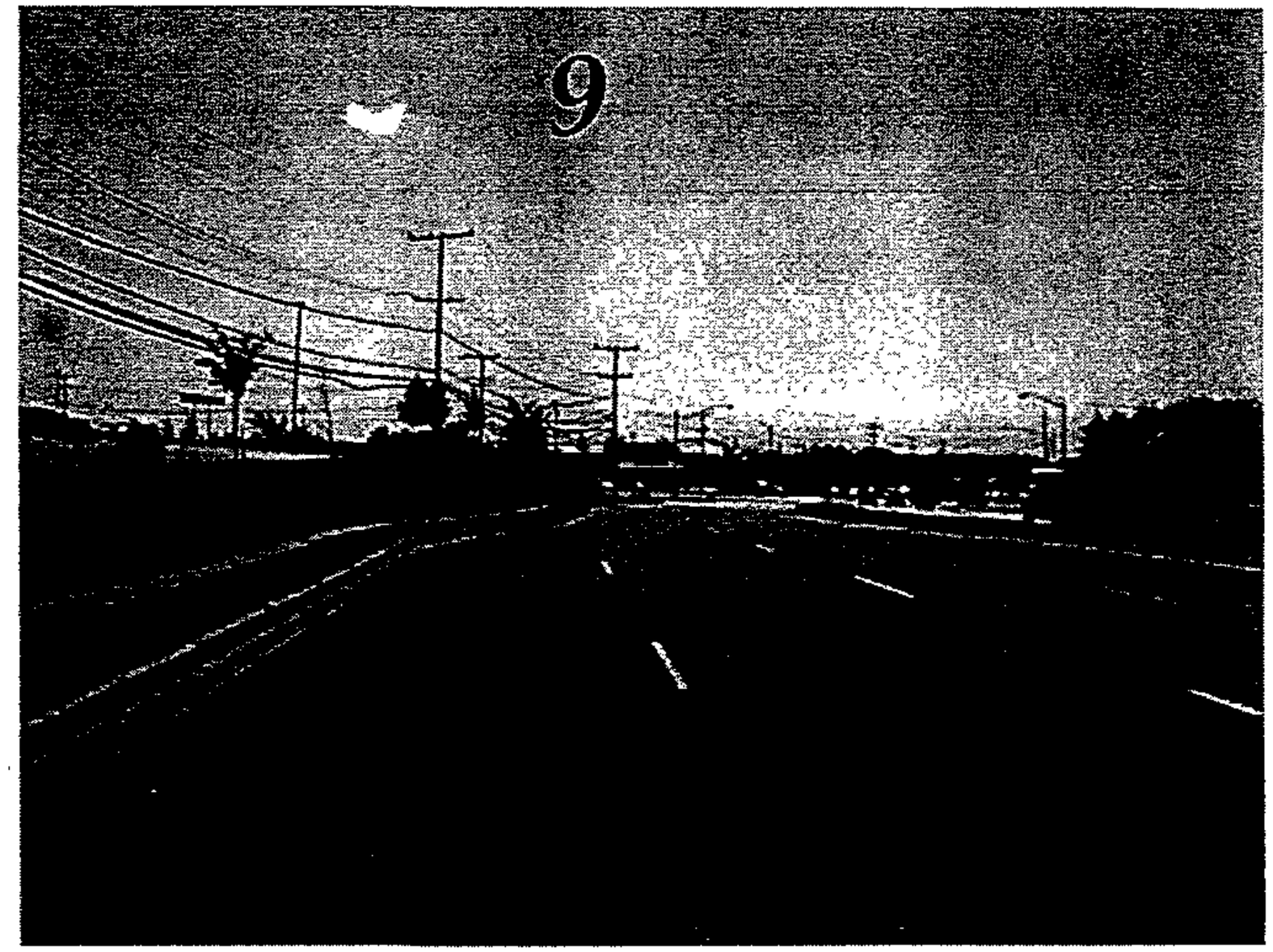
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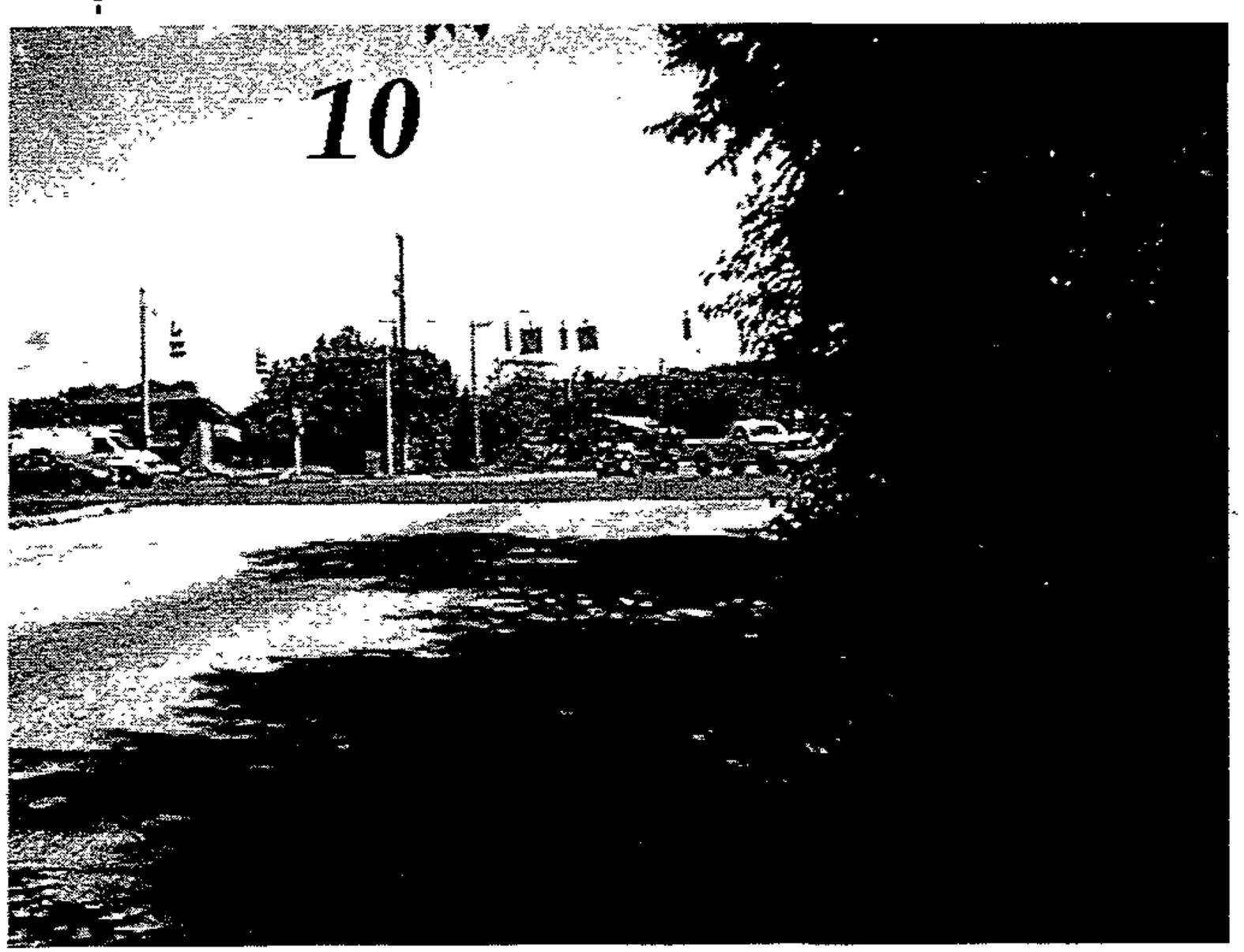
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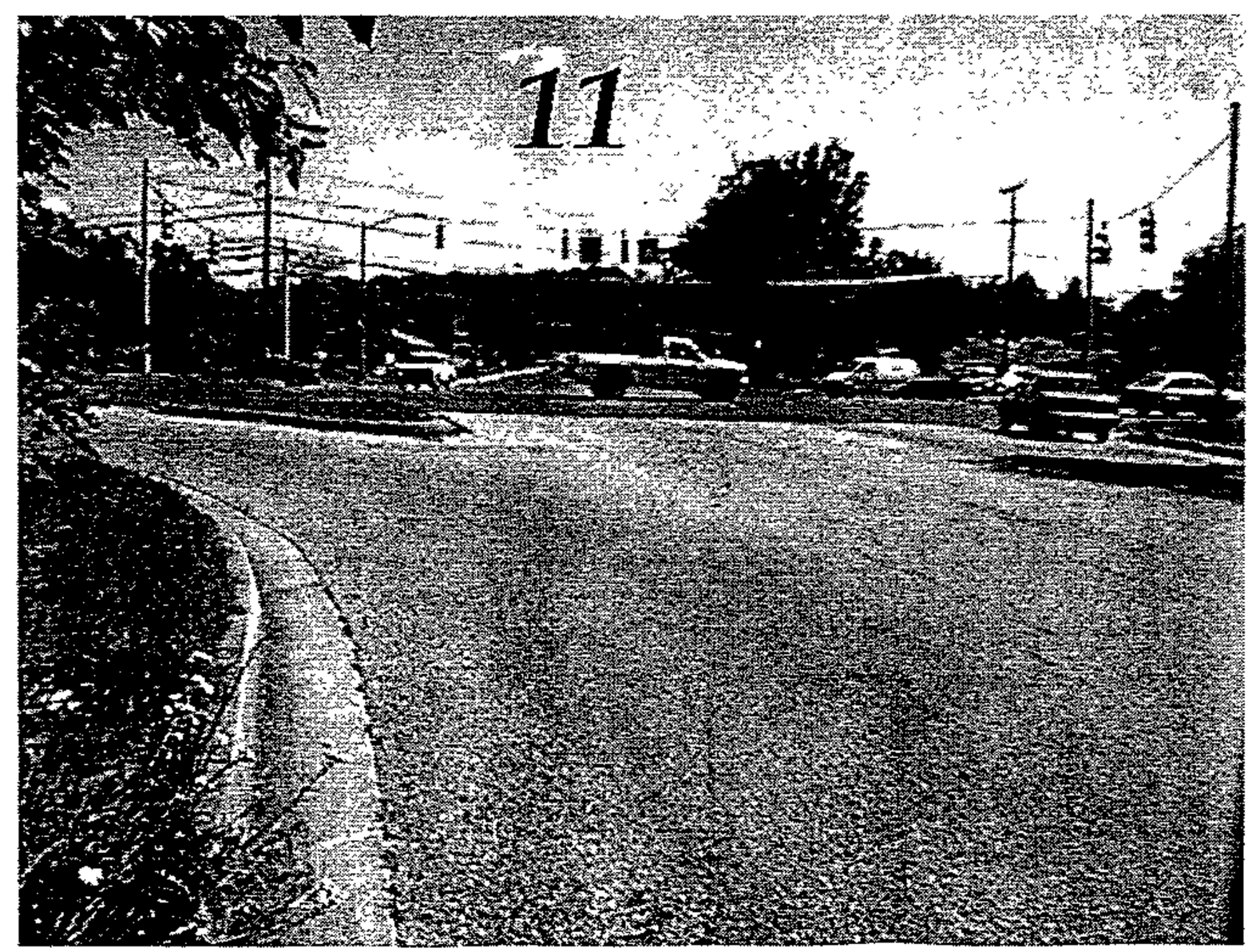
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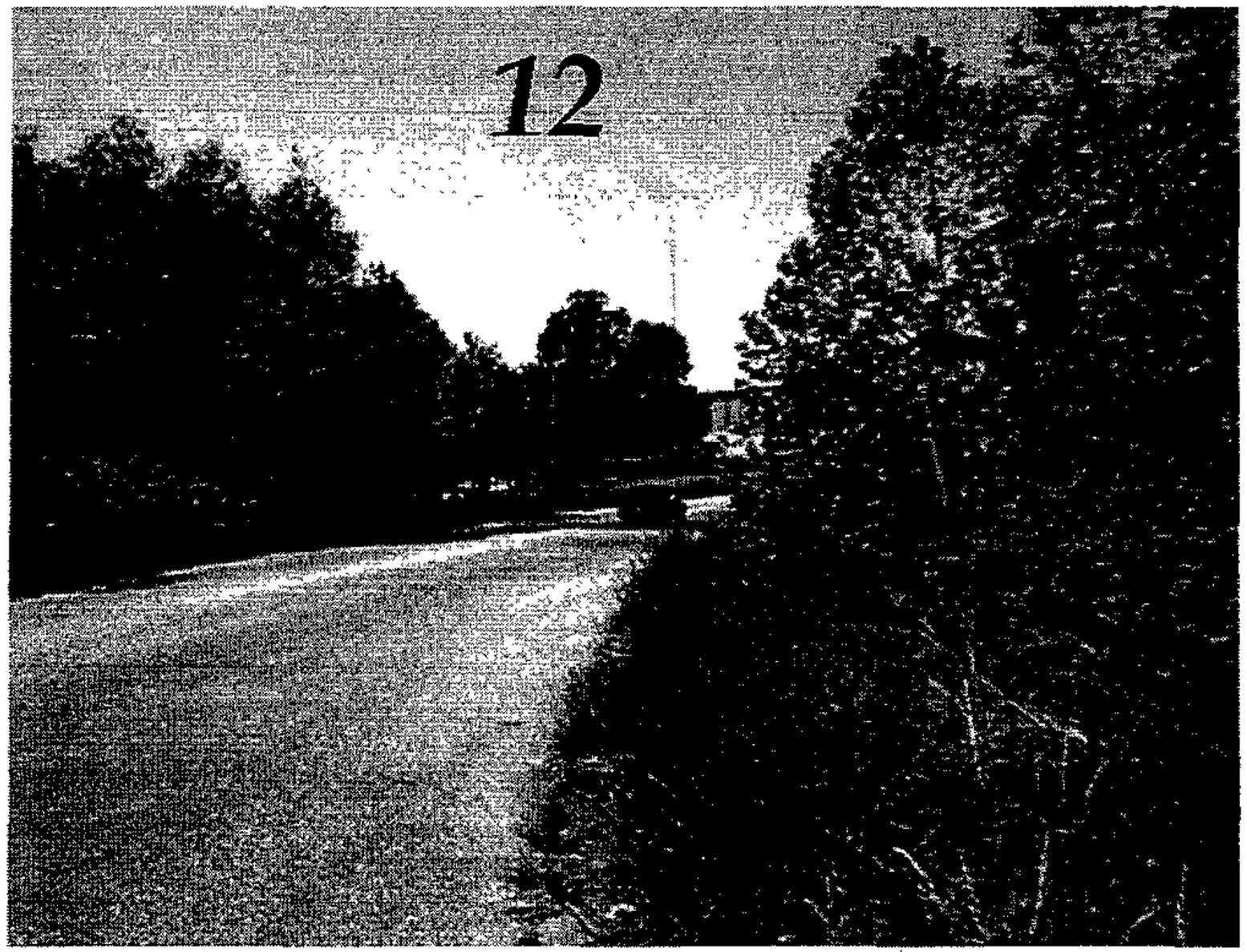
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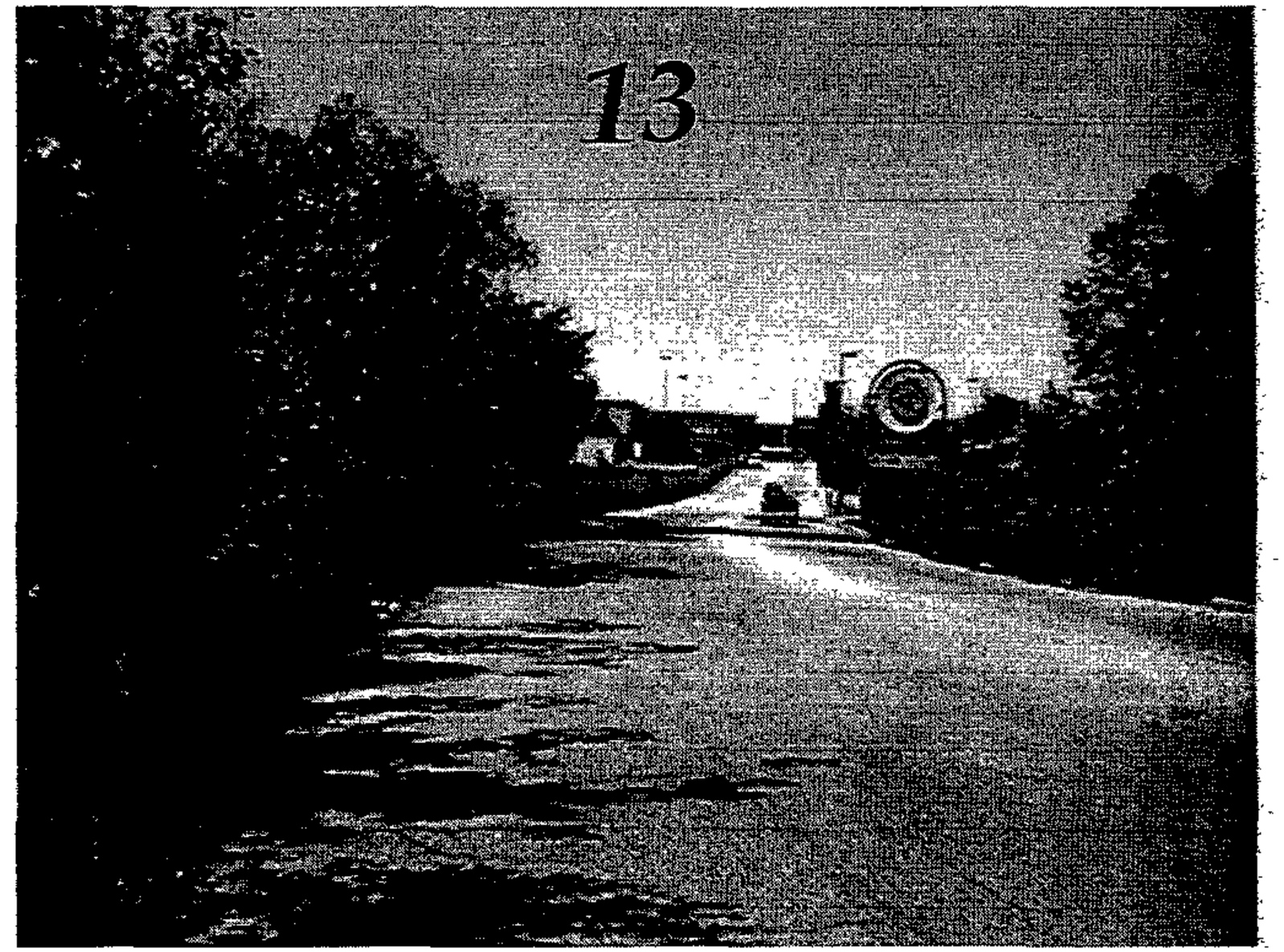
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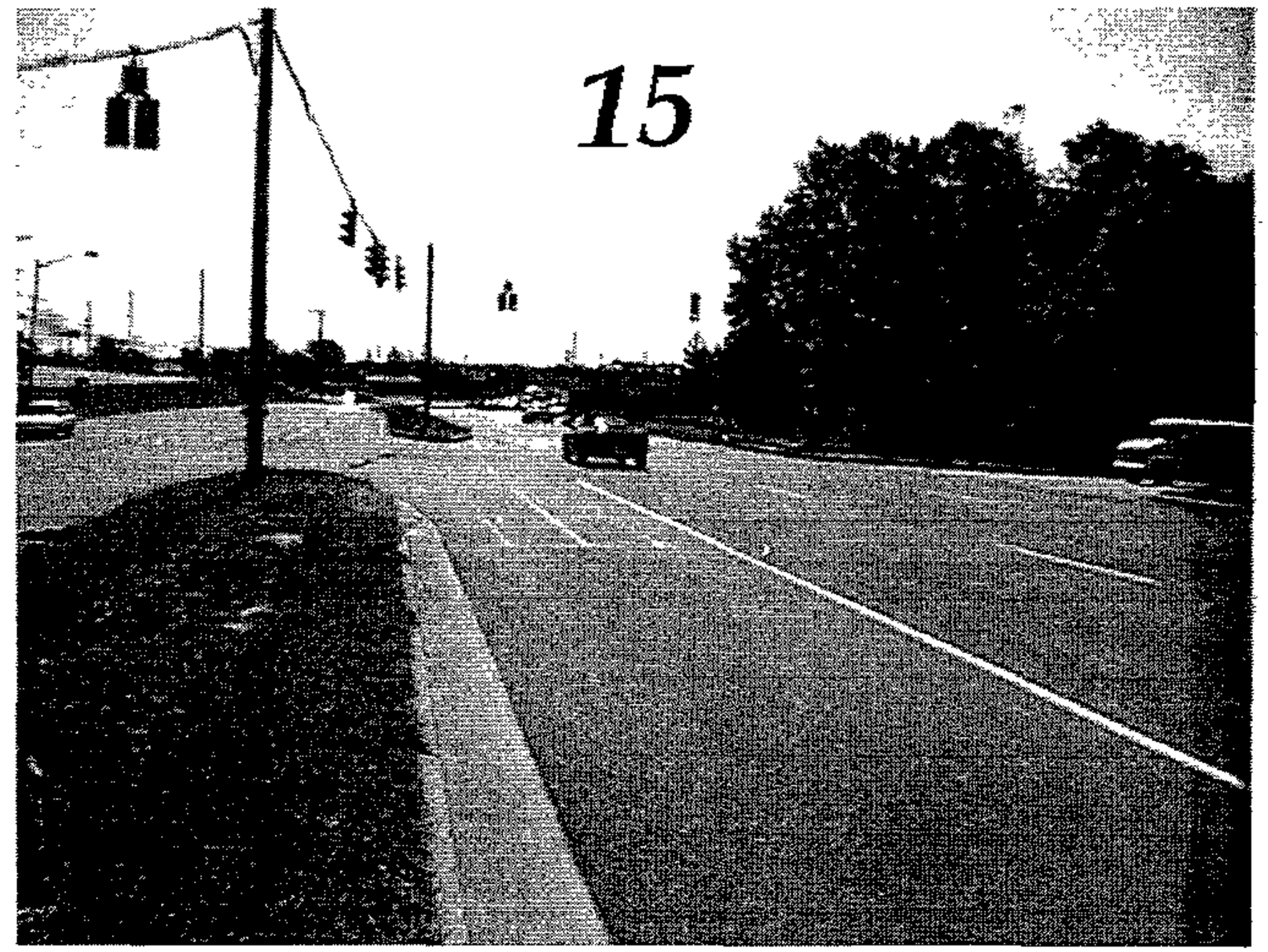
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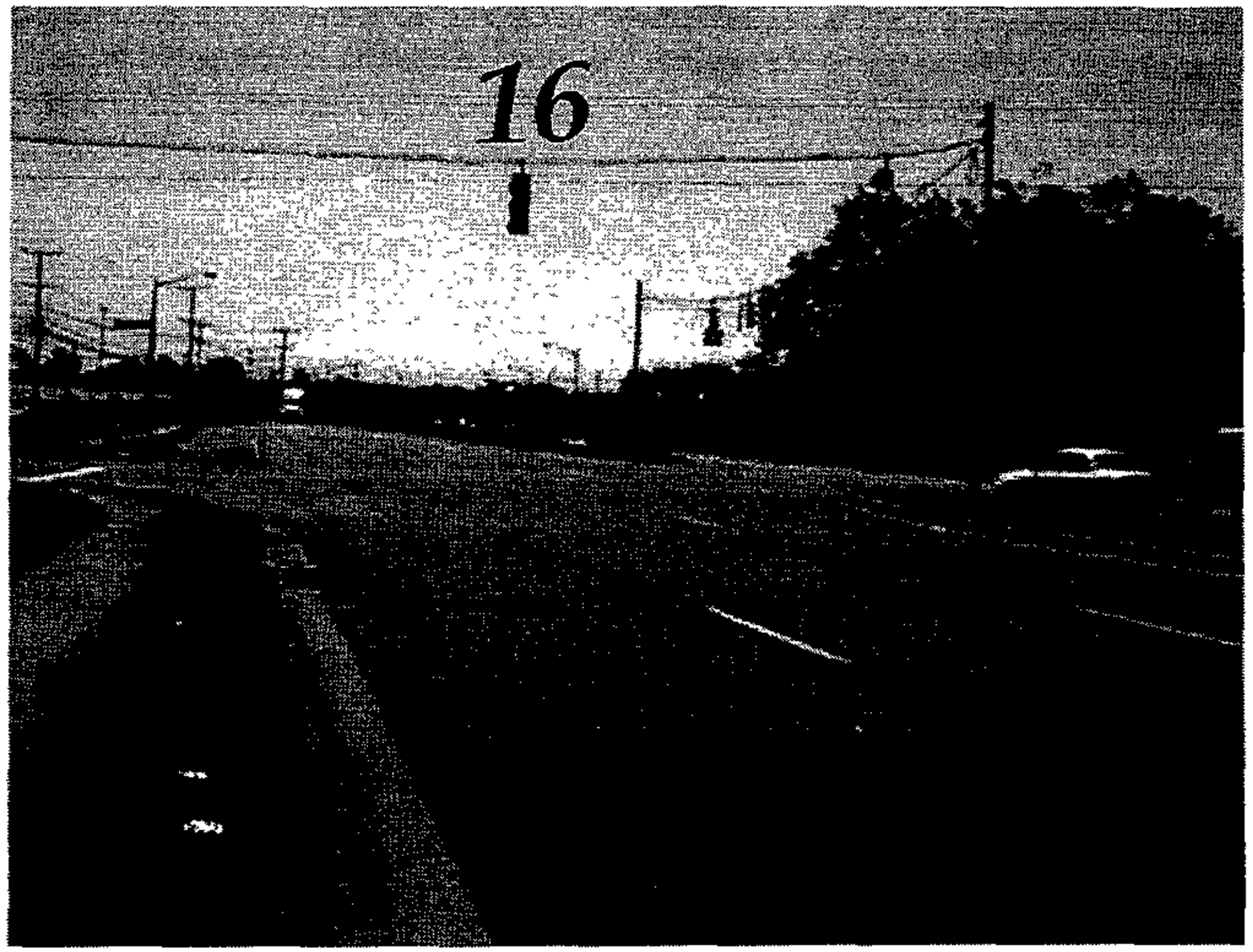
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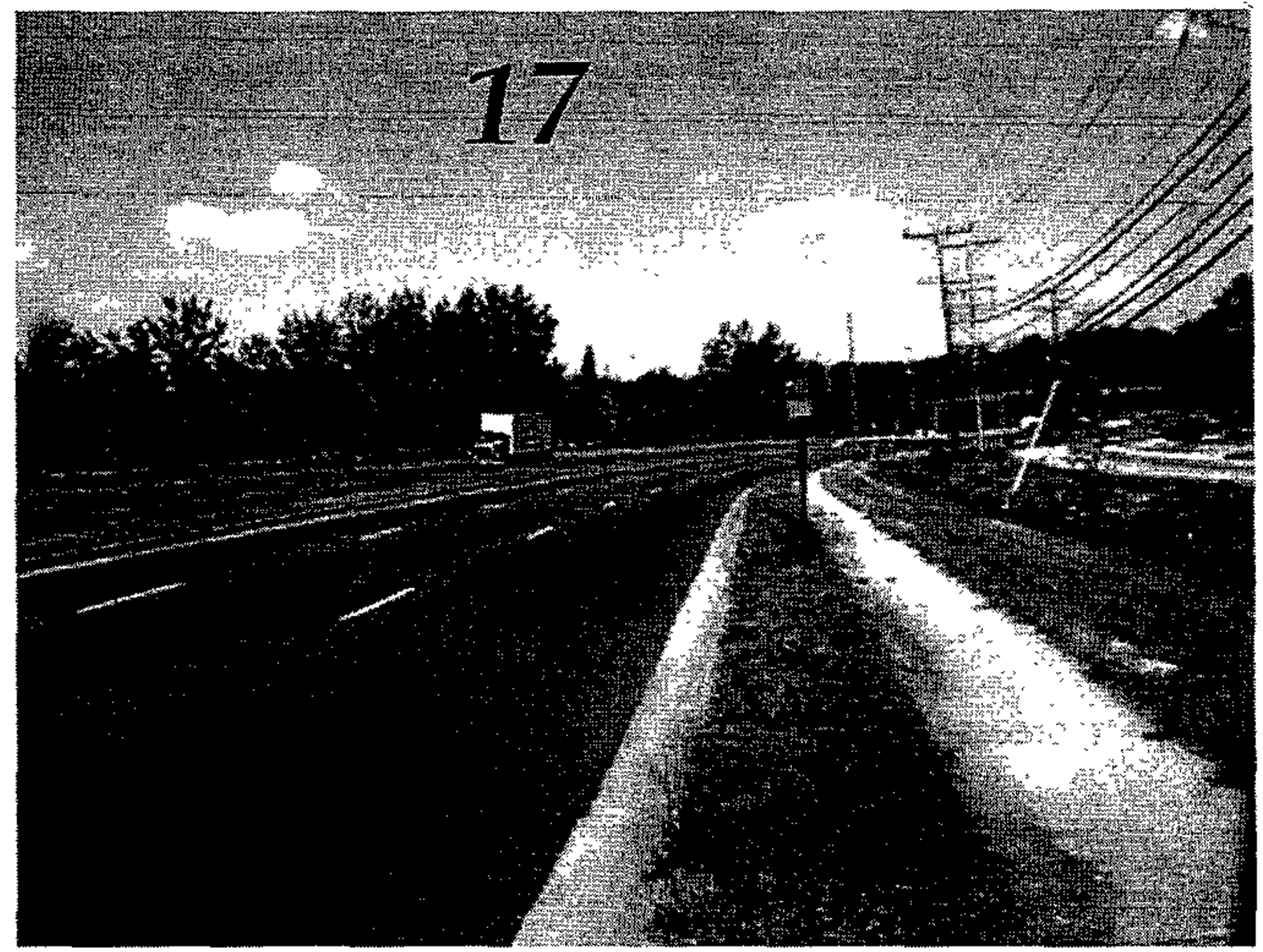
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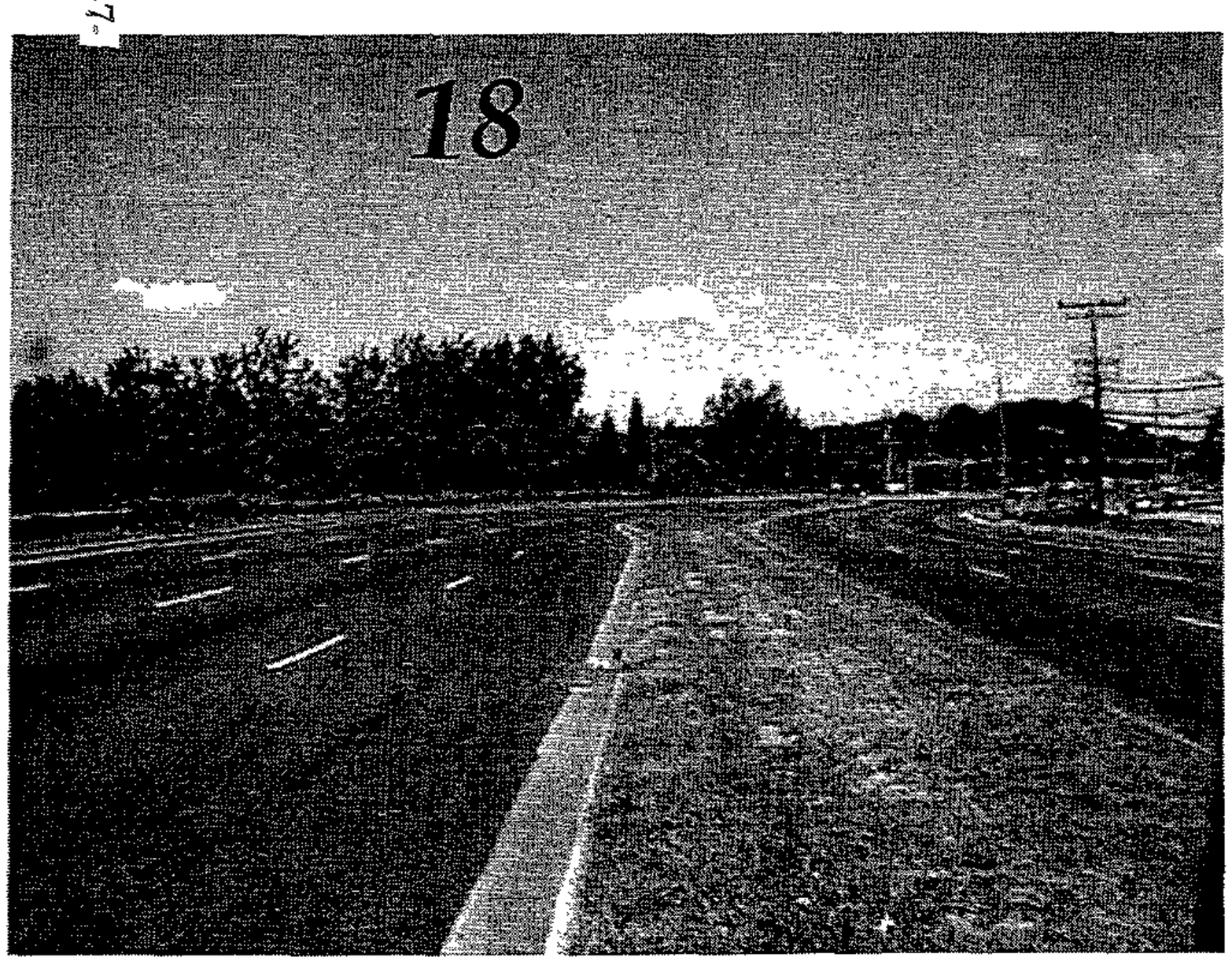
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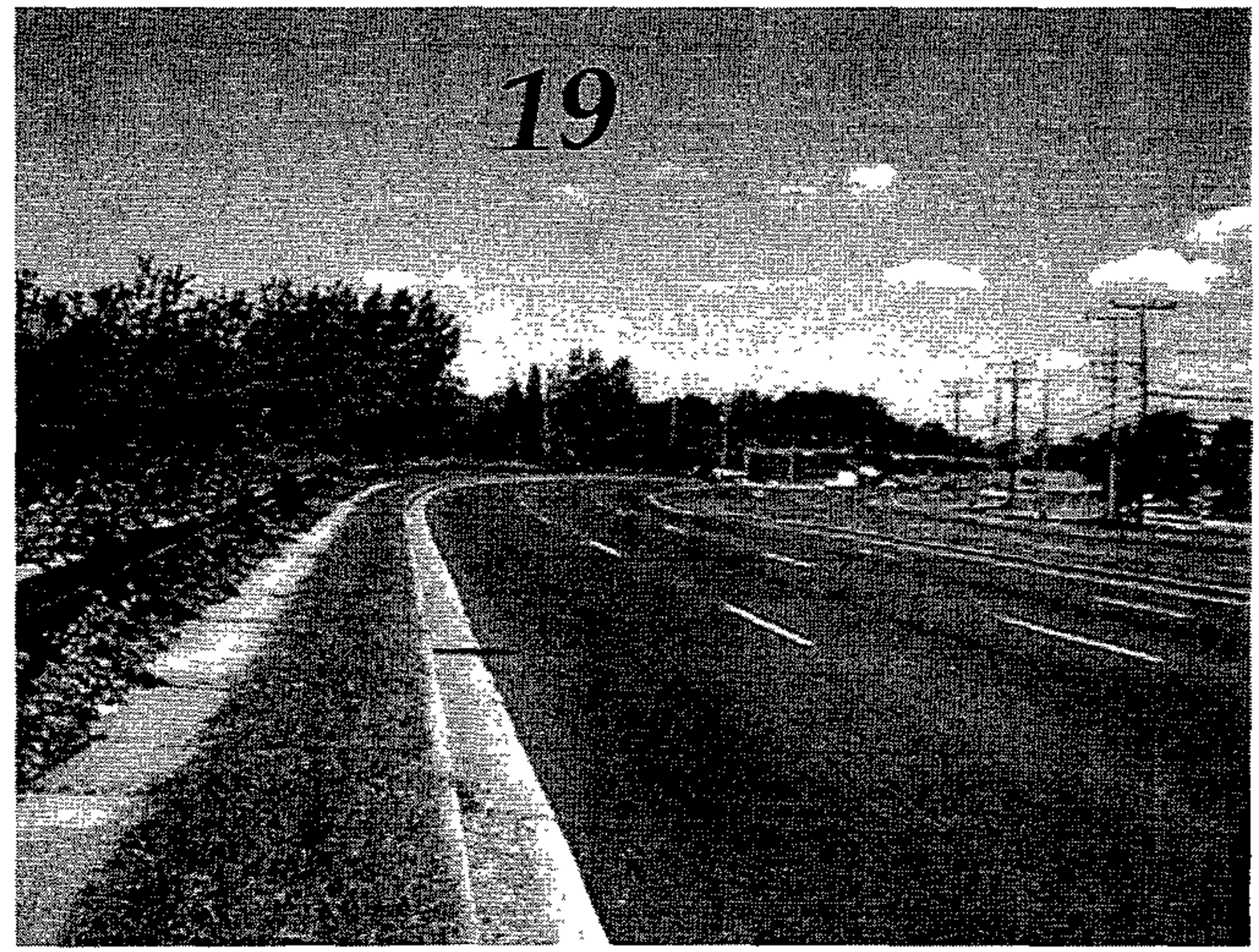
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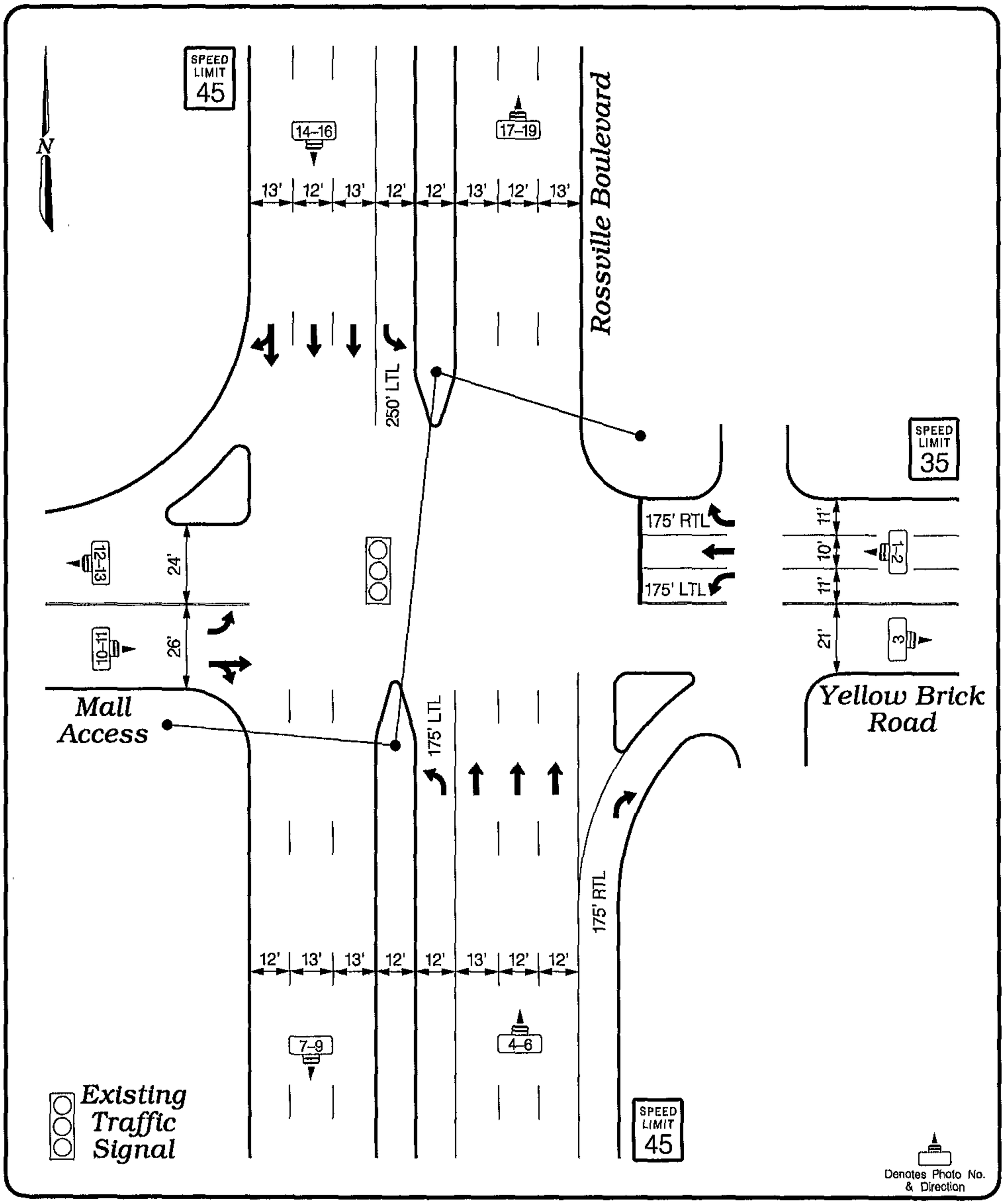


The Traffic Group

Rossville Boulevard at Yellow Brick Road/ Mall Access

FIELD WORK BY: S. Scalzo
DRAWN BY: S. Langley
DATE: May, 1999
SCALE: N/A

JOB NO.: 990321-02
DWG NAME: CD2.DGN
LOCATION: Baltimore Co., MD
SHEET NO.: 2 OF 2

Protestant Exhibit 2 for ID

VEHICLE TURNING MOVEMENT COUNT - SUMMARY

Counted by: SS,KC

Intersection of: *Rossville Blvd.* Date: May 25, 1999 Day: Tuesday

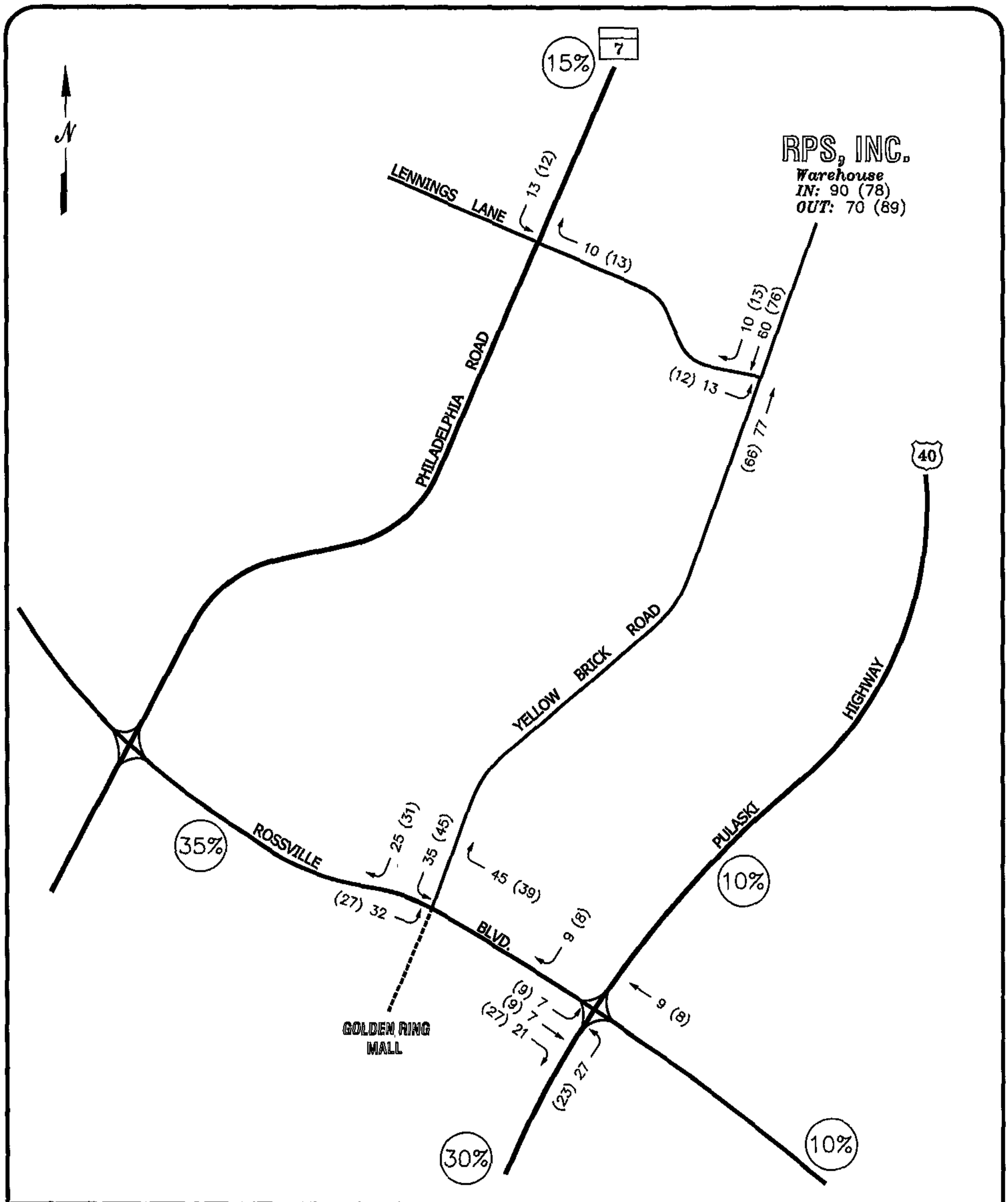
and: Yellow Brick Rd./Mall Access Weather: Fair,Cool

Location: *Balto.Co.,Md.* Entered by: SB

The Traffic Group

TIME	TRAFFIC FROM NORTH on: Rossville Blvd.					TRAFFIC FROM SOUTH on: Rossville Blvd.					TRAFFIC FROM EAST on: Yellow Brick Rd.					TRAFFIC FROM WEST on: Mall Access					TOTAL N + S + E + W
	RIGHT	THRU	LEFT	U-TN	TOTAL	U-TN	LEFT	THRU	RIGHT	TOTAL	RIGHT	THRU	LEFT	U-TN	TOTAL	U-TN	LEFT	THRU	RIGHT	TOTAL	
AM																					
07:0-15	14	176	52	0	242	0	15	161	52	228	25	5	33		63		2	3	3	8	541
15-30	14	190	57	0	261	1	4	181	52	238	15	4	28		47		3	2	4	9	555
30-45	13	196	62	0	271	1	8	232	80	321	25	2	22		49		4	8	4	16	657
45-00	9	180	55	1	245	1	16	217	80	314	16	5	30		51		4	6	1	11	621
08:0-15	13	143	62	0	218	0	12	228	55	295	32	2	30		64		1	4	6	11	588
15-30	4	162	65	0	231	2	13	207	62	284	40	6	31		77		5	4	6	15	607
30-45	9	151	52	0	212	3	9	192	43	247	21	5	32		58		5	4	1	10	527
45-00	8	136	43	0	187	0	20	169	58	247	23	5	31		59		4	1	4	9	502
2 Hr Totals	84	1334	448	1	1867	8	97	1587	482	2174	197	34	237	0	468	0	28	32	29	89	4598
1 Hr Totals																					
07-08	50	742	226	1	1019	3	43	791	264	1101	81	16	113	0	210	0	13	19	12	44	2374
715-815	49	709	236	1	995	3	40	858	267	1168	88	13	110	0	211	0	12	20	15	47	2421
730-830	39	681	244	1	965	4	49	884	277	1214	113	15	113	0	241	0	14	22	17	53	2473
745-845	35	636	234	1	906	6	50	844	240	1140	109	18	123	0	250	0	15	18	14	47	2343
08-09	34	592	222	0	848	5	54	796	218	1073	116	18	124	0	258	0	15	13	17	45	2224
PEAK HOUR																					
730-830	39	681	244	1	965	4	49	884	277	1214	113	15	113	0	241	0	14	22	17	53	2473
PM																					
04:0-15	14	177	24	1	216	1	31	180	48	260	62	14	63		139		9	8	26	43	658
15-30	10	237	30	2	279	1	27	223	32	283	73	16	71		160		13	10	30	53	775
30-45	12	207	32	1	252	2	22	226	26	276	67	29	78		174		15	3	28	46	748
45-00	14	252	32	1	299	2	24	243	35	304	77	20	76		173		17	3	23	43	819
05:0-15	16	218	18	0	252	3	38	273	32	346	78	21	76		175		16	2	25	43	816
15-30	15	247	14	0	276	0	24	251	30	305	56	19	57		132		17	1	26	44	757
30-45	14	213	13	0	240	1	28	240	25	294	45	7	42		94		22	3	22	47	675
45-00	13	199	21	0	233	0	21	222	23	266	34	11	31		76		18	3	34	55	630
2 Hr Totals	108	1750	184	5	2047	10	215	1858	251	2334	492	137	494	0	1123	0	127	33	214	374	5878
1 Hr Totals																					
04-05	50	873	118	5	1046	6	104	872	141	1123	279	79	288	0	646	0	54	24	107	185	3000
415-515	52	914	112	4	1082	8	111	965	125	1209	295	86	301	0	682	0	61	18	106	185	3158
430-530	57	924	96	2	1079	7	108	993	123	1231	278	89	287	0	654	0	65	9	102	176	3140
445-545	59	930	77	1	1067	6	114	1007	122	1249	256	67	251	0	574	0	72	9	96	177	3067
05-06	58	877	66	0	1001	4	111	986	110	1211	213	58	206	0	477	0	73	9	107	189	2878
PEAK HOUR																					
415-515	52	914	112	4	1082	8	111	965	125	1209	295	86	301	0	682	0	61	18	106	185	3158

Protestant Ex # 3 to ID



NOT TO SCALE

The Traffic Group

00 – MORNING PEAK HOUR
(00) – EVENING PEAK HOUR

EXHIBIT 5
TRIP DISTRIBUTION AND ASSIGNMENT FOR RPS, INC.

Protestant Ex #4 for JD

SUMMARY OF TRAFFIC CONDITIONS

ALONG YELLOW BRICK ROAD

NORTH OF ROSSVILLE BOULEVARD

- ***6,700 trips/day (counted Thursday/Friday 5/27 to 5/28/99)***
- ***AM peak hour is 7-8 AM - 609 vehicles (9% of ADT)***
- ***PM peak hour is 4-5 PM - 614 vehicles (9% of ADT)***
- ***AM peak hour tractor trailers - 25***
- ***PM peak hour tractor trailers - 49***
- ***Daily % of tractor trailers - 5.75%***

The Traffic Group, Inc.

June 1, 1999

(990321/wp/summary)

Protested 1st #5 Cont'd

THE TRAFFIC GROUP INC.

TOWSON,MARYLAND

05-28-1999 Volume by Type by Lane Report - D0527001.PRN 14:40 Pg 1

Sta: 111111111111 Id: 000000000110 CId: 01 Fmt: 300 - Imperial Int: 60 Min.

Start: Thu - May 27, 1999 at 12:00 End: Fri - May 28, 1999 at 12:00

City/Town: County: Baltimore

Location: Yellow Brick Rd North of Rosseville Blvd File: D0527001.PRN

Ln1-NORTH Ln2-SOUTH

Thu - May 27, 1999

Type		Cycle	Cars	2A-4T	Buses	2A-SU	3A-SU	4A-SU	4A-ST	5A-ST	6A-ST	5A-MT	6A-MT	7A-MT	None	Other	Total
13:00																	
Lane	1	0	190	54	6	10	4	0	6	11	0	0	0	0	0	3	284
	2	0	168	55	6	11	8	0	8	8	0	0	0	0	0	3	267
Lane	1-2	0	358	109	12	21	12	0	14	19	0	0	0	0	0	6	551
14:00																	
Lane	1	0	161	59	8	14	3	3	5	9	0	0	0	2	0	0	264
	2	0	133	33	8	21	2	2	7	6	0	0	0	0	0	0	212
Lane	1-2	0	294	92	16	35	5	5	12	15	0	0	0	2	0	0	476
15:00																	
Lane	1	1	128	39	2	14	1	0	4	2	0	0	0	1	0	3	195
	2	0	138	47	1	14	0	1	11	7	0	1	0	0	0	0	220
Lane	1-2	1	266	86	3	28	1	1	15	9	0	1	0	1	0	3	415
16:00																	
Lane	1	1	175	51	6	16	4	1	10	15	0	0	0	0	0	3	282
	2	0	181	44	5	14	2	1	9	2	0	0	0	1	0	2	261
Lane	1-2	1	356	95	11	30	6	2	19	17	0	0	0	1	0	5	543
17:00																	
Lane	1	0	114	31	5	7	0	0	9	7	0	0	0	1	0	3	177
	2	0	319	62	4	14	2	2	13	15	1	0	0	3	0	2	437
Lane	1-2	0	433	93	9	21	2	2	22	22	1	0	0	4	0	5	614
18:00																	
Lane	1	1	70	18	3	4	0	1	2	5	0	0	0	0	0	0	104
	2	0	295	43	2	5	0	4	8	5	0	0	0	0	0	1	363
Lane	1-2	1	365	61	5	9	0	5	10	10	0	0	0	0	0	1	467
19:00																	
Lane	1	0	64	17	0	9	1	0	3	2	0	0	0	1	0	0	97
	2	0	131	27	2	7	1	1	5	0	0	0	0	0	0	0	174
Lane	1-2	0	195	44	2	16	2	1	8	2	0	0	0	1	0	0	271
20:00																	
Lane	1	1	37	9	2	4	0	0	0	0	0	0	0	0	0	1	54
	2	0	74	19	1	1	1	0	1	2	0	0	0	0	0	0	99
Lane	1-2	1	111	28	3	5	1	0	1	2	0	0	0	0	0	1	153
21:00																	
Lane	1	0	32	8	1	1	0	0	3	0	0	0	0	0	0	0	45
	2	0	46	13	1	3	0	0	1	0	0	0	0	0	0	0	64
Lane	1-2	0	78	21	2	4	0	0	4	0	0	0	0	0	0	0	109
22:00																	
Lane	1	0	14	2	0	1	1	0	2	1	0	0	0	0	0	0	21
	2	0	35	6	0	1	0	0	0	0	0	0	0	0	0	0	42
Lane	1-2	0	49	8	0	2	1	0	2	1	0	0	0	0	0	0	63

Thu - May 27, 1999

Type		Cycle	Cars	2A-4T	Buses	2A-SU	3A-SU	4A-SU	4A-ST	5A-ST	6A-ST	5A-MT	6A-MT	7A-MT	None	Other	Total
23:00																	
Lane	1	0	8	6	0	4	0	0	0	1	0	0	0	0	0	0	19
	2	0	26	6	2	0	0	0	2	0	0	0	0	0	0	0	36
Lane	1-2	0	34	12	2	4	0	0	2	1	0	0	0	0	0	0	55
24:00																	
Lane	1	0	35	3	0	2	0	0	0	0	0	0	0	0	0	0	40
	2	0	33	5	0	1	0	0	0	1	0	0	0	0	0	0	40
Lane	1-2	0	68	8	0	3	0	0	0	1	0	0	0	0	0	0	80
Daily Totals		4	2607	657	65	178	30	16	109	99	1	1	0	9	0	21	3797
Percentages		0.11	68.66	17.30	1.71	4.69	0.79	0.42	2.87	2.61	0.03	0.03	0.00	0.24	0.00	0.55	

Fri - May 28, 1999

01:00																	
Lane	1	0	7	0	0	1	0	0	1	1	0	0	0	0	0	0	10
	2	0	36	8	1	0	0	0	2	0	0	0	0	0	0	0	47
Lane	1-2	0	43	8	1	1	0	0	3	1	0	0	0	0	0	0	57
02:00																	
Lane	1	0	8	2	0	0	0	0	0	1	0	0	0	0	0	0	11
	2	0	17	2	0	0	0	0	0	0	0	0	0	0	0	0	19
Lane	1-2	0	25	4	0	0	0	0	0	1	0	0	0	0	0	0	30
03:00																	
Lane	1	0	3	5	0	0	0	0	0	1	0	0	0	0	0	0	9
	2	0	8	4	0	0	0	0	0	2	0	0	0	0	0	0	14
Lane	1-2	0	11	9	0	0	0	0	0	3	0	0	0	0	0	0	23
04:00																	
Lane	1	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	2
	2	1	3	2	0	0	0	0	0	0	0	0	0	0	0	0	6
Lane	1-2	1	5	2	0	0	0	0	0	0	0	0	0	0	0	0	8
05:00																	
Lane	1	0	17	3	0	0	1	0	1	0	0	0	0	0	0	0	22
	2	0	4	0	0	1	0	0	1	0	0	0	0	0	0	0	6
Lane	1-2	0	21	3	0	1	1	0	2	0	0	0	0	0	0	0	28
06:00																	
Lane	1	0	79	21	0	1	1	0	0	4	0	0	0	0	0	0	106
	2	0	10	11	2	2	0	0	3	1	0	0	0	0	0	0	29
Lane	1-2	0	89	32	2	3	1	0	3	5	0	0	0	0	0	0	135
07:00																	
Lane	1	0	223	50	1	6	1	1	0	8	0	0	0	0	0	0	290
	2	0	40	12	3	12	0	0	3	1	0	0	0	0	0	1	72
Lane	1-2	0	263	62	4	18	1	1	3	9	0	0	0	0	0	1	362

THE TRAFFIC GROUP INC.

TOWSON, MARYLAND

05-28-1999 Volume by Type by Lane Report - D0527001.PRN 14:40 Pg 3

Fri - May 28, 1999

Type		Cycle	Cars	2A-4T	Buses	2A-SU	3A-SU	4A-SU	4A-ST	5A-ST	6A-ST	5A-MT	6A-MT	7A-MT	None	Other	Total
08:00																	
Lane	1	0	340	66	2	14	2	2	4	12	1	0	0	0	0	2	445
	2	1	90	46	5	10	3	1	2	5	0	0	0	1	0	0	164
Lane	1-2	1	430	112	7	24	5	3	6	17	1	0	0	1	0	2	609
09:00																	
Lane	1	1	286	48	4	11	1	2	1	9	0	0	0	1	0	1	365
	2	0	103	51	5	16	2	0	5	7	1	0	1	0	0	4	195
Lane	1-2	1	389	99	9	27	3	2	6	16	1	0	1	1	0	5	560
10:00																	
Lane	1	0	130	49	2	10	3	0	3	9	0	0	0	0	0	1	207
	2	0	108	50	3	22	2	0	10	9	0	0	0	0	0	1	205
Lane	1-2	0	238	99	5	32	5	0	13	18	0	0	0	0	0	2	412
11:00																	
Lane	1	0	96	37	4	18	3	0	4	9	1	0	0	0	0	0	172
	2	0	94	43	3	25	1	2	7	4	0	0	0	2	0	1	182
Lane	1-2	0	190	80	7	43	4	2	11	13	1	0	0	2	0	1	354
12:00																	
Lane	1	0	91	41	1	17	1	1	5	11	1	0	0	0	0	0	169
	2	0	87	39	1	23	1	1	5	7	0	0	0	2	0	1	167
Lane	1-2	0	178	80	2	40	2	2	10	18	1	0	0	2	0	1	336
Daily Totals		3	1882	590	37	189	22	10	57	101	4	0	1	6	0	12	2914
Percentages		0.10	64.58	20.25	1.27	6.49	0.75	0.34	1.96	3.47	0.14	0.00	0.03	0.21	0.00	0.41	

THE TRAFFIC GROUP INC.
TOWSON,MARYLAND

05-28-1999 Volume by Type by Lane Report - D0527001.PRN 14:40 Pg 4

Sta: 111111111111 Id: 000000000110 CId: 01 Fmt: 300 - Imperial Int: 60 Min.
Start: Thu - May 27, 1999 at 12:00 End: Fri - May 28, 1999 at 12:00
City/Town: County: Baltimore
Location: Yellow Brick Rd North of Rosseville Blvd File: D0527001.PRN
Ln1-NORTH Ln2-SOUTH

Station Data Summary

Type	Cycle	Cars	2A-4T	Buses	2A-SU	3A-SU	4A-SU	4A-ST	5A-ST	6A-ST	5A-MT	6A-MT	7A-MT	None	Other	Total
Grand Totals	7	4489	1247	102	367	52	26	166	200	5	1	1	15	0	33	6711
Percentages	0.10	66.89	18.58	1.52	5.47	0.77	0.39	2.47	2.98	0.07	0.01	0.01	0.22	0.00	0.49	

Lane	1	2	Total
Grand Totals	3390	3321	6711
Percentages	50.51	49.49	

Am/Pm Peak Hour Totals

Type	Cycle	Cars	2A-4T	Buses	2A-SU	3A-SU	4A-SU	4A-ST	5A-ST	6A-ST	5A-MT	6A-MT	7A-MT	None	Other	Total
Am Hour 7-8	1	430	112	7	24	5	3	6	17	1	0	0	1	0	2	609
Percentages	14.29	9.58	8.98	6.86	6.54	9.62	11.54	3.61	8.50	20.00	0.00	0.00	6.67	0.00	6.06	9.07
Pm Hour 16-17	0	433	93	9	21	2	2	22	22	1	0	0	4	0	5	614
Percentages	0.00	9.65	7.46	8.82	5.72	3.85	7.69	13.25	11.00	20.00	0.00	0.00	26.67	0.00	15.15	9.15

TRIP GENERATION RATES

LAND USE	FORMULA	DISTRIBUTION
Warehousing (ksf, ITE-150)		
	Ln(Morning Trips) = 0.707 x Ln(ksf) + 1.148	82/18
	Ln(Evening Trips) = 0.754 x Ln(ksf) + 0.826	24/76
	Daily Trips = 3.676 x ksf + 350.266	
General Light Industrial (ITE-110)		
	Morning Trips = 1.183 x ksf + -89.275	87/13
	Evening Trips = 1.433 x ksf + -163.421	15/85
	Daily Trips = 7.468 x ksf + -101.921	
Truck Terminal (ITE-030)		
	Morning Trips = 0.90 x ksf	40/60
	Evening Trips = 0.82 x ksf	47/53
	Daily Trips = 9.85 x ksf	

TRIP GENERATION TOTALS

	MORNING PEAK HOUR			EVENING PEAK HOUR			WEEK
	IN	OUT	TOTAL	IN	OUT	TOTAL	DAY
129,200 sf Warehousing	80	18	98	21	68	89	825
129,200 sf General Light Industrial	56	8	64	3	19	22	863
129,200 sf Truck Terminal	46	70	116	50	56	106	1273

The Traffic Group

ROT 5x 6 hr PD
~~P.G 5x 6~~

APPENDIX B

Intersection Capacity Analysis Worksheets

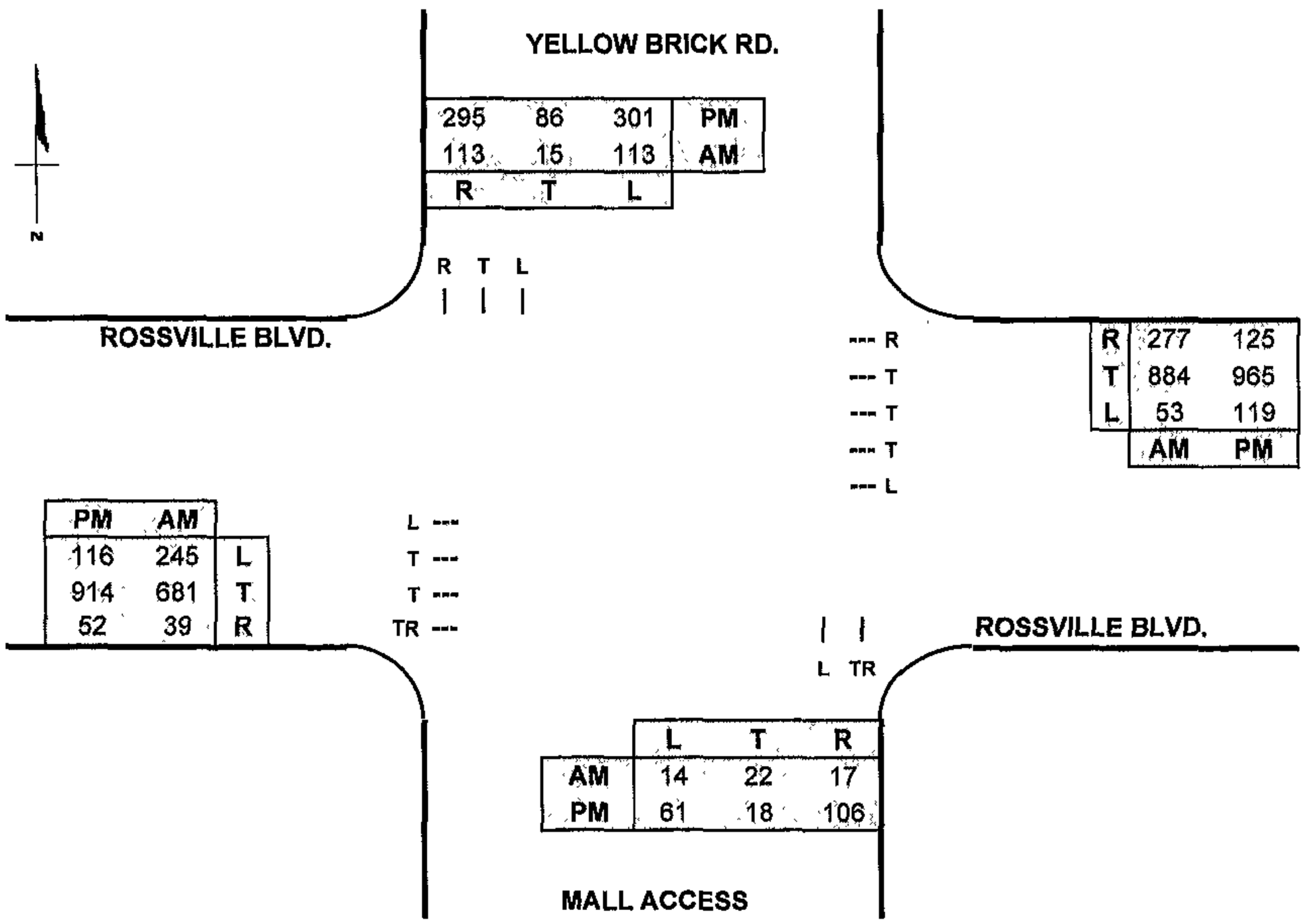
Protestant 1st #7
for IP

June 1, 1999

CRITICAL LANE VOLUME (CLV) METHODOLOGY
for MSHA

Intersection of: YELLOW BRICK RD. **Date of Count:** May 25, 1999
and: ROSSVILLE BLVD. **Day of Week:** Tuesday
Conditions: EXISTING TRAFFIC **Analyst:** Reddy Venna

Lane Use + Traffic Volumes



Capacity Analysis

Morning Peak Hour

Dir	Thru Volumes VOL	x LUF	= Total	+ Opposing Lefts VOL	x LUF	= Total	AM CLV
NB	39	1	39	113	1	113	152
SB	15	1	15	14	1	14	
EB	720	0.4	288	53	1	53	599
WB	884	0.4	354	245	1	245	

CLV TOTAL= **751**
Level of Service (LOS)= **A**

Evening Peak Hour

Dir	Thru Volumes VOL	x LUF	= Total	+ Opposing Lefts VOL	x LUF	= Total	PM CLV
NB	124	1	124	301	1	301	425
SB	179	1	179	61	1	61	
EB	966	0.4	386	119	1	119	505
WB	965	0.4	386	116	1	116	

CLV TOTAL= **930**
Level of Service (LOS)= **A**

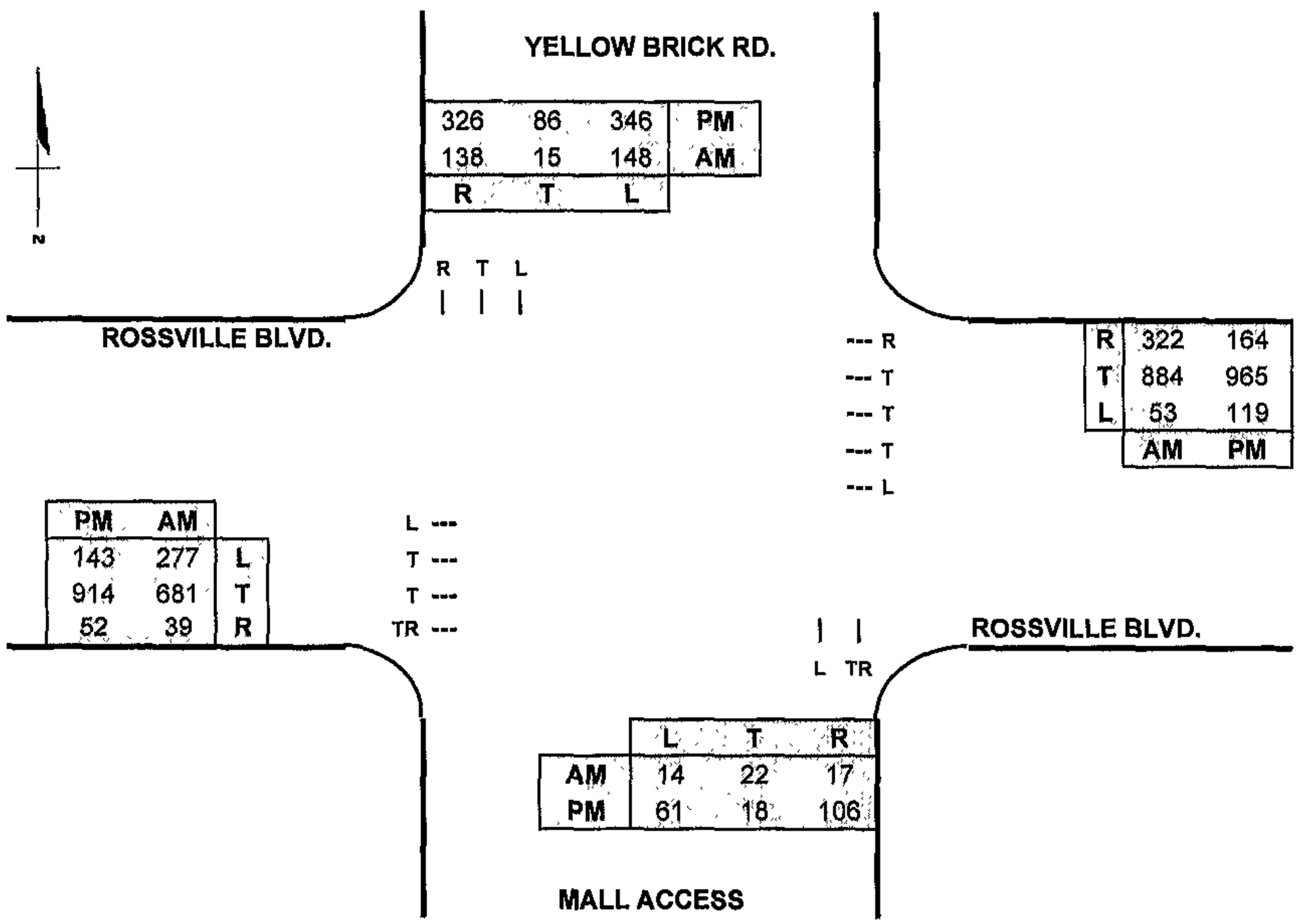
June 1, 1999

CRITICAL LANE VOLUME (CLV) METHODOLOGY
for MSHA

Intersection of: YELLOW BRICK RD. **Date of Count:** May 25, 1999
and: ROSSVILLE BLVD. **Day of Week:** Tuesday
Conditions: TOTAL TRAFFIC **Analyst:** Reddy Venna

The Traffic Group

Lane Use + Traffic Volumes



Capacity Analysis

Morning Peak Hour

Dir	Thru Volumes VOL	x LUF	= Total	+ Opposing Lefts VOL	x LUF	= Total	AM CLV
NB	39	1	39	148	1	148	187
SB	15	1	15	14	1	14	
EB	720	0.4	288	53	1	53	631
WB	884	0.4	354	277	1	277	

CLV TOTAL= **818**
Level of Service (LOS)= **A**

Evening Peak Hour

Dir	Thru Volumes VOL	x LUF	= Total	+ Opposing Lefts VOL	x LUF	= Total	PM CLV
NB	124	1	124	346	1	346	470
SB	183	1	183	61	1	61	
EB	966	0.4	386	119	1	119	529
WB	965	0.4	386	143	1	143	

CLV TOTAL= **999**
Level of Service (LOS)= **A**

RPS, Inc.

Full Phase Expected Traffic Flows for the Baltimore-MD Terminal

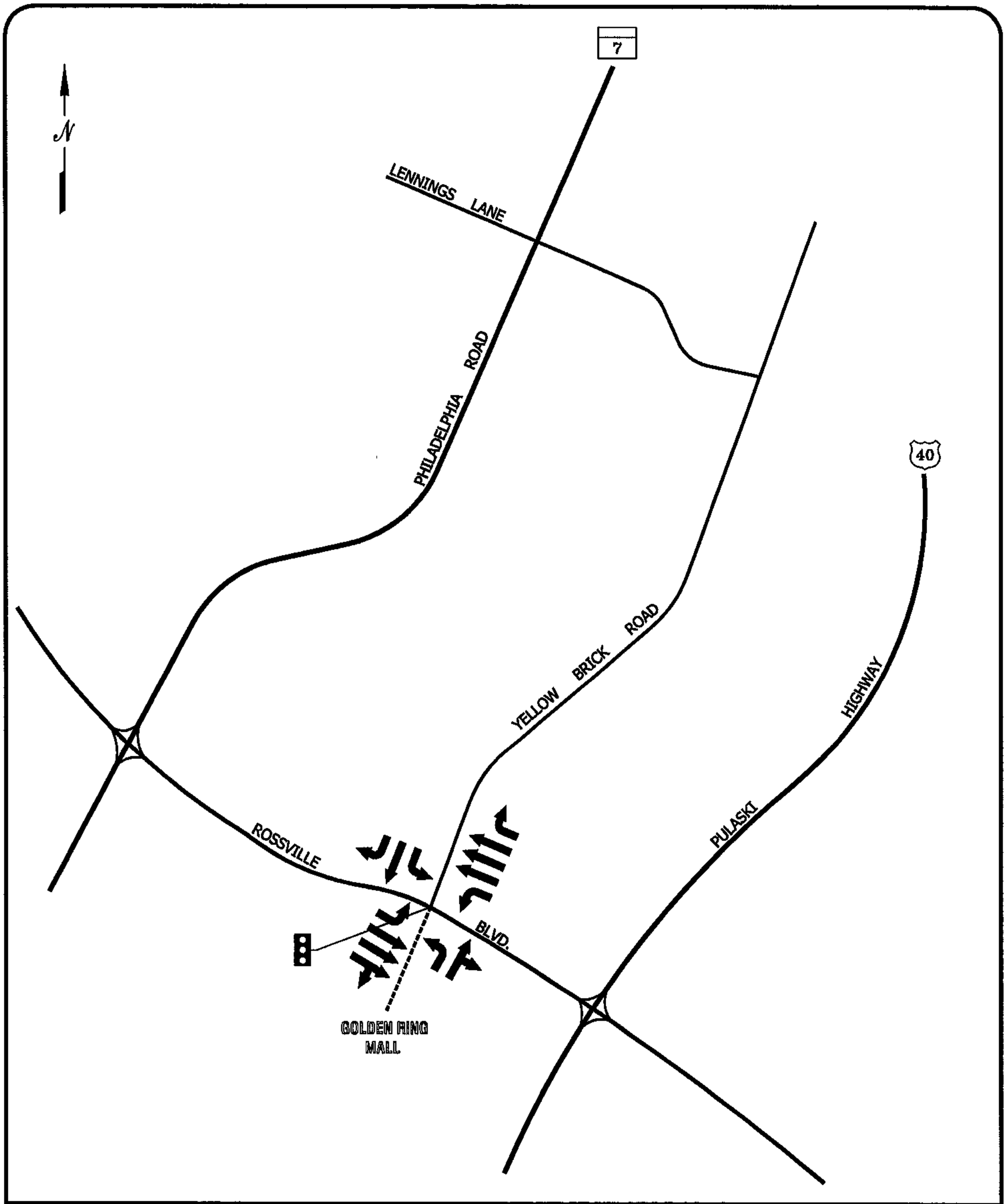
	Automobile Full Phase		*P&D Van Full Phase*		*Linehaul Full Phase*		*Total Vehicle Flow Full Phase*	
	Arrive	*Depart*	*Arrive*	*Depart*	*Arrive*	*Depart*	*Arrive*	*Depart*
00:01 - 01:00								
01:01 - 02:00								
02:01 - 03:00					3		3	
03:01 - 04:00		5			9		9	5
04:01 - 05:00		22			12	8	12	30
05:01 - 06:00	5	31				11	5	42
06:01 - 07:00	79	31		60			79	91
07:01 - 08:00	90	10		60			90	70
08:01 - 09:00								
09:01 - 10:00								
10:01 - 11:00								
11:01 - 12:00								
12:01 - 13:00	5						5	
13:01 - 14:00	9						9	
14:01 - 15:00								
15:01 - 16:00								
16:01 - 17:00		75	60				60	75
17:01 - 18:00	18	89	60				78	89
18:01 - 19:00								
19:01 - 20:00								
20:01 - 21:00								
21:01 - 22:00	23					2	23	2
22:01 - 23:00	31	24				3	31	27
23:01 - 24:00	40	13					40	13
Total	**300**	**300**	**120**	**120**	**24**	**24**	**444**	**444**

8

The Traffic Group

EXHIBIT 4
TRIP GENERATION TABLE
FOR RPS, INC.

Protestant 後 #8 for ID

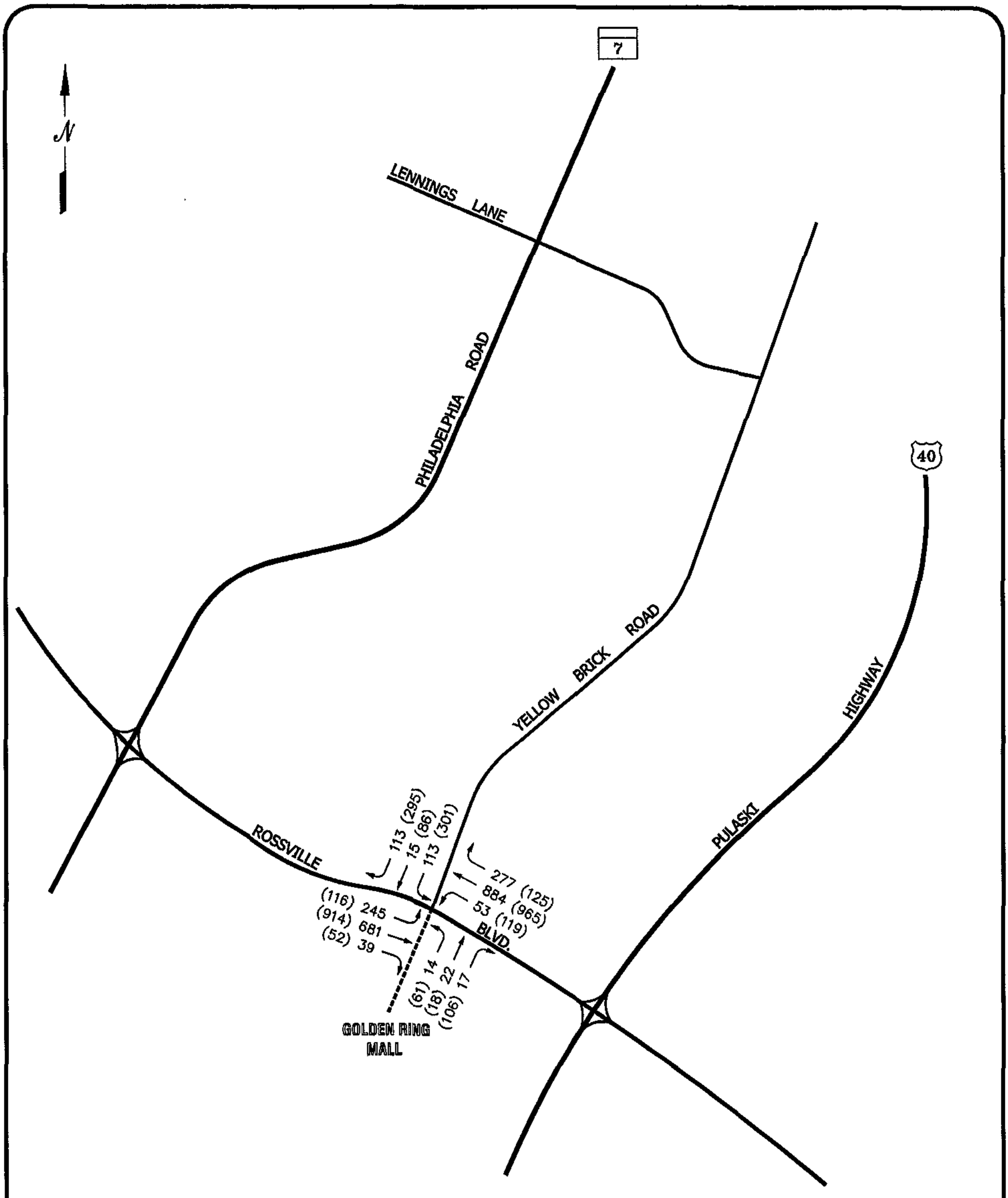


NOT TO SCALE

The Traffic Group

EXHIBIT 2
EXISTING LANE USE

Protestant 1st # 9 Exh ID
p. 1 of 3



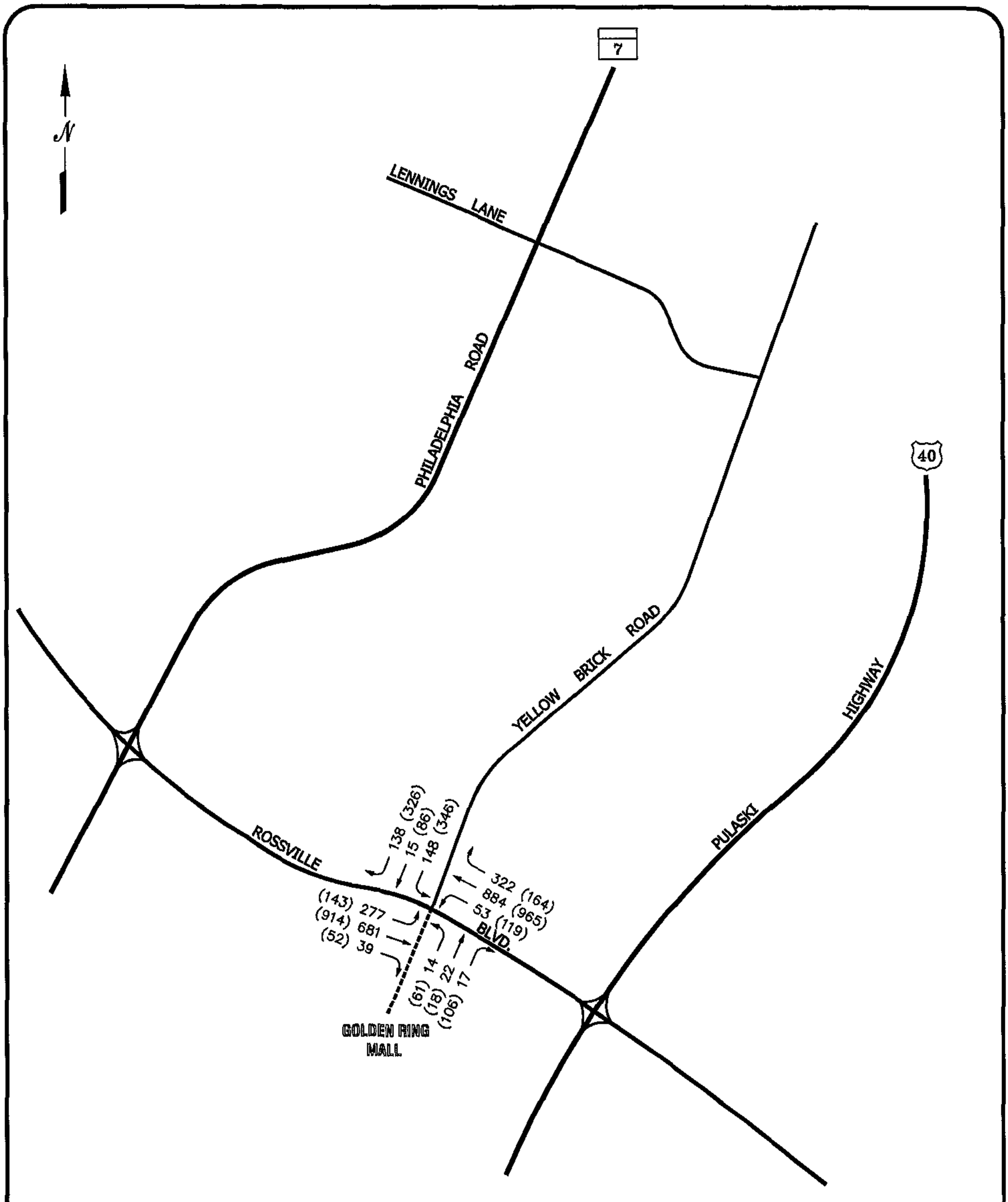
NOT TO SCALE

The Traffic Group

00 – MORNING PEAK HOUR
(00) – EVENING PEAK HOUR

EXHIBIT 3
EXISTING PEAK HOUR
TRAFFIC VOLUMES

p. 2 of 3



NOT TO SCALE

The Traffic Group

00 – MORNING PEAK HOUR
(00) – EVENING PEAK HOUR

EXHIBIT 6
TOTAL PEAK HOUR
TRAFFIC VOLUMES

ORIGINAL

1 PETITION FOR VARIANCE TO *
2 THE ZONING COMMISSIONER OF *
3 BALTIMORE COUNTY FOR THE * Case No.: 99390-XA
4 PROPERTY LOCATED AT 9114 *
5 THROUGH 9200 YELLOW BRICK ROAD *
6 * * * * * * * * *
7 - - - - - - - -
8 The above entitled matter came on for hearing
9 on Wednesday, June 2, 1999, commencing at 9:05 a.m., at
10 the Baltimore County Office Building, 111 West
11 Chesapeake Avenue, Room 106, Towson, Maryland, before
12 Zoning Commissioner Lawrence E. Schmidt.
13 - - - - - - - -
14 APPEARANCES:
15 G. SCOTT BARHIGHT, ESQUIRE
JULIE DiGRIGOLI, ESQUIRE
16 On behalf of the Petitioner
17 DOUGLAS W. BISER, ESQUIRE
On behalf of James F. Knott Realty
18 Group, James F. Knott Development
Corporation, J.F.K. Family Partnership,
19 and Oz Limited
20 - - - - - - - -
21 Reported by: NATALIE C. PRUNTY, CSR-CA, RPR

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THE HEARING COMMISSIONER: All right. Good morning, everyone. I'm Lawrence Schmidt, the Zoning Commissioner for Baltimore County, and this is the second hearing day for Case No. 99390-XA. It is a zoning petition for special exception and also a petition for variance both for the property known as 9114 through 9200 Yellow Brick Road. The property is presently owned by Baltimore Gas and Electric Company and under contract for purchase by the Westmoreland Company, Inc.

The petition for special exception is requesting approval for a Class 1 trucking facility, and the petition for zoning variance is a variance for Section 410.3.B.2 of the Baltimore County Zoning Regulations to allow a floor-area ratio of point 24 in lieu of the permitted point 10.

Let me have counsel identify themselves for the record, please.

MR. BARHIGHT: Good morning. Scott Barhight and Julie DiGrigoli, Whiteford, Taylor & Preston, on behalf of the petitioner.

1 THE HEARING COMMISSIONER: Good morning.
2 MR. BISER: Good morning. Douglas Biser on
3 behalf of James F. Knott Realty Group, James F. Knott
4 Development Corporation, J.F.K Family Partnership, and
5 Oz Limited Partnership.
6 THE HEARING COMMISSIONER: Okay. Good
7 morning, Counsel.
8 Just a couple of preliminary things. We
9 again have a court reporter present, as we did the
10 first day, I believe. And I think it's been agreed by
11 counsel that the court reporter will keep the
12 transcript of the proceedings today, although there
13 would be a de novo appeal to the court of appeals, the
14 record would be available to whoever would like to pay
15 for that. And I believe Mr. Barhight indicated last
16 time that his client was paying for the services of the
17 court reporter, and anyone who wanted a copy of the
18 transcript could make arrangements to do that.
19 Mr. Barhight, is that correct?
20 MR. BARHIGHT: That is correct. We will
21 obviously pay for the court reporter's presence at

1 these hearings, but if anyone wants to have access to
2 her notes, all they need to do is call their office and
3 see that they make a copy of it and obviously will be
4 charged for whatever fees are required for the court
5 reporting service to create the transcript itself.
6 THE HEARING COMMISSIONER: Okay. Very well.
7 And for the record, I think last time in
8 addition to opening statements and some preliminary
9 matters, we heard from one witness and one witness only
10 last time, which was Mr. Leo, who is the president of
11 the co-petitioner, Westmoreland Company. And according
12 to my file and notes from last time, I had three
13 exhibits submitted and accepted, which were 1A through
14 1F, a series of photographs of a similar operation by
15 RPS, including photographs of the interior of the
16 facility, the conveying system, vehicles, and so on. I
17 had as Exhibit No. 2 an interior layout plat, for lack
18 of a better term, of the proposed building. And
19 Exhibit No. 3, a one-page chart of expected traffic
20 flows for the Baltimore, Maryland, terminal. And I
21 think those exhibits were in and were referred to

1 during either direct or cross-examination of Mr. Leo.
2 And they were all marked as petitioner's exhibits, and
3 since obviously there haven't been any protestant's
4 witnesses, I don't think there were any protestant
5 exhibits.
6 Counsel, does that agree with your
7 recollection and notes?
8 MR. BARHIGHT: That's what I have. There was
9 reference during some of the testimony of Mr. Leo to
10 two drawings that we have on the board again today
11 which were prepared by G.W. Stephens, and Mr. Martin,
12 during his testimony, will probably authenticate them.
13 We will introduce them into evidence as exhibits at
14 that point in time, but I'm sure that in addition to
15 Mr. Leo, other witnesses may, as well as counsel may,
16 refer to them, just to recall that to your recollection
17 as well.
18 THE HEARING COMMISSIONER: That's fine.
19 MR. BARHIGHT: One other matter
20 preliminarily, I believe off the record we also had a
21 brief conversation with regard to whether you as the

1 Zoning Commissioner would maintain a tape recording of
2 these proceedings, and I believe it was agreed by
3 counsel that you would not be required in this case to
4 do so as we have a court reporter present who not only
5 is taking the court stenographer's notes but also is
6 keeping a tape recording as well. I believe we agreed
7 to that off the record prior to these proceedings this
8 morning.
9 THE HEARING COMMISSIONER: Okay. Thank you,
10 Mr. Barhight.
11 Mr. Biser, is that in accordance with what
12 your recollection is as well in terms of the exhibits
13 and so on?
14 MR. BISER: The transcript indicates the
15 exhibits were 1A through 1C. I believe you mentioned
16 1A through 1F. I recollected more than three
17 photographs being in Exhibit 1, but the transcript says
18 1A -- in the index, 1A through 1C.
19 THE HEARING COMMISSIONER: I think what
20 happened, as I recall, and I'm looking at the
21 exhibits -- Mr. Biser, if you want to come on up just

so we're clear. The marking of the exhibits is not my writing. I don't know whose handwriting that is.

MR. BARHIGHT: That's my scrawl.

THE HEARING COMMISSIONER: Okay. I think what happened is they came in in a packet of 1A, 1B, and 1C, and then later during the testimony they came in, and these were attached. My secretary could have done that after the hearing, but they're not marked. But I assume that they were exhibits.

MR. BISER: I don't have any problem with them going in. I just wanted to clarify.

MR. BARHIGHT: Can we go off the record for a second?

THE HEARING COMMISSIONER: Yes.

(Discussion held off the record.)

THE HEARING COMMISSIONER: Let's get back on the record.

Okay. Mr. Barhight, with his keen eye for detail, noticed that there were duplicates of the same photos, so they are indeed 1A through 1C.

Mr. Biser, you agree as well that we don't

1 need to keep a tape recording?
2 MR. BISER: I agree.
3 THE HEARING COMMISSIONER: Okay. Anything
4 else preliminarily?
5 Okay. Mr. Barhight, call your next witness.
6 MR. BARHIGHT: Thank you very much.
7 Mr. Guckert.
8 THE HEARING COMMISSIONER: Good morning,
9 Mr. Guckert.
10 WES GUCKERT,
11 the Witness, called for examination by the Petitioner,
12 being first duly sworn to tell the truth, the whole
13 truth, and nothing but the truth, testified as follows:
14 THE HEARING COMMISSIONER: Mr. Guckert, you
15 can be seated. State your name, and a business address
16 for the record is fine, sir.
17 THE WITNESS: For the record, Wes Guckert,
18 G-u-c-k-e-r-t. Business address, 40 West Chesapeake
19 Avenue, Towson, 21204.
20 EXAMINATION BY MR. BARHIGHT:
21 Q. Mr. Guckert, could you please indicate your

title and duties at The Traffic Group?

A. I'm president of The Traffic Group. We're a traffic engineering and transportation and planning consulting firm, and I undertake both administrative duties and oversee nearly all the technical analyses and reports.

Q. Mr. Guckert is not using the microphone. Can everyone hear him okay? You need to keep your voice up so everyone will be able to hear you. The mic system in this room is problematic.

A. Sure.

Q. Would you please briefly explain to the Zoning Commissioner your educational background and work-related experience in traffic engineering and transportation planning?

A. Bachelor of science in sociology, traffic engineering transportation planning courses from Northwestern University, University of Maryland, University of Tennessee, Federal Highway Administration, five years with the Maryland State Highway Administration, eight years with another

1 consulting firm, and the last 15 years as
2 president/owner of my own company.
3 Q. What is the ITE?
4 A. ITE is Institute of Transportation Engineers.
5 Q. And are you involved with that institute in
6 any way?
7 A. I'm a fellow with the Institute of
8 Transportation Engineers. I participate in a number of
9 committees and authored several articles that have been
10 published by the institute.
11 Q. Could you please give us a very brief
12 description of the nature of the work that you perform
13 on a day-to-day basis, not on the administrative side
14 but rather on the substantive side relating to traffic
15 engineering and traffic planning?
16 A. On a day-to-day basis we supervise, meet with
17 clients, determine scope of work for various projects,
18 be it government or in the private sector, determine
19 the locations of intersections that need to be studied,
20 consult with government agencies on those. We
21 supervise and have traffic counts undertaken, photo

1 surveys undertaken. We make projections of traffic
2 flows based upon trip distribution and orientation. We
3 utilize various methodologies to determine the amount
4 of traffic that's going to be generated by any
5 particular land use, assign the traffic to the road
6 system, combine it with existing traffic, and undertake
7 various types of analyses.
8 Q. Have you ever testified before the Baltimore
9 County Zoning Commissioner as an expert in the field of
10 traffic engineering and transportation planning?
11 A. I guess three, four hundred times.
12 Q. Okay. And in what other jurisdictions have
13 you been accepted as an expert in traffic engineering
14 and transportation planning?
15 A. In Maryland virtually every major
16 jurisdiction as it relates to those who may accept
17 expert testimony in both planning boards and boards of
18 appeals, the local circuit courts, district courts,
19 federal district court in Baltimore and various
20 locations throughout the United States, primarily along
21 the Mid-Atlantic area but as far west as California.

1 MR. BARHIGHT: Okay. I ask that Mr. Guckert
2 be accepted as an expert in traffic engineering and
3 transportation planning and submit him to voir dire.
4 THE HEARING COMMISSIONER: Mr. Biser, any
5 questions?
6 MR. BISER: Yes, I have a few voir dire
7 questions.
8 EXAMINATION BY MR. BISER:
9 Q. Mr. Guckert, of the 3 to 400 times you've
10 served as an expert witness --
11 A. That was in Baltimore County.
12 Q. In Baltimore County?
13 A. Yes, sir.
14 Q. How many times when you served as an expert
15 witness and testified where the issue was traffic from
16 a trucking facility similar to the one that's the
17 subject of this hearing?
18 A. I would have to go pull my records.
19 Q. Do you recall any?
20 A. If I can finish, please.
21 Q. I'm sorry. I thought you were.

A. What I would suggest is that as it relates to trucking facilities, from a traffic engineering transportation point of view, a trucking facility, Mr. Commissioner, to me is one that generates traffic. We know the amount of traffic that would be generated by this, as you know from previous testimony, and so for me, this is -- a trucking facility is no different than a warehouse, if you would, as it relates to trucks being brought in and out of a facility and cars being brought in and out of a particular building facility. So from that point of view, I would say dozens of times for industrial type projects.

Q. That wasn't the question, though, for industrial type projects, Mr. Guckert. Just answer the question, please.

How many times, if at all, have you testified in Baltimore County as an expert witness regarding a trucking facility similar to the one that's the subject of the petition?

A. I would say based upon my previous testimony, dozens of times. As it relates to something that is

1 for RPS, certainly none. UPS, at least on one other
2 occasion, and Federal Express possibly on one other
3 occasion.
4 Q. The UPS testimony that you gave, what
5 facility did that concern?
6 A. Joh Avenue.
7 Q. And before what tribunal did you give
8 testimony for UPS?
9 A. Mr. Biser, I would have to go back and pull
10 those job records to do that.
11 Q. You don't recall?
12 A. I do not. It would have been in a forum or a
13 venue similar to this.
14 Q. But do you know what the venue was?
15 A. I think I just said I would have to go back
16 and check my records.
17 Q. Okay. So you're not sure?
18 A. That's correct.
19 Q. And the Federal Express testimony, in what
20 tribunal did you give your expert testimony in this
21 case?

1 A. Same answer.
2 Q. I'm sorry. Could you just answer the
3 question?
4 A. Sure. I'm not sure. It would have been in a
5 venue similar to this, either in the hearing examiner
6 situation or in the board of appeals.
7 Q. And in the UPS case, were you testifying on
8 behalf of UPS?
9 A. Yes, sir.
10 Q. And in the Federal Express case, were you
11 testifying on behalf of Federal Express?
12 A. Yes, sir.
13 Q. And in the 3 to 400 times that you testified
14 in Baltimore County, approximately what percentage of
15 those cases have you testified on behalf of the
16 petitioner?
17 A. Probably 95 to 98 percent.
18 Q. And of the dozens of times that you've
19 testified in cases where trucking traffic was an issue,
20 in what percentage of those cases did you testify on
21 behalf of the petitioner?

1 A. Probably 100 percent of the time.
2 MR. BISER: That's all the questions I have
3 of this witness on voir dire.
4 THE HEARING COMMISSIONER: Any objection or
5 do you want to be heard on whether I accept him as an
6 expert, Mr. Biser?
7 MR. BISER: No, I don't need to be heard on
8 that.
9 THE HEARING COMMISSIONER: Okay. I'll accept
10 him as an expert based on his qualifications and prior
11 experience.
12 Mr. Barhight.
13 MR. BARHIGHT: Thank you very much.
14 EXAMINATION BY MR. BARHIGHT:
15 Q. Mr. Guckert, are you familiar with the
16 proposed RPS facility that's the subject of these
17 hearings today?
18 A. Yes, sir.
19 Q. Are you familiar with the area surrounding
20 that facility?
21 A. Yes, sir.

Q. Have you had an opportunity to review the site plan?

A. Yes, sir.

Q. And visit the site area?

A. Yes, sir.

Q. Have you received a copy of the transcript of the proceedings of the previous day?

A. Yes, sir.

Q. What studies did you perform relative to the traffic impacts of the proposed RPS facility at this proposed location?

A. We examined the site plan. I conducted a field visit. We undertook a turning movement count at Rossville Boulevard and Yellow Brick Road. We undertook traffic counts along Yellow Brick Road on a daily basis, we undertook class vehicle classification counts along Yellow Brick Road, we made projection of the trip orientation, and we reviewed the projections that were made by the Westmoreland Company and undertook analyses at the key intersection, Mr. Commissioner, of Rossville Boulevard and Yellow

1 Brick Road.
2 Q. Could you please generally describe your
3 findings as a result of those studies?
4 A. Certainly.
5 Mr. Commissioner, as you may be aware, the
6 intersection of Yellow Brick Road and Rossville
7 Boulevard is a signalized intersection. The south leg
8 of the intersection is the entrance to Golden Ring
9 Mall, as you may be aware. Rossville Boulevard is
10 basically a six-lane divided roadway with auxiliary
11 turn lanes, right or left turn lanes as may be
12 appropriate along Rossville Boulevard.
13 Yellow Brick Road is a 50-foot wide what I
14 would classify as an industrial street. It has three
15 lanes approaching southbound Yellow Brick Road at
16 Rossville Boulevard, a left lane, a through lane, and a
17 right lane. The speed limit along Yellow Brick Road is
18 posted for 35 miles per hour.
19 We examined the issue of trip orientation
20 during the peak hours, Mr. Examiner, and as you are
21 aware from the previous testimony of Mr. Leo, there

1 will not be tractor trailers, or I believe he described
2 them as line haul vehicles. Those are the vehicles
3 that would run from this facility directly to
4 Harrisburg. There will not be movement of line haul
5 vehicles during the traditional commuting peak hours
6 between 7:00 and 9:00 in the morning and 4:00 and 6:00
7 in the afternoon. In fact, based upon the information
8 that I have received from RPS and read that I suspect
9 was submitted by Mr. Leo, the line haul vehicles will
10 be limited to the hours of 2:00 a.m. to 6:00 a.m. and
11 then again move around from probably nine o'clock at
12 night until somewhere around midnight. So throughout
13 the day and between the hours of 6:00 a.m. and 6:00 or
14 7:00 p.m., there will not be movement of the line haul
15 for the tractor trailer vehicles.
16 During the morning peak hour of 7:00 to 8:00
17 it's expected to have about 90 automobiles arrive.
18 Those are vehicles that are for the delivery drivers.
19 And about 70 vehicles will leave. About 10 cars and 60
20 vans will leave the facility. During the evening peak
21 hour those vehicles then start to come back for the

1 afternoon with about 78 vehicles arriving and about 89
2 or 90 vehicles leaving, with the bulk of those vehicles
3 that are departing being the employees that came in
4 with their personal vehicles in the morning.
5 We made projections of the arrival and
6 departure patterns of the automobiles and the vans.
7 And for purposes of our analysis, we assume that
8 15 percent of the peak-hour vehicles would be to and
9 from Route 7 via Lennings Lane and 35 percent to and
10 from Rossville Boulevard and Philadelphia Road, and the
11 balance of the vehicles, about 50 percent utilizing
12 Route 40 and Rossville Boulevard, with the majority of
13 those, about 30 percent, south or west on Pulaski
14 Highway towards the beltway and inside the city. And
15 those again, those are basic patterns that we assume
16 both for movement of the vans that are delivering
17 packages and as well as the employee trips.
18 When we did that, we end up showing about
19 85 -- actually 85 percent of the peak-hour trips
20 passing through the intersection of Yellow Brick Road
21 and Rossville Boulevard, 85 percent. We split that

1 traffic based on my previous discussion and then
2 undertook intersection capacity analyses and determined
3 that the intersection of Rossville Boulevard and Yellow
4 Brick Road is currently operating level of service A
5 and would continue to operate level of service A with
6 the RPS facility.
7 As you know, Mr. Commissioner, since this is
8 an industrial use, the growth management legislation
9 does not apply -- for industrial buildings growth
10 management legislation does not apply for basic
11 services. And with that being said, with the primary
12 intersection continuing to operate at a level of
13 service A during the peak hours, it's my opinion that
14 there would not be an adverse effect on traffic created
15 by this facility, firstly; and second, this use, quite
16 frankly, because of Yellow Brick Road being a 50-foot
17 wide industrial street, because of the good levels of
18 service, quite frankly, I can't imagine that there's
19 any better place, because we're not -- as you know,
20 Mr. Commissioner, the level of service does not get
21 better than level of service A. So I can't imagine

1 that this use where it's located could possibly have an
2 adverse effect.
3 Q. I believe during voir dire you were asked
4 questions by Mr. Biser with regard to previous cases
5 that you've worked on relative to trucking facilities.
6 Are you familiar with the traffic impacts generally of
7 what you would call a typical trucking facility?
8 A. Yes.
9 Q. From a traffic impact standpoint, how would
10 you compare the proposed trucking facility for RPS to
11 what you would characterize as a typical trucking
12 facility?
13 A. Well, the -- this is an industrial use,
14 warehousing, industrial truck terminal. They all
15 generate comparable trips during peak hours and
16 throughout the day. Comparable. Not identical, but
17 comparable. And so that this use is generating
18 relatively low volumes of traffic when compared to
19 other types of commercial uses.
20 Did I answer your question?
21 Q. Well, I would like you to answer not just

1 relative to other commercial uses but also a typical
2 trucking facility.
3 A. Well, based upon Institute of Transportation
4 Engineers, they would have projected that this use
5 would generate slightly fewer peak-hour trips than what
6 Mr. Leo has shown. And of course ITE -- we did not use
7 ITE for this; we used the actual trips that are
8 projected by the developer. And there's a benefit
9 there, obviously, Mr. Commissioner, because here we
10 have pretty finite -- very finite information from the
11 developer, and it's higher than what ITE would have
12 shown and therefore certainly would have used a worst
13 case analysis in that situation.
14 Q. Well, with regard to the actual tractor
15 trailers that are proposed at this location, is there a
16 difference in the tractor trailer traffic for the
17 proposed RPS facility than what you would ordinarily
18 see in a typical trucking facility?
19 A. Yeah, and I think that's -- I think that's a
20 fair statement. We've undertaken analyses of other
21 facilities that generate trucks in commercial and

1 industrial areas, and typically you will see that of
2 the total traffic being generated, Mr. Commissioner,
3 out of an industrial building of this type, out of a
4 warehousing building, out of a facility that generates
5 a lot of trucks, that you would typically have maybe
6 five percent of the peak-hour trips would be tractor
7 trailers. We don't have that here.
8 So from a tractor trailer generating point of
9 view, there is a difference, and that difference is
10 this facility is not projected to generate any tractor
11 trailer trips during the traditional peak hours, when,
12 in fact, most other facilities that generate a lot of
13 deliveries in and out and trucking activities would
14 generate peak-hour trips by tractor trailers.
15 Q. Just to make sure the question was properly
16 asked and answered relative to the potential impacts,
17 do you have an opinion with regard to whether the
18 proposed RPS trucking facility will have an adverse
19 impact on the transportation facilities of the
20 immediate area?
21 A. I do.

1 Q. And could you please state that opinion for
2 the Zoning Commissioner?
3 A. It's my opinion that it will not have an
4 adverse effect.
5 Q. And could you please briefly summarize why
6 you hold that opinion?
7 A. It's my opinion, Mr. Commissioner, that the
8 subject site will not have an adverse impact for
9 several reasons. Number one, it's clear that this use
10 will not generate tractor trailer use, the heavy truck
11 use during the morning and evening peak hour.
12 Number two, it is also clear that the types
13 of vehicles that will be generated during the morning
14 and evening peak hour are a combination of automobiles
15 and a combination of step vans that will be delivering
16 packages throughout the day. It's also a situation
17 where the vans leave in the morning and come back in
18 the evening and basically very little activity
19 throughout the day.
20 The projected volumes of traffic and the
21 impact on the nearest critical intersection of Yellow

1 Brick Road and Rossville Boulevard is such that it will
2 not change the already existing level of service A
3 conditions. And when we maintain level of service A
4 conditions, it is my opinion that there will not be an
5 adverse impact on that intersection.
6 Q. Let me turn to a slightly different issue
7 that's been raised by Mr. Chase, who is a
8 representative of the community just to the north here,
9 who has concerns about Philadelphia Road and the
10 proposed Lennings Lane. Are you familiar with the
11 proposed Lennings Lane that would connect Yellow Brick
12 Road to Philadelphia Road, Maryland Route 7?
13 A. Yes, sir.
14 Q. Have you analyzed whether the proposed RPS
15 facility needs that connection in order to properly
16 function, given the existing Yellow Brick Road and
17 other traffic infrastructure?
18 A. Yes.
19 Q. And what is your analysis of that?
20 A. It is my opinion it does not need Lennings
21 Lane. Certainly the intersection of Rossville

1 Boulevard, Mr. Commissioner, and Yellow Brick Road can
2 more than adequately accommodate not only the existing
3 traffic but the projected traffic from the RPS facility
4 on a regular, ongoing and on a daily basis. I think
5 the Lennings Lane situation is one that really is a
6 relief valve or an emergency access more than anything
7 else.
8 Q. Are you aware that Baltimore County agencies
9 have taken the position that they are in favor of
10 Lennings Lane being constructed as shown on the site
11 plans?
12 A. I am.
13 Q. And do you understand -- without agreeing or
14 disagreeing, do you understand why they think that that
15 Lennings Lane connection is appropriate?
16 A. I believe I understand.
17 Q. And could you please briefly explain your
18 understanding?
19 A. It's my understanding that the Lennings Lane
20 access would -- due to the length of Yellow Brick Road,
21 that the Lennings Lane access, Mr. Commissioner, would

provide an alternative means of access, and quite frankly, would provide a safety valve as for emergency situations. But it does not have to be constructed certainly for the RPS facility, and certainly if the emergency aspect is of paramount concern to the county, it could be constructed differently to satisfy that requirement.

Q. I don't want to belabor this point too much, but could you please briefly describe to the Zoning Commissioner generally how Lennings Lane could be constructed in such a fashion it would provide adequate safety and emergency access but not provide day-to-day access for traffic?

A. I think if it were constructed as a 16- or 18-foot wide roadway, basically in the same alignment, and being chained or gated, Mr. Commissioner, as you know, is often done to provide emergency access, and then it could be used for emergency vehicles.

MR. BARHIGHT: One moment, please.

No other questions of this witness at this time. Thank you very much.

1 THE HEARING COMMISSIONER: Mr. Biser,
2 cross-examination.
3 MR. BISER: Thank you, Your Honor.
4 THE HEARING COMMISSIONER: Sure.
5 EXAMINATION BY MR. BISER:
6 Q. Mr. Guckert, Yellow Brick Road in this
7 location is a long cul-de-sac, is it not?
8 A. Yes.
9 Q. Are you aware of any cul-de-sacs in Baltimore
10 County that are longer than this one?
11 A. I do not know one way or the other.
12 Q. Are you aware of any cul-de-sacs in the
13 Baltimore region that are longer than this one?
14 A. I haven't taken the time to measure to
15 understand whether there are or are not.
16 Q. But you know of none off the top of your
17 head?
18 A. I know -- I do not know one way or the other.
19 Q. The reasons that you've given for your
20 opinion about the lack of adverse impact based on
21 transportation, one was that there's not going to be

1 any tractor trailer use during morning and/or peak
2 hours; is that correct?
3 A. That was one of them, yes, sir.
4 Q. So it would be adverse if those tractor
5 trailers were used during peak hours, would it not?
6 A. That was not my testimony.
7 Q. Well, if it wouldn't be adverse to have those
8 tractor trailers being used during the morning or
9 evening peak hours, would the converse be true?
10 A. Not necessarily.
11 Q. And your second reason that there was no
12 adverse impact is that the type of vehicles in the peak
13 hours are autos and step vans as opposed to tractor
14 trailers; correct?
15 A. As opposed to -- that's correct.
16 Q. As opposed to tractor trailers?
17 A. That's correct.
18 Q. And so that if tractor trailers were used in
19 those peak hours, that would be an adverse impact on
20 this area traffic-wise; correct?
21 A. It would create a different situation for

1 Yellow Brick Road and a different situation for the
2 intersection of Rossville Boulevard and Yellow Brick
3 Road. Whether or not it became adverse would be
4 dependent upon the quantity and the regularity of the
5 use of tractor trailers.
6 Q. Now, you said that you had analyzed other
7 trucking facilities and that typically you found from
8 your analysis that five percent of the peak-hour trips
9 would be tractor trailers; correct?
10 A. We've looked at a few other locations
11 recently and found five percent, that's correct.
12 Q. What facilities were they that you looked at?
13 A. It was the Sachs warehouse.
14 Q. Where is that?
15 A. In Harford County.
16 And the Frito-Lay facility in Harford County.
17 Q. And do you have those studies in your file?
18 A. No, sir.
19 Q. Did you bring your file with you today?
20 A. I have some notes.
21 Q. Okay. Because you had indicated in the

1 beginning of your direct examination the various things
2 that you've looked at in order to formulate your
3 opinion. One thing was, the first thing is that you
4 examined the site plan; correct?
5 A. Yes, sir.
6 Q. Do you have the site plan with you that you
7 examined?
8 A. It's the same site plan (indicating).
9 Q. Same as that one?
10 A. Yes, sir. It's just not rendered.
11 Q. And you did a field visit?
12 A. Yes, sir.
13 Q. Do you have any notes from your field visit?
14 A. I have notes, not from my field visit, but
15 from field visits that were made by my staff.
16 Q. Did you visit the site?
17 A. Yes, sir.
18 Q. Do you have notes from your field visit?
19 A. No, sir.
20 Q. Did you take any photographs?
21 A. My staff took photographs. I did not take

1 photographs.
2 Q. Do you have any of those photographs?
3 A. I do.
4 Q. With you today?
5 A. Yes, sir.
6 Q. May I see those?
7 A. Yes, sir.
8 Q. Mr. Guckert, you've handed me photostatic
9 copies of photographs?
10 A. Yes, sir.
11 Q. And there are 19 in number?
12 A. Yes, sir.
13 MR. BARHIGHT: If I might have the
14 opportunity to review the exhibits.
15 THE HEARING COMMISSIONER: Sure.
16 MR. BARHIGHT: And also, the gentleman's name
17 is Guckert, G-u-c-k-e-r-t.
18 MR. BISER: Thank you. I'm sorry,
19 Mr. Guckert. I apologize.
20 BY MR. BISER:
21 Q. Now, were you the photographer for each of

1 these?
2 A. No, sir.
3 Q. Who took these photographs?
4 A. These were taken by my staff.
5 Q. Can you just briefly go through each of the
6 photographs, referring to the number, and tell me where
7 they were taken.
8 A. Certainly. And I have a sketch that shows
9 that, if that would be helpful, versus going through it
10 all. Whatever you want to do is okay with me. Do you
11 want me to refer to the sketch and the numbers? For
12 example --
13 Q. May I see the sketch?
14 A. Certainly. That may shorten it.
15 Q. You have a little box with the number of the
16 photograph with an arrow pointing in the direction that
17 the photograph is taken; is that correct?
18 A. That's correct. Yes, sir.
19 Q. We don't have to go through each one of
20 those. These accurately depict where the photographs
21 were taken from; is that correct?

1 A. Yes, sir.
2 Q. Where are the original photographs?
3 A. They're digitals.
4 Q. Now, you indicated that you did a traffic
5 count as well?
6 A. Yes, sir.
7 Q. And who performed the traffic count?
8 A. My staff.
9 Q. And do you have with you the results of the
10 traffic count?
11 A. Yes, sir.
12 Q. And may I take a look at that document as
13 well?
14 A. Yes, sir.
15 THE HEARING COMMISSIONER: And that was what
16 location, Mr. Guckert, the traffic counts?
17 THE WITNESS: Rossville Boulevard and Yellow
18 Brick Road, counted on Tuesday, May 25th.
19 THE HEARING COMMISSIONER: And was that in
20 all directions of the intersection or one part?
21 THE WITNESS: It was a 12-way turning count,

1 all movements at the intersection, straight through and
2 left on all four lanes.
3 THE HEARING COMMISSIONER: Okay.
4 BY MR. BISER:
5 Q. And so the traffic count was only done on the
6 one day?
7 A. That's correct.
8 Q. Do you generally rely on traffic counts done
9 over just one day?
10 A. Yes.
11 Q. And you also said that a vehicle
12 classification count was done?
13 A. Yes.
14 Q. Was that done by you or your staff?
15 A. That was done -- my staff placed the
16 machines. This was a machine count.
17 Q. And do you have that?
18 A. Yes, sir.
19 Q. May I see it?
20 For the record, there's a first page that
21 says summary of traffic conditions along Yellow Brick

1 Road north of Rossville Boulevard, and then it has four
2 pages attached?
3 A. Yes, sir.
4 Q. And can you tell me how this was done?
5 A. It was done using a machine, a classifying
6 traffic counting machine, and we put a machine out in
7 both the northbound lane and the southbound lane of
8 Yellow Brick Road, and then two tubes we used for each
9 direction, and based upon the spacing between the
10 axles, the computer calculates the number of axles and
11 therefore the classification of the vehicle.
12 Q. Okay. And the next thing you indicated that
13 you did was a trip orientation?
14 A. Yes, sir.
15 Q. And do you have any papers regarding that?
16 And you've shown me what is listed as Exhibit 5, trip
17 distribution and assignments for RPS, Inc. --
18 A. Yes, sir.
19 Q. -- is that correct?
20 And how was this prepared?
21 A. This was prepared based upon an understanding

of the turning movements at Yellow Brick Road and Rossville Boulevard plus an understanding of the demographics of the area. Then I used my own judgment as it relates to the trip orientation of where generally the employees would live and basically where they would be delivering to.

Q. Okay. So this, what's listed as Exhibit 5, trip distribution and assignment for RPS, Inc., is your projection of trip orientation should this project be built?

A. Correct.

Q. Okay.

A. And then for clarification of the exhibit, we also have the peak-hour trip shown and then the assignment of those peak-hour trips to both Lennings Lane and to Yellow Brick Road and Rossville Boulevard based on the percentages that are shown in this exhibit.

Q. Okay. As far as your review of this site and the studies you've done of this site as it exists, just so I'm clear on this, you examined the site plan,

1 visited the field, you did a turn movement count,
2 traffic count, vehicle classification count?
3 A. That's what we've talked about so far. Then
4 we did analyses as well.
5 Q. Okay. Analyses.
6 Have you done any of those five different
7 things that we just talked about on any site that has a
8 trucking facility similar to the one that's being
9 proposed here?
10 A. For this case?
11 Q. For this case.
12 A. Do those other things for this case?
13 Q. Correct.
14 A. At other facilities?
15 Q. At other facilities.
16 A. No, sir.
17 Q. So your analysis, then, used what's there
18 now, your traffic study of what's there now, and then
19 what is it that you compared that with? Just the
20 projections given to you by Westmoreland?
21 A. I'm not sure I understand the question, but

let me try to answer it. I used the projections by Westmoreland, added those projections to the existing traffic.

Q. So your analysis is only as good as the projections given to you by Westmoreland. Is that a fair statement?

A. If I could, Mr. Commissioner, I think my analysis is based upon those projections. To say my analysis is only as good as because it takes into other things, certainly it's based upon -- the projections by the Westmoreland Company are a foundation of my analysis, if I can say it that way.

Q. Mr. Leo testified that he had 18 other projects where he runs RPS facilities. Did you visit any of those?

A. No, sir.

Q. Did you do any traffic studies of those?

A. No, sir.

Q. Did you do any field visits of those?

A. No, sir.

Q. Did you examine any of their site plans?

1 A. No, sir.
2 Q. Did you do any turn movement counts of those
3 facilities?
4 A. No, sir.
5 Q. Did you do any vehicle classification counts
6 for those facilities?
7 A. No, sir.
8 Q. And the only other two times that you've
9 served as an expert witness were one for an RPS
10 facility; correct?
11 A. UPS.
12 Q. UPS. I apologize.
13 And one for a Federal Express facility?
14 A. Those were the two I recall in Baltimore
15 County.
16 Q. Did you pull those files and study any of the
17 data that you had in either of those two cases?
18 A. No, sir.
19 Q. Did you do any analysis, sir, of what the
20 impact would be should this facility open up to
21 drop-offs by the public?

1 A. I am aware -- I think the answer to that
2 question is no, I did not do an analysis of that.
3 Q. Now, you indicated that tractor trailer
4 traffic to this facility is projected to be limited to
5 the time of essentially, I believe you said 2:00 a.m.
6 to 6:00 a.m.
7 A. And then later on in the evening.
8 Q. And then later on in the evening?
9 A. Yes, sir.
10 Q. How many tractor trailers would be passing by
11 or using the roadway between 2:00 a.m. and 6:00 a.m.
12 based on your projection?
13 A. For this facility?
14 Q. For this facility.
15 A. I believe, Mr. Commissioner, there's an
16 exhibit that was submitted by Mr. Leo that's probably
17 part of the record. And what that shows is that during
18 the early morning hours there would be approximately 24
19 line haul or tractor trailers arriving and during --
20 then an overlap when they start to leave, and there's
21 19 of them leaving. And during the late evening hours

1 there would be five additional vehicles leaving. So
2 the vehicles that arrive between 2:00 a.m. and
3 5:00 a.m. then leave between 4:00 and 6:00 and then
4 between 9:00 and 11:00 p.m.
5 Q. Now, the 60 vans that you talked about
6 arriving between 7:00 and 8:00 a.m., do you know what
7 the types of vans are that you referred to?
8 A. I would refer to them, Mr. Biser and
9 Mr. Commissioner, as what would be typical step vans,
10 RPS vans that you would see on the street, UPS vans
11 that you would see on the street, or Federal Express
12 vans, fairly standard step vans.
13 Q. Do you know what length they are?
14 A. I would have to -- I could measure them from
15 the site plan, if you like.
16 Q. Do you know without measuring?
17 A. I wouldn't want to -- I wouldn't want to
18 guess in this venue.
19 Q. You don't know what the gross vehicle weight
20 of those vans is?
21 A. I do not.

1 Q. Now, you talked about Yellow Brick Road being
2 a 50-foot-wide industrial street.
3 A. Yes.
4 Q. Does the term "industrial street" have any
5 defined meaning within your area of expertise?
6 A. I would say that there are a series of
7 regulatory agencies that refer to 50-foot-wide roadways
8 that serve industrial areas as industrial streets, and
9 that's why I referred to it as such, because this
10 roadway is 50 foot wide and it serves an industrial
11 park. So that's why I referred to it as an industrial
12 street.
13 Q. But that is not a term of art in your
14 expertise?
15 A. It's a classification in several zoning
16 ordinances. I apologize if I misled you,
17 Mr. Commissioner. I don't know whether that particular
18 term is used in the Baltimore County Zoning Code.
19 Q. Do you know of any published standard that
20 defines industrial street as you have used it?
21 A. I don't know that answer.

Q. So when you used the word "industrial street," that really is your usage as opposed to a usage within your area of expertise. Is that a fair statement?

A. Well, what's a fair statement is it's not a residential street, it's not a 50-foot-wide residential street. Again, I referred to it as a 50-foot-wide industrial street because it serves an industrial park. Nothing else was meant by that.

Q. Now, you indicated that you compared this facility with a typical trucking facility. What is a typical truck facility?

A. In what context did I make that statement?

Q. I don't know. I have a note down here that you in your analysis compared this facility with a typical trucking facility.

A. That may have referred, Mr. Examiner, to my comparison of traffic from average ITE rates versus those that are being used in this analysis.

Q. Now, do you have the reference to ITE that you compared this facility to or the proposed use?

A. What do you mean a reference?

Q. You indicated that the typical trucking facility was used by you, and that typical trucking facility, in your opinion, was the ITE use?

A. I compared the ITE lane use code 30.

Q. And you said that the ITE projection showed that this facility would generate fewer peak-hour trips than Mr. Leo indicated; correct?

A. That's correct.

Q. How many peak-hour trips did the ITE projection say this facility would produce?

A. And of course, make sure there's a -- you keep saying trucking facility, and I realize that's a term in the Baltimore County Zoning Regulations, but to make -- I'm not trying to split hairs, but ITE calls it a truck terminal. There is not a note for trucking facility.

Q. That was your -- I just used the same word you used on direct. So I'll use whatever term you would like.

A. I just want to make sure that we understand.

1 So that ITE lane use code 30 for a truck terminal would
2 be about 116 peak-hour trips based upon the
3 129,000 square-foot building.
4 Q. Are you referring to that document now?
5 A. Yes, sir.
6 Q. Okay.
7 A. No. I'm referring to something that I
8 produced that refers to that document.
9 Q. Do you mind if I see that, please?
10 MR. BISER: Mr. Schmidt, do you mind if we
11 have marked for identification the documents that he's
12 referred to that we identified before just so we know
13 what they are? And I can do that in sequence if it's
14 okay with you.
15 THE HEARING COMMISSIONER: Mr. Barhight, any
16 objection?
17 MR. BARHIGHT: No objection.
18 THE HEARING COMMISSIONER: We can mark them
19 and during a break, if you want, we can copy them if
20 you like.
21 MR. BISER: For the record, I would like

1 marked as Protestant Exhibit 1 for identification
2 collectively the photographs numbered 1 through 19, and
3 as Protestant's Exhibit No. 2 for identification, I
4 believe the next thing I referred to was the photograph
5 orientation. The witness calls this a condition
6 diagram, as Exhibit 2.
7 The next document we would mark for
8 identification, Exhibit 3, would be vehicle turning
9 movement count summary.
10 THE WITNESS: For Rossville Boulevard and
11 Yellow Brick Road.
12 MR. BISER: And the next document is the trip
13 distribution and assignment for RPS, Inc., as
14 Protestant's Exhibit No. 4 for identification.
15 The next document is the summary of traffic
16 conditions along Yellow Brick Road north of Rossville
17 Boulevard, which is a total of five pages, including
18 the face sheet, which would be Protestant's Exhibit
19 No. 5 for identification.
20 And the next document would be the paper
21 titled trip generation rates, which we would ask to be

1 marked as Protestant's Exhibit No. 6 for
2 identification.
3 BY MR. BISER:
4 Q. And so, sir, the trip generation rates, this
5 is a part of your report, and these figures were taken
6 out of what reference?
7 A. What we're looking at here -- and I'm sorry.
8 What is that last reference number?
9 THE HEARING COMMISSIONER: No. 6.
10 Q. This would be 6.
11 A. Referring to what was marked as Petitioner's
12 Exhibit 6 --
13 Q. Excuse me. This would be Protestant's
14 Exhibit 6 for identification.
15 A. I'm sorry.
16 Q. That's all right. I just want to make the
17 record clear.
18 A. Protestant's Exhibit 6 marked for
19 identification is a comparison of three types of uses
20 out of ITE, Mr. Commissioner. One is a warehouse use
21 ITE code 150, general light industrial use ITE code

110, and a truck terminal use ITE code 30, and showing a comparison of trips for 129,200 square-foot building for those three different types of usage.

And the last question I think you asked me, Mr. Biser, was the -- no. Dealt with the amount of trips that would be generated by a truck terminal or trucking facility in ITE versus those that would be projected by the Westmoreland Company for the new RPS facility.

Q. Now, you brought with you your file today. Did you issue one report?

A. I have not prepared a report.

Q. Okay. Because this document is marked -- Exhibit 4, marked Exhibit 5 on your sheet, what was that Exhibit 5 to?

A. It's a work in process.

Q. Okay. What else did you bring with you today?

A. I've got a site location map. I have the projected traffic that's a replication of the table that was submitted earlier. I have a lane use diagram

1 for the intersection of Yellow Brick Road and Rossville
2 Boulevard, showing the -- and another diagram that
3 shows volumes, total volumes, and then the capacity
4 worksheet that we undertook for both existing traffic
5 and total traffic.
6 Q. I notice that that's titled Appendix B and
7 there was another Appendix A. What are these appended
8 to?
9 A. This is a work in process. The report
10 basically has not been completed.
11 Q. There is a draft of the report?
12 A. This is it. What we're looking at are the
13 pieces that we're in the process of putting together.
14 Q. Are there any other pieces that you have not
15 brought with you today?
16 A. No, sir. This is it.
17 Q. I would like then to have Appendix A marked
18 as Protestant's Exhibit No. 7 collectively and Appendix
19 B as Exhibit 8. And I know there are multiple pages.
20 A. Well, you already have A because you've got
21 the turning movement count and the condition diagram

1 and the photos.
2 Q. Okay.
3 A. This one we have, the B, is the two pages of
4 the -- so far of the intersection capacity worksheets.
5 Q. Okay. If I can, I'd like to mark that, or
6 have it marked at a later time, as Exhibit No. 7 for
7 identification.
8 And you say we have the rest of these items?
9 Do you mind if I see this?
10 A. Certainly. Not at all.
11 Q. I don't mean to reach in front of you.
12 A. That's okay.
13 THE HEARING COMMISSIONER: Exhibit No. 7,
14 what is that actually entitled, Mr. Biser?
15 MR. BISER: It's titled Appendix B
16 intersection capacity analysis worksheets, and it's a
17 total of three pages, including the face sheet
18 Appendix B.
19 THE HEARING COMMISSIONER: Okay.
20 BY MR. BISER:
21 Q. Now, your Exhibit 4 --

A. Yes.

Q. -- it's a full phase expected traffic flows for Baltimore, Maryland. If you don't mind, I'm going to have that marked as Protestant's Exhibit No. 8 for identification.

MR. BARHIGHT: Excuse me. What's the description of that document?

MR. BISER: Full phase expected traffic flows for Baltimore, Maryland, terminal, Exhibit 4, trip generation table for RPS.

MR. BARHIGHT: Thank you.

BY MR. BISER:

Q. And just so we can have a complete record, there are attached to Exhibit A --

A. No. This again. This is not --

Q. There are three additional pages that I would like marked collectively as Exhibit 9, which you have marked as Exhibits 2, 3, and 6. The first is existing lane use; the second, existing peak-hour traffic volumes; third, total peak-hour traffic volumes.

A. Yes, sir. And that would be 9, 10 --

1 Q. That would be collectively 9. That's those
2 three pages.
3 MR. BISER: Mr. Schmidt, do you mind if we
4 take a minute just to mark these?
5 THE HEARING COMMISSIONER: Go ahead.
6 MR. BISER: Do you mind if I mark them
7 myself?
8 THE HEARING COMMISSIONER: All right. Sure.
9 If you want, you can look over his shoulder.
10 MR. BARHIGHT: No need.
11 THE HEARING COMMISSIONER: Mr. Biser, when we
12 get a break in the proceedings, I can copy all of them
13 for the file and give copies to counsel.
14 MR. BISER: That would be fine.
15 (Whereupon Protestant Exhibit Nos. 1 through
16 9 were marked for identification.)
17 MR. BISER: Thank you. Bear with me one
18 minute.
19 THE HEARING COMMISSIONER: Sure.
20 MR. BISER: I have no further questions.
21 Thank you.

1 THE HEARING COMMISSIONER: Mr. Barhight,
2 anything on redirect?
3 MR. BARHIGHT: No questions. Thank you.
4 THE HEARING COMMISSIONER: Thank you,
5 Mr. Guckert. You may step down.
6 MR. BARHIGHT: Call Mr. Roth.
7 THE HEARING COMMISSIONER: Will Mr. Guckert
8 be remaining? Will he be staying here?
9 MR. BARHIGHT: Well, let me ask off the
10 record.
11 (Discussion held off the record.)
12 THE HEARING COMMISSIONER: Okay. Go ahead,
13 Mr. Barhight.
14 MR. BARHIGHT: Call Mr. Roth to the stand.
15 THE HEARING COMMISSIONER: Sir, if you could
16 remain standing and raise your right hand, I'll swear
17 you in.
18 STEPHEN ROTH,
19 the Witness, called for examination by the Petitioner,
20 being first duly sworn to tell the truth, the whole
21 truth, and nothing but the truth, testified as follows:

1 THE HEARING COMMISSIONER: Sir, if you could
2 be seated. State your name and business address for
3 the record.
4 THE WITNESS: Stephen Roth, R-o-t-h, 7152
5 Windsor Boulevard, Baltimore, 21244.
6 EXAMINATION BY MR. BARHIGHT:
7 Q. Mr. Roth, where are you employed?
8 A. Employed with Baltimore Gas and Electric.
9 Q. What is your title and duties at -- is that
10 called BGE?
11 A. BGE.
12 Q. -- at BGE?
13 A. Director of real estate facilities planning.
14 Q. Are you familiar with the subject site?
15 A. Yes, I am.
16 Q. And did you participate in the sale and
17 purchase of this site?
18 A. Yes.
19 Q. You're familiar with the facts surrounding
20 the sale of this property by BGE over the last couple
21 of years?

1 A. Yes.
2 Q. Did Mr. James Knott ever express interest in
3 purchasing the subject site?
4 MR. BISER: Objection.
5 THE HEARING COMMISSIONER: What's the
6 relevance, Mr. Barhight?
7 MR. BARHIGHT: Obviously at the appropriate
8 time, depending upon the nature of the protestant's
9 case as identified by Mr. Biser, we're going to make
10 argument to you about standing and offer status as an
11 agreed party, and we'll recall for your review the
12 Kreatchman, if I'm saying it properly, versus Ramsburg
13 case at 224 Maryland 209, which basically stands for
14 the proposition that a person whose sole reason for
15 objecting to a zoning action to prevent competition is
16 not a person properly aggrieved, and we would like to
17 have the opportunity to lay a foundation for the facts
18 surrounding that issue, not only to lay the foundation
19 for these proceedings but also proceedings that may
20 come hereafter. We believe that in this case it is
21 very important for you to hear all of the information

with regard to Mr. James Knott's involvement in this site and what his disposition and predisposition is with regard to the site.

THE HEARING COMMISSIONER: Mr. Biser.

MR. BISER: No relevance whatsoever. Mr. Knott is not a competitor with Westmoreland. He's not in the business of shipping packages. There's no relevance at all what Mr. Knott's involvement with this property is or was. I mean, this is a variance and special exception, which have very limited areas of concern.

MR. BARHIGHT: If I might proffer to the Zoning Commissioner what Mr. Roth would say so that you can understand that which we intend to provide to the transcript.

MR. BISER: I'm going to object to any proffer. It doesn't lay any foundation if the substance of the testimony, notwithstanding what the proffer is, is objectionable. I mean, I think that's just a back door way of having the Zoning Commissioner hear what otherwise is objectionable. You've got to

1 lay the foundation for it. A proffer would only be
2 relevant if this body had an appeal on the record. It
3 does not.
4 THE HEARING COMMISSIONER: I know --
5 Mr. Barhight, I know nothing about this case and the
6 parties hereto other than what I've heard from Mr. Leo
7 and Mr. Guckert at this point in time. And I believe
8 Mr. Biser has indicated that he represents Mr. Knott as
9 among his clients. I'm inclined to -- I'm going to
10 sustain the objection at this point in time. I don't
11 know whether Mr. Knott is going to testify or
12 participate in this case. I do note that he was
13 subpoenaed in this case.
14 MR. BARHIGHT: And those subpoenas
15 unfortunately have not been successfully served,
16 notwithstanding the fact that we have asked Mr. Biser
17 if he would accept service on behalf of his client and
18 also have attempted service several times and have
19 affidavits to that effect.
20 One of the reasons why we're calling Mr. Roth
21 now in lieu of calling Mr. Knott and eliciting the

1 testimony directly from Mr. Knott regarding his
2 interest in purchasing the site, the contracts he has
3 for the construction of the site, is obviously that we
4 could not effect a subpoena service upon him.
5 Mr. Biser has refused to accept service. He has
6 obviously the right to do that. His client has -- we
7 have not successfully served his client and believe it
8 is important for this Zoning Commissioner to hear all
9 of the information regarding the motivation of the
10 parties, why they're here today. It goes to the
11 fundamental issues of standing and the parties agree
12 and we believe that your knowledge on these issues is
13 imperative to you making an informed decision with
14 regard to all of the issues and the motions that we
15 intend to make. Because we have not been able to
16 effect service, we cannot force Mr. Knott to come to
17 the stand, and that's why I have asked Mr. Roth to
18 appear today.
19 THE HEARING COMMISSIONER: Well, at this
20 point in time I'm going to sustain the objection. I'll
21 tell you what I will do, Mr. Barhight. I certainly

1 don't want to get into any type of case which is over
2 and above what the nature of this hearing before me is,
3 and that is, indeed, a land use case involving a
4 petition for special exception and a variance. I don't
5 want to go beyond that. I agree that the motives of
6 the parties just as the bias of expert witnesses are
7 relevant testimony and relevant evidence in these
8 proceedings, which may impact my judgment of various
9 witnesses' credibility.
10 For that reason, I think maybe it might be
11 proper to revisit this issue after the protestant's
12 case as rebuttal, depending on what the protestant's
13 case is, and I don't know that at this point in time.
14 But at this point of the proceedings, I don't see the
15 relevance of testimony about Mr. Knott's motives when I
16 haven't heard from Mr. Knott or don't know if he is
17 going to appear or anything.
18 So I'm going to try to keep it focused a
19 little more, and I'll sustain the objection and I'll
20 revisit that issue depending on what Mr. Biser does and
21 whether Mr. Knott testifies voluntarily as part of

1 Mr. Biser's case or not, and that's going to be a
2 judgment that he and his client are going to make
3 obviously. But at this point I'll sustain the
4 objection.
5 MR. BARHIGHT: Understood, and we'll try to
6 obviously bring Mr. Roth back if necessary at the
7 appropriate time and would now renew our request to
8 Mr. Biser that he accept service on behalf of his
9 client.
10 THE HEARING COMMISSIONER: That's up to
11 Mr. Biser.
12 MR. BARHIGHT: Just asking. He said he was
13 going to get back to us, and I haven't received a
14 response yet for about a week and I just wanted to see
15 if I could get a response.
16 MR. BISER: I'm not required to respond to
17 that, am I?
18 THE HEARING COMMISSIONER: Mr. Biser, you're
19 not under oath. I can't make you answer that question.
20 MR. BARHIGHT: I will accept the lack of
21 response as an indication that he is not willing to

1 accept service on behalf of his client.
2 THE HEARING COMMISSIONER: Accept it for
3 whatever it is.
4 MR. BARHIGHT: I have no further questions
5 for Mr. Roth at this time, and I would like to make it
6 clear on the record that I'm reserving to bring him
7 back at the appropriate time, understanding the
8 question regarding Mr. Knott's motivation in the
9 proceeding today. I'll characterize it premature at
10 this point, and we'll reserve the right at the
11 appropriate time also to make a proffer, and I may
12 bring that issue back up, but I'm not asking for the
13 proffer this morning.
14 THE HEARING COMMISSIONER: Okay. Any
15 cross-examination of Mr. Roth based on -- do you want
16 to cross-examine him about his name and address?
17 MR. BISER: About his name, no.
18 THE HEARING COMMISSIONER: You'll accept that
19 that is, indeed, his name?
20 MR. BISER: I was going to ask whether it was
21 spelled with a V or PH, but...

THE WITNESS: PH.

THE HEARING COMMISSIONER: Mr. Roth, you may step down, sir. Thank you.

MR. BARHIGHT: Call Mr. Martin to the stand, please.

THE HEARING COMMISSIONER: Mr. Martin, if you can remain standing and raise your right hand.

DAVID MARTIN,

the Witness, called for examination by the Petitioner, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

THE HEARING COMMISSIONER: Mr. Martin, you can be seated. State your name and place of employment for the record, please.

THE WITNESS: For the record, David Martin, director of land planning and landscape architecture for the firm of G.W. Stephens & Associates, 658 Kenilworth Drive, Towson, 21204.

EXAMINATION BY MR. BARHIGHT:

Q. Mr. Martin, you already indicated your title there at G.W. Stephens. Could you please briefly

1 describe for the Zoning Commissioner your duties.
2 A. Yes. My responsibilities for the firm of
3 G.W. Stephens, which is a civil engineering, land use
4 development consulting firm, is the director of
5 administration of the planning, the land use, the
6 zoning and the planning, site planning as well as the
7 landscape architectural work and services performed by
8 G.W. Stephens.
9 Q. Okay. Could you please briefly explain to
10 the Zoning Commissioner your educational background.
11 A. Yes. I have a bachelor of science in
12 landscape architecture from the Pennsylvania State
13 University. I have practiced in landscape architecture
14 as a registered professional in both the state of
15 Maryland and Pennsylvania. I also practiced in the
16 state of Florida, and I performed landscape
17 architectural and land planning services for the
18 Commonwealth of Bahamas, Jamaica, Massachusetts,
19 Alabama, North Carolina, Maryland, Pennsylvania, and
20 Virginia.
21 THE HEARING COMMISSIONER: I would like to be

1 the Zoning Commissioner in the Bahamas, I think. That
2 would be a good job.
3 MR. BISER: I would like to be the protestant
4 down there.
5 BY MR. BARHIGHT:
6 Q. I believe you already indicated that you have
7 professional affiliations as a landscape architect in
8 Maryland and Pennsylvania?
9 A. That is correct.
10 Q. Do you have any other professional
11 affiliations?
12 A. I am a member of the ASLA. That's the
13 American Society of Landscape Architects.
14 Q. Could you please briefly describe to the
15 Zoning Commissioner your work-related experience in the
16 areas of land planning and zoning? Just briefly, not
17 every case, just briefly your practice.
18 A. I understand. I've been in practice as a
19 landscape architect and also as a land planner since
20 1971 when I graduated from Penn State. I practiced in
21 the state of Pennsylvania for approximately nine years.

1 I practiced in the state of Florida for approximately
2 eight years dealing with land use, planned unit
3 developments, primarily golf course communities,
4 industrial commercial properties in the state of
5 Florida.
6 Since 1987 I've been employed here in
7 Maryland previous to G.W. Stephens with the firm of
8 Greenhorne & Omara, which is a large Maryland firm
9 headquartered in Greenbelt. I was the department head
10 for their land planning and landscaping architectural
11 group in their Towson office here. And for five years
12 I have been the director of land planning and landscape
13 architecture for G.W. Stephens & Associates. That's
14 the background.
15 At G.W. Stephens we primarily offer
16 consulting services in the field again of civil
17 engineering, land use, zoning, land planning, landscape
18 architecture in a -- what I would say a 50/50
19 combination of residential and industrial commercial
20 type projects running the gamut from conceptual plans
21 here in Baltimore County through the hearing officer's

hearing for development plan approvals in both residential and commercial and industrial type developments.

Q. Have you ever been accepted as an expert in landscape architecture, land planning, and zoning previously before the Baltimore County Zoning Commission?

A. Yes, I have.

Q. Could you give us a sense of approximately how many times?

A. Over the past, I would say 100.

Q. Okay. Have you ever testified and been recognized as an expert in these areas in the jurisdictions outside of Baltimore County?

A. Yes, I have.

Q. Could you please briefly describe those jurisdictions? You don't need to go into any detail.

A. All of the previous states that I mentioned in one venue or another or format, either as a witness regarding a plan unit development approval, special exception, or nature of that, here in Baltimore County

1 certainly as I mentioned, Howard County before the
2 board of appeals there, Harford County, the town of
3 Bel Air before their board of appeals, the planning
4 board there, federal district court in Baltimore City,
5 and the board of appeals here in Baltimore County.
6 MR. BARHIGHT: I request that Mr. Martin be
7 accepted as an expert in the areas of landscape
8 architecture and land planning and zoning and offer him
9 for voir dire.
10 THE HEARING COMMISSIONER: Mr. Biser.
11 MR. BISER: Yes. I have a few voir dire
12 questions.
13 EXAMINATION BY MR. BISER:
14 Q. Mr. Martin, I believe you said you've
15 testified approximately 100 times in Baltimore County.
16 A. That's correct.
17 Q. And other times in the various other
18 jurisdictions; is that correct?
19 A. That is correct.
20 Q. The 100 times in Baltimore County, what
21 percentage of those times that you've testified have

1 they been on behalf of the petitioner as opposed to a
2 protestant?
3 A. I would say 99 percent.
4 Q. And how about the times that you've testified
5 in Howard County? How many times have you testified
6 there?
7 A. Maybe a half a dozen approximately.
8 Q. And have they all been on behalf of the
9 petitioner?
10 A. That is correct.
11 Q. And how about in Harford County? How many
12 times have you testified there?
13 A. Twice at Harford County.
14 Q. And how many times on behalf of the
15 petitioner there?
16 A. Both times.
17 Q. And the town of Bel Air, how many times have
18 you testified for the body there?
19 A. Approximately a half a dozen.
20 Q. And have they all been on behalf of the
21 petitioner?

1 A. That is correct.
2 Q. And the federal district court case or cases
3 that you testified, what was that for?
4 A. That was for a condemnation regarding PECO,
5 that's Potomac Electric Company, and a land
6 condemnation in Howard County.
7 Q. You also indicated you testified as an expert
8 before the Baltimore County board of appeals. Was that
9 included in the 100 times you've been an expert in
10 Baltimore County? Did that include the board of
11 appeals?
12 A. I would say so, yes.
13 Q. So that wasn't a separate area of expertise
14 testimony?
15 A. No.
16 Q. Have you ever testified in a case where a
17 trucking facility was at issue such as the one in this
18 case?
19 A. I have testified regarding a Class 1 trucking
20 facility in Baltimore County, yes.
21 Q. And on how many occasions?

1 A. At least one specific occasion.
2 Q. And that one time was when?
3 A. That was approximately four years ago, and
4 most recently to amend that plan, I'm going to say
5 about six months ago.
6 Q. But at the same facility?
7 A. That is correct.
8 Q. And the four years ago that you testified
9 before, what body was it that you testified?
10 A. That was in front of the Zoning Commissioner.
11 Q. And what facility was the subject of the
12 hearing?
13 A. That facility is known as the New England
14 Motor Freight Trucking facility.
15 Q. Where is that located?
16 A. That is located in Baltimore County/Baltimore
17 City. The division line actually runs through the
18 site. Its principal entrance is off of Joh Avenue.
19 THE HEARING COMMISSIONER: Did I hear that
20 case, Mr. Martin, or Mr. Kotroco?
21 THE WITNESS: I believe you heard the first

1 case and Mr. Kotroco heard the amendment.
2 BY MR. BISER:
3 Q. Is that the same case that Mr. Guckert
4 testified in?
5 A. No, it is not.
6 Q. Because he had mentioned a Joh Avenue case as
7 well.
8 A. There are lots of trucking facilities on Joh
9 Avenue.
10 THE HEARING COMMISSIONER: He did the UPS on
11 Joh Avenue.
12 Q. And what was the issue the one time that you
13 testified in the Joh Avenue cases?
14 A. Well, the issue in Joh Avenue again was a
15 variance request as well as the need to obtain a
16 special exception. That happened to be a trucking
17 facility with some dated history, and as the
18 Commissioner's aware, the Class 1 and Class 2 trucking
19 facility legislation came into being long after many of
20 these facilities had been in operation. And as a
21 requirement of that legislation, all trucking

1 facilities were encumbered with bringing their site
2 plans and their operations into conformance by
3 producing a trucking facilities plan, whatever the
4 proper classification that they fit. And that's what
5 that particular case was about.
6 However, they also had asked to expand the
7 existing terminal facilities, which also was
8 incorporated into the trucking facilities plan that
9 they brought forward. And I believe, if memory serves
10 me correctly, there was a FAR variance granted with
11 that case.
12 Q. Other than that one time, do you recall any
13 other expert testimony you've given concerning similar
14 trucking facilities?
15 A. With regard to the legislation of a Class 1
16 or Class 2 trucking facility, no, I do not recall.
17 Q. Have you ever been engaged as a professional
18 land planner, landscape architect with respect to the
19 design of any similar facility?
20 A. Well, as a matter of course with our firm's
21 consulting practice, similar what I would call

1 industrial type sites, flex office spaces where a mix
2 of tractor trailers --
3 Q. Mr. Martin, I'm not talking about flex
4 spaces. I'm not talking about your firm --
5 MR. BARHIGHT: Objection. If the witness
6 could complete his answer. I believe he was attempting
7 to complete his answer in response to the question
8 asked.
9 THE HEARING COMMISSIONER: Let's let him
10 finish.
11 THE WITNESS: Can you repeat the question
12 again?
13 BY MR. BISER:
14 Q. Yes. If you could just answer the question
15 that's asked, Mr. Martin. And I'm not referring to
16 your firm. You're the one who has been proffered as
17 the expert. Just your involvement. Have you been
18 involved in the land use planning of a facility like
19 the facility that's the subject of this case?
20 A. I -- we -- I have been involved with the
21 development of industrial sites that may have buildings

1 with truck facilities, truck doors, step van, arrivals,
2 departures, in and out of the building, what they call
3 drive-in doors, on numerous occasions.
4 Q. How about for a company like UPS or RPS,
5 Federal Express, that does the same type of business as
6 the petitioner requests here?
7 A. I have not been involved in one of those.
8 MR. BISER: That's all the questions I have
9 to Mr. Martin, and I would object to his being admitted
10 as an expert. I know that he's an expert land planner.
11 He does not, however, have the background or the
12 expertise in this case to testify as an expert.
13 THE HEARING COMMISSIONER: I'll overrule the
14 objection and admit him. I note that the Baltimore
15 County Code in dealing with the professionals that can
16 seal plans under the development review process permits
17 not only civil engineers but also professional
18 landscape architects to seal plans. And although this
19 is not a development plan case per se, I think there is
20 an inference from that law that landscape architects
21 are on that same footing. And based on Mr. Martin's

licensing in the state of Maryland and his background and education, I'll accept him and allow him to testify.

Mr. Barhight.

MR. BARHIGHT: Thank you.

EXAMINATION BY MR. BARHIGHT:

Q. Mr. Martin, are you familiar with the subject property and the subject proposal?

A. Yes, I am.

Q. Have you had opportunities to visit the site and the area?

A. Yes, I have visited the site.

Q. And what has been your involvement with regard to the site plan that was prepared for filing of the petition for special exception and zoning variances?

A. I supervised the preparation of the site plan for or the plat to accompany special exception and the plat for variances as well as the actual Class 1 trucking facilities plan in this case. They are a combination document.

1 Q. Okay. I would like to direct your attention
2 to the two-page document, which is on the board, and
3 ask you to identify that document.
4 A. Yes. If I could go to the board?
5 THE HEARING COMMISSIONER: Sure. Just keep
6 your voice up, Mr. Martin.
7 A. Okay. The first document that we're
8 referring to is a plat to accompany the petition for
9 special exception to admit a Class 1 trucking facility
10 and a trucking facilities plan. And this particular
11 document illustrates the grading associated with that
12 facility as well.
13 Q. And does this two-page document meet the
14 requirements for the filing of a plat to accompany a
15 petition for special exception and variance?
16 A. Yes, it does. And as a matter of course for
17 filing said documents, a checklist of the Baltimore
18 County requirements for trucking facilities and special
19 exception and variance plats was submitted, reviewed by
20 the staff in the zoning office, and accepted for file.
21 Q. Okay. Does this particular document bear

your seal as a landscape architect registered in the state of Maryland?

A. That is correct, it does.

Q. And is it identical to the plat that was filed with the petition for special exception to variances in this particular case?

A. It is the same.

MR. BARHIGHT: I would like to go ahead and offer this as the next petitioner's exhibit. I believe it's No. 4. Is that what we're on?

THE HEARING COMMISSIONER: No. 4. Now, are you offering at this point, Mr. Barhight, just that single page?

MR. BARHIGHT: Both sheets. Sheet one of two and two of two.

THE HEARING COMMISSIONER: Okay. What's the difference, Mr. Martin, between page 1 and page 2?

THE WITNESS: The only difference, Mr. Commissioner, is that page 2 of 2, which is the top sheet, illustrates the grading associated with the plan, site plan. That is a requirement of the trucking

1 facilities plan information. If you'll note the second
2 sheet or sheet 1 of 2 as pinned to the board does not
3 illustrate the grading. That's more a staff request so
4 that the amount of data that they're reviewing on a
5 particular sheet, the grading versus setbacks and other
6 things don't get so confused and convoluted that they
7 have difficulty reading it.
8 THE HEARING COMMISSIONER: Okay. And that
9 does have your seal on both of those documents?
10 THE WITNESS: That's me.
11 THE HEARING COMMISSIONER: Okay. I'll accept
12 the documents as collectively Exhibit No. 4.
13 BY MR. BARHIGHT:
14 Q. While you're up here, Mr. Martin, could you
15 please identify the colored rendering that is also on
16 the board?
17 A. Certainly. This is a computerized, colored,
18 illustrative site plan utilizing the base information
19 that was generated for the actual special exception and
20 variance plat in a Class 1 trucking facilities plan.
21 It does, however, have our proposal for landscape

1 materials as a part of the landscape plan. That has
2 also been submitted to Baltimore County and tentatively
3 approved subject to the outcome of this particular
4 zoning hearing in the case, just to sort of sense a
5 flavor of the landscape materials, the building, and
6 the relationship to the gray area, which is parking.
7 Q. Mr. Martin, was this document created under
8 your supervision?
9 A. It certainly was.
10 MR. BARHIGHT: I would like to offer this as
11 the next petitioner's exhibit, Exhibit 5.
12 THE HEARING COMMISSIONER: Okay. I'll accept
13 that as Exhibit 5, and that's merely a colorized
14 rendering of the site plan?
15 THE WITNESS: That is correct.
16 THE HEARING COMMISSIONER: Okay.
17 BY MR. BARHIGHT:
18 Q. Mr. Martin, if you could please step back to
19 the board and briefly describe to the Zoning
20 Commissioner the subject site, focusing on initially
21 the location of the property and the zoning property.

1 A. Okay. I may refer back and forth to some
2 sheets, and I'll try to, for purpose of the court
3 reporter, explain which particular sheet I'm
4 describing.
5 MR. BARHIGHT: If I might interrupt the
6 witness, if I could go ahead and label these so that we
7 wouldn't have to remember which is which.
8 THE HEARING COMMISSIONER: Okay.
9 MR. BARHIGHT: I'm going to go ahead and mark
10 the colored exhibit as Petitioner's Exhibit No. 5.
11 I'll mark the sheet 2 of 2 of the Petitioner's Exhibit
12 No. 4 as Petitioner's Exhibit No. 4.
13 (Whereupon Petitioner Exhibit Nos. 4 and 5
14 were marked for identification.)
15 BY MR. BARHIGHT:
16 Q. Go ahead, Mr. Martin.
17 A. Okay. I'm now referring to Petitioner's
18 Exhibit No. 4, which is sheet 2 of 2 of the actual plat
19 to accompany petition. The site -- I'm going to refer
20 to the upper left-hand corner of this particular
21 exhibit, which is the part of the Rossville zoning map

referred to as northeast 5G, which is the county's official zoning map for this particular area. It is a hatched area that is shown on that map that represents the site in question. The map indicates that the zoning of this property is a combination of ML-IM and ML along Philadelphia Road. There are -- at the time that the zoning maps were created, there were some additional buildings along this area. It's just sort of a general description.

Q. What is the location of the site relative to the road system that's there today as well as proposed?

A. For that -- to answer that question I'm going to go to the vicinity and travel routes map which is in the right-hand corner again of Petitioner's Exhibit 4. It illustrates in a schematic way the street network surrounding both this site and the overall regional area. The site as located on that map, the vicinity and travel routes map, is identified as a blackened in or filled in area serviced by Yellow Brick Road, which I would characterize as a spine road feeding an industrial park, spine road meaning one that like a

1 spinal cord penetrates the center of some land bays and
2 feeds those on either side of it. To what would be the
3 northwest quadrant is Philadelphia Road, which is also
4 Maryland State Route 7.
5 And the plan also indicates the network of
6 U.S. Route 40, which is to the southeast of the
7 property. We mentioned Philadelphia Road. It does
8 illustrate Rossville Boulevard and the connection of
9 Yellow Brick Road out to Rossville as well as the
10 connection and the intersections of Route 40, the
11 beltway, I-695, up to the connection to I-95 as well as
12 the beltway heading towards Towson and Interstate 83.
13 Q. What is its relative location to the proposed
14 Lennings Lane?
15 A. Okay. It immediately abuts the proposed
16 Lennings Lane, which is shown on the main site plan as
17 well as the connection shown on the vicinity map,
18 again, up in the upper right-hand corner. It
19 immediately abuts Lennings Lane.
20 (Discussion held off the record.)
21 Q. Mr. Martin, I would like to refer to this

1 document very briefly. It's already been introduced
2 into evidence as Petitioner's Exhibit No. 2 that
3 Mr. Leo testified with regard to this exhibit briefly,
4 but I would like for you to describe -- let me back up.
5 Was this document prepared under your
6 supervision?
7 A. Yes, it was.
8 Q. Does it actually bear your seal?
9 A. Yes, it does.
10 Q. Could you briefly describe what this document
11 shows?
12 A. The document that we're referring to is a
13 computer generated enlarged portion of the site
14 representing the building at an enlarged scale, and in
15 a gray tone you can actually pick out the operations or
16 the layout of the building as it relates to parking,
17 conveyor belt systems, baggage conveyor, et cetera, as
18 well as just a sense of the front loading area as the
19 vehicular -- this is a partial enlargement of the
20 building area on the site.
21 Q. I would like to refer you back to

1 Petitioner's Exhibit No. 5 and ask you to describe the
2 surrounding zoning and the surrounding land uses
3 immediately adjacent to the property.
4 A. Okay. As I mentioned earlier, based on the
5 county's zoning map, the property is split zoned ML
6 that parallels Philadelphia Road, and ML-IM, which
7 encompasses the bulk of the remaining site.
8 Q. Mr. Martin, I may misunderstand. Could you
9 identify the property boundary to me?
10 A. Yes. The property boundary for this
11 particular site is here (indicating) and around
12 following Yellow Brick Road to what would be the east,
13 northwest to a corner backing up to a vacant parcel. I
14 mean, I'm sorry. A small portion of what is called the
15 Alliance Rehabilitation Center, I believe, to the
16 northwest and up to a point and again meeting back at
17 Lennings Lane.
18 Q. Okay. So then approximately -- is the area
19 that's actually in the ML zone a very large area?
20 A. The ML-IM zone?
21 Q. No.

A. The ML zone? No. It's a very small little triangular shape that meets right there.

Q. Could you please describe for the Zoning Commissioner the area that is the subject of the special exception proceeding, specifically relative to setbacks required for residential structures and setbacks required from wetlands? And if you could do that by referring to Petitioner's Exhibit No. 4.

A. Referring back to Petitioner's Exhibit 4, which is the plat that accompanied the variance request and the special exception, as it relates to the property at or the special exception definition as was submitted with the application, you'll note that there is a graphic dashed arc which is cast from an existing residence or a house structure to the northwest of the site. Our special exception area misses that -- that arc radius is 300 feet. Special exception that we've described, the area for this facility, is just shy of approaching into that arc. That meets the requirements set forth in the -- one of the requirements for the Class 1 trucking facilities legislation.

1 Down at what would be the southeast corner of
2 the property, there is another described dashed arc
3 with a dimension of 200 feet. That is from a wetland
4 area that is now described on the record plat for the
5 subject section 3 of Rossville Industrial Park with a
6 forest buffer easement described. That is from the
7 record plat. Subject special exception delineation
8 deviates from the actual property in the area of that
9 arc so as to not encroach, and that is another one of
10 the conditions of the Class 1 trucking facilities
11 legislation, that a facility like this be 200 feet away
12 from any wetland.
13 Q. Are you familiar with the uses up and down
14 Yellow Brick Road?
15 A. Yes, I am.
16 Q. And if I could travel west on existing Yellow
17 Brick Road, I'm asking you what facilities are
18 immediately to the north of Yellow Brick Road -- if
19 Yellow Brick Road is east/west for the purposes of this
20 discussion, what use is immediately north along Yellow
21 Brick Road to the west of the site?

A. There is a development known as FRP owned by FRP Development that has basically a pair of buildings which share a common truck/paved court used for multipurpose parking, automobile parking, as well as semi-tractor trailer operations as well as step vans, just sort of a multi -- very common to see in an industrial park like that.

Q. Okay. And directing your attention again, coming from the site west down Yellow Brick Road to the south of Yellow Brick Road, what structures, if any, are in that general location?

A. Those structures -- as opposed to the two which are what I would classify as perpendicular to Yellow Brick Road, those two structures run parallel to Yellow Brick Road, again, east/west if we're considering Yellow Brick Road as traveling east and west for purposes of this discussion. There are two very long buildings scaled from aerial photographs approximately 800 feet in length. And again, they share a common multipurpose paved court area internal to and parallel with their long axis.

Q. Does the -- let me back up and lay the foundation for this question.

Are you familiar with the Class 1 trucking facility requirements of the Baltimore County trucking regulations?

A. Yes, I am.

Q. Have you dealt with them in cases prior to this particular case?

A. I believe I mentioned a specific case that we dealt with in great detail.

Q. Does this particular site plan proposal meet the trucking facility requirements found in Baltimore County Zoning Regulations regarding Class 1 trucking facilities with the exception of the floor-area ratio variances that were requested here today along with special exception?

A. Yes, it does.

Q. So I'm not going to go into every single section of that law, but you've reviewed every one of those sections in that section of the Baltimore County Zoning Regulations, and this site plan meets all of

1 those requirements?
2 A. We have reviewed them extensively, and just
3 for the record, I believe that in one form or another
4 under the general notes found on Petitioner's Exhibit
5 4, those issues are described in detail and cover in
6 the general notes.
7 Q. You can return to your seat.
8 With regard to trucking facilities in
9 general, what kinds of impacts do you ordinarily expect
10 to see with regard to trucking facilities?
11 A. The normal impacts, and I would base this on
12 my experience with the New England Motor Freight
13 facility and having met with the community groups that
14 were directly affected or could be affected by that
15 facility, as well as the others that are down there.
16 The normal course of impacts that one would expect
17 would be the noise emanating from the facility by way
18 of discharging the trailer air hoses, the noise of just
19 loading and banging doors, loud speakers. The truck
20 traffic itself is certainly an issue. It was an issue
21 in that particular case. One would expect truck

1 traffic to be an issue of concern to immediate
2 neighbors.
3 The noise we talked about. Air pollution.
4 The visual impact of a truck facility. Again, I will
5 rely on my experience with the New England Motor
6 Freight. That certainly was a great deal of concern
7 about the buffers associated with that in that
8 particular instance surrounded by residentially zoned
9 and used neighborhoods.
10 So there's a visual impact that one needs to
11 be concerned with. I think the legislation itself for
12 trucking facilities deals with that kind of an issue.
13 It distinguishes that regardless of the previous
14 vesting of whatever, that the trucking facilities must
15 comply with the current Baltimore County landscape
16 manual requirements. In this particular case and in
17 contrast, this plan was approved under the old JSPC
18 process in Baltimore County, which predates the CRG
19 process, which was the predecessor to the current
20 process of development approval in Baltimore County,
21 the concept plan, development plan as we know it today.

Under those rules and under the policies that have been established and adhered to by the county, the landscaping requirements for other facilities in the bounds of this park do not get held to the standards for the landscape manual. Basically it's live with the terms of the legislation or the rules that were in effect at the time of the approval.

Q. Now, we've discussed very briefly the nature of the variance requested in this case. Could you please describe in detail to the Zoning Commissioner specifically the variance requested?

A. Certainly. The variance requested deals with the floor-area ratio. That ratio is derived by a representation or a ratio comparison of the floor area of the building encompassed by the walls as it relates to the site area. In this particular case, we have approximately a 12-acre site, multiplied by 43,560 square feet in an acre gives you a number. That number is divided into the area of the building footprint in this case because it's a one-story building. And that gives you a derived floor-area

ratio, in this case a point 25 approximate number.

Q. What is the requirement of the trucking facilities legislation for floor-area ratio in this?

A. The trucking facilities regulations indicate that a floor-area ratio for Class 1 trucking facility must not exceed point 1.

Q. Is that what we're seeking a variance here today?

A. That is the variance we're seeking.

Q. What would you consider to be unique with regard to the subject site and any of the surrounding properties and its impact on the subject site?

A. Okay. If I can --

MR. BISER: Objection. Mr. Commissioner, if I may, this is the same question that I asked on the first day that you found objectionable and would not let the first witness testify to because it was a legal issue. And if it's not proper to ask that witness, it's certainly not proper to ask this witness either.

MR. BARHIGHT: This gentleman has been accepted, although over objection, as an expert in

1 landscape architecture, land planning and zoning, and
2 has testified in answer to the same questions numerous
3 times in other proceedings.
4 As a part of the variance requirements, we
5 need to show uniqueness in a word, and that's exactly
6 what I'm attempting to do in this particular case. And
7 I've asked Mr. Martin that question because we believe
8 that it's part of the requirements of the zoning
9 regulations as well as the Cromwell vs. Ward case.
10 THE HEARING COMMISSIONER: I believe since
11 this witness is an expert witness, and I believe the
12 reason that Mr. Leo did not answer that question is
13 that he did not have any expertise in that area, that
14 this witness can testify about that ultimate issue as
15 it were. So I'll overrule the objection and allow him
16 to testify.
17 THE WITNESS: Could you repeat the question?
18 BY MR. BARHIGHT:
19 Q. I'd be happy to.
20 Mr. Martin, are you familiar with the
21 variance requirements in the Baltimore County Zoning

1 Regulations?
2 A. Yes, I am.
3 Q. Are you familiar with what I'm characterizing
4 as the uniqueness requirement?
5 A. Yes, I am.
6 Q. Could you please describe to the Zoning
7 Commissioner what is unique in this situation?
8 A. If I can go to the board again.
9 Q. Please. And as you're doing that, let me
10 show you something that I have. Have you prepared a
11 drawing to assist you in answering that question?
12 A. Yes, I have.
13 THE HEARING COMMISSIONER: Off the record.
14 (Discussion held off the record.)
15 MR. BARHIGHT: I would like to mark for
16 identification purposes at this point only a drawing.
17 BY MR. BARHIGHT:
18 Q. Can you just identify the drawing we put on
19 the board very briefly in two sentences or less?
20 A. What we've just pinned to the board is what
21 we at G.W. Stephens and I labeled a site context map.

1 It is to the scale of one inch equals 100 feet, and the
2 reduced scale allows us to show a little more of the
3 surrounding area and the relationships of those
4 properties to this. With that exhibit, I think I can
5 answer Mr. Barhight's question or attempt to offer my
6 opinion regarding the peculiarities and unusual
7 conditions surrounding this property and its
8 uniqueness.
9 MR. BARHIGHT: I would like to have this
10 marked for identification purposes only at this point
11 as Petitioner's Exhibit No. 6 for ease of reference.
12 THE HEARING COMMISSIONER: So mark it as
13 No. 6 for identification only.
14 (Whereupon Petitioner Exhibit No. 6 was
15 marked for identification.)
16 BY MR. BARHIGHT:
17 Q. Now, I'll repeat my question, Mr. Martin.
18 A. Please.
19 Q. Could you please address the uniqueness issue
20 in this situation?
21 A. What I would like to do is describe several

1 things that may -- in my opinion, are -- set this
2 property aside in a different venue or a different vein
3 as far as site configurations, context with
4 relationship to neighbors, and that sort of thing.
5 As I mentioned earlier, Yellow Brick Road is
6 what planners call a spine road network with property
7 bays or land use bays to either side of it, the main
8 road feeding those particular land bays. When we get
9 to the subject site, Yellow Brick Road changes or that
10 condition changes somewhat as it relates to the rest of
11 the industrial park.
12 As you'll see from the plan, Yellow Brick
13 Road takes a reverse curve to the southeast. And this
14 property happens to be the particular one where the
15 only connection, other connection, to an outside street
16 network from Yellow Brick occurs right here
17 (indicating), and that's with Lennings Lane extended to
18 Philadelphia Road.
19 The sheer geometry of those streets makes
20 this particular site a little bit abnormally shaped as
21 it relates to the rectangular loaves of bread or the

1 square shaped properties immediately to the west along
2 Yellow Brick Road on either side of Yellow Brick Road.
3 Additionally, the zoning itself, as we looked at the
4 Baltimore County zoning map, which I referred to as
5 northeast 5G, illustrates that the subject site
6 primarily zoned ML-IM, and there is a split zone or a
7 zone, a band of ML, a plain ML zone that runs parallel
8 to Route 7. Route 7 happens to be the devising line to
9 a residential zone DR-35.
10 Now, immediately adjacent to this particular
11 site to what would be the northwest in the ML zone is a
12 residentially used property, an Alliance -- I'll
13 characterize it as a health rehabilitation center,
14 dealing primarily, according to their literature, with
15 mental illness but other disabilities not to exclude
16 substance abuse rehabilitation. As a part of their
17 property, they still have a resident or old residential
18 house in front of their primary newer facility
19 building, which is towards the rear of the property
20 with a parking lot in front. There is a residential
21 structure that appears to be used as a living quarter

1 for patients, or I think their literature refers to
2 them as customers.
3 Immediately adjacent to that is another
4 industrial site. Nothing different there. Then next
5 to the -- which is the Baltimore Rigging property.
6 Immediately adjacent to the Baltimore Rigging
7 going north on Route 7 are two other additional
8 residentially used properties. Along Philadelphia
9 Road, within the regional context of this property,
10 certainly 1,000 feet to the north and maybe 1,000 feet
11 to the south, this is sort of the one place where these
12 residential properties may be impacted by a view shed
13 issue related to not just this facility but any
14 development of this particular site. They are uphill
15 from the subject property.
16 Route 7 is sort of a benched ridge line, if
17 you will. These properties are pretty level with that.
18 This particular property -- and again, this exhibit is
19 based on Baltimore County GIS information. I'm just
20 going to refer to an elevation on some of these
21 contours at Lennings Lane, the existing Lennings Lane,

1 which pops out from the -- onto Route 7 from what I'll
2 call the northeast -- northwest. Excuse me -- in an
3 elevation of 130 feet above sea level. Floor elevation
4 of the proposed building, I'm going to refer to
5 Petitioner's Exhibit 4, is set at 96 feet above sea
6 level.
7 So the building floor and the relationship of
8 the parking and the pavement as shown on the
9 Petitioner's Exhibit 4 is substantially lower than the
10 immediate residential properties that I previously
11 described, the Alliance health rehabilitation area and
12 these residential properties over in this area
13 (indicating), which are at about elevation 120. The
14 road is going downhill slightly in this area.
15 But the point is that all of these properties
16 are uphill from this particular site. The difference
17 is that although the zoning is ML, they are being used
18 as residentially -- primarily the three residential
19 properties and a health rehabilitation center. I can't
20 find that condition with that zoning and that use
21 within the immediate confines of the subject site. So

the land use differences related to this subject site in the view shed impacts that may or do exist today with the grading operations that have occurred out here already are certainly something that are set differently and relate differently and that you might expect to see or do, in fact, see elsewhere in Rossville's Industrial Park.

Q. Mr. Martin, do you have a couple of photographs that help depict this change in grade of the view sheds that you discussed?

A. Yes, I do.

Q. Can you identify these two photographs that I've placed before you?

A. These two photographs were taken by myself last Friday afternoon. And for purposes of context, do you want to number these in any particular order?

Q. Yes, I would like to after you identify them. Can you please identify what they depict?

A. Yes. The first photograph I'm holding is a photograph of the subject property taken from what I would characterize as the southwest -- almost the due

1 south corner of the subject rectangular area shown on
2 my context map, looking almost due north, which is
3 along this line. And in the background, you can see
4 the Alliance brick facility, their adjoining greenhouse
5 structures, and the opening where Lennings Lane --
6 there is a current driveway that comes in to I presume
7 service Alliance, but it's a cleared area right in this
8 location on the context map next to the Alliance
9 parking lot and building.
10 Q. And the other photograph?
11 A. The other photograph that I'm holding was
12 taken again last Friday by myself, and that was taken
13 in the back, the rear of the Alliance facility. And
14 it's a photograph looking southeast along what would be
15 the long axis of the facility shown on our site plan
16 for the Westmoreland building, and it shows the graded
17 pad area in this general location shown on the context
18 map.
19 MR. BARHIGHT: I would like to offer into
20 evidence Petitioner's Exhibit No. 6, which was
21 previously marked for identification purposes, the site

1 context map scale one inch equals 100.
2 THE HEARING COMMISSIONER: And Mr. Martin
3 indicated that he and his staff prepared that under his
4 direction?
5 MR. BARHIGHT: Yes, I believe he did.
6 THE HEARING COMMISSIONER: I think he does
7 indicate it is a scale drawing; right, Mr. Martin?
8 THE WITNESS: That is correct.
9 THE HEARING COMMISSIONER: All right. I'll
10 accept that as an Exhibit No. 6.
11 (Whereupon Petitioner Exhibit No. 6 was
12 admitted into evidence.)
13 MR. BARHIGHT: I would also like to offer as
14 Petitioner's Exhibits 7A and B the photographs that he
15 has referenced that he took, and there is a little
16 notation created by the camera of the date, May 28th,
17 1999. The first one being the view I'll call it from
18 the south generally would be A.
19 THE HEARING COMMISSIONER: Okay.
20 MR. BARHIGHT: Looking up towards Alliance
21 and the residences, and B looking from the rear yard of

Alliance down towards the site.

THE HEARING COMMISSIONER: Mr. Biser, any objection to these photographs?

MR. BISER: No.

THE HEARING COMMISSIONER: The witness did indicate he took them on the dates on here. Okay. Also accept those.

(Whereupon Petitioner Exhibit Nos. 7A and 7B were marked and admitted into evidence.)

BY MR. BARHIGHT:

Q. Mr. Martin, I've left the photographs here on the panel before the Zoning Commissioner in case you need them.

A. Okay.

Q. Mr. Martin, we've also discussed in previous testimony but I want to ask you a question as well, are you familiar with the operation of the proposed RPS facility?

A. I have listened to Mr. Leo's testimony, and I've reread his testimony from the transcript. And based on that, yes, I think I have a familiarity with

1 what the operation is.
2 Q. And you're also familiar with the exhibit
3 that bears your seal that shows the configuration of
4 the proposed building, Petitioner's Exhibit No. 2?
5 A. Yes.
6 Q. Okay. What, if anything, is unique about the
7 operation of the proposed RPS facility?
8 MR. BISER: Objection. This is way outside
9 the area of his expertise.
10 MR. BARHIGHT: The man's a land planner. I'm
11 asking him to describe the site, describe the area,
12 describe the operations. If I asked some of the
13 questions I'm about to ask, Mr. Biser would say I
14 hadn't laid a proper foundation. I'm trying to show
15 the basis for his opinions I'm about to elicit, and I
16 think it's important for him to be able to describe the
17 knowledge of the unique characteristics of the proposed
18 facility.
19 THE HEARING COMMISSIONER: I guess the
20 question is unique compared with what. I mean, he has
21 indicated that he's --

1 MR. BARHIGHT: I'll be more specific. I
2 appreciate that.
3 THE HEARING COMMISSIONER: Be more specific.
4 MR. BARHIGHT: I appreciate that.
5 BY MR. BARHIGHT:
6 Q. With regard to trucking facilities generally,
7 Mr. Martin, what is unique about the proposed operation
8 of this facility?
9 MR. BISER: Objection.
10 THE HEARING COMMISSIONER: I'll allow him to
11 answer the question, Mr. Biser. He's indicated that he
12 has familiarity from a land planning standpoint, so in
13 this context, I think the question is acceptable.
14 MR. BISER: If I may be heard briefly, the
15 question isn't what is unique about this trucking
16 facility. That's irrelevant. The question is what's
17 unique about the property. This gentleman is not a
18 trucking expert. His knowledge about this facility is
19 gained wholly from listening to Mr. Leo testify. So he
20 can't express expert opinions about a facility, the use
21 of which he's only learned from another witness. It's

1 land use that's his balliwick, not trucking facilities
2 and how they operate.
3 MR. BARHIGHT: I believe you've already
4 ruled, if I'm not mistaken.
5 THE HEARING COMMISSIONER: Well, as I
6 understand the question that's being asked, it's being
7 asked from a land use perspective.
8 MR. BARHIGHT: Correct.
9 THE HEARING COMMISSIONER: And that is -- I
10 mean, obviously any land planner is not in the trucking
11 facilities, restaurants, or any other land use. He's a
12 land planner, which Mr. Martin is qualified as. So
13 within the context of him being able to elicit an
14 opinion as a land planner comparing this trucking
15 facility to other trucking facilities that he is
16 familiar with as a land planner, I'll allow him to
17 answer the question.
18 BY MR. BARHIGHT:
19 Q. Do you want me to repeat myself, Mr. Martin?
20 A. Yes.
21 Q. Can you please describe from a land planning

1 perspective what is unique about the proposed operation
2 of the RPS facility relative to other trucking
3 facilities?
4 A. Okay. To answer that question, I'm going to
5 utilize the Petitioner's Exhibit No. 2 exhibit which
6 was prepared and signed and sealed by myself. And just
7 to briefly describe again, that is an enlarged
8 depiction of the building architectural floor plan and
9 a portion of the property in its immediate vicinity.
10 MR. BISER: Mr. Martin, if I may interrupt,
11 what exhibit is that?
12 MR. BARHIGHT: Two.
13 THE WITNESS: This is Petitioner's Exhibit
14 No. 2. This was prepared basically extracting from our
15 computer an enlarged version of the site plan with the
16 building furnished by RPS or Westmoreland template, an
17 architectural digital template from their computer,
18 which is what we utilized to prepare our zoning
19 exhibits, the wall lines, et cetera. They just happen
20 to have more detail in their digital representation.
21 And our computer married their computer, and we've now

1 got an exhibit that represents the use or the
2 demonstration of the use as based on their
3 architectural footprint of how this building operates
4 or what's basically going on where.
5 And as it relates to land use, the gray area
6 shown is superimposed over that portion of the building
7 floor plan shown to house step vans, loading against or
8 backed against finger -- what I'll call finger piers,
9 presumably for loading. And I think Mr. Leo testified
10 to that is how the operation occurs. The trucks back
11 into the finger pier and they are loaded from that
12 facility.
13 If you were to strip away the wall line of
14 that particular building, and that is exactly what this
15 graphics is doing with the gray tone, what's left is a
16 roofed area of in this general area of what we would
17 call the front of the building. And in terms of -- and
18 I don't have the exact numbers for the entire -- well,
19 it's 120 -- excuse me for a second to refer to another
20 number. The total square footage of the building with
21 its addition is 129,200 square feet. Referring again

1 back to Petitioner's Exhibit No. 2, the gray area of
2 that total 129,000 and some change, 64,230 square feet
3 plus or minus is shown to encompass that area devoted
4 to the step van parking and loading along these finger
5 piers. There are one, two, three, four, five shown on
6 the architectural footprint.
7 BY MR. BARHIGHT:
8 Q. How, Mr. Martin, is that unique from a
9 typical trucking facility?
10 MR. BISER: Objection.
11 THE HEARING COMMISSIONER: Same objection?
12 MR. BISER: Same objection.
13 THE HEARING COMMISSIONER: I'll note a
14 continuing objection, Mr. Biser.
15 MR. BISER: That's fine. Thank you.
16 THE HEARING COMMISSIONER: And the same
17 ruling.
18 Go ahead, Mr. Martin. Continue.
19 THE WITNESS: I'll relate that directly to my
20 experience at New England Motor Freight, if I may. In
21 that particular instance or a Class 1 trucking facility

1 that you might see, and I saw the adjoining facilities
2 to New England Motor Freight down off of Joh Avenue as
3 a part of that case, so I'm familiar with what is what
4 I'll call the norm in that area of a trucking facility.
5 It's basically a long, thin building, maybe 40 feet, 50
6 feet wide, that has finger piers off of it in some
7 instances. In other instances that building itself is
8 the finger pier and the truck trailers and their
9 tractors back into that finger pier in an exposed
10 condition and are loaded off of that singular finger
11 pier or multiple finger piers that may spring from that
12 main one. The dock doors are open to the outside.
13 Most importantly, the difference between --
14 the distinguishing difference between what I'm looking
15 at in this floor plan which is enclosed by walls, and
16 that is the visual impact that those trucking
17 facilities have because they are exposed to the
18 outdoors and whatever views may or may not be present
19 to external streets, residential properties, and
20 adjoining neighbors.
21 BY MR. BARHIGHT:

Q. Turning your attention to the requirements of the Baltimore County Zoning Regulations relative to approval of variances, would the strict interpretation of the Baltimore County Zoning Regulations relative to floor-area ratio cause practical difficulty or undue hardship to RPS in this case?

MR. BISER: Objection.

THE HEARING COMMISSIONER: Overruled. Again, as an expert witness in an administrative forum, I'll allow the expert witness to render an opinion, and I'll be consistent with Mr. Madden in that respect.

BY MR. BARHIGHT:

Q. Mr. Martin, do you recall the question?

A. No. Repeat it for me.

Q. Okay. Would the strict interpretation of the Baltimore County Zoning Regulations relative to floor-area ratio requirement cause practical difficulty or undue hardship to RPS?

A. Well, I've listened to the testimony of Mr. Leo and how his operations run, and I think he expressed a concern that it would be a difficult --

1 practically difficulty for them to remove the wall and
2 roofed area of the step van in order for this building
3 to comply with the strict requirements of a point 1 FAR
4 on this particular site.
5 One of the point -- my concern as a land
6 planner and a landscape architecture is that if you
7 were to remove the walls of this building, there is a
8 greater significant impact to the adjoining residential
9 properties, the adjoining Alliance rehabilitative
10 center, as well as the visual impact along Route 7
11 itself, the daily travel. It seems to me that as a
12 planner and a design person, any time that you can
13 incorporate this amount of traffic, the service step
14 van vehicular elements, and screen them off internally
15 in a building, it's a tremendous asset and benefit to
16 the county, the community, the surrounding landowners,
17 and certainly the immediate adjacent visual impacts are
18 reduced.
19 Q. If the floor-area ratio variance is granted,
20 would it create a situation that meets the spirit and
21 intent of the Baltimore County Zoning Regulations?

A. For the reasons I just stated, I believe it would serve every purpose to further the spirit and intent of the Baltimore County Zoning Regulations. My reading of Section 410 -- I can't recall exactly which subsections, but there are seven additional paragraphs at the end of that Section 410 that deal basically with just said design issues and the purposes of the legislation, consolidation of trucking facilities into more focused areas instead of a broad distribution of willy-nilly throughout the county.

More importantly is well designed facilities. I think that's stated in the regulation also, the principles being whatever you can do to enhance the operations of a facility like that is what the legislation was focused on doing. Based on what I read and what I've seen elsewhere in my own personal experience with the New England Motor Freight as opposed to this operation, what's being proposed here, there's a far greater benefit that certainly meets the spirit and intent as I read the regulations in Section 410 at the end of that main section where they talk

about purpose design issues.

Q. If the proposed floor-area ratio variance is granted, can it be done so without an adverse impact on the health, safety, or general welfare of the surrounding community?

A. Absolutely.

Q. Would you please explain why?

A. Again, we're going to enclose all of this operation inside a wall and a roof. All of this busyness, all of this noise that would occur in an external condition just to meet the FAR requirement of point 1 would be exposed to the community and the adjoining property owners. Here's an opportunity to wall this in, put a roof on it, and basically hide it so that all of those impacts, the noise, the visual, the sounds, it's all encompassed within the walls of the building.

Q. If we altered the operation as is shown by Petitioner's Exhibit No. 2 and exposed these loading activities in the area described, would we be able to meet the floor-area ratio requirements?

1 A. Yes.
2 Q. Okay. If we did that, would it have a
3 greater or lesser adverse impact on the surrounding
4 community?
5 A. It would have a greater adverse impact on the
6 community for all the reasons I've already stated, the
7 visual, the noise, the sounds, just the sheer activity
8 that goes on here, the visual activity.
9 THE HEARING COMMISSIONER: Mr. Martin, have
10 you done a calculation of what the floor-area ratio
11 would be for the building without the 64,230 square
12 feet?
13 THE WITNESS: I believe it was point 12.
14 However, in discussions with Mr. Leo's architect, you
15 know, it's not just a simple matter of cutting this
16 out. There would be some additional reductions in the
17 building. But what I attempted to show with my graphic
18 exhibit here is that area as the plan stands today
19 encompassing that, what is devoted to simply the step
20 van parking areas. I believe that the architect, in my
21 conversation with the architect, that we could make

1 this building comply.
2 MR. BISER: Objection.
3 BY MR. BARHIGHT:
4 Q. Let me ask a more specific question.
5 THE HEARING COMMISSIONER: Hold on.
6 Mr. Biser's got a -- Mr. Biser, I'm going to allow -- I
7 mean, his answer to the question, as I understand it,
8 was that it would be point 12 if you eliminate the gray
9 area. I'm going to accept that part of the testimony.
10 MR. BISER: No objection to that part of the
11 testimony.
12 BY MR. BARHIGHT:
13 Q. Mr. Martin, can the building be altered to
14 meet the floor-area ratio requirements and still meet
15 the operational requirements of Westmoreland Company
16 and RPS but exposing significant areas outside of the
17 building?
18 A. That's my opinion, that it could.
19 MR. BISER: Objection.
20 THE HEARING COMMISSIONER: What's the basis?
21 MR. BISER: This is not a land -- this is a

1 complex question that allows him to assume or allows
2 him to discuss an area that's outside of his expertise,
3 and that is whether it meets Westmoreland's
4 requirements. We already know from Mr. Leo's testimony
5 that they have facilities that are as small as 18,000
6 square feet. This gentleman has no expertise in
7 running trucking facilities and what the economies of
8 scale are for them, and so the question asks something
9 that's outside of his area and is objectionable.
10 THE HEARING COMMISSIONER: Mr. Barhight.
11 MR. BARHIGHT: It's a simple calculation of
12 whether we can get down to point 1. Based upon all of
13 the background information and familiarity questions
14 that I've already asked, it is clear that he is able to
15 answer that question. He knows how to do the
16 calculation, and, in fact, he's the fellow who did the
17 calculation and knows how to do it and sealed the plan
18 in the first place. He's the one who knows why we're
19 at point 25 versus getting to point 1, and I believe
20 that his answer should stand in the record.
21 THE HEARING COMMISSIONER: Well, I guess it's

1 sort of self-evident based on what Mr. Biser said that
2 there are smaller RPS facilities elsewhere. I'll allow
3 the answer to stand, and I'll just leave it at that.
4 I'll allow the answer to stand. I'll overrule the
5 objection.
6 BY MR. BARHIGHT:
7 Q. Mr. Martin, have you had the opportunity to
8 review some of the adjacent uses to the west along
9 Yellow Brick Road in order to compare the proposed use
10 to existing uses in the area?
11 A. Yes, I have.
12 Q. And would you do that ordinarily in any
13 zoning review?
14 A. Absolutely.
15 Q. Okay. Let's direct your attention to the two
16 uses that you described, and again, I'm going to relate
17 Yellow Brick Road as an east/west road for these
18 purposes.
19 A. Okay.
20 Q. But going west on Yellow Brick Road, I
21 believe you described a tandem of buildings operated by

1 FRP Development.
2 A. That's correct.
3 Q. Have you had an occasion to identify the
4 square footage of those two buildings?
5 A. In rough terms based on aerial photography or
6 the GIS information from Baltimore County, yes.
7 Q. So have you been able to estimate the
8 footprints of those buildings?
9 A. Yes, I have.
10 Q. And what is those estimates?
11 A. The estimates of the buildings as translated
12 to FARs are generally in the point 45 range for both of
13 those buildings. I think one is at point 45, one is
14 point 47, something like that.
15 THE HEARING COMMISSIONER: How big is the
16 building's square footage, if you know?
17 THE WITNESS: I don't recall right offhand.
18 BY MR. BARHIGHT:
19 Q. Do you have an exhibit at your desk that
20 might help you with that?
21 A. Yes, I do.

1 Do you want me to describe the exhibit?
2 Q. No. I just want you to elicit the
3 information from it. Again, referring to the FRP
4 tandem building.
5 A. Sure.
6 Q. I believe the Commissioner is asking if you
7 know the square footage of those two buildings.
8 A. The square footage of the first building, the
9 one immediately adjacent to what I would call Lennings
10 Lane, this first building, is estimated at 97,000
11 square feet.
12 THE HEARING COMMISSIONER: Is that a single
13 story or two-story building?
14 THE WITNESS: Appears to be a one-story, high
15 ceilings, typical of a larger industrial type building.
16 BY MR. BARHIGHT:
17 Q. Now, these two buildings that we're referring
18 to are parallel to Lennings Lane yet perpendicular to
19 Yellow Brick?
20 A. Yes, they are perpendicular to Yellow Brick
21 Road, that's correct.

1 Q. And the one to the west of the one you just
2 described at FRP, what would those approximate square
3 feet be?
4 A. That building is approximately 90,600 square
5 feet.
6 Q. And as to the first building closest to the
7 proposed RPS facility, what would be the approximate
8 floor-area ratio?
9 A. That FAR is about a point 43.
10 Q. And one that's to the west of that?
11 A. Point 40.
12 Q. Now, do those buildings contain loading bays
13 for trucks?
14 A. Yes, they do.
15 Q. How many loading bays are in the building
16 that involve the FAR development closest to the RPS
17 facility?
18 A. There are counted 13 loading doors.
19 Q. And how many loading bays are there in the
20 second of the two west of that site?
21 A. Fifteen loading doors.

1 Q. Okay. Have you had occasion to review the
2 same information for the properties owned by Mr. Knott
3 south of Yellow Brick Road in close proximity to the
4 site?
5 A. Yes, I have.
6 Q. And have you also had occasion to take a
7 photograph of one of those two buildings just to
8 familiarize the Zoning Commissioner with the
9 surrounding area?
10 A. Yes.
11 Q. I would like you to identify the photograph
12 that I'm handing you.
13 A. This is a photograph taken by me again last
14 Friday in what I would characterize as the common
15 property line dividing Mr. Knott's lots to BGE
16 property, and on the site context map, that's sort
17 of -- that would be in the south corner of the
18 property.
19 Q. Referring to Petitioner's Exhibit No. 6?
20 A. That is correct. That's a photograph looking
21 up the length of the long length of that building that

1 fronts Yellow Brick Road parallel, looking at their
2 common multi-used paved area, the common court, trucks,
3 parking, step vans, loading, et cetera.
4 Q. I would like to offer this as -- did you take
5 that photograph?
6 A. Yes, I did.
7 Q. When did you take the photograph?
8 A. Friday.
9 MR. BARHIGHT: I would like to offer this as
10 the next petitioner's exhibit.
11 THE HEARING COMMISSIONER: We'll accept this
12 as Exhibit No. 8.
13 (Whereupon Petitioner Exhibit No. 8 was
14 marked and admitted into evidence.)
15 BY MR. BARHIGHT:
16 Q. Mr. Martin, I understand that at this
17 particular location there are two structures on this
18 Knott site?
19 A. That is correct.
20 Q. And unlike the FRP which are oriented
21 perpendicular to Yellow Brick Road, they are oriented

parallel to Yellow Brick Road?

A. That is also correct.

Q. And is the photograph that Commissioner Schmidt is looking at right now, is that the court between those two buildings?

A. Yes, it is.

Q. What is the approximate square footage of the building that fronts on Yellow Brick Road at that location?

A. The building that fronts on Yellow Brick Road is approximately 165,000 square feet, and again, that's based on a single story footprint. I have no idea what may or may not be an additional floor area inside. There could be a mezzanine area that would be counted as floor area as far as it relates to Baltimore County's Zoning Regulations, but I'm basing it solely on the footprint that I can see in the photograph.

Q. And as to that building which fronts on Yellow Brick Road, what would the floor-area ratio of that particular building be?

A. That's approximately point 55.

1 Q. And how many loading bays for trucks are
2 there at that building?
3 A. There are 48 loading doors on that building.
4 Q. Okay. Let me come south to the tandem
5 building that's also parallel to Yellow Brick Road
6 that's further south from the building that fronts on
7 Yellow Brick Road, also Knott Development parcel.
8 A. Yes.
9 Q. Have you been able to estimate the square
10 footage of that building?
11 A. Yes, I have.
12 Q. And what is that square footage?
13 A. That square footage is 213,800 approximately.
14 Q. And what would the floor-area ratio be for
15 that structure?
16 A. About point 57.
17 Q. And are there loading bays for trucks at that
18 facility as well?
19 A. Yes, there are. There are 24 loading doors
20 on that facility.
21 Q. Do you have an opinion about whether the

1 proposed RPS facility is consistent with the structures
2 that we just identified that are operated by FRP
3 Development and Knott Development just to the west of
4 the site?
5 A. Yes, I do have an opinion on that.
6 Q. Could you please explain your opinion?
7 MR. BISER: Objection.
8 MR. BARHIGHT: Wait a minute.
9 THE HEARING COMMISSIONER: From what
10 perspective I assume is the objection, Mr. Biser?
11 MR. BISER: That is.
12 THE HEARING COMMISSIONER: Why don't you
13 clarify that. I mean, is it talking architecturally,
14 from a land use standpoint, or what?
15 MR. BARHIGHT: I apologize.
16 BY MR. BARHIGHT:
17 Q. Speaking as an expert in land planning and
18 zoning, could you please relate the consistency or the
19 compatibility of proposed use to those four structures
20 that we just described in detail?
21 A. Yeah, and I'm going to refer to the -- how I

1 would visualize this site plan holding it next to the
2 site plans for the FRP buildings holding it next to the
3 site plans of the two buildings, that of James F.
4 Knott, as we just briefly described.
5 THE HEARING COMMISSIONER: All right. So
6 from a land planning standpoint of site development.
7 THE WITNESS: Looking at it solely at wall
8 lines, site coverage, paved areas, that sort of thing.
9 THE HEARING COMMISSIONER: Okay.
10 THE WITNESS: They're very comparable. This
11 building as it relates to the FRP buildings in
12 footprint alone and looking at plan view has basically
13 the same dimensional qualities as the FRP buildings. I
14 believe the FRP buildings are slightly longer but
15 slightly narrower. This is slightly shorter but
16 slightly broader.
17 BY MR. BARHIGHT:
18 Q. When you say this, you mean the subject
19 property?
20 A. The subject property, the Westmoreland
21 facility in dimension. James F. Knott buildings, as I

1 related it to the square footages that I could measure,
2 are much longer, approximately 800 feet in length. If
3 I can refer to the architectural plan here on
4 Petitioner's Exhibit 2, the overall length of this
5 building is approximately 524 feet in length. That is
6 the Westmoreland proposed facility.
7 Q. Mr. Martin, you can stay standing if you need
8 to answer the special exception requirements. I'm
9 going to ask you now a couple of questions.
10 A. Okay.
11 Q. Are you familiar with the special exception
12 requirements in Baltimore County Zoning Regulations?
13 A. Yes, I am.
14 THE HEARING COMMISSIONER: Mr. Barhight,
15 before you get to that, if that's a suitable place to
16 take a brief break before you get to that area of
17 questioning, I want to give our court reporter a little
18 bit of a break. We'll take about five or ten minutes.
19 Gentlemen, I'll make copies of these exhibits while
20 we're on break.
21 (Whereupon a break was taken from 11:36 a.m.

to 11:49 a.m.)

THE HEARING COMMISSIONER: Okay. Back on the record.

BY MR. BARHIGHT:

Q. Mr. Martin, before we took the recess, I believe I indicated that I was going to begin the special exception questions, and I believe you indicated familiarity with the special exception requirements of Baltimore County Zoning Regulations. I would like to jump right into those questions, if you don't mind.

Mr. Martin, do you have an opinion as to whether the proposed use will tend to create congestion in the roads, streets, or alleys greater than or above and beyond the congestion apparent with a trucking facility located elsewhere in the ML-IM zone?

A. Based on my --

Q. Well, do you have an opinion?

A. Yes, I have an opinion.

Q. Okay. Great. Could you please state your opinion and the basis for that opinion?

A. It's my opinion that this facility as I compare it to my own personal knowledge at New England Motor Freight and trucking facilities adjacent to that particular Class 1 facility in conjunction with my hearing of Mr. Guckert's testimony regarding the traffic that is certainly not my field, it's my opinion that there is no adverse impact related to additional traffic at this site as opposed to any other site with this facility.

Q. Do you have an opinion as to whether the proposed use will create potential hazards from fire, panic, or other dangers greater than you would ordinarily expect for a trucking facility located elsewhere in the ML-IM zone?

A. I would expect it would be the same application of all the fire codes, BOCA codes, Baltimore County building codes, the standards for the building at this site as any other site in Baltimore County, and therefore that it would be no greater adverse impact at this location than any other location with regard to those conditions.

Q. Could you please state your opinion as to whether the proposed use will tend to overcrowd the land or cause undue concentration of population greater than you would ordinarily expect of a trucking facility located elsewhere in the ML-IM zone?

A. Okay. As it relates to overcrowding the land, I don't believe it will, and I relate that to my opinion of the adjoining properties and the FAR coverages that those particular sites currently exist with as it relates to the requested point 25 FAR on this particular facility. So from a land coverage or a site coverage impact, this is actually less than some of the immediately adjoining properties.

From a population -- this is clearly an industrial property in use, and therefore it's not going to directly impact a population as a residential property would or development.

Q. Could you please state your opinion as to whether the proposed use will interfere with adequate provisions for schools, parks, water, sewerage, and transportation above and beyond which you would

1 ordinarily expect of a trucking facility located
2 elsewhere in the ML-IM zone?
3 A. It's my opinion having looked at this
4 particular site through the Class 1 trucking facilities
5 checklists, examined the property for sewer
6 availability, water availability, road network, which
7 speaks for itself as shown on the plan and has been
8 discussed throughout the testimony given here, that
9 those facilities exist. They will not be adversely
10 impacted by this facility. If they exist in another
11 location, this facility would not adversely impact that
12 any greater or any less as it would in this location.
13 Q. Could you please state your opinion as to
14 whether the proposed use will interfere with adequate
15 light and air above and beyond what you would
16 ordinarily expect of a trucking facility located
17 elsewhere within the ML-IM zone?
18 A. Well, adequate light and air as it relates to
19 land use primarily deals with higher storage buildings,
20 vertical elevation, if you will. And by virtue of the
21 fact that this is a single-story building in the height

1 range of 20 to 30 feet, as is most of the other
2 industrial buildings in Rossville Industrial Park,
3 there should be no greater impact here or anywhere else
4 in the county as it relates to light and air and that
5 sort of thing.
6 Q. Could you please state your opinion as to
7 whether the proposed trucking facility is consistent
8 with the purpose of the zoning classification, ML-IM,
9 and the spirit and intent of the Baltimore County
10 Zoning Regulations generally?
11 A. Well, it's clear that the ML-IM provides via
12 the special exception avenue the opportunity to place
13 Class 1 trucking facilities in that zone. Obviously
14 there was a set of legislative rules written that dealt
15 specifically above and beyond the normal special
16 exception conditions for Class 1 and Class 2 trucking
17 facilities referring to BCZR Section 410, which further
18 identifies conditions and requirements to be met for
19 Class 1 trucking facilities.
20 So with that said, I believe this facility
21 meets those requirements and standards and is no

different in this location as any other that they would be required to meet in any other location.

Q. Can you please state your opinion as to whether the proposed use of a trucking facility is consistent with the permeable surface and vegetative retention provisions of Baltimore County Zoning Regulations?

A. This particular plan as it's been depicted has provisions for adequate drainage. There is a storm water management facility shown on the plat, and I believe that it's in my opinion that all of those issues are adequately shown currently on the plan and certainly would be reviewed at another level should this proceed forward.

Q. Does the site plan meet the forest buffer requirements of the county?

A. There are no forest buffer requirements directly impacting this particular site. There is a forest buffer on the site across, as I identified earlier, on the other side of Yellow Brick Road to the south.

Q. And I believe you indicated previously, but I'll make sure that I didn't misunderstand your testimony. Has there been any kind of preliminary approval of the landscaping plan which is partially depicted on Petitioner's Exhibit No. 5?

A. Yes, there has. A landscape plan prepared under my supervision was prepared in accordance with the county's landscape manual. It was submitted to Mr. Harden, who is the county's landscape architect, has been reviewed and tentatively approved subject to the outcome of these proceedings.

Q. And could you please also state your opinion as to whether the proposed use will have a greater impact upon the health, safety, and general welfare of the locality involved than you would ordinarily expect of a trucking facility located elsewhere in the ML-IM zone?

A. Could you repeat that again? I missed part of it.

Q. Sure. As hard as it was to say with Mossberg and Schultz overlay.

1 Could you please state your opinion as to
2 whether the proposed use will have a greater
3 detrimental effect upon the health, safety, and general
4 welfare of the locality involved than you would
5 ordinarily expect of a trucking facility located
6 elsewhere in the ML-IM zone?
7 A. As I mentioned earlier in my testimony, I
8 believe that this will have a less adverse impact by
9 the nature of the design of the facility and the
10 encompassing of much of the loading operations within
11 the walls and the roof structure as opposed to a
12 Class 1 trucking facility in comparison, which I
13 identified as the New England Motor Freight, which many
14 or all of the operations that occur in loading, storage
15 of the vehicles, backing up to the docks, are exposed
16 to the outdoors. This is the distinguishing
17 characteristic of a Class 1 trucking facility that you
18 would see down in the heavier industrialized areas of
19 Baltimore County, from my experience in the Joh area
20 particularly. This particular facility, as I
21 mentioned, at this location I think has, in fact, a

1 lesser of an impact by just by virtue of the way to be
2 proposed and designed.
3 MR. BARHIGHT: I have no other questions of
4 this witness at this time. Thank you.
5 THE HEARING COMMISSIONER: Mr. Biser.
6 MR. BISER: Thank you.
7 THE HEARING COMMISSIONER: Off the record.
8 (Discussion held off the record.)
9 EXAMINATION BY MR. BISER:
10 Q. Mr. Martin, directing your attention to your
11 most recent testimony concerning the special exception,
12 you indicated that your opinion is that this facility
13 will not cause more congestion particularly when
14 compared to the New England Freight facility that you
15 were involved in; is that correct?
16 A. I think I said that it would not, and I would
17 base that not on my experience as a traffic engineer or
18 a planner, but based on my testimony -- I mean, the
19 testimony of Mr. Guckert, who I would rely on for that
20 particular piece of information.
21 Q. Okay. So while you expressed that opinion,

1 that opinion is one of Mr. Guckert and not yours
2 independent of his testimony and opinion?
3 A. You're asking me for my opinion?
4 Q. Yes. Do you have an independent opinion
5 outside of what Mr. Guckert has expressed regarding
6 congestion and adverse impact of additional traffic
7 caused by this facility?
8 A. Well, it's my opinion based on the
9 information furnished to myself and our firm in the
10 preparation of this facility and going through the
11 requirements of a Class 1 trucking facilities
12 checklist, requirements, et cetera, that there's no
13 greater impact from this facility than any other
14 facility on the street network.
15 Q. Did you do a study, a traffic study?
16 A. No.
17 Q. So other than the information you had from
18 Guckert, what is it that you base your opinion on
19 regarding traffic congestion?
20 A. Well, I just stated I'm basing it, in my
21 opinion, looking at the number of trucks, the long haul

1 freight trucks that are shown on the subject site plan,
2 the special exception plat and various plans as opposed
3 to the number of doors that were identified on
4 adjoining properties that are also truck doors, truck
5 docks.
6 Q. Well, they're different use facilities,
7 aren't they?
8 A. A truck is a truck in my opinion.
9 Q. Well, a Class 1 trucking facility is a
10 different facility than those adjacent properties you
11 referred; correct?
12 A. Agreed.
13 Q. And they have different amounts of trucks
14 coming in; correct? If you know.
15 A. Long haul trucks as distinguished from step
16 vans?
17 Q. Yes.
18 A. Certainly every facility there is of a
19 different size, has different number of doors.
20 Q. So you can't really compare those facilities
21 including the Knott facility which you identified with

1 this Class 1 trucking facility, can you?
2 A. No, because it's not a Class 1 trucking
3 facility.
4 Q. So why is it that you had the photographs
5 taken?
6 MR. BARHIGHT: Objection. He's being
7 argumentative.
8 THE HEARING COMMISSIONER: It's
9 cross-examination. I'll give him some latitude.
10 BY MR. BISER:
11 Q. Why did you take those photographs?
12 A. I just took those photographs as a comparison
13 of the -- we wanted to focus on the scale of the
14 buildings on that particular facility and the FAR
15 coverages of those as opposed to the FAR coverage of
16 the immediately adjoining property, which is the
17 Westmoreland site.
18 Q. You also indicated when you were talking
19 about the traffic that those facilities have truck bays
20 or doors; correct?
21 A. Yes.

1 Q. You're aware, though, that none of those
2 facilities is used as a Class 1 trucking facility; is
3 that correct?
4 A. I have no personal knowledge one way or the
5 other whether they have been approved as a Class 1 or
6 otherwise.
7 Q. Now --
8 THE HEARING COMMISSIONER: I believe there
9 was no testimony about the use of those buildings per
10 se at all; is that right, Mr. Martin?
11 THE WITNESS: I did not testify as to the use
12 of any of the adjoining properties.
13 BY MR. BISER:
14 Q. That's fair enough.
15 Now, when you talked about congestion in
16 regard to the special exception, you compared it to the
17 New England Motor Freight facility that you referenced
18 a few times, and I would like to ask you, Mr. Martin,
19 whether you independently did any traffic study of the
20 New England Motor Freight facility.
21 A. No, I did not.

1 Q. Now, you also expressed the opinion that
2 there's no greater hazard with the proposed use of this
3 facility; is that correct?
4 A. What sort of a hazard?
5 Q. Well, I don't know, sir, because the question
6 was, is there any greater hazard.
7 MR. BARHIGHT: Objection. That wasn't the
8 question. I was asking verbatim from one of the
9 questions of Section 502.1.
10 THE HEARING COMMISSIONER: Let me take a look
11 at the section.
12 MR. BARHIGHT: I believe, if my memory serves
13 me, it's something along the lines of potential hazard
14 from fire, panic, or other dangers.
15 THE HEARING COMMISSIONER: Right.
16 Mr. Barhight, I believe that you did, indeed, just read
17 the language from 502.1 A through H. So the language
18 is, create a potential hazard from fire, panic, or
19 other danger.
20 Mr. Biser, why don't you reask your question.
21 BY MR. BISER:

1 Q. That type of hazard, fire, panic, did you do
2 any studies to substantiate your opinion on the
3 potential hazards?
4 A. Of this particular building?
5 Q. Yes.
6 A. No, I didn't do any studies.
7 Q. Now, you also expressed the opinion that this
8 proposed facility would not result in overcrowding of
9 land or concentration of populations; is that correct?
10 A. That is correct.
11 Q. What studies did you do to formulate that
12 opinion?
13 A. Well, the study for the overcrowding of land
14 was the FAR calculation that we performed as a part of
15 the requirement for the variance plat, special
16 exception.
17 Q. Did you do any study, though, of the
18 population concentration caused by this facility?
19 A. I think I stated in my testimony this is an
20 industrial project, and all of my experience in other
21 zoning matters related to this portion of the special

1 exception requirements, that particular issue primarily
2 stems from a residential project, where there's
3 obviously an increase of the population of a particular
4 property.
5 Q. Did you do any comparison of the overcrowding
6 of this site or the impact on overcrowding or
7 concentration of population based on the facility as
8 proposed versus a facility like this one that does not
9 require the variance for floor-area ratio?
10 A. I can only say, again, that I -- the only
11 comparison that I did was the FAR comparison, which is
12 building coverage to building coverage not as it
13 relates to another Class 1 trucking facility.
14 Q. And do you have any numbers that you used to
15 base your opinion?
16 A. Yes.
17 Q. What are those numbers?
18 A. Well, those numbers were generated from the
19 tax maps, the tax map data information for the Maryland
20 property view regarding the lot size of our adjoining
21 properties, the two FRP lots and the two J. F. Knott

lots.

Q. Do you have those figures with you?

A. Yes.

Q. May I see them?

A. Sure.

Q. And where is there anything on this piece of paper that has anything to do with the overcrowding or lack thereof?

A. I think I testified that what this is is my calculations of the lot acreage, the building coverage on those four lots.

Q. I guess my question was a little bit different than that.

You expressed an opinion about overcrowding of land or concentration of population. And you expressed an opinion on that; correct?

A. Yes, I did.

Q. And I was just wondering where your data is to support that opinion.

MR. BARHIGHT: Objection. Asked and answered now I count three times.

MR. BISER: I haven't heard the answer to that question.

MR. BARHIGHT: You just don't like the answer that you hear.

THE HEARING COMMISSIONER: Well, I'm going to overrule the objection, because I'm not sure he's answered exactly what the data was.

So go ahead, Mr. Martin. Maybe I'm just thick-headed too.

THE WITNESS: The figures that I referred to on the FAR -- FAR is a comparison again of the ratio of the building coverage, the floor areas against the site area. We calculated the Westmoreland property, which is already on the special exception on the variance plat at a point 25 ratio. We calculated based on Baltimore County GIS data, which is represented on -- I can't remember the exhibit number, but it's on the board, the site context map, and the Maryland property data, the areas of the lots on the adjoining four properties that I testified to. I ran the math equations on those four properties and did a comparison

1 of their coverage and our site coverage, and that's the
2 basis of my opinion.
3 BY MR. BISER:
4 Q. Okay. You don't have any data for
5 concentration of population; correct?
6 A. No.
7 MR. BISER: Mr. Barhight, excuse me. I would
8 ask you not to laugh. I don't think that was a silly
9 question at all.
10 MR. BARHIGHT: My emotions are displayed
11 openly.
12 THE HEARING COMMISSIONER: Gentlemen, come
13 on. Let's stick to the case.
14 BY MR. BISER:
15 Q. Now, Mr. Martin, you also expressed an
16 opinion about the fact that there wouldn't be any
17 adverse impact on schools, parks, water, sewers, and
18 roads; is that so?
19 A. Yes.
20 Q. And what is the basis for that opinion? What
21 studies did you do or data did you review?

A. Well, I'll start with the sewer, the infrastructure utilities. Our firm at G.W. Stephens as a part of this project has prepared site plans, road improvement plans, utility drawings for those particular issues, the sewer, the water, the roads, and the drainage. I am familiar with that as it relates to the preparation of these plats and plans, and our firm has submitted those plans to Baltimore County for review. As a matter of course, they will be reviewed before anything ever gets built. They will be sufficient to accommodate this building. That is the basis of my opinion, my knowledge of what our firm has participated in.

Q. Do you have the reference to those drawings with you?

A. The county's reference numbers?

Q. Or your reference numbers, your job numbers.

A. Our job number is 9178.

Q. And do you have a copy of any of those drawings with you?

A. No, I do not.

1 Q. Now, you also testified with respect to the
2 special exceptions that this facility would have less
3 impact than the New England Motor Freight facility; is
4 that correct?
5 A. I think my testimony was that because of the
6 encompassing of the parked vehicles within the building
7 as opposed to my experience on the New England Motor
8 Freight terminal, it is my opinion that there is a less
9 impact -- lesser impact at this location than at that
10 location.
11 Q. And your role at the New England Motor
12 Freight facility was one of a land planner; correct?
13 A. And a landscape architect, yes.
14 Q. But you did not have any input in the traffic
15 studies at that facility?
16 A. No, I did not.
17 Q. Did you render any opinions during the course
18 of whatever proceedings took place with respect to New
19 England Motor Freight with regard to the traffic
20 impact?
21 A. Well, I expressed my opinion as I've done

here today that based on Tim's traffic consultant and the figures that he testified to, that it was my opinion that there would be no adverse impact to that location.

Q. Mr. Martin, Yellow Brick Road that would service this facility is a cul-de-sac, is it not?

A. It is not a cul-de-sac. It is a dead-end road, for lack of a better terminology. It is projected on the county's master road plan to ultimately proceed to the northeast and connect or fill in the missing link between this section of Yellow Brick Road and a section further to the northeast that currently exists. There is a missing gap starting at this property and proceeding to the northeast.

Q. Okay. But for right now, it's a dead-end road.

A. That's correct.

Q. And it's going to be a dead-end road for at least the foreseeable future?

A. I can't -- I have no opinion as to how long it may be that way.

1 Q. It may never be anything other than a
2 dead-end road, as far as you know; correct?
3 A. One way or the other, I have no opinion,
4 that's correct.
5 Q. Do you know of any longer cul-de-sac in the
6 area?
7 A. No, I don't.
8 MR. BISER: That's all the questions I would
9 have with respect to special exception, and I think it
10 might be a good time for a break.
11 THE HEARING COMMISSIONER: All right. Then,
12 gentlemen, why don't we take a break for lunch. It's
13 about a quarter after 1:00, so we'll take about an
14 hour's break and reconvene for the balance of the
15 cross-examination on Mr. Martin.
16 We'll go off the record.
17 (Whereupon a lunch break was taken from
18 12:15 p.m. to 1:25 p.m.)
19 THE HEARING COMMISSIONER: Okay. Let's get
20 back on the record. And we have Mr. Martin on the
21 stand.

1 And, Mr. Biser, if you want to continue your
2 cross-examination.
3 MR. BISER: Thank you, Mr. Schmidt.
4 THE HEARING COMMISSIONER: Sure.
5 BY MR. BISER:
6 Q. Mr. Martin, were other properties considered
7 and studied by you on behalf of Westmoreland for this
8 type of trucking facility?
9 A. No, not to my knowledge.
10 Q. Do you know from your conversation with
11 Westmoreland whether they considered other properties?
12 A. Not direct conversation with Westmoreland. I
13 heard Mr. Leo's testimony. I think he stated he had
14 looked at some other pieces.
15 Q. To your knowledge, based on your expertise
16 and knowledge of this area and other areas in Baltimore
17 County, do you know whether there are any other ML-IM
18 zone sites in Baltimore County where this facility
19 could be constructed without the need for a variance?
20 A. I have no knowledge of any right off the top
21 of my head. I think there's something in the

1 neighborhood of 283,000 parks in Baltimore County, but
2 I don't have any specific knowledge.
3 Q. Now, the Commissioner asked you a question.
4 I would just like, if I could, to clarify it so that I
5 understand it. You were referring to what's been
6 marked as Petitioner's Exhibit No. 2, and this is your
7 computer generated drawing; correct?
8 A. That is correct.
9 Q. And you were asked if the step van parking
10 area was eliminated, would the balance of the facility
11 still need a variance for the floor-area ratio.
12 A. Yes, he asked me that.
13 Q. Okay. And your answer was that it would?
14 A. My answer was that as the plan stands right
15 now, we would still need a 200th of a percentage of FAR
16 variance.
17 Q. So it would still need a variance?
18 A. Correct.
19 Q. Now, you testified on direct concerning the
20 view of this property from other properties, the view
21 shed I believe you called that?

A. That is correct.

Q. And you took two photographs, which you used in explaining the view shed?

A. Yes, that is correct.

Q. And one I believe was taken from -- well, let's take a look at those photographs, if we can. Let's take a look at 7A first. And that's taken looking toward Alliance; am I correct?

A. That is correct.

Q. And did you ever speak with anyone from Alliance?

A. Not directly, no.

Q. And the other photograph, Petitioner's 7B, what is that looking toward?

A. That is looking towards the site that is the subject of this hearing.

Q. Okay. And what's on the other side of that site?

A. A wooded area.

Q. Okay. So from that wooded area, there is no one over there that can view the property; correct?

A. No, that's correct.

Q. And the residents that you said were in the area when you were explaining the view scape, did you ever speak with them?

A. No, I did not.

Q. Now, the facility, a facility, a trucking facility like this facility, could be built on this site without the need for a variance; it would just have to be a smaller facility; correct?

A. When you say a smaller facility, do you mean the building envelope, the building walled-in area?

Q. This facility, in order to meet the floor-area ratio, could be constructed; it would just have to be smaller; correct?

A. I think what I stated and will state again is that the building as it relates to the FAR calculation could be reduced without the need for a variance and still have the same exact trucking facility operation occurring, the number of step vans shown on the plan, the number of truck door docks that service the long haul semi-tractor trailers that have been discussed in

1 the previous testimony.
2 Q. So, Mr. Martin, you would agree that there's
3 nothing unique about this piece of property requiring
4 the variance, but rather it's the use to which the
5 petitioner wishes to put the property that is requiring
6 the variance. Is that a fair statement?
7 A. No, it's not a fair statement. I don't
8 believe I said that at all.
9 Q. I know you may not have said it in that
10 fashion, but it is true that a facility can be built,
11 trucking facility, by the petitioner smaller that would
12 not require the floor-area ratio variance; correct?
13 MR. BARHIGHT: Objection. Asked and
14 answered.
15 THE HEARING COMMISSIONER: In those terms --
16 MR. BISER: It's just preparatory to my
17 cross-examination.
18 THE HEARING COMMISSIONER: All right. I'll
19 give you a little bit of latitude. I mean, he's said
20 what he's said.
21 THE WITNESS: I'm going to say it again.

It's my opinion that this facility with the same number of step vans being loaded and unloaded on a daily basis, the same number of long haul vehicles with truck doors that service those, the real docks four feet off the ground, would remain the same. The building envelope, that is the amount of walled-in and roofed-in area, could be reduced to the right number to make the mathematical formula for FAR work at a point 1, which is what the trucking -- Class 1 trucking facilities calls for. It's my opinion, though, that that does not necessarily reduce the size of the facility in its -- in total.

BY MR. BISER:

Q. But it reduces the size of the enclosure?

A. That is correct.

Q. Is that correct?

A. Yes.

Q. So the enclosure can be built smaller so that the variance would not be needed?

A. That is correct.

Q. And that's got nothing to do with the site;

1 correct?
2 A. I don't recall saying that was
3 particularly --
4 Q. Well, isn't it true, sir, that there's
5 nothing about this site that's unique that requires the
6 variance, that this facility can be built smaller
7 without the need for a variance?
8 A. I will stand with what I said. The building
9 itself could be --
10 Q. Sir, answer that question, though. This
11 building could be reduced in size so that the variance
12 is not needed. And you said that is correct?
13 A. That is correct.
14 Q. And so there's nothing that's unique about
15 this piece of property, then, that requires the
16 variance, but rather it's only the size of the
17 building. Isn't that so?
18 A. That's not so in total. That's not my
19 opinion.
20 Q. Well, what isn't correct about that?
21 A. I think I stated earlier in my testimony that

there were several things that distinguished this site, peculiar to this site, unusual to this site, as related to adjoining properties. They include the only location where off of Yellow Brick Road there is a connection being made to Philadelphia. That coupled with the alignment changes that were shown on the plans and the very least and very obvious renders the site of the configurations of this parcel different from all of the others up and down Yellow Brick Road. There's a difference right there.

Q. Well, sir, that's the case whether this variance is granted or not; right?

MR. BARHIGHT: I have to object. I believe that Mr. Martin was not done with his answer.

MR. BISER: I'm sorry. I thought he was finished. I apologize.

THE HEARING COMMISSIONER: Do you have anything else to say, Mr. Martin, in response to that question?

THE WITNESS: I would say again that the shape of the property is what I testified to as being

1 different from the adjoining properties zoned ML and in
2 the Rossville Industrial Park.
3 BY MR. BISER:
4 Q. So you think just the mere shape of this
5 property requires the variance?
6 A. No. That was one of the things that I
7 testified to.
8 Q. The shape of the property doesn't require the
9 variance, isn't the thing that requires the variance;
10 correct?
11 A. I was testifying as to what distinguishes
12 this property from other properties adjoined to it. It
13 wasn't just the shape of the property.
14 Q. But, Mr. Martin, as an expert testifying on
15 variances, the shape of this property doesn't require a
16 variance as long as the building is smaller; correct?
17 A. I would concede that that's true. The shape
18 of the property --
19 Q. So you could --
20 MR. BARHIGHT: Objection. This is like the
21 fifth time.

1 MR. BISER: I'm sorry. I didn't mean to
2 interrupt.
3 MR. BARHIGHT: If he would just take a moment
4 and allow the witness, who is a little bit slower in
5 speaking, to get the full opportunity to answer the
6 questions, I would appreciate it.
7 THE HEARING COMMISSIONER: Go ahead,
8 Mr. Martin.
9 THE WITNESS: Okay. Would you repeat your
10 question, please?
11 BY MR. BISER:
12 Q. Yes, Mr. Martin. You were explaining how the
13 shape of this property is unique. But, in fact, all
14 property is unique in that regard, is it not?
15 A. I would say that all properties are unique in
16 some way.
17 Q. And the uniqueness in shape of this property
18 doesn't require, doesn't mandate that a variance be
19 issued; correct?
20 A. The mere shape of it? No, not necessarily.
21 Q. And as evidence of that, you would agree that

1 this facility can be built without a variance as long
2 as the building is smaller?
3 A. I believe I stated exactly that.
4 Q. Okay. Let's go on to the next thing that you
5 indicate is unique about this property that requires
6 the variance. What was the next thing?
7 A. You're asking me?
8 Q. Yes. I'm asking you.
9 A. I believe I talked about the proximity of the
10 residential properties, the residentially used
11 residential properties immediately adjacent to this, in
12 addition to a health rehabilitation center directly to
13 the northwest of the site.
14 Q. And again, the proximity of the residences to
15 this property doesn't require a variance, does it?
16 A. I would not -- I would not say that.
17 Q. You could build this facility smaller and
18 comply with the FAR, even though the residential areas
19 are in the same place; right?
20 A. Yes, you could do that.
21 Q. So you would agree, then, that the location

and proximity of the residential area to this property doesn't dictate to the variances required; correct?

A. I would not say that.

Q. But only with respect to how the property is being used. Is that your testimony?

A. How it's being used or how it's being designed? It's how it's being designed.

Q. How it's being designed; correct?

A. That's exactly what I would say.

Q. So if, again, the building was smaller even though the residences are in the same location, this variance would not be required?

A. That's correct.

Q. Now, I'm sorry. You had mentioned a third item in addition to the proximity of the residences. What was that third item of uniqueness?

A. I think what I said was, again, the road pattern. This is the only piece in Rossville Industrial Park that has a road connection to Route 7.

Q. And that connection is by way of what?

A. Lennings Lane.

1 Q. Well, that's not connected now, is it?
2 A. No.
3 Q. And you don't know if it will ever be
4 connected; correct?
5 A. I have enough knowledge on this piece of
6 property to know from Baltimore County that it will be
7 built whether this facility is here or any other
8 facility is placed on this site.
9 Q. But you don't know when?
10 A. No.
11 Q. And you don't know what form that's going to
12 take?
13 A. I -- the road drawings are approved now with
14 the section that's shown on the roadway.
15 Q. There's been testimony about restricted use
16 just for emergency vehicles. You don't know how
17 Lennings Lane is going to ultimately be built, do you?
18 A. I only know what's approved now.
19 Q. So you don't know when it's going to be built
20 or in what configuration?
21 A. No, I don't.

1 Q. All right. Is there anything else that you
2 contend is unique about this piece of property?
3 A. I don't recall saying anything else.
4 Q. Now, you would agree, Mr. Martin, would you
5 not, that this property could be developed for other
6 uses without the variance requested?
7 A. Certainly.
8 Q. Now, have you made a determination as to how
9 large or how many square feet the building would need
10 to be so that it did not -- the site did not require a
11 variance for the FAR?
12 A. I have -- we had done that calculation. I
13 don't have that committed to memory. I will say it's
14 roughly in the neighborhood of about 50 to
15 60,000 square feet.
16 Q. And you understand that Westmoreland operates
17 trucking facilities similar to this that are
18 approximately equal to that 50 to 60,000 square feet or
19 less. Is that your understanding?
20 A. I recall Mr. Leo stated that.
21 Q. Now, you indicated that one of the unique

1 features was the proximity to the residential site and
2 that was because of the visual impact?
3 A. Well, visual as well as just a horizontal
4 measurement. They actually abut this particular
5 property.
6 Q. But you never talked to those residents?
7 A. No, I did not.
8 Q. Did you speak with any of the tenants or
9 owners of any of the properties along Yellow Brick
10 Road?
11 A. Personally, no.
12 Q. Now, the facilities that you talked about,
13 the FRP development, the Knott building, and the other
14 buildings where you discussed the footprints of those
15 buildings, none of those are Class 1 trucking
16 facilities; correct?
17 A. Not to my knowledge.
18 Q. And this would be a Class 1 trucking
19 facility; correct?
20 A. That's apparently the interpretation of the
21 county, yes.

Q. And your testimony concerning those other buildings and the fact that they had loading doors, et cetera, the uses to which those facilities are put are different than the one intended for this site; correct?

A. I have no knowledge of what the uses within those buildings are. I think I stated that. But a truck dock and a truck parked there and a truck utilizing those doors, there's a fine line about what a Class 1 trucking facility is and a truck dock within an industrial park.

Q. Well, as a professional land planner and zoning expert, there's no question in your mind that the use of this facility is much different than the uses to which the other sites are put. Isn't that a fair statement?

A. I would state this, that goods move in and out of buildings in this industrial park, other industrial parks, by way of semi-tractor trailers or step vans or delivery vans in a very common sort of way, and that they also leave the premises via a dock

1 door, a semi-tractor trailer. A distinguishing
2 characteristic as Baltimore County has determined and
3 as far as I can tell is the primary focus of a trucking
4 facility not a slash warehouse distribution facility.
5 Q. They're used differently, aren't they?
6 A. In a fine way, yes. There is a fine
7 distinction between the two.
8 Q. Now, the unique characteristics that you
9 talked about, none of them, none of them prevent
10 Westmoreland from building this building to a size that
11 would not require a variance; isn't that so?
12 A. Not -- not -- no.
13 MR. BISER: That's all the questions I have
14 for Mr. Martin.
15 THE HEARING COMMISSIONER: Anything on
16 redirect, Mr. Barhight?
17 MR. BARHIGHT: Yes, please. Thank you. Let
18 me take a moment to get organized and I'll try to move
19 quickly.
20 EXAMINATION BY MR. BARHIGHT:
21 Q. Mr. Martin, on cross-examination before lunch

1 you were asked a series of questions related to
2 comparing the proposed site to New England Motor
3 Freight sites and other sites that you looked at on Joh
4 Avenue and in your experience. I just want to make
5 sure I understood the basis of your opinions. Does the
6 basis of your opinions today include sites other than
7 just the New England Motor Freight site?
8 A. Yes. It would be based on, as I mentioned,
9 adjoining properties that we had looked at, had to look
10 at in the course of preparing the zoning plans and
11 providing testimony on that particular project.
12 Q. Turning your attention now to the
13 cross-examination after lunch, I believe Mr. Biser
14 asked a series of questions with regard to Lennings
15 Lane. What is your understanding of Baltimore County's
16 current position regarding whether Lennings Lane has to
17 be constructed?
18 A. Well, I would simply utilize the very fact
19 that the county has approved road drawings as they were
20 prepared by G.W. Stephens & Associates, and the
21 conditions of those public road drawings as they're

1 approved today are represented on the zoning plats
2 shown on the petitioner's exhibits.
3 Q. And based upon your understanding of the fact
4 of the approved road drawings, is it also your
5 understanding that the fact to contract to construct
6 that road was already executed with BG&E and a
7 contractor?
8 A. I don't know that personally firsthand, but I
9 have understood that at the very least there are
10 negotiations going on about constructing of the roadway
11 network with BG&E as the constructor.
12 Q. Is it also your understanding that efforts
13 were made to convince Baltimore County otherwise about
14 the need to construct Lennings Lane but that Baltimore
15 County had stuck to its guns regarding the ultimate
16 need to construct Lennings Lane?
17 A. Yes. I have personal knowledge of that
18 discussion, not just with this project, but with other
19 projects directly or incorrectly related to Lennings
20 Lane.
21 Q. Other than actually doing the construction in

the field, what other steps need to be taken for Lennings Lane's construction to begin?

A. I presume there's the normal standards of bond posting with the county, the public works agreements executed, and those sorts of things, and the permit issue.

Q. But the drawings that are necessary to construct the road have all been approved by Baltimore County?

A. That is correct.

THE HEARING COMMISSIONER: Is that for Lennings Lane to be constructed just along this property's frontage, Mr. Martin, or all the way to Philadelphia Road?

THE WITNESS: My understanding, the drawings indicate it be constructed all the way to Philadelphia Road.

BY MR. BARHIGHT:

Q. I believe Mr. Biser asked you a question about whether this property could be developed for uses other than a trucking facility without a variance

1 floor-area ratio. Do you recall that question?
2 A. Yes.
3 Q. Assuming for a moment this property was to be
4 so developed as Mr. Biser hypothesized and it was not
5 for a Class 1 or Class 2 trucking facility, what would
6 the floor-area ratio be? Would that be contained in
7 the Baltimore County Zoning Regulations?
8 A. It is contained in the ML zoning regulations
9 for what the zoning classification is, and that FAR for
10 those other uses other than a Class 1 is an FAR of 2.
11 Q. 2 point 2 or 2 point 0?
12 A. 2 point 0.
13 Q. Last series of questions.
14 As it relates to the variance and the unique
15 issue, if the Zoning Commissioner today or whatever day
16 decides not to grant the variance in whatever fashion
17 necessary for us to be able to move forward as the
18 plans indicate and Westmoreland proceeds without the
19 variance, what impacts will there be on the adjacent
20 residences, Alliance and the health facility?
21 A. To restate what I testified to, it's my

opinion that the visual impact would be dramatically different for the reasons that I did state, which is the exposure of 96, I believe, step vans and their loading finger piers to the outside environment, both visually from the noise perspective, and even sound, noise, lighting, and even that sort of thing. That's all exposed now to the outside world. Certainly the highest impact would be to the immediately adjoining properties, the Alliance Rehabilitation Center and the residential properties that exist on Route 7 that I identified.

Q. If those four residences that you identified, one of the four being the residential piece of Alliance and the rehabilitation activities of Alliance, were not there but instead more traditional manufacturing uses like those shown by FRP and Mr. Knott's development were there instead, would those same kinds of adverse effects on a residential community exist?

A. Not in my opinion.

MR. BARHIGHT: I have no other questions of this witness at this time.

1 THE HEARING COMMISSIONER: Mr. Biser,
2 anything further?
3 MR. BISER: Yes, very briefly.
4 EXAMINATION BY MR. BISER:
5 Q. Mr. Martin, you say in your opinion your
6 concerns wouldn't be there if this property was used
7 like Mr. Knott uses his property; is that correct?
8 A. I don't think that's what -- when you say the
9 uses, what use? The use on this site?
10 Q. Well, counsel just asked you if this property
11 was used --
12 MR. BARHIGHT: No, I didn't.
13 Q. -- in the same fashion Mr. Knott uses his
14 property --
15 MR. BARHIGHT: No, I didn't.
16 MR. BISER: Excuse me. Do you mind if I
17 finish?
18 MR. BARHIGHT: That's not what I asked.
19 THE HEARING COMMISSIONER: Let him finish the
20 question.
21 MR. BARHIGHT: I apologize.

1 BY MR. BISER:
2 Q. -- would you have the same concerns about the
3 visual and noise problems?
4 A. That was not what I understood the question
5 to be.
6 Q. What did you understand the question to be?
7 A. I understood the question to be simply that
8 the adjoining properties that are currently
9 residential, if they, in fact, were industrial
10 projects, would that impact be the same to them as it
11 is to a residential project. And it's my opinion that
12 they would not be, and I base that opinion on the very
13 purpose outlined in Section 410.B.4, 1 through 7, where
14 residential properties adjoining trucking facilities
15 are specifically identified as being something to
16 protect.
17 Q. Did you ever talk to those people and find
18 out whether they had any problem with the visual nature
19 of this project?
20 MR. BARHIGHT: Objection. Asked and answered
21 I count four times.

1 THE HEARING COMMISSIONER: He answered he did
2 not.
3 BY MR. BISER:
4 Q. So you don't know whether they have any
5 problem with this project visually or not?
6 MR. BARHIGHT: Objection. Asked and
7 answered.
8 THE HEARING COMMISSIONER: He knows nothing
9 about their position about anything.
10 BY MR. BISER:
11 Q. And that's true with Alliance as well;
12 correct, Mr. Martin?
13 A. I have a little bit of knowledge about
14 Alliance's position on this.
15 Q. Did you talk to them?
16 A. I left a phone message with the president of
17 Alliance.
18 Q. But you never talked to the president?
19 A. I never talked to him directly.
20 MR. BISER: That's all I have.
21 THE HEARING COMMISSIONER: Anything further?

MR. BARHIGHT: No. Thank you very much. Nothing further for this witness.

THE HEARING COMMISSIONER: Thank you, Mr. Martin. You may step down.

MR. BARHIGHT: As is the custom of the Baltimore County Zoning Commissioner, I would ask to hand deliver a letter addressed to you from Alliance, stating their position relative to this request.

THE HEARING COMMISSIONER: Mr. Biser, typically in an administrative forum such as this, I get all kinds of deliveries from all kinds of people about various cases that are before me that are delivered either in person or by the post office. And I typically, since I'm an administrative function as opposed to a judicial function, accept them, put them in the case file, and assign the evidentiary weight to them that I deem appropriate.

I have no idea what Alliance is talking about in this case, but I mean, technically it's hearsay. I understand the objections. But since I'm quasi-judicial and not a court of law, either a

1 district court or circuit court, I just include it in
2 the case file and, again, assign the evidentiary weight
3 that I deem appropriate. And I'll do that in this
4 case.
5 MR. BISER: I have not read this letter, so I
6 don't know what it contains, but I would enter my
7 objection.
8 THE HEARING COMMISSIONER: Okay. It's noted
9 for the record, and I'll do the same thing that I do in
10 every other case.
11 Okay. Mr. Barhight, any other witnesses?
12 MR. BARHIGHT: No, and but for one brief
13 conversation that we need to have with regard to
14 Mr. Roth, I will be resting my case in chief and would
15 ask the Zoning Commissioner in light of the
16 conversation that we had off the record just before the
17 recess whether you thought it appropriate to entertain
18 a reconsideration of your earlier ruling. If not, then
19 we will rest our case in chief.
20 THE HEARING COMMISSIONER: All right. Well,
21 let's then -- let's do it this way. Mr. Barhight, I

1 will assume, has rested his case for the purposes of
2 this.
3 Mr. Biser, just so it's on the record, do you
4 have any testimony or evidence, witnesses that you
5 would like to offer?
6 MR. BISER: We do not.
7 THE HEARING COMMISSIONER: Okay. All right.
8 So that would then conclude the case.
9 Mr. Barhight, I will hear from you on that
10 issue if you want to make an argument. Well, I'll just
11 hear you from. Go ahead. What you would like to tell
12 me about that issue?
13 MR. BARHIGHT: Actually, nothing further than
14 what was already previously stated. But I guess we
15 should probably already ask if anyone in the room who
16 is not represented by Mr. Biser desires to testify.
17 THE HEARING COMMISSIONER: Good point. I'm
18 sorry. Is there anyone who is here who is not
19 represented by Mr. Biser or Mr. Barhight, is there
20 anyone else who is here who would like to offer any
21 testimony or evidence on this case?

1 Okay. Seeing none...
2 MR. BISER: I would like to put one other
3 thing on the record. The issue was raised earlier with
4 respect to not -- and I want to make sure the record's
5 clear, that I also represent Oz Limited, which is the
6 owner of 9104, 9108 Yellow Brick Road, which has no
7 connection with the Knott entities.
8 THE HEARING COMMISSIONER: Okay.
9 Mr. Barhight, let me just tell you what my feeling is,
10 and I will certainly hear you from, but --
11 MR. BARHIGHT: I'll stand on my earlier
12 presentation.
13 THE HEARING COMMISSIONER: Okay. Since the
14 protestants have not offered any testimony, then
15 obviously the record of the case will be based upon
16 what the record of the case is to this point. I am
17 familiar with the argument about standing from my
18 tenure on the county board of appeals and the language
19 in the county code which talks about the right of any
20 person, quote, feeling aggrieved to file an appeal.
21 However, as the Zoning Commissioner, my role

1 is somewhat different. I don't know whether perhaps it
2 can be better characterized to say that standing is
3 somewhat relaxed here. Obviously the petitioner has an
4 obligation to present its case, which there has been a
5 presentation in this case. And it's my judgment or
6 it's thereafter my role to determine whether the
7 testimony and evidence that has been presented is
8 sufficient to meet the burden for both of the special
9 exception and the variance.
10 I guess, I mean, Mr. Biser certainly from a
11 tactical and strategical standpoint can determine what,
12 if any, evidence he wants to put on. The record does
13 indicate that there are protestants who both may be
14 impacted by this witness, Mr. Roth, who you wanted to
15 produce, and who may not from what I understand.
16 Based on that, I'm not going to allow
17 Mr. Roth to testify. I'll allow the case to stand
18 where it is, and if this matter follows a course to the
19 county board of appeals, then the board of appeals will
20 have to determine what they want to do with it. But I
21 see based on the procedural posture of this case at

1 that time so as to not change my ruling.
2 Okay. I think we also indicated that before
3 the hearing -- I'm sorry. Before the lunch break I
4 asked counsel whether they wanted to submit anything in
5 writing. Mr. Barhight indicated not. Mr. Knott,
6 K-n-o-t-t, but he indicated n-o-t. And Mr. Biser
7 indicated that he would like a brief period of time to
8 do that. I'll allow you a brief period of time to
9 submit something, and I will not -- I keep using that
10 word again. I will not try to drag this out any
11 further than a short period of time.
12 I would ask that if either side intends to
13 refer to any of the testimony -- and I think a
14 transcript was prepared from the first day. At least I
15 saw counsel, I believe, flipping through such. I do
16 not have that, and my office is routinely not supplied
17 with that. If someone would be so kind as to either
18 supply me with that or at least the sections of it
19 which they think are relevant, because I will not have
20 that transcript unless you provide it to me.
21 In terms of timing, I know, Mr. Barhight,

1 you've got somewhat of a time constraint deadline, so I
2 would try to get something out very quickly.
3 MR. BARHIGHT: If I might interrupt for a
4 moment.
5 THE HEARING COMMISSIONER: Yes.
6 MR. BARHIGHT: You did originally at
7 primarily the request of protestants to try and gather
8 together two days off into the future that were
9 continuous. Now we find that we didn't need all those
10 two days; we could have finished in basically a half a
11 day. That did create delay unnecessarily. We would
12 certainly have more than adequate time between now and
13 anytime tomorrow to prepare any oral arguments we
14 should make. We have that whole day available, and I
15 would like to suggest that in lieu of written brief
16 that if we need more time to gather our thoughts, we
17 are both professional lawyers, we can do so over the
18 evening and come back and make closing arguments to you
19 tomorrow. We have the whole day set aside. I would
20 like to suggest that to you in lieu of a brief that
21 will further unnecessarily delay the decision of the

1 proceedings.
2 THE HEARING COMMISSIONER: Mr. Biser, what
3 about that?
4 MR. BISER: Mr. Barhight seems to think that
5 the timing is more important than the correct result in
6 this case, and I believe we need time to adequately
7 brief this issue. We will not have benefit of the
8 transcript that's been prepared today by tomorrow, and
9 I think that a ten-day request is more than reasonable
10 and would adequately expedite this decision.
11 THE HEARING COMMISSIONER: Here's what I'm
12 going to do. If you want to submit written argument,
13 that's okay, and I'll have it due next Friday, which is
14 June 8th or something. Does anybody have a calendar?
15 I don't have one off the top of my head. Whatever a
16 week from Friday is.
17 MR. BISER: I think that's the 11th.
18 THE HEARING COMMISSIONER: Is it the 11th?
19 MR. BARHIGHT: June the 11th is what my
20 calendar shows.
21 THE HEARING COMMISSIONER: And I'm not going

1 to have any reply brief or anything like that. I want
2 everything in by the close of business on June the
3 11th.
4 MR. BARHIGHT: Would that be 4:30?
5 THE HEARING COMMISSIONER: Yes. You can get
6 it over to my office by 4:30 on Friday, and I will try
7 to get a decision out to you promptly.
8 I will just say from a procedural standpoint,
9 and this has nothing to do with the case, but from a
10 very real and practical standpoint, I have somewhat of
11 a personnel changeover in my office which to a large
12 extent leads me to believe that no matter what I wanted
13 to do, it would take me a week or so to get an order
14 out.
15 So I concur with Mr. Biser from the
16 standpoint that the correct result is more important
17 than anything, and that's what I endeavor to do in all
18 my cases. But I think having something in by --
19 MR. BARHIGHT: Petitioner doesn't disagree
20 with that perspective.
21 THE HEARING COMMISSIONER: I know you don't,

1 Mr. Barhight.
2 MR. BARHIGHT: Just because Mr. Biser said I
3 did doesn't mean I do.
4 THE HEARING COMMISSIONER: No. I understand
5 that.
6 And, Mr. Barhight, I'm going to ask you if
7 you will, or if you would, and I won't ask you to
8 answer this question today or answer this area of
9 inquiry, but this case presents an issue which is
10 somewhat interesting and is not unusual in many of the
11 variance cases which I entertain based on the decision
12 in Cromwell vs. Ward and based on the tenor of
13 Mr. Biser's cross-examination of Mr. Martin. And I'll
14 maybe ask you to address it within your memorandum to
15 get -- what's the word that they use in the Clinton
16 administration -- the correct spin on what Cromwell vs.
17 Ward means. And that is this. That under Cromwell vs.
18 Ward -- and obviously counsel are familiar with that
19 case and the requirements there and the requirements as
20 they relate to the uniqueness in order for variance
21 relief to be granted.

1 But this is one of those cases that may very
2 well be the kind -- well, it is one of those cases
3 where the requirement which is seeking to be varianced
4 is a requirement -- it is the floor-area ratio
5 requirement. And the floor-area ratio requirement as
6 Mr. Martin has indicated is nothing more than a
7 function of the size of the building vis-a-vis the size
8 of the parcel. So that because of that, Cromwell vs.
9 Ward drawn to its -- I'm not going to say logical
10 because I often see very little logic associated with
11 that decision, but drawn to its arguable conclusion
12 would be that there could not be variance relief
13 granted in this case because there is no unique factor
14 which actually drives or impacts the issues related to
15 the variance relief in this case.
16 In other words, unlike a setback requirement
17 where there might be issues of topography configuration
18 or other characteristics of the property which could
19 easily be drawn to justify variance relief from a
20 setback requirement, or even a height requirement if
21 there were subsurface conditions in the Loyola Federal

1 case, for example, which justified it there, the simple
2 answer -- and I'm not suggesting that Mr. Biser was
3 suggesting a simple answer, but the logical conclusion
4 of that approach is that merely make the building
5 smaller, and therefore there's no need for a variance,
6 because, again, the only issue of floor-area ratio is
7 size of lot versus size of building.
8 However, if that's the approach, then I would
9 ask Mr. Biser -- and Mr. Biser, you don't have to
10 respond now, but maybe you can address this in your
11 memorandum. But why does the county council committee
12 have authority to issue a variance from floor-area
13 ratio requirements? If the simple answer in any FAR
14 case is make your building smaller and bring it into
15 compliance with the requirement, where could I ever
16 variance floor-area ratio requirement, because what
17 factor would ever be unique which would drive such a
18 relief of such a request?
19 I hope I haven't confused the issue, but
20 that's an issue that has repeatedly come up for certain
21 variance applications where the simple -- and I use

1 that word guardedly -- the simple answer seems to be
2 just reduce the size of something and it doesn't have
3 anything or doesn't have any reasonable nexus or at
4 least obvious nexus to a factor such as property's
5 configuration, topography, subsurface conditions, or
6 other natural type constraints, because, indeed, this
7 is not an issue that really goes to the property per
8 se. At least it may be so argued, but merely the size
9 of the building.
10 So I would appreciate you both addressing
11 that issue. Maybe there are cases where FAR could be
12 varianced and this is not one of them. Maybe there are
13 cases where this should be varianced. But I would ask
14 that you address that, because that's something that
15 I'm going to have to take a look at.
16 Anything further, Mr. Barhight?
17 MR. BARHIGHT: Yes. Because Mr. Biser will
18 not have the opportunity to respond to an oral argument
19 and because I think it would be appropriate for him not
20 to be surprised by two issues that we intend to raise
21 in our brief so that it is properly argued before you,

one issue that we're certainly going to raise is whether this is a trucking facility at all that needs a special exception. So that's the instant question that comes to mind in the first place.

THE HEARING COMMISSIONER: Did you forget who wrote the UPS decision, Mr. Barhight?

MR. BARHIGHT: I didn't forget who wrote the dissenting opinion that was later not affirmed by the court of appeals.

THE HEARING COMMISSIONER: But it was not affirmed on another basis, as I recall.

MR. BARHIGHT: But I think that the argument is still there. I'm very cognizant having been involved in that case tangentially. I remember several recorded properties at the time. I remember. I'm not a fool. But at the same time, I think it's an issue that's properly before the Zoning Commissioner to address one way or the other.

THE HEARING COMMISSIONER: I'll revisit it. Maybe I've matured and acquired wisdom since 1989 or whatever that was. I don't know.

1 MR. BARHIGHT: We've hopefully all matured.
2 THE HEARING COMMISSIONER: I've definitely
3 matured. I can tell you that. Take a look at my
4 waistline.
5 MR. BARHIGHT: I didn't want Mr. Biser to be
6 surprised by the fact that we do intend to ask that
7 question, because in the first instance, that's the
8 nature of the petition for special exception. Any time
9 you file such a petition, the first question that has
10 to be answered is, is it necessary.
11 The second question is whether you -- and
12 assuming that the answer to that question is yes, a
13 special exception is necessary. And second, assuming
14 that you think it appropriate to grant a special
15 exception, assuming that that is an outcome as well, do
16 you have the authority under the special exception
17 requirements to grant as a condition of your approval
18 under the special exception that this building be
19 enclosed to reduce the impact upon the neighboring
20 community.
21 I don't want Mr. Biser to be surprised by

1 either of those two issues. We are obviously going to
2 take a position on both and want to bring that to both
3 of your attention so that it can be fully briefed so
4 that you can review those questions properly.
5 THE HEARING COMMISSIONER: I appreciate your
6 candor. I'm sure Mr. Biser does too. And appreciate
7 it that way. Hopefully both sides can present all the
8 arguments that they believe bear on the issues
9 presented, and again, I just raised that one issue
10 because it seems to be coming before me more frequently
11 in light of Cromwell vs. Ward.
12 Anything further, gentlemen?
13 MR. BISER: That will be all.
14 THE HEARING COMMISSIONER: Thank you all very
15 much. I will endeavor to get a decision out, I'll just
16 say relatively quickly. I don't think it, hopefully,
17 will not take me too long, but I will try to get a
18 decision out to you quickly upon receipt of the
19 memorandum. Thank you all very much.
20 MR. BARHIGHT: Thank you very much.
21 (Proceedings concluded at 2:10 p.m.)

1 STATE OF MARYLAND
2 CITY OF BALTIMORE SS:
3 I, NATALIE C. PRUNTY, a Notary Public of the
4 state of Maryland, do hereby certify that the within
5 named Deponent personally appeared before me at the
6 time and place herein set out, and after having been
7 duly sworn, was interrogated by counsel.
8 I further certify that the examination was
9 recorded stenographically by me and that this
10 transcript is a true record of the proceedings.
11 I further certify that I am not of counsel to
12 any of the parties, nor an employee of counsel, nor
13 related to any of the parties, nor in any way
14 interested in the outcome of this action.
15 As witness my hand this day of
16 1999.
17 Natalie C Prunty
18 NATALIE C. PRUNTY, CSR, RPR
19
20
21

LAWYER'S NOTES

PAGE	LINE	

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ORIGINAL

1 PETITION FOR VARIANCE TO *
2 THE ZONING COMMISSIONER OF *
3 BALTIMORE COUNTY FOR THE * Case No.: 99390-XA
4 PROPERTY LOCATED AT 9114 *
5 THROUGH 9200 YELLOW BRICK ROAD*
6 - - - - - -
7 The above-entitled matter came on for
8 hearing on Monday, May 10, 1999, commencing at 9:05
9 a.m., at Baltimore County Circuit Court, 600 Bosley
10 Avenue, Towson, before Commissioner Lawrence
11 Schmidt.
12 APPEARANCES:
13 G. SCOTT BARHIGHT, ESQUIRE
14 JULIE A. DIGRIGOLI, ESQUIRE
15 On behalf of the Petitioner
16 DOUGLAS W. BISER, ESQUIRE
17 On behalf of James F. Knott Realty
18 Group, James F. Knott Development
19 Corporation, J.F.K. Family
20 Partnership and Oz Limited
21 Reported By: MICHELE D. LAMBIE, CSR, RPR

1 I N D E X O F W I T N E S S E S

2

3 WITNESS PAGE

4

5 J. LEO DIRECT CROSS REDIRECT RECROSS

6

7 MR. BARHIGHT: 23 150

8 MR. BISER: 54 123

9 MR. CHASE: 112

10

11 I N D E X O F E X H I B I T S

12

13 PETITIONER'S

14

15 EXHIBITS IDENTIFICATION IN EVIDENCE

16 1A. 44 50

17 1B. 44 50

18 1C. 44 50

19 2. 50 52

20 3. 106 --

21

P R O C E E D I N G S

- - - - -

THE HEARING EXAMINER: Let's get on the record in case 99390-XA. Good morning everyone.

My name is Lawrence Schmidt. I'm the Zoning Commissioner for Baltimore County, and this is a public hearing. Again, the case is 99390-XA.

It's a petition for special exception and a petition for zoning variance. The property at issue is 9114 through 9200 Yellow Brick Road.

The petition for special exception is asking for approval of a Class 1 trucking facility, and the petition for zoning variance is seeking approval of a variance from the requirement in Section 410.3.B.2 of the Baltimore County Zoning Regulations to allow a floor-area ratio of point 24 in lieu of the permitted point 1.

The petitions have been filed by the Baltimore Gas and Electric Company, who is identified on the petitions as the property owner, and the Westmoreland Company, Inc., identified as

1 the contract purchaser.
2 Let me have counsel identify themselves
3 for the record, please.
4 MR. BARHIGHT: Good morning. Scott
5 Barhight and Julie Digrigoli; Whiteford, Taylor and
6 Preston on behalf of the petitioner.
7 THE HEARING EXAMINER: Good morning.
8 MR. BISER: Good morning. Douglas Biser
9 on behalf James F. Knott Realty Group, James F.
10 Knott Development Corporation, J.F.K. Family
11 Partnership and Oz Limited. There are other
12 protestants here who I don't, do not represent who
13 have signed in.
14 THE HEARING EXAMINER: Okay. All right.
15 A couple of things preliminarily. I know we do have
16 a court reporter here.
17 Typically, I record the proceedings on a
18 tape system that is set up in this room, although I
19 believe that either one or both parties have
20 requested that a court reporter be here, and Mr.
21 Barhight or Mr. Biser, do you want the court

1 reporter's transcript to be the record of this
2 case?
3 MR. BARHIGHT: I would like to move that
4 the court reporter obviously be permitted to be
5 present today to take the notes as indicated and
6 also that her notes become the portion of the
7 record.
8 I know it's your practice, notwithstanding
9 having a court reporter here, that you continue to
10 attempt to take, take the tape recordings if you're
11 going to continue with that practice and her notes
12 would then be a portion of the record.
13 THE HEARING EXAMINER: Okay. Mr.
14 Kotroco, who is the Deputy Zoning Commissioner, and
15 who heard cases here on Friday told me this morning
16 that he was having some problems with the tape
17 system on Friday --
18 MR. BARHIGHT: Oh.
19 THE HEARING EXAMINER: -- which I'm not
20 sure what the problem was, although when I did turn
21 it on a couple of minutes ago I heard some funny

1 noises.
2 If it's okay, I will turn -- like that. I
3 think in view of that I'm just going to turn the
4 tape system off, and I have confidence that this
5 lady can record the testimony accurately and I
6 believe -- do you have a tape?
7 THE COURT REPORTER: Yes.
8 THE HEARING EXAMINER: She has a backup
9 tape going, and we'll just use that as a record of
10 this case. It's actually sort of fortuitous that
11 she's here this morning.
12 Mr. Biser, do you have any objection to
13 that?
14 MR. BISER: No objection. We would join
15 in that request as well with the additional request
16 that all speakers identify themselves prior to
17 making any remarks.
18 THE HEARING EXAMINER: Well, it's
19 typically my practice in contested cases to have
20 speakers testify from the witness box up here and
21 put them under oath, so that instead of people just

1 yelling out from the crowd we know who is testifying
2 and keep at least that amount of formality so that
3 the hearing is somewhat organized. Okay.
4 Then we'll accept the Court Reporter as
5 the record or part of the record of this case, and I
6 understand she is keeping a tape, in addition to her
7 transcript notes.
8 Obviously, any appeal from my decision is
9 a de novo appeal, but nonetheless there will be a
10 record of the testimony that's being offered here
11 today. Anything else preliminarily?
12 MR. BISER: Yes. We have --
13 MR. BARHIGHT: I --
14 MR. BISER: I'm sorry, Mr. Barhight.
15 MR. BARHIGHT: I want to finish -- if I
16 could finish up with regard to the reporter and then
17 you can proceed. I apologize for interrupting, but
18 it has to do with the Court Reporter.
19 Obviously I want to make it clear on the
20 record that we'll pay for the court reporter's
21 presence here today and that if anyone wants a copy

1 of her transcription that they should communicate
2 with her directly. We do not necessarily intend to
3 provide a transcript of the proceedings
4 automatically to you as the Zoning Commissioner or
5 to the Board of Appeals --
6 THE HEARING EXAMINER: Okay.
7 MR. BARHIGHT: -- because her notes will
8 be in the record of the proceedings.
9 THE HEARING EXAMINER: All right. Since
10 this is a zoning case and not a development-plan
11 case, as you know the rules for the appeals are
12 slightly different.
13 This would be -- in the event any side or
14 any party is dissatisfied with my decision, it would
15 be a de novo appeal to the County Board of Appeals,
16 and as such, there's no requirement that any record
17 be transmitted to the board.
18 Counsel or some party may want copies or
19 portions of testimony just for them to have it for
20 whatever purposes, discovery or whatever it may be,
21 but whoever wants those copies of those portions of

1 the testimony would be free to inquire with the
2 Court Reporter and make arrangements to obtain
3 them. There would not be any requirement that they
4 be submitted to me.
5 I don't know whether there's any intention
6 to submit post-hearing memorandum in this case,
7 whether you want to do that. Anyone who wants to do
8 that and supplement it with any part of the
9 testimony to me, that's something that we can
10 discuss at the end of the hearing after we see how
11 much testimony is offered today.
12 MR. BARHIGHT: To help facilitate the
13 record, the lady's name is Michele Lambie,
14 L-A-M-B-I-E, and she can be reached at
15 410-825-7120. Thank you for coming, Ms. Lambie.
16 MR. BISER: The only additional request
17 that I would have is because now Ms. Lambie is the
18 official reporter of these proceedings that we have
19 equal access to her and to request for transcripts.
20 I know Mr. Barhight was the one that hired
21 her, but I would like, in the event that Mr.

1 Barhight does not have a transcript, to be able to
2 have equal access to her to get that transcript
3 prepared.
4 MR. BARHIGHT: Absolutely.
5 THE HEARING EXAMINER: I'm sure as long as
6 Ms. Lambie is paid, she'll give a transcript to
7 whoever wants it.
8 MR. BISER: I just want to make certain
9 of that.
10 THE HEARING EXAMINER: Okay.
11 MR. BISER: I have one additional
12 request. The petition for variance does not cite
13 the reasons for the variance and says that those
14 reasons are to be presented at the hearing.
15 We would object to that at this time, and
16 as a, as a cure for that, we would request that
17 after the petitioner's evidence is presented that
18 you hear the respondent's request, if any, at that
19 time for a continuance so we can prepare our
20 witnesses and any exhibits that we deem necessary as
21 we are not aware at this time, and won't be until

1 after they present their case, as to what the
2 reasons for the variance are at this time. So that
3 would be a preliminary request that I would make.
4 THE HEARING EXAMINER: Mr. Barhight.
5 MR. BARHIGHT: Well, in the interest of
6 request by my colleague, only because if I had
7 written anything down it would have been completely
8 unhelpful to him, obviously.
9 The practice has developed over the years
10 obviously that very little, if anything, is written
11 on the petition for zoning variance for the obvious
12 reasons that there is no discovery in these
13 proceedings, but also because there's nothing
14 required by the statute to be written in there.
15 That's a form that asks the question, and I can
16 point you numerous instances where, to be presented
17 at the hearing exactly what is indicated on all of
18 the petitions.
19 I think it might be best to suggest that
20 the counsel for the protestants has had more than
21 adequate time to understand the nature of the

1 variance and special exception request, that we've
2 identified the request that's at, before you today.
3 They obviously have witnesses in the, in
4 the audience that I'm quite familiar with who are
5 professionals who understand zoning matters, and I
6 think that he's quite well prepared I would suspect.
7 THE HEARING EXAMINER: Well, I will take
8 that -- unless anyone else wants to be heard, I'll
9 just take that under consideration.
10 I would say, Mr. Biser, that the petition
11 form is just that. It is, indeed, a form. There's
12 no requirement I'm aware of in the zoning
13 regulations where the applicant has to disclose in
14 advance of the hearing whatever its theory of the
15 case is.
16 Now, of course, that is a form that
17 Baltimore County has published. I suspect it's more
18 for my benefit than anyone else's benefit that when
19 that form was devised it was anticipated that the
20 Zoning Commissioner would be able to review that
21 prior to the hearing of the case to get an

1 understanding of what the case would be about.
2 In any event, I think the fairest thing to
3 do would be just to see what testimony unfolds from
4 the applicant.
5 If you believe there's such testimony
6 offered that would warrant a continuance because it
7 is so, I'm not going to say unusual, but something
8 that would really require a witness or your client
9 to examine the issue, then I'll take that under
10 consideration. Let's see what the case is.
11 I'm not going to rule at this point
12 without hearing from the applicant what their case
13 is that there will be a continuance after the
14 presentation. Let's see what it is and move from
15 there.
16 MR. BISER: Mr. Schmidt, that's why I
17 prefaced my statement with the request was going to
18 be made, if at all, at the end of their, their
19 case.
20 I do not know what their case is. I don't
21 know what their basis for the variance is, and while

1 there isn't any particular provision, the zoning
2 regulations require them to set forth in detail what
3 their reasons are. Clearly they have to set forth
4 some reason or else the notice, the posting doesn't
5 mean anything.
6 We have a right as respondents and
7 protestants to have due process, and that includes a
8 notice of what this hearing concerns. So we will
9 revisit this, as you say, at the end of their case.
10 THE HEARING EXAMINER: Okay. Let me say
11 also for the record just preliminarily that I do
12 have in the file the certificate of publication and
13 notice of posting.
14 For the record, the Baltimore County
15 Zoning Regulations require that public notice be
16 given of today's hearing, and there is in the file a
17 copy of an advertisement, which appeared in the
18 April 22nd edition of the Jeffersonian Newspaper,
19 giving public notice of today's hearing, the special
20 exception request and the variance request and also
21 notice of the time, the date and place of the

1 hearing.
2 Similarly, I have a copy of a certificate
3 of posting signed by Mr. Ogle, who is one of the
4 signed posters on the approved list that the
5 Department of Permits and Development Management
6 maintains, indicating that he posted a sign on the
7 property on April the 23rd of 1999. Actually, two
8 signs on the property; one facing Yellow Brick Road
9 and one facing Route 7 and Lennings Lane.
10 So unless there's any objection, I will
11 incorporate those into the record of the case, and
12 it does appear to me that proper public notice of
13 today's hearing has been given. Okay.
14 One other thing is I don't know -- are
15 there sign-in sheets that are being circulated? Mr.
16 Barhight or Mr. Biser, can somebody get those?
17 MR. BARHIGHT: Yes. We have those. Thank
18 you.
19 THE HEARING EXAMINER: All right.
20 (List tendered.)
21 THE HEARING EXAMINER: Let me just say,

1 for the record, particularly for the benefit of the
2 people who are here who are not represented by
3 either Mr. Biser or Mr. Barhight, this is an
4 administrative hearing conducted pursuant to the
5 Baltimore County Zoning Regulations on a petition
6 for special exception and a petition for zoning
7 variance, which have been filed, which I have
8 briefly identify before.
9 The format of the case is essentially
10 informal, although witnesses will be sworn in, and
11 I'll give counsel an opportunity to question the
12 witnesses and cross-examine the witnesses in
13 accordance with routine administrative law.
14 If there's anyone, if there's anyone here
15 who is not represented by an attorney, you certainly
16 are free to participate, and I welcome your
17 participation. I'll give you an opportunity to ask
18 any questions that you may have of the witness. We
19 want you to keep your voice up and identify
20 yourself.
21 Additionally, after the parties present

1 their own cases, anyone else who wishes to speak or
2 present any testimony and evidence would be given
3 the opportunity to do that.
4 I typically do not make a decision at the
5 hearing. Sometimes I want to take a look at the
6 property or, at the very least, consider whatever
7 information has been submitted to me. So I am
8 required, and do issue, a written decision with my
9 findings.
10 Obviously, my decision could be to grant
11 the zoning relief, which has been requested, or to
12 deny it, or as a third alternative, I could grant it
13 and impose any restrictions or limitations that I
14 deem appropriate.
15 If you have signed in on the sign-in
16 sheet, I will send you a copy of my written
17 decision.
18 Under the rules of procedure anyone who is
19 dissatisfied with my decision, has 30 days from the
20 date of my written decision, not today's date, but
21 30 days from the actual date of the written decision

1 to file an appeal to the County Board of Appeals.
2 That appeal has to be in writing and has
3 to be accompanied by a fee which the Board of
4 Appeals charges to entertain and accept any appeal.
5 If the board would or if an appeal --
6 excuse me. If an appeal would be filed, then the
7 board would schedule another hearing similar to
8 this. The property would, again, be posted with
9 notice of the hearing. If an appeal is not filed,
10 then my decision becomes final on the 31st day. Any
11 questions or any other things from there?
12 MR. BARHIGHT: May I see the one sign-in
13 sheet?
14 THE HEARING EXAMINER: Counsel, if either
15 one of you need to take a look at that during the
16 hearing, you certainly may.
17 (Whereupon, there was a pause for document
18 examination.)
19 MR. BARHIGHT: I believe, for the record,
20 there is a gentleman here representing a community
21 group. Mr. Ed Chase I believe is in the audience

from the Rossville Community Association, and he may want to participate as you have indicated, but I wanted to point that out to you.

THE HEARING EXAMINER: Mr. Chase has been here before on other cases, so I think he's somewhat familiar with our policy. He's the only one not being paid to be here, right, Mr. Chase?

MR. CHASE: That's correct.

THE HEARING EXAMINER: Mr. Barhight, do you have anything on opening or do you want to go directly to testimony?

MR. BARHIGHT: Well, I'll make a very, very brief opening statement just to lay a foundation since we have so many folks in the audience.

Obviously, we're here with regard to a piece of property that's on Yellow Brick Road, and 9114 to 9200 Yellow Brick Road in the 5th Election District and the 6th Councilmanic District. It's actually very close to where the 6th Councilmanic District ends and starts with the 5th Councilmanic

1 District.
2 The property is currently owned by
3 Baltimore Gas and Electric Company. We have
4 representatives of Baltimore Gas and Electric here
5 with us today.
6 The contract purchaser is the Westmoreland
7 Company who intends to develop the property,
8 assuming that they obtain all of the necessary
9 approvals, for the benefit of a tenant who would be
10 the RPS Company, and you will hear during the
11 testimony of Mr. Leo, who will be our first witness,
12 more information with regard to the Westmoreland
13 Company, as well as RPS.
14 Obviously, we're here on two different
15 zoning reliefs. One is a special exception pursuant
16 to the Zoning Regulation, Section 410, to permit a
17 class 1 trucking facility in an MLIM zone.
18 We're also here with regard to a variance
19 from Section 401.3B2 to request a floor-area ratio
20 of point 25 in lieu of the required point 1. So you
21 will be hearing testimony with regard to both the

special exceptions and the variances as well today.

I will note also in the audience is Kasey Lewis representing the Baltimore County Economic Development Office.

I want to publicly thank the Economic Development Office for their support throughout this process. They have been tremendous, and also to indicate that I believe in the file, I don't know whether Mr. Biser has had an opportunity to review it or not, that we received a series of Zoning Advisory Committee comments which I understand are automatically included in the record of these proceedings, and specifically would like to point out to you the comment from the Office of Planning which is in support of this project. I'm always happy to seeing the Office of Planning weighing in support of our various projects.

With that, obviously, I'll give Mr. Biser an opportunity to make an opening, if he so chooses, but would close my remarks and begin with Mr. Leo once Mr. Biser has an opportunity.

1 THE HEARING EXAMINER: Mr. Biser, do you
2 have anything on opening at this point?
3 MR. BISER: I do not. We reserve our
4 opening for after the plaintiff's case for the
5 reason I stated before, is that we don't know what
6 it is that they're claiming a relief of or based on.
7 THE HEARING EXAMINER: Very well. So
8 reserved. Mr. Barhight, call your first witness.
9 MR. BARHIGHT: I'll call Mr. Leo.
10 THE HEARING EXAMINER: Mr. Leo, if you
11 could come up to this witness box here.
12 MR. LEO: All right.
13 MR. BARHIGHT: Your Honor, are you still
14 using the mic system?
15 THE HEARING EXAMINER: Yes, I think we
16 are.
17 THE HEARING EXAMINER: Sir, if you can,
18 remain standing for a moment. Raise your right and
19 I'll swear you in.
20 JADA REINHART LEO,
21 the Deponent, called for examination by the

1 Petitioner, being first duly sworn to tell the
2 truth, the whole truth, and nothing but the truth,
3 testified as follows:
4 THE HEARING EXAMINER: If that mic
5 system starts acting up, I'll turn it off and just
6 keep your voice up so that everyone can hear.
7 Mr. Leo, state your name and address for
8 us, please, for the record?
9 THE WITNESS: My name is Jada Reinhart
10 Leo. My address is 2822 Lafayette Drive,
11 Huntsville, Alabama 35801.
12 THE HEARING EXAMINER: Mr. Barhight.
13 MR. BARHIGHT: I'll move over this way so
14 Mr. Leo doesn't have to strain his neck, if you
15 don't mind.
16 DIRECT EXAMINATION BY MR. BARHIGHT:
17 Q. Mr. Leo, could you please indicate where
18 you're currently employed?
19 A. I'm employed with the Westmoreland
20 Company, Incorporated.
21 Q. And what are your title and duties there?

1 A. My title is president of the company, and
2 I'm in charge of basically running the company.
3 Q. What is the nature of Westmoreland
4 Company? What kind of business are you all in?
5 A. Westmoreland is in the specialty
6 build-to-suit business for certain companies. We
7 have companies that approach us with a building
8 requirement in certain parts of the country, and we
9 go into those areas, locate land, wreck buildings
10 and then enter into lease agreements with those
11 tenants.
12 Q. And what is your experience in this
13 business?
14 A. We have been incorporated since 1991, and
15 we have 22 projects that we have completed.
16 Q. And could you identify just briefly for
17 the Zoning Commissioner the states in which you have
18 developed RPS trucking facilities?
19 A. The states we've been involved with are
20 Alabama, Massachusetts, Michigan, Indiana, Illinois,
21 Virginia, Columbia, South Carolina, Arkansas. That

1 covers the majority of the states.
2 Q. And approximately how many RPS trucking
3 facilities have you had the privilege of developing?
4 A. Of those, we've probably had 18 of those
5 have been RPS facilities.
6 Q. Okay. What is RPS? Can you briefly
7 describe the business of RPS?
8 A. RPS is in the package-handling business.
9 They were formally known as Roadway Package System.
10 They ship packages around the country,
11 self-contained packages. They're similar, to some
12 degree, like a UPS-like operation except that in the
13 case of UPS you can ship a box of cookies across the
14 country.
15 In the case of RPS, their customers are
16 primarily commercial and industrial. So their
17 packages are slightly larger, and they do not get
18 into the residential service like UPS would have.
19 Q. And could you -- you may have already
20 stated it, but could you make it clear the
21 relationship between Westmoreland and RPS relative

1 to this case and this particular site?
2 A. Sure. In this circumstance, we are
3 vendors essentially providing a building for them
4 which they will occupy and pay us a monthly rent as
5 a part of a lease agreement.
6 Q. So then you will actually be the owner,
7 your --
8 A. Yes.
9 Q. -- company will be the owner of this?
10 A. Westmoreland Company owns the buildings
11 and has long-term lease agreements with RPS.
12 Q. Okay. And you're familiar with the RPS
13 operation in all of these different states and of
14 these various locations?
15 A. Yes, I am.
16 Q. Okay. I'd like you to step down from the
17 witness stand just for a moment and if I could ask
18 you to come to the board.
19 We have a series of exhibits for the
20 benefit of counsel and for Mr. Schmidt, some of
21 which are already hopefully in your file. The Plat

to Accompany Petition for Special Exception to Permit a Class 1 Trucking Facility and Trucking Facilities Plan should be in your file already, and I have two of those sheets on the board. We have some additional sheets that we'll be introducing as you proceed.

If I could ask you to approach the board and take a look at the Plat to Accompany Petition for a Special Exception, and if you could just briefly locate for the Zoning Commissioner the subject property?

A. Sure. The property is located at the to-be-built intersection of Yellow Brick Road and Lennings Lane essentially in the northern quadrant of that intersection on a site of land, approximately 12.2 acres of land. The site has been a former ash fill for BG&E.

THE HEARING EXAMINER: A former what?

THE WITNESS: Ash fill. That's where they, basically their waste from their incineration processes has been stockpiled there.

THE HEARING EXAMINER: Okay.

BY MR. BARHIGHT:

Q. Have you asked as a part of the preparation for these proceedings for G.W. Stephens to prepare a rendering of the site plan?

A. Yes.

Q. And could you please identify that rendering?

A. That rendering here is posted on the board now.

Q. Okay. Now, let's talk real briefly about Lennings Lane. Is Lennings Lane constructed in the configuration shown on the site plan today?

A. No, it's not.

Q. Okay. And what is Westmoreland's relationship to Lennings Lane? Are you all going to build Lennings Lane?

A. We are not building Lennings Lane.

Q. Okay. Who is responsible for building Lennings Lane?

A. Baltimore Gas and Electric.

1 Q. And do you understand how it is they've
2 become responsible for the construction of Lennings
3 Lane?
4 A. My understanding is that the Lennings Lane
5 extension is a part of the master road plan that the
6 County has adopted and that whenever any kind of
7 improvements are brought along this road, the
8 Lennings Lane improvement will be made along with
9 the extension of Yellow Brick Road.
10 Q. For your facility, for your operation of
11 the RPS facility, do you all need the Lennings Lane
12 extension?
13 A. No.
14 Q. You can go ahead and return to your seat.
15 Is the subject site within an industrial park?
16 A. Yes, it is.
17 Q. Do you know the name of that park?
18 A. It's Rossville Industrial Park.
19 Q. Okay. And can you describe just briefly
20 that park to the Zoning Commissioner?
21 A. The industrial park is made up of

1 different warehousing and office facilities. There
2 appears to be some large warehousing operations as
3 well going in along that facility. I would say
4 there's roughly three-quarters of a million to a
5 million square feet of improved buildings along that
6 road. It could be as much as a million and a half
7 of built-up construction, pre-engineered steel, a
8 whole variety.
9 Q. I would like to direct your attention to
10 some site-specific questions now, if I may.
11 Specifically with regard to the location of the RPS
12 trucking facility, could you indicate to the Zoning
13 Commissioner the proposed square footage of the
14 trucking facility?
15 A. The proposed square footage is
16 approximately 110,000 square feet.
17 Q. Is the facility located at least 200 feet
18 away from all wetlands?
19 A. Yes.
20 Q. And is the facility also located at least
21 300 feet away from any residential dwellings and

1 residential zones?
2 A. Yes.
3 Q. Okay. Let's talk for a moment about the
4 screening of the RPS trucking facility.
5 Could you please describe to the Zoning
6 Commissioner, and if you want to step down to the
7 board again, I should have left you up here, I
8 apologize.
9 A. That's all right.
10 Q. If you could describe how the property
11 will be screened --
12 A. Okay.
13 Q. -- and/or fenced?
14 A. All right. The perimeter of the building
15 itself and the main truck yard, trailer yard will be
16 fence and secured. Then around that perimeter we
17 have a green belt of shrubs and trees to protect and
18 to insulate.
19 Also because of the nature of this site,
20 the physical elevation of the building is
21 significantly below the adjoining residential areas

1 that were here, and there's some scattered
2 residential in this area as well (indicating).
3 Those are the basic improvements that are planned.
4 Q. Okay. I'm going to ask you to stand there
5 for a moment to describe the operation of the
6 trucking facility giving us an idea of the hours of
7 operation and the nature of the different vehicles
8 that will come in and out of the facility?
9 A. Sure. Because this is a package-handling
10 facility, there's some operations that are ongoing
11 essentially at all hours. So let me just kind of
12 walk you through a typical cycle of how this
13 operation would take place.
14 Inside the warehouse themselves are small
15 pickup and delivery vans. These are similar to what
16 you see with UPS or Federal Express-type
17 step-vans.
18 In the morning, the drivers for these vans
19 arrive at the site 7 a.m. or so in the morning.
20 They enter the facility, take their vans out, drive
21 out and leave the site and they would go out and do

1 their pickup and delivery activities; dropping off
2 packages, picking up packages, so they're leaving
3 around 8 in the morning.
4 Late in the afternoon they'll be finishing
5 their routes and their activities. They would be
6 returning to the facility pulling inside the
7 warehouse and backing up to a conveyor system which
8 would, they would off-load the packages onto this
9 conveyor system, and the conveyor system would carry
10 these packages for distribution to the large
11 trailers or package or large vans. That will be
12 carried by the, to the hub in Harrisburg. These
13 trailers would pull out -- I think I've got a
14 schedule on the actual hours.
15 Q. Okay. Go ahead.
16 A. All right. The trailers would be pulling
17 out around 10 to 11 o'clock in the evening going to
18 Harrisburg, and then they would go to this hub
19 facility, which is Harrisburg, and then have these
20 packages sorted, and then a return shipment would
21 come back in with these large trailers as well to

1 this facility. These trailers would be arriving
2 early in the morning.
3 So the large trailers are arriving early
4 in the morning and then they're off-loading these
5 packages which, once again, are going through the
6 conveyor system and then distributed to the small
7 package vans. Then late in the morning, 7 a.m.,
8 we've done now a 24-hour cycle, and the package vans
9 start again repeating.
10 Q. If all goes well, approximately when would
11 you expect the RPS facility to begin operation?
12 A. On or around October 1 to the middle of
13 November.
14 Q. Okay. When that operation begins, about
15 how many of these tractor trailers or trucks would
16 you expect to be coming to the facility?
17 A. Our projections are we have ten tractor
18 trailers arriving and ten departing.
19 Q. Okay. Now, let's talk a little bit about
20 the step-vans. Approximately how many step-vans
21 would you expect to be utilized at this facility?

A. Sixty-seven.
Q. Sixty-seven?
A. Um-hum.
Q. Now, approximately how many automobiles would you expect to be visiting the site? Do you have a number on that?
A. Yes, we do. It would be 153 is what our projection is.
Q. Okay. With regard to the projections you pointed out to me yesterday, is there a typographical error on the petition, the Plat to Accompany the Petition. Particularly note 4?
A. Well, I think it's a question of just clarification. As it reads right now, it says number of trucks using this facility over a 24-hour period and the number shows 150.
In reality when I'm thinking of trucks, that's nowhere near the number of trucks we're speaking of. We're talking about essentially ten tractor-trailer trucks in and out, which is counted twice, so that's 20. The rest are all step-vans.

1 So that's just nomenclature that I think needs to be
2 clarified.
3 Q. Will any on-site guards be provided at
4 this facility?
5 A. Yes, there will be.
6 Q. Now, while you're up there, let's talk
7 about the access to the RPS, RPS trucking facility
8 and focus on the routing of the trucks, the tractor
9 trailers for a moment.
10 A. Sure.
11 Q. Is there a note on the plan to accompany
12 the petition that identifies the actual routes to
13 and from the site for these trucks?
14 A. Yes, there is.
15 Q. Okay. And could you please briefly
16 describe to the Zoning Commissioner how these
17 tractor trailers -- I assume they all come from
18 Harrisburg?
19 A. That's correct.
20 Q. How they will get from Harrisburg to the
21 site and then how they will go from the site back to

1 Harrisburg?
2 A. Well, the travel route as they're
3 departing the site would be to head straight down
4 Yellow Brick Road, pull onto Highway 40 and then
5 access the interstate and then back again either 6,
6 695 essentially.
7 Q. Okay. With regard to the site itself,
8 will all of the necessary parking for any of the
9 vehicles that will use the facility be provided on
10 site?
11 A. Yes.
12 Q. All of the parking spaces will be properly
13 striped and curbed?
14 A. Absolutely.
15 Q. Let's discuss briefly the lighting of the
16 facility. I'm sure the folks in the neighborhood
17 are going to be concerned about that.
18 A. Absolutely.
19 Q. Could you please describe generally the
20 lightly and how the lighting will function on the
21 site?

A. All right. We will have box lighting for lighting in the outer-parking area, essentially downward-directed lighting, and then along our building itself we have lights that will be, have essentially shields on them so as to allow the light to essentially be limited to on-site lighting.

Q. Will the site be properly drained? Will you provide storm water management for the paved areas?

A. Yes. The site will be, is engineered, and there's a master storm water detention facility as a part of this facility located across the street.

Q. Will there be any outside PA or sound speakers permitted on site?

A. No.

Q. Okay.

THE HEARING EXAMINER: The 153 automobiles, are they employee automobiles?

THE WITNESS: Yes. That's correct.

THE HEARING EXAMINER: How about --

THE WITNESS: Well, you have to keep in

1 mind now when you're saying 153 -- I'm sorry.
2 That's correct.
3 THE HEARING EXAMINER: I assume that's a
4 maximum number you're talking about at one time?
5 THE WITNESS: That's correct. That's on
6 the initial phase of the facility.
7 THE HEARING EXAMINER: And if I want to
8 ship a package, if I want to send my zoning
9 regulations to someone in California, can I drive to
10 your facility and drop it off?
11 THE WITNESS: Well, we have the
12 capability of allowing that to occur, but ordinarily
13 we don't allow really any walk-in customers.
14 All the business that is conducted is
15 essentially through the van driver. So there's a
16 1-800 number that you would be able to call, and a
17 van driver would pick up your package and then ship
18 it for you and fill out the proper forms.
19 THE HEARING EXAMINER: All right. Go
20 ahead, Mr. Barhight.
21 MR. BARHIGHT: Thank you.

BY MR. BARHIGHT:

Q. Will any drunk, excuse me, junked trailers or automobiles or trucks or automotive parts be stored on this site?

A. No.

Q. I'd like for you to focus, again, now on the size and the configuration of the building and the RPS function within the building and ask you to focus on how the building itself and how the RPS operation differs from a typical trucking facility, and if you'd like, you can certainly make use of the fourth item that's on the board here, which is an internal site plan, and also some photographs that I have. Let me first show these photographs to Counsel.

(Whereupon, there was a pause for document examination.)

Q. Mr. Leo, I've given three different photographs to Mr. Biser and I should give copies to Mr. Chase so he can follow along as well and provided those to the Zoning Commissioner.

1 If you can describe to the Zoning
2 Commissioner utilizing those three photographs, as
3 well as the building-interior exhibit, which is up
4 on the board, how this operation is different than
5 what the customary trucking facility is that you
6 would ordinarily expect.
7 A. Absolutely. And maybe for clarity, do we
8 have -- just some of the lines here are pretty
9 fine. Can you see this clearly from here? Do you
10 want me to bring you another drawing?
11 Q. Yeah, why don't we do that? Why don't we
12 allow him to have a copy on the board. Which one is
13 that one?
14 A. This is the one GWS has provided. That is
15 similar.
16 THE HEARING EXAMINER: I'll tell you
17 what, I'll move to the exhibit.
18 THE WITNESS: Okay. Thank you.
19 THE HEARING EXAMINER: Sure.
20 BY MR. BARHIGHT:
21 Q. Do you recall my question?

A. Why don't you restate your question?

Q. Okay. Okay. What I would like for you to do is to educate the Zoning Commissioner with regard to the internal operation of the facility utilizing the building-interior exhibit that's on the board, as well as the three photographs that we provided to Mr. Biser and Mr. Chase and to the Zoning Commissioner, focusing on how this is different than what you would typically expect of the typical trucking facility which you're familiar with?

A. Sure. Sure. Well, let's just begin with the description of what is a typical trucking facility? In -- you normally have a dock that is dock high, 50 to 60 feet wide by 100 to 120 feet that has doors essentially on either side that allows for loading and unloading.

This is unique, and I think the way we begin is by kind of focusing on the conveyor system itself. These lines here represent lines of vans. These vans are backing up against the conveyor system, which I described earlier, which they unload

1 the packages on and then they're sorted and then put
2 in the trailers for hauling to Harrisburg.
3 Unlike a truck terminal, which essentially
4 is long, thin and rectangular, all of the operations
5 in this facility are self-contained. Everything is
6 within the facility. There is no outside open
7 doors. There's no forklift activity. In fact,
8 there is no forklift activity at all at this
9 operation. It's all bottom lifted.
10 Let me give you some reference here
11 relative to these photos. For example, this
12 photograph right here --
13 MR. BARHIGHT: The witness is showing a
14 photograph --
15 BY MR. BARHIGHT:
16 Q. Let's mark these for identification
17 purposes if you don't mind --
18 A. Sure.
19 Q. -- so we that can refer to them.
20 MR. BARHIGHT: There is a photograph
21 marked RPS Package Distribution Equipment Sorting

1 and Distributing Operations. If we could mark that
2 as Petitioner's Exhibit 1 for identification
3 purposes for the moment. Another one --
4 THE HEARING EXAMINER: We'll mark them
5 1A, 1B and 1C.
6 MR. BARHIGHT: Okay.
7 (Petitioner's Exhibits 1A, 1B and 1C
8 marked for identification.)
9 MR. BARHIGHT: So Mr. Chase can follow
10 along as well, the Petitioner's Exhibit 1A, for
11 identification purposes, is the first conveyor belt
12 system. 1B is the one that shows the multiple-story
13 system, and 1C is the one that shows the trucks
14 within the photograph. Obviously, if Mr. Chase or
15 anybody else would like to approach to, the witness
16 as to this as well is welcome.
17 BY MR. BARHIGHT:
18 Q. Go ahead. You were about to make
19 reference to the different photographs --
20 A. Right.
21 Q. -- and explain to the Zoning Commissioner

1 the internal operation of the conveying system.
2 A. Exactly.
3 Q. If you can as you do that refer to the
4 photograph identifications that are highlighted.
5 A. Okay. I'm going to turn this a little bit
6 so you can get a different perspective. If anyone
7 wants to come around and take a better look, just
8 come right on. All right.
9 THE HEARING EXAMINER: That's fine.
10 A. All right. This exhibit, photograph 1A
11 shows this arc in the conveyor system. It's
12 indicative of looking at the conveyor system from
13 this angle. That's what this arc here represents.
14 That's a chute that directs packages to a specific
15 van and a specific van line or in this case to a
16 trailer for off-loading a package. Take a look at
17 that.
18 THE HEARING EXAMINER: Okay.
19 A. All right. Photograph 1B shows the
20 multilayered dimensions of a stacked conveyor
21 system, essentially a two-story conveyor, conveyor

1 system.
2 In this circumstance for this facility,
3 you're roughly looking at the conveyor activity,
4 once again, in this area of this facility.
5 Unlike a truck terminal, there are no
6 conveyor systems. Everything is essentially an open
7 dock with a forklift moving everything around.
8 THE HEARING EXAMINER: Okay.
9 A. Photograph 1C is indicative of getting a
10 perception of behind these vans would be the actual
11 initial conveyor belt, the conveyor system. So
12 where these vans would be backing up against this
13 conveyor system, that's how these vans are looking.
14 So behind these vans there is a long, thin
15 conveyor belt which when they're off-loading their
16 packages, they're actually placed on here and
17 they're varied and distributed and broken down and
18 put in the trailers, and then when the inbound
19 traffic comes in from Harrisburg, then those
20 packages are off-loaded and the belt is reversed and
21 those packages then are carried and put back into

1 the vans once again.
2 THE HEARING EXAMINER: Okay.
3 Q. So in the proposal that we see here today,
4 are all of these loading activities then proposed to
5 be done within the building?
6 A. Yes. The only loading activities which
7 may be considered exterior is the fact that when the
8 packages are off-loaded off the conveyor system to
9 the trailers that are going out to Harrisburg, those
10 trailers are sitting on the exterior of the
11 building.
12 Q. But all of the vans, in fact, actually
13 are --
14 A. All of vans -- all of the van activity is
15 inside, and all of the real package handling is done
16 within the building.
17 MR. BARHIGHT: I'd like to offer the
18 introduction of the photographs as Petitioner's
19 Exhibits 1A, 1B and 1C.
20 THE HEARING EXAMINER: Let me ask, these
21 photographs are taken of what, another site I

1 assume?
2 THE WITNESS: Yes, sir. That is.
3 THE HEARING EXAMINER: And this is a
4 prototype that's done the same way by RPS all over
5 the country?
6 THE WITNESS: Well, that's -- that is a
7 hub facility located in Nashville, Tennessee. That
8 facility is a little bit larger than this, but in
9 terms of the actual conveyor system and the
10 operations, they're fundamentally identical.
11 THE HEARING EXAMINER: Okay. So the
12 internal operating and sorting and loading is all
13 the same?
14 THE WITNESS: Yes, sir.
15 THE HEARING EXAMINER: Okay.
16 THE WITNESS: Just on a bigger scale on a
17 larger facility; a smaller scale on a smaller
18 facility.
19 THE HEARING EXAMINER: All right.
20 Illustrative of that, Mr. Biser, any objection?
21 MR. BISER: Yes. I would object to

1 these. I think the size of this facility is one of
2 the key issues in the variance and the photographs
3 are not of the same, same type or size facility, and
4 the mere fact that it does the same business is not
5 relevant to the issues here in this case, and I
6 would object further and ask that they be excluded.
7 THE HEARING EXAMINER: Well this is, this
8 is a hub facility in Nashville you said --
9 THE WITNESS: Yes, sir.
10 THE HEARING EXAMINER: -- Mr. Leo?
11 THE WITNESS: Um-hum.
12 THE HEARING EXAMINER: How does the size
13 of this building compare with the size of the
14 building proposed?
15 THE WITNESS: The hub facility in
16 Nashville I believe is approximately 180,000 square
17 feet. This facility is 110,000 square feet. The
18 practical operations are essentially identical.
19 THE HEARING EXAMINER: I'll overrule the
20 objection. What I'll -- I'll accept these for the
21 purpose of providing an illustration of the basic

1 system as it occurs in the, in the, in the
2 building.
3 Certainly, it's two different facilities
4 and obviously, the one is not built, so I can't look
5 at it, but just as a description of the system, for
6 that purpose, I'll accept them.
7 (Whereupon, Petitioner's Exhibits 1A, 1B
8 and 1C admitted into evidence.)
9 MR. BARHIGHT: Thank you. I'd also like
10 to offer --
11 BY MR. BARHIGHT.
12 Q. Let ask you a couple more quick questions,
13 Mr. Leo.
14 A. Yes.
15 Q. Could you please identify what has been
16 marked as Petitioner's Exhibit Number 2 for
17 identification purposes?
18 (Petitioner's Exhibit Number 2 marked for
19 identification.)
20 A. Petitioner's Exhibit Number 2 is a drawing
21 prepared by G.W. Stephens and Associates titled

1 Building Interior Exhibit for RPS Distribution
2 Center dated May 6th, 1999.
3 Q. And is this the, Petitioner's Exhibit
4 Number 2 what you have been discussing with regard
5 to the interior configuration of the operation?
6 A. Yes.
7 Q. Okay. Is this the actual proposal for the
8 subject property?
9 A. Yes, it is.
10 MR. BARHIGHT: I would like to offer this
11 as the next Petitioner's exhibit?
12 THE HEARING EXAMINER: Okay. Mr. Biser,
13 any there any objections to that?
14 MR. BISER: No objection.
15 THE HEARING EXAMINER: No objection.
16 Okay. I see Mr. Martin is here from Stephens, and I
17 assume that it was his firm that did most of these?
18 MR. BARHIGHT: Yes.
19 THE HEARING EXAMINER: Okay.
20 MR. BARHIGHT: And Mr. Martin will be
21 testifying later.

1 THE HEARING EXAMINER: Okay. I'll accept
2 them contingent on Mr. Martin being able to identify
3 them since he's sealed the documents, but since the
4 witness has been discussing them and referencing,
5 it's probably appropriate to put them in the record
6 at this point. Okay.
7 (Whereupon, Petitioner's Exhibit Number 2
8 admitted into evidence.)
9 THE HEARING EXAMINER: Okay.
10 BY MR. BARHIGHT:
11 Q. With regard to the step-van, why is it
12 that RPS generally chooses to place those kind of
13 operations under roof?
14 A. Well, there's a couple different reasons.
15 First of all, of course, weather sensitivity to the
16 packages. We don't want the packages exposed to
17 weather.
18 Second of all, by keeping all of the
19 operations within the building itself any kind of
20 sound or any kind of noise that would be generated
21 would be contained within the building itself.

1 Also, for the safety and security of all
2 of the personnel involved having a controlled
3 environment is the best one or at least has been
4 their experience.
5 Q. Based upon your experience with other
6 trucking facilities, is it your opinion that the
7 proposed development of the RPS Class 1 trucking
8 facility proposed today will function properly on
9 this subject site?
10 A. Yes, it will.
11 MR. BARHIGHT: No other questions of this
12 witness at this time.
13 THE HEARING EXAMINER: Okay. I don't
14 whether Mr. Biser would like him to return to his
15 seat or not?
16 MR. BISER: Yes, that would be fine. You
17 can return to your seat.
18 THE HEARING EXAMINER: Let me ask you
19 something before Mr. Biser starts his
20 cross-examination --
21 THE WITNESS: Yes.

THE HEARING EXAMINER: -- Mr. Leo. How tall is this building, if you know?

THE WITNESS: I would say our -- for example, like the top of the ridge profile, I'd say we're probably between 23 and 24 feet, somewhere in there. It might be a foot taller or a foot shorter, but in that range.

THE HEARING EXAMINER: Okay. Mr. Biser, go ahead.

MR. BISER: Thank you.

CROSS-EXAMINATION BY MR. BISER:

Q. Mr. Leo, the other facilities that you talked about that you manage now or have under lease that are similar to this I believe you said were 18 in number?

A. Yes.

Q. And what are the sizes of those other facilities?

A. They range anywhere between -- the smallest facility is roughly 12,000 square feet, and the largest facility would be maybe 80,000 square

1 feet.
2 Q. Twelve thousand to 80,000 square feet?
3 A. I would say that's the range.
4 Q. Okay. The one that you said was in
5 Nashville that's the subject of the photographs, 1A
6 through 1C I believe you said was 180,000?
7 A. That's correct.
8 Q. Okay. How many of the facilities of the
9 18 that you currently run are smaller than the
10 proposed facility?
11 A. All of them.
12 Q. I'm sorry, I thought you said Nashville
13 was larger facility?
14 A. Right. That facility is not owned by us.
15 That's owned by the company.
16 Q. I apologize. I thought you said you owned
17 it?
18 A. No. No.
19 Q. All of the other 18 facilities of like
20 nature that you presently own and lease are smaller
21 than this facility?

1 A. That is correct.
2 Q. So there's nothing that's unique about
3 this type of facility that requires the size that
4 you have requested here, isn't that correct?
5 A. I don't quite understand what you're
6 asking.
7 Q. Well, you run -- all of your other 18
8 facilities are smaller, correct?
9 A. Right.
10 Q. There is nothing about this size that you
11 have proposed here that requires it to be that size
12 for you to run it?
13 A. I guess I'm not understanding what you're
14 saying. I mean, the, the fundamentals of the
15 operations that will take place within this building
16 are the same as the fundamentals in most of the
17 other operations that we have.
18 Q. Some businesses need a certain size in
19 order to reach an economy of scale where they can
20 economically run their business, correct? Is that a
21 fair statement?

1 A. For some businesses, that's probably true;
2 for other businesses, it's probably not.
3 Q. But in this business because your other
4 facilities are running smaller, this facility, too,
5 can run smaller than the proposed site, isn't that
6 so?
7 A. No, it's not.
8 Q. But you run the other 18 facilities all of
9 which are smaller; correct?
10 A. That's correct.
11 Q. So a smaller facility can be run doing the
12 same type of operation with a smaller area?
13 A. No. That's not correct.
14 Q. No. Okay. Now, if that's not correct,
15 let me ask you, if you can, sir, to list for me the
16 addresses or locations of those other facilities so
17 we can have an opportunity to look at those and
18 compare them to see what, if any, uniqueness you
19 claim?
20 A. I don't have a list of those addresses
21 with me.

1 Q. Well, what cities are they in?
2 A. The cities are in Mishawaka, Indiana.
3 Q. Yes.
4 A. Huntsville, Alabama; Rockford, Illinois;
5 Hammond, Indiana. We have Anniston, Alabama.
6 Q. I'm sorry, Anniston?
7 A. Anniston, Alabama; Richmond, Virginia. We
8 have Chicopee, Massachusetts. We have additions to
9 the Chicopee, Massachusetts facility. We have
10 additions to the Mishawaka facility.
11 Q. How do you spell Mishawaka?
12 A. That's a good one.
13 Q. That was my best question for you.
14 A. I think the best way is to say Southbend,
15 Indiana. That's the adjoining community that it
16 really serves. Mishawaka is located east about ten,
17 15 miles from that.
18 Q. And that's an addition, right?
19 A. That's right. Additions to those
20 facilities. That's correct.
21 Q. Okay.

1 A. You have Memphis, Tennessee. You have
2 Miami, Florida. It's really truly not Miami. It's
3 Cutler Ridge, Florida, and you have -- I think those
4 are all of the facilities, if I'm not mistaken.
5 Q. That would be 11?
6 A. Yeah. There's more.
7 Q. Which is the 12,000 square foot facility?
8 A. Anniston, Alabama.
9 Q. And which is the 80,000 square foot?
10 A. That would be Hammond, Indiana.
11 Q. And all of these other smaller facilities,
12 do they look like the, the facilities that were
13 exhibited in Exhibits 1A through 1C?
14 A. No, not all of them.
15 Q. Do they have similar functions in that
16 they receive the vans in one side, sort the packages
17 and out the other side with the tractor trailers?
18 A. Yes.
19 Q. And do they have the conveyor belt system
20 as well?
21 A. They have a conveyor belt system, although

1 perhaps not as sophisticated as the one shown on
2 those exhibits.
3 Q. But a conveyor belt system?
4 A. Yes.
5 Q. And are they, all of these other 18
6 facilities internally contained as this one is?
7 A. Yes, they are.
8 Q. And so all of the operations, as this one,
9 are contained within one building --
10 A. That's correct.
11 Q. -- is that correct. And I presume that
12 all those systems are up and running at this, at
13 this point?
14 A. The only one that's not up and running at
15 this point is Richmond, Virginia which we're
16 starting that conveyor assembly in about three
17 weeks.
18 Q. Is this property you say under contract
19 now?
20 A. Yes, it is.
21 Q. And what other properties in the area, if

1 any, are under contract for the same facility?
2 A. None.
3 Q. What other properties in this area were
4 looked at by you for the purpose that this property
5 is now proposed?
6 A. I would say that I looked at virtually
7 everything available in this marketplace.
8 Q. How many different sites were looked at?
9 A. I would say in excess of 40 properties.
10 Q. And do you have a file or a listing of
11 those other properties?
12 A. I have a list of all of the properties
13 that were looked at. I don't have it with me.
14 Q. And were any of those other properties
15 subject to a written offer by you to purchase?
16 A. There was written offers on two different
17 parcels.
18 Q. And are those offers still outstanding?
19 A. No.
20 Q. And what were the locations of the
21 properties where you made offers?

A. One was in Seton Business Park, and the other was immediately west of that. I can't recall the name of the, the location.

Q. Do you remember the road or the owner's name?

A. Let's see here. No, I don't at this time.

Q. Were either of those two properties -- did either of those two properties need variances for you to build or to use those properties for this type of facility?

A. I don't recall that -- I think the Seton Business Park site -- I'm not sure. To tell you the truth, I'm just not sure.

Q. Now, your petition for variance indicates that you need an FAR of point 24; is that correct, in lieu of the point 1?

A. Um-hum.

Q. Is that correct?

A. Yes.

Q. The petition for variance, is that based on the site plan that was prepared by G.W. Stephens

1 that you referred to earlier?
2 A. I would assume so.
3 Q. You didn't have any part in preparing that
4 site plan?
5 A. In terms of actually drawing it?
6 Q. Yes.
7 A. No. We generated concept plans.
8 Q. All right. Do you know how long, how much
9 distance there is on the cul-de-sac that will
10 service this property, Yellow Brick Road?
11 A. What cul-de-sac are you speaking of?
12 Q. Yellow Brick Road, from the point that you
13 enter Yellow Brick Road to get back to this proposed
14 facility.
15 A. Yeah, I'm not understanding. Why don't
16 you show me here on the plan what you're speaking
17 of?
18 Q. All right. If you would, stand up and
19 show us where you enter Yellow Brick Road.
20 A. Show me what you're talking about and that
21 will make it easier for all of us. Okay?

1 Q. When you get on to Yellow Brick Road to go
2 back to the facility?
3 A. Right.
4 Q. Okay. How much distance is that, do you
5 know?
6 A. The distance from where Yellow Brick
7 Road --
8 Q. Accesses 40?
9 A. Gosh, I would say -- I don't know the
10 exact distance. The scale is one to a thousand, and
11 it looks like it's roughly maybe 3,000 feet.
12 Q. And the only other access to the property
13 is the possibility of Lennings Lane going in
14 sometime?
15 A. That is correct.
16 Q. And you're under no obligation to extend
17 Lennings Lane to access Yellow Brick Road, is that
18 my understanding?
19 A. We're not responsible for extending
20 Lennings Lane; that is correct.
21 Q. And is the contract that you have with

1 BG&E, does it require BG&E to extend Lennings Lane
2 before you open for operation?
3 A. It requires them to construct the roads.
4 The particulars relative to the extension of
5 Lennings Lane prior us to opening is somewhat of an
6 open issue.
7 Q. So you can open this facility and have
8 this facility up and running with all of the trucks
9 and Lennings Lane does not have to be opened; is
10 that correct?
11 A. From our perspective; that is correct.
12 Q. All right. When is it that the contract
13 requires BG&E to extend Lennings Lane from Route 7
14 to Yellow Brick Road, if you know?
15 A. The contract says that they're responsible
16 for the road improvements for Yellow Brick Road and
17 Lennings Lane, but in terms of a time line for the
18 Lennings Lane extension, I don't believe it's
19 delineated in our agreement.
20 Q. Okay. So there is no time for that --
21 A. Not that I'm aware of.

1 Q. -- as far as you know; is that correct?
2 A. Not that I can recall, right.
3 Q. Okay. The other sites that you talked
4 about, the Seton Business Park -- you may resume the
5 stand. We're finished with that for now. Thank
6 you.
7 A. All right.
8 Q. What was the zoning of that proposed site
9 at Seton Business Park, do you know?
10 A. I'm not sure. It was within the City of
11 Baltimore.
12 Q. And --
13 A. A portion of it was in the city and a
14 portion of it was in the county.
15 Q. Was in the county. The second site that
16 you said was -- did you say it was close to Seton?
17 A. It was west of Seton.
18 Q. Okay. What was the zoning for that
19 property?
20 A. I believe that was ML if I'm not mistaken.
21 Q. Do you know anything about the

1 requirements for the installation of traffic lights
2 or traffic-control devices at Philadelphia Road at
3 Lennings Lane when and if it goes in?
4 A. I don't know anything relative to the
5 actual, any kind of light requirements or things of
6 that nature. I do know that we have agreed as a
7 part of our special exception to not allow truck
8 traffic up and down Lennings Lane.
9 Q. I'm sorry, you have agreed not to allow
10 that?
11 A. That's correct.
12 Q. And who is that agreement with?
13 A. Well, it's a part of our stipulation
14 relative to this.
15 Q. Who did you stipulate with?
16 A. I'm talking about on the special
17 exception.
18 Q. Okay. So all of the traffic will be, that
19 this project generates will be funneled onto Yellow
20 Brick Road; is that correct?
21 A. Okay. That's not what I said. What I

1 said was that we've agreed that the tractor traffic
2 with the trailers will not be allowed on Lennings
3 Lane. There's not a restriction at this time
4 relative to automobile traffic.
5 Q. How about the vans?
6 A. Your question was, am I, are we allowing
7 all traffic to go on Yellow Brick Road. That's not
8 correct.
9 Q. Okay. I understand now.
10 A. Okay.
11 Q. So your restriction is for the tractor
12 trailers?
13 A. That's correct.
14 Q. And that's 18 of them?
15 A. That is ten going out --
16 Q. Right.
17 A. -- and then ten returning, so it's a total
18 of ten running a loop.
19 Q. How about the vans?
20 A. There's no restrictions on the vans.
21 Q. So the vans can use Lennings Lane --

A. That's my understanding.

Q. -- is that correct. Now, you said -- in answer to Mr. Barhight's question, you said that initially you proposed to have 18 tractor trailers?

THE HEARING EXAMINER: Ten.

Q. I'm sorry, ten.

A. Ten is what I said.

Q. Do I take that to mean that there's an alternate plan where this might be increased at some time?

A. Well, the facility is designed for some modest expansion relative to the site. If you'll notice on the exhibit, we show a small phase-two expansion at this facility.

Consequently, I would expect there would be some modest proportional adjustment in the tractor trailers that would be operating out of the site relative to the change in the size of the facility.

Q. Do you have the plans drawn or preliminary plans drawn for that expansion?

A. We have a prototype that shows the preliminary expansion, and it shows here on the site plan as well the full phase.

Q. Do you have those with you today?

A. Well, those are displayed on the board right there.

Q. All right. And then after that expansion, how many tractor trailers is it that you anticipate using at this facility?

A. Well, I'm not -- you know, we're not the operating company that's going to be within the facility, but the addition that's proposed -- can I take a look at the exhibit?

Q. Sure.

A. The facility is initially 110,000 square feet, and the expansion is roughly 20,000 square feet as it's shown here on this exhibit noted as Plat to Accompany Petition for Special Exception to Permit dated March 30th, 1999.

So if you have 110,000 square feet and you have ten tractor-trailer rigs coming in and out and

you're adding 20,000 square feet, I would think you're probably adding maybe two, maybe three. So you're talking about instead of ten, 13.

Q. How many vans will be added?

A. Well, that -- at full phase?

Q. Um-hum.

A. I couldn't tell you the total number of vans off the top of my head. I would suspect you're probably talking about close to probably 80, 90.

Q. And how many automobiles?

A. Automobile traffic, it looks like our maximum site plan or our site plan right here shows a maximum auto park of 265 total spaces shown here on the exhibit.

THE HEARING EXAMINER: The auto traffic is all for employees; is that correct?

THE WITNESS: Yes, sir. That's correct.

THE HEARING EXAMINER: Except possibly an isolated walk-up delivery?

THE WITNESS: Right. If someone -- yeah, exactly. Do we need to note this as an exhibit?

1 THE HEARING EXAMINER: Mr. Barhight will
2 take care of that.
3 MR. BARHIGHT: I'll take care of that when
4 Mr. Martin takes the stand.
5 THE WITNESS: All right.
6 BY MR. BISER:
7 Q. And how about the hours of operation, are
8 they going to be changed at all upon completion of
9 phase two?
10 A. No. I can't imagine that those hours of
11 operation will change.
12 Q. And when is it that you plan on or is
13 there a date when you plan on proceeding with phase
14 two?
15 A. There is no date at this time.
16 Q. Are there any restrictions that you know
17 of to the use of this property by any of the
18 adjoining properties?
19 A. Not that I'm aware of. When you say
20 restrictions, what do you mean?
21 Q. Any kind of restrictions that are imposed

1 by adjoining properties to the, to the use of this
2 property.
3 A. None that I'm aware of.
4 THE HEARING EXAMINER: What's next to
5 this property?
6 THE WITNESS: Well, we have -- if I could
7 approach the exhibit?
8 THE HEARING EXAMINER: Sure. Go ahead.
9 THE WITNESS: On the north side, this is
10 essentially unimproved, the immediate north side is
11 unimproved property. Then there's a commercial
12 steel erection business roughly in kind of the
13 northeast quadrant or rather northwest quadrant.
14 Immediately west of the site there's a
15 business in operation, I believe it's a drug
16 rehabilitation center, something of that nature.
17 To the southwest and down Philadelphia
18 Road, there's kind of a mixture of scattered
19 residential and business applications, and then due
20 south, of course, along Yellow Brick Road, warehouse
21 and distribution-office warehouse.

1 To the east, it's essentially unimproved,
2 and then there's a, kind of railroad tracks, and
3 then you jump over to Pulaski Highway which, of
4 course, is a commercial corridor, and then to the
5 northeast quadrant essentially unimproved property.
6 THE HEARING EXAMINER: Yellow Brick Road
7 as it presently exists --
8 THE WITNESS: Yes, sir.
9 THE HEARING EXAMINER: -- does it
10 terminate near this site?
11 THE WITNESS: Yes, sir. Yellow Brick
12 Road stops right there (indicating).
13 THE HEARING EXAMINER: Okay. That's
14 where it stops right now?
15 THE WITNESS: Yes, sir.
16 THE HEARING EXAMINER: So that will have
17 to be expanded, extended?
18 THE WITNESS: The proposal is to extend
19 it. I guess that's part of the County road plan.
20 BY MR. BISER:
21 Q. Did you contact any of the adjacent

1 property owners prior to signing the contract of
2 sale?
3 A. Yes.
4 Q. Which ones did you contact?
5 A. I spoke to the folks at Baltimore Rigging.
6 Q. Baltimore Rigging?
7 A. Um-hum, (Nodding head yes.)
8 Q. Anyone else?
9 A. No.
10 Q. Where is Baltimore Rigging? Is that the
11 steel erector that you were talking about?
12 A. That's correct. Right.
13 Q. Okay. You did not talk to the drug rehab
14 before signing the contract --
15 A. No, I did not.
16 Q. -- or the mixed residential and business
17 use at the southwest area --
18 A. No.
19 Q. -- or the warehouse facility south of the
20 facility; is that correct?
21 A. That's correct.

1 Q. Referring back to the other sites that you
2 looked at, why were those other sites rejected or
3 not selected or not the subject of the contract?
4 A. Sure. First of all, the, the process of
5 locating any site for this company involves analysis
6 and computer modeling for pickup and delivery and
7 also what we call line haul. Line haul is the large
8 trucks going back and forth from Harrisburg.
9 That computer model analyzes the different
10 costs of different locations, and that is part of
11 the function that is used to estimate which portions
12 of the community make the most sense.
13 The sites -- so that those components are
14 taken into account when you're analyzing different
15 sites and comparing different locations.
16 In this market area, this corridor
17 appeared to be one of the better areas to consider
18 for a facility for RPS.
19 Q. Why was the Seton Business Park rejected
20 or not contracted for?
21 A. Well, we attempted to enter into an

1 agreement in a formal fashion on the Seton Business
2 Park, but we ran into issues relative to the fact
3 that the property was split by the different
4 counties and city governments.
5 Q. And what difference does that make?
6 A. Well, apparently there was controversy
7 relative to the actual zoning, what could and could
8 not be done.
9 Q. Whether you could use the facility for
10 this type of use, a trucking facility?
11 A. Well, I think a portion of the property
12 was zoned properly. The problem is the balance of
13 the property, which was split by two different
14 jurisdictions, was not acceptable.
15 Q. And what did you need for that, a rezoning
16 or did you need a variance?
17 A. I think an actual rezoning was required to
18 accomplish what was needed.
19 Q. And the other site that you said was close
20 to Seton, why was that not the subject of a
21 contract?

1 A. I think the analysis indicated that it was
2 too far west for the trade-offs involved.
3 THE HEARING EXAMINER: What's the area,
4 Mr. Leo, that this site will actually serve in terms
5 of the delivery area?
6 THE WITNESS: All of Baltimore County and
7 actually some areas outside of Baltimore County, but
8 primarily Baltimore County.
9 THE HEARING EXAMINER: How about
10 Baltimore City or Harford County?
11 THE WITNESS: Absolutely Baltimore City.
12 The, the core pickup and delivery activity, as I
13 understand it, is primarily in inner Baltimore
14 within the City of Baltimore itself.
15 THE HEARING EXAMINER: Where is -- are
16 there other RPS Distribution Centers similar to this
17 in this area?
18 THE WITNESS: Yes. There is an existing
19 facility already in operation.
20 THE HEARING EXAMINER: Where is that?
21 THE WITNESS: That's I believe on Gough

1 Street.
2 THE HEARING EXAMINER: In Baltimore
3 City?
4 THE WITNESS: In Baltimore City. I
5 think it's just slightly east of downtown.
6 THE HEARING EXAMINER: Is this site going
7 to pick up that business?
8 THE WITNESS: Absolutely.
9 THE HEARING EXAMINER: So that facility
10 will close?
11 THE WITNESS: Yes, it will.
12 THE HEARING EXAMINER: Are there any
13 other facilities in Baltimore County that are up and
14 running?
15 THE WITNESS: No, sir. There are not.
16 THE HEARING EXAMINER: How about in the
17 general Baltimore metropolitan area, any other ones
18 that you're aware of?
19 THE WITNESS: No, sir. This will be the
20 only one.
21 THE HEARING EXAMINER: All right. Go

1 ahead, Mr. Biser.
2 MR. BISER: Thank you.
3 THE HEARING EXAMINER: Sorry to interrupt
4 you.
5 MR. BISER: That's quite all right.
6 BY MR. BISER:
7 Q. Mr. Leo, I asked you earlier about
8 traffic-control devices that were proposed at the
9 intersection of Lennings Lane and Philadelphia Road?
10 A. Um-hum.
11 Q. What of the same type of facilities, if
12 you know, are contemplated at the intersection of
13 Lennings and Yellow Brick Road? Do you know whether
14 there's going to be a traffic-control device there?
15 A. I'm not aware of any traffic-control
16 device that is anticipated at the intersection of
17 Yellow Brick Road and, and Lennings Lane
18 intersection. I would assume there will be a stop
19 sign if Lennings Lane is, is constructed since it
20 would appear that Yellow Brick Road is the primary
21 artery.

1 Q. I, I was asking you earlier about any
2 practical restrictions that are imposed by abutting
3 property owners, and I'm not sure whether you ever
4 answered that question so bear with me if I'm asking
5 it again.
6 Do you know of any practical restrictions
7 that are imposed on this use or this property by any
8 abutting property owners or property?
9 A. None that I'm aware of.
10 Q. Are you aware of any unusual architectural
11 aspects of this proposed building?
12 A. No.
13 Q. Are you aware of any unusual engineering
14 aspects of this proposed building?
15 A. Well, I think there are some unique
16 considerations relative to the foundation design of
17 this facility based on the fact that we're building
18 on essentially a ply ash site. I think there are
19 some additional engineering and design for footings
20 that are required in that type of sub-grade of
21 material.

Q. But that has nothing to do with the variance for the FAR?

A. Not that I'm aware of. I don't believe there's any tie-in between the FAR and that design point.

Q. Has the building been designed?

A. Yes, it has.

Q. And what point is the -- at what stage is the design now?

A. I believe the design for the site plan -- is that what you are speaking of?

Q. No, for the building.

A. I'm not sure exactly how far along the architectural drawings are at this stage. I know, I know they're underway. I couldn't tell you beyond that.

Q. So they have not been put out to bid or shown to a contractor for bid as far as you know?

A. Shown to a contractor for bid?

Q. Um-hum.

A. Well, we have already selected the general

contractor if that's what you're asking.

Q. Does he have construction drawings?

A. He has prototype drawings, and he has been released for architectural work.

Q. Has the parking been designed?

A. My understanding is the parking has been designed.

Q. And that includes the depth of the pavement itself and the pavement design?

A. The actual pavement thickness?

Q. Yes.

A. I'm not sure. I knew that we have had soil borings that have been conducted or been contracted out, but in terms of the actual structural design of the asphalt thickness, I couldn't tell you what the stage of that is at this point.

Q. Mr. Leo, are you aware of any unique characteristics with this site that make it difficult for your company to comply with the existing zoning without the variance?

A. Why don't you repeat the question?

Q. Are you aware of any unique characteristics of this site that make it difficult for your company to comply with the existing zoning without the variance?

A. Well, I think the, the issues are the fact that there are certain physical limitations as to the amount of land available at this parcel, and because there is -- the variance essentially deals with that net-land area. There is not additional net-land area available on this platted lot to satisfy our building-size requirement, thus the need for the variance.

Q. That has to do with the size of the building you want to build, correct?

A. Yes.

Q. You could build a smaller building and not need the variance, correct?

A. We could not build a smaller building and satisfy our design requirements for this, although there are ways we could do some very strange

1 things. The practical implication of this, of those
2 modifications would be essentially really wasteful
3 in terms of the design of the building.
4 THE HEARING EXAMINER: What's driving the
5 size of the building? Why is it that you want to
6 put this size building here?
7 THE WITNESS: What's driving the size of
8 the building is the growth and development of
9 business within this marketplace for RPS, and what
10 happens is that as a part of their current business
11 level and their projected growth level within the
12 industry, they design a facility that they believe
13 meets their, basically their ten-year criteria with
14 the ability to expand to meet a 15-year criteria.
15 This facility meets those criteria on the front
16 end.
17 The other factor that's driving that
18 equation, too, is that there are some locations that
19 have what they call more inbound activity versus
20 outbound activity.
21 For example, there may be more packages,

1 for example, going out of Baltimore than coming into
2 Baltimore. But the problem is that in order to
3 balance that out, you have to have, for example,
4 maybe additional load and load doors to satisfy that
5 requirement. So those are all factors that drive
6 the size and the configuration of the building, but
7 this size meets the criteria for the conceivable
8 future for RPS.
9 BY MR. BISER:
10 Q. So, Mr. Leo, if you found a larger site,
11 you wouldn't need the variance, correct?
12 A. If we found a larger site under, under
13 terms that were acceptable, that's possible.
14 Q. So the only thing special or unique about
15 this site that requires this variance, in your
16 opinion, is its size, correct?
17 A. Well, not, not only that, but also the
18 relative size of the land to our building and the
19 design that we have.
20 Q. Right. So it's just the size of the
21 property in relation to the building? That's the

1 only reason for the variance, correct?
2 A. Well, that's not the only reason for the
3 variance.
4 Q. What are the other reasons?
5 A. Well, the variance that we need here is
6 because of the design we have. We could propose a
7 building that would have interior corridors, open
8 roof, within the building, but that would be -- it
9 wouldn't make any sense. It would be wasteful, and
10 although we may at this point be requiring the
11 variance because of how we're interpreted as a
12 building in this marketplace, in reality we are not
13 a truck-terminal facility. We are a small-package
14 distribution facility, and that is the big
15 distinction.
16 Q. If you don't get the variance, will you
17 still close on the, on the sale of the property?
18 A. I can't speak to that. That's -- there
19 are other people involved who would have to make
20 that decision.
21 Q. Does the contract have a condition for

closing on the variance being granted?

A. I believe that having the variance is, is a component, and I think the purchaser has the option to proceed or not to proceed.

Q. So that there, if the variance isn't granted, there's not any unreasonable hardship on the owner or you; is that correct?

MR. BARHIGHT: Objection. Asking for a legal conclusion. To the extent that he's quoting from --

MR. BISER: His opinion.

THE HEARING EXAMINER: Mr. Biser, I'll sustain that question as it is asked. He's not been offered as a, obviously a legal or with any expertise.

If you want to rephrase that question and just ask him what the impacts will be as contract purchaser, I think that's acceptable.

BY MR. BISER:

Q. Mr. Leo, as the contract purchaser if the variance is not granted, what impact is that going

1 to have on Westmoreland?
2 A. My suspicion is that we won't be able to
3 proceed on this project, so there would be negative
4 implications on that part of our relationship with
5 RPS and for RPS in this marketplace.
6 Q. And if this variance is not granted, is
7 there any practical difficulty that will be
8 presented to Westmoreland?
9 MR. BARHIGHT: Again, objection for the
10 same reasons stated previously. He's not being here
11 to offer expert testimony as a planning or zoning
12 expert.
13 MR. BISER: If I may be heard. This
14 gentleman is the president of this company who is
15 expert in land development and acquisition as that's
16 his only business. Surely he has and can inform
17 this, this Board or this body as to what hardship or
18 difficulty would, would be existent.
19 THE HEARING EXAMINER: I was looking
20 around to see if there's a board or a body other
21 than me up here, but in any event, he can certainly

1 render his opinion.
2 I guess the question that I have, Mr.
3 Biser, when you, you know, when you use the buzz
4 words practical difficulty, that means something to
5 you and me and Mr. Barhight, perhaps Mr. Martin, Mr.
6 Madden who are all more expertise with that. I'm
7 not sure that this witness knows what that means in
8 the context of what you're asking him.
9 Certainly, he can testify as a fact
10 witness as to what the ramifications and the
11 implications will be, and then I'll have to make a
12 decision as to whether the facts that he testifies
13 to, indeed, give rise to a practical difficulty
14 under the law.
15 My problem is when you use the words
16 practical difficulty, you know what they mean, I
17 know what they mean, but I'm not sure he does. Even
18 though he develops land, he does it all over the
19 country and he perhaps is not familiar with either
20 the Baltimore County Zoning Regulations or decisions
21 out of the Court of Appeals or Court of Special

1 Appeals of the State and knows what that terms
2 means. So that's my dilemma.
3 MR. BISER: I'm not asking him for a
4 legal opinion at this point as much as I'm asking
5 him for a factual explanation --
6 THE HEARING EXAMINER: He said --
7 MR. BISER: -- and I will restrict that
8 question to the layman's use of those words.
9 practical difficulty is not a complex-word usage,
10 and I think this gentleman can understand it and
11 give us his insight into it. I'm not asking him
12 for a legal opinion.
13 THE HEARING EXAMINER: Okay.
14 MR. BARHIGHT: My concern, and why I would
15 like to be heard on this briefly, is that I don't
16 know of any layman to go running around using the
17 phrase, practical difficulty. It is clearly a term
18 of art and a legal term that has significant meaning
19 within the Baltimore County Zoning Regulations and
20 case law within the State of Maryland, and
21 pretending as if it doesn't, doesn't make the

1 question adequate.
2 I never asked that question on direct
3 examination. It's clearly outside the scope of
4 direct examination. He's not been qualified as an
5 expert witness in either planning or zoning. He
6 should not be required to render opinions in that
7 area.
8 THE HEARING EXAMINER: All right. Well,
9 he has testified -- I believe his testimony would be
10 if the variance is not granted and Westmoreland is
11 unable to close and acquire the site and develop the
12 site that that would have a negative implication for
13 your relationship with RPS --
14 THE WITNESS: Yes.
15 THE HEARING EXAMINER: -- and would also
16 have negative implications for RPS's ability to
17 serve this market.
18 THE WITNESS: Absolutely.
19 THE HEARING EXAMINER: Other than those
20 factors, are there any other negative implications?
21 Maybe that's a better word to ask.

1 THE WITNESS: Well, I think, I think it
2 would be wise to give some background as to how
3 we've gotten to this, this point.
4 Counselor here had asked the question,
5 Well, had you looked at another site here?
6 Considered another site there? In addition to
7 ourselves, there are other experts that have been,
8 that are true real estate specialists that have been
9 brought in, and RPS has been looking for a facility
10 for close to three years, trying to find a piece of
11 land in this marketplace that is viable.
12 Of course, their ideal location was about
13 where we're sitting right here, right in the middle
14 of Towson, but it's impractical. There's not a
15 chance that can happen.
16 And so there have been many, many
17 properties researched thoroughly, many people within
18 economic development at BDC, untold numbers of real
19 estate professionals in this marketplace have been
20 called upon to provide sites and options and
21 whatever can be found, and all of that effort and

1 all of that energy has boiled down to this site, and
2 I can assure you the amount of effort and energy to
3 get to this point has been enormous.
4 THE HEARING EXAMINER: Okay. I mean, I
5 assume, for example, that in addition to the size of
6 this, of the land or the area of the land that your
7 location and proximity to major roads is a
8 significant factor since this is a
9 transportation-driven business?
10 THE WITNESS: Absolutely. Absolutely.
11 THE HEARING EXAMINER: Okay. In other
12 words, putting this out in the middle of the country
13 somewhere where you could acquire a hundred-acre
14 site --
15 THE WITNESS: Sure.
16 THE HEARING EXAMINER: -- if it's got
17 country roads around it and no access to an
18 interstate, it doesn't do you any good?
19 THE WITNESS: It doesn't do us any good.
20 We have to be -- you know, as a misnomer, the
21 computer model kind of analyzes what is the best

1 kind of break-even point between pickup and delivery
2 activities, small-van activity and the large
3 line-haul trucks that come down from Harrisburg.
4 And that model analyzes different locations all over
5 in, all over Baltimore, and I know they've analyzed
6 plenty trying to come to a conclusion.
7 THE HEARING EXAMINER: Okay.
8 BY MR. BISER:
9 Q. Mr. Leo, what were your -- when you went
10 to these real estate people to ask them to find
11 property for you, what were your criteria that you
12 gave to them?
13 A. Well, as I mentioned earlier, there are
14 other people who have been involved. There's a
15 third party, independent real estate entity that is,
16 that are consultants to RPS that have been pounding
17 the streets, so to speak, in this marketplace for an
18 extended period of time.
19 My direct activity has been through my
20 efforts, the efforts of the BDC and through the
21 efforts of the economic development for Baltimore

1 County.
2 Q. My question though was what criteria did
3 you give to these other real estate consultants or
4 realtors when you asked them to look for property
5 for you?
6 A. Show me everything basically. I want to
7 look at anything over eight to ten acres, anything.
8 Q. Who were the realtors or real estate
9 consultants that were engaged to look for property?
10 A. Fisher and Company was the, is the
11 third-party consultant who was involved with the
12 real estate search criteria.
13 Q. Where are they located?
14 A. Dallas, Texas.
15 Q. Did you contact any local realtors or
16 engage any local realtors?
17 A. I may have spoken to a few local realtors.
18 Q. Who would that be?
19 A. I think I spoke to some folks at Miller
20 Real Estate.
21 Q. Did you hire them?

1 A. No. Westmoreland does not engage anyone
2 formally for a real estate searches.
3 Q. Why not?
4 A. Because it's our practice not to engage
5 anyone formally for a real estate search.
6 Q. If you're having trouble locating a site,
7 wouldn't that be a good idea to get a local realtor?
8 A. That's one perspective. Our perspective
9 is we want to keep every door open and every
10 opportunity open because a broker has a double
11 incentive if he's feeling he's got an equal
12 opportunity with everyone else.
13 If there's a broker who's engaged to
14 represent a property or engaged to represent a
15 marketplace and they don't do a thorough job or they
16 have a full relationship with another broker, we may
17 not find out about that property as we need to.
18 Q. The Commissioner asked you about the other
19 reason maybe that this site was a desirable site
20 from your standpoint was its proximity to
21 transportation, to roads, etcetera?

1 A. Yes.
2 Q. That's no different from any of the other
3 properties in that area? They all have the same
4 approximate location to various transportation
5 modes, isn't that so?
6 A. Other properties in that area, what are
7 you speaking of?
8 Q. The adjacent or adjoining properties or
9 other properties in that neighborhood. They're in
10 the same relative location to --
11 A. Right. Sure.
12 Q. Correct? So that's not a unique
13 characteristic for this property, its location
14 relative to Route 7, Route 40, Interstate 95?
15 A. Well, it's not unique relative to the
16 other land that's already developed; that is
17 correct. It's unique in the fact that it is
18 available.
19 Q. All right. Have you talked to the
20 community groups, the residential community groups?
21 A. I've spoken to some of the community

1 groups. That's correct.
2 Q. Who have you spoken to?
3 A. I've spoken to Ed Chase with, I think, the
4 Rossville Community Association, and they were the
5 only community group that essentially had gotten
6 back with me. There were two other community groups
7 that I spoke with that I can't recall their name
8 right now.
9 Q. And have you told Mr. Chase or this other
10 group, whose name you can't recall --
11 A. Well, there were two other groups.
12 Q. Two other groups?
13 A. There were two other groups.
14 Q. And what is it that you told them about
15 this site?
16 A. And I also met with Nick I believe it's
17 Filipidis with Mr. Ed Chase as well simultaneously.
18 Q. What have you told them about the proposed
19 use and the variance?
20 A. I just showed them the project, the layout
21 of the project and what we were proposing to do. I

1 met Mr. Chase out there on the site as well and
2 showed him, gave him some relative perspective as to
3 the elevation issues of the building relative to his
4 personal residence which is located essentially just
5 across the street of where the Philadelphia and
6 Lennings Lane intersection would be.
7 Q. And is Mr. Chase aware that Lennings Lane
8 is to be extended?
9 A. Yes. He's aware that it's a part of the
10 county road plan.
11 Q. Has anyone done a study of the, of the
12 paving sections or cross-sections or the structural
13 integrity of Yellow Brick Road and your intended use
14 with tractor trailers to see whether there's going
15 to be any negative impact?
16 A. Are you talking about for analyzing the
17 structural with the additional traffic on, on the,
18 on the existing Yellow Brick Road would be?
19 Q. Yes.
20 A. Not that I'm aware of.
21 THE HEARING EXAMINER: Are there any

1 restrictions, if you know, as to traffic on Yellow
2 Brick Road?
3 THE WITNESS: I'm not aware -- I'm not
4 aware of any restrictions relative to --
5 THE HEARING EXAMINER: Trucks?
6 THE WITNESS: -- trucks at all. In fact,
7 there are existing tractor-trailer rigs currently
8 going up and down that highway.
9 Q. Has there been any study on the, the
10 increased noise by, by the tractor trailers as
11 opposed to the other type of traffic on Yellow Brick
12 Road?
13 A. No.
14 Q. Do you propose to do one?
15 A. Not at this time, and let me explain that,
16 if I can, to some degree. Can I approach the
17 drawing here?
18 Q. Sure.
19 THE HEARING EXAMINER: Go ahead.
20 A. I think-- okay. I'm referring to the
21 other exhibit for the RPS Distribution Center dated

1 May 6, 1999, sheet 1 of 1.
2 The issue of sound, the building-floor
3 elevation of this building is 97 feet, and the
4 adjoining elevation of the edge of our property is
5 approximately 121 feet.
6 So our building-floor elevation is at 97,
7 the adjoining bank closest to the residential area
8 is 21 feet, so we're talking about an elevation
9 differential of 24 feet.
10 If you look at the road contours carrying
11 the building elevation all of the way out to the
12 edge of Philadelphia Road, the last transition shown
13 on this drawing shows the road elevation at 132
14 feet; whereas, our building elevation, once again,
15 is at 97 feet. So now we're talking about a 35-foot
16 delta in elevation transition. Essentially earth
17 and wall 35 feet high.
18 We don't believe there is any reason or
19 concern for sound generation from this facility
20 based on that earth and wall, and also because of
21 our activities are essentially on the south side of

1 the building, any sound that would be generated or
2 the majority of sound generated should be reflecting
3 off the building and going south for the existing
4 industrial improvements down Yellow Brick Road.
5 Q. Mr. Leo, are you a sound expert?
6 A. No.
7 Q. Does Westmoreland -- will Westmoreland
8 retain ownership of the facility?
9 A. That is the plan, but that is subject to
10 change.
11 Q. Under the present contract, it's, it's
12 anticipated that Westmoreland will be the legal
13 owner of not only the land, but the facility
14 itself --
15 A. Yes.
16 Q. -- is that correct. Are any improvements
17 anticipated to be made to Yellow Brick Road? Not
18 the extended Yellow Brick Road, but the existing
19 Yellow Brick Road?
20 A. None that I'm aware of.
21 Q. What are the hours -- what will be the

1 hours of peak operation of the facility? I know
2 it's around the clock, but what are the peak hours?
3 A. Well, peak hours of activity at that
4 facility should be early morning when they pickup
5 and delivery facilities, pickup and delivery vans
6 leave the operation.
7 Q. And that would be after 9 a.m. or 8 a.m.?
8 A. Let's see here.
9 Q. I know you already testified to that. I
10 apologize.
11 A. Let me look. This, this chart is pretty
12 detailed.
13 Q. What are you referring to, I'm sorry?
14 A. I've got a little -- well, I had a traffic
15 chart. Oh, I left it up there. It's on your table
16 right there.
17 Q. Okay.
18 A. It looks like the peak traffic flow is
19 going to be between 6 and 8 p.m.
20 Q. I'm sorry, 6 and 8?
21 A. I'm sorry, 6 and 8 a.m. I'm sorry.

1 Q. It's a.m?
2 A. Six and 8 a.m. and 4 and 6 p.m.
3 Q. And do you know what the peak hours of
4 operation or traffic use are for the existing users
5 of the, of the area along Yellow Brick Road?
6 A. No, I do not.
7 MR. BISER: Mr. Commissioner, may we have
8 this paper marked and, as identification as he, for
9 identification as he's referring to it?
10 MR. BARHIGHT: No objection.
11 THE HEARING EXAMINER: Okay. If you
12 want, do you want me to enter it as an exhibit?
13 MR. BISER: Yes, please.
14 THE HEARING EXAMINER: Okay.
15 THE WITNESS: I just need a copy of it
16 back.
17 MR. BARHIGHT: Will you offer that as the
18 next Petitioner's Exhibit then, we know where we
19 are?
20 THE HEARING EXAMINER: Do you want to
21 make it a Petitioner's Exhibit? Okay. For the

record, I'll mark it as Petitioner's Exhibit Number 2. During the break, Mr. Leo, I'll make a copy of this and give it back to you.

THE WITNESS: That's fine.

THE HEARING EXAMINER: The document is called, Attachment to RPS, Inc. 1999 Expected Traffic Flows for the Baltimore, Maryland Terminal.

MR. BARHIGHT: I believe we're at 3. Does that make sense? 1-A, B and C would have been the photos and 2 would have been the internal design.

THE HEARING EXAMINER: Let's go off the record.

(Whereupon, there was an off-the-record discussion held.)

(Whereupon, Petitioner's Exhibit Number 3 marked for identification.)

THE HEARING EXAMINER: I stand corrected. Number 3 then is the attachment.

BY MR. BISER:

Q. Mr. Leo, who prepared Exhibit Number 3?

A. That exhibit was prepared by RPS.

1 Q. Do you know who at RPS, what person was in
2 charge of preparing that exhibit?
3 A. I'm sure it was facilities engineering,
4 but I don't know the specific individual.
5 Q. So you have no personal knowledge of the
6 times of peak usage other than through RPS?
7 A. Well, I have knowledge of what their peak
8 usage is just by my awareness of what their business
9 is and how they operate.
10 Q. Okay.
11 MR. BISER: Bear with me one minute, Mr.
12 Commissioner.
13 THE HEARING EXAMINER: Certainly.
14 MR. BISER: I think I'm almost finished.
15 (Brief pause.)
16 BY MR. BISER:
17 Q. Now, you earlier testified in direct, Mr.
18 Leo, that this property is approximately 200 feet
19 away from the nearest wetland; is that correct?
20 A. I believe I testified that it was over 200
21 feet from the nearest wetland.

1 Q. Who determined that?
2 A. G.W. Stephens.
3 Q. That was not a determination that you
4 made?
5 A. No.
6 Q. Do you know where the wetland is?
7 A. Not exactly.
8 Q. And has there been any study on the
9 impact, if any, to the wetland for this project?
10 A. I'm not sure if there's been a separate
11 study that's been done. There is an existing
12 erosion plan, I believe, that's in place for this
13 project.
14 Q. Okay. And you also indicated that the
15 nearest residential property is approximately 300
16 feet from --
17 A. I think it's a little over 300 feet
18 from --
19 Q. And, again, who determined that?
20 A. G.W. Stephens.
21 Q. And what residence were you referring to

1 that's 300 feet away?
2 A. I can show you --
3 Q. Okay.
4 A. -- if I can approach the exhibit here.
5 I'm referring to the colored exhibit of the RPS
6 Distribution Center. It's a property facing on
7 Philadelphia Road.
8 According to the drawings, it shows that
9 the owner is William H. Samuels in the existing
10 residential structure.
11 Q. Have you talked to Mr. Samuels about the
12 variance that you are requesting?
13 A. No, I have not.
14 Q. Have you attempted to make contact with
15 Mr. Samuels?
16 A. No, I have not.
17 Q. The Commissioner asked you a question
18 about package drop-offs. You said that you will
19 accept package drop-offs at this facility?
20 A. Well, the operation is set up so that
21 there's no real customer service center at this

1 facility; however, if someone wanders in and has a
2 package, I'm sure that they would try to accommodate
3 them. But as a rule, all of their package pickup
4 and delivery is handled through their van
5 operations.
6 Q. So you have no way of anticipating or
7 estimating what the number of package drop-offs will
8 be six months or a year after the facility opens?
9 A. I would suspect that there could be hardly
10 any at these facilities since, as I mentioned
11 earlier, there are no customer-service centers or
12 drop-off facilities like would you see at a Post
13 Office or at like a UPS facility. There's nothing
14 like that at this location.
15 Q. You compared -- when we were going through
16 the photographs 1-A through 1-C, you were comparing
17 this facility to a typical trucking facility. Have
18 you ever worked for or with another trucking
19 facility?
20 A. Yes.
21 Q. And when was that?

1 A. We've been involved in developing
2 facilities over the last decade.
3 Q. Okay.
4 MR. BISER: Commissioner, that's all of
5 the questions that I have of this gentleman right
6 now, although I would like a minute to confer with
7 my clients to see what other questions we may have
8 of this gentleman and, again, necessitated by the
9 fact that we did not know what the reasons were for
10 the variance.
11 THE HEARING EXAMINER: Okay. Before
12 you --
13 MR. BISER: So if I could take a
14 five-minute recess?
15 THE HEARING EXAMINER: Before you do
16 that, Mr. Biser, let me see if there's anyone else
17 who is present who is not represented by either Mr.
18 Biser or by Mr. Barhight who would like to ask any
19 questions of this witness, and I would ask that you
20 keep your remarks at this time as questions. Mr.
21 Chase, do you have any questions?

1 MR. CHASE: Just one question.
2 CROSS-EXAMINATION BY MR. CHASE:
3 Q. Mr. Leo, the element of size of the
4 building has been discussed here in your testimony.
5 Have you made any attempt whatsoever to acquire any
6 additional vacant land adjoining the parcel from
7 BG&E?
8 A. Can you clarify? You're saying by
9 additional land --
10 Q. Obviously, BG&E has a certain, a parcel
11 that's a certain size?
12 A. They have a tract, right.
13 Q. How many acres is it? Eight acres, ten
14 acres?
15 A. The site I believe for our facility is
16 roughly about 12.2 acres.
17 Q. All right. One of the concerns -- there
18 are other concerns, of course. One of the concerns
19 I had, as well as the Community Association, was the
20 size of the building relative to the size of the
21 parcel. One thing I did not ask you at our meeting

1 at the site that was not discussed here was whether
2 you made any attempt whatsoever to look into
3 adjacent property owners maybe acquiring a bit more
4 land to more easily accommodate the size of the
5 building you claim you need to run this operation.
6 And can you elaborate? You have not contacted
7 anyone?
8 A. We have not formally submitted any
9 agreement for any acquisition of any additional
10 land. We focused on the platted lot that was
11 available with BG&E's ownership.
12 Q. Would you be so against that avenue of
13 possibility should Mr. Schmidt recommend such an
14 issue or such an alternative?
15 A. Well, I guess the, the real problem is
16 that we have a time line that we're operating under,
17 and what other complications that may entail is
18 difficult to surmise.
19 Now, whether or not that's even a
20 possibility, you know, you're talking about
21 potentially acquiring -- I assume what you're

1 speaking of is the property directly to the north
2 side of that. Is that what you are speaking of?
3 Q. Well, how about further down Yellow Brick
4 Road? I mean, I know the further down you go you
5 enter into a wetlands situation, but that's across
6 to the south of Yellow Brick Road. How about to the
7 north of Yellow Brick Road behind the, the rigging
8 operation?
9 A. We haven't explored that.
10 Q. Okay. But you wouldn't -- you would be
11 against looking into that situation?
12 A. Well, our, our application is for using
13 this lot that's already platted and is already in
14 place, and that is the subject of our variance.
15 I think our, our interest is in trying to
16 get the project delivered under an accelerated
17 timetable with the least amount of roadblocks and
18 problems along the way.
19 The -- you know, what you're introducing
20 is a concept which, in my opinion, would delay and
21 probably cause an extreme, you know, hardship on us

1 making the schedules that we originally projected
2 for this project. But in terms of saying would we
3 rule anything out? You know, our goal is to make it
4 work on this site if at all possible.
5 Q. At our meeting at the site, I was quite
6 astounded by the topo of the property and how much
7 earth moving would be, the project would entail in
8 order to create your facility. There's also the
9 element of, you know, the ash situation. This was a
10 dump that's been used for some time. Have you
11 looked into any ramifications in moving this ash?
12 Is it a health concern? Do you know anything about
13 that?
14 A. I know a little bit about it. I know
15 that the earth work that's being, taking place on
16 the site would be controlled by BG&E, and, of
17 course, they're experts relative to handling this
18 material.
19 So in this circumstance, I know there's
20 certain safety precautions and health precautions
21 that are necessary when you're moving this material

1 to avoid dusting and things of that nature, and BG&E
2 has the responsibility for taking charge of that
3 matter. So I would suspect that they are the
4 experts, and they'll handle it in a proper manner.
5 Q. Would EPA have to get involved with this
6 at all?
7 A. I'm not sure what the regulations are,
8 Ed. There may be some disturbance requirement, but
9 I don't think there is.
10 Q. Getting back to the main issue which is
11 the extension of Lennings Lane, you stipulated for
12 the record that you do not need the road extended to
13 facilitate your project?
14 A. That's correct.
15 Q. Who, who is demanding the expansion of the
16 road?
17 A. My understanding is that the Lennings Lane
18 extension was something that was adopted as a part
19 of the master road plan by the County Transportation
20 Department and that that's how it was essentially
21 placed and planned for.

1 Can that be changed? I think it is
2 potentially possible it can be changed, but right
3 now -- I know that's your big concern due to your
4 proximity particularly to your residence there, but
5 that is where it originates from is part of the
6 original county road plan.
7 Q. And one other procedural question. I know
8 in regards to -- perhaps I'm ignorant about this,
9 but in regards to residential projects, it seems as
10 though community associations do have a right to
11 lend input regarding the concept, the landscaping,
12 you know, screening, issues regarding buffer areas,
13 things of that nature. We were brought into this
14 project extremely late. In fact, I think it's been
15 only two weeks ago you initially contacted me, and
16 it was right before the zoning signs were posted.
17 Perhaps you don't know this, but maybe Mr. Schmidt
18 can answer this. Does the community have any input
19 whatsoever regarding the concept plan or screening
20 buffer areas, things of that nature?
21 THE HEARING EXAMINER: Well, I would just

1 say to you, Mr. Chase, this is not a development
2 plan case. There are development review regulations
3 in Baltimore County where there is a community input
4 meeting as a proposed development proceeds through
5 that, those regulations and the process. I would
6 suspect, although I don't know that this site by
7 virtue of its zoning and history may very well be
8 exempt from that process.
9 MR. BISER: That's correct. The DRC has
10 made that decision.
11 THE HEARING EXAMINER: And the county has
12 what's called the Development Review Committee which
13 decides if there's exemptions from that process. So
14 this case is not going to go through the community
15 input meeting and so on and so forth.
16 Anyone who comes in and testifies, in
17 answer to your question about input, if you want to
18 offer testimony about, Gee, we want to see them
19 plant a row of evergreens or we want them to do this
20 or that, that's a decision that I can make and can
21 require, and it would be made as part of any

1 approval, assuming I would assume, assuming I would
2 approve the project. I could attach any kind of
3 restriction or condition.
4 So the community does have input by
5 appearing at this hearing and testifying and telling
6 me what it is what you want and why you want it, but
7 this is not a development plan case where there will
8 be a meeting in the community, for example. Does
9 that answer your question?
10 MR. CHASE: Okay.
11 BY MR. CHASE:
12 Q. One other question in regards to Yellow
13 Brick Road. What after -- assuming your project
14 gets built, how will it end? Will there be a
15 cul-de-sac? Will it be a dead end for future
16 inspection, extension? Do you have any knowledge
17 regarding that at all?
18 A. Ed, I don't. I believe that the street
19 will end essentially as it currently ends right
20 now. You know, Yellow Brick Road just stops right
21 now. So I will assume that when the road is

1 extended, it would just stop. Now, there may be
2 someone else here who can give --
3 Q. There's somebody else here from Baltimore
4 County that could --
5 A. There might be someone else who can shed
6 some light on that, but I don't know anything other
7 than what the plan shows.
8 THE HEARING EXAMINER: I do not know. I
9 don't know -- there may be a witness who testifies,
10 that might be able to testify about that. I do not
11 know.
12 MR. BISER: We're not planning to call
13 anyone from the Transportation Planning Department
14 of Baltimore County, so I don't know that we are
15 going to be able to provide that specific detailed
16 information to Mr. Chase today.
17 THE HEARING EXAMINER: You could call
18 over there, Mr. Chase, and see. I just don't know.
19 MR. CHASE: The community does have
20 concerns regarding the traffic flow through this
21 specific project, and I think it would be in order

1 for us to have someone here to answer those
2 concerns.
3 THE HEARING EXAMINER: Well, the only
4 problem is, is that that's, that's an issue that,
5 although it is a relevant issue, it may not be
6 relevant to this particular case.
7 In other words, you want to know where
8 Yellow Brick Road is ultimately going to go and how
9 it's going to end, and for, and I understand why you
10 want, why you want to know that, but I'm not here to
11 decide what the master plan of the road system in
12 Essex is going to look like or, or anything if you
13 understand what I'm saying. I've got to decide this
14 particular property, this particular petition.
15 What I would suggest, Mr. Chase, is
16 contacting either the Bureau of Public Works, maybe
17 Mr. Bowling's department or Mr. Faneeli or your
18 County Councilman. I guess this is Mr. Gardina's
19 district.
20 MR. CHASE: Bartenfelder.
21 THE HEARING EXAMINER: Bartenfelder, Mr.

Bartenfelder, and they can put you in touch with whoever. But those are more global issues than what the issue is before me.

MR. BARHIGHT: The property is actually in Mr. Gardina's, but affects residential areas that are in Mr. Bartenfelder's.

THE HEARING EXAMINER: The line is right near there?

MR. BARHIGHT: Yes.

THE HEARING EXAMINER: I know you indicated it was close.

MR. CHASE: I have no further questions of Mr. Leo, but I would reserve the right to speak here.

THE HEARING EXAMINER: Absolutely. I'll give you an opportunity to testify. Okay. You want to take a recess?

MR. BISER: Yes.

THE HEARING EXAMINER: All right. We'll take about a five-minute recess and then reconvene.

MR. BARHIGHT: Thank you.

1 (A brief recess was taken.)
2 THE HEARING EXAMINER: Let's get back on
3 the record if everybody can be seated, and we'll
4 continue with the examination of Mr. Leo. Mr.
5 Biser, any further questions?
6 MR. BISER: I have a few additional
7 questions
8 RECROSS-EXAMINATION BY MR. BISER:
9 Q. Mr. Leo, the building that's proposed
10 here, is this a pre-engineered metal building?
11 A. Yes, it is.
12 Q. And the details of which would be shown
13 now on the architectural drawings?
14 A. They should be.
15 Q. I know we talked about Baltimore Rigging.
16 They're one of the adjoining land owners, are they
17 not?
18 A. Yes.
19 Q. Do you know whether they have a, have a
20 parcel or parcels for sale or available for sale
21 presently?

A. They do have a parcel for sale.
Q. And where is that parcel?
A. Essentially north of this site. It's --
Q. And how -- I'm sorry.
A. It's north and -- when I say north --
Q. Can you show us --
A. Yeah.
Q. -- where it is?
A. My understanding is it's north, not only north of this site here, but to the street going back, some configuration.
Q. And did you have any discussions with them about purchasing that parcel?
A. They provided me information about the site.
Q. And how much land did that parcel consist, consist of?
A. I couldn't even tell you the total acreage. It was maybe 15 to 20 acres.
Q. Did you make an offer to purchase that property?

1 A. No, I did not.
2 Q. And why not?
3 A. Because I didn't see how that land site
4 would fit in with our overall plan to build this
5 project on an expedited basis.
6 Q. Was that -- did you become aware of that
7 parcel after you had this property under contract?
8 A. I'm not sure when I became aware of that.
9 Q. Did you have any engineers look at that
10 parcel, in addition to this parcel, to somehow use
11 it together or independently?
12 A. No.
13 Q. Have you done any studies or had any
14 studies done for you as to what the impact would be
15 on fire safety issues if the only access along this
16 cul-de-sac to this property and the other properties
17 that are on Yellow Brick Road if Lennings Lane is
18 not connected?
19 A. We've had some discussions with some of
20 the parties within the county about that, yes.
21 Q. Have you had any studies done?

1 A. Not any studies done.
2 Q. If, if there was a problem with Yellow
3 Brick Road, there's no other access to these
4 buildings back there by fire and emergency vehicles,
5 is there, other than Yellow Brick Road?
6 A. That is correct today. We have spoken
7 with the County relative to that question in an
8 attempt to address Mr. Chase's concern and our
9 concern about fire safety as well in that scenario.
10 Q. Well, Mr. Chase and, and the organization
11 and his community association he represents does not
12 want Lennings Lane in --
13 A. Right.
14 Q. -- is that your understanding?
15 A. Yes.
16 Q. And if Lennings Lane does not go in, that
17 presents all the users along Yellow Brick Road with
18 the situation where the only access to their
19 properties by fire and other emergency equipment is
20 on Yellow Brick Road, correct?
21 A. Yes, that is correct. However, there is a

1 third alternative.
2 Q. And what is that alternative?
3 A. Well, the alternative is, and this is the
4 concept that we have spoken with the street
5 department and fire department about, the issue of
6 Lennings Lane primarily rose and was the concern
7 about fire, the exact point you're, you're raising,
8 and the concept that we raised with them was
9 creating a dedicated fire lane from Philadelphia
10 Road to Yellow Brick Road with break-away fences at
11 both ends of the fire lane.
12 This would allow for fire access in the
13 event that Yellow Brick Road is blocked. It would
14 allow for an all-weather surface to be created so
15 that the trucks could come in and out. The
16 break-away fence would allow the fire department to
17 enter the area unrestricted. Fourth, it would
18 eliminate any automobile traffic coming up and down
19 Lennings Lane, and, and that addressed the initial
20 concern of the fire department and the
21 Transportation Department about fire access.

1 Also, apparently the fire department in
2 this area is familiar with dedicated fire lanes the
3 and-break away gates scenario which we have used and
4 seen in other parts of the country that we've been
5 involved with.
6 Q. But you're -- the plat that you have here
7 and all of the petitions that you have filed,
8 etcetera have nothing about that, correct?
9 A. That is correct.
10 Q. So you could get this variance and special
11 exception and not have any break-away gates or other
12 access, correct?
13 A. Well, as the -- the application that we
14 have for special exception deals with our specific
15 improvements. The issue of Lennings Lane and Yellow
16 Brick Road is a part of the master road plan for the
17 County and it's a separate and detached issue.
18 Q. Well, the public health and safety is not
19 a separate issue from the special exception or
20 variance, is it?
21 A. I'm not saying that the public safety

1 should be compromised at all.
2 Q. So you think in order for you to get the
3 special exception or variance that you need access
4 by Lennings Lane, correct?
5 A. No. I'm not saying that at all.
6 Q. Well, that's why you went ahead and
7 developed and explored these break-away gates
8 because you were concerned about access, correct?
9 A. I'm concerned about access relative to the
10 fact that the community groups that are here I would
11 suspect would have objection to road traffic coming
12 up on to Philadelphia Road, and in trying to
13 anticipate that, trying to come up with a workable
14 solution that would satisfy the community's
15 situation, the fire department's situation, our
16 needs and the county's needs, we came up with and
17 developed this concept. That's why we had a meeting
18 specifically about the concept of creating a
19 dedicated fire lane so as to eliminate the concerns
20 that we suspected the local community groups would
21 raise.

1 Q. So, Mr. Leo --
2 A. Excuse me. If I can finish?
3 Q. I apologize. I thought you were.
4 A. I'm not finished. As far as we're
5 concerned, Lennings Lane could go away. We have no
6 interest in Lennings Lane. We don't -- we wish it
7 was not there, but it is there. And so as a part of
8 the County road plan, we have to deal with it as it
9 is today.
10 Now, what may happen as part of a
11 political solution or as something that's worked out
12 with the community groups, if that's an alternative
13 and somehow Lennings Lane can go away and a fire
14 lane be created and satisfy these various
15 departments' concerns, we're happy with that.
16 Either way.
17 Q. Mr. Leo, would you agree as an expert in
18 real estate development that in order to assure
19 public health, safety and welfare that additional
20 access is needed for fire and other rescue equipment
21 through Lennings Lane or a like access?

A. Do I believe that there should be some type of access?

Q. Correct.

A. I think there should be.

Q. And so why wasn't that a part of the plans that you brought here today with your petition for variance and special exception?

A. Because our special exception has nothing to do with the road improvements.

Q. But you would agree --

A. Our special exception has to do with a piece of real estate which we're acquiring from BG&E which we're improving.

Q. But you're also aware that in order to get your special exception you have to show that there's not any impact on the safety, health and welfare of the people in the area, correct?

A. Um-hum, (Nodding head yes.)

Q. Is that correct?

MR. BARHIGHT: Well, objection. Now he's asking for a legal opinion.

1 A. I'm not sure -- I don't know what the
2 regulations are specifically. I'm sure we have to
3 design a plan.
4 MR. BARHIGHT: Excuse me. Objection.
5 He's not even properly stated the question at
6 502.1. So for that reason alone, I object to the
7 question.
8 THE HEARING EXAMINER: I'll sustain the
9 objection. Restate your question, Mr. Biser.
10 BY MR. BISER:
11 Q. Mr. Leo, you would agree that as a real
12 estate expert developer, particularly with these
13 kinds of sites, that you have a safer site and a
14 safer community if you have sufficient adequate
15 access by fire and other safety and emergency
16 vehicles, correct?
17 A. Yes.
18 Q. And you would agree that this site and the
19 adjoining property owners are safer if there's
20 additional access other than Yellow Brick Road by
21 way of Lennings Lane?

A. Yes.

Q. And you would agree, too, that if Lennings Lane is not open that that additional access could be gained through the break-away gates and the other devices that you talked about?

A. Possibly, yes.

Q. Okay. But that is not a part of your petition for special exception or variance at this point?

A. That's correct.

Q. Do you intend to make that a part of your petition in the event that Lennings Lane is not to be completed for road traffic?

A. Well, it depends on what you mean. If, if -- what -- why don't you ask me the question again?

MR. BARHIGHT: I object because, and I think it's important to, to be heard on this. The special exception area does not include Lennings Lane or Yellow Brick Road. We are only here before you to seek approval for the improvements and the

1 special exception and the use and the variances
2 within the four corners of the zoning lines.
3 THE HEARING EXAMINER: However, as I
4 understand it, the testimony has been that Yellow
5 Brick Road will, indeed, be extended to serve this
6 property --
7 MR. BARHIGHT: Correct.
8 THE HEARING EXAMINER: -- and that
9 Lennings Lane -- I'm trying to remember what he
10 said. Isn't it part of the contract that a portion
11 of Lennings Lane is to be constructed?
12 MR. BARHIGHT: Yes. BG&E has an
13 obligation currently with Baltimore County to extend
14 Yellow Brick Road and to extend Lennings Lane, and
15 the agreement between, as Mr. Jada, Mr. Leo has
16 testified, the agreement between BG&E and
17 Westmoreland address that issue as well; however,
18 Lennings Lane is shown as a master plan road.
19 We don't have a choice about whether we
20 show it on our plan or not. Baltimore County
21 requires us to show existing and proposed roads.

1 Baltimore County is proposing the extension of
2 Yellow Brick Road and the extension of Lennings
3 Lane. It has nothing to do with the special
4 exception.
5 MR. BISER: Excuse me. If I may be heard
6 on this. It has everything to do with the special
7 exception.
8 For Mr. Barhight to argue that the
9 requirements to protect the health, safety and
10 welfare only surround the perimeter of the property
11 is ludicrous. We're talking about its impact on all
12 of the roadways and all of the access and to the
13 adjoining and adjacent land owners.
14 This is the longest cul-de-sac in
15 Baltimore County. It is accessed and services many
16 different properties along the way. And to say that
17 it's not important to know whether Lennings Lane is
18 going to go in and have access to a trucking
19 facility that has tractor trailers going up a long
20 cul-de-sac is ludicrous. I think it's very germane
21 to the issue here.

1 MR. BARHIGHT: I think Mr. Biser must
2 misunderstand me and I may have misstated.
3 Obviously, we have to prove health, safety and
4 general welfare and the impacts.
5 We don't get to decide whether Lennings
6 Lane goes in or not. We don't get to make that
7 decision. That is made by Baltimore County.
8 What Mr. Leo has testified is that if
9 Baltimore County says Lennings Lane goes in, BG&E is
10 going to build it. If we can talk Baltimore County
11 out of that and put in a fire safety break-away
12 system, then that's hopefully what will occur, but
13 today Baltimore County has made it clear Lennings
14 Lane is going in. We hope to be able to talk them
15 out of that, if possible. It would be helpful
16 perhaps if Mr. Biser would indicate his client's
17 position on this issue.
18 MR. BISER: We would know our position if
19 we knew before today what the reasons were for the,
20 the variance, and we don't and we're just learning
21 that now. We will state our position at a later

1 time.
2 THE HEARING EXAMINER: Okay. Well, I'm
3 not sure where we are. There's been argument. I
4 don't know if there's a question on the table or
5 not.
6 I mean, I will say that obviously the
7 applicant does have to meet the criteria that are
8 set out in Section 502.1, which impacts the health,
9 safety and general welfare of the locale I think is
10 the words that's used. So the locale is not the
11 four corners of the property.
12 On the other hand, I cannot make this
13 applicant, I don't believe, undertake certain
14 off-site improvements over which they have no
15 control.
16 I suspect what I could do -- I mean, I'll
17 hear from the various parties, and I could enter a
18 restriction, for example, requiring that before
19 building permits or use-and-occupancy permits are
20 issued for the project, assuming it went forward,
21 that there be a second means of access either by,

1 for fire and safety equipment either by way of an
2 extension of Lennings Lane or the break-away gates
3 that he's talked about if I found that that's
4 warranted in order to protect the public health,
5 safety and general welfare of the public, and then I
6 could just leave it up to Baltimore County.
7 The other thing, and I'll say this, Mr.
8 Biser, the test is whether this applicant will, will
9 cause and this proposed use will cause detrimental
10 impact to the health, safety and general welfare,
11 and to a certain extent, both you and Mr. Chase, I
12 think, are treading a little bit on let's talk about
13 global issues.
14 If I can, I would, I would say that the
15 present property owners on, on Yellow Brick Road may
16 have an interest in providing a second means of
17 access to their properties, but that doesn't have
18 anything to do with this site.
19 Whether this site is developed or whether
20 it's not developed does not necessarily resolve the
21 issue of whether an individual business presently

1 located on Yellow Brick Road wants to have two means
2 of access to its property.
3 So from that standpoint, I don't want to
4 get into whether the guy down the street also wants
5 his traffic to go out on Lennings Lane. Do you
6 understand what I'm saying?
7 MR. BISER: I understand perfectly,
8 Commissioner, and the important thing about this
9 variance and special exception requested is that it
10 does impact.
11 Obviously, if this building wasn't there,
12 the access to Yellow Brick Road and the other users
13 of it is the same. All right. But what we've done
14 is we've compounded it now with a request for a
15 trucking facility that has tractor trailers and
16 other trucks that are, are more prone to clogging
17 that access should they be involved in any type of
18 accident and that's why it's important for this
19 case.
20 THE HEARING EXAMINER: Plus, there's
21 increased traffic volume on that road and those

1 impacts. I understand that --
2 MR. BISER: Right.
3 THE HEARING EXAMINER: -- but it's, it's
4 sort of, it's an issue that there's got to be some
5 narrowing of it, although I certainly understand
6 where you're coming from.
7 MR. BISER: I'll go on to a different
8 subject.
9 THE HEARING EXAMINER: Very well.
10 BY MR. BISER:
11 Q. Mr. Leo, what -- I know you named a number
12 of properties that you looked at, but specifically,
13 did you look at any other properties on Route 40,
14 and if so, what are their addresses?
15 THE HEARING EXAMINER: Let me ask this,
16 because we've spent a lot of time on this issue,
17 what's the relevance?
18 In other words, this applicant has come in
19 and said, I'm going to present to you, Mr. Zoning
20 Commissioner, a site plan for this site and it's
21 either going to pass muster or it's going to fail.

1 If there's ten other properties down the street, as
2 far as I'm concerned, and not maybe everybody else,
3 but in me deciding this narrow issue who cares? My
4 test is whether this property at this location meets
5 the requirements for special exception and variance
6 relief.
7 MR. BISER: Here's why it's important and
8 relevant. Because the Court of Appeals in Cromwell
9 versus Ward in discussing when a variance can be
10 granted and when it cannot be granted it shows --
11 THE HEARING EXAMINER: I have to make a
12 determination of whether it's unique.
13 MR. BISER: It's unique and not common to
14 other properties in the area --
15 THE HEARING EXAMINER: Well, you've asked
16 him that.
17 MR. BISER: -- and, therefore, it is
18 relevant not just to ask him that question, but also
19 see what other properties in the area he's looked
20 at, and that's why I have narrowed the question to
21 Route 40 and I will do so as to Route 7 to see what,

1 if any, impact there was or was not to other areas,
2 other properties he looked at in this area.
3 THE HEARING EXAMINER: Well, clearly,
4 there's got to be a defining of uniqueness, and
5 you've asked him specifically already the question
6 about uniqueness. I'll give you some latitude, but,
7 again, I don't want to ask about every property in
8 Baltimore County, Harford County, Baltimore City as
9 compared to this because we'll never get, we'll
10 never finish this case.
11 MR. BISER: I agree, and I'm just going
12 to focus on those properties around this area.
13 THE HEARING EXAMINER: Okay.
14 BY MR. BISER:
15 Q. Mr. Leo, what other properties did you
16 look at in Route 40 in Baltimore County with respect
17 to this site, and can you give me their addresses?
18 A. I know that there was some research done
19 along Route 40. I couldn't tell you what specific
20 properties were looked at.
21 Q. Who would know that?

A. I'm sure I have some records in my office relative to what was examined.

Q. And how about Route 7, the same question?

A. The same response.

Q. Okay. And how about in the White Marsh area, what other properties did you look at in the White Marsh area?

A. There were a number of properties that were reviewed. I don't recall all of the addresses or the locations at this time.

Q. How about the County Seat Building, did you consider that or did you make any offers?

A. County Seat Building?

Q. Yes.

A. I'm not familiar with it.

Q. How about --

A. Is there a specific address or something?

Q. Kelso Road. Did you look at any locations --

A. I don't recall looking --

Q. -- on Kelso Road?

1 A. I don't recall looking at something
2 specifically called County Seat Building.
3 Q. Do you recall looking at a location at
4 Kelso Road that had previously been occupied by UPS?
5 A. I don't recall that.
6 Q. Would you have that information available
7 as to what properties you looked at?
8 A. Well, not necessarily because the, in
9 addition to our searching for land sites, there's
10 also a third party, I mentioned earlier Fisher &
11 Company, that also has researched real estate as
12 well.
13 So in some cases, their search and my
14 search would have overlapped. In some cases, they
15 may have looked at something and eliminated it as a
16 possibility for one reason or another. So I'm not
17 privy to all, all the properties they would have
18 looked at as well. I know that I individually
19 looked at some properties in that area, but
20 specifically to the UPS building, I can't, I can't
21 tell you.

1 Q. Now, your company, Westmoreland, will be
2 the owner of this property and you are leasing it to
3 RPS, correct?
4 A. Yes.
5 Q. Do you have the lease already prepared
6 between Westmoreland and RPS?
7 A. The lease has been prepared. It has not
8 been executed.
9 Q. Okay. And what is the, the length of the
10 lease?
11 A. It's a ten-year lease.
12 Q. And what are the use restrictions that are
13 contained within the lease?
14 MR. BARHIGHT: Objection. We're really
15 starting to go far afield here.
16 THE HEARING EXAMINER: Well, I guess in
17 terms of as it might impact what's to be on this, on
18 this property, I'll overrule the objection.
19 THE WITNESS: When you speak of use
20 restrictions, what are you speaking of?
21 BY MR. BISER:

1 Q. The use of the property. You've -- we've
2 spent a lot of time testifying about how this
3 property was going to be used and the truck traffic
4 and all of that. What assurances do we or any other
5 adjoining property owners have that the use of this
6 property is going to be put to the uses that you've
7 testified?
8 A. Well, the lease provides for RPS to meet
9 all of the local ordinances and rules of law
10 requiring their operation at that location.
11 Q. So other than rule-of-law restriction,
12 there's no internal restriction in the lease that
13 restricts the use to the uses that you have
14 testified; is that correct?
15 MR. BARHIGHT: Objection. I mean, now
16 we're getting into some legal niceties. If the
17 petition for special exception and the petition for
18 variance are granted, we're bound by, and so is RPS,
19 this site plan. Now it's kind of an elliptical
20 legal argument that you have to make looking at the
21 terms and conditions of the lease and really calls

1 for a legal conclusion, but Mr. Biser knows that
2 this site plan will bind whomever uses that
3 property.
4 MR. BISER: Excuse me, Mr. Commissioner.
5 There are many areas that it does not bind. For
6 instance, you asked a very good question about how
7 about people coming off the street to deliver their
8 packages as other businesses do. There's no
9 restriction for that under Mr. Barhight's theory.
10 They get the, they get the variance. They can
11 increase this traffic notwithstanding this variance
12 just by, by hanging out a sign, we take packages,
13 etcetera. It has a lot of bearing on this issue.
14 BY MR. BISER:
15 Q. What restrictions, sir, are there within
16 the lease on the use of this building and this
17 property?
18 MR. BARHIGHT: Objection. Asked and
19 answered.
20 THE HEARING EXAMINER: Overruled. Are
21 there other than-- other than the requirement that

1 they have to comply with the law, are there any
2 other restrictions? I mean, are there any,
3 restrictions as to the amount of trucks or traffic
4 or --
5 THE WITNESS: Not really. There's not a
6 restriction in the lease. The facility is designed
7 within certain guidelines and, of course, as a part
8 of the lease, we have the actual building plans and
9 design.
10 You know, they're obligated to, of course,
11 pay us rent and make their own internal improvement,
12 such as the conveyor system and things of that
13 nature, for their operation. Beyond that, you know,
14 I'm sure they wouldn't be signing that lease unless
15 they intended to be there.
16 THE HEARING EXAMINER: Okay.
17 BY MR. BISER:
18 Q. Is there any restriction on subletting?
19 A. They have the right to sublet to an
20 affiliate company.
21 Q. How about a non-affiliated company? How

1 about Federal Express or UPS or some other
2 competitor that does not operate in the same
3 fashion?
4 A. Well, Federal Express is the parent
5 company of, or FDX is the parent company of RPS.
6 Q. That's a bad example. Some other --
7 A. That's a great example.
8 Q. With some other delivery-package company,
9 are there any restrictions of subleasing or
10 assignment of this lease to a competitor?
11 A. There -- any subleasing beyond that
12 internal entity would have to be approved by
13 Westmoreland.
14 THE HEARING EXAMINER: So there are
15 restrictions about subletting?
16 THE WITNESS: Right.
17 BY MR. BISER:
18 Q. And are there any further restrictions in
19 the subletting provision that restricts the
20 subtenant from expanding the use of the property?
21 A. No. That would be an issue we would

1 normally explore at any time that that would, that
2 that event would occur.
3 MR. BISER: That's all the questions I
4 have.
5 THE HEARING EXAMINER: Anything on
6 redirect?
7 MR. BARHIGHT: Yes. I'll try to be brief.
8 REDIRECT EXAMINATION BY MR. BARHIGHT:
9 Q. Mr. Leo, you were asked some questions
10 with regard to the difference between the 110,000
11 square feet and the roughly 20,000 square foot
12 addition expansion for the future. Do you recall
13 that line of questions?
14 A. Yes.
15 Q. And I believe you were asked questions
16 with regard to the expected addition of trucks and
17 then also the expected addition of vans?
18 A. Right.
19 Q. Do you recall that line of questions?
20 A. Yes.
21 Q. And during those questions and answers,

1 you answered at one point with the number 80 to 90
2 with regard to the vans, and I didn't understand
3 what that 80 or 90 referred to. Could you please
4 explain to the Zoning Commissioner what that 80 to
5 90 figure referred to?
6 A. The, THE initial phase of the building has
7 a projected 67 vans out of the facility, and if
8 we're essentially increasing the building size by
9 roughly 20 percent --
10 THE HEARING EXAMINER: Then you added
11 another 12 to that, roughly 13?
12 THE WITNESS: Right. I'm figuring
13 that's in the neighborhood of what we're discussing.
14 THE HEARING EXAMINER: You didn't mean
15 another 80 or 90 vans?
16 THE WITNESS: No, not another 80 or 90 on
17 top of that. No. The site would not permit it.
18 THE HEARING EXAMINER: Okay.
19 BY MR. BARHIGHT:
20 Q. I would like to direct your attention to
21 another line of questions that related to the

building operation during cross-examination, and you had mentioned during one of your answers that the building could be redesigned to meet the floor-area ratio requirement. Could you please briefly explain to the Zoning Commissioner the nature of those changes that would need to be made?

A. Sure. Can I approach the drawing up here?

Q. Please.

THE WITNESS: Commissioner, it might be helpful if you came back over.

THE HEARING EXAMINER: Do you want me to come back over here?

THE WITNESS: Yeah, if I can describe it to you.

THE HEARING EXAMINER: Sure.

THE WITNESS: Here we go.

MR. BARHIGHT: For the record, the witness is returning, referring to Petitioner's Exhibit Number 2.

THE WITNESS: I'm going to need to turn

1 this just a little bit.
2 THE HEARING EXAMINER: That's okay. I
3 can see it.
4 THE WITNESS: Can you see it?
5 THE HEARING EXAMINER: Yes.
6 THE WITNESS: I can scoot it back. That
7 may be easier.
8 THE HEARING EXAMINER: That's fine.
9 THE WITNESS: Anybody that wants to
10 around, I'll happy to have you. Okay. Here is the
11 conveyor system. These are the vans backing up to
12 the conveyors.
13 The method of which we could approach
14 meeting that land ratio would be we could create a
15 roofing structure simply over these conveyors, and
16 then there would be dock seals and roll-up doors
17 within which the vans would back up against and then
18 be able to load and unload packages.
19 So you'd have essentially what we could
20 call a pier dock which would be, the roof line would
21 be a long narrow strip here and then a long narrow

1 strip here and then the roof line, once again, from
2 this point back, and then, once again, essentially
3 following this configuration would be your
4 boundary. Very inefficient, but it could be done.
5 That is, that is a method.
6 THE HEARING EXAMINER: Okay.
7 BY MR. BARHIGHT:
8 Q. What impact, if any, would you expect
9 there to be on the community if you were forced to
10 put these operations outside versus having them
11 completely contained within the proposed building?
12 A. Well, I suspect that you would have noise,
13 although no really significant addition is based on
14 the sound barrier here. I think you would have a
15 safety issue relative to the employees because they
16 would always be outside. Not that they wouldn't
17 enjoy a nice day like today, for example, but in the
18 winter or whatever it could be dangerous. Security
19 for those individuals, and I think just the sheer
20 ability to keep control of the environment. I'm not
21 sure exactly how that could be done.

1 We have seen facilities where just one
2 pier dock has been created, and there's continual
3 problems. A lot -- with it all being enclosed, you
4 keep it a better controlled environment. If there's
5 any noise, it's also contained in the building. You
6 know, those are some of the major advantages.
7 Q. You can take your seat again. During your
8 cross-examination, Mr. Biser asked you some
9 questions with regard to the Baltimore Rigging
10 site. Do you recall that?
11 A. Yes.
12 Q. Is that site adjacent to this property?
13 A. Yes, it is.
14 Q. And could you going back to the -- sorry
15 about that.
16 A. Do you want me to come back up here?
17 Q. Yes.
18 A. Okay.
19 Q. With reference to the rendered colored
20 site plan, could you please locate the Baltimore
21 Rigging site?

A. Sure. In this general area.

Q. Okay.

A. They do have an existing building.

MR. BISER: For the record, as you look at the plan, it's just to the right of your property or the property under consideration?

THE WITNESS: Right. I think it's kind of in the northeastern.

MR. BISER: Northeastern.

THE WITNESS: Northerly of the property.

BY MR. BARHIGHT:

Q. And does Baltimore Rigging have any structures on their property?

A. Yes, they do.

Q. Do they make use of that property today?

A. Yes, they do.

MR. BARHIGHT: If I may have a moment, I might be done.

(Brief pause.)

MR. BARHIGHT: No other witness -- no other questions of this witness at this time.

1 THE HEARING EXAMINER: Anything further
2 of this witness?
3 MR. BISER: No. Thank you.
4 THE HEARING EXAMINER: Thank you, sir.
5 You may step down.
6 MR. BARHIGHT: Given the hour of the day,
7 might I suggest a lunch break since it is ten of
8 12? Otherwise, I'll put a witness on for just a few
9 moments and --
10 THE HEARING EXAMINER: Does somebody want
11 to answer their phone? Fortunately, we're not
12 recording.
13 MR. BARHIGHT: We can suggest a 45-minute
14 lunch break or I can put another witness on for a
15 few minutes.
16 THE HEARING EXAMINER: Before we do that,
17 let me have Counsel come up to the bench. Let's go
18 off the record.
19 (Whereupon, there was an off-the-record
20 discussion held.)
21 THE HEARING EXAMINER: All right. We'll

1 break for lunch.
2 (Luncheon recess.)
3 THE HEARING EXAMINER: Let's get back on
4 the record. Gentlemen, we all can be seated if
5 you're more comfortable, and ladies. Gentlemen and
6 ladies and gentlemen, I'm sorry.
7 Over the lunch break, I checked on my 2
8 o'clock case and, again, when these cases are filed,
9 the attorneys give a time estimate, and I'm looking
10 at this one. It says three hours, and so that the
11 docket clerk set another case in this afternoon
12 thinking that a case that would start at 9 would
13 finish in the morning.
14 Obviously, we're not finished in the
15 morning and we've got a lot of ground to cover, and
16 my 2 o'clock case appears to be a contested case as
17 well just based on my review of the file and
18 somebody just coincidentally happened to come into
19 the office and look at it over the break and I asked
20 them about it.
21 So I don't see how we're going to be able

1 to finish this case today because if that's a
2 contested case -- I can certainly hear this one for
3 a while and move them back a little bit of time, but
4 I guess the question is just what's the most
5 expeditious way and the most reasonable way to
6 proceed?
7 MR. BARHIGHT: What I would like to
8 suggest, since that we now even have probably less
9 than an hour because obviously they're posted at 2,
10 is that we spend that time identifying how many
11 witnesses we think each side is going to need to
12 call and how much time we actually do need to
13 complete this case and then define those dates and
14 times on our respective calendars so we can get it
15 properly scheduled.
16 I think it's unfair for us to put a
17 witness on and that witness may not be able to carry
18 over and complete or may not be able to complete and
19 then be forced to carry over for maybe even a couple
20 of weeks. I think it's grossly unfair to a witness
21 to have to be stopped in the middle of their

1 testimony for a multiple-week period of time.
2 THE HEARING EXAMINER: I mean, I prefer
3 not to put a witness on if we can't finish them. If
4 we have somebody who we can finish in a half an hour
5 or something like that, that would be fine.
6 MR. BARHIGHT: I don't think that's the
7 case with the other two expert witnesses that we
8 have.
9 THE HEARING EXAMINER: How many witnesses
10 do you have, Mr. Barhight?
11 MR. BARHIGHT: Two.
12 THE HEARING EXAMINER: Two more.
13 MR. BARHIGHT: Two expert witnesses.
14 THE HEARING EXAMINER: That's Mr.
15 Martin?
16 MR. BARHIGHT: Yes, and Mr. Schmid.
17 MR. BISER: Mr. Who?
18 MR. BARHIGHT: Schmid.
19 THE HEARING EXAMINER: He's a traffic
20 witness I believe?
21 MR. BARHIGHT: Yes.

1 THE HEARING EXAMINER: Mr. Martin is a
2 registered landscape architect?
3 MR. BARHIGHT: Landscape architect, land
4 planner and zoning expert.
5 THE HEARING EXAMINER: From G.W.
6 Stephens. Well, then Mr. Biser, unless you have any
7 objection, does that make sense to you?
8 MR. BISER: It makes sense to me. I
9 don't think that in a 45-minute period of time that
10 we can get a lot done. So it makes sense to me if
11 we're going to reschedule it to do that.
12 THE HEARING EXAMINER: Okay. Why don't
13 we then close the hearing. I apologize for bringing
14 everybody back from lunch, but I thought when we
15 recessed at whatever time that was, I thought that,
16 at 12:30, I thought that the afternoon case may not
17 be a contested case and we might be able to just
18 work around it, but it doesn't appear to be the
19 case.
20 Why don't I have Counsel come back to my
21 office and we'll set another date or two. Mr.

1 Biser, do you have any idea as to how many witnesses
2 you're looking at?
3 MR. BISER: I don't.
4 THE HEARING EXAMINER: Do you have a
5 range, three to five, seven to nine?
6 MR. BISER: I think, I think three to
7 five is probably the range. The exact number and
8 who they are depends on what these other witnesses
9 have to say.
10 THE HEARING EXAMINER: Okay.
11 MR. BARHIGHT: We can figure on five as
12 being the maximum?
13 MR. BISER: Well, I don't want to be
14 precluded from calling more if I need to.
15 THE HEARING EXAMINER: Six?
16 MR. BARHIGHT: Nor am I suggesting that.
17 MR. BISER: You said -- maximum means
18 maximum.
19 THE HEARING EXAMINER: Well, I just don't
20 want to -- I just want to know -- I guess my
21 question is right now, think about it as we're

1 walking back there, whether we're going to need one
2 day or more.
3 MR. BISER: I was thinking a day and a
4 half.
5 MR. BARHIGHT: Then why don't we do two
6 days?
7 THE HEARING EXAMINER: Then I'll set it
8 accordingly, but I mean, I just, I don't want to run
9 out of time. I'll -- let's go back and see what
10 we've got available on your schedules and my
11 schedule and room availability and we'll reset it.
12 Ladies and gentlemen, that will conclude
13 today's proceedings and everyone here -- is Mr.
14 Chase still here? Mr. Chase is here.
15 MR. BARHIGHT: He might as welcome back.
16 THE HEARING EXAMINER: Mr. Chase, why
17 don't you come back so you'll know. Everybody else,
18 I assume, is represented by counsel.
19 MR. BARHIGHT: That's all I wanted to make
20 clear on the record is that everyone who's
21 represented by counsel or who appeared without

1 counsel will participate in the rescheduling so
2 there's no need to re-post or readvertise or come
3 back and put the new date on the record because
4 everyone affected will be in the meeting.
5 THE HEARING EXAMINER: Yes. Is everybody
6 back here your client, Mr. Biser?
7 MR. BISER: These two gentlemen are.
8 This gentleman, no.
9 MR. BARHIGHT: He's with BG&E.
10 THE HEARING EXAMINER: He's with BG&E.
11 He's with you?
12 MR. BARHIGHT: He's covered.
13 THE HEARING EXAMINER: Everybody over
14 there, okay. Thank you all very much. That will
15 conclude today's proceedings.
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21

1 CERTIFICATE OF NOTARY PUBLIC/REPORTER

2

STATE OF MARYLAND)
3 :
COUNTY OF BALTIMORE)

4

5 I hereby certify that the foregoing
6 transcript is a true and accurate record of the
7 proceedings.
8 In witness whereof, I have hereunto set
9 my hand and affixed my Notarial Seal, this 12th day
10 of May, 1999.
11
12 Michele D. Lambie
13 MICHELE D. LAMBIE
14 Notary Public in and for the
15 State of Maryland
16 My Commission Expires
17 July 1, 2000
18
19
20
21

LAWYER'S NOTES

PAGE	LINE	

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Eves. - 410-367-3833

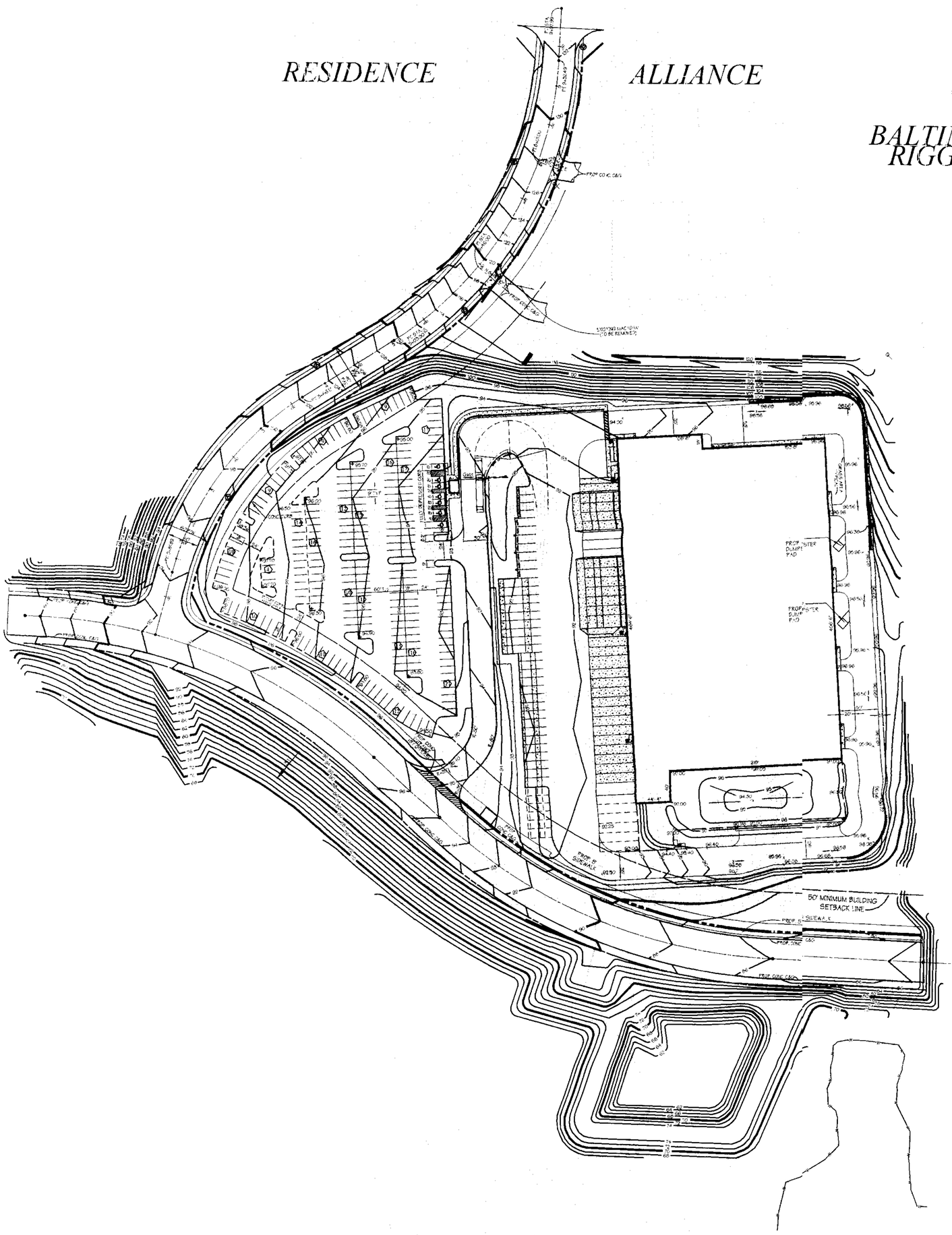
Ref No 3

Attachment II
RPS, Inc.
1999 (FY2000) Expected Traffic Flows for the Baltimore - MD Terminal

	Automobile 1999		P&D Van 1999		Linehaul 1999		Total Vehicle Flow 1999		
	Arrive	Depart	Arrive	Depart	Arrive	Depart	Arrive	Depart	
00:01 - 01:00									00:01 - 01:00
01:01 - 02:00									01:01 - 02:00
02:01 - 03:00					2		2		02:01 - 03:00
03:01 - 04:00		2			4		4	2	03:01 - 04:00
04:01 - 05:00		16			4	4	4	20	04:01 - 05:00
05:01 - 06:00	4	21				4	4	25	05:01 - 06:00
06:01 - 07:00	39	11		33			39	44	06:01 - 07:00
07:01 - 08:00	45	5		34			45	39	07:01 - 08:00
08:01 - 09:00									08:01 - 09:00
09:01 - 10:00									09:01 - 10:00
10:01 - 11:00									10:01 - 11:00
11:01 - 12:00									11:01 - 12:00
12:01 - 13:00	3						3		12:01 - 13:00
13:01 - 14:00	6						6		13:01 - 14:00
14:01 - 15:00									14:01 - 15:00
15:01 - 16:00									15:01 - 16:00
16:01 - 17:00		39	33				33	39	16:01 - 17:00
17:01 - 18:00	9	41	34				43	41	17:01 - 18:00
18:01 - 19:00									18:01 - 19:00
19:01 - 20:00									19:01 - 20:00
20:01 - 21:00									20:01 - 21:00
21:01 - 22:00	9					1	9	1	21:01 - 22:00
22:01 - 23:00	16	12				1	16	13	22:01 - 23:00
23:01 - 24:00	22	6					22	6	23:01 - 24:00
Total	153	153	67	67	10	10	230	230	Total

APR 28 1999
FAMHS

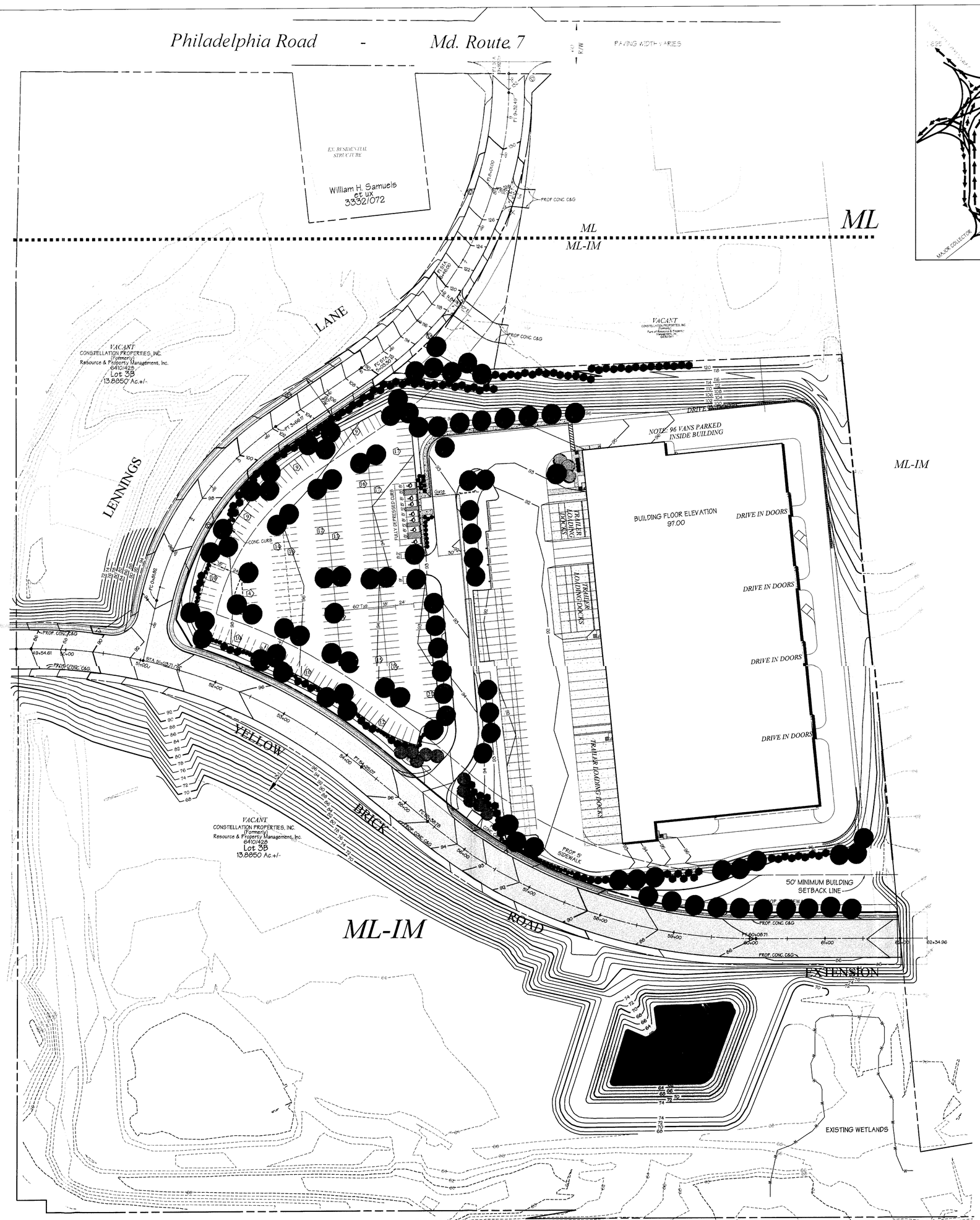
Pet X C 7 B-7



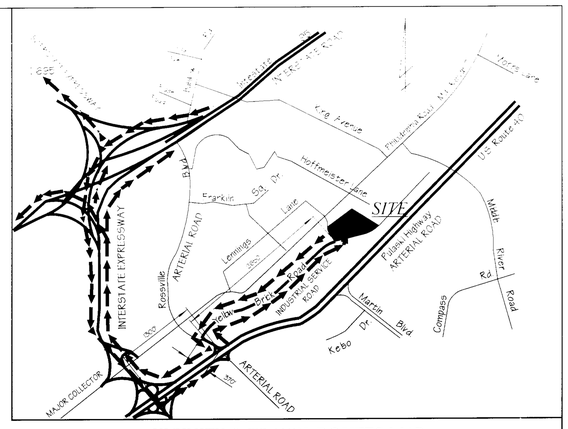
SCALE: 1"= 100'

SITE CONTEXT MAP

BASE MAP DATA FROM BALTIMORE COUNTY GIS



PLAN
SCALE: 1" = 50'



VICINITY & TRAVEL ROUTES MAP
SCALE: 1" = 1000'

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
658 KENILWORTH DRIVE, SUITE 100
TOWSON, MARYLAND 21204
(410) 825-8120

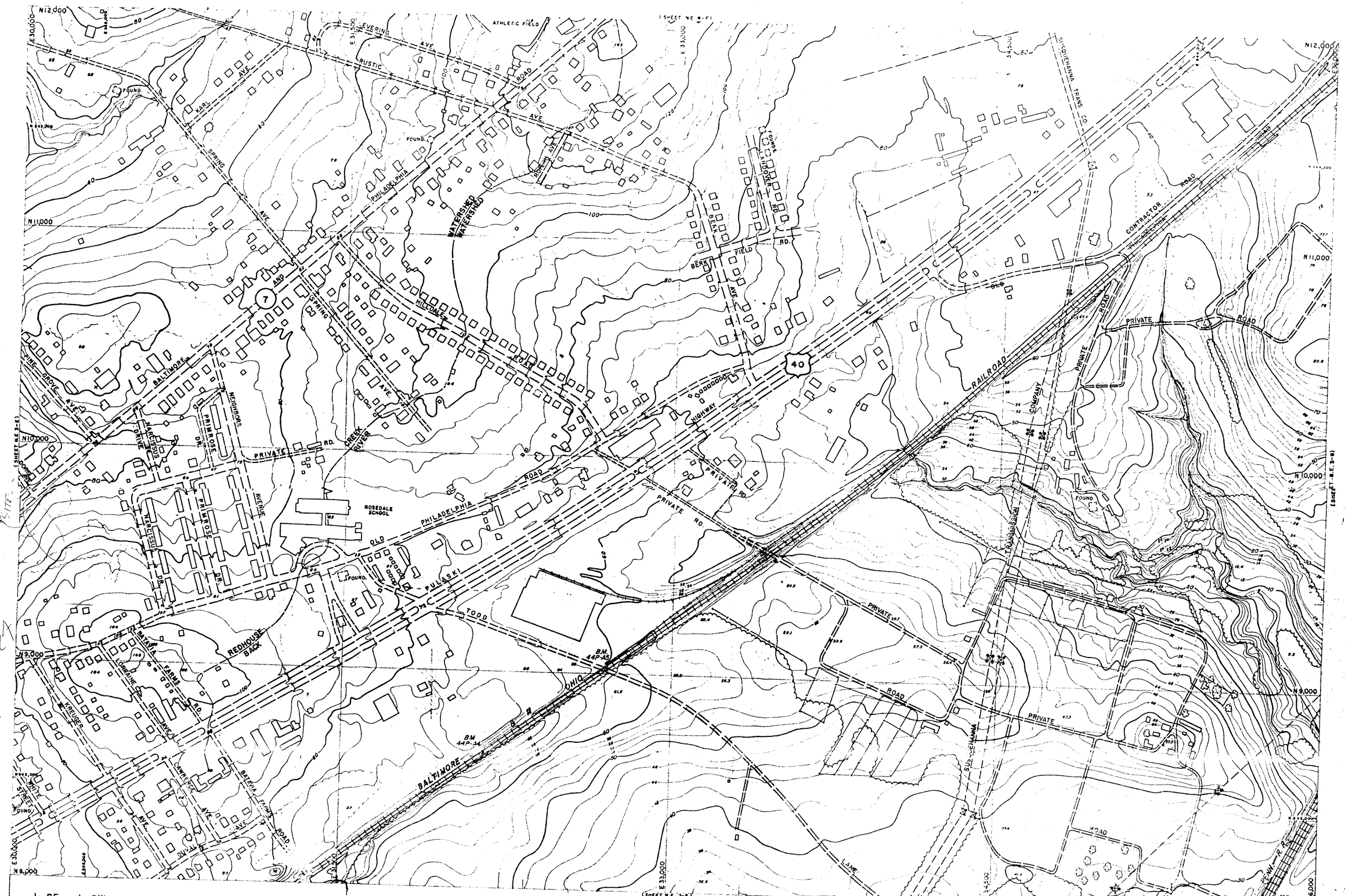
DEVELOPER/LESSEE
THE WESTMORELAND COMPANY, INC.
200 RANDOLPH AVENUE, SUITE 200
HUNTSVILLE, ALABAMA 35801
CONTACT: JADA R. LEO, PRESIDENT
PHONE: 1-256-539-5533

OWNER/LESSER
BGE COMPANY
39 W. LEXINGTON STREET
BALTIMORE, MARYLAND 21201

COLOR EXHIBIT FOR RPS DISTRIBUTION CENTER

ROSSVILLE INDUSTRIAL PARK
SECTION IV - LOT 3A
9114 THRU 9200 YELLOW BRICK ROAD
Election District 15
Councilmanic District 6
Scale: 1" = 50'
Tax Map 90 - Parcel 906
MAY 06, 1999
Sheet 1 of 1

Valero\Studio\gr rendering.dgn Nov. 07, 1998 16:20:27

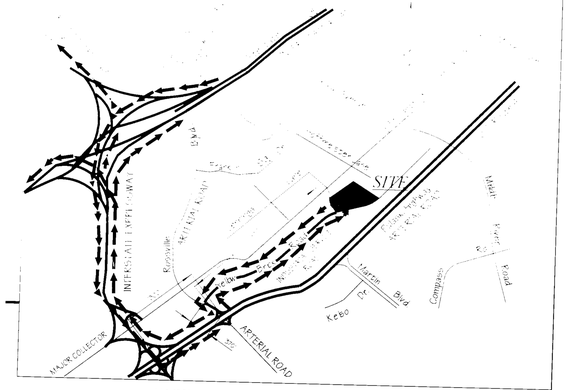


J-SE I-SW
J-NE I-NW

PHOTOGRAMMETRIC MAP OF BALTIMORE COUNTY METROPOLITAN AREA

REVISIONS			SCALE	LOCATION	SHEET
	BY	DATE	1" = 200'	ROSEDALE	N.E. 3-F
		9-15-54	DATE OF PHOTOGRAPHY APRIL 1953		

Topography Compiled by Photogrammetric Methods
AERO SERVICE CORPORATION - PHILADELPHIA, PA



VICINITY & TRAVEL ROUTES MAP
SCALE: 1" = 1000'

PLAN
SCALE: 1" = 20'

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
658 KENILWORTH DRIVE, SUITE 100
TOWSON, MARYLAND 21204
(410) 825-8120

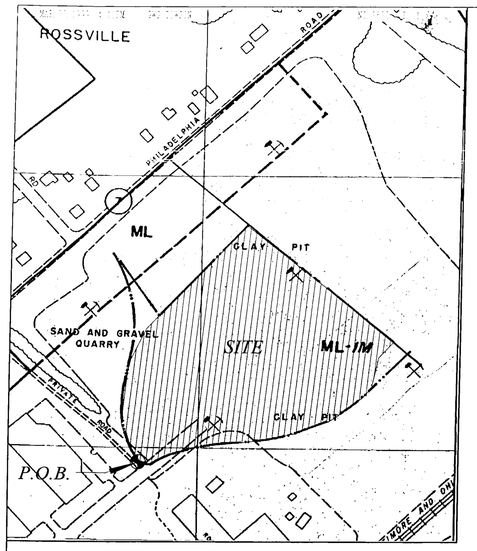
STATE OF MARYLAND — CYRIL LLOYD KERTTIN — LANDSCAPE ARCHITECT

DEVELOPER/LESSEE
THE WESTMORELAND COMPANY, INC.
200 RANDOLPH AVENUE, SUITE 200
HUNTSVILLE, ALABAMA 35801
CONTACT: JADA R. LEO, PRESIDENT
PHONE: 1-256-539-5533

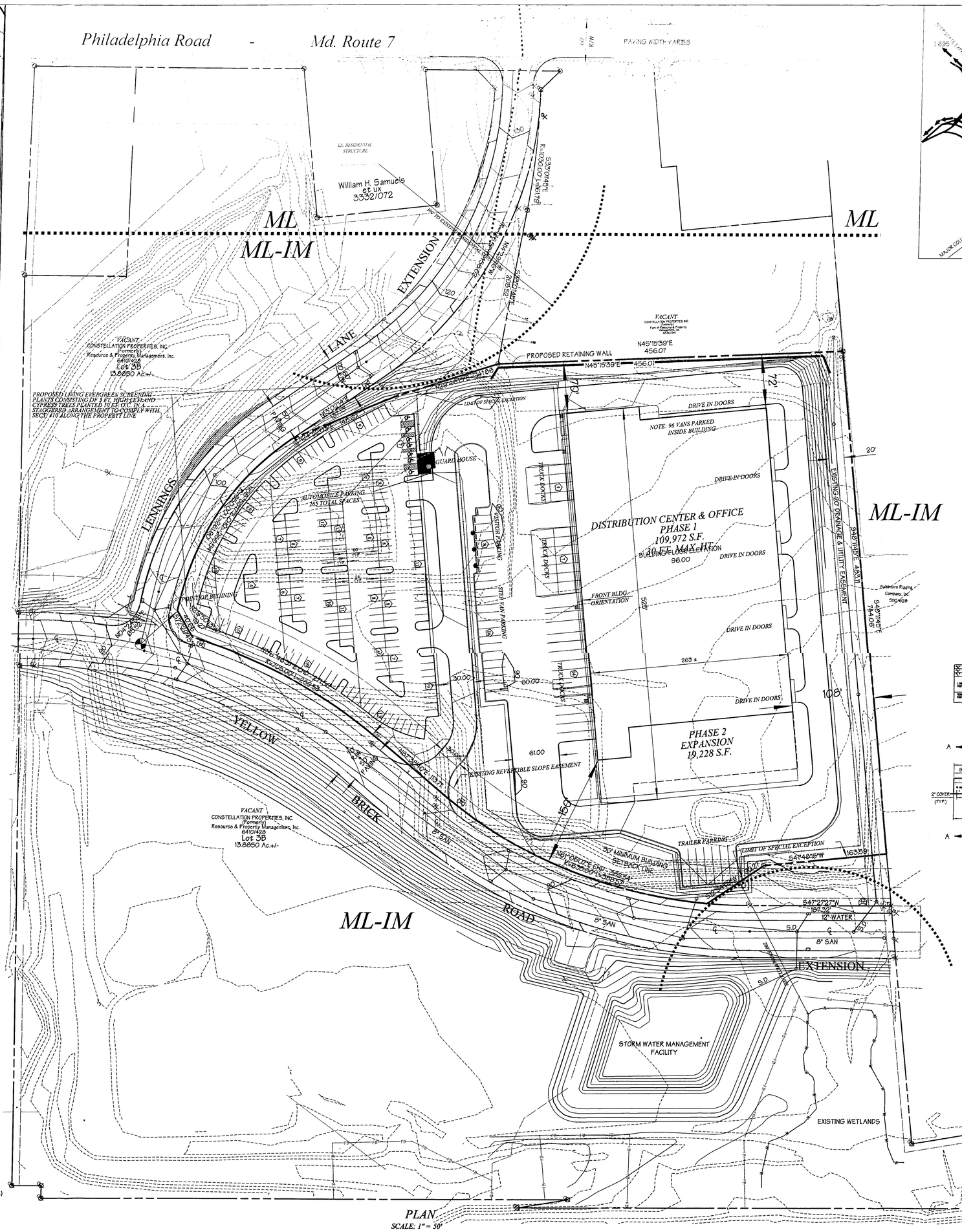
OWNER/LESSER
BGE COMPANY
39 W. LEXINGTON STREET
BALTIMORE, MARYLAND 21201

BUILDING INTERIOR EXHIBIT FOR RPS DISTRIBUTION CENTER

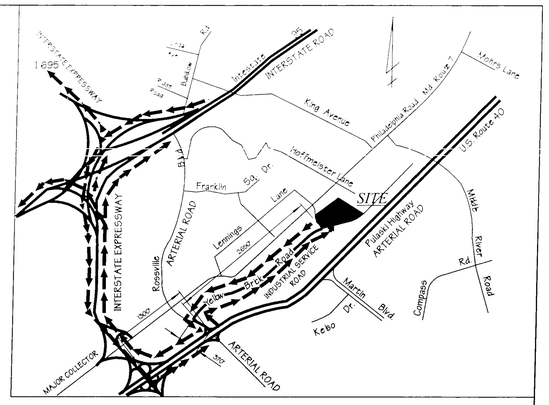
ROSSVILLE INDUSTRIAL PARK
SECTION IV - LOT 3A
9114 THRU 9200 YELLOW BRICK ROAD
Election District 15
Councilmanic District 6
Scale: 1" = 20'
Tax Map 90 - Parcel 906
MAY 06, 1999
Sheet 1 of 1



PART OF ROSSVILLE ZONING MAP NE 5-G
SCALE: 1" = 200'



PLAN
SCALE: 1" = 50'



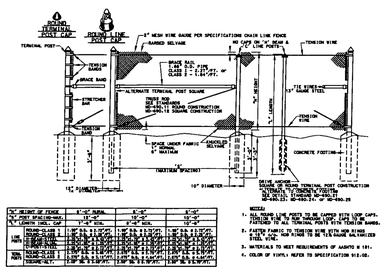
VICINITY & TRAVEL ROUTES MAP
SCALE: 1" = 1000'

90 PROPOSED GRADE

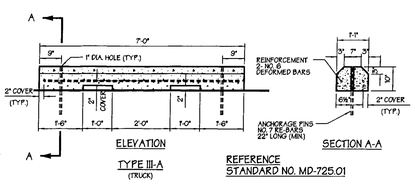
86 EXISTING GRADE

1½" BIT. CONC. BAND SN/SF
4½" BIT. CONC. BASE
4" AGG. BASE ASTM # 02940
4" AGG. BASE / SUBBASE CR-1 OR CR-6

TYPICAL PAVING SECTION
NOT TO SCALE



TYPICAL CHAIN LINK SECURITY FENCE DETAIL - 6' MIN HEIGHT
NOT TO SCALE



WHEEL STOP
NOT TO SCALE

GENERAL NOTES

1. THIS CLASS 1 TRUCKING FACILITY INCLUDING DRIVEWAYS, TRUCK PARKING OR AUTOMOBILE PARKING IS NOT WITHIN 300 FEET OF A RESIDENTIAL STRUCTURE AND / OR 200 FEET OF A WETLAND.
2. ROUTES TO THE SITE: TRUCKS FROM I-95 TO I-695 EXIT NORTH ON ROUTE 40 TO ROSSVILLE BLVD. THENCE NORTH ON ROSSVILE BLVD. TO YELLOW BRICK ROAD, THENCE EAST TO THE SITE ENTRANCE.
3. ROUTES FROM THE SITE: TRUCKS LEAVING THE SITE. TURN WEST ON YELLOW BRICK ROAD, THENCE TO ROSSVILLE BLVD., SOUTH TO ROUTE 40 THENCE SOUTH ON ROUTE 40 TO I-695, THENCE WEST TO I-95 NORTH OR SOUTH OR I-83 NORTH.
4. NUMBER OF TRUCKS USING THIS FACILITY OVER A 24 HOUR PERIOD = 150
5. NUMBER OF EMPLOYEES ON THE LARGEST SHIFT = 130
6. PARKING SPACES REQUIRED = 5 + 1 PER 2 EMPLOYEES ON LARGEST SHIFT = 70 SPACES
7. HOURS OF OPERATION IS MIDNIGHT TO MIDNIGHT - 7 DAYS A WEEK WITH MORNING PEAK HOURS FROM 6:00 AM TO 9:00 AM AND EVENING PEAK HOURS FROM 4:00 PM TO 8:00 PM.
8. MAX. NUMBER OF TRAILERS PARKED ON SITE OUTSIDE OF THE BUILDING = 50
9. TOTAL NUMBER OF ON-SITE AUTOMOBILE PARKING SPACES = 265 SPACES (7 HANDICAPPED SPACES INCLUDED).
10. SITE LIGHTING IS TO BE PROVIDED WITH BUILDING WALL PACKS AND ON-SITE POLE LIGHT STANDARDS UTILIZING CUT-OFF GLARE FIXTURES AS TO REFLECT LIGHT AWAY FROM ADJACENT PROPERTIES AND PUBLIC ROADS.
11. TELEPHONE SERVICE IS PROVIDED INSIDE THE BUILDING FOR TRUCK DRIVERS AND OTHER PERSONNEL.
12. MALE & FEMALE RESTROOMS AND A DRIVER'S ROOM SHALL BE PROVIDED IN THE BUILDING FOR TRUCK DRIVERS AND OTHER PERSONNEL.
13. NO JUNKED TRAILERS OR VEHICLES SHALL BE PERMITTED TO BE STORED ON THE SITE. NO AUTOMOTIVE OR TRUCK PARTS WILL BE STORED ON SITE.
14. NO OUTSIDE P.A. OR SOUND SPEAKERS SHALL BE PERMITTED ON SITE
15. CONCRETE WHEEL STOPS OR CAST IN PLACE CONCRETE CURBING WILL BE PROVIDED FOR ALL TRUCK AND AUTOMOBILE PARKING SPACES.
16. A MIN. 6 FT. HT. CHAIN LINK SECURITY FENCE IS TO BE PROVIDED AS SHOWN ON THE PLAN.
17. PROPERTY DOES NOT LIE WITHIN A 100 YEAR FLOOD PLAIN. THERE ARE NO OTHER WETLANDS OTHER THAN AS SHOWN.
18. THIS PROPERTY DOES NOT LIE WITHIN THE C.B.C.A.
19. ALL PASSENGER VEHICULAR PARKING AND MANUVERING AREAS WILL BE PAVED WITH BITUMINOUS PAVING AND BE PERMANENTLY STRIPED.
20. ALL TRUCKING FACILITY TRUCK PARKING AND MANUVERING AREAS WILL COMPLY WITH TRUCKING FACILITY REQUIREMENTS.
21. ALL PROPOSED SIGNS WILL COMPLY WITH SECTION 450 OF THE B.C.Z.R.
22. THE ONLY RESIDENTIAL STRUCTURE ABLE TO VIEW THE SITE WILL BE ADEQUATELY SCREENED FROM THE TRUCKING FACILITY WITH 6 FT. MIN. HEIGHT OPAQUE FENCE AND/OR RETAINING WALLS AND/OR LIVING EVERGREEN SCREEN PLANTS. NO OTHER RESIDENTIAL PREMISES, CHURCHES, SCHOOLS, HOSPITALS OR OTHER SIMILAR INSTITUTIONAL USES ARE LOCATED WITHIN VISUAL PROXIMITY TO THE SITE.
23. NO SLOPES WILL EXCEED 2:1. ALL SEDIMENT CONTROL & SOIL STABILIZATION MEASURES SHALL CONFORM WITH 1994 MARYLAND STANDARDS AND SPECIFICATIONS FOR SOIL EROSION & SEDIMENT CONTROL.
24. ALL WORK ASSOCIATED WITH THIS TRUCKING FACILITIES PLAN WILL BE COMPLETE AT THE ISSUANCE OF THE BUILDING USE AND OCCUPANCY PERMIT.
25. ADEQUATE DRAINAGE MEASURES WILL BE INCORPORATED IN THE DESIGN OF THIS TRUCKING FACILITY AND COMPLY WITH THE APPROPRIATE PUBLIC WORKS SPECIFICATIONS & DETAILS.

SPECIAL EXCEPTION REQUESTED

AS PROVIDED FOR IN SECTION 410 OF THE B.C.Z.R. TO PERMIT A CLASS 1 TRUCKING FACILITY IN AN ML-IM ZONE.

VARIANCE REQUESTED

RELIEF IS HEREBY REQUESTED FROM SECTION 410.3.B.2 OF THE B.C.Z.R. TO PERMIT A FLOOR AREA RATIO (FAR) OF .23 IN LIEU OF THE PERMITTED .10

SITE DATA

SITE AREA	GROSS 12.0729 Ac.±. AREA OF S.P. EXCEPTION & VARIANCE 11.3741 Ac.±
EXISTING ZONING	ML-IM
EXISTING USE	VACANT
PROPOSED USE	CLASS 1 TRUCKING FACILITY
PLAT REFERENCE	68/119
TAX ACCOUNT NUMBER	04152200027362
ANCILLARY USES	NONE
PROP. BUILDING FLOOR AREA:	109,972 S.F. PHASE 1 + 19,228 S.F. PHASE 2 = 129,200 S.F.
FLOOR AREA RATIO	129,200 S.F. / 525,895.5 S.F. = .2456 (1 permitted)
PROP. BUILDING HEIGHT	30'±
PARKING SPACE DIMENSIONS:	
Typical Automobile Space	9' x 18'
Handicap Space	13' x 18' Min.
Step Van Space	10.5' x 30'
Trailer Space	10.5' x 50'
Truck Dock Space	12' x 60'
(All spaces to be permanently striped)	

ZONING HISTORY:

1. THIS PROPERTY WAS ORIGINAL APPROVED AS PART OF A JOINT SUBDIVISION PLANNING COMMISSION REVIEW (J.S.P.C.) AND APPROVAL KNOWN AS THE BALTIMORE BRICK CO. - ROSSVILLE INDUSTRIAL SITES, DATED OCTOBER 18, 1968.
2. J.S.P.C. REVISED JANUARY 21, 1969.
3. DRC # 010266 - GRANTED A REFINEMENT TO THE J.S.P.C. ON JAN. 3, 1996.

PREVIOUS COMMERCIAL BUILDING PERMIT: NONE

PAVING CERTIFICATION

I HEREBY CERTIFY THAT THE SPECIFICATIONS FOR THE PAVING SECTION, INCLUDING THE SUBBASE AND THE SOIL CONDITIONS RELATIVE TO THIS SITE, ARE CAPABLE OF WITHSTANDING LOADS IMPOSED BY FULLY LOADED TRUCKS OF MAXIMUM GROSS WEIGHT.

STATE OF MARYLAND REGISTERED PROFESSIONAL ENGINEER No. 21395

SEAL — SIGNATURE (P.E.)

SITE PLAN APPROVED BY:

ZONING COMMISSIONER — DATE

CHAIRMAN, COUNTY TRUCKING FACILITIES DEVELOPMENT OFFICIALS ADMINISTRATIVE OFFICER/COUNTY ATTORNEY — DATE

BCMD

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 — VERNON L. STEPHENS — REGISTERED PROFESSIONAL ENGINEER — No. 6626

DEVELOPER/LESSEE
THE WESTMORELAND COMPANY, INC.
200 RANDOLPH AVENUE, SUITE 200
HUNTSVILLE, ALABAMA 35801
CONTACT: JADA R. LEO, PRESIDENT
PHONE: 1-256-539-5533

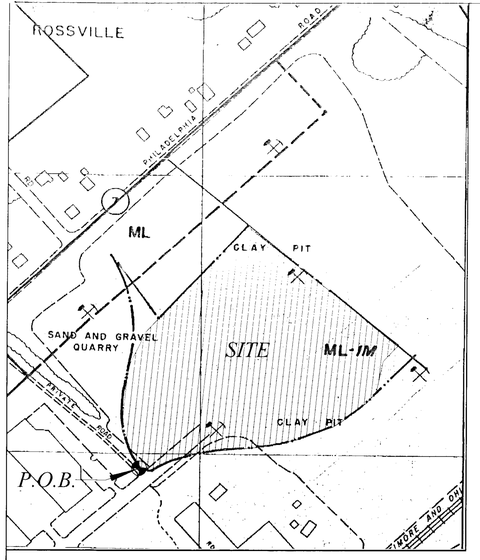
OWNER/LESSER
BGE COMPANY
39 W. LEXINGTON STREET
BALTIMORE, MARYLAND 21201

GRADING PLAN TO ACCOMPANY CLASS 1 TRUCKING FACILITIES PLAN

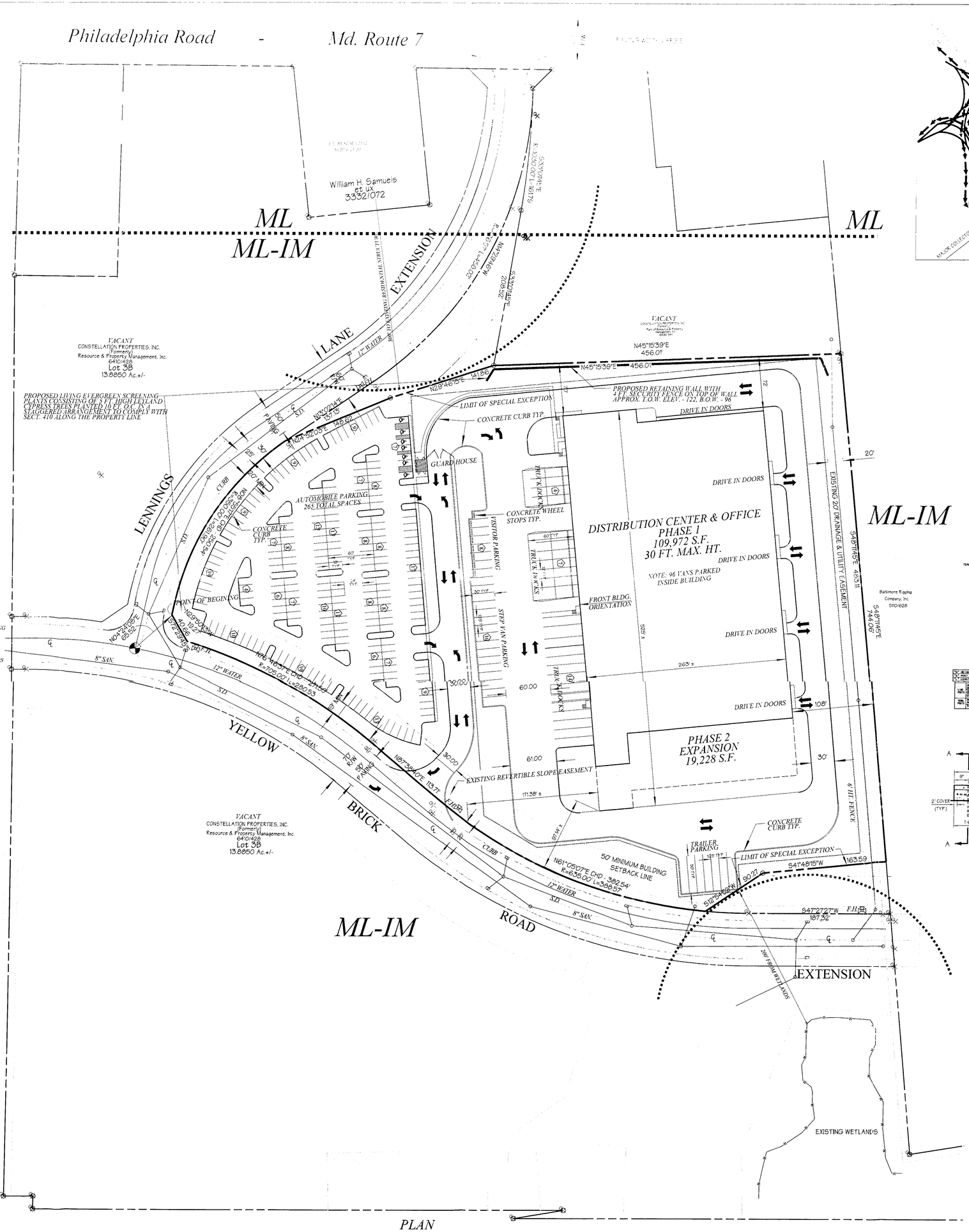
PLAT TO ACCOMPANY PETITION FOR A SPECIAL EXCEPTION TO PERMIT A CLASS 1 TRUCKING FACILITY and TRUCKING FACILITIES PLAN

ROSSVILLE INDUSTRIAL PARK
SECTION IV - LOT 3A
9114 THRU 9200 YELLOW BRICK ROAD

Election District 15 — Tax Map 90 - Parcel 906
Councilmanic District 6 — MARCH 30, 1999
Scale: 1" = 50' — Sheet 2 of 2



PART OF ROSSVILLE ZONING MAP NE 5-G
SCALE: 1" = 200'



PLAN
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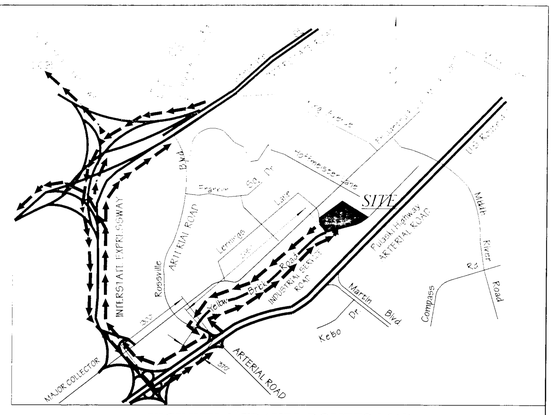
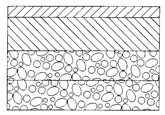
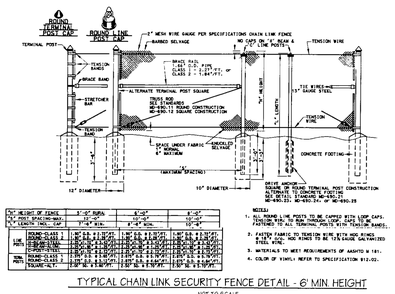


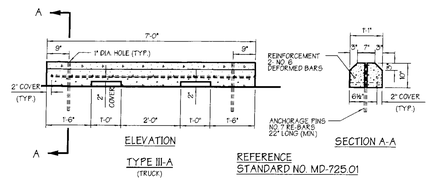
VICINITY & TRAVEL ROUTES MAP
SCALE: 1" = 1000'



TYPICAL PAVING SECTION
NOT TO SCALE



TYPICAL CHAIN LINK SECURITY FENCE DETAIL - 6' MIN. HEIGHT
NOT TO SCALE



WHEEL STOP
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VARIANCE REQUESTED

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SITE DATA

SITE AREA	GROSS 12.0729 Ac.±, AREA OF S.P. EXCEPTION & VARIANCE 11.3741 Ac.±
EXISTING ZONING	ML-IM
EXISTING USE	VACANT
PROPOSED USE	CLASS 1 TRUCKING FACILITY
PLAT REFERENCE	68/119
TAX ACCOUNT NUMBER	0415220002738Z
ANCILLARY USES	NONE
PROP. BUILDING FLOOR AREA:	109,972 S.F. PHASE 1 + 19,228 S.F. PHASE 2 = 129,200 S.F.
FLOOR AREA RATIO	129,200 S.F. / 525,885.5 S.F. = .2456 (.1 permitted)
PROP. BUILDING HEIGHT	30'±
PARKING SPACE DIMENSIONS:	
Typical Automobile Space	9' x 18'
Handicap Space	13' x 18' Min.
Step Van Space	10.5' x 30'
Trailer Space	10.5' x 50'
Truck Dock Space	12' x 60'
(All spaces to be permanently striped)	

ZONING HISTORY:

1. THIS PROPERTY WAS ORIGINAL APPROVED AS PART OF A JOINT SUBDIVISION PLANNING COMMISSION REVIEW (J.S.P.C.) AND APPROVAL KNOWN AS THE BALTIMORE BRICK CO. - ROSSVILLE INDUSTRIAL SITES, DATED OCTOBER 18, 1968.
2. J.S.P.C. REVISED JANUARY 21, 1969.
3. DRC # 010266 - GRANTED A REFINEMENT TO THE J.S.P.C. ON JAN. 3, 1996.

PREVIOUS COMMERCIAL BUILDING PERMIT: NONE

PAVING CERTIFICATION

I HEREBY CERTIFY THAT THE SPECIFICATIONS FOR THE PAVING SECTION, INCLUDING THE SUBBASE AND THE SOIL CONDITIONS RELATIVE TO THIS SITE, ARE CAPABLE OF WITHSTANDING LOADS IMPOSED BY FULLY LOADED TRUCKS OF MAXIMUM GROSS WEIGHT OF 72,000 LBS.

SEAL — PROFESSIONAL ENGINEER (P.E.) SIGNATURE

SITE PLAN APPROVED BY:

ZONING COMMISSIONER — DATE

CHAIRMAN, COUNTY TRUCKING FACILITIES DEVELOPMENT OFFICIALS ADMINISTRATIVE OFFICER/COUNTY ATTORNEY — DATE

390

SEE SHEET 2 OF 2 FOR GRADING PLAN.

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
658 KENILWORTH DRIVE, SUITE 100
TOWSON, MARYLAND 21204
(410) 825-8120

DEVELOPER/LESSEE
THE WESTMORELAND COMPANY, INC.
200 RANDOLPH AVENUE, SUITE 200
HUNTSVILLE, ALABAMA 35801
CONTACT: JADA R. LEO, PRESIDENT
PHONE: 1-256-539-5533

OWNER/LESSER
BGE COMPANY
39 W. LEXINGTON STREET
BALTIMORE, MARYLAND 21201

PLAT TO ACCOMPANY PETITION FOR A SPECIAL EXCEPTION TO PERMIT A CLASS 1 TRUCKING FACILITY and TRUCKING FACILITIES PLAN

ROSSVILLE INDUSTRIAL PARK
SECTION IV - LOT 3A
9114 THRU 9200 YELLOW BRICK ROAD

Election District 15 — Tax Map 90 - Parcel 906
Councilmanic District 6 — MARCH 30, 1999
Scale: 1" = 50' — Sheet 1 of 2

99-390-XA

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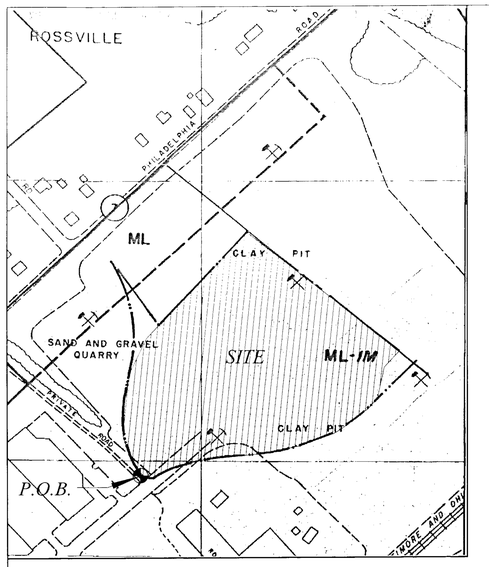
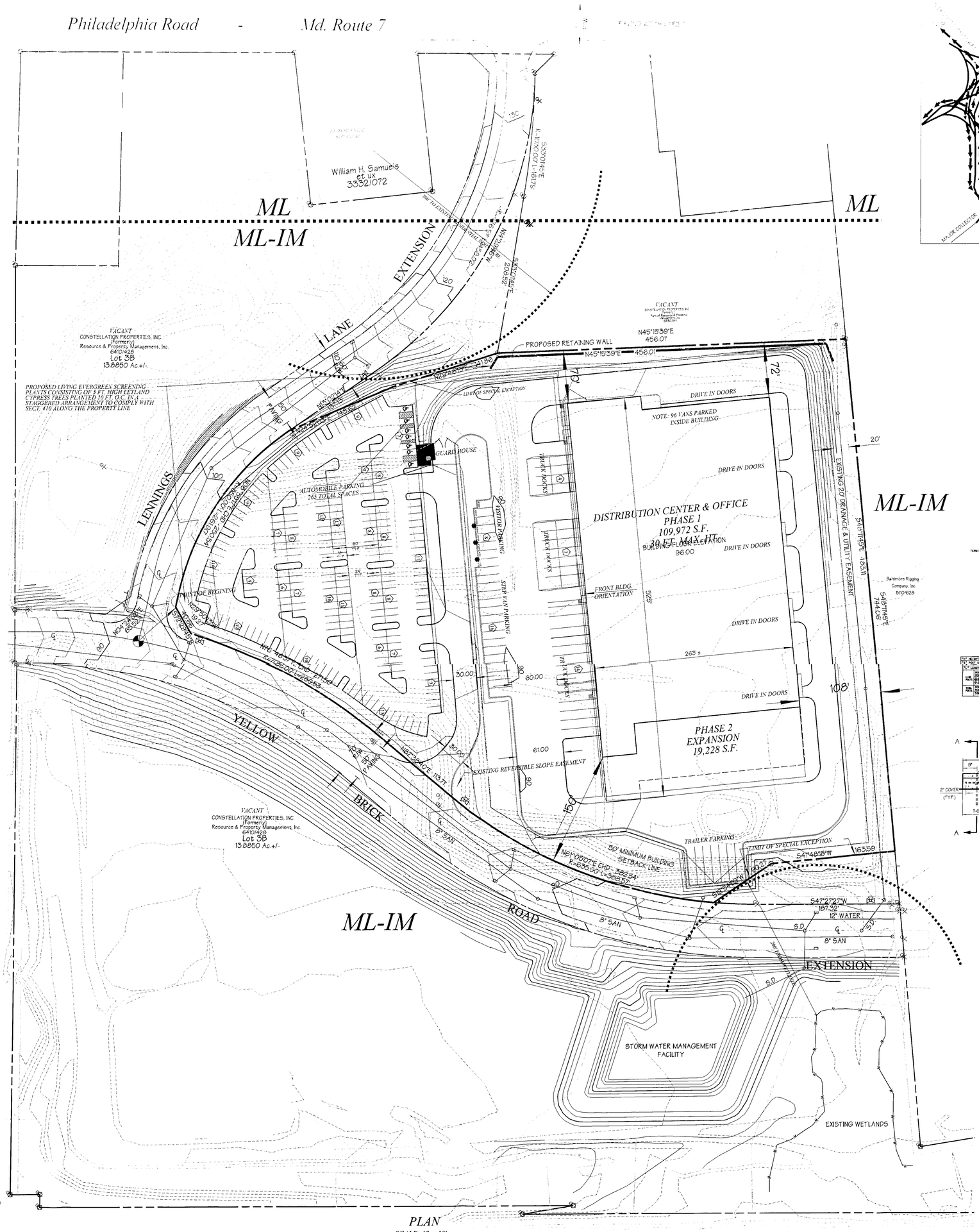
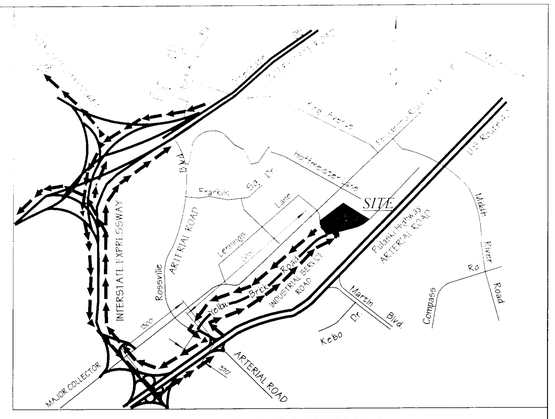


PART OF ROSSVILLE ZONING MAP NE 5-G
SCALE: 1" = 200'



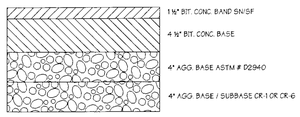
PLAN
SCALE: 1" = 50'



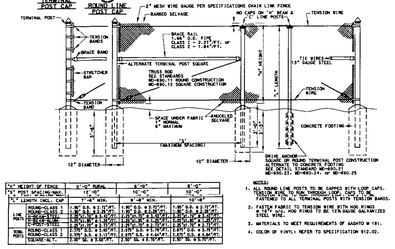
VICINITY & TRAVEL ROUTES MAP
SCALE: 1" = 1000'

90 PROPOSED GRADE

86 EXISTING GRADE



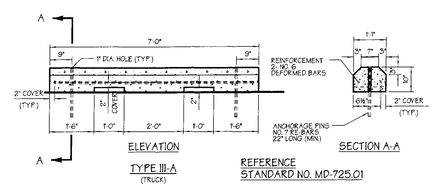
TYPICAL PAVING SECTION
NOT TO SCALE



FOR HEIGHT OF FENCE	5'-0" (NOM.)	6'-0"	8'-0"
FOR POST SPACING (MAX.)	10'-0"	10'-0"	10'-0"
FOR LENGTH (MIN.) OF POST	2'-6" (MIN.)	2'-6" (MIN.)	3'-0"
POSTS	ROUND: 1.90"	2.00"	2.50"
	SQUARE: 1.66"	1.75"	2.00"
RAILS	ROUND: 1.66"	1.66"	1.66"
	SQUARE: 1.66"	1.66"	1.66"
BRACE RAIL	ROUND: 1.66"	1.66"	1.66"
	SQUARE: 1.66"	1.66"	1.66"
FABRIC	2" MESH 9 GAUGE	2" MESH 9 GAUGE	2" MESH 9 GAUGE
TENSION WIRE	7 GAUGE	7 GAUGE	7 GAUGE
POST TOP	ROUND: CAP	CAP	CAP
	SQUARE: CAP	CAP	CAP
TENSION BAND	3/16" x 3/4"	3/16" x 3/4"	3/16" x 3/4"
BRACE BAND	3/16" x 3/4"	3/16" x 3/4"	3/16" x 3/4"
TENSION BAR	3/8" x 3/4"	3/8" x 3/4"	3/8" x 3/4"
STRETCHER BAR	3/8" x 3/4"	3/8" x 3/4"	3/8" x 3/4"

NOTES:
1. ALL ROUND PIPE POSTS TO BE CAPPED WITH LOOK CAPS.
2. FASTEN FABRIC TO TENSION WIRE WITH 9GA WIRE TIES. FASTEMER TO ALL TERMINAL POSTS WITH TENSION BANDS.
3. FASTEN FABRIC TO TENSION WIRE WITH 9GA WIRES. 9 1/2" HOG RING TIES TO BE 11GA GAUGE GALVANIZED STEEL WIRE.
4. MATERIALS TO MEET REQUIREMENTS OF AASHTO M 181.
5. COLOR OF VINYL: REFER TO SPECIFICATION 012-02.

TYPICAL CHAIN LINK SECURITY FENCE DETAIL - 6' MIN HEIGHT
NOT TO SCALE



ELEVATION
TYPE III-A
(TRUCK)

REFERENCE STANDARD NO. MD-725.01

SECTION A-A

WHEEL STOP
NOT TO SCALE

PAVING CERTIFICATION

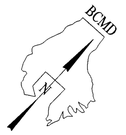
I HEREBY CERTIFY THAT THE SPECIFICATIONS FOR THE PAVING SECTION, INCLUDING THE SUBBASE AND THE SOIL CONDITIONS RELATIVE TO THIS SITE, ARE CAPABLE OF WITHSTANDING LOADS IMPOSED BY FULLY LOADED TRUCKS OF MAXIMUM GROSS WEIGHT.

SEAL — SIGNATURE (P.E.)

SITE PLAN APPROVED BY:

ZONING COMMISSIONER — DATE

CHAIRMAN, COUNTY TRUCKING FACILITIES DEVELOPMENT OFFICIALS ADMINISTRATIVE OFFICER/COUNTY ATTORNEY — DATE



GENERAL NOTES

1. THIS CLASS 1 TRUCKING FACILITY INCLUDING DRIVEWAYS, TRUCK PARKING OR AUTOMOBILE PARKING IS NOT WITHIN 300 FEET OF A RESIDENTIAL STRUCTURE AND OR 200 FEET OF A WETLAND.
2. ROUTES TO THE SITE:
   TRUCKS FROM I-95 TO I-695 EXIT NORTH ON ROUTE 40 TO ROSSVILLE BLVD. THENCE NORTH ON ROSSVILE BLVD. TO YELLOW BRICK ROAD, THENCE EAST TO THE SITE ENTRANCE.
3. ROUTES FROM THE SITE:
   TRUCKS LEAVING THE SITE, TURN WEST ON YELLOW BRICK ROAD, THENCE TO ROSSVILLE BLVD., SOUTH TO ROUTE 40 THENCE SOUTH ON ROUTE 40 TO I-695, THENCE WEST TO I-95 NORTH OR SOUTH OR I-83 NORTH.
4. NUMBER OF TRUCKS USING THIS FACILITY OVER A 24 HOUR PERIOD = 150
5. NUMBER OF EMPLOYEES ON THE LARGEST SHIFT = 130
6. PARKING SPACES REQUIRED = .5 - 1 PER 2 EMPLOYEES ON LARGEST SHIFT = 70 SPACES
7. HOURS OF OPERATION IS MIDNIGHT TO MIDNIGHT - 7 DAYS A WEEK WITH MORNING PEAK HOURS FROM 6:00 AM TO 9:00 AM AND EVENING PEAK HOURS FROM 4:00 PM TO 8:00 PM.
8. MAX. NUMBER OF TRAILERS PARKED ON SITE OUTSIDE OF THE BUILDING = 50
9. TOTAL NUMBER OF ON-SITE AUTOMOBILE PARKING SPACES = 265 SPACES (7 HANDICAPPED SPACES INCLUDED)
10. SITE LIGHTING IS TO BE PROVIDED WITH BUILDING WALL PACKS AND ON-SITE POLE LIGHT STANDARDS UTILIZING CUT-OFF GLARE FIXTURES AS TO REFLECT LIGHT AWAY FROM ADJACENT PROPERTIES AND PUBLIC ROADS.
11. TELEPHONE SERVICE IS PROVIDED INSIDE THE BUILDING FOR TRUCK DRIVERS AND OTHER PERSONNEL.
12. MALE & FEMALE RESTROOMS AND A DRIVER'S ROOM SHALL BE PROVIDED IN THE BUILDING FOR TRUCK DRIVERS AND OTHER PERSONNEL.
13. NO JUNKED TRAILERS OR VEHICLES SHALL BE PERMITTED TO BE STORED ON THE SITE. NO AUTOMOTIVE OR TRUCK PARTS WILL BE STORED ON SITE.
14. NO OUTSIDE P.A. OR SOUND SPEAKERS SHALL BE PERMITTED ON SITE
15. CONCRETE WHEEL STOPS OR CAST IN PLACE CONCRETE CURBING WILL BE PROVIDED FOR ALL TRUCK AND AUTOMOBILE PARKING SPACES.
16. A MIN. 6 FT. HT. CHAIN LINK SECURITY FENCE IS TO BE PROVIDED AS SHOWN ON THE PLAN.
17. PROPERTY DOES NOT LIE WITHIN A 100 YEAR FLOOD PLAIN. THERE ARE NO OTHER WETLANDS OTHER THAN AS SHOWN.
18. THIS PROPERTY DOES NOT LIE WITHIN THE C.B.C.A.
19. ALL PASSENGER VEHICULAR PARKING AND MANUVERING AREAS WILL BE PAVED WITH BITUMINOUS PAVING AND BE PERMANENTLY STRIPED.
20. ALL TRUCKING FACILITY TRUCK PARKING AND MANUVERING AREAS WILL COMPLY WITH TRUCKING FACILITY REQUIREMENTS.
21. ALL PROPOSED SIGNS WILL COMPLY WITH SECTION 450 OF THE B.C.Z.R.
22. THE ONLY RESIDENTIAL STRUCTURE ABLE TO VIEW THE SITE WILL BE ADEQUATELY SCREENED FROM THE TRUCKING FACILITY WITH 6 FT. MIN. HEIGHT OPAQUE FENCE AND/OR RETAINING WALLS AND OR LIVING EVERGREEN SCREEN PLANTS. NO OTHER RESIDENTIAL PREMISES, CHURCHES, SCHOOLS, HOSPITALS OR OTHER SIMILAR INSTITUTIONAL USES ARE LOCATED WITHIN VISUAL PROXIMITY TO THE SITE.
23. NO SLOPES WILL EXCEED 2:1. ALL SEDIMENT CONTROL & SOIL STABILIZATION MEASURES SHALL CONFORM WITH 1994 MARYLAND STANDARDS AND SPECIFICATIONS FOR SOIL EROSION & SEDIMENT CONTROL.
24. ALL WORK ASSOCIATED WITH THIS TRUCKING FACILITIES PLAN WILL BE COMPLETE AT THE ISSUANCE OF THE BUILDING USE AND OCCUPANCY PERMIT.
25. ADEQUATE DRAINAGE MEASURES WILL BE INCORPORATED IN THE DESIGN OF THIS TRUCKING FACILITY AND COMPLY WITH THE APPROPRIATE PUBLIC WORKS SPECIFICATIONS & DETAILS.

SPECIAL EXCEPTION REQUESTED

AS PROVIDED FOR IN SECTION 410 OF THE B.C.Z.R. TO PERMIT A CLASS 1 TRUCKING FACILITY IN AN ML-IM ZONE.

VARIANCE REQUESTED

RELIEF IS HEREBY REQUESTED FROM SECTION 410.3.B.2 OF THE B.C.Z.R. TO PERMIT A FLOOR AREA RATIO (FAR) OF .25 IN LIEU OF THE PERMITTED .10

SITE DATA

SITE AREA	GROSS 12.0729 Ac.±, AREA OF SP. EXCEPTION & VARIANCE 11.3741 Ac.±
EXISTING ZONING	ML-IM
EXISTING USE	VACANT
PROPOSED USE	CLASS 1 TRUCKING FACILITY
PLAT REFERENCE	68/119
TAX ACCOUNT NUMBER	04152200027382
ANCILLARY USES	NONE
PROP. BUILDING FLOOR AREA:	109,972 S.F. PHASE 1 + 19,228 S.F. PHASE 2 = 129,200 S.F.
FLOOR AREA RATIO	129,200 S.F. / 525,895.5 S.F. = .2456 (1 permitted)
PROP. BUILDING HEIGHT	30'±
PARKING SPACE DIMENSIONS:	
Typical Automobile Space	9' x 19'
Handicap Space	13' x 19' Min.
Step Van Space	10.5' x 30'
Trailer Space	10.5' x 50'
Truck Dock Space	12' x 60'
(All spaces to be permanently striped)	

ZONING HISTORY:

1. THIS PROPERTY WAS ORIGINAL APPROVED AS PART OF A JOINT SUBDIVISION PLANNING COMMISSION REVIEW (J.S.P.C.) AND APPROVAL KNOWN AS THE BALTIMORE BRICK CO. - ROSSVILLE INDUSTRIAL SITES, DATED OCTOBER 18, 1968.
2. J.S.P.C. REVISED JANUARY 21, 1969
3. DRC # 010296 - GRANTED A REFINEMENT TO THE J.S.P.C. ON JAN. 3, 1996.

PREVIOUS COMMERCIAL BUILDING PERMIT: NONE

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
658 KENILWORTH DRIVE, SUITE 100
TOWSON, MARYLAND 21204
(410) 825-8120

DEVELOPER/LESSEE
THE WESTMORELAND COMPANY, INC.
200 RANDOLPH AVENUE, SUITE 200
HUNTSVILLE, ALABAMA 35801
CONTACT: JADA R. LEO, PRESIDENT
PHONE: 1-256-539-5533

OWNER/LESSER
BGE COMPANY
39 W. LEXINGTON STREET
BALTIMORE, MARYLAND 21201

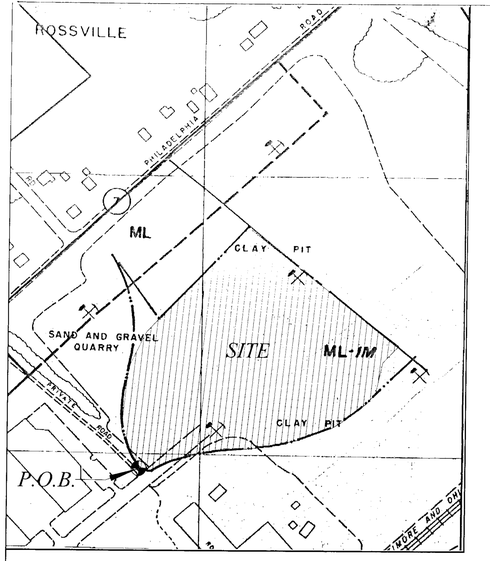
GRADING PLAN TO ACCOMPANY CLASS 1 TRUCKING FACILITIES PLAN

PLAT TO ACCOMPANY PETITION FOR A SPECIAL EXCEPTION TO PERMIT A CLASS 1 TRUCKING FACILITY and TRUCKING FACILITIES PLAN

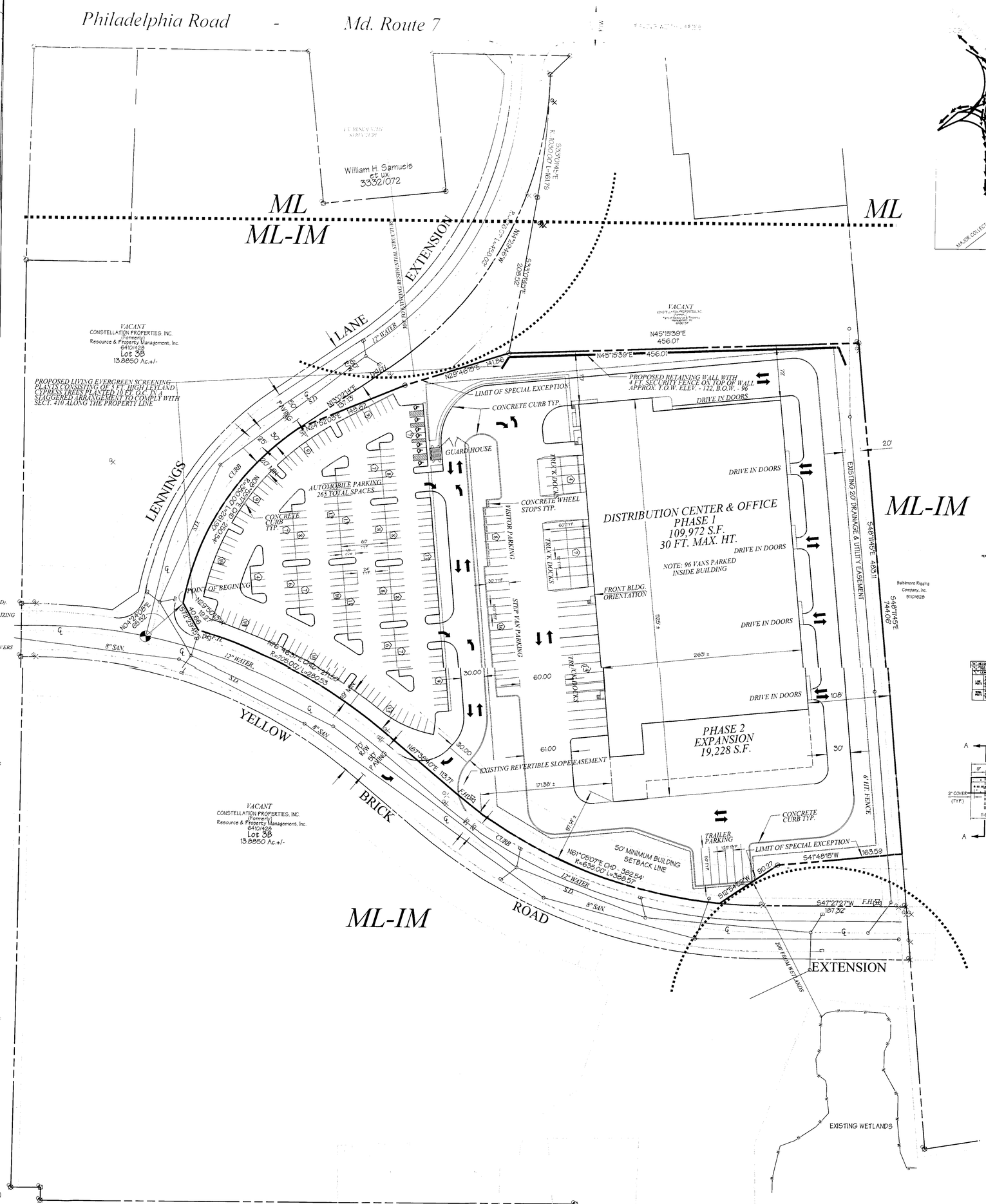
ROSSVILLE INDUSTRIAL PARK
SECTION IV - LOT 3A
9114 THRU 9200 YELLOW BRICK ROAD

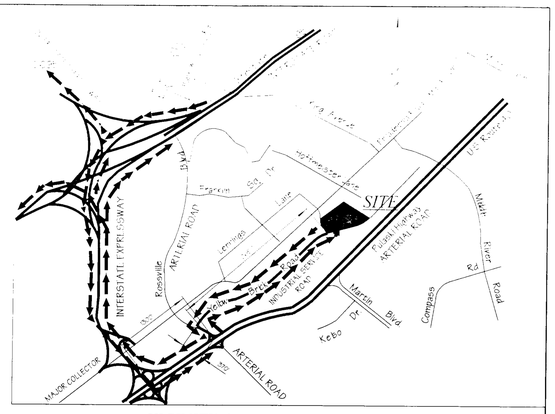
Election District 15
Councilmanic District 6
Scale: 1" = 50'

Tax Map 90 - Parcel 906
MARCH 30, 1999
Sheet 2 of 2

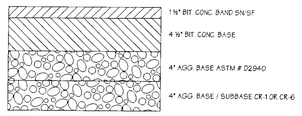


PART OF ROSSVILLE ZONING MAP NE 5-G
SCALE: 1" = 200'

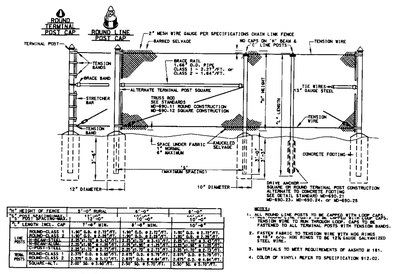




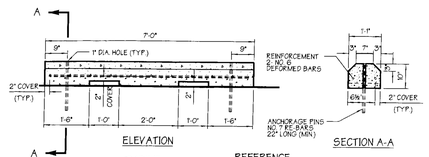
VICINITY & TRAVEL ROUTES MAP
SCALE: 1" = 1000'



TYPICAL PAVING SECTION
NOT TO SCALE



TYPICAL CHAIN LINK SECURITY FENCE DETAIL - 6' MIN. HEIGHT
NOT TO SCALE



TYPE III-A
(TRUCK)

REFERENCE
STANDARD NO. MD-725.01

WHEEL STOP
NOT TO SCALE

GENERAL NOTES

1. THIS CLASS 1 TRUCKING FACILITY INCLUDING DRIVEWAYS, TRUCK PARKING OR AUTOMOBILE PARKING IS NOT WITHIN 300 FEET OF A RESIDENTIAL STRUCTURE AND OR 200 FEET OF A WETLAND.
2. ROUTES TO THE SITE:
   TRUCKS FROM I-95 TO I-695 EXIT NORTH ON ROUTE 40 TO ROSSVILLE BLVD. THENCE NORTH ON ROSSVILE BLVD. TO YELLOW BRICK ROAD, THENCE EAST TO THE SITE ENTRANCE.
3. ROUTES FROM THE SITE:
   TRUCKS LEAVING THE SITE, TURN WEST ON YELLOW BRICK ROAD, THENCE TO ROSSVILLE BLVD., SOUTH TO ROUTE 40 THENCE SOUTH ON ROUTE 40 TO I-695, THENCE WEST TO I-95 NORTH OR SOUTH OR I-83 NORTH.
4. NUMBER OF TRUCKS USING THIS FACILITY OVER A 24 HOUR PERIOD = 150
5. NUMBER OF EMPLOYEES ON THE LARGEST SHIFT = 130
6. PARKING SPACES REQUIRED = 3 + 1 PER 2 EMPLOYEES ON LARGEST SHIFT = 70 SPACES
7. HOURS OF OPERATION IS MIDNIGHT TO MIDNIGHT - 7 DAYS A WEEK WITH MORNING PEAK HOURS FROM 6:00 AM TO 9:00 AM AND EVENING PEAK HOURS FROM 4:00 PM TO 8:00 PM.
8. MAX. NUMBER OF TRAILERS PARKED ON SITE OUTSIDE OF THE BUILDING = 50
9. TOTAL NUMBER OF ON-SITE AUTOMOBILE PARKING SPACES = 265 SPACES (7 HANDICAPPED SPACES INCLUDED).
10. SITE LIGHTING IS TO BE PROVIDED WITH BUILDING WALL PACKS AND ON-SITE POLE LIGHT STANDARDS UTILIZING CUT-OFF GLARE FIXTURES AS TO REFLECT LIGHT AWAY FROM ADJACENT PROPERTIES AND PUBLIC ROADS.
11. TELEPHONE SERVICE IS PROVIDED INSIDE THE BUILDING FOR TRUCK DRIVERS AND OTHER PERSONNEL.
12. MALE & FEMALE RESTROOMS AND A DRIVER'S ROOM SHALL BE PROVIDED IN THE BUILDING FOR TRUCK DRIVERS AND OTHER PERSONNEL.
13. NO JUNKED TRAILERS OR VEHICLES SHALL BE PERMITTED TO BE STORED ON THE SITE, NO AUTOMOTIVE OR TRUCK PARTS WILL BE STORED ON SITE.
14. NO OUTSIDE P.A. OR SOUND SPEAKERS SHALL BE PERMITTED ON SITE
15. CONCRETE WHEEL STOPS OR CAST IN PLACE CONCRETE CURBING WILL BE PROVIDED FOR ALL TRUCK AND AUTOMOBILE PARKING SPACES.
16. A MIN. 6 FT. HT. CHAIN LINK SECURITY FENCE IS TO BE PROVIDED AS SHOWN ON THE PLAN.
17. PROPERTY DOES NOT LIE WITHIN A 100 YEAR FLOOD PLAIN. THERE ARE NO OTHER WETLANDS OTHER THAN AS SHOWN.
18. THIS PROPERTY DOES NOT LIE WITHIN THE C.B.C.A.
19. ALL PASSENGER VEHICULAR PARKING AND MANUVERING AREAS WILL BE PAVED WITH BITUMINOUS PAVING AND BE PERMANENTLY STRIPED.
20. ALL TRUCKING FACILITY TRUCK PARKING AND MANUVERING AREAS WILL COMPLY WITH TRUCKING FACILITY REQUIREMENTS.
21. ALL PROPOSED SIGNS WILL COMPLY WITH SECTION 450 OF THE B.C.Z.R.
22. THE ONLY RESIDENTIAL STRUCTURE ABLE TO VIEW THE SITE WILL BE ADEQUATELY SCREENED FROM THE TRUCKING FACILITY WITH 6 FT. MIN. HEIGHT OPAQUE FENCE AND/OR RETAINING WALLS AND/OR LIVING EVERGREEN SCREEN PLANTS. NO OTHER RESIDENTIAL PREMISES, CHURCHES, SCHOOLS, HOSPITALS OR OTHER SIMILAR INSTITUTIONAL USES ARE LOCATED WITHIN VISUAL PROXIMITY TO THE SITE.
23. NO SLOPES WILL EXCEED 2:1. ALL SEDIMENT CONTROL & SOIL STABILIZATION MEASURES SHALL CONFORM WITH 1994 MARYLAND STANDARDS AND SPECIFICATIONS FOR SOIL EROSION & SEDIMENT CONTROL.
24. ALL WORK ASSOCIATED WITH THIS TRUCKING FACILITIES PLAN WILL BE COMPLETE AT THE ISSUANCE OF THE BUILDING USE AND OCCUPANCY PERMIT.
25. ADEQUATE DRAINAGE MEASURES WILL BE INCORPORATED IN THE DESIGN OF THIS TRUCKING FACILITY AND COMPLY WITH THE APPROPRIATE PUBLIC WORKS SPECIFICATIONS & DETAILS.

SPECIAL EXCEPTION REQUESTED

AS PROVIDED FOR IN SECTION 410 OF THE B.C.Z.R. TO PERMIT A CLASS 1 TRUCKING FACILITY IN AN ML-IM ZONE.

VARIANCE REQUESTED

RELIEF IS HEREBY REQUESTED FROM SECTION 410.3.B.2 OF THE B.C.Z.R. TO PERMIT A FLOOR AREA RATIO (FAR) OF .25 IN LIEU OF THE PERMITTED .10

SITE DATA

SITE AREA	GROSS 12.0729 Ac.±. AREA OF S.P. EXCEPTION & VARIANCE 11.3741 Ac.±
EXISTING ZONING	ML-IM
EXISTING USE	VACANT
PROPOSED USE	CLASS 1 TRUCKING FACILITY
PLAT REFERENCE	68/119
TAX ACCOUNT NUMBER	04152200027382
ANCILLARY USES	NONE
PROP. BUILDING FLOOR AREA:	109,972 S.F. PHASE 1 + 19,228 S.F. PHASE 2 = 129,200 S.F.
FLOOR AREA RATIO	129,200 S.F. / 525,8955 S.F. = .2456 (1 permitted)
PROP. BUILDING HEIGHT	30'±
PARKING SPACE DIMENSIONS:	
Typical Automobile Space	9' x 18'
Handicap Space	13' x 18' Min.
Step Van Space	10.5' x 30'
Trailer Space	10.5' x 50'
Truck Dock Space	12' x 60'
(All spaces to be permanently striped)	

ZONING HISTORY:

1. THIS PROPERTY WAS ORIGINAL APPROVED AS PART OF A JOINT SUBDIVISION PLANNING COMMISSION REVIEW (J.S.P.C.) AND APPROVAL KNOWN AS THE BALTIMORE BRICK CO. - ROSSVILLE INDUSTRIAL SITES, DATED OCTOBER 18, 1968.
2. J.S.P.C. REVISED JANUARY 21, 1969.
3. DRC # 0102EE GRANTED A REFINEMENT TO THE J.S.P.C. ON JAN. 3, 1996.

PREVIOUS COMMERCIAL BUILDING PERMIT: NONE

PAVING CERTIFICATION

I HEREBY CERTIFY THAT THE SPECIFICATIONS FOR THE PAVING SECTION, INCLUDING THE SUBBASE AND THE SOIL CONDITIONS RELATIVE TO THIS SITE, ARE CAPABLE OF WITHSTANDING LOADS IMPOSED BY FULLY LOADED TRUCKS OF MAXIMUM GROSS WEIGHT OF 75,000 LBS.

SEAL — REGISTERED PROFESSIONAL ENGINEER — No. 11695 — STATE OF MARYLAND

PROFESSIONAL ENGINEER SIGNATURE (P.E.)

SITE PLAN APPROVED BY:

ZONING COMMISSIONER — DATE

CHAIRMAN, COUNTY TRUCKING FACILITIES DEVELOPMENT OFFICIALS ADMINISTRATIVE OFFICER/COUNTY ATTORNEY — DATE

SEE SHEET 2 OF 2 FOR GRADING PLAN.

PLAN
SCALE: 1" = 50'

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
658 KENILWORTH DRIVE, SUITE 100
TOWSON, MARYLAND 21204
(410) 825-6120

DEVELOPER/LESSEE
THE WESTMORELAND COMPANY, INC.
200 RANDOLPH AVENUE, SUITE 200
HUNTSVILLE, ALABAMA 35801
CONTACT: JADA R. LEO, PRESIDENT
PHONE: 1-256-539-5533

OWNER/LESSER
BGE COMPANY
39 W. LEXINGTON STREET
BALTIMORE, MARYLAND 21201

PLAT TO ACCOMPANY PETITION
FOR A SPECIAL EXCEPTION TO PERMIT
A CLASS 1 TRUCKING FACILITY
and
TRUCKING FACILITIES PLAN

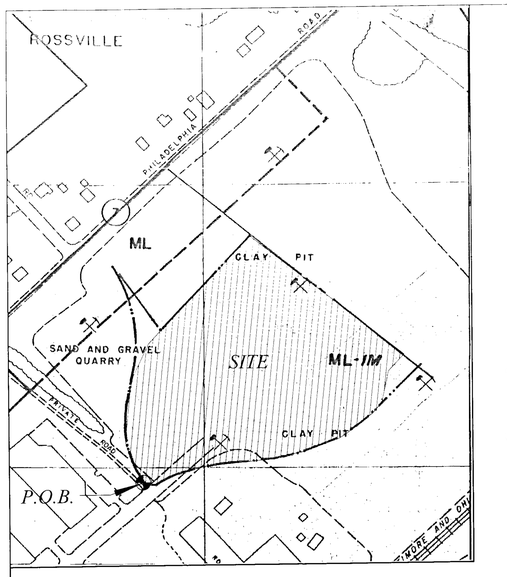
ROSSVILLE INDUSTRIAL PARK
SECTION IV - LOT 3A
9114 THRU 9200 YELLOW BRICK ROAD

Election District 15
Councilmanic District 6
Scale: 1" = 50'

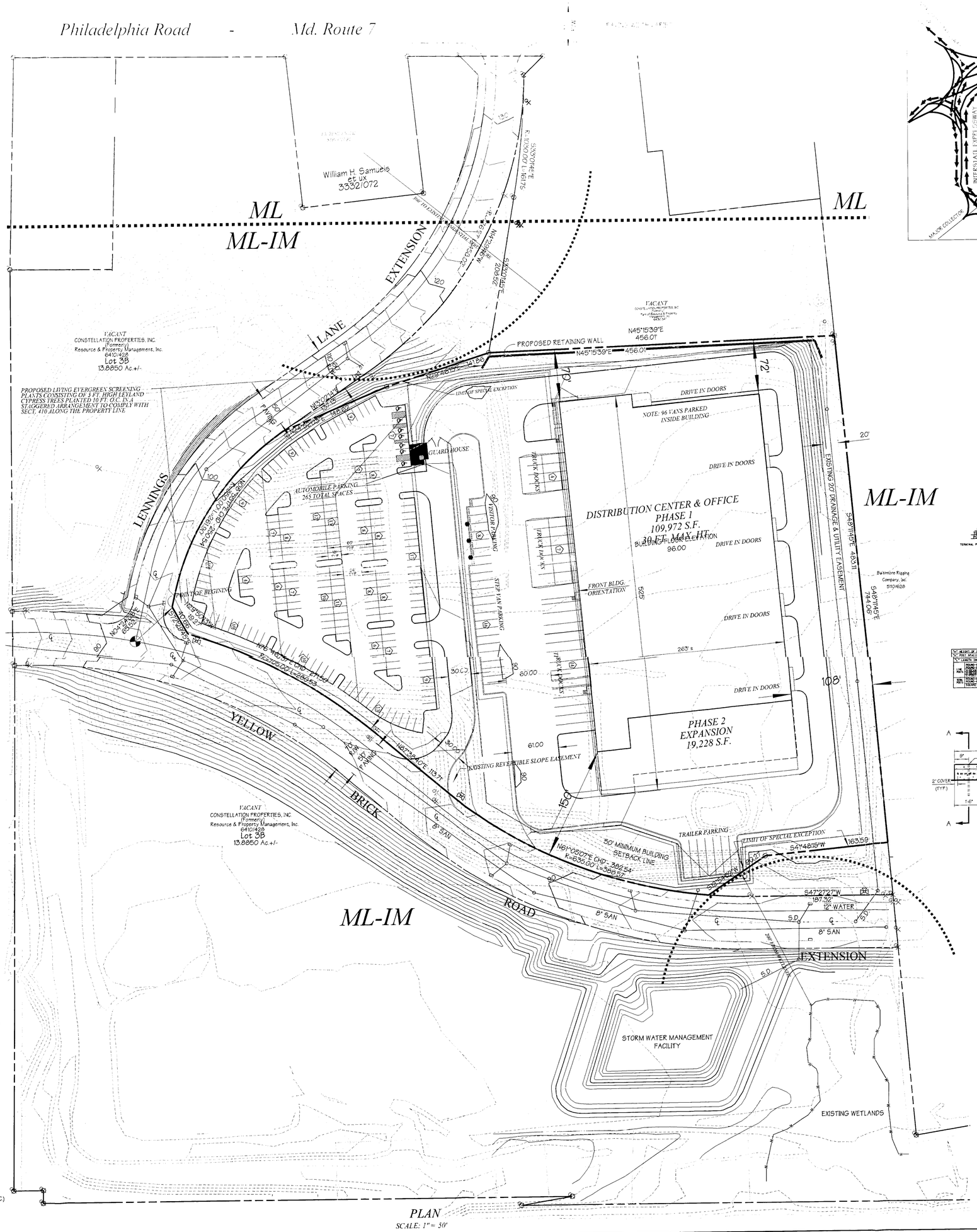
Tax Map 90 - Parcel 906
MARCH 30, 1999
Sheet 1 of 2

99-390-XA

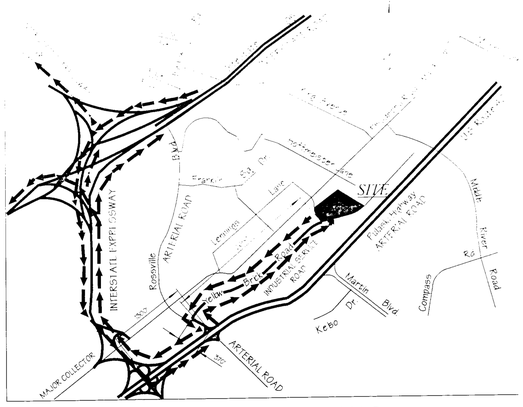
\micro\specialexceptionplat 503 Apr. 01, 1999 14:55:52



PART OF ROSSVILLE ZONING MAP NE 5-G
SCALE: 1" = 200'



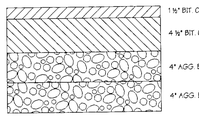
PLAN
SCALE: 1" = 50'



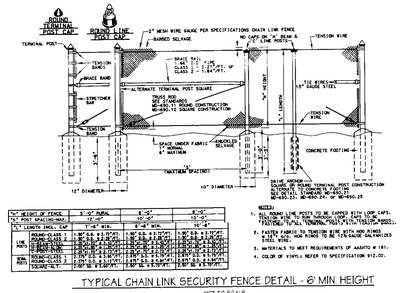
VICINITY & TRAVEL ROUTES MAP
SCALE: 1" = 1000'

90 PROPOSED GRADE

86 EXISTING GRADE



TYPICAL PAVING SECTION
NOT TO SCALE



"A" HEIGHT OF FENCE	5'-0" FABRIC	6'-0"	8'-0"
"B" POST SPACING-MAX.	10'-0"	10'-0"	10'-0"
"C" LENGTH (MIN.) EMB.	1'-6" MIN.	2'-0" MIN.	3'-0" MIN.
LIGHT FRAME: GALVANIZED	1.90" O.D. x 2.72 LB/FT	2.00" O.D. x 2.72 LB/FT	2.00" O.D. x 2.72 LB/FT
LIGHT FRAME: GALVANIZED	1.90" O.D. x 2.72 LB/FT	2.00" O.D. x 2.72 LB/FT	2.00" O.D. x 2.72 LB/FT
LIGHT FRAME: GALVANIZED	1.90" O.D. x 2.72 LB/FT	2.00" O.D. x 2.72 LB/FT	2.00" O.D. x 2.72 LB/FT
LIGHT FRAME: GALVANIZED	1.90" O.D. x 2.72 LB/FT	2.00" O.D. x 2.72 LB/FT	2.00" O.D. x 2.72 LB/FT
HEAVY FRAME: GALVANIZED	2.00" O.D. x 3.65 LB/FT	2.00" O.D. x 3.65 LB/FT	2.00" O.D. x 3.65 LB/FT
HEAVY FRAME: GALVANIZED	2.00" O.D. x 3.65 LB/FT	2.00" O.D. x 3.65 LB/FT	2.00" O.D. x 3.65 LB/FT
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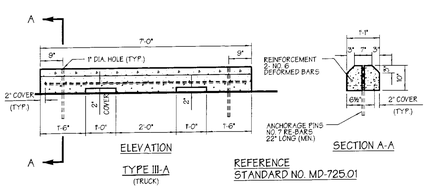
HEAVY FRAME: GALVANIZED	2.00" O.D. x 3.65 LB/FT	2.00" O.D. x 3.65 LB/FT	2.00" O.D. x 3.65 LB/FT

NOTES:
1. ALL FENCE LINK POSTS TO BE CAPPED WITH LOW CAPS. ALL POSTS TO BE GALVANIZED STEEL PIPE. TERMINAL POSTS, CORNER POSTS, PULL POSTS, LINE POSTS, GATE POSTS AND BRACES TO BE GALVANIZED.
2. FASTEN FABRIC TO TENSION WIRE WITH AND BEND. FASTEN TENSION WIRE TO POSTS WITH GALVANIZED STEEL WIRE.
3. MATERIALS TO MEET REQUIREMENTS OF AASHTO M-181.
4. COLOR OF VINYL: REFER TO SPECIFICATION 912.02.

TYPICAL CHAIN LINK SECURITY FENCE DETAIL - 6' MIN HEIGHT
NOT TO SCALE



ELEVATION
TYPE III-A
(TRUCK)

SECTION A-A
REFERENCE STANDARD NO. MD-725.01

WHEEL STOP
NOT TO SCALE

GENERAL NOTES

1. THIS CLASS 1 TRUCKING FACILITY INCLUDING DRIVEWAYS, TRUCK PARKING OR AUTOMOBILE PARKING IS NOT WITHIN 300 FEET OF A RESIDENTIAL STRUCTURE AND / OR 200 FEET OF A WETLAND.
2. ROUTES TO THE SITE: TRUCKS FROM I-95 TO I-695 EXIT NORTH ON ROUTE 40 TO ROSSVILLE BLVD. THENCE NORTH ON ROSSVILE BLVD. TO YELLOW BRICK ROAD, THENCE EAST TO THE SITE ENTRANCE.
3. ROUTES FROM THE SITE: TRUCKS LEAVING THE SITE, TURN WEST ON YELLOW BRICK ROAD, THENCE TO ROSSVILLE BLVD., SOUTH TO ROUTE 40 THENCE SOUTH ON ROUTE 40 TO I-695, THENCE WEST TO I-95 NORTH OR SOUTH OR I-83 NORTH.
4. NUMBER OF TRUCKS USING THIS FACILITY OVER A 24 HOUR PERIOD = 150
5. NUMBER OF EMPLOYEES ON THE LARGEST SHIFT = 130
6. PARKING SPACES REQUIRED = 5 + 1/EVER 2 EMPLOYEES ON LARGEST SHIFT = 70 SPACES
7. HOURS OF OPERATION IS MIDNIGHT TO MIDNIGHT - 7 DAYS A WEEK WITH MORNING PEAK HOURS FROM 6.00 AM TO 9:60 AM AND EVENING PEAK HOURS FROM 4:00 PM TO 8:00 PM.
8. MAX. NUMBER OF TRAILERS PARKED ON SITE OUTSIDE OF THE BUILDING = 50
9. TOTAL NUMBER OF ON-SITE AUTOMOBILE PARKING SPACES = 265 SPACES (7 HANDICAPPED SPACES INCLUDED)
10. SITE LIGHTING IS TO BE PROVIDED WITH BUILDING WALL PACKS AND ON-SITE POLE LIGHT STANDARDS UTILIZING CUT-OFF GLARE FIXTURES AS TO REFLECT LIGHT AWAY FROM ADJACENT PROPERTIES AND PUBLIC ROADS.
11. TELEPHONE SERVICE IS PROVIDED INSIDE THE BUILDING FOR TRUCK DRIVERS AND OTHER PERSONNEL.
12. MALE & FEMALE RESTROOMS AND A DRIVER'S ROOM SHALL BE PROVIDED IN THE BUILDING FOR TRUCK DRIVERS AND OTHER PERSONNEL
13. NO JUNKED TRAILERS OR VEHICLES SHALL BE PERMITTED TO BE STORED ON THE SITE. NO AUTOMOTIVE OR TRUCK PARTS WILL BE STORED ON SITE.
14. NO OUTSIDE P.A. OR SOUND SPEAKERS SHALL BE PERMITTED ON SITE
15. CONCRETE WHEEL STOPS OR CAST IN PLACE CONCRETE CURBING WILL BE PROVIDED FOR ALL TRUCK AND AUTOMOBILE PARKING SPACES.
16. A MIN. 6 FT. HT. CHAIN LINK SECURITY FENCE IS TO BE PROVIDED AS SHOWN ON THE PLAN.
17. PROPERTY DOES NOT LIE WITHIN A 100 YEAR FLOOD PLAIN. THERE ARE NO OTHER WETLANDS OTHER THAN AS SHOWN.
18. THIS PROPERTY DOES NOT LIE WITHIN THE C.B.C.A.
19. ALL PASSENGER VEHICULAR PARKING AND MANUVERING AREAS WILL BE PAVED WITH BITUMINOUS PAVING AND BE PERMANENTLY STRIPED.
20. ALL TRUCKING FACILITY TRUCK PARKING AND MANUVERING AREAS WILL COMPLY WITH TRUCKING FACILITY REQUIREMENTS.
21. ALL PROPOSED SIGNS WILL COMPLY WITH SECTION 450 OF THE B.C.Z.R.
22. THE ONLY RESIDENTIAL STRUCTURE ABLE TO VIEW THE SITE WILL BE ADEQUATELY SCREENED FROM THE TRUCKING FACILITY WITH 6 FT. MIN. HEIGHT OPAQUE FENCE AND OR RETAINING WALLS AND OR LIVING EVERGREEN SCREEN PLANTS. NO OTHER RESIDENTIAL PREMISES, CHURCHES, SCHOOLS, HOSPITALS OR OTHER SIMILAR INSTITUTIONAL USES ARE LOCATED WITHIN VISUAL PROXIMITY TO THE SITE.
23. NO SLOPES WILL EXCEED 2:1. ALL SEDIMENT CONTROL & SOIL STABILIZATION MEASURES SHALL CONFORM WITH 1994 MARYLAND STANDARDS AND SPECIFICATIONS FOR SOIL EROSION & SEDIMENT CONTROL.
24. ALL WORK ASSOCIATED WITH THIS TRUCKING FACILITIES PLAN WILL BE COMPLETE AT THE ISSUANCE OF THE BUILDING USE AND OCCUPANCY PERMIT.
25. ADEQUATE DRAINAGE MEASURES WILL BE INCORPORATED IN THE DESIGN OF THIS TRUCKING FACILITY AND COMPLY WITH THE APPROPRIATE PUBLIC WORKS SPECIFICATIONS & DETAILS.

SPECIAL EXCEPTION REQUESTED

AS PROVIDED FOR IN SECTION 410 OF THE B.C.Z.R. TO PERMIT A CLASS 1 TRUCKING FACILITY IN AN ML-IM ZONE.

VARIANCE REQUESTED

RELIEF IS HEREBY REQUESTED FROM SECTION 410.3.B.2 OF THE B.C.Z.R. TO PERMIT A FLOOR AREA RATIO (FAR) OF .25 IN LIEU OF THE PERMITTED .10

SITE DATA

SITE AREA	GROSS 12.0729 Ac.±, AREA OF S.P. EXCEPTION & VARIANCE 11.3741 Ac.±
EXISTING ZONING	ML-IM
EXISTING USE	VACANT
PROPOSED USE	CLASS 1 TRUCKING FACILITY
PLAT REFERENCE	68/119
TAX ACCOUNT NUMBER	04152200027382
ANCILLARY USES	NONE
PROP. BUILDING FLOOR AREA:	109,972 S.F. PHASE 1 + 19,228 S.F. PHASE 2 = 129,200 S.F.
FLOOR AREA RATIO	129,200 S.F. / 525,895.5 S.F. = .2456 (.1 permitted)
PROP. BUILDING HEIGHT	30'±
PARKING SPACE DIMENSIONS:	
Typical Automobile Space	9' x 18'
Handicap Space	13' x 18' Min.
Step Van Space	10.5' x 30'
Trailer Space	10.5' x 50'
Truck Dock Space	12' x 60'
(All spaces to be permanently striped)	

ZONING HISTORY:

1. THIS PROPERTY WAS ORIGINAL APPROVED AS PART OF A JOINT SUBDIVISION PLANNING COMMISSION REVIEW (J.S.P.C.) AND APPROVAL KNOWN AS THE BALTIMORE BRICK CO. - ROSSVILLE INDUSTRIAL SITES, DATED OCTOBER 18, 1968.
2. J.S.P.C. REVISED JANUARY 21, 1980.
3. DRC # 0102GE - GRANTED A REFINEMENT TO THE J.S.P.C. ON JAN. 3, 1996.

PREVIOUS COMMERCIAL BUILDING PERMIT: NONE

PAVING CERTIFICATION

I HEREBY CERTIFY THAT THE SPECIFICATIONS FOR THE PAVING SECTION, INCLUDING THE SUBBASE AND THE SOIL CONDITIONS RELATIVE TO THIS SITE, ARE CAPABLE OF WITHSTANDING LOADS IMPOSED BY FULLY LOADED TRUCKS OF MAXIMUM GROSS WEIGHT.

SEAL — SIGNATURE (P.E.)

SITE PLAN APPROVED BY:

ZONING COMMISSIONER — DATE

CHAIRMAN, COUNTY TRUCKING FACILITIES DEVELOPMENT OFFICIALS ADMINISTRATIVE OFFICER/COUNTY ATTORNEY — DATE

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
658 KENILWORTH DRIVE, SUITE 100
TOWSON, MARYLAND 21204
(410) 825-8120

DEVELOPER/LESSEE
THE WESTMORELAND COMPANY, INC.
200 RANDOLPH AVENUE, SUITE 200
HUNTSVILLE, ALABAMA 35801
CONTACT: JADA R. LEO, PRESIDENT
PHONE: 1-256-539-5533

OWNER/LESSER
BGE COMPANY
39 W. LEXINGTON STREET
BALTIMORE, MARYLAND 21201

GRADING PLAN TO ACCOMPANY CLASS 1 TRUCKING FACILITIES PLAN

PLAT TO ACCOMPANY PETITION FOR A SPECIAL EXCEPTION TO PERMIT A CLASS 1 TRUCKING FACILITY and TRUCKING FACILITIES PLAN

ROSSVILLE INDUSTRIAL PARK
SECTION IV - LOT 3A
9114 THRU 9200 YELLOW BRICK ROAD

Election District 15
Councilmanic District 6
Scale: 1" = 50'

Tax Map 90 - Parcel 906
MARCH 30, 1999
Sheet 2 of 2

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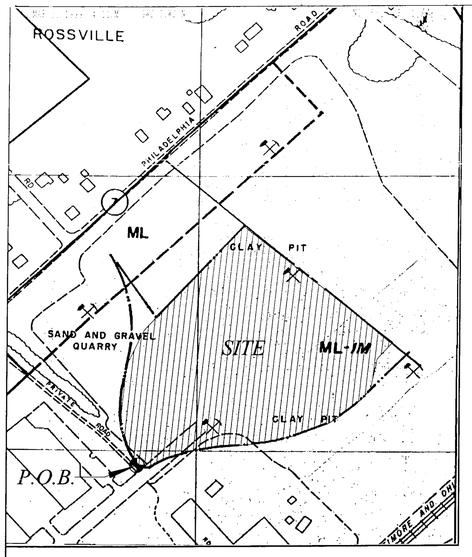
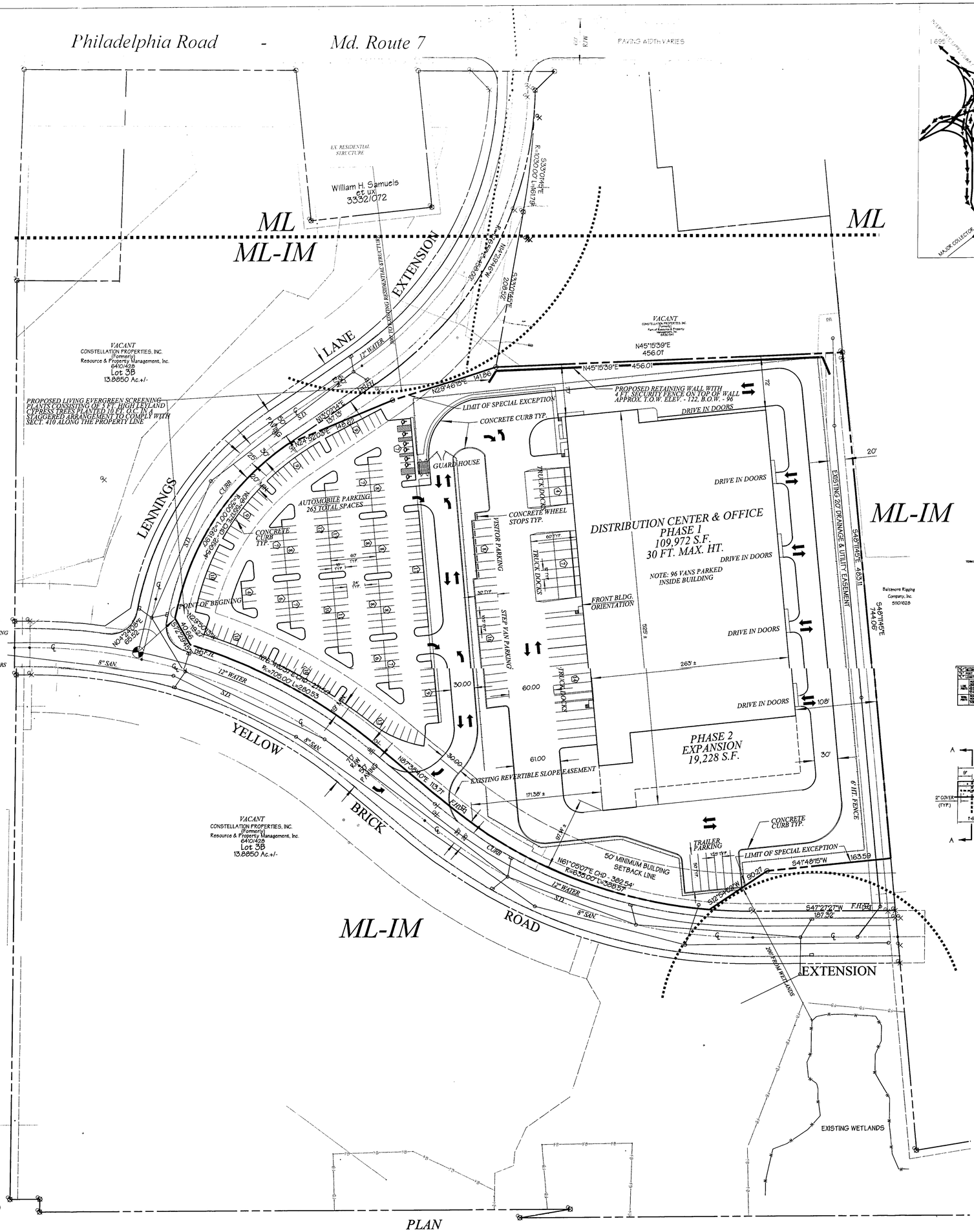
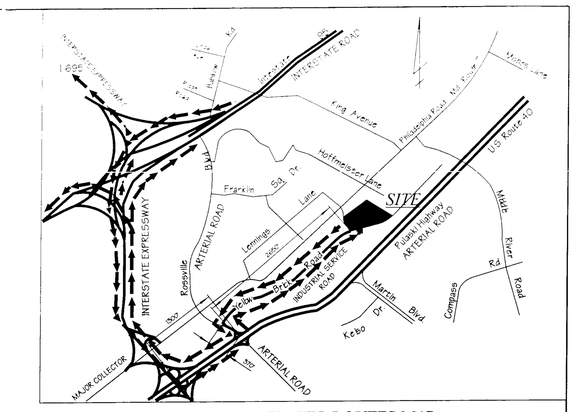


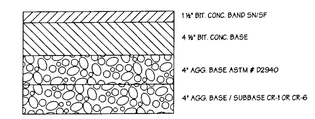
PART OF ROSSVILLE ZONING MAP NE 5-G
SCALE: 1" = 200'



PLAN
SCALE: 1" = 50'



VICINITY & TRAVEL ROUTES MAP
SCALE: 1" = 1000'



TYPICAL PAVING SECTION
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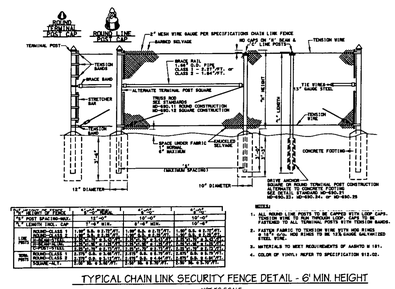
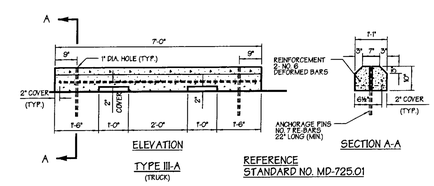


TYPICAL CHAIN LINK SECURITY FENCE DETAIL - 6' MIN. HEIGHT
NOT TO SCALE



WHEEL STOP
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EXISTING USE	VACANT
PROPOSED USE	CLASS 1 TRUCKING FACILITY
PLAT REFERENCE	68/119
TAX ACCOUNT NUMBER	04152200027382
ANCILLARY USES	NONE
PROP. BUILDING FLOOR AREA:	109,972 S.F. PHASE 1 + 19,228 S.F. PHASE 2 = 129,200 S.F.
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2. J.S.P.C. REVISED JANUARY 21, 1969.
3. DRC # 01026E - GRANTED A REFINEMENT TO THE J.S.P.C. ON JAN. 3, 1996.

PREVIOUS COMMERCIAL BUILDING PERMIT: NONE

PAVING CERTIFICATION

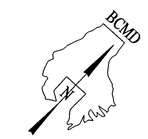
I HEREBY CERTIFY THAT THE SPECIFICATIONS FOR THE PAVING SECTION, INCLUDING THE SUBBASE AND THE SOIL CONDITIONS RELATIVE TO THIS SITE, ARE CAPABLE OF WITHSTANDING LOADS IMPOSED BY FULLY LOADED TRUCKS OF MAXIMUM GROSS WEIGHT OF [illegible]

SEAL — PROFESSIONAL ENGINEER SIGNATURE (P.E.)

SITE PLAN APPROVED BY:

ZONING COMMISSIONER — DATE

CHAIRMAN, COUNTY TRUCKING FACILITIES DEVELOPMENT OFFICIALS ADMINISTRATIVE OFFICER/COUNTY ATTORNEY — DATE



SEE SHEET 2 OF 2 FOR GRADING PLAN.

PLAT TO ACCOMPANY PETITION
FOR A SPECIAL EXCEPTION TO PERMIT
A CLASS 1 TRUCKING FACILITY
and
TRUCKING FACILITIES PLAN

ROSSVILLE INDUSTRIAL PARK
SECTION IV - LOT 3A
9114 THRU 9200 YELLOW BRICK ROAD

Election District 15 — Tax Map 90 - Parcel 906
Councilmanic District 6 — MARCH 30, 1999
Scale: 1" = 50' — Sheet 1 of 2

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
858 KENILWORTH DRIVE, SUITE 100
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BALTIMORE, MARYLAND 21201

FN 9178

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