IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE - NE/Corner Hollins Ferry Road and Hammonds Ferry Road (3023 Hammonds Ferry Road) 13th Election District 1st Council District	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
	*	Case No. 04-035-SPHXA
Shalin Enterprises, Inc. Petitioners	*	

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception and Variance filed by the owners of the subject property, Shalin Enterprises, Inc., by and through their attorney, John B. Gontrum, Esquire. The Petitioners request a special hearing to approve an amendment to the site plans and Orders issued in prior Cases Nos. 65-316-RX and 83-48-X to permit a fuel service station use in combination with a convenience store of 1709 sq.ft. and carryout of 286 sq.ft. within the existing building. In addition, special exception relief is requested to approve such use in combination, pursuant to Section 405.E of the Baltimore County Zoning Regulations (B.C.Z.R.). Lastly, variance relief is requested from the B.C.Z.R. as follows: From Section 405.4.A.2.b to permit landscape transition areas of as little as 3' in lieu of the minimum required 10' from a public right-of-way and 0' in lieu of the required 6' from adjacent properties; from Section 405.4.A.2.c to waive the vegetation requirements under the landscape manual for automotive uses; and, from Sections 405.4.b.1 and 405.4.B.10 to permit a fuel service station use in combination with a convenience store of 1709 sq.ft. and carryout restaurant of 286 sq.ft within an existing building on a lot size of 18,804 sq.ft. in lieu of the minimum required lot area of 23,524 sq.ft. 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 Exhibit 1.

ORDER RECEIVED FOR FILING
Date 11/10/03
By

Appearing at the requisite public hearing in support of the request were Shrgyas Panchigar, principle of Shalin Enterprises, Inc., property owners; Patrick Richardson, the Professional Engineer who prepared the site plan; and John B. Gontrum, Esquire, attorney for the Petitioners. There were no Protestants or other interested persons present; however, a request for a copy of the Order issued in this case was received from Stan Sobotka. Moreover, a letter regarding the request was received from Brenda Harney, Director of the Greater BLR Alliance, Inc., a neighborhood association.

Testimony and evidence offered revealed that the subject property is an irregular shaped parcel located on the northeast corner of Hammonds Ferry Road and Hollins Ferry Road in Catonsville. The property contains a gross area of 0.63 acres, more or less, zoned B.L.-A.S. and is improved with a one-story building to the rear of the site, which has been used as an Exxon fuel service station for many years. In addition to the building, a fuel pump island containing 12 multi-product fuel dispensers is located in the front portion of the site, adjacent to the intersection. Testimony indicated that a number of years ago, there was also a convenience store and small office area added to the building. The Petitioners are desirous of utilizing 286 sq.ft. of the convenience store to install a deli/carry-out, which will offer ready-to-eat sandwiches and other similar products. Although no exterior changes or additions are proposed to the existing building, the requested relief is necessary to bring the property into compliance with zoning regulations.

Based on the testimony and evidence offered, I am persuaded to grant the requested relief. It is clear that the property has been used as a gasoline service station for many years and that the proposed improvements are consistent with other uses in the area and the character of the surrounding neighborhood. The zoning relief requested and addition of the proposed deli will not significantly alter the use/appearance of the property. Testimony indicated that a Royal Farms Store is located on the adjacent property to the east and to the north (rear) side is a service garage operation. I find that the relief requested meets the requirements of Section 502.1 of the B.C.Z.R. I further find that the special hearing relief should be granted to allow amendments to the site plans and Orders issued in the prior cases to reflect current conditions on the site.

ORDER RECEIVED FOR FILING
Date 11/11/03
By

Lastly, as noted above, variance relief is requested from the landscape requirements. In this regard, relief is necessary due to the unusual configuration of the site and the location of existing improvements thereon. As shown on the site, the existing building abuts the rear property line and the balance of the site is largely paved macadam. Thus, landscaping of the property is limited to existing grassy areas. Moreover, the property lacks sufficient area to meet the requirements for a fuel service station use in combination with a convenience store. However, as noted above, the property has been used for such purposes for many years, apparently without detrimental impact to the surrounding neighborhood. For all of these reasons, I am persuaded to grant the requested variances.

Further testimony revealed that the Petitioners negotiated and reached an agreement with the Greater BLR Alliance, Inc. regarding the proposal. Thus, the relief granted herein is conditioned upon Petitioners' compliance with the terms and conditions of that agreement, which has been incorporated herein as set out below.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 10th day of November 2003 that the Petition for Special Hearing to approve an amendment to the site plans approved and Orders issued in prior Cases Nos. 65-316-RX and 83-48-X to permit a fuel service station use in combination with a convenience store of 1709 sq.ft. and proposed carryout of 286 sq.ft. within the existing building, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Exception to approve such uses in combination, pursuant to Section 405.E of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from the B.C.Z.R. as follows: From Section 405.4.A.2.b of the B.C.Z.R. to permit landscape transition areas of as little as 3' in lieu of the minimum required 10' from a public right-of-way and 0' in lieu

ORDER RECEIVED FOR FILING
Date 11/10/03
By

of the required 6' from adjacent properties; from Section 405.4.A.2.c of the B.C.Z.R. to waive the vegetation requirements under the landscape manual for automotive uses; and from Sections 405.4.b.1 and 405.4.B.10 of the B.C.Z.R. to permit a fuel service station use in combination with a convenience store of 1709 sq.ft. and carryout restaurant of 286 sq.ft within an existing building on a lot size of 18,804 sq.ft. in lieu of the minimum required lot area of 23,524 sq.ft., in accordance with Petitioner's Exhibit 1, 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, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2) The Petitioners shall install a guardrail between the subject property and the adjacent Royal Farms Store lot to prevent traffic from that business from cutting through the subject property to avoid the intersection.

3) The Petitioners shall submit a landscape plan to Mr. Avery Harden, the Landscape Architect for Baltimore County, to develop a suitable landscape plan for the subject property. Said plan should recognize the existing use of the property and improvements thereon and shall require landscaping as reasonably practical and prudent. A copy of the approved plan shall be submitted to the Office of Planning and the Greater BLR Alliance, Inc.

4) There shall be no damaged or disabled vehicles stored on the subject lot.

5) If agreeable to the adjacent property owner at 3015 Hammonds Ferry Road, the Petitioners shall erect a small barrier fence along the common property line. In addition, the existing fuel tank in that area shall be removed.

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

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 11/14/13
By

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 3023 HAMMONDS FERRY 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 Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

An amendment to site plans and orders in cases numbers: 65-316RX and 83-48-X to permit a fuel service station in combination with a convenience store of 1,709 square feet and carry out of 286 square feet in the existing building.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, 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

Attorney For Petitioner:

John B. Gontrum, Esquire
Name - Type or Print

Signature

Whiteford, Taylor & Preston LLP
Company

210 W. Pa. Ave., (410) 832-2055
Address Telephone No.

Towson MD 21204
City State Zip Code

Legal Owner(s):

SHALIN ENTERPRISES, INC.
Name - Type or Print

Signature

Name - Type or Print

Signature

3023 HAMMONDS FERRY RD 410-242-0481
Address Telephone No.

BALTIMORE MD 21227
City State Zip Code

Representative to be Contacted:

John B. Gontrum, Esquire
Name

210 W. Pa. Ave., (410) 832-2055
Address Telephone No.

Towson MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By BM Date 7/23/03

Case No. 04-035-SPHXA

REV 9/15/98

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 3023 HAMMONDS FERRY RD

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

A use in combination with a fuel service station of a convenience store of 1,702 square feet and a carry out restaurant of 286 square feet per section 405.E.

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

Attorney For Petitioner:

John B. Gontrum, Esquire
Name - Type or Print

Signature

Whiteford, Taylor & Preston LLP
Company

210 W. Pa. Ave., (410) 832-2055
Address Telephone No.

Towson, MD 21204
City State Zip Code

Legal Owner(s):

SHALIN ENTERPRISES, INC.
Name - Type or Print

Shayan Panaligan
Signature

Name - Type or Print

Shayan Panaligan
Signature

3023 HAMMONDS FERRY RD 410-242-0481
Address Telephone No.

BALTIMORE MD 21227
City State Zip Code

Representative to be Contacted:

John B. Gontrum, Esquire
Name

210 W. Pa. Ave., (410) 832-2055
Address Telephone No.

Towson MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By BR Date 7/23/03

Case No. 04-035-SPHXA

REV 09/15/98

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 3023 HAMMONDS FERRY RD

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 provided at the time of the 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

Attorney For Petitioner:

John B. Gontrum, Esquire
Name - Type or Print

Signature

Whiteford, Taylor & Preston LLP
Company

210 W. Pa.Ave.,Ste, 400 (410) 832-2055
Address Telephone No.

Towson, MD 21204
City State Zip Code

Legal Owner(s):

SHALIN ENTERPRISES, INC.
Name - Type or Print

Shayas Panabigar
Signature

Name - Type or Print

Shayas Panabigar
Signature

3023 HAMMONDS FERRY ROAD 410-242-0481
Address Telephone No

BALTIMORE MD 21227
City State Zip Code

Representative to be Contacted:

John B. Gontrum, Esquire
Name

210 W. Pa. Ave., (410) 832-2055
Address Telephone No.

Towson, MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING

Reviewed By BK Date 7/23/03

Case No. 04-035-SPHXA

REV 9/15/98

REQUESTED VARIANCES

405.4A.2.b	-	To permit landscape transition areas as small as 3′ in lieu of the required 10′ from a public right-of-way and 0′ in lieu of the required 6′.
405.4A.2.c.	-	To waive vegetation requirements under the landscape manual for automotive uses.
405.4b.1 and 40-5.4B.10	-	Co-permit a fuel service station in combination with a convenience store of 1,709 square feet and carry-out restaurant of 386 square feet in existing building on a lot size of 18,804 square feet in lieu of required 23,524 square feet.

284460

Richardson Engineering, LLC

730 W. Padonia Road, Suite 101
Cockeysville, Maryland 21030

410-560-1502, fax 410-560-0827

ZONING DESCRIPTION
HAMMONDS FERRY EXXON STATION
3023 HAMMONDS FERRY ROAD
13TH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

BEGINNING FOR THE SAME at a point on the North side of Hollins Ferry Road at the east side of Hammonds Ferry Road, thence running and binding on the east side of Hammonds Ferry Road right-of-way (1) by a curve to the right with a radius of 22.00 feet for a distance of 19.50 feet, (2) by a curve to the left with a radius of 865.47 feet for a distance of 80.17 feet, (3) by a curve to the right with a radius of 710.00 feet for a distance of 76.38 feet, thence leaving the right of way of Hammonds Ferry Road and, (4) North 85 degrees 43 minutes 47 seconds East 165.81 feet, (5) South 36 degrees 58 minutes 15 seconds East 148.54 feet, to the northern side of Hollins Ferry Road, thence binding on the north side of said road, (6) South 85 degrees 43 minutes 47 seconds West 125.00 feet, to the point of beginning;

Containing a net area of 18,803 square feet, or 0.43 acres of land, more or less.

STATE OF MARYLAND
REGISTERED
PROFESSIONAL ENGINEER

9/16/02

#035

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: #04-035-SPHXA
3023 Hammonds Ferry Road
Veast corner of Hammonds Ferry Road and Hollins Ferry Road
13th Election District - 1st Councilmanic District
Legal Owner(s): *Shalin Enterprises, Shnyls Pandigan*

Special Hearing: to permit an amendment to site plans and orders in case numbers: 65-316-RC and 83-48-X to permit a fuel service station in combination with a convenience store of 1,709 square feet and carry-out 286 square feet in the existing building. **Variance:** to permit landscape transition areas as small as 3 feet in lieu of the required 10 feet from a public right-of-way and 0 feet in lieu of the required 6 feet. To waive vegetation requirements under the landscape manual for automotive uses. To co-permit a fuel service station on combination with a convenience store of 1,709 square feet and carry-out restaurant of 386 square feet in existing building on a lot size of 18,804 square feet in lieu of the required 23,524 square feet. **Special Exception:** to permit use in combination with a fuel service station of a convenience store of 1,702 square feet and a carry-out restaurant of 286 square feet.

Hearing: Wednesday, September 24, 2003 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT/9/674 Sept. 9 0625550

CERTIFICATE OF PUBLICATION

9/11, 2003

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 9/9, 2003.

- [X] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 25091

DATE 7/23/03 ACCOUNT R 001-006-6150

AMOUNT $ 800.00

RECEIVED FROM: Richardson Engineering LLC

FOR: Special Hearing, Special Exception & Variances

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

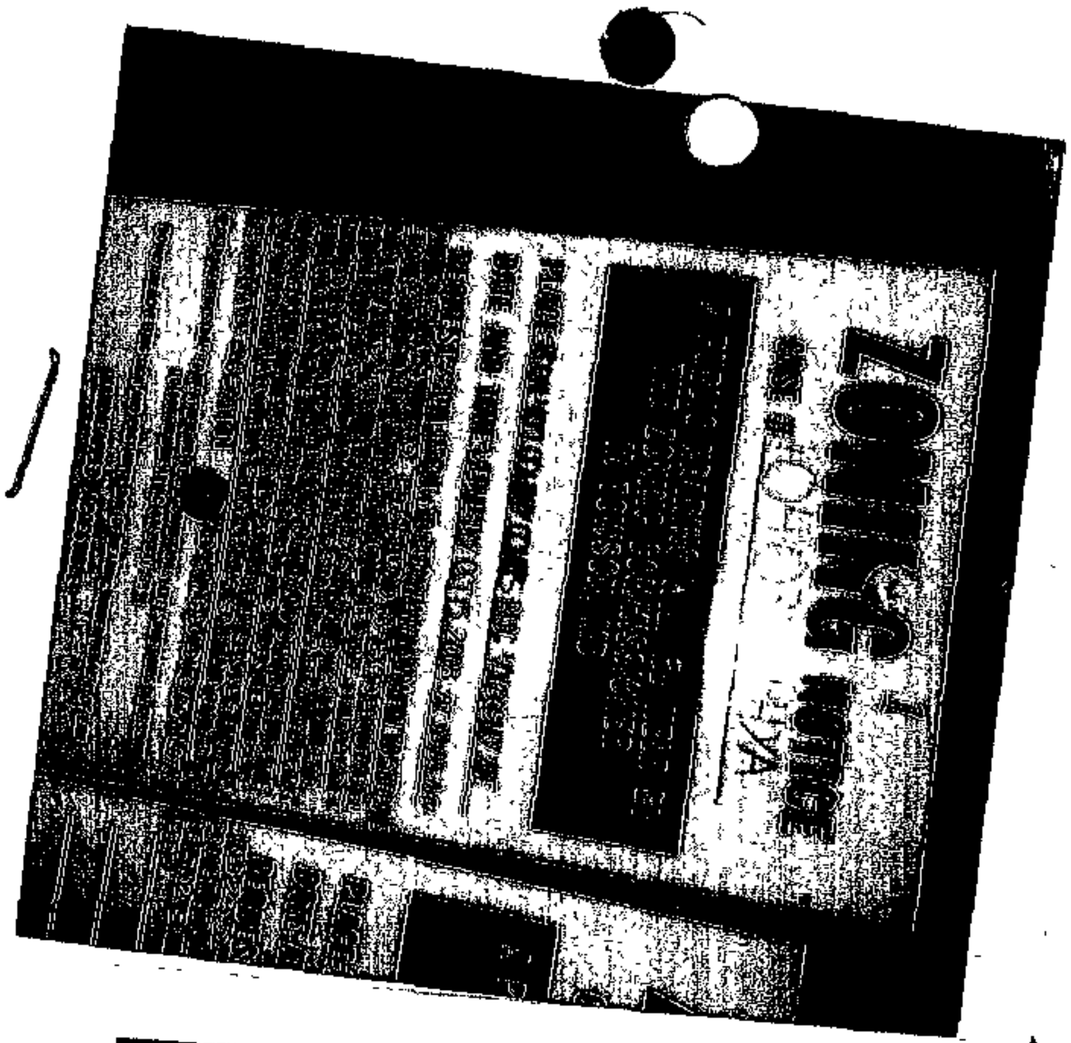
Item # 035

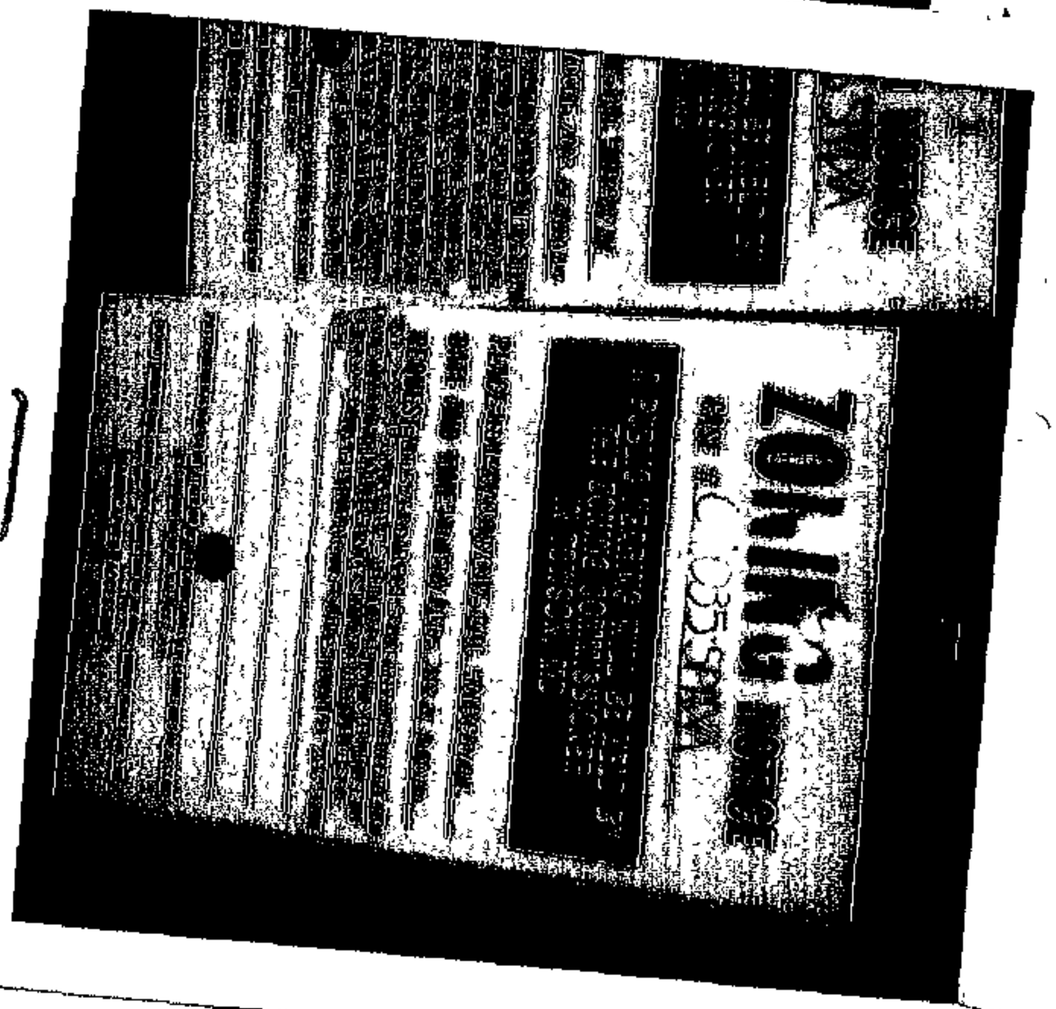
CASHIER'S VALIDATION

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
7/23/2003	7/23/2003	14:20:57	2

REG WSH WALKIN DRL IND
>RECEIPT # 236077 7/23/2003 DFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 025091
Recpt Tot $800.00
800.00 CK .00 CA
Baltimore County, Maryland





SIGN!

E OF POSTING

RE: Case No.: 04-035-SPHXA

Petitioner/Developer: SHALIN ENT.
SHNYIS PANDIGAN

Date of Hearing/Closing: OCt, 15, 2003

ury that the necessary sign(s) required by law were

AMMONDS FERRY RD

9/27/03
(Month, Day, Year)

Sincerely,

(Signature of Sign Poster) (Date) 9/27/03

SSG Robert Black
(Print Name)

1508 Leslie Road
(Address)

Dundalk, Maryland 21222
(City, State, Zip Code)

(410) 282-7940
(Telephone Number)

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

August 7, 2003

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: 04-035-SPHXA
3023 Hammonds Ferry Road
N/east corner of Hammonds Ferry Road and Hollins Ferry Road
13th Election District – 1st Councilmanic District
Legal Owner: Shalin Enterprises, Shnyis Pandigan

Special Hearing to permit an amendment to site plans and orders in case numbers: 65-316-RC and 83-48-X to permit a fuel service station in combination with a convenience store of 1, 709 square feet and carry out 286 square feet in the existing building. Variance to permit landscape transition areas as small as 3 feet in lieu of the required 10 feet from a public right-of-way and 0 feet in lieu of the required 6 feet. To waive vegetation requirements under the landscape manual for automotive uses. To co-permit a fuel service station on combination with a convenience store of 1, 709 square feet and carry-out restaurant of 386 square feet in existing building on a lot size f 18, 804 square feet in lieu of the required 23, 524 square feet. Special Exception to permit use in combination with a fuel service station of a convenience store of 1, 702 square feet and a carry-out restaurant of 286 square feet.

Hearings: Wednesday, September 24, 2003, at 10:00 a.m., in Room 407, County Courts Building, 401 Bosley Avenue

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

C: John Gontrum, Whiteford, Taylor & Preston, 210 W. Pennsylvania Av., Towson 21204
Shalin Enterprises, 3023 Hammonds Ferry Road, Baltimore 21227

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, SEPTEMBER 9, 2003.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed with Soybean Ink
on Recycled Paper

TO: PATUXENT PUBLISHING COMPANY
Tuesday, September 9, 2003 Issue - Jeffersonian

Please forward billing to:
George Panchigar
3023 Hammonds Ferry Road
Baltimore, MD 21227

443-506-2600

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: 04-035-SPHXA
3023 Hammonds Ferry Road
N/east corner of Hammonds Ferry Road and Hollins Ferry Road
13th Election District – 1st Councilmanic District
Legal Owner: Shalin Enterprises, Shnyis Pandigan

Special Hearing to permit an amendment to site plans and orders in case numbers: 65-316-RC and 83-48-X to permit a fuel service station in combination with a convenience store of 1, 709 square feet and carry out 286 square feet in the existing building. Variance to permit landscape transition areas as small as 3 feet in lieu of the required 10 feet from a public right-of-way and 0 feet in lieu of the required 6 feet. To waive vegetation requirements under the landscape manual for automotive uses. To co-permit a fuel service station on combination with a convenience store of 1, 709 square feet and carry-out restaurant of 386 square feet in existing building on a lot size f 18, 804 square feet in lieu of the required 23, 524 square feet. Special Exception to permit use in combination with a fuel service station of a convenience store of 1, 702 square feet and a carry-out restaurant of 286 square feet.

Hearings: Wednesday, September 24, 2003, at 10:00 a.m., in Room 407, County Courts Building, 401 Bosley Avenue

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL 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

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

September 26, 2003

John Gontrum
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

Dear Mr. Gontrum:

RE: Case Number: 04-035-SPHXA, 3023 Hammonds Ferry Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on July 23, 2003.

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:klm

Enclosures

c: People's Counsel
Shalin Enterprises, 3023 Hammonds Ferry Road, Baltimore 21227

Baltimore County
Fire Department

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

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

August 6, 2002

ATTENTION: Rebecca Hart

Distribution Meeting of: August 4, 2003

Item No.: 035

Dear Ms. Hart:

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 Baltimore County Fire Prevention Code, (2000 edition of NFPA 1 & 101), prior to occupancy or beginning of operation.

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

cc: File

Department of Permits and Development Management

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

Baltimore County

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

November 26, 2003

Mr. John Gontrom
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

Dear Mr. Gontrum:

RE: Case : 04-035, 3023 Hammonds Ferry Road

Please be advised that an appeal of the above-referenced case was filed in this office on November 19, 2003. 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,

Timothy Kotroco
Director

KT:rlh

c: Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Shalin Enterprises, Inc.
Michael Tanczyn, 606 Baltimore Avenue, Suite 106, Towson 21204

Printed on Recycled Paper

Zoning Commissioner

Suite 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
Tel: 410-887-3868 • Fax: 410-887-3468

Baltimore County

James T. Smith, Jr., County Executive
Lawrence E. Schmidt, Zoning Commissioner

November 3, 2003

John B. Gontrum, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE
NE/Corner Hollins Ferry Road & Hammond Ferry Road
(3023 Hammonds Ferry Road)
13th Election District – 1st Council District
Shalin Enterprises, Inc. - Petitioners
Case No. 04-035-SPHXA

Dear Mr. Gontrum:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing, Special Exception and Variance have been granted, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the 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. Shrgyas Panchigar, Shalin Enterprises, Inc.
3023 Hammonds Ferry Road, Baltimore, Md. 21227
Mr. Patrick Richardson, Richardson Engineering, LLC
730 W. Padonia Road, Suite 101, Cockeysville, Md. 21030
Mr. Stan Sobotka, 3611 Roland Avenue, Baltimore, Md. 21211
Office of Planning; People's Counsel; Case File

Printed on Recycled Paper

Department of Permits and Development Management

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

Baltimore County

James T Smith, Jr, County Executive
Timothy M Kotroco, Director

December 19, 2005

Richard Richardson
110 Old Padonia Road, Suite LC
Cockeysville, MD 21030

Re: Spirit & Intent - Case # 04-035-SPHXA; Shalin Enterprises, Inc.; 3023 Hammonds Ferry Rd; 13th Election District

Dear Mr. Richardson:

Your recent letter to the Zoning Office was forwarded to me for reply. Your request for the inquiry was to be reassured that the proposed area configuration of retail uses for the existing one-story building meets the Spirit and Intent of the subject zoning case.

Based upon the revised site plan (12/12/05) you submitted, and specifically, the calculations shown under "General Notes" # 9, it has been determined that the current revision of retail uses meets the Spirit and Intent of the subject zoning case.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, I can be reached at 410-887-3391.

Sincerely,

Bruno Rudaitis
Planner II
Zoning Review

br:BR

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*

SHA
Driven to Excel
The State Highway Administration
MARYLAND DEPARTMENT OF TRANSPORTATION

Robert L. Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

Date: 8.5.03

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

RE: Baltimore County
Item No. 035 BPR

Dear. Ms. Hart:

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,

Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: September 10, 2003

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

RECEIVED

SEP 11 2003

ZONING COMMISSIONER

SUBJECT: 3032 Hammonds Ferry Road

INFORMATION:

Item Number: 04-035

Petitioner: Shalin Enterprises, Inc.

Zoning: BL-AS

Requested Action: Special Exception/Special Hearing/Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not oppose the petitioner's requests to permit a fuel service station in combination with a convenience store and, to variance the required landscape transition areas provided the following conditions are met:

1. Revise General Note # 10 on the plan to include 'landscapes areas' to the list of features to remain.
2. Revise the subject site plan to show the sidewalks along Hammonds Ferry Road, from the vehicular entrance to the northern property line.

This office **opposes** all requests to waive the landscape requirements adjacent to the public right-of-way for an automotive use. There is adequate space to provide landscaping in the areas along the public right-of-way. A landscape plan should be prepared to supplement the existing planting. Said plan should be submitted this office for review and approval prior to the issuance of any building permits.

Prepared by: Mark A. Cumpton

Section Chief: Lyn Lanham

AFK/LL:MAC:

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

DATE: September 25, 2003

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

SUBJECT: Zoning Advisory Committee Meeting
For August 11, 2003
Item Nos. 033, 034, 035, 036, 037,
039, 040, 041, 043, 045, and 046

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

RWB:CEN:jrb

cc: File

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

November 18, 2003

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Re: Petitions For Special Hearing, Special Exception & Variance
N/E Corner Hollins Ferry Road & Hammonds Ferry Road
(3023) Hammonds Ferry Road)
13th Election District - 1st Council District
Shalin Enterprises, Inc. - Petitioners
Case No.: 04-035-SPHXA

Dear Mr. Kotroco:

Please enter an appeal to the Board of Appeals from the decision of the Zoning Commissioner, approving the above Petitions, dated November 10, 2003. The appeal should be noted on behalf of the following individuals that I represent:

Mr. Robert Newell, 3934 McDowell Lane, Lansdowne, MD 21227
Mr. Frank Ashley, 4384 Hollins Ferry Road, Lansdowne, MD 21227
Ms. Shantel Brooks, 3163 Kessler Road, Lansdowne, MD 21227
Cloverland Farms Dairy, T/A Royal Farms, 3611 Roland Avenue, Baltimore, MD 21211
Billy Burnley, 3122 Aspen Court, Lansdowne, MD 21227
Wayne Hayes, 2924 Charleston Avenue, Lansdowne, MD 21227

Enclosed you will find our check for costs. Please advise us of all hearing dates.

RECEIVED
NOV 19 2003
Per.....

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl
Encl.
cc: clients
John B. Gontrum, Esquire
Lawrence Schmidt

RECEIVED
NOV 18 2003
03-5821
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

RE:	PETITION FOR SPECIAL HEARING SPECIAL EXCEPTION & VARIANCE 3023 Hammonds Ferry Road; NE corner Hammonds Ferry Rd & Hollins Ferry Rd 13th Election & 1st Councilmanic Districts Legal Owner(s): Shalin Enterprises, Inc; Shalin Panchigar Petitioner(s)	* * * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 04-035-SPHXA

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

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and 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 8th day of August, 2003, a copy of the foregoing Entry of Appearance was mailed to John B. Gontrum, Esquire, Whiteford, Taylor & Preston, LLP, 210 W Pennsylvania Avenue, Suite 400, Towson, MD 21204, Attorney for Petitioner(s).

RECEIVED
AUG 0 8 2003
Per.....

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

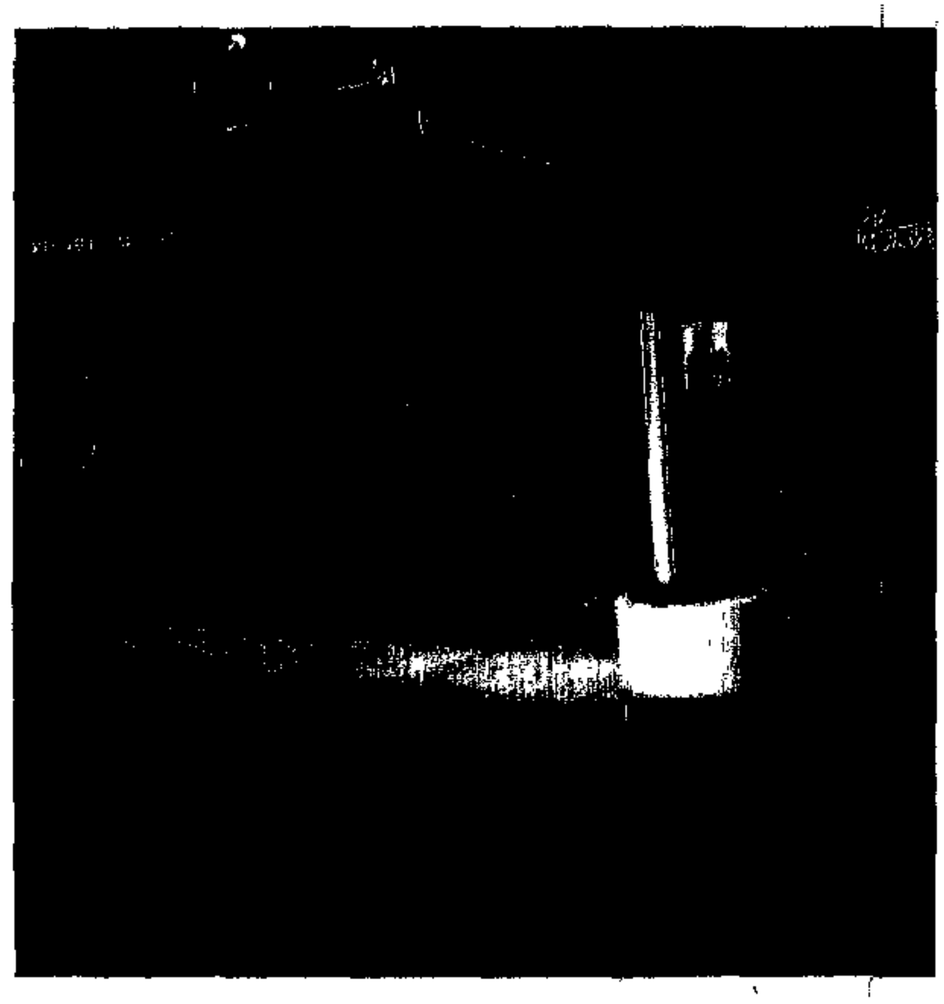
PLEASE PRINT CLEARLY

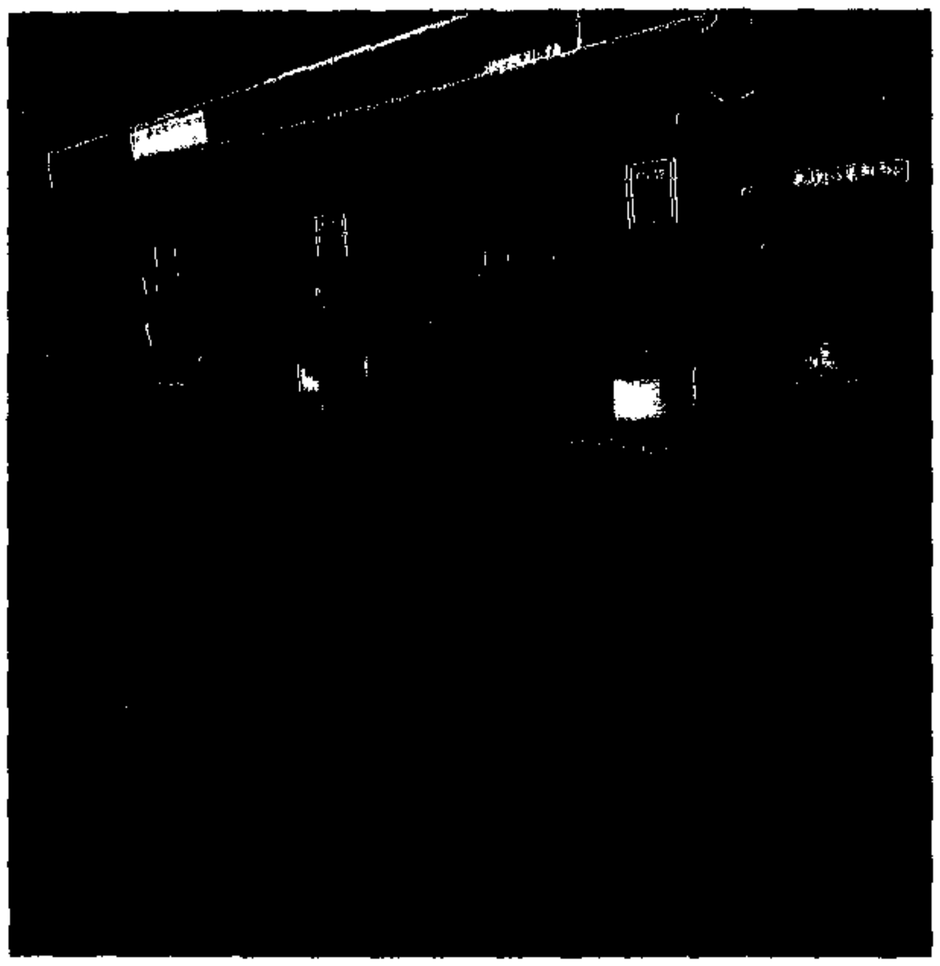
CASE NAME_____
CASE NUMBER_____
DATE_____

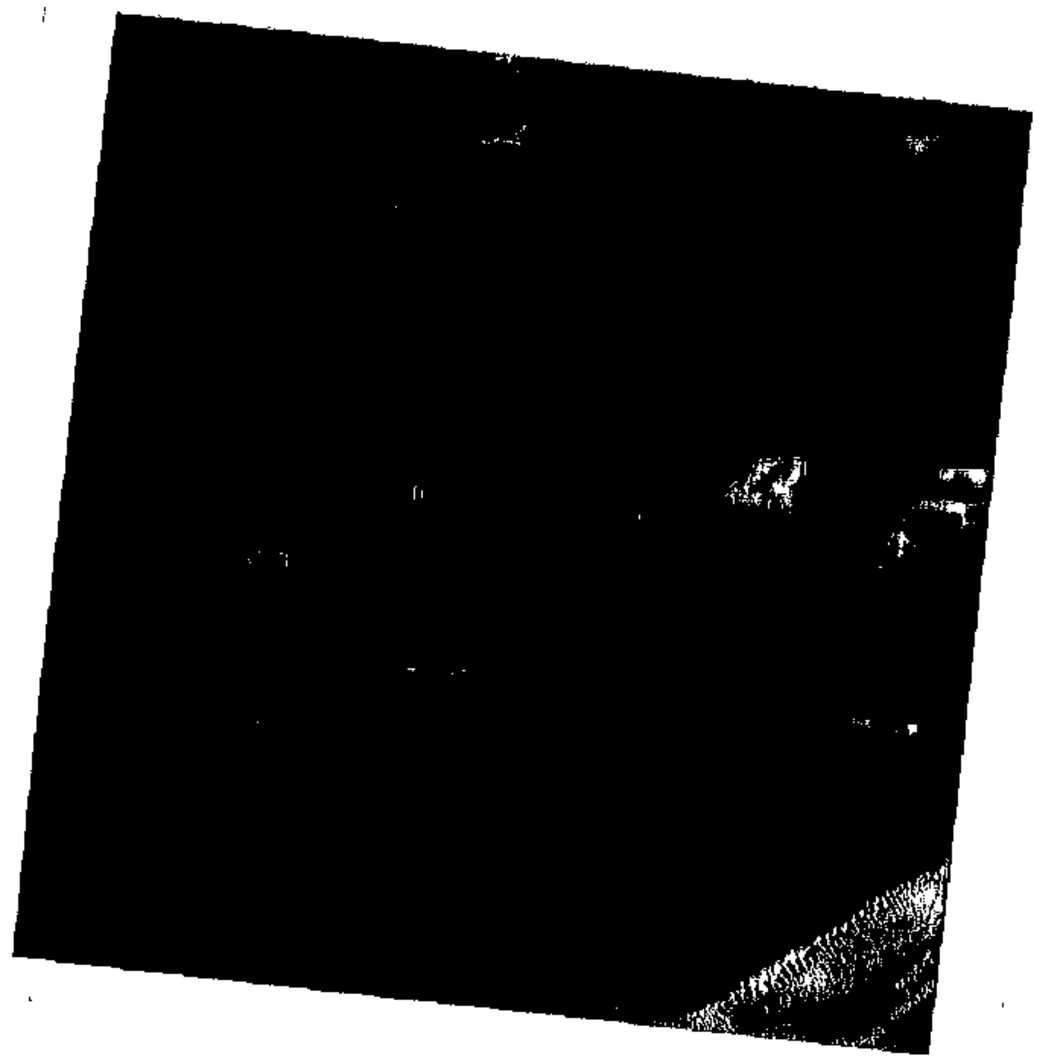
PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
RICK RICHARDSON	730 W PADONIA RD	COCKEYSVILLE, MD 21030	REIG@FIVESTONES.COM
SHREYAS PANCHIGAR	2926 W. Almondbury Dr.	Pasadena MD 21122	shreyaspanchigar@hotmail.com
JOHN GONTRUM			
		Phone Lin	
		STAN SOBOTKA	
		3611 Pulaski Rd	20 LAND Ave
			MD
			21211

photographs
#04-035-SPNXA
(Ex. 2A-2F)







SUBS

From the desk of:
Brenda Harney, Director
914 Winsap Court
Baltimore, MD 21227
The Greater BLR Alliance, Inc.
(410) 247-9718

RECEIVED
OCT 27 2003
ZONING COMMISSIONER

October 17, 2003

Baltimore County Zoning Commission
County Courts Building
401 Bosley Avenue
Room 407
Towson, MD 21401

Attention Hearing Officer,

Case # is 4-35-SPHXA which is 3023 Hammonds Ferry Road to permit an amendment to site plans and order #'s 65-316RX and 83-48-X. Theresa Lowery and myself apologize for not being at the hearing on Wednesday, October 15th at 2-PM to finalize the communities concerns.

This letter is to inform you of our discussion on Tuesday, October 14th with Mr. John Gontrum, lawyer for the owner of the property, and the owner himself. Theresa Lowery from Lansdowne, Edna Harmison from Riverview and myself were present at this meeting. Below are the results of that meeting:

* Communities agreed to allow amendments per case numbers.
* Guard rail installed between Exxon and Farm Store.
* Landscaping plan to be submitted to communities for approval.
* Owner also agreed to erect small barrier fence between property lines with a business toward the rear, if approved by existing business owner. Fuel tank will also be removed from this area.

The biggest concern the communities had was the safety of the motorists and the pedestrians in this area. This business location and surrounding areas are extremely busy. Baltimore County Traffic has already advised the communities that all traffic upgrades for this intersection are completed. Because of the size of the carry-out, and the redesign of the parking lot, the communities were in favor. We are hoping the business owner will take into account the communities concerns when deciding on the type of carry-out food he plans on installing. The lawyer and the owner were considerate enough to inform the communities of the future additions and upgrades to the community they will be proposing. I will be sharing these plans with the communities to get their feedback.

The information above should have been relayed at the hearing. The organization is extremely interested in monitoring the activities of the businesses in the communities. If information above differs from what you heard at the hearing, please contact me at the address or phone number above.

Sincerely,

Brenda Harney

Brenda Harney, Director

cc: J. Gontrum

File

Reset Oct 15

9/24/03 04-035 SPH XA

John G. Contrum - Atty for Pet
Theresa Lowry - Community Lowery

Request for Postponement - Confirm

- failure to place sign on property
continuance requested to properly post property
- was proper publication
Lowry agreed

Continuance Granted

Reset for Oct 15, 2003

- Request made for continuance to avoid republishing costs

#407

WEDNESDAY **24** SEPTEMBER

ZONING COMMISS

CASE NUMBER: 4-42-A
64 W. Kingston Park Lane
Location: S/side of Kingston Park Road, 403 feet southeast of Kingston Road
15th Election District, 6th Councilmanic District
Legal Owner: Jill Leslie Knauff
Contract Purchaser:

VARIANCE to permit 8 feet side yards, and 44 feet width of lot at front building line in lieu of 10 feet sides and 55 feet width and to permit an undersize lot.

Hearing: Wednesday, 09/24/2003 at 9:00:00 AM, County Courts Building, 401 Bosley Avenue, Rm. 407

CASE NUMBER: 4-35-SPHXA
3023 Hammonds Ferry Road
Location: N/east corner Hammonds Ferry Road and Hollins Ferry Road
13th Election District, 1st Councilmanic District
Legal Owner: Shalin Enterprises, Shalin Panchigar
Contract Purchaser:

SPECIAL HEARING to permit an amendment to site plans and orders; in cases numbers: 65-316RX and 83-48-X to permit a fuel service station in combination with a convenience store of 1,709 square feet and carry out of 286 square feet in the existing building. VARIANCE to permit landscape transition areas as small as 3 feet in lieu of the required 10 feet from a public right-of-way and 0 feet in lieu of the required 6 feet. To waive vegetation requirements under the landscape manual for automotive uses. To co-permit a fuel service station on combination with a convenience store of 1,709 square feet and carry-out restaurant of 386 square feet in existing building on a lot size of 18,804 square feet in lieu of required 23,524 square feet. Special Exception to permit use in combination with a fuel service station of a convenience store of 1,702 square feet and a carry out restaurant of 286 square feet.

Reset: 10/15/03 @ 2:00 pm, Rm #407

Hearing: Wednesday, 09/24/2003 at 10:00:00 AM, County Courts Building, 401 Bosley Avenue, Rm. 407

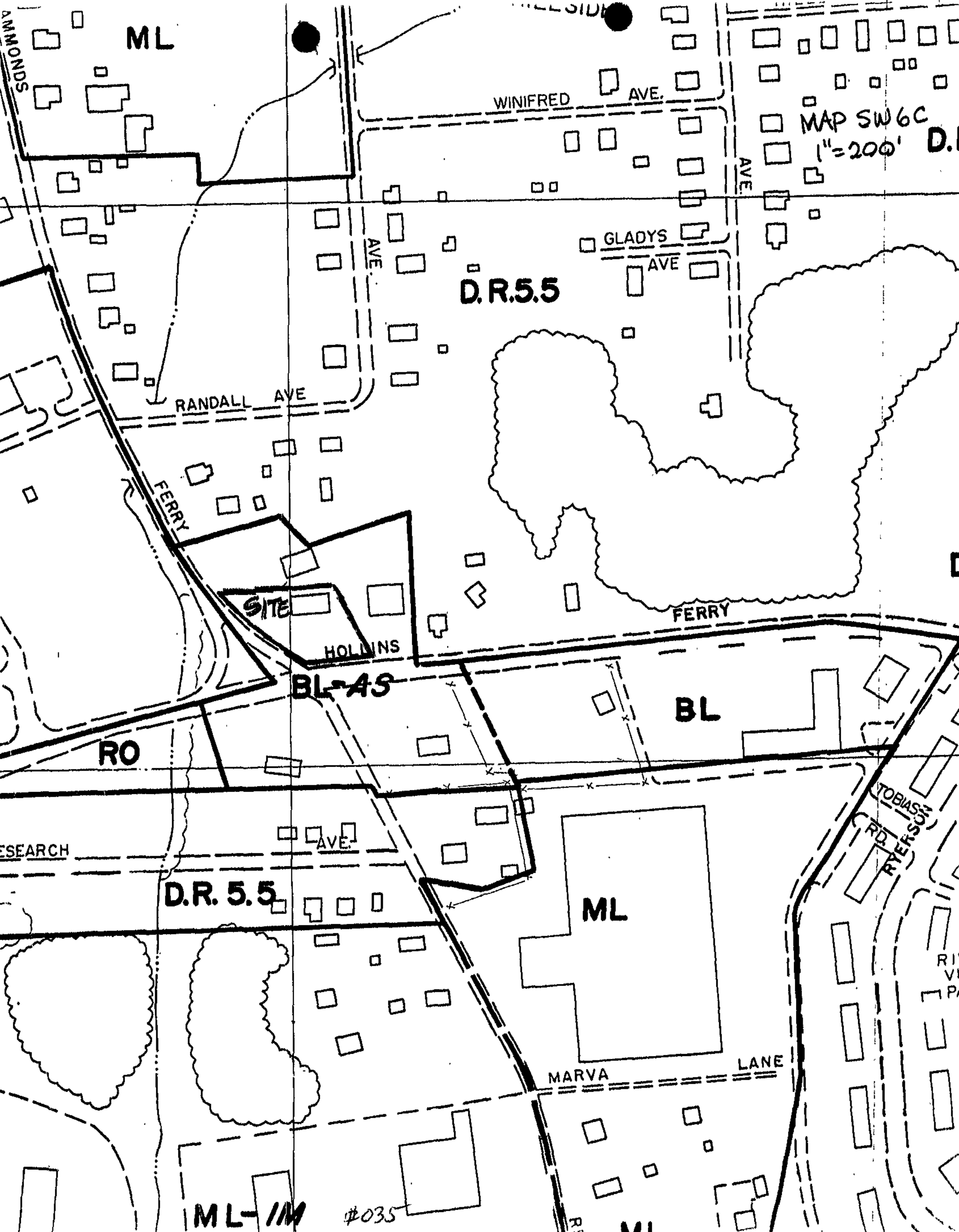
CASE NUMBER: 4-27-SPH
1406 Mt. Carmel Road 1314 "B" Mt. Carmel Road
Location: N/side Mt. Carmel Road 230 feet southwest Flickwood Road
7th Election District, 3rd Councilmanic District
Legal Owner: Glenn L. and Barbara Durst Grantor: Maurice E. Fitez, Jr. and Shirley M. Fitez
Contract Purchaser:

#104

SPECIAL HEARING to permit a transfer of 1 density unit along with 1 acre of land from Fitez to Durst as shown on the attached zoning plats.

Hearing: Wednesday, 09/10/2003 at 11:00:00 AM, County Courts Bldg., 401 Bosley Avenue, Rm. 407 Cont'd 9/24/03 @ 2:00 P.M., Rm #407

CASE NUMBER: 04-021-SPHXA
Rosewood Lane & Garrison Forest Road
W/side of Garrison Forest Road, 343.6 feet south of Rosewood Lane
3rd Election District – 3rd Councilmanic District
Legal Owner: State of MD to the use of the Dept. of Health & Mental Hygiene, Nelson J. Sabatini, Secretary
Contract Purchaser: The Associated Jewish Community Federation of Baltimore; Matthew Freedman, V.P. Community Planning


ML
WINIFRED AVE.
MAP SW 6C
1"=200'
D.R.5.5
GLADYS AVE
RANDALL AVE
FERRY
SITE
HOLLINS
BL-AS
BL
RO
ESEARCH AVE.
D.R. 5.5
ML
MARVA LANE
ML-1/4
#035
ML
TOBIASON RD
RYERSON

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: 04-035-SPHXA

Petitioner: SHALIN ENTERPRISES, INC.

Address or Location: 3023 HAMMONDS FERRY RD

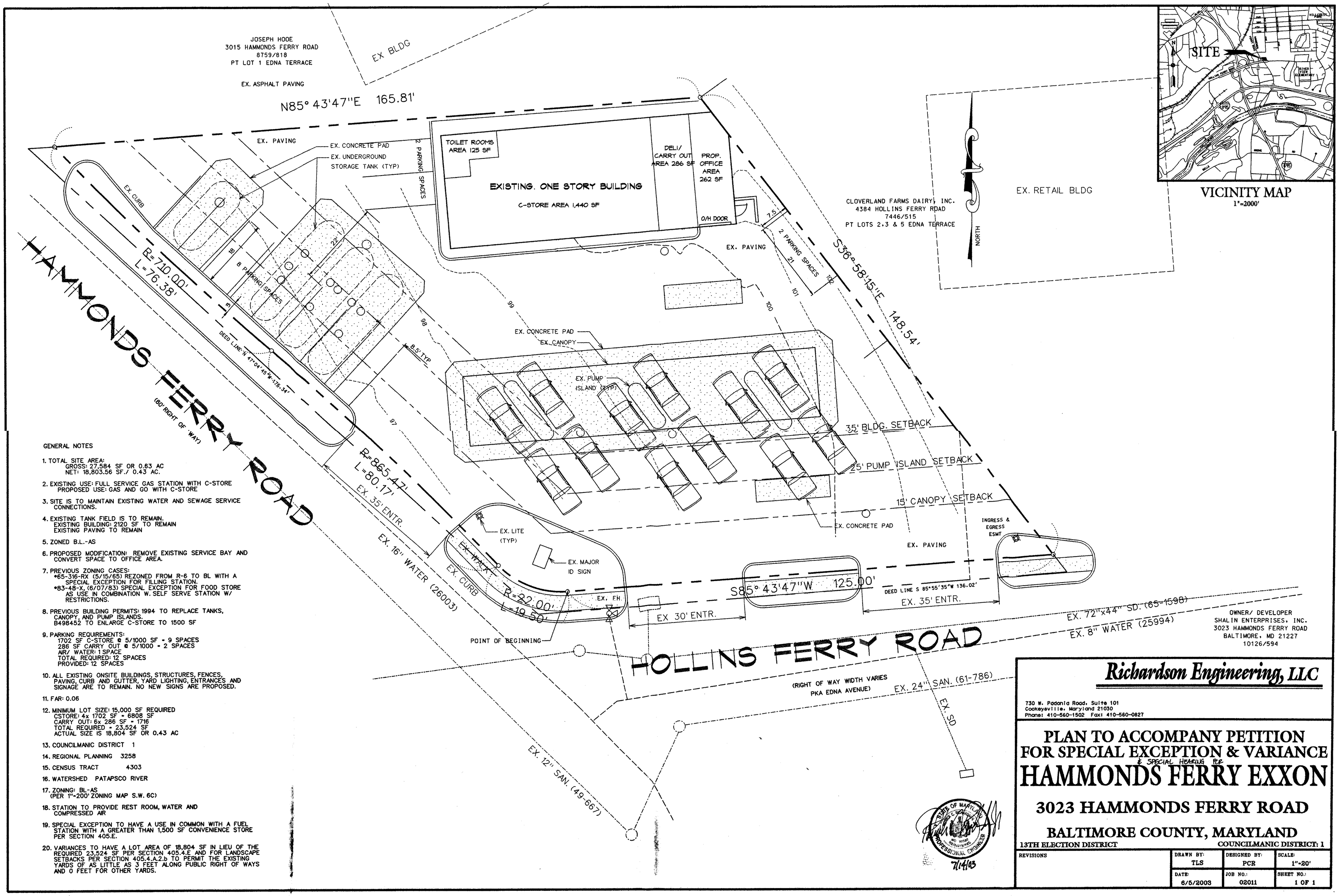
PLEASE FORWARD ADVERTISING BILL TO:

Name: GEORGE PANCHIGAR HAMMONDS FERRY EXXON

Address: 3023 HAMMONDS FERRY RD
BALTIMORE, MD 21227

Telephone Number: 443-506-2600

Revised 2/20/98 - SCJ



GENERAL NOTES

1. TOTAL SITE AREA:
   GROSS: 27,584 SF OR 0.63 AC
   NET: 18,803.56 SF./ 0.43 AC.

2. EXISTING USE: FULL SERVICE GAS STATION WITH C-STORE
   PROPOSED USE: GAS AND GO WITH C-STORE

3. SITE IS TO MAINTAIN EXISTING WATER AND SEWAGE SERVICE CONNECTIONS.

4. EXISTING TANK FIELD IS TO REMAIN.
   EXISTING BUILDING: 2120 SF TO REMAIN
   EXISTING PAVING TO REMAIN

5. ZONED B.L.-AS

6. PROPOSED MODIFICATION: REMOVE EXISTING SERVICE BAY AND CONVERT SPACE TO OFFICE AREA.

7. PREVIOUS ZONING CASES:
   *65-316-RX (5/15/65) REZONED FROM R-6 TO BL WITH A SPECIAL EXCEPTION FOR FILLING STATION.
   *83-48-X, (6/07/83) SPECIAL EXCEPTION FOR FOOD STORE AS USE IN COMBINATION W. SELF SERVE STATION W/ RESTRICTIONS.

8. PREVIOUS BUILDING PERMITS: 1994 TO REPLACE TANKS, CANOPY, AND PUMP ISLANDS.
   B498452 TO ENLARGE C-STORE TO 1500 SF

9. PARKING REQUIREMENTS:
   1702 SF C-STORE @ 5/1000 SF = 9 SPACES
   286 SF CARRY OUT @ 5/1000 = 2 SPACES
   AIR/ WATER: 1 SPACE
   TOTAL REQUIRED: 12 SPACES
   PROVIDED: 12 SPACES

10. ALL EXISTING ONSITE BUILDINGS, STRUCTURES, FENCES, PAVING, CURB AND GUTTER, YARD LIGHTING, ENTRANCES AND SIGNAGE ARE TO REMAIN. NO NEW SIGNS ARE PROPOSED.

11. FAR: 0.06

12. MINIMUM LOT SIZE: 15,000 SF REQUIRED
    CSTORE: 4x 1702 SF = 6808 SF
    CARRY OUT: 6x 286 SF = 1716
    TOTAL REQUIRED = 23,524 SF
    ACTUAL SIZE IS 18,804 SF OR 0.43 AC

13. COUNCILMANIC DISTRICT 1

14. REGIONAL PLANNING 3258

15. CENSUS TRACT 4303

16. WATERSHED PATAPSCO RIVER

17. ZONING: BL-AS
    (PER 1"=200' ZONING MAP S.W. 6C)

18. STATION TO PROVIDE REST ROOM, WATER AND COMPRESSED AIR

19. SPECIAL EXCEPTION TO HAVE A USE IN COMMON WITH A FUEL STATION WITH A GREATER THAN 1,500 SF CONVENIENCE STORE PER SECTION 405.E.

20. VARIANCES TO HAVE A LOT AREA OF 18,804 SF IN LIEU OF THE REQUIRED 23,524 SF PER SECTION 405.4.E AND FOR LANDSCAPE SETBACKS PER SECTION 405.4.A.2.b TO PERMIT THE EXISTING YARDS OF AS LITTLE AS 3 FEET ALONG PUBLIC RIGHT OF WAYS AND 0 FEET FOR OTHER YARDS.

#035

6/3/07

IN THE MATTER OF:	*	BEFORE THE
THE APPLICATION OF		
SHALIN ENTERPRISES, INC. -	*	COUNTY BOARD OF APPEALS
LEGAL OWNER/PETITIONER		
FOR SPECIAL HEARING, SPECIAL	*	OF
EXCEPTION AND VARIANCE ON		
PROPERTY LOCATED ON NE/COR	*	BALTIMORE COUNTY
HOLLINS FERRY ROAD		
(3022 HAMMONDS FERRY ROAD)	*	CASE NO.: 04-035-SPHXA
13TH ELECTION DISTRICT	*	
1ST COUNCILMANIC DISTRICT		

* * * * * * * * * * *

RULING ON PROTESTANTS' MOTION FOR RECONSIDERATION AND AMENDMENT TO BOARD'S APRIL 19, 2007 OPINION AND ORDER

Upon consideration of the Motion for Reconsideration timely filed by Protestants, through counsel, this Board, having convened for public deliberation on May 15, 2007, unanimously approves Protestants' request to amend the Board's Opinion and Order dated April 19, 2007, to remove all references to a guardrail. Petitioners and Protestants had come to an understanding under which the Petitioner agreed to withdraw its request for a guardrail. This intent was stated in a letter that was hand-delivered to this Board on June 22, 2006.

IT IS THEREFORE ORDERED this 5th day of June, 2007, that the Motion for Reconsideration be and is hereby granted; and it is further

ORDERED that the Board of Appeals for Baltimore County Opinion and Order dated April 19, 2007, is hereby amended to remove all references to a guardrail; and it is further

ORDERED that the Opinion and Order issued by this Board on April 19, 2007, in which the Petitions for Special Hearing and Special Exception were granted with restrictions, shall remain as issued, **EXCEPT** that **restriction #2, including any and all requirements for a guardrail, shall be STRICKEN** from said Opinion and Order.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chair

Wendell H. Grier

Margaret Brassil, Ph.D.

County Board of Appeals of Baltimore County

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

June 8, 2007

Michael P. Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
Towson, MD 21204

RE: *In the Matter of: Shalin Enterprises, Inc. – Legal Owner*
Case No. 04-035-SPHXA /Ruling on Motion for Reconsideration

Dear Mr. Tanczyn:

Enclosed please find a copy of the Board's Ruling on Protestants' Motion for Reconsideration and Amendment to Board's April 19, 2007 Opinion and Order issued this date in the subject matter.

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

c: Robert Newell
Frank Ashley
Shantel Brooks
Cloverland Farms Dairy t/a Royal Farms
Bill Burnley
Wayne Hayes
John B. Gontrum, Esquire
Shrgyas Panchigar /Shalin Enterprises
Patrick Richardson /Richardson Engineering
Stan Sobotka
Office of People's Counsel
Pat Keller, Planning Director
William J. Wiseman III, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

4/20/07

IN THE MATTER OF:	*	**BEFORE THE**
Shalin Enterprises, Inc. **Petitioner/Legal Owner**	*	**BOARD OF APPEALS**
3022 Hammonds Ferry road **13th Election District**	*	**OF BALTIMORE COUNTY**
1st Election District	*	
		CASE NO.: 04-035 SPHXA

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

PLAINTIFF'S MOTION FOR RECONSIDERATION

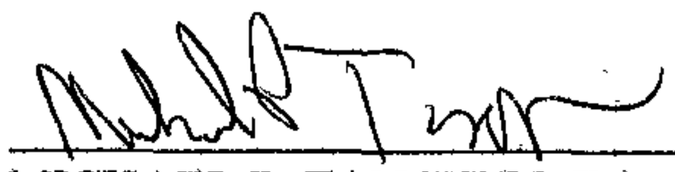
NOW COMES Robert Newell, Frank Ashley, Shantel Brooks, Cloverland Farms Dairy t/a Royal Farms, Bill Burnley, and Wayne Hayes, Protestants, by their attorney , Michael P. Tanczyn and moves this Honorable Board to reconsider its Opinion and Order, dated April 19, 2007 and for reasons says:

1. That the Petitioners, through counsel, and the Protestants, through counsel, came to an understanding, which was forwarded to the Board by letter June 22, 2006, under which the Petitioner agreed to withdrawal its request for any guard rail, as noted in the letter, which letter was a hand-delivered to the Board on the date indicated.

2. That the Board's Opinion specifically talks about getting approval for the guard rail, which the Petitioner had previously agreed to delete from its request.

3. That subsequent to receiving this Opinion, counsel for Protestant has been in contact with Petitioner's counsel, Mr. Gontrum, who has no objection to the request in this Motion for Reconsideration that the Board modify its Opinion or to delete any reference to a guardrail and to specifically note that the Petitioner has previously withdrawn its request for a guardrail in the body of its Opinion, as incorporated in its Order.

Respectfully Submitted:



MICHAEL P. TANCZYN, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
410-296-8823
Attorney for the Protestants

CERTIFICATION OF MAILING

I HEREBY CERTIFY this 25th day of April, 2007, a copy of the foregoing Motion for Reconsideration and proposed Order was mailed, first-class mail, postage prepaid to John B. Gontrum, Esquire, Whiteford, Taylor & Preston, L.L.P., 400 Court Towers, 210 West Pennsylvania Avenue, Towson, Maryland, 21204, Attorney for the Petitioners and to Peter Max Zimmerman, Esquire, Peoples' Counsel for Baltimore County, Room 47, 400 Washington Avenue, Towson, Maryland 21204.

MICHAEL P. TANCZYN, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
(410) 296-8823
Attorney for the Protestants

IN THE MATTER OF:	*	**BEFORE THE**
Shalin Enterprises, Inc. **Petitioner/Legal Owner**	*	**BOARD OF APPEALS**
3022 Hammonds Ferry Road **13th Election District**	*	**OF BALTIMORE COUNTY**
1st Election District	*	
		CASE NO.: 04-035 SPHXA

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

ORDER

Upon consideration of the Motion for Reconsideration timely filed by the Protestants, through counsel, it is, by the Board of Appeals for Baltimore County, this _____ day of _____, 2007,

ORDERED that the Motion for Reconsideration be and the same is granted, as prayed.

_____
Lawrence M. Stahl, Panel Chair

_____
Wendell H. Grier

_____
Margaret Brassil, Ph.D.

Copies Furnished:

Michael P. Tanczyn, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Attorney for the Protestants

John B. Gontrum, Esquire
Whiteford, Taylor & Preston, L.L.P.
400 Court Towers
210 West Pennsylvania Avenue
Towson, MD 21204
Attorney for the Petitioners

Peter Max Zimmerman, Esquire
Peoples' Counsel for Baltimore County
Room 47
400 Washington Avenue
Towson, MD 21204

4/19/07

IN THE MATTER OF:	*	BEFORE THE
THE APPLICATION OF		
SHALIN ENTERPRISES, INC. -	*	COUNTY BOARD OF APPEALS
LEGAL OWNER/PETITIONER		
FOR SPECIAL HEARING, SPECIAL	*	OF
EXCEPTION AND VARIANCE ON		
PROPERTY LOCATED ON NE/CORNER	*	BALTIMORE COUNTY
HOLLINS FERRY ROAD		
(3022 HAMMONDS FERRY ROAD)	*	CASE NO.: 04-035-SPHXA
13TH ELECTION DISTRICT	*	
1ST COUNCILMANIC DISTRICT		

* * * * * * * * * * *

OPINION

This matter comes before the Baltimore County Board of Appeals on an appeal from a decision of the Zoning Commissioner dated November 3, 2003, in which special exception and variance relief were granted to Petitioner. Public *de novo* hearings were held on October 5, 2004, January 11, 2005, December 20, 2005, and January 18 and 19, 2006. Shalin Enterprises, Petitioner, was represented by John B. Gontrum, Esquire. Protestants were represented by Michael P. Tanczyn, Esquire. A public deliberation was held on March 2, 2006.

Background

Although a total of five days of public hearings were held on this matter, on December 20, 2005, prior to the hearing and before going on record, counsel advised that an additional day would be necessary. Because one Board member would no longer be sitting on cases effective December 31, 2005, it was agreed by all parties that the hearing should be postponed and begun anew with a reconstituted Board panel. Therefore, the days relevant for testimony and evidence are the final two days of hearings, January 18 and 19, 2006.

The Petition for Special Hearing is to approve an amendment to the site plans and Orders issued in prior cases, 65-316 RX and 83-48-X, to permit a fuel service station use in combination

with a convenience store. The Petition for Special Exception requested approval of such use in combination, pursuant to § 405.E of the *Baltimore County Zoning Regulations* (BCZR). In addition, variances for existing conditions were requested, specifically from BCZR 405.4.A.2b to permit landscape transition areas as small as 3 feet in lieu of the required 10 feet from a public right of way; for a 0-foot setback in lieu of the required 6 feet from an adjacent commercial property; and from BCZR § 405.4A2.c to waive vegetation requirements under the landscape manual for automotive uses. Other variance requests from BCZR 405.4E1 and 405.4E.10 were withdrawn on appeal.

The subject property is at the corner of Hollins Ferry Road and Hammonds Ferry Road in the Lansdowne section of Baltimore County. In 1965 a special exception for a filling station was granted in Case No. 65-316-RX. An additional site plan was approved in 1973, and the building was expanded to its current location and size. Over time, the layout of the interior of the building on the site has changed as Petitioner and previous owners converted service bays in the service station to other uses. There have been no exterior changes to the facility since 1994.

The site is zoned B.L.-A.S. The current use of the site is a full-service gas station with convenience store. At the time of the hearing, there was also a package good store and ATM within the building. The existing building is 2,120 square feet in size. Petitioner proposes reconfiguring the interior of the building to include a delicatessen and carry out area of 144 square feet (Petitioner Exhibit 1). The site plan also requires re-striping of the parking lot, provides for additional landscaping, eliminates a propane storage tank, relocates the air/vacuum pump and provides for a guard rail between the adjacent Royal Farms Store and the subject site up to the easement area.

Testimony and Evidence

Patrick Richardson, Jr., of Richardson Engineering, LLC, was admitted as an expert engineer and expert on zoning regulations regarding site plans, and testified for Petitioner regarding the site plan, which he prepared. The property contains a triangular-shaped easement granted to the Royal Farms Store adjacent to the subject site at 4384 Hollins Ferry Road, to allow traffic to flow between the two properties. There is also an easement between the subject property and the property at 3015 Hammonds Ferry Road. There are four points of entrance and exit from the property, three gas islands under a canopy able to serve four cars per island, and twelve parking spaces, including one handicapped space. Mr. Richardson testified that the number met the requirements of BCZR § 405.

Mr. Richardson also testified that the site plan presented to this Board had been modified to address conditions placed by the Zoning Commissioner. The delicatessen area was reduced to 144 square feet. The existing convenience store area, which includes the sales area and cooler, totals 735 square feet. When calculated using the required multipliers, the total area required for a deli/carryout and convenience store is 18,804, the net area of the lot. The liquor store currently in the building will be converted to office space for the gas station.

Mr. Richardson further testified that the intersection is rated A by the County and that, if the Special Exception were granted, it would not create any additional congestion in the area. He stated that the guardrail and speed bump would improve traffic and keep people from cutting through the two lots to avoid the intersection signal, as they do at present. The deli would not overcrowd the land any more than the convenience store does now, which is allowed as of right under the zoning regulations. He further stated that the property was served by public water and sewer, the location of the pumps was safe, and the proposal was consistent with the zoning.

Petitioner introduced Exhibit 9, a letter from the Department of Permits and Development Management (PDM), which states: "Based upon the revised site plan (12/12/05) you submitted, and specifically, the calculations shown under 'General Notes' #9, it has been determined that the current revision of retail uses meets the Spirit and Intent of the subject zoning case."

Petitioner's Exhibit 10 is a memo from the Office of Planning recommending that the six conditions placed by the Zoning Commissioner in his opinion be upheld.

Regarding the requested variances, Mr. Richardson stated that these were for existing conditions, including the 3-foot landscaping from the right of way and the 0-foot setback paving. Both the parking area and the building predate legislation passed in 1993, which created current setbacks.

Three area residents testified on behalf of Petitioner. Each one approved the granting of the special exception and opined that it would not make traffic any worse than it was at present. One witness, Jacob Miller, opined that the guardrail would harm business at the Royal Farm Store because its parking lot becomes congested so people then park on Petitioner's lot.

Dennis Wertz, senior planner for the First Councilmanic District in the Office of Planning, testified that he has visited the site and had no concerns with the special exception request. The requested new use was for the interior of the existing building and did not require any exterior expansion of space. He saw no negative impact to the community's health, safety, or welfare. Since the exterior uses were pre-existing, he had no objection to the special exception. His main concern was that the site plan did not show the existing sidewalk along Hammonds Ferry Road, and he thought it should be required.

Nicholas Brader III testified for Protestants. He was admitted as an expert in engineering and zoning regulations, and testified as to what he thought were the shortcomings of the site

plan. He stated that the storage areas behind the freezers should be taken into account when calculating the area, and if they were, the use would be more than allowed. He opined that the site area was very tight and expressed concerns regarding the traffic circulation. Specifically, he said the drive-by on the east side of the lot was too narrow. He also pointed out that the handicapped parking space did not have an access strip and the existing grade was 10 percent when it should be level.

Robert Newell testified regarding his concern with the guardrail between the properties. Mr. Newell had been store manager of the Royal Farms store for 3 years. He opined that a landscaping buffer would be better for both properties than the guardrail. On cross-examination he admitted that the delicatessen itself would not adversely affect the Royal Farm Store. The main concern was the guardrail blocking access between the two properties.

Stanley Sobotka, the Royal Farms district leader, also testified regarding his concerns with Petitioner's site plan, specifically the guardrail and speed bump. But he also did not think the special exception request for a delicatessen and carryout would be harmful to the area.

Finally, Mr. Richardson testified on rebuttal that, as an existing gas station, Petitioner met the requirements of BCZR § 405.6 and was not subject to the requirements of § 409.11. When shown that the handicapped access ramp was now several feet away from the handicapped parking space, Mr. Richardson admitted that it could be moved, but that the pitch of the parking lot was also pre-existing.

Issues Raised on Appeal

Petitioner raises the following issues:

1. Do Protestants have standing to take this appeal?
2. Was the site plan changed so as to require a remand?

3. Should the special exception for the use in combination of a fuel service station with a delicatessen/carry out of 144 square feet be granted?

4. Does the Board have the authority to require the approved plan be amended either to conform to the regulations as it deems them to be or to properly condition the proposed uses to render them better able to meet the requirements of public health, safety, and general welfare?

5. Should the variances for existing conditions be granted?

Opinion

1. Do Protestants have standing to take this appeal?

Petitioner cites *Sugarloaf Citizens' Association v. Department of Environment*, 344 Md. 271 (1996), to argue that Protestants were not personally aggrieved by the Zoning Commissioner's opinion and order and therefore did not have standing to appeal to this Board. Furthermore, Petitioner argues that a competitor is not entitled to standing solely on the basis of additional competition. However, Protestants testified that they in fact were not concerned with the proposal for a deli/carryout. Their concern and the main reason for their appeal was the Zoning Commissioner's order that a guardrail be placed between the properties. Mr. Sobotka, representing Royal Farms, stated he was concerned that the guardrail and speed bump would hurt that business.

Protestants argue that these requirements became changes to the proposed site plan only after the Zoning Commissioner's hearing, and therefore their only recourse was to appeal to this Board.

Sugarloaf determined that the threshold for standing at an administrative level was low, and it also determined that standing was sufficient "if the appellant's name was submitted to the Board of Appeals as one who would be aggrieved by an adverse decision" or "submitting name in writing as a protestant is sufficient" (Id at 287).

Given the facts of this case and the findings in *Sugarloaf,* this Board finds that Protestants found themselves sufficiently aggrieved by the Zoning Commissioner's order as to necessitate this appeal, giving them standing.

2. Was the site plan changed so as to require a remand?

Protestants argue that Petitioner's site plan was changed after the Zoning Commissioner's hearing and therefore the case should be remanded back to the Zoning Commissioner. They also point to other uses on the site, such as the ATM and liquor store, which were not factored into the total site area.

Zoning appeals are heard by this Board *de novo*, and it is not unusual for minor changes to be made to a site plan before a Board of Appeals hearing, particularly when the Petitioner does so to comply with the Zoning Commissioner's order, as in this case.

According to Mr. Richardson's testimony, other current uses on the site, such as the ATM and liquor store, are scheduled to be removed. This Board finds that as long as these uses are removed, the site area is in compliance, and we will require they be removed in our Final Order.

In addition, there were questions regarding whether the "C-Store Storage Area," which totals 309 feet, should be added to the convenience store sales area. Petitioner states that this area is not open to the public and is mainly storage for the auto part sales and office, which do not require additional lot area.

The relevant sections regarding site area in the *Baltimore County Zoning Regulations* are as follows:

> **405.4.D. Ancillary uses.** The uses listed below, only, are permitted by right in conjunction with any fuel service station. The minimum *area of the site* as determined under Section 405.4.A.1 shall be increased each ancillary use by at least the number of

square feet indicated below, which includes land for required parking and stacking spaces:

. . .

2. Convenience store with a sales area of up to 1,500 square feet *inclusive of accessory storage*. An additional site area of four times the square footage of the convenience store's sales area shall be provided.

. . .

7. The retail sale of automotive service items such as motor oil, antifreeze or allied products. *No additional site area is required.*

405.4.E. Uses in combination with fuel service stations. The minimum area of the site as determined by Section 405.4.A.1 shall be increased for each use in combination with a fuel service station by at least the number of square feet indicated below:

. . . .

10. Restaurant, including fast food, fast food drive-through only, and carry-out restaurants. Additional *site area of six times the gross square footage of the restaurant* must be provided. (Italics added throughout.)

The Site Plan has the 309 square-foot storage area marked as "C-Store Storage Area." It is clear from the plain reading of § 405.4.D.2 that the sales area is to be measured inclusive of accessory storage. No exceptions are made for public accessibility or inaccessibility to the storage. Therefore, if Petitioner intends, as stated in testimony, to use this area for automotive storage or office, the site plan must clearly say so. It cannot be used for the convenience store without putting Petitioner out of compliance with the site area requirements.

3. Should the special exception for the use in combination of a fuel service station with a delicatessen/carry out of 144 square feet be granted?

The Court of Special Appeals states in *Schultz v. Pritts* that the applicant bears the burden of proving that the use meets the "prescribed standards and requirements." *Schultz v. Pritts* 291 Md.1, 432 A.2d 1319 (1981). The applicant has to prove to the Board that the use "would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest." If the applicant satisfies the Board on these points then "he has met his burden" (*Schultz v. Pritts, supra,* at 11).

Thus, it is Petitioner's burden to provide credible, affirmative evidence and testimony that his proposed use is not detrimental to the neighborhood and meets *each* of the nine criteria set forth in § 502.1 of the BCZR. In addition, the Petitioner must satisfy the *Schultz v. Pritts* standard that his particular use at this particular location would not have "any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone" (*Schultz v. Pritts, supra*, at 22).

In the subject case, Petitioner's expert witnesses, Patrick Richardson and Senior County Planner Dennis Wertz, each testified to the § 502.1 requirements and provided credible evidence on each point. The fuel station and convenience store are not at issue in this special exception case, yet many of the concerns voiced by Protestants were regarding issues such as the traffic flow around the gas pumps and the site area and use of the interior of the building (addressed above).

Three traffic-related issues that Protestants brought up are of concern. The first issue is that of the handicapped parking space. The site plan shows the parking space on the left side of the building, but the ramp to get up to the sidewalk around the building is in front. This creates an unsafe situation in which a person in a wheelchair would have to maneuver on the paved area—within the flow of traffic—to access the sidewalk and building. We agree this is unsafe

and will require in our Order that the access ramp be moved to the side where the parking space is located.

The second issue concerns the parking spaces blocking access to the dumpster and fuel tank refill area. We find this a simple matter of scheduling, however. Petitioner will need to schedule garbage pickup and tank refilling during hours when customers are least likely to be present.

A third issue concerns the guardrail and speed bump. Protestants argue that these changes could create traffic congestion on the two sites, and their point is a concern. However, we find it beyond our expertise to determine whether the guardrail should remain, be repositioned, or be eliminated. We will therefore leave this to the traffic experts in the County's Bureau of Traffic Engineering and Transportation Planning, Department of Public Works, to determine and will require their approval of the guardrail in our final Order.

With those issues addressed, and given the expert testimony by Petitioner's witnesses, we find that Petitioner has met his burden in proving that the proposed use of a deli and carryout will not be detrimental to the neighborhood and meets § 502.1 criteria.

4. Does the Board have the authority to require the approved plan be amended either to conform to the regulations as it deems them to be or to properly condition the proposed uses to render them better able to meet the requirements of public health, safety, and general welfare?

BCZR § 502.2 grants the Board of Appeals, as well as the Zoning Commissioner, the power to impose restrictions or conditions it believes necessary to protect the neighborhood. It reads:

> In granting any special exception, the Zoning Commissioner or the Board of Appeals, upon appeal, shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. The owners, lessees or tenants of the property for which a special exception is granted, if required by the Zoning Commissioner, or Board of Appeals, upon appeal, shall enter into an agreement in writing with said Zoning Commissioner and/or the County Commissioners of Baltimore County,

stipulating the conditions, restrictions or regulations governing such special exception, the same to be recorded among the land records of Baltimore County. The cost of such agreement and the cost of recording thereof shall be borne by the party requesting such special exception. When so recorded, said agreement shall govern the exercise of the special exception as granted, as to such property, by any person, firm or corporation, regardless of subsequent sale, lease, assignment or other transfer.

5. Should the variances for existing conditions be granted?

Petitioner requests variances from BCZR 405.4.A.2b to permit landscape transition areas as small as 3 feet in lieu of the required 10 feet from a public right-of-way; and 0 feet in lieu of the required 6 feet from an adjacent commercial property; and from BCZR § 405.4.1.2.c to permit a waiver from vegetation requirements under the landscape manual for automotive uses. However, these variances for the site area are for pre-existing conditions of the site dating back to 1965, when the special exception for the fuel service station was granted. The special exception requested is for a change within the building itself, which does not affect or change the existing exterior conditions. Since the conditions are pre-existing and not affected by the granting of the Special Exception, this Board finds that variances are not needed.

ORDER

IT IS THEREFORE this 19th day of April, 2007 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to approve an amendment to the site plans approved and Orders issued in prior Cases Nos. 65-316-RX and 83-48-X to permit a fuel service station use in combination with a convenience store within the existing building be and is hereby **GRANTED**; and it is further

ORDERED that the Petition for Special Exception to approve such uses in combination, pursuant to § 405.E of the *Baltimore County Zoning Regulations* be and is hereby **GRANTED**, subject to the following restrictions:

1. The Petitioners shall submit a landscape plan to Mr. Avery Harden, the Landscape Architect for Baltimore County, to develop a suitable landscape plan for the subject property. Said plan should recognize the existing use of the property and improvements thereon and shall require landscaping as reasonably practical and prudent. A copy of the approved plan shall be submitted to the Office of Planning and the Greater BLR Alliance, Inc.

2. The Petitioners shall consult with and abide by the decision of the Bureau of Traffic and Transportation Planning, Baltimore County Department of Public Works, regarding the placement of the guardrail and speed bump between the subject property and the adjacent Royal Farms Store lot.

3. The Petitioners shall move the handicapped access ramp to a location more easily accessible to the handicapped parking space on the left side of the building.

4. Petitioner shall remove the package goods/liquor store and ATM machine from the property and will not replace them with any other ancillary use that will conflict with the area and parking requirements of the zoning regulations.

5. Petitioner will arrange with its suppliers to time trash removal and fuel service to the site so as not to conflict with peak site usage hours.

6. The site plan will be amended to reflect that the 309 square feet currently marked "C-Store Storage Area" will be used for office and auto supplies only.

7. There shall be no damaged or disabled vehicles stored on the subject lot.

8. If agreeable to the adjacent property owner at 3015 Hammonds Ferry Road, the Petitioners shall erect a small barrier fence along the common property line. In addition, the existing fuel tank in that area shall be removed.

9. A revised site plan will show the sidewalk along Hammonds Ferry Road.

10. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order; and it is further

ORDERED that the requested variances are not needed and that therefore the Petition for Variance is **DISMISSED** as moot.

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, Panel Chair

Wendell H. Grier

Margaret Brassil, Ph.D.

County Board of Appeals of Baltimore County

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

April 19, 2007

Michael P. Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
Towson, MD 21204

RE: *In the Matter of: Shalin Enterprises, Inc. – Legal Owner*
Case No. 04-035-SPHXA

Dear Mr. Tanczyn:

Enclosed please find a copy of the final *Opinion* and *Order issued this* date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all subsequent Petitions for Judicial Review filed from this decision should be noted under the same civil action number as the first Petition.**
If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco, Adm.
Kathleen C. Bianco
Administrator

Enclosure

c: Robert Newell
Frank Ashley
Shantel Brooks
Cloverland Farms Dairy t/a Royal Farms
Bill Burnley
Wayne Hayes
John B. Gontrum, Esquire
Shrgyas Panchigar /Shalin Enterprises
Patrick Richardson /Richardson Engineering
Stan Sobotka
Office of People's Counsel
Pat Keller, Planning Director
William J. Wiseman III, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

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2/23/06

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FEB 23 2006
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:	*	**BEFORE THE**
Shalin Enterprises, Inc. **Petitioner/Legal Owner**	*	**BOARD OF APPEALS**
3022 Hammonds Ferry road **13th Election District**	*	**OF BALTIMORE COUNTY**
1st Election District	*	
		CASE NO.: 04-035 SPHXA

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

PROTESTANTS' MEMORANDUM

NOW COMES Robert Newell, Frank Ashley, Shantel Brooks, Cloverland Farms Dairy t/a royal Farms, Bill Burnley, and Wayne Hayes, Protestants, by their attorney , Michael P. Tanozyn and submits the within Memorandum to assist the Board in its resolution of this matter.

PROCEDURAL HISTORY

This matter was heard by the Zoning Commissioner, under the Petitions for Special Hearing, Special Exception and Variance. The Petition for Special Hearing was to approve an amendment to the site plans and Orders issued in prior cases, 65-316RX and 83-48X, to permit a fuel service station use in combination with a convenience store of 1709 square feet and a carryout of 286 square feet within an existing building. The Petition for Special Exception requested approval of such use in combination, pursuant to §405.E of the BCZR, a variance from §405.4.A.2.B to permit landscape transition area of as little as 3', in lieu of the minimum required 10' from the public right of way and zero feet, in lieu of the required 6' from adjacent properties; from BCZR 405.4.A.2.C to waive the vegetation requirements on the landscape manual for automotive uses; from BCZR 405.4.B.1 and 405.4.B.10 to permit a fuel service station use in combination with a convenience store, of 1709 square feet, carryout restaurant of 286 square feet within an existing building, on a lot size of 18,804 square feet, in lieu of the minimum required lot

area of 23,524 square feet. That matter was heard by the Zoning Commissioner who, by Opinion and Order, November 10, 2003, approved the Petition for Special Hearing and approved the special exception relief and the variance relief, subject to six enumerated conditions set forth in the Zoning Commissioner's Opinion, which is in the Board's file as Petitioner's Exhibit 8.

On timely appeal taken to the Board of Appeals, this matter was scheduled for de novo hearing on June 8, 2004, September 21, 2004, October 5, 2004, January 11, 2005, January 19, 2005, December 20, 2005, January 18, 2006 and January 19, 2006. Notwithstanding all of those hearing dates, whatever hearings were held were mooted by the Petitioner's never ending modification of its request and submission of new drawings and site plans to the end that on December 20, 2005, Petitioner, through counsel, requested that the matter be heard as if a new beginning, January 18, 2006, which in fact occurred. On January 18, 2006, through counsel, the Petitioner, without specifically amending any petitions, stated for the record that the Petitioner was not seeking a variance for the uses requested, and was not seeking a zero side yard setback. He further stated he was withdrawing the variance requests, as to the C store.

Preliminarily, Petitioner raised a motion challenging the standing of Protestants and Protestants raised a preliminary objection to proceeding on changed plans, which had not been reviewed by the County or readvertised, and which materially altered the plan as originally advertised. The Board of Appeals, after conferring amongst the members present, requested the Parties to address those issues in these memos.

RELEVANT ZONING HISTORY OF THE SITE

Joint exhibits were introduced, which described the relevant zoning history of the site. After the 1965 rezoning; in 1983 a Petition for Special Exception was filed, seeking approval of a food store in combination with a self-service station (Joint Exhibit 1A). After hearing, the Zoning Commissioner issued an Order in Case 83-48X June 7, 1983, approving a food store in combination

with a self-service station restricted to sale of pet food only (Joint Exhibit 1B). A timely appeal of that decision was taken by the Lansdowne Improvement Association (Joint Exhibit 1C). The Board of Appeals dismissed the Petition by Order, November 22, 1983 when the Petitioner chose not to proceed (Joint Exhibit 1D). Photographs showing the condition and layout of the property were accepted as Joint Exhibit 1E and a letter from the Baltimore County Zoning Advisory Committee concerning that petition was admitted as Joint Exhibit 1F. Joint Exhibit 2 was the prior zoning violation case, 82-256, with an Order dated July 1, 1982, requiring certain corrections at the site, as well as the filing of a Petition for Special Exception, which was noted in the above joint exhibits. The property is zoned BL-AS and sits on the northeast corner of Hollins Ferry Road and Hammonds Ferry Road. It comprises a gross site area of 27,584 square feet, with a net site area of 18,804 square feet or .43 acres. As listed on Petitioner's Exhibit 1, sealed by Patrick Richardson, December 12, 2005, the existing uses are described as a fuel service gas station with C store and a proposed use gas and go with C store, office, liquor store, and carryout. The existing building, as listed in the general notes, as comprising 2,120 square feet.

PETITIONER'S CASE

Petitioner called, as its first witness, Patrick C. Richardson, Jr., who testified as an expert witness, he was a professional engineer licensed in Maryland, license #16597. He testified that he had prepared site development plans for 20 years, and had done hundreds of them, and was familiar with zoning and development regulations in Baltimore County. He testified that he had prepared the site plans utilized by Petitioner in this case and described the immediate neighborhood beyond the Petitioner's site as a Royal Farms to the east and a service garage to the north, with residential development to the interior. Petitioner's Exhibit 1 was the most recently revised site plan, dated December 12, 2005. He located on that plan, on the Royal Farms side, a triangular easement for

which Petitioner's property was the burdened property. That easement was to allow vehicular and pedestrian access to the Royal Farms site from Hollins Ferry Road. Petitioner's request before the Board, as earlier, had included a proposed guard rail barrier along that property line, which would have blocked the deeded easement area for access to the Royal Farms store. He described the zoning history of the property and then he identified, concerning the zoning history of the property, a re-zoning petition approved December 7, 1965 (Petitioner's Exhibit 2), approving the property for a filling station.

He testified that the building was approved approximately 1973 and in the 1980s, and then discussed the zoning violation case which led to the filing of special exception and special hearing petitions with variances, in case 83-48X. He then discussed the permit application (Petitioner's Exhibit 5), dated July 20, 1994, which did not call for a change to the exterior of the building, but only to the interior, and that none of the entrances were changed to the building in that permit application. He stated that a Baltimore County permit was issued in 2002, by which three service bays were removed and converted to a C store.

He reviewed Petitioner's Exhibit 1 site plan for the uses in common requested by Petitioners and reviewed the multi-fuel dispenser locations, as well as the proposed parking spaces and the traffic circulation plan, as shown on the site plan. He identified where the vacuum station and the air and water supplies were located on the west side of the building, as well as his parking calculations. He did not include the storage area in the calculation of a C store and he acknowledged that the uses proposed where the C store is located were not separated by demising walls, but were an open area. He testified that the only demising wall lay between the automotive product sales area and the area labeled "liquor store office." He identified the landscape plan as Petitioner's Exhibit 7, dated September 15, 2003, from which variances were requested by the

Petitioner and he identified the Zoning Commissioner Order in the instant case, introduced as Petitioner's Exhibit 8. He stated he was working with Mr. Panchigar as to the interior layout of the property and that he had testified that he had told Mr. Panchigar that the ATM should be removed from the property, since it was not shown on the plan, and required additional square footage for the site area, as well as parking spaces. He acknowledged that the ATM was still in use at the time of hearing. He testified that when he was last at the site, December 14, 2005, before the January hearing, he saw no ATM machine, although the liquor store was in place. He testified that he had not reviewed the proposed liquor store location with the Zoning Office. He introduced Petitioner's Exhibit 9, a December 19, 2005 letter from Bruno Rudaitis of the Zoning Office, stating that the proposed changes met the spirit and intent of the original zoning case. He also authenticated Petitioner's Exhibit and a letter from the Baltimore County Planning Office December 20, 2005, which renewed the Planning Office's request that all 6 conditions contained in the Zoning Commissioner's Order be retained. He testified that he had reviewed Petitioner's Exhibit 1, the site plan with Raheem Famili.

He testified that the intersection of Hammonds Ferry Road and Hollins Ferry Road functioned at level of service A, and he introduced the December 30, 2004 traffic counts as Petitioner's Exhibit 11. His rationale for seeking the various variances requested from setbacks were that the parking area had been paved since the 1960s and that Hammonds Ferry Road was located 3' from the edge of the curb adjacent to Petitioner's site. On cross examination, he acknowledged that the handicapped spaces were substandard and that there was less than the required aisle width from the parking spaces on the west side of the building, to allow the maneuver room for vehicle operators to safely get in and out of spaces. He further acknowledged the problem

with access to the existing dumpster if the two parking spaces were utilized on the east side of the property.

Petitioner's next witness was Teresa Lowery, a long time resident of the neighborhood, who testified in favor of the Petitioner's request She attempted to qualify as a spokesman for the Greater BLR Alliance and promised to forward Rule 8 papers, which she did not have with her, by the next hearing date, January 19, 2006. Protestants' review of the Board's file on February 22; 2006 revealed no Rule 8 papers in the file for Ms. Lowery, and therefore, Protestants would object to Ms. Lowery testifying in anything other than individual capacity. During her testimony, she testified that her group had discussed this request some 5 months before the hearing and voted to approve this. It is noteworthy that the plan they voted on had been changed by the Petitioner on December 12, 2005, since their community group had considered the plan. She held the opinion that the traffic to be generated by the Petitioner's request would be no more than what was existing. She said she had no opinion on the liquor store and that the shootings at the Petitioner's site were no greater than other areas of the community.

Petitioner's third witness was a resident of the neighborhood of 30 years, Donald Latham. He testified that he visited the Petitioner's site several times a week, and he did not believe the deli would be a problem for the neighborhood and would not change traffic much, and it provided a resource when he and his crew wanted to stop and get something to eat. He testified that at present there were drunks and drug addicts who fly through the area.

Petitioner's witness four was a neighbor, Jacob Miller, who had resided in the neighborhood for 60 years. He testified as an individual in favor of the Petitioner's request. He stated that he gets coffee at the Royal Farms 4 to 5 times a week and he believed the guard rail would hurt Royal Farms if it was put in. He stated that he didn't now about the layout of the Petitioner's property.

Petitioner's fifth witness was Dennis Wertz of the Baltimore County Planning office. He stated that he visited the site prior to the planning comment, which was dated September 4, 2003, and that he looked upon this as an existing developed site, with existing sidewalk on Hammonds Ferry Road, as zoned BLAS, and he believed the interior had been reconfigured since 2003. He had no concerns about the proposed use of the property and no knowledge of the allowed uses in common under BCZR §405.

In Protestants' case, Protestants' first witness was Nicholas Brader, III, who was a professional engineer, licensed in Maryland and Virginia, employed by Matis Warfield, Inc., consulting engineers in Hunt Valley. Mr. Brader was accepted as an expert witness and his CV, describing his credentials was admitted as Protestants' Exhibit 7. Mr. Brader had reviewed the various site plans submitted by Petitioner throughout the appeal process, and had concerns about whether what Petitioner requested complied with the zoning regulations.

He pointed out that liquor store use is not permitted as a use in common under BCZR §405. He further pointed out that the two parking spaces located on the east side of Petitioner's site nearest the dumpster appeared not to comply with the regulations because of the existing slope size of access aisle and drive aisle. He had measured the parking spaces listed and distances, as shown on the site plan, and concluded that the site would not meet the minimum parking requirements for the uses requested. He further pointed out that the ATM that was on site requires an additional parking space and requires additional site area, which is not even included on the site plan or included in Petitioner's request, although it has been in continuous existence at the site. He further pointed out that the existing building had a gross area of 2,120 square feet, and that the type of parking required added up or accounted for only 1,988 square feet. The difference in area needed to be assigned to something and would increase the required parking.

He pointed out the inadequacies of the handicapped parking access area and that the stacking spaces were not shown at the required 20' length, and only shown to be 6' wide, when they were required to be at least

7 ½' for a parallel parking space wide and 8 ½' for a standard parking space. He described the traffic circulation plan as poor, because the drive aisles of either sides of the multiple fuel dispensers were one way.

He questioned the size of the proposed area for automotive product sales as disproportionately large to the area of the convenience store, which had been changed over time from the earlier site plan, to increase that are and to reduce the C store area. He further pointed out in a previous zoning Order in Case 01-262SPHXA, copy of which was furnished to the Board, where a C store involving Royal Farms, that the Zoning Commissioner had included the freezer storage area and the sales area, and that by including that, this site would not meet the minimum site area requirements under BCZR §405. He also questioned the location of the parking spaces in the vicinity of the fuel tank fills and he questioned how the tanker truck could enter or exit the site.

He questioned the absence of an unloading space for the vendors coming to service the C store and to bring supplies or equipment. Other Protestant photographs were introduced to show where existing vendors park on the west side of the existing building and in the case of the Coke vendor, parking on Hollins Ferry Road, blocking the traffic lane, since there is no parking allowed at that location and where there is a fire hydrant present. Those were shown in Protestants' Exhibits 8A through 8I.

He had been to the site and could identify from Protestants' Exhibits 1 through3 the many uses in place at Petitioner's site, including the ATM machine, liquor store, check cashing facility, changeable copy sign for rent out front, as well as the interior layout in front of the ATM machine in front of the C store. He believed that the uses proposed, in addition to including a liquor store,

which was not an approved use in common, under BCZR §405 would make the site unworkable or too busy.

Protestants' successor witnesses identified the Deed from Exxon to Shalin Enterprises (Protestants' Exhibit 4), as well as the Deed to Royal Farms (Protestants' Exhibit 5), which sets forth the easement area and burdens the Shalin Enterprises property to provide that. Protestants' Exhibit 6 was a series of 4 photographs showing the propane tank and the delivery vehicles on the west side of the existing building. Protestants' Exhibits 8A through 8I were photographs taken by Robert Newell, showing 18 wheelers and moving trucks and tractor trailers blocking the fuel pumps when refueling, which caused traffic to be pushed out into Hollins Ferry Road and kept interior traffic circulation poor for vehicles trying to move around on Petitioner's site. Protestants' Exhibits 9A and 9B showed the ATM sign and the ATM machine and Protestants' Exhibit 10A and 10B showed photographs indicating traffic conditions and an accident which had occurred in front of the Petitioner's site. Protestants' Exhibit 11 was an ATM receipt from January 17, 2006, showing that the ATM had been utilized on that occasion by one of Protestants' witnesses. In addition to Robert Newell who talked about problems with untagged vehicles and vehicles parking on the Royal Farms site, including the Petitioner's customers and the fact that traffic circulation was poor on the Petitioner's site, due to all the activity which he had going on at that site, Protestants' next witness was Stanley Sobotka who testified as to the need for the access to the Royal Farms and that Royal Farms was very concerned about any efforts to close off that access. He further corroborated the crowded traffic conditions on the Petitioner's site and the offloading of vendor trucks from Hollins Ferry Road, as shown in the photographs which were Protestants' Exhibits 8A through 8I.

ISSUES PRESENTED

1. STANDING OF THE PROTESTANTS TO PARTICIPATE

2. MATERIAL CHANGES TO THE SITE PLAN AND THE PETITION WITHOUT RE-ADVERTISING, AS A VIOLATION OF DUE PROCESS

3. APPROVAL OF THE PETITIONER'S REQUEST WOULD MAKE A MOCKERY OF THE ZONING REGULATIONS, WHEN PETITIONER'S SITE PLAN DOES NOT REFLECT ALL OF THE USES EXISTING ON THE SITE, WHICH REQUIRE ADDITIONAL PARKING SPACES OR SITE AREA; INCLUDES A LIQUOR STORE WHICH IS NOT PERMITTED AS A USE IN COMMON, UNDER BCZR §405.4.D, ANCILLARY USES, WHERE THE USES PROPOSED, PROPERLY INCLUDED IN THE C STORE CALCULATION WOULD MAKE THIS ALREADY TIGHT SITE EVEN LESS COMPLIANT WITH THE REGULATIONS.

1. As to standing, the named Protestants included many individuals in addition to Cloverland Farms Dairy. These individuals who came to numerous hearings at the Board of Appeals, included Mr. Ashley and Mr. Newell. Mr. Ashley, by example, was a retired gentleman who was not employed by Cloverland Farms, but had been a long time neighborhood resident. The Petitioner relies on the decision in Sugarloaf Citizens Association v. Department of the Environment, 344 Md. 271 (1996) for its contention that the Protestants lack standing, since they did not appear before the Zoning Commissioner. By reviewing Petitioner's Exhibit 8, the Zoning Commissioner's Opinion and Order, the Board of Appeals can readily see that the guardrail imposed as a condition would block the access of the Royal Farms and its deeded easement for which Shalin Enterprises property was a burdened property. Royal Farms clearly had the right to appeal to protect its vested and deeded property interest and the Petitioner did not say anything to the contrary on that point, and therefore, Royal Farms was a person aggrieved, under the law, by the decision of the Zoning Commissioner.

The multiple points raised by Nicholas Brader, pointing out deficiencies in the site plan in the absence of existing uses from the site plan, such as the ATM machine, clearly shows that Petitioner's site plan does not comply with the zoning regulations and requirements of the Baltimore County Zoning Regulations, as previously described. Even Mr. Richardson testified that

he had told the Petitioner that the ATM could not be there and should be removed, and was ignored by the Petitioner. Therefore, the Protestants, as a group, were persons aggrieved, participated in the hearings, since there was no Protestant testimony over the first 6 scheduled days of hearing, and clearly meet the test set forth in the Sugarloaf case, supra.

2. The Petitioners original Petition calls for specified uses in common, and by reviewing the petitions in the Board of Appeals file, and contrasting them with the varying changes as Petitioner's site plans changed over time, the Board of Appeals can ascertain that the requests made which would have been advertised, as listed in the petitions for special exception, special hearing, and for variance, were materially changed over time by the reconfiguration by Petitioner of the interior of the existing building. Those petitions and plans were also deficient, since none of them listed an ATM machine, which has been present since the matter was first brought before the Zoning Commissioner through the time of final hearing conclusion at the Board of Appeals. BCZR §102.1 expressly prohibits use or occupancy of any land building or structure except in conformity with the zoning regulations. Petitioner's existing and proposed uses do not comply with BCZR §405. Therefore, the Petitioner's request, which was advertised to the public, based on the representations of Petitioner, was inaccurate, changed over time, and deserved to be remanded to the Zoning Commissioner with a new public notice and hearing, so that the public would have an opportunity to be heard on the amendments. In a *nisi prius* decision, the Circuit Court for Baltimore County, in the matter of John Mangione, et al., Case No. 03C-03-9661, the Circuit Court for Baltimore County ruled that the Board of Appeals lacked jurisdiction to review a special exception on appeal where the height and length of the proposed building had both significantly increased from the original proposal as advertised and filed. That decision of the Circuit Court dated May 18, 2004 was given to the Board of Appeals in an earlier hearing. In concluding that

notice is an element of procedural due process of law, under the Express Powers Act, Article 25 §5U of the Maryland Code, as well as included in Baltimore County Charter, 603 for the Board of Appeals and former County Code §26-127, pertaining to Zoning Commissioner hearings. The Court concluded that the Board erred in failing to remand the case to the Zoning Commissioner so that the Zoning Commissioner would have an opportunity to apply the facility's new dimensions to the criteria contained in BCZR §502.1 and to afford the public an opportunity to be heard on the revised request. The Court concluded that the Board of Appeals, has *de novo* review, but in doing so it still exercises Appellate jurisdiction, citing UPS v. People's Counsel, 336 Md. 569 (1994). Although the Board has the right to hear additional evidence, if the additional evidence is material, then the other party must have proper notice of that evidence. Quoting Cassidy v. County Board of Appeals, 218 Md. 418 (1958), when the Court expressly found in that decision that the site plan is an integral part of the petition. Turning to the site plan at the case before the Board now, not only does the site plant not include the ATM, it does not include in the calculations of a C store, the C store storage area, in patent disregard of the prior interpretation of the section made by the Zoning Commissioner in similar cases, including 01-262SPHXA. The regulations could not be clearer on that point. Section 405.4.B, Ancillary Uses II, describes convenient stores with a sales area of up to 1,500 square feet inclusive of accessory storage. BCZR §405.4.E.1 describes convenience stores with a sales area larger than 1,500 square feet inclusive of accessory storage. There is no question that the plan submitted to the Zoning Commissioner had a vastly different interior configuration for the C store than that presented to the Board of Appeals. To that end, it represents to the extent that that is true, the material changes to the site plan which are not reflected in amendments to the petition as to specific areas, and which do not include the existing ATM, grossly misrepresent Petitioner's actual use on the site.

It is for that reason that the Protestants requested the Court to remand this case back to the Zoning Commissioner as a necessary step to provide for procedural due process to all Parties.

3. The Petitioner's request makes a mockery of the zoning regulations and cannot be approved as presented for a number of reasons. First, it does not include existing uses on the site, such as the ATM and does not include the calculation of C store storage area as part of the C store calculation. Those call for multiples for additional site area, under the rationale that the more uses in common proposed are needed, the greater the site area required to accommodate them. Those provisions are specifically set forth in BCZR §405.4.D. In that section, ATMs require 1,000 square feet for each device, self-service vacuums require parking spaces, ATMs require parking spaces.

Next, the request which is for uses in common with fuel service stations includes a liquor store. Liquor stores are specifically excluded from the uses lifted under BCZR §405.4.D, Ancillary Uses. That section begins "The uses listed below, only, are permitted by right in conjunction with any fuel service station. The minimum area of the site is determined under BCZR §405.4.A.1 shall be increased each ancillary use by at least the number of square feet indicated below, included land for required parking and stacking spaces. Further, BCZR §405.4.D.1.C calls for a limit of 500 square feet for the combined areas for sales display and customer waiting room, where the Petitioner's most recent plat calls for 538 square feet. Next, the proposed liquor store/office is a liquor store. Close up pictures and testimony of Protestants' witnesses indicated that the liquor store, which has barricaded windows, comprises the entire 262 square feet. Because that is not a permitted use in common, if that unauthorized use in common were to be removed, the 262 square feet would go to a C store use and would require additional parking spaces.

Next, the traffic circulation plan is inadequate under all expert testimony, because:

A. The dumpster truck can not get to the dumpster if the two parking spaces are in use, and if the pumping islands are in use.

B. The traffic circulation plan for the pumping islands do not provide for by-pass lanes and propose one-way traffic at the pumps, while Protestants' photographs indicate that two-way traffic is in use, based on the positioning of the vehicles at the pumps, as shown in the photographs.

C. There is no unloading space for vendors to serve the C store. Existing vendors parking in the area for which handicap spaces are proposed to the west of the building on Petitioner's site plan or in the case of the large truck deliveries, they park on Hollins Ferry Road in front of a fire hydrant, in a no parking zone.

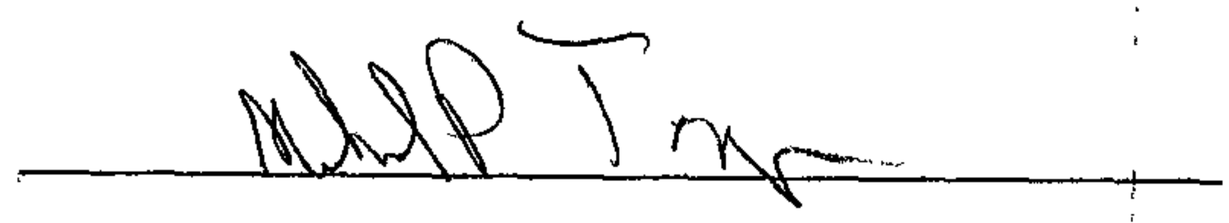
D. The parking spaces are inadequate, if once the existing uses are calculated, and once the C store storage area is calculated correctly. Additionally, as pointed out by Mr. Brader, the aisles are inadequate on the west side of the site, since they do not provide 22' aisles from the parking spaces to allow traffic safe ingress and egress, s required under BCZR §409.

In conclusion, to approve this plan on which the Petitioner does not even show the existing uses, including an ATM machine, nor does Petitioner calculate the C store directly, runs afoul of and makes a mockery of the Baltimore County Zoning Regulations.

CONCLUSION

Protestants respectfully request the Board to deny the petitions and in the alternative, remand the case to the Zoning Commissioner for consideration of a site plan to be submitted by Petitioner that shows all existing uses and accounts for the C store area in the manner required under BCZR §405 of the Zoning Regulations.

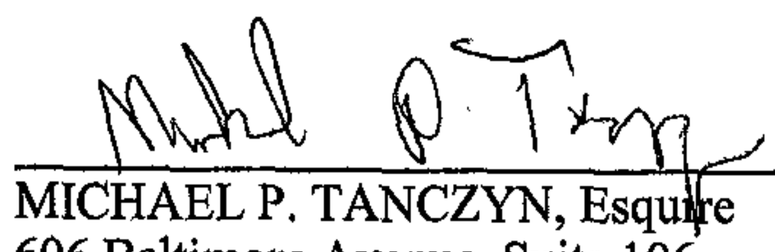
Respectfully submitted,



MICHAEL P. TANCZYN, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
(410) 296-8823
Attorney for the Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 23rd day of February, a copy of the foregoing Memorandum of was hand-delivered to John B. Gontrum, Esquire, Whiteford, Taylor & Preston, L.L.P., 400 Court Towers, 210 West Pennsylvania Avenue, Towson, Maryland, 21204, attorney for the Petitioners.



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February 23, 2006

VIA HAND-DELIVERY
Board of Appeals of Baltimore County
Attn: Kathy Bianco
Old Courthouse
Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: 3022 Hammonds Ferry Road
Case No.: 04-035-SPHXA

Dear Kathy:

Enclosed please find an original and three (3) copies of Protestant's Memorandum, regarding the above-captioned matter.

Thank you for your assistance. Please feel free to contact me should you have any questions.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl
Encl.

cc: Protestants
John Gontrum, Esquire

RECEIVED
FEB 23 2006
BALTIMORE COUNTY
BOARD OF APPEALS

2/23/06

IN THE MATTER OF: SHALIN ENTERPRISES, INC. Petitioner	* *	BEFORE THE COUNTY BOARD OF APPEALS OF
3023 Hammonds Ferry Road 13th Election District 1st Council District	* *	BALTIMORE COUNTY CASE NO. 04-035-SPHXA

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PETITIONER'S MEMORANDUM

RECEIVED
FEB 23 2006
BALTIMORE COUNTY
BOARD OF APPEALS

SUMMARY OF PETITIONER'S CASE

Petitioner contends that Protestants lack standing under the standards articulated by the Court of Appeals in Sugarloaf Citizens' Association et al v. Department of Environment, 344 Md. 271, 686 A.2d 605 (1996). Some scintilla of interest must be expressed in the administrative proceeding in order to become eligible to take an appeal as a "person aggrieved". Furthermore, appeals from competitors are not permitted in Maryland. Only Protestant Royal Farms through its employees appeared and testified before the Board. No individual named Protestant testified.

This is a very simple special exception case. Petitioner is asking only for permission to locate a 144 square foot delicatessen/carry out facility within an existing 2,120 square foot building and service station. An existing, permitted 1,500 square foot Convenience store will be diminished in size to 735 square feet, and an existing, permitted package goods store will be removed for office space. **No variances are sought from lot size or from parking.** Such uses as may be inconsistent with the request or which may generate the need for variances by their presence will be removed consistent with the Board's Order. **There was absolutely no testimony that the**

a. Conforms with a plan for the entire site as reviewed by the Directors of Planning, Public Works, and Permits and Development Management; and
b. Is located in a B.L., B.R., B.M., M.L. or M.H. Zone or a PUD; and
c. Meets the requirements set forth in Section 405.4 or, in the judgment of the Director of Permits and Development Management, would be done in such a manner that the station would be improved to be more in keeping with the purposes of Section 405.4; and
d. In cases where a provision of Bill No. 172-1993 conflicts with the terms or conditions of a prior special exception, the project may be subject to special hearing at the discretion of the Director of Permits and Development Management.
2. After a public hearing, the Zoning Commissioner may authorize expansion of the station beyond the confines of the site, subject to the provisions of 405.6.A.1 above.
3. Any of the "uses in combination with" fuel service stations listed in Section 405.4.E may be added to any such station, provided that a special exception is granted and the provisions of Section 405.4 are met.
4. Any structure or expansion of the use that is shown on a plan approved prior to the effective date of Bill No. 172-1993 shall be considered as being in compliance with Section 405.4.A.2.a.
B. Portable "A" or "sandwich board" signs shall be removed within three months of the adoption of this provision.

STATEMENT OF FACTS

1. SITE HISTORY.

The subject property and the adjacent Royal Farms convenience store on Hollins Ferry Road were under common ownership in the 1960's. At that time the common owner sold the subject property to a company that became Exxon and imposed on the property a small triangular easement area containing .011 acres of land described in Protestant's Ex. 4 and shown on Petitioner's Exhibit 1 over the easternmost access point to the subject property.

A site plan was prepared in 1965 pursuant to the regulations then in effect (Pet. Ex. 2, 3), and a rezoning to a commercial zone along with a special exception for a filling station was granted in Case No. 65-316-RX. An additional site plan was approved in 1973, and the building was expanded to its current location within the six foot (6′) landscape area currently required by Section 405.4A.2.b. In 1994, the landscape area at the corner was actually expanded from the prior site plans by the relocation of the pumps and facilities, and the set backs for the facilities were again approved (Pet. Ex. 5). The plans and permits in 1994 were significant because they occurred after the adoption of County Council Bill 172-93, which established the current standards. The 1994 plan approval, therefore, basically accepted the configuration and setbacks on the property as they exist today as being in conformance with the current regulations. Subsequently in 2002, a permit was issued allowing the convenience store to expand to 1,500 as an accessory use to the fuel service station. No appeal was taken from the issuance of this permit. The site plan for the special exception, which does not change the configuration of the improvements has been approved, therefore, pursuant to BCZR § 405.6A.1.c as being in keeping with the standards of BCZR §405.4 by virtue of these permit reviews.

In 1982 a zoning violation case (82-256-V) was brought against the then owners and tenants of the property for use of the property as a food store in combination with the service station. The Deputy Zoning Commissioner found that a violation existed and ordered compliance with a site plan approved (C-284-73). (Jt. Ex. 2). That site plan was filed as Exhibit 4, and depicts the setbacks from the streets as set forth on the

current site plan with the exception that the corner has since been enlarged. Pursuant to the violation order the owners and tenants of the property brought a special exception petition for the use in common, which was granted, but later dismissed when the petitioners failed to present their case on appeal to the Board (Jt. Ex. 1A-F).

Over the years the layout of the interior of the building on the site also changed as Petitioner and its predecessors converted the service bays in the service station to other uses. It is uncontested, however, that there have been no exterior changes to the facility since 1994.

2. PETITIONER'S PROPOSED USE.

The Petitioner's site plan dated December 12, 2005, under which this case proceeded, requires a restriping of the parking, provides for additional landscaping, eliminates a propane storage tank, relocates the air/vacuum pump and provides for a guard rail between the Royal Farms Store and the subject site up to the easement area. It is the last requirement, based on the testimony of the Protestants, which seems to be at the heart of the opposition. It is a requirement, however, sought by the local community association as evidenced by the agreement signed by them and to which testimony was offered by Ms. Lowry. No additional building is sought; no configuration to the structures is sought other than as described above.

The real changes with respect to the special exception are on the inside of the existing building, which would be reconfigured as shown on Petitioner's Exhibit 1. All of the uses with the exception of the delicatessen/carry out area are uses that have been

permitted by the zoning office and have been permitted as either accessory uses or as independent uses existing independent of the fuel service station. Petitioner, however, intends to remove the package goods store within the next few weeks, and has no objection to the placement of a condition in the Board's order approving the special exception that requires the removal of the package goods store.

Although Protestant's witnesses had issues with other aspects of the site plan, there was no testimony in opposition to the main issue before the Board – the special exception for the delicatessen/carry out. There was no testimony that the use in common failed to meet the special exception requirements in the zoning regulations or as articulated in Section 502.1 of the BCZR. Testimony was produced by Petitioner that the proposed use in common did meet the required criteria.

DISCUSSION

This case is most unusual on several levels. From a zoning perspective it is unusual to have a special exception use that for all practical purposes is not visible. The use proposed is an interior use that will exist in common with permitted accessory uses, and indeed, is much smaller in area than permitted accessory uses. It will have absolutely no impact on the exterior of the premises, and it was conceded even by Protestants that it will have little or no impact on additional traffic to the premises. It meets the zoning special exception criteria because its impact is so minimal.

The case also is unusual because of the nature of the protest. This is not a case where those protesting are community residents or People's Counsel. The actual

individual appellants never even testified if they were present at the hearings at all. Only Royal Farms, the owner of the adjacent convenience store testified through its employees and hired witness. Even more remarkable was the testimony of the employees that they actually had no issue with the proposed use. The witnesses testified that they could not have cared less about the proposed use, yet Royal Farms hired an expert and prosecuted this appeal over a two year period since the zoning decision was issued over what they said was a guard rail issue and a site layout issue on a site that had existed in the same layout for over ten (10) years. Even more remarkable is that the Petitioner could erect a guard rail along its property line at any time or stripe its parking lot and need no zoning authorization at all for either action. Essentially, according to the testimony of the Royal Farms witnesses, the appeal of a zoning decision, where no one appeared or wrote or called in protest, is over issues that have nothing to do with what was approved.

Finally, the case is remarkable because of the time it took to be heard and because of the site plan issues and interior layout changes that occurred over the interval of the appeal. There is no question but that conditions inside the building changed. The parties agreed, however, to go forward on the December, 2005 plan, which shows both existing conditions and proposed changes and to try the case completely based on that plan.

There are essentially four issues raised in this case.

1. Do Protestants have standing to take this appeal?

2. Was the site plan changed so as to require a remand?

3. Should the special exception for the use in combination of a fuel service station with a delicatessen/carry out of 144 square feet be granted?

4. Does the Board have the authority to require the approved plan be amended either to conform to the regulations as it deems them to be or to properly condition the proposed uses to render them better able to meet the requirements of public health, safety and general welfare?

1. DO PROTESTANTS HAVE STANDING TO TAKE THIS APPEAL?

There are five (5) named individual Protestants and Cloverland Farms Dairy trading as Royal Farms. Only Royal Farms participated in the appeal before the Board. None of the named Protestants appeared, filed correspondence, called the zoning commissioner, requested recognition in the hearing or in any way participated in the hearing below. But for Royal Farms, which does own the adjoining property, none of the Protestants has any demonstrable interest in the case at all, and Royal Farms never participated in the decision.

Royal Farms through its witnesses claims that it was aggrieved because of the order below, which required a guard rail along its mutual property line with Petitioner, yet no order of the zoning commissioner nor of this Board can impact rights in property. The ostensible issue, which prompted the appeal, was that a guard rail was going to be placed across an easement. But that could have been simply remedied because the deeds are clear that the small triangular portion of Petitioner's property is

burdened with an easement for the benefit of the Royal Farms property. That issue had nothing to do with the special exception sought or granted.

The witnesses testified that they were unconcerned about Petitioner's requested use in common and that they were unopposed to the use in the Petitioner's premises, but a delicatessen/carry out would directly compete with their use of a carry out in their own store. It is impossible to believe that an appeal that stretched out over two years was over whether Petitioner extended a guard rail thirty feet or placed parking along a property line, where parking already has been occurring. What is much more plausible to believe is that Royal Farms became aware after the hearing that a delicatessen was proposed in the adjoining property and decided to take steps to prevent it as competition to their own use. The cases are clear that competition is not grounds for standing in zoning cases. Consequently, other excuses for opposing the special exception had to be found. None of them, however, go to the legal issues involving a special exception.

Protestants, however, are confronted with a very real standing problem. To be aggrieved over a decision means that at least on some superficial level there must be participation in the proceedings that led to the decision. The proceedings before the zoning commissioner were advertised and posted. The community association was an active participant in the discussions prior to the hearing. There was every opportunity for Royal Farms or the other named appellants, whoever they may be, to do something at the zoning commissioner level, but they did nothing. The level of their participation did not have to be at the level of testifying or of presenting evidence. They did not

even have to be present at the hearing and presumably could have entered an appearance by correspondence as People's Counsel does. By doing nothing they are no longer stakeholders in the decision and can not be said to be aggrieved. Montgomery County v. One Park North Associates, 275 Md. 193 (1975) (Attached hereto as "Attachment B").[1]

2. WAS THE SITE PLAN CHANGED SO AS TO REQUIRE A REMAND?

The site plan was changed several times over the course of the appeal. It was changed due to drafting issues; it was changed due to the dismissal of the variance to lot size; and it was changed due to changes in the uses existing and proposed inside the building. In every case, however, the intensity of the proposed uses was diminished from that presented to the zoning commissioner. In the Matter of: John Mangione, et al, Civil Action 03-C-03-009661, involved an intensification and expansion of buildings from that presented to the zoning commissioner. The court noted on page 8 of the opinion that "the increased height and width of the facility could possibly not satisfy the criteria of 502.1, which would prevent the granting of a special exception."

In this case the withdrawal of the variance request by Petitioner to the size of the property due to the size of the proposed uses substantially diminished the size of the proposed uses within the building that generate the area requirement. Since the zoning

[1] People's Counsel rarely attends zoning commissioner hearings, but it is scrupulous in noting an appearance in order to take appeals from decisions it deems to be adverse. It is important to note that at least that office deems it necessary that some attention be paid to the hearing below in order to take appeals as an aggrieved party.

prejudiced; the county had the opportunity to review and comment on the plan; the proposal diminished the special exception activity on the site and a variance request was withdrawn. There was nothing improper in what Petitioner did, and after Protestants' acquiescence in the procedure there is no point to a remand.

3. SHOULD THE SPECIAL EXCEPTION FOR THE USE IN COMBINATION OF A FUEL SERVICE STATION WITH A DELICATESSEN/CARRY OUT OF 144 SQUARE FEET BE GRANTED?

Petitioner has fully met its burden of producing evidence in support of its Petitions for Special Exception, Special Hearing and Variance. To deny the petitions based on the evidence presented would be arbitrary, capricious and without evidentiary basis.

In support of the petitions Petitioner produced testimony and witnesses, all agreeing that placing a 144 square foot delicatessen/carry out use in the existing building on the property would not be injurious to the public health, safety or general welfare. Protestants put on no testimony to the contrary and Mr. Sobotka on behalf of Royal Farms stated that he did not oppose the special exception. His issue was over the speed bump and guard rail. Every county agency including the Office of Planning indicated that the special exception should be granted. There simply was no showing that the proposed use at this location would be more injurious to the general public than at any other similarly zoned location.

Petitioner not only produced Mr. Richardson, who prepared the plans but also several community witnesses, and the community planner. These included the present and past presidents of the local community associations. None of these witnesses are employed by the Petitioner as were the witnesses presented by Royal Farms. All believed that the site as now configured and as proposed was a safe site. None believed that the addition of the delicatessen/carry out would be injurious to the public health, safety or general welfare.

Similarly, the variances sought by the Petitioner were not opposed by any party or by any county agency. The site, as configured, has been approved as consistent with the current legislation by virtue of the 1994 reconfiguration. No one is suggesting that the building be taken down or that the parking be removed to create the buffers. Both the parking area and the building predated the legislation calling for the buffers in 1993. Subsequent to the legislation the county approved, as BCZR §405.6 permits it to do, a reconstructed site. No one felt that a public hearing was necessary, and the fact that no one has protested the changes even to current date basically indicates that the setbacks and buffers have been approved pursuant to BCZR §405.6A.1.c..

There is a true legal question on whether petitioning for the variances to validate the existing conditions is necessary. Section 405.6 provides for existing stations and would indicate that no variances are necessary if approval has occurred of the site plans. When a use in combination, however, is sought then the provisions of Section 405.4 have to be met. It is not the use in combination, however, that generates the need for the variances. The variances are generated because existing site conditions

including an existing building, parking area and underground storage tank placement, all of which have been previously approved, lie within the landscape buffer areas. In order, therefore, to bring the site up to the current standards variances were sought from the buffer provisions.[2]

There can be no question but that a unique situation exists. Legal, approved, conforming structures under the statutory provision for existing fuel service stations exist on the site within the buffer areas. The configuration of the site with these structures on it is truly unique. These structures would have to be removed thereby creating a practical difficulty. Because the statute permits this situation to exist, the relief sought is clearly within the spirit and intent of the law. It is the lack of clarity of the regulations in respect to this situation that creates the issue. No opposition to the variances was ever expressed during the hearing.

The opposition voiced during the hearing related to the Special Hearing request to amend the previously approved site plan and order. Protestants, however, were unclear on what they wanted. On the one hand Robert Newell testified that he did not want to see the guard rail because it would channel traffic through a narrow portion of the site near the entrance. Trucks on the Royal Farm site would be blocked from turning if a guard rail was placed along the boundary with the service station. These are reasonable issues, perhaps not relevant, but they raise a good point. Mr. Newell

[2] Because the special exception for the site showing the full paving of the property without the buffers predated the laws requiring the buffers, and because the special exception for the site is still valid, and because neither the convenience store nor the 144 square foot delicatessen/ carry out require the variances or generate buffers in themselves, the variances may well not be necessary in this matter as having been grandfathered under the BCZR for special exceptions.

went on to testify, however, that he thought a six (6) foot planted buffer between the two sites taking up the asphalt would be nice. This suggestion is totally inconsistent with the argument on guard rails. If guard rails impede traffic flow, a planted buffer would not? A six foot planted buffer would exacerbate issues with the traffic flow on the service station site and would do nothing to help traffic flow on the Royal Farms site. It would create a practical difficulty unique to the site in the removal of previously approved, long existing paving and structures.

The issue with the guard rail is irrelevant to the issues before the Board for several reasons. It has nothing to do with the special exception or variances. The Petitioner can put up a guard rail along its property line or speed bump across the easement area, and because these improvements are less than 42 inches in height, no fence permit is necessary. Also, the arguments against the guard rail have to do with traffic flow on the Royal Farms site. That site arguably is too small for trucks to turn around. Royal Farms would like to use Petitioner's property to provide access and to provide turning radii that are more comfortable for its delivery vehicles and customers. The problem is that Petitioner only has an easement burdening its property over a very small area, and the rest of its property does not exist for the benefit of the Royal Farms site. If Royal Farms has overbuilt its site so that its customers and vendors can not access it properly, that is not the fault of Petitioner, and Petitioner is in no way obligated to resolve Protestant's problems with its site.

The testimony indicated that both sites are very busy during the morning rush hour. It is true that delivery trucks at that hour can create site congestion. None of

that congestion, however, was linked to the proposed deli/carry out. That congestion is due to more customers coming to the sites than the current parking configuration can handle. For that reason people visiting one site frequently park on the other site. A guard rail might impede such traffic jointly using the properties. Allowing pedestrian access back by the building may be the answer, while allowing the guard rail to satisfy community concerns about traffic cutting through the service station property to avoid the traffic signal at Hollins Ferry and Hammonds Ferry Roads.

Other site plan issues were raised by Nicholas Brader, a professional engineer retained by Royal Farms. He disputed the fact that the storage area behind the cooler was not included in the sales area for the convenience store, and he introduced an opinion by the former zoning commissioner that he claimed was on point. Unlike the Cloverland Farms Dairy, Inc. case (01-262-sphxa) the Petitioner in this case has included the cooler area to which the public has access and the cashier area in its calculations of sales area. [3] Only the storage area not accessible by the public has been excluded. That storage area also serves the office and the automotive sales area. If included, that storage area would require another 1,236 of lot size. If the storage area, however, was totally associated with the auto parts sales and storage or office no additional lot area would be necessary. Consequently, based on the use of the storage area there is no need to include it in the site multiplier calculations.[4]

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[3] The Zoning Commissioner in that case agreed that neither the office space nor the bathrooms should be included in the sales area.

[4] Mr. Brader was correct that the ATM machine can not remain if the special exception is approved; the site plan does not propose an ATM machine in the building.

The zoning regulations provide that "the retail sale of automotive service items such as motor oil, antifreeze or allied products" is permitted as an ancillary use to a service station and "No additional site area is required." BCZR §405.4D.7. The storage area, office area and automotive service sales area were also included in the parking calculations for the site.

Mr. Brader clearly was quite wrong in limiting the sales area for the automotive service sales to 500 square feet. BCZR §405.4D.1 does limit the combined area for sales, display and customer waiting room to 500 square feet, but that is **only** in connection with **vehicle repairs**. No vehicle repairs on site are proposed. The ancillary sale of automotive service products in §405.4D.7, proposed by Petitioner, has no limitation on area.

The answer, however, to many of Mr. Brader's comments is that the zoning reviewers in the Department of Permits and Development Management thoroughly reviewed the plan and the amendments to the plan. Mr. Bruno Rudaitis of the zoning office personally reviewed and approved the site plan and the uses within the building. The zoning reviewers are charged with knowledge of the regulations and their application. In fact, the Baltimore County Code Section 32-3-102 states: "The Director of Permits and Development Management shall interpret and enforce the Baltimore County Zoning Regulations to insure that uses or buildings, including structures, landscaping, roads, and streets, conform to plans approved by the county." The site plan has been reviewed by the agency charged with its review for conformance with the zoning regulations and has been approved. In addition, the plan was reviewed and

approved by Rahee Famili of the development review section. He approved the entrances and internal traffic circulation pattern including the parking area. Not one of the parking spaces was questioned either by him or by the zoning office. It is significant that Protestants never called any of the county reviewers to examine them on their review and approval of the plans.[5]

Mr. Brader also was wrong in his description of the parking spaces along the Hammonds Ferry Road portion of the site. There is a thirty foot wide common access point on the northernmost entrance to the property shared by way of an easement over the adjoining property of Joseph Hode. This easement area actually is fairly substantial and burdens the Hode property for the benefit of the service station. Vehicles accessing the parking area on the subject property may make use of this access area.

Mr. Brader did raise a good point about the ramp for disabled people, and this ramp can certainly be moved to accommodate the proposed parking area. It should be pointed out that the site currently really does not have any disabled parking. It was not required to, for it predated the accessibility requirements. The existing sign on the building requires disabled individuals to park right in front of the building where there is conflict with vehicles using the pumps. The site plan proposes the disabled parking

[5] The requirement for a special area for loading or unloading was addressed not only by the county reviews of the site but also specifically by BCZR § 409.11, which provides for off-street loading areas "consistent with the size and use of the proposed building." There is more than adequate loading area now on the site, and the inclusion of a 144 square foot space within the existing building and diminution of the carry out area by 50% from the approved area should reduce the need for loading area. Comparison of the loading area required for a 144 square foot space to that required for a full Royal Farms convenience store is ludicrous.

space in a much safer location than currently exists. Moving the ramp to access the parking is an acceptable condition to Petitioner.[6]

Mr. Brader also disputed the legitimacy of the current package goods store. As the Board knows, placement of a liquor store on a property occurs only after zoning review and approval. Consequently, the placement of the package goods store occurred only after zoning approval, and again, its designation on the site plan occurred after a subsequent zoning review.

The liquor store, however, is neither an ancillary use to the service station nor a use in common with the service station. It has its own independent access and its own independent cash register and employment staff. It is an independent use in the building. There is no prohibition in the zoning regulations for a service station to share a property with a barber shop, video store, or package goods store provided that the requirements for parking are met. Numerous cases exist throughout the county where lots are so used. In this case the presence of a small package goods store on the same property does not mean that it is a common use sharing common access, waiting and service area and cashiers. It is not.

Perhaps, more important, is that the package goods use is temporary and will be terminating soon. The Board certainly is able to condition approval of the special exception on removal of the package goods store. As Mr. Richardson explained, the package goods store is there today, but it is planned to be office space to support the

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[6] It should also be noted that with the removal of the propane tank the proposed parking next to the building can be shifted closer to the property line resulting in a larger area adjacent to the disabled space.

service station. It is also important to remember that as soon as the package goods area is converted to office space then the parking tabulation will change to require one less space than is currently provided. Consequently, Petitioner will have one more space than required by the zoning regulations.

Finally, it is interesting to note that the Royal Farms engineering witness appeared to be at odds in his testimony to the Royal Farms staff when it came to the guard rail. Mr. Brader asked only that it not encroach on the easement area. He did not suggest removing asphalt and creating a landscape area or not having the guard rail at all.

Protestants made the point that the interior uses in the building were arranged so as to fit within the site constraints. They are correct. There is nothing unusual in sizing a building to make sure that it has sufficient parking, access, etc. In this one case the zoning regulations condition internal building uses on site area. Consequently, it is to be expected that those internal uses in an existing building are proposed in such a way as to come into conformity with the property size regulations. In fact, Petitioner is quite willing to have a condition applied to the site plan that any final site plan be subject to review by the Department of Permits and Development review zoning bureau and that the internal areas be laid out to come into conformance with their requirements. The fact that the proposed site plan has already been reviewed and has been found to be conforming is important, but if the Board determines that areas should be accounted differently than the zoning bureau and Petitioners have approved and proposed then Petitioner is prepared to make the plan conform. What is important to

the Petitioner is that some area for a delicatessen/carry out, some area for a convenience store, some area for sales of automotive products and some office space area approved.

4. DOES THE BOARD HAVE THE AUTHORITY TO REQUIRE THE APPROVED PLAN BE AMENDED EITHER TO CONFORM TO THE REGULATIONS AS IT DEEMS THEM TO BE OR TO PROPERLY CONDITION THE PROPOSED USES TO RENDER THEM BETTER ABLE TO MEET THE REQUIREMENTS OF PUBLIC HEALTH, SAFETY AND GENERAL WELFARE?

The Board clearly is empowered pursuant to BCZR §502.2 to impose conditions and restrictions to its approval of the site plan and special exception. This would include restrictions on future uses and interior and exterior site layout. The Zoning Commissioner imposed restrictions, and restrictions and conditions are expected in most special exception approvals.

In this case the Petitioner has agreed to the following conditions:

1. the six (6) conditions imposed in the Zoning Commissioner's order including placement of the guard rail up to the easement area. The Petitioner agrees with Royal Farms that it can not place the guard rail across the easement area;
2. opening the guard rail near the service station building to provide for pedestrian traffic near the buildings;
3. relocation of the accessibility ramp into the building;
4. approval of a landscape plan by the county's landscape architect;

5. removal of the package goods store from the building and replacement with office use or other ancillary use that does not conflict with the area requirements of the zoning regulations;
6. removal of the ATM machine;
7. arranging with its suppliers to time trash removal and fuel service to site so that there is no conflict with peak site usage hours

While these conditions have little to do with the special exception request, they do improve the existing conditions at the site.

CONCLUSION

Petitioner respectfully requests that the special exception for a use in common of a fuel service station with a 144 square foot delicatessen/carry out facility be approved. There was absolutely no testimony that such use would in any way be harmful to the health, safety or general welfare. Not only do Protestants lack standing to bring the appeal, they also failed to present any testimony indicating that the special exception use would lead to any degradation in existing conditions. In the absence of such testimony and in the presence of the testimony and evidence submitted by Petitioner and by the county agencies, it would be arbitrary to deny the special exception request.

The variance requests from BCZR § 405.4A.2.b to permit landscape transition areas as small as 3 feet in lieu of the required 10 feet from a public right-of-way and 0 feet in lieu of the required 6 feet from an adjacent commercial property; from BCZR § 405.4A.2.c to waive vegetation requirements under the landscape manual for

automotive uses should also be granted. The existing uses infringing on the landscape transition areas were approved for the existing service station in 1994, and the building has existed and macadam has existed since 1965. It would indeed be hardship to retrofit today's regulations on an existing fully built out site. The existing conditions at the site as approved make the site unique.

The amended site plan should also be granted. It is up to the Board to determine the extent of the guard rail between the service station and the Royal Farms store. The guard rail will cut down on through traffic on the sites and should prevent an unsafe condition from occurring. The reconfiguration of parking will provide additional spaces to the existing condition and will improve site circulation.

For all of these reasons Petitioners request that the appeal be denied and that its petitions be approved.

Respectfully submitted,

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for review. The Director of Permits and Development Management shall allow the Board a maximum of 30 days, before taking action, to comment on an alleged violation. **[Bill Nos. 51-1993; 74-1999]**

Ex # A

Section 405
Fuel Service Stations
[Bill No. 172-1993[2]]

405.1 Statement of legislative findings and policy.

A. Bill No. 40-1967 enacted six commercial districts (C.N.S., C.C.C., C.T., C.S.A., C.S.-1 and C.S.-2) and one industrial district (I.M.). One of the main purposes of the new commercial districts was to control the location of service stations and the uses associated with them. In 1975, the C.R. District was added to govern service stations and other commercial uses in rural areas.

B. While the C.T., C.C.C., C.R. and I.M. Districts have special use and bulk regulations which make each one unique, the remaining districts (C.N.S., C.S.A., C.S.-1 and C.S.-2) do not include provisions which make them distinct. As a consequence, the C.S.A., C.N.S., C.S.-1 and C.S.-2 Districts are consolidated into the automotive services (A.S.) District.

C. The design and operation of service stations has changed significantly and the provisions set forth in Bill No. 40-1967 no longer reflect contemporary business practices. Due to the rise of self-service stations, the number of businesses that "service" motor-vehicles by providing repair facilities has been steadily declining, while the number of stations with convenience stores or car wash operations has been increasing. To better reflect the evolving role of this use, the name of "automotive service station" is being changed to "fuel service station," and regulations which govern the permitted ancillary uses are being amended to reflect contemporary business practices and to facilitate the upgrading of existing stations.

D. It is the intent of this section to permit fuel service stations in accordance with the goals of the Master Plan and duly adopted community plans by requiring performance standards that will regulate their location and appearance as well as the additional uses which may be developed at such sites.

405.2 Locations in which fuel service stations are permitted.

A. A fuel service station is permitted by right subject to Section 405.4, provided that no part of the lot is within 100 feet of a residentially zoned property and is integrated with and located:

1. In a planned shopping center of which at least 20% has been constructed at the time the building permit for the fuel service station is issued, but not to

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[2] **Editor's Note: This bill also repealed former Section 405, which was part of BCZR 1955, as amended by Resolution, November 21, 1956, and Bill Nos. 40-1967; 69-1968.**

exceed one station for each 60,000 square feet of gross floor area of the planned shopping center;

2. In an approved planned industrial park of a minimum net area of 50 acres, but not to exceed one for each 50 acres of net area; or

3. In a planned drive-in cluster.

B. Fuel service stations on individual sites which do not comply with the requirements of Section 405.2.A are permitted by special exception, as provided below and subject to Sections 405.3 and 405.4.

1. Within the urban-rural demarcation line (URDL), in C.C.C., A.S., I.M. or MD 43 Districts, provided no part of the lot is in an M.R. Zone. **[Bill No. 78-2002]**

2. Outside the URDL with C.R. District designation only in B.L., B.M. or B.R. Zones, subject to Section 259.3.B.2.

405.3 In addition to the findings required under Section 502.1, the Zoning Commissioner, prior to granting any special exception for a fuel service station, shall consider the presence of abandoned fuel service stations in the vicinity of the proposed site. A finding by the Zoning Commissioner of the presence of one abandoned fuel service station, as defined in Section 405.7, within a one-half-mile radius, or two such stations

(Cont'd on page 4-15)

within a one-mile radius of the proposed fuel service station establishes that there is no need for the proposed use, unless rebutted to the Zoning Commissioner's satisfaction by market data.

405.4 Standards.

A. Site development.

1. Site dimensions. The area of any fuel service station site shall be no less than 15,000 square feet or 1,500 times the number of fuel service spaces (as defined in Section 101), whichever is greater. If any use permitted under Section 405.4.D or 405.4.E is added to the fuel service station, the area of the site shall be increased in accordance with the provisions of those sections.

2. Setbacks.

a. No main structure of a service station shall be set back less than 35 feet from any street right-of-way; no fuel pump shall be set back less than 25 feet from any street right-of-way; no canopy shall be set back less than 15 feet from any street right-of-way.

b. Except at the required access driveways, a landscape transition area shall be provided along the entire perimeter of fuel service stations. Such area shall have a minimum width of 10 feet if the fuel service station abuts a public right-of-way, and six feet in all side and rear yards abutting nonresidentially zoned land, except that service stations located within 50 feet of any residentially zoned property (other than a residential zone line in a public right-of-way) shall provide a buffer measuring no less than 15 feet from that property line.

c. The landscape transition area shall be vegetated and screened in accordance with the Landscape Manual requirements for automotive uses.

d. Other setbacks shall be as required by these regulations.

3. Access, internal circulation and vehicle reservoir capacity.

a. The number and location of access driveways shall be determined by the hearing officer or Zoning Commissioner based upon the recommendations of the Director of Public Works and the Office of Planning.

b. All internal paved areas of a fuel service station site used for parking, driveway, aisles and stacking purposes shall comply with Section 409 and shall be laid out to preclude vehicles waiting on the street or blocking the right-of-way before gaining entrance.

c. In addition to the fuel service space, at least one stacking space shall be provided:

(1) For each pump island side, at pump islands that contain multiproduct dispensers (MPD) and where a bypass lane serves each (MPD);

(2) For each MDP in cases where there is no bypass lane or where a convenience store is located on the same lot; or

(3) For each pump, if the pump dispenses a single fuel type.

d. Parking spaces on the site of any fuel service station shall be provided as follows:

(1) One space per employee on the largest shift.

(2) Three spaces per 1,000 square feet of gross floor area for a convenience store up to 1,500 square feet. (Convenience stores larger than 1,500 square feet shall be subject to the parking requirements for retail uses in accordance with Section 409, including the first 1,500 square feet).

(3) Three spaces per service bay, not counting service spaces in the bays.

(4) One space per self-service air or vacuum cleaner unit.

(5) One space per automatic teller machine.

B. All fuel service stations shall provide a rest room facility, water and compressed air for customers.

C. Appearance.

1. General design.

a. Any structure on the site that is converted to an ancillary use or to a use in combination with a fuel service station must be upgraded to create a unifying architectural theme with other structures on the site.

b. The rear and sides of buildings on lots abutting residentially zoned properties shall be finished with materials that in texture and color resemble the front of the building. The type of facade treatment shall be indicated on the site plan or an accompanying elevation drawing and is subject to review by the Director of Planning.

c. Except for the temporary outdoor sale of items permitted under Section 230.9, the outside display of merchandise is permitted only under the canopy, or if there is no canopy, on or between the pump island or in an area immediately adjacent to the cashier's kiosk. Such goods may not block access drives, stacking spaces or interfere with the site's circulation pattern.

d. If the fuel service station is located within 50 feet of a residentially zoned property, lighting standards on site may not exceed a height of 18 feet and shall be directed away from any residentially zoned properties.

e. To increase compatibility with surrounding buildings or to enhance the attractiveness of the site of fuel service stations for which a special exception is required, the Zoning Commissioner may specify additional requirements, including:

(1) Changes in building or site plan design;

(2) Restrictions on hours of operations; or

(3) Other requirements deemed necessary for compliance with this section.

2. Signs. Signs are permitted, subject to Section 450. **[Bill No. 89-1997]**

3. Maintenance. At all times, the premises shall be maintained in a clean and orderly condition. All landscaped areas shall be irrigated as needed and dead plants replaced. The responsibility for compliance with these provisions lies with all parties that individually or collectively have a lease or ownership interest in the fuel service station.

D. Ancillary uses. The uses listed below, only, are permitted by right in conjunction with any fuel service station. The minimum area of the site as determined under Section 405.4.A.1 shall be increased each ancillary use by at least the number of square feet indicated below, which includes land for required parking and stacking spaces:

1. Minor vehicle repair or diagnostic services to vehicles, except those which are unlicensed or which have a State Motor Vehicle Administration transporter or a dealer license. Additional site area of 1,300 feet per service bay shall be provided.

a. Type of service and repairs include but are not limited to the sale and installation of mufflers, small auto parts and accessories and shall remain accessory to the fuel service station operation.

b. All service and repairs shall take place within completely enclosed buildings.

c. The combined area for sales, display and customer waiting room may not exceed 500 square feet.

d. Storage of tow trucks, damaged or disabled vehicles or parts is subject to Section 405A.

2. Convenience store with a sales area of up to 1,500 square feet inclusive of accessory storage. An additional site area of four times the square footage of the convenience store's sales area shall be provided.

3. Automatic teller machine, but no drive-through facilities. Additional site area of 1,000 square feet for each device shall be provided.

4. Self-service vacuum stations. All such stations shall be located at least 30 feet from a residentially zoned property. No additional site area is required.

5. Temporary outdoor sale of Christmas trees, firewood, cut flowers or live plants as limited by Section 230.9.

6. The sale of cigarettes, candy, drinks, snacks and similar items from vending machines or the cashier's kiosk. No additional site area is required if vending machines do not exceed a total of five machines, otherwise the area shall be considered a convenience store.

7. The retail sale of automotive service items such as motor oil, antifreeze or allied products. No additional site area is required.

E. Uses in combination with fuel service stations. The minimum area of the site as determined by Section 405.4.A.1 shall be increased for each use in combination with a fuel service station by at least the number of square feet indicated below:

Type of Use	**Integral Planned Development**	**Individual Site**
(SE = Special Exception and P = Permitted by Right)		
1. Convenience store with a sales area larger than 1,500 square feet inclusive of accessory storage. Additional site area of four times the square footage of the convenience store's sales area must be provided.	SE	SE
2. Roll-over car wash. No specific additional site area required, provided that the stacking, parking and buffer requirements of Section 419 are met.	P	SE
3. Full service car wash. No specific additional site area required, provided that the stacking, parking and buffer requirements of Section 419 are met.	SE	SE
4. Service garages providing services other than those listed in Section 405.4.D, subject to the provisions of Section 405.4.C.1.a through 1.e.	SE	SE
5. Automobile rental, with a maximum stock of 12 cars. Additional site area of 4,000 square feet must be provided.	SE	SE

Type of Use	Integral Planned Development	Individual Site
6. Trailer rental, for trailers not exceeding ¾ ton chassis weight, with a maximum stock of 20 trailers. Additional site area of 5,000 square feet must be provided.	SE	SE
7. Light-truck rental, including rental of trucks equipped with campers, for trucks not exceeding 1½ tons' capacity, with a maximum stock of eight trucks. Additional site area of 4,000 square feet must be provided.	SE	SE
8. Parking of not more than six school buses. Additional site area of 2,600 square feet must be provided.	SE	SE
9. Self-service car washes. No additional site area required, provided that the stacking, parking and buffer requirements of Section 419 are met.	SE	Not Permitted
10. Restaurant, including fast food, fast food drive-through only, and carry-out restaurants. Additional site area of six times the gross square footage of the restaurant must be provided.	SE	SE

405.5 Plan approvals.

A. Conversion of any conforming fuel service station building to another use, permitted in the basic zone or district in which the site is located, shall require approval of the overall plan of the entire site by the Directors of Planning, Public Works and Permits and Development Management or, in the case of a special exception, the Zoning Commissioner.

B. For all service station sites requiring a special exception, any amended plan shall constitute a new plan and be subject to the same requirements of these regulations.

405.6 Fuel service stations existing prior to the effective date of Bill No. 172-1993.

A. Expansion, reconstruction or addition of uses.

1. Any fuel service station which legally existed by right or by special exception on the effective date of Bill No. 172-1993 may be expanded or reconstructed, and any ancillary use listed in Section 405.4.D may be added, provided that the project is confined to the limits of the site as it existed on the effective date of Bill No. 172-1993; and

a. Conforms with a plan for the entire site as reviewed by the Directors of Planning, Public Works, and Permits and Development Management; and

b. Is located in a B.L., B.R., B.M., M.L. or M.H. Zone or a PUD; and

c. Meets the requirements set forth in Section 405.4 or, in the judgment of the Director of Permits and Development Management, would be done in such a manner that the station would be improved to be more in keeping with the purposes of Section 405.4; and

d. In cases where a provision of Bill No. 172-1993 conflicts with the terms or conditions of a prior special exception, the project may be subject to special hearing at the discretion of the Director of Permits and Development Management.

2. After a public hearing, the Zoning Commissioner may authorize expansion of the station beyond the confines of the site, subject to the provisions of 405.6.A.1 above.

3. Any of the "uses in combination with" fuel service stations listed in Section 405.4.E may be added to any such station, provided that a special exception is granted and the provisions of Section 405.4 are met.

4. Any structure or expansion of the use that is shown on a plan approved prior to the effective date of Bill No. 172-1993 shall be considered as being in compliance with Section 405.4.A.2.a.

B. Portable "A" or "sandwich board" signs shall be removed within three months of the adoption of this provision.

405.7 Abandoned fuel service stations.

A. Finding. The County Council recognizes that at times the public need for fuel service stations at particular locations ceases, and those stations become abandoned. An abandoned fuel service station is one which, intentionally, is not in actual and continuous operation as defined in Section 405.7.B. The County Council further recognizes that an abandoned fuel service station which is left to deteriorate can become a threat to the health, safety and welfare of the community, can have a blighting influence on surrounding properties and can cause a deterioration of the use, value and enjoyment of property in the immediate neighborhood.

B. Notice of presumption of abandonment. Whenever the owner or agent of any fuel service station has ceased or terminated the use of the premises as a fuel service station, the owner or agent shall notify the Director of Permits and Development Management within 30 days after the termination. Notwithstanding the failure of the owner to notify the Director, any fuel service station which has not been in actual and continuous operation as a station for a period of 12

consecutive months shall be presumed to be abandoned and right to resume the use is thereby terminated. For purposes of this section, "continuous operation" shall mean operation as a fuel service station at least eight hours per day, five days per week.

C. Termination of special exception. Any special exception for the operation of a fuel service station shall become void upon notice of abandonment by the owner or upon proof of abandonment after notice and hearing pursuant to Section 500.7 of the zoning regulations. Any special exception for a fuel service station shall terminate at the time of the conversion to another use.

D. The premises (including landscaping) of any fuel service station which is not in continuous operation or which is abandoned shall be continuously maintained in the same manner as is required under these regulations for operating fuel service stations.

E. Proceedings to require removal.

1. Whenever it shall be determined by the Director of Permits and Development Management that a fuel service station has not been in continuous operation and that the premises have not been continuously maintained, the Director shall issue a notice to the owner or agent to repair, correct or take other appropriate action to remedy the specific deficiencies enumerated in the notice.

2. If the deficiencies have not been corrected within a period of 90 days following the date of the notice, the Director of Permits and Development Management shall refer the matter to the Zoning Commissioner for a hearing, pursuant to Section 500.7, to require removal.

3. If, after notice and hearing pursuant to Section 500.7 of the zoning regulations, it is determined that a fuel service station has not been in continuous operation and not continuously maintained and corrected according to prior notice, and if it is further found that by reason of the continued vacancy, the structure and grounds lack reasonable or adequate maintenance, thereby causing deterioration and blighting influence on nearby properties and thereby depreciating the enjoyment, use or value of the property in the immediate vicinity to such an extent that it is harmful to the public health, welfare, safety, comfort or convenience of the neighborhood in which the station is situated, the Zoning Commissioner shall order the station's removal. For purposes of the subsection, "removal" shall mean the removal by the owner of all aboveground structures, including paving, and removal or abandonment in place of underground tanks in compliance with the provisions of COMAR 26.10.10.02 and § 33-7-103 of the Baltimore County Code. **[Bill No. 137-2004]**

405.8 Conversions of abandoned stations. One of the purposes of this subsection is to promote the conversion of vacated fuel service stations to other uses; therefore, if a fuel service station has been abandoned as such, but is converted to another use, no

fuel service station structure, equipment or appurtenances necessary or appropriate to the new use need be removed.

Section 405A
Storage of Damaged or Disabled Motor Vehicles on Service Garage Premises
[Bill No. 43-1969]

Damaged or disabled motor vehicles may be stored on the premises of any conforming service garage or nonconforming use service garage, provided that any outdoor storage of such motor vehicles shall be subject to the following requirements:

405A.1 Screening. All such vehicles shall be screened from off-site view by walls (including building walls) or fences at least eight feet in height. However, a screening wall or fence less than eight feet high, but not less than six feet high, existing on the date of enactment of this provision[1] may serve in lieu of such eight-foot wall or fence. All surfaces of such walls or fences facing residential zones or premises shall be finished or, in the discretion of the Zoning Commissioner, vine-covered or otherwise improved by the use of planting.

405A.2 Paving. The storage area shall be paved with permanent all-weather materials over suitably compounded and compacted base materials, and shall be properly drained.

Section 406
Golf Driving Range, Miniature Golf and Baseball Batting Range
[BCZR 1955; Bill No. 26-1988]

406.1 All lighting installations shall be such and be so arranged as not to increase traffic hazards or to cause direct or glaring reflection into adjoining premises.

Section 406A
Tennis Facilities
[Bill Nos. 62-1978; 31-1984; 26-1988]

406A.1 A tennis facility may be established as a principal use in an R.C. or D.R. Zone only if it is owned by a homes or residents' association, as defined in the Comprehensive Manual of Development Policies adopted pursuant to Section 504 of these regulations, by a neighborhood improvement association, or by a neighborhood tennis club. For the purposes of this subsection, a "neighborhood improvement association" is an incorporated association, the purpose of which is to promote the common good and general welfare of its members, who reside within the association's boundaries as defined in its charter or bylaws; a "neighborhood tennis club" is a nonprofit incorporated association, the purpose of which is to own or maintain a tennis facility

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1 **Editor's Note: This provision was enacted on April 15, 1969 (Bill No. 43-1969).**

Citation/Title
344 Md. 271, 686 A.2d 605, Sugarloaf Citizens' Ass'n v. Department of Environment, (Md. 1996)

***271** 344 Md. 271

686 A.2d 605

Ex A

Court of Appeals of Maryland.

SUGARLOAF CITIZENS' ASSOCIATION et al.
v.
DEPARTMENT OF ENVIRONMENT et al.

No. 60 Sept. Term 1995.
Dec. 20, 1996.

Local landowners, environmental organizations and citizens' groups sought judicial review of determination of the Maryland Department of Environment (MDE) allowing construction to proceed for power-generating solid waste incinerator. The Circuit Court, Montgomery County, DeLawrence Beard, J., dismissed petitions for lack of standing, and appeal was taken. The Court of Special Appeals, 103 Md.App. 269, 653 A.2d 506, affirmed. Writ of certiorari was granted. The Court of Appeals, Eldridge, J., held that: (1) owners of farm adjacent to tract which encircled incinerator were adjoining or nearby property owners who were prima facie aggrieved by issuance of permits for incinerator for purposes of standing to bring action for judicial review; (2) evidence that much higher levels of toxic substances would fall on farm than on properties farther away from incinerator showed that effect on farm owners different from that on general public so as to support standing to bring action for judicial review; (3) administrative law judge (ALJ) sufficiently considered evidence that pollution from incinerator would harm wildlife and humans; (4) refuse disposal permit sufficiently indicated disposal sites for nonhazardous and possibly hazardous ash and compliance with county solid waste management plan; (5) air quality standards for ozone nonattainment areas under 1990 Amendments to Clean Air Act (CAA) did not apply to applications for permits submitted before state had incorporated new regulations into its plan; and (6) plaintiffs were not entitled to discovery prior to contested case hearing on issuance of permits for incinerator.

Judgment of the Court of Special Appeals reversed, and case remanded with directions.

West Headnotes

[1] Administrative Law and Procedure ⚷665.1

15A ----
15AV Judicial Review of Administrative Decisions

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344 Md. 271, 686 A.2d 605, Sugarloaf Citizens' Ass'n v. Department of Environment, (Md. 1996)

15AV(A) In General
15Ak665 Right of Review
15Ak665.1 In General.

Person may properly be party at agency hearing under relatively lenient standards for administrative standing but not have standing in court to obtain judicial review to challenge adverse agency decision.

[2] Administrative Law and Procedure ⚷668

15A ----
15AV Judicial Review of Administrative Decisions
15AV(A) In General
15Ak665 Right of Review
15Ak668 Persons Aggrieved or Affected.

In order to be "aggrieved" for purposes of standing to bring action for judicial review under Administrative Procedure Act (APA), person ordinarily must have interest such that he or she is personally and specifically affected in way different from public generally. Code, State Government, § 10-222(a)(1).

[3] Administrative Law and Procedure ⚷450.1

15A ----
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(D) Hearings and Adjudications
15Ak450 Parties
15Ak450.1 In General.

[See headnote text below]

[3] Environmental Law ⚷378

149E ----
149EVIII Waste Disposal and Management
149Ek377 Administrative and Local Agencies and Proceedings
149Ek378 In General.

(Formerly 199k25.5(9) Health and Environment)

Local landowners, environmental organizations and citizens' groups had standing as parties to participate in administrative hearing on decision of Department of Environment to issue two permits which authorized construction of solid waste incinerator, absent identification of any statute or regulation prescribing more demanding criteria for administrative standing in such case.

[4] Constitutional Law ⚷79

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344 Md. 271, 686 A.2d 605, Sugarloaf Citizens' Ass'n v. Department of Environment, (Md. 1996)

92 ----
92III Distribution of Governmental Powers and Functions
92III(C) Executive Powers and Functions
92k78 Encroachment on Judiciary
92k79 In General.

Under basic principles of administrative law, as well as separation of powers requirement, it is not proper function of administrative official or agency in executive branch of government to decide whether plaintiff or potential plaintiff has standing to maintain action in court for judicial review of agency action; although General Assembly may enact legislation affecting standing to bring type of action in court or prescribing criteria for standing to bring such action, determination of whether person has standing to maintain action in court is exclusively judicial rather than administrative function. Const.Declaration of Rights, Art. 8.

[5] Action 13

13 ----
13I Grounds and Conditions Precedent
13k13 Persons Entitled to Sue.

Standing to challenge governmental action, and merits of challenge, are separate and distinct issues.

[6] Environmental Law 656

149E ----
149EXIII Judicial Review or Intervention
149Ek649 Persons Entitled to Sue or Seek Review; Standing
149Ek656 Other Particular Parties.

(Formerly 199k25.15(4.1) Health and Environment)

Whether evidence at administrative hearing indicated likely fallout of toxic substances from incinerator upon landowners' properties would be at level acceptable under government air quality standards was erroneous test for standing of landowners to bring action for judicial review of decision to issue permits for construction of incinerator; test went to merits of case and would preclude standing for judicial review even if landowners suffered legally cognizable harm and administrative law judge (ALJ) had erroneously excluded issues and evidence or misconstrued law.

[7] Zoning and Planning 571

414 ----
414X Judicial Review or Relief
414X(A) In General

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344 Md. 271, 686 A.2d 605, Sugarloaf Citizens' Ass'n v. Department of Environment, (Md. 1996)

414k571 Right of Review.

In actions for judicial review of administrative land use decisions, adjoining, confronting or nearby property owner is deemed, prima facie, to be person aggrieved for standing purposes, and person challenging aggrievement has burden of denying such damage in answer to petition for judicial review and of coming forward with evidence to establish that petitioner is not, in fact, aggrieved.

[8] Environmental Law 656

149E ----
149EXIII Judicial Review or Intervention
149Ek649 Persons Entitled to Sue or Seek Review; Standing
149Ek656 Other Particular Parties.

(Formerly 199k25.15(4.1) Health and Environment)

Owners of farm located 2,000 feet from incinerator and adjacent to tract of land which encircled incinerator and which contained generating stations utilizing energy produced by incinerator were adjoining or nearby property owners and, thus, were prima facie aggrieved by issuance of permits for incinerator for purposes of standing to bring action for judicial review of permit decisions.

[9] Environmental Law 656

149E ----
149EXIII Judicial Review or Intervention
149Ek649 Persons Entitled to Sue or Seek Review; Standing
149Ek656 Other Particular Parties.

(Formerly 199k25.15(4.1) Health and Environment)

Evidence adduced at administrative hearing demonstrating that much higher levels of toxic substances would fall on farm adjacent to parcel containing incinerator than would fall on properties farther away from incinerator site showed that owners of ***271** farm would be affected in way different from general public so as to support their standing to bring action for judicial review of issuance of permits for incinerator.

[10] Environmental Law 690

149E ----
149EXIII Judicial Review or Intervention
149Ek690 Harmless Error.

(Formerly 199k25.15(11) Health and Environment)

Administrative law judge's (ALJ) erroneous statements concerning exclusion of

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evidence relating to initial prevention of significant deterioration (PSD) permit from hearing on subsequent permit for construction of incinerator and refuse disposal permit did not result in prejudicial error absent demonstration that objectors were actually precluded at adjudicatory hearing from raising PSD issues or from presenting evidence pertinent to construction and refuse disposal permits on ground that issues had earlier been resolved at preliminary PSD stage.

[11] Environmental Law ⚷272

149E ----
149EVI Air Pollution
149Ek266 Particular Sources of Pollution
149Ek272 Waste Disposal Facilities; Incineration.

(Formerly 199k25.6(5.1) Health and Environment)

[See headnote text below]

[11] Environmental Law ⚷301

149E ----
149EVI Air Pollution
149Ek298 Evidence
149Ek301 Weight and Sufficiency.

(Formerly 199k25.6(5.1) Health and Environment)

Administrative law judge (ALJ) sufficiently considered evidence that pollution from proposed incinerator would harm wildlife and humans, along with conflicting evidence, in making findings and conclusions that overall level of risk to environment from facility was insignificant for purposes of reviewing issuance of permits necessary for construction of incinerator; ALJ specifically considered evidence on arsenic emissions, polychlorinated biphenyls (PCBs), and level of mercury in fish and pond water from incinerator.

[12] Environmental Law ⚷272

149E ----
149EVI Air Pollution
149Ek266 Particular Sources of Pollution
149Ek272 Waste Disposal Facilities; Incineration.

(Formerly 199k25.6(5.1) Health and Environment)

Preamble to Federal Register, in which Environmental Protection Agency (EPA) explained that toxicity equivalents (TEQs) was one of several methods by which New Source Performance Standards (NSPS) level for dioxide emissions could be measured, supported administrative law judge's (ALJ) decision to use TEQ

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approximation of dioxide emissions standard to determine whether dioxide level for proposed solid waste incinerator would conform to NSPS. 40 C.F.R. § 60.53a(b).

[13] Environmental Law ⚷272

149E ----
149EVI Air Pollution
149Ek266 Particular Sources of Pollution
149Ek272 Waste Disposal Facilities; Incineration.

(Formerly 199k25.5(5.5) Health and Environment)

[See headnote text below]

[13] Environmental Law ⚷433(2)

149E ----
149EIX Hazardous Waste or Materials
149Ek425 Hazardous, Dangerous, or Toxic Waste
149Ek433 Incineration
149Ek433(2) Permits, Licenses, and Approvals.

(Formerly 199k25.5(5.5) Health and Environment)

Although administrative law judge (ALJ) erroneously determined that Resource Conservation and Recovery Act (RCRA) was inapplicable to incinerator ash generated from proposed facility, ALJ sufficiently considered issue of RCRA compliance for permits necessary for construction of solid waste incinerator by alternatively finding that applicants for permits had established they would dispose of any ash found to be toxic at particular landfill.

[14] Environmental Law ⚷272

149E ----
149EVI Air Pollution
149Ek266 Particular Sources of Pollution
149Ek272 Waste Disposal Facilities; Incineration.

(Formerly 199k25.5(5.5) Health and Environment)

[See headnote text below]

[14] Environmental Law ⚷433(2)

149E ----
149EIX Hazardous Waste or Materials
149Ek425 Hazardous, Dangerous, or Toxic Waste

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344 Md. 271, 686 A.2d 605, Sugarloaf Citizens' Ass'n v. Department of Environment, (Md. 1996)

149Ek433 Incineration
149Ek433(2) Permits, Licenses, and Approvals.

(Formerly 199k25.5(5.5) Health and Environment)

Refuse disposal permit for new solid waste incinerator sufficiently indicated necessary disposal sites for nonhazardous and possibly hazardous ash discharged from facility and compliance with county solid waste management plan; application for permit indicated specific landfill as proposed site for ash and alternative specific landfill for any ash found to be hazardous in future, and letter from county and evidence presented at hearing supported finding that facility would be consistent with waste management plan.

[15] Environmental Law 287

149E ----
149EVI Air Pollution
149Ek287 Ozone.

(Formerly 199k25.6(5.1) Health and Environment)

More demanding air quality standards for ozone nonattainment areas under 1990 Amendments to Clean Air Act (CAA) did not apply to applications for permits for construction of solid waste incinerator submitted before state had incorporated new regulations pertaining to ozone nonattainment areas into its state implementation plan (SIP). Clean Air Act, §§ 101, 172, 173, 181, as amended, 42 U.S.C.A. §§ 7401, 7502, 7503, 7511,

[16] Environmental Law 272

149E ----
149EVI Air Pollution
149Ek266 Particular Sources of Pollution
149Ek272 Waste Disposal Facilities; Incineration.

(Formerly 199k25.6(5.1) Health and Environment)

[See headnote text below]

[16] Environmental Law 301

149E ----
149EVI Air Pollution
149Ek298 Evidence
149Ek301 Weight and Sufficiency.

(Formerly 199k25.6(5.1) Health and Environment)

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344 Md. 271, 686 A.2d 605, Sugarloaf Citizens' Ass'n v. Department of Environment, (Md. 1996)

Administrative law judge (ALJ) sufficiently considered food chain routes of exposure to air toxins released from proposed solid waste incinerator in approving issuance of permits for incinerator, by examining two comprehensive risk assessments which both examined various toxins likely to accumulate in local farm ponds, measured resulting harm from consumption of fish within those ponds, and estimated harm from consumption of milk and beef from livestock raised on local farms and from vegetables grown on those farms. Md.Regs. Code title 26, § 11.15.06.

[17] Constitutional Law ⚷278.1

92 ----
92XII Due Process of Law
92k278.1 Health and Environmental Regulations.

[See headnote text below]

[17] Environmental Law ⚷378

149E ----
149EVIII Waste Disposal and Management
149Ek377 Administrative and Local Agencies and Proceedings
149Ek378 In General.

(Formerly 199k25.5(9) Health and Environment)

Local landowners, environmental organizations and citizens' groups did not have right under due process clause, or other authority, to discovery prior to contested case hearing on issuance of permits for new solid waste incinerator, absent stipulation of parties providing for such discovery, and absent showing of reliance by administrative law judge (ALJ) or by Department of Environment upon any document which was not previously shown to plaintiffs or with regard to which there was no opportunity for rebuttal. U.S.C.A. Const.Amend. 14; Md.Regs. Code title 26, § 01.02.21A.

[686 A.2d 608] ***276** Mick G. Harrison (Richard E. Condit, on brief), Washington, DC, for Petitioner.

Lawrence P. Fletcher-Hill, Assistant Attorney General (Joseph J. Curran, Jr., Attorney General; Ann Marie DeBiase, Assistant Attorney General, on brief), Baltimore, for Appellee.

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344 Md. 271, 686 A.2d 605, Sugarloaf Citizens' Ass'n v. Department of Environment, (Md. 1996)

Andrea C. Ferster, Laura D. Middleton, Washington, DC, Amicus Curiae for Montgomery Cty.

Argued before MURPHY, C.J., (FN*) and ELDRIDGE, RODOWSKY, CHASANOW, KARWACKI and BELL, JJ.

***277** ELDRIDGE, Judge.

The dispute in this case concerns the decision of the Maryland Department of the Environment (the Department) to issue two permits which authorized the construction of a solid waste incinerator near Sugarloaf Mountain in Dickerson, Maryland. A group comprised of local landowners, environmental organizations and citizens' groups challenged the Department's decision by filing in the Circuit Court for Montgomery County an action for judicial review under the Maryland Administrative Procedure Act, Maryland Code (1984, 1995 Repl.Vol.), § 10-222 of the State Government Article. (FN1) The circuit court [686 A.2d 609] dismissed the action on the ground that none of the plaintiffs had standing to seek review of the Department's decision. The Court of Special Appeals affirmed. *Sugarloaf v. Dept. of Environment,* 103 Md.App. 269, 653 A.2d 506 (1995). We issued a writ of certiorari to determine whether the two courts below correctly interpreted and applied Maryland law regarding standing to maintain actions for judicial review of adjudicatory administrative decisions. Since we shall hold that both courts below erred with respect to standing, we shall also determine whether the administrative decision ***278** should be upheld on the merits in light of the judicial review criteria set forth in the Administrative Procedure Act, § 10-222(h)(3) of the State Government Article.

I.

The Potomac Electric Power Company (PEPCO) owned a tract of land, containing over 1,000 acres, in the Dickerson area of Montgomery County, Maryland. Two generating stations operated by PEPCO and auxiliary structures were on the tract. In 1987, PEPCO and Montgomery County entered into a transaction whereby the County purchased a 35-acre portion of the PEPCO tract to build a Resource Recovery Facility which would incinerate solid waste and would produce energy for sale to PEPCO. The facility was to be designed and constructed jointly by Montgomery County and the Northeast Maryland Waste Disposal Authority.

Among the several plaintiffs who opposed the construction of this facility were the Buchanans, owners of approximately 234 acres of land immediately adjacent to the PEPCO tract. About two hundred of the Buchanans' acres are devoted to farming, while the remaining acreage constitute woodland. (FN2) The Buchanans' property is located approximately 2,000 feet from the facility, and is separated from the PEPCO property by a narrow road. (FN3)

In 1988 Montgomery County and the Northeast Maryland Waste Disposal Authority filed an application with the Department for a Prevention of Significant Deterioration (PSD) ***279** permit, the first permit in the PSD permit process

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required by the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Maryland Air Quality Control statutes, Code (1982, 1996 Repl.Vol.), Title 2 of the Environment Article, and implemented by the Air Management Administration of the Maryland Department of the Environment. (FN4)

The present case had its genesis in this Court's opinion in *Sugarloaf v. Waste Disposal,* 323 Md. 641, 594 A.2d 1115 (1991) (*Sugarloaf I*), where some of the present plaintiffs argued that they were entitled to a "contested case" administrative hearing on the application by the County and the Authority for the PSD approval permit. (FN5) In [686 A.2d 610] rejecting this argument, we held that, although a full contested case hearing was available upon an application for a construction permit, it was not available at the PSD approval stage. (FN6) The Court did not, however, determine whether any of the plaintiffs would have standing to seek judicial review of a Department decision ***280** to issue a construction permit. *Sugarloaf I, supra,* 323 Md. at 650-651 n. 6, 594 A.2d at 1119 n. 6.

In light of this Court's decision in *Sugarloaf I,* the Secretary of the Department delegated authority to the Office of Administrative Hearings, under Code (1984, 1995 Repl.Vol.), § 10-207 of the State Government Article, to hold a contested case hearing on the issue of whether a permit to construct should be issued to the applicants. The Secretary later expanded this authority to include consideration of whether a refuse disposal permit should be issued. (FN7) The Secretary also requested that the Administrative Law Judge (ALJ) "entertain ***281** arguments on the issue of standing and make findings." (FN8) Thereafter, Administrative Law Judge Suzanne S. Wagner conducted a 15-day hearing on these issues.

After the conclusion of the hearing, the ALJ submitted an opinion containing extensive findings and conclusions as well as a proposed order. The ALJ concluded: (1) the construction and refuse disposal permit applications conformed to applicable federal and state law, and the permits should be issued; (2) all of the plaintiffs lacked standing either under the Maryland Environmental Standing Act, Code (1974, 1989 Repl.Vol., 1995 Cum.Supp.), §§ 1-501 through 1-508 of the Natural Resources Article, or under Maryland common law principles of standing embodied in the Administrative Procedure Act, § 10-222(a) of the State Government Article, to bring an action challenging the Department's decision to issue the permits. (FN9) [686 A.2d 611] The Department adopted, without modification, ***282** the ALJ's findings, conclusions, and proposed decision, and issued the two permits.

The plaintiffs then brought the present action in the Circuit Court for Montgomery County, seeking judicial review of the final administrative decision. The circuit court, in a brief order, dismissed the action on the ground that all of the plaintiffs lacked standing to seek judicial review of the administrative decision.

The Court of Special Appeals, agreeing that the plaintiffs lacked standing,

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affirmed. *Sugarloaf v. Dept. of Environment, supra,* 103 Md.App. 269, 653 A.2d 506. In its opinion, the Court of Special Appeals indicated that the standing issue in the present case concerned the plaintiffs' standing to bring a judicial review action in the circuit court and not their standing to be parties at the administrative hearing. The intermediate appellate court thus stated (103 Md.App. at 277, 653 A.2d at 510):

> "To have standing under common law principles to challenge a final order or decision of an administrative agency entered in a contested case, a person must show two things--that he was a party to the administrative proceeding and that he is 'aggrieved' by the agency's order or decision. *Medical Waste v. Maryland Waste, supra,* 327 Md. 596, 612 A.2d 241 (1992); *Bailey v. Dep't. of Public Safety,* 333 Md. 397, 635 A.2d 432 (1994). There is no question here that appellants were parties to the administrative proceeding; with the county's acquiescence, they were permitted to participate in the proceeding, and they did participate by giving evidence and presenting argument. ***283** The only question is whether any of them were 'aggrieved,' in the legal sense."

The Court of Special Appeals also pointed out that, in determining whether the plaintiffs were "aggrieved" by the final administrative decision and thus had standing to bring a judicial review action, a court may look to the evidence adduced at the administrative hearing as well as the pleadings and any evidence submitted to the circuit court. The Court of Special Appeals, however, went further and held that, in determining whether plaintiffs had standing to bring a judicial review action, the findings and conclusions of the ALJ regarding standing could be accepted if supported by substantial evidence. The intermediate appellate court stated (103 Md.App. at 279, 653 A.2d at 511):

> "Where ... the issue of standing has been litigated at the administrative level and findings based on substantial evidence have been made, the court need not relitigate that issue *de novo.*"

The Court of Special Appeals reviewed some of the evidence concerning the emission of "toxic and potentially harmful" substances from the facility, and a "study carried out for Montgomery County ... showing that more of these emissions will likely fall on [plaintiffs'] properties than on properties much farther from the site." 103 Md.App. at 280, 653 A.2d at 511. The appellate court next [686 A.2d 612] pointed to the ALJ's findings discounting certain evidence that the emissions " 'may have unacceptable levels of ... arsenic, mercury, dioxins, and PCB's,' " and the ALJ's findings that the emissions would be "insignificant or well within acceptable limits established by national health and environmental agencies." 103 Md.App. at 281, 653 A.2d at 512. The Court of Special Appeals then concluded (*ibid.*):

> "As we have indicated, where the issue of standing has been fully litigated by the agency, parties do not achieve the status of aggrieved persons *gratis,* or based on bare allegations, ***284** or solely on evidence they have produced. A court is entitled to credit the agency's findings if there is

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substantial evidence in the record as a whole to support them. Here, there was."

The plaintiffs filed a petition for a writ of certiorari challenging the Court of Special Appeals' decision on the standing issue, and we granted the petition. During oral argument the respondents took the position that, if this Court were to conclude that the decisions below concerning standing were erroneous, then this Court could decide the merits. (FN10) The petitioners, in their rebuttal argument, stated that they were "ready" to have the case decided on the merits but that they would like to brief the merits first. (FN11) Subsequently, this Court issued an order directing the parties to file supplemental briefs as to whether the Department's decision "should be affirmed, reversed, modified, or the case remanded to the agency for further proceedings, in light of the judicial review ***285** criteria set forth in the Administrative Procedure Act...." (FN12) Both sides have filed extensive supplemental briefs, with additional record extracts, on this issue.

II.

A.

The decisions below appear to reflect some confusion between standing to be a party at the administrative level and standing to maintain a judicial review action in the circuit court, as well as confusion over the appropriate roles of an administrative agency and a [686 A.2d 613] reviewing court with regard to each type of standing.

[1] The cases in this Court, and the language of the Administrative Procedure Act itself, § 10-222(a)(1) of the State Government Article, recognize a distinction between standing to be a party to an administrative proceeding and standing to bring an action in court for judicial review of an administrative decision. Thus, a person may properly be a ***286** party at an agency hearing under Maryland's "relatively lenient standards" for administrative standing but may not have standing in court to challenge an adverse agency decision. *Maryland-Nat'l v. Smith,* 333 Md. 3, 11, 633 A.2d 855, 859 (1993). *See Medical Waste v. Maryland Waste,* 327 Md. 596, 611-614, 612 A.2d 241, 248-250 (1992) (organization was a party at the administrative proceeding but lacked standing to maintain a judicial review action.)

The requirements for administrative standing under Maryland law are not very strict. Absent a statute or a reasonable regulation specifying criteria for administrative standing, one may become a party to an administrative proceeding rather easily. In holding that a particular individual was properly a party at an administrative hearing, Judge J. Dudley Digges for the Court in *Morris v. Howard Res. & Dev. Corp.*, 278 Md. 417, 423, 365 A.2d 34, 37 (1976), explained as follows:

"He was present at the hearing before the Board, testified as a witness and

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made statements or arguments as to why the amendments to the zoning regulations should not be approved. This is far greater participation than that previously determined sufficient to establish one as a party before an administrative agency. *See, e.g., Baxter v. Montgomery County*, 248 Md. 111, 113, 235 A.2d 536 (1967) (per curiam) (submitting name in writing as a protestant); *Bryniarski v. Montgomery Co.*, 247 Md. 137, 143, 230 A.2d 289, 293-94 (1967) (testifying before agency); *Hertelendy v. Montgomery Cty.*, 245 Md. 554, 567, 226 A.2d 672, 680 (1967) (submitting into evidence letter of protest); *DuBay v. Crane*, 240 Md. 180, 184, 213 A.2d 487, 489 (1965) (identifying self on agency record as a party to proceedings); *Brashears v. Lindenbaum*, 189 Md. 619, 628, 56 A.2d 844, 849 (1948) (same). Bearing in mind that the format for proceedings before administrative agencies is intentionally designed to be informal so as to encourage citizen participation, we think that absent a reasonable agency or other regulation providing for a more formal method of becoming a party, anyone clearly identifying himself to the agency for the record as having an interest in the outcome of the ***287** matter being considered by that agency, thereby becomes a party to the proceedings."

More recently, Judge McAuliffe for the Court in *Maryland-Nat'l v. Smith, supra*, 333 Md. at 10, 633 A.2d at 859, summarized Maryland law relating to status as a party in administrative proceedings:

"*Morris* and other cases of this Court indicate that the threshold for establishing oneself as a party before an administrative agency is indeed low. Although we have said that one's presence at the hearing and testimony in favor of an asserted position is sufficient, *id.*, we have also said that personal appearance and testimony at the hearing are not required. *Hertelendy v. Montgomery Cty.*, 245 Md. 554, 567, 226 A.2d 672 (1967); *Largo Civic Ass'n v. Pr. Geo's Co.*, 21 Md.App. 76, 81, 318 A.2d 834 (1974). In fact, it has been held to be sufficient that the hearing examiner considered the appellant to be a party, *Northampton Corp. v. Pr. George's Co.*, 21 Md.App. 625, 633-34, 321 A.2d 204, *rev'd on other grounds*, 273 Md. 93, 327 A.2d 774 (1974), or that the appellant's name was submitted to the Board of Appeals as one who would be aggrieved by an adverse decision. *Wright v. McCubbin*, 260 Md. 11, 14, 271 A.2d 365 (1970). *See also Baxter v. Montgomery County*, 248 Md. 111, 113, 235 A.2d 536 (1967) (submitting name in writing as a protestant is sufficient); *Bryniarski v. Montgomery Co.*, 247 Md. 137, 143, 230 A.2d 289 (1967) (testifying before agency is sufficient); *DuBay v. Crane*, 240 Md. 180, 184, 213 A.2d 487 (1965) (identifying self on agency record as a party is sufficient)."

See Medical Waste v. Maryland Waste, supra, 327 Md. at 611-612, 612 A.2d at 248-249.

[686 A.2d 614] For a person or entity to maintain an action under the Administrative Procedure Act for judicial review of an administrative decision, the person or entity "must both be a 'party' to the administrative proceedings and be 'aggrieved' by the final decision of the agency." *Medical Waste v. Maryland Waste, supra*, 327 Md. at 611, 612 A.2d at 248. *See* § 10- ***288**

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344 Md. 271, 686 A.2d 605, Sugarloaf Citizens' Ass'n v. Department of Environment, (Md. 1996)

222(a)(1) of the State Government Article; *Bailey v. Dep't. of Public Safety*, 333 Md. 397, 405, 635 A.2d 432, 436 (1994); *Maryland-Nat'l v. Smith, supra*, 333 Md. at 11, 633 A.2d at 859 ("Establishing the [plaintiff's] status as a party to the proceedings before the Board of Appeals completes only half of the required analysis; the [plaintiff] must also be aggrieved by the Board's decision in order to have standing").

[2] While the term "aggrieved" is not defined in the Administrative Procedure Act, we have held that the statutory requirement that a party be " 'aggrieved' mirrors general common law standing principles applicable to judicial review of administrative decisions." *Medical Waste v. Maryland Waste, supra*, 327 Md. at 611 n. 9, 612 A.2d at 248-249 n. 9; *Bryniarski v. Montgomery Co.*, 247 Md. 137, 143-146, 230 A.2d 289, 294-295 (1967). Accordingly, in order to be "aggrieved" for purposes of judicial review, a person ordinarily must have an interest " 'such that he is personally and specifically affected in a way different from ... the public generally.' " *Medical Waste v. Maryland Waste, supra*, 327 Md. at 611 n. 9, 612 A.2d at 248-249 n. 9, quoting *Bryniarski v. Montgomery Co., supra*, 247 Md. at 144, 230 A.2d at 294. *See Maryland-Nat'l v. Smith, supra*, 333 Md. at 11, 633 A.2d at 859; *Abramson v. Montgomery County*, 328 Md. 721, 733, 616 A.2d 894, 900 (1992); *DuBay v. Crane*, 240 Md. 180, 185, 213 A.2d 487, 489-490 (1965) ("the [administrative] decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is personally and specially affected in a way different from ... the public generally").

[3] In the present case, the letter from the Secretary of the Department delegating authority to an ALJ to hold a hearing requested that the ALJ render findings and conclusions on whether the plaintiffs had standing to participate in the administrative hearing. If there were a statutory provision or a regulation setting forth criteria for administrative standing, the Secretary's request would have been appropriate. Under such circumstances, the ALJ could properly make ***289** findings and conclusions concerning administrative standing. No party in the instant case, however, has called to our attention any statute or regulation prescribing criteria for administrative standing in a case like this, and we are not aware of any such statute or regulation. Consequently, under the decisions of this Court discussed above, the plaintiffs were appropriately accorded standing as parties to the administrative hearing. There was no proper issue of administrative standing to be resolved by the ALJ.

The ALJ, however, did in fact render findings and conclusions with respect to the plaintiffs' standing, holding that the plaintiffs would not be "aggrieved" by the issuance of the permits and that, therefore, they did not "have standing to challenge the administrative decisions." The ALJ purported to apply the case law dealing with standing in court to maintain a judicial review action. If the ALJ's findings and conclusions concerning the plaintiffs' standing were intended to relate to administrative standing, the ALJ clearly applied an erroneous standard. Moreover, as pointed out previously, the plaintiffs were in fact properly accorded administrative standing. The plaintiffs' status at the

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administrative hearing was simply a non-issue.

If, on the other hand, the ALJ was rendering findings and conclusions on the plaintiffs' entitlement to maintain a judicial review action, which appears more likely and which was the Court of Special Appeals' interpretation of the ALJ's opinion, then the ALJ went beyond her proper role. In addition, the Court of Special Appeals erred in according any deference to the ALJ's findings and conclusions concerning judicial standing.

[4] Under basic principles of administrative law, as well as the separation of powers requirement set forth in Article 8 of the [686 A.2d 615] Maryland Declaration of Rights, (FN13) it is not the proper ***290** function of an administrative official or agency in the executive branch of government to decide whether a plaintiff or potential plaintiff has standing to maintain an action in court. The purpose of the "Contested Cases" subtitle of the Administrative Procedure Act is "to resolve disputes in administrative prceedings," Code (1984, 1995 Repl.Vol.), § 10-201(1) of the State Government Article, and *not* to resolve disputes in judicial proceedings.

The General Assembly may, of course, enact legislation affecting a person's standing to bring a type of action in court or prescribing criteria for standing to bring such an action. *See, e.g., State Administrative Bd. v. Election Bd. of Balt.*, 342 Md. 586, 596-597, 679 A.2d 96, 101 (1996); *Medical Waste v. Maryland Waste, supra*, 327 Md. at 614-623, 612 A.2d at 250-255; *Boulden v. Mayor*, 311 Md. 411, 414, 535 A.2d 477, 479 (1988); *Public Serv. Comm'n v. Md. People's Counsel*, 309 Md. 1, 6-10, 522 A.2d 369, 371-373 (1987); *Dep't. of State Planning v. Mayor and Council of Hagerstown*, 288 Md. 9, 10-16, 415 A.2d 296, 297-300 (1980). Nevertheless, with respect to the allocation of functions between administrative agencies and the judiciary, the determination of whether a person has standing to maintain an action in court is exclusively a judicial function. *See, generally, Attorney General v. Johnson*, 282 Md. 274, 283-290, 385 A.2d 57, 63-67, *appeal dismissed*, 439 U.S. 805, 99 S.Ct. 60, 58 L.Ed.2d 97 (1978); *Shell Oil Co. v. Supervisor*, 276 Md. 36, 44-47, 343 A.2d 521, 526-527 (1975); *Dep't of Nat. Res. v. Linchester Sand and Gravel Corp.*, 274 Md. 211, 220-223, 334 A.2d 514, 521-522 (1975); *Dal Maso v. County Commrs.*, 182 Md. 200, 205, 34 A.2d 464, 466 (1943); *Mayor and Council of Hagerstown v. Dechert*, 32 Md. 369, 383 (1870); *Wright v. Wright's Lessee*, 2 Md. 429, 452-453 (1852); *Miller v. State*, 8 Gill. 145, 148-150 (1849); *Berrett v. Oliver et al.*, 7 G. & J. 191, 206 (1835). *See also New England Rehabilitation Hosp. v. CHHC*, 226 Conn. ***291** 105, 627 A.2d 1257, 1272 (1993) To view preceding link please click here (administrative agency is not "vested with the authority to decide ... who could challenge an adverse decision of the agency in court"); *Rose v. Freedom of Information Com'n*, 221 Conn. 217, 602 A.2d 1019, 1024 (1992); *Kemp-Golden v. Dept. of Children & Fam.*, 281 Ill.App.3d 869, 217 Ill.Dec. 599, 605-606, 667 N.E.2d 688, 694-695 (1996).

In holding that the issue of standing in court may properly be litigated at the administrative level, and that a reviewing court may appropriately defer to the agency's findings and conclusions regarding judicial standing if those findings

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and conclusions are supported by substantial evidence, the Court of Special Appeals relied on *Bryniarski v. Montgomery Co., supra,* 247 Md. 137, 230 A.2d 289. The *Bryniarski* opinion pointed out that, when "[a] person whose property is far removed from the subject property" faces a challenge in court to his standing, and therefore attempts to establish in court that he is aggrieved by an administrative zoning decision, he may rely on "evidence" before the agency, as well as evidence before the court, to show "that his personal or property rights are specially and adversely affected by the [administrative] action." 247 Md. at 145, 230 A.2d at 295. The opinion in *Bryniarski* did not suggest that it would be appropriate for the administrative agency to render findings and conclusions with regard to standing in court, or that a reviewing court should give any deference to administrative findings and conclusions when deciding whether the plaintiff was entitled to maintain an action for judicial review. Instead, *Bryniarski* clearly viewed the resolution of the standing dispute to be exclusively a judicial function. Thus, the Court in *Bryniarski* referred to the standing issue as having been "determined *by the courts* on a case by case basis," and, in commenting on a prior case, *Bryniarski* referred to findings of the "*trial court* ... on conflicting evidence, that the protestant was a person aggrieved." 247 Md. at [686 A.2d 616] 144-145, 230 A.2d at 294-295, To view preceding link please click here emphasis added.

The other cases in this Court have also treated the question of standing to maintain a judicial review action as a matter to ***292** be resolved exclusively by the courts. Thus, in *Town of Somerset v. Montgomery County Board of Appeals,* 245 Md. 52, 63, 225 A.2d 294, 301 (1966), Judge Oppenheimer for the Court stated:

> "When the issue of the standing of an appellant to [seek judicial review] is raised in the court in which review of the administrative action is asked, we have approved the practice of trial judges in permitting testimony on the point to be taken before them, *see e.g., Chatham Corp. v. Beltram,* 243 Md. 138, 148, 220 A.2d 589 (1966) and *Wilkinson v. Atkinson,* 242 Md. 231, 218 A.2d 503 (1966). The question is not one of taking additional testimony on the merits of the substantive issues decided by the Board [compare *Suburban Properties, Inc. v. Mayor and Council of Rockville,* 241 Md. 1, 5-6, 215 A.2d 200 (1965) and cases therein cited], but of determining whether the appellants have the requisite standing to have those issues reviewed."

See, e.g., Maryland-Nat'l v. Smith, supra, 333 Md. at 11-14, 633 A.2d at 859-861; *Morris v. Howard Res. & Dev. Corp., supra,* 278 Md. at 424-425, 365 A.2d at 38 (judicial standing issue should be adjudicated by the circuit court "through a motion or other pleading filed by [an adverse party] to dismiss Morris as a party, Morris's answer thereto, and testimony if need be on the point"); *Baxter v. Montgomery County,* 248 Md. 111, 113, 235 A.2d 536, 537 (1967) (it is the trial court's function to decide whether the plaintiffs are aggrieved, and "the court may hear evidence to establish that aggrievement"); *Kennerly v. Mayor & Council of Baltimore,* 247 Md. 601, 606, 233 A.2d 800, 803 (1967); *Hertelendy v. Montgomery Cty.,* 245 Md. 554, 564-568, 226 A.2d 672, 678-680 (1967); *The Chatham Corp. v. Beltram,* 243 Md. 138, 148-149, 220 A.2d 589, 595 (1966);

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344 Md. 271, 686 A.2d 605, Sugarloaf Citizens' Ass'n v. Department of Environment, (Md. 1996)

Wilkinson v. Atkinson, 242 Md. 231, 233-235, 218 A.2d 503, 505-506 (1966); *Brashears v. Lindenbaum*, 189 Md. 619, 628-629, 56 A.2d 844, 849 (1948) ("These jurisdictional facts [showing standing to seek judicial review and thereafter to appeal] should appear from the record, and in the event of dispute, should be resolved by the Circuit Court").

***293** The Court of Special Appeals, therefore, erred in holding that any deference could be given to the administrative decision concerning the plaintiffs' standing to maintain an action for judicial review.

B.

The Court of Special Appeals also erred by blurring the distinction between standing to seek judicial review of an administrative decision and the merits of that administrative decision. While recognizing that there was evidence showing that more toxic substances from the incinerator would likely fall on the plaintiffs' properties than on properties much farther from the incinerator, the Court of Special Appeals relied on administrative findings "that the probable emissions from the [incinerator] would be insignificant or well within acceptable limits established by national health and environmental agencies." *Sugarloaf v. Dept. of Environment, supra*, 103 Md.App. at 281, 653 A.2d at 511-512. The Court of Special Appeals pointed out that the ALJ discounted conclusions from the Department of Natural Resources that "unacceptable levels of ... arsenic, mercury, dioxins, and PCBs" may fall on nearby farm ponds. 103 Md.App. at 281, 653 A.2d at 512. Because, in the Court of Special Appeals' view, substantial evidence supported the ALJ's findings that the plaintiffs would not suffer "actual ... harm" and that emissions falling on their properties would be insignificant or "within acceptable limits," 103 Md.App. at 280-281, 653 A.2d at 511-512, the intermediate appellate court concluded that the ALJ's views regarding the plaintiffs' lack of standing should be upheld.

Presumably, if the ALJ had found that the emissions from the incinerator would have been harmful to nearby property owners, or if the level of emissions were found to have been "unacceptable," the permits would not have been issued. Thus, under the analysis by the Court of Special Appeals, the issue of whether any of the plaintiffs were sufficiently affected to have standing, and the issue of [686 A.2d 617] whether the permits should have been granted, became identical.

***294** Moreover, the applicants and the Department take the same approach before this Court, arguing that, since the level of emissions upon any of the plaintiffs' properties were found to have been "acceptable" under government air quality standards, none of the plaintiffs was sufficiently "harmed" to have standing to challenge in court the issuance of the permits. During oral argument before this Court, counsel for the applicants and the Department frankly acknowledged that, in their view, the standing issue and the merits were the same. (FN14)

In cases involving challenges to administrative land use decisions, there is a

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distinction between standing in court to obtain review of the governmental action and the merits of the challenger's position. Thus, in *Bryniarski v. Montgomery Co., supra,* 247 Md. at 145-146, 230 A.2d at 295, involving the administrative grant of a special exception permitting the construction and operation of an apartment hotel, this Court stated:

> "The status of a person to [obtain judicial review] as a 'person aggrieved' is to be distinguished from the result on the merits of the case itself.... If, on the merits, the board acted properly in approving the application, the protesting property owner is not damaged *in law,* however much he may be damaged*in fact.* His damage is then *damnum absque injuria.* Because the result on the merits might be adverse, however, does not mean that the protestant ***295** would not have status to challenge the board's action." (Emphasis in original).

The Court in *Bryniarski* went on to hold that evidence indicating that there would be an increase in traffic in the area because of the apartment hotel was sufficient to give landowners, who were "contiguous or close in proximity" to the proposed hotel, standing to challenge in court the grant of a special exception. Such persons would have standing even if it were ultimately determined that the increase in traffic was not so great as to require denial of the special exception.

[5] Similarly, with respect to a facility discharging toxins into the air pursuant to a permit, a nearby property owner may be subject to greater emissions than the public generally but, nevertheless, the amount falling upon the nearby property owner might be within "acceptable" limits. The impact upon a nearby property owner may well be different from the impact upon the general public but may not amount to legally cognizable harm. Therefore, standing to challenge governmental action, and the merits of the challenge, are separate and distinct issues. *See, e.g., Assn. of Data Processing Service Org. v. Camp,* 397 U.S. 150, 153, 90 S.Ct. 827, 830, 25 L.Ed.2d 184, 188 (1970) (whether there has been an invasion of one's " 'legal interest' ... goes to the merits. The question of standing is different. It concerns ... the question whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question "); *Flast v. Cohen,* 392 U.S. 83, 99, 88 S.Ct. 1942, 1952, 20 L.Ed.2d 947, 961 (1968) ("The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a ... court and not on the issues he wishes to have adjudicated"); *Town of Somerset v. Board, supra,* 245 Md. at 63, 225 A.2d at 301 (distinguishing between "the merits of the substantive issues decided by the Board" and whether "the appellants have the requisite standing to have those issues reviewed"); Stein, Mitchell & Mezines, *Administrative* [686 A.2d 618] *Law* § 50.01, at 50-3 (5th ed. 1996) ("Questions of standing focus ***296** not on the merits of the case but on what parties have the right to seek judicial review").

[6] If a plaintiff's standing in court to challenge the issuance of a government permit allowing particular activity on the permittee's land were

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dependent upon the plaintiff's establishing that he or she would suffer legally cognizable harm, the result would be that numerous permits, issued after adjudicatory hearings, would be immune from judicial review. Furthermore, as illustrated by the present case, plaintiffs in judicial review actions would be faced with an unreasonable hurdle. The Court of Special Appeals did seem to require in the present case, as a pre-requisite for the denial of standing, that the record contain substantial evidence supporting the administrative findings and conclusions that the emission levels from the incinerator would be within acceptable limits under governmental standards. But, in the instant case, the plaintiffs' argument on the merits is not that particular findings by the ALJ were unsupported by substantial evidence. Instead, as discussed in Part III of this opinion, *infra*, the plaintiffs contend that the ALJ committed numerous errors of law by excluding relevant issues and evidence, by misconstruing the applicable governmental air quality standards, and by ignoring certain evidence. According to the plaintiffs' theory, if the ALJ had not erroneously excluded certain issues and evidence, the ALJ would have found that the levels of toxic substances falling on nearby property owners were not acceptable, and thus the nearby property owners would have suffered legally cognizable harm. Similarly, under the plaintiffs' theory, if the ALJ had applied correct governmental standards, she would have found that the amount of pollutants emitted from the incinerator and falling on nearby property owners was unacceptable. If the plaintiffs' contentions on the merits are valid, they may have suffered legally cognizable harm. But they were precluded from making these arguments in the courts below on the ground that, under the ALJ's decision, they would not suffer legally cognizable harm. Under the approach taken by the Court of Special Appeals and the respondents, an administrative agency can, by erroneously ***297** excluding issues and evidence or by misconstruing the law, conclude that none of the challengers to the issuance of a permit would be harmed in a legally significant manner, and such finding, if supported by sufficient evidence at the hearing, would deprive any challengers of standing to maintain a judicial review action. The challengers would lack standing even though, if the challengers' arguments on the merits are sound, they might suffer such legally cognizable harm.

Consequently, we reject the argument that the plaintiffs lack standing because, in the respondents' view, the likely fallout of toxic substances upon their properties will be acceptable under government air quality standards. Under Maryland law, this is an erroneous test for standing.

C.

It is a settled principle of Maryland law that, " 'where there exists a party having standing to bring an action ... we shall not ordinarily inquire as to whether another party on the same side also has standing.' " *People's Counsel v. Crown Develop- ment Corp.*, 328 Md. 303, 317, 614 A.2d 553, 559-560 (1992), quoting *Board v. Haberlin*, 320 Md. 399, 404, 578 A.2d 215, 217 (1990). *See, e.g., County Council v. Md. Reclamation*, 328 Md. 229, 232 n. 1, 614 A.2d 78, 80 n. 1 (1992); *Sugarloaf v. Waste Disposal, supra*, 323 Md. at 650 n. 6, 594 A.2d

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at 1119 n. 6, and cases there cited.

The record in the present case establishes that the Buchanans had standing to maintain this action. Consequently, it is unnecessary to determine whether any of the other plaintiffs also had standing.

[7] In actions for judicial review of administrative land use decisions, "[a]n adjoining, confronting or nearby property owner is deemed, *prima facie*, ... a person aggrieved. The person challenging the fact of aggrievement has the burden of denying such damage in his answer to the petition for [judicial review] and of coming forward with evidence to establish that the petitioner is not, in fact, [686 A.2d 619] aggrieved." *Bryniarski v. Montgomery Co., supra,* 247 Md. at 145, 230 A.2d at 294. *See, e.g., Md.-Nat'l Cap. P. & P. v. Rockville,* 269 Md. 240, 248, 305 ***298** A.2d 122, 127 (1973) To view preceding link please click here (indicating that one who "owns any property located within sight or sound of the subject property" is aggrieved); *Wier v. Witney Land Co.,* 257 Md. 600, 612-613, 263 A.2d 833, 839 (1970) (" 'At least three of the protestants ... are in sight distance of the property forming the subject of the petition.... These protestants were ... nearby property owners and are deemed, prima facie, to be specially damaged and, consequently, persons aggrieved' "); *Chatham Corp. v. Beltram,* 252 Md. 578, 251 A.2d 1, 4 (1969) ("In light of the testimony of Mr. Beltram and Mrs. Hahn with reference to the proximity of their homes within the same subdivision to the reclassified area ... there was no error in the ruling that [they] had standing to sue"); *Aubinoe v. Lewis,* 250 Md. 645, 650-652, 244 A.2d 879, 882-883 (1968); *The Chatham Corp. v. Beltram, supra,* 243 Md. at 148, 220 A.2d at 595 ("Since Beltram's evidence was that he owned property, in which he lived, in close proximity to the reclassified land ..., there was no error in ruling that Beltram had standing to sue"); *Toomey v. Gomeringer,* 235 Md. 456, 460, 201 A.2d 842, 844 (1964) (although "the protestants' properties were more than two city blocks away from the property for which rezoning was sought," they were accorded standing); *Bd. of Zoning Appeals v. Bailey,* 216 Md. 536, 539, 141 A.2d 502, 503 (1958) (standing accorded to zoning reclassification protestants who lived "three-fourths of a mile by road and between one-third and one-half a mile as the crow flies" from the subject property).

[8] In cases involving government-issued permits allowing activity which causes the emission of toxic substances into the air, the concept of "nearby" property owners who are presumptively aggrieved may well include persons in a greater geographical range than in a typical zoning matter. We need not, however, explore that issue in the present case. Under the above-cited decisions, the Buchanans were adjacent or nearby property owners who were prima facie aggrieved. Their farm was adjacent to the PEPCO tract of land which encircled the incinerator and which contained the generating stations utilizing the energy produced by the incinerator. The ***299** Buchanans' farm was only 2,000 feet from the incinerator itself. If the Buchanans' farm would not be considered adjoining or sufficiently nearby because of the size of the tract on which the joint PEPCO-Montgomery County operation was to take place, then no property owner would be presumptively aggrieved. In our view, the Buchanans were adjoining or nearby

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property owners, and, therefore, they were prima facie aggrieved. Since the respondents failed in the circuit court to "com[e] forward with evidence to establish that [they were] not, in fact, aggrieved," *Bryniarski v. Montgomery Co., supra,* 247 Md. at 145, 230 A.2d at 294, the Buchanans had standing to maintain this action for judicial review. (FN15)

[686 A.2d 620] [9] Moreover, as indicated earlier, the evidence adduced at the administrative hearing demonstrated that much higher ***300** levels of toxic substances would fall on the Buchanans' farm and on other nearby property owners than would fall on properties farther away from the site. This would ordinarily be expected in any case involving a permit for activity causing toxic emissions into the air. Thus, as acknowledged in the applicants' brief in this Court, there was expert testimony that property four miles from the incinerator would be less impacted than nearby property "that will be most impacted by the" incinerator. (Brief of the Northeast Maryland Waste Disposal Authority and Montgomery County at 27). The applicants also acknowledged "that the ambient impact analysis by [applicants'] expert shows different geographic areas experience different levels of impact" (*id.* at 21), and that persons in close proximity to the incinerator, such as the Buchanans, will be exposed to higher levels of pollutants.

As to the level of toxins on soil, vegetation and water, one expert stated that "the peak concentration point is predicted to occur" within four or five kilometers from the incinerator, while another expert put this distance as within three miles. The applicants' expert witness Dr. Jones had conducted a toxic risk assessment on the Buchanans' farm pond, and testified that one "would anticipate the highest deposition and runoff [of mercury and dioxide] into the [Buchanans'] pond." With respect to mercury contamination of fish taken from the pond, Dr. Jones stated that the "hazard index ... based on the emissions rates from ... this facility was approximately ... 20% of the allowable hazard index," and Dr. Jones characterized this as "acceptable" under federal air quality standards. With regard to dioxins, he stated that "the calculated risk for dioxins due to fish consumption of the pond was two and a half chances in a million" which he viewed as an "acceptable" risk.

As previously discussed, however, the fact that the level of pollutants from the incinerator falling on nearby property may be "acceptable" under governmental air quality standards, thereby justifying the issuance of the permits, is not the test for a plaintiff's standing to seek judicial review. Instead, the test is whether the plaintiff is affected in a way different from ***301** the public generally. The administrative record in this case, without contradiction, shows that nearby property owners such as the Buchanans would be affected in a way different from the general public.

III.

Turning to the merits, the plaintiffs contend that the ALJ committed numerous errors of law in the course of the extensive administrative hearing and in her

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proposed decision which was adopted by the Department.

A.

[10] The plaintiffs initially contend that the ALJ, in a prehearing memorandum order filed on December 24, 1991, concerning the issues to be considered at the adjudicatory hearing, erroneously excluded from consideration any "air quality issues addressed in the PSD approval stage" even though these same "air quality matters ... [were] at the heart of whether an air quality Permit to Construct should be issued." (Plaintiffs' supplemental brief at 17). The plaintiffs advance the same argument with regard to the refuse disposal permit. (*Id.* at 40-45). The only such allegedly excluded issue which is identified and discussed in the plaintiffs' briefs, however, concerned "the best available control technology for toxic air emissions" or "T-BACT" as it is referred to by the parties. The plaintiffs assert that "ALJ Wagner clearly erred in concluding that T-BACT ... issues were part of the PSD regulatory program and therefore must be excluded" from the adjudicatory hearing on the permit to construct and the refuse disposal permit. (*Id.* at 45). (FN16) [686 A.2d 621] The applicants respond by arguing, *inter alia,* that under the broad listing of issues which the ALJ agreed to consider, and at the hearing itself, ***302** the plaintiffs "had the opportunity to present evidence ... in relation to every applicable air regulatory standard." (Applicants' supplemental brief at 14).

If the ALJ had actually excluded issues and evidence relevant to the construction and the refuse disposal permit applications on the ground that such issues had been resolved in the earlier PSD permit proceeding, then we would agree with the plaintiffs that the ALJ would have committed a prejudicial error requiring a reversal of the administrative decision. As discussed previously, this Court in *Sugarloaf I* held that, under the statutory and regulatory air quality scheme, the permit to construct stage is the more appropriate time at which to hold a contested case hearing. *Sugarloaf I, supra,* 323 Md. at 659, 594 A.2d at 1124. In support of this conclusion, we explained as follows (323 Md. at 658, 594 A.2d at 1123):

"The PSD approval, however, is simply a preliminary finding that the incinerator will not significantly harm the air quality in the Sugarloaf Mountain area generally. Although such approval is required in order to construct and operate the incinerator, the PSD approval itself does not authorize the construction or operation of the facility. As noted previously, Montgomery County and the Northeast Authority must engage in a permit application approval process at each of these stages also. Approval of the PSD permit has no immediate effect on any individual property rights, nor does it grant to the County the authority to begin constructing the proposed facility.

"Conversely, the granting of a permit to construct would more immediately affect the individuals living around the proposed facility whose property might be harmed by the incinerator. The construction permit would create an immediate right in the County to begin building the facility. Clearly at this

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stage in the process, where actual harm may occur, a contested case hearing is more appropriate."

Because the PSD permit approval was "simply a preliminary finding," and because the PSD hearing was not a trial type ***303** hearing, we specifically held in *Sugarloaf I* that "the determinations made at the non-trial type hearing at the PSD stage would not be preclusive under principles of res judicata or collateral estoppel." 323 Md. at 658-659 n. 13, 594 A.2d at 1123-1124 n. 13. Consequently, the resolution of an issue at the PSD stage would not preclude consideration of that same issue at a later administrative hearing on the construction permit or refuse disposal permit applications if the issue was pertinent to those permit applications.

The plaintiffs correctly assert that, in her memorandum order of December 24, 1991, the ALJ did state that "none of the PSD Approval determinations is subject to review in this proceeding." In a later pre-hearing proceeding, on February 10, 1992, the ALJ reiterated that "the issues involving ... PSD ... are all stricken from consideration at [the] hearing" and that "I will not entertain any evidence on those." These statements by the ALJ were inconsistent with *Sugarloaf I* and were erroneous to the extent that any PSD approval determinations concerned issues which were also pertinent to the applications for a construction permit or a refuse disposal permit. The ALJ did not in her December 24th memorandum order, or in any later statements, otherwise identify these PSD "determinations," and nothing in the parties' briefs or record extracts has enabled us to identify them. No portion of the transcript of the 15-day hearing, involving the exclusion of offered evidence, has been called to our attention.

As indicated earlier, the only issue which is identified and discussed in the plaintiffs' briefs as having been allegedly excluded because it was resolved at the PSD stage related to TBACT. Neither side disputes that consideration of T-BACT is relevant at both the PSD approval stage and the permit to **[686 A.2d 622]** construct stage. (FN17) Indeed, pursuant to COMAR 26.11.15.05, ***304** "[a] person may not construct, reconstruct, operate, or cause to be constructed, reconstructed, or operated any new installation or new source that will discharge a toxic air pollutant to the atmosphere without installing and operating T-BACT."

An examination of the record reveals, however, that the ALJ did not exclude T-BACT issues. To the contrary, in her findings, conclusions and proposed decision, the ALJ specifically listed the following as having been issues at the hearing: 2.e. "Will [the facility] comply with COMAR 26.11.15.06. regarding unreasonable endangerment?" and 2.f. "Will the pollution control equipment required for the [facility] adequately capture the volatized mercury, dioxin and related chemicals in order to avoid unreasonable endangerment?" These issues are directly relevant to a determination of whether the facility will be using T-BACT, as defined in COMAR 26.11.15.01.B(3). Moreover, the record reveals that the plaintiffs presented evidence concerning the T-BACT standard for mercury. For example, the plaintiffs introduced evidence regarding experimental work being performed in Germany and California on the use of carbon injection to control

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mercury. The ALJ recognized this evidence, but found that "[such technology] is not yet required for compliance with COMAR 26.11.15.05 [related to T-BACT]." Consequently, the ALJ concluded that, "although [the plaintiffs] raised a number of issues regarding the proposed [facility's] compliance with [COMAR 26.11.15], they presented no evidence to demonstrate the facility will not be using T-BACT." Accordingly, the record does not support the contention that the ALJ excluded the issue of T-BACT from consideration at the adjudicatory hearing.

Although the ALJ may have made erroneous statements in her pre-hearing memorandum and order of December 24, 1991, and at the pre-hearing proceeding on February 10, 1992, ***305** the plaintiffs have failed to demonstrate that they were actually precluded at the adjudicatory hearing from raising an issue or presenting evidence pertinent to the construction and refuse disposal permits on the ground that the issues had earlier been resolved at the preliminary PSD stage.

B.

[11] The plaintiffs maintain that the ALJ "misconstrued the legal significance of uncontroverted evidence in the record of pollution from the ... incinerator that will cause harm to wildlife and humans." (Plaintiffs' supplemental brief at 30). Specifically, the plaintiffs argue that the ALJ ignored Department of Natural Resources (DNR) findings and expert opinions that emissions of toxic PCBs, arsenic and mercury will cause unsafe conditions in farm ponds and to fish within those ponds. For support, the plaintiffs rely primarily on a DNR Risk Assessment (FN18) indicating that toxic emissions of these pollutants will exceed the federal Environmental Protection Agency (EPA) criteria for pond water. The plaintiffs claim that, taken together, the presence of these pollutants in the environment would constitute both air pollution and a nuisance. (FN19) (*Id.* at 33).

Contrary to the plaintiffs' contention, the ALJ did not "ignore" this evidence. Rather, the ALJ was persuaded that arsenic emissions would be captured in a pollution control device which would keep the level of arsenic at acceptable levels. Moreover, the ALJ acknowledged[686 A.2d 623] that the risk assessment produced by the applicants did not calculate the risk for PCBs, but the ALJ accepted the opinion of the applicants' expert that "the risk from dioxin was most representative of ***306** the most significant risk." Accordingly, she determined that a risk analysis for PCBs was unnecessary.

The ALJ did, however, discuss at length the impact of mercury in farm ponds and upon fish within those ponds. Studies performed by the applicants' experts persuaded her that the level of mercury in fish and pond water would be substantially *below* EPA and federal Food and Drug Administration standards. In addition, the testimony of a Department environmental specialist convinced the ALJ that the mercury level in fish and other aquatic species would not increase if the facility was built. Consequently, the ALJ adopted the position that "risks to human health and aquatic organisms through mercury deposition in ponds

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are minimal and acceptable." Furthermore, the ALJ discussed evidence presented in the form of carcinogenic risk assessments by both the plaintiffs and the applicants, and she concluded that, under EPA standards, the overall level of risk to the environment from the facility was "insignificant." (FN20)

The ALJ did not "ignore" evidence that pollution from the incinerator will harm wildlife and humans. Instead, she considered such evidence, along with conflicting evidence, and made findings and conclusions. It is not the function of a reviewing court independently to weigh the conflicting evidence. *See MVA v. Karwacki*, 340 Md. 271, 280-285, 666 A.2d 511, 515-518 (1995), and cases there cited.

C.

[12] The plaintiffs assert that the ALJ improperly determined that the level of dioxide emissions from the facility would comply with New Source Performance Standards (NSPS) under COMAR 26.11.06.12, as provided for in 40 ***307** C.F.R. 60 (1992) . (FN21) (Plaintiffs' supplemental brief at 37). Under 40 C.F.R. 60.53a(b), the standard for dioxide emissions is set at "30 nanograms per dry standard cubic meter." According to the plaintiffs, the ALJ erred in finding this standard to be equivalent to a .46 toxicity equivalent (TEQ) and, as a result, concluding that the .42 TEQ offered by the applicants met the standard under 40 C.F.R. 60.53a(b). The plaintiffs maintain that the ALJ, in using the two figures as equivalents, "arbitrarily redefined the law to the benefit of the Applicants." (Plaintiffs' supplemental brief at 37-39).

The record indicates that the ALJ did not "arbitrarily" arrive at .46 TEQ as an equivalent measure of compliance with NSPS. Rather, the ALJ cited the preamble to the Federal Register, in which the EPA explained that there are several methods by which the 30 nanograms can be measured, one of which is by toxicity equivalents (TEQs). *See* 56 Fed.Reg. 5504. Applying a method of calculation developed in 1987, the EPA explained that the 30 nanograms corresponded to a TEQ of approximately .46. Because the applicants calculated the level of dioxide emissions as .42 TEQ using the 1987 scheme, the ALJ appropriately applied the corresponding 1987 .46 TEQ limit to determine whether the dioxide level calculated by the applicants complied with NSPS. Accordingly, the ALJ did not commit an error of law by using .42 TEQ to determine whether the dioxide level conformed with NSPS.

[686 A.2d 624]

D.

[13] The plaintiffs argue that the ALJ issued the permits without first considering whether the applicants had satisfied ***308** relevant provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901*et. seq.* (1994), relating to solid waste incinerator ash. In particular, the plaintiffs argue that the federal statute requires 1) the testing of the incinerator ash and, if the test discloses that the ash is hazardous, 2) the designation of an

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appropriate landfill in which to store the hazardous ash. (FN22)

In 1994, the United States Supreme Court held that ash generated from a resource recovery facility was subject to the hazardous waste provisions contained in the Resource Conservation and Recovery Act. *City of Chicago v. Environmental Defense Fund,* 511 U.S. 328, 114 S.Ct. 1588, 128 L.Ed.2d 302 (1994). (FN23) Therefore, the ALJ erred in finding the federal statute inapplicable to the incinerator ash generated from the facility in question. Nevertheless, the ALJ was also persuaded by the applicants' argument that, "if it is determined the ash must be tested for toxicity and does, in fact, test toxic, [the Applicants] will dispose of such ash at the GSX Services Landfill." Thus, as an alternate ground for decision concerning this issue, the applicants satisfied the ALJ that they had considered the possibility that the ash might test hazardous and would deal with the situation accordingly.

E.

[14] On a related issue, the plaintiffs contend that the refuse disposal permit was incomplete because it lacked necessary disposal sites for the non-hazardous and possibly hazardous ***309** ash discharged from the facility. They maintain that the permit application required "material changes" which could only be implemented through submission to the Secretary of the Environment and amendments to Montgomery County's solid waste plan. (FN24) According to the plaintiffs, the ALJ failed to consider these issues at the adjudicatory hearing.

We reject the plaintiffs' contention that the refuse disposal permit was issued improperly. At the beginning of her findings, conclusions, and proposed decision, the ALJ listed the following as an issue to be resolved: "Has the site [which] applicants intend to use for disposal of the incinerator ash and noncombustibles been fully analyzed or licensed in accordance with COMAR 26.04.07.25.B(11)." The ALJ recognized that, under COMAR 26.04.07.25B(11), an applicant for a refuse disposal permit must identify a proposed site for the ash. She then pointed out that the applicants designated "Oak Landfill" in their permit application as their proposed site. As discussed above, the ALJ also accepted the applicants' representation that, in the event that the ash tested hazardous in the future, the applicants had designated an alternative landfill in which to store the ash.

In addition, the ALJ devoted eight pages of her proposed decision to a discussion of the applicants' compliance with the Montgomery County Solid Waste Plan. She first noted that, under COMAR 26.04.07.25G, the following two conditions must be met before a refuse waste disposal permit can be issued:

> [686 A.2d 625] "(1) A statement from the appropriate local governmental agency concerning the consistency of the proposed facility ***310** with the approved county comprehensive solid waste management plan ...
>
> (2) Proof that the facility is consistent with the approved county

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comprehensive solid waste management plan."

The ALJ then determined that the applicants had met both of these requirements. The first requirement was satisfied by a letter attached to the application for the refuse disposal permit and signed by the Director of the Montgomery County Department of Environmental Protection. (FN25) The letter stated that the facility was "part of the Montgomery Solid Waste Management Plan." While refusing to review in this proceeding the County's Solid Waste Plan itself, (FN26) the ALJ did permit the parties to present evidence as to whether the facility complied with the plan. After a detailed review of evidence presented at the hearing by the parties on this issue, the ALJ concluded that "the weight of the evidence supports the finding that the Facility described in the Refuse Disposal Permit Application is consistent with the County's approved comprehensive solid waste management plan."

The refuse disposal permit was neither incomplete nor improper on the grounds asserted by the plaintiffs.

F.

[15] The plaintiffs further challenge the issuance of the permits on the ground that the incinerator would not be in ***311** compliance with the more demanding air quality standards for ozone non-attainment areas under the 1990 Amendments to the federal Clean Air Act, Title I, Part D, 42 U.S.C. §§ 7502, 7503 (1994). (FN27) (Plaintiffs' supplemental brief at 24). The applicants, on the other hand, maintain that the 1990 Clean Air Act Amendments are not applicable to the facility at issue. (Applicants' supplemental brief at 20).

It is undisputed that issuance of the permits in this case was not in compliance with the pertinent air quality standards under the 1990 Amendments to the federal Clean Air Act. It follows that if the permits were subject to the requirements specified in §§ 7502 and 7503 of the 1990 Clean Air Act, the Department erred in issuing them.

We conclude, however, that the terms of the Clean Air Act, coupled with interpretive guidance from the EPA, indicate that the permits in question are not subject to the more rigid standards demanded under the 1990 Amendments to the Clean Air Act. (FN28)

Pursuant to § 7409(a) of the Clean Air Act, the EPA is directed to establish national primary and secondary ambient air quality standards for certain air pollutants which threaten the health and welfare of the Nation. 42 U.S.C. § 7409(a)(1). Congress delegated to the states the responsibility of implementing these standards through State Implementation Plans, 42 U.S.C. § 7410(a). In 1990, Congress amended the Clean Air Act to include more rigorous air quality standards[686 A.2d 626] which states were required to incorporate into their existing plans. At issue in this case are new source review standards, contained ***312** in §§ 7502 and 7503, which govern sources contained in ozone non-

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attainment areas.

The plaintiffs argue that, pursuant to § 7401's "Effective Date of 1990 Amendment" provision, §§ 7502 and 7503 became effective on November 15, 1990, the date on which they were enacted. That provision provides as follows:

> "Except as otherwise expressly provided, the amendments made by this Act ... shall be effective on the date of enactment of this Act [November 15, 1990]."

The new standards, however, did not immediately apply to all permits issued after November 15, 1990. Under § 7511, states were required to submit their revised plans to the EPA by November 12, 1992. *See* 42 U.S.C. § 7511. For those states which had not incorporated the new plan provisions by November 15, 1992, however, the "existing" plans would be effective and continue to govern all permit applications submitted prior to November 15, 1992.

This interpretation is consistent with that of the EPA in two guidance memoranda issued by John S. Seitz, Director of the Office of Air Quality Planning and Standards. (FN29) In his first memorandum, dated March 11, 1991, the Director explained that:

> "[T]he 1990 Amendments require States to submit to EPA new NSR permit program rules for ozone nonattainment areas by November 15, 1992.... The EPA interprets this as an expression of congressional intent not to mandate that states adhere to the more stringent ... NSR requirements in nonattainment areas during the time provided for state implementation (SIP) development. Thus, for NSR permitting purposes in nonattainment areas, the new NSR requirements ***313** in Title I are not in effect until the States, as required by the Act, adopt NSR permit program rules to implement the Title I provisions."

Mr. Seitz further interpreted Title I of the 1990 Amendments in his September 3, 1992 memorandum:

> "Title I of the 1990 CAAA requires that States with nonattainment ares or areas in the Northeast Ozone Transport Region (NOTR) submit to EPA, by specified deadlines, augmented new source permit rules which meet the amended requirement of Part D of Title I of the Act.... For ozone, the 1990 CAAA require that States submit [plans] meeting the amended Part D NSR requirements by November 15, 1992. Where States do not submit the Part D NSR [plans] by the applicable statutory deadline ... sources that have submitted complete permit applications ... by the submittal deadline may receive final permits under existing State NSR rules. In this situation, such sources will be considered by EPA to be in compliance with the Act without meeting the amended Part D NSR provisions of the 1990 CAAA [provided they meet certain requirements]...."

The EPA is the federal agency responsible for implementing the provisions of the federal Clean Air Act. As such, its interpretation of the provisions of the

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344 Md. 271, 686 A.2d 605, Sugarloaf Citizens' Ass'n v. Department of Environment, (Md. 1996)

Clean Air Act is entitled to deference if it is "based on a permissible construction of the statute." *Chevron U.S.A. v. Natural Res. Def. Council*, 467 U.S. 837, 843-844, 104 S.Ct. 2778, 2781-2782, 81 L.Ed.2d 694, 702-704 (1984). Consistent with 1990 Clean Air Act provisions and EPA guidance, before the 1990 Amendments take effect in Maryland, the State of Maryland must, at the very least, incorporate the new regulations into its existing plan. (FN30)

[686 A.2d 627] ***314** Our holding is consistent with that of other courts which have decided this identical issue. *See, e.g., In the Matter of Crown/Vista Energy Project*, 279 N.J.Super. 74, 652 A.2d 212 (App.Div.), *cert. denied*, 140 N.J. 277, 658 A.2d 301 (1995). In that case, an air pollution control permit was issued by the New Jersey Department of Environmental Protection to the operator of a coal-fueled power plant for the sale of electricity. On February 28, 1992, the operator submitted an application for the permit, which the Department issued to him on October 1, 1993. A group of citizens and individuals sought review of the Department's decision on the ground that the permit was not in compliance with § 7511a of the 1990 Clean Air Act in that it did not meet the new emission standards required under that section. Analyzing the statutory scheme underlying the Clean Air Act, and citing the EPA memoranda for support, the New Jersey Court rejected the petitioners' claim that the permit, issued *after* the date of enactment of the 1990 Amendments, was subject to the more stringent emissions requirements. 652 A.2d at 216-217.

The same position was adopted by the United States District Court for the Northern District of California in *Citizens for a Better Environment v. Wilson*, 775 F.Supp. 1291, 1299 (N.D.Cal.1991). On this issue, the court in *Wilson* concluded that (775 F.Supp. at 1299):

> "... Congress intended to hold agencies to [regulations contained] in existing [plans], pending formal [plan] revision. Such an interpretation best reconciles and harmonizes the purposes of the Clean Air Act and the provisions of the 1990 Amendments. It is most consistent with the overall purpose of achieving healthy air as expediously as practicable and the statutory scheme of retaining the enforceability of existing [plans] until replaced...."

In the case at bar, the applicants submitted their permit applications sometime in 1990. On November 6, 1991, the EPA designated Montgomery County as a serious ozone non- ***315** attainment area. 40 C.F.R. § 81.321. Maryland did not, however, incorporate the new plan regulations pertaining to ozone non-attainment areas until April 26, 1993. *See* COMAR 26.11.17. Accordingly, at the time that the applicants submitted their permit applications, Maryland had not yet incorporated the new regulations into its plan. Thus, the 1990 Amendments are not applicable to the permits at issue in this case.

G.

[16] According to the plaintiffs, the ALJ erred in finding that "pollutant levels in water, fish, and food ... cannot be considered when determining

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compliance with MDE's prohibition on unreasonable endangerment under 26.11.15.06. (FN31)" (Plaintiffs' supplemental brief at 46). The record indicates otherwise.

As previously discussed in Part III B of this opinion, *supra*, the ALJ devoted several pages of her findings, conclusions and proposed decision to a consideration of the risks to "water fish and food" from incinerator pollutants. In particular, the ALJ considered two comprehensive risk assessments which both examined the various toxins likely to accumulate in local farm ponds and measured the resulting harm from consumption of fish within those ponds. The risk assessments also estimated the level of harm through the consumption of milk and beef from live-stock raised on local farms and from vegetables grown on those farms. Thus, the plaintiffs' argument that the ALJ [686 A.2d 628] "ignored food chain routes of exposure to ***316** air toxins released from the incinerator" is not supported by the record.

H.

[17] We find no merit in the plaintiffs' final argument that "[t]he ALJ's determination that pre-hearing discovery was not permitted denied [plaintiffs] due process of law as required by the United States and Maryland Constitutions." (Plaintiffs' supplemental brief at 46). There is no provision in the Maryland Administrative Procedure Act which provides for discovery at the pre-hearing stage. Furthermore, under COMAR 26.01.02.21A, which governs the Department of the Environment contested case proceedings, "[d]iscovery may be taken only in accordance with the stipulation of the parties." Parties may, however, "request governmental documents under the Maryland Public Information Act, State Government Article, § 10-611 et. seq." COMAR 26.01.02.21B. There was no stipulation in this case providing for discovery. Consequently, the ALJ properly determined that, absent such stipulation, she was not authorized to require the extensive discovery requested by the plaintiffs. Moreover, pursuant to COMAR 26.01.02.21B, the plaintiffs requested certain documents under the Maryland Public Information Act which they received without delay. Finally, the plaintiffs do not dispute the respondents' representations that the plaintiffs were furnished with several documents.

The plaintiffs do not argue that the ALJ or the Department relied upon any document which was not previously shown to the plaintiffs, or with regard to which there was no opportunity for rebuttal. *Cf. Rogers v. Radio Shack,* 271 Md. 126, 129, 314 A.2d 113, 115 (1974) ("We agree with Rogers that under the circumstances here, with no opportunity for cross-examination or rebuttal, fundamental fairness would preclude reliance upon the report by an administrative agency"). The plaintiffs have cited no case in the Supreme Court or in this Court, and we are unaware of any such case, holding that due process mandates pre-hearing discovery in an administrative proceeding. *See, Replacement Rent-A-Car v. Smith,* 99 Md.App. ***317.** 588, 593, 638 A.2d 1217, 1219 (1994) To view preceding link please click here ("The Maryland Rules relating to discovery apply only to proceedings in the circuit courts and not to proceedings before administrative agencies.... It is equally well-established that there is no

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broad constitutional right to pre-hearing discovery in administrative proceedings and that any general right to such discovery must come from the statutes or rules governing those proceedings. * * * Neither the State Administrative Procedure Act nor the statute governing the [agency] provides such entitlement ..."), and cases there cited.

Thus, we perceive no error in the ALJ's refusal to require pre-hearing discovery.

IV.

For the reasons set forth in Parts II and III of this opinion, the circuit court should have affirmed the administrative decision rather than dismissing the plaintiffs' action for lack of standing.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED, AND CASE REMANDED TO THE COURT OF SPECIAL APPEALS WITH DIRECTIONS TO REVERSE THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AND REMAND THE CASE TO THAT COURT WITH DIRECTIONS TO ENTER A JUDGMENT AFFIRMING THE DECISION OF THE DEPARTMENT OF THE ENVIRONMENT. COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY THE RESPONDENTS.

(FN*) Murphy, C.J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the adoption of this opinion.

(FN1.) The plaintiffs in this action include the following organizations and landowners:

(1) the Audubon Naturalist Society, owner of property approximately 20-25 miles from the incinerator;

(2) the Izaak Walton League, owner of property approximately 4 miles from the incinerator;

(3) the Sugarloaf Citizens' Association, a non-profit organization seeking to protect and preserve the environment;

(4) the Dickerson-Beallsville Coalition, a non-profit organization with 9 of its 44 members owning property close to the incinerator;

(5) the Buchanans, owners of 234 acres of land located adjacent to the tract of land containing the incinerator, and approximately 2,000 feet from the incinerator itself;

(6) Kenneth Cox and Tracey Morgan, owners of 16 acres of land located approximately 1 mile from the incinerator;

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(7) Jane Hunter, owner of 55 acres of land located approximately 1 mile from the incinerator;

(8) Gail Morgan, owner of 16 acres of land located approximately 1 mile from the incinerator; and

(9) John Snitzer, owner of 2 1/2 acres of land located approximately 1 1/4 miles from the incinerator.

(FN2.) The Buchanans had resided on this property since 1988. Following Mr. Buchanan's recent death, Mrs. Buchanan continues to reside on this property with three of her seven children. The property is also used for boarding and training horses and riders. The Buchanans grow various crops on this property, which is a source of food for both the family and the horses.

(FN3.) According to testimony at the administrative hearing, the Buchanan property is located only 600 feet from the site of the proposed incinerator. Later at the hearing, however, counsel for the parties stipulated that the property was 2,000 feet from the facility.

(FN4.) Hereinafter the County and the Authority will sometimes be referred to collectively as the "applicants."

(FN5.) A "contested case" is defined in Maryland's Administrative Procedure Act, Code (1984, 1995 Repl.Vol.), § 10-202(d) of the State Government Article, as follows:

"*Contested case.*-- (1) 'Contested case' means a proceeding before an agency to determine:

(i) a right, duty, statutory entitlement, or privilege of a person that is required by statute or constitution to be determined only after an opportunity for an agency hearing; or

(ii) the grant, denial, renewal, revocation, suspension, or amendment of a license that is required by statute or constitution to be determined only after an opportunity for an agency hearing."

As discussed in *Sugarloaf I*, a "contested case" hearing is a hearing at which trial-type procedures are followed. *See* Code (1995 Repl.Vol.), §§ 10-201 through 10-217 of the State Government Article. *See also Sugarloaf I, supra*, 323 Md. at 651, 594 A.2d at 1120.

(FN6.) We held that, consistent with provisions of COMAR 26.11.02.11M and Code (1982, 1996 Repl.Vol.), § 2-404 of the Environmental Article, only a non-trial type hearing, at which the parties and the public are given an opportunity to comment, is required at the PSD approval stage. We categorized the PSD approval stage as being "merely a preliminary or interlocutory requirement."

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344 Md. 271, 686 A.2d 605, Sugarloaf Citizens' Ass'n v. Department of Environment, (Md. 1996)

See Sugarloaf I, 323 Md. at 653-659, 594 A.2d at 1121-1124.

*317_ (FN7.) In addition to the permits required under the federal Clean Air Act and the Maryland Air Quality Control statutes, § 9-204(d) of the Environment Article requires a person to obtain a refuse disposal permit before installing a refuse disposal system. For purposes of § 9-204(d), a "refuse disposal system" includes 1) an incinerator; 2) a transfer station; 3) a landfill station; 4) a landfill; 5) a solid waste processing facility; and 6) any other solid waste acceptance facility. *See* § 9-201(e) of the Environment Article. Section 9-210 of the Environment Article sets out the prerequisites for obtaining a refuse disposal permit as follows:

" **§ 9-210. Same--Prerequisites for issuance of permit.**

(a) *In general.*--The Secretary may not issue a permit to install ... a refuse disposal system regulated under § 9-204(a) of this subtitle until the requirements set forth in this subsection are met in the following sequence:

(1) Except for the opportunity for a public informational meeting, the Department has completed its preliminary phase 1 technical review of the proposed refuse disposal system;

(2) The Department has reported the findings of its preliminary phase 1 technical review, in writing, to the county's chief elected official and planning commission of the county where the proposed refuse disposal system is to be located; and

(3) The county has completed its review of the proposed refuse disposal system, and has provided to the Department a written statement that the refuse disposal system:

(i) Meets all applicable county zoning and land use requirements; and

(ii) Is in conformity with the county solid waste plan."

Although the scope of the Department's delegation letter did not originally encompass the refuse disposal permit, the parties consented to having the two issues consolidated in one hearing after the plaintiffs initially raised issues relating to the refuse disposal permit.

(FN8.) In his letter delegating the matter to an ALJ, the Secretary referred to "standing to participate in the [administrative] hearing." Nevertheless, in order to avoid a possible remand from the courts, the applicants made no objection to the plaintiffs' standing at the administrative level in this case, and the plaintiffs were in fact accorded standing.

(FN9.) The ALJ began the "standing" portion of her opinion as follows:

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344 Md. 271, 686 A.2d 605, Sugarloaf Citizens' Ass'n v. Department of Environment, (Md. 1996)

"Maryland law recognizes that individuals have standing to challenge administrative decisions when 1) they have been a party to the administrative proceedings, and 2) [they] are aggrieved by the agency decision. *Maryland-National Capital Park Planning Comm. v. Friendship Heights,* 57 Md.App. 69, 77, 468 A.2d 1353, *cert. denied,* 300 Md. 89, 475 A.2d 1200 (1984); *Bryniarski v. Montgomery County Board of Appeals,* 247 Md. 137, 143, 230 A.2d 289 (1967). In order to be aggrieved by an agency decision, an individual must have a specific interest or property right at stake that is different from those interests of the general public. *Bryniarski,* 247 Md. at 144, 230 A.2d 289."

After reviewing the plaintiffs' contentions regarding standing, the ALJ concluded:

"The concerns expressed by the individual Plaintiffs are identical to the concerns of the public generally. Everyone is concerned about the loss of rural areas to development. Everyone is concerned about the effects of emissions on the environment. The individual Plaintiffs expressed the concerns of all of us--is it necessary to have the RRF, and is it necessary to have it in my community. Their concerns were aired at various public hearings in this matter, and, after all of those hearings, it was determined by Montgomery County that municipal waste disposal is best addressed by source reduction, recycling, incineration and landfilling, and further, it is necessary to build the RRF, and it should be located in Dickerson, Maryland. In my opinion, the individual Plaintiffs in this case have not made sufficient showing to demonstrate that they are aggrieved in a 'specific interest or property right ... that ... is personally and specifically affected in a way different from that suffered by the public generally.' *Bryniarski v. Montgomery County Bd. of Appeals,* 247 Md. 137, 144, 230 A.2d 289 (1967)."

*317_ (FN10.) The following colloquy occurred between the Court and counsel for the applicants:

"THE COURT: Suppose we didn't agree with you on standing, but, after reviewing the record, believe there's substantial evidence to support the findings, can we affirm on that ground?

"APPLICANTS' COUNSEL: I believe you can. Absolutely.

* * *

"APPLICANTS' COUNSEL: I believe you can. Because in this case they chose to use the merits evidence as their evidence of standing. And, there's a very thorough 171-page proposed decision and order from the ALJ where she goes through all the evidence; she makes all the scientific judgments, and she finds no harm. But, frankly, Your Honor, in this case there was no evidence of harm."

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(FN11.) During his rebuttal argument before this Court, counsel for the petitioners stated as follows:

"We're open and ready to decide this case on the merits. I would say just one last thing. If Your Honors are considering disposing this case on the merits, we think there would be a major due process problem with that. We have not briefed the merits in this case. There are several legal issues, violations, bases for permit denials, that are not addressed in our attempts to show aggrievement. So, we would at least ask for notice and a chance to brief those issues on the merits, if we're going to go to the merits, and we're ready to do that as soon as possible."

(FN12.) The judicial review section of the Administrative Procedure Act, Code (1984, 1995 Repl.Vol.), § 10-222 of the State Government Article, provides in relevant part as follows:

" § 10-222. Judicial review.

"(a) *Review of final decision.*--(1) Except as provided in subsection (b) of this section, a party who is aggrieved by the final decision in a contested case is entitled to judicial review of the decision as provided in this section.

* * *

"(h) *Decision.*--In a proceeding under this section, the court may:

(1) remand the case for further proceedings;

(2) affirm the final decision; or

(3) reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision:

(i) is unconstitutional;

(ii) exceeds the statutory authority or jurisdiction of the final decision maker;

(iii) results from an unlawful procedure;

(iv) is affected by any other error of law;

(v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or

(vi) is arbitrary or capricious."

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344 Md. 271, 686 A.2d 605, Sugarloaf Citizens' Ass'n v. Department of Environment, (Md. 1996)

(FN13.) Article 8 of the Declaration of Rights states as follows:

"Article 8. Separation of powers.

"That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other."

(FN14.) Thus, when counsel for the applicants was asked by the Court whether there was a distinction between the effect upon the plaintiffs for purposes of standing and the amount of harm to air quality that would require denial of the permits, counsel replied:

"Frankly your Honor, I think that where you have a full hearing as we had here, almost a month long, I think that distinction blurs."

The following colloquy occurred between the Court and the attorney for the Department:

"ATTORNEY: In the context of this case, the merits are very close to the standing issue. That is, the question of whether one of the petitioners will be harmed is the same inquiry as is involved with standing.

"THE COURT: You say it's very close, what is the difference?

"ATTORNEY: Your honor, in this case, on that challenge to this permit, it may be indistinguishable."

(FN15.) In arguing that the Buchanans were not "nearby" property owners and thus not presumptively aggrieved, the applicants rely upon *Wilkinson v. Atkinson,* 242 Md. 231, 218 A.2d 503 (1966), and *DuBay v. Crane,* 240 Md. 180, 213 A.2d 487 (1965) (Brief of Northeast Maryland Waste Disposal Authority and Montgomery County at 16). Neither case supports the applicants' argument. Both *DuBay* and *Wilkinson* involved challenges to zoning reclassifications. In *DuBay* the protestants lived "at least 1500 feet in a straight line from the rezoned property" (240 Md. at 183, 213 A.2d at 489), and in *Wilkinson* the protestants "could see the reclassified property from [their] home" (242 Md. at 234, 218 A.2d at 505). In both cases, upon evidence adduced in the circuit court, it was decided that the protestants were not aggrieved. The basis for both decisions, however, was not that the protestants were not "nearby" property owners. Instead, in each case the Court relied on the fact that the protestants' property was separated from the rezoned property by the Baltimore Beltway. The Court in *Wilkinson* thus stated (242 Md. at 235, 218 A.2d at 506):

"The [protestants'] property is on the opposite side of the Beltway, and, in *DuBay,* we pointed out ..., the Beltway 'if not a complete shield against the apartments to be constructed, will serve as an adequate barrier.' It is true

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that, in that case, the property was 1500 feet from the rezoned property, and it was not shown that Dubay could see the reclassified property from his home, *but it was the existence of the broad, heavily traveled intervening Beltway which was the determining factor.*" (Emphasis added).

In the case at bar, unlike *DuBay* and *Wilkinson,* no evidence was presented to the circuit court rebutting the Buchanans' prima facie standing. Moreover, the evidence in the administrative record discloses no barrier to the emissions from the incinerator which would function comparably to the Baltimore Beltway in a zoning case.

*317_ (FN16.) It is not clear to us, from the portions of the record contained in the record extracts before this Court, that the ALJ treated the T-BACT issues as being included in the "PSD" issues resolved at the earlier PSD permit stage. At times, the ALJ referred to "T-BACT" issues and "PSD" issues separately.

(FN17.) "T-BACT" is defined in COMAR 26.11.15.01.B(3) as

"production technology, emissions control technology, operation and maintenance procedures, other measures, or combination of them that results in the maximum degree of emission reduction that the Department determines, on a case-by-case basis, is achievable by an installation, for each toxic air pollutant discharged, taking into account the potency and toxicity of each toxic air pollutant discharged as well as technical and economic feasibility."

(FN18.) A "risk assessment" is a study of the increased risk of cancer caused by emissions resulting from the resource recovery facility.

(FN19.) For support, the plaintiffs cite COMAR 26.11.06.08 which provides in pertinent part: "An installation or premises may not be operated ... in such manner that a nuisance or air pollution is created."

(FN20.) "Insignificant risk concentration" is defined in COMAR 26.11.15.01B(8) as "a concentration of a ... toxic air pollutant in the atmosphere that would result in an excess individual lifetime cancer risk of not more than 1 in 100,000 ... assuming continuous exposure for 70 years and using procedures consistent with EPA's Risk Assessment Guidelines."

(FN21.) The New Source Performance Standards apply to an "[i]ncinerator capable of charging more than 50 tons ... of refuse per 24-hour day." COMAR 26.11.01.01C(3). Under COMAR 26.11.06.12, "[a] person may not construct, modify, operate, or cause to be constructed, modified, or operated, a New Source Performance Standard (NSPS) source as defined in COMAR 26.11.01.01C, which results or will result in violation of the provisions of 40 CFR 60, 1992 edition." As noted in the plaintiffs' brief, if the facility is not in compliance with these standards, the MDE must deny an application for an air quality permit. *See* COMAR 26.11.02.06B(1)(a).

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344 Md. 271, 686 A.2d 605, Sugarloaf Citizens' Ass'n v. Department of Environment, (Md. 1996)

(FN22.) The exhaustive permit requirements necessary for treatment, storage or disposal of hazardous waste are set forth in 42 U.S.C. § 6925.

(FN23.) Prior to 1994, courts had issued inconsistent opinions on this issue. Some courts viewed incinerator ash as being exempt from the hazardous waste provisions of the statute, *see, e.g., Environmental Defense Fund v. Wheelabrator Technologies, Inc.,* 931 F.2d 211 (2nd Cir.),*cert. denied,* 502 U.S. 974, 112 S.Ct. 453, 116 L.Ed.2d 471 (1991), while other courts determined that incinerator ash was subject to these provisions. *See, e.g., Environmental Defense Fund v. City of Chicago,* 948 F.2d 345 (7th Cir.1991), *judgment vacated,* 506 U.S. 982, 113 S.Ct. 486, 121 L.Ed.2d 426 (1992).

(FN24.) Relying on Code (1984, 1996 Repl.Vol.), § 9-204(e)(2), of the Environment Article, the plaintiffs claim that, in order to complete their permit applications, the applicants must "[s]ubmit to the Secretary any material change in the plans and specifications, with the reason for the change." In this case, the "material changes" included sites for the incinerator ash. Citing § 9-204(h)(2) of the Environment Article, the plaintiffs assert that before such change can be implemented, the Secretary must issue a "revised permit based on the submission to the Secretary under subsection (e)(2)."

(FN25.) The ALJ noted that this requirement was also satisfied by statements made by the applicants on the face of the application for the refuse waste disposal permit that the facility was "consistent with the County Plan."

(FN26.) The ALJ thus stated:

"Plaintiff Walton was adamant in its determination to have the county solid waste planning policy become an issue in this proceeding. These decisions were made by the County subsequent to public hearings and enactment by the County Council. I do not have the authority to review or evaluate either the plan or its implementation. The County determines how to address its solid waste with input from the public and general oversight by MDE. In this proceeding, I do have authority to determined[sic] if the Applicants have submitted an appropriate statement and proof of consistency with the County's approved comprehensive solid waste management plan."

*317_ (FN27.) An ozone non-attainment area is an area found, under § 107 of the Clean Air Act, 42 U.S.C. § 7407, to exceed the national primary or secondary ambient air quality standard for ozone. 42 U.S.C. § 7501(2). The National Capital Interstate Air Quality Control Region, which includes Montgomery County, has been labeled a non-attainment area for ozone for purposes of solid waste management plan preparation under 42 U.S.C. § 7511a.

(FN28.) Further amendments to the Clean Air Act were enacted in 1995. The 1995 Amendments do not, however, change any of the substantive questions at issue in this case.

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(FN29.) In these two guidance memoranda, the EPA sought to clarify the complex and significant changes made to the Clean Air Act in anticipation of numerous issues certain to be raised concerning the 1990 Amendments. In particular, the EPA anticipated that many states would not be able to incorporate the new standards into their plans by the November 15, 1992 deadline, and issued these memoranda to provide further guidance to those states.

(FN30.) The "savings clause" contained in § 110(n), 42 U.S.C. § 7410(n)(1) indicates that before the 1990 Amendments take effect, the EPA must also approve the state's revised plan. Section 110(n) reads as follows:

"Any provision of any applicable implementation plan that was approved or promulgated by the Administrator [of the EPA] pursuant to this section as in effect before November 15, 1990, shall remain in effect as part of such applicable implementation plan, except to the extent that a revision to such provision is approved or promulgated by the Administrator pursuant to this chapter."

(FN31.) COMAR 26.11.15.06 provides, in pertinent part as follows:

"A. Requirements for New Installations, Sources, or Premises.

(1) Except as provided ... below, a person may not construct, modify, or operate or cause to be constructed, modified, or operated any new installation or source without first demonstrating to the satisfaction of the Department using procedures established in this chapter that total allowable emissions from the premises of each toxic air pollutant discharged by the new installation or source will not unreasonably endanger human health."

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Citation/Title
275 Md. 193, 338 A.2d 892, Montgomery County v. One Park North Associates, (Md. 1975)

*193 275 Md. 193

338 A.2d 892

Ex B

Court of Appeals of Maryland.

MONTGOMERY COUNTY, Maryland
v.
ONE PARK NORTH ASSOCIATES.

No. 198.
June 9, 1975.

Montgomery County sought to appeal from order of Board of Review of the Department of Health and Mental Hygiene, which set aside order of Secretary of Health and Mental Hygiene prohibiting issuance by Washington Suburban Sanitary Commission of any sewer authorization, connection or hookup without the Secretary's approval and which directed that developer be granted requisite authorization for sewer and water hookup. The Circuit Court for Montgomery County, Ralph G. Shure, C. J., concluded that the County, though not a party in the proceedings below, was aggrieved by the Board's order and had a right to appeal and concluded that Board's action was within its authority and was neither arbitrary nor capricious, and County appealed. The Court of Appeals, Murphy, C. J., held that since County was not a party to any of the administrative proceedings the County was not a 'party aggrieved' within meaning of Administrative Procedure Act, that provision of the Act that political subdivisions of the state have status of an interested person or party in all matters including appeals did not give the County standing to appeal and that statute authorizing any person dissatisfied with an order of the Secretary issued pursuant to the 'Water, Ice and Sewerage' subtitle to appeal did not authorize County's appeal since statute did not invest the County with standing to appeal where it was not a party in the proceedings.

Circuit Court order vacated; appeal dismissed.

West Headnotes

[1] Health ⚷371

198H ----
198HII Public Health
198Hk370 Administrative Proceedings in General
198Hk371 In General.

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275 Md. 193, 338 A.2d 892, Montgomery County v. One Park North Associates, (Md. 1975)

(Formerly 199k7.5, 199k71/2 Health and Environment)

Since Montgomery County was not a party to order of Secretary of Health and Mental Hygiene declaring that sewerage facilities of Washington Suburban Sanitary Commission were inadequate, to developer's request for approval of sewer and water authorization or to order of Board of Review setting aside Secretary's initial order, the County, seeking to appeal, was not a "party aggrieved" within meaning of Administrative Procedure Act; that the County may have been "aggrieved" by Board's order did not afford its standing as a party to Board proceedings. Code 1957, art. 41 §§ 206A, 206B, 255, 256A; art. 43, §§ 388, 391; Maryland Rules, Rules B1, B3.

[2] Administrative Law and Procedure ⚷668

15A ----
15AV Judicial Review of Administrative Decisions
15AV(A) In General
15Ak665 Right of Review
15Ak668 Persons Aggrieved or Affected.

Provision of Administrative Procedure Act that political subdivisions of the state and their agencies have the status of an interested person, petitioner, or party, as the case may be, in all matters including appeals does not invest a county or other political subdivision with status as an aggrieved party where it was not a party to the proceedings before the administrative agency; thrust of such section is to remove any question of the right of a county, its agencies and instrumentalities to participate in proceedings under the Administrative Procedure Act to the same extent as any other legal entity. Code 1957, art. 41, § 256A.

[3] Health ⚷381

198H ----
198HII Public Health
198Hk379 Judicial Review of Administrative Proceedings
198Hk381 Administrative Decisions Reviewable.

(Formerly 199k7.5, 199k71/2 Health and Environment)

Board of Review of Department of Health and Mental Hygiene has jurisdiction to determine appeals from those decisions of the Secretary of Health and Mental Hygiene which are subject to judicial review under Administrative Procedure Act or under any other provisions of law; however, statute authorizing appeals from orders or regulations of the Secretary does not qualify as another "provision of law" permitting judicial review since nothing in such statute invests a political subdivision with standing to appeal from an order of the Board of Review where it was not a party in the proceedings. Code 1957, art. 41, § 256A; art. 43, § 404; Maryland Rules, Rule B3.

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275 Md. 193, 338 A.2d 892, Montgomery County v. One Park North Associates, (Md. 1975)

[4] Health ⚷371

198H ----
198HII Public Health
198Hk370 Administrative Proceedings in General
198Hk371 In General.

(Formerly 199k7.5, 199k71/2 Health and Environment)

Denial by Secretary of Health and Mental Hygiene of developer's request for exception from Secretary's order prohibiting issuance by Washington Suburban Sanitary Commission of any sewer authorization or hookup without Secretary's approval did not involve a "contested case" as that term is defined in Administrative Procedure Act since it was not a proceeding in which developer's legal rights, duties or privileges were required by law to be determined after an agency hearing; hence, Board of Review of Department of Health and Mental Hygiene had no jurisdiction, under Administrative Procedure Act, to review determination as a final decision in a contested case. Code 1957, art. 41, §§ 206A, 244(c), 255.

[5] Health ⚷376

198H ----
198HII Public Health
198Hk370 Administrative Proceedings in General
198Hk376 Orders and Other Decisions in General.

(Formerly 199k7.5, 199k71/2 Health and Environment)

Board of Review of Department of Health and Mental Hygiene did not have jurisdiction to review refusal by Secretary of Health and Mental Hygiene to grant developer's application for sewer and water hookup, on ground that Secretary's decision was subject to judicial review under "any other provisions of law," since Secretary's letter advising developer that requested exception would violate order prohibiting further discharges of raw or inadequately treated sewerage was not an "order" within contemplation of statute authorizing appeals from orders issued pursuant to the "Water, Ice and Sewerage" subtitle. Code 1957, art. 41, § 206A; art. 43, § 404.

[338 A.2d 893] ***194** Charles S. Rand, Asst. County Atty., Rockville (Richard S. McKernon, County Atty., and Robert G. Tobin, Jr., Deputy County Atty., Rockville, on the brief), for appellant.

David N. Webster, Washington, D. C. (Paul R. Connolly, J. Alan Galbraith and Williams, Connolly & Califano, Washington, D. C., on the brief), for appellee.

Argued before MURPHY, C. J., and SINGLEY, SMITH, DIGGES, LEVINE, ELDRIDGE and O'DONNELL, JJ.

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275 Md. 193, 338 A.2d 892, Montgomery County v. One Park North Associates, (Md. 1975)

MURPHY, Chief Judge.

One Park North Associates (OPNA) applied to the Washington Suburban Sanitary Commission (WSSC) in May of 1972 for sewer connection and hookup authorizations for a two-level retail store and office complex which it proposed to construct in Montgomery County, Maryland. OPNA's application was pending before the WSSC when, on August 16, 1973, the Secretary of Health and Mental Hygiene (the Secretary), acting pursuant to powers vested in him by Maryland Code (1971 Repl.Vol.) Art. 43, passed an order declaring that the sewerage facilities owned and operated by the WSSC in designated basins tributary to the Blue Plains treatment plant-including the Little Falls basin where OPNA's property was located-were inadequate. The Secretary's order specified that 'the capability of sewerage ***195** facilities at the wastewater treatment plant at Blue Plains to provide adequate treatment is being exceeded, which conditions continue to cause discharges of raw and inadequately treated sewage into the waters of the State, which waters are being, or are liable to become polluted in a way dangerous to health, thereby constituting a menace and nuisance prejudicial to the health, safety and comfort of the public.' With exceptions not here pertinent, the Secretary's order prohibited issuance by the WSSC of any sewer 'authorization, connection, or hookup within[338 A.2d 894] (the designated) basins tributary to the Blue Plains Plant,' without his approval. ([FN1])

On September 26, 1973, OPNA sought the Secretary's approval for a sewer and water authorization, connection and hookup for its proposed complex. OPNA's application recited that water and sewer lines of adequate capacity were immediately available to the site in public rights of way; that Phase I of the proposed complex would be two years in construction and when completed would, according to WSSC engineering calculations, generate a sewer volume of 31,987 gallons per day; that during the period of construction of Phase I, OPNA would effect an immediate reduction of sewer flow of 40,796 gallons per day into the Blue Plains Plant; that of this reduced daily sewer flow, 37,796 gallons would result from the installation of water reclamation systems on two commercial car wash operations which OPNA controlled in basins tributary to the Blue Plains Plant; that the remaining ***196** 3,000 gallons per day of reduced flow would be effectuated by disconnecting six active sewer connections on OPNA's property; and that as a result, there would be a permanent reduction of flow into Blue Plains, after Phase I was completed, of 8,809 gallons per day, or 3,215,285 gallons annually. Because of the proposed reductions of sewer flow, both immediate and permanent, OPNA urged the Secretary to make an exception to his order of August 16, 1973.

By a letter dated October 19, 1973, the Secretary advised OPNA that 'such an exception as you request would constitute a clear violation of the intent of our Orders which are to prohibit further discharges of raw or inadequately treated sewage into the waters of the State.' In his letter, the Secretary stated that OPNA could appeal his decision to the Board of Review of the Department of Health and Mental Hygiene (the Board).

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275 Md. 193, 338 A.2d 892, Montgomery County v. One Park North Associates, (Md. 1975)

OPNA noted an appeal to the Board on November 1, 1973, alleging that the Secretary's decision not to grant the exception was 'arbitrary, capricious and unreasonable.' A hearing was held on December 20, 1973, before the Board. The Attorney General appeared on behalf of the Secretary; he maintained that even if the water reclamation devices-which 'do not have a track record' and are 'conceptual theories'-operated to decrease the amount of water used to carry the organic material, the organic load itself, which causes the pollution to the State's waters, would not thereby be decreased. In rebuttal, OPNA argued that its water savings system were 'tested, tried, and proven.' It stated:

'The only people who will be coming to this shopping center will be those who are serviced in this area by the Bule Plains Treatment Plant. . . . (T)hose people . . . will either flush at home or they will flush here.'

OPNA pointed out that its proposed complex was designed to service the Metropolitan Washington area, all of which was serviced by the Blue Plains Treatment Plant and that, as a result, the overall volume[338 A.2d 895] of the organic load in the sewage would not be increased. It argued:

***197** 'So if somebody comes from Virginia to shop there or someone from 12th and M Street, Northwest, comes to shop in Montgomery County, they are still using that same old Blue Plains Treatment Plant and it is really just a trade off. Your volume doesn't increase. Your pollutants don't increase but your volume is being tremendously decreased.'

Speaking on the Secretary's behald, Mr. Bingley, a sewage engineer, said:

'(W)e are not talking about pollution due to a volume of water or a volume of liquid. We are talking about pollution dur to orgnic material discharged by the human being. This amount of organic material discharged by the human being can be conveyed to a treatment facility by 10 gallons or by a hundred gallons. Ten gallons admittedly is less hydraulic volume but the organic load, the stuff that really causes pollution, is still there regardless of the quantity of water.

'. . . (W)e are not talking about real volume as a pollution, we are talking about a volume of water carrying a pollution load.'

'We can decrease the volume of water but we haven't decreased the pollution problem. We have only decreased the possibility of sewage overflow.'

'(I)f you decrease the volume and increase the number of people, you are automatically increasing the organic material.'

'In a commercial enterprise such as a shopping center or something the public uses, I submit to you that there are plenty of people outside the area who are coming in to use that facility. That is, coming in to shop.'

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275 Md. 193, 338 A.2d 892, Montgomery County v. One Park North Associates, (Md. 1975)

Asked whether the water reclamation devices to be installed ***198** on the car wash operations would reduce the chemical pollutants, Bingley said they would not.

By an order dated January 21, 1974, the Board concluded that OPNA had 'presented a factual case for the relief of sewage effluent in the aggregate by a combination of water saving devices in two car wash operations and the deactivation of housing in the area of construction of the proposed shopping center . . ..' In its order, the Board found that OPNA presented '(a) reasonable alternative to sewage overflow . . . in the sewage drainage basin effected by the proposed project'; that the State failed 'to contradict the reasonable conclusion that there would be no threat to the health and welfare of the citizens of the State in the implementation of this total plan'; and that '(t)he State and its subdivisions will be well served if the project is completed.' The Board 'set aside' the Secretary' order of August 16, 1973 and directed that OPNA 'shall be granted' the requisite authorizations by the WSSC.

While neither a party nor an intervenor in the proceedings before the Secretary or the Board, Montgomery County (the County) noted an appeal to the Circuit Court for Montgomery County from the Board's order of January 21, 1974. The County alleged that it was required by s 387C of Art. 43 to provide for the orderly expansion and extension of community sewerage systems and to provide for adequate sewage treatment facilities to prevent the discharge of untreated or inadequately treated sewage into the waters of the State. It maintained that the Board's order had undermined the authority vested in the County under the statute; that the Board had acted in excess of its statutory authority; and that the Board was without power to set aside an order of the Secretary, or to direct the issuance of a sewer connection authorization, which was a function vested exclusively in the WSSC. OPNA challenged the County's right to appeal; it asserted[338 A.2d 896] that, because the County was not a party, it had no standing to appeal from the Board's decision.

In an opinion dated September 11, 1974, the court (Shure, J.) concluded that the County, though not a party in the ***199** proceedings below, was aggrieved by the Board's order and had a right to appeal under the Administrative Procedure Act, Code Art. 41, s 244 et seq. and subtitle B (Administrative Agencies-Appeal From) of Chapter 1100 of the Maryland Rules. The court nevertheless concluded that the action taken by the Board was within its authority and was neither arbitrary nor capricious. This appeal by the County from the court's order then followed.

The County maintains that, since the Secretary's decision not to grant the exception was quasi-legislative, the Board had no jurisdiction in the matter, its jurisdiction being limited to reviewing the Secretary's quasi-judicial decisions. The County contends that legislative orders or regulations passed by the Secretary involving sewerage facilities are reviewable only under the provisions of Art. 43, s 404; that section authorizes any person, including a county, which is dissatisfied with any order or regulation of the Secretary passed pursuant to

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the provisions of the 'Water, Ice and Sewerage' subtitle of Art. 43 (ss 387-406) to appeal therefrom within ten days after the service of such order or regulation. OPNA contends that the Board had jurisdiction, that its order was within its statutory authority, and that the lower court did not err in affirming the Board's order. OPNA also argues that the County lacks standing to appeal.

Insofar as here pertinent, the Board of Review of the Department of Health and Memtal Hygiene is empowered by Art. 41, s 206A to

> 'hear and determine appeals from those decisions of the Secretary or any departments or other agencies within the Department of Health and Mental Hygiene which are subject to judicial review under s 255 of this article or under any other provisions of law.'

Section 255 of Art. 41 sets forth the right to judicial review under the Administrative Procedure Act; it provides in subsection (a):

> 'Any party aggrieved by a final decision in a ***200** contested case, whether such decision is affirmative or negative in form, is entitled to judicial review thereof under this subtitle.'

Section 244(c) of Art. 41 defines a 'contested case' as

> 'a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing.'

Section 260B of Art. 41, entitled 'Appeals to board of review,' permits an appeal by '(a) party aggrieved' by a decision of the Secretary for which an appeal to the Board is provided by s 206A. In connection with such appeals, the section directs that the Board 'shall adopt procedures as provided in the Administrative Procedure Act. . . .and shall in all other respects be governed by the provisions of said act.' The section further provides:

> 'The decision of the board shall be the final agency decision for purposes of judicial review under s 255 of this article or for purposes of any other provisions of law permitting appeals to the courts from decisions of agencies included within the Department of Health and Mental Hygiene. Appeals from decisions of the board shall be as prescribed in the Administrative Procedure Act or by the substantive law applying to commission, department, board or other instrumentality whose decision is being appealed.'

[1] Notwithstanding the County's interest in the Secretary's order of August [338 A.2d 897] 16, 1973, in OPNA's proposal, and in the Board's order of January 21, 1974, we hold that, not being a party to any of these proceedings, the County was not a 'party aggrieved' under s 255 of Art. 41 and hence was not entitled to judicial review under the provisions of that section. That the County may have been 'aggrieved' by the Board's order does not afford it standing as a party to

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the proceeding. Nor do Maryland Rules B1 and B3, upon which the County places reliance, afford it standing. These rules do ***201** no more than set forth procedures governing appeals to the courts from administrative agencies. Rule B1 specifies that such rules 'apply to the review of any final action of an administrative agency by a court where such review is specially authorized by statute, regardless of the form of such review . . .'; Rule B3 provides that '(a)n appeal may be taken by a person now or hereafter authorized by statute to appeal.'

[2][3] The County asserts that it has standing to appeal by reason of the provisions of s 256A of Art. 41; that section, part of the Administrative Procedure Act, provides:

> 'For the purposes of this subtitle, the political subdivisions of this State and their agencies and instrumentalities have the status of an interested person, petitioner, or party, as the case may be, in all matters including appeals.'

While we noted in Bd. of Ex. of Land. Arch. v. McWilliams, 270 Md. 383, 387, 311 A.2d 792, 795 (1973), that s 256A 'constituted an enlargement of the right of appeal,' nothing in the section invests the County with status as an aggrieved party where it was not a party to the proceedings before the administrative agency. What the section does is to remove any question of the right of a county, its agencies and instrumentalities to participate in proceedings under the Administrative Procedure Act to the same extent as any other legal entity.

As heretofore indicated, the Board of Review has jurisdiction to determine appeals from those decisions of the Secretary, which are subject to judicial review 'under s 255 . . . or under any other provisions of law.' Section 404 of Art. 43 authorizing appeals from orders or regulations of the Secretary would appear to qualify as another provision of law permitting judicial review of decisions of the Secretary. But nothing in that section, assuming its applicability, invests the County with standing to appeal from an order of the Board of Review where it was not a party in the proceedings.

In sum, since the County lacks standing and no other ***202.** party lodged an appeal in these proceedings, we are without jurisdiction to entertain this appeal.

[4][5] While we must dismiss the County's appeal for lack of standing, we think it important that we indicate our disagreement with the advice given by the Secretary in his letter of October 19, 1973 to OPNA that an appeal to the Board would lie from his decision denying OPNA's requested exception. As already noted, the Board's jurisdiction under s 206A is to hear and determine appeals from those decisions of the Secretary which are subject to judicial review under s 255 of Art. 41 (the Administrative Procedure Act), viz., a final decision 'in a contested case.' The Secretary's denial of OPNA's request for an exception from his order of August 16, 1973, did not involve a contested case as that term is

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defined in s 244(c); it was not a proceeding in which OPNA's 'legal rights, duties, or privileges . . . (were) required by law or constitutional right to be determined after an agency hearing.' See Rules of Procedure for Hearings before the Secretary of Health and Mental Hygiene, s 10.01.02-1.

Nor does it appear that the Board obtained jurisdiction because the Secretary's decision was under s 206A, subject to judicial review under 'any other provisions of [338 A.2d 898] law.' OPNA did not appeal to the Board from the Secretary's order of August 16, 1973; it appealed from the refusal of the Secretary on October 19, 1973 to grant an exception to his order. Since the Secretary's letter of October 19, 1973 was not an 'order' within the contemplation of Art. 43, s 404, the provisions of s 404 of Art. 43 were not implicated in OPNA's appeal to the Board, and consequently no basis for the exercise of the Board's jurisdiction can be attributed to the provisions of that statute. Accordingly, it would appear that the Board's order was a nullity since it was without jurisdiction to enter its order of January 21, 1974.

Order of the Circuit Court for Montgomery County affirming the order of the Board of Review vacated; appeal dismissed; costs to be paid by Montgomery County.

(FN1.) The Secretary is the head of the Department of Health and Mental Hygiene. Code (1971 Repl.Vol.) Art. 41, s 206. All the powers formerly vested in the State Board of Health were transferred by s 1H of Article 43 to the Secretary; that section provides, in effect, that whenever the term 'State Board of Health' is used in the laws of the State, it shall be deemed to refer to the Secretary unless such a construction would be unreasonable.

Under Art. 43, s 388, the Secretary is vested with 'general supervision and control over the waters of the State, insofar as their sanitary and physical condition affect the public health or comfort; and (the Secretary) may make and enforce rules and regulations, and order works to be executed, to correct and prevent their pollution.' This section also empowers the Secretary to 'examine all existing . . . sewerage systems and . . . to compel their operation in a manner which shall protect the public health and comfort, or to order their alteration, extension or replacement . . . .' Section 391 of Art. 43 authorizes the Secretary to issue orders governing the operation of inadequate sewerage systems.

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1/26/05

IN THE MATTER OF:	*	BEFORE THE
SHALIN ENTERPRISES, INC. Owner	*	COUNTY BOARD OF APPEALS
3022 Hammonds Ferry Road 13TH Election District	*	OF BALTIMORE COUNTY
1st Councilmanic District	*	CASE NO. 04-035-SPHXA

****

ORDER

The above referenced matter came before this Board on a hearing and based on a Motion made by Protestants' counsel Michael P. Tanczyn, Esquire, and agreed to by the Petitioner, it is hereby

ORDERED, this 26th day of January, 2005, by the County Board of Appeals of Baltimore County that the above referenced matter shall be continued until such time as a new hearing date is scheduled pursuant to Petitioner's request and that Petitioner submit an amended zoning site plan incorporating a description of the internal uses within the existing building to the Department of Permits and Development Management, the Department of Public Works and the Office of Planning for review and comment and that such comments be forwarded back to this Board for review prior to the continued hearing date.

LAWRENCE STAHL, CHAIRMAN

JOHN P. QUINN

MARGARET BRASSIL, Ph.D.

#324726

County Board of Appeals of Baltimore County

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

January 26, 2005

Michael Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
Towson, MD 21204

RE: *In the Matter of: Shalin Enterprises, Inc.*
Case No. 04-035-SPHXA

Dear Mr. Tanczyn:

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

Very truly yours,

Kathleen C. Bianco /tts

Kathleen C. Bianco
Administrator

Enclosure

c: Robert Newell
Frank Ashley
Shantel Brooks
Cloverland Farms Dairy t/a Royal Farms
Bill Burnley
Wayne Hayes
John B. Gontrum, Esquire
Shrgyas Panchigar /Shalin Enterprises
Patrick Richardson /Richardson Engineering
Stan Sobotka
Office of People's Counsel
Pat Keller, Planning Director
William J. Wiseman III, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

11/10/03

IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE - NE/Corner Hollins Ferry Road and Hammonds Ferry Road (3023 Hammonds Ferry Road) 13th Election District 1st Council District	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
	*	Case No. 04-035-SPHXA
Shalin Enterprises, Inc. Petitioners	*	

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception and Variance filed by the owners of the subject property, Shalin Enterprises, Inc., by and through their attorney, John B. Gontrum, Esquire. The Petitioners request a special hearing to approve an amendment to the site plans and Orders issued in prior Cases Nos. 65-316-RX and 83-48-X to permit a fuel service station use in combination with a convenience store of 1709 sq.ft. and carryout of 286 sq.ft. within the existing building. In addition, special exception relief is requested to approve such use in combination, pursuant to Section 405.E of the Baltimore County Zoning Regulations (B.C.Z.R.). Lastly, variance relief is requested from the B.C.Z.R. as follows: From Section 405.4.A.2.b to permit landscape transition areas of as little as 3' in lieu of the minimum required 10' from a public right-of-way and 0' in lieu of the required 6' from adjacent properties; from Section 405.4.A.2.c to waive the vegetation requirements under the landscape manual for automotive uses; and, from Sections 405.4.b.1 and 405.4.B.10 to permit a fuel service station use in combination with a convenience store of 1709 sq.ft. and carryout restaurant of 286 sq.ft within an existing building on a lot size of 18,804 sq.ft. in lieu of the minimum required lot area of 23,524 sq.ft. 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 Exhibit 1.

ORDER RECEIVED FOR FILING
Date 11/10/03
By

Appearing at the requisite public hearing in support of the request were Shrgyas Panchigar, principle of Shalin Enterprises, Inc., property owners; Patrick Richardson, the Professional Engineer who prepared the site plan; and John B. Gontrum, Esquire, attorney for the Petitioners. There were no Protestants or other interested persons present; however, a request for a copy of the Order issued in this case was received from Stan Sobotka. Moreover, a letter regarding the request was received from Brenda Harney, Director of the Greater BLR Alliance, Inc., a neighborhood association.

Testimony and evidence offered revealed that the subject property is an irregular shaped parcel located on the northeast corner of Hammonds Ferry Road and Hollins Ferry Road in Catonsville. The property contains a gross area of 0.63 acres, more or less, zoned B.L.-A.S. and is improved with a one-story building to the rear of the site, which has been used as an Exxon fuel service station for many years. In addition to the building, a fuel pump island containing 12 multi-product fuel dispensers is located in the front portion of the site, adjacent to the intersection. Testimony indicated that a number of years ago, there was also a convenience store and small office area added to the building. The Petitioners are desirous of utilizing 286 sq.ft. of the convenience store to install a deli/carry-out, which will offer ready-to-eat sandwiches and other similar products. Although no exterior changes or additions are proposed to the existing building, the requested relief is necessary to bring the property into compliance with zoning regulations.

Based on the testimony and evidence offered, I am persuaded to grant the requested relief. It is clear that the property has been used as a gasoline service station for many years and that the proposed improvements are consistent with other uses in the area and the character of the surrounding neighborhood. The zoning relief requested and addition of the proposed deli will not significantly alter the use/appearance of the property. Testimony indicated that a Royal Farms Store is located on the adjacent property to the east and to the north (rear) side is a service garage operation. I find that the relief requested meets the requirements of Section 502.1 of the B.C.Z.R. I further find that the special hearing relief should be granted to allow amendments to the site plans and Orders issued in the prior cases to reflect current conditions on the site.

ORDER RECEIVED FOR FILING
Date 11/10/03
By

Lastly, as noted above, variance relief is requested from the landscape requirements. In this regard, relief is necessary due to the unusual configuration of the site and the location of existing improvements thereon. As shown on the site, the existing building abuts the rear property line and the balance of the site is largely paved macadam. Thus, landscaping of the property is limited to existing grassy areas. Moreover, the property lacks sufficient area to meet the requirements for a fuel service station use in combination with a convenience store. However, as noted above, the property has been used for such purposes for many years, apparently without detrimental impact to the surrounding neighborhood. For all of these reasons, I am persuaded to grant the requested variances.

Further testimony revealed that the Petitioners negotiated and reached an agreement with the Greater BLR Alliance, Inc. regarding the proposal. Thus, the relief granted herein is conditioned upon Petitioners' compliance with the terms and conditions of that agreement, which has been incorporated herein as set out below.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 10th day of November 2003 that the Petition for Special Hearing to approve an amendment to the site plans approved and Orders issued in prior Cases Nos. 65-316-RX and 83-48-X to permit a fuel service station use in combination with a convenience store of 1709 sq.ft. and proposed carryout of 286 sq.ft. within the existing building, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Exception to approve such uses in combination, pursuant to Section 405.E of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from the B.C.Z.R. as follows: From Section 405.4.A.2.b of the B.C.Z.R. to permit landscape transition areas of as little as 3' in lieu of the minimum required 10' from a public right-of-way and 0' in lieu

ORDER RECEIVED/FOR FILING
Date 11/10/03
By

of the required 6' from adjacent properties; from Section 405.4.A.2.c of the B.C.Z.R. to waive the vegetation requirements under the landscape manual for automotive uses; and from Sections 405.4.b.1 and 405.4.B.10 of the B.C.Z.R. to permit a fuel service station use in combination with a convenience store of 1709 sq.ft. and carryout restaurant of 286 sq.ft within an existing building on a lot size of 18,804 sq.ft. in lieu of the minimum required lot area of 23,524 sq.ft., in accordance with Petitioner's Exhibit 1, 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, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2) The Petitioners shall install a guardrail between the subject property and the adjacent Royal Farms Store lot to prevent traffic from that business from cutting through the subject property to avoid the intersection.

3) The Petitioners shall submit a landscape plan to Mr. Avery Harden, the Landscape Architect for Baltimore County, to develop a suitable landscape plan for the subject property. Said plan should recognize the existing use of the property and improvements thereon and shall require landscaping as reasonably practical and prudent. A copy of the approved plan shall be submitted to the Office of Planning and the Greater BLR Alliance, Inc.

4) There shall be no damaged or disabled vehicles stored on the subject lot.

5) If agreeable to the adjacent property owner at 3015 Hammonds Ferry Road, the Petitioners shall erect a small barrier fence along the common property line. In addition, the existing fuel tank in that area shall be removed.

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

ORDER RECEIVED FOR FILING
Date 11/14/13
By

LES:bjs

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

Zoning Commissioner

Suite 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
Tel: 410-887-3868 • Fax: 410-887-3468

Baltimore County

James T. Smith, Jr., County Executive
Lawrence E. Schmidt, Zoning Commissioner

November 3, 2003

John B. Gontrum, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE
NE/Corner Hollins Ferry Road & Hammond Ferry Road
(3023 Hammonds Ferry Road)
13th Election District – 1st Council District
Shalin Enterprises, Inc. - Petitioners
Case No. 04-035-SPHXA

Dear Mr. Gontrum:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing, Special Exception and Variance have been granted, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the 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. Shrgyas Panchigar, Shalin Enterprises, Inc.
3023 Hammonds Ferry Road, Baltimore, Md. 21227
Mr. Patrick Richardson, Richardson Engineering, LLC
730 W. Padonia Road, Suite 101, Cockeysville, Md. 21030
Mr. Stan Sobotka, 3611 Roland Avenue, Baltimore, Md. 21211
Office of Planning; People's Counsel; Case File

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 3023 HAMMONDS FERRY 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 Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

An amendment to site plans and orders in cases numbers: 65-316RX and 83-48-X to permit a fuel service station in combination with a convenience store of 1,709 square feet and carry out of 286 square feet in the existing building.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, 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

Attorney For Petitioner:

John B. Gontrum, Esquire
Name - Type or Print

Signature

Whiteford, Taylor & Preston LLP
Company

210 W. Pa. Ave, (410) 832-2055
Address Telephone No.

Towson MD 21204
City State Zip Code

Legal Owner(s):

SHALIN ENTERPRISES, INC.
Name - Type or Print

Bhavesh Panchigar
Signature

Name - Type or Print

Bhavesh Panchigar
Signature

3023 HAMMONDS FERRY RD 410-242-0481
Address Telephone No.

BALTIMORE MD 21227
City State Zip Code

Representative to be Contacted:

John B. Gontrum, Esquire
Name

210 W. Pa. Ave., (410) 832-2055
Address Telephone No.

Towson MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By BM Date 7/23/03

Case No. 04-035-SPHXA

REV 9/15/98

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 3023 HAMMONDS FERRY RD

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

A use in combination with a fuel service station of a convenience store of 1,702 square feet and a carry out restaurant of 286 square feet per section 405.E.

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

Attorney For Petitioner:

John B. Gontrum, Esquire
Name - Type or Print

Signature

Whiteford, Taylor & Preston LLP
Company

210 W. Pa. Ave., (410) 832-2055
Address Telephone No.

Towson MD 21204
City State Zip Code

Legal Owner(s):

SHALIN ENTERPRISES, INC.
Name - Type or Print

Shreyas Panchigar
Signature

Name - Type or Print

Shreyas Panchigar
Signature

3023 HAMMONDS FERRY RD 410-242-0481
Address Telephone No.

BALTIMORE MD 21227
City State Zip Code

Representative to be Contacted:

John B. Gontrum, Esquire
Name

210 W. Pa. Ave., (410) 832-2055
Address Telephone No.

Towson MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By BR Date 7/23/03

Case No. 04-035-SPHXA

REV 09/15/98

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 3023 HAMMONDS FERRY RD

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 provided at the time of the 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

Attorney For Petitioner:

John B. Gontrum, Esquire
Name - Type or Print

Signature

Whiteford, Taylor & Preston, LLP
Company

210 W. Pa. Ave., (410) 832-2055
Address Telephone No.

Towson MD 21204
City State Zip Code

Legal Owner(s):

SHALIN ENTERPRISES, INC.
Name - Type or Print

Shreyas Ponabigar
Signature

Name - Type or Print

Shreyas Ponabigar
Signature

3023 HAMMONDS FERRY ROAD 410-242-0481
Address Telephone No

BALTIMORE MD 21227
City State Zip Code

Representative to be Contacted:

John B. Gontrum, Esquire
Name

210 W. Pa. Ave., (410) 832-2055
Address Telephone No.

Towson MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING
Reviewed By BR Date 7/23/03

Case No. 04-035-SPHXA

REV 9/15/98

REQUESTED VARIANCES

405.4A.2.b	-	To permit landscape transition areas as small as 3′ in lieu of the required 10′ from a public right-of-way and 0′ in lieu of the required 6′.
405.4A.2.c.	-	To waive vegetation requirements under the landscape manual for automotive uses.
405.4b.1 and 40-5.4B.10	-	Co-permit a fuel service station in combination with a convenience store of 1,709 square feet and carry-out restaurant of 386 square feet in existing building on a lot size of 18,804 square feet in lieu of required 23,524 square feet.

284460

#035

Richardson Engineering, LLC

730 W. Padonia Road, Suite 101
Cockeysville, Maryland 21030

410-560-1502, fax 410-560-0827

ZONING DESCRIPTION
HAMMONDS FERRY EXXON STATION
3023 HAMMONDS FERRY ROAD
13TH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

BEGINNING FOR THE SAME at a point on the North side of Hollins Ferry Road at the east side of Hammonds Ferry Road, thence running and binding on the east side of Hammonds Ferry Road right-of-way (1) by a curve to the right with a radius of 22.00 feet for a distance of 19.50 feet, (2) by a curve to the left with a radius of 865.47 feet for a distance of 80.17 feet, (3) by a curve to the right with a radius of 710.00 feet for a distance of 76.38 feet, thence leaving the right of way of Hammonds Ferry Road and, (4) North 85 degrees 43 minutes 47 seconds East 165.81 feet, (5) South 36 degrees 58 minutes 15 seconds East 148.54 feet, to the northern side of Hollins Ferry Road, thence binding on the north side of said road, (6) South 85 degrees 43 minutes 47 seconds West 125.00 feet, to the point of beginning;

Containing a net area of 18,803 square feet, or 0.43 acres of land, more or less.

STATE OF MARYLAND
REGISTERED
PROFESSIONAL ENGINEER

9/16/02

#035

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

August 7, 2003

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: 04-035-SPHXA
3023 Hammonds Ferry Road
N/east corner of Hammonds Ferry Road and Hollins Ferry Road
13th Election District – 1st Councilmanic District
Legal Owner: Shalin Enterprises, Shnyis Pandigan

Special Hearing to permit an amendment to site plans and orders in case numbers: 65-316-RC and 83-48-X to permit a fuel service station in combination with a convenience store of 1, 709 square feet and carry out 286 square feet in the existing building. Variance to permit landscape transition areas as small as 3 feet in lieu of the required 10 feet from a public right-of-way and 0 feet in lieu of the required 6 feet. To waive vegetation requirements under the landscape manual for automotive uses. To co-permit a fuel service station on combination with a convenience store of 1, 709 square feet and carry-out restaurant of 386 square feet in existing building on a lot size f 18, 804 square feet in lieu of the required 23, 524 square feet. Special Exception to permit use in combination with a fuel service station of a convenience store of 1, 702 square feet and a carry-out restaurant of 286 square feet.

Hearings: Wednesday, September 24, 2003, at 10:00 a.m., in Room 407, County Courts Building, 401 Bosley Avenue

Timothy Kotroco
Director

TK:klm

C: John Gontrum, Whiteford, Taylor & Preston, 210 W. Pennsylvania Av., Towson 21204
Shalin Enterprises, 3023 Hammonds Ferry Road, Baltimore 21227

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, SEPTEMBER 9, 2003.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed with Soybean Ink
on Recycled Paper

TO: PATUXENT PUBLISHING COMPANY
Tuesday, September 9, 2003 Issue - Jeffersonian

Please forward billing to:
George Panchigar
3023 Hammonds Ferry Road
Baltimore, MD 21227

443-506-2600

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: 04-035-SPHXA
3023 Hammonds Ferry Road
N/east corner of Hammonds Ferry Road and Hollins Ferry Road
13th Election District – 1st Councilmanic District
Legal Owner: Shalin Enterprises, Shnyis Pandigan

Special Hearing to permit an amendment to site plans and orders in case numbers: 65-316-RC and 83-48-X to permit a fuel service station in combination with a convenience store of 1, 709 square feet and carry out 286 square feet in the existing building. Variance to permit landscape transition areas as small as 3 feet in lieu of the required 10 feet from a public right-of-way and 0 feet in lieu of the required 6 feet. To waive vegetation requirements under the landscape manual for automotive uses. To co-permit a fuel service station on combination with a convenience store of 1, 709 square feet and carry-out restaurant of 386 square feet in existing building on a lot size f 18, 804 square feet in lieu of the required 23, 524 square feet. Special Exception to permit use in combination with a fuel service station of a convenience store of 1, 702 square feet and a carry-out restaurant of 286 square feet.

Hearings: Wednesday, September 24, 2003, at 10:00 a.m., in Room 407, County Courts Building, 401 Bosley Avenue

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL 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.

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: #04-035-SPHXA
3023 Hammonds Ferry Road
N/east corner of Hammonds Ferry Road and Hollins Ferry Road
13th Election District - 1st Councilmanic District
Legal Owner(s): Shalin Enterprises, Shnyis Pandigan

Special Hearing: to permit an amendment to site plans and orders in case numbers: 65-316-RC and 83-48-X to permit a fuel service station in combination with a convenience store of 1,709 square feet and carry out 286 square feet in the existing building. **Variance:** to permit landscape transition areas as small as 3 feet in lieu of the required 10 feet from a public right-of-way and 0 feet in lieu of the required 6 feet. To waive vegetation requirements under the landscape manual for automotive uses. To co-permit a fuel service station on combination with a convenience store of 1,709 square feet and carry-out restaurant of 386 square feet in existing building on a lot size of 18,804 square feet in lieu of the required 23,524 square feet. **Special Exception:** to permit use in combination with a fuel service station of a convenience store of 1,702 square feet and a carry-out restaurant of 286 square feet.

Hearing: Wednesday, September 24, 2003 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT/9/674 Sept. 9 C625550

CERTIFICATE OF PUBLICATION

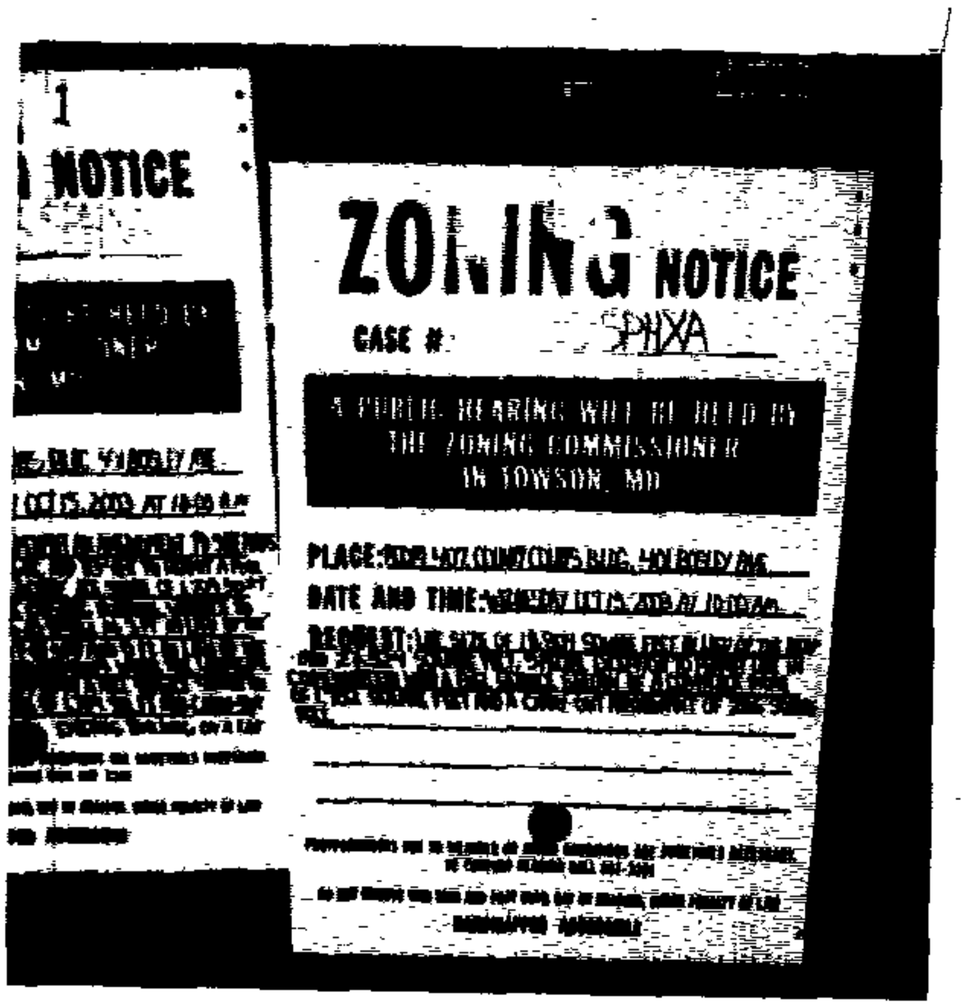
9/11/, 2003

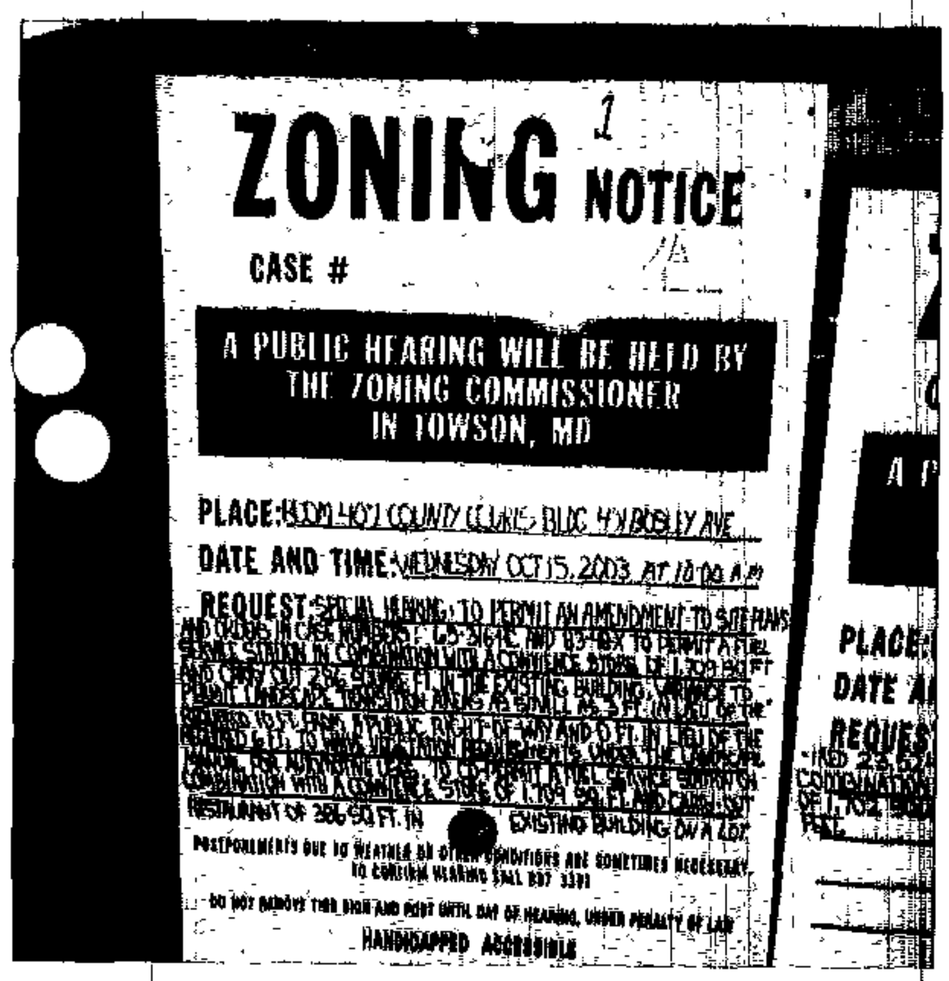
THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 9/9/, 2003.

- [x] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING


1
NOTICE
ZONING NOTICE
CASE #: SPHXA
A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD
PLACE:
DATE AND TIME:
REQUEST:


ZONING 1 NOTICE
CASE #
A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD
PLACE: 105 W. CHESAPEAKE AVE., TOWSON, MD 21204
DATE AND TIME: WEDNESDAY, OCT. 15, 2003 AT 10:00 A.M.
REQUEST: SPECIAL HEARING: TO PERMIT AN AMENDMENT TO SITE PLANS AND ORDERS IN CASE NUMBERS: 85-396-X AND 93-188-X TO PERMIT A FUEL SERVICE STATION IN COMBINATION WITH A CONVENIENCE STORE OF 1,709.50 SQ. FT. AND ONLY SEAT 256 SQUARE FT. IN THE EXISTING BUILDING; VARIANCE TO PERMIT LANDSCAPE TERMINAL ISLANDS AS SMALL AS 5 FT. IN LENGTH OF THE REQUIRED 9 FT.; TO WAIVE LANDSCAPE REQUIREMENTS ALONG THE PUBLIC RIGHT-OF-WAY AND 5 FT. IN LIEU OF THE REQUIRED 10 FT. TO WAIVE LANDSCAPE REQUIREMENTS ALONG THE PUBLIC RIGHT-OF-WAY; AND TO PERMIT A FUEL SERVICE STATION IN COMBINATION WITH A CONVENIENCE STORE OF 1,709.50 SQ. FT. AND ONLY SEAT RESTAURANT OF 256.50 FT. IN EXISTING BUILDING ON A LOT.
POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY. TO CONFIRM HEARING CALL 887-3391
DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING, UNDER PENALTY OF LAW
HANDICAPPED ACCESSIBLE

CERTIFICATE OF POSTING

RE: Case No.: 04-035-SPHXA

Petitioner/Developer: SHALIN ENT.
SHNYIS PANDIGAN

Date of Hearing/Closing: Oct. 15, 2003

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

ATTN: Becky Hart {(410) 887-3394}

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:

3023 HAMMONDS FERRY RD

The sign(s) were posted on 9/27/03
(Month, Day, Year)

Sincerely,

POSTED TWO SIGNS BECAUSE OF LENGTH OF SIGN.

9/27/03
(Signature of Sign Poster) (Date)

SSG Robert Black
(Print Name)

1508 Leslie Road
(Address)

Dundalk, Maryland 21222
(City, State, Zip Code)

(410) 282-7940
(Telephone Number)

4269

APPEAL SIGN POSTING REQUEST

CASE NO.: 04-035-SPHXA

SHALIN ENTERPRISES

3023 HAMMONDS FERRY ROAD, BALTIMORE, MD 21227

13TH ELECTION DISTRICT APPEALED: 11/19/2003

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

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

CERTIFICATE OF POSTING

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

Attention: Kathleen Bianco
Administrator

RE: CASE NO.: 04-035-SPHXA

Petitioner/Developer:

SHALIN ENTERPRISES

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

3023 HAMMONDS FERRY ROAD, BALTIMORE, MD 21227

The sign was posted on 1/6, 200~~3~~4

By: Gary Freund
(Signature of Sign Poster)

GARY FREUND
(Printed Name)

APPEAL SIGN POSTING REQUEST

CASE NO.: 04-035-SPHXA

SHALIN ENTERPRISES

3023 HAMMONDS FERRY ROAD, BALTIMORE, MD 21227

13TH ELECTION DISTRICT APPEALED: 11/19/2003

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

Department of Permits and Development Management

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

Baltimore County

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

November 26, 2003

RECEIVED
DEC 0 2 2003
BALTIMORE COUNTY
BOARD OF APPEALS

Mr. John Gontrom
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

Dear Mr. Gontrum:

RE: Case : 04-035, 3023 Hammonds Ferry Road

Please be advised that an appeal of the above-referenced case was filed in this office on November 19, 2003. 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,

Timothy Kotroco
Director

KT:rlh

c: Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Shalin Enterprises, Inc.
Michael Tanczyn, 606 Baltimore Avenue, Suite 106, Towson 21204

Printed 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

November 1, 2005

NOTICE OF ASSIGNMENT /Day #2

CASE #: 04-035-SPHXA

IN THE MATTER OF: SHALIN ENTERPRISES, INC. –Petitioner /Legal Owner 3022 Hammonds Ferry Road
13th Election District; 1st Election Distirct

11/10/2003 – Z.C.'s Order in which requested zoning relief was **GRANTED** with restrictions.

Day #2 from 10/05/04
which was continued on 1/11/05 for reasons as stated, has been reassigned to the following date and time upon confirmation of availability of counsel and the sitting Board members; and has been

REASSIGNED FOR: TUESDAY, DECEMBER 20, 2005 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 : Michael P. Tanczyn, Esquire
Appellants /Protestants : Robert Newell
Frank Ashley
Shantel Brooks
Cloverland Farms Dairy t/a Royal Farms
Bill Burnley
Wayne Hayes

Counsel for Petitioner /Legal Owner : John B. Gontrum, Esquire
Petitioner /Legal Owner : Shrgyas Panchigar /Shalin Enterprises

Patrick Richardson /Richardson Engineering
Stan Sobotka

Office of People's Counsel
Pat Keller, Planning Director
William J. Wiseman III, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

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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

Pd 20 9/21/04 - Reg. of Deeds

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

April 9, 2004

NOTICE OF ASSIGNMENT

CASE #: 04-035-SPHXA

IN THE MATTER OF: SHALIN ENTERPRISES, INC. –Petitioner /Legal Owner 3022 Hammonds Ferry Road
13th Election District; 1st Election Distirct

11/10/2003 – Z.C.'s Order in which requested zoning relief was **GRANTED** with restrictions.

ASSIGNED FOR: **TUESDAY, JUNE 8, 2004 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 : Michael P. Tanczyn, Esquire
Appellants /Protestants : Robert Newell
Frank Ashley
Shantel Brooks
Cloverland Farms Dairy t/a Royal Farms
Bill Burnley
Wayne Hayes

Counsel for Petitioner /Legal Owner : John B. Gontrum, Esquire
Petitioner /Legal Owner : Shrgyas Panchigar /Shalin Enterprises

Patrick Richardson /Richardson Engineering

Stan Sobotka

Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

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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

PP'd to 10/05/04 req. of Counsel for petitioner

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

April 22, 2004

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 04-035-SPHXA **IN THE MATTER OF: SHALIN ENTERPRISES, INC. –Petitioner /Legal Owner** 3022 Hammonds Ferry Road
13th Election District; 1st Election Distirct

11/10/2003 – Z.C.'s Order in which requested zoning relief was **GRANTED** with restrictions.

which was assigned to be heard on 6/08/04 has been **POSTPONED** at the request of Counsel for Appellants /Protestants due to Court of Special Appeals schedule conflict; and has been

REASSIGNED FOR: **TUESDAY, SEPTEMBER 21, 2004 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

Kathleen C. Bianco
Administrator

T/c from Chris Powlson 4/29. will req. PP. Gontrum away this week.

nts	: Michael P. Tanczyn, Esquire
its	: Robert Newell
	Frank Ashley
	Shantel Brooks
	Cloverland Farms Dairy t/a Royal Farms
	Bill Burnley
	Wayne Hayes
ner	: John B. Gontrum, Esquire
ner	: Shrgyas Panchigar /Shalin Enterprises
Engineering	

Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, 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

May 4, 2004

SECOND NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 04-035-SPHXA **IN THE MATTER OF: SHALIN ENTERPRISES, INC. –Petitioner /Legal Owner** 3022 Hammonds Ferry Road
13th Election District; 1st Election Distirct

11/10/2003 – Z.C.'s Order in which requested zoning relief was **GRANTED** with restrictions.

which was reassigned to be heard on 9/21/04 has been **POSTPONED** at the request of Counsel for Petitioner due to schedule conflict (Mr. Gontrum scheduled to be away week of 9/20/04); and has been

REASSIGNED FOR: **TUESDAY, OCTOBER 5, 2004 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 : Michael P. Tanczyn, Esquire
Appellants /Protestants : Robert Newell
Frank Ashley
Shantel Brooks
Cloverland Farms Dairy t/a Royal Farms
Bill Burnley
Wayne Hayes

Counsel for Petitioner /Legal Owner : John B. Gontrum, Esquire
Petitioner /Legal Owner : Shrgyas Panchigar /Shalin Enterprises

Patrick Richardson /Richardson Engineering
Stan Sobotka

Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, 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 7, 2004

NOTICE OF ASSIGNMENT /Days 2 and 3

CASE #: 04-035-SPHXA

IN THE MATTER OF: SHALIN ENTERPRISES, INC. –Petitioner /Legal Owner 3022 Hammonds Ferry Road
13th Election District; 1st Election Distirct

11/10/2003 – Z.C.'s Order in which requested zoning relief was **GRANTED** with restrictions.

Day #2 from 10/05/04

ASSIGNED FOR: **TUESDAY, JANUARY 11, 2005 at 10:00 a.m. /Day #2; and ~~WEDNESDAY, JANUARY 19, 2005 at 10 a.m. /Day #3~~**

pulled see file notes

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 : Michael P. Tanczyn, Esquire
Appellants /Protestants : Robert Newell
Frank Ashley
Shantel Brooks
Cloverland Farms Dairy t/a Royal Farms
Bill Burnley
Wayne Hayes

Counsel for Petitioner /Legal Owner : John B. Gontrum, Esquire
Petitioner /Legal Owner : Shrgyas Panchigar /Shalin Enterprises

Patrick Richardson /Richardson Engineering
Stan Sobotka

Office of People's Counsel
Pat Keller, Planning Director
William J. Wiseman III, Zoning Commissioner
Timothy M. Kotroco, 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

December 21, 2005

NOTICE OF ASSIGNMENT / Confirmed Dates

CASE #: 04-035-SPHXA **IN THE MATTER OF: SHALIN ENTERPRISES, INC. –Petitioner /Legal Owner** 3022 Hammonds Ferry Road
13th Election District; 1st Election Distirct

11/10/2003 – Z.C.'s Order in which requested zoning relief was **GRANTED** with restrictions.

The subject matter has been scheduled for hearing anew on 1/18/06 and 1/19/06 (morning only on 1/19) as confirmed with Counsel on 12/20/05; and has been

ASSIGNED FOR: WEDNESDAY, JANUARY 18, 2006 at 9:00 a.m. /Day #1 (revised)
AND THURSDAY, JANUARY 19, 2006 at 9:00 a.m. /Day #2 (am only)

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

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

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

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 : Michael P. Tanczyn, Esquire
Appellants /Protestants : Robert Newell
Frank Ashley
Shantel Brooks
Cloverland Farms Dairy t/a Royal Farms
Bill Burnley
Wayne Hayes

Counsel for Petitioner /Legal Owner : John B. Gontrum, Esquire
Petitioner /Legal Owner : Shrgyas Panchigar /Shalin Enterprises
Patrick Richardson /Richardson Engineering
Stan Sobotka

Office of People's Counsel
Pat Keller, Planning Director
William J. Wiseman III, Zoning Commissioner
Timothy M. Kotroco, 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

January 20, 2006

NOTICE OF DELIBERATION

IN THE MATTER OF:

SHALIN ENTERPRISES – Petitioner /Legal Owner
Case No. 04-035-SPHXA

Having heard this matter on 1/18/06 and 1/19/06, public deliberation has been scheduled for the following date /time:

DATE AND TIME : THURSDAY, MARCH 2, 2006 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Closing briefs are due on Tuesday, February 21, 2006
(Original and three [3] copies)

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellants /Protestants : Michael P. Tanczyn, Esquire
Appellants /Protestants : Robert Newell
Frank Ashley
Shantel Brooks
Cloverland Farms Dairy t/a Royal Farms
Bill Burnley
Wayne Hayes

Counsel for Petitioner /Legal Owner : John B. Gontrum, Esquire
Petitioner /Legal Owner : Shrgyas Panchigar /Shalin Enterprises
Patrick Richardson /Richardson Engineering
Stan Sobotka

Office of People's Counsel
Pat Keller, Planning Director
William J. Wiseman III, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

FYI: 2-4-5

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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

May 1, 2007

NOTICE OF DELIBERATION -
MOTION FOR RECONSIDERATION

IN THE MATTER OF:

SHALIN ENTERPRISES – Petitioner /Legal Owner
Case No. 04-035-SPHXA

Having heard this matter on 1/18/06 and 1/19/06, public deliberation has been scheduled for the following date /time:

DATE AND TIME : TUESDAY, MAY 15, 2007 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Copies of Motion for Reconsideration filed on 4/26/07 forwarded to Board members (2-4-5) on 4/27/07.

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants : Michael P. Tanczyn, Esquire
Appellants /Protestants : Robert Newell
Frank Ashley
Shantel Brooks
Cloverland Farms Dairy t/a Royal Farms
Bill Burnley
Wayne Hayes

Counsel for Petitioner /Legal Owner : John B. Gontrum, Esquire
Petitioner /Legal Owner : Shrgyas Panchigar /Shalin Enterprises
Patrick Richardson /Richardson Engineering
Stan Sobotka

Office of People's Counsel
Pat Keller, Planning Director
William J. Wiseman III, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

FYI: 2-4-5

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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

September 26, 2003

John Gontrum
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

Dear Mr. Gontrum:

RE: Case Number: 04-035-SPHXA, 3023 Hammonds Ferry Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on July 23, 2003.

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.
Supervisor, Zoning Review

WCR:klm

Enclosures

c: People's Counsel
Shalin Enterprises, 3023 Hammonds Ferry Road, Baltimore 21227

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

DATE: September 25, 2003

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

SUBJECT: Zoning Advisory Committee Meeting
For August 11, 2003
Item Nos. 033, 034, 035, 036, 037,
039, 040, 041, 043, 045, and 046

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

RWB:CEN:jrb

cc: File

Baltimore County
Fire Department

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

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

August 6, 2002

ATTENTION: Rebecca Hart

Distribution Meeting of: August 4, 2003

Item No.: 035

Dear Ms. Hart:

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 Baltimore County Fire Prevention Code, (2000 edition of NFPA 1 & 101), prior to occupancy or beginning of operation.

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

cc: File

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*

State Highway Administration
Driven to Excel
MARYLAND DEPARTMENT OF TRANSPORTATION

Robert L. Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

Date: 8·5·03

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

RE: Baltimore County
Item No. 035 BPR

Dear. Ms. Hart:

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,

Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: September 10, 2003

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

RECEIVED

SEP 11 2003

ZONING COMMISSIONER

SUBJECT: 3032 Hammonds Ferry Road

INFORMATION:

Item Number: 04-035

Petitioner: Shalin Enterprises, Inc.

Zoning: BL-AS

Requested Action: Special Exception/Special Hearing/Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not oppose the petitioner's requests to permit a fuel service station in combination with a convenience store and, to variance the required landscape transition areas provided the following conditions are met:

1. Revise General Note # 10 on the plan to include 'landscapes areas' to the list of features to remain.
2. Revise the subject site plan to show the sidewalks along Hammonds Ferry Road, from the vehicular entrance to the northern property line.

This office **opposes** all requests to waive the landscape requirements adjacent to the public right-of-way for an automotive use. There is adequate space to provide landscaping in the areas along the public right-of-way. A landscape plan should be prepared to supplement the existing planting. Said plan should be submitted this office for review and approval prior to the issuance of any building permits.

Prepared by: Mark A. Cumpton

Section Chief: Lyn Lanham

AFK/LL:MAC:

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Lawrence Stahl, Chairman
County Board of Appeals

DATE: September 10, 2003

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

SUBJECT: 3032 Hammonds Ferry Road – **SECOND REVIEW**

INFORMATION:

Item Number: 04-035

Petitioner: Shalin Enterprises, Inc.

Zoning: BL-AS

Requested Action: Special Exception/Special Hearing/Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning reviewed the petitioner's revised site plan and recommends that the 6 restrictions set by the Zoning Commissioner's Order dated 11/10/2003 be upheld by the Board of Appeals.

Prepared by: Martha Cunningham

Section Chief: Jeff Mayhew

AFK/LL:MAC:

RECEIVED
MAR - 7 2005
BALTIMORE COUNTY
BOARD OF APPEALS

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Lawrence Stahl, Chairman
County Board of Appeals

DATE: September 10, 2003

correct date should be March 4, 2005

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

SUBJECT: 3032 Hammonds Ferry Road – **SECOND REVIEW**

INFORMATION:

Item Number: 04-035

Petitioner: Shalin Enterprises, Inc.

Zoning: BL-AS

Requested Action: Special Exception/Special Hearing/Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning reviewed the petitioner's revised site plan and recommends that the 6 restrictions set by the Zoning Commissioner's Order dated 11/10/2003 be upheld by the Board of Appeals.

Prepared by: Martha A Cummings

Section Chief: Jeff Mayhew

AFK/LL:MAC:

Baltimore County
Fire Department

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

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

August 6, 2002

ATTENTION: Rebecca Hart

Distribution Meeting of: August 4, 2003

Item No.: 035

Dear Ms. Hart:

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 Baltimore County Fire Prevention Code, (2000 edition of NFPA 1 & 101), prior to occupancy or beginning of operation.

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

cc: File

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
CLOSING BRIEFS – SHALIN ENTERPRISES

DATE: February 23, 2006

TO: L. Stahl
W. Grier
M. Brassil

FROM: Kathi

SUBJECT: Shalin Enterprises /Case No. 04-035-SPHXA

Attached are copies of the following filed this date:

- Petitioner's Memorandum filed by John Gontrum; and
- Protestants' Memorandum filed by Michael Tanczyn.

Public deliberation is scheduled for Thursday, March 2, 2006 at 9:00 a.m.

For Margie and Larry, please note that the 10 a.m. case (scheduled to following this deliberation) has been pulled.

Please call me if you have any questions.

kathi

Attachments

NOTE: Copy of memos to L. Stahl in office on 2/23/06.

From: Linda Fliegel
To: Kathleen Bianco
Date: 4/20/2007 3:31:06 PM
Subject: Shalin Enterprises

Dear Kathi,

Mr. Tanczyn called today to say that he had delivered a letter to our office in June of 2006 regarding an agreement that was reached with respect to a particular part of our Order. He stated that he would fax a copy of this letter to our office, and that he would be more than willing to prepare a Motion for Reconsideration if necessary.

If the Order is faxed before I leave today, I will place it in your mail folder.

I hope your time off was enjoyable!

L

Spoke w/ L. Stahl 4/24/07
need motion to revise -

4/25/07 - T/C to Mike re need for motion

from 4/26, to Bianca 4/27.
Hearing on 5/15/07 @ 9:00 am
notice for 5/01/07

APPEAL

Petition for Special Hearing
Petition for Special Exception
Petition for Variance
3022 Hammonds Ferry Road
N/east corner of Hammonds Ferry Road and Hollins Ferry Road
13th Election District – 1st Election District
SHALIN ENTERPRISES – L/O

Case No.:04-035-SPHXA

✓ Petition for Special Hearing, Special Exception and Variance (7/23/03)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (August 7, 2003)

✓ Certification of Publication (9/9/03)

✓ Certificate of Posting (9/27/03) by SSG Robert Black

✓ Entry of Appearance by People's Counsel (8/8/03)

✓ Petitioner(s) Sign-In Sheet
One Sheet

✓ Protestant(s) Sign-In Sheet
None

✓ Citizen(s) Sign-In Sheet
None

✓ Zoning Advisory Committee Comments

✓ Petitioners' Exhibit
1. Plan to Accompany Petition for Special Exception and Variance

✓ Protestants' Exhibits:
None

✓ Miscellaneous (Not Marked as Exhibit)
1. Photographs 2A-2F

✓ Zoning Commissioner's/Zoning Commissioner's Order () 11/10/03 Granted w/Restrictions

✓ Notice of Appeal received on November 19, 2003 by Michael Tanczyn, Esq on behalf of Newell, Ashley, Brooks, Cleveland, Burkley & Hayes

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Mr. John Gontrum, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson 21204
Michael Tanczyn, 606 Baltimore Avenue, Suite 106, Towson 21204

SHRGYAS PANCHIGAR
SHALIN ENTERPRISES INC
3023 HAMMONDS FERRY ROAD
BALTIMORE MD 21227

MICHAEL P. TANCZYN, ESQUIRE
SUITE 106
606 BALTIMORE AVENUE
TOWSON, MD 21204

PATRICK RICHARDSON
RICHARDSON ENGINEERING
730 W PADONIA ROAD, S 101
COCKEYSVILLE, MD 21211

JOHN B. GONTRUM
WHITEFORD TAYLOR AND PRESTON
210 W PENNSYLVANIA AVENUE
TOWSON MD 21204

STAN SOBOTKA
3611 ROLAND AVENUE
BALTIMORE, MD 21211

Case No. 04-035-SPHXA

In the Matter of: *Shalin Enterprises, Inc.* – Legal Owner /Petitioner

SPH – To approve amendment to 65-316-RX and 83-48-X to permit fuel service station use in combo w/convenience store 1709 sf and carryout of 286 sf within existing building.
SE – To approve use in combination pursuant to 405.E of BCZR.
VAR – LTA; vegetation requirements; fuel svce station in combo w/convenience store on lot size of 18,804 sf ilo minimum required 23,524 sf.

11/10/2003 – Z.C.'s decision in which requested zoning relief was GRANTED with restrictions.

3/25/04 – Letter from John B. Gontrum, Esquire, counsel for Petitioner – requesting consideration of earliest hearing date possible – client worked with community; equipment ordered; appeal filed by adjacent business.

4/09/04 – Notice of Assignment sent to following; scheduled for hearing on Tuesday, June 8, 2004 at 10 a.m.:

Michael P. Tanczyn, Esquire
Robert Newell
Frank Ashley
Shantel Brooks
Cloverland Farms Dairy t/a Royal Farms
Bill Burnley
Wayne Hayes
John B. Gontrum, Esquire
Shrgyas Panchigar /Shalin Enterprises
Patrick Richardson /Richardson Engineering
Stan Sobotka
Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

4/13/04 – Letter requesting postponement from 6/08/04 hearing date filed by Michael P. Tanczyn, Esquire; holding this date, among others, for Court of Special Appeals (Hines et al v French et al, #01784) to a date after 7/01/04.

4/22/04 – Notice of PP and Reassignment sent to parties; reassigned for hearing on Tuesday, September 21, 2004 at 10:00 a.m.

4/29/04 – T/C from Chris Loveland – John Gontrum will be away week of 9/20/04; requesting postponement of 9/21/04 reassigned hearing. Advised Ms. Loveland that 10/05/04 would be next available date for hearing. Will follow up with letter requesting postponement (via FAX).

4/30/04 – Letter via FAX from John Gontrum, Esquire – requesting postponement from 9/21/04 to 10/05/04.

5/04/04 – Second Notice of PP and Reassignment sent to parties; case reassigned to Tuesday, October 5, 2004 at 10:00 a.m.

10/05/04 – Board convened for hearing (Stahl, Brassil, Quinn); concluded day #1; with agreement of counsel, assigned 1/11/05 and 1/19/05 for days 2 and 3. Notice to be sent.

10/07/04 – Notice of Assignment /Days 2 and 3 sent to parties; assigned for Tuesday, January 11, 2005 at 10:00 a.m. /Day #2; and Wednesday, January 19, 2005 at 10:00 a.m. /Day #3. FYI copy to 2-5-6.

1/11/05 – Board convened for hearing (Stahl, Brassil, Quinn); amended plan submitted by Counsel for Petitioner; hearing suspended and continued; upon agreement of counsel, Mr. Gontrum will provide a proposed Order continuing this matter to allow Petitioner to obtain appropriate review and agency comments; to be forwarded back to this Board.

1/12/05 – T/C from Michael Tanczyn, Esquire – proposed Order as submitted by Mr. Gontrum on 1/11/05 via e-mail is okay as prepared. To be signed and issued.

3/07/05 – Second Review by Office of Planning; recommendation that 6 restrictions set by ZC in order dated 11/10/2003 be upheld by Board of Appeals. Copy provided to 2-5-6 this date; copy to counsel via FAX.

9/26/05 – Revised plan to accompany Petition for Special Exception "in the Hammonds Ferry Exxon matter" submitted by Mr. Gontrum via letter dated 9/26/05.

9/27/05 – T/C to Mr. Gontrum – only comments received re revised plan were from Planning; Order referenced review /comment also by PDM and DPW. Were there additional comments in this matter?

10/12/05 – Per Mr. Gontrum, all comments are available. He will assure that a copy of same is received by the Board; the matter will then be rescheduled for hearing; same panel – 2-5-6.

10/25/05 – Letter from Mr. Gontrum – providing Development Plans Review /PDM approvals.

10/26/05 – Comments from the Office of Planning, with date of memos corrected to reflect 3/04/05.

11/01/05 – Upon confirmation of availability of counsel and respective panel members for this case, the case has been set for hearing day #2 for Tuesday, December 20, 2005 at 10:00 a.m. FYI copies to 2-5-6 with copy of amended plan.

12/15/05 – Letter from J. Gontrum – revised site plan as forwarded to DPW, PDM, and Planning.

12/20/05 – Board convened for hearing in this matter (Stahl, Brassil, Quinn). Prior to hearing and going on the record, counsel advised that an additional day would be necessary in this matter. Mr. Quinn has resigned from the Board and will no longer be sitting on cases effective 12/31/05, with a final work date (for purposes of deliberating and completing cases already begun) of 2/28/06. Therefore, after discussion with counsel, the panel members, and after discussion by counsel with their respective clients, the matter was postponed from today's date, to be assigned two additional dates for hearing anew in this matter (holding 1/18/06 at 9 a.m.; possibly 1/19/06 at 9 a.m. /morning; and/or 1/25/06, all dates confirmed with counsel and the Board).

12/21/05 – Notice of Assignment for hearing anew /days 1 and 2 sent to parties upon confirmation; assigned for Wednesday, January 18, 2006 at 9:00 a.m. (as requested) and Thursday, January 19, 2006 at 9:00 a.m. (morning session only, as requested); fyi copy to panel of 2-4-5.

1/18/06 – Board convened for hearing (Stahl, Grier, Brassil); concluded day #1 this date; to reconvene on Thursday, January 19, 206 at 9:00 a.m. for day #2 (1/2 day only).

1/19/06 – Board convened for day #2 (2-4-5); concluded this date. Memos due from counsel 2/21/06; deliberation on 3/02/06; notice to be sent.

1/20/06 – Notice of Deliberation sent to parties; assigned for Thursday, March 2, 2006 at 9:00 a.m. FYI copy to 2-4-5.

2/23/06 – Petitioner's Memorandum filed by John Gontrum; Protestants' Memorandum filed by Michael Tanczyn. Copy to L. Stahl this date; copies mailed to W. Grier and M. Brassil this date.

3/02/06 – Board convened for public deliberation (Stahl, Grier, Brassil); granted requested relief w/restrictions. Written Opinion and Order to be issued; appellate period to run from date of written Order. (4)

6/23/06 – Letter from Michael Tanczyn – re post-hearing negotiations between parties and possible inclusion as part of final order of the Board, which has not yet been issued.

NOTE: PER L STAHL – DECISION CANNOT BE CHANGED AT THIS TIME; MUST WAIT FOR ISSUEANCE OF ORDER.
ORDER ISSUED BY THE BOARD ON 4/19/07

4/26/07 – Motion for Reconsideration filed by Michael P. Tanczyn, Esquire, on behalf of Protestants – understanding reached between Petitioners and Protestants – Petitioner agreed to withdraw request for guard rail per letter to the Board dated 6/22/07.

4/27/07 – Copy of Motion and copy of Board's order sent this date to 2-4-5 for review – will need public deliberation scheduled – inquired within cover memo – could this panel be here at 9 a.m. on 5/15/07; 2 and 4 sitting at 10:30 a.m.; also 9:30 a.m. AHB appeal; need 5 for 9 a.m., along with 2 and 4, to deliberate this Motion. Will follow up with a call to 2-4-5 first thing week of 4/30/07.

5/01/07 – Notice of Deliberation sent to parties; assigned for Tuesday, May 15, 2007 at 9:00 a.m. Confirmed availability of 2-4-5 for 9 a.m. on 5/15/07.

Department of Permits and Development Management

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

Baltimore County

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

July 18, 2005

Richard Richardson
110 Old Padonia Road, Suite LC
Cockeysville, MD 21030

Re: Shalin Enterprises, Inc.; 3023 Hammonds Ferry Rd; Case # 04-035-SPHXA; 13th Election District

Dear Mr. Richardson:

Your recent letter to the Zoning Office was forwarded to me for reply. Your request for the inquiry was to be reassured that the subject site meets the minimum lot size requirements for a fuel service station with a convenience store as required per Section 405.4.E Baltimore County Zoning Regulations (BCZR).

Based upon the submitted site plan (revised 6/13/2005), and specifically, the calculations shown under "General Notes" # 9, it has been determined that the subject site does meet the requirements of Section 405.4.E BCZR

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, I can be reached at 410-887-3391.

Sincerely,

Bruno Rudaitis
Planner II
Zoning Review

br:BR

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

Printed on Recycled Paper

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

COPY

IN THE MATTER OF: Shalin Enterprises, Inc
3023 Hammonds Ferry Rd
Baltimore, MD 21227
Case No.: 04-035-SPHXA

DATE: March 2, 2006

BOARD/PANEL Lawrence M. Stahl
Dr. Margaret Brassil
John P. Quinn

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: To deliberate the following:

Petition for Special Hearing filed by Shalin Enterprises requesting an amendment to site plans and orders in case numbers 65-316RX and 83-48-X to permit a fuel service station in combination with convenience store of 1,709 square feet and carry out of 286 square feet in the existing building

Petition for Special Exception filed by Shalin Enterprises requesting a use in combination with a fuel service station of a convenience store of 1,702 square feet and a carryout restaurant of 286 square feet per Section 405.E

Petition for Variance filed by Shalin Enterprises requesting landscape transition; waive vegetation requirement and building on lot size of 18,804 sq. ft. in lieu of the required 23,524 sq. ft.

Note: On 11/10/2003 the Zoning Commissioner's decision for said zoning relief was *granted* with restrictions.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board addressed the Zoning Commissioner's requirements.
- Existing store is 2,120 sq. ft.
- Petitioner would like to turn part of the existing store (2,120 sq. ft) into a deli (144 sq. ft.).
- Sections 405.6 and 405.4.D. of the B.C.Z.R. were discussed, as well as Bill 172-93.
- Landscape/vegetation – no retention problem (Schultz v. Pritz).
- Trash collection is not to impede traffic flow. (Sec. 502.1B - B.C.Z.R.)
- ATM machine is to be removed.
- Handicapped parking space and ramp would be moved.

- Discuss the repositioning of a guardrail to allow citizens to walk between properties and control traffic.
- Any repositioning of the guardrail would be determined by DEPRM.

DECISION BY BOARD MEMBERS:

FINAL DECISION: After a through review of the facts and law in the above-captioned matter, the Board reached a unanimous decision to *GRANT* the Petitioner's request.

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

Respectfully Submitted

Linda B. Fliegel

Linda B. Fliegel
County Board of Appeals

RE:	PETITION FOR SPECIAL HEARING SPECIAL EXCEPTION & VARIANCE 3023 Hammonds Ferry Road; NE corner Hammonds Ferry Rd & Hollins Ferry Rd 13th Election & 1st Councilmanic Districts Legal Owner(s): Shalin Enterprises, Inc; Shalin Panchigar Petitioner(s)	* * * * * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 04-035-SPHXA

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

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and 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 8th day of August, 2003, a copy of the foregoing Entry of Appearance was mailed to John B. Gontrum, Esquire, Whiteford, Taylor & Preston, LLP, 210 W Pennsylvania Avenue, Suite 400, Towson, MD 21204, Attorney for Petitioner(s).

RECEIVED
AUG 0 8 2003
Per.....

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

IN THE MATTER OF	*	BOARD OF APPEALS
SHALIN ENTERPRISES, INC.	*	OF
Petitioner/Legal Owner	*	BALTIMORE COUNTY
3022 Hammonds Ferry Road 13th Election District; 1st Election District	* *	 CASE NO.: 04-035-SPHXA

* * * * * * *

SUBPOENA

TO:
John Lewis
Office of Zoning
Room 109
County Office Building
111 Chesapeake Avenue
Towson, MD 21204

You are hereby commanded to appear and testify for the Protestants:

on: Tuesday, December 20, 2005 @ 10:00 a.m.

at: County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

This Subpoena was requested by Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland, 21204, 410-296-8823, counsel for the Protestants, and any questions should be referred to that office.

11-23-2005
DATE

Kathleen C. Bianco
Board of Appeals

RECEIVED
NOV 23 2005
BALTIMORE COUNTY
BOARD OF APPEALS

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

November 22, 2005

Board of Appeals of Baltimore County
Attn: Kathy Bianco
Old Courthouse
Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: 3022 Hammonds Ferry Road
Case No.: 04-035-SPHXA

Dear Ms. ~~Bianco~~: Kathy

Enclosed please find a Subpoena for the December 20, 2005 hearing in the above captioned matter. Could you please have it signed, and call us when it is signed? We will pick it up and have it served.

Thank you for your assistance in this matter. Please feel free to contract me should you have any questions.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl
Encl.
cc: client

T/c to Mike 11/25/05 for pick up

RECEIVED
NOV 23 2005
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:	*	BEFORE THE
SHALIN ENTERPRISES, INC. Owner	*	COUNTY BOARD OF APPEALS
3022 Hammonds Ferry Road 13TH Election District	*	OF BALTIMORE COUNTY
1st Councilmanic District	*	CASE NO. 04-035-SPHXA

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

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

TO: Jeffrey W. Long, Deputy Director
Office of Planning
401 Bosley Avenue, Room 406
Towson, Maryland 21204

SERVE ON: Jeffrey W. Long, Deputy Director
Office of Planning
401 Bosley Avenue, Room 406
Towson, Maryland 21204

YOU ARE HEREBY COMMANDED TO:

( ) Personally appear;
( ) Produce documents and/or objects only;
(X) Personally appear and produce documents or objects;

at the Board of Appeals, in Room 49 Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, on **Wednesday, January 18, 2006 and Thursday, January 19, 2006 at 9:00 a.m.**

YOU ARE COMMANDED TO produce the following documents or objects:

1. Any and all documents and records in your possession pertaining to Case NO. 04-035-SPHXA.

RECEIVED
JAN 1 1 2006
BALTIMORE COUNTY
BOARD OF APPEALS

SUBPOENA REQUESTED BY:
John B. Gontrum, Esquire
Whiteford, Taylor & Preston L.L.P.
Suite 400
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2055

The witness named above is hereby ORDERED to so appear before the Hearing Officer. The Board Requests the Private Process Server to issue the summons set forth herein.

Lawrence S. Wescott

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

352778

LOCAL DELIVERY/PICKUP REQUEST

Whiteford, Taylor & Preston, LLP
210 W. Pennsylvania Ave
400 Court Towers
Towson, Maryland 21204

Place a check to indicate whether your request is a delivery or pickup and whether a confirmation is required, fill in each blank to provide delivery information and describe your special requirements.

INSTRUCTIONS: DELIVERY ☒ PICKUP ☐ CONFIRMATION

DATE: 01/11/06 TIME:

CLIENT/MATTER NO. 78743/1 ATTORNEY/SECRETARY: ATC/sll

DELIVERY/PICKUP TIME REQUESTED: 01/11/06

DELIVERY/PICKUP ADDRESS

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

COMPANY:

FLOOR/ROOM NO. BUILDING:

STREET ADDRESS:

CITY: STATE: ZIP:

DESCRIPTION LETTER ☐ PACKAGE ☐ OTHER ☐

SPECIAL INSTRUCTIONS: Please have Board of Appeals sign

RECEIVED
JAN 11 2006
BALTIMORE COUNTY
BOARD OF APPEALS

CONFIRMATION

DATE-STAMPED COPY ☐

Signature of person accepting delivery Lynn B Fleagle
Date: 1/11/06 Time 3:45

Richardson Engineering, LLC

110 Old Padonia Road, Suite LC
Cockeysville, Maryland 21030

tel. 410-560-1502
fax 410-560-0827

December 12, 2005

Attn: Mr. Rahee Famili
Department of Public Works
Developers Review and Approval Section
111 W. Chesapeake Avenue
Towson, MD 21204

Subject: Hammonds Ferry Exxon
Zoning Case 04-035-SPHXA

Dear Mr. Famili:

Attached is a copy of a revised plan for this site. We have gone through several layouts for the interior of the building in order to show compliance with the Zoning Regulations. No other modifications have been made to the plans except for the corresponding changes in notes required by the change in interior uses. You previously reviewed and approved the plan in July 5, 2005. A copy of those comments is attached for your reference.

If you have any questions, please feel free to contact me at any time.

Very truly yours,

Rick Richardson

Patrick C. Richardson, Jr. PE

WHITEFORD, TAYLOR & PRESTON L.L.P.

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

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
SUITE 495
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

JOHN B GONTRUM
DIRECT NUMBER
410-832-2055
JGontrum@wtplaw com

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 339-4058
www.wtplaw.com

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

115 ORONOCO STREET
ALEXANDRIA, VIRGINIA 22314
TELEPHONE 703 836-5742
FAX 703 836-3558

December 15, 2005

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DEC 15 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Via Hand Delivery
Kathleen C. Bianco, Administrator
Board of Appeals for Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204

Re: Hammonds Ferry Exxon
Zoning Case No. 04-035-SPHXA

Dear Ms. Bianco:

Enclosed please find a copy of the revised site plan for the referenced property. As you can see, Richardson Engineering has forwarded the plan to the Department of Public Works, the Department of Permits and Development Management, and to the Baltimore County Office of Planning.

If you have any questions, please don't hesitate to contact me.

Very truly yours,

John B. Gontrum

JBG:sar
Enclosure

WHITEFORD, TAYLOR & PRESTON L.L.P.

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FAX 202 331-0573

115 ORONOCO STREET
ALEXANDRIA, VIRGINIA 22314-1685
TELEPHONE 703 836-5742
FAX 703 836-3558

October 24, 2005

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OCT 25 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Via Hand Delivery
Ms. Kathleen C. Bianco
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

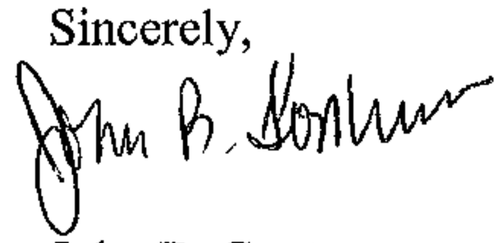
Re: 3023 Hammonds Ferry Road; Case No. 04-035-SPHXA

Dear Ms. Bianco:

Enclosed for the above-referenced file please find approvals from Development Plans Review and the Department of Permits and Development Management.

Please call me with any questions or concerns. Thank you for your assistance with this matter.

Sincerely,



John B. Gontrum

JBG:ac
Enclosures
347279

WHITEFORD, TAYLOR & PRESTON L.L.P.

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October 26, 2005

RECEIVED
OCT 26 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Via Hand Delivery
Ms. Kathleen C. Bianco
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

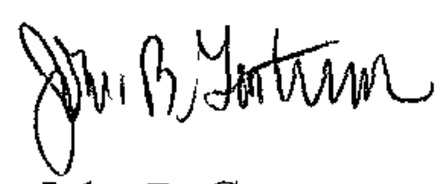
Re: 3023 Hammonds Ferry Road; Case No. 04-035-SPHXA

Dear Ms. Bianco:

Enclosed for the above-referenced file please find comments from the Office of Planning dated March 4, 2005 and July 25, 2005.

Please call me with any questions or concerns. Thank you for your assistance with this matter.

Sincerely,



John B. Gontrum

JBG:ac
Enclosures
347279v2

WHITEFORD, TAYLOR & PRESTON L.L.P.

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FAX 703 836-3558

September 26, 2005

Kathleen C. Bianco, Administrator
Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

RE: ***In the Matter of Shalin Enterprises, Inc.***
Case No. 04-035-SPHXA

Dear Ms. Bianco:

Attached please find four copies of a revised plan to accompany the Petition for Special Exception in the Hammonds Ferry Exxon matter. You may recall that the Board adjourned the prior case in order that we file an amended plan. Copies of this plan have been given to Michael P. Tanczyn, Esquire.

Accordingly, we would appreciate if you would set the case back in on the Board of Appeals docket for the continued hearing under the amended plan.

Your consideration of this matter is deeply appreciated.

Very truly yours,

John B. Gontrum

JBG:sar
Enclosures
Cc: Michael P. Tanczyn, Esq.

345161

RECEIVED
SEP 26 2005
BALTIMORE COUNTY
BOARD OF APPEALS

WHITEFORD, TAYLOR & PRESTON
L.L.P.

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FAX 202 331-0573

1317 KING STREET
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FAX 703 836-0265

JOHN B. GONTRUM
DIRECT NUMBER
410-832-2055
JGontrum@wtplaw.com

March 23, 2004

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

Re: 3023 Hammonds Ferry Road
Shalin Enterprises, Inc. - Petitioner
Appeal Case No.: 04-035 -SPHXA

Dear Ms. Bianco:

We wish to request as prompt a hearing as may be possible in the above referenced zoning appeal for 3023 Hammonds Ferry Road. This appeal was taken on November 19, 2003. We understand that the Board's schedule is very crowded, but our client had worked with the community and had ordered equipment for the carry-out sought to be permitted. The appeal was quite surprising from the adjacent business.

The delay in the resolution of this matter has created quite a burden on my client. We would not anticipate the appeal hearing lasting more than one day, for the site already is fully developed and improved. Any assistance which the Board can render in setting this in for a prompt hearing would be greatly appreciated.

Very truly yours,

John B. Gontrum

cc: Mr. George Panchigar

6/08/04 @ 10 am

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

November 18, 2003

The Honorable Timothy Kotroco, Esquire
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Re: Petitions For Special Hearing, Special Exception & Variance
N/E Corner Hollins Ferry Road & Hammonds Ferry Road
(3023) Hammonds Ferry Road)
13th Election District - 1st Council District
Shalin Enterprises, Inc. - Petitioners
Case No.: 04-035-SPHXA

Dear Mr. Kotroco:

Please enter an appeal to the Board of Appeals from the decision of the Zoning Commissioner, approving the above Petitions, dated November 10, 2003. The appeal should be noted on behalf of the following individuals that I represent:

Mr. Robert Newell, 3934 McDowell Lane, Lansdowne, MD 21227
Mr. Frank Ashley, 4384 Hollins Ferry Road, Lansdowne, MD 21227
Ms. Shantel Brooks, 3163 Kessler Road, Lansdowne, MD 21227
Cloverland Farms Dairy, T/A Royal Farms, 3611 Roland Avenue, Baltimore, MD 21211
Billy Burnley, 3122 Aspen Court, Lansdowne, MD 21227
Wayne Hayes, 2924 Charleston Avenue, Lansdowne, MD 21227

Enclosed you will find our check for costs. Please advise us of all hearing dates.

RECEIVED
NOV 19 2003
Per.....

Very truly yours,

Michael P. Tanczyn, Esquire

RECEIVED
NOV 18 2003
03-5821
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

MPT/cbl
Encl.
cc: clients
John B. Gontrum, Esquire
Lawrence Schmidt

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

June 22, 2006

Board of Appeals of Baltimore County
Attn: Kathy Bianco
Old Courthouse
Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: Shalin Enterprises, Inc.
Case No.: 04-035-SPHXA

Dear Ms. Bianco:

I am authorized by John Gontrum, attorney for the Petitioner, to advise you that pursuant to post-hearing negotiations between the parties, the Petitioner is willing to withdraw its request for a guard rail between its property and that of the adjacent property owner, Royal Farms. Could you please advise the Chairman of the Panel, Mr. Stahl of this development? We are, as you know, still awaiting the Board's decision, and this may be included therein as a post-hearing agreement between the Petitioner and the Protestants, whom I represented.

Thank you for your assistance in this matter. Please feel free to contact me should you have any questions.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl

cc: client
John Gontrum, Esquire (via hand-delivery)

RECEIVED
JUN 2 3 2006
BALTIMORE COUNTY
BOARD OF APPEALS

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

April 12, 2004

RECEIVED
APR 13 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Board of Appeals of Baltimore County
Attn: Kathy Bianco
Old Courthouse
Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: 3022 Hammonds Ferry Road
Case No.: 04-035-SPHXA

Dear Ms. Bianco:

I am in receipt of the Notice of Assignment, scheduling the hearing in the above captioned matter for June 8, 2004 at 10:00 a.m. As June 8, 2004 is one of the hearing dates I am holding for the Court of Special Appeals of Maryland, regarding Hines, et al. v. French, et al, case no.: 01784, I am requesting a postponement of this hearing, for a date after July 1, 2004.

Please advise me of any new hearing dates.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl

cc: client
Protestants
John Gontrum, Esquire
People's Counsel for Baltimore County

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827
Email: mptlaw@verizon.net

April 25, 2007

Board of Appeals of Baltimore County
Attn: Kathy Bianco
Old Courthouse
Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: Shalin Enterprises, Inc.
Case No.: 04-035-SPHXA

Dear Ms. Bianco:

Per your telephone message, enclosed herewith for the Board is a Motion for Reconsideration and proposed Order, which we have copied to counsel of record.

Please feel free to contact me with any questions.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl
Encl.

cc: client
John Gontrum, Esquire
Peter Max Zimmerman, Esquire

RECEIVED
APR 26 2007
BALTIMORE COUNTY
BOARD OF APPEALS

PLEASE PRINT CLEARLY

CASE NAME_____
CASE NUMBER_____
DATE_____

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
RICK RICHARDSON	730 W PADONIA RD	COCKEYSVILLE, MD 21030	REIG@FIVESTONES.COM
SHREYAS PANCHIGAR	2926 W. Almondbury Dr.	Pasadena MD 21122	shreyaspanchigar@hotmail.com.
JOHN GONTRUM			
		Phone un-	
		STAN SOBOTKA	
		3611 Fox Ho RO	1AND Ave
			MD
			21211

photographs
#04-035-5PNXA
(Ex. 2A-2F)

EXO

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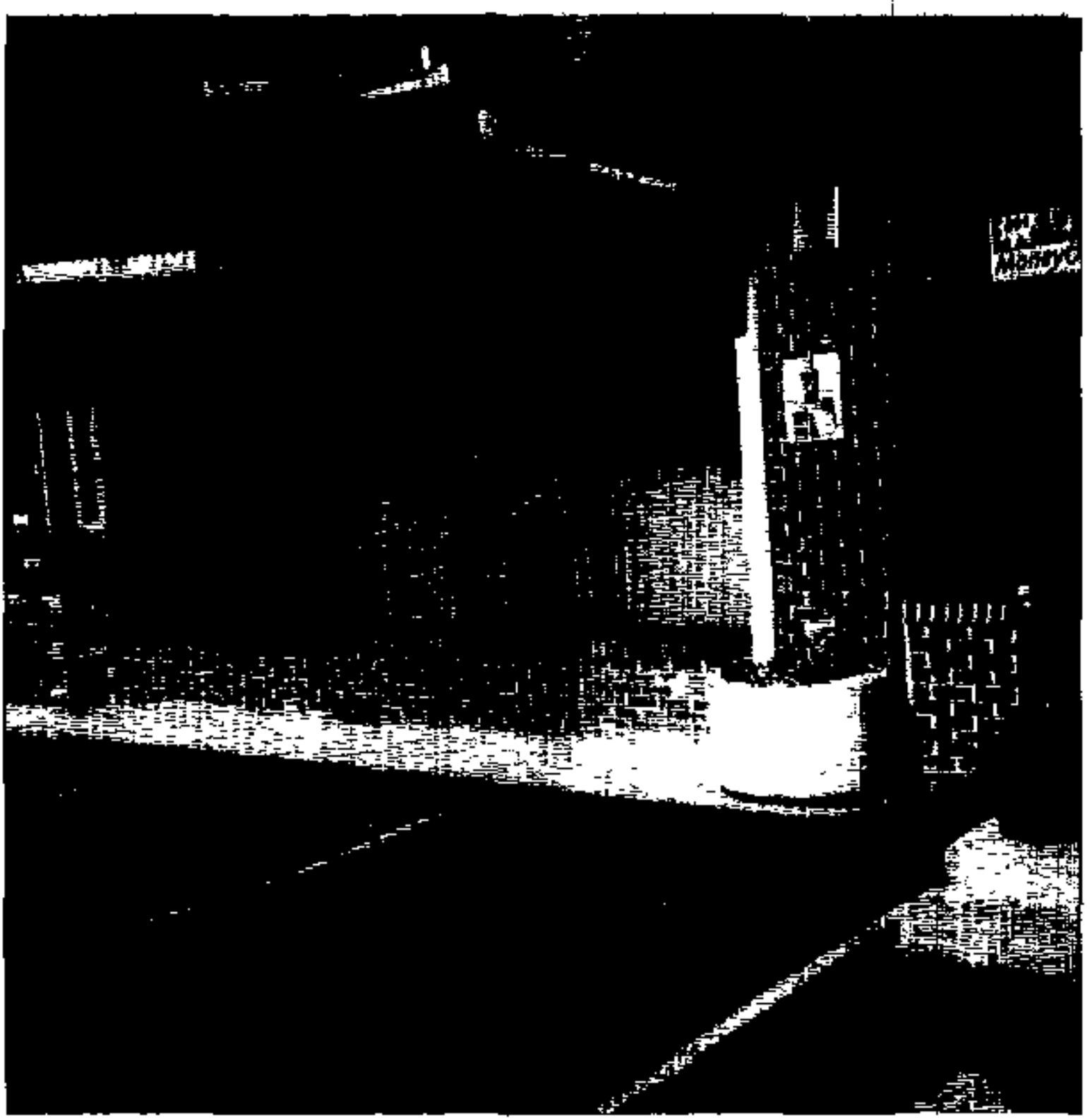
fet 2F



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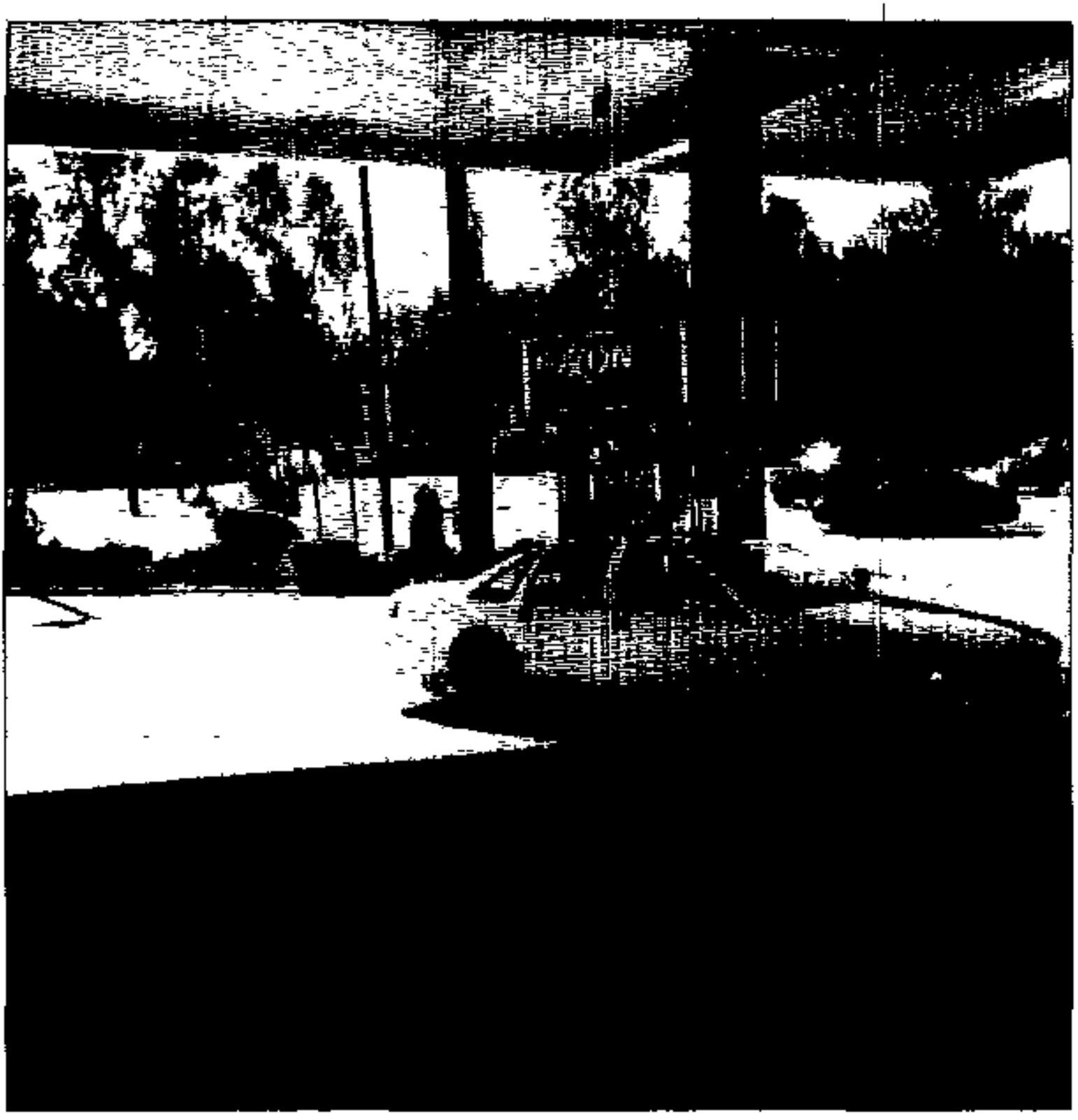

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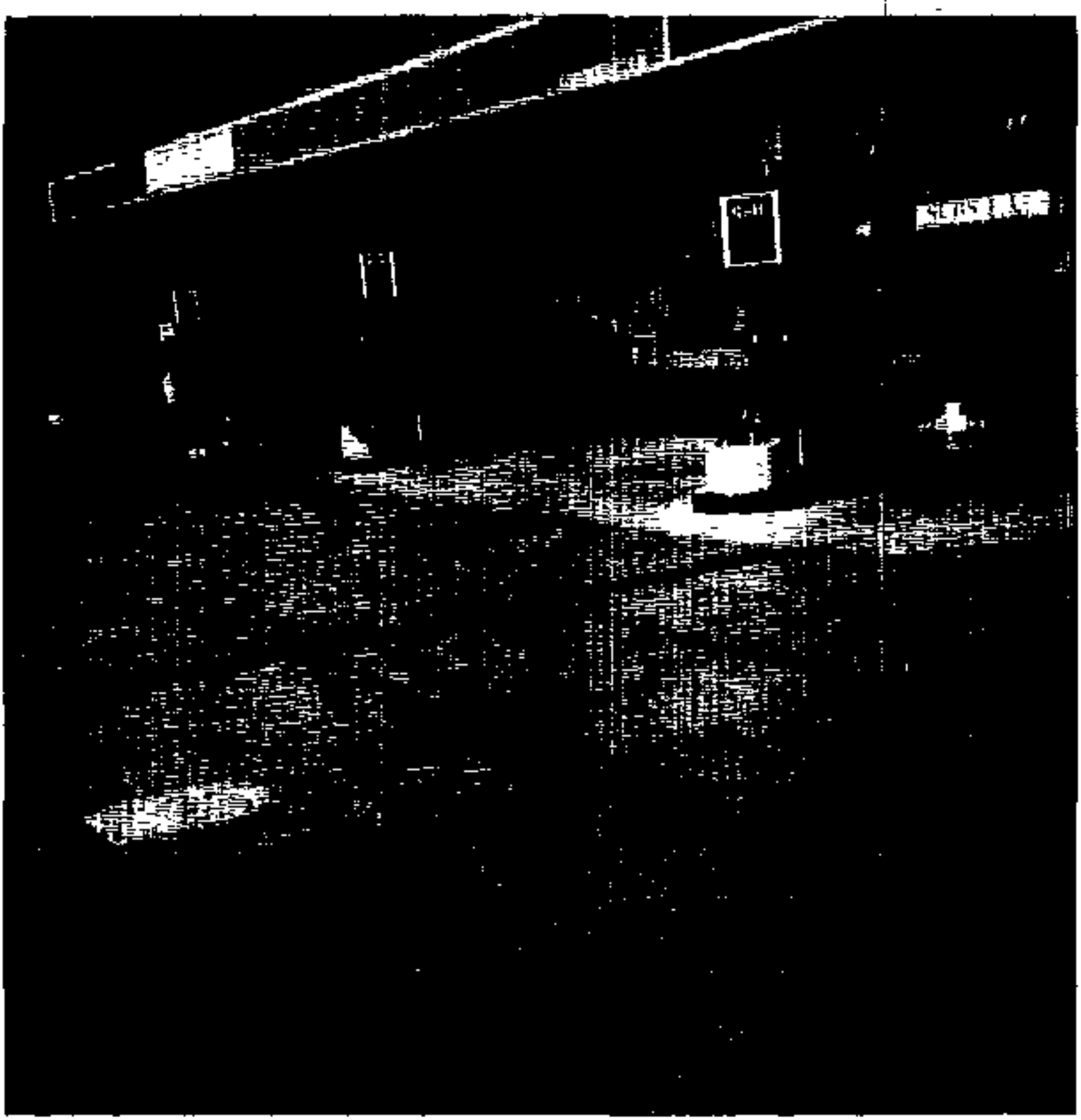

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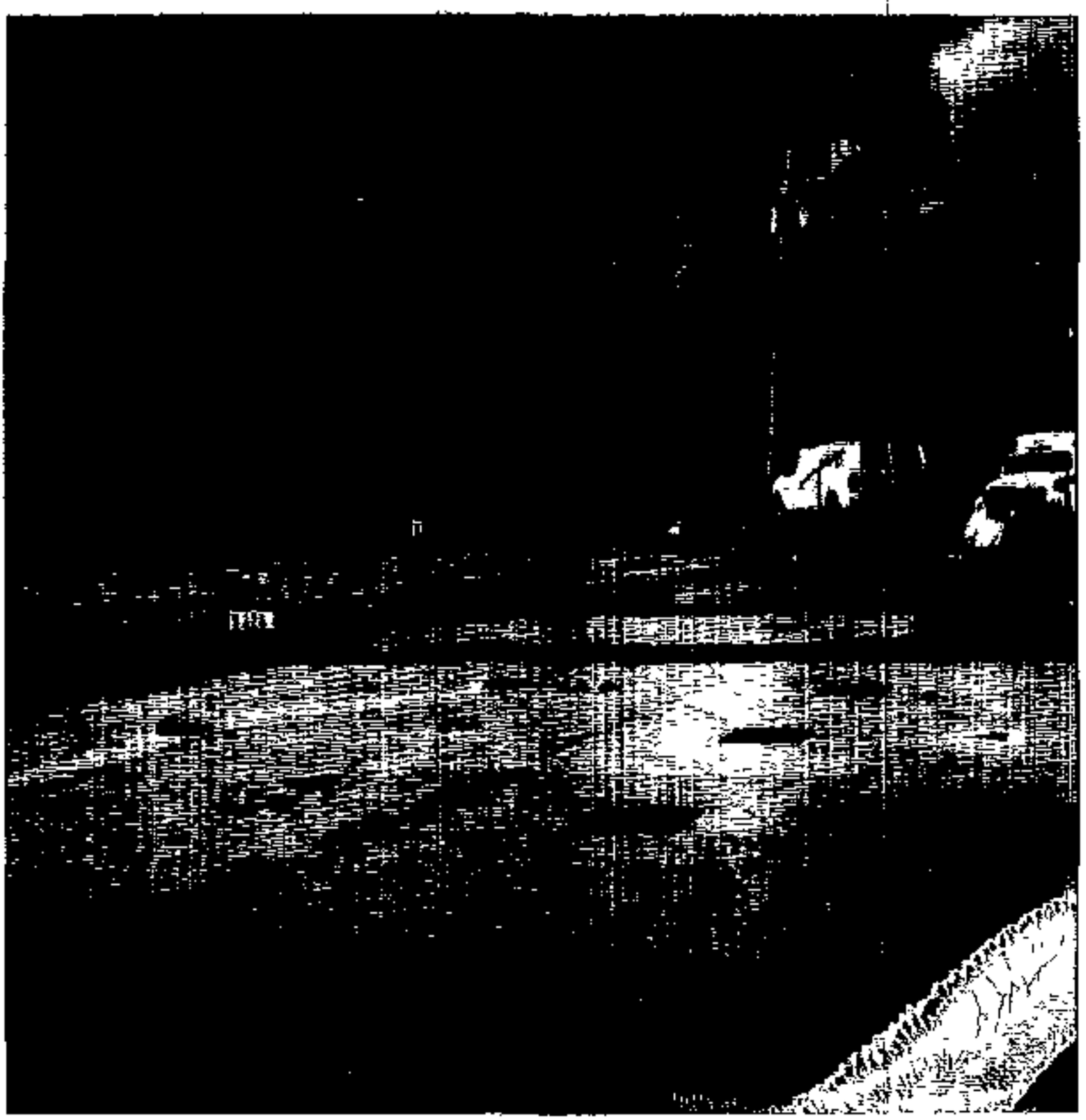

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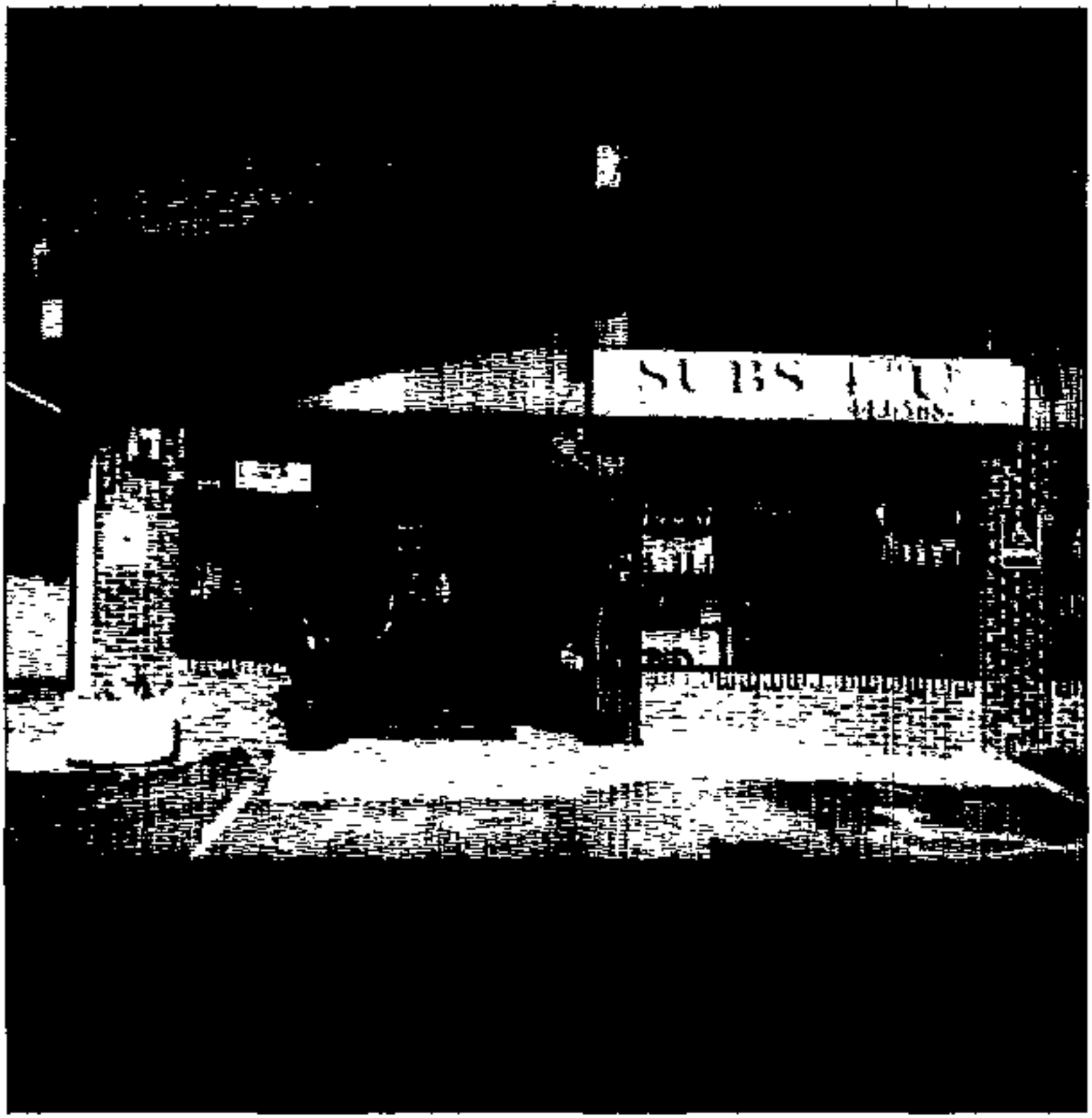
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[redacted]

Pob 2D

Verified 1-18-06
Verified 1/19/06

Joint Exhibits
Shalin

CBA04-035SPHXA 1/18/06

Joint

1A	Petition for SPX in June 1983
1B	ZC hearing in same case 83-48-X
1C	Appeal of Z.C. hearing
1D	Order of dismissal
1E	Photos from evidence
1F	Letter from BC Zoning Plans Adv. Comm
2	Zoning Violation

PETITION FOR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

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 Law and Zoning Regulations of Baltimore County, to use the herein described property for Food Store use in combination with self-service station.

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

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

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

Legal Owner(s):

Contract Purchaser:

(Type or Print Name)

Signature

Arthur L. Decker

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Name, address and phone number of legal owner, con-tract purchaser or representative to be contacted

Name

Address

City and State

Attorney's Telephone No.:

ORDERED By The Zoning Commissioner of Baltimore County this 22nd day of June, 1983, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout said County, that property be posted, and that a public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building, located at 111 W. Chesapeake Avenue in Towson, Baltimore County, on the 19 day of July, 1983, at 9:45 o'clock

DATE June 22, 1983

BY Jack L. Dougherty

Zoning Commissioner

JT 10

RE: PETITION FOR SPECIAL EXCEPTION :
NE/corner of Hammonds Ferry and
Hollins Ferry Roads - 13th Election :
District
Humble Oil & Refining Company - :
Petitioner
NO. 83-48-X (Item No. 259) :

BEFORE THE

ZONING COMMISSIONER

OF

BALTIMORE COUNTY

::: ::: :::

::: ::: :::

The petitioners herein, owner and lessee of the subject property, seek a special exception for a food store as a use in combination with a self-service station, in accordance with the site plan prepared by George William Stephens, Jr. and Associates, Inc., dated May 20, 1982, and marked Petitioners' Exhibit 1. The subject site is located on the northwest corner of Hammonds Ferry and Hollins Ferry Roads, contains 0.458 of an acre, more or less, and is zoned B.L. (Business, Local) with a C.N.S. (Commercial, Neighborhood Shopping) District superimposed thereon. The petition was filed in compliance with the terms and provisions of the Order rendered in Case No. 82-256-V, dated July 1, 1982 (Protestants' Exhibit 1).

Bradley Eirman testified that he leased the self-service Alert gasoline station in 1979. On the advice of his attorney, he decided to sell pet food and use the station's three bay areas for storage. While the patron has his gas tank filled, the pet food may be placed in his car. This operation, which began in 1981, precipitated the zoning violation case.

Theresa Lowry, in opposition to the request, stated that this intersection has an automotive-service station on each of its four corners and that by allowing one to sell anything other than gasoline or a related product would create a proliferation of uses in combination, worsen the traffic problem, and depreciate the properties in the area. She felt that the petitioners had not met the burden of proof required by Section 502.1 of the Baltimore County Zoning Regulations and requested that the special exception be denied.

Section 405.4.D. allows:

"3. 'Carry-out' food shops..." and

"5. Food stores with less than 5,000 square feet of retail sales area..."

Either of these terms could be applied to the petition since Petitioners' Exhibit 1 clearly indicates the retail sales area is less than 5,000 square feet. The question is raised, though, as to whether or not pet food is what was contemplated by "food shops" or "food stores". A history of the above section indicates these uses in combination with

ORDER RECEIVED FOR FILING
DATE June 7, 1983
BY Stella Dyer
ADMINISTRATIVE ASSISTANT

Item B

"Sandwich board" signs shall be prohibited. In all other respects, the regulations of Section 413 shall be applicable."

service stations were established by Bill No. 40, 1967 and predated the present method of merchandising motor vehicle fuel, i.e., gas and go. As such, it would seem that the County Council did not consider food shops or food stores to include the sale of pet food, but said sales may be included since there is no exclusion.

Since the petitioners have met the requirements of Section 502.1 and the health, safety, and general welfare of the community will not be adversely affected, the special exception for a food store as a use in combination with an existing self-service station should be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 7th day of June, 1983, that the Petition for Special Exception for a food store as a use in combination with a self-service station, in accordance with Petitioners' Exhibit 1, is hereby GRANTED, from and after the date of this Order, subject, however, to the following restrictions:

1. The food store shall be limited to the sale of pet food only.
2. Compliance with the comments submitted by the Department of Permits and Licenses, dated June 22, 1982, the Fire Department, dated September 1, 1982, and the Department of Health, dated August 10, 1982.
3. A revised site plan, incorporating the restrictions set forth above, shall be submitted for approval by the Department of Public Works and the Office of Planning and Zoning.

Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING

DATE June 7, 1983

BY Gladys L. Gorsuch
ADMINISTRATIVE ASSISTANT

July 6, 198[illegible]
25 Ly Hammonds
Ferry Rd
Balto 21227,
Md.
Case 834 8-[illegible]

Balto County Office of Zoning
Towson 21204 Md.

To whom it may concern.

We wish to appeal the decision on this zoning case and the ruling of Mr Hammond, Zoning Comm.

Respectfully
Sheron Strong
President
Lansdowne Singer.
Association Inc.

JUL 7 AM
Ans'd
Rec'd
Rel'd
Bal'd
Chk'd
ZONING DEPARTMENT
By .....

Pet 1C

WNP/bp

County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

November 22, 1983

Mrs. Theresa Lowry
2517 Hammonds Ferry Rd.
Baltimore, Md. 21227

Re: Case No. 83-48-X
Humble Oil & Refining Company

Dear Mrs. Lowry:

Enclosed herewith is a copy of the Order of Dismissal passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

June Holmen, Secretary

Encl.
cc: Humble Oil & Refining Co.
J. W. Hessian, Esq.
N. E. Gerber
J. Hoswell
A. E. Jablon
J. E. Dyer
J. Jung
File

IN THE MATTER OF
THE APPLICATION OF
HUMBLE OIL & REFINING COMPANY
FOR SPECIAL EXCEPTION
NORTHEAST CORNER OF HAMMONDS
FERRY AND HOLLINS FERRY ROADS
13th DISTRICT

BEFORE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

No. 83-48-X

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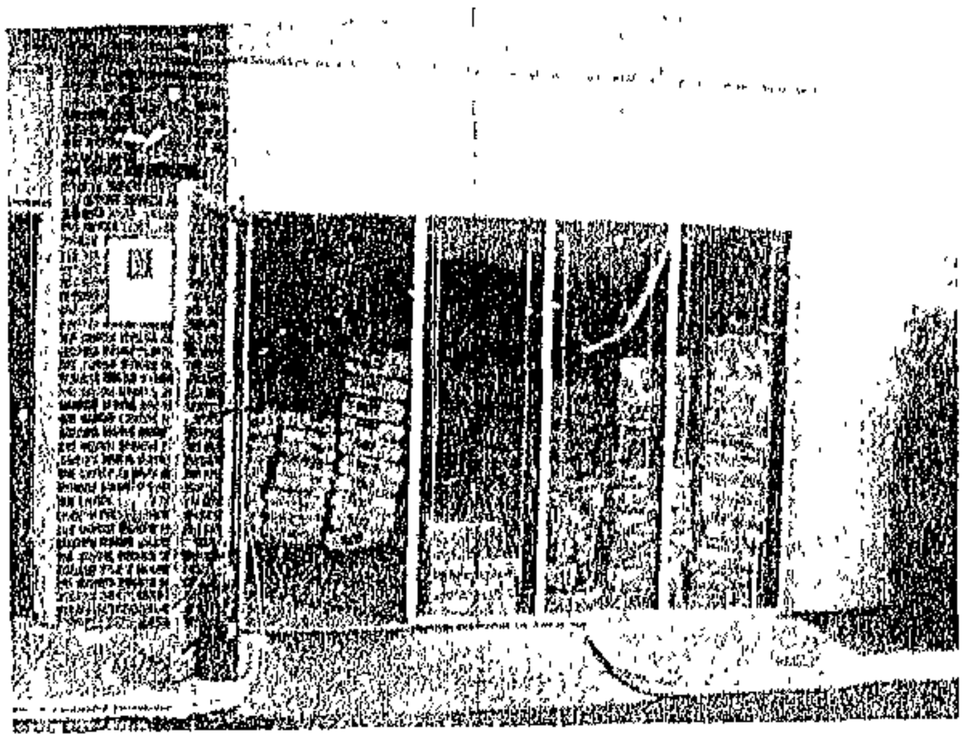

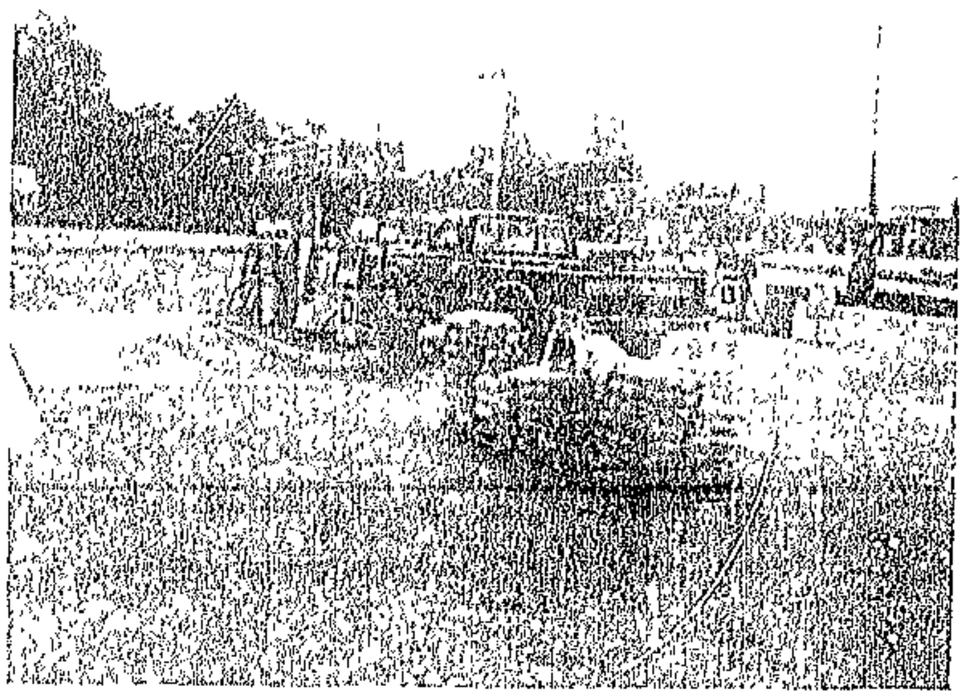

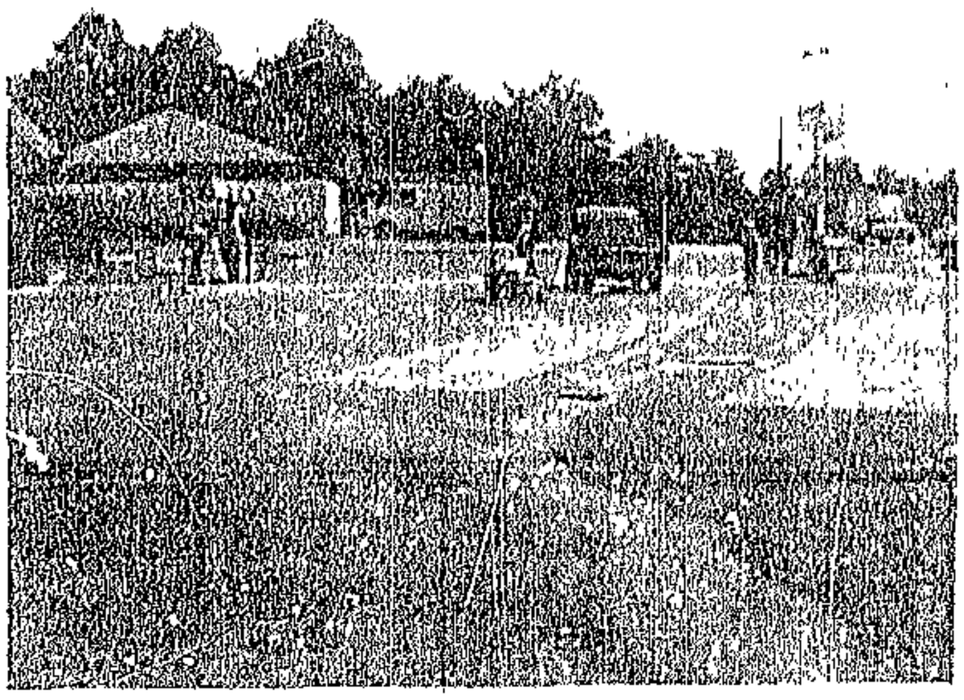

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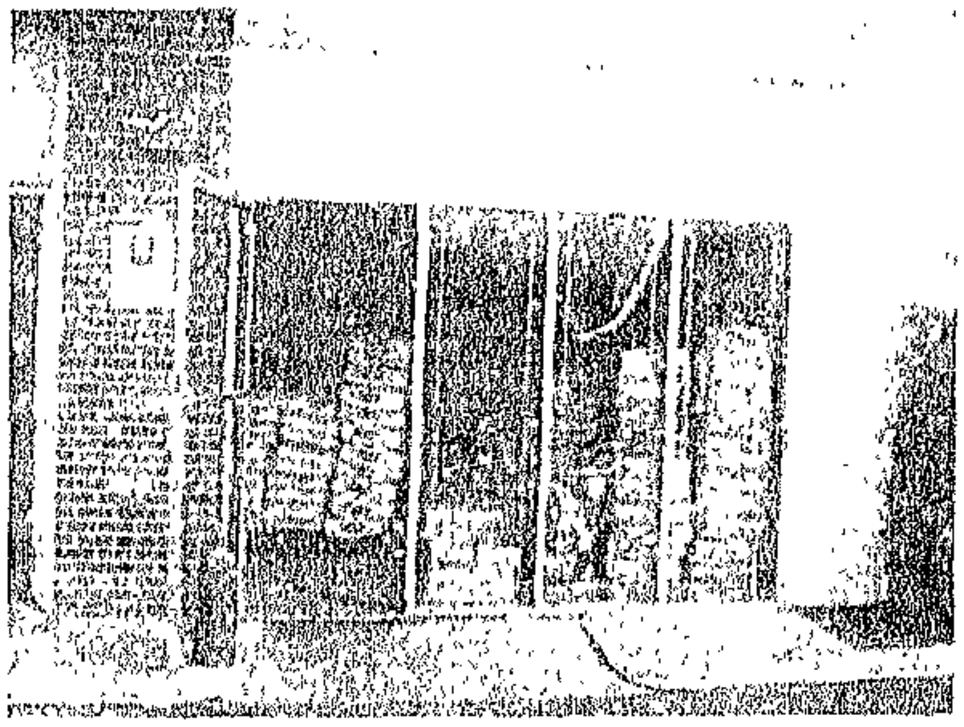

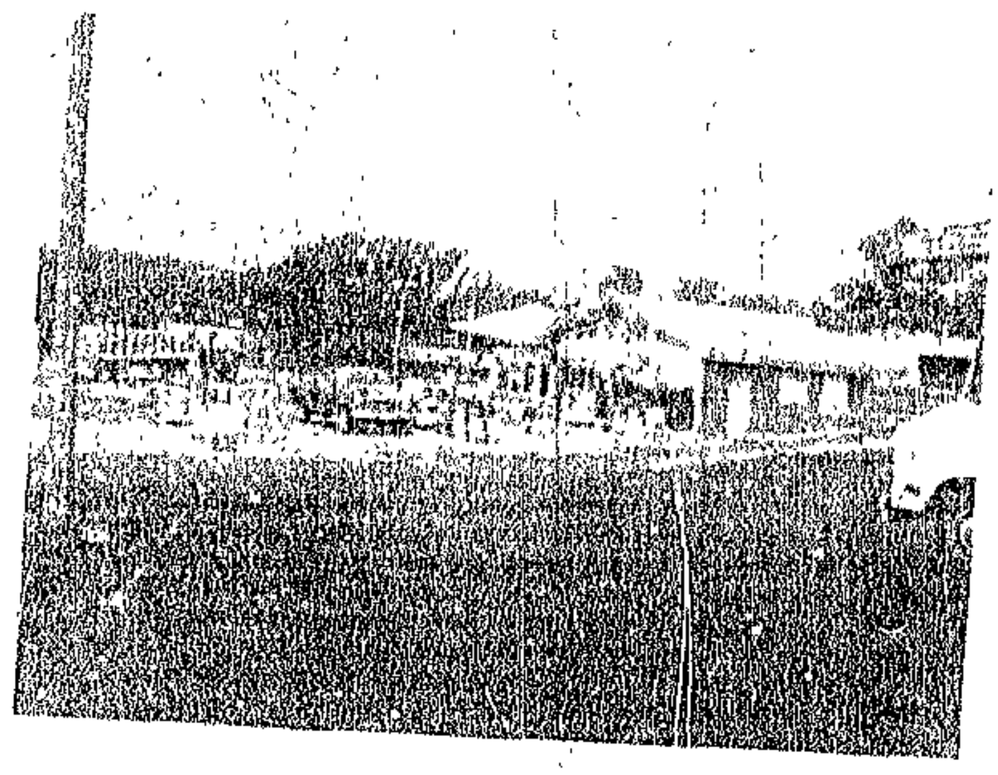

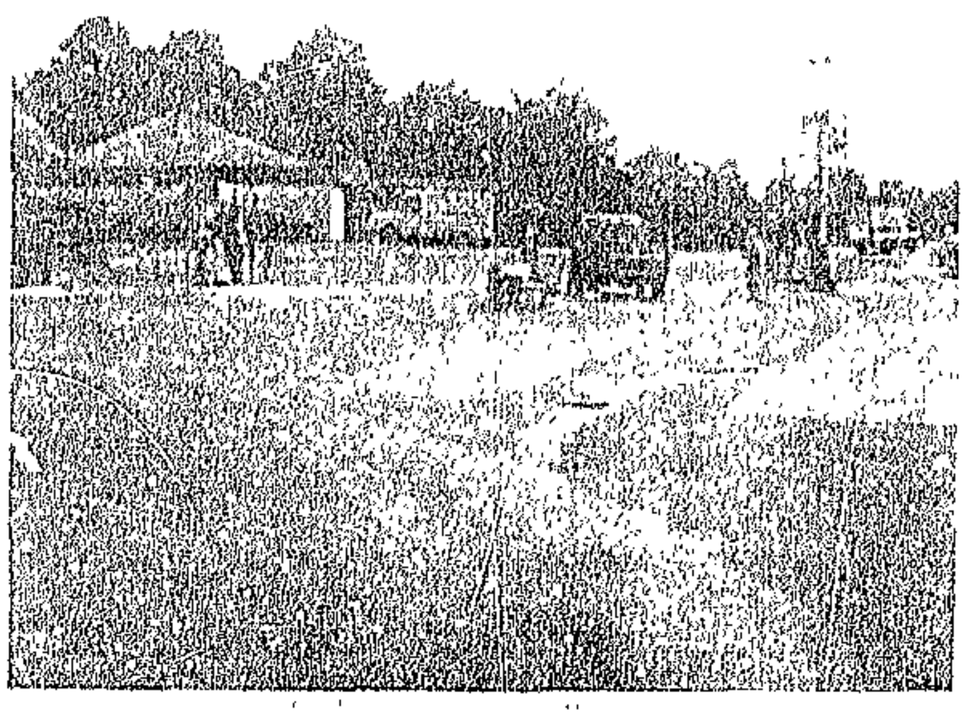

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

August 25, 1982

Mr. Bradley Zimmer
9623 Pinkerton Road
Millers, Maryland 21107

RE: Item No. 259 - Case No. 83-48-X
Petitioner - Humble Oil & Refining Company
Special Exception Petition

Dear Mr. Zimmer:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

In view of your proposal to legalize the existing use on this property, this hearing is required.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

Nicholas B. Commodari

NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bsc
Enclosures
cc: George William Stephens, Jr. & Associates, Inc.
303 Allegheny Avenue
Towson, Maryland 21204

#12

Comment #4: All self-service stations shall have at least one attendant on duty while the station is open to the public. The attendant's primary function shall be to supervise, observe and control the dispensing of class I liquids, according to NFPA 30, Section 7.7.4.3.

Enclosure

RE: ALLEGED ZONING VIOLATION 3023 Hammonds Ferry Road 12th Election District Samuel Bell, et al Jack Merrill Exxon Company, U.S.A. Plaza One-Four Valley Cockeysville, Maryland 21030 Defendants Bradley Eirman c/o Lansdowne Exxon 3023 Hammonds Ferry Road Baltimore, Maryland 21227 Defendant	:	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY 82-256-V, C-82-659

A complaint has been filed with the Zoning Office concerning an alleged violation of the Baltimore County Zoning Regulations on property at the above location. A hearing was held to determine whether a violation exists.

The following Baltimore County Zoning Regulations are involved:

Section 100.1 - "No land shall be used or occupied and no building or structure shall be erected, altered, located, or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use."

Section 101 - Definitions -"Sign, Business: A sign which calls attention to a business, service, industry or other activity conducted on the premises upon which the sign is located."

Section 101 - Definitions - "Trailer (or Mobile Home): Any of the various types of vehicles or mobile homes, with or without motive power, including small structures transportable by a pickup truck or similar vehicle, which are used for human habitation or for business purposes, but excluding vehicles used only for transportation of materials, products, or animals. A trailer (or mobile home) shall still be regarded as such even though its mobility may have been eliminated by removing its wheels, or otherwise, and placing it on a stable foundation, or rigid supports. Recreational vehicles, as defined herein, are excepted from this definition."

Section 211 - "Use Regulations - D.R. Zone."

Section 413.4.B.4 - "Signs. Portable "A" or Sandwich Board" signs shall be prohibited. In all other respects, the regulations of Section 413 shall be applicable."

#2

Section 405.4.C. - "Permitted Ancillary Uses. The uses listed below shall be permitted as of right in conjunction with any such service station so permitted, or may be permitted at the discretion of the Zoning Commissioner in conjunction with any such station permitted, or may be permitted at the discretion of the Zoning Commissioner in conjunction with any such station permitted by special exception. The minimum area of the site as determined under Subparagraph 405.4.A.1 shall be increased for each ancillary use by at least the number of square feet indicated in the listing for that use, where such a figure is stated. Only uses listed in this Paragraph C or in Paragraph D (Uses in Combination with Service Stations) shall be permitted in conjunction with any service station regulated under this Subsection 405.4."

Section 405.4.D - "Uses in Combination with Service Stations. The uses listed below and uses accessory thereto may be permitted in integral combination with such a service station by special exception. The minimum area of the site as determined under Subparagraph 405.4.A.1 shall be increased for each such combining use by a total of the product of the number of square feet of gross floor area occupied by such use times the factor stated at the end of the listing for that use, where such a factor is stated."

Section 500.4 - "In cases in which no building permit is required, any person desiring to use any land for any purpose other than that for which said land is being used at the time of adoption of this Order and Resolution, shall make application to the Zoning Commissioner for a use permit, upon such form as the Zoning Commissioner may prescribe. If such use is permissible the Zoning Commissioner may issue a use permit, conditioned by other provisions contained in the Regulations which shall indicate that it authorizes particular use applied for."

Section 500.9 - "The Zoning Commissioner shall have the power to require the production of plats of developments or subdivisions of land, or of any land in connection with which application for building or use permits or petitions for a Special Exception, a reclassification, or a temporary use shall be made, such plats to show the location of streets or roads and of buildings or other structures proposed to be erected, repaired, altered, or added to. All such plats shall be drawn to scale and shall clearly indicate the proposed location, size, front, side and rear setbacks from property lines and elevation plans of proposed building or other structures. Such details shall conform in all respects with Zoning Regulations. No such plats or plans, showing the opening or laying out or roads or streets, shall be approved by the Zoning Commissioner unless such plats or plans shall have been previously approved by the Office of Planning and the Department of Public Works of Baltimore County."

Testimony at

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Regulations, excep

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Section 500.10 c

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#83-48-X

NE/cor. of Hammonds
Ferry Rds.

Humble Oil and Refini

1 SIGN

PETITION

Testimony at the hearing indicated that the Defendants are guilty of violating the above referenced Baltimore County Zoning Regulations, except those sections pertaining to a trailer, in that signs have been placed on the property without proper permits and full compliance with an approved site plan has not been attained.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 1st day of July, 1982, that any signs not in compliance with Sections 413 and 405.4.B.4 of the Baltimore County Zoning Regulations must be removed within 30 days from the date of this Order.

It is FURTHER ORDERED that full compliance with the most recently approved site plan (C 284-73) must be attained or a Petition for Special Exception and a site plan must be filed, either within 45 days from the date of this Order.

It is FURTHER ORDERED that the Petition for Special Exception must be accepted for filing within 45 days from the date of this Order.

It is FURTHER ORDERED that full compliance with any Order issued subsequent to the Special Exception hearing must be attained within 30 days from the date that same was rendered.

It is FURTHER ORDERED that since the trailer has been removed from the subject property, this charge is hereby DISMISSED.

Any appeal from this decision must be in accordance with Section 500.10 of the Baltimore County Zoning Regulations within 30 days.

Jean M. H. Jung
Deputy Zoning Commissioner
of
Baltimore County

ORDER RECEIVED FOR FILING

verified 1-18-06
Verified 1/19/06

Shalin Protestants / Appellants Exhibits

Case 04-035-SPHxA

Prot 1 ✓ Photo of Site

Prot 2 ✓ Photo

Prot 3 ✓ Photos

Prot 4 ✓ Deed from Exxon to Shalin Oct 1993

Prot 5 ✓ Deed for Royal Farms Store

Prot 6 ✓ 4 Photos

Prot 7 ✓ CV - Brader

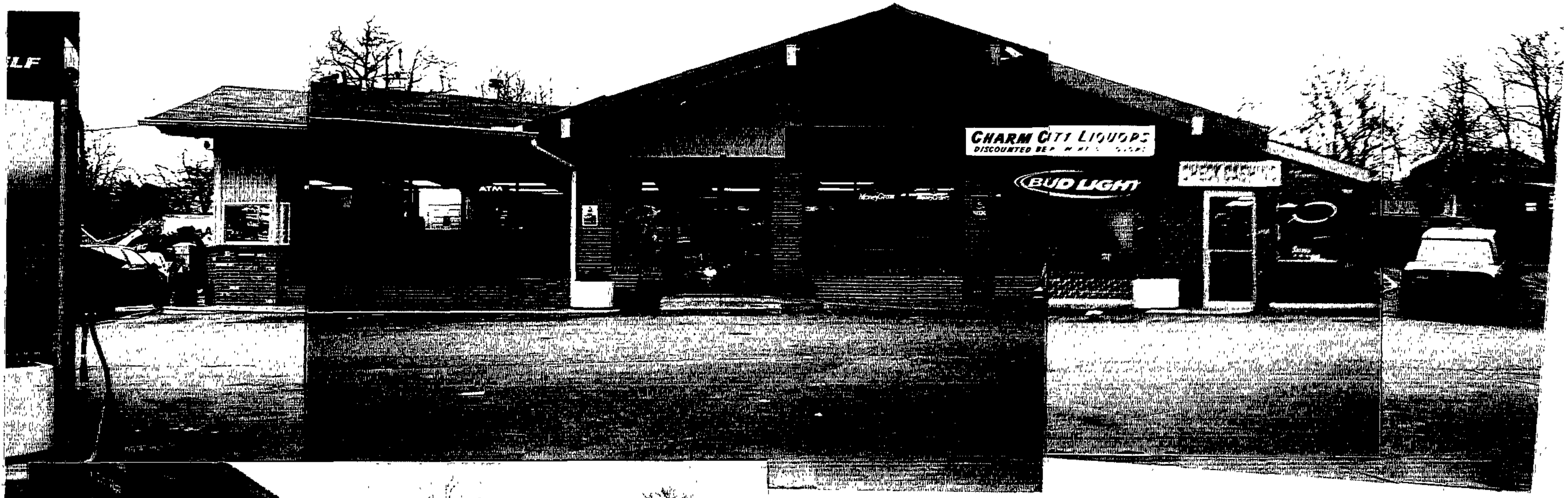
Prot 8 ✓ Photos
A - I

Prot 9 ✓ a & b Photos

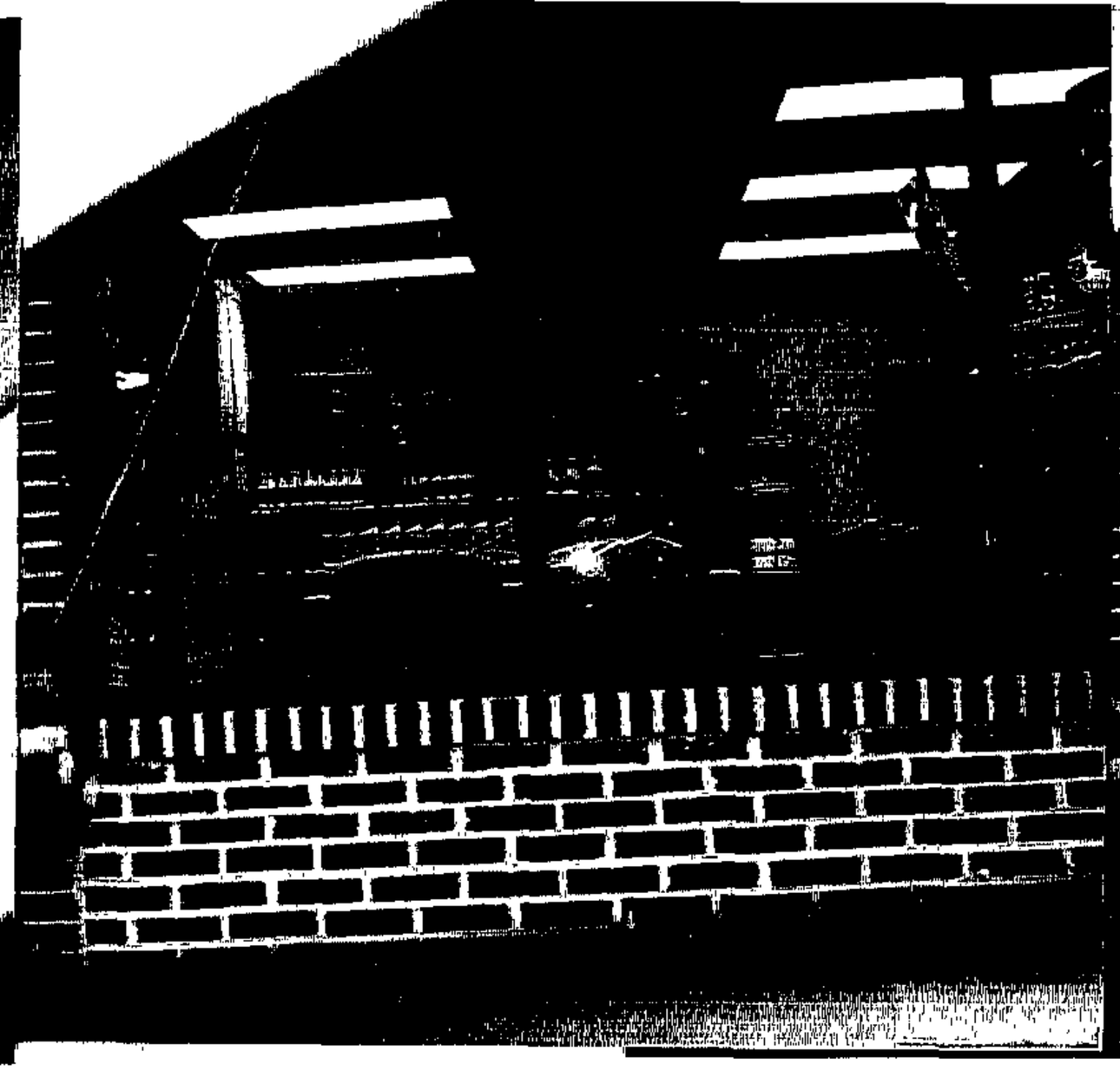
Prot 10 A ✓ Photos
B ✓

Prot 11 ATM receipt 1/17/06 used missing 1/19/06

CBA Prot Ex 1
1/17/2006



CBA Photo Ex 2
1/17/2006



[redacted]

CBA Prod Ex 3
1/17/2006

28.00

LIBER 10126 PAGE 594

Exxon Company, U.S.A.
(a division of Exxon Corporation)
P. O. Box 2180
Houston, Texas 77252-2180

SPECIAL WARRANTY DEED

STATE OF MARYLAND §
§
COUNTY OF BALTIMORE § KNOW ALL MEN BY THESE PRESENTS:

THAT EXXON CORPORATION, a New Jersey corporation, as successor in interest to Humble Oil & Refining Company, a Delaware corporation, having an office at 800 Bell Street, Houston, Texas 77002-7426, ("Grantor") for and in consideration of the sum of ONE HUNDRED NINETY THOUSAND AND NO/100 DOLLARS ($190,000.00) cash to it in hand paid by SHALIN ENTERPRISES, INC., a Maryland corporation, 3023 Hammonds Ferry Road, Baltimore, Maryland 21227, ("Grantee") the receipt of which is hereby acknowledged, does hereby GRANT, BARGAIN, SELL, and CONVEY unto Grantee, in fee simple, subject to the further provisions of this Deed, all that certain tract or parcel of land (the "Property") in the City of Baltimore, County of Baltimore, State of Maryland, being more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes.

This conveyance is made by Grantor and accepted by Grantee subject to Grantor's right to re-enter as described herein and all valid and existing conditions, covenants, restrictions, reservations, exceptions, rights-of-way and easements whether or not of record and all laws, regulations and restrictions, including building and zoning ordinances, of municipal or other governmental authorities applicable to and enforceable against the Property.

Grantee acknowledges that the Property has been used as a service station for the storage, sale, transfer and distribution of motor vehicle fuel, petroleum products or derivatives containing hydrocarbons, and that such fuel, products or derivatives may have been spilled, leaked, or otherwise discharged onto or into the Property.

Grantor has conducted an environmental site assessment regarding the environmental condition of the Property. The results of such assessment delineate the amount and location of any hydrocarbons present in the soil and/or groundwater and establishes the "Baseline" condition of the Property. If further testing or remediation is required by any governmental agency with jurisdiction over the Property, the Baseline shall be modified as Grantor deems appropriate based on such tests.

Grantor shall undertake such investigation and remediation of the Baseline condition of the Property as Grantor deems necessary or appropriate to comply with applicable laws, regulations or government orders in effect on the Effective Date. Should Grantor undertake any investigation and/or remediation, it will be conducted in accordance with all applicable laws and regulations, and Grantor will remediate the Baseline condition to a level Grantor deems to be acceptable to applicable authorities. Grantor shall not be responsible for investigation and/or remediation of any hydrocarbons (or other contamination) discovered or deposited on or into the Property after the Effective Date, or for any increase in the Baseline levels of hydrocarbons after the Effective Date. The Grantee shall be responsible for investigation and/or remediation of any hydrocarbons or other contamination discovered or deposited on or into the Property after the Effective Date, or for any increase in the Baseline level of hydrocarbons after the Effective Date.

Grantor reserves for itself the exclusive right to negotiate with and file reports with the state or any other governmental authority regarding testing, and/or remediation efforts for any investigation or remedial work Grantor may elect to do or which a third party or public authority may require.

During the period in which Grantor is performing remediation or monitoring activities on the Property, the Grantee shall promptly provide to Grantor copies of all reports, correspondence, notices and communications sent to or

RETURN TO:
FIRST AMERICAN TITLE INS. CO.
121 ALLEGHENY AVENUE
TOWSON, MD 21204
8446-SDS

CBA Prot 4

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE
SIGNATURE OK DATE 11/8/93

11/8/93
By ✓ Date

received from governmental authorities or third persons regarding the environmental condition of the Property or any investigation and/or remediation at the Property.

GRANTOR'S REMEDIATION RESPONSIBILITIES SHALL INURE ONLY TO THE BENEFIT OF THE GRANTEE AND THE LENDING INSTITUTION HOLDING THE MORTGAGE TO FINANCE GRANTEE'S PURCHASE OF THE PREMISES AND NOT TO SUBSEQUENT PURCHASERS, ASSIGNS, OF EITHER SUCCESSORS, OF EITHER OR ANY OTHER PERSON OR ENTITY.

Grantor reserves the right of access to the Property, at no cost to Grantor, as Grantor and/or Grantor's employees, agents, and contractors may require for any activities deemed necessary or appropriate by Grantor to carry out any testing or remediation which Grantor may choose to undertake, or which may be required by any governmental agency having jurisdiction over the environmental condition of the Property.

Grantor shall, to the extent practicable consistent with sound remediation practices, undertake these actions in a manner that will not unreasonably disrupt any operations on the Property, but in no event shall Grantor have any liability to anyone whomsoever, including Grantee, its successors, assigns, tenants or users for business disruption or any other damage, injury or loss whatsoever.

Provisions setting out Grantor's access rights shall be included in any lease or subsequent transfer of the Property by Grantee, and any tenant or subsequent purchaser shall be required to comply with all of Grantee's obligations hereunder. Grantor expressly reserves, for a reasonable period of time which shall be deemed to be not less than 90 days from the Effective Date the full and unencumbered right to enter upon the Property for the purpose of removing all signs, goods, equipment and fixtures, including underground tanks and lines, not conveyed to Grantee.

As further consideration for this conveyance, Grantee does hereby remise, release and forever discharge Grantor, its representatives, successors and assigns, from any and all claims, demands, liabilities (including fines and civil penalties) and causes of action, at law or in equity, including, but not limited to, any statutory causes of action, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) for injury (including death), destruction, loss or damage of any kind or character to the person or property of Grantee and Grantee's employees, agents, servants and representatives, successors and assigns arising out of, or in relation to, any actual or alleged spills, leaks, or other discharges onto or into the Property which may have resulted in surface or subsurface contamination.

As further consideration for this conveyance, Grantee agrees to be responsible for and indemnify, defend, and hold Grantor harmless from any and all claims, demands and causes of action (including, but not limited to CERCLA), at law or in equity, brought by any and all third parties, including (without limitation) Grantee's employees, agents, servants, invitees and representatives, successors and assigns and also including (without limitation) any private citizen, person, organization and agency, branch or representative of federal, state or local government, on account of any injury (including death), destruction, loss or damage of any kind or character to person, property or natural resources, arising out of, or in relation to, any actual or alleged spills, leaks or other discharges onto or into the Property which occur at any time after the Effective Date.

The conditions, covenants and other provisions set out in this Deed shall be covenants running with the land and shall be binding upon and shall inure to the benefit of the parties, their subsidiaries, affiliates, legal representatives, heirs, successors and assigns, except as otherwise provided herein.

Ad valorem taxes and special assessments, if any, against the Property for the current year shall be pro-rated between Grantor and Grantee as of the Effective Date, and Grantee hereby assumes and agrees to pay same.

TO HAVE AND TO HOLD the Property, together with the appurtenances, estate, title and interest thereto, unto Grantee, Grantee's successors, heirs and assigns, in fee simple, forever, subject to the provisions hereof, and in lieu of all other warranties, express or implied, Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend the title to the Property unto Grantee, Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, and that Grantor will execute further assurances of the Property as may be requisite.

IN WITNESS WHEREOF, Grantor has signed this deed this 29 day of OCTOBER, 19 93, but EFFECTIVE as of this 29 day of OCTOBER, 1993 ("Effective Date").

FORM APPROVED
dpe
LMM

GRANTOR:

EXXON CORPORATION

ATTEST:

By: James E. Hill
Name: JAMES E. HILL
Title: Assistant Secretary

By: Joe McMillan
Name: JOE T. McMILLAN
Title: Vice President

GRANTEE:

SHALIN ENTERPRISES, INC.

ATTEST:

By: Nisha Pandhigar
Name: Nisha Shreyas Pandhigar
Title: Vis President

By: Shreyas Pandhigar
Name: Shreyas Suresh Pandhigar
Title: President

CERTIFICATE

I hereby certify that the foregoing instrument was executed pursuant to a duly adopted resolution by the Board of Directors of Exxon Corporation and do further certify that the foregoing instrument is not part of a transaction in which there is a sale, lease exchange or other transfer of all, or substantially all, of the property and assets of said corporation.

ATTEST:

EXXON CORPORATION

By: James E. Hill
Name: JAMES E. HILL
Title: Assistant Secretary

By: Joe McMillan
Name: JOE T. McMILLAN
Title: Vice President

STATE OF TEXAS §
COUNTY OF HARRIS §

I hereby certify, that on this 2ND day of DECEMBER, in the year 19 92, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared, JOE T. McMILLAN, who acknowledged himself to be the Vice President of EXXON CORPORATION, a corporation, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Corporation by himself.

Witness my hand and official seal.

SUE S. WERNER
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
FEBRUARY 29, 1996

Sue S. Werner
Notary Public, State of Texas
My Commission Expires: 2-29-96

STATE OF MARYLAND §
COUNTY OF BALTIMORE §

I hereby certify, that on the 29 day of OCTOBER, in the year 1993, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared, SHREYAS PANCHILAL, who acknowledged himself to be the PRESIDENT of SHALIN ENTERPRISES, INC., a corporation, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Corporation by himself.

Witness my hand official seal.

Notary Public, State of Maryland
My Commission Expires: 7/12/94

STEPHANIE A. SIMONK
NOTARY PUBLIC
BALTIMORE CO., MD.

CERTIFICATION

This is to certify that the within instrument has been prepared by or under the supervision of the undersigned Maryland attorney, or by a party to this instrument.

EXXON CORPORATION
By: Joe T. McMillan
Name: Joe T. McMillan
Title: Vice President

SP #2-5471
Baltimore, Maryland

EXHIBIT "A" TO SPECIAL WARRANTY DEED FROM
EXXON CORPORATION TO
SHALIN ENTERPRISES, INC.
3023 HAMMONDS FERRY ROAD
BALTIMORE, MARYLAND 21227

BEGINNING for the same at the intersection of the northeast side of Hammonds Ferry Road and the North side of a forty foot avenue, now known as Edna Avenue, shown on the Plat of "Edna Terrace", recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 3 page 24; and running thence binding on said northeast side of Hammonds Ferry Road (1) North 47 degrees 04 minutes 45 seconds West 176.34 feet; thence leaving said Hammonds Ferry Road and running for new lines of division the two following courses and distances: (2) North 85 degrees 43 minutes 47 seconds East 172.50 feet, and (3) South 36 degrees 58 minutes 15 seconds East 154.29 feet to a point on the north side of Edna Avenue herein referred to; and thence binding thereon (4) South 85 degrees 55 minutes 35 seconds West 136.02 feet to the place of beginning. Containing 0.4584 of an acre of land, more or less.

SAVINGS AND EXCEPTING so much of said land as contained in Deed dated August 5, 1966 and recorded among the Land Records of Baltimore County in Liber O.T.G. No. 4664, folio 311 by and between Humble Oil & Refining Company and Baltimore County, Maryland.

BEING a portion of that lot of ground which by Deed dated July 9, 1965, and recorded among the Land Records of Baltimore County, Maryland, in Liber R.R.G. No. 4485, folio 152, was granted and conveyed by David S. Ivings and Mary J. Ivins, his wife, unto the within named Grantor, in fee simple.

RESERVING, HOWEVER, unto the within named Grantor, for itself, its successors and assigns, for the benefit of the remaining property of the Grantor, contained in the deed hereinabove referred to but not in this deed specifically granted and conveyed and for the benefit of such remaining land, a non exclusive easement, license, right and privilege of passage and use, both pedestrian and automotive, for the purpose of ingress and egress to, through and over that portion of the property hereinabove conveyed, which said portion is described as follows, to be used in common with the Grantee herein.

BEGINNING for the same at a point on the north side of Edna Avenue, as laid out forty feet wide and as shown on the Plat of "Edna Terrace" recorded among the Land Records of Baltimore County in Plat Book W.P.C. 3 page 24, at the distance of 138.98 feet, as measured westerly along said North side of Edna Avenue from the dividing line between Lots 14 and 15, as shown on said plat; and running thence binding on the north side of said Edna Avenue and referring the courses of this description to the Grid Meridian established in the Baltimore County Metropolitan District, (1) South 85 degrees 55 minutes 35 seconds West 25.00 feet thence leaving said Edna Avenue for a new line of division (2) North 04 degrees 04 minutes 25 seconds West 38.65 feet and

thence (3) South 36 degrees 58 minutes 15 seconds east 46.03 feet to the place of beginning. Containing 0.0111 of an acre of land, more or less.

Subject to the proposed widening of Edna Avenue.

AND in the further consideration of the sum of Five Dollars ($5.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant unto the said Grantee, its successors and assigns, a non exclusive easement, license, right and privilege of passage and use, both pedestrian and automotive, for the purpose of ingress and egress to, over and through the following described property in common with others, so as to provide ingress and egress to and from the lot of ground hereinabove conveyed across portions of the land described in the deed hereinabovereferred to retained by the Grantor, which said non exclusive easement area is described as follows:

BEGINNING for the same at a point on the northeast side of Hammonds Ferry Road, as shown on the Plat of "Edna Terrace" recorded among the Land Records of Baltimore County in Plat book W.P.C. 3 page 24, at the distance of 176.34 feet, as measured northwesterly along said northeast side of Hammonds Ferry Road from its intersection with the north side of a forty foot avenue shown on said plat and now known as Edna Avenue; and running thence binding on said northeast side of Hammonds Ferry Road (1) North 47 degrees 04 minutes 45 seconds West 35.90 feet to the beginning of the third or North 77 degrees 52 minutes East 161.7 foot line of the land conveyed by Julius Levine to David S. Ivins and wife by deed dated January 25, 1943 and recorded among the said Land Records in Liber R.J.S. 1275 page 204; thence binding on a part of said third line (2) North 47 degrees 57 minutes 00 seconds East 100.00 feet; thence for a new line of division (3) South 31 degrees 25 minutes 30 seconds East 63.92 feet to a point in the second or North 85 degrees 43 minutes 47 seconds East 172.50 foot line of that 0.4584 acre parcel hereinabove described; thence binding reversely on a part of said line (4) South 85 degrees 43 minutes 47 seconds West 100.00 feet to the place of beginning. Containing 0.1026 of an acre of land, more or less.

Subject to the proposed widening of Hammonds Ferry Road.

LIBER 10126 PAGE 599

012106 NOV-8 93

Baltimore County, Maryland
Land Instrument Intake Sheet

(Type or print in black ink only—all copies must be legible)

In compliance with *Baltimore County Code*, 1978, Title 33, Taxation, Article III, §33-126 through 33-140, as amended, and the Annotated Code of Maryland, Tax-Property Article, §12-101 through 12-113, as amended, and Tax-Property Article, §13-101 through 13-408, as amended, it is certified that an instrument of writing dated _____ conveying title to, or creating liens or encumbrances upon, real or personal property is offered for record in the County. The property conveyed, or on which a lien or encumbrance is created, is identified as follows: CHUM

Space Reserved for Clerk of Circuit Court Recording Validation

1 Description of Property (Check box(es) for item(s) to be indexed in land records)

☐ Property Tax ID No. | ☐ Lot/Block | Map/Grid/Parcel No.
12-CB-800460

☐ Subdivision/Tract | ☐ Lot Acreage | Prior Deed Ref. | VAR. L.O.G. ☐

☐ Street Address (or description if partial conveyance)
NE COR HOLLINS FERRY ROAD
3023 HAMMONDS FERRY ROAD

2 Transferred From
Grantor(s) (☐ check box if additional sheets are attached)
EXXON CORPORATION, SUCCESSOR IN TITLE TO HUMBLE OIL & REFINING COMPANY
Owner of record (if different from grantor)

3 Transferred To
Grantee(s) (☐ check box if additional sheets are attached)
SHALIN ENTERPRISES, INC.

4 Type of Instrument
(X) Deed | Deed of Trust | (X) Mortgage | Lease
Assignment of Mtg/DOT | (X) Financing Statement (2) | Contract | Other (Specify) | Land Installment Cont. | (X) F/S TERM. | Power of Attorney

C RC/F 23.00
C T TX 950.00
C DOCS 950.00
CC IMP 5.00
DEED 0
SM CLERK 1928.00
#32973 C001 R02 T11:
11/08/

5 Exemptions (Cite authority or explain briefly)
Baltimore County Exempt Status Claimed:
Recordation Tax Exempt Status Claimed:
State Exempt Status Claimed:

6 Consideration and Tax Calculations
Make check payable to Baltimore County, MD
(410) 887-2416

Consideration Amount		County Taxes to be Paid
Purchase Price/Consideration (including any new mortgage)	$ 190,000.00	Transfer Tax Consideration $ 190,000. x 1.6% = $ 3040.00
Real Property		
Personal Property		
Balance of Assumed Mortgage		Office of Finance Use Only
Other		Agent: MK Tax Bill: Pd
Total Consideration	$ 190,000.00	C.B. Credit: — Ag. Tax/Other: —
or Assessed Factor	$	

7 Fees and Recording Instructions
Make check payable to Clerk of the Circuit Court
(410) 887-2650

Recordation Fees		Special Recording Instructions (if any)
Recording Charges	$ 109.00	
State Transfer Tax	950.00	
County Recordation Tax	1025.00	
Surcharge	12.00	
Other		
Total	$ 2096.00	

8 Contact/Mail Information

Instrument Prepared By	Return Instrument To	Mailing Address for Tax Bill
Name: EXXON COMPANY USA	Name: FIRST AMERICAN TITLE INS. CO.	Name: SHALIN ENTERPRISES C/O HAMMONS FERRY EXXON
Firm:	Address: 121 ALLEGHENY AVE	Address: 3023 HAMMONDS FERRY RD
Address: P.O. BOX 2180 HOUSTON, TX	TOWSON, 21204	BALTIMORE 21227
Phone: 77252-2180		

9 Certification
I hereby certify under the penalties of perjury that the information given above is true to the best of my personal knowledge and belief.
Signature: J A Smith Date: 11-4-93

10 Assessment Information (410) 321-2299

IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

☐ Yes (X) No Will grantee be living at property conveyed?
☐ Yes (X) No Is grantor currently receiving a homeowners' tax credit?
☐ Yes (X) No Is property conveyed subject to agricultural transfer tax? If yes, enter amount: _____
☐ Yes (X) No If agricultural assessment on conveyance is to continue, have you attached a letter of intent?
☐ Yes (X) No Partial conveyance? If yes, amount of acreage transferred: _____
List improvements conveyed: _____
If subdivision occurred after July 1, indicate former property tax ID number: _____

Optional Expediting Information
A delay in processing may be incurred if a conveyance deed is not accompanied by an adequate property description, preferably a survey or area calculation. A partial conveyance may require additional processing time.

☐ Yes ☐ No Was property surveyed? If yes, attach copy of survey. If partial conveyance, balance of acreage:
Complete description of property conveyed (subdivision, lot, block, section, plat ref., acreage):

Location and improvement address:

Space Reserved for County Transfer Tax

Assessment Use Only - Do Not Write Below This Line
☐ Terminal Verification ☐ Agricultural Verification ☐ Tran. Process Verification ☐ Whole ☐ Desc. ☐ Part
☐ Deed Plotter
Deed Reference
Assigned Property No

Distribution: White - Clerk's Office \ Canary - Office of Finance \ Pink - SDAT \ Goldenrod - Preparer

AOC-CC-100

B4 C009:43AM11/08/93 2A02#0087TL TRTX
$3,040.00

T-3
SAFECO TITLE INSURANCE CO. OF MD.
(Corporation Form)
App. H- 111110 (A)

LIBER 7446 PAGE 515

AGRICULTURAL TRANSFER TAX
Exempt 1/6/87

This Deed, Made this 29th day of December, in the year one thousand nine hundred and eighty-six, by and between - - - - - - - -
HILLCREST PROPERTIES, INC. -

a body corporate of the State of Maryland, party - - - - - - - - , of the first part, Grantor, and
CLOVERLAND FARMS DAIRY, INC., a body corporate of the State of Maryland, party of the second part, Grantee.

RECD 14.00
TRANS TAX 2822.08
RECORD 2822.50
DEED 0 #
SM CLERK 2858.58
#73400 MCP MCP 14:25
03/14/87

THE ACTUAL CONSIDERATION PAID OR TO BE PAID IS $564,415.00.

Witnesseth: that in consideration of the sum of Five Dollars, and other valuable considerations, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant, convey and assign unto the said Grantee, its successors and assigns, in fee simple, - - - - - - - - - - - - - - - - - - -

BEING the same lot of ground which by Deed dated January 5, 1966 and recorded among the Land Records of Baltimore County in Liber OTG No. 4568 folio 47 was granted and conveyed by John B. Crowley and wife, et.al. unto Hillcrest Properties, Inc.

BEGINNING FOR THE THIRD at the corner formed by the intersection of the Northeast side of Windsor Mill Road and the Northwest side of Gwynn Oak Avenue; thence running along the Northwest side of Gwynn Oak Avenue North fifty degrees three minutes East, a distance of Sixty-five and Forty one-hundredths feet to a point; thence turning and running North thirty-six degrees nine minutes West a distance of Ninety-four and thirty-one hundredths feet to a point; thence turning and running South fifty-five degrees no minutes West a distance of Eighty-four and Twenty-two one-hundredths feet to a pipe set in the Northeast side of Windsor Mill Road; and thence turning and running along the Northeast side of Windsor Mill Road South forty-six degrees fifty-one minutes East, a distance of One Hundred two and eleven one-hundredths feet to the point and place of beginning.

The improvements thereon being known as No. 2100 Gwynn OakAvenue.

SAVING AND EXCEPTING therefrom so much of the above described lot of ground as was conveyed by Tide Water Realty Company, et.al. to Baltimore County, Maryland, by a Deed dated June 17, 1964 and recorded among the Land Records of Baltimore County in Liber R.R.G. No. 4319 folio 379.

BEING THE SAME lot of ground which by Deed dated August 19, 1964 and recorded among the Land Records of Baltimore County in Liber R.R.G. No. 4365 folio 207 was granted and conveyed by Tide Water Realty Company unto Hillcrest Properties, Inc.

BEGINNING FOR THE FOURTH at a point on the north side of Edna Avenue, as laid out forty feet wide and as shown on the Plat of "Edna Terrace" recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 3, folio 24, at the distance of 81.70 feet, as measured westerly along said north side of Edna Avenue from the dividing line between Lots Nos. 14 and 15, as shown on said plat, said point of beginning being at the beginning of the second or north 05 degrees 55 minutes east 260.6 foot line of the land conveyed by William H. Carter and wife to Franklin E. Potter and wife, by Deed dated June 20, 1951 and recorded among said Land Records in Liber G.L.B. No. 1981, folio 337, said point of beginning being also the beginning of the land conveyed by Julius Levine to David S. Ivins and wife, dated January 25, 1943 and recorded among said Land Records in Liber R.J.S. No. 1275, folio 204, and running thence, binding on a part of the first line of said last mentioned land and on the north side of said Edna Avenue, and referring the courses of this descritpion to the Grid Meridian established in the Baltimore County Metropolitan District, (1) south 85 degrees 55 minutes 35 seconds west 57.28 feet, thence leaving said Edna Avenue and running for new lines of division, the two following courses and distances, (2) north 36 degrees 58 minutes 15 seconds west 154.29 feet and (3) north 75 degrees 42 minutes 00 seconds east 143.35 feet to a point on the last line of said parcel conveyed to Ivins, thence binding on a part of said line and reversely on a part of the second line of said parcel conveyed to Potter, (4) south 04 degrees 04 minutes 25 seconds east 155.00 feet to the place of beginning.

Containing 0.3362 of an acre of land. Said property being sometimes known as 4384 Hollins Ferry Road.

FOR TITLE SEE DEED of date of December 27, 1965 recorded among the Land Records of Baltimore County in Liber OTG No. 4568, folio 321, from Commonwealth Trust Company, to the within named Grantor, in fee simple.

BEING the same lot of ground which by Deed dated November 28, 1978 and recorded among the Land records of Baltimore County in Liber EHK, Jr. No. 5964 folio 259, was granted and conveyed by Windsor Refrigeration Co., Inc., unto Hillcrest Properties, Inc.

Together with the buildings and improvements thereupon; and the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in anywise appertaining.

To have and to hold the said described lots(s) of ground and premises, unto and to the use of the said Grantee, its successors and assigns, in fee simple.

And the said Grantor covenants that it will warrant specially the property hereby granted and conveyed, and that it will execute such further assurances of said land as may be requisite.

Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

In Testimony Whereof, the said Grantor has caused its corporate seal to be hereto affixed, and its Vice-President to set his hand hereto.

WITNESS:

Thomas M. Zeller

HILLCREST PROPERTIES, INC.

BY Ralph C Kamp (Seal)
Ralph C Kamp ~~Vice~~ President

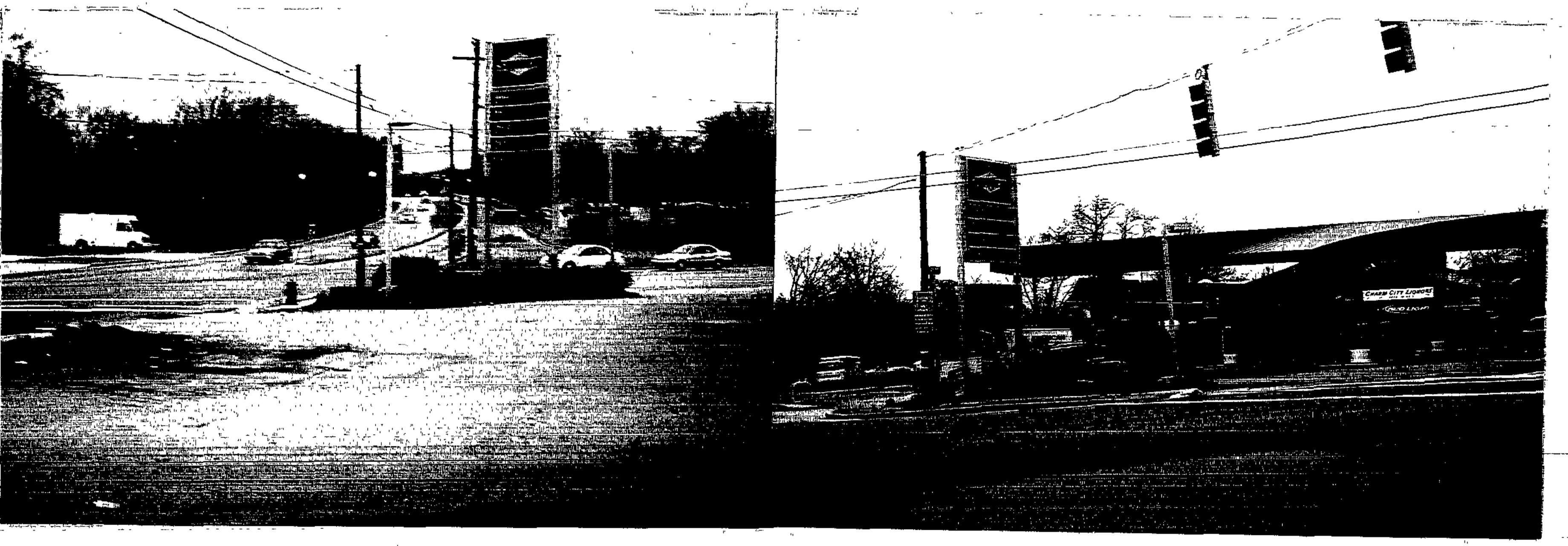
State of Maryland, Baltimore City, TO WIT:

I HEREBY CERTIFY, that on this 29th day of December, 19 90, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared Ralph C Kamp, who acknowledged himself to be the ~~Vice~~ President of the Grantor Corporation, and that he, as such ~~Vice~~ President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing, in my presence, the name of the said corporation by himself as ~~Vice~~ President, and certified that this conveyance is not part of a transaction in which there is a sale, lease, exchange or other transfer of all or substantially all of the property and assets of the Grantor Corporation.

WITNESS: my hand and Notarial Seal

Thomas M. Zeller
Notary Public

My Commission expires: 7-1-91



CBA
Proof Ex
1/17/2006

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
Professional Engineer - State of Virginia	PE 37694

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 40 new sites and redevelopment of 12 sites beginning with zoning hearings through final construction drawings.

BWI Technology Park – Anne Arundel County, 100 Acre Industrial Park. All site and infrastructure design for 14 buildings

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 15 buildings.

Business Center at Owings Mills – Baltimore County - Final site design for 4 lots with 7 buildings including site grading and storm water management.

CBA Prot 7

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.

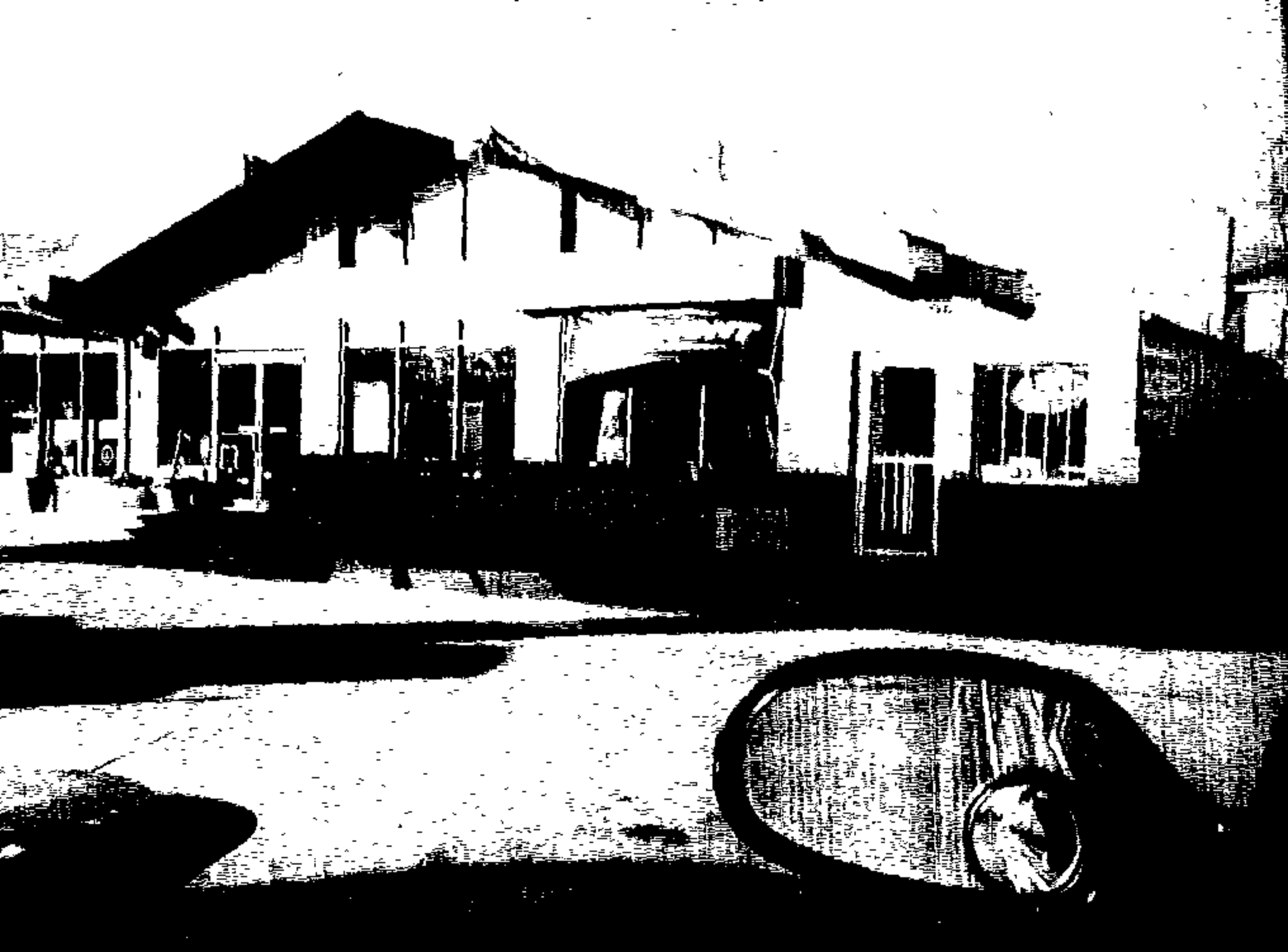
Liberty Manor – Baltimore County, 12 lot subdivision, 50 condominium townhouses. Final Development Plans and construction plans including house grading, storm water management, sediment control, road and storm drain design.

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

8A-8I (9 photos)
9A & 9B (2 photos)

Protestants exhibits
04-035-SPHXA

ATM



Robert Newell

Dec 19, 2005

9B

Coca-Cola
SUND

SUNOCO

A1M

CBA
Prot
10B

CBA Prot
10A

From the desk of:
Brenda Harney, Director
914 Winsap Court
Baltimore, MD 21227
The Greater BLR Alliance, Inc.
(410) 247-9718

RECEIVED
OCT 27 2003
ZONING COMMISSIONER

October 17, 2003

Baltimore County Zoning Commission
County Courts Building
401 Bosley Avenue
Room 407
Towson, MD 21401

Attention Hearing Officer,

Case # is 4-35-SPHXA which is 3023 Hammonds Ferry Road to permit an amendment to site plans and order #'s 65-316RX and 83-48-X. Theresa Lowery and myself apologize for not being at the hearing on Wednesday, October 15th at 2-PM to finalize the communities concerns.

This letter is to inform you of our discussion on Tuesday, October 14th with Mr. John Gontrum, lawyer for the owner of the property, and the owner himself. Theresa Lowery from Lansdowne, Edna Harmison from Riverview and myself were present at this meeting. Below are the results of that meeting:

* Communities agreed to allow amendments per case numbers.
* Guard rail installed between Exxon and Farm Store.
* Landscaping plan to be submitted to communities for approval.
* Owner also agreed to erect small barrier fence between property lines with a business toward the rear, if approved by existing business owner. Fuel tank will also be removed from this area.

The biggest concern the communities had was the safety of the motorists and the pedestrians in this area. This business location and surrounding areas are extremely busy. Baltimore County Traffic has already advised the communities that all traffic upgrades for this intersection are completed. Because of the size of the carry-out, and the redesign of the parking lot, the communities were in favor. We are hoping the business owner will take into account the communities concerns when deciding on the type of carry-out food he plans on installing. The lawyer and the owner were considerate enough to inform the communities of the future additions and upgrades to the community they will be proposing. I will be sharing these plans with the communities to get their feedback.

The information above should have been relayed at the hearing. The organization is extremely interested in monitoring the activities of the businesses in the communities. If information above differs from what you heard at the hearing, please contact me at the address or phone number above.

Sincerely,

Brenda Harney

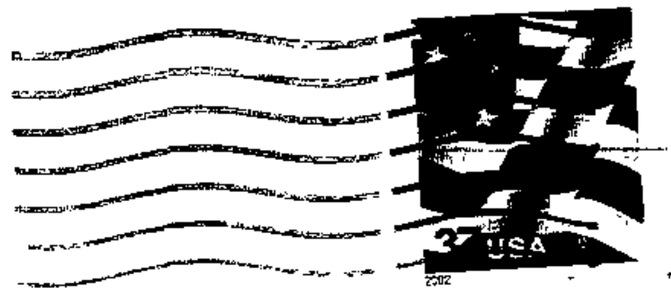
Brenda Harney, Director

cc: J. Gontrum

CBA pet BYH

B. HARNEY
914 WINSAP CT.
BALTO., MD 21227

BALTIMORE MD 212
PM
21 OCT
2003



Balto County Zoning
County Courts Bldg.
401 Bosley Ave.
Room 407

FOR:
Hearing Off. Towson,

21204/4427 MD

COPY

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
	*	
IN THE MATTER OF: JOHN MANGIONE, ET AL	*	CIVIL ACTION Case no: 03-C-03-009661
PETITION OF PEOPLE'S COUNSELFOR BALTIMORE COUNTY	*	
	*	
CROSS PETITION OF JOHN MANGIONE, ET AL	*	
	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	
	*	
BOARD OF APPEALS OF BALTIMORE COUNTY	*	
Old Courthouse	*	
400 Washington Avenue		
Towson, MD 21204	*	

RECEIVED
MAY 20 2004
PEOPLE'S COUNSEL

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

OPINION AND ORDER

This case comes to the Circuit Court for Baltimore County as administrative appeal from the ruling of the Board of Appeals of Baltimore County.

On November 28, 2000, the Baltimore County Permits and Development Management granted a special exemption to John Mangione, Louis Mangione, Nicholas Mangione, and Mary Mangione (hereinafter Petitioners) pursuant to Baltimore County Code Section 26-171(b)(9), for a continuing care facility (hereinafter facility). The facility was to be located on the North Side of East Padonia Road, east of Greenside Drive. On January 17, 2001, Petitioners filed a petition for a special exception requesting approval for the facility in the BR zone. On March 16, 2001, Deputy Zoning

Commissioner of Baltimore County issued an order granting the special exception after a hearing had been held. The County Home Park Community Association, David Jordan, President, and Gary and Patricia Lay (hereinafter Protestants) appealed the order to the Baltimore County Board of Appeals (hereinafter Board). The Board held hearings de novo on November 13, 2002, December 4, 2002, and April 3, 2003.

On Thursday, May 29, 2003, the Board held its public deliberation and affirmed the decision of the Zoning Commissioner to approve the requested special exception on August 13, 2003. On September 3, 2003, Protestants filed a timely appeal of the Board's decision and on September 11, 2003, Petitioners also filed a timely appeal of portions of the Board's decision to the Circuit Court for Baltimore County.

Facts

The property at issue in this case is located on the north side of East Padonia Road, approximately 360' east of Greenside Drive. The property is split zoned BL, BR, DR 3.5 and DR 16. The majority of the property is zoned BR. In its original petition to the Zoning Commissioner, the Petitioners proposed to construct a facility that would be 50 feet in height and 240 feet in length. On November 13, 2002, the Petitioners presented an amended site plan to the Board. The amendment increased the dimensions of the building to 60 feet in height and to 260 feet in length.

Protestants argued that due to the amendment, the case should be remanded to the Zoning Commissioner with a new public notice and hearing so that the public would have an opportunity to be heard on the amendment. The Board, however, stated that it had the discretion to accept the amendment and affirmed the decision of the Zoning

Commissioner. The Board then placed six restrictions on the property, which were conditions precedent to the relief granted.

The Protestants appealed the Board's decision arguing that: (1) the Board did not have jurisdiction to review the petition for special exception because the petition was not amended until the hearing; (2) the Board did not correctly approve the petition for special exception pursuant to the standards set for the in the Baltimore County Zoning Regulations (BCZR) section 502.1; (3) the proposed building did not satisfy the applicable height standards; (4) the proposed facility is subject to the standards for Class B assisted living facilities; (5) the proposed facility must satisfy the BCZR Residential Transition Area standards; and (6) the issuance of a Certificate of Need by the Maryland Health Care Commission has an effect on the special exception approval.

The Petitioners also filed an appeal arguing that: (1) the Board erred as a matter of law in imposing vague conditions as part of their approval of the requested special exception, and therefore the vague conditions should be declared void; and (2) the Board erred as a matter of law in imposing a condition on their approval of the requested special exception, which delegates the authority to approve the subject project to the Baltimore County Office of Planning.

ISSUE

This Court, for the reasons cited below, will only address two issues for review:

1. Did the County Board of Appeals have jurisdiction to review a special exception on appeal where the height and length of the proposed building have both significantly increased?

2. Was the County Board of Appeals' decision conclusory, vague, and thus legally insufficient to justify the approval of the special exception?

Based upon the Court's consideration of the entire record of the proceedings below, and its review of the applicable law, this Court answers in the negative for the first issue and in the affirmative for the second issue. Accordingly, this Court finds that this case must be remanded for a new hearing in accordance with the BCZR and the Baltimore County Code (BCC).

STANDARD OF REVIEW

The Court of Special Appeals of Maryland, in Maryland Department of Education v. Shoop, explains that the standard of review of the Court of Special Appeals for decisions of administrative panels is precisely that of the circuit court. 119 Md. App. 181, 196, 704 A.2d 499 (citing Dep't of Human Res. v. Thompson, 103 Md. App. 175, 188, 652 A.2d 1183 (1995)), cert. denied, 349 Md. 495, 709 A.2d 140 (1998). The appellate court reviews appeals from such panels under a two-tiered scheme. Dep't of Health & Mental Hygiene v. Reeders Mem'l Home, Inc., 86 Md. App. 447, 452, 586 A.2d 1295 (1991).

The appellate court examines the panel's findings of fact under the substantial evidence test. Id. The appellate court cannot, however, substitute its judgment for that of the administrative panel. Zeitschel v. Bd. of Educ., 274 Md. 69, 82, 332 A.2d 906 (1975). As for the appellate court's review of the findings of law, when no such deference is appropriate, it may substitute its judgment for that of the administrative panel. Shanty Town Assoc. v. Dep't of the Env't, 92 Md. App. 103, 116, 607 A.2d 66 (1992); see Younkers v. Prince George's County, 333 Md. 14, 19, 633 A.2d 861 (1993)

(citing People's Counsel v. Md. Marine Mfg. Co., 316 Md. 491, 496-97, 560 A.2d 32 (1989)).

Furthermore, for a reviewing court to uphold an administrative hearing board's order, the order must be sustainable on its findings of fact and for the reasons stated by the agency. See Regan v. Bd. of Chiropractic Exam'rs, 120 Md. App. 494, 508-09, 707 A.2d 891 (1998). Indeed, on appeal the court asks whether a reasoning mind reasonably could have reached the factual conclusion that the agency reached. Eberle v. Baltimore County, 103 Md. App. 160, 166, 652 A.2d 1175 (1995) (quoting Hill v. Baltimore County, 86 Md. App. 642, 659, 587 A.2d 1155 (1991)).

The reviewing court, however, must not go beyond the findings of fact of the administrative hearing. See Supervisor of Assessments v. Ely, 272 Md. 77, 321 A.2d 166 (1974). The Court of Appeals held that judicial review of the act of the administrative agency "need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment." Id. Furthermore, it is not only within the province of the agency to resolve conflicting evidence, but to also draw the ruling inference. See Bulluck v. Pelham Wood Apts., 283 Md. 505 (1978). As such, the reviewing court is bound to the record of the administrative hearing. Id.

DECISION

1. **Did the County Board of Appeals have jurisdiction to review a special exception on appeal where the height and length of the proposed building have both significantly increased?**

The Petitioners, in their original proposal for the facility, submitted a site plan to the Zoning Commissioner in which the dimensions of the facility were 50 feet in height and 240 feet in length. On November 13, 2002, without prior notice to the Protestants,

the Petitioners submitted to the Board an amended site plan in which the facility's dimensions were increased to 60 feet in height and 260 feet in length.

Notice is an element of procedural due process of law. It is incorporated in the Express Powers Act, Article 25A, Section 5 (U), Maryland Code, in County Charter Section 603 for the Board of Appeals, and County Code Section 26-127 pertaining to zoning commissioner hearings. As stated in Rule 2a of the Practice and Procedure of the Baltimore County Board of Appeals, "[n]o hearing shall be conducted without at least ten (10) days' notice to all parties of record or their counsel of record, unless otherwise agreed to by all such parties or their counsel of record."

In the case at bar, the Protestants argue that the Board, at the very least, should have remanded the case to the Zoning Commissioner for a new public notice and hearing on the amended site plan. By remanding the case, the Board could have afforded the Zoning Commissioner the opportunity to apply the facility's new dimensions to the criteria in section 502.1 and the public an opportunity to be heard.

> The Board found that accepting the amendment was in its sole discretion.
>
> The Board feels the amended site plan which shows a taller and longer building does not detrimentally affect anyone's ability to prepare for this hearing. With more than [five] months between the granting of the amended site plan and the conclusion of the case, the Board feels that this was more than a sufficient amount of time for the Protestants to prepare their case.

In the Matter of: John Mangione, No. 01-283-X at 2 (Balt. County Bd. App. 2003).

The Board, however, incorrectly assessed its amount of discretion. The Board has de novo review, yet it still exercises appellate jurisdiction. UPS v. People's Counsel, 336 Md. 569 (1994). Although the Board has the right to hear additional evidence,[1] if the

[1] See UPS, 336 Md. at 587-88; People's Counsel v. Crown Dev., 438 Md. 303, 316 (1992).

additional evidence is material, then the other party must have proper notice of that evidence. Cassidy v. County Board of Appeals, 218 Md. 418 (1958).

The Petitioners argue that the Board had the discretion to accept the amended site plan because the changes in the facility's dimensions were minor. Furthermore, the site plan was amended, not the petition, and there is no requirement that the petition lay out the dimensions of the facility. Hence, Petitioners assert that there is no additional requirement that the public be notified.

In the case at bar, the Zoning Commissioner made his decision based on the petition and site plan presented to him. The Zoning Commissioner found that the use for which the special exception was requested would not violate the criteria for granting a special exception within Section 502.1 of the BCZR. Section 502.1 states that

> [b]efore 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 danger;
> D. Tend to overcrowd land and cause undue concentration of population;
> E. Interfere with adequate provisions of schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvement;
> F. Interfere with adequate light and air; [Bill No. 45-1982]
> 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; [Bill No. 45-1982]
> H. Be inconsistent with impermeable surface and vegetative retention provisions of these Zoning Regulation; [Bill No. 45-1982]
> 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. [Bill No. 74-2000]

In order to comply with the criteria in section 502.1, the Zoning Commissioner needed the dimensions of the facility at his disposal. By changing the facility's

dimensions, a new determination is required as to whether or not section 502.1's criteria were met. The increased height and width of the facility could possibly not satisfy the criteria of 502.1, which would prevent the granting of a special exception.[2]

This Court finds that Petitioners' claim is without merit. A decision on whether the facility meets the criteria of section 502.1 cannot be made without looking at the site plan. Therefore, this Court finds that the site plan is an integral part of the petition.

Petitioners contend that even if the amendment were material, the Protestants had enough time to respond and prepare for the hearings. On November 13, 2002, the Board granted the requested amendment. Hence, Petitioners argue that the

> Protestants had until April 3, 2003, more than five months, to complete the preparation of their case in opposition. It is hard to imagine that this was not a sufficient amount of time for the Protestants to prepare their case. It is important to note that pursuant to Rule 2.a of the Board's Rules of Practice and Procedure, only 10 days notice is required for a public hearing.

(Appellee/ Cross-Appellants' Response to People's Counsel's Mem. at 8.)

Petitioners, however, fail to recognize that Appendix H, Rule 9(d)(2) of the BCZR states, "[p]etitions may be amended prior to the hearing only if said amendment takes place prior to the first public advertisement of the petition." The amendment at issue was not introduced to the Board until the first hearing on November 13, 2002. Thus, it is immaterial that the hearings were not completed until April 3, 2003 because the Protestants were unprepared for any testimony concerning the new dimensions put forth by the Petitioners on November 13, 2002.

Overall, this Court finds that the material change in the site plan required proper notice to be given to the public, giving the public an opportunity to be heard. As a result,

---

[2] More specifically, but not limited to subsections B, C, E, F, and I.

this Court further finds that this case must be remanded for a new hearing after proper notice is provided in accordance with BCZR and BCC.

2. **Was the County Board of Appeals' decision conclusory, vague, and thus legally insufficient to justify the approval of the special exception?**

In the instant case, the Board gave no facts or legal reasoning for its granting of the special exception. The Board only stated that

> [a]fter review of the testimony and evidence, this Board through a majority finds that the Petitioners have met their burden and will grant the special exception relief to approve a Continuing Care Facility in a BR zone for property located on the north side of East Padonia Road, east of Greenside Drive.

In the Matter of: John Mangione, No. 01-283-X at 5.

In Board of County Commissioners v. South Resources Management, Inc., the Court of Special Appeals of Maryland held that

> [i]n order to determine whether sufficient evidence existed to allow the Board to render a decision under a correct legal standard, [the court] must turn to the factual findings provided by the Board. As an administrative board, the Board is required to issue findings of fact and conclusions of law in support of its opinion. See Mehrling v. Nationwide Ins. Co., 371 Md. 40, 62-3, 806 A.2d 662 (2002) (noting that "administrative agencies are required to resolve all significant conflicts in the evidence and then chronicle, in the record, full, complete and detailed findings of fact and conclusions of law." (quoting Forman v. Motor Vehicle Admin., 332 Md. 201, 221, 630 A.2d 753 (1993))). The Court of Appeals further specified that "findings of fact must be meaningful and cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions." Mehrling, 371 Md. at 62-3, 806 A.2d 662 (quoting Bucktail v. Talbot County, 352 Md. 530, 553, 723 A.2d 440 (1999)). The purpose of the findings requirement is threefold: (1) requiring an articulation of the reasoning process makes the decision-maker accountable to the public; (2) it allows the injured party to understand the reasons behind the agency's decision; and (3) most important, the findings requirement assists in facilitating judicial review of the agency's decision. Sweeney v. Montgomery County, 107 Md. App. 187, 197, 667 A.2d 922 (1995) (citing Baltimore Gas and Electric Co. v. Public Service Commission, 75 Md. App. 87, 540 A.2d 820 (1988)). With regard to the issue of judicial review, the Court of Appeals held that "[a]t a minimum, one must be able to discern from

> the record the facts found, the law applied, and the relationship between the two...." Mehrling, 371 Md. at 62-3, 806 A.2d 662 (quoting Forman, 332 Md. at 220-21, 630 A.2d 753).

154 Md. App. 10, 34-5, 837 A.2d 1059 (2003).

In the instant case, the Board provided no factual findings or legal analysis of the evidence and testimony; the Board merely condensed some of the testimony and evidence presented by the parties before making its decision. In summarizing the testimony at the hearing, the Board laid out the testimony of Ms. Melanie Moser and Mr. John Seefried, two expert witnesses of the Mangiones. The Board cited Ms. Moser's conclusion that the visual impact, "activities, noise, and movement anticipated from the proposed . . . [f]acility" on the adjoining and surrounding properties would have less of an adverse impact "than those that would ordinarily be expected from such a use located elsewhere in the BR zone." In the Matter of: John Mangione, No. 01-283-X at 2-3. The Board also cited Mr. John Seefried's conclusion that the facility would not adversely impact "traffic congestion, potential hazards from dangers, or interference with adequate provisions for public services." Id. at 3.

The Board, however, gave little to no background of the testimony of the Protestants' witnesses. The Board briefly mentioned the testimony of David Jordan and Stephen Weber, witnesses who spoke on behalf of the community. The Board did not summarize any other testimony provided by the other Protestants' witnesses, except to state that there were, "[s]everal other witnesses on behalf of the Protestants [who] testified about concerns with noise, visual, safety, and property sale." In the Matter of: John Mangione, No. 01-283-X at 4.

After summarizing the testimony presented before it, the Board, without analyzing the law or facts of the case, decided: The Residential Transition Area

regulations in BCZR section 1B01.1.B "do not apply outside of the DR zone;" the letter of John Lewis of the County Permits and Development Management, which stated, "the maximum building height is sixty feet" is accepted; and, the special exception is granted. In the Matter of: John Mangione, No. 01-283-X at 5.

In following the Court of Special Appeals' decision in South Resources Management, Inc., this Court finds that the Board's "[f]ailure to provide specific findings of fact constitutes a legal error and prevents [the reviewing court] from fully understanding the Board's decision." 14 Md. App. 10, 36 (citing Lewis v. Department of Natural Resources, 377 Md. 382, 434, 833 A.2d 563 (2003)). Hence, this Court finds that its ability to address the other issues presented by both parties in their appeal and cross appeal is "hindered because the Board failed to make specific findings of fact" and conclusions of law. South Resources Management, Inc., 14 Md. App. at 35.

After careful review of all of the evidence, submitted memoranda, oral arguments, and all applicable law, it is therefore **ORDERED** this 18th day of May 2004, that the case be **REMANDED** for a new hearing in accordance with the BCZR and the BCC.

John O. Hennegan, Judge

Cc: Peter Zimmerman, Esq.
G. Scott Barhight, Esq.
County Board of Appeals

Verified 1-18-06
Verified 11/9/06

Shalin
Petitioner Exhibits

CBA ?

Case 04-035-SPHXA

Pet 1 ✓ Site Plan on board Rm 45

Pet 2 ✓ Site Plan 1965

Pet 3 ✓ Z. regs 1965

Pet 4 ✓ Site Plan 1923

Pet 5 ✓ Permit Application - 1994

Pet 6 ✓ Site Plan from ZC hearing

Pet 7 ✓ Landscape Plan

Pet 8 ✓ ZC Order (in file) copied 11/18/06

Pet 9 ✓ Letter from Z. Office

Pet 10 ✓ Letter from Planning

Pet 11 ✓ Traffic Counts 2003

Pet 12 Rule 8 for Ms Lawry
1 Only [to be mailed to Board]

proposed use of land during excavation and grading plans after excavation shall be directed to the Zoning Commissioner. Any Special Exception granted hereunder may include the right to erect and operate buildings, machinery, and equipment for a temporary period, consistent with other provisions of the order of the Zoning Commissioner, or the Board of Zoning Appeals, on appeal. All pertinent requirements of the Baltimore County Health Department Regulations and the Baltimore County Building Code shall be incorporated by the Zoning Commissioner and the Board of Zoning Appeals, on appeal, in approving any application hereunder.

Section 404—FARMING

404.1—Any farming use, or combination of uses, as defined in Section 101, must be located on at least 3 acres of land.

404.2—All accessory buildings except farmers' roadside stands shall be governed by the same area requirements as those applicable to a principal building in the zone in which the farm is located.

404.3—Commercial reduction of inedible animal or vegetable matter and commercial slaughtering, except killing of poultry produced on the premises, are prohibited.

404.4 — Commercial piggeries (hog raising for other than family use) are permitted only on a farm of at least 10 acres, and no hogs shall be permitted within 150 feet of any land zoned or used for residential purposes.

404.5—Manure must be stored in places removed at least 100 feet from all boundary lines of the lot.

404.6—Farmers' roadside stands must be set back at least 35 feet from the nearer edge of the street pavement.

Section 405—FILLING STATIONS

405.1—Lighting—All lighting installations shall be such and be so arranged as not to increase traffic hazards or to cause direct or glaring reflection into residential premises.

405.2—Pump islands shall be located not less than 12 feet from the street right-of-way line. The Zoning Commissioner, however, before granting any Special

CBA
Pet 3

Exception hereunder, shall consult with the office of Planning regarding any proposed future street right-of-way widening at such location.

405.3 — Repairs — Only minor and emergency repairs and customary services such as tire and chain service are permitted outside of a building. Body or fender repairs or repainting shall not be considered as emergency repairs, and in no case shall work be done outside which involves considerable noise, dust, paint or lacquer spray mist, or other objectionable characteristics.

405.4—Storage and parking—No continuous storage or continuous parking of vehicles is permitted outside of a building when the station is closed for business, except for emergencies.

405.5—Storage of inflammable liquids—See regulations in Baltimore County Building Code.

Section 406—GOLF DRIVING RANGE, MINIATURE GOLF, AND BASEBALL BATTING RANGE

406.1—All lighting installations shall be such and be so arranged as not to increase traffic hazards or to cause direct or glaring reflection into adjoining premises.

406.2—Enough offstreet parking space shall be provided so that parking on an adjoining access street or highway is unnecessary.

Section 407—HOSPITALS

407.1—Class A, as defined in Section 101 and conditioned as follows:

a. The lot area shall be as follows:
   (1) For hospitals with 100 beds or more—at least 5 acres;
   (2) For hospitals with from 50 to 100 beds—at least 4 acres;
   (3) For hospitals with less than 50 beds—at least 3 acres.

b. No part of any building shall be less than 100 feet from any bounding lot or street line;

c. Adequate offstreet parking space shall be provided, but not less than the number of spaces specified in Section 409.2.

CBA Pet 4

HAMMONDS FERRY ROAD

HAMMO

FARM STATE

LOCATION MAP

ALERT OIL COMPANY
3411 SILVERSIDE ROAD
WILMINGTON, DELAWARE 19810

PLOT PLAN

HAMMONDS FERRY (HOLLINS FERRY ROADS)
BALTIMORE CO., MARYLAND
DISTRICT 13

MARYLAND SURVEYING AND ENGINEERING CO. INC.

PLANS APPROVED

P-145

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204

DATE: 7-20-94

PERMIT #: B-206120
RECEIPT #: A-228839
CONTROL #: C-
XREF #:

FEE: $90.00+140.00+5.00+12.00
PAID:
PAID BY: APPL
INSPECTOR:

I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

BUILDING 1 or 2 FAM.
CODE CODE
BOCA CODE ✓

TYPE OF IMPROVEMENT
1. NEW BLDG CONST
2. ✓ ADDITION
3. ✓ ALTERATION
4. REPAIR
5. WRECKING
6. MOVING
7. OTHER

TYPE OF USE

RESIDENTIAL
01. ✓ ONE FAMILY
02. TWO FAMILY
03. THREE AND FOUR FAMILY
04. FIVE OR MORE FAMILY (ENTER NO UNITS)
05. SWIMMING POOL
06. GARAGE
07. OTHER

TYPE FOUNDATION: 1. SLAB 2. BLOCK 3. CONCRETE
BASEMENT: 1. FULL 2. PARTIAL 3. NONE

PROPERTY ADDRESS 3023 Hammonds Ferry Rd
SUBDIV:
TAX ACCOUNT #: 13-08-800660
OWNER'S INFORMATION (LAST,FIRST)
NAME: Lalin Enterprises Inc.
ADDR: 3023 Hammonds Ferry Rd 21227

HISTORIC DISTRICT/BLDG. YES ☐ NO ✓ DO NOT KNOW
DISTRICT/PRECINCT 13
DOES THIS BLDG. HAVE SPRINKLERS YES — NO —

APPLICANT INFORMATION
NAME: Nick Commodari - Agent
COMPANY: Hammonds Ferry Rd
STREET 3023 Hammonds Ferry Rd
CITY,ST,ZIP 21227
PHONE #: 242-0481 MHIC LICENSE #:
APPLICANT SIGNATURE: N Commodari TRACT: BLOCK:
PLANS: CONST O PLOT 10 PLAT DATA O EL / PL /
TENANT
CONTR: PPS CONTRACTORS
ENGNR:
SELLR:

DESCRIBE PROPOSED WORK: COMPLY WITH 1993 BCCA SECTION 705.2&.3 CONST 1 STY ADDITION ON BOTH SIDES OF EX BLDG. 1ST ADD - 7'X10'X15' = 70 SF - TO BE CASHIER'S BOOTH. 2ND ADD - 10'+29'X15' = 278 SF (IRREG) TO BE CUSTOMER WAITING AREA. INT ALTS. - REMOVE EX PARTITIONS & INSTALL DOOR TO BOTH RM, CEILING, FLOORING, DRYWALL, NEW STOREFRONT & FINISHES. 332 SF TOTAL OF ADD & ALTS = ~~NEW PER BONS~~

NON-RESIDENTIAL
08. AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. CHURCH, OTHER RELIGIOUS BUILDING
10. FENCE (LENGTH HEIGHT)
11. INDUSTRIAL, STORAGE BUILDING
12. PARKING GARAGE
13. ✓ SERVICE STATION, REPAIR GARAGE
14. HOSPITAL, INSTITUTIONAL, NURSING HOME
15. OFFICE, BANK, PROFESSIONAL
16. PUBLIC UTILITY
17. SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. SIGN
19. STORE MERCANTILE RESTAURANT
SPECIFY TYPE
20. SWIMMING POOL
SPECIFY TYPE
21. TANK, TOWER
22. TRANSIENT HOTEL, MOTEL (NO. UNITS)
23. OTHER

TYPE OF CONSTRUCTION
1. ✓ MASONRY
2. WOOD FRAME
3. STRUCTURE STEEL
4. REINF. CONCRETE

TYPE OF HEATING FUEL
1. GAS 3. ELECTRICITY
2. OIL 4. COAL

TYPE OF SEWAGE DISPOSAL
1. ✓ PUBLIC SEWER ✓ EXISTS PROPOSED
2. PRIVATE SYSTEM
SEPTIC EXISTS PROPOSED
PRIVY EXISTS PROPOSED

TYPE OF WATER SUPPLY
1. ✓ PUBLIC SYSTEM ✓ EXISTS PROPOSED
2. PRIVATE SYSTEM EXISTS PROPOSED

CENTRAL AIR: 1. 2.
ESTIMATED COST: $30,000.00 OF MATERIALS AND LABOR
PROPOSED USE: GAS STATION & ADD/ALTS
EXISTING USE: GAS STATION

OWNERSHIP
1. ✓ PRIVATELY OWNED 2. PUBLICLY OWNED 3. SALE 4. RENTAL

RESIDENTIAL CATEGORY: 1. DETACHED 2. SEMI-DET. 3. GROUP 4. TOWNHSE 5. MIDRISE 6. HIRISE
#EFF: #1BED: #2BED: #3BED: TOT BED: TOT APTS/CONDOS:
1 FAMILY BEDROOMS
GARBAGE DISPOSAL 1. Y 2. N BATHROOMS CLASS 20
POWDER ROOMS KITCHENS LIBER FOLIO

BUILDING SIZE
FLOOR 680
WIDTH 10'
DEPTH 29
HEIGHT 15
STORIES 1
LOT #'S
CORNER LOT 1. ✓ Y 2. N

LOT SIZE AND SETBACKS
SIZE 165.97 X
FRONT STREET
SIDE STREET
FRONT SETBK NC
SIDE SETBK NC/0'
SIDE STR SETBK
REAR SETBK NC
ZONING

APPROVAL SIGNATURES		DATE
BLD INSP		
BLD PLAN	120 R.J. Seim FINAL	7-21-94
FIRE	120 R.J. Seim FINAL	7-21-94
SEDI CTL		
ZONING	109 [illegible]	7-21-94
PUB SERV	104 [illegible]	7-21-94
ENVRMNT	[illegible]	7/20/94
PERMITS		

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

~~[illegible]~~ WAIVE PLANS & DATA RJS

CBA Pet. 5

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND LICENSES
TOWSON, MARYLAND 21204

BUILDINGS ENGINEER

PERMIT NO: B206120

PERMISSION IS HEREBY GRANTED TO:

NAME: SUALIN ENTERPRISES INC
ADDRESS: 3023 HAMMONDS FERRY RD 21227

TO USE AND OCCUPY THE LAND AND/OR BUILDINGS DESCRIBED AND LOCATED AS FOLLOWS ON PERMIT NO: B206120

LOCATION OF PROPERTY: 3023 HAMMONDS FERRY RD
DIST: 13 LOT NO: BLOCK NO.
SUBDIVISION: NE COR HOLLINS FERRY

DATE: 04/05/95
FEE PAID: 297.00

ISSUED BY THE BUILDINGS ENGINEER

INSPECTOR COPY

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND LICENSES
TOWSON, MARYLAND 21204

BUILDINGS ENGINEER

PERMIT NO: B206120

PERMISSION IS HEREBY GRANTED TO:

NAME: SHALIN ENTERPRISES INC
ADDRESS: 3023 HAMMONDS FERRY RD 21227

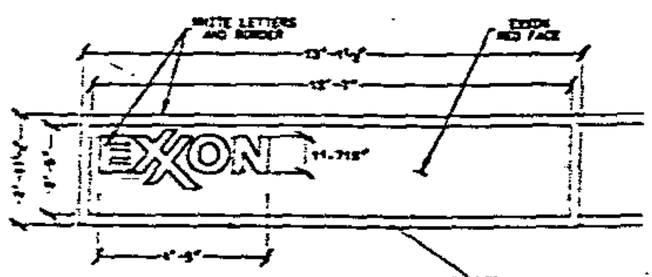
TO USE AND OCCUPY THE LAND AND/OR BUILDINGS DESCRIBED AND LOCATED AS FOLLOWS ON PERMIT NO: B206120

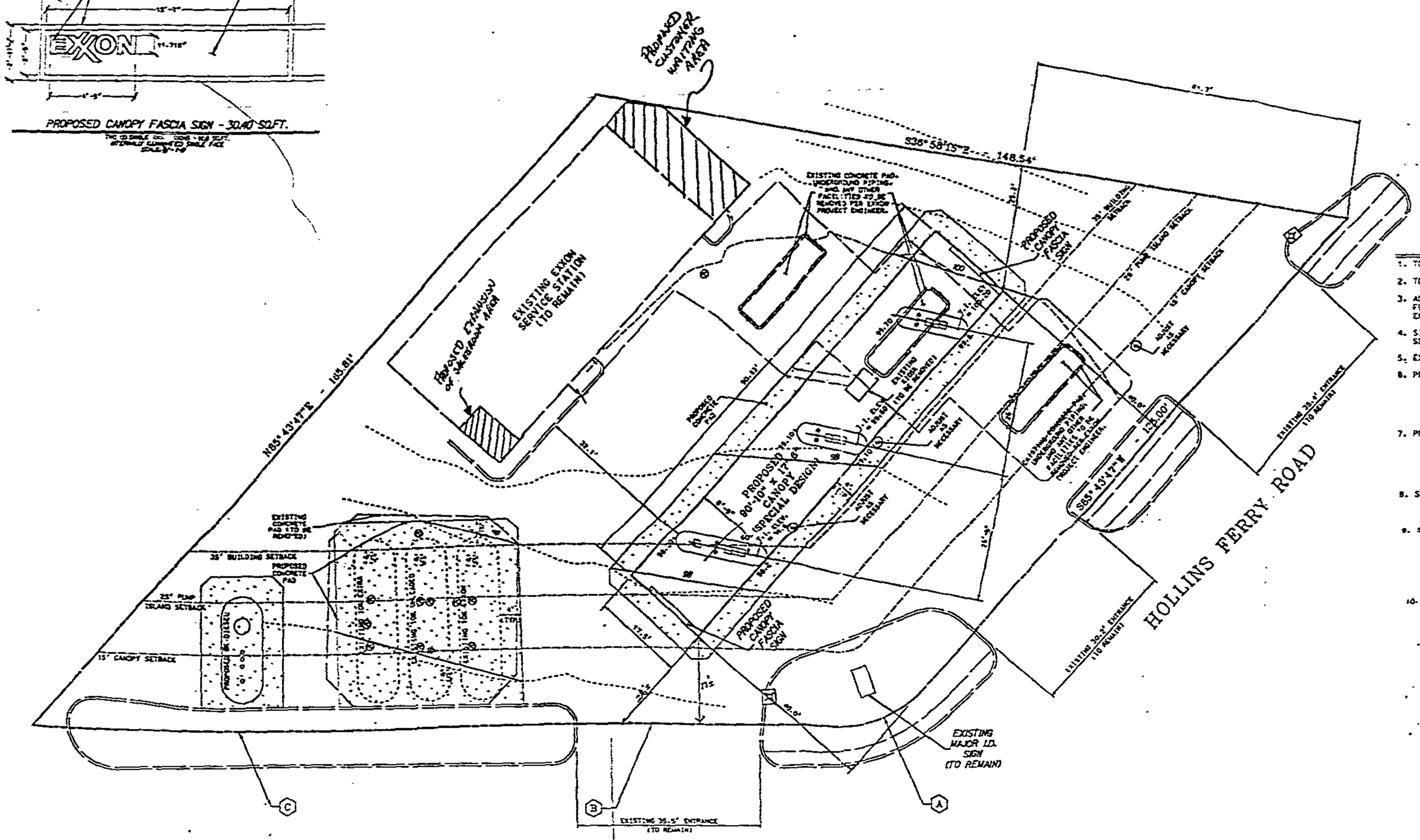
LOCATION OF PROPERTY: 3023 HAMMONDS FERRY RD
DIST: 13 LOT NO: BLOCK NO.
SUBDIVISION: NE COR HOLLINS FERRY

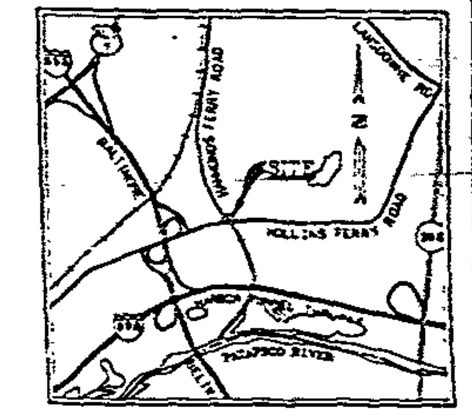
DATE: 04/05/95
FEE PAID: 297.00

ISSUED BY THE BUILDINGS ENGINEER

INSPECTOR COPY







VICINITY MAP
SCALE: 1" = 2000'

SITE INFORMATION

1. TOTAL SITE AREA: 18,803.56 SQ.FT./0.43 AC. +/-
2. TOTAL PROPOSED MULTI-PRODUCT DISPENSERS (MPD): 3
3. ALL EXISTING ON-SITE BUILDINGS, STRUCTURES, FENCES, CURB AND GUTTER, YARD LIGHTING, AND ENTRANCES ARE TO REMAIN.
4. SITE IS TO MAINTAIN EXISTING WATER AND SEWAGE SERVICE CONNECTIONS.
5. EXISTING TANK FIELD IS TO REMAIN.
6. PROPOSED DEMOLITION:
   A. REMOVE THREE (3) PUMP ISLANDS AND TRIMLINE DISPENSERS - KIOSK
   B. REMOVE CONCRETE PAVING AS NEEDED PER SITE AND GRADING PLAN.
7. PROPOSED MODIFICATIONS:
   A. SPECIALLY DESIGN CANOPY.
   B. THREE (3) PUMP ISLANDS AND THREE (3) MULTI-PRODUCT DISPENSERS (MPD'S) + (1) DIESEL DISPENSER
   C. STAGE I AND II VAPOR RECOVERY.
   D. CONCRETE PAVING PER SITE AND GRADING PLAN.
8. SITE ADDRESS:
   EXXON STATION
   3023 HAMMOND FERRY ROAD
   LANSDOWNE, MARYLAND 21227
   ZONED B.L.-CIS
9. SIGNAGE:
   A. ALLOWABLE SIGNAGE:
      4 x 90.83 L.F.
      = 363.32 SQ.FT.
   B. PROPOSED SIGNAGE:
      1. TWO (2) CANOPY FASCIA SIGNS x 30.4 SQ.FT.
      = 60.8 SQ.FT.
10. PREVIOUS CASES
   #65-316-RX (5/13/65) REZONED FROM B.L.-B.L. + SPECIAL EXCEPTION FOR FILING STATION
   #83-48-X (6/7/83) SPECIAL EXCEPTION FOR FOOD STORE AS USE IN COMBINATION W/SELF SERVE STATION W/RESTRICTIONS

HAMMONDS FERRY ROAD

	RADIUS	LENGTH	DELTA	TANGENT	LONG CHORD	
A	22.00'	19.50'	50° 47'06"	10.44	N68° 52'40"W	18.87'
B	865.47'	80.17'	05° 18'27"	40.11	N46° 08'21"W	80.14'
C	710.00'	76.38'	06° 09'50"	38.23	N45° 92'39"W	76.34'

02011

10 0 10 20 30 40 50
GRAPHIC SCALE

OWNER/DEVELOPER/APPLICANT
EXXON COMPANY, U.S.A.
6301 IVY LANE
SUITE 700
GREENBELT, MARYLAND 20770
ATTN: MR. DENNIS COURNEY
PHONE: (410)-563-5176

DATE	REVISIONS	BY	CHK
04/08/94	REV TANK LOCATION PER EXXON.	CB	TFW

EXXON COMPANY, U.S.A. A DIVISION OF EXXON CORPORATION
Marketing Department — Real Estate & Engineering

DATE: 04/08/1994
DRAWN BY: CB
CHK. BY: TFW
SCALE: 1" = 10'

SITE LAYOUT PLAN
FOR AN EXXON STATION AT
3023 HAMMONDS FERRY ROAD
LANSDOWNE MARYLAND

PROJECT NO. 94042.00
DISC. NO.
RAS. NO. 2-5471
DWG. NO. 01 OF 01

Pet Ex
CBA 8

IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE - NE/Corner Hollins Ferry Road and Hammonds Ferry Road (3023 Hammonds Ferry Road) 13th Election District 1st Council District	*	BEFORE THE
	*	ZONING COMMISSIONER
	*	OF BALTIMORE COUNTY
	*	Case No. 04-035-SPHXA
Shalin Enterprises, Inc. Petitioners	*	

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception and Variance filed by the owners of the subject property, Shalin Enterprises, Inc., by and through their attorney, John B. Gontrum, Esquire. The Petitioners request a special hearing to approve an amendment to the site plans and Orders issued in prior Cases Nos. 65-316-RX and 83-48-X to permit a fuel service station use in combination with a convenience store of 1709 sq.ft. and carryout of 286 sq.ft. within the existing building. In addition, special exception relief is requested to approve such use in combination, pursuant to Section 405.E of the Baltimore County Zoning Regulations (B.C.Z.R.). Lastly, variance relief is requested from the B.C.Z.R. as follows: From Section 405.4.A.2.b to permit landscape transition areas of as little as 3' in lieu of the minimum required 10' from a public right-of-way and 0' in lieu of the required 6' from adjacent properties; from Section 405.4.A.2.c to waive the vegetation requirements under the landscape manual for automotive uses; and, from Sections 405.4.b.1 and 405.4.B.10 to permit a fuel service station use in combination with a convenience store of 1709 sq.ft. and carryout restaurant of 286 sq.ft within an existing building on a lot size of 18,804 sq.ft. in lieu of the minimum required lot area of 23,524 sq.ft. 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 Exhibit 1.

ORDER RECEIVED FOR FILING
Date 11/10/03
By

Appearing at the requisite public hearing in support of the request were Shrgyas Panchigar, principle of Shalin Enterprises, Inc., property owners; Patrick Richardson, the Professional Engineer who prepared the site plan; and John B. Gontrum, Esquire, attorney for the Petitioners. There were no Protestants or other interested persons present; however, a request for a copy of the Order issued in this case was received from Stan Sobotka. Moreover, a letter regarding the request was received from Brenda Harney, Director of the Greater BLR Alliance, Inc., a neighborhood association.

Testimony and evidence offered revealed that the subject property is an irregular shaped parcel located on the northeast corner of Hammonds Ferry Road and Hollins Ferry Road in Catonsville. The property contains a gross area of 0.63 acres, more or less, zoned B.L.-A.S. and is improved with a one-story building to the rear of the site, which has been used as an Exxon fuel service station for many years. In addition to the building, a fuel pump island containing 12 multi-product fuel dispensers is located in the front portion of the site, adjacent to the intersection. Testimony indicated that a number of years ago, there was also a convenience store and small office area added to the building. The Petitioners are desirous of utilizing 286 sq.ft. of the convenience store to install a deli/carry-out, which will offer ready-to-eat sandwiches and other similar products. Although no exterior changes or additions are proposed to the existing building, the requested relief is necessary to bring the property into compliance with zoning regulations.

Based on the testimony and evidence offered, I am persuaded to grant the requested relief. It is clear that the property has been used as a gasoline service station for many years and that the proposed improvements are consistent with other uses in the area and the character of the surrounding neighborhood. The zoning relief requested and addition of the proposed deli will not significantly alter the use/appearance of the property. Testimony indicated that a Royal Farms Store is located on the adjacent property to the east and to the north (rear) side is a service garage operation. I find that the relief requested meets the requirements of Section 502.1 of the B.C.Z.R. I further find that the special hearing relief should be granted to allow amendments to the site plans and Orders issued in the prior cases to reflect current conditions on the site.

ORDER RECEIVED FOR FILING
Date 11/19/03
By

Lastly, as noted above, variance relief is requested from the landscape requirements. In this regard, relief is necessary due to the unusual configuration of the site and the location of existing improvements thereon. As shown on the site, the existing building abuts the rear property line and the balance of the site is largely paved macadam. Thus, landscaping of the property is limited to existing grassy areas. Moreover, the property lacks sufficient area to meet the requirements for a fuel service station use in combination with a convenience store. However, as noted above, the property has been used for such purposes for many years, apparently without detrimental impact to the surrounding neighborhood. For all of these reasons, I am persuaded to grant the requested variances.

Further testimony revealed that the Petitioners negotiated and reached an agreement with the Greater BLR Alliance, Inc. regarding the proposal. Thus, the relief granted herein is conditioned upon Petitioners' compliance with the terms and conditions of that agreement, which has been incorporated herein as set out below.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 10th day of November 2003 that the Petition for Special Hearing to approve an amendment to the site plans approved and Orders issued in prior Cases Nos. 65-316-RX and 83-48-X to permit a fuel service station use in combination with a convenience store of 1709 sq.ft. and proposed carryout of 286 sq.ft. within the existing building, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Exception to approve such uses in combination, pursuant to Section 405.E of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from the B.C.Z.R. as follows: From Section 405.4.A.2.b of the B.C.Z.R. to permit landscape transition areas of as little as 3' in lieu of the minimum required 10' from a public right-of-way and 0' in lieu

ORDER RECEIVED/FOR FILING
Date 11/10/03
By

of the required 6' from adjacent properties; from Section 405.4.A.2.c of the B.C.Z.R. to waive the vegetation requirements under the landscape manual for automotive uses; and from Sections 405.4.b.1 and 405.4.B.10 of the B.C.Z.R. to permit a fuel service station use in combination with a convenience store of 1709 sq.ft. and carryout restaurant of 286 sq.ft within an existing building on a lot size of 18,804 sq.ft. in lieu of the minimum required lot area of 23,524 sq.ft., in accordance with Petitioner's Exhibit 1, 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, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2) The Petitioners shall install a guardrail between the subject property and the adjacent Royal Farms Store lot to prevent traffic from that business from cutting through the subject property to avoid the intersection.

3) The Petitioners shall submit a landscape plan to Mr. Avery Harden, the Landscape Architect for Baltimore County, to develop a suitable landscape plan for the subject property. Said plan should recognize the existing use of the property and improvements thereon and shall require landscaping as reasonably practical and prudent. A copy of the approved plan shall be submitted to the Office of Planning and the Greater BLR Alliance, Inc.

4) There shall be no damaged or disabled vehicles stored on the subject lot.

5) If agreeable to the adjacent property owner at 3015 Hammonds Ferry Road, the Petitioners shall erect a small barrier fence along the common property line. In addition, the existing fuel tank in that area shall be removed.

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

ORDER RECEIVED FOR FILING
Date 11/11/13
By

LES:bjs

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

Department of Permits and Development Management

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

Baltimore County

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

December 19, 2005

Richard Richardson
110 Old Padonia Road, Suite LC
Cockeysville, MD 21030

Re: Spirit & Intent - Case # 04-035-SPHXA; Shalin Enterprises, Inc.; 3023 Hammonds Ferry Rd; 13th Election District

Dear Mr. Richardson:

Your recent letter to the Zoning Office was forwarded to me for reply. Your request for the inquiry was to be reassured that the proposed area configuration of retail uses for the existing one-story building meets the Spirit and Intent of the subject zoning case.

Based upon the revised site plan (12/12/05) you submitted, and specifically, the calculations shown under "General Notes" # 9, it has been determined that the current revision of retail uses meets the Spirit and Intent of the subject zoning case.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, I can be reached at 410-887-3391.

Sincerely,

Bruno Rudaitis
Planner II
Zoning Review

CBA Pet
9

br:BR

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Lawrence Stahl, Chairman
County Board of Appeals

DATE: December 20, 2005

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

SUBJECT: 3032 Hammonds Ferry Road – **THIRD REVIEW**

INFORMATION:

Item Number: 04-035

Petitioner: Shalin Enterprises, Inc.

Zoning: BL-AS

Requested Action: Special Exception/Special Hearing/Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning reviewed the petitioner's revised site plan dated 12/12/05 and recommends that the 6 restrictions set by the Zoning Commissioner's Order dated 11/10/2003 be upheld by the Board of Appeals.

Prepared by: Lynn Lochar

Section Chief: Lyn Franchot

AFK/LL

CBA
Pat 10

W:\DEVREV\ZAC\04-035 amend.doc

Pet Ex. [redacted] 11
CBA.

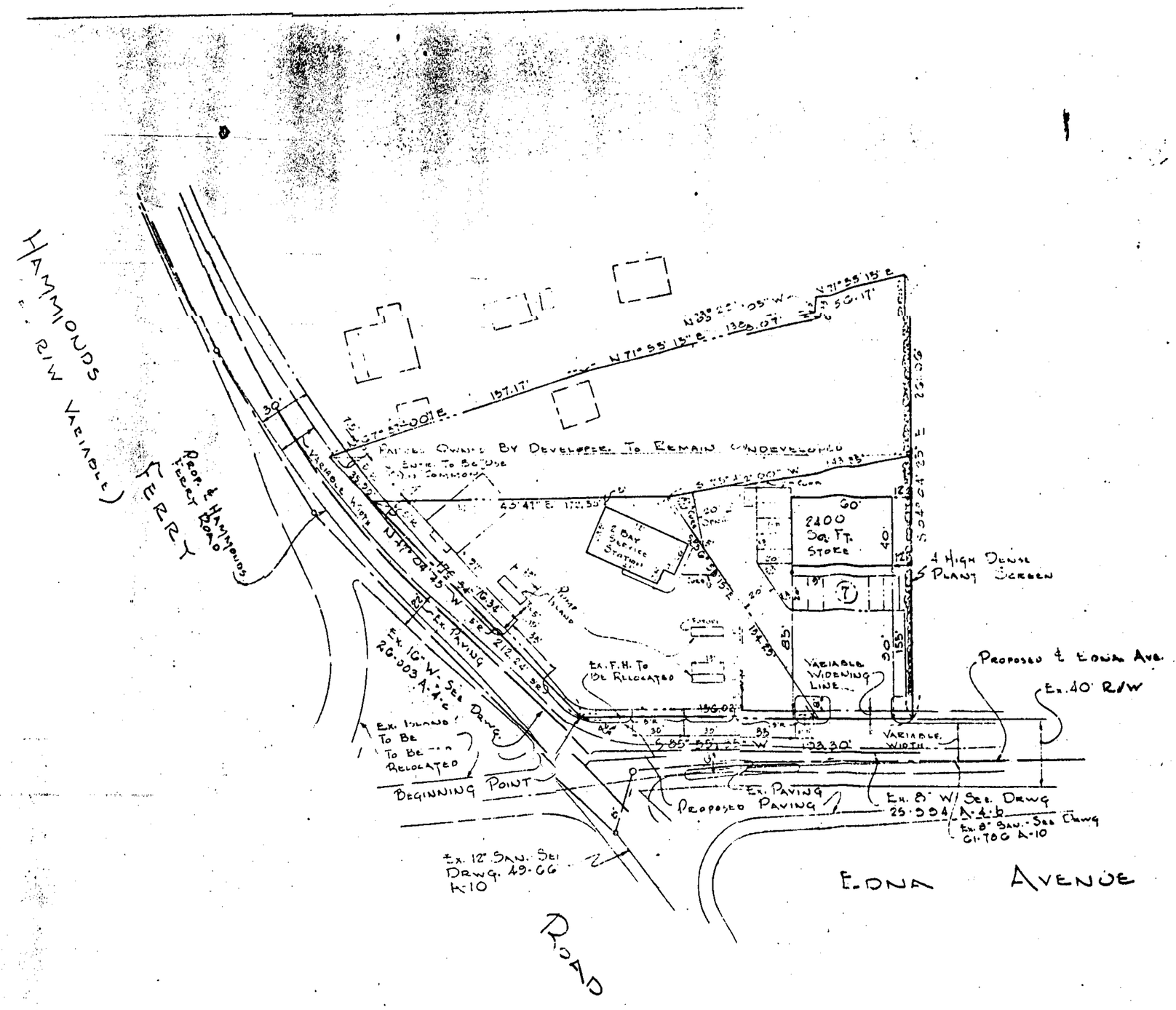
BALTIMORE COUNTY TRAFFIC ENGINEERING
TURNING MOVEMENT COUNT DATA

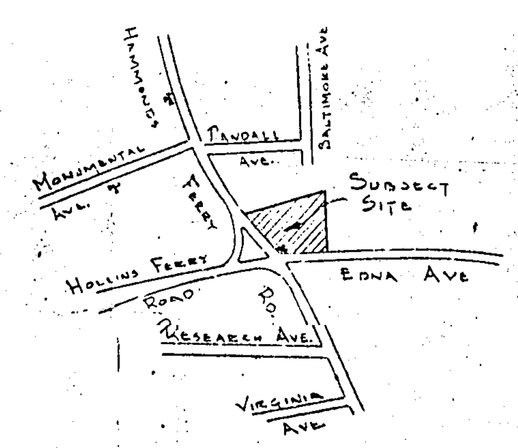
LOCATION HAMMONDS FERRY RD & HOLLINS FERRY RD

COUNTY SIGNAL NUMBER TMC C172

ROAD NAME	HAMMONDS FERRY RD				HAMMONDS FERRY RD					HOLLINS FERRY RD				HOLLINS FERRY RD					
	NORTHBOUND				SOUTHBOUND					EASTBOUND				WESTBOUND					
AM	L	S	R	TOTAL	L	S	R	TOTAL	N + S TOTAL	L	S	R	TOTAL	L	S	R	TOTAL	E + W TOTAL	GRAND TOTAL
6:00-6:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6:15-6:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6:30-6:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6:45-7:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7:00-7:15	13	15	4	32	2	15	28	45	77	14	36	11	61	20	89	6	115	176	253
7:15-7:30	13	12	3	28	1	14	33	48	76	18	50	8	76	8	95	2	105	181	257
7:30-7:45	6	18	9	33	4	17	45	66	99	13	47	7	67	14	84	4	102	169	268
7:45-8:00	15	9	5	29	9	17	36	62	91	25	37	14	76	13	101	4	118	194	285
8:00-8:15	18	20	9	47	3	30	36	69	116	22	55	11	88	16	82	6	104	192	308
8:15-8:30	8	16	9	33	5	16	30	51	84	23	51	5	79	11	75	9	95	174	258
8:30-8:45	7	13	7	27	3	11	37	51	78	46	53	11	110	17	87	6	110	220	298
8:45-9:00	10	18	5	33	4	17	45	66	99	42	50	10	102	13	93	4	110	212	311
AM HOUR TOTALS																			
6:00-7:00	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
6:15-7:15	13	15	4	32	2	15	28	45	77	14	36	11	61	20	89	6	115	176	253
6:30-7:30	26	27	7	60	3	29	61	93	153	32	86	19	137	28	184	8	220	357	510
6:45-7:45	32	45	16	93	7	46	106	159	252	45	133	26	204	42	268	12	322	526	778
7:00-8:00	**47**	**54**	**21**	**122**	**16**	**63**	**142**	**221**	**343**	**70**	**170**	**40**	**280**	**55**	**369**	**16**	**440**	**720**	**1063**
7:15-8:15	52	59	26	137	17	78	150	245	382	78	189	40	307	51	362	16	429	736	1118
7:30-8:30	47	63	32	142	21	80	147	248	390	83	190	37	310	54	342	23	419	729	1119
7:45-8:45	48	58	30	136	20	74	139	233	369	116	196	41	353	57	345	25	427	780	1149
8:00-9:00	**43**	**67**	**30**	**140**	**15**	**74**	**148**	**237**	**377**	**133**	**209**	**37**	**379**	**57**	**337**	**25**	**419**	**798**	**1175**

	NORTHBOUND				SOUTHBOUND					EASTBOUND				WESTBOUND					
PM	L	S	R	TOTAL	L	S	R	TOTAL	N + S TOTAL	L	S	R	TOTAL	L	S	R	TOTAL	E + W TOTAL	GRAND TOTAL
3:00-3:15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3:15-3:30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3:30-3:45	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3:45 4:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4:00-4:15	18	28	19	65	7	28	13	48	113	79	81	7	167	5	48	5	58	225	338
4:15-4:30	25	31	16	72	9	37	25	71	143	62	105	16	183	9	98	7	114	297	440
4:30 4:45	29	33	13	75	9	37	43	89	164	51	107	7	165	18	86	10	114	279	443
4:45-5:00	13	38	15	66	12	30	47	89	155	62	111	8	181	21	85	5	111	292	447
5:00-5:15	23	36	16	75	12	47	45	104	179	64	116	12	192	18	79	13	110	302	481
5:15-5:30	8	37	19	64	14	35	31	80	144	69	92	16	177	19	67	12	98	275	419
5:30-5:45	8	15	17	40	7	18	25	50	90	30	67	2	99	8	50	8	66	165	255
5:45-6:00	13	21	16	50	5	21	20	46	96	33	77	7	117	11	55	6	72	189	285
PM HOUR TOTALS																			
3:00-4:00	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
3:15-4:15	18	28	19	65	7	28	13	48	113	79	81	7	167	5	48	5	58	225	338
3:30-4:30	43	59	35	137	16	65	38	119	256	141	186	23	350	14	146	12	172	522	778
3:45-4:45	72	92	48	212	25	102	81	208	420	192	293	30	515	32	232	22	286	801	1221
4:00-5:00	**85**	**130**	**63**	**278**	**37**	**132**	**128**	**297**	**575**	**254**	**404**	**38**	**696**	**53**	**317**	**27**	**397**	**1093**	**1668**
4:15-5:15	90	138	60	288	42	151	160	353	641	239	439	43	721	66	348	35	449	1170	1811
4:30-5:30	73	144	63	280	47	149	166	362	642	246	426	43	715	76	317	40	433	1148	1790
4:45-5:45	52	126	67	245	45	130	148	323	568	225	386	38	649	66	281	38	385	1034	1602
5:00-6:00	**52**	**109**	**68**	**229**	**38**	**121**	**121**	**280**	**509**	**196**	**352**	**37**	**585**	**56**	**251**	**39**	**346**	**931**	**1440**





LOCATION PLAN
SCALE: 1"=500'

GENERAL NOTES

1. TOTAL ACREAGE OF TRACT EQUALS 1.5846 ACRES
2. PRESENT ZONING OF TRACT "B-2" & "B-2"/SPECIAL EXCEPTION FOR GAS STATION.
3. PROPOSED USE OF TRACT RETAIL STORE & GAS STATION
4. FLOOR AREA OF RETAIL STORE EQUALS 2400 SQ. FT.
5. REQUIRED OFF-STREET PARKING (9.5x18) UNITS EQUALS 12
6. PROPOSED OFF-STREET PARKING (9'x20') UNITS EQUALS 12
7. EXISTING STRUCTURES ON TRACT OWNED BY DEVELOPER SHALL BE REMOVED.
8. FOR FINAL SITE PLAN OF GAS STATION SEE DRWGS BY HUMBLE OIL & REFINING CO.

PLANS APPROVED
OFFICE OF PLANNING & ZONING
BY [illegible]
DATE 12/7/65

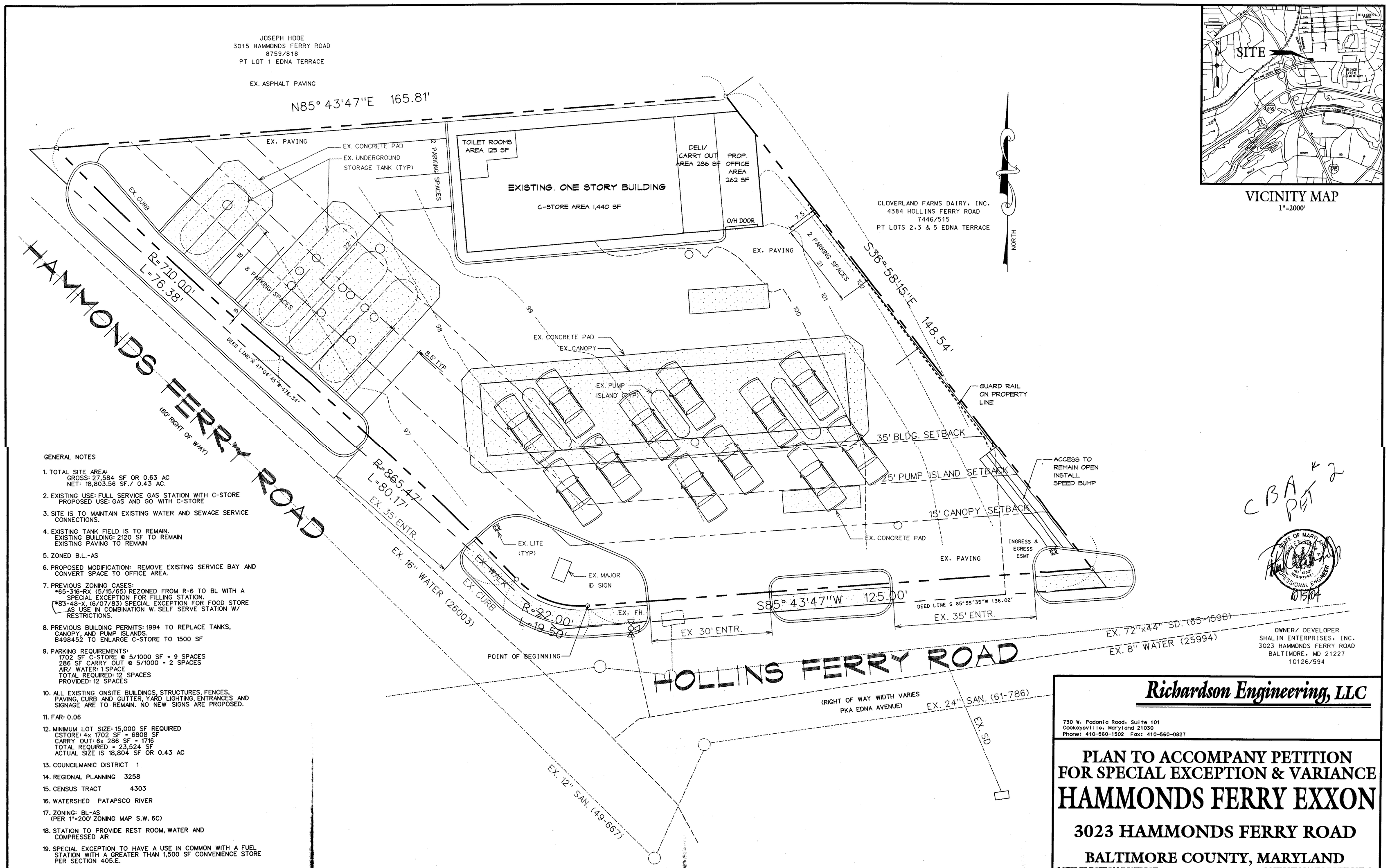
CBA Pet. 2

SITE PLAN
OF
NE CORNER EDNA AVE. & HAMMONDS FERRY RD.
ELECTION DISTRICT 13 — BALTIMORE CO., MD.
SCALE: 1"=50' — SEPT. 28, 1965

DEVELOPER
COMMONWEALTH TRUST CO. OF WILMINGTON, DEL.
ATTN: MR. GEO. H. MINTON
P.O. BOX 1004, BALTO. MD. 21203

MATZ, CHILDS & ASSOCIATES

1	Revd. Entrance, Hammonds Ferry Rd. Parking	2-8-65	



GENERAL NOTES

1. TOTAL SITE AREA:
   GROSS: 27,584 SF OR 0.63 AC
   NET: 18,803.56 SF./ 0.43 AC.
2. EXISTING USE: FULL SERVICE GAS STATION WITH C-STORE
   PROPOSED USE: GAS AND GO WITH C-STORE
3. SITE IS TO MAINTAIN EXISTING WATER AND SEWAGE SERVICE CONNECTIONS.
4. EXISTING TANK FIELD IS TO REMAIN.
   EXISTING BUILDING: 2120 SF TO REMAIN
   EXISTING PAVING TO REMAIN
5. ZONED B.L.-AS
6. PROPOSED MODIFICATION: REMOVE EXISTING SERVICE BAY AND CONVERT SPACE TO OFFICE AREA.
7. PREVIOUS ZONING CASES:
   *65-316-RX (5/15/65) REZONED FROM R-6 TO BL WITH A SPECIAL EXCEPTION FOR FILLING STATION.
   *83-48-X, (6/07/83) SPECIAL EXCEPTION FOR FOOD STORE AS USE IN COMBINATION W. SELF SERVE STATION W/ RESTRICTIONS.
8. PREVIOUS BUILDING PERMITS: 1994 TO REPLACE TANKS, CANOPY, AND PUMP ISLANDS.
   B498452 TO ENLARGE C-STORE TO 1500 SF
9. PARKING REQUIREMENTS:
   1702 SF C-STORE @ 5/1000 SF = 9 SPACES
   286 SF CARRY OUT @ 5/1000 = 2 SPACES
   AIR/ WATER: 1 SPACE
   TOTAL REQUIRED: 12 SPACES
   PROVIDED: 12 SPACES
10. ALL EXISTING ONSITE BUILDINGS, STRUCTURES, FENCES, PAVING, CURB AND GUTTER, YARD LIGHTING, ENTRANCES AND SIGNAGE ARE TO REMAIN. NO NEW SIGNS ARE PROPOSED.
11. FAR: 0.06
12. MINIMUM LOT SIZE: 15,000 SF REQUIRED
    CSTORE: 4x 1702 SF = 6808 SF
    CARRY OUT: 6x 286 SF = 1716
    TOTAL REQUIRED = 23,524 SF
    ACTUAL SIZE IS 18,804 SF OR 0.43 AC
13. COUNCILMANIC DISTRICT 1
14. REGIONAL PLANNING 3258
15. CENSUS TRACT 4303
16. WATERSHED PATAPSCO RIVER
17. ZONING: BL-AS
    (PER 1"=200' ZONING MAP S.W. 6C)
18. STATION TO PROVIDE REST ROOM, WATER AND COMPRESSED AIR
19. SPECIAL EXCEPTION TO HAVE A USE IN COMMON WITH A FUEL STATION WITH A GREATER THAN 1,500 SF CONVENIENCE STORE PER SECTION 405.E.
20. VARIANCES TO HAVE A LOT AREA OF 18,804 SF IN LIEU OF THE REQUIRED 23,524 SF PER SECTION 405.4.E AND FOR LANDSCAPE SETBACKS PER SECTION 405.4.A.2.b TO PERMIT THE EXISTING YARDS OF AS LITTLE AS 3 FEET ALONG PUBLIC RIGHT OF WAYS AND 0 FEET FOR OTHER YARDS.

OWNER/ DEVELOPER
SHALIN ENTERPRISES, INC.
3023 HAMMONDS FERRY ROAD
BALTIMORE, MD 21227
10126/594

Richardson Engineering, LLC

730 W. Padonia Road, Suite 101
Cockeysville, Maryland 21030
Phone: 410-560-1502 Fax: 410-560-0827

PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION & VARIANCE

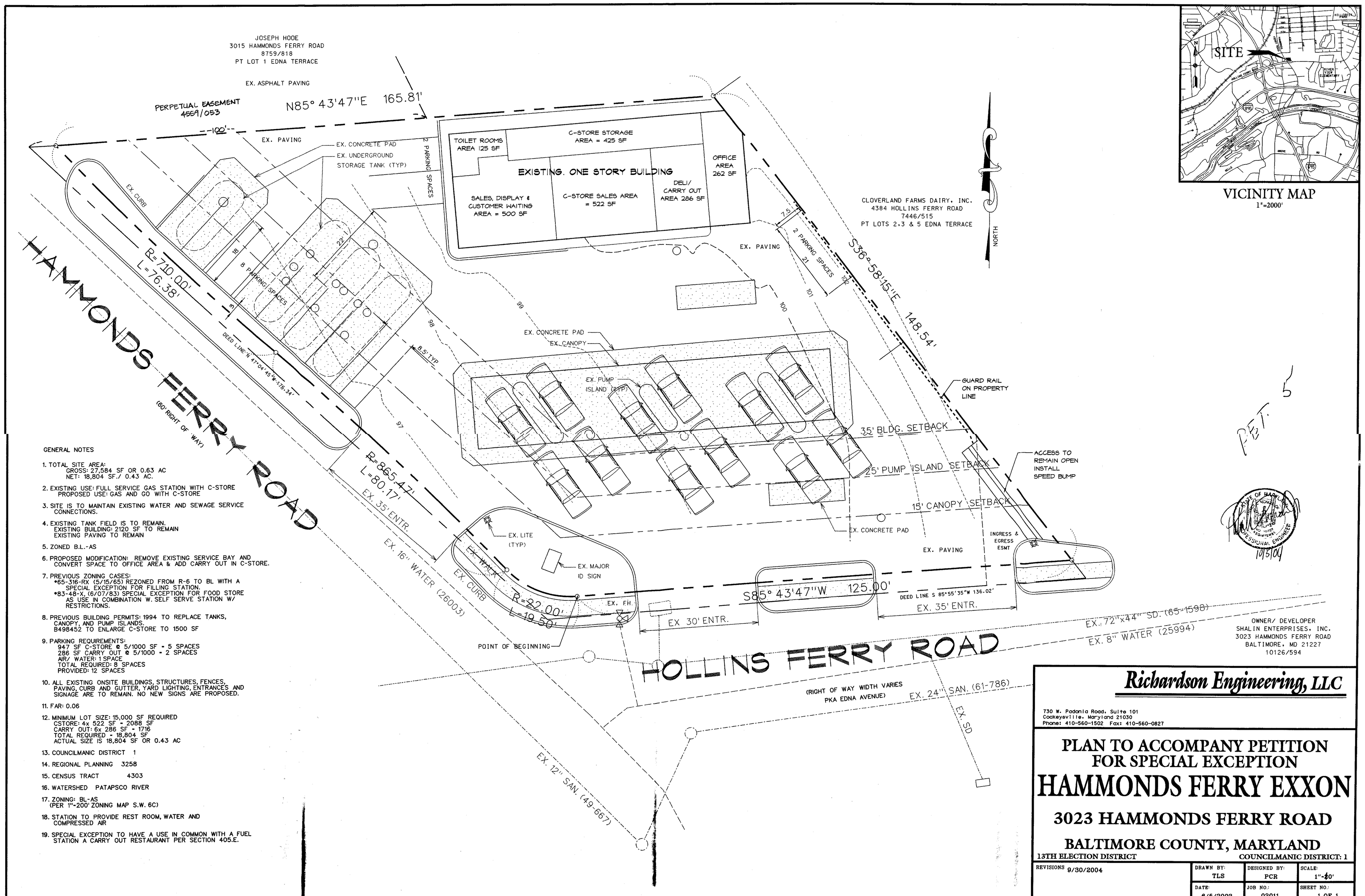
HAMMONDS FERRY EXXON

3023 HAMMONDS FERRY ROAD

BALTIMORE COUNTY, MARYLAND

13TH ELECTION DISTRICT — COUNCILMANIC DISTRICT: 1

REVISIONS 1/26/04	DRAWN BY: TLS	DESIGNED BY: PCR	SCALE: 1"=20'
	DATE: 6/5/2003	JOB NO.: 02011	SHEET NO.: 1 OF 1



GENERAL NOTES

1. TOTAL SITE AREA:
   GROSS: 27,584 SF OR 0.63 AC
   NET: 18,804 SF./ 0.43 AC.
2. EXISTING USE: FULL SERVICE GAS STATION WITH C-STORE
   PROPOSED USE: GAS AND GO WITH C-STORE
3. SITE IS TO MAINTAIN EXISTING WATER AND SEWAGE SERVICE CONNECTIONS.
4. EXISTING TANK FIELD IS TO REMAIN.
   EXISTING BUILDING: 2120 SF TO REMAIN
   EXISTING PAVING TO REMAIN
5. ZONED B.L.-AS
6. PROPOSED MODIFICATION: REMOVE EXISTING SERVICE BAY AND CONVERT SPACE TO OFFICE AREA & ADD CARRY OUT IN C-STORE.
7. PREVIOUS ZONING CASES:
   *65-316-RX (5/15/65) REZONED FROM R-6 TO BL WITH A SPECIAL EXCEPTION FOR FILLING STATION.
   *83-48-X, (6/07/83) SPECIAL EXCEPTION FOR FOOD STORE AS USE IN COMBINATION W. SELF SERVE STATION W/ RESTRICTIONS.
8. PREVIOUS BUILDING PERMITS: 1994 TO REPLACE TANKS, CANOPY, AND PUMP ISLANDS.
   B498452 TO ENLARGE C-STORE TO 1500 SF
9. PARKING REQUIREMENTS:
   947 SF C-STORE @ 5/1000 SF - 5 SPACES
   286 SF CARRY OUT @ 5/1000 - 2 SPACES
   AIR/ WATER: 1 SPACE
   TOTAL REQUIRED: 8 SPACES
   PROVIDED: 12 SPACES
10. ALL EXISTING ONSITE BUILDINGS, STRUCTURES, FENCES, PAVING, CURB AND GUTTER, YARD LIGHTING, ENTRANCES AND SIGNAGE ARE TO REMAIN. NO NEW SIGNS ARE PROPOSED.
11. FAR: 0.06
12. MINIMUM LOT SIZE: 15,000 SF REQUIRED
    CSTORE: 4x 522 SF - 2088 SF
    CARRY OUT: 6x 286 SF - 1716
    TOTAL REQUIRED - 18,804 SF
    ACTUAL SIZE IS 18,804 SF OR 0.43 AC
13. COUNCILMANIC DISTRICT 1
14. REGIONAL PLANNING 3258
15. CENSUS TRACT 4303
16. WATERSHED PATAPSCO RIVER
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18. STATION TO PROVIDE REST ROOM, WATER AND COMPRESSED AIR
19. SPECIAL EXCEPTION TO HAVE A USE IN COMMON WITH A FUEL STATION A CARRY OUT RESTAURANT PER SECTION 405.E.

OWNER/ DEVELOPER
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PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION

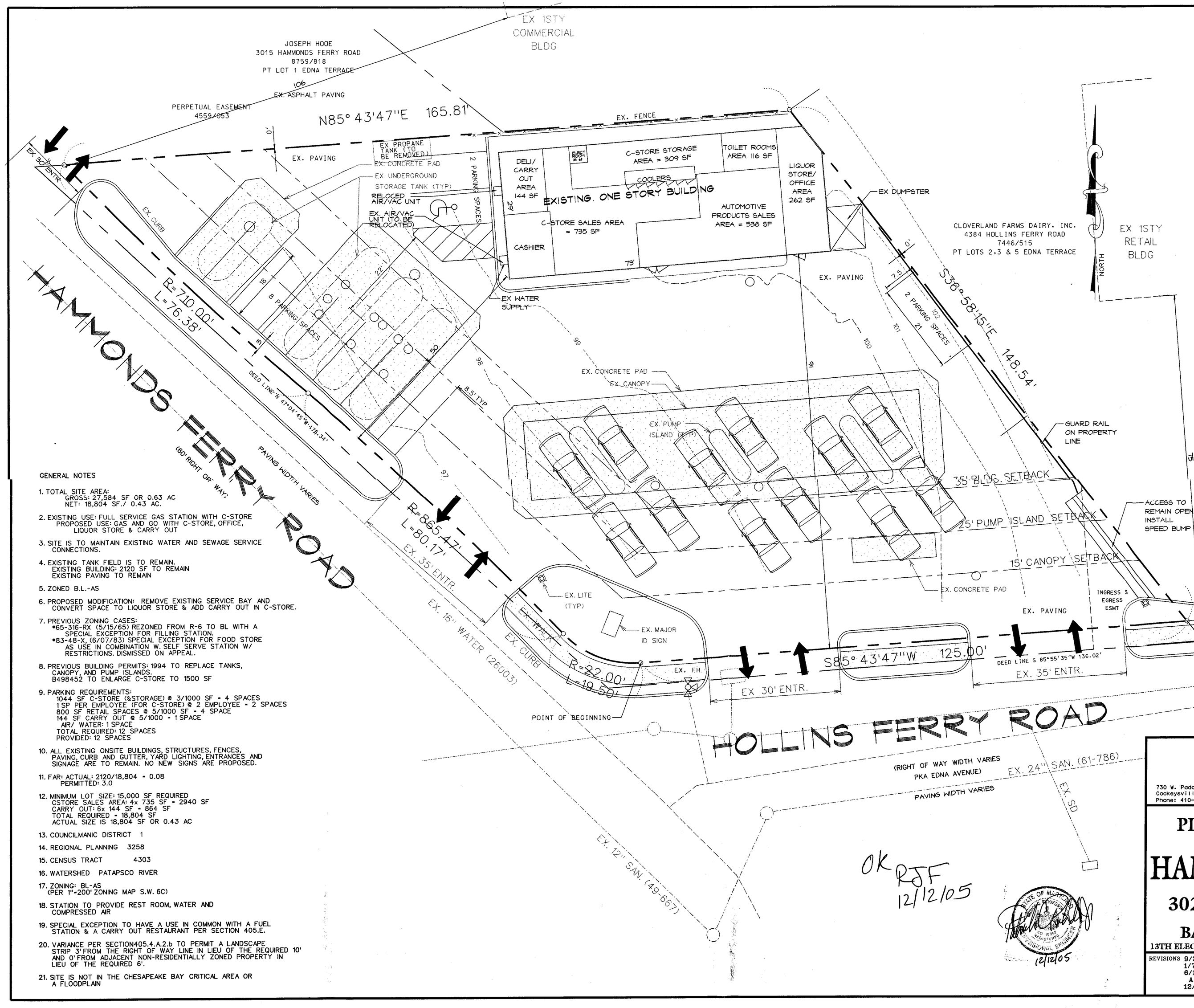
HAMMONDS FERRY EXXON

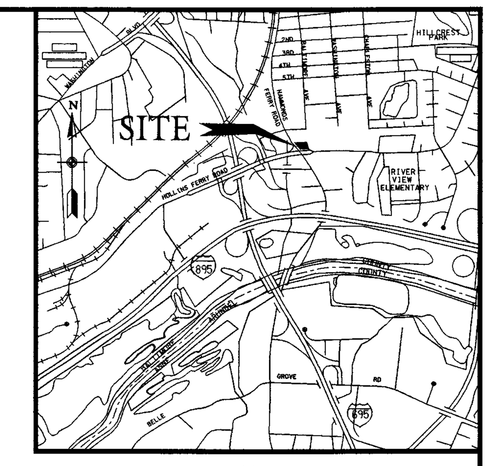
3023 HAMMONDS FERRY ROAD

BALTIMORE COUNTY, MARYLAND

13TH ELECTION DISTRICT — COUNCILMANIC DISTRICT: 1

REVISIONS 9/30/2004	DRAWN BY: TLS	DESIGNED BY: PCR	SCALE: 1"=40'
	DATE: 6/5/2003	JOB NO.: 02011	SHEET NO.: 1 OF 1





VICINITY MAP
1"=2000'

GENERAL NOTES

1. TOTAL SITE AREA:
   GROSS: 27,584 SF OR 0.63 AC
   NET: 18,804 SF./ 0.43 AC.

2. EXISTING USE: FULL SERVICE GAS STATION WITH C-STORE
   PROPOSED USE: GAS AND GO WITH C-STORE, OFFICE, LIQUOR STORE & CARRY OUT

3. SITE IS TO MAINTAIN EXISTING WATER AND SEWAGE SERVICE CONNECTIONS.

4. EXISTING TANK FIELD IS TO REMAIN.
   EXISTING BUILDING: 2120 SF TO REMAIN
   EXISTING PAVING TO REMAIN

5. ZONED B.L.-AS

6. PROPOSED MODIFICATION: REMOVE EXISTING SERVICE BAY AND CONVERT SPACE TO LIQUOR STORE & ADD CARRY OUT IN C-STORE.

7. PREVIOUS ZONING CASES:
   *65-316-RX (5/15/65) REZONED FROM R-6 TO BL WITH A SPECIAL EXCEPTION FOR FILLING STATION.
   *83-48-X, (6/07/83) SPECIAL EXCEPTION FOR FOOD STORE AS USE IN COMBINATION W. SELF SERVE STATION W/ RESTRICTIONS. DISMISSED ON APPEAL.

8. PREVIOUS BUILDING PERMITS: 1994 TO REPLACE TANKS, CANOPY, AND PUMP ISLANDS.
   B498452 TO ENLARGE C-STORE TO 1500 SF

9. PARKING REQUIREMENTS:
   1044 SF C-STORE (&STORAGE) @ 3/1000 SF = 4 SPACES
   1 SP PER EMPLOYEE (FOR C-STORE) @ 2 EMPLOYEE = 2 SPACES
   800 SF RETAIL SPACES @ 5/1000 SF = 4 SPACE
   144 SF CARRY OUT @ 5/1000 = 1 SPACE
   AIR/ WATER: 1 SPACE
   TOTAL REQUIRED: 12 SPACES
   PROVIDED: 12 SPACES

10. ALL EXISTING ONSITE BUILDINGS, STRUCTURES, FENCES, PAVING, CURB AND GUTTER, YARD LIGHTING, ENTRANCES AND SIGNAGE ARE TO REMAIN. NO NEW SIGNS ARE PROPOSED.

11. FAR: ACTUAL: 2120/18,804 = 0.08
    PERMITTED: 3.0

12. MINIMUM LOT SIZE: 15,000 SF REQUIRED
    CSTORE SALES AREA: 4x 735 SF = 2940 SF
    CARRY OUT: 6x 144 SF = 864 SF
    TOTAL REQUIRED = 18,804 SF
    ACTUAL SIZE IS 18,804 SF OR 0.43 AC

13. COUNCILMANIC DISTRICT 1

14. REGIONAL PLANNING 3258

15. CENSUS TRACT 4303

16. WATERSHED PATAPSCO RIVER

17. ZONING: BL-AS
    (PER 1"=200' ZONING MAP S.W. 6C)

18. STATION TO PROVIDE REST ROOM, WATER AND COMPRESSED AIR

19. SPECIAL EXCEPTION TO HAVE A USE IN COMMON WITH A FUEL STATION & A CARRY OUT RESTAURANT PER SECTION 405.E.

20. VARIANCE PER SECTION405.4.A.2.b TO PERMIT A LANDSCAPE STRIP 3' FROM THE RIGHT OF WAY LINE IN LIEU OF THE REQUIRED 10' AND 0' FROM ADJACENT NON-RESIDENTIALLY ZONED PROPERTY IN LIEU OF THE REQUIRED 6'.

21. SITE IS NOT IN THE CHESAPEAKE BAY CRITICAL AREA OR A FLOODPLAIN

RECEIVED
DEC 12 2005
OFFICE OF PLANNING AND ZONING

OWNER/ DEVELOPER
SHALIN ENTERPRISES, INC.
3023 HAMMONDS FERRY ROAD
BALTIMORE, MD 21227
10126/594

OK RJF 12/12/05

12/12/05

Richardson Engineering, LLC

730 W. Padonia Road, Suite 101
Cockeysville, Maryland 21030
Phone: 410-560-1502 Fax: 410-560-0827

PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION

HAMMONDS FERRY EXXON

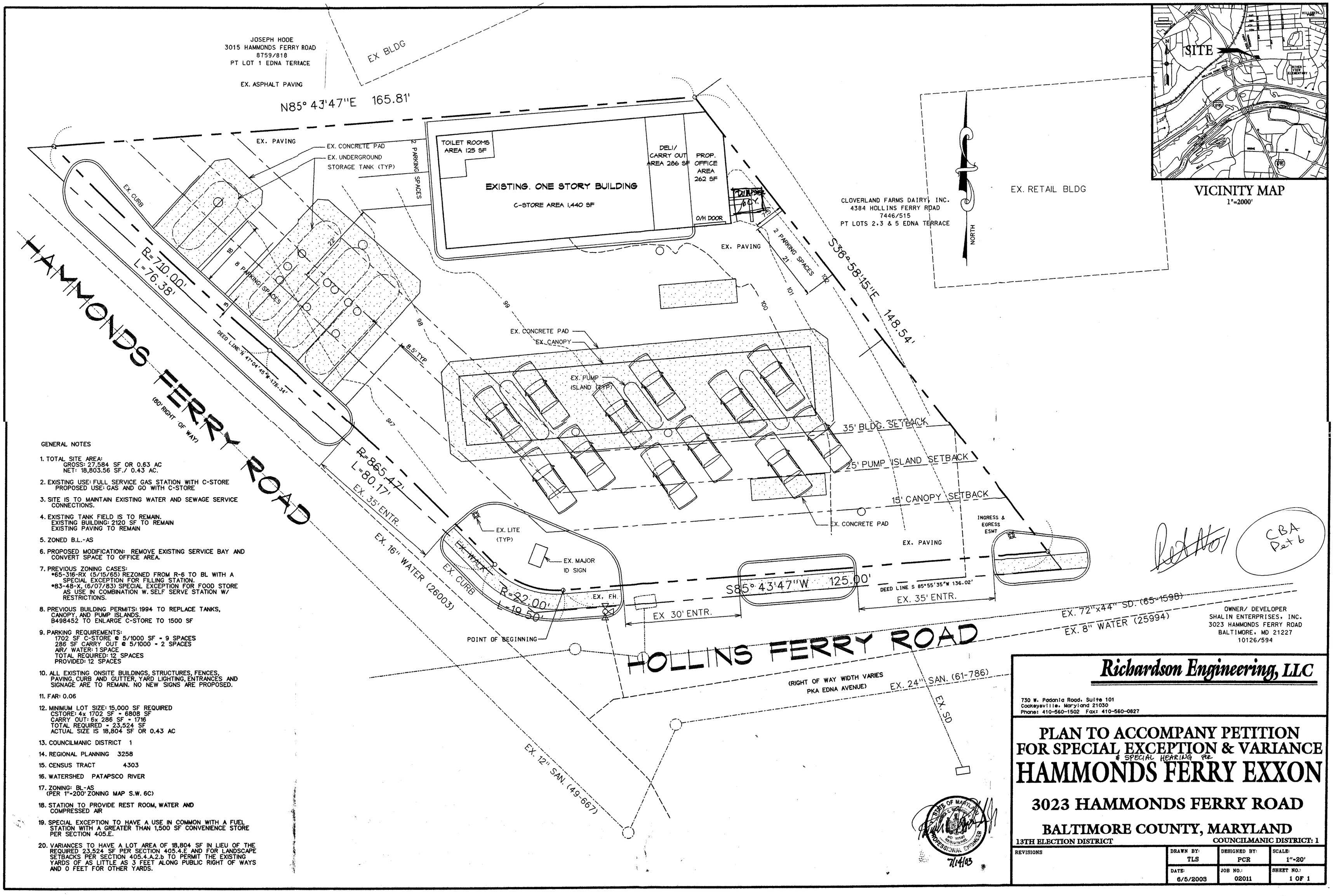
3023 HAMMONDS FERRY ROAD

BALTIMORE COUNTY, MARYLAND

13TH ELECTION DISTRICT — COUNCILMANIC DISTRICT: 1

REVISIONS	DRAWN BY:	DESIGNED BY:	SCALE:
9/30/2004 1/7/2005 6/13/05 APPD BY ZONING AND SCALE WAS ACCEPTED 12/12/05 INTERIOR LAYOUT	TLS	PCR	1" = 10'
	DATE: 6/5/2003	JOB NO.: 02011	SHEET NO.: 1 OF 1

PETIONERS #1



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3. SITE IS TO MAINTAIN EXISTING WATER AND SEWAGE SERVICE CONNECTIONS.
4. EXISTING TANK FIELD IS TO REMAIN.
   EXISTING BUILDING: 2120 SF TO REMAIN
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   AIR/ WATER: 1 SPACE
   TOTAL REQUIRED: 12 SPACES
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OWNER/ DEVELOPER
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10126/594

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Phone: 410-560-1502 Fax: 410-560-0827

PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION & VARIANCE & SPECIAL HEARING PR

HAMMONDS FERRY EXXON

3023 HAMMONDS FERRY ROAD

BALTIMORE COUNTY, MARYLAND

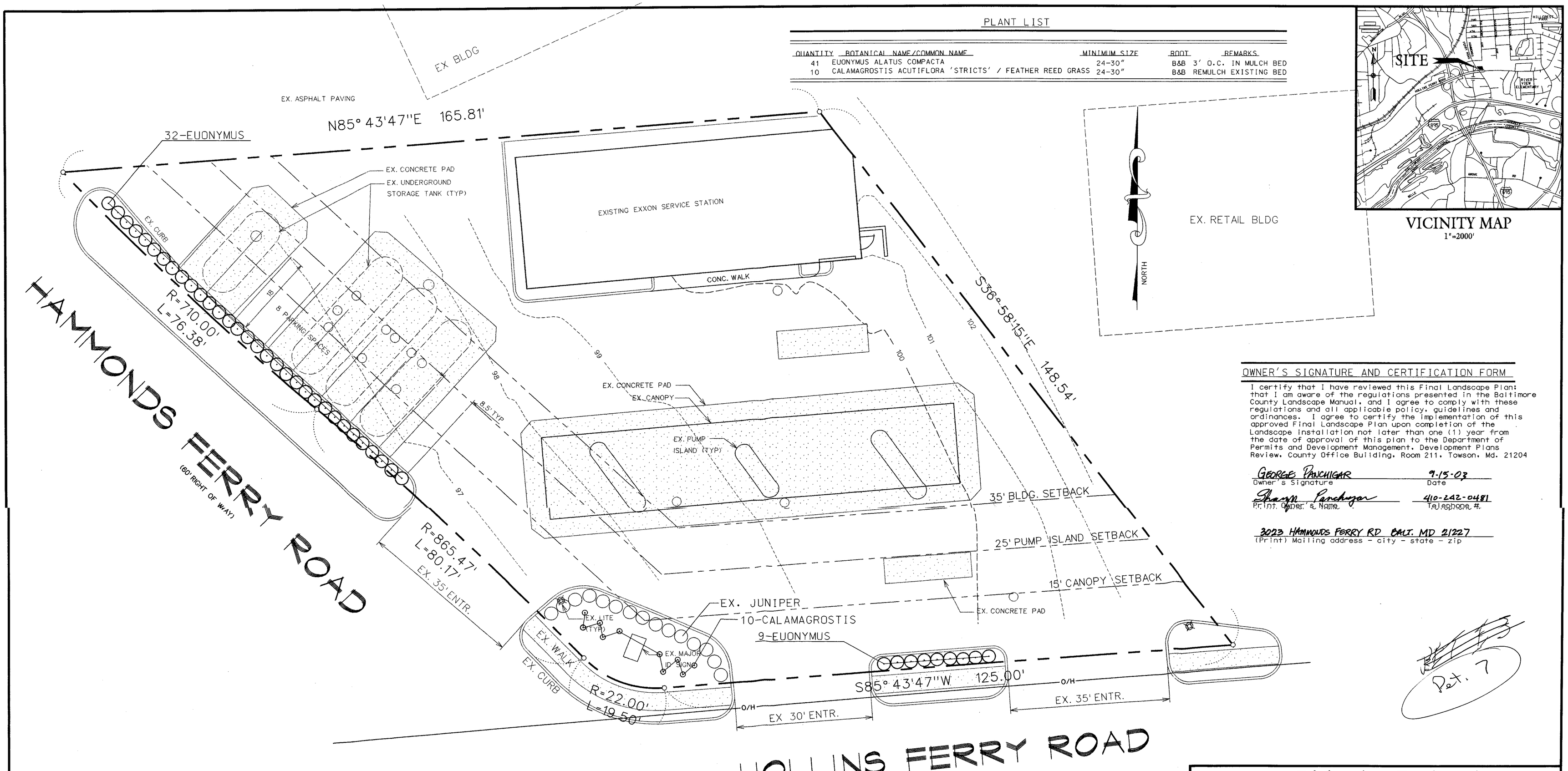
13TH ELECTION DISTRICT — COUNCILMANIC DISTRICT: 1

REVISIONS	DRAWN BY: TLS	DESIGNED BY: PCR	SCALE: 1"=20'
	DATE: 6/5/2003	JOB NO.: 02011	SHEET NO.: 1 OF 1

#035

PLANT LIST

QUANTITY	BOTANICAL NAME/COMMON NAME	MINIMUM SIZE	ROOT	REMARKS
41	EUONYMUS ALATUS COMPACTA	24-30"	B&B	3' O.C. IN MULCH BED
10	CALAMAGROSTIS ACUTIFLORA 'STRICTS' / FEATHER REED GRASS	24-30"	B&B	REMULCH EXISTING BED



OWNER'S SIGNATURE AND CERTIFICATION FORM

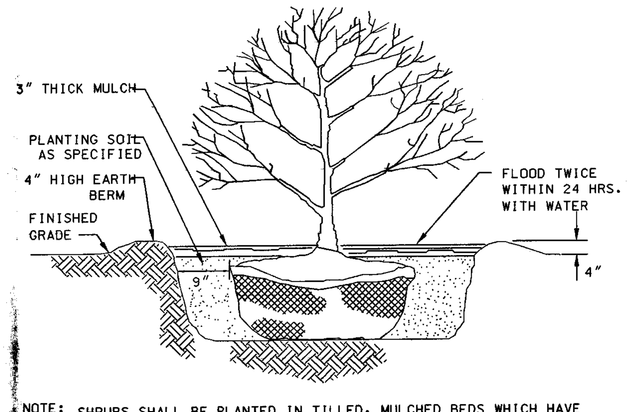
I certify that I have reviewed this Final Landscape Plan; that I am aware of the regulations presented in the Baltimore County Landscape Manual, and I agree to comply with these regulations and all applicable policy, guidelines and ordinances. I agree to certify the implementation of this approved Final Landscape Plan upon completion of the Landscape installation not later than one (1) year from the date of approval of this plan to the Department of Permits and Development Management, Development Plans Review, County Office Building, Room 211, Towson, Md. 21204

GEORGE PANCHIGAR — 9-15-03
Owner's Signature — Date

Sharon Panchigar — 410-242-0481
Print Owner's Name — Telephone #

3023 HAMMONDS FERRY RD BALT. MD 21227
(Print) Mailing address - city - state - zip

Pat. 7



NOTE: SHRUBS SHALL BE PLANTED IN TILLED, MULCHED BEDS WHICH HAVE BEEN AMENDED WITH EITHER PEAT MOSS OR COMPOSTED LEAF MOLD.

SHRUB PLANTING DETAIL

NOT TO SCALE

SEE SPECIFICATIONS FOR ADDITIONAL REQUIREMENTS AND ALL MATERIALS.

LANDSCAPE NOTES

1) ALL PLANT MATERIALS SHALL BE NURSERY GROWN AND SHALL CONFORM TO AMERICAN ASSOCIATION OF NURSERYMAN, INC. STANDARDS.
2) ALL PLANTING PROCEDURES AND SPECIFICATIONS SHALL CONFORM TO "LANDSCAPE SPECIFICATION GUIDELINES FOR BALTIMORE WASHINGTON METROPOLITAN AREA" LATEST EDITION.
3) THE CONTRACTER SHALL CONTACT "MISS UTILITY" FOR UNDERGROUND UTILITY LOCATIONS AT LEAST 72 HOURS PRIOR TO THE COMPLETION DATE.
4) ALL PLANTS SHALL BE GUARANTEED BY THE CONTRACTOR FOR ONE YEAR FOLLOWING THE INSTALLATION COMPLETION DATE.

Richardson Engineering, LLC

730 W. Padonia Road, Suite 101
Cockeysville, Maryland 21030
Phone: 410-560-1502 Fax: 410-560-0827

LANDSCAPE PLAN
HAMMONDS FERRY EXXON
3023 HAMMONDS FERRY ROAD
BALTIMORE COUNTY, MARYLAND

13TH ELECTION DISTRICT — COUNCILMANIC DISTRICT: 1

REVISIONS	DRAWN BY:	DESIGNED BY:	SCALE:
	TLS	PLW	1"=20'
	DATE: 9/15/2003	JOB NO.: 02011	SHEET NO.: 1 OF 1

commissioner approved the more intense use and the variance request, it would be pointless to send back the petition on a lesser request.

Moreover, the Protestants never protested the withdrawal of the variance request. They accepted the withdrawal. The Protestants also acceded to the amendment of the site plan in order to handle the drafting issues and the proposed uses. The Protestants did not protest the latest change in the plan or indicate that they were in any way prejudiced by the change in plan. They were certainly prepared for the plans because Petitioners were required and did submit the plans to county agencies for review prior to their submittal to the Board.

People's Counsel for Baltimore County v. Mangione, 85 Md. App. 738 (1991) also was cited by Protestants. In that case after a decision on a petition for review to circuit court had been reached a motion was filed to reconsider the decision based on a smaller facility. This request modified the pleadings that had been filed in the court for review of the Board's decision. There was no opportunity for evidence or county comment on the amended plan. Clearly, this is a much different set of facts than that presented to the Board. A reviewing court has no authority to amend the petition or reach any intermediate decision. The motion to amend was not proper in that context after the decision had been reached.

In this case the amendments filed by Petitioner have been with the Board's consent and with notice to Protestants before the evidentiary hearing. The amendments also have not altered the site plan. The layout is the same as it has always been. Only the interior layout of the building has changed. Protestants were not

Verified 10-05-04

Petitioner Exhibits (1)

CBA04-035 Shalin Enterprises
SPHXA

Joint (Same as on Appel. List - included w/ Appel List)

1A
B
C
D
E & F
2 Zoning Violation

} actual exhibits w/ Appellant's list

Pet 1 ~~CBA~~ Site Plan from H below

2 Modified Site Plan - Current

3 Landscape Plan

4. Letter from Harney to HO [Taken from folder] dated Oct 17, 2003

5. Modified Site Plan / Alternative not needing var.

6 2003 Traffic Counts

7

Verified 10/05/04

Appellants Exhibits (2)

Shalin Enterprises

CBA04-035
SPHXA

Joint (Same as on ~~Appeal~~ Pet. list)

Ex 1A	Pet for SE in June 1983	Case 83-48-X
B	ZC hearing in same case	
C	Appeal of ZC hearing	
D	Order of Dismissal - case	
E	Photos from evidence	
F	Letter from BC Zoning Plans Adv. Comm	
2	Zoning Violation	

LOCATION HAMMONDS FERRY RD & HOLLINS FERRY RD COUNTY SIGNAL NUMBER TMC C172

	RECORDER	WEATHER	ROAD SURFACE	DAY OF THE WEEK	DATE OF COUNT
A.M.	BH	CLOUDY	WET	TUE	12/30/2003
P.M.	BH	CLEAR	WET	TUE	12/30/2003

PERCENTAGE TURNING MOVEMENTS AND TOTAL VOLUMES

ROAD NAME	HAMMONDS FERRY RD				HAMMONDS FERRY RD					HOLLINS FERRY RD				HOLLINS FERRY RD				
	NORTHBOUND				SOUTHBOUND					EASTBOUND				WESTBOUND				
	L	S	R	TOTAL	L	S	R	TOTAL		L	S	R	TOTAL	L	S	R	TOTAL	
%TURNING	34%	46%	19%	100%	7%	30%	63%	100%	AM	31%	58%	12%	100%	13%	82%	5%	100%	N/A
MOVEMENT	27%	47%	26%	100%	13%	44%	43%	100%	PM	35%	59%	6%	100%	15%	76%	9%	100%	N/A
TOTAL	90	121	51	262	31	137	290	458	AM	203	379	77	659	112	706	41	859	2238
VOLUMES	137	239	131	507	75	253	249	577	PM	450	756	75	1281	109	568	66	743	3108
GRAND TOTALS	227	360	182	769	106	390	539	1035		653	1135	152	1940	221	1274	107	1602	5346

ESTIMATED ADTS	NORTH	SOUTH	EAST	WEST
	7066	5023	9918	13049

ESTIMATED VEHICLES ENTERING THE INTERSECTION ..... > 17528

INTERSECTION: HAMMONDS FERRY RD & HOLLINS FERRY RD

DESCRIPTION: HAMMONDS FERRY RD IS A TWO LANE COUNTY RD. WITH A RIGHT TURN YIELD S/B. HOLLIS FERRY RD. IS A FOUR LANE COUNTY RD. WITH A LEFT TURN LANE AND ARROWS E/B.

THE SIGNAL FUNCTIONS AS A 3 PHASE LIGHT. THE CYCLE LENGTHS AVERAGE 88 SECONDS IN THE MORNING AND 94 SECONDS IN THE AFTERNOON. THE PEAK HOUR IN THE MORNING IS 8:00 TO 9:00 AND IS 4:15 TO 5:15 IN THE AFTERNOON. THE PEAK FLOW OCCURS IN THE W/B DIRECTION OF HOLLINS FERRY RD DURING THE AM AND IN THE E/B DIRECTION OF HOLLINS FERRY RD IN THE PM.

LOADED CYCLES

	NORTHBOUND	SOUTHBOUND	EASTBOUND	WESTBOUND
% OF LOADS	*	*	*	*
AM HOUR	*	*	*	*
% OF LOADS	*	*	*	*
PM HOUR	*	*	*	*

REMARKS: *

THE LEVEL OF SERVICE IS: A

A - 0% B - 1-10% C - 11-30% D - 31-70% E - 71-85% F - 86-100%

FOR UPDATED LIST YES OR NO DATE REVIEWED: _____ APPROVED BY: _____ CHECKED BY: _____