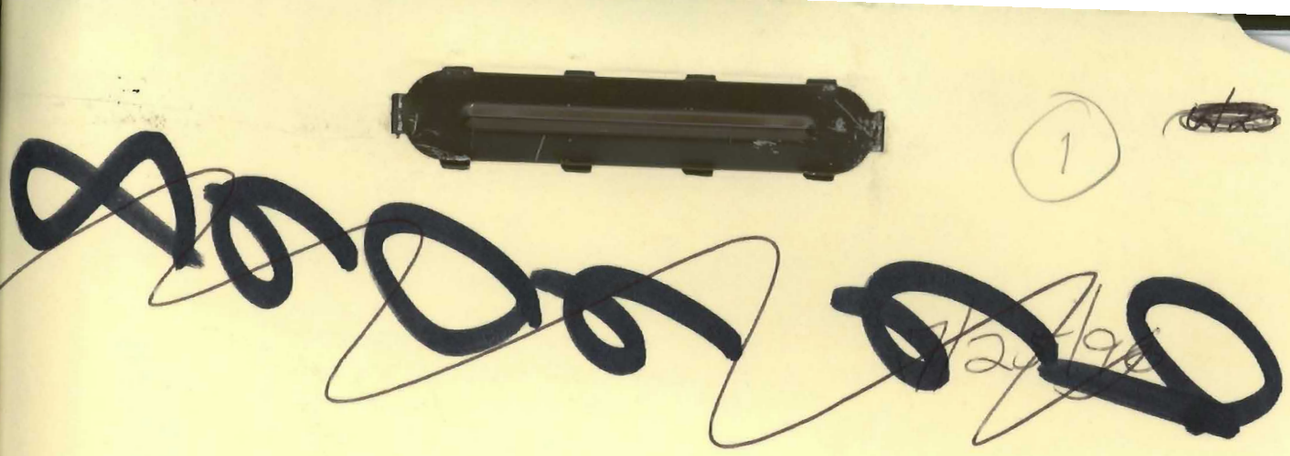

ORDERS
OPINIONS
MEMORANDA

20040160 "A"
Supplemental
&
20040294 "A"
Supplemental

(1)

3/26/10

IN THE MATTER OF THE APPLICATION OF 3600 GEORGETOWN CORP. - PETITIONER (NEW ENGLAND MOTOR FREIGHT) FOR SPECIAL HEARING AND SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE N/S GEORGETOWN RD, SW OF BLOOMFIELD ROAD (3600 GEORGETOWN ROAD)	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
13TH ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	Case No. 04-294-SPHX and
AND		
IN THE MATTER OF THE APPLICATION OF THE GREATER BLOOMFIELD COMMUNITY ASSN, ET AL - PETITIONERS /PROTESTANTS FOR SPECIAL HEARING ON PROPERTY LOCATED AT 3600 GEORGETOWN RD; 3600 GEORGETOWN CORP. -LEGAL OWNER	*	Case No. 04-160-SPH

* * * * * * * * *

ORDER OF THE BOARD ON REMAND
FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY
PURSUANT TO ORDER OF THE COURT OF SPECIAL APPEALS

This matter is before this Board on remand from the Court of Special Appeals.

Background

This Board issued an Order on March 15, 2006 by unanimous decision DENYING the following requests: 1) Petition for Special Hearing (Case No.: 04-160-SPH) for the expansion of the New England Motor Freight (NEMF) operation beyond that of the nonconforming use; and 2) Petition for Special Exception (Case No. 04-294-SPHX) to expand the existing special exception for a Class I trucking facility.

The Board's Order was appealed to the Circuit Court for Baltimore County on April 13, 2006. On March 7, 2007, The Honorable Ruth A. Jakubowski, Circuit Court for Baltimore County, issued a Memorandum Opinion and Order, which affirmed in part the request for Special Exception in Case No.: 04-294-SPHX; and reversed in part and remand for entry of an

order consistent with the Court's Opinion, the Board's March 15, 2006 Order as to Case No. 04-160-SPH. The Circuit Court decision was appealed to the Court of Special Appeals of Maryland on April 4, 2007.

On July 7, 2009, the Court of Special Appeals issued its Mandate vacating the Judgment of the Circuit Court and remanded the case back to the County Board of Appeals for further proceedings, consistent with the unreported Opinion filed December 24, 2008.

On July 15, 2009, Judge Jakubowski, of the Baltimore County Circuit Court, remanded the case back to the County Board of Appeals for further proceedings consistent with the opinion of the Court of Special Appeals filed on December 24, 2008.

The Board scheduled a hearing for December 3, 2009 for argument only.

On November 24, 2009, G. Scott Barhight, Counsel for Petitioner, NEMF, hand delivered a letter of withdrawal to the Board of Appeals, withdrawing the Petition under Rule 3.b.2 of the Rules of Practice and Procedure of the Board of Appeals. Counsel for the Protestants and People's Counsel for Baltimore County objected to the withdrawal by NEMF.

On December 3, 2009, this Board convened a hearing for argument only on the issues. Appellant, Greater Bloomfield Community Association, et. al. was represented by J. Carroll Holzer, Esquire; People's Counsel for Baltimore County was represented by Peter Max Zimmerman; and 3600 Georgetown Corp (NEMF), Property Owner/Petitioner was represented by G. Scott Barhight, Esquire and Jennifer R. Busse, Esquire of Whiteford, Taylor & Preston, LLP. Memorandum were submitted on February 5, 2010. A Public Deliberation was held on Tuesday, March 2, 2010.

In its original decision the Board had denied the Petitioner's request for Special Exception because NEMF had failed to satisfy three (3) of the criteria in Section 502.1 of the Baltimore County Zoning Regulations (BCZR). Those sections were Section 502.1 (A), (F) and (G).

In addition, the Board stated in its decision that it denied the request for Special Exception because the evidence showed that there were other locations in Baltimore County that were available to the Petitioner for an expanded trucking operation.

In its decision remanding this case to the Board, the Court of Special Appeals stated:

> "we are unable to determine the extent which the Board's decision to deny the Special Exception was based on its erroneous belief that it was appropriate to consider whether other areas in the County are available to NEMF to locate its trucking facility. In light of the Board's error, we shall vacate the Judgment of the Circuit Court with respect to NEMF's expansion request and remand to the Board for further proceedings."

In addition, the Court indicated that the Board should consider the case of *Purich v. Draper* 395 MD 694 (2006) which was decided after the decision of the Board in the instant case. Before the Circuit Court, the Appellants contended that NEMF had lost their nonconforming use when they applied for the Special Exception to expand the trucking terminal at Georgetown Road, based upon the *Purich* case.

ISSUES

1. **Whether or not the Petitioner, NEMF, should be allowed to withdraw its Petition after the matter has been appealed to the Court of Special Appeals and returned to the Board for further consideration.**

2. **Whether or not the Board considered the fact that there was land available for NEMF to expand its trucking operations elsewhere in the County as a basis for denying the Petitioner's Special Exception.**

3. **Whether of not NEMF lost its nonconforming use by its failure to utilize the Special Exception which it obtained in 1998 to expand its operation and which was extended for five (5) years, but never utilized, under the *Purich* decision.**

DECISION

I. The Motion to Dismiss

The Board has evaluated the position of the parties with respect to the Petitioner's Motion to Dismiss. Rule 3 of the Boards Rules of Practice and Procedure is not clear with respect to the timeliness of a withdrawal of a Petition. The Board feels that it is authorized to interpret its own Rules. Therefore, the Board feels that Rule 3 should not be applicable to allow a withdrawal after the Board has rendered a decision in a matter. In this matter, the case has continued for a seven (7) year period. The parties have expended considerable amounts of money in presenting their positions to this Board, the Circuit Court, and the Court of Special Appeals. The Board feels that the parties are entitled to a final decision in this matter and will DENY the Motion to Dismiss.

II. The Issue With Respect To The Other Sites Available In The County For The Petitioner To Expand Its Operation

In its original decision, the Board detailed it's reasons for finding that the Petitioner failed to meet the requirements of Section 502.1 of the BCZR. Specifically, the Board found that the Petitioner failed to meet the requirements of Section A, that the use would be detrimental to the

health, safety or general welfare of the locality involved. Petitioner also failed to meet the requirements of Section F, in that the expansion of the terminal would interfere with adequate light and air. The Board also held that Petitioner failed to meet the requirements of Section G, in that it would be inconsistent with the purposes of the zoning classification and inconsistent with the spirit and intent of the zoning regulations. It was totally unnecessary for the Board to add the language with respect to other areas in the County, since the location of the trucking facility next to the Bloomfield Community would seriously affect the Bloomfield Community, if an expansion of the size contemplated by the Petitioner was allowed.

It was quite clear from the evidence presented to the Board, that the particular use proposed at the particular location would have more of an adverse effect at that location on the Bloomfield Community, above and beyond those inherently associated with such Special Exception use, irrespective of its location within the zone.

The Board finds that the Special Exception should be DENIED based upon a failure of Petitioner to meet all of the requirements of Section 502.1 and under the guidelines established by the Court of Appeals in *Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981).*

III. The Effect Of The *Purich* Case On The Present Matter.

The *Purich* case is a matter of first impression for this Board. The *Purich* case involved property in Montgomery County owned by Draper Properties, Inc. (DPI), which was zoned convenience commercial (C-I). DPI leased this parcel to Shell Oil Company (Shell) in early 1963. Shell operated the property as an automobile filling station. At that time, a filling station was a permitted use in the C-I zone. Effective May 1, 1963 however, pursuant to a change in the zoning ordinance, the operation of new automobile fillings stations began to require a Special Exception.

One of the effects of the new ordinance was that if an operator sought to upgrade its facility, it would have to apply for and receive a Special Exception to operate a filling station.

Shell continued to operate the filling station as a nonconforming use until 1997. In that year, Shell applied to the Montgomery County Board of Appeals (MCBA) for a Special Exception "for a use as an automobile filling station", claiming that it wanted to renovate and modernize the existing gas station. MCBA granted the Special Exception which provided that Shell could undertake certain improvements that may not have been permitted unless a Special Exception for an automobile filling station use was first obtained.

Shell continued to operate the filling station as it had before obtaining a Special Exception; however, it made no attempt to modernize the station. In 2003, MCBA revoked the Special Exception, but found under the law, the nonconforming use remained. Several owners of the property adjacent to the filling station appealed to the Circuit Court, which affirmed the MCBA's decision.

The Court of Appeals granted *Certiorari* and the Court determined that once Shell's Special Exception was granted on April 7, 1997, the use of the property came into conformance with the zoning law, hence the nonconforming use ceased. It reasoned that once Shell applied for and was granted a Special Exception for the operation of the filing station, it began to conform with the overall zoning provisions; and nonconformance became conformance.

The Court overruled the MCBA and ruled that the nonconforming use terminated when six (6) months had elapsed from the time the Special Exception was granted. It stated:

> "The Board misconstrued the function of the granting of a Special Exception and, because of that, misconstrued when a Special Exception

begins to exists. The situation extant is that once a Special Exception is applied for, granted, and operation of the subject property is begun or continued pursuant to it, the owner of the proeprty has six (6) months to revert back to a prior nonconforming use (if one existed) before it is abandoned. But in this case a Special Exception was not "revoked" within that six (6) month period. Even if DPI could decide not to make use of that Special Exception and could pursue the revocation of the Special Exception, the result, however, would be that the Property could then only be operated pursuant to Montgomery County's convenience commercial (C-I) requirements. Thus, as the nonconforming use no longer exists, the property can be operated as an automobile filling station only pursuant to a Special Exception – if it still exists. If the Special Exception was properly revoked, then the only uses that may be made of the property are those uses permitted by right in the district."

The Court then noted that the holding generated an issue as to whether or not the Special Exception was in fact, properly revoked, and remanded the matter to the Montgomery County Board of Appeals to consider whether the revocation of the Special Exception was properly accomplished.

People's Counsel contends that the situation in *Purich* is identical to the situation before this Board under the current case. He contends that the 1998 Special Exception granted to NEMF to expand its operations at Georgetown Road was never utilized and therefore contends as a matter of law, the Petitioner lost his nonconforming use; either when the Zoning Commissioner approved the

Special Exception on February 25, 1998 or within one (1) year afterwards, since it was still operating with the benefit of the Special Exception, even though it did not implement the required conditions.

Petitioner, NEMF adopts the position of Judge Hollander of the Court of Special Appeals. The NEMF Petition for Special Exception in 1998 expressly provided that it was being sought to expand and improve the then existing facility consistent with the requirements set forth in the applicable zoning regulations. Petitioner states it did not require, nor seek a Special Exception in order to continue to operate the facility, because no such requirement existed. The Petition for Special Exception only sought approval for an expansion. Thus, if NEMF did not utilize the Special Exception it previously obtained for purposes of expansion, the failure to do so impacts only the expansion effort not NEMF's ability to continue to use the site as a nonconforming Class I trucking facility. It states that the only thing NEMF had abandoned is the right to expand pursuant to the previously approved Petition for Special Exception.

The Board has considered the positions of both People's Counsel and the Petitioner and adopts the position of the Petitioner. It is clear that the Baltimore County Zoning Regulations (BCZR), Section 410.1(E and F) provides that site plans for pre-1996 trucking facilities may be amended only by Special Exception. Section 410.1 (E) and (F) state:

§ 410.1. Nonconforming and other existing Class I trucking facilities.

"E. Expansion of nonconforming Class II trucking facilities. The site, structures and paved areas of a nonconforming Class II trucking facility may not be expanded unless the use is made to conform in all respects with these zoning regulations or except as follows:

1. Expansion to the minimum extent necessary to comply with the standards of Section 410A.3 may be allowed by the Zoning Commissioner, after public hearing, provided that the expansion is

not in excess of that allowed under Section 104 and that, in the judgment of the Zoning Commissioner, the expansion would be in the interest of the general welfare of the community, with particular consideration given to any dwellings within 300 feet of the trucking facility.

2. Operations of the trucking facility may be enclosed within buildings, even though the construction of buildings or enlargement of existing buildings necessary to do so would result in an expansion beyond the limit proposed under Section 104, provided that the trucking facility is in an M.L. or M.H. Zone and that the Zoning Commissioner finds, after public hearing, that the enclosure would lessen the net overall environmental impact of the facility and would otherwise be in the interest of the general welfare of the community.

F. With the exception of plans for conforming Class II trucking facilities in M.H. Zones, plans approved under this section may be amended only by special exception."

It is clear to this Board that the Special Exception granted in 1998 was for the sole purpose of expanding the Class I trucking facility at Georgetown Road and not to continue the nonconforming use as was present in the *Purich* case.

Therefore, it is the position of this Board that the nonconforming use under which the Georgetown Road trucking operation was operating is still in effect.

ORDER

IT IS THEREFORE this 26th day of March, 2010, by the Board of Appeals for Baltimore County,

ORDERED that the Petitioner's Motion To Dismiss filed November 12, 2009 in case 04-160-SPH and 04-294-SPHX is hereby **DENIED**; and it is further

ORDERED that the Special Exception sought by Petitioners in case number 04-294-SPHX and 04-294-SPHX is hereby **DENIED**, on the basis that the Petitioner fails to meet the requirements of Section 502.1(A), (F), and (G); and it is further

ORDERED that the nonconforming use under which the Petitioner has continued to operate the trucking facility at Georgetown Road **is still in effect**.

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 Chairman

Edward W. Crizer, Jr.

Lawrence S. Wescott

3/26/10

County Board of Appeals of Baltimore County

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March 26, 2010

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Re: In the Matter of: New England Motor Freight, aka 3600 Georgetown Rd.
Case No.: 04-160-SPH & 04-294-SPHX

Dear Counsel:

Enclosed please find a copy of the Order of the Board on Remand from the Circuit Court for Baltimore County pursuant to Order of the Court of Special Appeals issued this date by the Board of Appeals of Baltimore County in the above 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 Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Theresa R. Shelton
Administrator

/trs

Duplicate Originals

Enclosure: Opinion

c (w/Encl): Greater Bloomfield Community Assn.
Lorna Rudnikas/Darlene Byrd
Brenda Elliott Donald Sadler

William P. Jones /Economic Development
William Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, Director/Planning
Nancy West, Assistant County Attorney
John E. Beverungen, County Attorney

2/5/10

RE:	PETITION FOR SPECIAL HEARING NW/side Georgetown Rd, 100' NE Hall Ave (3600 Georgetown Road)	*	BEFORE THE COUNTY BOARD OF APPEALS
	Tom Mauk, Chatherine Scarborough, Anna Wood, Greater Bloomfield Association	*	FOR BALTIMORE COUNTY
	Petitioners	*	Case No. 04-160-SPH

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

RE:	PETITION FOR SPECIAL HEARING AND EXCEPTION N/S Georgetown Rd, SW of Bloomfield Rd (3600 Georgetown Road) 13th Election & 1st Councilmanic Districts	*	BEFORE THE COUNTY BOARD OF APPEALS FOR
	3600 Georgetown Corporation, c/o Myron Shevell - Legal Owners	*	BALTIMORE COUNTY
	Petitioners	*	Case No. 04-294-SPHX

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

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BOARD OF APPEALS

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RE:	PETITION FOR SPECIAL HEARING NW/side Georgetown Rd, 100' NE Hall Ave (3600 Georgetown Road)	*	BEFORE THE COUNTY BOARD OF APPEALS
	Tom Mauk, Chatherine Scarborough, Anna Wood, Greater Bloomfield Association	*	FOR BALTIMORE COUNTY
	Petitioners	*	Case No. 04-160-SPH

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

RE:	PETITION FOR SPECIAL HEARING AND EXCEPTION N/S Georgetown Rd, SW of Bloomfield Rd (3600 Georgetown Road) 13th Election & 1st Councilmanic Districts	*	BEFORE THE COUNTY BOARD OF APPEALS FOR
	3600 Georgetown Corporation, c/o Myron Shevell - Legal Owners	*	BALTIMORE COUNTY
	Petitioners	*	Case No. 04-294-SPHX

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

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S
POST-REMAND MEMORANDUM

Preface

This memorandum is designed to build upon and sharpen the focus of the argument presented at the December 3, 2009 remand hearing before the Board (CBA). We shall also try to identify and answer further the panel members' questions to counsel and the points presented by NEMF's counsel.

For the purpose of organization, we shall address in order the issues of the withdrawal, reconsideration of the special exception independently of the "comparative geography" evidence, and reconsideration of the termination of the nonconforming use in light of Purich v. Draper Properties 395 Md. 694 (2006). As noted at the hearing, the withdrawal issue arises in the context of the special exception remand. Therefore, they are inextricably intertwined.

The function and nature of the remand

The Court of Special Appeals (CSA) has issued a mandate to vacate the Circuit Court order and require the Circuit Court to remand the case to the CBA. Let us pause to consider the nature of a remand. The essential meaning of the word is to "send back." The Court of Appeals explained in O'Donnell v. Bassler 289 Md. 501, 509 (1981) the function of a remand to an administrative agency,

> "... that if an administrative function remains to be performed after a reviewing court has determined that an administrative agency has made an error of law, the court ordinarily may not modify the agency order. Under such circumstances, the court should remand the matter to the administrative agency without modification."

In O'Donnell, the Court remanded the case for the specific purpose of consideration of the impact of legislation enacted after the zoning board's decision. The mandate (289 Md. at 515) was very similar to the CSA mandate here.

It is elementary that a remand to an administrative agency does not start the case anew, but rather is focused and limited in accordance with the appellate court's instructions. The recent high court decision in Powell v. Calvert County 368 Md. 400 (2005) reflects another application of the remand process.

There is an excellent discussion of the remand process relating to this CBA's decision in People's Counsel for Baltimore County v. Country Ridge Shopping Center 144 Md. App. 580 (2002), attached. Serendipitously, that case also involved the denial of a special exception for relocation of a pawnshop, and a somewhat similar assignment of error in the initial decision. The CSA found that the CBA had improperly considered a minimum distance requirement between pawnshops, and remanded for review independently of that matter. Upon remand, the CBA focused on the specific remand instruction and determined that its findings under BCZR § 502.1 did stand without regard to the distance issue. The CSA affirmed, and also sustained the appointment of new panel members to replace the two original panel members who had left. Here, we have the same panel members, with the note that Mr. Wescott became a member of the original CBA panel for review of the special exception. As a corollary of institutional continuity, he participates in all issues on remand.

Two contemporary CBA cases involving remands for reconsideration or further consideration come immediately to mind: James Hammond, CBA No. 03-366-SPH and Howard and Melanie Becker, 06-651-SPHA. In each of these, the CBA on remand answered the specific questions posed by the CSA and/or Circuit Court. There was never any suggestion by any party that the entire original CBA decision was vacated. That is not the function of this kind of remand to an administrative agency.

Questions presented

1. After a full CBA hearing and decision on the merits, and an ensuing final mandate with specific CSA remand instructions, must the CBA implement the remand, or may it allow a petitioner to withdraw the petition, with or without prejudice?

* What are the relevant CBA Rules? How should they be applied or interpreted in this extraordinary situation? Does Rule 3.b.2 allow NEMF to dictate a withdrawal --- or does it allow a request, which here must or should be denied under applicable law?

* Would it subvert the administration of justice and the interest in fairness to allow such a withdrawal ---with the consequence of a potential re-filing and restart of the entire case --- especially after so much effort in about seven years of litigation?

* Does NEMF's attempt to withdraw the petition constitute implicitly or logically an admission that there is no merit to its special exception on remand?

2. As a matter of law, does the March 15, 2006 CBA Supplemental Opinion denying the special exception include legally sufficient findings and conclusions that the petition fails to satisfy BCZR §§ 502.1 A, F, and G, independent of the "comparative geography" paragraph which the appellate court called flawed?

* Is this remand focused and limited? Is NEMF's argument that the CBA decision is entirely vacated a tactical deception to discourage implementation of the remand?

3. Based on the Purich decision, did the Zoning Commissioner's February 25, 1998 approval of an earlier special exception expansion plan terminate the nonconforming use after the one-year abandonment/discontinuance period under BCZR § 104.1, despite the lack of utilization or construction pursuant to the approval? Did the ensuing expiration of the 5-year period for utilization effectively void the special

exception under BCZR § 502.3 as NEMF changed its plans and filed new petitions?

* Is the CBA's task again targeted and limited in scope?

* Does the majority holding in Purich that approval of a special exception use terminates the nonconforming use after the applicable statutory period apply to the 1998 special exception use approved for NEMF? As in the Montgomery County ordinance in Purich, does BCZR § 502 extend in scope to all special exception uses, whether or not new, modernized, or expanded, so that the use is the key denominator?

* Insofar as the CSA opinion refers in *dictum* to an "arguable" distinction between the special exception use approved in Purich for modernization and the special exception use for expansion approved here, is this a distinction without a difference? In other words, does the holding in Purich apply to all approvals of permissible special exception uses, regardless of whether new, modernized, or expanded? In this connection, does BCZR § 502 cover all special exception uses, including expansions?

* Furthermore, does the holding in Purich extend to all special exception uses, whether or not there is a "choice" to apply for it? Is NEMF's argument that it had "no choice" but to apply an attempt to create another delusive distinction?

* In sum, did the CSA misread and overly complicate the meaning and scope of Purich in suggesting an arguable distinction?

*. Did the CSA recognize, as shown by the record, that NEMF never pursued the expansion and construction plan approved in its February, 1998 special exception, but rather kept changing plans, filing new petitions, and acquiring additional property, eventually filing the current special exception petition in late 2003, so that the special exception became void in February, 2003.

* Did the determination of voidness by the Director of Department of Permits and Development Management, expressed in the March, 2003 correspondence from his Director of Enforcement, just concur with the undisputed evidence on this record?

I. The request to withdraw without prejudice is improper, as a matter of law; the CBA should implement the remand

An extraordinary request

A relatively small number of CBA decisions become the subject of petitions for judicial review. Within this group, a smaller number lead to remands to reconsider aspects of the case. The CBA typically reviews the record, exercises its discretion to hold a hearing for argument and/or to receive memoranda, deliberates publicly, and issues a final written opinion.

To our recollection, during the many years in which undersigned People's Counsel has participated in CBA proceedings, there has never been a request by a petitioner to withdraw a petition without prejudice following a remand --- until now. The application and interpretation of the CBA rules here presents a question of first impression. The answer to this question is important not just to the explanation of the law, but also to the administration of justice and fairness to the parties.

In our view, when the CBA adopted Rule 3b concerning withdrawal, it did not anticipate the extraordinary occurrence of a request to withdraw a petition after remand. Accordingly, we must consider this extraordinary circumstance..

The relevant CBA Rules 3b and 4b.

"BCZR APPENDIX H
RULES OF PRACTICE AND PROCEDURE OF THE BALTIMORE COUNTY BOARD OF APPEALS

Rule 3b. [Bill No. 50-2005]

1. An appeal may be withdrawn or dismissed at any time prior to the conclusion of the hearing on said appeal.

2. A request for withdrawal of a petition shall be filed in writing with the board. A petitioner who wishes to have a petition withdrawn and dismissed without prejudice shall withdraw the petition not less than 10 days before the scheduled hearing date. A petition that is withdrawn less than 10 days before the scheduled hearing date shall be dismissed with prejudice. A petition that is dismissed with prejudice under this paragraph may not be resubmitted for a period of 18 months after the dismissal.

Rule 4b. The chairman shall regulate the course of the hearing and shall rule upon procedural matters, applications, modifications and objections made during the course of the hearing, subject to the concurrence of a majority of the board conducting the hearing."

The method of interpretation of agency rules

The Court of Appeals explained in Maryland Comm'n on Human Relations v. Bethlehem Steel Corp. 295 Md. 586, 592-93 (1983),

> "This Court has recognized that the interpretation of an agency rule is governed by the same principles that govern the interpretation of a statute. *See, e.g.,* **1150 *Dorsey v. Beads*, 288 Md. 161, 176, 416 A.2d 739, 747 (1980); *Messitte v. Colonial Mortgage Serv. Co. Assocs., Inc.*, 287 Md. 289, 293, 411 A.2d 1051, 1053 (1980). More important, agency rules are designed to serve the specific needs of the agency, are promulgated by the agency, and are utilized on a day-to-day basis by the agency. A question concerning the interpretation of an agency's rule is as central to its operation as an interpretation of the agency's governing statute. Because an agency is best able to discern its intent in promulgating a regulation, the agency's expertise is more pertinent to the interpretation of an agency's rule than to the interpretation of its governing statute."

There are many cases on statutory interpretation. Chief Judge Bell summarized in Pelican National Bank v. Provident Bank of Maryland 381 Md. 327, 336 (2004),

> "This Court has often stated the paramount goal of statutory interpretation, to "ascertain and effectuate the intention of the legislature." *Oaks v. Connors*, 339 Md. 24, 35, 660 A.2d 423, 429 (1995); *Nationsbank v. Stine*, 379 Md. 76, 85, 839 A.2d 727, 732-33 (2003). The quest to ascertain legislative intent requires examination of the language of the statute as written and if, given the plain and ordinary meaning of the words used, the meaning and application of the statute is clear, we end our inquiry. *Comptroller of the Treasury v. Kolzig*, 375 Md. 562, 567, 826 A.2d 467, 469 (2003). It is also true, however, that:
>
> > "While the language of the statute is the primary source for determining legislative intention, the plain meaning rule of construction is not absolute; rather, the statute must be construed reasonably with reference to the purpose, aim, or policy of the enacting body. The Court will look at the larger context, including the legislative purpose, within which statutory language appears. Construction of a statute which is unreasonable, illogical, unjust, or inconsistent with common sense should be avoided."
>
> *Tracey v. Tracey*, 328 Md. 380, 387, 614 A.2d 590, 594 (1992) (Citations omitted). In seeking to "avoid constructions of a statute which is unreasonable, illogical, unjust, or inconsistent with common sense," *Pak v. Hoang*, 378 Md. 315, 323, 835 A.2d 1185, 1189 (2003), we prefer an interpretation of the statute that avoids rendering any "part of the

statute ... meaningless or nugatory." *Toler v. Motor Vehicle Admin.*, 373 Md. 214, 220, 817 A.2d 229, 234 (2003) (citing *Gillespie v. State*, 370 Md. 219, 222, 804 A.2d 426, 428 (2002))."

Application and interpretation of the rules to NEMF's request

There is a distinction between Rule 3.b.1, which allows the withdrawal of an appeal prior to the conclusion of the hearing, and Rule 3.b.2, which applies to any request to withdraw a petition, and is more detailed. There is also the direction of Rule 4.b for the Chairman, with the concurrence of the majority, to regulate the course of the hearing and rule upon procedural matters. It is also a fundamental precept of administrative law that an agency should act reasonably, and not arbitrarily and capriciously.

There is a good reason for the distinction between Rules 3.b.1 concerning appeals and 3.b.2 concerning petitions. The withdrawal of an appeal leaves intact the decision appealed. It leaves the prevailing party conclusively with the benefit of the earlier decision, ends the case, and thus does not cause prejudice, other than the effort to oppose the appeal. On the other hand, the withdrawal of the petition leaves open the potential to file the same petition another day, correct perceived omissions, change strategy and tactics, and cause the opposing party much more aggravation and effort. This cycle can be repeated again and again. It is also significant that Rule 3.b.1 is silent as to the terms of the withdrawal or dismissal. This reinforces the idea that it applies to appeals but not to petitions. If it applied to petitions, the fundamental principles of administrative law would require the Board to exercise reasonable discretion to decide whether a dismissal should be with or without prejudice. We submit, therefore, based on plain language and the consequences for fairness, that Rule 3.b.1 does not apply to the withdrawal of a petition. Rather, the only rule applicable to the withdrawal of a petition is Rule 3.b.2.

Plainly, NEMF's contention that it has an absolute right to dismiss is erroneous. The question presented then must focus on the application of Rule 3.b.2 to a request for withdrawal made following a trial and an appellate remand.

The sensible interpretation of Rule 3.b.2 is that it allows a request for withdrawal of a petition without prejudice made at least 10 days before the first scheduled hearing of

the case. Otherwise, it would allow the various abuses identified above. It would give a petitioner a unilateral choice for a restart prior to any hearing stage of the proceedings. Because CBA hearings are often staggered and spaced during the initial hearing stage, a literal reading of the rule to allow a withdrawal without prejudice before any hearing day, whether the initial or subsequent, would be inherently unfair. It would also tolerate a chaotic and unacceptable right of a petitioner to terminate the case in midstream, and then file a new petition. We discussed this at length at oral argument.

At oral argument, the CBA panel inquired about the point that even in the event of a withdrawal and dismissal with prejudice, Rule 3.b.2 allows a petitioner to file another petition 18 months after the dismissal. We responded that the 18-month period is a minimum period, but that after 18 months, the petition may still be subject to review under the *res judicata* doctrine, which applies to a decision on the merits unless there is a material change in circumstances in the neighborhood or perhaps a material change in the petition. See Whittle v. Board of Zoning Appeals of Baltimore County 211 Md. 36 (1956); Woodlawn Area Citizens Assoc. v. Board of Co. Comm'rs 241 Md. 187 (1966). We also responded, at this juncture, that the implementation of the remand would provide a clearer decision on the merits which would preclude the re-litigation of a new petition in the absence of a material change in the neighborhood or circumstances.

Rule 3.b does not address specifically the situation where a petitioner makes a request to withdraw the petition after a remand. As we noted, this is an extraordinary circumstance. As we also noted at oral argument, it only makes sense for a petitioner to make such a request where it perceives that the CBA will most probably rule against the petitioner on the merits. A petitioner who perceives a reasonable possibility of success would never request to withdraw the petition.

In our view, the fact that the case has entered the judicial system and become the subject of a remand puts a whole new complexion on the proceedings. We are no longer dealing just with the initial CBA hearing process and Rule 3.b.2. Now, we are dealing with the order of the court and its instructions. In effect, Rule 3.b.2 is subordinate to the judicial remand. The CBA is bound to follow the instructions of the court.

As we also said at oral argument, it is not the prerogative of the petitioner capriciously to dictate the terms of the conclusion of the proceedings for its exclusive benefit and self-serving purposes. The arrogance of its position is beyond debate.

We have also cited Rule 4b because it delegates to the Board chairman the responsibility to regulate the course of the hearing and rule upon procedural matters, subject to the concurrence of the Board majority. This responsibility is necessarily subject to the aforesaid principles that administrative action be reasonable, not arbitrary or capricious, and consistent with procedural due process of law.

It should also be kept in mind that the petitioner has the burden of proof in a special exception case. Turner v. Hammond 270 Md. 43, 54-55 (1973); Schultz v. Pritts 291 Md. 1, 15-21 (1981).Once the trial begins, the petitioner must meet its burden to prove a *prima facie* case on the merits. A petitioner's dismissal in midstream or after remand presents the issue of failure to meet the burden of proof. This is an act of abandonment, which should be considered final.

* * *

To gain further insight, we examined how the Maryland and Federal Courts handle voluntary dismissals. Maryland Rule 2-506(b) provides that after a defendant files an answer or motion for summary judgment, "... a plaintiff may dismiss an action only by order of court and upon such terms and conditions as the court deems proper." The Rule dates from 1984. Its Source note cites its derivation as prior Rule 541b and the 1968 version of Federal Civil Rule 41(a)(2). The contemporary 1984 Maryland Rules Commentary states, at page 269:

> Under former Rule 541, the plaintiff to a law action could dismiss an action voluntarily at any time before the introduction of evidence at trial. This often resulted in abuse, giving the plaintiff control over the court's trial docket and over the judge and jury before whom he was submitting the case. If the plaintiff was dissatisfied with the appearance of the jury panel or with the judge to whom the case was assigned, he simply filed a notice of dismissal without prejudice. The lawsuit would be filed again shortly thereafter, commencing the case once again from the beginning. This obviously operated to the prejudice of the parties and the court.

The Commentary also observes that "... the decisional law under F.R. Civ. P. 41 serves as a guide to the circumstances under which dismissal will not be allowed." Page 270. See Owens-Corning Fiberglas Corp v. Fibreboard Corp. 95 Md. App. 345, 348-51 (1993)

Even under former Rule 541, a plaintiff could not unilaterally dismiss an action after the introduction of evidence. Under new Maryland Rule 2-506(b), Scheve v. Schudder 328 Md. 363, 376-78 (1992) and Owens-Corning, *supra*, are helpful. In Scheve, a tax sale purchaser with a change of heart sought voluntary dismissal of orders of redemption which had been entered in their favor in two cases. The Circuit Court first struck the orders at their request, but then reentered them as a matter of law upon motions for judgment by defendants. Upon appeal, the Court of Appeals held that Rule 2-506(b) gave the Circuit Court discretion with respect to the dismissal and ordered limited remand for that purpose. In Owens-Corning, a complex asbestos case, two of the cross-claimants requested dismissal without prejudice after jury selection, pretrial and evidentiary rulings, and opening statements by plaintiffs and non-settling defendants, (but before opening statements on the cross-claims). The Circuit Court rather dismissed with prejudice, and the Court of Special Appeals affirmed. Judge Rosalyn B. Bell wrote:

> In the instant case, the trial judge was ready to proceed with the trial, the jury had been empanelled and sworn, and some of the parties had given their opening statements. The judge, wanting to move the case forward, offered Owings-Corning and Keene a choice of dismissing their cross-claims with prejudice or going forward with their cross-claims at trial. This was not the choice they wanted, but the trial judge made it clear that this was what was available to them. When they continued to balk, the trial judge merely did what he told them he would do, namely, grant their motion to dismiss, but with the condition of prejudice. We cannot say that he abused the discretion given to him by the rules. 95 Md. App. at 364.

Serendipitously, the Court of Appeals had occasion recently to affirm a trial judge's denial of a pretrial motion for dismissal without prejudice in Pasteur v. Skevofilax 396 Md. 495 (2007). The Plaintiff made the motion after extensive discovery when their critical expert witness unexpectedly withdrew from the case for personal reasons. In affirming, Judge Glenn Harrell discussed the applicable standards,

> "Although this Court previously has not decided precisely what "plain legal prejudice" entails, we find instructive the federal case law regarding FRCP 41. Whether a plaintiff is

> entitled to voluntary dismissal without prejudice, i.e., the defendant would not suffer "plain legal prejudice" in the event of dismissal, is resolved traditionally by analysis according to the following four factors: (1) the non-moving party's effort and expense in preparing for litigation; (2) excessive delay or lack of diligence on the part of the moving party; (3) sufficiency of explanation of the need for a dismissal without prejudice; and (4) the present stage of the litigation, i.e., whether a motion for summary judgment or other dispositive motion is pending. [Citations omitted] While some courts employ slightly different or augmented tests to determine whether a defendant would suffer clear legal prejudice if voluntary dismissal is granted, *421 we believe that these four factors sufficiently weigh the equities in order to determine whether dismissal without prejudice is appropriate in a given case." Citations and footnotes omitted..395 Md. 420.

In view mainly of the extensive expenditure of time and resources by the parties and court, the circuit judge denied the motion. The Court of Appeals sustained his decision.

Let us examine the federal cases for further guidance. In Zagano v. Fordham University 900 F.2d 12 (2d Cir. 1990), plaintiff Zagano moved for voluntary dismissal less than ten days before trial and then refused to proceed with trial after denial of her motion. The trial judge dismissed with prejudice, and the appellate court affirmed. The Second Circuit articulated the following criteria to govern the exercise of discretion,

> Factors relevant to the consideration of a motion to dismiss without prejudice include the plaintiff's diligence in bringing the motion; any 'undue vexatiousness' on plaintiff's part; the extent to which the suit has progressed, including the defendant's effort and expense in preparation for trial; the duplicative expense of relitigation; and the adequacy of plaintiff's explanation for the need to dismiss. 900 F.2d 14.

Minnesota Mining v. Barr Laboratories 289 F.3d 775 (8th Cir. 2002) dealt with plaintiff 3M's motion to dismiss without prejudice, which was filed after information disclosed in discovery cast doubt on the main claim. The Court identified these "... factors to consider in exercising this discretion ... : whether the party has presented a proper explanation for its desire to dismiss; whether a dismissal would prejudice the defendant; whether a dismissal would result in a waste of judicial time and effort; whether a dismissal would prejudice the defendant; and whether the dismissal was designed to avoid an adverse judgment." In affirming a dismissal with prejudice, the Court wrote:

> The district court here considered appellant's claimed entitlement to a dismissal without prejudice under Rule 41(a)(2), but found no legitimate justification for the appellants to dismiss the action without prejudice. The district court concluded that the

> appellants were seeking to avoid a judgment that would be adverse to their interest ... and that this was not a legitimate justification for their desire to dismiss without prejudice. ... Because the district court properly found that 3M had not offered a sufficient justification for a dismissal without prejudice, we hold that the district court did not abuse its discretion in denying 3M's motion. Indeed, under the circumstances, a dismissal without prejudice might well have constituted an abuse of discretion since 3M was plainly seeking to avoid an adverse judgment.

Similarly, Phillips USA v. Allflex USA 77 F.3d 354, 358 (7th Cir. 1996), affirmed the lower court's denial of a motion to dismiss without prejudice which was made after the opposing party filed a motion for summary judgment. The appellate court reinforced its adoption of the following factors: "the opposing party's effort and expense in preparing for trial ...; excessive delay and lack of diligence on the part of the movant ...; and insufficient explanation of the need for dismissal ..." The court may also "... consider the present stage of litigation." Ibid. Ultimately, the opinion concluded:

> We agree with the district court that a party should not be permitted to avoid an adverse decision on a dispositive motion by dismissing a claim without prejudice.

Subsequently, in Jones v. Simek 193 F.3d 485 (7th Cir. 1999) the Seventh Circuit affirmed a refusal to dismiss without prejudice where a motion was filed thirteen days prior to trial. The Court wrote:

> Similarly, there was no abuse of discretion in the court's refusal to dismiss without prejudice. ... The case was well advanced, the defendants had invested considerable time and resources in trial preparation, as had the court, and Jones' reason for the request (a scheduling conflict) was weak.

* * *

Let us apply the relevant criteria. The zoning proceeding here is more than "well advanced." It is back on remand after a full trial, judicial review, and about seven years of litigation. Petitioner has given no real reason or justification, but rather has asserted a dictatorial right to dismiss without prejudice. for the voluntary dismissal.

In our view, there is a logical reason for this extraordinary timing of this effort to abandon and abort the case. The request is designed to avoid an adverse judgment (the inevitability of which we discuss in Section II, below). It is plainly unjust to allow

Petitioner to walk away without consequences and without accountability. Petitioner could then start the case anew and even repeat the tactic.

We also submit a dismissal without prejudice violates procedural due process of law. It subverts basic principles of fair play. These are integral to ordered liberty in the American system of justice. More than this, where the appellate court has ordered a remand, the lawful and right thing to do is to implement the remand.

II. The CBA's March 15, 2006 Supplemental Opinion plainly includes legally sufficient findings to support the denial of the special exception, independent of the "comparative geography" observations which the CSA found flawed.

At oral argument, we reviewed the CSA remand. Judge Ellen Hollander acknowledged that the CBA had "specifically concluded that NEMF failed to satisfy three of the nine criteria in § 502.1: 502.1(A), (F) and (G). Nevertheless, she found the CBA decision flawed by its addition or inclusion of comparison with other locations and its crediting of Dillon's testimony.

Judge Hollander singled out language in the following paragraph as problematic,

> "There is no question that the NEMF operation is, at certain points, within 300 feet of a residential area. Encroachment has happened over time and is not the basis for denying the special exception; however it is indicative of the fact that NEMF is very close to a residential neighborhood. Increasing this operation at this location would have a much more adverse effect on the Bloomfield neighborhood than would increasing the operation at the Quad Avenue trucking facility in Essex where large areas of undeveloped land surround the operation, according to the testimony of Jack Dillon. **The Board credits the testimony of Mr. Dillon that there is abundant land zoned M.L. in Baltimore County, which is not adjacent to a residential community such as the Bloomfield Community, where this operation could be expanded and thrive.** As stated by the Court of Appeals in *Montgomery County v. Maryland's Club, Inc.*, 202 Md., 279, 287 (1953), "the duties given the Board are to judge whether the neighboring properties and general neighborhood would be adversely affected, and whether the use, in a particular case, is in harmony with the general purpose and intent of the zoning plan." This Board feels that this expansion of the NEMF operation at Georgetown Avenue is not in harmony with the general purpose and intent of the zoning plan and we therefore will deny the special exception, The special hearing in Case. 04-160-SPH to deny the expansion of the NEMF operation beyond that of the nonconforming use permitted by the BCZR is granted." CBA Supplemental Opinion, page 12. Emphasis supplied.

Her opinion concluded, at pages 93-94,

> "In the proceedings below, appellant expressly challenged any claim that the Board was entitled to deny the special exception merely because the evidence showed that there are other locations in Baltimore County that are available to NEMF for an

expanded trucking operation. Nevertheless, the Board received comparative analysis testimony from Dillon and Martin. Dillon, a witness for appellees, stated that there are over 20,000 acres of land in the County zoned either M.L. or M.H. Referring to "that area," he testified: "I am convinced there are areas that are more suitable for a location of a truck terminal that would meet the 300-foot setback, and would also not have the adverse impact that it has here at this location from the noise and the fumes aspect [.]"

Clearly, in its Supplemental Opinion, the Board credited Dillon's testimony. In addition to the three criteria in § 502.1 that the Board addressed, it found that there is **"abundant land zoned M.L. in Baltimore County, which is not adjacent to a residential community such as the Bloomfield Community, where this operation could be expanded and thrive."** This comment reflects that the Board rejected NEMF's legal position as to the use of a comparative analysis. Emphasis supplied.

We are unable to determine that extent to which the Board's decision to deny the special exception was based on its erroneous belief that it was appropriate to consider whether other areas in the County are available to NEMF to locate its trucking facility. In *Country Ridge Shopping Center, Inc., supra*, we said, 144 Md. App. at 595-96: "[I]f an appellate court is in doubt as to why an administrative agency did what it did, as we were in this case, it is appropriate to remand the case to the agency for nothing more than 1) a clarification of or 2) an amplification of its reasoning." *See also Powell v. Calvert County*, 137 Md. App. 425, 429 (2001) (approving such a procedure), *reversed on other grounds*, 368 Md. 400 (2002). In light of the Board's error, we shall vacate the judgement of the circuit court with respect to the NEMF's expansion request and remand to the Board for further proceedings."

It was ironic that Judge Hollander credited NEMF with having "challenged" the consideration of evidence relating to other locations in the M.L. Zone. After all, as the CBA described the evidence in its Supplemental Opinion, Page 4, it was NEMF's witness, David Martin, who presented a survey of other trucking facility sites.

"Mr. Martin testified that he had examined 44 trucking facilities that operated [sic, in] Baltimore County. He stated that some of the facilities were required to obtain variances in order to comply with BCZR § 410 and others were not. His testimony concerning whether or not certain trucking facilities were required to have variances and others were not pertained to the issue of whether or not any facility was a conforming Class I trucking facility under the current legislation. It did not pertain to the question of whether or not the special exception should be granted. In an effort to prove their respective points, the parties called experts in the fields of noise and air pollution."

Moreover, Judge Hollander recognized that Mr. Martin had presented this evidence. Mr. Dillon's evidence came in response. Therefore, NEMF was hardly in a position to make

such a "challenge." In effect, NEMF sandbagged the CBA and the other parties. Yet, the CSA considered this as a legitimate challenge.

Under these circumstances, the appellate court should not have dignified or legitimized NEMF's delusive complaint. We also disagree with the CSA's view that the Court of Appeals in People's Counsel v. Loyola College 406 Md. 54 (2008) precluded the CBA from considering comparative geography in a proper case. Rather, the high court affirmed as legally sufficient the CBA's judgment in Loyola College that such evidence need not or should not be considered in that more complicated rural setting.

Be that as it may, Judge Hollander remanded the case to provide the opportunity for the CBA to clarify or amplify its reasoning. In this regard, she cited and followed the path of Country Ridge Shopping Center. There, the CBA on remand clarified that its findings stood independently of the specific location standard which the appellate court found not germane. Upon review for a second time at the appellate court, Judge Charles Moylan affirmed in his reported opinion. 144 Md. App. 580, at 589-90, 597-600.

Here, it is similarly perspicuous that the CBA made thorough and legally sufficient findings sufficient to deny the special exception, which stand on their own and do not depend on the evidence Judge Hollander described as irrelevant.

As we recapitulated in some detail at oral argument, the CBA Supplemental Opinion fairly and intelligently reviewed the testimony of the expert and lay witnesses on each side of the case. This included at page 4 the testimony of George Harman, program manager for MDE's noise control program. He described particular noise problems generated by truck operations near residential areas, including "periodic" or "impulse" noises. He described state regulatory decibel limits, which could likely be exceeded, especially restrictive night limits. Timothy Buckley, Johns Hopkins School of Public Health professor, made noise measurements near the boundary, evaluated the situation, and found, as the CBA wrote on page 5, "the proposed expansion would increase noise levels within the community that would not only exceed standards but would have an adverse effect on the health of the community. He testified that impulse or periodic events are the most damaging types of noise to the ear and also possess a high, continued

stress factor." His measurements showed a frequent exceedance of state standards. Dr. Buckley also testified on air pollution, particularly diesel fumes, and explained in detail that expansion would increase fumes injuriously and with great risk.

In reference to John Dillon's testimony, the CBA reviewed his observations at the site at pages 7-8. The CBA described Mr. Dillon's personal late- evening observations of existing noise levels, and his comparison of "the area of the buildings that were currently on the site and what was proposed." Here is the heart of the CBA summary of this part of Mr. Dillon's testimony,

> "The building on the site in 1981 consisted of 14,148 square feet in area. The proposed NEMF site plan in 1988-99 was for 24,798 square feet in a new building. The current proposal was for 33,040 sq. ft. which was a substantial increase in size. It was Mr. Dillon's opinion that the current use of NEMF is a trucking facility without the benefit of a proper special exception or a legitimate nonconforming use at this time. He testified that he felt that there was definitely an adverse impact on the health, safety and general welfare of this community, and he based that opinion on the testimony of Mr. Harmen and Dr. Buckley dealing with noise and air pollution and his own personal observation of the noise witnessed on May 17, 2005. He believed that expanding from 70 tractor/trailers to 300 tractor/trailers and the number of employees to 120 would provide additional traffic through the community which would tend to create congestion in roads, streets, or alleys. He testified that the expansion of the facility would overcrowd the land in terms of bringing health impacts closer to the community. He felt that the granting of NEMF's request was inconsistent with the proper zoning classification and not within the spirit and intent of the regulations in that it was within 300 feet and within proximity with residential zones.

The CBA went on to summarize Mr.. Dillon's testimony concerning other potential locations in the county, but the above description of his evaluation of the impact at the site itself stands on its own.

The CBA concluded its summary on page 8 with reference to testimony of area residents about "personal experiences as to the impact of NEMF on their enjoyment of their property." This included descriptions of the noise and "the diesel fumes [which] prevented them from opening their windows during the summertime and also from enjoying their backyards."

The extensive CBA findings and conclusions

The CBA decision on the special exception is at pages 9-12,

"**Decision**

Section 502 of the *Baltimore County Zoning Regulations* (BCZR) governs special exceptions. That section provides that, before the requested special exception may be granted, it must appear that the use for which it is requested will not:

A. Be detrimental to the health, safety, or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other dangers;

D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;

F. Interfere with adequate light and air;

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations...

It is the opinion of this Board that the Petitioner fails to meet the first criterion in that the Board feels that the health, safety or general welfare of the locality involved will be detrimentally affected by an expansion of the trucking facility at this location. There seems to be no question that the noise level will not be substantially affected by the addition of the 100 tractors and 200 trailers. However, the frequency of the noise generated by the increased numbers of the pieces of equipment will substantially affect the enjoyment of their property by the residents of the Bloomfield community. Petitioner's expert, George Spanos, agreed that increased frequency can be an annoyance which can affect the enjoyment of an individual's property.

While Dr. Buckley did not perform any tests on the property to determine the level of diesel fumes which permeate the air in the Bloomfield community, there is no question that the individuals can smell diesel fumes at the present time. Petitioner points out the Federal Clean Air Act established manufacturing criteria for diesel engines and formulation criteria for diesel fuel. It is through this regulatory scheme that Congress has opted to protect human health and the environment from diesel emissions. The Maryland Department of the Environment has been delegated limited authority to implement and

enforce this regulatory scheme; its regulations do not deviate from the Federal criteria. Petitioner contends that NEMF has never been cited for any type of air pollution violation. As stated by Dr. Buckley in his testimony, it is a fact that the community is:

> ...located within an urban environment, so not only is it an urban environment where we know air pollution is higher than a rural or even a suburban environment, but it is an urban environment that is very closely situated to a number of major highways, 95 and 695, and there are many urban arterials in close proximity to that community, so already there is a heightened risk in my opinion within that community.
>
> So the trucking company is adding to that. The expansion would only add greater to that hazard.

As with noise frequency, the pollution of the air can only be increased by tripling the number of tractors that come onto the site. As testified to by the manager for NEMF at the Georgetown Road site, there are occasions when the tractors are left running, either because they have sleeper cabs and the operators keep the engine running to generate electricity or heat, or because they are awaiting a load or hooking onto a trailer and keep their engines running rather than turning them off and starting them again. It was Mr. Dillon's testimony that he sat in the yard with Ms. Rudnikas and heard a noise every 1.5 minutes from the operations at NEMF. If the operations are tripled, it is certainly possible that the noise would be almost continuous from the hooking and unhooking of trailers and other noises associated with the operation.

Not only does the Board feel that the Petitioner fails to meet the requirements of Part A, but also feels that it fails to meet the requirements of Part F, interfering with adequate light and air, and Part G, being inconsistent with the purposes of the zoning classification or in any other way inconsistent with the spirit and intent of the zoning regulations.

The purposes of BCZR § 410 were enumerated in § 410.4B. The second purpose stated is: "to assure that the improvements of the sites of existing and future Class I trucking facilities are of such design, quality or character that they will not be likely to deteriorate in such a way that a public nuisance would be created or that the public interest would otherwise be adversely effected"; and § 410.7: "in general to accommodate trucking activities in recognition of their importance to the economy of the county and the nation while minimizing the impact of existing and future Class I trucking facilities on the environment and achieving an optimum level of compatibility between such facilities and nearby uses especially dwellings and institutional uses." The Board recognizes again that the Bloomfield Community is in an industrial area. It has been co-existing with the NEMF facility as it is now operating and puts up with the noise and the diesel fumes emanating from the site. The company indicates that it will construct a fence on top of a retaining wall in order to shield the community from the noise generated by the increased volume of trucks on the property. It should be noted that in Case No. 01-544-SPHX for reconsideration, the Deputy Zoning Commissioner, Timothy Kotroco,

cited the testimony of NEMF's president Myron Shevell, that a solid board fence on top of the retaining wall would run contrary to security measures applicable to his business. He evidently stated that it would not be possible for the security guards to see what was actually taking place on the other side of the fence, and that such a fence would not be structurally sound since it could not withstand severe winds blowing across the parking lot. This causes a question as to whether a fence could be constructed that would absorb the sound as proposed by Company expert Mr. Spanos. An expansion of the facility does not appear to be in the best interest of the community which has been located in the area for over 60 years. The fact that industrial operations have grown up around the community does not mean that the community is not entitled to protection from further expansion.

"Finally, the Board feels that under the guidelines established by the Court of Appeals in Schultz v. Pritts 291 Md. 1 (1981) the Board must deny the special exception. As stated on page 15 of that decision:

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

It was only after these independent and legally sufficient findings that the CBA added on page 12 the paragraph comparing other locations, which included the language the appellate court found offensive.

There is absolutely no doubt that the CBA's previous findings, which Judge Hollander recognized and accepted, stand as a sound judgment. The evidence overwhelmingly supports the CBA's decision. The CBA described the evidence fairly. The CBA deduced logical factual findings and inferences. Based on these findings, the CBA came to the correct conclusion of law, one that is more than fairly debatable supportable on this record.

All that the CBA has to do now is to clarify or confirm what should be obvious to anyone who reads the opinion. The CBA's decision to deny the special exception stands independently of the comparative geography, which the CSA found to be extraneous.

In this context, attention should be paid to Judge Moylan's instructive opinion in Country Ridge Shopping Center is instructive. He reviewed the CBA's opinion on remand, or "Round Two," as he described it, at 144 Md. App. at 589-90. He explained that an appellate court may remand a case to an agency for clarification. 144 Md. App. at. 595-97. He went on to affirm the CBA's action on remand.

While suggesting that the CBA's language there might have been more artful or polished, Judge Moylan nevertheless recognized, 144 Md. App. at 597,

> "The Board made it clear that its initial 1997 denial of the special exception had not depended on the one-mile radius limitation and that it had not considered that limitation to be a critical factor in the decision."

Here, the CBA's Supplemental Opinion is well done and more than sufficient. All that remains is to clarify that the findings of fact and legal conclusions did not depend on the factor of comparative geography, and that the opinion stands separate and apart from that final paragraph, and clearly it was not critical or even material. In sum, the deletion of the final paragraph of the Supplemental Opinion does not change the outcome.

III. Based on the Purich decision, NEMF's 1998 special exception approval plainly led to the termination after the BCZR §104.1 one-year statutory abandonment period to the termination of the nonconforming use; subsequently, the special exception became "void thereafter" under BCZR §502.3.

The CSA recognized that the Purich majority opinion presented a "complicated" new question to be answered by the CBA in the first instance here. Did the unutilized 1998 special exception approval terminate the NEMF nonconforming use upon the expiration of the statutory period for abandonment or discontinuance? Judge Hollander identified the problem, and yet seemed to struggle for an "arguable" way to distinguish the special exception for "modernization" in Purich from the special exception for expansion here.

Here is what Judge Hollander wrote to conclude her discussion of the Purich case, at page 100,

> "As we see it, appellees claim that NEMF obtained and used the special exception received in 1998, thereby abandoning its nonconforming use. Yet, they simultaneously insist that NEMF did not "utilize" this special exception, because NEMF failed to undertake the proposed construction within the statutory period. Either appellant used the 1998 Special Exception or it did not: **if it did not, then its lawful nonconforming use of the Property arguably remained intact**; if it did use the exception, then it may have lost the nonconforming use, but did not necessarily lose the 1998 Special Exception.
>
> **The 1998 Petition may be distinguishable from the one at issue in *Purich*.** The Montgomery County ordinance "does not mention modernization" in regard to filing stations. In contrast, BCZR § 410.1(F) provides that site plans for pre-1976 trucking facilities "may be amended only by special exception." In addition, with exceptions not relevant here, BCZR § 410.1(E) states: "The site, structures and paved areas of a nonconforming Class I trucking facility may not be expanded unless the use is made to conform in all respects with these Zoning regulations." **Through these provisions, BCZR arguably contemplates a distinction between a special exception for use of a trucking facility and a special exception for the expansion of an existing facility**, a distinction seemingly absent from the pertinent regulations in *Purich*. Moreover, **NEMF's 1998 Petition was arguably for expansion**, not for continued use of the Facility. NEMF never acted on its plans, however, It is never used the special exception, it may not have abandoned its lawful nonconforming use.
>
> **As indicated, the Board never considered this complicated issue. In our view, it is appropriate for the Board to consider the contention in the first instance. Because a remand is necessary for the reasons previously discussed, the Board may determine, on remand, whether to consider appellees' *Purich*/abandonment claim and, if so, the resolution of that claim. We express no opinion as to the merits of such a claim."** Emphases supplied.

At oral argument, panel member Lawrence Wescott inquired about Judge Hollander's suggestion of a distinction. We responded that the *dictum* in her opinion as perplexing on this point. It should be kept in mind that "statements of dicta are remarks 'by the way' including any statement enunciated by the court merely by way of 'illustration, argument, analogy or suggestion." Bryan v. State Roads Comm'n 115 Md. App. 707, 712, aff'd 356 Md. 4 (1999), quoting Black's Law Dictionary. They have no precedential value.

Here, we shall show that the suggested distinctions have no basis and are illusory. They do not stand up to scrutiny, In our view, Judge Cathell's holding and logic require a ruling here that the NEMF nonconforming use terminated on February 25, 1999.

Predictably, NEMF's counsel considered the discussion of an "arguable" distinction to be a "signal" that the CBA should rule in its favor. Fortunately, Judge Hollander cautiously declined to go so far on this "complicated" issue. This was a wise thing to do, because a careful analysis will reveal that there are no real distinctions.

The nonconforming use question is the key question. The record is clear that NEMF never utilized or did any construction to implement the special exception within the controlling maximum 5-year period. Rather, NEMF kept changing its plans and petitions, hoping ultimately for approval of the different special exception filed in 2003. So, the special exception became "void thereafter." Judge Hollander's opinion recognizes this consequence. The bottom line is that at this writing, either NEMF still has a nonconforming use, or it has nothing at all.

* * *

In Purich v. Draper Properties, Inc. 395 Md. 694 (2006), Shell Oil Company, the lessee, applied in 1997 for a special exception use to "renovate" or "permit modernization" of the existing nonconforming fuel service station. The County Board of Appeals approved the special exception, with various improvements itemized as conditions. In granting the special exception use, the Montgomery County CBA,

> "... provided that Shell could install new pump islands, construct a new canopy, renovate the exterior and service bay areas of the station, add a handicap parking space, install a trash enclosure, and install new lighting, which may not have been permitted unless a 'special exception' for an automobile service station use was first obtained." 395 Md. 700-01.

Shell's "modernization" could accurately also be described as an expansion, because it involved both new and additional facilities. See Jahnigen v. Staley 245 Md. 130 (1967).

As it happened, the station continued to operate, but Shell never made the improvements. Subsequently, in 2003, Draper Properties, Inc. (DPI), a new lessee, decided to go in a different direction and asked the CBA to revoke the special exception

and reinstate the nonconforming use. The CBA, over objection by a neighboring property owner, granted the request, and the Circuit Court affirmed.

Upon review in the Court of Appeals, Judge Cathell held for the majority that the approval of the special exception, together with operation of the station for six months (the Montgomery County statutory period for abandonment of a nonconforming use), did cause, as a matter of law, the termination of the nonconforming use.

By electing to apply for and obtain a special exception, a type of permitted use, the applicant took the use out of the category of nonconforming uses and obtained the benefits of a permitted special exception use. Under the county code there, a special exception is a "specific use that would not be appropriate generally or without restriction, which must be based on certain conditions [and statutory requirements] ..." 395 Md. at 712-13. Given the essential purpose of nonconforming use law to eliminate nonconforming uses and bring the property into conformity with permitted uses, the choice to apply for, obtain, and leave the special exception in effect for the statutory abandonment/discontinuity period terminated the nonconforming use as a matter of law.

Let us examine the relevant Baltimore County law. The essential inquiry is to determine the legislative purpose. It is basic that "... the language of a statute must be viewed as a whole, with reference to the surrounding provisions of a statute." Department of Human Resources v. Howard 397 Md. 353, 362 (2007). It is important to "... construe the statute as a whole so that no word, clause, sentence, or phrase is rendered surplusage, superfluous, meaningless, or nugatory." The goal also is to avoid any "unreasonable, illogical or inconsistent interpretation ...." Mayor & Town Council of Oakland v. Mayor & Town Council of Mountain Park 392 Md. 301, 316 (2006); Department of Health v. Kelly 397 Md. 399, 420 (2007).

The Baltimore County Zoning Regulations governing special exceptions are comparable in purpose and structure to the above Montgomery County Code provisions. It is elementary that one of the fundamental functions of zoning regulations is to control the use of property. Village of Euclid v. Ambler Realty Co. 272 U.S. 365 (1926). Judge

Rita Davidson reviewed the structure of the BCZR in Kowalski v. Lamar 25 Md. App. 493, 496, 498 (1975. She wrote,

"Section 102.1 of the zoning regulations provides, insofar as here relevant:

> '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. . . .' (Emphasis added.)

Section 1A00.2 of the zoning regulations provides:

> "A. Uses Permitted as of Right. *The following uses, only, are permitted as of right in* RDP *zones."*
>
> * * *
>
> "B. **Uses Permitted by Special Exception**. *The following uses, only, are permitted as special exceptions*:"
>
> * * *

These sections establish that the only uses permitted in the R.D.P. zone are those designated as uses permitted as of right and uses permitted by special exception. Any use other than those permitted and being carried on as of right or by special exception is prohibited." Italics in original, bold and underlined supplied.

Furthermore, BCZR § 502 deals governs special exceptions. It begins,

"Section 502
Special Exceptions
[BCZR 1955]

(See Section 270, Schedule of Special Exceptions.)

NOTE: Certain types of **uses** are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few **uses**, such as dumps and junkyards, are inherently so objectionable as to make extra regulations and controls advisable even in the M.H. Zone, to which they are restricted. **Others**, like a cemetery, do not fit into any of the zone categories, that is, residential, business and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper **uses** of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety or general welfare of the public, the **uses listed as special exceptions** are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the County Board of Appeals.

In granting any special exception, the Zoning Commissioner and the County Board of Appeals, upon appeal, shall be governed by the following principles and conditions." Emphasis supplied.

Clearly, special exceptions pertain to "certain types of **uses**."

Correspondingly, BCZR §253.2.A.12, the M.L. Zone provision which authorizes trucking facility uses by special exception, begins,

> "The **uses** listed in this subsection are **permitted by special exception** only (See Section 502):
>
> A. The following industrial, quasi-industrial, transportation, storage, or quasi-public **uses** or utilities: 410A)."
>
> 12. Trucking facilities. (See Section 410 and 410A). Emphases supplies.

Furthermore, the special exception provision which allows expansion of nonconforming Class I trucking facilites, BCZR § 410.1.F, actually states,

> "With the exception of plans for conforming Class II trucking facilities in M.H. Zones, plans approved under this section may be **amended only by special exception**." Emphasis supplied.

Properly understood and accurately described, NEMF's 1998 petition for special exception was a petition to amend a special exception use, Indeed, as described in Zoning Commissioner Lawrence Schmidt's February 25, 1998 opinion,

> "The Petitions were filed by 3600 Georgetown Corporation, property owner. Special exception relief is requested, pursuant to Sections 410.1.F and 502.7 of the Baltimore County Zoning Regulations (BCZ0 to amend the site plan of a previously approved Class I trucking facility dated June 16, 2001 (Trucking Facility 139)." E. 708.

Moreover, like the special exception requested in Purich, the NEMF special exception use would add "certain additions and improvements." As ZC Schmidt wrote,

> "The Petitioner seeks relief in the instant Petitions to permit the construction of certain additions and improvements to the property. As noted on the plan, there presently exists a one story metal warehouse/terminal building on a concrete foundation. This facility contains 16 truck bays. The Petitioner proposes to construct an addition to this building as more particularly shown on the site plan. Specifically, a new area for office space will be added as well as an addition to the terminal. Moreover, a new one-story service garage will be constructed next to the existing service facility. The plan also shows additional areas of parking and macadam. "

It should be apparent that the 1998 NEMF special exception is on the same legal and factual track as that in Purich. But let us examine in more detail Judge Cathell's analysis to see how it fits the situation here.

* * *

Judge Cathell began his discussion with a general review of nonconforming use law. 395 Md. At 708-11. He quoted from Beyer v. Mayor & City Council 182 Md. 444 (1943) and Prince George's County v. E.L Gardner, Inc. 293 Md. 259, 267-68 (1982). The Gardner case is very familiar to the CBA, as it has been central to its decisions in a number of nonconforming use cases over the last several years. He emphasized that nonconforming uses are not favored. An initially legal use may survive a change in law which otherwise would prohibit it, but it should gradually disappear. As a corollary, the local zoning law "... must be strictly construed in order to effectuate the purpose of eliminating nonconforming uses." 395 Md. 712.

Judge Cathell explained that a special exception use is a type of permitted use,

> "Thus, when one applies for and is granted a special exception for a use being made, or to be made, that use becomes a permitted use even if it had theretofore been a nonconforming use." 395 Md. 713.

DPI sought to avoid this result by arguing that " ... the special exception was for the 'modernization' of an existing automobile filling station operated as a lawful nonconforming use." Ibid. Indeed, the CBA there had described the special exception as "... to permit *modernization*" of the existing station." But Judge Cathell pointed out that the Montgomery County ordinance referred to the operation of filling stations in general, not to modernization. Concerning the CBA's description of "modernization," he wrote,

> "This is a statement that the reason the applicant wanted the special exception was that under such exception, if it was granted, Shell could modernize the facility. The special exception use was, however, not *for* modernization, but for the automobile filling station *use* itself. Unfortunately, the Board's initial characterization of the special exception for the Property was misleading and has apparently subsequently misled the Board and the trial court Additionally, it is clear from Shell's actual petition, that the "use proposed' by it, and consequently DPI, was an 'Automobile Filling Station, ' not just the modernization." Italics in original. 395 Md. 714.

Then, referring again to the Montgomery County Code description of a special exception as "...the grant of a specific *use* that would not be appropriate generally or without restriction ...," he emphasized,

" . . . Special exceptions, pursuant to portions of the Zoning Ordinance applicable here, are for *uses,* not modernization-although a desire to be permitted to modernize may be the reason an applicant applies for a special exception, i.e., a special exception may permit modernization where it would not be permitted if the filling station was operating as a nonconforming use.

A special exception brings a property into conformance with applicable zoning laws. The use becomes permitted, albeit there may be conditions. In this case, the nonconforming use of the Property as an automobile filling station prior to April 7, 1997, though lawful, was in conflict with Montgomery County's zoning goals. Once the special exception was granted on April 7, 1997, the use of the Property came into conformance with the zoning law; hence, the nonconforming use ceased." 395 Md. 714-15.

He continued,

"The nonconforming use stopped on April 7, 1997, and the property was operated under the special exception from that point forward. Thereafter, the six month period by which abandonment is calculated under the statute, if even applicable, began immediately upon the grant of, and operation under the special exception. Once Shell applied for and was granted a special exception from the operation of the filling station on the Property, it began to conform with the overall zoning provisions. Nonconformance became conformance and, pursuant to *Gardner* and *Grant*, the Zoning Ordinance must be strictly construed to eliminate the nonconforming use." 395 Md. 715-16.

DPI also argued "...that the special exception was never implemented, and, therefore, that the nonconforming use of the property never actually ceased." 395 Md. At 717. Judge Cathell rejected this argument as well, observing that,

"... a filling station already existed and was being operated and continued to be operated. The pertinent question is whether the legal status of the use changed upon the initial granting of the special exception"

* * *

Let us pause to reflect on the parallel legal and factual context here under Baltimore County Zoning Law. Like the Montgomery County provision describing a special exception as a use, BCZR §§ 502 and 253.2.B.12 provide that special exceptions generally, and for trucking facilities in M.L. Zones specifically, are types of *uses.* In this context, NEMF's petition under BCZR §410.1.F to amend its nonconforming trucking facility use to obtain a special exception in the M.L. Zone is a petition for a permitted special exception use. In obtaining a permitted special exception use, the nonconforming use necessarily disappeared. They could not co-exist.

Let us also pause to consider NEMF's main arguments, echoing Judge Hollander's suggestion of "arguable" distinctions. NEMF argues that a special exception for an "expansion" is significantly different from the special exception for the automobile filling station use in Purich. This argument is flawed. As in the Montgomery Code provisions in Purich, the Baltimore County Zoning Regulations governing special exceptions involve special exception *uses*, and amendments of *uses*. As in the case of DPI's "*modernization*" distinction, NEMF's focus on "*expansion*" is misplaced.

In rejecting DPI's modernization argument, Judge Cathell explained that Shell Oil, the original applicant, requested a special exception for an automobile filling station use in lieu of its nonconforming use to fulfill "a desire to be permitted to modernize." But this was not the essence of the special exception. Rather, the special exception is a permitted use. NEMF here requested a special exception for its trucking facility use in lieu of its nonconforming use to fulfill a similar desire, to be permitted to expand. The modernization in Purich and the expansion here were thus both the reasons for requesting the special exception use, but were not the essence of the special exception use. Furthermore, a comparison of the additions and improvements described in Purich with the additions and improvements described in ZC Schmidt's opinion shows that the "modernization" and "expansion" in the two cases are factually parallel and interchangeable in principle. Both cases involve modernization and expansion. Judge Hollander's "arguable" distinction is thus without foundation and illusory.

Furthermore, as in Purich, the failure of NEMF to implement its approved special exception use does not furnish an escape from the change in status from nonconforming use to conforming use. Nor, as Judge Cathell was to emphasize, even if such failure could be called a violation of the special exception, it would not be a basis to argue either for survival or revival of the nonconforming use. Because NEMF was already operating, the special exception approval simply eliminated the nonconforming use, either immediately or at the expiration of the abandonment period. Here, of course, BCZR § 104.1 provides for a six-month abandonment/discontinuance period for termination.

* * *

Now let us return to the concluding portions of Judge Cathell's opinion, in which he further clarifies and reinforces his reasoning and determination. We shall see again how the current case fits into the Purich pattern, why NEMF's arguments fail, and how Judge Hollander's "arguable" distinctions disappear.

Judge Cathell continued,

> "The change to a permitted use (i.e., the special exception) terminates the nonconforming use, which then cannot be revived or renewed. There is nothing to revive and nothing to renew. DPI contends that none of the steps toward modernization-as provided for in the grant of special exception-were taken, and thus the special exception is not valid. There is little evidence in the record showing that all of the requirements of the special exception were met. That, however, is not entirely dispositive in the case *sub judice.* As discussed *supra,* the use's legal status as a permitted use was established the moment the special exception was granted because the filling station was, in fact, already operating. 395 Md. 718-19. Footnotes omitted.

Again, NEMF in 1998 was in the same position as Shell Oil in 1997. It was already operating; it applied for and obtained a permitted special exception use; it did not implement the requirements of the approved special exception use.

Judge Cathell returned again to DPI's "modernization" argument. The following discussion applies with equal force to NEMF's "expansion" argument here.

> "DPI's argument hinges on the *modernization* being the operative scope of the special exception. We hold, however, that the *use* is what defines a special exception in Montgomery County. § 59-A-2.1 of the Zoning Ordinance (defining "Special Exception" as "[t]he grant of a specific *use* ...." (emphasis added)). Therefore, whether DPI or Shell actually did or did not take any steps to modernize the Property is not dispositive to the establishment of the special exception for an automobile filling station. §§ 59-A-2.1 and § 59-A-4.53(b)(2) of the Zoning Ordinance. **What is dispositive is that the Property was operating as an automobile filling station while a special exception permitting the operation of a filling station existed. That operation constitutes the *use* under the special exception. It was at that point a permitted use, albeit it might have been operating in violation of the Zoning Ordinance's requirements for such use.** 395 Md. At 719. Emphasis supplied. Footnotes omitted.

Let us also underline that the Purich decision did not depend on whether the applicant for special exception had a choice when it applied. NEMF's other main argument is that it had no choice but to apply for a special exception use to amend its nonconforming use plan. Whether or not there was a choice, the bottom line is that NEMF sought and obtained a permitted special exception use. The matter of choice had

nothing to do with Judge Cathell's determination. Clearly, the improvements and additions to facilities constituted extensions or expansions which did require an application for a special exception. Jahnigen v. Staley 245 Md. 130 (1967). It was not as if Shell Oil casually applied for a special exception which it did not need.

Indeed, it was at this juncture that Judge Cathelll recounted in footnote 29,

> "Shell applied for the special exception because it could not make the renovations it desired while operating the filling station as a nonconforming use. It is clear that the operative scope of the special exception is the use (e.g. automobile filling station) which Shell, and correspondingly DPI, recognizing in its original petition. 395 Md. At 719.

Again, upon close scrutiny, NEMF's argument and Judge Hollander's "arguable" distinction turn out to be without foundation and illusory.

Judge Cathell recapitulated, with this pertinent language,

> The situation extant is that once a special exception is applied for, granted, and operation of the subject property is begun or continued pursuant to it, the owner of the property has six months to revert back to a prior nonconforming use (if one existed) before it is abandoned. But in this case the special exception was not "revoked" within that six month period. Even if DPI could decide not to make use of that special exception and could pursue the revocation of the special exception, the result, however, would be that the Property could then only be operated pursuant to Montgomery County's Convenience Commercial (C-1) requirements. Thus, as the nonconforming use no longer exists, the Property can be operated as an automobile filling station only pursuant to a special exception-if it still exists. If the special exception was properly revoked then the only uses that may be made of the property are those uses permitted by right in the District.." 395 Md. 721.

He concluded,

> Special exceptions in Montgomery County are provided for *uses* of property. In the case *sub judice,* the Property was in operation as an automobile filling station pursuant to a special exception. Once that use began, either the nonconforming use was immediately terminated or, at a minimum, the six month period of abandonment started in respect to the prior nonconforming use status of the Property. Those six months passed and the nonconforming use, if not sooner terminated, was thus abandoned." 395 Md. 722.

It is remarkable how closely the present case follows this pattern in Purich. Clearly, as a matter of law NEMF lost its nonconforming use either when ZC Schmidt approved its special exception on Februrary 25, 1998 or within the one year afterwards.,

NEMF was still operating with the benefit of the special exception, even though it did not implement the required conditions.

There is an additional dimension in the present case. As Judge Hollander appeared to recognize, and the record reflects, there is no genuine dispute that NEMF failed to utilize or do any construction under the approved 1998 special exception. The most relevant portions of BCZR §502.3 are as follows:

> "A special exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void. The Zoning Commissioner or, on appeal, the County Board of Appeals, in connection with the grant of any special exception, shall fix within the aforegoing limits the period of time for its utilization.
>
> * * *
>
> A special exception which requires any construction for its utilization shall be deemed to have been used within its authorized time if such construction shall have commenced during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence."

NEMF did seek and obtain an extension of time to allow the maximum of five years for utilization under BCZR § 502.3. But it still did not proceed with utilization. Rather, it kept filing new and different petitions. Finally, on February 25, 2003, the special exception expired and became "thereafter void." It is remarkable that even the Director of the Department of Permits and Development and Management, a department which works cooperatively with developers, recognized that the special exception no longer had validity.

Finally, let us return to Judge Hollander's opinion, and her "arguable" distinctions, which we have demonstrated to be without foundation and illusory. Her 100-page opinion addressed a multiplicity of issues. It shows a huge effort.

She wisely recognized that the CBA needed to address the Purich problem. She also wisely recognized that this is an issue in the first instance for the County Board of Appeals. But we must respectfully disagree with her suggestions of arguable distinctions. We also believe that, upon careful scrutiny, she would now agree with our position that these distinctions are without a difference from Judge Cathell's majority decision.

Conclusion

For the foregoing reasons, we request,

1. That the County Board of Appeals implement the remand, and deny NEMF's belated request to withdraw the petition for special exception without prejudice;

2. That the County Board of Appeals clarify and reinforce the legally sufficient and independent grounds for denial of NEMF's petition for special exception; and

3. That the County Board of Appeals determine that NEMF's nonconforming use terminated by virtue of its 1998 special exception approval, and that the said approval in 2003 became "void thereafter."

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

CAROLE S. DEMILIO
Deputy People's Counsel
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410-887-2188

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February, 2010, a copy of the People Counsel's for Baltimore County's Post-Remand Memorandum was mailed first-class, postage pre-paid to J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmont Avenue, Towson, MD 21286, and G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

2/5/10

PETITION FOR SPECIAL HEARING NW/Side Georgetown Road 100' NE Hall Avenue (3600 Georgetown Road) Tom Mauk, Catherine Scarborough, Anna Wood, Greater Bloomfield Association Petitioners	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY Case No.: 04-160-SPH
* * * * * * * * * * * * *		
RE: PETITION FOR SPECIAL HEARING AND EXCEPTION N/S Georgetown Road, SW of Bloomfield Road 13th Election District 1st Councilmanic District 3600 Georgetown Corporation, c/o Myron Shevell – Legal Owners Petitioners	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY Case No.: 04-294-SPHX
* * * * * * * * * * * * *		

PROTESTANTS POST-REMAND MEMORANDUM

Greater Bloomfield Community Association, LLC and individuals, ***Lorna Rudnikas, Darlene Byrd, Brenda Elliott*** and ***Donald Sadler***, by and through their attorney, ***J. Carroll Holzer, Esquire***, Holzer & Lee, hereby submits this Memorandum as requested by the County Board of Appeals and says:

First, on December 3, 2009, Oral Argument was presented on behalf of the Greater Bloomfield Community Association, *et al.* At that time, the Protestants first adopted and incorporated People's Counsel's argument and Pre-Hearing Memorandum. The issues were briefed and orally argued by People's Counsel as to the withdraw issue and the *Parish* issue.

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BALTIMORE COUNTY
BOARD OF APPEALS

On behalf of the citizens of Greater Bloomfield and the Greater Bloomfield Community Association, the Protestants desire finality to this case having expended large sums of money, much time and energy of the Association and the obtaining of necessary experts, such as Land Planner, Jack Dillon and Dr. Timothy Buckley, Johns Hopkins School of Public Health, in regard to noise and health concerns to reach the conclusion that expansion of the trucking facility into the Community should be **DENIED** and the *Purich* issue resolved. This case has been going on over seven (7) years. Bloomfield agrees with People's Counsel that NEMF's Request to Dismiss its Petition is because it recognized there is suitable evidence for the Board to make a determination that the special exception should be denied. The Board is also aware that Bloomfield argued in addition to denying expansion, that New England Motor Freight has lost its special exception and non-conforming use on the subject site as a result of the *Purich* case.

After reviewing People's Counsel's Post-Remand Memorandum, Bloomfield joins People's Counsel in urging this Board to determine:

1. That the County Board of Appeals implement the Remand and deny New England Motor Freight's belated request to withdraw the Petition for Special Exception without prejudice;

2. That the County Board of Appeals clarify and reinforce the legal sufficient and independent grounds for denial of New England Motor Freight's Petition for Special Exception; and

3. That the County Board of Appeals determine that New England Motor Freight's non-conforming use terminated by virtue of its 1998 special exception approval and that the said approval in 2003 became void.

Respectfully submitted,

J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
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410-825-6961
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of February, 2010, a copy of the foregoing Protestants Post-Remand Memorandum was mailed first class, postage pre-paid to the following: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Jefferson Building, 105 West Chesapeake Avenue, Room 204, Towson, Maryland 21204 and G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, L.L.P., Towson Commons, Suite 300, One West Pennsylvania Avenue, Towson, Maryland 21204-5025.

J. CARROLL HOLZER, Esquire

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BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF	*	BEFORE THE
NEW ENGLAND MOTOR FREIGHT	*	COUNTY BOARD OF APPEALS
	*	Case Nos.: **04-160-SPH** and
	*	**04-294-SPHX**

* * * * * * * * * * *

POST HEARING BRIEF OF NEW ENGLAND MOTOR FREIGHT

Now comes 3600 Georgetown Road Corporation/New England Motor Freight (hereinafter collectively "NEMF") by its undersigned counsel, and pursuant to the request by the County Board of Appeals at the conclusion of the December 3, 2009 hearing on remand of this matter, hereby submits this Brief in further support of its position.

I. NEMF's Petition For Special Exception Was Properly And Timely Withdrawn In Accordance With the Well-established Rules Of This Board, And Thus, There Is No Further Justiciable Controversy For The Board To Consider Pertaining To NEMF's Petition For Special Exception

As this Board well knows, the Court of Special Appeals, in its ruling of December 24, 2008, vacated the judgment of the Circuit Court for Baltimore County and instructed that Court to remand this matter back to the Board for further proceedings. Indeed, with specific reference to this Board's prior consideration of NEMF's special exception request for expansion, the Court of Special Appeals opined that the Board had committed error and "[i]n light of the Board's error, we shall vacate the judgment of the Circuit Court with respect to NEMF's expansion request and remand to the Board for further proceedings". Court of Special Appeals Opinion at 94.

It is axiomatic under Maryland law that an appellate court's reversal serves to annul or set aside the prior ruling of a lower court. *Carpenter v. Imbesi*, 369 Md. 549, 562

(2002). Accordingly, once the Court of Special Appeals made its ruling, the Board's prior decision regarding the Petition For Special Exception had no preclusive effect whatsoever. Stated simply, the Circuit Court and Board of Appeals Orders no longer exist.

Thereafter, in accordance with Rule 3.b.2[1] set forth in Appendix H to the BCZR the Petitioner notified the Board in writing on November 12, 2009 (twenty (20) days prior to the December 3, 2009 hearing) of its decision to withdraw the pending Petition For Special Exception. As the notification of withdrawal indisputably occurred more than ten (10) days prior to the December 3rd hearing, the express language of Rule 3.b.2 compels the conclusion that the Petition is unconditionally dismissed without prejudice. Indeed, Rule 3.b provides:

> 1. An appeal may be withdrawn or dismissed at any time prior to the conclusion of the hearing on said appeal.
>
> 2. A request for withdrawal of a petition shall be filed in writing with the board. A petitioner who wishes to have a petition withdrawn and dismissed without prejudice shall withdraw the petition not less than 10 days before the scheduled hearing date. A petition that is withdrawn less than 10 days before the scheduled hearing date shall be dismissed with prejudice. A petition that is dismissed with prejudice under this paragraph may not be resubmitted for a period of 18 months after the dismissal.

At the risk of stating the obvious, once NEMF timely and properly dismissed its Petition, there no longer existed any justiciable controversy before the Board with regard to the special exception request. Simply put, the question of expansion at this site pursuant to the Petition For Special Exception (Case No. 04-294-SPHX) became moot. There is nothing esoteric, novel or vague about the concept of mootness under Maryland law. Rather, it is a fundamental precept that an issue is rendered moot if at the time it is before a tribunal, there is no

[1] By his letter to the Board dated December 7, 2009, Mr. Zimmerman on behalf of People's Counsel for Baltimore County conceded that this issue is controlled by Rule 3.b.2.

longer any existing controversy, such that the court may no longer provide an effective remedy. See, e.g., *Hammen v. Baltimore County Police Department*, 573 Md. 440 (2003); *Bond v. Slavin*, 157 Md. App. 340 (2004); *Stevenson v. Lanham*, 127 Md. App. 597 (1999); *Williams v. Williams*, 63 Md. App. 220 (1985). Notwithstanding the clear language of the Board rule, and further notwithstanding the fact that the facility at issue is owned and operated by NEMF, which accords it the right to determine whether to seek approval for or to timely withdraw an expansion effort, both People's Counsel and the Greater Bloomfield Association argue that they are somehow empowered to compel this Board to consider a special exception that the property owner has properly and timely withdrawn. Stated bluntly, no such authority exists.

Rather than citing to any specific case law, regulation or rule, both People's Counsel and the Greater Bloomfield Association argue that given the time expended on this matter by the parties and the fact that the Board previously considered these issues (a ruling that was vacated by the Court of Special Appeals), this Board should issue a substantive ruling on the withdrawn Petition.

As has been demonstrated herein, this Board has no authority to issue such a ruling once the Petition has been withdrawn. Indeed, upon withdrawal, there is no justiciable controversy pending before the Board that could serve as the predicate for any such ruling. Any action to the contrary would violate the mootness doctrine, as well as the Board's own rules.[2] In

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[2] Pursuant to Rule 3.b.2 the sole issue for the Board to determine is whether the withdrawal occurred more than ten (10) days prior to the hearing. If so, the withdrawal is deemed without prejudice. If the withdrawal is provided less than ten (10) days before the hearing, the withdrawal would be with prejudice. As NEMF notified the Board of the withdrawal in writing twenty (20) days prior to the December 3rd hearing, then its withdrawal is by rule without prejudice.

sum, the request by People's Counsel and the Greater Bloomfield Association to ignore the timely and proper withdrawal of the Petition For Special Exception must be rejected.

II. The Court Of Appeals Decision In *Purich v. Draper* Is Inopposite To The Facts Of The Instant Case, And As Clearly Signaled By Judge Hollander In Her Opinion, Does Not Justify A Finding That NEMF Has Lost Its Legal Nonconforming Use

After recognizing that the Board never had the opportunity to consider the application, *vel non*, of the Court of Appeals ruling in *Purich v. Draper*, 395 Md. 694 (2006) because that opinion post-dated the Board's initial consideration of this appeal, the Court of Special Appeals directed the Board to address *Purich* as a component of its remand order. Although the Court of Special Appeals could have simply stopped by mandating further consideration of this issue by the Board, Judge Hollander took the rather extraordinary step of devoting several pages in her Opinion to setting forth the clear factual distinctions existent between the situation in *Purich* and NEMF case. In sum, the Board received a clear signal from the Court of Special Appeals with regard to the significant dissimilarities between the two cases, and it should not ignore the message that the Court was sending. Judge Hollander clearly signaled that *Purich* does not dictate a finding that NEMF has abandoned its non-conforming status.

Purich involved a property, located in Montgomery County, owned by Draper Properties, Inc. The property was zoned, "convenience commercial" (C-1). 395 Md. at 698. At some point in early 1963, Draper leased the property to Shell for the operation of an automobile filling station. *Id.* In May, 1963, pursuant to a change in Montgomery County zoning law, the operation of automobile filling stations required a special exception. *Id.* As such, the property,

which was continuously operated as an automobile filling station from 1963 through 1997, existed as a legal non-conforming use. *Id.* at 699.

In 1997, Shell applied to the Montgomery County Zoning Board for a special exception to "use" the property as an automobile filling station in order to facilitate a modernization of the existing station. *Id.* The Petition filed by Shell was approved by the Montgomery County Board of Appeals. *Id.* at 700-01. Notwithstanding the special exception grant, Shell apparently did not implement any of the upgrades contained in the special exception. *Id.* at 701. In April, 2003, the Board determined that the special exception was never implemented, but in July of 2003, pursuant to a request by PMG, the new lessee, concluded that although the special exception was revoked, the lawful non-conforming use remained. *Id.* at 696-97; 703.

The Court of Appeals ultimately found that while Shell may have desired to "modernize" the station, the applicable Montgomery County Zoning Ordinance required that to operate as a filling station, a special exception was required. Specifically, the Court of Appeals noted that "[t]he special exception use was, however, *not* for modernization, but for the automobile filling station *use* itself. *Id.* at 714 (emphasis in original). As such, the Court of Appeals concluded that the "non-conforming use status, if not earlier terminated was abandoned after the special exception was granted and six months elapsed."[3] Id. at 712.

Contrary to the zoning regulations in *Purich* (which speak only to the *use* of an automobile filling station), the applicable Baltimore County Zoning Regulation sets forth a

[3] The Montgomery County Zoning Regulations provide that if a non-conforming use is abandoned over a continuous period of at least six (6) months, the non-conforming use terminates. *Id.* at 715.

specific scheme for non-conforming Class I trucking facility operators who seek to *expand* an existing trucking operation. Indeed, as Judge Hollander correctly noted:

> [NEMF's] Petition may be distinguishable from the one at issue in *Purich*. The Montgomery County Ordinance "does not mention modernization" in regard to the filling station. In contrast, BCZR Section 410.1(F) provides that site plans for pre-1976 trucking facilities "may be amended only by special exception." In addition, with exceptions not relevant here, BCZR Section 410.1(E) states: "the site, structures and paved areas of a non-conforming Class I trucking facility may not be *expanded* unless the use is made to conform in all respects with these Zoning Regulations. Through these provisions, BCZR arguably contemplates a distinction between a special exception for use of a trucking facility and a special exception for the expansion of an existing facility, *a distinction seemingly absent from the pertinent regulations in Purich*. Moreover, NEMF's 1998 Petition was arguably for *expansion*, not for continued *use* of the facility. NEMF never acted on its plans, however, if it never used the special exception, it may not have abandoned its lawful, non-conforming use.

Court of Special Appeals Opinion at 99-100 (emphasis supplied).

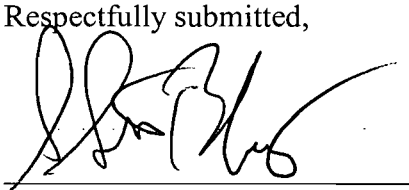
Indeed, NEMF's Petition For Special Exception expressly provided that it was being sought to expand and improve the then-existing facility consistent with the requirement set forth in the applicable zoning regulations. Simply stated, as opposed to the situation in *Purich*, NEMF did not require nor seek a special exception in order to continue to operate the facility, because no such requirement existed. The Petition For Special Exception only sought approval of an expansion, thus even if NEMF did not utilize the special exception it previously obtained for purposes of expansion, the failure to do so impacts only the expansion effort, not NEMF's ability to continue to use the site as a non-conforming Class I trucking facility. The only thing NEMF has abandoned is the right to expand pursuant to the previously approved Petition For Special Exception.

Under such circumstances, as Judge Hollander clearly signaled, the decision in *Purich* is inopposite to the facts here and as such, NEMF's alleged failure to properly vest the special exception cannot serve as a basis to vitiate its legal non-conforming use of the site as a Class I trucking facility.

III. Conclusion

For the reasons set forth herein, the Board should conclude that it has no standing to consider the previously withdrawn special exception expansion request of NEMF because that matter has been rendered moot pursuant to NEMF's timely withdraw the Petition. Moreover, because the Court of Appeals' holding in *Purich v. Draper* is inapplicable to the facts presented in this matter, the Board should determine that NEMF retains its lawful, non-conforming use of the site as a Class I trucking facility.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4TH day of February, 2010, a copy of the foregoing Post Hearing Brief of New England Motor Freight was mailed first class, postage prepaid to:

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G. Scott Barhight

1886546v3

7/10/09

IN THE MATTER OF: GREATER BLOOMFIELD ASSOCIATION, ET AL	*	IN THE CIRCUIT COURT
Petitioner	*	FOR BALTIMORE COUNTY
v.	*	Case No. 03-C-06-003979
IN THE MATTER OF: 3600 GEORGETOWN CORPORATION	*	
Respondent	*	

* * * * * * * * * * *

ORDER

Based on the Mandate of the Court of Special Appeals issued January 23, 2009 which vacated the Judgment of the Circuit Court for Baltimore County, it is this 10th day of July, 2009 ORDERED that this case be remanded to the Board of Appeals for further proceedings consistent with the opinion of the Court of Special Appeals filed on December 24, 2008. Costs are to be paid by Appellees.

Judge Ruth Jakubowski

Clerk to Notify all Parties

cc: J Hutzler
P Nussbaum
Board of Appeals

FILED JUL 15 2009

MANDATE

Court of Special Appeals

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

No. 00217, September Term, 2007

3600 Georgetown Corporation
vs.
Greater Bloomfield Association et al.

JUDGMENT: December 24, 2008: Judgment of the Circuit Court for Baltimore County vacated. Case remanded to the circuit court, with instructions to remand to the Board for further proceedings consistent with this opinion. Costs to be paid by appellees.
Unreported opinion by Hollander, J.

January 23, 2009: Mandate issued.

From the Circuit Court: for **BALTIMORE COUNTY**
03C060003979

STATEMENT OF COSTS:

Appellant(s):	
Lower Court Costs-	120.00
Steno Costs of Appellant-	292.50
Filing Fee of Appellant-	50.00
Filing Fee of Appellant-	50.00
Filing Fee of Appellant-	50.00
Brief of Appellant-	212.40
Record Extract-10 COPIES	2,236.80
Reply of Appellant-	64.80
Appellee(s):	
Brief of Appellee-PEOPLE'S COUNSEL	259.20
Brief of Appellee-GREATER BLOOMFIELD	133.20

FILED JUL 07 2009

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this **twenty-third** *day of* **January** **2009**

Leslie D. Gradet
Clerk of the Court of Special Appeals

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

RECEIVED BY
DEC 26 2008
for Baltimore County

UNREPORTED

IN THE COURT OF SPECIAL

APPEALS OF MARYLAND

No. 217

SEPTEMBER TERM, 2007

3600 GEORGETOWN CORP.

v.

GREATER BLOOMFIELD COMMUNITY ASSOC., *et. al.*

Hollander,
*Adkins, Sally D.,
Wenner, William W.,
(Retired, specially assigned),

JJ.

Opinion by Hollander, J.

Filed: December 24, 2008

*Sally D. Adkins, now serving on the Court of Appeals, participated in the hearing and conference of this case while an active member of this Court; she participated in the adoption of this opinion as a specially assigned member of this Court.

12/24/08

In this appeal, we are asked to resolve a zoning dispute involving a trucking facility operated by 3600 Georgetown Corporation, d/b/a New England Motor Freight ("NEMF"), appellant. In two consolidated cases, the Baltimore County Board of Appeals (the "Board") concluded in two separate rulings issued in March 2006 that NEMF's trucking facility constitutes "a proper use of the subject property," but it denied NEMF's request for a special exception to expand the facility. Unhappy with the ruling permitting continued operation of the trucking facility, People's Counsel for Baltimore County ("People's Counsel"), Greater Bloomfield Community Association (the "Association"), and four individual Association members, appellees,[1] sought judicial review in the Circuit Court for Baltimore County. NEMF filed a cross-petition challenging the Board's denial of its expansion request.

Following a hearing on October 20, 2006, the circuit court issued a Memorandum Opinion and Order on March 7, 2007, reversing the Board's ruling permitting continued operation of the trucking facility, and affirming the Board's decision denying appellant's

---

[1]Unless otherwise noted, we will use the term "Association" to refer collectively to the Greater Bloomfield Community Association and the individual appellees. At the hearing before the Board on July 14, 2005, J. Carroll Holzer, Esquire, appeared on behalf of the individual petitioners in Case 04-160-SPH, and advised the court that the same persons were also the protestants in Case 04-294-SPH. Unfortunately, he did not identify these persons. Our review of the signature page for the Petition in Case 04-160-SPH reveals that it was signed by Tom Mauk, Catherine Scarborough, Anna Woods, and by Lorna Rudnikas for the Association. These persons were also identified by the Board as "Protestants." However, the petition for judicial review was filed by Rudnikas, Darlene Byrd, Brenda Elliott, and Donald Sadler. Therefore, as best we can determine, the individual appellees are Rudnikas, Byrd, Elliott, and Sadler. (Ms. Byrd's name is sometimes spelled as "Bird" in the record.) Finally, we note that People's Counsel and the Association filed separate briefs, but the Association "adopt[ed] People's Counsel's legal analysis."

expansion request. This appeal followed.

Appellant poses five questions, which we have reworded slightly:

1. Did the circuit court err in concluding that NEMF was operating a nonconforming trucking facility based upon the plain language of the applicable regulation?

2. Assuming the issue of abandonment is applicable to this case, did the circuit court err by improperly substituting its judgment for that of the Board?

3. Assuming that NEMF is operating a nonconforming trucking facility that was abandoned, did the circuit court err in failing to recognize and enforce property right protections mandated by federal bankruptcy law?

4. Even if NEMF is operating a nonconforming trucking facility that was abandoned, and that bankruptcy law protections do not apply, did the circuit court err in permitting a collateral attack on a prior decision of the Zoning Commissioner?

5. Did the circuit court err by affirming the Board's erroneous utilization of an improper standard in analyzing NEMF's Petition for Special Exception?

For the reasons set forth below, we shall vacate the judgment of the circuit court and remand to the Board for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND[2]

The business at issue is a Class I trucking facility (the "Facility"). It is located at 3600 Georgetown Road in Lansdowne, an unincorporated community in southern

[2]The parties presented voluminous evidence to the Board over the course of several days. In our factual summary, we have not strictly followed the order in which the witnesses appeared.

Baltimore County (the "Property"). The Property occupies about 6.25 acres in Baltimore County and 3.28 acres in Baltimore City,[3] and is situated near the intersection of Interstate 95 and the Baltimore Beltway; Caton Avenue connects the Property to I-95. Although most of the area around the Property consists of warehouses and industrial buildings, the Property also adjoins Bloomfield, a residential neighborhood composed largely of single-family homes.[4] The Facility is located in a zone designated by Baltimore County as Manufacturing-Light ("M.L."). Section 253.2 of the Baltimore County Zoning Regulations ("BCZR") permits the operation of such trucking facilities in an M.L. zone by special exception.

On September 19, 2003, the Association, along with four Bloomfield residents, filed a "Petition for Special Hearing to the Zoning Commissioner of Baltimore County" ("Bloomfield Petition"), asking the Zoning Commissioner to determine whether NEMF was lawfully utilizing the Property.[5] On December 18, 2003, appellant filed a "Petition for Special Exception to the Zoning Commissioner of Baltimore County" ("NEMF Petition"), seeking permission to expand the Facility. Both petitions are central to this appeal.

[3]3600 Georgetown Road is a Baltimore City address. The entrance to the Facility is on Joh Avenue in Baltimore City.

[4]Ms. Rudnikas testified that, at the time of the hearing, the Association had as its members 44 dues-paying families "out of 73 homeowners."

[5]Rudnikas, Mauk, Scarborough, and Woods were the individual petitioners.

On September 7, 2004, the Zoning Commissioner/Hearing Officer, Lawrence Schmidt, granted the NEMF Petition and denied the Bloomfield Petition. Appellees then appealed to the Board. The Board consolidated the petitions and held five days of hearings between July and September of 2005, culminating in two opinions issued on March 15, 2006. One, titled "Opinion," concluded that the Facility constitutes a lawful nonconforming use of the Property. The other, titled "Supplemental Opinion," denied NEMF's request to expand the Facility.[6]

On April 13, 2006, appellees filed a Petition for Judicial Review in the circuit court, challenging the Opinion. On April 28, 2006, NEMF filed a Cross Petition for Judicial Review, challenging the Supplemental Opinion. To understand the issues presented by these petitions, it is essential to understand the protracted zoning history with respect to the Property.[7] We pause to do so.

In 1960, Wilson Freight Company ("Wilson" or "Wilson Freight") asked the Board to reclassify the Property's zoning designation from "R-6" (Residential) to "M-L."

[6]The two opinions were the result of a change in the Board's membership during the course of its deliberations. We discuss the change in greater detail, *infra*. The Board also issued a "Cover Order" on March 15, 2006, stating that the Opinion and Supplemental Opinion "constitute the full and final Order and decision of this Board in the subject matter."

[7]The Board said: "An understanding of the chronological history of this matter is essential." Similarly, People's Counsel stated that the case "has a long history and litigation odyssey." And, the circuit court recognized that, because of "the complexity of the issues," a thorough review of the zoning history and the procedural history was "clearly warranted."

Wilson also asked for a special exception to operate a "truck terminal."[8] On October 11, 1961; the Board granted both the reclassification request and the special exception, subject to restrictions (the "1961 Order").[9] Wilson then built the Facility.

In the mid 1970s, the County Council received two reports relating to truck terminals. One was issued on August 7, 1975, by a Citizens Task Force on Truck Terminals; the other was issued by the Baltimore County Planning Board on February 19, 1976. Both reports found trucking facilities "totally inappropriate in or near residential areas," in part because of the fumes and because the trucks operate "day and night. . . ." Each proposed comprehensive new zoning laws for truck facilities.

In response to these reports, in April 1976 the County Council enacted Bill 18-76, which created new zoning regulations for truck terminals. Of import here, the Bill permitted "Class I Trucking Facilities" to operate by special exception on land zoned Manufacturing-Light. *See* BCZR § 253.2.A.12. Bill 18-76, now codified in the BCZR, added the following definitions to BCZR § 101:

> TRUCKING FACILITY -- A structure or land used or intended to be used primarily (a) to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types, in order to facilitate the transportation of such goods or chattels; or (b) for truck or truck-trailer parking or storage . . . .
>
> TRUCKING FACILITY, CLASS I (TRUCK TERMINAL) -- A trucking

[8]"Truck terminal" is the former designation for a "Class I Trucking Facility."

[9]The restrictions required Wilson to build a fence around its terminal, pave the surface enclosed by the fencing, and not use a loud speaker system outside the building.

> facility whose primary purpose is to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types, in order to facilitate the transportation of such goods or chattels.

Wilson filed for bankruptcy in 1980. The United States Bankruptcy Court for the Southern District of New York issued an order on July 24, 1980, granting Wilson permission to remain a debtor in possession, with "full power and authority to continue to operate" its trucking business. Because the Facility met the definition of a "Class I Trucking Facility," Wilson was required to file a site plan in 1981. *See* BCZR § 410.1A. The Zoning Supervisor, James Dyer, approved Wilson's site plan in a letter dated May 7, 1982, stating:

> Please be advised that I have reviewed the subject property site plans and case file and find that the zoning problems have been cleared up by way of the revised site plan approved by the writer on June 16, 1981 and by the Chairman of the County Trucking Facilities Development Officials on June 15, 1981. Subsequent to the approval of the site plan, the site was inspected by the Zoning Enforcement Section Inspector, Mr. Henry E. Phipps, and found to be in compliance with said approved plan . . . .
>
> Based upon the above, *I can advise you that the property may be used as a trucking operation and that there are no outstanding violations.* It is suggested, however, that you make every effort to see that the trucking operation maintains compliance with the aforementioned approved site plan. (Emphasis added.)

During the 1980s, Wilson sold the Facility to AAA Trucking Corp., which then sold it to NEMF in 1990. Since then, appellant has filed four petitions with the Zoning Commissioner, each relating to NEMF's desire to expand the Facility. NEMF's four petitions led to rulings by the Zoning Commissioner in 1998, 1999, 2001, and 2003.

First, in 1998, NEMF filed a Petition for a Special Hearing and a Petition for a Special Exception, Case 98-260-SPHX (collectively, the "1998 Petition"), in which it sought to amend the site plan that had been approved in May 1982 and expand the Facility. In particular, appellant proposed construction of a 10,970-square-foot terminal addition and a 2,999-square-foot, one-story service garage facility. On February 25, 1998, Commissioner Schmidt granted the 1998 Petition, subject to restrictions (the "1998 Order"). Observing that "no Protestants or other interested persons" attended the public hearing, the 1998 Order stated, in part:

> Apparently, a trucking facility has been operated from the subject premises by the New England Motor Freight Company for many years. The existing facility was granted special exception approval on October 11, 1961 in case No. 48-90=RX. The property was rezoned in the 1976 Comprehensive Zoning Map process from M.L. to M.L.R.-I.M. Later, pursuant to legislation passed by the County Council which regulated trucking facilities and is now codified in Section 410 of the BCZR, the use on the subject property was found to be in existence prior to April 18, 1976 and to be in compliance with the provisions of such legislation (Bill No. 18-76).
>
> The Petitioner seeks relief in the instant Petitions to permit the construction of certain additions and improvements to the property. As noted on the plan, there presently exists a one story metal warehouse/terminal building on a concrete foundation. This facility contains 16 truck bays. The Petitioner proposes to construct an addition to this building as more particularly shown on the site plan. Specifically, a new area for office space will be added as well as an addition to the terminal. Moreover, a new one-story service garage will be constructed next to the existing service facility. The plan also shows additional areas of [employee] parking and macadam.
>
> Based upon the testimony and evidence presented, all of which is uncontradicted, I am persuaded to grant the Petitions for Special Exception

and Special Hearing. The existing use and the proposed improvements to the site appear compatible with the property's zoning classification and neighborhood. The additions and improvements represent an upgrade to the property.

Second, in 1999, NEMF sought an extension of the special exception granted by the 1998 Order; it filed a Petition for Special Hearing, Case 99-208-SPH. The Zoning Commissioner granted the extension on January 15, 1999 (the "1999 Order"). The 1999 Order "allow[ed] utilization to February 25, 2003. . . ."

Third, in 2001, appellant filed a Petition for Special Hearing and Special Exception, Case 01-544-SPHX. It sought to amend the site plan approved in 1998, and to obtain a special exception to expand the Facility. Many Bloomfield residents appeared at the hearing in opposition to the expansion request. The Zoning Commissioner issued a decision on October 12, 2001 (the "October 2001 Order"), approving the request, subject to various restrictions. The protestants lodged an appeal. After appellant filed a withdrawal of its petitions on January 9, 2003, the Board issued an Order of Dismissal of Petitions on January 16, 2003, in which it declared "null and void" the October 2001 Order.

James Thompson, Supervisor of the Bureau of Code Enforcement at the Department of Permits and Development Management ("PDM"),wrote to appellant's counsel on March 3, 2003. He stated:

> Upon review with Director Arnold Jablon, the question was raised whether the petitioner had indeed utilized its special exception per Section 502.3 of the Baltimore County Zoning Regulations in case no. 98-260

SPHX. In this instance, the portion of this regulations that the director contends is most relevant reads:

> A special exception which requires any construction for its utilization shall be deemed to have been used within its authorized time if such construction shall have commenced during the authorized period, or any exception thereof, provided said construction is thereafter pursued to completion with reasonable diligence.
>
> * * *
>
> To date, none of these projects has been started, let alone completed. In fact, . . . the property owner had elected not to proceed with the construction of the terminal addition/new service garage building. If one would further factor in the issues outlined in the January 2003 correction notice, this department must conclude, pursuant to Section 502.3, BCZR, that the special exception granted by Zoning Commissioner Lawrence E. Schmidt on February 25, 1998, in case no. 98-260 SPHX is no longer valid and in effect.

Fourth, on September 29, 2003, the Association filed a Petition, Case 04-160-SPH, asking the Zoning Commissioner to determine whether appellant was "lawfully utilizing" the Property. NEMF filed its Petition on December 18, 2003, Case 04-294-SPHX, seeking to expand its use of the Facility. NEMF included a site plan detailing the proposed expansion to an adjacent parcel, then owned by Florence Weiner (the "Weiner Parcel"), which NEMF later acquired on February 4, 2004.

In his "Findings of Fact and Conclusions of Law," dated September 28, 2004, the hearing officer granted the NEMF Petition, rejecting appellees' challenge to the expanded use of the Property. In his six-page opinion, Commissioner Schmidt stated, in part:

> This is not the case where a new use is being introduced to a residential area. Rather, although the Greater Bloomfield community is immediately

south of the site, this is generally a highly industrial/manufacturing area of Baltimore County. The site enjoys excellent access to major roads in the area, including I-95 and the Baltimore Beltway (I-695). Thus, the neighbors cannot claim to be unaware of the existing trucking facility and its inherent impacts. It has no doubt been at this location longer than many of the residents who own houses have lived there . . . .

* * *

Trucking facilities are inherently not favored land uses insofar as residential communities. They produce such inherent effects/impacts as noise, dust, traffic, etc. Nonetheless, they are a needed and legal land use and permitted in Baltimore County.

Based upon the testimony and evidence offered and the totality of the circumstances as they exist in this case, I am persuaded to grant the property owner's Petition and permit the proposed expansion/renovation of the site . . . . In my judgment this renovation will actually improve site conditions and I believe may actually benefit the adjacent residential homes. As noted above, the existing downstream flooding may very well be mitigated by the proposed improvements. Additionally, the site plan shows a system of proposed landscaping other than the natural buffer that exists at the present time. . . . For these reasons I will grant the Petition for Special Exception and Special Hearing filed by the owners of the property and will deny the Petitions filed by the Protestants.

Both the Association and People's Counsel noted appeals from the hearing officer's decision. The Board commenced a *de novo* evidentiary hearing on July 14, 2005,[10] which consumed several days over the course of the ensuing months.

Peter John Filipowicz, NEMF's terminal manger since 1999, testified that, at the time, the Facility had 90 trailers and 36 trucks, with 44 bay doors. According to Filipowicz, the weekend disturbance is minimal because the Facility closes at midnight on Friday and reopens Sunday at midnight. To his knowledge, the Facility had never been

[10]BCZR § 501.6 provides that "[a]ppeals from the Zoning Commissioner shall be heard by the board of zoning appeals de novo."

cited for a violation of noise ordinances. He explained that the expansion plan contemplated a replacement structure, approximately 33,300 square feet in size, with 94 docks to load and unload trailers. In addition, the plan called for approximately 269 trailers on site, as well as a maximum of 106 trucks. He added: "I doubt we'll ever have that many domiciled there. . . ."

Myron Shevell, NEMF's the CEO/Chairman of the Board, testified that NEMF sought to expand the Facility onto the so called Weiner Parcel, because of the "many warehouses being built all around the Bloomfield community," which "are going to be used as the docks increase their work here in Baltimore[.]"[11] He elaborated: "[I]f you take what's contiguous around us, where we are and all the warehouses that are being built, if there isn't a trucking service to take care of all those companies coming in with containers, you're going to have a serious, serious problem." According to Shevell, the proposed expansion would allow NEMF to hire 120 new employees. When asked what would happen if the request were denied, Shevell answered: "Well, we have already been speaking to Virginia. That's probably where we are going to go."

On cross-examination, Shevell noted that he visited the Property shortly before NEMF acquired it in 1990, and it was "in shambles." He recalled: "[T]he windows were all broken. The doors were hanging off it. . . . [I]t was a den for drug addicts. There were

[11]Shevell identified photographs of an NEMF facility in Newberg, New York. The photographs, received in evidence, purported to show what the Facility would look like after construction of a new terminal building and renovation of the existing terminal building.

needles all over the place. It was the worst you could imagine." Shevell claimed that NEMF had the Facility "up and running" within a month or two of its purchase. The following testimony is pertinent:

> [ASSOCIATION'S COUNSEL]: Having an understanding that you acquired the property in 1990 or 1989, and you visited the site in 1989, what, if any, visible evidence of a trucking operation existed that was an ongoing trucking operation?
>
> [SHEVELL]: Well, it was a truck operation. It was a truck terminal. The people went bankrupt. And that's as much as I can tell you.
>
> [ASSOCIATION'S COUNSEL]: I mean, when you saw it, when you personally visited there, were there trucks going in and out at this time, unloading, dropping off, parking?
>
> [SHEVELL]: Sir, I just said the company went bankrupt. It was a truck terminal. The company went bankrupt. Obviously, it's closed.
>
> [ASSOCIATION'S COUNSEL]: Do you know when it went bankrupt?
>
> [SHEVELL]: No, I do not.
>
> * * *
>
> [PEOPLE'S COUNSEL]: What was the approximate time period between Wilson going into bankruptcy and . . . your actual acquisition and taking over of the property?
>
> [SHEVELL]: I can't give you a time frame.
>
> * * *
>
> [PEOPLE'S COUNSEL]: From any of your visits or discussions or activities at that time, did you acquire any information about how long the site had been closed, the trucking operation had stopped, based on the bankruptcy?
>
> [SHEVELL]: No.

David Martin, a landscape architect and site planner, testified for appellant as an expert in land planning, landscape architecture, development, and zoning. He and his firm, G.W. Stephens & Associates, prepared NEMF's 1998 expansion plan as well as the current proposal. Martin described the existing Facility, which consists of an office building on the City portion of the Property and a terminal building that is "part in the city, part in the county." The Facility has a paved area, with street access off of Joh Avenue, trailer parking, and a repair facility. Martin pointed out that there is another trucking facility southeast of Bloomfield, and to the south of that site is "a big industrial warehouse building . . . that obviously has a lot of trucks and trailers associated with the dock doors on that building."

Further, Martin maintained that the proposed expansion included plans to improve the landscaping and security fencing. Describing other improvements, Martin said:

> We'll start with the existing facility, which proposes to expand the paved areas to the outer edges of the site . . . up to what I will call the Weiner tract line.
>
> The building is proposed to be expanded to the west of the existing building. In actuality, the existing building will be demolished and rebuilt as one building, albeit in the same dimensional profile as the existing. New offices again in the same location.
>
> A reorganization of the pedestrian and visitor parking, the worker parking, employee parking, on the city side of the site.
>
> The entrance remains where it is today, albeit expanded with a better gate, a guard house. That access is off of Joh Avenue to the north of the property.

> The plan illustrates where the trailers are being parked on the existing property's expansion area as well as tractor parking. The dock doors. And it shows also the existing repair building is to be relocated on the same existing site, however, further up to the west and the north.

Further, Martin maintained that the existing Facility constituted a "conforming" use, because Wilson's site plan met the applicable Baltimore County and Baltimore City zoning regulations. He explained that, after the passage of Bill 18-76, Wilson submitted its site plan and "a representative of Baltimore County actually visited the site, went down the checklist said this plan actually has done the things . . . prescribed in the bill, and wrote a letter that said, This now conforms to Section 410."

Martin recounted that he reviewed the plans for all 44 approved trucking facilities in Baltimore County, and visited about half of them. He presented a slideshow containing photographs of thirteen of these facilities, and opined that NEMF's proposed facility "is a significant improvement from those that you have seen in the other slides that are currently operating elsewhere in the county." Martin elaborated:

> The reason I would opine that that is the case is that the proposed facility demonstrates brand new paving throughout the site, new curbing, retaining walls, Class A screening, landscaping, and [in] proximity to the residential neighborhood are well defined security operations, new fencing, a new building, new dock facilities, all of the proper turning radius for the trucks, the vehicles themselves, and stormwater management in an underground facility on this site.
>
> Very crisp, clean expectations as shown on the site plan, as opposed to those slides that we saw that illustrate ongoing operations that are, frankly, rather unsightly, but certainly run and have been running for many, many years, many of them.

In Martin's opinion, the proposed expansion complied with all of the provisions in BCZR § 410.1(B)(2), as well as *Schultz v. Pritts*, 291 Md. 1 (1981). In reaching that conclusion, he considered the nine categories of adverse effects listed in BCZR § 502.1. In particular, when asked whether the proposed use would "tend to create congestion in the roads, streets or alleys greater than what [he] would ordinarily expect regardless of its location in the zone elsewhere in Baltimore County," Martin responded: "I would expect that this would not have a greater impact on the road network." He explained:

> Section 14 of the BCZR identifies as one of the principal criteria for a trucking facility, that it have close proximity to an industrial service road or . . . major arterials or an interstate highway system.
>
> This particular facility, if I had to identify a site in Baltimore County that best fit that criteria, I would be hard pressed to find another site with the access on a major industrial collector road, Joh Avenue, that immediately enters onto or T's into with the traffic signal, Caton Avenue, a major arterial that traverses both the county and the city, and then, within a thousand feet, be at Interstate 95, interchange, and I think that clearly showed the access route from this facility as opposed to some of the others that, frankly, were traversing, as we showed on the slides, right in front of residential properties on relatively minor residential streets, especially on the east side of the county.

Further, Martin opined that the proposed use would not "create potential hazards from fire, panic, or other dangers greater than [he] would ordinarily expect regardless of its location elsewhere in the zone in Baltimore County[.]" Nor did Martin except the proposed use "to overcrowd the land." In addition, Martin stated:

> Obviously, it's not going to increase the population because it's not a residential property, and I don't believe it's overcrowding the land at all. . . . [B]y right . . . this is an ML/IM zone. The site could actually facilitate a

huge industrial building. . . .

> The site is ten acres. You can actually put twenty acres of building on there. We are nowhere near that kind of number.
>
> The parking and the paving are within the confines of the reasonable site development proposal in this zone, in a heavy industrial zone.

Moreover, Martin maintained that the proposed use would not "interfere with adequate provisions for schools or parks" because it is not a residential development that would produce students. He observed that the surrounding areas "are heavily industrial, with the exception of Bloomfield to the south, and parks are not generally associated with or located in heavy industrial areas of the county." Further, Martin claimed that the proposed use is consistent with "the permeable surface and vegetative retention provisions of the zoning regulations[.]"

When asked whether the proposed use would "interfere with adequate provisions for water and sewerage and transportation greater than you would ordinarily expect regardless of its location elsewhere in the zone in Baltimore County," Martin responded: "The water and sewer are actually at the site, servicing the site today. The proposed expansion would rely on that utility service, and it would not be a greater impact here than anyplace else." Similarly, he said that the "sewerage service is . . . at the property, serving the existing facility now," and "[i]t is adequate." Martin maintained that the proposed use will not interfere "with adequate light and air above and beyond what you would ordinarily expect regardless of its location in the zone in Baltimore County[.]" He

explained:

> It's a less than forty-five foot high building that's being proposed. It's not like it's going to be casting shadows as a heavily city/urban situation with highrise buildings in proximity to other buildings.
>
> So the answer, in my opinion, no, it's not going to be detrimental to the adequate light or air of the site, or the adjoining site.

In addition, Martin asserted: "I believe the special exception covered under Section 410 for trucking facilities is very well outlined, very well prescribed, and I would say that we meet that prescription with the proposal." The transcript continues:

> [APPELLANT'S COUNSEL]: The last catch-all question, do you have an opinion as to whether the proposed use will have a greater detrimental effect on the health, safety and general welfare of the locality involved than you would ordinarily expect regardless of its location in the zone elsewhere in Baltimore County?
>
> [MARTIN]: *It's not going to have a greater impact here than it would have elsewhere.*
>
> [APPELLANT'S COUNSEL]: Could you please explain in detail to the Board why you have that opinion?
>
> [MARTIN]: Well, I will go back to number one. Its proximity to the travel routes. The trucks clearly are not traversing through the residential neighborhoods that are adjoining the property.
>
> There may be local deliveries, but this is not a local delivery facility. As Mr. Shevell testified, this is a regional facility where freight is actually distributed to other regions or urban areas of the east coast.
>
> This proximity, I think, makes it actually a better location, as I already stated, than you might be able to pinpoint and find elsewhere in the county.
>
> I think because it is being redeveloped, it certainly is being scrutinized, or would be scrutinized through the development process of

Baltimore County as it exists today. (Emphasis added.)

On cross-examination, Martin admitted that the existing Facility violates the 300-foot setback area prescribed by BCZR § 410.2, and that the proposed plan would not satisfy that provision. In addition, Martin acknowledged that eleven of the thirteen Baltimore County trucking facilities he considered had their plans approved between 1977 and 1981; only two were approved under the current standards. Eleven of the thirteen sample facilities had fewer than 100 vehicles and less than the 33,040 square feet of building area proposed for appellant's expanded Facility. Martin conceded that he did not examine NEMF's Quad Avenue facility or other trucking facilities situated entirely within industrial areas.

George Harman,[12] of the Maryland Department of Environment ("MDE"), testified for the Association. He served as Program Manager of MDE's noise control program. MDE's noise pollution standards, codified at Code of Maryland Regulations ("COMAR") 26.02.03.02-03, prohibit nighttime noise levels in excess of 55 decibels in a residential area; 65 db's are permitted during the day. Commenting on noise measurements taken by one of his inspectors, using a 1985 truck, Harman testified that the truck had to be located between 215 and 220 feet away from a neighboring property line "before its decibel level would be attenuated" to 55 decibels. For the much louder sound caused by the release of an air hose, a distance of at least 1485 feet was required. Harman also pointed to COMAR

[12]In its Supplemental Opinion, the name is spelled "Harmen." We shall use the spelling provided by the witness.

28.02.03.02, setting forth a stricter decibel level ceiling for "impulse noises," defined as "noises that have a sudden spike to them," such as the sound made by a gunshot or truck-related noises. Impulse noises, he explained, "cause a great deal of consternation." On cross-examination, Harman admitted that he had no knowledge of any noise complaints relating to the Facility. He added that a person can abate loud noises by moving the source of the noise further away; by building a wall; or by putting "better muffler systems on the vehicles."

Timothy Buckley, Ph.D., an associate professor at the Johns Hopkins School of Public Health, testified for the Association as an expert in industrial hygiene, with a specialty in environmental exposure assessment.[13] Buckley recalled that he placed a noise measuring device (dosimeter) in a tree about ten feet from the fence on the south side of the Facility, and left it there to take readings of noise levels for four days. According to Buckley, COMAR's nighttime noise standard of 55 decibels was "exceeded over ninety percent of the time during the night intervals," while during the day the 65 decibel standard "was exceeded approximately ten percent of the time." Buckley explained that the measurements exceeded 55 decibels while the trucks were idling, and rose to 75 decibels during spikes. Moreover, he claimed there were 20-30 spikes per hour, both day

[13]Buckley testified that an industrial hygienist "is somebody who specializes in the protection of workers, health and safety, and that's fairly broadly defined to also include communities and environmental medical issues as well, so industrial hygienists are also trained with respect to community and environmental health." He explained that environmental exposure is "measuring or assessing the extent to which humans or communities come into contact with chemical or physical hazards in the environment."

and night. He explained that impulse noise, as defined earlier by Harman, "is the type of noise that is most damaging to the ear," and "poses a greater hazard. . . ." He noted that if NEMF brought its fence line "closer to the community," and increased the number of its trucks, there would be more noise in "very close proximity to the community."

Based on Buckley's review of NEMF's operations and expansion proposal, he concluded: "I have no doubt that the expansion will result in increased noise levels within the community that will not only exceed the state standards, but will have an adverse health effect upon the community." In his view, NEMF's proposed expansion could increase stress and sleeplessness among Bloomfield residents, and could alter their immune systems.

In addition, Buckley addressed the issue of air pollution from diesel fumes. He referred to literature on decreased pulmonary function in children living in proximity to traffic, as well as higher cancer rates. Focusing on the Bloomfield community, he observed that it was already at a "heightened risk" due to its location in an "urban environment," and the proposed expansion would "add . . . to that hazard." Later, he stated: "If this expansion occurs . . . you might likely see some elevations in certain kinds of diseases or exacerbations of asthma, or decrement in pulmonary function." In his view, "the further you can remove the hazards from populations or from communities, the more favorable will be the public health outcome." He also said: "Distance is very much

your friend with respect to both noise hazard as well as the air pollution."[14]

The following testimony is pertinent:

> [ASSOCIATION'S COUNSEL]: Do you have any opinion in regard to, again, the proposal of New England Motor Freight to (a), expand closer to the community and (b), increase the number of vehicles, the maximum number of vehicles to 300 that would be operating here relative to the fumes issue?
>
> [BUCKLEY]: Absolutely. I think the community is already being adversely affected by this facility, so if you now expand the number of vehicles that are emitting this diesel exhaust, generating this noise, (a), and (b), you bring it in closer proximity to the community. The situation, which is already problematic, is going to become much worse.

The Association presented the testimony of several Bloomfield residents who live near the Facility: Elizabeth Qualls, Ms. Byrd, Mike Garrish, Nancy Scheitlin, and Ms. Rudnikas. In general, they complained that the Facility constantly emitted noise and fumes, which interfered with their enjoyment of their yards in the summer. They also claimed that flooding and water runoff from the Facility were damaging their properties. Ms. Byrd, who had lived in Bloomfield for 35 years, was asked about the history of the Facility. The following exchange is pertinent:

> [ASSOCIATION'S COUNSEL]: Have you seen the course of the development of Wilson, the Wilson trucking company and then their successors and the New England Motor Freight coming in, in the late eighties or early nineties?
>
> [BYRD]: I've seen right through, it was, Wilson was in there, Triple A

[14] On cross-examination, Dr. Buckley clarified that he based his conclusions about air pollution, in part, on measurements of black carbon levels he took near the Facility. He admitted that he had never visited any other trucking facilities or taken other readings.

was in there. It was empty for a couple years and then New England Motor Freight moved in, so.

[ASSOCIATION'S COUNSEL]: When do you recall it being empty and how do you know that?

[BYRD]: Well, the children, my son, at that time, was a teenager and they used to go up there and play and they would have beer parties up there . . . I don't know how much trouble it was for the people up there but they, it was a hangout for the kids in the neighborhood. I mean, they would go up there skateboarding and they just used it as their own private playground. It was –

[ASSOCIATION'S COUNSEL]: Do you recall what years that was?

[BYRD]: It was empty two times, and, in between each of the, in between Wilson and Triple A, it was empty for awhile and then the longer period, you know, in that area. And then between Triple A and New England moving in, it was empty, but, I – you know.

[ASSOCIATION'S COUNSEL]: Can you put a year to it?

[BYRD]: I can't, I can't put an exact year to it. No, I really can't.

[ASSOCIATION'S COUNSEL]: Did you have any personal knowledge of the site by either visiting it or walking past it or whatever in regard to whether it was being utilized?

[BYRD]: We used to walk up there and it was empty. But, as far as to tell you what year it was in, that I couldn't tell you.

[ASSOCIATION'S COUNSEL]: Could you tell us how long a period of time you recall it being empty?

[BYRD]: It was empty at least for a couple years. I mean, it was a long time. It wasn't, it wasn't just a couple months. It was a long period of time.[14]

[14]Byrd clarified that this long period she was referring to was the first time the Facility (continued...)

Ms. Rudnikas testified in her capacity as President of the Association, and as a resident of the Bloomfield neighborhood. She presented a slideshow that contained numerous pictures of Bloomfield. According to Rudnikas, the Association has "44 families that are dues-paying members out of 73 homeowners." She recalled that when appellant filed its 1998 Petition, Bloomfield and its residents were not represented at the hearing because "[n]o one knew about it."

Rudnikas expressed concern that the wind blew diesel fumes from the Facility into the houses of residents. As to "environmental concerns," she stated:

> [W]e're concerned with the loss of habitat, you know . . . all the little animals that used to run loose in the woods; it's not entirely [NEMF's] concern, actually, because the more we have building around us the more we're finding that's a problem. But, further expansion toward us is only going to make that much worse. We're concerned about species endangerment.
>
> We have wetlands that run behind Georgetown Road; that is a very big concern of what is going to happen to those wetlands. The chemical and diesel fuel runoff, I know that there are engineering feats for taking care of that apparently but we have a real concern how that works and what the future is going to be. Chesapeake Bay endangerment, everybody is concerned with.
>
> * * *
>
> Well, it used to be wooded area. And, I'm not sure how long it took the folks at NEMF to take the trees down, down to the bare ground but it seemed like overnight.

With respect to "stormwater management issues," Rudnikas stated:

[14](...continued)
was empty. It was vacant the second time for a shorter period of time.

There has been some talk with regard to stormwater management for that site. It is interesting for us and from our viewpoint that nothing has been done in 15 years. And we just feel that at this point in time, when there is a big talk of expansion, within 30 feet of people's property lines, which is unconscionable, as far as we are concerned, it's like a carrot and stick thing. We will take care of the water if we can come in your living room. . . .

And so, it's a big, big fight for us. We're concerned about fuel runoff. We're seeing in the one backyard on Hopkins Avenue actual diesel fuel in the water that's laying there after a heavy rain. . . .

As to the matter of noise, Rudnikas commented:

[I]t is amazing at nighttime how you, I can hear the tractor trailers and I didn't know at first what that sound was, why is that so, what is that crashing noise. But, 3 o'clock in the morning I've got two dogs and they suddenly want to go out and I'm hearing the banging and the clanging. I haven't heard it in my living room or my bedroom because I've had my windows closed.

But, when I went outside, I could hear and it's unbelievable. I took an opportunity to sit in the field and take measurements and timed it, every time you hear that noise. Bang, clang and so help me when I got home and put it on paper, it was 1.6 minutes, every 1.6 minutes, you hear this banging and clanging. It's incredible. That's from 71 trucks.[16]

Ms. Rudnikas also identified records showing that the Facility did not use any water from April 27, 1981, to October 21, 1981, and from May 6, 1982, to August 2, 1982. According to appellees, these records, introduced in evidence, established that Wilson abandoned its nonconforming use of the Property for at least a year.

John J. Dillon, Jr. testified for appellees as an expert in planning, zoning, and land

[16]On questioning by one of the Board members, Rudnikas admitted that she also heard noises from an oil company located behind her house. She claimed, however, that those noises were not as loud or as frequent.

use. He explained that after the passage of Bill 18-76, existing trucking facilities had to file plans with the County within a certain period of time. He continued:

> Wilson Freight in . . . 1980 . . . filed for bankruptcy. . . . [T]here was a plan prepared for review, dated in 1981, and it was reviewed by the Zoning Office. There was a – a review of those files indicated an inspection was made, and the inspection indicated that they had met the requirements of Bill 410. We find that to be somewhat troubling in that during that same time period, the company had gone into bankruptcy. *The water records that were submitted the other day in testimony indicated that there was no use of the property from February of 1981 through October of 1982. Furthermore, the community testified, also – indicated that for a long period of time – that is, actually, about 19 months – the community found no activity on the property. So, we believe that, in fact, the nonconforming use had been lost.*
>
> . . . *When Bill 18-76 was enacted, that actually created a nonconforming situation for Wilson Freight Company,* because it couldn't comply [with] the new requirements. So, *under the Zoning Regulations, Section 104, if a nonconforming use is out of use for more than a year, it is lost.* So, we contend that through the evidence that has been shown and presented so far, that, in fact, the nonconforming use had actually been lost during that time period despite the fact that Mr. Dyer approved the plans in a letter of May 7th, 1982. He also approved this plan for an area of 6.25 acres. That is 1.51 acres larger than the original Special Exception was for of 4.74 acres . . . there was an expansion of that use that was approved by Mr. Dyer, and, we believe, in error. (Emphasis added.)

Noting that in 1981 the Facility occupied 6.25 acres in the County, Dillon claimed that the NEMF Petition proposed to create a Facility that would occupy a total of 17.5 acres, including the Weiner Parcel, with 13.98 acres in the County. Claiming "that the [zoning] regulations have attempted to provide a protection to residential communities by enacting these large setbacks of 300 feet to residential zones," Dillon indicated that NEMF's plan did not meet the BCZR § 410.2 setback requirement of 300 feet from a

dwelling or residential zone. The following colloquy is noteworthy:

> [ASSOCIATION'S COUNSEL]: Have you had the opportunity to review whether there are any other ML-Zoned areas in Baltimore County that would be suited, or better suited, or would have less of an impact on the community as the subject site would allegedly have?
>
> [NEMF'S COUNSEL]: Let me make a more particular objection, here. As a part of the continuing objection. . . .
>
> – we have had the issue before about whether it is the proper standard and proper test. We will be able to make that argument later, but I think I need to make a continuing objection about that, make it once, and you can rule.
>
> [COMMISSIONER]: I accept it, for the record, and overrule your objection, and suggest that that be subject of argument in cross-examination.
>
> * * *
>
> [ASSOCIATION'S COUNSEL]: Okay. . . . what other information do you have relative to my original question regarding other areas in Baltimore County or sites that would have a lesser impact on a residential community?
>
> [DILLON]: . . . I selected areas that are within the industrially-zoned portions of the County to look at where there were existing truck terminals that you could physically see because of the very clear aerial, as you no doubt know, but also to see if there is additional land available generally in those same areas. I found in the southwest area, not far from here, there are a number of truck terminals or facilities that are operating with trucks. There are some vacant lands available that is not developed yet that is in the industrially-zoned areas. The same thing in the southeast area. There is a concentration of trucking facilities along North Point Boulevard, a number of them. I am sure Gateway, there is still some unused land in that area. Because of the testimony the other day, I did particularly look at the Quad Avenue area,[11] where New England Motor Freight does have property. That is a very wide-open area in terms of undeveloped land around them.

[11]NEMF's counsel objected to the suggestion that NEMF owns the Quad property.

* * *

> [ASSOCIATION'S COUNSEL]: Let me ask you this . . . [C]ould you determine whether there were any residential properties or residential neighborhoods within 300 feet of the site?
>
> [DILLON]: No, that property was all zoned industrial. There was no residential nearby.
>
> [ASSOCIATION'S COUNSEL]: All right. Are there any other sites that you would care to address at this point?
>
> [DILLON]: In this area, I did look also, in the area, down around 895, near where the Carlings Brewery is. There is some land down there that is open. It is all industrial, no residences nearby, and there is also what appears to be some trucking facilities there, as well.

In addition, Dillon noted that Baltimore County has 12,000 acres of M.L.-zoned land, in which a Class I Trucking Facility is a special exception use, and another 8,500 acres zoned Manufacturing-Heavy ("M.H."), where a Class I Trucking Facility is a permitted use. He pointed out that NEMF operates another trucking facility on Quad Avenue, located in a M.H. zone. Dillon testified that he was "convinced" that "there are areas [in Baltimore County] that are more suitable for a location of a truck terminal that would meet the 300-foot setback, and would also not have the adverse impact that it has here at this location from the noise and the fumes aspect[.]" He opined that the Facility "could be located in another area of Baltimore County in an ML Zone and not have those adverse impacts" described by Dr. Buckley.

When asked to address the adverse effects that would result from the proposed expansion, Dillon responded:

"A. Be detrimental to the health, safety, or general welfare of the locality involved." I believe that there is definitely an issue of adverse impact . . . and I am primarily basing that opinion on two things. 1. The testimony of both Mr. Harm[a]n and Doctor Buckley dealing with the noise, and the air pollution, or the air quality in that area, and, secondly, on my own personal observation of the noise on May 17th of 2005 . . . that the community having to put up with that kind of nuisance is certainly a detrimental impact. B. . . .

"Tend to create congestion in roads, streets, or alleys therein." We did not provide any testimony by the expert witnesses, but I think as a general concern, expanding from 70 trucks to 300 trucks is – and, also, expanding employees will provide some additional traffic through the community. . . . So, I think there is some potential for some traffic impact[].

"[D]. Tend to overcrowd land and undue concentration of population." The expansion of this and the resulting impacts of that expansion, I think, does overcrowd the land in terms of, again, its health impacts to the community, and bringing that closer to the community, I think that is a significant problem.

* * *

[C.] "Create a potential hazard from fire, panic, or other dangers." Again, Doctor Buckley did talk about the noise impact. I think that is another danger. I am not sure that fire would be an issue particularly there, but I guess things could happen. We don't know what they are carrying in these trucks . . . having 300 trucks moving in -- or more -- out of a site every day carrying cargo . . . would be -- provide a potential danger to the community.

* * *

"E. Interfere with provisions for schools, parks, water, sewage, transportation." Here, I think the concern is dealing with the storm water management issue and the impacts of drainage off-site that the community has indicated is a significant problem. There is an elevation change. Water does tend to run downhill, and it, so far, has not been properly managed. . . .

"[F.] Interfere with adequate light and air." Again, the air problem was clearly identified by Doctor Buckley as a significant concern to this community . . . .

"G. Be inconsistent with the property's zoning classification and no

other way inconsistent with the spirit and intent of the Zoning Regulations." Here, I think the Zoning Regulations allow a trucking terminal by Special Exception. They also allow it by Special Exception with meeting certain conditions that were outlined under 410. The conditions that were placed there under 410 were placed there as a result of concerns by the community, and, ultimately, by the Planning Board and the County Council, where they are located in close proximity to residential zones. This is clearly the case here, where they are expanding very, very close to a residential community. . . So, yes, I do think it is not consistent with the County's own regulations.

* * *

[I] "Be detrimental to the environmental and natural resources of the site." I think, as brought out by the community, the disruption of the wooded area is a concern to the community. Wildlife has played an important role in that community. So, there is a concern from that viewpoint. So, I think I have covered all of those issues.

Further, Dillon stated that he did not "see anything in [BCZR§ 410.1] that would lead [him] to believe that the current proposal is exempt or excused" from satisfying the setback provision in BCZR § 410.2. The transcript continues:

> [PEOPLE'S COUNSEL]: All right. What factors relating to the situation of the site, and the neighborhood and the proposal are some of the significant factors contributing to your opinion?
>
> [DILLON]: First of all, this property has operated since 1960 as a relatively modest operation in terms of a truck terminal, with some starts and stops in between. The proposal that we have in front of us is an expansion from 70 vehicles or trailers to 300 trailers and that is just in terms of what they would be parking there. That doesn't include what is moving in and out on a daily basis. . . . So, the size of the entire operation is huge compared to what is there now. That would have, itself, would have a large impact on this residential community it is so close to.

However, Dillon admitted he had not reviewed the plans of any other trucking operation in Baltimore County.

According to Dillon, the 1961 Order was no longer in effect, because of the enactment of BCZR § 410 in 1976. He explained that, within one year following the enactment of Bill 18-76, all trucking facilities were required to file a plan, pursuant to BCZR § 410.1(A). Wilson, according to Dillon, did not meet this time period. Dillon continued:

> They were ultimately cited with a zoning violation, which I think brought everything to attention. The review began to take place. The Zoning Commissioner did find it in violation and there was an appeal taken. The process of reviewing of complying [sic] with that section, I think, continued with a plan being presented by Paul Lee. That plan was to meet the provisions of Section 410.1.B2, where it lists a series of requirements such as automobile parking, access to streets, layout, fencing, wheel stops, paving, curbing, drainage, concealment of automobile parts. The Special Exception – the review under that process to see if [the Facility] complied was going on during that time period. Now, we are approaching 1980 in ths process. The inspector ultimately found that they had complied with these requirements; however, in my review of his records, it was no notes or no anything other than the fact that he inspected the property and complied. . . . As a matter of fact, during that time period is when we believe they went out of business.
>
> * * *
>
> This is 1984. Between February of '81 and October of '82, they had ceased operations, and they still hadn't had their approval, yet, under these conditions. It hadn't come through when they finally received that approval from Jim Dyer on May 7th of '82. They were already out – they had already been out of operation for over a year, and the plan that he approved ultimately was a plan that reflected an area larger than this part of the original special exception. . . .

Dillon admitted that, by letter dated May 7, 1982, Mr. Dyer said the Facility was "in compliance," and did not mention "nonconforming." When asked about his claim that

appellant did not conform to § 410.1E, Dillon explained:

> What I think happened here is that under that section, when Mr. Dyer approved the plans, he approved plans that were for an area in excess of what the original Special Exception was for without benefit of a public hearing. If the plans were approved – if, in fact, our argument or our belief that the property went out of business for a period of two years before the Site Plan was approved, more than a year before the Site Plan was approved, that they were nonconforming, that they were in a nonconforming situation because they hadn't conformed yet, that was in process. If they went out of business during that period, then, they lost their use of the property. . . .

The following exchange is also pertinent:

> [APPELLANT'S COUNSEL]: Once he said we were in conformance, then, weren't we conforming?
>
> [DILLON]: . . . [I]f they were nonconforming, and they were out of business for a year or more, they lost their nonconformance. . . .
>
> * * *
>
> [W]e believe we have established that in the late '80's, there was a period of about 19 months that was out of operation. We do know that when it became AAA Trucking sometime between -- up to 1990 -- before 1990, it also went out of operation. I don't have any data on the exact time period. We know it was vacant for a period of time. I just don't have any data on it.
>
> * * *
>
> [APPELLANT'S COUNSEL]: So, at this point, do you have an opinion about whether it was abandoned in the 1990 time frame, generally?
>
> [DILLON]: According to the water records, there was no water use after February of 1981. The water began to be used again in a regular fashion after November of '81, which corresponds with the time period -- I mean of '82, when AAA went into the site and started operations.

On redirect, the following transpired:

> [ASSOCIATION'S COUNSEL]: In 1976, to your knowledge, based upon all of the documents that you reviewed, did the 300-foot setback requirement from the residential property line, did that come into effect in

1976 by Bill 18?

[DILLON]: Yes, it did.

[ASSOCIATION'S COUNSEL]: At the time, based upon the site plans that had been submitted, did the predecessor of New England Motor Freight . . . did they meet the 300-foot requirement from the existing D.R. Zone Line?

[DILLON]: No, the 300-foot setback is through the existing building and through part of the parking area.

[ASSOCIATION'S COUNSEL]: So, had that law been [in] existence in 1961, the 300-foot line would have gone right through the existing building in 1961, it would go right thorough the existing building in '81, it would go right through the existing building in '98, and it would go through the existing building today, is that correct?

[DILLON]: That's correct.

[ASSOCIATION'S COUNSEL]: So, when the law was passed in 1976, did this facility existing today and as existed in 1976 meet the 300-foot requirement?

[DILLON]: No.

[ASSOCIATION'S COUNSEL]: So, when did the nonconforming use start, in your opinion?

[DILLON]: In 1976, with the adoption of the Bill 1876.

[ASSOCIATION'S COUNSEL]: Because?

[DILLON]: It didn't comply [with] the . . . 410 Regulations.

* * *

[PEOPLE'S COUNSEL]: Mr. Dillon, the facility Wilson Freight -- and in every other incarnation -- every plan that we have seen, the facility has always been well within 300 feet of the residential zone, correct?

[DILLON]: A significant portion of it, yes.

[PEOPLE'S COUNSEL]: So, when Bill 1876 was passed, including Section 410.2, with that minimum setback, the facility was nonconforming, correct?

[DILLON]: Correct.

* * *

[PEOPLE'S COUNSEL]: Now, Bill 1876, Page 3, has a definition of nonconforming use, "A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such use." So, clearly, the Wilson Freight became nonconforming when Bill 1876 was passed, correct?

[DILLON]: I believe that is what I testified.

* * *

[PEOPLE'S COUNSEL]: . . . Mr. Dillon, has this facility ever conformed to Section 410.2 of the Zoning Regulations from 1960 on?

[DILLON]: I don't believe it has.

* * *

[PEOPLE'S COUNSEL]: Functionally, tell me -- give your observation as to whether Section 410.1 allowed approval of certain nonconforming facilities if they made certain site plan improvements, but still allowed them to be within 300 feet, and so nonconforming as to Section 410.2?

[DILLON]: I believe they have, yes.

* * *

[PEOPLE'S COUNSEL]: The point, Section 410.1, ordinarily, a use that is nonconforming simply is allowed to continue until changed or discontinued, correct?

[DILLON]: That's correct.

[PEOPLE'S COUNSEL]: In this case, facilities which did not conform with Section 410.2 were allowed to continue under Section 410.1 only if they met certain criteria and made certain improvements?

[DILLON]: Correct.

* * *

[PEOPLE'S COUNSEL]: Did the approval under Section 410.1 generally or, in this case, as far as you can see, make the facility conforming as to the

300-foot distance requirement?

[DILLON]: No.

[PEOPLE'S COUNSEL]: In fact, it would have been impossible to do that?

[DILLON]: That's correct.

Geoge Spano, an acoustician,[18] testified as an expert for NEMF. He took noise measurements at the Facility, and compared these measurements to the noise regulations contained in COMAR. The following ensued:

> [APPELLANT'S COUNSEL]: Okay. If this project is approved and if New England Motor Freight constructs in accordance with that plan and operates in accordance with that plan, what impacts would you expect to occur?
>
> [SPANO]: Two things: number one, the dock operations.
>
> First of all, in order to understand the site, as I said, it grades down. It goes away into the residents [sic], to the south. And on the north side of the site, on the other side of the building, is the main facility and the fuel depot. So if you want any service done to your truck or want any fuel, you're on the other side of the site and other side of the building. And I don't think you can be heard on the south side when you're over there.
>
> So in that respect, the site is relatively well laid out because the majority of the noise from the maintenance and the fuel and the entry is on Joh Avenue, way away from where the residences are. So they don't hear, to any substantial degree, the trucks coming in, having fuel or having maintenance.
>
> Then, as they turn around the facility and approach the loading dock, that's where they might be able to be heard when they're on the south side. And you can occasionally hear a truck traveling on the south side. And they're going slowly, I would say ten miles an hour, as they leave the facility. Or as they back up to the loading dock, there is some banging noise that can occasionally be heard, and there is some air release sounds that can occasionally be heard.
>
> So what I found was that when I measured those sounds, they were 55 decibels or less measured at 20 feet, my M1 location, 20 feet from the existing parking lot. They met the standard. And when I say met the standard, let me be clear on that. *We saw nothing that exceeded 55.*
>
> Now, remember there's a daytime standard of 65 and then a nighttime standard of 55. So during the day, they're well below the standard and pretty much just part of the – I mean, you can hear it, there's no doubt about that, but it's, you know, part of the environment of being in an area that's surrounded by highways.
>
> So the daytime standard is easily met, and then the evening standard, the activity does reduce at night. However, when a truck passes there or the air brakes sound, we don't think it would exceed 55. *So it would meet even the nighttime standard.* (Emphasis added.)

Spano challenged Harman's conclusions, stating:

> What Mr. Harm[a]n did was he presented tests that were made of truck noise, not at this site. And he measured at distances that would typify the distances or be closer than this site, and they implied that the noise of the truck would exceed the COMAR standard. And so you have these tests at another site that say, well, at that distance this could be over the standard. But then you have him saying, I've been here for eight years and I never heard a complaint on this subject.

Spano added that Harman measured the noise made by a dump truck and a 1985 International brand tractor, yet failed to mention what year these measurements were taken. Notably, Spano pointed out that NEMF did not have either of these vehicles in its fleet.

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[18] In its Supplemental Opinion, the Board identified the spelling as "Spanos." We shall use the spelling provided by the witness. Spano defined an acoustician as "someone who studies the science of sound."

On cross-examination, Spano admitted that the proposed expansion would increase the number of tractors and trailers, leading to an increase in the potential annoyance suffered by Bloomfield residents. One of his measurements (including a graph at ten-minute intervals), showed nighttime noise levels of just above 55 decibels/10 per cent of the time. One of his instruments registered a 24-hour average of 64.9 dB, with nighttime L10 (10 per cent of the time) measurements in the 70s. Spano suggested that Bloomfield residents might close their windows or keep their bedrooms in the back of the house, as this is "one of the most basic forms of noise control." He concluded: "[T]ruck activity on the southeast side parking area should be minimized at night as currently observed."

James Markle, a licensed civil engineer who had been consulting with NEMF since 1999, was received as an expert for NEMF in the field of civil engineering. He characterized as "nonexistent" the stormwater management control facilities at the Facility. According to Markle, water runs downhill to the residential neighborhood. In contrast, he claimed that NEMF's expansion plan would manage stormwater and abate future runoff.

The hearing concluded on September 30, 2005. The Board issued both its Opinion and its Supplemental Opinion on March 15, 2006, along with a Cover Order directing that both opinions together "constitute the full and final Order and decision of this Board in the subject matter." The Opinion, signed by Commissioners Stahl and Crizer, determined that "the nonconforming use continues to apply," and that "the previously granted special

exception, as approved in prior case No. 98-260-SPHX, was utilized and vested and cannot be voided[.]" The Supplemental Opinion, signed by Commissioners Stahl, Crizer, and Wescott, granted the Bloomfield Petition, "deny[ing] the expansion of the NEMF operation beyond that of the nonconforming use[.]" It also denied the NEMF Petition "to expand the existing special exception for a Class I trucking facility[.]"

In the Opinion, the Board concluded that appellees did not make "a sufficient case . . . to support a finding that the nonconforming use of the subject site was lost." It reasoned that the testimony of Mr. Shevell "clearly established that a nonconforming use properly existed as to the subject site as the result of its long trucking history; including its existence enjoyed by Wilson Motor Freight." Shevell, the Opinion noted, "further testified that, except for a period of one to two months in 1989-1990, storage and maintenance activities could continue on the property even during an intervening period of bankruptcy." With regard to the Protestants' evidence with respect to water use, the Opinion stated:

> Protestants, including testimony presented by Lorna Rudnikas, President of the Bloomfield Community Association, and expert witness Jack Dillon, suggested that the factors of the alleged lack of water use by Petitioners on the subject site and what they saw anecdotally as inactivity and nonuse of the property supported their contention that the one-year period of nonuse required to lose a nonconforming use had, in fact, occurred.
>
> * * *
>
> The testimony regarding water use is not conclusive in and of itself, nor is the anecdotal testimony or the mere filing of a bankruptcy. In light of the failure of the Protestants to sufficiently convince this Board, therefore, especially in light of Mr. Shevell's testimony to the contrary, we find that

the nonconforming use continues to apply to the subject site in question.

The Board also considered "whether or not the existing Wilson property continues to enjoy its special exception status." It opined: "Incontrovertible testimony presented by Petitioner clearly establishes that a special exception for Wilson Freight was granted on October 11, 1961, in Case No. 48-90-RX." Noting that the County enacted BCZR § 410 in April 1976, the Opinion stated:

> Pursuant to that legislation, which only applied to Class I trucking facilities (or parts thereof) established after April 18, 1976, a facility had to meet requirements set out by the Baltimore County Council or take appropriate steps (if it did not) to bring it into compliance within a specific period of time.
>
> The testimony and reading of the unambiguous language of § 410. clearly establishes that a Class I facility with an appropriate special exception had existed on the site since 1961, well prior to the effective date of April 18, 1976. Moreover, none of the ameliorative portions of that legislation, including a request that sought a necessary variance of standards, the filing of a program of compliance, or a petition requesting that the site not be made to comply with the regulations set out in the statute were required of Wilson by the County. *This Majority (again noting the unanimous determination of the panel on October 27, 2005) finds that the special exception issued in 1961 has been continually in use as to the Wilson property, has vested, presently exists and cannot be voided.* (Emphasis added.)

In its thirteen-page Supplemental Opinion, which addressed NEMF's proposed expansion by special exception, the Board ruled that, pursuant to BCZR § 502.1, NEMF failed to meet § 502.1(A), the first criterion for a special exception. In this regard, it ruled that "the health, safety, or general welfare of the locality involved will be detrimentally affected by an expansion of the [Facility]." Although the Board determined that "the

noise level will not be substantially affected by the addition of the 100 tractors and 200 trailers," it concluded that "the frequency of the noise generated by the increased numbers of the pieces of equipment will substantially affect the enjoyment of their property by the residents of the Bloomfield community." The Board also said: "If the operations are tripled, it is certainly possible that the noise would be almost continuous from the hooking and unhooking of trailers and other noises associated with the operation." In addition, the Board found: "As with noise frequency, the pollution of the air can only be increased by tripling the number of tractors that come onto the site." Although the Board acknowledged that "Dr. Buckley did not perform any tests on the property to determine the level of diesel fumes which permeate the air in the Bloomfield community," it was of the view "that the individuals can smell diesel fumes at the present time," and that expansion of the trucking company "would only add . . . to that hazard."

The Board mentioned only two other criteria in BCZR § 502.1. It determined that the expansion "fails to meet the requirements of [BCZR § 502.1(F)], interfering with adequate light and air, and [BCZR § 502.1(G)], being inconsistent with the purposes of the zoning classification or in any other way inconsistent with the spirit and intent of the zoning regulations." The Supplemental Opinion continued:

> The purposes of BCZR § 410 were enumerated in § 410.4B. The second purpose is: "to assure that the improvements of the sites of existing and future Class I trucking facilities are of such design, quality or character that they will not be likely to deteriorate in such a way that a public nuisance would be created or that the public interest would otherwise be adversely effected [sic]"; and § 410.7: "in general, to accommodate

trucking activities, in recognition of their importance to the economy of the county and the nation, while minimizing the impact of existing and future Class I trucking facilities on the environment and achieving an optimum level of compatibility between such facilities and nearby uses, especially dwellings and institutional uses." The Board recognizes again that the Bloomfield Community is in an industrial area. It has been co-existing with the NEMF facility as it is now operating and puts up with the noise and the diesel fumes emanating from the site. . . . An expansion of the facility does not appear to be in the best interest of the community which has been located in the area for over 60 years. The fact that industrial operations have grown up around the community does not mean that the community is not entitled to protection from further expansion.

Notably, after quoting from *Schultz*, *supra*, 291 Md. at 15, the Board also said:

> There is no question that the NEMF operation is, at certain points, within 300 feet of a residential area. Encroachment has happened over time and is not the basis for denying the special exception; however it is indicative of the fact that NEMF is very close to a residential neighborhood. *Increasing this operation at this location would have a much more adverse effect on the Bloomfield neighborhood than would increasing the operation at the Quad Avenue trucking facility in Essex where large acres of undeveloped land surround the operation, according to the testimony of Jack Dillon. The Board credits the testimony of Mr. Dillon that there is abundant land zoned M.L. in Baltimore County, which is not adjacent to a residential community such as the Bloomfield Community, where this operation could be expanded and thrive.* (Emphasis added.)

Based on the findings cited above, and relying on "*Montgomery County v. Maryland's* [sic] *Club, Inc.*, 202 Md. 279, 287 (1953)," the Board held that permitting NEMF's proposed expansion "is not in harmony with the general purpose and intent of the zoning plan. . . ." Therefore, it denied "the expansion of the NEMF operation beyond that of the nonconforming use permitted by the BCZR. . . ."

On April 13, 2006, appellees jointly filed a petition for judicial review of the

Opinion. Appellant subsequently filed a cross-petition for judicial review of the Supplemental Opinion. The circuit court conducted a hearing on October 20, 2006, at which the parties' attorneys presented argument. On March 7, 2007, the court issued a "Memorandum Opinion and Order" and an "Order," reversing the Board's conclusion that appellant has a valid special exception or a valid nonconforming use, but affirming the Board's decision denying appellant's request to expand its special exception.

After reviewing the tangled procedural zoning history, the court analyzed whether NEMF lost its nonconforming use. The court said:

> In its initial Opinion, the Board concluded that a nonconforming use on the property properly exists, and that such use was not discontinued for a sufficient amount of time to lead to its loss. The Board determined that testimony "clearly establishes that a Class I facility with an appropriate special exception has existed on the property since 1961." As such, the facility was not required to comply with the new requirements set out by the 1976 legislation, including seeking a variance, filing a program of compliance and adhering to setback requirements. In holding that the nonconforming use on the property was not lost, the Board in part based its decision on the testimony of Myron Shevell, the Chairman of NEMF, who testified that, except for a period of one to two months in 1989-1990, storage and maintenance activities *could* continue on the property. The Board also noted that testimony regarding lack of water use on the property and Wilson Freight's filing for bankruptcy was insufficient to support a finding that the nonconforming use was lost.
>
> * * *
>
> After hearing testimony and reviewing exhibits, the Board concluded that Petitioner/Counter-Respondent did not provide sufficient evidence to prove that the nonconforming use was lost. The Court recognizes that the Board was able to review the exhibits presented by the parties and observe the demeanor and mannerisms of the witness, and this Court will not substitute its judgment for that of the Board absent a finding of substantial evidence contradicting the Board's conclusion. However, this Court finds

that there is substantial evidence contradicting the Board's conclusion.

Following a review of the pleadings of both parties as well as that of the People's Counsel for Baltimore County, the transcript of the proceedings below and the Opinion of the Board, this *Court finds that the Board erred in concluding that [appellant] did not lose its nonconforming use. It appears to this Court that the Board ignored the evidence of discontinuity when making its finding*, holding that "the testimony regarding water use is not conclusive in and of itself, nor is the anecdotal testimony or the mere filing of bankruptcy." To the contrary, *evidence introduced by [appellees], including both water records and testimony, indicates that operations on the facility did cease for a period of at least one year on at least one occasion between 1982 and 1990.*

Myron Shevell, the Chairman, CEO and majority stockholder of New England Motor Freight testified that, when he acquired the property in question, he observed that the trucking operation was closed. In fact, he described the property to be "in shambles," with broken doors and windows, and characterized it as a "den for drug addicts." Transcript p. 99 (July 14, 2005). In addition, members of the Greater Bloomfield community testified to personally observing the cessation of activity on the property for substantial periods of time. Similarly, a zoning expert testified before the Board that [appellant] had in fact lost its nonconforming use. This testimony supports [appellees'] contention that operations ceased shortly before Wilson Freight declared bankruptcy in 1982 and again when AAA took over the site after Wilson Freight, but ceased operations in the late 1980's. Lastly, [the Association] introduced water records for the trucking facility indicating that no water had been used on the property for a 19-month period. Taken as a whole, the testimony and evidence presented to the Board established that operations ceased at the trucking facility for at least one year.

According to BCZR § 104.1, abandonment of a nonconforming use for at least one year results in the termination of that use. Due to the fact that activity on the property ceased for at least one year, perhaps on more than one occasion, the nonconforming use approved in 1982 was lost and no longer exists. This Court finds that the Board erred as there is insufficient evidence to support the Board's findings and conclusions of law on this point. The nature of the evidence presented to the Board, and reviewed by this Court, would not lead reasoning minds to conclude that the

> nonconforming use existed when [appellant] acquired the property. Thus, the Board erred in concluding that [appellant] maintains nonconforming use status, and its holding as to this issue is REVERSED. (Emphasis added.)

The court next considered whether the Board properly determined that "the previously granted special exception was vested and could not be voided." Noting that the Board determined that appellant "continues to enjoy the special exception originally granted to Wilson Freight on October 11, 1961," the circuit court said:

> This Court has found no authority for [appellant's] position that the special exception vested. The concept of "vesting rights" cannot logically apply to a special exception when both the Director of Permits and Development Management and the Director of Zoning Enforcement have determined that the exception "expired."

The court reasoned:

> After a thorough review of the pleadings and record in this case, this Court finds that the special exception granted to [appellant] in 1998 was not utilized by February 25, 2003, and has since expired. At the hearing before the Board, Jack Dillon[1] testified that the facility has been operating without a valid special exception. Furthermore, Mr. Dillon's testimony was in accord with that of Ms. Rudnikas, President of the Bloomfield Community Association, who also testified that Respondent/Counter-Petitioner is operating without a special exception. Upon review of the record, this Court finds that Respondent/Counter-Petitioner failed to present the Board with any compelling evidence proving otherwise. Despite [appellant's] contention that the small variations mentioned above do constitute a vesting of the special exception, this Court disagrees.

It concluded:

> This Court finds that [appellant] chose not to utilize the special exception granted by the Zoning Commissioner in 1998. The special exception expired on February 25, 2003 and no longer exists. Thus, the Board erred in concluding that a special exception currently exists, and its holding as to this issue is REVERSED.[1]

With respect to the Board's denial of appellant's request to expand by way of special exception, the court stated:

> In contrast to the dearth of reasoning set forth in the Board's initial Opinion,[] The Supplemental Opinion included a solid legal analysis of the issues presented and the evidence heard by the Board. The Board summarized the testimony and evidence presented to it and thoroughly explained why it decided to deny [appellant's] request. Specifically, the Board discussed the testimony of David Martin, who indicated his belief that the proposed improvements were in compliance with the criteria enumerated in BCZR § 502.1. Similarly, the Board considered the testimony of George Harm[a]n, program manager for the Department of the Environment Noise Control Program for the State of Maryland, who conducted measurements of noise produced by trucks located on the property in question. Furthermore, Timothy Buckley, a Ph.D. from the Johns Hopkins University School of Public Health, stated that he utilized a dosimeter to measure the noise currently emanating from the trucking facility and believed that the proposed expansion would increase noise levels and create an adverse effect on the surrounding community.[]
>
> After conducting a through review of the testimony presented at the hearing below, the Board considered the relevant evidence in light of the standard enumerated in *Schultz* [*v. Pritts*, 291 Md. 1 (1981)]. The Board found that an increase in the activity on the site would indeed have an adverse effect on the Bloomfield community, detrimentally affecting the health, welfare and safety of the surrounding community and that the expansion would not be "in harmony with the general purpose and intent of the zoning plan."

As to appellant's claim that the Board employed the wrong analysis, the court said:

> While [appellees] clearly asserted that the Board properly denied the proposed expansion, [appellant] argued otherwise. Specifically, [appellant] stressed that the Board incorrectly considered adverse effects above and beyond those created by the existing facility, *and whether a more appropriate alternative site exists*. Furthermore, [appellant] argued that the Board failed to recognize the inherent adverse effects associated with trucking facilities, and instead denied the request for special exception because the use's operations would have more of an adverse effect at the trucking facility's current location. (Emphasis added.)

In rejecting appellant's contention, the court pointed to the Board's "thorough analysis" in the Supplemental Opinion and said:

> Though the Board did indeed note that the theoretical impact of the proposed expansion would be less adverse on a community surrounding an Essex facility also owned and operated by [appellant], this Court finds that the Board ultimately did not base its decision on this factor. Instead, the Board explained that [appellant] failed to satisfy at least three of the nine criteria set forth in the BCZR that must be fulfilled before request for a special exception can be granted.[] Furthermore, the Board properly applied the standard adopted by the *Schultz* court, and appropriately considered whether there are any facts or circumstances indicating that the proposed use would have adverse effects above and beyond those inherently associated with the special exception, *regardless of the facility's location within the zone*. This Court finds that the Board denied [appellant's] request for special exception based on sound legal reasoning and substantial evidence.

The court denied appellant's motion for reconsideration in an Order of May 29, 2007.

DISCUSSION

I.

Preliminarily, we shall consider appellees' complaint as to the procedure employed by the Board in issuing two its rulings. People's Counsel characterizes this matter as "A Tale of Two Opinions."

As the Board pointed out in its Opinion, the evidence was not completed after three days of hearings on July 14, 19, and 21 of 2005. The Board recounted what

occurred:[19]

> In discussion with counsel on July 21, 2005, several alternative dates were chosen, beginning August 15 through and including September 14, 2005. Counsel was reminded at that time that Mr. Ramsey, one of the Board members hearing the case, was leaving the Board at the end of October, and that, therefore, under the longstanding procedures of the Board, the matter, including a signed opinion by the Board, needed to be completed in time for Mr. Ramsey to add his signature to it, especially as a majority of two members is needed in the decision.
>
> Nevertheless, counsel set only one additional date of hearing. The matter was resumed on September 14, 2005, but again was not completed on that date by counsel. In discussions with staff and members of the Board regarding additional dates, all counsel were again cautioned regarding the end of Mr. Ramsey's tenure on the Board and were, in fact, offered the alternative of having him replaced by another Board member who, after reading the transcripts of the preceding hearing dates, would then complete the case and obviate any concern as to the completion schedule. All counsel declined this suggestion and after further discussions with their clients, a new date of September 30, 2005 was finally set. The matter was in fact completed on that date.
>
> In view of the plethora of issues presented for adjudication and the extended schedule of the case, simultaneous briefs in lieu of closing arguments were submitted by counsel on October 14, 2005 (by [appellant's counsel]) and October 17, 2005 (in separate briefs by [the Association's counsel] and [People's Counsel]).
>
> On October 27, 2005, the Board convened for public deliberation. Two issues, relating to the existence of a special exception and of nonconforming use, were resolved unanimously by all three members. The issue of the applicability of a special exception for proposed expansion purposes developed into a multi-hour discussion among the members. That particular issue, one of a number still at that point to be addressed by the Board, was decided by a majority consisting of Mr. Ramsey and Mr. Crizer. The Board then determined that, given the complexity of the remaining issues, and the possibility of other majority findings within the case in

[19]The underlying facts are not in dispute.

> which Mr. Ramsey's vote might be pivotal (conceivably in concert with either Mr. Crizer or Mr. Stahl), it would not be reasonable to assume deliberations could be completed and the normal process for drafting and signing an opinion accomplished in its entirety before the end of Mr. Ramsey's term. The Board then unanimously decided to adjourn the deliberation at that point, and to replace Mr. Ramsey with another member of the Board who, after a review of the hearing transcripts, could complete the remaining matters to be deliberated and join in an appropriate written Opinion.

The Board continued:

> This Majority takes note that, although . . . originally set for three days, the hearing of this matter inexorably was extended, both with the concurrence of counsel and as a result of the speed and content of their conduct of the case during each day of hearings, as well as in discussions regarding the setting of additional dates. Moreover, they did so after being advised, on at least two occasions, of the Board's concern as to Mr. Ramsey's ending tenure and requirements for the completion and execution of a final written Opinion in the case. They were offered a replacement for Mr. Ramsey, but all counsel declined to consider this option.

Explaining what occurred after Mr. Ramsey's departure, the Board said:

> Another member of the Board, Lawrence Wescott, was assigned, reviewed the transcripts and all other exhibits and evidence, and after that review took part in the completion of the deliberation on December 6, 2005. It was determined that Mr. Stahl and Mr. Crizer would sign as a majority of the previous panel as to the two unanimous determinations made at the October 27, 2005 deliberation and that all three, including Mr. Wescott, would join in the Order as to the remaining issue.

As to the validity of the process used by the Board, it said:

> The undersigned members believe that a majority of the members (as to each issue to be determined) currently sitting on the Board must sign an Opinion of the Board for it to be valid. One member cannot "represent" at the signing of an opinion a majority that does not, at that time, consist of at least two present sitting members of the Board. The undersigned find that, given the course of the deliberation on October 27, 2005, and that Board's

belief that deliberation and preparation of a final written Opinion and execution of that document appropriately could not be completed in time for Mr. Ramsey to join with Mr. Crizer as a sitting majority of two members on those issues decided by them; and that the Board's subsequent actions in adding Mr. Wescott and thereafter completing the deliberation and written Opinion, was clearly permitted and in the spirit and intent of Rule 1(c)(I) and (II).

In its Supplemental Opinion, the Board noted that public deliberation was held on the NEMF Petition on December 6, 2005, by Board members Stahl, Crizer, and Wescott, with respect to "the granting of the special exception for the expansion for the trucking facility." In regard to the issuance of the Supplemental Opinion, the Board explained:

> This Opinion is issued as the result of the failure of the initial panel of Board members to reach a decision with respect to the request for a special exception in the above cases due to the fact that one of the Board members was leaving the Board on October 31, 2005. Since it was impossible for the Board to reach a decision and write an opinion prior to the departure of Board member Ramsey, the initial Board issued a decision with respect to the issues resolved by that panel, and Board member Wescott was assigned to read the transcript and to deliberate the matter with respect to the granting or denial of the special exception.

With this background, we turn to appellees' complaint. They assert that Stahl and Crizer "justified issuing a two-member opinion by saying that Mr. Ramsey had agreed before he resigned [that the lawful nonconforming use remained in place], so there was no need to involve Mr. Wescott." This "truncated procedure," appellees contend, "conflicted with Board Rule 1c1, which authorizes replacement members to fill vacancies, but on the basis of complete rather than partial participation." In their view, "the rule does not allow a two-member opinion with the exclusion of the replacement

member from part of the deliberations and opinion."[20]

Of significance here, appellees did not note a conditional cross-appeal, challenging the authority of the Board to issue its rulings in the way that it did. Nor do they include a "Question Presented" in their briefs as to this issue.[21] Therefore, this issue is not preserved. Even if preserved, however, it lacks merit. We explain.

Rule 1(c.) of the Board's Rules of Practice and Procedure provides:

> c. Three (3) members of the board of appeals, as designated by the chairman, shall sit for the purpose of conducting the business of the board; and a majority vote of two (2) members shall be necessary to render a decision, except as follows:
>
> 1. During the course of a hearing, if any member of the original panel is unable to continue to serve, the chairman shall appoint a member to fill the vacancy; or [Bill 50-05]
>
> 2. In the case of a remand, if any member of the original panel is unable to serve, the chairman shall appoint a member to fill the vacancy. [Bill 50-05]

In our view, the Board did not violate the Rule. First, Commissioner Wescott was not required to sign the Opinion. The rule required three members of the Board *to sit* "for the purpose of conducting the business of the board," and three members did, in fact, do so. Second, the rule required "a majority vote of two (2) members" to "render the decision." In signing the Opinion, Stahl and Crizer satisfied that provision. Because the

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[20]Appellant does not address this issue in its original brief or in its reply brief.

[21]*See, e.g., Green v. North Arundel Hosp. Ass'n*, 126 Md. App. 394, 426 (1999) (declining to address issues not included in the "Questions Presented" section of the brief); Rule 8-504(a)(5).

Commissioners were unable to complete their entire task prior to Ramsey's departure, however, Commissioner Wescott joined as the third Board panelist. He reviewed all of the transcripts and the exhibits and, on December 6, 2005, he took part in the deliberations pertaining to the remaining issues.

This Court thoroughly considered a related issue in *People's Counsel for Baltimore County v. County Ridge Shopping Center, Inc.*, 144 Md. App. 580 (2002). In that case, there was a change in the membership of the Board after this Court issued a remand; by the time of the remand, two of the three Board members who originally decided the zoning case were no longer on the Board. Writing for this Court, Judge Moylan stated, *id.* at 603:

> We conceptualize the Board of Appeals as an ongoing governmental entity, not as *an ad* hoc petty jury. It is an administrative tribunal with an institutional life that transcends the tenure of any of its members. Courts, by parity of behavior, unabashedly use the first personal pronouns "we," "us," and "our" in describing decisions made a century before any current member of the court was born. In this phenomenon of institutional continuity there are echoes of the stirring epilogue of a John Wayne epic,[1] "The names may change; the faces may change; but the regiment goes on." Thus it is with the Baltimore County Board of Appeals. It has a life that goes on beyond the tenure of any of its members.

In "the exercise of that institutional continuity," the Court rejected Country Ridge's claim that "the change in the membership of the Board mandated an evidentiary rehearing on remand. . . ." *Id.* It relied, in part, on *Younkin v. Boltz*, 241 Md. 339 (1966). As to *Younkin*, *Country Ridge* recounted, 144 Md. App. at 605:

> The evidentiary hearings on the special exception in *Younkin* were spread over two days. Only three of five board members were present for the first day's hearing and only two of those three ultimately voted to grant the special exception. The necessary majority vote to grant the exception depended on at least one of the two additional board members, who joined their colleagues for the second day of the hearing but who had missed the first day.

The two members of the Board who attended the second hearing in *Younkin* read the transcript from the first hearing. The matter was then argued to the five Board members. *Younkin*, 241 Md. at 341-42. After the Board granted the special exception, the protestants sought review in the circuit court, complaining that a key member of the majority did not attend the first day's hearing and thus did not observe the many witnesses who testified that day, so as to assess their credibility. The circuit court determined that the Board's action was "illegal" because "only two of the three who had heard all the testimony voted to grant the exception." *Id.* at 341.

In explaining *Younkin*, the *Country Ridge Court* said, 144 Md. App. at 606:

> In *Younkin*, . . . the Court of Appeals reversed the trial judge and rejected [its] reading of *Clark* [*v. County Board of Appeals for Montgomery County*, 235 Md. 320 (1964)]. It adopted, rather, the federal and the majority state view, disdained by *Clark*, that it is not required that a voting member of an administrative agency shall have heard the witnesses so long as the member shall have "considered and appraised the evidence."
>
> The general rule in both the federal and state systems is that in the absence of specific statutory direction to the contrary *the deciding member or members of an administrative or quasi-judicial agency need not hear the witnesses testify.* 2 Davis, Administrative Law Treatise § 11:02, p. 40.
>
> * * *
>
> The general rule is that *it is enough if those who decide have considered and appraised the evidence and the courts feel more satisfied*

that they have done so if they have heard argument.
241 Md. at 342-43, 216 A.2d 714 (emphasis supplied).

See also Bethesda Management Services v. Dep't of Licensing and Regulation, 276 Md. 619, 627-28 (1976); *Gemeny v. Prince George's County*, 264 Md. 85, 94 (1972); *Hyson v. Montgomery County Council*, 242 Md. 55, 72 (1966); *People's Counsel for Baltimore County v. Prosser Co.*, 119 Md. App. 150 (1998).

In our view, the Board complied with its rules of procedure, and certainly satisfied the spirit of the cases cited above.

II.

Before addressing appellant's contentions, it is helpful to review generally the concepts of zoning that are pertinent here.

Zoning constitutes "an exercise of governmental authority that generally falls squarely within the province of the political subdivisions of the State." *Maryland Overpak Corp. v. Mayor And City Council of Baltimore*, 395 Md. 16, 26 (2006). The Court of Appeals recently stated: "It is well-settled that zoning regulations are a valid exercise of a government's police power so long as the limitations imposed are in the public interest and are related substantially to the health, safety, or general welfare of the community." *Casey v. Mayor and City Council of Rockville*, 400 Md. 259, 306 (2007).

Euclidean zoning is one type of zoning. With Euclidean zoning, "a municipality divides an area geographically into particular use districts, specifying certain uses for each district. 'Each district or zone is dedicated to a particular purpose, either residential,

commercial, or industrial,' and the 'zones appear on the municipality's official zoning map.'" *Rouse-Fairwood Dev. Ltd. P'ship v. Supervisor of Assessments for Prince George's County*, 138 Md. App. 589, 623 (2001) (citation omitted). *See People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 70 (2008) ("*Loyola*"); *Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md. App. 616, 638 (1998); *see also Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926); *Mueller v. People's Counsel*, 177 Md. App. 43, 68 (2007), *cert. denied*, 403 Md. 307 (2008).

The Court of Appeals has characterized Euclidean zoning as a "fairly static and rigid form of zoning," because it "allows for little modification, beyond self-contained procedures for predetermined exceptions or variances." *Mayor and Council of Rockville v. Rylyns Enterprises, Inc.*, 373 Md. 514, 534 (2002). However, the "zoning device" known as the special exception "introduces some flexibility" to a Euclean zoning scheme. *Loyola*, 406 Md. at 71; *see Rylyns*, 372 Md. at 541; *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 287 (1953). A special exception is a "zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses which the legislative body has determined can, *prima facie*, properly be allowed in a specified use district, absent any fact or circumstance in a particular case which would change this presumptive finding." *Loyola*, 406 Md. at 105-06.[2]

[2]The terms "special exception" and "conditional use" are basically interchangeable. (continued...)

As the *Loyola* Court explained, *id.* at 71-2:

> The special exception adds flexibility . . . by serving as a "middle ground" between permitted uses and prohibited uses in a particular zone. . . . A permitted use in a given zone is permitted as of right within the zone, without regard to any potential or actual adverse effect that the use will have on neighboring properties. A special exception, by contrast, is merely deemed *prima facie* compatible in a given zone. The special exception requires a case-by-case evaluation by an administrative zoning body or officer according to legislatively-defined standards. That case-by-case evaluation is what enables special exception uses to achieve some flexibility in an otherwise semi-rigid comprehensive legislative zoning scheme.

Nonconforming uses do not conform to a zoning regulation. Clearly, such uses "are not favored." *Trip Associates, Inc. v. Baltimore*, 392 Md. 563, 573 (2006). In *County Council of Prince George's County v. Gardner, Inc.*, 293 Md. 259, 267 (1982), the Court said that "nonconforming uses pose a formidable threat to the success of zoning. They limit the effectiveness of land use controls, contribute to urban blight, imperil the success of the community plan, and injure property values." Because "the fundamental problem facing zoning is the inability to eliminate the nonconforming use," *Mayor & City Council of Baltimore v. Dembo*, 123 Md. App. 527, 538 (1998), a primary goal of zoning law has been "to reduce nonconformance to conformance as speedily as possible with due regard to the legitimate interests of all concerned." *Grant v. Mayor of*

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[22](...continued)
See Md. Overpak Corp., 395 Md. at 29 n. 12 (stating that "a 'conditional use' has an alias by which it is sometimes known elsewhere in Maryland [as] a 'special exception,' although the two terms are largely synonymous"); *Futoryan v. Mayor & City Council of Baltimore*, 150 Md. App. 157, 159 (2003) (recognizing that the terms "conditional use" and "special exception" "mean exactly the same thing"); *Lucas v. People's Counsel for Balt. County*, 147 Md. App. 209, 227 n.20 (2002) (same).

Baltimore, 212 Md. 301, 307 (1957).

Nevertheless, a "nonconforming use is a vested right and entitled to constitutional protection." *Amereihn v. Kotras*, 194 Md. 591, 601 (1950). *Amereihn* explained, *id.*:

> If a property is used for a factory, and thereafter the neighborhood in which it is located is zoned residential, if such regulations applied to the factory it would cease to exist, and the zoning regulation would have the effect of confiscating such property and destroying a vested right therein of the owner. Manifestly this cannot be done, because it would amount to a confiscation of the property, and nonconforming use is a vested right and entitled to constitutional protection.

As this Court has said, "[i]t is fundamental that zoning concerns the regulation of land use; and it is the policy of this State that such regulation will occur at the local level." *Superior Outdoor Signs, Inc. v. Eller Media Co.*, 150 Md. App. 479, 506 (2003). *See Maryland-National Capital Park & Planning Comm'n v. Mayor of Rockville*, 272 Md. 550, 560 (1974).[23] In this regard, we note that "Baltimore County is a charter county pursuant to Article XI-A of the Maryland Constitution." *United Parcel Servs., Inc. v. People's Counsel for Balt. County*, 336 Md. 569, 581 (1994). As a charter county, Maryland Code (1957, 2005 Repl. Vol.), Article 25A, § 5(X)(1)(i) authorizes Baltimore

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[23]Zoning and planning are separate functions. *Appleton Regional Community Alliance v. County Comm'rs of Cecil County*, 404 Md. 92, 102 (2008); *Board of County Comm'rs of Carroll County v. Stephans*, 286 Md. 384, 389 (1979). Planning encompasses the development of a community and the creation of "goals for orderly growth and development including the establishment of viable neighborhoods for which it delineates appropriate boundaries," as well as "methods for implementation and achievement of those goals, including proposals for future land use and zoning classifications." *Howard Co. v. Dorsey*, 292 Md. 351, 362 (1982). *See Washington County Taxpayers Assoc., Inc. v. Board of County Comm'rs*, 269 Md. 454, 455-56 (1973) ("planning embraces zoning, in a general way, but the converse is not true").

County, to enact local laws for the protection and promotion of public safety, health, morals, and welfare, relating to zoning and planning. *See Harford County v. Earl E. Preston, Jr., Inc.*, 322 Md. 493, 501 (1991) (noting the authority of a charter county "to divide the county into use districts and to determine which uses would be permitted within each district as a matter of right (permitted uses) and which uses would only be permitted under certain conditions (special exceptions)"); *Glascock v. Balt. County*, 321 Md. 118, 121 (1990) (stating that Article 25A, § 5(X) "grants Baltimore County its authority to enact a zoning ordinance"). *McKemy v. Baltimore County*, 39 Md. App. 257, 259-60 (1978), recounts that the Legislature delegated its zoning authority to the County Commissioners of Baltimore County in 1939; on January 2, 1945, "the County Commissioners adopted a comprehensive set of zoning regulations"; on March 30, 1955, the County adopted "a new set of comprehensive zoning regulations."

With these general principles in mind, we turn to the precepts that guide our review of the rulings below. In accordance with the well established principles of administrative law, we review the decision of the Board, not the decision of the circuit court. *Loyola*, 406 Md. at 66; *People's Counsel for Baltimore County v. Surina*, 400 Md. 662, 681 (2007); *Mastandrea v. North*, 361 Md. 107, 133 (2000). Notably, "[j]udicial review of administrative agency action is narrow." *United Parcel Serv., Inc.*, 336 Md. at 577. We must determine "if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative

decision is premised upon an erroneous conclusion of law." *Md. Aviation Adm. v. Noland*, 386 Md. 556, 571 (2005). *See Total Audio-Visual Systems, Inc. v. Dep't of Labor*, 360 Md. 387, 394 (2000); *Halici v. City of Gaithersburg*, 180 Md. App. 238, 248 (2008); *Capital Commercial Props., Inc. v. Montgomery County Planning Bd.*, 158 Md. App. 88, 95 (2004).

Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512 (1978). In *White v. North*, 356 Md. 31, 44 (1999), the Court of Appeals explained:

> In judicial review of zoning matters, including special exceptions and variances, "the correct test to be applied is whether the issue before the administrative body is 'fairly debatable,' that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions." For its conclusion to be fairly debatable, the administrative agency overseeing the variance decision must have "substantial evidence" on the record supporting its decision. (Internal citations omitted.)

See Alviani v. Dixon, 365 Md. 95, 107-108 (2001); *Gigeous v. ECI*, 363 Md. 481, 497 (2001); *Singley v. County Comm'rs of Frederick County*, 178 Md. App. 658, 675 (2008).

Ordinarily, an appellate court is "less deferential in [its] review . . . of the legal conclusions of the administrative body and may reverse those decisions where the legal conclusions reached by that body are based on an erroneous interpretation or application of the zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute." *Surina*, 400 Md. App. at 682. In *Loyola*, the Court

said, 406 Md. at 67: "[T]he deference 'often . . . accorded' an agency's interpretation extends only to the application of the statutes or regulations that the agency administers," and not to the agency's "analysis of caselaw." *See Colburn v. Department of Public Safety & Correctional Services*, 403 Md. 115, 128 (2008) ("'With respect to an agency's conclusions of law, we have often stated that a court reviews de novo for correctness. We frequently give weight to an agency's experience in interpretation of a statute that it administers, but it is always within our prerogative to determine whether an agency's conclusions of law are correct, and to remedy them if wrong.'") (quoting *Schwartz v. Maryland Dep't of Natural Resources*, 385 Md. 534, 554 (2005)); *Belvoir Farms Homeowners Ass'n., Inc. v. North*, 355 Md. 259, 267-68 (1999) ("Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when the conclusions are based upon an error of law.")

Nevertheless, we are mindful of what the Court said in *Stansbury v. Jones*, 372 Md. 172, 182 (2002): "It is a clearly established rule in the law of zoning that a court may not substitute its judgment for that of the Zoning Board." (Citation omitted). *See Surina*, 400 Md. at 681 (a reviewing court "may not substitute its judgment for the administrative agency's in matters where purely discretionary decisions are involved, particularly when the matter in dispute involves areas within that agency's particular realm of expertise . . . so long as the agency's determination is based on 'substantial evidence.'"); *Mueller*, 178 Md. App. at 83; *Chesley v. City of Annapolis*, 176 Md. App. 413, 431 (2007). Indeed, it

is "the zoning agency [that] is considered to be the expert in the assessment of the evidence, not the court." *Bowman Group v. Moser*, 112 Md. App. 694, 699 (1996), *cert. denied*, 344 Md. 568 (1997); *see Cremins v. County Commr's of Washington County*, 164 Md. App. 426, 437 (2005); *White v. Spring*, 109 Md. App. 692, 699, *cert. denied*, 343 Md. 680 (1996).

It is also noteworthy that this appeal requires us to interpret various BCZR provisions. We construe ordinances under the same well settled canons of construction that apply to the interpretation of statutes. *Howard Research and Dev. Corp. v. Concerned Citizens for the Columbia Concept*, 297 Md. 357, 362 (1983); *Ahalt v. Montgomery Co.*, 113 Md. App. 14, 25 (1996). Although we need not reiterate all of these canons, we emphasize that we must construe the statute as a whole, so that all provisions are considered together and, to the extent possible, reconciled and harmonized. *Deville v. State*, 383 Md. 217, 223 (2004); *Navarro-Monzo v. Washington Adventist*, 380 Md. 195, 204 (2004). Moreover, where appropriate, we interpret a provision "in the context of the entire statutory scheme of which it is a part." *Gordon Family Partnership v. Gar on Jer*, 348 Md. 129, 138 (1997). In addition, "'courts are required, to the extent possible, to avoid construing a statute in a manner that would produce farfetched, absurd, or illogical results which would not likely have been intended by the enacting body." *Maryland-National Capital Park and Planning Com'n v. Anderson*, 395 Md. 172, 201 (2006) (citation omitted).

III.

As noted, in 1976 the County Council enacted Bill 18-76, which imposed new regulations on trucking facilities. Most of those provisions are now codified in BCZR § 410, titled "Class I Trucking Facilities (Truck Terminals)." The BCZR also contains a minimum setback requirement:

> 410.2 Location. No Class I trucking facility or part thereof (including any access point or driveway) *established on or after the effective date of this section* may be located within 200 feet of a wetland or, with the exception of accessory passenger automobile parking areas, within 300 feet of a dwelling or a residential zone. No passenger automobile parking area or part thereof accessory to a Class I trucking facility may be located within 25 feet of a dwelling or a residential zone. (Emphasis added).

As shown by the highlighted text of BCZR § 410.2, the provision did not obligate existing trucking facilities to comply fully with the new, stricter regulations. This construction of § 410.2 is supported by BCZR § 410.3, which states: "The standards of this subsection apply to Class I trucking facilities established on or after the effective date hereof, to conforming Class I trucking facilities established before that date and hereafter expanded or otherwise changed, and, to the extent specified in Subsection 410.1, *to nonconforming Class I trucking facilities*." (Emphasis added.) Although existing trucking facilities were required to comply with some of the new zoning regulations, § 410.3 created a "grandfather clause" that allowed existing trucking facilities to continue operating, even if they failed to meet all the new standards contained in Bill 18-76.

BCZR § 410.1 established specific procedures, requirements, and site plan and

development standards for trucking facilities that predated the passage of Bill 18-76. In particular, BCZR § 410.1(A)(2) required the owner or agent of such a facility to file certain plans within one year from the effective date of Bill 18-76. Under BCZR § 410.3(c), these plans had to show:

> [T]he layout and operation of the use in detail that is sufficient for the Zoning Commissioner to determine whether and in what manner the facility will meet the requirements of these Zoning Regulations and must be certified by a professional engineer . . . or by a professional who is not an engineer but who is registered under law as competent to certify the accuracy of the plans. The operation, as well as the development, of the use must be in accord with the approved plans. In particular, the number of vehicles (including trailers) on the site must not at any time exceed the number provided for by the plans.

Section 410.1(B) set forth the Commissioner's duties upon receiving such plans:

> B. Rulings, etc., as to nonconformance with respect to certain provisions.
>
> 1. Within one year after the date the Zoning Commissioner acknowledges the adequacy of previously filed plans of a trucking facility or accepts new plans for the facility, as provided under Subsection A, he shall review the plans and issue a ruling whether or not the facility conforms with the provisions listed in Paragraph 2 below and, if not conforming with any such provision, whether the nonconformance may be allowed to stand under the provisions of Paragraph 3. . . .

Paragraph 2 of BCZR § 410.1(B) lists the "provisions with respect to which the Zoning Commissioner [was required to] issue rulings under Paragraph 1[.]" These provisions relate to street access, automobile parking, fencing, and other matters. Notably, they do not include the setback standards contained in BCZR § 410.2.

If the Zoning Commissioner determined that a facility did not conform with an

applicable provision, the owner or agent was required either to file "an acceptable program of compliance," to be achieved "within 27 months" after the ruling, or "a petition requesting that the facility not be required to conform with a provision in question[.]" BCZR § 410.1(C). An owner or agent who opted for the latter course was required to show "that conformance with the provision would cause undue hardship," and that the requested relief would not be adverse to "the interest of the general welfare of the community, with particular consideration given to any dwelling within 300 feet of the facility." *Id.* Relief from a provision could be granted "to the extent necessary to eliminate undue hardship, and only to that extent, and only in keeping with the intent of these Zoning Regulations in general and this section in particular; relief may not be granted to an extent detrimental to the general welfare of the community." *Id.*

Further, BCZR § 410.1 states, in part:

> D. Effects of failure to comply.
>
> 1. The failure of an owner or authorized agent for a Class I trucking facility to comply with an applicable requirement of Subsection A or C above or failure to comply with an order by the Zoning Commissioner prescribing a truck route as provided in Paragraph 3 of Subsection B shall constitute a violation of these Zoning Regulations.
>
> 2. The right to continue any Class I trucking facility that was established before the effective date of this section and whose owner or agent has failed to comply with an applicable requirement of Subsection A shall cease three years after that date, unless the facility conforms or has been changed to conform with all provisions of these Zoning Regulations, as if it were a new use. . . .

BCZR § 410.1(E), which relates to expansion of nonconforming Class I trucking facilities, is also relevant. It states:

> E. Expansion of nonconforming Class I trucking facilities. The site, structures and paved areas of a nonconforming Class I trucking facility may not be expanded unless the use is made to conform in all respects with these Zoning Regulations or except as follows:
>
> 1. Expansion to the minimum extent necessary to comply with the standards of Section 410.3 may be allowed by the Zoning Commissioner, after public hearing, provided that the expansion is not in excess of that allowed under Section 104 and that, in the judgment of the Zoning Commissioner, the expansion would be in the interest of the general welfare of the community, with particular consideration given to any dwellings within 300 feet of the trucking facility.
>
> 2. Operations of the trucking facility may be enclosed within buildings, even though the construction of buildings or enlargement of existing buildings necessary to do so would result in an expansion beyond the limit imposed under Section 104, provided that the truck facility is in an M.L. or M.H. Zone and that the Zoning Commissioner finds, after public hearing, that the enclosure would lessen the net overall environmental impact of the facility and would otherwise be in the interest of the general welfare of the community.

Under BCZR § 410.4, all actions taken by the Commissioner and other County officials, pursuant to Section 410, must be consistent with the following purposes:

> 1. To promote the spatial consolidation of trucking facilities, such as joint use of larger sites, so that the number of locations or trucking facilities will not be excessive with respect to the public interest and so as to provide for greater flexibility in the layout of individual sites.
>
> 2. To assure that the improvements of the sites of existing and future

Class I trucking facilities are of such design, quality or character that they will not be likely to deteriorate in such a way that a public nuisance would be created or that the public interest would otherwise be adversely affected.

3. To minimize heavy truck traffic on motorways other than freeways, expressways or arterial streets.

4. To minimize the off-premises parking or storage of vehicles associated with existing and future Class I trucking facilities.

5. To promote the on-site provision of important conveniences so that employees or others associated with existing and future Class I trucking facilities need not seek such conveniences in or about the homes or business establishments of others or in other inappropriate places.

6. To provide the county government with plans and other records that are sufficiently detailed to afford proper administration of this section and related provisions.

7. In general, to accommodate trucking activities, in recognition of their importance to the economy of the county and the nation, while minimizing the impact of existing and future Class I trucking facilities on the environment and achieving an optimum level of compatibility between such facilities and nearby uses, especially dwellings and institutional uses.

IV.

As indicated, the Board concluded that the Facility was "a proper use of the subject property" because "the nonconforming use continues to apply" to the Facility. It also held that the special exception granted by the 1998 Order "was utilized and vested and cannot be voided[.]" However, the circuit court reversed both of these rulings.

NEMF contends that the circuit court erred in reversing the Board's holding that

the Facility is a lawful use. Appellant also challenges the conclusion – of both the Board and the circuit court – that the Facility was a *nonconforming* use. It insists that its use is both lawful *and* conforming, because the Facility "conforms with the requirements of BCZR § 410[.]" The distinction is subtle, but critical: if NEMF is correct, then any evidence showing discontinuation or abandonment of the Facility is irrelevant; if the Board is correct, we must also consider appellant's alternative claim that the circuit court erred when it rejected the Board's finding that NEMF did not abandon or discontinue its nonconforming use.

A nonconforming use is statutorily defined as follows in BCZR § 101: "A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective 'nonconforming' is a nonconforming use." BCZR § 104.1 is also relevant. It provides:

> A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

Claiming that the record is devoid of evidence supporting the Board's conclusion that NEMF's use is "nonconforming," appellant asserts:

> The sole basis of nonconformity asserted by Appellees was that the facility failed to meet the minimum residential zone setback requirements under BCZR § 410.2. However, BCZR § 410.2, enacted in 1976, provides that,

> "no Class I trucking facility or part **thereof. . . established on or after the effective date of this section** may be located within 200 feet of wetland or [with certain exceptions] within 300 feet of a dwelling or a residential zone". . . . Thus, on its face, the residential setback requirement applies *only if* the facility came into existence **on or after** April 18, 1976, the effective date of the legislation.[0]

According to appellant, its use of the Property "conformed" with the BCZR because the Zoning Supervisor determined in 1982 that the Facility was in compliance. Similarly, appellant maintains that, in granting NEMF's special exception in February of 1998, Commissioner Schmidt affirmed the finding that the Facility was in conformance with Bill 18-76. NEMF posits: "Only those trucking terminals that could not comply with the legislation were deemed nonconforming." Based on "a plain reading of the regulations and a review of the uncontradicted facts," appellant urges us to conclude that NEMF is operating a conforming Class I Trucking Facility. Further, appellant argues that, "if a property user is considered to be utilizing property as a conforming Class I trucking facility, its use of the property can never be abandoned. Put differently, abandonment only applies if a use is nonconforming." Therefore NEMF maintains that the circuit court erred by concluding that NEMF was operating on abandoned nonconforming use.

Appellees counter that the Facility became nonconforming as soon as Bill 18-76 was passed. Because that bill, *inter alia*, imposed a minimum setback requirement in BCZR § 410.2, and the Facility "plainly extended . . . to within 300 feet of the dwellings and residential zone of the Bloomfield community," appellees maintain that appellant

failed to satisfy the setback provision. As a result, argue appellees, "Wilson pursued the BCZR § 410.1 process to authorize continuation of nonconforming facilities with approved plans meeting site and development standards and upgrades." Conceding that Wilson received a letter of approval from the zoning supervisor in February 1982, appellees contend: "This letter did not provide Wilson with 'conforming' status. Rather, the approval allowed Wilson to operate despite its status as a nonconforming facility and nonconforming use."

According to appellees, NEMF's argument that the Wilson facility became a "conforming" facility is premised on "circular and misleading reasoning." They suggest that "NEMF's continued insistence that the facility became 'conforming' is an exercise in Orwellian branding or doublespeak. . . ." In support of their position, appellees rely on the definition of "nonconforming" in Bill 18-76 (now BCZR § 101), quoted earlier, and argue: "From this definition alone, it is apparent that the County Council intended to cover existing trucking facilities which did not conform to the special regulation for location of BCZR § 410.2." In their view, this intent is further evidenced by BCZR § 410.1, which established a process for nonconforming facilities to continue to operate, so long as they upgraded their facilities. Claiming that Bill 18-76 merely "establish[ed] additional prerequisites to the achievement of legal nonconforming use status," appellees posit: "Upon careful review of the legislation, it will become apparent that Wilson's limited 'conformity' was to the site plan/development standards necessary for its 1982

certification to continue as a nonconforming facility." They add: "It is critical to keep in mind that new facilities as well as expansions of existing facilities must meet the setback standards or obtain variances."

In its reply brief, appellant asserts that BCZR § 410.2 applies only to facilities that came into existence on or after April 18, 1976, and it reiterates that "a trucking facility has existed at the site as a special exception use since at least 1961." According to appellant, "Appellees' nonconformity argument is grounded upon the patently erroneous position that the facility fails to meet the minimum setback requirement provided in BCZR §410.2." Yet, NEMF insists that, "on its face, the residential setback requirement applies *only if* the facility came into existence **on or after** April 18, 1976, the effective date of the legislation." With the enactment of BCZR § 410, argues appellant, it was required to submit plans to the County for "a determination as to whether the facility was in compliance with the legislation." Therefore, "NEMF filed a site plan on April 27, 1981," which was later revised. In a Zoning Supervisor letter dated May 7, 1982, determined that the Facility "was in full compliance with all statutory provisions that applied to it." On this basis, along with the 1998 granting of the Special Exception, appellant maintains that the Facility was a conforming use.

This dispute requires us to examine the concept of "nonconforming uses," which we briefly discussed earlier. In *Beyer v. Mayor and Council of Baltimore City*, 182 Md. 444, 446 (1943), the Court of Appeals explained:

> Non-conforming uses . . . are common to all zoning statutes or ordinances and are those permitted by such statutes or ordinances to continue even though similar uses are not permitted in the area in which they are located. The reason for this is stated in a leading work on the subject: 'The view that has been followed is that a few non-conforming buildings and uses if allowed to continue will not be a substantial injury to a community if only such non-conforming buildings are not allowed to multiply where they are harmful or improper. Zoning has sought to safeguard the future, in the expectation that time will repair the mistakes of the past.' Bassett on Zoning, Chap. V, page 105.

More recently, in *Purich v. Draper*, 395 Md. 694, 708 (2006), the Court of Appeals said: "[A] nonconforming use exists if a person utilizes property in a certain manner that is lawful before and up to the time of the adoption of a zoning ordinance, though the then-adopted zoning ordinance may make that previously lawful use non-permitted." Similarly, in *Lone v. Montgomery County*, 85 Md. App. 477, 496 (1991), we explained:

> An owner of land may establish a "lawful nonconforming use" if the evidence conclusively establishes that before and at the time of adoption of the original zoning ordinance, he was using substantially all of his tract of land in a then-lawful manner for a use which by the later legislative action became nonpermitted.

See also Bd. of Zoning Appeals of Howard County v. Meyer, 207 Md. 389 (1955); *Antwerpen v. Baltimore County*, 163 Md. App. 194, 201 (2005).

As indicated, BCZR § 101 defines "nonconforming use," in part, as "a legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use." Based on the Board's finding that, at the time of the effective date of Bill 18-76, the Facility failed to comply with the setback requirements of

BCZR § 410.2, it necessarily concluded that the Facility became "nonconforming."

By its terms, BCZR § 410.2 applies only to trucking facilities "established on or after the effective date of this section." Although a pre-existing facility may continue to operate, despite failure to comply with the setback requirement, logic dictates that the exemption does not transform the Facility to one that conforms to the new law. Rather, Bill 18-76 excused all pre-1976 trucking facilities from strict compliance with the setback requirements, because of the obvious hardships involved in bringing an existing trucking facility into full compliance with those standards, and because of the concern as to claims of confiscation of property. There is no indication, however, that the ordinance intended to render "conforming" a facility that failed to comply with a newly enacted, comprehensive regulatory scheme.

Applying principles of statutory construction, our conclusion is consistent with the legislative scheme, the plain text of Bill 18-76, and the concept of a nonconforming use. Under the enactment, existing facilities were relieved from complying with the full set of regulations only if they complied with the site plan approval process set forth in BCZR § 410.1. This process required the Zoning Commissioner to "review the plans and *issue a ruling whether or not the facility conforms with the provisions listed in Paragraph 2 below* and, if ***not conforming*** with any such provision, whether the ***nonconformance*** may be allowed to stand under the provisions of Paragraph 3 . . ." BCZR § 410.1(B)(1). (Boldface and italics added.) Thus, the statutory text plainly evidences the view that a

facility that does not comply is nonconforming.

"'Paragraph 2" refers to BCZR § 410.1(B)(2), which contains only a small subset of the new trucking facility regulations, relating to a variety of criteria, such as "automobile parking," "access to streets," and "layout such as not to cause congestion." Notably, BCZR § 410.1(B)(2) does not contain the setback standards; so long as the facility met the criteria in BCZR § 410.1(B)(2), it could continue to operate as a lawful nonconforming use, despite failure to meet other regulations applicable to a trucking facility.

In sum, a trucking operation that obtained approval under this procedure (such as the Facility) did not thereby become a "conforming" use. As appellees point out, the Facility merely "'conformed,' in the eyes of the Zoning Supervisor, to the site plan and development requirements necessary for it to continue as a nonconforming facility." In order to become a conforming use, a trucking facility must satisfy the entire set of zoning regulations contained in BCZR § 410.

V.

As noted, the Board found that NEMF did not abandon or discontinue its use, but the circuit court reversed that conclusion. Because the Facility became a lawful nonconforming use after passage of Bill 18-76, we must next consider whether the Facility lost the right to maintain this use, either through abandonment or discontinuance.

Appellant complains that the circuit court "improperly disturb[ed] the Board's factual conclusions that the Property's use had not been interrupted for a sufficient period of time to cause abandonment." The evidence of abandonment, appellant insists, "was grossly deficient and could not support the Circuit Court's conclusion." Referring to the circuit court's reliance on appellees' water usage records, appellant asserts that those records "establish that water usage was not reported from April 27, 1981 to October 21, 1981, and again from May 6, 1982 to August 2, 1982." According to appellant, "It is self-evident that these periods are insufficient to establish the requisite twelve continuous months of inactivity necessary to support a finding of abandonment." Appellant continues:

> Consistent with what the water usage records demonstrate, the Board was provided testimony from Myron Shevell, the Chief Executive Officer of NEMF, who testified about the long history of trucking operations at the Property and the bankruptcy filings related to the predecessor property owners. The Board exercised its discretion when comparing this evidence with the evidence presented by Appellees, and properly concluded that there was insufficient evidence to support a finding of abandonment.[24]

In addition, appellant maintains that the circuit court "was to determine only whether there were any facts to support the Board's conclusions, not whether [it] concurred with the Board's interpretation of those facts." Claiming that the burden of

[24]In its reply brief, appellant underscores that appellees' other evidence of abandonment consisted of "the anecdotal testimony of neighborhood resident Darlene Byrd, who asserted that the property was empty for 'a long time.'" It points again to Shevell's testimony about "the long history of trucking operations at the property and the bankruptcy filings related to the predecessor property owners."

establishing abandonment rested with appellees, and recognizing the deference accorded to the Board's factual findings, appellant asserts that the circuit court engaged in "an impermissible re-evaluation of the weight and credibility of the evidence considered by the Board. . . ."

Appellees maintain that "the burden of proof is on the property owner to demonstrate the unchanged and uninterrupted continuity of the [nonconforming] use." They contend that NEMF "presented no testimony or records to reconstruct the historic use of the site." In their view, Ms. Byrd "was the only eyewitness to present specific testimony about the disuse, and it was for well over a year in the early part of the decade."

According to appellees, the special exception was void, pursuant to BCZR § 502.3, because appellant failed to "utilize" it by making the planned improvements before it expired on February 25, 2003, at the end of the authorized five-year time period.[25] They maintain that "by not following up with any use or construction integral to the 1998 special exception approval, NEMF subsequently failed to utilize the approved special exception. It became void at the end of the day, Feb. 25, 2003." Appellees assert:

> Accordingly, on March 3, 2003, James Thompson, Director of Zoning Enforcement wrote to NEMF's counsel on behalf of Arnold Jablon, Director of PDM. He communicated that the 1998 special exception had lapsed and become void for lack of proper utilization. He was just confirming the undisputed facts. NEMF's actions in pursuing a different plan, albeit never consummated, and the aerial photos all show that there

[25]Appellees observe that Schmidt's decision "describes the application as for a building addition for office space and terminal area, a new one-story service garage, additional areas of parking and macadam, and substantial landscaping and berming."

was no effort made to provide the improvements proposed, discussed, and approved in [Zoning Commissioner] Schmidt's 1998 opinion.

In addition, appellees claim that the 1998 special exception "could not properly have been utilized within the 300-foot setback area without a petition for variance being filed and approved." They posit:

> Rather than perfect the 1998 approval, NEMF filed its fourth different set of petitions for special hearing and special exception on December 18, 2003, Case No. 04- 294-SPHX. E. 6. But by this time, it was in the position of a new applicant. Its nonconforming use had terminated, and its 1998 special exception had become void.[26]

We previously addressed the concept of a nonconforming use. We turn now to explore how a property can lose its status as a lawful nonconforming use.

Landay v. Board of Zoning Appeals, 173 Md. 460 (1938), is instructive. *Landay* involved a row of storefronts that were used as a junk shop between 1926 and 1932. After Baltimore City passed a zoning ordinance in 1931, restricting this use, the junk shop became a nonconforming use. It was closed from 1932 to 1935. The Court considered whether the nonconforming use was lost during the period of non-use.

The *Landay* Court explained that there are two methods by which an owner can lose a nonconfonning use: through the common law doctrine of abandonment, or by operation of a zoning statute. The Court elaborated on the former method, noting that "as a competent person may give away, throw away, sell, or surrender any property right

[26]Appellees advance an additional abandonment argument based on *Purich*, *supra*, 395 Md. 694. We discuss this contention, *infra*.

which he may have, he may also abandon it. That power, however, exists apart from the [zoning] ordinance and not as a consequence of it." Expanding on the common law abandonment doctrine, the Court said, *id.* at 469-70:

> Abandonment in law depends upon the concurrence of two, and only two, factors; one an intention to abandon or relinquish; and two, some overt act, or some failure to act, which carries the implication that the owner neither claims nor retains any interest in the subject-matter of the abandonment. 1 *C.J.S. Abandonment*, 8. Time is "not an essential element" of abandonment, although the lapse of time may be evidence of an intention to abandon (*Id.*, 9, 16), and where it is accompanied by acts manifesting such an intention it may be considered in determining whether there has been an abandonment. Nor is mere non-use[] evidence of abandonment unless it continues for the statutory period of limitations of actions to recover the right or property. *Id.*, 16. It is said too that: "It is a universally accepted principle that mere non-use[] of property over a period of time, when unaccompanied by any other acts indicating an intention to relinquish or abandon title thereto or ownership thereof, does not amount to an abandonment." 1 *C.J.S.* 10.

In addition, the Court addressed loss of a nonconforming use through the operation of a zoning ordinance. Noting that such ordinances "are in derogation of the common-law right to so use private property as to realize its highest utility," *id.* at 466, the Court recognized that "they should be liberally construed to accomplish their plain purpose and intent, [but] they should not be extended by implication to cases not clearly within the scope of the purpose and intent manifest in their language." *Id.*

The Court examined the Baltimore City zoning ordinance then in effect, which provided: "A non-conforming use, if changed to a use of a higher classification may not thereafter be changed to a use of a lower classification. . . . Nothing contained in this

ordinance shall be construed to prevent the continuance of any use which now legally exists." *Id.* at 465. This language, the Court observed, indicated that "the only manner in which the right to a non-conforming use may be lost" – by operation of the zoning ordinance – "is by a change of such use to one of a higher classification." *Id.* Because the ordinance did not "refer directly to a mere cessation of use" as being sufficient to terminate a nonconforming use, *id.*, the Court reasoned that "the conclusion that the right may be lost by cessation or discontinuance can only be reached by inference and implication." *Id.* The Court stated: "[S]ince the ordinance provides one way and only one way in which a nonconforming use may be lost, to supply another way in which such a right may be lost would be to do what the [City] alone was authorized to do, but which it refrained from doing." *Id.*

Here, the statutory provision in BCZR § 104.1 is relevant. It states: "[U]pon . . . any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate." Although BCZR § 104.1 does not expressly place on the owner of a nonconforming use the burden of proving that there has not been a twelve month break in use, appellees ask us to conclude that this burden rests with NEMF. Citing *Purich*, 395 Md. 694, appellees insist that NEMF did not meet its burden to show that the Facility was in continuous use for the requisite period.

In our view, appellees' reliance on *Purich* is misplaced. *Purich*, which we discuss

in greater detail below, involved the question of whether an owner abandoned his nonconforming use by applying for a special exception, then operating the property for the twelve-month discontinuation period after receiving the special exception. The parties did not dispute that the owner had taken certain action in connection with the property; the only question was whether this action constituted discontinuance or abandonment. The case before us presents the converse dispute: the parties agree that if the Facility's owner stopped using the Property as a trucking facility for twelve months, then that conduct would constitute abandonment, but they do not agree that such a cessation of activity ever occurred.

We are satisfied that, as the parties asserting abandonment, the burden of proof fell on appellees to establish abandonment. *Cf. Chevy Chase Land Co. v. United States*, 355 Md. 110, 161 (1999) (concluding, in connection with an easement, that "'the burden of proving abandonment rests on the one who asserts or relies on it'") (citation omitted); *Klein v. Dove*, 205 Md. 285, 295 (1954) ("The burden of proof of abandonment [of an easement] is on those who assert it."). As one treatise has explained:

> All jurisdictions provide that "abandonment" of a nonconforming use results in its termination. Abandonment, however, is more than mere nonuse. Abandonment requires the party challenging the nonconforming use to show . . . facts from which a court could infer the user's intent to renounce the nonconforming use.
>
> Many jurisdictions provide easier routes for terminating a nonconforming use on the basis of nonuse. Some jurisdictions impose a presumption of intent to abandon a nonconforming use upon the running of a certain period of nonuse.

> Thus, all a challenger need show to make out a prima facie case in such a jurisdiction is nonuse for the designated period. Still, the owner of the nonconforming use could come back with evidence to rebut the presumption. There is criticism over the imposition of an intent requirement to terminate a nonconforming use. A number of jurisdictions have taken a more aggressive stance by allowing zoning authorities to do away with the intent issue altogether upon the running of a certain period of nonuse. In these jurisdictions, termination is automatic once nonuse over the discontinuance period is proved.

Eugene McQuillen, *Municipal Corporations*, § 25.191 (3d ed.) (footnotes omitted).

On several occasions, the Court of Appeals has examined provisions similar to BCZR § 104.1. *See, e.g., Purich, supra*, 395 Md. 694; *McLay v. Maryland Assemblies, Inc.*, 269 Md. 465 (1973); *Canada's Tavern, Inc. v. Town of Glen Echo*, 260 Md. 206 (1970). In *Trip Associates, Inc., supra*, 392 Md. 563, for example, the Court considered § 13-407 of Baltimore City's Zoning Code, which provided, in part:

> (a) Discontinuance or abandonment
>
> (1) Except as specified in this section, whenever the active and continuous operation of any Class III nonconforming use, or any part of that use, has been discontinued for 12 consecutive months:
>
> (i) the discontinuance constitutes an abandonment of the discontinued nonconforming use, or discontinued part of that use, regardless of any reservation of an intent to resume active operations or otherwise not abandon the use[.]

In interpreting this provision, the Court explained, *id.* at 577:

> Abandonment, as the foregoing ordinance confirms, focuses not on the owner's intent, but rather, on whether the owner failed to use the property as a nonconforming use in the time period specified in the zoning ordinance. *See Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 581, 709 A.2d 749, 759 (1998) ("There is no hard and fast rule in nonconforming use abandonments that intent to abandon must be actually shown when the zoning ordinance or statute utilizes the word 'abandonment'").
>
> On the other hand, the abandonment or discontinuance must be active and actual.

Extrapolating from *Trip Associates, Inc.*, under BCZR § 104.1 the mere discontinuance of a nonconforming use for the statutory period is sufficient to terminate the use, without regard to proof of intent to abandon. But, by its text, BCZR § 104.1 leaves undisturbed the common law rule that the party alleging abandonment has the burden of proving it. Moreover, *Landay* teaches that statutory provisions as to discontinuance should be read narrowly, because they are in derogation of the common law. Indeed, *Landay* declined to infer or imply from a zoning ordinance a means of terminating a nonconforming use that did not appear in the text of the statute.

As we see it, the adoption of appellees' argument would create a risk of an owner losing a valuable, constitutionally protected property right merely because the owner (or its predecessors in interest) failed to keep records showing continuous nonconforming use of the property. If the drafters of the BCZR, having made it easier to prove abandonment of a nonconforming use by eliminating the intent requirement, and surely mindful of constitutional limitations on the government's takings power, had intended to shift the burden of proof as well, they would have been more explicit in so stating.

Moreover, the cases cited by the appellees for the proposition that nonconforming uses are "not favored" are not controlling on the issue of burden of proof. While

nonconforming uses are "not favored," and local jurisdictions have passed ordinances providing "easier routes for terminating a nonconforming use on the basis of nonuse," *Municipal Corporations*, *supra*, § 25.191, one who challenges the nonconforming use cannot require the owner of a nonconforming use to prove a negative: that there has never been a twelve month break in his nonconforming use of his property. Assigning the burden of proof to appellees strikes a proper balance between the goals and policies of zoning ordinances and the constitutional protection to which the owner of a nonconforming use is entitled.

Finally, our conclusion that the party alleging termination of the nonconforming use, pursuant to a zoning ordinance, has the burden of proof is consistent with that of other jurisdictions that have considered the question. *See, e.g.*, *Finn v. Zoning Hearing Bd. of Beaver Borough*, 869 A.2d 1124, 1127 (Pa. Commw. Ct. 2005); *Snake River Brewing Co., Inc. v. Town of Jackson*, 39 P.3d 397, 404 (Wyo. 2002); *City of University Place v. McGuire*, 30 P.3d 453, 457 (Wash. 2001); *Church v. St. Charles Parish*, 767 So.2d 913, 916 (La. App. 2000); *Town of Avon v. Harville*, 718 N.E.2d 1194, 1199 (Ind. App. 1999); *City of Glendale v. Aldabbagh*, 928 P.2d 659, 664 (Ariz. App. 1996), *vacated on other grounds*, 939 P.2d 418 (Ariz. 1997); *Pleasant View Mobile Home Park, Inc. v. Town of Mechanic Falls*, 538 A.2d 273, 275 (Me. 1988); *Washington Arcade Associates v. Zoning Bd. of Review of Town of North Providence*, 528 A.2d 736, 738 (R.I. 1987); *Martin v. Beehan*, 689 S.W.2d 29, 31 (Ky. App. 1985); *Dusdal v. City of Warren*, 196

N.W.2d 778, 781 (Mich. 1972); *Morrison v. Horne*, 363 P.2d 1113, 1114 (Utah 1961).

The question, then, is whether appellees met their burden of proof. The only documentary evidence that appellees presented to the Board was a set of water records showing a discontinuance of service to the Facility for two discrete time periods, neither of which exceeded twelve months. A neighborhood resident, Ms. Byrd, also claimed that the Facility had been empty for at least a year in the past, but she was unable to recall what year this discontinuation took place, and was generally unable to provide much detail or personal knowledge to support her claim. The Board was not required to assign weight to Ms. Byrd's testimony. To the contrary, it was entitled to conclude that appellees failed to establish a discontinuation of the nonconforming use of the Facility during the 1980s within the meaning of BCZR § 104.1. Given that appellees had the burden of proof on this issue, the circuit court erred by improperly substituting its judgment for that of the Board.

VI.

We next consider appellant's claim that the Board applied the incorrect legal standards when it considered and denied NEMF's petition for special exception to expand the Facility. Relying on its construction of *Schultz*, NEMF insists:

> [T]he proper test for determining whether a special exception should be granted involves acknowledging the inherent adverse effects from this type of use (a trucking facility), and then comparing the actual adverse effects that will result from this proposed use at this proposed location to the adverse effect that are ordinarily expected from such a use (i.e., truck traffic, noise, fumes), regardless of its location within the zone. Schultz,

291 Md. at 22-23.

According to appellant, the Board should have "identified the adverse effects inherently associated with a trucking facility and then analyzed which of the potential adverse effects on surrounding areas exceeded the inherent adverse effects." Although appellant concedes that the Board found that NEMF failed to satisfy three of the nine criteria set forth in BCZR § 502.1, it argues:

> [T]he Board did not compare each of those criteria to inherent adverse effects associated with a trucking facility generally, regardless of its location in the zone.[1] Instead, the Board erroneously focused its analysis on this particular facility only, and found that, "increasing this operation at this location would have a much more adverse effect on the Bloomfield neighborhood, then would increasing the operation at the Quad Avenue trucking facility in Essex where large areas of undeveloped land surround the operation.

Appellees counter that the Facility "is already impinging on the health and safety of the adjacent dwellers in Bloomfield. Its expansion would only worsen the situation." They characterize as "deeply flawed" the comparative location analysis performed by NEMF's planning expert, David Martin, who attempted to show that the adverse effects of the expansion would be unremarkable. "In contrast," allege appellees, "the expert and eyewitness evidence in opposition to the special exception showed overwhelmingly *the particular adverse effects at this location* . . ." (Emphasis added.) Notably, they also assert that the evidence showed "the availability of many other M.L. Zone locations in purely industrial areas, including the Quad Avenue area where NEMF operates another facility." In their view, the Facility "produces adverse effects on the neighborhood which

are much greater here than if located elsewhere in the zone."

Claiming that the Supplemental Opinion evidenced that the Board applied the correct legal standard, appellees posit:

> The comparative location analysis at the heart of *Schultz* has been applied consistently: [*Board of County Comm'rs* v.] *Holbrook*, [314 Md. 210 (1988)] mobile home inappropriate near residence; *Alviani*, service station belongs in entirely commercial area; *Mangione*, convalescent home inappropriate near interior residential community; *Mossburg*, truck transfer station proper inside main heavy industrial zone; *Lucas*, helistop problematic in historic rural area; *Futoryan*, service garage inappropriate next to residences. Indeed, the NEMF situation presents far greater obnoxious impacts than any of the cases cited.

Alternatively, appellees argue that NEMF's Petition "should have been disqualified at the start for failure to satisfy the location standards and/or request a variance." They contend that a petition "for a new or expanded special exception must meet the dwelling/residential zone setback standards of BCZR 410.2 for any '. . . Class I trucking facility or part thereof.'" They assert that the Board properly denied the Petition, because NEMF was required to apply for a variance as part of its request, and failed to do so.

In its reply brief, appellant reiterates that the Board "made no determination that the **particular use proposed** at the **particular location proposed** would have any adverse effects **above and beyond those inherently associated** with such a special exception use irrespective of its location within the zone, as is required under Maryland law."

BCZR § 410.1(F) provides that, "[w]ith the exception of plans for conforming Class II trucking facilities in M.H. zones," a trucking facility's site plan "may be amended only by special exception." As noted previously, a special exception use is "a use which is permitted . . . once certain statutory criteria have been satisfied." *Mossburg v. Montgomery County*, 107 Md. App. 1, 7 (1995). We explained in *Mossburg*, *id.* at 7-8:

> [A] special exception/conditional use in a zoning ordinance recognizes that the legislative body of a representative government has made a policy decision for all of the inhabitants of the particular governmental jurisdiction, and that the exception or use is desirable and necessary in its zoning planning provided certain standards are met.

See also Umerley v. People's Counsel for Baltimore County, 108 Md. App. 497, 509, *cert. denied*, 342 Md. 584 (1996).

After the circuit court issued its decision in this case, and after oral argument before this Court, the Court of Appeals decided *Loyola*, 406 Md. 54. It contains a comprehensive review of the history of the special exception in Maryland, as well as a thorough explication of "the seminal" case of *Schultz*, 291 Md. 1.[11] *See Loyola*, 406 Md. at 72-87. Writing for the *Loyola* Court, Judge Harrell endeavored to provide "greater clarity in explaining the proper evaluative framework for discrete special exception/conditional use applications and dispelling any lingering mis-understandings of what the Court truly intended when it filed the opinion in *Schultz* twenty-seven years ago." *Id.* at 57.

[11] *Loyola* cited several cases characterizing *Schultz* as "seminal." *Loyola*, 406 Md. at 87. It also pointed out that *Schultz* "has been cited in over 100 reported Maryland appellate decisions." *Id.* at 90.

Before reviewing *Loyola*, however, it is useful to discuss *Anderson v. Sawyer*, 23 Md. App. 612 (1974). As the *Loyola* Court recognized, "*Anderson* is particularly important to a proper understanding of what . . . the Court meant in *Schultz* in defining what adverse effects are 'inherent' in a proposed use." *Loyola*, 406 Md. at 104. In *Anderson*, Judge Rita Davidson, who later authored *Schultz*, explained, 23 Md. App. at 617:

> The conditional use or special exception is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

With this framework in mind, the *Anderson* Court held that the Baltimore County Board of Appeals erroneously denied an application for a special exception to operate a funeral home within a residential zone. The Court reasoned that, "in order to deny the right of the property owner to enjoy the requested special exception, the Board needed before it probative evidence that the proposed use would, in fact, create traffic congestion on Sunberry Road, and would, in fact, be detrimental otherwise to the general welfare of the locality involved. In this case there was no such probative evidence presented." *Id.* at 617-18. The *Anderson* Court explained, *id.* at 624-25:

There can be no doubt that an undertaking business has an inherent depressing and disturbing psychological effect which may adversely affect persons residing in the immediate neighborhood in the enjoyment of their homes and which may lessen the values thereof. Indeed, it is precisely because of such inherent deleterious effects that the action of a local legislature in prohibiting such uses in a given zone or zones will be regarded as promoting the general welfare and as constitutionally sound. But in the instant case the legislature of Baltimore County has determined that as part of its comprehensive plan funeral homes are to be allowed in residential zones notwithstanding their inherent deleterious effects. By defining a funeral home as an appropriate use by way of special exception, the legislature of Baltimore County has, in essence, declared that such uses, if they satisfy the other specific requirements of the ordinance, do promote the health, safety and general welfare of the community. As part of the comprehensive zoning plan this legislative declaration shares in a presumption of validity and correctness which the courts will honor.

The presumption that the general welfare is promoted by allowing funeral homes in a residential use district, notwithstanding their inherent depressing effects, cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses. Consequently, the bald allegation that a funeral home use is inherently psychologically depressing and adversely influences adjoining property values, as well as other evidence which confirms that generally accepted conclusion, is insufficient to overcome the presumption that such a use promotes the general welfare of a local community. Because there were neither facts nor valid reasons to support the conclusion that the grant of the requested special exception any way other than would result from the location of any funeral home in any residential zone, the evidence presented by the protestants was, in effect, no evidence at all.

* * *

The record is so devoid of substantial support facts as to be incapable fo raising a debatable issue. The protestants have shown nothing more than that they would suffer the same degree of harm as would be suffered by any homeowner if a funeral home were permitted on land adjacent or in close proximity to their residences. If the residents of Baltimore County do not want funeral homes in residential use districts, they should prevail upon the local legislature to change the ordinance.

(Citations omitted)

Because *Schultz* is central to the Court's analysis in *Loyola*, it is also important for us to review *Schultz* before analyzing *Loyola*. In *Schultz*, 291 Md. at 11, Robert and Ann Pritts petitioned for a special exception to operate a funeral home in an area zoned for single-family residential homes in Carroll County. The Carroll County Board of Zoning Appeals denied the special exception. On appeal, the Prittses contended that the Board of Zoning Appeals should have approved the special exception to operate a funeral home. The Court disagreed. Writing for the Court, Judge Davidson, the author in *Anderson*, explained, *id.* at 11-12:

> The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any fact or circumstance negating the presumption.* The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.
>
> Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. *If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide.* But if there is no probative evidence of harm

> or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.

(Citations omitted; emphasis in original).

The *Schultz* Court continued, *id.* at 15:

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

The Court held, *id.* at 22-23:

> We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated w ith such a special exception use irrespective of its location within the zone.

We now turn to *Loyola*. There, the Baltimore County Board of Appeals granted Loyola College's application for a special exception to develop a Retreat Center in a R.C.2 zone. Among other things, BCZR § 1A01.2(C) permits buildings for colleges as

special exceptions in that zone. *Id.* at 58. In contrast to its opponents, Loyola "presented no evidence regarding how its Retreat Center proposal would operate at other sites in Baltimore County in the R.C.2 zone." *Id.* at 64. The Board "affirmed the conclusions of the hearing officer with regard to the development plan and granted Loyola's petition for special exception as a 'college.'" *Id.* at 65. Thereafter, both circuit court and this Court both affirmed. The Court of Appeals then granted certiorari to consider one issue, *id.* at 66:

> Does *Schultz* v. *Pritts*, 291 Md. 1, 482 A.2d 1319 (1981), require that, before of a special exception may be granted, an applicant must adduce evidence of, and the zoning body must consider, a comparison of the potential adverse effects of the proposed use at the proposed location to the potential adverse effects of the proposed use at other, similarly-zoned locations throughout the jurisdiction?

Concluding that "*Schultz* imposes no such requirement," the Court affirmed. *Id.*

Upon review of *Schultz*, its predecessors, and its progeny, the *Loyola* Court said, 406 Md. at 101:

> Evaluation of a special exception application is not an equation to be balanced with formulaic precision. *See Sharp*, 98 Md. App. at 73, 632 A.2d at 256 (rejecting "appellants' interpretation of the holding of *Schultz* as if it were the atomic chart of eleme nts from which a formula for divining inherent and peculiar adverse effects could be derived"). That lack of a precise rubric is reflected in the standard of judicial review applied to zoning decisions. Courts are to defer to the conclusions of the zoning body where the "evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning *fairly debatable*." *Schultz*, 291 Md. at 26, 432 A.2d at 1333 (emphasis added).

The *Loyola* Court also stated, *id.* at 102: "It is clear in examining the plain

language of *Schultz*, and the cases upon which *Schultz* relies, that the *Schultz* analytical overlay for applications for individual special exceptions is focused entirely on the neighborhood involved in each case." Of import here, the *Loyola* Court underscored, *id.* at 102:

> The *Schultz* standard requires an analysis of the effects of a proposed use "irrespective of its location within the zone." "Irrespective of" is defined by Webster's Collegiate Dictionary (10th ed. 1993) as "regardless of." The same dictionary defines "regardless of" as "without taking into account."

Noting that *Loyola*'s opponents "urge[d] the opposite result," *id.* Judge Harrell wrote, *id.* at 102-103:

> Petitioners contend that *Schultz* requires an applicant for a special exception to compare, and concomitantly the zoning body to consider, the adverse effects of the proposed use at the proposed location to, at least, a reasonable selection or representative sampling of other sites within the same zone throughout the district or jurisdiction, *taking into account* the particular characteristics of the areas surrounding those other test sites. The *Schultz* standard requires no such evidentiary burden be shouldered by an applicant nor analysis undertaken by the zoning decision-maker.
>
> *Schultz* speaks pointedly to an individual case analysis focused on the particular locality involved around the proposed site. *See Schultz*, 291 Md. at 15, 432 A.2d at 1327 ("These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in *an adverse effect upon adjoining and surrounding properties* unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone." (emphasis added)); *Schultz*, 291 Md. at 11, 432 A.2d at 1324 ("The duties given the Board are to judge whether *the neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan." (emphasis added)); *id.* ("If [the applicant] shows to the satisfaction of the Board that the proposed use would be conducted *without real detriment to the neighborhood* and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance *to the neighboring area* and uses is, of course, material." (emphasis added)); *Schultz*, 291 Md. at 12, 432 A.2d at 1325 ("These standards dictate that if a requested special exception use is properly determined to have an adverse effect *upon neighboring properties in the general area*, it must be denied." (emphasis added)).

Based on its review of special exception law, the *Loyola* Court determined, 406 Md. at 105: "Thus, the *Schultz* standard, as presaged in *Anderson*, requires that the adverse effect 'inherent' in a proposed use be determined without recourse to a comparative geographic analysis. Any language to the contrary in *Holbrook, Lucas, Futoryan, Hayfields*, and *Mossburg* is disapproved." Addressing the language in *Schultz*, i.e., "consideration of whether 'the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone,'" the Court said, *id.*: "The language retains vitality and sense as long as the *raison d'etre* for its inclusion in *Schultz* is understood." The Court reasoned, *id.* at 106-107:

> The local legislature, when it determines to adopt or amend the text of a zoning ordinance with regard to designating various uses as allowed only by special exception in various zones, considers in a generic sense that

certain adverse effects, at least in type, potentially associated with (inherent to, if you will) these uses are likely to occur wherever in the particular zone they may be located. In that sense, the local legislature . . . separates permitted uses, special exceptions, and all other uses. That is why the uses are designated special exception uses, not permitted uses. The inherent effects notwithstanding, the legislative determination necessarily is that the uses conceptually are compatible in the particular zone with otherwise permitted uses and with surrounding zones and uses already in place, provided that, at a given location, adduced evidence does not convince the body to whom the power to grant or deny individual applications is given that actual incompatibility would occur. With this understanding of the legislative process (the "presumptive finding") in mind, the otherwise problematic language in *Schultz* makes perfect sense.

Finally, we turn to the Board's decision concerning NEMF's expansion request. Special exceptions are governed in Baltimore County by BCZR § 502.1, which provides the nine conditions that must be satisfied before a special exception use will be permitted:

> Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:
>
> A. Be detrimental to the health, safety or general welfare of the locality involved;
>
> B. Tend to create congestion in roads, streets or alleys therein;
>
> C. Create a potential hazard from fire, panic or other danger;
>
> D. Tend to overcrowd land and cause undue concentration of population;
>
> E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
>
> F. Interfere with adequate light and air;
>
> G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
>
> H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
>
> 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.

As we have seen, the Board specifically concluded that NEMF failed to satisfy three of the nine criteria in § 502.1: § 502.1(A), (F), and (G).

In the proceedings below, appellant expressly challenged any claim that the Board was entitled to deny the special exception merely because the evidence showed that there are other locations in Baltimore County that are available to NEMF for an expanded trucking operation. Nevertheless, the Board received comparative analysis testimony from Dillon and Martin. Dillon, a witness for appellees, stated that there are over 20,000 acres of land in the County zoned either M.L. or M.H. Referring to "that area," he testified: "I am convinced there are areas that are more suitable for a location of a truck terminal that would meet the 300-foot setback, and would also not have the adverse impact that it has here at this location from the noise and the fumes aspect[.]"

Clearly, in its Supplemental Opinion, the Board credited Dillon's testimony. In addition to the three criteria in § 502.1 that the Board addressed, it found that there is "abundant land zoned M.L. in Baltimore County, which is not adjacent to a residential community such as the Bloomfield Community, where this operation could be expanded

and thrive." This comment reflects that the Board rejected NEMF's legal position as to the use of a comparative analysis.

We are unable to determine the extent to which the Board's decision to deny the special exception was based on its erroneous belief that it was appropriate to consider whether other areas in the County are available to NEMF to locate its trucking facility. In *Country Ridge Shopping Center, Inc., supra*, we said, 144 Md. App. at 595-96: "[I]f an appellate court is in doubt as to why an administrative agency did what it did, as we were in this case, it is appropriate to remand the case to the agency for nothing more than 1) a clarification of or 2) an amplification of its reasoning." *See also Powell v. Calvert County*, 137 Md. App. 425, 429 (2001) (approving such a procedure), *reversed on other grounds*, 368 Md. 400 (2002). In light of the Board's error, we shall vacate the judgment of the circuit court with respect to NEMF's expansion request and remand to the Board for further proceedings.

VII.

What remains is a contention raised by appellees for the first time in the circuit court, advanced by them in response to NEMF's motion for reconsideration. By that time, the Court of Appeals had issued *Purich, supra*, 395 Md. 694. Based on *Purich*, appellees argued that NEMF abandoned its nonconforming use by obtaining the 1998 special exception. Notably, this argument was never considered by the Board.

Appellees renew their *Purich* argument on appeal, as an additional ground to

support their abandonment claim. In particular, appellees contend that the Board's 1998 approval of appellant's special exception request constituted an abandonment, because it "terminated the nonconforming use as a matter of law." They explain: "[B]y obtaining the special exception approved February 25, 1998 and extending it for over a year, NEMF effectively abandoned its nonconforming facility status as a matter of law, under BCZR § 104.1, on February 25, 1999." According to appellees, NEMF's "choice to apply for, obtain, and leave the special exception in effect for the statutory abandonment/discontinuity period terminated the nonconforming use as a matter of law." They add: "In other words, the initially successful 1998/1999 [special exception] applications terminated the nonconforming use and replaced it in a year with a permitted use status. Once that nonconforming use status ended, it could never be revived or resurrected." Thus, appellees insist that, "on February 25, 1999, by operation of law as in Purich, the approved special exception passed the BCZR § 104.1 one-year duration for abandonment or discontinuity of the nonconforming use. It terminated by that date, if not terminated earlier for change or discontinuance."

Purich, 395 Md. 694, involved property in Montgomery County owned by Draper Properties, Inc. ("DPI"), which was zoned Convenience Commercial (C-1). DPI leased this parcel to Shell Oil Co. ("Shell") in early 1963, which operated the property as an automobile filling station. At the time, a filling station was a permitted use in the C-1 zone. *Id.* at 696. "On May 1, 1963, however, pursuant to a change in the Zoning

Ordinance, the operation of new automobile filling stations began to require a special exception. . . . One of the effects of the new ordinance was that if an operator sought to upgrade its facility, it would have to apply for, and receive, a special exception to operate a filling station." *Id.* at 699.

Until 1997, Shell continued to operate its filling station as a nonconforming use. In that year, Shell applied to the Montgomery County Board of Appeals ("MCBA") for a special exception "for a 'use' as an 'Automobile Filling Station,'" claiming it wanted to renovate and modernize the existing gas station. *Id.* The MCBA granted the special exception, which provided that Shell could undertake certain improvements that "may not have been permitted unless a 'special exception' for an automobile filling station use was first obtained." *Id.* at 701. Shell "continued to operate the filling station as it had before obtaining the special exception. There [was] no evidence in the record that Shell implemented any of the upgrades contained in the grant of the special exception[.]" *Id.* In 2003, the MCBA revoked the special exception, but found that the lawful nonconforming use remained. *Id.* at 696-97. Several owners of property adjacent to the filling station appealed to the circuit court, which affirmed the MCBA's decision. *Id.* at 697.

The Court of Appeals granted certiorari to consider whether the nonconforming use status lapsed while the filling station was operated pursuant to the special exception. *Id.* It observed, *id.* at 712-13 (quoting *Stacy v. Montgomery County*, 239 Md. 189, 193 (1965)):

> "A special exception within the meaning of the zoning ordinance is one which is controlled and which is expressly permissible in a given zone." Thus, when one applies for and is granted a special exception for a use being made, or to be made, that use becomes a permitted use even if it had theretofore been a nonconforming use.
>
> * * *
>
> A special exception brings a property into conformance with applicable zoning laws. The use becomes permitted, albeit there may be conditions.

Montgomery County's zoning ordinances, the Court noted, provided that a nonconforming use is abandoned if it ceases for at least six months. *Id.* at 715. The Court determined that once Shell's special exception was granted on April 7, 1997, "the use of the Property came into conformance with the zoning law; hence, the nonconforming use ceased." *Id.* at 715-16. It reasoned: "Once Shell applied for and was granted a special exception for the operation of the filling station on the Property, it began to conform with the overall zoning provisions. Nonconformance became conformance[.]" *Id.* at 716. The Court explained, *id.* at 717:

> DPI and Shell abandoned the operation of the filling station as a nonconforming use when Shell sought and obtained the special exception for the operation of the filling station. A property cannot operate where the use is both a nonconforming use and a special exception use when it is the same use because the permitted use extinguishes the nonconforming character of the use. The law requires that the conforming, permitted, use be favored, i.e., the special exception.

Thus, the Court rejected MCBA's conclusion that the nonconforming use survived after the special exception was terminated. *Id.* at 698. It ruled that the nonconforming

use terminated once six months had elapsed from the time the special exception was granted. *Id.* The Court also rejected DPI's claim that it never "implemented" the special exception because it did not make the permitted improvements to the station. It stated, *id.* at 719:

> DPI's argument hinges on the *modernization* being the operative scope of the special exception.[1] We hold, however, that the *use* is what defines a special exception in Montgomery County . . . whether [Shell] actually did or did not take any steps to modernize the Property is not dispositive to the establishment of the special exception for an automobile filling station. . . . What is dispositive is that the Property was operating as an automobile filling station while a special exception permitting the operation of a filling station existed. That operation constitutes the *use* under the special exception. It was at that point a permitted use, albeit it might have been operating in violation of the Zoning Ordinance's requirements for such use.

Further, the Court said, *id.* at 721:

> The Board misconstrued the function of the granting of a special exception and, because of that, misconstrued when a special exception begins to exist. The situation extant is that once a special exception is applied for, granted, and operation of the subject property is begun or continued pursuant to it, the owner of the property has six months to revert back to a prior nonconforming use (if one existed) before it is abandoned. But in this case the special exception was not "revoked" within that six month period. Even if DPI could decide not to make use of that special exception and could pursue the revocation of the special exception, the result, however, would be that the Property could then only be operated pursuant to Montgomery County's Convenience Commercial (C-1) requirements. Thus, as the nonconforming use no longer exists, the Property can be operated as an automobile filling station only pursuant to a special exception-if it still exists. If the special exception was properly revoked then the only uses that may be made of the property are those uses permitted by right in the District.

The Court concluded, *id.* at 722:

> Special exceptions in Montgomery County are provided for uses of property. In the case *sub judice*, the Property was in operation as an automobile filling station pursuant to a special exception. Once that use began, either the nonconforming use was immediately terminated or, at a minimum, the six month period of abandonment started in respect to the prior nonconforming use status of the Property. Those six months passed and the nonconforming use, if not sooner terminated, was thus abandoned.

But, the Court noted that its holding generated an issue as to "whether the special exception was, in fact, properly revoked[1] given that the Board and DPI mistakenly believed that they were returning the Property to its nonconforming status." *Id.* at 722. The Court remanded for the Board to reconsider "whether the revocation of the special exception was properly accomplished." *Id.*

As we see it, appellees claim that NEMF obtained and used the special exception received in 1998, thereby abandoning its nonconforming use. Yet, they simultaneously insist that NEMF did not "utilize" this special exception, because NEMF failed to undertake the proposed construction within the statutory period. Either appellant used the 1998 Special Exception or it did not: if it did not, then its lawful nonconforming use of the Property arguably remained intact; if it did use the exception, then it may have lost the nonconforming use, but did not necessarily lose the 1998 Special Exception.

The 1998 Petition may be distinguishable from the one at issue in *Purich*. The Montgomery County ordinance "does not mention modernization" in regard to filling stations. In contrast, BCZR § 410.1(F) provides that site plans for pre-1976 trucking facilities "may be amended only by special exception." In addition, with exceptions not

relevant here, BCZR § 410.1(E) states: "The site, structures and paved areas of a nonconforming Class I trucking facility may not be expanded unless the use is made to conform in all respects with these Zoning regulations." Through these provisions, BCZR arguably contemplates a distinction between a special exception for use of a trucking facility and a special exception for the expansion of an existing facility, a distinction seemingly absent from the pertinent regulations in *Purich*. Moreover, NEMF's 1998 Petition was arguably for expansion, not for continued use of the Facility. NEMF never acted on its plans, however. If it never used the special exception, it may not have abandoned its lawful nonconforming use.

As indicated, the Board never considered this complicated issue. In our view, it is appropriate for the Board to consider the contention in the first instance. Because a remand is necessary for the reasons previously discussed, the Board may determine, on remand, whether to consider appellees' *Purich*/abandonment claim and, if so, the resolution of that claim. We express no opinion as to the merits of such a claim.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED. CASE REMANDED TO THE CIRCUIT COURT, WITH INSTRUCTIONS TO REMAND TO THE BOARD FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEES.

4/11/07

IN THE MATTER OF GREATER BLOOMFIELD ASSN., et al.	*	IN THE
	*	CIRCUIT COURT
Petitioner/Counter-Respondent	*	FOR
AND	*	BALTIMORE COUNTY
IN THE MATTER OF 3600 GEORGETOWN CORP.	*	
Respondent/Counter-Petitioner	*	Case No.03-C-06-003979

* *

ORDER

Upon consideration of Petitioner/Counter-Respondent's Motion to Extend Time, and any Response thereto, it is this 11 day of April, 2007 ORDERED:

Response to 3600 Georgetown Corporations' Motion for Reconsideration shall be filed with the Clerk of the Circuit Court no later than April 23, 2007.

Judge

True Copy Test
SUZANNE MENSH, Clerk
Per _____
Assistant Clerk

FILED APR 17 2007

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BALTIMORE COUNTY
BOARD OF APPEALS

3/1/07

IN THE MATTER OF GREATER BLOOMFIELD ASSN., et. al	*	IN THE
	*	CIRCUIT COURT
Petitioner/Counter-Respondent	*	FOR
and	*	BALTIMORE COUNTY
	*	
IN THE MATTER OF 3600 GEORGETOWN CORP.	*	Case No. 03-C-06-003979
Respondent/Counter-Petitioner	*	

* *

MEMORANDUM OPINION AND ORDER

This matter comes before the Court for judicial review of two decisions issued by the County Board of Appeals of Baltimore County (hereinafter "Board"). In late 2003, both Petitioner/Counter-Respondent and Respondent/Counter-Petitioner filed zoning petitions to determine the status of the facility in question. On September 28, 2004, the Zoning Commissioner granted Respondent/Counter-Petitioner's petitions to amend and expand a previously granted special exception. The Zoning Commissioner also determined that the previously granted special exception had been utilized and vested. Furthermore, the Commissioner denied Petitioner/Counter-Respondent's Petition for Special Hearing, finding that the existing facility is a proper use of the property and that expansion is appropriate.

Petitioner/Counter-Respondent filed a timely appeal from the Zoning Commissioner's decision to the Board. On March 15, 2006, the Board determined that Respondent/Counter-Petitioner's previously granted special exception was utilized and vested, and could not be voided. The Board also found that a nonconforming use

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cc Bd Hearer, Bach. Gnt

continues to apply to the site, and that the existing operation is a proper use of the property. In addition, the Board issued a Supplemental Opinion on March 15, 2006, in which it granted Petitioner/Counter-Respondent's Petition to deny expansion of Respondent/Counter-Petitioner's facility beyond its existing nonconforming use.

Petitioner/Counter-Respondent filed a Petition for Judicial Review of the Board's first Opinion on April 13, 2006. Respondent/Counter-Petitioner filed a Cross-Petition for Judicial Review of the Board's Supplemental Opinion on April 28, 2006. On October 20, 2006, a hearing was held before this Court. For the reasons set forth herein, the judgment of the County Board Appeals is **AFFIRMED IN PART** and **REVERSED IN PART AND REMANDED.**

BACKGROUND

Due to the complexity of the issues in this case, an explanation of the procedural history of this case intertwined with the zoning history of the facility at issue is clearly warranted.

The property in question houses a Class I trucking facility currently owned and operated by 3600 Georgetown Corporation. Its principals also own the trucking company operating at the site, New England Motor Freight (hereinafter "NEMF"). The property, which straddles the Baltimore County/City line, is zoned Manufacturing-Light (M.L.). In the 1960s and 1970s the facility was operated by the Wilson Freight Forwarding Company (hereinafter "Wilson Freight") pursuant to a rezoning and special exception approved by the County Board of Appeals on October 11, 1961. In 1976, the County Council enacted Bill 18, which contained new measures regulating trucking facilities near residential communities. Because the existing facility did not meet the setback

requirements from dwellings or residential zones imposed by the new legislation. Wilson Freight filed a site plan in 1981 to confirm its nonconforming status. In a letter dated May 7, 1982, James Dyer, Zoning Supervisor, approved the nonconforming status of the facility.

Prior to the Zoning Supervisor's approval of the facility's nonconforming status, Wilson Freight filed for bankruptcy. A bankruptcy order was issued on July 24, 1980. Testimony revealed that the facility was allegedly abandoned for several months in the early 1980s, after which a company called AAA began to use the property. AAA ceased operations on the property in the late 1980s. The property was allegedly abandoned again until 1991, when NEMF began operating its trucking facility.

In 1998, NEMF applied for, and received, a special exception from the Zoning Commissioner, allowing it to expand its existing facility. Almost one year after receiving the special exception, NEMF petitioned to extend the approval to allow utilization of the special exception within five years, as opposed to two years. On January 15, 1999, NEMF's petition to extend the approval was granted.

In 2001, NEMF filed another petition to expand the previously approved plan. The new plan was approved, however various community groups were dissatisfied with this result and appealed the approval to the Board. One week before a hearing on the matter was to take place, NEMF withdrew its petition and the Board dismissed the case.

The special exception granted to NEMF in 1998 allegedly expired on February 25, 2003. The director of Permits and Development Management determined that the special exception was not properly utilized and had expired. On March 3, 2003, the

Director of Zoning Enforcement wrote a letter finalizing that decision. NEMF did not file an appeal.

In 2003, both NEMF and interested citizens filed zoning petitions to clarify the status of the facility. On October 12, 2004, the Zoning Commissioner granted NEMF's petitions to amend and expand the previously approved special exception. The Zoning Commissioner also found that the plan approved in 1998 had been utilized and vested. Furthermore, the Zoning Commissioner denied the citizens' petition for a special hearing, finding that the existing facility is a proper use of the property and that the proposed expansion is appropriate.

Petitioner/Counter-Respondent appealed the decisions of the Zoning Commissioner to the Board. Hearings for the appeal were scheduled in July, but did not conclude until October of 2005.[1] On October 31, 2005, one of the members left the Board. Since the Board's decision was not complete at that time, the Board issued an initial decision on the issues that it had already resolved. In its initial Opinion, written by two members, the Board determined that NEMF's previously granted special exception was utilized and had vested. The Board also found that "storage and maintenance activities could continue on the property even during an intervening period of bankruptcy," thus the site's nonconforming use was not lost. Furthermore, the Board concluded that the nonconforming use continues to apply to the site, and that the existing operation is a proper use of the property.

The Board subsequently filed a Supplemental Opinion in which it granted Petitioner/Counter-Respondent's petition to deny the expansion of NEMF's operation

[1] The case was originally scheduled to be heard by the Board on July 14, 19 and 21, 2005. Because additional hearing dates were required, the parties appeared before the Board on September 14, 2005 and September 30, 2005.

beyond the nonconforming use and denied NEMF's petition for special exception requesting approval to expand the facility. In so doing, the Board found that expansion of NEMF "is not in harmony with the general purpose and intent of the zoning plan."

Petitioner/Counter-Respondent appealed the findings of the County Board of Appeals set out in its initial Opinion. In their Petition for Judicial Review, Greater Bloomfield raised the following issues:

1) Did the County Board of Appeals err in determining that New England Motor Freight had not lost the nonconforming use and has in fact continuously operated as a nonconforming use;

2) Did the County Board of Appeals err in determining that the previously granted Special Exception was utilized and vested and could not be voided.

Respondent/Counter-Petitioner appealed the Board's denial to expand the existing facility.

STANDARD OF REVIEW

A final decision of a county zoning board must be upheld on review if it is not premised upon an error of law and if the agency's conclusions reasonably may be based on the facts proven. In fact, this Court's role in reviewing an administrative agency's decision is narrow. The reviewing court cannot substitute its own judgment for that of the zoning board and must accept the zoning board's factual conclusions, if they are based on substantial evidence and if reasoning minds could reach the same conclusion on the record. *Columbia Road Citizens' Ass'n v. Montgomery County*, 98 Md. App. 695, 698 (1994). This Court is also "limited to determining if there is substantial evidence in

the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *United Parcel v. People's Counsel*, 336 Md. 569, 577 (1994).

In regard to the Board's legal conclusions, this Court's review is "expansive" and owes "no deference." *Bennett v. Zelinsky*, 163 Md. App. 292, 299 (2005), *cert. granted*, 389 Md. 399 (2005). "'Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based upon an error of law.'" *Stansbury v. Jones*, 372 Md. 172, 184 (2002) (quoting *Belvoir Farms Homeowners' Ass'n v. North*, 355 Md. 259, 267 (1999)). However, the agency's interpretation and application of any statute that the agency administers should be given considerable weight by the reviewing court. *Lussier v. MD Racing Commission*, 343 Md. 681, 696-97 (1996).

For purposes of judicial review, substantial evidence means more than a "scintilla of evidence" such that a reasonable person could come to more than one conclusion in such a situation, the issue to be considered is "fairly debatable" and the reviewing court may not substitute its judgment for that of the agency. *Realty Improvement Ass'n v. Sycamore Realty Co., Inc.*, 105 Md. App. 701, 714, 661 A.2d 182 (1995).

DISCUSSION

A. Did the County Board of Appeals correctly determine that NEMF did not lose its nonconforming use?

In its initial Opinion, the Board concluded that a nonconforming use on the property properly exists, and that such use was not discontinued for a sufficient

amount of time to lead to its loss. The Board determined that testimony "clearly establishes that a Class 1 facility with an appropriate special exception has existed on the property since 1961." As such, the facility was not required to comply with the new requirements set out by the 1976 legislation, including seeking a variance, filing a program of compliance and adhering to setback requirements. In holding that the nonconforming use on the property was not lost, the Board in part based its decision on the testimony of Myron Shevell, the Chairman of NEMF, who testified that, except for a period of one to two months in 1989-1990, storage and maintenance activities *could* continue on the property. The Board also noted that testimony regarding lack of water use on the property and Wilson Freight's filing for bankruptcy was insufficient to support a finding that the nonconforming use was lost.

BCZR § 101 defines a nonconforming use as "a legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use." In applying nonconforming use regulations, courts recognize the inherent conflict between depriving a property owner of his/her rights as a result of a newly enacted regulation and applying zoning ordinances that were created for the benefit of the public. While zoning regulations permit nonconforming uses to continue upon passage of regulations that would otherwise invalidate them, "any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more," will result in the termination of the nonconforming use. BCZR § 104.1. Thus, zoning ordinances limit the existence of nonconforming uses so that "such restrictions...achieve the ultimate elimination of nonconforming uses through economic attrition and physical

obsolescence." *County Council of Prince George's County v. E.L. Gardner, Inc.*, 293 Md. 259, 268 (1982).

At the hearing below, Petitioner/Counter-Respondent asserted that Respondent/Counter-Petitioner's predecessors abandoned the property in question for at least one year on two separate occasions, extinguishing the nonconforming use that was granted to the previous owners of the property in 1982. According to Petitioner/Counter-Respondent, the first alleged abandonment occurred in 1980 when Wilson Freight terminated its operations and filed for bankruptcy. The second discontinuation of use identified by Petitioner/Counter-Respondent occurred between the lapse in operations at the facility by AAA and the acquisition of the property by Respondent/Counter-Petitioner. At the hearing before the Board, Petitioner/Counter-Respondent introduced water records indicating that no water had been used on the property for a period of 19 months as well as testimony confirming the abandonment.

Respondent/Counter-Petitioner countered that the nonconforming use granted to Wilson Freight still exists as operations on the property never ceased for a period of at least one year. Mr. Shevell testified that the property was abandoned when he acquired it, but that discontinuation of use was limited to one or two months. Furthermore, the Chairman noted that storage and maintenance activities could continue on the property, even during an intervening period of bankruptcy.

After hearing testimony and reviewing exhibits, the Board concluded that Petitioner/Counter-Respondent did not provide sufficient evidence to prove that the nonconforming use was lost. The Court recognizes that the Board was able to review the exhibits presented by the parties and observe the demeanor and mannerisms of the

witnesses, and this Court will not substitute its judgment for that of the Board absent a finding of substantial evidence contradicting the Board's conclusion. However, this Court finds that there is substantial evidence contradicting the Board's conclusion.

Following a review of the pleadings of both parties as well as that of the People's Counsel for Baltimore County, the transcript of the proceedings below and the Opinion of the Board, this Court finds that the Board erred in concluding that Respondent/Counter-Petitioner did not lose its nonconforming use. It appears to this Court that the Board ignored the evidence of discontinuity when making its finding, holding that "the testimony regarding water use is not conclusive in and of itself, nor is the anecdotal testimony or the mere filing of bankruptcy." To the contrary, evidence introduced by Petitioner/Counter-Respondent, including both water records and testimony, indicates that operations on the facility did cease for a period of at least one year on at least one occasion between 1982 and 1990.

Myron Shevell, the Chairman, CEO and majority stockholder of New England Motor Freight testified that, when he acquired the property in question, he observed that the trucking operation was closed. In fact, he described the property to be "in shambles," with broken doors and windows, and characterized it as a "den for drug addicts." Transcript p. 99 (July 14, 2005). In addition, members of the Greater Bloomfield community testified to personally observing the cessation of activity on the property for substantial periods of time. Similarly, a zoning expert testified before the Board that Respondent/Counter-Petitioner had in fact lost its nonconforming use. This testimony supports Petitioner/Counter-Respondent's contention that operations ceased shortly before Wilson Freight declared bankruptcy in 1982 and again when AAA took over the

site after Wilson Freight, but ceased operations in the late 1980's. Lastly, Petitioner/Counter-Respondent introduced water records for the trucking facility indicating that no water had been used on the property for a 19-month period. Taken as a whole, the testimony and evidence presented to the Board established that operations ceased at the trucking facility for at least one year.

According to BCZR § 104.1, abandonment of a nonconforming use for at least one year results in the termination of that use. Due to the fact that activity on the property ceased for at least one year, perhaps on more than one occasion, the nonconforming use approved in 1982 was lost and no longer exists. This Court finds that the Board erred as there is insufficient evidence to support the Board's findings and conclusions of law on this point. The nature of the evidence presented to the Board, and reviewed by this Court, would not lead reasoning minds to conclude that the nonconforming use existed when Respondent/Counter-Petitioner acquired the property. Thus, the Board erred in concluding that Respondent/Counter-Petitioner maintains nonconforming use status, and its holding as to this issue is REVERSED.

B. Did the County Board of Appeals properly determine that the previously granted special exception was vested and could not be voided?

At the hearing below, the Board determined that Respondent/Counter-Petitioner continues to enjoy the special exception originally granted to Wilson Freight on October 11, 1961. In its conclusory Opinion, the Board found that "the testimony and reading of the unambiguous language of § 410 clearly establishes that a Class I facility with an appropriate special exception had existed on the site since 1961." Furthermore, the

Board noted that Wilson Freight was not required to comply with any of the "ameliorative portions" of the statute.

BCZR § 410 prescribes certain requirements with which Class I trucking facilities must comply, including minimum setbacks from wetlands, dwellings and automobile-parking areas. Furthermore, BCZR § 410.1.F provides for amendments to plans approved under BCZR § 410, but only by special exception.[2] While special exceptions may be granted upon review by an administrative board, BCZR § 502.3 states that "a special exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void."

Respondent/Counter-Petitioner was granted a special exception by the Zoning Commissioner on February 25, 1998. Since the Order granting this special exception did not specify a time period within which the special exception must be utilized, the time limit for utilization was two years.[3] However, before the expiration of the special exception, Respondent/Counter-Petitioner filed a petition to extend the time period within which the special exception must be utilized from two years to five years. This request was granted in an Order dated January 15, 1999. Thus, the new expiration date for the special exception granted by the Zoning Commissioner was February 25, 2003.

In 2001, Respondent/Counter-Petitioner filed a new plan to expand the plan previously approved by the Zoning Commissioner in 1998. On October 12, 2001, the Deputy Zoning Commissioner approved the new plan, but with setback restrictions.

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[2] A special exceptions is "a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption." *Schultz v. Pritts*, 291 Md. 1, 11 (1981).

[3] Thus, according to the Order dated February 25, 1998, the special exception must be utilized by February 25, 2000.

Petitioner/Counter-Respondent, the People's Counsel for Baltimore County, the Greater Bloomfield Association and Maryland Citizens for the Environment moved for reconsideration of this decision. After a hearing on the matter, the Deputy Zoning Commissioner issued an Order on Motion for Reconsideration, granted Respondent/Counter-Petitioner's motion and issued a new order removing the most severe restrictions. People's Counsel for Baltimore County and various community groups appealed this decision, but Respondent/Counter-Petitioner withdrew its petition before the hearing date scheduled before the Board. The Board dismissed the appeal on January 16, 2003.

On appeal to this Court, Petitioner/Counter-Respondent argued that the special exception granted to Respondent/Counter-Petitioner never vested, and thus expired. To support its claim, Petitioner/Counter-Respondent noted that Arnold Jablon, Director of Permits and Development Management, determined that the special exception had not been properly utilized and had expired. In addition, James Thompson, Director of Zoning Enforcement, issued a letter dated March 3, 2003 confirming the expiration of the special exception.[4] In response to Petitioner/Counter-Respondent's argument, Respondent/Counter-Petitioner asserted that the special exception was utilized and had vested, noting that activity on the site has increased.[5] According to Respondent/Counter-Petitioner, the increased activity was a sufficient utilization of the special exception, even though some of the major improvements outlined in the approved plan were never constructed. This Court has found no authority for Respondent/Counter-Petitioner's

[4] Though Respondent/Counter-Petitioner sent a letter dated March 5, 2003 disagreeing with Mr. Thompson's assessment, it did not file an appeal.

[5] Specifically, Respondent/Counter-Petitioner noted that the site's current operation utilizes 75 trucks, as opposed to the 60 trucks used in 1981; 36 tractors; and 90 trailers, as opposed to 85.

position that the special exception vested. The concept of "vesting rights" cannot logically apply to a special exception when both the Director of Permits and Development Management and the Director of Zoning Enforcement have determined that the exception "expired."

As mentioned above, this Court will not substitute its judgment for that of an administrative agency and will accept the Board's factual conclusions so long as they are based on substantial evidence. However, this Court gives no deference to the Board with respect to erroneous legal conclusions, and its review of the Board's application of the law is expansive. After a thorough review of the pleadings and record in this case, this Court finds that the special exception granted to Respondent/Counter-Petitioner in 1998 was not utilized by February 25, 2003, and has since expired. At the hearing before the Board, Jack Dillon[6] testified that the facility has been operating without a valid special exception. Furthermore, Mr. Dillon's testimony was in accord with that of Ms. Rudnikas, President of the Bloomfield Community Association, who also testified that Respondent/Counter-Petitioner is operating without a special exception. Upon review of the record, this Court finds that Respondent/Counter-Petitioner failed to present the Board with any compelling evidence proving otherwise. Despite Respondent/Counter-Petitioner's contention that the small variations mentioned above do constitute a vesting of the special exception, this Court disagrees.

This Court finds that Respondent/Counter-Petitioner chose not to utilize the special exception granted by the Zoning Commissioner in 1998. The special exception

[6] Mr. Dillon was a member of the Baltimore County Zoning and Planning Office for over 30 years, and was qualified as an expert in planning, zoning and land use.

expired on February 25, 2003 and no longer exists. Thus, the Board erred in concluding that a special exception currently exists, and its holding as to this issue is REVERSED.[7]

C. Did the County Board of Appeals properly deny Respondent/Counter-Petitioner's request to expand by way of special exception?

Finally, in its Supplemental Opinion, the Board denied Respondent/Counter-Petitioner's request for a special exception to expand the existing facility. The proposed expansion would involve demolishing the existing building and building a new building with additional bays; reorganizing parking and circulation; expanding the entrance on Joh Avenue; constructing a gate and guardhouse; relocating the repair building to a new location; constructing a retaining wall, new curbing, paving, security fence and sound barrier and planting a number of evergreens.

In considering Respondent/Counter-Petitioner's request, the Board properly employed the standard set out by the Maryland Court of Appeals in *Schultz v. Pritz*. 291 Md. 1 (1981). In *Schultz,* the Court of Appeals held that, "if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for special exception use is arbitrary, capricious, and illegal...If a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied." *Id.* at 11-12. When determining

[7] In addition to the arguments made in this section, Petitioner/Counter-Respondent also argued that the 1998 special exception was defective from the outset as the community never received proper notice of the hearings or Respondent/Counter-Petitioner's plan to encroach upon to 300 foot setback area. In addition, Petitioner/Counter-Respondent asserted that the special exception was also invalid as Respondent/Counter-Petitioner failed to apply for a variance under § 410. Respondent/Counter-Petitioner countered that Petitioner/Counter-Respondent is precluded from arguing these points based on the doctrine of *res judicata*.

Because this Court finds that the 1998 special exception has expired, it is unnecessary to address these issues.

whether a special exception would have an adverse effect, a court must consider "whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." *Id.* at 22.

In contrast to the dearth of reasoning set forth in the Board's initial Opinion[8], the Supplemental Opinion included a solid legal analysis of the issues presented and the evidence heard by the Board. The Board summarized the testimony and evidence presented to it and thoroughly explained why it decided to deny Respondent/Counter-Petitioner's request. Specifically, the Board discussed the testimony of David Martin, who indicated his belief that the proposed improvements were in compliance with the criteria enumerated in BCZR § 502.1. Similarly, the Board considered the testimony of George Harmen, program manager for the Department of the Environment Noise Control Program for the State of Maryland, who conducted measurements of noise produced by trucks located on the property in question. Furthermore, Timothy Buckley, a Ph.D. from the Johns Hopkins University School of Public Health, stated that he utilized a dosimeter to measure the noise currently emanating from the trucking facility and believed that the

[8] While this Court has reversed the Board's ruling on substantive—not procedural—grounds, it is concerned with the Board's management of this case. A majority of the Board's initial Opinion is devoted to describing the transitions of the Board members, with very little discussion of the applicable law. The Board's conclusory opinion provides little insight into its reasoning and decision. In addition, the Board emphasizes the materiality of a unanimous opinion, yet only two Board members actually participated in drafting the initial Opinion. The procedural defects apparent in this case are of particular concern as the issues involved in this case affect the property rights, health and welfare of homeowners and businesses alike. Such issues should not be glossed over or given short shrift simply because a member of the Board left midway through the hearings on this case.

proposed expansion would increase noise levels and create an adverse effect on the surrounding community.[9]

After conducting a thorough review of the testimony presented at the hearing below, the Board considered the relevant evidence in light of the standard enumerated in *Schultz*. The Board found that an increase in the activity on the site would indeed have an adverse effect on the Bloomfield community, detrimentally affecting the health, welfare and safety of the surrounding community and that the expansion would not be "in harmony with the general purpose and intent of the zoning plan."

While Petitioner/Counter-Respondent clearly asserted that the Board properly denied the proposed expansion, Respondent/Counter-Petitioner argued otherwise. Specifically, Respondent/Counter-Petitioner stressed that the Board incorrectly considered adverse effects above and beyond those created by the existing facility, and whether a more appropriate alternative site exists. Furthermore, Respondent/Counter-Petitioner argued that the Board failed to recognize the inherent adverse effects associated with trucking facilities, and instead denied the request for special exception because the use's operations would have more of an adverse effect at the trucking facility's current location.

Though the Board did indeed note that the theoretical impact of the proposed expansion would be less adverse on a community surrounding an Essex facility also owned and operated by Respondent/Counter-Petitioner, this Court finds that the Board ultimately did not base its decision on this factor. Instead, the Board explained that

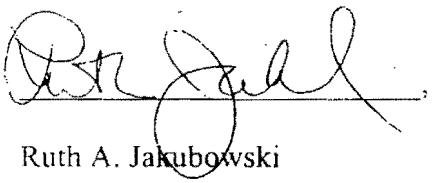
[9] The Board also considered and summarized the testimony of several other witnesses who were present at the hearing below. This Court has reviewed the entire Supplemental Opinion issued by the Board, as well as the complete record, and does not feel the need to list each and every consideration addressed in the Board's Supplemental Opinion. Rather, in mentioning the witnesses above, this Court merely wishes to acknowledge the Board's thorough analysis of the issues presented.

Respondent/Counter-Petitioner failed to satisfy at least three of the nine criteria set forth in the BCZR that must be fulfilled before a request for a special exception can be granted.[10] Furthermore, the Board properly applied the standard adopted by the *Schultz* court, and appropriately considered whether there are any facts or circumstances indicating that the proposed use would have adverse effects above and beyond those inherently associated with the special exception, *regardless of the facility's location within the zone.* This Court finds that the Board denied Respondent/Counter-Petitioner's request for special exception based on sound legal reasoning and substantial evidence. Thus, the Board's decision regarding Respondent/Counter-Petitioner's request for special exception is AFFIRMED.

[10] According to BCZR § 502.1, "Before any special exception may be granted, it must appear that the use for which the special exception is requested will not: A. Be detrimental to the health, safety or general welfare of the locality involved; B. Tend to create congestion in roads, streets or alleys therein; C. Create a potential hazard from fire, panic or other danger; D. Tend to overcrowd land and cause undue concentration of population; E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements; F. Interfere with adequate light and air; G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor 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."

CONCLUSION

For the reasons set forth herein, this Court shall AFFIRM IN PART and REVERSE IN PART AND REMAND for entry of an order consistent with this Court's Opinion.



, Judge

Ruth A. Jakubowski

3/7/07

Date

Clerk to notify parties

3/7/07

IN THE MATTER OF GREATER BLOOMFIELD ASSN., et. al	*	IN THE CIRCUIT COURT
Petitioner/Counter-Respondent	*	FOR
and	*	BALTIMORE COUNTY
	*	
IN THE MATTER OF 3600 GEORGETOWN CORP.	*	Case No. 03-C-06-003979
Respondent/Counter-Petitioner	*	

* *

ORDER

This matter came before the Court as a Petition for Judicial Review of a decision by the County Board of Appeals for Baltimore County. For the reasons stated in its Memorandum Opinion, it is this 7 day of March, 2007, by the Circuit Court for Baltimore County, Maryland,

ORDERED that this matter shall be AFFIRMED IN PART and REVERSED IN PART AND REMANDED to the County Board of Appeals for Baltimore County for entry of an order consistent with this Court's Memorandum Opinion.

, Judge
Ruth A. Jakubowski

3/7/07
Date

Clerk to notify parties

8/26/06

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	CIVIL ACTION No. 03-C-06-003979
IN THE MATTER OF THE APPLICATION OF: 3600 GEORGETOWN CORP. - PETITIONER (NEW ENGLAND MOTOR FREIGHT) FOR SPECIAL HEARING AND SPECIAL EXCEPTION on property located on the N/S Georgetown Road, SW of Bloomfield Road 13th Election District 1st Councilmanic District Case No. 04-294-SPHX	*	
AND	*	
IN THE MATTER OF THE APPLICATION OF: THE GREATER BLOOMFIELD COMMUNITY ASSN, ET. AL. - PETITIONERS/PROTESTANTS FOR SPECIAL HEARING on property located at 3600 Georgetown Road; 3600 Georgetown Corp. - Legal Owner Case No. 04-160-SPH	*	

MEMORANDUM OF PETITIONER

Pursuant to Maryland Rules 7-207, Petitioner, 3600 Georgetown Corporation, by and through its attorneys, G. Scott Barhight, Jennifer R. Busse, and Whiteford, Taylor & Preston, L.L.P., hereby submits this Memorandum.

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BALTIMORE COUNTY

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IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	CIVIL ACTION No. 03-C-06-003979 AE
IN THE MATTER OF THE APPLICATION OF: 3600 GEORGETOWN CORP. - PETITIONER (NEW ENGLAND MOTOR FREIGHT) FOR SPECIAL HEARING AND SPECIAL EXCEPTION on property located on the N/S Georgetown Road, SW of Bloomfield Road 13th Election District 1st Councilmanic District Case No. 04-294-SPHX	*	
AND	*	
IN THE MATTER OF THE APPLICATION OF: THE GREATER BLOOMFIELD COMMUNITY ASSN, ET. AL. - PETITIONERS/PROTESTANTS FOR SPECIAL HEARING on property located at 3600 Georgetown Road; 3600 Georgetown Corp. - Legal Owner Case No. 04-160-SPH	*	

MEMORANDUM OF CROSS PETITIONER

STATEMENT OF THE CASE

This case involves a trucking facility (identified in Baltimore County Permits and Development Management's records as Trucking Facility 139) owned by 3600 Georgetown Corporation, doing business as New England Motor Freight ("NEMF"), located at 3600 Georgetown Road (the Property) in the Landsdowne area of Baltimore County.

The Greater Bloomfield Community Association and various individuals ("Protestants"), along with People's Counsel for Baltimore County, participated in the case below.

The parties agree on the prior zoning cases and approved site plans that are relevant to this appeal. Attached within the Appendix is a full summary of the previous zoning cases on the Property. *See*, App. 42-App. 47.

The Property is actually comprised of two parcels. The parcel containing the existing use and improvements, Parcel 121, is identified herein as the "Wilson Freight Property" due to the fact that the original special exception for a trucking terminal on the site was granted in 1961 when Parcel 121 was owned by the Wilson Freight Company. The second parcel, Parcel 115, is referred to herein as the "Weiner Parcel". It is adjacent to the Wilson Freight Property and has been acquired by NEMF. As is explained more fully in the attached summary of the previous zoning cases on the Property, the Wilson Freight Property has enjoyed special exception status as a trucking facility since 1961. As part of its request in Case 04-294-SPHX, NEMF seeks approval to expand the existing trucking facility onto the Weiner Parcel.

Instant Cases - Summary of Petitions:

Case No. 04-196-SPH: The Protestants filed this petition for special hearing, seeking a determination on several questions, including whether NEMF and the existing use of the property is lawful at this time.

Case No. 04-294-SPHX: NEMF filed these petitions for special hearing and special exception, also seeking a determination on several questions, and seeking to amend the previously approved special exception granted in Case No. 98-260-SPHX and to expand the existing special exception for a Class I trucking facility. In the alternative, NEMF filed a special exception to amend a previously approved Class I trucking facility.

Summary of Zoning Commissioner's Decision:

A hearing was held by the Zoning Commissioner on September 7, 2004. The Zoning Commissioner granted NEMF's petitions to amend the previously granted special exception relief granted in Case No. 98-260-SPHX and to expand the previously approved special exception for a Class I trucking facility. The Zoning Commissioner also ordered that the plan approved in Case No. 98-260-SPHX had been utilized and vested. Finally, the Zoning Commissioner denied the Protestants' petition for special hearing, finding against the Protestants on their questions of whether the existing trucking facility operation is a proper use of the property and whether the proposed expansion is appropriate. The decision was appealed by the Protestants and People's Counsel to the Board of Appeals.

Summary of Board of Appeals' Decisions:

On March 15, 2006, the Board filed a Cover Order, an Opinion and Order, and a Supplemental Opinion and Order. The Board's Cover Order explained that both the Opinion and Order executed by two of the Board members, Messrs. Stahl and Crizer, along with the Supplemental Opinion and Order executed by three of the Board members, Messrs. Stahl, Crizer and Wescott, constitute the full and final Order and decision of the Board in this matter. The Opinion and Order executed by the two members set forth the Board's decision that NEMF's previously granted special exception "was utilized and vested and cannot be voided"; and further ordered that a "nonconforming use continues to apply to the subject site in question, and that the existing operation is a proper use of the subject property." The Board's Order attached to its Supplemental Opinion granted a portion of the Protestants' petition for special hearing via its decision "to deny the expansion of the NEMF operation beyond that of the nonconforming use"; and denied NEMF's petition for special exception requesting approval to expand the facility.

Appellate Status:

On April 13, 2006, Protestants and People's Counsel filed a Petition for Judicial Review. On April 28, 2006, NEMF filed a Petition for Judicial Review and a Response to the Petition for Judicial Review filed by Protestants and People's Counsel. On May 10, Protestants and People's Counsel filed a Response to NEMF's Petition for Judicial Review.

The Record of Proceedings was filed on June 15, 2006. The parties filed a Stipulation for Extension of Time for Filing Memoranda which was granted via an Order dated July 7, 2006. Pursuant to that Order, the Parties' initial Memoranda are due to be filed on or before Monday, August 21, 2006. The hearing date for this matter has been set for October 20, 2006.

QUESTIONS PRESENTED

I. Whether the Board of Appeals erred as a matter of law by utilizing an improper standard in analyzing NEMF's Petition for Special Exception.

II. Whether the Circuit Court Should Reverse The Board's Decision and Grant NEMF's Petition for Special Exception.

III. Whether the Board of Appeals erred as a matter of law by finding that NEMF is a Nonconforming Trucking Facility.

STATEMENT OF THE FACTS

This case involves a trucking facility owned by 3600 Georgetown Corporation, doing business as New England Motor Freight ("NEMF"), located at 3600 Georgetown Road in the Landsdowne community of Baltimore County (Trucking Facility 139). NEMF proposes to demolish the existing building and build a new building with additional bays; reorganize parking and circulation; expand the entrance off of Joh Avenue and construct a gate and guard house; relocate the repair building further to the northwest of its current location; construct a retaining

wall, new curbing, paving, security fence, a sound barrier; provide stormwater management; and plant permanent evergreen Class A landscape screen. NEMF Ex. 2, T.4[1], pp. 19-21.

Protestants reside in the residential neighborhood adjacent to the Wilson Freight Property. Protestants oppose NEMF's development proposal due to their concerns regarding stormwater management, noise, traffic and fumes. Notwithstanding these stated concerns, in actuality, NEMF's proposal addresses and alleviates Protestants' concerns much more than the activities that are currently permitted on the property.

The proposed expansion will result in a state-of-the-art Class I Trucking Facility, one of two in Baltimore County. As the Wilson Freight Property is currently permitted to operate, it has, among other things, deteriorating paving, no sound barrier, and no stormwater management. If NEMF's proposed expansion is approved, the Protestants will benefit from the new curbing and paving, an underground stormwater management facility, a new sound barrier and a new building.

ARGUMENT

I. The Standard Of Review

The legal interpretation of regulations by an administrative agency must be given proper deference by the reviewing courts. This principal was fully explained by the Court of Appeals in *Days Cove Reclamation Co. v. Queen Anne's Co.*, 146 Md.App. 469, 807 A.2d 156 (2002), *writ denied*, 372 Md. 431, 813 A.2d 258 (2002).[2]

> The scope of our review of administrative agency action is narrow and we are "not to substitute [our] judgment for the expertise of those persons who constitute

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[1] There were five days of hearing testimony before the Board. The transcripts will be referenced as T.1 through T.5.

[2] The Court of Special Appeals in *Days Cove* reversed the decision of the Circuit Court for Queen Anne's County with directions to reverse the order of the board and instruct the board to issue the requested conditional use permit for a rubble landfill. The Court of Special Appeals held that there was a lack of substantial evidence to deny the special exception.

> the administrative agency. *United Parcel Service v. People's Counsel*, 336 Md. 569, 576-77, 650 A.2d 226, 230 (1994)(internal quotations omitted). Accordingly, this Court is tasked with "determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Board of Phys, Quality Assurance v. Banks,* 354 Md. 59, 67-68, 729 A.2d 376, 380 (1999)(quoting *United Parcel Serv.*, 336 Md. at 577, 650 A.2d at 230).
>
> With regard to questions of fact, we will only disturb the decision of an administrative agency if "a reasoning mind reasonably could [not] have reached the factual conclusion the agency reached." *Baltimore Lutheran High Sch. Ass'n v. Employment Sec. Admin.*, 302 Md. 649, 662, 490 A.2d 701, 708 (1985). Thus, "[a] reviewing court should defer to the agency's fact-finding and drawing of inferences if they are supported by the record." *Banks*, 354 Md. at 68, 729 A.2d at 380-81.

Nevertheless, the appellate courts have clearly held: "But a reviewing court is under no constraint in reversing an administrative decision which is premised solely upon an erroneous conclusion of law." *People's Counsel v. Maryland Marine Mfg., Co.*, 316 Md. 491, 497, 560 A.2d 32 (1989); *see also, Insurance Comm'r v. Engelman*, 345 Md. 402, 411, 692 A.2d 474, 479 (1997).

Therefore, the Court of Appeals has held: "Accordingly, we may reverse an administrative decision premised on erroneous legal conclusions." *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569, 709 A.2d 749 (1998)[3]; *see also, Belvoir Farms v. North*, 355 Md. 259, 267, 734 A.2d 227 (1999). If there is no administrative function remaining to be performed after the reviewing court has determined that the administrative agency has made an error of law, the reviewing court may reverse the agency's decision. *See, Belvoir Farms, supra,* at 268, *quoting, O'Donnell v. Bassler*, 289 Md. 501, 509-11, 425 A.2d 1003, 1008 (1981). This premise of law was explained in *Price v. Cohen*, 213 Md. 457, 132 A.2d 125 (1957) when the

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[3] The Court of Appeals in *Catonsville Nursing* reversed the decision of the Circuit Court for Baltimore County and remanded the case with direction that it affirm the decision of the Maryland Health Resources Planning Commission, holding that the Circuit Court misconstrued an applicable provision of law.

Court held: "The courts will reverse only where there are no grounds for reasonable debate and where the action of the Board is capricious, arbitrary, discriminatory, or illegal." *Id.* at 463.

In a case such as this that involves the review of a petition for special exception, the court's standard of review was set forth in *Mossberg v. Montgomery County*, 107 Md.App. 1, 666 A.2d. 1253 (1995), *cert. denied*, 341 Md. 649, 672 A.2d 623 (1996).[4]

> Specifically, we shall review facts and circumstances upon which the Board could have found that the special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind of degree, than that inherently associated with such a use regardless of its location within the zone.

Id. at 12, *quoting*, *People's Counsel v. Mangione*, 85 Md.App. 738, 750, 584 A.2d 1318 (1991).

In sum, the function of this Court in its review of this matter is essentially to repeat the task that was performed or should have been performed by the Board of Appeals. *See, e.g.*, *Beth Tfiloh Congregation of Baltimore City, Inc. v. Glyndon Community Ass'n, Inc.*, 152 Md.App. 97, 115-16, 831 A.2d 93 (2003).

II. The Board Erred As A Matter Of Law By Utilizing An Improper Standard In Analyzing NEMF's Petition For Special Exception.

The Board failed to properly evaluate NEMF's Petition for Special Exception. The Baltimore County Zoning Regulations ("BCZR") require that the standards of § 502.1 be met and the appellate courts have given detailed guidance in *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981) on how the agencies should evaluate the criteria enunciated in the regulations. The Court of Appeals provided a clear standard for the review of special exceptions in *Schultz*:

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4 The Court of Special Appeals in *Mossberg* reversed the decision of the Montgomery County Circuit Court to affirm the decision of the Montgomery County Board of Appeals and directed the Circuit Court to order the Board to grant the requested special exception, holding that the Board's decision was arbitrary and illegal because it was not based on substantial or sufficient evidence of adverse impacts at the subject site greater than or above and beyond the impacts elsewhere in that zone.

> We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Id. at 22.

In this case, the Board failed to apply the *Schultz* test. Instead, the Board claimed that the proposal violated BCZR §502.1A, F and G, but fashioned its own test which improperly focused on 1) whether there was a better alternative site; and 2) whether the additional proposed activity on the site would increase the adverse effects on the community above and beyond the adverse effects of the existing trucking facility use. *See*, Board's Supplemental Opinion at 9–13.

There is no dispute that a trucking facility is permitted by special exception on the property. BCZR §253.2.A.12. A special exception use is "expressly permissible" once certain statutory criteria have been satisfied. *Mossburg v. Montgomery County*, 107 Md.App. at 7 (1995). "It is part of a comprehensive zoning plan, sharing the presumption that it is in the interest of the general welfare and is, therefore valid." *Id.* The Wilson Freight Property was granted special exception status in 1961 and has been operating as a Class I Trucking Facility pursuant to its special exception since that time. Accordingly, the Wilson Freight Property's right to operate under a valid special exception has vested and it has retained its special exception status for four decades. *Powell v. Calvert County*, 368 Md. 400, 795 A.2d 96 (2002). The question before the Board was whether the proposed use of the site met the special exception standard.

In special exception cases, general compatibility with the surrounding neighborhood is not the proper issue to consider because that issue has already been resolved by the legislature. *Id.* The issue is not whether the use will have adverse effects. Obviously some adverse effects

are contemplated in a special exception case because the use is permitted by special exception, not by right. *Id.* Therefore, the proper issue to be considered in a special exception case is whether the adverse effects in a particular location would be above and beyond those inherently associated with the special exception use irrespective of its location within the zone. *Id.* (quoting *Schultz, supra*, at 22-23).

According to Webster's Third New International Dictionary, the phrase "irrespective of" is defined as:

> without respect or regard to: independent or regardless of < values his friends irrespective of what he may have to gain from them > < this payment is made irrespective of any settlement the court may order >

Id. at 1196.

Therefore, the *Schultz* test directs us to analyze whether the adverse effects at the proposed location are greater than those inherently associated with a Class I Trucking Facility "without respect or regard to" and "independent or regardless of" its location within the zone. In other words, one does not compare the proposed site to other potential sites to see whether other sites may be better. The question is whether the use would be worse here than you would ordinarily expect.

Accordingly, in this case, the issue is not whether the proposed expansion has adverse effects on the community. Any trucking facility inherently has adverse effects. Rather, the proper issue is whether NEMF's proposed amendments to its already approved plans will have adverse effects that are greater than those inherently associated with a trucking facility regardless of its location within M.L. zoned land in Baltimore County. *Id.*

Section 502 of the BCZR governs special exceptions. That section provides that before the requested special exception may be granted, it must appear that the use for which it 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 for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
F. Interfere with adequate light and air;
G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations...

BCZR §502.1.

These requirements are to be determined in accordance with the special exception standard enunciated in *Mossburg* and *Schultz*. For example, regarding the first factor set forth in BCZR §502.1.A, the determination that must be made is whether NEMF's proposed expansion would adversely affect the community any more than would be ordinarily expected, regardless of its location. By defining a trucking facility as an appropriate use by way of special exception, the County Council has basically declared that such uses, if they satisfy the other specific requirements of the Legislation, do promote the health, safety and general welfare of the community. *Schultz*, 291 Md. at 14 (analyzing the BCZR in a special exception case for a funeral home in a residential zone). Accordingly, the presumption that the general welfare is promoted by allowing trucking facilities in M.L. zones, notwithstanding their inherent effects (*ie.*, noise and fumes), cannot be overcome unless there are strong and substantial existing facts

or circumstances showing that the proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with trucking facilities regardless of their location. *Id.*

In *Schultz*, the applicants sought a special use permit to construct a funeral establishment in a residential zone. After acknowledging the inherent impacts of funeral homes, *Id.* at 13–14, the Court of Appeals set forth the proper standard for reviewing requests for special exceptions. *Id.* at 22-23.

In explaining the correct standard for special exception uses, the *Schultz* Court emphasized that special exception uses are presumed valid and are presumed to be in the interest of the general welfare. The *Schultz* Court also stressed that:

> where there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious and illegal.

Id. at 11. The Court then summarized cases which it explained set the precedent for the proper special exception standard.

> Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Id. at 15, *citing*, *e.g.*, *Anderson v. Sawyer*, 23 Md.App. 612, 329 A.2d 716 (1974); *Deen v. BGE*, 240 Md. 317, 214 A.2d 146 (1965).

The *Schultz* Court then clarified the special exception standard as follows:

> We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Id. at 22-23.

The special exception standard was further explored in *Mossburg, supra.* There, the Court of Special Appeals reversed the order of the Circuit Court for Montgomery County affirming the Montgomery County Board of Appeals' decision denying a request for special exception to operate a solid waste transfer station on an industrial zoned property in Rockville, Maryland. The Board of Appeals denied the special exception request due to its concerns over the environment and traffic. *Mossburg*, 107 Md.App., at 12. The Board of Appeals found that there would be adverse impact from runoff from the subject site into a tributary that ultimately drains into Rock Creed, the Potomac River and the Chesapeake Bay. *Id.* at 13.

The *Mossburg* Court held that there was no evidence that other areas in the zone do not drain into the same tributary. In fact, the Court found that there were not any areas in the county where stormwater runoff did not ultimately drain into the Chesapeake Bay. *Id.* The Court also noted that the Board of Appeals wrongfully ignored the Montgomery County Environmental Planning Division's findings and recommendations, including the fact that its staff would recommend conditional approval subject to the applicant revising the currently approved plan and obtaining approval from the department; and the County's legislation expressly governing environmental effects of private solid waste transfer stations in the County's comprehensive Solid Waste Management Plan. *Id.* at 13, 22-25. The Board of Appeals' finding about traffic safety related to the property's unique location in the zone where trucks cannot continue past the property due to bridge restrictions. *Id.* at 15. Noting that the legislature knew exactly the type of business or use for which it was providing the special exception, the Court found that there would be no present or future adverse impact that would be different on the subject site than elsewhere on the site's road or in other I-2 Zone areas of Montgomery County. *Id.* at 17-18.

The Board's decision to deny NEMF's Petition for Special Exception is found on pages 9 - 13 of its Supplemental Opinion. In reaching its decision, the Board cited to the standard set forth in *Schultz v. Pritts*, but then went on to improperly apply the standard of review mandated by case law. The Board held:

> Increasing this operation at this location would have a much more adverse effect on the Bloomfield neighborhood than would increasing the operation at the Quad Avenue trucking facility in Essex where large areas of undeveloped land surround the operation, according to the testimony of Jack Dillon.

See, Board's Supplemental Opinion at 12.

The correct analysis does not include comparing the proposed special exception area to other potential sites to determine whether the proposed special exception use would be better suited elsewhere. A petitioner has no duty to compare the anticipated adverse effects at the proposed site with the anticipated adverse effects of the proposed use at various other sites. Such analysis is simply not part of the special exception standard set forth by the Maryland Appellate Courts. The correct special exception standard first requires the identification of the adverse effects inherent to the proposed use, those that the use would generate regardless of where in the zone it is located. Then the reviewing body must determine whether there is sufficient evidence to prove that the adverse effects resulting from the proposed use at the proposed location will exceed the identified inherent adverse effects.

Importantly, special exceptions are not properly denied simply because there may, in the Board's opinion, be a "better" site. In *Lucas v. People's Counsel for Baltimore County*, 147 Md.App. 209, 807 A. 2d 1176 (2002), the Court stated, "the Board recognized that finding a better site was not the issue. We believe that the Board applied the appropriate standard." *Id.* at 240. Therefore, simply because the use at an alternative site may result in fewer impacts does

not necessarily mean that the impacts at the proposed location are greater than those inherent in the use.

Similarly, the mere fact that the proposed trucking facility is located in a heavy industrial area (Board's Supplemental Opinion at 11) adjacent to a residential community does not result in a denial of a special exception. One can not forget that special exception uses are presumed to be in the public interest and a valid part of the comprehensive plan. *Mossberg*, 107 Md.App. at 7. Presumably, Baltimore County could have adopted a zoning map or zoning regulations which limited trucking facilities to certain locations in the manufacturing zones, not adjacent to residential communities, but it did not do so. A similar argument against a special exception was rejected by the Court of Special Appeals in *Days Cove Reclamation Co. v. Queen Anne's County*, 146 Md.App. 469, 485, 807 A.2d 156 (2002), *writ denied*, 372 Md. 431, 813 A.2d 258 (2002).

Instead, Baltimore County adopted trucking facility regulations that require trucking facilities established after the effective date of the regulations to be at least 300 feet from a dwelling or residential zone. BCZR §410.2. The County Council did not further limit such uses by prohibiting them from being adjacent to residential zones or communities or requiring a much greater distance (i.e. 1000 feet or 1 mile).

As stated in *Days Cove*,

> In order for a unique characteristic at the neighborhood to support the denial of a conditional use it is necessary that the ordinary adverse effects of the conditional use be greater at the location in question, because of the unique characteristics at that location's neighborhood, ...

146 Md. at 487. The mere existence of a residential community can not equate to a "unique characteristic". If this were true, there would not be a 300 foot setback requirement from residential zones, and no trucking facilities could ever be granted special exception approval

adjacent to residences. BCZR §410.2. Further, the fact that the proposed additions to the trucking facility will increase activity, and therefore noise and fumes, is not a "unique characteristic" of the neighborhood. Rather, the increased activity is a characteristic of the proposal (which one would ordinarily expect). Finally, the assertion that there may be other better sites begs the question of how the adverse effects here may be greater than you would ordinarily expect. One can always assert that another location would have lesser impacts. If this was the test, no special exceptions would ever be granted.

The second prong of the Board's erroneous decision to deny NEMF's special exception was that the additional proposed activity at the Property would increase the adverse effects on the community and that therefore, the special exception should automatically be denied. This simplistic view creates a ridiculous result. For example, under such an analysis, no special exception could ever expand, regardless of its size. For a trucking facility, the addition of one more tractor trailer at the site would trigger a denial. The Board's erroneous analysis was short sighted. As is instructed by the zoning regulations, NEMF petitioned the Board to view the entire Property anew, by filing for a special exception to amend the previously granted approval and permit the proposed expansion. *See*, BCZR §410.1F. Instead of looking at the big picture and analyzing the entire Property and entire use as proposed, the Board determined that any additional activity at the existing site would "substantially affect" the impacts on the community. *See*, Board's Supplemental Opinion at 9. Such an analysis is simply not the proper standard.

The Board here failed to recognize the existence of the inherent adverse effects associated with this use. For example, the Board never acknowledged that all trucking facilities inherently bring truck traffic, noise, fumes, vibration, light, buildings, storm water to be managed, visual impacts, and the list can go on. Without recognizing these, the Board failed to

conduct the appropriate analysis. Succinctly stated, the Board never found that the proposed impacts were greater than you would ordinarily expect. Instead, the Board simply found that an increase in the use's operations would have more of an adverse effect at this location than if the use were moved to another location, and found that the increased activity proposed would have a greater impact than the existing activity. No wonder the special exception was denied. That is absolutely not the correct or even relevant analysis that needed to be performed. The proposed trucking facility will have no greater impacts here than one would ordinarily expect.

III. The Circuit Court Should Reverse The Board And Grant NEMF's Petition For Special Exception.

In this case, there was absolutely no evidence that the anticipated adverse impacts from the expansion of the trucking facility at the Property would be greater than the adverse impacts inherent to a trucking facility, irrespective of its location in the M.L. zone. In fact, the evidence in the record clearly demonstrates that the proposed plan meets all of the requirements of BCZR §502.1 and the special exception standard set forth through case law. A reviewing court is not bound by an agency's decision that is based on an error of law. *See, e.g., People's Counsel v. Mangione,* 316 Md. at 347. Here, as was the situation in the *Days Cove* case, *supra*, this Court should reverse the decision of the Board and mandate the grant of the special exception.

In the *Days Cove* case, the appellant had applied for a conditional use permit to construct a rubble landfill. The Board denied the permit. The Court of Appeals held that there was no convincing evidence to show that the site was peculiarly unsuited to the proposed use and as such, the Board had to grant the permit. The Court of Appeals noted that "the Board's decision did not distinguish between adverse effects that are common to rubble landfills and those that the

Board found to be unique to the Site." 146 Md.App. at 485. The same is true of the opinion of the Board in this instant case.

The *Days Cove* Court analyzed each of the board's findings of fact to determine which were candidates for denying the special exception. In the Court's words, "[t]hose findings that are not candidates for possibly satisfying the *Schultz* test must be culled first from the Board's list of reasons." *Id.* at 485. Among the facts that the Court held were not sufficient to deny the special exception was the fact that the existence of the landfill would result in an increase in truck traffic. The Court said that fact did not qualify as one on which the special exception could be denied because such an increase in truck traffic "is not unique to the Site." *Id.* Similarly, with regard to the protestants' real estate expert's testimony that residential property located adjacent to a landfill is less valuable than property which is not located adjacent to a landfill, the Court noted that there was "no evidence that property values would be more adversely affected by a landfill at the Site than would the value of properties adjacent to or in the vicinity of a landfill located elsewhere in the zone." *Id.* The Court went on to note:

> Indeed, when one considers that the properties in the neighborhood are already adversely affected by high voltage electrical transmission lines and their supporting towers, as well as by railroad tracks, any decline in value that the proposed landfill causes at the Site would seem to be less than that near a landfill at some other location.

Id.

Similar to the facts in the *Days Cove* case, there was no evidence submitted in this case that was sufficient on which to deny the special exception. The two adverse impacts specifically discussed by the Board in this case were noise and fumes. The Court of Special Appeals in *Days Cove* held that an increase in truck traffic is an inherent adverse effect from a landfill. Similarly, noise and fumes are inherent adverse effects from a trucking facility. Additionally, and similar

to how the Court of Special Appeals in *Days Cove* held that the adverse impact on property values would seem to be less at that site since it was already adversely impacted by high voltage transmission lines and supporting towers, in this instant case it would seem logical that the adverse impacts from noise and fumes on the surrounding community would be less at the Property since the community is already adversely impacted by the traffic it endures from being surrounded by I-95 and other major traffic corridors and various commercial and industrial uses. The Board recognized that the community is in an industrial area and has been co-existing with the current NEMF facility and the noise and fumes emanating from the site. *See*, Board's Supplemental Opinion at 11. The Board's holding that an increase in operations would have more of an adverse effect on the community than would locating the proposed use in Essex, and the holding that the increase in fumes and noise justifies denial of the special exception, does not justify denial under the special exception standard.

The Board in this instant matter accepted David Martin as an expert witness, and Mr. Martin, on behalf of NEMF, testified that NEMF's proposal satisfies all of the requirements of BCZR §502.1. *See*, Board's Supplemental Opinion at 3-4. The evidence supports that if NEMF's special exception to amend its approved plan is granted; there will be no greater detrimental effects on the health, safety and general welfare of the community than any other trucking facility located elsewhere in the M.L. zone. T.4, p. 77. All trucking facilities generate noise and fumes to some degree. There is no dispute that the proposed plan eliminates the stormwater runoff concerns. T.5, pp. 295-96. Also, there is no evidence demonstrating that the proposed plan will cause greater detrimental effects on the health, safety and general welfare of the community above and beyond that impact elsewhere within the M.L. zone either in this industrial corridor or in other M.L. zones in Baltimore County.

No where in the Board's Opinion is there the identification of inherent adverse impacts and then a comparison of those with the impacts anticipated from the proposed use. The Board's Supplemental Opinion discusses two particular adverse impacts – noise and fumes. As to noise and fumes, the Board found:

> There seems to be no question that the noise level will not be substantially affected by the addition of the 100 tractors and 200 trailers. However, the frequency of the noise generated by the increased numbers of the pieces of equipment will substantially affect the enjoyment of their property by the residents of the Bloomfield Community. Petitioner's expert, George Spanos, agreed that increased frequency can be an annoyance which can affect the enjoyment of an individual's property.
>
> While Dr. Buckley did not perform any tests on the property to determine the level of diesel fumes which permeate the air in the Bloomfield community, there is no question that the individuals can smell diesel fumes at the present time. The Petitioner points out the Federal Clean Air Act established manufacturing criteria for diesel engines and formulation criteria for diesel fuel. It is through this regulatory scheme that Congress has opted to protect human health and the environment from diesel emissions. The Maryland Department of the Environment has been delegated limited authority to implement and enforce this regulatory scheme; its regulations do not deviate from the Federal criteria. Petitioner contends that NEMF has never been cited for any type of air pollution violation. As stated by Dr. Buckley in his testimony, it is a fact that the community is:
>
> > located within an urban environment, so not only is it an urban environment where we know air pollution is higher than a rural or even a suburban environment, but it is an urban environment that is very closely situation to a number of major highways, 95 and 695, and there are many urban arterials in close proximity to that community, so already there is a heightened risk in my opinion within that community.
>
> As with noise frequency, the pollution of the air can only be increased by tripling the number of tractors that come onto the site.

See, Board's Supplemental Opinion at 9-10.

The above findings do not warrant a denial of the special exception. At no time did the Board find that the actual anticipated adverse effects from the proposed use would be greater

than those inherent with such a use regardless of where it is located in the zone. All the Board did was opine that the increase in operations would increase the adverse effects felt by the community.

In fact, there is no evidence in the record that the anticipated impacts will be greater than those that are ordinarily expect from such a use. As the appellate court in *Days Cove* did in its analysis, we should direct our attention to these areas significantly addressed by the Board. Since the Board focused on the noise and fume impacts, below is a summary of the actual testimony in the record with regard to these impacts.

THE NOISE GENERATED AT THE FACILITY WILL BE REDUCED BY THE PROPOSED SOUND BARRIER AND THE NOISE IS NO GREATER THAN WHAT IS ORDINARILY EXPECTED FOR A TRUCKING FACILITY

Protestants argued that NEMF's proposal should not be approved because of the adverse noise impacts it will have on the community. In support, the Protestants rely upon evidence introduced through flawed expert methodologies. In support of Protestants, Dr. Timothy Buckley was admitted as an expert in industrial hygiene with a specialty in environmental exposure assessment. T.1, p. 170. Dr. Buckley's testimony and curriculum vitae reveals that he lacks experience in the field of noise measurement and assessment. Dr. Buckley's methodologies are also flawed, as evidenced by his measurements in Bloomfield Exs. 6A and 6B. The measurements in these exhibits are scientifically impossible because they indicate identical sounds at identical intervals which cannot happen in the natural environment. T.5, pp. 133-40. The seven patterns of sound in Dr. Buckley's measurements are repeated identically every three hours. T.5, p. 134-37. This type of identical pattern is impossible. *Id.* Dr. Buckley's data also do not indicate the typical traffic sound levels associated with heavy traffic times on the roadways located near the Community. T.5, pp. 138-39. Any area surrounding

roads with heavy traffic experiences more noise during morning and evening rush hour, and then lower volumes of noise during the afternoon and later evening hours. *Id.* The chart provided by Dr. Buckley (Bloomfield Ex.s 6A and 6B) does not show this traffic pattern. *Id.* Unlike Dr. Buckley's measurements, Mr. Spano's data accurately depicts a random pattern of noise which is to be expected in the natural environment, and also indicates a heavier volume of traffic during the day which sharply decreases during the late evening hours. *Id.* An expert's opinion can be given no greater probative value than the facts and reasons upon which it is based. *Days Cove*, 146 Md.App. at 488-89.

Unlike Dr. Buckley's measurements, George Spano of Polysonics Corporation, set up two noise measuring stations at the Wilson Freight Property which measured noise on a twenty-four hour period basis. T.5, p. 92. Mr. Spano's data were collected by three separate measuring devices according to accepted industry practice for the measurement of sound. T.5, pp. 93-94. Mr. Spano collected his measurements on the paved area near the fence, and also twenty feet south of the existing parking lot. T.5, p. 93. Mr. Spano located one of his measurement devices where the parking lot is proposed at the south property line (the area labeled Trailer Parking, 27 spaces on NEMF Ex. 2) because of his concern that it would be located closer to the community. T.5, pp. 118-19. The sound activity was documented for the entire twenty-four hour period. T.5, p. 94-95.

According to Mr. Spano's noise measurements at the Wilson Freight Property, NEMF complies with the standard for residential levels at its property line in accordance with Maryland regulations for daytime and nighttime hours. T. 5, pp. 107-08, 114-17. The majority of noises emanating from the Wilson Freight Property are generated far away from the community, off of Joh Avenue. T.5, p. 116. As a result, the community does not hear, to any substantial degree,

trucks entering the sight, trucks being fueled or trucks receiving maintenance. T.5, p. 116. In the event NEMF's request is approved, the increase in trucks at the proposed Class I Trucking Facility will not affect sound levels much, if at all. T.5, p. 118, 191. As Mr. Spano testified, since sound is a logarithm, an increase in the amount of trucks on the Wilson Freight Property does not really affect the level of sounds heard in the community. T.5, p. 118.

George Harman of the Maryland Department of the Environment ("MDE") also testified. Mr. Harman provided Protestants with some samples of truck noise that the MDE collected in previous cases. Bloomfield Ex. 1. Mr. Harman's data was not collected at Wilson Freight Property and it was not collected on the trucks or model of trucks used at the Wilson Freight Property. Mr. Harman's data was also measured at distances much closer than those between the community and the Wilson Freight Property. T.5, p. 128. In addition, Mr. Harman's measurements were collected in a "free field," resulting in sound measurements that are higher than those existing at the Wilson Freight Property. T.5, pp. 183-85. Because the Wilson Freight Property is on higher ground than the community and because there are trees and other obstructions between the Wilson Freight Property and the community, the sounds generated at the Wilson Freight Property are lessened by the time they reach the community. Mr. Harman's data do not take the topography changes, trees and other obstructions (including proposed sound wall mitigation) into account. *Id.* As a result, Mr. Harman's noise measurements are not directly predictive of the noises emanating from the current or proposed operations. *Id.*

The MDE receives approximately 150 noise complaints each year. T.1, pp. 166-67. The MDE, however, has never received a single complaint against NEMF at the Wilson Freight Property. T.1, pp. 167-68. In addition, Captain John Spiroff, a Baltimore County police officer,

testified that the police have never been called to NEMF to issue any kind of violation, noise or otherwise. T.1, p. 54-55.

One would expect that in all the years of litigation on this site, and given the testimonial evidence provided by Protestants concerning noise, at least one noise complaint would have been filed with the MDE or the local police. That, however, is not the case. No complaints have ever been filed against the Wilson Freight Property. The community is surrounded by heavy industrial and commercial businesses that require trucks to enter and exit their facilities. T.1, pp. 17-18. The community is also extremely close to major roadways such as Caton Avenue, Washington Boulevard and Interstate 95. *Id.* Railroad noises are also heard in the community. T.5, p. 109. The sources of noise heard by the community are infinite. The amount of noise generated by NEMF is negligible compared to the other noises the community endures simply because of its urban location within a major road network and heavy industrial area. T.5, p. 91. Notably, Captain Spiroff characterizes the community as "quiet." T.1, pp. 52-53.

In any event, NEMF proposes to construct a sound barrier that will eliminate many noises generated by the proposed improvements. In addition, NEMF does not propose any type of outdoor loud speaker system. T.4, p. 21. Other noises generated by trucks traveling to and from the proposed improvements are not any greater than what is ordinarily expected for a trucking facility regardless of its location. In fact, as Mr. Martin testified, the noises associated with NEMF's trucks are less than those ordinarily occurring at other trucking facilities in M.L. zones because of the short distance the trucks must travel to reach the major road networks such as Interstate 95 and the Baltimore beltway. In addition, Mr. Filipowicz, terminal manager of the Facility, testified that NEMF's trucks are subject to an aggressive preventative maintenance program whereby the oil, filters, exhaust, brakes, etc. are changed and inspected every sixty

days. T.5, pp. 30-31. Mr. Filipowicz also testified that NEMF has not received any noise violations. T.5, p. 35. Accordingly, any noises resulting from NEMF's proposed expansion will not be above and beyond those noises ordinarily expected from a trucking facility regardless of its location within the M.L. zone. If anything, given the proposed sound barrier, the noise will be less than one would ordinarily expect.

NEMF'S PROPOSAL WILL NOT CREATE ANY GREATER FUMES THAN WHAT IS ORDINARILY EXPECTED AT A TRUCKING FACILITY

Protestants complained that they smell fumes generated by the Wilson Freight Property. To that end, Dr. Buckley testified that such fumes may have negative impacts on the community's health. It is not surprising that Protestants claim to smell fumes. After all, they are surrounded by major roads such as Joh Avenue, Caton Avenue, Washington Boulevard, Interstate 95 and Interstate 695. They are also located close to other heavy industrial businesses that require trucks to travel to and from their facilities. As a consequence, the community is subject to fumes from a myriad of sources. The amount of fumes generated by NEMF is minimal compared to the other potential sources of fumes surrounding the community. Moreover, in light of all of the sources of fumes surrounding the community, it is impossible to identify which fumes originate at the Wilson Freight Property.

Protestants assert that the Wilson Freight Property is a source of air pollution that is negatively impacting the adjacent neighborhood. Protestants' assertion is not based upon any air quality monitoring or other data, as no such data was introduced at the hearing. Rather, Protestants rely solely upon the opinion of Dr. Buckley.

Without taking any air quality samples, and without determining the source of any alleged pollutants, Dr. Buckley baldly opined that the Wilson Freight Property is currently impacting the community and that such impact will increase upon the proposed expansion. *See*,

Board's Supplemental Opinion at 5. Dr. Buckley's opinion is entirely speculative and, by his own admission, not based on the scientific methodology used to evaluate air pollution impacts. T. 1, p. 205-206.

Moreover, in forming his opinion, Dr. Buckley apparently did not rely on any other air quality studies of trucking facilities, did not visit any trucking facilities, and had no idea regarding the location of other trucking facilities within Baltimore County and the proximity of such facilities to residential areas.

While Dr. Buckley may have notable academic credentials, his opinion appears to rely solely on conjecture, rather than data and analysis. Consequently, no weight should be afforded Dr. Buckley's opinion.

Fortunately, there are regulations governing air quality. It is uncontroverted that the Class I Trucking Facility and any emissions related to the operation of trucks thereon, is not subject to air quality regulations. Rather than regulating emissions from individual vehicles or facilities where such vehicles are operated, the Federal Clean Air Act addresses established manufacturing criteria for diesel engines and formulation criteria for diesel fuel. 42 U.S.C. §7401 *et seq.* It is through this regulatory scheme that Congress has opted to protect human health and the environment from diesel emissions. The MDE has been delegated limited authority to implement and enforce this regulatory scheme; its regulations do not deviate from the Federal criteria. *See, e.g.,* COMAR 11.21.02 (Diesel Vehicle Emissions Control Program). Importantly, it is uncontradicted that NEMF has never been cited for any type of air pollution violation. T.5, p. 35.

Like the noise issue, one must wonder about the assertion of intolerable air pollution emanating from the Wilson Freight Property. If the conditions are so unpleasant, why has there

never been a complaint, and why has NEMF never been cited for any air pollution violation? There is simply no evidence that NEMF is violating any air pollution regulations. Dr. Buckley provided no evidence that any pollutants or fumes emanate from the Wilson Freight Property in a harmful manner. In sum, Dr. Buckley merely opined that air pollution is bad for you, that the proposed facility will generate harmful fumes, and that therefore the proposed facility is bad and should be denied.

NEMF's request for special exception to amend its approved plan and existing operations should have been granted because the proposal would not create any adverse impacts above and beyond those inherent characteristics ordinarily associated with a trucking facility. Here, the issue is not whether the community will suffer any adverse impacts as a result of the proposed expansion. Protestants did not present facts or valid reasons to support a conclusion that the grant of the requested special exception would adversely affect adjoining and surrounding properties in a manner greater than you would ordinarily expect. As stated in *Schultz*, absent any fact or circumstance negating the presumption that the proposed special exception is in the interest of the general welfare, and therefore, valid, the special exception must be granted. *Schultz* 291 Md. at 11-15, 22-23. Therefore, since the evidence in the record demonstrates that the proposed changes comply with the applicable provisions of BCZR §410, and demonstrates that there was no showing of adverse impacts greater than those one would ordinarily expect, NEMF's request for special exception should have been granted.

IV. The Board Erred As A Matter Of Law In Finding That The Property Enjoys Nonconforming Use Status.

The Board found that the Wilson Freight Property enjoys nonconforming use status. *See*, Board's Opinion at 4-6. NEMF is not asserting that it is either a nonconforming use or a

nonconforming trucking facility. In fact, in its Closing Memorandum to the Board, NEMF explained that it is a Conforming Class I Trucking Facility. This distinction is important because it determines which regulations apply to expansions of existing Class I Trucking Facilities.

Protestants' petition for special hearing raised the question of whether NEMF lost any ability to claim it is a non-conforming use. Presumably, Protestants raised this issue as an attempt to terminate the trucking facility use on the Property. Similarly, People's Counsel's argued to the Board that NEMF's proposal for expansion should be denied on the grounds that it allegedly violates the 25% rule that relates to nonconforming uses. BCZR §104. These arguments are irrelevant and have only confused the issues. NEMF is neither a nonconforming use nor a nonconforming trucking facility. NEMF enjoys its special exception status as a Conforming Class I Trucking Facility.

The term "nonconforming" typically refers to uses and/or structures that are found to have been in existence before the application of regulation(s) which would limit and/or prohibit the existence of the particular use. In order to validate a nonconforming use, the Zoning Commissioner must determine that sufficient evidence exists to establish that the use has been operated at the subject site (without interruption for more than a 1 year period) since prior to the enactment of whichever regulation would limit and/or prohibit its existence.

A "nonconforming trucking facility" is an entirely different concept. This is because the regulations dealing with trucking facilities, which were enacted in 1978, specifically required that as of the enactment of those regulations, all trucking facilities had to either come into "conformance" or be subject to the a particular set of trucking facility regulations - those specifically set forth for "nonconforming trucking facilities". The evidence is uncontroverted that the Wilson Freight Property came into compliance. Per the regulations, therefore, the

Wilson Freight Property is a Conforming Trucking Facility. The clearest fact on this issue is the May 7, 1982 letter from James E. Dyer, the then Zoning Supervisor of Baltimore County, which confirmed that Wilson Freight was in compliance with Bill 1801976. *See*, Bloomfield Ex. 18.

Furthermore, the Board erred as a matter of law by finding that NEMF enjoys nonconforming use status because the Board also held that the special exception granted in 1961 "has been continually in use as to the Wilson property, has vested, presently exists and cannot be voided." Where a property enjoys special exception status for a use, it is unnecessary and nonsensical to hold that the same property enjoys nonconforming use status for that same use. In the event that a property was eligible for nonconforming use status, the grant of a special exception for that use would negate the need for nonconforming use status.

There is no dispute that the Wilson Freight Property is a Class I Trucking Facility as defined in BCZR §101 at 1-31, 1-32. Accordingly, section 410 of the BCZR governs the activities occurring at the Class I Trucking Facility. Pursuant to the plain reading of section 410 of the BCZR, the activity at the Wilson Freight Property is a conforming Class I Trucking Facility.

BCZR §410.1 applies to Class I trucking facilities existing on the effective date of the Legislation, or April 18, 1976. If a trucking facility did not have approved plans on file with the County at that time, it was required to file plans demonstrating its layout and operation of use within one year of the passage of the law. BCZR §§410.1.A.1, 410.1.A.2, 410.3.C.1. Within one year of the date those plans were filed, the Zoning Commissioner was required to determine if they complied with selected provisions of the regulations or whether they were permissibly exempt from the regulations. BCZR §§410.1.B.1, 410.1.B.2, 410.1.B.3. If the Zoning Commissioner determined that the filed plans did not comply with the appropriate regulations,

and were not permissibly exempt from those regulations, the trucking facility was required to file a program of compliance showing that the appropriate regulations would be met within twenty seven months (BCZR §410.1.C.1) or a petition requesting that the facility not be required to meet the appropriate regulations because conformance with the provision would cause undue hardship and would not be in the general interest of the community. BCZR §410.1.C.2. *See also, Umerley v. People's Counsel for Baltimore County*, 108 Md.App. 497, 501, 672 A.2d 173 (1996) (PC Ex. 3) (summarizing procedure set forth in BCZR §410). If the Zoning Commissioner determined that a trucking facility did not conform to the Legislation, the trucking facility would be required to petition for a variance from the particular provision of the Legislation in which it was nonconforming. *See, e.g.*, BCZR §410.1.B.3.

The Class I Trucking Facility has existed on the Wilson Freight Property for over forty years. It was granted special exception approval on October 11, 1961 in Case 48-90-RX. In the 1976 Comprehensive Zoning Map process the property was rezoned from M.L. to M.L.R. – I.M. Subsequently in 1976, the County Council enacted Bill No. 18-76 which is now codified as BCZR §410. A site plan was filed for the Class I Trucking Facility and was approved on June 16, 1981 by James E. Dyer, Zoning Supervisor, and by the Chairman of the County Trucking Facilities Development Officials on June 15, 1981. Subsequently, the Class I Trucking Facility was inspected by Zoning Enforcement whereby it was "found to be in compliance" with the approved site plan. Bloomfield Ex. 18. *See also* Bloomfield Ex. 20, p. 2 (stating that the use on the property was found to be in existence prior to April 18, 1976 and to be in compliance with the provisions of Bill No. 18-76); Bloomfield Ex. 22, p. 2 (stating that the special exception for a Class I Trucking Facility granted to the Wilson Freight Property in 1961 was later confirmed by the 1982 letter written by James E. Dyer). The Class I Trucking Facility was not required to seek

a variance from any of the Legislation's provisions, nor was it required to file a program of compliance or a petition requesting that it not be required to meet the appropriate regulations as required by BCZR §410.1.C. Hence, the Wilson Freight Property is a conforming Class I Trucking Facility which meets all applicable Baltimore County Zoning Regulations. Bloomfield Ex. 18; T.4, pp. 23-25.

David Martin of G.W. Stephens & Associates testified that forty-four trucking facilities operate in Baltimore County. T.4, pp. 26-27. Some of these facilities were required to obtain variances in order to comply with BCZR §410 and others, such as the Wilson Freight Property, were not.[5] T.4, pp. 103- 113; NEMF Exs. 9-14. For example, the trucking facility located at 8216 and 8224 Bletzer Road (NEMF Ex. 13) requested a variance from BCZR §410.A.3(b)(6). T.4, pp. 108-09. The trucking facility located at 8227 Fischer Road (NEMF Ex. 14) requested a variance from BCZR §410.A.2 to permit a setback of 100 feet from a residential area and also requested a paving variance. T.4, pp. 109-10. On the other hand, the trucking facilities located at 2000 Hammonds Ferry Road (NEMF Ex. 8), 3510 Washington Boulevard (NEMF Ex. 12), 4412 Pistoria Road (NEMF Ex. 10), 4546 Annapolis Road (NEMF Ex. 9) and 2312 Eskow Road (NEMF Ex. 11) were not required to request variances and are therefore conforming trucking facilities. Because the Wilson Freight Property was not required to obtain a variance from BCZR §410.2, and because it was approved by the Zoning Supervisor and Chairman of the County Trucking Facilities Development Officials, it is a conforming Class I Trucking Facility under the Legislation.

[5] The fact that some of the forty four facilities are Class II trucking facilities is irrelevant. Although some facilities are Class II facilities, the Legislation's language concerning the process and procedure for nonconformance is the same for Class I and Class II trucking facilities. BCZR §410.1.B & C; BCZR §410A.1.B & C.

CONCLUSION

For the reasons set forth above, NEMF respectfully requests this Honorable Court reverse the Board's decision to deny NEMF's Petition for Special Exception and enter its Order granting the special exception. The Special Exception was improperly denied and should be granted.

Additionally, and also for the reasons set forth above, NEMF respectfully requests this Honorable Court reverse the Board's decision that the existing Trucking Facility is a nonconforming use or a nonconforming Trucking Facility. NEMF is a conforming Class I Trucking Facility. Those portions of the trucking facility regulations that relate to conforming Class I Trucking Facilities apply to the NEMF facility. *See*, BCZR §§410.1A, §410.1B.1-2., 410.2, 410.3, and 410.4. Conversely, those portions of the trucking facility regulations that specifically only relate to nonconforming Trucking Facilities do not apply to the NEMF facility. *See, e.g.*, BCZR §§410.1B.3, 410.1C, 410.1D, and 410.1E.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of August, 2006 a copy of the foregoing Memorandum of Petitioner was mailed first class, postage prepaid to:

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§ 7401. Congressional findings and declaration of purpose

(a) Findings

The Congress finds—

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

(b) Declaration

The purposes of this subchapter are—

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution prevention and control programs.

(c) Pollution prevention

A primary goal of this chapter is to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of this chapter, for pollution prevention.

(July 14, 1955, c. 360, Title I, § 101, formerly § 1, as added Dec. 17, 1963, Pub.L. 88–206, § 1, 77 Stat. 392, and renumbered § 101 and amended Oct. 20, 1965, Pub.L. 89–272, Title I, § 101(2), (3), 79 Stat. 992; Nov. 21, 1967, Pub.L. 90–148, § 2, 81 Stat. 485; Nov. 15, 1990, Pub.L. 101–549, Title I, § 108(k), 104 Stat. 2468.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1963 Acts. House Report No. 508 and Conference Report No. 1003, see 1963 U.S. Code Cong. and Adm. News, p. 1260.

1965 Acts. House Report No. 899, see 1965 U.S. Code Cong. and Adm. News, p. 3608.

1967 Acts. House Report No. 728 and Conference Report No. 916, see 1967 U.S. Code Cong. and Adm. News, p. 1938.

1990 Acts. Senate Report No. 101–228, House Conference Report No. 101–952, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 3385.

Codifications

Section was formerly classified to section 1857 of this title.

Amendments

1990 Amendments. Subsec. (a)(3). Pub.L. 101–549, § 108(k)(1), inserted parenthetical reference to the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source.

Subsec. (b)(4). Pub.L. 101–549, § 108(k)(2), substituted "air pollution prevention and control" for "air pollution control".

Subsec. (c). Pub.L. 101–549, § 108(k)(3), added subsec. (c).

1967 Amendments. Subsec. (b). Pub.L. 90–148 inserted "and enhance the quality of" following "to protect".

1965 Amendments. Subsec. (b). Pub.L. 89–272, substituted "this title" for "this Act," which for purposes of codification has been changed to "this subchapter".

Effective and Applicability Provisions

1990 Acts. Section 711(b) of Pub.L. 101–549 provided that:

"(b) [Except as otherwise expressly provided, the amendments made by this Act [Pub.L. 101–549, Nov. 15, 1990, 104 Stat. 2399, popularly known as the Clean Air Act Amendments of 1990, for distribution of this Act to the Code see Tables] shall be effective on the date of enactment of this Act [Nov. 15, 1990].

"(2) [The Administrator's authority to assess civil penalties under section 205(c) of the Clean Air Act, as amended by this Act [section 7524(c) of this title], shall apply to violations that occur or continue on or after the date of enactment of this Act [Nov. 15, 1990]. Civil penalties for violations that occur prior to such date and do not continue after such date shall be assessed in accordance with the provisions of the Clean Air Act [this chapter] in effect immediately prior to the date of enactment of this Act.

"(3) [The civil penalties prescribed under sections 205(a) and 211(d)(1) of the Clean Air Act, as amended by this Act [sections 7524(a) and 7545(d)(1) of this title], shall apply to violations that occur on or after the date of enactment of this Act [Nov. 15, 1990]. Violations that occur prior to such date shall be subject to the civil penalty provisions prescribed in sections 205(a) and 211(d) of the Clean Air Act in effect immediately prior to the enactment of this Act. The injunctive authority prescribed under section 211(d)(2) of the Clean Air Act, as amended by this Act [section 7545(d)(2) of this title], shall apply to violations that occur or continue on or after the date of enactment of this Act [Nov. 15, 1990].

"(4) For purposes of paragraphs (2) and (3), where the date of a violation cannot be determined it will be assumed to be the date on which the violation is discovered."

1977 Acts. Section 406 of Pub.L. 95–95, as amended by Pub.L. 95–190, § 14(a)(6), Nov. 16, 1977, 91 Stat. 1405, provided that:

"(a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Clean Air Act [this chapter], as in effect immediately prior to the d
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"(2) The Administrator's authority to assess civil penalties under section 205(c) of the Clean Air Act, as amended by this Act [section 7524(c) of this title], shall apply to violations that occur or continue on or after the date of enactment of this Act [Nov. 15, 1990]. Civil penalties for violations that occur prior to such date and do not continue after such date shall be assessed in accordance with the provisions of the Clean Air Act [this chapter] in effect immediately prior to the date of enactment of this Act.

"(3) The civil penalties prescribed under sections 205(a) and 211(d)(1) of the Clean Air Act, as amended by this Act [sections 7524(a) and 7545(d)(1) of this title], shall apply to violations that occur on or after the date of enactment of this Act [Nov. 15, 1990]. Violations that occur prior to such date shall be subject to the civil penalty provisions prescribed in sections 205(a) and 211(d) of the Clean Air Act in effect immediately prior to the enactment of this Act. The injunctive authority prescribed under section 211(d)(2) of the Clean Air Act, as amended by this Act [section 7545(d)(2) of this title], shall apply to violations that occur or continue on or after the date of enactment of this Act [Nov. 15, 1990].

"(4) For purposes of paragraphs (2) and (3), where the date of a violation cannot be determined it will be assumed to be the date on which the violation is discovered."

1977 Acts. Section 406 of Pub.L. 95–95, as amended by Pub.L. 95–190, § 14(a)(6), Nov. 16, 1977, 91 Stat. 1405, provided that:

"(a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Clean Air Act [this chapter], as in effect immediately prior to the date of enactment of this Act [Aug. 7, 1977] shall abate by reason of the taking effect of the amendments made by this Act [see Short Title of 1977 Acts note under this section]. The court may, on its own motion or that of any party made at any time within twelve months after such taking effect, allow the same to be maintained by or against the Administrator or such officer or employee.

"(b) All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations or other actions duly issued, made, or taken by or pursuant to the Clean Air Act [this chapter], as in effect immediately prior to the date of enactment of this Act [Aug. 7, 1977], and pertaining to any functions, powers, requirements, and duties under the Clean Air Act, as in effect immediately prior to the date of enactment of this Act, and not suspended by the Administrator or the courts, shall continue in full force and effect after the date of enactment of this Act until modified or rescinded in accordance with the Clean Air Act as amended by this Act [see Short Title of 1977 Acts note under this section].

"(c) Nothing in this Act [see Short Title of 1977 Acts note under this section] nor any action taken pursuant to this Act shall in any way affect any requirement of an approved implementation plan in effect under section 110 of the Clean Air Act [section 7410 of this title] or any other provision of the Act in effect under the Clean Air Act before the date of enactment of this section [Aug. 7, 1977] until modified or rescinded in accordance with the Clean Air Act [this chapter] as amended by this Act [see Short Title of 1977 Acts note under this section].

"(d)(1) Except as otherwise expressly provided, the amendments made by this Act [see Short Title of 1977 Acts note under this section] shall be effective on date of enactment [Aug. 7, 1977].

"(2) Except as otherwise expressly provided, each State required to revise its applicable implementation plan by reason of any amendment made by this Act [see Short Title of 1977 Acts note under this section] shall adopt and submit to the Administrator of the Environmental Protection Administration such plan revision before the later of the date—

"(A) one year after the date of enactment of this Act [Aug. 7, 1977], or

"(B) nine months after the date of promulgation by the Administrator of the Environmental Protection Administration of any regulations under an amendment made by this Act [see Short Title of 1977 Acts note under this section] which are necessary for the approval of such plan revision".

Transfer of Functions

Reorg. Plan No. 3 of 1970, § 2(a)(3), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, transferred to the Administrator of the Environmental Protection Agency the functions vested by law in the Secretary of Health, Education, and Welfare or in the Department of Health, Education, and Welfare which are administered through the Environmental Health Service, including the functions exercised by the National Air Pollution Control Administration, and the Environmental Control Administration's Bureau of Solid Waste Management, Bureau of Water Hygiene, and Bureau of Radiological Health, except insofar as the functions carried out by the Bureau of Radiological Health pertain to regulation of radiation from consumer products, including electronic product radiation, radiation as used in the healing arts, occupational exposure to radiation, and research, technical assistance, and training related to radiation from consumer products, radiation as used in the healing arts, and occupational exposure to radiation.

Savings Provisions

Section 711(a) of Pub.L. 101-549 provided that: "Except as otherwise expressly provided in this Act [Pub.L. 101-549, Nov. 15, 1990, 104 Stat. 2399, popularly known as the Clean Air Act Amendments of 1990, for distribution of this Act to the Code see Tables], no suit, action, or other proceeding lawfully commenced by the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Clean Air Act [this chapter], as in effect immediately prior to the date of enactment of this Act, [Nov. 15, 1990], shall abate by reason of the taking effect of the amendments made by this Act."

Prior Provisions

Provisions similar to those comprising this section were contained in a prior section 1857 of this title, Act July 14, 1955, c. 360, § 1, 69 Stat. 322, prior to the general amendment of this chapter by Pub.L. 88-206.

Short Title

1999 Amendments. Pub.L. 106-40, § 1, Aug. 5, 1999, 113 Stat. 207, provided that: This Act [amending section 7412 of this title, and enacting provisions set out as notes under section 7412 of this title] may be cited as the 'Chemical Safety Information, Site Security and Fuels Regulatory Relief Act'."

1998 Amendments. Pub.L. 105-280, § 1, Oct. 27, 1998, 112 Stat. 2773, provided that: "This Act [amending section 7511b of this title, and enacting provisions set out as notes under section 7511b of this title] may be cited as the 'Border Smog Reduction Act of 1998'."

1990 Amendments. Pub.L. 101-549, Nov. 15, 1990, 104 Stat. 2399, is popularly known as the "Clean Air Act Amendments of 1990". See Tables for classification.

1981 Amendments. Pub.L. 97-23, § 1, July 17, 1981, 95 Stat. 139, provided: "That this Act [amending sections 7410 and 7413 of this title] may be cited as the 'Steel Industry Compliance Extension Act of 1981'."

1977 Amendments. Pub.L. 95-95, § 1, Aug. 7, 1977, 91 Stat. 685, provided that: "This Act [enacting sections 4362, 7419 to 7428, 7450 to 7459, 7470 to 7479, 7491, 7501 to 7508, 7548, 7549, 7551 to 7617 to 7625, and 7626 of this title, amending sections 7403, 7405, 7407 to 7415, 7417, 7418, 7521 to 7525, 7541 7543, 7544, 7545, 7550, 7571, 7601 to 7605, 7607, 7612, 7613, and 7616 of this title, repealing section 1857c-10 of this title and enacting provisions set out as notes under this section and sections 7403, 7422, 7470, 7479, 7502, 7521 7548, and 7621 of this title and section 792 of Title 15, Commerce and Trade] may be cited as the 'Clean Air Act Amendments of 1977'."

1970 Amendments. Pub.L. 91-604, § 1, Dec. 31, 1970, 84 Stat. 1676, provided: "That this Act [amending this chapter generally] may be cited as the 'Clean Air Amendments of 1970'."

Section 401 of Act July 14, 1955, as added Dec. 31, 1970, Pub.L. 91-604, § 14, 84 Stat. 1709, provided that: "This title [subchapter IV of this chapter] may be cited as the 'Noise Pollution and Abatement Act of 1970'."

1967 Amendments. Section 1 of Pub.L. 90-148 provided: "That this Act [amending this chapter generally] may be cited as the 'Air Quality Act of 1967'."

1966 Amendments. Pub.L. 89-675, Oct. 15, 1966, 80 Stat. 954, provided: "That this Act [amending sections 7405 and 7616 of this title and repealing section 1857f-8 of this title] may be cited as the 'Clean Air Act Amendments of 1966'."

1965 Amendments. Section 201 of Act July 14, 1955, as added by Pub.L. 89-272, Title I, § 101(8), Oct. 20, 1965, 79 Stat. 992, and amended by Pub.L. 90-148, § 2, Nov. 21, 1967, 81 Stat. 499, provided that: "This title [subchapter II of this chapter] may be cited as the 'National Emission Standards Act'." Prior to its amendment by Pub.L. 90-148, Title II of Act July 14, 1955, was known as the "Motor Vehicle Air Pollution Control Act".

1963 Acts. Section 317, formerly section 14 of Act July 14, 1955, as added by section 1 of Pub.L. 88-206, renumbered section 307 by section 101(4) of Pub.L. 89-272, renumbered section 310 by section 2 of Pub.L. 90-148, and renumbered section 317 by Pub.L. 91-604, § 12(a), Dec. 31, 1970, 84 Stat. 1705, provided that: "This Act [this chapter] may be cited as the 'Clean Air Act'."

Federal Compliance with Pollution Control Standards

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, as amended, set out as a note under section 4321 of this title.

Impact on Small Communities

Section 810 of Pub.L. 101-549 provided that: "Before implementing a provision of this Act [Pub.L. 101-549, Nov. 15, 1990, 104 Stat. 2399, popularly known as the Clean Air Act Amendments of 1990, for distribution of this Act to the Code, see Tables], the Administrator of the Environmental Protection Agency shall consult with the Small Communities Coordinator of the Environmental Protection Agency to determine the impact of such provision on small communities, including the estimated cost of compliance with such provision."

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1963 Acts. Section 317, formerly section 14 of Act July 14, 1955, as added by section 1 of Pub.L. 88-206, renumbered section 307 by section 101(4) of Pub.L. 89-272, renumbered section 310 by section 2 of Pub.L. 90-148, and renumbered section 317 by Pub.L. 91-604, § 12(a), Dec. 31, 1970, 84 Stat. 1705, provided that: "This Act [this chapter] may be cited as the 'Clean Air Act'."

Federal Compliance with Pollution Control Standards

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, as amended, set out as a note under section 4321 of this title.

Impact on Small Communities

Section 810 of Pub.L. 101-549 provided that: "Before implementing a provision of this Act [Pub.L. 101-549, Nov. 15, 1990, 104 Stat. 2399, popularly known as the Clean Air Act Amendments of 1990, for distribution of this Act to the Code, see Tables], the Administrator of the Environmental Protection Agency shall consult with the Small Communities Coordinator of the Environmental Protection Agency to determine the impact of such provision on small communities, including the estimated cost of compliance with such provision."

List of Chemical Contaminants From Environmental Pollution Found in Human Tissue

Pub.L. 95-95, Title IV, § 403(c), Aug. 7, 1977, 91 Stat. 792, provided that, not later than twelve months after Aug. 7, 1977, the Administrator of the Environmental Protection Agency was to publish throughout the United States a list of all known chemical contaminants resulting from environmental pollution which had been found in human tissue including blood, urine, breast milk, and all other human tissue, and that, not later than eighteen months after Aug. 7, 1977, the Administrator was to publish in the same manner an explanation of what was known about the manner in which the chemicals had entered the environment and thereafter human tissue, and, further, that the Administrator, in consultation with National Institutes of Health, the National Center for Health Statistics, and the National Center for Health Services Research and Development, if feasible, was to conduct an epidemiological study to demonstrate the relationship between levels of chemicals in the environment and in human tissue.

National Industrial Pollution Control Council

For provisions relating to the establishment of the National Industrial Pollution Control Council, see Ex. Ord. No. 11523, Apr. 9, 1970, 35 F.R. 5993, set out as a note under section 4321 of this title.

Radon Assessment and Mitigation

Pub.L. 99-499, Title I, § 118(k), Oct. 17, 1986, 100 Stat. 1659, as amended Pub.L. 105-362, Title V, § 501(i), Nov. 10, 1998, 112 Stat. 3284, provided that:

"**(1) National assessment of radon gas.**—No later than one year after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to the Congress a report which shall, to the extent possible—

"**(A)** identify the locations in the United States where radon is found in structures where people normally live or work, including educational institutions;

"**(B)** assess the levels of radon gas that are present in such structures;

"**(C)** determine the level of radon gas and radon daughters which poses a threat to human health and assess for each location identified under subpara-

graph (A) the extent of the threat to human health;

"(D) determine methods of reducing or eliminating the threat to human health of radon gas and radon daughters; and

"(E) include guidance and public information materials based on the findings or research of mitigating radon.

"(2) **Radon mitigation demonstration program.**—

"(A) **Demonstration program.**—The Administrator shall conduct a demonstration program to test methods and technologies of reducing or eliminating radon gas and radon daughters where it poses a threat to human health. The Administrator shall take into consideration any demonstration program underway in the Reading Prong of Pennsylvania, New Jersey, and New York and at other sites prior to enactment. The demonstration program under this section shall be conducted in the Reading Prong, and at such other sites as the Administrator considers appropriate.

"(B) **Liability.**—Liability, if any, for persons undertaking activities pursuant to the radon mitigation demonstration program authorized under this subsection shall be determined under principles of existing law.

"(3) **Construction of section.**—Nothing in this subsection shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this subsection. Nothing in paragraph (1) or (2) shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law."

Radon Gas and Indoor Air Quality Research

Pub.L. 99–499, Title IV, §§ 401 to 405, Oct. 17, 1986, 100 Stat. 1758, provided that:

"Sec. 401. Short title.

"This title may be cited as the 'Radon Gas and Indoor Air Quality Research Act of 1986'.

"Sec. 402. Findings.

"The Congress finds that:

"(1) High levels of radon gas pose a serious health threat in structures in certain areas of the country.

"(2) Various scientific studies have suggested that exposure to radon, including exposure to naturally occurring radon and indoor air pollutants, poses a public health risk.

"(3) Existing Federal radon and indoor air pollutant research programs are fragmented and underfunded.

"(4) An adequate information base concerning exposure to radon and indoor air pollutants should be developed by the appropriate Federal agencies.

"Sec. 403. Radon gas and indoor air quality research program.

"(a) **Design of program.**—The Administrator of the Environmental Protection Agency shall establish a research program with respect to radon gas and indoor air quality. Such program shall be designed to—

"(1) gather data and information on all aspects of indoor air quality in order to contribute to the understanding of health problems associated with the existence of air pollutants in the indoor environment;

"(2) coordinate Federal, State, local, and private research and development efforts relating to the improvement of indoor air quality; and

"(3) assess appropriate Federal Government actions to mitigate the environmental and health risks associated with indoor air quality problems.

"(b) **Program requirements.**—The research program required under this section shall include—

"(1) research and development concerning the identification, characterization, and monitoring of the sources and levels of indoor air pollution, including radon, which includes research and development relating to—

"(A) the measurement of various pollutant concentrations and their strengths and sources,

"(B) high-risk building types, and

"(C) instruments for indoor air quality data collection;

"(2) research relating to the effects of indoor air pollution and radon on human health;

"(3) research and development relating to control technologies or mitigation measures to prevent or abate indoor air pollution (including the development, evaluation, and testing of individual and generic control devices and systems);

"(4) demonstration of methods for reducing or eliminating indoor air pollution and radon, including sealing, venting, and other methods that the Administrator determines may be effective;

"(5) research, to be carried out in conjunction with the Secretary of Housing and Urban Development, for the purpose of developing—

"(A) methods for assessing the potential for radon contamination of new construction, including (but not limited to) consideration of the moisture content of soil, porosity of soil, and radon content of soil; and

"(B) design measures to avoid indoor air pollution; and

"(6) the dissemination of information to assure the public availability of the findings of the activities under this section.

"(c) **Advisory committees.**—The Administrator shall establish a committee comprised of individuals representing Federal agencies concerned with various aspects of indoor air quality and an advisory group comprised of individuals representing the States, the scientific community, industry, and public interest organizations to assist him in carrying out the research program for radon gas and indoor air quality.

"(d) **Implementation plan.**—Not later than 90 days after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to the Congress a plan for implementation of the research program under this section. Such plan shall also be submitted to the EPA Science Advisory Board, which shall, within a reasonable period of time, submit its comments on the plan to Congress.

"(e) **Report.**—Not later than 2 years after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to Congress a report respecting his activities under this section and making such recommendations as appropriate.

"Sec. 404. Construction of title.

"Nothing in this title shall be construed to authorize the Administrator to carry out any regulatory program or any activi-

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(e) **Report.**—Not later than 2 years after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to Congress a report respecting his activities under this section and making such recommendations as appropriate.

Sec. 404. Construction of title.

Nothing in this title shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this title. Nothing in this title shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

"Sec. 405. Authorizations.

"There are authorized to be appropriated to carry out the activities under this title and under section 118(k) of the Superfund Amendments and Reauthorization Act of 1986 (relating to radon gas assessment and demonstration program) not to exceed $5,000,000 for each of the fiscal years 1987, 1988, and 1989. Of such sums appropriated in fiscal years 1987 and 1988, two-fifths shall be reserved for the implementation of section 118(k)(2)."

Railroad Emission Study

Pub.L. 95–95, Title IV, § 404, Aug. 7, 1977, 91 Stat. 793, as amended H.Res. 549, Mar. 25, 1980, directed the Administrator of the Environmental Protection Agency to conduct a study and investigation of emissions of air pollutants from railroad locomotives, locomotive engines, and secondary power sources on railroad rolling stock in order to determine the extent to which such emissions affect air quality in air quality control regions throughout the United States, the technological feasibility and the current state of technology for controlling such emissions, and the status and effect of current and proposed State and local regulations affecting such emissions; and, within one hundred and eighty days after commencing such study and investigation, to submit a report of such study and investigation, together with recommendations for appropriate legislation, to the Senate Committee on Environment and Public Works and the House Committee on Energy and Commerce.

[Any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Energy and Commerce of the House of Representatives treated as referring to the Committee on Commerce of the House of Representatives, except that any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Energy and Commerce of the House of Representatives treated as referring to the Committee on Agriculture of the House of Representatives, in the case

of a provision of law relating to inspection of seafood or seafood products, the Committee on Banking and Financial Services of the House of Representatives, in the case of a provision of law relating to bank capital markets activities generally or to depository institution securities activities generally, and the Committee on Transportation and Infrastructure of the House of Representatives, in the case of a provision of law relating to railroads, railway labor, or railroad retirement and unemployment (except revenue measures related thereto), see section 1(a)(4) and (c)(1) of Pub.L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.]

Spill Control Technology

Pub.L. 99–499, Title I, § 118(n), Oct. 17, 1986, 100 Stat. 1660, provided that:

"**(1) Establishment of program.**—Within 180 days of enactment of this subsection [Oct. 17, 1986], the Secretary of the United States Department of Energy is directed to carry out a program of testing and evaluation of technologies which may be utilized in responding to liquefied gaseous and other hazardous substance spills at the Liquefied Gaseous Fuels Spill Test Facility that threaten public health or the environment.

"**(2) Technology transfer.**—In carrying out the program established under this subsection, the Secretary shall conduct a technology transfer program that, at a minimum—

"**(A)** documents and archives spill control technology;

"**(B)** investigates and analyzes significant hazardous spill incidents;

"**(C)** develops and provides generic emergency action plans;

"**(D)** documents and archives spill test results;

"**(E)** develops emergency action plans to respond to spills;

"**(F)** conducts training of spill response personnel; and

"**(G)** establishes safety standards for personnel engaged in spill response activities.

"**(3) Contracts and grants.**—The Secretary is directed to enter into contracts and grants with a nonprofit organization in Albany County, Wyoming, that is capable of providing the necessary technical support and which is involved in environmental activities related to such hazardous substance related emergencies.

"**(4) Use of site.**—The Secretary shall arrange for the use of the Liquefied Gaseous Fuels Spill Test Facility to carry out the provisions of this subsection."

Study and Report Concerning Economic Approaches to Controlling Air Pollution

Pub.L. 95–95, Title IV, § 405, Aug. 7, 1977, 91 Stat. 794, directed the Administrator of the Environmental Protection Agency, in conjunction with the Council of Economic Advisors, to undertake a study and assessment of economic measures for the control of air pollution which could strengthen the effectiveness of existing methods of controlling air pollution, provide incentives to abate air pollution to a greater degree than was required by existing provisions of the Clean Air Act, and serve as the primary incentive for controlling air pollution problems not addressed by any provision of the Clean Air Act, and, not later than two years after Aug. 7, 1977, to conclude the study and assessment and submit a report containing the results thereof to the President and to the Congress.

Study of Odors and Odorous Emissions

Pub.L. 95–95, Title IV, § 403(b), Aug. 7, 1977, 91 Stat. 792, provided that the Administrator of the Environmental Protection Agency conduct a study and report to the Congress not later than Jan. 1, 1979, on the effects on public health and welfare of odors or odorous emissions, the sources of such emissions, the technology or other measures available for control of such emissions and the costs of such technology or measures, and the costs and benefits of alternative measures or strategies to abate such emissions.

Study on Regional Air Quality

Pub.L. 95–95, Title IV, § 403(d), Aug. 7, 1977, 91 Stat. 793, directed the Administrator of the Environmental Protection Agency to conduct a study of air quality in various areas throughout the country, including the gulf coast region, with such study to include analysis of liquid and solid aerosols and other fine particulate matter and the contribution of such substances to visibility and public health problems in such areas."

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 1077

Ord. No. 10779, Aug. 21, 1958, 23 F.R. 6487, which related to cooperation of Federal agencies with State and local authorities, was superseded by Ex. Ord. No. 11282, May 26, 1966, 31 F.R. 7661, formerly set out as a note under this section.

EXECUTIVE ORDER NO. 1150

Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573, which provided for the prevention, control, and abatement of air pollution at Federal facilities was superseded by Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, formerly set out as a note under section 4331 of this title, provided for the prevention, control, and abatement of environmental pollution at Federal facilities.

EXECUTIVE ORDER NO. 1175

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Air pollution control: sufficiency of evidence of violation exceeding terminating in abatement order. 48 ALR3d

Nuisance as entitling owner or occupant of real estate to personal inconvenience, discomfort, annoyance, distinct from, or in addition to, damages for depreciation or its use. 25 ALR5th 568.

When statute of limitations begins to run as to cause of action on air pollution. 19 ALR4th 456.

Validity, construction, and application of variance provisions pollution control laws and regulations. 66 ALR4th

Electric generating plant or transformer station as nuisance

Air pollution control: validity of legislation permitting adoption permissible standards of pollutant emission. 48 ALR

Air pollution: evidence as to Ringelmann chart observations

Pollution control: preliminary mandatory injunction to prevent effects of polluting practices. 49 ALR3d 1239.

Right to maintain action to enjoin public nuisance as to pollution control agency. 60 ALR3d 665.

Validity of regulation of smoke and other air pollution. 7

Application of air quality modeling to decisionmaking under USCA §§ 7401-7426). 84 ALR Fed 710.

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EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 10779

Ex. Ord. No. 10779, Aug. 21, 1958, 23 F.R. 6487, which related to cooperation of Federal agencies with State and local authorities, was superseded by Ex. Ord. No. 11282, May 26, 1966, 31 F.R. 7663, formerly set out under section 7418 of this title.

EXECUTIVE ORDER NO. 11507

Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573, which provided for the prevention, control, and abatement of air pollution at Federal facilities was superseded by Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, formerly set out as a note under section 4331 of this title.

EXECUTIVE ORDER NO. 11752

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, formerly set out as a note under section 4331 of this title, provided for the prevention, control, and abatement of environmental pollution at Federal facilities.

AMERICAN LAW REPORTS

Air pollution control: sufficiency of evidence of violation in administrative proceeding terminating in abatement order. 48 ALR3d 795.

Nuisance as entitling owner or occupant of real estate to recover damages for personal inconvenience, discomfort, annoyance, anguish, or sickness, distinct from, or in addition to, damages for depreciation in value of property or its use. 25 ALR5th 568.

When statute of limitations begins to run as to cause of action for nuisance based on air pollution. 19 ALR4th 456.

Validity, construction, and application of variance provisions in state and local air pollution control laws and regulations. 66 ALR4th 711.

Electric generating plant or transformer station as nuisance. 4 ALR3d 902.

Air pollution control: validity of legislation permitting administrative agency to fix permissible standards of pollutant emission. 48 ALR3d 326.

Air pollution: evidence as to Ringelmann chart observations. 51 ALR3d 1026.

Pollution control: preliminary mandatory injunction to prevent, correct, or reduce effects of polluting practices. 49 ALR3d 1239.

Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency. 60 ALR3d 665.

Validity of regulation of smoke and other air pollution. 78 ALR2d 1305.

Application of air quality modeling to decisionmaking under Clean Air Act (42 USCA §§ 7401-7426). 84 ALR Fed 710.

Construction and application of pre-emption sections (§§ 208, 210(c)(4)) of Clean Air Act (42 USCA §§ 1857f-6a, 1857f-6c(c)(4)). 18 ALR Fed 971.

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Pre-emption, by provisions of Clean Air Act (42 USCA §§ 7401 et seq.), of federal common law of nuisances in area of air pollution. 61 ALR Fed 859.

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When is interest of proposed intervenor inadequately represented by existing party so as to satisfy that requirement for intervention as of right under Rule 24(a)(2) of Federal Rules of Civil Procedure. 74 ALR Fed 327.

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State or local regulation of transportation of hazardous materials as pre-empted by Hazardous Materials Transportation Act (49 USCA §§ 1801 et seq.). 78 ALR Fed 289.

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Clean Air Act implementation plans for nonattainment areas. 90 ALR Fed 481.

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1. Constitutionality

Due Process Clause of Fifth Amendment was violated by Clean Air Act (CAA) scheme pursuant to which Administrator of Environmental Protection Agency (EPA) had power to issue administrative compliance order (ACO) that had status of law and carried possibility of monetary penalties and imprisonment for noncompliance after finding, "on the basis of any information available," that statutory violation had been committed; scheme deprived regulated party of reasonable opportunity to be heard and present evidence on crucial issues of whether conduct underlying issuance of ACO actually took place and whether alleged conduct amounted to CAA violation. Tennessee Valley Authority ... 2003 WL 21452...

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11 Fed. Proc. L Ed Environmental Protection §§ 32:201, 32:202, 32:236, 32:384, 32:388, 32:628, 32:745, 32:748, 32:764.

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Separation of powers doctrine was violated by Clean Air Act (CAA) scheme in which decision to issue administrative compliance order (ACO), like decision to file civil suit in district court, was made not after full-blown adjudication of whether CAA violation had been committed but rather "on the basis of any information available" to Administrator of Environmental Protection Agency (EPA); without meaningful judicial review, statutory scheme worked unconstitutional delegation of judicial power to non-Article III tribunal. Tennessee Valley Authority v. Whitman, C.A.112003, 2003 WL 21452521.

2. Construction—Generally

When faced with a problem of statutory construction, court shows great deference to the interpretation given the statute by the officers or agency charged with its administration, and when the construction of an administrative regulation rather than a statute is in issue, deference is even more clearly in order. Montana Power Co. v. Environmental Protection Agency, C.A.9 (Mont.) 1979, 608 F.2d 334. Administrative Law And Procedure ⇨413; Statutes ⇨219(1).

Interpretation of this chapter must be consistent with its purpose which is

based in important part on a policy of nondegradation of existing clean air. Exxon Corp. v. City of New York, S.D.N.Y.1974, 372 F.Supp. 335, reversed on other grounds 548 F.2d 1088. Environmental Law ⇐ 247

3. —— Other laws, construction

Clean Water Act (CWA) section banning discharge of radiological, chemical, or biological warfare agent into navigable waters did not apply to stack emissions from incineration facility for chemical warfare agents; interpreting section broadly to include discharge by way of atmospheric deposition would be inconsistent with congressional intent, would lead to irrational results, and would create conflict between Act and Clean Air Act. Chemical Weapons Working Group, Inc. (CWWG) v. U.S. Dept. of the Army, C.A.10 (Utah) 1997, 111 F.3d 1485. Environmental Law ⇐ 175; Environmental Law ⇐ 170

Individual Clean Air Act (CAA) conformity determinations and approvals regarding metropolitan planning organization's Regional Transportation Plan (RTP) and Transportation Improvement Plan (TIP) by Department of Transportation (DOT) did not constitute administrative "rulemaking," and thus were not subject to notice and comment requirements of Administrative Procedure Act (APA), since such decisions were made within DOT's sphere of discretion, and were based on promulgated rules already subjected to formal rulemaking process. Sierra Club v. Atlanta Regional Com'n, 2002, 255 F.Supp.2d 1319.

Claims of children with respiratory diseases under ADA and Rehabilitation Act arising from farmers' practice of burning wheat stubble were not foreclosed by comprehensive congressional scheme to regulate air pollution through Clean Air Act (CAA). Save Our Summers v. Washington State Dept. of Ecology, E.D.Wash. 1999, 132 F.Supp.2d 896, reconsideration denied. Civil Rights ⇐ 194; Environmental Law ⇐ 254

The Radon Gas and Indoor Air Quality Research Act's requirement that the Environmental Protection Agency (EPA) seek the assistance of a representative advisory committee "in carrying out the research program" regarding the respiratory health effects of breathing secondhand tobacco smoke reflected Congress' intent that consultation occur at least while EPA conducted research, which required more than post hoc consultation. Flue-Cured Tobacco Co-op. Stabilization Corp. v. U.S. E.P.A., M.D.N.C.1998, 4 F.Supp.2d 435, vacated 313 F.3d 852. Environmental Law ⇐ 285

Sophisticated developer with actual knowledge of the Clean Water Act and the possible existence of non-tidal wetlands on its property did not establish that its investment-backed expectations for its planned development were reasonable, for purpose of regulatory taking claim. Broadwater Farms Joint Venture v. U.S., Fed.Cl.1999, 45 Fed.Cl. 154, appeal dismissed 232 F.3d 908. Eminent Domain ⇐ 2(10)

4. Purpose

Purpose of Clean Air Act Amendments of 1977 [Clean Air Act, § 101 et seq. as amended, 42 U.S.C.A. § 7401 et seq.] was to ensure additional efforts to bring areas of country which had not met time requirements of Act into compliance. State of Ohio v. Ruckelshaus, C.A.6 1985, 776 F.2d 1333, certiorari denied 106 S.Ct. 2889, 476 U.S. 1169, 90 L.Ed.2d 977. Environmental Law ⇐ 245

This chapter was intended comprehensively to regulate, through guidelines and controls, complexities of restraining and curtailing modern day air pollution. Bunker Hill Co. Lead and Zinc Smelter v. U. S. Environmental Protection Agency, C.A.9 (Idaho) 1981, 658 F.2d 1280. Environmental Law ⇐ 245

In stating the purposes of this chapter, Congress indicated that it wanted assurances from Agency that new standards would not exacerbate existing problems. Sierra Club v. Costle, C.A.D.C.1981, 657 F.2d 298, 211 U.S.App.D.C. 336. Environmental Law ⇐ 245

When conflicting, inconclusive views form the greater part of the legislative history, the court is left with divining the "intent" of Congress from the overall purpose of the statute in question. Montana Power Co. v. Environmental Protection Agency, C.A.9 (Mont.) 1979, 608 F.2d 334. Statutes ⇐ 184

The 1970 Amendments to this chapter were passed in reaction to the failure of the states to cooperate with the federal government in effectuating the stated purpose of this chapter, especially the commitment "to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capability of its population." ASARCO Inc. v. Environmental Protection Agency, C.A.D.C.1978, 578 F.2d 319, 188 U.S.App.D.C. 77.

Provisions of this chapter requiring the setting of fuel controls by Administrator were intended by Congress as a means for obtaining primary air quality standards rather than as an alternative to promulgation of such standards. Natural Resources Defense Council, Inc. v. Train, C.A.2 (N.Y.) 1976, 545 F.2d 320. Environmental Law ⇐ 273

Congress sought to achieve two goals in enacting and amending Clean Air Act: permitting state regulation of new motor vehicle emissions, and protecting motor vehicle manufacturers from undue burden of complying with more than two different regulatory schemes. Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. New York State Dept. of Environmental Conservation, N.D.N.Y.1993, 810 F.Supp. 1331, modified on reconsideration 831 F.Supp. 57, affirmed in part, reversed in part on other grounds 17 F.3d 521, on remand 869 F.Supp. 1012. Environmental Law ⇐ 273

This chapter was enacted and amended for the purpose of protecting the public health. Lloyd A. Fry Roofing Co. v. U.S. E.P.A., W.D.Mo.1976, 415 F.Supp. 799, affirmed 554 F.2d 885. Environmental Law ⇐ 245

5. Retroactive effect

In view of express statutory provision for immediate effectiveness of amendment of this chapter by Pub.L. 95–190, and because no manifest injustice would result, application of such amendments on appeal was proper even though they were enacted during pendency of action. Sequoyah to Save Lake Tahoe, Inc. v. Trounday, C.A.9 (Nev.) 1979, 598 F.2d 1041, certiorari denied 100 S.Ct. 299, 444 U.S. 943, 62 L.Ed.2d 310. Environmental Law ⇐ 248

6. State regulation or control

Local legislature's power to regulate air pollution abatement is subject not only to minimum standards of federal Clean Air Act but also to limitations placed on that power by state. Southeastern Oakland County Resource Recovery Authority v. City of Madison Heights, C.A.6 (Mich.) 1993, 5 F.3d 166. Environmental Law ⇐ 256; Environmental Law ⇐ 256

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Federal domain in area of this chapter is not exclusive. Clean Air Coordinating Committee v. Roth-Adam Fuel Co., C.A.7 (Ill.) 1972, 465 F.2d 323, certiorari denied 93 S.Ct. 895, 409 U.S. 1117, 34 L.Ed.2d 701, rehearing denied 93 S.Ct. 1412, 410 U.S. 959, 35 L.Ed.2d 694. States ⇐ 18.31

Under Kentucky law, current owner of contaminated property did not fall within class of persons intended to be protected by state and federal air quality statutes and regulations, and thus prior landowner's alleged violations of statutes and regulations did not constitute negligence per se, for purposes of current owner's action to recover costs incurred in cleaning up property; statutes and regulations were intended to protect public from air contamination, not to protect property owners from incurring costs to clean up asbestos and other environmental contaminants. Regional Airport Authority of Louisville and Jefferson County v. LFG, LLC, (W.D.Ky. 2003) 255 F.Supp.2d 688.

Private individual's state law nuisance claim against paper company for alleged air pollution damage from paper company's mill was not preempted by federal Clean Air Act. Ouellette v. International Paper Co., D.Vt.1987, 666 F.Supp. 58. Nuisance ⇐ 41; States ⇐ 18.31; Nuisance ⇐ 18

Cause of action complaining about environmental conditions arising from operation of hazardous waste treatment and disposal facility, to extent based upon federal common law, was preempted by more comprehensive scope of this chapter. Reeger v. Mill Service, Inc., W.D.Pa. 1984, 593 F.Supp. 360. Action ⇐ 35

Clean Air Act preempted United States' cause of action against defendant seeking damages under the federal common law of nuisance for air pollution. U. S. v. Kin-Buc, Inc., D.C.N.J.1982, 532 F.Supp. 699. Environmental Law ⇐ 254

United States should defer to state's interpretation of the terms of its air pollution and control plan when said interpretation is consistent with Clean Air Act. U. S. v. Interlake, Inc., N.D.Ill.1977, 432 F.Supp. 985. Environmental Law ⇐ 258

When viewed against the backdrop of federally reinforced, broad state powers to regulate air pollution generally, there appears no ground for broadening the

Clean Air Act's rather well-defined, in terms of congressional intent, aircraft and engine-oriented preemption to cover state regulation of jet engine test cells which is essentially unrelated to the purpose underlying that preemption. People of State of Cal. ex rel. State Air Resources Bd. v. Department of Navy, N.D.Cal. 1977, 431 F.Supp. 1271, affirmed 624 F.2d 885. States ⇐ 18.17

If the Administrator, in setting emission standards for motor vehicle engines, has made the necessary regulations to control lead emissions, he cannot permit the states to regulate such emissions. Natural Resources Defense Council, Inc. v. Train, S.D.N.Y.1976, 411 F.Supp. 864, affirmed 545 F.2d 320.

Clean Air Act of 1970 was based in important part on policy of nondegradation of existing clean air, and regulation permitting states to submit plans which allow pollution levels of clean air to rise to secondary standard level of pollution was contrary to legislative policy of Act and was invalid. Sierra Club v. Ruckelshaus, D.C.D.C.1972, 344 F.Supp. 253, affirmed. Environmental Law ⇐ 258

7. Rules and regulations

Extension Policy of Environmental Protection Agency (EPA), which was a "guidance memorandum" not promulgated through notice and comment rulemaking, and provided for extensions of attainment deadlines when attainment of air quality standards was frustrated by transported upwind pollution, was unauthorized agency action contrary to express language of the Clean Air Act (CAA). Southern Organizing Committee for Economic and Social Justice v. U.S. E.P.A., C.A. 112003, 333 F.3d 1288.

Under the Clean Air Act, in the context of conformity of general federal actions to state or federal implementation plans, the categorical exception for the "development and issuance" of federal regulations does not include the substantive results of their promulgation and implementation. Public Citizen v. Department of Transp., C.A.9 2003, 316 F.3d 1002.

Interpretation by Environmental Protection Agency (EPA) of regulatory exemption for equipment at plants designed to "use" less than 1,000 megagrams of benzene per year, by which "use" was not limited to amount consumed, and recycled benzene was counted each time it cycled through two separate points within system, deserved deference because interpretation was not inconsistent with regulation or Clean Air Act, and interpretation was not "created" for litigation. U.S. v. Hoechst Celanese Corp., C.A.4 (S.C.) 1997, 128 F.3d 216, certiorari denied 118 S.Ct. 2367, 524 U.S. 952, 141 L.Ed.2d 736. Environmental Law ⇐ 683; Environmental Law ⇐ 274

National Emission Standards for Hazardous Air Pollutants Regulation requiring owners of facility to deposit all asbestos containing material at waste disposal sites and to prevent discharge of visible emissions during collection is not limited to "final" disposal sites, as such interpretation would defeat regulatory objective by allowing for continued emission of asbestos dust while debris is being transferred to its final resting place. U.S. v. Tzavah Urban Renewal Corp., D.N.J. 1988, 696 F.Supp. 1013. Environmental Law ⇐ 284

8. Secondhand smoke study

The Environmental Protection Agency (EPA) exceeded its authority under Radon Gas and Indoor Air Quality Research Act regarding a report evaluating the respiratory health risks of breathing secondhand tobacco smoke and classifying environmental tobacco smoke (ETS) as a carcinogen; in conducting the ETS risk assessment, EPA disregarded information and made findings on selective information, did not disseminate significant epidemiologic information, deviated from its risk assessment guidelines, failed to disclose important findings and reasoning, and left significant questions without answers. Flue-Cured Tobacco Co-op. Stabilization Corp. v. U.S. E.P.A., M.D.N.C.1998, 4 F.Supp.2d 435, vacated 313 F.3d 852. Environmental Law ⇐ 285

9. Persons entitled to maintain action

Impairment of plaintiffs' health that was alleged to be probable deleterious consequence of construction of Hackensack Meadowlands Sports Complex constituted a sufficiently grave invasion of a legally protected interest to confer standing on individuals and environmental organizations to maintain class action seeking judgment that New Jersey statute authorizing construction of complex was fatally inconsistent with Clean Air

Act and must be enjoined under supremacy clause; enactment of Clean Air Act was plainly intended to protect the health and welfare of, among others, plaintiffs, as citizens and inhabitants of the United States. Wuillamey v. Werbin, D.C.N.J.1973, 364 F.Supp. 237. Federal Civil Procedure ⇐ 181; Environmental Law ⇐ 656; Environmental Law ⇐ 652

10. Stays

Bankruptcy court did not have jurisdiction to authorize, under the stay provisions of Bankruptcy Act and the rules, the operation of a quarry by the debtor in possession in violation of state laws and regulations for the attainment of goals set forth in Federal
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11. Fees

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§ 7402. Cooperative activities

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pollution; encourage the enactment of improv
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(b) Federal cooperation

The Administrator shall cooperate with and enc
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appropriate and available facilities and resources
Government.

(c) Consent of Congress to compacts

The consent of the Congress is hereby given to
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11. Fees

Parties eligible for fee awards under Clean Air Act are, at minimum, those who "partially prevail" on claim, achieving limited degree of success. Environmental Protection Information Center, Inc. v. Pacific Lumber Co., N.D.Cal.2002, 229 F.Supp.2d 993. Environmental Law ⇐ 717

§ 7402. Cooperative activities

(a) Interstate cooperation; uniform State laws; State compacts

The Administrator shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.

(b) Federal cooperation

The Administrator shall cooperate with and encourage cooperative activities by all Federal departments and agencies having functions relating to the prevention and control of air pollution, so as to assure the utilization in the Federal air pollution control program of all appropriate and available facilities and resources within the Federal Government.

(c) Consent of Congress to compacts

The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress. It is the intent of Congress that no agreement or compact entered into between States after November 21, 1967, which relates

Title 11
DEPARTMENT OF TRANSPORTATION

Subtitle 21 MOTOR VEHICLE ADMINISTRATION — COMMERCIAL MOTOR VEHICLES

Chapter 02 Diesel Vehicle Emissions Control Program

Authority: Transportation Article, §§12-104(b) and 23-401 — 23-404, Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Diesel vehicle" means a motor vehicle that:

(a) Is powered by a compression ignition engine; and

(b) Has a manufacturer's gross vehicle weight rating or gross combination weight rating over 10,000 pounds.

(2) "Governor" means a mechanism installed on a diesel engine by the original equipment manufacturer for the purpose of limiting the maximum engine speed.

(3) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background, expressed as a percent, as measured by emissions test equipment under Regulation .07 of this chapter.

(4) "SAE J1667" means the emissions test described in document number J1667 published by the Society of Automotive Engineers, entitled "Snap-Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles," which is incorporated by reference in Regulation .02 of this chapter.

(5) "State Police" means the Department of State Police.

.02 Incorporation by Reference.

Snap-Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles, Surface Vehicle Recommended Practice, SAE J1667 (Society of Automotive Engineers, Inc., February 1996) is incorporated by reference.

.03 Applicability.

Unless otherwise stated in this chapter, the regulations in this chapter apply to a diesel vehicle that is operating on any highway in Maryland.

.04 General Requirements for the Emissions Test.

A. A person may not cause, allow, or permit the operation of a diesel vehicle on any highway in Maryland, if the vehicle:

(1) Discharges exhaust emissions, the opacity of which exceeds the applicable emissions opacity standards under Regulation .06 of this chapter; or

(2) Has emission control, exhaust equipment, or a governor installed either on the vehicle or diesel engine which has been disconnected, detached, or deactivated, or in any other way has been rendered inoperable or less effective than designed by the original equipment or vehicle or engine manufacturer.

B. A diesel vehicle operating on any highway is subject to an emissions test that shall measure the opacity of the exhaust combustion products discharged into the atmosphere by the engine powering the diesel vehicle.

.05 Emissions Test Procedure.

A. The emissions test shall be conducted in accordance with the procedures described in SAE J1667.

B. The general procedures for a valid emissions test in accordance with SAE J1667 are as follows:

(1) Before testing, verify that the emissions test equipment meets the requirements under Regulation .07 of this chapter;

(2) Before initiating the test, determine that all accessories and any engine braking devices are turned off;

(3) Determine that the engine speed governor is in proper operating condition by:

(a) Inquiring of the diesel vehicle operator whether the governor is in proper operating condition, and

(b) Instructing the operator, with the transmission in either neutral (with the clutch disengaged if so equipped) or in park, to gradually increase the engine speed; then, if the engine speed in-

creases uncontrollably, the diesel vehicle operator shall be instructed to immediately release the accelerator pedal and fuel supply to the engine, and discontinue emission testing of any vehicle with a dysfunctional engine speed governor;

(4) Perform the emissions test on at least one exhaust pipe in accordance with SAE J1667.

C. The owner or driver of the diesel vehicle that receives an emissions test shall be provided with the results in writing, in percent opacity, upon completion of the emissions test in this chapter.

.06 Emissions Standards.

A. Diesel vehicle engines of model year 1991 and newer may not produce emissions that exceed 40 percent opacity.

B. Diesel vehicle engines of model year 1990 through 1974 may not produce emissions that exceed 55 percent opacity.

C. Diesel vehicle engines of model year 1973 and older may not produce emissions that exceed 70 percent opacity.

.07 Emissions Test Equipment.

A. Equipment used to conduct the emissions test shall be:

(1) Designed to meet the equipment specifications provided in SAE J1667;

(2) Approved by the Maryland Department of the Environment; and

(3) Maintained in accordance with manufacturer's specifications.

B. Maintenance records for emissions test equipment shall be maintained for a period of 4 years from the date of issue and shall include:

(1) The dates of calibration;

(2) The full legal name of the individual who calibrated the emissions test equipment; and

(3) Any receipts for parts and repairs needed to maintain the emissions test equipment.

.08 Individuals Authorized to Conduct Emissions Tests on Diesel Vehicles.

A. Emissions Inspectors.

(1) An individual who is employed by the State Police or the Maryland Transportation Authority Police may be certified as an emissions inspector by demonstrating to the State Police:

(a) The ability to conduct an emissions test under Regulations .04 and .05 of this chapter using emissions test equipment meeting the requirements under Regulation .07 of this chapter;

(b) A thorough understanding of this chapter and Transportation Article, Title 23, Subtitle 4, Annotated Code of Maryland; and

(c) That the individual has attended and successfully completed training in the operation of the emissions test equipment which the individual will use to conduct the emissions test under Regulations .04 and .05 of this chapter.

(2) If an applicant has satisfied the requirements under §A(1) of this regulation, the State Police may certify the applicant as an emissions inspector to:

(a) Conduct diesel vehicle emissions testing;

(b) Conduct diesel vehicle emissions retesting;

(c) Issue a safety equipment repair order;

(d) Certify compliance with a safety equipment repair order;

(e) Issue a Maryland Driver/Vehicle Inspection Report; and

(f) Issue the results in writing, in percent opacity, of an emissions test or retest under this chapter.

B. Diesel Emissions Retesters. An individual may apply to become certified by the Automotive Safety Enforcement Division of the State Police as a diesel emissions retester if the following conditions are met:

(1) The applicant demonstrates to the State the ability to conduct an emissions test under Regulations .04 and .05 of this chapter using emissions test equipment meeting the requirements under Regulation .07 of this chapter;

(2) The applicant demonstrates a thorough understanding of this chapter and Transportation Article, Title 23, Subtitle 4, Annotated Code of Maryland; and

(3) The applicant is employed at:

(a) An inspection station licensed under the provisions of Transportation Article, §23-103, Annotated Code of Maryland, to inspect vehicles over 10,000 pounds gross vehicle weight rating, or

(b) A diesel vehicle repair facility located in Maryland where the primary business is the repair, rebuild, or reconditioning of diesel vehicle engines for the public at a charge and that meets the minimum work area requirements of COMAR 11.14.01.05C(7).

C. Certification as a Diesel Emissions Retester. If an applicant has satisfied the requirements under §B of this regulation, the Automotive Safety Enforcement Division of the State Police may certify the applicant as a diesel emissions retester to:

(1) Conduct diesel vehicle emissions retests at only the licensed inspection station or diesel vehicle repair facility that meets the requirements under §B(3) of this regulation;

(2) Report the results of the emissions retest, in percent opacity; and

(3) Certify compliance with a safety equipment repair order pertaining only to violations of the emissions standards under this chapter.

D. Renewal of Certification as a Diesel Emissions Retester.

(1) Certification as a diesel emissions retester shall be for a period of time not to exceed 3 years.

(2) An individual with current, valid certification as a diesel emissions retester may apply for certification renewal in a manner prescribed by the State Police within 60 days before certification expiration.

E. A diesel emissions retester shall immediately notify the Automotive Safety Enforcement Division of the State Police of any change in employment.

F. The emissions test equipment used, procedures conducted, and records maintained by diesel emissions retesters are subject to periodic audits conducted by personnel from the Maryland Department of the Environment or the Automotive Safety Enforcement Division of the State Police, or both.

G. The State Police may, for cause, suspend or revoke any certifications issued under this regulation.

.09 Enforcement.

A. Diesel Vehicles Registered In Maryland.

(1) If it is determined that the emissions test in this chapter cannot be performed on a diesel vehicle registered in Maryland because the vehicle is operating as described under Regulation .04A(2) of this chapter, the diesel vehicle shall be considered to have failed the emissions test and shall be subject to §A(2) — (5) of this regulation and Transportation Article, §23-404, Annotated Code of Maryland.

(2) A safety equipment repair order shall be issued to the driver of a diesel vehicle registered in Maryland that fails an emissions test under this chapter in accordance with Transportation Article, §23-404, Annotated Code of Maryland.

(3) COMAR 11.14.01.16 applies to any safety equipment repair order that is issued to repair a diesel vehicle to comply with emissions standards.

(4) The certified safety equipment repair order submitted to the State Police shall include evidence that the diesel vehicle complies with the emissions standards in Regulation .06 of this chapter.

(5) The evidence required to demonstrate that the diesel vehicle was repaired and complies with the emissions standards in Regulation .06 of this chapter shall include the results of an emissions retest conducted by:

(a) An emissions inspector; or

(b) A certified diesel emissions retester.

B. Foreign Registered Diesel Vehicles.

(1) If it is determined that the emissions test in this chapter cannot be performed on a foreign registered diesel vehicle because the vehicle is operating as described under Regulation .04A(2) of this chapter, the diesel vehicle shall be considered to have failed the emissions test and shall be subject to §B(2) — (4) of this regulation and Transportation Article, §23-404, Annotated Code of Maryland.

(2) A Maryland Driver/Vehicle Inspection Report shall be issued to the driver of a foreign registered vehicle that fails an emissions test under this chapter in accordance with Transportation Article, §23-404, Annotated Code of Maryland, and COMAR 11.21.01.10.

(3) The Maryland Driver/Vehicle Inspection Report, given to the driver of a foreign registered diesel vehicle that fails an emissions test

under this chapter, shall include notification that the foreign registered diesel vehicle has failed to comply with emissions standards in this State.

(4) The owner of a foreign registered diesel vehicle that receives a Maryland Driver/Vehicle Inspection Report stating that the vehicle failed an emissions test shall certify that the vehicle was repaired to comply with emissions standards under Regulation .06 of this chapter by signing and returning the Maryland Driver/Vehicle Inspection Report to the State Police.

Administrative History

Effective date: July 10, 2000 (27:13 Md. R. 1212)

TOWN CENTER — A locality designated and delimited as a town center by the Planning Board to serve as the primary center of commercial (including supporting commercial) and higher-density residential development for an area having a population of approximately 100,000 or more persons, and meeting criteria or guidelines adopted and published by the Planning Board. Industrial, lower-density residential, and institutional uses are not excluded from town centers (when allowed under the regulations for the zone in which they are located). **[Bill No. 40-1967]**

TOWN-CENTER DISTRIBUTOR-BYPASS ROAD — An arterial street which is designed to distribute traffic to a town center as well as to carry traffic around and away from such a center, and which is designated by the Planning Board as a town-center distributor-bypass road. **[Bill No. 40-1967]**

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. **[Bill Nos. 145-1959, Section 415.5; 109-1964; 29-1974]**

TRAILER PARK — A tract of land specifically planned and equipped to accommodate residential trailers for temporary or continuing occupancy, including all buildings, structures, tents, vehicles, utilities and accessories used or intended as equipment for such trailer park.

TRANSIT CENTER — A structure or portion of a structure and bus staging area designed and located to facilitate transfers among bus routes operated by the State Mass Transit Administration. A transit center may also be designed with parking to facilitate transfers between other modes of transportation including taxicabs, automobiles, commuter vanpools, airport limousines and privately owned buses. **[Bill No. 91-1990]**

TRANSIT FACILITY — A structure or any combination of structures, including at-grade, elevated or below-grade fixed guideways, tunnels, electrical substations or fixtures necessary to support public mass transportation operations owned or operated by or on behalf of the Mass Transit Administration. This term shall not include a transit center, a transit storage and repair yard, bus terminal or rail passenger station. **[Bill No. 91-1990]**

TRANSIT STORAGE AND REPAIR YARD — A site used primarily for the storage and maintenance of common carrier vehicles and for the repair of equipment associated with such vehicles. **[Bill No. 91-1990]**

TRUCKING FACILITY — A structure or land used or intended to be used primarily (a) to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types, in order to facilitate the transportation of such goods or chattels; or (b) for truck or truck-trailer parking or storage. A trucking facility may include, as incidental uses only, sleeping quarters and other facilities for trucking personnel, facilities for the service or repair of vehicles, or necessary space for the transitory storage of goods or chattels. The term "trucking facilities" includes facilities for

the storage of freight-shipping containers designed to be mounted on chassis for part or all of their transport, but does not include a warehouse, moving and storage establishment or truck stop. Land used for the parking, storage or repair of trucks used as an accessory to a lawful business or industrial use of the land that such parking or storage area forms a part of shall not be considered a trucking facility within the meaning of this definition. As used in this definition, the terms "trucks," "truck-trailers" and "truck tractors" do not include any vehicle whose maximum gross weight is 10,000 pounds or less, as rated by the State Motor Vehicle Administration. **[Bill Nos. 18-1976;[27] 218-1980]**

TRUCKING FACILITY, CLASS I (TRUCK TERMINAL) — A trucking facility whose primary purpose is to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types, in order to facilitate the transportation of such goods or chattels. **[Bill No. 18-1976]**

TRUCKING FACILITY, CLASS II — A trucking facility other than a Class I trucking facility, including a truck yard (the primary purpose of which is to accommodate the parking or storage of trucks, truck trailers or truck tractors. **[Bill No. 18-1976]**

TRUCK STOP — A structure or land used or intended to be used primarily for the sale of fuel for trucks and, usually, incidental service or repair of trucks; or a group of facilities consisting of such a use and attendant eating, sleeping or truck parking facilities. As used in this definition, the term "trucks" does not include any vehicle whose maximum gross weight is 10,000 pounds or less, as rated by the State Motor Vehicle Administration. **[Bill No. 18-1976]**

UNLICENSED MOTOR VEHICLE — Any motor vehicle which does not have a current and valid registration plate or plates and validation tab or tabs attached to and displayed on the vehicle for the then current registration period. **[Bill No. 135-1986]**

URBAN-RURAL DEMARCATION LINE — A boundary line established by the Planning Board, dividing that portion of Baltimore County considered as "urban" from that portion of the county considered as "rural." In establishing or relocating such line, the Planning Board shall consider population density, existing public water supply and sewerage facilities, other existing public facilities and public facilities scheduled for planning or construction in the capital budget and five-year capital program. **[Bill No. 40-1967]**

VETERINARIAN — A person licensed to engage in the practice of veterinary medicine. **[Bill No. 85-1967]**

VETERINARIAN'S OFFICE — An office which is maintained by a veterinarian for the treatment of animals and in which no animal is kept overnight. **[Bill No. 85-1967]**

VETERINARIUM — Any building or portion thereof which is used, intended to be used or arranged primarily for treatment of animals by a veterinarian, where overnight care is allowed, and where all areas used for treatment or housing of animals are odorproofed and soundproofed. **[Bill No. 85-1967]**

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27 **Editor's Note: This bill also repealed the former definition of "truck terminal."**

determined by the Department of Environmental Protection and Resource Management.

E. Growth allocation will not be required for subdivisions of land where each resultant parcel or lot contains a dwelling which existed on December 1, 1985.

F. Residential subdivision of land other than for single-family dwellings, as covered by Paragraphs D and E of this subsection, is permitted in accordance with an approved final development plan or record plat if the approval was granted by the county before June 1, 1984.

G. For nonresidential developments, a lot or parcel of land may be developed with a use permitted on the property under the zoning or use regulations in effect on December 1, 1985, notwithstanding that such development may be inconsistent with the provisions of Article 33, Title 2 of the Baltimore County Code and provided that this right to develop is subject to the Zoning Regulations in effect at the time the right is to be exercised; unless the lot or parcel is within the recorded or approved plat or a plan of a land subdivision approved by the county before December 1, 1985, in which case the limitations and rights pertaining to the approved plan or plat shall govern.

Section 104
Nonconforming Uses
[BCZR 1955]

104.1 A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate. **[Bill Nos. 18-1976; 124-1991]**

104.2 A structure damaged to any extent or destroyed by fire or other casualty may be restored within two years after such destruction or damage but may not be enlarged. In the case of residentially used structures which are nonconforming in density, the number of dwelling units or density units rebuilt may be equal to but may not exceed the number of units which existed before the casualty. **[Bill No. 124-1991]**

104.3 No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than 25% of the ground floor area of the building so used. This provision does not apply to structures or uses restored pursuant to Section 104.2, except as authorized by the Zoning Commissioner pursuant to Section 307. **[Bill No. 124-1991]**

104.4 Exception. Any contrary provision of these regulations notwithstanding, an office building that was authorized by grant of a special exception and that becomes damaged to any extent or destroyed by casualty may be fully restored in accordance with the terms of the special exception. **[Bill Nos. 167-1980; 124-1991]**

104.5 Any use which becomes or continues to be nonconforming which exists within the Chesapeake Bay Critical Area on or after the effective date of this section is subject to the provisions of Sections 104.1, 104.2 and 104.3 and to the variance provisions and procedures of § 32-4-231, § 33-2-205, or § 33-2-603 of the Baltimore County Code, whichever is or are applicable. **[Bill Nos. 32-1988; 124-1991; 9-1996; 137-2004]**

104.6 A striptease business lawfully operating prior to the effective date of this legislation[7] that is in violation of the requirements contained herein shall be deemed a nonconforming use. A striptease business which is a nonconforming use:

A. Shall be permitted to continue for a period not to exceed one year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty days or more; and

B. Shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. **[Bill No. 137-1990]**

104.7 Notwithstanding the provisions of this section, nonconforming signs are subject to Section 450.8.C. **[Bill No. 89-1997]**

Section 105
Prohibited Uses in Chesapeake Bay Critical Area
[Bill No. 32-1988]

The establishment or expansion of the following uses is prohibited in all Chesapeake Bay Critical Areas:

A. Solid or hazardous waste collection or disposal facilities.

B. Sanitary landfills.

C. Permanent sludge hauling, storage or disposal facilities other than those associated with wastewater treatment facilities.

D. Transportation facilities and utility transmission facilities, except those necessary to serve uses permitted in the underlying zone per the Baltimore County Zoning Regulations. Such uses may be permitted only in intensely developed areas and only after the activity or facility has demonstrated that there will be a net improvement in water quality to the adjacent body of water. **[Bill No. 9-1996]**

E. Nonmaritime heavy industries, except those uses permitted in the underlying zone as authorized by these regulations. Such uses may be permitted only in intensely developed areas, as defined by the Baltimore County Code,[8] and only after the activity or facility has demonstrated that there will be a net improvement in water quality to the adjacent body of water. **[Bill No. 9-1996]**

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7 **Editor's Note: Apparently refers to Bill No. 137-1990.**

8 **Editor's Note: See § 33-2-101 of the Baltimore County Code, 2003.**

24. Shoe repair shops.

25. Stationery or office supply stores.

26. Taverns.

27. Truck rental and truck trailer rental agencies.

28. Dog grooming facility. **[Bill No. 72-2002]**

D. The following temporary use: carnivals, temporary, provided that no such use shall be established for more than 90 days in any one-year period.

E. Combinations of the uses listed above.

F. Accessory uses or structures, including but not limited to:[2]

1. Incidental sales (wholesale or retail).

2. Living quarters for watchmen or caretakers and their families, and accessory uses or buildings subsidiary thereto.

3. Trailers for temporary use, as permitted under Section 415.

4. Industrial medical clinics.

5. Employees' recreation facilities.

6. Excavations, uncontrolled.

7. Parking spaces (see Section 409).

8. Signs (see Section 450). **[Bill No. 89-1997]**

G. Hotels and motels when within an M.L. Zone which is part of a contiguous area of 25 acres or more of industrial zoning, and provided that the combined tract areas developed for such uses do not occupy more than 25% of the particular contiguous area of industrial zoning in which they are located. **[Bill No. 82-1984]**

253.2 Uses permitted by special exception. The uses listed in this subsection are permitted by special exception only (see Section 502).

A. The following industrial, quasi-industrial, transportation, storage or quasi-public uses or utilities:[3]

1. Airstrips or airports, where it is shown that such use will serve primarily the industrial uses in the same area.

2. Airports, general aviation, if located in accordance with the Master Plan.

3. Excavations, controlled, involving the use of explosives (see Section 403).

4. Moving and storage establishments. **[Bill No. 18-1976]**

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2 **Editor's Note: All provisions of this subsection are originally from Bill No. 100-1970, except as otherwise noted.**

3 **Editor's Note: All provisions of this subsection are originally from Bill No. 100-1970, except as otherwise noted.**

5. Sanitary or rubble landfills (see Section 412). **[Bill No. 97-1987]**

6. Storage, warehousing or distribution not permitted as of right.

7. Sludge disposal facility – co-landfilling (see Section 412A.2.A). **[Bill No. 46-1982]**

(Cont'd on page 2-89)

8. Sludge disposal facility – composting (see Section 412A.2.B). **[Bill No. 46-1982]**

9. Sludge disposal facility – handling in general (see Section 412A.2.C). **[Bill No. 46-1982]**

10. Sludge disposal facility – incineration (see Section 412A.2.D). **[Bill No. 46-1982]**

11. Sludge disposal facility – landspreading (see Section 412A.2.E). **[Bill No. 46-1982]**

12. Trucking facilities (see Sections 410 and 410A). **[Bill No. 18-1976]**

13. Truck stops. **[Bill No. 18-1976[15]]**

14. Utilities not permitted under the provisions of Section 253.1.

B. The following auxiliary service uses, provided that any such use shall be located in a planned industrial park at least 25 acres in net area or in an I.M. District; provided, further, that it is shown that any such use will serve primarily the industrial uses and related activities in the surrounding industrial area: **[Bill No. 172-1993][16]**

1. Automotive-service stations, subject, further, to the provisions of Section 405.

2. Car washes, subject, further, to the provisions of Section 419.

3. Garages, service, including establishments for the service or repair of trucks, of truck trailers or of freight-shipping containers designed to be mounted on chassis for part or all of their transport. **[Bill No. 218-1980]**

4. Union halls or other places of assembly for employment-related activities.

C. The following interim uses, provided that it is shown by the petitioner and verified by the Director of Public Works that public sewerage and water supply facilities will not be available to the site of any such use for a period of at least two years after the time the petition is heard, and provided, further, that any such use shall be discontinued and the grant of the special exception shall expire on a date within a year after such time as public sewerage and water supply facilities do become available to the site, as shall be more particularly stipulated in the order granting the special exception. **[Bill No. 21-1996[17]]**

1. Amusement parks.

2. Farms or limited-acreage wholesale flower farms.

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15 **Editor's Note: This bill also repealed the former entry for truck terminals.**

16 **Editor's Note: All provisions of this subsection are originally from Bill No. 100-1970, except as otherwise noted.**

17 **Editor's Note: This bill reenacted this Subsection C, deleting the following entries and renumbering the rest: "baseball-batting ranges," "golf-driving ranges" and "miniature-golf courses." Original provisions of this subsection were derived from Bill No. 100-1970.**

3. Commercial kennels and private kennels, subject to Section 421. **[Bill No. 87-2001]**

4. Radio or television broadcasting studios.

5. Racetracks.

6. Riding stables, commercial.

7. Shooting ranges.

8. Trailers, nonaccessory, subject to the provisions of Section 415, except that trailer parks are not permitted.

9. Used motor vehicle outdoor sales areas.

10. Veterinarians' offices.

D. The following miscellaneous uses:[18]

1. Signs, outdoor advertising (see Section 450). **[Bill No. 89-1997]**

2. Wireless telecommunications towers, subject to Section 426. **[Bill Nos. 64-1986; 30-1998]**

3.[19] Commercial recreational facilities. **[Bill No. 21-1996]**

E. Combinations of the uses listed in this subsection or combinations of such uses with uses which are permitted as of right.

253.3 Scope of restricted production. For the purposes of this section, "restricted production" shall include only the assembly, manufacture or compounding of articles of merchandise from previously prepared materials, or the machining, electroplating or other comparable light processing or treatment of such articles; but it shall not include the manufacture of large stampings (such as motor vehicle fenders or bodies). (However, the exclusion of a use under a particular entry, whether by virtue of a limitation to restricted production or otherwise, does not affect the applicability of any other entry under which the use may be described.)

253.4 Within 100 feet of any residential zone boundary or the right-of-way of any street abutting such a boundary, only passenger automobile accessory parking and those uses permitted in M.R. Zones, as limited by the use regulations in Section 241, are permitted. Any use other than passenger automobile accessory parking and those uses permitted in M.R. Zones as limited by the use regulations in Section 241 established within 100 feet of the right-of-way of an existing or proposed freeway or expressway so designated by the Planning Board shall be screened from the motorway in accordance with the standards and criteria contained in the Baltimore County Landscape Manual adopted pursuant to § 32-4-404 of the Baltimore County Code. Notwithstanding the foregoing, no trucking facility or part of a trucking facility may

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18 **Editor's Note: All provisions of this subsection are originally from Bill No. 100-1970, except as otherwise noted.**

19 **Editor's Note: Former Subsection D.3, regarding after-hours clubs, was repealed by Bill No. 36-2000. Said bill also provided for the renumbering of former Subsection D.4 as Subsection D.3.**

Section 410
Class I Trucking Facilities (Truck Terminals)
[Bill No. 18-1976[5]]

410.1 Nonconforming and other existing Class I trucking facilities. The provisions of this subsection apply to Class I trucking facilities existing on the effective date of this section.

A. Plans.

1. If the owner of or authorized agent for a Class I trucking facility believes that approved plans of that trucking facility are on file with the Office of Planning or Department of Permits and Development Management on the effective date of this section, he must so notify the Zoning Commissioner, in writing, within six months after that date, unless he has filed or will file plans as provided in Paragraph 2 below. Within 30 days after he receives the written notice, the Zoning Commissioner shall inform the owner or agent whether the plans are, in fact, on file and, if they are on file, whether they meet the requirements of Section 410.3.C.1. If the plans do not meet those requirements, the owner or agent shall file plans that do meet the requirements, within one year after the effective date of this section.

2. If approved plans of a Class I trucking facility are not on file with the Office of Planning or the Department of Permits and Development Management on the effective date of this section, or if the Zoning Commissioner is not notified under Paragraph 1, the owner of or authorized agent for the trucking facility must file plans of the facility, meeting the requirements of Section 410.3.C.1, within one year after that date.

3. Within 30 days after the effective date of this section, the Zoning Commissioner shall publish a checklist of requirements for plans submitted pursuant to Paragraph 2. The checklist must indicate among other things, one or more acceptable scales to which plans must be drawn.

4. The mere submission of plans under this paragraph will not establish the legality of any Class I trucking facility.

B. Rulings, etc., as to nonconformance with respect to certain provisions.

1. Within one year after the date the Zoning Commissioner acknowledges the adequacy of previously filed plans of a trucking facility or accepts new plans for the facility, as provided under Subsection A, he shall review the plans and issue a ruling whether or not the facility conforms with the provisions listed in Paragraph 2 below and, if not conforming with any such provision, whether the nonconformance may be allowed to stand under the

[5] **Editor's Note: Former Section 410 was repealed by Bill No. 140-1962.**

provisions of Paragraph 3. If the provision requires the recommendation or approval of authorities other than the Zoning Commissioner, the ruling with respect to conformance with that provision may be made only upon such recommendation or approval.

2. The provisions with respect to which the Zoning Commissioner shall issue rulings under Paragraph 1 are the following:

Section 409.6.A.3 (automobile parking)
Section 410.3.A.1 (access to streets)
Section 410.3.B.3 (layout such as not to cause congestion)
Section 410.3.B.5 (fencing, etc.)
Section 410.3.B.6 (wheel stops, etc.)
Section 410.3.B.7 (paving and curbing)
Section 410.3.B.8 (drainage)
Section 410.3.B.9 (rest rooms and other conveniences)
Section 410.3.C.2 (concealment of automotive parts, junk vehicles)

3. A trucking facility's nonconformance with Section 409.6.A.3 shall be allowed to stand if a variance to that section is granted pursuant to Section 307 of these regulations and Article 32, Title 3, Subtitle 3 of the Baltimore County Code. Nonconformance with Section 410.3.A.1 shall be allowed to stand if the site of the trucking facility does not abut a street on which access is permitted under that section or, if it does abut such a street, the county trucking facilities development officials determine that the length of the coextensive street line and site boundary is insufficient to permit proper access from that street. However, in any case where access that is not in accordance with Section 410.3.A.1 is allowed to remain, the Zoning Commissioner shall have the power to prescribe the route that trucks must use in reaching or on leaving the site, in accordance with a recommendation of the county trucking facilities development officials. **[Bill No. 137-2004]**

C. Procedure, etc., in use of nonconformance with respect to certain provisions. If the Zoning Commissioner, under Section 410.1.B.1, rules that a trucking facility does not conform with a provision listed in Section 410.1.B.2 and if the nonconformance with that provision is not allowed to stand under Section 410.1.B.3, one or both of the courses of action set forth in Paragraphs 1 and 2 below must be followed:

1. Within 90 days of the date of the Zoning Commissioner's ruling, the owner or agent must file with the Zoning Commissioner an acceptable program of compliance, showing that conformance with each provision in question will be achieved within 27 months after the date of the ruling. The program must include, among other things, that the Zoning Commissioner may reasonably require, (a) a plan of the trucking facility as it will be upon conformance as required, and (b) the schedule under which conformance will be achieved. The Zoning Commissioner may refuse to accept any such program that, in his judgment, does not show that approximately half of all the work to be completed under the program will be done by the end of the 15th month

after the date of the ruling or does not meet other requirements of these Zoning Regulations. The trucking facility covered by a program of compliance submitted pursuant to this paragraph must be in partial compliance with the provisions in question by the end of the 15th month after the date of the ruling, as shown in the program, and must be in full compliance with all such provisions at the end of the 27th month after the date of the ruling; or

2. Within 90 days after the date of the Zoning Commissioner's ruling, the owner or agent must file with the Zoning Commissioner a petition requesting that the facility not be required to conform with a provision in question, the petition to be advertised and heard in accordance with the provisions of Section 500.7. No relief may be granted under this paragraph, however, unless the petitioner shows that conformance with the provision would cause undue hardship and would not be in the interest of the general welfare of the community, with particular consideration given to any dwelling within 300 feet of the facility. Such relief may be granted to the extent necessary to eliminate undue hardship, and only to that extent, and only in keeping with the intent of these Zoning Regulations in general and this section in particular; relief may not be granted to an extent detrimental to the general welfare of the community. Where relief is sought but not granted under this paragraph, the Zoning Commissioner shall require a program of compliance such as that provided for under Paragraph 1 above and shall provide for enforcement of that program. In any case, the trucking facility must conform with any provision from which relief is not granted under this paragraph within 27 months of the date of the Zoning Commissioner's ruling pursuant to Section 410.1.B.1.

D. Effects of failure to comply.

1. The failure of an owner of or authorized agent for a Class I trucking facility to comply with an applicable requirement of Subsection A or C above or failure to comply with an order by the Zoning Commissioner prescribing a truck route as provided in Paragraph 3 of Subsection B shall constitute a violation of these Zoning Regulations.

2. The right to continue any Class I trucking facility that was established before the effective date of this section and whose owner or agent has failed to comply with an applicable requirement of Subsection A shall cease three years after that date, unless the facility conforms or has been changed to conform with all provisions of these Zoning Regulations, as if it were a new use.

3. The right to continue any Class I trucking facility that was established before the effective date of this section and whose owner or agent has complied with the applicable requirements of Subsection A but has failed to comply with an applicable requirement of Subsection C shall cease three

years after the date of the Zoning Commissioner's ruling issued pursuant to Paragraph 1 of Subsection B, unless the facility conforms or has been changed to conform with all provisions of these Zoning Regulations, as if it were a new use.

E. Expansion of nonconforming Class I trucking facilities. The site, structures and paved areas of a nonconforming Class I trucking facility may not be expanded unless the use is made to conform in all respects with these Zoning Regulations or except as follows:

1. Expansion to the minimum extent necessary to comply with the standards of Section 410.3 may be allowed by the Zoning Commissioner, after public hearing, provided that the expansion is not in excess of that allowed under Section 104 and that, in the judgment of the Zoning Commissioner, the expansion would be in the interest of the general welfare of the community, with particular consideration given to any dwellings within 300 feet of the trucking facility.

2. Operations of the trucking facility may be enclosed within buildings, even though the construction of buildings or enlargement of existing buildings necessary to do so would result in an expansion beyond the limit imposed under Section 104, provided that the truck facility is in an M.L. or M.H. Zone and that the Zoning Commissioner finds, after public hearing, that the enclosure would lessen the net overall environmental impact of the facility and would otherwise be in the interest of the general welfare of the community.

F. With the exception of plans for conforming Class II trucking facilities in M.H. Zones, plans approved under this section may be amended only by special exception.

G. Public information program on provisions of this section and Section 410A. For the period from the beginning of the second month to the end of the 12th month after the date of enactment of this section, the Zoning Commissioner shall implement a program of public information regarding the provisions of this section and Section 410A, with emphasis on the provisions of this subsection and Subsection 410A.1. In particular, he shall endeavor to ensure that any party responsible for complying with these sections is informed of the provisions therein. (However, the failure of the Zoning Commissioner to inform any party of the provisions of these sections will not constitute a legal justification for that party's failure to comply with them.)

410.2 Location. No Class I trucking facility or part thereof (including any access point or driveway) established on or after the effective date of this section may be located within 200 feet of a wetland or, with the exception of accessory passenger automobile parking areas, within 300 feet of a dwelling or a residential zone. No passenger automobile parking area or part thereof accessory to a Class I trucking facility may be located within 25 feet of a dwelling or a residential zone.

410.3 Site and development standards; plans; operation. The standards of this subsection apply to Class I trucking facilities established on or after the effective date hereof, to conforming Class I trucking facilities established before that date and hereafter expanded or otherwise changed, and, to the extent specified in Subsection 410.1, to nonconforming Class I trucking facilities.

A. Access points.

1. Any point of access to a public street must be on a public industrial service road, on a major collector street or on an arterial street. However, no access point on a public industrial service road is permitted unless the hearing authority (in the case of a trucking facility permissible by special exception) or the Director of Public Works (in the case of a facility permitted as a matter of right) prescribes an appropriate route for trucks traveling to or from the facility or finds that an appropriate route has already been prescribed. (Such a decision may be appealed to the Board of Appeals as provided under Section 602 of the Baltimore County Charter, as amended, and § 32-3-401 of the Baltimore County Code.) **[Bill Nos. 218-1980; 137-2004]**

2. The curb tangent length between access points must be at least 100 feet, except that a shorter length may be allowed or greater length required by the Zoning Commissioner on recommendation of the county trucking facilities development officials. The number, widths and channelization (if any) of access points shall be as required by the Zoning Commissioner, after recommendation of the county trucking facilities development officials and, in the case of access points on a state-maintained highway, recommendation of the State Highway Administration.

B. Other site and development standards.

1. Unless the lot on which the facility is situated lies within a planned industrial park, the net area of the lot must be at least three acres and its diametral dimension must be at least 150 feet. (This paragraph does not limit the number of trucking facilities that may be situated on a lot of the minimum size.)

2. Contrary provisions of these regulations notwithstanding, the trucking facility's floor area ratio may not exceed 0.1.

3. The layout of improvements must be such as to provide for convenient forward movement of vehicles leaving or entering the site and such as to preclude any likelihood that trucks will be unable to gain immediate access onto the site at any time, as determined by the Zoning Commissioner after recommendation by the county trucking facilities development officials.

4. The minimum area of the surface that must be provided for parking of truck tractors and trailers on the site, not including maneuvering area, is 1,320 square feet per loading berth. However, a lesser area may be allowed or greater area required by the Zoning Commissioner after recommendation by the County trucking facilities development officials. (See Section 409 for automobile-parking requirements.)

5. Except in an M.H. Zone, that part of the site devoted to trucking operations (not including the automobile parking area) must be surrounded by security fencing at least six feet high. In any zone, except for approved access points, the site as a whole must be enclosed or partially enclosed by opaque fencing, walls or living screen planting to visually screen the use and its accessory uses from residential zones, from residential premises or from churches, schools, hospitals or other similar institutional uses, and to prevent possible extension of uses beyond the site boundaries. The height of the visual screening must be at least six feet, except that screen planting may be as low as three feet from the ground at the time of planting if it is of such a variety that it can reasonably be expected to be at least six feet high no more than two years after it is planted. In any case, planting must be such as to provide full screening effect within two years after it is planted and must be maintained in good condition. Further, all fencing and screening must be in accordance with adopted design provisions (as defined in Section 101).

6. Wheel stops or other means must be provided to protect walls, fencing or screen planting.

7. All parking, loading, maneuvering and storage areas must be paved in accordance with the applicable provisions of Section 409. Curbing at the edges of paved areas must be provided if required by the Zoning Commissioner, on recommendation of the county trucking facilities development officials. **[Bill No. 26-1988]**

8. Proper drainage of the entire site must be provided for. On-site stormwater detention or controlled release facilities may be required by the Department of Public Works.

9. Adequate rest room facilities (for both sexes), a drivers' room and telephone service for the truck drivers and other personnel must be provided on the site.

10. Upon the effective date of the Baltimore County Landscape Manual, all landscaping and screening shall be in accordance with such manual adopted pursuant to § 32-4-404 of the Baltimore County Code. **[Bill Nos. 31-1984; 137-2004]**

C. Plans and operation.

1. The plans for a Class I trucking facility submitted in or with an application to Baltimore County for any permit to establish or alter such a facility, or submitted in pursuance of any provision of these Zoning Regulations, must

show the layout and operation of the use in detail that is sufficient for the Zoning Commissioner to determine whether and in what manner the facility will meet the requirements of these Zoning Regulations and must be certified by a professional engineer (licensed as such under the provisions of Title 14 of the Business Occupations and Professions Article of the Annotated Code of Maryland) or by a professional who is not an engineer but who is registered under law as competent to certify the accuracy of the plans. The operation, as well as the development, of the use must be in accord with the approved plans. In particular, the number of vehicles (including trailers) on the site must not at any time exceed the number provided for by the plans.

2. Automotive parts must be concealed from off-site view. Junk vehicles may not be stored or otherwise situated on the site.

3. In the granting of a special exception authorizing the establishment of a Class I trucking facility, the Zoning Commissioner may impose (in addition to any other reasonable restriction) reasonable limitations on hours of operation.

410.4 Actions of county officials to be consistent with certain purposes.

A. Consistency of actions with purposes. Whenever the Zoning Commissioner, the county trucking facilities development officials or any other county official or officials take an action pursuant to the provisions of this section, that action must, where applicable, be as consistent as is feasible with the purposes of this section, as set forth in Subsection B below and elsewhere in this section, and with the other purposes of these regulations in general (including the purposes set forth in Article 32 of the Baltimore County Code. **[Bill No. 137-2004]**

B. Purposes. In addition to other purposes implied or expressed in other provisions, the purposes of this section are:

1. To promote the spatial consolidation of trucking facilities, such as joint use of larger sites, so that the number of locations or trucking facilities will not be excessive with respect to the public interest and so as to provide for greater flexibility in the layout of individual sites.

2. To assure that the improvements of the sites of existing and future Class I trucking facilities are of such design, quality or character that they will not be likely to deteriorate in such a way that a public nuisance would be created or that the public interest would otherwise be adversely affected.

3. To minimize heavy truck traffic on motorways other than freeways, expressways or arterial streets.

4. To minimize the off-premises parking or storage of vehicles associated with existing and future Class I trucking facilities.

5. To promote the on-site provision of important conveniences so that employees or others associated with existing and future Class I trucking facilities need not seek such conveniences in or about the homes or business establishments of others or in other inappropriate places.

6. To provide the county government with plans and other records that are sufficiently detailed to afford proper administration of this section and related provisions.

7. In general, to accommodate trucking activities, in recognition of their importance to the economy of the county and the nation, while minimizing the impact of existing and future Class I trucking facilities on the environment and achieving an optimum level of compatibility between such facilities and nearby uses, especially dwellings and institutional uses.

Section 410A
Class II Trucking Facilities (Truck Yards, etc.)
[Bill No. 18-1976]

410A.1 Nonconforming and other existing Class II trucking facilities. The provisions of this subsection apply to Class II trucking facilities existing on the effective date of this section.

A. Plans.

1. If the owner of or authorized agent for a Class II trucking facility believes that approved plans of that facility are on file with the Office of Planning or Department of Permits and Development Management on the effective date of this section, he must so notify the Zoning Commissioner, in writing, within six months after that date, unless he has filed or will file plans as provided in Paragraph 2 below. Within 30 days after he receives the written notice, the Zoning Commissioner shall inform the owner or agent whether the plans are, in fact, on file and, if they are on file, whether they meet the requirements of Section 410A.3.C.1. If the plans do not meet those requirements, the owner or agent shall file plans that do meet the requirements within one year after the effective date of this section.

2. If approved plans of a Class II trucking facility are not on file with the Office of Planning or the Department of Permits and Development Management on the effective date of this section or if the Zoning Commissioner is not notified in accordance with Paragraph 1, the owner of or authorized agent for the trucking facility must file plans of the facility, meeting the requirements of Section 410A.3.C.1, within one year after that date.

3. Within 30 days after the effective date of this section, the Zoning Commissioner shall publish a checklist of requirements for plans submitted pursuant to Paragraph 2. The checklist must indicate, among other things, one or more acceptable scales to which plans must be drawn.

501.6 Appeals from the Zoning Commissioner shall be heard by the board of zoning appeals de novo. At such hearing, all parties, including the Zoning Commissioner, shall have the right to be represented by counsel, to produce witnesses and to file and submit all proper oral or written evidence.

501.7 The decision and order of the board of zoning appeals may affirm or reverse in whole, or in part, any decision or order of the Zoning Commissioner, or may modify the order appealed from and direct the issuance of a permit for such modified use as it may deem proper, subject, however, to zoning regulations and restrictions.

501.8 The charges and fees for procedures before the Zoning Commissioner to be paid by petitioner and before the board of appeals by the appellant or petitioner, shall be as follows. **[Bill Nos. 64-1960; 57-1982; 36-1984]**

A. Cost of procedure before Zoning Commissioner,.

(1) Petition for special exception: $100.

(2) Petition for special hearing pertaining to a one-family residence: $35.

(3) Petition for variance pertaining to a one-family residence: $35.

(4) All other petitions for variance or special hearing: $100.

(5) Maximum charge for petitions filed together: $250.

B. Cost of proceedings before the County Board of Appeals.

(1) Appeals from granting or refusing to grant a special exception: $100.

(2) Petition for reclassification: $100.

(3) All other hearings or appeals: $75.

C. The fees established herein may be changed by the County Administrative Officer from time to time and shall be in addition to advertising and posting expenses as established by the County Administrative Officer. In addition, the County Administrative Officer shall waive any or all of the fees or expenses established herein for the filing of a petition for special exception or variance when such petition is filed by a Baltimore County volunteer fire, ambulance or rescue company.

Section 502
Special Exceptions
[BCZR 1955]

(See Section 270, Schedule of Special Exceptions.)

NOTE: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junkyards, are inherently so objectionable as to make extra regulations and controls advisable even in the M.H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential,

business and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety or general welfare of the public, the uses listed as special exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the County Board of Appeals.

In granting any special exception, the Zoning Commissioner and the County Board of Appeals, upon appeal, shall be governed by the following principles and conditions.

502.1 Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other danger;

D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F. Interfere with adequate light and air; **[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 the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor **[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]**

502.2 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,[1] 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

[1] **Editor's Note: Under Section 1107 of the Baltimore County Charter, the County Council and County Executive have succeeded "to all powers heretofore vested in the county commissioners by the constitution and laws of this state."**

SUMMARY OF ZONING CASES

Case No. 4890-RX

On October 11, 1961, Wilson Forwarding Freight Company ("Wilson Freight") was granted a reclassification of the property located at 3600 Georgetown Road (the "Wilson Freight Property") from an R-6 zone to an M.L. zone. The County Board of Appeals held that the request for reclassification should be granted because the property was erroneously zoned at the time the Land Use Map was adopted by the County Council on June 2, 1959. The property was reclassified because it is surrounded by commercially zoned properties including junk yards, gasoline stations, trucking establishments and other commercial uses where it would be "impractical" for the property to be developed for residential purposes. Bloomfield Ex. 11, p. 1.

The Board of Appeals also granted a special exception for a trucking terminal at the Wilson Freight Property. The Board of Appeals was unanimous in its opinion that the special exception for a trucking terminal be granted, subject to certain restrictions. Bloomfield Ex. 11, p. 2.

Bill 18-1976 and the 1976 CZMP

The Wilson Freight Property was rezoned in the 1976 Comprehensive Zoning Map process from M.L. to M.L.R. – I.M. On April 18, 1976, the County Council adopted Bill No. 18-76 (the "Legislation"), which is now codified in Section 410 of the BCZR. The Legislation was adopted to regulate trucking facilities in Baltimore County.

Case No. 77-139-TV

Pursuant to the Legislation, Wilson Freight filed the requisite site plans for the Wilson Freight Property. On May 7, 1982, James E. Dyer, Zoning Supervisor of Baltimore County confirmed that Wilson Freight was in compliance with the Legislation and that there were no

outstanding zoning violations. Bloomfield Ex. 18. Mr. Dyer's letter also confirmed that all zoning problems on the Wilson Freight Property were resolved pursuant to the revised site plan that was reviewed and approved by him on June 16, 1981, and by the Chairman of the County Trucking Facilities Development Officials on June 15, 1981.

Case No. 98-260-SPHX

In this case, 3600 Georgetown Corporation doing business as NEMF, filed petitions for special hearing and special exception to amend the site plan that was approved in 1981 and to approve an amendment to the previously approved plan in Case No. 48-90-RX. Zoning Commissioner Schmidt granted the petitions for special exception and special hearing on February 25, 1998. Mr. Schmidt found that NEMF's use and proposed improvements to the Wilson Freight Property were compatible with the Wilson Freight Property's zoning classification and neighborhood. Bloomfield Ex. 20, p. 2. Mr. Schmidt further held that the additions and improvements requested in the case represented an "upgrade" to the Wilson Freight Property. *Id.*

Case No. 99-208-SPH

In this case, NEMF filed a petition for special hearing seeking to expand the time frame to begin using the special exception granted in Case 98-260-SPHX. Because Section 502.3 of the BCZR provides that the Zoning Commissioner may increase the period of utilization from two years up to five years from the date of the initial grant, NEMF was in negotiations to purchase an adjacent piece of property (the "Weiner Parcel"), and there were no adverse Zoning Advisory Committee ("ZAC") comments, Zoning Commissioner Schmidt granted the petition for special hearing to allow utilization to February 25, 2003.

Case No. CBA-00-162

NEMF and Baltimore County, Maryland settled and dismissed this appeal before the County Board of Appeals. The issue in this case was whether the Wilson Freight Property complied with BCZR §410.2. Subsequent to the Zoning Commissioner's Order extending the Wilson Freight Property's special exception in Case 99-208-SPH, Code Enforcement Officers of the Division of Code Inspections and Enforcement investigated the site. On September 25, 2000, James H. Thompson, Code Inspections and Enforcement Supervisor, issued a letter stating that Arnold Jablon, Director of Permits and Development Management ("PDM") "elected to declare the February 25, 1998 decision no longer valid and in effect." The September 25, 2000 letter stated that Mr. Jablon's decision was based on NEMF's failure to: 1) obtain an approved landscape plan, a condition of the Zoning Commissioner's Order in Case 98-260-SPHX; and 2) obtain permits for grading/paving and the erection of fencing.

The Division of Code Inspections and Enforcement issued Civil Case No. 00-7138, and a hearing on the citation was held before the Hearing Officer Stanley J. Schapiro on November 14, 2000. Mr. Schapiro's Order, dated November 20, 2000 found that NEMF "constructed the fence and graded [a portion of] the [Weiner] property under the mistaken belief that the Zoning Commissioner's Order in Case 98-260-SPHX authorized the construction of the fence and grading." Mr. Schapiro further found that NEMF "has removed all tractor-trailers from those proposed areas indicated on the site plan filed with said Order" and that "barriers have been positioned on site to prevent re-entry into those areas."

NEMF subsequently submitted a final landscape screening plan for the Wilson Freight Property which was approved by PDM on November 30, 2000. Thereafter, on December 1,

2000, NEMF's counsel sent a letter to Mr. Jablon requesting that he revisit his decision of September 25, 2000 where he declared the February, 1998 decision invalid. On April 27, 2001, James Thompson issued a response indicating that Mr. Jablon was willing to abate his decision of September 25, 2000, and also indicating that a variance was required if the Class I trucking facility was within 300 feet of any dwelling or residential zone per BCZR §410.2. On May 11, 2001, NEMF's counsel issued another letter to Mr. Jablon explaining that BCZR §410.2 does not apply to the Wilson Freight Property because it was established before the enactment of the Legislation. On May 14 and 15, 2001, representatives of PDM noted their agreement with NEMF. As a consequence, NEMF and Baltimore County entered into a settlement agreement declaring Mr. Jablon's September 25, 2000 letter void because it was based on a mistaken construction of the law and that NEMF's 1998 special exception approval obtained in Case 98-260-SPHX remains in full force and effect. Accordingly, it was determined that the 300 foot setback requirement of BCZR §410.2 does not apply to the Wilson Freight Property.

Case No. 01-544-SPHX

In this case, NEMF requested special exception approval to amend the site plan approved in Case 980260-SPHX and a special exception to expand the existing Class I trucking facility onto the Weiner Parcel.[1] Special hearing relief was also requested to approve a car parking compound located within Baltimore City as supporting the Class I trucking facility. Deputy Zoning Commissioner Kotroco granted NEMF's request to expand the Class I trucking facility onto the Weiner Parcel subject to certain restrictions. The parties then filed motions for reconsideration of the Deputy Zoning Commissioner's Order asking that the Order be modified. A public hearing was held on February 27, 2002. Mr. Kotroco issued another Order denying the

Motion for Reconsideration filed by the Office of People's Counsel finding that NEMF's proposed expansion of the Class I trucking facility was appropriate. Bloomfield Ex. 22, p. 6. Mr. Kotroco granted NEMF's Motion for Reconsideration holding that it was not his intention to impose conditions and restrictions that would ultimately render NEMF's operations at the Class I trucking facility ineffective and that he did not intend for NEMF to cease operations at the Class I trucking facility and relocate. *Id.*

The case was then appealed to the County Board of Appeals. On January 16, 2003, because the contract to purchase the Weiner Parcel expired, NEMF withdrew its petitions filed in Case 01-544-SPHX. The Deputy Zoning Commissioner's Order dated October 12, 2001 and Order on Motion for Reconsideration dated April 3, 2002 were then rendered null and void. Bloomfield Ex. 24.

Case No. 04-160-SPH

Tom Mauk, Catherine Scarborough, Anna Wood and the Greater Bloomfield Community Association ("Protestants"), filed their current petition for special hearing to determine the following questions:

1) whether NEMF is lawfully utilizing that portion of its property located in the S/W portion of the site identified on the plan submitted to DEPRM;

2) whether the Property's and the Weiner Parcel's prior zoning history and the BCZR prohibit the issuance of Permit # B511616;

3) whether NEMF lost any claim as a nonconforming use;

4) whether NEMF lost its right to exist on the subject site since its special exception in 1998 expired; and its special exception in 2000 was withdrawn;

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[1] The County Council voted to rezone the Weiner Parcel during the 2000 Comprehensive Zoning Map process to M.L. and B.M. – I.M., thereby permitting NEMF to expand the Class I Trucking Facility onto the Weiner

5) whether any expansion beyond that of the nonconforming use is permitted by the BCZR and to what extent; and

6) whether NEMF is required to comply with the 300 foot setback from the property line pursuant to BCZR §410.2 (Bill 18-76).

Case No. 04-294-SPHX

NEMF filed a petition for special exception to amend the Special Exception Plan approved in Case 98-260-SPHX and to expand the existing Special Exception for a Class I trucking facility in accordance with the attached Plan to Accompany Petition for Special Exception and Special Hearing. In the alternative, NEMF requests a special exception to amend a previously approved Class I trucking facility plan.[2]

NEMF also filed a petition for special hearing to determine whether:

1) the Plan approved in Case 98-260-SPHX was utilized and vested;

2) to determine whether the existing use of the site as a Class I trucking facility has been utilized and vested; and

3) to amend a previously approved car parking compound in Baltimore City as supporting a Baltimore County trucking facility and to further recognize that the subject car parking compound as fulfilling the requirements of BCZR §409.6.A.3 providing the parking requirements for a trucking facility in Baltimore County.

Parcel. Bloomfield Ex. 22, p. 6.

[2] Since the withdrawal of the Petition in Case 01-544-SPHX, NEMF entered into a new contract to purchase the Weiner Parcel. NEMF purchased the Weiner Parcel in 2004. T.1, p. 93.

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August 21, 2006

Via Hand Delivery
Clerk's Office
Civil Assignment
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, MD 21285-6754

Re: 3600 Georgetown Corp. v. Baltimore County Board of Appeals
(Petitions recorded under same case number)

Case No. 03-C-06-003979 AE

Dear Sir/Madam:

Enclosed herein please find an original and 2 copies of Petitioner, 3600 Georgetown Corp.'s Memorandum. Please date stamp the extra copy and return it to the courier.

Thank you for your consideration of this request.

Sincerely,

G. Scott Barhight/jb

G. Scott Barhight

cc: J. Carroll Holzer, Esq.
Peter Max Zimmerman, Esq.

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ORDERS
OPINIONS
MEMORANDA
CON'T

(2)

20040160 'A'
Supplemental
&
20040294 'A'
supplemental

6/15/06

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF:
GREATER BLOOMFIELD ASSN.: *
LORNA RUDNIKAS, PRESIDENT
1727 Hall Avenue, Baltimore, MD *
21227; and individuals LORNA
RUDNIKAS; DARLEENE BYRD, *
1709 Wilson Avenue, Baltimore, MD
21227; BRENDA ELLIOTT, 3510 *
Georgetown Road, Baltimore, MD
21227; and DONALD SADLER, *
1712 Wilson Avenue, Baltimore,
MD 21227 *and* PEOPLE'S COUNSEL *
FOR BALTIMORE COUNTY,
Old Courthouse, Room 47, 400 *
Washington Ave., Towson, MD 21204
*
FOR JUDICIAL REVIEW OF THE OPINION * CIVIL ACTION
OF THE COUNTY BOARD OF APPEALS No. **3-C-06-3979**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204
*
IN THE MATTER OF THE APPLICATION *
OF: 3600 GEORGETOWN CORP. -
PETITIONER (NEW ENGLAND MOTOR *
FREIGHT) FOR SPECIAL HEARING &
SPECIAL EXCEPTION ON PROPERTY *
LOCATED ON THE N/S GEORGETOWN
ROAD, SW OF BLOOMFIELD ROAD *
(3600 GEORGETOWN ROAD)
CASE NO.: 04-294-SPHX *
*
and
*
IN THE MATTER OF THE APPLICATION
OF: THE GREATER BLOOMFIELD COM- *
MUNITY ASSOCIATION, ET AL
(PETITIONERS/PROTESTANTS) *
FOR SPECIAL HEARING ON PROPERTY
LOCATED AT 3600 GEORGETOWN ROAD *
3600 GEORGETOWN CORPORATION

RECEIVED AND FILED
06 JUN 15 PM 2:13
CLERK OF
BALTIMORE COUNTY

3 accordion folders in box,
along w/2 large rolled up overlays 196 & 206a

CASE NO.: 04-160-SPH *

13TH ELECTION DISTRICT *
1ST COUNCILMANIC DISTRICT
* * * * * * * * * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD APPEALS AND DEPARTMENT OF PERMITS & LICENSES OF BALTIMORE COUNTY

CASE NO.: 04-160-SPH

Sept.29, 2003	Petition for Special Hearing filed by J. Carroll Holzer, Esquire, on behalf of Tom Maul, Catherine Scarborough, Anna Wood and the Greater Bloomfield Community Association by the President, Lorna Rudnikas to determine: 1. NEMF New England Motor Frieght is lawfully utilizing the SW portion of the identified plan for the construction of an underground SWM facility with possible truck parking 2. To determine whether sites prior to zoning history and the BCZR would prohibit Permit B511616 3. Whether NEMF lost any claim as non-conforming use 4. Has NEMF lost its right to exist on subject site 5. Is any expansion beyond the non-conforming use permitted 6. Should NEMF be required to comply with the 300' min ft. setback
Oct. 21, 2003	Entry of Appearance by People's Counsel.
Nov. 5, 2003	Corrected Notice of Zoning Hearing.

November 24, 2003 Certificate of Posting by Bruce Doak.

November 25, 2003 Certification of Publication.

CASE NO.: 04-294-SPHX

Dec. 18, 2003 Petition for Special Hearing & Special Exception.

Petition for Special Hearing filed by G. Scott Barhight/Jennifer R. Busse , Esquire, on behalf of 3600 Georgetown Corp. requesting:

1. determination of the Plan approved in case no.: 98-260-SPHX was utilized and therefore vested;
2. determination whether the existing use of th4e site as a Class I trucking facility has been utilized and therefore vested and
3. To amend a 0previoisly approved car parking compound in Baltimore City as supporting a Baltimore County trucking facility and further, to recognize that the subject car parking compound as fulfilling the requirements of BCZR §409.63 providing the parking requirements for a trucking facility in Baltimore County.

Petition for Special Exception filed by G. Scott Barhight/Jennifer R. Busse , Esquire, on behalf of 3600 Georgetown Corp requesting:

1. to amend the Special Exception plan approved in case No.: 98-260-SPHX
2. to expand the existing Special Exception for a Class I Trucking Facility in accordance with the attached Plan to Accompany Petition for Special Exception and Special Hearing
3. In the alternative, Special Exception to amend a previously approved Class I Trucking Facility Plan

Jan. 8, 2004 Entry of Appearance by People's Counsel.

Jan. 13, 2004 Notice of Zoning Hearing

Feb. 8, 2004 Certificate of Posting by SSG – Robert Black.

Feb. 10, 2004 Certificate of Publication – Jeffersonian.

CASE NO.: 04-160-SPH & 04-294-SPHX

Feb. 27, 2004 Zoning Advisory Committee Comments.

Sept. 7, 2004 Hearing before the Zoning Commissioner.

Sept. 7, 2004 Sign-In Sheet for Petitioner & Citizens.

Sept. 28, 2004	Zoning Commissioner's Order / GRANTED in reference to 04-294-SPHX and DENIED 04-160-SPH.
Oct.12, 2004	Notice of Appeal filed by People's Counsel
Oct. 13, 2004	Notice of Appeal filed by J. Carroll Holzer on behalf of Tom Maul, Catherine Scarborough, Anna Wood and the Greater Bloomfield Community Association by the President, Lorna Rudnikas
Oct. 19, 2004	Entry of Appearance by Jennifer R. Busse, Esq. and G. Scott Barhight, Esq.
Nov. 15, 2004	Letter from the Timothy Kotroco, Dir. Of PDM notifying J. Carroll Holzer, Esq. that an appeal of the case had been filed.
Nov. 17, 2004	Appeal received BOA.
Dec. 17, 2004	Confirmation of Appeal Sign Posting Request/Certificate of Posting.
Mar. 7, 2005	Notice of Postponement & Reassignment.
May 25, 2005	Entry of Appearance by People's Counsel.
July 6, 2005	Various subpoenas.
July 14, 2005	Hearing before the Board – Day #1.
July 19, 2005	Hearing before the Board – Day #2.
July 21, 2005	Hearing before the Board – Day #3.
Sept. 14, 2005	Hearing before the Board – Day #4.
Sept. 30, 2005	Hearing before the Board – Day #5.

Developer's Exhibits

1. A-C Pictures of facility they own in New York.
2. 2004 Site Plan (In File) from below
3. Letter dated March 5, 2003 from Jennifer Busse, Esq.
4. Letter dated Aug. 24, 2001 – ID only
5. David L. Martin L.A. C.V.
6. Sampled Trucking Facilities on Record w/ Baltimore County
7. Power Point Presentation
8. Site Plan 2000 Hammonds Ferry Road

9. Site Plan 4546 Annapolis Road
10. Site Plan 4412 Pistorio Road
11. Site Plan Eskow Avenue
12. Site Plan Washington Blvd.
13. Site Plan 8216 & 8224 Beltzer Road
14. Site Plan 8227 Fischer Road
15. NEMF Noise Control Analysis
16. James Markle C.V.
17. Letter from Rober Bowling dated 6/2/2004
18. Site Plan for Storm Water Management
19. a. Letter from Michael Walsh dated 6/27/05
    b. Letter from Joan Hatfield dated 6/28/05
    c. Letter from David Iannucci dated 6/29/05

Protestant's Exhibits

1. MDE Packet A – K
2. Title 26 Dept. of the Environment A – G
3. Title 3 Noise Control (20 pages)
4. Db formula
5. C.V. for Dr. Timothy J. Beckley

6.a. Fence line noise data
6.b. Fence line noise data (portion)
6.c–g. Packets of raw data

7. Rule 8 papers
8. Power point presentation by Lorna Rudnik
9. Jack Dillon C.V.
10. Power point presentation by Jack Dillo
11. CBA 4890 – RX
12. Baltimore County Task Force 1975
13. Final Report 1976
14. County Council of Baltimore County 1976
15. Deputy Zoning Commissioner of Baltimore County – 77- 77-139 TV
16. Order of U.S. Bankruptcy Court filed July 24, 198
17. Baltimore County Board of Appeals No. 77-139
18. Letter from James E. Dyer (Zoning Supervisor)

19.a. Site Plan of Wilson Freight.
19.b. Overlay for Ex. 19 Site Plan (Behind door rolled up w/ 26a)

20. Zoning Commissioner's Case No.: 98-260-SPHX
21. Zoning Commissioner's Case No.: 99-208-SP
22. Deputy Zoning Commissioner's Case No. 01-544-SPHX
23. Motion for Reconsideration
24. CBA – Dismissing 01-544-SPHX
25. Letter from James H. Thompson (Code Enforcement)
26 Site Plan from 99-208-SPH & 98-260-SPH

26.a. Overlay for Ex. 26 Site Plan (Behind door rolled up)

27. Aerial photo from Baltimore City
28. Overlay for proposed NEMF Site
29. Overlay for Merritt Prop. Project.
30. Topography map from Baltimore County
31. Topography map (larger scale than Ex. 30)
32. Checklist
33. Master Plan (Blown Up)
34. Rule 8 papers corrected (See Ex. 7)
35. Petitions from community.

People's Counsel Exhibits

1. General Provisions
2. Special Regs.
3. Umerley v. People's Counsel
4. Aerial photo
5. Aerial photo (broader shot)
6. 1960 site plan
7. Permits & Development Zoning Map
8. NEMF web site packet
9. Real property data search for 7020 Quad Ave.
10. ADC Map #44
11.a. Zoning map
11.b. Zoning map
12. GIS Photo of Quad Avenue property
13. 200 scale zoning map
14. Taxation and Assessment Report
15. ADC Map page 42
16. Laskey v. Beth Steel Corp. Order
17. CBA Case #03-456-SPH
18. Trucking Facilities List
19. List created by David Martin
20. Zoning Commissioner's Case #00-239-XA
21.a. Case #86-417-XSPHA
21.b. Case #87-246-SPHA

Oct. 3, 2005	Notice of Deliberation.
Oct. 27, 2005	Public Deliberation – Day #1. (Messrs. Stahl ,Chairman, Crizer, and Ramsey).
Nov. 1, 2005	Notice of Deliberation/Reassignment Date.
Nov. 8, 2005	Joint Motion for Appropriate Relief, Implementation of State Open Meetings Law, Production of Minutes, and Effectuation of Decision Made in Public Deliberation.

Nov. 8, 2005	Request for Expedited Hearing filed by People's Counsel.
Nov. 22, 2005	Affidavit of Audra T. Cathell regarding Public Deliberation of October 27, 2005.
Nov. 22, 2005	New England Motor Freight's Response to Joint Motion for Appopriate Relief filed by G. Scott Barhight, Esq.
Nov. 29, 2005	Subpoena of Board Administrator, Kathleen Bianco, requesting that she produce certain documents pertaining to the Public Deliberation of New England Motor Freight that took place on October 27, 2005.
Nov. 30, 2005	Affidavit of Service of the Subpoena on Kathleen Bianco.
Dec. 1, 2005	Letter from People's Counsel to Kathleen Bianco, Board Administrator, requesting that they be allowed to inspect and copy any and all objects, notes, minutes, documents pertaining the to Public Deliberation of Oct. 27, 2005.
Dec. 6, 2005	Public Deliberation – Day #2. (Messrs. Stahl ,Chairman, Crizer & Wescott) **Note:** Mr. Ramsey resigned in October and was replaced by Mr. Wescott .
Mar. 15, 2006	Cover Order, Opinion & Order signed by Messrs. Stahl and Crizer, and a Supplemental Opinion and Order, signed by Messrs. Stahl, Crizer and Wescott issued.
Apr. 18, 2006	Board received a copy of the Petition for Judicial Review filed in the Circuit Court by J. Carroll Holzer, Esq., People's Counsel and Deputy, People's Counsel. On April 13, 2006.
April 28, 2006	Cross Petition for Judicial Review filed by G. Scott Barhight, Esq. filed with the Circuit Court for Baltimore County. (Received copy in BOA on May 1, 2006 no case no. reflected on copy)
May 1, 2006	Response to Petition for Judicial Review filed by G. Scott Barhight, Esq. which was filed on April 28, 2006 in the Circuit Court for Baltimore County.
May, 2, 2006	Certificate of Notice filed in the Circuit Court for Baltimore County by Board of Appeals.
May 10, 2006	Response to Cross Petition for Judicial Review filed by People's Counsel and J. Carroll Holzer, Esq.

May 25, 2006	Retrieved, via phone call with Kathy at the Circuit Court, since the Board had not received confirmation from the court, that Cross Petition for Judicial Review was recorded under case no. 03-C-06-3979.
May 25, 2006	Second Certificate of Notice file for Cross Petition for Judicial Review filed by G. Scott Barhight, Esq. and Jennifer R. Busse, Esq.
June 9, 2006	Transcript received in Board of Appeals.
June 15, 2006	Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Board acted are permanent records of the originating agency in Baltimore County. These records are hereby forwarded to the Court together with exhibits entered before the Hearing Officer.

Linda B. Fliegel

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

C: J. CARROLL HOLZER, ESQUIRE
G. SCOTT BARHIGHT, ESQ. /JENNIFER R. BUSSE, ESQ.
PETER M. ZIMMERMAN, PEOPLE'S COUSEL FOR BALTIMORE COUNTY
CAROLE S. DEMILIO, DEPUTY PEOPLE'S COUNSEL
GREATER BLOOMFIELD ASSN.:LORNA RUDNIKAS, PRESIDENT
LORNA RUDNIKAS; DARLEENE BYRD
BRENDA ELLIOTT,
DONALD SADLER

5/10/06

PETITION OF GREATER BLOOMFIELD ASSN.; LORNA RUDNIKAS, PRESIDENT, 1727 Hall Ave, Baltimore, MD 21227; and individuals LORNA RUDNIKAS; DARLENE BYRD, 1709 Wilson Avenue, Baltimore, MD 21227; BRENDA ELLIOTT, 3510 Georgetown Road., Baltimore, MD 21227; and DONALD SADLER, 1712 Wilson Avenue, Baltimore, MD 21227 and PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204	*	FOR
IN THE MATTER OF THE APPLICATION OF **3600 GEORGETOWN CORPORTATION** – Petitioner (NEW ENGLAND MOTOR FRIEGHT) FOR SPECIAL HEARING AND SPECIAL EXCEPTION for property located on the N/S Georgetown Road, SW of Bloomfield Road 13th Election District, 1st Councilmanic District Case No. 04-294-SPHX	*	BALTIMORE COUNTY Civil No. 03-C-06-3979
and	*	
IN THE MATTER OF THE APPLICATION OF THE GREATER BLOOMFIELD COMMUNITY ASSOCIATION, ET AL. (PETITIONERS/PROTESTANTS) FOR SPECIAL HEARING for property located at 3600 Georgetown Rd; 3600 Georgetown Corp. – Legal Owners Case No. 04-160-SPH	*	

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

RESPONSE TO CROSS-PETITION FOR JUDICIAL REVIEW

GREATER BLOOMFIELD ASSOCIATION, LORNA RUDNIKAS, PRESIDENT and individuals, LORNA RUDNIKAS; DARLENE BYRD, BRENDA ELLIOTT and DONALD SADLER by and through their attorneys, J. CARROLL HOLZER, and HOLZER & LEE, and PEOPLE'S COUNSEL FOR BALTIMORE COUNTY by and through PETER MAX

ZIMMERMAN, People's Counsel for Baltimore County and CAROLE S. DEMILIO, Deputy People's Counsel, in accordance with Maryland Rule 7-204, submits this response to the Cross-Petition for Judicial Review filed by 3600 GEORGETOWN CORPORATION, and states that they intends to participate in this action for Judicial Review. The undersigned participated in the proceeding before the County Board of Appeals.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

J. CARROLL HOLZER, ESQUIRE
Holzer & Lee, P.A.
508 Fairmount Avenue
Towson, MD 21286
(410) 825-6961
Attorney for Greater Bloomfield Association, et al.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th of May, 2006, a copy of the foregoing Response to Cross-Petition for Judicial Review was mailed G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204, Attorney for Petitioners.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

5/26/06

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF:
3600 GEORGETOWN CORP. *

FOR JUDICIAL REVIEW OF THE OPINION * CIVIL ACTION
OF THE COUNTY BOARD OF APPEALS No. **3-C-06-3979**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204
*
IN THE MATTER OF THE APPLICATION
OF: 3600 GEORGETOWN CORP. - *
PETITIONER (NEW ENGLAND MOTOR
FREIGHT) FOR SPECIAL HEARING & *
SPECIAL EXCEPTION ON PROPERTY
LOCATED ON THE N/S GEORGETOWN *
ROAD, SW OF BLOOMFIELD ROAD
CASE NO.: 04-~~394~~-SPHX *
294
and *

IN THE MATTER OF THE APPLICATION *
OF: THE GREATER BLOOMFIELD COM-
MUNITY ASSOCIATION, ET AL *
(PETITIONERS/PROTESTANTS)
FOR SPECIAL HEARING ON PROPERTY *
LOCATED AT 3600 GEORGETOWN ROAD
3600 GEORGETOWN CORPORATION – LEGAL*
OWNER
CASE NO.: 04-160-SPH *

13TH ELECTION DISTRICT *
1ST COUNCILMANIC DISTRICT

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

SECOND CERTIFICATE OF NOTICE
(CROSS PETITION FOR JUDICIAL REVIEW)

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of

RECEIVED AND FILED
06 MAY 26 AM 10: 37
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial

Review to the representative of every party to the proceeding before it; namely:

J. CARROLL HOLZER, ESQUIRE
508 FAIRMOUNT AVENUE, TOWSON, MD 21286

PETER M. ZIMMERMAN,
PEOPLE'S COUSEL FOR BALTIMORE COUNTY, OLD COURTHOUSE, ROOM 47, 400 WASHINGTON AVENUE, TOWSON, MD 21204

CAROLE S. DEMILIO
DEPUTY PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, OLD COURTHOUSE, ROOM 47, 400 WASHINGTON AVENUE, TOWSON, MARYLAND 21204

G. SCOTT BARHIGHT, ESQUIRE/JENNIFER R. BUSSE, ESQUIRE
WHITEFORD, TAYLOR & PRESTON, 210 W. PENNSYLVANIA AVE., TOWSON, MD 21204

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

Linda B. Fliegel

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

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to:, People's Counsel for Baltimore County, Maryland, Old Courthouse, Room 47, 400 Washington Ave., Towson, MD 21204; and to J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, MD 21286 and G. Scott Barhight, Esquire/Jennifer R. Busse, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204 on this ____ day of May, 2006.

Linda B Fliegel

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

County Board of Appeals of Baltimore County

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

May 26, 2006

G. Scott Barhight, Esq.
Jennifer R. Busse, Esq.
Whiteford, Taylor & Preston, L.L.P.
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: Circuit Court Civil Action No.
Second (Cross) Petition for Judicial Review
In the Matter of: 3600 Georgetown Corp.
Case No.: 03-C-06-3979

Dear Counsels:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the second (cross) petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter.

The cost of the transcript of the record must be paid prior to the record being submitted. Please verify payment of the transcript in this matter to insure that the original transcript is submitted to this office in time to transmit the record to the Circuit Court in accordance with the Maryland Rules.

Enclosed is a copy of the Second Certificate of Notice.

Very truly yours,

Linda B. Fliegel

Linda B. Fliegel
Legal Secretary

Enclosure

c: J. Carroll Holzer, Esq.
People's Counsel
Carolyn Peatt

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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

May 26, 2006

J. Carroll Holzer, Esq.
508 Fairmount Avenue
Towson, MD 21286

RE: Circuit Court Civil Action No. 3-C-06-3979
Petition for Judicial Review
3600 Georgetown Corp – (New England Motor Freight
Board of Appeals Case No.: 04-160-SPH

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules, that a Cross Petition for Judicial Review was filed on April 28, 2006 in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, **must be filed under Civil Action No . 3-C-06-3979.**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel

Linda B. Fliegel
Legal Secretary

/lbf
Enclosure

c: G. Scott Barhight, Esq./Jennifer R. Busse, Esq.
People's Counsel for Balto. Co.
William J. Wiseman, III,
Zoning Commissioner
Timothy M. Kotroco, Dir./PDM
Myron Shevell
New England Motor Freight
Robert Walker
Lorna Rudnikas, Pres.
Greater Bloomfield Community Assoc.
Lorna Rudnikas
Tom Mauk
David Martin
Anna Wood
Marvin & Florence Weiner
Catherine Scarborough

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5/2/06

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY *

PETITION OF: *
GREATER BLOOMFIELD ASSN.: *
LORNA RUDNIKAS, PRESIDENT
1727 Hall Avenue, Baltimore, MD *
21227; and individuals LORNA
RUDNIKAS; DARLEENE BYRD, *
1709 Wilson Avenue, Baltimore, MD
21227; BRENDA ELLIOTT, 3510 *
Georgetown Road, Baltimore, MD
21227; and DONALD SADLER, *
1712 Wilson Avenue, Baltimore,
MD 21227 and PEOPLE'S COUNSEL *
FOR BALTIMORE COUNTY,
Old Courthouse, Room 47, 400 *
Washington Ave., Towson, MD 21204

FOR JUDICIAL REVIEW OF THE OPINION * CIVIL ACTION
OF THE COUNTY BOARD OF APPEALS No. **3-C-06-3979**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF THE APPLICATION
OF: 3600 GEORGETOWN CORP. - *
PETITIONER (NEW ENGLAND MOTOR
FREIGHT) FOR SPECIAL HEARING & *
SPECIAL EXCEPTION ON PROPERTY
LOCATED ON THE N/S GEORGETOWN *
ROAD, SW OF BLOOMFIELD ROAD
(3600 GEORGETOWN ROAD) *

and *

IN THE MATTER OF THE APPLICATION *
OF: THE GREATER BLOOMFIELD COM-
MUNITY ASSOCIATION, ET AL *
(PETITIONERS/PROTESTANTS)
FOR SPECIAL HEARING ON PROPERTY *
LOCATED AT 3600 GEORGETOWN ROAD
3600 GEORGETOWN CORPORATION *

CASE NO.: 04-160-SPH *

RECEIVED AND FILED
06 MAY -2 PM 2:22
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

13TH ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

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

CERTIFICATE OF NOTICE

Madam Clerk:

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

J. CARROLL HOLZER, ESQUIRE
508 FAIRMOUNT AVENUE
TOWSON, MD 21286

PETER M. ZIMMERMAN,
PEOPLE'S COUSEL FOR BALTIMORE COUNTY, OLD COURTHOUSE, ROOM 47,
400 WASHINGTON AVENUE, TOWSON, MD 21204

CAROLE S. DEMILIO
DEPUTY PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, OLD COURTHOUSE,
ROOM 47, 400 WASHINGTON AVENUE, TOWSON, MARYLAND 21204

GREATER BLOOMFIELD ASSN.:LORNA RUDNIKAS, PRESIDENT
1727 HALL AVENUE, BALTIMORE, MD 21227 *AND INDIVIDUALS*

LORNA RUDNIKAS; DARLEENE BYRD
1709 WILSON AVENUE, BALTIMORE, MD 21227

BRENDA ELLIOTT,
3510 GEORGETOWN ROAD, BALTIMORE, MD 21227

DONALD SADLER
1712 WILSON AVENUE, BALTIMORE, MD 21227

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

Linda B. Fliegel

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

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to:, Greater Bloomfield Association, Lorna Rudnikas, President, 1727 Hall Avenue, Baltimore, MD 21227; and individuals Lorna Rudnikas and Darleene Byrd, 1709 Wilson Avenue, Baltimore, MD 21227; Brenda Elliott, 3510 Georgetown Road, Baltimore, MD 21227; Donald Sadler, 1712 Wilson Avenue, Baltimore, MD 21227, People's Counsel for Baltimore County, Maryland, Old Courthouse, Room 47, 400 Washington Ave., Towson, MD 21204; and to J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, MD 21286 on this 22nd day of May, 2006.

Linda B. Fliegel

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

County Board of Appeals of Baltimore County

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

May 2, 2006

Peter M. Zimmerman,
People's Counsel
and
Carole S. Demilio, Deputy
People's Counsel
400 Washington Ave.
Couthouse – Rm. 49
Towson, MD 21204

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

RE: Circuit Court Civil Action No. 03-C-06-003979
Petition for Judicial Review
3600 Georgetown Corp – New England Motor Freight
Case No.: 04-160-SPH

Dear Counsels:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review, which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days. The cost of the transcript of the record must be paid by you and must be paid in time to transmit same to the Circuit Court within the sixty day timeframe, as stated in the Maryland Rules.

The Court Reporter that you need to contact to obtain the transcript and make arrangement for payment is as follows:

COURT REPORTER	HEARING DATE(S) - 2005
CAROLYN PEATT	July 14th & Sept. 14th
BOB SHOCKETT	July 19th
SUE KAMBOURIS	July 21st
SUE SMITH	Sept. 30th

This office has already notified Ms. Peatt that a transcript on the above-captioned matter would be due by June 15, 2006 for filing in the Circuit Court.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel
Legal Secretary

c: Carolyn Peatt, Court Reporter
People's Counsel
G. Scott Barhight, Esq/Jennifer R. Bussee, Esq.

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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 2, 2006

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

RE: Circuit Court Civil Action No. 3-C-06-3979
Petition for Judicial Review
3600 Georgetown Corp – (New England Motor Freight
Board of Appeals Case No.: 04-160-SPH

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on April 13, 2006 in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, **must be filed under Civil Action No . 3-C-06-3979.**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel

Linda B. Fliegel
Legal Secretary

/lbf
Enclosure

c: J. Carroll Holzer, Esq.
People's Counsel for Balto. Co.
William J. Wiseman, III,
Zoning Commissioner
Timothy M. Kotroco, Dir./PDM
Myron Shevell
New England Motor Freight
Robert Walker
Lorna Rudnikas, Pres.
Greater Bloomfield Community Assoc.
Lorna Rudnikas
Tom Mauk
David Martin
Anna Wood
Marvin & Florence Weiner
Catherine Scarborough

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4/28/06

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

April 28, 2006

VIA HAND DELIVERY
Ms. Suzanne Mensch
Clerk, Circuit Court of Maryland for
Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

Re: Response to Petition For Judicial Review, Case No.:
In the Matter of 3600 Georgetown Corporation,
Baltimore County Board of Appeals
Case Nos.: 04-160-SPH and 04-294-SPHX

Dear Ms. Mensch:

Enclosed please find an original and three (3) copies of 3600 Georgetown Corporation's Response to Petition for Judicial Review to be filed in the above-referenced case. Please date stamp the extra copy and return it, as well as the receipt, to the courier.

If you have any questions or need further assistance, please do not hesitate to contact me.

Thank you for your assistance with this matter.

Sincerely,

G. Scott Barhight

Enclosure
cc: Baltimore County Board of Appeals
J. Carroll Holzer, Esq.
People's Counsel for Baltimore County
New England Motor Freight

359518

RECEIVED
MAY 01 2006
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

*

PETITION OF
GREATER BLOOMFIELD ASSN., ET. AL.

FOR JUDICIAL REVIEW OF THE * CIVIL ACTION
DECISION OF THE COUNTY BOARD No.
OF APPEALS OF BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF: *
3600 GEORGETOWN CORP. - PETITIONER
(NEW ENGLAND MOTOR FREIGHT) FOR
SPECIAL HEARING AND SPECIAL EXCEPTION
on property located on the
N/S Georgetown Road, SW of Bloomfield Road *
13th Election District
1st Councilmanic District
Case No. 04-294-SPHX

AND *

IN THE MATTER OF THE APPLICATION OF:
THE GREATER BLOOMFIELD COMMUNITY ASSN, ET. AL. -
PETITIONERS/PROTESTANTS FOR SPECIAL HEARING
on property located at 3600 Georgetown Road;
3600 Georgetown Corp. - Legal Owner *
Case No. 04-160-SPH

3600 GEORGETOWN CORPORATION'S
RESPONSE TO PETITION FOR JUDICIAL REVIEW

3600 Georgetown Corporation, by and through its attorneys, G. Scott Barhight, Jennifer R. Busse, and Whiteford, Taylor & Preston, L.L.P., and pursuant to Maryland Rule 7-204(a), submits this Responds to the Petition for Judicial Review filed by the Greater Bloomfield Association, et. al. 3600 Georgetown Corporation was a party to the proceedings below, Case Nos. 04-160-SPH and 04-294-SPHX, and intends to participate in the action for Judicial Review.

Respectfully Submitted,

G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2077

Attorneys for Respondent,
3600 Georgetown Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of April, 2006 a copy of the foregoing Response to Petition for Judicial Review was mailed first class, postage prepaid to:

Peter Max Zimmerman, Esquire
Carol S. Demilio
Old Courthouse, Room 407
400 Washington Avenue
Towson, Maryland 21204
Office of People's Counsel for Baltimore County

J. Carroll Holzer, Esquire
Holzer & Lee, P.A.
508 Fairmount Avenue
Towson, Maryland 21204
Attorney for Petitioners

Baltimore County Board of Appeals
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

G. Scott Barhight, Esquire

359513

4/28/06

WHITEFORD, TAYLOR & PRESTON L.L.P.

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ALEXANDRIA, VIRGINIA 22314
TELEPHONE 703 836-5742
FAX 703 836-3558

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

April 28, 2006

VIA HAND DELIVERY
Ms. Suzanne Mensch
Clerk, Circuit Court of Maryland for
Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

Re: Cross Petition For Judicial Review, Case No.:
In the Matter of 3600 Georgetown Corporation,
Baltimore County Board of Appeals
Case Nos.: 04-160-SPH and 04-294-SPHX

Dear Ms. Mensch:

Enclosed please find an original and three (3) copies of 3600 Georgetown Corporation's Cross Petition for Judicial Review to be filed in the above-referenced case. Please date stamp the extra copy and return it, as well as the receipt, to the courier.

If you have any questions or need further assistance, please do not hesitate to contact me.

Thank you for your assistance with this matter.

Sincerely,

G. Scott Barhight

Enclosure
cc: Baltimore County Board of Appeals
J. Carroll Holzer, Esq.
People's Counsel for Baltimore County
New England Motor Freight

359518v2

RECEIVED
MAY 01 2006
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

*

PETITION OF
3600 GEORGETOWN CORP.

FOR JUDICIAL REVIEW OF THE * CIVIL ACTION
DECISION OF THE COUNTY BOARD No.
OF APPEALS OF BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF: *
3600 GEORGETOWN CORP. - PETITIONER
(NEW ENGLAND MOTOR FREIGHT) FOR
SPECIAL HEARING AND SPECIAL EXCEPTION
on property located on the
N/S Georgetown Road, SW of Bloomfield Road *
13th Election District
1st Councilmanic District
Case No. 04-294-SPHX

AND *

IN THE MATTER OF THE APPLICATION OF:
THE GREATER BLOOMFIELD COMMUNITY ASSN, ET. AL. -
PETITIONERS/PROTESTANTS FOR SPECIAL HEARING
on property located at 3600 Georgetown Road;
3600 Georgetown Corp. - Legal Owner *
Case No. 04-160-SPH

CROSS PETITION FOR JUDICIAL REVIEW

Pursuant to Maryland Rules 7-203(b) and 7-202, Petitioner, 3600 Georgetown Corporation, by and through its attorneys, G. Scott Barhight, Jennifer R. Busse, and Whiteford, Taylor & Preston, L.L.P., requests Judicial Review of the Final Opinion and Order of the County Board of Appeals of Baltimore County issued on March 15, 2006 filed in Case Nos. 04-160-SPH and 04-294-SPH consisting of the Cover Order; the Opinion and Order; and the Supplemental Opinion and Order, all attached hereto.

RECEIVED
MAY 0 1 2006
BALTIMORE COUNTY
BOARD OF APPEALS

Respectfully Submitted,

G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2077

Attorneys for Petitioners,
3600 Georgetown Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of April, 2006 a copy of the foregoing Cross Petition for Judicial Review was mailed first class, postage prepaid to:

Peter Max Zimmerman, Esquire
Carol S. Demilio
Old Courthouse, Room 407
400 Washington Avenue
Towson, Maryland 21204
Office of People's Counsel for Baltimore County

J. Carroll Holzer, Esquire
Holzer & Lee, P.A.
508 Fairmount Avenue
Towson, Maryland 21204
Attorney for Petitioners

Baltimore County Board of Appeals
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

G. Scott Barhight 1/6
G. Scott Barhight, Esquire

359520

4/13/06

PETITION OF: GREATER BLOOMFIELD ASSN.; LORNA RUDNIKAS, PRESIDENT, 1727 Hall Ave., Baltimore, MD 21227; and individuals LORNA RUDNIKAS; DARLENE BYRD, 1709 Wilson Ave, Baltimore, MD 21227; BRENDA ELLIOTT, 3510 Georgetown Rd., Baltimore, MD 21227; and DONALD SADLER, 1712 Wilson Ave., Baltimore, MD 21227 and PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Old Courthouse, 400 Washington Ave., Towson, MD 21204	*	IN THE
	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
	*	
	*	Case No. C-06-3979
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse, Room 47, 400 Washington Ave. Towson, MD 21204	*	
	*	
	*	
IN THE MATTER OF THE APLICATION OF 3600 GEORGETOWN CORP.- PETITIONER (NEW ENGLAND MOTOR FREIGHT) FOR SPECIAL HEARING & SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE N/S GEORGETOWN RD., SW OF BLOOMFIELD RD. (3600 GEORGETOWN RD.) Case No. 04-294-SPHX	*	
	*	
and	*	
IN THE MATTER OF THE APPLICATION THE GREATER BLOOMFIELD COMMUNITY ASSOCIATION, ET AL. (PETITIONERS/PROTESTANTS) FOR SPECIAL HEARING ON PROPERTY LOCATED AT 3600 GEORGETOWN ROAD 3600 GEORGETOWN CORPORATION Case No. 04-160-SPH	*	
	*	
	*	
13TH ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	

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

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BALTIMORE COUNTY
BOARD OF APPEALS

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CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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PETITION FOR JUDICIAL REVIEW

Pursuant to Rule 7-202, Petitioners Greater Bloomfield Association, Lorna Rudnikas, President, 1727 Hall Avenue, Baltimore, MD 21227, and individuals Lorna Rudnikas; Darlene

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

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

Byrd, 1709 Wilson Ave., Halethorpe, MD 21227; Brenda Elliott, 3510 Georgetown Rd., Halethorpe, MD 21227; and Donald Sadler, 1712 Wilson Ave., Halethorpe, MD 21227, by and through their attorneys, J. Carroll Holzer and Holzer & Lee; and Petitioner, People's Counsel for Baltimore County request Judicial Review of the Cover Order and the incorporated Opinion and Order of the County Board of Appeals of Baltimore County in combined Case No. 04-294-SPHX and Case No. 04-160-SPH rendered on March 15, 2006 and attached hereto. The instant Petition applies only to the Board's Order signed by Lawrence Stahl and Edward Crizer concluding that "the previously granted special exception, as approved in prior case No. 98-260-SPHX was utilized and vested and cannot be voided"; and "that the nonconforming use continues to apply to the subject site in question, and that the existing operation is a proper use of the subject property" and to the Cover Order insofar as it incorporates the aforesaid Opinion and Order.

This Petition for Judicial Review does **not** apply to the Supplemental Opinion and Order **Granting** Petition for Special Hearing in Case No. 04-160-SPH by denying the expansion of NEMF beyond that of the nonconforming use order and, **Denying** the Petition for Special Exception in Case No. 04-294-SPHX to expand the existing special exception for a Class I trucking facility.

Petitioners were parties before the County Board of Appeals and fully participated in the proceedings.

Respectfully submitted,

J. CARROLL HOLZER, Esquire
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Petitioners

PETER MAX ZIMMERMAN, ESQUIRE
People's Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Ave., Towson, MD 21204
410-887-2188

CAROLE S. DEMILIO, ESQUIRE
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of April, 2006, a copy of the foregoing Petition for Judicial Review was mailed first class, postage pre-paid to: G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 210 West Pennsylvania Ave. Towson, Maryland, 21204; County Board of Appeals, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland, 21204.

J. CARROLL HOLZER, Esquire

C:\My Docs\Petitions 2006\NEMF Circuit Court 4-10-06

3/15/06

IN THE MATTER OF THE APPLICATION OF 3600 GEORGETOWN CORP. - PETITIONER (NEW ENGLAND MOTOR FREIGHT) FOR SPECIAL HEARING AND SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE N/S GEORGETOWN RD, SW OF BLOOMFIELD ROAD (3600 GEORGETOWN ROAD)	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
13TH ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	Case No. 04-294-SPHX and
AND		
IN THE MATTER OF THE APPLICATION OF THE GREATER BLOOMFIELD COMMUNITY ASSN, ET AL - PETITIONERS /PROTESTANTS FOR SPECIAL HEARING ON PROPERTY LOCATED AT 3600 GEORGETOWN RD; 3600 GEORGETOWN CORP. -LEGAL OWNER	*	Case No. 04-160-SPH

* * * * * * * * *

COVER ORDER

IT IS THEREFORE, this 15th day of March, 2006 by the County Board of Appeals of Baltimore County

ORDERED that the Opinion and Order of Lawrence M. Stahl and Edward W. Crizer, Jr., and the Supplemental Opinion and Order of Lawrence M. Stahl, Edward W. Crizer, Jr., and Lawrence S. Wescott, attached hereto, constitute the full and final Order and decision of this Board in the subject matter.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman /2005

Lawrence S. Wescott

Edward W. Crizer, Jr.

IN THE MATTER OF THE APPLICATION OF 3600 GEORGETOWN CORP. - PETITIONER (NEW ENGLAND MOTOR FREIGHT) FOR SPECIAL HEARING AND SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE N/S GEORGETOWN RD, SW OF BLOOMFIELD ROAD (3600 GEORGETOWN ROAD)	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
13TH ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	Case No. 04-294-SPHX and
AND		
IN THE MATTER OF THE APPLICATION OF THE GREATER BLOOMFIELD COMMUNITY ASSN. ET AL - PETITIONERS /PROTESTANTS FOR SPECIAL HEARING ON PROPERTY LOCATED AT 3600 GEORGETOWN RD; 3600 GEORGETOWN CORP. -LEGAL OWNER	*	Case No. 04-160-SPH

* * * * * * * * *

OPINION

The members of the Board noted below now address themselves to particular procedural issues raised in this matter as well as certain substantive determinations reached as part of the deliberation of October 27, 2005.

An understanding of the chronological history of this matter is essential. Originally given dates in May of 2005, this case was rescheduled due to counsel scheduling issues to July 14, 19, and 21, 2005. Hearings on each of these dates took place. The matter, however, was not completed. In discussion with counsel on July 21, 2005, several alternative dates were chosen, beginning August 15 through and including September 14, 2005. Counsel was reminded at that time that Mr. Ramsey, one of the Board members hearing the case, was leaving the Board at the end of October, and that, therefore, under the longstanding procedures of the Board, the matter, including a signed opinion by the Board, needed to be completed in time for Mr. Ramsey to add his signature to it, especially as a majority of two members is needed in the decision.

Nevertheless, counsel set only one additional date of hearing. The matter was resumed on September 14, 2005, but again was not completed on that date by counsel. In discussions with staff and members of the Board regarding additional dates, all counsel were again cautioned regarding the end of Mr. Ramsey's tenure on the Board and were, in fact, offered the alternative of having him replaced by another Board member who, after reading the transcripts of the preceding hearing dates, would then complete the case and obviate any concern as to the completion schedule. All counsel declined this suggestion and after further discussions with their clients, a new date of September 30, 2005 was finally set. The matter was in fact completed on that date.

In view of the plethora of issues presented for adjudication and the extended schedule of the case, simultaneous briefs in lieu of closing arguments were submitted by counsel on October 14, 2005 (by Mr. Holzer) and October 17, 2005 (in separate briefs by Mr. Barhight and Mr. Zimmerman).

On October 27, 2005, the Board convened for public deliberation. Two issues, relating to the existence of a special exception and of nonconforming use, were resolved unanimously by all three members. The issue of the applicability of a special exception for proposed expansion purposes developed into a multi-hour discussion among the members. That particular issue, one of a number still at that point to be addressed by the Board, was decided by a majority consisting of Mr. Ramsey and Mr. Crizer. The Board then determined that, given the complexity of the remaining issues, and the possibility of other majority findings within the case in which Mr. Ramsey's vote might be pivotal (conceivably in concert with either Mr. Crizer or Mr. Stahl), it would not be reasonable to assume deliberations could be completed and the normal process for drafting and signing an opinion accomplished in its entirety before the end of Mr. Ramsey's

term. The Board then unanimously decided to adjourn the deliberation at that point, and to replace Mr. Ramsey with another member of the Board who, after a review of the hearing transcripts, could complete the remaining matters to be deliberated and join in an appropriate written Opinion.

Another member of the Board, Lawrence Wescott, was assigned, reviewed the transcripts and all other exhibits and evidence, and after that review took part in the completion of the deliberation on December 6, 2005. It was determined that Mr. Stahl and Mr. Crizer would sign as a majority of the previous panel as to the two unanimous determinations made at the October 27, 2005 deliberation and that all three, including Mr. Wescott, would join in the Order as to the remaining issues.

Rule 1(c)(I) and (II) of the Rules of Practice and Procedure of the County Board of Appeals states:

> c. Three (3) members of the board of appeals, as designated by the chairman, shall sit for the purpose of conducting the business of the board; and a majority vote of two (2) members shall be necessary to render a decision, except as follows:
>
> I. During the course of a hearing, if any member of the original panel is unable to continue to serve, the chairman shall appoint a member to fill the vacancy; or **[Bill 50-05]**
>
> II. In the case of a remand, if any member of the original panel is unable to serve, the chairman shall appoint a member to fill the vacancy. **[Bill 50-05]**

The undersigned members believe that a majority of the members (as to each issue to be determined) currently sitting on the Board must sign an Opinion of the Board for it to be valid. One member cannot "represent" at the signing of an opinion a majority that does not, at that time, consist of at least two present sitting members of the Board. The undersigned find that, given the course of the deliberation on October 27, 2005, and that Board's belief that deliberation and preparation of a final written Opinion and execution of that document appropriately could not be completed in time

for Mr. Ramsey to join with Mr. Crizer as a sitting majority of two members on those issues decided by them; and that the Board's subsequent actions in adding Mr. Wescott and thereafter completing the deliberation and written Opinion, was clearly permitted and in the spirit and intent of Rule 1(c)(I) and (II).

This Majority takes note that, although set originally set for three days, the hearing of this matter inexorably was extended, both with the concurrence of counsel and as a result of the speed and content of their conduct of the case during each day of hearings, as well as in discussions regarding the setting of additional dates. Moreover, they did so after being advised, on at least two occasions, of the Board's concern as to Mr. Ramsey's ending tenure and requirements for the completion and execution of a final written Opinion in the case. They were offered a replacement for Mr. Ramsey, but all counsel declined to consider this option.

Having determined that the procedure regarding the deliberation of October 27, 2005, was appropriate, this Majority now addresses itself to the two issues unanimously resolved at that earlier deliberation, and for which a majority of present sitting members continues to exist. The first issue is whether the nonconforming use enjoyed by the subject site was interrupted for a sufficient period of time to result in its being lost.

Evidence presented by the Petitioner, specifically including but not limited to the testimony of Myron Shevell, Chairman of the Board and Chief Executive Officer of the New England Motor Freight Company, clearly established that a nonconforming use properly existed as to the subject site as the result of its long trucking history; including its existence enjoyed by Wilson Motor Freight. He further testified that, except for a period of one to two months in 1989-1990, storage and maintenance activities could continue on the property even during an intervening period of bankruptcy.

Protestants, including testimony presented by Lorna Rudnikas, President of the Bloomfield Community Association, and expert witness Jack Dillon, suggested that the factors of the alleged lack of water use by Petitioners on the subject site and what they saw anecdotally as inactivity and nonuse of the property supported their contention that the one-year period of nonuse required to lose a nonconforming use had, in fact, occurred.

This Majority (and a unanimous finding of the Board at its October 27, 2005 deliberation) does not believe that a sufficient case was made by Protestants to support a finding that the nonconforming use of the subject site was lost. The testimony regarding water use is not conclusive in and of itself, nor is the anecdotal testimony or the mere filing of a bankruptcy. In light of the failure of the Protestants to sufficiently convince this Board, therefore, especially in light of Mr. Shevell's testimony to the contrary, we find that the nonconforming use continues to apply to the subject site in question.

The second issue determined unanimously by the Board at the October 27, 2005 deliberation relates to the question of whether or not the existing Wilson property continues to enjoy its special exception status. Incontrovertible testimony presented by Petitioner clearly establishes that a special exception for Wilson Freight was granted on October 11, 1961, in Case No. 48-90-RX. Baltimore County Zoning Regulations § 410 regarding trucking facilities was enacted many years later, on April 18, 1976. Pursuant to that legislation, which only applied to Class I trucking facilities (or parts thereof) established after April 18, 1976, a facility had to meet requirements set out by the Baltimore County Council or take appropriate steps (if it did not) to bring it into compliance within a specific period of time.

The testimony and reading of the unambiguous language of § 410 clearly establishes that a Class I facility with an appropriate special exception had existed on the site since 1961, well prior to

the effective date of April 18, 1976. Moreover, none of the ameliorative portions of that legislation, including a request that sought a necessary variance of standards, the filing of a program of compliance, or a petition requesting that the site not be made to comply with the regulations set out in the statute were required of Wilson by the County. This Majority (again noting the unanimous determination of the panel on October 27, 2005) finds that the special exception issued in 1961 has been continually in use as to the Wilson property, has vested, presently exists and cannot be voided.

ORDER

IT IS THEREFORE this 15th day of March, 2006, by the Board of Appeals for Baltimore County,

ORDERED that the previously granted special exception, as approved in prior case No. 98-260-SPHX, was utilized and vested and cannot be voided; and it is further

ORDERED that, pursuant to the above Opinion, the nonconforming use continues to apply to the subject site in question, and that the existing operation is a proper use of the subject property.

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[1]
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman /2005

Edward W. Crizer, Jr.

[1] This Opinion and Order, issued with the Supplemental Opinion and Order signed by Lawrence S. Wescott, Lawrence M. Stahl, and Edward W. Crizer, Jr., and the cover Order incorporating both this Opinion and the referenced Supplemental Opinion and Order, constitute the final Opinion and Order of the Board in this matter.

County Board of Appeals of Baltimore County

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

March 15, 2006

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

RE: *In the Matter of: 3600 Georgetown Corp; New England Motor Freight* /Case No. 04-294-SPHX and
In the Matter of: The Greater Bloomfield Community Assn., et al /Case No. 04-160-SPH

Dear Mr. Holzer:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter. This final Opinion and Order consists of: (1) a Cover Order signed by the Board; (2) the Opinion and Order signed by Messrs. Stahl and Crizer; and (3) the Supplemental Opinion and Order signed by Messrs. Wescott, Stahl and Crizer.

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

Kathleen C. Bianco
Administrator

Enclosure

c: Office of People's Counsel
Greater Bloomfield Community Assn.
Lorna Rudnikas
Tom Mauk
Catherine Scarborough
Anna Wood
G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
Myron Shevell /3600 Georgetown Corp.
NEMF /3600 Georgetown Road
David Martin and James Markle /GW Stephens Jr. & Assoc.
Robert Walker
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM
William P. Jones /Economic Development

Printed with Soybean Ink on Recycled Paper

3/15/06

IN THE MATTER OF THE APPLICATION OF 3600 GEORGETOWN CORP. - PETITIONER (NEW ENGLAND MOTOR FREIGHT) FOR SPECIAL HEARING AND SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE N/S GEORGETOWN RD, SW OF BLOOMFIELD ROAD (3600 GEORGETOWN ROAD)	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
13TH ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	Case No. 04-294-SPHX and
AND		
IN THE MATTER OF THE APPLICATION OF THE GREATER BLOOMFIELD COMMUNITY ASSN, ET AL - PETITIONERS /PROTESTANTS FOR SPECIAL HEARING ON PROPERTY LOCATED AT 3600 GEORGETOWN RD; 3600 GEORGETOWN CORP. -LEGAL OWNER	*	Case No. 04-160-SPH

* * * * * * * * *

SUPPLEMENTAL OPINION

This Opinion is issued as the result of the failure of the initial panel of Board members to reach a decision with respect to the request for a special exception in the above cases due to the fact that one of the Board members was leaving the Board on October 31, 2005. Since it was impossible for the Board to reach a decision and write an opinion prior to the departure of Board member Ramsey, the initial Board issued a decision with respect to the issues resolved by that panel, and Board member Wescott was assigned to read the transcript and to deliberate the matter with respect to the granting or denial of the special exception. A public deliberation was held on December 6, 2005, with Board members Stahl, Crizer, and Wescott attending. The Board reached a unanimous decision with respect to the special exception during that deliberation.

Background

Case No. 04-196-SPH was filed by Tom Mauk, Catherine Scarborough, Anna Woods, and the Greater Bloomfield Community Association ("Protestants") for a special hearing to determine several questions:

1. Whether New England Motor Freight (NEMF) is lawfully utilizing the portion of its property located in the southwest portion of the site identified as "on the Plan submitted to DEPRM";

2. Whether the property's and the Weiner parcel's prior zoning history and the BCZR prohibit the issuance of Permit No. B 511616;

3. Whether NEMF lost any claims of nonconforming use;

4. Whether NEMF lost its right to exist on the subject site since its special exception in 1998 expired; and its special exception in 2000 was withdrawn;

5. Whether any expansion beyond that of the nonconforming use is permitted by the BCZR and to what extent; and

6. Whether NEMF is required to comply with the 300-foot setback from the property line pursuant to BCZR § 410.2 (Bill 18-76).

NEMF filed a Petition for Special Hearing and Petition for Special Exception in Case No. 04-294-SPHX to amend the special exception plan approved in Case 98-260-SPHX and to expand the existing special exception for a Class I trucking facility in accordance with the Plan attached to accompany Petition for Special Exception and Special Hearing. In the alternative, NEMF requested a special exception to amend a previously approved Class I trucking facility plan. This supplemental decision will deal only with the granting of the special exception for the expansion of the trucking facility.

The trucking facility owned by 3600 Georgetown Corporation doing business as New England Motor Freight (NEMF) is located at 3600 Georgetown Road in the Lansdowne area of Baltimore County. A portion of the property is located in Baltimore City. NEMF proposes to demolish the existing building and build a new building with additional bays; reorganize parking and circulation; expand the entrance off of Joh Avenue, and construct a gate and guard house; relocate the repair building farther to the northwest of its current location; construct a retaining wall, new curbing, paving, security fence, a sound barrier, and plant a number of evergreens per a permanent evergreen landscape plan. The Protestants reside in the residential Bloomfield neighborhood adjacent to the property owned by NEMF.

Myron Shevell, President of NEMF, David Martin, Director of land planning /landscape architecture for GW Stephens Associates, and John Filipowicz, terminal manager in Baltimore of NEMF, all testified with respect to the expansion plans of NEMF at 3600 Georgetown Road. At the present time, the company has an office building, in the Baltimore City portion of the property, and a terminal building appended to that office building, part in the City and part in Baltimore County. There is a paved area closer to the Georgetown Road portion of the property. Trailer parking and loading docks are located on either side of the terminal doors. There is an existing repair facility at the central area of the site, and an employee and visitor car parking to the south of the existing entrance.

At the present time, the company has 90 trailers and 36 tractors or trucks located at the Georgetown location. It has 44 docks from which to load and unload freight. Mr. Filipowicz testified that, in addition to the trucks based at the Georgetown facility, other trucks come in and out of the facility all day long. He estimated that there were approximately 75 trips in and 75 trips out of the facility each day, including the 36 tractors that are located at the facility.

The new facility will have acreage in Baltimore County of approximately 13.9 acres. The City portion will have 3.5 acres. The present building will be torn down and a building of approximately 33,340 sq. ft. will be constructed. There will be 94 bays in which trailers can be loaded and unloaded.

David Martin indicated in his testimony that he felt that all of the criteria in § 502.1 of the BCZR would be complied with since there would be no congestion in the roads and no hazards from fire, etc. He felt that there would be no overcrowding of the land, it would not have an effect on schools and parks, and there would be adequate provisions for water and sewerage. As a matter of fact, the stormwater management plan would greatly alleviate the problems of flooding in the Bloomfield area that are currently being felt by the residents. He indicated that

there would be adequate accommodations for light and air and that there would be no adverse effect on impermeable surface or vegetation. He indicated that he felt that this site would have no more adverse effect on the health and safety of the surrounding area than the site would have elsewhere in the M.L. zone.

Mr. Martin testified that he had examined 44 trucking facilities that operated Baltimore County. He stated that some of the facilities were required to obtain variances in order to comply with BCZR § 410 and others were not. His testimony concerning whether or not certain trucking facilities were required to have variances and others were not pertained to the issue of whether or not any facility was a conforming Class I trucking facility under the current legislation. It did not pertain to the question of whether or not the special exception should be granted. In an effort to prove their respective points, the parties called experts in the fields of noise and air pollution.

George Harmen, program manager for the Department of the Environment Noise Control Program for the State of Maryland, testified that he had collected a number of examples of measurements relative to the demonstration of noise from a tractor-trailer. He explained how his department conducted measurements of trucks producing various noises, such as starting, stopping, breaking, air hose disconnect, etc. Harmen testified that the date /time decibel level at the property line permitted by State regulations is 65 db's. The night time limit is 55 db's. He identified a certain type of noise known as "impulse" or "periodic" noise, examples being gunshot noises and emptying of dumpsters in the middle of the night, which may not exceed a level which is 5 db's lower than the applicable permitted db's.

Protestants also called Timothy Buckley, a Ph.D. from the Johns Hopkins University School of Public Health. Dr. Buckley placed a noise instrument called a dosimeter within ten (10) feet of the NEMF's fence on the south side of the facility in the month of May 2005. He

testified that, in his opinion, the proposed expansion of NEMF, as it relates to the health, safety and welfare of the community, with particular attention to noise level. In his opinion, the proposed expansion would increase noise levels within the community that would not only exceed standards but would have an adverse effect on the health of the community. Dr. Buckley further testified that impulse or periodic events are the most damaging types of noise to the ear and also possess a high, continued stress factor. He concluded that if you have an impulse noise it imposes a greater hazard than if you have a noise of a constant general level. Buckley indicated that his dosimeter readings at the 55 db level were exceeded over 90 percent of the time during the night intervals, and that during the daytime, the 65 db level was exceeded approximately 10 times.

Dr. Buckley also testified with respect to air pollution, particular in regard to diesel fumes. He felt that the proposal of NEMF to expand closer to the community and increase the number of trucks on the property would have an adverse impact as it would be increasing the number of vehicles emitting diesel exhaust and generating additional noise. Dr. Buckley conducted no experiments nor any scientific evaluation of the effect of diesel fumes on the community of Bloomfield.

NEMF presented George Spanos, of Polysonics Corporation. Spanos is an acoustician, who measures noise, analyzes it, and makes plans so that people are not aggravated by noise. There were two noise-measuring stations at the Wilson Freight Property which measured noise for a 24-hour period. According to his instruments, a majority of the noise emanating from the NEMF property was generated away from the community off of Joh Avenue. It was his opinion that the community does not hear, to any substantial degree, trucks entering the site, trucks being fueled, or trucks receiving maintenance. It was his opinion that an increase in the number of trucks at the property would not really affect the levels of sound heard in the community. Mr.

Spanos also commented about the Buckley's report which indicated that the peaks of sound were repeated in a similar pattern at identical intervals, which Spanos indicated cannot happen in a natural environment. Spanos' report did indicate that at certain times the sound impulses did exceed the accepted levels of 55 and 60 db's.

Mr. Spanos also recommended that the number of trailers that would be parked at the southern line of the company near the Bloomfield community not be added to during the night, which would be from 10 p.m. to 7 a.m. In addition, he recommended that a board fence be constructed on a retaining wall which is proposed for the plans to shield the community from the noise. Spanos did testify that an increase in the number of trucks coming onto the property would increase the number of occasions for noises, particularly periodic noises. He stated, at page 191 of the transcript, in response to the question:

> Q: ...so within that context, while I understand where you're coming from, from a noise standpoint, isn't the increased number of vehicles and trailers that will be there, doesn't that substantially increase the number of occasions for noises, particularly periodic noises, to occur?
>
> A: Well if you take out your word substantial, I agree with you. Whether it's substantial or not, I'm not really clear on. But clearly, yes, if one noise annoys you that same noise repeated again will continue to annoy you.
>
> * * * * *
>
> Q. Okay, so it's really not fair to say that just because you increase the number of tractors and trailers but you're really not increasing the noise, you are in effect, though, increasing the potential aggravation created by a periodic episode?
>
> A. Yes. Most acousticians use the word "annoyance."
>
> Q. Annoyance?
>
> A. And when we do surveys, we say what percentage of the community was annoyed by a discreet event. So I'm agreeing with you, more noise, more annoyance.

Mr. Spanos indicated that the board fence which he was recommending would be an overlapping board fence in order to try to eliminate noise coming through the seams of the fence. He admitted that there would be an increase in the noise of approximately 5 db's.

The Protestants called Mr. Jack Dillon, who was qualified as an expert in planning, zoning and land use. Mr. Dillon visited the property and the Bloomfield community on five occasions from January to July 2005. He testified that on May 17, 2005, he sat with Lorna Rudnikas, a resident of Bloomfield at the edge of NEMF property for an hour in the late evening so he could experience the noise for himself. He described a "limit of noise that repeated itself every 1.5 minutes plus or minus, beginning with the sound of a tractor /trailer driving onto the site, breaking noises, whoosh of air brakes, followed by a loud clang, followed by another whoosh of loud air, following by a loud bang." He testified that all of this took place over about 1-½ minutes to 2-½ minutes and it was repeated over and over again. Mr. Dillon also compared the area of the buildings that were currently on the site and what was proposed.

The building on the site in 1981 consisted of 14,148 square feet in area. The proposed NEMF site plan in 1988-99 was for 24,798 square feet in a new building. The current proposal was for 33,040 sq. ft. which was a substantial increase in size. It was Mr. Dillon's opinion that the current use of NEMF is a trucking facility without the benefit of a proper special exception or a legitimate nonconforming use at this time. He testified that he felt that there was definitely an adverse impact on the health, safety and general welfare of this community, and he based that opinion on the testimony of Mr. Harmen and Dr. Buckley dealing with noise and air pollution and his own personal observation of the noise witnessed on

May 17, 2005. He believed that expanding from 70 tractor/trailers to 300 tractor/trailers and the number of employees to 120 would provide additional traffic through the community which would tend to create congestion in roads, streets, or alleys. He testified that the expansion of the

facility would overcrowd the land in terms of bringing health impacts closer to the community. He felt that the granting of NEMF's request was inconsistent with the proper zoning classification and not within the spirit and intent of the regulations in that it was within 300 feet and within proximity with residential zones.

Mr. Dillon also testified that, according to the Baltimore County Office of Planning, after the 2004 zoning cycle, the acreage of M.L. zoned land in Baltimore County totaled 12,032 acres. Property zoned M.H. consisted of 8,546 acres after the 2004 zoning cycle. Mr. Dillon stated that he had evaluated various sites of M.L. and M.H. property. He found that the Quad Avenue trucking facility operated by NEMF in the Essex area of Baltimore County contained large areas of undeveloped land and it was buffered from residential properties. He reviewed the 200-scale zoning maps and concluded that there were substantial industrial areas in the southwest and the southeast corners of the County near North Point Boulevard, Eastern Avenue, and Pulaski Highway, down through Middle River, which would result in less of an impact on residential communities if a trucking facility were located there. Also available was part of the White Marsh industrial area.

Finally, residents of Bloomfield, Elizabeth Qualls, Darlene Byrd, Mike Garrish, Nancy Scheitlin, and Lorna Rudnikas, all testified with respect to their personal experiences as to the impact of NEMF on their enjoyment of their property. Ms. Qualls testified that the noise emanating from the trucking facility as well as the diesel fumes prevented them from opening their windows during the summertime and also from enjoying their backyards. In addition, they were all concerned about the water runoff which comes from the NEMF site.

Decision

Section 502 of the *Baltimore County Zoning Regulations* (BCZR) governs special exceptions. That section provides that, before the requested special exception may be granted, it must appear that the use for which it is requested will not:

A. Be detrimental to the health, safety, or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other dangers;

D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;

F. Interfere with adequate light and air;

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations...

It is the opinion of this Board that the Petitioner fails to meet the first criterion in that the Board feels that the health, safety or general welfare of the locality involved will be detrimentally affected by an expansion of the trucking facility at this location. There seems to be no question that the noise level will not be substantially affected by the addition of the 100 tractors and 200 trailers. However, the frequency of the noise generated by the increased numbers of the pieces of equipment will substantially affect the enjoyment of their property by the residents of the Bloomfield community. Petitioner's expert, George Spanos, agreed that increased frequency can be an annoyance which can affect the enjoyment of an individual's property.

While Dr. Buckley did not perform any tests on the property to determine the level of diesel fumes which permeate the air in the Bloomfield community, there is no question that the individuals can smell diesel fumes at the present time. Petitioner points out the Federal Clean Air Act

established manufacturing criteria for diesel engines and formulation criteria for diesel fuel. It is through this regulatory scheme that Congress has opted to protect human health and the environment from diesel emissions. The Maryland Department of the Environment has been delegated limited authority to implement and enforce this regulatory scheme; its regulations do not deviate from the Federal criteria. Petitioner contends that NEMF has never been cited for any type of air pollution violation. As stated by Dr. Buckley in his testimony, it is a fact that the community is:

> ...located within an urban environment, so not only is it an urban environment where we know air pollution is higher than a rural or even a suburban environment, but it is an urban environment that is very closely situated to a number of major highways, 95 and 695, and there are many urban arterials in close proximity to that community, so already there is a heightened risk in my opinion within that community.
>
> So the trucking company is adding to that. The expansion would only add greater to that hazard.

As with noise frequency, the pollution of the air can only be increased by tripling the number of tractors that come onto the site. As testified to by the manager for NEMF at the Georgetown Road site, there are occasions when the tractors are left running, either because they have sleeper cabs and the operators keep the engine running to generate electricity or heat, or because they are awaiting a load or hooking onto a trailer and keep their engines running rather than turning them off and starting them again. It was Mr. Dillion's testimony that he sat in the yard with Ms. Rudnikas and heard a noise every 1.5 minutes from the operations at NEMF. If the operations are tripled, it is certainly possible that the noise would be almost continuous from the hooking and unhooking of trailers and other noises associated with the operation.

Not only does the Board feel that the Petitioner fails to meet the requirements of Part A, but also feels that it fails to meet the requirements of Part F, interfering with adequate light and

air, and Part G, being inconsistent with the purposes of the zoning classification or in any other way inconsistent with the spirit and intent of the zoning regulations.

The purposes of BCZR § 410 were enumerated in § 410.4B. The second purpose stated is: "to assure that the improvements of the sites of existing and future Class I trucking facilities are of such design, quality or character that they will not be likely to deteriorate in such a way that a public nuisance would be created or that the public interest would otherwise be adversely effected"; and § 410.7: "in general to accommodate trucking activities in recognition of their importance to the economy of the county and the nation while minimizing the impact of existing and future Class I trucking facilities on the environment and achieving an optimum level of compatibility between such facilities and nearby uses especially dwellings and institutional uses." The Board recognizes again that the Bloomfield Community is in an industrial area. It has been co-existing with the NEMF facility as it is now operating and puts up with the noise and the diesel fumes emanating from the site. The company indicates that it will construct a fence on top of a retaining wall in order to shield the community from the noise generated by the increased volume of trucks on the property. It should be noted that in Case No. 01-544-SPHX for reconsideration, the Deputy Zoning Commissioner, Timothy Kotroco, cited the testimony of NEMF's president Myron Shevell, that a solid board fence on top of the retaining wall would run contrary to security measures applicable to his business. He evidently stated that it would not be possible for the security guards to see what was actually taking place on the other side of the fence, and that such a fence would not be structurally sound since it could not withstand severe winds blowing across the parking lot. This causes a question as to whether a fence could be constructed that would absorb the sound as proposed by Company expert Mr. Spanos. An expansion of the facility does not appear to be in the best interest of the community which has been located in the area for over 60 years. The fact that industrial operations have grown up

around the community does not mean that the community is not entitled to protection from further expansion.

Finally, the Board feels that under the guidelines established by the Court of Appeals in *Schultz v Pritz*, 291 Md. 1 (1981) the Board must deny the special exception. As stated on page 15 of that decision:

> These cases established that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located elsewhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a request of special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such special exception use irrespective of its location within the zone.

There is no question that the NEMF operation is, at certain points, within 300 feet of a residential area. Encroachment has happened over time and is not the basis for denying the special exception; however it is indicative of the fact that NEMF is very close to a residential neighborhood. Increasing this operation at this location would have a much more adverse effect on the Bloomfield neighborhood than would increasing the operation at the Quad Avenue trucking facility in Essex where large areas of undeveloped land surround the operation, according to the testimony of Jack Dillon. The Board credits the testimony of Mr. Dillon that there is abundant land zoned M.L. in Baltimore County, which is not adjacent to a residential community such as the Bloomfield Community, where this operation could be expanded and thrive. As stated by the Court of Appeals in *Montgomery County v Maryland's Club, Inc.*, 202 Md., 279, 287 (1953), "the duties given the Board are to judge whether the neighboring properties and general neighborhood would be adversely affected, and whether the use, in a

particular case, is in harmony with the general purpose and intent of the zoning plan." This Board feels that this expansion of the NEMF operation at Georgetown Avenue is not in harmony with the general purpose and intent of the zoning plan and we therefore will deny the special exception. The special hearing in Case No. 04-160-SPH to deny the expansion of the NEMF operation beyond that of the nonconforming use permitted by the BCZR is hereby granted.

ORDER

IT IS THEREFORE this 15th day of March, 2006, by the Board of Appeals for Baltimore County,

ORDERED that the Petition for Special Hearing in Case No. 04-160-SPH to deny the expansion of the NEMF operation beyond that of the nonconforming use is **GRANTED**; and it is further

ORDERED that the Petition for Special Exception in Case No. 04-294-SPHX, to expand the existing special exception for a Class I trucking facility, be and is hereby **DENIED**.

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[1]
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman /2005

Lawrence S. Wescott

Edward W. Crizer, Jr.

[1] This Opinion and Order and the Opinion signed by Lawrence M. Stahl and Edward W. Crizer, Jr., as well as the cover Order incorporating both this Supplemental Opinion and the referenced Opinion of Messrs. Stahl and Crizer, constitute the final Opinion and Order of the Board in this matter.

11/22/05

IN THE MATTER OF:		
3600 GEORGETOWN CORPORATION	*	BEFORE THE
Legal Owner		
3600 Georgetown Road	*	COUNTY BOARD OF APPEALS
3rd Election District, 1st Councilmanic District		
v.	*	OF BALTIMORE COUNTY
TOM MAUK, *et al.*		
Protestants/Petitioners	*	Case Nos.: 04-160-SPH &
(Case # 04-160-SPH)		and
	*	04-294-SPH
And		
	*	
IN THE MATTER OF:		
3600 GEORGETOWN CORP.	*	
3600 Georgetown Road		
3rd Election District, 1st Councilmanic District		
Legal Owner/Petitioner	*	
(Case # 04-294-SPH)		

* * * * *

NEW ENGLAND MOTOR FREIGHT'S RESPONSE TO JOINT MOTION FOR APPROPRIATE RELIEF, IMPLEMENTATION OF STATE OPEN MEETINGS LAW, PRODUCTION OF MINUTES, AND EFFECTUATION OF DECISION MADE IN PUBLIC DELIBERATION

3600 Georgetown Corporation, d/b/a New England Motor Freight ("NEMF"), by its undersigned counsel, submits this Response to the Joint Motion for Appropriate Relief, Implementation of State Open Meetings Law, Production of Minutes, and Effectuation of Decision Made in Public Deliberation filed by Greater Bloomfield Association ("Protestants") and People's Counsel for Baltimore County ("People's Counsel") (the "Motion").

The Motion requests that the Board of Appeals continue the public deliberation of October 27, 2005, produce accurate and complete minutes of the public deliberation of October 27, 2005, and issue a majority opinion and order *nunc pro tunc* to deny NEMF's

special exception for expansion. The Motion fails for several reasons and should therefore be denied in its entirety.

I. The Facts Alleged in the Motion Are Inaccurate

The Motion asserts that the October 27, 2005 deliberation "resulted in a determination by a majority of board members, Edward Crizer and Michael Ramsey, to deny the special exception for expansion of the [NEMF] trucking facility[, and that Mr. Crizer and Mr. Ramsey] also determined that the proposed expansion is subject to the minimum location standards of BCZR 410.2, including the minimum setback of 300 feet from dwellings or residential zones." Motion, p. 3.

On October 27, 2005 the Board publicly convened to consider the following questions raised in Protestants' Case No. 04-160-SPH:

1) Whether NEMF is lawfully utilizing that portion of its property located in the S/W portion of the site identified on the plan submitted to DEPRM;

2) Whether the Property's and the Weiner Parcel's prior zoning history and the BCZR prohibit the issuance of Permit # B511616;

3) Whether NEMF lost any claim as a nonconforming use;

4) Whether NEMF lost its right to exist on the subject site since its special exception in 1998 expired; and its special exception in 2000 was withdrawn;

5) Whether any expansion beyond that of the nonconforming use is permitted by the BCZR and to what extent; and

6) Whether NEMF is required to comply with the 300 foot setback from the property line pursuant to BCZR §410.2 (Bill 18-76).

The Board also met on October 27, 2005 to publicly deliberate on the following questions raised in Case No. 04-294-SPHX by NEMF:

1) Whether the Plan approved in Case 98-260-SPHX was utilized and vested;

2) Whether the existing use of the site as a Class I trucking facility has been utilized and vested; and

3) Whether NEMF may amend a previously approved car parking compound in Baltimore City as supporting a Baltimore County trucking facility and to further recognize that the subject car parking compound as fulfilling the requirements of BCZR §409.6.A.3 providing the parking requirements for a trucking facility in Baltimore County.

As of the time the Board concluded the October 27, 2005 deliberations, it had only decided the following issues: 1) the Wilson Freight Property did not lose its status as a nonconforming Class I trucking facility; 2) the Wilson Freight Property is exempt from the 300 foot setback requirement of BCZR §410.2; and 3) the 300 foot setback requirement of BCZR §410.2 applies to the Weiner Property. At the point Mr. Stahl recommended concluding the October 27, 2005 deliberations, the three Board members were addressing the noise component of NEMF's request for a special exception to expand.

Messrs. Crizer and Ramsey stated that they felt the additional noise generated as a result of an expansion would negatively impact the community. However, the Board had not yet considered the other issues which they stated they desired to address, specifically traffic, stormwater management and fumes. Nor had the Board yet considered the other special exception factors enumerated in BCZR §502.1. People's Counsel's and

Protestants' assertion that the Messrs. Crizer and Ramsey decided to deny the special exception is wholly inaccurate and misleading. Furthermore, the assertion that Mr. Stahl "decided to grant the special exception" is also inaccurate. Mr. Stahl did not decide to grant the special exception on October 27, 2005. Rather, while addressing the first and only issue the Board considered that day relating to the special exception request, Mr. Stahl indicated that the noise which would be generated at the site would not be greater than that which would be ordinarily expected from such a use elsewhere within the M.L. zone.

People's Counsel and Protestants' contention that Messrs. Crizer and Ramsey determined that the proposed expansion is subject to the 300 foot setback requirement of BCZR §410.2 is entirely false. All three Board members decided that the Wilson Freight Property is exempt from the 300 foot setback requirement of BCZR §410.2 No Board member stated, much less decided, that BCZR §410.2 applies to the Wilson Freight Property. People's Counsel and Protestants' characterizations of the Board's actions on October 27, 2005 are false.

II. The Open Meetings Act Has Not Been Violated

The Motion alleges that the Board violated the State Open Meetings Law by "erasing and suppressing a decision of a majority of the panel membership made in public deliberation and failing to produce minutes of the meeting." Motion, p. 4. The Open Meetings Act (Md. Code Ann., State Government, §10-501, et seq.), does not provide for any such violation. Rather, the Act is intended to provide the public the opportunity to witness meetings of public bodies. Md. Code Ann., State Government, §10-501. The Act simply requires a public body (in this case, the Board) to give adequate notice of the

time and location of its meetings, to hold its meetings in places reasonably accessible to individuals wishing to attend, and prepare written minutes of its session as soon as practicable after it has met. Md. Code Ann., State Government, §§10-503(b), 10-505, 10-506, 10-509.

In this case, the Board held an open session to deliberate the issues raised in Case Nos. 04-160-SPH and 04-294-SPHX on October 27, 2005. Notice of the Board's deliberation was properly provided and is not in dispute. The Act requires that the Board prepare written minutes of the deliberation as soon as practicable. Md. Code Ann., State Government, §§10-509. Therefore, as long as the Board prepares written minutes of its deliberations, no violation of the Act has occurred.

Regardless, a motion to the Board is not the appropriate vehicle to assert a violation of the Act and the Board has no jurisdiction to entertain the Motion. Rather, People's Counsel and Protestants may file a written complaint with the State Open Meetings Law Compliance Board seeking a written opinion on the application of the Act to the action of the Board. Md. Code Ann., State Government, §§10-502.5.

III. Maryland Law Dictates That An Absent Board Member May Effectively Participate In the Board's Decision

The Court of Appeals of Maryland holds that "it is not required that a voting member of an administrative agency shall have heard the witnesses so long as the member shall have 'considered and appraised the evidence.'" *People's Counsel of Baltimore County v. Country Ridge Shopping Center, Inc.*, 144 Md.App. 580, 606 (2001) (quoting *Younkin v. Boltz*, 241 Md. 339 (1966)). "The general rule in both the federal and state systems is that in the absence of specific statutory direction to the contrary the deciding member or

members of an administrative or quasi-judicial agency need not hear the witness testify." *Id.* (quoting 2 Davis, Administrative Law Treatise, §11:02, p. 40).

The Maryland Administrative Procedure Act (Art. 41, §§244-56) also contemplates that the evidence does not have to be heard by all those who will render the final decision. Absent members of the Board may participate in a decision provided they have familiarized themselves with the testimony. *Id.* at 608; *Younkin*, 241 Md. 339. The Board may properly premise its decision on a review of the transcript and the remainder of the written record. *Country Ridge,* 144 Md.App. at 609.

IV. There Has Been No Violation of Procedural Due Process of Law

Without any support, the Motion alleges that the failure of the Board "to implement its majority decision....violates procedural due process of law and principles of fundamental fairness under the Maryland Declaration of Rights, Article 24, and the Fourteenth Amendment of the United States Constitution." Motion, p. 6.

Due process of law recognizes that a person shall not be deprived of life, liberty or property without an opportunity to be heard in defense. The Constitution of the United States provides for due process of law in the Fifth and Fourteenth Amendments. The Maryland Declaration of Rights also states that no person ought to be deprived of life, liberty or property, but by the law of the land. Md. Const., Decl. of Rights, Art. 24.

In order to assert a due process claim, People's Counsel and Protestants must show that governmental action caused them to suffer a grievous loss of some kind. *Holmes v. Robinson*, 84 Md.App. 144 (1990). If the claimant does not have at stake an interest in life, liberty, or property, there is no right to due process. *Plato v. Roudebush*, 397 F.Supp. 1295 (D. Md. 1975). Here, neither People's Counsel nor Protestants have

set forth any interest in life, liberty or property that has been deprived by the Board's decision to re-deliberate with a new Board member who has been given the opportunity to review all of the evidence. The Motion's allegations relating to due process are without merit.

For the reasons stated above, the Joint Motion for Appropriate Relief, Implementation of State Open Meetings Law, Production of Minutes, and Effectuation of Decision Made in Public Deliberation filed by Greater Bloomfield Association and People's Counsel for Baltimore County should be denied in its entirety.

Dated: November 22, 2005

Respectfully submitted,

G. Scott Barhight

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348966

IN THE MATTER OF: 3600 GEORGETOWN CORPORATION Legal Owner 3600 Georgetown Road 3rd Election District, 1st Councilmanic District v. TOM MAUK, *et al.* Protestants/Petitioners (Case # 04-160-SPH)	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case Nos.: 04-160-SPH & and 04-294-SPH
And	*	
IN THE MATTER OF: 3600 GEORGETOWN CORP. 3600 Georgetown Road 3rd Election District, 1st Councilmanic District Legal Owner/Petitioner (Case # 04-294-SPH)	*	

* * * * *

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of November, 2005, a copy of New England Motor Freight's Response to the Joint Motion for Appropriate Relief, Implementation of State Open Meetings Law, Production of Minutes, and Effectuation of Decision Made in Public Deliberation was mailed, first class, postage prepaid to:

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Attorneys for New England Motor Freight

11/22/05

IN THE MATTER OF:		
3600 GEORGETOWN CORPORATION	*	BEFORE THE
Legal Owner		
3600 Georgetown Road	*	COUNTY BOARD OF APPEALS
3rd Election District, 1st Councilmanic District		
v.	*	OF BALTIMORE COUNTY
TOM MAUK, *et al.*		
Protestants/Petitioners	*	Case Nos.: 04-160-SPH &
(Case # 04-160-SPH)		and
	*	04-294-SPH
And		
	*	
IN THE MATTER OF:		
3600 GEORGETOWN CORP.	*	
3600 Georgetown Road		
3rd Election District, 1st Councilmanic District		
Legal Owner/Petitioner	*	
(Case # 04-294-SPH)		

* * * * *

AFFIDAVIT OF AUDRA T. CATHELL

1. I am an attorney at Whiteford, Taylor & Preston, LLP. I am of the age of majority and am competent to be a witness to the following facts.

2. I attended the Board of Appeals' (the "Board") public deliberation for the above-referenced cases on October 27, 2005.

3. The Board began its deliberations discussing whether the Wilson Freight Property lost its status as a conforming or nonconforming Class I trucking facility. The Board unanimously concluded that the Wilson Freight Property did not lose its status as a nonconforming use. The Board unanimously concluded that Protestants failed to set forth sufficient evidence of a cease in operations for more than a one-year period.

4. Because the Wilson Freight Property did not lose its nonconforming use status prior to 1976, and the Wilson Freight Property did everything it was required to do

as a result of the Legislation in 1976, the Board concluded that the 300 foot setback requirement of BCZR §410.2 does not apply to the Wilson Freight Property.

5. Because NEMF concedes that the setback requirement applies to the newly acquired Weiner Property, the Board concluded that the Weiner Property must comply with the 300 foot setback requirement of BCZR §410.2.

6. The Board then began its discussions on whether NEMF is permitted to expand its operations. The Board addressed whether the additional noise that would be generated as a result of an increase of 200 trucks would negatively impact the community.

7. Mr. Stahl recommended that the Board place conditions on the proposed plan, noting that several aspects of the plan are beneficial to the community. However, the Board did not impose any conditions on the plan.

8. Mr. Stahl questioned Ms. Bianco about the proper procedure to implement in the event that Messrs. Ramsey and Crizer disagreed with Mr. Stahl and whether Mr. Ramsey's opinion in fact impacts the Board's ultimate determination because Mr. Ramsey would not be signing the Board's opinion, and thus it was Mr. Stahl's opinion versus Mr. Crizer's opinion. Ms. Bianco responded by stating that a new board member would be necessary to deliberate in order to resolve the conflicting opinions of Mr. Crizer and Mr. Stahl.

9. The Board unanimously concluded that it would be necessary for another Board member to apprise himself/herself of all of the evidence before the Board by reviewing the transcripts, exhibits and briefs. Mr. Stahl, Mr. Crizer and the replacement

Board member would then deliberate all issues raised in the above-captioned cases and issue a properly executed opinion.

10. The Board did not discuss any other issues of concern raised by Protestants such as fumes, traffic, or stormwater management. The Board did not discuss whether NEMF's special exception request as it relates to fumes, traffic or stormwater management would have adverse effects that are greater than those inherently associated with a trucking facility regardless of its location within M.L. zoned land in Baltimore County.

11. The Board did not discuss the special exception factors of BCZR §502.1.

12. The Board did not conclude that the requested special exception should be denied.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the matters set forth above are true.

Audra T. Cathell

Dated: November 22, 2005

349102

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G. SCOTT BARHIGHT
DIRECT NUMBER
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gbarhight@wtplaw.com

November 22, 2005

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

Re: 3600 Georgetown Corp. - New England Motor Freight
Case Nos. 04-294-SPHX and 04-160-SPH

Dear Ms. Bianco:

Enclosed for filing in the above-referenced matter, please find the original and three copies of New England Motor Freight's Response to Joint Motion for Appropriate Relief, Implementation of State Open Meetings Law, Production of Minutes, and Effectuation of Decision Made in Public Deliberation.

Thank you for your assistance with this matter.

Sincerely,

G. Scott Barhight

G. Scott Barhight

GSB:sll
Enclosure
cc: J. Carroll Holzer, Esquire *(w/encl)*
Peter M. Zimmerman, Esquire *(w/encl)*
Nancy West, Esquire *(w/ encl)*

318740v5

RECEIVED
NOV 22 2005
BALTIMORE COUNTY
BOARD OF APPEALS

11/8/05

RE:	PETITION FOR SPECIAL HEARING NW/side Georgetown Rd, 100' NE Hall Ave (3600 Georgetown Road)	*	BEFORE THE COUNTY BOARD OF APPEALS
	Tom Mauk, Chatherine Scarborough, Anna Wood, Greater Bloomfield Association	*	FOR BALTIMORE COUNTY
	Petitioners	*	Case No. 04-160-SPH

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

RE:	PETITION FOR SPECIAL HEARING AND EXCEPTION N/S Georgetown Rd, SW of Bloomfield Rd (3600 Georgetown Road) 13th Election & 1st Councilmanic Districts	*	BEFORE THE COUNTY BOARD OF APPEALS FOR
	3600 Georgetown Corporation, c/o Myron Shevell - Legal Owners	*	BALTIMORE COUNTY
	Petitioners	*	Case No. 04-294-SPHX

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

RECEIVED
NOV - 8 2005
BALTIMORE COUNTY
BOARD OF APPEALS

REQUEST FOR EXPEDITED HEARING

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY and GREATER BLOOMFIELD ASSOCIATION, et al. request an expedited hearing on the Joint Motion for Appropriate Relief, Implementation of State Open Meetings Law, Production of Minutes, and Effectuation of Decision Made in Public Deliberation filed in the above-captioned cases.

J. CARROLL HOLZER
508 Fairmount Avenue
Towson, MD 21204
410 825-6961

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

Carole S. Demilio /RMW
CAROLE S. DEMILIO
Deputy People's Counsel
400 Washington Avenue
Towson, MD 21204
410-887-2188

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2005, a copy of this Request for Hearing was mailed first-class, postage pre-paid to Nancy West, Esquire, Office of Law, 400 Washington Avenue, 2nd Floor, Towson, MD 21204 and G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

11/8/05

RE:	PETITION FOR SPECIAL HEARING NW/side Georgetown Rd, 100' NE Hall Ave (3600 Georgetown Road)	*	BEFORE THE COUNTY BOARD OF APPEALS
	Tom Mauk, Chatherine Scarborough, Anna Wood, Greater Bloomfield Association	*	FOR BALTIMORE COUNTY
	Petitioners	*	Case No. 04-160-SPH

RECEIVED
NOV - 8 2005
BALTIMORE COUNTY
BOARD OF APPEALS

RE:	PETITION FOR SPECIAL HEARING AND EXCEPTION N/S Georgetown Rd, SW of Bloomfield Rd (3600 Georgetown Road) 13th Election & 1st Councilmanic Districts	*	BEFORE THE COUNTY BOARD OF APPEALS FOR
	3600 Georgetown Corporation, c/o Myron Shevell - Legal Owners	*	BALTIMORE COUNTY
	Petitioners	*	Case No. 04-294-SPHX

JOINT MOTION FOR APPROPRIATE RELIEF, IMPLEMENTATION OF STATE OPEN MEETINGS LAW, PRODUCTION OF MINUTES, AND EFFECTUATION OF DECISION MADE IN PUBLIC DELIBERATION

People's Counsel for Baltimore County and Greater Bloomfield Association, et al. file this Joint Motion, and state as follows:

I. Background

1. This motion requests relief from the extraordinary and unlawful conclusion to the public deliberations conducted by the County Board of Appeals (CBA) on October 27, 2005 in this case.

2. The Maryland Open Meetings Law requires CBA consideration and decision of zoning matters to be made in public deliberations. Md. Ann. Code State Government

Article, Secs. 10-501, et seq., especially 10-503(b). See Wesley Chapel Bluemount Ass'n v. Baltimore County 347 Md. 125 (1997).

3.The Open Meetings Law also requires, "as soon as practicable after a public body meets, it shall have written minutes of its session prepared." Sec. 10-509(b). Subsection (c) states that these "... minutes shall reflect: (i) each item that the public body considered; (ii) the action that the public body took on each item; and (iii) each vote that was recorded.

4. In the present matter, the two petitions present competing zoning requests for special hearing determinations and a special exception. There were 5 trial-type hearing days. The main parties are the Greater Bloomfield Association, et al, (including various individual citizens) who presented three expert witnesses (George Harman, Timothy Buckley, and John Dillon, Jr.), 5 citizen witnesses (including GBA President Lorna Rudnikas), and the district police captain (John Spiros); 3600 Georgetown Corporation (NEMF), which presented its Chairman (Myron Shevell), Operations Manager (Peter Filipowicz), and three expert witnesses (David Martin, George Spano, and James Markle); People's Counsel for Baltimore County, who participated and produced exhibits; and Baltimore County, by its office of law, which made a brief appearance at the opening. The GBA produced 30 exhibits; NEMF 19; and People's Counsel 21. Many of the exhibits are site plans and maps; many deal with legislative history; others with zoning history; and others with noise issues. They are voluminous.

5. On September 30, 2005, at the end of the final hearing day, the CBA set an October 17 deadline for filing of memoranda and October 27 for public deliberation.

6. The memoranda were duly submitted on October 17. They also are voluminous.

7. The CBA commenced deliberations at 11:30 A.M. on October 27, 2005. There then occurred an extraordinary course of events, which require the filing of this motion.

8. This motion is made upon information and belief, corroborated by the totality of circumstances, including the attached affidavits of John J. Dillon, Jr. and Lorna Rudnickas, who attended the public deliberation. Exhibits A and B. The deliberation resulted in a determination by a majority of board members, Edward Crizer and Michael Ramsey, to deny the special exception for expansion of the trucking facility. These members also determined that the proposed expansion is subject to the minimum location standards of BCZR 410.2, including the minimum setback of 300 feet from dwellings or residential zones. Chairman Lawrence Stahl, however, decided to grant the special exception. Indeed, despite Chairman Stahl's ensuing effort to have his colleagues agree to a partial expansion, they refused to do so, and maintained their determination to deny the special exception for expansion.

9. There then occurred an extraordinary turn and twist of events. In view of Mr. Ramsey's imminent resignation, Chairman Stahl suggested, in essence, that the vote would be left at 1-1 because there would be no time to write an opinion soon enough for Mr. Ramsey to sign it. The Chairman then suggested that a new board member would have to be assigned to replace Mr. Ramsey, review the record, and arrive at an independent conclusion at a future deliberation. Board members Ramsey and Crizer acquiesced to this procedure. As a result, the CBA panel aborted and discontinued its deliberations in the afternoon.

10. The CBA Secretary, Kathleen Bianco, was present at the deliberation and took notes. These notes, however, have not been published as minutes.

II. The Aborting of the Mission Violates the State Open Meetings Law

11. People's Counsel hereby challenges the untimely aborting of the public deliberation and the failure to produce complete and faithful minutes, including the determination of Board members Crizers and Ramsey to deny the special exception.

12. The County Board of Appeals' action violates the State Open Meetings Law by erasing and suppressing a decision of a majority of the panel membership made in public deliberation. The decision having been made, it cannot be taken back.

13. The CBA's action further violates the State Open Meetings by failing to produce minutes of the meeting, thus officially concealing what happened.

14. In an analogous situation, the Circuit Court reversed a County Board of Appeals decision that a case was moot when, after the CBA deliberation to deny the special hearing, the CBA nevertheless granted a voluntary motion for an order allowing withdrawal of the petition without prejudice. The Court thus effectuated the public deliberation and required the CBA to issue a proper opinion and order consistent with its deliberation. Petition of People's Counsel for Baltimore County in the Matter of Application of Penwood Mobile Home Park, July 15, 2004, Finifter, Circuit Judge. Exhibit C.

15. In People's Counsel for Baltimore County v. Country Ridge Shopping Center 144 Md. App. 580, 603 (2002), the Court of Special Appeals has observed that the Board

of Appeals is "an ongoing governmental entity." It has "an institutional life that transcends the tenure of any of its members." As Judge Moylan put it,

> "In this phenomenon of institutional continuity, there are echoes of the stirring epilogue of a John Wayne epic [Fort Apache (1948)], 'The names may change; the faces may change; but the regiment goes on.' Thus it is with the County Board of Appeals. It has a life that goes on beyond the tenure of any of its members."

16. In the present case, the institutional life has reached the point of a valid and effective majority decision made in open and public deliberation. The CBA "regiment" had achieved its objective, climbed the hill, and placed its flag in the good earth. Having done that, it had no cause for retreat. It could not lawfully retreat in the way that it did.

17. To proceed lawfully, the CBA could have concluded the case in several ways: (1) The CBA could have issued an opinion and order prior to Mr. Ramsey's scheduled resignation date, brief if necessary, to be followed by a fuller explanatory opinion later. This is sometimes done by the Court of Appeals when it is important to publish an order promptly. See Maryland Aggregates v. State 337 Md. 658, 662 (1995). (2) The CBA could have, and could still, extend or reinstate Mr. Ramsey's tenure for the purpose of co-signing the majority opinion in this case. (3) The CBA could issue the majority opinion signed by Mr. Crizer, with a note that the opinion reflects and is consistent with the public deliberation decision in which Mr. Ramsey joined. (4) The CBA could have another member step in Mr. Ramsey's shoes for the limited purpose of effectuating the decision made by him in public deliberation.

18. In Country Ridge Shopping Center, the appellate court reversed and remanded an earlier CBA decision for reconsideration because of a legal error in the initial CBA

decision. By the time of the remand, two CBA panel members had left. It was unavoidable that new members would have to come in and review the issues as corrected and directed by the appellate court. In the present case, the CBA deliberations proceeded without legal error up to the time of the majority decision. That is when the deliberations took the interrupted and unlawful turn. Therefore, the principle of institutional continuity requires that the institution consummate and finalize the results of the deliberation in a final opinion and order denying the special exception for expansion and otherwise reflecting the special hearing decisions made in public deliberation.

III. The Aborting of the Mission Violates Procedural Due Process of Law

19. Under all of these circumstances, the failure of the CBA to implement its majority decision not only violates the State Open Meetings law, but also violates procedural due process of law and principles of fundamental fairness under the Maryland Declaration of Rights, Article 24, and the Fourteenth Amendment of the United States Constitution. It is shocking to the conscience.

20. Administrative proceedings are subject to the constitutional requirements of procedural due process of law. Maryland State Police v. Zeigler 330 Md. 540, 559 (1993). In Maryland Aggregates v. State 337 Md. 658, 686-87 (1995), Judge Eldridge quoted the Zeigler opinion:

> "Procedural due process, guaranteed to persons in this State by Article 24 of the Maryland Declaration of Rights, requires that administrative agencies performing adjudicatory or quasi-judicial functions observe the basic principles of fairness as to parties appearing before them. ... " [citations omitted].

The delineation of procedural due process rights depends on the circumstances. The Court of Appeals wrote in Pitsenberger v. Pitsenberger 287 Md. 20, 30 (1980),

> "Once it is determined that an interest is entitled to due process protection, the pertinent inquiry then becomes what process is due. ... The Supreme Court has recognized that interpretation of the due process clause is a practical matter which must be approached with the realization that due process 'negates any concept of inflexible procedures universally applicable to every imaginable situation.'"

21. The CBA's belated interjection of Mr. Ramsey's upcoming resignation as a reason to abort a majority decision already made and publicly stated is a profound violation of principles of fundamental fairness and procedural due process of law.

22. The Supreme Court was prescient in stating that there is no one rule for "every imaginable situation." What happened on October 27, 2005 at the CBA deliberation is virtually unimaginable, and a reminder that truth is stranger than fiction. The CBA made a decision, and then proceeded to erase it and suppress the evidence that it has occurred.

IV. The Substitution of a New Board Member to Make an Independent Decision Compounds the Violations and in No Way Cures the Legal Defects

23. It is plainly inappropriate to introduce a new board member with the opportunity to substitute his decision for the decision already made by panel member Michael Ramsey. This contrasts with the remand situation, where in essence a new decision must be considered and made, and where substitution of new members is unavoidable in the event of vacancies occurring in the meantime.

24. It is especially inappropriate where the new board member did not observe witnesses, did not hear testimony, did not see or digest exhibits as discussed or displayed

during testimony, and, in general, does not have the equivalent opportunity to get a sense of the context of the case as it progressed.

25. It sets up the opportunity to substitute a reversal of Michael Ramsey's decision where this is neither necessary nor appropriate in view of the opportunity to consummate the majority decision made by members Ramsey and Crizer.

26. A new panel member cannot possibly absorb and judge the complex and profound issues in this case in the way which Mr. Ramsey had the opportunity to do.

27. Under all the circumstances, it is a miscarriage of justice to have dismissed Mr. Ramsey from the case and to have erased the evidence of the majority decision in which he and Mr. Crizer concurred.

28. In sum, substitution of a new board member under these extraordinary circumstances conflicts with the State Open Meetings law and procedural due process of law. The CBA should render its decision and enter an order in accordance with the 2-1 majority determination made October 27, 2005 at the public deliberation.

V. The Board of Appeals Rules Do Not Justify Its Action

29. Board of Appeals Rule 1c1 allows the Chairman to appoint a new board member "During the course of a hearing if a any member of the original panel is unable to continue to serve …." This plainly does not apply here because the hearing had ended, Mr. Ramsey had served through the point of decision, and the Board could realistically and lawfully have completed the final formality of a written opinion and order, either with or without his signature, under the alternatives listed in Paragraph 17, above.

30. In any event, if CBA Rule 1c1 were interpreted or expanded to apply to appointment of a new member under the present circumstances, it would conflict with the State Open Meetings Law and procedural due process of law for all the above reasons.

31. People's Counsel for Baltimore County and Greater Bloomfield Association, et al. note that on November 1, 2005, the CBA issued a notice of "Reassignment Date" of December 6, 2005 for the public deliberation of this case. The notice omits any mention of the October 27, 2005 public deliberation and the events of that day. The December 6 public deliberation, apparently a new public deliberation with a substitute for Mr. Ramsey, would be irregular and should not be held as such because it undermines the decision already made. The present motion registers, therefore, an objection to the mode and manner of this public deliberation, for all of the reasons stated above.

Wherefore, People's Counsel for Baltimore County and Greater Bloomfield Association respectfully request:

a. That the County Board of Appeals comply with and effectuate the State Open Meetings Law and consummate its October 27, 2005 public deliberation in the right way.

b. That the County Board of Appeals produce accurate and complete minutes of the public deliberations which occurred on October 27, 2005, including but limited to the notes of the secretary to the Board who was present at the deliberations.

c. That the County Board of Appeals (1) issue a majority opinion and order *nunc pro tunc* to deny the special exception for expansion, signed by members Crizer and Ramsey, as it should have been prior to Mr. Ramsey's scheduled resignation date, to be followed if necessary by a fuller explanatory opinion later, signed by Mr. Crizer, with a

note that it further discusses the earlier decision of both members; (2) extend or reinstate (or deem extended or reinstated as a matter of law), Mr. Ramsey's tenure for the purpose of co-signing said majority opinion and order to deny the special exception in this case; (3) issue the said majority opinion signed by Mr. Crizer, with a note that the opinion reflects and is consistent with the public deliberation decision in which Mr. Ramsey joined, prior to his resignation; and/or (4) have another member step in Mr. Ramsey's shoes for the limited purpose of effectuating the decision made by him and Mr. Crizer in public deliberation to deny the special exception.

d. That the County Board of Appeals hold a public hearing on this motion for the presentation of argument and for production of evidence as to what occurred on October 27, if necessary.

e. That the County Board of Appeals review, deliberate, and decide this Motion prior to holding a new and independent public deliberation on the merits, such as the deliberation just scheduled for December 6, 2005.

f. That the County Board of Appeals grant such further relief as may be appropriate under all of the circumstances.

J. CARROLL HOLZER
508 Fairmount Avenue
Towson, MD 21204
410 825--6961

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

Carole S. Demilio/RMW
CAROLE S. DEMILIO
Deputy People's Counsel
400 Washington Avenue
Towson, MD 21204
410-887-2188

CERTIFICATE OF SERVICE

I hereby certify that on this 8 day of November, 2005, a copy of this Joint Motion for Appropriate Relief, Implementation of State Open Meetings Law, Production of Minutes, and Effectuation of Decision Made in Public Deliberation was mailed first-class, postage pre-paid to Nancy West, Esquire, Office of Law, 400 Washington Avenue, 2nd Floor, Towson, MD 21204 and G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

AFFIDAVIT OF PERSONAL KNOWLEDGE

My name is Jack Dillon, I am over 18 years of age and competent to testify in this case.

On Thursday, October 27, 2005 I attended the scheduled deliberation of the Board of Appeals for Cases No's. 04-160SPH & 04-294SPHX. Sitting on this case was Lawrence Stahl as Chair, Edward Crizer and Michael Ramsey. Kathleen Bianco, Administrator – joined the board as the scribe for the Board.

The Board was scheduled to convene at 10 a.m. however, was delayed until about 11.30 a.m. Mr. Stahl (Chair) began by asking for first impressions which led to a discussion of what the various issues were as outlined in the "Holzer Brief". After discussions concerning the non-conforming use issue and the 300' setback issue raised in the "Holzer Brief', the Board examined the question of the proposed expansion. It was unanimous that the newly acquired property would be subject to the 300' setbacks. Mr. Ramsey and Mr. Crizer both expressed the opinion that the proposed expansion is subject to the setback requirements because this area was outside of the original Special Exception. Mr. Ramsey expressed his concern that the impact of the noise generated from the site and its impact on the community and the anticipated increase of noise and fumes by tripling the number of trucks would have an adverse impact on the community. Mr. Crizer agreed. Mr. Stahl clearly did not agree with Mr. Ramsey and Mr. Crizer and repeatedly tried to persuade them to change their position without success.

Mr. Stahl then pulled the site plan and requested Mr. Crizer and Mr. Ramsey to look and see if a compromise could be reached. Mr. Stahl suggested that they should consider restricting the distance of the expansion and limiting the number of trucks on the property. Neither Mr. Ramsey nor Mr. Crizer was impressed with this idea.

It was about this time (12.30 p.m.) the Board decided to halt the deliberations and allow another case that had been scheduled for 11.30 a.m. to proceed.

The Board reconvened at 2.30 p.m. Mr. Stahl proceeded with his suggestion that a setback could be established that would minimize the noise impact. Both Mr. Crizer and Mr. Ramsey still did not agree. This then led to the discussion of the Special Exception Section 502.1 and the required tests. The first requirement "A", "Would the proposed use have an adverse impact on the health, safety and general welfare of the

Exh. A.

NOV-08-2005 13:27 FROM-CCBC APPLIED TECH 410 455 4744 T-934 P.001/002 F-352

community?". Mr. Crizer again expressed his belief that the petitioner had not proved his burden because of the noise impact on the community. Mr. Stahl then asked if Mr. Crizer had the same concern about "fumes" generated from the diesel trucks. Mr. Crizer responded that he did.

At that point it was announced for the first time that Mr. Ramsey would not be able to sign the final order because he would no longer be on the Board and in fact his "exit ticket" was in process.

Mr. Stahl then presented the dilemma, that if Mr. Crizer and Mr. Stahl were at an impasse, it was not useful to go further with the deliberation. The solution would be to have a new Board member assigned and redeliberate after he/she had reviewed the transcripts and briefs or rehear the entire case.

The Board then adjourned the deliberation about 3:00 p.m.

Both Mr. Crizer and Mr. Ramsey were opposed to the proposed expansion on the basis that it would adversely affect the Bloomfield community.

Under penalty of perjury I certify this 3rd day of November, 2005 that the statements made above are true and correct to the best of my knowledge, information and belief.

Jack Dillon Nov. 8, 2005

Jack Dillon

AFFIDAVITE

This is to confirm that I, Lorna D. Rudnikas am over the age of 18 and competent to testify.

On Thursday, October 22, 2005 I attended a scheduled Deliberation of the Board of Appeals at the County Court House in Towson, Maryland regarding the New England Motor Freight/Bloomfield Case. Those Board Members in attendance were: Mr. Stahl (Chair), Mr. Ramsey and Mr. Crizer. Ms. Kathy Bianco, Administrator attended as well to take minutes of the meeting.

The Deliberation began around 11:30 a.m. and discussion lasted approximately one hour or so, after which there was a break for lunch. Everyone returned after more than a hour.

Deliberations began again and after discussion about the memorandums submitted by both attorneys, it became very clear that Mr. Crizer and Ramsey were not in agreement with Mr. Stahl regarding the special exception for further expansion of NEMF toward the community. Based upon the impact of noise and fumes upon the community, Mr. Ramsey voiced his strong opposition to the expansion in any way. In fact he stated to the affect that "...there is no way that NEMF can prove to me that further expansion will not do harm to this community. They have not done so and as far as I am concerned, cannot do so. Furthermore, any suggestion that the community had no complaints of noise in the past, as far as I am concerned, is simply because they were trying to be ***good neighbors***."

Mr. Crizer agreed with Mr. Ramsey and both refused to change their opinion regarding their very strong feeling and opposition to further expansion which they stated would indeed be very harmful to the community. They refused to change their opinion, even when Mr. Stahl - who apparently wanted to approve the expansion, asked them both repeatedly if it was possible they would change their minds.. They both steadfastly refused to consider changing their minds.

From there on the conversation focused on Mr. Stahl's note that Mr. Ramsey would not be on the Board after that day, (October 22, 2005).

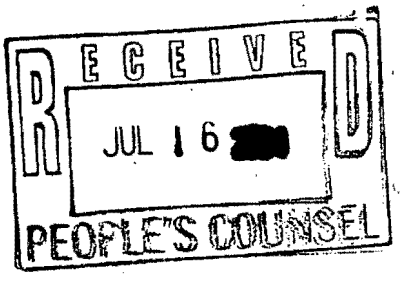
Lorna D. Rudnikas

Lorna D. Rudnikas, President
Greater Bloomfield Community Association, Inc.

11/7/05
Date

Exh. B

PETITION OF :	*	**IN THE CIRCUIT COURT**
	*	
People's Counsel for Baltimore County	*	**FOR**
Old Courthouse, Room 47, 400 Washington Avenue	*	
Towson, MD 21204	*	
	*	**BALTIMORE COUNTY**
IN THE CASE OF:	*	
The Application of Penwood Mobile Home Park for	*	
a special hearing for property located on the N/E	*	
corner of Dogwood and Oak Roads	*	**Case No.: 03-C-04-000090**
(8000 Dogwood Road)	*	
	*	
15th Election District, 7th Councilmanic District	*	
CBA NO. CBA-03-207-SPH	*	
	*	
	*	



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MEMORANDUM AND ORDER OF COURT

This matter came before this court regarding the Petition of People's Counsel for Baltimore County for judicial review of the administrative decision of the Baltimore County Board of Appeals ("CBA" "Board"). A hearing before this court was held on June 16, 2004, at which time both parties presented arguments.

FILED JUL 15 2004

Exh. C

10/17/05

IN THE MATTER OF:		
3600 GEORGETOWN CORPORATION	*	BEFORE THE
Legal Owner		
3600 Georgetown Road	*	COUNTY BOARD OF APPEALS
3rd Election District, 1st Councilmanic District		
v.	*	OF BALTIMORE COUNTY
TOM MAUK, *et al.*		
Protestants/Petitioners	*	Case Nos.: 04-160-SPH &
(Case # 04-160-SPH)		and
	*	04-294-SPH
And		
	*	
IN THE MATTER OF:		
3600 GEORGETOWN CORPORATION	*	
3600 Georgetown Road		
3rd Election District, 1st Councilmanic District		
Legal Owner/Petitioner	*	
(Case # 04-294-SPH)		

* * * * *

NEW ENGLAND MOTOR FREIGHT'S CLOSING MEMORANDUM

3600 Georgetown Corporation, d/b/a New England Motor Freight ("NEMF"), by its undersigned counsel, submits this memorandum in lieu of closing arguments.

STATEMENT OF THE CASE

This case involves a trucking facility owned by 3600 Georgetown Corporation, doing business as New England Motor Freight ("NEMF"), located at 3600 Georgetown Road in the Landsdowne community of Baltimore County (Trucking Facility 139). The parties agree on the prior zoning cases and approved site plans that are relevant to this appeal. Below is a summary of the relevant cases preceding those currently before the Board.

Case No. 4890-RX

On October 11, 1961, Wilson Forwarding Freight Company ("Wilson Freight") was granted a reclassification of the property located at 3600 Georgetown Road (the

"Wilson Freight Property") from an R-6 zone to an M.L. zone. The County Board of Appeals held that the request for reclassification should be granted because the property was erroneously zoned at the time the Land Use Map was adopted by the County Council on June 2, 1959. The property was reclassified because it is surrounded by commercially zoned properties including junk yards, gasoline stations, trucking establishments and other commercial uses where it would be "impractical" for the property to be developed for residential purposes. Bloomfield Ex. 11, p. 1.

The Board of Appeals also granted a special exception for a trucking terminal at the Wilson Freight Property. The Board of Appeals was unanimous in its opinion that the special exception for a trucking terminal be granted, subject to certain restrictions. Bloomfield Ex. 11, p. 2.

Bill 18-1976 and the 1976 CZMP

The Wilson Freight Property was rezoned in the 1976 Comprehensive Zoning Map process from M.L. to M.L.R. – I.M. On April 18, 1976, the County Council adopted Bill No. 18-76 (the "Legislation"), which is now codified in Section 410 of the BCZR. The Legislation was adopted to regulate trucking facilities in Baltimore County.

Case No. 77-139-TV

Pursuant to the Legislation, Wilson Freight filed the requisite site plans for the Wilson Freight Property. On May 7, 1982, James E. Dyer, Zoning Supervisor of Baltimore County confirmed that Wilson Freight was in compliance with the Legislation and that there were no outstanding zoning violations. Bloomfield Ex. 18. Mr. Dyer's letter also confirmed that all zoning problems on the Wilson Freight Property were resolved pursuant to the revised site plan that was reviewed and approved by him on June

16, 1981, and by the Chairman of the County Trucking Facilities Development Officials on June 15, 1981.

Case No. 98-260-SPHX

In this case, 3600 Georgetown Corporation doing business as NEMF, filed petitions for special hearing and special exception to amend the site plan that was approved in 1981 and to approve an amendment to the previously approved plan in Case No. 48-90-RX. Zoning Commissioner Schmidt granted the petitions for special exception and special hearing on February 25, 1998. Mr. Schmidt found that NEMF's use and proposed improvements to the Wilson Freight Property were compatible with the Wilson Freight Property's zoning classification and neighborhood. Bloomfield Ex. 20, p. 2. Mr. Schmidt further held that the additions and improvements requested in the case represented an "upgrade" to the Wilson Freight Property. *Id.*

Case No. 99-208-SPH

In this case, NEMF filed a petition for special hearing seeking to expand the time frame to begin using the special exception granted in Case 98-260-SPHX. Because Section 502.3 of the BCZR provides that the Zoning Commissioner may increase the period of utilization from two years up to five years from the date of the initial grant, NEMF was in negotiations to purchase an adjacent piece of property (the "Weiner Parcel"), and there were no adverse Zoning Advisory Committee ("ZAC") comments, Zoning Commissioner Schmidt granted the petition for special hearing to allow utilization to February 25, 2003.

Case No. CBA-00-162

NEMF and Baltimore County, Maryland settled and dismissed this appeal before the County Board of Appeals. The issue in this case was whether the Wilson Freight Property complied with BCZR §410.2. Subsequent to the Zoning Commissioner's Order extending the Wilson Freight Property's special exception in Case 99-208-SPH, Code Enforcement Officers of the Division of Code Inspections and Enforcement investigated the site. On September 25, 2000, James H. Thompson, Code Inspections and Enforcement Supervisor, issued a letter stating that Arnold Jablon, Director of Permits and Development Management ("PDM") "elected to declare the February 25, 1998 decision no longer valid and in effect." The September 25, 2000 letter stated that Mr. Jablon's decision was based on NEMF's failure to: 1) obtain an approved landscape plan, a condition of the Zoning Commissioner's Order in Case 98-260-SPHX; and 2) obtain permits for grading/paving and the erection of fencing.

The Division of Code Inspections and Enforcement issued Civil Case No. 00-7138, and a hearing on the citation was held before the Hearing Officer Stanley J. Schapiro on November 14, 2000. Mr. Schapiro's Order, dated November 20, 2000 found that NEMF "constructed the fence and graded [a portion of] the [Weiner] property under the mistaken belief that the Zoning Commissioner's Order in Case 98-260-SPHX authorized the construction of the fence and grading." Mr. Schapiro further found that NEMF "has removed all tractor-trailers from those proposed areas indicated on the site plan filed with said Order" and that "barriers have been positioned on site to prevent re-entry into those areas."

NEMF subsequently submitted a final landscape screening plan for the Wilson Freight Property which was approved by PDM on November 30, 2000. Thereafter, on December 1, 2000, NEMF's counsel sent a letter to Mr. Jablon requesting that he revisit his decision of September 25, 2000 where he declared the February, 1998 decision invalid. On April 27, 2001, James Thompson issued a response indicating that Mr. Jablon was willing to abate his decision of September 25, 2000, and also indicating that a variance was required if the Class I trucking facility was within 300 feet of any dwelling or residential zone per BCZR §410.2. On May 11, 2001, NEMF's counsel issued another letter to Mr. Jablon explaining that BCZR §410.2 does not apply to the Wilson Freight Property because it was established before the enactment of the Legislation. On May 14 and 15, 2001, representatives of PDM noted their agreement with NEMF. As a consequence, NEMF and Baltimore County entered into a settlement agreement declaring Mr. Jablon's September 25, 2000 letter void because it was based on a mistaken construction of the law and that NEMF's 1998 special exception approval obtained in Case 98-260-SPHX remains in full force and effect. Accordingly, it was determined that the 300 foot setback requirement of BCZR §410.2 does not apply to the Wilson Freight Property.

Case No. 01-544-SPHX

In this case, NEMF requested special exception approval to amend the site plan approved in Case 980260-SPHX and a special exception to expand the existing Class I trucking facility onto the Weiner Parcel.[1] Special hearing relief was also requested to approve a car parking compound located within Baltimore City as supporting the Class I

[1] The County Council voted to rezone the Weiner Parcel during the 2000 Comprehensive Zoning Map process to M.L. and B.M. – I.M., thereby permitting NEMF to expand the Class I Trucking Facility onto the Weiner Parcel. Bloomfield Ex. 22, p. 6.

trucking facility. Deputy Zoning Commissioner Kotroco granted NEMF's request to expand the Class I trucking facility onto the Weiner Parcel subject to certain restrictions.

The parties then filed motions for reconsideration of the Deputy Zoning Commissioner's Order asking that the Order be modified. A public hearing was held on February 27, 2002. Mr. Kotroco issued another Order denying the Motion for Reconsideration filed by the Office of People's Counsel finding that NEMF's proposed expansion of the Class I trucking facility was appropriate. Bloomfield Ex. 22, p. 6. Mr. Kotroco granted NEMF's Motion for Reconsideration holding that it was not his intention to impose conditions and restrictions that would ultimately render NEMF's operations at the Class I trucking facility ineffective and that he did not intend for NEMF to cease operations at the Class I trucking facility and relocate. *Id.*

The case was then appealed to the County Board of Appeals. On January 16, 2003, because the contract to purchase the Weiner Parcel expired, NEMF withdrew its petitions filed in Case 01-544-SPHX. The Deputy Zoning Commissioner's Order dated October 12, 2001 and Order on Motion for Reconsideration dated April 3, 2002 were then rendered null and void. Bloomfield Ex. 24.

Case No. 04-160-SPH

Tom Mauk, Catherine Scarborough, Anna Wood and the Greater Bloomfield Community Association ("Protestants"), filed their current petition for special hearing to determine the following questions:

1) whether NEMF is lawfully utilizing that portion of its property located in the S/W portion of the site identified on the plan submitted to DEPRM;

2) whether the Property's and the Weiner Parcel's prior zoning history and the BCZR prohibit the issuance of Permit # B511616;

3) whether NEMF lost any claim as a nonconforming use;

4) whether NEMF lost its right to exist on the subject site since its special exception in 1998 expired; and its special exception in 2000 was withdrawn;

5) whether any expansion beyond that of the nonconforming use is permitted by the BCZR and to what extent; and

6) whether NEMF is required to comply with the 300 foot setback from the property line pursuant to BCZR §410.2 (Bill 18-76).

Case No. 04-294-SPHX

NEMF filed a petition for special exception to amend the Special Exception Plan approved in Case 98-260-SPHX and to expand the existing Special Exception for a Class I trucking facility in accordance with the attached Plan to Accompany Petition for Special Exception and Special Hearing. In the alternative, NEMF requests a special exception to amend a previously approved Class I trucking facility plan.[2]

NEMF also filed a petition for special hearing to determine whether:

1) the Plan approved in Case 98-260-SPHX was utilized and vested;

2) to determine whether the existing use of the site as a Class I trucking facility has been utilized and vested; and

3) to amend a previously approved car parking compound in Baltimore City as supporting a Baltimore County trucking facility and to further recognize that the subject car parking compound as fulfilling the requirements of

[2] Since the withdrawal of the Petition in Case 01-544-SPHX, NEMF entered into a new contract to purchase the Weiner Parcel. NEMF purchased the Weiner Parcel in 2004. T.1, p. 93.

BCZR §409.6.A.3 providing the parking requirements for a trucking facility in Baltimore County.

QUESTIONS PRESENTED

The questions presented to this Board are:

1) whether the Facility is a conforming trucking facility pursuant to section 410 of the Baltimore County Zoning Regulations ("BCZR");

2) whether NEMF should be granted a special exception to amend the Special Exception Plan approved in Case 98-260-SPHX, and whether NEMF should be granted the special hearing to amend a car parking compound in Baltimore City as supporting the Baltimore County Class I Trucking Facility and fulfilling the requirements of BCZR §409.6.A.3;

3) assuming *arguendo*, that the Facility is nonconforming, whether NEMF has lost its nonconforming Class I trucking facility status; and

4) whether NEMF has lost its special exception status.

STATEMENT OF THE FACTS

This case involves a trucking facility owned by 3600 Georgetown Corporation, doing business as New England Motor Freight ("NEMF"), located at 3600 Georgetown Road in the Landsdowne community of Baltimore County (Trucking Facility 139). NEMF proposes to demolish the existing building and build a new building with additional bays; reorganize parking and circulation; expand the entrance off of Joh Avenue and construct a gate and guard house; relocate the repair building further to the northwest of its current location; construct a retaining wall, new curbing, paving, security

fence, a sound barrier; and plant permanent evergreen Class A landscape screen. NEMF Ex. 2, T.4[3], pp. 19-21.

Protestants reside in the residential neighborhood adjacent to the Wilson Freight Property. Protestants oppose NEMF's development proposal due to their concerns of stormwater management, noise, traffic and fumes. However, in actuality, NEMF's proposal addresses and alleviates Protestants' concerns much more than the activities that are currently permitted on the property.

The proposed expansion will result in a state-of-the-art Class I Trucking Facility, one of two in Baltimore County. As the Wilson Freight Property is currently permitted to operate, it has, among other things, deteriorating paving, no sound barrier, and inadequate stormwater management. If NEMF's proposed expansion is approved, the Protestants will only benefit from the new curbing and paving, an underground stormwater management facility, a sound barrier and a new building.

ARGUMENT

1. The Facility Is A Conforming Class I Trucking Facility

There is no dispute that the Wilson Freight Property is a Class I Trucking Facility as defined in BCZR §101. Accordingly, section 410 of the BCZR governs the activities occurring at the Class I Trucking Facility. Pursuant to the plain reading of section 410 of the BCZR, the activity at the Wilson Freight Property is a conforming Class I Trucking Facility.

BCZR §410.1 applies to Class I trucking facilities existing on the effective date of the Legislation, or April 18, 1976. If a trucking facility did not have approved plans on

[3] There were five days of hearing testimony before the Board. The transcripts will be referenced as T.1 through T.5.

file with the County at that time, it was required to file plans demonstrating its layout and operation of use within one year of the passage of the law. BCZR §§410.1.A.1, 410.1.A.2, 410.3.C.1. Within one year of the date those plans were filed, the Zoning Commissioner was required to determine if they complied with selected provisions of the regulations or whether they were permissibly exempt from the regulations. BCZR §§410.1.B.1, 410.1.B.2, 410.1.B.3. If the Zoning Commissioner determined that the filed plans did not comply with the appropriate regulations, and were not permissibly exempt from those regulations, the trucking facility was required to file a program of compliance showing that the appropriate regulations would be met within twenty seven months (BCZR §410.1.C.1) or a petition requesting that the facility not be required to meet the appropriate regulations because conformance with the provision would cause undue hardship and would not be in the general interest of the community. BCZR §410.1.C.2. *See also, Umerley v. People's Counsel for Baltimore County*, 108 Md.App. 497, 501 (1996) (PC Ex. 3) (summarizing procedure set forth in BCZR §410). If the Zoning Commissioner determined that a trucking facility did not conform to the Legislation, the trucking facility would be required to petition for a variance from the particular provision of the Legislation in which it was nonconforming. *See, e.g.*, BCZR §410.1.B.3.

The Class I Trucking Facility has existed on the Wilson Freight Property for over forty years. It was granted special exception approval on October 11, 1961 in Case 48-90-RX. In the 1976 Comprehensive Zoning Map process the property was rezoned from M.L. to M.L.R. – I.M. Subsequently in 1976, the County Council enacted Bill No. 18-76 which is now codified as BCZR §410. A site plan was filed for the Class I Trucking Facility and was approved on June 16, 1981 by James E. Dyer, Zoning Supervisor, and

by the Chairman of the County Trucking Facilities Development Officials on June 15, 1981. Subsequently, the Class I Trucking Facility was inspected by Zoning Enforcement whereby it was "found to be in compliance" with the approved site plan. Bloomfield Ex. 18. *See also* Bloomfield Ex. 20, p. 2 (stating that the use on the property was found to be in existence prior to April 18, 1976 and to be in compliance with the provisions of Bill No. 18-76); Bloomfield Ex. 22, p. 2 (stating that the special exception for a Class I Trucking Facility granted to the Wilson Freight Property in 1961 was later confirmed by the 1982 letter written by James E. Dyer). The Class I Trucking Facility was not required to seek a variance from any of the Legislation's provisions, nor was it required to file a program of compliance or a petition requesting that it not be required to meet the appropriate regulations as required by BCZR §410.1.C. Hence, the Wilson Freight Property is a conforming Class I Trucking Facility which meets all applicable Baltimore County Zoning Regulations. Bloomfield Ex. 18; T.4, pp. 23-25.

David Martin of G.W. Stephens & Associates testified that forty-four trucking facilities operate in Baltimore County. T.4, pp. 26-27. Some of these facilities were required to obtain variances[4] in order to comply with BCZR §410 and others, such as the Wilson Freight Property, were not.[5] T.4, pp. 103- 113; NEMF Exs. 9-14. For example,

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[4] People's Counsel cites *Umerley v. People's Counsel for Baltimore County*, 108 Md.App. 497 (1996) to support his position that the proposed Class I Trucking Facility is required to obtain a variance from BCZR §410.2. *Umerley* is inapposite. There, the trucking facility was in violation of BCZR §410 since the enactment of the Legislation. Moreover, the facility misrepresented its business activities in order to obtain building permits and had been issued several zoning violations. Here, the Wilson Freight Property has consistently been found to be in compliance with BCZR §410 and it has never been issued a zoning violation. People's Counsel also cites *Laskey v. Bethelehem Steel Corp.*, No. 18, September Term, 1979, an unreported Court of Special Appeals opinion. *Laskey* is likewise inapposite because it merely addresses whether the Legislation applies to either a dwelling, or a residential zone.

[5] The fact that some of the forty four facilities are Class II trucking facilities is irrelevant. Although some facilities are Class II facilities, the Legislation's language concerning the process and procedure for nonconformance is the same for Class I and Class II trucking facilities. BCZR §410.1.B & C; BCZR §410A.1.B & C.

the trucking facility located at 8216 and 8224 Bletzer Road (NEMF Ex. 13) requested a variance from BCZR §410.A.3(b)(6). T.4, pp. 108-09. The trucking facility located at 8227 Fischer Road (NEMF Ex. 14) requested a variance from BCZR §410.A.2 to permit a setback of 100 feet from a residential area and also requested a paving variance. T.4, pp. 109-10. On the other hand, the trucking facilities located at 2000 Hammonds Ferry Road (NEMF Ex. 8), 3510 Washington Boulevard (NEMF Ex. 12), 4412 Pistoria Road (NEMF Ex. 10), 4546 Annapolis Road (NEMF Ex. 9) and 2312 Eskow Road (NEMF Ex. 11) were not required to request variances and are therefore conforming trucking facilities. Because the Wilson Freight Property was not required to obtain a variance from BCZR §410.2, and because it was approved by the Zoning Supervisor and Chairman of the County Trucking Facilities Development Officials, it is a conforming Class I Trucking Facility under the Legislation.

2. NEMF's Proposal Should Be Approved Because It Meets All Applicable Zoning Requirements

A. NEMF'S PROPOSAL MEETS THE SPECIAL EXCEPTION REQUIREMENTS OF THE BCZR

Section 410.1.F provides that plans approved under the Legislation may be amended only by special exception unless they are for a conforming Class II trucking facility in the M.H. zone. Because the Wilson Freight Property is a Class I Trucking Facility and its plans were approved pursuant to the Legislation, NEMF may amend its plans by special exception.

There is no dispute that a trucking facility is permitted by special exception on the property. BCZR §253.2.A.12. A special exception use is "expressly permissible" once certain statutory criteria have been satisfied. *Mossburg v. Montgomery County*, 107

Md.App. 1, 7 (1995). "It is part of a comprehensive zoning plan, sharing the presumption that it is in the interest of the general welfare and is, therefore valid." *Id.* The Wilson Freight Property was granted special exception status in 1961. The Wilson Freight Property has been operating as a Class I Trucking Facility pursuant to its special exception since that time. Accordingly, the Wilson Freight Property's right to operate under a valid special exception has vested and it has retained its special exception status for four decades. *Powell v. Calvert County*, 368 Md. 400 (2002).

In special exception cases, general compatibility with the surrounding neighborhood is not the proper issue to consider because that issue has already been resolved by the legislature. *Id.* The issue is not whether the use will have adverse effects. Obviously some adverse effects are contemplated in a special exception case because the use is permitted by special exception, not by right. *Id.* Therefore, the proper issue to be considered in a special exception case is whether the adverse effects in a particular location would be above and beyond those inherently associated with the special exception use irrespective of its location within the zone. *Id.* (quoting *Schultz v. Pritts*, 291 Md. 1, 22-23 (1981)).

Accordingly, in this case, the issue is not whether the proposed expansion has adverse effects on the community. Any trucking facility inherently has adverse effects. Rather, the proper issue is whether NEMF's proposed amendments to its already approved plans will have adverse effects that are greater than those inherently associated with a trucking facility no matter where it is located within M.L. zoned land in Baltimore County. *Id.*

Section 502 of the BCZR governs special exceptions. That section provides that before the requested special exception may be granted, it must appear that the use for which it 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 for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
F. Interfere with adequate light and air;
G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations...

BCZR §502.1.

These requirements are to be determined in accordance with the special exception standard enunciated in *Mossburg* and *Schultz*. For example, regarding the first factor set forth in BCZR §502.1.A, the determination that must be made is whether NEMF's proposed expansion would adversely affect the community any more than would be ordinarily expected, regardless of its location. By defining a trucking facility as an appropriate use by way of special exception, the County Council has basically declared that such uses, if they satisfy the other specific requirements of the Legislation, do promote the health, safety and general welfare of the community. *Schultz*, 291 Md. at 14 (analyzing the BCZR in a special exception case for a funeral home in a residential zone). Accordingly, the presumption that the general welfare is promoted by allowing trucking facilities in M.L. zones, notwithstanding their inherent effects (*ie.*, noise and fumes),

cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with trucking facilities regardless of their location. *Id.*

For example, in Mossburg, *supra*, the Court of Special Appeals reversed the order of the Circuit Court for Montgomery County affirming the Montgomery County Board of Appeals' decision denying a request for special exception to operate a solid waste transfer station on an industrial zoned property in Rockville, Maryland. The Board of Appeals denied the special exception request due to its concerns over the environment and traffic. *Mossburg*, 107 Md.App., at 12. The Board of Appeals found that there would be adverse impact from runoff from the subject site into a tributary that ultimately drains into Rock Creed, the Potomac River and the Chesapeake Bay. *Id.* at 13.

The *Mossburg* Court held that there was no evidence that other areas in the zone do not drain into the same tributary. In fact, the Court found that there were not any areas in the county where stormwater runoff did not ultimately drain into the Chesapeake Bay. *Id.* The Court also noted that the Board of Appeals wrongfully ignored the Montgomery County Environmental Planning Division's findings and recommendations, including the fact that its staff would recommend conditional approval subject to the applicant revising the currently approved plan and obtaining approval from the department; and the county's legislation expressly governing environmental effects of private solid waste transfer stations in the. *Id.* at 13, 22-25. The Board of Appeals' finding about traffic safety related to the property's unique location in the zone where trucks cannot continue past the property due to bridge restrictions. *Id.* at 15. Noting that the legislature knew

exactly the type of business or use for which it was providing the special exception, the Court found that there would be no present or future adverse impact that would be different on the subject site than elsewhere on the site's road or in other I-2 Zone areas of Montgomery County. *Id.* at 17-18.

The proposed plan (NEMF Ex. 2) meets all of the requirements of BCZR §502.1:

A. If NEMF's special exception to amend its approved plan is granted, there will be no greater detrimental effects on the health, safety and general welfare of the community than any other trucking facility located elsewhere in the M.L. zone. T.4, p. 77. All trucking facilities generate noise, stormwater runoff and fumes to some degree. There is no dispute that the proposed plan eliminates the stormwater runoff concerns. T.5, pp. 295-96. Also, there is no evidence demonstrating that the proposed plan will cause greater detrimental effects on the health, safety and general welfare of the community above and beyond that impact elsewhere within the M.L. zone in this industrial corridor or in other M.L. zones in Baltimore County.

B. The proposed expansion will not create any more congestion in roads or streets than a trucking facility would elsewhere in the M.L. Zone. T.4, p. 68-70. Rather, the Facility is the most ideally located trucking facility in the County as it relates to this standard because of its close proximity to major roads and interstates, eliminating most, if not all travel on residential roads. T.4, pp. 69-70. As a consequence, the proposed expansion cannot possibly create any more traffic congestion above and beyond that impact elsewhere in the M.L. zone.

C. The proposed expansion will not create any potential hazards from fire, panic or

other dangers greater than those ordinarily expected from a trucking facility in the M.L. zone. T.4, pp. 70-71. There is no evidence that the proposed expansion will create any potential hazards from fire, panic or other dangers above and beyond those ordinarily associated with trucking facilities regardless of their location in the M.L. zone.

D. The proposed expansion will not overcrowd the land and cause undue concentration of the population. T.4, pp. 70-71. In fact, the ratio of building coverage to the land in the proposed plan is half of what is permitted on the Property. T.4, pp. 71-74. Therefore, the proposed expansion will not overcrowd the land and cause undue concentration of the population above and beyond that impact elsewhere within the M.L. zone in this industrial corridor or in other M.L. zones in Baltimore County.

E. The proposed expansion will in no way affect the provisions for schools or parks (T.4, p. 74), and the water and sewage service currently available at the Class I Trucking Facility is adequate to support the proposed changes. T.4, p. 75. Petitioners presented no evidence that the proposed expansion would affect the provisions for schools, parks or water and sewage. Accordingly, the proposed expansion will not affect the provisions for schools or parks or water and sewage above and beyond that impact elsewhere within the M.L. zone.

F. There will be no greater interference with adequate light or air than what is otherwise ordinarily expected from a trucking facility in the M.L. zone because of the low floor area ratio and building height. T.4, p. 76. Petitioners have submitted no evidence indicating that the proposed expansion will interfere with adequate light and air above and beyond that impact by a trucking facility elsewhere within the M.L. zone. Accordingly, the proposed expansion will not interfere with adequate light and air above

and beyond what is ordinarily expected by a trucking facility regardless of its location within the M.L. zone.

G. The proposed expansion is consistent with the purposes of the M.L. zone and is consistent with the spirit and intent of the BCZR. T.4, p. 76. The BCZR expressly provides for trucking facilities by special exception in the M.L. zone. The Baltimore County Council recognized this fact and accepted that there is some level of adverse impacts associated with trucking facilities when it enacted BCZR § 253.2.A.12.

H. The proposed stormwater management facility will make the proposed expansion entirely consistent with the permeable surface and vegetative retention provisions of the BCZR as compared to what is ordinarily expected from a trucking facility in the M.L. zone. T.4, p. 76-77. James Markle, Chief Executive Officer of George W. Stephens & Associates, testified that the proposed stormwater management facility will manage water totaling approximately 13 acres of drainage area which currently runs through the community uncontrolled, and will divert, manage and discharge it to a safe discharge point so it will no longer impact the community. T.5, p. 261. The proposed stormwater management facility not only meets the Baltimore County standards, it exceeds the requirements because it has been designed to manage stormwater for up to a hundred-year storm. T.5, pp. 267-68.

In fact, the proposed expansion is a drastic improvement over what is currently permitted to operate on the Wilson Freight Property. As the existing Class I Trucking Facility currently operates, it is similar to most other trucking facilities in Baltimore County. T.4, pp. 63-64. However, if the proposed plan is approved, the proposed Class I Trucking Facility will be a state-of-the-art trucking facility that will be much more

pleasant to live near consisting of a new building, dock facilities, paving, curbing, retaining walls, Class A screening, landscaping, higher security, a sound barrier, and an underground stormwater management facility that will remove the existing flooding problems. T.4, pp. 64-65; NEMF. Ex. 2. These improvements cannot be considered detrimental to the community. They can only serve to benefit the community. In fact, it is clear that if the proposed improvements are not permitted, the community will be worse off than they are today.

Protestants and People's Counsel urge that NEMF should not be granted a special exception to amend its approved plan because of negative effects on stormwater management, noise, traffic and air pollution/fumes. NEMF should be entitled to amend its approved plan and existing operations by special exception because any adverse effects that would occur at the expanded and proposed Class I Trucking Facility are not above and beyond those inherently associated with a trucking facility irrespective of its location within the M.L. zone. *Id.*

1. THE PROPOSED STORMWATER MANAGEMENT FACILITY WILL BE MORE EFFECTIVE THAN THE EXISTING STORMWATER MANAGEMENT ON SITE AND AT OTHER TRUCKING FACILITIES WITHIN THE M.L. ZONE

Protestants express a great deal of concern over stormwater management at the Wilson Freight Property. The stormwater management problems at the Wilson Freight Property are not disputed. Currently, the stormwater runoff is uncontrolled, resulting in runoff draining into the community. T.5, p. 257. To that end, NEMF proposes to construct a new underground stormwater management facility. As testified by James Markle, Chief Executive Officer of George W. Stephens & Associates, a well respected expert civil engineer, the proposed stormwater management facility will consist

of new curbs with gutters, and storm drain inlets located in the parking lot and along the curbs and gutters. T.5, p. 259. The stormwater will be piped through underground pipes to three large underground chambers. T.5, p. 259. The stormwater will then be managed for water quantity and quality and will be discharged through the proposed storm drainpipe leading to a stream that runs away from the Community. T.5, pp. 259-60.

The proposed diversion of stormwater has already been approved by the Baltimore County Department of Permits and Development Management ("PDM"). NEMF Ex. 17. The proposed stormwater management plans have been submitted to the Baltimore County Department of Environmental Protection and Resource Management. T.5, p. 265. The proposed stormwater management facility not only meets the County's requirements, it exceeds the requirements because it has been designed to manage stormwater for up to a hundred-year storm. T.5, pp. 267-68. Consequently, the proposed stormwater management will only have positive effects on the downstream community.

2. THE NOISE GENERATED AT THE FACILITY WILL BE REDUCED BY THE PROPOSED SOUND BARRIER AND THE NOISE IS NO GREATER THAN WHAT IS ORDINARILY EXPECTED FOR A TRUCKING FACILITY

Protestants argue that NEMF's proposal should not be approved because of the adverse noise impacts it will have on the community. However, Protestants' only evidence on noise currently generated at the Wilson Freight Property was introduced through flawed expert methodologies. In support of Protestants, Dr. Timothy Buckley was admitted as an expert in industrial hygiene with a specialty in environmental exposure assessment. T.1, p. 170. Dr. Buckley's testimony and curriculum vitae reveals that he lacks experience in the field of noise measurement and assessment. Dr. Buckley's methodologies are also flawed, as evidenced by his measurements in Bloomfield Exs. 6A

and 6B. The measurements in Bloomfield Exs. 6A and 6B are scientifically impossible because they indicate identical sounds at identical intervals which cannot happen in the natural environment. T.5, pp. 133-40. The seven patterns of sound in Dr. Buckley's measurements are repeated identically every three hours. T.5, p. 134-37. This type of identical pattern is impossible. *Id.* Dr. Buckley's data also do not indicate the typical traffic sound levels associated with heavy traffic times on the roadways located near the Community. T.5, pp. 138-39. Any area surrounding roads with heavy traffic experiences more noise during morning and evening rush hour, and then lower volumes of noise during the afternoon and later evening hours. *Id.* The chart provided by Dr. Buckley (Bloomfield Ex.s 6A and 6B) does not show this traffic pattern. *Id.* Unlike Dr. Buckley's measurements, Mr. Spano's data accurately depicts a random pattern of noise which is to be expected in the natural environment, and also indicates a heavier volume of traffic during the day which sharply decreases during the late evening hours. *Id.*

Unlike Dr. Buckley's measurements, George Spano of Polysonics Corporation, set up two noise measuring stations at the Wilson Freight Property which measured noise on a twenty-four hour period basis. T.5, p. 92. Mr. Spano's data were collected by three separate measuring devices according to accepted industry practice for the measurement of sound. T.5, pp. 93-94. Mr. Spano collected his measurements on the paved area near the fence, and also twenty feet south of the existing parking lot. T.5, p. 93. Mr. Spano located one of his measurement devices where the parking lot is proposed at the south property line (the area labeled Trailer Parking, 27 spaces on NEMF Ex. 2) because of his concern that it would be located closer to the community. T.5, pp. 118-19. The sound activity was documented for the entire twenty-four hour period. T.5, p. 94-95.

According to Mr. Spano's noise measurements at the Wilson Freight Property, NEMF complies with the standard for residential levels at its property line in accordance with Maryland regulations for daytime and nighttime hours. T. 5, pp. 107-08, 114-17. The majority of noises emanating from the Wilson Freight Property are generated far away from the community, off of Joh Avenue. T.5, p. 116. As a result, the community does not hear, to any substantial degree, trucks entering the sight, trucks being fueled or trucks receiving maintenance. T.5, p. 116. In the event NEMF's request is approved, the increase in trucks at the proposed Class I Trucking Facility will not affect sound levels much, if at all. T.5, p. 118, 191. As Mr. Spano testified, since sound is a logarithm, an increase in the amount of trucks on the Wilson Freight Property does not really affect the level of sounds heard in the community. T.5, p. 118.

George Harman of the Maryland Department of the Environment ("MDE") also testified. Mr. Harman provided Protestants with some samples of truck noise that the MDE collected in previous cases. Bloomfield Ex. 1. Mr. Harman's data was not collected at Wilson Freight Property and it was not collected on the trucks or model of trucks used at the Wilson Freight Property. Mr. Harman's data was also measured at distances much closer than those between the community and the Wilson Freight Property. T.5, p. 128. In addition, Mr. Harman's measurements were collected in a "free field," resulting in sound measurements that are higher than those existing at the Wilson Freight Property. T.5, pp. 183-85. Because the Wilson Freight Property is on higher ground than the community and because there are trees and other obstructions between the Wilson Freight Property and the community, the sounds generated at the Wilson Freight Property are lessened by the time they reach the community. Mr. Harman's data

do not take the topography changes, trees and other obstructions into account. *Id.* As a result, Mr. Harman's noise measurements are not directly predictive of the noises emanating from the current or proposed operations. *Id.*

The MDE receives approximately 150 noise complaints each year. T.1, pp. 166-67. The MDE, however, has not received a single complaint against NEMF at the Wilson Freight Property. T.1, pp. 167-68. In addition, Captain John Spiroff testified that he has never been called to NEMF to issue any kind of violation, noise or otherwise. T.1, p. 54-55.

One would expect that in all the years of litigation on this site, and given the testimonial evidence provided by Protestants concerning noise, at least one complaint would have been filed with the MDE or the local police. That, however, is not the case. No complaints have been filed against the Wilson Freight Property. The community is surrounded by heavy industrial and commercial businesses that require trucks to enter and exit their facilities. T.1, pp. 17-18. The community is also extremely close to major roadways such as Caton Avenue, Washington Boulevard and Interstate 95. *Id.* Railroad noises are also heard in the community. T.5, p. 109. The sources of noise heard by the community are infinite. The amount of noise generated by NEMF is negligible compared to the other noises the community endures simply because of its urban location within a major road network and heavy industrial area. T.5, p. 91. Notably, Captain Spiroff characterizes the community as "quiet." T.1, pp. 52-53.

In any event, NEMF proposes to construct a sound barrier that will eliminate many noises generated by the proposed improvements. In addition, NEMF does not propose any type of outdoor loud speaker system. T.4, p. 21. Other noises generated by

trucks traveling to and from the proposed improvements are not any greater than what is ordinarily expected for a trucking facility regardless of its location. In fact, as Mr. Martin testified, the noises associated with NEMF's trucks are less than those ordinarily occurring at other trucking facilities in M.L. zones because of the short distance the trucks must travel to reach the major road networks such as Interstate 95 and the Baltimore beltway. In addition, Mr. Filipowicz, terminal manager of the Facility, testified that NEMF's trucks are subject to an aggressive preventative maintenance program whereby the oil, filters, exhaust, brakes, etc. are changed and inspected every sixty days. T.5, pp. 30-31. Mr. Filipowicz also testified that NEMF has not received any noise violations. T.5, p. 35. Accordingly, any noises resulting from NEMF's proposed expansion will not be above and beyond those noises ordinarily expected from a trucking facility regardless of its location within the M.L. zone. If anything, given the proposed sound barrier, the noise will be less than one would ordinarily expect.

3. NEMF's Proposal Will Not Create Any Greater Traffic Congestion In The Community And Is Not Greater Than What Is Ordinarily Expected At A Trucking Facility

The amendments to NEMF's approved plan will not create any more adverse traffic impacts than what is ordinarily expected from a trucking facility. In fact, the traffic generated by NEMF is less than most other trucking facilities in the County because the Wilson Freight Property is located so close to major roadways. As shown on slide four of Mr. Martin's powerpoint presentation (NEMF Ex. 7), trucks enter and exit the Wilson Freight Property from Joh Avenue and out onto Caton Avenue then continuing to I-95. T.4, p. 32. This route is also shown as required by the BCZR on the proposed plan (NEMF 2). Mr. Filipowicz testified that NEMF's trucks comply with the

route identified on the plan at all times unless they have a local delivery in the opposite direction which would make the regular route nonsensical. T.5, p. 60-61.

NEMF likely has the least amount of adverse traffic impacts of all Baltimore County trucking facilities. T.4, p.78. Trucks traveling in and out of the Wilson Freight Property do not travel the residential roads in the community. Rather, they enter and exit the Wilson Freight Property from Joh Avenue which hosts many other industrial uses. From Joh Avenue, NEMF trucks travel Caton Avenue which is another major road and then within a thousand feet, the trucks access Interstate 95. T.4, p. 69. Unlike other trucking facilities, NEMF trucks do not travel residential streets and certainly do not travel streets within the community. T.4, pp. 69-70. As testified by Captain Spiroff, NEMF has never been issued a violation from the traffic division of the Baltimore County Police Department, and NEMF has been a quiet and good neighbor to the community. T.1, pp. 54-57.

4. NEMF'S PROPOSAL WILL NOT CREATE ANY GREATER FUMES THAN WHAT IS ORDINARILY EXPECTED AT A TRUCKING FACILITY

Protestants complain that they smell fumes generated by the Wilson Freight Property. To that end, Dr. Buckley testified that such fumes may have negative impacts on the community's health. There is no doubt that Protestants smell fumes. After all, they are surrounded by major roads such as Joh Avenue, Caton Avenue, Washington Boulevard, Interstate 95 and Interstate 695. They are also located close to other heavy industrial businesses that require trucks to travel to and from their facilities. As a consequence, the community is subject to fumes from a myriad of sources. The amount of fumes generated by NEMF is minimal compared to the other potential sources of fumes surrounding the community. Moreover, in light of all of the sources of fumes

surrounding the community, it is impossible to identify which fumes originate at the Wilson Freight Property.

Protestants assert that the Wilson Freight Property is a source of air pollution that is negatively impacting the adjacent neighborhood. Protestants' assertion is not based upon any air quality monitoring or other data, as no such data was introduced at the hearing. Rather, Protestants rely solely upon the opinion of Dr. Buckley.

Without taking any air quality samples, and without determining the source of any alleged pollutants, Dr. Buckley baldly opined that the Wilson Freight Property is currently impacting the community and that such impact will increase upon the proposed expansion. Dr. Buckley's opinion is entirely speculative and, by his own admission, not based on the scientific methodology used to evaluate air pollution impacts.

Moreover, in forming his opinion, Dr. Buckley apparently did not rely on any other air quality studies of trucking facilities, did not visit any trucking facilities, and had no idea regarding the location of other trucking facilities within Baltimore County and the proximity of such facilities to residential areas.

While Dr. Buckley may have notable academic credentials, his opinion appears to rely solely on conjecture, rather than data and analysis. Consequently, no weight should be afforded Dr. Buckley's opinion.

Fortunately, there are regulations governing air quality. It is uncontroverted that the Class I Trucking Facility and any emissions related to the operation of trucks thereon, is not subject to air quality regulations. Rather than regulating emissions from individual vehicles or facilities where such vehicles are operated, the Federal Clean Air Act addresses establishes manufacturing criteria for diesel engines and formulation criteria

for diesel fuel. 42 U.S.C. §7401 *et seq.* It is through this regulatory scheme that Congress has opted to protect human health and the environment from diesel emissions. The MDE has been delegated limited authority to implement and enforce this regulatory scheme; its regulations do not deviate from the Federal criteria. *See, e.g.,* COMAR 11.21.02 (Diesel Vehicle Emissions Control Program). Importantly, it is uncontradicted that NEMF has never been cited for any type of air pollution violation. T.5, p. 35.

Like the noise issue, one must wonder about the assertion of intolerable air pollution emanating from the Wilson Freight Property. If the conditions are so unpleasant, why has there never been a complaint, and why has NEMF never been cited for any air pollution violation? There is simply no evidence that NEMF is violating any air pollution regulations. Dr. Buckley provided no evidence that any pollutants or fumes emanate from the Wilson Freight Property in a harmful manner. In sum, Dr. Buckley merely opined that air pollution is bad for you.

NEMF's request for special exception to amend its approved plan and existing operations should be granted because it would not create any adverse impacts above and beyond those inherent characteristics ordinarily associated with a trucking facility. Here, the issue not whether the community will suffer any adverse impacts as a result of the proposed expansion. Protestants did not present facts or valid reasons to support a conclusion that the grant of the requested special exception would adversely affect adjoining and surrounding properties in a manner greater than you would ordinarily expect. Therefore, as long as the proposed changes comply with the applicable provisions of BCZR §410, NEMF's request for special exception should be granted.

B. NEMF'S PROPOSAL MEETS THE STANDARDS OF BCZR §410.2

People's Counsel argues that the current and proposed Class I Trucking Facility violates BCZR §410.2 because part of NEMF's property has been within 300 feet of a residential zone or dwelling since its site plan was originally filed with the County. People's Counsel's argument is based on a misreading of the Legislation. This issue is one of statutory interpretation. The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature, here the County Council. *Kushell v. Dept. of Natural Resources*, 385 Md. 563, 576-77 (2005). Statutory construction begins with the plain language of the statute. *Id.* If the statute's language is unambiguous when construed according to its ordinary and everyday meaning, then courts give effect to the statute as it is written. *Id.*

Section 410.2 of the BCZR provides that "[n]o Class I trucking facility or part thereof (including any access point or driveway) established on or after the effective date of this section may be located within 200 feet of a wetland, or with the exception of accessory passenger automobile parking areas, within 300 feet of a dwelling or a residential zone."

Because the language in BCZR §410.2 is clear and unambiguous, there is no room for construction, and the Board must look solely to what is written to determine what the County Council intended. The plain language of BCZR §410.2 dictates that it only applies to Class I trucking facilities (or parts thereof) that were established on or after April 18, 1976. If the County Council intended for this provision to apply to trucking facilities established before its enactment, it would have stated so just as it did in other portions of the legislation. *See, e.g.,* BCZR §410.3 ("The standards of this

subsection apply to Class I trucking facilities established on or after the effective date hereof, to conforming Class I trucking facilities established before that date and hereafter expanded...") (emphasis added). There is no dispute that the special exception for a Class I Trucking Facility was established on the Wilson Freight Property before 1976. As a result, BCZR §410.2 does not apply to the Wilson Freight Property because it was established long before the Legislation was enacted. Anything occurring on the Wilson Freight Property, the site with the existing special exception, is exempted from the 300 foot setback requirement. This interpretation has been adopted by Zoning Commissioner Schmidt in Case 98-260-SPHX, by PDM in Case CBA-00-162, by Deputy Zoning Commissioner Kotroco in Case 01-544-SPHX, and again by the Zoning Commissioner in Case 04-294-SPHX.

On the other hand, BCZR §410.2 does apply to the newly acquired Weiner Parcel. Mr. Dillon testified that the proposed stormwater management facility and "a little bit" of the proposed retaining wall fall within 300 feet of the D.R. 5.5 zone. T.3, p. 111. NEMF clearly intends to comply with the 300 foot setback requirement of BCZR §410.2 on the Weiner Parcel. The site plan introduced as NEMF Ex. 18 shows that the stormwater management facility has been moved to the north and placed underground outside of the 300 setback. NEMF is willing to accept compliance with the 300 foot setback requirement as a condition to approval.

C. NEMF'S PROPOSAL MEETS THE STANDARDS OF BCZR §410.3

Out of the sections of BCZR §410 applicable to the Class I Trucking Facility, subsection 3 is the most detailed, restrictive and crucial to the case at hand. BCZR §410.3 governs the development requirements that a conforming Class I trucking facility must

meet in order to expand. It sets forth standards for, among other things, access points, lot area, floor area ratio, parking surface area, security, safety, paving, drainage, and landscaping. BCZR §410.3. The statute also authorizes the imposition of reasonable limitations on hours of operation. BCZR §410.3.C.3.

There is no dispute that the proposed plan (NEMF Ex. 2) complies with the requirements of BCZR §410.3. Furthermore, Baltimore County agencies have recommended approval of NEMF's proposed amended plan. *See* NEMF Ex. 17 (June 2, 2004 letter from Robert W. Bowling, Supervisor, Bureau of Development Plans Review); T.5, pp. 263-66.

D. NEMF'S PROPOSAL IS ENTIRELY CONSISTENT WITH THE PURPOSES OF BCZR §410

The purposes of BCZR §410 are enumerated in BCZR §410.4.B. The purposes of the legislation are:

> 1. To promote the spatial consolidation of trucking facilities, such as joint use of larger sites, so that the number of locations or trucking facilities will not be excessive with respect to the public interest and so as to provide for greater flexibility in the layout of individual sites;
> 2. To assure that the improvements of the sites of existing and future Class I trucking facilities are of such design, quality or character that they will not be likely to deteriorate in such a way that a public nuisance would be created or that the public interest would otherwise be adversely affected;
> 3. To minimize heavy truck traffic on motorways other than freeways, expressways or arterial streets;
> 4. To minimize the off-premises parking or storage of vehicles associated with existing and future Class I trucking facilities;
> 5. To promote the on-site provision of important conveniences so that employees or others associated with existing and future Class I trucking facilities need not seek such conveniences in or about the homes or business establishments of others or in other inappropriate places;

6. To provide the county government with plans and other records that are sufficiently detailed to afford proper administration of this section and related provisions; and

7. In general, to accommodate trucking activities, in recognition of their importance to the economy of the county and the nation, while minimizing the impact of existing and future Class I trucking facilities on the environment and achieving an optimum level of compatibility between such facilities and nearby uses, especially dwellings and institutional uses.

All of these purposes are fulfilled by NEMF's current proposal. In accordance with BCZR §410.4.B.1, the spatial consolidation of trucking facilities will be promoted if the proposal is approved. If NEMF is permitted to expand pursuant to NEMF Ex. 2, NEMF will close its Quad Avenue trucking facility thus consolidating two facilities.

As suggested by BCZR §410.4.B.2.1, the improvements of the Wilson Freight Property are of such design, quality or character that they will not be likely to deteriorate in such a way that a public nuisance would be created or that the public interest would be otherwise affected. In fact, the proposed changes at the site are drastic improvements over what is currently permitted on the property and will result in a state-of-the-art trucking facility on the property with much better aesthetics and underground stormwater management.

Heavy truck traffic will be minimized on motorways other than freeways, expressways or arterial streets if NEMF is permitted to expand rather than forced to relocate. As previously stated, the Wilson Freight Property is ideally located with respect to proximity to Interstates I-95 and 695 as well as other arterial streets. These facts are completely consistent with BCZR §410.4.B.3.

Off-premises parking or storage of vehicles associated with the Class I Trucking Facility will be minimized if NEMF is permitted to expand. There will be no off-

premises parking or storage of vehicles associated with the Wilson Freight Property. As a result, the proposal complies with BCZR §410.4.B.4. The state-of-the-art Class I Trucking Facility will provide the necessary conveniences (*ie.*, bathrooms, etc.) expected by BCZR §410.4.B.5.

Consistent with BCZR §410.4.B.6, NEMF will provide Baltimore County with plans and other records that are sufficiently detailed to afford proper administration of BCZR §410 and its related provisions. In addition, as required by BCZR §410.4.B.4.7, approval of NEMF's request will fulfill the legislation's purpose of supporting the trucking industry because it will permit NEMF to continue and improve its regional services that support many different aspects of the economy. On the other hand, if NEMF's request is denied, NEMF will be forced to cease its operations at the Wilson Freight Property and relocate its business to Virginia. In that event, hundreds of jobs will be lost; the Wilson Freight Property will be permitted to operate under a new owner as it currently exists with stormwater problems, deteriorated buildings, docks, paving, etc., no sound barrier, and minimal security; and the County will lose a major force in the trucking industry.

E. NEMF'S PROPOSAL TO USE BALTIMORE CITY PROPERTY TO MEET ITS PARKING REQUIREMENT SHOULD BE APPROVED

The Wilson Freight Property is partially located within Baltimore County and partially within Baltimore City. Access to the site is in Baltimore City. The Weiner Parcel can only gain access to the public roadways through the Wilson Freight Property. The proposed Class I Trucking Facility integrates its activities throughout the Baltimore County and Baltimore City area. As a practical matter, Baltimore County and Baltimore City properties must be developed as a whole. If the Board approves the special

exception relief, as it should, it must recognize the multi-jurisdictional nature of the site and approve the requested special hearing relief.

3. *Assuming Arguendo, That The Facility Is Nonconforming, Its Nonconforming Use and Special Exception Have Not Lapsed*

The property's zoning history reveals that its longstanding use has been a Class I Trucking Facility. In addition, as noted by the Deputy Zoning Commissioner in his Order On Motion For Reconsideration in Case 01-544-SPHX, representatives of Baltimore County have consistently given their "stamp of approval" for the Wilson Freight Property's use as a Class I Trucking Facility. Bloomfield, Ex. 22, p. 5.

Protestants make much of the fact that operations at the Wilson Freight Property ceased due to the bankruptcies of the property's former owners, and that such cessation voided the "nonconforming use" of the Wilson Freight Property that was confirmed in the letter from Mr. Dyer (Bloomfield Ex. 18). T.3, p. 20. The Wilson Freight Property is not a "nonconforming use." Assuming, *arguendo*, that the Wilson Freight Property is a nonconforming use, there is no conclusive evidence that the Class I Trucking Facility failed to operate continuously.

Protestants assert that Wilson Freight filed for bankruptcy in 1980 and that AAA Trucking filed for bankruptcy between 1982 and 1990. T.3, pp. 19-21. Protestants' only evidence of nonuse is water records with which Protestants purport to show that the Wilson Freight Property was not used from February, 1981 through October, 1982, and the testimony of Darlene Byrd, a resident of the community who recalls walking her dogs in the vicinity of the site. Myron Shevell, Chairman of the Board and Chief Executive Officer of NEMF testified that the Class I Trucking Facility ceased operations for only one or two months during 1989 and 1990 as a result of AAA Trucking's

bankruptcy. T.1, p. 107. In light of the evidence on non-use, the only deduction that can be made is that there were changes in the operation. Storage may have continued, maintenance may have been performed inside the maintenance building, and trucks and trailers continued to use the site. There is insufficient evidence to conclude that all activities continuously ceased for a period of more than one year.

Moreover, there is no dispute that the property's former owners, Wilson Freight and AAA Trucking declared bankruptcy, subjecting the activities and assets at the Wilson Freight Property to the federal bankruptcy laws. As such, all actions, including any local government actions, were automatically stayed pending the bankruptcy proceedings. 11 U.S.C. §362. The purpose of the automatic stay is to preserve the assets of the debtor's estate. *In re Connecticut Pizza, Inc.*, 193 B.R. 217, 227 (Bankr. Md. 1996). Accordingly, any cessation of business at the Wilson Freight Property due to bankruptcy would not deprive the debtors of their most valuable asset—their right to operate a trucking facility on the property.[6]

Nevertheless, as a consequence, even if there were brief periods of time in which operations at the Wilson Freight Property ceased, the Class I Trucking Facility is still permitted to exist and operate according to its special exception granted in Case 4890-RX and its confirmation of compliance with BCZR §410 in Mr. Dyer's letter (Bloomfield Ex. 18). The Wilson Freight Property was granted a special exception. According to *Powell*,

[6] People's Counsel cites CBA Case 03-456-SPH (PC Ex. 17) as support that the Wilson Freight Property lost its nonconforming use due to discontinuance. CBA Case 03-456-SPH is inapposite. There, the property was voluntarily abandoned on several occasions for a period in excess of one year. Here, the Class I Trucking Facility was inactive only for one or two months and that inactivity was a result of bankruptcy.

supra, the special exception was used and therefore vested. Since the special exception was used, and therefore vested, the rights in the special exception can not be voided.

CONCLUSION

For the reasons stated above, New England Motor Freight respectfully requests that the Board approve its Plan to Accompany Petition for Special Exception & Special Hearing For an Amendment to and Expansion of a Class I Trucking Facility of New England Motor Freight Company at 3600 Georgetown Road (NEMF Ex. 2) permitting NEMF to expand the paved areas; demolish the existing building and build a new building with the same dimensional profile; reorganize parking; expand the entrance on Joh Avenue and construct a gate and guard house; relocate the repair building further; construct a retaining wall and sound barrier, new curbing, paving and a security fence; and plant permanent evergreen Class A landscape screen.

Dated: October 17, 2005

Respectfully submitted,

G. Scott Barhight

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Attorneys for New England Motor Freight

343305

IN THE MATTER OF:		
3600 GEORGETOWN CORPORATION	*	BEFORE THE
Legal Owner		
3600 Georgetown Road	*	COUNTY BOARD OF APPEALS
3rd Election District, 1st Councilmanic District		
v.	*	OF BALTIMORE COUNTY
TOM MAUK, *et al.*		
Protestants/Petitioners	*	Case Nos.: 04-160-SPH &
(Case # 04-160-SPH)		and
	*	04-294-SPH
And		
	*	
IN THE MATTER OF:		
3600 GEORGETOWN CORPORTION	*	
3600 Georgetown Road		
3rd Election District, 1st Councilmanic District		
Legal Owner/Petitioner	*	
(Case # 04-294-SPH)		

* * * * *

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2005, a copy of New England Motor Freight's Closing Memorandum was mailed, first class, postage prepaid to:

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October 17, 2005

DELIVERY BY HAND

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

Re: 3600 Georgetown Corp. - New England Motor Freight
Case Nos. 04-294-SPHX and 04-160-SPH

Dear Ms. Bianco:

Enclosed for filing in the above-referenced matter, please find the original and three copies of New England Motor Freight's Closing Memorandum.

Thank you for your cooperation in this matter.

Sincerely,

G. Scott Barhight

GSB:sll
Enclosure
cc: J. Carroll Holzer, Esquire *(w/encl)*
Peter M. Zimmerman, Esquire *(w/encl)*

318740v4

10/19/05

RE:	PETITION FOR SPECIAL HEARING NW/Side Georgetown Road 100' NE Hall Avenue (3600 Georgetown Road) Tom Mauk, Catherine Scarborough, Anna Wood, Greater Bloomfield Association Petitioners	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY Case No.: 04-160-SPH

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

RE:	PETITION FOR SPECIAL HEARING AND EXCEPTION N/S Georgetown Road SW of Bloomfield Road (3600 Georgetown Road) 13th Election District 1st Councilmanic District 3600 Georgetown Corporation, c/o Myron Shevell – Legal Owners Petitioners	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY Case No.: 04-294-SPHX

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

GREATER BLOOMFIELD, ET AL.
HEARING MEMORANDUM

Greater Bloomfield Association, Tom Mauk, Catherine Scarborough, Anna Wood, et al., individuals through ***J. Carroll Holzer, Esquire***, Holzer & Lee, hereby submits this post hearing Memorandum in Lieu of Final Argument to support its position in Case No.: 04-160-SPH and to respond to the Petition of 3600 Georgetown Corporation, Case No.: 04-294-SPHX.

I.

STATEMENT OF THE CASE

Case No.: 04-160-SPH was initiated by the Community based upon plans of New England Motor Freight, located at 3600 Georgetown Road, to expand their facility. The Community petitioned in the fall of 2003 requesting the Zoning Commissioner in Case No.: 04-160-SPH to determine the following questions:

"1. To determine whether New England Motor Freight (hereinafter "NEMF") known as '3600 Georgetown Corporation' located at 3600 Georgetown Road, Baltimore County, is lawfully utilizing that portion of their property located in the S/W portion of the site identified on the Plans submitted to DEPRM to which Petitioners have been denied the right to copy from DEPRM's files, plans for construction of an underground storm water facility with possible truck parking located thereon, in violation of Baltimore County Zoning Regulations and prior cases.

2. To determine whether the site's prior zoning history and the Baltimore County Zoning Regulations would prohibit the issuance of Permit #B511616.

3. Whether NEMF lost any claim as a non-conforming use (See Site Plans for 1981, Exhibits #1 and #2).

4. Has the NEMF lost its right to exist on the subject site since its Special Exception in 1998 expired; and its Special Exception in 2000 was withdrawn.

5. Is any expansion beyond that of the non-conforming use shown on Exhibit #1 permitted by the Baltimore County Zoning Regulations and to what extent.

6. Should NEMF be required to comply with the 300 foot minimum setback from the property line per Bill 18-76."

In response to the Community's Petition, NEMF in the winter of 2003, filed a Petition for Special Hearing and a Petition for Special Exception which became identified as Case No.: 04-294-SPHX. The NEMF Petition for Special Hearing requested the following:

> "1. To determine whether the Plan approved in Case No.: 98-260-SPH was utilized and therefore vested;
>
> 2. To determine whether the existing use of the site as a Class I trucking facility has been utilized and is therefore vested; and
>
> 3. To amend a previously approved car parking compound in Baltimore City as supporting a Baltimore County trucking facility and further, to recognize that the subject parking compound is fulfilling the requirements of Baltimore County Zoning Regulations §409.6.3 providing the parking requirements for a trucking facility in Baltimore County."

The NEMF Petition for Special Exception requested the following:

> 1. To amend the Special Exception Plan approved in Case No.: 98-260-SPHX; and
>
> 2. To expand the existing Special Exception for Class I trucking facility in accordance with the attached Plan to accompany Petition for Special Exception and Special Hearing
>
> 3. In the alternative, Special Exception to amend a previously approved Class I trucking facility plan.

Before the Zoning Commissioner, both cases were consolidated and scheduled for a hearing on September 7, 2004. At that hearing, Counsel for Bloomfield did not appear and participate in the proceedings before the Zoning Commissioner with approval of the Zoning Commissioner. Bloomfield presented citizen concerns through the testimony of Lorna Rudnikas. Testimony on behalf of NEMF was presented by David Martin, registered landscape architect.

The Zoning Commissioner in his decision of September 28, 2004 described the NEMF proposal for extensive development on the 17.51 acres (3.5 acres located in Baltimore City) zoned M.L. he stated that the NEMF plan called for "existing terminal building to be razed and a new office building and a new office terminal constructed in its place and an existing repair shop will be removed and a new structure erected to take its place." The Zoning Commissioner also noted "additional area for parking will be constructed." (He did not elaborate on the increase in the number of trucks and trailers proposed by the expansion).

An appeal was timely filed by the Community from the Zoning Commissioner's decision to the County Board of Appeals for a *de novo* appeal of the consolidated cases.

Prior Zoning History

(For a more detailed analysis of the prior zoning background of 3600 Georgetown Road, see People's Counsel's Hearing Memorandum).

To briefly summarize the past history however, the site consisted of a modest facility operated by the Wilson Freight Forwarding Company through the 1960s and '70s pursuant to a rezoning and a Special Exception approved by the County Board of Appeals on October 11, 1961 in Case No.: 4980-RX. Due to community complaints throughout Baltimore County concerning the close proximity of trucking facilities to residential communities the County Council determined to regulate trucking facilities in 1976 by Bill 18, codified in Baltimore County Zoning Regulations, §410. The facility on Georgetown Road existing at that time did not meet the new setbacks from dwellings or residential zones which prompted Wilson Freight to file a Site Plan and then a revised Site Plan in 1981. The Zoning Office purportedly allowed the

non-conforming status by letter dated May 7, 1982; however Wilson Freight had gone bankrupt during that time period and had ceased operations. Subsequent community testimony and Baltimore City water use records established that the abandonment of the site exceeded one year.

In 1990, NEMF acquired the property. On February 25, 1998 in Case No.: 98-260-SPHX, NEMF received approval from the Zoning Commissioner for a Special Exception and on January 15, 1999, in Case No.: 99-208-SPH received approval to allow utilization of the Special Exception within five (5) years instead of the usual two (2) years. At no time in 1998 or 1999 and the present case did NEMF ever apply for a ***variance*** from the Baltimore County Zoning Regulation requirement of 300 feet setback from a residential zone. There is no record of approval of any variance from a 300 foot setback requirement for NEMF in the zoning history.

NEMF did not utilize its 1998-99 approval within the five (5) year period. Instead in 2001 it filed Case No.: 01-544-SPHX with a new plan to expand what was approved in the preceding cases. On October 12, 2001, the Deputy Zoning Commissioner approved this Plan however People's Counsel and various community groups and individuals appealed the approval to the County Board of Appeals. A week before the hearing, NEMF withdrew its Petition and the CBA issued an Order of Dismissal in that case. Meanwhile, in Case No.: 98-260-SPHX, a five (5) year time for utilization was still running and then ultimately expired. The then Director of PADM, Arnold Jackson, determined that the Special Hearing/Special Approval was not properly utilized and expired on February 25, 2003. He issued a determination that such was the case and NEMF failed to appeal.

At that point the present cases were filed.

Background – Trucking Facility Legislation

Some knowledge of the history of the trucking facility legislation would be of some assistance to the Board on this case. For more detailed analysis, refer to People's Counsel Memorandum. It is clear however that the trucking facility legislation directed its attention to protecting nearby residential areas from the negative impacts of trucking operations. In 1975, the County Executive and County Councilman for the 7th District created a task force to recommend changes to the zoning law relative to trucking facilities. The Baltimore County Planning Board then adopted the recommendations of the task force and the Planning Board's report for the basis of the County Council's approval of Bill 18-76. The Planning Board report emphasized that trucking facilities are "***totally inappropriate in or near residential areas." The "noise and fumes of large tractor-trailers are unacceptable operating day and night close to their (citizens) homes***." The report further stated that "***a number of trucking facilities had already been established too close to the homes of Baltimore County citizens over the years especially in communities near major industrial areas.***" The existing Regulations were deemed "inadequate."

The clear purpose of Bill 18-76 was to ensure that trucking facilities not be located closer than 300 feet to a dwelling or a residential zone. That requirement was intended to protect the citizens of Bloomfield from the very type of expansion proposed by NEMF.

Question of Non-Conforming and/or Special Exception

The Bloomfield Community submits, as will be discussed in more detail in the Statement of Facts herein, that it has established through testimony and water records that any non-conforming use of the site by Wilson Trucking Company as a trucking facility has been

terminated or abandoned by two (2) separate periods of disuse each extending over one year. Pursuant to §104 of the Zoning Regulations that non-use ends the non-conforming use. Thus, Bloomfield submits that there is no non-conforming use for the trucking facility on this site.

Bloomfield further submits that any Special Exception for the operation of a trucking facility on the subject site expired on February 25, 2003 pursuant to the determination of Director of PADM Arnold Jablon. Therefore, Bloomfield submits that under the current M.L. Zoning that NEMF is not operating either as a lawful non-conforming use or with a grant of a Special Exception.

Furthermore, Bloomfield submits that at no time has NEMF applied for a variance from the 300 foot setback requirement in ***any*** of its cases set forth in the zoning history including the present cases.

Bloomfield supports the analysis of the People's Counsel in its Memorandum that whether NEMF is viewed as a non-conforming facility or modification and an expansion of a Special Exception, under either circumstance the current expansion proposal should be treated as a new facility and therefore both Special Exception and variance standards are controlling. Again, as in 1998 and 1999, the current NEMF Petition is defective in that it fails to request approval of encroachment within the minimum 300 foot setback area and as a result of Baltimore County Zoning Regulations §253.2.A.12; and §410.1; and §410.2; and §104.2, the NEMF Petition must be dismissed.

Furthermore, Bloomfield submits that in the following Statement of Facts, evidence has been presented by the Community which establishes that this Board should, in the alternative, deny the Petition for Special Hearing and Special Exception filed by NEMF for approval of its

plan to expand its facilities under the *Schultz v. Pritts Test*. Bloomfield submits that the proposed NEMF expansion will have greater impact at Bloomfield than in other areas in the zone and therefore should be Denied.

II.

STATEMENT OF FACTS

Bloomfield submits that the following recitation of facts supports the Community's contention that the expansion proposed by NEMF would have greater impacts on the Bloomfield Community than if NEMF were located elsewhere in the same M.L. Zone and the request for expansion should be denied.

A.

Bloomfield Case

1. ***John Spiroff***. Bloomfield first called Captain John Spiroff, Commander of the Wilkens Precinct.[1] Captain Spiroff defined the Bloomfield Community as an exceptional community with very little crime throughout the area. He defined Bloomfield as the most quiet, most crime stable community in his District and a credit to the residents. (7-14-05, p. 52).

2. ***George Harman***. George Harman was then called to testify. Harman is Program Manager for the Department of the Environment Noise Control Program. Harman became aware of the Bloomfield Community and its concerns in regard to noise emanating from NEMF. His office provided Lorna Rudnikas with samples of truck company noise that have been collected by the Department. He also conducted a set of measurements for her in particular relative to a

[1] Transcript pages will be referred to as 7-14-05, p. _____ or 7-21-05, p. _____.

sample demonstration of noise from a tractor-trailer. (7-14-05, p. 114). See also Bloomfield Exhibit #1. Harman described the vehicles utilized for his department's truck analysis as a 1985 International brand truck, a dump truck and a third vehicle being a standard tractor-trailer vehicle which was the subject of the sample demonstration. Harman explained how his Department conducts measurements of trucks producing various noises such as starting, stopping, breaking, air hose disconnect, which then generates by computer, a chart relative to distances. (7-14-05, p. 117). Harman verified that he had personally taken measurements and has verified the calculations and graphing done by his assistant, Mr. Hill. (7-14-05, p. 121). Harman testified that the daytime decibel level at the property line permitted by the State Regulations is 65 db's with a nighttime limit being 55 db's. (Bloomfield Exhibit #1). Harman then defined a separate type of noise known as "impulse" or "periodic" noise. Examples being gunshot noises, emptying of dumpsters in the middle of the night which may not exceed a level which is 5 db's lower than the applicable permitted db's. That means, for instance in the evening, a periodic or impulse noise could be no more that 50 db's. (7-14-05, p. 136-137). Harman then likened impulse or periodic noise to the sudden burst of energy when engines start or when air hoses release. (See Bloomfield Exhibit #2).

Bloomfield Exhibits #1 and #2 illustrate the fact that with the closest house being approximately 40 or 50 feet away from NEMF operations, the application of the State charts (Bloomfield #1 and #2) support a finding that noises exceeding the permitted levels (particular impulse noises during the evening exceed levels of 50 db's) occur at NEMF. The projected decibel levels are violated by examination of the residential properties which are within the distance set forth by the chart.

On cross-examination by People's Counsel, Harman testified that he had been responsible for noise control for the State for approximately eight (8) years. Harman testified that the increase in more trucks creating impulse sounds would increase the repetitive number of spikes which would cause annoyance. However, if the impulse events were to occur simultaneously, it would not substantially increase the maximum noise level. (7-14-05, p. 160). Harman reiterated that the more trucks involved, the more chance that more spikes will exceed the standards. (T. 161).

3. ***Timothy Buckley***, a PhD. from the Johns Hopkins University School of Public Health was called by the Community. Dr. Buckley's CV was submitted as Bloomfield Exhibit #5. It consisted of approximately 22 pages setting forth his extensive background and publications. Dr. Buckley was offered as an expert in "industrial hygiene with a specialty in environmental exposure assessment." As an expert in this field, Dr. Buckley combined not only expertise in noise assessment but also assessment of diesel fumes and finally the ability as one trained in the medical field to assess the impacts of noise and diesel fumes on the human body. (7-14-05, p. 171, 176).

[***It should be noted that Dr. Buckley's testimony was not rebutted by any expert called by NEMF and thus stands unchallenged in regard to his testimony. While NEMF called a noise expert in rebuttal, they provided no rebuttal for the significant and dangerous impacts of diesel fumes upon humans and upon the Bloomfield neighborhood***].

Dr. Buckley described an industrial hygienist as "somebody who specialized in the type of workers, health and safety, and that is also fairly broadened and defined to also include communities, environmental medical issues as well." He testified that his primary focus is on "environmental exposure and health impacts on the workplace." (7-14-05, p. 171-172).

He also has a joint appointment in the Department of Epidemiology and Department of Oncology. He testified that an Epidemiologist is in the business of "assessing health impacts." Therefore, it is more oriented at looking at the "health of communities and exposure assessment." As a member of the Department of Oncology, it relates to his specific research and interest in "environmental exposure to carcinogens, traffic related primarily." (7-14-05, p. 173). He has studied specifically diesel exhaust which is classified as a "probable human carcinogen." (7-14-05, p. 173). Likewise, Dr. Buckley has consulted with the Baltimore County school system for air pollution issues, has studied toll booth workers and mobile source related hazards. Dr. Buckley testified that he has been assessing noise and noise association with traffic, bus depots, etc., as well as the impact of diesel fumes on the population.

Noise

Dr. Buckley then turned his attention and his testimony to a discussion of noise assessment. Dr. Buckley placed a noise instrument called a dosimeter within ten (10) feet of the NEMF's fence on the south side of the facility in the month of May, 2005. ***(IT SHOULD BE NOTED THAT NEMF DID NOT KNOW THAT NOISE WAS BEING STUDIED OVER THIS PERIOD OF TIME AS OPPOSED TO NEMF KNOWLEDGE OF THEIR OWN EXPERTS PLACING THE DOSIMETER ON THEIR PROPERTY FOR A 24 HOUR PERIOD OF TIME ON JUNE _____, 2005).*** Dr. Buckley testified that he had an opinion in regard to the impact of the proposed expansion by NEMF on the Community as it relates to their health, safety and welfare with particular attention to the noise level. In his opinion, the proposed expansion will result in increased noise levels within the Community that will not only exceed the State standards, but will have an adverse ***health*** effect upon the Community. (7-14-05, p. 179).

Buckley's testimony in regard to the impact of noise on the Community indicated that as a stress factor, it can exacerbate other kinds of health effects, that it's an additional stressor that can exacerbate ***diseases*** such as sleeplessness and the immune function. (7-14-05, p. 180).

Dr. Buckley further testified in regard to the "impulse" or "periodic" events opining that impulse noise that is the type of noise is the most damaging to the ear and also possesses a high continued stress factor. He concluded that if you have impulse noise, it poses a greater hazard than if you have a noise of a constant general level. (7-14-05, p. 181).

Buckley testified that over the four (4) days that his dosimeter was recording, the 55 decibel level was exceeded over the ninety percent (90%) of the time during the night intervals and that during the daytime the 65 decibel level was exceeded approximately ten (10) times. (7-14-05, p. 181). He further testified that from his review of the Site Plan, if the fence line of NEMF is brought closer to the Community, those decibel levels, because of the number of vehicles and the number of trucks going to 300 creates a prescription for more noise impact for the Community. (7-14-05, p. 182).

Diesel Fumes

Dr. Buckley then turned his attention to air pollution, particularly in regard to diesel fumes. Dr. Buckley opined that the proposal of NEMF to (a) expand closer to the Community and (b) increase the maximum number of vehicles to 300 that would be operating would cause additional health impacts to the Community. Buckley testified that "the Community is already being adversely impacted by this facility so if you now expand the

number of vehicles that are emitting diesel exhaust, generating this noise and you bring it closer in proximity to the Community, the situation which is already problematic is going to become much worse." (7-14-05, p. 183).

Dr. Buckley then connected the practical effects of diesel fumes to the human population. He testified that traffic related diesel exhaust will result in increased respiratory function or decreased pulmonary function in kids and a higher cancer rate, some types of cancer associated with proximity to exhaust fumes.

Dr. Buckley then addressed the issue of the *Schultz v. Pritts* standards by opining that the impact upon the Community is greater in this location than elsewhere in the Zone. (7-14-05, p. 185-188). Dr. Buckley indicated that the Community was already located within an urban environment that is situated next to a number of major highways (Interstate 95 and Interstate 695) and that there would be less of an impact from this expansion if it were expanding in a more suburban area. He stated "it's a threshold effect in the sense that Bloomfield where you already have a high level of exposure and risk and the expansion in this initial proximity raises that level to above some levels associated with some health effects, then that would have a more severe impact on the Bloomfield Community than it would if it were located in some rural community where the background was lower. Therefore, the additional risk associated with the trucking facility may not exceed that threshold." (7-14-05, p. 187). Dr. Buckley was cross-examined by People's Counsel and responded in regard to the noise spikes that there appeared to be 20 or 30 spikes per hour. (7-14-05, p. 192). Dr. Buckley further commented on diesel exhaust containing carcinogens which are associated with throat cancer. Dr. Buckley amplified his opinion in regard to the impact of the expansion of NEMF by stating "if this expansion occurs, this is the kind of Community where we typically get drawn in to health effects studies.

This is already a situation where you might likely see some elevations in certain kinds of diseases where exacerbations of asthma, or decrements and pulmonary function." (T. 195).

4. ***Elizabeth Qualls***. On Day 2, July 19, 2005, Elizabeth Qualls, 1704 Rittenhouse Avenue, testified that she is a retired music educator. She testified as to the noise emanating from the truck terminal of NEMF as well as the fumes that she must breathe at her home as a result of diesel trucks running which create family health issues. Further, she testified in regard to water runoff from the subject site which has been impacting her property.

5. ***Darlene Byrd***, 1709 Wilson Avenue – Ms. Byrd testified that she was a retired State of Maryland District Court employee. She provided her own personal experiences with noise, fumes, runoff and flooding again emanating from NEMF. She expressed concern for her property values as a result of the proposed expansion and potential destruction to the well-being of the Community.

6. ***Mike Garrish***, 3404 Hopkins Avenue. Garrish reiterated complaints in regard to noise and fumes currently existing and emanating from the site and opined as to his concern if they are permitted to expand. He likewise testified to environmental and water runoff issues related with diesel fuel being mixed in water and ending up in his yard.

7. ***Nancy Scheitlin***, 1706 Rittenhouse Avenue. Ms. Scheitlin testified on Day 3, July 21, 2005, as a nurse at St. Joseph's Hospital. She testified as to the personal impact of the noise and fumes on her personally. Her property is also subject to flooding from NEMF.

8. ***Lorna Rudnikas***. Ms. Rudnikas testified on Day 2, July 19, 2005 as the President of the Bloomfield Community Association and as an individual. Ms. Rudnikas resides at 1727 Hall Road around the corner from Georgetown Road and within hearing and smelling

distance of NEMF. She testified that she is the President of the Community Association and was speaking on behalf of the members of the Association who reside within the boundaries of Washington Boulevard/ Caton Avenue, Georgetown Road, Hall Road, Holly, Hopkins Avenue, James Street, Rittenhouse Avenue and Wilson Avenue. She provided Rule 8 documents which were subsequently amended as Bloomfield Exhibit #_____. She presented a Power Point presentation to the Board which was reproduced as Bloomfield Exhibit #8. Rudnikas described the broad cross-section of the Bloomfield workforce consisting of professional doctors, nursing, animal care, daycare, real estate, white collar and blue collar activities. (Bloomfield #8, p. 4). She described the Community consisting of single-family older single-family homes being well maintained. (Bloomfield #8, p. 6-9). She charted the stability of the Bloomfield Community with over forty-eight percent (48%) of the Community having lived in the area between one and 20 years; over seventeen percent (17%) of the population having lived between 21 and 40 years in the Community and an astounding twenty-four percent (24%) having lived in the Community for 41 to 60 years. Ms. Rudnikas summarized the significant concerns of the Association related to the proposed expansion of NEMF as the issues of diesel fumes, environmental disturbance, encroachment on the 300 foot setback, excessive flooding and the noise. She further added testimony that pursuant to Baltimore County Zoning Regulations §104.1, NEMF has lost its non-conforming use. She presented City water records showing no use of water for 19 months. (Bloomfield #8, p. 11). She further defined the concerns in regard to the diesel fumes which currently cause problems in the Community including nose and throat irritation, coughing, enhance asthmatic episodes and enhanced heart concerns. (Bloomfield #8, p. 12). She then

showed two (2) pictures which viewed the current triangular field south of the existing NEMF and the relative proximity of the NEMF currently to the Community. (Bloomfield #8, p. 13-14). Rudnikas provided climatic wind data for Baltimore-Maryland showing that primarily the wind throughout the year was blowing from the west-northwesterly direction. (Bloomfield #8, p. 16). She testified that the NEMF is west-northwest of the Bloomfield Community and the resulting wind blew the diesel fumes as well as carried the noise into the Community. (Bloomfield #8, p. 22). Rudnikas showed the NEMF current parking relative to the graveled area improperly installed by NEMF in violation of Baltimore County Regulations which is again on the southern side of NEMF closest to the Community.

Rudnikas then addressed what she called the "carrot/stick" syndrome in which she indicated that since NEMF acquired the property in 1990 and even before then, the storm water issues produced on the NEMF site, ran in a southerly direction through the Community causing damage. She testified that if the Community wanted a resolution to the storm water flooding problems, they would have to accept the expansion of NEMF and the increased noise and diesel fumes impacting their Community.

Subsequently on Day 5, September 30, 2005, in rebuttal to the storm water management presentation by NEMF, Ms. Rudnikas indicated that the Community objected to the proposed expansion and if they had to forego either expansion or storm water correction, they would forego the storm water correction in lieu of not having the NEMF operation any closer to the existing Community and certainly not expanded as requested by NEMF.

She testified as to the close proximity of neighboring homes to the NEMF operation. (See photograph Bloomfield #8, p. 27 and 31).

Ms. Rudnikas testified that she had contacted the Maryland Department of the Environment Noise Control Section and was provided information by John Hill, (subsequently, Mr. Hill's boss, George Harman testified before this Board).

At Ms. Rudnikas request, John Hill conducted a tractor-trailer noise analysis utilizing a tractor-trailer similar to those utilized by NEMF. Mr. Hill conducted an experiment with a truck disconnecting and reconnecting to a trailer which report is found on Bloomfield #8, p. 35, 36 and 37. It can be seen, the starting of the engine and the release of the air hose charts at Bloomfield #8, p. 36 and the reconnecting of the tractor with the trailer on page 37 establish high decibel readings above 50, 55 and 65 for properties located within 40 to 60 feet of the NEMF as it ***exists today***.

Ms. Rudnikas testified that the Community was aware that the subject site had not been utilized as a truck facility for two (2) time periods between the bankruptcy of Wilson Motor Freight in the early 1980's and the abandonment of the property after AAA Trucking Company left the site and prior to the acquisition by NEMF in 1990. She testified that pursuant to Baltimore County Zoning Regulations §104.1 that the subject site was abandoned for more than one year on two (2) occasions during that timeframe. She conducted an investigation in the Baltimore City Department of Public Works and established that there was no water consumption for 3600 Georgetown Road between the years 1981 and 1982. Such water consumption figures can be found at Bloomfield #8, p. 38, 39 and 40. This testimony was lent credence by the President of NEMF in his testimony. Myron Shevell testified that when NEMF acquired the property in 1990, that the place was in a "shambles with windows broken, doors hanging off" and appeared to be a "den for drug addicts." (7-14-05, p. 99).

The Community suggests it is clear, from unrebutted testimony that for a period exceeding one year the subject site ceased to be used as a truck facility and therefore lost any non-conforming use status that it may have had or enjoyed up to that time.

9. ***Jack Dillon***. Mr. Dillon began his testimony on Day 2, July 19, 2005 and continued it on Day 3, July 21, 2005. Dillon qualified as an expert in planning, zoning and land use. (Bloomfield #9). As a previous 30+ year member of the Baltimore County Zoning and Planning Office until his retirement in 1996, Mr. Dillon experienced broad understanding of the Baltimore County Zoning Regulations Planning and Development requirements. He began his testimony by a presentation of a Power Point, the physical copy which is marked as Bloomfield Exhibit #10. He defined the general Community of Bloomfield as a mix of light to heavy industry interspersed with well-established residential community that remain vital and relatively healthy. The Bloomfield Community is bordered by I-695, I-95, Caton Avenue, Patapsco Avenue, Hammonds Ferry Road and Washington Boulevard. He described that the Community of Bloomfield has been in existence since the 1800's. He described the Community as an island in the midst of change, however, unlike what happens and what often occurs to older communities that undergo change, decline sets in, this Community has thrived in the face of change. It is a well-maintained community, modest homes occupied by families with deep roots.

Dillon personally visited the property on January 3rd, January 15th, March, May and July 17, 2005. Dillon testified that on May 17, 2005, he sat with Lorna Rudnikas at the edge of NEMF property for an hour in the late evening so he could experience the noise for himself. What he described was a "rhythm of noise that repeated itself every 1.5 minutes plus or minus beginning with the sound of a tractor-trailer driving onto the site, breaking noises, whoosh of air

brakes followed by a loud clang followed by another rush of loud air, followed by a loud bang" (the dropping of a 5th wheel). He testified that all this took place over about 1.5 minutes to 2.5 minutes and it was repeated over and over again. Dillon further described the topography of the site in which the NEMF trucking facility sits approximately 20 feet higher than the Bloomfield Community to the South.

Dillon then discussed the concerns of the Community in his Power Point presentation which are summarized as follows:

- The unlawful expansion of NEMF
- BCZR §104 – Non-conforming use loss
- BCZR §410 – Trucking Facilities
- Expansion versus Intensification
- Required 300 foot setback from residential zone line

Dillon testified that their personal concerns related to noise issues, air quality issues, zoning encroachment, traffic, storm water management and finally economic impact of the expansion on the adjacent properties.

Dillon's Zoning History

Dillon began an analysis of the zoning history of the site. (7-21-05, p. 15). Dillon testified that in 1961 the Wilson Freight Company began to operate at 3600 Georgetown Road. Wilson filed for a Special Exception and a reclassification under Case No.: 4980-RX. (Bloomfield Exhibit #11). The Board of Appeals granted a truck terminal and a trucking warehouse with restrictions. The area of that Special Exception was 4.74 acres. (7-21-05, p. 17).

Dillon then commented on the Task Force created under the direction of the County Executive and Councilman dated August 7, 1975. (Bloomfield Exhibit #12). In 1976, the Planning Board's final report was presented to the County Council and accepted. Dillon testified that the thrust of that report was the unwanted impact of trucking facilities in close

proximities to residential areas generating unwanted noise and fumes. That report resulted in the introduction and passage of Bill 18-76 creating §410 of the Baltimore County Zoning Regulations. (Bloomfield Exhibit #14).

He testified that in 1977 because the truck legislation was not complied with by Wilson; Baltimore County brought Case No.: 77-139TB in which the Deputy Zoning Commissioner found a violation to the truck facility legislation. An appeal was taken to the Board of Appeals which dismissed the case in 1982 when Wilson Freight filed for bankruptcy. (7-21-05, p. 19). (Bloomfield Exhibit #15). Dillon continued that between the appeal by Wilson and the Dismissal by the Board, a 1981 Plan was reviewed by the Zoning Office and the files indicated an inspection was made and accepted by the Zoning Office. Dillon was troubled by that finding since Wilson had gone into bankruptcy and the City water records indicated that there was no use of the property from February, 1981 through October, 1982, approximately 19 months. Members of the Community also testified that there was no truck activity on site during that period of time. Dillon contended that the evidence presented shows that the non-conforming use had been lost during that time period despite the fact that Mr. Dyer (of the Zoning Office) approved the Plans in a letter dated May 7, 1982. Dillon noted that Dyer also approved the Plan for an area of 6.25 acres which is 1.5 acres ***larger than the original*** Special Exception. Dillon opined that expansion approved by Dyer was in error and in violation of the law. (7-21-05, p. 20-21).

The next action after Wilson Freight ceased operation in 1982 was AAA Trucking Company which began its operation between 1982 and 1990 which also went into bankruptcy and led to a second period of disuse of the property.

Next Dillon testified that NEMF applied for a Special Exception in 98-260 SPH and subsequently Case No.: 99-208 was an approved extension of that Special Exception for five (5) years. (7-21-05, p. 25).

Dillon then addressed a comparison of the 1981 Plan (Bloomfield Exhibit #19) and Bloomfield Exhibit #26, which was the 1998-99 Site Plan and created the acetate overlay being marked as Bloomfield #19A. Dillon's testimony that the site was expanding in all directions except a northerly direction. (7-21-05, p. 32-33).

Dillon then compared the area of the buildings in the 1981 Plan as totaling 14,148 square feet and in the 1998-99 Plan as 32,400 square feet. Dillon then testified about the Baltimore County Zoning Regulations §104.1 which permits expansion of buildings up to twenty-five percent (25%). He then concluded that there was a substantial increase by the trucking companies over the twenty-five percent (25%) Rule proscribed by Baltimore County Zoning Regulations. (7-21-05, p. 34-35).

Dillon also testified that in 1998-99, while a Special Exception was granted, Bill 18-76 required a setback of 300 feet from a residential zone. No variance was requested nor granted by the Zoning Commissioner. He concluded that the grant of a Special Exception without a variance was an error. (T. 36). (7-21-05, p. 36).

Dillon then discussed the 2001 NEMF Case No.: 01-544 SPHX, in which People's Counsel participated. This request was subsequently withdrawn by NEMF. Dillon commented upon the letter from Jim Thompson, head of Zoning Enforcement (Bloomfield Exhibit #25), which indicated that NEMF had not executed their Special Exception under 1998-99 and it was lost. Dillon found the files revealed that no appeal was taken from that decision. (7-21-05, p. 37).

Dillon created an overlay, for the Site Plan approved under the Zoning Commissioner's decision of Case No.: 99-208 and Case No.: 98-260 showing the proposed expansion. This overlay was marked as Bloomfield Exhibit #26A. Dillon then testified that the Wilson Site Plan in 1981 in Baltimore County only, the building area was 14,148 square feet. In the 1998-99 NEMF Site Plan, the Baltimore County area was 24,798 square feet and in the 2000 NEMF Site Plan, it was 33,040 square feet (with NEMF saying it was 35,828 square feet). (7-21-05, p. 44-45). Dillon then concluded that substantial expansion had occurred during the non-conforming years of NEMF. (7-21-05, p. 46).

Dillon then testified in regard to the 300 foot setback line from the residential zone line. Dillon established that the residential zone line was changed by moving away from the trucking facility. He then prepared another overlay in which in orange he mapped out the location of the 300 foot line in the Baltimore County area. (7-21-05, p. 48).

Dillon Opinion

Dillon, after having presented numerous exhibits demonstrating the history of the site, the topography, the general area, the Community, the current development in the area, then rendered his opinion in regard to the current status of NEMF. He opined that the current use of NEMF as a trucking facility is operating without the benefit of a proper Special Exception or a legitimate non-conforming use at this time. (7-21-05, p. 64-65). He concluded that the citizens testimony and the water records of Baltimore City confirmed that the use had ceased for a period of 18-19 months and was therefore null and void. (7-21-05, p. 65).

He also concluded that the Special Exception granted under 98-260 was in error and did not take into consideration the 300 foot setback requirements as required under §410 and finally that Special Exception granted under 1998-99 cases had expired after not being used after five (5) years. (7-21-05, p. 66).

Dillon next opined that §410.1.E, §410.2.F and §410.2 dealing with the location of Class I trucking facilities requires a 300 foot setback and in this case the NEMF facility is within the 300 feet. (7-21-05, p. 67).

Next, Dillon opined that the NEMF Site Plan marked as Exhibit #2 does not comply with the Department of Permits and Development Management checklist as required. (7-21-05, p. 70-71). Dillon pointed out that all the dimensions of the property, boundaries were not shown, the meets and bounds description were all not shown, and the dimensions and heights of the existing building and proposed buildings and the square footage given on the proposed plan were not shown. (7-21-05, p. 73).

Dillon then further opined that there are other areas in the M.L. Zone, properties in Baltimore County that would be better suited and have less of an impact on the Community than the subject site would have. Dillon reviewed the 200 scale zoning maps and concluded that there is substantial industrial areas in the Southwest and in the Southeast part of the County up through North Point Boulevard – Eastern Avenue, Pulaski Highway and down through Middle River that would have less of an impact on residential communities. Also available is part of White Marsh industrial area. (T. 76). He then referred to the Baltimore County Master Plan, Map 39, at page 259, which was marked as Bloomfield #33. Dillon testified that according to the Baltimore County Office of Planning, there were 12,248 acres of M.L. Zone after the 2000 Comprehensive Zoning Cycle and after the 2004 Zoning Cycle, it was reduced to

12,032 acres. The M.H. Zone in 2000 was 8,596 acres and in 2004 it was 8,546 acres of M.H. Zoning in Baltimore County. (7-21-05, p. 82). Dillon further found that NEMF operated a Quad Avenue trucking facility in the Essex area of Baltimore County that contained large areas of undeveloped land around it and was buffered from residential properties. (T. 84-86).

Finally, Mr. Dillon testified in regard to the requested expansion by NEMF for the subject site and addressed the criteria of Baltimore County Zoning Regulation §502.1 for the Board to consider. (7-21-05, p. 87). Dillon opined that he believed there is definitely an adverse impact on the health, safety and general welfare to this Community and he based that opinion on the testimony of Mr. Harman and Dr. Buckley dealing with noise and air pollution and Dillon's own personal observation of the noise witnessed on May 17, 2005. Secondly, he believed that expanding from 70 tractor-trailers to 300 tractor-trailers and expanding the number of employees will provide additional traffic through the Community which will tend to create congestion in roads, streets or alleys. (7-21-05, p. 88). Thirdly, he testified that the expansion of this facility and the resulting impacts of that expansion does overcrowd the land in terms of bringing health impacts closer to the Community. (7-21-05, p. 89). Insofar as creating potential hazard from fire, panic or other dangers, Dillon adopted and included the testimony of Dr. Buckley about noise impact upon the Community. (7-21-05, p. 89). Finally, he found granting of the NEMF request to be inconsistent with the property zoning classification and with the spirit and intent of the Regulations in that it was within 300 feet and in close proximity with residential zones. (7-21-05, p. 91).

The People's Counsel then cross-examined Mr. Dillon. Dillon testified in response to People's Counsel question that the total area of NEMF at this site is 17.513 acres with 3.532 acres in Baltimore City and 13.9813 acres in Baltimore County. In the 1981 Non-

Conforming Use Plan, there was a total of 9.2505 acres with 3.28 in Baltimore City and 6.25 in Baltimore County so the acreage has doubled since 1981. (7-21-05, p. 97).

People's Counsel then asked Dillon to examine Bloomfield Exhibit #26A which indicated by an orange line which indicated the location of the 300 foot setback line. Dillon concluded that the majority of the new terminal building is within the 300 foot mark. (7-21-05, p. 106). Dillon then testified that approximately sixty-five percent (65%) of the site is within 300 feet of the residential zone line. (7-21-05, p. 108). Dillon then testified that 74 parking spaces were within the 300 foot radius. (7-21-05, p. 108).

Finally, People's Counsel questioned Dillon in regard to what is known as the *Schultz v. Pritts* test and §502.1 of the Baltimore County Zoning Regulations in regard to the specific impacts being greater at the subject site than elsewhere. Dillon responded as follows at page 150-151:

> First of all, we have 12,000 acres of zoned land in the County and another 8,500 acres of M.H. Zoning in the County. Inside that area, I am convinced there are areas that are more suitable for a location for a truck terminal that would meet the 300 foot setback and would also not have the adverse impact that it has here at this location from the noise and the fumes aspect, so this particular use, I believe could be located in another area of Baltimore County in an M.L. Zone and not have those adverse impacts...

People's Counsel then requested Dillon to explain which factors relating to the site, the neighborhood, are all factors in contributing to his opinion to which Dillon responded:

> First of all, this property has operated since 1960 as a relatively modest operation in terms of a truck terminal, with some starts and stops in between. The proposal that we have in front of us is an expansion from 70 vehicles to 300 trailers and that is just in terms of what they would be parking there. That does not include what is moving in and out on a daily basis. It could be more than that so the

> size of the entire operation is huge compared to what is there now. That would have, itself, a large impact on this residential community it is so close too... (7-21-05, p. 52).

And again,

> The proposed truck terminal as we see on the Plans is extending closer to the residential community. We know from the topography of the area that there is already a 20 foot difference in elevation from Georgetown Road to the top of the slope. In order for that facility to expand in a logical way, they are going to need to build a large retaining wall, and fill that area in, in order to place the trucks on it, and to grade it in a way that would handle the storm water management in an efficient way to get it to the storm water management facility. That is a significant change in terms of the – what the Community will face in terms of elevation and relationship to the trucking facilities... (7-21-05, p. 153).

Finally, People's Counsel questioned Dillon in regard to the Baltimore County Zoning Regulations §410. Dillon opined that §410.1E would require a proposed trucking facility, even if expansion of a non-conforming use, must comply with the other Sections of the Zoning Regulations. (Specifically, the 300 foot setback). Dillon opined that §410.1E requires NEMF to conform in ***all respects*** with the Zoning Regulations. (7-21-05, p. 156). Dillon further opined that §410.1 does not contain any language which would exempt or excuse NEMF from meeting the distance standard in §410.2. (7-21-05, p. 156).

B.

New England Motor Freight – Developer's Case

1. ***Myron P. Shevell*** – testified as President of NEMF Company based in Elizabeth, New Jersey. He testified that NEMF purchased the subject property in 1990 and then added the Weiner Property in 2004. He testified that the enlarged facility would serve

the needs of the Baltimore-Washington area. He testified that the company currently operates out of two (2) sites – Georgetown Road in Baltimore and Quad Avenue in Essex and that the company has just acquired land in Cecil County. He indicated that the company may also move or expand to Virginia.

On cross-examination he admitted that he had never visited the Bloomfield Community south of NEMF to observe the impact of the facility on the neighborhood. Shevell did admit that in 1989-90 when the company acquired the subject site that it was in shambles and "not operating." (This testimony corroborates the testimony of the Community that on two (2) occasions between 1982 and 1990 all trucking activities ceased on the site on two (2) occasions, each for at least one year). Shevell also testified in response to Board member Ramsey's question that when NEMF purchased the property, it was "all closed up."

2. ***David Martin***, qualified as landscape architect on Day 4, September 14, 2005. He acknowledged that he had no personal knowledge of the site prior to 1998 when he became involved with NEMF. Martin explained the proposed Site Plan for expansion for NEMF.

Martin selected 13 of 44 officially existing trucking facilities in Baltimore County for comparison purposes. (It is of note that he did not select the Quad Avenue operation of NEMF).

Martin also concluded that the proposed expansion did meet the criteria required under Baltimore County Zoning Regulations §502.1.

People's Counsel Cross-Examination

On cross-examination by the People's Counsel, Martin testified that he selected 13 of the 44 truck facilities listed by Baltimore County. He gave no explanation as to factors or reasons why he did not analyze the remaining 31 truck facilities.

People's Counsel, elicited the age of each of the 13 truck facilities (68th Street, Philadelphia Road, Fisher Road, Beechwood Road, Bletzer Road, Hammond's Ferry Road, Washington Boulevard, Old North Point Road, Pistorio Road, Annapolis Road and Eskow Road). It was clear that all of these facilities were older, pre-existing truck facilities and not comparable or analogous to the NEMF situation except for the new Federal Express project.

3. ***Mr. Peter Filipowicz*** – Filipowicz is terminal manager of the NEMF, Baltimore facility. He has been the manager since 1999. He testified that the current operation consists of 36 domicile trucks and 90 domicile trailers. At the current time, in addition to the domicile trucks and trailers, there are additional 100 trips in and out per day.

If the proposed expansion is approved, the 36 domicile trucks will rise to 106. The 90 domicile trailers will rise to 269 trailers with 150 additional trips in and out.

Filipowicz also testified that there are currently 44 dock doors in use and the number of dock doors will grow to 94 if the proposed expansion is approved.

Filipowicz candidly acknowledged that you can hear sound emanating from the NEMF site related to air hoses and coupling. He also indicated that two (2) small trucks that they utilized have back up beepers. (All sounds which the Community have complained

about). He also acknowledged that truckers will leave their motors running, particularly in the winter time while they are waiting to unload or hooking up. He also acknowledged sleeper trucks will run their engines constantly.

4. ***George Spano*** – Mr. Spano qualified as an "acoustician" expert. He acknowledged there is no licensing required for such experts, nor are there any formal courses that he took related to sound and noise. He basically acknowledged that he spent 30 years of on-the-job work in the Company started by his father. He basically acknowledged that he was not a medical doctor. His testimony was objected to by Counsel insofar as he attempted to opine relative to the issue of noise and its medical impact on the human body.

Spano has then presented a report which purported to show various noise levels as a result of two (2) measuring devices set up on the NEMF property for a period of 24 hours in June, 2005. (***IT SHOULD BE NOTED THAT NEMF KNEW OF THE DATE AND TIME OF THE NOISE TEST AS CONDUCTED BY SPANO WHILE THEY DID NOT KNOW OF THE EXISTENCE OF THE NOISE METERS PLACED OFF OF THEIR PROPERTY BY DR. BUCKLEY WHICH TOOK RECORDINGS FOR A FOUR (4) DAY PERIOD).***

Spano did acknowledge that there existed "impulse" noises which can be annoying. He also acknowledged that the more trucks loading and unloading, the more impulse noises could exist during the nighttime hours and the more annoyance to the Community. He acknowledged that the truck's fifth wheel clanging and air hose noises could be impulse noises as described by the Community's expert George Harman. Spano

opined that the proposed plan would not affect the Community. He did acknowledge, however that the closest distance from the NEMF to the closest house was approximately 40-50 feet. He also acknowledged that he had not stood in the Community behind NEMF in the late evening hours. In fact, he had only visited the site between 12 noon and 4:00 p.m. on one day to form his conclusion.

Finally, in response to cross-examination, he stated, "you can hear, there is no doubt about it" referring to the noise emanating from the NEMF.

Spano in effect ***confirmed*** the noise issue in the Community by proposing the imposition of a board fence and also that NEMF should not use the back parking lot closest to the Community. These two (2) conditions as recommendations, confirm the Community's position as to the potential impact of the approved Site Plan on the Community in regard to noise.

On cross-examination by People's Counsel, Spano acknowledged that the definition of noise is "unwanted sound." His definition, the Community submits, covers the repetitive impulse sounds described by the Community and Jack Dillon, during his observance.

Also, on cross-examination Spano did testify that "it was better to locate a truck terminal where there are no residents nearby ... definitely!"

5. ***Jim Markel*** – Markel testified as the drafter of the storm water management facility proposed for the subject site. His candid testimony acknowledged that since 1999 he has been involved with the NEMF site and that in the intervening six (6) years, storm water management facilities on the site have been "non-existent" and "uncontrolled" and that the

water runs south through the residential Community of Bloomfield. Markel candidly acknowledged that since there was no requirement that NEMF contain or control its storm water that for six (6) years it allowed it to run through the Community allowing it to cause damage therein.

Markel testified that if the Storm Water Management Plan is approved which is contingent on getting the expansion approved, that the current storm water problem in the Community will be controlled.

Markel also candidly answered that in order for the Bloomfield Community to obtain the benefits of the proposed storm water management facility that they would have to accept the unwanted expansion of the trucking facility.

NOTE: *IT SHOULD BE NOTED THAT NEMF FAILED TO PRESENT ANY EXPERT WITNESS TO REBUT THE TESTIMONY OF DR. BUCKLEY RELATED TO THE IMPACT TO THE COMMUNITY FROM DIESEL FUMES. DR. BUCKLEY'S TESTIMONY STANDS UNREBUTTED RELATIVE TO THE NEGATIVE IMPACTS OF DIESEL FUMES IN SUCH CLOSE PROXIMITY TO THE COMMUNITY WHICH WOULD BE FURTHER INCREASED BY THE PROPOSED EXPANSION.*

C.

Community Rebuttal

Lorna Rudnikas testified in rebuttal as to her responses to the NEMF case. First, she testified that the Community is caught between "the carrot and the stick" approach of NEMF. Given the choice of solving the flooding problems which would therefore necessitate the

approval of the proposed enlargement, or not approving the enlargement which would allow the flooding problem to continue, she testified that the Community would prefer no enlargement by NEMF and again requested this Board to deny NEMF request.

Secondly, she responded to Mr. Martin's "bouncing balls" traffic power point by suggesting that trucks from NEMF continue to turn right on Canton Avenue and turn right at Washington Boulevard going through the Community contrary to NEMF's expert.

Thirdly, she personally visited a number of the trucking facilities cited by Mr. Martin for NEMF located in the west side of Baltimore County. She visited Adell Plastic Manufacturers, Pistorio Road, Ward Trucking Facility at 3510 Washington Boulevard and 200 Hammond's Ferry Road. She testified that all of them are further separated from a residential community as distinguished from the close proximity of the Bloomfield Community to NEMF.

Finally, she testified that the 300 foot buffer requirement should be required between NEMF and the Bloomfield Community.

III.

QUESTIONS PRESENTED

1. **The Board should deny NEMF Special Exception to expand their existing trucking facility.**

2. **NEMF has failed previously and with this Petition in Case No.: 04-294-SPH to request a variance from the 300 foot setback requirement between a trucking facility and a residential zoned line and therefore the Special Exception should be denied.**

3. **The previous exception for NEMF has expired and therefore they are without a Special Exception for the property.**

4. **NEMF is currently not operating under a non-conforming use in that it was terminated by operation of law pursuant to Baltimore County Zoning Regulations §104 in that the operation had been abandoned for more than one year.**

LEGAL ARGUMENT

1. **The Board should deny NEMF Special Exception to expand their existing trucking facility.**

NEMF in Case No.: 04-294-SPHX has requested a Petition for Special Exception and a Petition for Special Hearing to enlarge its existing operation. The Board's consideration of this request is guided by the Baltimore County Zoning Regulations §502.1 which sets forth the criteria for the Board to review to determine the appropriateness of the NEMF request.

Noise

In the extensive Statement of Facts contained in this Memorandum, the Community has articulated significant reasons why the proposed expansion would be detrimental to the health, safety and welfare of the Community which would require denial by this Board. In summary, the lay testimony of the Community members and the presentation by noise experts George Harman and Dr. Timothy Buckley clearly establish that the existing noise level from a 24 hour, seven day a week operation by NEMF causes annoyance to the Community. Also that it is in violation of decibel readings established by the charts produced by George Harman on behalf of the State of Maryland. Dr. Buckley's noise analysis confirms the results predicted by the State charts. Dr. Buckley has testified and his testimony is unrebutted that noise can significantly interfere with the medical health of the adjacent community.

It is unrebutted that the trucking operation makes "periodic" or "impulse" noises which occur in rapid succession throughout the evening hours. It is clear that these "impulse" noises occur above the 50 decibel reading permitted during the nighttime hours and are easily heard by the neighbors.

The existing noise, noises and noise level including impulse noises will be significantly aggravated by the increased activity and increased number of trucks proposed for the site. Mr. Peter Filipowicz candidly acknowledged that 36 domicile trucks would be increased to 90; that 90 domicile trailers would increase to 269 and that currently additional tractor-trailer trips of approximately 100 will increase to 150 trips after the proposed enlargement. It is undisputed that the trucking facility will be expanded towards the Community from its present status and in fact currently is within 40 to 60 feet of adjacent homes. The significant impact of this additional operation was even acknowledged by NEMF's own sound expert Mr. Sano who recommended a wooden fence and no parking in the southern parking area. The Community rejects this attempted mitigation as too little and unenforceable.

The testimony of Dr. Buckley related to the impact of noise on humans was unrebutted by NEMF.

Diesel Fumes

In addition to noise, the Community complained about the diesel fumes.

Testimony from Lorna Rudnikas as to the wind direction being from the Northwest to the Southeast confirms the complaints of all the citizens in regard to the diesel fumes invading their neighborhood. NEMF through its General Manager confirmed that in its

24 hour, 7 day a week operations, many diesel trucks leave their engines running while hooking up loading and departing. In addition, sleeper vehicles operate throughout the night generating diesel fumes. All of this testimony was confirmed by the neighbors.

Dr. Buckley testified as to the nature of diesel fumes as carcinogenic causing cancer and other pulmonary damage to residents in close proximity to the fumes. The proposed expansion with the increased number of vehicles further aggravates the current situation.

Traffic

The addition of a significant number of tractor-trailers and the increase in the number of bays by more than doubling the number of bays from 44 to 94 will further aggravate the traffic congestion as described by the neighbors with tractor-trailers turning right out of NEMF and proceeding through the Community as testified by the neighbors and Mrs. Rudnikas.

Flooding

The current flooding situation imposed for many years and since 1999 by NEMF without correction alleged to be solved by a new storm water management facility. The catch-22 however is that in order for the Community to benefit from this improvement, it must submit to the expansion requested by NEMF. The Community is adamantly against the expansion. The Community also believes that NEMF while acknowledging it is causing a storm water problem has not improved its property as a good neighbor to protect the neighborhood from flooding and should not benefit from the requirement that it must satisfy storm water management regulations now by getting the proposed expansion.

Greater Impacts at Bloomfield

The Community submits that it has passed the *Schultz v. Pritts* test by establishing that the NEMF expansion request will have greater damage to the Bloomfield Community than if it were placed elsewhere in the zone. Dr. Buckley clearly testified that the impacts of noise and diesel fumes would be greater on the Bloomfield Community than if the trucking facility was located elsewhere in the zone. Also, Jack Dillon in analyzing the *Schultz* test likewise found the impacts greater on Bloomfield than if they were placed elsewhere in similar zones. In fact, Dillon analyzed other areas of Baltimore County which contained M.L. and M.H. zoning which would provide greater protection from residential zones. Dillon obtained information from the County Office of Planning which established significant acreage in the County for both M.L. and M.H. zones that could satisfy the requirement and permit NEMF to comply with the setback requirements of 300 feet.

While this Board is certainly familiar with the standards required to approve a Special Exception, a short synopsis of Maryland case law is appropriate.

Special Exceptions in the Court of Appeals

Judge Hall Hammond, later Chief Judge for many years, explained the law of special exceptions in *Montgomery v. Merlands Club, Inc.*, 202 Md. 279 (1953). It is the seminal case. The more recent decisions are actually restatements or reformations of Judge Hammond's analysis and language. So, in *Turner v. Hammond*, 270 Md. 41 (1973), Judge McWilliams said:

> "Occasionally the bar and less often the bench lose sight of the concept that the conditional use or special exception, as it is generally called, is a part of the comprehensive zoning plan sharing the presumption that as such it is in the interest of the general welfare and, therefore, valid. *Rockville Fuel and Feed Co. v. Board of Appeals of the City of Gaithersburg*, 257 Md. 183, 187 (1970). The special exception is a valid zoning mechanism that delegates to an administrative board a limited

authority to permit enumerated uses the legislature has determined can be allowed, properly albeit prima facie, absent any fact or circumstance negating the presumption. *Rockville, supra.* In *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 287 (1953), we said:

> '... The duties given the Board are to judge whether the neighboring properties and the general neighborhood would be adversely affected, and whether the use, in the particular case, is in harmony with the general purpose and intent of the zoning plan.'
>
> While the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements he does not have the burden of showing affirmatively that his proposed use accords with the general welfare. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses, is, of course, material but if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal. *Rockville, supra.*" 270 Md. 41.

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

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

In 1981, the tradition carried forward *Schultz v. Pritts*, 291 Md. 1 (1981). In *Board of County Comm'rs. V. Holbrook*, 314 Md. 210 (1988). There, Judge Harry Cole quoted Judge Davidson's opinion in Schultz and referred to the earlier decisions.

"In *Schultz v. Pritts, supra,* this Court determined the applicable standard for judicial review of the grant or denial of a special exception use. We observed.

'The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.'

* * *

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

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

'[A] special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and,

> therefore, should be denied is whether there are facts that show that the particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." 291 Md. At 15 [emphasis supplied]. 314 Md. At 216, 217.

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

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

Recent Court of Special Appeals Applications

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

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

Mangione shows that the proposed use need not give rise to a worst case scenario, or mathematical demonstration, to warrant denial. There were many other residential zones in Baltimore County which also would pose particular and unusual problems.

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

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

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

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

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

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

The evidence showed clearly that potential problems associated with this transfer station site were no worse than in any of the other three I-2 zones. The site was on a main road. It drained into the same general watershed as these other industrial zones. It also adjoined heavier industrial uses which drained into the same creek. *Mossburg* is the classic case of a proposal which did not pose problems uncommon to the use in the zone generally.

In *Hayfields v. Valleys Planning Council*, 122 Md. App. 616 (1998), the Court remanded, on environmental grounds, the Board's approval of a country club/golf course special exception. It rejected the Board's reasoning that the proposal should be approved merely because there were other properties underlain by the Cockeysville Marble aquifer which also could be vulnerable. 122 Md. App., at 649-55.

The Board had granted the Special Exception because it thought there were other locations in the zone which plausibly could suffer adverse environment effects equal to or worse than the subject site. But this is not the standard. The standard is simply whether the subject site poses problems over and above the norm for the entire zone.

The cumulative factual record before the Board reflects that the impact on the Bloomfield Community is far greater than elsewhere in the zone and therefore the *Schultz* test has been met.

The Board should deny the expansion.

2. NEMF has failed previously and with this Petition in Case No.: 04-294-SPH to request a variance from the 300 foot setback requirement between a trucking facility and a residential zoned line and therefore the Special Exception should be denied.

NEMF failed to request a variance to the 300 foot requirement to the Baltimore County Zoning Regulations found in §410. It is factually undisputed that NEMF is closer than 300 feet to the residential zone line. Jack Dillon, as set forth in the Statement of Facts, establishes that a substantial portion of the proposed building, the proposed parking area for trailers and a number of the truck bays are within the 300 feet. It is clear, factually, that this

proposed expansion cannot be approved or constructed unless a variance is requested. None was requested in this Special Exception, nor was a variance requested at any time by NEMF in its 1998-99 cases.

People's Counsel Memorandum will address this issue in more detail, and to avoid repetition, the Community will simply adopt the argument related thereto in the People's Counsel Memorandum.

3. The previous exception for NEMF has expired and therefore they are without a Special Exception for the property.

The letter of Department of Permits and Development Management reviewing Case No.: 98-260-SPHX and the 1999 case extending the Special Exception for five (5) years was not utilized and expired on February 25, 2003. NEMF did not appeal from that decision. It is the Community's position that the Special Exception has not been utilized within the five (5) year period and has expired. Additionally, the Community submits that the 1998-99 Special Exception cases likewise failed to contain variances and were in violation of §410 of the Baltimore County Zoning Regulations in regard to the 300 foot setback.

Again, People's Counsel Memorandum on this matter is herein incorporated and adopted by the Community.

4. **NEMF is currently not operating under a non-conforming use in that it was terminated by operation of law pursuant to Baltimore County Zoning Regulations §104 in that the operation had been abandoned for more than one year.**

NEMF lost its non-conforming use.

The evidence presented by the testimony of the Community and Lorna Rudnikas as to two (2) periods in the 1981-1990 timeframe that Wilson Freight and AAA Trucking Company went bankrupt and went out of business constitute an abandonment of the non-conforming use. The Baltimore City water records submitted as evidence before the Board clearly establishes that no trucking operations were in existence during those 19 months. As recited in the Statement of Facts, the second timeframe for the abandonment for the non-conforming use occurred prior to 1990 when the President of NEMF testified that the "property was empty" and "in a shambles with broken windows," etc. It is clear that NEMF never contested either period of abandonment nor produced any evidence to establish the continued use of the property as a trucking facility in order to satisfy the requirements of the Baltimore County Zoning Regulations §104.

Again for further discussion, the Community adopts the People's Counsel Memorandum.

CONCLUSION

The Community submits for all the above reasons that NEMF should not be permitted to expand the current operation as proposed on its Site Plan submitted as part of Case No.: 04-294-SPHX.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of October, 2005, a copy of the foregoing Greater Bloomfield, *et al.* Hearing Memorandum was mailed first class, postage pre-paid to the following: G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 210 West Pennsylvania Avenue, Towson, Maryland 21204 and Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204.

J. CARROLL HOLZER, Esquire

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10/17/05

RE:	PETITION FOR SPECIAL HEARING NW/side Georgetown Rd, 100' NE Hall Ave (3600 Georgetown Road)	*	BEFORE THE COUNTY BOARD OF APPEALS
	Tom Mauk, Chatherine Scarborough, Anna Wood, Greater Bloomfield Association	*	FOR BALTIMORE COUNTY
	Petitioners	*	Case No. 04-160-SPH

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

RE:	PETITION FOR SPECIAL HEARING AND EXCEPTION N/S Georgetown Rd, SW of Bloomfield Rd (3600 Georgetown Road) 13th Election & 1st Councilmanic Districts	*	BEFORE THE COUNTY BOARD OF APPEALS FOR
	3600 Georgetown Corporation, c/o Myron Shevell - Legal Owners	*	BALTIMORE COUNTY
	Petitioners	*	Case No. 04-294-SPHX

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PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S HEARING MEMORANDUM

Introduction

This is a tale of two cases about 3600 Georgetown Road. The current owner is 3600 Georgetown Corporation. Its principals also own the trucking company operating at the site, New England Motor Freight Corp. ("NEMF"). For simplicity, we refer to their side as "NEMF." On the other side are the Greater Bloomfield Association ("GBA")

The property, which straddles the Baltimore County/City line is mainly in the County and zoned M.L. (Manufacturing-Light). A principal theme in this memorandum is that NEMF's plan does not satisfy BCZR 410.2 location standard, which requires trucking facilities to have a minimum setback of 300 feet from dwellings and residential zones. This standard applies whether the facility is viewed as an expansion of a nonconforming facility, a "conforming"

existing facility, or a new facility. Another theme is that, apart from the location standard, NEMF failed to meet the special exception standard. The proposed special exception fails as a matter of law because NEMF has failed to meet its affirmative burden of proof and because the evidence in opposition overwhelmingly compels denial.

This tale includes a review of the tortuous history of trucking operations at 3600 Georgetown Road, going back to 1961. There is, on a parallel track, a review in depth of the county's comprehensive legislation on trucking facilities, going back to 1975. On the surface, NEMF is requesting a special exception to expand a trucking facility. But this is no ordinary or routine special exception case. The history and the law generate many important and challenging issues. An understanding of this background will help the County Board of Appeals identify and resolve the legal issues particular to this history as well as the basic special exception issues.

Background

The story began with a relatively modest facility operated by the Wilson Freight Forwarding Company (WFFC) on about 9 acres (6 in Baltimore County, 3 in Baltimore City) through the 1960s and 1970s under the authority of a rezoning and special exception approved by the County Board of Appeals (CBA) on October 11, 1961 in Case 4980-RX.. Bloomfield (GBA) Exh. 11. It continued with the County Council's enactment of comprehensive zoning legislation to regulate trucking facilities in 1976, Bill 18, codified in BCZR 410. GBA Exh. 14. The facility did not meet the new setbacks from dwellings or residential zones. This prompted WFFC to file a site plan, and then a revised plan, in 1981 to confirm nonconforming status and clear up other zoning problems. The Zoning Supervisor, James Dyer, allowed the nonconforming status by letter dated May 7, 1982. GBA Exh. 18.

WFFC then left the scene. There is a bankruptcy order dated July 24, 1980. GBA Exh. 16. It appears from the testimony that WFFC abandoned or discontinued the use for more than a year in the early 1980s, after which a company called AAA took over. That company eventually closed operations in the late 1980s. In or about 1991, after a period of discontinuity, the operation resumed under the banner of NEMF, which had acquired the site on October 22, 1990. P.C Exh. 14, Shevell testimony.

In 1998, NEMF, applied for and obtained an Order, dated February 25, 1998, to approve a special hearing, in the nature of a special exception, to expand what it called an existing facility. Case 98-260-SPHX. GBA Exh. 20. In Case 99-208-SPH, it obtained a January 15, 1999 order to extend the approval to allow utilization of the special exception within five years instead of the usual two. GBA Exh. 21. A critical point is that NEMF did not apply for a variance from the setback requirement of 300 feet from a residential zone; that there was no notice of a variance issue; and that, therefore, the approval did not extend to any required variance. There is also evidence that the public notice was inadequate. From all indications, the zoning sign was posted at the entrance on Joh Avenue in Baltimore City and not at the county side of the site adjacent to the Bloomfield community.

In any event, NEMF did not proceed to utilize its 1998-99 approval. Instead, in 2001, it filed a new case, 01-544-SPHX, with a new plan to expand what was approved in the preceding cases. On October 12, 2001, the Deputy Zoning Commissioner approved this plan, but with setback restrictions. GBA Exh. 22. NEMF, People's Counsel, the GBA and Maryland Citizens for the Environment moved for reconsideration. GBA Exh. 23. After a hearing, the DZC issued an Order on Motion for Reconsideration dated April 3, 2002. It granted NEMF's motion and issued a new order removing the most serious restrictions.

People's Counsel, community groups, and various individuals appealed. The CBA scheduled a hearing for January 22, 2003. Just before the hearing, NEMF withdrew its petition. The CBA issued an Order of Dismissal of Petitions on January 16, 2003. GBA Exh. 24.

As to the 1998 ZC approval in Case No. 98-260-SPHX, extended in 1999, the February 25, 2003 deadline for utilization came and went. The Director of PDM, Arnold Jablon, determined that the special hearing/special approval had not been properly utilized and had expired under BCZR 502.3. James Thompson, Director of Zoning Enforcement wrote a letter March 3, 2003 to formalize this decision. GBA Exh. 25. NEMF did not appeal. Therefore, the 1998 approval did not vest.

Instead, in late 2003, as questions persisted about NEMF's operation, interested citizens and NEMF filed zoning petitions to clarify and determine the legality of the situation and the status of the facility. These are the present cases. 04-160-SPHX and 04-294-SPH. This latest proposed expansion is substantially larger and more intense than any previous proposal. See Pet. Exh. 2. It involves the newly acquired (2004) Weiner property, adding about 8 acres and almost doubling the size of the original site. It dramatically increases the number of trucks and trailers domiciled at the site, about doubling even the proposed 2001 expansion. It substantially expands the terminal building. It extends the truck and trailer parking and operational area south, closer to the boundary with the Bloomfield area neighborhood, residential zone, and residences.

Nevertheless, the Zoning Commissioner on October 12, 2004 denied the citizens' petition and granted that of NEMF. People's Counsel and area citizens have appealed to the CBA.

Questions Presented

The parties have identified many questions in the dueling petitions. We attempt to condense them here into a manageable number of key issues.

I. Nonconforming Use Issues: Nature of the 1982 Approval; Termination by Discontinuity

1. Under the 1976 trucking facilities ordinance, what is the scope, nature and effect of the 1982 approval of the Wilson Freight Forwarding Company's preexisting nonconforming facility? In particular, did this approval signify (as Bloomfield and People's Counsel contend) that the Wilson Freight facility qualified for status as a nonconforming facility meeting specific site standards necessary for continuation as a nonconforming facility? Or did it mean (as NEMF contends) that the facility became a "conforming facility" generally?

2. If the WFFC facility survived as a nonconforming use, did this nonconforming use terminate by virtue of discontinuity in the early 1980s and again in the late 1980s after closure, respectively, of the Wilson Freight and AAA operations?

3. Even if the WFFC facility were considered "conforming," given the periods of abandonment and discontinuity, along with revival under new ownership, isn't the NEMF operation a new operation under any historical interpretation and scenario?

II. A Threshold Legal Issue: Does the BCZR 410.2 Location Standard Apply to the Expansion?

4. Whether or not the WFFC facility is described as a nonconforming use or a conforming facility, and whether or not it terminated or was just discontinued, is a request for a major expansion subject both to special exception and location (setback) standards (as Bloomfield and People's Counsel contend) or subject only to special exception standards (as NEMF contends)?

a. In this connection, does the expired 1998 special exception have any legal significance, or does it matter? Among other things, was it jurisdictionally and/or legally defective in the first place for lack of a variance request, and lack of notice, relating to deviation from the minimum setback of 300 feet from residences or a residential zone? Is it, in any event, irrelevant because it was not utilized and is therefore void. In any event, because the current proposal is dramatically different in area, number of trucks and trailers, building size, and proximity to the residential neighborhood and zone, must it be reviewed as a new case?

b. Does the withdrawn 2001 special exception request have any legal significance?

III. Does the Proposal Satisfy Special Exception Standards?

5. Is the current NEMF special exception request legally sustainable on the merits?

a. If the location and residential setback standards apply, is the special exception defective and disqualified because it fails on its face to satisfy these standards?

b. If the location and residential setback standards do not specifically apply, does the request in any event satisfy the basic special exception standards?

Analytical Outline

The Baltimore County portion of the site is zoned M.L., which permits a trucking facility by special exception. BCZR 253.2.A.12 A nonconforming Class I facility may expand to meet site and development requirements and to enclose buildings, subject to narrowly tailored standards. BCZR 410.1.E. Plans may otherwise be amended only by special exception. 410.1.F. In this context, BCZR 410.2 provides a minimum setback of 300 feet from a dwelling or residential zone. A special exception is a conditional use. Expansion of a trucking facility must necessarily and appropriately satisfy both special exception and the particular location standards. It is also subject to BCZR 410.3 site standards and area standards of the relevant zone. Umerley v. People's Counsel 108 Md. App. 497, cert. denied 342 Md. 584 (1996).

The proposed facility's southern boundary is the northern boundary of the Bloomfield neighborhood. This shared border runs in zigzag fashion for about 1120 feet. There are fifteen residential properties immediately adjoining this border. The rest of Bloomfield is just beyond these properties, much of it within 300 feet of this same border. Therefore, whether viewed as an approved nonconforming or new facility, both a special exception and variances are required. NEMF's petition avoids and disregards the variance problem. This is a jurisdictional defect.

As an introduction to the key issues, consider first this outline:

1. The zoning office approved a revised site plan for a nonconforming trucking facility in 1982. The WFFC site was nonconforming to begin with because it failed to meet the location standards of BCZR 410.2 and site standards of 410.3. The legislation allowed existing facilities to survive despite nonconformity with location standards, but did require reasonable site improvements. WFFC was in this position. It filed a plan with the zoning office under BCZR

410.1 for nonconforming facilities, and made sufficient site improvements to satisfy the zoning inspector that it met the site standards under BCZR 410.A.3. The plan did not propose to satisfy the location standards, but rather allowance to continue as an approved nonconforming facility. It is a distortion of the law to say that the upgrading to "conform" with site standards made it a "conforming facility" generally. Rather, it attained status as an approved nonconforming facility. It remained nonconforming because it never met the location standards.

2. If the nonconforming facility were not discontinued, its expansion would still require a special exception and variance from location standards required for expansion of nonconforming facilities under BCZR 410.1.E, 253.4, and 410.2. Even if the WFFC facility were called a "conforming facility," its expansion under BCZR 410.1.E would still require a special exception and a variance from BCZR 410.2 location standards. Whatever name, designation, or status we use to describe the approval and historic evolution of the WFFC facility, the law requires both a special exception and variance from location standards for an expansion.

3. NEMF's 1998 petition for special exception for expansion did not include a petition for variance. Its petition was therefore incomplete and legally insufficient to allow encroachment into the minimum setback area. The Zoning Commissioner's decision to approve the operation was likewise invalid or inoperative to the extent that the operation would occur within the setback area. In this context, the public notice was defective as to content. There is also evidence that the sign giving notice was posted on Joh Avenue in Baltimore City and failed to satisfy the "conspicuous notice" requirement of the law. In the absence of proper notice, the Zoning Commissioner had no jurisdiction. The 1999 extension was likewise insufficient. In sum, the 1998-99 approvals were defective and legally ineffective at the time they occurred.

4.In any event, on February 25, 2003, PDM made a reasonable final decision that the 1998-99 approval expired. NEMF did not appeal, and there is no evidence in any event that it utilized the special exception. Under BCZR 502.3, a special exception is void unless utilized within the applicable time period.

5. The record shows that NEMF did not pursue the 1998-99 approval, but rather changed course and sought a different approval in the 2001 case. However, having secured a final approval on April 3, 2002, and facing an appeal to the CBA, NEMF chose to withdraw its petition. The CBA issued an order of dismissal, thus ending any legal effect of that approval.

6. Even if the 1998 and/or 2001 proposals were operative, they would not affect review of the current proposal. The latest expansion proposal is dramatically different in area, number of trucks and trailers, building size, and proximity to the residential area and zone. The key legal issues have never been contested and adjudicated. For these reasons, the 1998-99 and 2001 orders could not possibly have any *res judicata* or preclusive effect on the factual and legal issues now presented. This is an entirely new and different expansion proposal.

7. In sum, the current proposal, whether viewed as an expansion of a nonconforming facility, an expansion of a "conforming facility," or as a new facility, is subject to *de novo* review for compliance with both special exception and location standards.

8. The preponderance of the evidence shows that NEMF has revived operations previously discontinued for more than a year after the closures of WFFC and AAA. Therefore, the nonconforming status has terminated under BCZR 104.1. The current proposal is for a new facility. Even if the CBA finds otherwise, both special exception and variance standards apply for reasons stated above.

9. A fundamental problem is that the current NEMF petition is again defective because it requests approval of encroachment into the minimum 300 feet setback area without including a variance request. BCZR 253.2.A.12, 410.1, and 410.2 show a legislative purpose to apply special exception, location, and variance standards under any view of the history.

10. Even if the CBA concludes that expansion of an approved existing facility (whether deemed nonconforming or conforming) is subject to special exception standards alone, and does not technically require a variance, NEMF entirely failed to meet its burden of proof to show satisfaction of special exception standards under Schultz v. Pritts 291 Md. 1 (1981) and its progeny. The relevant adverse impacts include the proximity to the residential area generally, and the noise and fumes associated with diesel truck operations specifically. NEMF attempted to show the similarity of its proposal, via David Martin's study, to 13 other facilities around the county. It turned out, however, that all but one (Federal Express) were facilities which existed prior to the 1976 law, and, like WFFC, secured approval in the 1976-82 time period. It also turned out that the Federal Express site is not close to a residential neighborhood. On top of that, it turned out that all of these examples were much smaller in area, number of trucks and trailers, and building size than the NEMF proposal.

11. This is just the second case to come before the CBA involving a significant expansion of an existing facility. The first was Umerley v. People's Counsel 108 Md. App. 497 (1996), cert. denied 342 Md. 584 (1996). P.C. Exh. 3. There, the CBA approved the expansion, but the Circuit Court reversed and the Court of Special Appeals affirmed the reversal. The CSA found that Umerley had forfeited its nonconforming status by expanding improperly in the past. It also found that there was no justification for a variance from the important location standards.

12. In almost 30 years since the County Council passed the trucking facilities law, the CBA has never approved a major expansion of a trucking facility within 300 feet of residences and a residential zone on any other site. The only apparent approval given at the Zoning Commissioner level relates to the 1998-99 decisions here, which, as noted, were jurisdictionally and legally defective. CBA approval of the proposed expansion here would undermine the essential purpose of the law to protect residential areas. It would also go against the historic implementation of the law since 1976.

Legislative History and Case Law

A statute must read in its entirety and in context to discern its essential purpose. As the Court said just recently in Board of Physicians v. Mullan 381 Md. 157, 168 (2004),

> "...we 'avoid constructions that are illogical, unreasonable, or inconsistent with common sense..., and instead interpret and harmonize statutes as a whole, giving meaning and effect to all parts of the statutory language and refraining from interpretations that render any part of a law surplusage or contradictory."

To illustrate, in Lucas v. People's Counsel for Baltimore County 147 Md. App. 209 (2002), the Court of Special Appeals reviewed carefully the history, structure, and policy of the zoning legislation concerning airports, airfields, and helicopter operations in order to discern the legislative purpose. It also gave weight to legitimate expert testimony to assist this effort.

The history sheds light on the essential purpose of the trucking facilities law to protect nearby residential areas. In 1975, County Executive Theodore G. Venetoulis appointed a special Citizens Task Force on Truck Terminals. Councilman John W. O'Rourke of the Seventh District became Chairman. The Task Force recommended major changes to the zoning law in a report to the Planning Board on August 7, 1975. GBA Exh. 12. On February 19, 1976, the Board issued a Final Report, entitled "Proposed Zoning Amendments: Trucking Facilities." GBA Exh. 13. It proposed comprehensive new legislation. Based on this report, the County Council enacted into

law as Bill 18-76. GBA Exh. 14. Both the Task Force and Board found that trucking facilities are "totally inappropriate in or near residential areas." The "noise and fumes of large tractor-trailers" are unacceptable "operating day and night close to their [citizens'] homes." A "number of trucking facilities [had already] been established to close to the homes of Baltimore County citizens over the years, especially in communities near major industrial areas." The existing regulations were "inadequate" and apparently allowed these facilities. The "... purpose of the regulations proposed here [was] to remedy those deficiencies, both in terms of control over the development of new facilities and in terms of remedial measures applicable to existing ones."

To protect residential areas, the law established location standards in BCZR 410.2 and 410A.2 for all trucking facilities, both Class I and Class II. These prescribe minimum setbacks from wetlands and from dwellings or residential zones.

An issue arose as to whether the language "...within 300 feet of a dwelling or residential zone" applied to a dwelling in a non-residential zone. The trucking facility operator contended that it applied only to dwellings in residential zones, and the CBA agreed. People's Counsel appealed, and ultimately prevailed. In Laskey v. Bethlehem Steel Corp. No. 18, CSA, September Term 1979 (P.C. Exh. 16), the Court held that the language and the history showed that "dwelling" and "residential zone" were used in the usual disjunctive sense connoted by "or" and established separate and independent requirements. The "residential zone" standard would otherwise be superfluous. The Court also cited the Planning Board Report, and wrote at page 5:

> "The report concluded that trucking facilities are 'totally inappropriate in or near residential areas . The fact is ... that a number of trucking facilities have been established too close to the hones of Baltimore County citizens over the years, especially in communities near major industrial areas ..."

In the 1990s, the trucking facility law was at the center of another controversy. This led to Umerley v. People's Counsel for Baltimore County 108 Md. App. 497, cert. denied 342 Md. 584 (1996). There are significant points of comparison between Umerley and the present case.

Trucking Facilities Law: References and Excerpts

People's Counsel introduced BCZR 101 trucking facility definitions in PC Exh. 1. BCZR 101 defines "Trucking Facility" essentially as:

> "A structure or land used or intended to be used primarily (a) to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types, in order to facilitate the transportation of such goods or chattel; or (b) for truck or truck-trailer parking or storage." (Additional details omitted).

A "Trucking Facility, Class I" (Truck Terminal)" is defined as:

> "A trucking facility whose primary purpose is to accommodate the transfer of goods or chattels from trucks or truck-trailers to other trucks or truck-trailers or to vehicles of other types, in order to facilitate the transportation of such goods or chattels."

A "Trucking Facility, Class II" is defined as:

> "A trucking facility other than a Class I tucking facility, including a truck yard (the primary purpose of which is to accommodate the parking or storage of trucks, truck trailers, or truck tractors."

BCZR 410 governs Class I Trucking Facilities, and BCZR 410A deals with Class II Facilities. They are parallel in many ways. The proposed NEMF facility is clearly a Class I Facility, a "Truck Terminal." Therefore, this memorandum focuses on BCZR 410.

BCZR 410 in its entirety is relevant and is included in PC Exh. 2. We reproduce here excerpts. These are BCZR 410.1.F, the provision for changes to approved nonconforming facilities, and BCZR 410.2, the location standard:

> "410.1.F. With the exception of plans for conforming Class II trucking facilities in M.H. Zones, plans approved under this section may be amended only by special exception.

"410.2. Location. No class I trucking facility or part thereof (including any access point or driveway) established on or after the effective date of this section may be located within 200 feet of a wetland, or, with the exception of accessory passenger automobile parking areas, within 300 feet of a dwelling or a residential zone. No passenger automobile parking area or part thereof accessory to a Class I trucking facility may be located within 25 feet of a dwelling or a residential zone.

Zoning Classifications Where Trucking Facilities Are Permitted

Bill 18-76 permits trucking facilities by special exception in the M.L. Zone (BCZR 253.2.A.12), and by right in the M.H. Zone if located at least 300 feet from a residence zone and 200 feet from a business zone (BCZR 256.2). "Truck stops" are permitted by special exception in the B.R. Zone (BCZR 236.4). The law thus severely limits the location of trucking uses.

The proposed NEMF facility is located in an M.L. Zone. Therefore, it is subject to special exception review, as well other standards set forth in the Trucking Facilities law.

Structure and Function of the 1976 Trucking Facilities Law

BCZR 410.1 made available some protection for "nonconforming and other existing" facilities. In this context, it established specific procedures, requirements, and standards for such facilities, and addressed their potential expansion. It must be read together with BCZR 104, which governs nonconforming uses generally.

BCZR 410.2 set the crucial "Location" standards for a "**facility or part thereof ...** established after the effective date of this section: minimum distances of 200 feet from a wetland and 300 feet from a dwelling or a residential zone." The nonconforming use provisions of BCZR 410.1 allowed existing facilities which did not meet these standards to continue operation if certain the "Site and Development" standards of BCZR 410.3 were met. It recognized the impracticality of forcing existing facilities to meet the location standards and so did not make

that a condition for approval of nonconforming status. But it did not exempt any "expansion" or "part" of a facility established after the law went into effect.

BCZR 410.3 established the aforesaid "Site and Development" standards, addressing access points, minimum site area, floor area ratio, layout, fencing and screening, wheel stops, parking, loading, and maneuvering, drainage, landscaping, and additional reasonable conditions. In general, nonconforming facilities had to be improved so as to meet these standards within one year after the required filing of plans. BCZR 410.1.b.

BCZR 410.4 required that any action of the Zoning Commissioner and other county officials be consistent with specified purposes and other purposes of the regulations in general. The specified purposes in BCZR 410.4.B are to promote spatial consolidation, to assure that site improvements and future facilities do not create a public nuisance or adversely affect the public interest, to minimize heavy truck traffic on motorways other than freeways, expressways, or arterial streets, to minimize off-premises parking or storage, and, crucially,

> "In general, to accommodate trucking activities, in recognition of their increasing importance to the economy of the county and the nation, while minimizing the impact of existing and future Class I trucking facilities on the environment and achieving an optimum level of compatibility between such facilities and nearby uses, especially dwellings and institutional uses."

I. Nonconforming Use Law; NEMF's Proposal a New Facility from any Perspective; Location Standard Requirement

A nonconforming use is defined in BCZR 101 essentially as "... a legal use which does not conform to the use regulation for the zone in which it is located ...." A nonconforming use is a use legally in existence at the time a new law is passed which ordinarily would prohibit the use. The typical statutory scheme affords protection for nonconforming uses, but also provides for their termination upon the occurrence of certain events. In Baltimore County, the basic scheme is

in BCZR 104. The additional provisions for nonconforming Class I trucking facilities in BCZR 410.1 also come into play here.

The law disfavors nonconforming uses. The intent is that they will disappear over time. A change in the use ordinarily terminates the use. This can occur, on the one hand, by expansion, or, on the other hand, by abandonment or discontinuity. The law is strictly construed in order to effectuate the purpose of eliminating nonconforming uses. See County Council for Prince George's County v. Gardner 293 Md. 259 (1992). Baltimore County has legislatively incorporated these principles in BCZR 104.1, which terminates the use upon any change of use, or any abandonment or discontinuance for a period of one year or more.

Gardner contains an excellent discussion of nonconforming use law, at 293 Md. 259, 267-68 (1991). Judge Rita Davidson there wrote:

> "This Court has repeatedly recognized that one of the fundamental problems of zoning is the inability to eliminate incompatible nonconforming land uses. In *Grant v. Mayor and City Council of Baltimore*, 212 Md. 301, 307, 129 A.2d 363, 365 (1957), this Court said:
>
> > "Nonconforming uses have been a problem since the inception of zoning. Originally they were not regarded as serious handicaps to its effective operation; it was felt they would be few and likely to be eliminated by the passage of time and restrictions on their expansion. For these reasons and because it was thought that to require immediate cessation would be harsh and unreasonable, a deprivation of rights in property out of proportion to the public benefits to be obtained and, so, unconstitutional, and finally a red flag to property owners at a time when strong opposition might have jeopardized the chance of any zoning, most, if not all, zoning ordinances provided that lawful uses existing on the effective date of the law could continue although such uses could not thereafter be begun. Nevertheless, the earnest aim and ultimate purpose of zoning was and is to reduce nonconformance to conformance as speedily as possible with due regard to the legitimate interests of all concerned, and the ordinances forbid or limit expansion of nonconforming uses and forfeit the right to them upon abandonment of the use or the destruction of the improvements housing the use."

> Thus, this Court has recognized that the problem inherent in accommodating existing vested rights in incompatible land uses with the future planned development of a community is ordinarily resolved, under local ordinances, by permitting existing uses to continue as nonconforming uses subject to various limitations upon the right to change, expand, alter, repair, restore, or recommence after abandonment. Moreover, this Court has further recognized that the purpose of such restrictions is to achieve the ultimate elimination of nonconforming uses through economic attrition and physical obsolescence. *The Arundel Corp. v. Board of Zoning Appeals of Howard County,* 255 Md. 78, 83-4, 257 A.2d 142, 146 (1969); *Stieff v. Collins,* 237 Md. 601, 604, 207 A.2d 489, 491 (1965); *Colati v. Jirout,* 186 Md. 652, 655, 657, 47 A.2d 613, 614-15 (1946); *Beyer v. Mayor of Baltimore,* 182 Md. 444, 446, 34 A.2d 765, 766 (1943); *See Kastendike v. Baltimore Ass'n for Retarded Children, Inc.,* 267 Md. 389, 397, 297 A.2d 745, 749-50 (1972).
>
> Whether a nonconforming use can be changed, extended, enlarged, altered, repaired, restored, or recommenced after abandonment ordinarily is governed by the provisions of the applicable local ordinances and regulations. *Feldstein v. La Vale Zoning Board,* 246 Md. 204, 211, 227 A.2d 731, 734 (1967); *Phillips v. Zoning Comm'r of Howard County,* 225 Md. 102, 109, 169 A.2d 410, 413 (1961); *Board of Zoning Appeals of Baltimore County v. Gue,* 217 Md. 16, 21-22, 141 A.2d 510, 513 (1958). These local ordinances and regulations must be strictly construed in order to effectuate the purpose of eliminating nonconforming uses. *Mayor of Baltimore v. Byrd,* 191 Md. 632, 638, 62 A.2d 588, 591 (1948); *Colati,* 186 Md. at 658-59, 47 A.2d at 616; *Knox v. Mayor of Baltimore,* 180 Md. 88, 96, 23 A.2d 15, 18 (1941); *see City of Hagerstown v. Wood,* 257 Md. 558, 563, 263 A.2d 532, 534 (1970); *Hewitt v. County Comm'rs of Baltimore County,* 220 Md. 48, 59, 151 A.2d 144, 150 (1959)."

BCZR 104.1 also follows prevailing nonconforming use law for abandonment or discontinuity. While abandonment depends on subjective intent, discontinuity turns on an objective evaluation of what has occurred. The discontinuation for a year of a nonconforming use terminates the use. In this respect, the law here is reminiscent of the law described in Canada Tavern, Inc. v. Town of Glen Echo 260 Md. 206 (1970), where Judge McWilliams wrote:

> "We think the Council, having in mind a larger purpose, intended to align itself with those local governments which have found it desirable to delete the factor of intent in respect of the abandonment, discontinuation, or cessation of nonconforming uses rather than continuing to run the gamut of its judicial determination in a succession of infinitely variable situations."

In the present case, the County's 1982 approval of the WFFC plan allowed the facility to continue in use as a nonconforming facility. It never conformed to BCZR 410.2 location

standards. This nonconforming use terminated when WFFC discontinued its operation for more than a year in the early 1980s. The later similar period of discontinuity between AAA and NEMF would have terminated the use if it had survived to that time.

Even if the 1982 WFFC approved facility could properly be called "conforming," the periods of discontinuity effectively ended that use. The AAA and NEMF operations sprung up independently and were different from the old WFFC operations. From any point of view, they were new uses and not a continuation of the approved WFFC facility. Therefore, the NEMF operation should be viewed as a new operation and subject to all relevant legal standards, including the BCZR 410.2 location standards.

II. A Trucking Facility Expansion Must Also Meet Location Standards

Even if the NEMF proposal is viewed as a proposed expansion of a valid approved and continuing nonconforming use, or expansion of a validly approved and continuing "conforming" facility, it still must comply with the location standards as well as other BCZR 410 standards.

NEMF has suggested that the location standards do not apply. We disagree. This section of the argument will analyze the law from various perspectives. The analysis will show that whether the NEMF facility is deemed nonconforming or "conforming," the expansion must directly comply with the location standards as well as meet the spirit and intent of the zoning law under special exception standards.

BCZR 104.1 follows the prevailing pattern of nonconforming use with respect to changes involving expansion. To determine whether an expansion has occurred or is proposed, it is relevant to consider any change in character, land area, buildings, and facilities from the original use. Chayt v. Zoning Appeals Board 177 Md. 426 (1939); Knox v. Mayor & City Council 180 Md. 88 (1941); Colati v. Jirout 186 Md. 652 (1946); Cleland v. Mayor & City Council 198 Md.

440 (1951); Fritze v. City of Baltimore 202 Md. 265 (1953); Shannahan v. Ringgold 212 Md. 481 (1957); Boulevard Scrap Co. v. City of Baltimore 213 Md. 6 (1957); Phillips v. Zoning Comm'r 225 Md. 102 (1961); Jahnigen v. Staley 245 Md. 130 (1967).

BCZR 410.1 is consistent with this approach. It includes a detailed filing and approval procedure to confirm the existence of nonconforming trucking facilities operating at the time of passage of the 1976 law. This required plan approval is subject to a timetable for filing and satisfaction of detailed site plan standards. BCZR 410.1.E and 410.1.F address expansions. Each type of expansion is subject to review in a public hearing. These sections provide:

> "E. Expansion of nonconforming Class I trucking facilities. The site, structures and paved areas of a nonconforming Class I trucking facility may not be expanded unless the use is made to conform in all respects with these Zoning Regulations or except as follows:
>
> 1. Expansion to the minimum extent necessary to comply with the standards of Section 410.3 may be allowed by the Zoning Commissioner, after public hearing, provided that the expansion is not in excess of that allowed under Section 104 and that, in the judgment of the Zoning Commissioner, the expansion would be in the interest of the general welfare of the community, with particular consideration given to any dwellings within 300 feet of the trucking facility.
>
> 2. Operations of the trucking facility may be enclosed within buildings, even though the construction of buildings or enlargement of existing buildings necessary to do so would result in an expansion beyond the limit imposed under Section 104, provided that the truck facility is in an M.L. or M.H. Zone and that the Zoning Commissioner finds, after public hearing, that the enclosure would lessen the net overall environmental impact of the facility and would otherwise be in the interest of the general welfare of the community.
>
> F. With the exception of plans for conforming Class II trucking facilities in M.H. Zones, plans approved under this section may be amended only by special exception."

The meaning of 410.1.E.1 is that expansion to meet the minimum site and development standards of BCZR 410.3 may be allowed, subject to BCZR 104, so long as it advances the general welfare, with particular consideration given to nearby dwellings. This is a narrowly

tailored provision. It accommodated only such expansions as were necessary upon passage of the law to meet such standards as minimum site, parking, maneuvering, and access standards.

BCZR 410.1.E.2 is another tailored provision. It allows the enclosure of facilities within buildings in M.L. and M.H. zones, again subject to BCZR 104, if the enclosure lessens net environmental impact and is otherwise in the interest of the general welfare of the community.

BCZR 410.1.F is a more general provision. With an exception not applicable here, it requires special exception review for any amendment of approved plans. A special exception, of course, is a conditional use. Schultz v. Pritts 291 Md. 1, 11 (1981); County Comm'rs v. Holbrook 314 Md. 210 (1986). It is subject to compliance with basic special exception standards as well as other statutory prerequisites. Chester Haven L.P. v. Queen Anne's County Board of Appeals 103 Md. App. 324 (1995). Under BCZR 410, this means that a special exception is also subject to review for compliance with all relevant standards, and for satisfaction of variance standards in the event of any deviation. Umerley v. People's Counsel 108 Md. App. 497, cert. denied 342 Md. 584 (1996). Here, this translates to the requirement that an expansion of a trucking facility is subject to the BCZR 410.2 setbacks from wetlands, residential zones, and dwellings, and to variance review for any proposed encroachment.

NEMF takes BCZR 410.F out of context. It focuses on this subsection's requirement of a special exception for expansion of an existing facility. It then argues that this subsection's omission of any reference to BCZR 410.2 reflects a legislative intent to exempt the expansion from the location standards. This argument is unsustainable, whether the NEMF facility is deemed "nonconforming" or "conforming."

First of all, there is no such exemption stated. The BCZR enumerate hundreds of special exception uses in different zones or special regulations. In identifying such uses, the County

Council does not, and need not, add that each use is also subject to the area regulation which governs the relevant zone or use. It is essential to the structure of the zoning regulations that each proposed use must comply with all of the relevant regulations applicable to that use. It is not necessary for the use regulations to specifically include an explicit reminder with each listing that there must be compliance with area standards. Neither must the area regulations include an explicit reminder for compliance with use standards. All of the standards work together.

Secondly, BCZR 410.2 goes so far as to cover every "... trucking facility or part thereof ..." This means that, in evaluating an expansion, the scope of review includes the entire facility. It is to be remembered that an expansion, by its nature, involves a combination of old and new. This combination produces an entirely new integrated use. NEMF seems to suggest that it can escapes the location standard because it does not propose to use the newly acquired Weiner property directly for trucking activities. The trucking company apparently contends that it can circumvent this requirement by planning stormwater management for this "part" of the facility rather than truck loading, movement or parking. This argument cannot stand. The expansion still involves truck loading, movement, and parking within 300 feet of the residences and residential zone. Indeed, it extends this area southward and closer to the residences than ever before. In any event, the newly acquired property also adjoins the residential zone and area. While it may be devoted to storm water management rather than the physical presence of trucks, it is still part of the trucking facility. When the law prescribes minimum setbacks for any "facility or part thereof," it means every part of the facility. There is no exemption for infrastructure.

Thirdly, it would undermine the legislative intent if expansions were allowed without regard to location standards. It would have the effect of an insidious poison injected to weaken the law at its core. NEMF may argue that the special exception standard provides sufficient

protection. The answer is that such protection is good as far as it goes, but that the County Council decided that a definite location standard is necessary to reinforce the legislative purpose.

Fourthly, it is illogical and offensive to suggest an exemption from the location standard for expansion of a facility fortunate enough to receive past protection as an existing facility despite the otherwise illegal location. NEMF attempts to finesse the law by describing the zoning office's 1982 approval of the WFFC plan as amounting to a designation of "conforming" status. Under this halo, NEMF suggests that such existing "conforming" facilities get a pass from the location standards for expansion. Whatever name is given to the 1982 approval, there is no justification for the suggestion that it exempts subsequent expansion from location standards.

* * *

It is now time to take another look at the 1998-99 and 2001 cases. NEMF may argue that the approvals in these cases support its position that the BCZR 410.2 location standards do not apply directly. The record does not support such an argument.

There is no genuine dispute that the Zoning Commissioner's 1998-99 orders expired and, as a result, became null and void. BCZR 502.3 states:

> "A special exception which has not been utilized within a period of two years from the final order granting same, or such longer period not exceeding five years, as may have been specified therein shall thereafter be void."

The February 25, 1998 order in Case 98-260-SPHX did not specify a time period, so that the time limit for utilization was two years. GBA Exh. 21. It is doubtful under BCZR 502.3 that the Commissioner may extend the time period in a new order where not "specified" in "the final order granting same." But that is what happened on January 15, 1999 in Case 99-308-SPH. GBA Exh. 22. In any event, as NEMF was still unsettled as to its expansion plans, it did not utilize the special exception within the five year extended period. James Thompson, for the PDM Director,

decided in his March 3, 2003 letter. GBA Exh. 25. There was no appeal. (NEMF did respond by letter March 5, 2003 to disagree, but did not file an appeal. NEMF Exh. 3). Anyway, the evidence before the CBA fails to show utilization of the 1998-99 approval. Rather, NEMF decided to enlarge the scope of its expansion and acquire the Weiner property. This led to the 2001 case rather than an attempt to implement the 1998-99 Orders. The PDM decision was thus became final. The 1998-99 approval had become null and void.

Even if the 1998-99 Orders had not become null and void for lack of timely utilization, they still would not support NEMF's position. They were legally and jurisdictionally defective at the outset. In the absence of a petition for variance, there was no notice to the public that the request involved expansion involved encroachment in the 300 foot setback area. Likewise, the Commissioner had no authority to approve a plan to encroach in this area.

Notice is jurisdictional. Cassidy v. Board of Zoning Appeals 218 Md. 418 (1957). Notice of a petition for special hearing or special exceptions insufficient where it does not include notice of a required variance, See, e.g. Burke v. Village of Colonie Board of Zoning Appeals 604 NYS2; d 343 (1993); Foland v. Zoning Board of Appeals 207 NYS 2d 607 (1960); Mello v. Board of Review 177 A.2d 533 (R.I. 1960); Kane v. Board of Appeals 173 N.E. 1 (Mass. 1930). It is also that the law that a property owner may not use an "estoppel" argument to claim a right to continue or confirm an illegal approval. Lipsitz v. Parr 164 Md. 222 (1933); City of Hagerstown v. Long Meadow Shopping Center 264 Md. 482 (1972); Marzullo v. Kahl 366 Md. 158 (2001). The 1998-99 orders were therefore legally ineffective to grant NEMF legal permission to utilize the property for a trucking facility within the minimum setback area.

In addition, there is a serious question as to whether the public, especially the Bloomfield community, had adequate notice of the public hearings. It appears that in each case

the sign was posted at the Joh Avenue entrance, in Baltimore City. It is doubtful that this satisfies the "conspicuous notice" requirement of Code Sec. 32-3-302 (formerly Sec. 26-127). This is yet another reason to reject the notion that the 1998-99 cases give NEMF an advantage or hinder the Bloomfield citizens from asserting their legal rights. The proper placement of notice is a prerequisite to jurisdiction and due process of law. Wright v. Zoning Board of Appeals 391 A.2d 146 (Conn. 1978); Eaton v. Zoning Hearing Board 471 A.2d 919 (Pa. Cmwlth. 1984).

On top of all this, even if it is assumed that the 1998-99 orders were valid, they would not support NEMF's position, much less have any "*res judicata*" or preclusive effect. One of the elements of the doctrine of *res judicata* is that the claim or transaction in the later case must be **identical** to that in the case asserted to have binding effect. Lone v. Montgomery County 85 Md. App. 477, 491 (1990). The application of the doctrine of in zoning cases comes up from time to time. In Whittle v. Board of Zoning Appeals 211 Md. 36 (1956), involving a request for approval of a special permit in the face of an earlier denial, the court pointed out that

> "... where the facts are subject to changes which might reasonably lead to an opposite result from that arrived at in an earlier case, and if there have been substantial changes in facts and circumstances between the first case and the second, then the doctrine of *res judicata* would not prevent the granting of the special permit [in contrast to the prior denial]..."

The Court applied this rule to reject application of the doctrine in McBee v. Baltimore County 221 Md. 312 (1960).

In the present case, the present petition involves a dramatically larger expansion than in the 1998-99 cases. The interested public is or may be different (the Bloomfield community was not present at the earlier case). The scope of the relevant evidence necessarily is different. *Res judicata* does not apply. In the same vein, the doctrine of collateral estoppel does not apply. On occasion, a court will respect a ruling on an issue in an earlier case where the same parties are

present and where the issue is actually contested and litigated. Again, the Bloomfield community is new to the litigation. Equally important, the question of the applicability of the location standards was never actually litigated. Of course, this relates back to the inadequate notice and the failure to request a variance.

A claim of preclusion, in this context, shocks the conscience. In order to secure approval of a huge trucking facility expansion, NEMF looks back to the earlier approval of a much more limited expansion. It then turns out that the more limited request was legally insufficient and incomplete, so that the public notice omitted the location standard issue. If this were not aggravating enough, it turns out the sign was posted in Baltimore City.

The net result of this lengthy discussion and analysis is that the 1998-99 orders should have no legal bearing on the CBA's decision in the present case. In context, they are like debris to be swept aside so that they do not clutter the thought process in the case at hand.

The 2001 Deputy Zoning Commissioner decision likewise should have no bearing. The DZC's April 3, 2002 final order was appealed to the CBA. Upon a voluntary withdrawal by NEMF, the CBA issued its January 16, 2003 Order dismissing the petition. It disappeared

III. The NEMF Proposal Does Not Satisfy Special Exception Standards

a. The NEMF Petition Is Disqualified for Failure to Meet Location Standards

In the world of athletics, it is common to speak of a false start in track & field or swimming, illegal procedure and offside in football, outside the batter's box or outside the foul line in baseball, and foot faults in tennis. These illustrations are apt in the world of zoning when a petition fails to address and meet properly all of the relevant and applicable legal requirements.

NEMF is in this position. It has requested a special exception for an expansion without regard to the location standards. Section II of the Argument has explained in detail how and why

the trucking facilities law demands compliance with the location standards in this situation. There is nothing in the tortured history of trucking operations at this site to excuse NEMF.

Indeed, the evidence indicates that the original WFFC nonconforming use approval, dating from 1982, terminated long ago by virtue of discontinuity. The NEMF facility, in context, is a totally new facility. But even if viewed as an expansion of an existing facility, in effect a new mixture of old and new, the law does not provide NEMF an exemption or escape hatch to avoid the essential location standards.

NEMF may realize it cannot overcome the burden of proof to obtain a variance, as in the Umerley case. Whatever the reason, NEMF made a tactical decision to assert an entitlement to avoid the location standard. The CBA must reject this tactic. This is important not only for this case, but also for all of the other existing trucking facilities in Baltimore County.

b. NEMF Has Failed to Meet the Burden of Proof to Obtain a Special Exception

The time has come to address frontally the merits of the special exception. Even if it were not otherwise disqualified, the petition would still fail. NEMF did not produce substantial affirmative evidence to meet the Schultz v. Pritts standard. In contrast, the Bloomfield community produced probative evidence of overwhelming adverse effects particular to this site and its impact on the adjoining residential neighborhood.

The public health, safety, and welfare of the locality, the overcrowding of land, and consistency with the spirit and intent of the zoning law are key criteria under BCZR 502.1. Here, the concerns center on the proximity of the NEMF site and operation to the adjoining residential neighborhood. The County Council addressed the proximity problem in Bill 18-76. The Council focused on the incompatible characteristics of trucking and residential uses, including visual, noise, and air pollution impacts.

While the Bloomfield Community Association presented first at the hearing, the burden of proof for a special exception remains with the applicant. Turner v. Hammond 270 Md. 41, 55-56 (1973); Futoryan v. Mayor & City Council 150 Md. App. 157 (2003). Therefore, the evaluation logically begins with NEMF's case. The merits of NEMF's special exception presentation depend primarily on the testimony of David Martin. He was the only witness who undertook to address all of the BCZR 502.1 standards.

To begin with, Martin shared or adopted NEMF's mistaken position that the facility is "conforming" and does not have to comply with location standards required for facilities established after passage of Bill 18-76. He refused to admit that the facility is nonconforming, although he acknowledged that it has never complied with the location standards. Argument Sections I and II, *supra*, have addressed these legal issues, which are ripe for the CBA to resolve.

Martin reviewed 13 existing trucking facility sites, picked (he said) at random from a list of 41 sites indicated by county records. He collected site plans for these sites, visited them, took photographs, and put together a map and a power point presentation. NEMF Exh. 6, 7. The theme of his presentation is that NEMF is similar to the other sites, in that most of them are located near residences and appear to have similar access roads, fences, and, implicitly, resemble the NEMF site in general appearance. There were, however, serious omissions in his pretty computer demonstration. Martin did not disclose the age of the facilities, whether they had been approved as nonconforming facilities, the size of the properties and buildings, and the number of trucks and trailers. These omissions would prove to be the undoing of his presentation.

On cross-examination, Martin admitted that all but one of the sites had on file plans for nonconforming facilities approved by the zoning office between 1977 and 1981. Like the WFFC operation, they predate the trucking facilities law. The only exception is the RPS site on

Philadelphia Road in White Marsh, which the Zoning Commissioner approved in 2000. P.C. Exh. 20. As a footnote, the 8225 Fischer Road site had an approved 1977 plan and expanded in 1985 to 8227 Fischer Road. P.C. Exh. 21a. These two sites on Martin's list thus merge. The 8216 Bletzer Road site was modified in 1987. P.C. Exh. 21b. Neither the RPS approval nor the Fischer and Bletzer Road modifications involved proposals to establish or expand sites close to residential neighborhoods. To illustrate, the RPS opinion, which describes a kind of postal facility, states on pages 4-5 that the only residence in the area was in a block building in an M.H. zone, and that there was a Carmax facility in between it and the site.

Upon inquiry as to the size of the properties and buildings on the various sites reviewed, and the number of tractors and trailers, the CBA allowed a recess so that Martin could review his records. He produced a handwritten chart, which was admitted in evidence as P.C. Exh. 19. The chart speaks for itself. Suffice it to say that the proposed NEMF expansion dwarfs the rest of the operations in size and magnitude.

Whether by chance or design, Martin's study concentrated on old facilities next to residential areas. These are precisely the kinds of operations the Council had in mind when it enacted the 1976 law to protect residential neighborhoods. The legislative mechanism was to but to prevent their expansion and to prevent the establishment of new facilities close to residences and residential zones. Martin refused to admit this legislative intent, but it is transparent from the Planning Board Report and from the text of the legislation.

Another feature of Martin's study is that it omits other trucking facilities located in M.L. and other manufacturing zones which are entirely industrial areas, far away from any residences. The most obvious omission was NEMF's Essex site, which it leases on Quad Avenue, near North Point Boulevard. P.C. Exh. 8. An aerial photo confirmed, as did the testimony of NEMF's

manager, that this site is nowhere near any residential area. P.C.Exh. 13. Indeed, on its eastern border, there is another trucking facility which adjoins NEMF's Quad Avenue operation. To the west, there is vacant land. Clearly, it is feasible to place trucking facilities in locations where they are not right next to residences.

Remarkably, Martin's study shows that since the 1976 enactment of the trucking facilities law, there has not been a single zoning approval anywhere else to place or expand a trucking facility close to a residential neighborhood. The 1998-99 and 2001 NEMF decisions threatened to put a blemish on this record, but those approvals are void because expired or voluntarily dismissed and legally ineffective for the other reasons stated above. This means that if the CBA approves the current proposal, it will depart from a legal pattern in place for almost three decades. It not only will have an adverse impact on the Bloomfield Community, but also will jeopardize every residential community adjacent to an existing facility where the owner may decide to expand. This would be a terrible precedent.

Martin's testimony thus fails to meet NEMF's affirmative burden to produce evidence that there will be no adverse effects above and beyond those inherently associated with the use irrespective of its location within the zone. Indeed, his testimony proves the opposite. The adverse impacts will be far greater than at new or expanded sites in exclusively industrial neighborhoods. The existing sites near residential areas predate Bill 18-76. The legislation tolerates these as approved nonconforming uses, subject to the stated required upgrades in site and development standards.

The GBA asked John J. Dillon, Jr., the experienced planner, to study the matter. He did a detailed review of the legislative history and the history of the site. He visited the area and made personal observations as to the neighborhood, its boundaries, and the NEMF operation. He made

personal observations of the noise impact. He also reviewed identified and discussed other M.L. and M.H. zones in the southwest area and on the east side of the county. This included a review of the "100 scale" zoning map for the Pulaski Highway area from the city line eastward. It also included a review of the aerial photo of the Quad Avenue area.

Dillon expressed a series of opinions, based on the explicit standards articulated in the Schultz case. He identified the boundaries of the Bloomfield community nestled west of Washington Boulevard, south of the city line, and backing up to the NEMF site. He showed that the proposed NEMF expansion would have adverse effects to this neighborhood above and beyond those inherently associated with such use irrespective of its location in the zone. Dillon contrasted the adverse impacts to the adjacent Bloomfield community here with the obvious lesser impact at locations within entirely industrial areas. He gave the Quad Avenue area as an example. He went on to identify numerous and substantial M.L. zones on the map of the Pulaski Highway area located far from residential areas. He also made reference to other industrial zones in the southwest area where the impact would be less.

This contrasts with Martin's testimony. While Martin failed to prove affirmatively that the adverse impact at the NEMF site would meet the Schultz standard, Dillon proved affirmatively that it would not. He demonstrated that the adverse impact on the public safety, health, and welfare of the Bloomfield locality would be above and beyond those inherently associated with the use at other localities in the zone. He also demonstrated that the NEMF proposal undermines the essential legislative purpose to protect residential neighborhoods.

There is one thing in common between Martin's testimony and Dillon's testimony. They both attempted to look at sites or areas in industrial zones around the county. The broad geographic scope of the inquiry is appropriate and consistent with the implementation of the

Schultz standard. Later cases have confirmed this broad scope. Mossburg v. Montgomery County 107 Md. App. 1, 9 (1995), citywide inquiry relating to heavy industrial zone, transfer station use; Hayfields, Inc. v. Valleys Planning Council 122 Md. App. 616, 649-53 (1998), countywide inquiry relating to agricultural zone, golf course use; Lucas v. People's Counsel 147 Md. App. 209, 237-40 (2002), countywide inquiry relating to agricultural zone, helicopter use; Futoryan v. Mayor & City Council 150 Md. App. 157, 181-82 (2003), general discussion, commercial zone, service garage use. It is noteworthy that the Mossburg case held that the transfer station there should be approved because, in comparing the proposed location with other I-2 zones in the city, the court found:

> "...an otherwise silent record does not establish that the impact, however severe at a given location, is greater at that location than elsewhere." 107 Md. App. 9.

The record in the present case is not silent. There is ample proof that the adverse impact on Bloomsbury is dramatically greater than the impact at locations farther away from residential areas. The location comparison is even more striking because of the particular degree of proximity and the magnitude of the proposal.

As noted, the southern boundary of the NEMF site shares a long zigzag border of 1120 feet with the northern boundary of the Bloomfield neighborhood and its residential zone. 15 dwellings occupy a majority of this border area on the Bloomfield side, along with the residential streets of Bloomfield and the rest of the neighborhood. The NEMF facility thus immediately adjoins the residential area. The evidence shows that the primary trucking operations are already well within 300 feet. The proposed expansion would bring them closer. Thus, NEMF does not come close to meeting the spirit and intent of the law. This is an extreme deviation. There is also the factor that the NEMF site is virtually on a hill overlooking Bloomfield, with a drop of twenty feet near the border. This aggravates the adverse visual impact.

The close proximity combines with the size and scope of the proposal to produce an adverse impact not only above and beyond the ordinary, but also likely the most harmful of any facility in the county. It is to be remembered that in People's Counsel v. Mangione 85 Md. App. 738, 746-47, n. 6 (1991), the Court confirmed the commonsense proposition that:

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

There is a remarkable byproduct of Martin's random survey. It revealed the NEMF proposal would result in one of the largest trucking facilities in the entire, perhaps the largest. This unintended revelation is found in the chart he prepared under cross-examination. The data on property size (acres), building size (square feet), and number of trucks and trailers all show that the NEMF facility would greatly exceed in magnitude the 13 facilities surveyed. There is no evidence in the record of another facility in the county comparable to the NEMF proposal in magnitude. To illustrate the point, the trucking facilities on Quad Avenue shown in the aerial photograph are also much smaller. P.C. Exh. 13. If there exists a larger facility, it is reasonable to believe that Martin would have mentioned it because it would have been in NEMF's interest.

It warrants repetition that in order to deny a special exception, as Judge Davidson wrote in Schultz 291 Md. 1, 15:

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

This means that a special exception must be denied where the adverse effects are particular to the location, and above and beyond the normal adverse effects. Judge Davidson gave the example that a funeral home could not be denied a special exception in a residential area due to its depressing psychological effect, as this would occur in any residential area. It might, however, have to be denied because of a particular access problem, which would not necessarily occur at other sites in the zone. It should be underlined, in this context, that in order for a special exception to be denied, it is not necessary that the CBA find that the proposal is in the worst possible location in the county or that it is the most extreme in size and scope. It just has to present some particular adverse effect which is not inherent in the use wherever it may be.

In the present case, the Schultz criterion for denial is more than met. There are demonstrably adverse effects not found at other locations in the zone. That is clear from the proximity to the residential area, the degree of proximity, and the size and scope. The record also shows that this proposal's injurious impact will exceed any other in Baltimore County. It was not necessary for GBA to prove that. Indeed, the burden of proof was on NEMF to satisfy the Schultz standard. But the record reveals, from any point of view, that a trucking facility does not belong at this location under the law.

It is also to be remembered that the supposed "need" or economic importance of the trucking facility is irrelevant. Umerley decided that the references in the law to the economic significance of the trucking industry do not affect the implementation of the zoning standards for special exceptions and variances. 108 Md. App. at 508-09. Mr. Umerley made an argument similar to that made by NEMF and Mr. Shevell regarding the economic contribution of the facility to the area economy. Indeed, Umerley had the added argument that his company did a substantial amount of hauling directly for the Baltimore County government. Judge Bishop

pointed out, however, that the County Council had taken into consideration the economic significance of the industry, along with other factors, in establishing legal standards. Where the law required a special exception or a variance, the facility must comply with the law.

Umerley recognized, in addition, the importance of the BCZR 410.2 location standard. The thrust of Judge Bishop's opinion is to respect the intent of the County Council to protect nearby residential areas. This intent is relevant not only to direct application of the location standard under BCZR 410.1, but also to its implementation as an essential element of the public safety, health and welfare and spirit and intent of the zoning law criteria under BCZR 502.1.

This section of the argument has focused so far on the testimony of Messrs. Martin and Dillon, the two main expert planning witnesses. It will conclude with a brief discussion of the specific testimony from George Harman, Timothy Buckley and George Spano regarding noise impact, and the testimony of Buckley regarding air pollution impact.

Harman, who supervises the noise control program for MDE, provided specific information on noise levels generated by diesel trucks at various distances and matched them against state regulations. GBA Exh. 1-4 This includes periodic noises ("spikes" in colloquial language). His findings, while involving different trucks at various sites, raised the inference that NEMF diesel trucks would generate decibel levels in excess of state limits at the residential property line, especially at night (55 dba) and for periodic events (50 dba at night), such as the startup of engines and the release of air brakes. This inference is particularly strong when considered in conjunction with Dillon's personal observation and the observation of neighbors regarding the existing operation. Dr. Buckley performed a study at the site, which further corroborated these observations. GBA Exh. 6a-g. George Spano, a consultant for NEMF, disputed these findings. His report concluded that there would be no violation of state limits, at

the same time recommending mitigation measures for the southern part of the site. NEMF Exh. 15. Spano's findings are dubious for several reasons. His data was for just one 24-hour period, a limited database. He relied on arithmetic averages of noise levels to find that the site complies with state regulations. A close look at this data revealed, on cross-examination, that on many occasions, both day and night, particular noise levels for ten-minute intervals substantially exceeded state limits, with many reported levels over 60 and even 70dba. Spano also admitted that noise impact is ultimately defined subjectively, that he did not do a noise survey of the community or met with residents, and that the noise impact on a residential area would be less if the facility were located far from any residences. In sum, the noise impact testimony collectively demonstrates that the impact will be greater at this location than at other locations. It also shows that there are and will likely be more incidents where state limits are exceeded.

Separately, Professor Buckley, one of the best qualified experts on air pollution ever to appear at the CBA, gave convincing testimony that the fumes from the diesel trucks would pose a particular health hazard at this location, given the nature of the fumes, the proximity, and frequent prevailing air currents directed toward Bloomfield. There was also testimony from neighbors regarding the impact of the fumes.

Conclusion

To paraphrase the poet, how do we deny NEMF's expansion proposal, let us count the ways. To start with, there was a nonconforming Wilson Freight facility which terminated by discontinuity time and again. But even if the facility had operated continuously until NEMF took over, it would not make any difference to the ultimate legal conclusion here. Whatever we call the existing facility (nonconforming, conforming, terminated, revived, new), the expansion or new plan must comply with BCZR 410.2 location standards, and it does not by a long shot. The

CBA must reject NEMF's persistent protests that it can legally avoid and circumvent this fundamental requirement. Even if the location standard did not apply, the special exception would fail. NEMF's presentation failed to meet the affirmative burden of proof under Schultz v. Pritts. There is more. Martin's presentation proved the opposite. There is no facility, existing, expanded, or new, which has the location, size, and scope to produce such severe adverse effects on a residential area. Even if GBA had not produced any evidence, the NEMF petition would fail. Meanwhile, GBA produced overwhelming evidence to disprove NEMF's case. Indeed, in view of the history of the discontinuity of the old facility, the record indicates that the right to operate actually terminated years ago. In that sense, this case is analogous to Umerley, where the appellate court found that the existing facility had forfeited its right to continue operations.

For all of the reasons given in this memorandum, the NEMF petition for special hearing must be denied in totality as a matter of law. The GBA petition must be granted. The CBA must not allow expansion of the NEMF facility under any circumstances.

The CBA should also declare that the 1982 approval of the WFFC facility terminated by discontinuity. There is, therefore, no longer a valid trucking facility use at the site. The CBA should not hesitate, on this record, to make the factual finding of discontinuity and legal conclusion of termination.

Postscript: Maryland vs. Virginia

Let us not overlook NEMF Chairman Shevell's statement at the outset of the proceedings that NEMF will move its operation to Virginia if it does not get its way with this expansion. The main thing to keep in mind is that this statement has no legal relevance to the special exception or location standards.

It often occurs in our national economy that businesses play one state or locality against another. Whether it involves tax relief, permit approval, or zoning, captains of industry frequently assert that they will move businesses elsewhere if not satisfied. Whether this is done as a bluff, a threat, a warning, or just friendly advice, it has the potential to intimidate local officials. It also usually triggers support from local agencies devoted to business development. See NEMF Exh. 19. It also often occurs without concern for neighborhoods affected adversely. It is illustrative that Chairman Shevell never met with any citizens from Bloomfield and either disregarded or dismissed their concerns as trivial.

Mr. Shevell stressed the importance of trucking to the national economy. This civics lesson was not necessary. We are all aware of the thundering herd of trucks on our highways and the reality that they must stop, load, unload, and park at facilities in the several states. The County Council was aware of that when Bill 18-76 passed. It also found it necessary and appropriate to place strong controls on their location. The Court of Special Appeals recognized this in the Umerley case.

When we think of Maryland vs. Virginia, we usually think of College Park and Charlottesville, the Terrapins and the Cavaliers. The game here has a different dimension. If the CBA's denial of NEMF's petition on legal grounds causes NEMF to move to Virginia, then consider the consequences. The law prevails, the Bloomfield neighborhood improves its quality of life, the CBA sends a message that the law respects our neighborhoods and citizens, NEMF must forego its new plans here but gets to place a new facility elsewhere, whether or not Virginia. NEMF will also learn a constructive and valuable lesson that it needs to pay more attention to the local communities where it does business. Maybe, if it looks hard enough, NEMF can find a more suitable location in Baltimore County.

If, on the other hand, the CBA grants NEMF's wishes, then the law becomes a paper tiger, Bloomfield is put in great jeopardy and perhaps on the road to perdition, the message sent is that the law does not care about our neighborhoods, and NEMF gets to gratify its business plans and desires.

The Supreme Court wrote in Village of Euclid v. Ambler Realty Co. 272 U.S. 365, 388 (1926), the landmark decision upholding the constitutionality of zoning to protect residential areas:

> "Thus the question whether the power exists to forbid the erection of a building of a particular kind or for a particular use, like the question whether the particular thing is a nuisance, is to be determined, not by an abstract consideration of the building or the thing considered apart, but by considering it in connection with the circumstances and the locality. ... A nuisance may be merely the right thing in the wrong place, like a pig in the parlor instead of the barnyard. If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control."

Baltimore County has made a legislative judgment to control the location of trucking facilities. When NEMF says it will leave for Virginia if not satisfied, a control issue comes into view. Will NEMF control Baltimore County, or does Baltimore County law control NEMF? The right thing to do is obvious.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio /kmw

CAROLE S. DEMILIO
Deputy People's Counsel
400 Washington Avenue
Towson, MD 21204
410-887-2188

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2005, a copy of the People Counsel's for Baltimore County's Hearing Memorandum was mailed first-class, postage pre-paid to J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmont Avenue, Towson, MD 21286, Nancy West, Esquire, Office of Law, 400 Washington Avenue, 2nd Floor, Towson, MD 21204 and G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

10/19/04

IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION, and VARIANCE N/S Georgetown, SW of Bloomfield Rd 3600 Georgetown Road 13th Election District 1st Councilmanic District	* BEFORE THE * COUNTY BOARD OF APPEALS * OF * BALTIMORE COUNTY
Florence Weiner, Owner 3600 Georgetown Corp., Lessees	* Zoning Commissioner Case Nos. 04-160-SPH and 04-294-SPHX

* * * * * * * * * * *

ENTRY OF APPEARANCE

Please enter the appearance of G. Scott Barhight, Jennifer R. Busse and Whiteford, Taylor & Preston L.L.P., on behalf of 3600 Georgetown Corp. in the above referenced matters.

G. Scott Barhight
Jennifer R. Busse
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of October, 2004, a copy of the foregoing Entry of Appearance was mailed to:

J. Carroll Holzer, Esquire
Holzer & Lee
The 508 Building
508 Fairmount Avenue
Towson, MD 21286

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

G. Scott Barhight

G. Scott Barhight

318738

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015
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SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

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

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

JENNIFER R. BUSSE
DIRECT NUMBER
410 832-2077
jbusse@wtplaw.com

October 19, 2004

RECEIVED
OCT 20 2004
BALTIMORE COUNTY
BOARD OF APPEALS

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

Re: 3600 Georgetown Corp. - New England Motor Freight
Case Nos. 04-294-SPHX and 04-160-SPH

Dear Ms. Bianco:

Enclosed for filing in the above-referenced matter, please find 3600 Georgetown Corp.'s Entry of Appearance.

If you have any questions, please feel free to contact me.

Sincerely,

Jennifer R. Busse

JRB:sll
Enclosure
cc: Peter M. Zimmerman, Esquire
J. Carroll Holzer, Esquire
New England Motor Freight

318740

10/13/04

IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION, AND VARIANCE	*	BEFORE THE
N/S Georgetown Road, SW of Bloomfield Road	*	ZONING COMMISSIONER
3600 Georgetown Road	*	OF BALTIMORE COUNTY
13th Election District		
1st Councilmanic District	*	Case Nos. 04-294-SPHX & 04-160-SPH
Florence Weiner, Owner	*	
3600 Georgetown Corp., Lessees		
Petitioners: Tom Mauk, Catherine Scarborough, Anna Wood, Lorna Rudnikas and Greater Bloomfield Community Association	*	

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

NOTICE OF APPEAL

Greater Bloomfield Community Association through Lorna Rudnikas, President, 1727 Hall Avenue, Baltimore, MD 21227, and individuals Lorna Rudnikas, Tom Mauk, 1702 Hall Ave., Catherine Scarborough, 3440 Georgetown Rd.; and Anna Wood, 3500 Georgetown Rd. all of Baltimore, MD 21227, Appellants in the above captioned case, by and through their attorney, J. Carroll Holzer and Holzer and Lee, feeling aggrieved by the decision of the Zoning Commissioner in the above captioned cases, hereby note an appeal to the County Board of Appeals from Findings of Fact and Conclusions of Law of the Zoning Commissioner of Baltimore County dated September 28, 2004 and attached hereto, and incorporated herein as **Exhibit #1**.

Filed concurrently with this Notice of Appeal is Appellants' check made payable to Baltimore County to cover the costs of the appeal. Appellants were parties below and fully participated in the proceedings.

RECEIVED

OCT 13 2004

Per. klm

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

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

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of October, 2004, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Ave., Towson, MD 21204; County Board of Appeals, Basement Old Court House, 400 Washington Ave., Towson, MD 21204; and People's Counsel for Baltimore County, Basement, Old Courthouse, 400 Washington Ave., Towson, MD 21204.

J. CARROLL HOLZER, Esquire

C:\My Docs\Notices 2004\Rudnikas October 11, 2004

IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE - N/S Georgetown Road, 629.36' SW of Bloomfield Road
(3600 Georgetown Road)
13th Election District – 1st Council District

Florence Weiner, Owner,
3600 Georgetown Corp., Lessees
Petitioners, Case No. 04-294-SPHX; and
Tom Mauk, Catherine Scarborough,
Anna Wood, & Greater Bloomfield Comm. Assoc.
Petitioners, Case No. 04-160-SPH

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Cases Nos. 04-294-SPHX & 04-160-SPH

Exhibit #1

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above matters come before the undersigned Zoning Commissioner on cross Petitions relating to the property known as 3600 Georgetown Road. In Case No. 04-160-SPH, a Petition for Special Hearing was filed by the Greater Bloomfield Community Association and certain individuals as noted above, through their attorney, J. Carroll Holzer, Esquire, relative to the existing trucking facility operated by 3600 Georgetown Corporation, also known as New England Motor Freight (NEMF) Company. In that case, the Petitioners raise a series of issues as more particularly identified in the Petition for Special Hearing and relate to whether the existing operation is a proper use of the subject property, in accordance with prior zoning approvals and whether a proposed expansion is appropriate.

In companion Case No. 04-294-SPHX, Petitions for Special Hearing and Special Exception were filed by the property owner, Florence Weiner, and the Contract Lessees, 3600 Georgetown Corporation, through their attorneys, G. Scott Barhight, Esquire, and Jennifer R. Busse. In that case, the Petitioners seek approval of an amendment to the special exception relief granted in prior Case No. 98-260-SPHX and to permit the expansion and/or amendment to the previously approved special exception for a Class I Trucking Facility in accordance with the site plan submitted herein. In addition, special hearing relief is requested for a determination that the

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

October 12, 2004

Timothy Kotroco, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Hand-delivered

Re: PETITION FOR SPECIAL HEARING & EXCEPTION
NW/side Georgetown Road, 100' NE Hall Avenue
(3600 Georgetown Road)
13th Election District; 1st Council District
Florence Weinger & 3600 Georgetown Corporation,
Owner/Petitioners, Case 04-294-SPHX,
Tom Mauk, Catherine Scarborough, Anna Wood, and the Greater
Bloomfield Community Association.- Petitioners, 04-160-SPH
Case No.: 04-160-SPH & 04-294-SPHX

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated September 29, 2004 by the Baltimore County Zoning Commissioner in the above-entitled case

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

RECEIVED
OCT 12 2004
Per

Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio/rmw
Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: G. Scott Barhight, Esquire
J. Carroll Holzer, Esquire
Lorna Rudnikas, President, Greater Bloomfield Ass'n
Messrs. David L. Martin & Rick Chadset, G.W. Stephens

9/28/04

IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE - N/S Georgetown Road, 629.36' SW of Bloomfield Road	*	BEFORE THE
(3600 Georgetown Road) 13th Election District – 1st Council District	*	ZONING COMMISSIONER
	*	OF BALTIMORE COUNTY
	*	Cases Nos. 04-294-SPHX & 04-160-SPH
Florence Weiner, Owner, 3600 Georgetown Corp., Lessees Petitioners, Case No. 04-294-SPHX; and	*	
Tom Mauk, Catherine Scarborough, Anna Wood, & Greater Bloomfield Comm. Assoc. Petitioners, Case No. 04-160-SPH	*	

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above matters come before the undersigned Zoning Commissioner on cross Petitions relating to the property known as 3600 Georgetown Road. In Case No. 04-160-SPH, a Petition for Special Hearing was filed by the Greater Bloomfield Community Association and certain individuals as noted above, through their attorney, J. Carroll Holzer, Esquire, relative to the existing trucking facility operated by 3600 Georgetown Corporation, also known as New England Motor Freight (NEMF) Company. In that case, the Petitioners raise a series of issues as more particularly identified in the Petition for Special Hearing and relate to whether the existing operation is a proper use of the subject property, in accordance with prior zoning approvals and whether a proposed expansion is appropriate.

In companion Case No. 04-294-SPHX, Petitions for Special Hearing and Special Exception were filed by the property owner, Florence Weiner, and the Contract Lessees, 3600 Georgetown Corporation, through their attorneys, G. Scott Barhight, Esquire, and Jennifer R. Busse. In that case, the Petitioners seek approval of an amendment to the special exception relief granted in prior Case No. 98-260-SPHX and to permit the expansion and/or amendment to the previously approved special exception for a Class I Trucking Facility in accordance with the site plan submitted herein. In addition, special hearing relief is requested for a determination that the

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Date 9/28/04
By

prior plan approved in Case No. 98-260-SPHX was utilized and vested, and to amend portions of that plan to reflect the proposed expansion. The relief requested in these competing Petitions is more fully described in the attachments thereto, which are incorporated herein, and on the site plan submitted with the Petitions filed by the property owner and marked as Petitioner's Exhibit 1.

By way of background, the Petition filed by the opponents/neighbors (Case No. 04-160-SPH) was filed with Baltimore County's Department of Permits and Development Management on September 29, 2003. The Petitions filed by the property owner (Case No. 04-294-SPHX) were subsequently filed on December 18, 2003. A public hearing on Case No. 04-160-SPH was initially scheduled for November 2003; however, was continued and both cases consolidated for public hearing. Initially, the matters were scheduled for a hearing on February 25, 2004. Apparently, negotiations between the respective parties had been ongoing so that several hearing dates were postponed and the matter continued. The record of the case will show continuances granted from previously scheduled hearing dates of February 25, 2004, May 5, 2004 and June 3, 2004. Ultimately, the matters were scheduled for public hearing on September 7, 2004. Appearing at that time were G. Scott Barhight, Esquire, attorney for the Property Owner, and David Martin and James Markle from G. W. Stephens, Jr. and Associates, Inc., the consultants who prepared the site plan for this property on behalf of the Owners. Appearing on behalf of the neighbors/opponents were Lorna Rudnikas, President of the Greater Bloomfield Community Association, and Darlene Bird. Although the matter was originally scheduled for five full days of testimony, the hearing was completed in its entirety on September 7, 2004. It is also to be noted that J. Carroll Holzer, Esquire, who had entered his appearance as attorney for the Protestants/Neighbors sought leave to not appear and participate at the hearing. His request was granted and although he remains attorney of record, the matter proceeded without his participation.

At the hearing on September 7, 2004, Counsel for the Petitioners informally amended the Petition by removing Florence Weiner as co-Petitioner/Property owner. Apparently, 3600 Georgetown Corporation, the corporate identity of NEMF for this property, has acquired the property from Ms. Weiner.

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Testimony was offered by Ms. Lorna Rudnikus on behalf of the Greater Bloomfield Community Association. She indicated that her association is opposed to portions of the existing operation and any expansion of the facility. She generally described the residential community of Greater Bloomfield, which exists primarily to the south of the subject property. Apparently, this is an older and established community and many residents have resided in this area for many years. Ms. Rudnikas expressed a variety of concerns regarding NEMF Company's existing and proposed operation. These concerns ranged from fears regarding additional truck traffic, noise and dust, to the possibility of increased storm water runoff from the site into the residential neighborhood given the potential increase in impervious area. It was also opined that the spirit and intent of the regulations was not being followed by the property owner and specifically, the requirements of Bill #18-76 which regulates trucking facilities in Baltimore County. In sum, the record of this case fully contains the concerns expressed by Ms. Rudnikus. These concerns are also more clearly shown in a packet of information collectively marked as Exhibits 1 through 7. These exhibits include photographs of the site and other documentation related to the neighbors' opposition.

NEMF Company also presented testimony and evidence. Testimony was received from David Martin a Registered Landscape Architect who prepared the plan. Mr. Martin described the subject property in some detail. Previously, the property was zoned M.L.R.-I.M.; however, is currently zoned M.L. The property is located in southwest Baltimore County adjacent to the Baltimore City line and indeed, a portion of the site is located in the City. That portion of the property located in the City includes the point of access to the site from Joh Avenue as well as areas of parking and a portion of an existing terminal building. The total acreage of the property is 17.5133 acres. There are 3.5 acres of the site located in Baltimore City and approximately 14 acres in Baltimore County. The property is actually comprised of two parcels, an original parcel owned by the NEMF Company for a number of years as well as the property acquired from Ms. Weiner. The Weiner property is approximately 8 acres in area and is located on the west side of the site.

NEMF proposes an extensive redevelopment of this site. The existing terminal building will be razed and a new office building and terminal constructed in its place. Additionally, an

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By

existing repair shop building will be removed and a new structure erected to take its place. The existing means of access to the site from Joh Avenue will be retained; however, additional pervious areas for parking will be constructed. The details of the proposed improvements are more particularly shown on the site plan. The proposed expansion is of particular note as it relates to the storm water runoff concerns expressed by Ms. Rudnikas. In this regard, the property has been used as a trucking facility since approximately 1961. Obviously, this is an older site and when the property was originally developed, there were no storm water management regulations in place. However, Baltimore County's Department of Environmental Protection and Resource Management currently imposes significant regulation as it relates to storm water management. Essentially, the intent of the regulations is to assure water quality and quantity control and to provide that downstream properties will not be flooded from storm water runoff. In this regard, the proposed renovation of the site will result in the installation of storm water management over a previously unmanaged property. A water control area is proposed on the west side of the property. Additionally, inlets will be installed throughout the parking lot to gather and transport water to the facility. It appears that these improvements may actually benefit the adjacent residential community. That is, whereas at the present time, storm water flows from the property freely and unmanaged, it will hereinafter be collected and diverted to the water quality control area to be released at a controlled rate.

Mr. Martin also testified extensively about the other proposed improvements to the site. The details of his testimony are contained within the record of the case. He opined that all of the new facilities and proposed redevelopment of the site complies with Section 410 of the B.C.Z.R. That Section regulates the operation of trucking facilities in Baltimore County. He also opined that the proposal meets the special exception requirements of Section 502.1 of the B.C.Z.R. In this regard, it is must be observed that the property has been used as trucking facility for in excess of 40 years. This is not the case where a new use is being introduced to a residential area. Rather, although the Greater Bloomfield community is immediately south of the site, this is generally a highly industrial/manufacturing area of Baltimore County. The site enjoys excellent access to

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By

major roads in the area, including I-95 and the Baltimore Beltway (I-695). Thus, the neighbors cannot claim to be unaware of the existing trucking facility and its inherent impacts. It has no doubt been at this location longer than many of the residents who own houses have lived there, albeit a fact that there are several long-time residents of the community.

Testimony was also offered from James Markle, a Professional Engineer with G, W. Stephens, Jr. and Associates, Inc. Mr. Markle fully described in technical detail the storm water management proposal outlined above.

Trucking facilities are inherently not favored land uses insofar as residential communities. They produce such inherent effects/impacts as noise, dust, traffic, etc. Nonetheless, they are a needed and legal land use and permitted in Baltimore County.

Based upon the testimony and evidence offered and the totality of the circumstances as they exist in this case, I am persuaded to grant the property owner's Petition and permit the proposed expansion/renovation of the site as more particularly shown on Petitioner's Exhibit 1. In my judgment this renovation will actually improve site conditions and I believe may actually benefit the adjacent residential homes. As noted above, the existing downstream flooding may very will be mitigated by the proposed improvements. Additionally, the site plan shows a system of proposed landscaping other than the natural buffer that exists at the present time. This landscaping, including a retaining wall and fencing will serve to increase security and may also mitigate the inherent impacts of the operation. For these reasons I will grant the Petition for Special Exception and Special Hearing filed by the owners of the property and will deny the Petitions filed by the Protestants.

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 in the Petitions for Special Hearing and Special Exception filed in Case No. 04-294-SPHX shall be granted and the Petitions for Special Hearing filed in Case No. 04-160-SPH denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 28th day of September 2004 that the Petition for Special Hearing seeking approval of an

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Date 9/28/04
By

amendment to the special exception relief granted in Case No. 98-260-SPHX; and approval to permit the expansion and/or amendment to the previously approved special exception for a Class I Trucking Facility, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the plan approved in prior Case No. 98-260-SPHX was utilized and vested, and to amend portions of that plan to reflect the proposed expansion, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Hearing filed by the Greater Bloomfield Community Association and certain individuals in Case No. 04-160-SPH, seeking a resolution of a series of issues and a determination that the existing operation is a proper use of the subject property, in accordance with prior zoning approvals and whether a proposed expansion is appropriate, be and is hereby DENIED.

Any appeal of this decision must be entered within thirty (30) days of the date hereof.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 12/8/04
By BJS

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 3600 Georgetown Road

which is presently zoned ML

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

SEE ATTACHED

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

N/A
Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

G. Scott Barhight/Jennifer R. Busse
Name - Type or Print

Signature

Whiteford, Taylor & Preston (410) 832-2077
Company

210 W. Pennsylvania Ave, 4th Floor
Address Telephone No.

Towson, MD 21204
City State Zip Code

Legal Owner(s):

3600 Georgetown Corp.
Name - Type or Print

Signature

Myron P. Shevell
Name - Type or Print

Signature

1-71 North Avenue, E (410) 832-2077
Address Telephone No.

Elizabeth, NJ 07201
City State Zip Code

Representative to be Contacted:

Jennifer R. Busse
Name

210 W. Pennsylvania Ave (410) 832-2077
Address Telephone No.

Towson, MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By CTM Date 12/18/03

ORDER RECEIVED FOR FILING
Date 12/23/03
By

Case No. 04-294-SPHX

REV 9/15/98

Attachment to Petition for Special Hearing

1. To determine whether the Plan approved in Case No. 98-260-SPHX was utilized and therefore vested;

2. To determine whether the existing use of the site as a Class I Trucking Facility has been utilized and is therefore vested; and

3. To amend a previously approved car parking compound in Baltimore City as supporting a Baltimore County trucking facility and, further, to recognize that the subject car parking compound as fulfilling the requirements of BCZR §409.6.3 providing the parking requirements for a trucking facility in Baltimore County.

ORDER RECEIVED FOR FILING
Date 9/23/14
By

#294

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

September 29, 2004

Sept 28, 2004

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

RE: PETITIONS FOR SPECIAL HEARING & SPECIAL EXCEPTION
(3600 Georgetown Road)
13th Election District – 1st Council District
Florence Weiner & 3600 Georgetown Corporation, Owners/Petitioners, Case 04-294-SPHX
Tom Mauk, Catherine Scarborough, Anna Wood, and the Greater Bloomfield Comm. Assoc., Petitioners, Case No. 04-160-SPH

Dear Mr. Barhight & Ms. Busse:

Enclosed please find a copy of the decision rendered in the above-captioned matters. The Petitions for Special Hearing and Special Exception filed in Case No. 04-294-SPHX have been granted and the Petition for Special Hearing filed in Case No. 04-160-SPH denied, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the 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. Marvin H. Weiner, 2000 N. Ocean Blvd., #706, Boca Raton, FL 33431
Mr. Myron P. Shevell, 3600 Georgetown Corp., I-71 North Avenue East, Elizabeth, NJ 07210
Messrs. David L. Martin & Rick Chadsey, G. W. Stephens, Jr. & Assoc., Inc.
1020 Cromwell Bridge Road, Towson, MD 21286
Mr. Robert F. Walker, 141 E. 26th Street, Erie, PA 16504
Ms. Lorna D. Rudnikas, President, Greater Bloomfield Comm. Assoc.
1727 Hall Avenue, Baltimore, MD 21227
Mr. Tom Mauk, 1702 Hall Avenue, Baltimore, MD 21227
Ms. Catherine Scarborough, 3440 Georgetown Road, Baltimore, MD 21227
Ms. Anna Woods, 3500 Georgetown Road, Baltimore, MD 21227
J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Md. 21286
People's Counsel; Case File

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

September 29, 2004

Order dated 9/28/04

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

RE: PETITIONS FOR SPECIAL HEARING & SPECIAL EXCEPTION
(3600 Georgetown Road)
13th Election District – 1st Council District
Florence Weiner & 3600 Georgetown Corporation, Owners/Petitioners, Case 04-294-SPHX
Tom Mauk, Catherine Scarborough, Anna Wood, and the Greater Bloomfield Comm. Assoc., Petitioners, Case No. 04-160-SPH

Dear Mr. Barhight & Ms. Busse:

Enclosed please find a copy of the decision rendered in the above-captioned matters. The Petitions for Special Hearing and Special Exception filed in Case No. 04-294-SPHX have been granted and the Petition for Special Hearing filed in Case No. 04-160-SPH denied, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the 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. Marvin H. Weiner, 2000 N. Ocean Blvd., #706, Boca Raton, FL 33431
Mr. Myron P. Shevell, 3600 Georgetown Corp., I-71 North Avenue East, Elizabeth, NJ 07210
Messrs. David L. Martin & Rick Chadsey, G. W. Stephens, Jr. & Assoc., Inc.
1020 Cromwell Bridge Road, Towson, MD 21286
Mr. Robert F. Walker, 141 E. 26th Street, Erie, PA 16504
Ms. Lorna D. Rudnikas, President, Greater Bloomfield Comm. Assoc.
1727 Hall Avenue, Baltimore, MD 21227
Mr. Tom Mauk, 1702 Hall Avenue, Baltimore, MD 21227
Ms. Catherine Scarborough, 3440 Georgetown Road, Baltimore, MD 21227
Ms. Anna Woods, 3500 Georgetown Road, Baltimore, MD 21227
J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Md. 21286
People's Counsel; Case File

6-6-1

12/11/95

(3)

Re-insp.
12/8/95
No evidence
of C.O's found
on the premises
case closed

PETITIONS / ASSIGNMENTS / COMMENTS / CORRESPONDENCE

20040160 "A"
supplemental
&
20040294 "A"
supplemental

(3)

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 3600 Georgetown Rd.

which is presently zoned ML

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

(See Attachment)

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.

Petitioners:

(See attached signature page)
Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

J. CARROLL HOLZER
Name - Type or Print

Signature

J. Carroll Holzer, P.A.
508 Fairmount Ave.
Towson, MD 21286
410-825-6961
Telephone No.

City State Zip Code

Legal Owner(s):

3600 Georgetown Corp.
Name - Type or Print

Signature

Name - Type or Print

Signature

3600 Georgetown Rd. 410-247-1886
Address Telephone No.

Baltimore MD 21227
City State Zip Code

Representative to be Contacted:

Name

Address Telephone No.

City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1 DAY

UNAVAILABLE FOR HEARING —

Reviewed By JL Date 9/29/03

Case No. 04-160-SPH

ORDER RECEIVED FOR FILING
Date 9/29/03
By B

Attachment 1
PETITION FOR SPECIAL HEARING

PETITION OF GREATER BLOOMFIELD COMMUNITY ASSOCIATION, INC.

SPECIAL HEARING:

1. To determine whether New England Motor Freight (NEMF) Company known as "3600 Georgetown Corporation" located at 3600 Georgetown Road, Baltimore County, is lawfully utilizing that portion of their property located in the S/W portion of the site identified on the plan submitted to DEPRM to which Petitioners have been denied the right to copy from the DEPRM files plans for the construction of an underground SWM facility with possible truck parking to be located thereon in violation of the B.C.Z.R. and prior cases.

2. To determine whether the sites prior zoning history and the B.C.Z.R. would prohibit the issuance of Permit #B511616.

3. Whether NEMF lost any claim as a non-conforming use. [See Site Plan for 1981, Exhibits 1 and 2].

4. Has the NEMF lost its right to exist on the subject site since its Special Exception in 1998 expired; and its Special Exception in 2000 was withdrawn?

5. Is any expansion beyond that of the non-conforming use shown on Exhibit 1 permitted by the B.C.Z.R. and to what extent?

6. Should NEMF be required to comply with the 300'minimum setback from the property line per Bill 18-76.

For Additional Information Contact:

J. Carroll Holzer, PA
Holzer and Lee
508 Fairmount Ave.
Towson, MD 21286

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

ORDER RECEIVED FOR FILING
Date 7/29/14
By

C:\Petitions\petition for special hearing NEMF

PETITION FOR SPECIAL HEARING

SIGNATURE PAGE

1.

Name: Tom Mauk
Address: 1702 Hall Avenue
Baltimore, Maryland 21227 Phone # 410-242-0602

Tom Mauk
Signature

2.

Name: Catherine Scarborough
Address: 3440 Georgetown Road
Baltimore, Maryland 21227 Phone # 410-242-9353

Catherine Scarborough
Signature

3.

Name: Anna Woods a.w.
Address: 3500 Georgetown Road
Baltimore, Maryland 21227 Phone # 410-242-4918

Anna Woods
Signature

4.

Name: Greater Bloomfield Community Association by President
Lorna D. Rudnikas
Address: 1727 Hall Avenue
Baltimore, Maryland 21227 Phone # 410-247-9639

Lorna D. Rudnikas 8/31/03
Signature

FROM THE OFFICE OF

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CONSULTING ENGINEERS • LAND PLANNERS • LAND SURVEYORS
1020 CROMWELL BRIDGE ROAD • TOWSON, MARYLAND 21286-3396

Zoning Description
June 26, 2001

Description to accompany a Special Exception & Special Hearing to Amend an Approved Trucking Facilities Plan
3600 Georgetown Road
Baltimore County, Maryland
Election District 13, Councilmanic District 1
Tax Map 102 – Parts of Parcels 121 & 115

Beginning at a point located at the centerline intersections of Hopkins Avenue 30 feet wide and Rittenhouse Avenue 40 feet wide at the said intersection, thence N 44 degrees 33' minutes 01 seconds W to a Point of Beginning located on the south eastern property line and the Baltimore City municipal boundary, thence the following property courses:

S 38 degrees 29 minutes 38 seconds W, 131.45 feet, thence S 33 degrees 56 minutes 55 seconds W, 292.03 feet, thence N 52 degrees 57 minutes 28 seconds W, 124.98 feet, thence S 34 degrees 02 minutes 32 seconds W, 100.21 feet, thence N 52 degrees, 56 minutes 45" W, 76.02, thence N 08 degrees 18 minutes 02 seconds E, 71.36 feet, thence N 45 degrees 35' minutes 15 seconds W, 323.88 feet, thence S 76 degrees 58 minutes 07 seconds E, 187.72 feet, thence S 13 degrees 01 minutes 53 seconds E, 64.95 feet, to a curve having a radius of 200 feet with a chord of S 14 degrees 00 minutes 53 seconds W, 124.26 feet, thence S 14 degrees 33 minutes 06 seconds W, 73.07 feet, thence S 37 degrees 04 minutes 22 seconds W, 96.20 feet, thence N 45 degrees 21 minutes 30 seconds W, 614.33 feet, thencë N 76 degrees 58 minutes 07 seconds E, 948.20 feet, thence S 60 degrees 54 minutes 40 seconds E, 538.06 feet, concurrent with the Baltimore County / Baltimore City municipal boundary, back to the point of beginning.

Containing 10.25 acres (446,490) square feet of land more or less, located in Baltimore County, Maryland

STATE OF MARYLAND
DAVID LLOYD MARTIN
LANDSCAPE ARCHITECT

5-44

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

410-825-8120 • FAX 410-583-0288
gwstowson@erols.com

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at W of 3600 Georgetown Rd ~~Parcel 115, Sulphur Spring Road~~

which is presently zoned ML

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

SEE ATTACHED

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

3600 Georgetown Corp.
Name - Type or Print

Signature Myron P. Shevell
1-71 North Avenue East
Address Telephone No.
Elizabeth, NJ 07210
City State Zip Code

Attorney For Petitioner:

G. Scott Barnight & Jennifer R. Busse
Name - Type or Print

Signature
Whiteford, Taylor & Preston
Company
210 West Pennsylvania Ave. (410) 832-2000
Address Telephone No.
Towson, MD 21204
City State Zip Code

Legal Owner(s):

Florence Weiner
Name - Type or Print

Signature
Marvin H. Weiner
Name - Type or Print
Attorney-in-Fact

Signature
2000 N. Ocean Blvd., #706
Address Telephone No.
Boca Raton, FL 33431
City State Zip Code

Representative to be Contacted:

Jennifer R. Busse
Name
210 W. Pennsylvania Ave. (410) 832-2000
Address Telephone No.
Towson, MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____
UNAVAILABLE FOR HEARING _____
Reviewed By CTM Date 12/18/03

Case No. 04-294-SPHX

REV 09/15/98

ORDER RECEIVED FOR FILING
Date
By

Attachment to Petition for Special Exception

1. To amend the Special Exception Plan approved in Case No. 98-260-SPHX; and

2. To expand the existing Special Exception for a Class I Trucking Facility in accordance with the attached Plan to Accompany Petition for Special Exception and Special Hearing.

3. In the alternative, Special Exception to amend a previously approved Class I Trucking Facility Plan.

ORDER RECEIVED FOR FILING
Date 9/29/14
By

04-294-SPHX

Zoning Description
November 17, 1998
Re-Described December 9, 2003

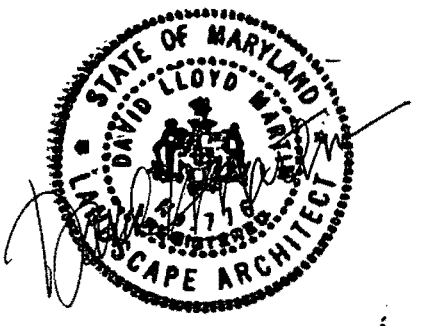
Description to accompany a Special Exception & Special Hearing to Amend an Approved Trucking Facilities Plan
3600 Georgetown Road
Baltimore County, Maryland
Election District 13, Councilmanic District 1
Tax Map 102 – Parcel 121

Beginning at a point located at the centerline intersections of Joh Avenue, 80' wide, and Bloomfield Road, 50' wide at the said intersection, thence S 32 degrees 39' minutes 43 seconds W to a Point of Beginning at the intersection of the right of way of Old Georgetown Road and the Baltimore City municipal boundary, thence the following property courses:

S 38 degrees 49 minutes 10 seconds W, 133.21 feet, thence S 34 degrees 19 minutes 10 seconds W, 292.04 feet, thence N 32 degrees 40 minutes 50 seconds W, 125.00 feet, thence S 34 degrees 19 minutes 10 seconds W, 51.60 feet, thence N 45 degrees, 09 minutes 57" E, 687.67, thence N 77 degrees 14 minutes 59 seconds E, 411.24 feet, thence S 60 degrees 20' minutes 24 seconds E, 533.07 feet, concurrent with the Baltimore County / Baltimore City municipal boundary, back to the point of beginning.

Containing 6.25 acres (272,250) square feet of land more or less, located in Baltimore County, Maryland

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



#1294

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: #04-160-SPH
3600 Georgetown Road
N/west side Georgetown Road, 100 feet northeast of Hall Avenue
13th Election District – 1st Councilmanic District
Legal Owner(s): Georgetown Road

Special Hearing(s): to determine whether New England Motor Freight is lawfully utilizing the southwest portion of the site identified on the plan for the construction of any undergoing SWM facility with possible truck parking to be in violation of the B.C.Z.R. and prior cases. To determine whether the site prior zoning history and the B.C.Z.R. would prohibit the issuance of Permit B511616. Whether NEMF lost any claim history as a non-conforming use. Has the NEMF lost its right to exit on the subject site? Is any expansion beyond that of the non-conforming use and to what extent? Should NEMF be required to comply with the minimum setback from the property line?

Hearing(s): Wednesday, December 10, 2003 at 9:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake 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 11/802 Nov. 25 C638581

CERTIFICATE OF PUBLICATION

11/25/, 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 11/25/, 2003.

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

S. Wilkinson

LEGAL ADVERTISING

Gerhold, Cross & Etzel, Ltd.
Registered Professional Land Surveyors • Established 1906
Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

CERTIFICATE OF POSTING

RE: CASE NO. 04-160-SPH
PETITIONER/DEVELOPER:
Georgetown Road
DATE OF HEARING:
December 10, 2003

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVE.
TOWSON, MARYLAND 21204

ATTENTION: REBECCA HART

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

LOCATION:
3600 Georgetown Road
N/west side Of Georgetown Road
100 feet northeast of Hall Avenue



POSTED ON: November 20, 2003

DATE:
November 24, 2003

SIGNATURE OF SIGN POSTER

BRUCE DOAK

GERHOLD, CROSS & ETZEL, LTD
SUITE 100
320EAST TOWSONTOWN BLVD
TOWSON, MARYLAND 21286
410-823-4470 PHONE
410-823-4473 FAX

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: #04-294-SPHX
3600 Georgetown Road
Centerline Hopkins and Rittenhouse
13th Election District – 1st Councilmanic District
Legal Owner(s): Florence and Marvin Weiner, Atty.

Special Exception: to amend the Special Exception Plan approved in Case No. 98-260-SPHX. To expand the existing Special Exception for a Class I Trucking Facility in accordance with the attached plan to accompany petition for Special Exception and Special Hearing. To permit the alternative Special Exception to amend previously approved Class I Trucking Facility Plan (Parcel 121 & 115). **Special Hearing:** to determine whether the Plan approved in Case No. 98-260-SPH was utilized and therefore vested. To determine whether the existing use of the site as a Class I Trucking Facility has been utilized and is therefore vested and to amend previously approved car parking in Baltimore City as supporting a Baltimore County Trucking Facility, and further, to recognize that the subject car parking as fulfilling the requirements for a trucking facility in Baltimore County (Parcel 121).

Hearing: Wednesday, February 25, 2004 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

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

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

JT 2/675 Feb. 10 C648889

CERTIFICATE OF PUBLICATION

2/10/, 2004

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 2/10/, 2004.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 04-294-SPHX

Petitioner/Developer: FLORENCE AND MARVIN WEINER

Date of Hearing/Closing: 2/25, 26, 27 AND 3/1/04

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

ATTN: Kristen Matthews {(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: SIGNS POSTED ON 3600 GEORGETOWN RD AND JOH AVE

The sign(s) were posted on 2/8/04
(Month, Day, Year)

Sincerely,

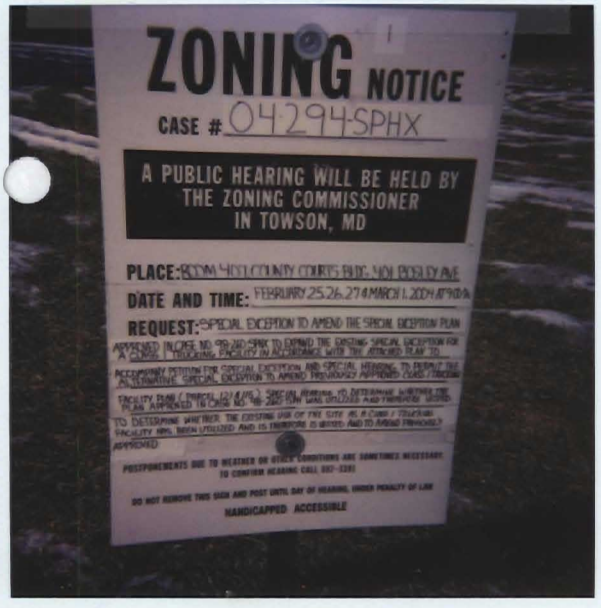
Robert Black 2/8/04
(Signature of Sign Poster) (Date)

SSG Robert Black
(Print Name)

1508 Leslie Road
(Address)

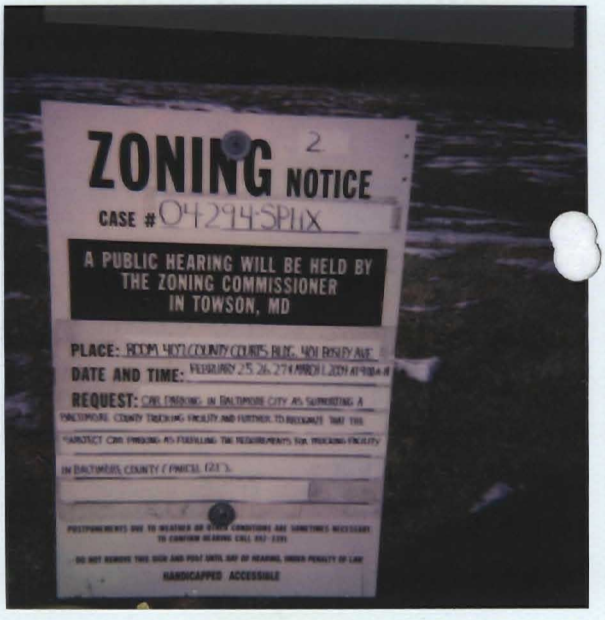
Dundalk, Maryland 21222
(City, State, Zip Code)

(410) 282-7940
(Telephone Number)


ZONING NOTICE
CASE # 04-294-SPHX
A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWSON, MD
PLACE: ROOM 407, COUNTY COURTS BLDG. 401 BOSLEY AVE
DATE AND TIME: FEBRUARY 25, 26, 27 AND MARCH 1, 2004 AT 9:00 A.M.
REQUEST: SPECIAL EXCEPTION TO AMEND THE SPECIAL EXCEPTION PLAN
DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING, UNDER PENALTY OF LAW
HANDICAPPED ACCESSIBLE


ZONING NOTICE
CASE # 04-294-SPHX
A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWSON, MD
PLACE: ROOM 407, COUNTY COURTS BLDG. 401 BOSLEY AVE
DATE AND TIME: FEBRUARY 25, 26, 27 AND MARCH 1, 2004
REQUEST: SPECIAL EXCEPTION TO AMEND THE SPECIAL EXCEPTION PLAN


ZONING NOTICE
CASE # 04-294-SPHX
A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWSON, MD


ZONING NOTICE
CASE # 04-294-SPHX
A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWSON, MD
PLACE: ROOM 407, COUNTY COURTS BLDG. 401 BOSLEY AVE
DATE AND TIME: FEBRUARY 25, 26, 27 AND MARCH 1, 2004
REQUEST:
HANDICAPPED ACCESSIBLE

APPEAL SIGN POSTING REQUEST

CASE NO.: 04-160-SPH AND 04-294-SPHX

3600 GEORGETOWN ROAD LLC- LEGAL OWNER

3600 GEORGETOWN ROAD, BALTIMORE, MD 21227

13TH ELECTION DISTRICT APPEALED: 10/12/2004

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

CASE NO.: 04-160-SPH AND 04-294-SPHX

Petitioner/Developer:

3600 GEORGETOWN ROAD LLC – LEGAL OWNER

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

3600 GEORGETOWN ROAD

The sign was posted on 12/17/4, 2004

By: Chen
(Signature of Sign Poster)

Jerry Chen
(Printed Name)

APPEAL SIGN POSTING REQUEST

CASE NO.: 04-160-SPH AND 04-294-SPHX

3600 GEORGETOWN ROAD LLC- LEGAL OWNER

3600 GEORGETOWN ROAD, BALTIMORE, MD 21227

13TH ELECTION DISTRICT APPEALED: 10/12/2004

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

CASE NO.: 04-160-SPH AND 04-294-SPHX

Petitioner/Developer:

3600 GEORGETOWN ROAD LLC – LEGAL OWNER

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

3600 GEORGETOWN ROAD

The sign was posted on 12/17/4, 2004

By: Chen, J
(Signature of Sign Poster)

Jerry C Chen
(Printed Name)

Department of Permits and Development Management

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

Baltimore County

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

November 5, 2003

CORRECTED 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: 04-160-SPH
3600 Georgetown Road
N/west side Georgetown Road, 100 feet northeast of Hall Avenue
13th Election District – 1st Councilmanaic District
Legal Owner: Georgetown Road

Special Hearing to determine whether New England Motor Freight is lawfully utilizing the southwest portion of the site identified on the plan for the construction of any undergoing SWM facility with possible truck parking to be in violation of the B.C.Z.R. and Prior cases. To determine whether the site prior zoning history and the B.C.Z.R. would prohibit the issuance of Permit B511616. Whether NEMF lost any claim history as a non-conforming use. Has the NEMF lost its right to exit on the subject site? Is any expansion beyond that of the non-conforming use and to what extent? Should NEMF be required to comply with the minimum setback from the property line?

Hearings: Wednesday, December 10, 2003 at 9:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake Avenue

Timothy Kotroco
Director

TK:rlh

C: J. Carroll Holzer, 508 Fairmount Avenue, Towson 21286
3600 Georgetown Corp., 3600 Georgetown Road, Baltimore 21227

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, NOVEMBER 24, 2003.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OF FICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed on Recycled Paper

Department of Permits and Development Management

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

Baltimore County

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

January 13, 2004

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: 04-294-SPHX
3600 Georgetown Road
Centerline Hopkins and Rittenhouse
13th Election District – 1st Councilmanic District
Legal Owner: Florence and Marvin Weiner, Atty.

Special Exception to amend the Special Exception Plan approved in Case No. 98-260-SPHX. To expand the existing Special Exception for a Class I Trucking Facility in accordance with the attached plan to accompany petition for Special Exception and Special Hearing. To permit the alternative Special Exception to amend previously approved Class I Trucking Facility Plan (Parcel 121 & 115). Special Hearing to determine whether the Plan approved in Case No. 98-260-SPH was utilized and therefore vested. To determine whether the existing use of the site as a Class I Trucking Facility has been utilized and is therefore vested and to amend previously approved car parking in Baltimore City as supporting a Baltimore County Trucking Facility, and further, to recognize that the subject car parking as fulfilling the requirements for a trucking facility in Baltimore County (Parcel 121).

Hearing: Wednesday, February 25, 2004, at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Timothy Kotroco
Director

TK:klm

C: G. Scott Barhight, Jennifer Busse, 210 W. Pennsylvania Ave., Towson 21204
Florence and Marvin Weiner, 2000 N. Ocean Blvd., Ste. 706, Boca Raton, FL 33431
Myron Shevell, 1-71 North Avenue, East, Elizabeth NJ 07210

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, FEBRUARY 10, 2004.**
(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.

County Board of Appeals of Baltimore County

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

pp'd and rescheduled @ req of Counsel for Property Owner, out of town week of 5/22/05. Reset to 3 July dates

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

February 14, 2005

NOTICE OF ASSIGNMENT

CASE #: 04-160-SPH — **IN THE MATTER OF: 3600 GEORGETOWN CORP. – Legal Owner; Greater Bloomfield Community Assn., et al – Petitioners /Protestants**
3600 Georgetown Road

AND

CASE #: 04-294-SPHX — **IN THE MATTER OF: 3600 GEORGETOWN CORP. -- Legal Owner /Petitioner**
3600 Georgetown Road 13th E; 1st

9/28/04 – Z.C.'s Order in which special hearing relief as to Case No. 04-160-SPH /Petition filed by Greater Bloomfield Comm. Assn., et al, was DENIED; and in which Property Owner /Petitioner's requested special hearing relief as to Case No. 04-294-SPHX for amendment and expansion was GRANTED.

ASSIGNED FOR:

WEDNESDAY, MAY 18, 2005 at 10:00 a.m. /Day #1;
TUESDAY, MAY 24, 2005 at 10:00 a.m. /Day #2; and
WEDNESDAY, MAY 25, 2005 at 10:00 a.m. /Day #3

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 B, 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: Appellant : Office of People's Consel

Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Greater Bloomfield Community Assn.
Individuals: Lorna Rudnikas
Tom Mauk
Catherine Scarborough
Anna Wood

Counsel for Property Owner /Petitioner : G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire

Property Owner /Petitioner : Myron Shevell /3600 Georgetown Corp.

NEMF /3600 Georgetown Road
David Martin and James Markle /GW Stephens Jr. & Assoc.
Robert Walker

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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L.L.P.

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TELEPHONE 410 884-0700
FAX 410 884-0719

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410 832-2000
FAX 410 832-2015
www.wtplaw.com

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

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

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

February 23, 2005

RECEIVED
FEB 23 2005
BALTIMORE COUNTY
BOARD OF APPEALS

DELIVERY BY HAND

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

Re: 3600 Georgetown Corp. - New England Motor Freight
Case Nos. 04-294-SPHX and 04-160-SPH

Dear Ms. Bianco:

We are in receipt of the Board's notice of hearing dates for the above-referenced matter. Unfortunately, I am already committed to attend the International Conference of Shopping Centers convention in Las Vegas, Nevada during the week of May 22, 2005. As you are aware, we anticipate that this matter will require at least three days of hearings. I honestly believe that it is in the best interests of both parties that the hearing dates in this matter be scheduled as close together as possible. Therefore, I respectfully request that the three hearing dates previously scheduled for May 18, May 24, and May 25, 2005, be rescheduled.

Thank you for your cooperation in this matter.

Sincerely,

G. Scott Barhight

GSB:sll
cc: J. Carroll Holzer, Esquire
Peter M. Zimmerman, Esquire
New England Motor Freight
Jennifer R. Busse, Esquire

318740v2

7-14 OK w/GSB
7-19 OK w/PC
7-21 OK w/JCH

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 March 7, 2005

NOTICE OF POSTPONEMENT AND REASSIGNMENT

CASE #: 04-160-SPH **IN THE MATTER OF: 3600 GEORGETOWN CORP. – Legal Owner; Greater Bloomfield Community Assn., et al – Petitioners /Protestants AND**

CASE #: 04-294-SPHX **IN THE MATTER OF: 3600 GEORGETOWN CORP. -- Legal Owner /Petitioner**
3600 Georgetown Road 13th E; 1st

9/28/04 – Z.C.'s Order in which special hearing relief as to Case No. 04-160-SPH /Petition filed by Greater Bloomfield Comm. Assn., et al, was DENIED; and in which Property Owner /Petitioner's requested special hearing relief as to-Case No. 04-294-SPHX for amendment and expansion was GRANTED.

which had been scheduled for 5/18, 5/24 and 5/25/05 has been **POSTPONED** at the request of Counsel for Property Owner/ Petitioner and reassigned, upon confirmation with respective counsel, to the following dates:

REASSIGNED FOR:

THURSDAY, JULY 14 at 10:00 a.m. /Day #1;
TUESDAY, JULY 19, 2005 at 10:00 a.m. /Day #2; and
THURSDAY, JULY 21, 2005 at 10:00 a.m. /Day #3

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 B, 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: Appellant : Office of People's Consel

Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Greater Bloomfield Community Assn.
Individuals: Lorna Rudnikas
Tom Mauk
Catherine Scarborough
Anna Wood

Counsel for Property Owner /Petitioner : G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire

Property Owner /Petitioner : Myron Shevell /3600 Georgetown Corp.

NEMF /3600 Georgetown Road
David Martin and James Markle /GW Stephens Jr. & Assoc.
Robert Walker

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
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

July 21, 2005

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

RE: *In the Matter of: 3600 Georgetown Corp., Legal Owner; Bloomfield Community Assn., et al*
(New England Motor Freight)
Case No. 04-160-SPH and Case No. 04-294-SPHX

Dear Mr. Holzer:

This letter will confirm that Wednesday, September 14, 2005 has been scheduled on the Board's docket for hearing day #4 in the subject matter.

With the departure of Mr. Ramsey from the Board of Appeals in October 2005, it was imperative that the hearing in this matter be concluded by the middle of September to allow sufficient time for written briefs and public deliberation while Mr. Ramsey is still a member of the Board of Appeals, with September 14th being held as day #4 for conclusion of this case.

Should you require any additional information, please call me at 410-887-3180.

Very truly yours,

Kathleen C. Bianco
Administrator

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County Board of Appeals of Baltimore County

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

August 27, 2005

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

Re: *In the Matter of: 3600 Georgetown Corp., Legal Owner; Bloomfield Community Assn., et al*
(New England Motor Freight)
Case No. 04-160-SPH and Case No. 04-204-SPHX

Dear Mr. Holzer:

This letter is to confirm that Wednesday, September 14, 2005 at 11:30 a.m. has been scheduled on the Board's docket for hearing day #4 in the above-captioned matter.

As mentioned previously, with the pending departure of Mr. Ramsey from the Board of Appeals in October 2005, it is imperative that the hearing in this matter is concluded by the middle of September to allow sufficient time for written briefs and public deliberation while Mr. Ramsey is still a member of the Board of Appeals.

Should you require any additional information, please call me at (410)887-3180.

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

c: People's Counsel for Baltimore County
G. Scott Barhight, Esq.
Jennifer R. Busse, Esq.
William J. Wiseman, III, Zon. Comm
Arnold F. Keller, Planning Dir.
Timothy M. Kotroco, Dir./PDM
NEMF

Marvin H. Weiner
Myron P. Shevell
David L. Martin
Rick Chadsey
Anna Woods
Catherine Scarborough
Robert Walker
Lorna D. Rudnikas
Tom Mauk
James Markle

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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 September 21, 2005

NOTICE OF ASSIGNMENT /Day #5

CASE #: 04-160-SPH **IN THE MATTER OF: 3600 GEORGETOWN CORP. – Legal Owner; Greater Bloomfield Community Assn., et al – Petitioners /Protestants AND**

CASE #: 04-294-SPHX **IN THE MATTER OF: 3600 GEORGETOWN CORP. -- Legal Owner /Petitioner**
3600 Georgetown Road 13th E; 1st

Day #5 from 9/14/05

9/28/04 – Z.C.'s Order in which special hearing relief as to Case No. 04-160-SPH /Petition filed by Greater Bloomfield Comm. Assn., et al, was DENIED; and in which Property Owner /Petitioner's requested special hearing relief as to-Case No. 04-294-SPHX for amendment and expansion was GRANTED.

ASSIGNED FOR: **FRIDAY, SEPTEMBER 30, 2005 at 9:00 a.m. /Day #5**

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 B, 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: Appellant : Office of People's Consel

Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Greater Bloomfield Community Assn.
Individuals: Lorna Rudnikas
Tom Mauk
Catherine Scarborough
Anna Wood

Counsel for Property Owner /Petitioner : G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire

Property Owner /Petitioner : Myron Shevell /3600 Georgetown Corp.

NEMF /3600 Georgetown Road
David Martin and James Markle /GW Stephens Jr. & Assoc.
Robert Walker

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director

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

October 3, 2005

NOTICE OF DELIBERATION

IN THE MATTER OF:
NEW ENGLAND MOTOR FREIGHT; 3600 GEORGETOWN CORP. –Legal Owner
GREATER BLOOMFIELD COMMUNITY ASSOCIATION – Protestants /Petitioners
Case No. 04-294-SPHX and Case No. 04-160-SPH

Having heard this matter over five days of hearing (7/14; 7/19; 7/21; 9/14; and 9/30/05), public deliberation has been scheduled for the following date /time:

DATE AND TIME : **THURSDAY, OCTOBER 27, 2005 @ 10:00 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

NOTE: Closing briefs are due on Monday, October 17, 2005
NO LATER THAN 3:00 p.m. (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: Appellant : Office of People's Consel

Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Greater Bloomfield Community Assn.
Individuals: Lorna Rudnikas
Tom Mauk
Catherine Scarborough
Anna Wood

Counsel for Property Owner /Petitioner : G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire

Property Owner /Petitioner : Myron Shevell /3600 Georgetown Corp.
NEMF /3600 Georgetown Road
David Martin and James Markle /GW Stephens Jr. & Assoc.
Robert Walker

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director

Timothy M. Kotroco, Director /PDM

fyi copy: 2-4-7

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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

November 1, 2005

NOTICE OF DELIBERATION / Reassignment Date

IN THE MATTER OF:
NEW ENGLAND MOTOR FREIGHT; 3600 GEORGETOWN CORP. –Legal Owner
GREATER BLOOMFIELD COMMUNITY ASSOCIATION – Protestants /Petitioners
Case No. 04-294-SPHX and Case No. 04-160-SPH

Having heard this matter over five days of hearing (7/14; 7/19; 7/21; 9/14; and 9/30/05), public deliberation, has been scheduled for the following date /time:

DATE AND TIME : TUESDAY, DECEMBER 6, 2005 at 10:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Closing briefs were filed by Counsel on October 17, 2005

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: Appellant : Office of People's Consel

Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Greater Bloomfield Community Assn.
Individuals: Lorna Rudnikas
Tom Mauk
Catherine Scarborough
Anna Wood

Counsel for Property Owner /Petitioner : G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
Property Owner /Petitioner : Myron Shevell /3600 Georgetown Corp.
NEMF /3600 Georgetown Road
David Martin and James Markle /GW Stephens Jr. & Assoc.
Robert Walker

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

fyi copy: 2-3-7

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NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

County Board Of Appeals Of Baltimore County The
Old Courthouse, Room 47
400 Washington Ave
Towson MD 21204

Assignment Date: 07/13/06

Case Title: In The Matter of: Greater Bloomfield Assn, et al
Case No: 03-C-06-003979 AE

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.
You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 07/28/06
2. All Motions (excluding Motions in Limine) are due by..... 09/10/06
3. TRIAL DATE is..... 10/20/06
   Civil Non-Jury Trial: Start Time: 09:30AM: To Be Assigned: 1/2 HOUR ADMINSITRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

cc: Greater Bloomfield Community A

RECEIVED
JUL 17 2006
BALTIMORE COUNTY
BOARD OF APPEALS

cc: J Carroll Holzer Esq
cc: G Scott Barhight Esq
cc: Peter M Zimmerman Esq
cc: Carole S Demilio Esq
Issue Date 07/13/06

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

Hearing Room #2, Jefferson Building
Second Floor, 105 W. Chesapeake Avenue
(next to Suite 203)

August 6, 2009

ASSIGNMENT NOTICE / ORAL ARGUMENT
ON REMAND ORDER FROM THE CIRCUIT COURT
(MANDATE OF THE COURT OF SPECIAL APPEALS)

CASE #: 04-160-SPH IN THE MATTER OF: 3600 GEORGETOWN CORP. – Legal Owner; Greater Bloomfield Community Assn., et al – Petitioners /Protestants AND

CASE #: 04-294-SPHX IN THE MATTER OF: 3600 GEORGETOWN CORP. -- Legal Owner /Petitioner
3600 Georgetown Road 13th E; 1st

A hearing for the purpose of receiving argument only – Mandate of the Court of Special Appeals issued January 23, 2009 which vacated the Judgment of the Circuit Court and ORDERED that the case be remanded to the Board of Appeals for further proceedings consistent with the opinion of the Court of Special Appeals.

ASSIGNED FOR: THURSDAY, DECEMBER 3, 2009 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 B, 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.

Theresa R. Shelton, Administrator

c: Appellants : Peter Max Zimmerman
Carole S. Demilio
People's Counsel for Baltimore County

Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Greater Bloomfield Community Assn.
Individuals: Lorna Rudnikas/Darlene Byrd
Brenda Elliott
Donald Sadler

Counsel for Property Owner /Petitioner : G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
Whiteford, Taylor & Preston, LLP

Property Owner /Petitioner : Myron Shevell /3600 Georgetown Corp.
NEMF /3600 Georgetown Road
David Martin and James Markle /GW Stephens Jr. & Assoc.

William P. Jones /Economic Development
Timothy Kotroco, Director/PDM
Nancy West, Assistant County Attorney

William Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, Director/Planning
John E. Beverungen, County Attorney

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

December 3, 2009

DELIBERATION NOTICE

CASE #: 04-160-SPH IN THE MATTER OF: 3600 GEORGETOWN CORP. – Legal Owner; Greater Bloomfield Community Assn., et al – Petitioners /Protestants AND

CASE #: 04-294-SPHX IN THE MATTER OF: 3600 GEORGETOWN CORP.
3600 Georgetown Road 13th E; 1st

Having HEARD ARGUMENT ON THIS MATTER ON December 3, 2009; public deliberation has been scheduled for the following date /time:

DATE AND TIME: **TUESDAY, MARCH 2, 2010 at 10:30 a.m.**

LOCATION : **Jefferson Building - Second Floor - Hearing Room #2 - Suite 206**

NOTE: Closing briefs are due no later than 4:00 p.m. on Thursday, February 5, 2010
(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.

Theresa R. Shelton, Administrator

c: Appellants : Peter Max Zimmerman
Carole S. Demilio
People's Counsel for Baltimore County

Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Greater Bloomfield Community Assn.
Individuals: Lorna Rudnikas/Darlene Byrd
Brenda Elliott
Donald Sadler

12/13/09
No Notices to be Sent tw

Counsel for Property Owner /Petitioner : G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
Whiteford, Taylor & Preston, LLP

Property Owner /Petitioner : Myron Shevell /3600 Georgetown Corp. → no Notices to be sent
NEMF /3600 Georgetown Road
David Martin and James Markle /GW Stephens Jr. & Assoc.

William P. Jones /Economic Development
Timothy Kotroco, Director/PDM
Nancy West, Assistant County Attorney

William Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, Director/Planning
John E. Beverungen, County Attorney

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

February 27, 2004

J Carroll Holzer
508 Fairmount Avenue
Towson, Maryland 21204

Dear Mr. Holzer:

RE: Case Number:04-160-SPH, 3600 Georgetown Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on September 29, 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:clb

Enclosures

c: People's Counsel
3600 Georgetown Corp 3600 Georgetown Baltimore 21227
Lorna Rudinkas 1727 Hall Avenue Baltimore 21227

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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

February 27, 2004

G. Scott Barhight
Jennifer Busse
Whiteford, Taylor, & Preston
210 W. Pennsylvania Ave.
Towson, Maryland 21204

Dear Mr. Barhight and Ms. Busse:

RE: Case Number:04-294-SPHX, 3600 Georgetown Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on December 18, 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:clb

Enclosures

c: People's Counsel
Florence and Marvin Weiner 2000 N. Ocean Blvd Boca Raton FL 33431
3600 Georgetown Corp. Myron P. Shevell 1-71 North Avenue East Elizabeth NJ 07210

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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

October 16, 2003

ATTENTION: Rebecca Hart

Distribution Meeting of: October 14, 2003

Item No.: 151-169 160

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.

7. The Fire Marshal's Office has no comments at this time.

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

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

January 7, 2004

ATTENTION: Rebecca Hart

Distribution Meeting of: January 5, 2004

Item No.: (294)-298

Dear Ms. Hart:

6. The Fire Marshal's Office has no comments at this time.

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

cc: File

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on Recycled Paper

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

January 5, 2004

ATTENTION: Rebecca Hart

Distribution Meeting of: December 29, 2003

Item No.: 280-285, 287-299 294

6. The Fire Marshal's Office has no comments at this time.

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

cc: File

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

SHA State Highway Administration — Driven to Excel

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

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: 10.14.03

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

RE: Baltimore County
Item No. 160 JLL

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,

K. A. McDonald

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

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

SHA Driven to Excel
State Highway Administration

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

Maryland Department of Transportation

Date: 1.8.04

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

RE: Baltimore County
Item No. 294 LTM

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,

for K. J. Kobel

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: October 20, 2003

RECEIVED

OCT 21 2003

ZONING COMMISSIONER

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

SUBJECT: Zoning Advisory Petition(s): **Case 04-160**

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

Prepared By: Mark A Cunningham

Section Chief: Lynn Lanham

AFK/LL

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: February 24, 2004

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

SUBJECT: Zoning Advisory Petition(s): **Case 4-294**

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

Prepared By: Mark A Cunningham

Section Chief: Lyn Lanham

AFK/LL

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: November 26, 2003

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

SUBJECT: Zoning Advisory Committee Meeting
For October 20, 2003
Item Nos. 151, 152, 153, 154, 156,
157, 158, 159, 160, 161, 162, 163, 164,
167, and 168

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

RWB:CEN:jrb

cc: File

ZAC-10-20-2003-NO COMMENT ITEMS 151-169-11122003

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: February 2, 2004

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

SUBJECT: Zoning Advisory Committee Meeting
For January 12, 2004
Item Nos. 294, 295, 296, and 297

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

RWB:jrb

cc: File

ZAC-01-12-2004-NO COMMENT ITEMS 294-298-02022004

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Tim Kotroco

FROM: R. Bruce Seeley

DATE: January 16, 2004

SUBJECT: Zoning Item # See List Below

Zoning Advisory Committee Meeting of January 5, 2004

__X__ The Department of Environmental Protection and Resource Management has no comments on the following zoning items:

04-294

04-295

04-297

Reviewers: Sue Farinetti, Dave Lykens

S:\Devcoord\ZAC SHELL 11-20-03.doc

RE:	PETITION FOR SPECIAL HEARING 3600 Georgetown Road; NW/side Georgetown Rd, 100' NE Hall Avenue 13th Election & 1st Councilmanic Districts Legal Owner(s): 3600 Georgetown Corp Petitioner(s): Catherine Scarborough, Anna Wood, Tom Mauk, Greater Bloomfield Community Ass'n President Lorna Rudnikas	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 04-160-SPH

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

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 and documentation filed in the case.

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

RECEIVED
OCT 21 2003
Per.....

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 21st day of October, 2003, a copy of the foregoing Entry of Appearance was mailed to J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, MD 21286, Attorney for Petitioner(s).

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

RE:	PETITION FOR SPECIAL HEARING AND SPECIAL EXCEPTION	*	BEFORE THE
	Parcel 115, Sulpher Spring Road; 3600 Georgetown Rd c/line Hopkins & Rittenhouse	*	ZONING COMMISSIONER
	13th Election & 1st Councilmanic Districts	*	FOR
	Legal Owner(s): Florence & Marvin H Weiner, Attorney in Fact	*	BALTIMORE COUNTY
	Contract Purchaser(s): 3600 Georgetown Corp, Myron P Shevell	*	04-294-SPHX

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

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 January, 2004, a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esquire, & Jennifer R, Busse, Esquire, Whiteford, Taylor & Preston, 210 West Pennsylvania Avenue, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED

JAN 08 2004

Per bh

RE:	PETITION FOR SPECIAL HEARING 3600 Georgetown Road; NW/side Georgetown Rd, 100' NE Hall Avenue 13th Election & 1st Councilmanic Districts Legal Owner(s): 3600 Georgetown Corp Petitioner(s): Catherine Scarborough, Anna Wood, Tom Mauk, Greater Bloomfield Community Ass'n President Lorna Rudnikas	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY 04-160-SPH

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

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 and documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED
MAY 26 2005
BALTIMORE COUNTY
BOARD OF APPEALS

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 26th day of May, 2005, a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204 and J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, MD 21286.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RE:	PETITION FOR SPECIAL HEARING AND SPECIAL EXCEPTION	*	BEFORE THE COUNTY
	Parcel 115, Sulpher Spring Road; 3600 Georgetown Rd c/line Hopkins & Rittenhouse	*	BOARD OF APPEALS
	13th Election & 1st Councilmanic Districts	*	FOR
	Legal Owner(s): Florence & Marvin H Weiner, Attorney in Fact	*	BALTIMORE COUNTY
	Contract Purchaser(s): 3600 Georgetown Corp, Myron P Shevell	*	04-294-SPHX

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

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 and 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

RECEIVED
MAY 26 2005
BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of May, 2005, a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204 and J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, MD 21286.

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

Department of Permits and Development Management

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

Baltimore County

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

November 15, 2004

RECEIVED
NOV 17 2004
BALTIMORE COUNTY
BOARD OF APPEALS

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

Dear Mr. Barhight and Mrs. Busse:

RE: Case: 04-294-SPHX and 04-160-SPH, 3600 Georgetown Road

Please be advised that an appeal of the above-referenced case was filed in this office on October 12, 2004 by Peoples Counsel and on October 13, 2004 by J. Carroll Holzer. 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

Timothy Kotroco
Director

TK:klm

c: Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Marvin Weiner, 2000 N. Ocean Blvd., #706, Boca Raton FL 33431
Myron Shevell, I-71 North Avenue East, Elizabeth NJ 07210
David Martin & Rick Chadsey, 1020 Cromwell Bridge Road, Towson 21286
Robert Walker, 141 E. 26th St., Erie PA 16504
Lorna Rudnikas, 1727 Hall Avenue, Baltimore 21227
Tom Mauk, 1702 Hall Avenue, Baltimore 21227
Catherine Scarborough, 3440 Georgetown Road, Baltimore 21227
Anna Woods, 3500 Georgetown Road, Baltimore 21227
J. Carroll Holzer, 508 Fairmount Avenue, Towson 21204

Printed on Recycled Paper

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

October 12, 2004

Timothy Kotroco, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Hand-delivered

Re: PETITION FOR SPECIAL HEARING & EXCEPTION
NW/side Georgetown Road, 100' NE Hall Avenue
(3600 Georgetown Road)
13th Election District; 1st Council District
Florence Weinger & 3600 Georgetown Corporation,
Owner/Petitioners, Case 04-294-SPHX,
Tom Mauk, Catherine Scarborough, Anna Wood, and the Greater
Bloomfield Community Association - Petitioners, 04-160-SPH
Case No.: 04-160-SPH & 04-294-SPHX

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated September 29, 2004 by the Baltimore County Zoning Commissioner in the above-entitled case

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

RECEIVED
OCT 12 2004
Per. KLR

Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: G. Scott Barhight, Esquire
J. Carroll Holzer, Esquire
Lorna Rudnikas, President, Greater Bloomfield Ass'n
Messrs. David L. Martin & Rick Chadset, G.W. Stephens

Department of Permits and Development Management

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

Baltimore County

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

November 15, 2004

RECEIVED
NOV 17 2004
BALTIMORE COUNTY
BOARD OF APPEALS

J. Carroll Holzer
508 Fairmount Avenue
Towson, MD 21286

Dear Mr. Holzer:

RE: Case: 04-160-SPH and 04-294-SPHX, 3600 Georgetown Road

Please be advised that a separate appeal of the above-referenced case was filed in this office on October 12, 2004 by People's Counsel. 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

Timothy Kotroco
Director

TK:klm

c: William Wiseman, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Marvin Weiner, 2000 N. Ocean Blvd., #706, Boca Raton FL 33431
Myron Shevell, I-71 North Avenue East, Elizabeth NJ 07210
David Martin & Rick Chadsey, 1020 Cromwell Bridge Road, Towson 21286
Robert Walker, 141 E. 26th St., Erie PA 16504
Lorna Rudnikas, 1727 Hall Avenue, Baltimore 21227
Tom Mauk, 1702 Hall Avenue, Baltimore 21227
Catherine Scarborough, 3440 Georgetown Road, Baltimore 21227
Anna Woods, 3500 Georgetown Road, Baltimore 21227
J. Carroll Holzer, 508 Fairmount Avenue, Towson 21204

APPEAL

Petition for Special Hearing
3600 Georgetown Road
NW/side Georgetown Road, 100' NE Hall Avenue
13th Election District – 1st Councilmanic District
Petitioners: Tom Mauk, Catherine Scarborough, Anna Wood,
Greater Bloomfield Community Association

Case No.: 04-160-SPH

✓ Petition for Special Hearing (September 29, 2003)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (November 5, 2003)

Hearing Held Week of September 7, 2004 for several consecutive days

✓ Certification of Publication (November 25, 2003)

✓ Certificate of Posting (November 20, 2003) by Bruce Doak

✓ Entry of Appearance by People's Counsel (October 21, 2003)

RECEIVED
NOV 17 2004
BALTIMORE COUNTY
BOARD OF APPEALS

✓ Petitioner(s) Sign-In Sheet – None in File

✓ Protestant(s) Sign-In Sheet – None in File

✓ Citizen(s) Sign-In Sheet – None in File

✓ Zoning Advisory Committee Comments 2-27-04

✓ Petitioners' Exhibit
- ✓ 1. Plat to accompany Petition for Special Hearing for Property

Protestants' Exhibits: None in File

✓ Miscellaneous (Not Marked as Exhibit)
- ✓ 1. Plat to accompany Petition for Special Hearing

✓ Zoning Commissioner's Order (DENIED (in reference to 04-160-SPH – September 28, 2004)

✓ Notice of Appeal received on October 12, 2004 from People's Counsel

✓ Notice of Appeal also received on October 13, 2004 from J. Carroll Holzer

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Marvin Weiner, 2000 N. Ocean Blvd., #706, Boca Raton FL 33431
Do not send
Myron Shevell, I-71 North Avenue East, Elizabeth NJ 07210
David Martin & Rick Chadsey, 1020 Cromwell Bridge Road, Towson 21286
Robert Walker, 141 E. 26th St., Erie PA 16504
Lorna Rudnikas, 1727 Hall Avenue, Baltimore 21227
Tom Mauk, 1702 Hall Avenue, Baltimore 21227
Catherine Scarborough, 3440 Georgetown Road, Baltimore 21227
Anna Woods, 3500 Georgetown Road, Baltimore 21227
J. Carroll Holzer, 508 Fairmount Avenue, Towson 21204

date sent November 16, 2004, klm

LORNA RUDNIKAS, PRESIDENT
GREATER BLOOMFIELD COMMUNITY
1727 HALL AVENUE
BALTIMORE, MD 21227
appellant / Pet 160

LORNA RUDNIKAS
1727 HALL AVENUE
BALTIMORE, MD 21227
appellant / Pet 160

ANNA WOOD
3500 GEORGETOWN ROAD
BALTIMORE, MD 21227
appellant / Pet 160

TOM MAUK
1702 HALL AVENUE
BALTIMORE, MD 21227
appellant / Pet 160

J. CARROLL HOLZER, ESQUIRE
HOLZER AND LEE
508 FAIRMOUNT AVENUE
TOWSON, MD 21286
attorney for appellant / Pet 160

CATHERINE SCARBOROUGH
3440 GEORGETOWN ROAD
BALTIMORE, MD 21227
appellant / Pet 160

DAVID MARTIN
1020 CROMWELL BRIDGE ROAD
TOWSON MD 21286-3396

ROBERT WALKER
141 E 26TH STREET
ERIE, PA 16504

attorneys for owner / Petitioner

G SCOTT BARHIGHT
WHITEFORD TAYLOR & PRESTON
210 W PENNSYLVANIA AVENUE
TOWSON MD 21204

JENNIFER R BUSSE ESQUIRE
WHITEFORD TAYLOR & PRESTON
210 W PENNSYLVANIA AVENUE
TOWSON MD 21204

FLORENCE WEINER
MARVIN WEINER
2000 N. OCEAN BLVD #706
BOCA RATON, FL. 33431
attorneys in fact for owners

MYRON SHEVELL
3600 GEORGETOWN CORP
I-71 NORTH AVENUE E
ELIZABETH NJ 07201
owner /

NEMF
3600 GEORGETOWN ROAD
BALTIMORE MD 21227
owner /

attorney for

APPEAL

Petition for Special Hearing and Special Exception
3600 Georgetown Road
N/S Georgetown Road, SW of Bloomfield Road
13th Election District – 1st Councilmanic District
Legal Owners: 3600 Georgetown Corp. c/o Myron Shevell

Case No.: 04-294-SPHX [redacted]

✓ Petition for Special Hearing & Special Exception (December 18, 2003)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (January 13, 2004)

Hearing Held Week of September 7, 2004 for several consecutive days

✓ Certification of Publication (February 10, 2004 – The Jeffersonian)

✓ Certificate of Posting (February 8, 2004) by SSG Robert Black

✓ Entry of Appearance by People's Counsel (January 8, 2004)

✓ Petitioner(s) Sign-In Sheet – 2 Sheets

✓ Protestant(s) Sign-In Sheet – None in File

✓ Citizen(s) Sign-In Sheet – 2 Sheets

✓ Zoning Advisory Committee Comments - 2-27-04

✓ Petitioners' Exhibit
- ✓ 1. Site Plan for Petition for Special Exception & Special Hearing
- ✓ 2. Letter dated June 2, 2004 from Robert Bowling

Protestants' Exhibits:
- ✓ 1. Memorandum of People's Counsel
- ✓ 2. Aerial View of Community/NEMF trucking facility
- ✓ 3. A-F ~~Crush and Run Area~~ Photos Proposed Site
- 4. ~~Hopkins Avenue backyard property lines~~ Crush + Run photo
- 5. A-G ~~Sdensos' Sisters' property with~~ views of Crush/Run area / Proposed SWM
- 6. A/B ~~Proposed site for SWM System~~ Photos Hopkins Ave
- 7. A-D Rittenhouse Avenue location specific to flood damage

✓ Miscellaneous (Not Marked as Exhibit)
1. Findings and Facts and Conclusions of Law (98-260-SPHX)

✓ Zoning Commissioner's Order (GRANTED in reference to 04-294-SPHX & 98-260-SPHX – DENIED in reference to 04-160-SPH)

✓ Notice of Appeal received on October 12, 2004 by People's Counsel and on October 13, 2004 by J. Carroll Holzer.

RECEIVED
NOV 17 2004
BALTIMORE COUNTY
BOARD OF APPEALS

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Marvin Weiner, 2000 N. Ocean Blvd., #706, Boca Raton FL 33431
Myron Shevell, I-71 North Avenue East, Elizabeth NJ 07210
David Martin & Rick Chadsey, 1020 Cromwell Bridge Road, Towson 21286
Robert Walker, 141 E. 26th St., Erie PA 16504
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Catherine Scarborough, 3440 Georgetown Road, Baltimore 21227
Anna Woods, 3500 Georgetown Road, Baltimore 21227
J. Carroll Holzer, 508 Fairmount Avenue, Towson 21204

date sent November 15, 2004, klm

LORNA RUDNIKAS, PRESIDENT
GREATER BLOOMFIELD COMMUNITY
1727 HALL AVENUE
BALTIMORE, MD 21227

appellant/Pet on 160

LORNA RUDNIKAS
1727 HALL AVENUE
BALTIMORE, MD 21227

appellant/Pet on 160

TOM MAUK
1702 HALL AVENUE
BALTIMORE, MD 21227

appellant/Pet on 160

CATHERINE SCARBOROUGH
3440 GEORGETOWN ROAD
BALTIMORE, MD 21227

appellant/Pet 160

attorneys for owner/Petitioner

G SCOTT BARHIGHT
WHITEFORD TAYLOR & PRESTON
210 W PENNSYLVANIA AVENUE
TOWSON MD 21204

JENNIFER R BUSSE ESQUIRE
WHITEFORD TAYLOR & PRESTON
210 W PENNSYLVANIA AVENUE
TOWSON MD 21204

MYRON SHEVELL
3600 GEORGETOWN CORP
I-71 NORTH AVENUE E
ELIZABETH NJ 07201

owner/

NEMF

BALTIMORE COUNTY
MARYLAND

would like a copy of opinion and order

WILLIAM P. JONES
Waterfront & Redevelop
Department of Economic
Development

400 Washington Avenue
Towson, Maryland 21204-4665

wjones@co.ba.md.us
phone 410.887.8237
fax 410.887.8017
www.baltimorecountyonline.info

ANNA WOOD
3500 GEORGETOWN ROAD
BALTIMORE, MD 21227

appellant/Pet on 160

J. CARROLL HOLZER, ESQUIRE
HOLZER AND LEE
508 FAIRMOUNT AVENUE
TOWSON, MD 21286

attorney for appellant/Pet 160

DAVID MARTIN
1020 CROMWELL BRIDGE ROAD
TOWSON MD 21286-3396

ROBERT WALKER
141 E 26TH STREET
ERIE, PA 16504

FLORENCE WEINER
MARVIN WEINER
2000 N. OCEAN BLVD #706
BOCA RATON, FL. 33431

attorneys-in-fact for owner

attn fact

NEMF
3600 GEORGETOWN ROAD
BALTIMORE MD 21227

owner/

CASE #: 04-160-SPH

AND

CASE #: 04-294-SPHX

IN THE MATTER OF: 3600 GEORGETOWN CORP. – Legal Owner; Greater Bloomfield Community Assn., et al – Petitioners /Protestants
3600 Georgetown Road

IN THE MATTER OF: 3600 GEORGETOWN CORP.
-- Legal Owner /Petitioner
3600 Georgetown Road 13th E; 1st

04-160-SPH: Petition filed by Greater Bloomfield Comm Assn, et al – Whether existing operation is proper use in accordance with prior zoning approvals and whether proposed expansion is appropriate

04-294-SPHX – Petition filed by Property Owner, 3600 Georgetown Corp. /NEMF – Approval of amendment to SE granted in prior 98-260-SPHX; to permit expansion and/or amendment to previously approved SE for Class I Trucking Facility; determination that prior plan approved in 98-260-SPHX was utilized and vested; to amend portions of that plan to reflect expansion.

9/28/04 – Z.C.'s Order in which special hearing relief as to **Case No. 04-160-SPH** /Petition filed by Greater Bloomfield Comm. Assn., et al, was **DENIED**; and in which Property Owner /Petitioner's requested special hearing relief as to Case No. **04-294-SPHX** for amendment and expansion was **GRANTED.**

10/20/04 – Entry of Appearance filed by Jennifer R. Busse, Esquire; entering the appearance of G. Scott Barhight, Esquire; Jennifer R. Busse, Esquire; and WHITEFORD, TAYLOR & PRESTON LLP on behalf of 3600 Georgetown Corp.

AWAITING FILE FROM PDM; NOT RECEIVED AS OF 10/21/04.

11/17/04 – File received from PDM; docketed by CBA.

2/14/05 -Notice of Assignment sent to following; assigned for hearing on Wednesday, May 18, 2005 at 10:00 a.m. /Day #1; Tuesday, May 24, 2005 at 10:00 a.m /Day #2; and Wednesday, May 25, 2005 at 10:00 a.m. /Day #3:

Office of People's Consel
J. Carroll Holzer, Esquire
Greater Bloomfield Community Assn.
Individuals: Lorna Rudnikas
Tom Mauk
Catherine Scarborough
Anna Wood
G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
Myron Shevell /3600 Georgetown Corp.
NEMF /3600 Georgetown Road 21227
David Martin and James Markle /GW Stephens Jr. & Assoc.
Robert Walker
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

2/23/05 – Letter from G. Scott Barhight, Esquire, requesting that the three hearing dates be rescheduled due to a calendar conflict the week of May 22, 2005 when he will be out of town (requesting that all three dates be reassigned to keep the hearing dates as close together as possible).

CASE #: 04-160-SPH IN THE MATTER OF: 3600 GEORGETOWN CORP. – Legal Owner; Greater Bloomfield Community Assn., et al – Petitioners /Protestants

AND 3600 Georgetown Road

CASE #: 04-294-SPHX IN THE MATTER OF: 3600 GEORGETOWN CORP. -- Legal Owner /Petitioner

3600 Georgetown Road 13th E; 1st

3/03/05 - Confirmed three dates in July for hearing in this matter with respective counsel, included PC. Notice of PP and Reassignment to be sent.

3/07/05 – Notice of PP and Reassignment sent to parties this date; case reassigned to Thursday, July 14, 2005; Tuesday, July 19, 2005; and Thursday, July 21, 2005, all beginning at 10 a.m. FYI copy to 2-4-7.

7/14/05 – Board convened for day #1 of hearing (Stahl, Ramsey, Crizer); concluded day #1; to 7/19/05 for day #2. NOTE: Court Reporter Peatt experienced equipment problems near end of hearing day #1; machine to be sent to Albany NY for repairs; likely that it won't be returned in time for Tuesday 7/19/05 /day #2. Agreement reached between counsel (Holzer, Zimmerman, Barhight) to split the cost of a court reporter for 7/19/05 (estimated $300 for the day; Carolyn will contact Gore Brothers for probable cost and then she will contact counsel with that figure).

-- NOTE #2 – All exhibits verified with exception of Bloomfield Exhibits 6a, 6b, 6c to 6g. To be copied and provided by GSB.

7/15/05 – Letter from G. Scott Barhight, Esquire – with attached exhibits 6 a through 6g – now included with exhibits in file.

7/19/05 – Board convened for day #2 of hearing (2-4-7). T/C from C. Peatt; her machine will not be ready until Friday; she has borrowed machine for 7/21/05 but cannot be totally sure that it will work (older machine borrowed from another reporter); nor that it will not fail during the hearing on Thursday. Situation presented to Counsel in this matter; they agreed to proceed on Thursday, 7/21/05 with Bob Shocket /Gore Brothers, who was the reporter who substituted for Carolyn this date. Carolyn notified 2 p.m. that Gore will cover on Thursday.

- Concluded day #2; will convene on Thursday, July 21, for Day #3 as previously assigned **EXCEPT THE HEARING WILL BEGIN AT 9 A.M. AS AGREED BY THE PARTIES THIS DATE.**

7/21/05 – Board convened for day #3; Sue Kambouris of Gore Brothers was court reporter this date. Concluded day #3. Awaiting confirmation from this office as to which of two dates will work for day #4; i.e., 9/01/05 or 9/14/05; 9/01/05 is preferred by panel members; calendar for 8/15/05 as to status of currently assigned case on 9/01/05. If that date does not work, then notice will be sent for 9/14/05. Summary: Notice of Assignment for day #4 will be sent after 8/15/05, with verification that day #4 will either be 9/01/05 or 9/14/05. Parties have agreed to either of these dates.

8/27/05 – Letter to Mr. Holzer and copied to all parties as notice and confirmation that Wednesday, 9/14/05 at 11:30 a.m. has been scheduled for day #4 in this matter.

9/14/05 – Board convened for day #4; Concluded day #4. Case did not conclude this date; awaiting confirmation from counsel as to availability for day #5 (keeping in mind that Mr. Ramsey will no longer be a member of the Board of Appeals effective close of business on 10/31/05). Possible dates include: 9/20/05 – afternoon; 9/21/05 9 a.m. to 11:30 a.m.; or Wednesday 9/28/05, if the 10 a.m. case can be moved. (The CBA panel members in this case have made themselves available on any of the preceding dates for conclusion of this case.)

9/20/05 – Meeting with Messrs. Holzer and Barhight – above dates will not work for various reasons. After review of the calendar and confirmation with Messrs. Stahl, Ramsey and Crizer, additional possible dates: 9/30/05; 10/03/05; or 10/07/05 (2 Friday dates and 1 Monday). After review and consult with clients, witnesses, and calendars, Friday, September 30, 2005 at 9:00 a.m. has been scheduled for hearing day #5 in this matter; notice to be sent. Counsel notified by telephone this date of confirmed day #5.

CASE #: 04-160-SPH IN THE MATTER OF: 3600 GEORGETOWN CORP. – Legal Owner; Greater Bloomfield Community Assn., et al – Petitioners /Protestants

AND 3600 Georgetown Road

CASE #: 04-294-SPHX IN THE MATTER OF: 3600 GEORGETOWN CORP. -- Legal Owner /Petitioner 3600 Georgetown Road 13th E; 1st

9/21/05 – Notice of Assignment /Day #5 sent to parties this date; assigned for Friday, September 30, 2005 at 9:00 a.m. as confirmed and as agreed by counsel to this matter. (Memos will be due 10/17/05; delib 10/27/05 tentative)

9/30/05 – Board convened for day #5 (Stahl, Ramsey, Crizer); concluded hearing this date. Memos due 10/17/05; deliberation on 10/27/05 at 10:00 a.m. Notice to be sent.

10/03/05 – Notice of Deliberation sent to parties; assigned for Thursday, October 27, 2005 at 10:00 a.m. FYI copies to 2-4-7.

10/14/05 – Memos filed by J. Carroll Holzer on behalf of Petitioners /Protestants (due 10/17/05; hold pending receipt of additional closing briefs then to file.

10/17/05 – People's Counsel for Baltimore County's Hearing Memorandum filed by P. Zimmerman.
-- New England Motor Freight's Closing Memorandum filed by G. Scott Barhight, Esquire.

10/19/05 – Copies prepared for distribution to Board (Stahl, Ramsey, Crizer); copy to Stahl 10/19/05 in office; copies to Crizer 10/20/05; and Ramsey 10/21/05.

10/27/05 – Board convened for public deliberation. Several hours into the deliberation process, after having decided (1) that Petitioner had not lost the nonconforming use; and (2) that the original special exception had vested, the Board then began to deliberate the issue of the special exception for purpose of expansion. While deliberating 502.1A, the 3 panel members disagreed on that one issue, with the majority decision belonging to Mr. Ramsey, who had resigned from the Board effective 10/31/05 and Mr. Crizer. Mr. Stahl, upon realizing that he and Mr. Crizer would not be able to agree on the special exception for purposes of expansion, terminated the public deliberation in this matter, noting that a third Board member would be assigned to review the record in this matter, including file, exhibits and transcript, and then, on a new deliberation date to be assigned, will meet with Messrs. Stahl and Crizer for public deliberation in this matter. Notice of the second deliberation date will be sent to all parties ASAP. Holding 12/06/05 once third member is confirmed.

11/01/05 – Notice of Deliberation /Reassignment sent to all parties this date; reassigned to Tuesday, December 6, 2005 at 10:00 a.m. for deliberation in this matter; panel consisting of L. Stahl and E. Crizer from original panel; and L. Wescott replacing M. Ramsey in this matter.

11/08/05 – Request for Expedited Hearing on Joint Motion for Appropriate Relief, Implementation of State Open Meetings Law, Production of Minutes, and Effectuation of Decision Made in Public Deliberation filed by P. Zimmerman and C. Holzer. Running response time from Petitioner prior to distribution to panel (2 and 7).

11/22/05 – New England Motor Freight's Response to Joint Motion for Appropriate Relief, Implementation of State Open Meetings Law, Production of Minutes, and Effectuation of Decision Made in Public Deliberation filed by G. Scott Barhight, Esquire.
- Copies to L. Stahl this date; copies mailed to E. Crizer this date (none provided to L. Wescott as directed).

11/29/05 – Subpoena from P. Zimmerman to K. Bianco relative to 12/06/05 deliberation and any documents from 10/27/05 deliberation.

12/01/05 – Letter from P. Zimmerman requesting copies of any documents, etc., pertaining to 10/27/05 deliberation. (Copy provided to County Attorney for response under Public Information Act.)

12/06/05 – Board convened for public deliberation (Stahl, Crizer, Wescott). Initially, Stahl and Crizer deliberated the Motion filed by P. Zimmerman and C. Holzer, addressing the issues raised by counsel in that Motion. At conclusion of that deliberation, moved onto the deliberation of the special exception request for expansion of the facility in which all three panel members participated. Unanimous decision of the Board that special exception for expansion was DENIED.

- Written Opinion and Order to be issued by the Board addressing the Board's decision made on October 27th in which it was determined that the nonconforming use had not been lost; and that the original special exception was vested (to be signed by Stahl and Crizer, with footnote indicating that Ramsey participated in this unanimous decision) (2); and a written Opinion and Order to be issued by the Board addressing the Board's decision made on December 6th and signed by Stahl, Crizer and Wescott as to the denial of the special exception for expansion (3), with a cover Order to the effect that these two written Opinions/Orders constitute the final decision of the Board in this matter (3).

NOTE: William P. Jones, Economic Development, ext 8237, requested copy of Board's final opinion and order in this matter – when the decision is issued – copy will be provided to Mr. Jones – to be added to cover letter.

Copy to Laura Barnhardt via FAX @ 410-494-2916

IN THE MATTER OF:	*	BEFORE THE
3600 GEORGETOWN CORPORATION, Legal Owner	*	COUNTY BOARD OF APPEALS
	*	BALTIMORE COUNTY
Greater Bloomfield Comm. Assn. Petitioners/Protestants	*	
1st Councilmanic District		Case Nos. 04-160-SPH &
13th Election District	*	04-294-SPHX

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

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday, July 14, 2005 at 10:0 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave., Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board. (See attached Notice of Hearing)

Witness: Tom Vidmar, Deputy Director
Address: DEPRM
County Courts Bldg, 4th Floor
401 Bosley Ave.
Towson, MD 21204

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 508 Fairmount Ave. Towson, 21286 **410-825-6961**

The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above cases. The Board requests the Sheriff to issue the summons set forth herein.

Linda B Fliegel
County Board of Appeals of
Baltimore County

Cost: $

Summoned: _____, 2000

Not Served: _____, 2000

Sheriff of Baltimore County

C:Subpoenas CBA NEMF 2005-Arnold Jablon

RECEIVED
JUL 06 2005
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:	*	BEFORE THE
3600 GEORGETOWN CORPORATION, Legal Owner	*	COUNTY BOARD OF APPEALS
	*	BALTIMORE COUNTY
Greater Bloomfield Comm. Assn. Petitioners/Protestants	*	
1st Councilmanic District		Case Nos. 04-160-SPH &
13th Election District	*	04-294-SPHX

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

SUBPOENA

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Witness: David Iannucci, Executive Director
Address: Dept. of Economic Development
Old Courthouse
400 Washington Ave.
Towson, MD 21204

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 508 Fairmount Ave. Towson, 21286 **410-825-6961**

The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above cases. The Board requests the Sheriff to issue the summons set forth herein.

Lynch B Thigpen
County Board of Appeals of
Baltimore County

Cost: $

Summoned: _____, 2000

Not Served: _____, 2000

Sheriff of Baltimore County

C:Subpoenas CBA NEMF 2005-Arnold Jablon

RECEIVED
JUL 06 2005
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:	*	BEFORE THE
3600 GEORGETOWN CORPORATION, Legal Owner	*	COUNTY BOARD OF APPEALS
	*	BALTIMORE COUNTY
Greater Bloomfield Comm. Assn. Petitioners/Protestants	*	
1st Councilmanic District		Case Nos. 04-160-SPH &
13th Election District	*	04-294-SPHX

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

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Witness: Tim Buckley, Associate Professor
Address: Hopkins Bloomburg School of Public Health
Division of Environmental Engineering
615 North Wolfe St.
Baltimore, MD 21206

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 508 Fairmount Ave. Towson, 21286 **410-825-6961**
The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above cases. The Board requests the Sheriff to issue the summons set forth herein.

Lawrence B. Illegible
County Board of Appeals of
Baltimore County

Cost: $

Summoned: _____, 2000

Not Served: _____, 2000

Sheriff of Baltimore County

C:Subpoenas CBA NEMF 2005-Arnold Jablon

RECEIVED
JUL 06 2005
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:	*	BEFORE THE
3600 GEORGETOWN CORPORATION, Legal Owner	*	COUNTY BOARD OF APPEALS
	*	BALTIMORE COUNTY
Greater Bloomfield Comm. Assn. Petitioners/Protestants	*	
1st Councilmanic District		Case Nos. 04-160-SPH &
13th Election District	*	04-294-SPHX

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

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday, July 14, 2005 at 10:0 a.m. at Room 48 , located at Basement, Old Courthouse, 400 Washington Ave., Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board. (See attached Notice of Hearing)

Witness: Carl Richards, Zoning
Address: County Office Bldg.
Towson, MD 21204

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 508 Fairmount Ave. Towson, 21286 **410-825-6961**
The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above cases. The Board requests the Sheriff to issue the summons set forth herein.

Lois B Fleagel
County Board of Appeals of
Baltimore County

Cost: $

Summoned: _____, 2000

Not Served: _____, 2000

Sheriff of Baltimore County

C:Subpoenas CBA NEMF 2005-Carl Richards

RECEIVED
JUL 06 2005
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:	*	BEFORE THE
3600 GEORGETOWN CORPORATION, Legal Owner	*	COUNTY BOARD OF APPEALS
	*	BALTIMORE COUNTY
Greater Bloomfield Comm. Assn. Petitioners/Protestants	*	
1st Councilmanic District		Case Nos. 04-160-SPH &
13th Election District	*	04-294-SPHX

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

SUBPOENA

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Witness: Arnold Jablon, Esquire (former Director of PDM)
Address: Venable, LLP
210 Allegheny Ave.
Towson, MD 21204

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 508 Fairmount Ave. Towson, 21286 **410-825-6961**
The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above cases. The Board requests the Sheriff to issue the summons set forth herein.

Linda B Hoffel
County Board of Appeals of
Baltimore County

Cost: $

Summoned: _____, 2000

Not Served: _____, 2000

Sheriff of Baltimore County

C:Subpoenas CBA NEMF 2005-Arnold Jablon

RECEIVED
JUL 06 2005
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:	*	BEFORE THE
3600 GEORGETOWN CORPORATION, Legal Owner	*	COUNTY BOARD OF APPEALS
	*	BALTIMORE COUNTY
Greater Bloomfield Comm. Assn. Petitioners/Protestants	*	
1st Councilmanic District		Case Nos. 04-160-SPH &
13th Election District	*	04-294-SPHX

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

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday, July 14, 2005 at 10:0 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave., Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board. (See attached Notice of Hearing)

Witness: Captain John Spiroff
Address: Commander, Wilkens Precinct No. 1
901 Walker Ave.
Catonsville, MD 21228

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 508 Fairmount Ave. Towson, 21286 **410-825-6961**
The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above cases. The Board requests the Sheriff to issue the summons set forth herein.

Lawrence B. Hogel
County Board of Appeals of
Baltimore County

Cost: $

Summoned: _____, 2000

Not Served: _____, 2000

Sheriff of Baltimore County

RECEIVED
JUL 06 2005
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:	*	BEFORE THE
3600 GEORGETOWN CORPORATION, Legal Owner	*	COUNTY BOARD OF APPEALS
	*	BALTIMORE COUNTY
Greater Bloomfield Comm. Assn. Petitioners/Protestants	*	
1st Councilmanic District		Case Nos. 04-160-SPH &
13th Election District	*	04-294-SPHX

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

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday, July 14, 2005 at 10:0 a.m. at Room 48 , located at Basement, Old Courthouse, 400 Washington Ave., Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board. (See attached Notice of Hearing)

Witness: George Harman, Program Manager
Address: Environmental Assessment & Planning
MDE
1800 Washington Blvd., Suite 540
Baltimore, MD 21230

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 508 Fairmount Ave. Towson, 21286 **410-825-6961**
The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above cases. The Board requests the Sheriff to issue the summons set forth herein.

Lindle B Fleagle
County Board of Appeals of
Baltimore County

Cost: $

Summoned: _____, 2000

Not Served: _____, 2000

Sheriff of Baltimore County

RECEIVED
JUL 06 2005
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:	*	BEFORE THE
3600 GEORGETOWN CORPORATION, Legal Owner	*	COUNTY BOARD OF APPEALS
	*	BALTIMORE COUNTY
Greater Bloomfield Comm. Assn. Petitioners/Protestants	*	
1st Councilmanic District		Case Nos. 04-160-SPH &
13th Election District	*	04-294-SPHX

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

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Thursday, July 14, 2005 at 10:0 a.m. at Room 48 , located at Basement, Old Courthouse, 400 Washington Ave., Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board. (See attached Notice of Hearing)

Witness: James Thompson
Address: Supervisor, Code Enforcement
County Office Bldg.
Towson, MD 21204

Name: J. Carroll Holzer
Firm: Holzer & Lee
Address: 508 Fairmount Ave. Towson, 21286 **410-825-6961**

The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above cases. The Board requests the Sheriff to issue the summons set forth herein.

Kathleen C. Bianco
County Board of Appeals of
Baltimore County

Cost: $

Summoned: _____, 2000

Not Served: _____, 2000

Sheriff of Baltimore County

C:Subpoenas CBA NEMF 2005-Jim Thompson

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BALTIMORE COUNTY
BOARD OF APPEALS

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JUL 11 2005
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF: 3600 Georgetown Road Property 3600 Georgetown Corporation, Legal Owner/Appellant; New England Motor Freight – Tenant 13th Election District; 1st Councilmatic District	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case Nos. 04-294-SPHX and 04-160-SPH

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

SUBPOENA

TO: Mr. James H. Thompson
Baltimore County Department of Permits and Development Management
Bureau of Code Enforcements
111 W. Chesapeake Avenue
Towson, Maryland 21204

YOU ARE HEREBY SUMMONSED AND COMMANDED TO: (X) Personally appear, testify and (X) produce the following documents or objects :

Any and all documents or objects related to the above referenced Appeal, including but not limited to : Baltimore County Department of Permits and Development Management's file(s) for 3600 Georgetown Road, including but not limited to Code Inspections and Enforcement **Violation 00-7138** and any documentation relating thereto, Baltimore County's files in **Case CBA-00-162** and Baltimore County's files in **Case Nos. 04-160-SPH and 04-294-SPHX,** and any documents telated thereto that are in either your possession, the possession of the Baltimore County Department of Permits and Development Management, the possession of any other Baltimore County agencies and/or employee(s), or otherwise in the possession of Baltimore County,

in Hearing Room 48, Old Court House, 400 Washington Avenue., Towson, MD 21204 on **Tuesday, the 19th day of July, 2005, at 10:00 a.m., and Thursday, the 21st day of July, 2005,**

until completed, regarding the above-captioned case, for the purpose of testifying at the request of the Owner, Petitioner and Appellant, New England Motor Freight, and 3600 Georgetown Corporation.

Mr. Sheriff/Private Process Server:

Please process in accordance with the Board's Rules of Practice and Procedure, found in the Baltimore County Code, Appendix C, Rule 5.

Kathleen D. Bianco
Baltimore County Board of Appeals

Issued: _____

338717

RE:	PETITION FOR SPECIAL HEARING NW/side Georgetown Rd, 100' NE Hall Ave (3600 Georgetown Road)	*	BEFORE THE COUNTY BOARD OF APPEALS
	Tom Mauk, Chatherine Scarborough, Anna Wood, Greater Bloomfield Association	*	FOR BALTIMORE COUNTY
	Petitioners	*	Case No. 04-160-SPH

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

RE:	PETITION FOR SPECIAL HEARING AND EXCEPTION N/S Georgetown Rd, SW of Bloomfield Rd (3600 Georgetown Road) 13th Election & 1st Councilmanic Districts	*	BEFORE THE COUNTY BOARD OF APPEALS FOR
	3600 Georgetown Corporation, c/o Myron Shevell - Legal Owners	*	BALTIMORE COUNTY
	Petitioners	*	Case No. 04-294-SPHX

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

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: (Name, Address, County) Kathleen Bianco, Administrator
County Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

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

in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 on December 6, 2005 **at** 10 **a.m.**

YOU ARE COMMANDED TO produce the following documents or objects **(for general purpose as stated):**

Any and all objects, notes, minutes, documents (handwritten, typed or otherwise written) and/or other documentation pertaining to the October 27, 2005 deliberation in the matter of New England Motor Freight, Case Nos. 04-294-SPHX and 04-160-SPH.

RECEIVED
NOV 29 2005
BALTIMORE COUNTY
BOARD OF APPEALS

SUBPOENA REQUESTED BY:

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21286
(410) 825-6963

And

Peter Max Zimmerman, People's Counsel
Office of People's Counsel
400 Washington Avenue, Room 47
Towson, Maryland 21204
(410) 887-2188

The witness named above is hereby ORDERED to so appear before the County Board of Appeals. The Board requests (___) the Sheriff, (X) Private Process Server, to issue the summons set forth herein.

Lynn B Flugel
County Board of Appeals for Baltimore County

RE:	PETITION FOR SPECIAL HEARING NW/side Georgetown Rd, 100' NE Hall Ave (3600 Georgetown Road)	*	BEFORE THE COUNTY BOARD OF APPEALS
	Tom Mauk, Chatherine Scarborough, Anna Wood, Greater Bloomfield Association	*	FOR BALTIMORE COUNTY
	Petitioners	*	Case No. 04-160-SPH

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

RE:	PETITION FOR SPECIAL HEARING AND EXCEPTION N/S Georgetown Rd, SW of Bloomfield Rd (3600 Georgetown Road) 13th Election & 1st Councilmanic Districts	*	BEFORE THE COUNTY BOARD OF APPEALS FOR
	3600 Georgetown Corporation, c/o Myron Shevell - Legal Owners	*	BALTIMORE COUNTY
	Petitioners	*	Case No. 04-294-SPHX

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

AFFIDAVIT OF SERVICE

I, the undersigned, certify that on November 29, 2005, I effected service of process by personally serving a Subpoena upon Kathleen Bianco, Administrator of the County Board of Appeals at 400 Washington Avenue, Room 49, Towson, Maryland 21204, to appear before the County Board of Appeals for Baltimore County.

I further certify that I am over the age of 18 and am not a party to this action.

I solemnly affirm under penalty of perjury that the contents of this Affidavit are true and correct to my knowledge.

Rebecca M. Meile

Name: **Rebecca M. Meile, Legal Secretary**
Firm: **People's Counsel for Baltimore County**
Address: **400 Washington Avenue**
Old Courthouse, Room 47
Towson, Maryland 21204

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NOV 30 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

December 1, 2005

Kathleen Bianco, Administrator
County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: In the Matter of the: New England Motor Freight
Case No.: 04-160-SPH & 04-294-SPHX

Dear Ms. Bianco:

Pursuant to the Maryland State law governing access to public records, Md. Code State Government Article Secs. 10-611 et seq and particularly Secs. 10-613 and 10-614, People's Counsel for Baltimore County respectfully submits this written application to you, as the custodian of records of the County Board of Appeals, to inspect and copy any and all objects, notes, minutes, documents (handwritten, typed or otherwise written) and/or other documentation pertaining to the October 27, 2005 deliberation in the matter of 3600 Georgetown Corporation and New England Motor Freight, Case Nos. 04-160-SPH and 04-294-SPHX. Under the Maryland Open Meetings Law, Sec. 10-509 of the same Article, we believe these minutes are intended to be available for inspection and copying. Indeed, this law requires their availability without the necessity of a request.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio/rmw

Carole S. Demilio
Deputy People's Counsel

PMZ\CSD\rmw

RECEIVED
DEC 0 1 2005
BALTIMORE COUNTY
BOARD OF APPEALS

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 3, 2007

The Honorable Suzanne Mensh
Clerk of the Court
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, MD 21204

RE: New England Motor Freight /In the Matter of:
Greater Bloomfield Assn., et al (Petitioner /Counter-Respondent)
and In the Matter of: 3600 Georgetown Corporation
(Respondent /Counter-Petitioner) Case No. 04-160-SPH and
Case No. 04-294-SPHX; **Civil Action No. 03-C-06-003979 AE**

Dear Madam Clerk:

By this letter, I am returning to your office the entire box of the Board of Appeals files, exhibits and closing memoranda pertaining to the above-reference case that was delivered to this office shortly after the March 8, 2007 decision issued by The Honorable Ruth A. Jakubowski.

This material appears to have been prematurely returned to the Board prior to the expiration of the timeframe for appellate review. In addition, it has been brought to my attention that a Motion for Reconsideration of Memorandum Opinion and Order and Memorandum of Law in Support was filed with the Circuit Court on March 20, 2007.

Therefore, we are returning this file to the Circuit Court at this time.

Sincerely,

Kathleen C. Bianco
Administrator

RECEIVED AND FILED
2007 APR -3 A 11: 04
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

c: The Honorable Ruth A. Jakubowski
G. Scott Barhight, Esquire
J. Carroll Holzer, Esquire
Office of People's Counsel

Printed with Soybean Ink
on Recycled Paper

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

July 29, 2009

RECEIVED
JUL 29 2009
BALTIMORE COUNTY
BOARD OF APPEALS

Lawrence M. Stahl, Panel Chairman
Edward Crizer, Panel Member
Lawrence S. Wescott, Panel Member
County Board of Appeals of Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: In the Matter of the: New England Motor Freight
Case Nos.: 04-160-SPH & 04-294-SPHX,
Civil No. 03-C-06-3979, CSA No.: Sept Term, 2007, No. 217

Dear Messrs. Stahl, Crizer and Wescott:

On July 10, 2009, the Circuit Court issued its order to implement the mandate of the Court of Special Appeals. The appellate court's unreported opinion dated December 24, 2008 in 3600 Georgetown Corp. v. Greater Bloomfield Association, et al. instructed that the case be remanded to the County Board of Appeals (CBA) for further proceedings. The Court of Appeals subsequently denied People's Counsel's petition for writ of certiorari, as well as that of the Greater Bloomfield Association. The case is now ripe for CBA review on remand.

The Court of Special Appeals opinion runs 100 pages. In order to sharpen the focus and address properly the remand issues, I respectfully suggest and request that the CBA hold a hearing for oral argument, and provide for filing of written memoranda by a set date in advance of the hearing, perhaps with a reasonable page limit.

At this time, it is apt to bring up or clarify another point of procedure. The CBA will recall that it issued two opinions on March 15, 2006. The first dealt with the nonconforming use issues, and was signed only by panel chair Lawrence M. Stahl and Edward Crizer, with a reference to Michael Ramsey having participated in the public deliberation. The second opinion, a supplemental opinion, dealt with the special exception issues. A full three-member panel of Messrs. Stahl, Crizer, and Lawrence Wescott deliberated upon and signed this opinion.

The circumstances were as follows. Mr. Ramsey, one of the original panel members, had heard the case and participated in the incomplete initial deliberation on October 27, 2005. But he resigned prior to their subsequent completion. The initial deliberation reached a consensus on the nonconforming use issues but not on the special exception issues. The CBA then assigned Mr.

Wescott to participate in the deliberation and decision on the special exception issues. These deliberations resumed on December 6, 2005. Both opinions were issued on March 15, 2006.

The Court of Special Appeals found, among other things, that this was an acceptable procedure under those circumstances. CSA opinion, pages 45-52. Now that the case is back on remand, however, the full CBA panel should address all issues relevant to the remand. This is consistent with the CBA rules and with People's Counsel v. Country Ridge Shopping Center 144 Md. App. 580 (2002), which the CSA also cited. In Country Ridge, the Court of Special Appeals held that where a panel member had left the CBA while the appeal was pending in the courts, the CBA could and should reasonably appoint new members to the panel to review the entire record, deliberate, and decide the remand issues. As Judge Charles Moylan dramatically put it, "The Regiment Goes On." 144 Md. App. at 602. Subsequent to Country Ridge, the CBA has followed this practice in other cases involving a remand where one or more of the original panel members no longer held a position on the board.

Here, the full 3-member CBA panel on remand, including Mr. Wescott, should review all issues relevant to the remand. Indeed, Mr. Wescott, having already reviewed the record and the special exception issues, is in a better position to participate in the remand than the new members appointed in County Ridge, who had no prior experience with that case.

In addition, while the CBA record is now back at the CBA, along with the CSA opinion, the CBA may find it convenient and helpful to have access to the record extract filed with the Court of Special Appeals. If so, we shall make it available if and when the CBA so advises.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ\rmw

cc: G. Scott Barhight, Esquire
Edward M. Buxbaum, Esquire
J. Carroll Holzer, Esquire

County Board of Appeals of Baltimore County

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410-887-3180
FAX: 410-887-3182

November 5, 2009

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston, LLP
Towson Commons, Suite 300
1 W. Pennsylvania Avenue
Towson, MD 21204

SENT VIA FACSIMILE
TO: (410)832-2015
AND REGULAR MAIL

Re: In the Matter of: New England Motor Freight, aka 3600 Georgetown Rd.
Case No.: 04-160-SPH & 04-294-SPHX

Dear Mr. Barhight:

We are in receipt of your request to submit pre-hearing memoranda prior to the oral argument scheduled for December 3, 2009.

Please be advised that it is not the normal process of the Board to accept pre-hearing memoranda and therefore your request is hereby denied. We feel that there will be sufficient time for Counsel to present their cases at the hearing scheduled for December 3, 2009.

Should you have any questions, please do not hesitate to contact this office.

Very truly yours,

Lawrence M. Stahl /kc

Lawrence M. Stahl
Panel Chairman

LMS/klc

cc. Peter M. Zimmerman, Office of People's Counsel (Via hand delivery)
J. Carroll Holzer, Esquire (Via hand delivery)
Myron P. Shevell, New England Motor Freight
Theresa R. Shelton, Administrator (Via email)

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

November 19, 2009

RECEIVED
NOV 19 2009
BALTIMORE COUNTY
BOARD OF APPEALS

Lawrence M. Stahl, Panel Chairman
Edward Crizer, Panel Member
Lawrence S. Wescott, Panel Member
County Board of Appeals
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: In the Matter of the: New England Motor Freight
Case No.: 04-160-SPH & 04-294-SPHX
Civil No. 03-C-06-3979, CSA No.: Sept. Term 2009, No. 217

Dear Panel Chairman Stahl and Members Crizer and Wescott:

This is in response to the letter dated November 12, 2009 to the Board from Scott Barhight, Esquire, attorney for 3600 Georgetown Corporation and New England Motor Freight Corporation.

Mr. Barhight seeks to withdraw Georgetown/NEMF's Petition for Special Exception, apparently without prejudice. At this stage of the case and under the circumstances of the Court of Special Appeals remand, this should be denied as a matter of law.

The Court of Special Appeals remand instructs the Board to reconsider its decision to deny the special exception independent of its observations as to a comparison of other sites. In our view, the CBA plainly made ample findings as to the particular adverse impacts which warranted denial of the special exception, independent of the language in the latter part of the opinion which Judge Ellen Hollander identified as not relevant. Therefore, we will argue on December 3 that the Board should reconfirm its denial based on the very detailed findings concerning the particular impact at this location.

In seeking to withdraw its petition for special exception at this juncture, Petitioners are attempting to employ a tactic to avoid an adverse finding on the merits. Such a denial of the special exception would, in our view, be important in the event that petitioners or a successor party refiles another petition for special exception in the future. Indeed, we would argue that the opinion would have a *res judicata* effect on similar future petitions.

There has been a huge amount of time and resources over many years spent by all the parties in making an ample record in this case, including many area citizens and expert

witnesses. There followed exhaustive appellate review. To allow a withdrawal without prejudice at this stage would open the door to petitioners or successors to start a future case anew, from the beginning. This is an unacceptable tactical manipulation.

Furthermore, enclosed Board Rule 3b provides that a request to withdraw without prejudice must be made not less than 10 days before the scheduled hearing date. Plainly, the common sense meaning of this is that the request must be made more than 10 days before the hearing which begins the case, not the remand hearing held years after the completion of the initial hearing on the merits and a lengthy judicial review and appeal process.

Our request is that the Board deny Petitioners' request to withdraw without prejudice. We believe that the right thing to do is to follow the Court of Special Appeals' instructions and consider whether the Board's independent findings already made were sufficient in and of themselves to warrant denial of the special exception. We believe the answer is clearly and simply yes. We also believe that Petitioners' attempt to withdraw without prejudice implicitly recognizes or concedes that the findings in the CBA's opinion compel denial on the merits. Otherwise, Petitioners' would merely let the litigation take its course.

In the alternative, the Board could dismiss the petition with prejudice. We believe this would also have a preclusive effect on any future similar petition. Under the circumstances, this is a second-best resolution, in light of the work done and the ample basis in the opinion to deny the petition on the merits.

If the Board allows at this stage a withdrawal without prejudice, we would have no alternative but to file a petition for judicial review. This unfortunately would lead to years more of litigation, focusing on Petitioners' procedural tactic to avoid an adverse ruling on the merits. The case could then return to the Board several years from now. This should not be allowed to happen. The time has come for final resolution of the special exception on the merits.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ\ rmw

cc: G. Scott Barhight, Esquire
J. Carroll Holzer, Esquire

section 500.11 of the Baltimore County Zoning Regulations, setting forth good and sufficient reasons for the requested postponement. **[Bill No. 50-2005]**

c. No postponement shall be granted within fifteen (15) days prior to the hearing date except in extraordinary circumstances and for a reason satisfactory to the board, given by the party requesting such postponement indicating that the circumstances requiring the postponement are of an unusual and ordinary nature.

d. All records and dockets of the board shall be open to the public during normal business hours.

e. In appeals from decisions of the zoning commissioner, formal notice of hearings, continuances and decisions of the board will be provided only to those persons entitled to receive same in accordance with section 500.11 of the Baltimore County Zoning Regulations.

Rule 3. Appeals.

a. No appeal shall be entertained by the board of appeals unless the notice of appeal shall state the names and addresses of the persons taking such appeal.

b. **[Bill No. 50-2005]**

1. An appeal may be withdrawn or dismissed at any time prior to the conclusion of the hearing on said appeal.

2. A request for withdrawal of a petition shall be filed in writing with the board. A petitioner who wishes to have a petition withdrawn and dismissed without prejudice shall withdraw the petition not less than 10 days before the scheduled hearing date. A petition that is withdrawn less than 10 days before the scheduled hearing date shall be dismissed with prejudice. A petition that is dismissed with prejudice under this paragraph may not be resubmitted for a period of 18 months after the dismissal.

c. Unless otherwise provided for by statute, all appeals to the board of appeals, subject to and limited by statutory authority to hear appeals, shall be made within thirty (30) days from the date of the final action appealed. **[Bill No. 141-1989]**

Rule 4. Conduct of hearings.

a. All hearings held by the county board of appeals shall be open to the public. No hearing shall be private even though all parties agree. The county board of appeals shall have the power to administer oaths, and all witnesses shall testify under oath.

b. The chairman shall regulate the course of the hearing and shall rule upon procedural matters, applications, modifications and objections made during the course of the hearing, subject to the concurrence of a majority of the board conducting the hearing.

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PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

December 7, 2009

Lawrence M. Stahl, Panel Chairman
Edward Crizer, Panel Member
Lawrence S. Wescott, Panel Member
County Board of Appeals of Baltimore County
The Jefferson Building
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Towson, MD 21204

RECEIVED
DEC 0 7 2009
BALTIMORE COUNTY
BOARD OF APPEALS

Re: In the Matter of the: New England Motor Freight
Case Nos.: 04-160-SPH & 04-294-SPHX,
Civil No. 03-C-06-3979, CSA No.: Sept Term, 2007, No. 217

Dear Messrs. Stahl, Crizer and Wescott:

This letter gives Petitioner's counsel and the Board notice, and sets the record straight, about an important distinction in the Board Rules which was overlooked at oral argument. We shall just identify it here, and discuss it in detail in our memorandum.

Rule 3.b.1 states that "an **appeal** may be withdrawn at any time prior to the conclusion of the hearing on said **appeal**." It does not refer to a "**petition**." Therefore, Rule 3.b.1 is not relevant to NEMF's request to withdraw its petition. Rule 3.b.2, in contrast, governs a "**request for withdrawal of a "petition**." Emphases supplied.

We shall analyze this Rule, and the reasons for this distinction, in our memorandum's argument that the Board should implement the appellate court's remand, and not grant NEMF's "withdrawal" (which by rule is a request).

We shall also note Rule 4.b, which directs the chairman, with the concurrence of the majority to "regulate the course of the hearing and rule upon procedural matters, applications, modifications, and objections made during the course of the hearing ...."

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

cc: G. Scott Barhight, Esquire
Edward M. Buxbaum, Esquire
J. Carroll Holzer, Esquire

BOARD OF APPEALS OF BALTIMORE COUNTY
POST-HEARING BRIEFS
IN THE MATTER OF: 3600 GEORGETOWN /NEMF

DATE: November 22, 2005

TO: L. Stahl
E. Crizer

FROM: Kathi

SUBJECT: Case No. 04-294-SPHX and 04-160-SPH *In the Matter of: New England Motor Freight /3600 Georgetown Corp.*

Attached are the following documents filed on in the subject matter:

- Request for Expedited Hearing and Joint Motion for Appropriate Relief, Implementation of State Open Meetings Law, Production of Minutes, and Effectuation of Decision Made in Public Deliberation filed by Peter M. Zimmerman, People's Counsel for Baltimore County, and J. Carroll Holzer, Esquire; and

- New England Motor Freight's Response to Joint Motion for Appropriate Relief, Implementation of State Open Meetings Law, Production of Minutes, and Effectuation of Decision Made in Public Deliberation filed by G. Scott Barhight, Esquire.

Public deliberation is scheduled in the subject matter on Tuesday, December 6, 2005 at 10:00 a.m. as previously assigned on the merits of this case, with Mr. Wescott replacing Mr. Ramsey on the panel.

As directed, I did not provide copies of the attached documents to Mr. Wescott as he will not participate in the deliberation of the Joint Motion filed by Messrs. Holzer and Zimmerman.

Any questions, please call me.

kathi

Attachments (2)

COPIES TO LMS **11/22/05 /in office**
COPIES TO EWC **11/22/05 via USPS**

FILE

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

TO: Larry S.
Larry W.
Ed

DATE: July 28, 2009

FROM: Theresa

RE: **New England Motor Freight**

Gentlemen:

I have the file(s) on this matter that were hand delivered from CCT. This case was remanded to the Board.

At this point, I need to know if you are going to Deliberate only, or if the matter should be scheduled for ARGUMENT on the remand issues.

Please let me know on Thursday, at the conclusion of the Staff Meeting, if possible, what the panel has decided.

The docket is full through the end of November, and the first available dates I have put on HOLD, are as follows:

Tuesday, December 01
Wednesday, December 02
Thursday, December 03

Of course, if something falls out, I could call and try to set it in prior to this time

Please advise as to availability on these dates.

If this will be a Deliberation only, the following dates at 9:00 are open:

8/26 (Larry W would have to come in – the other panel members are here)

9/01 (Larry S would have to come in – the other panel members are here)

9/03 (Ed would have to come in – the other panel members are here)

9/09 (Larry W would have to come in – the other panel members are here)

Thank You.
Theresa

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence
Phone: 410-887-3180 Fax: 410-887-3182

To: Lawrence Stahl, Panel Chairman
Lawrence Wescott
Edward W. Crizer, Jr.

From: Sunny Cannington, Legal Secretary

Date: July 21, 2009

Re: 3600 Georgetown Corp/New England Motor Freight
Board of Appeals case numbers: 04-294-SPHX and 04-160-SPH

Attached please find a copy of the following documents for your review in the above referenced matter. Please be advised that this matter has been remanded to the Board pursuant to the Court of Special Appeals decision dated 12/24/08.

- Original Opinion and Order of the Board, dated March 15, 2006 which includes an Opinion and Supplemental Opinion and Order;
- The Circuit Court Opinion issued March 7, 2007 wherein the Opinion of the Board was Affirmed in Part, Reversed in part and Remanded;
- The Court of Special Appeals decision issued December 24, 2008 wherein the Opinion of the Circuit Court was Vacated and this matter was remanded to the Board of Appeals for further proceedings consistent with the opinion of the Court of Special Appeals; and
- The Circuit Court Order Remanding this matter to the Board dated 7/10/09 and received by the Board on 7/20/09.

The full file has been requested from the Circuit Court and upon its return, this matter will be set in for further proceedings as appropriate.

cc: Theresa Shelton, Administrator

Krysundra Cannington - Re: 3600 Georgetown

From: <John.Almond@courts.state.md.us>
To: "Krysundra Cannington" <kcannington@baltimorecountymd.gov>
Date: 7/9/2009 1:05 PM
Subject: Re: 3600 Georgetown

Good News! Your case is back and I sent it upstairs for Judge Jakubowski to sign the order to return it to The Board. I have the exhibits and copies here for you if you want them today.... I would think the judge would agree to send it to you per the order of COSA.

Enjoy the beautiful day. I hear it is going to get hotter later in the week. Uggh

JOHN ALMOND
Supervisor of the Records Room
Circuit Court for Baltimore County

"Krysundra Cannington" <kcannington@baltimorecountymd.gov>

07/02/2009 09:36 AM

To <John.Almond@courts.state.md.us>

cc "Theresa Shelton" <tshelton@baltimorecountymd.gov>

Subject 3600 Georgetown

Hi John,

I just wanted to follow up with you on this case that was Remanded to us. It's 3600 Georgetown (aka New England Motor Freight) Case No.: 03-C-06-003979. This case had gone up to the Court of Special Appeals and was Remanded. Has it come back to the Circuit Court yet? Has the Circuit Court issued their Remand Order to the Board of Appeals yet? When I checked in the Maryland Judiciary site, it appears that nothing has been updated since the file was sent to the Court of Special Appeals. The Board really wants to move on this so that it can be finished up. Let me know what's going on.

Thank you for all your help. I hope you have a great weekend and July 4th. Be safe!

Sunny

Krysundra "Sunny" Cannington
Legal Secretary
County Board of Appeals
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
(410) 887-3180
kcannington@baltimorecountymd.gov

Message from server JBNW:
Received Monday, April 13, 2009 10:41:15 AM:

From: rwheatley[161] Our Petition for Cert in NEMF was denied we are told. So it should be coming back to you on remand soon.

IN THE MATTER OF NEW ENGLAND MOTOR FREIGHT (NEMF)

March 20, 2007

TO: L. Wescott
L. Stahl
E. Crizer

FROM: Kathi

FYI – attached is a copy of the Circuit Court decision in NEMF.

The Circuit Court has filed a split decision as follows:

- **AFFIRMED** in part (as to the denial of the special exception for expansion – decision signed by Wescott, Stahl, Crizer); and
- **REVERSED** and remanded "for entry of an order consistent with this Court's Opinion" (as to the existence of the nonconforming use – decision signed by Stahl and Crizer as deliberated with M. Ramsey); the Court determined that the nonconforming use did not exist at the time Petitioner acquired the property; and
- **REVERSED** and remanded "for entry of an order consistent with this Court's Opinion" (as to the vesting of the original special exception granted in 1998 – decision signed by Stahl and Crizer as deliberated with M. Ramsey). Judge Jakubowski determined on review that the special exception granted in 1998 was not utilized by February 25, 2003 (the extended date for use of the special exception), and therefore has since expired.

This decision was filed by the Court on March 8th; therefore NEMF still has time to take the matter to the Court of Special Appeals.

Should no further appeals be taken, I'll prepare the necessary Order on Remand in which the nonconforming use and the original special exception were lost, pursuant to Judge Jakubowski's order.

kathi

WHITEFORD, TAYLOR & PRESTON
L.L.P.

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1317 KING STREET
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FAX 703 836-0265

July 15, 2005

DELIVERY BY HAND

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

Re: 3600 Georgetown Corp. - New England Motor Freight
Case Nos. 04-294-SPHX and 04-160-SPH

Dear Ms. Bianco:

During the hearing in this matter on July 14, 2005, Mr. Holzer introduced Bloomfield Exhibits 6A and 6B. It was agreed upon by all involved that I would take the original documents that comprise these Exhibits and have them copied. I have done so, and attached hereto please find a copy for the Board's file of Bloomfield's Exhibits 6A and 6B.

By copy of this letter, I am also sending Peter Max Zimmerman and Carroll Holzer copies for their files as well.

Thank you for your cooperation in this matter.

Sincerely,

G. Scott Barhight

G. Scott Barhight

6a.
6b. } recvd
6c-g } 7-15-05 and w/exhibits

GSB:sll
Enclosure
cc: J. Carroll Holzer, Esquire *(w/encl)*
Peter M. Zimmerman, Esquire *(w/encl)*

318740v3

RECEIVED
JUL 15 2005
BALTIMORE COUNTY
BOARD OF APPEALS

WHITEFORD, TAYLOR & PRESTON L.L.P.

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March 29, 2007

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

Re: New England Motor Freight-
In the Matter of Greater Bloomfield Assn., *et al*
(Petitioner/Counter-Respondent)
and In the Matter of 3600 Georgetown Corporation
(Respondent/Counter-Petitioner)
Our File No.: 048237/00131
Case No. 03-C-06-003979 AE

RECEIVED
MAR 30 2007
BALTIMORE COUNTY
BOARD OF APPEALS

Dear Kathy:

I am requesting that you forward the box of the Board of Appeals files, exhibits and closing memoranda pertaining to the above-referenced case back to the Clerk of the Circuit Court for Baltimore County. As you may know, on March 8, 2007, the Memorandum Opinion and Order issued by The Honorable Ruth A. Jakubowski was entered in this case. Judge Jakubowski affirmed and denied part of the requested relief and remanded the case to the Board of Appeals.

According to Maryland Rule 7-210, "after the time for seeking appellate review has expired, if no appellate review has been sought, the clerk shall return the record of the agency proceedings to the agency. If appellate review has been sought, the clerk, unless otherwise ordered by the appellate court, shall return the record of the agency proceedings to the agency upon the conclusion of the appellate review." On March 20, 2007, 3600 Georgetown Corp., Respondent/Counter-Petitioner timely filed its Motion for Reconsideration of Memorandum Opinion and Order and Memorandum of Law in

Support with the Circuit Court. Additionally, the time for seeking appellate review has not expired. Thus, it appears that the record was sent to you prematurely.

I have attached a copy of Entries from the Docket of the Board of Appeals and Department of Permits & Licenses of Baltimore County. Please refer to the attached document for the list of documents we are referring to.

Thank you for your time and attention to this matter. Please do not hesitate to contact me with any questions and/or concerns.

Sincerely,

Scott Barhight/ASH

G. Scott Barhight

GSB/kml
Enclosures
cc: The Honorable Ruth A. Jakubowski
Edward M. Buxbaum, Esquire
Paul M. Nussbaum, Esquire
J. Carroll Holzer, Esquire
Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Mr. Myron P. Shevel, New England Motor Freight
Bruce A. Blakeman, Esquire

380126

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November 4, 2009

RECEIVED
NOV - 4 2009
BALTIMORE COUNTY
BOARD OF APPEALS

VIA HAND DELIVERY
Lawrence M. Stahl, Panel Chairman
Edward Crizer, Panel Member
Lawrence S. Wescott, Panel Member
County Board of Appeals of Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: In the Matter of the: New England Motor Freight
Case Nos.: 04-160-SPH & 04-294-SPHX,
Civil No. 03-C-06-3979, CSA No.: Sept Term, 2007, No. 217

Dear Messrs. Stahl, Crizer and Wescott:

I write on behalf of my client, New England Motor Freight. As you are aware, upon reversal and remand by the Court of Special Appeals, re-argument in this case is scheduled for December 3, 2009 at 10:00 a.m. The Court of Special Appeals Opinion is very extensive (100 pages). I thus believe it will be helpful to the Board to have certain issues brought into focus prior to the oral argument. Accordingly, it is the intention of New England Motor Freight to provide a pre-hearing memoranda at least ten (10) days in advance of the oral argument.

Just as the case before the Circuit Court and the Appellate Courts of Maryland, providing pre-hearing memoranda (or briefs) prior to the oral argument is a tremendous aid to the appellate body. By a letter to the Board dated July 29, 2009, People's Counsel, Peter Zimmerman, in the second paragraph of that letter, concurred with the suggestion of pre-hearing memorandum. By letter dated August 10, 2009, counsel for the Greater Bloomfield Association, J. Carroll Holzer, indicated that he fully concurred with the positions taken by the Office of People's Counsel.

*Whiteford, Taylor and Preston L.L.P. is a limited liability partnership. Our Delaware office is operated under a separate Delaware limited liability company, Whiteford, Taylor & Preston L.L.C.

If the Board determines that pre-hearing memoranda would not be helpful to the Board, please indicate as such as soon as possible. Since we are confident that such memoranda will clearly aid the Board in its understanding of the Court of Special Appeal's Opinion and open issues on remand, we have begun our work on the memoranda.

We look forward to presenting our oral arguments to you on December 3, 2009. Thank you for your kind attention to this matter.

Sincerely,

G. Scott Barhight

GSB/kml
cc: Peter Max Zimmerman, Esquire
Mr. Myron P. Shevell, NEMF
J. Carroll Holzer, Esquire
Edward M. Buxbaum, Esquire

411188v2

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gbarhight@wtplaw.com

November 12, 2009

RECEIVED
NOV 12 2009
BALTIMORE COUNTY
BOARD OF APPEALS

VIA HAND DELIVERY
Lawrence M. Stahl, Panel Chairman
Edward Crizer, Panel Member
Lawrence S. Wescott, Panel Member
County Board of Appeals of Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: In the Matter of the: New England Motor Freight
Case Nos.: 04-160-SPH & 04-294-SPHX,
Civil No. 03-C-06-3979, CSA No.: Sept Term, 2007, No. 217

Dear Mr. Chairman and Members of the Board of Appeals:

As you are aware, the oral argument in the above referenced matter has been scheduled for December 3, 2009. In order to facilitate the proper preparation of the Board and the parties for the oral argument, New England Motor Freight has instructed this office to inform the Board and the parties of its intention to withdraw that portion of the Petitions pending before the Board seeking to expand the existing Class 1 trucking facility.

In 2003, New England Motor Freight filed a Petition for Special Hearing and a Petition for Special Exception which was assigned Case No. 04-294-SPHX. The Petition for Special Exception sought to amend the previously approved special exception plan and to expand the existing special exception for a Class 1 Trucking Facility. The Petition for Special Exception to amend the previously approved special exception and to expand the existing Class 1 Trucking Facility is hereby withdrawn.

By Order dated March 15, 2006, the Board of Appeals denied the Petition for Special Exception. By Order dated March 7, 2007, the Baltimore County Circuit Court (Judge Jakobowski) affirmed the decision of the Board of Appeals. By Order dated

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December 24, 2008, the Court of Special Appeals of Maryland reversed the decision of the Circuit Court affirming the Board of Appeals and remanded the Petition for Special Exception back to the Board of Appeals for further proceedings.

The only two issues remanded by the Court of Special Appeals to the Board of Appeals relate to: (1) the proper application of *Purich v. Draper Properties, Inc.*, 395 Md. 694, 912 A.2d 598 (2006); and (2) the proper application of the special exception standards to the instant Petition for Special Exception. Since the Petition for Special Exception has now been withdrawn, that portion of the remand is moot. The only open issue relates to the application of the *Purich* case to the facts of the instant case.

Should you have any questions or comments, please feel free to contact me. We look forward to our oral argument on December 3, 2009

Sincerely,

G. Scott Barhight

GSB/kml
cc: Peter Max Zimmerman, Esquire
J. Carroll Holzer, Esquire
Edward M. Buxbaum, Esquire
413008

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November 19, 2009

RECEIVED
NOV 19 2009
BALTIMORE COUNTY
BOARD OF APPEALS

VIA HAND DELIVERY
Lawrence M. Stahl, Panel Chairman
Edward Crizer, Panel Member
Lawrence S. Wescott, Panel Member
County Board of Appeals of Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: In the Matter of the: New England Motor Freight
Case Nos.: 04-160-SPH & 04-294-SPHX,
Civil No. 03-C-06-3979, CSA No.: Sept Term, 2007, No. 217

Dear Mr. Chairman Stahl and Members Crizer and Wescott:

This office is in receipt of a letter from Mr. Holzer dated November 19, 2009 which objects to the letter which I sent on behalf of my client dated November 12, 2009 withdrawing the Petition for Special Exception. Mr. Holzer's letter references a November 19, 2009 letter from People's Counsel which, at this point, I have not received.

Under Rule 3.b.2 of the Rules of Practice and Procedure of the Baltimore County Board of Appeals, a petitioner has a right to withdraw their petition, provided it is done so in writing and at least ten (10) days prior to the scheduled hearing date before the Board. The request of New England Motor Freight to withdraw its Petition was clearly done in writing and at least ten (10) days prior to the scheduled hearing date of December 3, 2009. Therefore, in accordance with the Board's rules, the Petition has been dismissed without prejudice.

Mr. Holzer's letter also references information which he has apparently received from "the media." On behalf of New England Motor Freight, I object to this attempt to

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improperly introduce evidence into the record. This information, which is false, should be stricken from the record.

Thank you for your kind attention to this matter, and we look forward to the December 3, 2009 hearing on this matter.

Sincerely,

G. Scott Barhight

GSB/kml
cc: Peter Max Zimmerman, Esquire
J. Carroll Holzer, Esquire
Edward M. Buxbaum, Esquire
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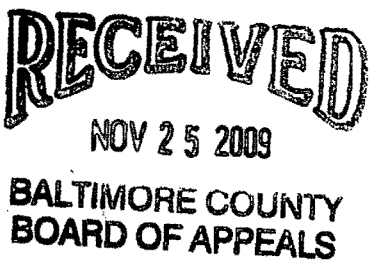
November 24, 2009



VIA HAND DELIVERY

Lawrence M. Stahl, Panel Chairman
Edward W. Crizer, Panel Member
Lawrence S. Wescott, Panel Member
County Board of Appeals
105 W. Chesapeake Avenue
Suite 203
Towson, Maryland 21204

Re: In the Matter of: New England Motor Freight

Dear Panel Chairman Stahl and Members Crizer and Wescott:

This office has just received Mr. Zimmerman's letter to you dated November 19, 2009. Although we have already responded to Mr. Holzer's letter to you of that same date, Mr. Zimmerman's letter is so mistaken in its discussion of the law that a response is required.

The Court of Special Appeals unmistakably reversed and remanded the Board of Appeals' decision on the Petition for Special Exception for expansion in light of the appellate court's finding of "error" on the part of the Board in applying the relevant criteria for consideration of the special exception sought by my client. It is axiomatic under Maryland law that a "reversal" means that the ruling of the lower court has been annulled or set aside. Carpenter v. Imbesi, 369 Md. 549, 562 (2002). Accordingly, the Board's prior decision regarding the Petition for Special Exception no longer exists. In fact, the posture of the case, subsequent to the Court of Special Appeals' decision, was a Special Exception granted by the Zoning Commissioner which was on de novo appeal to the Board.

The reversal and remand as ordered by the Court of Special Appeals required the Board to conduct further proceedings regarding the Petition for Special Exception, and to reanalyze the issues presented thereby consistent with the directive of the Court

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of Special Appeals. See Maryland Rule 8-604(d)(1). Accordingly, New England Motor Freight would have been well within its rights to have requested additional testimony regarding this issue. In any event, the Board of Appeals would have been required to undertake a new and full evaluation of the Petition for Special Exception based upon the clear instructions from the Court of Special Appeals. Simply stated, as the Board did not properly apply the special exception test to the New England Motor Freight Special Exception Petition, its prior decision has no preclusive effect, and none of the Board's findings relative to the Special Exception stand.

The Board's rules make it clear that a Petitioner may withdraw its Petition. New England Motor Freight has done so, consistent with those rules. The previously withdrawn Petition for Special Exception is now moot and there is nothing left for the Board to do regarding the special exception. It is hornbook law that a matter is "moot" when it presents no actual controversy or where the issues have ceased to exist. Accordingly, this Board cannot rule on a petition that does not exist.

People's Counsel complains that the time and resources spent litigating this matter to date render it "unacceptable" to allow New England Motor Freight to timely withdraw its Petition consistent with the Board's own rules. While all parties have devoted a great deal of time, energy and resources on this matter, that does not provide justification or a legitimate basis to disregard the well established rules of this Board and the law of the State of Maryland. The Board's rules are clear, the Petition has been withdrawn, and the Special Exception is moot.

Sincerely,

G. Scott Barhight

GSB:tdm
413239

HOLZER & LEE

LAW OFFICES
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August 10, 2009
#7423

VIA FAX 410-887-3182
Ms. Theresa R. Shelton, Administrator
County Board of Appeals
of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

RE: In the Matter of New England Motor Freight
Case No.: 04-160-SPH & 04-294-SPHX

Dear Theresa:

I received the Office of People's Counsel's letter dated July 29 and fully concur with its position regarding the remand to the County Board of Appeals of the NEMF matter.

Very truly yours,

J. Carroll Holzer

JCH:mlg

cc: Office of People's Counsel
G. Scott Barhight, Esq.
Greater Bloomfield Assn.

HOLZER
& LEE

LAW OFFICES
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November 19, 2009
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BALTIMORE COUNTY
BOARD OF APPEALS

Lawrence Stahl, Panel Chair
Edward Crizer, Panel Member
Lawrence Wescott, Panel Member
County Board of Appeals
105 W. Chesapeake Ave.
Towson, MD 21204

RE: In the Matter of New England Motor Freight
Case No. 04—160-SPH & 04-294-SPHX
Civil No. 03-C-06-3979; CSA No. 217, September Term, 2009

Dear Chairman Stahl and Members Crizer and Wescott:

On behalf of my clients, The Greater Bloomfield Community Association, and many individuals from the neighborhood who testified and participated in the hearings before the Board of Appeals, we strongly object to the letter from 3600 Georgetown Corporation (also known as New England Motor Freight, NEMF) to the Board dated November 12, 2009 to withdraw its Petition for Special Exception. We adopt the reasoning and rationale of the Office of People's Counsel for Baltimore County in his letter of November 19, 2009 in responding to 3600 Georgetown Corporation.

We received information from the media late last week that NEMF was closing its operation at the site in question in the instant case. We personally confirmed on Friday, November 13, 2009, that NEMF ceased operations at the site which is the subject of this case and remand from the Court of Special Appeals.

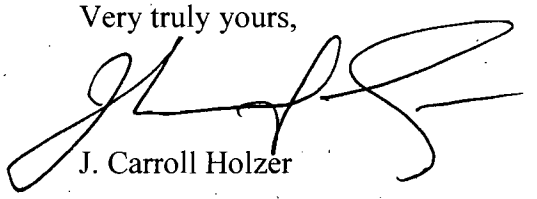
My clients are seeking to assist the County in revitalizing this site with a business and/or commercial operation that is compatible with the adjoining residential neighborhood, and less intrusive as another trucking terminal would be. This would not only be a benefit to the Greater Bloomfield Community, but would present the County in a positive light as well. It could be a win-win opportunity given the present situation and cessation of the trucking operation.

Additionally, my clients have invested substantial sums of money and resources, including expert witnesses, in this protracted litigation in order to protect their neighborhood from major nuisances and damage emanating from loud noise and the deleterious impact upon the community's health and welfare. The Board of Appeals confirmed this position in its denial

of NEMF's proposed expansion. NEMF's effort to simply withdraw its Petition without prejudice will allow these problems to revisit the Bloomfield Community in the future.

My clients agree with People's Counsel that NEMF's request to withdrawal comes far too late and should not be permitted, unless the withdrawal is with prejudice. The Community supports the position taken by the Office of People's Counsel.

Very truly yours,



J. Carroll Holzer

JCH:mlg

cc: Peter Max Zimmerman, Esq.
G. Scott Barhight, Esq.

7/19/05

Larry:

Call from Carolyn (to be shared with counsel?):

Her machine is not expected back until Friday of this week.

She has borrowed a machine – has not been used in a while but she is willing to try to go with it on Thursday for day #3 of today's case.

The other alternative would be to inquire if Bob can be here on Thursday as well as today.

Again – she said she's very sorry – and that she will be ready to go on Thursday with the borrowed machine – if that's okay with everyone.

k

1:50 pm 7-19-05
Counsel agreed to proceed on 7-21-05. Day 3 with Dave Lepatter as arranged for today 7-19-05.
T/c to CP - Have will come on 7-21-05.
T/c to CP 2:00 pm - with above response. Confirmed w/ Bob - he'll be there at 9 on 7/21.

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF:	New England Motor Freight; 3600 Georgetown Corp. – Legal Owner /Petitioner; Greater Bloomfield Community Association – Protestants /Petitioners Case No. 04-294-SPHX and Case No. 04-160-SPH	
DATE :	Thursday, October 27, 2005	
BOARD /PANEL :	Lawrence M. Stahl	(LMS)
	Michael O. Ramsey	(MOR)
	Edward W. Crizer, Jr.	(EWC)
RECORDED BY :	Kathleen C Bianco /Administrator	

PURPOSE: To deliberate Case No. 04-294-SPHX /Petitions for Special Hearing and Special Exception filed by Property Owner to amend prior SE; to permit expansion; prior plan was utilized; and Case No. 04-160-SPH /Petition for Special Hearing filed by Protestants to determine whether existing operation is proper use per prior approvals and whether proposed expansion is appropriate.

Deliberation:

Discussion of issues:

The session began with a review of the Briefs filed by the parties to this case.

Reviewing Mr. Holzer's brief – Issues 1 through 6 – could be reviewed in conjunction with NEMF response; issues include: NEMF lawfully utilizing property; prohibit issuance of permit –review regs; NEMF lost nonconforming use; lost right to exist since 1998 SE expired and 2000 special exception was withdrawn; expansion issue

NEMF page 7 – SE to amend 1998 SE to expand Class I; alternative SPH to amend – expand what NEMF has or get new one; plan was utilized and vested; facility is conforming trucking facility.

Pointed out reference to the issues in PMZ brief as well.

- **Current Status – Has there been vesting; does it legally exist (if this is okay, then on to expansion issue).**
  - Nonconforming use – goes back historically to trucking uses there; clear they had nonconforming use when Wilson was there.
  - Community raises issue that there were two periods between Wilson and AAA when they saw no active trucking; bankruptcy filed; no evidence that water was being used in 19-month period

Discussion

- ✓ As to bankruptcy issue – except Chapter 11 – business continues to operate and will continue to operate for years; example: airlines in Chapter 11
- ✓ Fact that they filed bankruptcy does not mean they ceased to exist

- ✓ Could have continued to operate during that period
- ✓ Issue: What constitutes use for that period – were there trucks going in and out of property.

    - ♦ Fact: No evidence to show that it ceased to operate during bankruptcy
    - ♦ Non-use of water over period of 19 months – not sufficient
    - ♦ How much water is necessary for trucking facility
    - ♦ In terms of lost nonconforming use based on water usage /bankruptcy – no convincing showing that there was a period when it was not used
    - ♦ Water bill was just one piece; not enough to take away the nonconforming use
    - ♦ Vague on dates when it closed and when it opened
    - ♦ No evidence presented that it ceased to exist; what constitutes keeping it going during a bankruptcy

Decision

- ☑ Due to lack of evidence, nonconforming use was not lost

Operates according to special exception

- ° Wilson was granted special exception
- ° Special exception used and therefore vested
- ° Since the special exception was used and vested, rights cannot be voided

Discussion

- ✓ Discussed Bloomfield Exhibit 18
- ✓ 300' issue
- ✓ 2/25/03 per Jablon – special exception previously granted had expired
- ✓ Reviewed back to 1961 and special exception granted to Wilson
- ✓ October 1961 reclassification R 6 to ML and G –SE
- ✓ 1976 – changed to MLR-IM
- ✓ Any reason why special exception no longer exists? Did special exception expire in 1998? Special exception withdrawn in 2000.
- ✓ Reviewed NEMF page 3 - Special exception and special hearing granted by Schmidt – compatible with zoning classification and the neighborhood
- ✓ 1999 wanted to expand timeframe (2 to 5 years); grant to February 25, 2003
- ✓ Reviewed Community page 5 – 1990 acquired property
- ✓ Received approval for special exception / within 5 years

    - ♦ Was Class I prior to 1976
    - ♦ 300' issue does not apply /expansion of existing SE
    - ♦ If existed prior to 1976 and did not lose special exception and is still nonconforming use – then they are exempt from 300'

- ✓ Dillon on page 23 community; page 28/29 NEMF
- ✓ Established after April 1976 per Barhight
- ✓ 410 applies to Weiner parcel – moved it so variance not needed
- ✓ 410 does not apply to Wilson property - existed prior to 1976; brought Weiner into compliance

Decision

☑ Utilized special exception; did not lose it. Can move on to expansion issue.

Expansion issue – must be special exception standards /502.1 BCZR for SE

- Discussed and reviewed pages 33-37 /Community Brief; page 12 /NEMF; and pages 24/25 People's Counsel
- Amend by special exception
- Class I prior to legislation

Discussion

- ✓ NEMF expansion and 502.1 /page 33 of Community
- ✓ Page 13 of Developer
- ✓ *Schultz v. Pritts*
- ✓ A – H /page 14
- ✓ Reviewed all testimony and evidence to this issue
- ✓ Began with A.

  - Health, Safety, and General Welfare
  - Started with noise and fumes
  - General discussion – no question that noise exists

LMS posed issue raised by community - regarding problem with the number of trucks.

MOR expressed concern that now you have two more trucks, coming in at additional times; Great increase in the amount of noise, even if it's just a background hum all the time; Tremendous amount of additional noise -- may have been acceptable at 100 trucks; but what about 300 trucks?

EWC - Commercial has developed around them – peninsula community /warehouse, lab, etc. surround them -- They have commercial neighbors operating during normal business house; not as intrusive as trucking facility. How will expansion be handled?

LMS added that this issue had been addressed – did not believe that the additional trucks would create a problem but posed question to EWC and MOR as to their thoughts on the noise issue.

EWC added that even if you accepted what was there before, now there's a continued encroachment on their right to enjoy their property; substantial number of additional vehicles – believes this would affect the community more than what's existed.

MOR – 24/7 operation; slows down on the weekends but still operates – believes it's very intrusive.

Decision

EWC and MOR – does not meet A – not concerned about the level – more concerned about the frequency; Spano (sp?) did a good job – but did not address frequency. Believe this to be an issue.

LMS – reviewed what had been discussed thus far - 300' is as a technical thing not applicable to the original – not to Weiner; changes to Weiner.

MOR – Concerned about the 300' – what restrictions would be needed; to be fair to the community; for a workable solution. Could this be done?

EWC agreed there are good points to the project. But – does not want to create a project the Developer may not want or the community may not want. Reiterated that he still had problems with 502.1.A.

MOR again referred to the proposal, as it exists – if the improvements could be done – then test the trucks starting up and shutting down to see if the improvements work (e.g., build the wall; improve SWM, etc.).

LMS indicated that no one would want to go through those improvements unless the project were approved – would not do anything so expensive and then not get the expansion.

MOR again reviewed the law and what the Developer proposes. Again discussed the noise – is going to be increased in the location because the houses are right next to the location.

LMS still believed that A could be met – could be supported by the evidence.

MOR and EWC agreed that:
- location would be adversely affected
- if moved to another location, would have to comply with the 300' setback
- because they get the nonconforming use, they are closer to the homes
- adverse impact on community when reviewing A

LMS stated that the Board was very split on this issue; that he felt strongly that it did meet 502.1A – would like to hear further discussion from MOR and EWC as to their thoughts on this issue. Discussion continued with similar comments to above for a period of time.

At 12:50 p.m., the Board recessed from public deliberation in this matter (Stahl, Ramsey, Crizer) to allow the panel of Stahl, Quinn and M Mohler to hear a scheduled 11 a.m. case in another matter (Case No. 05-387-A), for which the parties had been present in Hearing Room 48 for over 2 hours.

At the conclusion of the hearing in Case No. 05-387-A, the Board (Stahl, Ramsey, and Crizer) reconvened for the continuation of this public deliberation.

Continued Discussion – 502.1A

- LMS began this reconvened portion of the public deliberation by asking both MOR and EWC if they believed they would change their position 502.1A was not met by the Petitioner.
  - EWC indicated that he would not change – that he believed that the project did not meet A of 502.1 as proposed

- MOR also stated that he believed that it would adversely affect the community and would fail on 502.1
- LMS then posed a question as to the issue of fumes, which would also go to 502.1A
- EWC indicated that he would have the same problem as with the noise – it would be detrimental to this community because of the prior discussion
- MOR also stated his concern about the fumes for the same reasons as the noise – its location to the community and the nonconforming use and previous special exception
- LMS indicated that he disagreed with EWC and MOR – that his position was that 502.1A was in fact met; was supported by the evidence; no greater impact on the health, safety or general welfare of this community.

At this point, LMS raised the issue that, with the departure of MOR from the Board of Appeals and considering that LMS and EWC strongly disagreed on the issue of 502.1, it would be impossible for the Board to issue a Majority Opinion and Order since one Opinion and Order, signed by Mr. Crizer, would reflect one decision and the Dissenting Opinion of LMS would reflect another decision in this matter.

As MOR would no longer be a member of the Board, he would not be able to sign the final Opinion and Order that would be issued after his departure. Had all three Board members found unanimously -- possible for the two remaining members to sign the Order with footnote that MOR had agreed with this decision. Opinion signed by EWC = actually would be the Majority, with or without MOR. However, with the departure of MOR, there would only be one signature on Order issued by the Board.

Therefore, as chairman, LMS, after discussion with the panel, stopped deliberation in this matter, indicating that he would assign a third Board member to replace MOR; that a new deliberation date would be assigned for a time after the third new member had read and reviewed the record in this matter. Then a deliberation date would be assigned and the matter deliberated at that time with a full Board.

The public deliberation was recessed and terminated at this time.

NOTE: These minutes have been prepared to record the decision made to terminate these deliberations and reschedule to a later date for the reasons as stated above and during this public deliberation.

Kathleen C. Bianco, Administrator
County Board of Appeals

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF:	New England Motor Freight; 3600 Georgetown Corp. – Legal Owner /Petitioner; Greater Bloomfield Community Association – Protestants /Petitioners Case No. 04-294-SPHX and Case No. 04-160-SPH **(CONTINUED DELIBERATION)**	
DATE :	**Tuesday, December 6, 2005 at 10:00 a.m.**	
BOARD /PANEL :	Lawrence M. Stahl	(LMS)
	Edward W. Crizer, Jr.	(EWC)
	Lawrence S. Wescott	(LSW)
RECORDED BY :	Kathleen C Bianco /Administrator	

PURPOSE: To continue the deliberation of Case No. 04-294-SPHX /Petitions for Special Hearing and Special Exception filed by Property Owner to amend prior SE; to permit expansion; prior plan was utilized; and Case No. 04-160-SPH /Petition for Special Hearing filed by Protestants to determine whether existing operation is proper use per prior approvals and whether proposed expansion is appropriate. **Deliberation in this matter initially begun on 10/27/05 with Stahl, Crizer and Ramsey.**

The Board convened at 10:00 a.m. for this specially assigned deliberation – originally begun on October 27, 2005. Today's deliberation included Messrs. Stahl and Crizer from the original panel and Lawrence Wescott, replacing Michael O. Ramsey, who resigned from the Board effective 10/31/05.

Deliberation:

First issue for discussion:

Outstanding Motion regarding the process – LSW stayed out of this discussion /deliberation. Since he was not part of the 10/27/05 deliberation, would not be part of this deliberation; has not reviewed notes or other documents from earlier deliberation, but rather reviewed only the transcript of hearing, the file, and memos filed by parties.

Deliberation of Motion:

- Procedure followed – policy of Board to have at least two members sign (law requires two signatures) and that individual be a member of the Board when signing the final Order
- Counsel to this matter are all familiar with this policy
- Hearing went to five days – not as originally scheduled
- Counsel to this matter knew from the beginning that Mr. Ramsey was leaving; that the matter had to be completed, including deliberation, prior to his departure
- Responsibility – all knew situation which led to why this happened

LMS – Still believes this was the most appropriate thing to do; could not conclude case, write opinion and Ramsey sign before he left the Board.

- ✓ No jurisdiction over open meetings law issues
- ✓ No right to extend Ramsey's term
- ✓ Most expeditious for what the Board has proposed – ie, have new Board member sit and then complete the matter

Do rules cover this situation:

LMS - After two times warning counsel that this would happen – answer is yes. EWC agrees that this is the correct procedure to follow.

Additional LMS comment re possible amendment to rules to include a Board member removing himself at some point for a stated reason – discussion for another day.

Hearing not necessary; Opinion as to those issues deliberation on 10/27/05 between 2-4-7 to be signed by Messrs. Stahl and Crizer, including today's Motion.

Second issue:

Decision on Motion:

Status of today's deliberation:

- ✓ Reviewed situation – sought counsel as to procedure
- ✓ Some issues were determined
- ✓ Minutes do exist for the 10/27/05 deliberation – available for anyone wishing a copy
- ✓ Issues were decided by the Board on 10/27/05
  - ° Nonconforming use was still in existence – was not lost
  - ° 300' expansion did not apply to Wilson
  - ° Original special exception was vested

Left with the expansion issue and new special exception request – was just getting into that on 10/27/05; other two issues had been decided; 2 of the original 3 members are here; on solid ground to accept those issues and move on from there

LMS to other panel members: Do you have any problem with picking up at the special exception?
LSW – No problems
EWC – After review – believes this is the way to go. Confirmed that LMS and EWC agreed on nonconforming use; agreed that original special exception had vested

---

Today's deliberation: Special Exception request for expansion

° LSW reviewed 502.1 laundry list and first criterion under 502.1 -- would it be detrimental to the health, safety or general welfare of the locality involved (*Schultz v. Pritts*)

- ☑ One thing brought out in the testimony – that this residential area sits in an area that is fairly well surrounded by manufacturing and other types of industry, in addition to NEMF
- ☑ They are accustomed to noise and diesel fumes from the trucks, etc.
- ☑ Testimony in record from the people living there that they hear the noise of the trucks at night and during the day; smell diesel fumes

- ☑ No expert testimony re any types of testing, etc.
- ☑ Expert testimony that diesel fumes can be carcinogenic
- ☑ Testimony to level diesel fumes can reach but not brought out as to what that level is
- ☑ Will go from 36 trucks to 106 trucks and 269 trailers plus the other traffic coming in and out during the day, night, etc.
- ☑ Will be a hub accepting all traffic coming in, etc.
- ☑ Transfer freight to other trailers; send them out
- ☑ Conflicting experts re noise
- ☑ Looked at experts and reports – both show spikes where noise goes up
- ☑ Expert for NEMF – as to noise, you might have 2 or 22 – noise level is not going to be any more but the frequency will be much greater; 3 times what they have now

Summary re 502.1:

° Operation will be detrimental to the health, safety and general welfare of the community; emphasized general welfare language of *Schultz v. Pritts* – whether or not there are facts or circumstances that show the use at the location proposed would have adverse effect above and beyond those associated with the use irrespective of location in the zone.

° Location was near a dangerous intersection; location is big liability to the company; does not say this lightly – very important facility for the County. But Mr. Dillon testified to the number of ML and MH acres in the County; Quad Avenue currently has operation (was Carlin's Brewery property) plus other properties around, including North Point Area. While this area may be ideal from standpoint of being close to major highways, other properties are not that far off.

° Does not meet *Schultz v. Pritts* because if you put this operation in a place not so close to residential area, you would have an operation that would not be affecting residential neighborhood.

LMS - Any way to ameliorate this; this is an important project to the County.

LSW – Expert talked about a wall – board on board type – in one of the hearings.

° Spano – could not live with board on board fence because of the security problems – in violation of security

° Would not be possible for security guards to see what was taking place on the other side of the fence

° Fence on top of retaining wall – would not be sound; subject to wind; could blow over. Law requires an opaque fence around part of the property; requires at least 6' opaque fence; possible it would not do the trick; referenced sound barriers on the beltway – loud noises

Question: Would this be more adverse here in this particular situation – will this be more detrimental? Referenced Dillon and Rudnikas – Dillon came up with noise heard every 1.6 minutes; could be multiplied by 3

° Also referencing testimony heard – Manager needs 7 day operation – close down on Friday night and open Sunday night – but must go 24 hours a day, 7 days a week.

° Two conflicting experts and the residents – paid particular attention to testimony of residents

- While no complaints have been filed – it's already there – expansion another issue

EWC – Adopts what LSW said but would go further – nonconforming use on Wilson property – not a 300' buffer on the property which affects the neighborhood

- Does not apply to Wilson and puts it closer; adding of trailers and trucks – relied heavily on Dillon's night of sitting out and listened to company's sound man – but relied on Dillon and Rudnikas and visits

- Agrees with LSW – and evidence presented – sound levels may not intensify but the frequency will be greater

- *Schultz V Pritts* applies and it fails on the first leg of 502.1.

LMS: Cannot find a way where there can be some expansion without tremendously negative effect on the neighborhood

That's why questioned if there could be any amelioration to where expansion could be granted without harming the neighborhood

Was not impressed with testimony – sound person; technical person; frequency is the issue – can that be lessened some way. No testimony that it could.

LSW: The diesel fumes still exist, whether carcinogenic or not – will be increased in the air by 3 times

LMS: Cannot put a roof on the place

EWC: Very good positive points in this project for the community; the community has been very respective to all its business neighbors; testimony that they had discussions with one of the new neighbors; did not fight; were compliant. But this is a project that goes against and really affects the way they live.

LMS: Project is too much?

LSW and EWC – agreed it was

LMS: Could a smaller expansion have gone forward?

EWC: Problem reaching meeting ground – does not know what would be best for the community; and what would be okay for the trucking company – what kind of compromise would work for both.

LMS: So it would fail on 502.1A. Could stop here and say it failed; or could complete the list so that if this matter goes up on appeal, the Appellant could have benefit of Board having finished case and determined issues; court would not have to send it back for everything.

LMS: Can go through list

EWC: Agreed

LMS: Believes it's the better way to go.

Continued discussion of 502.1:

- **Fails on A – noise and fumes – EWC and LSW agree on this; LMS – agreed on the frequency; agreed as to emissions – could possibly be blocked but frequency cannot be changed**
- **502.1B – Congestion – roads, streets and alleys**
  - Not main focus
  - But more trucks and 7 day operation – would affect roads
  - City portion of property is the entrance
  - Since that is the case – insufficient evidence re congestion in roads, streets, alleys; could be the City's problem

- **502.1C – Fire, hazard and other danger – NO**
- **502.1D – Tend to overcrowd land /property – NO**
- **502.1E – Interfere with parks, etc. – project does not make it worse**
- **502.1F – Light and air – diesel fumes would change the air; believe it would fail here for the same reasons as "A"**
- **502.1G – Consistent with the property's zoning classification – spirit and intent of BCZR**
  - Inconsistent with BCZR
  - This project at this location would be inconsistent with spirit and intent of BCZR

- **502.1H – Inconsistent with impervious surface**
  - Was some talk about the stream but not enough evidence

SUMMARY:

Expansion failed as to requirements of 502.1 for special exception – health, safety and general welfare (A); and the air (F). Also inconsistent with the spirit and intent of BCZR

Unanimous – LMS, LSW, and EWC – fails on those issues above and as discussed

LMS: Referred to Dillon and Rudnikas in terms of sound – commercial area; people have lived with it; expansion won't be able to happen so probably the commercial uses will die. Has problem with sound more than emissions – no question that being close to trucking facility and emissions is a bad thing – not very much qualitative evidence; was less than impressed with some of the evidence presented – exception of Dillon and Rudnikas – knew what it sounded like. Protestants' expert testimony failed; either accept individual people's testimony or you don't. Could draw conclusions from testimony presented by Dillon and Rudnikas.

LSW: Neighbors testified they could not open windows at night – sounds and fumes – but had been living with it.

LMS: But they did not try to alter it.

LSW: What could you do to alter it?

EWC: Reason this association was formed was because of the trucking facility – this is what they were doing.

LMS: Inconsistent with business – if you find it fails on anything in list, then it fails with *Schultz v. Pritts*

LSW: Questioned if decision was unanimous; polled each Board member for final vote on special exception expansion issue.

LSW: Fails under S v P
EWC: Agrees it fails for reasons stated and discussed
LMS: Would like to find a way to grant it – but it's an ultimate good. But can't find anything to ameliorate the situation; will make the decision unanimous

FINAL DECISION: Special exception request for proposed expansion fails under the requirements of *Schultz v. Pritts* as indicated above.

Summary of decisions reached in this matter and orders to be issued:

LMS and EWC – Will sign an Opinion and Order on the first two issues deliberated 10/27/05
LSW, LMS and EWC – Will sign Opinion and Order on the special exception expansion
LSW, LMS and EWC – Will sign a cover Order to incorporate both Opinions in this matter as the final Order and decision of the Board.

The appellate period in this matter will run 30 days from date of written Order(s).

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above 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.

Kathleen C. Bianco, Administrator
County Board of Appeals

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: 3600 Georgetown Corp 04-160-SPH and 04-294-SPHX

DATE: March 2, 2010

BOARD/PANEL: Lawrence M. Stahl
Lawrence S. Wescott
Edward W. Crizer, Jr.

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. Petitioner's Motion to Dismiss filed November 12, 2009
2. Montgomery Co v. Purich
3. Schultz v. Pritz

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board discussed the Petitioner's Motion to Dismiss. The Board determined that only the Board of Appeals can interpret the Board of Appeals Rules of Practice and Procedure. The Board's Rules state that "[a]n appeal may be withdrawn or dismissed at any time prior to the conclusion of the hearing on said appeal." This case is on remand from the Court of Special Appeals. The Board determined that the appropriate time to withdraw or dismiss this matter would have been prior to the Board's original decision in this case. The Board determined that once the decision was issued by the Board, the time to withdraw or dismiss had passed. The Board also decided that the parties to this matter were entitled to a conclusion to this matter, with as much time and money that has been spent on this matter over the last seven years, it is inappropriate to withdraw or dismiss this matter at this time after the matter has been remanded by the Court of Special Appeals.
- The Board then discussed the case of Schultz v. Pritz and the language that is required. Mr. Wescott reviewed that he wrote the portion of the decision with regard to § 502.1. Mr. Wescott remembers the Board's position that the Petitioner is not required to look at other properties. To determine if a requested Special Exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a Special Exception use located anywhere within the zone. All matters before the Board rise and fall on their own. The Board made their determinations based on the evidence and testimony provided with regard to that property at that time. The Board held that the

location was not appropriate for the requested expansion due to the nature of the surrounding community.

- The Board reviewed the Purich case. The Board finds that it is difficult to apply a ruling with regard to local law from one jurisdiction and apply it to another jurisdiction when the laws are completely different. In the Purich case, a Special Exception was required to use the property as a filling station. The question at issue was whether the owner lost the non-conforming use. The way the Montgomery County laws are written, once the special exception was granted. There was no need for the non-conforming use. After 6 months the non-conforming use lapsed under the law in Montgomery County. and therefore it was no longer valid. In the case before this Board, the BCZR requires that to modify the Class 1 trucking facility, the owners must apply for a Special Exception. The owners do not require a Special exception to operate the trucking facility. The operation of the trucking facility is the non-conforming use. The Board determined that the way Baltimore County's statutes are written, the Purich case is difficult to apply to this matter. After hearing argument with regard to these issues, the Board determined that the Petitioners still have a non-conforming use and the Special Exception was required only for the modification of the facility.

FINAL DECISION BY BOARD MEMBERS: The Board unanimously decided that they will not allow the withdrawal and dismissal of this matter. The Board unanimously determined that the location of the property is not an appropriate location for the expansion of a trucking facility and since the Special Exception was granted but not used, the non-conforming use is still in effect.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above 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,

Sunny Cannington

Sunny Cannington

PLEASE PRINT CLEARLY

CASE NAME 04-160-SPH
04-294-SPHX
CASE NUMBER NEMF
DATE 9/7/04

PETITIONER'S SIGN-IN SHEET

NEMF, 3600 G

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
G. Scott Barhight	210 W Pennsylvania Ave	Towson MD 21204	
DAVID MARTIN	1020 CROMWELL BR. RD.	TOWSON, MD 21286	dmartin@g.w.stephens.com
JAMES MARKLE	1020 Cromwell Bridge Rd,	Towson, MD 21286	JMARKLE@GWSTEPHENS.COM

PLEASE PRINT CLEARLY

CASE NAME 3600 Georgetown Rd
CASE NUMBER
DATE 3/1/04

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
ROBERT F. WALKER	141 E 26th ST	ERIE, PA 16504	rwalker@nemf.com
DAVID L. MARTIN	1020 CROMWELL BRIDGE RD	TOWSON 21286	dmartin@gwstephens.com
RICK CHADSEY	1020 Cromwell Bridge Rd	TOWSON 21286	rchadsey@gwstephens.com
Jenn Busse	c/o Whiteford, Taylor & Preston		jbusse@wtplaw.com
G. Scott Barbright	210 W. Pennsylvania Ave., Ste 400, Towson, MD 21204		

PLEASE PRINT CLEARLY

CASE NAME_____
CASE NUMBER_____
DATE_____

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Lorna Rudnikas	1727 Hall Ave	Baltimore, Md	RUDNIKASLR@AOL.com
Camille Rudnikas	" "	" "	LornaMedea@aol.com
Lorna Rudnikas- representing	President, Greater Bloomfield Community Assoc. and 32 families who are members of Assoc.		

PLEASE PRINT CLEARLY

CASE NAME_____
CASE NUMBER_____
DATE_____

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Lorna Rudnicki	1727 Hall Avenue	Baltimore Co. MD 21227	rudnickis1d@comcast.net
Darlene Byrd	1709 Wilson Ave.	Balto. Co. MD 21227	

Circuit Court of Maryland

Go Back

Case Information

Court System: **Circuit Court for Baltimore County - Civil System**
Case Number: **03C06003979**
Title: **In The Matter of: Greater Bloomfield Assn, et al**
Case Type: **Admin. Agency Appeal Ex Parte** Filing Date: **04/13/2006**
Case Status: **Closed/Active**
Case Disposition: **Decree or Order** Disposition Date: **04/23/2009**

Plaintiff/Petitioner Information

(Each Plaintiff/Petitioner is displayed below)

Party Type: **Petitioner** Party No.: **3**
Name: **Byrd, Darlene**
Address: **1709 Wilson Ave**
City: **Baltimore** State: **MD** Zip Code: **21227**

Attorney(s) for the Plaintiff/Petitioner

Name: **Holzer, Esq, J Carroll**
Practice Name: **Holzer & Lee**
Address: **508 Fairmount Avenue**
City: **Towson** State: **MD** Zip Code: **21286-5448**

Party Type: **Petitioner** Party No.: **4**
Name: **Elliott, Brenda**
Address: **3510 Georgetown Road**
City: **Baltimore** State: **MD** Zip Code: **21227**

Attorney(s) for the Plaintiff/Petitioner

Name: **Holzer, Esq, J Carroll**
Practice Name: **Holzer & Lee**
Address: **508 Fairmount Avenue**
City: **Towson** State: **MD** Zip Code: **21286-5448**

Party Type: **Petitioner** Party No.: **5**
Name: **Sadler, Donald**
Address: **1712 Wilson Ave**
City: **Baltimore** State: **MD** Zip Code: **21227**

Attorney(s) for the Plaintiff/Petitioner

Name: **Holzer, Esq, J Carroll**
Practice Name: **Holzer & Lee**
Address: **508 Fairmount Avenue**
City: **Towson** State: **MD** Zip Code: **21286-5448**

Party Type: **Petitioner** Party No.: **6**
Business or Organization Name: **Peoples Counsel For Baltimore County**
Address: **Old Courthouse**
City: **Towson** State: **MD** Zip Code: **21204**

Attorney(s) for the Plaintiff/Petitioner

Name: **Holzer, Esq, J Carroll**
Practice Name: **Holzer & Lee**
Address: **508 Fairmount Avenue**
City: **Towson** State: **MD** Zip Code: **21286-5448**
Name: **Zimmerman, Esq, Peter M**
Practice Name: **People's Counsel For Baltimore County**
Address: **105 West Chesapeake Ave.**
Room 204
City: **Towson** State: **MD** Zip Code: **21204**
Name: **Demilio, Esq, Carole S**
Practice Name: **Deputy Peoples Counsel**
Address: **Old Courthouse Room 47**
400 Washington Avenue
City: **Towson** State: **MD** Zip Code: **21204**

Party Type: **Petitioner** Party No.: **1**
Business or Organization Name: **Greater Bloomfield Assn**
Address: **1727 Hall Ave**
City: **Baltimore** State: **MD** Zip Code: **21227**

Attorney(s) for the Plaintiff/Petitioner

Name: **Holzer, Esq, J Carroll**
Practice Name: **Holzer & Lee**
Address: **508 Fairmount Avenue**
City: **Towson** State: **MD** Zip Code: **21286-5448**

Party Type: **Petitioner** Party No.: **2**
Name: **Rudnikas, Lorna**

Attorney(s) for the Plaintiff/Petitioner

Name: **Holzer, Esq, J Carroll**
Practice Name: **Holzer & Lee**
Address: **508 Fairmount Avenue**
City: **Towson** State: **MD** Zip Code: **21286-5448**

Defendant/Respondent Information

(Each Defendant/Respondent is displayed below)

Party Type: **Respondent** Party No.: **1**
Business or Organization Name: **3600 Georgetown Corp**

Aliases Defendant/Respondent

Name: **New England Motor Freight**

Attorney(s) for the Defendant/Respondent

Name: **Nussbaum, Esq, Paul Mi**
Practice Name: **Whiteford, Taylor & Preston, LLP**
Address: **210 W Pennsylvania Ave**
City: **Towson** State: **MD** Zip Code: **21204-4515**
Name: **Barhight, Esq, G Scott**
Practice Name: **Whiteford, Taylor & Preston L.L.P.**
Address: **210 West Pennsylvania Ave**
400 Court Towers

City: **Towson** State: **MD** Zip Code: **21204-4515**
Name: **Buxbaum, Esq, Edward M**
Practice Name: **Whiteford, Taylor & Preston, LLP**
Address: **Seven Saint Paul Street**
City: **Baltimore** State: **MD** Zip Code: **21202-1626**

Party Type: **Respondent** Party No.: **2**
Business or Organization Name: **Greater Bloomfield Community Assn The**

Court Scheduling Information

Event Type: **Civil Non-Jury Trial** Notice Date:
Event Date: **10/20/2006** Event Time: **09:30 AM**
Result: **Held/Concluded** Result Date: **10/20/2006**

Related Persons Information

(Each Related person is displayed below)
Party Type: **Interested Party** Party No.: **1**
Business or Organization Name: **County Board Of Appeals Of Baltimore County The**
Address: **Old Courthouse, Room 47**
City: **Towson** State: **MD** Zip Code: **21204**

Document Tracking

(Each Document listed. Documents are listed in Document No./Sequence No. order)
Doc No./Seq No.: **1/0**
File Date: **04/13/2006** Close Date: **03/08/2007** Decision:
Party Type: **Petitioner** Party No.: **1**
Document Name: **Petition for Judicial Review with Exhibits**
Filed by PET001-Greater Bloomfield Assn, PET002-Rudnikas, PET003-Byrd, PET004-Elliott, PET005-Sadler, PET006-Peoples Counsel For Baltimore County

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Doc No./Seq No.: **1/1**
File Date: **04/28/2006** Close Date: **03/08/2007** Decision:
Party Type: **Respondent** Party No.: **1**
Document Name: **Answer**

Doc No./Seq No.: **2/0**
File Date: **04/28/2006** Close Date: **03/08/2007** Decision:
Party Type: **Respondent** Party No.: **1**
Document Name: **Petition for Judicial Review**

Doc No./Seq No.: **2/1**
File Date: **05/10/2006** Close Date: **03/08/2007** Decision:
Party Type: **Petitioner** Party No.: **1**
Document Name: **Answer**

Doc No./Seq No.: **3/0**
File Date: **05/02/2006** Close Date: **03/08/2007** Decision:
Party Type: **Interested Party** Party No.: **1**
Document Name: **Certificate of Notice**

Doc No./Seq No.: **4/0**
File Date: **05/26/2006** Close Date: **03/08/2007** Decision:
Document Name: **Certificate of notice**

Doc No./Seq No.: **5/0**
File Date: **06/06/2006** Close Date: **03/08/2007** Decision:
Document Name: **Intention To Participate**

Doc No./Seq No.: **6/0**
File Date: **06/15/2006** Close Date: **03/08/2007** Decision:
Party Type: **Interested Party** Party No.: **1**
Document Name: **Transcript of Record from Adm Agency**

Doc No./Seq No.: **7/0**
File Date: **06/20/2006** Close Date: **06/20/2006** Decision:
Party Type: **Petitioner** Party No.: **1**
Document Name: **Notice of Transcript of Record Sent**

Doc No./Seq No.: **8/0**
File Date: **06/20/2006** Close Date: **06/20/2006** Decision:
Party Type: **Respondent** Party No.: **1**
Document Name: **Notice of Transcript of Record Sent**

Doc No./Seq No.: **9/0**
File Date: **06/30/2006** Close Date: **06/30/2006** Decision:
Party Type: **Petitioner** Party No.: **6**
Document Name: **Notice of Transcript of Record Sent**

Doc No./Seq No.: **10/0**
File Date: **07/07/2006** Close Date: **07/07/2006** Decision: **Granted**
Document Name: **Stipulation for extension of time for filing of memoranda**

Doc No./Seq No.: **11/0**
File Date: **07/13/2006** Close Date: **07/13/2006** Decision:
Document Name: **Scheduling Order**

Doc No./Seq No.: **12/0**
File Date: **08/16/2006** Close Date: **08/21/2006** Decision:

Party Type: **Petitioner** Party No.: **1**
Document Name: **Memorandum**
Filed by PET001-Greater Bloomfield Assn, PET002-Rudnikas, etal

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Doc No./Seq No.: **13/0**
File Date: **08/16/2006** Close Date: **08/21/2006** Decision:
Party Type: **Petitioner** Party No.: **6**
Document Name: **Memorandum**

Doc No./Seq No.: **14/0**
File Date: **08/21/2006** Close Date: **08/23/2006** Decision:
Party Type: **Petitioner** Party No.: **1**
Document Name: **Memorandum of petitioner**
Filed by PET001-Greater Bloomfield Assn, RES002-Greater Bloomfield Community Assn The

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Doc No./Seq No.: **15/0**
File Date: **09/18/2006** Close Date: **09/25/2006** Decision:
Party Type: **Respondent** Party No.: **2**
Document Name: **Response memorandum of petitioner**

Doc No./Seq No.: **16/0**
File Date: **10/20/2006** Close Date: **03/08/2007** Decision:
Document Name: **Open Court Proceeding**
Hon. Ruth Jakubowski - Hearing had in re: Administrative Appeal - Dispo sub-curia. Opinion and order to be filed.

Doc No./Seq No.: **17/0**
File Date: **03/08/2007** Close Date: **03/08/2007** Decision: **Granted**
Document Name: **Memorandum Opinion and Order affiming in part, denying in part and remanding**
to the County B O A

Doc No./Seq No.: **18/0**
File Date: **03/12/2007** Close Date: **04/23/2009** Decision:
Document Name: **Docket entries sent to Board of Appeals of Baltimore County**

Doc No./Seq No.: **19/0**
File Date: **03/19/2007** Close Date: **05/29/2007** Decision: **Denied**
Party Type: **Respondent** Party No.: **1**
Document Name: ***Motion for Reconsideration of Memorandum Opinion and Order and Memorandum**
of Law in Support

Doc No./Seq No.: **19/1**
File Date: **04/23/2007** Close Date: **04/23/2009** Decision:
Party Type: **Petitioner** Party No.: **1**
Document Name: ***Answer**
Filed by PET001-Greater Bloomfield Assn, PET006-Peoples Counsel For Baltimore County, etal

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Doc No./Seq No.: **19/2**
File Date: **04/23/2007** Close Date: **04/23/2009** Decision:

Party Type: **Petitioner** Party No.: **6**
Document Name: ***Answer**

Doc No./Seq No.: **19/3**
File Date: **05/02/2007** Close Date: **04/23/2009** Decision:
Party Type: **Respondent** Party No.: **1**
Document Name: ***Reply Memorandum in Support of Its Motion for Reconsideration with exhibits**

Doc No./Seq No.: **20/0**
File Date: **03/19/2007** Close Date: **04/23/2009** Decision:
Party Type: **Respondent** Party No.: **1**
Document Name: ***Request for Hearing/Reconsideration**

Doc No./Seq No.: **21/0**
File Date: **03/24/2007** Close Date: **03/24/2007** Decision:
Document Name: **Reopen Case**

Doc No./Seq No.: **22/0**
File Date: **04/04/2007** Close Date: **04/23/2009** Decision:
Party Type: **Respondent** Party No.: **1**
Document Name: ***Notice of Appeal to COSA or COA**
(13/T2-11)

Doc No./Seq No.: **23/0**
File Date: **04/05/2007** Close Date: **04/05/2007** Decision:
Document Name: **Pre Trial Hearing Letter Issued**

Doc No./Seq No.: **24/0**
File Date: **04/03/2007** Close Date: **04/06/2007** Decision:
Party Type: **Interested Party** Party No.: **1**
Document Name: ***Notice of return of exhibits and closing memorandum**

Doc No./Seq No.: **25/0**
File Date: **04/09/2007** Close Date: **04/23/2009** Decision:
Party Type: **Respondent** Party No.: **1**
Document Name: **Request for Hearing/motion for reconsideration ***

Doc No./Seq No.: **26/0**
File Date: **04/11/2007** Close Date: **04/23/2009** Decision:
Party Type: **Respondent** Party No.: **1**
Document Name: **Response to petitioners motion to extend time to respond to Georgetown Corps**
motion for reconsideration *

Doc No./Seq No.: **27/0**
File Date: **04/17/2007** Close Date: **04/17/2007** Decision: **Granted**
Party Type: **Petitioner** Party No.: **1**

Document Name: ***Motion to Extend Time to respond to Motion for reconsideration**
Filed by PET001-Greater Bloomfield Assn, PET006-Peoples Counsel For Baltimore County, etal

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Doc No./Seq No.: **28/0**
File Date: **05/11/2007** Close Date: **04/23/2009** Decision:
Document Name: **Order for Prehearing Conference (COSA)**

Doc No./Seq No.: **29/0**
File Date: **06/05/2007** Close Date: **04/23/2009** Decision:
Party Type: **Respondent** Party No.: **1**
Document Name: **Notice of Appeal to COSA or COA /13/T2-11 ***

Doc No./Seq No.: **30/0**
File Date: **06/06/2007** Close Date: **06/06/2007** Decision:
Document Name: **Pre Trial Hearing Letter Issued**

Doc No./Seq No.: **31/0**
File Date: **07/09/2007** Close Date: **04/23/2009** Decision:
Document Name: **Request for Transcripts dated 04/16/07**

Doc No./Seq No.: **32/0**
File Date: **08/24/2007** Close Date: **04/23/2009** Decision:
Document Name: **Original Record sent to COSA**
Sent Certified Mail, 2 Volumes, 1 Transcript, #7006 0810 0002 4402 2600 Separate Box Exhibits Sent #7006 0810 0002 4402 2594

Doc No./Seq No.: **33/0**
File Date: **07/08/2009** Close Date: Decision:
Document Name: **Returned from Cosa - 2 Volume, 1 Transcript, 3 Expanding Files**

Doc No./Seq No.: **34/0**
File Date: **07/07/2009** Close Date: Decision:
Document Name: **Mandate Received from Court of Special Appeals - Judgment December 24, 2009**
Judgment of the Citcuit Court of Baltimore County vacated. Case remanded to the circuit court with instructions to remand to the Board for further proceedings consistent with this opinion. Cost to be paid by appellees. January 23, 2009 Mandate issued

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The complete case file can be obtained from the Circuit Courthouse.

www.baltimoresun.com/news/maryland/baltimore-city/bal-md.trucks23nov23,0,4454534.story

baltimoresun.com

Battle over truck terminal enters next phase

Halethorpe lot seems empty, but hearing Dec. 3 might change all that

By Arthur Hirsch

Baltimore Sun reporter

November 23, 2009

The view from outside the New England Motor Freight lot in Halethorpe might suggest the local neighborhood association has won its years-long fight against the trucking company's expansion. On what might otherwise be a busy late afternoon, the gates are locked, the loading dock, offices, maintenance shop quiet, the asphalt lot empty but for a few trailers.

Though trucking operations have all but ceased at the terminal that straddles the Baltimore City- Baltimore County line, the case remains open and local opposition has not rested. Not after years of holding bake sales, oyster roasts and shrimp feasts to raise money, not after spending about $25,000 and countless hours as the case dragged through the county Board of Appeals, Baltimore County Circuit Court and the state Court of Special Appeals, only to end up now where it began: at the county Board of Appeals.

Year 7 of the Halethorpe - or Lansdowne, depending on the interpretation - Truck Terminal Battle closes on a note of uncertainty for activists of the Greater Bloomfield Community Association, an organization that was dormant until this struggle breathed life into it.

"We don't want a lot," said Lorna Rudnikas, the organization's former president who has been active in the motor freight challenge. "Just little red-brick buildings that open at 9 a.m. and close at 5 p.m."

She means another use for the property between Joh Avenue and Georgetown Road, where the company has run a trucking terminal since 1991 and where one trucking operation or another has done business off and on since at least the 1970s.

NEMF, one of the Shevell Group of trucking companies based in New Jersey, owns 17 acres there and the lot is still being used by another Shevell company. Earlier this month, NEMF pulled out of Halethorpe, consolidating operations at terminals in Hagerstown and North East.

Representatives of the company in New Jersey and their lawyer in Baltimore did not return phone calls, but the former NEMF Halethorpe terminal manager, Peter Filipowicz, who lost his job in the transition, said most of the 70 employees were moved from Halethorpe to the two other Maryland operations.

While about 100 trucks a day once rolled in and out of the terminal, Filipowicz said that's down to about five or six a day under Eastern Freight Ways.

Filipowicz said the move out of Halethorpe had nothing to do with the community challenge to its proposed expansion and everything to do with the recession.

The company is taking legal steps to keep its options open as the case continues next month before the Board of Appeals.

In 2006, the board denied the company's request for a "special exception" to expand the operation. At the time, the company was proposing to make room for quadrupling the number of tractors to about 300 and doubling the trailers to 260.

Opponents argued that the expansion would put the operation too close to homes, bringing unacceptable noise and exhaust fumes.

On appeal, the county Circuit Court sustained the denial of the expansion and also sided with the community in its claim that the company's right to do business on that site as a "nonconforming use" had expired in the 1980s when no business was conducted there for more than a year. The state Court of Special Appeals ordered the Board of Appeals late last year to take up the case again, and it will do so during a hearing Dec. 3.

The company's local lawyer asked last week to withdraw its petition for the expansion. The community association's lawyer, J. Carroll Holzer, called that request an attempt to effectively restart the process as if no decisions had been made.

"Our position is you've already asked for expansion and been denied," Holzer said in an interview.

His view is supported by the county People's Counsel, whose job is to represent the public on zoning matters. In a letter to the Board of Appeals, Peter Max Zimmerman - who backed the association in earlier appeals - called the request for withdrawal an "unacceptable tactical manipulation."

Rudnikas said her group is working on two fronts: fighting to see that the expansion plan cannot be revived and pressing county officials to encourage the trucking company to sell the land or develop it in a way the neighbors consider more suitable.

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2/23

IN RE: PETITIONS FOR SPECIAL HEARING & SPECIAL EXCEPTION
N/S Georgetown Road, 629.36 ft. SW of c/l Bloomfield Road
3600 Georgetown Road
13th Election District
1st Councilmanic District
3600 Georgetown Corp., Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 98-260-SPHX

****

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner on Petitions for Special Hearing and Special Exception for the property located at 3600 Georgetown Road in Lansdowne. The Petitions were filed by 3600 Georgetown Corporation, property owner. Special Exception relief is requested, pursuant to Sections 410.1.F and 502.7 of the Baltimore County Zoning Regulations (BCZR), to amend the site plan for a previously approved Class 1 trucking facility dated June 16, 1981 (Trucking Facility 139). Special Hearing relief is requested to approve an amendment to a previously approved plan in case No. 48-90-RX. The subject property and requested relief are all more particularly shown on the amended plan to accompany the Petition for Special Hearing and Petition for Special Exception marked as Petitioner's Exhibit No. 1.

Appearing at the requisite public hearing held for this case was Robert Walker, on behalf of New England Motor Freight Company, the business entity which operates the subject trucking facility. Also present was David L. Martin, a Landscape Architect with G.W. Stephens, Jr. and Associates, the preparers of the site plan. The Petitioner was represented by David Gildea, Esquire. There were no Protestants or other interested persons present.

Testimony and evidence presented was that the subject property under consideration is a triangularly shaped parcel which straddles the Baltimore County/Baltimore City line in Lansdowne. The property, in its entirety, is approximately 9.523 acres in area. Approximately 6.25 acres are in Balti-

4

PROTESTANT'S EXHIBITS

2004016O "A" supplemental
&
2004029 4 "A" supplemental

4

3600 Georgetown - New England Motor Freight
04-160-SPH & 04-294-SPHX

Verified 7-14-05

Verified 7-19-05

(Protestants) Bloomfield

Verified 7-21-05

Verified 9-14-05

1. MDE Packet A-K
2. Title 26 Dept of the Environment A-6
3. Title 3 Noise Control 20 pages
4. Db formula
5. C.V. for Dr. Timothy J. Buckley
6. Fence line noise data
6b. Fence line noise data (portion)
6c-g packets of raw data
7. Rule 8 papers
8. Power Point presentation by Lorna Rudnikas
9. Jack Dillon C.V.
10. Power Point presentation by Jack Dillon
11. CBA 4890-RX
12. Balto. Co. Task Force 1975
13. Final Report 1976
14. County Council of Balto. Co. 1976
15. Dept. Zoning Commissioner of Balto. Co. 77-139 TV
16. Order of U.S. Bankruptcy Court filed July 24, 1980
17. Balto. Co. Board of Appeals No. 77-139
18. Letter from James E. Dyer (Zoning Super)
19. Site Plan of Wilson Freight
20. Zoning Comm. Case No. 98-260SPHX
21. Zoning Comm. Case No. 99-208-SPH
22. Dupity Zoning Comm. Case No. 01-544-SPHX
23. Motion for Reconsideration
24. CBA Dismissing 01-544-SPHX (make copy)
25. Letter from James H. Thompson (Code Enforcement)
26. Site Plan from 99-208 SPH + 98-260 SPHX
19A. Overlay for Ex. 19 Site Plan } behind door - rolled up with 26A.
26A. Overlay for Ex. 26 Site Plan }
27. Aerial Photo from Balto. Co.
28. Overlay for proposed NEMF site (missing 7/28 missing)
29. Overlay for Merritt prop. project
30. Topography Map from Balto. Co.

2

3600 Georgetown
04-160-SPH
04-294-SPHX

Verified
7-21-05

Bloomfield

✓ ✓ ✓	31.	Topographical Map (larger scale than Ex. 30)
✓ ✓ ✓	32.	Checklist
✓ ✓ ✓	33.	Master Plan (Blow up)
✓	34.	Ryle & Papers corrected see Ex 7
✓	35.	Petitions from Community

MARYLAND DEPARTMENT OF THE ENVIRONMENT
1800 Washington Boulevard • Baltimore MD 21230
410-537-3000 • 1-800-633-6101

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Kendl P. Philbrick
Secretary

Jonas A. Jacobson
Deputy Secretary

July 12, 2005

The graphs and supplement information, to include charts, listed below were supplied by the Maryland Department of the Environment to Mrs. Lorna Rudnikas.

Graph Titles and number of pages.

1. Object measured for sound – International truck (2 pages)
2. Object measured for sound – 1985 Internationa truck (2 pages)
3. Object measured for sound – dump truck (2 pages)
4. Truck disconnecting and then re-connecting to a trailer (3 pages)

John Hill

7/12/05

John Hill
Noise Control

Date

Bloomfield Ex. #1A.

Bloomfield Ex. #2

7/13/04

26.02.03.00

Title 26 DEPARTMENT OF THE ENVIRONMENT

Subtitle 02 OCCUPATIONAL, INDUSTRIAL, AND RESIDENTIAL HAZARDS

Chapter 03 Control of Noise Pollution

Authority: Environment Article, §3-401, Annotated Code of Maryland

Preface

The Environmental Noise Act of 1974 of the State of Maryland declares as policy the limitation of noise to that level which will protect the health, general welfare, and property of the people of the State. It requires that the Department assume responsibility for the jurisdiction over the level of noise, and prepare regulations for the control of noise, including the establishment of standards for ambient noise levels and equipment performance with respect to noise, for adoption by the Secretary of the Environment. Enforcement of the regulations and standards is the responsibility of the Department in all areas, using the facilities and services of local agencies within the areas to the greatest extent possible. The Department shall coordinate the programs of all State agencies relating to noise abatement, and each State agency prescribing sound level limits or regulations respecting noise shall obtain the endorsement of the Department in prescribing any limits or regulations.

26.02.03.01

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "ANSI" means American National Standards Institute or its successor bodies.

(2) "Construction" means any site preparation, assembly, erection, repair, alteration, or similar activity.

(3) "Curtilage" means the enclosed land surrounding a house or dwelling and includes all areas maintained in lawn or horticultural plantings and may be bounded by a fence or wall, but would not typically include areas more distant than 300 feet from the dwelling unless those areas were horticulturally maintained and routinely used as areas of personal refuge, or supported accessory structures that were routinely utilized.

(4) "Day-night average sound level (L_{dn})" means in decibels, the energy average sound level for a 24-hour day with a 10 decibel penalty applied to noise occurring during the nighttime period; i.e., noise levels occurring during the

2 A.

Document 1 of 34

Source:
Maryland Code/ENVIRONMENT/TITLE 3. NOISE CONTROL

TITLE 3. NOISE CONTROL

Subtitle 1. Definitions; General Provisions.

3-101. Definitions.
3-102. Legislative findings and intent.
3-103. Responsibilities of Department.
3-104. Authority to obtain funds.
3-105. Powers and duties of political subdivisions.

Subtitle 2. Environmental Noise Advisory Council.

3-201. Council established.
3-202. Membership.
3-203. Officers.
3-204. Meetings; compensation; staff.
3-205. Advisory role of Council.

Subtitle 3. Interagency Noise Control Committee.

3-301. Committee established.
3-302. Composition; chairman.
3-303. Meetings; compensation; staff.
3-304. Duties of Committee.

Subtitle 4. Rulemaking and Enforcement.

3-401. Environmental noise standards, sound level limits, and noise control rules and regulations - Adoption.
3-402. Same - Procedures for adoption.
3-403. Same - Enforcement.
3-404. Corrective orders.
3-405. Injunctive actions.
3-406. Civil penalty.
3-407. Plan for compliance.
3-408. Conditions not violations.

Subtitle 5. Duties and Authority of Units of State Government.

3-501. "Unit" defined.
3-502. Support of State noise control policy.
3-503. Compliance with noise control requirements.
3-504. Sound level limits or regulations.
3-505. Investigation of complaints.

Bloomfield Ex. #4

$$20 \log_{10} \frac{D_1}{D_2} = \Delta$$

Bloomfield Ex. #5

July 11, 2005

CURRICULUM VITAE

TIMOTHY JOHN BUCKLEY

PERSONAL DATA

Home Address
4604 Oakview Court
Columbia, MD 21042
PH: (410) 964-3171
E-Mail: csb-tjb@comcast.net

Business Address
Johns Hopkins University
Dept. Environmental Health Sciences
615 North Wolfe Street
Baltimore, Maryland 21205
PH: (410) 614-5750; FAX: (410) 955-9334
E-mail:tbuckley@jhsph.edu

EDUCATION AND TRAINING

Degree	Year	Institution	Field
B.S.	1981	St. John's University Collegeville, MN	Chemistry
M.H.S.	1986	Johns Hopkins University Baltimore, MD	Industrial Hygiene
Ph.D.	1991	Rutgers University / Robert Wood Johnson Med. Sch. Piscataway, NJ	Environmental Science

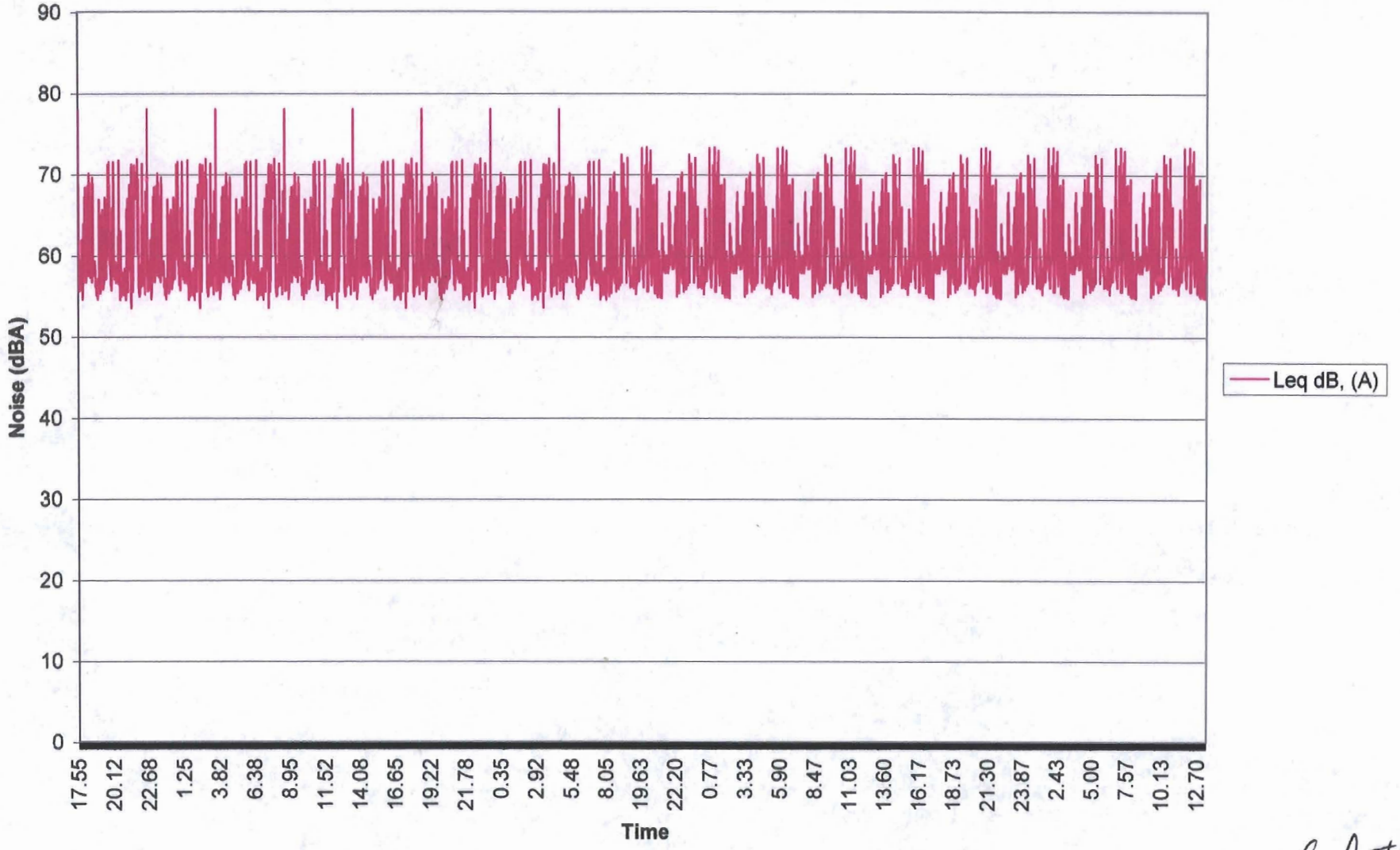
Board Certified: Certified Industrial Hygienist - Comprehensive Practice, American Board of Industrial Hygiene

PROFESSIONAL EXPERIENCE

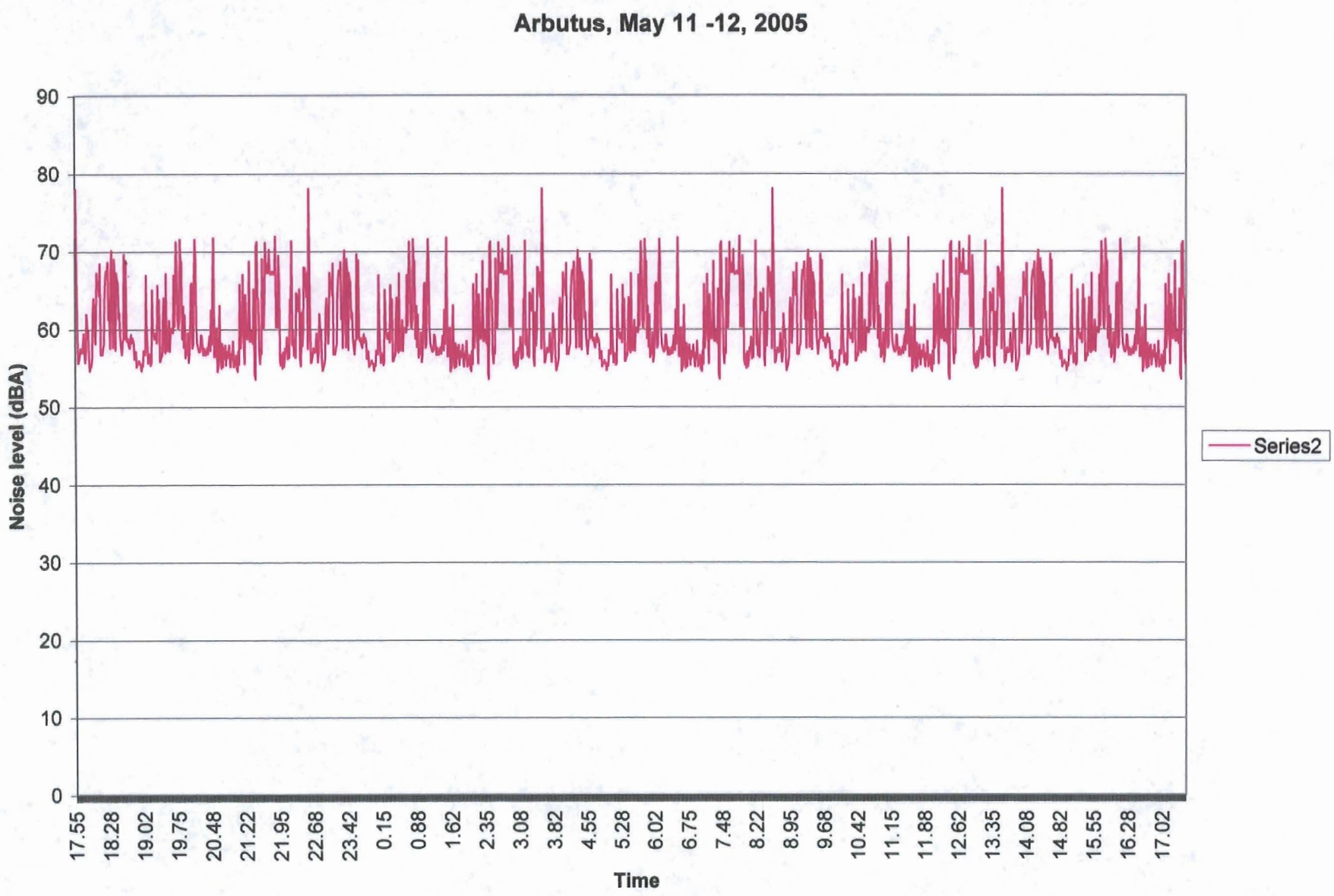
2002-present ***Associate Professor,*** The Johns Hopkins University, School of Hygiene and Public Health, Department of Environmental Health Sciences, Division of Environmental Health Engineering; **1999-present:** joint appointment in the Department of Epidemiology; **2005-present**: joint appointment in the Department of Oncology.

1996 - 2002 ***Assistant Professor***, The Johns Hopkins University, School of Hygiene and Public Health, Department of Environmental Health Sciences, Division of Environmental Health Engineering; **1999-2002:** joint appointment in the Department of Epidemiology.

Arbutus Noise Data



Bloomfield #6A



Bloomfield 6B

C:\documents and settings\student\my documents\bryan christensen\noise data\05-11-05.dta

- Profile -

Overload o Yes
Low batten Yes
Number of None
Profile sam 1 min
First datap 1 : 2311

Datapoint	Flags (OBPZ)	Date	Time	Hour	Leq dB, (A)	LAVG Q=5
1	O---	5/11/2005	17:33:00	17.55	78	74.1
2	O---	5/11/2005	17:34:00	17.57	68.8	67.9
3	O---	5/11/2005	17:35:00	17.58	59.7	58.4
4	----	5/11/2005	17:36:00	17.60	55.6	55.5
5	----	5/11/2005	17:37:00	17.62	55.8	55.8
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10	----	5/11/2005	17:42:00	17.70	57	56.9
11	----	5/11/2005	17:43:00	17.72	59.4	59.1
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20	----	5/11/2005	17:52:00	17.87	55	55
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22	----	5/11/2005	17:54:00	17.90	56.3	56.3
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24	----	5/11/2005	17:56:00	17.93	63.9	63.6
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26	----	5/11/2005	17:58:00	17.97	58.1	58.1
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38	----	5/11/2005	18:10:00	18.17	64	63.5
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40	----	5/11/2005	18:12:00	18.20	67.5	66.8
41	----	5/11/2005	18:13:00	18.22	66.9	66.8

Blomfield 6 C

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423	—	5/12/2005	0:35:00	0.58	59.7	59.4
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441	—	5/12/2005	0:53:00	0.88	61.8	60.5
442	—	5/12/2005	0:54:00	0.90	56.3	56.3
443	—	5/12/2005	0:55:00	0.92	57	56.8
444	—	5/12/2005	0:56:00	0.93	56.7	56.7
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456	—	5/12/2005	1:08:00	1.13	60	59.8
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Bloomfield 6D

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1882	—	5/13/2005	0:54:00	0.90	55.9	55.9
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1887	—	5/13/2005	0:59:00	0.98	55.2	55.3
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1893	—	5/13/2005	1:05:00	1.08	57.8	57.7
1894	—	5/13/2005	1:06:00	1.10	55.6	55.5
1895	—	5/13/2005	1:07:00	1.12	56	56
1896	—	5/13/2005	1:08:00	1.13	56.8	56.4
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1906	—	5/13/2005	1:18:00	1.30	65.6	63.5
1907	—	5/13/2005	1:19:00	1.32	60	60.1
1908	—	5/13/2005	1:20:00	1.33	63.8	62.2
1909	—	5/13/2005	1:21:00	1.35	55.8	55.8
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Bloomfield
6E

435	—	5/14/2005	0:19:00	0.32	56.6	56.6
436	—	5/14/2005	0:20:00	0.33	65.7	63.5
437	—	5/14/2005	0:21:00	0.35	59.4	59.7
438	—	5/14/2005	0:22:00	0.37	57.4	57.4
439	—	5/14/2005	0:23:00	0.38	60.7	59.4
440	—	5/14/2005	0:24:00	0.40	64.6	63.5
441	—	5/14/2005	0:25:00	0.42	56.9	56.9
442	—	5/14/2005	0:26:00	0.43	57.9	57.5
443	—	5/14/2005	0:27:00	0.45	56.9	57
444	—	5/14/2005	0:28:00	0.47	56.8	56.8
445	—	5/14/2005	0:29:00	0.48	58.5	58.3
446	—	5/14/2005	0:30:00	0.50	58.1	57.7
447	—	5/14/2005	0:31:00	0.52	58.5	58.4
448	—	5/14/2005	0:32:00	0.53	58.3	58.1
449	—	5/14/2005	0:33:00	0.55	58.7	58.5
450	—	5/14/2005	0:34:00	0.57	59.6	59.6
451	—	5/14/2005	0:35:00	0.58	60.5	60.5
452	—	5/14/2005	0:36:00	0.60	61.3	61.3
453	—	5/14/2005	0:37:00	0.62	61.6	61.5
454	—	5/14/2005	0:38:00	0.63	67.4	66.7
455	—	5/14/2005	0:39:00	0.65	67.2	64.5
456	—	5/14/2005	0:40:00	0.67	73.2	72.6
457	—	5/14/2005	0:41:00	0.68	65.7	65.8
458	—	5/14/2005	0:42:00	0.70	67	66.2
459	—	5/14/2005	0:43:00	0.72	65.9	65.3
460	—	5/14/2005	0:44:00	0.73	57.1	57
461	—	5/14/2005	0:45:00	0.75	57.8	57.7
462	—	5/14/2005	0:46:00	0.77	56.9	56.6
463	—	5/14/2005	0:47:00	0.78	57.2	57.2
464	—	5/14/2005	0:48:00	0.80	56	55.9
465	—	5/14/2005	0:49:00	0.82	57.4	57.2
466	—	5/14/2005	0:50:00	0.83	59.1	58
467	—	5/14/2005	0:51:00	0.85	59.5	59
468	—	5/14/2005	0:52:00	0.87	58.9	58.8
469	—	5/14/2005	0:53:00	0.88	59.7	59.2
470	—	5/14/2005	0:54:00	0.90	59.8	59.2
471	—	5/14/2005	0:55:00	0.92	71.1	68.4
472	—	5/14/2005	0:56:00	0.93	66.2	67
473	—	5/14/2005	0:57:00	0.95	70.8	70.1
474	—	5/14/2005	0:58:00	0.97	65.9	65.3
475	—	5/14/2005	0:59:00	0.98	60	59.6
476	—	5/14/2005	1:00:00	1.00	59.5	58.8
477	—	5/14/2005	1:01:00	1.02	69.8	68.7
478	—	5/14/2005	1:02:00	1.03	73.3	71.7
479	—	5/14/2005	1:03:00	1.05	63.8	63.3
480	—	5/14/2005	1:04:00	1.07	55.5	55.5
481	—	5/14/2005	1:05:00	1.08	58.3	58
482	—	5/14/2005	1:06:00	1.10	58.1	57.7
483	—	5/14/2005	1:07:00	1.12	55.9	55.9
484	—	5/14/2005	1:08:00	1.13	55.5	55.4
485	—	5/14/2005	1:09:00	1.15	61.8	61.2
486	—	5/14/2005	1:10:00	1.17	69.8	68.8

Blomfield
6F

1891	—	5/15/2005	0:35:00	0.58	61.3	60.2
1892	—	5/15/2005	0:36:00	0.60	62.4	60.4
1893	O—	5/15/2005	0:37:00	0.62	72	70.2
1894	—	5/15/2005	0:38:00	0.63	66.7	65.1
1895	—	5/15/2005	0:39:00	0.65	61.7	61.2
1896	—	5/15/2005	0:40:00	0.67	61	61
1897	—	5/15/2005	0:41:00	0.68	61.3	60.8
1898	—	5/15/2005	0:42:00	0.70	59.7	59.4
1899	—	5/15/2005	0:43:00	0.72	58.5	58.1
1900	—	5/15/2005	0:44:00	0.73	58.2	57.8
1901	—	5/15/2005	0:45:00	0.75	58	57.7
1902	—	5/15/2005	0:46:00	0.77	57.4	57.4
1903	—	5/15/2005	0:47:00	0.78	57.6	57.5
1904	—	5/15/2005	0:48:00	0.80	66	64.3
1905	—	5/15/2005	0:49:00	0.82	56	56
1906	—	5/15/2005	0:50:00	0.83	57.5	57.1
1907	—	5/15/2005	0:51:00	0.85	56.8	56.7
1908	—	5/15/2005	0:52:00	0.87	56.9	56.9
1909	—	5/15/2005	0:53:00	0.88	56.7	56.7
1910	—	5/15/2005	0:54:00	0.90	57.2	57
1911	—	5/15/2005	0:55:00	0.92	57.2	57
1912	—	5/15/2005	0:56:00	0.93	57.4	57.3
1913	—	5/15/2005	0:57:00	0.95	56.3	56.3
1914	—	5/15/2005	0:58:00	0.97	56.1	56.1
1915	—	5/15/2005	0:59:00	0.98	57.3	57
1916	—	5/15/2005	1:00:00	1.00	58.7	58
1917	—	5/15/2005	1:01:00	1.02	57.1	57
1918	—	5/15/2005	1:02:00	1.03	58.6	58.3
1919	—	5/15/2005	1:03:00	1.05	60.9	60.2
1920	—	5/15/2005	1:04:00	1.07	55.9	55.9
1921	—	5/15/2005	1:05:00	1.08	56.6	56.5
1922	—	5/15/2005	1:06:00	1.10	57.2	57.2
1923	—	5/15/2005	1:07:00	1.12	59.5	58.9
1924	—	5/15/2005	1:08:00	1.13	57.3	57.2
1925	—	5/15/2005	1:09:00	1.15	57.1	57.1
1926	—	5/15/2005	1:10:00	1.17	56.4	56.4
1927	—	5/15/2005	1:11:00	1.18	56.2	56.2
1928	—	5/15/2005	1:12:00	1.20	55.9	55.9
1929	—	5/15/2005	1:13:00	1.22	56.1	56.1
1930	—	5/15/2005	1:14:00	1.23	55.2	55.2
1931	—	5/15/2005	1:15:00	1.25	57.4	57.4
1932	—	5/15/2005	1:16:00	1.27	58.5	58.2
1933	—	5/15/2005	1:17:00	1.28	56.3	56.2
1934	—	5/15/2005	1:18:00	1.30	56.4	56.3
1935	—	5/15/2005	1:19:00	1.32	56.6	56.6
1936	—	5/15/2005	1:20:00	1.33	65.7	63.5
1937	—	5/15/2005	1:21:00	1.35	59.4	59.7
1938	—	5/15/2005	1:22:00	1.37	57.4	57.4
1939	—	5/15/2005	1:23:00	1.38	60.7	59.4
1940	—	5/15/2005	1:24:00	1.40	64.6	63.5
1941	—	5/15/2005	1:25:00	1.42	56.9	56.9
1942	—	5/15/2005	1:26:00	1.43	57.9	57.5

Bloomfield
6G

Bloomfield Ex. #7

RESOLUTION

Greater Bloomfield Community Assn ASSOCIATION

RESOLVED: That at the Second meeting of the Greater Bloomfield Community Association held on February 3, 2005, it was decided by the Association that the responsibility for review and action on all zoning matters for the period March 3, 2005 thru February 29, 2006 be placed in the (Board of Directors) (Zoning Committee) consisting of the following members:

AS WITNESS our hands and seal this 3rd day of February, 2005.

ATTEST:

Camille D. Rudnikas — Lorna D. Rudnikas

Camille Rudnikas — Lorna D. Rudnikas

SECRETARY — **PRESIDENT**

C:\My Docs\Forms\Rule 8 Resolution

Bloomfield
Ex. # 7

BOARD COPY

7/14/05 Rudnitsky

THE BLOOMFIELD CHALLENGE

Small Community – BIG Message

"DON'T TREAD ON US"

Bloomfield Ex. #9

Jack Dillon & Associates, LLC

410-337-5455 Fax 410-337-5476 410-221-0060

jackdillon@dmv.com

Baltimore County
207 Courtland Avenue
Towson, Maryland 21204

Dorchester County
922 Parson Drive
P.O. Box 64
Madison, Maryland 21648

Resume of Jack Dillon
Principal of Jack Dillon & Associates, LLC

EDUCATION

B.S. in Business Management
University of Baltimore, Baltimore, MD (1969)
Graduate Summer Program in Urban Planning
Georgia Institute of Technology, Atlanta, GA (1969)
Para Legal Program University of Maryland
University of Maryland University College (1978)
Video & Television Production
Dundalk Community College (1984-1986)
Attended Graduate Program in Landscape Architecture
Morgan State University, Baltimore, MD (1992-1994)

PROFESSIONAL AFFILIATION

American Planning Association

EMPLOYMENT

Mr. Dillon was employed by Baltimore County from 1962 to 1996. He was assigned to a special research project at Johns Hopkins University from 1962 thru 1965 and then two years at the jointly staffed Baltimore City and Baltimore County Analyzer Office at the Ashburton Filtration Plant. He then worked in the Office of Planning and Zoning, eight years in the Zoning Office and the remaining twenty one years in the Planning Office until his retirement in 1996.

In 1997 he accepted the position of Executive Director of The Valleys Planning Council, a private non-profit planning and land preservation organization. He retired from that position in September 2004 when he formed his planning consulting firm.

Bloomfield Ex. #10

The Community of Bloomfield

New England Motor Freight

2

RE: PETITION FOR RECLASSIFICATION from an "R-6" Zone to an "M-L" Zone and SPECIAL EXCEPTION for Truck Terminal and Warehouse - N.W. Old Georgetown Rd. and S.W. Baltimore City-Baltimore County boundary- 13th Dist. Wilson Forwarding Freight Co., Petitioner	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY No. 4890-RX

This is a petition for Reclassification from and "R-6" Zone to an "M-L" Zone and a Special Exception for a truck terminal and warehouse on a tract of land 4.74 acres located Northwest of Old Georgetown Road and Southwest of Baltimore County--BaltimoreCity boundary; subject property being located in the 13th District of Baltimore County.

This petition has been before the Board of Appeals since the original hearing date of October 6, 1960. An additional hearing was held on January 26, 1961, and still a third hearing on May 11, 1961. Since that time the Board, at the request of attorneys for petitioner and protestants have held the matter sub curia waiting for memorandums to be filed.

It appears from the testimony presented that it would be highly impractical to expect the petitioner to build homes on the subject property. A large majority of the surrounding area is zoned commercially and is being used for commercial purposes. The testimony of Mr. Charles M. Bandiere, an admitted real estate expert, was to the effect that the "highest and best use" of the property would be "M-L". He felt that the commercial aspects of the area that surround the residential area to the southwest of the subject property made it impractical to expect the petitioner to develop his property for residential purposes. He pointed out the automobile junk yard, the gasoline stations on Washington Boulevard and the trucking establishments over the City line on Caton Avenue. His testimony was substantiated by Mr. Augustine J. Muller, Consulting Engineer, former Zoning Commissioner and County Commissioner of Baltimore County appearing as an expert witness. His testimony also was to the effect that the property had been originally zoned in error and that it should have been zoned "M-L"--the same category which the land to the west of the subject tract had been zoned.

MICROFILMED

Bloomfield

Report of the Baltimore County Citizens Task Force on Truck Terminals
Adopted August 7, 1975

PROPOSED ZONING AMENDMENTS:
TRUCK TERMINALS
TRUCK-SERVED WAREHOUSES

Blomfield 12

Baltimore County Office of Planning and Zoning Towson, Maryland 21204

Final Report of the
Baltimore County Planning Board
Adopted February 19, 1976

PROPOSED ZONING AMENDMENTS: TRUCKING FACILITIES

Blomfield 13

Baltimore County Office of Planning and Zoning
Towson, Maryland 21204

County Council of Baltimore County Maryland

Legislative Session 1976, Legislative Day No. 7

BILL NO. 18-76

Introduced by Mr. O'Rourke, Councilman

(By request of County Executive)

By the County Council, March 15, 1976

A BILL

Entitled

AN ACT to amend the Baltimore County Zoning Regulations to regulate truck oriented uses of property in Baltimore County, to designate the zoning classifications under which such uses shall be permitted as of right, allowed by special exception or prohibited both in terms of control over the development of new facilities as well as remedial measures applicable to existing ones, by adding certain definitions to Section 101 of said zoning regulations and revising certain existing ones, by repealing and re-enacting with amendments Section 104 thereof, by redesignating the subtitle "Statement of Purpose" under Article 4 thereof, by repealing and re-enacting with amendments subsections 233.2, 236.4, 241.1, 253.2A, 256.2, 256.4, 409.2b and 500.7 thereof and by adding new sections B400, 410 and 410A to said zoning regulations:

SECTION 1. *Be it enacted by the County Council of Baltimore County, Maryland*, that the following definitions be and they are hereby added, in alphabetical order, to Section 101 of the Baltimore County zoning regulations.

Section 101 Definitions

Collector street, major: A street, or part of one, that: is intended for travel between neighborhoods or between neighborhoods and other places, but not for travel within neighborhoods; it is not an arterial street and has been designated as a major collector street by the Planning Board by the same method used to designate freeways, expressways, and arterial streets.

Bloomfield #14

3C

RE: ALLEGED ZONING VIOLATION
3600 Georgetown Road
13th Election District

Mr. D. M. Gantz, Pres.
Aetna Cartage Co.
11353 Reed Hartman Hwy.
Cincinnati, Ohio 45241
Defendant

Mr. Paul Dayhoff
Wilson Freight Co.
3600 Georgetown Road
Baltimore, Maryland 21227
Defendant

: BEFORE THE
: DEPUTY ZONING
: COMMISSIONER
: OF
: BALTIMORE COUNTY
77-139-TV

This matter comes before the Deputy Zoning Commissioner for compli

ance with the Baltimore County Council Bill No. 18-76 effective April 18, 19

Section 410. A. 1. of the Baltimore County Zoning Regulations states:

> "If the owner of or authorized agent for a Class I trucking facility believes that approved plans of that trucking facility are on file with the Office of Planning and Zoning or Department of Permits and Licenses on the effective date of this section, he must so notify the Zoning Commissioner, writing, within 6 months after that date, unless he has filed or will file plans as provided in subparagraph 2, below. Within 30 days after he receives the written notice, the Zoning Commissioner shall inform the owner or agent whether the plans are, in fact, on file and, if they are on file, whether they meet the requirements of subparagraph 410. 3C. 1. If the plans do not meet those requirements, the owner or agent shall file plans that do meet the requirements within 1 year after the effective date of this section.

Without reviewing the evidence in detail, but based upon all the evidenc

presented at the hearing, in the opinion of the Deputy Zoning Commissioner,

the subject property is being utilized as a trucking facility Class I which is

defined as:

> "Trucking Facility, Class I (truck terminal): A trucking facility whose primary purpose is to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks of truck trailers or to vehicles of other types, in order to facilitate the transportation of such goods or chattels."

RECEIVED FOR FILING
DATE June 5, 1978
BY Stella Lowenbach
ADMINISTRATIVE ASSISTANT

Blue #15

Rec'd 12-16-80 HCP

Filed July 24, 1980 Burton R. Lifland Bankruptcy Judge.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
WILSON FREIGHT COMPANY,	:	REORGANIZATION NO. 80 B 11129
Debtor.	:	
In re	:	
AETNA CARTAGE COMPANY,	:	REORGANIZATION NO. 80 B 11130
Debtor.	:	
In re	:	
DEARBORN EQUIPMENT CORPORATION,	:	REORGANIZATION NO. 80 B 11131
Debtor.	:	
In re	:	
HICKORY RENTAL COMPANY,	:	REORGANIZATION NO. 80 B 11132
Debtor.	:	
In re	:	
LEXINGTON BY-PASS COMPANY	:	REORGANIZATION NO. 80 B 11133
Debtor.	:	
In re	:	
OAK RENTAL COMPANY,	:	REORGANIZATION NO. 80 B 11134
Debtor.	:	
In re	:	
WOODROW EQUIPMENT COMPANY,	:	REORGANIZATION NO. 80 B 11135
Debtor.	:	

ORDER RELATING TO OPERATION OF BUSINESS
BY DEBTORS IN POSSESSION

Brookhaven #16

16C

IN THE MATTER OF D. M. GANTZ, AETNA CARTAGE CO. and PAUL DAYHOFF, WILSON FREIGHT CO. FOR ALLEGED ZONING VIOLATION	:	BEFORE
	:	COUNTY BOARD OF APPEALS
	:	OF
3600 Georgetown Road 13th District	:	BALTIMORE COUNTY
	:	No. 77-139-TV

: :

ORDER OF DISMISSAL

This case comes before the Board on an appeal from a decision of the Deputy Zoning Commissioner which found the Defendants in violation of the Baltimore County Zoning Regulations.

WHEREAS, on December 16, 1980, the Board held a hearing on this matter at which time the case was continued for the purpose of endeavoring to come to some agreement and compliance.

WHEREAS, the Board of Appeals is in receipt of an Order of Dismissal of Appeal, filed March 30, 1982 (a copy of which is attached hereto and made a part hereof) from the attorney representing the Defendants-Appellants in the above entitled matter.

WHEREAS, the said attorney requests that the appeal filed on behalf of said Defendants-Appellants be dismissed as of March 30, 1982, and enclosed a copy of a letter from the Zoning Commissioner, dated March 22, 1982 (a copy of which is also attached hereto and made a part hereof) which states: ". . .that an inspection of the site indicates it to be in satisfactory compliance with the approved site plan."

IT IS HEREBY ORDERED this 31st day of March, 1982, that said appeal be and the same is hereby DISMISSED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

LeRoy B. Spurrier

John A. Miller with permission etc

Bloomfield #17

17

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

WILLIAM E. HAMMOND
ZONING COMMISSIONER

May 7, 1982

Mr. Archie L. Honbarrier, President
Colonial Motor Freight Line, Inc.
P.O. Box 7027
High Point, North Carolina 27264

RE: Wilson Freight Co.
(Case No. 77-139-TV)
3600 Georgetown Road -
13th Election District

Dear Mr. Honbarrier:

Your letter dated April 19, 1982, to Mr. William E. Hammond, Zoning Commissioner, has been referred to me for reply. You have requested information pertaining to whether or not you may use the above-referenced property for a trucking operation and whether or not the recent problems with the zoning have been cleared up.

Please be advised that I have reviewed the subject property site plans and case file and find that the zoning problems have been cleared up by way of the revised site plan approved by the writer on June 16, 1981 and by the Chairman of the County Trucking Facilities Development Officials on June 15, 1981. Subsequent to the approval of the site plan, the site was inspected by the Zoning Enforcement Section Inspector, Mr. Henry E. Phipps, and found to be in compliance with said approved plan (see copy of letter dated March 22, 1982, enclosed). As a result of this finding of compliance, Mr. Williams, Attorney for the Aetna Cartage Co., dismissed the pending Appeal before the Board of Appeals.

Based upon the above, I can advise you that the property may be used as a trucking operation and that there are no outstanding violations. It is suggested, however, that you make every effort to see that the trucking operation maintains compliance with the aforementioned approved site plan. The present owner of the company should have a copy of said plan in his files. If this is not the case, you may obtain a copy from this office.

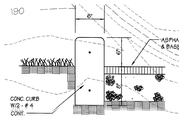
Very truly yours,

James E. Dyer

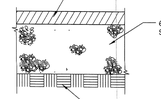
JAMES E. DYER
Zoning Supervisor

JED:nr
Enclosure
cc: Mr. William E. Hammond, Zoning Commissioner
Mrs. Jean M. H. Jung, Deputy Zoning Commissioner
Mr. Henry E. Phipps, Zoning Inspector

Bloomfield #18



CONCRETE CURB DETAIL
1 1/2" = 1' - 0"



TRUCKING FACILITY
SITE PAVING DETAIL
NO SCALE

PAVING CERTIFICATION

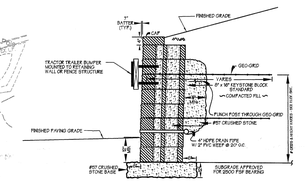
I HEREBY CERTIFY THAT THE PAVING BASE AND SOIL OF ALL PARKING, LOADING, MANEUVERING, AISLE AND STORAGE AREAS WILL WITHSTAND LOADS IMPOSED BY EXPECTED TRUCK TRAFFIC AND STORAGE ACTIVITIES.

WRITE NAME _____ DATE _____

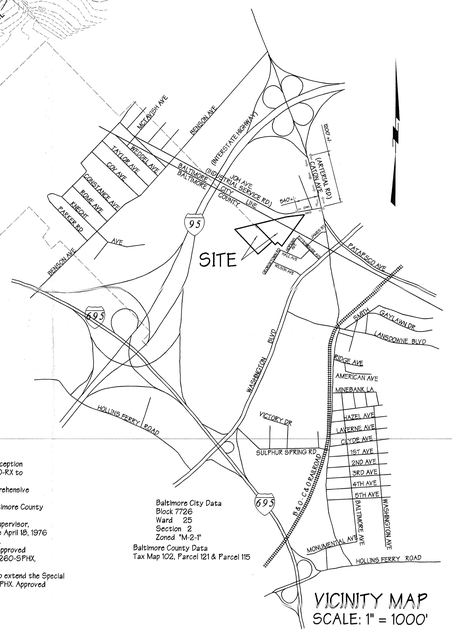
PRINT NAME _____ DATE _____

TRUCKING FACILITIES OFFICIALS DEPARTMENTAL CHECK-OFF

ADMINISTRATIVE OFFICER / DIRECTOR PDM / CHAIRMAN	DATE
CHIEF, BUREAU OF TRAFFICE ENGINEERING	DATE
DIRECTOR, ECONOMIC DEVELOPMENT	DATE
CHIEF, BUREAU OF ENGINEERING, PDM	DATE
STATE HIGHWAY ADMINISTRATION	DATE
ZONING SUPERVISOR / DIRECTOR, PERMITS & DEVELOPMENT MGT.	DATE



TYPICAL TRACTOR TRAILER BUMPER STOP PROTECTION
NOT TO SCALE



VICINITY MAP
SCALE: 1" = 1000'

Baltimore City Data
Block 7726
Ward 25
Section 2
Zoned "M-2-1"
Baltimore County Data
Tax Map 102, Parcel 121 & Parcel 115

ZONING HISTORY

1. Existing Facility was granted a Special Exception approval on October 11, 1961 in Case 4890-RX to permit a Trucking Facility.
2. Property was re-zoned in the 1976 Comprehensive Zoning Map process from ML to MLR-IM.
3. Truck Facilities Plan approved by the Baltimore County Zoning Commissioner on 6/16/81.
4. On May 7, 1982, James E. Dyer, Zoning Supervisor, found this facility as existing prior to the April 18, 1976 and to be in compliance with Bill No. 18-76.
5. Special Exception to amend a previously approved Class I Trucking Facility Plan, Case # 98-260-SPHX, granted February 25, 1998.
6. Case No. 99-208-SPH, Special Hearing to extend the Special Exception granted on case no. 98-260-SPHX. Approved January 15, 1999.

SITE DATA

1. SITE AREA - PARCEL 121 - BALTIMORE CITY - 3.532 ACRES
   BALTIMORE COUNTY - 5.9984 ACRES
   TOTAL - 9.5334 ACRES
   PARCEL 115 - BALTIMORE COUNTY - 7.9819 ACRES
   TOTAL - 17.5153 ACRES
   TOTAL - BALTIMORE COUNTY - 13.9803 ACRES
2. DEED REFERENCE - PARCEL 121 - 8628 / 138
   PARCEL 115 - 3977 / 184
3. OWNER / DEVELOPER - PARCEL 115 & 121
   3600 GEORGETOWN CORP.
   1-71 NORTH AVENUE E.
   ELIZABETH, NJ 07201
4. EXISTING ZONING - PARCEL 121 - BALTIMORE CITY - M-2-1
   BALTIMORE COUNTY - ML, DR-5.5
   PARCEL 115 - BALTIMORE COUNTY - ML, BM-IM, DR-5.5
5. TAX ACCOUNT NUMBERS - PARCEL 121 - 0413130123000
   PARCEL 115 - 0413123353770
6. FLOOR AREA RATIO - ALLOWED - 01 (BALTIMORE COUNTY LAND & BLDG. ONLY)
   - EXISTING - 1,368,977 S.F. / 609,025.42 S.F. = 0.02 F.A.R.
   - PROPOSED - 33,040 S.F. / 609,025.42 S.F. = 0.05 F.A.R.
7. MAX. BUILDING HEIGHT - NEW TERMINAL BUILDING - 45'

Legend

- PROPOSED 6' CHAIN LINK FENCE (BALTIMORE CITY ONLY)
- PROPERTY LINE
- WETLANDS
- FOREST BUFFER EASEMENT
- EXISTING CONTOURS
- 150 PROPOSED CONTOURS

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
1020 CROMWELL BRIDGE ROAD
TOWSON, MARYLAND 21286-3396
(410) 825-8120

STATE OF MARYLAND — CLOYD LOUIS HARRIS — No. 21601 — REGISTERED PROFESSIONAL ENGINEER

GENERAL NOTES

1. The existing Special Exception area is governed by Section 410.1 of the B.C. Z.R.
2. The proposed Expansion area in governed by Sections 410.2 & 410.3 of the B.C.Z.R.
3. Total area of property equals 17.5133 Acres (Baltimore City = 3.532 Ac.±, Baltimore County = 13.9803 Ac.±)
4. Existing zoning of property "M-2-1" (Balto. City) & "ML, DR-5.5, & BM-IM" (Balto. County) (Special Exception 4890-RX)
5. Existing use of Parcel 121 - "Truck Terminal" ("Truck Terminal Class I").
6. Hours of operation are midnight to midnight - seven days per week.
7. Number of trucks using the facility over a 24 hour period is projected to be a Max. of 300.
8. Number of trailers parked on the site: Max. - 269
9. Number of tractors parked on the site: Max. - 106
10. Number of employees on the largest shift = 150 (estimated projection) requiring 65 spaces.
    (1 space / employee) + 5 spaces + 6 shop employees, (BCZR Section 409) Total required = 76 spaces.
    (Note: all office space useage is located in Baltimore City.)
11. Number of parking spaces provided in Baltimore City 81 (incl. 4 H.C.)
12. All existing features are "Field Located" on the Site Plan.
13. Lighting: Any fixture used to illuminate any parking facility shall be so arranged as to reflect the light away from residential lots and public streets. Light standards shall be protected from vehicular traffic by curbing or landscaping.
14. Telephone service is provided inside the Terminal Building.
15. Male & female rest rooms & driver's room shall be provided in the new terminal building. 1 rest room in dock area shall be provided.
16. No junked trailers or vehicles are stored on the site.
17. Parts storage area shall be located in the New Repair Shop Building.
18. Existing use of Parcel 115 - vacant.
19. Existing building heights in approximately 30'; New building height is 45'.
20. No out side loud speakers are permitted on site.
21. F.A.R. in Balto. Co. = 33,040 s.f. building in Balto. Co./ 609,025.42 s.f. site in Balto. Co.= 0.05 < 0.1 Permitted
22. Chain link fence to be replaced as shown. Installation to be a part of the expansion construction program. Chain link fence shall be reinforced with evergreen landscape hedge or tree plantings so as to screen parking area from all adjacent residential properties.
23. Site Plan conforms with Truck Terminal Requirements.
24. Access Points to the facility are fixed.
25. Landscaping of this facility shall conform to the latest Baltimore County Landscape Design Manual.
26. Engineering certification. A registered engineer of appropriate qualifications must certify that the paving base and soil of all parking, loading, maneuvering, aisle and storage areas will withstand the loads imposed by expected truck traffic and storage activities.
27. Property does not lie within 100 year Flood Plain.
28. Permanent bumper protection devices shall be provided to protect walls, fencing or screen planting and provide for Federally mandated trailer security. Typical detail is shown hereon.
29. Sewer and water utility service is located in Joh Avenue and serves this property thru the Baltimore City portion of the site.
30. All project identification signage is located in the Baltimore City portion of the property.
31. All paving to be bituminous concrete, striped in accordance with this plan, and curbed at the entire perimeter of the paving limits, and meet all requirements for paving standards required in Section 409.8.D of the B.C.Z.R.

REVISIONS:
COMPLIED WITH SPRC COMMENTS
3/17/98

ROUTES TO SITE

1. North on I-95 to Caton Ave; South on Caton Ave. to JOH Ave.; West on JOH Ave to Site.
2. Northeast on Washington Blvd. to Caton Ave.; North on Caton Ave to JOH Ave.; West on JOH Ave. to Site.

ROUTES FROM SITE

1. East on JOH Ave. to Caton Ave.; North on Caton Ave. to I-95; South on I-95.
2. East on JOH Ave. to Caton Ave.; North on Caton Ave. to I-95; South on I-95 To Baltimore Beltway; Northwest or Southeast on Baltimore Beltway

OWNER:
PARCEL 115 & 121
3600 GEORGETOWN CORP.
1-71 NORTH AVENUE E.
ELIZABETH, N.J. 07201
CONTACT: MR. ROBERT F. WALKER

ZONING RELIEF REQUESTED:

1. Special Exception to amend the Special Exception Plan approved in case no. 98-260-SPHX.
2. Special Exception to expand the existing Special Exception area for a Class I Trucking Facility.
3. A special Hearing to determine whether a Special Hearing is required in this matter; and
4. A Special Hearing to determinate a previously approved car parking compound in Baltimore City as supporting a Baltimore County trucking facility and, further, to recognize that the subject car parking compound fulfills the requirements of BCZR Sec. 409.6.3 (providing the parking requirements for a Trucking Facility in Baltimore County).

PETITION FOR SPECIAL EXCEPTION & SPECIAL HEARING FOR AN AMENDMENT TO AND EXPANSION OF A CLASS I TRUCKING FACILITY OF NEW ENGLAND MOTOR FREIGHT COMPANY AT 3600 GEORGETOWN ROAD

ELECTION DISTRICT 13
COUNCILMANIC DISTRICT 1
SCALE: 1" = 40'

DATE: AUGUST, 2004

BALTIMORE COUNTY, MD.
DEC 6, 1978
REV. APRIL 27, 1981
2nd REV. JANUARY 1, 1998
3rd REV. NOVEMBER 10, 1998

NJFMF # 18

SITE PLAN APPROVED BY:

ZONING COMMISSIONER _____ DATE _____

CHAIRMAN, COUNTY TRUCKING FACILITIES DEVELOPMENT OFFICIALS ADMINISTRATIVE OFFICER / COUNTY ATTORNEY _____ DATE _____

#[illegible] 19D 2/25/98

19B

IN RE: PETITIONS FOR SPECIAL HEARING & SPECIAL EXCEPTION
N/S Georgetown Road, 629.36 ft. SW of c/l Bloomfield Road
3600 Georgetown Road
13th Election District
1st Councilmanic District
3600 Georgetown Corp., Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 98-260-SPHX

****

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner on Petitions for Special Hearing and Special Exception for the property located at 3600 Georgetown Road in Lansdowne. The Petitions were filed by 3600 Georgetown Corporation, property owner. Special Exception relief is requested, pursuant to Sections 410.1.F and 502.7 of the Baltimore County Zoning Regulations (BCZR), to amend the site plan for a previously approved Class 1 trucking facility dated June 16, 1981 (Trucking Facility 139). Special Hearing relief is requested to approve an amendment to a previously approved plan in case No. 48-90-RX. The subject property and requested relief are all more particularly shown on the amended plan to accompany the Petition for Special Hearing and Petition for Special Exception marked as Petitioner's Exhibit No. 1.

Appearing at the requisite public hearing held for this case was Robert Walker, on behalf of New England Motor Freight Company, the business entity which operates the subject trucking facility. Also present was David L. Martin, a Landscape Architect with G.W. Stephens, Jr. and Associates, the preparers of the site plan. The Petitioner was represented by David Gildea, Esquire. There were no Protestants or other interested persons present.

Testimony and evidence presented was that the subject property under consideration is a triangularly shaped parcel which straddles the Baltimore County/Baltimore City line in Lansdowne. 22. Bloomfield The property, in its entirety, is approximately 9.523 acres in area. Approximately 6.25 acres are in Balti-

Bloomfield 20

IN RE: PETITION FOR SPECIAL HEARING
W/S Old Georgetown Road, 150 ft. NW
Of c/l Hopkins Avenue
3600 Georgetown Road
13th Election District
1st Councilmanic District
3600 Georgetown Road, LLP
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 99-208-SPH

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for the property located at 3600 Georgetown Road in Lansdowne. The Petition was filed by 3600 Georgetown Road, LLP, property owner. Special Hearing relief was requested to approve an extension of the special exception approved in case No. 98-260-SPHX, pursuant to Section 502.3 of the Baltimore County Zoning Regulations (BCZR). The subject property and requested relief are more particularly described on Petitioner's Exhibit No. 1, the plat to accompany the Petition for Special Hearing.

Appearing at the requisite public hearing held for this case was David L. Martin, a Landscape Architect with G.W. Stephens, Jr. and Associates, Inc., the preparers of the site plan. The Petitioner was represented by David K. Gildea, Esquire. There were no Protestants or other interested persons present.

The subject property was the subject of a recent hearing before me under Petitions for Special Hearing and Special Exception filed in case No. 98-260-SPHX. Pursuant to an opinion and Order issued on February 25, 1998, the Petitions for Special Hearing and Special Exception were approved to amend the site plan for a previously approved Class I trucking facility dated June 16, 1981 and to amend the previously approved plan in case No. 48-90-RX.

The Petitioner comes before me under a Petition for Special Hearing, seeking to expand the timeframe wherein the Special Exception might be utilized. Section 502.3 of the BCZR provides that special exceptions may be utilized for a period of 2 years from the date of the grant of the Petition. However, that section further allows the Zoning Commissioner to increase that period of utilization up to 5 years from the date of the initial grant.

Testimony and evidence presented was that the Petitioner was negotiating to acquire an

Bloomfield

IN RE: PETITION FOR SPECIAL HEARING W/S Old Georgetown Road, 200' NE centerline of Hall Avenue 13th Election District 1st Councilmanic District (3600 Georgetown Road) 3600 Georgetown Corp. Petitioner	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 01-544-SPHX

* * * * * * * * * * *

Oct 12, 2001

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing and Special Exception filed by the legal owner of the subject property, the 3600 Georgetown Corp. The Petitioner is requesting special exception approval to amend the site plan previously approved in Case No. 98-260-SPHX and a special exception to expand the existing Class I trucking facility onto newly acquired property. In addition, special hearing relief is being requested to approve a car parking compound located within Baltimore City as supporting the trucking facility which is located in Baltimore County.

Appearing at the hearing on behalf of the special hearing and special exception requests were Pete Filipowicz, appearing on behalf of the owner of the property, James Markle and David Martin, professional engineers with G. W. Stephens and Associates, the engineers who prepared the site plan of the property, and Scott Barhight and Jennifer Busse, attorneys at law, representing the Petitioner. Appearing in opposition to the Petitioner's request were many residents of the surrounding residential community, all of whom signed in on the Protestants' Sign-In Sheet.

The property, which is the subject of this special hearing and special exception request, consists of 9.523 acres, of which 6.25 acres are located in Baltimore County and 3.28 acres are located in Baltimore City. The portion of the property located in Baltimore County is zoned ML.

Bloomed 22

Baltimore County
Zoning Commissioner

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

#429B

April 3, 2002

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

RE: MOTIONS FOR RECONSIDERATION
(3600 Georgetown Road)
3600 Georgetown Corporation - Petitioner
Case No. 01-544-SPHX

Dear Mr. Barhight:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

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,

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Peter Filipowicz, NEMF, 3600 Georgetown Road, Baltimore, Md. 21227
Bruce A. Blakeman, Esquire, 108 S. Franklin Avenue, Valley Stream, NY 16580
Mr. David Martin, G.W. Stephens, 1020 Cromwell Bridge Road, Towson, Md. 21286
Ms. Vickie Fultonberger, 3323 Bero Road, Baltimore, Md. 21227
Ms. Teresa Lowry, 2517 Hammond Ferry Road, Baltimore, Md. 21227
Mr. Paul Byrd & Ms. Brenda Armstrong, 3416 Hopkins Avenue, Baltimore, Md. 21227
Messrs. Donald & Howard Clifford, 3415 Georgetown Road, Baltimore, Md. 21227
Ms. Michelle Carmichael, 1706 Hall Avenue, Baltimore, Md. 21227
Mr. Chris Douglas, 1700 Rittenhouse Avenue, Baltimore, Md. 21227
Ms. Jennifer Kohlhaus, 1706 Hall Avenue, Baltimore, Md. 21227
Messrs. Lorna & Camille Rudnikas, 1727 Hall Avenue, Baltimore, Md. 21227
Ms. Sandy Smith, 3412 Hopkins Avenue, Baltimore, Md. 21227
Mr. Bill Moxley, 1702 Rittenhouse Avenue, Baltimore, Md. 21227
Ms. Heather Kesner, 3406 Hopkins Avenue, Baltimore, Md. 21227
Mr. John Baggett, 1709 Rittenhouse Avenue, Baltimore, Md. 21227
Mr. Thomas Mauk, 1702 Hall Avenue, Baltimore, Md. 21227
Mr. & Mrs. William McCarren, 1704 Hall Avenue, Baltimore, Md. 21227
Ms. Elizabeth Qualls, ~~1704 Hall Avenue,~~ Rittenhouse Baltimore, Md. 21227
Mr. & Mrs. John Eide, 1719 Wilson Avenue, Baltimore, Md. 21227
Mr. Roger Wright, 3512 Old Georgetown Road, Baltimore, Md. 21227
Mr. S. Burgess, 1720 Hall Avenue, Baltimore, Md. 21227
Mr. Paul Hughes, 3406 Hopkins Avenue, Baltimore, Md. 21227
People's Counsel; Case File

Blackland #23

Printed with Soybean Ink

IN THE MATTER OF THE APPLICATION OF NEW ENGLAND MOTOR FREIGHT, INC.; 3600 GEORGETOWN ROAD FOR SPECIAL HEARING AND SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE W/S OLD GEORGETOWN ROAD, 200' SE OF C/L HALL AVE (3600 GEORGETOWN ROAD) 13TH ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 01-544-SPHX

* * * * * * * * *

ORDER OF DISMISSAL OF PETITIONS

This case comes to the Board on an appeal filed by Theresa Lowery, Brenda Armstrong, Maryland Citizens for the Environment, Inc., and Greater Bloomfield Community and an appeal filed by the Office of People's Counsel from the April 3, 2002 Order on Motion for Reconsideration of the Deputy Zoning Commissioner (DZC), including the approval of the Petitions for Special Exception and Special Hearing in the DZC's October 12, 2001 Order.

WHEREAS, the Board is receipt of a letter of withdrawal of the Petitions filed January 9, 2003 via facsimile by Jennifer R. Busse, Esquire, and WHITEFORD, TAYLOR & PRESTON, L.L.P, Counsel for New England Motor Freight, Petitioner (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said Counsel for Petitioner requests that the Petitions filed in the above-referenced matter be withdrawn as of January 9, 2003,

IT IS THEREFORE. this 16th day of January, 2003, by the County Board of Appeals of Baltimore County

ORDERED that said Petitions filed in Case No. 01-544-SPHX are **WITHDRAWN AND DISMISSED,** and that the Deputy Zoning Commissioner's Order on Motion for Reconsideration dated April 3, 2002 and the Order of the Deputy Zoning Commissioner dated October 12, 2001 as modified in the Order on Motion for Reconsideration, including any and all relief granted therein, are rendered **null and void.**

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman

Charles L. Marks

Lawrence S. Wescott

Bloomfield #24

Baltimore County
Department of Permits and
Development Management

Permits and Licenses
County Office Building
111 West Chesapeake Ave
Towson, Maryland 21204
(410) 887-3900
Fax: (410) 887-2824

#31

March 3, 2003

Jennifer R. Busse, Esquire
Whiteford, Taylor and Preston, LLP
210 West Pennsylvania Avenue
Towson, MD 21204-4515

Re: Case No. 00-7138
3600 Georgetown Road

Dear Ms. Busse:

On January 31, 2003, the Baltimore County Bureau of Code Enforcement issued a correction notice to 3600 Georgetown Corporation. This document dealt with submitting contracts for the paving, wheel-stop, and fence-slatting installations, along with a planting schedule for the landscaping. Your firm was able to supply this department with that information by the February 14, 2003, deadline.

Upon review with Director Arnold Jablon, the question was raised whether the petitioner had indeed utilized its special exception per Section 502.3 of the Baltimore County Zoning Regulations in case no. 98-260 SPHX. In this instance, the portion of this regulation that the director contends is most relevant reads:

> A special exception which requires any construction for its utilization shall be deemed to have been used within its authorized time if such construction shall have commenced during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence.

In the 1998 special exception case, the property owner proposed to construct a 10,970-square-foot terminal addition and a new 2,999-square-foot, one-story service garage facility to replace the existing one-story garage building that was to be razed. Also, additional trailer/employee paved parking areas were to be created on the overall facility site. To date, none of these projects has been started, let alone completed. In fact, your firm informed this department that the property owner had elected not to proceed with the construction of the terminal addition/new service garage building. If one would further factor in the issues outlined

Blumpl #25

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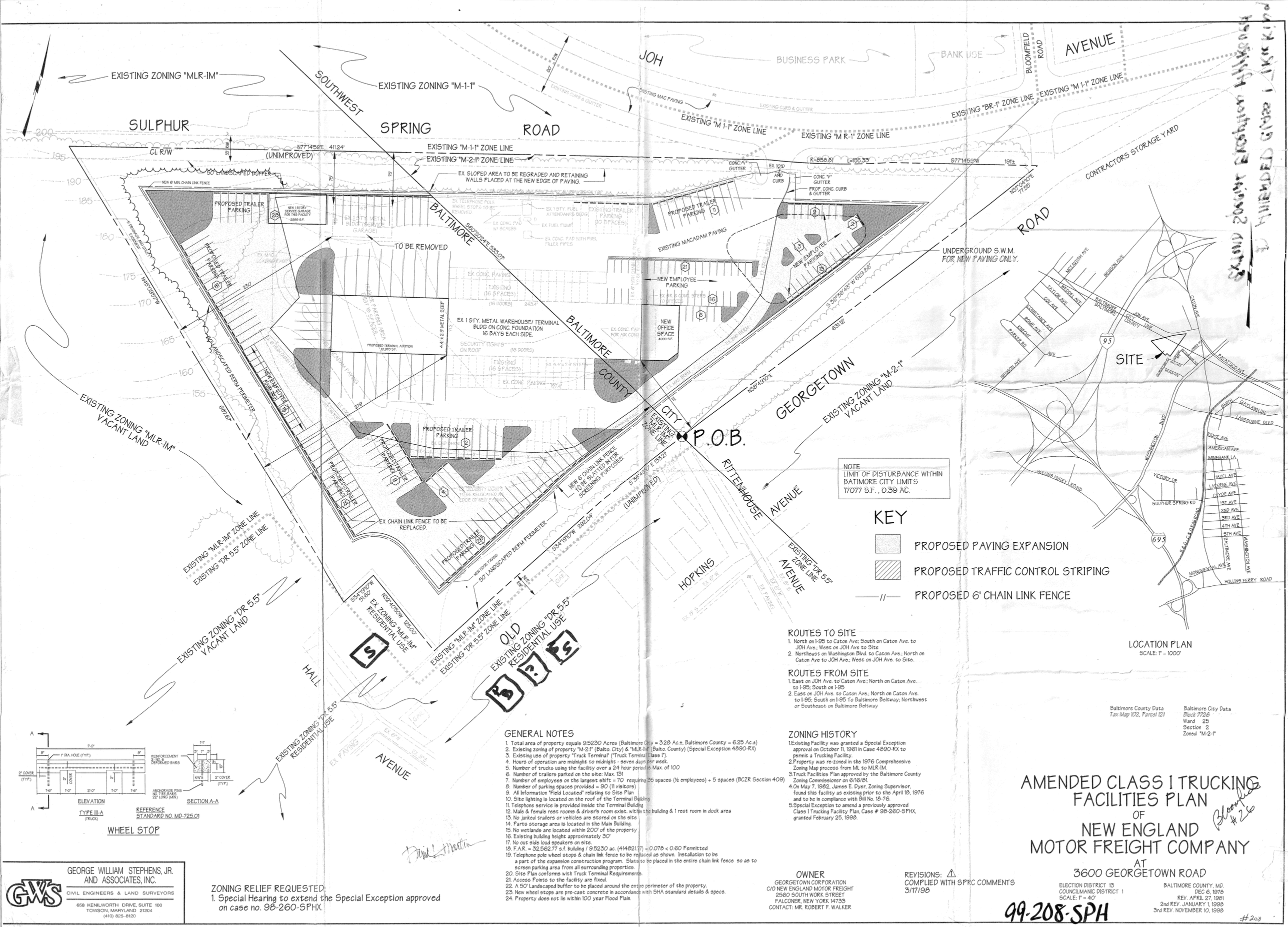
on Recycled Paper

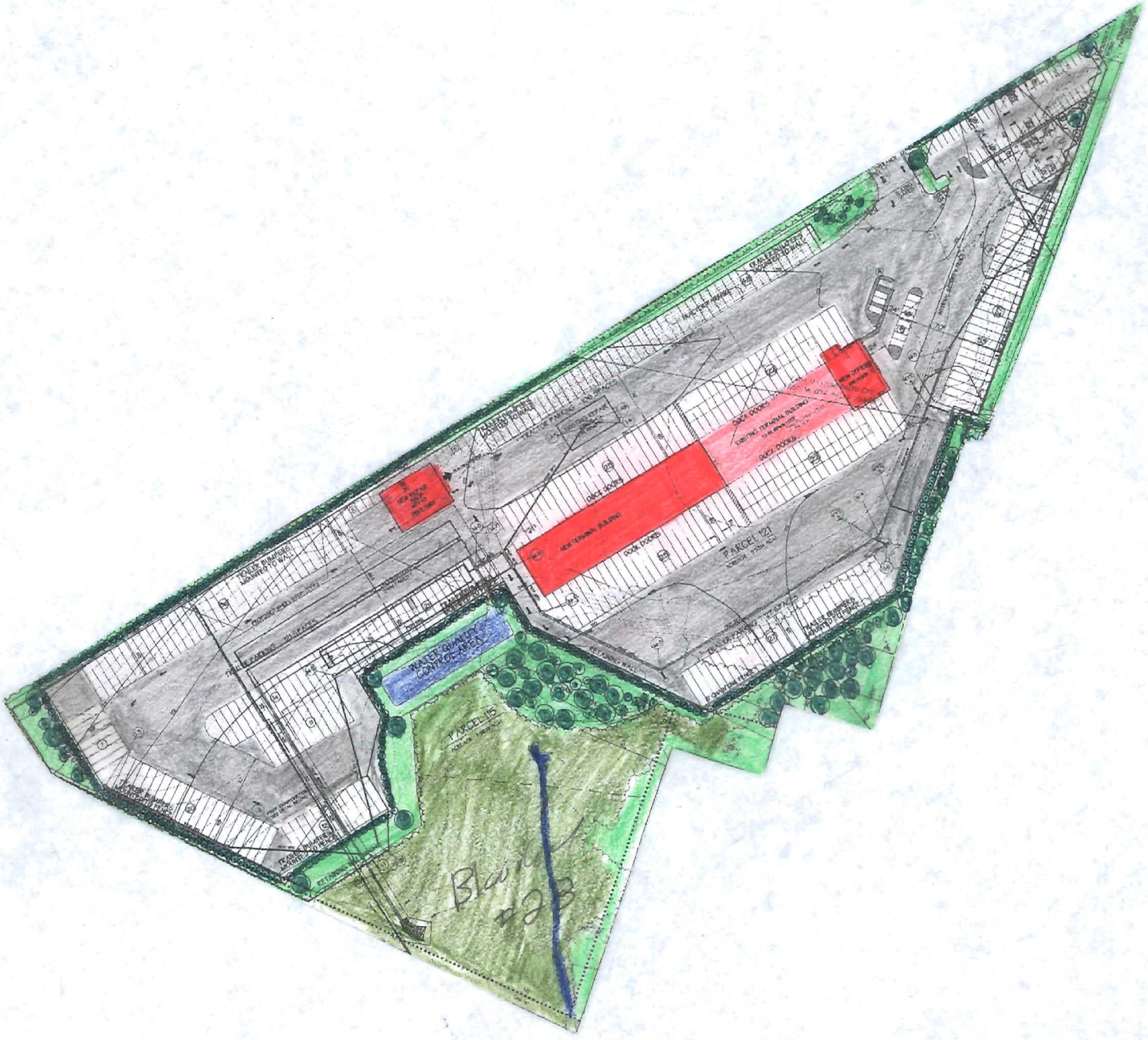

EXISTING ZONING "MLR-IM"
SOUTHWEST
EXISTING ZONING "M-1-1"
JOH
BUSINESS PARK
BANK USE
BLOOMFIELD ROAD
AVENUE
EXISTING MAC PAVING
EXISTING "M 1-1" ZONE LINE
EXISTING "BR-1" ZONE LINE
EXISTING "M R-1" ZONE LINE
SULPHUR
SPRING
ROAD
CL R/W
(UNIMPROVED)
N77°14'59"E 411.24'
EXISTING "M-1-1" ZONE LINE
EXISTING "M-2-1" ZONE LINE
EX. SLOPED AREA TO BE REGRADED AND RETAINING WALLS PLACED AT THE NEW EDGE OF PAVING.
R=859.81 L=156.33'
S77°14'59"W 191'±
CONTRACTORS STORAGE YARD
N57°00'E 77.55'
NEW 6' MIN. CHAIN LINK FENCE
50' LANDSCAPED BUFFER
PROPOSED TRAILER PARKING
NEW 1 STORY SERVICE GARAGE FOR THIS FACILITY 2999 S.F.
EX. 1 STY. METAL BLDG. (SERVICE GARAGE)
EX. TELEPHONE POLE WHEEL STOPS TO BE REMOVED.
EX. 1 STY. FUEL ATTENDANT'S BLDG.
EXISTING TRAILER PARKING (10 SPACES)
EX. FUEL PUMPS
EX. CONC. PAD W/ SCALES
EX. CONC. PAD WITH FUEL FILLER PIPES
PROP. CONC. CURB & GUTTER
CONC. "V" GUTTER
EX. 10'D AND CURB
EXISTING MACADAM PAVING
NEW EMPLOYEE PARKING
UNDERGROUND S.W.M. FOR NEW PAVING ONLY.
TO BE REMOVED
EX. CONC. PAVING
EXISTING (16 SPACES)
(16 DOORS)
243.4'
EX. 1 STY. METAL WAREHOUSE/ TERMINAL BLDG ON CONC. FOUNDATION 16 BAYS EACH SIDE.
NEW OFFICE SPACE 4000 S.F.
EX. CONC. PAD FOR AIR COND.
PROPOSED TERMINAL ADDITION 10,070 S.F.
4-4'x 25' METAL STEP
SECURITY LIGHTS ON ROOF
EX. 4-4'x 7'-4" STEPS
EX. CONC. PAVING
EX. CONC. & CONC. STEPS
EX. 6' HIGH CHAIN LINK FENCE
EX. RAMP
EX. RAMP BERM
EX. MAC PAVING
EX. INF
EX. 6"W
EX. 8"W
EX. 8"S
EX. 6"S

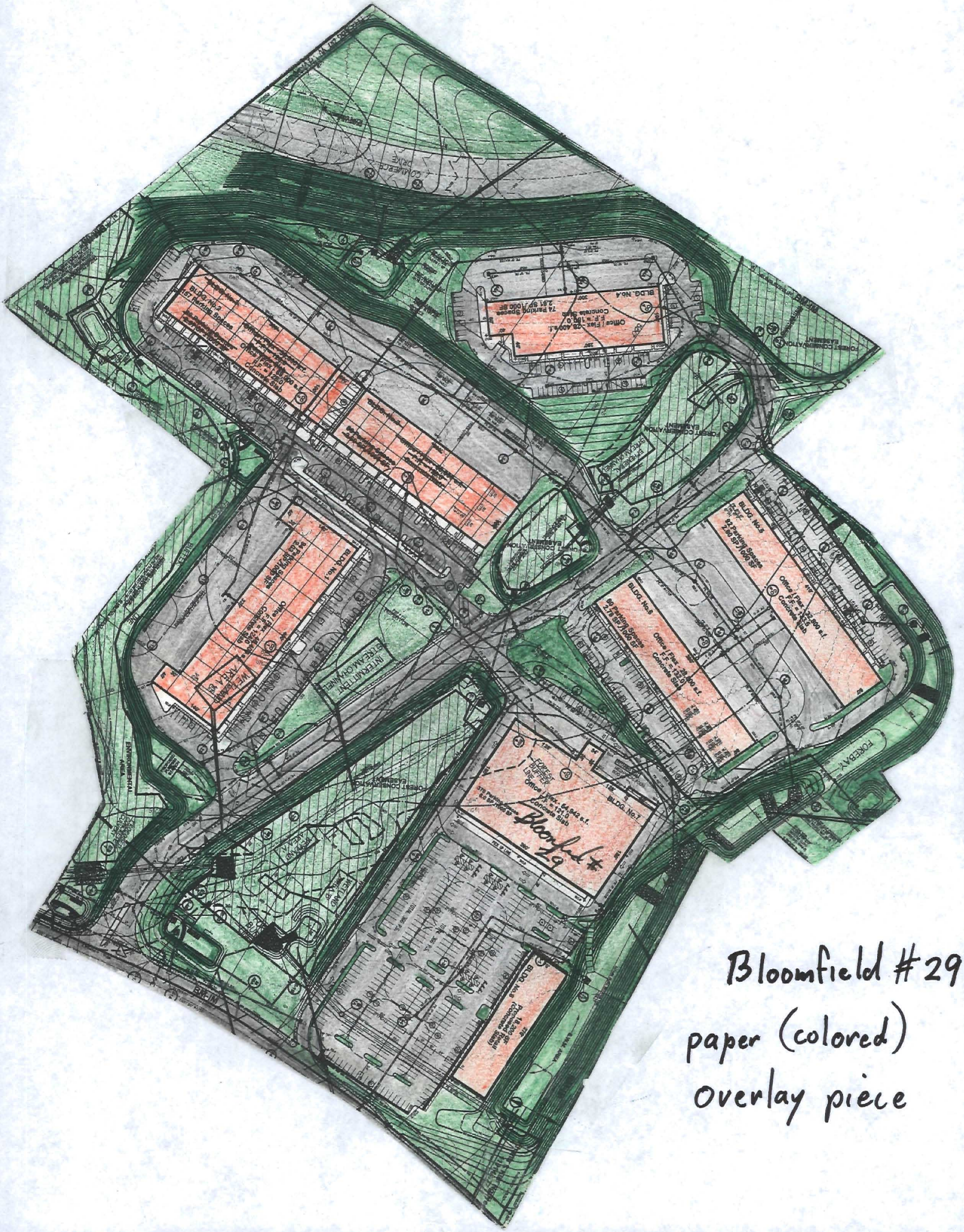
(c) Copyright 2004, Pictometry International

MD Balto 8003 Comm. Oblig.
45.5 - 04-01-17

Bloomfield #28

small colored overlay piece





Bloomfield #29

paper (colored)

overlay piece



Baltimore County
Maryland

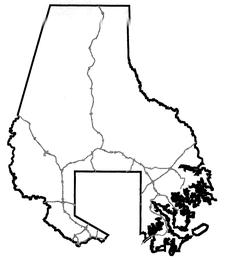
Tile Id: 102A3

Legend

- Radio Towers
- Transmission Towers
- Microwave Transmitters
- Residential
- Commercial
- Institutional
- Garages and Other Structures
- Buildings Under Construction
- Toll Booths and Rail Stations
- Water Towers and Storage Tanks
- C_line
- Index Contour
- Intermediate Contour
- Index Depression Contour
- Intermediate Depression Contour
- Obscured Index Contour
- Obscured Intermediate Contour
- Obscured Index Depression Contour
- Obscured Intermediate Depression Contour
- Hidden Contour
- Spot Elevation
- Water Elevation
- Bridge Elevation
- Rooftop Elevation
- Junkyard
- Quarries
- Gravel\Sand Pit
- Landfill
- Cemetary
- Area Under Construction
- Power Stations
- Race Tracks
- Commercial Pool
- Golf Courses
- Baseball\Athletic Fields
- Tennis Court
- Park\
- Bike and Hike Areas
- Playground
- Paved Roads
- Curbs
- Hidden Roads
- Unpaved Roads
- Road Under Construction
- Unnamed Roads
- Paved Alleys
- Paved Parking Lots, Driveways, Runways, Taxiways
- Bridges and Overpasses
- Tunnel Portal
- Rail Line
- Hidden Rail Line
- Abandoned Line
- Metro Line
- Light Rail
- Light Rail Under Construction
- Transmission Line
- Pipeline
- Natural Hydrography, Reservoirs, and SW Retention Ponds
- Bay Area
- Boat Ramps, Piers, Dams, and Bulkheads
- Single Line Streams
- Culvert
- Hidden Hydrography
- Wetlands and Swamps
- 2775 - 9999
- Bulkheads
- Floodwall
- Wooded Areas, Orchards and Nurseries
- Tree Rows
- Wetlands, Swamps

0 100 200 400 600 800 Feet

1 inch equals 200 feet
Contour Interval: 2'



N

Map Notes:
Map Production date: Jan 04, 2005
Map compiled using photogrammetric methods from 1" = 200' aerial photography dated 4/2000

Projection:
Maryland State Plane
Zone ID 1900
NAD 83 US SURVEY FEET

Block #30



Produced by Baltimore County GIS Services Unit
Date: July 13, 2005

Date of Imagery: 2002

1 inch equals 50 feet

Bloomfield Ex. # 32

CHECKLIST FOR INFORMATION TO BE SHOWN ON SITE DEVELOPMENT PLANS FOR EXISTING AND PROPOSED TRUCKING FACILITIES (CLASS I & II)

This checklist shall serve as a guide in preparing site plans for trucking facilities. Plans must be certified by a professional engineer or by a professional who is not an engineer, but who is registered under law as competent to certify the accuracy of these plans.

If the owner or authorized agent for a Class I or Class II trucking facility believes that approved plans of that trucking facility are on file within the Office of Planning and Zoning or the Department of Permits and Licenses, he must notify the Zoning Commissioner in writing within six months of the effective date of Bill 18-76 (April 19, 1976). Within 30 days after he receives the written notice, the Zoning Commissioner shall inform the owner or agent whether the plans are in fact on file, and if so, whether they meet the requirements of the checklist set forth below. If the plans do not meet these requirements, the owner or agent shall file plans that do meet the requirements within one year after said effective date.

A. North arrow. _____

B. Scale of drawing: 1" = 10', 1" = 20', 1" = 30', 1" = 40', 1" = 50'. _____

C. Election District.

D. Dimensions of property (including bearings and distances). _____

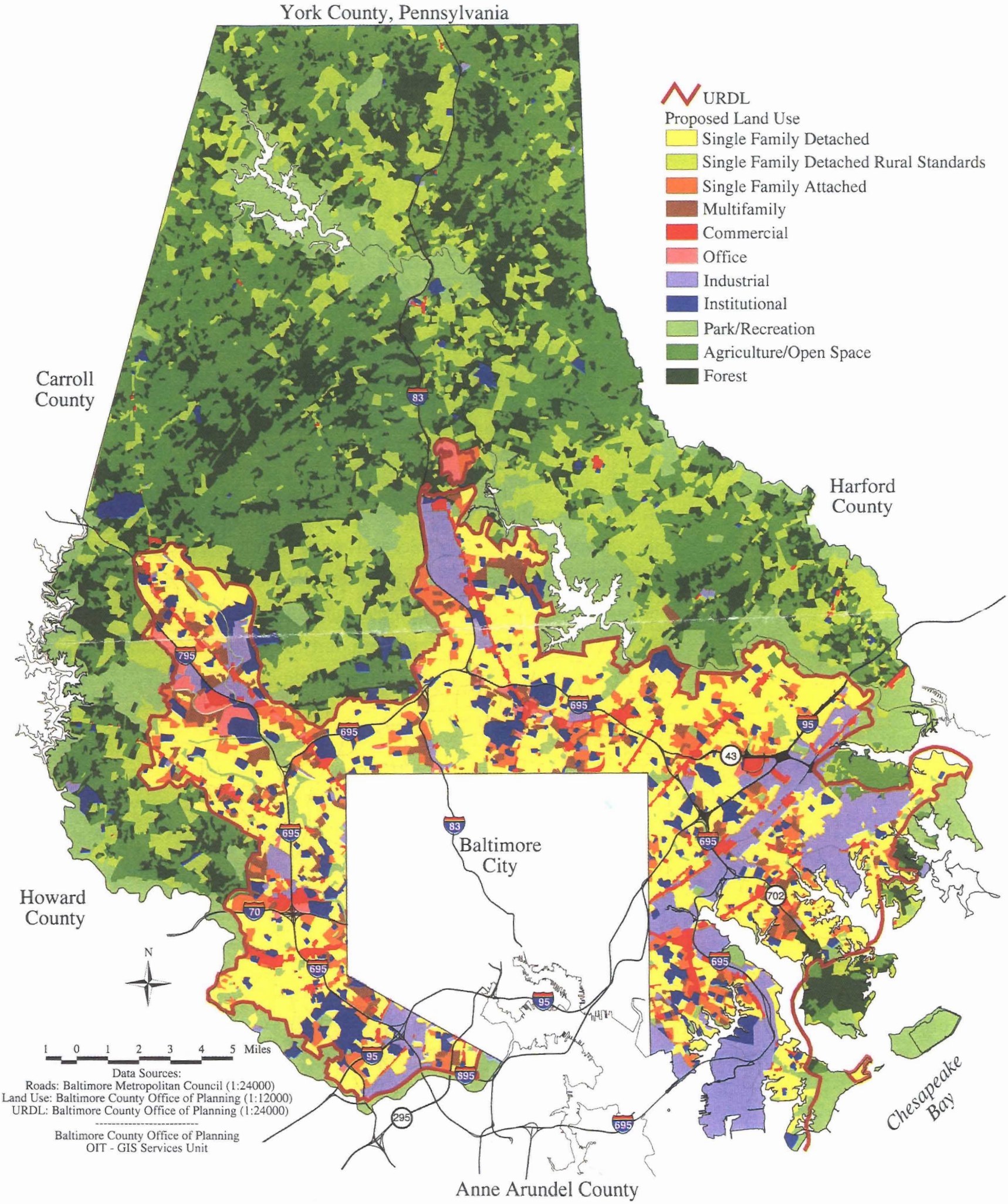
E. Relation of tract in question to additional property owned. _____

F. Area of property in question (acres or square feet).
Minimum for Class I = 3 acres.
Minimum for Class II = 5 acres. _____

G. Location plan drawn at a scale of 1" = 1000'. Said plan to show all streets labeled as to their class (i.e., arterial, major collector, industrial service road, expressway, freeway, etc.), and proposed route of trucks. The site location and points of access shall be clearly plotted on said plan with the distances to intersecting streets dimensioned. _____

H. The site plan must include a complete interior functional layout of the trucking operation. The layout of improvements must be such as to provide convenient forward movement of vehicles leaving or entering the site, and such as to preclude any likelihood that trucks will be unable to gain immediate access onto the site at any time, as determined by the Zoning Commissioner after recommendation by the County Trucking Facilities Development Officials. _____

Bloomfield Ex. #33



MAP 39
PROPOSED LAND USE

Bloomfield Ex # 34

RESOLUTION

THE GREATER BLOOMFIELD COMMUNITY ASSOCIATION

RESOLVED: That at the **Second** Meeting of the **GREATER BLOOMFIELD COMMUNITY ASSOCIATION** held on **February 2, 2005**, it was decided by the Association that the responsibility for review and action on all zoning matters for the period **03/03/05** through **02/29/06** be placed in the **Board of Directors/Zoning Committee** consisting of the following members:

1. **Lorna D. Rudnikas, President**
2. **Darlene Byrd, Vice President**
3. **Donald Sadler, Treasurer**
4. **Camille Rudnikas, Secretary**

AS WITNESS our hands and seal this 3rd day of **February, 2005.**

ATTEST:

Camille Rudnikas
SECRETARY

Lorna D. Rudnikas
PRESIDENT

Bloomfield Ex. 35

Please return this Petition to: Lorna Rudnikas
President, Greater Bloomfield Community Assoc., Inc.
Use Drop Box at: 1727 Hall Avenue

Dear Neighbor:
As you know, the New England Motor Freight Trucking Company located at 3600 Georgetown Road (entrance on Joh Avenue) has expansion plans that will further encroach upon our residential property lines behind Rittenhouse Avenue, Hopkins Avenue and Georgetown Road. This petition has been prepared to specifically and clearly show that our community is united in opposition to NEMF's further expansion toward our community.

DATE: 10/25/04

I, the undersigned, owner of property located at: 3572 Georgetown Rd

in the subdivision of Bloomfield, in the vicinity of Halethorpe, Maryland, 13th Election District of Baltimore County, hereby request my name be listed as opposing any expansion of the New England Motor Freight Company that will result in further encroachment upon the residential property lines in the Community of Bloomfield.

PRINT NAME: Sheri L. Fox

SIGNATURE: [signature]

ADDRESS: 3572 Georgetown Rd Halethorpe Md 21227

PHONE: 410-242-2752

PLEASE NOTE::
It should be known that our family has resided in the Community of Bloomfield for a total of 1 **years.**

217
ST.2007
2 Volumes/1 Trans
3 Exp Files/2 Boxes

20040160 "A" supplemental
&
20040294 "A" supplemental

5

NEW ENGLAND MOTOR

PEOPLE'S COUNSEL'S EXHIBITS

3600 Georgetown LLC - New England Motor Freight
04-160-SPHX and 04-294-SPHX

Verified 7/21/05

Verified 7-14-05

Verified 9-14-05

Peoples Counsel

Verified 7-19-05

✓	✓	✓	Ex1 General Provisions
✓	✓	✓	Ex2 Special Regs.
✓	✓	✓	3 Unerley v. People's Counsel
✓	✓	✓	4 Arial photo
✓	✓	✓	5 Arial photo (broader shot)
✓	✓		6. 1960 site plan
✓	✓		7. Permits + Development Zoning Map
✓	✓		8. NEMF Web site packet
✓	✓		9. Real Property Data Search for 7020 Quad Ave
✓	✓		10. ADC Map #44
✓	✓		11a Zoning Map
✓	✓		11b. Zoning Map
✓	✓		12. G.I.S. Photo of Quad Ave property
✓	✓		13. 200 scale Zoning Map
✓			14. Taxation and Assessments Report
✓			15. ADC Map page 42
✓	✓		16. Laskey v. Beth. Steel Corp. Order
✓	✓		17. CBA Case # 03-456-SPH
✓			18. Trucking Facilities List
✓			19. List created by David Martin
			20. Zoning Commissioner's Case # 00-239-XA
✓			21.a Case # 86-417 XSPHA
			b Case # 87-246 SPHA

P.C. Ex. 1

TOWN CENTER — A locality designated and delimited as a town center by the Planning Board to serve as the primary center of commercial (including supporting commercial) and higher-density residential development for an area having a population of approximately 100,000 or more persons, and meeting criteria or guidelines adopted and published by the Planning Board. Industrial, lower-density residential, and institutional uses are not excluded from town centers (when allowed under the regulations for the zone in which they are located). **[Bill No. 40-1967]**

TOWN-CENTER DISTRIBUTOR-BYPASS ROAD — An arterial street which is designed to distribute traffic to a town center as well as to carry traffic around and away from such a center, and which is designated by the Planning Board as a town-center distributor-bypass road. **[Bill No. 40-1967]**

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. **[Bill Nos. 145-1959, Section 415.5; 109-1964; 29-1974]**

TRAILER PARK — A tract of land specifically planned and equipped to accommodate residential trailers for temporary or continuing occupancy, including all buildings, structures, tents, vehicles, utilities and accessories used or intended as equipment for such trailer park.

TRANSIT CENTER — A structure or portion of a structure and bus staging area designed and located to facilitate transfers among bus routes operated by the State Mass Transit Administration. A transit center may also be designed with parking to facilitate transfers between other modes of transportation including taxicabs, automobiles, commuter vanpools, airport limousines and privately owned buses. **[Bill No. 91-1990]**

TRANSIT FACILITY — A structure or any combination of structures, including at-grade, elevated or below-grade fixed guideways, tunnels, electrical substations or fixtures necessary to support public mass transportation operations owned or operated by or on behalf of the Mass Transit Administration. This term shall not include a transit center, a transit storage and repair yard, bus terminal or rail passenger station. **[Bill No. 91-1990]**

TRANSIT STORAGE AND REPAIR YARD — A site used primarily for the storage and maintenance of common carrier vehicles and for the repair of equipment associated with such vehicles. **[Bill No. 91-1990]**

TRUCKING FACILITY — A structure or land used or intended to be used primarily (a) to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types, in order to facilitate the transportation of such goods or chattels; or (b) for truck or truck-trailer parking or storage. A trucking facility may include, as incidental uses only, sleeping quarters and other facilities for trucking personnel, facilities for the service or repair of vehicles, or necessary space for the transitory storage of goods or chattels. The term "trucking facilities" includes facilities for

P.C. Ex. 2

Section 410
Class I Trucking Facilities (Truck Terminals)
[Bill No. 18-1976[5]]

410.1 Nonconforming and other existing Class I trucking facilities. The provisions of this subsection apply to Class I trucking facilities existing on the effective date of this section.

A. Plans.

1. If the owner of or authorized agent for a Class I trucking facility believes that approved plans of that trucking facility are on file with the Office of Planning or Department of Permits and Development Management on the effective date of this section, he must so notify the Zoning Commissioner, in writing, within six months after that date, unless he has filed or will file plans as provided in Paragraph 2 below. Within 30 days after he receives the written notice, the Zoning Commissioner shall inform the owner or agent whether the plans are, in fact, on file and, if they are on file, whether they meet the requirements of Section 410.3.C.1. If the plans do not meet those requirements, the owner or agent shall file plans that do meet the requirements, within one year after the effective date of this section.

2. If approved plans of a Class I trucking facility are not on file with the Office of Planning or the Department of Permits and Development Management on the effective date of this section, or if the Zoning Commissioner is not notified under Paragraph 1, the owner of or authorized agent for the trucking facility must file plans of the facility, meeting the requirements of Section 410.3.C.1, within one year after that date.

3. Within 30 days after the effective date of this section, the Zoning Commissioner shall publish a checklist of requirements for plans submitted pursuant to Paragraph 2. The checklist must indicate among other things, one or more acceptable scales to which plans must be drawn.

4. The mere submission of plans under this paragraph will not establish the legality of any Class I trucking facility.

B. Rulings, etc., as to nonconformance with respect to certain provisions.

1. Within one year after the date the Zoning Commissioner acknowledges the adequacy of previously filed plans of a trucking facility or accepts new plans for the facility, as provided under Subsection A, he shall review the plans and issue a ruling whether or not the facility conforms with the provisions listed in Paragraph 2 below and, if not conforming with any such provision, whether the nonconformance may be allowed to stand under the

---

5 **Editor's Note: Former Section 410 was repealed by Bill No. 140-1962.**

absence of a constitutional violation, would make any person furthering some business of the State "State personnel."[9] This would make the scope of waiver of immunity synonymous with a basis for tort liability and would be inconsistent with the legislative intent.

[27] The Legislature granted immunity to "State personnel" pursuant to C.J., § 5–399.2(b). If "State personnel" perform a negligent act, for which the State has waived immunity, then "State personnel" are immune from suit. Consequently, because the individuals who performed the tortious acts in this case and their employer, Basil, were not "State personnel," they were not immune from suit. We note that the contract between the State and Basil required Basil to indemnify the State against liability for claims relating to performance under the contract and required Basil to carry liability insurance in certain minimal amounts. Thus, appellant was not left without recourse or remedy. Unfortunately for him, he did not timely file his action against Basil.

JUDGMENT AFFIRMED; APPELLANT TO PAY THE COSTS.

---

9. Appellant argues that the Eighth Amendment to the United States Constitution gives rise to a duty by the State to provide medical care to inmates. This argument, apparently, is made to support the position that the State owes a non-delegable duty to inmates to provide a basis for tort liability. *See* discussion *supra* pp. 481–482. Additionally, a complaint that a health care provider negligently diagnosed or treated a medical condition is not a valid claim under the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 292, 50 L.Ed.2d 251 (1976). The medical malpractice does not rise to the level of a constitutional violation even if the injured party is a prisoner. *Id.* Appellant also argues that the health care providers in question were acting under color of State law for purposes of 42 U.S.C. § 1983 and cites *West v. Atkins*, 487 U.S. 42, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988), in support thereof. There is no claim under § 1983 in this case, and the question of whether an individual is acting under color of State law for that purpose has no relevance to whether an individual is "State personnel" within the meaning of the Act. *See Rucker*, 316 Md. at 280, 558 A.2d 399.

672 A.2d 173

Leo J. UMERLEY, et ux.

v.

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.

No. 802, Sept. Term, 1995.

Court of Special Appeals of Maryland.

March 1, 1996.

Residents, neighborhood improvement association, and others appealed decision of county board of appeals that granted special exception and variances to landowners. The Circuit Court, Baltimore County, J. Norris Byrnes, J., reversed, and landowners appealed. The Court of Special Appeals, Bishop, J., held that landowners' trucking facility was not unique and thus was not entitled to variances.

Affirmed.

1. **Zoning and Planning** ⇐605

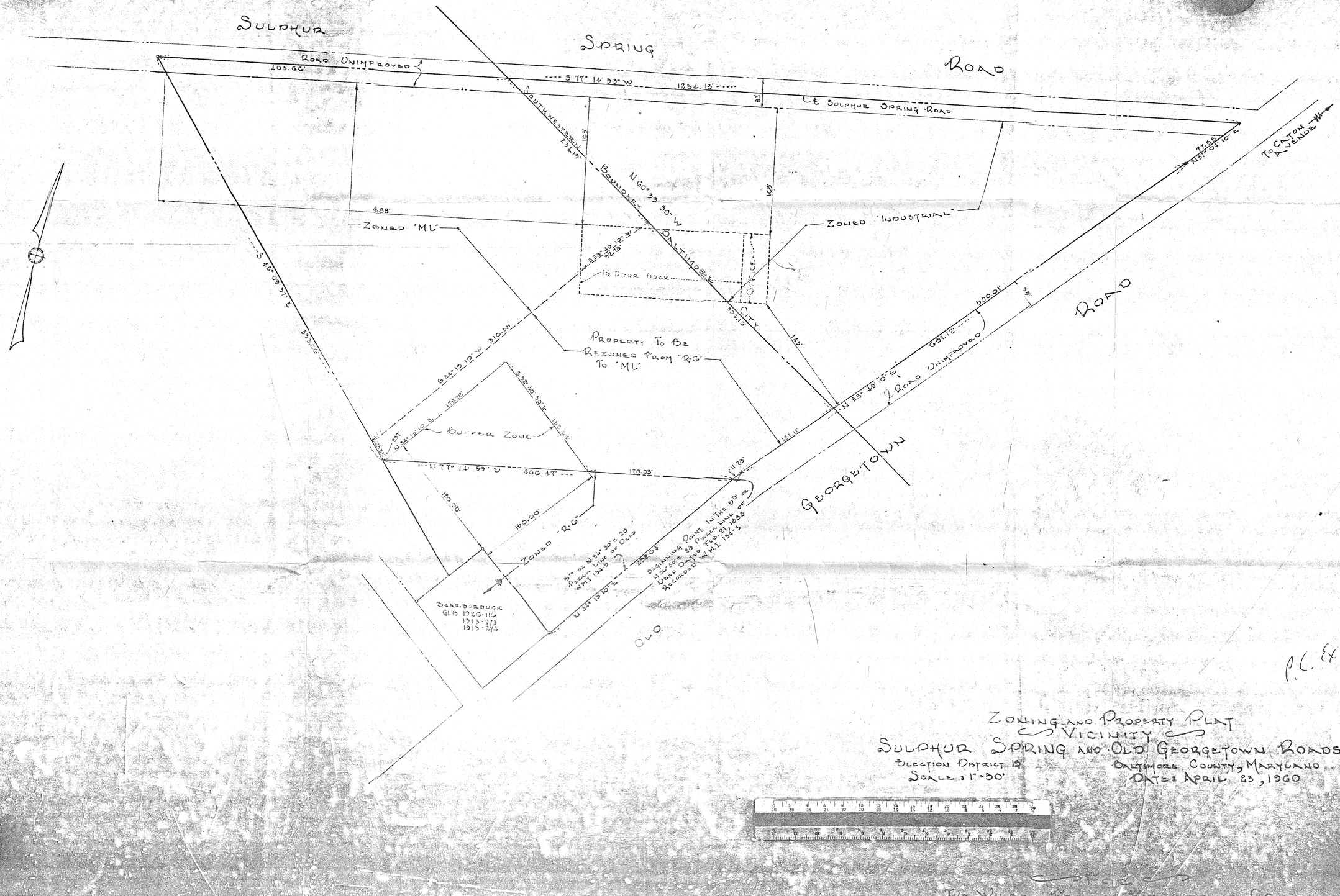
Order of county zoning authority must be upheld on review if it is not premised on error of law and if its conclusions reasonably may be based upon facts proven.

2. **Administrative Law and Procedure** ⇐781, 791, 796

When reviewing agency order, court first determines whether agency recognized and applied correct principles of law governing case, next examines agency's factual findings to determine if they are supported by substantial evidence, and finally examines how agency applied law to facts.

3. **Administrative Law and Procedure** ⇐781, 790

In reviewing how agency has applied law to facts, court accords great deference to agency; test is whether reasoning mind could reasonably have reached conclusion reached by agency, consistent with proper application of controlling legal principles.



P.C. Ex #6

Zoning and Property Plat
Vicinity
Sulphur Spring and Old Georgetown Roads

Election District 12
Scale: 1"=50'
Baltimore County, Maryland
Date: April 23, 1960

Price

The Wilson Walker Engraving Co.



P.C. Exh 5

Map Produced By Baltimore County GIS Services Scale: 1 inch equals 200 feet

Baltimore County Tile: 102A3

P.C. Exh. 4



Produced by Baltimore County GIS Services Unit
Date: July 13, 2005

Date of Imagery: 2002

1 inch equals 500 feet

PC Exh. 7

BALTIMORE COUNTY

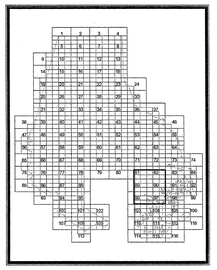
Permits & Development
Zoning Maps

Legend

- Zoning
- New 200' Scale Grid
- Old 200' Scale Grid
- Roads
- Railroad
- County Border

Land Use

- Board of Education
- Military
- Recreation And Parks



Area of Interest

U
©

Scale: 1:12000
1" = 1000'

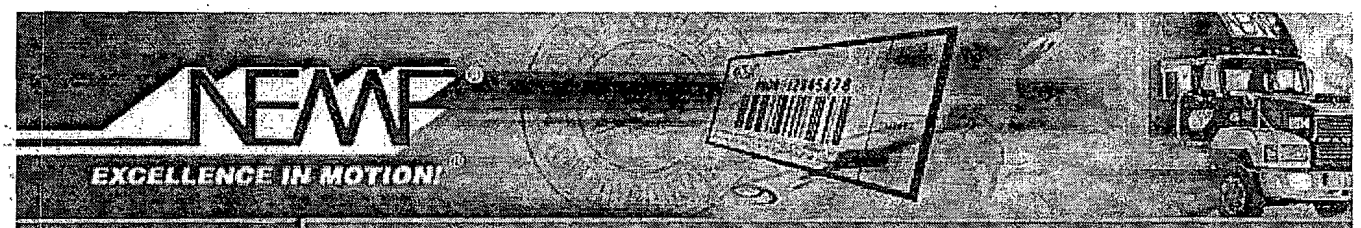
0 375 750 1,500 2,250 3,000 Feet

DISCLAIMER:

This is not an Official Zoning Map and is shown for illustrative purposes only. The Department of Permits & Development Management and Baltimore County do not warrant the accuracy or reliability of the information displayed herein.

Data Sources:
Planimetric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004

Prepared By LACGGIS. JSM.
Baltimore County Department of
Permits & Development.
March 1, 2005 d:\arcmap\PDM Zoning Maps.mxd



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P.C. Ex # 8

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District -** 15 **Account Number -** 2100010301

Owner Information

Owner Name:	7020 QUAD LLC	**Use:**	INDUSTRIAL
		Principal Residence:	NO
Mailing Address:	120 OLDHAM ST BALTIMORE MD 21224-2635	**Deed Reference:**	1) /20837/ 295 2)

Location & Structure Information

Premises Address
7020 QUAD AVE

Legal Description
4.8215 AC
7020 QUAD AVE
2600FT E BALTO CITY LINE

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assesment Area	Plat No:
96	10	295						3	Plat Ref:

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1970	15,305 SF	4.82 AC	07

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2004	As Of 07/01/2005
Land:	329,600	583,800		
Improvements:	664,400	599,800		
Total:	994,000	1,183,600	1,120,400	1,183,600
Preferential Land:	0	0	0	0

Transfer Information

Seller: WOODHURST REALTY LLC	**Date:** 10/15/2004	**Price:** $1,550,000
Type: IMPROVED ARMS-LENGTH	**Deed1:** /20837/ 295	**Deed2:**
Seller: WOODHURST REALTY LLP	**Date:** 10/04/2001	**Price:** $0
Type: NOT ARMS-LENGTH	**Deed1:** /15630/ 391	**Deed2:**
Seller: YELLOW FREIGHT SYSTEM INC	**Date:** 02/01/1999	**Price:** $1,050,000
Type: IMPROVED ARMS-LENGTH	**Deed1:** /13491/ 374	**Deed2:**

Exemption Information

P.C. Ex. #9

BALTIMORE
FRANKFORD
ROSEDALE
GOODNOW HILL
GARDENVILLE
HERRING RUN PARK
Exit-14
Exit-13
Exit-12
Exit-62
Exit-61
Exit-60
Exit-59
Joins Map 35
Joins Map 44
McCormick ES
Hazelwood ES & MS
Gardenville Belford Shop Ctr
Saint Anthony of Padua Cath
Holland Hills Park
Annunciation
Red House Run ES
Cedonia Park
Mount Pleasant Bapt
Radecke Playfield
Furley Park
Furley ES
Rosedale Shop Ctr
Prince of Peace Luth
Moores Run Park
Gardenville Park
Frankford Gardens Shop Ctr
Parkside Shop Ctr
Northeast MS
Herring Run Most Precious Blood Cath
Woodbourne Ctr
Day School
Thurgood Marshall MS & HS
Frankford ES
Moravia Pk Pre K-8 Campus
Frankford Plaza
United Hebrew
Rosedale Jewish
Rosedale Co Fire & Rescue
St Clements
Tuition-East Ems
Claremont Freedom
Moravia Ind Park
Mickro Kodesh
Bohemian
Fire Academy & Co 3
Carroll Cook
Armistead Gardens ES
Claremont Spec Ed
VEIP Sta
Baltimore City Incinerator East Facility
Rosedale Industrial Park
Canton Industrial Park
Colgate Park
Colgate ES
St Peters
Chesaco Utd Meth
Eastpoint Mall Baltimore (Eastern Area) C of C
Eastwood Elementary Magnet
Eastwood Ctr
Patterson HS
Our Lady of Fatima
Joseph Lee Park
Southeastern Dist
Aerial Tower 124
Highlandtown
Dak Lawn
Eastview Co 15 & Rescue
Berkshire ES
Liberty Trailer Park
Defense Heights
Johns Hopkins Bayview Medical Center
Moores Run
Redhouse Run
Patapsco
Baltimore County
Quad Ave
Eastern Ave
Boulevard
Point Rd
Pulaski Hwy
Harbor Tunnel Thruway
John F Kennedy Memorial Hwy
Philadelphia Pulaski
Sinclair Lane
Moravia Ave
Hamilton Ave
Erdman Ave
Ponca St
Lombard St
Broadway
Gough St
Bank St
Aliceanna St
Fleet St
Lancaster St
Wolfe St
Ann St
Caroline St
Dallas St
Durham St
Eden St
Washington Blvd
Hudson St
Kane St
Quinton St
Conkling St
Decker Ave
Dillon St
Ellwood Ave
Fait Ave
Fayette St
Fleet St
Gay St
Gough St
Grundy St
Hillen St
Hoffman St
Hudson St
Ingleside Ave
Jefferson St
Kane St
Kenwood Ave
Kresson St
Lakewood Ave
Lanvale St
Lehigh St
Lexington St
Linwood Ave
Lombard St
Madison St
Mason St
Milton Ave
Monument St
Moravia Rd
Mosher St
Newkirk St
Oldham St
Orleans St
Patterson Park Ave
Pennsylvania Ave
Pratt St
Preston St
Rose St
Saint Paul St
Shamrock Ave
Shelley Rd
Spring Ave
Stricker St
Sylvan Ave
Talbot St
Tivoli Ave
Toone St
Valley Rd
Vine St
Wabash Ave
Wallis Ave
Wilkens Ave
Wolfe St
Woodbourne Ave
Wyman Park Dr
York Rd
Yorkwood Rd
Zeller St
Zoo Dr
Zoo Entrance
Zoo Parking
Zoo Picnic Area
Zoo Restrooms
Zoo Ticket Booth
Zoo Visitor Center
Zoo Walkway
Zoo Water Fountain
Zoo Wheelchair Access
Zoo Wheelchair Rental
Zoo Wheelchair Repair
Zoo Wheelchair Storage
Zoo Wheelchair Transfer
Zoo Wheelchair Turnaround
Zoo Wheelchair Waiting Area
Zoo Wheelchair Waiting Room
Zoo Wheelchair Waiting Room
Zoo Wheelchair Waiting Room

P.C. Ex 14

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District** - 13 **Account Number** - 1323153770

Owner Information

Owner Name: 3600 GEORGETOWN CORPORATION

Mailing Address: C/O NEW ENGLAND MOTOR FREIGHT
1-71 NORTH AVE E
ELIZABETH NJ 07201-2936

Use: INDUSTRIAL
Principal Residence: NO
Deed Reference: 1) /19544/ 737
2)

Location & Structure Information

Premises Address
SULPHUR SPRING RD

Legal Description
7.9853 AC SS
SULPHUR SPRG RD
FRONTS ON 30 FT R

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assesment Area	Plat No:
102	20	115						2	Plat Ref:

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		7.98 AC	07

Stories	Basement	Type	Exterior

Value Information

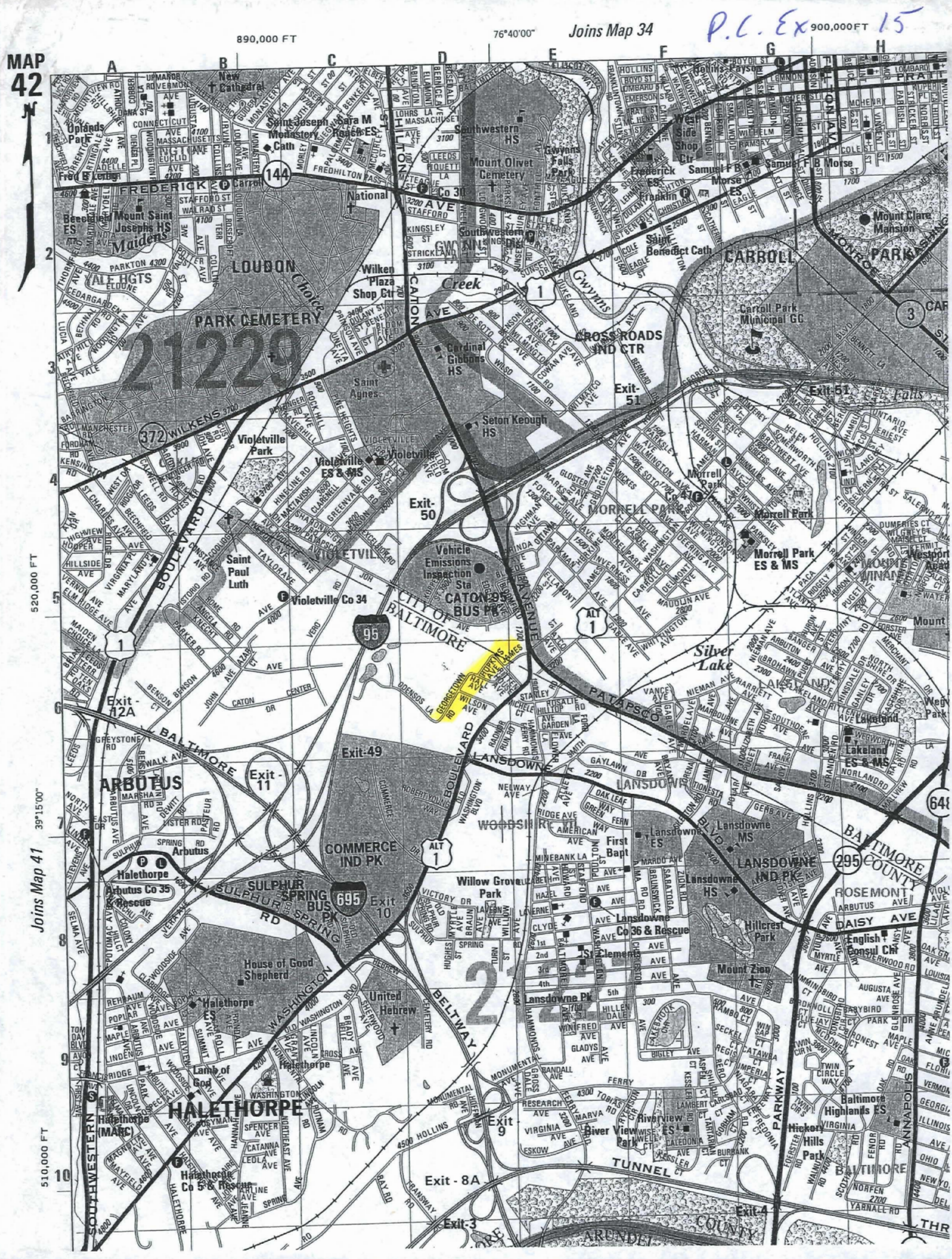
	Base Value	Value As Of 01/01/2005	Phase-in Assessments As Of 07/01/2004	As Of 07/01/2005
Land:	86,200	335,300		
Improvements:	0	0		
Total:	86,200	335,300	86,200	169,233
Preferential Land:	0	0	0	0

Transfer Information

Seller: WEINER FLORENCE	**Date:** 02/04/2004	**Price:** $350,000
Type: UNIMPROVED ARMS-LENGTH	**Deed1:** /19544/ 737	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

P.C. Ex 15


MAP 42
890,000 FT
76°40'00"
Joins Map 34
900,000FT
Joins Map 41
39°15'00"
520,000 FT
510,000 FT
21229
21228
Loudon Park Cemetery
Halethorpe
Arbutus
Lansdowne
Violetville
Morrell Park
Cross Roads Ind Ctr
Commerce Ind Pk
Lansdowne Ind Pk
Caton 295 Bus Pk
Sulphur Spring Bus Pk
Vehicle Emissions Inspection Sta
Exit-51
Exit-50
Exit-49
Exit - 12A
Exit - 11
Exit 10
Exit-9
Exit - 8A
Exit-4
Exit-3
Frederick Rd
Wilkens Ave
Baltimore Blvd
Lansdowne Blvd
Caton Ave
Patapsco
Beltway
Tunnel
Parkway
Annapolis
Southwestern
Washington Blvd
Sulphur Spring Rd
Hollins
Monroe
Gwynns Falls
Silver Lake
Baltimore County
Arundel County
Mount Olivet Cemetery
Mount Saint Josephs HS
Saint Joseph Monastery Cath
Southwestern HS
Gwynns Falls Park
Mount Clare Mansion
Carroll Park Municipal GC
Cardinal Gibbons HS
Seton Keough HS
Saint Agnes
Violetville Park
Violetville ES & MS
Saint Paul Luth
Violetville Co 34
Morrell Park
Morrell Park ES & MS
Lakeland ES & MS
Lansdowne ES
Lansdowne MS
Lansdowne HS
Lansdowne Co 36 & Rescue
Arbutus Co 35 & Rescue
Halethorpe Co 5 & Rescue
Halethorpe ES
Halethorpe (MARC)
Riverview ES
Baltimore Highlands ES
Hickory Hills Park
Willow Grove Park
Hillcrest Park
Mount Zion
House of Good Shepherd
Lamb of God
United Hebrew
First Bapt
St Clements
English Consul Ch
Rosemont
Daisy Ave
Laurel
Lansdowne Pk
Riverview Park
Wilken Plaza Shop Ctr
Frederick ES
Samuel F B Morse ES
Franklin
Saint Benedict Cath
Carroll
Park
Choice
Creek
Falls
Westport
Mount
Arbutus
Halethorpe
Lansdowne
Violetville
Morrell Park
Cross Roads Ind Ctr
Commerce Ind Pk
Lansdowne Ind Pk
Caton 295 Bus Pk
Sulphur Spring Bus Pk
Vehicle Emissions Inspection Sta
Exit-51
Exit-50
Exit-49
Exit - 12A
Exit - 11
Exit 10
Exit-9
Exit - 8A
Exit-4
Exit-3
Frederick Rd
Wilkens Ave
Baltimore Blvd
Lansdowne Blvd
Caton Ave
Patapsco
Beltway
Tunnel
Parkway
Annapolis
Southwestern
Washington Blvd
Sulphur Spring Rd
Hollins
Monroe
Gwynns Falls
Silver Lake
Baltimore County
Arundel County
Mount Olivet Cemetery
Mount Saint Josephs HS
Saint Joseph Monastery Cath
Southwestern HS
Gwynns Falls Park
Mount Clare Mansion
Carroll Park Municipal GC
Cardinal Gibbons HS
Seton Keough HS
Saint Agnes
Violetville Park
Violetville ES & MS
Saint Paul Luth
Violetville Co 34
Morrell Park
Morrell Park ES & MS
Lakeland ES & MS
Lansdowne ES
Lansdowne MS
Lansdowne HS
Lansdowne Co 36 & Rescue
Arbutus Co 35 & Rescue
Halethorpe Co 5 & Rescue
Halethorpe ES
Halethorpe (MARC)
Riverview ES
Baltimore Highlands ES
Hickory Hills Park
Willow Grove Park
Hillcrest Park
Mount Zion
House of Good Shepherd
Lamb of God
United Hebrew
First Bapt
St Clements
English Consul Ch
Rosemont
Daisy Ave
Laurel
Lansdowne Pk
Riverview Park
Wilken Plaza Shop Ctr
Frederick ES
Samuel F B Morse ES
Franklin
Saint Benedict Cath
Carroll
Park
Choice
Creek
Falls
Westport

P.C.EX. 16

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

September Term, 1979

No. 18

OWEN J. LASKEY, et al.,

v.

BETHLEHEM STEEL CORPORATION, et al.

Gilbert, C.J.
Wilner
Couch,
JJ.

PER CURIAM

Filed: September 26, 1979

P.C. Ex 17

IN THE MATTER OF THE APPLICATION OF LINDA AMOS AND SUSANNE GIGLIOTTI – PETITIONERS; 111 MELLOR AVENUE PROPERTY FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE NE/S MELLOR AVENUE, 1,383' S OF C/L OF FREDERICK ROAD 1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 03-456-SPH

* * * * * * * * *

OPINION

This is an appeal from a decision of the Zoning Commissioner in which the Zoning Commissioner granted relief requested in a Petition for Special Hearing.

The hearing before the Board took place on December 22, 2004. Petitioners, Linda Amos, Susanne Gigliotti, and Lewis and Cindy Kubiet, were represented by Michael P. Tanczyn, Esquire. The Kubiets were allowed to participate as parties at the hearing before the Board although they only testified as witnesses below. They live on Mellor Avenue, near the property in question. Between the Zoning Commissioner's hearing and the hearing before the Board, Ms. Amos and Ms. Gigliotti moved away from Mellor Avenue. The Appellant /Respondent was represented by Benjamin Bronstein, Esquire. The amendment of the Petition to include the Kubiets was contested by Counsel for the Appellant /Respondent, Drenner Concrete /Purchaser-Legal Owner, Wayne Odochowski.

Facts

The testimony indicated that the property in question is located on the east side of Mellor Avenue in Catonsville, just south of the intersection of Mellor Avenue and Frederick Road. The property is rectangular in shape, about 60 feet by 355 feet, and is approximately .5 acre in size. It is zoned B.M. with a small remaining portion of the property zoned D.R. 2.

Improvements on the property include a one-story tin shed, 18 feet by 40 feet in dimension which is located in the southern D.R. 2 portion of the site. A container is located in the northern portion of the site which is zoned B.M. Additionally, there is a concrete retaining wall and a long concrete pad along the rear of the property which crosses the zone line, and there are several concrete parking bays along the northern property line. The remaining area of the property is unimproved. The property is enclosed with

P.C. Ex 18

44 TRUCKING FACILITIES by Election District:

7th

1 • No T.F. #, W side York, S of Mt. Carmel, across from Monkton Rd.

12th

2 • T.F. # 18 8100 Stansbury Road
3 • T.F. # 152 8101 Flood & Wills Road

13th

4 • T.F. # 1 2000 Hammonds Ferry Rd.
5 • T.F. # 120 3523 Marmemco Ct.
6 • T.F. # 125 4546 Annapolis Rd.
7 • T.F. # 137 4412 Pistorio Rd.
8 • T.F. # 138 4747 Hollins Ferry Rd. (copied plan)
4764 Hollins Ferry Rd. (there is no plan in County's file)
9 • T.F. # 154 2312 Eskow Avenue
10 • T.F. # 158 2930 Hammonds Ferry Rd.
11 • T.F. # 159 3510 Washington Blvd.
12 • T.F. # 160 3300 Transway Rd.
13 • T.F. # 167 5001 Washington Blvd. *** County File Missing**

P. C. Ex 19

	Trucks / Trailers	Bldg. S.F.	FC. of Site
1) 6812 ST	(190 TTL)	#3 1284 / 3407 #2	17.68
		#1 4710 / #4 7609	
2) Eskow	NT NT	NT	11.84
3) 4546 Annapolis Rd	(75 TTL)	(25,199) sq ft	(217,800 sq ft
4) PISTORIO RD	(5 TRUCKS)	(80 X 160) ft	2.3 acres
5) 6503 old North Pt	(28 TTL)	2934 sq ft	4.56 acres
6) 3510 Wash Blvd	(64 TTL)	(62 X 230')	7.15 acres
7) 2000 Hammonds Ferry	(81 TTL)	① 15,314 sq ft ② 3,150 sq ft	5 acres
8) 8216 BLEITZER	MAX ((116 TTL))	4362 sq ft	6.84 acres
9) 4101 Beechwood	(19 TTL)	53,310 sq ft	20.9 acres
10) 8227 Fisher Rd	(21 TTL)	NT	9.19 acres
11) 8225 Fisher Rd	(51 TTL)	(168 X 80')	14.19 acres
12) 8300 BLEITZER	(47 TTL)	#1 16,453 sq ft #2 (36 X 36)	3.1 acres
13) PHILA RD	(115 TRUCKS)	133,250 sq ft	33.4 acres

P.C. Ex 20

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE – SE/S Philadelphia Road, W/S Campbell Boulevard (future extension) (RPS-White Marsh) 15th Election District 6th Councilmanic District	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
	*	Case No. 00-239-XA
White Marsh Associates, LLC Petitioners	*	

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Exception and Variance filed by the owners of the subject property, White Marsh Associates, LLC, by John H. Gease, III, Vice President, through their attorney, Robert A. Hoffman, Esquire. The Petitioners request a special exception to allow a Class I Trucking Facility (passenger parking and access road) on the subject property, located in an M.L.-I.M. zone. In addition, the Petitioners request a variance from Section 256.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a Class I Trucking Facility to be located 2 feet from a business zone in lieu of the required 200 feet, and from Section 410.2 of the B.C.Z.R. to permit the driveway and access point for the proposed facility to be located 75 feet from an existing residential dwelling in lieu of the required 300 feet. The subject property and relief sought are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing held in support of these requests were John H. Gease, III on behalf of White Marsh Associates, LLC, property owners, and a number of representatives of RPS, the corporate entity which will operate the proposed Class I Trucking Facility. They included Mike Cline, James M. Maxwell, Eric E. Adamczyk, Scott Rohrman, and Jada R. Leo. Also present were Scott Rouk and Ted Scott, representatives of Morris & Ritchie Associates, the engineers/surveyors who prepared the site plan for this property, Wes Guckert, a traffic engineering expert engaged by the Petitioners to evaluate the traffic impact of the proposed

21B

IN RE: PETITION FOR SPECIAL HEARING AND ZONING VARIANCE - W/S of Bletzer Road, 200' S of the c/l of Glenhurst Road (8216 and 8224 Bletzer Road) 15th Election District 7th Councilmanic District

Russell L. Siegel, et ux
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 87-246-SPHA

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

The Petitioners herein request a special hearing to confirm that the building located within 300 feet of the above-referenced site was not used as a residence when the plans for a Class B trucking facility were submitted for approval, and additionally, a variance to permit the parking area to be paved with crusher run and/or slag in lieu of the required paving, as more particularly described on the plan submitted, prepared by Paul Lee Engineering, Inc. and identified as Petitioner's Exhibit 1, revised September 26, 1986.

At the onset of the hearing, Counsel for the Petitioners moved to amend the Petition for Zoning Variance to read "to allow the parking area to be slag in lieu of the required paving."

The attorney for the Petitioners proferred the history of the subject site relative to the Baltimore County Zoning Regulations (BCZR) for trucking facilities, including the purchase of an additional 2 and 1/2 acres in order to provide the required 5 acres, and the submission of plans.

All parties, including the Protestant, the President of the Wells-McComas Citizens Improvement Association, Inc., and Paul Lee, the engineer, agreed that the building located within 300 feet of the subject site, as shown on the plan submitted, prepared by Paul Lee Engineering, Inc. and identified as Petitioner's Exhibit 2, revised October 1982, was not used as a residence when the plan was submitted for approval pursuant to Section 410.A.2 of the BCZR.

Testimony by and on behalf of the Petitioners indicated that they purchased 8216 Bletzer Road in 1973 and 8224 Bletzer Road in 1982. When 8216 Bletzer Road was purchased, the lot was paved with slag only as far back as the

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Date 5/4/87
By Kathi Schlemmer

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commercial and

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Board must decide several issues, [illegible]sented by both the Petitioner and the Office of People's Counsel in their Memorandums. These are:

relies upon

and Whittle

lateral telephone

shown on Petitioner

Critical Area rev

Road property line.

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is required in or

full-fledged truckin

Protestants

improvement associa

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effect. In additio

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if expansion is allow

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Pursuant to t

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MICROFILMED

IN RE: PETITION FOR SPECIAL EXCEPTION, SPECIAL HEARING & ZONING VARIANCE
SE/cor. Beach & Fischer Roads
15th Election District
7th Councilmanic District
Margaret Corkran
Petitioner

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 86-417-XSPHA

The Petitioner herein requests a special exception for the expansion of an existing Class II truck terminal on part of Site II of the property described herein; a special hearing to approve an amendment to the site plan previously approved in Case #78-165-ASPH to separate Site I from Site II and to remove Restrictions 5, 6, 7 and 8 from said plan; and variances for Site II to permit a minimum setback of 100 feet from a residential area in lieu of the required 300 feet and a paving section of 8 inch crushed stone in the storage area in lieu of the required paving, all as more particularly described on the plan submitted, prepared by George William Stephens, Jr. & Associates, Inc., revised January 22, 1986 and identified as Petitioner's Exhibit 1.

Testimony by and on behalf of the Petitioner indicated that the subject property is the site of two separate Class II truck terminals, as shown on Petitioner's Exhibit 1, with Site I having a long-term lease and Site II having a month-to-month lease by EMARCO as "Container Depot Industries." In fact, Sites I and II were treated as one property only in Case #78-165-ASPH. There has never been compliance with the plans previously approved in that case. The Petitioner proposes to expand the allowed useable area of Site II solely for the purpose of providing a storage yard for containers and trailers and a 24-foot wide roadway. Two accesses onto Fischer Road, in existence since 1977, will be used. The Petitioner also proposes utilizing the existing crushed stone paving in the storage area and paving only the roadway in the expanded area. She further proposes to remove the stone and renaturalize the area outside the proposed

ORDER RECEIVED FOR FILING
Date 4/3/86
By Kitty Gallagher

ORDER RECEIVED FOR FILING
Date 4/3/86
By Kitty Gallagher

MICROFILMED

LANCE

I 240

86-417-XSPHA

nore County and which is
ereof, hereby petition for a
ack of 100 feet
300 feet and from

PETITION FOR SPECIAL HEARING

I 240

86-417-XSPHA

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 Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve

TO THI

DEVELOPER'S

EXHIBITS

3600 Georgetown - New England Motor Freight
04-160-SPH and 04-294-SPHX

Verified 7/21/05

Verified 7-14-05

Verified 9/14/05

Verified 9/19/05

Verified 9/30/05

(Developer) New England Motor Freight

✓	✓	✓	1. a-e pictures of facility they own in N.Y.
✓	✓	✓	2. 2004 site plan (in file) from below
✓	✓		3. Letter dated March 5, 2003 from Jennifer Busse
✓	✓		4 Letter dated Aug. 24, 2001 ID only
✓			5. David L. Martin L.A. C.V.
✓			6. Sampled Trucking Facilities on Record w/ Balto Co
✓			7. PowerPoint Presentation
✓			8. Site Plan 2000 Hammonds Ferry Rd
✓			9. Site Plan 4546 Annapolis Road
✓			10. Site Plan 4412 Pistorio Rd
✓			11. Site Plan Eskow Ave
✓			12. Site Plan Washington Blvd
✓			13. Site Plan 8216 + 8224 Bletzer Rd
✓			14. Site Plan 8227 Fischer Rd
✓			15. NEMF Noise Control Analysis
✓			16. James Markle, C.V.
✓			17. Letter from Robert Bowling dated 6-2-04
✓			18. Site Plan for Storm Water Management
✓			19a Letter from Michael Walsh dated 6-27-05
—			b Letter from Joan Hatfield dated 6-28-05
—			c Letter from David Iannucci dated 6-29-05



NEMF Ex 1a



NEMF 16



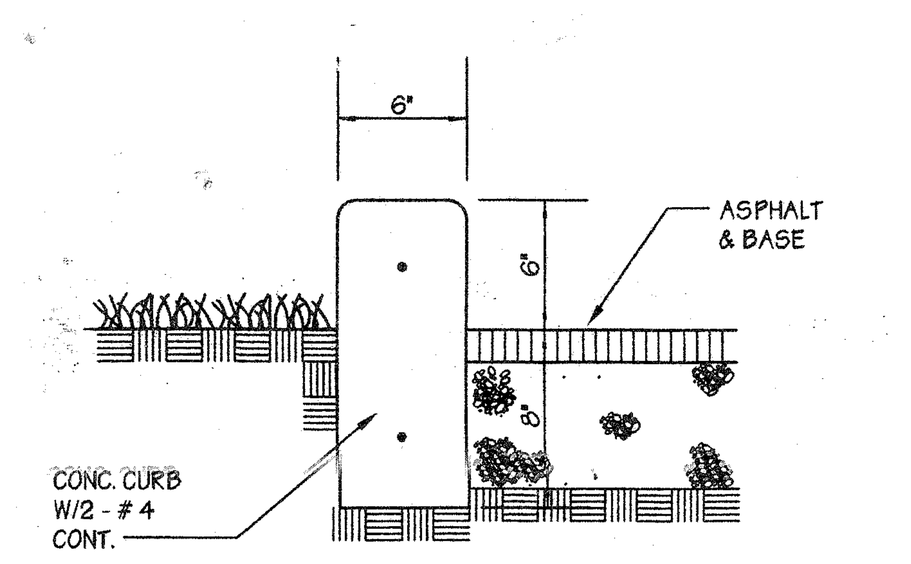
NEMF 1c



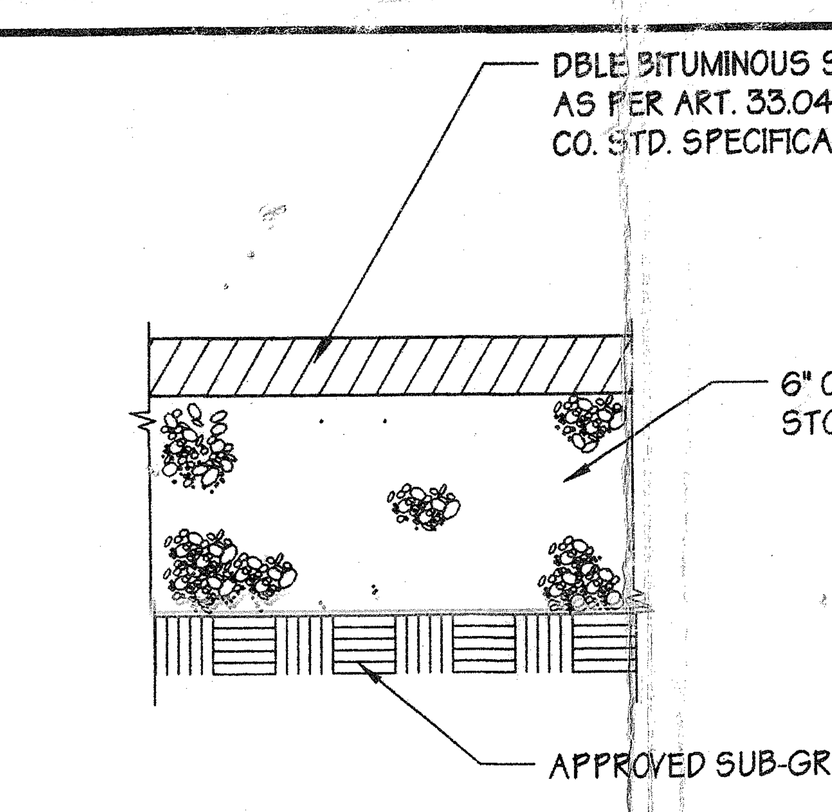
NEMF 1d



NEMF 1e



CONCRETE CURB DETAIL
1 1/2" = 1' - 0"



TRUCKING FACILITY
SITE PAVING DETAIL
NO SCALE

PAVING CERTIFICATION

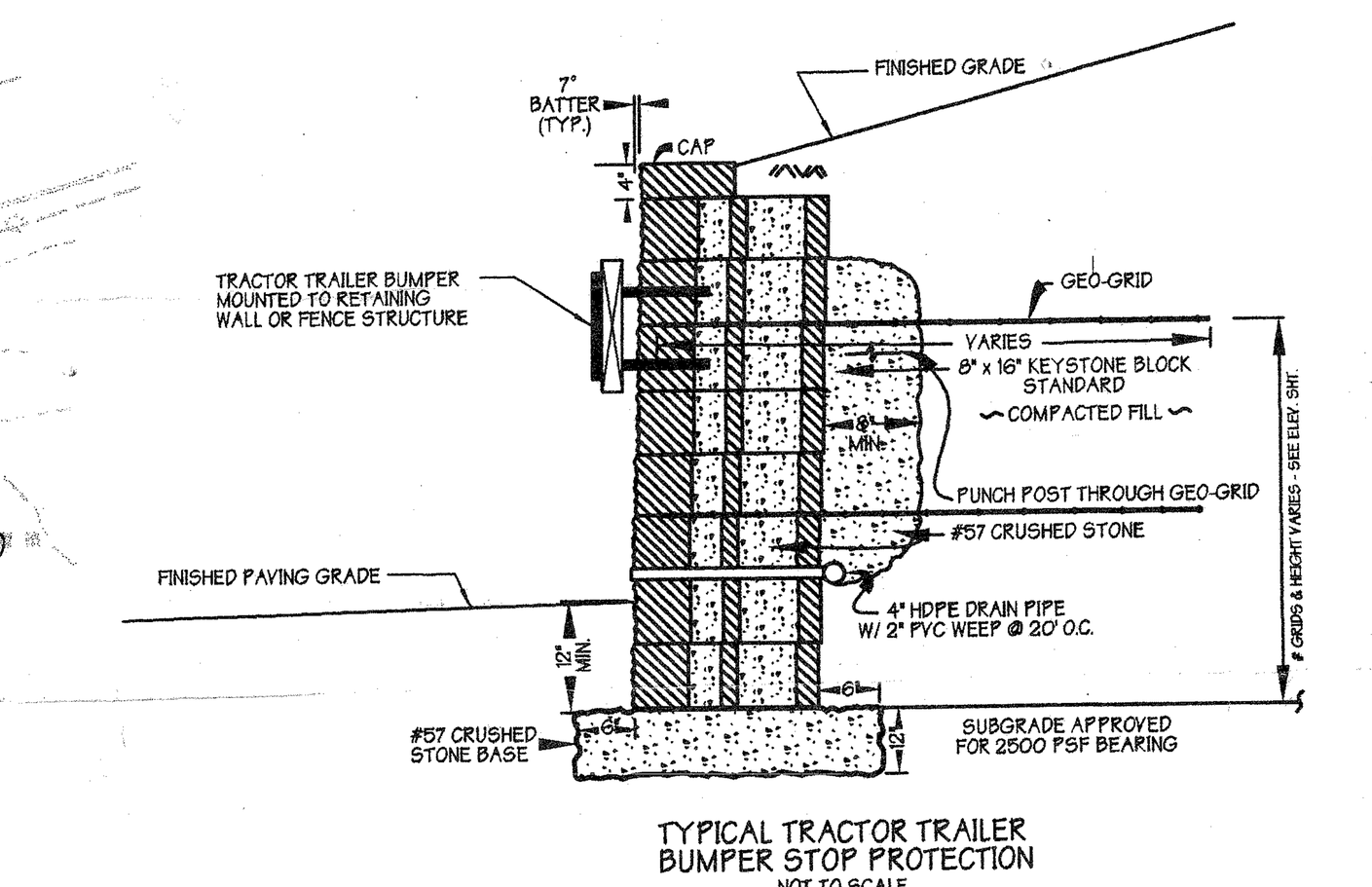
I HEREBY CERTIFY THAT THE PAVING BASE AND SOIL OF ALL PARKING, LOADING, MANEUVERING, AISLE AND STORAGE AREAS WILL WITHSTAND LOADS IMPOSED BY EXPECTED TRUCK TRAFFIC AND STORAGE ACTIVITIES.

WRITE NAME ______ DATE

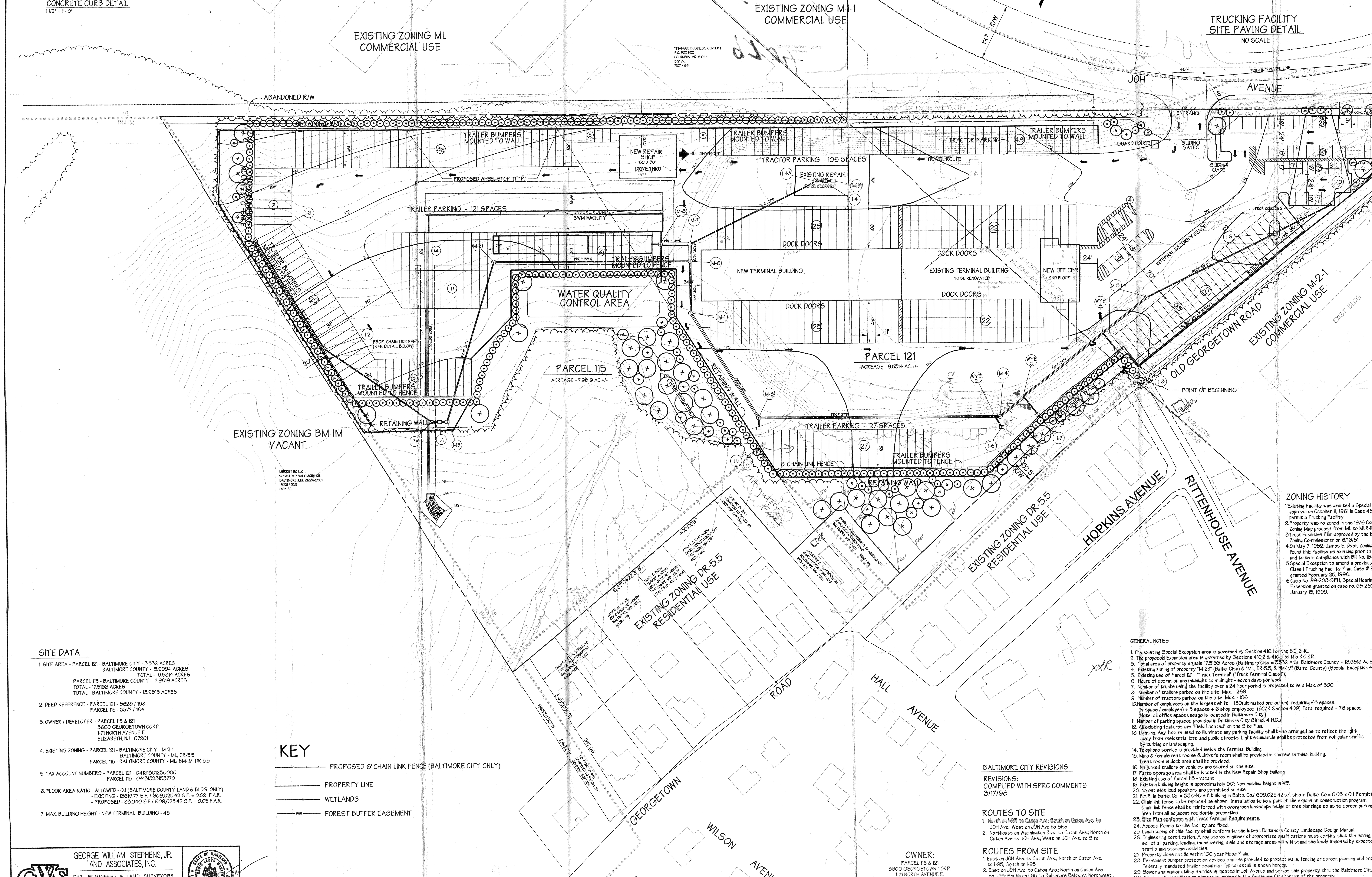
PRINT NAME ______ DATE

TRUCKING FACILITIES OFFICIALS DEPARTMENTAL CHECK-OFF

ADMINISTRATIVE OFFICER / DIRECTOR PDM / CHAIRMAN	DATE
CHIEF, BUREAU OF TRAFFICE ENGINEERING	DATE
DIRECTOR, ECONOMIC DEVELOPMENT	DATE
CHIEF, BUREAU OF ENGINEERING, PDM	DATE
STATE HIGHWAY ADMINISTRATION	DATE
ZONING SUPERVISOR / DIRECTOR, PERMITS & DEVELOPMENT MGT.	DATE



TYPICAL TRACTOR TRAILER BUMPER STOP PROTECTION
NOT TO SCALE



SITE DATA

1. SITE AREA - PARCEL 121 - BALTIMORE CITY - 3.532 ACRES
   BALTIMORE COUNTY - 5.9994 ACRES
   TOTAL - 9.5314 ACRES
   PARCEL 115 - BALTIMORE COUNTY - 7.9819 ACRES
   TOTAL - 17.5133 ACRES
   TOTAL - BALTIMORE COUNTY - 13.9813 ACRES

2. DEED REFERENCE - PARCEL 121 - 8628 / 198
   PARCEL 115 - 3977 / 184

3. OWNER / DEVELOPER - PARCEL 115 & 121
   3600 GEORGETOWN CORP.
   1-71 NORTH AVENUE E.
   ELIZABETH, NJ 07201

4. EXISTING ZONING - PARCEL 121 - BALTIMORE CITY - M-2-1
   BALTIMORE COUNTY - ML, DR-5.5
   PARCEL 115 - BALTIMORE COUNTY - ML, BM-IM, DR-5.5

5. TAX ACCOUNT NUMBERS - PARCEL 121 - 04131301230000
   PARCEL 115 - 04131323153770

6. FLOOR AREA RATIO - ALLOWED - 0.1 (BALTIMORE COUNTY LAND & BLDG. ONLY)
   - EXISTING - 13619.77 S.F. / 609,025.42 S.F. = 0.02 F.A.R.
   - PROPOSED - 33.040 S.F / 609,025.42 S.F. = 0.05 F.A.R.

7. MAX. BUILDING HEIGHT - NEW TERMINAL BUILDING - 45'

KEY

- PROPOSED 6' CHAIN LINK FENCE (BALTIMORE CITY ONLY)
- PROPERTY LINE
- WETLANDS
- FBE — FOREST BUFFER EASEMENT

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
1020 CROMWELL BRIDGE ROAD
TOWSON, MARYLAND 21286-3396
(410) 825-8120

FILENAME: sgbl8273specialexplannew2.s01

BALTIMORE CITY REVISIONS

REVISIONS:
COMPLIED WITH SPRC COMMENTS
3/17/98

ROUTES TO SITE

1. ~~North on I-95 to Caton Ave; South on Caton Ave. to~~ JOH Ave.; West on JOH Ave to Site
2. Northeast on Washington Blvd. to Caton Ave.; North on Caton Ave to JOH Ave.; West on JOH Ave. to Site.

ROUTES FROM SITE

1. East on JOH Ave. to Caton Ave.; North on Caton Ave. to I-95; South on I-95
2. East on JOH Ave. to Caton Ave.; North on Caton Ave. to I-95; South on I-95 To Baltimore Beltway; Northwest or Southeast on Baltimore Beltway

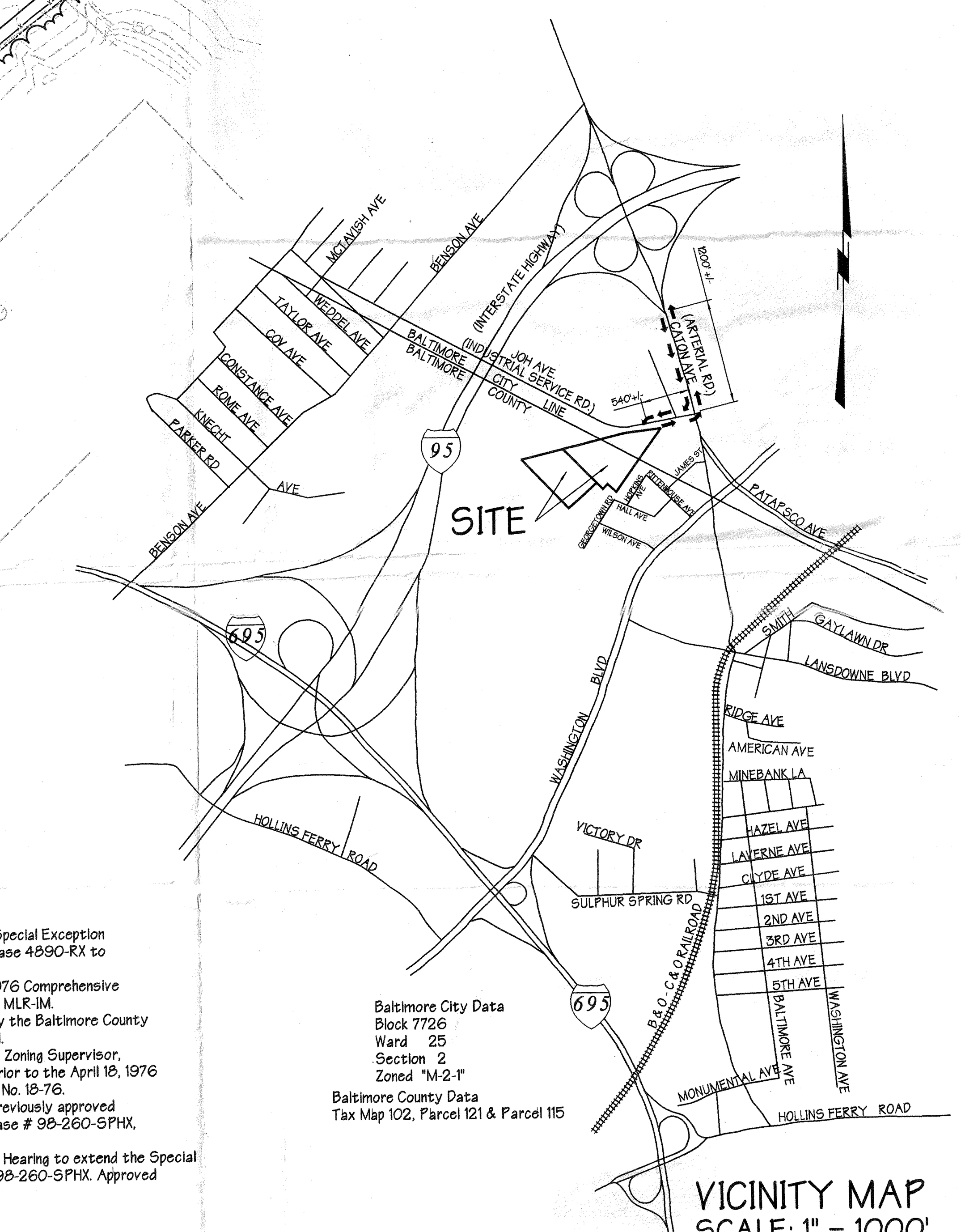
OWNER:
PARCEL 115 & 121
3600 GEORGETOWN CORP.
1-71 NORTH AVENUE E.
ELIZABETH, N.J. 07201
CONTACT: MR. ROBERT F. WALKER

GENERAL NOTES

1. The existing Special Exception area is governed by Section 410.1 of the B.C. Z. R..
2. The proposed Expansion area is governed by Sections 410.2 & 410.3 of the B.C.Z.R..
3. Total area of property equals 17.5133 Acres (Baltimore City = 3.532 Ac.±, Baltimore County = 13.9813 Ac.±)
4. Existing zoning of property "M-2:1" (Balto. City) & "ML, DR-5.5, & BM-IM" (Balto. County) (Special Exception 4890-RX)
5. Existing use of Parcel 121 - "Truck Terminal" ("Truck Terminal Class I").
6. Hours of operation are midnight to midnight - seven days per week.
7. Number of trucks using the facility over a 24 hour period is projected to be a Max. of 300.
8. Number of trailers parked on the site: Max. - 269
9. Number of tractors parked on the site: Max. - 106
10. Number of employees on the largest shift = 130(ultimated projection) requiring 65 spaces (½ space / employee) + 5 spaces + 6 shop employees, (BCZR Section 409) Total required = 76 spaces. (Note: all office space useage is located in Baltimore City.)
11. Number of parking spaces provided in Baltimore City 81(incl. 4 H.C.)
12. All existing features are "Field Located" on the Site Plan.
13. Lighting. Any fixture used to illuminate any parking facility shall be so arranged as to reflect the light away from residential lots and public streets. Light standards shall be protected from vehicular traffic by curbing or landscaping.
14. Telephone service is provided inside the Terminal Building
15. Male & female rest rooms & driver's room shall be provided in the new terminal building. 1 rest room in dock area shall be provided.
16. No junked trailers or vehicles are stored on the site.
17. Parts storage area shall be located in the New Repair Shop Building.
18. Existing use of Parcel 115 - vacant
19. Existing building height is approximately 30'; New building height is 45'.
20. No out side loud speakers are permitted on site.
21. F.A.R. in Balto. Co. = 33.040 s.f. building in Balto. Co./ 609,025.42 s.f. site in Balto. Co.= 0.05 < 0.1 Permitted
22. Chain link fence to be replaced as shown. Installation to be a part of the expansion construction program. Chain link fence shall be reinforced with evergreen landscape hedge or tree plantings so as to screen parking area from all adjacent residential propertles.
23. ~~Site Plan conforms with Truck Terminal Requirements.~~
24. Access Points to the facility are fixed.
25. Landscaping of this facilty shall conform to the latest Baltimore County Landscape Design Manual.
26. Engineering certification. A registered engineer of appropriate qualifications must certify that the paving, base and soil of all parking, loading, maneuvering, aisle and storage areas will withstand the loads imposed by expected truck traffic and storage activities.
27. Property does not lie within 100 year Flood Plain.
28. Permanent bumper protection devices shall be provided to protect walls, fencing or screen planting and provide for Federally mandated trailer security. Typical detail is shown hereon.
29. Sewer and water utility service is located in Joh Avenue and serves this property thru the Baltimore City portion of the site.
30. All project identification signage is located in the Baltimore City portion of the property.
31. All paving to be bituminous concrete, striped in accordance with this plan, and curbed at the entire perimeter of the paving limits, and meet all requirements for paving standards required in Section 409.8.D of the B.C.Z.R.

ZONING HISTORY

1. Existing Facility was granted a Special Exception approval on October 11, 1961 in Case 4890-RX to permit a Trucking Facility.
2. Property was re-zoned in the 1976 Comprehensive Zoning Map process from ML to MLR-IM.
3. Truck Facilities Plan approved by the Baltimore County Zoning Commissioner on 6/16/81.
4. On May 7, 1982, James E. Dyer, Zoning Supervisor, found this facility as existing prior to the April 18, 1976 and to be in compliance with Bill No. 18-76.
5. Special Exception to amend a previously approved Class I Trucking Facility Plan, Case # 98-260-SPHX, granted February 25, 1998.
6. Case No. 99-208-SPH, Special Hearing to extend the Special Exception granted on case no. 98-260-SPHX. Approved January 15, 1999.



Baltimore City Data
Block 7726
Ward 25
Section 2
Zoned "M-2-1"
Baltimore County Data
Tax Map 102, Parcel 121 & Parcel 115

VICINITY MAP
SCALE: 1" = 1000'

ZONING RELIEF REQUESTED:

1. Special Exception to amend the Special Exception Plan approved in case no. 98-260-SPHX.
2. Special Exception to expand the existing Special Exception area for a Class I Trucking Facility.
3. A special Hearing to determine whether a Special Hearing is required in this matter; and
4. A Special Hearing to determinate a previously approved car parking compound in Baltimore City as supporting a Baltimore County trucking facility and, further, to recognize that the subject car parking compound fulfills the requirements of BCZR Sec. 409.6.3 (providing the parking requirements for a Trucking Facility in Baltimore County).

PETITION FOR SPECIAL EXCEPTION & SPECIAL HEARING FOR AN AMENDMENT TO AND EXPANSION OF A CLASS I TRUCKING FACILITY OF NEW ENGLAND MOTOR FREIGHT COMPANY AT 3600 GEORGETOWN ROAD

NEMF Ex. 2

ELECTION DISTRICT 13
COUNCILMANIC DISTRICT 1
SCALE: 1" = 40'

BALTIMORE COUNTY, MD.
DEC 6, 1978
REV. APRIL 27, 1981
2nd REV. JANUARY 1, 1998
3rd REV. NOVEMBER 10, 1998

~~DATE: AUGUST, 2004~~

SITE PLAN APPROVED BY:

ZONING COMMISSIONER	DATE
CHAIRMAN, COUNTY TRUCKING FACILITIES DEVELOPMENT OFFICIALS ADMINISTRATIVE OFFICER / COUNTY ATTORNEY	DATE

NEMF Ex. 5

ENGINEERS • PLANNERS • SURVEYORS
TRANSPORTATION

CHIEF EXECUTIVE OFFICER
JAMES A. MARKLE, JR., P.E.

PRESIDENT
WALTER H. NOYES, PROF L.S.

VICE PRESIDENTS
FREDERICK N. CHADSEY, IV, P.E.
PASQUALE R. CIARLO
PAUL W. TAYLOR, P.E.

SENIOR ASSOCIATES
CLARENCE W. CULLUM, JR., P.E.
WALTER F. EISNER, PROF L.S.
WILLIAM E. HENNING, III, PROF L.S.
JAMES H. HUNT, PROF L.S.
DAVID L. MARTIN, L.A.
WILLIAM H. NOYES, P.E., PROF L.S.
HARRY P. PHILLIPS, P.E.
MILLARD TERRY SCHAUB, P.E.
GEORGE H. TWIGG, P.E.
ELIZABETH VENTMILLER
KAREN M. WATSIC, P.E.

ASSOCIATES
DAVID J. BICKEL, L.A.
JOHN BOLING
THOMAS W. HEWITT
PAUL K. MOODY, III, PROF L.S.
BERNT C. PETERSEN, L.A.
JAMES M. SHAW, JR., PROF L.S.
KEVIN P. SHORTELL, P.E.
GEOFFREY P. TOBIAS
MARK B. TRESS, SR.
GERALD D. TURNBAUGH, P.E.

TOWSON, MARYLAND:
1020 CROMWELL BRIDGE ROAD
TOWSON, MARYLAND 21286-3396
(410) 825-8120
FAX (410) 583-0288

BELCAMP, MARYLAND:
WATER'S EDGE CORPORATE CAMPUS
4692 MILLENNIUM DRIVE, SUITE 100
BELCAMP, MARYLAND 21017
1 (888) 297-2340
(410) 297-2340
FAX (410) 297-2345

GEORGETOWN, DELAWARE:
104 EAST PINE STREET
GEORGETOWN, DELAWARE 19947
1 (866) 902-4990
(302) 856-4990
FAX (302) 856-4995

VISIT OUR WEB SITE AT
www.gwstephens.com

CURRICULA VITAE

DAVID L. MARTIN, L.A.

Director of Land Planning / Landscape Architecture
George William Stephens, Jr. & Associates

Professional Registration: Landscape Architect
Maryland - No. 776
Pennsylvania - No. 573-E

Education:
The Pennsylvania State University
Bachelor of Science Landscape Architecture - 1971

Professional Affiliations:
American Society of Landscape Architects, Member
Urban Land Institute, Associate

Professional practice includes 34 years of land planning, landscape architecture, comprehensive zoning, PUD master planning, site planning, and expert witness testimony regarding land use and zoning issues. Mr. Martin has been practicing in the Greater Baltimore Metropolitan region since 1987 and has been qualified as an expert in land planning, site planning, and zoning cases in Anne Arundel County, Baltimore County, Howard County, Harford County, Bel Air, Aberdeen, Havre de Grace, Perryville and Federal District Court of Baltimore.

Prior to his relocation to Maryland, Mr. Martin practiced landscape architecture and land planning in Pennsylvania, Florida, Massachusetts, Alabama, The Commonwealth of the Bahamas and Jamaica.

Principal duties for G. W. Stephens, Jr. & Assoc. include supervision of site development and land planning, zoning interpretation, community input meetings, development plans and Hearing Officer's Hearings, special exception petitions, variance request petitions and landscape plan preparation.

Significant projects include Developments of Regional Impact (DRI) in the State of Florida including; Palm Coast, Florida - 10,000 acre master plan, Beverly Hills, Florida - 6,500 acre master plan, and Doral Park, Florida - 2000 acre master plan. Significant local projects include: Hollywoods, Monmouth Meadows, Greenbriar, Guzzo Property, Forge Landing, Owings Mills Commerce Center, The Avenue at Whitemarsh, New England Motor Freight Trucking Facility, Cedar Land Farms P.U.D., Westwicke, Beaverbrook, Biddison Property, Bridle Ridge, Green Spring Station, Home Depot of Owings Mills, Bel Air and Timonium, and Ashland Market Place.

Mr. Martin has prepared numerous comprehensive-zoning petitions in Baltimore County during the 1992, 1996, 2000 & 2004 CZMP processes and has a thorough understanding of the principles of Euclidean zoning and their application throughout the Baltimore Metro region. He also served on an ad-hoc committee that authored the Service Employment (SE) Zone of Baltimore County and the Public Affairs Committee for NAIOP. He has extensive experience dealing with all of the Baltimore Regional Area County's development regulations.

NEMF #4 ID only

WHITEFORD, TAYLOR & PRESTON
L.L.P.

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

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

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

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

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

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

August 24, 2001

The Honorable Timothy M. Kotroco
Deputy Zoning Commissioner
401 Bosley Avenue, 4th Floor
Towson, Maryland 21204

Ms. Brenda Armstrong
3416 Hopkins Avenue
Baltimore, Maryland 21227

Re: New England Motor Freight, 3600 Georgetown Road
Case No.: 01-544-SPHX

Dear Mr. Kotroco and Ms. Armstrong:

Pursuant to Mr. Kotroco's instruction, enclosed is a copy of the Compromise and Settlement Agreement entered into evidence as Petitioner's Exhibit No. 4 at the Zoning Hearing in this matter on Wednesday, August 22, 2001. This Compromise and Settlement Agreement was entered into on August 7, 2001, the date New England Motor Freight's appeal of Mr. Jablon's September 25, 2000 letter was scheduled to be heard before the Board of Appeals in Case No. CBA-00-162. As a result of this Compromise and Settlement Agreement executed by both C. Robert Loskot, Assistant County Attorney on behalf of Baltimore County, and myself on behalf of New England Motor Freight, New England Motor Freight agreed to dismiss its appeal of Mr. Jablon's letter.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,

G. Scott Barhight /lb

G. Scott Barhight

GSB:mbb
Enclosure

NEMF Ex. #3

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
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

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

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

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

JENNIFER R. BUSSE
DIRECT NUMBER
410 832-2077
jbusse@wtplaw.com

March 5, 2003

Via Facsimile – 410-887-2824
and First Class Mail

Mr. James H. Thompson
Supervisor, Bureau of Code Enforcement
111 W. Chesapeake Ave.
Towson, Maryland 21204

Re: 3600 Georgetown Road
New England Motor Freight Trucking Facility ("NEMF")
Your Reference: Case No. 00-7138
1998 Case No. 98-260-SPHX

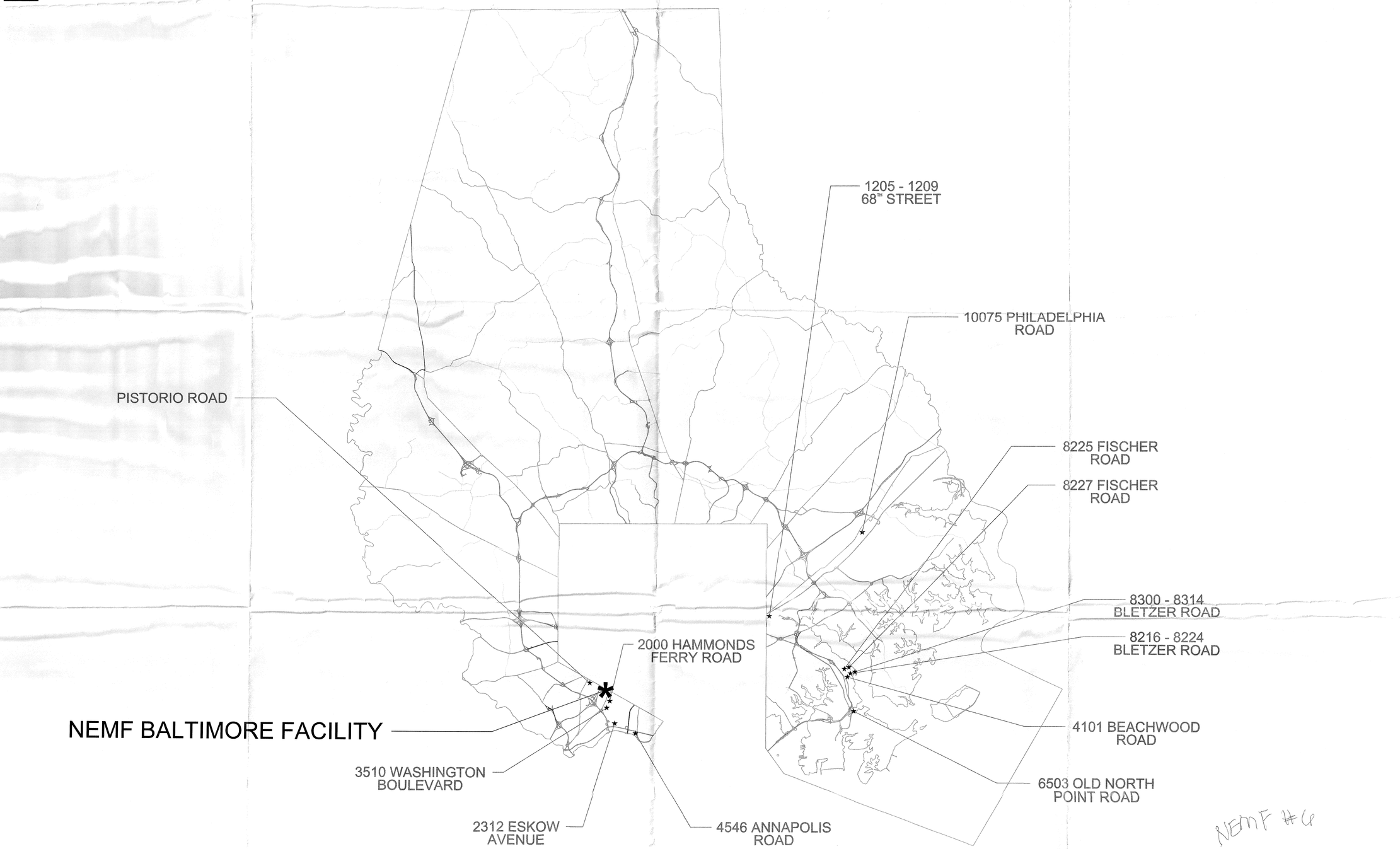
Dear Mr. Thompson:

Thank you for your letter dated March 3, 2003 and received by my office via hand delivery on March 4, 2003. Please accept this letter as NEMF's response to the allegations in your letter.

1) You assert that NEMF has not utilized its Special Exception approved in Case No. 98-260-SPHX. This allegation is false. From the date of the Order, NEMF has engaged in a variety of activities utilizing the Special Exception.

2) You allege that Whiteford, Taylor & Preston informed your department that the property owner had elected not to proceed with the construction of the terminal addition/new service garage building approved in Case No. 98-260-SPHX. This allegation is also false. Phase I of NEMF's expansion pursuant to the approval in Case No. 98-260-SPHX involves the expansion of paved areas. The terminal addition/new service garage building expansion is planned for a subsequent phase of construction.

SAMPLED TRUCKING FACILITIES ON RECORD WITH BALTO. CO.



NEMF #6

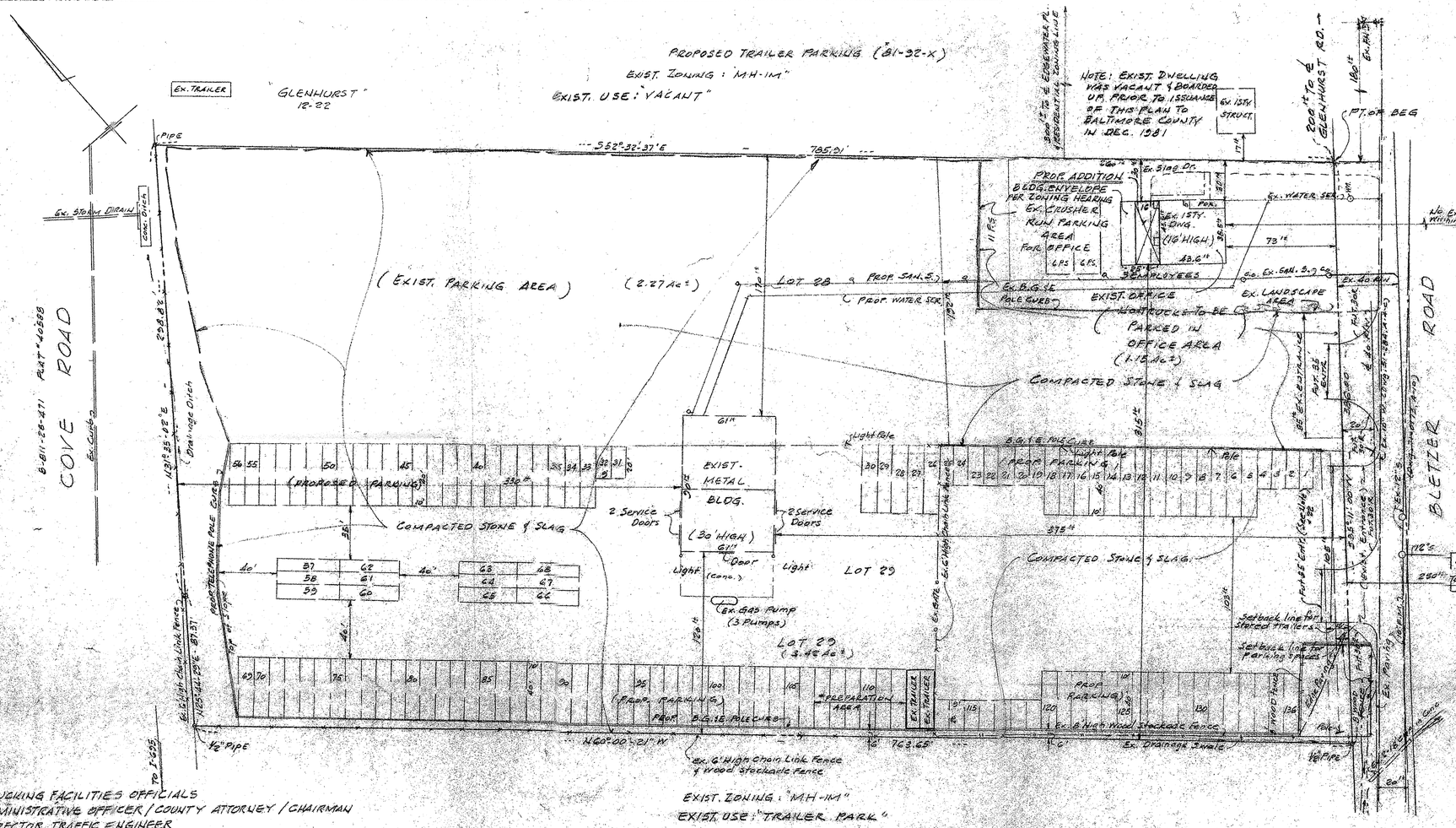
NEMF #7

NEMF

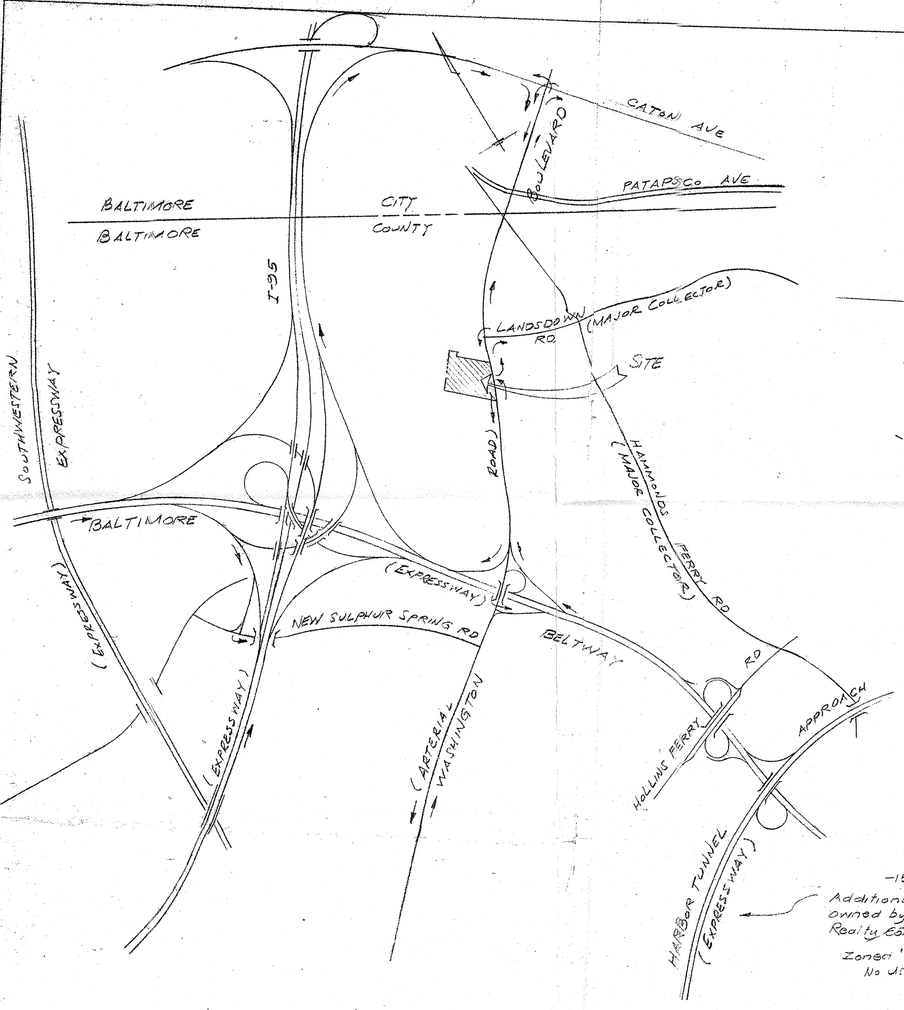
NEW ENGLAND MOTOR FREIGHT
BALTIMORE FACILITY
3600 GEORGETOWN ROAD
BALTIMORE, MARYLAND

Board of Appeals Case No. 04-160 SPH

Board of Appeals Case No. 04-294 SPHX


PROPOSED TRAILER PARKING (81-32-X)
EXIST. ZONING: "MH-IM"
EXIST. USE: "VACANT"
"GLENHURST" 12-22
EX. TRAILER
EX. STORM DRAIN
Conc. Ditch
COVE ROAD
B-81-26-471 PLAT #4688
Ex. Curb
PIPE
S62°32'37"E 785.01'
PROF ADDITION BLDG. ENVELOPE PER ZONING HEARING
EX. CRUSHER RUN PARKING AREA FOR OFFICE
6 EMPLOYEES
EX. 5100 SQ. FT.
EX. 15TY. BLDG. (16' HIGH)
EX. WATER SER.
EXIST. OFFICE
EX. LANDSCAPE AREA
EX. 40' R/W
PROF. WATER SER.
LOT 28
PROP. SAN. S.
Ex. B.G.&E. POLE CURB
(2.27 Ac±)
(EXIST. PARKING AREA)
COMPACTED STONE & SLAG
EXIST. METAL BLDG. (30' HIGH)
2 Service Doors
Light
Door
Ex. GAS PUMP (3 Pumps)
LOT 29
(3.48 Ac±)
PROP. PARKING
(PROPOSED PARKING)
*PREPARATION AREA
Ex. TRUCK SCALES
Ex. 6' High Chain Link Fence & Wood Stockade Fence
N60°00'21"W 763.65'
½" Pipe
TO I-695
Ex. Drainage Swale
Ex. 6' High Chain Link Fence
N65°44'29"E 87.31'
Ex. 6' High Wood Stockade Fence
Ex. B.G.&E. POLE LINE
Ex. B.G.&E. POLE CURB
Ex. 15TY. BLDG.
Ex. 40' R/W
Ex. 35' ENTRANCE
Ex. 12' ENTRANCE
Ex. 20' ENTRANCE
PUMP STA
TO WETLANDS
250'±
Setback line for Stored Trailers
Setback line for Parking Spaces
BLETZER ROAD
EXIST. ZONING: "MH-IM"
EXIST. USE: "PUMP STA. & VACANT"
No Exist. Bldgs Within 300'
300'±" TO E EDGEWATER PL. (RESIDENTIAL ZONING LINE)
200'±" TO E GLENHURST RD.
PT. OF BEG
180'±"
Ex. 15TY. STRUCT.
17'±
Ex. WATER SER.
Ex. SAN. S.
Ex. 40' R/W
Ex. 12' ENTRANCE
Ex. 35' ENTRANCE
Ex. 20' ENTRANCE
Ex. B.G.&E. POLE CURB
Ex. 6' High Chain Link Fence
Ex. Drainage Swale
Ex. Wood Stockade Fence
Ex. Inlet
Ex. Manhole
Ex. Pipe
Ex. Trees
Ex. Bldg.
Ex. Shed
Ex. Garage
Ex. Trailer
Ex. Pump
Ex. Gas Pump
Ex. Scale
Ex. Office
Ex. Metal Bldg.
Ex. Crusher Run Parking Area
Ex. Compacted Stone & Slag
Ex. Paving
Ex. Curb
Ex. Light Pole
Ex. Telephone Pole
Ex. Guy Wire
Ex. Fence
Ex. Gate
Ex. Sign
Ex. Tree
Ex. Shrub
Ex. Hedge
Ex. Grass
Ex. Soil
Ex. Rock
Ex. Water
Ex. Sewer
Ex. Gas
Ex. Electric
Ex. Telephone
Ex. Cable
Ex. Fiber Optic
Ex. Conduit
Ex. Duct
Ex. Manhole
Ex. Pipe
Ex. Inlet
Ex. Valve
Ex. Hydrant
Ex. Meter
Ex. Tank
Ex.

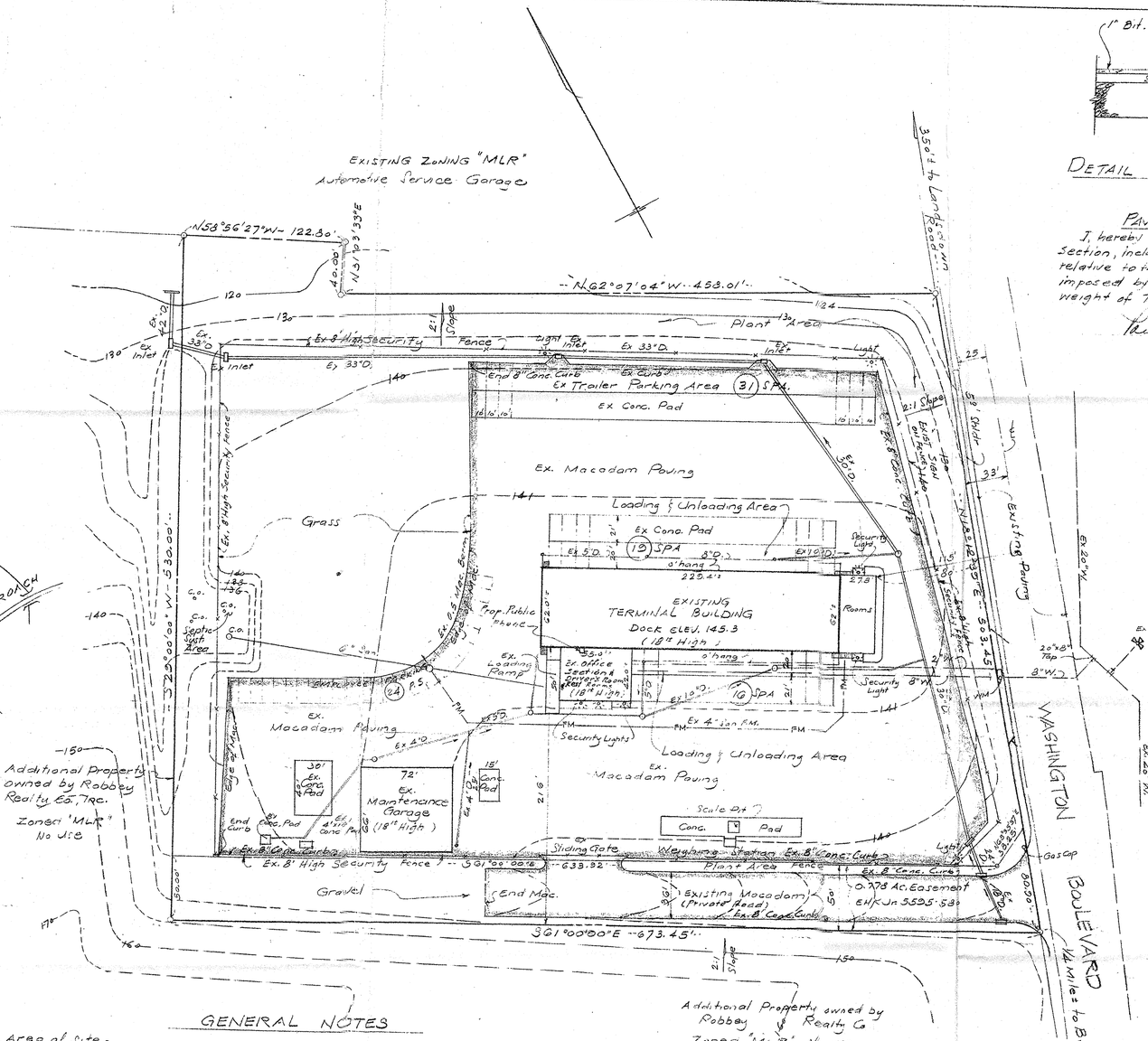
30-37

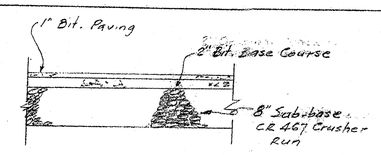


LOCATION PLAN
SCALE: 1"=1000'

EXISTING TRUCK ROUTES

1. FROM SITE NORTHEAST ALONG WASHINGTON BLVD. TO BALTO CITY
2. FROM SITE SOUTHWEST ALONG WASHINGTON BLVD. TO POINTS BEYOND BALTO CO.
3. FROM SITE SOUTHWEST ALONG WASHINGTON BLVD. TO BALTO. BELTWAY & NORTH & SOUTH ON THE BALTO. BELTWAY
4. FROM NORTHBOUND I-95 TO CATON AVE, SOUTHEAST ON CATON AVE TO WASHINGTON BLVD & SOUTHWEST FROM CATON AVE TO SITE,
5. FROM SOUTH BOUND BELTWAY SOUTHWEST ALONG RAMP TO SULPHUR SPRING ROAD, SOUTHEAST ON SULPHUR SPRING RD TO WASHINGTON BLVD; NORTH ON WASHINGTON BLVD TO SITE.
6. FROM NORTH BOUND BELTWAY NORTHEAST ALONG RAMP TO WASHINGTON BLVD, NORTH ON WASHINGTON BLVD. TO SITE.





DETAIL OF PAVING SECTION
No Scale

PAVING CERTIFICATION

I, hereby certify that the specifications for the paving section, including the sub-base, and the soil conditions relative to this site, are capable of withstanding loads imposed by fully loaded trucks of maximum gross weight of 73,280 pounds.

Paul Lee PE 4047

GENERAL NOTES

1. Area of Site: 7.1572 AC.
2. Existing Zoning of Property: "ML R-IM"
3. Existing Use of Property: "Truck Terminal, Class 1"
4. Site Lighting is as shown on Site Plan. Light Standards are 25' High
5. Public Telephone Booth to be placed on Site (Location as shown)
6. Male & Female Rest Rooms are provided in the terminal Bldg.
7. Off Street Parking Data:
   A. Auto Parking required: (Per Approved Site Plan Filed w/ Bldg. Permit in 1963)
      30 employees @ 1/2 employees + 5 P.S. = ---- 20 Spa
   B. Parking Spaces Existing ---- 24 Spa.
   C. Truck Parking Existing ---- 64 Spa. (35 @ Term. Bldg. Dock; 31 @ Conc Pad & N. End Site)
8. Site is located on an Arterial Road (Washington Boulevard)
9. Hours of operation will be Midnight Sunday to Midnight Friday (24 hr operation)
10. Maximum no. of vehicles expected to be on site at any one time: 25 Vehicles
11. No unked vehicles will be stored on the site. There will be no body repair of vehicles on the site.
12. Building height: 18'
13. No wetlands are within 200' of Buildings or site.
14. Automotive parts will be stored within Maintenance Bldg.
15. Permitted F.A.R. = 31,176 Sq. Ft. (0.712 Ac±) [0.1 x 7.1572]
16. Existing F.A.R. = 18,244 Sq. Ft. (0.42 Ac±) or 0.06 F.A.R.
17. No dwellings or residential zones exist within 300' of this site.
18. Special Exception granted to site Case No. 69-105-X)

LEGEND
---- EXISTING CONTOURS

SITE PLAN APPROVED BY:

Zoning Commissioner — 3/14/79 Date

Chairman, County Trucking Facilities Development Officials — 3-2-79 Date

MCA ENGINEERING CORP
1020 CROMWELL BRIDGE ROAD
BALTIMORE, MD. 21204

STATE OF MARYLAND — PAUL LEE — No. 4047 — REGISTERED PROFESSIONAL ENGINEER

EXISTING SITE PLAN
MUSHROOM TRANSPORTATION CO.
WASHINGTON BOULEVARD

13th ELECTION DISTRICT
SCALE: 1" = 50'

BALTIMORE COUNTY, MD.
JUNE 21, 1977
Rev: Jan. 12, 1979

Bureau of Engineering, Dept. of Public Works, Baltimore County, Maryland
Approved: 2/13/79

NEMF #12

T.F. #159

30-37

1. Truck's proceed from Terminal to Road (Major Collector)
2. Truck's proceed North on Hammonds Ferry Rd 1,000' to the signal at Hollins Ferry Rd. (Major Collector)
3. Truck's proceed West 300' to the North off ramp of 695 Beltway on (Expressway/freeway)
3A. West 1,700' to the South off ramp to 695 Beltway (Expressway/freeway)

LOCATION PLAN
SCALE: 1"=500'

Scale: 1"= 50'

Plot Outline N 86° 23' 10" W 947.30'

Plot Outline S 10° 14' 40" E 261.40'

Plot Outline S 61° 45' 08" E 364.08'

Plot Outline S 86° 12' 11" E 271.53'

Plot Outline N 80° 45' 27" E 678.09'

Plot Outline S 86° 01' 50" W 479.71'

Plot Outline N 11° 00' W 315.38'

Plot Outline N 9° 15' E 254.75'

Plot Outline N 14° 09' W 130'

Note: See OTG 32/19 For Recorded Flood Control Responsibilities

Zoned ML-IM See Map S.W 6-C

Zone ML-IM

See RRG 4108/71 (See 4108-69) Metal Structures, Inc

Land Leased S.H.A to Harry Smuck by Unrecorded Lease dated 19 April, 1972.

Dimensions Shown were Scaled from Plats SHA - 12767 which were marked INDED with NO dimensions shown. SEE ALSO SRC Plat 21253 & 15536

Note: Land Leased S.H.A to Harry Smuck by Unrecorded Lease dated 19 April, 1972. Dimensions Shown were Scaled from Plats SHA - 12767 which were marked INDED with NO dimensions shown. SEE ALSO SRC Plat 21253 & 15536

For Flood To Elev 19.8' See Record Plat 32/19
See Engineering Comments Dated Aug 18, 1977
J.O. # 4-224-1
Concerning Flood Plain Elevations
Flooding Anticipated: 100yr Storm to Elev 20.5
Also A 100 yr storm backwater Flood to Elev. 25.0

Dignan & Horns Inundated
Whole Site Inundated

Plot Plan for Trucking Facilities Development Committee

Existing Trucking Facilities Lots 1,2,3 of O.T.G. 32/19 PWA 136507

Owner: Stanley Holding Co. 6050 Ritchie Hgwy Balto. MD 21225

Landsdowne Dist 13 — Balto Co., MD

Whole Tract Zoned ML-IM Total Ac. 11.84 Each site (leased) shown on p.b. 32/19

See Zoning Map S.W. 6-C

All Public Works Facilities Existing from 1965 PWA 136507

All Trucking Facilities Existed Before C.C Bill 181/76 (April 19, 1976)

See Case 81-235-V

	Provisions (Bill 181/76)	2300 Eskow Ave 21227	2312 Eskow Ave 21227	2328 Eskow Ave 21227
		F.A.R. 11,000/110,000 .07 Ht: 20' CI-1 Facility - 3.3± Ac	F.A.R. 11,000/110,000 .07 Ht: 20' CI-1 Facility - 3.3± Ac	F.A.R. 19,000/174,000 .08 Ht: 20' CI-1 Facility 3.0 Ac±
		Burgmeyer	Dignon Trucking Inc	Horns Motor Express Inc
A	409.2.b(8) — Page 10 Auto Parking	Reqd: 5+1/2=: 5+5/10 :10 Provided: 20 Spaces	Reqd: 5+1/2=: 5+1/10 :10 Provided = 12 Spaces	Reqd: 5+1/2=: 5+5/10 :10 Provided = 20 Spaces
B	410.3 A1 — Access to Streets	< Eskow Ave See	to Hammonds Ferry Rd > also Location Plan	
C	410.3B.3- Layout such as Not to cause congestion	As Shown	As Shown	As Shown
D	410.385 Fencing	Each Lot Individually As Shown Fenced	Each Lot Individually As Shown Fenced	Each Lot Individually As Shown Fenced
E	410.386 Wheel Stops	< Telephone Poles, to be used as wheel stops, will be placed around the edge of the paved areas and also at least 6'ft' the fenced areas along Eskow Rd. See Compliance Note		
F	410.3 B7 Paving & Curbing	As Shown	As Shown	As Shown
G	410.3 B8 Drainage	Site is Graded to sheet flow storm water runoff from paved areas to existing stream		
H	410.389 Rest Rooms etc	At each terminal adequate rest room facilities for both sexes, a drivers room, & tel service for the truck drivers (other personnel are provided		
I	410.3c2 Concealment of auto parts-Junked Vehicles	< Auto Parts are stored & concealed within the buildings > All Junked Vehicles to be removed from the Sites See Compliance Note)		
	Hours of Operation / No of Trucks / Day	WK 40 HRS 25	80 HRS 35/40	40 HRS 20

All lites are affixed to the buildings

Paving Certification

I hereby certify that the specifications for the paving section, including the subbase, and the soil conditions relative to this site, are capable of withstanding loads imposed by fully loaded trucks of maximum gross weight of 73,280 lbs.

James L. Kramer PE # 2181
Signature (P.E)

SEAL JAN 24 1978

Compliance Schedule

Telephone Poles, to be used as wheel stops will be placed around the edge of the paved areas & along the Eskow Rd parking areas
Time: From Mar 1 '78 within 12 months

All Junked Vehicles to be removed from the Site
Time: From Mar 1 '78 within 12 months

Confine Parking of ALL vehicles to paved areas ONLY

April 26, 78 Confine Parking of All Vehicles to Macadam PAVED AREAS

Resubmitted: Mar 2, 1978
Comments from Meeting of Feb 22 '78 Updated
CI-1 Truck Facility Updated Jan 26 '78

Site Plan Approved By:

Zoning Commissioner — 6/6/78 Date

Chairman, County Trucking Facilities Development Officials — 7/24/78 Date

Stephen E. Weber, Engineer II
Dept. of Traffic Engr.
Elmer Hoppert Jr.
Permits & Records
John E. Meyer
State Highway Admin.
John Zwiebel
Frederick A. Kunzig Jr.

Lot Paved - 1964 Standards
Exist. Typical Paving Section

Surface Course - 3" Pen. Mac.
Base Course - 5" Macadam
Slag / Stone - 2"+

Sketch Showing Telephone Pole Used as Bumper-Wheel Guard

Fence, Overhang, 9', ℄ Telephone pole, 6"x6" truncated wood chocks - one each side - nailed to pole to prevent rotation - 3' from each end of pole, Wood chocks, Tel pole anchored in place with ¾" dia x 3'± steel pins driven flush with top of pole - 9' o.c.

Note 29 April 1977
Plat Updated by Field Surveys and office site plat after meeting of April 13, 1977 of Trucking Facilities Development Committee & the Owner

Note: The Property Lines Shown Hereon are taken from Deeds, Plats & Data & does NOT constitute a property survey

Water Supply from 2-1½" w.m. from 6"w - thru 50 R/w in Walnut Ave See 56-979 & 56-993

Sewerage to Exist Sewers See 50-489

Eskow Ave - Paving Section
1" to ½" Mac Top
10" min Concrete
Gravel Base 6" up

Rollins, Inc.
1 Sty Brick Bldg
Sales & Service
Not a Truck Terminal

Hammonds Ferry Rd

Note: 1,000' to Traffic Signal at Hollins Ferry Rd (Proceed on a Major Collector)

No Gate at Entrance

Each Lot is Individually Fenced

Eskow Ave

Hollins Ferry Rd

Research Ave

Virginia Ave

Maryva Ct

Lot 1, Lot 2, Lot 3

Note: Ex Fire Hydrant

Balto. Beltway

Harbor Tunnel Approach

Harbor Tunnel Off Ramp

Balto. Beltway — G.W. Chain Link Fence

Walnut Ave

Water Supply from Walnut Ave

570 Row

Veg. Garden

Diesel Pump, Gasoline Pump, Fillers

Shop Area, Storage, 1 Sty Brick Office

Dock Bumpers, Dock, Truck, Conc. Apron Parking

Sign on Middle of Roof - 9'8"x3'h
Burgmeyer
Progress Terminal Dock 22' high

Metal Bldg 175'

Truck Dock, Conc. Apron Parking

Note For Safety & Security trucks will back flush to Terminal

Tel pole wheel stops around edge of the Paved area See Compliance Schedule

Truck Parking Area, Macadam Paving

Confine Parking of All Vehicles to Paved Areas Only

Tel pole wheel stops around edge of paved area - See Compliance Note

Macadam Paving, Truck Parking Area

Plat Outline Truck Parking Area 220.00'

S.H.A.

Grass

205'

145'

Containment Gate

Automobile Parking Area

Tel pole wheel stops See Compliance Note

Confine Parking of All Vehicles to Paved Areas Only

Macadam Paved

350'

Shop Area, Gas Compressor, Parking

Terminal Dock, Metal Bldg

Dock Bumper

Typical 12' wide Curb Cut Allowance

Sign is Painted on Each Side of Building & says "Dignan"

Dignan

2 Sty Brick Office Area

Radio Tower

Containment Gate

Auto. Plng. Area

Wheel stops

Top 115.58 Inv. 103

Stone Area

Stream

Macadam Paving

Truck Parking Area

Scattered Wood Debris

Wheel stops

Tel pole bumper Wheel stops See Compliance Note

Sign is attached to front of building & says "Horn's Motor Express"

Horn's Motor Express Inc

Office

Auto. Plng. Area

Gasoline Pump

Containment Gate

Graveled Tail Tracked

Misc. Obstacles Area

Eskow Ave

678.09'

S.H.A.

Guy Pole & Anchor

16.5' Stone Drive

Fillers

Conc. Pad on Grade

Top 115.58 Inv. 103

Top 115.58 Inv. 103

Flood Indicator

Harbor Tunnel Off Ramp

Harbor Tunnel Approach

Balto. Beltway

Exit 6

Exit 5

Exit 4

Exit 3

Balto. County

Hollins Ferry Rd

Research Ave

Virginia Ave

Maryva Ct

Lot 1, Lot 2, Lot 3

Eskow Ave

Note: Ex Fire Hydrant

Collector Road

Beltway

Harbor Tunnel Approach

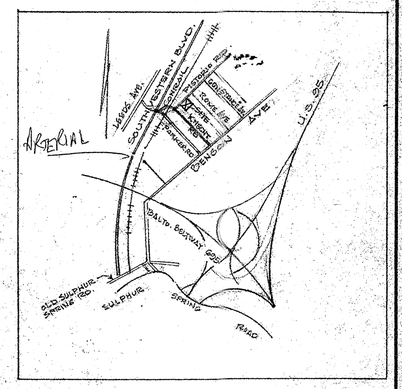
Harbor Tunnel Off Ramp

Location Plan
Scale: 1"=500'

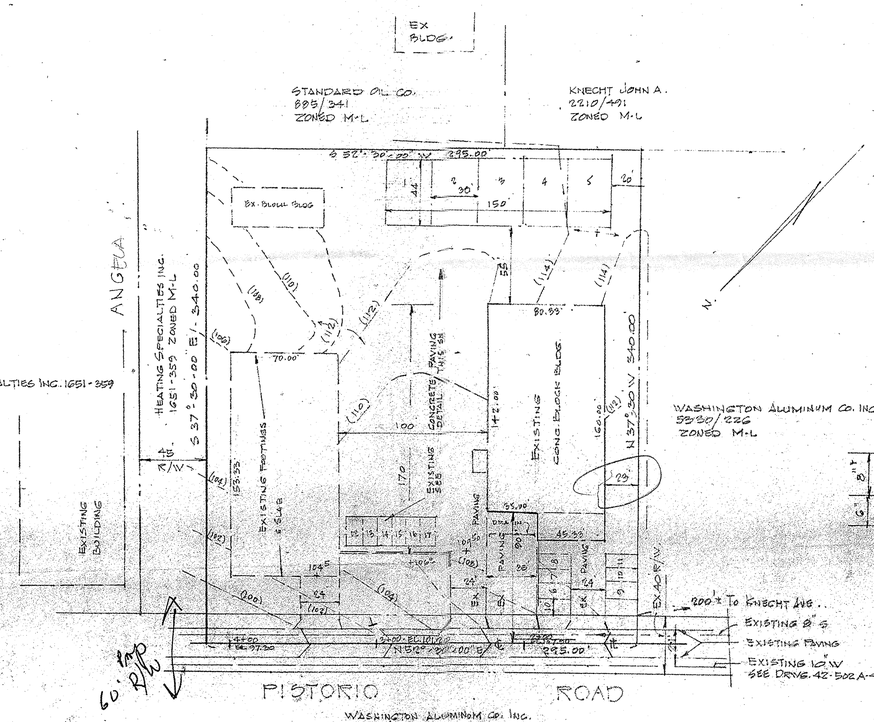
P.O. Box 9804

Scale 1" = 50' / Survey

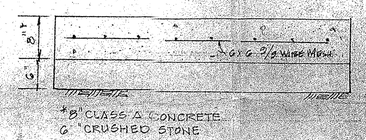
NEMF Ex #11 T.F. #154



VICINITY MAP
SCALE 1" = 2000'



PLAN
SCALE 1" = 50'



EXISTING PAVING SECTION
NO. SCALE

GENERAL NOTES: TRUCKING FACILITY CLASS I

1. SITE ADDRESS - 4412 PISTORIO RD. BALTIMORE CO. MD., 21217.
2. AREA OF SITE - 2.303 AC.±
3. OWNER: BIG BOY'S WAREHOUSE & RIGGING
   4412 PISTORIO RD BALTO. CO. MD. 21217
4. DEED REF. LIBER: 5360-299
5. PARCEL 169735, BLOCK 18, TAX MAP 101, ELECTION DISTRICT #13
6. PUBLIC WATER & SEWER
7. ZONED M-L
8. EXISTING BUILDING 160 x 80.33 x 22'-0 HIGH
   INCLUDING 18 x 45.38 OFFICE 1ST FLOOR
   A DRIVERS ROOM 2ND FLOOR
   REST ROOM FACILITIES FOR EA. SEX.
9. PARKING: EXISTING
   SPACES 1 THRU 5 INCL. = 44 x 20 TRUCK PARKING SPACE
   EA. SPACE = 1320 ☐', 5 SPACES
   SPACES 6 THRU 17 INCL. = 10' x 20 AUTO PARKING SPACE
   TOTAL = 12 AUTO PARKING SPACES
10. MAX. NO. OF EMPLOYEES = 8 PEOPLE
11. HOURS OF OPERATION 7A.M. TO 5.00 O'CLOCK P.M.
12. MAX. NO. OF VEHICLES ON SITE = 5

PAVING CERTIFICATION

I HEREBY CERTIFY THAT THE SPECIFICATIONS FOR THE EXISTING PAVING SECTION, INCLUDING THE SUB-BASE AND THE SOIL CONDITIONS RELATIVE TO THIS SITE, ARE CAPABLE OF WITHSTANDING LOADS IMPOSED BY FULLY LOADED TRUCKS OF MAXIMUM GROSS WEIGHT OF 73,280 lbs.

STATE OF MARYLAND — JOHN F. SCHNEIDER — No. 7317 — REGISTERED PROFESSIONAL ENGINEER

SEAL — John F. Schneider 8/18/77 — SIGNATURE — DATE

SITE PLAN APPROVED BY:

ZONING COMMISSIONER — DATE

CHAIRMAN, COUNTY TRUCKING FACILITIES DEVELOPMENT OFFICIALS — DATE

Visitors Parking
① M-L - I.M. - Legend Ex.
② Area - Various
③ New Use - Setbacks of Sep. Bldg.
④ Pistorio Rd - access not to extend beyond
⑤ Residence
⑥ REAR
⑦ Access location 100'
⑧ ent. 35'

SEP 1 '77 PM

Anne Recd Rctd Entd Chkd
OFFICE OF PLANNING & ZONING
By.....

OWNER:
BIG BOY'S WAREHOUSE & RIGGING
4412 PISTORIO RD.
BALTO. MD. 21217

ENGINEERS:
LAND DEVELOPMENT CONSULTANTS
2068-B TOWN & COUNTRY BLVD.
ELLICOTT CITY, MD. 21043
465-8518

BIG BOY'S RIGGING SERVICE, INC.
4312 PISTORIO ROAD
BALTIMORE, MARYLAND 21229

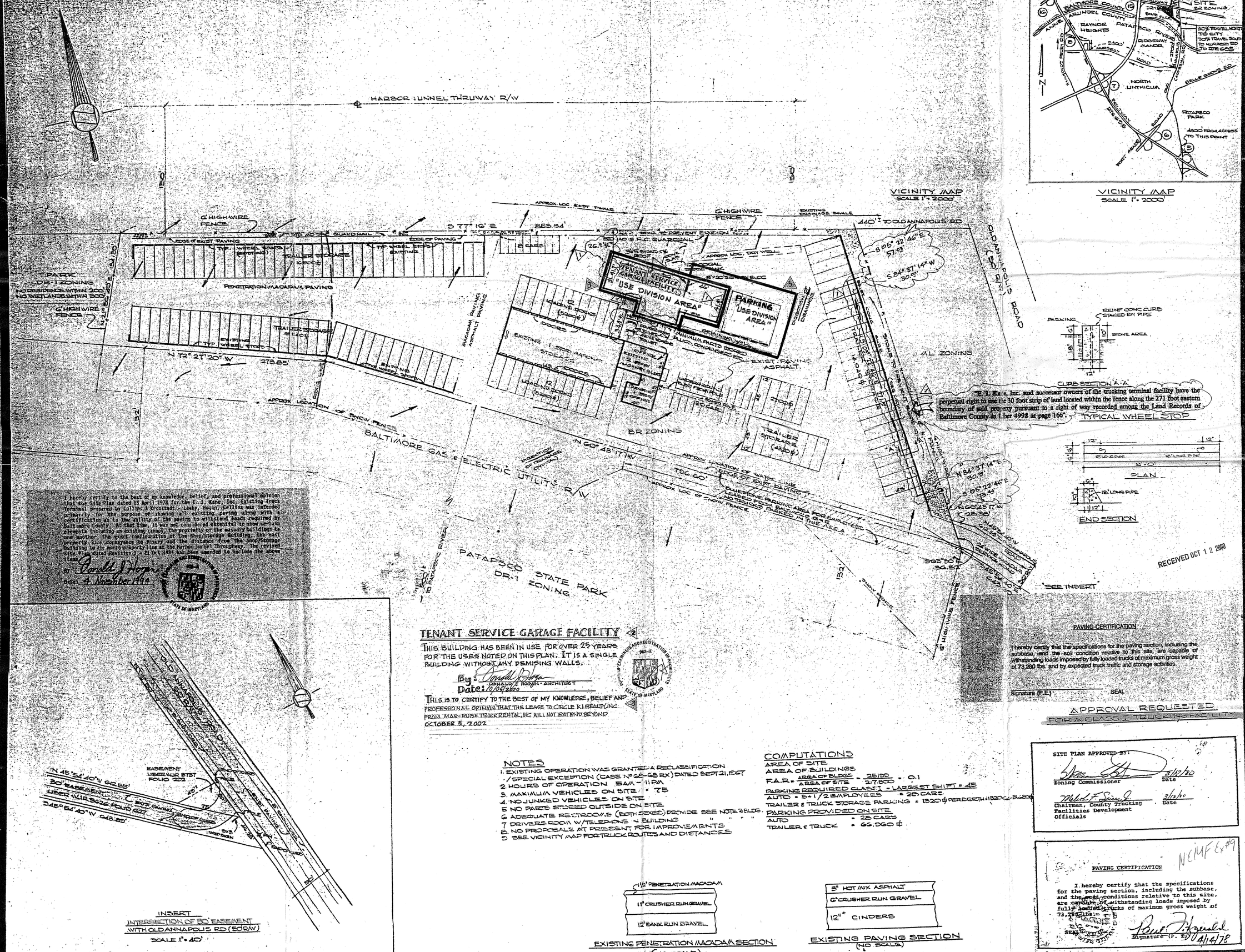
STATE OF MARYLAND — JOHN F. SCHNEIDER — No. 7317 — REGISTERED PROFESSIONAL ENGINEER

John F. Schneider 8/18/77

SITE PLAN
EXISTING TRUCKING FACILITY
4412 PISTORIO RD. 13TH. DISTRICT BALTO. CO. MD.

SCALE: 1" = 50'	APPROVED BY:	DRAWN BY: TKS
DATE: AUG. 12		REVISED
		DRAWING NUMBER: SP 46-77

T.E. #137
Big Boys NEMF Ex. #10



VICINITY MAP
SCALE 1" = 2000'

VICINITY MAP
SCALE 1" = 2000'

"E. I. Kane, Inc. and successor owners of the trucking terminal facility have the perpetual right to use a 30 foot strip of land located within the fence along the 271 foot eastern boundary of said property pursuant to a right of way recorded among the Land Records of Baltimore County in Liber 4998 at page 166".

CURB SECTION A-A

TYPICAL WHEEL STOP

I hereby certify to the best of my knowledge, belief, and professional opinion that the Site Plan dated 11 April 1978 for the E. I. Kane, Inc. existing truck terminal prepared by Collins & Kronstadt - Leahy, Hogan, Collins was intended primarily for the purpose of showing all existing paving along with a certification as to the ability of the paving to withstand loads imposed by Baltimore County. At that time, it was not considered essential to show certain elements including an existing canopy, the proximity of the masonry buildings to one another, the exact configuration of the Shop/Storage Building, the exact property line conveyance to Maryland and the distance from the Shop/Storage Building to the north property line at the Harbor Tunnel Throughway. The revised Site Plan dated Revision 3 - 21 Oct 1994 has been amended to include the above items.

By: Donald J. Hogan
Date: 4 November 1994

STATE OF MARYLAND

RECEIVED OCT 12 2000

REVISION 3 - 5 OCTOBER 2000
"USE DIVISION AREA" & ADDITIONAL CERTIFICATION

TENANT SERVICE GARAGE FACILITY

THIS BUILDING HAS BEEN IN USE FOR OVER 25 YEARS FOR THE USES NOTED ON THIS PLAN. IT IS A SINGLE BUILDING WITHOUT ANY DEMISING WALLS.

By: Donald J. Hogan
DONALD J. HOGAN - ARCHITECT
Date: 10/04/2000

STATE OF MARYLAND

THIS IS TO CERTIFY TO THE BEST OF MY KNOWLEDGE, BELIEF AND PROFESSIONAL OPINION THAT THE LEASE TO CIRCLE K REALTY, INC. FROM MAR-RUBE TRUCK RENTAL, INC WILL NOT EXTEND BEYOND OCTOBER 5, 2002

PAVING CERTIFICATION

I hereby certify that the specifications for the paving section, including the subbase, and the soil condition relative to this site, are capable of withstanding loads imposed by fully loaded trucks of maximum gross weight of 73,280 lbs. and by expected truck traffic and storage activities.

Signature (P.E.) _____ SEAL

APPROVAL REQUESTED
FOR A CLASS I TRUCKING FACILITY

SITE PLAN APPROVED BY:

Zoning Commissioner — Date 3/12/80

Chairman, County Trucking Facilities Development Officials — Date 3/3/80

NOTES

1. EXISTING OPERATION WAS GRANTED A RECLASSIFICATION / SPECIAL EXCEPTION (CASE No 68-68 RX) DATED SEPT 21, 1967
2. HOURS OF OPERATION 5 AM - 11 PM
3. MAXIMUM VEHICLES ON SITE = 75
4. NO JUNKED VEHICLES ON SITE
5. NO PARTS STORED OUTSIDE ON SITE
6. ADEQUATE RESTROOMS (BOTH SEXES) PROVIDE SEE NOTE 2 PLOS.
7. DRIVERS ROOM W/TELEPHONE IN BUILDING " " " "
8. NO PROPOSALS AT PRESENT FOR IMPROVEMENTS
9. SEE VICINITY MAP FOR TRUCK ROUTES AND DISTANCES

COMPUTATIONS

AREA OF SITE
AREA OF BUILDINGS
F.A.R. = AREA OF BLDGS / AREA OF SITE = 25,199 / 217,800 = 0.1

PARKING REQUIRED CLASS I - LARGEST SHIFT = 45
AUTO = 5 + 1/2 EMPLOYEES = 25 CARS
TRAILER & TRUCK STORAGE PARKING = 1320 ft² PER BERTH = 1320 / 360 = 3.66 = 4 BERTHS

PARKING PROVIDED ON SITE
AUTO = 25 CARS
TRAILER & TRUCK = 66,060 ft²

INSERT
INTERSECTION OF 30' EASEMENT WITH OLD ANNAPOLIS RD (ED/R/W)
SCALE 1" = 40'

EXISTING PENETRATION MACADAM SECTION
(NO SCALE)

EXISTING PAVING SECTION
(NO SCALE)

NEMF Ex #9

PAVING CERTIFICATION

I hereby certify that the specifications for the paving section, including the subbase, and the soil conditions relative to this site, are capable of withstanding loads imposed by fully loaded trucks of maximum gross weight of 73,280 lbs.

SEAL

Signature (P. E.) — Date 4/14/78

Collins & Kronstadt · Leahy · Hogan · Collins
architects
planners
engineers
1111 spring street
silver spring maryland
301 587-8642

project number
7616

project
E. I. KANE INC.
EXISTING TRUCK TERMINAL

location
4516 ANNAPOLIS RD
12th ELECTION DISTRICT
BALTIMORE MD 21227

drawn by
R.M.T.

date drawn
OCT 1976

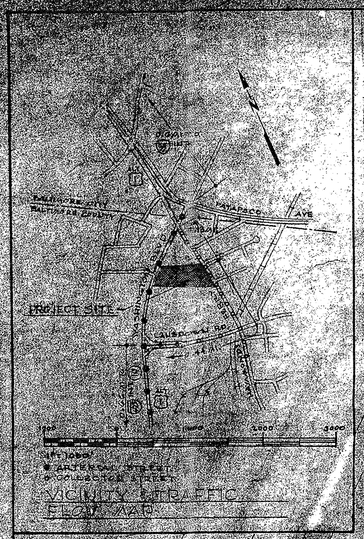
date issued
15th APRIL 1978
1 REVISION 1 - 21 OCT. 1994
2 REVISION 2 - 26 SEPT 2000

scale
1" = 40'

stamp
PLANS APPROVED
DEPT. OF PERMITS & DEV. MGMT.
BY
DATE 10-16-00

sheet title
SITE PLAN

sheet number
T.F. # 125



TRUCK TRAVEL ROUTES:

EXIT: On to Hammonds Ferry Road, thence North to Patapsco Ave., East to Baltimore City areas, or West to Interstate 95 interchange or outlying areas.
OR
Exiting South on Hammonds Ferry Rd. and thence West to Washington Blvd., then South to Interstate 895 interchange or proceeding to Southerly points on Washington Blvd.

ARRIVING:
Arrival routes would be the reverse running of those noted for exit or departures.

ML-1M

EXISTG BLDG. SHOP
BL-CS-1

EXISTG BLDG. APARTMENTS

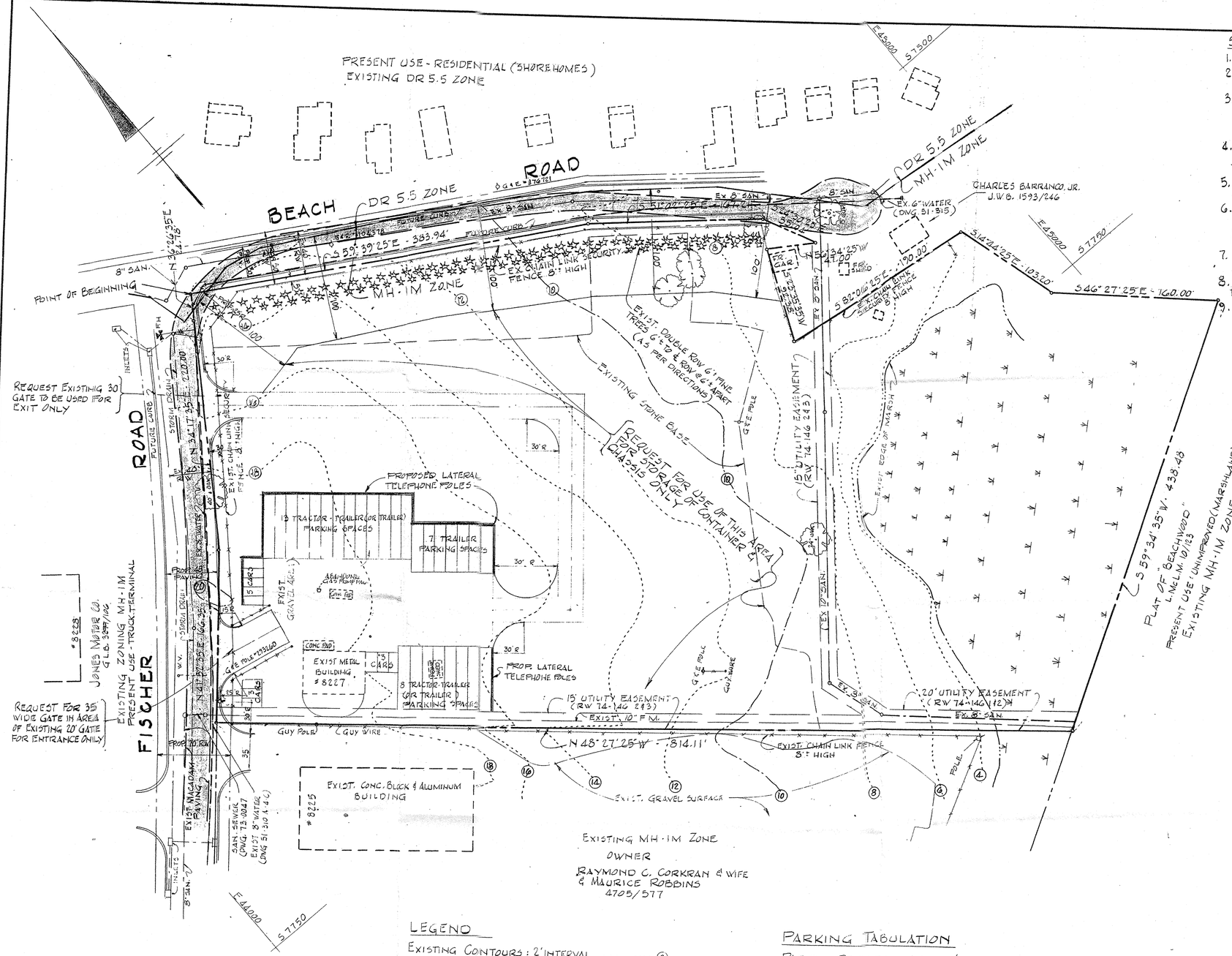
EXISTG BLDG. APARTMENTS

EXISTG BLDG. APARTMENTS

EXISTG BLDG. DWELLING

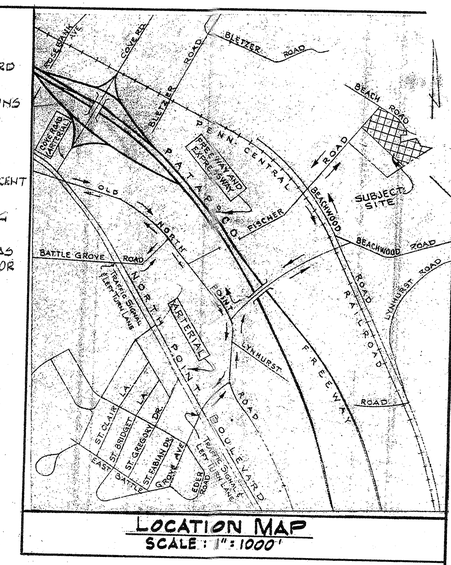
EXISTG BLDG. DWELLING

EXISTG BLDG. DWELLING



Site Standards

1. Net Area is 9.198 Acres ±
2. Layout Provides For Convenient Forward Movement Of Vehicles.
3. 75% Of Site Used For Trucking Operations Is Devoted To Parking Of Truck Tractors And Trailers. (Max. Number Of Units : 21 Parking For 21).
4. Site Is Surrounded By 8' High Chain Link Fence. Screening Has Been Provided Adjacent To Residential Zone.
5. Wheel Stops Will Be Provided In Trucking Operation Area.
6. Parking, Loading And Maneuvering Areas Will Be Paved With A Bituminous Concrete Or Cement Surface Over A Suitable Base As Per Original Site Plan Requirements.
7. Site Drains Naturally To Marsh Area In Rear.
8. Existing Building Will Be Utilized For Truck Terminal Facilities.
9. Additional Landscaping If Required Will Be Provided (Plan By Landscape Architect).

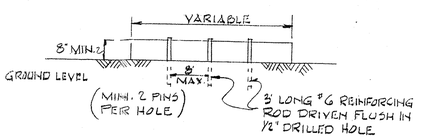


LOCATION MAP
SCALE : 1" = 1000'

General Notes :

1. Area Of Parcel : 9.198 Acres ±
2. Existing Zoning : MH-IM.
3. Present Use : Class II Truck Terminal
4. Proposed Use : Class II Truck Terminal And Storage Of Containers And Chassis.
5. Existing Building Will Be Utilized For Truck Terminal Facilities.
6. Public Sanitary Sewer And Water Are Available.
7. Hours Of Operation : 24 Hours - Maximum Number Of Trucks (Tractor And Trailer) = 21
8. Required Screening Has Been Planted On The North East Property Line.
9. Lateral Telephone Poles Will Be Used As Wheel Stops Where Indicated (See Detail).
10. No Junked Vehicles Will Be Stored On Site.
11. Access Or Travel Route To This Site Will Be By Fischer Road To Beachwood Road To Old North Point Road To North Point Blvd. Or Fischer Road To Beachwood Road To Old North Point Road To Battle Grove Or Grove Road To North Point Blvd..
12. No Outside Storage Of Auto Parts Is Permitted.

86-417-XSPH



LATERAL TELEPHONE POLE AND WHEEL STOP DETAIL
NOT TO SCALE

Legend

- Existing Contours : 2' Interval ..... (8)
- 8' High Chain Link Fence
- Proposed Curb & Gutter
- Existing Water
- Existing Sanitary
- Existing Storm Drain
- Existing Trees — Ex. Tree, Ex. Pine

Parking Tabulation

Parking Required - 1 Space/3000 Sq. Ft. Of Area Devoted To Parking Of Truck Tractors, Truck Trailers Or Tractor Trailers Bill 18 '76 CL II.

Total Area : $\frac{17,325}{3000}$ = 6 Spaces

Parking Provided = 11 Spaces

Ref No 3 Bldg off

Plat To Accompany Petition For

Special Hearing To Amend The Approved Site Plan For The Purpose Of Showing Separate Business Entities On Separate Parcels And To Allow Additional Use Of The Larger Of Said Entities For The Storage Of Containers And Chassis And A Request For Variance From Section 410 A.2 To Permit A Setback Of 100 Feet From A Residential Area Instead Of The Required 300 Feet And A Request For Variance From Section 410 A.3 B6 To Permit A Paving Section Of 8" Crushed Stone.

MICROFILMED

8227 Fischer

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
303 ALLEGHENY AVENUE
TOWSON, MARYLAND 21204
(301) 825-8120

STATE OF MARYLAND — GEORGE WILLIAM STEPHENS, JR. — No. 5963

NEMF Ex. 14

OWNERS
NORTH POINT TERMINAL COMPANY
8227 FISCHER ROAD
BALTIMORE, MARYLAND
477-1415
(DEED REF. 5867/817)

SITE PLAN
NORTH POINT TERMINAL COMPANY
15TH ELECTION DISTRICT · BALTIMORE COUNTY, MARYLAND
SCALE : 1" = 50'
DATE: OCTOBER 16, 1985

POLYSONICS CORP.
ACOUSTICS AND TECHNOLOGY CONSULTING
www.polysonics-corp.com

New England Motor Freight
Noise Control Analysis

Baltimore County, Maryland

July 12, 2005

NEMF Ex. #15

Warrenton Office - Corporate
217 East Main St. Remington, VA 22734
Phone: 540-439-4988, Fax: 540-439-9179

DC Office
5115 MacArthur Blvd., NW, Washington, DC 20016
Phone: 202-244-7171, Fax: 202-244-7479

JAMES A. MARKLE, JR., P.E.

Chief Executive Officer
George William Stephens, Jr.
and Associates, Inc.
1020 Cromwell Bridge Road
Towson, Maryland 21286
Tel: (410) 825-8120
Fax: (410) 583-0288

NEMF Ex. 16

EDUCATION

University of Pennsylvania: Philadelphia, Pennsylvania
Bachelor of Science in Civil Engineering, 1973.

LICENSURE

Registered Professional Engineer, State of Maryland #11005
Registered Professional Engineer, District of Columbia #7798

SUMMARY

32 years experience in project management, public administration, site and public works engineering, hydrology, hydraulics, stormwater management and sediment control.

Recognized expert in civil engineering, real estate development and water resources management: qualified expert witness in Baltimore County, Howard County, Anne Arundel County Boards of Appeals, Baltimore County Circuit Court and Howard County Circuit Court.

PROFESSIONAL EXPERIENCE

12/04 – Present

George William Stephens, Jr. & Associates, Inc. ; Towson, Maryland
Chief Executive Officer
Oversee management and engineering of major residential and commercial projects.

8/96 – 12/04

George William Stephens, Jr. & Associates, Inc. ; Towson, Maryland
Vice President and Chief Engineer
Oversee management and engineering of major residential and commercial projects.

2/95- 8/96

George William Stephens, Jr. & Associates, Inc.; Bel Air, Maryland
Chief Engineer
Oversee management and engineering of major residential and commercial projects. Supervise engineering and technical staff.

10/88-2/95

D. S. Thaler & Associates, Inc.; Baltimore, Maryland
Senior Project Manager
Oversee management and engineering of major residential and commercial projects. Supervise engineering and technical staff. Provide special assistance in matters related to stormwater management, wetlands, water quality and permit processing; negotiate with various state and federal government agencies including Department of Natural Resources, Department of the Environment, and Army Corps of Engineers.

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

NEMF Ex. #17

June 2, 2004

Mr. James A. Markle, Vice President
G. W. Stephens, Jr. & Assoc., Inc.
1020 Cromwell Bridge Road
Towson, MD 21286-3396

Reference: ***New England Motor Freight***
Drainage Diversion

Dear Mr. Markle:

After close review of the hydrology report, your request to divert approximately 3.9 acres of drainage area from an outfall in Baltimore City to an outfall in Baltimore County meets our criteria and is hereby approved. The decision was reached after consultation with the Department of Environmental Protection and Resource Management (D.E.P.R.M.).

This diversion will help alleviate the downstream flooding problems in Baltimore City. The additional flow will be handled by the proposed on-site underground storm water management facility.

If you have further questions concerning this diversion, please call me at 410-887-3751.

Very truly yours,

Robert W. Bowling

Robert W. Bowling, Supervisor
Bureau of Development Plans Review

RWB:RJF:jrb

cc: File

RJF-MARKLE-NEW ENG MOTOR FREIGHT-DRAIN DIVER-05182004

Printed on Recycled Paper

NEMF Ex. 19a

International Association of Machinists & Aerospace Workers

AUTOMOTIVE LOCAL UNION NO. 447
Philadelphia, PA and Vicinity

Michael J. Walsh - District 15
Asst. Directing Business Representative

Stephen J. Staab, Jr.
Business Representative

Phila. Port Admin. Bldg.
3460 N. Delaware Ave.
Room 106
Phila., PA 19134

Phone: (215) 426-2206
Fax (215) 426-3044

June 27, 2005

The Honorable James T. Smith, Jr.
Baltimore County Executive
400 Washington Avenue
Towson, MD> 21204

Dear Honorable Smith:

My name is Michael J. Walsh and I am from the International Association of Machinists and Aerospace Workers, District 15, Local Lodge 447 and I represent the employees of New England Motor Freight who work at the Baltimore terminal located at 3600 Georgetown Road. New England Motor Freight has petitioned for approval to expand their operation and the terminal and was approved by the Zoning Commissioner on September 28, 2004. An appeal was filed by the opposing neighbors and people's counsel for Baltimore County, to the County Board of Appeals.

I am writing to you requesting your support on behalf of New England Motor Freight and our members, who work at that terminal. New England Motor Freight is a good Employer who provides over 100 union jobs for our members who reside in both Baltimore City and/or Baltimore County. These jobs provided by New England Motor Freight are good paying Union jobs with Health and Welfare and Pension benefits, and the security of those jobs is very important to me as their Union Representative. The expansion of that trucking terminal will only help make that location more important to New England Motor Freight to maintain that location and will provide even more jobs for the citizen's of Baltimore City and Baltimore County.

I hope our members can count on your support for New England Motor Freight's expansion of the Baltimore terminal as a win/win situation that is good for the employees and citizens of Baltimore City and Baltimore County.

Sincerely,

Michael J. Walsh

Michael J. Walsh
Asst. Directing Business Representative

MJW:jr
Cc: Conigliaro, DBR
file

NEMF Ex. 19b

Baltimore County Chamber of Commerce
success starts here

June 28, 2005

FILE COPY

The Honorable James T. Smith, Jr.
400 Washington Avenue
Old Courthouse Mezzanine
Towson, Maryland 21204

Dear County Executive Smith:

On behalf of the Baltimore County Chamber of Commerce and its over 800 member companies representing approximately 210,000 employees, I am writing to express my support for New England Motor Freight's (NEMF) efforts to expand at its 3600 Georgetown Road facility. NEMF petitioned Baltimore County for zoning relief in order to expand its terminal facility onto an adjacent piece of land that it owns. On September 28, 2004, the Zoning Commissioner issued an Order approving the requested zoning relief. However, the Order was appealed by an adjoining residential neighborhood association and the People's Counsel for Baltimore County. The case is now set to be heard by the Baltimore County Board of Appeals on July 14, 2005.

The Chamber strongly supports NEMF's proposed expansion and zoning relief. NEMF currently employs approximately 112 people at its Baltimore County terminal, and the proposed expansion will allow for approximately 110 additional jobs. The pay range for employees in this facility range from $20,000 to over $50,000, and all NEMF employees enjoy substantial benefits including paid vacation and holidays, health insurance and pension plans. These jobs also allow people without a lot of formal education to become trained in a growing job market.

NEMF's facility is a valuable asset for Baltimore County and instrumental for trucking service along the Baltimore - Washington corridor. Should this zoning relief not be obtained, NEMF may be forced to relocate out of Baltimore County. This potential relocation would be a tremendous loss for Baltimore County, affecting not only a substantial number of direct NEMF jobs but also numerous other businesses in our region that depend on trucking services for their livelihood.

Thank you for your time and consideration. If you have any questions regarding the Chamber's position, please contact me at 410-825-0022 or jhatfield@baltcountycc.com.

Sincerely,

Joan G. Hatfield
President/CEO

cc: Myron P. Shevell, New England Motor Freight

NEMF Ex. 19c

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

DAVID S. IANNUCCI
Executive Director
Department of Economic Development

June 29, 2005

Mr. Lawrence M. Stahl, Esquire
Chairman of the Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

Re: 04-160-SPH
04-294-SPH

Dear Mr. Stahl:

With regard to the above referenced matters relating to New England Motor Freight ("NEMF"), located at 3600 Georgetown Road, and the Greater Bloomfield Community Association, the Department of Economic Development understands that a hearing is scheduled for July 14, 2005.

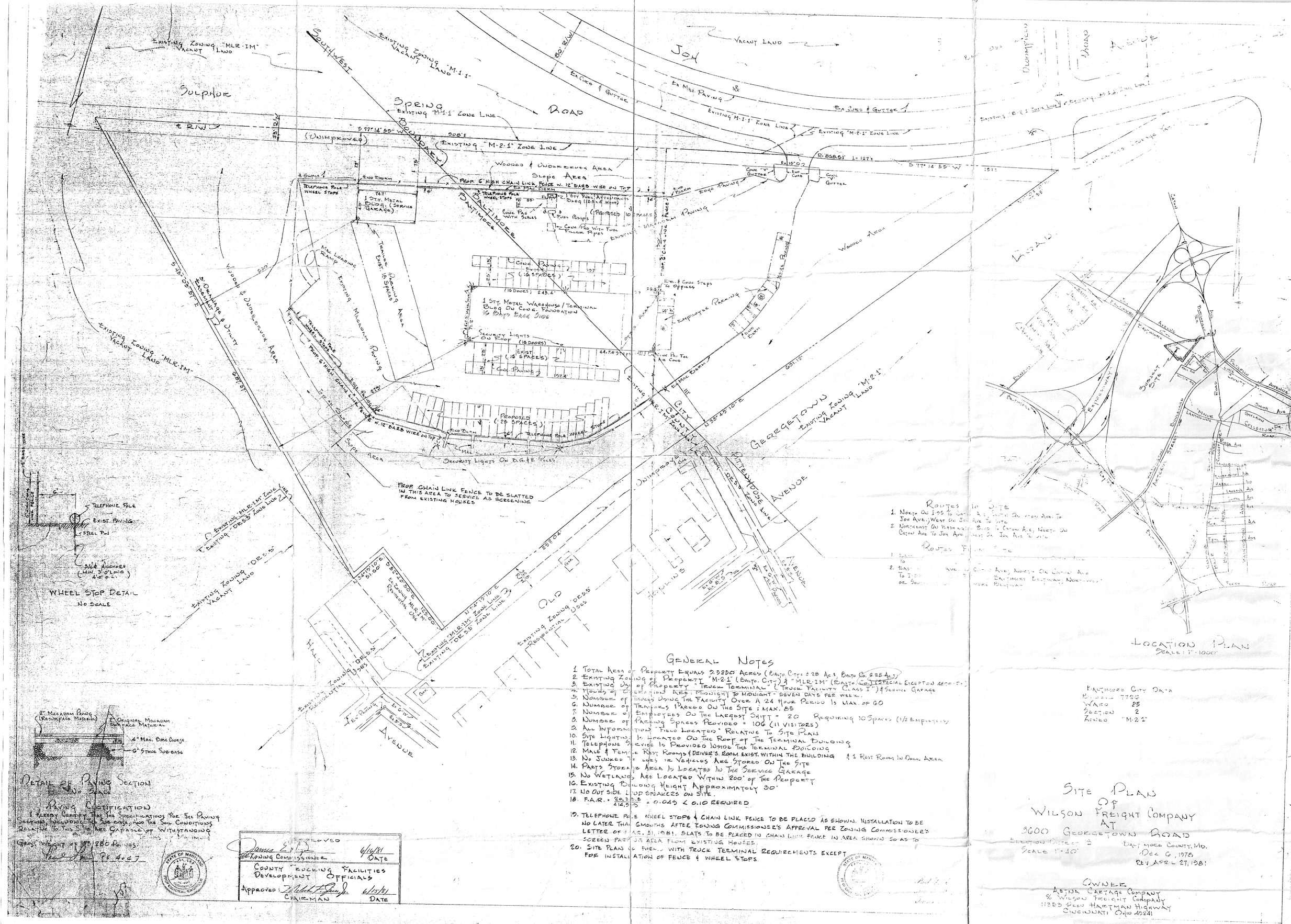
NEMF anticipates that its proposed expansion will generate approximately 110 new jobs. Total employment at the site will reach approximately 210 personnel with a salary range of $20,000 to $50,000. Additionally, we understand that NEMF personnel enjoy benefits, including paid vacation and holidays, health insurance and pension plans. The total private capital investment anticipated in relation to the acquisition, development and construction of this site will be approximately $5,000,000.

Baltimore County at one point facilitated discussions between NEMF and the community regarding the proposed expansion, and it appeared that a compromise development plan was agreed to. Unfortunately, that compromise did not hold, and NEMF decided to proceed with the plans that are now under appeal. While the Department of Economic would have preferred the compromise plan over the current proposal, in the absence of that, and for the reasons discussed above, the Department of Economic Development supports NEMF's proposed expansion. Should you have any questions, please do not hesitate to contact me at (410) 887-8000.

Sincerely,

David S. Iannucci
Executive Director

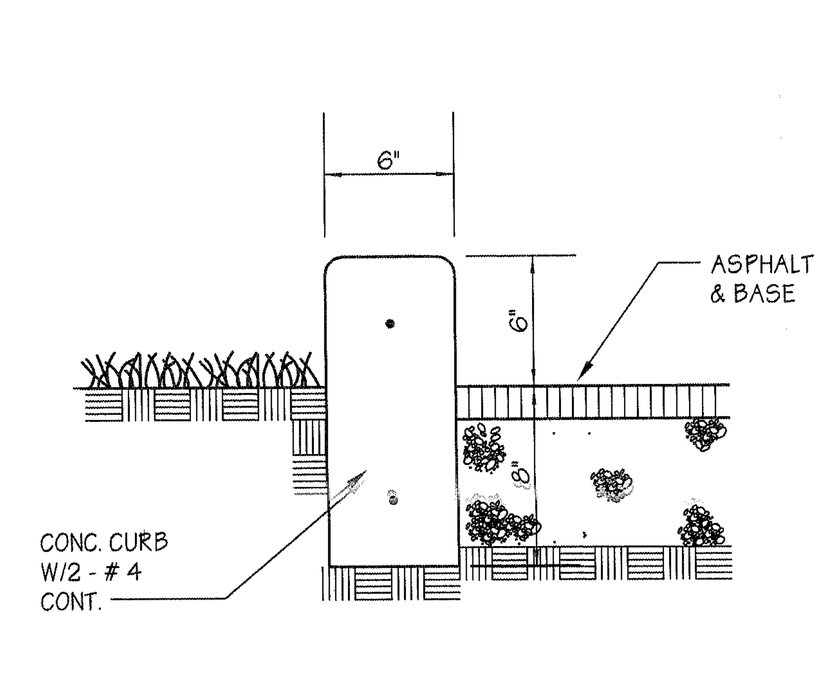
400 Washington Avenue Mezzanine | Towson, MD 21204-4665 | phone 410.887.2123 | fax 410.887.8017 | diannucci@co.ba.md.us
www.baltimorecountyonline.info


Existing Zoning "MLR-IM" Vacant Land
Sulphur
Spring
Road
Existing "M-1-1" Zone Line
Existing Zoning "M-1-1" Vacant Land
80' R/W
Ex Curb & Gutter
Vacant Land
Joh
Ex Misc. Paving
Existing M-1-1 Zone Line
Ex Curb & Gutter
Existing "M-2-1" Zone Line
Existing "B-2-1" Zone Line
Existing "M-2-1" Zone Line
Blomfield
Avenue
S 77° 14' 55" W 208.1'
(Unimproved)
Existing "M-2-1" Zone Line
Boundary
Wooded & Underbrush Area
Slope Area
Prop. 6' High Chain Link Fence w. 12" Barb Wire on Top
Ex. Misc. Paving
Telephone Pole
Wheel Stops
End Berm
1 Sty. Metal Bldg. (Service Garage)
Baltimore
1 Sty. Fuel Attendants Bldg. (12.5 x 6 Weight)
Gauge Pit with Scales
Fuel Pumps (Proposed)
2 Gauge Rod with Fuel Filler Pipes
Existing
Cond. Paving
(16 Spaces)
107'
(16 Doors) 248.4'
1 Sty. Metal Warehouse / Terminal Bldg on Conc. Foundation
16 Dock Bays Inside
Security Lights on Roof (16 Doors)
Exist. (16 Spaces)
44.7.4'
107.4'
Mac Loading Ramp
Existing Macadam Paving
Trailer Parking Area Exist. 16 Spaces
Wooded & Underbrush Area
Ex. 4 Conc. Steps to Offices
Employee Parking
Ex. Wire Berm
Existing Zoning "MLR-IM" Vacant Land
Ex. Drainage & Utility Easement
Existing Macadam Paving
Prop. 6' High Chain Link Fence w. 12" Barb Wire on Top
Slope Area
Security Lights on B.G.E. Poles
Proposed (25 Spaces)
Telephone Pole Wheel Stops
Prop. Chain Link Fence to be Slatted in this area to service as screening from existing houses
Existing "MLR-IM" Zone Line
Existing "DR-5.5" Zone Line
Existing Zoning "DR-5.5" Vacant Land
Existing Zoning "MLR-IM" Vacant Land
Existing "DR-5.5" Zone Line
Existing Zoning "DR-5.5" Residential Uses
Existing Zoning "MLR-IM" Zone Line
Existing "DR-5.5" Zone Line
Existing Zoning "DR-5.5" Residential Uses
Hall
Old
Georgetown
Existing Zoning "M-2-1" Vacant Land
City Property
Ex. Wire Berm
Unimproved Land
Rutledge Avenue
Ex. Curb & Gutter
Ex. Paving
Ex. Curb & Gutter
Ex. Misc. Paving
Ex. Curb & Gutter
Ex. Paving
Ex. Curb & Gutter
Ex. Paving
Ex. Curb & Gutter
Ex

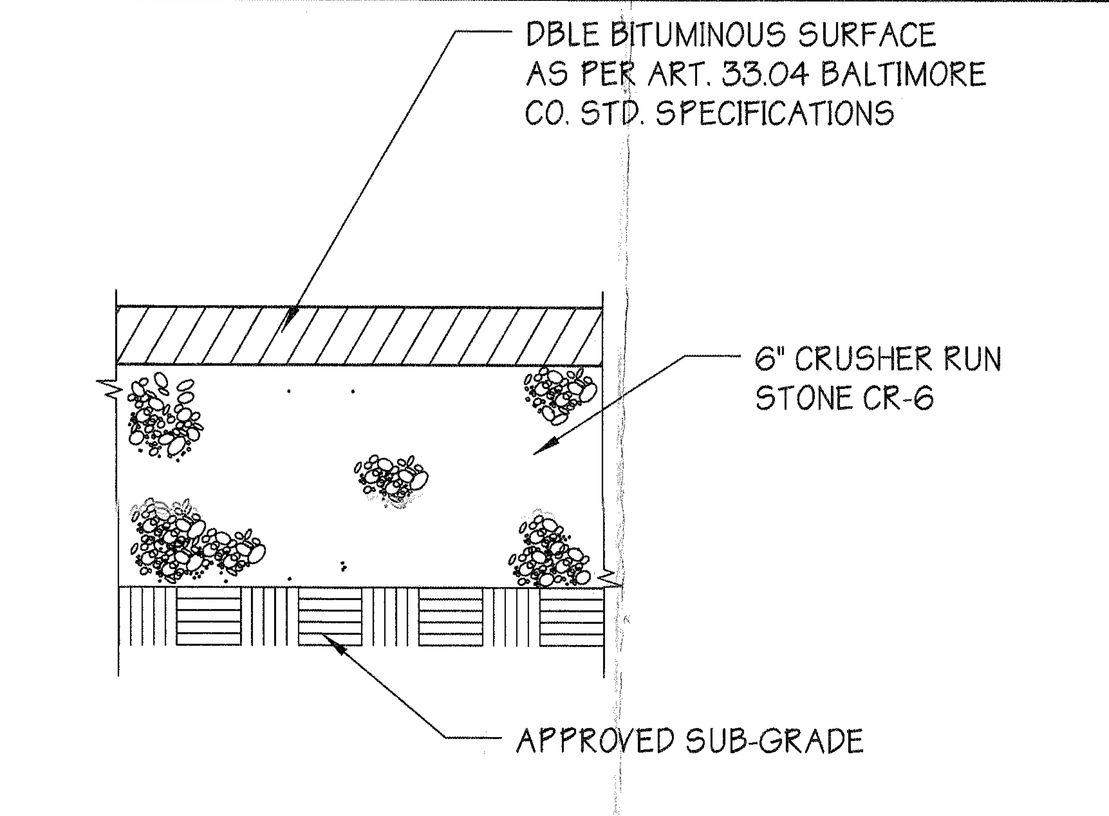
EXHIBITS

20040160 "A"
supplemented
&
20040294 "A"
supplemented

9



CONCRETE CURB DETAIL
1 1/2" = 1' - 0"



TRUCKING FACILITY SITE PAVING DETAIL
NO SCALE

PAVING CERTIFICATION

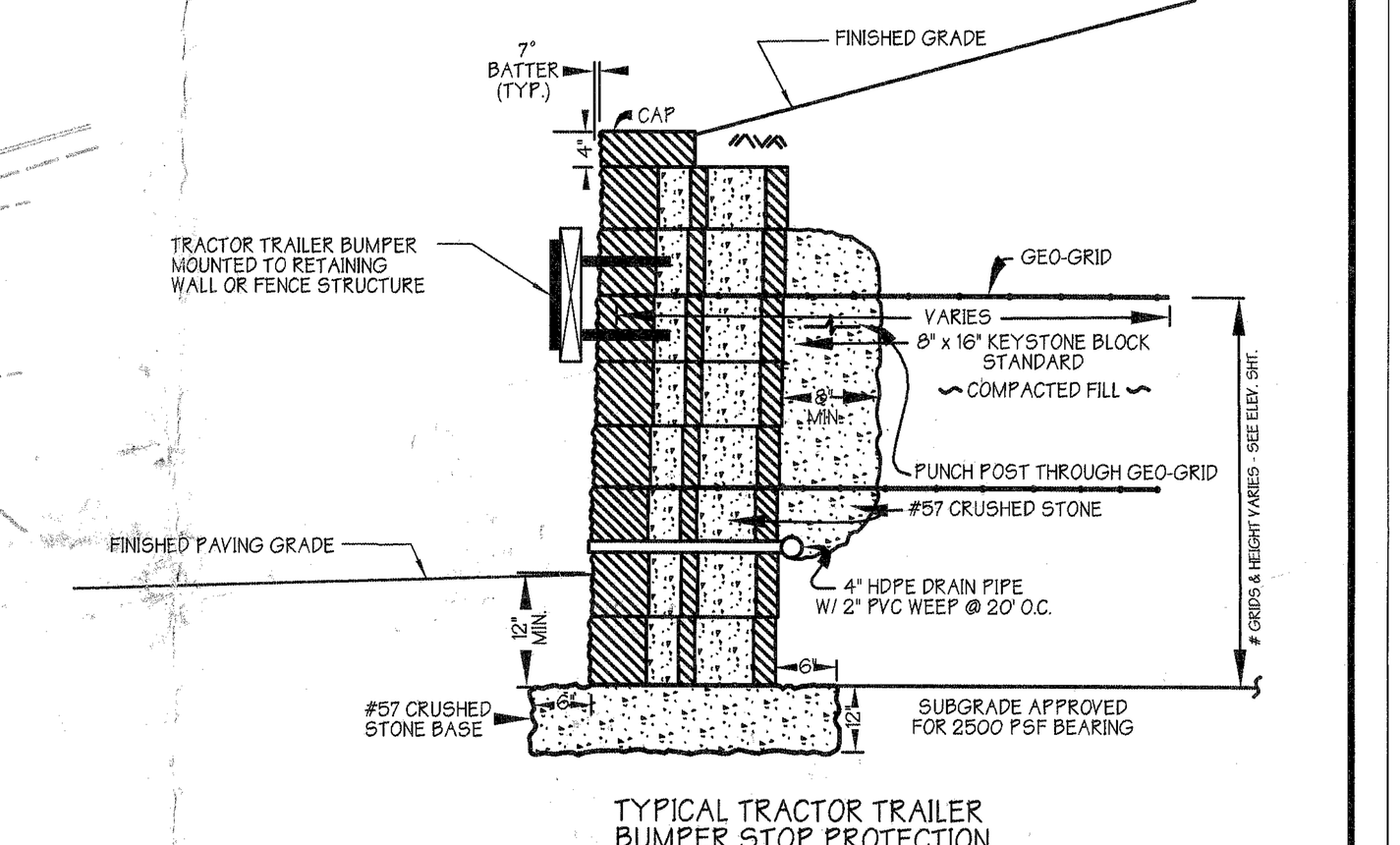
I HEREBY CERTIFY THAT THE PAVING BASE AND SOIL OF ALL PARKING, LOADING, MANEUVERING, AISLE AND STORAGE AREAS WILL WITHSTAND LOADS IMPOSED BY EXPECTED TRUCK TRAFFIC AND STORAGE ACTIVITIES.

WRITE NAME ____ DATE

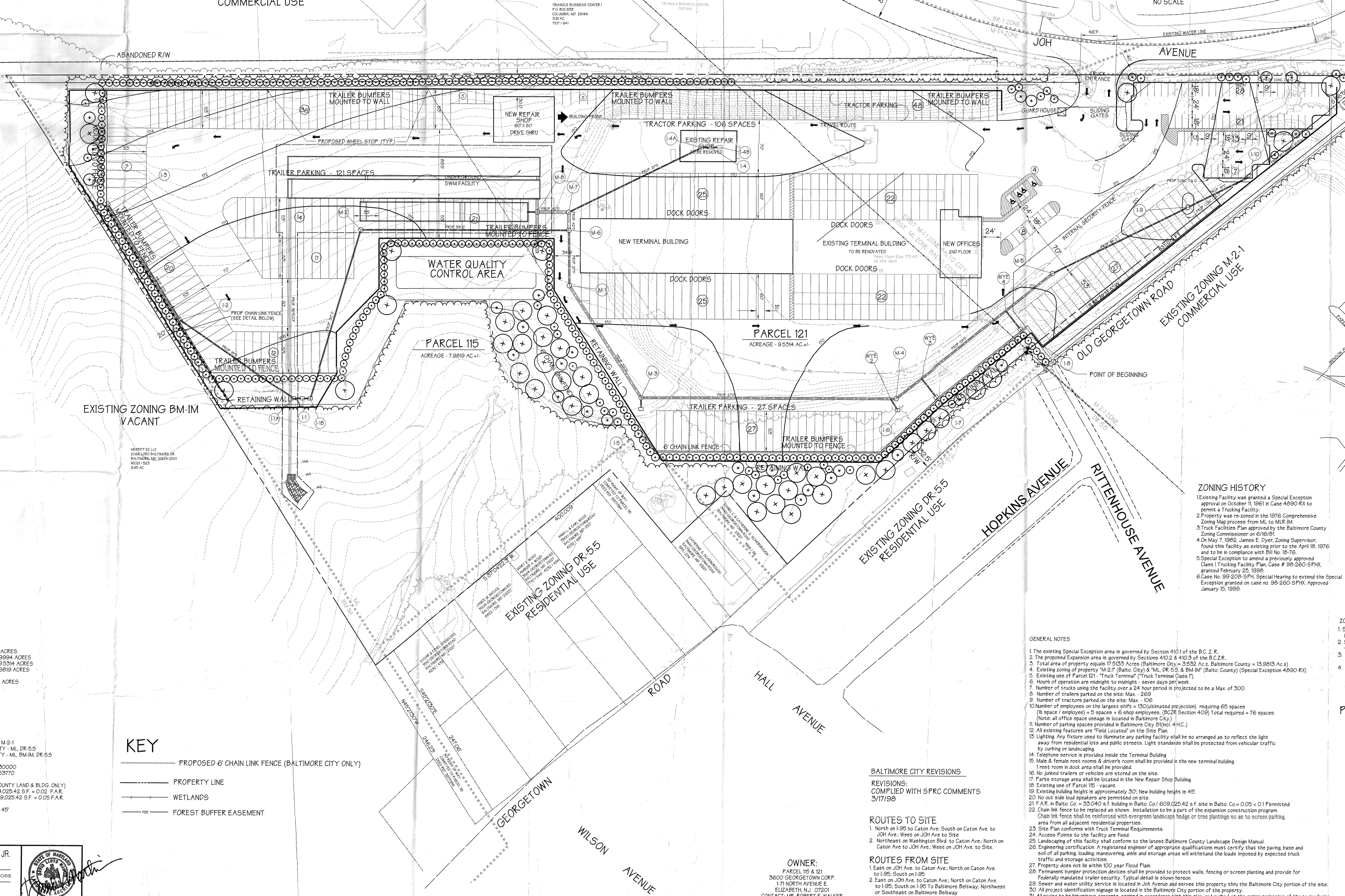
PRINT NAME ____ DATE

TRUCKING FACILITIES OFFICIALS DEPARTMENTAL CHECK-OFF

ADMINISTRATIVE OFFICER / DIRECTOR PDM / CHAIRMAN	DATE
CHIEF, BUREAU OF TRAFFICE ENGINEERING	DATE
DIRECTOR, ECONOMIC DEVELOPMENT	DATE
CHIEF, BUREAU OF ENGINEERING, PDM	DATE
STATE HIGHWAY ADMINISTRATION	DATE
ZONING SUPERVISOR / DIRECTOR, PERMITS & DEVELOPMENT MGT.	DATE

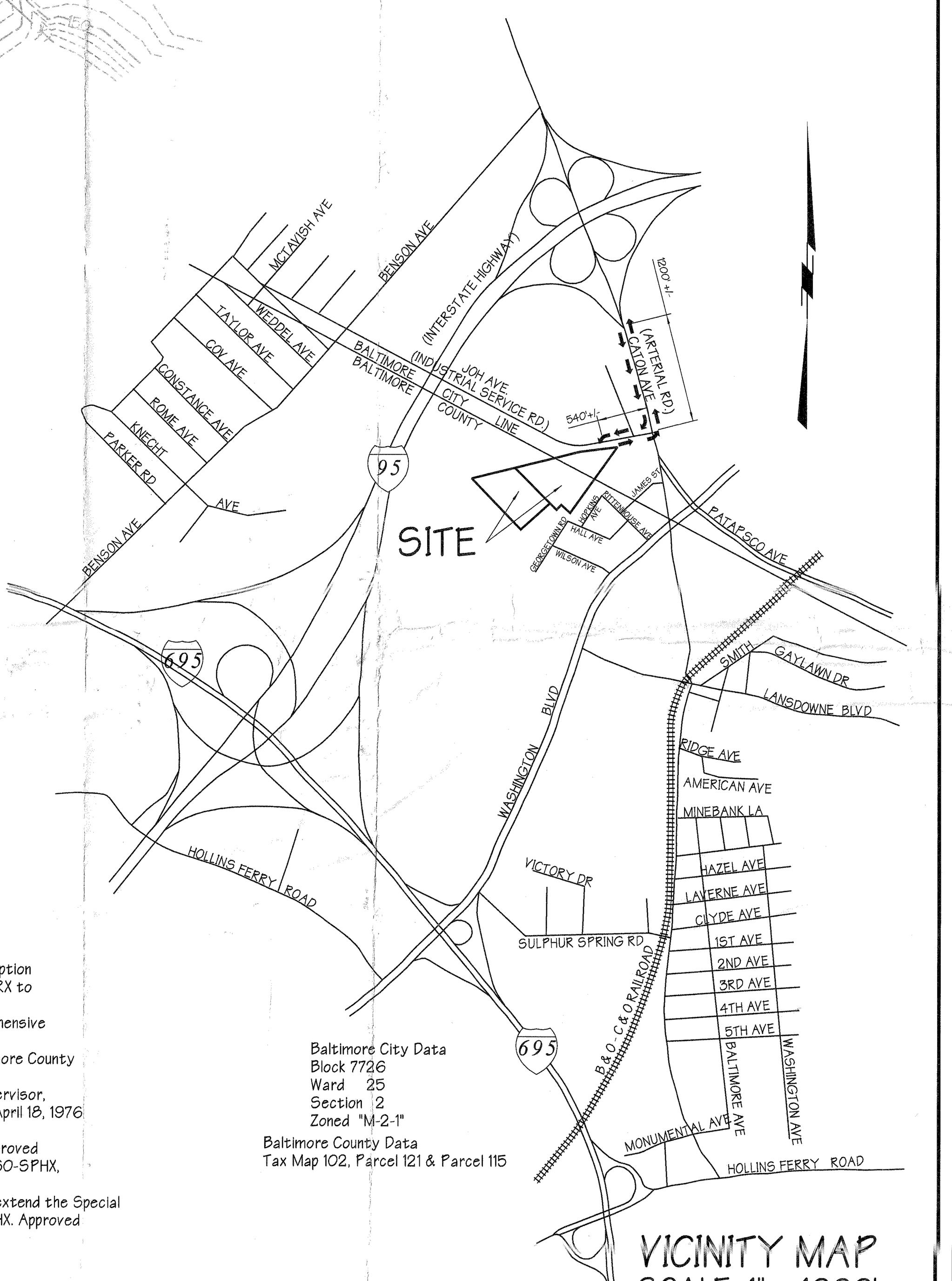


TYPICAL TRACTOR TRAILER BUMPER STOP PROTECTION
NOT TO SCALE



ZONING HISTORY

1. Existing Facility was granted a Special Exception approval on October 11, 1961 in Case 4890-RX to permit a Trucking Facility.
2. Property was re-zoned in the 1976 Comprehensive Zoning Map process from ML to MLR-IM.
3. Truck Facilities Plan approved by the Baltimore County Zoning Commissioner on 6/16/81.
4. On May 7, 1982, James E. Dyer, Zoning Supervisor, found this facility as existing prior to the April 18, 1976 and to be in compliance with Bill No. 18-76.
5. Special Exception to amend a previously approved Class I Trucking Facility Plan, Case # 98-260-SPHX, granted February 25, 1998.
6. Case No. 99-208-SPH, Special Hearing to extend the Special Exception granted on case no. 98-260-SPHX. Approved January 15, 1999.



Baltimore City Data
Block 7726
Ward 25
Section 2
Zoned "M-2-1"
Baltimore County Data
Tax Map 102, Parcel 121 & Parcel 115

VICINITY MAP
SCALE: 1" = 1000'

SITE DATA

1. SITE AREA - PARCEL 121 - BALTIMORE CITY - 3.532 ACRES
   BALTIMORE COUNTY - 5.9994 ACRES
   TOTAL - 9.5314 ACRES
   PARCEL 115 - BALTIMORE COUNTY - 7.9819 ACRES
   TOTAL - 17.5133 ACRES
   TOTAL - BALTIMORE COUNTY - 13.9813 ACRES
2. DEED REFERENCE - PARCEL 121 - 8628 / 198
   PARCEL 115 - 3977 / 184
3. OWNER / DEVELOPER - PARCEL 115 & 121
   3600 GEORGETOWN CORP.
   1-71 NORTH AVENUE E.
   ELIZABETH, NJ 07201
4. EXISTING ZONING - PARCEL 121 - BALTIMORE CITY - M-2-1
   BALTIMORE COUNTY - ML, DR-5.5
   PARCEL 115 - BALTIMORE COUNTY - ML, BM-IM, DR-5.5
5. TAX ACCOUNT NUMBERS - PARCEL 121 - 04131301230000
   PARCEL 115 - 04131323153770
6. FLOOR AREA RATIO - ALLOWED - 0.1 (BALTIMORE COUNTY LAND & BLDG. ONLY)
   - EXISTING - 13619.77 S.F. / 609,025.42 S.F. = 0.02 F.A.R.
   - PROPOSED - 33.040 S.F / 609,025.42 S.F. = 0.05 F.A.R.
7. MAX. BUILDING HEIGHT - NEW TERMINAL BUILDING - 45'

KEY

- PROPOSED 6' CHAIN LINK FENCE (BALTIMORE CITY ONLY)
- PROPERTY LINE
- WETLANDS
- FBE — FOREST BUFFER EASEMENT

BALTIMORE CITY REVISIONS

REVISIONS:
COMPLIED WITH SPRC COMMENTS
3/17/98

ROUTES TO SITE

1. North on I-95 to Caton Ave; South on Caton Ave. to JOH Ave.; West on JOH Ave to Site
2. Northeast on Washington Blvd. to Caton Ave.; North on Caton Ave to JOH Ave.; West on JOH Ave. to Site.

ROUTES FROM SITE

1. East on JOH Ave. to Caton Ave.; North on Caton Ave. to I-95; South on I-95
2. East on JOH Ave. to Caton Ave.; North on Caton Ave. to I-95; South on I-95 To Baltimore Beltway; Northwest or Southeast on Baltimore Beltway

OWNER:
PARCEL 115 & 121
3600 GEORGETOWN CORP.
1-71 NORTH AVENUE E.
ELIZABETH, N.J. 07201
CONTACT: MR. ROBERT F. WALKER

GENERAL NOTES

1. The existing Special Exception area is governed by Section 410.1 of the B.C. Z. R..
2. The proposed Expansion area is governed by Sections 410.2 & 410.3 of the B.C.Z.R..
3. Total area of property equals 17.5133 Acres (Baltimore City = 3.532 Ac.±, Baltimore County = 13.9813 Ac.±)
4. Existing zoning of property "M-2:1" (Balto. City) & "ML, DR-5.5, & BM-IM" (Balto. County) (Special Exception 4890-RX)
5. Existing use of Parcel 121 - "Truck Terminal" ("Truck Terminal Class I").
6. Hours of operation are midnight to midnight - seven days per week.
7. Number of trucks using the facility over a 24 hour period is projected to be a Max. of 300.
8. Number of trailers parked on the site: Max. - 269
9. Number of tractors parked on the site: Max. - 106
10. Number of employees on the largest shift = 130(ultimated projection) requiring 65 spaces (½ space / employee) + 5 spaces + 6 shop employees, (BCZR Section 409) Total required = 76 spaces. (Note: all office space useage is located in Baltimore City.)
11. Number of parking spaces provided in Baltimore City 81(incl. 4 H.C.)
12. All existing features are "Field Located" on the Site Plan.
13. Lighting. Any fixture used to illuminate any parking facility shall be so arranged as to reflect the light away from residential lots and public streets. Light standards shall be protected from vehicular traffic by curbing or landscaping.
14. Telephone service is provided inside the Terminal Building
15. Male & female rest rooms & driver's room shall be provided in the new terminal building. 1 rest room in dock area shall be provided.
16. No junked trailers or vehicles are stored on the site.
17. Parts storage area shall be located in the New Repair Shop Building.
18. Existing use of Parcel 115 - vacant
19. Existing building height is approximately 30'; New building height is 45'.
20. No out side loud speakers are permitted on site.
21. F.A.R. in Balto. Co. = 33.040 s.f. building in Balto. Co./ 609,025.42 s.f. site in Balto. Co.= 0.05 < 0.1 Permitted
22. Chain link fence to be replaced as shown. Installation to be a part of the expansion construction program. Chain link fence shall be reinforced with evergreen landscape hedge or tree plantings so as to screen parking area from all adjacent residential properties.
23. Site Plan conforms with Truck Terminal Requirements.
24. Access Points to the facility are fixed.
25. Landscaping of this facilty shall conform to the latest Baltimore County Landscape Design Manual.
26. Engineering certification. A registered engineer of appropriate qualifications must certify that the paving, base and soil of all parking, loading, maneuvering, aisle and storage areas will withstand the loads imposed by expected truck traffic and storage activities.
27. Property does not lie within 100 year Flood Plain.
28. Permanent bumper protection devices shall be provided to protect walls, fencing or screen planting and provide for Federally mandated trailer security. Typical detail is shown hereon.
29. Sewer and water utility service is located in Joh Avenue and serves this property thru the Baltimore City portion of the site.
30. All project identification signage is located in the Baltimore City portion of the property.
31. All paving to be bituminous concrete, striped in accordance with this plan, and curbed at the entire perimeter of the paving limits, and meet all requirements for paving standards required in Section 409.8.D of the B.C.Z.R.

ZONING RELIEF REQUESTED:

1. Special Exception to amend the Special Exception Plan approved in case no. 98-260-SPHX.
2. Special Exception to expand the existing Special Exception area for a Class I Trucking Facility.
3. A special Hearing to determine whether a Special Hearing is required in this matter; and
4. A Special Hearing to determinate a previously approved car parking compound in Baltimore City as supporting a Baltimore County trucking facility and, further, to recognize that the subject car parking compound fulfills the requirements of BCZR Sec. 409.6.3 (providing the parking requirements for a Trucking Facility in Baltimore County).

PETITION FOR SPECIAL EXCEPTION & SPECIAL HEARING FOR AN AMENDMENT TO AND EXPANSION OF A CLASS I TRUCKING FACILITY OF NEW ENGLAND MOTOR FREIGHT COMPANY AT 3600 GEORGETOWN ROAD

ELECTION DISTRICT 13
COUNCILMANIC DISTRICT 1
SCALE: 1" = 40'

BALTIMORE COUNTY, MD.
DEC 6, 1978
REV. APRIL 27, 1981
2nd REV. JANUARY 1, 1998
3rd REV. NOVEMBER 10, 1998

DATE: AUGUST, 2004

Pet No. 1

SITE PLAN APPROVED BY:

ZONING COMMISSIONER ____ DATE

CHAIRMAN, COUNTY TRUCKING FACILITIES DEVELOPMENT OFFICIALS ADMINISTRATIVE OFFICER / COUNTY ATTORNEY ____ DATE

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
1020 CROMWELL BRIDGE ROAD
TOWSON, MARYLAND 21286-3396
(410) 825-8120

STATE OF MARYLAND — DAVID LLOYD ... — LANDSCAPE ARCHITECT

FILENAME: adp\8273specialexplannew2.s01

EXISTING ZONING ML
COMMERCIAL USE

EXISTING ZONING M-1-1
COMMERCIAL USE

TRIANGLE BUSINESS CENTER I
P.O. BOX 835
COLUMBIA, MD 21044
3.35 AC
7127 / 641

ABANDONED R/W

ML
BM-IM

BEGINNING POINT

N16°58'07"E - 946.26'

TRAILER BUMPERS MOUNTED TO WALL

NEW REPAIR SHOP 60' x 80' DRIVE THRU

BUILDING FRONT

TRACTOR PARKING - 106 SPACES

TRAVEL ROUTE

EXISTING REPAIR SHOP TO BE REMOVED

PROPOSED WHEEL STOP (TYP.)

TRAILER PARKING - 121 SPACES

TRAILER BUMPERS MOUNTED TO FENCE

WATER QUALITY CONTROL AREA

DOCK DOORS

NEW TERMINAL BUILDING

EXISTING TERMINAL BUILDING
TO BE RENOVATED

NEW OFFICES
2ND FLOOR

RE-PLANTING AREA

6' HIGH LEYLAND CYPRESS EVERGREEN HEDGE PLANTING (ENTIRE PERIMETER OF SITE LOCATED IN BALT. CO.)

PARCEL 115
ACREAGE - 7.9819 AC.+/-

PARCEL 121
ACREAGE - 9.5314 AC.+/-

RETAINING WALL

TRAILER PARKING - 27 SPACES

6' CHAIN LINK FENCE

TRAILER BUMPERS MOUNTED TO FENCE

FOREST BUFFER RESERVATION

AREA EXCLUDED FROM SPECIAL EXCEPTION

EXISTING ZONING BM-IM
VACANT

ECHELMAN BROTHERS, INC
ROLLING GROVE AVENUE
BALTIMORE, MD 21228
3527 / 495
9.95 AC.

BALTIMORE CITY LINE

EXISTING ZONING DR-5.5
RESIDENTIAL USE

EXISTING ZONING M-2-1
COMMERCIAL USE

M-1-1 ZONE
M-2-1 ZONE

BR-1 ZONE
M-1-1 ZONE

BR-1 ZONE

JOH

AVENUE

ENTRANCE

GUARD HOUSE

BUILDING

GATES

ENTRANCE

EXIT

STORM WATER MANAGEMENT

INTERNAL SECURITY FENCE

CAR PARKING COMPOUND - 71 SPACES

POINT OF BEGINNING

OLD GEORGETOWN ROAD

HOPKINS AVENUE

RITTENHOUSE AVENUE

GEORGETOWN ROAD

HALL AVENUE

WILSON AVENUE

WILSON ROAD

ROLLING FERRY ROAD

SITE

VICINITY MAP
SCALE: 1" = 1000'

Baltimore City Data
Block 7726
Ward 25
Section 2
Zoned "M-2-1"

Baltimore County Data
Tax Map 102, Parcel 121 & Parcel 115

CONCRETE CURB DETAIL
1 1/2" = 1'-0"

TYPICAL TRACTOR TRAILER BUMPER STOP PROTECTION
NOT TO SCALE

TRUCKING FACILITY
SITE PAVING DETAIL
NO SCALE

PAVING CERTIFICATION

I HEREBY CERTIFY THAT THE PAVING BASE AND SOIL OF ALL PARKING, LOADING, MANEUVERING, AISLE AND STORAGE AREAS WILL WITHSTAND LOADS IMPOSED BY EXPECTED TRUCK TRAFFIC AND STORAGE ACTIVITIES.

WRITE NAME _____ DATE

PRINT NAME _____ DATE

TRUCKING FACILITIES OFFICIALS
DEPARTMENTAL CHECK-OFF

ADMINISTRATIVE OFFICER / DIRECTOR PDM / CHAIRMAN _____ DATE

CHIEF, BUREAU OF TRAFFICE ENGINEERING _____ DATE

DIRECTOR, ECONOMIC DEVELOPMENT _____ DATE

CHIEF, BUREAU OF ENGINEERING, PDM _____ DATE

STATE HIGHWAY ADMINISTRATION _____ DATE

ZONING SUPERVISOR / DIRECTOR, PERMITS & DEVELOPMENT MGT. _____ DATE

SITE DATA

1. SITE AREA - PARCEL 121 - BALTIMORE CITY - 3.532 ACRES
   BALTIMORE COUNTY - 5.9994 ACRES
   TOTAL - 9.5314 ACRES
   PARCEL 115 - BALTIMORE COUNTY - 7.9819 ACRES
   TOTAL - 17.5133 ACRES
   TOTAL BALTIMORE COUNTY - 13.9813 ACRES
2. DEED REFERENCE - PARCEL 121 - 6628 / 198
   PARCEL 115 - 3077 / 154
3. OWNER / DEVELOPER - PARCEL 121
   3600 GEORGETOWN CORP.
   1-71 NORTH AVENUE E.
   ELIZABETH, NJ 07201
   OWNER - PARCEL 115
   FLORENCE WEINER
   2000 N OCEAN BOULEVARD
   BOCA RATON, FL 33431
4. EXISTING ZONING - PARCEL 121 - BALTIMORE CITY - M-2-1
   BALTIMORE COUNTY - ML, DR-5.5
   PARCEL 115 - BALTIMORE COUNTY - ML, BM-IM, DR-5.5
5. TAX ACCOUNT NUMBERS - PARCEL 121 - 0413130123000
   PARCEL 115 - 0413123153770
6. FLOOR AREA RATIO - ALLOWED - 0.1 (BALTIMORE COUNTY LAND & BLDG. ONLY)
   - EXISTING - 1361.97 S.F. / 609,025.42 S.F. = 0.02 F.A.R.
   - PROPOSED - 36,588.64 S.F / 609,025.42 S.F. = 0.06 F.A.R.
7. MAX. BUILDING HEIGHT - NEW TERMINAL BUILDING - 40'

Plat not sealed; note # 4 and plat modified to be filed with Petition For Special Hearing attached hereto

KEY

- PROPOSED PAVING EXPANSION
- PROPOSED BUILDING EXPANSION
- PROPOSED 6' CHAIN LINK FENCE
- PROPOSED MAJOR DECIDUOUS TREE
- PROPOSED MINOR DECIDUOUS TREE
- PROPOSED EVERGREEN SCREEN TREES
- EXISTING ZONING LINE
- PROPERTY LINE
- WETLANDS
- FBE — FOREST BUFFER EASEMENT

GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
1020 CROMWELL BRIDGE ROAD
TOWSON, MARYLAND 21286-3396
(410) 825-8120

STATE OF MARYLAND — GEORGE WILLIAM STEPHENS, JR. — No. 10793 — REGISTERED PROFESSIONAL ENGINEER

FILENAME: M:\2001\01-083\Drawings\plat1.dgn Jun. 26, 2001 11:44:46

OWNERS:
PARCEL 121
3600 GEORGETOWN CORP.
1-71 NORTH AVENUE E.
ELIZABETH, N.J. 07201
CONTACT: MR. ROBERT F. WALKER

PARCEL 115
FLORENCE WEINER
#706 2000 N. OCEAN BLVD.
BOCA RATON, FL 33431

BALTIMORE CITY REVISIONS

REVISIONS: △
COMPLIED WITH SPRC COMMENTS
3/17/98

ROUTES TO SITE

1. North on I-95 to Caton Ave; South on Caton Ave. to JOH Ave.; West on JOH Ave to Site.
2. Northeast on Washington Blvd. to Caton Ave.; North on Caton Ave to JOH Ave; West on JOH Ave. to Site.

ROUTES FROM SITE

1. East on JOH Ave. to Caton Ave.; North on Caton Ave. to I-95; South on I-95
2. East on JOH Ave. to Caton Ave.; North on Caton Ave. to I-95; South on I-95 To Baltimore Beltway; Northwest or Southeast on Baltimore Beltway

ZONING HISTORY

1. Existing Facility was granted a Special Exception approval on October 11, 1961 in Case #880-RX to permit a Trucking Facility.
2. Property was re-zoned in the 1976 Comprehensive Zoning Map process from ML to MLR-IM.
3. Truck Facilities Plan approved by the Baltimore County Zoning Commissioner on 6/16/81.
4. On May 7, 1982, James E. Dyer, Zoning Supervisor, found this facility an existing prior to the April 18, 1976 and to be in compliance with Bill No. 18-76.
5. Special Exception to amend a previously approved Class I Trucking Facility Plan, Case # 98-260-SPHX, granted February 25, 1998.
6. Case No. 99-208-SPH, Special Hearing to extend the Special Exception granted on case no. 98-260-SPHX, Approved January 15, 1999.

GENERAL NOTES

1. The existing Special Exception area is governed by Section 410.1 of the B.C.Z.R..
2. The proposed Expansion area is governed by Sections 410.2 & 410.3 of the B.C.Z.R..
3. Total area of property equals 17.5133 Acres (Baltimore City = 3.532 Ac±, Baltimore County = 13.9813 Ac±)
4. Existing zoning of property "M-2-1" (Balto. City) & "ML (Balto. County) (Special Exception #880-RX)
5. Existing use of Parcel 121 - "Truck Terminal" ("Truck Terminal Class I").
6. Hours of operation are midnight to midnight - seven days per week.
7. Number of trucks using the facility over a 24 hour period is projected to be a Max. of 300.
8. Number of trailers parked on the site: Max. - 260
9. Number of employees on the largest shift = 200 (ultimated projection) requiring 100 spaces (1/2 space / employee) + 5 spaces + 6 shop employees. (BCZR Section 409) Total required = 111 spaces. (Note: all office space useage is located in Baltimore City.)
10. Number of parking spaces provided = 171. (11 visitors)
11. All existing features are "Field Located" on the Site Plan.
12. Lighting. Any fixture used to illuminate any parking facility shall be so arranged as to reflect the light away from residential lots and public streets. Light standards shall be protected from vehicular traffic by curbing or landscaping.
13. Telephone service is provided inside the Terminal Building.
14. Male & female rest rooms & driver's room shall be provided in the new terminal building. 1 rest room in dock area shall be provided.
15. No junked trailers or vehicles are stored on the site.
16. Parts storage area shall be located in the New Repair Shop Building.
17. Existing use of Parcel 115 - vacant
18. Existing building height is approximately 30'; New building height is 45'.
19. No out side loud speakers are permitted on site.
20. F.A.R. in Balto. Co. = 36,588.64 s.f. building in Balto. Co./ 609,025.42 s.f. site in Balto. Co.= 0.06 < 0.1 Permitted
21. Chain link fence to be replaced as shown. Installation to be a part of the expansion construction program. Chain link fence shall be reinforced with evergreen landscape hedge or tree plantings so as to screen parking area from all adjacent residential properties.
22. Site Plan conforms with Truck Terminal Requirements.
23. Access Points to the facility are fixed.
24. Landscaping of this facility shall conform to the latest Baltimore County Landscape Design Manual.
25. Engineering certification. A registered engineer of appropriate qualifications must certify that the paving base and soil of all parking, loading, manouvering, aisle and storage areas will withstand the loads imposed by expected truck traffic and storage activities.
26. Property does not lie within 100 year Flood Plain.
27. Permanent bumper protection devices shall be provided so protect walls, fencing or screen planting and provide for Federally mandated trailer security. Typical detail is shown hereon.
28. Sewer and water utility service is located in Joh Avenue and serves this property thru the Baltimore City portion of the site.
29. All project identification signage is located in the Baltimore City portion of the property.
30. All paving to be bituminous concrete, striped in accordance with this plan, and curbed at the entire perimeter of the paving limits, and meet all requirements for paving standards required in Section 409.8.D of the B.C.Z.R.

PLAT TO ACCOMPANY PETITION FOR SPECIAL HEARING FOR PROPERTY OWNED BY

NEW ENGLAND MOTOR FREIGHT COMPANY

AT

3600 GEORGETOWN ROAD

ELECTION DISTRICT 15
COUNCILMANIC DISTRICT 1
SCALE: 1" = 40'
DATE: JUNE 13, 2001

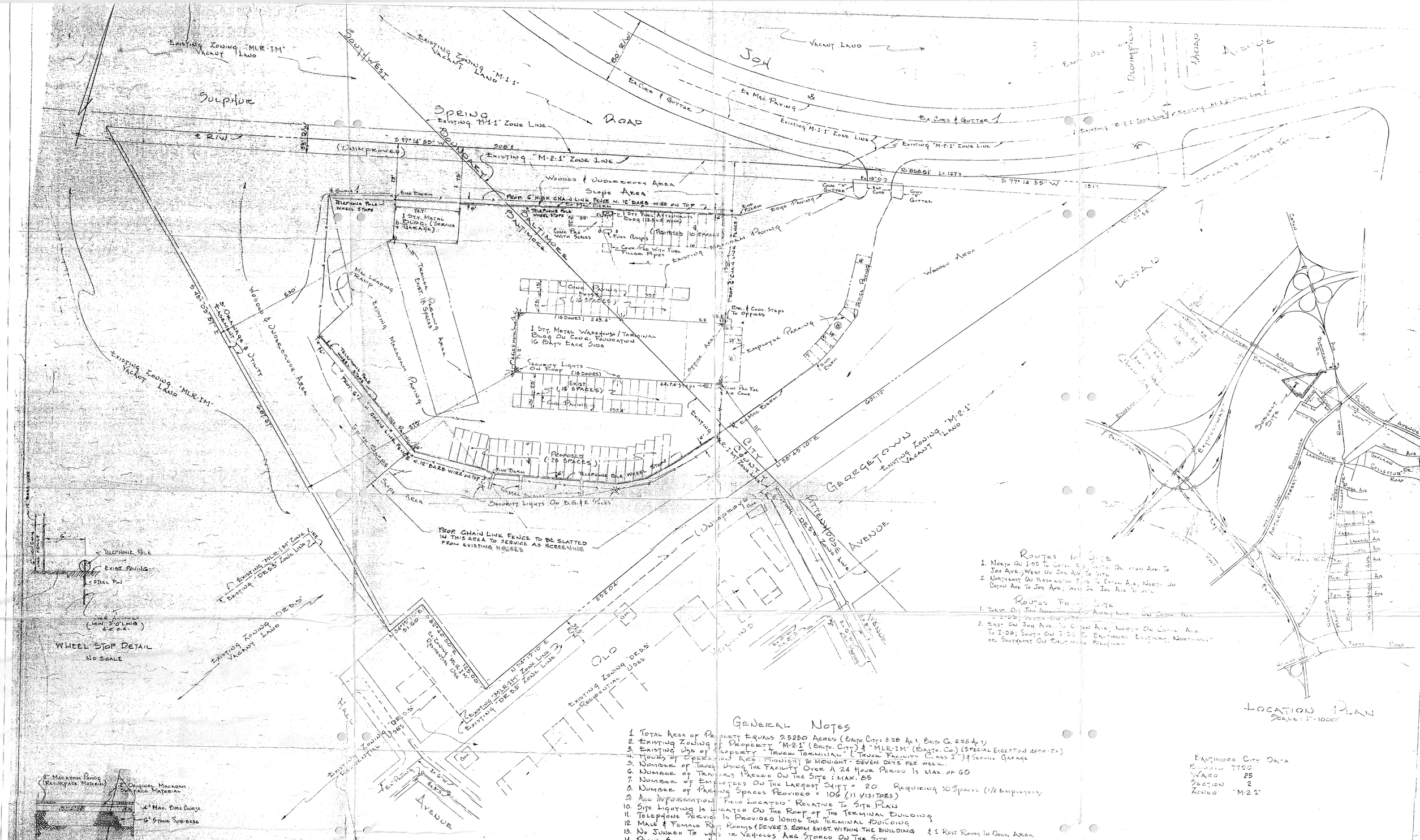
BALTIMORE COUNTY, MD.
DEC 6, 1978
REV. APRIL 27, 1981
2nd REV. JANUARY 1, 1998
3rd REV. NOVEMBER 10, 1998

16244

SITE PLAN APPROVED BY:

ZONING COMMISSIONER _____ DATE

CHAIRMAN, COUNTY TRUCKING FACILITIES DEVELOPMENT OFFICIALS
ADMINISTRATIVE OFFICER / COUNTY ATTORNEY _____ DATE


Existing Zoning "MLR-IM" Vacant Land
Sulphur Spring Road
Existing Zoning "M-1-1" Vacant Land
Existing "M-1-1" Zone Line
Existing "M-2-1" Zone Line
Vacant Land
Joh Avenue
Ex Mac Paving
Ex Curb & Gutter
Existing "D.E.D.S" Zone Line
Existing "M-2-1" Zone Line
R: 858.61' L= 127'±
S 77° 14' 55" W 131'±
Ex 18" D.I.
Curb "V" Gutter
Curb "V" Gutter
End Curb
Ex Mac Paving
Edge Paving
Existing Zoning "M-2-1" Vacant Land
Existing Zoning "M-2-1" Zone Line
Existing "D.E.D.S" Zone Line
Existing "M-2-1" Zone Line
Existing "M-2-1" Zone Line
Existing "M-2-1

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

June 2, 2004

Mr. James A. Markle, Vice President
G. W. Stephens, Jr. & Assoc., Inc.
1020 Cromwell Bridge Road
Towson, MD 21286-3396

Reference: ***New England Motor Freight***
Drainage Diversion

Dear Mr. Markle:

After close review of the hydrology report, your request to divert approximately 3.9 acres of drainage area from an outfall in Baltimore City to an outfall in Baltimore County meets our criteria and is hereby approved. The decision was reached after consultation with the Department of Environmental Protection and Resource Management (D.E.P.R.M.).

This diversion will help alleviate the downstream flooding problems in Baltimore City. The additional flow will be handled by the proposed on-site underground storm water management facility.

If you have further questions concerning this diversion, please call me at 410-887-3751.

Very truly yours,

Robert W. Bowling

Robert W. Bowling, Supervisor
Bureau of Development Plans Review

RWB:RJF:jrb

cc: File

Ret No 2

RJF-MARKLE-NEW ENG MOTOR FREIGHT-DRAIN DIVER-05282004

EXHIBITS

Submitted by

The Greater Bloomfield Community Association

for

Special Hearing:3600 Georgetown Road

Petitioner: Greater Bloomfield Community Assoc., et al.

* * * *

Before Zoning Commissioner: Lawrence Schmidt

Baltimore County
September 7, 8, 9, 14, & 17
2004

Exhibit Index

NUMBERED		DESCRIPTION
Exhibit	*1*	*Memorandum of People's Counsel: Case No. 01-544-SPHX dated February 8, 2002-* *Peter Max Zimmerman* *People;s Counsel for Baltimore County*
Exhibit	*2*	*Aerial view of community/NEMF trucking facility*
Exhibit	*3*	*Crush and Run Area*
Exhibit	*4*	*Hopkins Avenue backyard property lines in direct relationship To expansion within 30 feet*
Exhibit	*5*	*Odensos Sisters' property (3440 and 3500 Georgetown Road) with views of Crush/Run area and Proposed SWM System location*
Exhibit	*6*	*Proposed site for SWM System*
Exhibit	*7*	*Rittenhouse Avenue location specific to flood damage*

RE: PETITION FOR SPECIAL HEARING PETITION FOR SPECIAL EXCEPTION 3600 Georgetown Road (**New England Motor Freight**) W/S Georgetown Rd, 200' NE of c/l Hall Ave 13th Election District, 1st Councilmanic	*	BEFORE THE ZONING COMMISSIONER FOR
Legal Owner: 3600 Georgetown Corp. Petitioner	*	BALTIMORE COUNTY
	*	**Case No. 01-544-SPHX**

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

MEMORANDUM OF PEOPLE'S COUNSEL

The relief requested in this case for a Class I Trucking Facility is yet another example of this Petitioner's disregard for the requirements of BCZR 410. The Petitions for Special Exception and Special Hearing in this case must be denied. Additionally, the relief granted in Case 98-260 is illegitimate and cannot stand.

The history of the trucking facility use under BCZR is significant to both cases.

Truck uses have long been permitted in the zoning regulations for Baltimore County. While legislative changes occurred in 1955 and 1967, none were as drastic as the 1976 legislation codified as BCZR 410.

The Planning Board and the County Council recognized in 1976 the need to deal with existing trucking facilities that offend, if not shatter, the nearby residential areas. They were not content to make prospective changes for future trucking facilities but wanted to change the status quo for existing facilities. Unlike other new zoning laws, there was no automatic "grandfathering" under BCZR 410.

RECEIVED
FEB 08 2002
By GDZ

Exhibit - 1

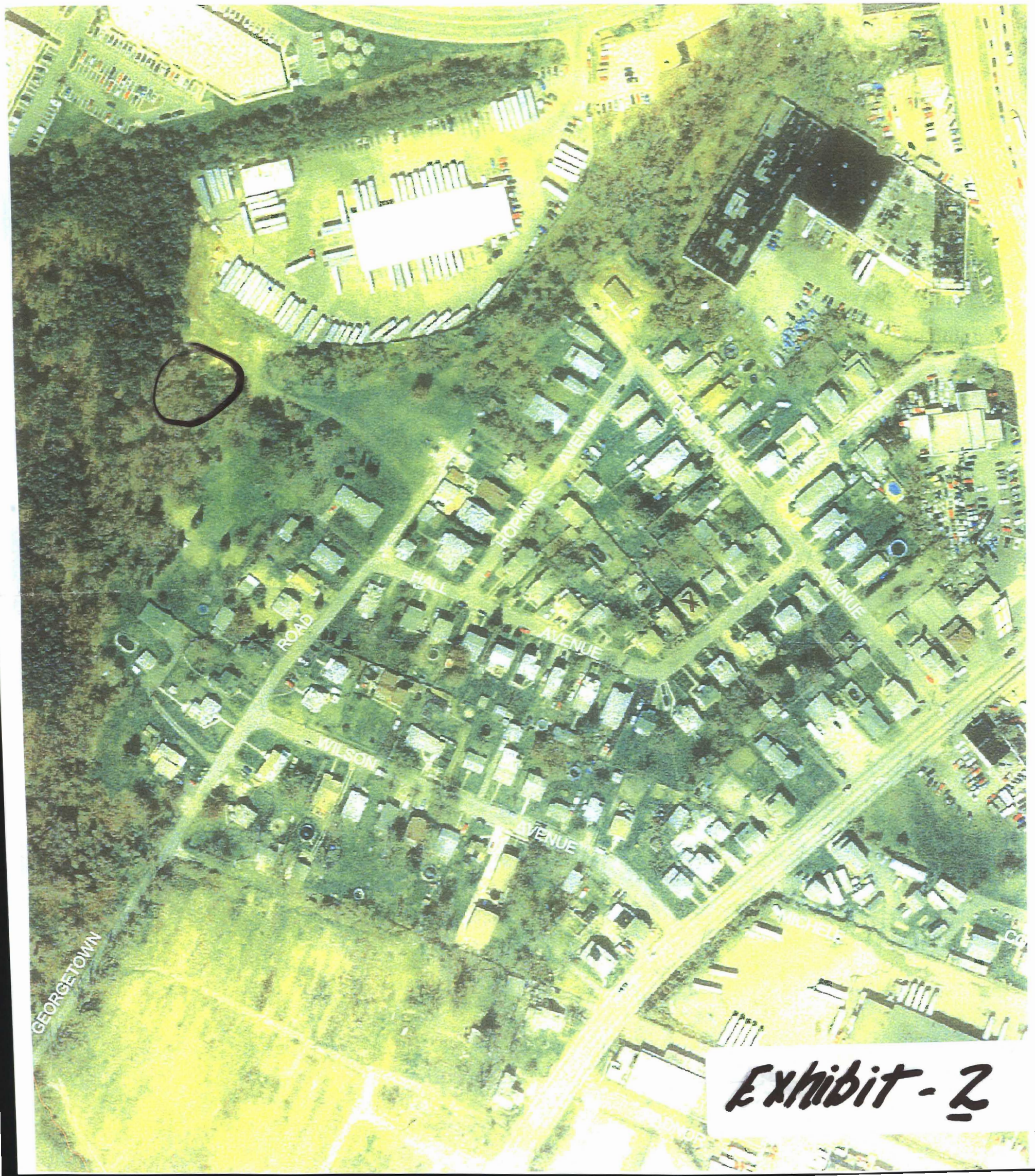

HORKINS AVENUE
HALL ROAD
AVENUE
WILSON AVENUE
AVENUE
GEORGETOWN

Exhibit - 2



Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004

Exhibit 3.a



Exhibit 3.b

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004



Exhibit 3.c

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004



Exhibit 3.d

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004



Exhibit 3.e

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004



Exhibit 3.f

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004



Exhibit 4

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004



Exhibit 5.a

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004



Exhibit 5.b

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004



Exhibit 5.c

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004



Exhibit 5.d

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004



Exhibit 5.e

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004



Exhibit 5.f

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004



Exhibit 5.g

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004

EXHIBIT 6

Hopkins Avenue Backyard Property Lines in Direct Relationship to Expansion Within 30 feet - FY 2004
6.a through 6.b



Exhibit 6.a

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004



Exhibit 6.b

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004



Exhibit 7.a

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004



Exhibit 7.b

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004



Exhibit 7.c

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004



Exhibit 7.d

Submitted by: Greater Bloomfield Community Association, Inc
Bloomfield/3600 Georgetown Road:Special Hearing Sept. 7,8,9,14 & 17, 2004

such as arsenic, lead and mercury and that it would leach into the groundwater through the quarries' porous floor. They alleged Constellation had "actively engaged in a campaign of deception to mislead" the plaintiffs as to the health threat.

Murphy estimates the Oct. 31 settlement will cost Constellation $45 million.

Under the terms, Constellation has agreed to pay for 84 households, which previously relied on private wells, to be connected to public water over the course of the next two years. The company will also pay

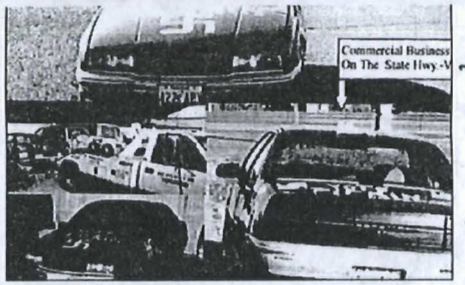
cient First Amendment claim to proceed with his suit against Queen Anne's County Deputy Sheriff J. Beatty, Judge Andre M. Davis ruled last week in **U.S. District Court** in Baltimore.

"Here, Beatty ticketed Richter's car as ostensibly abandoned and put a repair order on the car the same day that Richter parked it, legally, on a public street, as an act of political protest," Davis wrote. Such an action would likely chill "car speech" by "people of ordinary firmness," the judge said.

The car was tagged the same day and towed two days later. It was crushed months later after Richter refused to claim it from the impound lot.

The judge found Beatty was not entitled to qualified immunity; however, he did rule against Richter's procedural and substantive due-process claims.

"The towing of a car, even on an erroneous or pretextual basis, simply does not rise to the level of violating substantive due process rights," Davis ruled.



Charles E. Richter's court filings include these pictures of his car, which was ticketed, towed and eventually crushed.

(3) SPH - Opinion Maryland Lawyer 12/29/08
3600 Georgetown - Westcott
Stahl - Criser -

CSA vacates neighbors' win against NEMF

BY BARBARA GRZINCIC
barbara.grzincic@mddailyrecord.com

A trucking facility near Lansdowne didn't get everything it wanted from the **Court of Special Appeals**, but it did get a new lease on life and a second chance at the expansion it's been hoping for.

The decision vacates last year's win for the **Greater Bloomfield Community Association**, which argued that **New England Motor Freight** Inc. was not a proper use in the residential community and should not be allowed to quadruple the size of its operation.

In a 100-page unreported opinion released on Christmas Eve, the appeals court restored NEMF's right to operate as a nonconforming use.

It also sent the expansion request — which neighbors said would take the operation from 70 trucks to 300 — all the way back to the zoning board.

The remand was necessary, Judge Ellen L. Hollander wrote for the appeals court, in light of a Court of Appeals decision that came down less than four months ago.

In *People's Counsel for Baltimore County et al. v. Loyola College in Maryland*, decided Sept. 8, the top court clarified the standard for granting special exceptions, such as the one NEMF needs before it can expand.



RICH DENNISON

New England Motor Freight Inc. won a new lease on life, and a second chance at expanding its operation near Lansdowne, thanks to an appellate decision.

On remand, though, the board also "may determine … whether to consider" an alternative ground for finding NEMF lost its nonconforming use status, Hollander wrote.

The neighbors' first challenge was that 3600 Georgetown Corp., d/b/a NEMF, had never been entitled to nonconforming use status.

Built in 1961 with a 167-foot setback, the facility was grandfathered in when the county imposed 300-foot setbacks in 1976.

NEMF moved into the facility in 1991. By that time, however, the neighbors said the facility lost its nonconforming use status because it had been abandoned for more than a year.

That argument was rejected by the zoning board, which found insufficient evidence of abandonment. The circuit court reversed last year, a decision faulted by the appellate panel last week.

"Given that [the neighbors] had the burden of proof on this issue, the circuit court erred by improperly substituting its judgment for that of the Board," Hollander wrote.

The neighbors' alternate ground is that NEMF lost its nonconforming use status in 1998 when it obtained a different special exception allowing it to expand the garage and terminal building.

NEMF never started construction on the building and the special exception expired. However, the neighbors argue that NEMF's nonconforming use status ended by operation of law once it obtained the special exception.

The neighbors raised their second challenge after NEMF sought reconsideration of the circuit court's ruling last year.

Hollander's opinion sounds a skeptical note, but hastens to add that it is not deciding the matter.

"As indicated, the Board never considered this complicated issue," Hollander wrote. "In our view, it is appropriate for the Board to consider the contention in the first instance … . We express no opinion as to the merits of such a claim."

The opinion, *3600 Georgetown Corp. v. Greater Bloomfield Community Association et al.*, No. 217 of the Sept. 2007 term, is available as RecordFax # 8-1224-02 (101 pages).

Final Report of the
Baltimore County Planning Board
Adopted February 19, 1976

PROPOSED ZONING AMENDMENTS: TRUCKING FACILITIES

Baltimore County Office of Planning and Zoning
Towson, Maryland 21204

Report of the Baltimore County Citizens Task Force on Truck Terminals
Adopted August 7, 1975

PROPOSED ZONING AMENDMENTS:
TRUCK TERMINALS
TRUCK-SERVED WAREHOUSES

Baltimore County Office of Planning and Zoning Towson, Maryland 21204

County Council of Baltimore County Maryland

Legislative Session 1976, Legislative Day No. 7

BILL NO. 18-76

Introduced by Mr. O'Rourke, Councilman

(By request of County Executive)

By the County Council, March 15, 1976

A BILL

Entitled

AN ACT to amend the Baltimore County Zoning Regulations to regulate truck oriented uses of property in Baltimore County, to designate the zoning classifications under which such uses shall be permitted as of right, allowed by special exception or prohibited both in terms of control over the development of new facilities as well as remedial measures applicable to existing ones, by adding certain definitions to Section 101 of said zoning regulations and revising certain existing ones, by repealing and re-enacting with amendments Section 104 thereof, by redesignating the subtitle "Statement of Purpose" under Article 4 thereof, by repealing and re-enacting with amendments subsections 233.2, 236.4, 241.1, 253.2A, 256.2, 256.4, 409.2b and 500.7 thereof and by adding new sections B400, 410 and 410A to said zoning regulations:

SECTION 1. *Be it enacted by the County Council of Baltimore County, Maryland*, that the following definitions be and they are hereby added, in alphabetical order, to Section 101 of the Baltimore County zoning regulations.

Section 101 Definitions

Collector street, major: A street, or part of one, that: is intended for travel between neighborhoods or between neighborhoods and other places, but not for travel within neighborhoods; it is not an arterial street and has been designated as a major collector street by the Planning Board by the same method used to designate freeways, expressways, and arterial streets.

Bloomfield #10 BFD #10

The Community of Bloomfield

New England Motor Freight

Baltimore County Zoning Regulations

1998 Edition

Originally printed as amended through July 6, 1998

SERIAL NO. 93

GENERAL CODE PUBLISHERS CORP.
72 Hinchey Road
Rochester, NY 14624

1998

CHECKLIST FOR INFORMATION TO BE SHOWN ON SITE DEVELOPMENT PLANS FOR EXISTING AND PROPOSED TRUCKING FACILITIES (CLASS I & II)

This checklist shall serve as a guide in preparing site plans for trucking facilities. Plans must be certified by a professional engineer or by a professional who is not an engineer, but who is registered under law as competent to certify the accuracy of these plans.

If the owner or authorized agent for a Class I or Class II trucking facility believes that approved plans of that trucking facility are on file within the Office of Planning and Zoning or the Department of Permits and Licenses, he must notify the Zoning Commissioner in writing within six months of the effective date of Bill 18-76 (April 19, 1976). Within 30 days after he receives the written notice, the Zoning Commissioner shall inform the owner or agent whether the plans are in fact on file, and if so, whether they meet the requirements of the checklist set forth below. If the plans do not meet these requirements, the owner or agent shall file plans that do meet the requirements within one year after said effective date.

A. North arrow. _____

B. Scale of drawing: 1" = 10', 1" = 20', 1" = 30', 1" = 40', 1" = 50'. _____

C. Election District.

D. Dimensions of property (including bearings and distances). _____

E. Relation of tract in question to additional property owned. _____

F. Area of property in question (acres or square feet).
Minimum for Class I = 3 acres.
Minimum for Class II = 5 acres. _____

G. Location plan drawn at a scale of 1" = 1000'. Said plan to show all streets labeled as to their class (i.e., arterial, major collector, industrial service road, expressway, freeway, etc.), and proposed route of trucks. The site location and points of access shall be clearly plotted on said plan with the distances to intersecting streets dimensioned. _____

H. The site plan must include a complete interior functional layout of the trucking operation. The layout of improvements must be such as to provide convenient forward movement of vehicles leaving or entering the site, and such as to preclude any likelihood that trucks will be unable to gain immediate access onto the site at any time, as determined by the Zoning Commissioner after recommendation by the County Trucking Facilities Development Officials. _____

IN THE MATTER OF:	* BEFORE THE
3600 GEORGETOWN CORP.- Legal	* COUNTY BOARD OF APPEALS
Owner; Greater Bloomfield	* OF
Community Asso., et al -	* BALTIMORE COUNTY
Petitioners/Protestants AND	* CASE NO. 04-160-SPH
IN THE MATTER OF:	*
3600 GEORGETOWN CORP. - Legal	* CASE NO. 04-294-SPHX
Owner/Petitioner 3600 Georgetown*	
Road 13th E; 1st C	* July 14, 2005

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, At 10 a.m., July 14, 2005.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

IN THE MATTER OF
3600 GEORGETOWN CORP., Legal Owner; CASE NO.
GREATER BLOOMFIELD COMMUNITY ASSN., 04-160-SPH
et al,
Petitioners
13th E; 1st C

And

IN THE MATTER OF:
3600 GEORGETOWN CORP. CASE NO.
C/O MYRON SHEVELL, 04-294-SPXH
Petitioner/Legal Owner
13th E; 1st C

The above-mentioned hearing was continued on Thursday, July 21, 2005, commencing at 9 a.m., at the County Board of Appeals of Baltimore County, Old Courthouse, Hearing Room 48, 400 Washington AVenue, Towson, Maryland 21204, before Lawrence M. Stahl, Chairman; Edward W. Crizer, Jr., and Michael O. Ramsey.

APPEARANCES:

G. SCOTT BARHIGHT, ESQUIRE
On behalf of the Petitioner

J. CARROLL HOLZER, ESQUIRE
On behalf of Protestant/Community

PETER MAX ZIMMERMAN, ESQUIRE
On behalf of Office of
People's Counsel of Baltimore County

REPORTED BY: Susan A. Kambouris

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BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

JL 160

No. 28155

DATE 9/29/03 ACCOUNT 001 006 6150

AMOUNT $ 325.00

RECEIVED FROM: J Carroll Holzer P.A.

FOR: Non Res. SPH

3600 Georgetown Rd.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

MONTH/DAY	ACTUAL	TIME	DRAWER
9/30/2003	9/29/2003	15:16:13	5

REG: WS05 WALKIN CHAR CLK
>>RECEIPT # 331122 9/30/2003 OFLN
Rcpt: 5 528 ZONING VERIFICATION
CK NO. 028155
Rcpt Tot $325.00
325.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

Department of Permits and Development Management

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

Baltimore County

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

October 15, 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: 04-160-SPH
3600 Georgetown Road
N/west side Georgetown Road, 100 feet northeast of Hall Avenue
13th Election District – 1st Councilmanic District
Legal Owner: 3600 Georgetown Corp. (NEMF)

Special Hearing to determine whether New England Motor Freight is lawfully utilizing the southwest portion of the site identified on the plan for the construction of an underground SWM facility with possible truck parking to be in violation of the B.C.Z.R. and Prior cases. To determine whether the site prior zoning history and the B.C.Z.R. would prohibit the issuance of Permit B511616. Whether NEMF lost any claim history as a non-conforming use. Has the NEMF lost its right to exit on the subject site. Is any expansion beyond that of the non-conforming use and to what extent? Should NEMF be required to comply with the minimum setback from the property line?

Hearings: Wednesday, November 26, 2003 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Timothy Kotroco

Timothy Kotroco
Director

TK:rlh

C: J. Carroll Holzer, 508 Fairmount Avenue, Towson 21286
3600 Georgetown Corp., 3600 Georgetown Road, Baltimore 21227

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, NOVEMBER 11, 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 on Recycled Paper

HOLZER & LEE

LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER
1907-1989

THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET

To: Bede

October 22, 2003
#7423

Postponement Granted, please contact attorney re: reset this case. Also contact Scott Berchtold's office to find a date acceptable to his office. 11-12-03

Timothy Kotroco, Director
Permits & Development Management
111 Chesapeake Avenue
Towson, Maryland 21204

RE: 04-160-SPH
3600 Georgetown Road
Special Hearing Date Wednesday, November 26, 2003
9:00 a.m., Room 407

Dear Mr. Kotroco:

Please be advised that I filed a Petition for Special Hearing in the above-captioned case. Unfortunately, the case was set for Wednesday, November 26, 2003 without checking with my office.

I will be in Atlanta, Georgia from Tuesday, November 25th through Monday, December 1, 2003 I would therefore request that this matter be postponed and reassigned to a mutually agreeable date.

Very truly yours,

J Carroll Holzer

JCH.mlg

Enclosure

cc: 3600 Georgetown Corp.
3600 Georgetown Road
Baltimore, Maryland 21227
Greater Bloomfield Community
Association
Ms Lorna Rudnikas

PATUXENT PUBLISHING COMPANY
Tuesday, February 10, 2004 Issue - Jeffersonian

Please forward billing to:
J. Carroll Holzer
508 Farimount Avenue
Towson, MD 21286

410-825-6961

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: 04-160-SPH
3600 Georgetown Road
N/west side of Georgetown Road, 100 feet northeast of Hall Avenue
13th Election District – 1st Councilmanic District
Legal Owner: 3600 Georgetown Corp.

Special Hearing to determine whether New England Motor Freight is lawfully utilizing the southwest portion of the site identified on the plan for construction of any undergoing SWM facility with possible truck parking to be in violation of the BCZR and prior cases. To determine whether the sites prior zoning history and the BCZR would prohibit the issuance of Permit B511616. Whether NEMF lost any claim history as a nonconforming use. Has the NEMF lost its right to exit on the subject site? Is any expansion beyond that of the non-conforming use and to what extent? Should NEMF be required to comply with the minimum setback from the property line?

Hearing: Wednesday, February 25, 2004, at 9:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue

Lawrence E. Schmidt
LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

TO: PATUXENT PUBLISHING COMPANY
Tuesday, November 11, 2003 Issue - Jeffersonian

Please forward billing to:
J. Carroll Holzer 410-825-6961
508 Fairmount Avenue
Towson, MD 21286

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: 04-160-SPH
3600 Georgetown Road
N/west side Georgetown Road, 100 feet northeast of Hall Avenue
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Hearings: Wednesday, November 26, 2003 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Schmidt

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

RECEIVED
OCT 2 2
03-5562
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

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: #160

Petitioner: Tom Mauk, et al.

Address or Location: 3600 Georgetown Rd.

PLEASE FORWARD ADVERTISING BILL TO:

Name: J. Carroll Holzer, P.A.

Address: 508 Fairmount Ave.
Towson, MD 21286

Telephone Number: 410-825-6961

Revised 2/20/98 - SCJ

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 5, 2003

J. Carroll Holzer
508 Fairmount Avenue
Towson, MD 21286

To Whom It May Concern:

RE: Case Number: 04-160-SPH, 3600 Georgetown Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on September 29, 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
3600 Georgetown Road, Baltimore 21227

RE:	PETITION FOR SPECIAL HEARING 3600 Georgetown Road; NW/side Georgetown Rd, 100' NE Hall Avenue 13th Election & 1st Councilmanic Districts Legal Owner(s): 3600 Georgetown Corp Petitioner(s): Catherine Scarborough, Anna Wood, Tom Mauk, Greater Bloomfield Community Ass'n President Lorna Rudnikas	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 04-160-SPH

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

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 and documentation filed in the case.

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

RECEIVED
OCT 21 2003
Per.....

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 21st day of October, 2003, a copy of the foregoing Entry of Appearance was mailed to J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, MD 21286, Attorney for Petitioner(s).

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

JL
Intake Planner

9/3/03
Date Assigned

DROP-OFF PETITIONS PROCESSING CHECK-OFF

JL CALLED CARROLL KELLER 9/12/03 TO COME IN TO REVISE. ADVISED TO CALL ME TO SET UP TIME FOR OUR REMARKS TO BE CLARIFIED. LEFT MSG ON TAPE

☑ **Two Questions Answered on Cover Sheet:**
Any previous reviews in the zoning office?
Any current building or zoning violations on site? YES

☐ **Petition Form Matches Plat in these areas:**
Address YES
Zoning NO
Legal Owner(s) NO
Contract Purchaser(s) SHOULD BE LABELED AS PETITIONERS ON PET. FORM,
Request (if listed on plat) NA

☐ **Petition Form (must be current PDM form) is Complete:**
Request:
Section Numbers YES
NO Correct Wording (must relate to the code, especially floodplain and historical standard wording. Variances must include the request in lieu of the required code quantities.
Hardship/Practical Difficulty Reasons
Legal Owner/Contract Purchaser:
Signatures (originals) – NO FOR OWNERS WHO ARE BEING CHALLENGED IN THIS CASE
Printed/Typed Name and Title (if company) YES
Attorney (if incorporated) YES
Signature/Address/Telephone Number of Attorney YES

☑ **Correct Number of Petition Forms, Descriptions and Plats** (NOT SEALED OR NOT CURRENT,)

☑ **200 Scale Zoning Map** MAP BUT PROP ~~out~~ OUTLINE DOESNT MATCH PLAN

☑ **Check:** Amount Correct? Signed?

☐ **ZAC Plat Information:**
Location (by Carl) NWIS Old Georgetown Rd. at the Baltimore City / County Line (3600 Georgetown Rd.)
Zoning: ML Acreage: 6.25 Previous Hearing Listed With Decision
Election District 13 Councilmanic District 1 Case # 4890 RX
98-260 SPH X
Check to See if the Subject Site or Request is:
CBCA
Floodplain
Elderly
Historical
Pawn Shop
Helicopter
*If Yes, Print Special Handling Category Here NO
*If No, Print No

OK 9/29/03

160
Item Number Assigned

9/29/03 JL
Date Accepted for Filing

APPEAL

Petition for Special Hearing
3600 Georgetown Road
NW/side Georgetown Road, 100' NE Hall Avenue
13th Election District – 1st Councilmanic District
Petitioners: Tom Mauk, Catherine Scarborough, Anna Wood,
Greater Bloomfield Community Association

Case No.: 04-160-SPH

Petition for Special Hearing (September 29, 2003)

Zoning Description of Property

Notice of Zoning Hearing (November 5, 2003)

Hearing Held Week of September 7, 2004 for several consecutive days

Certification of Publication (November 25, 2003)

Certificate of Posting (November 20, 2003) by Bruce Doak

Entry of Appearance by People's Counsel (October 21, 2003)

Petitioner(s) Sign-In Sheet – None in File

Protestant(s) Sign-In Sheet – None in File

Citizen(s) Sign-In Sheet – None in File

Zoning Advisory Committee Comments

Petitioners' Exhibit
1. Plat to accompany Petition for Special Hearing for Property

Protestants' Exhibits: None in File

Miscellaneous (Not Marked as Exhibit)
1. Plat to accompany Petition for Special Hearing

Zoning Commissioner's Order (DENIED (in reference to 04-160-SPH – September 28, 2004)

Notice of Appeal received on October 12, 2004 from People's Counsel

Notice of Appeal also received on October 13, 2004 from J. Carroll Holzer

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Marvin Weiner, 2000 N. Ocean Blvd., #706, Boca Raton FL 33431
Myron Shevell, I-71 North Avenue East, Elizabeth NJ 07210
David Martin & Rick Chadsey, 1020 Cromwell Bridge Road, Towson 21286
Robert Walker, 141 E. 26th St., Erie PA 16504
Lorna Rudnikas, 1727 Hall Avenue, Baltimore 21227
Tom Mauk, 1702 Hall Avenue, Baltimore 21227
Catherine Scarborough, 3440 Georgetown Road, Baltimore 21227
Anna Woods, 3500 Georgetown Road, Baltimore 21227
J. Carroll Holzer, 508 Fairmount Avenue, Towson 21204

date sent November 16, 2004, klm

Department of Permits and Development Management

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

Baltimore County

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

February 23, 2004

Jennifer Busse
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

Dear Mrs. Busse:

RE: Case Number: 04-160-SPH, 3600 Georgetown Road

The above matter, previously scheduled for February 25, 2004, has been postponed. Once the hearing has been rescheduled you will be notified by mail.

Please be advised that the responsibility of the appropriate posting of the property is with the Petitioners. The petitioner or his/her agent may not personally post or change a zoning sign. One of the currently approved vendors/posters must be contacted to do so. If the property has been posted with the notice of the original hearing date, as quickly as possible after you have been notified, the new hearing date should be affixed to the sign(s).

Very truly yours,

Timothy Kotroco
Director

TK:klm

C: Florence and Marvin Weiner, 2000 N. Ocean Blvd., Ste. 706, Boca Raton FL 33431
Myron Shevell, Georgetown Corp., 1-71 North Avenue East, Elizabeth NJ 07210

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

September 2, 2004

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

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, Maryland 21286

RE: PETITIONS FOR SPECIAL HEARING & SPECIAL EXCEPTION
(3600 Georgetown Road)
13th Election District – 1st Council District
Marvin H. Weiner, et ux, Owners; 3600 Georgetown Corporation, Contract Lessees/Petitioners
Case No. 04-294-SPHX; Tom Mauk, Catherine Scarborough, Anna Wood, and the
Greater Bloomfield Comm.Assoc., Petitioners, Case No. 04-160-SPH

Dear Mr. Barhight & Mr. Holzer:

As you are aware, the hearing in the above-captioned matters was postponed in open hearing on Thursday, June 3, 2004, due to the untimely illness of Mr. Holzer. At that time, it was indicated that multiple hearing dates might be necessary to resolve all relevant issues. Indeed, five (5) hearing dates have been scheduled, namely, September 7th, 8th, 9th, 14th, and 17th. It is my understanding that the first two dates were reserved for Mr. Holzer's witnesses, and the following two dates for Mr. Barhight's witnesses, with the conclusion of the hearing anticipated on the last date. It is my understanding that the fifth hearing date may not be necessary.

As you are also aware, I have had to continue another hearing in which Mr. Holzer is involved and it appears that the only date available for the witnesses in that case is Friday, September 17th. Therefore, this letter is to advise you that it is my intention to conclude the hearing in the above-captioned matters on September 14th. Your cooperation and assistance in this matter is greatly appreciated.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Marvin H. Weiner, 2000 N. Ocean Blvd., #706, Boca Raton, FL 33431
Mr. Myron P. Shevell, 3600 Georgetown Corp., I-71 North Avenue East, Elizabeth, NJ 07210
Messrs. David L. Martin & Rick Chadsey, G. W. Stephens, Jr. & Assoc., Inc.
1020 Cromwell Bridge Road, Towson, MD 21286
Mr. Robert F. Walker, 141 E. 26th Street, Erie, PA 16504
Ms. Lorna D. Rudnikas, President, Greater Bloomfield Comm. Assoc.
1727 Hall Avenue, Baltimore, MD 21227
Mr. Tom Mauk, 1702 Hall Avenue, Baltimore, MD 21227
Ms. Catherine Scarborough, 3440 Georgetown Road, Baltimore, MD 21227
Ms. Anna Woods, 3500 Georgetown Road, Baltimore, MD 21227
People's Counsel; Case File

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

June 10, 2004

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

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, Maryland 21286

RE: PETITIONS FOR SPECIAL HEARING & SPECIAL EXCEPTION
(3600 Georgetown Road)
13th Election District – 1st Council District
Marvin H. Weiner, et ux, Owners; 3600 Georgetown Corporation, Contract Lessees/Petitioners
Case No. 04-294-SPHX; Tom Mauk, Catherine Scarborough, Anna Wood, and the
Greater Bloomfield Comm.Assoc., Petitioners, Case No. 04-160-SPH

Dear Mr. Barhight & Mr. Holzer:

This letter is to confirm that the hearing in the above-captioned matters was postponed in open hearing on Thursday, June 3, 2004, due to the untimely illness of Mr. Holzer. It is my understanding that it may be necessary to schedule this matter for multiple hearing dates. If this is the case, please conference call me in the next 7 to 10 days to discuss scheduling. At this time, it appears that we are looking at dates in mid- to late August, early September.

Thank you for your cooperation and assistance in this matter.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Marvin H. Weiner, 2000 N. Ocean Blvd., #706, Boca Raton, FL 33431
Mr. Myron P. Shevell, 3600 Georgetown Corp., I-71 North Avenue East, Elizabeth, NJ 07210
Messrs. David L. Martin & Rick Chadsey, G. W. Stephens, Jr. & Assoc., Inc.
1020 Cromwell Bridge Road, Towson, MD 21286
Mr. Robert F. Walker, 141 E. 26th Street, Erie, PA 16504
Ms. Lorna D. Rudnikas, President, Greater Bloomfield Comm. Assoc.
1727 Hall Avenue, Baltimore, MD 21227
Mr. Tom Mauk, 1702 Hall Avenue, Baltimore, MD 21227
Ms. Catherine Scarborough, 3440 Georgetown Road, Baltimore, MD 21227
Ms. Anna Woods, 3500 Georgetown Road, Baltimore, MD 21227
People's Counsel; Case File

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

May 5, 2004

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

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, Maryland 21286

RE: PETITIONS FOR SPECIAL HEARING & SPECIAL EXCEPTION
(3600 Georgetown Road)
13th Election District – 1st Council District
Marvin H. Weiner, et ux, Owners; 3600 Georgetown Corporation, Contract Lessees/Petitioners
Case No. 04-294-SPHX; Tom Mauk, Catherine Scarborough, Anna Wood, and the
Greater Bloomfield Comm.Assoc., Petitioners, Case No. 04-160-SPH

Dear Mr. Barhight & Mr. Holzer:

This letter is to confirm that at the request of Counsel for the Petitioners, the hearing in the above-captioned matters was postponed in open hearing this date, and by agreement of the parties, has been rescheduled for Thursday, June 3, 2004 at 1:30 PM in Room 407 of the Circuit Courts Building. In the event the parties are not prepared to proceed on that date, an alternative date of Wednesday, June 9, 2004 was selected. On that date, the hearing will convene at 9:00 AM in Room 106 of the County Office Building.

Should anyone have any further questions in this regard, please do not hesitate to call me.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Marvin H. Weiner, 2000 N. Ocean Blvd., #706, Boca Raton, FL 33431
Mr. Myron P. Shevell, 3600 Georgetown Corp., I-71 North Avenue East, Elizabeth, NJ 07210
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Zoning Commissioner

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401 Bosley Avenue
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Baltimore County

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

March 2, 2003

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

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, Maryland 21286

RE: PETITIONS FOR SPECIAL HEARING & SPECIAL EXCEPTION
(3600 Georgetown Road)
13th Election District – 1st Council District
Marvin H. Weiner, et ux, Owners; 3600 Georgetown Corporation, Contract Lessees/Petitioners
Case No. 04-294-SPHX;
Tom Mauk, Catherine Scarborough, Anna Wood, and the
Greater Bloomfield Comm.Assoc., Petitioners, Case No. 04-160-SPH

Dear Mr. Barhight, Ms. Busse & Mr. Holzer:

This letter is to confirm that the hearing in the above-captioned matters was continued in open hearing on Monday, March 1, 2004, and by agreement of all parties, has been rescheduled for Wednesday, May 5, 2004 at 1:00 PM in Room 407 of the Circuit Courts Building. It is anticipated that the hearing will proceed by proffer and that an amended site plan and written agreement will be submitted. No additional posting or advertising is necessary.

In the meantime, should anyone have any questions on the subject, please do not hesitate to call me.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Marvin H. Weiner, 2000 N. Ocean Blvd., #706, Boca Raton, FL 33431
Mr. Myron P. Shevell, 3600 Georgetown Corp., I-71 North Avenue East, Elizabeth, NJ 07210
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Ms. Catherine Scarborough, 3440 Georgetown Road, Baltimore, MD 21227
Ms. Anna Woods, 3500 Georgetown Road, Baltimore, MD 21227
People's Counsel; Case File

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

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

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

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
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WASHINGTON, D C 20036-5405
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FAX 202 331-0573

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

RECEIVED
JUL - 8 2004
ZONING COMMISSIONER

July 1, 2004

Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
Suite 405, County Courts Building
401 Bosley Avenue
Towson, MD 21204

Re: Hearing Dates – Petitions for Special Hearing & Special Exception (3600 Georgetown Road)
13th Election District – 1st Council District
Case No. 04-294-SPHX
Case No. 04-160-SPH

Dear Mr. Schmidt:

This letter is a follow-up to your correspondence of June 10, 2004, in which you requested that we contact your office in conjunction with opposing counsel in this matter, J. Carroll Holzer, in order to schedule new hearing dates for the above-referenced cases.

These scheduling discussions having taken place, it is my understanding that the following dates and rooms have been scheduled:

September 7, 2004, 9 a.m., Room 407, County Office Building; 111 West Chesapeake Avenue, Towson, MD 21204

September 8, 2004, 9 a.m., Room 407, County Office Building; 111 West Chesapeake Avenue, Towson, MD 21204

September 9, 2004, 9 a.m., Room 106, County Office Building; 111 West Chesapeake Avenue, Towson, MD 21204

September 14, 2004, 9 a.m., Room 407, County Office Building; 111 West Chesapeake Avenue, Towson, MD 21204

September 17, 2004, 9 a.m., Room 407, County Office Building; 111 West Chesapeake Avenue, Towson, MD 21204

We thank you for your assistance in this matter.

Sincerely,

G. Scott Barhight

GSB:swo

cc: Myron P. Shevell, 3600 Georgetown Corp., I-71 North Avenue East, Elizabeth, NJ 07210
Robert F. Walker, 141 E. 26th Street, Erie, PA 16504
David L. Martin & Rick Chadsey, G.W. Stephens, Jr. & Assoc., Inc., 1020 Cromwell Bridge Road, Towson, MD 21286
J. Carroll Holzer, Esq., 508 Fairmount Avenue, Towson, MD 21286
W. Carl Richards, Jr., Room 111, County Office Building, 111 West Chesapeake Avenue, Towson, MD 21204
Lorna D. Rudnikas, President, Greater Bloomfield Comm. Assoc., 1727 Hall Avenue, Baltimore, MD 21227
Tom Mauk, 1702 Hall Avenue, Baltimore, MD 21227
Catherine Scarborough. 3440 Georgetown Road, Baltimore, MD 21227
Anna Woods, 3500 Georgetown Road, Baltimore, MD 21227
People's Counsel

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JENNIFER R. BUSSE
DIRECT NUMBER
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jbusse@wtplaw.com

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FAX 202 331-0573

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

2/16/04
By agreement of Feb 25, Counsel, postpone Feb 26 + 27. leave March 1 hearing date on the schedule for settlement purposes. JK to do

February 12, 2004

DELIVERY BY HAND

Timothy M. Kotroco, Director
Office of Permits & Development Management
Room 111
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: New England Motor Freight – 3600 Georgetown Road
Case 04-160-SPH - Special Hearing Date: 12/10/03
Response to Mr. Holzer's February 10, 2004 Letter
Requesting Hearing Postponement

Dear Mr. Kotroco:

This office received Mr. Holzer's February 10, 2004 letter yesterday, on February 11, 2004. We are willing to agree to Mr. Holzer's request for a postponement of the hearings in this matter currently scheduled for February 25, 26, and 27, 2004. As to his request to postpone the hearing date for March 1, 2004, we respectfully request that this date be held open so that any settlement of this matter which might be arrived at before that date, can be put on the record. In addition, we respectfully request that four complete consecutive days be scheduled as soon as possible, for the hearing in this matter, in the event that settlement efforts are fruitless. Should you grant our request, I will arrange to have the signs posted at the property amended to reflect the postponement of the February 25th, 26th and 27th dates only.

Thank you for your consideration of this matter. We look forward to your decision.

Sincerely,

Jennifer R. Busse

JRB:sll

RECEIVED
FEB 12 2004
04-336

cc: J. Carroll Holzer, Esquire
Mr. Myron P. Shevell
Bruce A. Blakeman, Esquire
Mr. Robert F. (Nob) Walker
Mr. Peter J. Filipowicz
G. Scott Barhight, Esquire

294945

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BALTIMORE, MARYLAND 21202-1626
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FAX 202 331-0573

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

OK to postpone
T.K. 12.4.03

December 1, 2003

TRANSMISSION BY FACSIMILE - (410) 887-5708
AND DELIVERY BY HAND

Timothy M. Kotroco, Director
Office of Permits & Development Management
Room 111
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: New England Motor Freight – 3600 Georgetown Road
Case 04-160-SPH - Special Hearing Date: 12/10/03

Dear Mr. Kotroco:

Whiteford, Taylor & Preston has just recently been engaged to both defend New Motor Motor Freight ("NEMF") with regard to the above-referenced Special Hearing filed by the Greater Bloomfield Association, and file additional Petitions seeking Special Hearing and Special Exception relief on this property. As a result, we are respectfully requesting postponement of the hearing date in Case No. 04-160-SPH, in the interest of judicial economy. Specifically, we expect to be in a position to file NEMF's Petitions (along with a formal request that these Petitions be consolidated with Case 04-160-SPH) later this week, and it is our opinion that the hearings for these Petitions will take 4 complete days. As a result, we respectfully submit that no prejudice will result to either party as result of this request for postponement and consolidation.

Thank you for your consideration of this request. I can be reached at (410) 832-2077.

Sincerely,

Jennifer R. Busse

RECEIVED
DEC 2 2003
03-5946
DEPT OF PERMITS AND
DEVELOPMENT MANAGEMENT

JRB:sll

(All sent via facsimile)
cc: J. Carroll Holzer, Esquire
Mr. Myron P. Shevell
Bruce A. Blakeman, Esquire
G. Scott Barhight, Esquire

294945

HOLZER & LEE

LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER
1907-1989

THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL. JCHOLZER@BCPL.NET

September 7, 2004
#7423

Lawrence E. Schmidt, Esquire
Baltimore County
Zoning Commissioner
Suite 405
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

RE: New England Motor Freight
Zoning Commissioner Case Nos.: 04-160-SPH
04-294-SPHX

Dear Mr. Schmidt:

I would like to advise you that while I have been retained by Lorna Rudnikas and the Greater Bloomfield Community Association, Inc. to represent them in regard to their objection and opposition to the request of New England Motor Freight, my clients have chosen to proceed before the Zoning Commissioner with the President of the Association presenting its position concerning their Petition for Special Hearing, or in regard to the Petition for Special Hearing filed by New England Motor Freight.

In that I am still representing their interests, I would appreciate receiving a copy of your decision and any and all other notifications concerning this matter that emanate from your office and/or all correspondence related to this case from the Office of Whiteford, Taylor & Preston concerning the case before you.

Very truly yours,

J. Carroll Holzer

JCH:mlg

cc: Ms. Lorna Rudnikas
Peter Max Zimmerman, Esquire
G. Scott Barhight, Esquire

HOLZER
& LEE

LAW OFFICES

J. CARROLL HOLZER, PA

J HOWARD HOLZER
1907-1989

THOMAS J. LEE
OF COUNSEL

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(410) 825-6961
FAX (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET

September 2, 2003
 # 7423

HAND DELIVERED
Carl Richards
Department of Permits &
Development Management
Towson, MD 21204

Re: In the Matter of Petition for Special Hearing, 3600 Georgetown Road
Petitioners: Greater Bloomfield Community Assn., et al.

Dear Mr. Richards:

Attached are three (3) original Petitions for Special Hearing, three (3) property descriptions, 12 sets of plats and a zoning map of the subject site. Petitioners do not own the property subject of the Special Hearing, but are adjacent and/or adjoining property owners. The property is owned by 3600 Georgetown Corporation (NEMF), and Petitioners raise at least six issues relating to the use of the property as a trucking facility.

The County has filed with the owner a Uniform Code Enforcement/Correction Notice listing issues involving paving installation, wheel stop, fence slatting and landscape planting schedule that need to be addressed.

For advertising purposes, of the six issues we raised, the following is the language to be used for posting and advertising purposes only:

> *"To determine whether NEMF can lawfully use the S/W portion of the site for an underground SWM facility; and whether NEMF has lost its nonconforming use status."*

I appreciate your assistance in this matter and if you need to call, I can be reached at 410-825-6961

Very truly yours,

J. Carroll Holzer

RECEIVED
SEP 29 2003
Per...

JCH:clh

H:\Letters\Carl Richards-Greater Bloomfield C.A..doc

HOLZER
& LEE

LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER
1907-1989

THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET

February 10, 2004
#7423

Mr. Timothy Kotroco, Director
Permits & Development Management
111 Chesapeake Avenue
Towson, Maryland 21204

RE: New England Motor Freight

Dear Mr. Kotroco:

I am writing this letter on Tuesday, February 10, 2004. As you know, I will be out of the office from Wednesday, February 11, 2004 until Tuesday, February 24, 2004.

On Friday, January 30, 2004, you conveyed to me for the first time the revised Plat and side view drawing of the new Plat proposed by New England Motor Freight.

I overnighted the material to my clients who received it early last week. They have had the opportunity to preliminarily review the Plan and it has produced a number of questions by the Community, which I believe you and I can resolve by a meeting with them in person to explain the site plan design and the methodology for reaching a settlement with New England Motor Freight. Because of your vacation schedule, which began on Monday, February 9, 2004, we will not have the opportunity to discuss the Community's position and to conduct the site visit with the Community that you and I both hoped would be accomplished and which would produce a resolution of this matter.

In addition, because of my efforts to resolve this matter for the Community I have not been in a position to prepare for the hearings currently scheduled for February 25th, 26th, 27th and March 1, 2004.

FEB 11 2004
04-312

It is my personal feeling that this matter can be resolved between the Community and New England Motor Freight, however, additional dialogue needs to take place in order to assure the Community that their goals are being met by this Settlement Proposal. As a result of the lack of time for you and I to discuss this matter with the Community, I would respectfully request a postponement of the days currently assigned for a hearing with the understanding that upon my return we will immediately meet with the Community in an attempt to get this matter resolved without any further delay. I would note that when the case was previously scheduled for a hearing, New England Motor Freight filed their Petition for a Special Hearing and I consented to a postponement of my hearing date in order to consolidate this matter.

I am concerned that if the hearings are not postponed, an adversarial process will take place which will make a resolution of this matter extremely difficult. As you and Scott know, there are parties who would like to see this matter litigated.

In conclusion, I therefore respectfully request that the matter be postponed, that we schedule an immediate meeting on one of the hearing dates with the Community at the site so the Plan can be explained to them and their concerns put at rest. I would also have no objection to the matter being rescheduled promptly in the event a resolution is not reached.

Very truly yours,

J. Carroll Holzer

JCH:mlg

cc: Ms. Lorna Rudnikas
Scott Barhight, Esquire

D.R. 5.5

ML-IM

ML

BM-IM

BL

BL-CR

RO

BR

VIOLETTE AVE

AVENUE

TAYLOR AVE

BENSON

BALTIMORE

BALTIMORE

CITY

COUNTY

SITE

PARCEL 115

PARCEL 121

INTERSTATE 95

BLOOMFIELD

AVENUE

WILSON

BLVD.

OLD

WHITTEMORE

P A R K

WASHINGTON

UPLAND HEIGHTS

ROSALIE

RD.

HILLTOP

AVE.

GARDEN AVE

HILLTOP

WESTOVER

P. R. R.

SMITH

AVENUE

544

S 12,000

S 13,000

S 14,000

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W 16,500

W 15,000

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N 521,000

N 518,000

(SHEET SW-4-D)

(SHEET SW-4-B)

(SHEET SW.-5-C)

G-SW G-SE

2000 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 16, 2000
Bills Nos. 87-00, 88-00, 89-00, 90-00, 91-00, 92-00, 93-00.

Joseph Bartenfelder
Chairman, County Council

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

#160

SCALE	LOCATION	SHEET
1" = 200'±	LANSDOWNE	S.W. 4-C
DATE OF PHOTOGRAPHY JANUARY 1986		

SW 4 C