IN RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
SE/Corner North Point Road and Beachwood Road	*	DEPUTY ZONING COMMISSIONER
15th Election District	*	OF BALTIMORE COUNTY
7th Councilmanic District (4040 Old North Point Road)	*	CASE NO. 05-302-XA
Daniel Schuster, Member, Legal Owner AND	*	
Chris Lessner, President	*	
Atlantic Nationwide Trucking, Inc., Lessee Petitioners	*	

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as Petitions for Special Exception and Variance filed by the legal owner of the subject property Daniel Schuster, Member and Chris Lessner, President, Atlantic Nationwide Trucking, Inc Lessee. The Petitioners are requesting special exception and variance relief for property located at 4040 Old North Point Road in the eastern area of Baltimore County. The special exception request is to permit a Class II Trucking Facility in a ML-IM zone pursuant to Section 253.2.A.12 of the Baltimore County Zoning Regulations (B.C.Z.R.). In addition, variance relief is requested from the B.C.Z.R. as follows:

1. from Section 410A.2, to permit a Class II Trucking Facility a minimum of 25 ft. from a wetland in lieu of the required 200 ft.;

2. from Sections 255.1 and 238.1, to permit an 18 ft. building line to front property line setback in lieu of the required 25 ft.; and

3. from Section 410A.3.B.1, to permit a lot size of 3 +/- acres in lieu of the required 5 acres.

The property was posted with Notice of Hearing on December 24, 2004, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on December 28, 2004 to notify any interested persons of the scheduled hearing date.

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Amended Petition/ Additional Notice

At the beginning of the second day of hearings, the Petitioner requested to amend the Petition to include a variance from Section 410A.2 of the B.C.Z.R. to allow a Class II Trucking Facility within 72 ft. of a dwelling in lieu of the required 300 ft. in addition to the above requests for variance. As the Petitioner was asking for additional relief, which was not included in the posting notice or the certificate of publication, the property was posted with a second Notice of Hearing on February 17, 2005, for 15 days prior to the continued hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a second Notice of Zoning Hearing was published in "The Jeffersonian" newspaper on February 17, 2005 to notify any interested persons of the date and time for the continued hearing.

Applicable Law

Section 502.1 of the B.C.Z.R. - *Special Exceptions*

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 sprit 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]

Section 307 of the B.C.Z.R. – ***Variances***.

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area

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regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to the public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance."

Section 410A Class II Trucking Facility

410A.2 Location. Proximity to residential zone or wetland. No Class II 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 II trucking facility may be located within 25 feet of a dwelling or a residential zone.

410A.3 Site and development standards; plans; operation. The standards of this subsection apply to Class II trucking facilities established on or after the effective date hereof, to conforming Class II trucking facilities established before that date and hereafter expanded or otherwise changed, and, to the extent specified in Section 410A.1, to nonconforming Class II 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 Section 26-132 of the Baltimore County Code, 1988 Edition, as revised.) [Bill No. 218-1980]

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 five acres and its diametrical 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. 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.

3. At least 75% of that part of the site devoted to trucking operations must be devoted to parking of truck tractors and trailers, not including maneuvering area. (See Section 409 for automobile parking requirements.)

4. 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 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).

5. Wheel stops or other means must be provided to protect walls, fencing or screen planting.

6. 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]

7. 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.

8. 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.

9. Upon the effective date of the Baltimore County Landscape Manual, all landscaping and screening shall be in accordance with such manual adopted pursuant to Section 26-283 of the Baltimore County Code, 1988 Edition, as revised. [Bill No. 31-1984]

C. Plans and operation.

1. The plans for a Class II 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 provisions 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 or other competent professional (as described in Section 410.3.C.1). 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 II trucking facility, the Zoning Commissioner may impose (in addition to any other reasonable restriction) reasonable limitations on hours of operation.

410A.4 Actions of county officials to be consistent with certain provisions.

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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 Title 26 of the Baltimore County Code, 1988 Edition, as revised).

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 of 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 on the sites of existing and future Class II 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 II trucking facilities.
5. To promote the on-site provision of important conveniences so that employees or others associated with existing and future Class II 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 II trucking facilities on the environment and achieving an optimum level of compatibility between such facilities and nearby uses, especially dwellings and institutional uses.

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A ZAC comment was received from the Department of Environmental Protection & Resource Management (DEPRM) dated February 3, 2005, a copy of which is attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the variance and special exception requests was Christopher Lessner, President of PetitionerCorporation. Also appearing on behalf of the Petitioners were Henry Leskinon and David Martin of G. W. Stephens & Associates, Inc., the firm that

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prepared the site plan of the property, and Richard Cobert of the Department of Economic Development for Baltimore County, Maryland. Arnold Jablon, Esquire represented the Petitioners. Appearing in opposition to the Petitioners' request were Brenda Lingenfelder, Franklin Greever, Fred Thiess and Guido Guarnaccia. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

Testimony and evidence indicated that the property, which is the subject of this variance request, consists of 3.14 acres of land, more or less, zoned ML-IM. The site is presently vacant with the exception of several concrete pads, which were constructed by the prior occupant who intended to operate a concrete manufacturing and distribution business from the site.

Mr. Martin, the Petitioner's Landscape Architect, testified that the site is in the center of a heavy industrial area, which is located between the Baltimore Beltway (I-695) and North Point Boulevard. The zoning is manufacturing light with an IM overlay. He explained that the IM designation stands for "Industrial Major" and according to Section 259.2 E of the B.C.Z.R., the intent of the district is that it would be applied only to certain areas individually containing 100 acres or more of land zoned for industrial or semi-industrial use (MH, ML, MLR, MR, BR and/or BM), undivided by expressways or freeways. He testified that the County's records regarding the zoning history of the site did not indicate whether this site was part of a larger tract, which would meet this 100-acre criteria. He noted, however, that in applying IM Districts, the County Council intended to have sites such as this viewed as "prime industrial land" where non-auxiliary commercial usage would be discouraged. He also testified that the subject property has been in its present 3-acre configuration since 1968.

He noted that a Class II Trucking Facility is intended primarily to provide a place to park trailers. This is quite different from the Class I facility where the intention is to have freight moved

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by tractor trailers coming in and going out generally on a 24-hour basis. He listed the many industrial uses in the immediate area including other trucking facilities, contractor storage yards and industrial parks. See Petitioners' Exhibit 7, which shows each use in the immediate area. Given its location in an area with both industrial uses and zoning, he opined that the use of the site as a Class II Trucking Facility would not adversely affect the surrounding community and there would be no detriment to the health, safety, or welfare of the area. He reviewed the criteria of Section 502.1 of the B.C.Z.R. and indicated that the use proposed met each criteria.

He also noted that the zoning regulations require a site located on a public industrial service road, on a major collector street, or on an arterial street. He indicated that such a site with proper access and zoning was very rare in the County and that this site met all such requirements. As such, he indicated that the site was unique from a zoning standpoint because it is an in-fill site in the center of mixed heavy industrial uses and it is relatively small in size. He noted the site backs up to the right of way of I-695 and is bounded by Beachwood Road and Old North Point Road (a.k.a. North Point Road, which is different from North Point Boulevard). Beachwood Road is the primary road to access I-695 from the industrial areas east of I-695. As such it handles significant truck traffic.

He also noted that the truck route to be taken by trucks coming to and leaving the site involved turning south onto North Point Road, west on New Battle Grove Road, and then north on North Point Boulevard to access I-695 and the metropolitan area. This truck route was reviewed and approved by the County. He noted that the shape of the lot is not rectangular. Finally, he indicated that it would be a hardship not to utilize the property for this use even with its limitations.

In regard to the request for variances, he noted that the site is approximately 25 ft. from wetlands which lie off site and immediately to the south of the property. He described the wetlands as a man-made drainage ditch. The zoning regulations specify that a Class II facility may not be

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within 200 ft. of wetlands per Section 410.2 of the regulations. He testified that almost all of the parking areas where trailers would be stored, as shown on the plan to accompany, would actually be within 200 ft. from the nearby wetlands and noted that, if the regulations were strictly enforced, none of the trailers could be parked on the site. He also indicated that DEPRM approved a variance for continuing use of 0.36 acres of Forrest Buffer Easement area.

In regard to the request for a variance to allow a principal building within 18 ft. of a property line in lieu of the required 25 ft., he indicated that the Petitioner would like to utilize one of the existing concrete pads on the site as the foundation for the business office. He opined that it would be a hardship not to use the concrete pad as it sits, because to do otherwise would mean the pad would have to be jack hammered out with the associated noise and vibration associated with the removal.

Finally, Mr. Martin opined that the size of the site, at 3-acres, likely occurred because the State condemned part of a larger piece when it constructed I-695 and has been intact since 1968. There is no property adjacent to the site that can be acquired by the Petitioner to increase the size available. However, he noted that the proposed use fits this size well, with 75 trailers maximum parked on the site. Finally, he noted that the "neighborhood" to be considered in this case is not the Wells-McComas area but rather the isolated corridor of heavy industrial zoning and uses between North Point Boulevard and I-695.

On cross-examination, he indicated that he was not sure if the proposed truck route traversed roads that regularly are flooded during periods of heavy rain. He indicated that trailers using the site would normally be 53 ft. long, but he saw the roadways of the area were adequate to handle such trailers. He also admitted that the Plan to Accompany lists the hours of operation as 24 hours a day, seven days a week, which is identical to most Class I trucking facilities.

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Richard Colbert, of the Baltimore County Department of Economic Development, indicated that his office supports the requested zoning relief. He noted that the Petitioner operates a trucking facility in a location on the other side of I-695, which is nonconforming, contains three trucking facilities, and has been the source of continuing complaints and problems from the adjacent residential community. This problem site is known as the "Duie Pyle" property, which is up for sale. He noted that the area councilman wanted his Department's help in relocating these trucking facilities to solve complaints from the Wells-McComas community. He indicated that this site was ideal for this use.

Christopher Lessner, indicated that he has operated the Atlantic Nationwide Trucking Company (ANT), the Petitioner Corporation, since 1995 at the Duie Pyle location and wanted to relocate to avoid the many complaints from people in the area. He recounted how difficult it was to find locations for this kind of business. He thought this site was ideal because his business services local businesses through hauling construction materials, steel and shipping containers. Above all, there were only a few scattered homes in the area. He estimated that he would likely have 20 trucks per day on the property resulting in 25 trips in and 25 trips out of the site each day. He thought that he would have 10 trailers parked on the lot. He indicated that he would like to utilize the existing concrete pad on the property for the foundation for the modular office. He presented extensive photographs of the site and area. See Petitioners' Exhibit Nos. 5 and 9. He also indicated that he personally observed tow trucks parked at one of the homes along the truck route, indicating to him that one residence was being used as a business. Finally, he noted that the distance to the edge of the subject property to the Lingenfelder residence is 72 ft., but the distance to the trucks is considerably further.

On cross-examination, he indicated that trailers using this site would be 45 to 48 ft. long, but saw no problem keeping tractors and trailers on the paved portions of the roads and that neither

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vehicles entering or exiting the site would cross over into a lane of traffic going in the opposite direction. He also indicated that his business is somewhat unique and likely would not grow significantly.

Henry Leskinon, an environmental consultant, indicated that surface runoff from this property and others is collected on the adjacent property in a narrow grassy ditch or swale which is mowed by the adjacent property owner. Technically, this ditch or swale is a wetland, but is man-made, and without any evidence of wetland species. He indicated that if the requests are granted, the site which has no storm water management at all would be paved, graded and storm water facilities added so that the net result will be improved storm water control for the area.

On the second day of hearing, the Petitioners indicated that they now realized that there is a residence across North Point Road from the site. As such, the Petitioner amended its Petition to include a variance from the requirement that Class II trucking facilities be 300 ft. from a dwelling. The additional request was re-advertised and re-posted and set for a third day. Community representatives indicated that anyone could have seen the residence across the road.

On the third day, Fred Thiess, representing the Wells-McComas Citizens Improvement Association, indicated that the subject site is within the Associations boundaries and the Association, after due consideration, voted to oppose the requested relief. He reiterated that the Petitioner should have seen the residence across Old North Point Road and noted that the owner of the residence was in attendance at the hearing. The Petitioner indicated that the residence was 72 ft. from the edge of the subject property (in lieu of the required 300 ft.) and introduced a redline plan to accompany. [The redline plan inadvertently did not show that note 26 was struck].

He presented as Protestants' Exhibit 2, the Wells-McComas Community Conservation Plan that was recently completed by the County. The focus of the plan was the relationship of heavy industrial uses with adjoining residential uses. He indicated that trucking companies were a major

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problem in the community because residential uses and such heavy industrial uses were in constant conflict. He noted that the residential portion of the area started primarily as water front summer cottages but has recently changed to substantial residential properties. He noted that Baltimore County had cited the Duie Pyle site for zoning violations involving dust producing truck traffic. He indicated that since this Petitioner was a present tenant of Duie Pyle, this Petitioner was in violation of the County regulations or at least contributed to the problem.

Mr. Thiess objected to the proposed variance of a 3-acre lot size, indicating that granting this variance would be tailoring the property to the use and not the other way around, wherein a property is found to accommodate the use. He indicated that there was nothing unique about the property from a zoning standpoint and that it has many uses with which its size and location would be compatible. He presented a home video, which showed the area roads flood during rain storms and a truck backing up to avoid flooded sections of the roads. He presented photographs of the two homes (in addition to the Lingenfelder home) along the proposed truck route and of the area roads, which he indicated were not adequate to handle large tractor-trailers. In particular, he felt that trucks coming from this site and going north on North Point Road would swing out into oncoming traffic being unable to make the turn onto the paved portion of the road.

On cross-examination he admitted that this specific site was not within the Wells-McComas Community Plan boundaries. He further admitted that much of the video footage showing flooding in the area is from north of the site on North Point Road which is in the opposite direction of the approved truck route for this site. Finally, he agreed that the approved truck route would not result in trucks turning right onto North Point Road but rather would turn left. To follow another not approved route would be a zoning violation. However, he objected to the community having to police the no right turn onto North Point Road. In summary, he indicated that the residents in the

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area do not want any more trucks on inadequate roads and that it would be a hardship on the community to approve this special exception.

Brenda Lingenfelder, testified that she lives across North Point Road from the subject site with her disabled husband and disabled son as she has for the past 30 years. She indicted that allowing the trucking facility across the road would be a hardship for her and her family as she uses her front yard as her recreation by gardening. She also noted that she used to work for a trucking company, which generated truck traffic 24-hours a day.

She admitted on cross-examination that there are many heavy industrial uses around her home and that each generates truck traffic. She also indicated that several homes in the area have been converted to industrial uses. However, she testified that she intends to stay in her home because her parents live in the area and that she takes care of her elderly father as well as her disabled son and disabled husband. She confirmed the photographs taken of her home and the adjacent industrial uses thereon. See Petitioners' Exhibit 8. She testified that she has problems now with traffic damaging her property such that she placed large rocks along the road and worried that trucks going to and coming from this property would swing onto her property. She also indicated that area roads are often flooded during heavy rainstorms. She noted that there are two residences across from Costa's restaurant which are on the proposed truck route.

Guido Guarnaccia, also with the Association, objected to the proposed use as it will produce traffic, noise and dust. He noted several incidents where trucks went onto people's front lawns because the roads are inadequate.

The protestants presented three prior appellate Court Opinions and a final memorandum in support of their opposition to the requests. The Petitioners reviewed the protestant's submissions and declined to file separate responses other than as argued at the hearing.

Findings of Fact and Conclusions of Law

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On the surface, the relief requested in this case would not seem to be merited by the Petition and Plan to Accompany. The plan does not meet the criteria of Section 410 of the B.C.Z.R. in that the site does not meet the distance to wetlands, distance to a dwelling, or five acre minimum area required by the Trucking Facilities regulations nor the distance of principal building from the manufacturing zoning regulations. The Redline Plan to Accompany requests to be able to park 75 trailers and have 75 trucks on site. This concept is aggressively designed to maximize industrial build out and is to operate 24-hours a day, seven days a week. I will call this design the "GI-ANT operation" henceforth.

This new trucking facility would be across the street from Ms. Lingenfelder's modest home, where she looks after her disabled husband and disabled son and from a longer range cares for her elderly father. Its location directly across the street from her home would undoubtedly cause her to enjoy her home less and cause her to endure more noise, traffic and perhaps even distress as compared to her present condition. The Wells-McComas Civic Improvement Association is fiercely opposed to this new trucking facility being located in the center of their service area. The Wells-McComas area is changing from heavy industrial uses and marginal residential uses to an up-scale residential waterfront community. The last thing the citizens of the area want are more trucks. What's to like about this proposal?

However, reviewing the components of the Petitioners' case shows another side. For example, the evidence about the wetlands is that this amounts to a man-made drainage ditch on an off site property which that adjacent owner treats as a grassy swale. It leads nowhere. It has no wetland species much less endangered species. Once the subject site is managed for storm water, as is proposed, less water will run off the site into the ditch and it will likely dry out and disappear as a wetland. Any adverse effect on the wetland is minuscule. It simply does not matter from an environmental standpoint if the distance to the ditch is 25 ft. or 250 ft.

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Similarly, the setback to the front property line from the principal building is proposed to be 18 ft. in lieu of the required 25 ft. Granting this variance means the Petitioner will not have to jackhammer the concrete pad located near the front, which will alleviate noise, dust and irritation to Ms. Lingenfelder's family. Not removing the concrete pad would save the Petitioner the expense of constructing a base for his modular office.

Much more difficult is the size of the site. The regulations specify five acres minimum and this site has only 3 acres. More importantly, the Plan to Accompany, Petitioner's Redline Plan marked as Exhibit 1 (GI-ANT operation), demonstrates a fully developed site packed to the gunwales with every inch of space devoted to maximizing industrial uses of the property. According to the notes on the Plan, 75 trailers are to be parked on the site while 75 trucks will use the site presumably picking up and dropping off trailers. Operation will be round the clock, seven days a week. I point this out not in criticism of the engineers who designed the Plan. Undoubtedly, they thought the site was far from any residence as Note 26 indicates. From this perspective, why not ask for all you can get?

However, because of the Protestants' case, we now know Ms. Lingenfelder lives 72 ft. away across the street from the site. In addition, Mr. Lessner, who actually will operate the facility, tells us that he may park 10 trailers a day on the site and have perhaps 50 trips a day in and out of the site with tractors delivering and picking up trailers. He also tells us that he has a niche business which is unlikely to grow but must be located in the southeastern part of the County to service customers in the area. I am unaware of his present hours of operation but from his description of the operation of the business it does not seem that six employees are going round the clock to service customers. I will call this much-reduced business the "ANT operation" henceforth.

So a special exception granting space for seven times the number of trailers actually needed is not warranted by the evidence. For this 3-acre site next to a residence, a full bore Class II facility

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would have a detrimental impact on the adjoining residence. On the other hand, Mr. Lessner's ANT operation clearly fits the size of the site and the neighborhood.

This brings up the question of just what is the "neighborhood"? The Protestants contend it is the boundaries of the Wells-McComas Civic Improvement Association. However, I find the evidence overwhelming that this is far too broad a definition. Even the Wells-McComas Community Conservation Plan, which the Protestants introduced into evidence excludes the subject area.

"Neighborhood" is not defined in the BCZR but is defined in *the Baltimore County Code* as follows:

> §32-4-402. Compatibility.
>
> (a) "Neighborhood" defined. In this section, "neighborhood" means the existing buildings and land uses adjacent to and extending from the proposed development to:
>
> (1) A definable boundary such as a primary collector street or arterial street;
> (2) An area with a significant change in character or land use; or
> (3) A major natural feature.

Mr. Martin describes the industrial strip between the Beltway and North Point Boulevard as an island of industrial uses and zoning. The aerial maps entered into evidence fully support this conclusion. See Petitioners' Exhibit 7.

Finally, Ms. Lingenfelder testified that she is essentially alone as a residence in this industrial strip since several other residences in the area have been converted to industrial uses. This neighborhood sits in stark contrast to the waterfront Wells-McComas neighborhood described so ably by the Protestants in which the infamous "Duie Pyle" nonconforming trucking facility operates and greatly annoys adjacent residential neighborhoods.

Considering all the evidence presented, I find that the "neighborhood" impacted by the proposed facility is the industrial strip between the Beltway on the east, North Point Boulevard on

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the west, Old Battle Grove Road and Old Battle Grove Road extended to the Beltway on the north and finally New Battle Grove Road and New Battle Grove Road extended to the Beltway to the south. Ms. Lingenfelder lives on a tiny residential island within a larger island of industry. There are certainly large residential communities west of North Point Boulevard and east of the Beltway as shown by the aerial photograph, Petitioners' Exhibit 7. However, neither the impact of the proposed trucking facility itself nor the proposed truck route affects these communities.

Having defined the neighborhood, I further find that the truck route proposed by the Petitioner and approved by the appropriate County agencies, by which trucks enter and leave the site to gain access to I-695, is most reasonable. Fortunately for the Petitioners, this route avoids the flooded roads demonstrated by the Protestants in their video. While there may be one or perhaps two residences along the route, the ANT operation of the Petitioners will not measurably increase the truck traffic trying to find access to I-695 in light of considerable truck traffic coming across Beachwood Road from the east side of the Beltway .

All other aspects of the Plan meet the criteria proscribed in section 410 of the B.C.Z.R. The site will have to be landscaped and lit according to the direction of the Baltimore County Landscape Architect who now also knows that Ms. Lingenfelder lives across the street. There will be no loudspeaker/outdoor paging system on the site.

Variances

The protestants submitted *Laskey v Bethlehem Steel*, an unreported case before the Court of Special Appeals September 1979 Term, where the Appellate Court interpreted the County's Trucking Facilities law. The Appellees in *Laskey* argued that the regulation prohibiting trucking facilities within 300 ft. of a "residence" meant residential zone instead. The Court disagreed and reversed the Board of Appeals ruling to the contrary. As applied to this case (not looking at the *Laskey* case as a precedent but for its wisdom), I find that we have followed the spirit and letter of

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Laskey in this case. No one is arguing that the regulations apply to residential zones only and not to individual residences. In fact, the Petitioner agrees so completely with this view that he has asked for a variance of the requirement.

In regard to the issue of uniqueness, the Protestants submit *Umerley v Peoples Counsel*, 108 Md App 497 (1996) in support of their case that the variances should be denied. In *Umerley*, the Court of Special Appeals found that Umerley's requested variances, which are similar to those requested by this Petitioner, had to be granted first to then allow a special exception for a Class II trucking facility. The Court found that the Umerley property was not unique in a zoning sense, the variances granted by the Board of Appeals were reversed and consequently the special exception failed.

Very importantly, the Umerley Court found that requests for variances from distances from wetlands, and residences required by the County trucking regulations were, in fact, variances from height and area regulations and not variances from use regulations. This is a significant in this case as well.

However, the principal holding was that the 8 acres of ML-IM zoned land between Philadelphia Road and I-95 used by the Umerley's for their trucking terminal were not unique. The Court cited the seminal case of *Cromwell v Ward*, 102 Md. App. 691 (1995) which set forth the first requirement for granting a zoning variance was that the property be unique. As examples of "uniqueness" the Court referred to *North v St. Mary's County* 99 Md. App. 502 (1994) which specified,

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

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> to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.'
> *Id.* at 514, 638 A.2d 1175.

The Cromwell Court also clarified that the property is,

> "... peculiar, unusual, or unique when compared to other properties in the neighborhood such that the ordinance's height restriction's impact upon the subject property would be different than the restriction's impact upon neighboring properties."

The Petitioners argue that the subject property is unique in that it is a small in-fill parcel (3 acres) located in an a large industrial tract zoned ML-IM, in which every inch of space needs to be utilized for this use. The County Master Plan and Wells-McComas Community Plan each recognize this larger tract as industrial and not residential. The IM overlay district shows the County wants to encourage major industrial uses in this larger tract. The subject property is adjacent to wetlands, bordered by many roads, and backs up to the Beltway, the construction of which may have taken a portion of the subject tract. Trucking facilities must be on approved truck routes, which greatly limit their location even in an industrial zone.

The Protestants argue that the site has many other industrial uses available to it, is essentially flat and almost rectangular in shape. It is not inherently different from other properties in this larger ML-IM zoned tract, and there are no odd characteristics or physical peculiarities which distinguish it in any way from the Umerley property which the Court of Special Appeals found not unique.

In examining this pivotal issue, each variance request must be found to be unique in order to pass the *Cromwell* test. All three variances to the Trucking Facility Regulations must be granted in order to grant the special exception. Again I note that the Umerley Court did not view the dimensional requirements of the Trucking Facility regulations as elements of use but rather treated these regulations as traditional dimensional variances. This means that they can be varied if all the appropriate regulations are met.

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In regard to the request for a variance for the size of the lot, I note as background that this Commission has found literally hundreds of undersized lots unique in a zoning sense when zoning regulations were imposed after the lot was recorded in the land records. This occurs regularly in the eastern side of the County. For example, the nearby Bowleys Quarters subdivision of 50 ft. wide residential lots was recorded in the Land Records in 1920's. In 1955 or later, zoning regulations were imposed on these lots which often require 50 ft. side yard setbacks. Owners would like to build on these lots. Needless to say, these lots could not meet the later imposed regulations. We have consistently found these lots to be unique in a zoning sense even though they are rectangular in shape, flat and without environmental constraints. The reasoning for this is described in *Cromwell,* that the regulations impact these lots disproportionately from lots created after the regulations were imposed.

In regard to the subject request, I find that this 3-acre lot was recorded in the land records in 1968, as Mr. Martin testified, and that the Trucking Facility Regulations were imposed on this lot in 1976. Again, as an aside, this year was a particularly excellent year for creative zoning regulations in the County. The lot was 3 acres in size. The new (1976) regulations required 5 acres. Clearly, the newly imposed regulations impact this property disproportionately compared to similar lots created after the Trucking Regulations were imposed. This makes this property unique in regard to the undersized lot request.

In regard to the request to vary the permitted distance of Section 410A.2 for a trucking facility within 200 ft. of a wetland, the wetland is off-site. While this may raise some question as to whether the peculiarity must be located on site, I note that the examples of uniqueness given in *Cromwell* lists "practical restrictions imposed by abutting properties". Clearly, the Court foresaw off-site conditions, which directly affect the subject site as evidence of uniqueness. I so find here. We have to go 200 ft. beyond the perimeter of the subject property to see if there are wetlands.

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These regulations require us to look off-site. It happens in this particular case that this property is next to wetlands. Wetlands are the kind of environmental constraint that *Cromwell* recognizes can make properties unique. I see no difference in effect on the zoning issues raised whether the wetlands are on or off-site, given the 200 ft. setback requirement of the regulations. So I find this characteristic of the subject property unique.

By far the most difficult issue, which arises from the zoning regulations, is that the trucking facility must be 300 ft. from a residence. Again, this is an off-site restriction imposed by the regulations on the subject property. We must look off-site 300 ft. around the perimeter of the site. Again, *Cromwell* gives examples of uniqueness in "practical restrictions imposed by abutting properties". Here we find that the off-site restriction is not an environmental constraint but rather a residence.

To determine whether or not having a residence within 300 ft. of the subject property creates uniqueness from Section 410A.2 viewpoint, one must ask whether the trucking facility regulations impact this property in a way disproportionately from other ML parcels in the neighborhood which could also be home to a trucking facility?. As defined above, the "neighborhood" is the industrially zoned area between the Beltway and North Point Boulevard. Another way to ask the question is to inquire whether there are many residences in this industrial tract that affect and limit the other parcels in the tract so that many lots are similarly excluded from being used for trucking facilities? As above, my finding is that Ms. Lingenfelder's home is one of the last residences in the area. Said another way, her home imposes zoning limitations on parcels within 300 ft. of her home such as the subject site. From all evidence, her home is a residential island in a sea of industrial uses. Consequently, the 300 ft. zoning restriction imposes heavier burdens on this property than virtually all the other industrial parcels in the neighborhood.

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One of the reasons perhaps that one could find the above analysis difficult is that we so often look for some physical characteristic of the site to signal the property is unique. However, one must recall that physical characteristics of property, as listed in *Cromwell,* are only a few examples of the larger principal, that the regulations impact the subject property in an odd way. In fact, the statute that the *Cromwell* Court was interpreting gives this broader picture. Section 307 of the B.C.Z.R. specifies that "special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request." Using these words, perhaps it is easier to see that Ms. Lingenfelder's home creates this odd, peculiar, special circumstance for this property which the other parcels in the industrial tract do not shoulder. Again, we not only can look off-site, but also must look off-site.

Finally, I find that the concrete pads which exist on the property and which the Petitioner would like to erect his office, are the kind of unusual structures given by *Cromwell* as examples of uniqueness.

Regarding hardship or practical difficulty we look to *McLean v Soley*, 270 MD 208, (1973), where the Court of Appeals confirmed the variance granted by the County Board of Appeals and approved the test in regard to practical difficulty as follows:

> "1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
>
> 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
>
> 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

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Date 3/24/05
By

Considering the evidence in this case, I find that granting the requested trucking facility variances meets these tests as the lot size, the wetlands setback, and residence setback would all but eliminate the use of the property for this use. The property line setback requirement of 25 ft. would mean jack hammering the existing concrete pads to remove or reduce them.

I further find that granting these variances that no increase in residential density beyond that otherwise allowable by the Zoning Regulations will result from these variances. Given the restrictions below, I find these variances can be granted in strict harmony with the spirit and intent of the regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. In concluding this, my reference is the neighborhood of the industrial area between North Point Boulevard and the Beltway.

Special Exception

Having granted the Trucking Facility variances, I can now address the special exception. I do not grant the requested special exception for the design shown by the Redline Plan to accompany, which I have designated the GI-ANT operation. Considering the residence across the street, I find this design would adversely impact the community. I say this even though I found the neighborhood to be the industrial strip between the Beltway and North Point Boulevard. Ms. Lingenfelder is a member of that neighborhood and deserves consideration. I realize that her home is likely nonconforming and that the hope of the zoning regulations is that nonconforming uses will eventually disappear. From what I am told the "Duie Pyle" parcel is also non conforming. Nonconforming uses may continue, however, so that special exceptions can and should take impacts on these uses into account.

On the other hand, I find that the ANT operation will not adversely impact the neighborhood, including Ms. Lingenfelder, and that this design meets each criteria given in Section 502.1 of the B.C.Z.R. In granting the special exception for the ANT operation, I want to recognize

PLEASE PREPARED FOR FILING
Date 3/24/05
By

that limiting the number of trailers on site to exactly 10, as testified by Mr. Lessner, seems overly restrictive. He may have some peaks that will not significantly affect the area but nevertheless are needed for his business. Therefore, I will grant twice the number of trailers on site to be 20. Having found that figure, the number of trucks using the facility is limited to 20. See Notes 7 and 8 on the Plan to Accompany. Finally, the hours of operation should be limited as well, considering the nearby residence. Again, I am not aware of the hours of operation of the present ANT operation but from the description of the business and having 6 employees, I believe that operating from 6 AM to 9 PM, Monday through Saturday will strike the proper balance between Ms. Lingenfelder's need for rest and the Petitioner's need to be responsive to his customers. No outside paging system should be allowed nor should inoperable vehicles be stored on the premises. No body work should be allowed on the site. Each of the above conditions will make the ANT operation compatible with the community.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering the testimony and evidence offered by the Petitioners, I find that the Petitioners' request for special exception should be granted.

THEREFORE, IT IS ORDERED, this 24 day of March, 2005, by the Deputy Zoning Commissioner, that the Variance relief requested from the B.C.Z.R. as follows:

1. from Section 410A.2, to permit a Class II Trucking Facility 25 ft. from a wetland in lieu of the required 200 ft.; and
2. from Sections 410A.2, to permit a Class II Trucking Facility 72 feet from a residence in lieu of the required 300 feet; and
3. from Section 410A.3.B.1, to permit a lot size of 3 +/- acres in lieu of the required 5 acres.
4. from Sections 255.1 and 238.1, to permit an 18 ft. building line to front property line setback in lieu of the required 25 ft.;

be and are hereby GRANTED; and

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Date 3/24/05
By

IT IS FURTHER ORDERED, the Petitioners' request for special exception to permit a Class II Trucking Facility in a ML-IM zone pursuant to Section 253.2.A.12 of the Baltimore County Zoning Regulations (B.C.Z.R.), be and are hereby GRANTED: subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioners may apply for their permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition;

2. The Petitioners shall not allow any tractors/trailers operating in conjunction with his business to operate on any roadways in the area other than on the approved truck route shown on Petitioners' Exhibit 1; and

3. The Petitioners shall allow no more that 20 trailers and 20 tractors to be parked at one time on the property; and

4. That the Petitioners' hours of operation shall be from 6 AM to 9 PM, Monday through Saturday; and

5. The Petitioners' shall comply with the ZAC comments made by DEPRM dated February 3, 2005, a copy of which is attached hereto and made a part hereof;

6. The Petitioners' shall submit a fencing, landscape and lighting plan to the Baltimore County Landscape Architect for review and approval such that the Lingenfelder residence shall be properly screened and protected from the Petitioners' business activities; and

7. No outside paging system shall be utilized on the premises

8. No inoperable vehicles should be stored on and no body work repairs shall be made on the premises.

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

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

ORDER RECEIVED FOR FILING
Date 3/24/05
By

IN THE MATTER OF THE APPLICATION OF DANIEL SCHUSTER AND CHRIS LESSNER -LEGAL OWNERS /PETITIONERS FOR SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SE/COR OF NORTH POINT AND BEACHWOOD ROADS (4040 OLD NORTH POINT ROAD)	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
	*	Case No. 05-302-XA
15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	*	

* * * * * * * * *

ORDER OF DISMISSAL OF PETITIONS

This case comes to the Board on appeal filed by Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel, from the Deputy Zoning Commissioner's March 24, 2005 decision in which the subject Petitions for Special Exception and Variance were granted with restrictions, and a second appeal filed by Fred Theiss for Wells McComas Citizens Improvement Association.

WHEREAS, the Board is in receipt of a letter of withdrawal of Petitions filed October 26, 2005 by Arnold Jablon, Esquire, Counsel for Appellees /Petitioners (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said Counsel for Appellees /Petitioners requests that the Petitions for Special Exception and Variance filed in the above-referenced matter be withdrawn and dismissed without prejudice as of October 26, 2005,

IT IS THEREFORE this 15th day of November 2005, by the County Board of Appeals of Baltimore County

ORDERED that said Petitions filed in Case No. 05-302-XA be and are hereby **WITHDRAWN AND DISMISSED without prejudice,** rendering moot the appeals filed in this matter, and that the Deputy Zoning Commissioner's Order of March 24, 2005, including any and all relief granted to Petitioners therein, is rendered **null and void.**

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Margaret Brassil

Margaret Brassil, Ph.D.

Mike Mohler

Mike Mohler

Edward W. Crizer

Edward W. Crizer, Jr.

VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

25 October 2005

RECEIVED
OCT 26 2005
BALTIMORE COUNTY
BOARD OF APPEALS

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

Re: Case No. 05-302XA
Property: 4040 Old North Point Rd
15th ED; 7th CD

Dear Ms. Bianco:

Please be advised that I represent the Appellees in this matter. On their behalf, please accept this letter of my clients' intent to withdraw their Petitions for special exception and variances filed in the instant matter.

The Appellees have elected not to purchase or build or operate a trucking facility upon the property in question. Therefore, the appeal, which is now not scheduled, should be dismissed as moot. This is without prejudice to the right of any owners or contract purchasers of the property to seek approvals in the future.

Thank you for your consideration.

Sincerely,

Arnold Jablon

c: Peter M. Zimmerman, Esq., People's Counsel
Chris Lessner
Fred Thiess, President, Wells-McComas Citizens Imp Assoc
Christopher & Brenda Lingenfelder
Hon. John V. Murphy, Deputy Zoning Commissioner
Timothy M. Kotroco, Esq., Director, PDM

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 15, 2005

Arnold Jablon, Esquire
VENABLE, BAETJER & HOWARD, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: *In the Matter of: Daniel Schuster and Chris Lessner*
- Petitioners /Case No. 05-302-XA/Order of Dismissal of Petitions

Dear Mr. Jablon:

Enclosed please find a copy of the Order of Dismissal of Petitions issued this date by the County Board of Appeals of Baltimore County in the above-captioned matter in which the subject Petitions have been withdrawn and dismissed.

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

c: Office of People's Counsel
Fred Thiess, President
Wells McComas Citizens Imp. Assn.
Mr. & Mrs. Brenda Lingenfelder
Guido Guarnaccia
Franklin Greever
Daniel Schuster /Heist Property LLC
Christopher Lessner /Atlantic Nationwide Trucking, Inc.
Henry Leskinon
David Martin /GW Stephens & Assoc., Inc.
Robert Shriver
William J. Wiseman III /Zoning Commissioner
Richard Cobert /Economic Development
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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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
William J. Wiseman III, Zoning Commissioner

March 25, 2005

Arnold Jablon, Esquire
Venable, Baetjer & Howard, LLP
210 Allegheny Avenue
Towson, Maryland 21204

Re: Petitions for Special Exception & Variance
Case No. 05-302-XA
Property: 4040 Old North Point Road

Dear Mr. Jablon:

Enclosed please find the decision rendered in the above-captioned case.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

John V. Murphy

John V. Murphy
Deputy Zoning Commissioner

JVM:raj
Enclosure

c: Christopher Lessner, 8230 Bletzer Road, Baltimore, MD 21222
David Martin, G. W. Stephens & Associates, Inc., 1020 Cromwell Bridge Road
Towson, MD 21286
Henry Leskinon, 1527 York Road, Lutherville, MD 21093
Brenda Lingenfelder, 4047 North Point Road, Baltimore, MD 21222
Franklin Greever, 3920 Glenhurst Road, Baltimore, MD 21222
Fred Thiess, 4102 Beachwood Road, Baltimore, MD 21222
Guido Guarnaccia, 3912 Glenhurst Road, Baltimore, MD 21222
Richard Cobert, Department of Economic Development, Baltimore County, MD

Printed on Recycled Paper

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 4040 Old North Point Road

which is presently zoned ML-IM

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

SEE ATTACHED

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

To be determined at hearing

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Atlantic Nationwide Trucking, Inc.
Name - Type or Print By: Chris Lessner, President

Signature

8230 Bletzer Road 410-477-9733
Address Telephone No.

Baltimore, Maryland 21222
City State Zip Code

Legal Owner(s):

Heist Property, LLC
Name - Type or Print By: Daniel Schuster, Member

Signature

Name - Type or Print

Signature

52 New Plant Court 410-363-3784
Address Telephone No.

Owings Mills, Maryland 21117
City State Zip Code

Attorney For Petitioner:

Arnold Jablon
Name - Type or Print

Signature

Venable LLP
Company

210 Allegheny Avenue 410-494-6200
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

Representative to be Contacted:

Arnold Jablon
Name

210 Allegheny Avenue 410-494-6200
Address Telephone No.

Towson, MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING ½ DAY

UNAVAILABLE FOR HEARING

Reviewed By VL Date 12/17/04

DROP OFF PET.

Case No. 05-302-XA

ORDER RECEIVED FOR FILING
Date 12/13/04
By

PETITION FOR VARIANCE
ATTACHED SHEET

4040 Old North Point Road

1. Variance to permit a Class II Trucking Facility a minimum distance of 25 feet from a wetland in lieu of the required 200 feet, pursuant to Section 410A.2 of the Baltimore County Zoning Regulations ("BCZR").

2. Variance to permit an 18-foot front building line to front property line setback in lieu of the required 25 feet, pursuant to BCZR Sections 255.1 and 238.1.

3. Variance to permit a lot size of 3± acres in lieu of the required 5 acres, pursuant to BCZR Section 410A.3.B.1.

Petition for Special Exception

to the Zoning Commissioner of Baltimore Count

for the property located at 4040 Old North Point Road

which is presently zoned ML-IM

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

Atlantic Nationwide Trucking, Inc.
Name - Type or Print By: Chris Lessner, President

Signature

8230 Bletzer Road 410-477-9733
Address Telephone No.

Baltimore, Maryland 21222
City State Zip Code

Legal Owner(s):

Heist Property, LLC
Name - Type or Print By: Daniel Schuster, Member

Signature

Name - Type or Print

Signature

52 New Plant Court 410-363-3784
Address Telephone No.

Owings Mills, Maryland 21117
City State Zip Code

Attorney For Petitioner:

Arnold Jablon
Name - Type or Print

Signature

Venable, LLP
Company

210 Allegheny Avenue 410-494-6200
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

Representative to be Contacted:

Arnold Jablon
Name

210 Allegheny Avenue 410 494-6200
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1/2 DAY
UNAVAILABLE FOR HEARING —

Reviewed By VL Date 12/17/04

DROP OFF PET.

Case No. 05 302 XA

ORDER RECEIVED FOR FILING
3/24/05

Rev. 09/15/98

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
November 19, 2004

Description to accompany a Special Exception & Variance Request
4040 North Point Road
Baltimore County, Maryland
Election District 15, Councilmanic District 7
Tax Map 104 – Parcel 206

Beginning at a point located at the centerline intersections of Old North Point Road, 40' wide, and Beachwood Road, 30' wide at the said intersection, thence South 71 degrees 38 minutes 01 seconds E, 74.71 feet to a Point of Beginning at the northwest corner of the subject property, thence the following property courses:

Along a curve having a radius of 377.72 feet, length of 98.95 feet, chord bearing of N 44 degrees 12 minutes 16 seconds E and a chord length of 98.95 feet, thence N 54 degrees 05 minutes 45 seconds E, 86.17 feet, thence N 61 degrees 20 minutes 00 seconds E, 172.62 feet, thence S 38 degrees 33 minutes 41 seconds E, 193.99 feet, thence S 39 degrees 04 minutes 06 seconds E, 103.36 feet, thence S 59 degrees 22 minutes 10 seconds W, 568.29 feet, thence S 59 degrees 22 minutes 06 seconds W, 20.59 feet to a point on the east side right of way of Old North Point Road having a curve radius of 736.20 feet, length of 262.10 feet, chord bearing of N 0 degrees, 29 minutes, 11 seconds E, and chord length of 250.72 feet, thence N 22 degrees, 48 minutes, 59 seconds E, 72.68 feet, back to the point of beginning.

Containing 3.14 acres (136,778.4) 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.

STATE OF MARYLAND
DAVID LLOYD MARTIN
No. 7172
LANDSCAPE ARCHITECT

410-825-8120 • FAX 410-583-0288
www.gwstephens.com

VENABLE, BAETJER AND HOWARD, LLP
Including Professional Corporations

05081

OUR REF. NUMBER	YOUR INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	NET CHECK AMOUNT
	12/16/04 - $705.00					
	48664-209627 - Atlantic Nationwide/Old North Point Road					
	Baltimore County, MD					
	Filing Fee					

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 441217

DATE 12/17/01 ACCOUNT 001-006-6150

AMOUNT $ 705.00

RECEIVED FROM: Lendlease Tony Lentell

FOR: Atlantic National Trustee
4040 Woodcock Pkwy Ste
Dewal Spook & Vernon

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

O-5-302-15

PAID RECEIPT

BUSINESS	ACTUAL	TIME	MCD
12/17/2001	12/17/2001	09:47:54	1

TRANS DESC: WALKIN TRANS
RECEIPT # 241271 12/17/2001 CLERK
REF: 5 323 UNIBS VERIFICATION
CS NO. 441217

Recpt Tot $705.00
$705.00 CK $0.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #05-302-XA
4040 Old North Point Road
S/east corner North Point Road and Beachwood Road
15th Election District - 7th Councilmanic District
Legal Owner(s): Daniel Schuster, Member Daniel Schuster
Contract Purchaser: Chris Lessner, President Atlantic Nationwide Trucking, Inc.

Special Exception: to permit a Class II Trucking Facility in a ML-IM zone.

Variance: to permit a Class II Trucking Facility a minimum distance of 25 feet from a wetland in lieu of the required 200 feet. To permit an 18 foot building line to front property line setback in lieu of the required 25 feet, and to permit a lot size of 3 +/- acres in lieu of the required 5 acres.

Variance: to permit 72 feet in lieu of 300 feet from dwelling to property line.

Hearing: Friday, March 4, 2005 at 10:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson 21204.

WILLIAM WISEMAN
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.

2/206 Feb. 17 39518

CERTIFICATE OF PUBLICATION

2/17/, 2005

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 2/17/, 2005.

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

S. Wilkinson

LEGAL ADVERTISING

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: #05-302-XA
S/east corner North Point Road and Beachwood Road
15th Election District — 7th Councilmanic District
Legal Owner(s): Daniel Schuster, Member Dahlel Schuster
Contract Purchaser: Chris Lessner, President Atlantic Nationwide Trucking, Inc.

Special Exception to permit a Class II Trucking Facility in a ML-IM zone.

Variance to permit a Class II Trucking Facility a minimum distance of 25 feet from a wetland in lieu of the required 200 feet. To permit an 18 foot building line to front property line setback in lieu of the required 25 feet, and to permit a lot size of 3 +/- acres in lieu of the required 5 acres.

Hearing: Wednesday, January 12, 2005 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue.

WILLIAM WISEMAN
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 12/791 Dec. 28 34114

CERTIFICATE OF PUBLICATION

12/30/, 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 12/28/, 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.: 05-302-XA

Petitioner/Developer: CHRIS LESSNER
PRES. ATLANTIC NATIONWIDE TRUCKING

Date of Hearing/Closing: 1/12/05

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: 4040 OLD NORTH POINT RD

The sign(s) were posted on 12/24/04
(Month, Day, Year)

Sincerely,

Robert Black 12/28/04
(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)

CERTIFICATE OF POSTING

RE: Case No.: 05-302-XA

Petitioner/Developer: CHRIS LESSNER

PRES. ATLANTIC NATIONWIDE TRUCKING

Date of Hearing/Closing: MARCH 4, 2005

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: 4040 OLD NORTH POINT RD

The sign(s) were posted on 2/17/05
(Month, Day, Year)

Sincerely,

Robert Black 2/18/05
(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)

APPEAL SIGN POSTING REQUEST

CASE NO. 05-302-XA

DANIEL SCHUSTER & CHRIS LESSNER

4040 OLD NORTH POINT ROAD

15TH ELECTION DISTRICT APPEALED: 4/18/2005

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

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

APPEAL SIGN POSTING REQUEST

CASE NO. 05-302-XA

DANIEL SCHUSTER & CHRIS LESSNER

4040 OLD NORTH POINT ROAD

15TH ELECTION DISTRICT APPEALED: 4/18/2005

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, MD 21204

Attention: Kathleen Bianco
Administrator

CASE NO.: 5-302-XA

DANIEL SCHUSTER & CHRIS LESSNER – LEGAL OWNERS

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

4040 NORTH POINT ROAD

The sign was posted on 6/27, 2005

By: Gary Freund
(Signature of Sign Poster)

GARY FREUND
(Print Name)

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 05-302-XA

Petitioner: Atlantic Nationwide Trucking, Inc.

Address or Location: 4040 Old North Point Road

PLEASE FORWARD ADVERTISING BILL TO:

Name: Amy Dontell

Address: 210 Allegheny Avenue
Towson, MD. 21204

Telephone Number: (410) 494-6244

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 21, 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: 05-302-XA
4040 Old North Point Road
S/east corner North Point Road and Beachwood Road
15th Election District—7th Councilmanic District
Legal Owners: Daniel Schuster, Member Daniel Schuster
Contract Purchaser: Chris Lessner, President Atlantic Nationwide Trucking, Inc.

Special Exception to permit a Class II Trucking Facility in a ML-IM zone.
Variance to permit a Class II Trucking Facility a minimum distance of 25 feet from a wetland in lieu of the required 200 feet. To permit an 18 foot building line to front property line setback in lieu of the required 25 feet, and to permit a lot size of 3 +/- acres in lieu of the required 5 acres.

Hearing: Wednesday, January 12, 2005 at 2:00 p.m. in Room 407 County Courts Building
401 Bosley Avenue.

Timothy Kotroco

Timothy Kotroco
Director

TK: clb
C: Arnold Jablon, Venable, LLP. 210 Allegheny Avenue Towson 21204
Atlantic Nationwide Trucking, Inc. 8230 Bletzer Road Baltimore 21222
Heist Property, LLC Daniel Schuster 52 New Plant Court Owings Mills 21117

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

TO: PATUXENT PUBLISHING COMPANY
Thursday, February 17, 2005 Issue - Jeffersonian

Please forward billing to:
Amy Dontell 410-494-6244
210 Allegheny Avenue
Towson, Maryland 21204

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 05-302-XA
4040 Old North Point Road
S/east corner North Point Road and Beachwood Road
15th Election District—7th Councilmanic District
Legal Owners: Daniel Schuster, Member Daniel Schuster
Contract Purchaser: Chris Lessner, President Atlantic Nationwide Trucking, Inc.

Special Exception to permit a Class II Trucking Facility in a ML-IM zone.
Variance to permit a Class II Trucking Facility a minimum distance of 25 feet from a wetland in lieu of the required 200 feet. To permit an 18 foot building line to front property line setback in lieu of the required 25 feet, and to permit a lot size of 3 +/- acres in lieu of the required 5 acres.

Hearing: Friday, March 4, 2005 at 10:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson 21204

WILLIAM WISEMAN
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.

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 2, 2005

NEW 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: 05-302-XA
4040 Old North Point Road
S/east corner North Point Road and Beachwood Road
15th Election District—7th Councilmanic District
Legal Owners: Daniel Schuster, Member Daniel Schuster
Contract Purchaser: Chris Lessner, President Atlantic Nationwide Trucking, Inc.

Special Exception to permit a Class II Trucking Facility in a ML-IM zone. Variance to permit a Class II Trucking Facility a minimum distance of 25 feet from a wetland in lieu of the required 200 feet. To permit an 18 foot building line to front property line setback in lieu of the required 25 feet, and to permit a lot size of 3 +/- acres in lieu of the required 5 acres. Variance to permit 72 feet in lieu of 300 feet from dwelling to property line.

Hearing: Friday, March 4, 2005 at 10:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson 21204

Timothy Kotroco
Director

TK: klm

C: Arnold Jablon, Venable, LLP. 210 Allegheny Avenue Towson 21204
Atlantic Nationwide Trucking, Inc. 8230 Bletzer Road Baltimore 21222
Heist Property, LLC Daniel Schuster 52 New Plant Court Owings Mills 21117

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, FEBRUARY 17, 2005.**
(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.

TO: PATUXENT PUBLISHING COMPANY
Thursday, February 17, 2005 Issue - Jeffersonian

Please forward billing to:
Amy Dontell 410-494-6244
210 Allegheny Avenue
Towson, Maryland 21204

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: 05-302-XA
4040 Old North Point Road
S/east corner North Point Road and Beachwood Road
15th Election District—7th Councilmanic District
Legal Owners: Daniel Schuster, Member Daniel Schuster
Contract Purchaser: Chris Lessner, President Atlantic Nationwide Trucking, Inc.

Special Exception to permit a Class II Trucking Facility in a ML-IM zone.
Variance to permit a Class II Trucking Facility a minimum distance of 25 feet from a wetland in lieu of the required 200 feet. To permit an 18 foot building line to front property line setback in lieu of the required 25 feet, and to permit a lot size of 3 +/- acres in lieu of the required 5 acres.
Variance to permit 72 feet in lieu of 300 feet from dwelling to property line.

Hearing: Friday, March 4, 2005 at 10:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson 21204

WILLIAM WISEMAN
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.

County Board of Appeals of Baltimore County

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

PPd. reg. of Petitioner & Appellants Att. only on request

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

October 6, 2005

NOTICE OF ASSIGNMENT

CASE #: 05-302-XA **IN THE MATTER OF: DANIEL SCHUSTER & CHRIS LESSNER**
4040 Old North Point Road 15th E; 7th C

3/24/05 –D. Z.C.'s Decision in which requested variances and special exception were granted with restrictions.

ASSIGNED FOR: **TUESDAY, OCTOBER 25, 2005 at 10:00 a.m.**

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

Please refer to the Board's Rules of Practice & Procedure, Appendix 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 /Protestant : Fred Thiess, President
Wells McComas Citizens Imp. Assn.
Mr. & Mrs. Brenda Lingenfelder

Guido Guarnaccia
Franklin Greever

Counsel for Petitioners : Arnold Jablon, Esquire
Petitioners : Daniel Schuster /Heist Property LLC
Christopher Lessner /Atlantic
Nationwide Trucking, Inc.

Henry Leskinon
David Martin /GW Stephens & Assoc., Inc.

Robert Shriver

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Richard Cobert /Economic Development
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

County Board of Appeals of Baltimore County

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

W/D by Petitioners 10/26/05 - Order of Dismissal of Petitions to be issued.

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

October 20, 2005

NOTICE OF POSTPONEMENT

CASE #: 05-302-XA **IN THE MATTER OF: DANIEL SCHUSTER & CHRIS LESSNER**
4040 Old North Point Road 15th E; 7th C

3/24/05 –D. Z.C.'s Decision in which requested variances and special exception were granted with restrictions.

which had been assigned for hearing on 10/25/05 has been **POSTPONED/CONTINUED** at the request of Counsel for Petitioners and at the request of Appellant; to be reset only upon request.

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 /Protestant : Fred Thiess, President
Wells McComas Citizens Imp. Assn.
Mr. & Mrs. Brenda Lingenfelder

Guido Guarnaccia
Franklin Greever

Counsel for Petitioners : Arnold Jablon, Esquire
Petitioners : Daniel Schuster /Heist Property LLC
Christopher Lessner /Atlantic
Nationwide Trucking, Inc.

Henry Leskinon
David Martin /GW Stephens & Assoc., Inc.

Robert Shriver

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Richard Cobert /Economic Development
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: January 11, 2005

RECEIVED

JAN 13 2005

ZONING COMMISSIONER

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

SUBJECT: Zoning Advisory Petition(s): **Case(s) 5-302**

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 Cunningham in the Office of Planning at 410-887-3480.

Prepared By: Mark A Cunningham

Division Chief: Lynn Lochner

MAC/LL

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

RECEIVED

FEB - 3 2005

ZONING COMMISSIONER

TO: Tim Kotroco
PDM

FROM: John D. Oltman, Jr JDO
DEPRM

DATE: February 3, 2005

SUBJECT: Zoning Item # 05-302
Address 40 Old North Point Road (Atlantic Nationwide Trucking)

Zoning Advisory Committee Meeting of December 20, 2004.

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

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

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

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

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

Additional Comments:

Please note that the reduced Forest Buffer Easement shown on the plan attached to the original Zoning Petition will have to be executed using tree and shrub species that are considered "native" species. Please contact the Environmental Impact Review section of this Department for additional information.

Reviewer: Michael Kulis Date: February 3, 2005

PLUMBER RECEIVED FOR FILING
Date 3/24/05
By

Fire Department

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

Baltimore County

James T. Smith, Jr., County Executive
John J. Hohman, Chief

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

December 23, 2004

ATTENTION: Zoning Review planners

Distribution Meeting of: December 20, 2004

Item No.: 252, 291-296, 298-300, 302-304

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

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*

State Highway Administration
Driven to Excel

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

Maryland Department of Transportation

Date: 12.21.04

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

RE: Baltimore County
Item No. 302 JLL

Dear. Ms. Matthews:

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,

S. D. Foster

Steven D. Foster, Chief
Engineering Access Permits Division

2/2

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: January 21, 2005

RECEIVED

JAN 26 2005

ZONING COMMISSIONER

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

SUBJECT: Zoning Advisory Committee Meeting
For December 27, 2004
Item Nos. 291, 293, 294, 296, 297, 299,
300, 301, 302, and 304

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

RWB:CEN:jrb

cc: File

ZAC-12-27-2004-NO COMMENT ITEMS-291-304-01212005

RE:	PETITION FOR SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
	4040 Old North Point Road; SE corner North Point Road & Beachwood Road	*	ZONING COMMISSIONER
	15th Election & 7th Councilmanic Districts	*	FOR
	Legal Owner(s): Heist Property LLC, Daniel Schuster, Member	*	BALTIMORE COUNTY
	Contract Purchaser(s): Atlantic Nationwide Trucking, Inc by Chris Lessner, President Petitioner(s)	*	05-302-XA

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

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 22nd day of December, 2004, a copy of the foregoing Entry of Appearance was mailed to Arnold Jablon, Esquire,Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

DEC 22 2004

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

April 18, 2005

RECE
18
Per.

Timothy Kotroco, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Hand-delivered

Re: PETITION FOR SPECIAL EXCEPTION AND VARIANCE
SE/Corner North Point Road and Beachwood Road
(4040 North Point Road)
15th Election District; 7th Council District
Daniel Schuster, Member, Legal Owner and Chris Lessner, President,
Atlantic National Trucking, Inc, Lessee - Petitioners
Case No.: 05-302-XA

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 March 24, 2005, and the Order therein approving the special exception and variances, 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.

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Arnold Jablon, Esquire,Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204
Christopher & Brenda Lingenfelder, 4047 North Point Road, Baltimore, MD 21222
Fred Theiss, 4102 Beachwood Road, Baltimore, MD 21222
Guido Gaurnaccia, 3912 Glenhurst Road, Baltimore, MD 21222
Kathleen Bianco, Administrator of County Board of Appeals

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

May 16, 2005

Arnold Jablon, Esquire
Venable, Baetjer & Howard, LLP
210 Allegheny Avenue
Towson, MD 21204

Dear Mr. Jablon:

RE: Case: 05-302-XA, 4040 Old North Point Road

Please be advised that an appeal of the above-referenced case was filed in this office on April 18, 2005 by People's Counsel of Baltimore County, Maryland and an additional appeal was made on April 21, 2005 by the Wells McComas Citizens Improvement Association. 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 J Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Christopher Lessner, 8320 Bletzer Rd., Baltimore 21222
David Martin, G. W. Stephens & Assoc., 1020 Cromwell Bridge Rd., Towson 21286
Henry Leskinon, 1527 York Road, Lutherville 21093
Brenda Lingenfelder, 4047 North Point Road, Baltimore 21222
Franklin Greever, 3920 Glenhurst Road, Baltimore 21222
Fred Theiss, 4102 Beachwood Road, Baltimore 21222
Guido Guarnaccia, 3912 Glenhurst Road, Baltimore 21222
Richard Cobert, Dept. of Economic Development, Baltimore County, MD

Printed on Recycled Paper

APPEAL

Petition for Special Exception & Variance
4040 Old North Point Road
SE/corner of North Point and Beachwood Roads
15th Election District – 7th Councilmanic District
Legal Owners: Daniel Schuster & Chris Lessner

Case No.: 05-302-XA

RECEIVED
MAY 16 2005
BALTIMORE COUNTY
BOARD OF APPEALS

✓ Petition for Special Exception and Variance (December 17, 2004)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (February 2, 2005)

✓ Certification of Publication (February 17, 2005 – The Jeffersonian Issue)

✓ Certificate of Posting (February 17, 2005) by SSG Robert Black

✓ Entry of Appearance by People's Counsel (December 22,2004)

✓ Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet - None

✓ Citizen(s) Sign-In Sheet – 3 Sheets

✓ Zoning Advisory Committee Comments

Please notify Mr. Schuster of Hearing Date

Petitioners' Exhibit
- ✓1. Redlined Plan to accompany Special Exception and Variance Request
- 2. Not located in file
- ✓3. Aerial Photograph
- ✓4. Map
- ✓5. Photographs (a-l)
- ✓6. Baltimore County Zoning Map
- ✓7. Topographical Map

Protestants' Exhibits:
- ✓1. Letter dated January 11, 2005 to Zoning Commissioner from Wells McComas
- ✓2. Wells McComas Community Conservation Plan
- ✓3. Violation Notice dated January 11, 2005 to Zoning Commissioner from Wells McComas
- ✓4. Photograph
- ✓5. Videotape
- ✓6. Photographs (A – I)
- ✓7. Photographs (A – F)
- ✓8. Court of Special Appeals Document (September 26, 1979)
- ✓9. McLean v. Soley pg. 208 & 209 attached with Photos (A – H)
- ✓10. Umerley v. People's Counsel

Miscellaneous (Not Marked as Exhibit)
- ✓1. Case No. 04-250-SPH (Nonconforming uses)
- ✓2. Page 1514 of Dictionary
- ✓3. Letter dated March 5, 2005 from Wells McComas Improvement Association
- ✓4. Letter dated January 4, 2005 to William Wiseman, Zoning Commissioner

✓ Deputy Zoning Commissioner's Order (GRANTED – March 24, 2005)

✓ Notice of Appeal received on April 18, 2005 from Office of People's Counsel

✓ 2nd Notice of Appeal received on April 21, 2005 from Fred Theiss for Wells McComas Citizens Improvement Association

c: * People's Counsel of Baltimore County, MS #2010
Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Arnold Jablon, 210 Allegheny Ave., Towson 21204
Christopher Lessner, ~~8320 Bletzer Rd., Baltimore 21222~~
David Martin, 1020 Cromwell Bridge Rd., Towson 21286
Henry Leskinon, 1527 York Road, Lutherville 21093
Brenda Lingenfelder, 4047 North Point Rd., Baltimore 21222
Franklin Greever, 3920 Glenhurst Rd., Baltimore 21222
* Fred Theiss, 4102 Beachwood Rd., Baltimore 21222
Guido Guarnaccia, 3912 Glenhurst Rd., Baltimore 21222
Richard Cobert, Dept. of Economic Development

Robert F Shuver
2718 Plainfield Road
B, M 21222

Notification of Hearing

date sent May 16, 2005, klm

Case No. 05-302-XA

In the Matter of: Daniel Schuster & Chris Lessner
4040 Old North Point Road 15th E; 7th C

SE – To permit a Class II Trucking Facility in an M.L.-I.M. zone per § 253.2.A.12 of the BCZR; VAR – to be located a min of 25' from a wetland ilo req'd 200'; to permit an 18' bldg line to front property line setback ilo req'd 25'; and to permit a lot size of 3 +/- acres ilo req'd 5 acres.

3/24/05 –D. Z.C.'s Decision in which requested variances and special exception were granted with restrictions.

10/06/05 - Notice of Assignment sent to following; assigned for hearing on Tuesday, October 25, 2005 at 10 a.m.:

Fred Thiess, President
Wells McComas Citizens Imp. Assn.
Mr. & Mrs. Brenda Lingenfelder
Guido Guarnaccia
Franklin Greever
Arnold Jablon, Esquire
Daniel Schuster /Heist Property LLC
Christopher Lessner /Atlantic Nationwide Trucking, Inc.
Henry Leskinon
David Martin /GW Stephens & Assoc., Inc.
Robert Shriver
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Richard Cobert /Economic Development
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

10/14/05 – Letter from Fred Thiess, President, Wells McComas Citizens Improvement Assn., Appellants in this matter, requesting postponement; possible withdrawal of Petitions.

10/17/05 – Letter from A. Jablon, Esquire, requesting continuance of this matter; if no appeals are taken from approval on second property (appeal period runs out on 10/22), the Petitions in this case will be withdrawn.

10/20/05 – Notice of Postponement sent to parties; case pulled from schedule; to be reset only upon request to do so. Copy via FAX to Mr. Jablon; t/c to Mr. Thiess this date confirming same.

10/26/05 – Letter of withdrawal of Petitions filed by Arnold Jablon, Esquire, on behalf of Appellees /Petitioners. Order of Dismissal of Petitions to be issued.

BALTIMORE COUNTY
MARYLAND

RECEIVED
JAN 10 2005
ZONING COMMISSIONER

jm 1/12

MEMORANDUM

TO: William J. Wiseman, III, Zoning Commissioner

FROM: David Iannucci, Executive Director, DED

RE: American Nationwide Trucking Zoning Special Exception & Variance requests

DATE: January 4, 2005

Legal representatives from Venable, Baetjer & Howard, LLP have contacted our department concerning the zoning requests for this project. Atlantic Nationwide Trucking seeks to relocate from their current site on 8230 Bletzer Road in Dundalk to the site listed below:

CASE NUMBER: 05-302-XA Location: S/east corner North Point Road and Beachwood Road 15th Election District Legal Owner: Daniel Schuster, Member Contract Purchaser: Chris Lessner, President Atlantic Nationwide Trucking, Inc.

Our department endorses Atlantic Nationwide's request to move to this site. The location at North Point and Beachwood Roads is in the North Point Enterprise Zone in an industrial and commercial area. Existing businesses near the site include construction, paving, manufacturing, industrial and truck leasing facilities. Atlantic Nationwide employs 37 workers and anticipates capital investment and upgrades to exceed $1,000,000.

COUNTY BOARD OF APPEALS

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

FACSIMILE TRANSMITTAL SHEET

TO AND FAX NUMBER:

ARNOLD JABLON, ESQUIRE

FAX : 410-821-0147

FROM:

KATHLEEN BIANCO
FAX : 410-887-3182

TELEPHONE : 410-887-3180

DATE:
OCTOBER 20, 2005

TOTAL NO. OF PAGES INCLUDING COVER:
TWO (2)

Re: POSTPONEMENT Schuster-Lessner /Case No. 05-302-XA

URGENT FOR REVIEW FOR YOUR RECORDS PLEASE REPLY PLEASE RECYCLE

PERSONAL AND CONFIDENTIAL

FYI -- ATTACHED IS A COPY OF THE NOTICE OF POSTPONEMENT IN THE SUBJECT MATTER, WHICH HAS BEEN PULLED FROM TUESDAY'S SCHEDULE.

kathi

SENDING REPORT

Oct. 20 2005 01:42PM

YOUR LOGO : BOARDOFAPPEALS
YOUR FAX NO. : 4108873182

NO.	OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
01	94108210147	Oct. 20 01:41PM	01'07	SND	02	OK

TO TURN OFF REPORT, PRESS 'MENU' #04.
THEN SELECT OFF BY USING '+' OR '-'.

FOR FAX ADVANTAGE ASSISTANCE, PLEASE CALL 1-800-HELP-FAX (435-7329).

ARL HEARING DATE ALREADY SET JAN 12

VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

(410) 494-6244

aldontell@venable.com

December 16, 2004

HAND DELIVERED
Mr. W. Carl Richards
Department of Permits and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Re: Petitions for Special Exception & Variance
Petitioner: Atlantic Nationwide Trucking, Inc.
Location: 4040 Old North Point Road

Dear Mr. Richards:

I am drop filing the enclosed Petitions for Special Exception and Petitions for Variance for the above-referenced property. This property is not in violation of any zoning laws. With this letter, I have enclosed the following documents:

1. Petition for Special Exception (3)
2. Petition for Variance (3)
3. Zoning Description (3)
4. Site Plan (12)
5. Newspaper advertising form (1)
6. Check in the amount of $705.00

If you have any questions or concerns regarding this filing, please give me a call.

Very truly yours,

Amy L. Dontell

Amy L. Dontell
Paralegal

PS JL REVIEWED ORIGINAL

ALD
Enclosures
cc: Arnold Jablon, Esquire
TO1DOCS1/#198829 v1

VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

25 October 2005

RECEIVED
OCT 26 2005
BALTIMORE COUNTY
BOARD OF APPEALS

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

Re: Case No. 05-302XA
Property: 4040 Old North Point Rd
15th ED; 7th CD

Dear Ms. Bianco:

Please be advised that I represent the Appellees in this matter. On their behalf, please accept this letter of my clients' intent to withdraw their Petitions for special exception and variances filed in the instant matter.

The Appellees have elected not to purchase or build or operate a trucking facility upon the property in question. Therefore, the appeal, which is now not scheduled, should be dismissed as moot. This is without prejudice to the right of any owners or contract purchasers of the property to seek approvals in the future.

Thank you for your consideration.

Sincerely,

Arnold Jablon

c: Peter M. Zimmerman, Esq., People's Counsel
Chris Lessner
Fred Thiess, President, Wells-McComas Citizens Imp Assoc
Christopher & Brenda Lingenfelder
Hon. John V. Murphy, Deputy Zoning Commissioner
Timothy M. Kotroco, Esq., Director, PDM

VENABLE LLP

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Facsimile 410-821-0147

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ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

14 October 2005

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

Re: Daniel Schuster & Chris Lessner
Case No. 05-302 XA
D/H: 10/25/05

Dear Ms. Bianco:

As noted in the record, I am the attorney for the petitioner in this matter. After approvals by the Deputy Zoning Commissioner, appeals were taken to the Board.

The purpose of this letter is to request a continuance, for the following reason. It is anticipated that on the 23rd of October, my client will notify the Board that he will withdraw the petitions for special exception and variances that are the subject of these appeals. The reason is that my client has received approval for a special exception on a second property and the appeal period runs out on the 22nd of October. It is anticipated that no appeals will be taken from this second approval, thereby permitting my client to withdraw the instant petitions.

Thank you for your consideration.

Sincerely,

Arnold Jablon

RECEIVED
OCT 17 2005
BALTIMORE COUNTY
BOARD OF APPEALS

c: Peter M. Zimmerman, Esq.
Fred Thiess, President
Wells-McComas Citizens Imp Assoc
Brenda Lingenfelder

WELLS MCCOMAS CITIZENS IMPROVEMENT ASSOCIATION
P.O. BOX 9026
BALTIMORE, MARYLAND 21222

April 19, 2005

Timothy Kotroco, Director
Department of Permits and Development Management
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Special Exception and Variances
SE/Corner North Point Road and Beachwood Road
(4040 North Point Road)
15th Election District: 7th Council District
Case No.: 05-302-XA

Dear Mr. Kotroco:

Please enter an appeal to the County Board of Appeals from the Findings of Fact and Conclusions of Law Dated March 24, 2005, and the Order therein approving the special exception and variances, by the Baltimore County Zoning Commissioner in the above-entitled case. The appeal is being taken on behalf of the members of the Wells McComas Citizens Improvement Association which was proposed and approved at the regularly scheduled meeting held on Monday, April 18, 2005. The appeal is also being taken on behalf of Mr. & Mrs. Brenda Lingenfelder, 4047 North Point Road, Baltimore, Md. 21222.

Sincerely,

Fred Thiess
President

cc: Arnold Jablon, Esquire, Venable, 210 Allegheny Avenue, Towson, Md. 21204
Christopher & Brenda Lingenfelder, 4047 North Point Road, Baltimore, Md. 21222
Guido Gaurnaccia, 3912 Glenhurst Road, Baltimore, Md. 21222
Kathleen Bianco, Administrator of County Board of Appeals

RECEIVED
Per.....

WELLS MCCOMAS CITIZENS IMPROVEMENT ASSOCIATION
P.O. BOX 9026
BALTIMORE, MARYLAND 21222

March 5, 2005

John V. Murphy
Deputy Zoning Commissioner for Baltimore County
Room 405
401 Bosley Avenue
Towson, Maryland 21204

RE: Case #05-302 XA 4040 Old North Point Road

Dear Mr. Murphy:

I would like to start by thanking you for your patience during our recent hearing. This will be an attempt to summarize our position concerning the hearing. Be assured that this effort will not be as professional or as formal as the other side. I am a man of modest education with grammar as my weakest subject. All The punctuation and proper use of verbs, etc. may be questionable but I assure you that you will understand what I say. Forgive me for this inconvenience.

I would like to start by pointing out to you that it would be utterly ridiculous to permit this trucking facility to occupy the site. As pointed out during the hearing there are many obstacles. There is a major road flooding problem in that entire area. To congest it with what will amount to an additional 50 + trips by trucks in excess of 60' on a road that is less than 21' wide with no curbs or sidewalks and directly across from a dwelling would be an unreasonable burden to place on the residents and businesses in the general area. The site can be used for many other business types that would be a matter of right. That many trucks leaving that site onto a 20' road and only allowed one way out is very restrictive. There are many other properties that permit coming and going without that restriction. They stated that it is difficult to find sites suitable for Type II Trucking. At no time did they offer information from realtors in the area, or any other area. There is nothing unique about this site when it comes to them. I believe that the test is why would their operation be better off somewhere else as opposed to this site. I submit that the restrictions that potentially exist are many. The Admitted route that trucks would be required to travel is a restriction that does not apply in most other areas. In addition, the route is prone to road flooding and at times the size of the road is reduced to avoid standing water in the roadway. That means that trucks and all other traffic will be restricted to one lane for traffic coming in both directions. Any emergencies that would close that roadway would force them to travel in the other direction that according to them would be a violation of the zoning laws. I of course do not agree that the site plan precludes them from traveling in any direction they desire. The site plane denotes arrows but there are no comments supporting the "one direction claim".

We offered questions to the site plan and they were never addressed. The fact that an "expert" prepared the site plan and neglected to spot a residence that is within 60 feet of their property line is amazing. The residence (as per pictures submitted) is clearly a home. There are no signs of commercial use. The name of the owners and occupants appears on the site plan. Mr. & Mrs. Lingenfelder are in their house as a matter of right. They did not require changing county regulations to occupy their site. We asked about a variance noted on the site plan concerning a Forest Buffer Easement and they never responded. Our community has been denied an

opportunity to comment on that variance. The site plan had to be amended during the hearing on March 4, 2005 to include the 300' requirement [illegible] was ignored. The plan describes a tr[illegible] wash structure that is anything but

that. It is at least 5' deep and holds water. It was represented as a structure that existed but they were not certain how old it was. This structure was never used and is less than 2 years old. This site plan was actually prepared for the developer, Schuster Concrete, who constructed the structure. This all lends itself to credibility. The developer also installed the pad that is expected to be used to construct a building. This pad does not appear to be poured on a footer. They never responded to that question. The site plan required a fair amount of alteration and left many questions not addressed. We noted that the size of the road that the Expert Witness described was inaccurate but they neglected to address that. We noted that the measurements shown on the original site plan were incorrect they failed to address that. The Expert again claimed that there was no other residence on the truck route and we established that there are at least 2. For our community to be taken that lightly that they did such a bad job is terrible. There are obvious safety concerns since we have deaths in the area involving trucks such as those being proposed. The dust and emissions that will be generated are more that any community should be forced to deal with. I discussions with the county agencies they agreed that we should prevail. There are actually 66 homes within ½ mile in either direction along the Old North Point Rd. area. The other side mainly focused on the Conservation Plan we introduced. They noted that Old North Point Road lays just out side the area of the plan. I mentioned that a resolution was being introduced to expand and refine the Conservation Plan. The reason for our introducing the plan was to demonstrate the intention to expand the residential areas of our community and reduce truck traffic. There was also mention that this site had never had any violations. That is easily explained because this is actually a new address. The property had been divided.

As mentioned earlier there are no sidewalks or gutters. We demonstrated on the film that we showed how water travels along that road. Just imagine creating additional pervious surface in the area. Our children are forced to travel the road. There is at least 8 school bus trips along that road every day. Kids stand on the road waiting to board school buses. Kids ride bikes and skateboards on that road everyday. We live in a remote community where if you do not drive then you travel along the road. There is a rec center within a ¼ mile of the site that is utilized by youth in our community.

I would also like to address the "Jobs" issue. Our community is responsible for more jobs than any other community in our immediate area. We recently agreed with requests from clients of both attorneys from the other side to permit new business to locate in our area. One will be a development of Flex Warehouses and the other will be a 125,000 sq. ft distribution center. These two businesses will be located in an area of the community that precludes traffic from any residential areas. They also include covenants protecting the immediate community.

In closing let me summarize: the property is undersized, they are located to close to wetlands, they are located to close to the property line, they are located to close to a dwelling, the closest neighbor objects, the road is to small to accommodate trucks entering and exiting the site, there has been many errors and misrepresentations from the other side, the area floods and causes major traffic problems, the area does not have gutters or sidewalks, the site will not provide the 75% parking requirement, there is no opportunity to expand, the county requires 5 acres for type II trucking, there is a buffer variance that we had not been provided an opportunity to dispute, this site can be used for many other things as a matter of right, according to the plan presented there is only one way in and out of the site and the road is frequently blocked off or narrowed, school buses travel the road daily, children travel the road daily, the noise and dust generated will be substantial, they would like to black top the entire site in an area that currently floods, and finally we cannot ignore all of these things as a matter of convenience for the proposed tenant.

Sincerely,

Fred Thiess, President

WELLS MCCOMAS CITIZENS IMPROVEMENT ASSOCIATION
4102 BEACHWOOD ROAD
BALTIMORE, MARYLAND 21222

October 12, 2005

Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204
RE: Case # 05-302-XA

Dear Ms. Bianco:

I am requesting a postponement in the above-mentioned case. I received your notice on October 12, 2005, which does not allow 15 days. I am certain that Mr. Jablon has been in touch with you and will not object to any postponements. It has been our understanding that the request granted for this case are being withdrawn. Because of the assurance that they were to be withdrawn, we are not prepared for a hearing.

Thank you for your assistance. Any questions please contact me at 410-488-1111. I await your comments.

Sincerely

Fred Thiess
President

RECEIVED
OCT 14 2005
BALTIMORE COUNTY
BOARD OF APPEALS

DANIEL G. SCHUSTER
RECEIVED

NOV 30 2004

MAIN OFFICE

Zoning Office
Department of Permits and Development Management
111 West Chesapeake Ave
Towson, Maryland 21204

Zoning Office:

Please be advised that we, the undersigned, have authorized Arnold Jablon, Esq., Venable, LLP, 210 Allegheny Ave., Towson, Maryland 21204, to be our attorney-in-fact and attorney-at-law and on our behalf file the attached petitions for zoning relief. We hereby understand that the relief requested is for property we own and we hereby and herewith acknowledge our express permission for said petitions to be filed on our behalf. The petition(s) filed are for property located at 4040 Old North Point Rd, property we own.

Further, the undersigned is the contract lessee of said property, and hereby and herewith authorize(s) Mr. Jablon to be my/our attorney-in-fact and attorney-at-law and represent me/us in this matter.

Heist Property LLC (owner)

By: _____ 11/30/04 (Date)
Daniel G. Schuster, Member

52 New Plant Court, Owings Mills, Md 21117
address

Atlantic Nationwide Trucking, Inc. (Contract Lessee)

By: Christopher J. Lessner 11/29/04 (Date)
Chris Lessner, President

8230 Bletzer Road, Baltimore, Maryland 21222
address

COUNTY COUNCIL OF BALTIMORE COUNTY

FAX TRANSMISSION

TO: Carl Richards Zoning Review Office **DATE:** 1-6-04

FROM: The Honorable John Olszewski, Sr.
North Point Government Center
7701 Wise Avenue Suite 262
Baltimore, Maryland 21222

NO. of PAGES (including cover page)

SUBJECT: Case # 05-302-XA
Property located at North Point Rd. 21222
Trucking Company asking for a Variance to operate. Hearing next week.
Our office has had several inquiries about this issue. Can you supply our office with some details.
Thank-you for your help.
Doris Kuhar
for Councilman John Olszewski

Zoned ML-IM

Contact Person: Doris Kuhar, Legislative Aide
Phone Number: 410-887-7174
Fax Number: 410-285-7838

Check file + see me - Carl

PLEASE PRINT CLEARLY

CASE NAME 4040 Old North Pt Rd
CASE NUMBER 05-302-XA
DATE 3/4/05

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
DAVID MARTIN	1020 CROMWELL BRIDGE RD	TOWSON, MD 21286	dmartin@gwstephens.com
Christopher LESSNER	8230 BLETZER RD.	BALTO. MD. 21222	ANTS8230@AOL.COM
Henry Leskinen	1527 York Rd	Lutherville, MD 21093	espiemail@aol.com
Richard Colbert	Essex Dorch BC		

PLEASE PRINT CLEARLY

CASE NAME 4040 Old North Pt Rd.
CASE NUMBER 05-302-XA
DATE ~~PM~~ 3/4/05

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Fred Thiess	4102 Beechwood Rd	Balto., MD 21222	
Guido-Guarnaccia	3912 GLENHURST. Rd.	21222	
	Wells Mc Comas Comm Association		

PLEASE PRINT CLEARLY

CASE NAME 05-302-XA
CASE NUMBER 4040 Old North Pt Rd
DATE 3/4/05

CITIZEN'S SIGN-IN SHEET

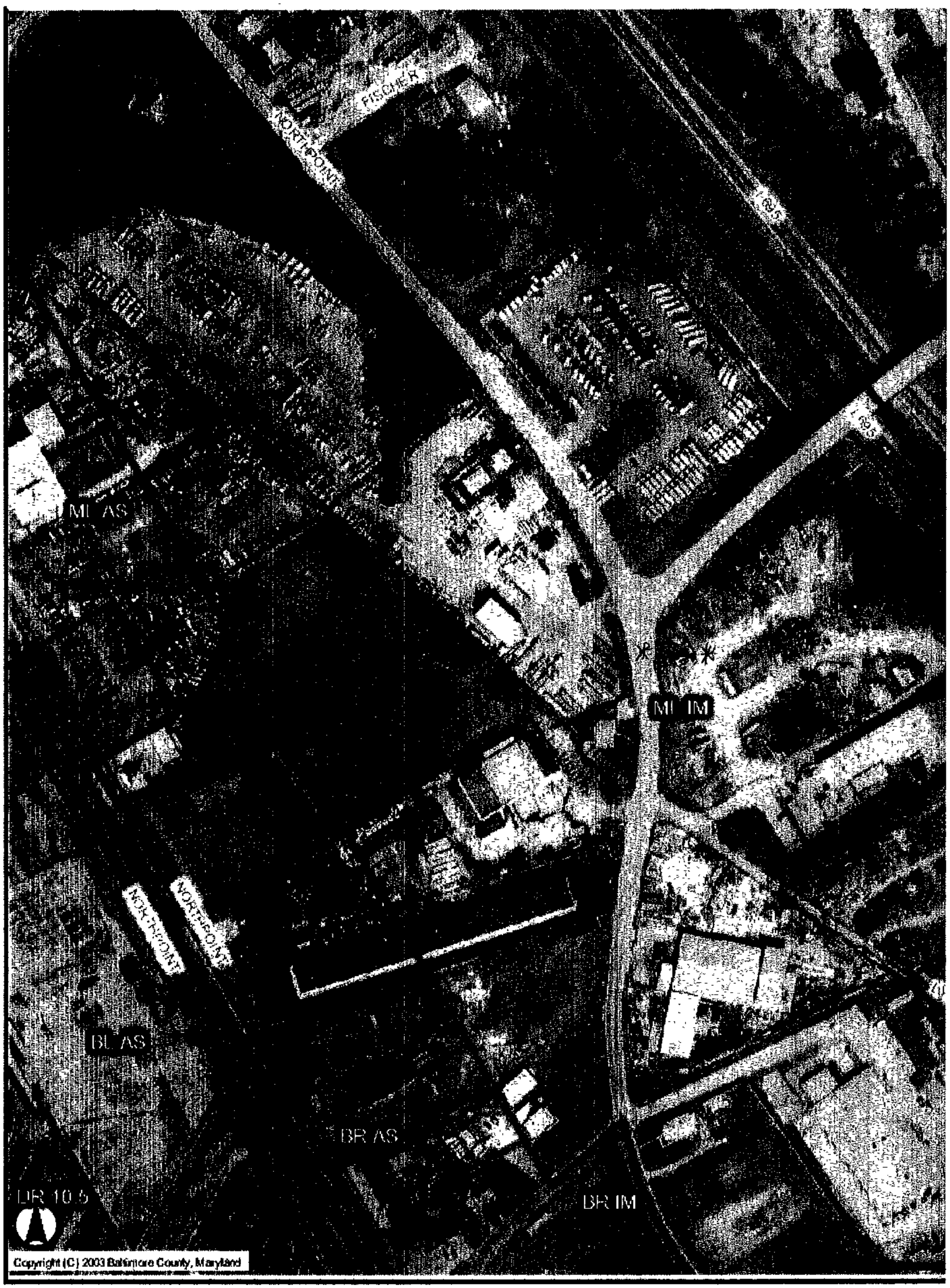
NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Michael Miller ✓	441 E. Pennsylvania Ave.	Towson, MD 21286	
Rona Schreum ✓	521 E. Joppa Rd.	Towson MD 21286	tdaley1206@yahoo.com
David Tiskiewicz	521 E. Joppa Rd. #200	Towson, MD. 21286	"
John Etzel	2 Southerly CT 402	Towson, MD 21286	—

PLEASE PRINT CLEARLY

CASE NAME 4040 Old North Pt Rd.
CASE NUMBER 05-302-XA
DATE March 3 2005
3rd Day

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Brenda Lingenfelder	4047 North Pt Rd	Balto Md 21222-3621	
Franklin Shoover	3920 Glenhurst Rd	Baltimore Md 21222	
Fred Theese	4102 Beachwood Rd	21222	
GUIDO-GUARNACCIA	3912-GLENHURST Rd.	Baltimore 21222	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such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

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 residential use 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.

BCZR 500.14 deals with zoning petitions within the Critical Area. It states:

Within the Chesapeake Bay Critical Area.

No decision may be rendered by the Zoning Commissioner on any petition or special exception, variance or special hearing unless the Zoning Commissioner has received from the director of the department of environmental protection and resource management, or his designated representative, written recommendations describing how the proposed requested would:

A. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off the surrounding lands;

B. Conserve fish, wildlife, and plant habitats; and

C. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also adjust the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts.

Nonconforming uses are generally not looked upon with favor by governmental entities. In general, the policy of the law is to eliminate nonconforming uses over time. *Prince George's County v. E. L. Gardner*, 293 Md. 259, 267-68 (1991).

In the opinion of the Board,, §§ 104.1 and 104.2 of the BCZR are quite clear with respect to the requirements for nonconforming uses. Section 104.1 states that "a nonconforming use (as defined in § 101) may continue except as otherwise specifically provided in these regulations...." [Emphasis supplied.] Section 104.2 allows for a structure that has been damaged or destroyed by other casualty to be restored within 2 years after such destruction or damage. Neither § 104.1 nor § 104.2 provides for any extension or enlargement of the 2-year period.

y fr. *negrito* + *-ic*] : of, relating to, or resembling Negroes
egritos
i·to \nə'grē(,)tō\ *n, pl* **negritos** *or* **negritoes** [Sp, dim. *egro*] **1** *usu cap* : a member of a people (as the Anda-ese) belonging to a group of negroid peoples of small re found in Oceania and the southeastern part of Asia — distinguished from *Negrillo* **2** : PARADISE TREE 1a
it·oid \-ri,tȯid\ *adj, often cap* [*negrito* + *-oid*] : of, re-g to, or having the characteristics of Negritos
ro \'nē(,)grō, *esp South* 'ni(,)- *or* -,grə\ *n* -ES [Sp or Pg, c, Negro, fr. L *nigr-, niger* black] **1** *usu cap* **a** : a member e black race of mankind as opposed by classification ac-ing to physical features (as skin color, hair form, or body eletal characteristics) but without regard to language or re to members of the Caucasian, Mongoloid, or other of mankind; *esp* : a member of a people belonging to the an branch of the black race and marked typically by dark entation and woolly hair and everted lips and broad flat s and prognathism **b** : a person of Negro ancestry; *esp* : a on whose pigmentation is dark like that of typical African roes and who often (as with mulattoes) has other physical acteristics of typical African Negroes **2** : a black to dark ish yellowish brown — called also *Saint Benoit*; see RAL BROWN
o \"\ *adj, usu cap* : of, relating to, or having the charac-tics of Negroes
-african \¦=(,)=¦===\ *n, cap N&A* **1** *in former classifica-* : a family of African languages **2** : the indigenous uages of Africa south of the Sahara
ant *n* : a common widely distributed black ant (*Formica i*)
bug *n, sometimes cap N* : any of numerous minute convex bugs that constitute the genus *Corimelaena* and that feed lant juices and impart a foul taste to fruits (as raspberries) which they crawl; *esp* : a common pest (*C. pulicaria*) of U.S. east of the Rocky mountains that is sometimes very uctive to celery, corn, and wheat
cloth *or* **negro cotton** *n, often cap N* : a strong coarse formerly used in making clothes for Negro slaves
coffee *n, often cap N* : COFFEE SENNA
head \'=(,)=,=\ *n* [fr. its color] **1** : a dark lump or mass bacco or inferior rubber **2** : NIGGERHEAD 3
head beech *n* : an Australian timber tree (*Nothofagus el*) having dark green foliage
roid \'nē,grȯid\ *adj, often cap* [ISV *negr-* Negro (fr. *ro*) + *-oid*] : of, resembling, or related to the Negro race
oid \"\ *n* -S *usu cap* : a negroid individual
o·ism \'nēgrō,izəm\ *n* -S *often cap* **1** : advancement of ro interests; *specif* : advocacy of the cause of equal rights Negroes **2** : a quality or trait distinctive or taken to be nctive of Negroes; *esp* : a word, phrase, or manner of ex-sion distinctive or taken to be distinctive of the speech of roes
o·ize \-,īz\ *vt* -ED/-ING/-S *sometimes cap* **1** : to cause to Negro (as in qualities, personnel) ⟨*negroized* speech⟩ ⟨a *negroized* stage production⟩ ⟨a *negroized* unit⟩ **2** : to e with negroism ⟨a *negroized* philanthropic group⟩
monkey *n* **1** : MOOR MACAQUE **2** : a black langur *sbytis maurus*) **3** *or* **negro tamarin** : a black Brazilian rin (*Leontocebus ursulus*)
peach *n* **1** : a stout spreading or semiclimbing shrub *cocephalus esculentus*) of tropical Africa and Ceylon with d brownish warty fruit having a reddish watery pulp the fruit of the negro peach
ro·phile \'nēgrō,fīl\ *also* **ne·gro·phil** \-fil\ *n* -S *often cap gro* + *-phile*] : one that is esp. friendly to Negroes and interests; *esp* : one that favors negroism
ophile \"\ *adj, often cap* : having the qualities of a ophile

joining or relatively near position or location ⟨the earth ~s near to the sun⟩ **2** : to associate in a friendly way (as by exchanging visits, having informal chats, offering ordinary help and advice) with another that is a neighbor : make the agreeable easy social contacts usual among congenial neighbors ⟨it was a quiet farmplace, standing among fields . . . yet it was near enough the town for ~*ing* —Maristan Chapman⟩ ⟨had no mind to ~ with them —V.L.Parrington⟩
neigh·bor·hood \-(r),hu̇d\ *n* [ME *neighborhode*, fr. ¹*neighbor* + *-hode*, -hood] **1** : friendly association with another that is a neighbor : the agreeable easy relationship usual among congenial neighbors ⟨if there are remoter nations that wish us not good but ill, they know that we are strong; they know that we can and will defend our ~ —F.D.Roosevelt⟩ **2** : the quality or state of being immediately adjacent or relatively near to something : PROXIMITY ⟨the ~ of the earth to the sun⟩ ⟨refugees from the country, driven by fear or the ~ of armies —F.L.Paxson⟩ **3 a** : the approximate area or point of the location or position of something ⟨traveled to a region somewhere in the ~ of that city⟩ **b** : the approximate amount or extent or degree — usu. used with *in* and a qualifying phrase ⟨has in the ~ of $10,000,000⟩ ⟨a highway in the ~ of 100 miles long⟩ **4 a** : a number of people forming a loosely cohesive community within a larger unit (as a city, town) and living close or fairly close together in more or less familiar association with each other within a relatively small section or district of usu. somewhat indefinite boundaries and usu. having some common or fairly common identifying feature (as approximate equality of economic condition, similar social status, similar national origins or religion, similar interests) and usu. some degree of self-sufficiency as a group (as through local schools, churches, libraries, business establishments, cultural and recreational facilities) ⟨thought the whole ~ would hear about it⟩ **b** : the particular section or district that is lived in by these people and that is marked by individual features (as type of homes and public establishments) that together establish a distinctive appearance and atmosphere ⟨now lives in a beautiful ~⟩ **c** : an area or region of usu. vague limits that is usu. marked by some fairly distinctive feature of the inhabitants or terrain ⟨would never want to live in that ~ of the country⟩ **5** : the assemblage of all points whose distances from a given point are not greater than a given positive number
neighborhood house *n* : SETTLEMENT 6g
neighboring *adj* [fr. pres. part. of ³*neighbor*] **1** : that is immediately adjacent or relatively near ⟨where the men from the ~ towns gathered —Phyllis Duganne⟩ ⟨~ countries⟩ ⟨~ planets⟩ **2** *of atoms or groups in a molecule* : attached to atoms united to each other; *esp* : attached to carbon atoms united to each other in aliphatic or alicyclic compounds — compare VICINAL 3
neighboring tone *n* : AUXILIARY TONE
neigh·bor·less \'nābə(r)ləs\ *adj* : having no neighbor
neighborlike \'==,=\ *adj* : NEIGHBORLY
neigh·bor·li·ness \'nābə(r)lēnəs, -lin-\ *n* -ES : the quality or state of being neighborly
¹**neigh·bor·ly** \-lē, -li\ *adv* [*neighbor* + *-ly*, adv. suffix] *archaic* : in a neighborly manner ⟨you called in here ~ —John Drinkwater⟩
²**neighborly** \"\ *adj* [*neighbor* + *-ly*, adj. suffix] **1** : of, relating to, or typical of neighbors, esp. congenial neighbors : suited to neighbors ⟨a ~ conversation⟩ ⟨has ~ chores —Mary Welsh⟩ ⟨~ helpfulness⟩ **2** : that readily associates in a friendly way (as by exchanging visits, having informal chats, offering ordinary help and advice) with a neighbor : that has the agreeable easy sociability typical of a congenial neighbor ⟨a pleasant ~ person⟩ **syn** see AMICABLE
neigh·bor·ship \-(r),ship\ *n* [ME *nychtbourschip*, fr. *nychtbour, neighbor* neighbor + *-schip, -ship* -ship] **1** *archaic* : PROXIMITY **2** *archaic* : the relationship and activity of a

WELLS MCCOMAS CITIZENS IMPROVEMENT ASSOCIATION
P.O. BOX 9026
DUNDALK, MARYLAND 21222

January 11, 2005

Zoning Commissioner of Baltimore County
401 Bosley Ave.
Towson, Maryland 21204
RE: Case # 05 302 XA 4040 Old North Point Road

Dear Mr. Commissioner:

On behalf of the Wells McComas Citizens Improvement Association we wish to go on record opposing a request for a Special Exception and two Variances for the above-mentioned case. At our community meeting on January 10, 2005 a discussion took place concerning this matter and by unanimous vote the community is opposed.

Also at this meeting our representatives were given permission to represent our Association in this matter. Our President, Mr. Fred Thiess, and Board member, Mr. Guido Guarnaccia, have been authorized to present our objections. Another of our members, Mrs. Brenda Lingenfelder will be opposing this matter. Mrs. Lingenfelder resides approximately 60 feet from the proposed site.

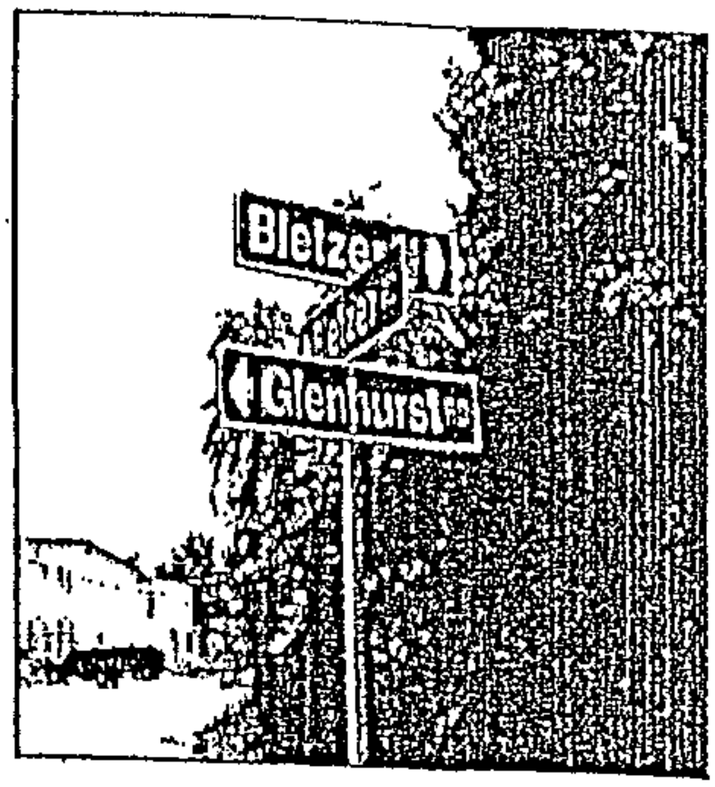
Wells McComas Citizens Improvement Association is a Maryland Corporation that has been in existence since 1969. This site is located directly in the center of our community. The boundaries for our community are as follows; Eastern Ave. on the west, Wise Ave. on the east, North Point Blvd. On the south, and Back River on the north.

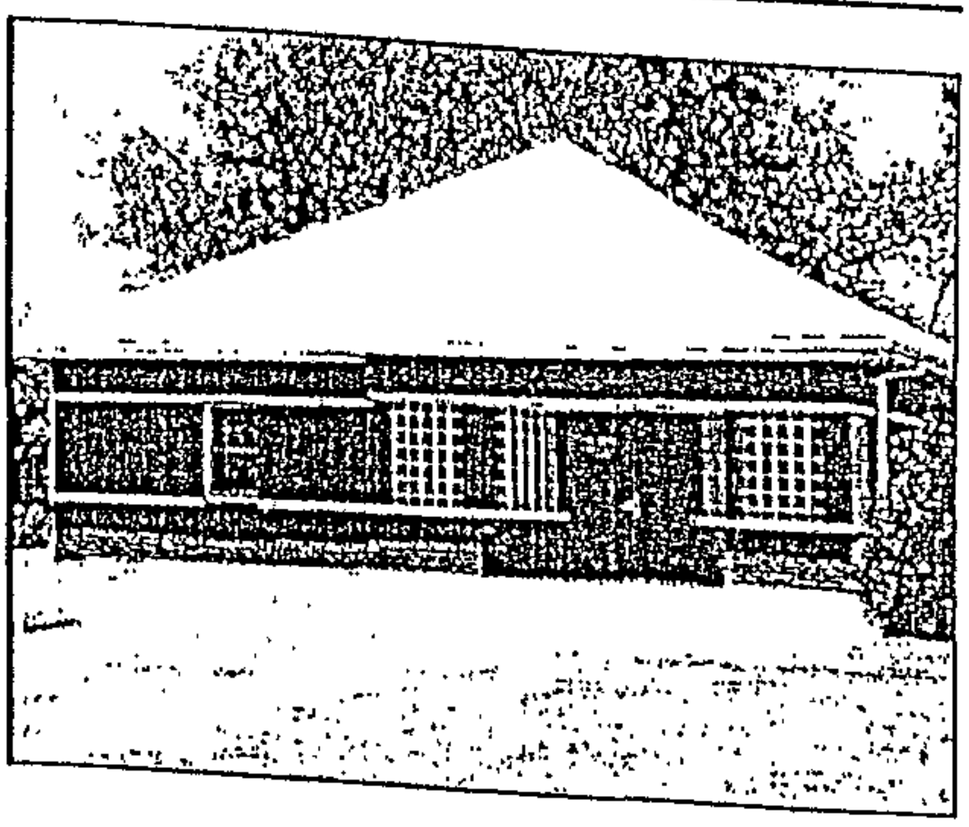
Thank You

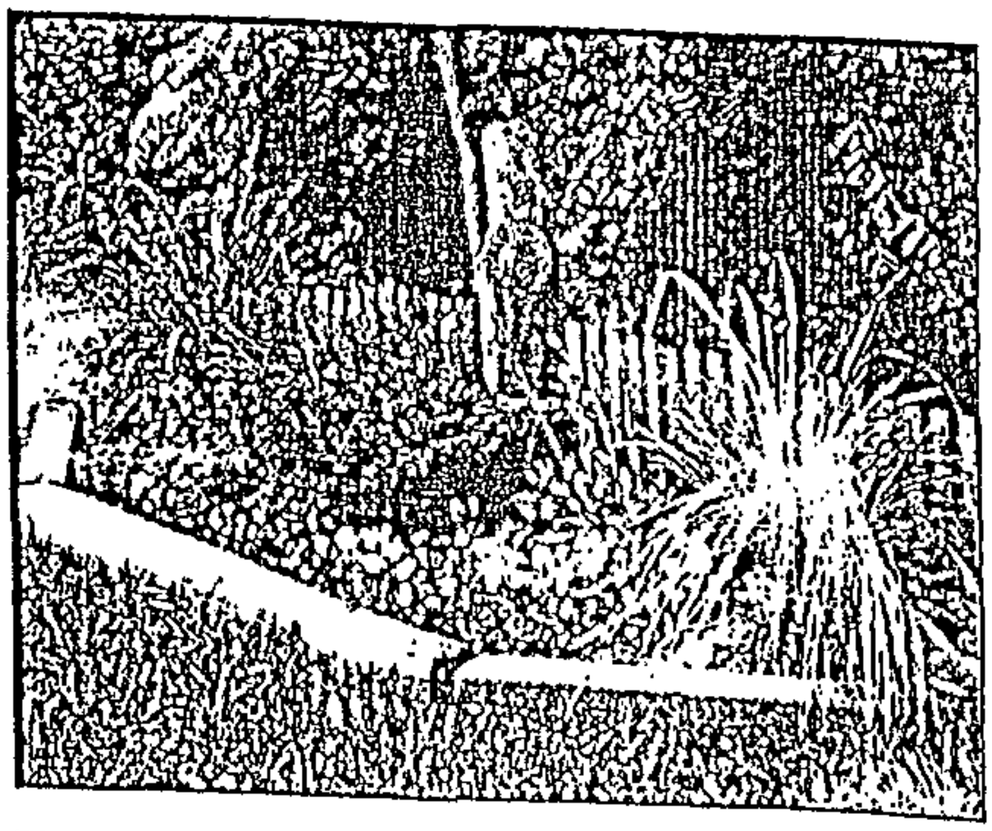
Sue Machlinski, Secretary

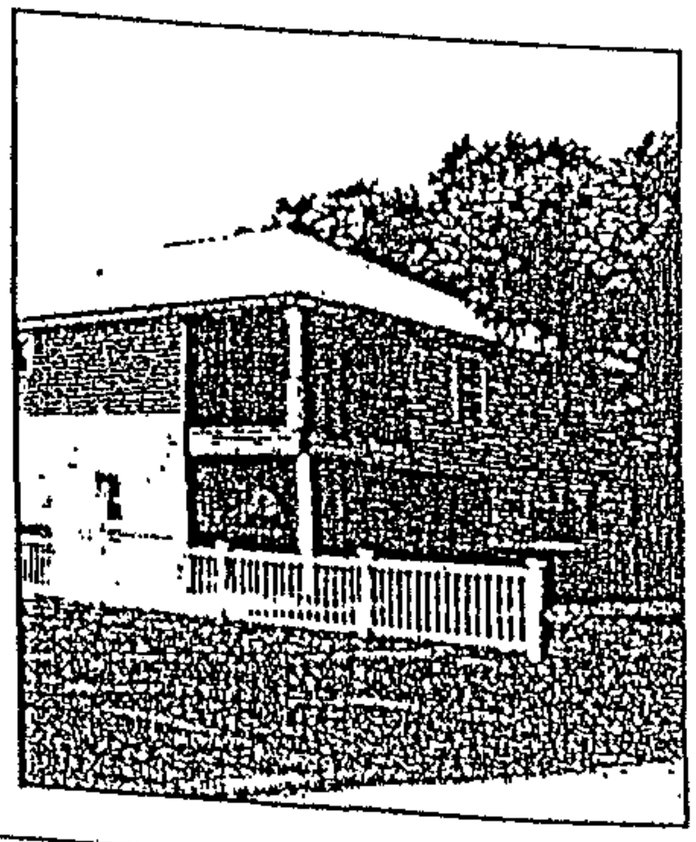
Pro #1

Wells-McComas Community Conservation Plan









Adopted by the Baltimore County Council
March 18, 2002

Pro #2

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2002, Legislative Day No. 6

Resolution No. 22-02

Mr. John Olszewski, Sr., Councilman

By the County Council, March 18, 2002

A RESOLUTION of the Baltimore County Council to adopt the Wells-McComas Community Conservation Plan as part of the Baltimore County Master Plan 2010.

WHEREAS, the Baltimore County Council adopted the Baltimore County Master Plan 2010 on February 22, 2000; and

WHEREAS, the Master Plan advocates the development and use of community plans for established neighborhoods in the County; and

WHEREAS, the Wells-McComas community is a logical unit for planning within Baltimore County; and

WHEREAS, the Wells-McComas Community Conservation Plan was prepared in close cooperation with an advisory committee representing community and business interests; and

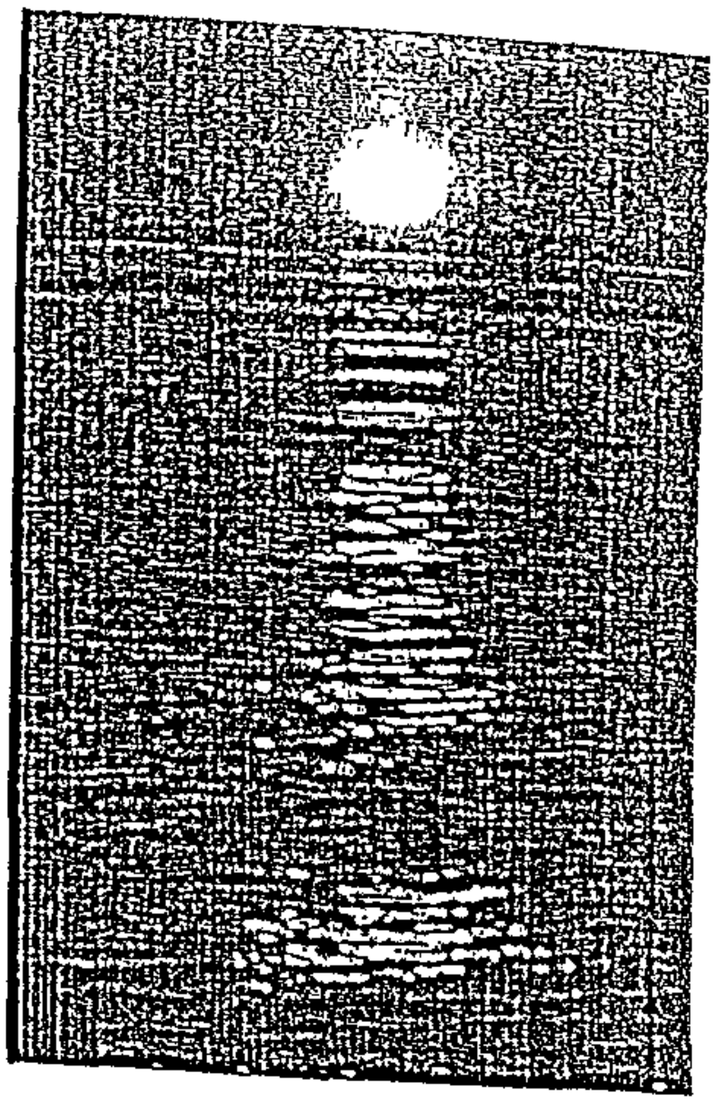
WHEREAS, the draft plan was the subject of a public hearing by the Planning Board on January 3, 2002 and was adopted by the Board on January 17, 2002; and

WHEREAS, the County Council held a public hearing on the recommended Wells-McComas Community Conservation Plan on March 4, 2002.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Wells-McComas Community Conservation

Introduction

On February 8, 2001, the Baltimore County Council passed Resolution No. 15-01 (Section F, Figure 1) sponsored by Councilman Olszewski requesting that a Community Conservation Plan be prepared for the Wells-McComas Community. This plan is focused on the relationship between the manufacturing businesses and residents of the community. This community is characterized by mixed-land use, particularly that of heavy industrial uses located next to homes. It is this mixture that has caused conflicts in the community for many years.

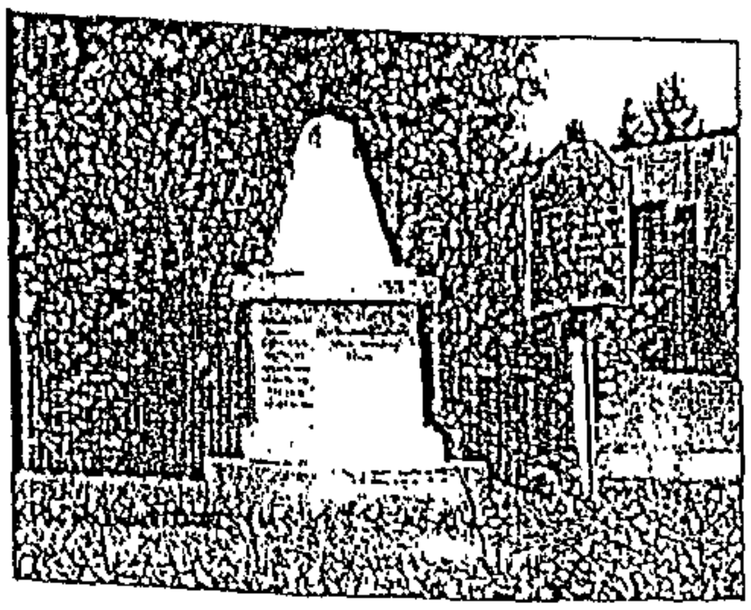


Located on the eastern side of Baltimore County, along the west bank of the Back River, the Wells-McComas community is an isolated haven for many residents. The study area (Section F, Figure 2) is bounded on the east by the Back River, to the north by the Back River Waste Treatment Facility, to the west by I-695, and to the south by I-695.

The Wells-McComas community has tried to establish a balance between residents and businesses. Residents still consider the neighborhood a good place to live and raise a family. Many are encouraged by new families moving into the neighborhood. Dedicated community and business members want to plan for ways to enhance the quality of life and reputation of the neighborhood not just through problem solving but also through promotion of the many assets of the community. In examining data collected during the planning process, most of the issues that were raised focus on the relationship between business owners and homeowners, quality of life for residents, and the waterfront as an asset.

Background

Until the turn of the century, the land on which the community was built, was rural in character. It was the War of 1812 that first brought attention to this area of Baltimore County. As Fort McHenry mounted its successful defense of Baltimore during the War of 1812, a significant, though much lesser known, land battle was taking place to the east of Baltimore. This battle took place on much of the land that is now the Wells-McComas community. Known as the 'Battle of North Point' (September 12-14, 1814), a series of skirmishes and battles occurred between the British troops and the defending American militia. A significant casualty at the Battle of North Point, was British General Ross. Legend has it that two sharpshooters, Daniel Wells and Henry McComas, made Ross their target. Whether they actually fired the shots will never be known. The boys fell almost immediately to British bullets.



The Battle Monument, located on Old North Point Road, is the only reminder that this area was an important battlefield

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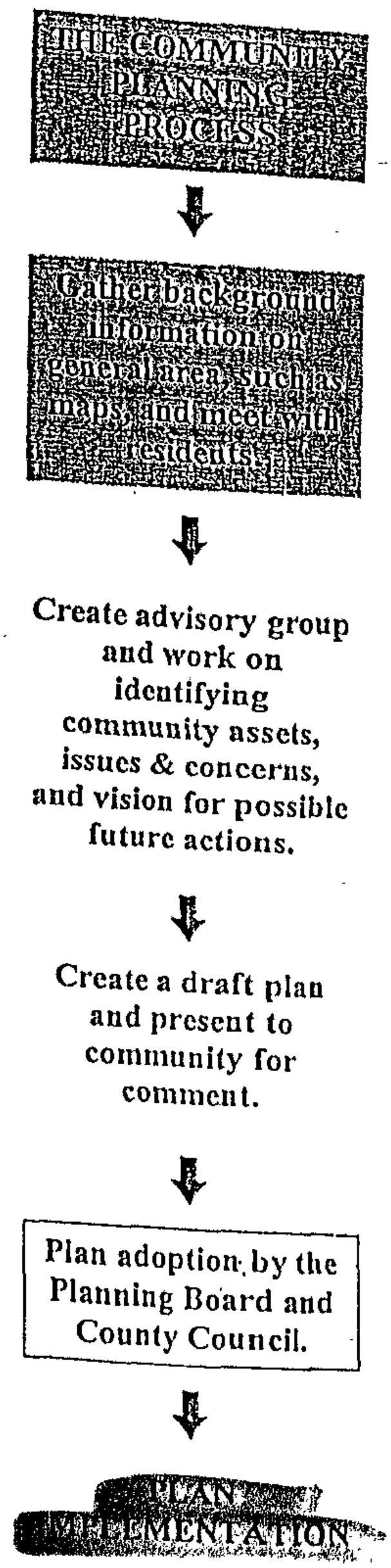
Planning Process

The Wells-McComas Community Conservation Plan is a working document that addresses the concerns of neighborhood residents and business owners in an attempt to preserve the livability and long-term viability of their community. [redacted]

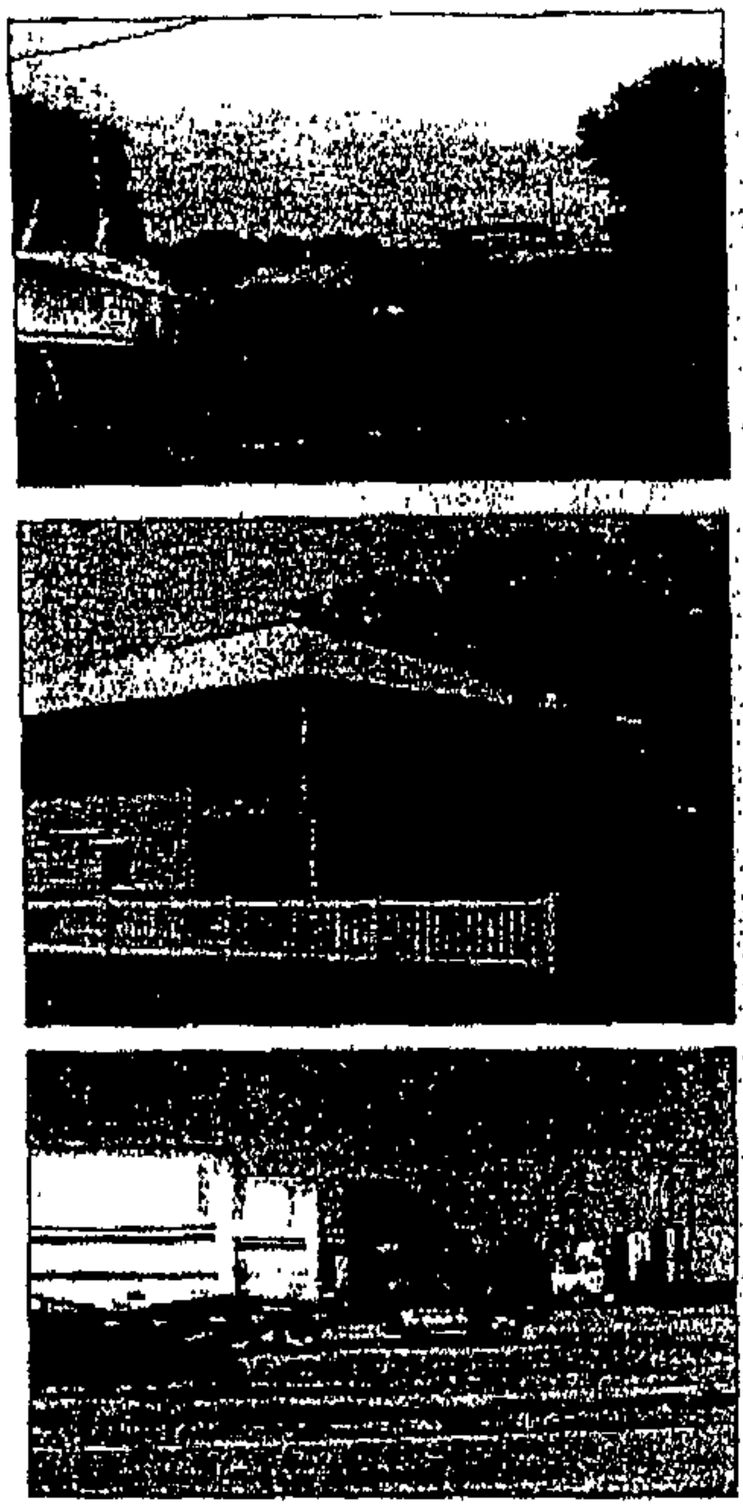
This plan provides an analysis of a wide-range of factors that collectively shape the Wells-McComas community's physical, social, and economic environment, while affecting its capacity to continue to function as an integral and unique part of Baltimore County's community composition.

The Wells-McComas Advisory Committee members met four times during the months of April and May, 2001. The meetings were focused on discussing the issues in the community and finding viable alternatives. Guests from various county departments attended some of the Advisory Committee meetings, lending their insight and expertise to the group's discussion.

The community planning process focused on five key steps. First, background information about the community to be studied was gathered. This information included maps, data gathered on-site in the community, and in discussions with residents. Most of this information was gathered by the Community Planner for the planning district. Second, the advisory committee was established. The committee's purpose is to identify issues and concerns within the community, identify the community's assets, and to develop the community's vision for the future. Third, the draft plan was created, recommending actions and strategies to address the issues. The draft plan was taken to community-wide meetings for review and comment, as well as submitted to Baltimore County agencies for review and comment. Fourth, after revisions are made, the document was submitted to the Planning Board and County Council for adoption as an amendment to Master Plan 2010. Public hearings are part of the adoption process with the Planning Board and County Council. Finally, the adopted plan is used by the community and county agencies for the implementation of recommendations set forth in the plan.



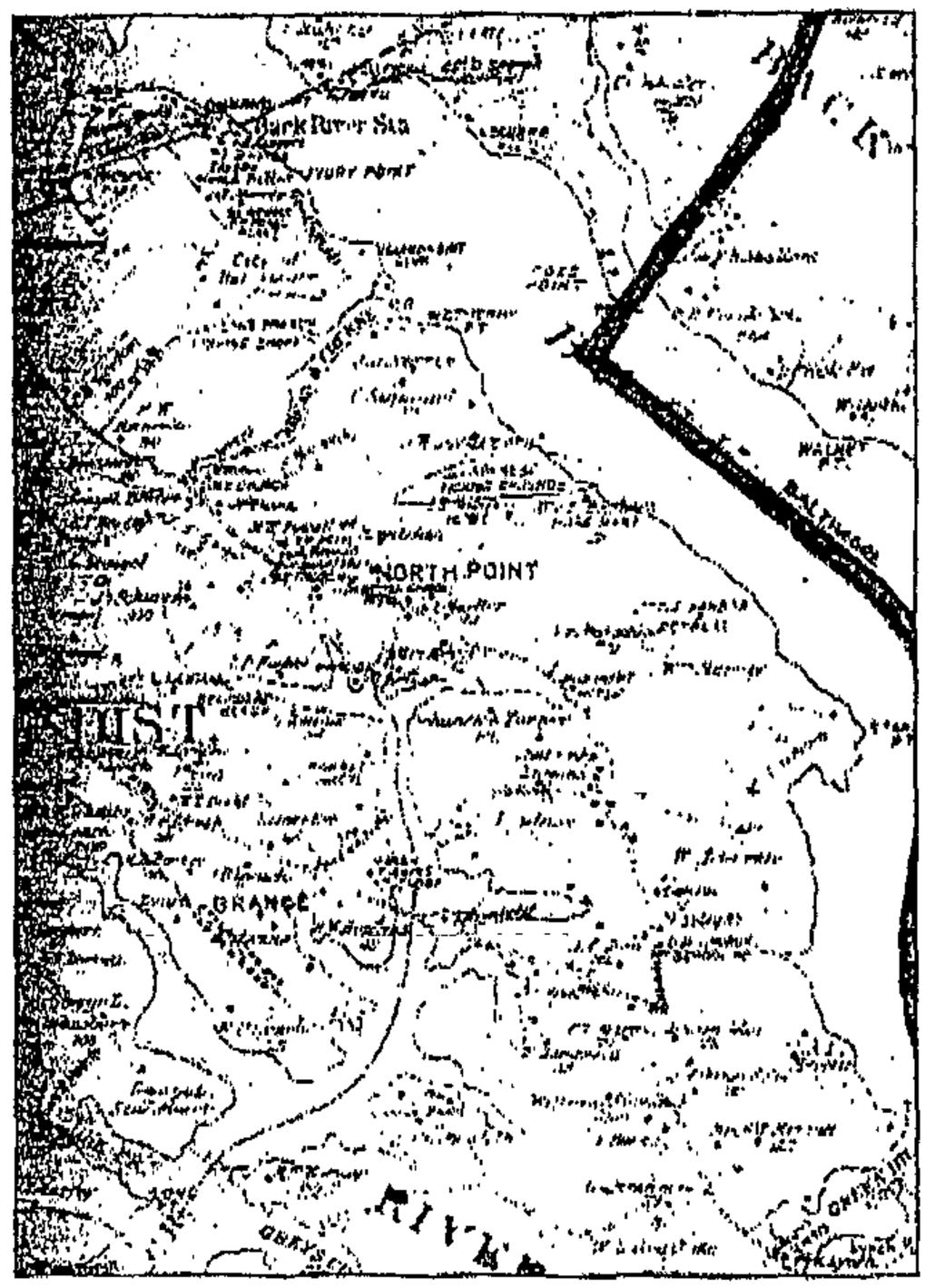
Section A



A sample of the many land uses found in the Wells-McComas community.

Over time the Wells-McComas community has evolved into a area with many different land uses located in close proximity to each other. While mixed-use developments are encouraged, it is certain that some land uses are not compatible. It is this incompatibility that is of concern for many Wells-McComas residents and business owners.

The purpose of the Wells-McComas Community Conservation Plan is to encourage the residents and business owners to join together to find a solution that is acceptable. Whether the solution is focused on finding ways for everyone to live peacefully together, or to find new locations for some businesses, it will be a solution agreed upon by both parties. In addition, it is important to also recognize that the strategies, recommendations, and goals set forth in this Community Conservation Plan are designed to meet the social and physical development needs of the Wells-McComas Community over the next five to ten years. The Wells-McComas Community Conservation Plan will ultimately be adopted as an amendment to the Baltimore County Master Plan 2010.



A section of the 1915 Baltimore County Atlas shows early settlement in the Wells-McComas study area. See a larger version of this map in Section E, Figure 3.

Planning Process

The Wells-McComas Community Conservation Plan is a working document that addresses the concerns of neighborhood residents and business owners in an attempt to preserve the livability and long-term viability of their community. The foundation of this [redacted] based on active citizen participation and informed decision [redacted]. With the input of residents, this plan is more effective in [redacted] the particular needs of this community and stands a better [redacted] of being implemented.

This plan provides an analysis of a wide-range of factors that collectively shape the Wells-McComas community's physical, social, and economic environment, while affecting its capacity to continue to function as an integral and unique part of Baltimore County's community composition.

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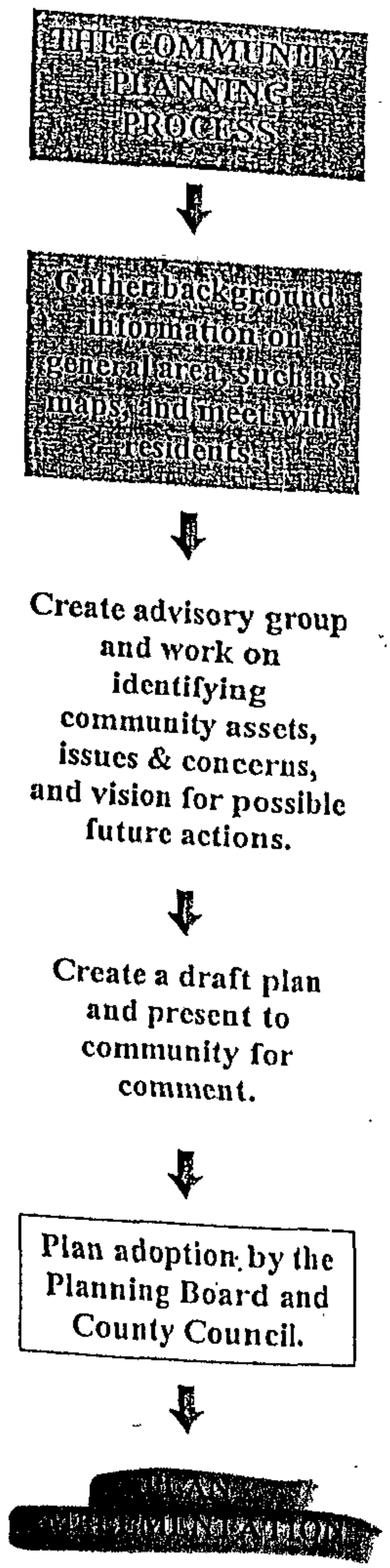


Section A

Plan Purpose

MASTER PLAN 2010
BALTIMORE COUNTY, MARYLAND

ADOPTED
FEBRUARY 22, 2000

Mission Statement

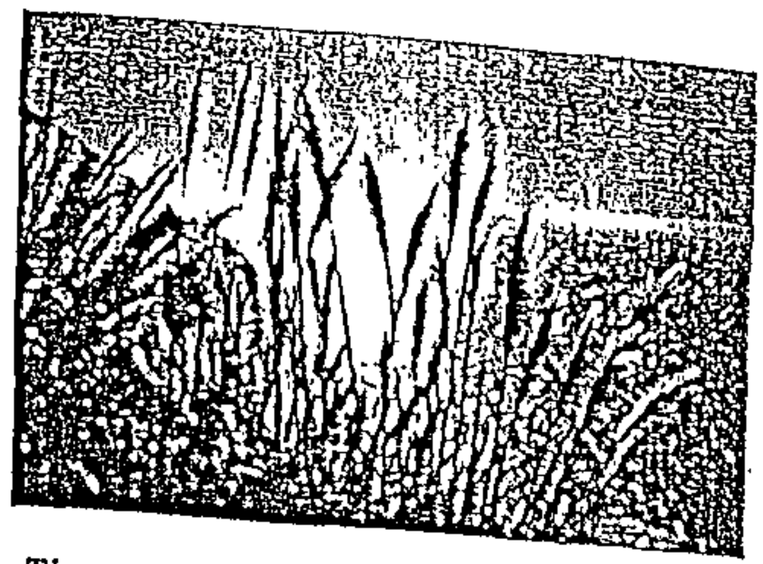
"The mission of the Wells-McComas Advisory Committee is to serve the community through the creation of a Community Plan, to be adopted as an amendment to the Baltimore County Master Plan 2010. By working with our neighbors, local government, and businesses we will identify, prioritize, and develop viable solutions for areas of concern.

The following is a list of some of our objectives and goals. We invite citizens of the Wells-McComas community to come and help us in our efforts.

- We desire to instill or re-instill community pride and involvement; and to reunite all aspects of the community, past and present, young and old.
- We recognize that the waterfront is an asset, and we seek to preserve it as such.
- We are concerned that there is no open space in our community, and we desire to create such an area.
- We are concerned with the prosperity of our community, and our youth; and are deeply committed to supporting them.
- We desire to create partnerships with educational institutions, businesses, and supporting the youth.
- We strongly believe that the partnership between the businesses and community is important in the implementation of a community plan and for the future of our community.
- We recognize conflicts between businesses and residents; and we resolve to seek and implement solutions to correct them.
- We recognize that relocation may not be possible for all businesses currently located in our community, so we also resolve to search for alternate solutions to co-exist peacefully.
- We believe that heavy truck traffic holds safety implications for the community, and we wish to seek alternative routes for trucks.
- We resolve to take an active approach to these problems, and remain actively engaged in solving them."

Community Assets

The natural resources of the Wells-McComas community have been noted time and time again as one of the greatest assets and contributors to the quality of life in the community. The waterfront is noted for its quiet and peaceful contribution to the lives of the residents. In addition, the waterfront is also used for recreational purposes such as boating and fishing. The community would like to gain greater access to the waterfront in order to increase recreational opportunities. The protection of the quality of the waterfront as a natural resource is also important to the community. Many residents are concerned about the environmental effects of industrial uses along the waterfront in their community. By increasing the access to the waterfront and protecting this natural feature, the community hopes to continue attracting young families to the area.



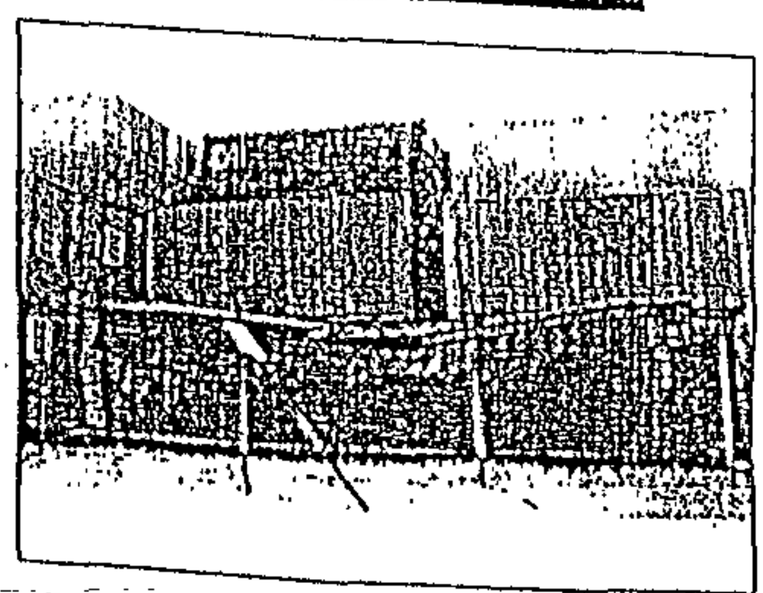
The waterfront is one of the community's greatest assets, yet public access is very limited.

Issues and Concerns

A number of issues which affect the quality of life for the Wells-McComas community were identified during the Advisory Group meetings.

These issues identify specific concerns of the community and lead to discussion about future possibilities. The following is a summary of specific issues and concerns based on those discussions. A map highlighting these issues can be found in Section F, Figure 6.

[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
inefficient signage stopping trucks from traveling through residential areas
[redacted]



Confusing signage in the neighborhood often contributes to truck traffic in prohibited areas. Poorly maintained industrial areas hurt the community's appearance.

Industrial areas generally carry a higher environmental burden than do purely residential neighborhoods in terms of pollution impacts and risk. [redacted] debate. Some of the business owners along the waterfront would be willing to relocate with financial

Section A

assistance. If not, then the business owners and residents must find some way to coexist in a peaceful manner.

Improving the quality of life in established communities, such as Wells-McComas, is a primary factor in Maryland's Smart Growth program. It is important for the Wells-McComas community to enhance the features that have made it sustainable in the past in order to ensure the viability of the community for the future.

Community Development Issues

Infrastructure

Most older urban areas in Baltimore County are faced with aging infrastructure. Due to heavy truck traffic in the community, the roads have been under constant repair and are in presently an acceptable condition. However, if the trucking and other manufacturing facilities were to remain in the community, the roads would need to be monitored on a continual basis.

Sidewalks and curbs along the roads are desirable. Streetscape plans are needed for the area. The intersection of Bletzer, Bletzer, and Edgewater is in need of streetscape improvements. Community signage and plantings could provide gateway treatment at entrance points.

Transportation

Truck traffic moving through the community is one of the greatest concerns. Noise and dust from the truck traffic has effected the residential areas.

The intersection of Bletzer Road, Bletzer Road, and Edgewater Place needs to be studied by professionals in the transportation field, in order to address design flaws that are causing driver confusion and to better define traffic patterns through the intersection.

Stop signs are not obeyed. Signage prohibiting truck traffic beyond a specific point is often not obeyed.

Enforcement of traffic regulations is important.

The intersection of Bletzer Road, Beltzer Road, and Edgewater Place is shown above. The lack of design has resulted in an intersection that is confusing to many drivers.

Housing

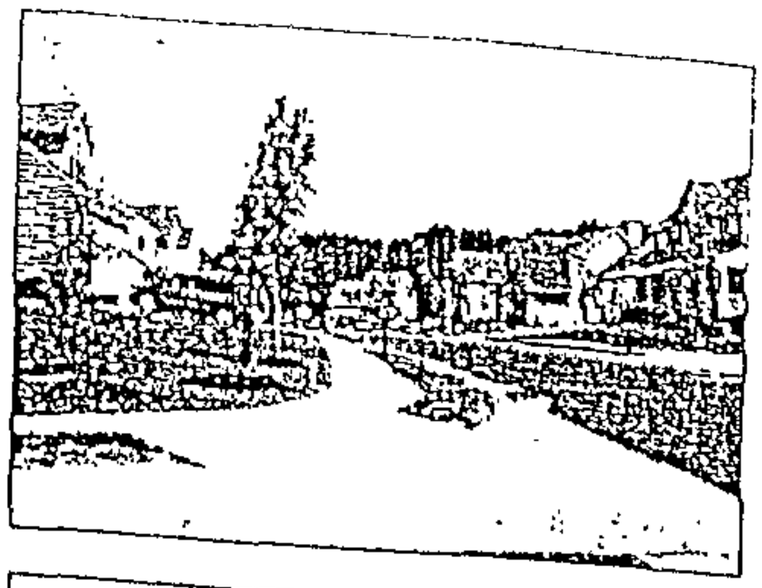
The housing stock in the Wells-McComas community is in good condition. Most of the houses in the neighborhood were built around 1960 and are single-family detached dwellings. There are a few older dwellings, as well as new in-fill development.

Retention of families in the community is important, as well as attracting new families to the area. Maintaining a family-oriented quality of life is crucial to the success of this plan.

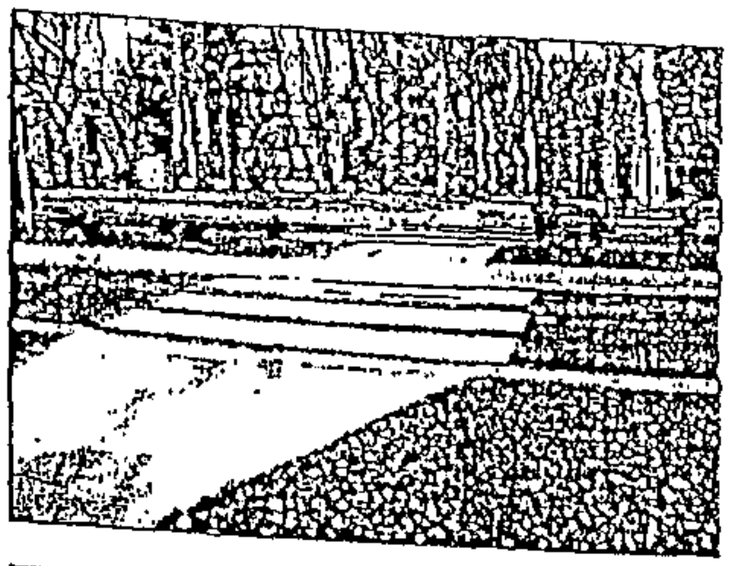
Current demographic information (Section F, Figure 5) shows that the area has experienced an increase in households in the past ten years.

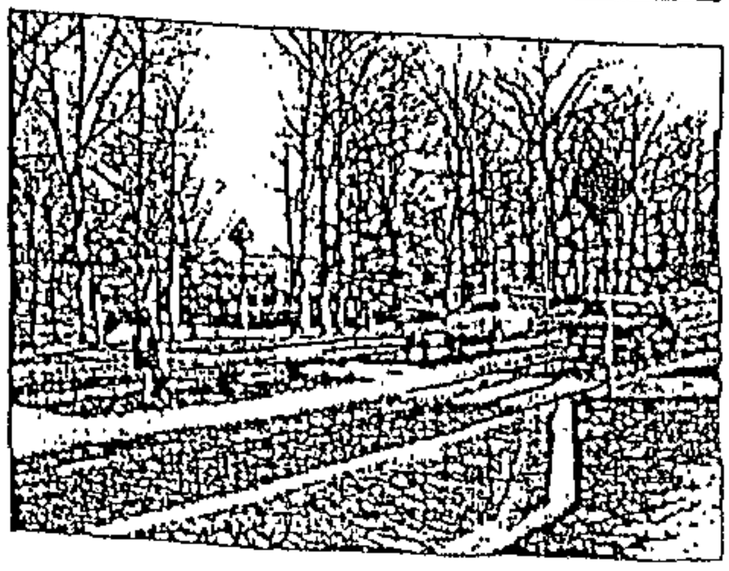
Signage, preventing thru-traffic in residential areas, is important to maintain and monitor. In particular, the intersection of Bletzer Road, Bletzer Road, and Edgewater Place is confusing to drivers, particularly to truck drivers who do not travel through the area often. Plantings within the pinch points would also make this more visually effective.

By placing "pinch points" or "chokers" along the roads entering the residential areas, the change from manufacturing to residential would be visibly noticeable to drivers.



Beachwood Estates, a suburban development, is a recent addition to the Wells-McComas Community.





As seen to the left, a "pinch point" in Towson, shows how the road can be narrowed entering a residential area. The "pinch point" creates a visual change as well as a beautiful addition to the streetscape.

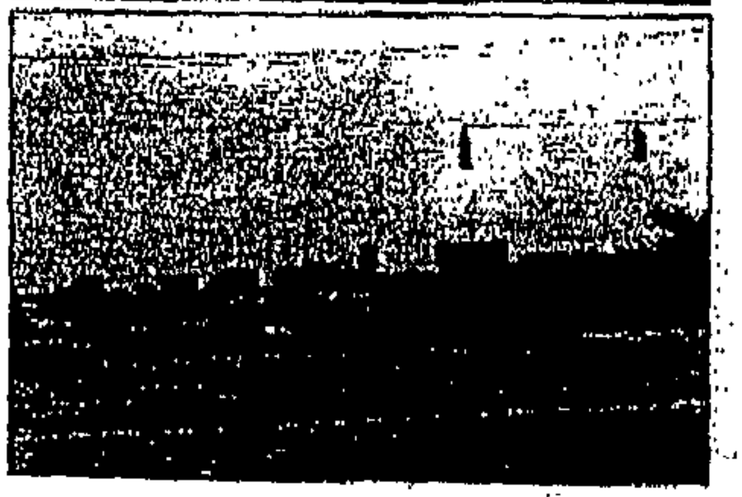
Section B

Beautification Projects

One of the lovely plantings done by residents, at the intersection of Bletzer Road, Bletzer Road, and Edgewater Place

Residents have made significant attempts to improve the appearance of their community. Small areas of plantings can be found at entrances to the residential areas, but more is needed. Landscaping should be designed and added to the gateways of the community, as well as interior gateways to residential areas. The main gateway into the community is found at the intersection of I-695 and Cove Road, and North Point Boulevard and Cove Road. These gateways need landscaping plans as wells as signage, to signify entrance into the community.

The beautification projects in these areas improve the appearance of the community, but most importantly they are notification to the drivers of commercial vehicles that entrance into certain areas of the community is prohibited. By using "pinch points" or "chokers", as mentioned earlier in this report, the visual barrier will also be further enforced by the narrowing of the street. The addition of sidewalks and pedestrian crossings will make the community a friendlier place to walk and bike.



The gateways to the community along Cove Road are clearly unattractive and in need of great improvements. Landscaping and signage are among some of the recommendations of this plan.

Economic Opportunities

A long-range goal of this plan is to relocate many of the trucking facilities along Bletzer Road and Edgewater Place. Sites in the general area, including Beth Steel properties, hold the most potential for relocation. The owners, however, of the trucking facilities wish to remain in the area, as they have established business partnerships. The Baltimore County Department of Economic Development participated in the Advisory Committee meetings, when relocation was discussed. A representative from the Department of Economic Development met with the business owners on-site for a quick overview of individual properties and business/operation needs.

The Department of Economic Development will continue working with those business owners wishing to relocate in order to find a desirable new location.

Recreational Opportunities

The following was taken from a report submitted by Baltimore County Parks & Recreation to the Wells-McComas Advisory Committee in June 2001.

The Wells-McComas Study Area is currently served by just under 450 acres of creditable parkland. Creditable acreage is the sum of the following parklands: the full acreage of local parks in the area, a portion of all countywide parks, a portion of all regional parks in or near the area, a share of the land area of the three main county-located reservoirs which are credited as countywide facilities, and the acreage of open spaces and undeveloped park and school recreation center sites in the area. The 447 creditable acres of parkland within the Wells-McComas Study area equates to a service level of **21.1** acres of parkland per 1,000 citizens, which is slightly below the Countywide level of 21.7 acres/ thousand.

Based on the state-mandated acreage goal of 30 acres per thousand population, this study area has a 8.9 acres per thousand parkland shortage, which equates to a deficit of just under 190 acres (based on year 2000 population projections).

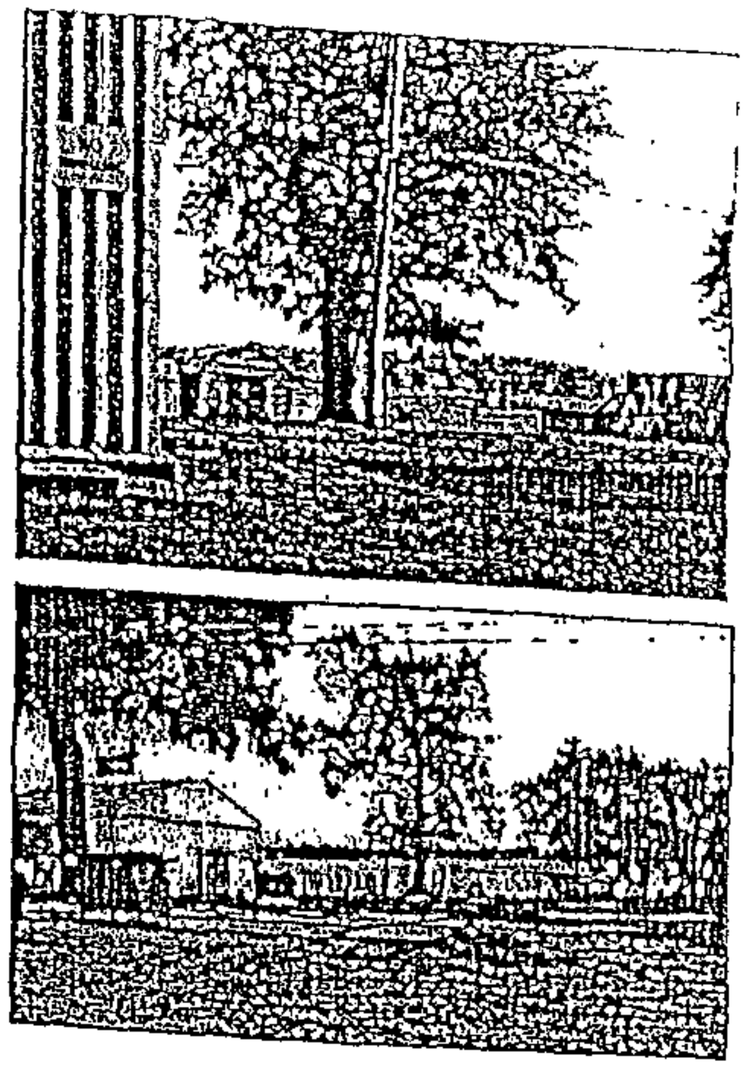
The deficit of parkland in the Wells-McComas Study Area may be offset by the acquisition of either local park and open space sites, or countywide and/or regional park sites that would help serve the area.

The following is a summary of recent Recreation and Parks-related projects in close proximity to the study area:

- Replacement of Edgemere Elementary School Recreation Center
- Purchase of former Edgemere VFW, on which site a senior center and small waterfront park were developed
- Installation of jogging track lighting at Patapsco High School Recreation Center
- Site renovations at the former Gray Manor Center, including the addition of a paved parking lot, comfort station, and walkways, as well as the replacement of playground equipment
- Playground replacement at North Point Village Park

One major project of regional significance is the acquisition of a portion of the former North Point Village Shopping Center to be converted into an indoor soccer facility.

The Advisory committee suggests that a recreation site be located within the study area. A site along the waterfront would be ideal, as there are no public access points to the water in the community.



The waterfront of the Wells-McComas community is accessed either through private property or by one of the three marinas. No public access is located in the community.

Section C

Land Use & Zoning

The following information illustrates the zoning and land use found within the Wells-McComas Study area. This information is based on data collected by the Baltimore County Office of Planning.

Land Use Acreage refers to the actual use taking place on a parcel or parcels of land.

LAND USE ACREAGE 2000	Acres		%
Residential	243.07		22.66
Single Family		74.84	
Multi-Family		0	
Mobile Home		28.28	
Pipeline Development		139.95	
Trucking	85.47		7.95
Industrial	122.97		11.41
Commercial	9.1336		0.85
Agricultural Preservation/Resource Conservation	289.12		26.89
Right of Way	146.34		13.61
Vacant	121.2		11.27
Further Review Areas	57.799	5.37	
TOTAL	1075.1		100%

Zoning Acreage refers to the zoning classification, placed on a parcel or parcels of land, by Baltimore County. Each zoning classification allows for specified uses on the parcel(s) of land. Definitions for zoning classifications can be found in Section E, Figure 7.

ZONING ACREAGE 2000	Acres		%
Residential	330.41		30.8
DR 3.5		279.91	
DR 5.5		50.5	
Business	1.97		0.1
BM		1.97	
Industrial	413.87		38.7
MH		408.74	
ML		4.71	
MLR		.42	
Rural Conservation	324.84		30.4
RC 2		21.11	
RC 20		84.34	
RC 5		219.39	
TOTAL	1071.1		100%

Implementation Actions

Streetscape & Beautification

Recommended Actions	Responsibility for Implementation
Add new "Welcome to Wells-McComas" signs at the major gateways into the community.	State Highways Administration, Wells-McComas Community Association.
Prepare landscape plans for gateways into communities.	State Highways Administration, Wells-McComas Community Association.

Recreation

Recommended Actions	Responsibility for Implementation
Create a waterfront park with public access.	Wells-McComas Community Association, Baltimore County Department of Recreation & Parks
Create a recreational facility to benefit residents of the community.	Wells-McComas Community Association, Baltimore County Department of Recreation & Parks

Infrastructure

Recommended Actions	Responsibility for Implementation
Entire community could greatly benefit from sidewalks and curbs along the interior streets.	Wells-McComas Community Association, Baltimore County Department of Public Works

TRANSPORTATION

Recommended Actions	Responsibility for Implementation
Introduce "pinch points" or "chokers" to control traffic speed and deter large trucks from entering residential community.	Wells-McComas Community Association, Baltimore County Department of Public Works
Law enforcement to more closely monitor truck traffic in community as well as strictly enforce traffic regulations.	Wells-McComas Community Association, Baltimore County Police Department
The intersection at Bletzer Road, Bletzer Road, and Edgewater Place needs to be evaluated and re-designed.	Wells-McComas Community Association, Baltimore County Department of Public Works

Appendix

Figure 1: Council Resolution *14*
Figure 2: Study Area Map *15*
Figure 3: 1915 Atlas *16*
Figure 4: Zoning Map *17*
Figure 5: Land Use Map *18*
Figure 6: Demographic Charts *19*
Figure 7: Key Issues Illustration *21*
Figure 8: Zoning Classifications *22*

Section E

Figure 1 Council Resolution

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2001, Legislative Day No. 3

Resolution No. 15-01

Mr. John Olszewski, Sr., Councilman

By the County Council, February 5, 2001

A RESOLUTION of the Baltimore County Council requesting the Baltimore County Planning Board to prepare a community plan for the Wells-McComas area of the County.

WHEREAS, the Baltimore County Council adopted the Baltimore County Master Plan 2010 on February 22, 2000; and

WHEREAS, the Master Plan advocates the development and use of community plans for the established neighborhoods in the County; and

WHEREAS, the Wells-McComas area of the Seventh Councilmanic District is a logical unit for planning within Baltimore County; and

WHEREAS, the Wells-McComas area has a mix of residential and industrial uses; and

WHEREAS: changing land use patterns have affected this area to an extent that a community plan is warranted; and

WHEREAS, an effective community plan for the Wells-McComas area will serve to promote stabilization of the community,

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Baltimore County Planning Board is requested to conduct an assessment of community needs and issues in the Wells-McComas area, with full opportunity for participation by the area's citizens, businesses, organizations and institutions, and to prepare a community plan for the area for adoption by the Planning Board and the County Council as part of and as an amendment to the Master Plan.

READ AND PASSED this 5th day of February, 2001.

BY ORDER

Thomas J. Peddicord, Jr.
Secretary

Wells-McComas Area

Prepared by Baltimore County Office of Planning August 2001

Data Source Digital Orthophotography
Eyemap Pi Baltimore County MD
Map Scale 1:2400 (1" = 200')
Source Photographs Spring 1994

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Section E

Figure 3 1915 Baltimore County Atlas

"Japenese Fishing Grounds" is circled on this map, highlighting a piece of history that has vanished from current maps.

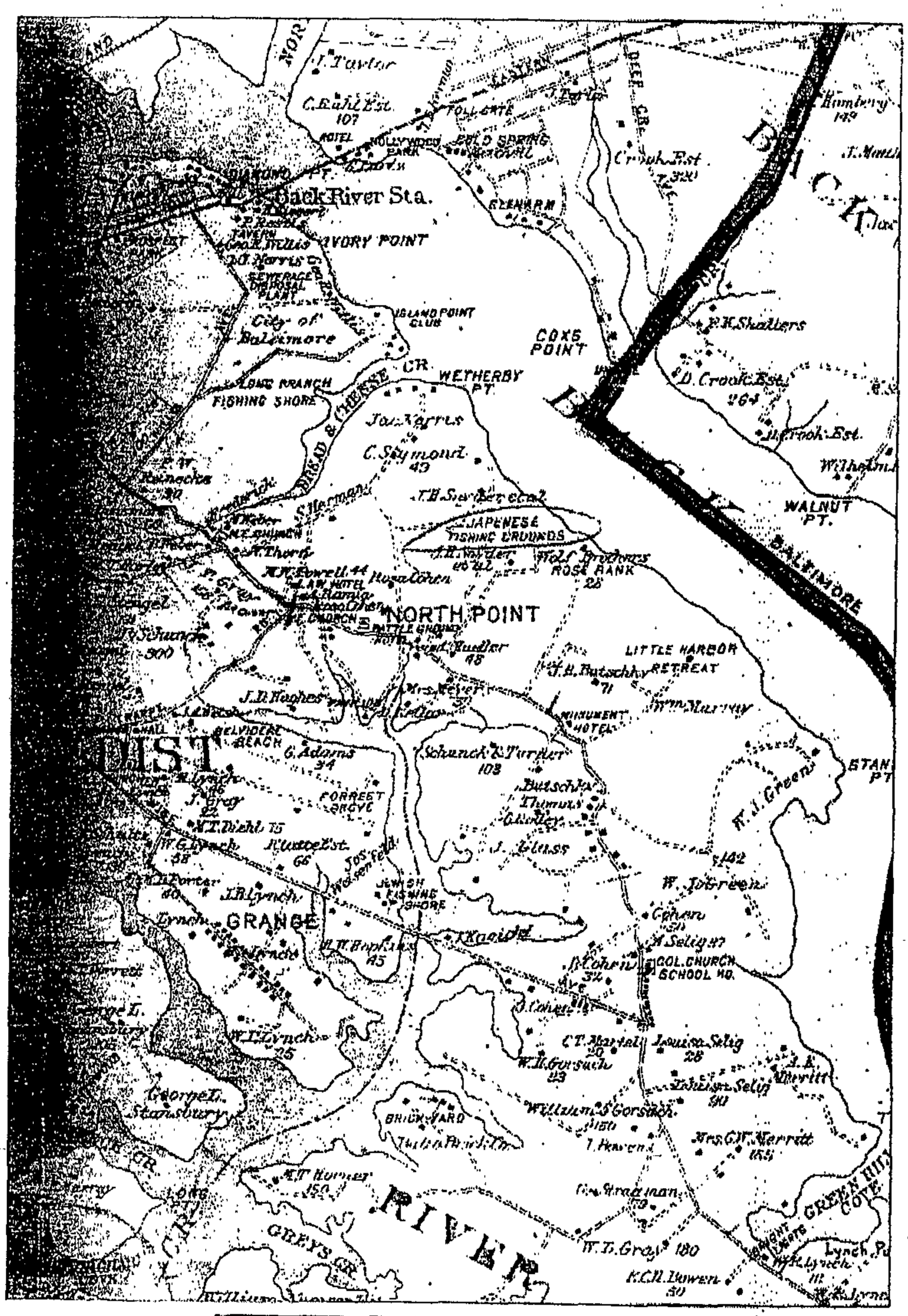
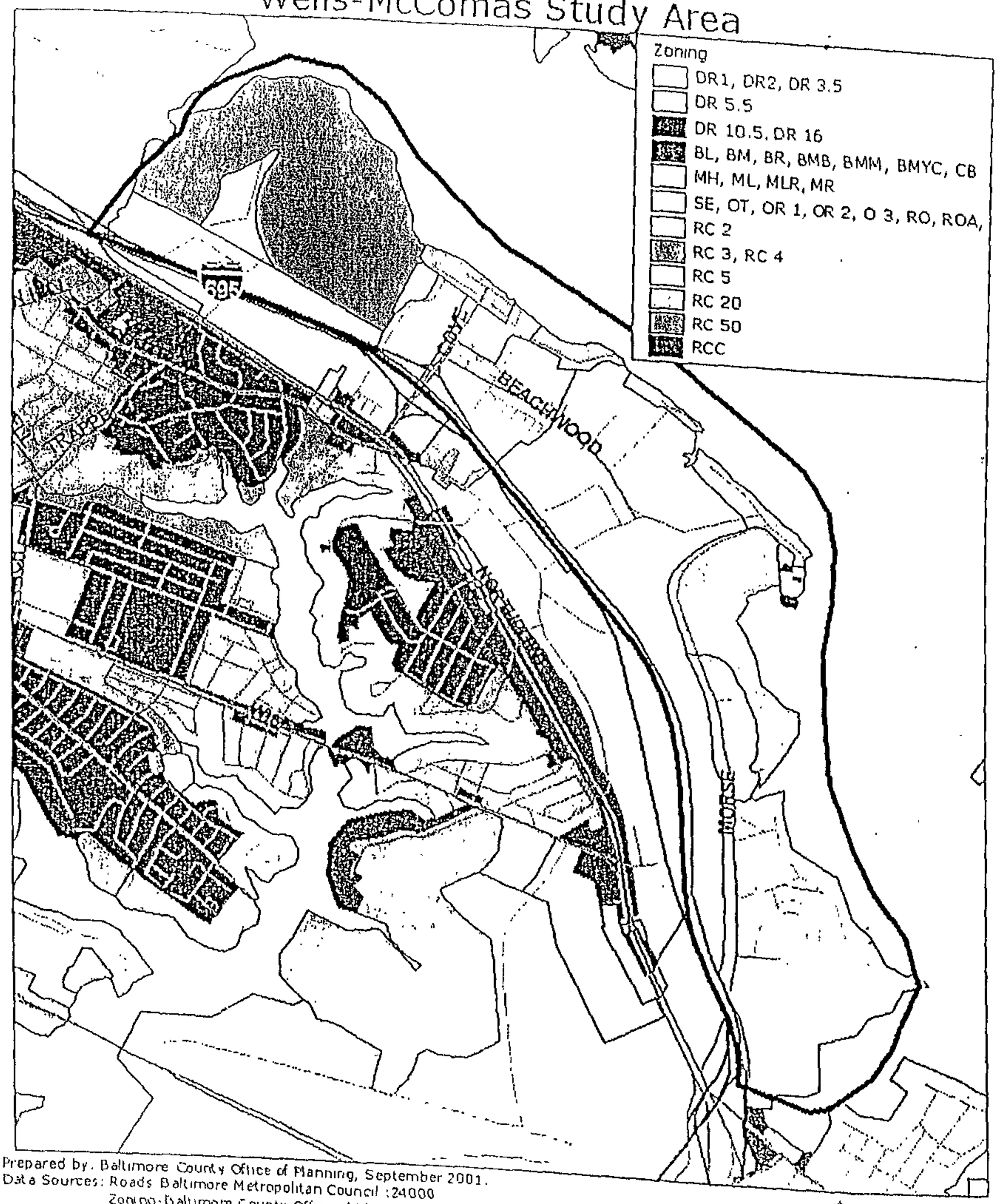


Figure 1 Zoning Map

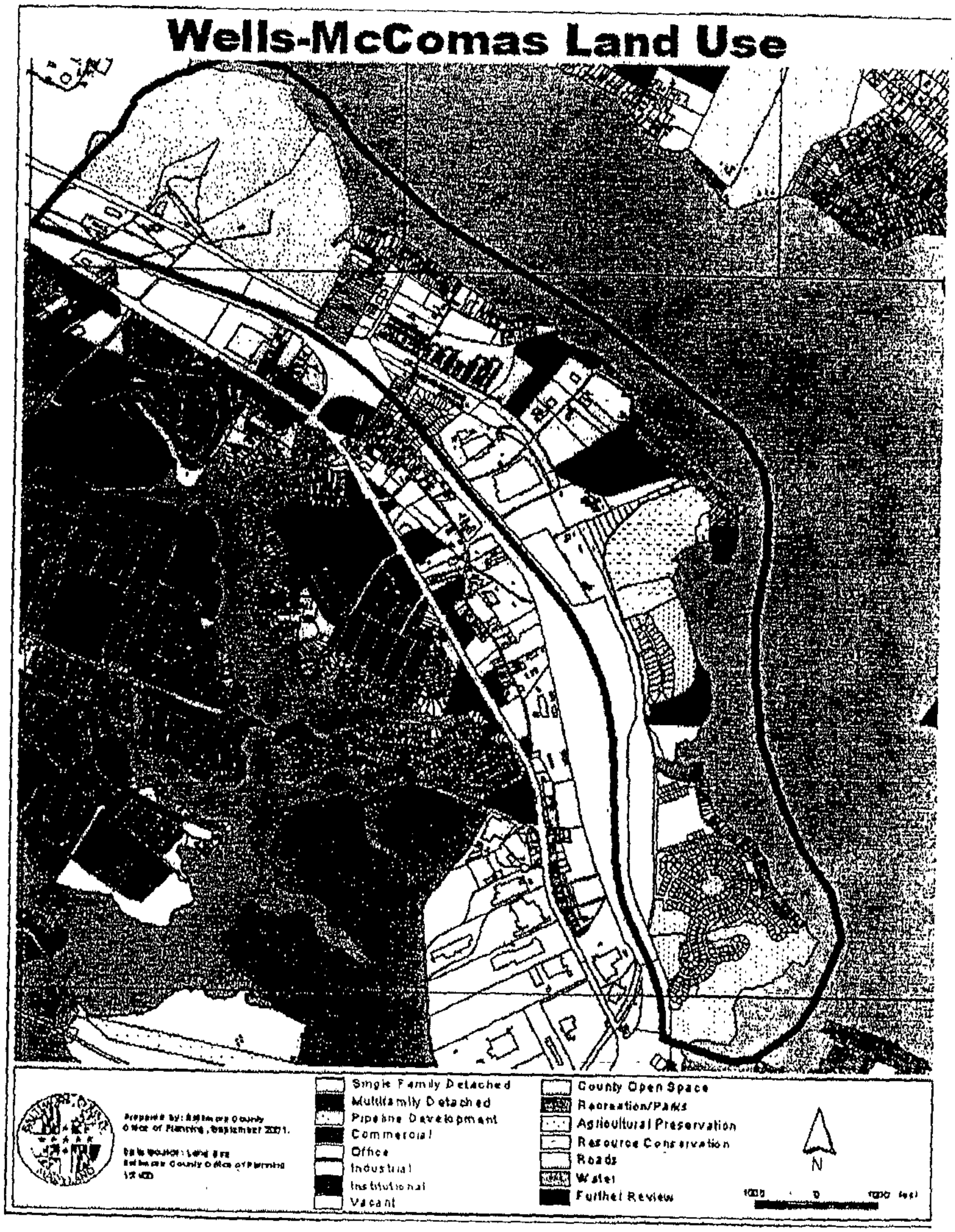


Prepared by: Baltimore County Office of Planning, September 2001.
Data Sources: Roads Baltimore Metropolitan Council 1:24000
Zoning-Baltimore County Office of Planning, 1:24000.
Study Area Boundary-Baltimore County Office of Planning, 1:2400.

Land use decisions involving zoning should be verified with the Zoning Office

Section F.

Figure 5 Land Use Map



Change in General Demographic Characteristics 1990 – 2000 for a Study Area within Census Tract 452400

Currently for Census 2000 data, the smallest geographic entity available is the census tract. The study area in southeastern Baltimore County is part of census tract 452400, which includes three block groups. Two of these block groups fall within the study area and contain 95% of the residential data. The third block group is not within the study area and is primarily Sparrows Point Country Club.

Change in race between the 1990 and 2000 Census cannot be measured because different terminology was used for the race categories. In 1990, individuals could only report one race, while in 2000, individuals could report up to six races. The names of the categories are also different. Below are the counts and categories for the 1990 and 2000 Census.

RACE

1990		2000	
		One race:	
White	2,123	White alone	2,792
Black	162	Black or African American alone	2,624
American Indian, Eskimo, or Aleut	7	American Indian and Alaska Native alone	142
Asian or Pacific Islander	8	Asian alone	8
Other race	2	Native Hawaiian and Other Pacific Islander alone	15
		Some other race alone	1
		Two or more races:	2
		White; Black or African American	14
		White; American Indian or Alaska Native	2
		White; Asian	9
		White; Native Hawaiian and other Pacific Islander	1
		White; some other race	1
		Native Hawaiian and Other Pacific Islander; some other race	0
		Three or more races:	1
		White; Black or African American; American Indian and Alaska Native	1
TOTAL	2,302	TOTAL	2,807

Section E

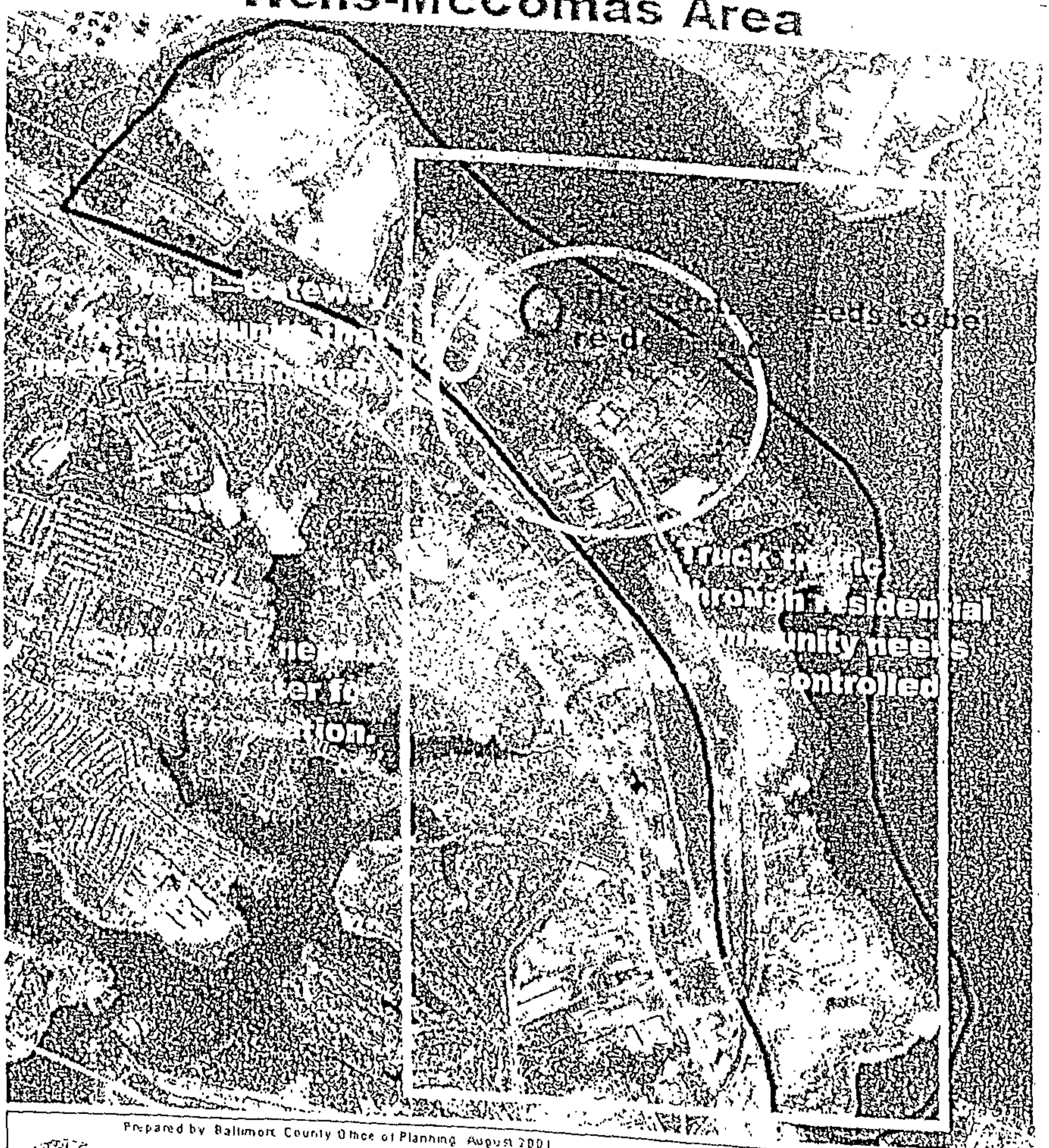
*For Census 2000 data on more than one race, only the complete category listing for "white..." is shown here and just the categories that have a value greater than "0" are shown after that.

Categories for Population and Housing can be compared between 1990 and 2000. The chart below shows some of the changes.

Subject		1990	2000	Change	Percent Change
Total population		2,302	2,807	505	21.9%
SEX AND AGE					
male	1,150	1,356	206		17.9%
female	1,152	1,451	299		25.9%
Under 5 years	145	162	17		11.7%
5 to 9 years	112	175	63		56.3%
10 to 14 years	95	207	112		117.9%
15 to 19 years	118	162	44		37.3%
20 to 24 years	172	86	-86		-50.0%
25 to 29 years	184	134	-50		-27.2%
30 to 34 years	202	184	-18		-8.9%
35 to 39 years	165	254	89		53.9%
40 to 44 years	148	272	124		83.8%
45 to 49 years	133	200	67		50.4%
50 to 54 years	172	187	15		8.7%
55 to 59 years	165	170	5		3.0%
60 to 64 years	155	162	7		4.5%
65 to 69 years	141	169	28		19.9%
70 to 74 years	85	113	28		32.9%
75 to 79 years	68	95	27		39.7%
80 to 84 years	27	43	16		59.3%
85 years +	15	32	17		113.3%
18 years +	1,889	2,162	273		14.5%
male	933	1,024	91		9.8%
female	956	1,138	182		19.0%
21 years +	1,804	2,079	275		15.2%
62 years +	430	554	124		28.8%
65 years +	336	452	116		34.5%
male	158	211	53		33.5%
female	178	241	63		35.4%
Median Age (years)	38.7	40.6	1.9		4.9%

Subject	1990	2000	Change	Percent Change
RELATIONSHIP				
Total population	2,302	2,807	505	21.9%
in households	2,302	2,807	505	21.9%
HOUSEHOLDS BY TYPE				
Total households	894	1,091	197	22.0%
Family households	693	783	90	13.0%
with own children -18yrs	262	316	54	20.6%
Married-couple family	568	598	30	5.3%
with own children -18yrs	219	239	20	9.1%
Male householder, no wife present	35	68	33	94.3%
with own children -18yrs	11	27	16	145.5%
Female householder, no husband present	90	117	27	30.0%
with own children -18yrs	32	50	18	56.3%
Nonfamily households	40	56	16	40.0%
householder living alone	161	252	91	56.5%
householder 65 years +	65	123	58	89.2%
Households w/ individuals under 18 years	270	372	102	37.8%
Households w/ individuals 65 years +	248	356	108	43.5%
Average household size	2.57	2.57	0	0.0%
Average family size	2.90	2.99	0	3.1%
HOUSING OCCUPANCY				
Total Housing Units	931	1,149	218	23.4%
Occupied housing units	894	1,091	197	22.0%
Vacant housing units	37	58	21	56.8%
for seasonal, recreational, or occasional use 6	6	0	0.0%	
HOUSING TENURE				
Occupied housing units	894	1,091	197	22.0%
Owner-occupied housing units 776	954	178	22.9%	
Renter-occupied housing units 118	137	19	16.1%	

Wells-McComas Area



Section E

Figure 8 Zoning Classifications

From A Citizen's Guide to Zoning in Baltimore County, April 1999.

Residential Zones

Intended to foster a greater variety of housing types meeting the needs of different housing market requirements; to allow more preservation of natural features and induce the reservation of better open space; to provide greater certainty about dwelling types and densities within existing communities with the goal of conserving and maintaining these areas.

DR 3.5: 3.5 units per acre

DR 5.5: 5.5 units per acre

Business Zones

BM Business Major

Wide range of commercial uses. Non-commercial uses of a civic, social, recreational, or educational nature. Uses allowed in any adjoining residential zone.

Manufacturing Zones

MH Manufacturing, Heavy

Bank, warehouses, laboratory, manufacturing and assembling of merchandise from previously prepared materials, office/medical clinics, printing, research institute, and transit facilities, animal boarding, commercial beach, community buildings and pools, outdoor recreation clubs, veterinarian's offices and with conditions any other manufacturing use. Dwellings are prohibited.

ML Manufacturing, Light

Industrial uses requiring assembly, production, processing, packaging, or treatment of various elements, boat yards, laboratories, office/medical clinics, bus terminals, excavations not using explosives, equipment/material storage yards, heliports, volunteer fire company facilities.

MLR Manufacturing, Light, Restricted

Banks, warehouses, laboratory, manufacturing and assembling of merchandise from previously prepared materials, office/medical clinics, printing, research institute, and transit facilities, car wash and fuel service stations in planned industrial parks with IM district.

Rural Conservation Zones

To foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses.

RC 2 Agriculture

Farm, farmette, single-family detached dwelling, public school, farmer's roadside stand, tenant house.

RC 5 Rural Residential

Single family dwelling, church, farm, farmette, school.

RC 20 Critical Area

Single family dwelling, school, fish and wildlife preserve, agriculture, aqua-culture.

Advisory Committee Members

Vince Carlin
Ross Cole
Guido Guarnaccia
Tim Koch
Pat Krug
Doris & Al Kuhar
Neil Lanzi
Jim Murry
Jean Ramadka
Russell Siegel
David Taylor
Richard Taylor
Fred Theiss
Janet Wood

Baltimore County
Office of Planning
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

http://www.co.ba.md.us

Baltimore County
Department of Permits and
Development Management

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

SERVED ON: STANLEY L. HOLMES, RESIDENT AGENT

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

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CITATION

SERVE ON RESIDENT AGENT, CORPORATE OFFICER, OWNER, TENANT, AS APPLICABLE

16-00-005727

Citation/Case No.	Property No.	Zoning:
04-0634	16-00-014053	M4

Name(s): PNEU CORPORATION

Address: P.O. BOX 564 WEST CHESTER PA. 19381-0564

Violation Location: 8230 BETZER ROAD

Violation Dates: 1-22-04 TO 1-18-05

BALTIMORE COUNTY FORMALLY CHARGES THAT THE ABOVE-NAMED PERSON(S) DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS OR REGULATIONS:

102.1; 256; 409.8A.2; 409.8D.2.(a)(b)(c); 410A.3.B.6; 410A.3.B.7 - B.C.Z.R.
32-3-102 - B.C.C.
PARKING LOT SURFACE FAILS TO BE DUSTLESS/DURABLE AND DOES NOT MEET DRAINAGE/PAVING STANDARDS.

Pursuant to Section 1-8, Baltimore County Code, a civil penalty has been assessed, as a result of the violation cited herein, in the amount indicated: $ 72,200.00/DAY

A quasi-judicial hearing has been pre-scheduled in Room 116, 111 West Chesapeake Avenue, Towson, Maryland, for: Date: 3-15-05 Time: 9:00 AM

Citation must be served by: Date: 2-10-05

Pro #3

30 years ago

Pro #4

Baltimore County Zoning Commissioner
Office of Planning
Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204

Photographs
Protestants Exhib.
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& 7A-7F

Case #05-302-A

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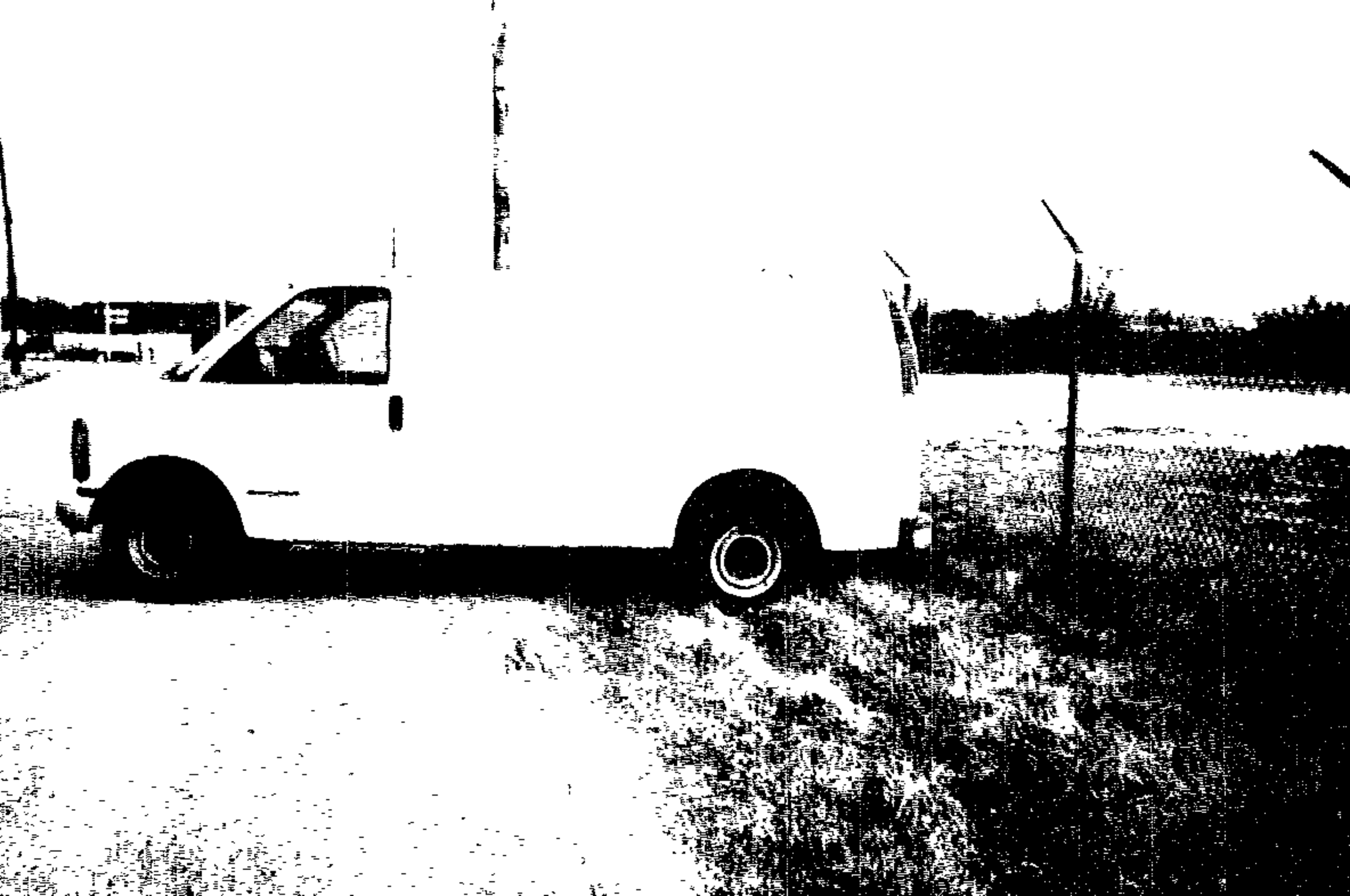

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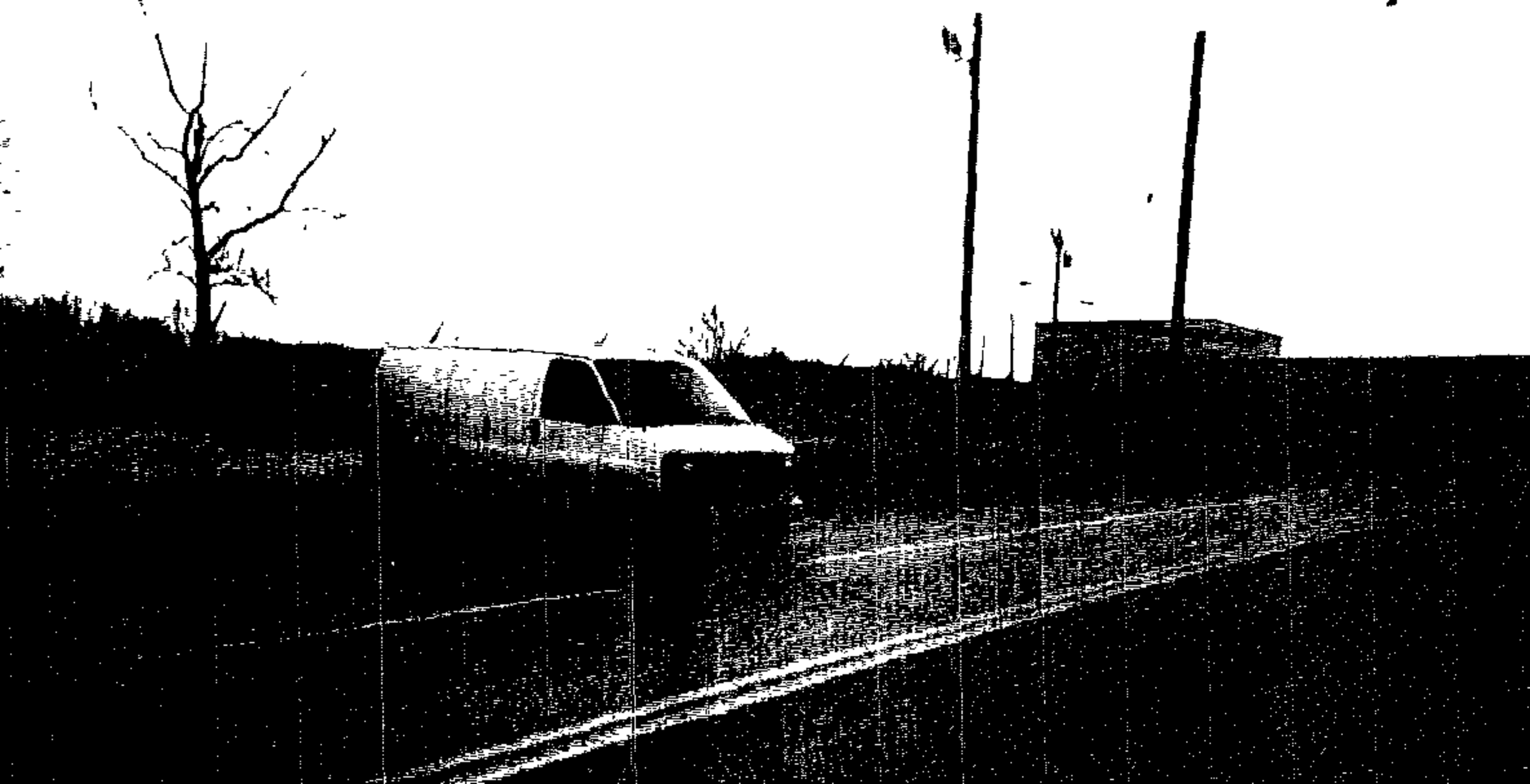

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UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

September Term, 1979

No. 18

EDEN J. LASKEY, et al.,

v.

BETHLEHEM STEEL
CORPORATION, et al.

Gilbert, C.J.
Weiner
Couch,
JJ.

PER CURIAM

Filed: September 26, 1979

OK

R

I might have left those out of 05-302

D no 6

This appeal generally involves the matter of statutory construction and the recognized rules to be followed in such an exercise by a zoning board of appeals, a trial court, and this Court.

The factual background of the case is simple and straightforward. Appellee Bethlehem Steel Corporation (Ernest J. Kern, contract purchaser) filed a petition for special exception for a truck terminal on property east of North Point Boulevard near its intersection with Wise Avenue. The subject property is located in a mixed residential, commercial, and industrial neighborhood in the southeastern section of Baltimore County, and is zoned M.L. - I.M. (manufacturing, light industrial - major district). There are residences in the vicinity of this property which constitute non-conforming uses since these properties are not zoned residential but have various classifications of business, commercial, or manufacturing-light. Several of the occupants of these residences opposed the petition for special exception.

Following a hearing before the Zoning Commissioner of Baltimore County the petition was denied. Appellees noted an appeal to the County Board of Appeals which, after hearing, granted the petition with restrictions. From this action appellants appealed to the circuit court, which affirmed the action of the Board of Appeals. From the circuit court's order appellants bring the matter to us, presenting two questions:

> 1. Whether the proximity of residences to the proposed trucking facility clearly was a bar to approval pursuant to Section 410A.2 of the Baltimore County Zoning Regulations, by plain language and legislative history?

2. Whether the failure of the Petitioner to contradict probative evidence of adverse environmental impact from noise, fumes, and congested access associated with the proposed trucking facility clearly was a bar to approval pursuant to Section 502.1 of the Baltimore County Zoning Regulations ?

The Baltimore County Zoning Regulations (hereinafter BCZR) existing at the time of the filing of the instant petition, BCZR 253.2A.6 (1975), provided that "truck terminals" would be permitted by special exception only. The former regulation made no mention of restrictions relative to a truck terminal's proximity to a dwelling or residential zone. By the time the hearing was held before the Board of Appeals, the County Council enacted a bill (Bill No. 18, 1976) amending the Zoning Regulations which by definition in present BCZR § 101 divided the former "truck terminals" into two classifications, "Class I trucking facility"[1] and "Class II trucking facility". The parties agree that the petition for special exception here concerns a Class II trucking facility which is defined as, "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)". Far more relevant to the present inquiry was the amendment's placement of restrictions on the establishment of trucking facilities, the most notable of which was a requirement that a Class II trucking facility be located 300 feet from a dwelling or a residential zone. It appears uncontradicted that under the Board of Appeals' order

---

1. "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 or to vehicles of other types, in order to facilitate the transportation of such goods or chattels. BCZR § 101 (1976). [Bill No. 18, 1976]

at least one of the protestants' dwellings is within this distance. Whether the other protestants' homes are within this distance is not clear from the record.

Both the Board of Appeals and the circuit court, in making their respective determinations, interpreted the pertinent section of the new Zoning Ordinance as meaning that a dwelling must be in a residential zone for the restriction to apply; we believe both erred in this construction.

The relevant section of the Zoning Ordinance (BCZR 410A.2) provides:

> "Location. Proximity to residential zone or wetland. No Class II 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 II trucking facility may be located within 25 feet of a dwelling or a residential zone."

Section 101 of the Zoning Regulations defines dwelling as "a building or portion thereof which provides living facilities for one or more families."

The resolution of this appeal will depend upon an examination of BCZR 410A.2 to determine the legislative intent. Appellants contend that it was the intent of the County Council to allow a Class II trucking facility, under circumstances such as exist in this case, only if such facility is located more than 300 feet from a dwelling. They contend the evidence demonstrated that this restriction was not met, and that both the Board of Appeals and the circuit court erred in concluding otherwise. On the other hand, appellees urge that the Board of Appeals and the circuit court were correct in interpreting the pertinent section to mean, in effect, that the dwellings must be within a residential zone for the restriction to apply. We disagree with appellees' position and shall reverse.

A cardinal rule of statutory construction is to ascertain and carry out the real legislative intention. See Wheeler v. State, 281 Md. 593, 596, 380 A.2d 1052 (1977), cert. den., 435 U.S. 997, 98 S. Ct. 1650, 56 L.Ed.2d 86. It is also well settled that a statute should not be construed to lead to an unreasonable or illogical result. See Curtis v. State, 284 Md. 132, 149, 395 A.2d 464 (1978), and cases cited therein. Furthermore, a statute is to be read so no word is rendered surplusage or meaningless. Mazor v. St. Dept. of Corrections, 279 Md. 355, 360, 369 A.2d 82 (1977). We also recognize that the legislature is presumed to have full knowledge and information as to prior and existing law on the subject of a statute it has enacted. Bowers v. State, 283 Md. 115, 127, 389 A.2d 341 (1978). Additionally, where statutory language is plain and free from ambiguity and expresses a definite and sensible meaning, courts are not at liberty to disregard the natural meaning of words with a view toward making the statute express an intention which is different from its plain meaning. Wheeler, supra.

Keeping these principles in mind, we conclude that BCZR 410A.2 is unambiguous and the intent of the legislature is clear - the County Council intended to provide that no trucking facility, or part thereof, could be located any closer than 300 feet from a dwelling. The appellees, in contending otherwise, state that since BCZR § 101 defines the word "OR: [as] The word 'or' shall mean 'and/or' unless the context otherwise clearly indicates another meaning." (emphasis supplied), the language should be read to mean that a residential zone must be involved. Such an interpretation, even if one were to read BCZR 410A.2 as "a dwelling and/or a residential zone", would render the use of the term "dwelling" surplusage. Mazor

v. St. Dept. of Corrections, supra. Clearly, there would be no necessity for the use of the term "dwelling" if a dwelling had to be in a residential zone for the restriction to apply. Further support for this conclusion can be found in the fact that "dwelling" was specifically added in the new regulation, it having been absent in the repealed regulation. Additional evidence of this intention can be found in the Baltimore County Planning Board's final report which accompanied the proposed trucking facilities zoning amendment[2] and was before the Council during its deliberations. 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 homes of Baltimore County citizens over the years, especially in communities near major industrial areas." It is evident from a consideration of all these factors, the lack of ambiguity, the mere presence of the term "dwelling", the specific addition of the term to the new regulation, and the Planning Board's final report, that the real legislative intent behind BCZR 410A.2 is to protect those dwellings which are not located in a residential zone.

The appellees, of course, look for support for their position in the opinion of the circuit court, where it is stated: "It is noted that while not controlling, the title to the particular section is 'proximity' to residential zone or wetland." According to appellees, if the drafters of the legislation or the County Council intended that the existence of a "dwelling" was the crucial element in the phrase "within 300 feet of a dwelling or a residential zone", the caption should have used the word "dwelling" by itself, or at the very least included the word "dwelling" concomitantly with "residential zone". We reject this argument. As the lower court

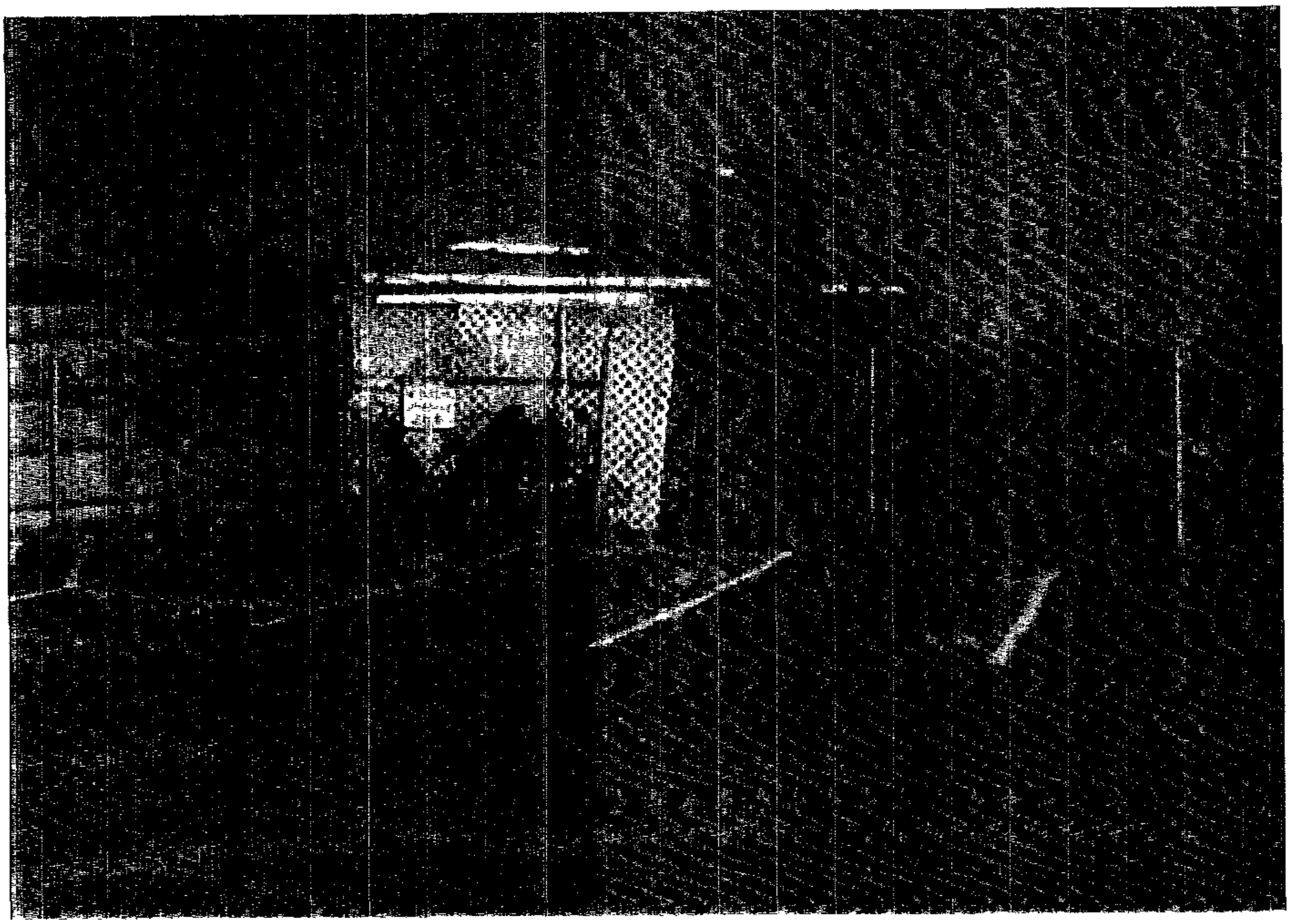
2. The new regulations were based to a large extent on recommendations of the special Citizens Task Force on Truck Terminals, appointed by the County Executive. The Planning Board held a hearing on the recommendations and revised them.

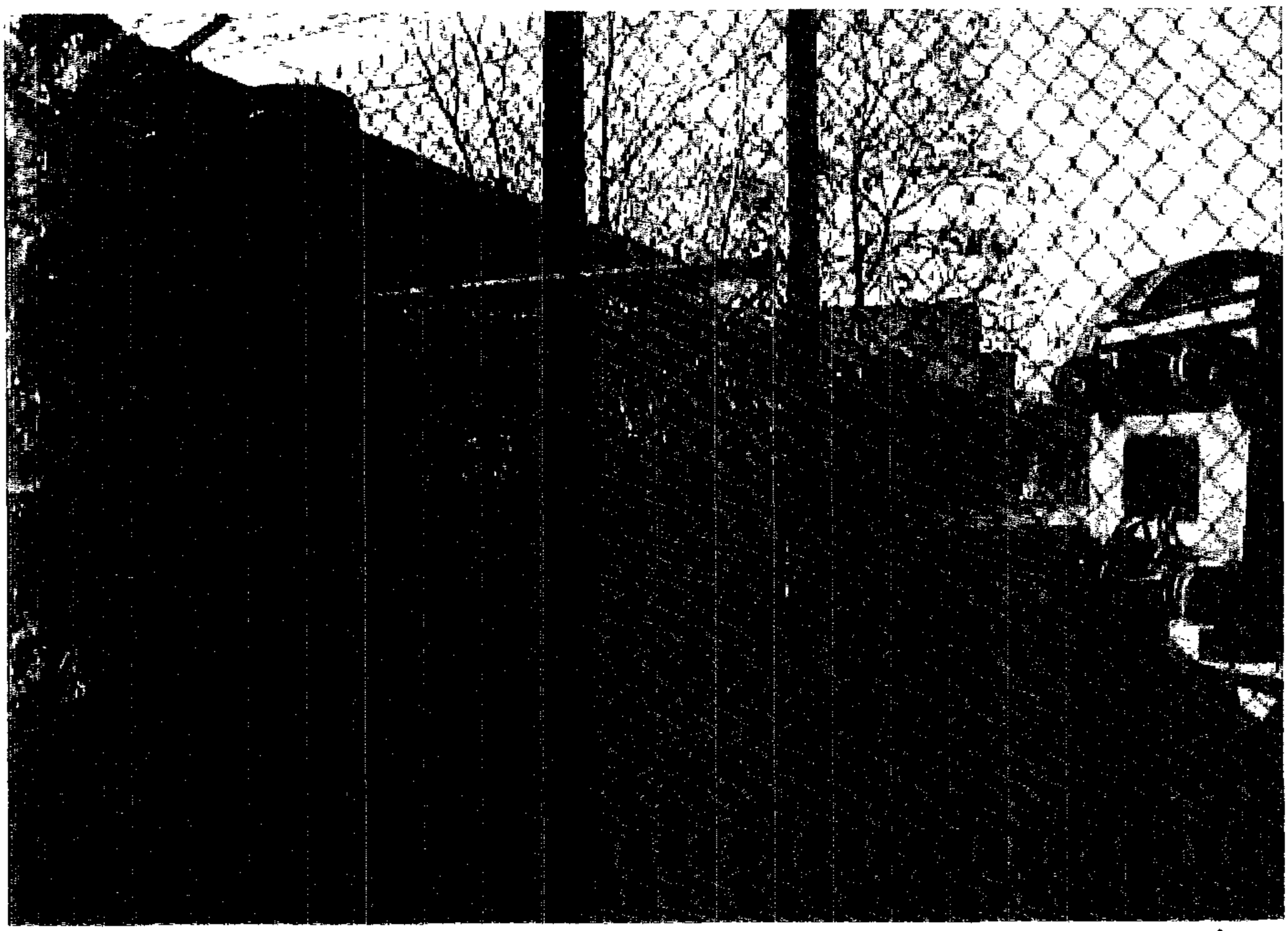
properly observed, though we disagree with the conclusion it reached on the merits, the caption to BCZR 410A.2 is not controlling. The caption to this section plays no part in ascertaining its intent, purpose, or effect, since we find no ambiguity in the body of the regulation.

We believe the Board of Appeals and the circuit court both erred in construing the Ordinance as they did. In view of this conclusion we find it unnecessary to reach appellants' second question.

ORDER REVERSED. CASE REMANDED FOR THE ENTRY OF AN ORDER NOT INCONSISTENT WITH THIS OPINION.

COSTS TO BE PAID BY APPELLEES.





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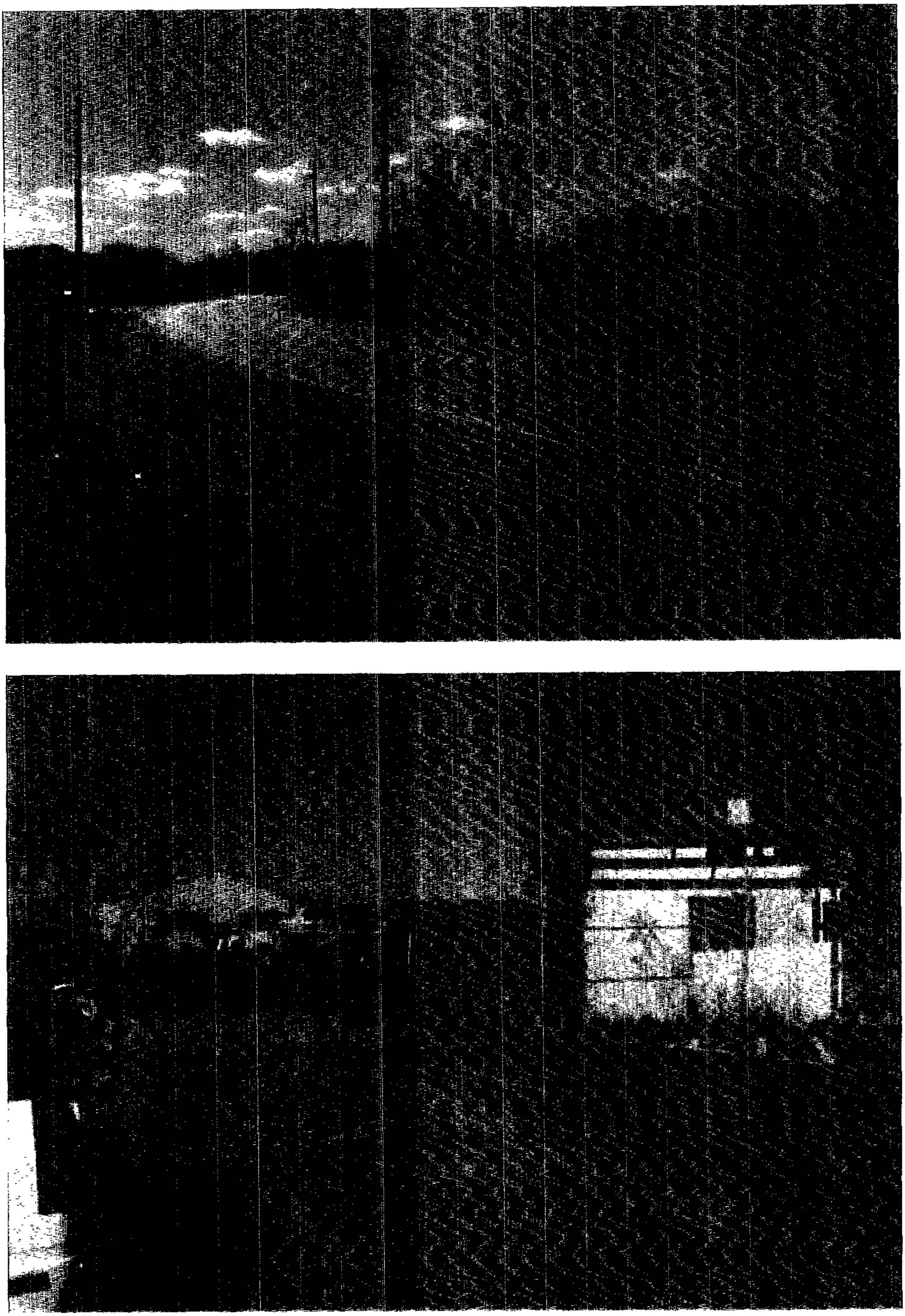

Pret FX01

McLEAN v. SOLEY

[No. 23, September Term, 1973.]

Decided November 7, 1973.

ZONING — *Variances — Need Sufficient To Justify An Exception Must Be Substantial And Urgent, And Not Merely For The Convenience Of The Applicant.* pp. 212-213

ZONING — *Variances — Requirements Of "Practical Difficulty Or Unreasonable Hardship" Are In The Disjunctive — No Reason To Construe "Practical Difficulty" As The Equivalent Of A Taking In The Constitutional Sense.* pp. 213-214

ZONING — *Variances — Criteria For Determining Whether Practical Difficulty Has Been Established.* pp. 214-215

ZONING — *Variances — Facts Which Meet Criteria For Granting Exception To Sideyard Requirements Where Strict Compliance Would Result In Destruction Of Trees.* p. 215

ZONING — *Estoppel — Variances — Rule That One Is Charged With Knowledge Of Zoning Regulations When Property Is Purchased And Therefore Precluded From Asserting Hardship Is Significant For Use Variances But Not Area Variances.* p. 215

ZONING — APPEAL — *Fairly Debatable — A Zoning Body's Decision Will Be Sustained Where Reasonable Persons Could Have Reached Differing Conclusions On The Evidence So That The Issues Were Fairly Debatable Even If A Court Might Have Reached A Contrary Result On The Evidence.* pp. 215-216

R. L. H.

Appeal from the Circuit Court for Baltimore County (MACDANIEL, J.).

Appeal by William H. McLean, Jr., from granting of a sideyard variance to Joseph L. Soley by the Board of Appeals of Baltimore County. From a judgment affirming the action of the Board, the protestant appeals.

Judgment affirmed; appellant to pay costs.

The cause was argued before MURPHY, C. J., and BARNES, MCWILLIAMS, SINGLEY, SMITH, DIGGES and LEVINE, JJ.

Richard F. Cadigan for appellant.

W. Lee Harrison, with whom was *Cooper C. Graham* on the brief, for appellee.

LEVINE, J., delivered the opinion of the Court.

This appeal is from an order of the Circuit Court for Baltimore County which affirmed a decision of the County Board of Appeals of Baltimore County (the Board) granting a variance from the side yard window setback requirement contained in the county zoning regulations. Appellee, Joseph L. Soley (Soley), had applied for the variance in connection with his proposed apartment house-office building project, and appellant, William H. McLean, Jr. (McLean), who lives in a house adjacent to the Soley property, was the only protestant.

The property in question is located on the north side of Aigburth Road approximately 324 feet east of York Road. Immediately to its west is a development previously built by Soley known as Cardiff Hall East Apartments, which also combines apartment units and office space. The McLean property, including his residence, is situated immediately to the east and fronts on Aigburth Road. The subject property, consisting of 2.43 acres, is rectangularly-shaped with the south end also fronting on Aigburth Road. The rear end of the parcel backs up on an alley which separates it from a development of detached homes called "Burkleigh Square."

Solely proposes to erect two rectangularly-shaped buildings, each to contain 20 dwelling units, positioned upon the parcel in a north-south direction. In other words, the south end of one building would front on Aigburth Road and the north end of the second would back up on the alley.

The adjacent parcel to the west, previously developed by Soley, consists of 4.44 acres and is improved by 60 units. Since the property is in the D.R. 16 classification, as is the

McLean property, it permits 16 dwelling units to the acre; and by treating the two parcels as one unit for density purposes, as Soley was permitted to do, it could properly accommodate 110 units.

Although Soley was required to seek relief from the strict requirements of the Baltimore County Zoning Regulations in several respects, only one is of concern in this appeal. Section 1B01.2C2a of the zoning regulations provides:

> "a. Where any dwelling unit window within a subdivision faces a property line which is not a street line prior to the time of development but, otherwise, which forms any part of the tract boundary, the window shall not be closer than 35 feet to the boundary."

When Soley initially filed his petition for a variance, he asked for a reduction in the above-described requirement from 35 to 10 feet for the southernmost (front) building in relation to McLean's property line. His principal reason for this request was — and remains — the retention of "the present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty." In a word, therefore, this dispute is over trees. McLean in his testimony describes the issue poetically: "It is a question of a tree or me; I think I am more important than the tree."

After this petition was presented to the Zoning Commissioner of Baltimore County, he ordered that it be granted, but modified Soley's application by reducing the setback requirement from 35 feet to 20 feet instead of the requested 10 feet. That decision was affirmed by the Board which rejected McLean's contention that the variance "would interfere with his light, air and privacy," and determined that Soley "would suffer a practical difficulty and unreasonable hardship if the requested variances were not granted."

In addition to his own testimony, at the Board hearing Soley also presented two expert witnesses, an engineer and

an arborist. Soley's testimony established that he is dedicated to preserving as many existing trees as he can in his building projects, including the one proposed here. This objective influenced the development of the first apartment complex, and it has been fully occupied during its entire six-year existence. He explained — and this was supported by the two experts — that if he chose to destroy the existing trees, he could build 110 units without requiring the contested variance.

Soley also described the meticulous care which he, the engineer and the arborist have taken on the first project in "pinpointing" the existing trees and in designing the projects "around" them. For example, the parking areas were built with "notches" and "cutouts" wherever trees were located, all at substantial expense to Soley. It was also established that the loss of a number of attractive trees running along the western boundary of the subject property would result if the buildings were constructed without the variance.

In short, Soley's case is that the preservation of these and other trees situated about the parcel depends upon the variance from the 35-foot requirement; and there was considerable evidence to show the natural beauty of these trees and their importance to the ecology. On the other hand, the loss of existing trees, if the variance is granted, would be relatively minor. Thus, it is claimed, denial of the variance would result in a "practical difficulty or unreasonable hardship," and would have a detrimental effect on the welfare of the community.

It was also established that even with the variance, since the McLean house is set back 28 feet from its property line, it would be 48 feet from the proposed apartment building. The engineer testified that this exceeds the county requirement for a 40-foot "window-to-window" relationship.

The evidence summarized above has not been seriously challenged by McLean. His complaint is that the reduction of 15 feet "will contribute to a greater invasion of my [yard] privacy, and I think that despite anything to the contrary, the summer breezes are going to be snuffed off, and, in a way, impair the enjoyment of the rear property."

As we have indicated, the Board decision was upheld by the circuit court which based its decision upon the test enunciated in *Loyola Loan Ass'n v. Buschman*, 227 Md. 243, 176 A. 2d 355 (1961); and held that the evidence of whether strict compliance with the regulations would result in practical difficulty or unreasonable hardship was fairly debatable. Hence, the Board had not been arbitrary, unreasonable or capricious in reaching its decision. We agree and shall affirm that judgment.

Succinctly stated, McLean's argument in this Court is that whatever the degree of practical difficulty or hardship required for a variance, neither is shown here; and that the request is "merely for the convenience of the applicant," *Carney v. City of Baltimore*, 201 Md. 130, 137, 93 A. 2d 74 (1952). In our view, McLean reads the requirements for a variance too severely.

We think the facts in *Carney, supra*, upon which McLean places his principal reliance, are distinguishable from those at bar. There, a homeowner sought a variance from a sideyard requirement for the purpose of building a bedroom and bath on the ground floor of his house due to his wife's physical condition. The adjacent property owner objected because the variance would have deprived him of light in his dining room. This Court upheld the Board of Appeals decision denying the requested variance. There, we said:

> ". . . The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, and a liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendency to cause discrimination and eventually destroy the usefulness of the ordinance. (citation omitted).
>
> "The expression 'practical difficulties or unnecessary hardships' means difficulties or hardships which are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant. Exceptions on the ground of 'practical difficulties or unnecessary hardships' should not be made except where the burden of the general rule upon the individual property would not, because of its unique situation and the singular circumstances, serve the essential legislative policy, and so would constitute an entirely unnecessary and unwarranted invasion of the basic right of private property. (citations omitted)." 201 Md. at 137.

We think the cases are distinguishable in that there the Board of Appeals determined that the variance was based on convenience rather than practical difficulty; and, furthermore, no benefit to any other persons was established.

In our view, this case is controlled by *Loyola Loan Ass'n v. Buschman, supra*. There, the applicant sought a variance from the height limitations for a proposed office building. Two additional floors were required because the side setback and parking space requirements made it necessary to build the structure in that manner. The standard for granting a variance then, as it is now, was whether strict compliance with the regulations would result in "practical difficulty or unreasonable hardship"; and that it should be granted only if in strict harmony with the spirit and intent of the zoning regulations; and only in such manner as to grant relief without substantial injury to the public health, safety and general welfare.

There we noted that the requirements "practical difficulty or unreasonable hardship" are in the disjunctive. Thus we said:

> "The terms of § 307 are applicable only to variances as to height and area. We see no occasion to construe that section otherwise than as it reads — in the disjunctive — 'practical difficulty or

unreasonable hardship,' and we see no reason to construe 'practical difficulty' here as the equivalent of a taking in the constitutional sense. In our estimation, the Board had at least sufficient evidence before it to make the question of practical difficulty a debatable one; and under the authorities above referred to, its order should, therefore, have been affirmed. . . . This, we think, presents at least a case of 'practical difficulty' within the meaning of § 307 of the Regulations. To ignore it and to restrict Loyola to a building of uneconomic size where, as here, the Board's findings that there is no injury to the public health, safety and general welfare and that the proposed variance is in strict harmony with the spirit and intent of the Regulations should be upheld, would, we think, place too narrow a construction upon § 307, and would itself impose an unreasonable hardship on the applicant. . . ." 227 Md. at 250-51.

We think it clear that the evidence in this case was fairly debatable on the issue of "practical difficulty." In 2 Rathkopf, *The Law of Zoning and Planning*, (3d ed. 1972) 45-28, 29, the following criteria for determining whether "practical difficulty" has been established are set forth:

> "1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
>
> "2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
>
> "3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy for its entire six years; that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance; and that there was only meager evidence to support the contention that a detriment would befall the neighboring property owner.

It is also contended by McLean that Soley is precluded from asserting "practical difficulty" because he was charged with knowledge of the sideyard requirements when he purchased this property. We see no merit in this argument. We noted in *Zengerle v. Bd. of Co. Comm'rs*, 262 Md. 1, 21, 276 A. 2d 646 (1971), citing *Loyola, supra*, that this "rule" is more strictly applied in "use variance" cases than in cases of "area variances," such as the one at bar. In other words, it has less significance where we are concerned with "practical difficulty" than it does in the event of "hardship" which usually characterizes the "use variance" cases.

Concededly, this is a close case, but it is nevertheless sufficient to support the findings of the Board. Under similar circumstances, we said in *Sembly v. County Bd. of Appeals*, 269 Md. 177, 304 A. 2d 814 (1973), quoting with approval from *Eger v. Stone*, 253 Md. 533, 542, 253 A. 2d 372 (1969):

> " 'This rule [if the issue is "fairly debatable," we will not substitute our judgment for that of the administrative body] will be adhered to even if we were of the opinion that the administrative body came to a conclusion we probably would not have reached on the evidence. In the instant case, but for the rule, we might well have reached the conclusion [that the Board of Appeals erred], but in enforcing

the rule we are obliged to say that reasonable persons could have reached a different conclusion on the evidence so that the issues were fairly debatable, and hence, the decision of the Board must be sustained.' " 269 Md. at 184.

This statement is applicable here.

In sum, we think the circuit court applied the correct test and therefore reached the only permissible result in this case.

Judgment affirmed; appellant to pay costs.

SUPERVISOR OF ASSESSMENTS OF ANNE ARUNDEL COUNTY v. BAY RIDGE PROPERTIES, INC.

[No. 72, September Term, 1973.]

Decided November 7, 1973.

EASEMENTS — *Easements For Recreational Use Of Beach In A Development Did Not Remain In A State Of Suspended Animation As Regarded Unsold Lots, Waiting To Be Activated By Either Sale Of The Lots Or Execution And Delivery Of Deeds Of Conveyance, But By Implication Were Intended To Attach To The Unsold Lots As Soon As The Plats Were Recorded And The First Lot Was Sold Since From Then On There Was No Longer A Unilateral Option Available To The Developer To Grant Or Withhold The Easements.* p. 222

EASEMENTS — *The Combination Of The Grant Of Easements For The Recreational Use Of Beach In A Development And Imposition Of Restrictions Against Disposition And Improvements Deprived The Beach, As The Servient Estate Of Whatever Value It Might Otherwise Have Had And What Value It Had Became Exclusively And Permanently Attached To The Lots, Sold Or Unsold, Improved Or Unimproved.* pp. 222-223

EASEMENTS — *Easement Rights In Beach, Held By Owners Of Lots In A Development, Enhance Values Of The Lots Themselves And Such Enhancement Is Directly Reflected In The Assessments Of Those Properties, But The Beach Itself, Once The Plan Of Development Was Activated, Could Not Be Assessed As Such Because Its Value, Consciously Or Unconsciously, Was Reflected In The Assessed Value Of The Lots To Which It Had Become Appended.* pp. 223-225

TAXATION — *Tax Court Did Not Depart From Statutory Mandate In Maryland Code, Article 81, § 8 (1), That Real Estate Be Assessed To The Owner, When It Directed That The Value Of Easement Rights In Beach Be Reflected In The Amount For Which The Lots To Which Easement Rights Were Appurtenant Were Assessed.* pp. 225-226

R. H.

Appeal from the Maryland Tax Court (KORN, C. J., and LOGAN, HUGHES and ARTHUR, JJ.).

Petition of appeal by Bay Ridge Properties, Inc., from assessment of certain property by the Appeal Tax Court of Anne Arundel County. From an order reversing the action of the Appeal Tax Court of Anne Arundel County and abating and cancelling the assessment, the Supervisor of Assessments of Anne Arundel County appeals.

Order affirmed; costs to be paid by appellant.

The cause was argued before MURPHY, C. J., and BARNES, MCWILLIAMS, SINGLEY, SMITH, DIGGES and LEVINE, JJ.

K. Donald Proctor, Assistant Attorney General, with whom were *Francis B. Burch, Attorney General,* and *E. Stephen Derby, Assistant Attorney General,* on the brief, for appellant.

John A. Blondell for appellee.

SINGLEY, J., delivered the opinion of the Court.

This is an appeal from an order of the Maryland Tax Court which abated and cancelled an assessment of $57,075.00, being approximately 60% of full cash value of $95,128.00, for State and Anne Arundel County tax purposes for the tax year 1972-73 imposed by the County's Supervisor of Assessments (the Supervisor) on 10.681 acres of land owned by Bay Ridge Properties, Inc. (Properties).[1]

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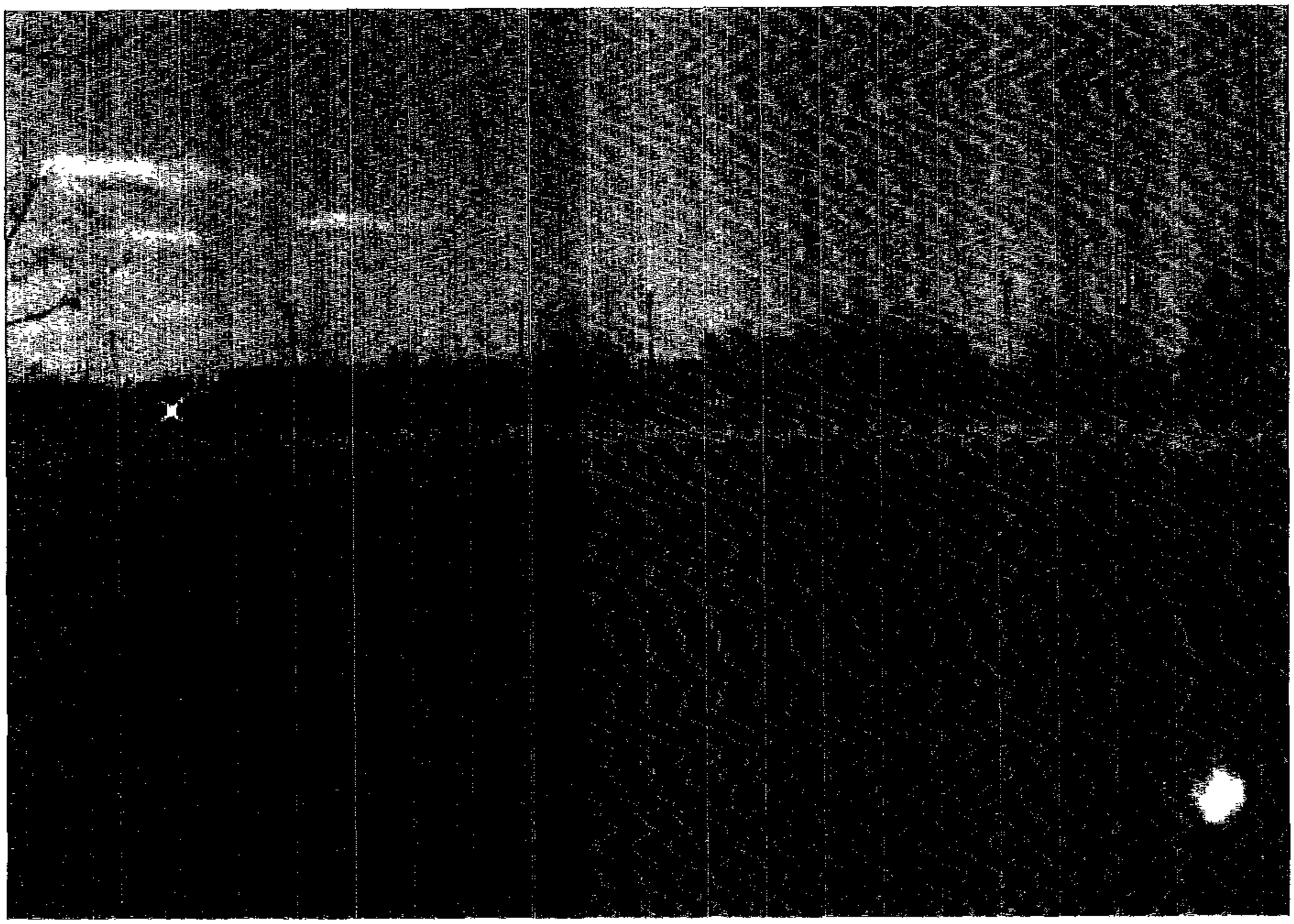
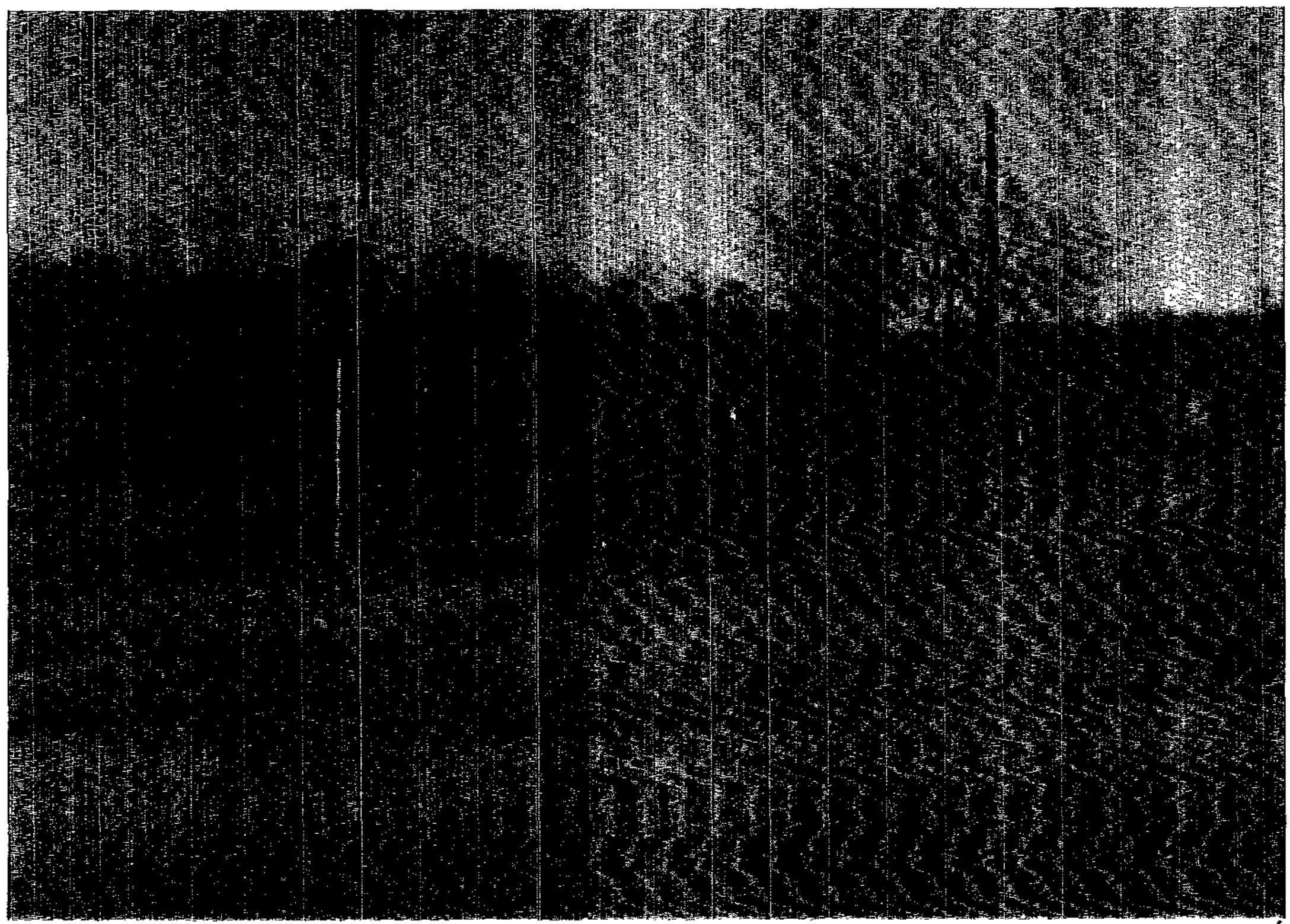
1. The order also had the practical effect of rejecting a proposed levy for three years' back taxes, 1971-72, 1970-71, and 1969-70, predicated on the idea that the 10.681-acre tract was "escaped" property, an assessment permitted by Maryland Code (1957, 1969 Repl. Vol.) Art 81, § 34.





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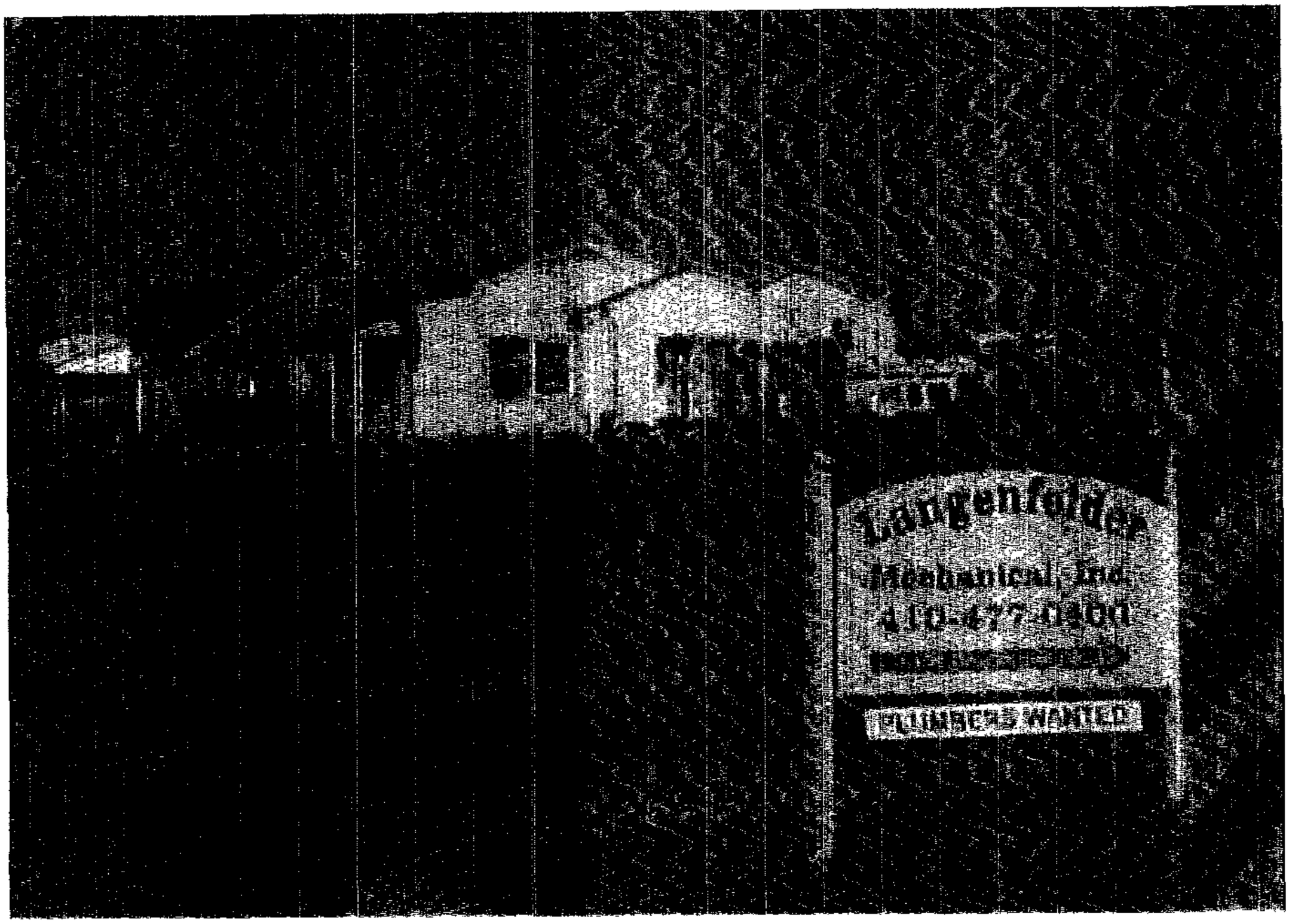

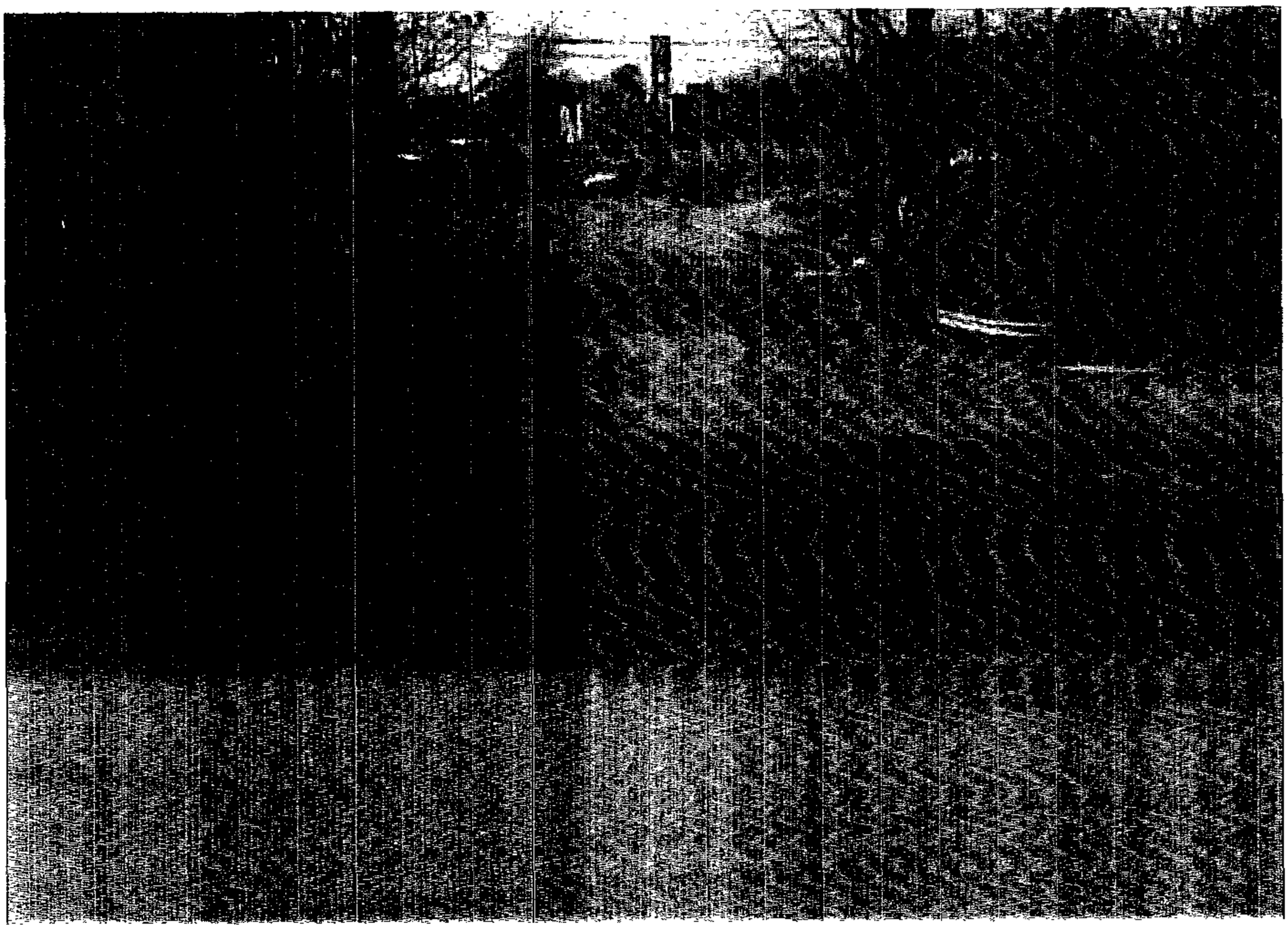

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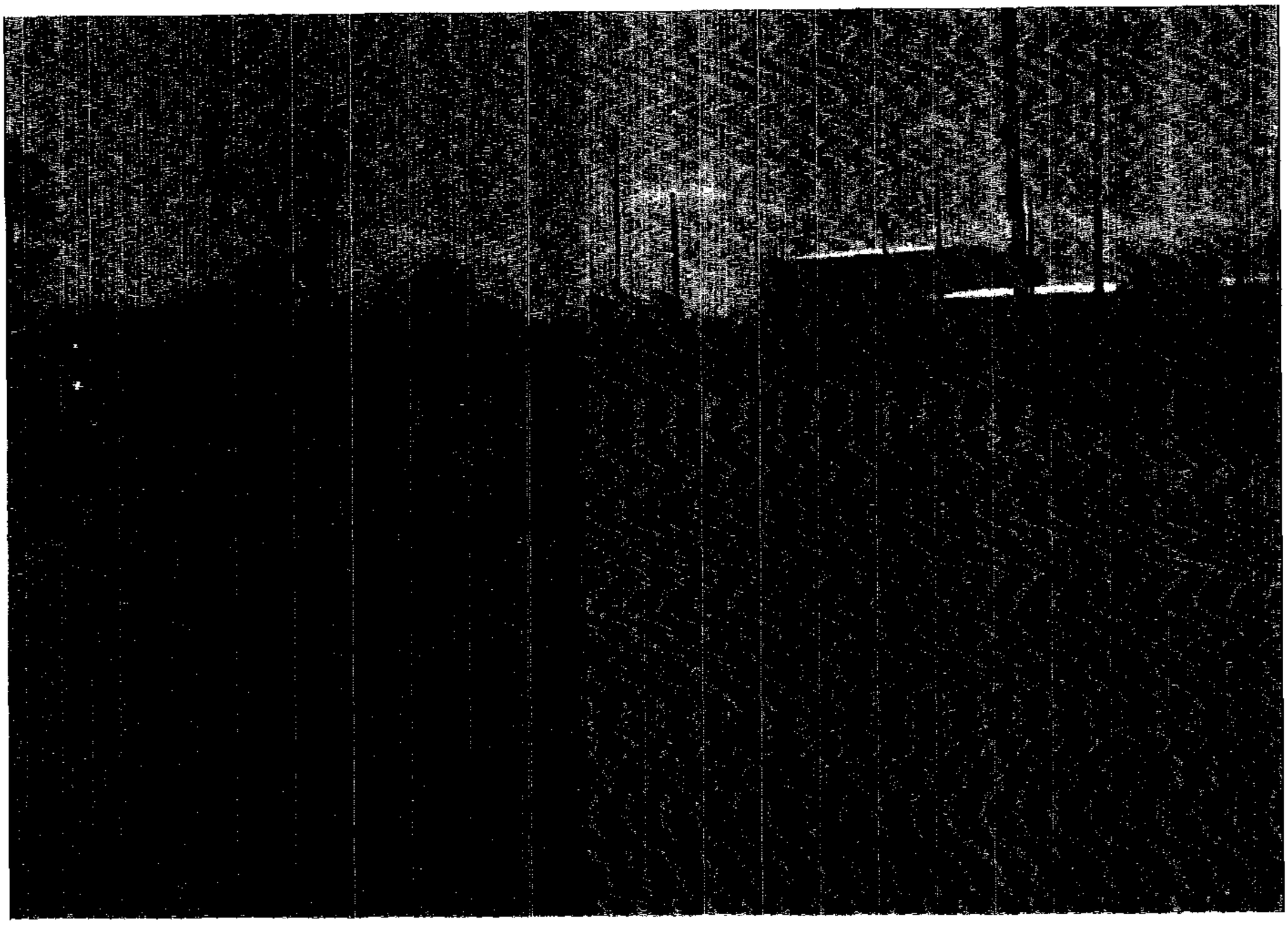

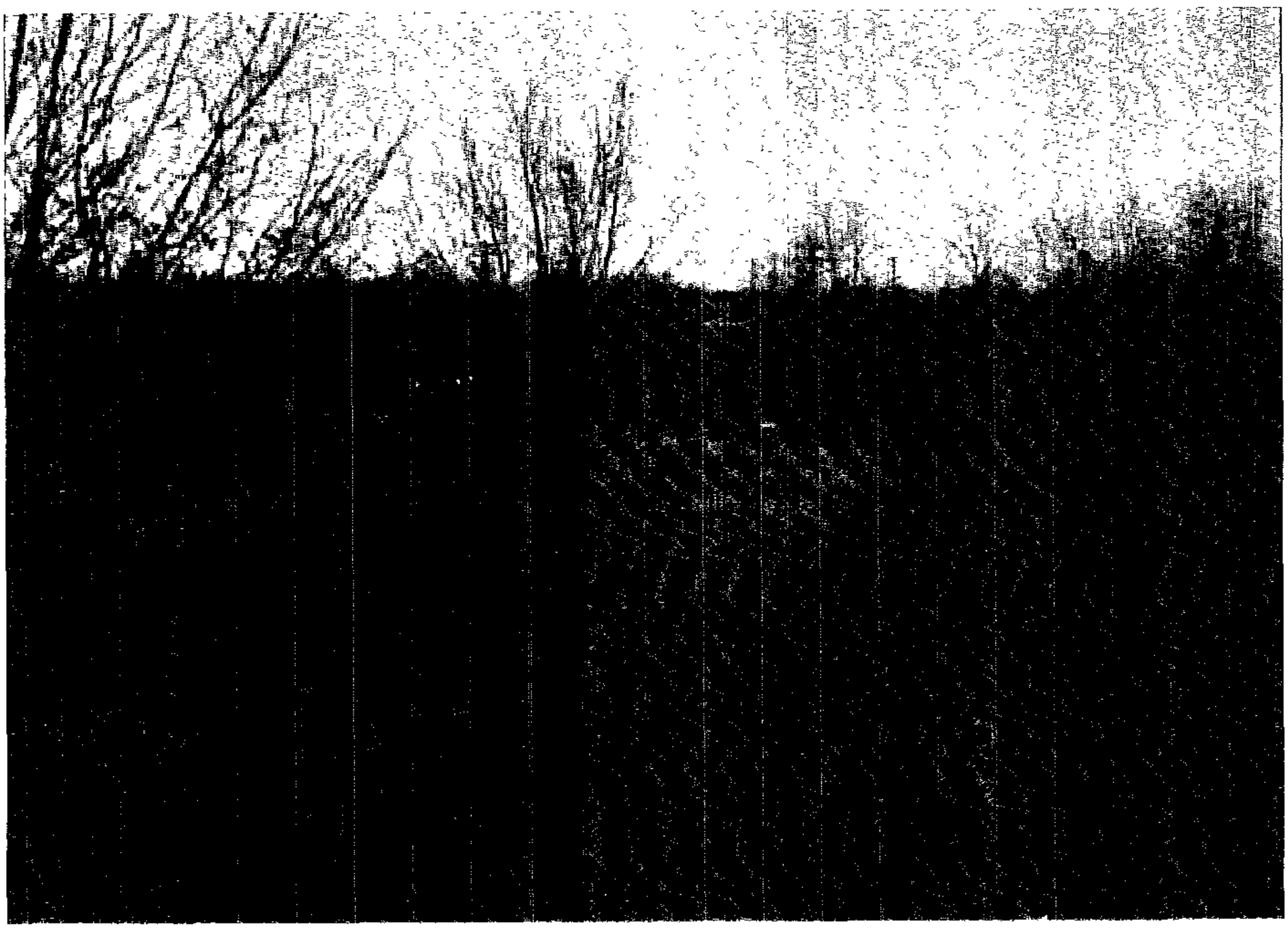

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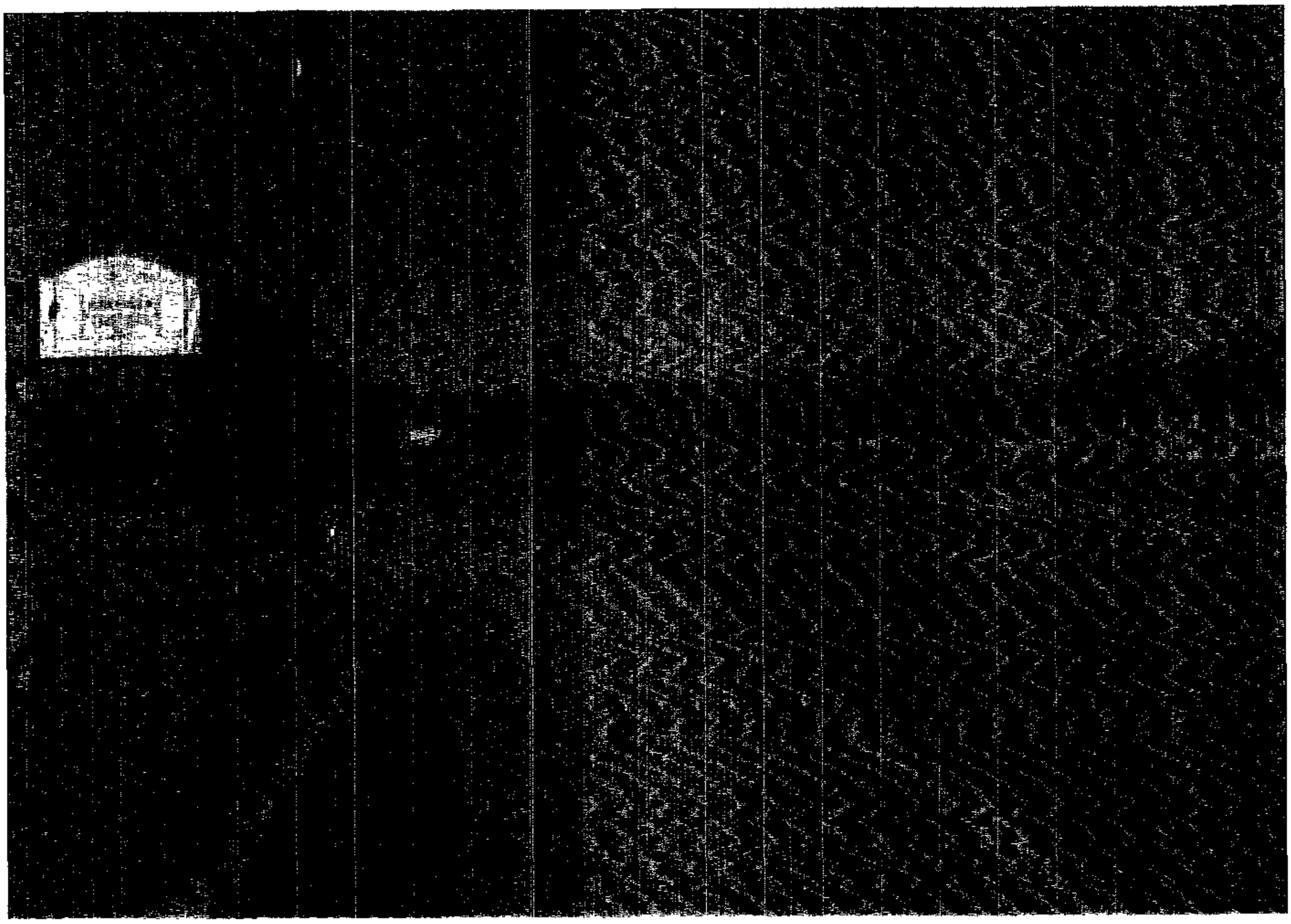

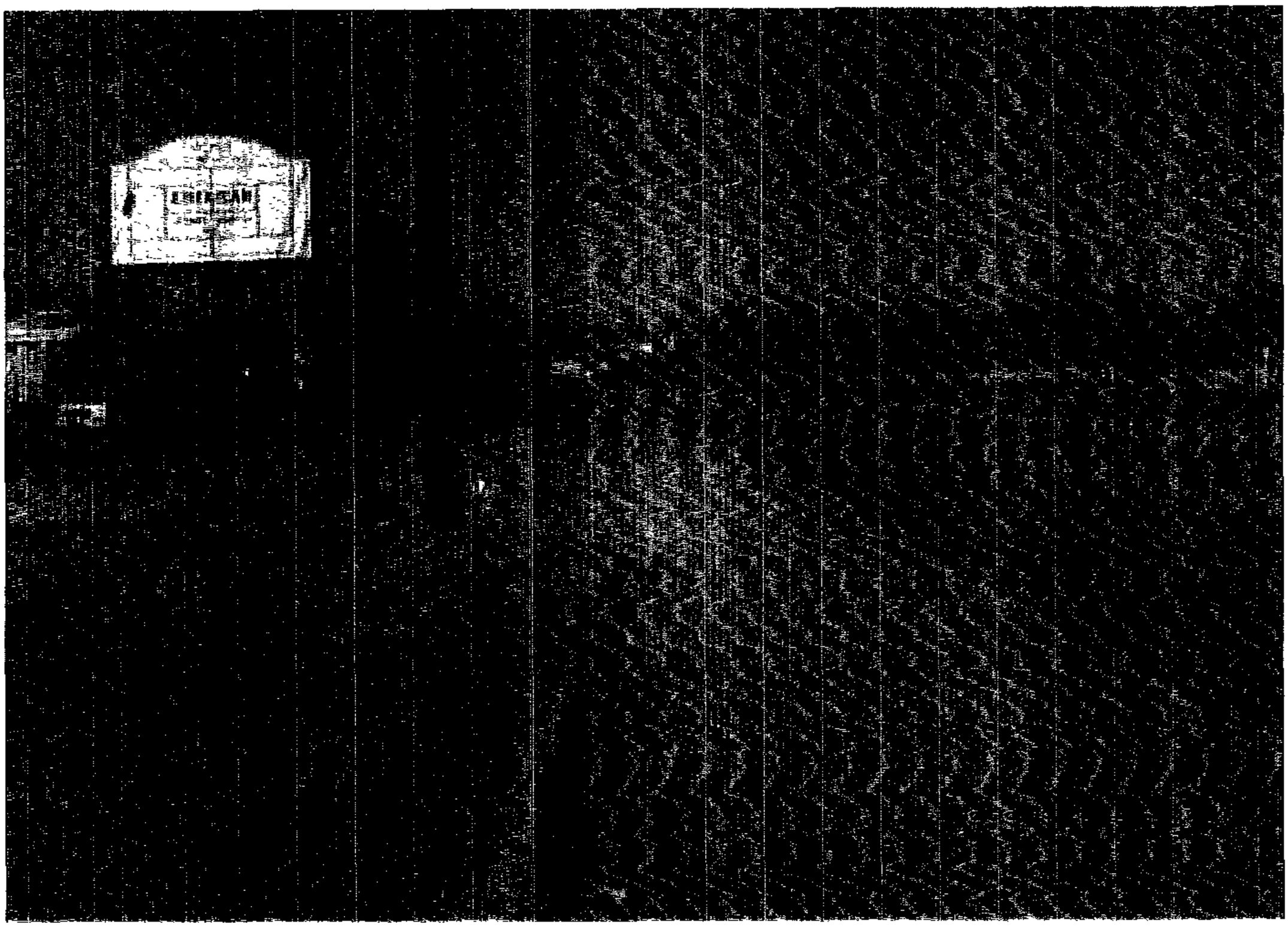

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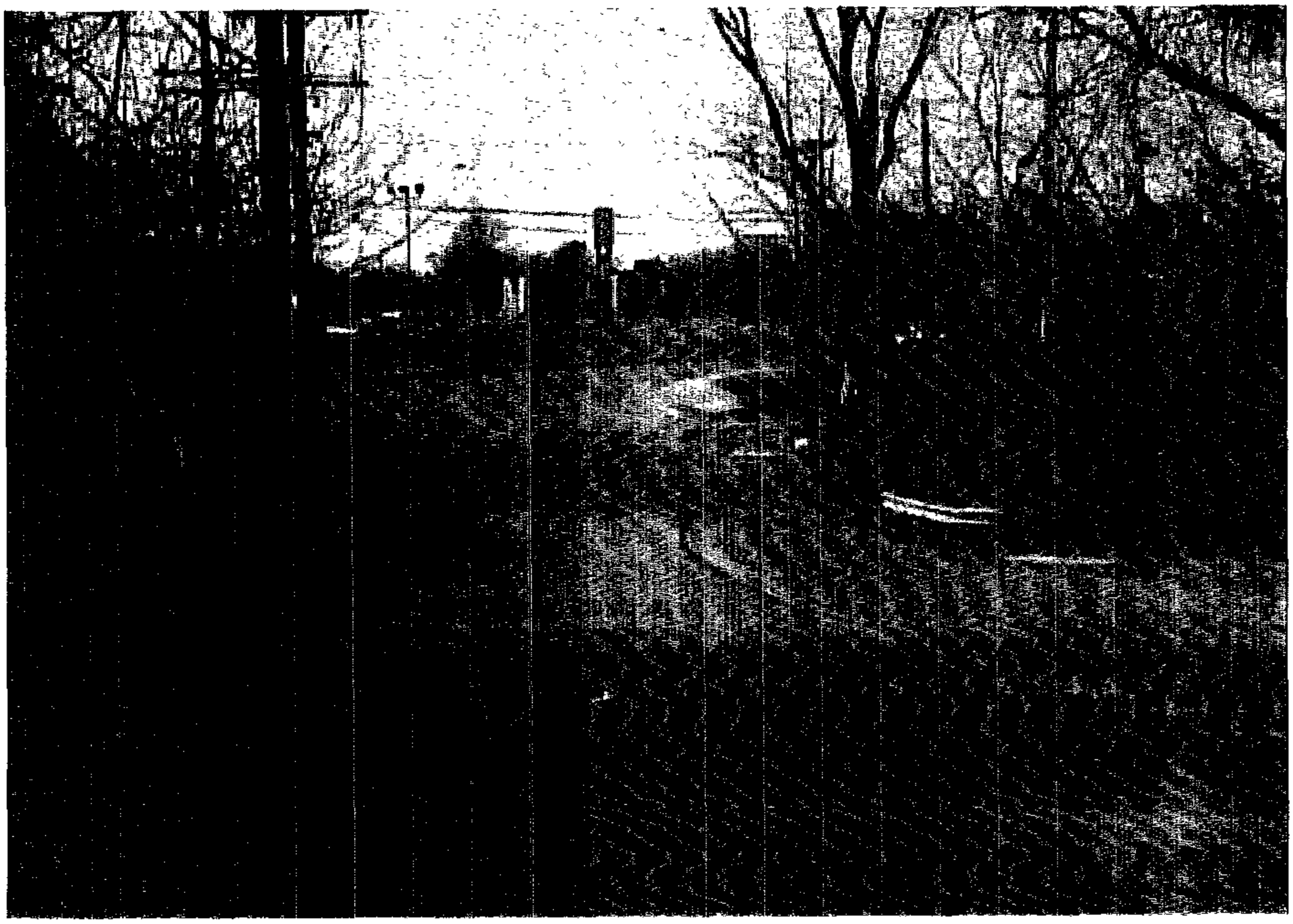

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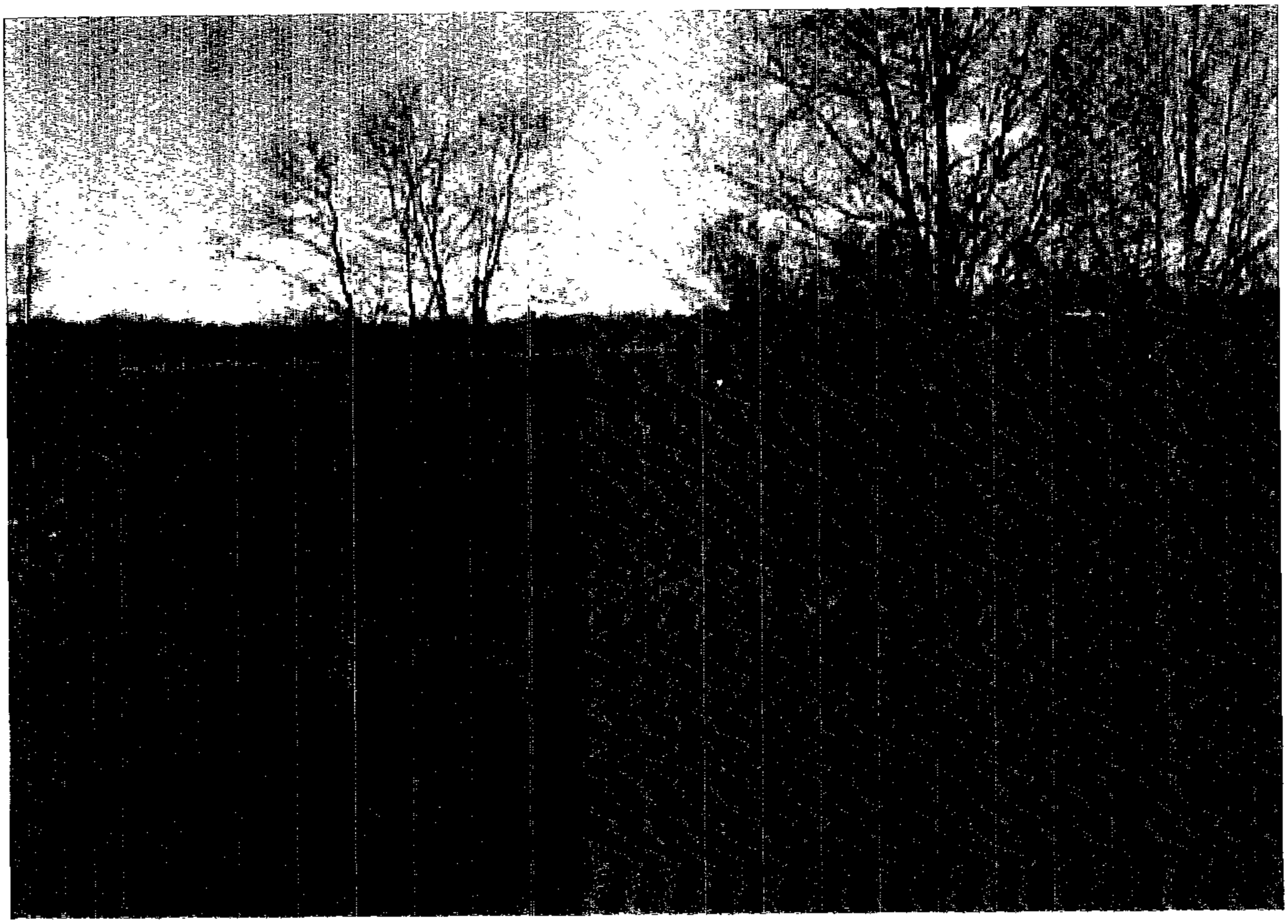

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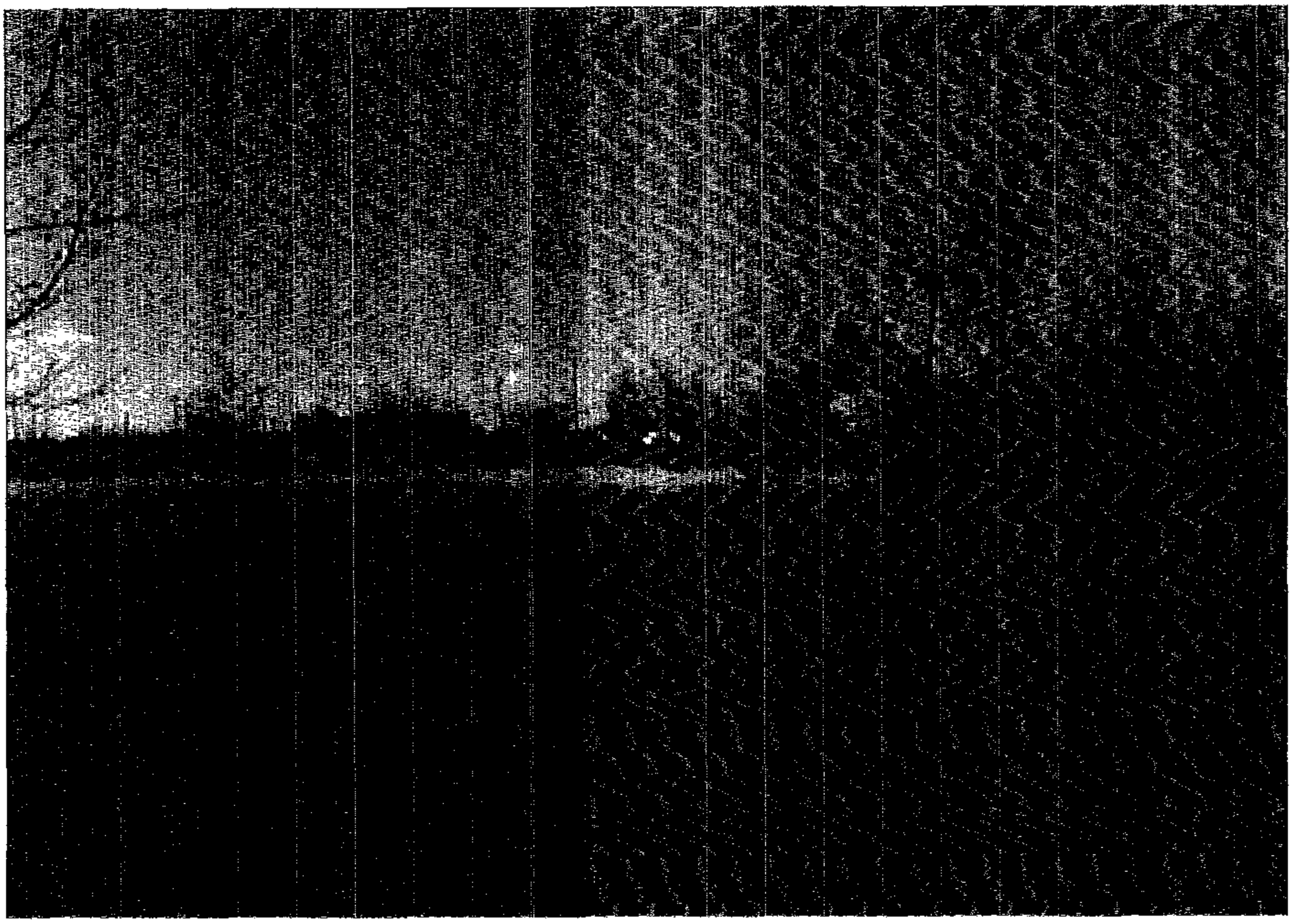

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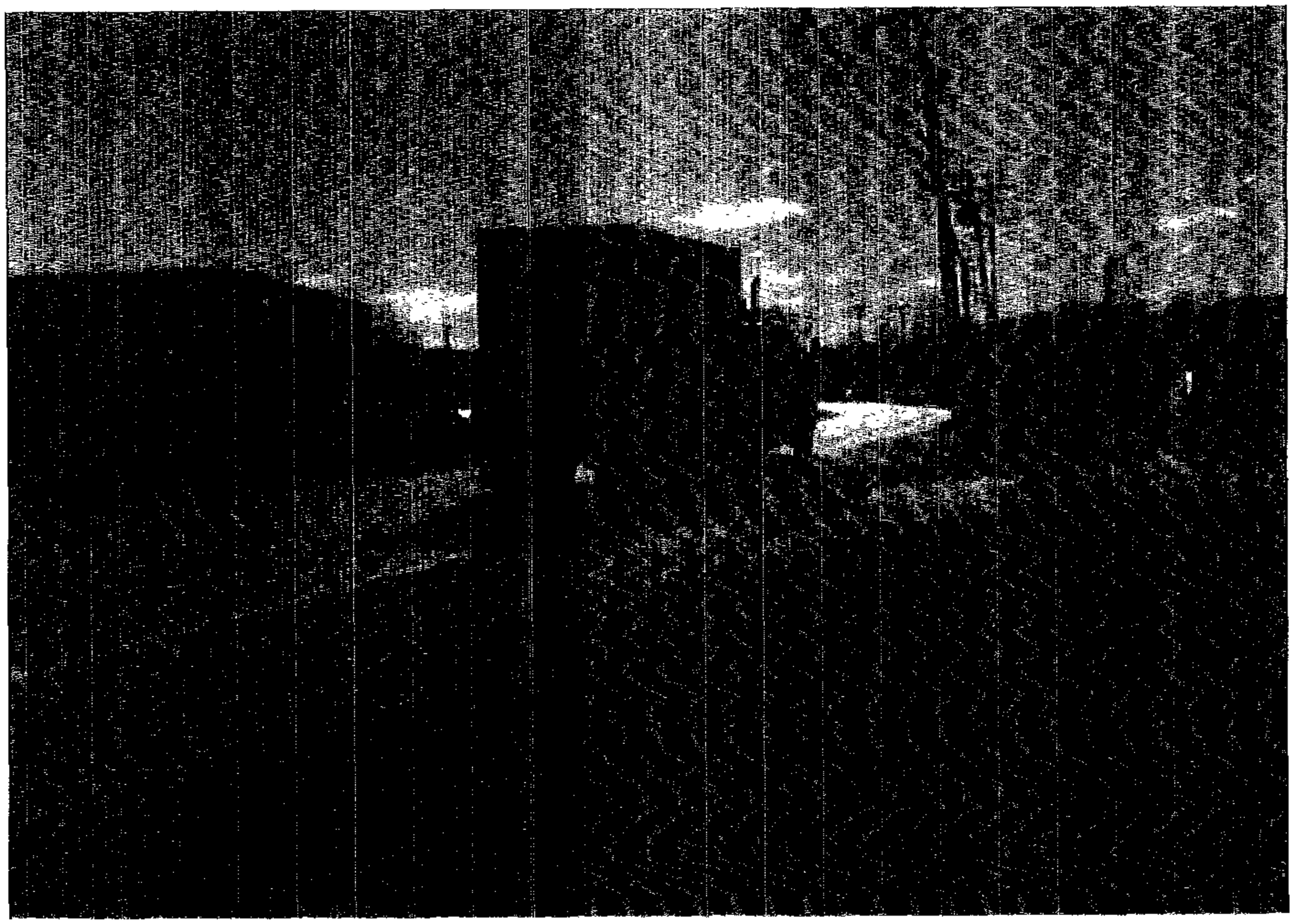

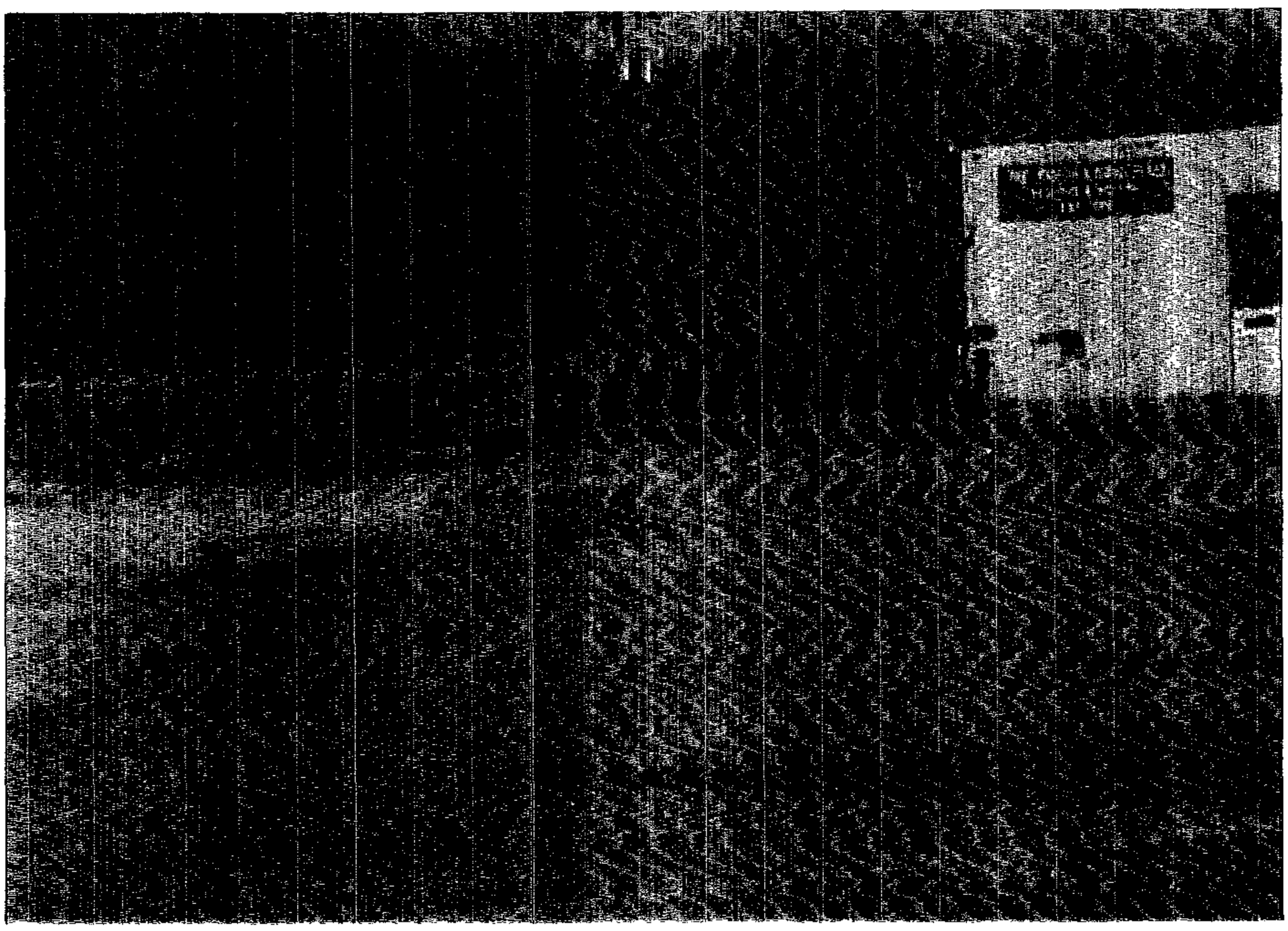

PRT EXH 9(h)

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.

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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.

4. Appeal and Error ⚷856(1)

Reviewing court may search record for evidence to support trial court's judgment and may sustain that judgment for a reason plainly appearing on record, even if that reason was not relied on by trial court.

5. Administrative Law and Procedure ⚷753, 784.1

Court of Special Appeals may not uphold agency's decision unless it is sustainable on agency's findings and for reasons stated by agency.

6. Zoning and Planning ⚷496

Variance may only be granted after two-step inquiry: first, zoning authority must determine whether subject property is unique and unusual in a manner different from nature of surrounding properties such that uniqueness or peculiarity of property causes zoning provision to have disproportionate impact upon property; if such finding is made, zoning authority must then determine whether unreasonable hardship results from disproportionate impact of ordinance.

7. Zoning and Planning ⚷502.1

Trucking facility was not unique, and thus owners of facility were not entitled to variances to legalize their use of land, which had been in violation of zoning regulations for 17 years; only evidence presented by landowners was that their operations predated regulations that they had violated, that their facility had always been in violation of those regulations, that their operations could not comply with those regulations, and that their operation was important to economy of county and state, but landowners failed to take advantage of window of opportunity opened by exemptions to regulations. Baltimore County, Md., Zoning Regulations, § 307.1.

8. Zoning and Planning ⚷481

"Special use exception" grants permission to engage in use that appropriate legislative authority has sanctioned under certain conditions; special exception is an acknowledgement by appropriate zoning authority that those conditions have been met.

9. Zoning and Planning ⚷481

A "variance" grants permission to engage in use that appropriate legislative authority has otherwise proscribed; it represents a determination by appropriate zoning authority that adherence to letter of applicable zoning regulations would result in extreme hardship to property owner.

Robert L. Hanley, Jr. (Stephen J. Nolan and Nolan, Plumhoff & Williams, Chtd. on the brief), Towson, for appellants.

Peter Max Zimmerman (Carole S. Demilio, on the brief), Towson, for appellees.

Argued before MOYLAN, BISHOP and EYLER, JJ.

BISHOP, Judge.

Appellants, Leo and Wanda Umerley, filed a petition requesting that the zoning commissioner of Baltimore County grant a special exception for a Class II Trucking Facility and certain variances. The Commissioner denied the petition for a special exception and dismissed the variances.

The Umerleys filed a timely appeal to the Board of Appeals of Baltimore County. After a *de novo* hearing, the Board of Appeals granted the requested special exception and variances.

Appellees, the People's Counsel for Baltimore County, the Nottingham Improvement Association, residents of the Nottingham neighborhood, and Gary Hoffman, owner of a business property adjacent to that of the Umerleys, filed an appeal of the Board of Appeals's decision to the Circuit Court for Baltimore County. Following oral argument, the circuit court reversed the Board of Appeals's decision, and the Umerleys noted an appeal to this Court.

ISSUE

The Umerleys raise a single issue on appeal, which we subdivide and rephrase:

I. Did the Board of Appeals properly grant the variances?

II. Did the Board of Appeals properly grant the special exception?

FACTS

The subject of this appeal consists of 8.5 acres that were acquired by the Umerleys over a period of thirty-one years. The property lies northeast of Baltimore City, and is bordered by Philadelphia Road to the north, by a line of the Baltimore & Ohio Railroad to the south, and by unimproved, wooded property to the east and west. The property is primarily zoned Manufacturing Light, Industrial Major ("M.L.-I.M."), and lies directly across Philadelphia Road from the residential neighborhood of Nottingham. Philadelphia Road itself is a two-lane artery that lies between U.S. Interstate 95 and U.S. Route 40 (Pulaski Highway); the land to its north is generally zoned for residential use, while the land to its south is zoned for industrial use.

The Umerleys acquired the first part of the 8.5 acre parcel in the mid-1950s. That lot, which consists of 2.5 acres, was improved by a two-bay garage in 1958. In 1961, the garage was expanded to four bays, and in 1982, an office complex was constructed next to the garage. The lot is mostly paved and is used for "employee automobile parking, truck parking, and frontage landscaping."

In 1982, the Umerleys acquired the second part of the 8.5 acre parcel. That lot, which consists of 2.8 acres, is almost entirely paved and is used for truck and trailer parking.

In 1989, the Umerleys acquired the third part of the 8.5 acre parcel. That lot consists of 3.2 acres and is vacant and wooded.

In 1976, the Baltimore County Council passed regulations designed to minimize the impact of trucking facilities on environmentally sensitive and residential areas. Recognizing the adverse effect of the regulations on existing trucking facilities, the council included provisions that allowed such

trucking facilities to exempt themselves from the new laws. We paraphrase these exemptions as follows:

1) All existing Class II trucking facilities had to file plans demonstrating their "layout and operation of use" with the county within one year of the passage of the law. (BCZR 410A.1.A.1, 410A.1.A.2, 410A.3.C.1).

2) 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 new regulations, or whether they were permissibly exempt from those regulations. (BCZR 410A.1.B.1, 410A.1.B.2, 410A.1.B.3).

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) a program of compliance showing that the appropriate regulations would be met within twenty-seven months (BCZR 410A.1.C.1); or

b) 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 410A.1.C.2).

4) Failure of a trucking facility to file plans with the county at all (in conformance with BCZR 410A.1.B.1 or 410A.1.B.2) meant that the facility lost the right to exist as a trucking facility three years from the date the new law was passed. (BCZR 410A.1.D.1 and 410A.1.D.2). Failure of a nonconforming trucking facility to file either a program of compliance or a petition for noncompliance (in conformance with BCZR 410A.1.C.1 or 410A.1.C.2) meant that the facility lost its right to exist as a trucking facility three years after the determination of noncompliance by the Zoning Commissioner. (BCZR 410A.1.D.3). If a trucking facility failed to comply with the applicable exemption provisions and thus lost the right to exist as a trucking facility, it could only continue operations by qualifying as a new use.

The Umerleys operated a trucking facility on the original 2.5 acre parcel at the time the 1976 regulations were passed; and their facility violated those regulations. The Umerleys never complied with the exemption provisions of the new law, and lost the right to maintain a trucking facility on the property. In spite of this fact, the Umerleys never shut down their facility; they actually expanded it in 1982 and 1988. For the 1982 expansion, the Umerleys obtained a permit from the county's Department of Permits and Licenses. On the application for that permit, the Umerleys represented that the land was to be used for the operation of a contracting business, rather than a trucking facility.

In the late 1980s, as a result of complaints from nearby businesses and residents, the county authorities finally noted the Umerleys' zoning violations. In response, the Umerleys moved to legalize the use of their land by filing a petition for the following:

1) A special exception to allow a Class II trucking facility in the M.L.-I.M. zone. (BCZR 253.2.A.6, 410, 410A).

2) A variance to allow a trucking facility within 300 feet of residential zones or residences. (BCZR 410A.2).

3) A variance to allow a trucking facility within 200 feet of wetlands. (BCZR 410A.2).

4) A variance to allow a trucking facility within 200 feet of Philadelphia Road. (BCZR 253.4).

5) A variance to allow automobile parking within 25 feet of a residential zone. (BCZR 410A.2).

6) A variance to allow the percentage of the facility devoted to truck and trailer parking to be 35.5 percent of the site used for trucking operations as opposed to the required 75 percent. (BCZR 410A.3.B.3).

7) A variance requesting a reduction of the sideyard building setback from fifty feet to seven feet within the increased setback area. (BCZR 243.2).

As stated *supra*, the zoning commissioner denied the Umerleys' petition, but the Board of Appeals of Baltimore County reversed that decision after a *de novo* hearing, and the Circuit

Court for Baltimore County reversed the Board of Appeals's decision.

DISCUSSION

Standard of Review

[1] The order of a county zoning authority "must be upheld on review if it is not premised upon an error of law and if [its] conclusions 'reasonably may be based upon the facts proven.'" *Ad + Soil, Inc. v. County Commissioners of Queen Anne's County*, 307 Md. 307, 338, 513 A.2d 893 (1986) (citing *Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 399, 396 A.2d 1080 (1979)). *See also Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 287, 96 A.2d 261 (1953) (zoning authority must properly construe controlling law); *Northampton Corp. v. Prince George's County*, 273 Md. 93, 101, 327 A.2d 774 (1974) (action of zoning authority is "fairly debatable" if based on substantial evidence); *Board of County Commissioners v. Holbrook*, 314 Md. 210, 218, 550 A.2d 664 (1988) (fairly debatable test "accords with the general standard for judicial review of the ruling of an administrative agency, which [is] defined as 'whether a reasoning mind reasonably could have reached the factual conclusion the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment.'"); *Ocean Hideaway Condominium Ass'n. v. Boardwalk Plaza Venture*, 68 Md.App. 650, 665, 515 A.2d 485 (1986) (no substantial evidence to support factual findings of zoning authority; because of the lack of substantial evidence, zoning authority's decision was not fairly debatable, and thus was "arbitrary, capricious and a denial of due process of law.").

[2, 3] An application of the above standard requires that we undertake the three-step analysis set forth by this Court in *Comptroller v. World Book Childcraft*, 67 Md.App. 424, 508 A.2d 148 (1986):

1. First, the reviewing court must determine whether the agency recognized and applied the correct principles of law

governing the case. The reviewing court is not constrained to affirm the agency where its order "is premised solely upon an erroneous conclusion of law."

2. Once it is determined that the agency did not err in its determination or interpretation of the applicable law, the reviewing court next examines the agency's factual findings to determine if they are supported by substantial evidence, *i.e.*, by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion....

3. Finally, the reviewing court must examine how the agency applied the law to the facts. This, of course, is a judgmental process involving a mixed question of law and fact, and great deference must be accorded to the agency. The test of appellate review of this function is "whether ... a reasoning mind could reasonably have reached the conclusion reached by the [agency], consistent with a proper application of the [controlling legal principles]."

Id. at 438–39, 508 A.2d 148 (citations omitted).

[4, 5] Also, unlike our review of a trial court's judgment, we will only uphold the decision of an agency on the basis of the agency's reasons and findings. *United Steelworkers of America AFL–CIO v. Bethlehem Steel Corp.*, 298 Md. 665, 679, 472 A.2d 62 (1984). We may search the record for evidence to support a trial court's judgment; and we may sustain that judgment for a reason plainly appearing on the record, even if the reason was not relied on by the trial court. *Id.* But we may not uphold an agency's decision "unless it is sustainable on the agency's findings and for the reasons stated by the agency." *Id.*

I. Variances

The zoning commissioner of Baltimore County and the Board of Appeals of Baltimore County are given the power to grant variances by BCZR 307.1, which provides as follows:

The zoning commissioner of Baltimore County and County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations and from sign regulations, only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the zoning regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking, or sign regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare. They shall have no power to grant any other variances. Before granting any variance, the zoning commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the zoning commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance.

In the appeal before the circuit court, the parties clashed over the following question: whether the regulations from which the Umerleys seek variances are "height and area" regulations or "use" regulations. Under BCZR 307.1, a variance may only be granted from "height and area" regulations. "Height and area" regulations establish "area, height, density, setback, or sideline restrictions," while "use" regulations restrict the use to which a piece of property may be put. *Anderson v. Board of Appeals*, 22 Md.App. 28, 37–38, 322 A.2d 220 (1974). The circuit court ruled that there was substantial evidence to support a finding by the Board of Appeals that the regulations from which the Umerleys seek variances are "height and area" regulations. An examination of the requested variances reveals that there is substantial evidence to support the Board of Appeals's conclusion that the subject

regulations are "height and area" regulations. Thus, we turn to the question of whether the Board of Appeals properly granted the requested variances.

[6] A variance may only be granted after a two-step inquiry. First, the zoning authority must determine whether the subject property is unique and unusual in a manner different from the nature of the surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to have a disproportionate impact on the property. *Cromwell v. Ward*, 102 Md.App. 691, 721, 651 A.2d 424 (1995). If such a finding is made, the zoning authority must then determine whether an unreasonable hardship results from the disproportionate impact of the ordinance. *Id.* These general rules are recognized by BCZR 307.1, which provides that a variance may only be granted if there are "special circumstances or conditions ... peculiar to the land ... and [if] strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship."

The "uniqueness" requirement has a rather specialized meaning. As this Court established in *North v. St. Mary's County*, 99 Md.App. 502, 638 A.2d 1175 (1994),

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

Id. at 514, 638 A.2d 1175.

A reading of the Board of Appeals's opinion shows that it failed to apply properly the law governing variances. On

pages sixteen and seventeen, the Board sets forth, verbatim, the requirements of BCZR 307.1—the regulation governing the granting of variances in Baltimore County. But then the Board goes on to ignore the first prong of the variance test—whether the subject property is unique and unusual in a manner different from the nature of the surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to have a disproportionate effect on the property. For each of the requested variances, the Board only addresses whether the Umerleys' compliance with the applicable regulation would cause them practical difficulty or undue hardship—the second prong of the variance test.

Ordinarily, the Board of Appeals's failure to consider the first prong of the regulation would mandate that we vacate and remand for further proceedings. We shall assume, however, that the Board of Appeals did find, implicitly, that there was sufficient evidence to support uniqueness, and, for that reason, moved on to consider the second prong of the variance test. Our review of the evidence that was produced before the Board and the considerable amount of argument presented by the parties in this appeal on the issue of uniqueness convinces us, as a matter of law, that there is no substantial evidence to support a finding of uniqueness; and, therefore, it cannot be said that such a finding would be "fairly debatable." As this Court said in *Ocean Hideaway Condominium Ass'n. v. Boardwalk Plaza Venture*, 68 Md.App. 650, 515 A.2d 485 (1986), "[W]hen a Board's finding cannot be said to be 'fairly debatable,' it is arbitrary, capricious and a denial of due process of law." *Id.* at 665, 515 A.2d 485. As in *Ocean Hideaway*, in which the record clearly indicated that the special exception should not have been granted, we hold that the requirements of Maryland law on variances were not met, and the circuit court was correct in reversing the Board's decision.

[7] As the Umerleys correctly assert, our inquiry on this issue focuses on whether there is substantial evidence in the record to support a finding that the subject property is

"unique." *See Cromwell*, 102 Md.App. at 726, 651 A.2d 424 (zoning authority held to have erred in granting variance when no evidence submitted to indicate that subject property was "unique"). In their briefs, the Umerleys fail to point to any evidence that would support a finding that their property is "unique" within the meaning of Maryland case law and BCZR 307.1. The Umerleys only point to evidence that shows that their operations predate the 1976 trucking facility regulations, that their facility has always been in violation of those regulations, that their operations cannot comply with those regulations, and that their operation is important to the economy of both Baltimore County and the State of Maryland. Because the uniqueness requirement mandates that the subject property "have an *inherent* characteristic not shared by other properties in the area," such evidence cannot support a finding that the Umerleys' property is unique within the meaning of Maryland law. A review of the record fails to reveal any other evidence that would support such a finding.

The Umerleys make much of the fact that their operation contributes substantially to the area economy, and that they will be forced to close their business if the requested variances and special exception are not granted. They also make much of the fact that the Baltimore County Council explicitly stated that part of the purpose of the 1976 trucking facility regulations is to "accommodate trucking activities, in recognition of their importance to the economy of the County and the nation." BCZR 410A.4.B.7. The Umerleys argue that this provision shows that the Baltimore County Council did not intend to force trucking operations out of business with the 1976 regulations, and that we should effectuate that intent by upholding the Board of Appeals's ruling.

We agree that the Baltimore County Council did not intend to drive legitimate trucking operations out of business with the 1976 trucking regulations. That is why it included the exemption provisions in those regulations. The Umerleys failed to take advantage of the window of opportunity opened by those exemption provisions; as a result, their operation has been in violation of the law for the past seventeen years. The

only way for them to comply with the law is to petition for variances and a special exception. Because the Umerleys failed to produce substantial evidence showing that their property is "unique" within the meaning of applicable Maryland law, their variance requests must be denied.

As a final matter, we note that the Umerleys might have been able to undertake their 1980s expansion activities legally had they properly complied with the exemption provisions of the 1976 regulations. Under BCZR 410A.1.E.1, a nonconforming trucking facility that existed at the time the 1976 regulations were passed and that properly complied with the applicable exemption provisions is allowed to expand its activities "to the minimum extent necessary to comply with the standards of Subsection 410A.3" as long as the zoning commissioner determines that "the expansion would be in the interest of the general welfare of the community...." Regulation 410A.3 provides, in relevant part, that all trucking facilities must be located on lots that are at least five acres (BCZR 410A.3.B.1), and that all trucking facilities must contain "adequate rest-room facilities, a drivers' room, and telephone service for the truck drivers and other personnel...." BCZR 410A.3.B.8. In the 1980s, the Umerleys: 1) expanded their lot on which they conducted their trucking operations from 2.5 acres to 5.3 acres; and 2) constructed a two-story office building on the original 2.5 acre site. Given the provisions of BCZR §§ 410A.1.E.1, 410A.3.B.1, and 410A.1.B, such activities might have been proper had the Umerleys properly complied with the exemption provisions of the 1976 regulations.

II. Special Exception

When a use district is established, applicable regulations allow two types of uses: 1) those permitted as of right; and 2) those permitted only on a showing that certain conditions have been met. *Schultz v. Pritts*, 291 Md. 1, 20–21, 432 A.2d 1319 (1981). A person wishing to engage in the latter type of use must petition the appropriate zoning authority in order to do so, and the petition must show that all of the applicable conditions are met. *Id.* If all of the required conditions are

satisfied, the petitioner is given permission, otherwise known as a special exception, to engage in the conditional use. *Id.*

[8, 9] The difference between a special exception and a variance lies in the legislative approval of the underlying use. A special exception grants permission to engage in a use that the appropriate legislative authority has sanctioned under certain conditions. The special exception is an acknowledgement by the appropriate zoning authority that those conditions have been met. A variance, by contrast, grants permission to engage in a use that the appropriate legislative authority has otherwise proscribed. It represents a determination by the appropriate zoning authority that adherence to the letter of the applicable zoning regulations would result in extreme hardship to the property owner. *See Cromwell, supra,* 102 Md.App. at 699–703, 651 A.2d 424.

In the case *sub judice,* the Umerleys petitioned for a special exception to operate a Class II trucking facility on the subject property. For such a special exception to be granted, the Umerleys must show that all of the conditions established by the Baltimore County Council for operation of a Class II trucking facility are met.

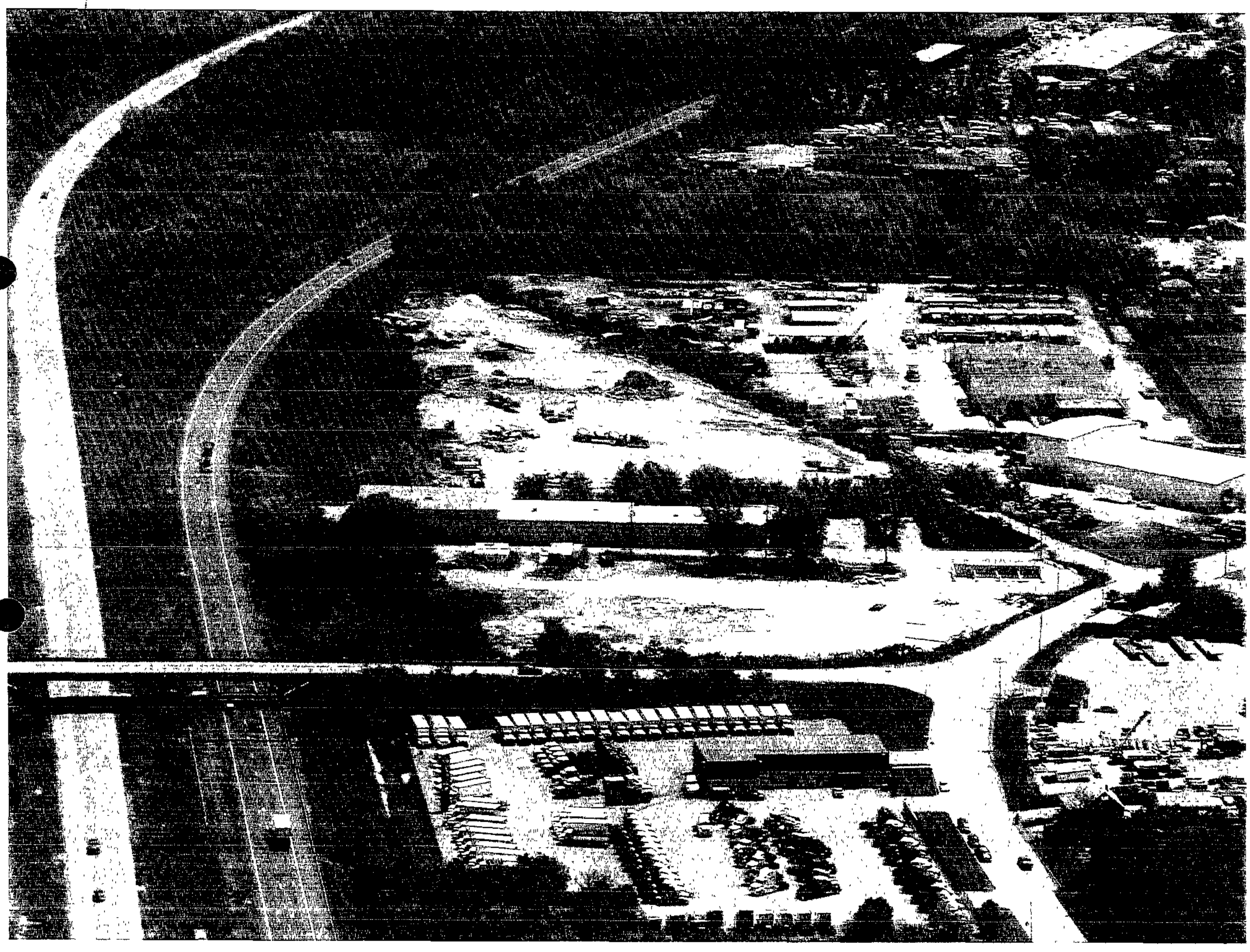
The Umerleys cannot meet several of the applicable conditions. Accordingly, they have applied for variances from those conditions. As noted in the preceding section, however, the petition for those variances will not be successful. As stated *supra,* because the Umerleys failed to produce substantial evidence showing that the subject property is "unique," their variance requests must fail.

Whether the Umerleys could have obtained the special exception had they succeeded in obtaining the variances is an interesting question, and one that we recently noted. *See Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County,* 103 Md.App. 324, 336, 653 A.2d 532 (1995) (asking, "Does the legislative intent that the [conditional] use be permitted remain if the conditions are not met but are eliminated by an administrative body granting a variance?"; also noting that, under such circumstances, "the presumption that a conditional use is permitted may well fall by the wayside."). In *Chester Haven,* however, we did not reach that question because the petitioner was unable to acquire the requested variances. We said that, once "the variance process fails, the entire application fails." *Id.*

In the case *sub judice,* the Umerleys have failed in their attempt to acquire variances from the restrictions that must be met in order to operate a Class II trucking facility. Accordingly, their petition for a special exception to operate such a facility must also fail.

JUDGMENT AFFIRMED. APPELLANTS TO PAY THE COSTS.

DET EXH 3



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EXH 4

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COUNTRY CLUB COVE
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BOARD OF EDUCATION
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15 72 A.
P 245
BALTO CO MD
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P 207
(BEAR CREEK ELEM.)
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ED 12
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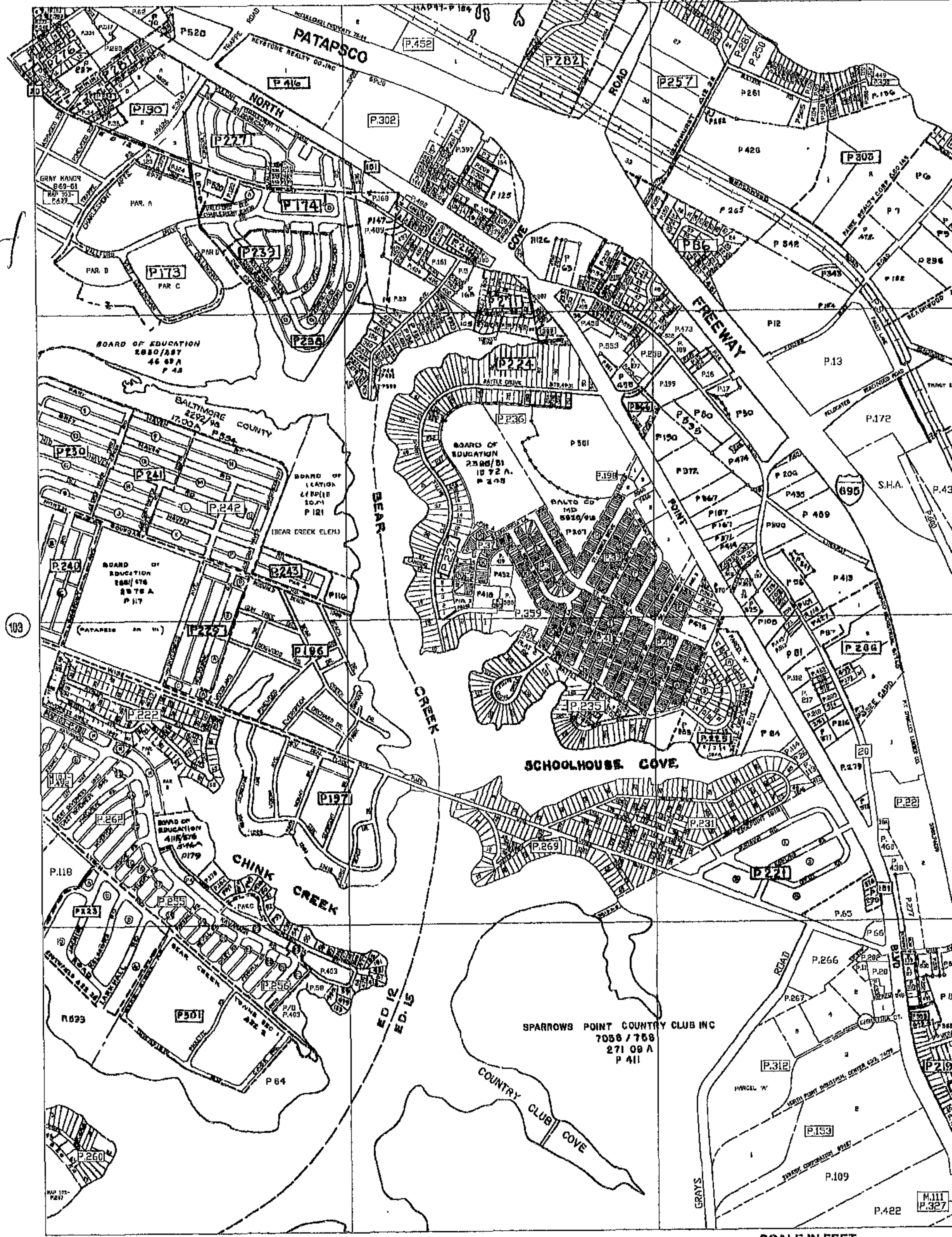
PBT
Ex H 4



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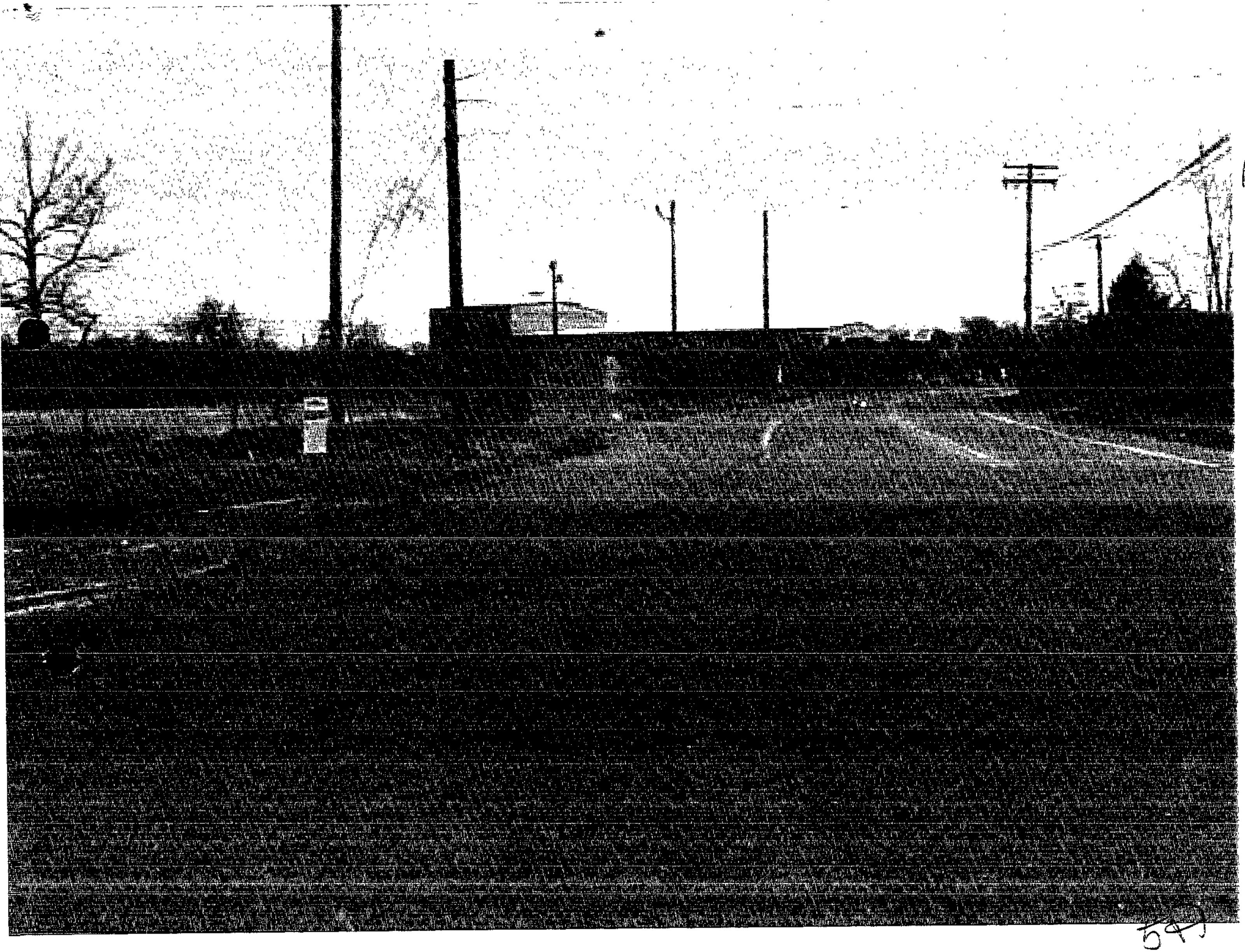

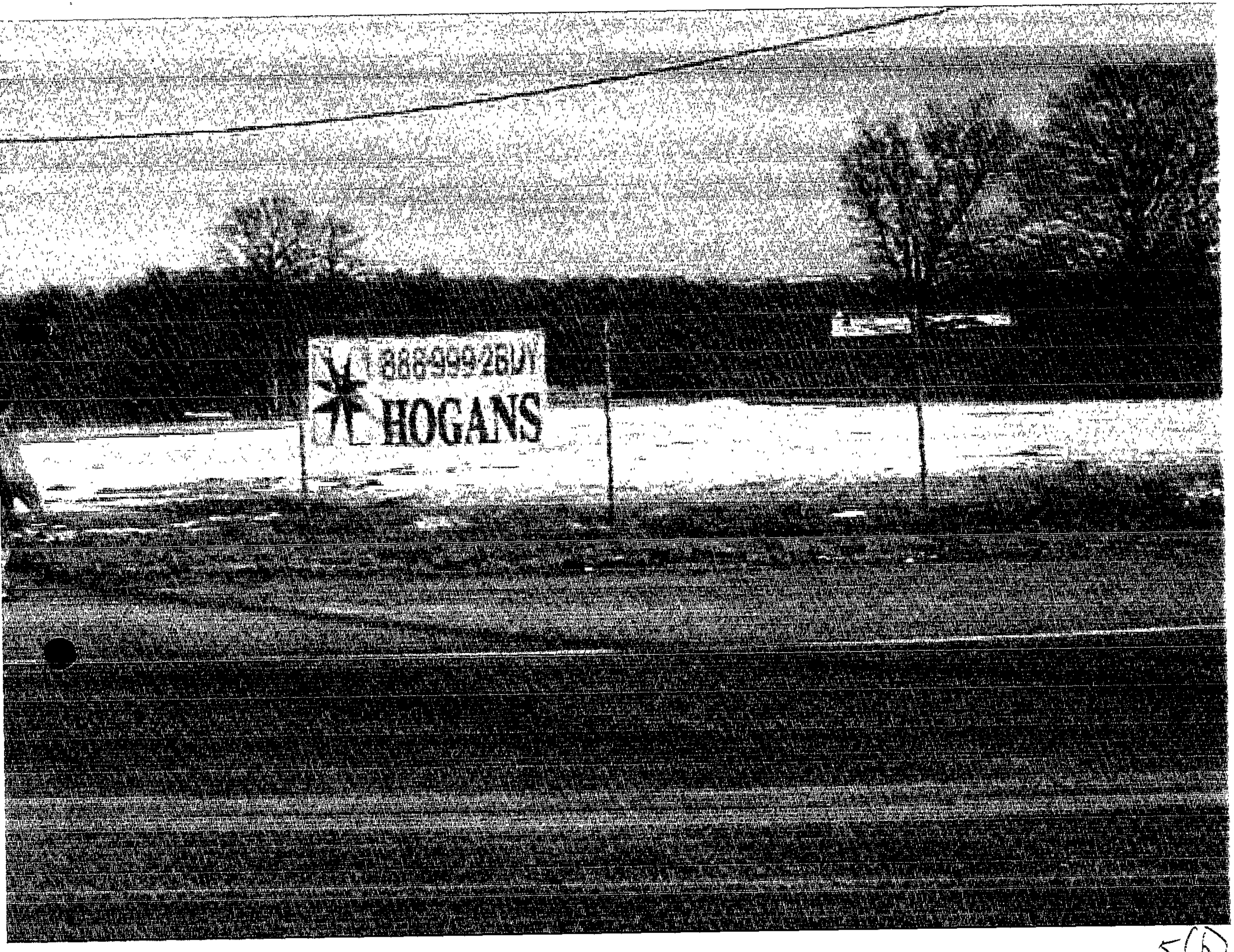

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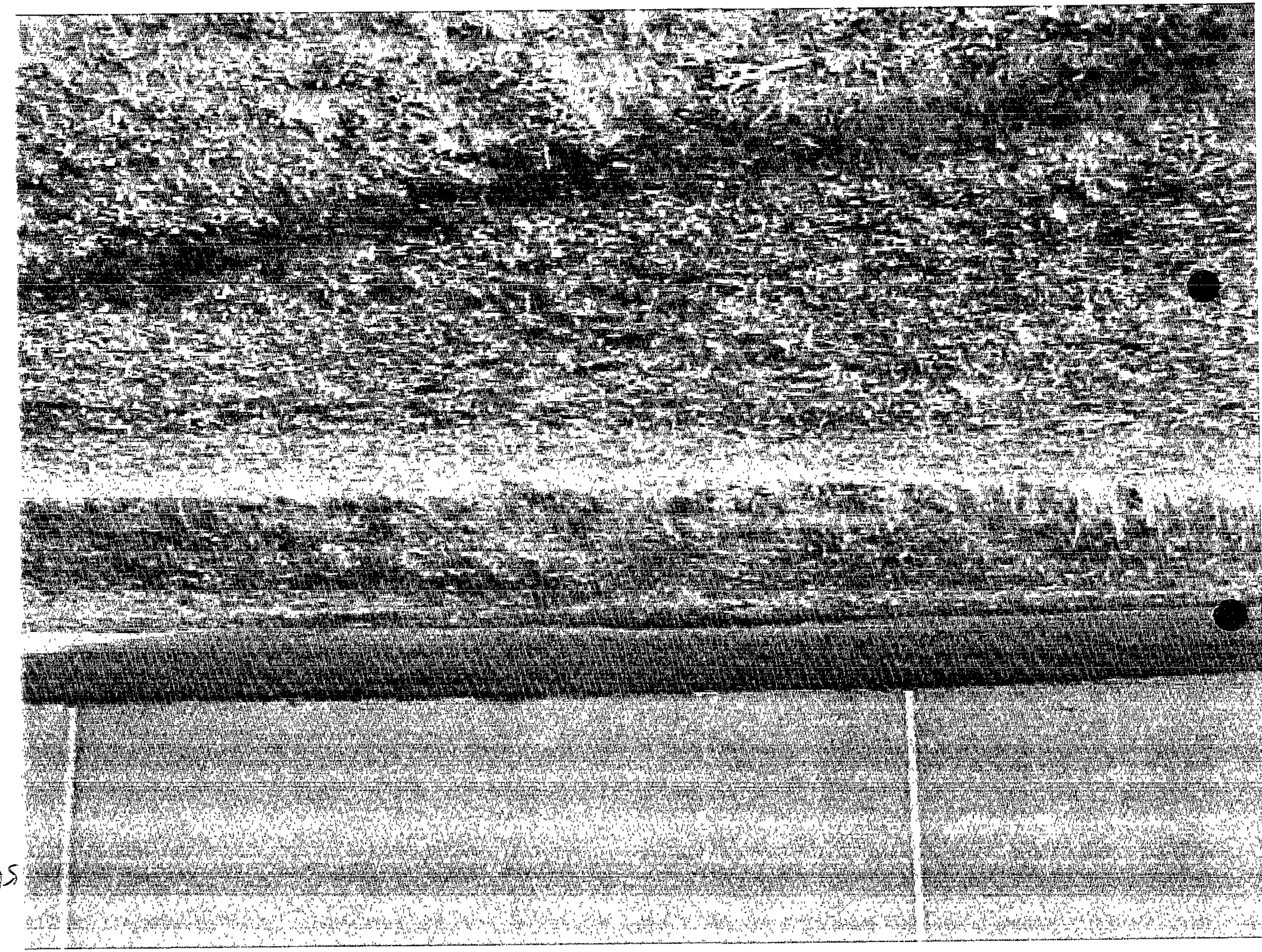

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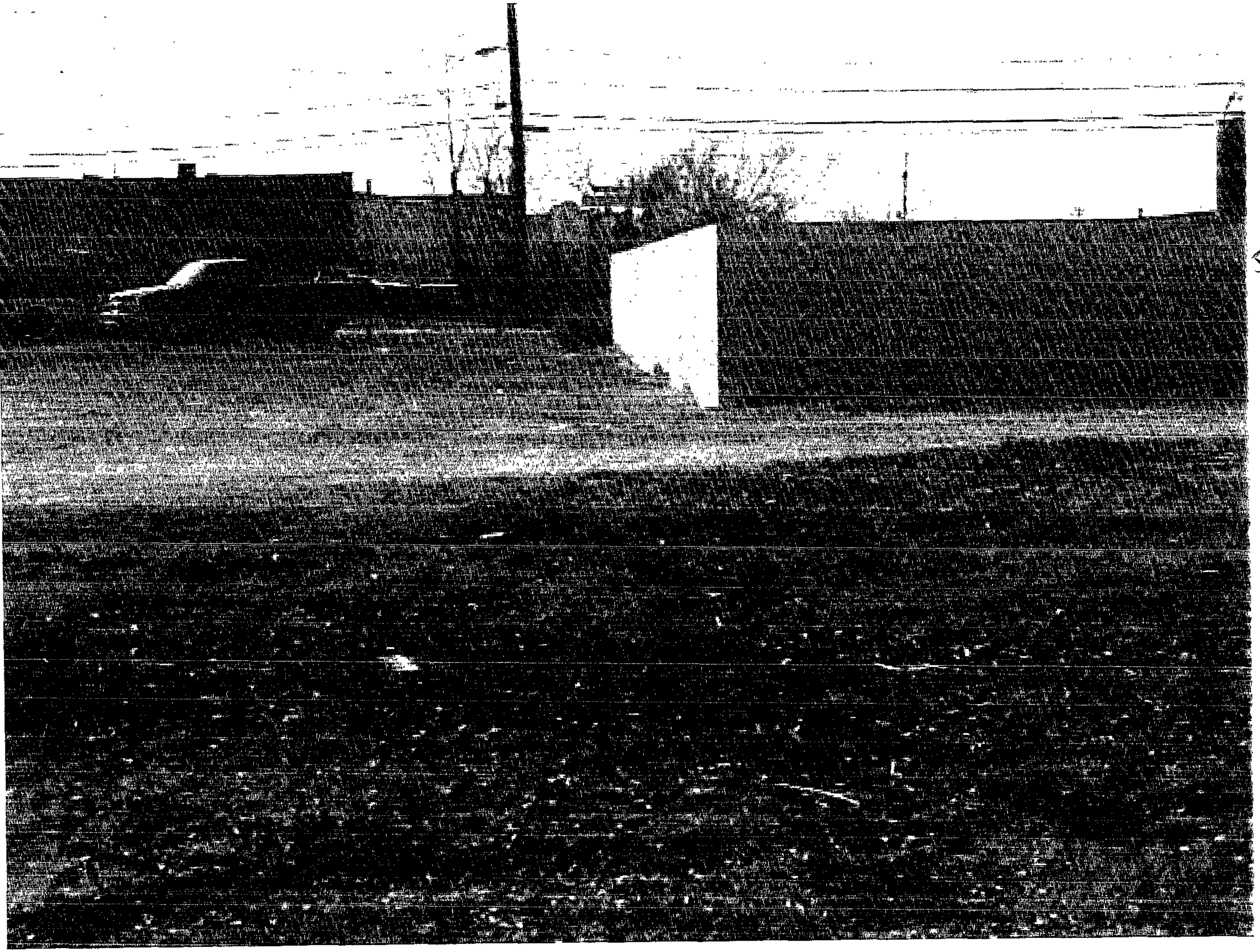

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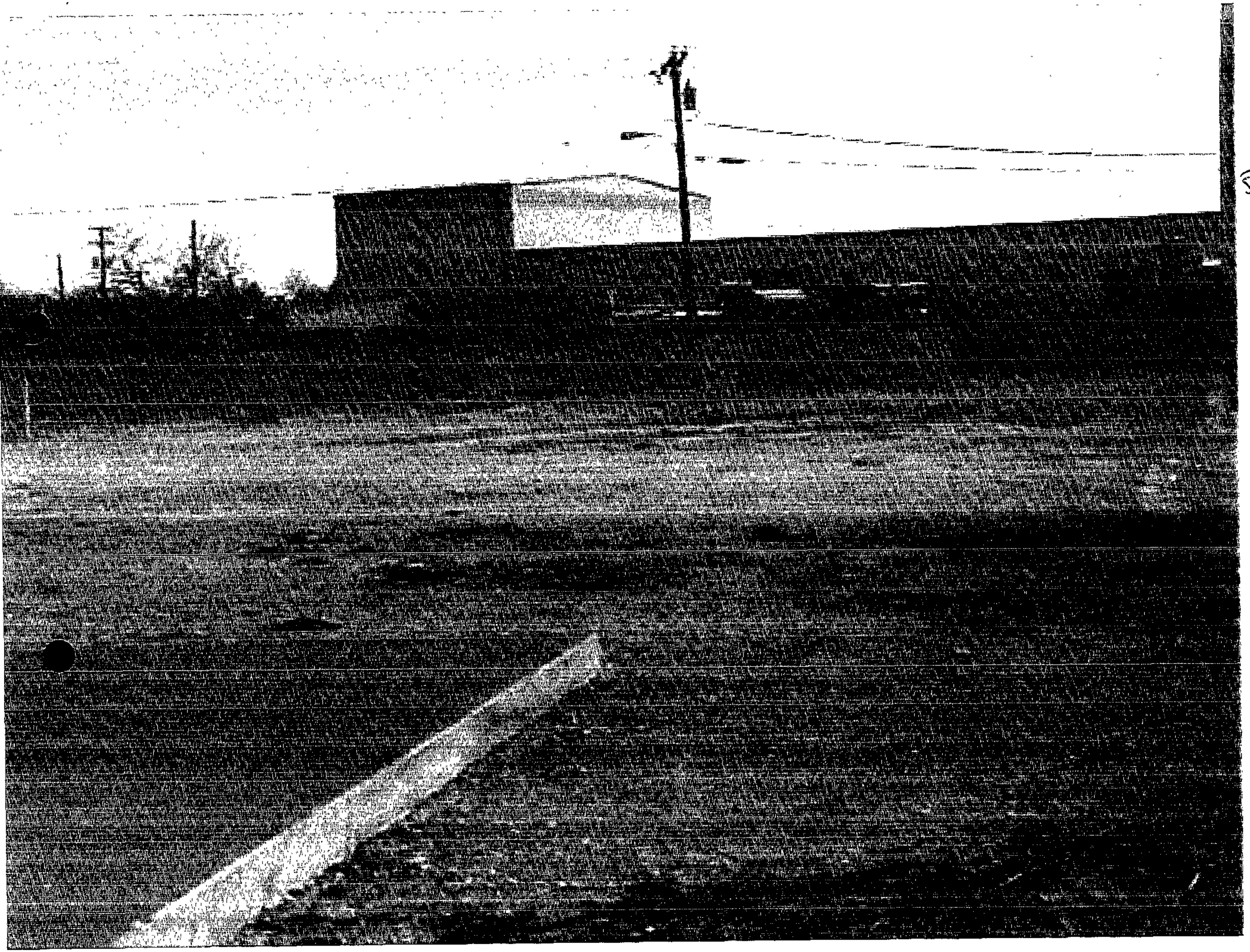

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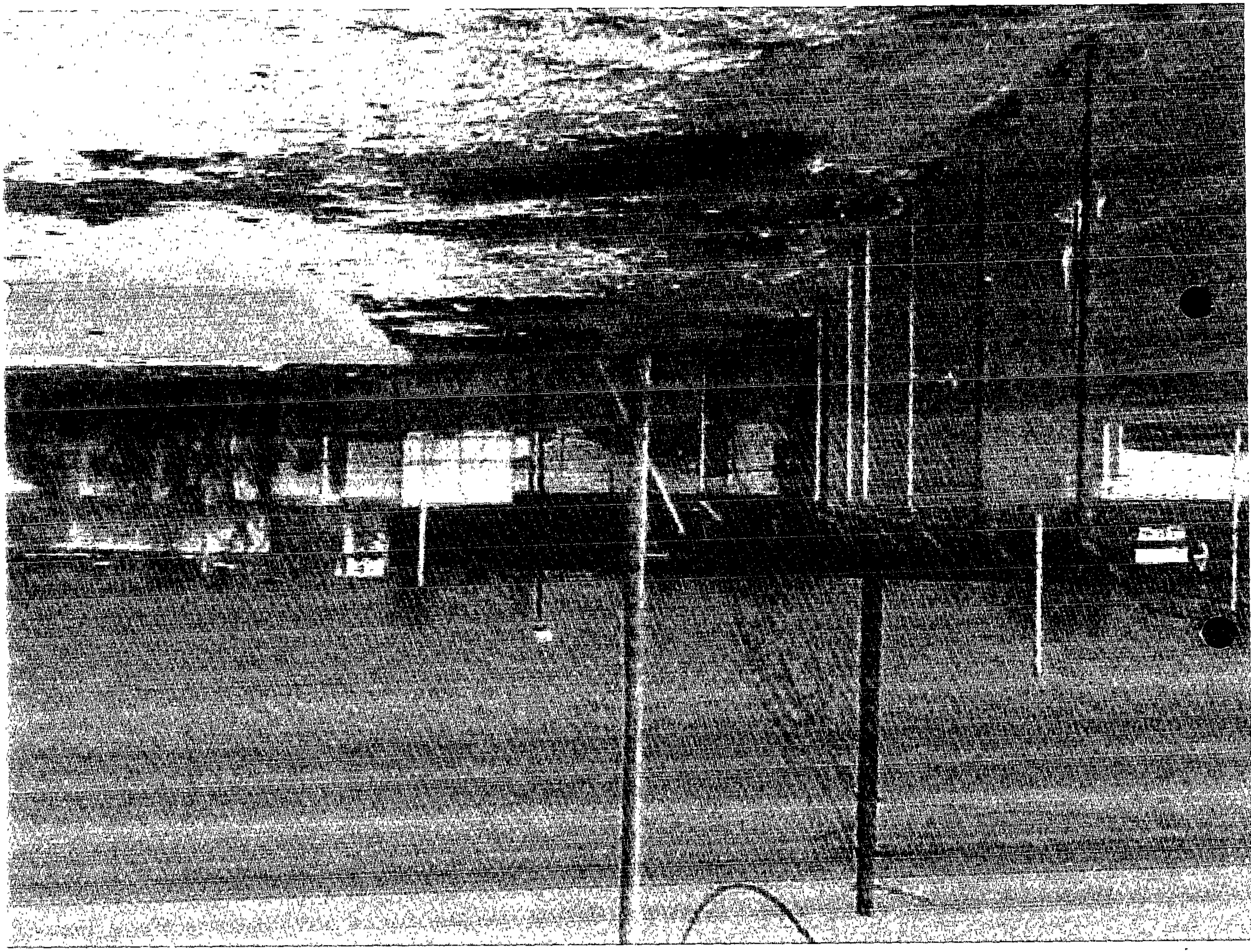

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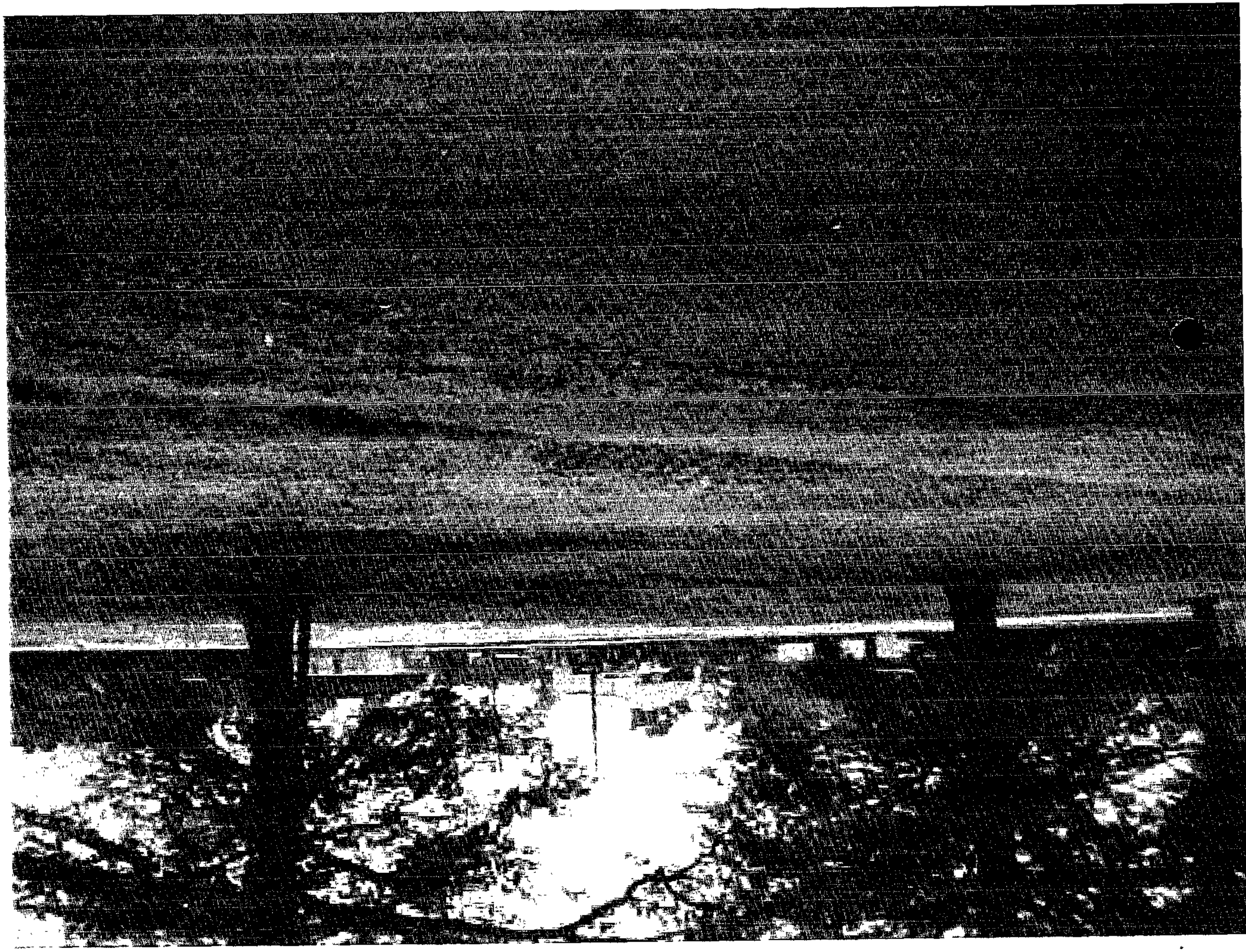

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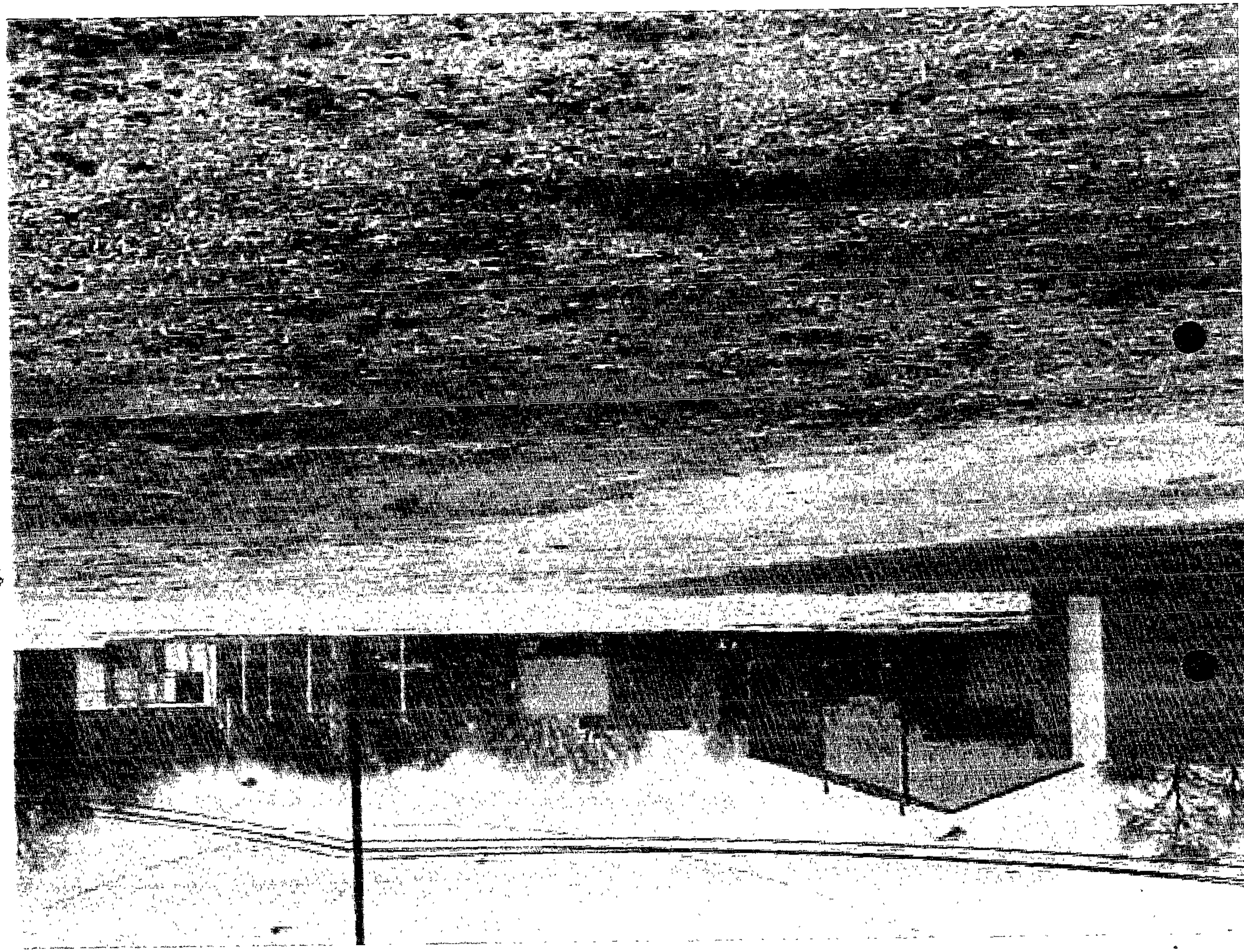

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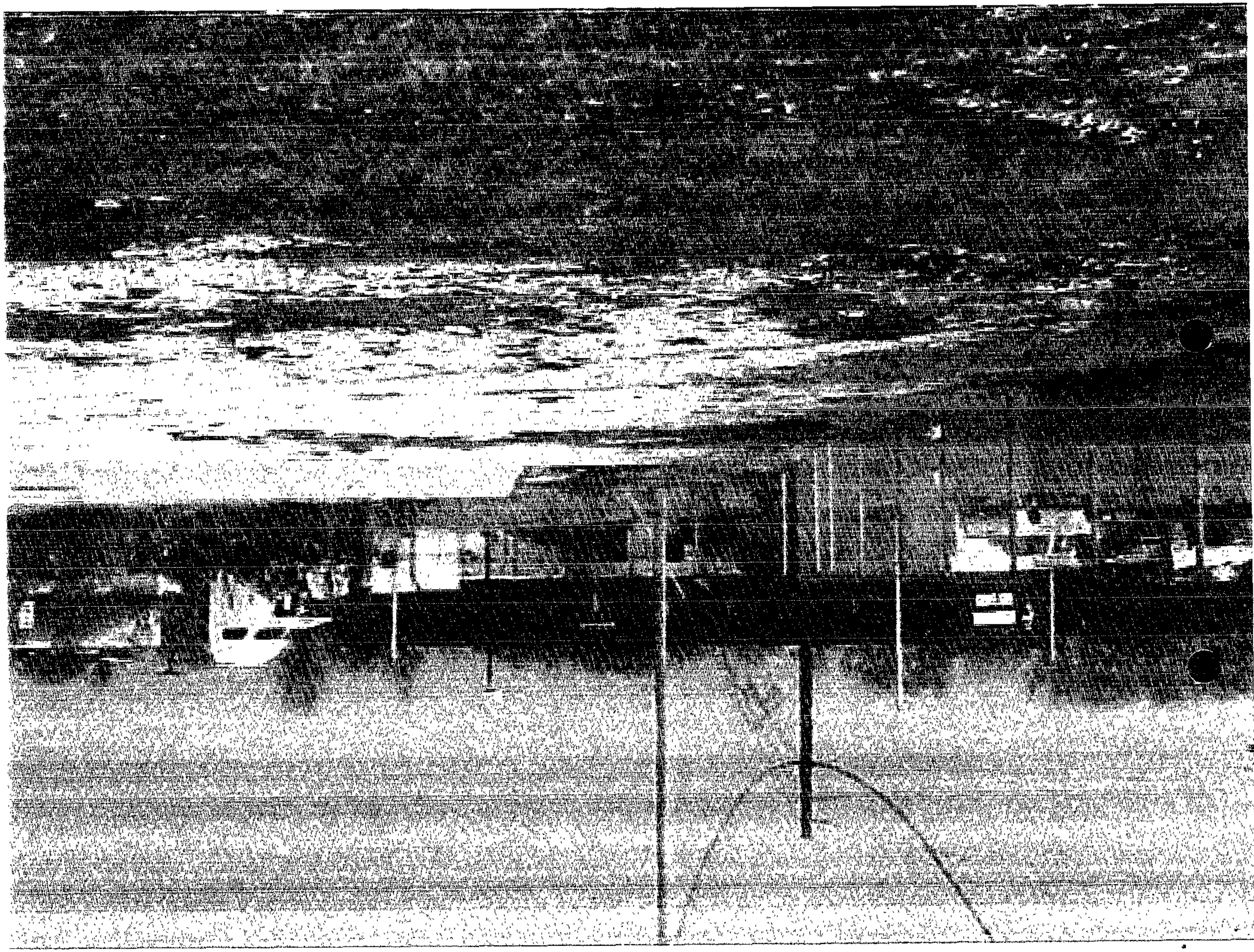
(D)



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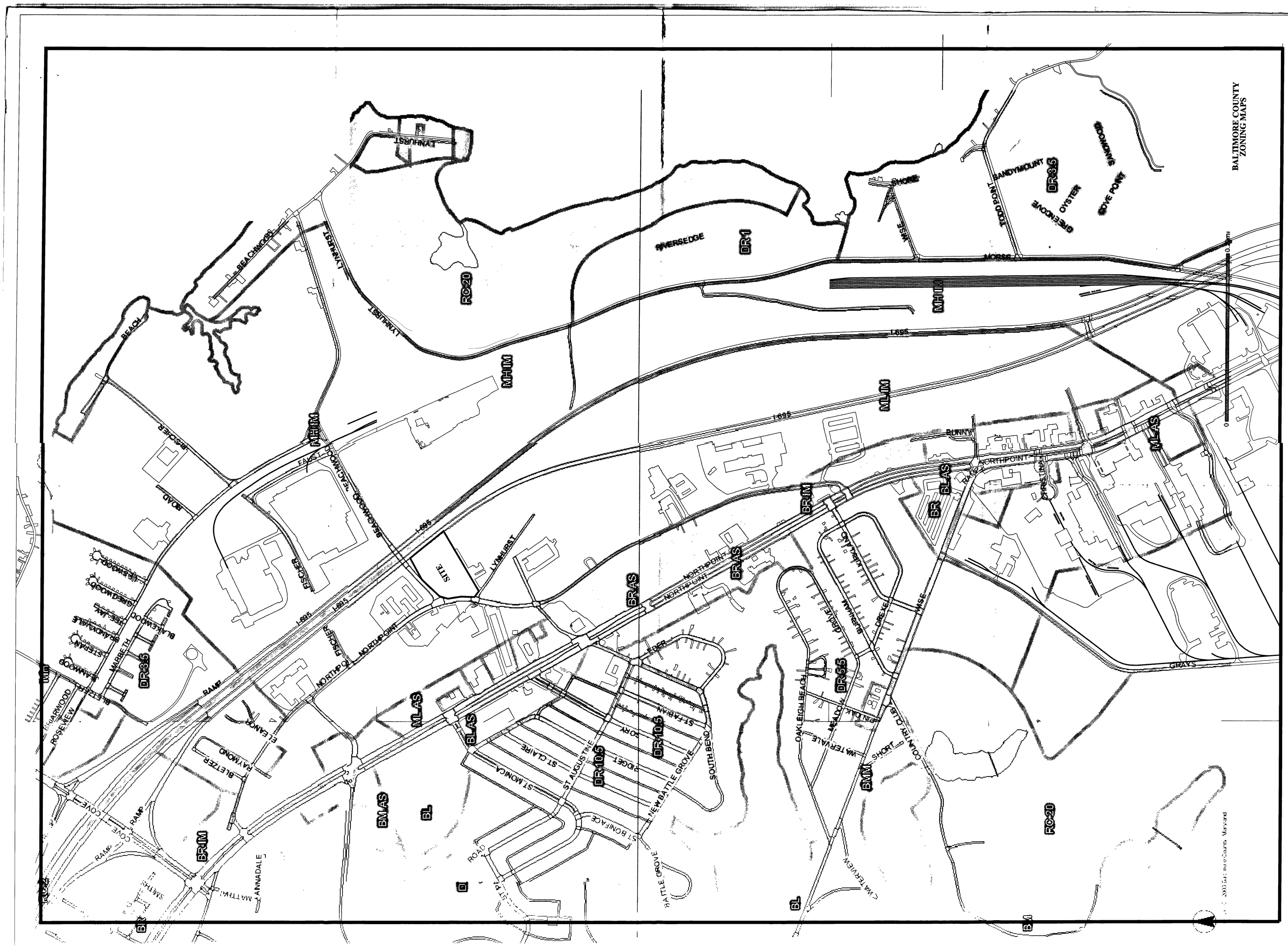
(7)


BALTIMORE COUNTY
ZONING MAPS
Pet. Ex. No 6
RC-20
DR1
DR3.5
DR5.5
DR10.5
MH-IM
ML-IM
BM-IM
BR-IM
BMAS
BLAS
MLAS
BRAS
BL
BM
SITE
I-695
LYNHURST
BEACHWOOD
FASCIER
NORTHPOINT
RIVERSEDGE
SHORE
MORSE
TOLSON
SANDYMOUNT
GREENDOVE
OYSTER
DOVE POINT
BOOMERANG
BUNNY
GRAYS
ST AUGUSTINE
ST CLAIRE
ST MONICA
ST BONIFACE
NEW BATTLE GROVE
SOUTH BEND
BATTLE GROVE
WATERVIEW
OAKLEIGH BEACH
MEADOW
SHORT
COUNTRY CLUB
ANNADALE
MARBETH
ROSEVIEW
BLAKEWOOD
GREENWOOD
RAMP
COVE
ROAD

PET EXH 1

SITE DATA

Gross Site Area: 3.1406 ac+/-.

Net Site Area: 3.1406 ac+/-

Tax Account Number: 15-1700001634.

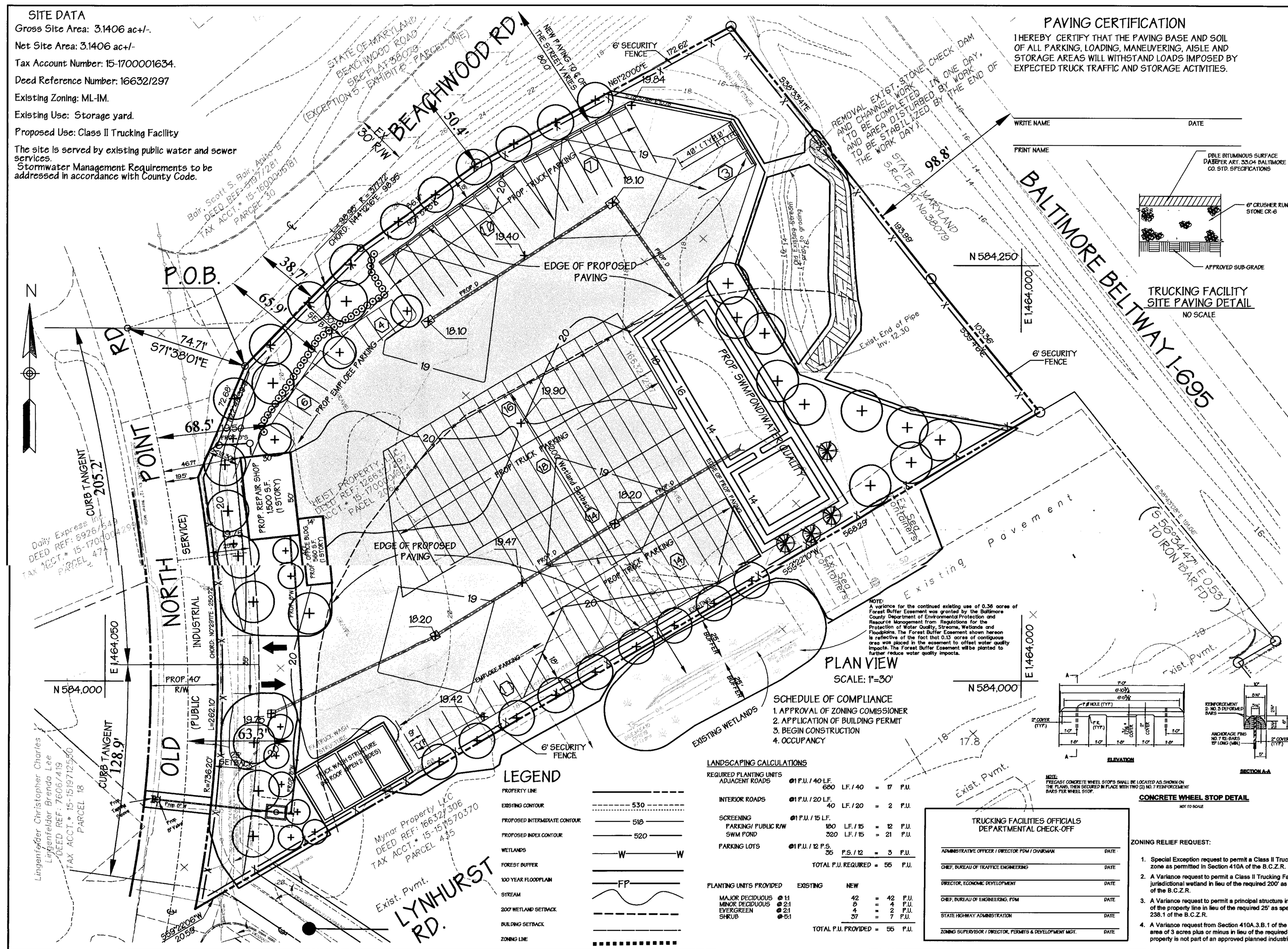
Deed Reference Number: 16632/297

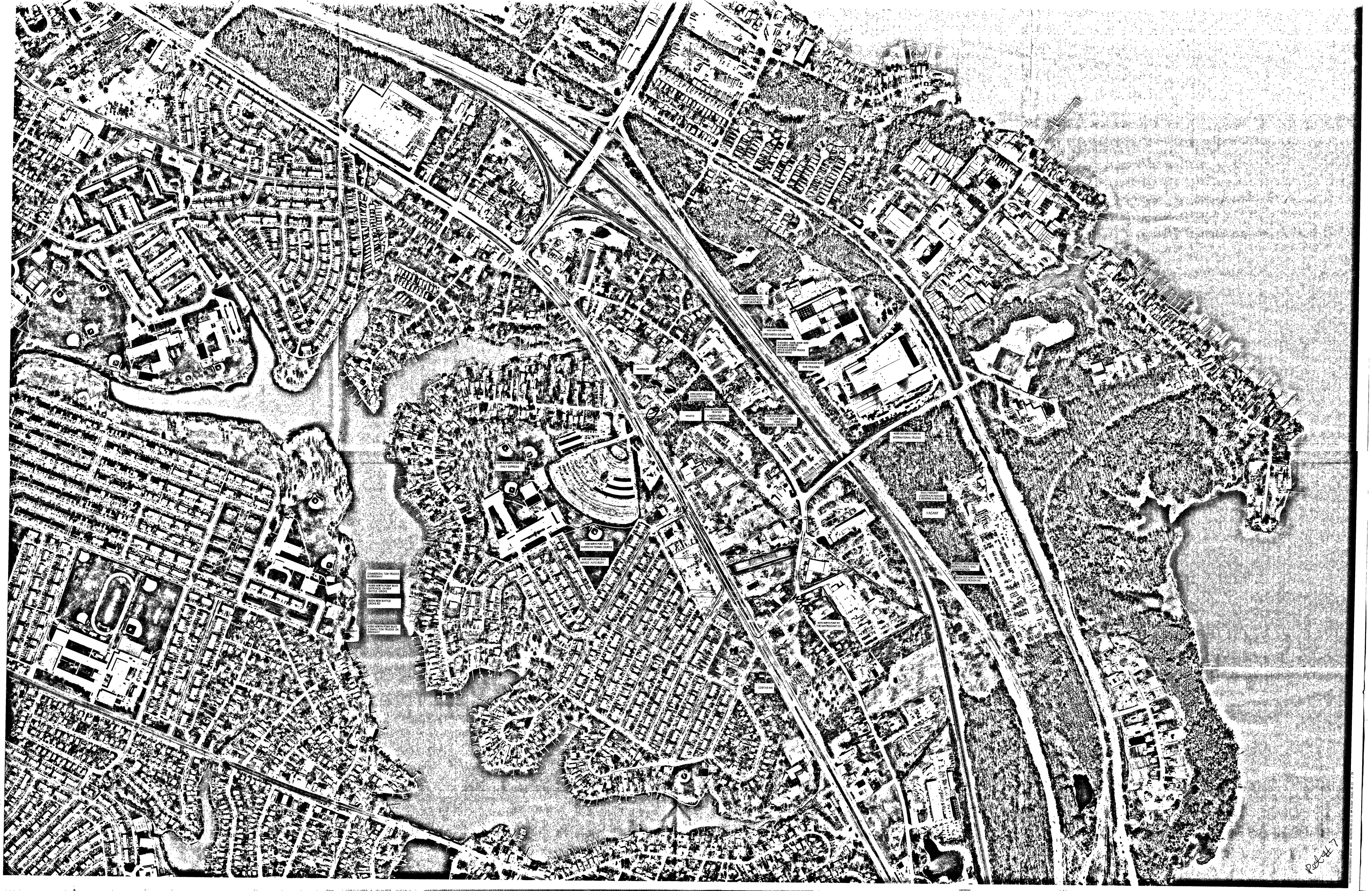
Existing Zoning: ML-IM.

Existing Use: Storage yard.

Proposed Use: Class II Trucking Facility

The site is served by existing public water and sewer services.
Stormwater Management Requirements to be addressed in accordance with County Code.


BEACHWOOD RD
BALTIMORE BELTWAY I-695
NORTH POINT INDUSTRIAL SERVICE
OLD (PUBLIC) R/W
LYNHURST RD.
P.O.B.
EDGE OF PROPOSED PAVING
PROP. TRUCK PARKING
PROP. EMPLOYEE PARKING
PROP. REPAIR SHOP 1,500 S.F. (1 STORY)
PROP. OFFICE BLDG. 500 S.F. (1 STORY)
PROP. SWM/POND/WATER QUALITY
EXISTING WETLANDS
6' SECURITY FENCE
N 584,250'
E 1,464,000
N 584,000
E 1,464,000
CURB TANGENT 205.2'
CURB TANGENT 128.9'
S71°38'01"E
Exist. Pvmt.
Existing Pavement
Exist. End of Pipe Inv. 12.10
Lingenfelter Christopher Charles Lingenfelter Brenda Lee DEED REF. 7606/419 TAX ACCT.# 15-1519712560 PARCEL 18
Myrar Property LLC DEED REF. 16632/306 TAX ACCT.# 15-1519570370 PARCEL 435
Daily Express Inc. DEED REF. 6926/543 TAX ACCT.# 15-1700004290 PARCEL 471
HEIST PROPERTY LLC DEED REF. 12655/457 TAX ACCT.# 15-1700001634 PARCEL 270
STATE OF MARYLAND BEACHWOOD ROAD SRC PLAT 38079 (EXCEPTION 5 - EXHIBIT E - PARCEL ONE)
Bair, Scott S. Bair, Anita B. DEED REF. 6987/281 TAX ACCT.# 15-1600005161 PARCEL 30
NEW PAVING TO BE OF THE STEEL VANES
REMOVAL EXIST. STONE CHECK DAM AND CHANNEL WORK TO BE COMPLETED IN ONE DAY, AND AREA DISTURBED BY WORK TO BE STABILIZED BY THE END OF THE WORK DAY.
STATE OF MARYLAND S.R.C. PLAT No. 38079
S63°23'31"E
S68°22'10"W
S56°34'47"E 0.53' TO IRON BAR FD.
BUFFER
EMPLOYEE PARKING
EX. WASH STRUCTURE W/ ROOF (OPEN 2 SIDES)
EX. WASH WATER
EX. SIGN
EX. STORAGE
EX. OFFICE
EX. SIGN
EX. STORAGE
EX. OFFICE
EX. SIGN
EX. STORAGE
EX. OFFICE


DEMOLISHED 90 AND GOLD SQ.
DREAMERS GO-GO BAR
1 HOUSE 4000 4002 4010 SQ. 2 HOUSE 4004 4006 DOUBLE WIDE 4008 DOUBLE WIDE
4012 RICHMOND ROAD 8100 TOTAL
4000 NORTH POINT BLVD. 2 CAR CARWASH
4000 RICHMOND ROAD 4 MASSIVE FIELDS
4000 OLD NORTH POINT BLVD. 2 CAR CARWASH 2 MASSIVE FIELDS
4000 OLD NORTH POINT BLVD. ONLY EXPRESS
VACANT
4000 NORTH POINT BLVD. AMERICAN POWER TOOLS
4000 NORTH POINT BLVD. 4000 4010 BLDG
4000 NORTH POINT BLVD. INTERNATIONAL TRUCKS
4000 NORTH POINT BLVD. 2 DRIVING & BILLIARD
4000 OLD NORTH POINT BLVD. 4000 4010 BLDG
COMMERCIAL TOW TRUCKS IN DRIVEWAY
4000 NORTH POINT BLVD. 8100 SQ. OLIVER BATTLE GROVE
8100 NEW BATTLE GROVE SQ.
4000 NORTH POINT BLVD. 2 SMALL TOW TRUCKS ON DRIVEWAY
4000 NORTH POINT BLVD. THE METROCOUNT CO.
COSTCO BLDG.

Pod #7