8/12/03

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
CROSS-PETITION OF:
CLOVERLAND FARMS DAIRY, INC. *
3611 Roland Avenue
Baltimore, MD 21211 *

* CIVIL ACTION
FOR JUDICIAL REVIEW OF THE NO.: 03-C-03-7910
OPINION OF THE COUNTY BOARD *
OF APPEALS OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49 *
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204 *

IN THE MATTER OF: *
CLOVERLAND FARMS DAIRY, INC.-
LEGAL OWNER/PETITIONER *
1601 Middleborough Road
15TH ELECTION DISTRICT *
5TH COUNCILMANIC DISTRICT
*
CASE NO.: 01-316-XA
* * * * * * * * * * * *

SECOND CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

James A. Dunbar, Esquire
Venable, Baetjer & Howard, LLP, 210 Allegheny Avenue, Towson, Md 21204

Patricia A. Malone, Esquire
Venable, Baetjer & Howard, LLP, 210 Allegheny Avenue, Towson, Md 21204

John M. Kemp, Vice President
Cloverland Dairy Farms, Inc., 3611 Roland Avenue, Baltimore, MD 21211

J. Carroll Holzer, Esquire
Holzer and Lee, 508 Fairmount Avenue, Towson, Md 21286

Jean Colvin
1609 Middleborough Road, Baltimore, MD 21221

Peter Max Zimmerman
People's Counsel for Baltimore County, Old Courthouse, Room 47,
400 Washington Avenue, Towson, Maryland 21204

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

I HEREBY CERTIFY that a copy of the foregoing Second Certificate of Notice has been mailed to: James A. Dunbar, Esquire, Venable, Baetjer & Howard, LLP, 210 Allegheny Avenue, Towson, Md 21204; Patricia A. Malone, Esquire, Venable, Baetjer & Howard, LLP, 210 Allegheny Avenue, Towson, Md 21204; John M. Kemp, Vice President, Cloverland Dairy Farms, Inc., 3611 Roland Avenue, Baltimore, MD 21211; J. Carroll Holzer, Esquire, Holzer and Lee, 508 Fairmount Avenue, Towson, Md 21286; Jean Colvin, 1609 Middleborough Road, Baltimore, MD 21221, and Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, this 13th day of August, 2003.

Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

8/13/03

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
JEAN COLVIN *
1609 Middleborough Road
Baltimore, MD 21221 *

*

FOR JUDICIAL REVIEW OF THE
OPINION OF THE COUNTY BOARD *
OF APPEALS OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49 *
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204 *

CIVIL ACTION
NO.: 03-C-03-7910

IN THE MATTER OF: *
CLOVERLAND FARMS DAIRY, INC.-
LEGAL OWNER/PETITIONER *
1601 Middleborough Road
15TH ELECTION DISTRICT *
5TH COUNCILMANIC DISTRICT

*

CASE NO.: 01-316-XA

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Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

///

6/26/03

IN THE MATTER OF THE APPLICATION OF CLOVERLAND FARMS DAIRY, INC. –LEGAL OWNER /PETITIONER FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE E/S BACK RIVER NECK ROAD, 558' SE OF C/L MIDDLEBOROUGH ROAD (1601 MIDDLEBOROUGH ROAD) 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT	* * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 01-316-XA

* * * * * * * * *

OPINION

This case comes before the Baltimore County Board of Appeals on a Petition for Special Exception relative to a property located at 1601 Middleborough Road, 15th Election District, 5th Councilmanic District. The Petition was granted with restrictions by the Zoning Commissioner on May 31, 2001.

The Petitioner had also requested a variance seeking relief from § 419.4.A.1 of the *Baltimore County Zoning Regulations* (BCZR) to permit a minimum distance of 20 feet between the proposed rollover car wash and the lot line of an adjacent residentially zoned property in lieu of the required 50 feet. The variance request was withdrawn before the Zoning Commissioner and dismissed as moot.

A timely appeal was taken to the granting of the Special Exception.

Robert A. Hoffman, Esquire, represented the Petitioner, Cloverland Farms Dairy, Inc., legal owner. J. Carroll Holzer, Esquire, represented the Appellants /Protestants.

On March 6, 2003, the Board held a *de novo* hearing.

At the beginning of the hearing, Mr. Hoffman moved for dismissal because the Notice of Appeal was deficient by way of Rule 3a of the *Rules of Practice and Procedure* of the Board. The Notice did not include the addresses of the Appellants /Protestants.

The Board, by a majority vote of 2-1, refused to dismiss the appeal on this basis. The fact was clear that the Protestants before the Board were the same people who had appeared before the Zoning Commissioner, including an adjacent landowner, Mrs. Jean Colvin. While the Notice of Appeal was not technically correct because of the omission of the addresses, the majority found that the appeal was made in writing, signed by the Appellants, properly directed to the Department of Permits and Development Management, and accompanied by the cost of appeal as required.

The majority found that there was no prejudice to the Petitioner by accepting the appeal, and that the failure to provide addresses is a technical irregularity which, on that basis alone, does not warrant a dismissal of the proceedings.

In the *Town of Somerset v. Montgomery County Board of Appeals*, Case No 98-263-XA/ Wil-Kel, LLC-Legal Owner; *McDonald's Corp.-C.P./Ruling on Motion to Dismiss* 245 Md. 52, 225 A2d 294 decided by the Maryland Court of Appeals, the Court held:

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

Mr. Hoffman then asked that Mr. Bob Christ be stricken as an Appellant because of a lack of standing. Although he stated that he did not agree with Mr. Hoffman's opinion that Mr. Christ lacked standing, Mr. Holzer volunteered to withdraw Mr. Christ as an Appellant /Protestant.

Following the hearing and the submission of simultaneous memos from counsel, a public deliberation was held on the merits of the case on May 21, 2003.

Background

The Petitioner, Cloverland Farms Dairy, Inc., requested a Special Exception to expand the fuel service use and to add a rollover car wash at their existing convenience store/fuel service station at the intersection of Middleborough and Back River Neck Roads, under the provisions of §§ 405.B.1 and 405.4.E.2 of the BCZR.

The subject site is one of 103 "Royal Farms" convenience/fuel service stations in Maryland, Delaware and Virginia. The Middleborough Road store is a located on a triangular-shaped parcel of .5 acre. In 1996 (Case #96-272-XA), Cloverland received permission to redevelop an old gas station into the existing convenience store/fuel service station. The Petitioner also owns an adjoining parcel of .9 acre to the rear where he wishes to expand. This parcel contains the original Cloverland dairy building, now unoccupied and used for storage.

In CZMP 2000 the rear parcel was rezoned by the County Council from B.L. to B.L.-A.S. which allows the proposed uses with the approval of a Special Exception. If the Special Exception is granted, the Petitioner plans to raze the vacant building on the rear parcel and add four fuel pumps plus a rollover car wash.

Testimony

John Kemp, executive vice-president of Royal Farms, which is owned by Cloverland Dairy, Inc., appeared before the Board as the first witness. He explained that Cloverland has been a Kemp family-owned business since 1925. He introduced two sets of site plans (Petitioner's Exhibits 1A & B and 2A & B) showing the proposal for the Special Exception on the subject site. He reiterated the history of the property as noted above as well as what he wishes to accomplish in the way of expansion.

Mr. Kemp also addressed the concern about the drainage ditch/storm drain at the rear of the property. He said that it collects storm water from off site, including the apartment complex

across the street, as well as from his property and Middleborough Road. He indicated that the ditch has caused flooding problems, and that he has agreed to give an easement to Baltimore County so that they can improve the situation. He introduced a letter from Eric Rockel (Petitioner's Exhibit 3) which addresses this issue and indicates that the County will provide maintenance of the ditch. He also introduced interoffice correspondence (Petitioner's Exhibit 4), dated February 26, 1996, showing that the County will make repairs to the ditch as necessary.

In discussing the proposed car wash, Mr. Kemp testified that he plans to add a landscape barrier as well as a board-on-board privacy fence between the adjacent residential neighbor, Mrs. Colvin, and the subject site. He opined that the addition of landscaping will reduce the impervious paving now existing.

On cross-examination by Mr. Holzer, Mr. Kemp agreed that the existing operation was not always as tidy as it should be, but this was "the exception, not the rule." He also testified that he would prefer the car wash to be open 24 hours, seven days per week. He further explained that the Zoning Commissioner had limited the hours of operation from 8:00 a.m. until 1/2 hour after dusk.

Sandy Russo was the next witness. She is a district leader for Royal Farms and oversees the store managers, visiting each store twice a week. She testified that there is substantial residential housing near the subject site and the regular customers at the store tend to be local. She also admitted that there have been some problems with the parking of trucks on site as well as cleanliness. However, she stated that she has not had any complaints from customers, and that this store is similar to others of this nature.

Kenneth Schmid, a traffic engineer, was accepted as an expert by the Board. He stated that he has been to the subject site on numerous occasions and has worked on two-to-three dozen convenience store/gas stations in the last 3 years.

He described the level of service at signalized intersections nearby as all A or B under the County's "loaded cycle" criteria. At the Middleborough and Back River Neck intersection where there is no traffic signal, Schmid used the "critical lane" analysis and found the peak level of service there to be an A. He also noted that no new points of ingress and egress would be needed to serve the expansion. Mr. Schmid submitted a letter to Mr. Kemp, dated February 27, 2003 (Petitioner's Exhibit #6) reciting his findings.

He testified further that in his opinion internal traffic patterns are standard and acceptable. He referred to the addition of the rollover car wash as "benign," with one car in and one car waiting. He stated that the stacking provided is adequate.

Under cross examination from Mr. Holzer, Mr. Schmid explained that the stacking spaces for the car wash were indicated by blocks on the plan, and although there was nothing planned at this time, the spaces could be striped on the pavement. He stated that he would, in fact, recommend the striping. He also noted that an existing utility pole would be removed, and that the front of the tunnel to the car wash faced the existing house to the north.

Mr. Schmid further explained that he had not updated the traffic count from his original report because he had checked the county records and the level of service had not changed in the interim.

The next witness was Nick Brader. Employed by Matis-Warfield, Inc., Mr. Brader was accepted by the Board as an expert in planning and engineering. Mr. Brader prepared the site

plans for the hearing before the Zoning Commissioner as well as the plan for the 1996 improvements to the subject site and the plan for the rezoning proposal in the 2000 CZMP.

As Petitioner's exhibits 8A & B, Mr. Brader introduced the current zoning maps showing the property as BL-AS. Mr. Brader opined that the addition of the AS designation allowed for the expansion of auto use on site.

Petitioner's Exhibit 9A, a photo presented by Mr. Brader, showed the view from Back River Neck Road and the existing conditions. Petitioner's 9B, also a photo taken by Mr. Brader, showed the view from Middleborough Road including Mrs. Colvin's house, the vacant building, the store currently in use, and the existing gas pumps. Mr. Brader testified that 3000 square feet of paving on the rear parcel would be replaced with landscaping. With the help of a drainage map (Petitioner's Exhibit 10), Mr. Brader stated that the new proposal would have a positive impact by reducing the impervious surface by .2 acre. He said that the landscaping would also aid in containing the runoff.

Mr. Brader repeated earlier testimony by the Petitioner that a board-on-board fence would be erected between Mrs. Colvin's property and the subject site. The location of the fence would be decided, according to Mr. Brader, in cooperation with the resident at 1609 Middleborough Road [Mrs. Colvin].

Mr. Brader then testified on the appropriateness of a Special Exception for the addition of a rollover car wash and four additional fuel pumps at the subject site as proposed by the Petitioner.

To be granted a Special Exception, the use must comply with § 502.1 as follows:

502.1—Before any Special Exception may be granted, it must appear that the use for which the
Special Exception is requested 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 dangers;

d. Tend to overcrowd the 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;

h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations;

i. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C. 2, R.C. 4, R.C. 5, or R.C. 7 zone. inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations;

j. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C. 2, R.C. 4, R.C. 5, or R.C. 7 zone.

Mr. Brader addressed each article separately and particularly indicating that, except for the car wash, the use was already existing, the car wash had adequate stacking capacity, the use of the additional property would improve the circulation of internal traffic, the one-story building would not change, public water and sewer are supplied and sufficient, and the rezoning which added the AS designation showed that the County Council deemed the auto use appropriate at this location. Therefore, the proposed use is not inconsistent with the spirit and intent of the property's BL-AS zoning, in Mr. Brader's opinion. Further, the proposed Special Exception at

this site would not have any more of an adverse impact here than at any other similar property zoned BL-AS adjoined by residential property.

Relative to the drainage ditch problem, Mr. Brader stated that the Petitioner had worked with Baltimore County to clean the ditch and they are willing to give the county any access they need for maintenance. He further indicated that he had prepared an easement plat to facilitate the process and he is now waiting for the county to act.

When asked by Mr. Holzer about lighting spilling over to adjacent residential properties, Mr. Brader indicated that he could guarantee that the shielded type of lights would be used at the subject site. Counsel for the Petitioner agreed to stipulate to this fact.

In answer to additional questions by Mr. Holzer, Mr. Brader stated that the existing gas pumps are 240 feet from Mrs. Colvin's house while those proposed will be 80 feet away. Mr. Brader also stated that the car wash would be 117 feet from Mrs. Colvin's house with the ninth vehicle in the stacking lane 41 feet away. Mr. Brader explained that the ninth stacking position was placed at an angle because he "thought it belonged there and it works practically." Mr. Brader opined that the impact on Mrs. Colvin would be mitigated by the addition of the fence and the landscaping, neither of which buffers her at this time.

On redirect by Mr. Hoffman, Mr. Brader stated that the proposal meets all setback requirements and even exceeds the requirements in most instances. He cited the example of the planned landscaping buffer set at 30 feet where only 15 feet is required.

Board member Worrall asked the witness if the angled stacking space could fit behind the others. Mr. Brader replied, "Yes, but I liked it there." Mr. Holzer then asked if that space were made parallel, would a difficulty be created in the traffic pattern? Mr. Brader answered that changing the space reduces the flow but it still "works."

The Appellant, Mrs. Eugenia Colvin, 1609 Middleborough Road was the next to testify. She indicated that she had lived at that address since 1970. She stated that there have been continual problems with the drainage ditch on the subject site since the first convenience store was built, causing the configuration of the ditch to be as altered. She indicated that the owners of the subject site and the county had responded to her complaints and cleaned up the ditch from time to time, but maintenance wasn't consistent. The ditch overgrew and filled with trash, and then overflowed the "full length of my property."

Mrs. Colvin testified that she continued to complain to the county but the problem did not abate. She indicated that she raised the same questions and concerns at the Zoning Commissioner hearing in May 2001. She stated that she is still having flooding problems caused by the overflowing ditch.

Mrs. Colvin also expressed concerns about the fumes from the additional gas pumps closer to her house and the cars waiting to use the car wash. She also opines that she will be impacted by the noise from the engines of the cars, the vacuum cleaners, and the radios associated with those using the car wash. She is also affected by the lighting which she states is directed toward her house such that she must keep the shades drawn.

As evidence Mrs. Colvin introduced photographs which she had taken of the drainage ditch on numerous occasions (Protestant's Exhibits 1, 3, 4, 5, 6), plus the unclean conditions existing on the subject site (Protestant's Exhibit 7, 8, 9A &B). She also introduced photographs showing the proximity of the site to her house (Protestant's Exhibit 10) and the flooding on her lot (Protestant's Exhibit 11), taken on July 19, 2002 and March 3, 2003.

Mrs. Colvin expressed her apprehension about the hours of operation of the car wash, stating that she didn't feel the Zoning Commissioner's restriction is sufficient.

Called in rebuttal, Mr. Kemp reiterated his position that he and his company are willing to do whatever is required to resolve the issue with the drainage ditch. However, he said that because this is a wetlands area, the resolution must be affected by the county.

He opined further that the new proposal would create a specific use for what is now a vacant parcel. Therefore trucks would no longer be able to park there and Mrs. Colvin would be protected from the commercial use by landscape screening and a fence.

Opinion

As stated by the Petitioner's Counsel in his memo, "According to the well-developed law of Maryland, a special exception is a 'valid zoning mechanism' whereby a particular use is presumed to be valid and is presumed to be consistent with the general welfare, absent facts or circumstances sufficient to negate that presumption. Schultz v. Pritts, 291 Md 1, 11, 432 A.2d 1319 (1981)."

Mr. Hoffman also quotes the Court of Appeals in Mayor and City Council of Rockville v. Rylus Enterprises, Inc. 372 Md, 514, 541-543, 814 A.2d 469 (2002) as follows:

> ...a special exception use is an additional use which the controlling zoning ordinance states will be allowed in a given zone unless there is showing that the use would have unique adverse affects (sic) on the neighboring properties within the zone.

The Board finds unanimously that the Protestant/Appellants have failed to prove that the situation in which Mrs. Colvin finds herself as a residentially zoned property adjacent to a property zoned BL-AS is any different than that of any other property similarly situated. The concerns raised by Mrs. Colvin are definitely worthy of attention, but they are typical of a residential neighbor adjacent to a convenience store with added uses of gas pumps and a car wash. The Petitioner meets all setbacks as required under the law. The special exception statute, or conditional use, assumes that there will be some adverse impacts.

The Board found Mr. Brader's recitation and explanation of the standards for a special exception as set forth under § 502.1 clear and concise. In essence the special exception, if granted, would not create any adverse effects at the subject site different than other sites with the same zoning. Moreover the special exception requested is within the spirit and intent of the zoning classification B.L.-A.S.

Indeed the Petitioner was convincing in his agreement to create a landscaping buffer of 30 feet in lieu of the 15 required and to further screen Mrs. Colvin from the commercial use with a board-on-board privacy fence. He also stipulated that all lights would be of the shielded type to mitigate the light directed onto Mrs. Colvin's property.

With regard to the car wash itself, the Board finds as a matter of fact that § 419.3A mandates that the stacking of vehicles waiting to enter the car wash be single file. Mr. Brader's testimony was that the double stacking shown on the site plan was an aesthetic convenience. We find that the double stacking is not in compliance with the regulation and will require that the site plan be amended to comply.

With regard to the requirement of § 419.4.B.1 that "No tunnel entrance or exit of a car wash operation shall face an adjacent residentially zoned property not including those across a street," the Board finds the Petitioner in compliance. Upon examining the site plan, we find that the entrance to the tunnel comes close to facing Mrs. Colvin's property, but in fact faces the property adjacent to her which is zoned BL.

In addition, the Petitioner has made definitive efforts to resolve Mrs. Colvin's main concern, the flooding of the drainage ditch onto her property. While the storm water flow drains from a 12-acre area, only .4 acre of which is owned by the Petitioner, evidence from Mr. Kemp, the owner, and Mr. Brader, the engineer, is convincing that Cloverland has been trying to resolve

the problem for a number of years. The area in question is designated as a "wetlands" regulated by the Army Corps of Engineers and the Maryland Department of the Environment. Cloverland has granted an easement to Baltimore County for maintenance of the drainage ditch, prepared the plat for the County at their expense, and completed the surveying necessary. Evidence also shows that the decrease in impervious area and the additional landscaping under the proposal at issue will actually improve the conditions over what now exists.

Therefore the Board will grant the Petitioner's request for a Special Exception to expand the fuel service component of an existing convenience store/fuel service station, adding four additional pumps, and to permit the addition of a rollover car wash as a "use in combination" pursuant to §§ 405.2.B.1 and 405.4.E.2 of the BCZR, subject to the following restrictions:

1. The Petitioner may apply for a building permit and be granted same upon receipt of this Order; however, Petitioner is 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 comply with the recommendations made by the Office of Planning, as set forth in their ZAC comments dated February 26, 2001, a copy of which is attached hereto and made a part hereof. Note, however, that the Petitioner's request for a variance was withdrawn by the Petitioner and dismissed as moot by the Zoning Commissioner.

3. The hours of operation of the proposed car wash facility shall be limited to from 8:00 a.m. to 8:00 p.m., seven days per week.

4. The Petitioner shall be required to comply with § 419.3A of the BCZR, which states in pertinent part:

   A. All stacking spaces for car washes shall be single-file at the entrance of the tunnel. The space for the car being washed shall not be counted as a stacking space.

   The Petitioner will amend their site plans to accommodate the nine stacking spaces required for a rollover car wash in single file, with none double-stacked.

5. The Petitioner will cooperate as necessary with Baltimore County in its effort to acquire the drainage ditch as an easement and permit county maintenance crews access to same.

6. When applying for any permits, the site plan and landscaping plan filed must reference this case and set forth and address the restrictions of this Order. These plans shall include a 30-foot landscape buffer and a board-on-board fence between the subject property and 1609 Middleborough Road. All lighting shall be of the shielded variety and directed down to mitigate off-site light intrusion.

ORDER

THEREFORE, IT IS ORDERED, by the Baltimore County Board of Appeals, this 26th day of June, 2003, that the Petition for Special Exception to expand the fuel service component of an existing convenience store/fuel service station, adding four additional pumps, and to permit the addition of a rollover car wash as a "use in combination" pursuant to §§ 405.2.B.1 and 405.4.E.2 of the BCZR, be and the same is hereby **GRANTED**, subject to the following restrictions:

1. The Petitioner may apply for a building permit and be granted same upon receipt of this Order; however, Petitioner is 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.

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6. When applying for any permits, the site plan and landscaping plan filed must reference this case and set forth and address the restrictions of this Order. These plans shall include a 30-foot landscape buffer and a board-on-board fence between the subject property and 1609 Middleborough Road. All lighting shall be of the shielded variety and directed down to mitigate off-site light intrusion.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman

Margaret Worrall

Melissa Moyer Adams

4/10/03

RECEIVED
APR 09 2003
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF: Cloveland Farm Dairy, Inc. 1601 Middleborough Road	*	THE COUNTY BOARD OF APPEALS
15th Election District; 5th Councilmanic	*	OF
RE: Petition for Special Exception	*	BALTIMORE COUNTY
	*	Case No. CBA-01-316-XA

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

PROTESTANT'S/APPELLANT'S MEMORANDUN IN LIEU OF FINAL ARGUMENT

Protestants/Appellants Jean Colvin, John Snyder, and George Loveless (Bob Christ withdrew as a Protestant before the Board) by J. Carroll Holzer and Holzer and Lee submit this Memorandum in Lieu of Final Argument and says:

STATEMENT OF THE CASE

This matter came before the Board as a result of an Appeal from a decision of the Zoning Commissioner of Baltimore County, who on May 31, 2001 approved with restrictions a Special Exception for the expansion of an existing fuel service station and the addition of a roll-over car wash pursuant to Sections 405.2.D.1 and 405.4.E.2 and 502.1 of the Baltimore County Zoning Regulations.

Petitions were originally filed by Cloverland Farms Dairy, Inc. for a Special Exception to approve the expansion of an existing fuel service station and the addition of a roll-over car wash as a use in combination pursuant to Sections 405.2.D.1 and 405.4.E.2 of the Baltimore County Zoning Regulations. In addition, Petitioners filed for a Variance from Section 419.4.A.1 to permit a minimum distance of 20 feet between the proposed roll-over car wash and the lot line of an adjacent residentially zoned property in lieu of

the required 50 feet. Before the Zoning Commissioner, the Petition for Variance was withdrawn and an amendment to the site plan submitted showing the roll-over wash building the required 50 feet from the property line.

STATEMENT OF FACTS

The Petitioner, Cloverland Farms, Inc., presented John Kemp, who testified as to the request of Cloverland Farms to expand the existing Royal Farms gas service as well as the installation of a new roll-over car wash on the site. Royal Farms had previously petitioned in 1996 for a Special Exception for the gas station. Kemp testified that in his opinion he believed the store was well-maintained even though photographs of last August and this January were submitted as Protestants' exhibits, which showed a lack of property maintenance in garbage both during the summer and winter months. Kemp further testified in regard to the drainage ditch, which is on his property, and which has been the source of problems to Protestant adjacent property owner Jean Colvin for years. Kemp testified that the property owner was willing to do whatever it took to resolve the problem by giving an easement to Baltimore County. He acknowledged that this problem had been existing for many years, actually from the early 1990's. During the previous Zoning Hearing in 1995/1996 and in the Hearing before the Zoning Commissioner in this case in 2001, Royal Farms had promised to cooperate with Baltimore County, but the flooding problem created by the ditch on the Royal Farms property had never been resolved. Royal Farms pass all blame on Baltimore County, even though it is Royal Farms' property. Ken Schmid testified that the proposed use would not impact Middleborough Road, or Back Riverneck Road. He defended the ninth stacked parking area as being appropriate. Nick Brader testified as Civil Engineer. He likewise testified

as to the efforts to resolve the flooding from the ditch area on Mrs. Colvin's property. He found no impact on the neighborhood under 502.1 even though the gas tanks and the car wash were being operated closer to Mrs. Colvin's property than previous. He likewise defended the ninth stacking space. Protestants are at a loss to understand how the ninth stacking space can possibly work in its current location. It is totally unrealistic and inconceivable that cars will stack in that fashion. The result then, would be to continue the ninth stacking space closer to Mrs. Colvin's property, which would exacerbate the gas fumes and the noise that she subsequently testified to.

The Protestants' testimony consisted of Mrs. Colvin of 1609 Middleborough Road, who has lived there since 1970. She showed pictures of the ditch on the Royal Farms property, which has caused extreme flooding on her property over the years, and despite repeated demands to the County and to Royal Farms, no one has resolved her flooding problem.

Colvin further testified that the extension of the gas pumps to the rear of the subject property would bring additional lights over those pumps, more noise as a result of cars filling up at the gas pumps with the accompanying horns blowing, radios blaring, engines running, doors slamming, which would now be closer to her bedroom window. Before the extension of the gas pumps, which she opposes, would bring additional noise, additional big lights, additional smell of gas from the pumps and fumes, which she has testified to from diesel engines, trucks and cars, and gas engines running, which enter her house. Colvin's testimony as it relates to the car wash mirrored the testimony in regard to the gas pumps by expressing her concern for the additional noise of blowers from the car wash, the whine of the motors, cars with engines running, stacked at least nine cars,

radios from all the cars, and the accompanying back-up of vehicles waiting to enter the car wash, all of which would be right next to her house and her bedroom window. In addition, the fumes from the cars waiting will create additional stench, much like the diesel trucks parked illegally, which have been running in that area of the proposed vehicle stacking for the car wash.

LEGAL ARGUMENT

I. The Special Exception should not be granted, based upon its impact on the Colvin property.

The Special Exception use for additional gasoline pumps behind the existing Royal Farms facility will have an adverse effect and impact on the Colvin property. Mrs. Colvin's testimony established that the particular use proposed at this location would have an adverse effect above and beyond those inherently associated with such special exception use because her house and bedroom windows are so close to the subject site and the additional gas pumps. Clearly, the impact of the granting of the Special Exception in 1996 has been demonstrated by her testimony concerning the fumes, noise, and lighting that has had an effect upon her health, safety, and welfare. Those original pump locations were much further away from her house and property. (Schultz vs. Pritts 290, MD 1 (1981)). This case is also similar to Board of County Commissioners vs. Holbrook , 314 MD 210 (1988) in which the granting of a Special Exception for a trailer in plain view of a permanent brick home was determined to be of sufficient uniqueness to permit the denial of the special exception. This case is also on point with People's Counsel for Baltimore County vs. Mangione, 85 MD App. 738 (1991) where a nursing home in a residential area was denied on the basis of its unique impact on the community.

The impact of the roll over car wash will likewise have significant impact over Mrs. Colvin's health and welfare. It will be right next to her property with at least 9 waiting vehicles stacked along her property line within a few feet of her bedroom window. She has already testified as to the fumes from trucks parked in the exact same areas as the waiting vehicles will be lined up. The noise from the car wash facility, the radios blaring from vehicles, the drying machine within the roll over will all significantly impact her residing in her house.

Furthermore, the subject site has greater impact upon Mrs. Colvin due to the close proximity of her house to the property and the wash facility.

It should be noted that just because the County Council, in the last comprehensive map, rezoned the back portion of this property to be B.L.—A.S. is not sufficient reason for the Board of automatically approve the Special Exception request. The Council, in its wisdom in comprehensively rezoning the zoned property still understood that the impact upon the health, safety, and welfare of the adjacent properties and community was to be a consideration for this Board. A Special Exception is still required and the impacts upon the Colvin property are still relevant. This Petition should be denied.

II. The record fails to establish proof by the Petitioner that they have complied with Baltimore County Zoning Regulation, Section 405.2.B.1.

Fuel service stations are permitted on the subject site by Baltimore County Zoning Regulation Section 405.2.B.1, which permits them subject to a special exception and in accordance with Sections 405.3 and 405.4.

Section 405.4.E.2 permits roll-over car washes subject to Section 419 of the Baltimore County Zoning Regulations.

Section 419, car wash [Bill No. 172—1993] permits a roll-over car wash in combination with the service station.

Section 419.2 requires evidence to be submitted in regard to the "manufacturer's rated hourly production capacity of the equipment to be installed" or "other evidence of the capacity". That evidence is not in the record before the Board in this case. Section 419.3 requires evidence that the stacking spaces for car washes to be "single file" at the entrance of the tunnel. There is no authority given for double-stacking spaces such as proposed on the site plan. See, 419.3.A.

Furthermore, Section 419.3 requires the stacking in a manner that does not preclude vehicles from waiting on the street or blocking the right-of-way before gaining entrance. Furthermore, Section 419.3.B requires parking spaces to avoid conflict with on-site circulation patterns. Clearly, the ninth parking space violates the intent of both of these sections.

Section 419.4 requires that "no tunnel entrance or exit of a car wash operation shall face an adjacent residentially zoned property not including those across the street". Here, it is undisputed from viewing the site plan that the tunnel entrance faces directly to the side of Ms. Colvin's property, which is not permitted by the regulations.

Finally, Section 419.4.5 permits the CBA to make changes to the building or site plan design and limit the hours of operation for car washes for which a special exception is required. Here, the subject car wash violates the regulations. Secondly, based upon the testimony of Jean Colvin, it is clear that the hours of operation, if the special exception is granted, should be limited. The Zoning Commissioner permitted the proposed car wash to operate from "8am to one half an hour after dusk, 7 days per week".

To impose that type of burden on the adjacent property is unconscionable. The Saturday operation should be limited to one half a day and the Sunday operation should be precluded. In the summertime, the hours of operation under the Zoning Commissioner's decision would be from 8:00 in the morning until approximately 9:30 or 10:00 in the evening. That is entirely too excessive and places an undue burden and hardship on Ms. Colvin. The Protestants respectfully request a limited number of days and limited number of hours as a condition for approval, if in fact approval is granted.

Wherefore, for all of the above reasons, Protestants respectfully request that the Board of Appeals deny the Special Exception based on the testimony of Ms. Colvin and the clear and unusual impact on her property as required by the cases of Schultz, Holbrook, and Mangione.

Respectfully submitted,

J. Carroll Holzer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of ~~March~~ April, 2003 a copy of the foregoing Memorandum in Lieu of Final Argument was mailed first class, postage pre-paid to Rob Hoffman, Venable, Baetjer and Howard, P.O. Box 5517, Baltimore, MD 21285.

J. Carroll Holzer, Esq.

4/10/03

IN THE MATTER OF CLOVERLAND FARMS DAIRY, INC., OWNER, FOR APPROVAL OF SPECIAL EXCEPTION FOR PROPERTY LOCATED AT 1601 MIDDLEBOROUGH ROAD	*	BEFORE THE COUNTY
	*	BOARD OF APPEALS OF
	*	BALTIMORE COUNTY
15th Election District 5th Councilmanic District	*	
	*	Case No. 01-316-XA
	*	

RECEIVED
APR 10 2003
BALTIMORE COUNTY
BOARD OF APPEALS

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PETITIONER'S POST-HEARING MEMORANDUM

Petitioner Cloverland Farms Dairy, Inc. ("Cloverland"), by Robert A. Hoffman and Patricia A. Malone with Venable, Baetjer and Howard, LLP, its attorneys, respectfully submits this Post-Hearing Memorandum in support of its Petition for Special Exception, as follows:

INTRODUCTION

Cloverland has filed a Petition for Special Exception to expand the fuel service component of an existing convenience store/fuel service station located at the intersection of Middleborough and Back River Neck Roads and to approve the addition of a rollover car wash as a "use in combination" pursuant to Sections 405.2.B.1 and 405.4.E.2 of the Baltimore County Zoning Regulations ("B.C.Z.R.").[1] The Zoning Commissioner for Baltimore County conducted a public hearing on the Petition for Special Exception and, on May 31, 2001, issued his Findings of Fact and Conclusions of Law, granting the requested special exception with

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[1] Cloverland had originally filed a Petition for Variance to reduce the minimum distance between the car wash and the adjacent residentially zoned property line from 50 feet to 20 feet, but withdrew the petition at the hearing before the Zoning Commissioner when the proposed car wash was relocated closer to Back River Neck Road, thus, satisfying the setback requirement.

some minor restrictions. An appeal to the County Board of Appeals ("Board of Appeals" or "Board") was filed by Eugenia Colvin, John Snyder, George Loveless, and Bob Christ ("Protestants").

On March 6, 2003, the Board of Appeals conducted a *de novo* hearing on the requested special exception relief.[2] Mrs. Colvin was the only Protestant to appear at that hearing. At the beginning of the hearing, Cloverland's counsel moved for dismissal because the Notice of Appeal was deficient. (T. 4-11) Because Protestants failed to comply with the requirement in Rule 3(a) of the Rules of Practice and Procedure of County Board of Appeals that their names and addresses be provided in the Notice of Appeal, Cloverland argued the Board should dismiss the appeal. Without this information, Cloverland could not determine whether the Protestants had standing to pursue this appeal, especially in light of the fact that three of the four Protestants did not even show up for the hearing. The Board, by a vote of 2 to 1, refused to dismiss the appeal on the basis of this deficiency. (T. 12-15)

Cloverland's counsel then moved to dismiss one or more of the Protestants for lack of standing. (T. 15-18) Following this motion, Mr. Holzer voluntarily withdrew Mr. Christ as a Protestant. (T. 18, 23) The Board then conducted an evidentiary hearing wherein Cloverland's expert and lay witnesses produced overwhelming evidence in support of the grant of the special exception.

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[2] With its Memorandum, Cloverland has provided to the Board of Appeals a copy of the hearing transcript.

STATEMENT OF THE FACTS

Cloverland operates a chain of "Royal Farm" dairy/convenience stores, 103 in Maryland, Virginia, and Delaware, including a store located at 1601 Middleborough Road in the Middle River/Essex area of Baltimore County. (T. 26-28) The Middleborough Road Royal Farm store is a 2,930 square foot combination convenience store/fuel service station on a triangular-shaped parcel (approximately .5 acres) located at the intersection of Middleborough and Back River Neck Roads. The existing conditions of the site are shown on the site plans introduced as Petitioner's Exhibits 1A-1B, 2A-2B. Prior owners of this parcel used the property for a service station and an automobile repair facility. (T. 28-29) Cloverland also owns the adjoining approximately .9 acre parcel to the rear of the site (311 Back River Neck Road) on which Cloverland operated a first-generation dairy store for many years. (T. 27-28)

In 1996, Cloverland purchased the Middleborough Road property and obtained the necessary zoning relief, including a special exception and variances, to redevelop an old gas station into the existing convenience store/fuel service station. *See* Case No. 96-272-XA. (T. 27-30) Once the new store opened, the old dairy store on the Back River Neck Road parcel was closed. (T. 27) Over the past several years, Cloverland has been in the process of upgrading its stores generally and expanding the services offered to meet its customers' demands for "one-stop shopping." (T. 32) Cloverland's newest initiative involves adding rollover car washes at some of its locations, including the Middleborough Road store. (T. 32, 38)

During Baltimore County's 2000 Comprehensive Zoning Map Process, Cloverland met with Councilman Vincent Gardina to discuss expanding the Middleborough Road Royal Farm store onto the vacant rear parcel by adding fuel pumps and a car wash and to discuss rezoning the rear parcel from BL to BL-AS. (T. 28-29) The addition of the AS (Automotive Services) district would allow the proposed uses with the approval of a special exception. In fact, the only purpose for adding the AS district to BL zoned land would be to allow for these types of uses. Councilman Gardina approved of Cloverland's plan and was in favor of the requested rezoning. (T. 28-29) Consequently, on the 2000 Comprehensive Zoning Maps, adopted by the Baltimore County Council in the Fall of 2000, the Back River Neck Road parcel was rezoned from BL to BL-AS. (T. 28-29, 93-94) *See also* Petitioner's Exhibits 8A, 8B.

Having had the rear parcel rezoned to its current BL-AS classification, Cloverland now seeks to go forward with its expansion plan, which requires obtaining special exception relief for the expanded fuel service offerings and the rollover car wash shown on Petitioner's Exhibit 2B. B.C.Z.R. §§ 405.2.B.1 and 405.4.E.2. The proposed expansion would almost triple the land area for the Royal Farm store, increasing the site area from approximately .5 acres to approximately 1.4 acres. *See* Petitioner's Exhibits 2A, 2B. The vacant building on the rear parcel would be torn down, and, in its place, Cloverland would add four fuel pump islands and a rollover car wash. (T. 30); *See also* Petitioner's Exhibit 2B.[3]

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[3] Cloverland proposes to keep the car wash open 24 hours a day in order to better serve its customers. If, however, the Board is inclined to grant the special exception, but believes a restriction as to the hours of operation is necessary to address some of the concerns raised by Mrs. Colvin, Cloverland suggests that the Board limit the operation of the car wash to the hours of 7:00 a.m. to 9:00 p.m.

Cloverland proposes no increase in the size of the current Royal Farm store building, which already may be accessed from either side. (T. 31-32) Because the site is almost entirely paved, Cloverland's proposal, which involves removing some of the paving to install grass and landscape buffers, will actually result in a reduction in total impervious area by 3,000 square feet. (T. 30-31, 100-105) Cloverland's proposal also involves the installation of a substantial amount of landscaping where none currently exists and the addition of some curbing. (T. 30-31, 100-105) Consequently, it will result in less stormwater runoff into a drainage ditch that exists between the rear parcel and Mrs. Colvin's property. (T. 100-106, 232-233) Cloverland also proposes to install a board-on-board privacy fence and additional landscaping between its property and Mrs. Colvin's property. (T. 39, 105-106)

As John Kemp, Vice-President of Cloverland, explained, Cloverland intends for this proposal to equalize usage of both sides of the convenience store/fuel service station, which will increase Cloverland's ability to monitor the rear parcel in terms of security (there will be no vacant, unused space where people can loiter or park their trucks) and appearance (this side of the property will serve as an equal "front entrance" of the store both in the minds of the public and in the minds of the employees, and it will be treated as such). (T. 232-233)

ARGUMENT

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

Special exceptions in Baltimore County are approved in accordance with B.C.Z.R. Section 502.1. According to the well-developed law of Maryland, a special exception is a "valid zoning mechanism" whereby a particular use is presumed to be valid and is presumed

to be consistent with the general welfare, absent facts or circumstances sufficient to negate that presumption. *Schultz v. Pritts*, 291 Md. 1, 11, 432 A.2d 1319 (1981). Although *Schultz v. Pritts* is the seminal case on special exceptions, in several recent decisions, the Court of Appeals and Court of Special Appeals have reiterated the standard relating to the grant or denial of a special exception. *Mayor & Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 541-543, 814 A.2d 469 (2002); *Lucas v. People's Counsel for Baltimore County*, 147 Md. 209, 237-239, 807 A.2d 1176 (2002); *Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md. App. 616, 640-641, 716 A.2d 311 (1998).

As the Court of Appeals explained in *Rylyns Enterprises*:

> ...a special exception use is an additional use which the controlling zoning ordinance states will be allowed in a given zone unless there is showing that the use would have unique adverse affects [sic] on the neighboring properties within the zone.

372 Md. at 542 (emphasis added). Recent appellant decisions have served to emphasize that, once a petitioner demonstrates that the proposed use satisfies the specific requirements of the applicable ordinance, the special exception must be granted unless "there are facts and circumstances that show that the particular use proposed at the particular location proposed 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 542 (*quoting Schultz*, 291 Md. at 11) (emphasis added).

To defeat a special exception, therefore, a protestant must do more than show that the use may have adverse effects that are common to the use generally. *Rylyns Enterprises*, 372 Md. at 542; *Schultz*, 291 Md. at 14, 22-23; *Lucas*, 147 Md. App. at 238-239. "The disqualifying adverse effect or effects must be more than mere annoyance. Classifying such

uses as special exceptions or conditional uses (as opposed to permitted uses) assumes that those uses will include some adverse impacts." *Rylyns Enterprises*, 372 Md. at 542 (emphasis added). A disqualifying adverse impact, therefore, must be something more than what is ordinarily expected and it must be unique to that particular location. *Id.* at 542. *See also Lucas*, 147 Md. App. at 238-239; *Hayflelds*, 122 Md. App. at 640-641. As outlined below, Cloverland produced strong and substantial evidence at the hearing before the Board demonstrating that the proposed expanded fuel service station and rollover car wash meet the applicable standards pertaining to these uses and that the proposal satisfies the requirements of Section 502.1.

Cloverland, though, is not unsympathetic to Mrs. Colvin's situation. As outlined below, Mrs. Colvin has pointed out some negative aspects of living next door to a fuel service station/convenience store, which is a fairly intensive commercial use. However, as discussed above, for Cloverland to be entitled to the requested special exception relief, the Board need not find that existing conditions will be made better or that additional impacts will not result. Rather, the Board need only find that the resulting impacts from the proposed improvements will not be more than what would ordinarily be expected or be worse at this particular location. The types of concerns raised by Mrs. Colvin, many of which are from existing conditions, are inherent to this type of operation and are not a sufficient basis to deny the requested relief. Cloverland actually went well beyond satisfying the legal standard for granting a special exception. Although it did not have to do so, Cloverland did demonstrate that Mrs. Colvin's situation, in many respects, will be improved if the relief is granted.

Health, Safety, and General Welfare of the Locality

General Concerns:

Nicholas Brader, professional engineer and land planner, expressed an opinion that the proposed expanded fuel service station and rollover car wash will not have an adverse impact on the health, safety, and general welfare of the surrounding community. (T. 107-108) In rendering this opinion, Mr. Brader found it significant that the convenience store/fuel service station already exists at this location; the only proposed additions are four fuel pump islands, the associated canopy, and a rollover car wash, which Cloverland moved farther away from Mrs. Colvin's house at her request. (T. 107-108) Both the fuel service use and the rollover car wash use on the rear parcel will meet or exceed all applicable setbacks and requirements. (T. 108, 142-144)

Further, with this proposal, the site area for the entire Royal Farm store use would almost triple, going from .5 acres± to 1.4 acres±. *See* Petitioner's Exhibits 2A, 2B. The vacant, deteriorating building on the rear parcel will be razed. (T. 30) Cloverland's proposal, which involves removing some of the paving to install grass and landscape buffers, will actually result in a reduction in total impervious area on the site. (T. 100-103) Cloverland also intends to install a substantial amount of landscaping on the rear parcel, which currently has no landscaping. (T. 103-105) With these improvements and some additional curbing, as Mr. Brader explained, he anticipates a net decrease in the already meager amount of stormwater runoff that drains from the property into the ditch beside Mrs. Colvin's house. (T. 100-105) Cloverland also intends to install a board-on-board privacy fence and additional landscaping between its property and Mrs. Colvin's property. (T. 39, 100-101, 105-106)

With respect to upkeep of the site, Mr. Kemp and Ms. Russo testified on behalf of Cloverland that policies and procedures are in place to ensure that Royal Farm stores and properties are kept neat and clean. These procedures involve store employees and store managers, a District Leader -- in this case, Ms. Russo -- who visits the site a couple of times a week to inspect, and unannounced inspections by "mystery inspectors." (T. 43, 58-64, 231-232) As Ms. Russo and Mr. Kemp confirmed, the managers and employees of the Middleborough Road store, while they may not be perfect, "do a good job," and the majority of the time the store is very presentable and is kept in a clean manner." (T. 61, 232) Also, because the proposal will equalize usage of both sides of the site, it will increase Cloverland's ability to monitor the rear parcel in terms of security, especially with regard to loitering and parking of trucks unrelated to the store, and in terms of appearance and upkeep as it will no longer be considered the "back" of the store. (T. 232-233) Therefore, Cloverland is confident that any problems that have occurred in the past will not re-occur.

In response to Cloverland's presentation of evidence and the testimony of its lay and expert witnesses, Mrs. Colvin raised what could be considered, at most, general complaints about living next to fuel service station and car wash, such as noise, smells, and lights, from the operation. These types of potential impacts are inherent with a fuel service station/convenience store use. The proposed uses, located anywhere else in Baltimore County on BL-AS zoned land, would have the same types of impacts. As Mr. Brader confirmed, it is common in Baltimore County to have commercial zoning along busy corridors -- for instance, York Road -- with residentially zoned land directly behind. (T. 148) Mr. Brader testified that he has worked on "dozens" of Royal Farm stores in Baltimore County, and these stores are

frequently located in similarly close proximity to residentially zoned and used land. (T. 145-147) The alleged adverse impacts are not unique to this site, nor do they rise above the level of "mere annoyances." Therefore, these complaints are not a sufficient basis on which to deny the requested relief. *Rylyns Enterprises*, 372 Md. at 542; *Lucas*, 147 Md. App. at 238-239; *Hayflelds*, 122 Md. App. at 640-641.

At any rate, any impact from these annoyances, which, to a large extent, already exist, may actually be lessened by the proposed improvements, with the decreased paving in close proximity to her house, the increased landscaping, the new board-on-board privacy fence to be installed, and the stipulation made by Cloverland's counsel that only "shielded" lighting will be used on the Back River Neck Road property. (T. 116-118)

Drainage Ditch:

Mrs. Colvin's major complaint related to the drainage ditch that lies between her house and the Back River Neck Road parcel. Mrs. Colvin testified that, because the ditch does not drain properly, it has a tendency to overflow onto her property. (T. 164-165) Mrs. Colvin stated that her problems with the drainage ditch date back to the 1970's when an unrelated abutting parcel, which fronts Back River Neck Road, was developed as a restaurant. (T. 161-164) At that time, Mrs. Colvin recalls a "drain" was removed, and the ditch was rerouted to a 90° angle. (T. 163-165) Since that time, according to Mrs. Colvin, she has had ponding in her backyard and one incident of water impacting her house. (T. 176, 214-216, 223-225, 228)

With regard to the issue of the drainage ditch, Cloverland presented the testimony of Mr. Kemp and Mr. Brader. Mr. Kemp does not dispute that the drainage ditch is located on

its Back River Neck Road property. (T. 54-55) Mr. Kemp would also like to see the ditch cleared and repaired. This ditch, though, is considered to be "wetlands" and is regulated by the Army Corps of Engineers and the Maryland Department of the Environment. A joint permit, therefore, is required for any work, including clearing, to be performed in this area. (T. 113, 230)

As Mr. Kemp and Mr. Brader explained, Cloverland has been working for years to resolve this problem. In 1995, at Cloverland's urging, Baltimore County agreed to take over maintenance of the ditch. (T. 33-35); Petitioner's Exhibits 3, 4. At that time, Cloverland agreed to provide any necessary permission for Baltimore County to enter and perform maintenance in this area. (T. 111-112, 230) Baltimore County was to have prepared the easement plat to acquire permanent rights to enter and maintain; however, the County never followed through with the preparation of this plat. (T. 111-112) After discussing the delay with the County, Mr. Kemp has now authorized Mr. Brader's firm to prepare the plat for the County at Cloverland's expense. (T. 111-112, 230) Mr. Brader's firm completed the additional surveying and has submitted the plat to Baltimore County. (T. 112) Baltimore County is now in the process of preparing the deed.

As Mr. Kemp explained, while Mrs. Colvin may not be satisfied with the rate of progress, Cloverland has spent time and money attempting to resolve a problem that originates off-site. (T. 230) This ditch carries stormwater from a 12 acre area to which, under existing conditions, Cloverland's properties contribute only .4 acres. (T. 101-102); *See also* Petitioner's Exhibit 10. Further, under the proposed conditions, because of a reduction in impervious area and increased curbing, an even smaller amount of Cloverland's properties

will drain to the ditch -- .2 acres instead of .4 acres. (T. 102-103) Regardless, Cloverland will continue to work with Baltimore County to resolve the problem. For purposes of this special exception request, though, granting the requested special exception relief will actually improve the situation, because runoff into the ditch will be slightly reduced.

Traffic Congestion

On the issue of traffic congestion, Cloverland produced the testimony and report of Kenneth Schmid, expert traffic engineer. Mr. Schmid is very familiar with combination fuel service station/convenience store operations, having worked on "two to three dozen" such projects in the last three years. (T. 69) In preparing his report, introduced as Petitioner's Exhibit 6, and in preparing to testify in this case, Mr. Schmid visited the site several times to observe the operation of the existing convenience store/fuel service station and the conditions on the surrounding roadways. (T. 68-69, 73, 75-79)

With regard to the surrounding roadways, he checked the "level of service" for the signalized intersections in close proximity to the site, which were all rated "A" with the exception of the "B" rating for the Back River Neck Road/Hamberg Road intersection. (T. 69-71) Using a different methodology, Mr. Schmid also analyzed the unsignalized intersection of Back River Neck Road and Middleborough Road and rated that intersection at "A" also. (T. 73-75) Based on his research and observations, Mr. Schmid concluded that the surrounding roadways are uncongested and are capable of handling any additional increase in traffic that might result from the proposed uses. (T. 73, 75); *See also* Petitioner's Exhibit 6.

With respect to existing and proposed site conditions, Mr. Schmid testified that no new access points are proposed on either the front or the rear parcel. The six points of access

into the site (three from Middleborough Road and three from Back River Neck Road) are existing. Petitioner's Exhibits 2A, 2B. One of the access points from Middleborough Road, the one closest to Mrs. Colvin's house, will be "narrowed down to a more standard width," and a utility pole will be moved from the center of that access point. (T. 78, 85) These changes will improve the function of that access point. (T. 75-78) The access point from the rear parcel to Back River Neck Road needs no improvements. (T. 77-78)

In Mr. Schmid's opinion, having observed the operation of the existing Royal Farm store on several occasions, adding four fuel pump islands to the rear parcel will help "balance the site" and will improve the internal circulation. (T. 79-82) He further opined that these pumps will help serve the missed opportunity customers who, rather than wait for an open fueling position, leave without ever fueling their cars. (T. 79) The rollover car wash, in his experience, would not be a primary use of the site and would be a "very benign use." (T. 80-81) Mr. Schmid testified that he did not expect either the expanded fuel service offerings or the car wash to draw much additional traffic into the site; rather, these uses, for the most part, would provide additional services to the existing customers or will draw from "passby-type traffic." (T. 80-82)

Based on his research and investigation of the site, Mr. Schmid rendered the following opinion that the proposed special exception uses would not have an adverse impact on the surrounding road system and would not tend to create congestion in the roads surrounding the property:

> We conclude that the expansion of the existing store will have only minor impacts with regards to increased traffic. We believe the adjacent road system is capable of handling any additional traffic to be generated. The increase in traffic to and from the

> site will be largely associated with passby-type traffic. The expansion of the store by providing increased numbers of fueling positions will result mainly in better internal traffic circulation and help eliminate the internal vehicle queuing at the existing fueling positions. We conclude that the overall site will operate in a much more safe and efficient manner and only serve to improve the existing operation.

Petitioner's Exhibit 6. Protestants did not dispute any of these findings.

In fact, the only issue Protestants' counsel raised having anything to do with traffic or congestion was related to the stacking spaces for the car wash. B.C.Z.R. Section 419 requires nine stacking spaces for a single tunnel rollover car wash. Cloverland's site plan shows nine stacking spaces. As shown on the site plan, Petitioner's Exhibit 2B, the ninth stacking space is, for lack of a better word, "crooked." In explaining why he drew the stacking space in that particular location, Mr. Brader stated that he was trying to provide the most room for cars to pass. (T. 149-153) In his opinion, the plan worked best that way. (T. 153-158) Mr. Schmid further confirmed that Petitioner's Exhibit 2B (with the "crooked" space) provided adequate stacking for the car wash. (T. 81) The stacking lanes will be clearly marked to indicate the double-lane stacking pattern. (T. 154-155) Cloverland is satisfied with the plan as submitted and submits that it should be approved that way.

However, in response to a question asked by the Board, Mr. Brader testified that the stacking space could have been placed in an alternate location, which he drew and marked with an "X," and there would still be sufficient room "for cars to go back and forth without any chance of congestion." (T. 153, 157-158) Mr. Schmid likewise testified that the "crooked" stacking space could "easily" fit in the second stacking lane. (T. 84) In either location, the stacking space in question would not impact the ability of vehicles to circulate the site and would meet County regulations. In the end, Cloverland submits that the issue of

the "crooked" stacking space is a red herring. As Mr. Schmid explained, it is not likely that people will wait 50 minutes (from the ninth stacking space) to run their car through the car wash. (T. 80)

Potential Hazard from Fire, Panic, or Other Dangers

Mr. Brader, who has worked on "dozens" of stores for Cloverland, confirmed that, in his expert opinion, because the proposed special exception uses will meet all applicable regulations, they will not create a potential hazard from fire, panic, or other danger. (T. 108) As he explained, the fuel service station/convenience store already exists and has been operating for five years without incident. (T. 30, 108) He noted that the Fire Department had no adverse comment regarding the proposed uses. (T. 108) Therefore, Mr. Brader concluded that the use of the site for an expanded fuel service station and a car wash will not create any type of hazard for the community. (T. 108)

Overcrowding of Land or Undue Concentration of Population

Mr. Brader confirmed that the proposed special exception uses would not overcrowd the land or cause an undue concentration of population. (T. 108-109) In fact, as Mr. Brader explained, this proposal will have the opposite effect. (T. 108-109) The addition of approximately .9 acres to the existing site area of .5 acres will actually better spread the uses out over the site and will allow for better flow and circulation. (T. 108-109)

Adequate Provisions for Schools, Parks, Etc.

Mr. Brader stated his opinion that the special exception uses would have no impact on schools or parks because no residential uses are proposed. (T. 109) With regard to water and sewer, because the expanded fuel service station aspect of the site demands very little water

and because the water from the car wash is recycled, the proposed uses would not interfere with the adequate provision of these services. (T. 109)

Interference with Adequate Light and Air

Mr. Brader likewise testified that the proposed uses would not interfere with adequate light and air. (T. 109) As indicated above, the proposal will actually result in the Royal Farm use being spread out over an area almost triple its current size. *See* Petitioner's Exhibits 2A, 2B. Other than the canopy over the fuel pumps, the only structure being added is a "short...one-story structure" -- the rollover car wash -- which has a fairly small footprint. (T. 108-109) Also, the existing building on the rear parcel, which has a larger footprint, will be removed.

Inconsistency with Zoning Regulations

Mr. Brader confirmed that the use of the subject property for the proposed expanded fuel service station and rollover car wash is consistent with the property's BL-AS classification and with the spirit and intent of the Baltimore County Zoning Regulations generally. (T. 109-110) As Mr. Kemp explained, during the 2000 Comprehensive Zoning Map Process, Councilman Gardina was not only aware of the proposal, but supported adding the AS (Automotive Services) district to the property. (T. 28-29) Mr. Brader emphasized that the only reason to add the AS district to this BL zoned property would be to allow for the proposed special exception uses; the AS district serves no other purpose. (T. 109-110) Further, the proposed layout on the rear parcel meets or exceeds all applicable setbacks and requirements of the Zoning Regulations. (T. 142-144)

Inconsistent with Impermeable Surface/Vegetation

There are no impermeable surface and vegetative retention provisions of the Baltimore County Zoning Regulations that apply to this site. (T. 110) However, as Mr. Brader explained, because the proposal involves a reduction in impervious area of approximately 3,000 square feet and the addition of substantial amounts of landscaping on the rear parcel, this factor would, in any event, clearly be satisfied by this proposal. (T. 100-105, 110)

CONCLUSION

As discussed in detail above, rather than having a negative impact on the neighboring properties and the surrounding community, Cloverland's proposal to expand and upgrade this Royal Farm store will actually result in positive improvements to the site and the neighborhood. Buffers to neighboring properties will be increased, and substantial landscaping will be installed. The impervious area on site will be decreased. Runoff from the site into the drainage ditch will be decreased. Also, Cloverland's ability to keep the store presentable and to prevent any issues with loitering or other security problems will be greatly improved by a more balanced use of the site. The testimony and evidence presented by Cloverland more than satisfied the burden articulated by the Court of Appeals and Court of Special Appeals for special exceptions. Therefore, the Board of Appeals should affirm the decision of the Zoning Commissioner and grant the requested special exception relief.

Respectfully submitted,

Robert A. Hoffman /FAM

ROBERT A. HOFFMAN

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of April, 2003, a copy of the foregoing PETITIONER'S POST-HEARING MEMORANDUM was mailed, first-class delivery, postage prepaid, to J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Maryland 21286, Attorney for the Protestants.

PATRICIA A. MALONE

TO1DOCS1/157681 v1

6/26/01

To: Ge[redacted] Handk
6/27/01
nan

RECEIVED
JUN 26 2001
DEPT OF PERMITS AND DEVELOPMENT MANAGEMENT

IN RE:	**PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE** **E/S Back River Neck Road** **1601 Middleborough Road** **15th Election District** **5th Councilmanic District** **Cloverland Farms Dairy, Inc.** **Petitioners**	*	**BEFORE THE**
		*	**ZONING**
		*	**COMMISSIONER**
		*	**OF**
		*	**BALTIMORE COUNTY**
		*	**Case No. 01-316-XA**

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

NOTICE OF APPEAL

Appellants, Jean Colvin, John Snyder, George Loveless and Bob Christ, by and through their attorney, J. Carroll Holzer and Holzer and Lee, feeling aggrieved by the decision of the Zoning Commissioner in the above captioned case as to the granting of the Special Exception, hereby appeal to the County Board of Appeals from the Findings of Fact and Conclusions of Law of the Zoning Commissioner of Baltimore County dated May 31, 2001, attached hereto, and incorporated herein as **Exhibit #1.**

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

Respectfully submitted,

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

RECEIVED
JUN 26 2001
By GDZ

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of June, 2001, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to Rob Hoffman, Esq., Venable, Baetjer & Howard, 210 Allegheny Ave., Towson, MD 21204, and the County Board of Appeals, Basement Old Court House, 400 Washington Ave., Towson, MD 21204, and People's Counsel for Baltimore County, Basement, Old Courthouse, 400 Washington Ave., Towson, MD 21204.

J. Carroll Holzer

NOTICES\Bob Christ-.NOA-CBA

5/31/01

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE – E/S Back River Neck Rd., 55.8' SE of the c/l Middleborough Road (1601 Middleborough Road) 15th Election District 5th Council District	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
	*	Case No. 01-316-XA
Cloverland Farms Dairy, Inc. Petitioners	*	

* * * * * * * * * * *

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, Cloverland Farms Dairy, Inc., by John M. Kemp, Vice President, through their attorney, Robert A. Hoffman, Esquire. The Petitioners request a special exception to approve the expansion of an existing fuel service station and the addition of a roll-over car wash as a use in combination, pursuant to Sections 405.2.B.1 and 405.4.E.2 of the Baltimore County Zoning Regulations (B.C.Z.R.). In addition, the Petitioners filed for variance relief from Section 419.4.A.1 of the B.C.Z.R. to permit a minimum distance of 20 feet between the proposed roll-over car wash building and the lot line of an adjacent residentially zoned property in lieu of the required 50 feet. However, during the course of the public hearing held for this case, the Petition for Variance was withdrawn. As amended, the subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibits 3A and 3B.

Appearing at the requisite public hearing in support of the requests were John M. Kemp, Vice President of Cloverland Farms Dairy, Inc., property owners; Ken Schmid, a Traffic Engineer, and Nick Brader, a Civil Engineer with Matis Warfield, the consulting engineers who prepared the site plan; and, Robert A. Hoffman, Esquire, attorney for the Petitioners. Numerous individuals appeared in opposition to the requests, all of whom signed the Protestants' Sign In sheet. Among those who testified were Eugenia Colvin, Shirley Fowble, Charles Christ, and

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Date 5/31/01
By

Clarence A. Cox. Ms. Fowble and Messrs. Christ and Cox were represented by J. Carroll Holzer, Esquire. Both Eric Rockel from the Bureau of Land Acquisition, and Steven Walsh, from the Storm Drain Design section of the Bureau of Engineering, appeared and testified on behalf of the Department of Permits and Development Management (DPDM).

Testimony and evidence offered revealed that the subject property consists of a gross area of 1.404 acres, more or less, split zoned B.L.-A.S. and D.R.3.5, and is located on the southeast side of the convergence of Back River Neck Road and Middleborough Road in Essex. The property is roughly triangular in shape and its configuration is created by the aforementioned intersection. Pursuant to the special exception and variance relief granted in Case No. 96-272-XA on March 5, 1996 by Deputy Zoning Commissioner Timothy M. Kotroco, the property is improved with a Royal Farms convenience store with a sales area larger than 1500 feet, and an accessory gasoline service station. Some of the variances granted in that case have become moot, due to the rezoning of the property. In any event, the Petitioners now come before the undersigned Zoning Commissioner seeking approval to expand the existing fuel service operation and the addition of a roll-over car wash facility as a use in combination with the existing convenience store. The proposed improvements are two-fold. First, the Petitioners propose to add four (4) new fuel pump islands on the eastern (rear) portion of the site. As shown on the site plan, there already exists four fuel pump islands on the front portion of the site, where the lot tapers near the intersection. Second, the Petitioners propose the construction of a roll-over car wash facility towards the rear corner of the property, adjacent to Back River Neck Road. As proposed under the Petitioners' original plan, the roll-over car wash building was to be located within 20 feet of the property line of the adjacent parcel owned by Earl and Eugenia Colvin. That parcel is zoned D.R.3.5 and is improved with a single family residence in which Mr. & Mrs. Colvin reside. Thus, variance relief was originally sought to permit the location of the car wash building as proposed. However, during the course of the hearing, it was determined that the car wash building could be located closer to Back River Neck Road, away from the Colvin property. In addition, the proposed relocation would place the building further than the required 50 feet from the property line, thereby

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Date 5/31/01
By

meeting the requirement of Section 419.4A.1. Thus, the Petitioners amended their plan and the Petition for Variance was withdrawn.

Testimony was received from Nick Brader, the engineer who prepared the site plan. He discussed in particular, the features of that plan, including the proposed location of the car wash building and the four new pump islands. He also discussed landscaping and other improvements that would be undertaken. Mr. Brader opined that the proposed use is in compliance with the requirements of Section 502.1 of the B.C.Z.R. and that the Petition for Special Exception should be granted. He particularly noted the fact that the proposed improvements do not represent a new use in that the convenience store and fuel service facility are presently in operation. That is, the proposed improvements are merely the expansion of an existing use on the property. Testimony was also received from Mr. Kemp on behalf of Cloverland Farms Dairy, Inc. Mr. Kemp discussed the proposed operation and promised to clean up the site prior to the issuance of any permits for new construction.

Much of the testimony from the neighbors on the initial day of hearing related to the existence of a swale/ditch which runs along the rear (eastern) property line of the site. The location of this ditch/swale roughly coincides with the property line between the subject site and the Colvin property. Apparently, the ditch/swale has been a problem for many years. It frequently becomes filled with litter and debris and during heavy rainstorms, can cause flooding on the Colvin's property. In this regard, Baltimore County has apparently for some time, proposed to acquire this ditch as a County easement. Acquisition by Baltimore County would thereafter require County maintenance. It was agreed by both Cloverland Farms Dairy, Inc. and the neighbors that County acquisition of the ditch and maintenance of same would be appropriate and would help solve a long-standing problem.

The hearing was continued and later reconvened so that testimony could be received from Messrs. Rockel and Walsh of DPDM concerning the subject swale/ditch. This testimony is contained within the record of this case. In summary, their testimony disclosed that Baltimore County is in the process of completing the necessary documentation to acquire the easement and

thereafter, will accomplish the necessary maintenance of the storm drain outfall ditch. Thus, it appears that this issue will be resolved shortly. Although the undersigned Zoning Commissioner cannot require the County to undertake any specific maintenance plan, I am satisfied that Mr. Walsh will follow through upon the representations he made in open hearing so as to remedy this situation. The resolution of this issue seemed to be the Protestants' most important concern.

In my judgment, properly restricted, the addition of the new pump islands and car wash facility can be approved without detriment to the surrounding locale. The testimony offered by Mr. Brader is persuasive that the proposal does not represent a new use to the subject property or neighborhood. Although the use will be intensified, the site presently operates as a convenience store with fuel service, and thus, is appropriate. Nonetheless, I will impose certain conditions upon the grant of the relief to mitigate any impacts upon the adjacent residential neighborhood. These restrictions are based upon the testimony and evidence offered at the hearing, and the recommendations made within the Zoning Advisory Committee (ZAC) comment produced by the Office of Planning. This Zoning Commissioner is authorized, pursuant to Section 502.3 of the B.C.Z.R., to impose conditions to insure that the impacts of the proposed improvements on the health, safety and general welfare of the surrounding locale will be mitigated.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons set forth herein the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 31st day of May, 2001 that the Petition for Special Exception to approve the expansion of an existing fuel service station and the addition of a roll-over car wash as a use in combination, pursuant to Sections 405.2.B.1 and 405.4.E.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibits 3A and 3B, be and is hereby GRANTED, subject to the following restrictions:

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

ORDER RECEIVED FOR FILING
Date 5/31/01
By

2) Prior to the issuance of any permits, the Petitioners shall comply with the recommendations made by the Office of Planning, as set forth in their ZAC comment dated February 26, 2001, a copy of which is attached hereto and made a part hereof.

3) The hours of operation of the proposed car wash facility shall be limited to from 8:00 AM to one-half an hour after dusk.

4) The Petitioner will cooperate as necessary with Baltimore County in its effort to acquire the ditch/swale as an easement and permit County maintenance crews access to same.

5) When applying for any permits, the site plan and landscaping 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 419.4.A.1 of the B.C.Z.R. to permit a minimum distance of 20 feet between the proposed roll-over car wash and the lot line of an adjacent residentially zoned property in lieu of the required 50 feet, be and is hereby DISMISSED AS MOOT.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 3/3/11
By

CBCA

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 1601 Middleborough Road

which is presently zoned BL-AS

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

SEE ATTACHED

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:

Name - Type or Print

Signature

Address — Telephone No.

City — State — Zip Code

Legal Owner(s):

Cloverland Farms Dairy, Inc.
Name - Type or Print

By:
Signature John M. Kemp, Vice-President

Name - Type or Print

Signature

3611 Roland Avenue — (410) 889-0200
Address — Telephone No.

Baltimore, MD 21211
City — State — Zip Code

Attorney For Petitioner:

Robert A. Hoffman
Name - Type or Print

Signature

Venable, Baetjer and Howard, LLP
Company

210 Allegheny Avenue — (410) 494-6200
Address — Telephone No.

Towson, MD 21204
City — State — Zip Code

Representative to be Contacted:

Robert A. Hoffman
Name

210 Allegheny Avenue — (410) 494-6200
Address — Telephone No.

Towson, MD 21204
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 2 hrs

UNAVAILABLE FOR HEARING

Reviewed By RJ Jr. **Date** 2-5-01

Case No. 01-316-XA

REV 09/15/98

1601 Middleborough Road

Special Exception to approve the expansion of the existing fuel service station and the addition of a roll-over car wash as a use in combination pursuant to Sections 405.2.B.1 and Section 405.4.E.2 of the Baltimore County Zoning Regulations.

TO1DOCS1/erl01/#111218 v1

316

ORDER RECEIVED FOR FILING
Date 6/3/01
By RB

Petition for Variance

to the Zoning Commissioner of Baltimore County

CBCA

for the property located at 1601 Middleborough Road

which is presently zoned BL-AS

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)

SEE ATTACHED

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 DETERMINED 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:

Name - Type or Print

Signature

Address — Telephone No.

City — State — Zip Code

Legal Owner(s):

Cloverland Farms Dairy, Inc.
Name - Type or Print

By:
Signature John M. Kemp, Vice-President

Name - Type or Print

Signature

3611 Roland Avenue — (410) 889-0200
Address — Telephone No.

Baltimore, — MD — 21211
City — State — Zip Code

Attorney For Petitioner:

Robert A. Hoffman
Name - Type or Print

Signature

Venable, Baetjer and Howard, LLP
Company

210 Allegheny Avenue — (410) 494-6200
Address — Telephone No.

Towson, — MD — 21204
City — State — Zip Code

Representative to be Contacted:

Robert A. Hoffman
Name

210 Allegheny Avenue — (410) 494-6200
Address — Telephone No.

Towson, — MD — 21204
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING See SP. Ex

UNAVAILABLE FOR HEARING

Reviewed By _____ Date 2-5-01

Case No. 01-316-XA

REV 9/15/98

1601 Middleborough Road

Variance from Section 419.4.A.1 of the Baltimore County Zoning Regulations to allow a minimum distance of twenty (20) feet between the proposed roll-over car wash and the lot line of an adjacent residentially zoned property in lieu of the required fifty (50) feet.

TO1DOCS1/erl01/#111225 v1

316

Description to Accompany A Petition for A Special Exception January 19,2001

Beginning at a point on the east side of Back River Neck Road, which is 60' wide at the distance of 55.8'± south east of the centerline of the nearest improved intersecting street of Middleborough Road that is of variable width. Thence the following courses and distances:

1.) North 31° 12' 55" East 25.39', to the south side of Middleborough Road, thence running and binding on the said south side Middleborough Road the following courses,
2.) South 58° 47' 05" East 55.00' ,
3.) North 31° 12' 55" East 7.68',
4.) South 58° 18' 45" East 96.66',
5.) South 69°50'18" East 78.07',
6.) North 85°56'27" East 55.99',
7.) North 85°55'59" East 50.00'
8.) North 77°29'02" East 35.87' thence leaving the south side of Middleborough Road for the following courses,
9.) South 14°55'53" East 142.54',
10.) South 09°07'45" East 74.89',
11.) South 80°52'15" West 168.70' to the east side of Back River Neck Road and binding on said east side of Back River Neck Road by a curve to the left with a,
12.) Radius of 5759.58' for a length of 83.71',
13.) North 38° 56' 29" West 302.87' to the place of beginning.

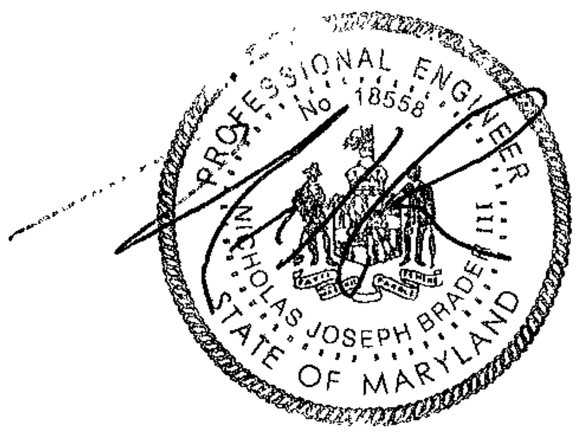
as recorded in Deed Liber 7446, Folio 515 and Deed Liber 11136, Folio 189.

Being parts of Lots 67 and Lot 68 in the subdivision of Hilltop Park, as recorded in Baltimore County Plat Book 8 Folio 32 containing 60,152 S.F. or 1.381 acres of land more or less.

Also known as 1601 Middleborough Road and 311 Back River Neck Road and located in the 15th Election District.

THIS DESCRIPTION COMPILED FOR ZONING PURPOSES ONLY AND IS NOT INTENDED TO BE USED FOR CONVEYANCES OR AGREEMENTS

316



BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 17,1

DATE 6/27/01

ACCOUNT 001-006-6150

AMOUNT $ 285.00

RECEIVED FROM: J. Carroll Holzer, P.A.

FOR: APPEAL (Special Exception) 01-316-XA

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PAYMENT ACTUAL TIME
6/28/2001 6/27/2001 14:45:03
REC U002 CASHIER SWAT SWPT DRAWER 2
>>RECEIPT # 177075 CHLN
DEPT 5 528 ZONING VERIFICATION
TR NO. 001751
Except Tot 285.00
285.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

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: #01-316-XA
1601 Middleborough Road (Royal Farm Store)
E/S Back River Neck Road, 55.8' SE of centerline Middleborough Road
15th Election District - 5th Councilmanic District
Legal Owner(s): Cloverland Farms Dairy, Inc.

Special Exception: to approve the expansion of the existing fuel service station and the addition of a roll-over car wash as a use in combination. **Variance:** to allow a minimum distance of twenty (20) feet between the proposed roll-over car wash and the lot line of an adjacent residentially zoned property in lieu of the required fifty (50) feet.

Hearing: Monday, April 2, 2001 at 2:00 p.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.

3/174 Mar. 15 C456044

CERTIFICATE OF PUBLICATION

TOWSON, MD, 3/15, 2001

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 3/15, 2001.

THE JEFFERSONIAN,

S. Wilkinson

LEGAL ADVERTISING

[redacted]

BALTIMORE COUNTY, MARYLA
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 079079

DATE 2-5-01 ACCOUNT R-001-6150

AMOUNT $ 350.00

RECEIVED FROM: Venable, Baetjer & Howard, LLP

FOR: Special Exception & Variance (unreasonable hardship or practical difficulty through rel.

01-316-XA

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

CERTIFICATE OF POSTING

RE: Case No.: 01-316-XA

Petitioner/Developer: ROYAL FARMS, ETAL
AMY DONTELL, ESQ (V.B.

Date of Hearing/Closing 4/2/01

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Correct Case No.
01-316-XA

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 BACK RIVER NECK RD. & MIDDLE BOROUGH RD. VIC.
-2 SIGNS-

The sign(s) were posted on 3/12/01
(Month, Day, Year)

Sincerely,

Patrick M O'Keefe 3/12/01
(Signature of Sign Poster and Date)

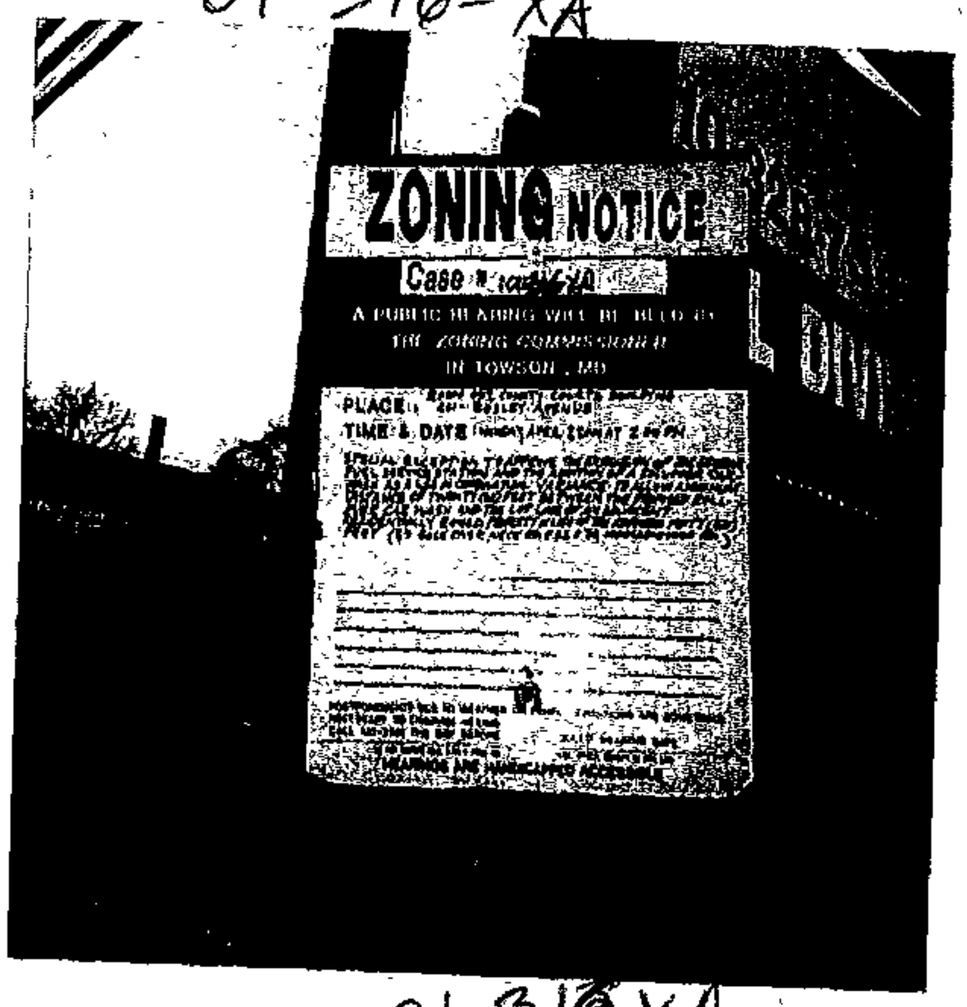
PATRICK M. O'KEEFE
(Printed Name)

523 PENNY LANE.
(Address)

HUNT VALLEY, MD. 21030
(City, State, Zip Code)

410-666-5366 ; CELL-410-905-8571
(Telephone Number)

01-316-XA



01-316-XA

VBH

4/2/01

APPEAL SIGN POSTING REQUEST

CASE NO. 01-316-XA

CLOVERLAND FARMS DAIRY, INC. -LO

E/s Back River Neck Road, 55.8' SE c/l Middleborough Road

15th Election District

Appealed: 6/26/01

Attachment – (Plan to accompany Petition
- exhibit #3A &3B)

**********COMPLETE AND RETURN BELOW INFORMATION**********

CERTIFICATE OF POSTING

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

Attention: Charlotte Radcliffe
Appeals Clerk

RE: Case No. 01-316-XA
Petitioner/Developer:
Cloverland Farms Dairy

This is to certify that the necessary appeal sign(s) was posted conspicuously on

property located at Back River Neck & Middleborough Rd.

The sign(s) was posted on 7/12/01, 2001.

By Gary C. Freund
(Signature of Sign Poster)

GARY C. FREUND
(Printed Name)

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: 01-316-XA

Petitioner: Cloverland Dairy Farms, Inc.

Petition Address or Location: 1601 Middleborough Rd.

PLEASE FORWARD ADVERTISING BILL TO: Amy Donteel

Name: Robert A. Hoffman, Venable Baetjer & Howard, LLP

Address: c/o 210 Allegheny Ave.

Towson, Md. 21204

Telephone Number: (410) 494-6200

Revised 2/20/98 - SCJ

TO: PATUXENT PUBLISHING COMPANY
Thursday, March 15, 2001 Issue – Jeffersonian

Please forward billing to:
Amy Donteel
Venable Baetjer & Howard LLP
210 Allegheny Avenue
Towson MD 21204

410 494-6200

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: 01-316-XA
1601 Middleborough Road (Royal Farm Store)
E/S Back River Neck Road, 55.8' SE of centerline Middleborough Road
15th Election District – 5th Councilmanic District
Legal Owner: Cloverland Farms Dairy, Inc.

Special Exception to approve the expansion of the existing fuel service station and the addition of a roll-over car wash as a use in combination. Variance to allow a minimum distance of twenty (20) feet between the proposed roll-over car wash and the lot line of an adjacent residentially zoned property in lieu of the required fifty (50) feet.

HEARING: Monday, April 2, 2001 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue

Lawrence E. Schmidt

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.

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

February 20, 2001

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: 01-316-XA
1601 Middleborough Road (Royal Farm Store)
E/S Back River Neck Road, 55.8' SE of centerline Middleborough Road
15th Election District – 5th Councilmanic District
Legal Owner: Cloverland Farms Dairy, Inc.

Special Exception to approve the expansion of the existing fuel service station and the addition of a roll-over car wash as a use in combination. Variance to allow a minimum distance of twenty (20) feet between the proposed roll-over car wash and the lot line of an adjacent residentially zoned property in lieu of the required fifty (50) feet.

HEARING: Monday, April 2, 2001 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue

GDZ

Arnold Jablon
Director

C: Robert A Hoffman, Venable Baetjer & Howard LLP, 210 Allegheny Avenue, Towson 21204
John M Kemp VP, Cloverland Farms Dairy Inc, 3611 Roland Avenue, Baltimore 21211

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, MARCH 24, 2001.**
(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.

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on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

January 29, 2002

NOTICE OF ASSIGNMENT

CASE #: 01-316-XA

IN THE MATTER OF: Cloverland Farms Dairy, Inc. –Legal Owner
1601 Middleborough Road
15th Election District; 5th Councilmanic District

5/31/01 – Petition for Special Exception GRANTED.
(Special Exception case only; Variance request withdrawn at ZC hearing)

ASSIGNED FOR: TUESDAY, APRIL 30, 2002 at 10:00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

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

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

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Jean Colvin
John Snyder
George Loveless
Bob Christ

Counsel for Petitioner : Robert A. Hoffman, Esquire
Petitioner : John M. Kemp, VP
Cloverland Farms Dairy, Inc.

Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt /Zoning Commissioner
Arnold Jablon, Director /PDM

Reset to
10/03/01

{4/30-/02 – W/agmt of counsel – PP'd on record

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County Board of Appeals of Baltimore County

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

pp'd @ request of Hoffman to 10/31/02 (by letter) — no obj. by Holzer pw T/C

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

April 30, 2002

NOTICE OF REASSIGNMENT

CASE #: 01-316-XA

IN THE MATTER OF: Cloverland Farms Dairy, Inc. –Legal Owner
1601 Middleborough Road
15th Election District; 5th Councilmanic District

5/31/01 – Petition for Special Exception GRANTED.
(Special Exception case only; Variance request withdrawn at ZC hearing)

which was scheduled to be heard on 4/30/02 was **POSTPONED** *on the record; and has been*

REASSIGNED FOR: **THURSDAY, OCTOBER 3, 2002 at 10:00 a.m.**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

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

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

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Jean Colvin
John Snyder
George Loveless
Bob Christ

Counsel for Petitioner : Robert A. Hoffman, Esquire
Petitioner : John M. Kemp, VP
Cloverland Farms Dairy, Inc.

Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt /Zoning Commissioner
Arnold Jablon, Director /PDM

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County Board of Appeals of Baltimore County

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

ppd to 3/06/03 req of Counsel for Petitioner

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

August 26, 2002

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 01-316-XA

IN THE MATTER OF: Cloverland Farms Dairy, Inc. –Legal Owner
1601 Middleborough Road
15th Election District; 5th Councilmanic District

5/31/01 – Petition for Special Exception GRANTED.
(Special Exception case only; Variance request withdrawn at ZC hearing)

which had been reassigned to be heard on 10/03/02 has been **POSTPONED** at the request of Counsel for Petitioner, without objection; and has been

REASSIGNED FOR: **THURSDAY, OCTOBER 31, 2002 at 10:00 a.m.**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

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

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

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Jean Colvin
John Snyder
George Loveless
Bob Christ

Counsel for Petitioner : Robert A. Hoffman, Esquire
Petitioner : John M. Kemp, VP
Cloverland Farms Dairy, Inc.

Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt /Zoning Commissioner
Arnold Jablon, Director /PDM

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County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

October 21, 2002

SECOND NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 01-316-XA

IN THE MATTER OF: Cloverland Farms Dairy, Inc. –Legal Owner
1601 Middleborough Road
15th Election District; 5th Councilmanic District

5/31/01 – Petition for Special Exception GRANTED.
(Special Exception case only; Variance request withdrawn at ZC hearing)

which had been reassigned to be heard on 10/31/02 has been **POSTPONED** at the request of Counsel for Petitioner, without objection; and has been

REASSIGNED FOR: **THURSDAY, MARCH 6, 2003 at 10:00 a.m.**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

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

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

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Jean Colvin
John Snyder
George Loveless
Bob Christ

Counsel for Petitioner : Robert A. Hoffman, Esquire
Petitioner : John M. Kemp, VP
Cloverland Farms Dairy, Inc.

Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt /Zoning Commissioner
Arnold Jablon, Director /PDM

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County Board of Appeals of Baltimore County

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

March 10, 2003

NOTICE OF DELIBERATION

IN THE MATTER OF:

CLOVERLAND FARMS DAIRY, INC.
Case No-01-316-XA

Having heard this matter on 3/06/03, public deliberation has been scheduled for the following date /time:

DATE AND TIME : WEDNESDAY, MAY 21, 2003 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Memos due from Counsel on Thursday, April 10, 2003 - ORIGINAL AND THREE [3] COPIES

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Jean Colvin
John Snyder
George Loveless
Bob Christ

Counsel for Petitioner : Robert A. Hoffman, Esquire
Petitioner : John M. Kemp, VP
Cloverland Farms Dairy, Inc.

Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt /Zoning Commissioner
Arnold Jablon, Director /PDM

FYI copy: L.W.M.

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on Recycled Paper

Baltimore County
Department of Permits and
Development Management

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

April 2, 2001

Robert A Hoffman
Venable Baetjer & Howard LLP
210 Allegheny Avenue
Towson MD 21204

Dear Mr. Hoffman:

RE: Case Number: 01-316-XA, 1601 Middleborough Road (Royal Farm Store)

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on February 5, 2001.

The Zoning Advisory Committee (ZAC), which consists of representatives from several 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, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards Jr

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: gdz

Enclosures

c: John M Kemp, VP, Cloverland Farms Dairy Inc, 3611 Roland Avenue, Baltimore 21211
People's Counsel

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: February 26, 2001

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

SUBJECT: 1601 Middleborough Road

INFORMATION:

Item Number: 01-316

Petitioner: Clover Land Farm Dairy, Inc.

Zoning: BL-AS

Requested Action: Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning supports the requested variance to allow a minimum distance of 20 feet between the proposed roll-over car wash and the lot line of an adjacent residentially zoned property in lieu of the required 50 feet provided the following conditions are met:

1. Clean up the area around the proposed site. Special attention should be given to the rear of the subject property and the ditch along the easterly property line.
2. Due to the proximity of the residential dwelling, a board-on-board fence with a scalloped edge should be erected in combination with evergreen landscaping in order to provide adequate screening.
3. Indicate the location of any proposed dumpster, and screen it from public view with a board-on-board fence.
4. Submit a sign package to this office for review and approval prior to the issuance of any building permits.
5. The non-conforming cardboard Marlboro cigarette sign must be removed as soon as possible.

Prepared by: Mark A Cunningham

Section Chief: Jeffrey W Long
AFK:MAC:

\\NCH_NW\VOL3\WORKGRPS\DEVREV\ZAC\01-316.doc

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Mgmt.

DATE: March 7, 2001

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

SUBJECT: Zoning Advisory Committee Meeting
For February 26, 2001
Item Nos. 315, 316, 317, 318, 320, 321,
323, and 324

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

RWB:HJO:jrb

cc: File

ZAC-2-26-2001-NO COMMENT ITEMS-372001.doc

Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 2·21·01

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

RE: Baltimore County
Item No. 316 JJS

Dear. Ms. Jackson:

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 Kenneth A. McDonald Jr., 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

Baltimore County
Fire Department

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

February 22, 2001

Department of Permits and
Development Management (PDM)
County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

ATTENTION: Gwen Stephens

RE: Property Owner: Cloverland Farms Dairy, Inc. - 316
Beltway Properties II, LLC - 321

Location: DISTRIBUTION MEETING OF February 20, 2001

Item No.: 316, 321

Dear Ms. Stephens:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

REVIEWER: LIEUTENANT JIM MEZICK, Fire Marshal's Office
PHONE 887-4881, MS-1102F

cc: File

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BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley RBS

DATE: February 26, 2001

SUBJECT: Zoning Item #316
1601 Middleborough Road

Zoning Advisory Committee Meeting of February 20, 2001

____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

____ The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which environmental regulations apply to the site.

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

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code).

____ Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).

____ Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).

__X__ A variance to Section 14-341 of the Baltimore County Code will be necessary to redevelop this property with a reduced Forest Buffer.

Reviewer: Glenn Shaffer Date: February 23, 2001

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: February 26, 2001

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

SUBJECT: 1601 Middleborough Road

FEB 28

INFORMATION:

Item Number: 01-316

Petitioner: Clover Land Farm Dairy, Inc.

Zoning: BL-AS

Requested Action: Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning supports the requested variance to allow a minimum distance of 20 feet between the proposed roll-over car wash and the lot line of an adjacent residentially zoned property in lieu of the required 50 feet provided the following conditions are met:

1. Clean up the area around the proposed site. Special attention should be given to the rear of the subject property and the ditch along the easterly property line.
2. Due to the proximity of the residential dwelling, a board-on-board fence with a scalloped edge should be erected in combination with evergreen landscaping in order to provide adequate screening.
3. Indicate the location of any proposed dumpster, and screen it from public view with a board-on-board fence.
4. Submit a sign package to this office for review and approval prior to the issuance of any building permits.
5. The non-conforming cardboard Marlboro cigarette sign must be removed as soon as possible.

Prepared by: Mark A Cunningham

Section Chief: Jeffrey W Long
AFK:MAC:

\\NCH_NW\VOL3\WORKGRPS\DEVREV\ZAC\01-316.doc

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

DATE: June 29, 2004

TO: Timothy Kotroco, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton
Board of Appeals

SUBJECT: **Cloverland Farms Dairy**
CBA No.: 01-316-XA
PDM File No.: 01-316-XA
Circuit Court Case No.: 03-C-03-7910

On February 17, 2004, Judge Cox of the Circuit Court of Baltimore County issued an Memorandum Opinion and Order AFFIRMING the Board of Appeals.

No further appeals have been taken in this matter. The Board of Appeals is closing and returning the file/exhibits that are attached herewith.

Attachment: SUBJECT FILE ATTACHED AND EXHIBITS

6/27	7/27	Cloverland Farms Dairy 01-316-XA	Special Exception GRANTED with exceptions.	APPEALED TO CCT Closed 5/6/2004 File to be sent directly to PDM when received from Cour

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

June 28, 2001

Robert A Hoffman
Venable Baetjer & Howard LLP
210 Allegheny Avenue
Towson MD 21204

RECEIVED
COUNTY BOARD OF APPEALS
01 JUN 29 AM 10:

Dear Mr. Hoffman:

RE: Case No. 01-316-XA, 1601 Middleborough Road

Please be advised that an appeal of the above-referenced case was filed in this office on June 26, 2001 by J. Carroll Holzer on behalf of Jean Colvin, John Snyder George Loveless and Bob Christ. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Arnold Jablon GDZ
Director

AJ: gdz

c: John M Kemp, VP, Cloverland Farms Dairy Inc, 3611 Roland Avenue, Baltimore 21211
People's Counsel

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on Recycled Paper

APPEAL

(*Petition for Special Exception*)
(1601 Middleborough Road)
(E/S Back River Neck Road, 55.8' SE centerline Middleborough Road)
15th Election District – 5th Councilmanic District
Cloverland Farms Dairy Inc - Legal Owner
- Contract Purchaser
Case No.: 01-316-XA

Petition for Special Exception (dated February 5, 2001)

Zoning Description of Property

Notice of Zoning Hearing (dated 2/20/01)

Certification of Publication (The Jeffersonian issue 3/15/01)

Certificate of Posting (Patrick M O'Keefe posted 3/12/01)

Entry of Appearance by People's Counsel (dated 2/27/01)

Petitioner(s) Sign-In Sheet (1 page)

Protestant(s) Sign-In Sheet (2 pages)

Citizen(s) Sign-In Sheet (none)

Zoning Advisory Committee Comments

Petitioners' Exhibits:
- 3A. Plan to Accompany a Petition for a Special Exception and Variance dated 2/1/01
- 3B. Plan to Accompany a Petition for a Special Exception and Variance dated 2/1/01 (revised)

Protestants' Exhibits:
(none)

Miscellaneous (Not Marked as Exhibits):
- Photographs (7 pictures)

Zoning Commissioner's Order (5/31/01 - GRANTED)

Notice of Appeal received on6/26/01 from J. Carroll Holzer on behalf of Jean Colvin, John Snyder, George Loveless and Bob Christ

c: Robert A Hoffman, Venable Baetjer & Howard LLP, 210 Allegheny Avenue Towson 21204
John M Kemp VP, Cloverland Dairy Farms Inc, 3611 Roland Avenue Baltimore 21211
People's Counsel of Baltimore County, MS #2010
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: February 26, 2001

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

SUBJECT: 1601 Middleborough Road

FEB 28

INFORMATION:

Item Number: 01-316

Petitioner: Clover Land Farm Dairy, Inc.

Zoning: BL-AS

Requested Action: Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning supports the requested variance to allow a minimum distance of 20 feet between the proposed roll-over car wash and the lot line of an adjacent residentially zoned property in lieu of the required 50 feet provided the following conditions are met:

1. Clean up the area around the proposed site. Special attention should be given to the rear of the subject property and the ditch along the easterly property line.
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3. Indicate the location of any proposed dumpster, and screen it from public view with a board-on-board fence.
4. Submit a sign package to this office for review and approval prior to the issuance of any building permits.
5. The non-conforming cardboard Marlboro cigarette sign must be removed as soon as possible.

ORDER RECEIVED FOR FILING
Date 3/3/01
By

Prepared by: Mark A Cunningham

Section Chief: Jeffrey W Long
AFK:MAC:

\\NCH_NW\VOL3\WORKGRPS\DEVREV\ZAC\01-316.doc

Case No. 01-316-XA

RE: Cloverland Farms Dairy, Inc. –Petitioner

SE – To approve expansion of an existing fuel service station and addition of roll-over car wash as a use in combination.
SPECIAL EXCEPTION CASE ONLY; VARIANCE REQUEST WITHDRAWN AT HEARING BEFORE ZONING COMMISSIONER

5/31/2001 –Z.C.'s Order in which special exception request was GRANTED.

1/29/02 – Notice of Assignment sent to following; scheduled for hearing on Tuesday, April 30, 2002 at 10:00 a.m.:

J. Carroll Holzer, Esquire
Jean Colvin
John Snyder
George Loveless
Bob Christ
Robert A. Hoffman, Esquire
John M. Kemp, VP
Cloverland Farms Dairy, Inc.
Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt /Zoning Commissioner
Arnold Jablon, Director /PDM

4/30/02 – Board convened for hearing (Stahl, Worrall, Adams); Counsel for Petitioner requested postponement; possible that this matter will not require a hearing date before the Board; Counsel for Appellants /Protestants indicated no objection to same. Postponement granted on the record; to be reassigned to September 2002 date.
-- Notice of Reassignment sent to parties; reassigned to Thursday, October 3, 2002 at 10:00 a.m. (no date available in September 2002).

8/26/02 – Letter requesting postponement of 10/03/02 hearing to 10/31/02 filed by Robert A. Hoffman, Esquire; T/C w/ C. Holzer confirmed no objection to the granting of same to 10/31/02.
-- Notice of PP and Reassignment sent to parties; case reassigned to Thursday, October 31, 2002 at 10:00 a.m.

10/17/02 – Letter requesting postponement of 10/31/02 hearing filed by R. Hoffman.

10/21/02 – T/C from C. Holzer; no objection to granting of request.
-- Second Notice of PP and Reassignment sent to parties; assigned for hearing on Thursday, March 6, 2003 at 10:00 a.m.

3/06/03 – Hearing concluded (Stahl, Worrall, Adams); memos due from counsel 4/10/03; public deliberation on 5/21/03; notice to be sent.

3/10/03 – Notice of Deliberation sent this date; deliberation assigned for Wednesday, May 21, 2003 at 9:00 a.m.; ;fyi copy to L.W.M.

4/09/03 – Protestants's /Appellant's Memorandum in Lieu of Final Argument filed by J. Carroll Holzer, Esquire.

4/10/03 – Petitioner's Post-Hearing Memorandum filed by Robert A. Hoffman, Esquire, and Patricia A. Malone, Esquire on behalf of Petitioner.

4/11/03 – Copies to L. W. M. this date via U.S. Mail; deliberation to be held on 5/21/03 at 9 a.m.

5/21/03 – Deliberation held and concluded; special exception to expand existing service station and to add rollover car wash *GRANTED* by the Board with conditions; variance request withdrawn before ZC; written Opinion and Order to be issued; appellate period to run from date of written Order. (Stahl, Worrall, Adams)

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Cloverland Farms Dairy, Inc.
Case No. 01-316-XA

DATE : Wednesday, May 21, 2003

BOARD /PANEL : Lawrence M. Stahl (LMS)
Margaret Worrall (MW)
Melissa Moyer Adams (MMA)

RECORDED BY : Kathleen C Bianco /Administrator

PURPOSE: To deliberate Case No. 01-316-XA/ request for special exception to expand fuel service and add rollover car wash as previously granted by Zoning Commissioner (variance relief withdrawn before Zoning Commissioner).

- Current .5 acre plus additional parcel of .9 acre totals 1.4 acres owned by Cloverland
- Original first store – used for storage
- Add car wash and more pumps
- Rezoned in CZMP 2000 from B.L. to B.L.-A.S.; allows this use with special exception

- Issue – stormwater runoff – not of Petitioner's making but ditch is on property; would reduce impervious surface; landscape buffer will absorb some of water runoff; privacy fence
- J. Colvin – believes she would be adversely impacted; water backing onto her property; Baltimore County is working on this with Petitioner; wetland issue on paved property
- If water issue is resolved, then she would be concerned about hours of operation of car wash – fumes from vehicles

- § 419 – car wash; can have it but concern – configuration /stacking; putting in landscaping and meets all setbacks
- Board reviewed language of 419.3A – "all" stacking spaces "shall" be single file at entrance – not what's happening here
- minimum of 9 spaces; single stacking is required; no evidence that you couldn't single-stack at site; Brader testified that single would work but this way is preferred; not a reason
- Would require that single stacking be followed as condition

- ✓ Other issue is locational – no entrance "shall" face residential adjacent property; but does not face her property; Board studied plan – followed line of entrance – faces next-door property (B.L.)
- ✓ Not an issue

- As to 502.1:
- Covered thoroughly by Petitioner; reviewed all requirements under 502.1
- No worse here than other zoned location
- No variance requested; meets all setbacks
- Efforts w/privacy fence to meet needs of Colvin
- Drainage ditch – major issue; Colvin testified – major issue for years; Petitioner working with County; digging up impermeable surface and replacing with landscaping; will help her problem
- Petitioner went through each point of 502.1 via witnesses; reviewed by Board at deliberation

RE: PETITION FOR SPECIAL EXCEPTION PETITION FOR VARIANCE	*	BEFORE THE
1601 Middleborough Road, E/S Back River Neck Rd, 55.8' SE of c/l Middleborough Rd	*	ZONING COMMISSIONER
15th Election District, 5th Councilmanic	*	FOR
Legal Owner: Cloverland Farms Dairy, Inc. Petitioner(s)	*	BALTIMORE COUNTY
	*	Case No. 01-316-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 or other proceedings in this matter and of the passage of any preliminary or final Order.

All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.

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 27th day of February, 2001 a copy of the foregoing Entry of Appearance was mailed to Robert A. Hoffman, Esq., Venable, Baetjer & Howard, 210 Allegheny Avenue, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

Baltimore County
Zoning Commissioner

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

April 12, 2001

Robert A. Hoffman, Esquire
Venable, Baetjer & Howard
210 Allegheny Avenue
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL EXCEPTION & VARIANCE
E/S Back River Neck Road, 55.8' SE of the c/l Middleborough Road
(1601 Middleborough Road) (Royal Farms Store)
15th Election District – 5th Council District
Cloverland Farms Dairy, Inc. – Petitioners
Case No. 01-316-XA

Dear Mr. Hoffman:

This letter is to confirm that the above-captioned matter, which was continued in open hearing on April 2, 2001, has been rescheduled for Tuesday, April 24, 2001 at 9:00 AM in Room 407 of the County Courts Building. At that time, Messrs. Eric Rockel from the Bureau of Land Acquisition, and Steve Walsh from the Storm Drain Design section of the Bureau of Engineering, will appear and testify concerning the County's acquisition of the right-of-way along the frontage of the subject property in Middleborough Road.

In the meantime, please do not hesitate to contact me should you have any questions in this regard.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs
cc: Mr. John M. Kemp, Vice President, Cloverland Farms Dairy, Inc.
3611 Roland Avenue, Baltimore, Md. 21211
Mr. Nick Brader, Matis & Warfield, 10540 York Road, Suite M, Cockeysville, Md. 21030
J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Md. 21286-5448
Mr. John Snyder, 1613 Middleborough Road, Baltimore, Md. 21221
Mr. & Mrs. Thomas Colvin, 1609 Middleborough Road, Baltimore, Md. 21221
Mr. David Boise, 1618 Middleborough Road, Baltimore, Md. 21221
Mr. Gordon Bosse, 1615 Middleborough Road, Baltimore, Md. 21221
Mr. John G. LaFlame, 215 West Road, Baltimore, Md. 21221
Mr. Clarence A. Cox, 528 Eastern Boulevard, Baltimore, Md. 21221
Mr. & Mrs. G. Vernon Fowble, 11 Ryan Frost Way, Baltimore, Md. 21221
Mr. Vernon Hoffman, 313 Back River Neck Road, Baltimore, Md. 21221
Mr. Charles R. Christ, 5921 Moravia Avenue, Baltimore, Md.
Resident, 1624 Middleborough Road, Baltimore, Md. 21221
Resident, 1612 Middleborough Road, Baltimore, Md. 21221
Messrs. Eric Rockel and Steve Walsh, DPDM; People's Counsel; Case File

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County Board of Appeals of Baltimore County

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

August 13, 2003

J. Carroll Holzer, Esquire
Holzer and Lee
508 Fairmount Avenue
Towson, Md 21286

RE: Circuit Court Civil Action No. 3-C-03-7910
Cross-Petition for Judicial Review
Cloverland Farms Dairy, Inc.
1601 Middleborough Road,
Case No.: 01-316-XA

Dear Mr. Holzer:

Notice is hereby given, in accordance with the Maryland Rules, that a Cross-Petition for Judicial Review was filed on August 1, 2003, in the Circuit Court for Baltimore County; Civil Action number C-03-7910, from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petitions must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. **3-C-03-7910.**

Enclosed is a copy of the Second Certificate of Notice.

Very truly yours,

Theresa R. Shelton

Theresa R. Shelton
Legal Secretary

/trs
Enclosures

c: Jean Colvin
People's Counsel of Baltimore County
Lawrence Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM

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Baltimore County
Zoning Commissioner

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

May 31, 2001

Robert A. Hoffman, Esquire
Venable, Baetjer & Howard
210 Allegheny Avenue
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL EXCEPTION & VARIANCE
E/S Back River Neck Road, 55.8' SE of the c/l Middleborough Road
(1601 Middleborough Road)
15th Election District – 5th Council District
Cloverland Farms Dairy, Inc. - Petitioners
Case No. 01-316-XA

Dear Mr. Hoffman:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Exception has been granted and the Petition for Variance dismissed, 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 Department of Permits and Development Management office at 887-3391.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. John M. Kemp, Vice President, Cloverland Farms Dairy, Inc.
3611 Roland Avenue, Baltimore, Md. 21211
Mr. Nicholas Brader, Matis Warfield, 10540 York Road, Suite M, Cockeysville, Md. 21030
Mr. Ken Schmid, 325 Gambrills Road, Gambrills, Md. 21054
J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Md. 21286
Mr. & Mrs. Earl Colvin, 1609 Middleborough Road, Baltimore, Md. 21221
Mr. Clarence A. Cox, 528 Eastern Boulevard, Baltimore, Md. 21221
Mr. & Mrs. G. Vernon Fowble, 11 Ryan Frost Way, Baltimore, Md. 21221
Mr. Charles R. Christ, 5921 Moravia Road, Baltimore, Md. 21206
Mr. David Bosse, 1618 Middleborough Road, Baltimore, Md. 21221
Mr. Gordon Bosse, 1615 Middleborough Road, Baltimore, Md. 21221
Mr. Vernon Hoffman, 313 Back River Neck Road, Baltimore, Md. 21221
Mr. John Snyder, 1613 Middleborough Road, Baltimore, Md. 21221
Mr. John G. LaFlame, 215 West Road, Baltimore, Md. 21221
Messrs. Eric Rockel & Steven Walsh, DPDM; Office of Planning; People's Counsel; Case File

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VENABLE, BAETJER AND HOWARD, LLP
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(410) 494-6200, Fax (410) 821-0147
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OFFICES IN

MARYLAND
WASHINGTON, D.C.
VIRGINIA

VENABLE
ATTORNEYS AT LAW

Robert A. Hoffman
410-494-6262

rahoffman@venable.com

August 26, 2002

Via Hand Delivery

Kathleen C. Bianco, Administrator
County Board of Appeals
for Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

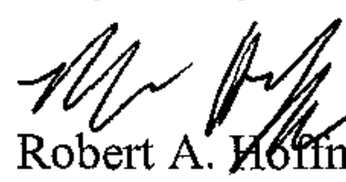
Re: Case No. 01-316-XA
Cloverland Farms Dairy, Inc.
1601 Middleborough Road

Dear Mrs. Bianco:

I represent Cloverland Farms Dairy, Inc., in the above captioned matter. This hearing has been scheduled for Thursday, October 3, 2002 at 10:00 a.m. I am respectfully requesting that the hearing in the above-referenced matter be postponed until Thursday, October 31, 2002, which I have been informed is available.

Thank you for your consideration in this matter.

Very truly yours,



Robert A. Hoffman

RAH/ald
cc: J. Carroll Holzer, Esquire
Mr. John Kemp
People's Counsel

TO1DOCS1/ald99/#143621 v1

02 AUG 26 PM 4:26

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Towson, Maryland 21285-5517
(410) 494-6200, Fax (410) 821-0147
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WASHINGTON, D.C.
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VENABLE
ATTORNEYS AT LAW

Robert A. Hoffman
410-494-6262

rahoffman@venable.com

October 17, 2002

Via Hand Delivery

Kathleen C. Bianco, Administrator
County Board of Appeals
for Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

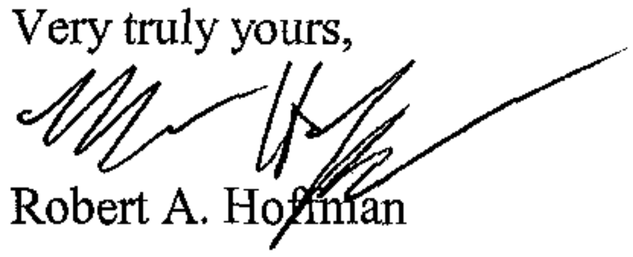
Re: Case No. 01-316-XA
Cloverland Farms Dairy, Inc.
1601 Middleborough Road

Dear Mrs. Bianco:

I represent Cloverland Farms Dairy, Inc., in the above captioned matter. This hearing has been scheduled for Thursday, October 31, 2002 at 10:00 a.m. I am respectfully requesting that the hearing in the above-referenced matter be postponed due to a preparation/scheduling conflict of mine.

I would be happy to discuss this request in more detail with Mr. Holzer and the Board, if necessary.

Very truly yours,



Robert A. Hoffman

RAH/ald
cc: J. Carroll Holzer, Esquire
Mr. John Kemp
People's Counsel

RECEIVED
OCT 17 2002
BALTIMORE COUNTY
BOARD OF APPEALS

TO1DOCS1/ald99/#146918 v1

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(410) 494-6262

rahoffman@venable.com

May 1, 2003

HAND-DELIVERED

Lawrence M. Stahl, Chairman
County Board of Appeals for
Baltimore County
Old Courthouse – Room 49
400 Washington Avenue
Towson, Maryland 21204

RECEIVED
MAY 0 1 2003
BALTIMORE COUNTY
BOARD OF APPEALS

Re: In the Matter of Cloverland Farms Dairy, Inc.
for Approval of Special Exception
Case No. 01-316-XA
1601 Middleborough Road

Dear Mr. Stahl:

I am writing to correct a misapplication of the law in Protestants' Memorandum in Lieu of Final Argument. Specifically, Protestants alleged that Petitioner failed to meet its burden of proof in that it had not demonstrated compliance with Section 419 of the Baltimore County Zoning Regulations ("B.C.Z.R."). Petitioners are incorrect in their assertion that Section 419, in its entirety, applies to this proposal. Protestants are also incorrect about the proposal's failure to comply with the applicable portions of Section 419.

According to B.C.Z.R. Section 405.4.E.2, in requesting the special exception for a car wash in combination with the existing fuel service station, Petitioners only had to demonstrate that the "stacking, parking and buffer requirements of Section 419 are met." Petitioners' proposal complies with the stacking, parking and buffer requirements of Section 419. The "stacking, parking and buffer requirements" are contained in subsections 419.3 and 419.4. Petitioners have demonstrated compliance with these subsections:

Protestants allege that stacking is not single-file at the entrance of the tunnel in violation of Section 419.A. The site plan submitted to the Board of Appeals for approval shows that the double-file stacking lanes narrow to a single-file lane at the entrance. Therefore, the plan complies.

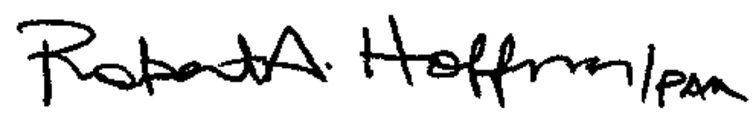
RECEIVED ~~POST-HEARING~~
~~DAY ONE~~
(Post Simultaneous memos)

Protestants allege that the stacking lanes will block vehicles from entering the site in violation of the introductory language of Section 419.3. There was no evidence produced at the hearing that would enable the Board to make such a finding. In fact, the only evidence was to the contrary.

Protestants allege that "the tunnel entrance faces directly to the side of Mrs. Colvin's property, which is not permitted by the regulations." This allegation is simply untrue. The entrance faces Middleborough Road, an orientation which is permitted by Section 419.4.B.1.

Lastly, Protestants assert that Petitioners failed to comply with Section 419.2 regarding the filing of a site plan and review by various County agencies. That subsection does not apply to car washes approved in combination with a fuel service station under Section 405.4.E.2. Section 419.2 applies only to stand alone car washes. *See e.g.*, B.C.Z.R. Section 248.3; Section 253.C.7; and Section 256.1. At any rate, a site plan was filed in this case and was reviewed by the appropriate County agencies (Zoning Advisory Committee), and all comments were addressed.

Very truly yours,



Robert A. Hoffman

RAH/pam

cc: J. Carroll Holzer, Esquire

TO1DOCS1/160009 v1

RECEIVED POST-HEARING
DAY ONE

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Rob Hoffman	210 Allegheny Ave
NICK BRADER	10540 YORK RD / Suite M, 21030
Ken Schmid	325 Gambrills Rd Suite E Gambrills, Maryland 21054
John M. Kemp	3611 Roland Avenue

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PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
John Snyder	1613 Middleborough
Eugenia Colvin	1609 Middleborough Rd.
George Hooley	1612 Middlebor
Thomas Mahuff	1624 Middleborough Rd
Thomas Colvin	1609 Middleborough Rd
David Bose	1618 Middleborough
Gordon M. Bose	1615 MiddlEborough Rd.
John G. Flynn	215 West Road
[illegible]	528 EASTERN Blvd
Charles R Chase	5921 MORAVIA AVE
Shirley Fowble	11 Ryan Frost WAY
G. Vernon Fowble	11 Ryan Frost Way
VERNON HOFFMAN	313 Back Rum Neck Rd
	21221
	Zip code

Case Number _____

PLEASE *PRINT* LEGIBLY

PROTESTANT'S SIGN-IN SHEET

Name	Address	City, State	Zip Code
CHARLES CHRIST	5921 MORAVIA RD	BALTO MD	21206
DAVID BOSSE	1618 Middleborough Rd	Balto MD	21221
Gordon BOSSE	1615 MIDDLEBOROUGH RD.	BALTO. MD	21221
EUGENIA COLVIN	1609 Middleborough Rd	Balto Md	21228
John Kemp	3611 Roland Ave.	Balto. Md.	21211
NICK BARGE	10540 YORK RD STE M	Hunt Valley, MD	21030
ERIC ROCKEL	111 W. Chesapeake Ave	Towson	21204
STEVEN WALSH	"	"	"

Revised 4/17/00

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review, with affidavit and exhibits..	07/22/03	07/22/03	PET001	TBA		02/17/04	JET CKC
0002000	Petition for Judicial Review	08/01/03	08/05/03	RES001	TBA		02/17/04	PH CKC
0003000	Certificate of Notice	08/13/03	08/14/03	000	TBA		02/17/04	NW CKC
0004000	Second Certificate Of Notice	08/13/03	08/14/03	000	TBA		02/17/04	NW CKC
0005000	*Transcript of Record from Adm Agency	09/12/03	09/24/03	000	TBA		02/17/04	MJ CKC
0006000	Notice of Transcript of Record Sent	09/24/03	09/24/03	ITP001	TBA		09/24/03	MJ MJ
0007000	Notice of Transcript of Record Sent	09/24/03	09/24/03	PET001	TBA		09/24/03	MJ MJ
0008000	Notice of Transcript of Record Sent	09/24/03	09/24/03	RES001	TBA		09/24/03	MJ MJ
0009000	Scheduling Order	10/20/03	10/20/03	000	TBA		10/20/03	KLS KLS
0010000	Petitioner's Memorandum	10/24/03	10/27/03	PET001	TBA		10/27/03	NW NW
0011000	Respondent's Memorandum *	11/21/03	11/22/03	RES001	TBA		11/22/03	CKC CKC
0012000	Open Court Proceeding January 14,2004. Hon. Kathleen G. Cox. Hearing had. Opinion to be filed.	01/15/04	01/15/04	000	KGC		02/17/04	SR CKC
0013000	Opinion of the Court	02/17/04	02/17/04	000	KGC		02/17/04	CKC CKC
0014000	Order affirming decision	02/17/04	02/17/04	000	KGC	Granted	02/17/04	CKC CKC
0015000	Invoice #13735 sent to J Carroll Holzer	02/20/04	02/20/04	000	TBA			PKE PKE
0016000	Misc. Document ( )	02/24/04	02/24/04	000	TBA			ATA ATA
0017000	case history sent to Balto co of appeals	02/24/04	02/24/04	000	TBA			ATA ATA

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	CLOSED	07/21/04	365	no	no	DAAA	D	001	000
EXPU	Exhibit Pickup Notic	CLOSED	04/17/04	30	no	no			000	000

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
SLTR	Set List For Trial	Done	09/12/03	0	yes	yes	DTRA	D	005	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: ITP 001 County Board Of Appeals Of Ba								
000		B	BOX 377/CBA TRANSC		B			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date. 10/20/03 Order Date : 10/20/03
Start Date . 10/20/03 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		11/04/03	02/17/04	CLOSED
All Motions (excluding Motions in Limine		12/05/03	02/17/04	CLOSED
TRIAL DATE is	01/14/04	01/18/04	01/15/04	REACHED

affidavit and exhibits..

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0002000	Petition for Judicial Review	08/01/03	08/05/03	RES001	TBA		02/17/04	PH CKC
0003000	Certificate of Notice	08/13/03	08/14/03	000	TBA		02/17/04	NW CKC
0004000	Second Certificate Of Notice	08/13/03	08/14/03	000	TBA		02/17/04	NW CKC
0005000	*Transcript of Record from Adm Agency	09/12/03	09/24/03	000	TBA		02/17/04	MJ CKC
0006000	Notice of Transcript of Record Sent	09/24/03	09/24/03	ITP001	TBA		09/24/03	MJ MJ
0007000	Notice of Transcript of Record Sent	09/24/03	09/24/03	PET001	TBA		09/24/03	MJ MJ
0008000	Notice of Transcript of Record Sent	09/24/03	09/24/03	RES001	TBA		09/24/03	MJ MJ
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0012000	Open Court Proceeding January 14,2004. Hon. Kathleen G. Cox. Hearing had. Opinion to be filed.	01/15/04	01/15/04	000	KGC		02/17/04	SR CKC
0013000	Opinion of the Court	02/17/04	02/17/04	000	KGC		02/17/04	CKC CKC
0014000	Order affirming decision	02/17/04	02/17/04	000	KGC	Granted	02/17/04	CKC CKC

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	CLOSED	07/21/04	365	no	no	DAAA	D	001	000
EXPU	Exhibit Pickup Notic	CLOSED	04/17/04	30	no	no			000	000
SLTR	Set List For Trial	[illegible]	09/12/03	0	yes	yes	DTRA	D	005	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: ITP 001 County Board Of Appeals Of Ba								
000		B	BOX 377/CBA TRANSC		B			

RD

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

06/25/04

Case Number: 03-C-03-007910 AE
Date Filed: 07/22/2003
Status: Closed/Active
Judge Assigned: To Be Assigned,
Location :

In The Matter of: Jean Colvin

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	01-316-XA
Case Folder ID	C03007910V01

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty Disp. / Addr Update	Entered
PET	001	Colvin, Jean	Party ID: 0599724	BT DO 02/17/04	07/22/03
		Mail. 1609 Middleborough Road Baltimore, MD 21221	07/22/03	07/22/03 JET	07/22/03 JET
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee The 508 Building 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	Appear: 07/22/2003		07/22/03
RES	001	Cloverland Farms Dairy	Party ID: 0599728	BT DO 02/17/04	07/22/03

Capacity : Legal Owner/pet For Special Exception For Property

Attorney: 0015510 Malone, Patricia Ann Appear: 08/05/2003 08/05/03
Venable, Baetjer & Howard, LLP
210 Allegheny Avenue
P O Box 5517
Towson, MD 21285-5517
(410)494-6200

0015531 Dunbar, James A Appear: 08/05/2003 08/05/03
Venable, Baetjer And Howard, LLP
210 Allegheny Ave
PO Box 5517
Towson, MD 21285-5517
(410)494-6200

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
ITP	001	County Board Of Appeals Of Baltimore County	Party ID: 0599727	BT DO 02/17/04	07/22/03
Mail.		Old Courthouse Room 49 400 Washington Ave Baltimore, MD 21204	07/22/03	07/22/03 JET	07/22/03 JET

CALENDAR EVENTS

Date	Time	Dur	Event Description	Text	SA	Jdg	Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec					
01/14/04	09:30A	02Q	Civil Non-Jury Trial	Y		KGC	01	/01	KLS
Conclude			01/15/04 E K.Cox	Y					

Stenographer(s). Debbie Kaplaska

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	User
02/17/04	DO	Decree or Order	BT	BEFORE TRIAL/HEARING	

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	07/22/03	

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Rob Hoffman	210 Allegheny Ave
NICK BRADER	10540 YORK RD / Suite M, 21030
Ken Schmid	325 Gambrills Rd Suite E Gambrills, Maryland 21054
John M. Kemp	3611 Roland Avenue

Printed with Soybean Ink
on Recycled Paper

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Graham Snyder	1613 Middleborough
Eugenia Colvin	1609 Middleborough Rd.
George Fowler	1612 Middleborough
Thomas Mahurin	1624 Middleborough Rd
Thomas Colvin	1609 Middleborough Rd
David Bose	1618 Middleborough
Gordon M. Bose	1615 Middleborough Rd
John H. Flynn	215 West Road
O'Clem A. Cox	528 EASTERN BLVD
Charles R Chase	5921 MORAVIA AVE
Shirley Fowble	11 Ryan Frost Way
G. Vernon Fowble	11 Ryan Frost Way
VERNON HOFFMAN	313 Black Rock Rd
	21221

ZIP code

Case Number _____

PLEASE *PRINT* LEGIBLY

PROTESTANT'S SIGN-IN SHEET

Name	Address	City, State	Zip Code
CHARLES CHRIST	5921 MORAVIA RD	BALTO MD	21206
DAVID BOSSE	1618 Middleborough Rd	Balto MD	21221
GORDON BOSSE	1615 MIDDLEBOROUGH RD	BALTO, MD	21221
EUGENIA COLVIN	1609 Middleborough Rd	Balto Md	21225
John Kemp	3611 Roland Ave.	Balto. Md.	21211
NICK BONDER	10540 YORK RD Ste M	Hunt Valley, MD	21030
ERIC ROCKEL	111 W. Chesapeake Ave	Towson	21204
STEVEN WALSH	"	"	"

Revised 4/17/00

Overhead

CVID

-06-03

Pet'r

1. 24" Colored Site Plan
2. 24" Black line copy
3. Letter from Lockel
4. Memo from Tom Tanner

Protestant

5. Schmid's Resume

#6 2/21/03 Schmid letter
#7 Butler's Resume
#8 a 1996 Zoning Map & 2000 Zoning Map
#9 a-c & Photos
#10 Drainage Area Map
#11 a-k Photos of Colvin's property

#7 & #8 #1 Photos by Colvin - see #9 #1 & 8
#2 Copy of Correction Notice
#3 4/29/02 Photos of Ditch Large (14" x 22") card of photos (in closet)
#4 Photos 8/21/02 Ditch
#5 Photos 9/5/02 & 8/21/02
#6 Photos recent of ditch - green backing
#7 Photos Toward BRN of dumpster & trash can
#8 3/4/03 Photos - green backing Large card (14" x 22") in closet
#9 Photos - Hedge
#10 3/4/03 Photos
#11 Photos 11/19/02 & 3/3/03 Bkyd w/ flooding
#12 Photos 11/19/02

MIDDLEBOROUGH ROAD

TOP INLET
33.55
INV 18"RCP
27.80

N 77°29'02"E 50.30

N 85°56'27"E 55.99

N 85°55'59"E 50.00

INV
18"RCP
28.43

INV
18"CMP
28.25

Prop. Drainage & Utility Easement

Prop. Access Easement

HOUSE

DECK

S 09°07'45"E 217.55

S 33°10'35"W

ROYAL FARM STORE
F.F. ELEV. 30.48

EDGE OF MAC

S 80°52'15"W 168.70

CONC WALK

ZC #1

PRINT DATE

APR 10 1995

G. W. STEPHENS, JR.

Baltimore County
Department of Permits and
Development Management

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Code Enforcement:	410-887-3351	Plumbing Inspection:	410-887-3620
Building Inspection:	410-887-3953	Electrical Inspection:	410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CORRECTION NOTICE

Citation/Case No. 02-8317

Property No. 15-0741056O

Zoning: BL-AS

Name(s): Cloverland Farms Dairy, Inc.

Address: 3611 Roland Ave. Balto. MD. 21211-2408

Violation Location: 1601 Middleborough Rd.

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

101, 102.1, 230.9, 230.13 - BCZR

Cease the parking of all tractor-trailer cabs/rigs on this BL-AS (Business, Local-Automotive Services) zoned land.

This activity constitutes a truck facility class II under the Baltimore County Zoning Regulations (BCZR) and is not permitted in this zone.

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE:

On or Before: 11-28-02

Date Issued: 11-21-02

FAILURE TO COMPLY WITH THE DEADLINE STATED IS A MISDEMEANOR. A CONVICTION FOR EACH VIOLATION SUBJECTS YOU TO POTENTIAL FINES OF $200, $500, OR $1000 PER DAY, PER VIOLATION, DEPENDING ON VIOLATION, OR 90 DAYS IN JAIL, OR BOTH.

Print Name: James H. Thompson

INSPECTOR: J. H. Thompson

STOP WORK NOTICE

PURSUANT TO INSPECTION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT. THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN:

Not Later Than:

Date Issued:

INSPECTOR:

AGENCY

Protest filed

Baltimore County Government
Office of Law

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3251

RECEIVED
DEC 29 1995
GEORGE WILLIAM STEPHENS JR
& ASSOC., INC.

May 19, 1995

Mr. John Kemp
Cloverland Farms Dairy
2200 North Monroe Street
Baltimore, Maryland 21217

Re: Royal Farm Store
Middleborough Road
RW 95-170
J.O.: "0"

Dear Mr. Kemp:

In reference to the conversation you had with Charles Reed, of this office, I am enclosing a copy of the drawing indicating the proposed easements as well as a letter of permission to allow Baltimore County to accomplish the necessary maintenance on the storm drain outfall ditch. We will follow up with a formal deed to dedicate the necessary easements in the future.

Please sign one copy of the letter of permission, have your signature witnessed and notarized and return to me at the following address: Division of Real Estate, 111 West Chesapeake Avenue, Room 300-A, Towson, Maryland 21204.

Thank you for your cooperation.

Sincerely,

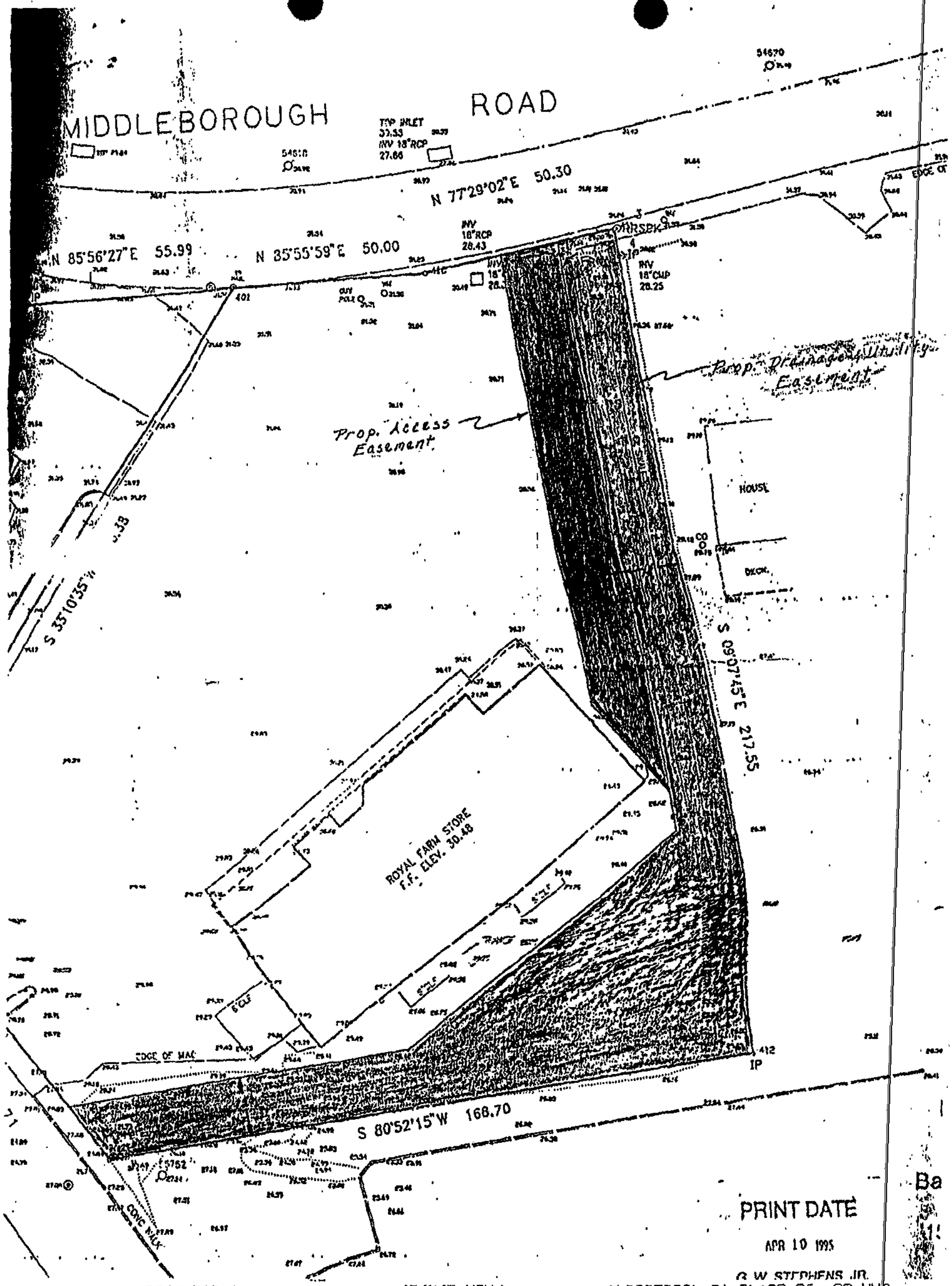
Eric Rockel

Eric Rockel, Supervisor
Contact, Negotiations and Records
Division of Real Estate

ER:CSR:an

Enclosure

JAN 03 '96 08:43 TO 4108210147 FROM G.W.S. T-370 P.02



JAN 03 '96 08:43 TO 4108210147 FROM G.W.S. T-370 P.03

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

COPY

INTER-OFFICE CORRESPONDENCE

TO: Carl Schmidt, Acting Chief
Bureau of Highways

February 26, 1996

FROM: Thomas H. Hamer, Deputy Director
Department of Public Works

SUBJECT: Royal Farms Property, Middleborough Road
Construction of Outfall Ditch

A commitment was made by members of the Bureau of Highways during an August 11, 1994 meeting to construct an outfall ditch at the above referenced location. The following individuals were party to said commitment: State Delegate, Mike Weir and former Delegate Farrell Maddox, Sheldon Epstein and Paul Wellman of the Bureau of Engineering, Richard Cox and Al Bethke of the Bureau of Highways, Glen Schaefer of DEPRM, a reporter from the Avenue Newspaper, an adjacent property owner, Ms. Colvin, and Nick Brader with George W. Stephens, the owner's representative.

To date a portion of the ditch has been constructed by the Bureau of Highways but a portion remains to be completed. Rick Cox has suggested that the remaining portion cannot be completed due to lack of access. If access cannot be obtained for vehicular entry, the work should be completed by other means including hand labor if necessary.

Attached is correspondence file and sketch showing area in which ditch is to be constructed.

Please contact Sheldon Epstein at Extension 3711 if you have any questions.

THH:SSE:plf

Attachment

cc: Shirley Murphy
Winnie Carpenter
File

Professional Resume of
Kenneth W. Schmid
11022 Pfeffers Road
Kingville, MD 21087

EXPERIENCE

January 1993 – Present

Traffic Concepts, Inc.
325 Gambrills Road, Suite E
Gambrills, MD 21054

Owner, Vice-President

Provides traffic engineering consultant services to the public and private sectors including:

Expert testimony before the County Zoning Officer and Board of Appeals for Special Exception and Rezoning cases. Development of Feasibility Analysis including access alternatives and the assessment of the impact of pertinent Adequate Public Facilities legislation of local governments on potential development sites. Development of Traffic Impact Studies including critical lane, highway capacity, and signal warrant analysis; recommendations of road improvements necessary to meet various Adequate Public Facility criteria and leading negotiations with government agencies to secure waivers for Adequate Public Facilities legislation. Design and preparation of traffic signal, maintenance of traffic, pavement marking, and road improvement concept plans. Preparation of technical and price proposals.

December 1989 – January 1993

Ronald W. Johnson Associates, Inc.
2661 Riva Road, Suite 420
Annapolis, MD 21401

Chief – Traffic Engineering Division

Page 5

May 1981 – July 1984

Maryland State Highway Administration
Office of Traffic and Safety
Hanover, MD 21076

Traffic Engineer I and II

Duties included developing signal design and signalization plans, reviewing signal design plans submitted by consultants, and developing equipment and construction design specifications. The development of traffic signal and traffic signal system timing often required the consideration of pedestrians and bicycle routes throughout the major highway system.

EDUCATION

Baltimore Polytechnic Institute, 1976 graduate

Essex Community College, 1976 – 1978

University of Maryland, 1981 graduate
Bachelor of Science – Civil Engineering

Various Continuing Education courses in the traffic engineering and highway design field.

PUBLICATIONS

Developed the Signal Design Manual currently in use by the Maryland State Highway Administration Office of Traffic and Safety

AFFILIATIONS

Institute of Transportation Engineers, 1985 – Present

National Federation of Independent Businesses, 1993 – Present

Started and developed the traffic engineering division at this consulting firm. Duties included: Directing the activities of the Traffic Engineering Division. Providing expert testimony at over 30 Special Exception, Rezoning, and Appeal cases. Development of more than 130 feasibility and Traffic Impact Studies. Design and preparation of traffic signal designs, maintenance of traffic, and road improvement concept plans.

December 1986 – November 1989

Anne Arundel County
Department of Public Works
Traffic Engineering Division
Annapolis, MD 21401

Traffic Engineer III and IV

Supervised the daily operations of the Development and Operation Section of the Traffic Engineering Division. This included full responsibility for reviewing and recommending approval or denial of Rezoning and Special Exception cases, subdivisions, and building permit applications. Supervised the activity of three engineers, seven traffic analysts. Duties included traffic control design and implementation throughout the County, for example traffic control design for the Baltimore & Annapolis Hiker/Biker trail.

July 1984 – December 1986

Maryland State Highway Administration
District #5 Office
Annapolis, MD 21401

Traffic Engineer III

Duties included traffic signal design, construction inspection, and conducting various traffic engineering studies in order to make recommendations to the District Traffic Engineers.

Accepted as an expert in the traffic engineering field in the following jurisdictions:

Baltimore City
City of Annapolis
City of Elkton
City of Frederick
City of Salisbury
Town of Bel Air
Town of Bowie
Town of Easton
Anne Arundel County
Baltimore County
Calvert County
Caroline County
Carroll County
Cecil County
Charles County
Frederick County
Harford County
Howard County
Kent County
Prince George's County
Queen Anne's County
St. Mary's
Talbot County

REFERENCES:

Mr. Harry Blumenthal
Blumenthal & Delavan, P.A.
170 Jennifer Road, Suite 240
P.O. Box 868
Annapolis, MD 21401-6484
(410) 573-2900

Alan Hyatt
Hyatt, Peters & Weber
1919 West Street
Annapolis, MD 21401
(410) 266-0626

Mr. Gary Westholm
Powell and Westholm, Inc.
2661 Riva Road, Suite 300
Annapolis, MD 21401
(410) 974-6850

Lawrence Elliott
MSHA – District 5
138 Defense Highway
Annapolis, MD 21401
(410) 841-5450

TRAFFIC CONCEPTS, INC.

Traffic Impact Studies • Feasibility • Traffic Signal Design • Expert Testimony

February 27, 2003

Mr. John Kemp
Royal Farms; Cloverland Dairy
3611 Roland Avenue
Baltimore, MD 21211

RE: Royal Farm Store
Back River Neck @ Middleborough Road
Baltimore County

Dear Mr. Kemp:

We have completed our updated review of the expansion plans for the above referenced project. The existing store has a 3,400 gross square foot convenience store (double entry) and gasoline sales supported by eight (8) fueling positions. The existing store is a triangular-shaped parcel of land with the fueling area located in the smaller angled section of the property. The Special Exception would allow the addition of eight (8) fueling positions and a rollover type car wash to the southern or larger side of the store. This would be accomplished by removing an existing vacant building. No new access points will be added, however, one of the accesses to Middleborough Road will be narrowed and channelized. The car wash will be located along the southern property line and stacking areas will be provided per Baltimore County Code.

During the initial zoning hearing review process, a peak hour traffic count was performed at the Back River Neck Road @ Middleborough Road intersection. The results indicated that this unsignalized intersection operated well in an uncongested manner with minimal delay. Levels of service "A" were calculated during the morning and evening peak hours. A check of levels of service at signalized intersections along the Back River Neck Road corridor indicates "A" or "B" operating conditions.

We conclude that the expansion of the existing store will have only minor impacts with regards to increased traffic. We believe the adjacent road system is capable of handling any additional traffic to be generated. The increase in traffic to and from the site will be largely associated with passby-type traffic. The expansion of the store by providing increased numbers of fueling positions will result mainly in better internal traffic circulation and help eliminate the internal vehicle queuing at the existing fueling positions. We conclude that the overall

Petitio

325 Gambrills Rd., Suite E • Gambrills, MD 21054 • (410) 923-7101 • Fax (410) 923-6473 • EMAIL: traconcept@aol.com

site will operate in a much more safe and efficient manner and only serve to improve the existing operation.

We have attached copies of the traffic count and trip generation information for your use. If you have any questions or require additional information, please feel free to contact our office at your convenience.

Sincerely,

TRAFFIC CONCEPTS, INC.

By: Kenneth W. Schmid

Summary of Trip Generation Calculation
For 3.4 Th.Gr.Sq.Ft. of Convenience Market with Gasoline Pumps
April 29, 2002

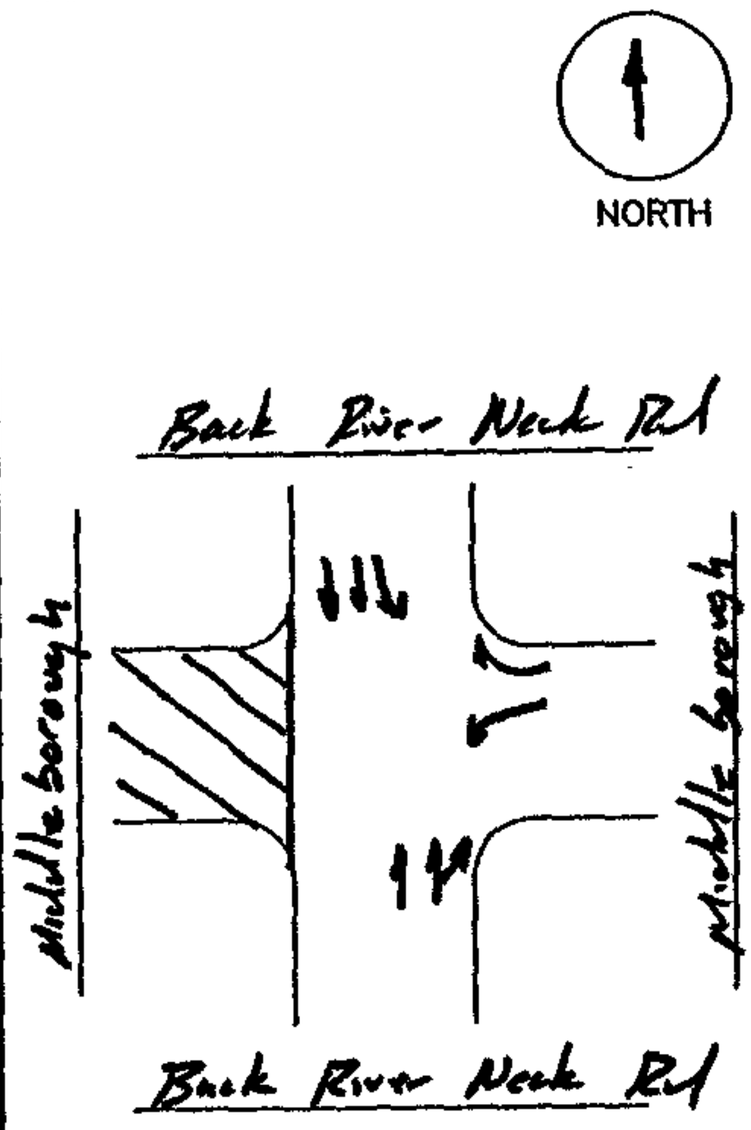
	Average Rate	Standard Deviation	Adjustment Factor	Driveway Volume
Avg. Weekday 2-Way Volume	845.60	163.67	1.00	2875
7-9 AM Peak Hour Enter	22.79	0.00	1.00	77
7-9 AM Peak Hour Exit	22.79	0.00	1.00	77
7-9 AM Peak Hour Total	45.58	18.50	1.00	155
4-6 PM Peak Hour Enter	30.31	0.00	1.00	103
4-6 PM Peak Hour Exit	30.31	0.00	1.00	103
4-6 PM Peak Hour Total	60.61	35.37	1.00	206
AM Pk Hr, Generator, Enter	22.61	0.00	1.00	77
AM Pk Hr, Generator, Exit	22.61	0.00	1.00	77
AM Pk Hr, Generator, Total	45.23	18.52	1.00	154
PM Pk Hr, Generator, Enter	31.29	0.00	1.00	106
PM Pk Hr, Generator, Exit	31.29	0.00	1.00	106
PM Pk Hr, Generator, Total	62.57	36.32	1.00	213
Saturday 2-Way Volume	1448.33	735.17	1.00	4924
Saturday Peak Hour Enter	28.90	0.00	1.00	98
Saturday Peak Hour Exit	26.68	0.00	1.00	91
Saturday Peak Hour Total	55.58	0.00	1.00	189
Sunday 2-Way Volume	1182.08	608.38	1.00	4019
Sunday Peak Hour Enter	0.00	0.00	1.00	0
Sunday Peak Hour Exit	0.00	0.00	1.00	0
Sunday Peak Hour Total	0.00	0.00	1.00	0

Note: A zero indicates no data available.
Source: Institute of Transportation Engineers
Trip Generation, 6th Edition, 1997.

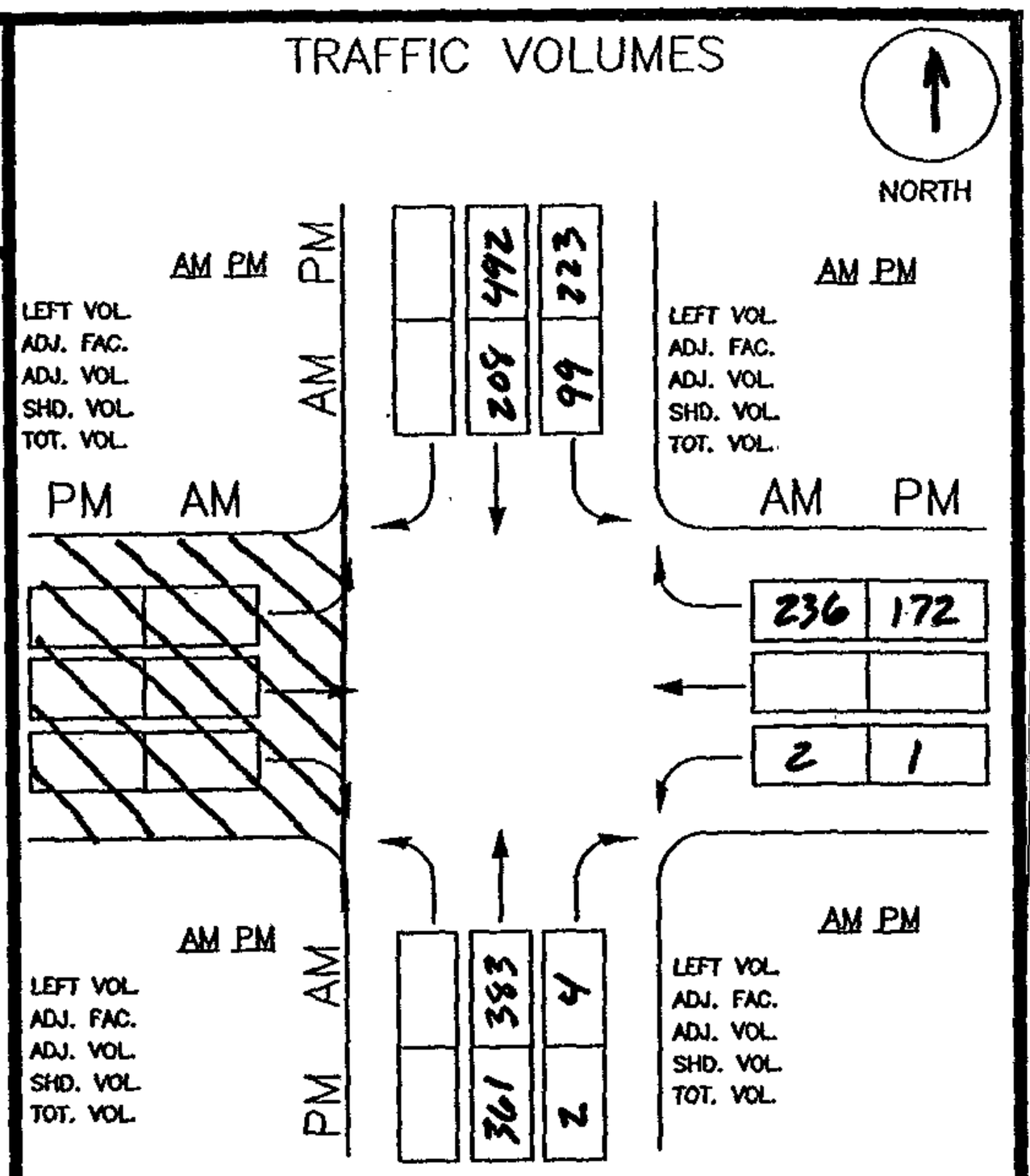
TRIP GENERATION BY MICROTRANS

TRAFFIC CONCEPTS, Inc.

LANE CONFIGURATION



TRAFFIC VOLUMES



		TOTAL VOLUME * LUF + OPPOSING LEFTS * LUF =	CRITICAL LANE VOLUME	LEVEL OF SERVICE
AM	NB	(383+4) * .55 + 99 * 1.0	312*	
	SB	208 * .55	114	
	EB			
	WB	(236 - 99) * 1.0	137*	449
PM	NB	(361+2) * .55 + 223 * 1.0	423*	
	SB	492 * .55	271	
	EB			
	WB	1 * 1.0	1*	424

CRITICAL LANE ANALYSIS

Prepared By: K. Schmid Condition: Existing

PEAK HOUR TURNING MOVEMENT COUNT

INTERSECTION: BACK RIVER N. @ MIDDLEB. **COUNTY:**

COUNT BY: K. SCHMID **DATE:** MARCH 28, 2001

WEATHER: CLEAR **DAY:** WEDNESDAY

	BACK RIVER NECK NORTHBOUND			BACK RIVER NECK SOUTHBOUND			EASTBOUND			MIDDLEBOROUGH WESTBOUND			
TIME	LEFT	THRU	RIGHT	LEFT	THRU	RIGHT	LEFT	THRU	RIGHT	LEFT	THRU	RIGHT	TOTAL
AM													
7:00-7:15		77	2	23	37					0		57	196
7:15-7:30		93	0	20	53					0		58	224
7:30-7:45		101	0	22	47					1		68	239
7:45-8:00		102	2	29	61					1		67	262
8:00-8:15		87	2	28	47					0		43	207
8:15-8:30		85	0	29	50					0		46	210
8:30-8:45													
8:45-9:00													
PEAK HR 7:15-8:15 TOTALS		383	4	99	208					2		236	
PM													
4:00-4:15		89	1	53	98					0		44	285
4:15-4:30		88	0	58	121					0		53	320
4:30-4:45		85	1	55	106					0		31	278
4:45-5:00		83	1	54	132					0		40	310
5:00-5:15		86	0	61	116					1		44	308
5:15-5:30		95	0	45	117					0		45	302
5:30-5:45		97	1	63	127					0		43	331
5:45-6:00													
PEAK HR 4:45-5:45 TOTALS		361	2	223	492					1		172	

TRAFFIC CONCEPTS, INC.
325 GAMBRILLS ROAD, SUITE E
GAMBRILLS, MARYLAND 21054
(410) 923-7101
FAX (410) 923-6473

A:\00-xxx\count1

Pet. #7

Nicholas Brader, III. P.E.
Principal

MATIS WARFIELD, INC.
CONSULTING ENGINEERS
10540 York Road Suite M
Hunt Valley, Maryland 21030

Professional Registration

Professional Engineer-State of Maryland PE 18558

Education

University of Delaware - BCE Civil Engineering – June 1986

Professional Experience

Prior to joining MATIS WARFIELD, INC. in 1998, Mr. Brader was a Project Manager and Senior Associate with the engineering firm of George William Stephens, Jr. & Associates, Inc. In his capacity with Matis Warfield, Inc., Mr. Brader is responsible for total project management including Zoning and Development Hearings and final construction documents. His specialties include site grading and storm water management design.

Project Experience

Office/Commercial/Industrial Development Projects:

Royal Farms Convenience Stores – 7 local jurisdictions, design of 34 new sites and redevelopment of 12 sites beginning with zoning hearings through final construction drawings.

I-97 Business Park – Anne Arundel County, 40 Acre Industrial Park. All site design including Final Development Plans, road, storm drain water and storm water management design for 10 buildings.

Rolling Heights Business Park – Baltimore County, 50 Acre Industrial Park. All infrastructure design including road, water , sewer, storm drain and storm water management. Final site design for 1 building.

Windsor Corporate Park - Baltimore County, 70 Acre Industrial Park. All infrastructure design including road, water , sewer, storm drain and storm water management. Final site design for 4 buildings.

Cromwell Business Park – Anne Arunbdel County, 100 +Acre Industrial Park. Infrastructure design for Area 3 including road, water , sewer, storm drain and storm water management. Final site design for 7 buildings.

Business Center at Owings Mills – Baltimore County - Final site design for 3 lots with 5 buildings including site grading and storm water management.

North East Commerce Center- Cecil County, 120 Acre Industrial Park. All infrastructure design including road, water , sewer, storm drain and storm water management. Final site design for 1 building.

Center at Monocacy – Frederick County, Final site design for 3 lots with 9 buildings including site grading and storm water management

International Trade Center – Anne Arundel County, Final site design for 6 lots with 9 buildings including site grading and storm water management

Lisbon Center – Howard County, Final design of shopping center including site grading and storm drain design.

Columbia Gateway – Howard County, Final site design of 5 lots and 12 office buildings including layout of parking deck, storm water management, sewer, storm drain and water main design.

Riverside Business Park – Harford County, Final site design of two lots with 3 research and development buildings, including storm water management, storm drains, water and sewer main design.

Yellow Freight Expansion – Anne Arundel County, Final site design for expansion to trucking terminal including critical area computations for water quality, storm water management and storm drain design.

Levinson Funeral Home – Baltimore County, Final site design for new funeral home including grading, road widening plans, storm water management, storm drain design, water and sewer main design.

Residential Projects:

Village of Deer Park – Baltimore County, 114 Townhouses. Final Development Plans and construction plans including house grading, storm water management, sediment control, road, storm drain, sewer and water main design.

Beaverbrook – Phase 1 – Baltimore County, 22 lot subdivision. Final Development Plans and construction plans including house grading, storm water management, sediment control, road and storm drain design.

Chestnut Hill Cove Section 4 – Anne Arundel County, 19 townhouses. Final Development Plans and construction plans including house grading, storm water quality, sediment control, road, critical area computations and storm drain design.

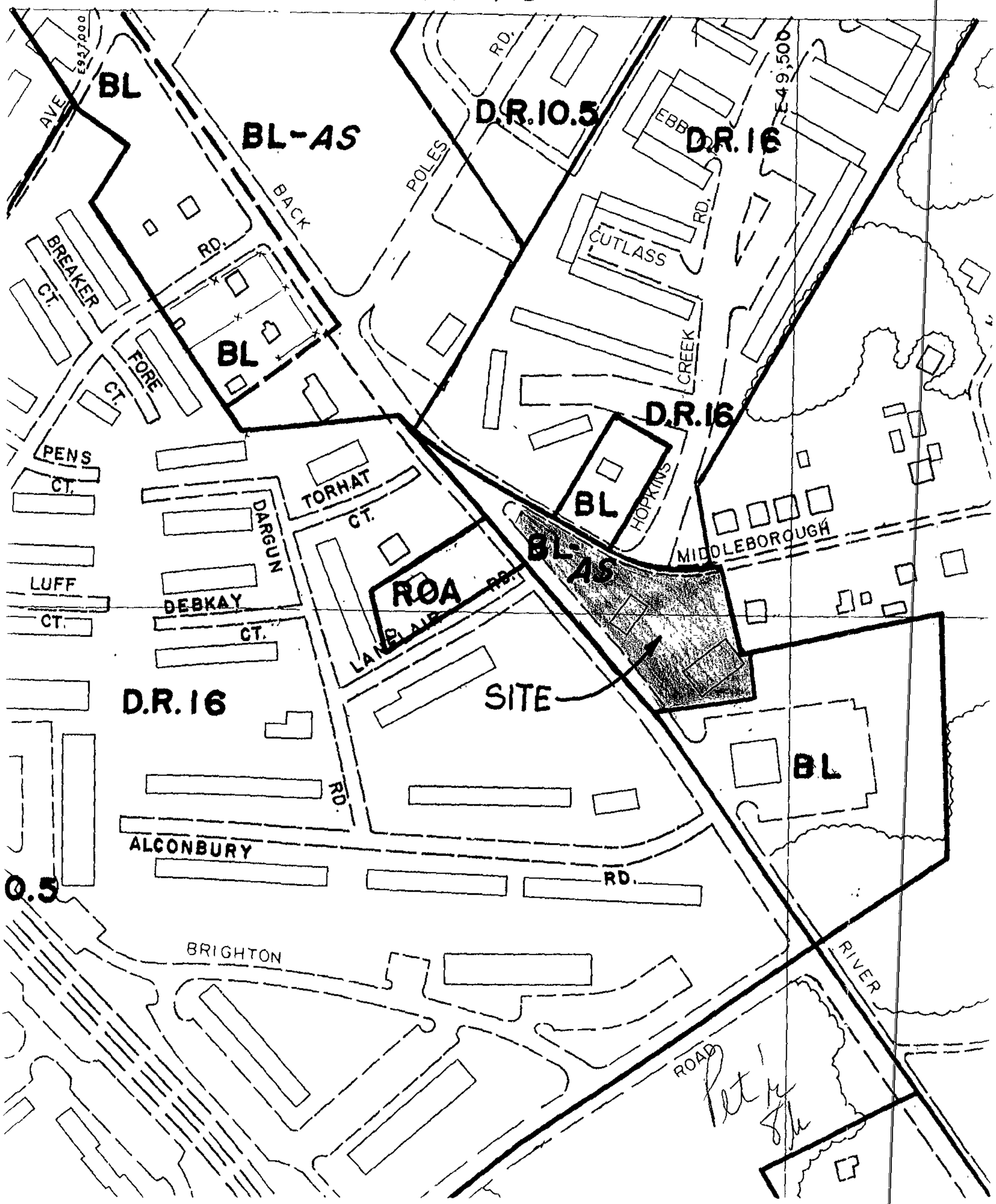
Shipley's Choice Section 12- Anne Arundel County, 7 lots subdivision. Sketch, Final Development Plans and construction plans including house grading, storm water quality, sediment control, road and storm drain design.

Liberty Manor – Baltimore County, 12 lot subdivision, 50 condominium townhouses. Final Development Plans and construction plans including house grading, storm water management, sediment control, road and storm drain design.

Shaneybrook Farms – Baltimore County, 59 lot subdivision. Road, water quality, storm drain and sediment control design.

2000 1"=200' ZONING MAP

NE 1-I



61-316-XA

Cloverland

9a & 9b (panoramic series)

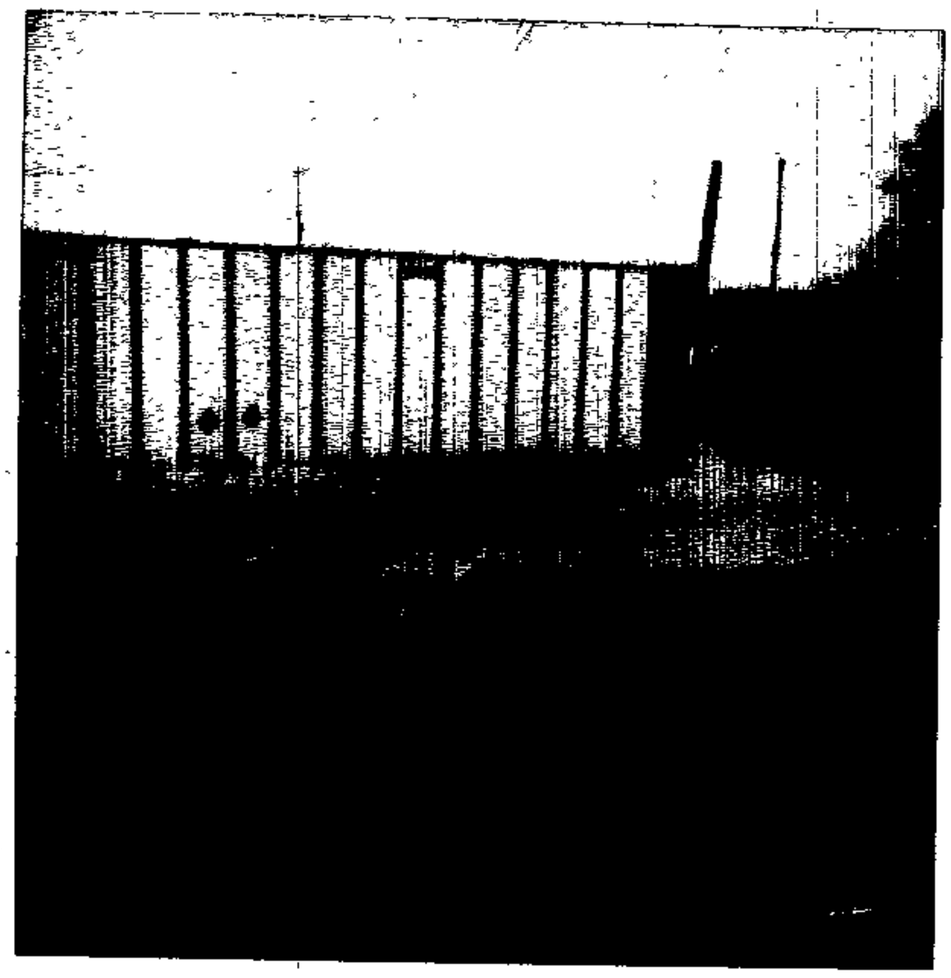
11a & 11b

Cove Village

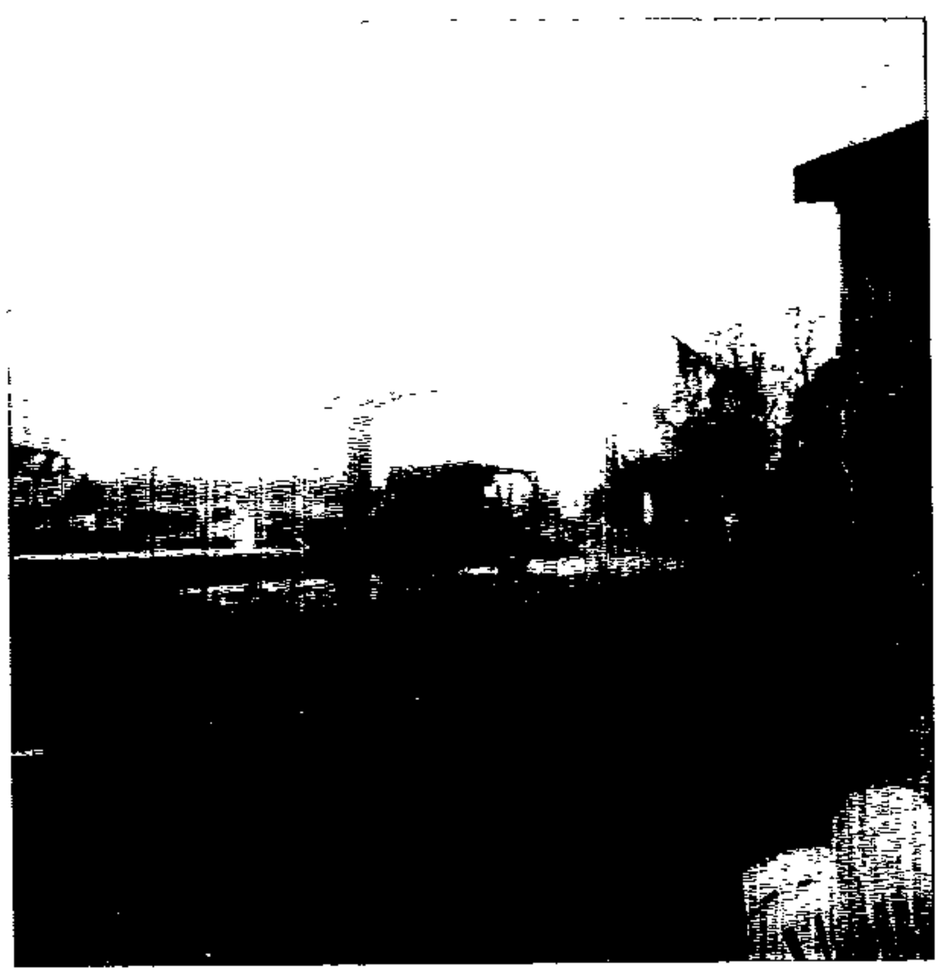
Petitioner's
Exhibits 1A -
1G
photographs

Case # 01-316-XA

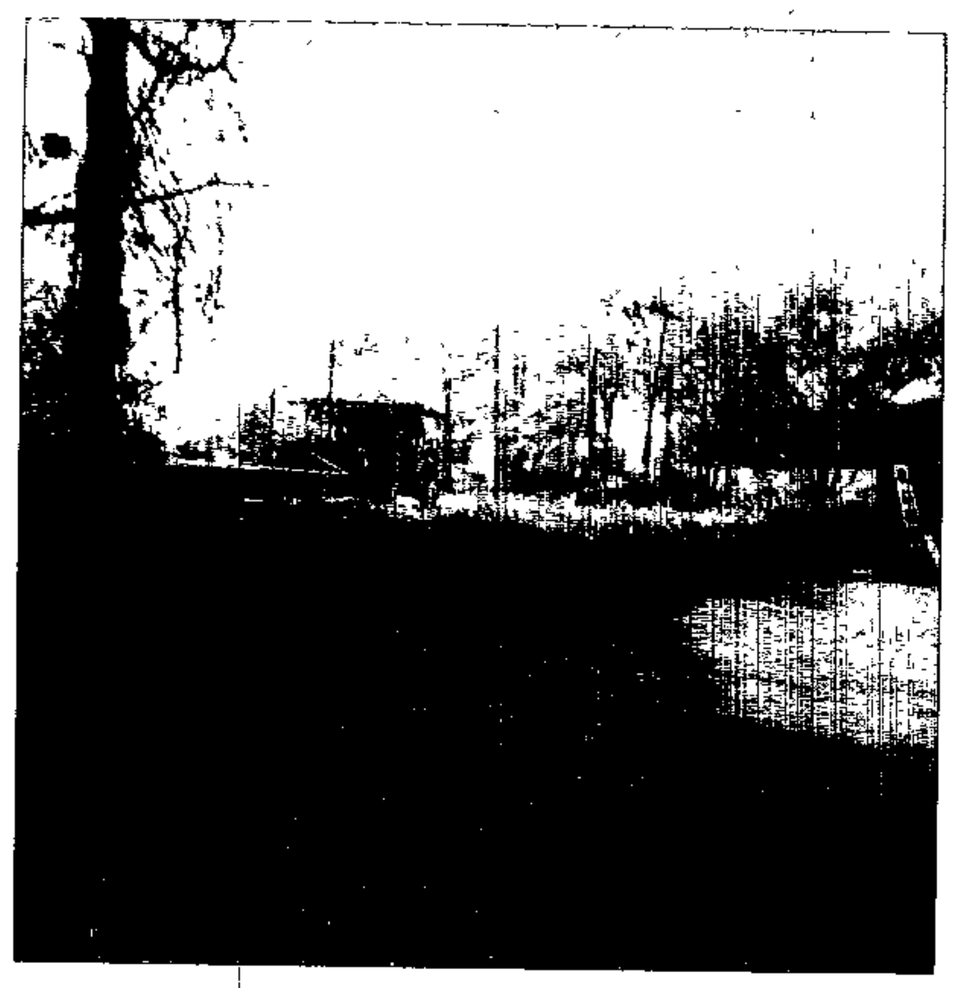
FARM STORE 4-11-95
Pet 1D



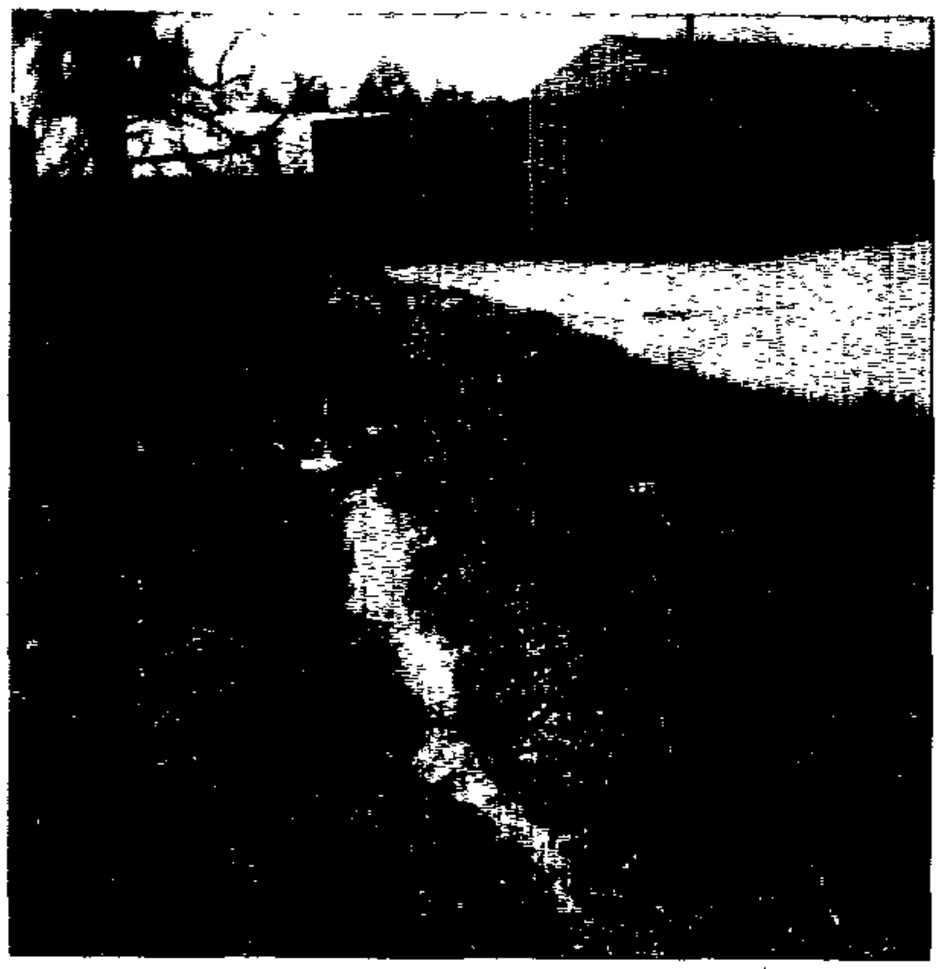
FARM STORE 4-11-95
Pet 1C



Pet No 1B



Pet No 1A



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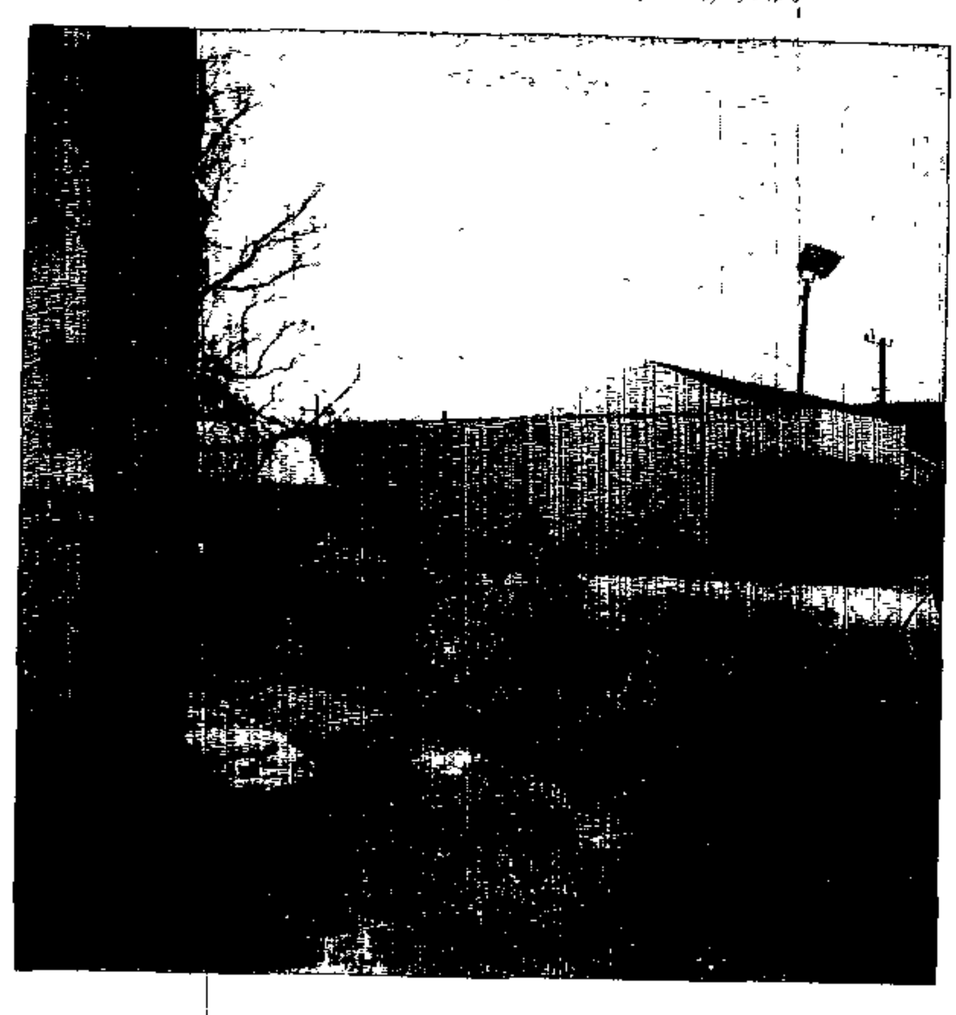

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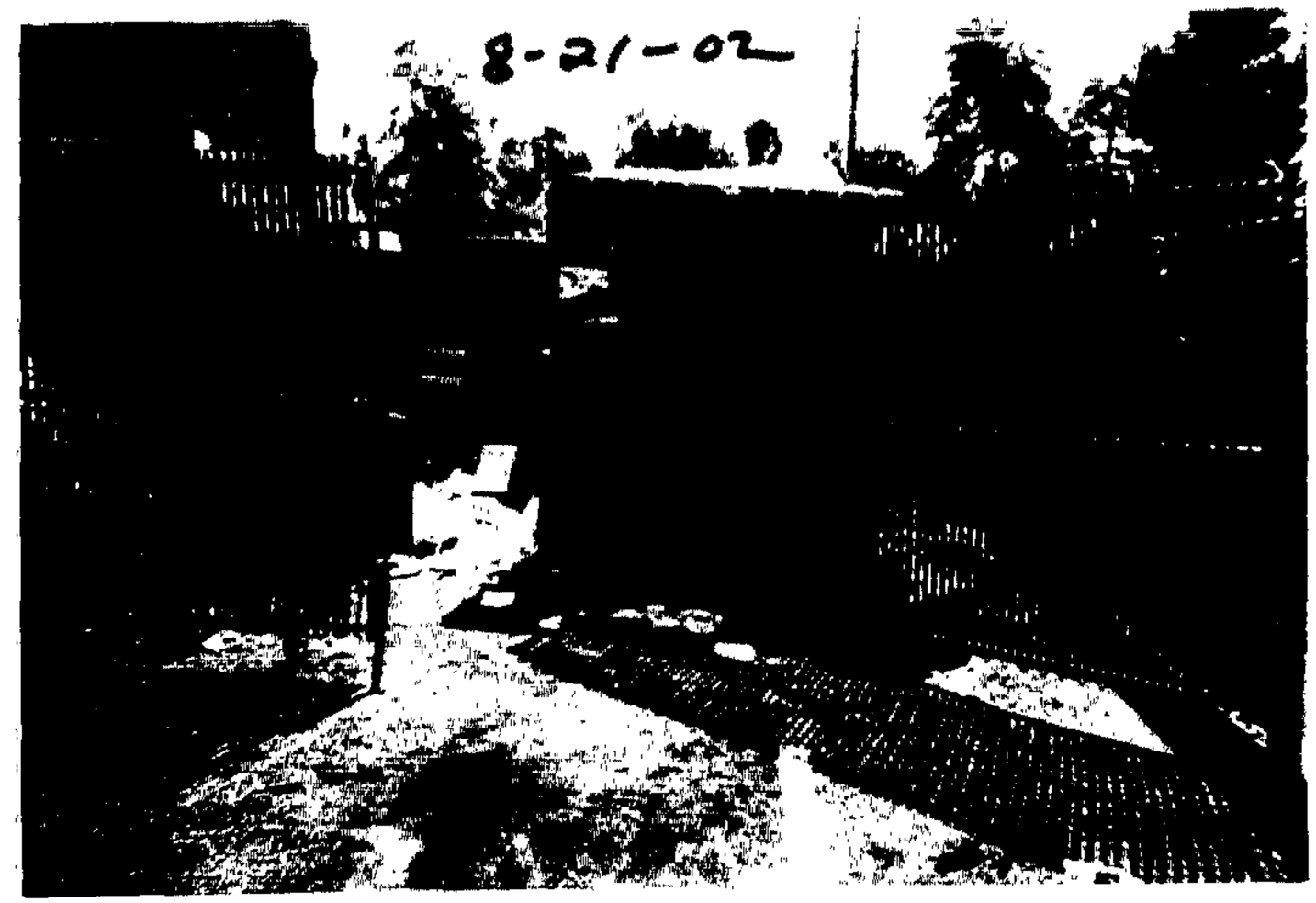

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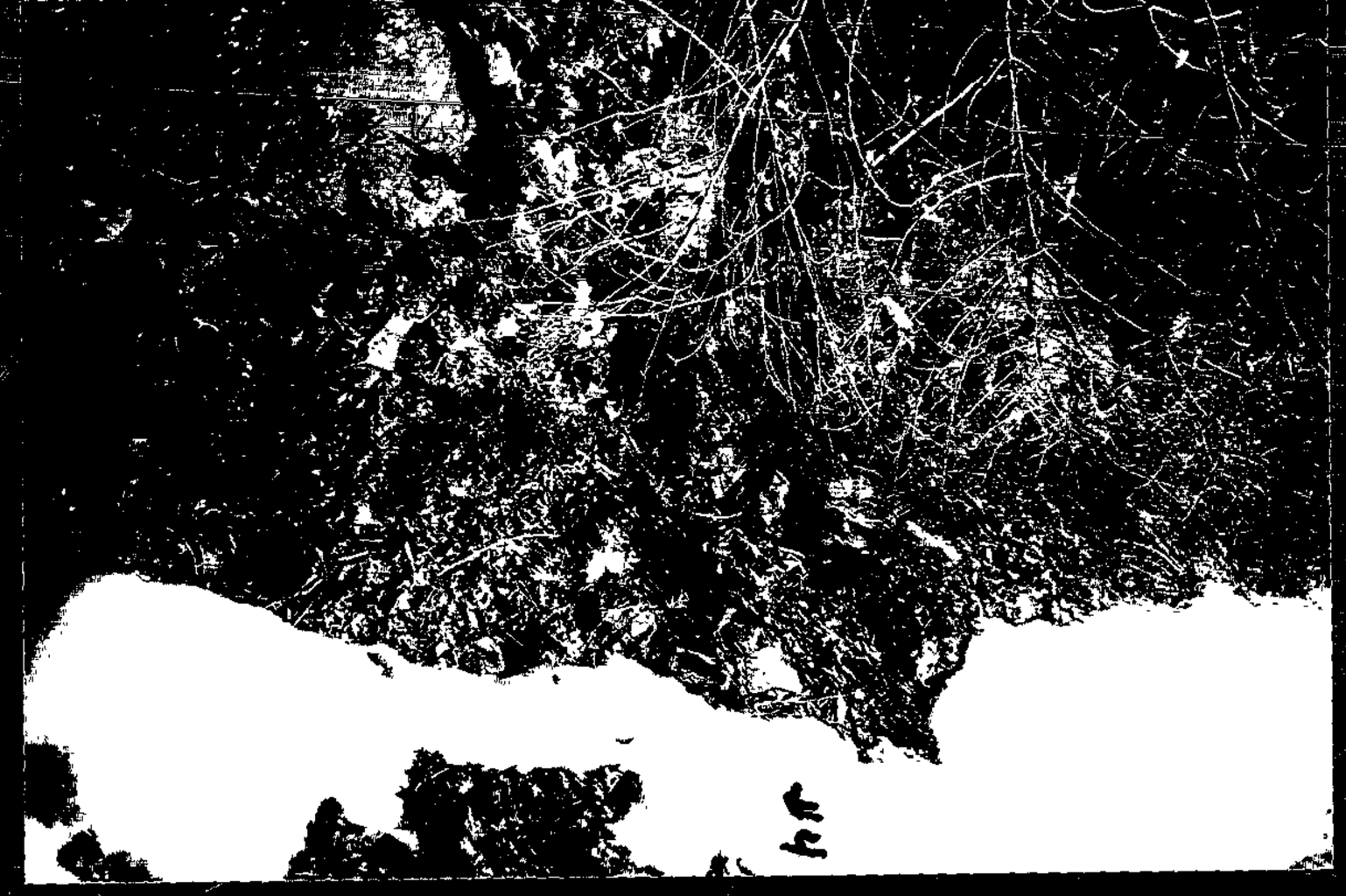
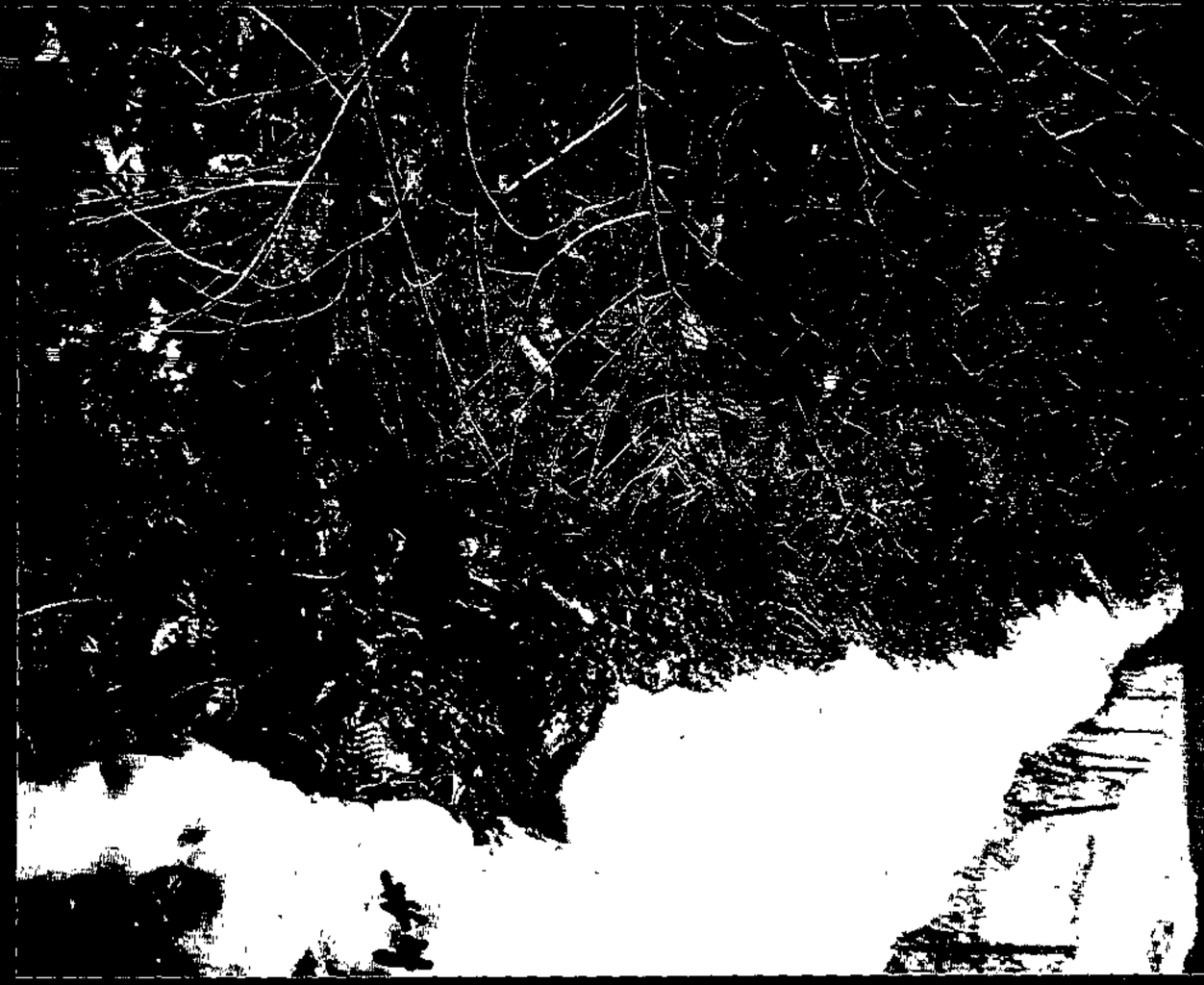




STORM.
DRAIN

Photo 1

STORM DRAIN

STORM DRAIN

9-5-02

NEW STORE

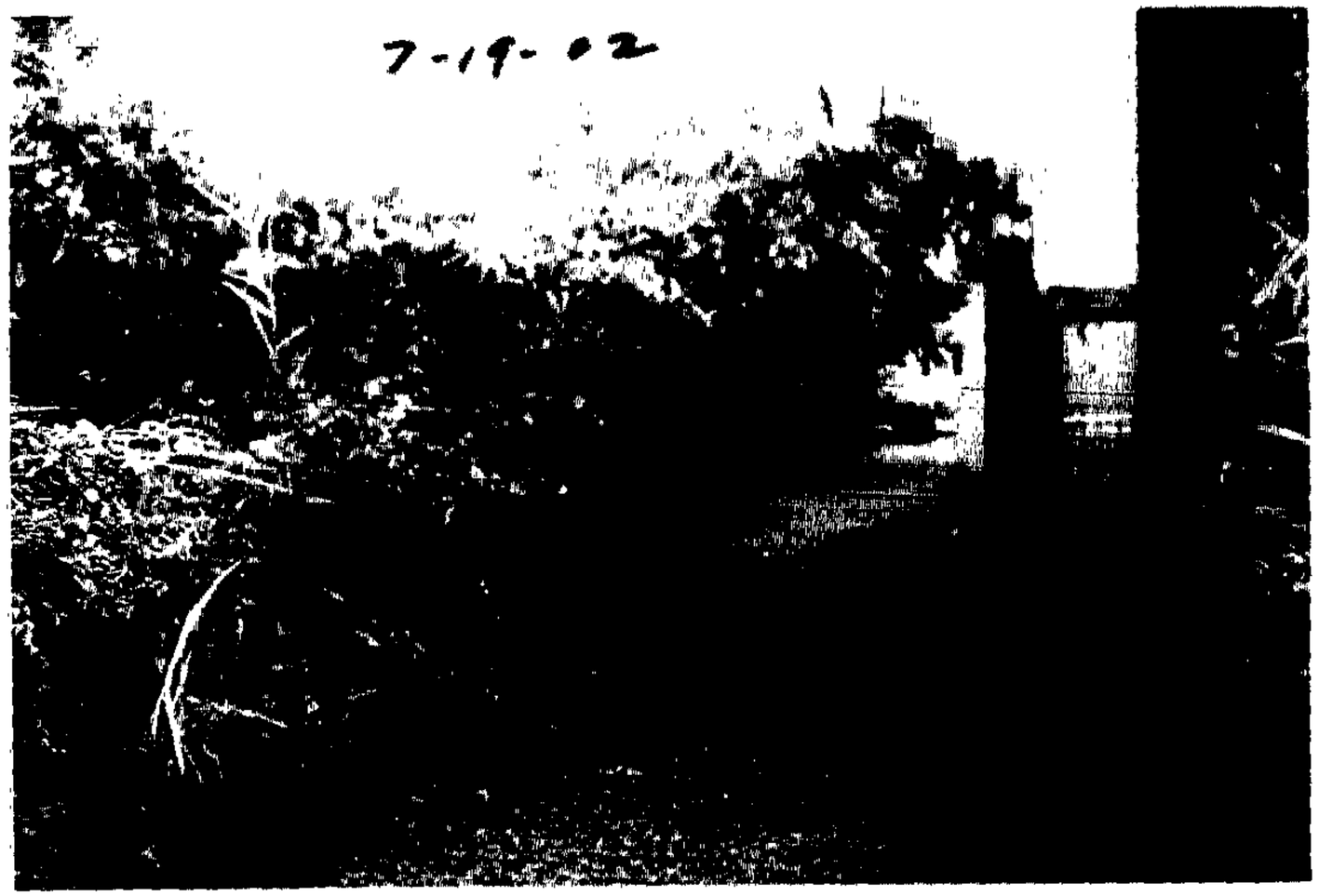
8-21-02

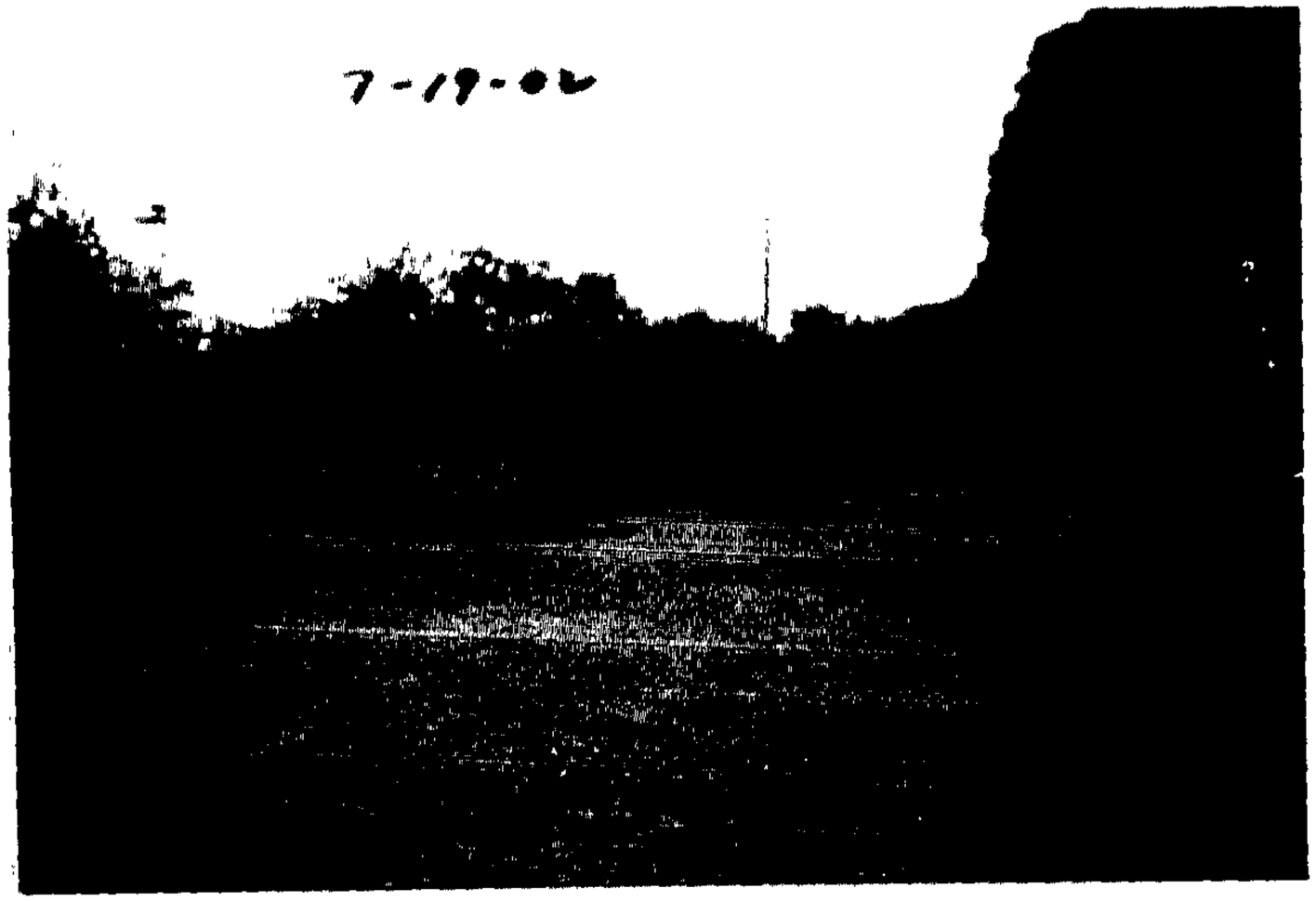
STORM DRAIN

OLD STORE

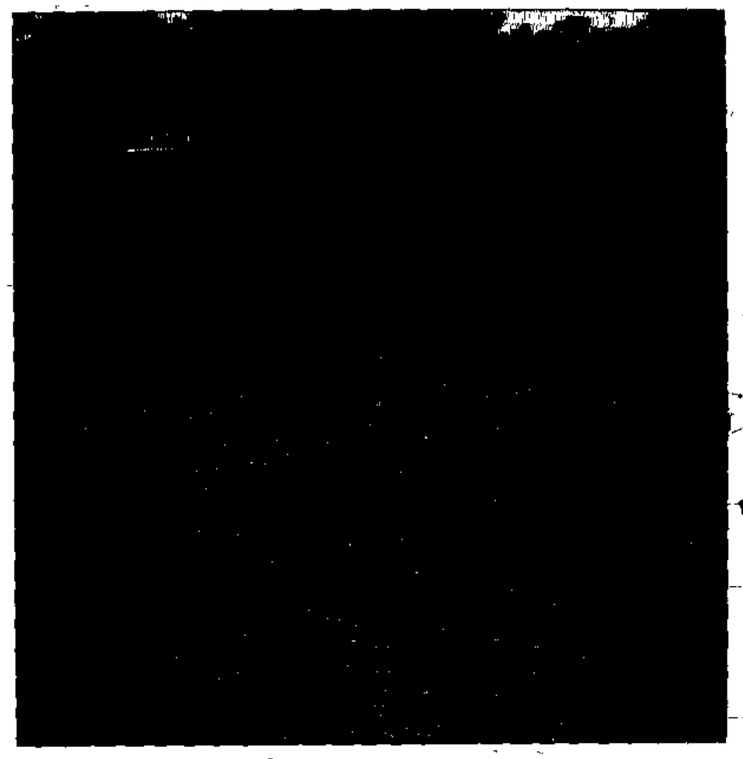
9-5-02

STORM DRAIN



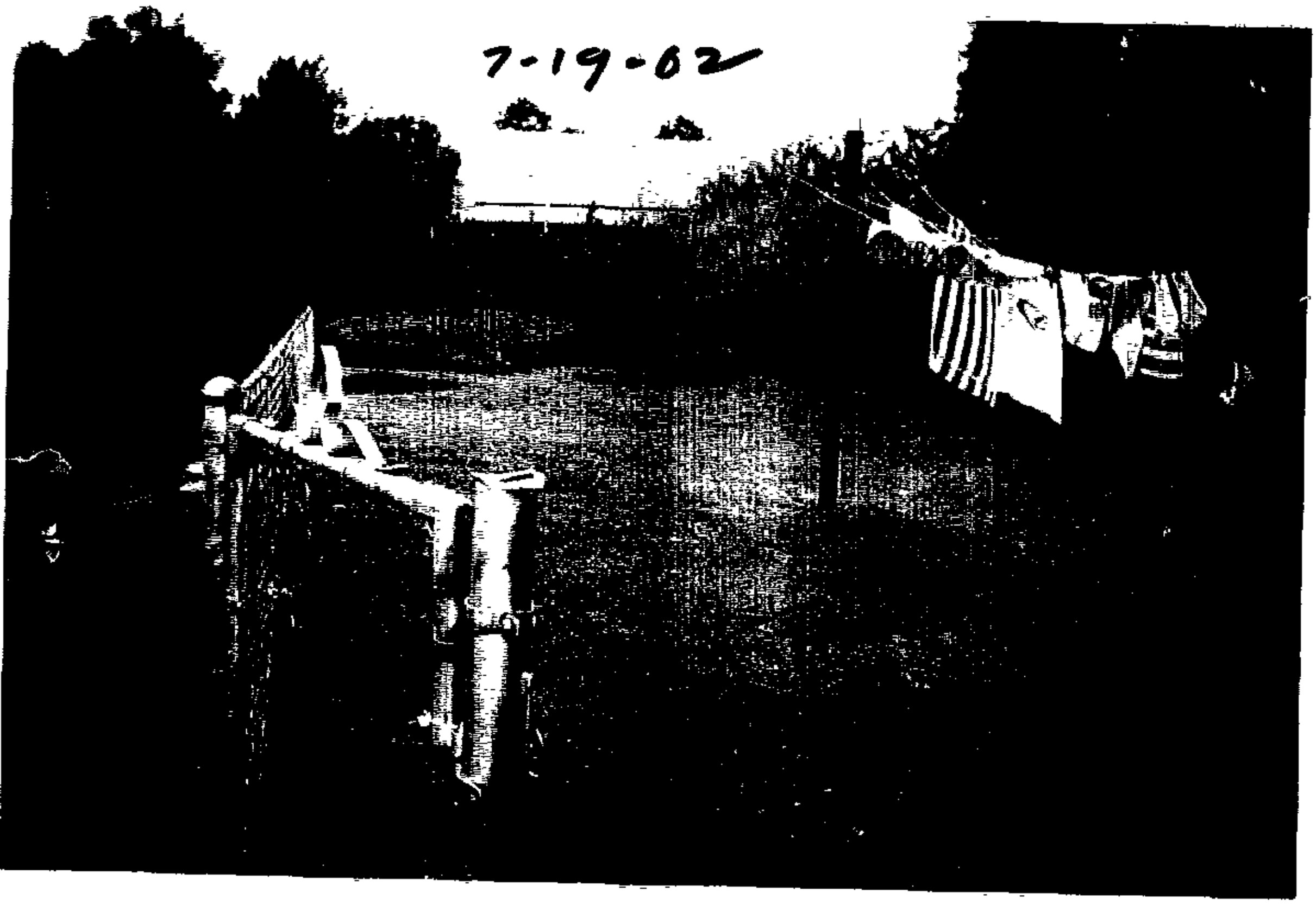


COLVIN YARD



7-02

Part 12

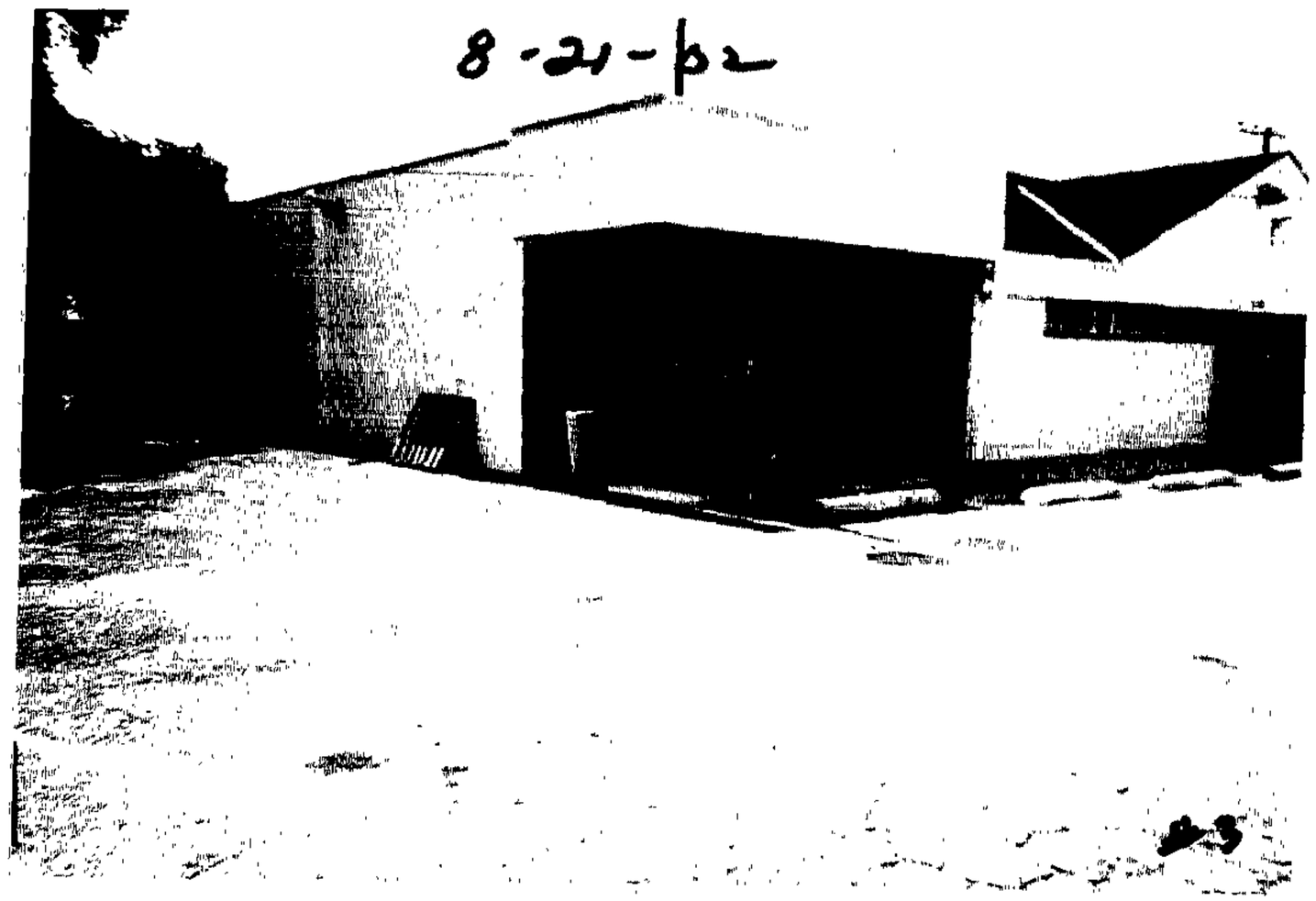


CORVIN YARD

Photo 11

Old Bldg

8-21-02



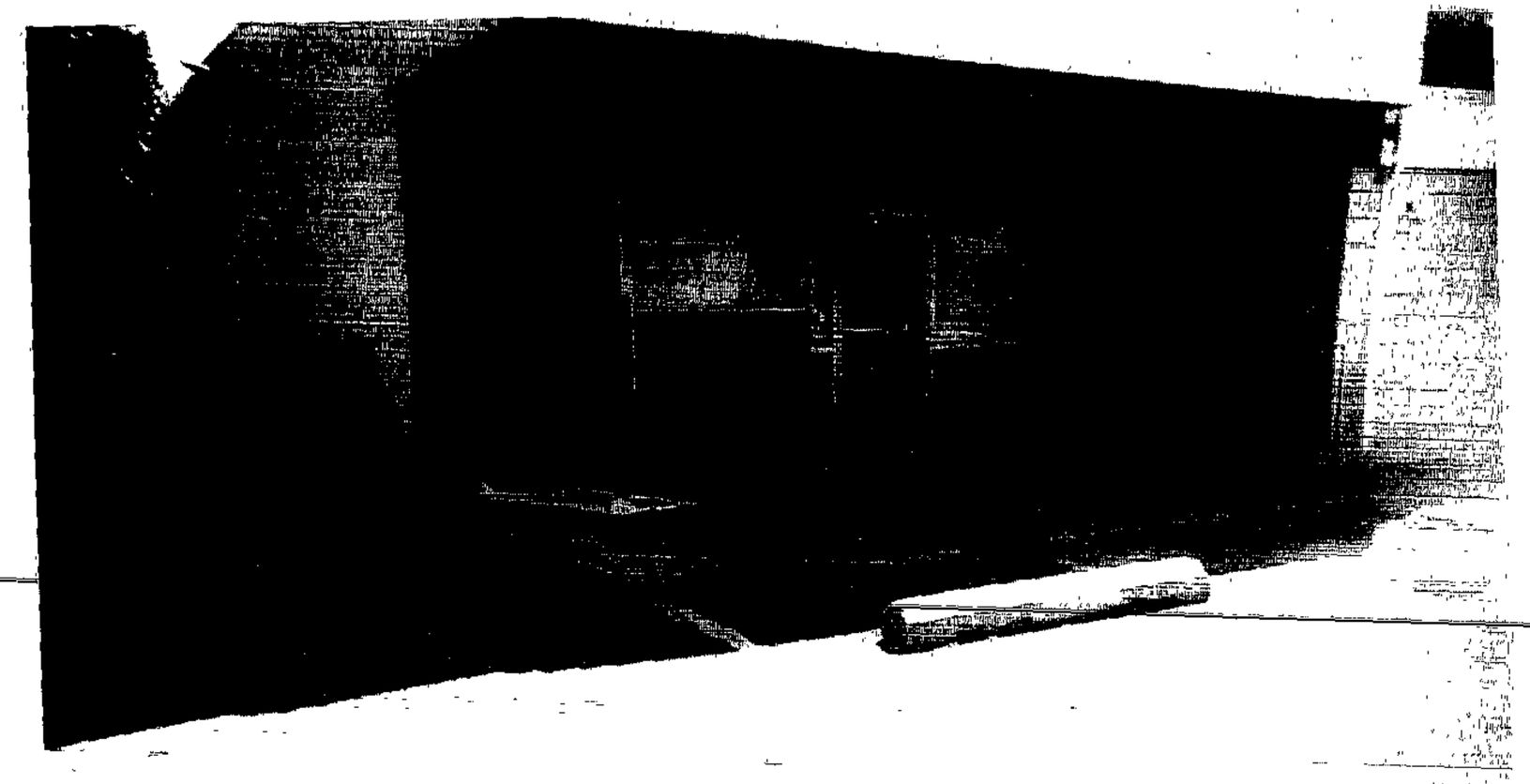
Storm Drain

9-5-02

Old Bldg

8-21-02

Old Bldg.



9-5-02

#3

Part 9

1 IN THE MATTER OF: BEFORE THE

2 CLOVERLAND FARMS DAIRY, INC. BALTIMORE COUNTY
1601 Middleborough Road
3 15th Election District; BOARD OF APPEALS
5th Councilmanic District
4 March 6, 2003
CASE NO. 01-316-XA
5 _____/

6

7

8 The Hearing of Cloverland Farms Dairy,
9 Inc. in the above-captioned matter came on for hearing
10 before the Baltimore County Board of Appeals, Old
11 Courthouse, Room 48, 400 Washington Avenue, Towson,
12 Maryland 21204, commencing at 10:00 a.m., on March 6,
13 2003, before Susan A. Kambouris, Notary Public.

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21 Reported by: Susan A. Kambouris

ORIGINAL

1 BEFORE: LAWRENCE M. STAHL, CHAIRMAN

2 MARGARET WORRALL

3 MELISSA MOYER ADAMS

4

5 APPEARANCES:

6

7 ROBERT A. HOFFMAN, ESQUIRE and
PATRICIA MALONE, ESQUIRE
8 Council for Petitioner

9 J. CARROLL HOLZER, ESQUIRE
Counsel for Appellants/Protestants
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P-R-O-C-E-E-D-I-N-G-S

MR. STAHL: Good morning, everyone.

MR. HOLZER: Good morning.

MR. STAHL: We are here on the March 6th, 2003 the 10:00 a.m. Meeting of the County Board of Appeals for Baltimore County. We are here in Matter 01-316-XA, which is the matter of Cloverland Farm Dairy, Inc. the legal owner of the property of 1601 Middleborough Road, in the 15th Election and 5th Councilmanic District of Baltimore County. We are here relative to a decision dated 5/31/01 in which a Petition for Special Exception was granted below by the Zoning Commissioner. This is a Special Exception Case only, a variance request having been withdrawn below during the course of the Hearing. Counsel, if you will, for the record?

MR. HOFFMAN: Yes, Rob Hoffman and Patsy Malone representing the Petitioner.

MR. HOLZER: J. Carroll Holzer, 508 Fairmont Avenue, representing Appellants Jean Colvin, who is here, John Snyder and George Loveless, who are

1 not here because of illness in their family, and
2 Mr. Christ, who is not here because he is out of
3 state.
4 MR. STAHL: And, again -- I didn't get
5 this --
6 MS. COLVIN: Colvin.
7 MR. HOLZER: The first name on the Notice
8 of Appeal.
9 MR. STAHL: Right. Okay. Anything
10 procedural, housekeeping, before we get started?
11 MR. HOFFMAN: Unfortunately, yes.
12 MR. STAHL: I was afraid to ask. I
13 figured I had to.
14 MR. HOFFMAN: I had the opportunity to
15 read a recent case Mr. Holzer was actually involved
16 in, and, at least, two of the Board Members, the
17 Winchendon Case, which --
18 MR. STAHL: It sounds vaguely familiar.
19 MR. HOFFMAN: I just wanted to hand that
20 case out first because when I read that case -- and
21 this would be in the context of a Motion to Dismiss

1 the Appeal that has been filed. I notice that the
2 board took a very hard line with the Hearing Officer
3 in terms of -- and with the Developer and the
4 Developer's Attorney in that particular case in
5 finding that in the majority opinion, that Rule 4
6 under the Zoning Commissioner's Rules was, at the time
7 of the hearing -- at the time of the hearing did not
8 include the ability to have a Motion for
9 Reconsideration, and, therefore, found that there
10 could be no Motion for Reconsideration, there could be
11 no new plan approved, and since thirty days had gone
12 by since the date of the original denial of the plan,
13 that was no opportunity to take an appeal from the
14 original denial. The descenting/concurring opinion
15 actually goes a little bit further in saying that
16 there is no Rule 4, in essence. You can't find that
17 there is a Rule 4, but it doesn't include the Motion
18 for Reconsideration until such time as the Council
19 takes some action indicating what rules the Hearing
20 Officer is supposed to follow, then he really
21 shouldn't be conducting hearings at all. I am not

1 here to discuss the merits of that particular case,
2 and what the Board found, but in Mr. Holzer's
3 Appeal --
4 MR. STAHL: Now, we are talking about the
5 instant case?
6 MR. HOFFMAN: In the instant case, the
7 Notice of Appeal, we believe, is deficient, and I
8 mentioned the Winchendon Case because I think the
9 Board is requiring that we strictly comply with the
10 County Council, the obligations provided for us by the
11 County Council, and, also, through the rules that the
12 Zoning Commissioner and, I would say, this Board has.
13 The County Code says that under Section 26-132 that,
14 "Such appeals shall be heard and disposed of by the
15 County Board of Appeals, as may be provided in the
16 Charter of the Board's own Rules of Procedure."
17 MR. STAHL: You are reading specifically
18 from 26-132?
19 MR. HOFFMAN: 26-132, towards the end of
20 Paragraph A.
21 MR. STAHL: Give me that language, "Such

1 Appeals shall be heard and disposed of" --
2 MR. HOFFMAN: "Such appeals shall be heard
3 and disposed of by the County Board of Appeals as
4 provided in the Charter or its own Rules of Procedure.
5 When I look at the Board's own Rules of Procedure,
6 under Rule No. 3, it says, "No appeal shall be
7 entertained by the Board of Appeals unless the Notice
8 of Appeal shall state the names and address of the
9 persons taking such appeal."
10 MR. STAHL: And you are reading again from
11 which, No. 3?
12 MR. HOFFMAN: I am reading from 3-A.
13 MR. STAHL: All right.
14 MR. HOFFMAN: I think you could look at
15 the Notice of Appeal that was filed in the case,
16 although it includes the names, there are no addresses
17 included in the Appeal, and I think that -- our
18 position would be that if the Board is going to
19 require Applicants to make sure that they review the
20 County Code, they make sure they review the Zoning
21 Commissioner/Hearing Officer's Rules of Procedure. We

1 would ask the Board, in this case, to do the same
2 thing with regard to the County Code, and its own
3 Rules of Procedure. It appears to me that it is
4 mandatory on the Board not to entertain this appeal if
5 the addresses were not included in the Notice of
6 Appeal.
7 MR. STAHL: I would think you would have
8 something to add to this?
9 MR. HOLZER: Say to that? I commend
10 Mr. Hoffman for an innovative argument, but I would
11 make a couple of points. Since I had the good fortune
12 or bad fortune to be involved in the Winchendon case,
13 I would simply point out to the Board that that case
14 was purely a Development Plan Review by this Board,
15 and it involved a matter that isn't quite exactly like
16 the one posed today. In any event, the hearing before
17 you today is a hearing, under the charter, is de novo.
18 The issue of whether or not the Notice of Appeal
19 contains -- it certainly contains the name. The issue
20 of whether it contains the address, the Board will
21 note that I incorporated in the Notice of Appeal,

1 Exhibit No. 1, which was the Findings of Fact and
2 Conclusions of Law of the Zoning Commissioner, who
3 mentions, again, these individuals, and, particularly,
4 Miss Colvin, as an adjacent property owner, and he
5 also mentions in there the sign-in sheet, which is a
6 part of the file, which indicates their name and
7 address. All of these individuals signed in. So,
8 first of all, I don't think the argument has merit in
9 regard to whether or not the address is missing from
10 the Notice of Appeal, and I don't think it is a
11 Winchendon case because that was under the Development
12 Regulations Statute, not under the Charter, and that
13 related to the Zoning Commissioner's Rules, and your
14 interpretation of those, and not necessarily this
15 Board's. This Board has a custom, and usage, and
16 practice, for many, many, many years of permitting an
17 appeal of this nature. I think if you are going to
18 interpret it strictly, at least in this case, it is
19 mitigated by the fact that the opinion of the Zoning
20 Commissioner is attached, and within that is
21 incorporated a sign-in sheet, and, certainly, this

1 witness, these Appellants were there, and they
2 testified in the hearing below. So, I think for all
3 of those reasons, even if there is a strict
4 interpretation of the rule, I don't see what the
5 prejudice is to the Developer in this case based upon
6 the fact that the same witnesses appeared before the
7 Zoning Commissioner, the same witness is going to
8 testify today that has testified previously. So, I
9 don't think there is any practical impact or prejudice
10 that would accrue to them. That is basically it.
11 MR. STAHL: Your motion, Mr. Hoffman, I
12 will give you the last crack.
13 MR. HOFFMAN: I would like to point out, I
14 reviewed the Zoning Commissioner's Order to see if the
15 addresses were included as it was attached as an
16 exhibit and the addresses are not included in that
17 Order. I don't think your rules state that there has
18 to be some material prejudice to the Appellant --
19 excuse me -- the Appellee if your rules are not
20 followed. It seems clear to me that the County
21 Council has said that these appeals are supposed to be

1 heard within the confines of your rules. Your rules
2 indicate that it is mandatory to include the address.
3 The address was not included. If the Board's practice
4 would be to allow people to come in later and tell us
5 what their addresses are, I think the Board -- and the
6 reason why I put in the Winchendon case was to ask the
7 Board to follow its own reasoning there, and that
8 would be that the Board, if it feels it has the
9 authority to change the rules and take the word,
10 shall, out of its rules, and make it something else,
11 change shall to may, or give permission to amend
12 notices of appeal at a later time, then, I think the
13 Board, under the County Code could do that, and,
14 perhaps, the Board feels that they should do that, but
15 that should be not for this case. That should be for
16 the next case. So, that would be all I have to say on
17 this particular issue.
18 MR. STAHL: Everyone's indulgence for a
19 moment.
20 (Whereupon, there was a discussion off of
21 the record.)

1 (Recess taken -- 10:26 a.m.)
2 (After recess -- 10:36 a.m.)
3 MR. STAHL: Sorry about that. We are
4 going to address this Motion now, obviously, because
5 if we grant it, there would be no further going ahead.
6 I think it has to be addressed at this point as
7 opposed to holding it sub curia. At this point, I
8 will be speaking for myself and my colleague, Miss
9 Worrall. Just for the record, the Winchendon matter
10 that counsel refers to, I was a member of that panel
11 and the descent that actually is the stronger
12 extension of what should or should not happen under
13 the rules was written by me. I am the descenting
14 member of that Board. I see it slightly differently,
15 however. The rule certainly says, "No appeal shall be
16 entertained by the Board." Okay. There is no
17 argument of what that means. Counsel's point, I
18 think, is well-taken, and what really moves me to deny
19 the motion is that I have always looked at having the
20 names and addresses such to make sure that we have
21 actually had a case where it happened years ago where

1 new people came into the appeal and they didn't have
2 standing, they weren't in the area, they just tried to
3 come in and join the appeal. It was a real issue
4 under the rules whether they had a right to be
5 involved in the appeal. Had we had any different cast
6 of characters, or different group of people, or people
7 who didn't sound familiar, or counsel had no idea who
8 they were, then, you would still have that issue, and
9 I think it would be very, very important that we
10 strictly adhere to a rule that says the addresses
11 shall be there. I think, in this situation, we have,
12 essentially, the same Protestants and the same cast of
13 characters. So that, certainly, that issue is not
14 really -- is not before the Board or shouldn't be
15 before the Board -- I think everybody -- barring a
16 motion that says some of these people don't have the
17 ability for standing to make an appeal to this Board.
18 MR. HOFFMAN: That would be my next
19 motion.
20 MR. STAHL: Well, we will get to one
21 motion at a time.

1 MR. HOFFMAN: I understand.

2 MR. STAHL: That Miss Worrall and I feel

3 that to rise to the level where we would essentially

4 nonsuit the Appellants is a rather drastic relief.

5 That given the fact that there is no question in our

6 mind that the folks who are in the appeal are the

7 folks who were in the matter below, and, therefore,

8 there is no question where they live, and where they

9 are a resident, that we are going to stretch the point

10 on the word, shall, and determine that, in fact, it

11 has been satisfied in the process, and that it does

12 not rise to the level of nonsuiting the parties, and,

13 therefore, Miss Worrall and I would rule to deny the

14 motion.

15 Now, my colleague, to the left, has a

16 different feeling on the matter and I am going to turn

17 the floor over to her.

18 MS. ADAMS: Let me say most respectfully

19 to my colleagues and to Mr. Holzer and his client --

20 and I will be very brief -- I believe shall is shall.

21 There is no annotation saying anything about

1 prejudice, or that the Board is to deviate in
2 different situations, or that it is a may, and based
3 on that, alone, I agree with Mr. Hoffman's position
4 that it doesn't include the addresses. Even though it
5 might seem very minor to the other side, it is what it
6 is, and, so, I would disagree with my colleagues.
7 MR. STAHL: All right. So, that denies
8 your motion --
9 MR. HOFFMAN: Understood.
10 MR. STAHL: -- and we move on to any other
11 motions.
12 MR. HOFFMAN: Since that motion has been
13 denied, then -- and since I think you correctly stated
14 the purpose of the rule, we are supposed to have an
15 opportunity to understand where the Appellants live in
16 order to determine whether or not they have standing.
17 My next motion would be, I guess, to dismiss. Again,
18 until I am provided with that information by
19 Mr. Holzer, I would like to know the addresses at this
20 point so that I can individually make a motion to
21 dismiss on each of the Appellants, if I feel it is

1 appropriate.

2 MR. STAHL: With the understanding,

3 certainly -- I mean, I am not telling you --

4 MR. HOFFMAN: I assume your denying my

5 motion meant he has now been given the opportunity to

6 amend.

7 MR. STAHL: Well, not even to -- well,

8 certainly, he can add information, but I am not saying

9 that there is a process of anticipating that is even

10 necessary. What I am saying is -- what Miss Worrall

11 and I are saying is that since the characters in the

12 drama are the same below as they are here, that there

13 has been -- that the purpose of that has been

14 satisfied, and that we don't feel that the

15 technicality of them, of the addresses of the people

16 who are involved in the matter already, and whose

17 addresses appeared in the file that everybody had

18 access to are not on the notice, itself, does not rise

19 to the level to take them out of court completely.

20 Now, if Mr. Holzer is going to provide you with

21 addresses, if you take the position you don't know

1 those addresses, certainly, you could object if those
2 addresses indicate that those folks didn't have
3 standing, understanding, however, that if even one of
4 them survives that inquiry, the appeal goes on.
5 MR. HOFFMAN: I understand, I understand.
6 MR. STAHL: So, if you don't have
7 addresses --
8 MR. HOFFMAN: I don't want to be cute with
9 the Board. I have the copy of the sign-in sheet. My
10 purpose in making --
11 MR. HOLZER: That is what I was going to
12 offer.
13 MR. HOFFMAN: Well, I know Miss Colvin
14 lives on Middleborough Road. Certainly, she could --
15 MR. STAHL: We could really stop right
16 there --
17 MR. HOLZER: She participated in the last
18 case.
19 MR. STAHL: -- if Miss Colvin is a
20 legitimate Protestant, then, we move ahead. If it
21 makes any difference to nonsuit one or more of the

1 others --

2 MR. HOFFMAN: It does to me and my client.

3 MR. HOLZER: Which one do you have

4 problems with?

5 MR. HOFFMAN: Mr. Christ, on Moravia

6 Avenue.

7 MR. HOLZER: Fine. Strike it. Any other

8 problems? Mr. Loveless and Mr. Snyder live there.

9 MR. HOFFMAN: Okay. I would like them

10 stricken, as well.

11 MR. HOLZER: I will withdraw Mr. Christ,

12 if that bothers him.

13 MR. HOFFMAN: But the reality is, the law

14 says --

15 MR. STAHL: One at a time. Mr. Christ,

16 you have moved to strike. You have agreed to strike

17 Mr. Christ.

18 MR. HOLZER: I will agree to strike

19 Mr. Christ.

20 MR. STAHL: Now, as to Mrs. Colvin, we are

21 going to say that she does --

1 MR. HOFFMAN: I am not going to make that
2 motion with Miss Colvin. If I find something when she
3 testifies, I can raise the motion again.
4 MR. STAHL: Right. As far as the other
5 two gentlemen?
6 MR. HOFFMAN: I make the same motion.
7 MR. HOLZER: Their addresses, I believe,
8 are in the neighborhood.
9 MR. STAHL: Do their addresses appear?
10 MR. HOFFMAN: Yes.
11 MR. STAHL: I haven't opened that. I just
12 want to hear from you now.
13 MR. HOLZER: I would offer that address
14 that was the sign-in sheet that Mr. Hoffman is
15 referring to.
16 MR. STAHL: That address would confirm the
17 ability for them to --
18 MR. HOLZER: Well, it is what it is. If
19 Mr. Hoffman believes that they live too far away, he
20 can make that argument, and the answer to that is that
21 anybody that shows up in an administrative hearing for

1 purposes of the administrative hearing is given wide
2 latitude to have standing. So, you know, even
3 Mr. Christ has standing at this level. He may not at
4 the Circuit Court, but he certainly has standing under
5 Howard Research and all of the rest of the litany of
6 cases the court has had in administrative hearings.
7 MR. STAHL: So, we only have to rule on
8 those two additional gentlemen?
9 MR. HOFFMAN: Well, if we are going to
10 explore Mr. Christ again --
11 MR. STAHL: No, we are not.
12 MR. HOLZER: No, we are not.
13 MR. STAHL: He has withdrawn Mr. Christ.
14 MR. HOFFMAN: He has raised Mr. Christ
15 again. I am going to respond to it. He said
16 Mr. Christ has standing.
17 MR. STAHL: No, he made a comment
18 Mr. Christ had standing below.
19 MR. HOLZER: I said --
20 MR. STAHL: With respect to Mr. Holzer,
21 whether he has standing below is not something we need

1 to get into at this point.

2 MR. HOLZER: My point is Mr. Christ would

3 even have standing here today, regardless of his

4 address, if he showed an interest in the

5 administrative process, but I have already indicated I

6 am striking him.

7 MR. STAHL: My point is, I don't have to

8 reach that issue --

9 MR. HOLZER: Exactly.

10 MR. STAHL: -- because he is withdrawing.

11 MR. HOFFMAN: For the record, then, I need

12 to respond. It is my understanding Mr. Christ was a

13 competitor. Mr. Christ was Mr. Holzer's original

14 client in this case. He did not represent the other

15 Appellants below and would not have standing in this

16 case. Mr. Holzer didn't represent the other

17 Appellants until he came to the first hearing and

18 found other Appellants whom he wanted to represent.

19 That was my understanding from the hearing below.

20 MR. HOLZER: I represented Miss Colvin at

21 the hearing below, and I also represented George

1 Loveless, and John Snyder at the hearing below. I
2 believe that is noted in the Zoning Commissioner's
3 decision, and I did.
4 MR. HOFFMAN: Not on the first day.
5 MR. STAHL: Well, I am not going to -- it
6 seems to me if somebody was ultimately in that hearing
7 below, whether they came in the first day or they came
8 in the second day, I remember -- one of the bad things
9 about being on the Board for a long time, I remember a
10 case having to do with the 7-Eleven on Owings Mills
11 Boulevard. There were some people the first day, and,
12 then, Beth Israel came in the second day of hearing
13 and was added at that point officially at this level.
14 There was even an issue raised on motion whether that
15 could occur. We ruled that they could be added at
16 that point and that was ultimately upheld. So, I am
17 not concerned if it was the first day, or the second
18 day, or any of that.
19 MR. HOFFMAN: I am finished, Mr. Chairman.
20 MR. STAHL: That is fine. I don't mind.
21 You are there to zealously represent your client.

1 MR. HOFFMAN: I know that. I am finished
2 being zealous. I think we can go ahead. Mr. Christ
3 has been removed.
4 MR. STAHL: You officially removed
5 Mr. Christ?
6 MR. HOLZER: Yes. I would do it again, if
7 it is necessary.
8 MR. STAHL: Not necessary. Any other
9 preliminary matters?
10 MR. HOFFMAN: I really am finished.
11 MR. STAHL: In that case, shall we turn to
12 the merits, gentlemen?
13 MR. HOFFMAN: Yes. Thank you. I would
14 like to just move ahead with our witnesses. If you
15 would like to make an opening?
16 MR. HOLZER: No.
17 Whereupon:
18 JOHN KEMP,
19 was called on for examination by counsel, and after
20 being duly sworn according to law, was examined and
21 testified as follows:

1 MR. HOFFMAN: Mr. Holzer, Mr. Chairman,
2 the Site Plan --
3 MR. STAHL: Excuse me. Mr. Hoffman
4 ,could we have his name and address?
5 THE WITNESS: John Kemp, 3611 Roland
6 Avenue, Baltimore, Maryland 21211.
7 MR. STAHL: Thank you, Mr. Kemp.
8 MR. HOFFMAN: Excuse me, Mr. Holzer and
9 Mr. Chairman, the Site Plan which is on the Board was
10 the Petitioner's Exhibit that was -- as revised below
11 Mr. Brader is here, who sealed the drawings, and I
12 would like to introduce it, at this point, so Mr. Kemp
13 can put some of his comments into context. Is there
14 any objection?
15 MR. HOLZER: I think you already verified
16 this, but as long as the colored print is the one that
17 was actually submitted below, I have no objection.
18 MR. HOFFMAN: What I will do, I will mark
19 the colored one 1-A and there is a hard-line version
20 that I will make 1-B.
21 MR. HOLZER: Okay.

1 MR. STAHL: Fair enough. 1-A, is the
2 colored version. Are you submitting 1-B, now?
3 MR. HOFFMAN: I am going to go ahead and
4 mark 1-B, as well. Black line copy.
5 (Petitioner's Exhibit Nos. 1-A & B and 2-A
6 & B so marked for identification.)
7 MR. HOFFMAN: If I might, to correct the
8 record, there are two sheets involved in each of the
9 plans.
10 MR. STAHL: Okay.
11 MR. HOFFMAN: So, I am going to make
12 Petitioner's 1-A and 1-B the colored version and
13 Petitioner's 2-A and 2-B the black line version of
14 the --
15 MR. STAHL: Okay. Mr. Holzer, any
16 problem?
17 MR. HOLZER: I am sorry.
18 MR. STAHL: They are 2-page documents.
19 The colored will be 1-A and B an the black line will
20 be 2-A and B.
21 MR. HOLZER: 2-A and B. Thank you.

1 MR. STAHL: Okay.

2 DIRECT EXAMINATION

3 BY MR. HOFFMAN:

4 Q Mr. Kemp, you are with Royal Farm Stores?

5 A Yes.

6 Q What is your position?

7 A Executive Vice-President.

8 Q Just briefly, what is Royal Farm Stores

9 and how many stores do you have throughout the

10 Baltimore market?

11 A Royal Farms is a local company based in

12 Baltimore, owned by Cloverland. It has been in

13 business since 1975, local business, and we have the

14 dairy business, and, also, the convenience store

15 business, and are presently operating 103 stores, the

16 majority in Maryland, but some in Delaware, and

17 Virginia, Eastern Shore.

18 Q Okay. And you are Executive

19 Vice-President, but this is a family-owned business?

20 You are one of the family members --

21 A That's correct.

1 Q -- of the owners?
2 A That's correct.
3 Q The store that is the subject of today's
4 Hearing, and if you wanted to take a look at
5 Petitioner's 1-A, in the vicinity map, could you
6 describe the location of the property that is in
7 question?
8 A Sure. It is down in the eastern part of
9 the Baltimore County. It is located at the corner of
10 Back River Neck Road and Middleborough Road. A little
11 history of the property.
12 Q Sure.
13 A The piece of the property where we are
14 proposing to put the car wash and additional gas pumps
15 is currently occupied by -- where the store used to
16 be. It is an older building, and, in that building,
17 we had a store, we had two other tenants, one being a
18 hair dresser and some other. When the property on the
19 corner --
20 Q Could you point out on the plan where the
21 former store was located?

1 A This former store location, you can
2 actually see ghosting with dotted lines of where the
3 building exists now. The building is still up.
4 Q Is it occupied?
5 A No, it is empty. We use this building for
6 some storage, and where the hair business used to be,
7 the manager uses as an office.
8 Q Okay. And is there an existing Royal Farm
9 Stores with fuel service on the site?
10 A That is -- yeah. Several years ago, the
11 property, the gas station on the corner became
12 available, and we purchased that property, and had it
13 cleaned up environmentally, and, basically, built the
14 building that you see now kind of like an orangish
15 brownish color, with some gas pumps up front. Then,
16 it was our plan after that, all part of the master
17 plan. The property behind us was not zoned --
18 actually went through the rezoning process with Rob.
19 I was at the last cycle. I worked with --
20 Q You have to answer the question. I can't.
21 I can't help you. You are doing fine.

1 A I worked with -- basically showed the
2 County what our intentions were, I worked with the
3 local politicians --
4 MR. STAHL: Was it Gardina, do you know?
5 A I believe it was -- showed him what our
6 plans were, what we would want to do. You know, they
7 made some -- they said at the time that they would
8 back what you want to do. They had copies of the
9 plans at that time, you know, had requested when we do
10 do that, that we knock down the existing building
11 because it was somewhat of an eye sore. It was an old
12 building. We said we would do that when we got
13 approved. We have been tied up in the approval
14 process, now, for -- due to delays that were caused by
15 us last fall, probably close to two years now, maybe a
16 year and a half.
17 Q Okay. Now, the gas station that was
18 previously there, you said you tore it down and
19 installed a new Royal Farms Store plus fuel service
20 pumps, and those fuel service pumps are on the
21 triangular piece of property that goes out to the

1 intersection of Back River Neck and Middleborough?
2 A Yes.
3 Q The relief that was granted to allow for
4 the existing Farm Store and fuel service pumps was
5 granted in 1996?
6 A That's correct.
7 Q Approximately, when did the store actually
8 get constructed and open for business, if you recall?
9 A It would have been -- it would have been,
10 approximately, six months after that.
11 Q So, would your testimony be that the store
12 has been operating for about five years now?
13 A That's correct, yes.
14 Q And the rear portion of the site, which is
15 the subject of the Hearing today, where you said there
16 is an existing building that you would like to tear
17 down, that is where you want to install additional
18 fuel service pumps and a car wash, correct?
19 A That's correct.
20 Q And the area where you want to make the
21 installation, is it paved or is it grass area at this

1 point?

2 A It is paved.

3 Q Is there a way to get into the Royal Farm

4 Store currently from the back parking area where you

5 want to install the fuel pumps and the car wash?

6 A Yes, there is. There is existing a very

7 large non-curbed ingress-egress point, a very large

8 one, actually, on Middleborough Road. As you can see

9 by the plan, what we propose doing here is adding some

10 significant landscaping and some islands that would

11 actually buffer the site, which doesn't exist right

12 now. Right now, you can clearly see from both

13 Middleborough Road and Back River Neck Road, you have

14 a clear view of an existing older building that lies

15 fallow and not in use.

16 Q So, just to get that testimony again, the

17 entrances on Middleborough Road and Back River Neck

18 Road are all existing?

19 A They exist right now, yes, but they are

20 much wider.

21 Q Much wider than what is proposed?

1 A That's correct, especially the
2 Middleborough ingress/egress.
3 Q Now, why did you choose to undertake an
4 effort to get the rear portion of the site rezoned to
5 allow for fuel service?
6 A In the very beginning, our plan, when the
7 property in front became available, was to actually
8 use the entire site new final paradigm in our business
9 has to do with larger stores, larger drive aisles,
10 more convenient ingress/egress into fueling positions,
11 and the like. It was part of our plan when we
12 actually made the store to actually have two sides,
13 and to eventually allow ingress and egress into
14 additional pumps, as well as, the car wash. It is an
15 additional service for the one-stop shopping and the
16 like.
17 Q Has business over the last five years
18 warranted adding the additional fuel pumps?
19 A Yes, business at the store is very good.
20 Q Mr. Kemp, are you familiar with the
21 drainage ditch that runs along the very rear portion

1 of the property?
2 A Yes.
3 Q And what is your understanding with regard
4 to -- I assume it is existing today?
5 A Yes.
6 Q And it is carrying storm water from off
7 site, and, to some extent, from this site currently?
8 A Yes.
9 Q And whose drainage ditch is that?
10 A The drainage originates, from my
11 understanding from the engineers, the drainage
12 originates from the development across the street,
13 which is an apartment complex, as well as, it
14 originates from Middleborough Road. It is actually --
15 the majority of the water, my understanding is -- I
16 could be corrected -- is generated by the county road,
17 and we have made repeated attempts for them to assume
18 responsibility, you know, for the drainage, and to
19 actually give them easements to improve the situation
20 that exists there.
21 Q Okay. Mr. Kemp, you have been involved in

1 this question of the drainage ditch for quite
2 sometime, haven't you?
3 A Yes.
4 Q Let me show you a copy of a letter. Is
5 this a copy of the letter you received in 1995 from
6 Mr. Eric Rockel?
7 A Yes.
8 Q And does this letter with the attachments
9 indicate that Baltimore County would provide the
10 necessary maintenance on the storm drain outfall
11 ditch?
12 A That's correct.
13 MR. HOFFMAN: Thank you.
14 MR. STAHL: Mr. Holzer?
15 MR. HOLZER: No objection.
16 MR. HOFFMAN: Petitioner's No. 3, please.
17 (Petitioner's Exhibit No. 3 so marked for
18 identification.)
19 Q Mr. Kemp, had you agreed to provide
20 Baltimore County with any necessary permission to go
21 in and perform the maintenance in this particular

1 area?

2 A We told them they could do whatever they

3 need to do to properly maintain the ditch, that's

4 correct.

5 Q Have you, in fact, engaged your engineer

6 to provide any drawings necessary for Baltimore County

7 to get the permission and go in and maintain the

8 outfall ditch?

9 A Nick, at Matis Warfield, has spent

10 considerable resources, time, money and effort to

11 provide them the information that they would need to

12 adequately maintain that particular property.

13 Q Mr. Kemp, were you also provided with a

14 copy of this inner office memo from Tom Hamer, Deputy

15 Director of the Department of Public Works, Carl

16 Schmidt, Acting Chief of the Bureau of Highways, dated

17 February 6th, 1996?

18 A Yes.

19 MR. HOFFMAN: I guess I would offer it

20 before I say anything more about it. I offer this as

21 Petitioner's Exhibit No. 4.

1 MR. STAHL: Mr. Holzer?

2 MR. HOLZER: No objection.

3 (Petitioner's Exhibit No. 4 so marked for

4 identification.)

5 Q Mr. Kemp, does that correspondence also

6 indicate that Baltimore County has undertaken the

7 responsibility to make the necessary repairs, any

8 necessary repairs to that drainage ditch?

9 A That's correct, yes.

10 Q Thank you. Mr. Kemp, have you been out to

11 the site recently, in the last month or two?

12 A No.

13 Q When is the last time you were out there?

14 A Approximately, two to three months ago.

15 Q All right. And what were the conditions

16 when you were there? What were the conditions,

17 physical conditions when you were there?

18 A As far as the --

19 Q The store, and operation of the parking

20 lot, and operation of the store?

21 A The store looked good. The property, at

1 that time, was properly maintained. Once again, you
2 know, the building to the rear is dilapidated, and we
3 have been reluctant to put any money into that
4 building for the simple fact that we would like to
5 raise the building and actually proceed with this
6 project. So, it didn't make any sense to put
7 significant improvements. Besides that, the store is
8 presentable, and we have been doing a pretty nice job.
9 Q Mr. Kemp, how long have you been involved
10 in the Royal Farm Store?
11 A 22 years.
12 Q 22 years. And, in that time, you are
13 responsible for not only the financial end of the
14 business, but the operation for all of the stores?
15 A My position, I am ultimately responsible
16 for everything, yes.
17 Q Now, and over the last, I will say, 5 to 7
18 years, have you been down in this area on several
19 occasions, many occasions?
20 A Yes.
21 Q Now, do you feel you are familiar with

1 some of the surrounding commercial uses and some of
2 the surrounding residential uses?
3 A Yes.
4 Q Mr. Kemp, tell me about the car wash,
5 itself, specifically, why would you like to install a
6 car wash, and could you explain what a rollover car
7 wash is?
8 A Well, we would like to install the car
9 wash. We have actually strategically been looking at
10 ten locations that we have, this being one of them
11 where it does have the area and the demographics, we
12 believe, would be successful. Naturally, it is a good
13 tie-in to the convenience, and the gasoline, and would
14 enhance the overall business. I believe it would be
15 very profitable. A description of the area, pretty
16 much, there is the resident protestant adjacent to the
17 property.
18 Q And her house is --
19 A Her house is --
20 Q -- located on the other side of the
21 drainage ditch?

A Yeah. With this particular plan, we have addressed additional screening to screen her from any current and/or future potential visual looking.

Q What you mean by that, you are -- is there any landscaping out there now to speak of?

A It is currently moderately screened.

Q Is part of your proposal to provide the landscaping that is shown on Petitioner's 1-A?

A That's correct.

Q Have you also committed to, if the relief is granted, putting up a board-on-board fence to provide additional screening?

A That's correct.

Q If there is -- and I am sure there is -- do you believe there may be trash in the drainage ditch, occasionally?

A Yes, there has been trash in the drainage ditch. Yes, there has.

Q The installation of a fence on your side of the drainage ditch, would that serve to try and keep that drainage ditch clear of any debris?

1 A It would help alleviate the problem. It
2 wouldn't solve it 100%, but it would help.
3 Q Mr. Kemp, do you believe that there would
4 be any adverse impact on the neighboring properties if
5 the relief that you have asked for was granted?
6 A I do not.
7 Q And let me ask it more specifically: You
8 had indicated earlier in your testimony that some
9 paving would be removed if this relief was granted.
10 Did I understand your testimony to be that earlier?
11 A I will leave that to the engineer, but I
12 believe there is impervious area when you consider the
13 building that would be removed. So, in essence, less
14 of the site would be used for what is now either
15 building and/or macadam, and that would be replaced
16 with what we see being the green area, and the
17 screening, and the additional curbing.
18 Q Mr. Kemp, your stores, are they located
19 predominantly along -- let's just take Baltimore
20 County. Baltimore County, are they located along
21 commercial corridors, like, York Road, Reisterstown

1 Road?

2 A The preponderance, yes.

3 Q The way your stores are situated, are

4 there residential uses located in close proximity to

5 your store?

6 MR. HOLZER: Objection. We are not really

7 concerned about York Road. We are concerned about

8 this project.

9 MR. STAHL: I will give him a moment or

10 two. He has a point. I will give you some leeway.

11 MR. HOFFMAN: I will make my point.

12 MR. STAHL: Make it quick.

13 Q Mr. Kemp, it is not unusual, is it, for

14 your store to have abutting residential uses directly

15 behind or to the side of one of your stores?

16 A That's correct.

17 MR. HOFFMAN: That was my point. Sorry.

18 I will try and be more direct. That is it.

19 CROSS EXAMINATION

20 BY MR. HOLZER:

21 Q All right. Mr. Kemp, good to see you

1 again.

2 MR. HOFFMAN: He wishes he could say the

3 same.

4 MR. STAHL: You weren't really expecting

5 an answer, were you?

6 THE WITNESS: I won't perjure myself.

7 MR. HOLZER: Nor did I expect a

8 complimentary answer.

9 Q Mr. Kemp, I gather, based on your

10 statement, that the store looks good, and it is

11 properly maintained, that you are satisfied and proud

12 of what this store looks like as one of your 103

13 stores in your chain?

14 A Is that a question?

15 Q Yes.

16 A Yes.

17 Q Okay.

18 A But, at times, like all commercial

19 establishments, there will be, at times, when it needs

20 tending to.

21 Q What kind of supervision do you personally

1 give this store in terms of making sure it reflects
2 the image of a good well-run business to the
3 neighbors?
4 A Well, we have an operations team. I am
5 explain the hierarchy a little bit. There is what we
6 call a Zone Leader. That persons name is Wade Graham.
7 Sandy Russo is the District Leader. Wade, basically,
8 oversees 50 stores. Sandy oversees 12 stores. She
9 used to be the manager of the store.
10 Q Of this store?
11 A That's correct. She is here today. Then,
12 there is the store manager there. The current store
13 manager that we have in there, we feel, is doing a
14 very good job, although there have been different
15 managers there in the past that we felt have not done
16 as good a job as need be, and, hence, they are no
17 longer with the organization, but the current manager,
18 we feel, does a good job.
19 Q So, the current manager is one of those
20 individuals that you feel is doing a good job in terms
21 of presenting the image of your company to the public?

1 A I feel that she does a good job, yes.
2 Q I have some photographs here taken by
3 Mrs. Colvin on March the 4th of this year, which was a
4 couple of days ago. I would like you to see if you
5 can particularly -- and I will identify these later,
6 but let's point to this photograph in the center
7 Marked No. 1, No. 1. Does that adequately reflect the
8 way your store looked on March 4th of 2003?
9 A No, the reason why is we basically -- the
10 other supervision that we do have is, we have mystery
11 inspections that occurred twice a month for all
12 stores, for all 103 stores, and those mystery
13 inspections, due to the blizzard conditions, our
14 stores for the last two weeks have not looked the way
15 they should look and we have been somewhat more
16 lenient according to the blizzard conditions due to
17 the fact that the stores had been stressed, had been
18 short staffed, and it was very difficult for them to
19 do their normal duties. So, we have not been proud of
20 our stores for the last two weeks, and mystery
21 inspections have pointed out that due to blizzard

1 conditions, those conditions at the stores had not
2 been maintained the way we would like them to be
3 maintained. So we are more lenient.
4 Q If I am not mistaken, there wasn't any
5 blizzard in August 21st of 2002. Take a look at that
6 picture of 2002 and tell me that the blizzard caused
7 that appearance?
8 A The dumpster area definitely needs to be
9 cleaned up in this picture on August 21st, 02.
10 Q So, it is really not unusual, then, to see
11 the dumpster area of the store in complete disarray?
12 A That would be the exception, not the rule.
13 Q Oh, okay. Well, we will see how many more
14 photographs I might be able to dig up that show the
15 exception.
16 MR. HOFFMAN: I am going to object to the
17 statement.
18 MR. HOLZER: I will withdraw it.
19 MR. STAHL: He has withdrawn it.
20 MR. HOFFMAN: If I might continue, the
21 photographs that you are digging up, first of all, I

1 don't know who they were taken by. If you want to
2 introduce them through this witness, that is fine.
3 MR. HOLZER: We will.
4 MR. HOFFMAN: We can do that. Those
5 dumpster areas are behind a screen and behind the
6 building. He is trying to prove the point his client
7 has a visual impact from those particular dumpsters.
8 That is just not the case. I think it is unfair to
9 use the pictures for that purpose and to make the
10 statements he just made at the end.
11 MR. STAHL: The statement is not in the
12 record anymore.
13 MR. HOLZER: I will introduce the pictures
14 through the appropriate witness.
15 MR. STAHL: Okay. At that point, you will
16 be able to cross-examine what they show and don't
17 show.
18 MR. HOLZER: Exactly.
19 Q Just so that I can understand, what are
20 the hours of operation of this car wash?
21 A The car wash doesn't exist.

1 Q I said, what are the hours -- I am sorry
2 -- of the proposed car wash?
3 A We haven't decided.
4 Q I think you testified before the Zoning
5 Commission that it could be 24 hours?
6 A It could, yes, that's correct.
7 Q Did the Zoning Commissioner limit the
8 hours from 8:00 a.m. until one half hour after dusk?
9 A If he did, we would abide by that.
10 Q But if you had your drothers, you would
11 like to see it 24 hours?
12 A We prefer no restrictions on the
13 commercial business. That would be a preference.
14 Q Is it going to be a car wash like the ones
15 I am familiar with where you actually go in the store,
16 and you pay, and you get a ticket, and, then, you
17 punch in your number, and you just roll through, you
18 don't have an attendant there?
19 A It would probably be the type where you
20 could actually pay, either, at the pump, at the car
21 wash, itself, and/or inside.

1 Q And, then, you get a number and you just
2 do -- you put your car in yourself?
3 A I don't know the exact details of whether
4 or not you have a number or put your credit card in.
5 Q I mean, has your store -- have your Royal
6 Farm Stores installed car washes in any of the 103?
7 A We have zero car washes.
8 Q So, this would be the first?
9 A From my testimony before, we are looking
10 at, approximately, 7 to 10 locations to add car
11 washes. None of them are up, as of yet.
12 Q The car wash would operate 7 days a week?
13 A Yes.
14 Q You indicated the Zoning Commissioner's
15 decision was dated May 31st of 2001. In your direct
16 testimony, you indicated that the delay getting here
17 to this hearing was caused by Royal Farm Stores. What
18 caused the delay?
19 MR. STAHL: He testified it was as a
20 result of their --
21 MR. HOFFMAN: He said -- we asked for a

1 postponement.

2 MR. STAHL: No, his question -- he stated

3 in his examination that there was delay due to

4 difficulties they had. So, he has a right to ask what

5 were those difficulties. He brought it up --

6 MR. HOLZER: That is what he is asking.

7 MR. STAHL: -- in his direct.

8 A We had a pool hall tenant that approached

9 a realtor that represented us in some other properties

10 who wanted to put a pool hall in the building, and we,

11 at that time, were negotiating with this individual,

12 but, at the very end, we felt due to some problems

13 that might arise via security, that it would not be

14 the best use for that particular property. So, we

15 broke off negotiations with the pool hall lessor who

16 was going to lease the entire building and decided to

17 come back in here and go through this process.

18 Q Would the pool have replaced the Royal

19 Farms Operation and the gas operation altogether?

20 A No.

21 Q No? It would have been in conjunction

1 with the gas station? I am sorry. I just really
2 don't understand. When you say you would lease it to
3 the pool hall operator, are you saying it would no
4 longer be used as a Royal Farms Gas Station and
5 Convenience Store?
6 A No, we are talking about the buildings
7 that exists that are vacant now.
8 Q The existing building in the back where
9 the proposed car wash would be located?
10 A That is correct.
11 Q The operation of the Royal Farms Store
12 permits vehicles to be parked there, particularly
13 diesels and trucks, do they not?
14 A Is this customers of the store?
15 Q No, not as customers of the store. You
16 just have allowed trucks to be parked on site and you
17 have received a zoning violation from Baltimore County
18 on that point?
19 A It is against company policy to park
20 trucks on our parking lot over night.
21 Q Well, you are familiar with the fact that

1 there was a Baltimore County Zoning Violation issued
2 in November of 2002 for this store for trucks parked
3 illegally there, is that correct?
4 A I was not aware of it, no, or I can't
5 recall. It has since been corrected, I am sure, if it
6 did occur.
7 MR. HOFFMAN: I haven't been to any
8 Violation Hearings.
9 Q I said that he was cited for one. I will
10 show you a November 28, 2002, a Zoning Violation
11 Notice issued by Mr. Thompson of Baltimore County
12 Zoning Enforcement with regard to repeated vehicles
13 parked there with their engines running.
14 MR. HOFFMAN: Well, this isn't a Violation
15 Notice.
16 MR. HOLZER: It is a note -- it is a --
17 what is it if it isn't an Enforcement Correct Notice?
18 It says it is a correction notice.
19 MR. HOFFMAN: Then, that is what it is.
20 Not a violation.
21 MR. STAHL: Two different things.

1 MR. HOFFMAN: Two very different things.
2 I didn't read anything in there about repeated
3 violations.
4 Q Are you familiar with that?
5 A No.
6 Q So, your Manager never informed you that
7 she had received this Enforcement Correction Notice?
8 A It would be customary if there was a
9 Correction Notice for me to be made aware of
10 everything.
11 MR. HOFFMAN: Could I ask -- if it says
12 that there were repeated violations, that is fine. If
13 it doesn't, I would like that to be stricken from the
14 record, or, at least the record corrected.
15 MR. STAHL: Have you given him a copy?
16 MR. HOFFMAN: I read it.
17 MR. HOLZER: It does not say repeated
18 violations at this point. I will strike that part of
19 it. We will get to that later.
20 Q Mr. Kemp, you are very familiar with Miss
21 Colvin, are you not, because Miss Colvin has appeared

1 in this case back in 2001 and testified, is that
2 correct?
3 A I was present at those, yes.
4 Q You also were present in 1995 when you
5 originally got the Special Exception for the gas
6 station, which is the existing portion of it, she was
7 also in attendance at that hearing in 1995?
8 A I can't recall 1995.
9 Q You can't recall. Do you recall, were you
10 at that hearing?
11 A I can't recall that, either. I can check
12 the records and find out, though.
13 MR. HOFFMAN: I can't recall if I was at
14 that hearing.
15 MR. HOLZER: Well, we have your signature,
16 Mr. Hoffman.
17 MR. HOFFMAN: I believe you.
18 MR. HOLZER: We have your signature that
19 you were there.
20 MR. STAHL: It gets harder and harder the
21 longer he does it.

1 MR. HOFFMAN: Seven years ago.

2 Q You are familiar with this, you brought up

3 in your direct testimony this drainage ditch issue.

4 You are familiar with that then, at least, back as far

5 as 1995, 1994?

6 A I can't recall.

7 Q Well, in 1995, you got Developer's Exhibit

8 No. 3, which was from Eric Rockel in regard to this

9 drainage ditch. So, at least in 1995, May thereof,

10 you were familiar with it, were you not?

11 A Yes, that's correct.

12 Q Had you had any conversations with Miss

13 Colvin prior to that in attempts to get this drainage

14 issue resolved?

15 A I can't recall directly with her. Over

16 the years we have been trying to resolve the drainage

17 problems that exist there, I am sure she would have

18 been part of the process there because it does affect

19 her property.

20 Q Are you saying that the drainage ditch is

21 not owned by you at the present time?

1 A The drainage ditch is on our property.
2 Q Is on your property?
3 A That's correct.
4 Q And --
5 A We are not --
6 Q You have answered the question. It is on
7 your property. With this proposed fence that you are
8 putting up -- and I am not sure I note where it is --
9 can you point out where, on this plan, it says it is a
10 board-on-board fence? It may be here. I am just not
11 sure.
12 MR. HOFFMAN: I think it is top left. No,
13 middle. I am sorry, I said left.
14 Q Okay. So, it has not been located yet?
15 A No. It is not on the plan. We have
16 agreed to it, though.
17 Q If the County were to acquire this
18 drainage ditch on this plan, is this the area that we
19 are referring to as to where the drainage ditch is?
20 A You have a copy. I believe if you look at
21 the copy that you have, that is, approximately, where

1 the drainage ditch is, yes.
2 Q I don't have a copy of this new plan, I
3 have a copy of the old plan that was proposed. I
4 guess we are really worried about what's on
5 Developer's 1-A and 1-B. I mean, I guess my question
6 to you is, is this where it is marked existing
7 wetland, is that the area of the drainage ditch?
8 A That's correct.
9 Q Would the building of a fence in any way
10 limit the County from being able to clean out the
11 drainage ditch?
12 A I can't answer that.
13 Q Do you know whether the County has made
14 any efforts since the Hearing in May, 2001, when the
15 same issue was brought to the attention of the Zoning
16 Commissioner, have they made any efforts to acquire,
17 by way of an easement, this property or to resolve
18 this problem since May of 2001?
19 A I believe they have. Matis Warfield, the
20 civil engineer, will testify -- will be able to answer
21 more about that than I can.

1 Q Okay.

2 MR. HOLZER: I have no further questions.

3 MR. STAHL: Redirect?

4 MR. HOLZER: Redirect?

5 MR. HOFFMAN: No, thank you.

6 MR. STAHL: Thank you, sir.

7 Whereupon:

8 SANDY RUSSO,

9 was called on for examination by counsel, and after

10 being duly sworn according to law, was examined and

11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. HOFFMAN:

14 Q Could you please state your name, your

15 address, and your occupation?

16 Sandy Russo, 1449 Galena Road, and I am a

17 District Leader.

18 Q District --

19 A Leader.

20 Q District Leader for --

21 A Royal Farm. I am sorry.

1 Q You can have a seat. Now, Mr. Kemp
2 mentioned your name and he said you were a District
3 Leader for this area of Eastern Baltimore County?
4 A Yes, sir.
5 Q And is the existing Royal Farms Store and
6 fuel service, that is within your district?
7 A Yes, sir.
8 Q And what does a District Leader do?
9 A We oversee the operations of the
10 management, coaching and developing the management
11 staff.
12 Q And how many stores do you have in your
13 district?
14 A 12.
15 Q How often do you visit each of the stores?
16 A I try to visit each location at least
17 twice per week.
18 Q Do you visit this particular location at
19 Back River Neck twice a week?
20 A Yes.
21 Q Do you live in the area?

1 A Yes, I do.

2 Q How long have you lived in the area?

3 A I have lived in that area for,

4 approximately, 18 years.

5 Q Do you go by the store?

6 A Frequently.

7 Q Outside of business?

8 A Yes.

9 Q Tell me about the operations of the store

10 and what your assessment of how it is operating, and

11 the business that it has been doing, and what purposes

12 it serves in the neighborhood. That is three

13 different questions.

14 A Okay. I will try. The purpose it serves

15 in the neighborhood is, currently, other than the Food

16 Lion down the street, and there is a 7-Eleven up a

17 little further, but this is -- we have a lot of

18 residential homes, and apartments, and whatnot right

19 directly near the store. It is a very busy location.

20 We sell a lot of milk, bread, everyday items to

21 regular customers who have been shopping that location

1 for years. I am sorry, could you repeat the other
2 questions?
3 Q Okay. That really was a fine answer to
4 all three, I think to all three questions, but I will
5 go back over one. In terms of the operation of the
6 store -- and you heard the testimony and some of the
7 comments earlier about a Correction Notice -- have
8 there been many problems or any problems with the
9 store and its operation?
10 A I mean, there have been a few. I am not
11 exactly sure what I am allowed to say and what I am
12 not allowed to say. As far as the parking of the
13 trucks, we did have, in addition to parking of the
14 trucks, we, Royal Farms, never give permission to
15 anybody to park trucks. We have -- across the street
16 from the property, there is an apartment complex where
17 there are folks who live there who drive trucks for a
18 living. They drop their trucks off, 1:00, 2 o'clock
19 in the morning when the management staff was not
20 there. When she found out what was going on, she took
21 care of the problem.

1 Q And how about the condition of the
2 property in terms of the building, its cleanliness,
3 what have you found -- how long have you been District
4 Leader? I guess I should ask that question.
5 A About two years this time.
6 Q And did you manage the store before that?
7 A Yes, I managed the existing store and I
8 also managed the store when it was the old building.
9 Q The former gas station? Oh, the old
10 building?
11 A Yes.
12 Q How have you found over that time period
13 the cleanliness of the site and the store?
14 A At times, there are issues. I can't say
15 that it is perfect, because it is not perfect. It is
16 a very busy location with parking lots on either side
17 of the building. You have to be on your toes to keep
18 the lot as clean as we would like it to be. There are
19 times when it is not as clean as I would have liked it
20 to have been. For the most part, they do a good job.
21 Q When you go and visit the store, do you

1 check that aspect of the site?
2 A Always. It is part of the walk through
3 that I do.
4 Q When you see it is not as clean as you
5 would like it to be, what actions do you take?
6 A We get it corrected.
7 Q Whose responsibility is it to actually go
8 out there and clean it? Do you end up doing it
9 yourself?
10 A I have. There have been occasions I have.
11 Q Do you understand what is being proposed
12 for the site in terms of the additional fuel service
13 pumps and the car wash?
14 A Yes.
15 Q As a resident of the area, and as the
16 District Leader, and former manager of the store, do
17 you think there would be any impacts, adverse impacts
18 on the surrounding neighbors if you all were allowed
19 to install these new portions of the operation?
20 A No, I don't.
21 Q In terms of how traffic gets in and out of

1 the site, Mr. Kemp testified that there are existing
2 entrances and exits on the rear portion of the site,
3 Middleborough and Back River Neck Road, is that true?
4 A That's correct.
5 Q Do people use those entrances now?
6 A Yes.
7 Q Do you believe that with the addition of
8 the fuel pumps and the car wash, would there still be
9 convenient access in and out of the site at those
10 locations?
11 A Yes, I believe so.
12 Q There is no way to -- you said this is a
13 busy location?
14 A Yes.
15 Q In terms of your other stores?
16 A I am sorry.
17 Q In comparison to your other stores --
18 A It is one of the busier locations.
19 Q Do you employ the same methodology to try
20 and keep sites clean?
21 A Yes.

1 Q And be a good neighbor as your other
2 stores?
3 A Yes.
4 Q You said you have regular customers?
5 A I have customers there who have been
6 coming to that store as long as I can remember and I
7 initially went to that location, I want to say,
8 probably 14 years ago. There are people there that
9 come there today that I saw there this morning that
10 have been coming there since then.
11 Q And they live in the neighborhood?
12 A Yes.
13 Q They live in the area?
14 A Yes.
15 Q Have you ever received any complaints from
16 them as to the operation of the store?
17 A No.
18 MR. HOFFMAN: I have no other questions.
19 MR. HOLZER: No questions.
20 MR. STAHL: Thank you.
21 Whereupon:

1 KENNETH SCHMID,

2 was called on for examination by counsel, and after

3 being duly sworn according to law, was examined and

4 testified as follows:

5 MR. STAHL: Sir, your name and your

6 address?

7 A My name is Kenneth Schmid, my business

8 address is 325 Gambrill Road.

9 MR. STAHL: Okay.

10 VOIR DIRE EXAMINATION

11 BY MR. HOFFMAN:

12 Q Mr. Schmid, your occupation is?

13 A Traffic engineer.

14 Q Is that a copy of your resume that you

15 provided?

16 A Yes.

17 MR. HOFFMAN: I am going to offer him as

18 an expert, a traffic engineer.

19 MR. STAHL: Why don't we put this in

20 first. Is this going to be No. 5?

21 MR. HOFFMAN: Yes. I didn't want to offer

it until Carroll had an opportunity to read it.

MR. STAHL: We can give it a number. If he has an objection --

MR. HOFFMAN: For once, I was trying to be courteous.

MR. HOLZER: No, I don't have any problem with it.

MR. HOFFMAN: Then, I would offer it as Exhibit 5.

MR. STAHL: Then, I would accept it.

(Petitioner's Exhibit No. 5 so marked for identification.)

MR. HOFFMAN: Thank you very much, Mr. Chairman. If the Board has an opportunity to look at it, I would be happy to run through his qualifications or if Mr. Holzer would stipulate, I would offer him as an expert.

MR. HOLZER: I personally haven't had the pleasure, I don't believe of having him as a witness. I don't recall, but he appears to have qualified in Baltimore County. I mean if he has qualified before

1 this Board already then, I would wouldn't --
2 MR. HOFFMAN: I can run through it. Here
3 is my big opportunity. Mr. Holzer, he appeared below.
4 Do you remember being at that hearing?
5 MR. STAHL: You don't have to answer that.
6 MR. HOLZER: I am having a senior moment.
7 MR. HOFFMAN: Where were you two and a
8 half years ago?
9 MR. HOLZER: Yes, except I didn't write
10 his name down. I just have traffic engineer.
11 MR. HOFFMAN: I think you accepted all of
12 his testimony as being solid and --
13 MR. HOLZER: I probably claimed him of
14 being worthy --
15 MR. STAHL: You are a trusting man. If I
16 didn't object to him before, I am sure not going to
17 object to him now. If Mr. Hoffman is proffering that
18 I accepted him the last time, then, I will accept
19 that.
20 MR. HOFFMAN: Fine. My memory is not that
21 good. If that is a yes, I am take a yes, and I will

1 move on. If it is a no --

2 MR. HOLZER: Go ahead, move on.

3 MR. STAHL: We are going to accept Mr.

4 Schmid as -- I will let you --

5 MR. HOFFMAN: Expert traffic engineer.

6 MR. STAHL: Okay. The Board will so

7 recognize him.

8 MR. HOFFMAN: Thank you very much.

9 DIRECT EXAMINATION

10 BY MR. HOFFMAN:

11 Q Mr. Schmid, have you been to this

12 particular site?

13 A I have been to this site in preparation

14 for the case below and in preparation for the

15 postponed case, and, recently, in preparation for this

16 case, as well.

17 Q Has your experience as a traffic engineer

18 resulted in your working on many full-service

19 convenience store operations?

20 A Yes, Royal Farms, Wa-Wa's, Exxon, Amoco's,

21 yes.

1 Q Amoco's. They are all your clients?
2 A I have worked for all of those in the
3 past, yes.
4 Q How many fuel service convenience store
5 cases have you worked on in, say, the last three
6 years, would you say?
7 A The last three years? Probably two or
8 three dozen.
9 Q So, do you think you are pretty familiar
10 with these types of operations?
11 A Yes, I am.
12 Q Now, Mr. Schmid, when you went down to the
13 site and as a traffic engineer, could you please
14 describe the existing conditions and how the Royal
15 Farm Store functions, currently?
16 A Initially when we got involved in this
17 case, we went down to take a look at this area, drive
18 the road network. One of the things we did, we
19 checked the County records. The County keeps track of
20 levels of services at signalized intersections
21 throughout the County. One of the things we wanted to

1 try to do was find out what the area signals were
2 operating at, level of services. We contacted the
3 County and recently got some updated information from
4 them now. The signalized intersections up and down
5 this site indicate an A Level of Service. The Homberg
6 intersection is operated as a B Level of Service by
7 the County.
8 Q Homberg and Back River Neck?
9 A Back River Neck.
10 Q Could you run through -- if that one is a
11 B and the others were A, what were the other
12 intersections?
13 A The other intersections were the
14 intersection of Middleborough at Hilltop Avenue.
15 Q What was that?
16 A That was an A.
17 Q An A is just like grammar school, an A is
18 good?
19 A Yes, an A is good.
20 Q Maybe like any school. I don't know why
21 grammar school. I don't see any after grammar school.

1 Maybe that is why. The other intersection is Williams
2 Avenue, Williams Avenue and Back River Neck?
3 A That's correct.
4 Q That was Level of Service?
5 A A.
6 Q Now, the County only uses -- the County
7 only rates signalized intersections, is that right?
8 A That's correct, they use a methodology
9 called loaded cycle. You can only do loaded cycle
10 analysis where traffic lights are.
11 Q And loaded cycle means what?
12 A Intersections work in cycles. They go
13 through green, yellow, red to all of the approaches.
14 One circle around that is called a cycle. Basically
15 what the County does is goes out and evaluates the
16 operation of the intersection during the peek hours,
17 during the morning, and evening travel. What they do
18 is they observe the number of times, number of cycles
19 at which vehicles in that approach double cycle,
20 basically meaning the light goes green, they are
21 waiting. The light goes green and if they don't make

1 it through during that green phase, that is called a
2 loaded cycle. That means we didn't get everybody
3 through. The County, basically says -- they set up a
4 percentage. If it is this much percentage loaded
5 cycle, it is an A, B, C, D. It works all of the way
6 down to E or F.
7 Q They go out during the peek hour?
8 A That's correct. So, an A-Level service
9 indicates there is zero to 10% of the time there is no
10 loaded cycles.
11 Q Everybody gets through the intersection
12 when it turns green?
13 A That's right. If they are waiting and the
14 light turns green, they get through the intersection.
15 Q B would mean a slightly higher percentage
16 of the time during the peak hours someone didn't get
17 through?
18 A One of the approaches was not clearing
19 every phase of the light.
20 Q Every phase. Now, that is a good
21 situation, I would assume, for those intersections?

1 A That is pretty much what we observed down
2 there. It is pretty much free flowing down the Back
3 River Neck Road corridor.
4 Q Did you go visit those intersections and
5 this store during the morning and evening peek hour?
6 A During the litany of this case, yes, I
7 have been out during the evening and morning time
8 periods.
9 Q Middleborough and Back River Neck does not
10 have a traffic signal?
11 A That's correct, it doesn't have a
12 signalized intersection.
13 Q The County doesn't rate that intersection?
14 A No, they don't.
15 Q Is there another methodology that you can
16 use to find out how that particular intersection is
17 functioning?
18 A Yes. The double-loaded cycle methodology
19 is very unique to Baltimore County. I think Baltimore
20 County is the only county that uses that methodology
21 of analyzing intersections. A more common method is

1 called a Critical Lane Analysis. It is basically the
2 summation of volume of traffic close to the
3 intersections conflicting with each other, based on
4 the number of lanes that handle the traffic. It rates
5 an intersection the same way, an A Level of Service to
6 E or F Level of Service.
7 Q Did you perform such an analysis for this
8 intersection?
9 A Yes, very early on in the first case, we
10 did perform peek hour traffic counts at this
11 intersection and found that the unsignalized
12 intersection worked at A Levels of Service.
13 Q Did you prepare a letter and include the
14 data that you accumulated to make your assessment that
15 this is the intersection of Back River and
16 Middleborough is an A-Level?
17 A Yes, I did.
18 Q The letter you have dated February 27th,
19 2003, the data, however, was from when?
20 A The original traffic count was done March
21 28, 2001. That was a Wednesday morning and afternoon.

1 The information from the County that I got isn't
2 contained in that letter, although I had the work
3 sheets faxed to me from the County that stipulates
4 level of service at those intersections that I talked
5 about.
6 Q Okay. Mr. Schmid, did you go out and look
7 at the site and watch the traffic in your preparation
8 for today's case?
9 A Yes, I did.
10 Q Do you believe the numbers and your
11 assessment that this is an A Level of Service
12 intersection holds true today?
13 A Yes. I mean, you can have good traffic
14 flow and good medium to high level of traffic flow and
15 still have A Levels of Service. It depends on the
16 number of lanes and the number of cars that consist
17 with each other. So, I never observed them my times
18 out there backing up with traffic that would indicate
19 to me some kind of congestion or volume problem along
20 this corridor.
21 Q How about in terms of the existing ingress

1 and egress from the site, there are 1, 2, 3, 4,
2 means -- separate means of ingress and -- oh, excuse
3 me, there are 6, I apologize, 3 to Back River Neck
4 Road and 3 to Middleborough Road.
5 A Right.
6 Q What were your observations with regard to
7 the functioning of these access points both internally
8 and externally?
9 A As can be seen by the plan, the existing
10 gasoline portion of the operation is defined to the
11 narrower triangle portion of the site. So, a lot of
12 my observations were over there to see how that
13 worked. Generally, when you get an area that stores
14 are in a triangle, like this, and the gas pumps are in
15 that area where it starts to neck down, you tend to
16 get -- it is not as free flowing. It operates and it
17 works okay, but it is not as generous and nice as you
18 would like to normally get flow and traffic patterns
19 around fueling positions. There were times I
20 indicated I observed the fueling areas are pretty much
21 filled up and I observed people just leaving and not

1 going to get gas, pulling in, shuffling around, and
2 just leaving. It didn't happen all of the time. It
3 certainly isn't a situation the fueling pumps are
4 filled and operated routinely, but during the times I
5 was out there, I was probably observing this over the
6 times I have been preparing for this case, probably a
7 total of three or four hours. I did notice times it
8 was full. The access points -- there are four access
9 points to that triangular piece, two on each end.
10 They serve vital functions because the site is narrow.
11 By having those four access points, it allows people
12 not to have to circulate around the site area. So,
13 the access points actually serve a good function and
14 they work rather well. There is not a lot of delay
15 getting in or out, the presence of those access points
16 allow the site to work a lot better in services.
17 Q How about the two access points that would
18 serve the proposed area for the fuel service,
19 additional fuel pumping positions and the car wash?
20 A The access out to Back River Neck Road is
21 a pretty standard type intersection in terms of width,

1 it operated fine. Back River Neck Road is a five-lane
2 road which basically has two through lanes in each
3 direction and has a center turn lane in the middle so
4 people waiting to turn left have an area to sit out of
5 the through traffic, which is a good thing. The
6 access out to Middleborough Road is more of a
7 substandard condition today. It is very wide. It is
8 a lot of paving. It is actually, I think, a utility
9 pole in the middle of the asphalt entrance. The Site
10 Plan shows that situation being addressed. That
11 access is being narrowed down to more of a standard
12 width and that will probably help a lot how that
13 access works.
14 Q Now, in terms of the Special Exception
15 Requirements, in your observations of this store,
16 keeping in mind we are going to be adding a car
17 wash -- propose to add a car wash and additional
18 fueling positions, do you believe there will be any
19 congestion created in the roads that serve this
20 particular site?
21 A No. I mean, I think what is going to

1 happen is the result is, from a gas pump standpoint,
2 is you are going to be able to balance your site out a
3 lot better and get a much better internal traffic
4 flow. You are going to increase the number of fueling
5 positions, but I don't think it is going to be a
6 linear progression in the amount of traffic you bring
7 in and out off your site.
8 Q Why is that?
9 A Because most of the time that I observed
10 the 8 fueling positions in the front were serving the
11 load. During peak times is when you want to be able
12 to service those other customers that would normally
13 leave your site. Also, the fueling positions here
14 will keep people off the more narrow point, and sort
15 of balance the site, and get people back towards where
16 the new fueling positions will create a much better,
17 standard move from the pumps and in and out of the
18 egress points.
19 Q How about the car wash, have you ever
20 dealt with fuel service stations that include car
21 washes?

1 A Yes.
2 Q That is a separate Special Exception use
3 in this case?
4 A Yes. I mean, a lot of the gas stations we
5 work for have a car wash as a rollover type car wash
6 and ancillary type of product they offer to the
7 customers. Normally or most of the time, they are
8 very benign uses. You drive by anyone and you will
9 see, maybe, one car in the car wash and one car
10 waiting to get in. The County Code requires that you
11 provide stacking for 9 spaces on site. For the 9th
12 car to be in line to get to the car wash in five
13 minutes cycles, it is about 50 minutes they have to
14 wait to get the rollover car wash of the car done.
15 Unless for some very extreme times, you probably don't
16 see people waiting 50 minutes to use these type of car
17 washes. For the stacking standpoint, it is usually
18 not a primary use of the site. People come to get
19 gas, milk, use the car wash at the same time. It is
20 not generating a lot of new traffic. It is, more or
21 less, pretty benign as long as you can provide the

1 stacking in there and keep people from gassing up the
2 gas sales, and it is a compatible use and pretty
3 benign.
4 Q Do you believe on the Site Plan that
5 adequate stacking is provided for this particular car
6 wash?
7 A Yes, I do.
8 Q Could you go up to the Site Plan and show
9 how circulation would work for the fueling positions
10 and the car wash?
11 A Well --
12 Q How likely people would come into that
13 portion of the site?
14 A I would believe based on the volume
15 standpoint of the convenience stores and gas stations
16 generate what we call pass by type trip generators.
17 They really draw the traffic off of the adjacent flows
18 of traffic. People don't normally, especially during
19 the peak hour time frame, make a specific trip to go
20 to the Royal Farms and go home, or from an office, or
21 go back to the office. Generally, they are driving

1 from another primary destination. They drive by and
2 stop in. We would suspect, basically, a simple volume
3 standpoint that Back River Neck Road carries more
4 volume than Middleborough Road. So, a larger portion
5 of the ingress/egress will occur along Back River Neck
6 Road. They have a multitude of ways to get in. If
7 they are coming northbound on Back River Neck Road,
8 they will probably use this fueling position over
9 here. If they are coming from this direction, they
10 are probably going to hit the first fueling positions
11 they see. The same way this way, they will probably
12 come in here. If they are coming in off the left
13 turn, here, they will probably try to flow into there.
14 By putting the fueling pumps back there, you give
15 people more positions not to have to use the front
16 part of the site. You also give people much better
17 offers to spread the traffic out and the site becomes
18 less congested. From the car wash standpoint, again,
19 there is going to be enough circulation that people
20 can come in and go around the fuel pump area, and wait
21 in line for the car wash or use the car wash. Again,

1 it all depends on what direction they are coming from
2 that there is ample access points to service getting
3 to the front of the gas pumps and car wash. I think
4 the initial car wash, when we looked at the Site Plan,
5 the car wash was more in this area. We were working
6 with Nathan and John Kemp. We decided that if we
7 moved it down here, we would get a little better
8 stacking.
9 MR. HOFFMAN: Thank you very much. Your
10 witness.
11 CROSS EXAMINATION
12 BY MR. HOLZER:
13 Q While you are there, could you point out
14 to me the 9 stacking spaces?
15 A They are indicated by blocks there.
16 Q Okay. So, you have one single space in
17 front of the car where -- that is the entrance to the
18 car wash on this north side? I guess that is north?
19 A Right.
20 Q On this north side, and 1, 2, 3, 4, 5, 6,
21 7, 8, 9, and that 9th one is sort of turned a little

1 funny. Is he covering both lanes? Why did you put
2 him in that way?
3 A I didn't put him in, but the site engineer
4 did that.
5 Q I mean, that is the way I drive.
6 A They could easily stack there.
7 Q So, the stacking of the vehicles will
8 stack from the car wash back towards Middleborough
9 Road, is that correct?
10 A That's correct.
11 Q There is nothing going to be marked on the
12 ground to say this is Stack Place No. 1, Stacking
13 Place No. 2, is it?
14 A It is not shown on the Site Plan yet, but
15 if that becomes an issue, you could certainly stripe
16 it as a double-loaded stacking area.
17 Q The way this is going to be set up, we are
18 not going to have all of these lines on the ground.
19 People are going to tend to stack up in single file,
20 are they not?
21 A It is our intent to stack them in the

1 double fashion.

2 Q Is it going to be on the plan and are

3 people going to be required to double stack or are

4 they going to be permitted to go wherever they want to

5 go when they stack?

6 A I would certainly recommend to Nick Brader

7 and John Kemp when they finalize the Site Plan to make

8 proper pavement marking to eliminate where the

9 stacking will occur and how it is going to occur.

10 Q Did you say you represented Amoco?

11 A I have represented Amoco.

12 Q Do you ever do the Amoco Gas Station and

13 car wash at York Road and Scotts Corner?

14 A No, I did not.

15 Q This utility pole that is currently there

16 in one of the access points, is that to be removed?

17 A Yes, I think the plan shows it -- it is a

18 guide pole, a wood guide pole and it is to be removed

19 or relocated.

20 Q It is shown on the plan that that would be

21 removed?

A I believe so, yes.

Q Is that correct?

A Yes. It says, "Relocated," with an arrow, and it points to a wood guide pole.

Q What is the purpose of these dotted black lines, here, that are going through? What are they supposed to represent?

A You might ask Nick Brader that.

Q Okay. And is the front of the tunnel of the car wash, is that facing in the direction of the existing house that is located on the north side?

A Generally, it is, yes.

Q From your testimony, there will not be any prescribed route to enter the car wash. So, if you are coming off Back River, you are going to have to circle the pumps in order to line yourself up to get in?

A Sure.

Q If you come in Middleborough, you can just pull in?

A That's correct.

1 Q And the analysis that you did on March --
2 I think you said --
3 A 28th.
4 Q -- March 28 of 2001, you brought up to
5 date. In other words, on this document that has been
6 marked -- I don't know whether it has been marked or
7 not, actually. Did you mark it? Did you put it in?
8 MR. STAHL: Are you talking the
9 February 27, 2003?
10 MR. HOLZER: Yes.
11 MR. STAHL: No. Since he is still on the
12 stand.
13 MR. HOFFMAN: What is it 6 or 7?
14 MR. STAHL: 6.
15 MR. HOFFMAN: I will move it as 6, if I
16 can interrupt you for a second.
17 MR. HOLZER: Okay.
18 (Petitioner's Exhibit No. 6 so marked for
19 identification.)
20 Q Those on Developer's Exhibit No. 6, those
21 calculations were all done -- let me see. Peak hour

1 turning movements were done in March of 2001, but
2 summary of trip calculations were done in April of
3 2002?
4 A Yeah, we probably, in preparation for the
5 last scheduled Zoning Hearing went ahead and printed
6 out trip generation calculations.
7 Q And those have been brought up-to-date,
8 you said?
9 A What is that?
10 Q Either one of these figures, either the
11 trip generation calculations or the turning movements?
12 A The trip generation calculations are
13 static. They wouldn't change over time. They are
14 accurate whether we did it 2002, or 2001, or right
15 now. The traffic count we did has not been updated.
16 We didn't feel it was really appropriate based on the
17 observations we did in 2001 and 2002 and the level of
18 service the intersection is working at. What we did
19 is go back to the County and ask them to update on the
20 level of services of the signalized intersections
21 along the corridors to see if they have changed. We

1 didn't really feel it was necessary to update the
2 traffic counts.
3 Q That is not in this report, that
4 information is not put in this report?
5 A No. It is not.
6 MR. HOLZER: I have no further questions.
7 MR. STAHL: Redirect?
8 MR. HOFFMAN: I think we are through.
9 MR. STAHL: Why don't we take five
10 minutes? Why don't we take lunch?
11 (Lunch recess -- 12:00 p.m.)
12 (After recess -- 1:00 p.m.)
13 MR. STAHL: Okay. We are back on the
14 record in Case 01-316-XA, Cloverland Farms Dairy. We
15 had finished the previous witness who was on the
16 stand. Mr. Hoffman, I understand you have one more.
17 MR. HOFFMAN: Yes, sir. Nick Brader?
18 Whereupon:
19 NICK BRADER,
20 was called on for examination by counsel, and after
21 being duly sworn according to law, was examined and

1 testified as follows:

2 MR. STAHL: Sir, your name and address.

3 THE WITNESS: My name is Nick Brader,

4 B-r-a-d-e-r, and work address is 10540 York Road,

5 Suite M. That is in Hunt Valley.

6 MR. STAHL: Okay.

7 VOIR DIRE EXAMINATION

8 BY MR. HOFFMAN:

9 Q Mr. Brader, you are with Matis Warfield,

10 Inc.?

11 A Yes.

12 Q You are a professional engineer?

13 A Yes, I am.

14 Q Did you provide me with a copy of your

15 resume?

16 A Indeed, I did.

17 Q Is that it?

18 A Yes.

19 MR. HOFFMAN: That would be No. 7, if I

20 could offer it.

21 MR. HOLZER: The Traffic Concepts Report

1 was No. 6, petitioner's 6.

2 MR. STAHL: This one will be Petitioner's

3 7.

4 (Petitioner's Exhibit No. 7 so marked for

5 identification.)

6 Q Mr. Brader, you prepared and sealed the

7 Site Plan that has been introduced as Petitioner's

8 Exhibit Nos. 1-A and B and 2-A and B?

9 A Yes.

10 Q You have testified as a professional

11 engineer in other cases before the Zoning Commissioner

12 and the Board of Appeals?

13 A Yes, I have.

14 Q Have you always been qualified as an

15 expert in land planning in terms of development

16 projects that you have been involved with?

17 A Yes.

18 MR. HOFFMAN: I would offer Mr. Brader.

19 MR. HOLZER: No objection.

20 MR. STAHL: As an expert in --

21 MR. HOFFMAN: Those two fields.

1 MR. STAHL: Planning and Engineering?

2 MR. HOFFMAN: Yes.

3 MR. STAHL: So noted.

4 MR. HOFFMAN: Thank you.

5 DIRECT EXAMINATION

6 BY MR. HOFFMAN:

7 Q Mr. Brader, you have been involved with

8 this site for quite sometime, haven't you?

9 A Yes, since Royal Farms looked at the

10 initial location years ago.

11 Q About how long ago was that?

12 A About eight years ago.

13 Q Were you involved in the initial

14 Application for a Special Exception for the Royal Farm

15 Store and fuel service that is there today?

16 A I was involved in it. I couldn't remember

17 like everybody else did earlier. It was actually

18 another fellow that attended the hearing. I was

19 involved in the case at that time.

20 Q Meaning, someone else from your office

21 came to the hearing in that case?

A In that case.

Q You prepared the Site Plan and attended the hearing below in this case, correct?

A Correct.

Q Did you also prepare a Comprehensive Re-Zoning Map Request on the 2000 Comprehensive Zoning Map?

A Yes, we did.

Q Did that result in a rezoning of a portion of the property that is the subject of the hearing today?

A Yes, the A.S., Automotive Services District was added to the underlying BL Zoning of that case.

Q Did you prepare a copy of the 200-scale Zoning Map from 1996 and a copy of the 200-scale Zoning Map from the year 2000 to indicate that fact?

A Yes.

Q Is that a copy of the 1996 Zoning Map Request?

A Yes.

1 Q Excuse me, of the 1996 Zoning Map?
2 A Map, yes.
3 Q That shows the rear portion of the site is
4 zoned BL, correct?
5 A Yes.
6 Q Is this a copy of the 200-Scale Zoning Map
7 from the year 2000?
8 A Yes.
9 Q That shows the rear portion of the site
10 being entirely zoned BL-AS, correct?
11 A That's correct.
12 MR. HOFFMAN: I would submit these as
13 Exhibits 8-A and B.
14 MR. STAHL: Mr. Holzer?
15 MR. HOLZER: No objection.
16 MR. STAHL: Okay. Let's see what we have
17 here. Okay. The 1996 Zoning Map, let's make that A
18 and the 2000 Zoning Map, we will make B.
19 (Petitioner's Exhibit Nos. 8-A and B so
20 marked for identification.)
21 Q Mr. Brader, what was the significance of

1 the addition of the AS District on the existing BL
2 Zoning?
3 MR. HOLZER: Objection. I mean, in his
4 opinion or in the opinion of the County Council? I
5 mean, I think he can testify as to his opinion, not
6 what the Council --
7 MR. STAHL: Why don't you rephrase the
8 question?
9 MR. HOFFMAN: Well, I think all of my
10 questions are asking for his opinion, but I will
11 restate it that way.
12 Q In your opinion, what was the significance
13 of the addition of the AS District to the BL Zoning on
14 the 2000 Comprehensive Zoning Map?
15 A It allowed for the expansion of the
16 automobile services use on the site, meaning that
17 without the AS District, gas pumps, or a car wash, or
18 combination uses are not permitted. With the AS
19 District, they are permitted by Special Exception.
20 Q Okay. Mr. Brader, you took some
21 photographs of the site?

A Lots of them over the years.

Q Do you have two panoramics with you?

A The originals of those are up here on the Board.

MR. HOLZER: Are these mine or do you need those?

MR. HOFFMAN: No, you may have those. Thank you. We can introduce the originals.

Q Are these color photocopies of those original photographs which are on the Board?

A Yes.

MR. HOFFMAN: If I could ask that these been marked 9-A and B.

Q Starting with 9-A, which is the view from Back River Neck Road, what is that view?

A That is the view starting at the left of that existing Royal Farms operation with the gas pumps, then, you see the existing Royal Farms Convenience Store building, then, you see the parking lot between the existing building and the vacant building. At the very edge, you see the vacant

1 building.

2 Q There seems to be a fence in front of the

3 vacant building at the end of the Back River Neck Road

4 end. Is that the trash dumpster enclosure?

5 A I believe it is, yes.

6 MR. HOFFMAN: This would be 9-A. Any

7 objection?

8 MR. HOLZER: No.

9 (Petitioner's Exhibit No. 9-A so marked

10 for identification.).

11 Q 9-B would be a view of the site from

12 Middleborough Road. Can you tell me what that shows?

13 A It is pretty much the reverse direction.

14 I think this is Mrs. Colvin's house at the very edge

15 of the picture.

16 Q That is on the left edge?

17 A Left edge of the picture. Moving to the

18 right, you see the vacant structure that was the

19 former Royal Farms, and you see quite a bit of the

20 parking lot. Then, you see the landscaping in front

21 of the new Royal Farms' building. You see the Royal

1 Farms' building. Then, you see the existing gas pumps
2 out in front.
3 Q You moved from left to right across the
4 page describing the existing conditions?
5 A Correct.
6 Q When did you take those photographs? It
7 looks like it was nice weather.
8 A Those were taken back in the summer.
9 MR. STAHL: Again, if you wouldn't mind,
10 Mr. Hoffman, for my edification, so I understand
11 everything he said, the existing facilities are here
12 and here?
13 MR. HOFFMAN: Yes, sir. That is the
14 Middleborough Road view.
15 MR. STAHL: And the abandoned building or
16 the other building that we are talking about is the
17 roof?
18 MR. HOFFMAN: In that photograph, it is
19 there. He indicated in his testimony, at least, that
20 is Mrs. Colvin's house there, all of the way on the
21 left. If you look at 9-A, it is the reverse. So, on

1 your right would be the vacant building.
2 MR. STAHL: So we know which building is
3 closer to which.
4 MR. HOFFMAN: Yes, sir.
5 MR. STAHL: Thank you.
6 MR. HOFFMAN: That would be 9-B.
7 (Petitioner's Exhibit No. 9-B so marked
8 for identification.).
9 Q Mr. Brader, if you would, could you go to
10 the Plan and describe the location of the existing
11 conditions, and how the existing conditions would be
12 changed under the current proposal?
13 A Okay. The existing vacant building is
14 here. The proposed car wash is over a corner of that
15 building, but it is bit closer to Back River Neck Road
16 than what the vacant structures are. The existing
17 paved area is a bit hard to see on here. It extends
18 into what is going to be landscaping under the
19 proposal. This whole area right now is, basically,
20 just a paved parking lot. Then, this is the existing
21 Royal Farms' building in use now, and there is four

1 gas islands out front and some additional parking
2 area. The entrances off Middleborough Road are here,
3 here, and, then, a wide area, right here, that we are
4 proposing to narrow down. This is also on Back River
5 Neck Road, one here, here, and here. That is to
6 remain the same.
7 MR. HOFFMAN: Mr. Holzer, I am handing him
8 a color photocopy of what is on the Board just to make
9 it easy.
10 Q Now, Mr. Brader, with the proposal as you
11 have described it, would there be more or less
12 impervious area than what exists today?
13 A Less impervious area. I believe it is
14 about 3,000 square feet less.
15 Q Show me where that would occur again?
16 A It is along the landscaping that we are
17 going to be putting in on this side of the property,
18 some along this side of the property, and some
19 adjacent to the parking areas in front of the store.
20 Q Is there any landscaping that exists along
21 that drainage ditch area in the back of the site

1 currently?
2 A There is no landscaping. It has grass,
3 and weeds, and stuff like that in there right now.
4 Most of the landscaping is in the newer part of the
5 Royal Farms' site when that was developed six years
6 ago.
7 Q All right. And where does the storm
8 water -- what kind of water does this ditch carry?
9 MR. HOFFMAN: I should ask a non-leading
10 question for once.
11 A This is a plan that shows the drainage
12 area to that ditch. The ditch on this plan is right
13 here. That is the vacant building that I have
14 referred to. These are apartments mainly up here.
15 This is Middleborough Road and Back River Neck Road.
16 All of this area, up here, drains to this ditch in
17 addition to Middleborough Road, and, then, a small
18 part of the Royal Farms' site, then, some of the
19 residential area over here all get to that ditch.
20 Q So, what portion -- if I could offer the
21 drainage area map as Petitioner's Exhibit No. 10. I

1 think I am up to 10.

2 MR. STAHL: The one that is up there?

3 MR. HOFFMAN: Yes, please.

4 MR. STAHL: All right, mark it.

5 (Petitioner's Exhibit No. 10 so marked for

6 identification.)

7 Q What percentage of that -- first of all,

8 how big is that drainage area?

9 A It is a total of 12 acres. Out of that 12

10 acres, our site is .4 acres in existing conditions and

11 would be reduced to .2 acres in proposed conditions.

12 Q So, out of that full 12 acres, under the

13 Proposal, .2 acres would --

14 A Still drain to that area.

15 Q -- still drain to that area?

16 A Yes.

17 Q That would be less, but marginally less

18 than what is existing in terms of drainage today?

19 A Correct.

20 Q Do you have an opinion as to whether the

21 proposed facilities on the site would have a positive

1 impact on drainage and runoff into that ditch?
2 A Yes, by virtue of our -- first of all,
3 reduction of impervious area of 3,000 square feet,
4 then, the switching of. 2 acres of our site from the
5 ditch towards Back River Neck Road will be an
6 impervious by that amount.
7 Q Does the additional landscaping that you
8 are proposing, does that have any affect on drainage
9 into that ditch?
10 A It potentially could also lessen the
11 amount of flow into it by -- since we are a small part
12 of the drainage area, it would reduce it by a small
13 percentage. It would be the same thing.
14 Q Mr. Brader, you have been down to the site
15 on several occasions?
16 A Yes, I have.
17 Q And I see in the photograph -- how would
18 you describe the condition of the site when you were
19 there to take your photographs?
20 A The earlier times I have been by there,
21 the site has been kept relatively well. Nothing stuck

1 out in my mind as being out of the ordinary or in bad
2 condition. When I was there recently, yesterday, even
3 my own front yard doesn't look as good as it does in
4 the summer as things have looked the last couple of
5 weeks. So, yesterday, probably a couple of things
6 could be cleaned up, but not in past occurrences, I
7 hadn't noticed anything.
8 Q Do you have an opinion as to what type of
9 impact a conversion of the rear portion of this site
10 to the proposed use would have on the overall site? I
11 don't know if that makes sense to you. If it didn't,
12 I will try and ask a better question. If it did, go
13 ahead and answer it.
14 A I will answer as best I can. Right now,
15 if you go out and look, the front half. I am sorry, I
16 don't know where to stand exactly. I wish I could
17 stand above it.
18 MR. STAHL: That side is probably your
19 best bet.
20 A Part of the site that has already be
21 developed 5 or 6 years ago where the existing Royal

1 Farms is nicely landscaped and it has been growing for
2 a couple of years. It looks improved. The back half
3 of the site with the vacant building is not. There is
4 no landscaping to speak of. With the proposal, there
5 is a significant amount of landscaping that is going
6 to be added. There is going to be additional green
7 area, for lack of a better word, adjacent to the
8 ditch. We will make the back portion of the site look
9 visually much better than it does today. Does that
10 answer your question?
11 Q I think so. Mr. Brader, there was some
12 reference to a fence in some of the earlier testimony.
13 Can you describe what type of fence is being proposed
14 and where its location would be?
15 A Right. We have got a note on the plan
16 that says, "Proposed board-on-board fence." Then, in
17 parentheses it says, "Location to be determined in
18 cooperation with 1609 Middleborough Road at the
19 suggestion of the Department of Planning when we were
20 processing the Original Zoning Request." So, the --
21 just according to the note, the exact location of the

1 fence isn't determined. It was something that we
2 would work out with Miss Colvin.
3 Q What was the intent behind that to put it
4 in the location where --
5 A It could be on the property line, on her
6 side, or it could be on the site side to prevent trash
7 from getting into the ditch. It was meant to be
8 flexible, so that we could work with Mrs. Colvin to
9 put it in a place that was agreeable to everybody,
10 hopefully.
11 Q Mr. Brader, do you work on a lot of Royal
12 Farm Stores? I should ask you, how many Royal Farm
13 Stores have you planned and developed?
14 A It has been in the dozens, maybe, 30, 40,
15 50 stores. I might have put something on my resume
16 there. It is a large number.
17 Q Are you familiar with those other
18 locations?
19 A Most of them, yes.
20 Q Is it common that there would be
21 residential property in very close proximity to a

1 convenience store with this operation?
2 A The large percentage of them do, that is
3 the customers, they wanted to be near neighborhoods in
4 order to have customers. That is part of the reason.
5 So, there is a lot of them and a lot of stores
6 locations, even with redevelopment sites, we will
7 design things to work compatible the best we can with
8 the neighborhood.
9 Q Do you have an opinion -- let's do it this
10 way. I would like to go through the elements of
11 Subsection 502.1. I am going to ask you each one
12 individually and ask you to give your opinion on those
13 elements. The first one would be under the Proposal
14 if the uses were granted and the two uses that we are
15 dealing with are the additional service and fuel
16 service and the car wash, would either of those uses
17 been detrimental to the health safety or general
18 welfare of the locale?
19 A In my opinion, no. The back portion of
20 the site that is the subject of the request, there is
21 already structures, there is already a convenience

1 store on that site. It is paved for parking. Cars
2 are already parking there. The car wash we have
3 located so there is adequate stacking and there is
4 actually -- we had actually moved that from an earlier
5 plan to be further away from the neighborhood side of
6 the site.
7 Q Would the proposed uses create a potential
8 hazard from fire, panic, or other dangers?
9 A The use is already there. There is
10 already fuel pumps there. As part of the Zoning
11 process, the plan has been reviewed by the County
12 Departments, including the Fire Department and they
13 didn't have any adverse comments, either.
14 Q Would the uses tend to overcrowd plan or
15 cause undue concentration of population?
16 A The whole purpose of our request is to
17 actually do the opposite of that, so that the site
18 would not be overcrowded, to give more room for
19 circulation, more room for people fueling. Might I
20 also add as part of our request, a number of variances
21 that were granted in the earlier case, area variances

1 for site area and setbacks are no longer applicable
2 because we are combining the site. There is the same
3 light, less congestion, there is more room for the
4 operation, basically.
5 Q Would the Proposal either the fuel service
6 or the car wash interfere with adequate light or air?
7 A They are short structures. They are
8 one-story structures. There wouldn't be any impact to
9 light or air.
10 Q I would ask you, would the Proposal
11 interfere with adequate provisions for schools, parks,
12 water, sewage, transportation, or other public
13 requirements, conveniences, or improvements?
14 A It is not residential, so there wouldn't
15 be any impact to schools or parks. As far as water
16 goes, there is very little demand on adequate water
17 supply. Most of the water is recycled with the car
18 wash. So, that answers the sewage question, as well.
19 As far as transportation, traffic issues, the traffic
20 engineer has, I believe, already addressed the traffic
21 end of that.

1 Q Would the Proposal be inconsistent with
2 the purposes of the property's zoning classifications
3 or in any other way inconsistent with the spirit and
4 intent of the Zoning Regulations?
5 A No, they wouldn't. To even more directly
6 answer it, as part of the Comprehensive Zoning Process
7 we referred to the AS District was actually added to
8 the property. So, at that point, by voting on it, the
9 County Council found that these uses would be
10 appropriate on this site.
11 Q Are there any applicable impermeable
12 surface or vegetative retention provisions in the
13 BL-AS?
14 A No.
15 Q The answer was no?
16 A No.
17 Q But you are reducing the amount of
18 impervious area and adding vegetation, is that
19 correct?
20 A That's correct.
21 Q Mr. Brader, you have been directly

1 involved with Baltimore County in trying to get them
2 to follow through on their obligation to clean the
3 ditch?
4 A We have been involved, yes, for several
5 years.
6 Q And Mr. Kemp directed you to prepare any
7 appropriate documentation the County needed in order
8 to let them get in there to clean the ditch?
9 A That's correct. Initially, going back, I
10 think, to the 1995-1996 letter, the County indicated
11 they were going to prepare an easement plat to give
12 them permanent rights to go in and maintain the ditch.
13 After the 1996 Case, we actually assumed that it had
14 been done because the County said they were going to
15 prepare it. When this case came back up again, I
16 guess it was a year and a half ago, we revisited the
17 issue, and, apparently, it was something that just was
18 on a real slow track or fell between the cracks. So,
19 we started trying to get it -- pushing them a bit to
20 get it done. A couple months ago, we were working
21 with another fellow in your office, Mr. Hoffman, as

1 well. As of a month and a half ago, two months ago,
2 the County asked us if we could prepare the easement
3 plat to get it done quicker. So, in the spirit of
4 helping it out, Mr. Kemp authorized us to go ahead and
5 prepare the easement plat, and over the course of the
6 last month, we have had to do additional surveying
7 work in order to prepare the plat. With the weather,
8 it has been a little tough to get it completed. We
9 were actually hoping to have it submitted with the
10 Hearing, but due to the weather, we are a week or two
11 behind with it right now. So, we will probably be
12 submitting the easement plat to the office of the
13 County in the next week or two.
14 Q Now, in your inspections of the drainage
15 ditch, how has it been functioning?
16 A Well, I haven't been out there in a
17 hundred year storm. I was out there yesterday and
18 there was runoff coming from all 12 acres from the
19 snow melting. There was definitely water flowing in
20 the ditch. There was water flowing in Middleborough
21 Road. It was over topping the ditch when I was there

1 yesterday. That is my observation.
2 Q Now, cleaning out a ditch sounds like it
3 would be just a simple or dredge it out sounds like it
4 would be a simple thing to do. Maybe for Baltimore
5 County, it is, but for -- are there potentially
6 permits at the Federal, State and Local levels
7 necessary to do any work in that ditch?
8 A The ditch would pretty certainly be
9 regulated by U.S. Army Corp of Engineers, and the
10 state, and joint permit application would have to be
11 filed for any work in the ditch.
12 Q Mr. Brader, with regard to the
13 installation of the proposed fueling stations, there
14 would also be a canopy over those fueling positions,
15 is that proposed?
16 A Yes, there would be.
17 Q And would the canopy use recessed lighting
18 or, I guess, lighting fixtures?
19 A It is standard practice they are shielded.
20 Q To shield the lighting so it doesn't spill
21 over onto the neighboring properties?

1 A Yes.

2 Q Would there be additional lighting

3 proposed on the store, itself, or on the parking lot?

4 A Not on the store, itself. There will be

5 lights underneath the canopy, obviously. I can't

6 answer if there would be additional lights on the site

7 right now or not. If they were, they would be

8 shielded, as well.

9 Q They would use shoe box-type fixtures to

10 insure that light is directed down on the site as

11 opposed to off the site?

12 A Right. It is mainly a factor of safety.

13 The site, itself, has to be illuminated enough so that

14 it is safe and safe to people.

15 MR. HOFFMAN: I think that is all of my

16 questions. Thank you.

17 CROSS EXAMINATION

18 BY MR. HOLZER:

19 Q On that point, we all know what a gas

20 station looks like with lights in the overhang. That

21 is going to light up the adjacent property no matter

1 what you do to it, will it not?
2 A There are many different types of light
3 fixtures, canopies, and canopy designs. I have seen
4 ones like you are describing. They don't have the
5 shields around the lights, themselves. They are open
6 on all four sides. You can see them. The ones that
7 are used with this canopy are shielded on all sides.
8 They do prevent a lot of the light you are referring
9 to.
10 Q Well, I have seen -- if you just ride down
11 York Road, you see the Exxon Station and the lights.
12 You see the Crown Station with the lights, and, I
13 mean, at night, there is no way any of the lights that
14 I have seen on any of these gas stations does not
15 possibly spill over onto the adjacent property. I
16 mean, isn't that your practical experience?
17 A I think a lot of the ones you are
18 referring to don't have the side shielded on the
19 fixtures. I have noticed the same thing you have.
20 There are a couple I think are obnoxious, to be honest
21 with you. Working with them, I pay close attention to

1 them, all of the ones that I have noticed. You have a
2 box. This cup is a light. They are open all of the
3 way around the sides. The one used in this canopy,
4 the sides are blocked and the light just shines down.
5 Q Is that on this plan that says that that
6 is the kind that is going to be used?
7 A I don't think it is on the plan.
8 Q Can you tell us what kind that is so that
9 if the Special Exception is granted, it can be part of
10 the condition?
11 A We can provide a copy of that.
12 Q I mean, can you just tell me, is it a
13 special brand? Is it a special --
14 A It is called shielded. I know it is
15 called shielded. I don't have the model numbers or
16 anything that specific with me off the top of my head.
17 I can draw you a picture, that is about the best.
18 Q In addition to the lights and the overhang
19 over the pumps, will there be other lights to reflect
20 the area for purposes of the car wash?
21 A That has not been designed yet.

1 Q How can you have a car wash that could
2 operate after hours, as Mr. Kemp said he would like to
3 have it running 24 hours if you don't have lights
4 designating where the car wash is, and where the
5 stacking lanes are?
6 A That level of detail is not on the Zoning
7 Plat.
8 Q I understand that. That is why I am
9 raising the question. Obviously, you could put in
10 lights that are in towers to serve those folks who
11 want to go into the car wash back here, and it could
12 have a direct impacted on my client's property, on
13 Miss Colvin's property.
14 MR. HOFFMAN: Mr. Holzer, if it helps, we
15 will stipulate that all lighting on the site will be
16 similarly shielded, so that it is directed to light up
17 the areas that are intended to be used by the Farm
18 Store Operation.
19 THE WITNESS: I believe there is even a
20 height restriction on them in proximity to
21 residential.

1 MR. HOFFMAN: That would be our
2 stipulation. I don't know if that is good enough for
3 you.
4 MR. HOLZER: No, I don't know if that is
5 good enough. If that is what you are proffering you
6 are going to do, that is fine, the Board can attach
7 that condition, if they choose.
8 Q In regards to the current lighting, are
9 these lights that you are suggesting are so wonderful,
10 are they currently used on the existing gas facility?
11 A I haven't been by there at night. I
12 couldn't answer you for sure what was used at that
13 time.
14 Q So, you have no idea what this place looks
15 like at night when the existing lights come on to
16 serve -- what I will call -- the front gas pumps? You
17 don't know what that looks like?
18 A I said I haven't been by there at night.
19 Q You don't know how, then, that currently
20 impacts the existing neighborhood in terms of light?
21 MR. HOFFMAN: I think he answered he

1 hasn't been by there at night.
2 Q So, the next question is: Therefore, you
3 don't know what it looks like, and how it impacts
4 adjacent properties at night?
5 MR. HOFFMAN: I think he answered the
6 question three times. "I haven't been there at
7 night." That is the answer to all four questions.
8 MR. STAHL: Your comment about the
9 conclusion is --
10 MR. HOLZER: I would like to have him
11 state the conclusion.
12 MR. HOFFMAN: I object.
13 MR. STAHL: It is a therefore. If he
14 hasn't been there, therefore --
15 MR. HOFFMAN: Therefore, you don't know.
16 MR. STAHL: Therefore, you can't say one
17 way or the other.
18 MR. HOLZER: But he has already testified
19 that it will not impact the health, safety and welfare
20 of the community.
21 THE WITNESS: The proposed fixtures.

1 MR. STAHL: You are asking him about what
2 is there now.
3 Q Are you suggesting that the existing
4 lighting is going to be changed, because the whole
5 project is proposed? I mean, the whole project will
6 be what the citizens have to live with.
7 MR. HOFFMAN: I object. That is not true.
8 The whole project is not proposed.
9 MR. HOLZER: I will withdraw the question.
10 MR. STAHL: I was going to say, my only
11 thought was, we are not being asked to rule on
12 anything having to do with the existing facility. We
13 are being asked to look at what they are proposing.
14 MR. HOLZER: I understand, I understand.
15 Q In regard to this ditch, I have a
16 newspaper article from August 18th, 1994 of The Avenue
17 Newspaper in which you are quoted as saying -- and
18 this issue related to the ditch and the 90-degree
19 right turn, which I don't think has really been
20 discussed before the Board. As I recall, this ditch
21 that we are talking about comes down here. Then, it

1 makes a 90-degree right turn and runs down the back of
2 your property, is that correct?
3 A That's correct.
4 Q You do acknowledge from drafting this plat
5 that the ditch is on your property, meaning the
6 Applicant?
7 A Correct.
8 Q Now, as I understand it, there was some
9 effort made to clean the ditch at one point by the
10 County, but they did not go any further than this
11 elbow. To your knowledge, based on this 18 years or 6
12 years that you have been involved in this, whatever it
13 is --
14 A It is not 18.
15 Q -- do you recall that?
16 A I remember being at that meeting to some
17 degree. I don't remember exactly the words, but the
18 County had, apparently, had a history of maintaining
19 the ditch, and, for a period of time, they stopped
20 doing that. That was the purpose of that meeting, was
21 to try to get everybody together and cooperate to get

1 what needed to be done, done.

2 Q But they never -- and Mr. Hoffman

3 introduced some earlier exhibits in which there was a

4 discussion of doing some hand digging past this elbow

5 and down the back side of the property, but that was

6 never done to the best of your knowledge, is that

7 right?

8 A I don't have knowledge if it was done or

9 wasn't done.

10 Q You suggested at this meeting that there

11 be a berm construction on Miss Colvin's side of the

12 ditch to direct the flow towards the middle of the

13 channel. Do you recall that suggestion?

14 MR. HOFFMAN: I am going to object to

15 using a newspaper article for purposes of

16 cross-examination. If he wants to ask him

17 questions --

18 MR. STAHL: You can ask him if he has ever

19 said that, if he ever said the other thing.

20 MR. HOLZER: I asked him.

21 MR. HOFFMAN: You can't impeach him on

1 what some reporter --

2 MR. STAHL: I am a little reticent to hold

3 somebody down to a newspaper article because I am

4 going to take judicial notice that newspaper articles

5 are well-known for not always being the most --

6 MR. HOLZER: I understand. My question

7 was --

8 Q Do you recall, in 1994, suggesting that an

9 alternative way to solve the flooding problem on the

10 Colvin property was to construct a berm?

11 MR. STAHL: Then, ask him the question.

12 Don't refer back to the article.

13 Q Do you recall that?

14 A I don't remember exact words I said nine

15 years ago.

16 Q I am not asking you to recall the exact

17 words. I am asking: Do you recall that suggestion as

18 being a viable option that you considered?

19 A I don't recall making specific suggestions

20 at the time. It is possible I did. I just don't

21 remember. That is one possible option that could be

1 done. It depends on the nature of the flooding. I
2 think the reason that we had the meeting was to get
3 people from the County out there, a representative of
4 Royal Farms, to try to move the issue forward, move
5 the solution forward. At that point, it needed more
6 study.
7 Q That was in 1994?
8 A Right.
9 Q And, then, again, in 1995 or 1996, Royal
10 Farms came in and asked for permission for a Special
11 Exception to build the gas station in the front?
12 A Right.
13 Q Did not that issue again come up in regard
14 to the County or Royal Farms resolving this problem of
15 the ditch and the flooding?
16 A I wasn't at that hearing. I think the
17 issue had come up again. At the same time, it wasn't
18 something that our proposal impacted. In the interest
19 of trying to help the issue to get to a solution, I
20 think, at that point, Royal Farms had signed a letter
21 of permission to allow the County to come on and

1 maintain the ditch. Let me refer back to the
2 correspondence.
3 Q If I am not mistaken --
4 MR. HOFFMAN: Wait a minute.
5 MR. HOLZER: I am sorry. Go ahead,
6 answer.
7 A I wanted to refer back to a letter from
8 the County about that time. I always refer back to
9 the May, 1995 letter from Baltimore County, Eric
10 Rockel --
11 Q Right.
12 A -- saying, "I am enclosing a copy of the
13 drawing indicating the proposed easements, as well as,
14 a letter of permission to allow Baltimore County to
15 accomplish the necessary maintenance on the storm
16 drain outflow ditch." That letter left me little
17 doubt.
18 Q The next sentence: "We will follow-up
19 with a formal deed to dedicate the necessary easements
20 in the future." That was in 1995?
21 A Right.

1 Q Nothing --
2 A I am not an employee of Baltimore County.
3 Q I understand that. I say, you have not
4 presented until recently, you have not presented
5 anything to them in regard to the formal deed?
6 A Quite frankly, I thought it had been done
7 after the 1995 or '96 Hearing. When we found out, as
8 I said before, a year and a half ago that it hadn't
9 been done, in the interest of helping things out --
10 and, once again, it is something we have almost no
11 impact on by virtue of our location, the drainage
12 area, and the fact we are reducing the area, the
13 impervious area to the ditch. Even in light of those
14 facts, we are still trying to help out and get the
15 issue resolved. In that light, we are in the middle
16 of preparing the easement plat that the County said
17 would be quicker if we prepared than if they did.
18 That is something we are volunteering to do.
19 Q That is wonderful. But the ditch is still
20 on your property. You are still responsible for your
21 property, and the land, is that not correct, in

1 regard --

2 MR. HOFFMAN: Objection. That is asking

3 him to draw a legal conclusion, who is responsible for

4 the ditch?

5 MR. STAHL: What does responsible mean?

6 MR. HOFFMAN: There is evidence in the

7 record the County says they are responsible.

8 MR. STAHL: You can simply ask, did he

9 believe that they are responsible?

10 Q Do you believe, as the property owner,

11 that you are responsible for the land which you own,

12 including this ditch?

13 MR. HOFFMAN: I am going to object. Now,

14 we are getting into issues of who is responsible for a

15 portion of land across which drainage from 12 acres of

16 land we don't own is coming across. I would say, as a

17 legal matter, it is the people upstream are

18 responsible for whatever damages are being caused to

19 this property owner and any other adjacent property

20 owners. It is not this property owner's

21 responsibility.

1 MR. STAHL: I will let you respond.
2 MR. HOLZER: Are we going to argue?
3 MR. STAHL: He made an objection,
4 essentially. If you want to respond to his
5 objection --
6 MR. HOLZER: No, I don't want to respond
7 to his objection.
8 MR. STAHL: The point of this is what,
9 Counsel?
10 MR. HOLZER: The point of this is, with
11 all due respect --
12 MR. STAHL: I am asking you for a proffer.
13 MR. HOLZER: -- that since 1994 my client
14 has had flooding problems as a result of this ditch
15 which is owned by and on the land of Royal Farms
16 Store.
17 MR. STAHL: Nobody contradicts that.
18 MR. HOLZER: In 1995, when the Board or
19 the Zoning Commissioner granted the Special Exception
20 for the original gas station, one of the issues was
21 the resolution of this problem. It was raised by my

1 client. With the granting of the Special Exception,
2 it has still continued to exist until this day in
3 terms of the flooding problem, and we have heard since
4 1994, we have heard since 1995, we have heard since
5 May of 2001, when the Zoning Commissioner stopped the
6 case below and brought the County in for a resolution
7 of this problem if, in fact, they were going to
8 acquire the land, and, two years later, nothing has
9 been done.
10 MR. STAHL: And I acknowledge that that
11 has been the history that has come before us. He has
12 given you, whether it is a good explanation, a bad
13 explanation, one that satisfies you and your client,
14 or one doesn't satisfy you and your client, he has
15 given you an explanation of what their understandings
16 were, and what steps they are taking at this point.
17 That is really all he can tell you at this point.
18 MR. HOLZER: I understand. So, did you
19 rule on this?
20 MR. STAHL: So, let's move on from it
21 because he has told us everything he can about that,

1 how we react to that information or how you react to
2 that information, notwithstanding.
3 MR. HOFFMAN: I just want to point out to
4 the Board, it did come up at the '96 case, but the
5 restriction in the '96 case is, "The Petitioner shall
6 continue to cooperate with the Baltimore County Bureau
7 of Highways relative to construction and maintenance
8 of the outfall of the drainage ditch to the rear of
9 the existing Royal Farms store on the adjacent
10 property."
11 MR. HOLZER: We are cooperating.
12 MR. STAHL: He is testifying he thought
13 the County had done it. Whether they should have made
14 that assumption or not, whether they should have done
15 something or didn't, are additional issues that he
16 can't speak to as a witness on cross-examination.
17 MR. HOFFMAN: There has been no evidence
18 presented that we are not cooperating.
19 MR. STAHL: It is not a matter of what you
20 present, it is a matter of what the basis of the
21 knowledge of the witness is, and what he knows.

1 Q How many tanks and what is the sizing of
2 the existing tankage?
3 A I don't know that information.
4 Q You don't know that?
5 A No.
6 Q What is the size of the tanking for the
7 new facility, the extension?
8 A It hasn't been determined yet. That is
9 usually part of a later design process.
10 Q In terms of the distance of the gas
11 operations, I mean, you have gone to a gas station and
12 gotten gas, have you not?
13 A Yes.
14 Q So, you are familiar with pulling in, you
15 are familiar with the noise, you are familiar with the
16 fumes, you are familiar with what takes place at a gas
17 station when you have pulled in. What is the distance
18 of the existing gas facility to Miss Colvin's house?
19 Could you measure it for me?
20 A If I have a scale, I can measure it. At
21 the closest point, about 240 feet.

1 Q 240 feet?
2 MR. STAHL: That is from what to where?
3 THE WITNESS: The corner of the house to
4 the closest fueling islands.
5 MR. HOLZER: The corner of the existing
6 fuel islands.
7 Q Now, what is the distance from her house
8 to the proposed corner of the proposed fuel?
9 A It is 80 feet.
10 Q So, therefore, whatever attendant
11 circumstances are involved in when one goes into a gas
12 station and fills up, changes the oil, or looks at the
13 oil, bangs the hood, all of that kind of stuff, it is
14 now going to be 80 feet away from her house as opposed
15 to 240, is that correct?
16 A That's correct.
17 Q You do not believe that that has an impact
18 on her property?
19 A Visually, it is closer. To mitigate that,
20 there is additional landscaping and buffering.
21 Q What about the sound? Did you consider

1 sound when you rendered your opinion?
2 A 80 feet -- I can't testify as to what the
3 decibel level would be.
4 MR. STAHL: Let's hold off for a moment to
5 let this rather large group of people pass.
6 Q Your answer?
7 A My answer is, I can't testify as to exact
8 decibel levels. When I am filling my tank up with
9 gas, I can't picture that a lot of noise is being
10 made. That is just something I don't see.
11 Q Would you, as a witness, prefer to live
12 240 feet away from a gas station fueling pump or 80
13 feet away?
14 MR. HOFFMAN: Objection. I don't think
15 that is the issue.
16 MR. STAHL: What difference does it make
17 what he thinks as an individual?
18 MR. HOLZER: Because he is drawing the
19 conclusion there is no impact on my client's property.
20 MR. STAHL: He may be right or wrong in
21 that perception, but whether he would like to live

1 there or not is not probative of anything.
2 Q Let's turn, then, to the car wash
3 facility. How close will the car wash operation be to
4 the corner of her house?
5 A The closest they get is about 117 feet.
6 Q Now, how close will the end of the vehicle
7 that is in the stacking lane, if there is nine
8 vehicles waiting, how close will that be to the corner
9 of her house?
10 A That will be 41 feet.
11 Q 41 feet.
12 MS. WORRALL: I am sorry, could you repeat
13 your answer?
14 MR. HOLZER: 117 feet from the car wash to
15 her house, 41 feet from the ninth parking -- ninth
16 stacking space to her house.
17 MR. HOFFMAN: The crooked one.
18 Q The crooked one. Okay. Did you draw that
19 crooked one on there like that? Why did you put it
20 like that?
21 A Because I am a bad driver.

1 Q Why is it that way? What in heaven's
2 name -- how could that possibly function if you had
3 nine cars waiting for the car wash?
4 A It fits.
5 Q Is there a reason why you didn't stick it
6 out into this area that is defined by the dotted-black
7 lines?
8 A By the way, the dotted-black lines are
9 underground utilities, water and sewer connections.
10 Q Okay. So, isn't there a reason why you
11 didn't have this diagonal parking in a straight
12 fashion?
13 A I thought that is where it fit best.
14 Q Wouldn't it, in fact, block the driveway
15 if it was put out where it should be?
16 A Where I think it should be is where I drew
17 it, so --
18 Q Don't you, as an engineer, have a
19 responsibility to make this stuff practically work, as
20 well as, theoretical?
21 A I think this practically works.

1 Q The other witness indicated he would
2 represent or recommend, rather, striping of the
3 stacking spaces. Are you telling me you are going to
4 paint a spot like that?
5 MR. HOFFMAN: I object. That is not what
6 he said. He recommended striping the lanes. He never
7 said he recommended striping where the spaces are. He
8 said we will --
9 MR. STAHL: I am almost certain it was
10 double striping the lanes, is what he said.
11 MR. HOLZER: Then, I misunderstood.
12 THE WITNESS: There is a note on there to
13 that effect.
14 MR. HOFFMAN: Try and listen carefully to
15 the testimony.
16 MR. HOLZER: I will. At times, it is so
17 unbelievable, I just can't.
18 Q I am sorry I interrupted. Again, if we
19 are going to put dual lines up, why do we have that
20 ninth space at that angle?
21 A I think I have already answered it. I

1 think it fits the best there.

2 Q Did you need to do any storm water

3 management on this site?

4 A No, we received a Waiver of Storm Water

5 Management from Baltimore County.

6 Q And why was that?

7 A Because of the reduction in impervious

8 area.

9 Q Okay. Even with the history of this

10 drainage ditch along the property, they were aware of

11 that?

12 A They granted us the waiver. They are

13 aware of the issue, as well, I believe.

14 MR. HOLZER: Okay. I think you may be

15 seated. I am not sure I am going to ask you any more

16 questions.

17 Q So, the current status is that you,

18 according to your testimony, you have prepared or will

19 submit within the next week or so, a plat for the

20 County to be able to acquire an easement to this

21 ditch?

1 MR. HOFFMAN: I am going to object. I
2 thought the Chairman said we were going to move on.
3 The point had been made and we are moving on from the
4 subject.
5 MR. STAHL: He is just, I think,
6 summarizing what he said.
7 MR. HOLZER: Right. I just want to make
8 sure.
9 MR. STAHL: You have already testified.
10 You can say, yes or no.
11 A I think in my exact words, I said, in the
12 next week or two. We are preparing the plat. The
13 next week or two, we will be submitting it to Eric
14 Rockel.
15 Q Okay. This landscaping, do you have a
16 landscaping plan or is what is on the Board as the
17 Developer's exhibit, is that the extent of the
18 landscaping plan?
19 A That is what is developed at this point.
20 That is a conceptual landscaping plan that accompanied
21 the zoning request. It is not the final landscaping

1 plan hasn't been prepared yet. That will be done with
2 building permits.
3 Q Okay. On Developer's Exhibit 9-A, the
4 Back River Neck photo, I have circled for my own
5 benefit and I don't have the --
6 A Look at the -- this is a little sharper,
7 here.
8 MR. HOLZER: These haven't been marked.
9 MR. STAHL: Those are the ones we will
10 actually use.
11 MR. HOFFMAN: The photocopies are in.
12 Q On 9-A, could you identify the proximity
13 of Mrs. Colvin's house? Could you circle it for me?
14 A This is a glossy photo.
15 MR. HOFFMAN: Why don't you circle the
16 photocopy?
17 MR. STAHL: If you want, you could have
18 him circle the photocopy. Circle the photocopy.
19 Then, we can simply provide both in the record.
20 MR. HOFFMAN: Sure. Here is an extra
21 copy. I already have it.

1 MR. HOLZER: That was mine.

2 MR. HOFFMAN: Now, I don't have one.

3 MR. STAHL: Mr. Holzer, if you want to use

4 the one we have here as part of our files, that is

5 probably the best. Then, we will have it in the file.

6 MR. HOLZER: That is fine. I thought

7 these were marked as 9-A and so forth and I didn't see

8 these marked.

9 MR. STAHL: They are, but they are

10 duplicates.

11 Q On 9-A, could you just circle Miss

12 Colvin's house? Okay. On 9-B -- now, is it fair to

13 say that in looking at 9-A, the photograph of 9-A,

14 that between where you are standing to take this

15 picture and her house will be the car wash and the

16 stacking lanes, is that somewhat in the vicinity of

17 this existing old building?

18 A I think the car wash building -- it is a

19 little bit hard to tell from this direction.

20 Somewhere around in there is the stacking spaces. It

21 is probably going to curve around.

1 Q Halfway down her house, roughly?
2 A You are just getting to the back of her
3 house. I don't think they are going to be past where
4 that car is, probably the front part of the car. It
5 is a little hard to tell with the depth perception.
6 Q From 9-B, from that angle, the car wash
7 will be roughly where the existing old building will
8 be and the stacking lane is back towards that pole?
9 A Not exactly. The existing old building is
10 there. The car wash is a bit closer to Back River
11 Neck Road. So, it is going to be, maybe, out of site
12 on here, but it is going to be, like, I think, about
13 there.
14 MR. HOLZER: For the record, indicating
15 basically where that truck with the orange and yellow
16 mark is. Okay. Thank you.
17 Q Even though the Council rezoned the
18 property in the Comprehensive Rezonings, as an expert
19 in land use, it is your opinion that the Special
20 Exception is still required in order to permit this
21 gas station and car wash, is that correct?

1 A Correct.

2 Q So, all of the standard criteria that

3 would normally be required under 502.1 would be

4 applicable, and the standard law as it relates to

5 granting of Special Exceptions would be applicable, is

6 that correct?

7 A Right. The second thing we did was to go

8 through those requirements.

9 MR. HOLZER: Okay. I think that is all.

10 MR. STAHL: Redirect?

11 REDIRECT EXAMINATION

12 BY MR. HOFFMAN:

13 Q Mr. Brader, there are setbacks required

14 for full-service stations for the fuel pumps, and

15 structures like canopies, and car washes, are there

16 not?

17 A Yes.

18 Q Don't those setbacks also relate to

19 residential zone boundaries?

20 A There are setbacks for the principal

21 structures, fuel service stations, there are setbacks

1 for canopies from right-of-way lines, and fuel pumps
2 from right-of-way lines. I am not sure if there is a
3 landscaping setback from residential uses that is
4 greater than from commercial uses. It is a 15-foot
5 Landscape Transition Area is required adjacent to it.
6 Q That is only applicable for the fuel
7 service stations?
8 A That I am aware of.
9 Q Your Site Plan that has been introduced as
10 Exhibit 1-A and B, does it meet all of the
11 requirements for setback?
12 A Yes.
13 Q Doesn't it, in fact, exceed the
14 requirements for setbacks, in most instances?
15 A Yes. The distance from the curb over here
16 to the property line is -- we have the minimum of a
17 15-foot line shown. Where the trees are is additional
18 area above the 15-foot. That scales 30 feet. So,
19 there is a 30-foot area where there would only be a
20 15-foot area required.
21 Q Is there a setback -- with regard to the

1 other setbacks for canopies or the fuel pumps, do you
2 exceed -- meet or exceed -- I shouldn't say you -- do
3 you exceed those requirements, as well?
4 A The canopy setback is 15-foot to
5 right-of-way lines. We are 47 and 63 feet. So, yes,
6 that would exceed it.
7 Q The existing paving where cars currently
8 can travel today and the existing building, those are
9 all closer to the existing home than the proposed fuel
10 service pumps and car wash, are they not?
11 A Correct.
12 Q So, isn't it a fact, then, that under the
13 proposal, there will be a greater distance to any of
14 these elements than what is there today?
15 A That is correct.
16 Q Do you know of any restriction on this
17 property owner from utilizing the BL-AS Zone for a
18 fast food restaurant with a drive-thru, a bank with a
19 drive-thru, any of those uses permitted by right, do
20 you know of any restriction on those uses?
21 MR. HOLZER: Objection. It is not

1 relevant. It is not the project.

2 MR. STAHL: Well, he is a planner.

3 MR. HOLZER: So what? So, it is

4 irrelevant. It is irrelevant whether --

5 MR. STAHL: I will let him answer the one

6 question. We are not going to get into it in any

7 great detail. If based on this he thinks --

8 MR. HOLZER: It is irrelevant whether they

9 want to put a bank or a McDonald's here.

10 MR. HOFFMAN: I will ask it a different

11 way.

12 Q Couldn't the existing building be used for

13 a Taco Bell with a drive-thru as a matter of right

14 under existing zoning, under existing conditions?

15 A Yes.

16 Q Mr. Brader, it is not unusual, is it, to

17 have distances that you testified to between the

18 canopy and the fuel service islands and a residential

19 structure, is it? The distance is 84 feet. That is

20 not unusual?

21 MR. HOLZER: Objection.

1 MR. HOFFMAN: Why? Excuse me.
2 MR. HOLZER: My objection is whether or
3 not it is unusual or not is irrelevant in this case.
4 It is what it is, and what are we going to claim is
5 you usual, what Exxon has, what BP has someplace. It
6 is irrelevant whether or not what is usual.
7 MR. HOFFMAN: Well, I guess I
8 misunderstood. The reason why I am asking is I
9 thought Mr. -- the burden of proof is actually on the
10 Appellants. They have to show that there is something
11 unique about the site, unusual about the site that
12 makes the impact worse. I thought that is where Mr.
13 Holzer was going. If he is saying that is not a
14 relevant discussion, I am perfectly happy to end the
15 discussion there.
16 MR. HOLZER: Let him end the discussion
17 there. I don't believe that that is the right
18 standard of law that he just quoted, and it is our
19 burden, but, nevertheless --
20 MR. STAHL: Why do I get a feeling in the
21 memo, everybody will tell us about Charles versus

1 Pritz?

2 MR. HOFFMAN: Then, I am going to ask the

3 question again and ask the Chairman to rule on it.

4 Q It is not unusual to have the type of

5 distance between fuel service operation, and a car

6 wash, and the residential use on this site?

7 MR. HOLZER: Objection.

8 MR. STAHL: I will overrule and let him

9 answer.

10 A We have worked on other sites with similar

11 dimensions.

12 Q Are you familiar with the Exxon station at

13 corner of York and Bosley, right at the bottom of the

14 hill?

15 A Yes.

16 Q Aren't the town houses -- the second floor

17 of the town houses overlooking the Exxon station?

18 A Yes.

19 Q Isn't there a Crown station farther down

20 the road that had a car wash -- I am not sure it is

21 still there -- that has a car wash in the back, don't

1 the town houses back right up to the car wash?
2 MR. HOLZER: Objection.
3 MR. STAHL: Again, we don't know the
4 specifics of that property or any of the process going
5 into that.
6 Q Isn't the nature of the commercial zoning
7 in Baltimore County to be linearly set along
8 commercial corridors with residential uses and
9 residential zoning immediately behind those commercial
10 uses?
11 A Yes.
12 MR. HOLZER: Objection.
13 MR. STAHL: It is kind of a -- I am going
14 to overrule the objection just because it is such a
15 broad question and such a broad answer. I don't know
16 that it has much impact.
17 MR. HOFFMAN: If you don't think it has
18 much impact, I will withdraw the question.
19 MR. STAHL: I don't think it has much
20 impact.
21 MR. HOLZER: By that definition, you

1 should sustain the objection.
2 MR. HOFFMAN: It was just such a weak
3 question, we should let it go, was that basically the
4 ruling?
5 MR. HOLZER: I think that is what it was.
6 MR. HOFFMAN: Okay. That was it.
7 MR. HOLZER: I have no further questions.
8 MR. STAHL: Before we go any further, do
9 you have a question?
10 MS. WORRALL: These stacking spaces,
11 Mr. Brader, still bother me. Don't go away.
12 THE WITNESS: If I had to point out
13 something to you, I was going to walk over to you.
14 MS. WORRALL: I am sorry, I thought you
15 were disappearing. This, we referred to as the
16 crooked stacking space, there is a space here that
17 talks about the size of the spaces. I believe that
18 stands for typical stacked space?
19 THE WITNESS: Right, 8 1/2 by 20 feet
20 long.
21 MS. WORRALL: Could this crooked one fit

1 behind that?

2 THE WITNESS: It could. I liked it better

3 there. It gave more room for people to travel between

4 the gas pump and the stacking spaces. It would fit

5 there, as well. I like it better where I have it

6 drawn.

7 MS. WORRALL: But it would fit in another

8 space?

9 THE WITNESS: Yes.

10 MS. WORRALL: That isn't the only place

11 you could have drawn it?

12 THE WITNESS: Right.

13 MS. WORRALL: Because that is the

14 requirement, 9.

15 MR. STAHL: Did that generate --

16 MR. HOLZER: Yes.

17 MR. HOFFMAN: I don't know who gets to go

18 first.

19 MR. HOLZER: You can go first.

20 MR. HOFFMAN: I am kidding you. I don't

21 think I have anything to ask him.

1 MR. STAHL: Well, let Mr. Holzer go first.
2 MR. HOFFMAN: I was trying desperately to
3 think of a good question. I couldn't think of any.
4 RECROSS EXAMINATION
5 BY MR. HOLZER:
6 Q There was previously a traffic expert that
7 testified for your client, correct?
8 A Yes.
9 Q He testified the traffic flow internally
10 is satisfactory based upon this alignment of stacking
11 spaces and the location of the pumps, correct?
12 A Yes.
13 Q Now, if you were to take this crooked
14 stacking space and stick it out in a parallel way to
15 the second line, would that not interfere with the
16 circular traffic flow for people pulling in and out of
17 these pumps?
18 A It changes the flow. The space would fit
19 there. What it does, it is going to reduce that
20 dimension down from 22 down to somewhere around
21 16 feet, which still works. I like it better at 22,

1 which is why I drew it that way.

2 Q So, the reality is, there is a reason why

3 you put that in crookedly, and that is because it

4 reduced the space between the stacking space and the

5 corner of the --

6 A The cars waiting to fuel there.

7 Q -- the cars waiting to fuel there? Which

8 means that it could produce congestion in violation of

9 Section 502.1, or, at least, it would have an impact

10 on the internal congestion, which is one of the

11 criteria of 502.1, which you testified to.

12 MR. HOFFMAN: I am going to object. That

13 is argument. He testified already that it works and

14 it is fine.

15 MR. STAHL: But he is asking him,

16 hypothetically, if it moved, as an expert, might it

17 cause a difficulty if it were moved to another

18 location.

19 MR. HOLZER: That was the point.

20 THE WITNESS: I didn't get an exact

21 question out of that. Could you rephrase it?

1 Q The question is that you put this stacking
2 space in this unusual posture so as to avoid having it
3 stick into a circulation area for the pumps, correct?
4 A No.
5 Q Then, why did you put it there, because
6 you just like the way it looks on this plan?
7 A I will explain it, I guess, in detail.
8 Again, basically, what I said, the stacking space can
9 fit there. There is still room for cars to go back
10 and forth without any chance of congestion. When I
11 look at a site plan --
12 MR. HOFFMAN: When you say, "Can fit
13 there," for the record, you have to be clear.
14 MR. STAHL: Why don't you stand around the
15 other way, first of all, so we can see.
16 THE WITNESS: I am sorry. You can take
17 this space, right here, at an angle, take it and put
18 it right there behind the space that has the
19 dimensions on it. It will be right there. What that
20 does is, it takes this 22-foot dimension and reduces
21 it down to 16, which is still adequate for cars to go

1 past. My job in doing a site plan is to make it work
2 the best that it can, not the minimal that it can.
3 So, in my opinion, I would rather have the stacking
4 space there, where there is more room for cars to get
5 by than less room. Both still works, but I would
6 rather have it work better or work the best.
7 Q (By Mr. Holzer:) But, sir, the expert,
8 the traffic expert said -- and I am corrected, I stand
9 corrected -- he didn't have the spaces designated, but
10 he had parallel lines to set forth the stacking drive
11 or area, and if you do that, there is no way that you
12 are going to draw that in that fashion, you are going
13 to draw parallel lines down this way to indicate where
14 the cars should line up to go into the car wash,
15 correct?
16 A The lines will be drawn where we tell them
17 to be drawn.
18 Q Let me ask you another way: Assuming this
19 is built and I drive in off of Middleborough Road, I
20 am not going to know that the ninth parking --
21 stacking space is at this crooked angle, am I?

1 A We can design it accordingly. The bottom
2 line is, I think it works either way. I just drew it
3 the best way I think it works.
4 MR. HOLZER: I have no further questions.
5 MR. HOFFMAN: I have to go look at the
6 crooked space.
7 THE WITNESS: I doubt very seriously --
8 there is no question.
9 REDIRECT EXAMINATION
10 BY MR. HOFFMAN:
11 Q Mr. Brader, if I ask you to, could you
12 draw the stacking space in a red color turned parallel
13 and behind the one that is labeled, "Typical stack
14 space 8.5 times 20"?
15 A Certainly.
16 MR. HOLZER: I am going to object not to
17 him doing that, that is fine, but the previous traffic
18 expert who testified, testified as to the internal
19 flow, and, in his opinion, based on this plan, it was
20 satisfactory, not based upon some amended plan.
21 MR. STAHL: Well, but he didn't say this

1 was the only way. He said based upon what he had
2 there, it was okay.
3 MR. HOFFMAN: He did testify that that
4 space could be turned. He did testify to that. He
5 did testify that the space could be turned.
6 MR. STAHL: Rather than have him make
7 comments --
8 MR. HOFFMAN: I am just saying what is in
9 the record. He did testify that that space that is on
10 an angle could be moved so that it was directly behind
11 and parallel to the landscaping area behind the last
12 stacking space, and he said circulation would be fine.
13 To be perfectly honest with the Board, so everybody
14 remembers, I think the difference of opinion was
15 Mr. Brader is saying his way is better. I think
16 Mr. Schmid said his way is better.
17 MR. STAHL: Both are satisfactory under
18 the law.
19 MR. HOFFMAN: Yes. That is -- as I recall
20 the testimony, that was the contradiction. One said
21 his way is better; one said the other way is better.

1 Q Could you draw in that space?

2 A Let me find a red pen.

3 Q You can use a blue pen. It doesn't have

4 to be in red. Blue will show up fine.

5 MR. HOFFMAN: I am not asking him to draw.

6 I don't have another question for him. I am only

7 asking him to draw it on there so that everyone can

8 see the difference. I am not proposing to amend the

9 plan. I am just trying to make it clear what the

10 testimony was.

11 MR. HOLZER: So, for purposes of the

12 record, you are not amending the plan?

13 MR. STAHL: No. He is showing where the

14 alternative spot would be --

15 MR. HOLZER: Got you.

16 MR. STAHL: -- which is the spot that the

17 traffic --

18 MR. HOLZER: I understand.

19 MR. HOFFMAN: Then, I would have to choose

20 one witness and I am not sure which witness to choose.

21 MR. HOLZER: We will leave that up to the

1 court, I hope.

2 THE WITNESS: Can you see? Is it clear?

3 MR. STAHL: Why don't we do this? Why

4 don't you connect it with something, with some

5 explanation so we know what it is.

6 MR. HOFFMAN: How about just put an X.

7 The record will reflect that the X is --

8 MR. STAHL: Mr. Hoffman?

9 MR. HOFFMAN: That was it.

10 MR. STAHL: Okay. Anything else,

11 Mr. Holzer?

12 MR. HOLZER: No.

13 MR. STAHL: Anything from the Board?

14 MR. HOFFMAN: That would be the

15 Petitioner's case at this time.

16 MR. STAHL: Okay. Mr. Holzer?

17 MR. HOLZER: Yes. Miss Colvin?

18 Whereupon:

19 EUGENIA M. COLVIN,

20 was called on for examination by counsel, and after

21 being duly sworn according to law, was examined and

1 testified as follows

2 MR. STAHL: Ma'am, if you would, for the

3 record, your full name and address?

4 THE WITNESS: My full name, it is Eugenia,

5 E-u-g-e-n-i-a, M, for Mary, last name is Colvin,

6 C-o-l-v -- as in victory -- i-n.

7 MR. STAHL: And your address?

8 THE WITNESS: 1609 Middleborough Road.

9 DIRECT EXAMINATION

10 BY MR. HOLZER:

11 Q Miss Colvin, how long have you lived at

12 Middleborough Road?

13 A I moved there in 1970.

14 Q Okay. You have lived in the house

15 adjacent to the subject site since that time?

16 A Absolutely.

17 Q For the record, instead of you having to

18 get up, it is marked, "Existing house," which is north

19 of the subject site, is that correct?

20 A That's correct. It is the only house

21 there.

1 Q Okay. Now, I am going to ask you a little
2 bit about some history and I want you to go through
3 it, but the Board has heard some of it, so we will try
4 to make it quick. When did you first have problems
5 with this, quote, ditch? When I am referring to the
6 ditch, it has been the one that everybody has talked
7 about between your property and on the property of the
8 Royal Farms Store running down from Middleborough
9 Road, and, then, down towards Back River Neck Roads?
10 When did you first start having problems and what type
11 of problems did you have?
12 A When we purchased the house from my aunt
13 and uncle, because it was in the family before the
14 Farm Store was bought, it was in the family. I
15 purchased it in 1970 because they were killed in an
16 automobile accident. When we moved in there, the
17 ditch was in very bad shape. The Farm Store had
18 already been there. They had moved in there after my
19 aunt had bought it and in between when I took it over.
20 I called Baltimore County. They came down. They
21 completely renovated the ditch at the time, and it was

1 completely filled with rats. I had exterminators in,
2 his it completely cleaned out. I, more or less, took
3 charge and maintained that ditch. Every year, I would
4 call the County and they came down.
5 Q Was it on your property?
6 A The ditch? Absolutely not. It has been
7 determined my property line is marked and it was on
8 the other side. But, at that time, the County didn't
9 question whose property it was on. They had taken
10 care of it. Then, come '88, the County no longer said
11 they owned it. They informed me that whosever
12 property line that ditch was in would have to maintain
13 it, and they came down to my house, and I showed them
14 that my property line was, in fact, marked, and they
15 looked at it and said, "It belongs to the Farm Stores,
16 then."
17 Q Okay. Now, what is the problem? What
18 problem does the ditch cause you, and do you have any
19 examples or pictures of that?
20 A I have loads of pictures from over the
21 years. The ditch, to explain what is happening with

1 the ditch, this ditch was revamped from its original
2 way that it ran that it goes in back of the Farm
3 Store. It used to go straight. When the Farm Stores
4 came in, they put a restaurant in back and took it
5 around.
6 Q So, the Royal Farms Store, at the time
7 they moved in, they changed the location of the ditch
8 from going straight to curving on their property?
9 A It wasn't them that changed it as much as
10 it ended up by being changed behind them when the
11 restaurant came into the back of us.
12 MR. STAHL: What years are we talking
13 about?
14 Q What year are we talking about?
15 A We are talking about -- my husband passed
16 away in '76. It had to be in that vicinity. I don't
17 have the exact year. It was in the vicinity of '76
18 when the ditch was then changed.
19 MR. STAHL: Who changed it in 1976?
20 THE WITNESS: Baltimore County.
21 MR. STAHL: Because you said, in '88, the

1 County told you --

2 THE WITNESS: That they no longer owned

3 the ditch.

4 MR. STAHL: So, some 12 years earlier.

5 MR. HOLZER: So, earlier, the County

6 acknowledged, according to her testimony, I gather,

7 that they were responsible for cleaning it out.

8 MR. STAHL: Right. In 1976, whatever

9 change occurred was done was done by the County?

10 THE WITNESS: Or the restaurant, which was

11 a Gino's or a Roy Rogers. I am not sure at this

12 point. It was one of those two that originally -- it

13 used to be like an old building back there.

14 Q Is that on the Royal Farms' property?

15 A That is directly behind the Royal Farms'

16 old building and my property.

17 Q It used to be not on Royal Farms'

18 property, but behind Royal Farms' property?

19 A Actually, it ended between me and the

20 Royal Farms at one time. It went to a drain down

21 there, which they took out when they put the

1 restaurant in.

2 Q All right. Now, what problems has this

3 ditch caused you in the past, over the years?

4 A Okay. Because of the ditch taking a

5 90-degree angle behind their old store, which doesn't

6 leave much room for any equipment -- in fact, I was

7 told by Baltimore County there is no way they can get

8 equipment back there because the corner of the store

9 is so close to the ditch, they actually tumbled one of

10 the big equipment in there one time. It takes a

11 90-degree angle and goes down behind the old Farm

12 Store and down into the main drain. Because it wasn't

13 maintained from 1988 to 1994, it was not touched at

14 all, it overgrew, it has all of the papers and all

15 from the Farm Store in there, and blowing in, amongst

16 other things. It overflowed into my yard because it

17 runs directly alongside of my house, the full length

18 of my property. It runs from the front of my house

19 down to the very end of my property. It overflowed.

20 It washed out a hole underneath of my foundation. I

21 had to go out and have cement brought in and re-do the

1 foundation. It washed off -- my oil tank -- my old
2 oil tank was sitting on a cinder block. It washed
3 that completely off. I had a new oil tank put in. It
4 flooded down into the yard and it backed into my
5 basement. It ruined a washer, dryer, hot water
6 heater. At that point -- and like I said, that was
7 back in 1994, I think it was, I became desperate to
8 have something done because even if it rained a little
9 bit, it got to the point if it rained a little bit, it
10 would flood. You could see it come right over the
11 ditch, over the top of the property line, right on
12 straight down beside my house. I could look out the
13 side of my window from the top floor and it looked
14 like I had a river around my house. That is how bad
15 it was. It was not able to take the water. It gets
16 down to a 90-degree angle and it can't go anywhere.
17 Q Now, let's get to 1994. Was there a
18 time -- do you recall me showing a newspaper article
19 to Mr. Brader, there was a meeting --
20 A Right.
21 Q -- that you had with property owners from

1 Royal Farms and their representatives and so forth.
2 What was the net impact of that?
3 A Okay. Leading up to that, what had
4 happened, like I said, 1994, Baltimore County came out
5 and checked and said, the Farm Store has the
6 responsibility of the ditch. I contacted Baltimore
7 County again and they -- and I have a recorded
8 message, and they state that they will only maintain
9 10 feet of it at the beginning, and the rest of it was
10 the Farm Store's. I contacted -- in July of '94, I
11 contacted a Mr. Swank with Baltimore County. He
12 informed me that Porter Brothers Contractors was hired
13 by the Royal Farms to clean it; however, it takes a
14 year for a permit. Nothing was done.
15 MR. HOFFMAN: Mr. Chairman, I understand
16 that a lot of hearsay is fine. At some point -- we
17 tried to put in some written evidence to indicate what
18 our position is. I would like to be in a position --
19 I have now just heard an allegation that someone at
20 Baltimore County was told by someone at Royal Farms
21 Store that they had gotten a permit.

1 MR. STAHL: Let me see if I can deal with
2 this, ma'am. We understand that you want to relate to
3 us the history.
4 THE WITNESS: Right.
5 MR. STAHL: You have to understand that in
6 order for counsel to be able to react, cross-examine,
7 do anything with the testimony, you have to testify to
8 what you have seen, to what you have heard yourself.
9 You can't say what other people -- that is called
10 hearsay.
11 THE WITNESS: Okay. I understand.
12 MR. STAHL: You can't say what other
13 people were told by other people, who said something
14 to other people.
15 MR. HOFFMAN: I hate to -- may I just say
16 one thing? I really was only objecting when it got to
17 the point that it was two or three people removed, and
18 there was an allegation that my client had said to
19 somebody --
20 MR. STAHL: But, frankly, I can't say
21 anything unless somebody objects.

1 MR. HOFFMAN: It is just for that purpose
2 I am not trying to cut off Mrs. Colvin from saying --
3 MR. STAHL: I understand. I would rather
4 have it as clean as possible.
5 MR. HOFFMAN: I will try to be careful if
6 I object again it is something that I think is, at
7 least, two or three steps.
8 Q Mrs. Colvin, based on your conversations
9 with the County, did you have reason to believe that
10 Royal Farms Store was supposed to be or was going to
11 be taking care of this problem back in 1994?
12 A That was my understanding.
13 Q Now, in 1995 or thereabouts, Royal Farms
14 Store came in for the Special Exception for the gas
15 station, is that correct?
16 A That is correct.
17 Q Did you attend that hearing?
18 A Yes, I did.
19 Q Mr. Hoffman was there, we know, is that
20 correct?
21 A That's correct.

1 Q And you raised, in 1995 or 1996, whatever
2 the date of that hearing was, you raised this concern
3 about the flooding and so forth, is that correct?
4 A That's correct. That was on December the
5 7th, 1995, I attended a hearing here. Mr. Hoffman was
6 here. In fact, I have his autograph, here, on my
7 folder. It was in respect to -- they wanted to put a
8 new building in the middle of the lot, because they
9 had bought the property in front of them, which was an
10 old gas station. They wanted to put a new building in
11 the middle of the lot. I attended that meeting, that
12 hearing. Mr. Hoffman, himself, said to me, "Well, do
13 you object to us --
14 MR. STAHL: Again, Mr. Hoffman can't
15 testify --
16 THE WITNESS: Well, he was here.
17 MR. STAHL: Mr. Hoffman can't testify.
18 THE WITNESS: Oh, okay.
19 MR. STAHL: He was the attorney in the
20 case. If you say something he totally disagrees with
21 as to what he said, he can't do anything about that.

1 You can't tell us that.

2 MR. HOLZER: Let me just ask a question.

3 Q At that hearing, did you agree not to

4 object to the new Royal Farms' building, and so forth,

5 and the gas pumps that would be in what we call the

6 triangular area?

7 A Yes, I said this. I didn't -- I was

8 asked, "Do you object to it?" I said, "No, on this

9 condition." First of all, the gas pumps, I was told,

10 was going to be away from my house, in the middle

11 section. I said, "Fine." I said, "Now, the only

12 other thing that I have reason to bring up is, what

13 about the storm drain?" We went through the storm

14 drain just like we are doing now. I was told then,

15 before work began on the store, the storm drain would

16 be taken care of. It was never touched.

17 Q Okay. So, that was in the hearing in

18 December of '95?

19 MR. HOFFMAN: If that is what we are

20 talking about, I object to that statement. I can't go

21 back and find out what --

1 MR. STAHL: Are we supposed to accept that
2 for the truth of it?
3 MR. HOLZER: Mr. Hoffman can ask her
4 questions as to whether --
5 MR. HOFFMAN: I can ask her questions as
6 to what I asked her at the last hearing and what the
7 response was. How am I supposed to do that?
8 MR. STAHL: The whole issue of the
9 conversation she had with Mr. Hoffman, I simply can't
10 let her get into because --
11 MR. HOLZER: Well, then, strike it from
12 the record. Do what you are going to do, but please
13 let me go on and ask her the questions.
14 MR. STAHL: Then, why don't you ask
15 questions and get us through this as opposed to a
16 narrative.
17 MR. HOLZER: I did. She gave the answer
18 that Mr. Hoffman -- what he said to her as the terms
19 of granting the Special Exception.
20 MR. STAHL: I have explained to you,
21 ma'am, you can't tell us what you say Mr. Hoffman said

1 to you. You can tell us what your understandings were
2 as a result of the meetings, as a result of statements
3 said to you, but you can't attribute them. Okay?
4 THE WITNESS: Okay.
5 MR. HOFFMAN: For the record, I am going
6 to say, I never said what the witness said I said.
7 MR. STAHL: Not even an issue, not even an
8 issue. Go ahead.
9 MR. HOLZER: I take exception to the
10 ruling and the comment of Mr. Hoffman, for purposes of
11 the record.
12 MR. STAHL: Okay.
13 Q Now, ma'am, your understanding when you
14 attended the hearing in December of '95 was that the
15 gas pumps -- that you had no objection to the existing
16 Royal Farms or the new Royal Farms Store being
17 constructed and the gas pumps in the triangular area,
18 is that correct?
19 A That's correct.
20 Q Did you have any concern about the gas
21 pumps being closer to your house at that time?

1 A Yes, I did.
2 Q What did you say or express at the
3 hearing, if you recall?
4 MR. HOFFMAN: I am going to object. Does
5 it really -- we are going back and retrying the prior
6 case. I mean, aren't we here to discuss what her
7 feelings are about this proposal?
8 MR. STAHL: One second. Proffer quickly
9 for me what relevance to what is going on now, the
10 permission that was granted in '95 has.
11 MR. HOLZER: She did not -- this is the
12 proffer -- that she appeared at the hearing in '95,
13 she did not oppose the granting of a Special Exception
14 for a gas station at the time, as long as, the gas
15 pumps were away from her property, in the triangular
16 area of this site.
17 MR. STAHL: Right.
18 MR. HOLZER: She did not want gas pumps
19 any closer to her house than that. That was the basis
20 upon which she did not any further object. Now, this
21 case, the relevance connected to this case is, now,

1 they are asking for gas pumps that are within whatever
2 number of feet the witness previously testified to her
3 house as opposed to 240 feet away.
4 MR. STAHL: And she has testified to
5 exactly what you just told me.
6 MR. HOFFMAN: I know.
7 MR. STAHL: We now know that. Move on.
8 MR. HOLZER: That is the proffer.
9 MR. STAHL: Move on. She has already said
10 that. She said there were two conditions.
11 MR. HOLZER: I know. I think she just
12 said it.
13 MR. STAHL: And they would fix the things.
14 They put the pumps where they were supposed to and
15 they didn't fix the drainage ditch. Move on.
16 Q Now, Miss Colvin, from that point on, from
17 1996, did you continue to explain to, either, the
18 Royal Farms store or the County in regard to this
19 drainage area?
20 A Yes, I did. Again, I spoke to various
21 people.

1 Q Various people in the county. Don't tell
2 us what they said.
3 A That is what I was scared to tell you.
4 Q As a result of speaking with the people in
5 the County, what happened, if anything?
6 A Well, again, they say, you know, "We are
7 going to do it." Then, you never hear any more from
8 them.
9 Q So, the answer to my question is, nothing
10 happened?
11 A Absolutely nothing.
12 Q Okay. Now, do you recall attending the
13 hearing in this case before Commissioner Schmidt in
14 May of 2001?
15 A Yes.
16 Q Do you recall testifying in that case?
17 A Yes.
18 Q Do you recall raising the same issue in
19 that case?
20 A Yes.
21 Q Do you recall Mr. Schmidt postponed the

1 case and brought the County in for the second day to
2 ask them questions about resolving this problem?
3 A Correct.
4 Q Is the ditch today any different than it
5 was in May of 2001?
6 A Not a blade has been touched.
7 Q Okay. Now, do you still have flooding?
8 A Definitely.
9 Q Is the flooding caused, in your opinion,
10 by the water that is flowing out of the ditch that is
11 on the property and currently owned by Royal Farms
12 Store?
13 A Definitely. It is where all of the water
14 comes straight on down from there.
15 Q Now, that is the history about the ditch.
16 Let's talk about something else. I have got some
17 photos which you can use. Let me get to your
18 testimony in regard to this proposal. They are
19 requesting additional gas stations -- I am sorry --
20 additional gas pumps between the existing Royal Farms
21 Store and the back of the property. Do you understand

1 that?

2 A Right.

3 MR. STAHL: Can I stop you for a second?

4 We have had a note of a phone call she has to take.

5 Can we take two minutes?

6 MR. HOFFMAN: Sure.

7 MR. STAHL: Let's take five minutes.

8 (Recess taken -- 2:43 p.m.)

9 (After recess -- 2:52 p.m.)

10 MR. STAHL: My apologies.

11 Q (By Mr. Holzer:) Mrs. Colvin, now, let's

12 address the proposal to have gas pumps back here in

13 this location closest to your house, and, also, the

14 proposed car wash. Let's address the issue of noise.

15 Do you have any noise concerns in regard to, either,

16 the gas station operation or the car wash, and if you

17 do, please explain them.

18 A Well, definitely, I do. First of all,

19 where the car wash is concerned, you are going to have

20 a vacuum cleaner running. I have been around these

21 car washes. They are very loud. It sounds like a

1 little jet plane to me. How can you live next to
2 noises like that? And you have got the engines of the
3 cars running. What they propose, these cars are going
4 to be right outside my window of my house when they
5 come into the car wash. I am going to hear boom boxes
6 and noise besides the car wash noise. My house was
7 built many years before the Farm Store was there. It
8 is a very old house. It is only 10 feet away from the
9 end of my property. Then, you have 10 feet of storm
10 drain before their property begins. I am 20 feet
11 away. I can throw a stone and hit somebody's car with
12 no problem. It is that close. I am getting noise
13 now, but I can live with it, what I am getting now.
14 That is about my full tolerance.
15 Q What about the noise currently from the
16 gassing operations up here in the front, can you hear
17 that, and in relationship to what is going to be back
18 here, if this is approved?
19 A The front of the store is not too much of
20 a bother. There is a buffer there. You see,
21 understand how this store is laid out. It is laid out

1 on a triangle. My side of my house faces an angle at
2 that store. This -- it is like a wind tunnel against
3 my house where the sound will come across the back of
4 the lot there more so than it would the front because
5 the front is more buffered. I don't get as much noise
6 from the front as I do from the back when people are
7 going in and out and talking. That is where my noise
8 is coming from, the back of the building facing my
9 house. If those gas tanks are back by me or the car
10 wash is back my me, I am sure -- because I am getting
11 noise now from what is back there.
12 Q Currently, this area, they allow parking
13 and cars do park there. They are not gassing up, but
14 I guess they allow vehicles to park --
15 A Right, it is two ways into the store.
16 Q Okay. Can you hear vehicles that are back
17 in that area now when they park?
18 A Oh, definitely. I could tell them without
19 even looking because my window shades are all down on
20 that side because of the problem. I can tell you when
21 there is a delivery truck coming in. I can tell you

1 when it leaves.

2 Q In addition to noise problems, do you have

3 any concern about the lights, about the proposed

4 lights in your house?

5 A Can I say I have objected about the lights

6 before? There is two big spotlights on the old

7 building. The one is very high in the air and it is

8 aimed down towards my house. The other light is on

9 the very side of the building, facing my house.

10 MR. STAHL: When you say old building,

11 which building, the existing Farm Store?

12 THE WITNESS: There is the old building

13 that they use for storage now.

14 Q You are referring to what is marked, "X

15 Vacant Building"?

16 A Where they say the car wash is going to be

17 further down.

18 Q You are talking about this as the old

19 building, here?

20 A Right. That is what I call the old

21 building.

1 Q That is to be demolished.
2 A They have two big lights, like I say, on
3 that. The one is aimed directly in my window. The
4 other is aimed towards the top of my house. Then,
5 there is lights coming from the main store, which is a
6 little further away from me, thank God, that are also
7 aimed towards my house. It is like daylight in my
8 house if I don't keep the shades drawn, but I have
9 learned to live with that, but you can only take so
10 much.
11 Q You have heard the testimony that the --
12 all of the lights on this area, back here, where the
13 new gas pumps will be are supposed to be shielded.
14 Does that give you any satisfaction?
15 A They are definitely going to be in my -- I
16 mean, I am that close. I don't care how they are
17 shielding. I am getting it from the old store, the
18 new store. I am sure the new store is far enough away
19 from me and I am still getting it from them.
20 Q As far as the stacking spaces, do you have
21 any concern about -- are we finished with lighting at

1 this point?

2 A I think so.

3 Q What about any fumes or exhaust from the

4 automobiles, are you concerned about that at all

5 either in relationship to the gas pumps and/or the car

6 wash?

7 A Definitely. Like I just said, for some

8 unknown reason -- and I am not a meteorologist -- the

9 wind seems to blow constantly on that side the house,

10 which carries the odors right on in. I have had quite

11 a bit of problems this past year with fumes and all,

12 as a matter of fact.

13 Q What caused those fumes, if you know?

14 A Oh, I know.

15 Q What caused them?

16 A A couple of years ago, it started out that

17 they were allowing tractor trailers, and I am saying

18 they were allowed to park there because I talked to

19 the tractor trailer men. They said the Farm Store

20 gave them permission to park there.

21 MR. HOFFMAN: Objection.

1 MR. STAHL: Sustained.

2 A Anyhow, I do have pictures of the tractor

3 trailers with the dates and all.

4 MR. STAHL: Okay.

5 Q How long has the parking of tractor

6 trailers been going on?

7 A It was going on for two years until,

8 finally, this past summer, I couldn't take it anymore.

9 What had happened, like I said -- and I have a picture

10 here, sir.

11 Q We will get to the pictures. You just

12 explain what happened.

13 A I wanted to explain how close my property

14 is to this property. The tractor trailers would pull

15 up and stay over there for days at a time. Some of

16 them would sleep in the campers. They run the

17 generators or the diesel fuel to keep hot, or to keep

18 cool, whatever the time of year was, and that would

19 come right into the house, and the noise was

20 unbearable. It started little, and, then, all of a

21 sudden this past year, it pyramided. It was three

1 tractor trailers at a time over there, mostly the
2 front part, whichever that is called.
3 Q The engine as opposed to the trailer?
4 A Yes.
5 Q Not the trailer.
6 A Once in awhile, they brought the whole
7 thing over. These would be out there for two and
8 three days at a time.
9 Q Would they be running the whole time?
10 MR. HOFFMAN: Mr. Chairman, I am going to
11 object. I don't know what the relevance -- our
12 proposal is to make changes to the site. I can't
13 produce any witnesses to say whether --
14 MR. STAHL: There was testimony from the
15 group from the District Leader that they had a problem
16 of trucks parking and that she had --
17 MR. HOFFMAN: That was over my objection
18 when the correction notice was introduced. That was
19 on cross-examination.
20 MR. STAHL: Right, but she did testify
21 that she had dealt with the problem, that there had

1 been a problem with some prior managers, and that she
2 had dealt with it.
3 MR. HOLZER: That's right.
4 MR. STAHL: That she had resolved it.
5 MR. HOLZER: The relevance is --
6 MR. STAHL: It wasn't the policy of the
7 company to allow that to happen.
8 Q The relevance of it related to this is, if
9 those vehicles were parked there, could you tell us
10 where those vehicles were parked, those trucks? I
11 know you have pictures. Just for now, just tell us.
12 A Like I said, the side of my house is
13 facing the Farm Store lot. I have a kitchen window
14 there. Those trucks would park between -- right there
15 at my kitchen window, sometimes all of the way up to
16 the front window.
17 Q Now, would that be, approximately, where
18 the stacking, nine stacking spaces are for the car
19 wash?
20 A Correct, that is approximately correct.
21 Q As a result, you were able to smell

1 fumes --

2 A Absolutely.

3 Q -- from vehicles parked there in your

4 house, is that correct?

5 MR. STAHL: From trucks.

6 Q From trucks?

7 A They had cars that would come in in the

8 middle of the night and would be with these trucks,

9 and they would be running in and out of the trucks.

10 You could smell both diesel and gasoline then. The

11 carbon monoxide. It just sucks right into my house on

12 that side because I use an air conditioner in the

13 summer. I use window fans in the summer. Of course,

14 like I said, even in the winter, you can still smell

15 it. It sucks right into the house.

16 Q Okay. So, are you concerned in regard to

17 the proposed car wash and the extension of the gas

18 pumps as it relates to fumes from vehicles that might

19 be utilizing those two facilities?

20 A Absolutely. There are school buses right

21 now that back in there in the morning, and they run

1 their motors, and I can smell them.

2 Q Do you have any other concerns before I

3 get to some of the pictures? Then, you can identify

4 those and show the Board what we are referring to. Do

5 you have any concerns about anything else, noise,

6 lights?

7 MR. STAHL: That you haven't already told

8 us.

9 Q That you haven't told us about. Fumes?

10 A Well, the trash is unbelievable. It comes

11 flying over into the yard. You have to be cleaning it

12 up all of the time. It is -- it becomes -- I have

13 blue bags up in my trees. They are flying in my tree.

14 They don't seem to keep the area cleaned up over

15 there. It is constant overflowing of the trash cans.

16 I have never, honest to God, seen them out there even

17 sweeping or picking up lately. I don't mean just

18 winter, I mean in the course of the year.

19 Q Back in November, did you make a complaint

20 in regard to the trucks that were parking on the Royal

21 Farms' property?

1 A Yes, and I also called Royal Farms and
2 informed them before I called Baltimore County, and
3 they didn't do a thing about it.
4 Q So, do you recall who you called at Royal
5 Farms to tell them about the trucks?
6 A I called the main office and a young lady
7 answered, and she said to me -- can I repeat this,
8 because she told me this?
9 Q You can this time, because it is --
10 A She says to me --
11 MR. HOFFMAN: I am going to object again
12 because --
13 MR. HOLZER: It is the exception to the
14 hearsay rule. It is them.
15 A All I know, she took the message.
16 MR. HOFFMAN: It is the whole notion the
17 violation notice is -- part the correction notice has
18 somehow crept into this case.
19 MR. STAHL: I was going to say, if the
20 company has already testified it is not their policy,
21 and that they have already done something relative to

1 a manager who allowed trucks to be there, that means
2 they acknowledged that there was a truck problem, and
3 that there were trucks there that were parking, and
4 that they have taken steps to deal with, and will
5 continue to deal with. No one is contesting that.
6 Q Ma'am, let me ask a question, then, based
7 on your statement. After you made the complaint and
8 after Royal Farms was notified, to the best of your
9 knowledge, did they still continue to allow trucks to
10 park there?
11 A Yes, sir, at least four or five.
12 Q For how long a period of time?
13 A Over a period of, sometimes, two or three
14 days.
15 Q How long did that go on?
16 MR. STAHL: I am sorry. When did this
17 take place?
18 THE WITNESS: Okay. I complained to
19 Baltimore County, approximately, in September or
20 October.
21 MR. STAHL: Of --

1 THE WITNESS: This past year.
2 MR. STAHL: 2002.
3 THE WITNESS: Again, I am only telling you
4 what they have here.
5 Q You have a document there that we referred
6 to previously?
7 A Right. They sent me this stating they
8 issued this document to them.
9 MR. HOLZER: This was the document that I
10 had previously referred to as a correction notice
11 dated November 21st, 2002, which I think Mr. Hoffman
12 has seen?
13 MR. HOFFMAN: Yes.
14 MR. HOLZER: I would like to offer that as
15 a Protestants' Exhibit. It is probably --
16 MR. HOFFMAN: I objected before. I think
17 that part was actually sustained. I didn't think that
18 was going to come in.
19 MR. STAHL: Well, the discussion that we
20 sustained was that it was not a violation notice. He
21 was referring to it as a violation notice initially.

1 You looked at it and said, no, it is not a violation
2 notice, it was simply a correction, because you
3 mentioned you hadn't been to a hearing about it. We
4 did say that -- we did correct him and correct the
5 record that it was not a violation notice, it was just
6 a correction notice. That is as far as we got.
7 MR. HOFFMAN: Okay. Then, I am going to
8 object. When you get a Correction Notice from
9 Baltimore County at this time doesn't -- it shouldn't
10 be predetermined that you are actually in violation.
11 The inspector comes out and --
12 MR. STAHL: Nobody said your client was.
13 MR. HOLZER: They admit it.
14 MR. STAHL: He is simply putting in a
15 correction notice to whatever relevance and probative
16 value that correction notice is.
17 MR. HOLZER: It confirms what your client
18 had testified to, that there was, in fact, trucks
19 parked there against company policy --
20 MR. STAHL: Which they resolved.
21 MR. HOLZER: -- as well as against County

1 policy. So, I would move that as Protestants' 2.
2 (Protestants' Exhibit No. 2 so marked for
3 identification.)
4 A You had asked me, sir, if there was more
5 trucks after that and when, correct?
6 Q Yes. I had asked you after you received a
7 copy of this notice from the County, did there
8 continue to be trucks parking there, and what
9 happened?
10 A After the initial, like I said, I talked
11 to the County and they sent me a copy. Well, that
12 copy, I didn't get until much later. After I talked
13 to them, there was another truck on 11/9. There was
14 another two trucks on 11/12. They stayed for a period
15 of two or three days, both of these trucks. There was
16 another truck December the 21st that stayed for a
17 couple of days, which I don't have a picture of
18 because it was rainy that day. There was another
19 truck on 12/25 that stayed for a couple of days and
20 the final truck was January the 19th of this year.
21 That was finally the final truck. I called the County

1 each and every one of these trucks was there.
2 Q Did an inspector come out each time?
3 A Yes, sir, a Mr. Rio with the Permits or
4 whatever department.
5 Q Zoning Enforcement Division?
6 A He came out. He saw me personally. He
7 said on the last --
8 MR. HOLZER: Objection. You just can't
9 say that. We don't want to get into an argument.
10 THE WITNESS: Okay.
11 Q Since January of this year, then, there
12 have been no further trucks parking there, to the best
13 of your knowledge?
14 A That's correct.
15 Q Now, you took a lot of time and effort to
16 make a number of photographs, take a number of
17 photographs. I would like to bring these up and let
18 you look at them. Some of them, the Board may have
19 already heard about. Let me do it just the same.
20 MR. HOLZER: These are the pictures of --
21 they are all dated and pictures of the ditch.

1 Q I show you a board -- now, did you take
2 all of these pictures, Miss Colvin?
3 A Yes, I did.
4 Q Did you make up this little board with
5 this writing on it that showed the relative location
6 of things as regards to the pictures?
7 A Uh-huh.
8 Q Is all of the writing in pen, is that your
9 writing in regard to what the picture was, and the
10 date and time it was taken?
11 A Yes.
12 Q So, these pictures on this first folder
13 are basically dated April 29 of 2002, in the morning,
14 and they basically -- let me shorten this -- they
15 basically reflect photographs that are
16 self-explanatory of the drainage ditch that we have
17 been referring to all day, is that correct?
18 A That's correct.
19 Q And do they accurately depict the scene as
20 you saw it on April 29th, 2002?
21 A That's correct.

1 MR. HOLZER: I would offer that as the
2 next Protestant's Exhibit.
3 MR. STAHL: No. 3.
4 MR. HOLZER: The Board can see the various
5 directions.
6 (Protestants' Exhibit No. 3 so marked for
7 identification.)
8 Q Now, you also have --
9 A Mr. Holzer, can I change the numbers --
10 Q No. I am let you do that.
11 MR. STAHL: Ma'am, just let him do his
12 thing.
13 MR. HOLZER: That is how I get my
14 enjoyment all afternoon.
15 MR. STAHL: Sorry. There are straight
16 lines that you should never give people.
17 Q I am going to show you what has been
18 marked as or what will be marked -- it is four
19 photographs and you have indicated the storm drain?
20 A That's correct.
21 Q You also indicated August 21st, 2002. Are

1 these pictures that show -- and they are No. 4 on
2 them. What do they show?
3 A First of all, they are 8/21/02 is the
4 first picture. Then, you notice the second picture is
5 dated the same, the third picture, but the last
6 picture is dated a couple of weeks later.
7 Q Why did you do that?
8 A I was trying to give them the benefit of
9 the doubt, that, maybe, I picked a bad day to take the
10 pictures, but these are behind those other pictures
11 that I already took.
12 Q They're taken from, basically, your
13 property line and they show, again, the ditch?
14 A Right.
15 Q As of that date, is that correct?
16 A That's correct.
17 MR. HOLZER: I offer that as No. 4.
18 (Protestants' Exhibit No. 4 so marked for
19 identification.)
20 Q Now, there is another four photos in which
21 they are marked storm drain September 5th, 2002. Two

1 on the right are September 5th of 2002. Two on the
2 left are August 21st, 2002. Could you explain what
3 these four photos reflect?
4 A Okay. This is the lot, the Farm Store Lot
5 adjacent to my home, on the side of my home. The
6 first two photos shows the parking lot that abuts up
7 against the storm drain next to my home. Then, on the
8 right-hand side is pictures of the old building, the
9 old Farm Store building, that area. That is all that
10 one side. If you put them together, that would be all
11 that one side. The only thing, the No. 2 picture on
12 the one side shows the new store, also.
13 MR. HOLZER: No. 5.
14 (Protestants' Exhibit No. 5 so marked for
15 identification.)
16 A Again, I did that two different times.
17 Q Okay. You have another four photos marked
18 storm drain March 4th, 2003. What do these four
19 photos -- these are obviously when there was snow on
20 the ground.
21 A I used the green to depict it is

1 up-to-date photos. These are of the storm drain and
2 they were just taken a few days ago. It shows you
3 even though it is winter and the under brush is all
4 dead, it is still debris.
5 Q It shows -- I mean is it also to show how
6 the storm drain is filled in and not carrying the
7 water?
8 A Right. Can I see what these numbers are?
9 Q No. 4.
10 A What I did, in the older pictures, I put
11 numbers to more or less correspond with the recent
12 pictures to show it is the same area. In other words,
13 this 4 would be those 4 on the white and the 4 on the
14 big board is the same. It would give you a general
15 idea it is coming from the same area.
16 MR. HOLZER: That would be number?
17 MS. ADAMS: No. 6.
18 MR. HOLZER: No. 6.
19 (Protestants' Exhibit No. 6 so marked for
20 identification.)
21 Q Now, I show you -- I didn't really realize

1 it -- that the white backing was the old pictures and
2 the green backing was the new one. Why didn't you
3 tell me that before?
4 A I tried to.
5 MR. HOLZER: I wish I had known that.
6 MR. STAHL: It is called prep time, Mr.
7 Holzer it is called prep time.
8 MR. HOLZER: I don't often have clients
9 that are that far ahead.
10 Q I show you what has been marked as -- what
11 will be marked, the white backing with four photos
12 dated August 21st, 2002 and September 5th, 2002. What
13 do they reflect?
14 A This is on the other side, towards Back
15 River Neck Road, where the garbage area is maintained.
16 The reason I took these pictures was, No. 1, the gates
17 are never closed to the garbage area. No. 2, no
18 matter when you walk past there -- and I have to go
19 over there to mail letters, sometimes -- this is what
20 you see, and it smells in the summer.
21 Q Now?

1 A Now, may I say about this picture?
2 Q You can tell the Board.
3 A On this picture --
4 Q Show them. They are the ones that are
5 important.
6 A You will see a Cloverland employee there.
7 When I walked up to take the picture of the debris
8 laying there, he came out and I thought, oh, he is
9 going to clean it up. Well, great, I won't have to
10 take the picture. The second picture is after he
11 left. He added to it, threw it on the ground, and not
12 into the dumpster. I have been trying to give them
13 the benefit of the doubt. It doesn't work.
14 MR. HOLZER: Okay. I would offer these
15 four on white backing as No. 7.
16 (Protestants' Exhibit No. 7 so marked for
17 identification.).
18 THE WITNESS: This is the most recent one,
19 the green.
20 MR. HOLZER: Now, I have learned.
21 Q I am going to this green folder which

1 contains 9 photos dated -- they are not dated, but
2 they have numbers, and they have snow on the ground.
3 Could you indicate what they are?
4 A These were taken the same as the other
5 greens as far as dates.
6 Q I am sorry, March 4th, '03.
7 A Again, I did the garbage area, which is
8 Marked 1, which will correspond with the garbage area
9 over there. As you see, even though it is winter --
10 by the way, when the summer pictures, were taken, we
11 were having a hundred degree weather. Now, we have
12 snow. We are still in the same situation of garbage
13 overflowing, the gates are not closed, it is never
14 maintained. The No. 2 pictures that I have numbered
15 is the old store. Again, if you compare it with the
16 one during the summer, you will see it is just as
17 overflowing garbage. The No. 3 is also the old store,
18 the front of it. It is two different areas there they
19 had doors. Like they told you they rented out part of
20 the stores. Then, they had the Farm Store. No. 3 was
21 where a beauty parlor was. It has garbage outside of

1 it. It is still there, as you will see in the old
2 pictures. You can compare the two photos. The No. 5
3 photo, I can see from my back window of my house, that
4 is the raw garbage, the back of garbage that is
5 throwed there right adjacent to the old store. It has
6 been there.
7 Q That is Photo No. 5?
8 A That is where the snow was over top of it.
9 It melted off. So, it has been there for some time.
10 MR. STAHL: Let me interrupt you for just
11 a second. You are talking about the dumpster, and
12 garbage, and the doors. Where on -- let me have you
13 use our copy or you can do it off of that -- where is
14 this located on that old big property? Mr. Holzer, if
15 you know? You can show this.
16 MR. HOLZER: No, I tell you it is shown on
17 the little pictures, 9-A and B, and the long skinny
18 ones.
19 MS. ADAMS: Oh, there it is.
20 MR. HOLZER: Thank you. I am showing
21 you --

1 THE WITNESS: All right, here it is, right
2 here. You see it? It is a gate open right there. As
3 a matter of fact. It is right here.
4 MR. HOLZER: For the record, the witness
5 is indicating on 9-A, on the far right-hand side.
6 THE WITNESS: It is brown in color. It is
7 like a little corral there. All of the way over to
8 your right hand.
9 MR. STAHL: These things?
10 THE WITNESS: That's it.
11 MR. STAHL: That is --
12 THE WITNESS: That is the garbage area.
13 MR. STAHL: That is the old building?
14 THE WITNESS: That is the old building.
15 MR. STAHL: Your property is further to
16 the right of that?
17 THE WITNESS: It is up to the end.
18 MR. STAHL: It is circled.
19 MR. HOLZER: You will see, for instance,
20 in Photograph No. 5, the garbage that is laying along
21 the side of the old building is the one facing her

1 home. If you look at Photograph No. 5, it would show
2 the material and garbage laying on her side of the old
3 building.
4 MS. WORRALL: So, if I understand this
5 correctly, the garbage area where it exists right now
6 is just about where the car wash is going to go?
7 THE WITNESS: That's correct.
8 MR. HOLZER: Yes.
9 MS. WORRALL: Where will the new garbage
10 area be?
11 MR. HOLZER: According to this, it says
12 existing dumpster, which is going to go. Well, it is
13 going to be right where the old new building was.
14 MR. HOFFMAN: Right, correct. The old new
15 building.
16 MR. STAHL: It is going to be that much
17 further away from her property line.
18 MR. HOLZER: Here, it is here. The
19 pictures are here.
20 MR. STAHL: It is here. It is going to
21 move over here.

1 MR. HOLZER: I am not necessarily sure it
2 is correct to say they are further away.
3 Q Let me ask you. I will do two of them
4 this time. We have a white backing with pictures of
5 the building dated August 21st, 2002, and, then, we
6 have the green one, with four pictures, dated
7 March 4th of 2000.
8 A This again, is on -- this is different
9 than that. This, again, is the old building. I was
10 showing it in the summertime, the parking lot around
11 it. It is full of debris and garbage. It has been
12 taken two different times, August the 21st, and I
13 waited a couple weeks, and went back. 9/5 they are
14 marked with the dates. Notice, it is not any better.
15 If anything, it is worse.
16 MR. HOLZER: Let me just offer this as the
17 next exhibit. I have lost track.
18 MR. STAHL: No. 8.
19 MS. ADAMS: Yes, 8.
20 (Protestants' Exhibit No. 8 so marked for
21 identification.)

1 Q Okay. This last one?
2 A This one, I did, I wanted to emphasize
3 just how close this whole thing is to me. This, I
4 took, and you will see my oil tank here. I stood
5 against my house and I took these pictures to show you
6 just how close all of this will be to me. This was
7 just taken. It is green.
8 Q You have here March 4th, 2002?
9 A Uh-huh.
10 Q Would you care to make that 2003?
11 A Oh, I think I had better. Sorry about
12 that.
13 Q I just happened to notice it.
14 A I am glad you saw that.
15 Q These were just taken this past March the
16 4th with the snow on the ground?
17 A That's correct.
18 Q They reflect you with your back to your
19 wall of your house, here, showing across to the Royal
20 Farms Store?
21 A Which still gives 10 feet, 10 feet. So it

1 is still that close, with all of that.
2 Q Now, is there anything that was said by
3 anyone during their testimony today at the Hearing
4 that you would care to respond to or is there any
5 additional issue or concern that you would like to
6 raise before I say, no further questions?
7 A The only -- well, one thing is -- I don't
8 want to go back to the truck thing. This thing about
9 the trucks were being parked there because the people
10 lived down in Cove Village is untrue. These were
11 out-of-town trucks. They had no business being there
12 other than they were staying overnight and they had
13 girls coming in and out all night. So, that had
14 nothing to do with it. The testimony said the
15 truckers lived in Cove Village. That is not true.
16 Q Is there anything else you would like to
17 comment on that was testified to earlier by any of the
18 people?
19 A Mr. Brader stated he wasn't sure he said
20 that about the ditch, about putting the little wall
21 up. Whether he said it or not, I took his advice, and

1 I built myself a little wall to try to cut down the
2 water. I have done everything I possibly can think
3 of. Can I make one statement?
4 Q Sure.
5 A In all of this, I can understand a
6 business wanting to be there and I don't doubt them
7 for that. The problem is they don't want to
8 compromise. They are -- you give them an inch and
9 they are taking a mile, just like when they moved the
10 store. I was willing to say fine, that is your
11 privilege. Then, now, they want to close in on me.
12 They don't act like they care. Just like these
13 trucks. It has just been a constant push, push, where
14 I am concerned, and I have a question. If they cannot
15 obey the laws about the trucks, what makes me think
16 they are going to obey the laws about when they are
17 going to close the car wash, when they are going to
18 live up to their understanding of how they are going
19 to obey the law when all of this is put in. That is a
20 worry to me, too.
21 Q Let me ask you this: Now that you have

1 raised the point: The hours of operation, as
2 expressed, if this special exception is granted, the
3 hours of operation, as expressed by Royal Farms,
4 Mr. Kemp, was he would like to be open 7 days a week,
5 24 hours a day. Now, the Zoning Commissioner allowed
6 them to be open 7 days a week, but limited the hours
7 from 8:00 a.m. until one half hour after dusk. What
8 is your feeling in regard to how long the gas station
9 should be open and how long the car wash should be
10 open? If you have a feeling?
11 A Well, I am hoping they are not open at
12 all, but as far as the dusk thing, who is going to
13 enforce this? There is no way -- like I said, there
14 is no way it is going to be enforced. That was
15 determined by that judge because he felt like he was
16 giving me something at that time from the way he said
17 it. I said, I can't put a limit when they are going
18 to be open. That is what he said to me about that.
19 At the time, I thought, okay, it is a compromise, but
20 seeing how this past couple of years has went where
21 there is just no -- it is just no carrying about the

1 residents there -- the lights, the noise, there is
2 just no compromise. So, as far as those hours are
3 concerned, even though they are put down, I do not
4 think they are going to be kept, anyhow.
5 Q If they were to be enforced or could be
6 enforced -- and let's assume that they will be, do you
7 want -- let's say the car wash operation first. Would
8 you limit any particular days in regards to the car
9 wash operation? Would there be some days, in other
10 words, that it should not be open, in your opinion?
11 A I don't think it should be there at all,
12 for what it is going to impact on me.
13 Q What if the Board approves the fact that
14 it can be there, is there anyway that it can be
15 mitigated or the effect on you be reduced in terms of
16 the days?
17 MR. HOFFMAN: I am going to object. I
18 think this is the third time he has asked the
19 question. I think the witness has given him her
20 honest answer.
21 MR. HOLZER: Okay. We don't want you

there at all. So don't open it. I will accept that.

MR. STAHL: That seems to be the feeling.

Q What about the hours of operation? I was talking about the days of the week. Do you have any?

MR. HOFFMAN: She appears -- I object to that. She answered that, too. He started with the hours of operation.

MR. STAHL: Let me try once real quick. Let's presume for a moment that this is granted, the Zoning Commissioner said, 8:00 a.m. until one half hour after dusk. Can you live with that, can you not live with that, is there a different set of times that you would find acceptable?

A Well, if it is law, I have to live with it. Truthfully, I don't see how physically or mentally I am going to be able to live with it.

MR. STAHL: Fair enough.

A But can I say one more thing?

Q What concerns, if any, do you have in addition to what you haven't already said?

A Okay. If you say okay, they are going to

1 get it, can I, at least, request that this privacy
2 fence be put on my side of that storm drain? I mean,
3 if they put it on their side, it is just going to
4 throw the aggravation onto me where that drain is
5 concerned and I don't think on top of everything else
6 with all of the aggravation -- I wish the people would
7 meet me halfway and they won't. I think I have tried
8 my darndest to try to meet them halfway. I wish I
9 could just get out, but I can't. They have got me in
10 a corner. I am a widow. There is nothing I can do.
11 MR. STAHL: I appreciate your comments.
12 THE WITNESS: Thank you, sir.
13 MR. HOLZER: Your witness.
14 MR. HOFFMAN: Well, if I might, I could
15 proffer for my client that the location of the fence
16 on your side of the ditch is perfectly acceptable.
17 MR. STAHL: I think there was even some
18 comment earlier.
19 MR. HOFFMAN: I think it is consistent
20 with the testimony earlier. I guess I wanted to
21 reiterate that. I think it is proposed to be a 6-foot

1 board on board. I think that is a solid fence, a
2 solid screen.
3 CROSS EXAMINATION
4 BY MR. HOFFMAN:
5 Q Miss Colvin, you testified that in 1988,
6 after about 12 years of maintaining the ditch, the
7 County told you they didn't own it and it was up to
8 others to maintain it?
9 A Whose ever property it was on.
10 Q But, in 1995, there is a letter that was
11 submitted as part of the case from the County saying
12 that it is their responsibility and they will maintain
13 the ditch. Are you aware of that letter that was
14 introduced?
15 A I am aware of that, but, I also am aware
16 of the factor -- circumstance you people are supposed
17 to work with the County and haven't done it. Nothing
18 has been done.
19 Q You are aware of the letter saying the
20 County has accepted responsibility?
21 A I also got the letter that you were

1 supposed to give an easement and make sure it was
2 taken care of and it wasn't.
3 Q You testified that there has been a great
4 deal of flooding onto your property, is that correct?
5 A That's correct.
6 Q Can you show me which of the photographs
7 that you introduced indicates where that flooding has
8 occurred?
9 A Do you want my property?
10 Q You testified that there was flooding?
11 A That's correct.
12 MR. HOLZER: I didn't introduce any
13 pictures showing flooding.
14 MR. HOFFMAN: My question is: Can she
15 show me on the pictures that were introduced?
16 A That is not my -- well, the picture --
17 Q On any of them?
18 A This would be the only one where I am
19 standing against my house, correct? That is it. The
20 flooding -- here is the ditch. Let me put it that way
21 so here is the Farm Store lot. Here is the ditch.

1 This is part of my yard, here, alongside of my house.
2 The ditch overflows. This is the new oil drum that
3 replaced the old one. It would come down here and
4 flood right on down to the back. Then, it would swirl
5 around into an area down there until it backed up.
6 Q This was taken March 4th?
7 A That's correct.
8 Q We have had 2 feet of snow melting and
9 several different rain storms. I don't see any area
10 that is currently flooded on your property.
11 A Here is why.
12 Q Does this show that there is any standing
13 water on your property?
14 A Do you want to see standing water?
15 Q Does this picture show standing water?
16 A This doesn't because you don't see the
17 bottom of the yard, right where it goes down to. It
18 flows down to there, and, then, it builds up. This is
19 taken after the snow storm and it was almost all gone.
20 Q Miss Colvin, I was at your property this
21 morning. There was no flooding there this morning.

1 A Did you look at the bottom of my yard,
2 sir?
3 Q I looked at your whole yard. Were you
4 there this morning?
5 A Wait a minute, sir. Wait a minute, wait a
6 minute, wait a minute. Sir --
7 Q I am just asking, is it your testimony
8 that there is flooding?
9 THE WITNESS: Mr. Holzer?
10 MR. HOLZER: Go ahead and pull the picture
11 out.
12 A This is the bottom of my yard where the
13 water made an indentation from running down to it. I
14 didn't know what else to do --
15 MR. HOFFMAN: Mr. Chairman, I asked her --
16 THE WITNESS: I am explaining to you, sir.
17 MR. STAHL: The way you do this is to
18 respond to his questions.
19 THE WITNESS: Oh, I am sorry. Okay.
20 Q Was there standing water out there this
21 morning?

1 A Yes, there is.
2 Q I will accept your answer.
3 A Do you want to see the pictures?
4 MR. STAHL: He didn't ask for the
5 pictures.
6 THE WITNESS: Oh, okay.
7 Q Miss Colvin, you have partially
8 constructed some additions on your house. When did
9 those take place?
10 A Oh, years ago. Why?
11 Q Can you tell me approximately when they
12 were started?
13 A I have no idea right offhand. I didn't
14 bring that information with me.
15 Q They are unfinished as of today?
16 A No, they are finished. The ty-vek is
17 there and the contractor is coming in to finish up
18 the -- what do you call it -- the vinyl. It is
19 starting to be put on the bottom. The weather has
20 been too bad.
21 Q These additions have been in this

1 unfinished condition since, at least, last year,
2 before the last hearing, isn't that correct?
3 A Yes, sir, and there is a reason for that.
4 I had a put on a new roof on the house last year.
5 Q Do you know if any permits were
6 obtained --
7 A I had a contractor do the roof last year.
8 Q -- for the additions, ma'am?
9 A Yes, there was -- in fact, I had posted a
10 permit in the front years ago when we put it on. I
11 put it in the window. But I couldn't tell you how
12 many years ago it has been.
13 MR. STAHL: Mr. Hoffman, let me interrupt
14 you just a for a moment. We need to take two
15 minutes -- five minutes.
16 MR. HOFFMAN: Okay.
17 (Recess taken -- 3:35 p.m.)
18 (After recess -- 3:43 p.m.)
19 MR. STAHL: All right. We are back on the
20 record. Mr. Hoffman, you have got the floor.
21 Q (By Mr. Hoffman:) Miss Covin, I was

1 talking about the additions to the house. I am going
2 to show you a photograph -- two photographs taken
3 yesterday. I will ask you if you can identify them?
4 Are these photographs of your home?
5 A Okay, yes.
6 Q Is this another photograph of your house
7 from a different location?
8 A Uh-huh.
9 Q Does this show the addition to the house?
10 A Well, this was a porch. That's right. It
11 was a porch. It deteriorated and we fixed it back up.
12 Q Does that show the other addition to the
13 house?
14 A No, that is the same thing. The same
15 shot.
16 Q And the driveway is paved partway into the
17 site, unpaved?
18 A Well, this was the crushed stone. The
19 weather has washed it. We had a snowplow in. This
20 was crushed stone.
21 Q It is pretty hard to make sure it stays in

1 good shape when it is just dirt.
2 A Well, I mean, when you have snow plows and
3 you come across crushed stone, they are going to take
4 up the stone.
5 Q Do either of these pictures show any of
6 the blue trash bags in the trees or any trash?
7 A No, because that is not the end of my
8 yard. It is down at the bottom. Okay?
9 Q The RV --
10 A That is my daughter's. I don't own a car,
11 sir. I can't afford it.
12 Q That is your daughter's RV?
13 A Uh-huh.
14 Q She raises poodles?
15 A She shows poodles.
16 Q And, next to the RV, there is an old truck
17 cap?
18 A An old truck cap? Let's see. I don't
19 know --
20 Q It is not in this picture. It is next to
21 the RV.

1 A No, sir.
2 Q A pickup truck cap with a lot of junk
3 underneath of it, is that yours?
4 A That is not a cap, sir, it is a camper,
5 and it is old, and I have arranged for my next-door
6 neighbor, he is going to take it to the dump, and I
7 have a couple of little things I cleaned out of the
8 yard. That is all going to the dump. I do that once
9 a year, at least. The camper, I was using it for
10 storage. In the past year it has deteriorated, so he
11 is going to haul it away.
12 Q Miss Colvin, you are testifying that you
13 have got an old camper that is rusting with junk
14 underneath of it sitting in the yard, and has been for
15 the last --
16 A Just since this past fall. I mean, the
17 weather has been too bad to haul it away.
18 MR. STAHL: For the record, Mr. Hoffman,
19 those photos you gave us are 11-A and B?
20 A Sir --
21 Q Miss Colvin, the proposed development of

1 the site with the installation of fuel service pumps
2 and the car wash, wouldn't you have to admit that even
3 if there were tractor trailers parking on the site,
4 that they couldn't do that if that portion of the site
5 was being utilized?
6 A I don't understand what you are asking,
7 sir.
8 Q If the site was utilized for fuel service
9 and a car wash, wouldn't that remove any ability for
10 the tractor trailers to park next to your property?
11 A You are still going to have the same
12 thing, whether it is tractor trailer, or a running
13 car, or a diesel pulling in to fuel up. You are still
14 going to have the same thing. You are still going to
15 have the fumes.
16 Q Isn't the real problem that there is a
17 vacant site in the back, next to your property? Isn't
18 that really what is causing the concerns that you have
19 raised here today?
20 A No, sir. Can I answer your question? My
21 concern --

1 MR. HOFFMAN: You answered it. You said,
2 "No, sir."
3 A No, sir.
4 MR. HOFFMAN: I have no other questions.
5 MR. HOLZER: I just have one.
6 REDIRECT EXAMINATION
7 BY MR. HOLZER:
8 Q Could you show me the photograph that
9 shows the backyard flooding?
10 A Yes, here is my backyard. Here it is with
11 the flooding. I want it to show that I don't have
12 junk in my yard, sir.
13 MR. HOFFMAN: I think the testimony was
14 that there is junk in the yard.
15 A Well, there is the backyard. You only
16 look at one little place.
17 MR. HOLZER: Objection. This is
18 argumentative.
19 MR. STAHL: We all can't talk at the same
20 time.
21 MR. HOLZER: I object.

1 MR. STAHL: Ma'am, we are almost there.
2 Hang in. Your attorney has the floor. Let him be the
3 ring master.
4 Q I show you what is marked with two photos
5 dated July 19th, 2002, and, also, March 3rd, 2003.
6 Did you take these photographs?
7 A Yes, I did.
8 Q Do they accurately depict the scene at the
9 time you saw it?
10 A That's correct. That is right behind my
11 house, there. The other part -- the other part of the
12 house.
13 Q In the area on July 19th, 2002, is this
14 area down here where that is water, is that your
15 backyard?
16 A That is where the water lays all of the
17 time.
18 Q Is that your backyard?
19 A Yes, it is. That is where the water made
20 the little ring. We just put a little bridge across
21 there so we could get across.

1 Q You built the bridge so you could walk
2 from one high ground portion to the other?
3 A Correct.
4 Q In the bottom photograph, March the 3rd,
5 '03 shows the snow, and it shows the same bridge, and
6 same area where there is flooding?
7 A Correct. I just sort of tried to contain
8 the water in one spot, is what I was doing.
9 MR. HOLZER: I would offer these as the
10 next Protestants' exhibits.
11 MS. ADAMS: No. 9.
12 MR. HOLZER: It is two photos on the same
13 folder.
14 MR. STAHL: Make them A and B.
15 MS. ADAMS: If you would like.
16 MR. STAHL: Okay.
17 (Protestants' Exhibit Nos. 9-A and B so
18 marked.)
19 Q I show you four pictures marked July 19th,
20 2002 with, "Colvin yard." Now, again, did you take
21 these pictures?

1 A Yes, I did.
2 Q Do they accurately depict your yard?
3 A That is the way my yard looks all of the
4 time because if I keep my paper picked up, why can't
5 they?
6 Q Does this photograph on the upper
7 left-hand corner depict the property line where the
8 ditch is?
9 A That's correct. The ditch is showing --
10 what do I call it -- weeds and all from the ditch are
11 coming out. I have to trim them back.
12 Q On the upper right-hand corner, you have
13 got July 19th, 2002. Again, it shows the little moat
14 and the bridge?
15 A Correct.
16 Q And the high ground, where it is flooded?
17 A That's correct. That is where all of the
18 water goes.
19 MS. WORRALL: What is the date on those,
20 Mr. Holzer?
21 MR. HOLZER: July 19th, 2002.

1 MS. ADAMS: Is that the date of all of
2 them?
3 MR. HOLZER: There are some that say July
4 of '02.
5 MR. STAHL: Mr. Holzer, where is the
6 bridge?
7 MR. HOLZER: The bridge is on her
8 property. These are only introduced because Mr.
9 Hoffman questioned whether her backyard floods. These
10 are photos, these last two exhibits, and I think this
11 one is the best, which is Protestants' No. 11, shows
12 her backyard in the summer of '02 and in the winter of
13 '03. The bridge, that little red bridge that you see
14 there, she testified was constructed because the
15 backyard is always flooded, so she could get to what
16 you can see is high ground in the center. That is all
17 of the questions I have.
18 MR. STAHL: Mr. Hoffman, anything else for
19 you?
20 MR. HOFFMAN: Yes.
21 RECROSS EXAMINATION

1 BY MR. HOFFMAN:

2 Q Miss Colvin, your testimony on direct was

3 that it floods and it comes across and comes into your

4 house. I assume you took these photographs after a

5 storm. I have standing water on my lawn. Where is it

6 coming into your house?

7 A Let me correct what you thought I said. I

8 said it did flood it one time. I have videos of it

9 flooding. It was a constant flooding. That was the

10 big flood when it ruined everything. I put the little

11 dirt wall up to throw it more to the bottom of the

12 yard. That is what I said.

13 MR. HOFFMAN: I don't have any more

14 questions.

15 MR. STAHL: Okay. Thank you very much,

16 ma'am.

17 THE WITNESS: Thank you, sir.

18 MR. STAHL: Anything else, Mr. Holzer?

19 MR. HOLZER: Hoffman, look over here. I

20 want you to see what you almost got yourself into.

21 Nothing further.

1 MR. STAHL: Okay.

2 MR. HOFFMAN: What is that?

3 MR. HOLZER: Video camera pictures.

4 MR. HOFFMAN: Am I in it?

5 MR. HOLZER: You are not in it, but the

6 flooded basement is.

7 MR. STAHL: Rebuttal case, Mr. Hoffman?

8 Is that a yes?

9 MR. HOFFMAN: Yes, sir. I will make it

10 quick.

11 MR. STAHL: For the record, say your name,

12 again, for the record.

13 THE WITNESS: John Kemp.

14 MR. STAHL: Mr. Kemp, let me just inform

15 you since you have testified already, the oath you

16 took previously is still in effect.

17 REDIRECT EXAMINATION

18 BY MR. HOFFMAN:

19 Q Mr. Kemp, you heard Miss Colvin's

20 testimony and, specifically, where she said that your

21 company has not been willing to meet her halfway on

1 these issues. What parts of this proposal do you feel
2 indicate that you have been willing to work with her,
3 and, if you would, can you go over again the efforts
4 that you have made that Baltimore County maintain the
5 ditch, as they have indicated in writing they would?
6 A Well, we have engaged Nick Brader. One
7 thing, it is a designated wetlands area. We are not
8 allowed to go in there and work therein, but we have
9 spent considerable time, and effort, money, resources
10 with Matis Warfield Engineers to get the issue
11 resolved. The County has been working with us to get
12 the issues resolved. They haven't been as responsive
13 as we might like them to be, but we are clearly at an
14 understanding it is Baltimore County's responsibility,
15 and efforts are being made -- have been made to get
16 those problems resolved that exist in that drainage
17 ditch.
18 Q Are you willing to provide any form of
19 permission for Baltimore County to go in that area and
20 do whatever work they need to do?
21 A We have always been willing for them to go

1 in there, yes, absolutely.
2 Q Have you ever not responded to a request
3 from Baltimore County?
4 A We have always responded to their
5 requests.
6 Q Now, Mr. Kemp, you heard Miss Colvin talk
7 about and you saw the photographs of the areas around
8 the store, and I would like to ask you if you agree
9 with Miss Colvin's assessment of the condition of the
10 store, and I would also like to ask you what efforts
11 you would make, if this approval were granted, to try
12 and be as good a neighbor as you can, knowing that you
13 have got a commercial use next to a residential use?
14 A I did see the pictures that were presented
15 to me up on the stand. I didn't see the other
16 pictures. I am not going to refute what the pictures
17 say or don't say. There are procedures in place at
18 the store level, operational procedures that must be
19 complied with on a daily basis that assure that daily
20 housekeeping, including the lots, get taken care of.
21 Unfortunately, as this site exists right now, the

1 perception from the store and Operations Personnel is
2 that that back area is actually the back and the rear
3 of the property. We also have -- Obrecht Phoenix
4 Contracting and our maintenance going in and out that
5 facility back there, but there are procedures in
6 place. I know that Mrs. Colvin does police the lot
7 for us occasionally. I was told by Sandy Russo, who
8 used to be the store manager.
9 MR. HOLZER: Objection.
10 MR. STAHL: Same rules apply to you. You
11 can't tell us what someone else told you.
12 A There are procedures that exist. The
13 majority of the time, the store is very presentable
14 and is kept in a clean manner.
15 Q Would the use of the -- you describe it as
16 the back part of the site, taking down the existing
17 rear building, and putting in the new uses, would that
18 have a some any effect on the condition of the rear
19 part of the property?
20 A Yes, it would be an area that would
21 receive more attention than it currently receives now

1 because it would act as the front of the store, as a
2 front rather than a rear, and I would also like to
3 mention there are things that actually alleviate the
4 present day situation, like less paving, screening,
5 fencing, more curbing that would currently alleviate
6 the situation as it exists right now, that are shown
7 on the plan in the green area in the rear.
8 MR. HOFFMAN: That was it.
9 RECROSS EXAMINATION
10 BY MR. HOLZER:
11 Q Mr. Kemp, how long do you think, in your
12 own personal opinion, is long enough to have a problem
13 that exists since the time you very first acquired the
14 property in terms of that drainage ditch, when do you
15 think enough is enough? You made that testimony and
16 that statement in front of the Hearing Officer
17 specifically in May of 2001, and, here, it has been
18 almost two years since that statement that you made
19 then to now and we still don't have any solution to
20 the problem.
21 A I am not a big government man. I can tell

1 you that right now. I tend to vote republican. I
2 don't have a whole lot of faith in that. I think what
3 they have done is unacceptable. I will be the first
4 to admit that. I wish that they would be more
5 responsive.
6 MR. HOFFMAN: Government people outside
7 the Board members, of course.
8 THE WITNESS: That's correct.
9 MR. STAHL: We are only part-time
10 government people.
11 MR. HOFFMAN: Which are highly critical
12 positions.
13 A We do not want the situation to exist.
14 The claims about us not meeting halfway, in my
15 opinion, are not justified at all.
16 Q Now, you heard the testimony in regards to
17 the trucks. Unless you completely disbelieve it, the
18 fact that Miss Colvin had dates, and times, and
19 pictures of vehicles parked there, what, if any,
20 efforts are you going to make to make sure that that
21 doesn't happen again?

1 A If this is approved, it is virtually
2 impossible for them to continue what they are doing.
3 I do believe our operations person -- she testified
4 she has done everything in her power to prevent that
5 problem from occurring. As you can see by the
6 correction notice and no correction notices or
7 violations thereafter, the County, again, were relied
8 upon, and I think we are doing a pretty good job.
9 Q The County did come out and inspect each
10 time and found there were trucks that continued to
11 park there even after the initial complaint?
12 MR. HOFFMAN: I am going to object. That
13 testimony was not allowed in. There is no --
14 MR. STAHL: There was no testimony other
15 than your clients as to other times.
16 MR. HOLZER: Absolutely.
17 MR. STAHL: The only documentary evidence
18 is the one notice.
19 MR. HOLZER: Absolutely, but my point is
20 that documentary evidence showed November as the time
21 the correction notice went out. She testified just

1 now on the stand that there were, at least, a number
2 of occurrences after that, and as late as January of
3 2003, where those vehicles still parked there. Unless
4 I said -- I prefaced my question, unless you totally
5 just don't believe her, what efforts are you going to
6 make to make sure it doesn't happen again?
7 A We will continue to enforce the company
8 policy. There will be disciplinary action if we have
9 people in the line of command that don't follow the
10 policy. Secondly, if this plan is approved, the
11 problem goes away.
12 Q Well, the problem might get closer to her
13 house in terms of having vehicles gassing up, wouldn't
14 you not agree? In other words, there are going to be
15 cars closer to her house now, when they gas up, and
16 when they do various things under the pumps than
17 currently exists at the site.
18 MR. HOFFMAN: I think the answer was
19 regarding the tractor trailer. How did we switch to
20 cars? I am going to object.
21 MR. STAHL: The question was trucks.

1 MR. HOLZER: I understand that. Now, I am
2 on another question. I asked another question.
3 MR. STAHL: I apologize.
4 MR. HOLZER: Forget it. I am sorry, but I
5 have no further questions.
6 MR. HOFFMAN: Nothing further.
7 MR. STAHL: Okay. Thank you, sir. Any
8 other rebuttal witnesses?
9 MR. HOFFMAN: No, sir.
10 MR. STAHL: Any rebuttal?
11 MR. HOLZER: No.
12 MR. STAHL: We are at the conclusion of
13 the testimony portion of the case. In lieu of closing
14 arguments and as is our practice in these matters, we
15 will request memoranda from each party including
16 whatever comments you want to make or distillation of
17 testimony, law applicable, the usual routine. How
18 long you folks want?
19 MR. HOFFMAN: 3 weeks, 4 weeks.
20 MR. STAHL: Mr. Holzer, how about you?
21 MR. HOLZER: 4 weeks.

1 MR. STAHL: Today is the 6th. So, two,
2 three, four weeks would make it the 10th of April.
3 MR. HOLZER: That sounds great.
4 MR. HOFFMAN: Perfect.
5 MR. STAHL: The 10th of April, it is.
6 (Whereupon, at 4:15 p.m., the hearing was
7 adjourned.)
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21

1 State of Maryland

2 County of Baltimore, to wit:

3 I, Susan Kambouris, a Notary

4 Public of the State of Maryland, County of Baltimore,

5 do hereby certify that the within-named witness

6 personally appeared before me at the time and place

7 herein set out, and after having been duly sworn by

8 me, according to law, was examined by counsel.

9 I further certify that the examination was

10 recorded stenographically by me and this transcript is

11 a true record of the proceedings.

12 I further certify that I am not of

13 counsel to any of the parties, nor in any way

14 interested in the outcome of this action.

15 As witness my hand and notarial seal

16 this 12th day of March, 2003.

17 Susan A. Kambouris

SUSAN A. KAMBOURIS

18 Notary Public

19

20 My Commission Expires:

21 May 1, 2005

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March 6, 2003

PETITIONER'S EXHIBITS

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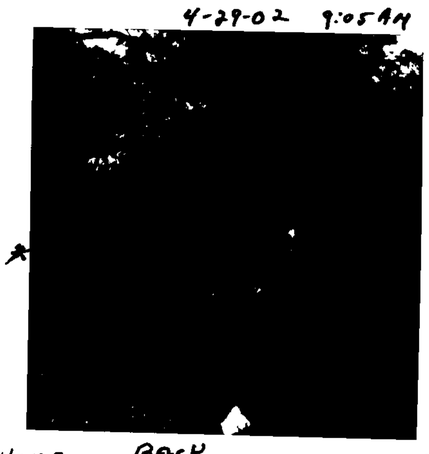
4-29-02 9:05 AM



House ← BACK (DITCH *) Old STORE →

Middleborough Rd.

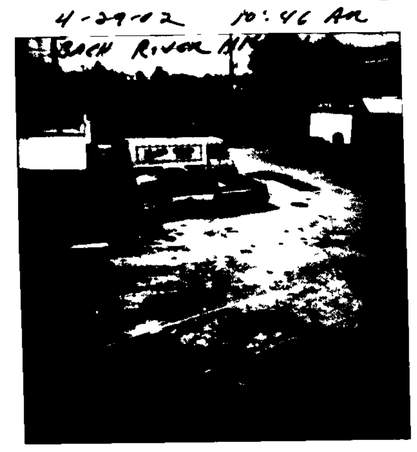
4-29-02 10:45 AM

window sill

Old Store

TAKEN FROM BATHROOM

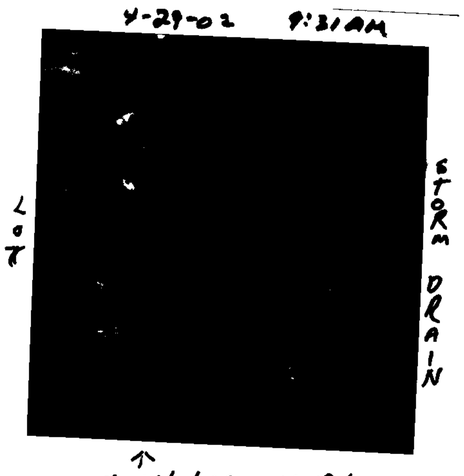
4-29-02 10:46 AM



TAKEN FROM BATHROOM

FARM STORE LOT

4-29-02 9:31 AM



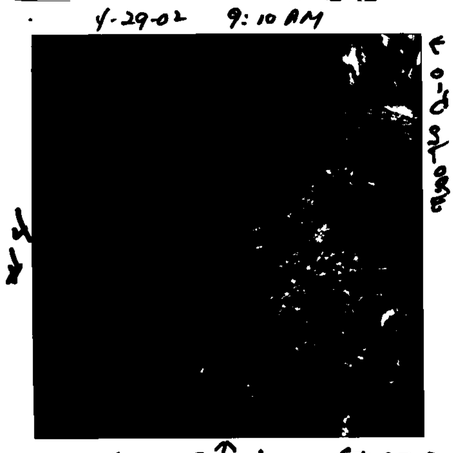
LOT

STORM DRAIN

Middleborough Rd

← FARM STORE HOUSE →

4-29-02 9:10 AM

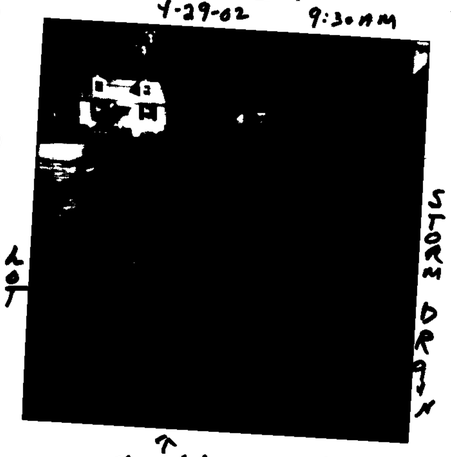


← Old STORE

HOUSE ← DRAIN STORE →

Middleborough Rd ↔

4-29-02 9:30 AM



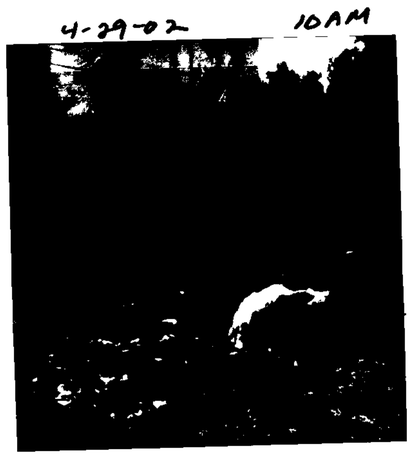
LOT

STORM DRAIN

Middleborough Rd

← FARM STORE HOUSE →

4-29-02 10AM



FARM STORE LOT
Middleborough Rd

BACK RIVER NECK Rd

MAIN DRAIN

90° TURN

FARM STORE + GAS Pumps

Old STORE

STORM DRAIN

11 FT FROM

18 FT FROM 1609 LOT

Middleborough Rd

HOUSE 1609 (HOUSE 12 FT IN)

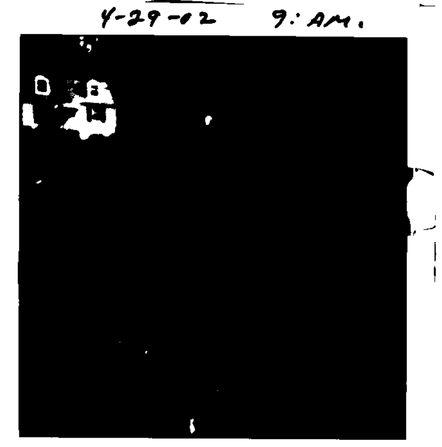
STORM DRAIN

4-29-02 10:47 AM

NEW STORE

TAKEN FROM BATHROOM

4-29-02 9:AM.

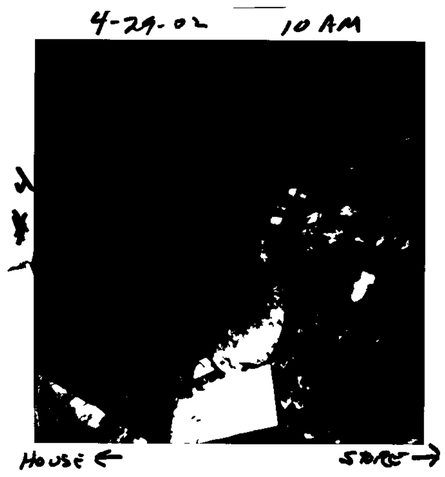


STORE ← HOUSE →

STORM DRAIN

TOWARD Middleborough

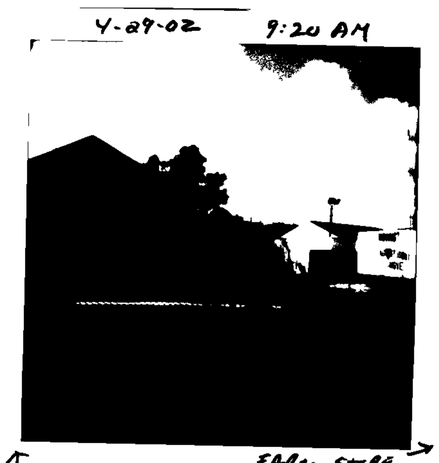
4-29-02 10 AM



HOUSE ← STORE →

STORM DRAIN UNDER Rd (Middleborough Rd) ↔

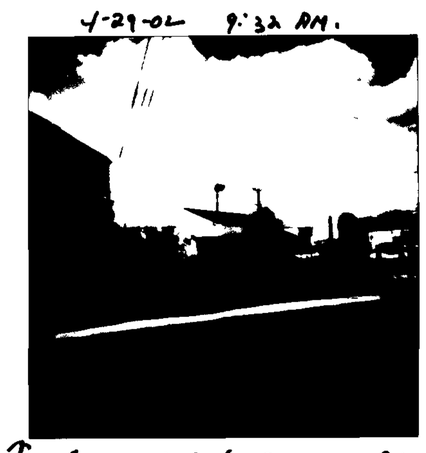
4-29-02 9:20 AM



↑ HOUSE FARM STORE →

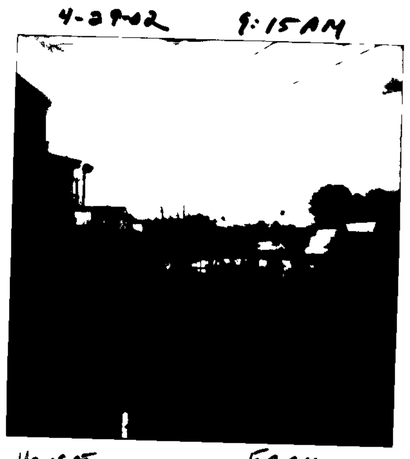
Middleborough Rd ←

4-29-02 9:32 AM.



↑ HOUSE Middleborough Rd ↔ FARM STORE →

4-29-02 9:15 AM



HOUSE FARM STORE LOT

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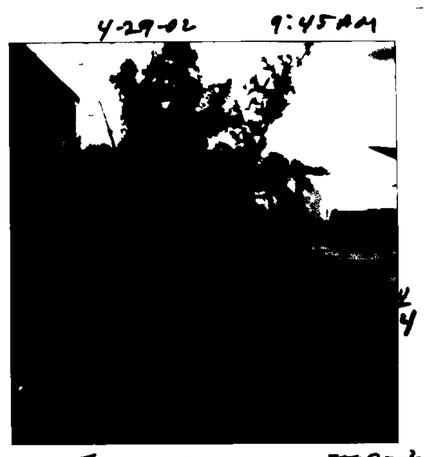
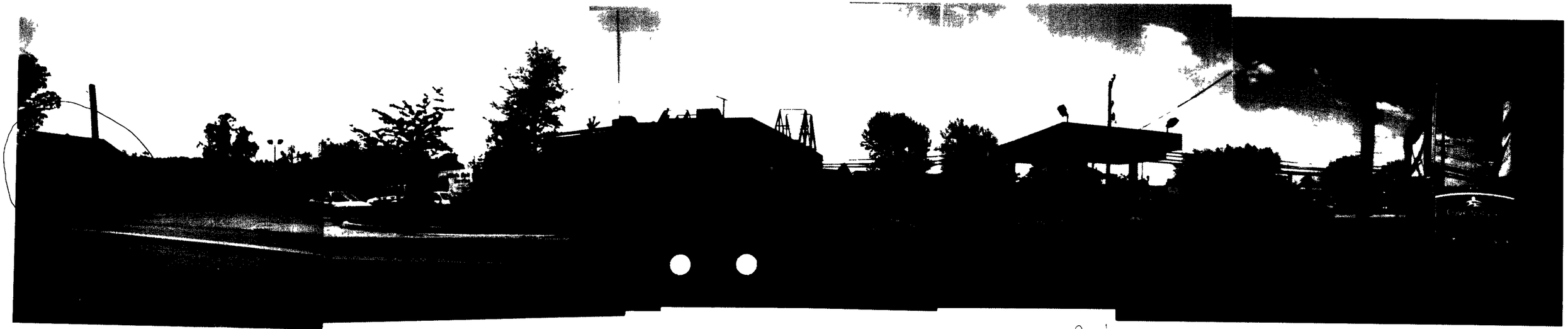


HOUSE ← ↑ STORM DRAIN STORE →

← Middleborough Rd →

Part B



MIDDLEBOROUGH RD

Petrigh

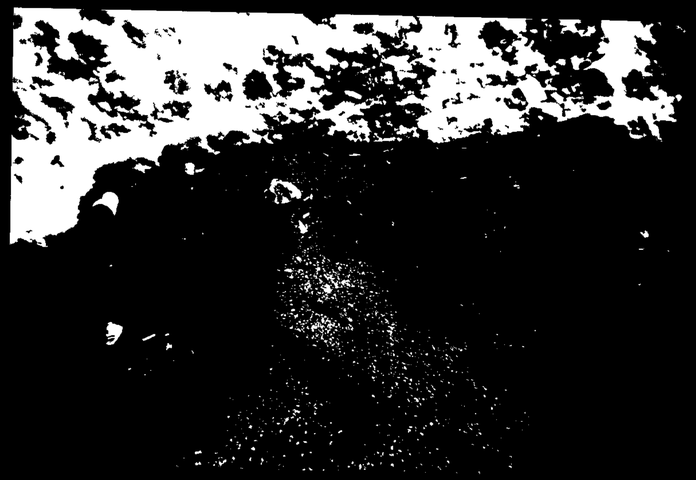
#2

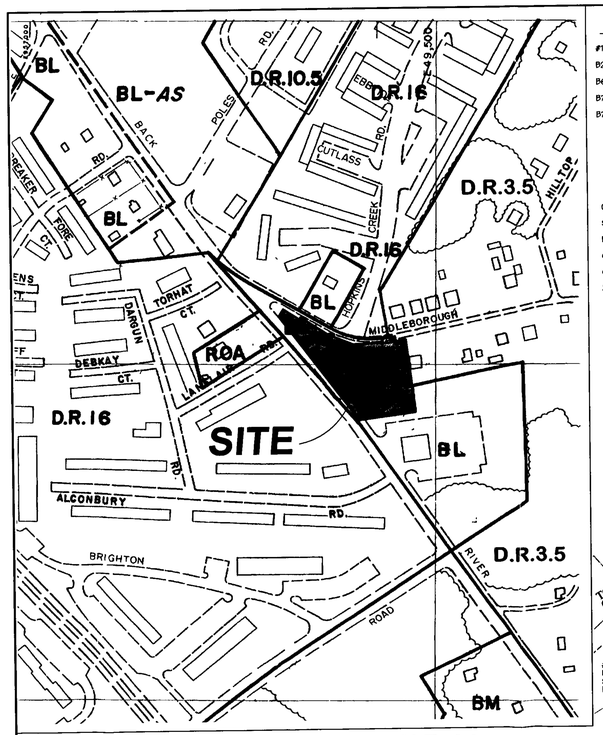
#3

3-4-03

#5

#5





PART OF 2000 ZONING MAP N.E. 1-I

1" = 200'

PREVIOUS COMMERCIAL PERMITS

#152-68	1601 Middleborough Road	Service station
B292902	1601 Middleborough Road	Royal Farms Concvenience Store
B68433	311 Back River Neck Road	Interior Renovation
B73262	311 Back River Neck Road	Alteration Permit
B74664	311 Back River Neck Road	Alteration Permit

ZONING HISTORY

CZMP Issue 5-079 Reclassify 0.8 Ac from BL to BL-AS (Granted)

96-272-XA 4/3/96 - Special Exception and Variances granted - See Order this sheet

R-96-200 1/24/96 Zoning Reclassification from BR to BR-AS (Granted)

67-235-X 10/16/68 Advertising Signs (Denied)

66-123-X 02/06/68 Zoning Reclassification from R-6 to BL 9(Granted)

3964 10/24/56 Special Exception for Gas Station, CN-5 District (Granted)

GENERAL NOTES

1 All work shall conform to Baltimore County standard specifications and details or as shown on these approved plans
2 The contractor shall notify Miss Utility 1-800-257-7777 five days prior to starting work
3 It is the responsibility of the contractor to investigate for underground gas and/or electric lines
4 To our knowledge no wastes or by-products will be produced on the Site
5 The dumpster is existing
6 See architectural plans for exact building dimensions
7 All fixtures used to illuminate the off-street parking area shall be so arranged as to reflect the light away from residential sites and public streets
8 The sign is existing
9 The contractor is to verify the locations of existing water and sewer connections to the building and to relocate if necessary
10 A waiver of Stormwater management shall be applied for
11 Any underground fuel tanks are to be installed in accordance with all local, state and federal regulations
12 The site shall comply with all applicable sections of the Fire Prevention Code prior to occupancy or beginning of operation
13 The site is not within the Chesapeake Bay Critical Area
14 Water and compressed air shall be provided in accordance with the B.C.Z.R. section 405
15 A limited exemption was granted per Section 26-171(a)(2) on April 4,1996 to construct the Convenience Store and Fuel Pumps that are now existing See DRC # 04016M, Dist 15C5

ROYAL FARMS STORE	
Hours of Operation	24 Hours/7 Days per Week
Max Number of Employees/Shift	Morning/Afternoon = 3 Afternoon/Evening = 3 Night = 2

SITE DATA

Site Area	61,178 S.F. 1.404 Ac
Net Site Area (less future r/w widening)	58,289 S.F. 1.338 Ac
Existing Zoning	BL-AS(D.R.3.5)
Councilmanic District	5
Existing Use	Convenience Store w/Fuel Pumps
Proposed Use	Convenience Store w/Fuel Pumps and Car Wash
Deed Reference	311 Back River Neck Rd 7446/515 1601 Middleborough Rd 11136/189
Plat Reference	8/92
Tax Account Numbers	15-08 5515560 15-07-415560
Ancillary Uses	Minor ancillary uses as permitted in Section 405.4.D of the B.C.Z.R. (No additional square footage required)
Existing Total Building Floor Area	2930 S.F.
Proposed Building Floor Area	
Total	2930 S.F.
Sales Floor Area	2930 S.F.
Floor Area Ratio	2930 S.F. ÷ 58,289 = 0.05 (3.0 permitted)
Existing Building Heights	18'
Proposed Building Height	18'
AREA REQUIRED FOR COMBINATION USE	
16 Servicing Spaces x 1500 S.F.	24,000 S.F.
Additional Site Area Factor 4 x 2930	11,270 S.F.
Total Site Area Required	35,270 S.F.
Total Site Area Provided	58,289 S.F.
Area of Special Exception	60,152 S.F. (EXCLUDES AREA OF SITE ZONED D.R.3.5)
PARKING SPACES	
Fuel Service w/Combination Use 2930 S.F. @ 5/1000	15
maximum employee shift	3
air	1
ATM	1
car wash (2 + 2 drying)	4
Total Required	24
Total Provided	32
PARKING SPACE DIMENSIONS	
Typical Space	8.5' x 18'
Handicap Space (All spaces to be permanently striped)	16' x 18'
FUEL SERVICE SPACES	
1 Per pump island side required	16
Provided	16
STACKING SPACES	
1 Per pump island side	16
Provided	16
9 Per rollover car wash	9
Provided	9

Petitioners

1B

+

2B

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE - SE/Corner Back River Neck & Middleborough Rds 15th Election District 5th Councilmanic District

Cloverland Farms Dairy, Inc Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No 96-272-XA

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 5th day of March, 1996 that the Petition for Special Exception to permit an automotive service station on the subject property, pursuant to Section 405.2.B.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), and to permit such use in combination with a food store with a sales area larger than 1500 sq.ft., pursuant to Section 405.4.D.2 of the B.C.Z.R., in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the restrictions set forth below, and,

IT IS FURTHER ORDERED that variance relief from the B.C.Z.R. shall be approved as follows (1) from Section 405.4.A.3.D and 409.6.1 to permit 30 parking spaces in lieu of the required 34, (2) from Sections 405.4.A.1 and 405.4.E.1 to permit a site area of 21,270 sq.ft. in lieu of the required 26,600 sq.ft., 3) from Section 405.4.A.2.B to permit a landscaped transition area of 0 feet in lieu of the required 15 feet for the rear, 4, the nontapering, and 7, rear and 3, rear, in lieu of the required 15 feet each for that area abutting public rights-of-way, 4) from Section 405.4.B to waive restroom requirements, 5) from Sections 238.1 and 405.4.A.2.A to permit a front setback of 22 feet in lieu of the required 25 feet, and in lieu of the required 35 feet, respectively, and from Section 238.2 to permit a rear yard setback of 0 feet in lieu of the required 30 feet, 6) from Section 405.4.A.2.A to permit gasoline pump island setbacks of 24 feet and 19 feet in lieu of the required 25 feet, 7) from Section 405.4.A.2.A to permit canopy setbacks of 7.5 feet and 5 feet in lieu of the required 15 feet, and, (8) from Section 413.2.F to permit a freestanding sign of 184 sq.ft. in lieu of the maximum permitted 100 sq.ft., in accordance with Petitioner's Exhibit 1, and as such, the Petition for Variance is hereby GRANTED, subject to the following restrictions

VARIANCE ABANDONED DUE TO INCREASE IN NUMBER OF PARKING SPACES

VARIANCE ABANDONED DUE TO INCREASE IN SITE AREA

VARIANCE ABANDONED DUE TO INCREASE IN SITE AREA

VARIANCE ABANDONED DUE TO CHANGE IN ZONING

VARIANCE ABANDONED DUE TO NEW SIGN REGULATIONS

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 such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded

CONDITION #2 REMOVED BY AMENDED ORDER DATED APRIL 3 1996

2) There shall be no pay telephones installed on the subject property. Furthermore, the existing pay telephones at the Royal Farm Store on the adjoining property shall remain turned off during evening hours

3) The actual design of the proposed Royal Farm Store shall be within the sole discretion of the Office of Planning. The Petitioner shall submit architectural elevation drawings for the proposed building for review and approval by the Office of Planning prior to the issuance of any building permits

4) The Petitioner shall continue to cooperate with the Baltimore County Bureau of Highways relative to the construction and maintenance of the outfall drainage ditch to the rear of the existing Royal Farm Store on the adjacent property

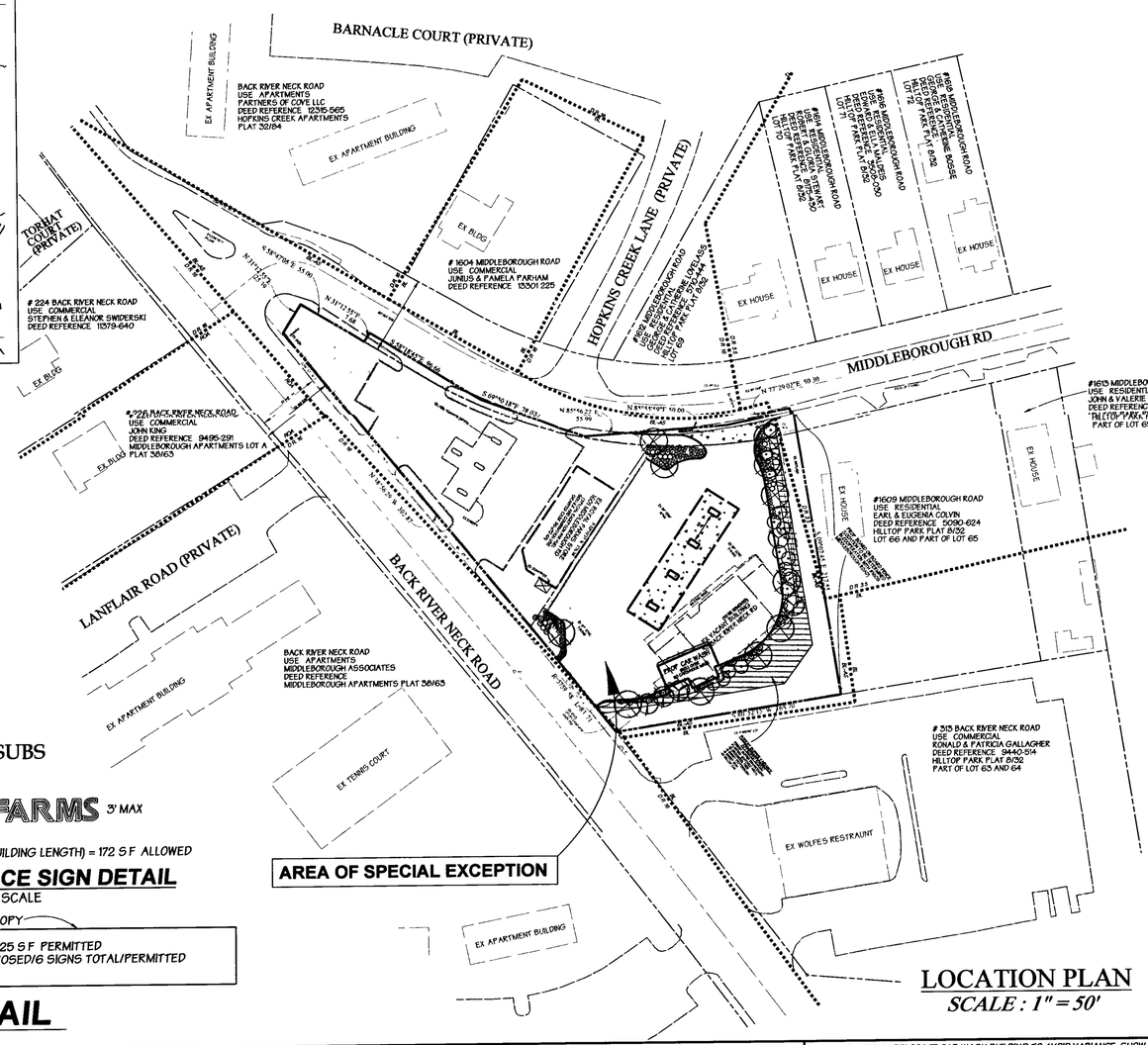
5) When applying for a building permit, the site plan and/or landscaping plan filed must reference this case and set forth and address the restrictions of this Order

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 413.2.F to permit a freestanding sign of 552 sq.ft. in lieu of the maximum permitted 100 sq.ft., be and is hereby DENIED, and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 413.5.D to permit a freestanding sign height of 35 feet in lieu of the maximum permitted 25 feet, be and is hereby DENIED

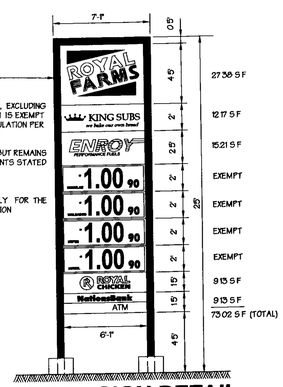
TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs



LOCATION PLAN

SCALE : 1" = 50'



EX. STORE SIGN DETAIL

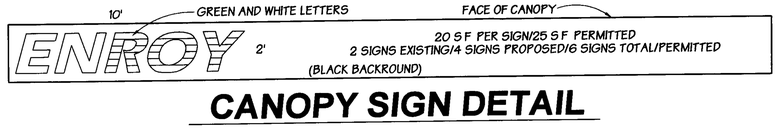
NO SCALE

108 S.F. EXISTING/ 2 x 86(BUILDING LENGTH) = 172 S.F. ALLOWED

BUILDING FACE SIGN DETAIL

NO SCALE

AREA OF SPECIAL EXCEPTION



CANOPY SIGN DETAIL

Matis Warfield
consulting engineers
10540 york road suite m
hunt valley, maryland 21030
phone 410-683-7004
facsimile 410-683-1798
www.matiswarfield.com

PROFESSIONAL ENGINEER No. 18536 STATE OF MARYLAND

OWNER
Cloverland Farms Dairy, Inc.
3611 Roland Avenue
Baltimore, Maryland 21211
(410) 889-0200

PETITION FOR SPECIAL EXCEPTION

1 Special Exception to approve the expansion of the existing fuel service station and the addition of a rollover car wash as a use combination use pursuant to Section 405.2.B.1 and Section 405.4.E.2 of the Baltimore County Zoning Regulations.

(PRIOR SPECIAL EXCEPTION AREA REMAINS UNCHANGED)

REVISED 4/13/01 - RELOCATE CAR WASH BUILDING TO AVOID VARIANCE. SHOW BALTIMORE COUNTY PROPOSED UTILITY EASEMENT. INDICATE 2 CAR DRYING SPACES

Plan to Accompany A Petition for A Special Exception and Variance

ROYAL FARMS STORE

1601 Middleborough Road
Baltimore, Maryland 21221
Store #15

Tax Map 97
Parcel 418, Lots 67&68
Scale: 1" = 50'

Election District 15
February 1, 2001
Sheet 1 of 2

FILENAME: 99065zoningnotes.sht

EBBTIDE COURT
CUTLASS COURT
DRIFTWOOD COURT
HOPKINS CREEK
BARNACLE COURT
BARNACLE COURT (PRIVATE)
9.6 ACRES
HOPKINS CREEK LANE (PRIVATE)
MIDDLEBOROUGH RD
BACK RIVER NECK ROAD
LANFLAIR ROAD (PRIVATE)
LANFLAIR ROAD
TORHAT COURT (PRIVATE)
TORHAT COURT
EDEBKAY COURT
POOL
TENNIS
2.4 ACRES
0.4 ACRES EXIST
0.2 ACRES PROP
EX APARTMENT BUILDING
BACK RIVER NECK ROAD
USE APARTMENTS
PARTNERS OF COVE LLC
DEED REFERENCE 9295-565
HOPKINS CREEK APARTMENTS
PLAT 32/84
224 BACK RIVER NECK ROAD
USE COMMERCIAL
STEPHEN & ELEANOR SWIDERSKI
DEED REFERENCE 13373-640
226 BACK RIVER NECK ROAD
USE COMMERCIAL
JOHN KING
DEED REFERENCE 9495-281
MIDDLEBOROUGH APARTMENTS LOT A
PLAT 38/63
BACK RIVER NECK ROAD
USE APARTMENTS
MIDDLEBOROUGH ASSOCIATES
DEED REFERENCE
MIDDLEBOROUGH APARTMENTS PLAT 38/63
1608 MIDDLEBOROUGH ROAD
USE COMMERCIAL
JUNIUS & PAMELA PARHAM
DEED REFERENCE 13301-225
#1611 MIDDLEBOROUGH ROAD
USE RESIDENTIAL
JOHN & VALERIE SNYDER
DEED REFERENCE 20223-051
HILLTOP PARK PLAT 8/32
PART OF LOT 65
#1609 MIDDLEBOROUGH ROAD
USE RESIDENTIAL
EARL & EUGENIA COLVIN
DEED REFERENCE 5090-624
HILLTOP PARK PLAT 8/32
LOT 66 AND PART OF LOT 65
315 BACK RIVER NECK ROAD
USE COMMERCIAL
RONALD & PATRICIA GAGLIGHER
DEED REFERENCE
HILLTOP PARK PLAT 8/32
PART OF LOT
EX HOUSE
EX BLDG
PK
1"=50'

SCHEMATIC PLANT KEY

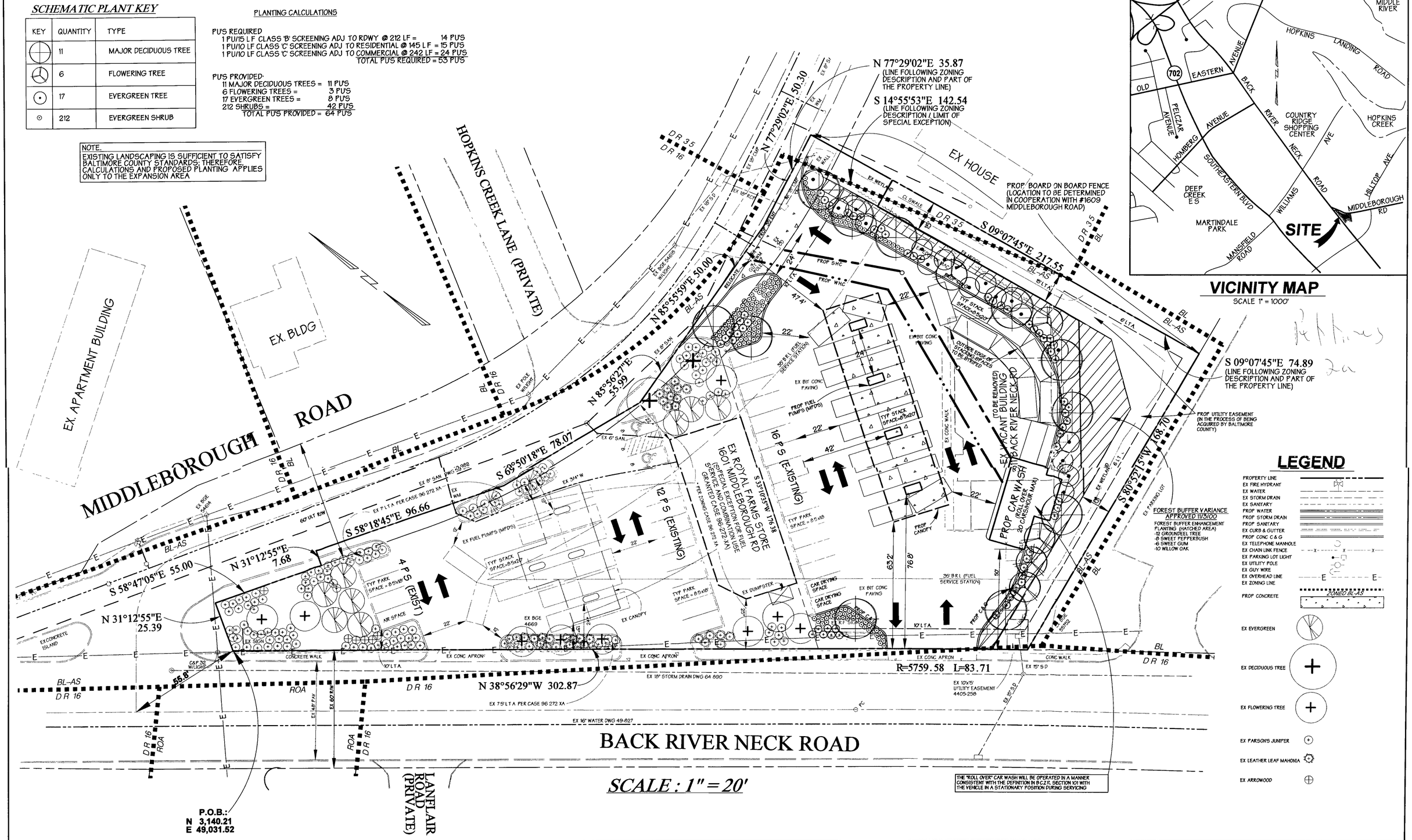
KEY	QUANTITY	TYPE
	11	MAJOR DECIDUOUS TREE
	6	FLOWERING TREE
	17	EVERGREEN TREE
	212	EVERGREEN SHRUB

NOTE.
EXISTING LANDSCAPING IS SUFFICIENT TO SATISFY BALTIMORE COUNTY STANDARDS; THEREFORE, CALCULATIONS AND PROPOSED PLANTING APPLIES ONLY TO THE EXPANSION AREA

PLANTING CALCULATIONS

PU'S REQUIRED
1 PU/15 LF CLASS 'B' SCREENING ADJ TO RDWY @ 212 LF = 14 PU'S
1 PU/10 LF CLASS 'C' SCREENING ADJ TO RESIDENTIAL @ 145 LF = 15 PU'S
1 PU/10 LF CLASS 'C' SCREENING ADJ TO COMMERCIAL @ 242 LF = 24 PU'S
TOTAL PU'S REQUIRED = 53 PU'S

PU'S PROVIDED·
11 MAJOR DECIDUOUS TREES = 11 PU'S
6 FLOWERING TREES = 3 PU'S
17 EVERGREEN TREES = 8 PU'S
212 SHRUBS = 42 PU'S
TOTAL PU'S PROVIDED = 64 PU'S



VICINITY MAP
SCALE 1" = 1000'

Matis Warfield
consulting engineers
10540 york road suite m
hunt valley, maryland 21030
phone 410-683-7004
facsimile 410-683-1798
www.matiswarfield.com

PROFESSIONAL ENGINEER No. 18558 — MICHAEL J. LOS WARFIELD — STATE OF MARYLAND

OWNER
Cloverland Farms Dairy, Inc.
3611 Roland Avenue
Baltimore, Maryland 21211-2408
(410) 889-0200

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(PRIOR SPECIAL EXCEPTION AREA REMAINS UNCHANGED)

REVISED 4/13/01 - RELOCATE CAR WASH BUILDING TO AVOID VARIANCE SHOW BALTIMORE COUNTY PROPOSED UTILITY EASEMENT INDICATE 2 CAR DRYING SPACES

Plan to Accompany A Petition for a Special Exception
ROYAL FARMS STORE
1601 Middleborough Road
Baltimore, Maryland 21221
Store #15

Tax Map 97
Parcel 418, Lots 67&68
Scale: 1" = 20'

Election District 15
February 1, 2001
Sheet 2 of 2

FILENAME 99066zoningplat sht

KEY	QUANTITY	TYPE
	11	MAJOR DECIDUOUS TREE
	6	FLOWERING TREE
	17	EVERGREEN TREE
	212	EVERGREEN SHRUB

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1 PU/15 L F CLASS 'B' SCREENING ADJ TO RDWY @ 212 LF = 14 PU'S
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1 PU/10 LF CLASS 'C' SCREENING ADJ TO COMMERCIAL @ 242 LF = 24 PU'S
TOTAL PU'S REQUIRED = 53 PU'S

PU'S PROVIDED·
11 MAJOR DECIDUOUS TREES = 11 PU'S
6 FLOWERING TREES = 3 PU'S
17 EVERGREEN TREES = 8 PU'S
212 SHRUBS = 42 PU'S
TOTAL PU'S PROVIDED = 64 PU'S

NOTE
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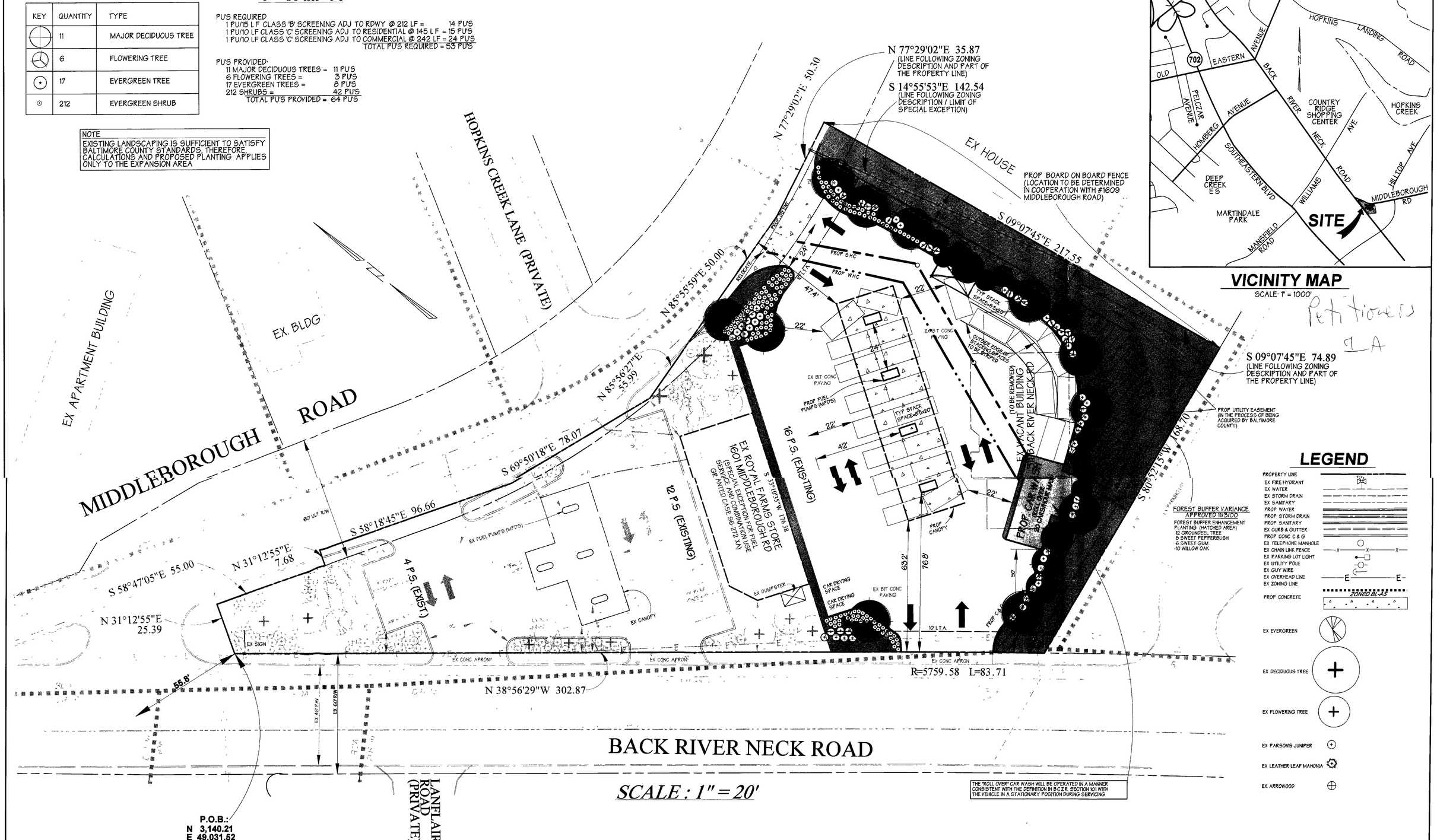

Petitioner's 1-A

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facsimile 410-683-1798
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FILENAME 980656zoningplat.sht

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Store #15

Tax Map 97
Parcel 418, Lots 67&68
Scale: 1" = 20'

Election District 15
February 1, 2001
Sheet 2 of 2

BACK RIVER NECK RD.

Pat'n Gafts