2/8/06

IN RE: PETITION FOR SPECIAL EXCEPTION E/S of Rolling Road, 440 ft. S centerline of Ashfield Drive 2nd Election District 4th Councilmanic District **(2705 Rolling Road)**	* * * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 06-075-X
Rutherford Burger Investments, LLC, By: Anthony Julio, *Legal Owner* and Stemark, Inc., By: Mark Ogrysko, *Lessee* *Petitioners*	* * *	

* * * \

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]

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 Office of Planning dated August 30, 2005, a copy of which is attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the special exception request were Steve Ogrysko, David West, Mark Ogrysho, B. Kacey Carter and Bill Monk for the Petitioners. C. William Clark, Esquire represented the Petitioners. Laura Vu, Hector and Yvonne O'Berry, Sajid Chaudhry and Iftikhar Ahmod attended the hearing in opposition to the requests. Michael Tanczyn, Esquire represented the protestants. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

The Petitioners are proposing to build a car wash with six (6) self-service and two (2) automatic bays on vacant property located on North Rolling Road on the edge of the Rutherford Business Park. Property in the business park is zoned Ml-IM. As such, the Petitioner requests approval of a special exception under Section 253.2B.2 and the special car wash regulations in Section 419.1 of the B.C.Z.R. See Petitioner' s Exhibits 1A and 1B.

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The Petitioner indicated that he owns several car washes presently in other locations and has twenty-five years experience in fuel service stations. He was familiar with the business park rules regarding the appearance of buildings in the park and agreed to follow those rules. Consequently, the new car wash building will have the same block, color, roof, etc. as other buildings in the park. He presented extensive photographs of similar car wash facilities. The park provides storm water management facilities. He noted that the proposed car wash would accommodate SUV and automobiles only. No trucks or recreational vehicles will be allowed. He will not service or repair vehicles on this property. While the property has access to public water and sewer, the car wash equipment recycles much of the water used so that little actual water will be discharged into the sewer system. A family member will clean the facility. There will be one (1) attendant on duty from 8 AM to 6 PM. The Petitioner will install security cameras on the site.

The Petitioner is requesting that the facility be allowed to operate seven (7) days a week, twenty-four hours a day. Not only will the equipment heat the water used in the car wash, but the pavement in front of and behind each bay. He agreed to comply with the comments from the Planning Office.

He admitted that apartments are located across Rolling Road on property zoned DR 16 and that the zoning boundary between the ML-IM of the park and DR 16 of the apartment complex is the center of Rolling Road.

Mr. West described the car wash equipment, vending and payment machines. Each of the vacuums has sound suppression features built into the machine. He mentioned that overall the goal is to operate the equipment at a noise level equal to the traffic on Rolling Road.

Mr. Monk, a zoning consultant, noted that the fuel service station to the south has a car wash, which was approved by this Commission by means of special exception. He noted that the business park has more than 25 acres. He admitted that an apartment complex has recently been constructed

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across Rolling Road but that the nearest residence is approximately 150 feet away from the car wash. Directly across Rolling Road is the storm water management facility serving the apartment complex. Traffic will not exit or enter directly from or to Rolling Road but rather will use two (2) existing service roads. The service road on the south side now serves the convenience store (with car wash). He indicated that the distance from the DR 16 / ML boundary in Rolling Road is 100 feet as required by the regulations. The plan meets all County parking and stacking requirements as well as landscaping buffers specified in the regulations.

He opined that the plan presented met each criteria of Section 502.1 of the B.C.Z.R. and would not adversely affect the neighborhood as all uses to the northeast and south are industrial. Directly across Rolling Road is the storm water management facility for the apartment complex.

He admitted that some of the vacuums associated with the self-service portion of the facility were within 100 feet of the DR 16/ ML-IM boundary. He opined that setting the car wash building back 100 feet from a residential boundary has met the long-standing interpretation of the Zoning Office. He further opined that the Rutherford Business is much larger than the 25-acre minimum specified in Section 253.2.B and that the car wash would primarily serve the industrial uses of the business park.

He admitted that he was involved in the special exception case in which the adjacent convenience store/car wash was approved for 24-hour operation. However, he noted that there is no requirement that the car wash portion be attended 24 hours each day. He saw the risk of undesirable elements coming to the car wash after the attendant left for the day was minimal given the heavy traffic on Rolling Road and convenience store attendant next door 24 hours a day. He noted that because of the site layout using service roads as access to the site, it would be difficult for a wrong doer to move from the site to residential communities. In regard to noise from the car wash, he noted that the only residential buildings were 150 to 200 feet away and with modern air

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conditioning he did not foresee noise from the site to be a problem. Nor did he see that there would be a problem with vehicles in the stacking lanes for the rollover bays blocking access to the self-service bays.

Mr. O'Berry, who owns a home in a nearby residential area, objected primarily to 24-hour operation of the proposed car wash. He related his frightening experience when he observed a 24-hour unattended car wash near Security Boulevard. He indicated that although he was wearing his police officer's uniform, customers after 11:30 PM appeared to be making drug deals, playing loud music and generally acting obnoxiously. He opined that such places act as a gathering place for undesirables. He expressed concern for the many persons including children crossing Rolling Road at night from the apartment complex to the convenience store adjacent to the subject site.

By agreement, counsel submitted summary memorandum of their client's position. The Petitioner pointed out that the Zoning Office had interpreted Section 419.4 A.1 to exclude from consideration "residentially zoned property" where the residentially zoned boundary is in a public street. The Petitioner contends that one should measure to the residential property line across Rolling Road, which is 137 feet from the self-service bay buildings and thus meets the statutory requirements. In addition, the Petitioner submitted an amended plan in which the building housing the self-serve tunnels was moved farther from Rolling Road and the DR 16 zoning line.

Mr. Tanczyn objected to the new plan requesting a hearing to examine the revised plan and present contrary evidence. A further hearing was scheduled by agreement on January 26, 2006 in which the Petitioner presented an extensive summary of past cases, which interpret the regulations. See Petitioner's Exhibit 10 for a highlighted plan illustrating the legal issues, and Exhibits 13 through 17 for the prior cases. In addition to cross-examination of the Petitioner's expert, Mr. Tanczyn submitted additional argument as to why the Petition should be turned down.

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Findings of Fact & Conclusions of Law

Zoning line in a public street

Mr. Clark presented one of the most comprehensive collections of self-serve car wash cases in which a residential zoning line adjacent to a car wash lies within a public street. Mr. Tanczyn provided and excellent summary of the legislative differences between self-service and other car wash operations. Hopefully we can keep this information available for future reference.

This issue is whether in Section 419.4 A 1 the phrase, "residentially zoned property" means to the farthest edge of the public road or to the actual residential zone boundary, which happens to lie within a public road. Mr. Clark argues that there is a long history of Zoning Office and Commission interpretations, which say the proper starting point is the farthest edge of the right of way. He notes that there are obviously no residential uses in the right of way of public street which could be disturbed by the noise and traffic generated by a car wash. On the other hand, Mr. Tanczyn argues that there is nothing in the regulations allowing such an interpretation. "Residentially zoned property" means just what it says, no part of any self-service car wash shall be within 100 feet of the residential zoning boundary.

Case No. 00-277-XA approved a plan in which the car wash buildings were approximately 120 feet from the residential line in the public street but access driveways to the public street, aisles, parking and drying spaces and vacuums were within the 100-foot setback line. None of these latter features were within 100 feet of the far side of the right of way of that street.

Case No. 99-302-X approved a plan in which the car wash buildings were approximately 225 feet from the residential line in the public street but access driveways to the public street, aisles, and one (1) stacking space were within the 100 foot setback line. The driveway was within 100 feet of the far side of the right of way of that street.

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Case No. 99-124-X approved a plan in which the car wash buildings were approximately 280 feet from the residential line in the public street. No access driveways to the public street, aisles, parking and drying spaces and vacuums were within the 100-foot setback line.

In contrast, the subject case has a plan in which one of the self-serve car wash tunnels is 94 feet from the residential line in the public street (Rolling Road) and access driveways to the public street, aisles, drying spaces and vacuums are within the 100 feet of that residential line. Remarkably in the alternative design, Exhibit 1B, while the self-service tunnel is moved back to be 100 feet from the residential line in the street, access driveways to the public street, aisles, drying spaces and vacuums are within the 100 feet of the farthest right of way line of Rolling Road.

My first observation is that if we take "no part of a self-service car wash" to include access driveways to the public street and driveways, there could be no self-serve car wash facilities when the residential line is in the public street. One has to get to and from the car wash to the public street. Surely, the Council never intended to carve out an absolute prohibition against self-serve car washes along public streets. I therefore read "no part of a self-service car wash" does not include access driveways to the public street or driveways.

My second observation is that there are parts of a self-service car wash, which are detrimental to adjoining residential uses. The washing machinery, vacuums and parking make noise and can be visually objectionable. One complaint often heard is that patrons park their cars on a summer night and play music at painful sound pressure levels while they clean their vehicles. Vacuums scream a high pitched sound that can be heard far from the canister and motor. The washing machinery clunks and groans and even the vehicles vibrate as high-pressure water is applied to the vehicle by the patron. Clearly, these components of the self-service car wash can adversely affect the community.

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Having said that, the question is does "residentially zoned property" include the right of way of public streets when the residential boundary is located in the center of the street. Although there are exceptions, generally abutting property owners have title to the centerline of a street as the County usually has no more than a right of way. So one can argue as Mr. Tanczyn does so ably that this is no different from any other location for the residential line. In addition, nothing in the regulations allows this Commission to interpret the regulations to trigger the setback from the car wash to residential uses. If we start down this slope, there is no stopping unless we evaluate each residential use as to how it might be affected by the less desirable characteristics of the car wash.

On the other hand, there clearly is no reason to protect the southbound lanes of Rolling Road from adjacent car wash operations. Surely, the traffic on those lanes will not be adversely affected even if a patron plays music a little loud. I accept Mr. Clark's assertion that the Zoning Office has interpreted the regulations to set back self-service car wash facilities from the farthest edge of the right of way and not the actual residential boundary.

On balance I find that Mr. Clark has the better argument. I think the Council wanted to protect the public where they live, work and play from the adverse aspects of self-service car washes but that this did not include the areas within the right of ways of streets.

Having said that, I see no reason to consider the alternative design presented by the Petitioner in Exhibit 1B.

However, I note that there is a self-service bay between the roll over bay and equipment room shown in Exhibit 1. Clearly, there are drying spaces, parking and vacuums, which serve this self-service bay within the 100 feet from the farthest edge of the right of way of Rolling Road. These are not allowed under the regulations and must be removed. Frankly, given the mix of self-service and roll over bays in the northern portion of the building, I do not know how any of the vacuum stations/drying spaces along Rolling Road serve the roll over and not the self-serve bays.

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I also note that the southern most vacuum station and drying space towards Rolling Road clearly serves the self-serve bays behind it. These are parts of the self-service car wash and must be removed. Again, the vacuums and drying spaces along Rolling Road will generate a great deal of noise and activity when in use, which can adversely affect the residential community on the other side of Rolling Road.

Finally, I note the great wisdom enunciated by the Deputy Zoning Commissioner Kotroco regarding hours of operation in Case No. 00-277-XA where he observed that 24-hour car wash operations can be compatible with the neighborhood as long as there is a caretaker to see that the patrons are well behaved. In the subject case, I note that there is only a storm water management facility immediately across Rolling Road rather than homes or recreational facilities so that the residents do not as directly feel the impact of lights and activity. So, I see no reason to simply limit the hours of operation. However, given the protestants' testimony, I see every reason to require that this facility have an attendant while it is open to the public.

In summary, I find that granting the special exception for the proposed car wash meets the criteria of Section 502.1 of the B.C.Z.R. - *Special Exceptions* and will not adversely affect the health, safety or welfare of the community if certain conditions are met. Therefore, I will grant the Special Exception subject to the following conditions:

1. That there be no audible paging system;
2. That all support facilities associated with the self-service bays including parking spaces, drying spaces and vacuums be removed from the area of 100 feet from the westernmost edge of the right of way of Rolling Road;
3. That the facility be open to the public only when an attendant is on duty;
4. That entrance gates be locked after hours;
5. That the lighting be directed away from the residences to the west, and

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6. That the Petitioners comply with the recommendations of the Planning Office dated August 30, 2005, a copy of which is attached and made a part of record thereof.

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' special hearing request should be granted with conditions.

THEREFORE, IT IS ORDERED, this 8 day of February, 2006, by this Deputy Zoning Commissioner, that the Petitioners' special exception request pursuant to Sections 253.2.B.2 and 419.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a car wash, be and is hereby GRANTED, subject, however, to the following conditions:

1. That there be no audible paging system;

2. That all support facilities associated with the self-service bays including parking spaces, drying spaces and vacuums be removed from the area of 100 feet from the westernmost edge of the right of way of Rolling Road;

3. That the facility be open to the public only when an attendant is on duty;

4. That entrances shall be locked after hours;

5. That the lighting be directed away from the residences to the west; and

6. That the Petitioners comply with the recommendations of the Planning Office dated August 30, 2005, a copy of which is attached and made a part of record thereof.

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

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Date 2-8-06
By

JVM:dlw

John V. Murphy
JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

8/3/07

PETITION OF:	*	
HECTOR O'BERRY YVONNE O'BERRY	*	IN THE
	*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	* *	FOR BALTIMORE COUNTY Case No. 03-C-06-13405
IN THE CASE OF:	*	
Rutherford Burger Investments, LLC By Anthony Julio-Legal Owner And Stemark, Inc., by Mark Ogrysko-Lessee	* *	

****

ORDER

Upon the Respondent's Motion to Dismiss, and any response thereto, counsel present, arguments heard, it is this 3rd day of August, 2007, ORDERED that the Petitioner's Petition for Judicial Review is hereby DISMISSED WITH PREJUDICE based upon this court's findings and opinion stated on the record.

Judge Ruth Jakubowski

Clerk to Notify all Parties

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AUG 07 2007
BALTIMORE COUNTY
BOARD OF APPEALS

True Copy Test
Clerk of the Circuit Court
for Baltimore County

FILED AUG 3 2007

Rutherford Bridge Crct. DISMISSED Pet. & Gnd. Rev.

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

02/27/08

Case Number: 03-C-06-013405 AE OTH
Date Filed: 12/18/2006
Status: Closed/Active
Judge Assigned: To Be Assigned,
Location :
CTS Start : 12/18/06 Target : 06/15/08

In The Matter of: Hector OBerry, et al

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	06-075-X
Case Folder ID	C06013405V01

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. / Addr Update	Entered
PET	001	OBerry, Hector		CT DO 08/03/07	12/18/06
			Party ID: 1092677		
		Mail: 7000 Rockfields Road Woodlawn, MD 21244	12/18/06		12/19/06 DFF
		Attorney: 0012544 Tanczyn, Michael P Michael P. Tanczyn, P.A. 606 Baltimore Avenue Suite 106 Baltimore, MD 21204 (410)296-8823		Appear: 12/18/2006	12/19/06
PET	002	OBerry, Yvonne		CT DO 08/03/07	12/18/06
			Party ID: 1092681		

Mail: 7000 Rockfields Road 12/18/06 12/19/06 DFF
Woodlawn, MD 21244

Attorney: 0012544 Tanczyn, Michael P Appear: 12/18/2006 12/19/06
Michael P. Tanczyn, P.A.
606 Baltimore Avenue
Suite 106
Baltimore, MD 21204
(410)296-8823

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. / Addr Update	Entered
RES	001	Rutherford Burger Investments L L C	Party ID: 1092686	CT DO 08/03/07	12/18/06
RES	002	Stemark Inc	Party ID: 1092689	CT DO 08/03/07	12/18/06

Attorney: 0810801 Clark, C William Appear: 03/16/2007 03/23/07
Nolan, Plumhoff & Williams, CHTD
502 Washington Ave
Suite 700
Towson, MD 21204
(410)823-7800

ITP	001	Board Of Appeals	Party ID: 1092691	CT DO 08/03/07	12/18/06

Mail: 400 Washington Avenue 12/18/06 12/19/06 DFF
Old Courthouse Room 49
Towson, MD 21204

CALENDAR EVENTS

Date	Time	Fac	Event Description	Text	SA	Jdg	Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec					
06/12/07	09:30A	CR17	Motion Hearing (Civil)	Y		RAJ	01 /01	05/09/07 RC	PF
Cancelled/Vacated			06/11/07 E						
06/28/07	09:30A	CR12	Civil Non-Jury Trial			LRD	01 /01		JMO LLH
Postponed			06/20/07 C L.Daniels						
08/03/07	09:30A	CR17	Motion Hearing (Civil)			RAJ	01 /01		LLH
Held/Concluded			08/03/07 E R.Jakubowski	Y					

Stenographer(s): Sherri Meyer

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	User	Activity Date
08/03/07	DO	Decree or Order	CT	AFTER TRIAL/HEARING	PH	08/03/07

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	12/19/06	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0001000	Petition for Judicial Review Filed by PET001-OBerry, PET002-OBerry	12/18/06	12/19/06	PET001	TBA	08/03/07	DFF PH
0002000	Notice of Service of Discovery*	01/11/07	01/12/07	000	TBA	08/03/07	CMS PH
0003000	Transcript of Record from Adm Agency	02/12/07	02/15/07	ITP001	TBA	08/03/07	PKE PH
0004000	Notice of Transcript of Record Sent	02/15/07	02/15/07	ITP001	TBA	02/15/07	PKE
0005000	Notice of Transcript of Record Sent	02/15/07	02/15/07	PET001	TBA	02/15/07	PKE
0006000	Notice of Transcript of Record Sent	02/15/07	02/15/07	PET002	TBA	02/15/07	PKE
0007000	Notice of Transcript of Record Sent	02/15/07	02/15/07	RES001	TBA	02/15/07	PKE
0008000	Notice of Transcript of Record Sent	02/15/07	02/15/07	RES002	TBA	02/15/07	PKE
0009000	Scheduling Order	03/08/07	03/08/07	000	TBA	03/08/07	JMO
0010000	Memorandum Filed by PET001-OBerry, PET002-OBerry	03/14/07	03/22/07	PET001	TBA	03/22/07	SAP
0011000	Notice of intention to Participate *	03/16/07	03/23/07	000	TBA	08/03/07	PKE PH
0012000	Motion to Dismiss petition	04/04/07	04/13/07	RES002	TBA	08/03/07	PH PH
0012001	Answer with Request for Hearing Filed by PET001-OBerry, PET002-OBerry	04/19/07	04/25/07	PET001	TBA	08/03/07	PH PH
0012002	Memorandum in Opposition to Motion	04/19/07	04/25/07	PET001	TBA	08/03/07	PH PH

Filed by PET001-OBerry, PET002-OBerry

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0013000	Request for Hearing/dismiss	04/04/07	04/13/07	RES002	TBA		08/03/07	PH PH
0014000	Motion to Extend Time to file responsive memorandum	04/13/07	04/13/07	RES002	JGT	Granted	04/13/07	PH
0015000	Motion to Strike Motion to dismiss Filed by PET001-OBerry, PET002-OBerry	04/19/07	04/25/07	PET001	TBA		08/03/07	PH PH
0015001	Opposition with Request for Hearing	05/01/07	05/10/07	RES002	TBA		08/03/07	NF PH
0015002	Reply Memorandum In Support of Motion To Dismiss	05/01/07	05/10/07	RES002	TBA		08/03/07	NF PH
0016000	Request for Hearing/strike Filed by PET001-OBerry, PET002-OBerry	04/19/07	04/25/07	PET001	TBA		08/03/07	PH PH
0017000	Hearing Notice	05/09/07	05/09/07	000	TBA		05/09/07	RC
0018000	Open Court Proceeding August 3, 2007. Hon Ruth A Jakubowski. Hearing had in re: Motions paper #12000-Respondents motion to dimiss petition-granted. Order to be signed. paper #15000-Petitioners motion to strike-denied.	08/03/07	08/03/07	000	RAJ		08/03/07	JMS PH
0019000	Order dismissing petition with prejudice	08/03/07	08/03/07	000	RAJ	Granted	08/03/07	PH

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	CLOSED	12/18/07	365	no	no	DAAA	D	001	000
22DT	22 Day Tickle	CLOSED	05/23/07	22	no	no	MOPH	D	015	001
EXPU	Exhibit Pickup Notic	CLOSED	10/02/07	30	no	no			000	000
SLMH	Set List For Motions	CANCEL	04/25/07	0	no	no	SLMM	T	000	000
SLMM	Set List Motions Mar	Done	12/28/09	999	yes	yes	DARH	D	013	000
SLMM	Set List Motions Mar	CLOSED	01/12/10	999	yes	no	DRHR	D	016	000
SLMR	Set List For Motions	CANCEL	05/05/07	31	no	no	SLMM	T	012	000
SLMR	Set List For Motions	CANCEL	05/11/07	22	no	no	MOPP	D	012	002

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
SLMR	Set List For Motions	CANCEL	05/11/07	22	no	no	MSTR	D	015	000
SLTR	Set List For Trial	CANCEL	02/12/07	0	yes	no	DTRA	D	003	000
SLTR	Set List For Trial	CANCEL	06/20/07	0	yes	no	CIVI	S	000	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: ITP 001 Board Of Appeals,								
000		B	BOX 530/EXHIBITS		B			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 03/08/07 Order Date : 03/08/07
Start Date : 03/08/07 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		03/23/07	08/03/07	CLOSED
All Motions (excluding Motions in Limine		05/19/07	08/03/07	CLOSED
TRIAL DATE is		06/06/07	08/03/07	CLOSED

ACCOUNTING SUMMARY

NON-INVOICED OBLIGATIONS AND PAYMENTS

Date	Rcpt/Initials	Acct	Desc	Debit	Credit	Method	Balance
12/18/06	200600030138/CPM	1265	MLSC	.00	25.00	CK	-25.00
12/18/06	200600030138/CPM	1500	Appearance F	.00	20.00	CK	-45.00
12/18/06	200600030138/CPM	1102	CF-Civil Fil	.00	80.00	CK	-125.00
12/19/06		1500	Appearance F	10.00	.00		-115.00
12/19/06		1102	CF-Civil Fil	80.00	.00		-35.00
12/19/06		1265	MLSC	25.00	.00		-10.00

08/07/07	1500 Appearance F	10.00	.00	.00

5/11/07

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

RECEIVED
MAY 1 1 2007
BALTIMORE COUNTY
BOARD OF APPEALS

N O T I C E O F M O T I O N S H E A R I N G

Case Number: 03-C-06-013405 AE
Administrative Agency : 06-075-X
C I V I L

In The Matter of: Hector OBerry, et al

STATE OF MARYLAND, BALTIMORE COUNTY COUNTY, TO WIT:

TO: Board Of Appeals
400 Washington Avenue
Old Courthouse Room 49
Towson, MD 21204

This case has been assigned a hearing on all open motions on:

CIRCUIT COURT FOR BALTIMORE COUNTY County Courts Building 401 Bosley Avenue Towson, MD 21285-6754	Court date: June 12, 2007 At: 09:30 AM Motion Hearing (Civil) 1/2 HOUR MOTIONS

PLEASE NOTE: If you desire to submit prior to this hearing date, please contact the Motion Assignment Clerk. A total of no more that one-half hour is allotted for a hearing on "Motion Days". If motions will take more than one-half hour, please contact the Motion Assignment Clerk for reassignment.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment's Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

A court reporter will not be present at the motion hearing unless specifically requested. Requests for reporters should be directed to the Motion Assignment Clerk. All requests for a postponement **MUST BE MADE IN WRITING AS SOON AS POSSIBLE**. This should be directed to the Motion Assignment Clerk with a copy to all counsel. Claim of not receiving this notice will not constitute reason for postponement.

Please refer to Information Desk for Court Room Designation.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., **cameras and recording equipment are strictly prohibited** in courtrooms and

adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

Assignment Clerk: Culbertson Rebecca
Assignment Office Phone: (410)-887-2660

Date Issued: 05/09/07

RECEIVED
MAY 11 2007
BALTIMORE COUNTY
BOARD OF APPEALS

4/9/07

PETITION OF:	*	IN THE
HECTOR O' BERRY YVONNE O' BERRY 7000 Rockfields Road Woodlawn, Maryland 21244	*	CIRCUIT COURT OF MARYLAND
	*	FOR
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY 400 Washington Avenue Towson, MD 21204	* * *	BALTIMORE COUNTY CIVIL ACTION NO.: 03-C-06-13405
IN THE CASE OF:	*	
Rutherford Burger Investments, LLC by Anthony Julio-Legal Owner and Stemark, Inc., by Mark Ogrysko-Lessee *	*	

* * * * * * * * * * *

ORDER

Upon the Respondent's Motion for Extension of Time, and any response thereto, it is this 9th day of April, 2007;

ORDERED, That the Motion to Extend Time is hereby Granted; and

IT IS FURTHER ORDERED, that the Respondent shall have thirty (30) days to file a Memorandum responsive to that filed by the Petitioners following the Court's ruling on Respondent's Motion to Dismiss in the Event that this Court denies said Motion to Dismiss.

John Mason Kehoe
Associate Judge

True Copy Test
SUZANNE MENSH, Clerk
Per Paula R. Shell
Assistant Clerk

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

FILED APR 13 2007

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

Case Number: 03-C-06-013405

TO: BOARD OF APPEALS
400 Washington Avenue
Old Courthouse Room 49
Towson, MD 21204

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APR 17 2007
BALTIMORE COUNTY
BOARD OF APPEALS

3/12/07

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

Board Of Appeals
400 Washington Avenue
Old Courthouse Room 49
Towson MD 21204

Assignment Date: 03/08/07

Case Title: In The Matter of: Hector OBerry, et al
Case No: 03-C-06-013405 AE

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.
You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 03/23/07
2. All Motions (excluding Motions in Limine) are due by..... 05/19/07
3. TRIAL DATE is..... 06/28/07
   Civil Non-Jury Trial: Start Time: 09:30AM: To Be Assigned: 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., cameras and recording equipment are strictly prohibited in courtrooms

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MAR 12 2007
BALTIMORE COUNTY
BOARD OF APPEALS

and adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

cc: Rutherford Burger Investments
cc: Stemark Inc
cc: Michael P Tanczyn Esq
Issue Date 03/08/07

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

N O T I C E O F R E C O R D

Case Number: 03-C-06-013405 AE
Administrative Agency : 06-075-X
C I V I L

In The Matter of: Hector OBerry, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 12th day of February, 2007.

Suzanne Mensh
Clerk of the Circuit Court, per

Date issued: 02/15/07

TO: BOARD OF APPEALS
400 Washington Avenue
Old Courthouse Room 49
Towson, MD 21204

RECEIVED
FEB 15 2007
BALTIMORE COUNTY
BOARD OF APPEALS

2/12/07

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF:
HECTOR O'BERRY & YVONNE O'BERRY *
7000 ROCKFIELDS ROAD
WOODLAWN, MARYLAND 21244 *

CIVIL ACTION
* NO. **03-C-06-13405**

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

IN THE MATTER OF THE APPLICATION *
RUTHERFORD BURGER INVESTMENTS ,LLC
BY ANTHONY JULIO – LEGAL OWNER *
AND STEMARK, INC., BY MARK OGRYSKO –
LESSEE *

2nd ELECTION DISTRICT *
4th COUNCILMANIC DISTRICT
*
CASE NO.: 06-075-X
* * * * * * * * * * * *

PROCEEDINGS BEFORE THE ZONING COMMISSIONER
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings in the above-entitled matter, consisting of the original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

RECEIVED AND FILED
07 FEB 12 PM 2:28
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Rutherford Burger Investments, LLC
Circuit Court Case No.: 03-C-06-13405
Board of Appeals Case No.: 06-675-X

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY

August 3, 2005	Petition for Special Exception to allow a car wash pursuant to §§ 253.2.B.2 and 410.1 of the BCZR.
	Zoning Description of Property
Aug. 11, 2005	Entry of Appearance by People's Counsel.
Aug. 16, 2005	Notice of Zoning Hearing
Sept. 20, 2005	Certificate of Publication – The Jeffersonian.
Sept. 19, 2005	Certificate of Posting – by Robert Black.
Sept. 26, 2005	Zoning Advisory Committee Comments.
Oct. 5, 2005	Citizens & Petitioners sign in sheets.
Feb. 8, 2006	Deputy Zoning Commissioner's Findings of Facts and Conclusion of Law *GRANTING* Petitioner's request with conditions.
Mar. 7, 2006	Letter of Appeal filed by Michael P. Tanczyn, Esq. on behalf of Sgt. Hector O'Berry and Yvonne O'Berry.
Mar. 17, 2006	Letter from Timothy Kotroco, Dir./PDM acknowledging receipt of Mr. Tanczyn's appeal and advising that file will be forwarded to the Board of Appeals.
Mar. 17, 2006	File received in the Board of Appeals.
Mar. 20, 2006	Appeal Sign Posting Request prepared. (Small blue paper)
Apr. 6, 2006	Confirmation of sign posting by Jeff Radcliff.
June 19, 2006	Notice of Assignment sent advising of trial date of Aug. 9, 2006.
Aug. 9, 2006	Hearing before the Board.

Petitioner's Exhibits – 06-075-X

1. Site Plan Redlined
2. Site Plan – clean unmarked copy.
3. Covenants for business park.
4. Dept. of Planning comments.
5. William P. Monk's resume.
6. Zoning map.
7. Photos – A thru C.
8. Photos – A thru H.
9. Graphic of easements.
10. Photos – A thru C.
11. Landscape plan.
12. Zoning Reg. 253.
13. Zoning Reg. Sec. 419.
14. Definitions.

Aug. 29, 2006	Protestant's Memorandum filed by Michae P. Tanczyn, Esq.
Aug. 29, 2006	Petitioner's Memorandum filed by C. William Clark, Esq.
Oct. 17, 2006	Notice of Deliberation.
Oct. 24, 2006	Board convened for public deliberation.
Oct. 24, 2006	Minutes of Deliberation for 06-075-X.
Nov. 17, 2006	Board issued Opinion and Order *GRANTING* special exception.

Rutherford Burger Investments, LLC
Circuit Court Case No.: 03-C-06-13405
Board of Appeals Case No.: 06-675-X

Dec. 18, 2006	Received notice from Michael P. Tanczyn Esq. that a Petition for Judicial Review had been filed with the Circuit Court.
Dec. 21, 2006	Board received a copy of the Petition of Judicial Review from the Circuit Court.
Jan. 11, 2007	Certificate of Notice mailed to appropriate parties.
Feb. 12, 2007	Transcript of testimony filed.
Feb. 12, 2007	Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Linda B. Fliegel

Linda B. Fliegel, Legal Secretary
County Board of Appeals
Room 49 Basement
Old Courthouse, 400 Washington Avenue
Towson, Maryland 21204 (410-887-3180)

c: Sgt. Hector O'Berry & Yvonne O'Berry
C. William Clark, Esq.
Rutherford Burger Investments, LLC/
By Anthony Julio
Stemark, Inc. by Mark Ogrysko
William Monk/Morris & Ritchie
Steve Ogrysko
David West
B. Kacey Carter
Laura Vu
Sajid Chaudhry
Iftikhar Ahmad
Office of People's Counsel
William J. Wiseman, III/Zoning Commissioner
Pat Keller, Planning Dir.
Timothy M. Kotroco, Dir./PDM

1/11/07

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*

PETITION OF:
HECTOR O'BERRY & YVONNE O'BERRY *
7000 ROCKFIELDS ROAD
WOODLAWN, MARYLAND 21244 *

CIVIL ACTION
* NO. **03-C-06-13405**

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

IN THE MATTER OF THE APPLICATION *
RUTHERFORD BURGER INVESTMENTS ,LLC
BY ANTHONY JULIO – LEGAL OWNER *
AND STEMARK, INC., BY MARK OGRYSKO –
LESSEE *

2nd ELECTION DISTRICT *
4th COUNCILMANIC DISTRICT
*

CASE NO.: 06-075-X
*

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

CERTIFICATE OF NOTICE

Madam Clerk:

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

RECEIVED AND FILED
'07 JAN 11 PM 2:36
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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

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

Sgt. & Mrs. Hector O'Berry
7000 Rockfields Road
Windsor Mill, MD 21244

C. William Clark, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue
Nottingham Centre
Towson, MD 21204-4528

Steve Ogrysko
1921 Pleasantville Road
Forest Hill, MD 21050

David West
6126 Three Cedars Lane
Fredericksburg, VA 22401

Mark Ogrysko
2309 Cool Woods Court
Jarrettsville, MD 21084

B. Kacey Carer
9125 Thamemeade Road
Laurel, MD 20783

Bill Monk
Morris & Ritchie
1220-C East Joppa Road – Ste. 505
Towson, MD 21286

Laura Vu
43 Straw Hat Road – Apt. 2D
Owings Mills, MD 21117

Sajid Chaudhry
2318 Halls Grove Road
Gambrills, MD 21054

12/18/06

IN THE CIRCUIT COURT FOR *
BALTIMORE COUNTY

*

PETITION OF: *

HECTOR O'BERRY *
YVONNE O'BERRY
7000 Rockfields Road * CIVIL ACTION
Woodlawn, Maryland 21244

* NO. C-06-13405

FOR JUDICIAL REVIEW OF THE *
DECISION OF THE
COUNTY BOARD OF APPEALS *
OF BALTIMORE COUNTY
400 Washington Avenue *
Towson, Maryland 21204

*

IN THE CASE OF:

*

Rutherford Burger Investments, LLC
by Anthony Julio - Legal Owner *
and Stemark, Inc., by Mark Ogrysko-
Lessee *

*

Case No.: 06-075-X

*

* * * * * *

RECEIVED
DEC 21 2006
BALTIMORE COUNTY
BOARD OF APPEALS

RECEIVED AND FILED
2006 DEC 18 AM 11:30
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

PETITION FOR JUDICIAL REVIEW

Now comes Sgt. Hector O'Berry and Yvonne O'Berry, by their counsel, Michael P. Tanczyn and petitions this Court for Judicial Review of the Decision of the County Board of Appeals of Baltimore County of the above case, dated November 17, 2006,

Michael P. Tanczyn

MICHAEL P. TANCZYN, Esquire

11/17/06

IN THE MATTER OF:	*	BEFORE THE
RUTHERFORD BURGER INVEST-MENTS, LLC – ANTONIO JULIO, Legal Owner and STEMARK, INC.	*	COUNTY BOARD OF
by MARK OGRYSKO, Lessee	*	APPEALS
2705 Rolling Road Baltimore, MD 21244	*	OF
	*	BALTIMORE COUNTY
2ND ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	CASE NO. 06-075-X

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

OPINION

This matter is before this Board on an appeal from a decision of the Deputy Zoning Commissioner in which a special exception was granted for a car wash at 2705 Rolling Road in Baltimore County, with certain conditions. Protestants, Hector O'Berry and Yvonne O'Berry, filed a timely appeal of the Deputy Zoning Commissioner's decision. A hearing was held before the Board of Appeals on August 9, 2006. The Petitioner was represented by C. William Clark, Esquire, of Nolan, Plumhoff, and Williams, Chartered, attorneys. The Protestants were represented by Michael Tanczyn, Esquire. Memos were filed on August 29, 2006, and a public deliberation was held on October 24, 2006.

BACKGROUND

The Petitioner is proposing to build a car wash with six (6) self-service and two (2) automatic bays on vacant property located at 2705 N. Rolling Road, in the Catonsville area, on the edge of the Rutherford Business Park. The property in the business park is zoned MI and IM. The Petitioner requested approval of the special exception under § 253.2.B.2 and the special car wash regulations in § 419.1 of the *Baltimore County Zoning Regulations* (BCZR). In accordance with the rules of the business park, the new car wash building will have the same block, color, roof, etc. as other buildings in the park. The park provides stormwater management facilities for the tenants. The car wash will not service or repair vehicles on the property. It will recycle

much of the water used so that little of the actual water will be discharged into the sewer system. There will be only one attendant on duty from 8:00 a.m. to 6:00 p.m. and the Petitioner testified that they intended to install security cameras on the site. Petitioner has requested that the facility be allowed to operate seven days a week, twenty-four hours a day. Not only will the equipment heat the water used in the car wash but the pavement in the front of and behind each bay will also be heated.

Petitioner presented a Declaration of Easements, Covenants and Restrictions among Rolling Road, LLC, etc. and Rutherford Tiger Properties, LLC and other Rutherford companies, concerning rights-of-way and easements affecting the property in question. Petitioner also presented William Monk, a registered landscape architect and land planner, who was accepted as an expert in the area of Baltimore County zoning regulations, development rules and regulations, and other Baltimore County requirements for the proposed use. Mr. Monk testified that the easements granted in the declaration of easements went across the front of the lot known as Lot B8 which is the Petitioner's lot. This cross-easement has been incorporated into drive isles for the proposed car wash. The easement road parallels Rolling Road and allows access from the lot to the right of the Petitioner's lot, as you face the lot from Rolling Road, to a lot on the left of Petitioner's lot and also the driveway going into the rear lots behind the Petitioner's lot in the remaining part of the business park.

North Rolling Road is bisected by a zoning line which is DR16 on the west side and M.L.-I.M. on the east side. The Petitioner proposes that the car wash be erected 100 feet from the centerline of Rolling Road, with the access road being parallel to Rolling Road and a buffer being located between the access road and the curb of Rolling Road. Mr. Monk testified that twenty-three parking spaces were required and that they would be located on the site. In addition, the car wash stacking requirements had been met in the preparation of the site plan. It

was Mr. Monk's position that, except for the landscape buffer, no part of the self-service car wash would be located within 100 feet of any residentially zoned property. Directly across the street from the entrances, or exits, of the car wash is a private storm water management facility for the residential apartments and condominiums located directly north of the site, approximately 150 feet from the proposed car wash.

It was Mr. Monk's opinion that the car wash operations did not include the access road which permitted the access and egress to the site for the car wash but also provided the required ingress and egress avenues for other parts of the business park. Finally, Mr. Monk testified that in his opinion the proposed car wash met all of the requirements of § 502.1 of the BCZR. He felt that the car wash would not be detrimental to health, safety, or general welfare of the locality involved and he did not feel that it would create congestion on roads, streets, or alleys therein or over crowd the land. Mr. Monk did not feel that there was any potential hazard from fire, panic, or other danger since there would be no hazardous materials on the site. His testimony was that there was a computer on site that would regulate the equipment and automatically shut down the system if the temperatures got too high. He stated that the car wash would not interfere with adequate provisions for schools, parks, water, sewerage, transportation, or other public requirements, conveniences, or improvements. It would not interfere with adequate light and air. He felt that the car wash would not be inconsistent with the purposes of the property zoning classification, nor in any other way inconsistent with the spirit and intent of the regulations since the property is zoned M.L.-I.M., nor would the car wash be inconsistent with the impermeable surface and vegetative retention provisions of the zoning regulations. In addition, the car wash would not be detrimental to the environmental and natural resources of the site and vicinity, including forest, streams, wetlands, aquifers, and flood plains since there were none located in that particular area. There was no testimony that the location of the car wash at the proposed site

would be less desirable at the proposed location than at any other site within the zone, in accordance with Schultz v. Pritts.

ISSUES

Protestants were represented at the hearing before the Board by their attorney, but did not personally appear to testify. Counsel for the Protestants raised specific issues:

1. The proposed car wash did not meet the requirements of § 409.4.A.1 in that he contended that the car wash was within 100 feet of the residentially zoned property.

2. Protestants also contended that the car wash would pose a detriment to the neighborhood in that a twenty-four operation without an attendant would draw people to the area to congregate and possibly engage in illegal activities as well as play loud music and generally create a disturbance.

In support of its position, Protestants contend that the access road in front of the car wash should be considered to be part of the car wash and therefore is within 100 feet of residentially zoned property. Since Rolling Road is a split zoned, DR 16 on the west side and M.L.–I.M. on the east side, Protestants contend that the 100 feet requirement would not be met if the access road is considered to be part of the car wash.

Petitioner offered no evidence in support of their position that the twenty-four hour operation would be detrimental to the peace and quite of the neighborhood.

DECISION

§ 419.4 of the BCZR states:

> "Notwithstanding the provisions of the zone in which the car wash was located, all facilities are subject to the following requirements:
>
> A. Locational standards.
>
> 1. Roll-over and full-service car wash buildings shall be set back at least 50 feet from the lot line of any residentially zoned property. Except for the landscape buffers, no part of a self-service car wash shall be within 100 feet of a residentially zoned property."

Counsel for the Petitioner submitted a number of cases before the Zoning Commissioner and the Board of Appeals with respect to the location of a car wash. Only one case, Case No. 04-168-SPHXA, Logan Village Center, LLC, before the Deputy Zoning Commissioner, dealt with the interpretation of the language of § 419.4.A.1. In his discussion of § 419.4.A.1, the Deputy Zoning Commissioner noted that the section is divided into two parts. The first specifies that "roll-over and full-service car wash buildings shall be set back at least 50 feet from the lot line of any residentially zoned property." The second part of the regulations states that "except for landscape buffers, no part of a self-service car wash shall be within 100 feet of a residentially zoned property." He went on to say that the second sentence does not specify distances between a car wash and residential lot lines. It simply states that "no part of a car wash shall be within 100 feet of a residentially zoned property."

The Board agrees with the interpretation of the Deputy Zoning Commissioner. The words "lot lines" are not included in the second section of 419.4.A.1. There is no mention as to ownership of the residentially zoned property, there being no distinction between property owned by the county or property owned by a land owner. Therefore, it is the position of the Board that the measurement would be from the zoning line which, in this case, is the center of Rolling Road and not to the lot line residence which is at least 190 feet away from the proposed car wash.

The next question was whether or not the access road is considered to be part of the car wash and therefore within the 100-foot prohibited area. In addition, Petitioner argued that the sign advertising the car wash, which is suppose to be erected in the buffer area, is part of the car wash. In reviewing the definition of car wash in § 101 of the BCZR, the Board notes that Car Wash, Car Wash, Roll-Over and Car Wash, Self-Service have very definite definitions. The definitions are as follows:

CAR WASH is – An area of land and/or a structure with machine or hand-operated facilities used for the cleaning, washing, polishing or waxing of motor vehicles as a principal or accessory use.

CAR WASH, ROLL-OVER - a car wash where exterior-only cleaning, washing or waxing services are provided on a roll-over basis with the vehicle in a stationary position during the servicing.

CAR WASH, SELF-SERVICE – a car wash where equipment or facilities are provided for the self-service cleaning and washing of motor vehicles.

None of those definitions indicates that a service driveway in front of the car wash, which is not part of the car wash operations, nor the sign of the car wash should be considered to be part of the car wash itself. The location standards found in § 419.4.A.1 state: "Rollover and full service car wash buildings shall be set back at least 50 feet from the lot line of any residentially zoned property." The second part of the definition does not address the buildings but states that, "no part of a self-service car wash shall be within 100 feet of a residentially zoned property." There is nothing mentioned with respect to the driveways in front of the car wash or with respect to any signs for the car wash. While it is noted that the expert presented by Petitioner, Mr. Monk, indicated that he thought that the sign might be part of the car wash, the three definitions of types of car washes, set forth above, do not indicate that a sign is included in the definition of a car wash. The Board finds that the access road and the sign do not constitute part of the car wash, and, therefore, the proposed car wash is not within 100 feet of the residentially zoned property.

The second issue concerns whether or not the car wash will be able to operate on a twenty-four hour, 365 day per year, schedule. Protestants presented no evidence in support of their position that such an operation would cause a nuisance in the neighborhood. The Board notes that a convenience store, selling gasoline and having an attached car wash operation, is now located immediately adjacent to the proposed site of the Petitioner's car wash. This store is open twenty-four hours a day, 365 days a year, and has at least one attendant on duty at all times. Petitioner contends that it will have an attendant on duty most of the time during the day

light hours of 8:00 a.m. to 5:00 p.m. In addition, it will have cameras located on the site to record any disturbance or activity on the site. Additionally, Petitioner will post signs on the site indicating that excess noise on the site will not be allowed. Petitioner stated that the vacuums used on the site would have noise suppression equipment on them to limit the noise coming from the vacuums. It was felt that the noise of the vacuums would not be louder than the noise of the usual traffic level on Rolling Road. The Petitioner has agreed to abide by the recommendations of the Office of Planning, set forth in its memo of August 30, 2005 to the Director of the Dept. of Permits and Development Management, which required the following:

1. Provide a landscape plan to include street trees along Rolling Road to the limits of the tract boundary of the subject property;

2. Submit a lighting plan to show lighting that will not conflict with adjacent residential uses. Lighting plan should include the locations and details of the proposed lighting and a computerized lighting design with point-by-point calculations that conforms to the *Illuminating Engineering Society of North America* (IESNA) standards, for review and approval by the Office of Planning and Avery Harden, Baltimore County Landscape Architect, in conjunction with the Final Landscape Plan.

3. Submit sign detail and building elevations to the Office of Planning for approval prior to building permit. The proposed building should be compatible with existing surrounding residential buildings.

The Board finds also that the proposed car wash meets the requirements under § 502.1 of the BCZR. The testimony of Mr. Monk supports this finding, and there was no testimony adverse to Mr. Monk to counteract any finding that the requirements of § 502.1 can be met by the Petitioner.

ORDER

THEREFORE, IT IS THIS 17th day of November, 2006, by the Board of Appeals of Baltimore County hereby **ORDERED** that the Special Exception request, pursuant to §§ 253.2.B.2. and 419.1 of the *Baltimore County Zoning Regulations* (BCZR) to allow a car wash be and is hereby *GRANTED*, subject to the following conditions:

1. Provide a landscape plan to include street trees along Rolling Road to the limits of the tract boundary of the subject property;

2. Submit a lighting plan to show lighting that will not conflict with adjacent residential uses. Lighting plan should include the locations and details of the proposed lighting and a computerized lighting design with point-by-point calculations that conforms to the *Illuminating Engineering Society of North America* (IESNA) standards, for review and approval by the Office of Planning and Avery Harden, Baltimore County Landscape Architect, in conjunction with the Final Landscape Plan.

3. Submit sign detail and building elevations to the Office of Planning for approval prior to building permit. The proposed building should be compatible with existing surrounding residential buildings.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Chairman

Margaret Brassil, Ph.D.

Robert W. Witt

County Board of Appeals of Baltimore County

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

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

November 17, 2006

RE: *In the Matter of:* RUTHERFORD BURGER INVESTMENTS, LLC, by Anthony Julio –Legal Owner and Stemark,Inc., by Mark Ogrysko – Lessee Case No. 06-075-X

Dear Mr. Tanczyn:

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

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

Very truly yours,

Kathleen C. Bianco, A.F.
Kathleen C. Bianco
Administrator

Enclosure

c: Sgt. Hector O'Berry and Yvonne O'Berry
C. William Clark, Esquire
Rutherford Burger Investments, LLC /
by Anthony Julio
Stemark, Inc., by Mark Ogrysko
Bill Monk /Morris & Ritchie
Steve Ogrysko
David West
B. Kacey Carter
Laura Vu
Sajid Chaudhry
Iftikhar Ahmad
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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8/29/06

RECEIVED
AUG 29 2006
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:	*	**BEFORE THE BOARD OF APPEALS**
Stemark, Inc. **Legal Owner**	*	**BOARD OF APPEALS**
2705 Rolling Road **Special Exception For A Car Wash**	*	**OF BALTIMORE COUNTY**
in ML-IM Zone	*	
		CASE NO.: 06-075X

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

PROTESTANTS' MEMORANDUM

On behalf of my clients, the Protestants, Sgt. Hector O'Berry and Yvonne O'Berry, his wife, we submit Memorandum to assist the Board in the rendering of a decision in this case. The O'Berrys have resided at 7000 Rockfields Road, Baltimore, Maryland 21244 since 1991, in a single family detached residence on 1 ½ acres the same side of Rolling Road, due south of the proposed carwash.

At the hearing held before the Board on August 9, 2006, Petitioner's witnesses were Mark O'Grysko, Vice President of Stemark, Inc., legal owner of the property, and William Monk, a principal of Morris and Ritchie Associates, Inc.

THE REQUEST

Petitioner's witnesses included Mark O'Grysko, Vice President of Stemark, Inc., listed as legal owner on the application, who proposed a combination six self-service bay and two roll over bay automatic car wash, with ancillary services, at 2705 Rolling Road, from Lot B8 of the Rutherford Business Park. The lot comprised 46,847 square feet, or 1.0754 acres of land, and had road frontage a little over 210 feet on Rolling Road, with a variable depth east from Rolling Road of 208 feet on the north and 219 feet on the south. The property shared an access drive from Rolling Road with the neighboring property, located on Lot B7 of the industrial park, as well as

from an access road north of the site to Rolling Road. Photographs were introduced, showing the site, as well as typical finishes proposed to be utilized by the Petitioner for the exterior of the car wash. The Petitioner was proposing a self service unattended car wash facility open 24 hours a day, seven days a week, 12 months of the year. Petitioner's representative testified that as far as employees on site, his older brother does maintenance for their other three car washes and would be expected to be at this site approximately 2 days a week for between 4 to 6 hours to clean the facility. He proposes having an attendant on the site, but without fixed hours. He further proposed putting up signs prohibiting loitering and loud noises at the site. He further testified that he proposed to put a digital security camera on the site that would record pictures, but not sound. That, he testified, would be monitored by him at a remote site, via his laptop, but not on a continuous or regular basis. If he saw something unusual by chance, he would call 911. The site was served by public water and sewer. He testified that detailing of cars by customers would be prohibited and there would be no hand waxing of vehicles.

Mr. Monk also testified for the Petitioner, as a principal of Morris and Ritchie Associates, Inc., the engineering firm which had prepared the plat which was admitted as Petitioner's Exhibit 1. Mr. Monk had prepared a black line amendment to Petitioner's plat, as well as what had been Exhibit 1B below with redline and blue highlights. Mr. Monk's testimony, in addition to describing the redline and blue highlight changes to plat to accompany the special exception application for 2705 Rolling Road also discussed the layout and location of improvements at the fuel service station and uses in combination thereof on the adjacent property at 2701 Rolling Road, which included a C store, ATM and single tunnel rollover carwash. The bulk of Mr. Monk's testimony had to do with reviewing previous zoning cases, whose decisions or plats were introduced in Petitioner's case as Exhibits 13A through 17B. What all of those exhibits had in common was

Petitioner's witness, Mr. Monk's attempt to explain away the Petitioner's inability on either Petitioner's Exhibit 1 or Petitioner's Exhibit 1B, the site plans, to comply with BCZR §419.4.A.1, prohibition, that no part of the self service car wash shall be within 100 feet of a residentially zoned property.

Protestants, the O'Berrys, were unable to attend on the day of the hearing, because Sgt. O'Berry was involved in a mandatory training program through his employer, the Maryland Department of Health and Mental Hygiene, where he works as a Sergeant in the police department.

LEGAL ISSUES

The Board was presented with excerpts of the BCZR, §419.4.A, entitled, "Locational Standards Applicable to Car Washes." While the use of property for a car wash is a use permitted by special exception in an ML-IM zone, under BCZR Section 253.2.B.2, that section expressly states that car washes are subject to the provisions of BCZR Section 419, as well as Section 502.1 of the BCZR.

Significantly, BCZR, Section 419.4.A.1 distinguishes between setback requirements for roll over and full service car wash buildings, and self-service car wash setbacks. With regard to roll over and full service car wash buildings, those are required to be at least 50 feet from the lot line of any residentially zoned property. Only the full service and roll over car wash buildings proposed on Petitioner's site meet that standard. However, regulations further provide, with regard to self-service car washes, that except for landscape buffers, no part of a self-service car wash shall be within 100 feet of a residentially zoned property. By examining the line scribed by Mr. Monk, to delimit the 100 foot setback from the DR zoned line, on Petitioner's site plan, in addition to the landscape buffer, the drying and vacuum parking spaces, as well as the traffic circulation aisles are all included within the 100 foot setback.

The Petitioner, at the hearing before the Board, asked to consider the issue of the locational standards in conjunction with an automated car wash approved as part of the gas station and C-store located next door at 2701 Rolling Road. As the neighboring C store layout was included, in part, on the Petitioner's site plan, when the Board of Appeals reviews that site plan, the Board will see that the car wash facility and vacuums, which are part of the car wash service, are not only automated, and subject to a 50 foot setback, but are located at least 115 feet from the nearest zoning residential line in Rolling Road. Therefore, that car wash adheres to and meets the requirements for an automated car wash and even the set back requirements for a self-service car wash, even though it is not a self-service car wash facility. The only activity in the first 100 feet of the 2701 Rolling Road facility is canopied fuel dispensing pumps.

The County Council distinguished between roll over and full-service car washes and self-service car washes with a purpose, in BCZR Section 419.4.A.1. The County Council in enacting BCZR Section 419 noted the distinction between self-service car washes and automated car washes in the activities which self-service involve and the effects that those services could have on any nearby residentially zoned property residents. The 50 foot setback for roll overs and full service car washes can be understood as deemed legislatively appropriate, when contrasted with the 100 foot setback for self-service car washes, particularly for unattended facilities, where the persons utilizing the car wash will have to get out of their vehicles and manually utilize equipment to wash their vehicles and vacuum them and dry them, if they desire to do so. In performing any of those functions, the Petitioners announced intent to put up "no loitering" and "no loud noise" signs, not only describe the concerns of nearby residential neighbors about activity at an unattended facility where the hours of operation are proposed to be 24 hours a day, 12 months of the year, but an acknowledgment of the existence of the potential threat to the quality of life to the residential

residents if the car wash is unattended and open 24 hours a day. The Petitioner's proposal to have an attendant there during daylight hours, but not during hours of darkness would not address the greatest problem time anticipated by Sgt. O'Berry and his wife, protesting this Petition. Furthermore, according to all witness testimony, the adjacent car wash is attended 24 hours a day and is well supervised, and appears to comply with all the requirements of BCZR Section 419, which treats self-service car washes differently than automated or roll over car washes.

When considering a Special Exception request, the Board of Appeals, under the law, is required to determine whether the proposed use will meet the requirements of BCZR Section 502.1 of the Baltimore County Zoning Regulations, as well as, in this case, the requirements of BCZR Section 419. Unfortunately for the Petitioner, their site plan with the 100 foot setback indicates that one of the activities which could be expected to promote noise or be a loitering or gathering space is well within the 100 foot setback from the DR 16 line. Across the street, as was testified to by Petitioner's expert witness, are the Windsor Commons Luxury Apartments, which are three story townhome style apartments, with balconies, which overlook Petitioner's side of Rolling Road. To the south of those apartments is a townhome and apartment development called Crosswinds at Rolling Road.

The case of Anderson v. Sawyer, 23 Md. App. 612, 329 A.2d 716 (1974), confirms that the Board of Appeals, in considering a request for special exception, may not only consider the effects on the neighborhood of the proposed use, but may impose safeguards and conditions to insure that the use at that site and in that area will not pose a hazard to the health, safety, and general welfare of the community, under BCZR Section 502.1.

In another case, Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981), quoting Anderson v. Sawyer held that, in considering a proposed special exception, the Board of Appeals can consider

and determine if there are any adverse affects upon neighboring properties in the general area. That case further held that the adverse affect must tend to have a greater effect on the immediate neighborhood where proposed, than if located anywhere else within the zone. In this case, that standard is met because of the proximity of the large luxury apartments and the townhome community, as well as the fair reading of BCZR Section 419.A.4 of the BCZR. The County Council intentionally distinguished and made different setbacks for self-service car washes, doubling the distance from the residential line from that required for automatic or full-service car washes. That regulation is clearly not met, because within the 100 foot area lie the ingress and egress aisles to the car wash. The fact that the Petitioner's site is to be largely unattended before 8:00 a.m. in the morning, essentially means there will be signs warning against loitering and making loud noises, but no effective way to enforce them, because there will be no attendant present at Petitioner's site. Therefore, that cries out for a condition, even if the activities of the car wash could be pushed back 100 feet from the residential lines, to either require an attendant when the car wash was open, or to require sound barriers for the protection of the residential community. Sound barriers alone do not address all of the host of problems testified to, or feared that this site, if unattended, would become a magnet for persons he believed to be undesirable and bent on causing problems. The difference is, signs won't self enforce the conditions and the Petitioner, as an absentee owner of an unattended car wash, will not suffer the problems, as will the residential community, if loud noises occur or criminal activity occurs on this unattended site in the hours of darkness, whenever he property is unattended. The Schultz v. Pritts standard is met, because of the existence of the residentially zoned and occupied lands directly across the street.

Interestingly, the BCZR measures the 100 foot setback requirement for self-service car washes from the DR zoning line and not from the nearest residential structure. That choice of

2. All internal paved areas of a car wash site used for stacking, parking, and driveway purposes, must comply with §409.1 and be laid out to allow circulation to preclude street backups or right of way blocking, as well as locating parking spaces to avoid conflict with onsite circulation (BCZR §419.3).

3. All facilities are subject to the locational standards of BCZR §419.4. In the clearest of terms, the Bill provided, except for the landscape buffers (emphasis supplied), no part of a self-service carwash shall be within 100 feet of a residentially zoned property (BCZR §419.4.A.1). Every case decision cited by Petitioners at the January 26, 2006 hearing represents a failure by the deciding authority to give weight and to follow that legislative mandate of 419.4.A.1. The legislature could not have made it simpler than to say, as it did, that except for the area given to landscape buffers, no other part of a self service car wash shall be within 100 feet of residentially zoned property. The point raised repeatedly by Mr. Monk on Petitioner's behalf, was that in the prior decisions, the deciding authorities had failed to expressly follow 419.4.A.1 in measuring the 100 feet from the nearest residentially zoned property. DR 16 is beyond dispute, residentially zoned property, and the 100 foot measurement from the DR 16 line extends well beyond the blue landscape buffer area highlighted on Petitioner's Exhibit 1B, to include the ingress/egress traffic circulation portion of the buildings for the self service bay equipment room, as shown on both Petitioner's Exhibit 1 and Petitioner's Exhibit 1B. The orientation of Petitioner's site to adjacent parcel is such that the only residentially zoned property lies across from its front entrance on Rolling Road. The remainder of the site is surrounded by ML-IM zoned property on the north, east, and south sides.

4. Where, as here a special exception is required, the County Council gave the Zoning Commissioner discretionary authority to require changes in the building or site plan designs or hours of operation for car washes, for which a special exception is required (BCZR §419.4.B.5).

The Board of Appeals will recall the Protestants' concerns included the Petitioner's proposal to operate the car wash as a largely unattended 24/7 operation, although including signs prohibiting noise or loitering. Ironically, for any times when the car wash was unattended, those signs which recognize very real quality of life problems would only be enforced by the honor system, by patrons of the car wash who may have little concern for the residentially occupied apartments across Rolling Road, from the Petitioner's site.

BALTIMORE COUNTY ZONING REGULATIONS DEFINITIONS DEALING WITH CAR WASH PROVIDES SUPPORT FOR THE LEGISLATIVE DIFFERENTIATION BETWEEN SELF SERVICE AND OTHER CAR WASHES

The definitions of the BCZR parses different types of wash facilities and a quick review evidences legislative intent to treat self service car wash facilities differently than others which is evident in the definitions provided. First, car wash refers to either machine or hand-operated facilities. Next, full service car wash excludes facilities providing complete interior and exterior detail cleaning that takes more than two hours per car. Self service car wash, as defined, refers to equipment or facilities for self service cleaning and washing of motor vehicles. Significantly, all of these definitions were included in Bill 172-1993, the most recent legislative enactment on the subject in Baltimore County. Therefore the County Council provisions in BCZR §419 were created at the same time the definitions were reviewed and approved for definitions applicable to these facilities. While "property" is not defined in the BCZR, "residential zone" is, as land classified RC, DR, ROA, or RAE as being "within a residential zone." Further proof of the County Council's intent to address the potential negative effects of self service car washes on adjacent residential properties, as well as understanding the context of the County Council's use of the term, "residentially zoned property," is to be found in reviewing BCZR §419.4.B - General Design:

1. Prohibition on tunnel entrance or exits facing an adjacent residentially zoned property, specifically exclude those across the street, as is the case here (BCZR §419.4.B.1).

2. The rear and side of buildings facing residentially zoned properties require finishes and colors and facade treatments, set forth in detail in BCZR §419.4.B.2. In the case of this Petitioner's site, that section is inapplicable, and even the Petitioner recognizes the context utilized for residentially zoned property by taking advantage of the fact that its side and rear does not face the residentially zoned property across Rolling Road from Petitioner's site.

3. The provision for a landscape transition area required for all car wash operations has varying width requirements, depending on its proximity to residentially zoned property. There is a specific provision distinguishing residential zone lines in a public right of way, under BCZR §419.4.B.3, which simply reduces the required landscape buffer to 15' from the nearest property line.

4. To ensure compatibility with surrounding buildings (emphasis supplied). The Zoning Commissioner may require changes to the car wash buildings, site plan, or hours of operation where a special exception is required (BCZR 419.4.B.5).

THE COUNTY COUNCIL RECOGNIZED THE PROBLEMS FOR OCCUPANTS OF ADJACENT RESIDENTIALLY ZONED LAND IN CREATING MORE STRINGENT CONTROLS IN BILL 172-1993.

When the County Council enacted Bill 172-1993 and put in more stringent controls than were included in the prior applicable zoning regulations for regulating car washes, the County Council expressly recognized that the new conditions were more stringent by expressly grandfathering the existing car washed, under BCZR §419.5. The County Council expressly excluded those car washes from adhering to new requirements set forth in BCZR §419. In so doing, the County Council was doing no more or less, than recognizing the vesting rights of existing car washes, previously approved, which would not meet or could not meet the distance or setback requirements or other provisions set forth in Bill 172-1993.

Protestants' objection to both of Petitioner's plans 1 and 1B stems from the clear mandate of the County Council set forth when it enacted and passed Bill 172-1993, providing the 100 foot buffer area, in which nothing but a landscape buffer could be located from residentially zoned property lines for a self service car wash. The clear legislative expression of intent, where sites proposed for self service car washes were closer than 100 feet to residentially zoned properties, were that they could not be located, except for the landscape buffer area, for any part of a self-service car wash, not just the buildings. All of the prior cases cited by Petitioner either did not present that as an issue for the Hearing Officer or were not decided on that basis. More to the point, the Hearing Officer is bound to follow the law and not follow previous errors made in not giving force and effect to the clear legislative mandate set forth in BCZR §419.4.A.1. That is what Protestants believe is the flaw in the logic employed by Petitioners, in urging the Board of Appeals not to pay attention to the express legislative prohibition set forth in BCZR §419.4.A.1, because it hasn't been followed in prior cases. A discussion of those cases presented at the January 26, 2006 hearing by Petitioner should now begin.

The cardinal rule of statutory construction is to ascertain and carry out the intent of the legislature, Marriott Employees Federal Credit Union v. Motor Vehicle Admin., 346 Md. 437, 697 A.2d 455 (1997). Statutory construction begins with the plain language of the statute, Deville v. State, 383 Md. 217, 858 A.2d 484 (2004). Here the plain language of the intent of the County Council specifically prohibits a 100 foot distance from a self service car wash from residentially zoned property. There are no ambiguities in that language, since they are all well defined. When construing statutory language where two constructions are possible, courts will prefer the construction which will result in the legality and effectiveness of the statutory provision being construed, and will not adopt the construction which would not accomplish that purpose. District

Land Corp. v. Washington Suburban Sanitary Commission, 266 Md. 301, 292 A.2d 695 (1972). Also, see Maloof v. State, Dept. of Environment, 136 Md. App. 682, 767 A.2d 372 (2001). When asked at the hearing, Mr. Monk could point to no provision in the BCZR, which contradicted the strict prohibition on self service car washes set back from residentially zoned property, under BCZR §419.4. Where the statutory language is clear, unambiguous and consistent with the purposes of the legislation in general and the particular provision being interpreted, a court statutory construction inquiry usually ends at that point. Smack v. Department of Health and Mental Hygiene, 134 Md. App. 412, 759 A.2d 1209 (2000). Finally, where mandatory language is used, it shall be given effect by the Hearing Officer. Maryland-National Capital Park and Planning Commission v. Silkor Development Corp., 246 Md. 516, 229 A.2d 135 (1967).

PETITIONER'S EXHIBIT 13A AND 13B - CASE 00-277XA, 4001 SOUTHWESTERN BLVD., GOODWILL INDUSTRIES

This request for a car wash and variance request from BCZR §255.1 of the regulations does not include in the Findings of Fact and Conclusions of Law, nor in the review of the site plan introduced in evidence, a request for variance from BCZR §419.4.A.1 for the setbacks called for under that section. Therefore, the issue was not expressly set out for, or brought to the attention of the Deputy Zoning Commissioner, nor is it mentioned in his decision as a factor considered by him. Notwithstanding that, BCZR §419, in its present form, had been enacted in 1993 and was in effect at the time that case was heard and the decision was subsequently rendered February 17, 2000. For whatever reason the requirements of BCZR §419.4.A.1. in the legislative mandate express therein by the County Council was not considered either in the Petition, the site plan, or the Deputy Zoning Commissioner's decision.

PETITIONER'S EXHIBIT 14A AND 14B - CASE 99-302X, 9615 PHILADELPHIA ROAD

In review of the Findings of Fact and Conclusions of Law which accompanied the Deputy Zoning Commissioner's April 22, 1999 Order, reveals that no Protestants were present at the time of hearing, and that Petitioner in that case did not seek variance relief from BCZR§419.4.A.1., nor is that section referred to in the site plan or decision of the Deputy Zoning Commissioner. Therefore, the same Protestants' argument would be applicable to that as the prior case.

PETITIONER'S EXHIBIT 15A AND 15B - CASE 99-124SPHX, BALTIMORE NATIONAL PIKE AT JOHNNYCAKE ROAD, SOUTHEAST SIDE

This was a Petition For Special Hearing, specifically concerned with Petitioner's request for a waiver of public works standards, to eliminate required road improvements to Old Frederick Road and Johnnycake Road for a proposed EZ Store facility. The Findings of Fact and Conclusions of Law, which accompanied the Deputy Zoning Commissioner's March 29, 1999 Order, granting the waiver of public works standards, indicates no Protestants or other interested persons were present other than Petitioner. In the body of that decision, the Deputy Zoning Commissioner notes an earlier 1998 case in which a special exception was granted for the car wash, which was done by prior Order, November 13, 1998. There is no mention in that case or in the Petition for Special Hearing of the requirements of BCZR §419.4.A.1, nor was it addressed or considered apparently by the Deputy Zoning Commissioner in that case. Again, the issue was not apparently before the Hearing Officer, and therefore does not stand for the proposition advanced by the Petitioners. It is, again, apples and oranges, where the decision of the Zoning Commissioner makes no mention of the specific issue raised in the instant self-service car wash case, namely whether the plan and petition adhered to the requirements of BCZR §410.4.A.1.

PETITIONER'S EXHIBIT 16 - CASE 04-168SPHXA, 3401-3451 DUNDALK AVENUE, LOGAN VILLAGE CENTER

Of interest in that case, the Zoning Commissioner, in the Petition For Special Hearing, was asked to determine if variances from BCZR §419.4.B.1 and B.3, were needed, that the Petitioner in that case then asked that the variances be granted. There is no mention in the Findings of Fact and Conclusions of Law, which accompanied the Deputy Zoning Commissioner's November 18, 2003 Order for any request from BCZR §419.4.A.1. In fact, the Deputy Zoning Commissioner's Opinion, whereby the Special Exception was denied specifically addresses the distance of the car wash building to the nearest residential lot line was 190 plus feet. The Deputy Zoning Commissioner then cites BCZR §419.4 requirement of a 100 foot distance, and correctly gives weight to the legislative mandate contained in BCZR §419.4.A.1. That was not the end of that case. In the Order on Motion For Reconsideration, dated March 5, 2005, the Deputy Zoning Commissioner granted variances requested by Petitioner for BCZR§419.4.B.1 and §419.4.B.3. Of interest, there was no request by the Petitioner nor decision by the Deputy Zoning Commissioner as to a variance from the requirements of BCZR §419.4.A.1, and therefore, that issue was not expressly decided in that case. Significantly, in the instant Rolling Road case, no request for variance had been made by the Petitioner from the requirements of BCZR §419.4.A.1, therefore, that issue of a request for variance is not before the Deputy Zoning Commissioner in the instant case. While the express provision of BCZR §419.4, stating that no part of a self service car wash should be within 100 feet of a residentially zoned property was present in that case, in light of the presentation of the issue in the Rolling Road car wash case presently before the Deputy Zoning Commissioner, revisiting the requirements of BCZR §419 as set forth in Bill 172-1993, and specifically regarding BCZR §419.4.A.1 would be appropriate in the instant case.

PETITIONER'S EXHIBIT 17A AND 17B - CASE 04-032XA, 7416 WINDSOR MILL ROAD

The decisions tendered by the Petitioner and accepted as Exhibit 17A and 17B are those of the County Board of Appeals. In that case, one of the prayers for relief was relief sought by the Petitioner, and included a variance request from the 100 foot setback prohibition described under BCZR §419.4.4.A.1, to allow a distance of 90 feet, rather than 100 feet from residentially zoned adjacent property. Of interest, while the Board of Appeals granted the special exception, while it denied the variances requested, the practical effect of that decision was to deny use of the property for a car wash, because the variance to locate a portion of the parking area was within 100 feet of adjacent residentially zoned property. That case represents, perhaps the only case in which a deciding hearing authority took note of and heeded the legislative mandate set forth in BCZR §419.4.A.1, as well as the Petitioner's request for variance from that standard and decided the issue, in a manner adverse to the Petitioner on that point.

Protestants, in summary, believe whether the Board of Appeals considers Petitioner's 1 or Petitioner's 1B site plans, that sections of the car wash, other than the landscape buffer are within the 100 foot prohibition. They further note that in this case Petitioners have not requested a variance from those requirements, so that issue of a variance of those requirements is not before the Board of Appeals for decision at this time. Petitioners have, in this case, rather than seeking a variance, sought to distinguish the clear County Council provision set forth in BCZR §419.4.A.1 from prior decisions involving the same point, although not brought up as such, in the majority of the cases, to show that the prior Hearing Officers have decided those cases in favor of the Petitioners is notwithstanding the clear legislative mandate and requirement of BCZR §419.4.A.1. Protestants believe that BCZR §419.4.A.1 clearly defines any area other than the landscape buffer, as part of the portion of the self service car wash, subject to a 100 foot setback from residentially zoned property, and that Petitioner's site plans clearly reflect that circumstance in both Petitioner's

1 and Petitioners's 1B. Because Petitioners have not requested relief from BCZR §419.4.A.1 requirements, unless the Board of Appeals accepts the prior decisions as effectively trumping the express provisions of BCZR §419.4.A.1, there is no way around the fact that Petitioner's site plans cannot comply with that section and should be denied.

However, if the Board of Appeals were to be inclined, after considering all evidence and legal authority to approve this site plan, we believe that Petitioner's 1B more closely reflected the spirit and intent of the BCZR §419, although it clearly does not comply with that section, for the reasons stated. If the Board of Appeals was inclined to approve the Petition and site plan, Protestants would request that this site be locked and barricaded when not in use, to prevent the access at the entry points and that the hours of operation be limited to consider the needs of the adjacent residential apartment and townhouse owners to have peaceful and quiet enjoyment of their properties, we would request that the facility be closed at 10:00 p.m. and not reopened before 7:00 a.m., Monday through Saturday, and that on Sunday, it be allowed to open after 10:00 a.m. through 10:00 p.m.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 29th day of August , a copy of the foregoing Protestants' Memorandum was mailed, first-class, postage prepaid to C. William Clark, Esquire, 502 Washington Avenue, Suite 700, Towson, Maryland 21204, Attorney for the Petitioners

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

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

August 29, 2006

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

Re: Protestant's Memorandum
2705 Rolling Road
Special Exception for a car wash in ML-IM zone

Dear Ms. Bianco:

Enclosed herewith please find an original and three copies of the Protestant's Memorandum directed by the Board for its consideration prior to the deliberation. Please advise us of the deliberation date once it is established.

Please feel free to contact me should you have any questions.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl
Encl.
cc: client

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AUG 29 2006
BALTIMORE COUNTY
BOARD OF APPEALS

8/29/06

IN THE MATTER OF :	*	**BEFORE THE**
RUTHERFORD BURGER INVESTMENTS, LLC	*	**COUNTY BOARD OF**
ANTONIO JULIO, Legal Owner and		
STEMARK, INC., BY MARK OGRYSKO-Lessee	*	**APPEALS**
2705 Rolling Road		
Baltimore, MD 21244	*	**OF**
2nd ELECTION DISTRICT	*	**BALTIMORE COUNTY**
4th COUNCILMANIC DISTRICT		
	*	**CASE NO. 06-075 X**
Petitioner		
	*	

* * * * * * * * * * *

PETITIONER'S MEMORANDUM

Stemark, Inc., by C. William Clark and Nolan, Plumhoff & Williams, Chtd., its attorneys, files this Memorandum in Support of its Petition for Special Exception and says as follows:

PROPOSED USE

The Petitioner proposes to develop a 1.07 acre parcel fronting on Rolling Road known as 2705 Rolling Road, as a rollover and self service carwash. The site plan was prepared and admitted as Petitioner's Exhibit No.1, which was Exhibit 1B, before the Zoning Commissioner below. A clean unmarked copy of the site plan was admitted as Petitioner's Exhibit No. 2. Petitioner proposes two (2) rollover bays, an equipment room and five (5) self service bays to be constructed. The edge of the proposed buildings closest to Rolling Road will sit at a distance of at least one hundred (100) feet from the zone line which runs approximately in the center of the right of way for Rolling Road. The subject property is part of the Rutherford Industrial Park and is zoned ML-IM. In addition to the detail contained in Petitioner's Exhibit Nos. 1 and 2, Petitioner offered the testimony of Mark Ogrysko, Vice President of Stemark, Inc., who has experience operating gasoline stations which have carwash operations associated with them including approximately eight (8)

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

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BALTIMORE COUNTY
BOARD OF APPEALS

years of experience with such an operation located in the Owings Mills area of Baltimore County. He testified as to the automated operations of the carwash, that there would be no gasoline, fuel or oil products sold at this location, nor any servicing of vehicles. He testified that he would post signs stating that no detailing of vehicles, nor loud noises, would be permitted on the site. He proposes to operate the facility twenty-four(24) hours a day seven (7) days a week and to use a video security system to monitor the activities on site. He testified that during normal business hours the company expects to employ an attendant to be on site. Furthermore, he testified that the soaps and waxes that will be used are biodegradable, that he expects to construct heating pads in the floor areas of the carwashes in order to prevent freezing of the water. He testified that he would operate a boiler to heat the water to approximately 120 degrees or less, that the system used contains a shut down valve in the event that the temperatures would exceed that in a malfunction situation, and that they would apply for and obtain all necessary permits from the State of Maryland and Baltimore County Government, including a water discharge permit from Baltimore County. He testified that they would have coin changers on site, and a small amount of vending machines. Furthermore, he testified that he would comply with comments issued by the Planning Department in connection with its review of the Petition and previous site plan regarding the landscape and lighting plan. Mr. Ogrysko also testified concerning restrictive covenants which are required in the Rutherford Business Park and that certain building materials are required to be used and approved by the owner of the business park.

EVIDENCE IN SUPPORT OF PETITION

In addition to the testimony of Mr. Ogrysko recited above, the Petitioner offered other documentary evidence and the testimony of William Monk, a registered landscape architect and land planner, who was accepted by the board as an expert in the area of Baltimore County Zoning

Regulations, development rules and regulations, and other Baltimore County requirements for the proposed use. Mr. Monk testified as to the site plans contained in Petitioner's Exhibit Nos. 1 and 2, which were prepared by his firm, Morris & Ritchie Associates, Inc., under his direction and supervision. Mr. Monk introduced a zoning map of the surrounding area and testified about the surrounding zoning and surrounding uses. Through Mr. Monk, Petitioner introduced a series of photographs showing the site for the proposed use, and surrounding buildings and uses. Mr. Monk testified that he was familiar with the proposed operation, heard the testimony of Mr. Ogrysko, and utilized that information in preparing the site plan. Mr. Monk testified as to the parking calculations that were required, including that twenty-three (23) parking places are required and that twenty-three (23) parking places are provided on site. Mr. Monk testified as to carwash stacking requirements and that all the requirements are met, as indicated by the information on Petitioners' Exhibits 1 and 2.

Mr. Monk testified as to the requirements of the Rutherford Business Park, as certain cross easements are required across the lot known at Lot B-8, which is the Petitioner's lot, in order for traffic to go from Lot B-7 to other parts of the business park. Those cross easements have been incorporated into the drive aisles for the proposed car wash. Through Mr. Monk, Petitioner introduced a graphic of those easements which was marked as Petitioner's Exhibit No. 9. Furthermore, Petitioner offered a landscape plan through Mr. Monk which shows the proposed preliminary landscape design for the landscape buffer and possible stormwater quality area located upon the Petitioner's frontage on Rolling Road.

Mr. Monk testified that he was familiar with the requirements of Section 502.1 and Section 419 of the Baltimore County Zoning Regulations which govern the approval of Special Exceptions and the requirements for carwash facilities. He testified that based upon his knowledge of the

proposed use, his knowledge of the regulations, the surrounding site and its existing and potential uses, in his opinion, the proposed use is consistent with and met the requirements of the Baltimore County Zoning Regulations.

In particular, the proposed use meets the requirement of Section 419.4(a) in that the rollover carwash buildings are set back at least fifty (50) feet from the lot line of any residentially zoned property. Furthermore, except for the landscape buffer, no part of the self service carwash is located within one hundred (100) feet of any residentially zoned property. He testified that all of the stacking lanes, vacuum equipment, the dumpster and the equipment room were all located at a distance in excess of one hundred (100) feet from the zone line which falls in the middle of Rolling Road. That public highway consists of a five (5) lane connector road, which is heavily traveled, and is the principal north and south traffic route for traffic proceeding that direction outside the beltway between Windsor Boulevard and Security Boulevard, including traffic existing from the Rutherford Business Park. Mr. Monk testified that the Rutherford Business Park includes a couple hundred of acres. Since the property is zoned ML-IM, it meets the requirement of Section 419.1 for the location of a rollover and/or self service carwash by Special Exception in an IM district. Mr. Monk testified that located across the street, directly across from the tunnel entrances or exits of the carwash operation is a private stormwater management facility for the residential apartments and condominiums located to the north of that site. The tunnel exit of the carwash facility is setback at least fifty (50) feet from the nearest exit drive, which he testified is actually located on the adjacent lot, Lot B-7, where the curb cuts are made for traffic to enter onto Rolling Road from the Rutherford Business Park properties. Mr. Monk testified that the carwash operations, in his opinion, do not include the drive aisles which permit ingress and egress into the site for the carwash, but also provide the required ingress and egress avenues for the other parts of the business park. Through

Mr. Monk, the Petitioner introduced portions of Section 101 of the Baltimore County Zoning Regulations containing the definition of rollover carwash and self service carwash, which were marked Petitioner's Exhibit No. 14. Mr. Monk testified that those definitions do not include the drive aisles nor a sign for the proposed carwash as part of the carwash operation definition.

ARGUMENT

Quite simply, Petitioner offered sufficient evidence to support its Petition for Special Exception for the proposed use. No Protestants appeared to testify or offer any evidence in opposition, although an attorney appeared and cross examined Petitioners' witnesses on behalf of the person who filed the appeal. At the conclusion of the hearing, counsel for the Petitioner requested permission to file this Memorandum in order to place before the Board, certain zoning opinions and site plans that accompanied them to demonstrate the approval of certain carwash operations where the zone line demarking a change from a commercial zone to a residential zone fell in the middle of a public right of way or street. The site plans for those cases also demonstrate that the ingress and egress points for the carwash operations may be located within the one hundred (100) foot setback requirement.

During the course of the hearing, an issue arouse as to the application of Section 419.4. A.1 to the site plan. The proposed roll over carwashes meet the requirements of that section and a question arises as to whether or not a self service carwash as proposed does. In pertinent part, that section states the following:

> "Except for the landscape buffers, no part of a self-service carwash shall be within 100 feet of a residentially zoned property."

The Baltimore County Zoning Regulations do not define the term "residentially zoned property." The testimony offered by William Monk, accepted as a expert in the Baltimore County Zoning Regulations, indicates that section does not include within that definition land within a

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& WILLIAMS,
CHARTERED

public right of way which is bisected by a zoning line which on one side of the line is a residential zone. As shown on the site plan which is Petitioners Exhibit 1, in this case, and as supported by the testimony of William Monk, Rolling Road is a public street that abuts the subject property consisting of 50 feet of paving on a 70 foot right of way. In approximately the middle of that right of way is a zone line, which to the east of that line, the properties are zoned ML-IM, and to the west of that line, the properties are zoned DR 16. The self service bays are at a distance of approximately 102 feet from the zoning line. The distance grows to 137 ½ feet once one adds 35 feet which is one half of the existing 70 foot right of way for Rolling Road to get to the property boundary of the adjoining residentially zoned property which is improved by a large private stormwater management pond, across Rolling Road from the proposed carwash.

Support for the Petitioner's position can be found in the case of Goodwill Industries of the Chesapeake, Inc., Petitioner Case No. 00-277 XA.[1] A copy of the Findings of Fact and Conclusions of Law, is attached to this Memo. The site plan for that case was admitted as Petitioner's Exhibit No. 13 B before the Zoning Commissioner in this case. The Special Exception was approved even though there was residentially zoned property within 100 feet for the parking areas and drive aisles for the proposed carwash. The zone line dividing the ML-IM from the DR 5.5 zoned property was located in the right of way of Southwestern Blvd. While the Opinion of Deputy Zoning Commissioner in that case does not expressly mention BCZR Section 419.4.A.1. it is clear that there were residents who live along Leeds Avenue who appeared and protested the approval.

---

1 The site plans mentioned in this section of the Memo are already contained in the Board's file, marked as Exhibits 13B-17B from the hearing before the Zoning Commissioner. Petitioner aks the Board to review them rather than have to duplicate and re-submit them. Counsel believes the opinions accompanying them were marked 13A-17A, but those opinions do not appear to be in the Board's file.

Additional support can be found in Case No. 99-302 X (a copy of the Opinion in that case is attached to this Memo), which involved a petition for carwash at 9615 Philadelphia Road filed by 4600 East Walbash Avenue Joint Venture. The site plan for that case was admitted as Exhibit 14B before the Zoning Commissioner below. The DR 16 zone line fell in the middle of the right of way for Philadelphia Road and parts of the carwash proposed in that case lay within 100 feet of that zone line. The Special Exception was approved. Further support can be found in Case No. 99-124 X, Sarah Enterprises, LLC, Owner, (a copy of the Opinion in that case is attached to this Memo) for the approval of a carwash on the southeast side of Baltimore National Pike and JohnnyCake Road. The site plan for that case was marked as Exhibit 15B before the Zoning Commissioner below. The DR 16 zone line fell in the middle of JohnnyCake Road and Old Frederick Road. Parts of the proposed self service carwash were within 100 feet of that zone line, but not within 100 feet of the residentially zoned property that abutted the public right of way.

Another case in which this issue arose, involved Logan Village Center, LLC and its Petition for a self service carwash at 3401-3451 Dundalk Avenue, Case No. 04-168 SPHXA. Attached hereto is a copy of the Opinion in that case. A review of the site plan which was marked as Exhibit 16B, before the Zoning Commissioner below makes it clear that the residentially zoned property abutted the property proposed for development and was not across a right of way of a public street. Parking spaces for the carwash within one hundred (100) feet of the residentially zoned property. The drive aisles did not all within that set back. Finally, the case of Mighty Wash located at 7410 Windsor Mill Road Case No. 04-032 XA involved an Opinion written by the Deputy Zoning Commissioner and expressly addressed the requirements of Section 419.4A1. The Deputy Zoning Commissioner granted the Special Exception and Variances.

In that case, the Deputy Zoning Commissioner granted a Motion for Reconsideration upon conditions that a sound barrier be erected. On Appeal, the County Board of Appeals granted the

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& WILLIAMS,
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Special Exception relief but denied the variances requested. Attached to this Memo, is a copy of the Opinion in that case. In that case one of the variances requested involved a request to place some of the carwash parking areas within the one hundred (100) foot set back from residentially zoned property which actually contained residences. That case is distinguishable from the present since (1) the zone line does not fall within the public right of way, (2) portions of single family houses that are zoned DR5.5 are within one hundred (100) feet of a part of the self service carwash operations (parking for the carwash), and (3) the drive aisles to access the carwash are not within the one hundred (100) foot set back. Subsequent to the Board's decision, the site was redesigned to meet the Board's opinion, and PADM approved the site plan for the carwash. A copy of that revised site plan which also shows the original site plan, is included in the Board's file which was marked Exhibit 17B, before the Zoning Commissioner below.

Additional support for Petitioner's Petition can be found in certain definitions contained in the Baltimore County Zoning Regulations. In Section 101, the BCZR defines a "street" as a "motorway which is not a freeway or expressway which has a right of way of more than 20 feet in width". Section 101 also defines "street line" as the following "a line which divides the right of way of a street from **other property**; a street right of way line". (emphasis added). It is clear that Rolling Road is a street and the line which divides the right of way of the street from other property is shown on the site plan. Even though the zone line falls in the middle of the right of way no one can seriously contend or believe that the western half of Rolling Road could be used for residential purposes. The definition of "street" and "street line" taken together indicate the area within the right of way is "other property" and should not be treated as "residentially zoned property". Further support can be found in Section 419.4.B.3 which describes the general design of landscape transition area to be provided along the perimeter of all carwash operations. There the phrase "residentially zoned property" is followed by the following phrase "(other than a residential zone line in a public

right of way)". There a residentially zoned property is treated differently from a property which carries a residential zone line in a public right of way, by allowing a carwash operation within 50 feet of a residentially zoned property, based on a residential zone line in a public right of way, to have a 10 foot landscape transition area as opposed to the 15 feet requirement for other residentially zoned and abutting property. Petitioner believes that the phrase "residentially zoned property" should not include that property lying within a public right of way when applying Section 419.4.A.1 of the Baltimore County Zoning Regulations.

Finally, the one hundred (100) foot setback from residentially zoned property only applies to the self service carwash operations. A review of the definition of self service carwash in Section 101 of the BCZR (Petitioner's Exhibit 14) makes clear that it is "... A carwash where equipment or facilities are provided for the self service cleaning and washing of motor vehicles." Nothing within that definition can be construed to include the drive aisles to access the site. If the council's purpose in creating the one hundred (100) foot set back requirements for self service operations is to locate the further hand cleaning of cars farther away from the residential properties, then Petitioner's plan meets the spirit and intent of those requirements by planning all of those activities behind the building containing the carwash tunnels. The nearest actual building containing a residence is greater than two hundred (200) feet away according to Mr. Monk's testimony, across a five(5) lane highway known as Rolling Road.

During cross examination of Mr. Monk, counsel for the appellant raised an issue as to whether or not the site plans which were marked as Petitioner's Exhibit Nos. 1 and 2 had been reviewed by the Office of Planning. The original site plan offered below before the Zoning Commissioner contained more rollover and self service carwashes then the current "red lined"plan had been reviewed by the Office of Planning who issued an approval the Current red lined plan was presented at a public hearing, with testimony from Mr. Monk, who was cross examined by

Appellant's counsel. The subject proposal is less intense and sets the operations further away from the zone line than the one previously reviewed. Petitioner asked that the Board take judicial notice of the fact that the Board receives red lined plans routinely, without the necessity of a further review by the Department of Public Works or the Office of Planning or PADM, and it should do so here. Furthermore, since there are fewer carwash bays proposed and the operations are set further away from the zone line falling in the middle of Rolling Road, one would be hard pressed to find that the Office of Planning would not approve this plan when it approved the prior version of this site plan, subject to conditions which the Petitioner has agreed to meet.

CONCLUSION

For the foregoing reasons, Petitioner requests that the County Board of Appeals approve the Petition for Special Exception.

C. William Clark
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
700 Nottingham Centre
502 Washington Ave.
Towson, MD 21204
(410) 823-7800

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of August, 2006 a copy of the foregoing Petitioner's Memorandum was mailed, first-class, postage prepaid to the following attorney of record :

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

Attorney for Appellant

C. William Clark

C. William Clark

(410) 823-7850

email
cwclark@nolanplumhoff.com

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765
email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

J. EARLE PLUMHOFF
(1940-1988)

NEWTON A. WILLIAMS
(RETIRED 2000)

RALPH E. DEITZ
(1918-1990)

August 29, 2006

VIA HAND DELIVERY

Baltimore County Board of Appeals
Attn: Ms. Kathy Bianco
Old Courthouse Room 49
400 Washington Avenue
Towson, MD 21204

Re: 2705 Rolling Road; Stemark, Inc.
Case No.: 06-075 X

Dear Ms. Bianco:

Enclosed herein please one original and three copies of the Petitioner's Post Hearing Memorandum to be filed in the above captioned case.

If you have any questions or concerns regarding this matter, please contact my office.

Thank you for your attention to this matter.

Very truly yours,

C. William Clark

CWC/jkc
Enclosures

cc: Michael P. Tanczyn, Esquire
Mark Orgysko, Vice President of Stemark, Inc.
William Monk, Morris & Ritchie Associates

RECEIVED
AUG 29 2006
BALTIMORE COUNTY
BOARD OF APPEALS

Y:\JENNIFERDATA\Wpdocs\Clients-zoning\Stemark,Inc\BdAppealsltr.wpd

BALTIMORE COUNTY

MARYLAND

JAMES T. SMITH, JR.
County Executive

February 8, 2006

WILLIAM J. WISEMAN III
Zoning Commissioner

C. William Clark, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue
Suite 700, Nottingham Centre
Towson, Maryland 21204-4528

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

Re: Petition for Special Exception
Case No. 06-075-X
Property: 2705 Rolling Road

Dear Messrs. Clark and Tanczyn:

Enclosed please find the decision rendered in the above-captioned case. The petition for Special Exception has been granted in accordance with the enclosed Order.

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:dlw
Enclosure

c: Steve Ogrysku, 1921 Pleasantville Road, Forest Hill, MD 21050
David West, 6126 Three Cedars Lane, Fredericksburg, VA 22401
Mark Ogrysko, 2309 Cool Woods Court, Jarrettsville, MD 21084

B. Kacey Carter, 9125 Thamemeade Road, Laurel, MD 20783
Bill Monk, 1220-C East Joppa Road, Suite 505, Towson, MD 21286
Laura Vu, 43 Straw Hat Road, Apt. 2D, Owings Mills, MD 21117
Sajid Chaudhry, 2318 Halls Grove Road, Gambrills, MD 21054
Iftikhar Ahmad, 2701 Rolling Road, Woodland, MD 21244
Hector and Yvonne O'Berry, 7000 Rockfields Road, Windsor Mill, MD 21244
People's Counsel; Case File

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 2705 Rolling Road

which is presently zoned ML-IM

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

A CAR WASH PURSUANT TO SECTION 253.2B.2 AND SECTION 419.1 (BCZR)

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

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

Contract Purchaser/Lessee:

Stemark, Inc./Mark Ogrysko
Name - Type or Print

Signature

2309 Cool Woods Ct.
Address — Telephone No.

Jerrittsville — MD — 21084
City — State — Zip Code

Attorney For Petitioner:

C. William Clark, Esq.
Name - Type or Print

Signature

Nolan, Plumhoff & Williams, CHTD.
Company

502 Washington Ave.,Suite 700 (410)823-7800
Address — Telephone No.

Towson — MD — 21204
City — State — Zip Code

Legal Owner(s):

Rutherford Burger Investments, LLC/
Anthony Julio
Name - Type or Print

Signature

Name - Type or Print

Signature

9640 Deerco Road
Address — Telephone No.

Lutherville-Timonium — MD — 21093
City — State — Zip Code

Representative to be Contacted:

Morris & Ritchie Associates, Inc./William Monk
Name

1220C East Joppa RD., Suite 505 (410)821-1690
Address — Telephone No.

Towson — MD — 21286
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By LTM Date 8/3/05

Case No. 06-075-X

ORDER RECEIVED FOR FILING
Date 8-10-05
By
REV 8/15/98

MORRIS & RITCHIE ASSOCIATES, INC.

ARCHITECTS, ENGINEERS, PLANNERS, SURVEYORS,
AND LANDSCAPE ARCHITECTS

Zoning Description

Beginning at a point located on the easterly side of Rolling Road which has a width of 70 feet at the distance of 440 feet southerly of the centerline of the nearest intersecting street, Ashfield Drive, which has a width of 66 feet. **Thence** the following courses and distances, viz:

North 55 degrees 46 minutes 55 seconds East, 17.28 feet; North 76 degrees 52 minutes 42 seconds East, 208.58 feet; South 13 degrees 07 minutes 18 seconds East, 213.10 feet; South 76 degrees 52 minutes 42 seconds West, 219.40 feet; Northwesterly by a non-tangential curve to the left having a radius of 1180.92 feet, an arc length of 132.05 feet, the chord of said arc bearing North 13 degrees 25 minutes 39 seconds West, 131.98 feet; North 16 degrees 37 minutes 55 seconds West, 75.04 feet to the point and place of beginning, being known and designated as #2705 Rolling Road.

Containing an area of 46,847 square feet or 1.0754 acres of land, more or less, and being located in the Second Election District of Baltimore County, Maryland.

STATE OF MARYLAND
MICHAEL LEE MAY
11041
PROFESSIONAL LAND SURVEYOR
7/25/07

1220-C East Joppa Road, Suite 505, Towson, MD 21286 (410) 821-1690 Fax: (410) 821-1748 www.mragta.com

Abingdon, MD (410) 515-9000 ✧ Laurel, MD (410) 792-9792 ✧ Towson, MD (410) 821-1690 ✧ Georgetown, DE (302) 855-5734 ✧ Wilmington, DE (302) 326-2200 ✧ York, PA (717) 751-6073

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 446950

DATE 8/8/05 ACCOUNT R001 0006 6150

AMOUNT $ 280.00

RECEIVED FROM: MORRIS RITCHIE ASSOC.

FOR: 06-075-X

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
BUSINESS ACTUAL TIME DRW
8/04/2005 8/03/2005 14:42:57 2
RED 4602 WALKTH REVA JEE
RECEIPT # 417397 7/31/2006 OPEN
Dept 5 520 ZONING VERIFICATION
JR NO. 446950
Recpt Tot $280.00
$280.00 CK $.00 CH
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: #06-075-X
2705 Rolling Road
E/side of Rolling Road, 440 feet south of centerline of Ashfield Drive
2nd Election District
4th Councilmanic District
Legal Owner(s): Rutherford Burger Investments, LLC, *Anthony Julio*
Contract Purchaser: Stemark, Inc., Mark Ogrysko
Special Exception: to allow a car wash.
Hearing: Wednesday, October 5, 2005 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for
Baltimore County

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

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

JT/9/694 Sept. 20 67836

CERTIFICATE OF PUBLICATION

9/22/, 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 9/20/, 2005.

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

S. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 5081

DATE 3/7/06 ACCOUNT 001-006-6150

AMOUNT $ 400.00

RECEIVED FROM: Michael P. Tanczyn, Esq.

FOR: Appeal #06-075-X
2705 Rolling Rd.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

MICHAEL PAUL TANCZYN
ESCROW ACCOUNT
606 BALTIMORE AVE, STE. 106
TOWSON, MD 21204

7094

65-320/550
BRANCH 97760

March 7, 2006
DATE

PAY TO THE ORDER OF Baltimore County $ 400.00

Four Hundred and 00/100 DOLLARS

Security Features Details on Back

WACHOVIA
Wachovia Bank, N.A.
wachovia.com

FOR Zonny Appeal v. O'Berry Michael Tanczyn

MP

⑆055000320⑈ 2200264035350⑈ 7094

© HARLAND 2001

Kristin Matthews

CERTIFICATE OF POSTING 06-075

RE: Case No.: PETITION FOR SPECIAL EXCEPTION

Petitioner/Developer: STEMARK INC.

Date of Hearing/Closing: OCT 5, 2005

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

ATTN WALT SMITH

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:

2705 ROLLING RD

The sign(s) were posted on 9-19-05
(Month, Day, Year)

RECEIVED
SEP 22 2005
DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

Sincerely,

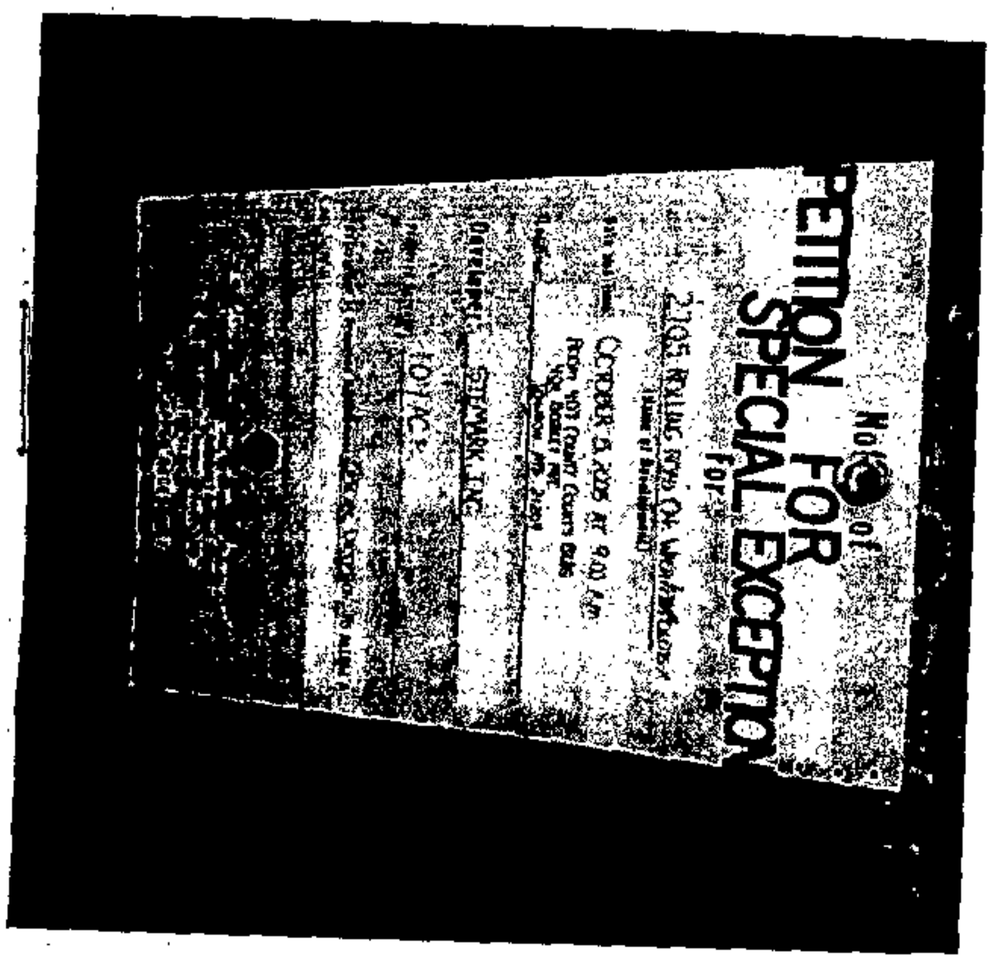
Robert Black 9-20-05
(Signature of Sign Poster) (Date)

SSG Robert Black
(Print Name)

1508 Leslie Road
(Address)

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

(410) 282-7940
(Telephone Number)



2705 Rolling Rd

Kristen Matthews

CERTIFICATE OF POSTING 06-075

RE: Case No.: PETITION FOR SPECIAL EXCEPTION

Petitioner/Developer: STEMARK INC.

Date of Hearing/Closing: OCT 5, 2005

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

ATTN WALT SMITH

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:

2705 ROLLING RD

The sign(s) were posted on 9-19-05
(Month, Day, Year)

Sincerely,

Robert Black 9-20-05
(Signature of Sign Poster) (Date)

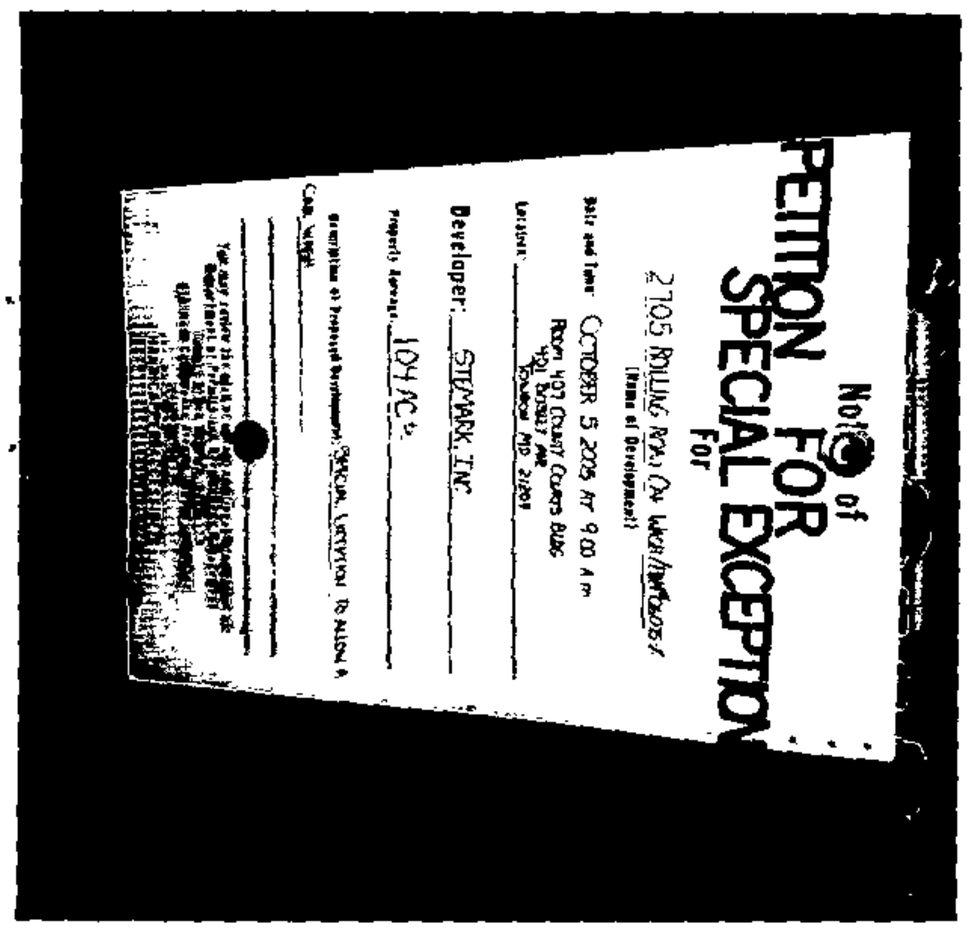
SSG Robert Black
(Print Name)

1508 Leslie Road
(Address)

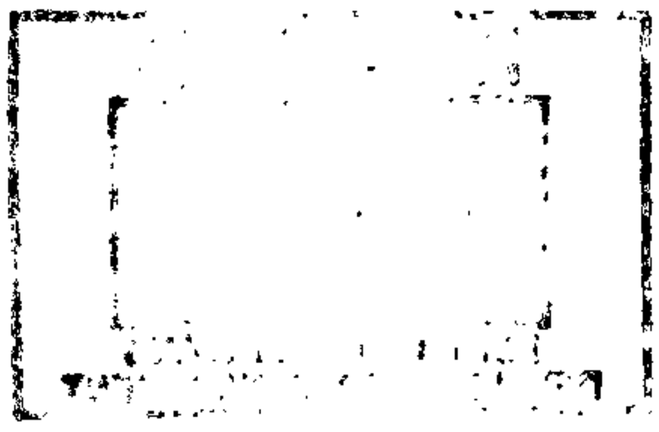
Dundalk, Maryland 21222
(City, State, Zip Code)

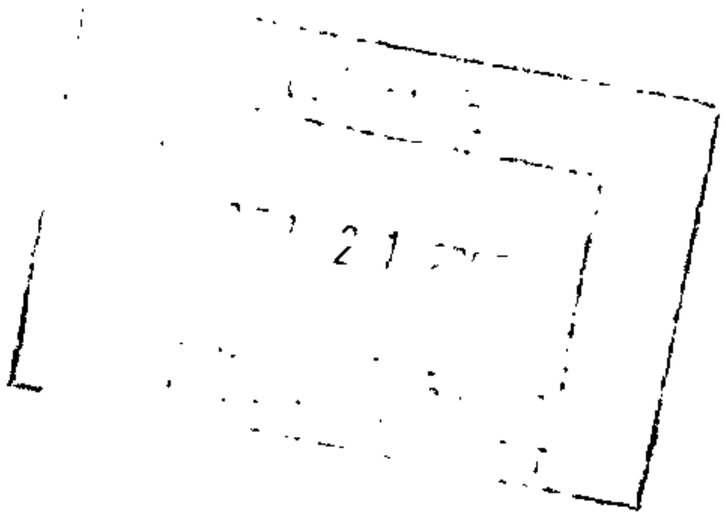
(410) 282-7940
(Telephone Number)

RECEIVED
SEP 22 2005
DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT



2705 Rolling Rd





APPEAL SIGN POSTING REQUEST

CASE NO. 06-075-X

2705 ROLLING ROAD

2ND ELECTION DISTRICT APPEALED: 3/7/2006

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

RECEIVED
APR - 6 2006
BALTIMORE COUNTY
BOARD OF APPEALS

CASE NO.: 06-075-X

LEGAL OWNER: MARK OGRYSKO

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

2705 ROLLING ROAD

The sign was posted on 4-5, 2006.

By: _____
(Signature of Sign Poster)

Jeff Radcliffe
(Print Name)

map 33 A5

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: 06-075-X

Petitioner: STEMARK, INC. (ATTN: MARK OGRYSKO)

Address or Location: 2705 ROLLING ROAD BALTIMORE COUNTY

PLEASE FORWARD ADVERTISING BILL TO:

Name: STEMARK, INC. (ATTN: MARK OGRYSKO)

Address: 2309 COOL WOODS COURT
JERRITSVILLE MD 21084

Telephone Number: 410-458-5550

Revised 2/20/98 - SCJ

TO: PATUXENT PUBLISHING COMPANY
Tuesday, September 20, 2005 Issue - Jeffersonian

Please forward billing to:
Stemark, Inc. 410-458-5550
Mark Ogrysko
2309 Cool Woods Court
Jerritsville, MD 21084

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: 06-075-X
2705 Rolling Road
E/side of Rolling Road, 440 feet south of centerline of Ashfield Drive
2nd Election District – 4th Councilmanic District
Legal Owners: Rutherford Burger Investments, LLC, Anthony Julio
Contract Purchaser: Stemark, Inc., Mark Ogrysko

Special Exception to allow a car wash.

Hearing: Wednesday, October 5, 2005 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

WILLIAM J WISEMAN III
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

August 16, 2005

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: 06-075-X
2705 Rolling Road
E/side of Rolling Road, 440 feet south of centerline of Ashfield Drive
2nd Election District – 4th Councilmanic District
Legal Owners: Rutherford Burger Investments, LLC, Anthony Julio
Contract Purchaser: Stemark, Inc., Mark Ogrysko

Special Exception to allow a car wash.

Hearing: Wednesday, October 5, 2005 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: C. William Clark, 502 Washington Avenue, Ste. 700, Towson 21204
Anthony Julio, 9640 Deerco Rd., Lutherville 21093
Mark Ogrysko, 2309 Cool Woods Court, Jerrittsville 21084
William Monk, 1220C East Joppa Rd., Ste. 505, Towson 21286

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, SEPTEMBER 20, 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.

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

June 19, 2006

NOTICE OF ASSIGNMENT

CASE #: 06-075-X

IN THE MATTER OF: RUTHERFORD BURGER INVESTMENTS, LLC, by Anthony Julio –Legal Owner and Stemark,Inc., by Mark Ogrysko - Lessee
2705 Rolling Road 2nd Election District; 4th Councilmanic District

2/08/2006 – D.Z.C.'s Order in which requested variance relief was GRANTED with conditions.

ASSIGNED FOR: WEDNESDAY, AUGUST 9, 2006 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: Counsel for Appellants /Protestants : Michael P. Tanczyn, Esquire
Appellants /Protestants : Sgt. Hector O'Berry and Yvonne O'Berry

Counsel for Petitioners : C. William Clark, Esquire
Legal Owners /Petitioners : Rutherford Burger Investments, LLC / by Anthony Julio
Lessee /Petitioner : Stemark, Inc., by Mark Ogrysko
Bill Monk /Morris & Ritchie
Steve Ogrysko
David West
B. Kacey Carter

Laura Vu
Sajid Chaudhry
Iftikhar Ahmad

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
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

October 17, 2006

NOTICE OF DELIBERATION

IN THE MATTER OF: **RUTHERFORD BURGER INVESTMENTS, LLC, by Anthony Julio, Legal Owner, and Stemark, Inc., by Mark Ogryysko, Lessee CASE #: 06-075-X**

Having heard this matter on 8/09/06, public deliberation has been scheduled for the following date /time:

DATE AND TIME : TUESDAY, OCTOBER 24, 2006 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Memos in this matter were filed on 8/29/06.

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants : Michael P. Tanczyn, Esquire
Appellants /Protestants : Sgt. Hector O'Berry and Yvonne O'Berry

Counsel for Petitioners : C. William Clark, Esquire
Legal Owners /Petitioners : Rutherford Burger Investments, LLC / by Anthony Julio
Lessee /Petitioner : Stemark, Inc., by Mark Ogrysko
Bill Monk /Morris & Ritchie
Steve Ogrysko
David West
B. Kacey Carter

Laura Vu
Sajid Chaudhry
Iftikhar Ahmad

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

FYI: 3-5-6

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on Recycled Paper

Department of Permits and Development Management

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

Baltimore County

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

September 26, 2005

C. William Clark, Esquire
502 Washington Avenue, Ste. 700
Towson, Maryland 21204

Dear Mr. Clark:

RE: Case Number:06-075-X , 2705 Rolling Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on August 3, 2005.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Rutherford Burger Investments, LLC. Anthony Julio 9640 Deereco Road Timonium 21093
Morris & Ritchie 1220 C. E. Joppa Road Suite 505 Towson 21286
Stemark, Inc. Mark Orgysko 2309 Cool Woods Court Jarretsville 21084

Printed on Recycled Paper

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Tim Kotroco

FROM: R. Bruce Seeley

DATE: September 7, 2005

SUBJECT: Zoning Items # See List Below

Zoning Advisory Committee Meeting of August 15, 2005

__X__ The Department of Environmental Protection and Resource Management has no comments on the following zoning items:

06-068
06-070
06-071
06-074
06-075
06-076

Reviewers: Sue Farinetti, Dave Lykens

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: August 30, 2005

RECEIVED

AUG 31 2005

ZONING COMMISSIONER

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

SUBJECT: 2705 Rolling Road

INFORMATION:

Item Number: 6-075

Petitioner: Stemark Inc. / Mark Ogrysko

Zoning: ML-IM

Requested Action: Special Exception

SUMMARY OF RECOMMENDATIONS:
The Office of Planning does not oppose the petitioner's request to permit a carwash in the ML-IM zone provided the following conditions are met:

1. Provide a landscape plan to include street trees along Rolling Road to the limits of the tract boundary of the subject property.
2. Submit a lighting plan to show lighting that will not conflict with adjacent residential uses. Lighting plan should include the locations and details of the proposed lighting and a computerized lighting design with point-by-point calculations that conforms to the *Illuminating Engineering Society of North America* (IESNA) standards, for review and approval by The Office of Planning and Avery Harden, Baltimore County Landscape Architect, in conjunction with the Final Landscape Plan.
3. Submit sign detail and building elevations to the Office of Planning for approval prior to building permit. The proposed building should be compatible with existing surrounding residential buildings.

For further information concerning the matters stated here in, please contact Dave Green at 410-887-3480.

Prepared by: Curtis Murray

Division Chief: Lynn Lochner
AFK/LL: CM

W:\DEVREV\ZAC\6-075.doc

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: August 19, 2005

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For August 22, 2005
Item No's: 070, 071, 072, 073, 074, 075, and 076

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

DAK:CEN:clw
cc: File
ZAC-NO COMMENTS-08192005.doc

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

August 10, 2005

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

ATTENTION: Zoning Review planners

Distribution Meeting of: August 15, 2005

Item No.: ~~067-076~~ 075

1. The fire marshal's office has no comments at this time.

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

Acting Lieutenant David Heath
Fire Marshal's Office
410-887-4881
MS-1102F

cc: File

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

SHA
Driven to Excel
State Highway Administration
Maryland Department of Transportation

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

Date: 8·9·05

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

RE: Baltimore County
Item No. 075 LTM

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

RE:	PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
	2705 Rolling Road; E/side Rolling Road,		
	440' S c/line Ashfield Drive	*	ZONING COMMISSIONER
	2nd Election & 4th Councilmanic Districts		
	Legal Owner(s): Rutherford Burger	*	FOR
	Investments, LLC by Anthony Julio		
	Contract Purchaser(s): Stemark, Inc	*	BALTIMORE COUNTY
	by Mark Ogrysko		
	Petitioner(s)	*	06-075-X

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

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 and documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of August, 2005, a copy of the foregoing Entry of Appearance was mailed William Monk, Morris & Ritchie Associates, 1220C East Joppa Road, Suite 505, Towson, MD 21286, and C. William Clark, Esquire, Nolan, Plumhoff & Williams, Chtd., 502 Washington Avenue, Suite 700, Towson, MD 21204 Attorney for Petitioner(s).

RECEIVED
AUG 11 2005
Per..

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Department of Permits and Development Management

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

Baltimore County

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

March 17, 2006

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

Dear Mr. Tanczyn:

RE: Case: 06-075-X, 2705 Rolling Road

Please be advised that we received your appeal of the above-referenced case on March 7, 2006. 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:raj
c: John V. Murphy, Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Office of People's Counsel, M.S. 2010
Sgt. & Mrs. Hector O'Berry, 7000 Rockfields Rod, Windsor Mill, MD 21244
C. William Clark, Esquire, Nolan Plumhoff & Williams, 502 Washington Ave., Ste. 700, Nottingham Centre, Towson, MD 21204-4528
Steve Ogrysko, 1921 Pleasantville Road, Forest Hill, MD 21050
David West, 6126 Three Cedars Lane, Fredericksburg, VA 22401
Mark Ogrysko, 2309 Cool Woods Court, Jarrettsville, MD 21084
B. Kacey Carter, 9125 Thamemeade Road, Laurel, MD 20783
Bill Monk, Morris & Ritchie, 1220-C East Joppa Road, Ste. 505, Towson, MD 21286
Laura Vu, 43 Straw Hat Road, Apt. 2D, Owings Mills, MD 21117
Sajid Chaudhry, 2318 Halls Grove Road, Gambrills, MD 21054
Ifikhar Ahmad, 2701 Rolling Road, Woodlawn, MD 21244

Printed on Recycled Paper

APPEAL

Petition for Special Exception
2705 Rolling Road
East side of Rolling Road, 440 feet
South centerline of Ashfield Drive
2nd Election District – 4th Councilmanic District
Legal Owner: Rutherford Burger Investments, LLC, by Anthony Julio and
Lessee: Stemark, Inc., by Mark Ogrysko

Case No.: 06-075-X

RECEIVED
MAR 17 2006
BALTIMORE COUNTY
BOARD OF APPEALS

✓ Petition for Special Exception (August 3, 2005)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (August 16, 2005)

✓ Certificate of Publication (September 20, 2005 – The Jeffersonian)

✓ Certificate of Posting (September 19, 2005) by Robert Black

✓ Entry of Appearance by People's Counsel (August 11, 2005)

✓ Petitioner(s) Sign-In Sheet

✓ Citizen(s) Sign-In Sheet

✓ Zoning Advisory Committee Comments

Petitioners' Exhibits
- ✓ 1 Plat to Accompany Petition
- ✓ 1A Schematic Landscape Plan
- ✓ 1B Revised Building Setback & Vacuum Locations per Special Exception
- ✓ 2 6 Photographs (2A-2F)
- ✓ 3 Declaration of Easements, Covenants & Restrictions for Rolling Road, LLC
- ✓ 4 6 Photographs (4A-4F)
- ✓ 5 5 Photographs (5A-5E)
- ✓ 6 8/30/05 ZAC comments from the Office of Planning w/ summary of recommendations
- ✓ 7 Resume of William P. Monk
- ✓ 8 2000 Comprehensive Zoning Map for "Belmont Area"
- ✓ 9 Photocopy of B.C.Z.R. pages 2-89 and 4-82 and 4-83 re: car washes
- ✓ 10 1/26/06 Revision to Plat for Special Exception
- ✓ 10A-C 3 Photographs
- ✓ 11 Revisions to Plat for Special Exception, re: travel aisle & driveway and Photographs 11-A(1), 11-A(2), 11-B, 11-C(1), 11-C(2)
- ✓ 12 General Provisions, Sec. 101, pages 1-29 and 1-30
- ✓ 13B Plat for Goodwill Industries for Car Wash (00-277-XA)
- ✓ 14B Plat for Car Wash @ 9615 Philadelphia Road (99-302-X)
- ✓ 15B Plat for Car Wash @ Route 40 West (99-124-X)
- ✓ 16B Plat for Car Wash @ 3401-3451 Dundalk Avenue (04-168-SPHXA)
- ✓ 17B Plat for 7416 Windsor Mill Road (04-032-XA)

Miscellaneous (Not Marked as Exhibits)
- ✓ 1 10/26/05 letter from Michael Tanczyn, Esq. re: Letter Memorandum
- ✓ 2 10/26/06 letter from C. William Clark, Esq. re: Letter Memorandum with attachments of (7) Orders from previous cases
- ✓ 3 10/27/05 letter from Michael Tanczyn, Esq. re: Petitioners' Memorandum
- ✓ 4 12/13/05 letter from Dep. Zoning Commissioner to attorneys in case
- ✓ 5 12/23/06 letter from C. William Clark, Esq. re: posting & advertising
- ✓ 6 2/3/06 Supplemental Memorandum by Protestants re: 1/26/06 hearing
- ✓ 7 Photocopy of B.C.Z.R. Sec. 419 re: car washes, pages 4-82 – 4-83

Deputy Zoning Commissioner's Order (Petition for Special Exception –GRANTED) dated 2/8/06

Notice of Appeal received on March 7, 2006 from Michael P. Tanczyn, Esquire

c: John V. Murphy, Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Office of People's Counsel, M.S. 2010
Sgt. & Mrs. Hector O'Berry, 7000 Rockfields Rod, Windsor Mill, MD 21244
C. William Clark, Esquire, Nolan Plumhoff & Williams, 502 Washington Ave., Ste. 700, Nottingham Centre, Towson, MD 21204-4528
Steve Ogrysko, 1921 Pleasantville Road, Forest Hill, MD 21050
David West, 6126 Three Cedars Lane, Fredericksburg, VA 22401
Mark Ogrysko, 2309 Cool Woods Court, Jarrettsville, MD 21084
B. Kacey Carter, ~~9125 Thamemeade Road, Laurel, MD 20783~~ 3113 Pousna RD – Abingdon MD 21009-2728
Bill Monk, Morris & Ritchie, 1220-C East Joppa Road, Ste. 505, Towson, MD 21286
Laura Vu, 43 Straw Hat Road, Apt. 2D, Owings Mills, MD 21117
Sajid Chaudhry, 2318 Halls Grove Road, Gambrills, MD 21054
Ifikhar Ahmad, 2701 Rolling Road, Woodlawn, MD 21244

date sent March 17, 2006, raj

MICHAEL TANCZYN, ESQUIRE Counsel for Appellants /Protestants
606 BALTIMORE AVENUE
SUITE 106
TOWSON, MD 21204

ANTHONY JULIO
RUTHERFORD BURGER INVESTMENTS LLC Legal Owner
9640 DEERCO ROAD
LUTHERVILLE-TIMONIUM MD 21093

CASE #: 06-075-X

IN THE MATTER OF: RUTHERFORD BURGER INVESTMENTS, LLC, by Anthony Julio, Legal Owner, and Stemark, Inc., by Mark Ogryysko, Lessee
2705 Rolling Road 2nd Election District; 4th Councilmanic District

SE – To allow a car wash pursuant to §§ 253.2.B.2 and 419.1 of the BCZR.

2/08/2006 – D.Z.C.'s Order in which requested variance relief was GRANTED with conditions.

6/19/06 --Notice of Assignment sent to following; assigned for hearing on Wednesday, August 9, 2006 at 10 a.m.:

Michael P. Tanczyn, Esquire
Sgt. Hector O'Berry and Yvonne O'Berry
C. William Clark, Esquire
Rutherford Burger Investments, LLC /
by Anthony Julio
Stemark, Inc., by Mark Ogrysko
Bill Monk /Morris & Ritchie
Steve Ogrysko
David West
B. Kacey Carter
Laura Vu
Sajid Chaudhry
Iftikhar Ahmad
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

8/09/06 – Hearing held (Wescott, Brassil, Witt); concluded this date; memos due 8/29/06.

10/17/06 – memos filed on 8/29/06; copies to Brassil and Witt on 9/01/06 via USPS; handed to Wescott on 9/01/06. Notice of Deliberation sent this date; to be deliberated on Tuesday, October 24, 2006 at 9:00 a.m. FYI copy to 3-5-6. Note to 5 via e-mail.

10/24/06 – Board convened for public deliberation (3-5-6); unanimous decision - special exception GRANTED; appellate period to run from date of written decision (3).

1/26

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

December 13, 2005

C. William Clark, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue
Suite 700, Nottingham Centre
Towson, Maryland 21204-4528

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

Re: Petition for Special Exception
Case No. 06-075-X
Property: 2705 Rolling Road

Dear Messrs: Clark and Tanczyn:

This letter is to confirm that the above-captioned matter, which was continued in open hearing on October 5, 2005, has been scheduled for further proceedings. By agreement of all parties, the matter has been scheduled for Thursday, January 26, 2006, at 9:00 a.m. in Room 407 of the County Courts Building in Towson. Please notify your clients/witnesses of the continued hearing date, time and location.

In the meantime, should anyone have any questions on the subject, please do not hesitate to contact me.

Very truly yours,

John V. Murphy

John V. Murphy
Deputy Zoning Commissioner
for Baltimore County

JVM:dlw

c: Steve Ogrysku, 1921 Pleasantville Road, Forest Hill, MD 21050
David West, 6126 Three Cedars Lane, Fredericksburg, VA 22401
Mark Ogrysko, 2309 Cool Woods Court, Jarrettsville, MD 21084
B. Kacey Carter, 9125 Thamemeade Road, Laurel, MD 20783
Bill Monk, 1220-C East Joppa Road, Suite 505, Towson, MD 21286
Laura Vu, 43 Straw Hat Road, Apt. 2D, Owings Mills, MD 21117
Sajid Chaudhry, 2318 Halls Grove Road, Gambrills, MD 21054
Iftikhar Ahmad, 2701 Rolling Road, Woodland, MD 21244
People's Counsel; PDM; Case File

Thomas J. Renner
William P. Englehart, Jr.
Robert L. Hanley, Jr.
Robert S. Glushakow
Douglas L. Burgess
C. William Clark
Catherine A. Potthast
E. Bruce Jones**
Cornelia M. Koetter*

* Also admitted in D.C.
**Also admitted in New Jersey

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765

email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

J. EARLE PLUMHOFF
(1940-1988)

NEWTON A. WILLIAMS
(Retired 2000)

RALPH E. DEITZ
(1918-1990)

October 26, 2005

VIA HAND DELIVERY
The Honorable John V. Murphy
Deputy Zoning Commissioner
for Baltimore County
County Courts Building, Room 407
401 Bosley Avenue
Towson, MD 21204

RECEIVED
OCT 26 2005
ZONING COMMISSIONER

Re: Petition of Stemark, Inc.
Case No. 06-075 X
2705 Rolling Road

Dear Deputy Zoning Commissioner Murphy:

At the conclusion of the hearing in the above captioned matter, you permitted counsel for the parties to submit a closing statement by way of Memorandum in letter form. This submission on behalf of the Petitioner became longer than anticipated at the time of the hearing, due to the various attachments and exhibits as explained below.

The Petition sought a Special Exception approval for a carwash with two roll over tunnels and six self service bays in a building proposed to be constructed on the site. During the course of the hearing, the Deputy Zoning Commissioner raised an issue as to the application of Section 419.4. A.1 to the site plan. The proposed roll over carwashes meet the requirements of that section and a question arises as to whether or not a self service carwash as proposed does. In pertinent part, that section states the following:

"Except for the landscape buffers, no part of a self-service carwash shall be within 100 feet of a residentially zoned property."

The Baltimore County Zoning Regulations do not define the term "residentially zoned property." The testimony offered by William Monk, accepted as a expert in the Baltimore County Zoning Regulations, indicates that the long standing administrative practice and interpretation of that

section as applied by the Department of Permits and Development Management does not include within that definition land within a public right of way which is bisected by a zoning line which on one side of the line is a residential zone. Following the hearing, counsel below contacted John Lewis of the Department of Permits and Development Management, Office of Zoning Review, who confirmed that interpretation as the policy and determination made by his department. As shown on the site plan which is Petitioners Exhibit 1, in this case, and as supported by the testimony of William Monk, Rolling Road is a public street that abuts the subject property consisting of 50 feet of paving on a 70 foot right of way. In approximately the middle of that right of way is a zone line, which to the east of that line, the properties are zoned ML-IM, and to the west of that line, the properties are zoned DR 16. As presently proposed, the self service bays are at a distance of approximately 102 feet from the zoning line except for the self service bay that is located next to the equipment room. The distance grows to 137 ½ feet once one adds 35 feet which is one half of the existing 70 foot right of way for Rolling Road to get to the property boundary of the adjoining property which is improved by a large private stormwater management pond, which is zoned DR 16, across Rolling Road from the proposed carwash. Support for the Petitioner's view and PADM's position can be found in the case of Goodwill Industries of the Chesapeake, Inc., Petitioner Case No. 00-277 XA. Enclosed please find a copy of the Findings of Fact and Conclusions of Law as well as a site plan that which was admitted as Petitioner's Exhibit No. 1 in that case. The Special Exception was approved even though there was residentially zoned property within 100 feet for the parking areas and drive aisles for the proposed carwash. The zone line dividing the ML-IM from the DR 5.5 zoned property was located in the right of way of Southwestern Blvd. While the Opinion of Deputy Zoning Commissioner in that case does not expressly mention BCZR Section 419.4.A.1. it is clear that there are residents who live along Leeds Avenue who appeared and protested the approval. A review of the file does not demonstrate any adverse comment from Zoning Review or the Office of Planning regarding the application of Section 419.4 A.1. Additional support can be found in Case No. 99-302 X which was a petition for carwash at 9615 Philadelphia Road filed by 4600 East Walbash Avenue Joint Venture. The DR 16 zone line fell in the middle of the right of way for Philadelphia Road and parts of the carwash proposed in that case lay within 100 feet of that zone line. The Special Exception was approved. Additional support can be found in Case 99-124 X, Sarah Enterprises, LLC, Owner, for the approval of a carwash on the southeast side of Baltimore National Pike and JohnnyCake Road. The DR 16 zone line fell in the middle of JohnnyCake Road and Old Frederick Road. Parts of the proposed self service carwash were within 100 feet of that zone line, but not within 100 feet of the residentially zoned property that abutted the public right of way. Copies of those site plans are available in the Office of Zoning Review in the Department of Development Management.

During the course of the hearing, the Deputy Zoning Commissioner recalled two other cases in which this issue arose, one involved Logan Village Center, LLC and its Petition for a self service carwash at 3401-3451 Dundalk Avenue. Enclosed with this letter, please find a copy of the opinions in that case. A review of the site plan makes it clear that the residentially zoned property abutted

the property proposed for development and was not across a right of way of a public street. Finally, the case of Mighty Wash located at 7410 Windsor Mill Road Case No. 04-032 XA involved an Opinion written by this Deputy Zoning Commissioner and expressly addressed the requirements of Section 419.4A1. The facts underlying that opinion distinguish that case from the subject case since the residentially zoned property abutted the site proposed for development. The zone line did not fall within the public right of way for a street which abutted the property. In that case, the Deputy Zoning Commissioner granted a Motion for Reconsideration upon conditions that a sound barrier be erected. On Appeal, the County Board of Appeals granted the Special Exception relief but denied a variance requested. Enclosed with this letter, is a copy of the site plan which was marked as Petitioner's Exhibit No. 1 in Case No. 04-032 X. Also enclosed please find a redlined site plan approving the carwash based upon a revised plan.

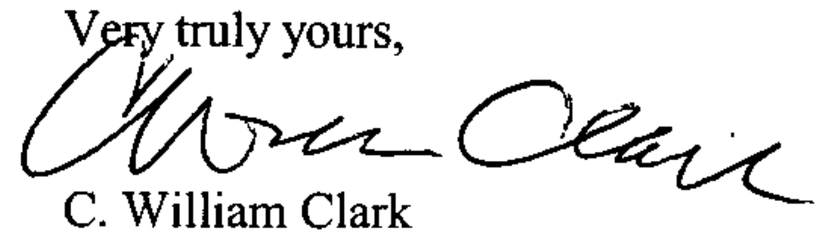
Additional support can be found in certain definitions contained in the Baltimore County Zoning Regulations. In Section 101, the BCZR defines a "street" as a "motorway which is not a freeway or expressway which has a right of way of more than 20 feet in width". Section 101 also defines "street line" as the following "a line which divides the right of way of a street from **other property**; a street right of way line". (emphasis added). It is clear that Rolling Road is a street and the line which divides the right of way of the street from other property is shown on the site plan. Even though the zone line falls in the middle of the right of way no one can seriously contend or believe that the western half of Rolling Road could be used for residential purposes. The definition of "street" and "street line" taken together indicate the area within the right of way is "other property" and should not be treated as "residentially zoned property". Further support can be found in Section 419.4.B.3 which describes the general design of landscape transition area to be provided along the perimeter of all carwash operations. There the phrase "residentially zoned property" is followed by the following phrase "(other than a residential zone line in a public right of way)". There a residentially zoned property is treated differently from a property which carries a residential zone line in a public right of way, by allowing a carwash operation within 50 feet of a residentially zoned property, based on a residential zone line in a public right of way, to have a 10 foot landscape transition area as opposed to the 15 feet requirement for other residentially zoned and abutting property. Petitioner believes that the phrase "residentially zoned property" should not include that property lying within a public right of way when applying Section 419.4.A.1 of the Baltimore County Zoning Regulations.

In the alternative, Petitioner has prepared a red lined plan, a copy of which is enclosed with this letter. The plan eliminates one of the self service bays thus reducing the parking requirement, relocates the required parking spaces to the rear of the building and shifts the building and vacuums slightly north on the property. In short, the red line plan removes all the carwash uses associated with the self service bay to a distance in excess of 100 feet from the residential zone line

and also relocates the Special Exception line to be a distance 100 feet removed from the zone line as well as the accessory uses associated with the self service bays. The driving and vehicular circulation/stacking patterns and points of vehicular ingress and egress remain materially unchanged. Petitioner requests that the Deputy Zoning Commissioner consider this redline plan and if need be, Petitioner requests that the hearing be reopened to admit the plan and provide supporting testimony.

With regard to the requirements of Section 502.1, the Petitioner offered the testimony of Mark Ogrysko, the proposed operator and William Monk in support of the Petition. The Protestant's main complaint resulted from a concern over persons congregating at the site after hours based on his experience one time at a different carwash in a different neighborhood not far from his home. The Deputy Zoning Commissioner can add a condition to his approval that the entrances can be chained during times the carwash is not open, if deemed appropriate and necessary. Petitioner believes that the overwhelming evidence demonstrates that the requirements of Section 502.1 have been met and that the Special Exception should be approved. If you need any further information, or have any questions, please contact me. Until then, I remain.

Very truly yours,



C. William Clark

CWC/jkc

Enclosures

cc: Michael Tanczyn, Esquire
William Monk (*without enclosures*)
Mark Ogrysko (*without enclosures*)

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

February 3, 2006

RECEIVED
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ZONING COMMISSIONER

The Honorable John V. Murphy, Esquire
Deputy Zoning Commissioner
401 Bosley Avenue
Room 405
Towson, Maryland 21204

Re: Case No.: 06-075X
2705 Rolling Road
Special Exception for a car wash in ML-IM zone

Dear Mr. Murphy:

On behalf of my clients, the Protestants, Sgt. Hector O'Berry and Yvonne O'Berry, his wife, we submit this supplemental letter memorandum to assist in the rendering of a decision in this case.

The O'Berrys, who appeared as Protestants, have resided at 7000 Rockfields Road, Baltimore, Maryland 21244, since 1991, in a single family detached residence, on 1 ½ acres, the same side of Rolling Road due south of the proposed car wash.

THE PETITIONER'S REQUEST, AS MODIFIED

At the continued hearing on January 26, 2006, Petitioner's called as a witnesses, William Monk, the principal of Morris and Ritchie Associates, Inc., previously accepted as an expert witness. Mr. Monk had prepared the amendment to Petitioners' plat, which was admitted as Petitioners' Exhibit 1B, with redline and blue highlights. Mr. Monk's testimony, in addition to describing the redline and blue highlight changes to plat to accompany the special exception application for 2705 Rolling Road also discussed the layout and location of improvements at the fuel service station and uses in combination thereof on the adjacent property at 2701 Rolling Road, which included a C store, ATM and single tunnel rollover carwash. The bulk of Mr. Monk's testimony had to do with reviewing previous zoning cases, whose decisions or plats were introduced in Petitioner's case as Exhibits 13A through 17B. What all of those exhibits had in common was Petitioner's witness, Mr. Monk's attempt to explain away the Petitioner's inability on either Petitioner's Exhibit 1 or Petitioner's Exhibit 1B, the site plans, to comply with BCZR §419.4.A.1, prohibition, that no part of the self service car wash shall be within 100 feet of a residentially zoned property. Protestants will review, seriatim, each of the decisions and site plans introduced in detail below. However, Protestants, O'Berry, first attempt to set the context of the BCZR §419 provisions as the useful prism for the Deputy Zoning Commissioner to consider Mr. Monk's testimony and the exhibits of Petitioner introduced at the last hearing.

WHAT DOES BILL 172-1993 PROVIDE AS LEGISLATIVE MANDATED CONTROLS OF CAR WASHES, UNDER BCZR §419.1

Bill 172-1993 was a comprehensive law, dealing with rollover, full service and self service car washes, which were studied in depth by the County Council for voting to approve Bill 172-1993 (BCZR §419.1). That section grandfathered legally existing car washes prior to the effective date of Bill 172-1993 (BCZR §419.5)

When all the provisions of §419 are read together and harmonized, a cardinal rule of statutory construction, the provisions of §419.A.1, setting forth differing setback requirements for rollover and full service car wash buildings from those required for self service car wash facilities from residentially zoned property represent a clear legislative mandate based on the effects each type of facility would have on nearby residentially occupied land. A quick tour of BCZR§419 provisions sets forth the legislative intention to so provide different setback requirements, enhancing them for self service car wash facilities, for the benefit of the adjacent residents to facilitate their peaceful and quiet enjoyment of the their residences. The following provisions are apt:

1. The site plan was to provide detailed and substantial information about the subject site and adjacent properties, traffic plan, proposed landscape buffer treatment (BCZR §419.2)

2. All internal paved areas of a car wash site used for stacking, parking, and driveway purposes, must comply with §409.1 and be laid out to allow circulation to preclude street backups or right of way blocking, as well as locating parking spaces to avoid conflict with onsite circulation (BCZR §419.3).

3. All facilities are subject to the locational standards of BCZR §419.4. In the clearest of terms, the Bill provided, except for the landscape buffers (emphasis supplied), no part of a self-service carwash shall be within 100 feet of a residentially zoned property (BCZR §419.4.A.1). Every case decision cited by Petitioners at the January 26, 2006 hearing represents a failure by the deciding authority to give weight and to follow that legislative mandate of 419.4.A.1. The legislature could not have made it simpler than to say, as it did, that except for the area given to landscape buffers, no other part of a self service car wash shall be within 100 feet of residentially zoned property. The point raised repeatedly by Mr. Monk on Petitioner's behalf, was that in the prior decisions, the deciding authorities had failed to expressly follow 419.4.A.1 in measuring the 100 feet from the nearest residentially zoned property. DR 16 is beyond dispute, residentially zoned property, and the 100 foot measurement from the DR 16 line extends well beyond the blue landscape buffer area highlighted on Petitioner's Exhibit 1B, to include the ingress/egress traffic circulation portion of the buildings for the self service bay equipment room, as shown on both Petitioner's Exhibit 1 and Petitioner's Exhibit 1B. The orientation of Petitioner's site to adjacent parcel is such that the only residentially zoned property lies across from its front entrance on Rolling Road. The remainder of the site is surrounded by ML-IM zoned property on the north, east, and south sides.

4. Where, as here a special exception is required, the County Council gave the Zoning Commissioner discretionary authority to require changes in the building or site plan designs or hours of operation for car washes, for which a special exception is required (BCZR §419.4.B.5). The Deputy Zoning Commissioner will recall the Protestants' concerns included the Petitioner's proposal to operate the car wash as a largely unattended 24/7 operation, although including signs prohibiting noise or loitering. Ironically, for any times when the car wash was unattended, those signs which recognize very real quality of life problems would only be enforced by the honor system, by patrons

of the car wash who may have little concern for the residentially occupied apartments across Rolling Road, from the Petitioner's site.

BALTIMORE COUNTY ZONING REGULATIONS DEFINITIONS DEALING WITH CAR WASH PROVIDES SUPPORT FOR THE LEGISLATIVE DIFFERENTIATION BETWEEN SELF SERVICE AND OTHER CAR WASHES

The definitions of the BCZR parses different types of wash facilities and a quick review evidences legislative intent to treat self service car wash facilities differently than others which is evident in the definitions provided. First, car wash refers to either machine or hand-operated facilities. Next, full service car wash excludes facilities providing complete interior and exterior detail cleaning that takes more than two hours per car. Self service car wash, as defined, refers to equipment or facilities for self service cleaning and washing of motor vehicles. Significantly, all of these definitions were included in Bill 172-1993, the most recent legislative enactment on the subject in Baltimore County. Therefore the County Council provisions in BCZR §419 were created at the same time the definitions were reviewed and approved for definitions applicable to these facilities. While "property" is not defined in the BCZR, "residential zone" is, as land classified RC, DR, ROA, or RAE as being "within a residential zone." Further proof of the County Council's intent to address the potential negative effects of self service car washes on adjacent residential properties, as well as understanding the context of the County Council's use of the term, "residentially zoned property," is to be found in reviewing BCZR §419.4.B - General Design:

1. Prohibition on tunnel entrance or exits facing an adjacent residentially zoned property, specifically exclude those across the street, as is the case here (BCZR §419.4.B.1).

2. The rear and side of buildings facing residentially zoned properties require finishes and colors and facade treatments, set forth in detail in BCZR §419.4.B.2. In the case of this Petitioner's site, that section is inapplicable, and even the Petitioner recognizes the context utilized for residentially zoned property by taking advantage of the fact that its side and rear does not face the residentially zoned property across Rolling Road from Petitioner's site.

3. The provision for a landscape transition area required for all car wash operations has varying width requirements, depending on its proximity to residentially zoned property. There is a specific provision distinguishing residential zone lines in a public right of way, under BCZR §419.4.B.3, which simply reduces the required landscape buffer to 15' from the nearest property line.

4. To ensure compatibility with surrounding buildings (emphasis supplied). The Zoning Commissioner may require changes to the car wash buildings, site plan, or hours of operation where a special exception is required (BCZR.B.5).

THE COUNTY COUNCIL RECOGNIZED THE PROBLEMS FOR OCCUPANTS OF ADJACENT RESIDENTIALLY ZONED LAND IN CREATING MORE STRINGENT CONTROLS IN BILL 172-1993.

When the County Council enacted Bill 172-1993 and put in more stringent controls than were included in the prior applicable zoning regulations for regulating car washes, the County Council expressly recognized that the new conditions were more stringent by expressly grandfathering the existing car washed, under BCZR §419.5. The County Council expressly excluded those car washes from adhering to new requirements set forth in BCZR §419. In so doing,

the County Council was doing no more or less, than recognizing the vesting rights of existing car washes, previously approved, which would not meet or could not meet the distance or setback requirements or other provisions set forth in Bill 172-1993.

Protestants' objection to both of Petitioner's plans 1 and 1B stems from the clear mandate of the County Council set forth when it enacted and passed Bill 172-1993, providing the 100 foot buffer area, in which nothing but a landscape buffer could be located from residentially zoned property lines for a self service car wash. The clear legislative expression of intent, where sites proposed for self service car washes were closer than 100 feet to residentially zoned properties, were that they could not be located, except for the landscape buffer area, for any part of a self-service car wash, not just the buildings. All of the prior cases cited by Petitioner either did not present that as an issue for the Hearing Officer or were not decided on that basis. More to the point, the Hearing Officer is bound to follow the law and not follow previous errors made in not giving force and effect to the clear legislative mandate set forth in BCZR §419.4.A.1. That is what Protestants believe is the flaw in the logic employed by Petitioners, in urging the Deputy Zoning Commissioner not to pay attention to the express legislative prohibition set forth in BCZR §419.4.A.1, because it hasn't been followed in prior cases. A discussion of those cases presented at the January 26, 2006 hearing by Petitioner should now begin.

The cardinal rule of statutory construction is to ascertain and carry out the intent of the legislature, Marriott Employees Federal Credit Union v. Motor Vehicle Admin., 346 Md. 437, 697 A.2d 455 (1997). Statutory construction begins with the plain language of the statute, Deville v. State, 383 Md. 217, 858 A.2d 484 (2004). Here the plain language of the intent of the County Council specifically prohibits a 100 foot distance from a self service car wash from residentially zoned property. There are no ambiguities in that language, since they are all well defined. When construing statutory language where two constructions are possible, courts will prefer the construction which will result in the legality and effectiveness of the statutory provision being construed, and will not adopt the construction which would not accomplish that purpose. District Land Corp. v. Washington Suburban Sanitary Commission, 266 Md. 301, 292 A.2d 695 (1972). Also, see Maloof v. State, Dept. of Environment, 136 Md. App. 682, 767 A.2d 372 (2001). When asked at the hearing, Mr. Monk could point to no provision in the BCZR, which contradicted the strict prohibition on self service car washes set back from residentially zoned property, under BCZR §419.4. Where the statutory language is clear, unambiguous and consistent with the purposes of the legislation in general and the particular provision being interpreted, a court statutory construction inquiry usually ends at that point. Smack v. Department of Health and Mental Hygiene, 134 Md. App. 412, 759 A.2d 1209 (2000). Finally, where mandatory language is used, it shall be given effect by the Hearing Officer. Maryland-National Capital Park and Planning Commission v. Silkor Development Corp., 246 Md. 516, 229 A.2d 135 (1967).

PETITIONER'S EXHIBIT 13A AND 13B - CASE 00-277XA, 4001 SOUTHWESTERN BLVD., GOODWILL INDUSTRIES

This request for a car wash and variance request from BCZR §255.1 of the regulations does not include in the Findings of Fact and Conclusions of Law, nor in the review of the site plan introduced in evidence, a request for except from BCZR §419.4.A.1 for the setbacks called for under that section. Therefore, the issue was not expressly set out for, or brought to the attention of the Deputy Zoning Commissioner, nor is it mentioned in his decision as a factor considered by him. Notwithstanding that, BCZR §419, in its present form, had been enacted in 1993 and was in effect at the time that case was heard and the decision was subsequently rendered February 17, 2000. For

whatever reason the requirements of BCZR §419.4.A.1. in the legislative mandate express therein by the County Council was not considered either in the Petition, the site plan, or the Deputy Zoning Commissioner's decision.

PETITIONER'S EXHIBIT 14A AND 14B - CASE 99-302X, 9615 PHILADELPHIA ROAD

In review of the Findings of Fact and Conclusions of Law which accompanied the Deputy Zoning Commissioner's April 22, 1999 Order, reveals that no Protestants were present at the time of hearing, and that Petitioner in that case did not seek variance relief from BCZR§419.4.A.1., nor is that section referred to in the site plan or decision of the Deputy Zoning Commissioner. Therefore, the same Protestants' argument would be applicable to that as the prior case.

PETITIONER'S EXHIBIT 15A AND 15B - CASE 99-124SPHX, BALTIMORE NATIONAL PIKE AT JOHNNYCAKE ROAD, SOUTHEAST SIDE

This was a Petition For Special Hearing, specifically concerned with Petitioner's request for a waiver of public works standards, to eliminate required road improvements to Old Frederick Road and Johnnycake Road for a proposed EZ Store facility. The Findings of Fact and Conclusions of Law, which accompanied the Deputy Zoning Commissioner's March 29, 1999 Order, granting the waiver of public works standards, indicates no Protestants or other interested persons were present other than Petitioner. In the body of that decision, the Deputy Zoning Commissioner notes an earlier 1998 case in which a special exception was granted for the car wash, which was done by prior Order, November 13, 1998. There is no mention in that case or in the Petition for Special Hearing of the requirements of BCZR §419.4.A.1, nor was it addressed or considered apparently by the Deputy Zoning Commissioner in that case. Again, the issue was not apparently before the Hearing Officer, and therefore does not stand for the proposition advanced by the Petitioners. It is, again, apples and oranges, where the decision of the Zoning Commissioner makes no mention of the specific issue raised in the instant self-service car wash case, namely whether the plan and petition adhered to the requirements of BCZR §410.4.A.1.

PETITIONER'S EXHIBIT 16 - CASE 04-168SPHXA, 3401-3451 DUNDALK AVENUE, LOGAN VILLAGE CENTER

Of interest in that case, the Zoning Commissioner, in the Petition For Special Hearing, was asked to determine if variances from BCZR §419.4.B.1 and B.3, were needed, that the Petitioner in that case then asked that the variances be granted. There is no mention in the Findings of Fact and Conclusions of Law, which accompanied the Deputy Zoning Commissioner's November 18, 2003 Order for any request from BCZR §419.4.A.1. In fact, the Deputy Zoning Commissioner's Opinion, whereby the Special Exception was denied specifically addresses the distance of the car wash building to the nearest residential lot line was 190 plus feet. The Deputy Zoning Commissioner then cites BCZR §419.4 requirement of a 100 foot distance, and correctly gives weight to the legislative mandate contained in BCZR §419.4.A.1. That was not the end of that case. In the Order on Motion For Reconsideration, dated March 5, 2005, the Deputy Zoning Commissioner granted variances requested by Petitioner for BCZR§419.4.B.1 and §419.4.B.3. Of interest, there was no request by the Petitioner nor decision by the Deputy Zoning Commissioner as to a variance from the requirements of BCZR §419.4.A.1, and therefore, that issue was not expressly decided in that case. Significantly, in the instant Rolling Road case, no request for variance had been made by the Petitioner from the requirements of BCZR §419.4.A.1, therefore, that issue of a request for variance is not before the Deputy Zoning Commissioner in the instant case. While the express provision of

BCZR §419.4, stating that no part of a self service car wash should be within 100 feet of a residentially zoned property was present in that case, in light of the presentation of the issue in the Rolling Road car wash case presently before the Deputy Zoning Commissioner, revisiting the requirements of BCZR §419 as set forth in Bill 172-1993, and specifically regarding BCZR §419.4.A.1 would be appropriate in the instant case.

PETITIONER'S EXHIBIT 17A AND 17B - CASE 04-032XA, 7416 WINDSOR MILL ROAD

The decisions tendered by the Petitioner and accepted as Exhibit 17A and 17B are those of the County Board of Appeals. In that case, one of the prayers for relief was relief sought by the Petitioner, and included a variance request from the 100 foot setback prohibition described under BCZR §419.4.4.A.1, to allow a distance of 90 feet, rather than 100 feet from residentially zoned adjacent property. Of interest, while the Board of Appeals granted the special exception, while it denied the variances requested, the practical effect of that decision was to deny use of the property for a car wash, because the variance to locate a portion of the parking area was within 100 feet of adjacent residentially zoned property. That case represents, perhaps the only case in which a deciding hearing authority took note of and heeded the legislative mandate set forth in BCZR §419.4.A.1, as well as the Petitioner's request for variance from that standard and decided the issue, in a manner adverse to the Petitioner on that point.

Protestants, in summary, believe whether the Deputy Zoning Commissioner considers Petitioner's 1 or Petitioner's 1B site plans, that sections of the car wash, other than the landscape buffer are within the 100 foot prohibition. They further note that in this case Petitioners have not requested a variance from those requirements, so that issue of a variance of those requirements is not before the Deputy Zoning Commissioner for decision at this time. Petitioners have, in this case, rather than seeking a variance, sought to distinguish the clear County Council provision set forth in BCZR §419.4.A.1 from prior decisions involving the same point, although not brought up as such, in the majority of the cases, to show that the prior Hearing Officers have decided those cases in favor of the Petitioners is notwithstanding the clear legislative mandate and requirement of BCZR §419.4.A.1. Protestants believe that BCZR §419.4.A.1 clearly defines any area other than the landscape buffer, as part of the portion of the self service car wash, subject to a 100 foot setback from residentially zoned property, and that Petitioner's site plans clearly reflect that circumstance in both Petitioner's 1 and Petitioners's 1B. Because Petitioners have not requested relief from BCZR §419.4.A.1 requirements, unless the Deputy Zoning Commissioner accepts the prior decisions as effectively trumping the express provisions of BCZR §419.4.A.1, there is no way around the fact that Petitioner's site plans cannot comply with that section and should be denied.

However, if the Deputy Zoning Commissioner were to be inclined, after considering all evidence and legal authority to approve this site plan, Protestants believe that Petitioner's 1B more closely reflects the spirit and intent of the BCZR §419, although it clearly does not comply with that section, for the reasons stated. In the event the Deputy Zoning Commissioner was inclined to approve the site plan, Protestants would request that this site be locked and barricaded when not in use, to prevent the access at the entry points and that the hours of operation be limited to consider the needs of the adjacent residential apartment and townhouse owners to have peaceful and quiet enjoyment of their properties, Protestants would request that the facility be closed at 10:00 p.m. and not reopened before 7:00 a.m., Monday through Saturday, and that on Sunday, it be allowed to open after 10:00 a.m. through 10:00 p.m.

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

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ZONING COMMISSIONER

February 3, 2006

VIA HAND-DELIVERY
The Honorable John V. Murphy, Esquire
Deputy Zoning Commissioner
401 Bosley Avenue
Room 405
Towson, Maryland 21204

Re: Case No.: Petition of Stemark, Inc.
Case No. 06-075 X
2705 Rolling Road

Dear Mr. Murphy:

Enclosed please find Protestants' supplemental memorandum, based on the hearing concluded January 26, 2006.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl
Encl.
cc: Sgt. and Mrs. Hector O'Berry
C. William Clark, Esquire

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

October 26, 2005

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ZONING COMMISSIONER

The Honorable John V. Murphy, Esquire
Deputy Zoning Commissioner
401 Bosley Avenue
Room 405
Towson, Maryland 21204

Re: Case No.: 06-075X
2705 Rolling Road
Special Exception for a car wash in ML-IM zone

Dear Mr. Murphy:

On behalf of my clients, Sgt. Hector O'Berry and Yvonne O'Berry, his wife, we submit this letter memorandum to assist in the rendering of a decision in this case.

The O'Berrys have resided at 7000 Rockfields Road, Baltimore, Maryland 21244, since 1991, in a single family detached residence, on 1 ½ acres, the same side of Rolling Road due south of the proposed car wash.

THE REQUEST

Petitioner's witnesses included Mark O'Grysko, Vice President of Stemark, Inc., listed as contract purchaser lessee on the application, who proposed a combination six self-service bay and two roll over bay automatic car wash, with ancillary services, at 2705 Rolling Road, from Lot B8 of the Rutherford Business Park. The lot comprised 46,847 square feet, or 1.0754 acres of land, and had road frontage a little over 210 feet on Rolling Road, with a variable depth east from Rolling Road of 208 feet on the north and 219 feet on the south. The property shared an access drive from Rolling Road with the neighboring property, located on Lot B7 of the industrial park, as well as from an access road north of the site to Rolling Road. Photographs were introduced, showing the site, as well as typical finishes proposed to be utilized by the Petitioner for the exterior of the car wash. The Petitioner was proposing a self service unattended car wash facility open 24 hours a day, seven days a week, 12 months of the year. Petitioner's representative testified that as far as employees on site, his older brother does maintenance for their other three car washes and would be expected to be at this site approximately 2 days a week for between 4 to 6 hours to clean the facility. He also proposed to have an attendant at the site from 8:00 a.m. to 6:00 p.m., 7 days a week. He further proposed putting up signs prohibiting loitering and loud noises at the site. The site was served by public water and sewer. He further testified that he proposed to put a security camera at the site that would digitally record sound. He testified that detailing of cars by customers would be prohibited and there would be no hand waxing of vehicles.

Mr. Monk also testified for the Petitioner, as a principal of Morris and Ritchie Associates, Inc., the engineering firm which had prepared the plat which was admitted as Petitioner's Exhibit 1. Mr. Monk testified as to the topography of the area and the residential uses across the street, as well as the storm water management facility directly across the street, and the other occupants of the industrial park on three sides from the subject site. Mr. Monk also marked on Petitioner's site plan the 100 foot line from the DR-16 ML-IM zoning line in Rolling Road, to show where that fell on the Petitioner's site plan. Mr. Monk expressed his opinion as to the requirements of BCZR Section 502.1 of the Zoning Regulations, and had been accepted as an expert witness as a professional engineer. He introduced photos of the gas station and C store next door, for which he had done the plan when that was approved, as a special exception, in 2002, zoning case #02-016X at 2701 Rolling Road. He testified that Rolling Road, in front of this site, had two traffic lanes, each north and south, with a center turn lane, and was a major collector road. He testified the zoning was to the west, DR 16 and DR 5.5, and that the residential sectors had townhomes and apartments. He testified that in his opinion, the property met the requirements of BCZR Section 419, and that the landscaping proposed on Rolling Road would be deciduous, versus existing evergreen on adjacent sites and across Rolling Road.

Petitioner's second witness was Dave West of Washtech, of Virginia, who testified as to the equipment and materials that would be used in the operation of this car wash and stated that the roll over automatic car wash could handle a maximum of 14 vehicles per hour. He testified the vacuum systems would be two motor, and would operate for 4 to 5 minutes for each dollar.

Protestants, the O'Berrys, testified, first through Mr. O'Berry, who testified that he had worked as a Sergeant for the Maryland State Department of Health and Mental Hygiene police force for 40 years, and he had resided with his family at 7000 Rockfields Road, south of this site, on a 1 ½ acre single family detached dwelling, since 1991. His principal concern was Petitioner's proposal to have this car wash be unattended, which Sgt. O'Berry believed could create what he characterized as after hour suspicious activities, as well as become a magnet for children and young adults, who might cause problems. He further considered all of the above to be a hazard, based on the proximity of the residential community in the apartments and townhomes across the street, as well as in his residential community to the south, where a public school is located. He was concerned about the noise, which he believed would be uncontrolled, that would be generated by the users of this facility. He testified anecdotally about his experiences at other unattended car washes in the general area, including one just north of Security Blvd. at the Best Buy, and how he felt about the persons that were at that site in the early morning hours when it was unattended, as a threat to himself, even when he was there in his policeman's uniform.

The proffer, which was made, that his wife's testimony would mirror his, and that she had thirty years working for the Department of Health and Mental Hygiene police was accepted by Petitioners and the Deputy Zoning Commissioner.

LEGAL ISSUES

The Deputy Zoning Commissioner brought to the attention of the parties provisions of BCZR Section 419.4.A, entitled "Locational Standards." While the use of property for a car wash is a use permitted by special exception in an ML-IM zone, under BCZR Section 253.2.B.2, that section expressly states that car washes are subject to the provisions of BCZR Section 419, as well as Section 502.1 of the BCZR.

indicates that one of the activities which could be expected to promote noise or be a loitering or gathering space is well within the 100 foot setback from the DR 16 line. Across the street, as was testified to by Petitioner's expert witnesses, are the Windsor Commons Luxury Apartments, which are three story townhome style apartments, with balconies, which overlook Petitioner's side of Rolling Road. To the south of those apartments is a townhome and apartment development called Crosswinds at Rolling Road.

The case of Anderson v. Sawyer, 23 Md. App. 612, 329 A.2d 716 (1974), confirms that the Deputy Zoning Commissioner, in considering a request for special exception, may not only consider the effects on the neighborhood of the proposed use, but may impose safeguards and conditions to insure that the use at that site and in that area will not pose a hazard to the health, safety, and general welfare of the community, under BCZR Section 502.1.

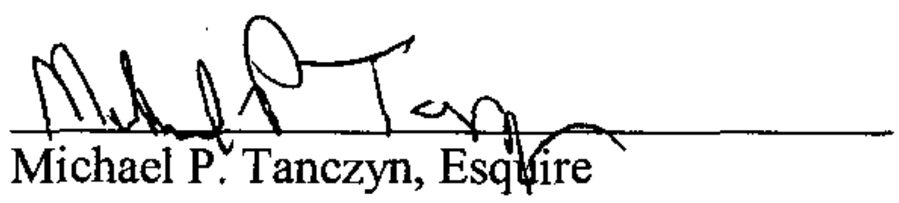
In another case, Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981), quoting Anderson v. Sawyer held that, in considering a proposed special exception, the Deputy Zoning Commissioner can consider and determine if there are any adverse affects upon neighboring properties in the general area. That case further held that the adverse affect must tend to have a greater effect on the immediate neighborhood where proposed, than if located anywhere else within the zone. In this case, that standard is met because of the proximity of the large luxury apartments and the townhome community, as well as the fair reading of BCZR Section 419.A.4 of the BCZR. The County Council intentionally distinguished and made different setbacks for self-service car washes, doubling the distance from the residential line from that required for automatic or full-service car washes. That regulation is clearly not met, as depicted on the Petitioner's site plan, because of the existence of its vacumns, within the 100 foot area, as well as the ingress and egress aisles to the car wash. The fact that the Petitioner's site is to be largely unattended after 6:00 p.m. until closing, before 8:00 a.m. in the morning, essentially means there will be signs warning against loitering and making loud noises, but no effective way to enforce them, because there will be no attendant present at Petitioner's site. Therefore, that cries out for a condition, even if the activities of the car wash could be pushed back 100 feet from the residential lines, to either require an attendant when the car wash was open, or to require sound barriers for the protection of the residential community. Sound barriers alone do not address all of the host of problems testified to by Sgt. O'Berry, who feared that this site, if unattended, would become a magnet for persons he believed to be undesirable and bent on causing problems. His suspicions and concerns, which he expressed well, are corroborated by the proposed signs, which Petitioner proposes to put up. The difference is, signs won't self enforce the conditions and the Petitioner, as an absentee owner of an unattended car wash, will not suffer the problems, as will the residential community, if loud noises occur or criminal activity occurs on this unattended site in the hours of darkness, whenever he property is unattended. The Schultz v. Pritts standard is met, because of the existence of the residentially zoned and occupied lands directly across the street.

Interestingly, the BCZR measures the 100 foot setback requirement for self-service car washes from the DR zoning line and not from the nearest residential structure. That choice of language by the County Council is significant because the County Council expressed its intent that self-service car washes would not be located within 100 feet of a residentially zoned land, to create a safe buffer, so that any residentially zoned and occupied land would not have to have a self-service car wash, regardless of whether its an attended car wash, within 100 feet of the DR zoned line. Those words are clear, unambiguous, and to be given their ordinary meaning, and given effect by the Deputy Zoning Commissioner in rendering his decision.

CONCLUSION

The proposed use at this site differs materially from the existing automatic single bay car wash immediately adjacent, which is attended 24 hours a day, and is an automated roll over car wash, and whose vacuuming stations and ancillary services are located more than double the required distance from the residential zoning line in Rolling Road. In the Petitioner's case, he proposes a 24 hours, 12 month a year operation, unattended, except between 8:00 a.m. and 6:00 p.m., and therefore, that business decision, which is cost effective for the Petitioner, visits a tangible threat to the health, safety, and general welfare of the community. As a practical matter, Petitioner, who proposed, as required by the building covenants for the business park, some high end finishes to the exterior structure, faces a risk of graffiti damage to the property, which would bring down the neighborhood, by proposing to leave the site unattended while open 24 hours a day. Even if the Petitioner states that he will provide an attendant when the car wash is open, there is no provision on the site plan nor in the testimony of Petitioner's witnesses to prevent persons from coming on the site when it is closed, if it were to be operated less than 24 hours a day, 12 months of the year. Because the Petitioner's site plan does not meet the requirements of BCZR Section 419.A.4, and would violate the provisions of BCZR Section 502.1 of the BCZR, the special exception should be denied. If the Deputy Zoning Commissioner decides that the petition should be granted, the Protestants request that the property be required, by condition, to have the property attended when open and provide that it will not be available for vehicular or pedestrian access when closed or unattended. The plan should not be approved until it complies with the explicit requirements of BCZR Section 419.A.4 in terms of location of the car wash related activities within the 100 foot setback. By looking at the Petitioner's site plan, the Deputy Zoning Commissioner can see that no car washing activities occur on the adjacent C store, gas station car wash property within 115 feet of the residentially zoned line, which is 50 feet more than BCZR Section 419.A.4 requires for roll over car washes.

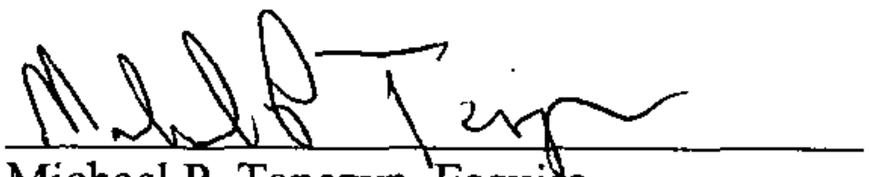
Respectfully Submitted,



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

CERTIFICATION OF MAILING

I HEREBY CERTIFY on this 26th day of October, 2005, that a copy of the foregoing was mailed, first-class, postage prepaid to C. William Clark, Esquire, 502 Washington Avenue, Suite 700, Towson, Maryland 21204.



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

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

October 27, 2005

VIA HAND-DELIVERY
The Honorable John V. Murphy, Esquire
Deputy Zoning Commissioner
401 Bosley Avenue
Room 405
Towson, Maryland 21204

RECEIVED
OCT 27 2005
ZONING COMMISSIONER

Re: Case No.: Petition of Stemark, Inc.
Case No. 06-075 X
2705 Rolling Road

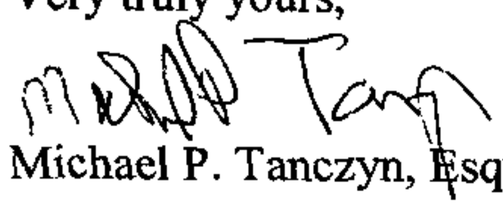
Dear Mr. Murphy:

I have just received the submission by the Petitioner of its closing Memo. We believe that the Petitioner's attempt, after the hearing was closed, to submit a redlined plan, dramatically changing the Petition, without an opportunity for review or cross-examination by the Protestants, or without being re-advertised as a material change to the plan originally submitted, to be irregular and in error. The proper way to consider the Petitioner's new plan is to reconvene a hearing, at which time the plan may be presented and questions may be asked. This can be very helpful to all parties, to not only fully understand the modified request, but also to ask any questions which may reveal information or problems or concerns about any revision, either not noticed or not mentioned by the Petitioner. It is fundamental due process to require that such a procedure be filed, and we object to the submission of a redlined plan dramatically changing the proposal after the testimony was concluded and hearing closed, subject to submission of legal memorandum.

Therefore, please consider this a request to reschedule a hearing on the Petitioner's revised plan. Although we have not had enough time to examine the revised plan in detail, it still appears that the vacuum drying spaces are still located within the 100 foot setback, as are the driving aisles, which are an integral part of the self-service car wash operation.

Thank you for your consideration of these comments and request. We look forward to receiving your decision. Even if the Petitioner, on our request to reopen the hearings to consider this plan, does not make such a request, in the alternative, the redlined plan should not be considered, because it is not part of the record at this time.

Very truly yours,



Michael P. Tanczyn, Esquire

MPT/cbl
cc: Mr. and Mrs. O'Berry
C. William Clark, Esquire

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

RECEIVED
MAR 07 2006
Per...

March 7, 2006

VIA HAND-DELIVERY
Zoning Commissioner
111 W. Chesapeake Avenue
Room 109
Towson, Maryland 21204

Re: Case No.: Petition for Special Exception
Case No. 06-075 X
2705 Rolling Road

Dear Zoning Secretary:

The purpose of this letter is to note an appeal from the Opinion and Order of the Deputy Zoning Commissioner in the above case, dated February 8, 2006, to the Board of Appeals of Baltimore County for the property located at 2705 Rolling Road. My clients are Sgt. Hector O'Berry, 7000 Rockfields Road, Windsor Mill, Maryland 21244, and Yvonne O'Berry, his wife, of the same address.

Please advise us of the receipt of this appeal and forward us notice of any hearings scheduled thereon. If you need any other information, please do not hesitate to contact us. Enclosed you will find our check for costs, in the amount of $400.00, which we were advised was the cost for filing this appeal.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl
cc: Sgt. and Mrs. Hector O'Berry
C. William Clark, Esquire

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 5081

DATE 3/7/06 ACCOUNT 001-006-6150

AMOUNT $ 400.00

RECEIVED FROM: Michael P. Tanczyn, Esq.
Appeal #06-075-X
2705 Rolling Rd.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

MICHAEL PAUL TANCZYN
ESCROW ACCOUNT
606 BALTIMORE AVE, STE. 106
TOWSON, MD 21204

7094

65-320/550
BRANCH 97760

March 7, 2006
DATE

PAY TO THE ORDER OF Baltimore County $ 400.00

Four Hundred and 00/100 DOLLARS

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Wachovia Bank, N.A.
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FOR Zonny Appeal w/ O'Berry Michael Tanczyn

MP

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Thomas J. Renner
William P. Englehart, Jr.
Robert L. Hanley, Jr.
Robert S. Glushakow
Douglas L. Burgess
C. William Clark
Catherine A. Potthast
E. Bruce Jones**
Cornelia M. Koetter*

* Also admitted in D.C.
**Also admitted in New Jersey

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765

email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

J. EARLE PLUMHOFF
(1940-1988)

NEWTON A. WILLIAMS
(Retired 2000)

RALPH E. DEITZ
(1918-1990)

RECEIVED
DEC 2 2 2005
ZONING COMMISSIONER

December 23, 2005

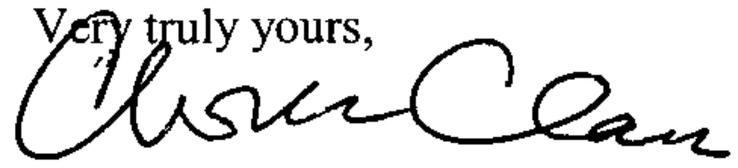
VIA HAND DELIVERY
The Honorable John V. Murphy
Deputy Zoning Commissioner
for Baltimore County
County Courts Building, Room 407
401 Bosley Avenue
Towson, MD 21204

Re: Petition for Special Exception
Case No. 06-075 X
Property: 2705 Rolling Road

Dear Mr. Murphy:

This letter is to confirm my telephone conference with Debbie of your office today ,that the Hearing now scheduled for 9:00 a.m. on Thursday, January 26, 2006 does not need to be re-advertised, nor does the property need to be posted. She reviewed your file and located your hand written note on the file to that affect. By this letter I am advising Mr. Tanczyn and the others below that the Petitioner will not re-advertise or re-post the property. If anyone has any objections, please let me know immediately, so the Deputy Zoning Commissioner can resolve any issues in a timely fashion. Thank you for your anticipated cooperation.

Very truly yours,



C. William Clark

CWC/jkc

Enclosures

cc: Michael P. Tanczyn, Esquire
William Monk)
Mark Ogrysko (*without enclosures*)

3. Two additional spaces at a roll-over car wash.

4. Four additional spaces at a full-service car wash.

419.4 Notwithstanding the provisions of the zone in which the car wash is located, all facilities are subject to the following requirements:

A. Locational standards.

1. Roll-over and full-service car wash buildings shall be set back at least 50 feet from the lot line of any residentially zoned property. Except for the landscape buffers, no part of a self-service car wash shall be within 100 feet of a residentially zoned property.

2. The tunnel exit of car wash facilities shall be set back at least 50 feet from the nearest exit drive.

B. General design.

1. No tunnel entrance or exit of a car wash operation shall face an adjacent residentially zoned property not including those across a street.

2. The rear and sides of buildings facing residentially zoned properties shall be finished with materials that in texture and color resemble the front of the building. The type of facade treatment shall be indicated on the site plan and shall be subject to review by the Director of the Office of Planning, who shall provide written comments to the approval authority.

3. Except for the required access drives, a landscaped transition area shall be provided along the perimeter of all car wash operations. Such area shall have a minimum width of 10 feet where the car wash fronts a public right-of-way and six feet in all side and rear yards abutting nonresidentially zoned land. Car wash operations located within 50 feet of any residentially zoned property (other than a residential zone line in a public right-of-way) shall provide a buffer that measures no less than 15 feet from that property line.

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

5. To increase compatibility with surrounding buildings or to enhance the attractiveness of the site, the Zoning Commissioner may require changes in building or site plan design or hours of operation for car washes for which a special exception is required.

419.5 The regulations contained in this Section 419 entitled "Car Wash" shall not apply to car washes legally existing prior to the effective date of Bill No. 172-1993. Bill No. 172-1993 does not affect the validity of any order granting a special exception or any plan approved by Baltimore County for a car wash which occurred prior to the effective date of this bill. Any such special exception or plan shall be subject to the applicable provisions of the Baltimore County Zoning Regulations in effect at the time of the grant of such special exception or plan.

COUNTY BOARD OF APPEALS

FACSIMILE TRANSMITTAL SHEET

TO: MICHAEL TANCZYN, ESQUIRE (1)	FROM: KATHLEEN BIANCO
C WILLIAM CLARK, ESQUIRE (2)	
FAX NUMBER: 410-296-8827 (1)	DATE: OCTOBER 17, 2006
410-296-2765 (2)	
COMPANY:	TOTAL NO. OF PAGES INCLUDING COVER: TWO (2)
PHONE NUMBER:	SENDER'S REFERENCE NUMBER: CASE NO. 06-075-X
RE: DELIBERATION -RUTHERFORD	YOUR REFERENCE NUMBER:

URGENT FOR REVIEW FOR YOUR RECORDS PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

PERSONAL AND CONFIDENTIAL

Attached is a copy of the Notice of Deliberation sent out this date in the subject matter. Deliberation has been scheduled for Tuesday, October 24, 2006 at 9:00 in the CBA hearing room.

Please contact me with any questions.

kathi

Attachment

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

SENDING REPORT

Oct. 17 2006 02:31PM

YOUR LOGO : BOARDOFAPPEALS
YOUR FAX NO. : 4108873182

NO.	OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
01	94102962765	Oct. 17 02:30PM	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).

SENDING REPORT

Oct. 17 2006 02:18PM

YOUR LOGO : BOARDOFAPPEALS
YOUR FAX NO. : 4108873182

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

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BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Rutherford Burger Investments, LLC
2705 Rolling Road
Baltimore, MD 21244
Case No.: 06-075-X

DATE: October 24, 2006

BOARD/PANEL Lawrence S. Wescott
Dr. Margaret Brassil
Robert Witt

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: Petition for Special Exception- a car wash pursuant to Section 253.2.B and Section 419.1.

Questions:
1) Where should the lot line/zoning line be measured?
2) Will the car wash be located within 100 feet of residential property?
3) Should the hours of operation be restricted, if the car wash is unattended, to help avoid potential problems in the neighborhood?

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- Petition proposes to build a car wash – (6) to be self-service and (20 to be automatic.
- The property is zoned ML – IM (east) and partially DR 16 (west), and is to be located in a business park in the Catonsville area.
- Panel discussed whether or not the car wash meets requirements under Sec. 419.4.A.1.of the (BCZR) with respect to car washes being 100 feet from residential property.
- Zoning Commissioner cases were cited but nothing from the upper courts.
- There was nothing specific mentioned about lot lines in the Deputy Zoning Commissioner's Order.
- The zoning line is located in the middle of Rolling Road.
- Panel did not recall any other case where the lot line was used in taking measurements and not the property line.
- With respect to Sec. 502.1, Mr. Monk testified that the car wash didn't affect the safety, health, or well being of the community. Protestants did not have any witnesses at the Board's hearing to present any evidence to the contrary.

- There was no evidence presented at the hearing as to why there should be any restrictions placed on the car wash to limit the time of operations.
- Mr. Monk, who is considered to be an expert witness, testified that he felt that the sign was a part of the car wash.
- The Board determined that signs have their own regulations.
- The panel mentioned the case of Shultz v. Pritts and stated that it had not been discussed during the hearing.
- The panel agreed to accept the Deputy Zoning Commissioner's reasoning that the access drive is not part of the car wash and the property meets the 100-foot requirement.
- It was agreed that the Planning Board's recommendations for landscaping and lighting should be adopted.
- The sign location is in the landscape/buffer area.
- The idea of 100-foot buffer area is to keep signage from residential areas.
- No evidence was presented to the Board as to why there should be any restrictions placed on the car wash limiting its time of operations.
- Petitioners agreed to abide by the restrictions outlined by the Planning Office.

DECISION BY BOARD MEMBERS: The Board found that the proposed car wash meets the requirements under Sec. 419.1 and Sec. 502.1 of the BCZR.

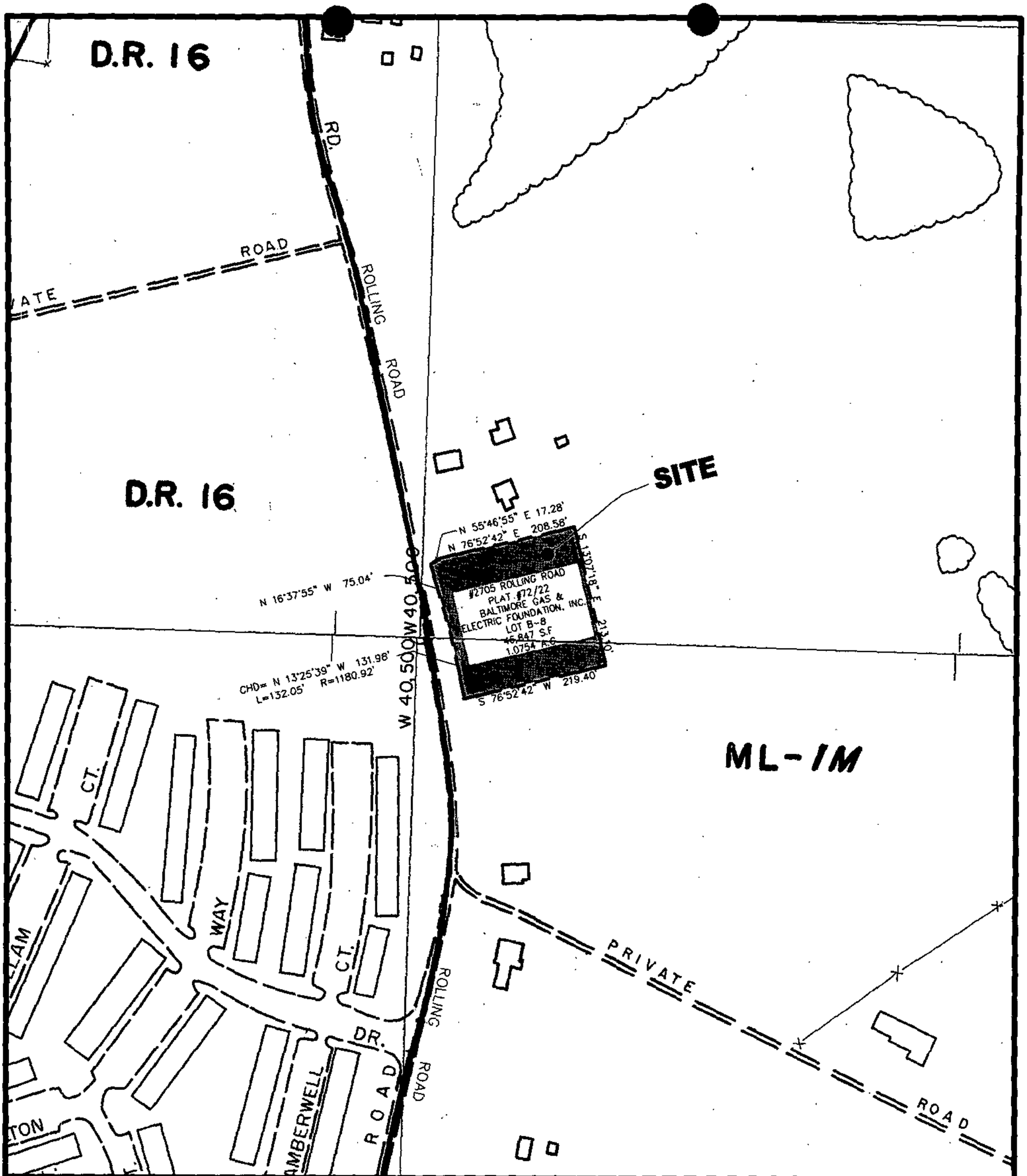
FINAL DECISION: After a thorough review of the facts, testimony and law on the above-captioned matter, the Board unanimously decided to *GRANT* the Petitioners request for a car wash subject to the restrictions set forth in the Aug. 30, 2005 letter from the Office of Planning.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place that date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted

Linda B. Fliegel

Linda B. Fliegel
County Board of Appeals



MRA

MORRIS & RITCHIE ASSOCIATES, INC.

ENGINEERS, PLANNERS, SURVEYORS, AND LANDSCAPE ARCHITECTS

1220-C EAST JOPPA ROAD, SUITE 505
TOWSON, MARYLAND 21286
(410) 821-1690
FAX: (410) 821-1748

MRAGTA.COM

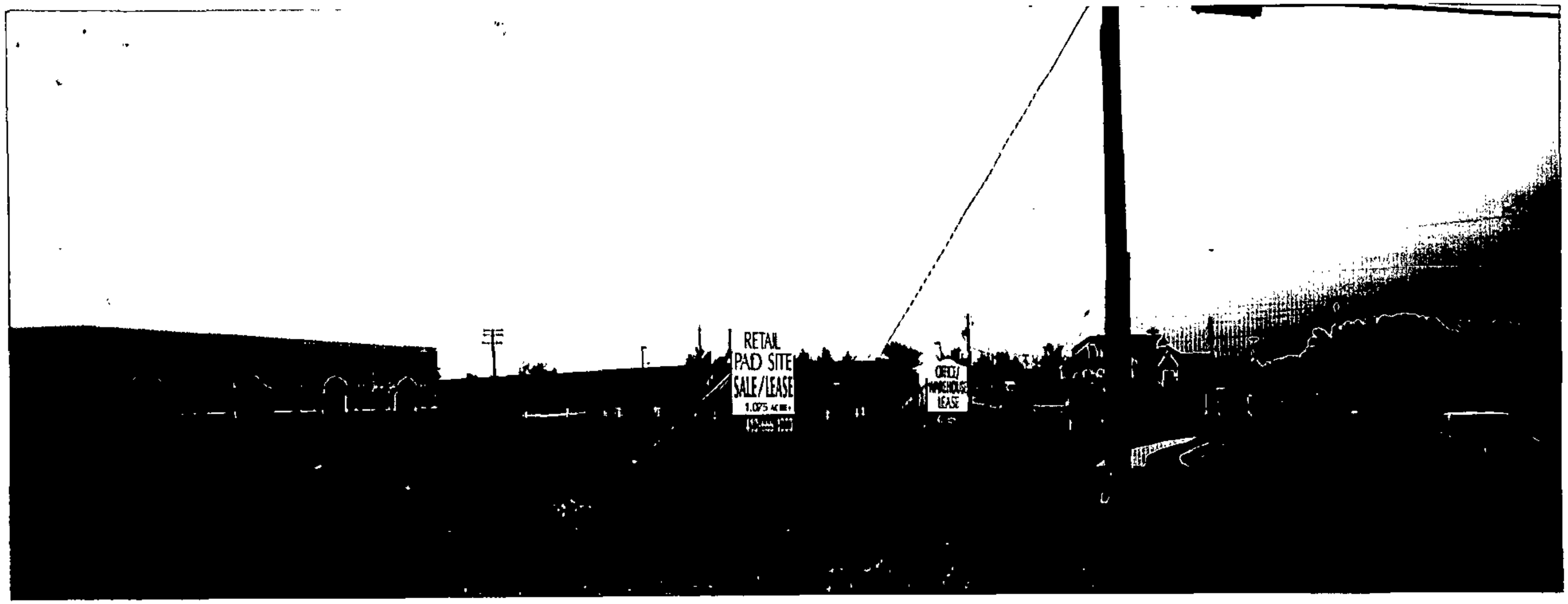
ZONING MAP

2705 ROLLING ROAD

BALTIMORE COUNTY, MARYLAND

SCALE: 1"=200'	DATE: 07/26/05	DRAWN BY: KC	DESIGN BY: KC	REVIEW BY: BM	JOB NO. : 14409

#75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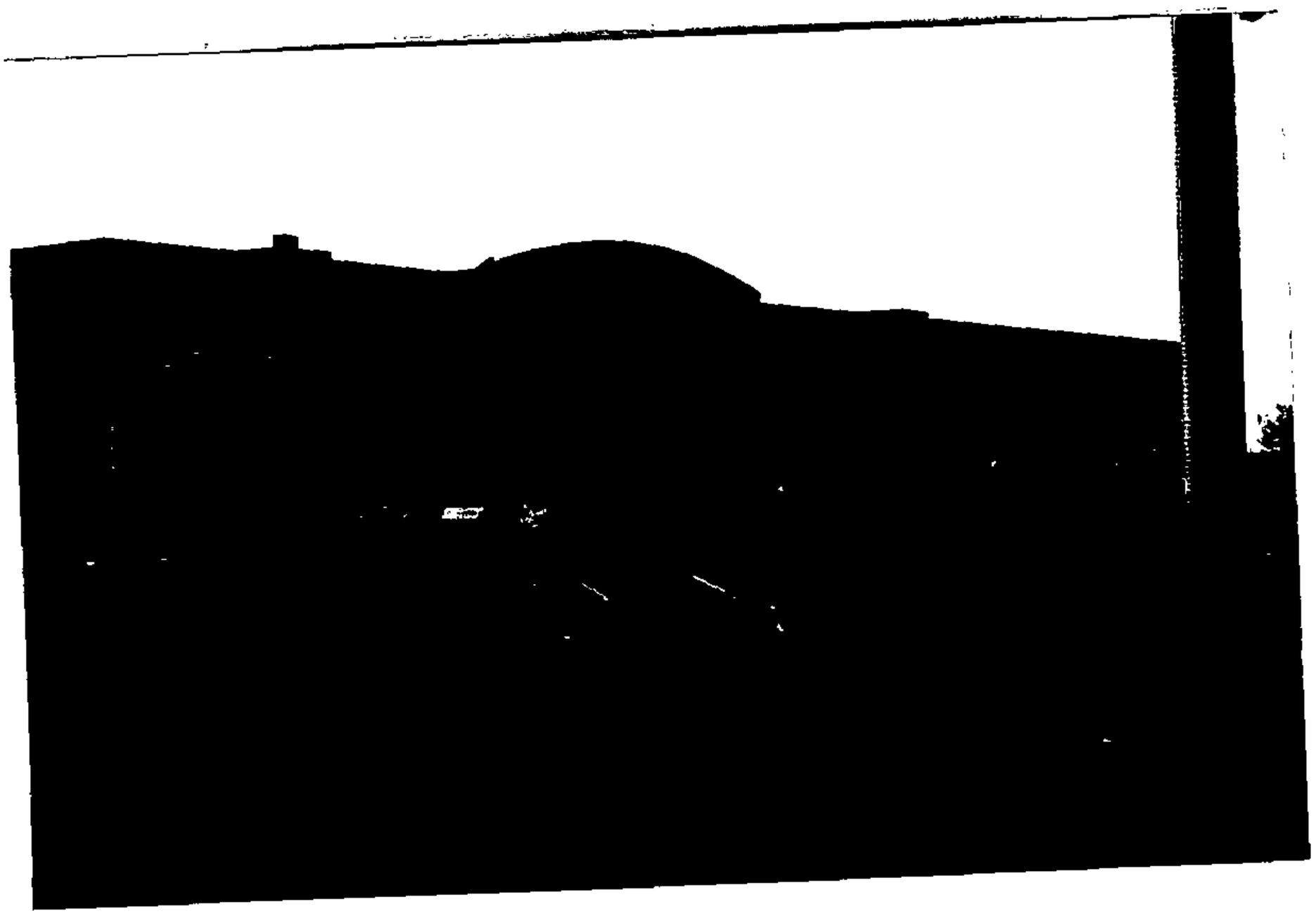
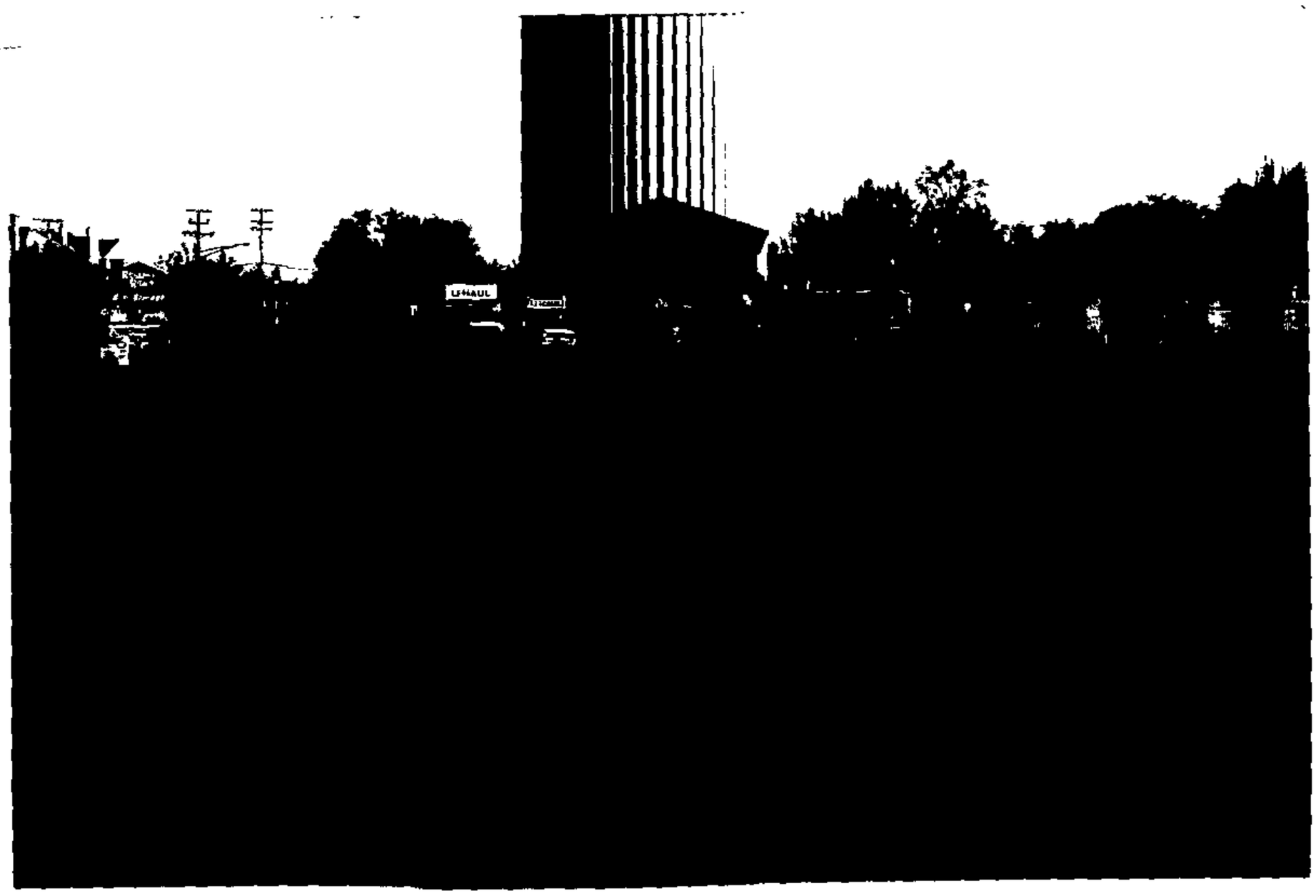
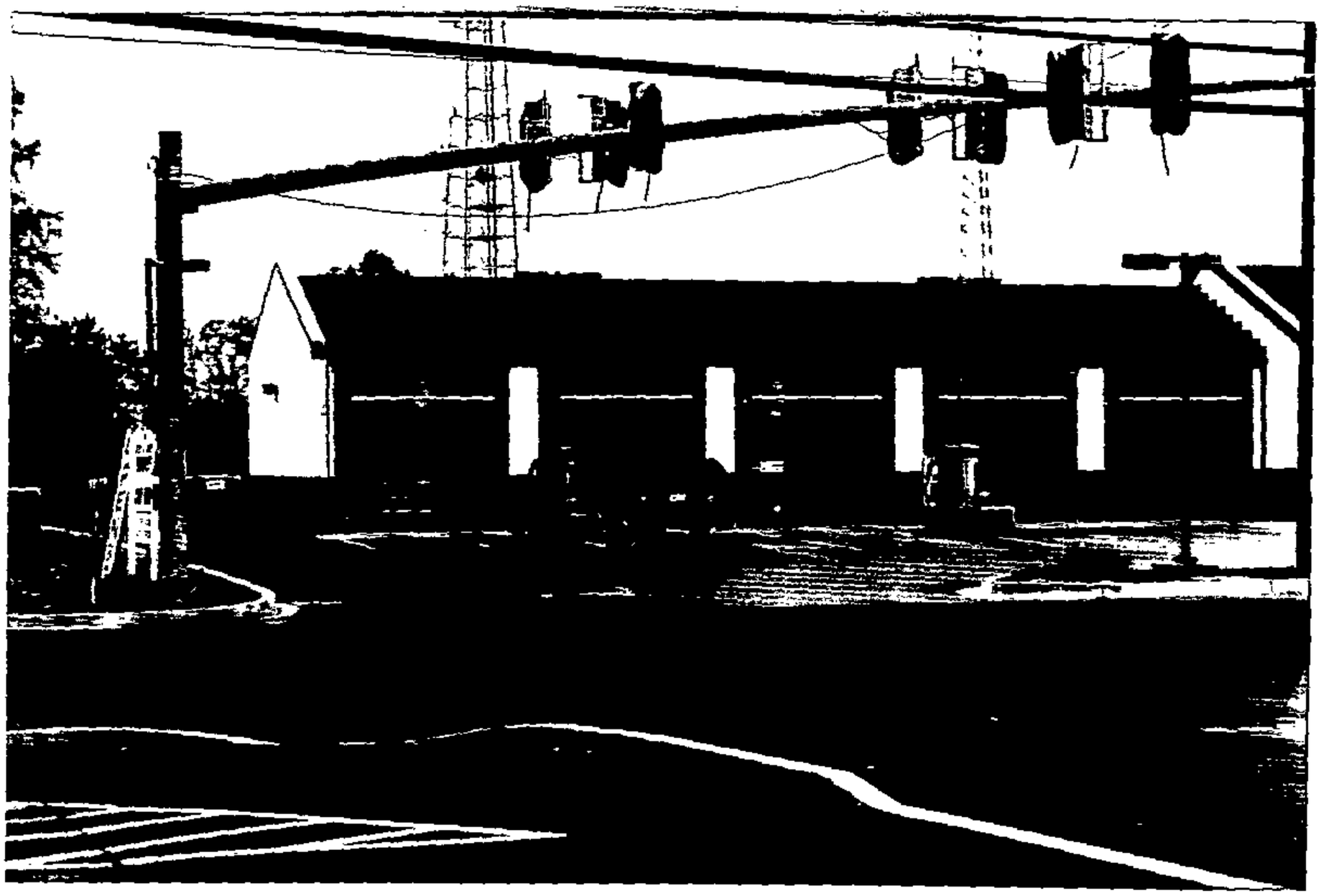


EX 2A-2F



EX
4A-48



EX 5A-3E

INTERIOR FRAGRANCE
SUPER VAC 3
SUPER VAC 3
SUPER VAC 3

Pet. Ex Nihilo (patents)
2705 Polling Road.
Lehmark Inc.
Case No.: 06-075-X

Unofficial Petitioner Exhibits

Board's Rutherford Burger Investments
06-075-X

Pet 1 Site Plan Redlined

Pet 2 Site Plan - Clean unmarked copy

Pet 3 Covenants for Bus. Park

Pet 4 Dept. Planning Comments

Pet 5 Mark Resume

Pet 6 Zoning Map

Pet 7 A-E Photos - Series

Pet 8 A-H Photos

Pet 9 Graphic of easements

Pet 10 A-C Photos

Pet 11 Landscape Plan

Pet 12 2 Reg 253

Pet. 13 2 Reg Sect. 419

Pet 14 Definitions

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CBA

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (this "**Declaration**") is made as of the 13th day of MAY, 2002, among **ROLLING ROAD LLC**, a Maryland limited liability company **ROLLING ROAD MINIS LLC**, a Maryland limited liability company, **RUTHERFORD TIGER PROPERTIES LLC**, a Maryland limited liability company, **RUTHERFORD BURGER INVESTMENTS LLC**, a Maryland limited liability company, and **RUTHERFORD WINDSOR LLC**, a Maryland limited liability company (collectively, the "**Declarant**").

RECITALS

The Declarant are the owners of certain parcels of land located in Baltimore County containing approximately 19.5 acres into five (5) parcels of land designated as Lot B-5, Lot B-6, Lot B-7, Lot B-8, and Lot B-9 (each a "**Lot**", and collectively, the "**Property**"), as shown on the Subdivision Plat dated September 15, 1999, entitled "A Resubdivision of Lot B-3 and Lot B-4, R.B.C. South," and recorded among the Land Records of Baltimore County on October 27, 1999, in Plat Book S.M. 72, at page 22; a copy of which is attached hereto as **Exhibit A** (the "**Plat**"). Declarant wishes to create certain easements, covenants and restrictions in order to provide for the orderly, integrated and efficient development and operation of the Property.

DECLARATIONS

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, hypothecated, conveyed, leased, used, occupied and improved subject to the easements, covenants and restrictions hereinafter set forth:

1. **Definitions**. As used in the provisions of this Declaration, the following terms shall have the meanings ascribed to them in this Section 1:

"**Center Roadway Easement Area**" means the area identified as such on **Exhibit B** attached hereto.

"**Construction Notice**" has the meaning given it in Section 3.2 below.

"**Default Rate**" means a rate of interest equal to the lesser of (a) four percent in excess of the prime rate as announced from time to time in the "Money Rates" section of the Wall Street Journal, or, if none, then four percent in excess of the prime rate as announced from time to time by the then largest commercial bank in the United States of America (as determined by total assets held) and (b) the maximum rate permitted by law.

"**Easement(s)**" means any one or more of the easements set forth in this Declaration.

"**Maintenance**" means the maintenance, repair, and replacement of the subject matter.

"**Occupant**" means any Person entitled to the use and occupancy of any portion of a Parcel under any lease, sublease, license, concession, or other similar agreement, or the Owner of such Parcel if the Owner occupies the Parcel.

Pet #3

"**Owner(s)**" means one or more of the record owners of fee simple title to any of the Parcels or any portion of the Parcels. An Owner shall not include any Person who holds such interest as security for the payment of an obligation, including any mortgagee or trustee under a deed of trust.

"**Parcel**" means each legally subdivided Lot shown on the Plat and any other legally subdivided lots which may be subsequently created from the land included within the Property.

"**Permittees**" means agents, employees, contractors, invitees, guests, tenants, subtenants, licensees, officers, directors, partners, managers, members, visitors and customers of an Owner, an Occupant, or the Declarant.

"**Person**" means an individual or a partnership, firm, association, corporation, trust, or any other form of business or government entity.

"**Plat**" has the meaning given to it above.

"**Pro Rata Share**" has the meaning given to it in Section 4.3.3 below.

"**Roadway(s)**" means either, or both, as applicable, of the areas designated as "**Center Roadway Easement Area**" or "**South Roadway Easement Area**" on **Exhibit B**.

"**Roadway Improvements**" means all improvements to, in, on, under, and over either, or both, as applicable, of the Roadways, including roadways, walkways, sidewalks, curbs, gutters, and landscaping.

"**Sanitary Sewer Easement Area**" means the area identified as such on **Exhibit B** attached hereto.

"**South Roadway Easement Area**" means the area identified as such on **Exhibit B**.

"**SS Pro Rata Share**" has the meaning given to it in Section 4.4.3 below.

"**SS System**" has the meaning given to it in Section 2.4 below.

"**SWM System**" has the meaning given to it in Section 2.2 below.

"**SWM System Easement Area**" means the area identified as such on **Exhibit B** attached hereto.

"**Work**" has the meaning given to it in Section 3.1 below.

2. Easements.

2.1 Access Easements.

2.1.1 Center Roadway Access Easement. The Declarant grants and conveys to the Owners of Lots B-6, B-8 and B-9 only, for the benefit of such Owners and their respective Permittees, a perpetual, non-exclusive easement (the "**Center Roadway Access Easement**") for

pedestrian and vehicular traffic over and across the Center Roadway Easement Area for use in common by such Owners and their Permittees.

2.1.2 South Roadway Access Easement. The Declarant grants and conveys to the Owners of Lots B-6 and B-7 only, for the benefit of such Owners and their respective Permittees, a perpetual, non-exclusive easement (the **"South Roadway Access Easement"**) for pedestrian and vehicular traffic over and across the South Roadway Easement Area for use in common by such Owners and their Permittees.

2.1.3 Cross Easements. The Declarant grants and conveys to the Owners of Lots B-7 and B-8 only, for the benefit of such Owners and their respective Permittees, perpetual, reciprocal and non-exclusive cross easements in, on, over, and across the entrances, exits, driveways, walks or service drives located from time to time on each of Lots B-7 and B-8, for ingress, egress, and access of vehicular and pedestrian traffic, including commercial vehicular traffic such as delivery trucks, upon, between or across each of such Lots, as applicable; provided, however, the employees of an Occupant of either Lot shall be permitted to park only on the Lot occupied by the employing Occupant.

2.2 Stormwater Management Easement. The Declarant grants and conveys to the Owners of Lots B-6, B-7, B-8 and B-9 only, for the benefit of such Owners and their respective Permittees, a perpetual, non-exclusive easement in, on and over the SWM System Easement Area shown on **Exhibit B** for use in common of a storm water management system (the **"SWM System"**) serving such Lots, which SWM System consists of an underground storm water management pond and the storm water pipe, manholes, inlets and other associated structures located on or within the aforesaid SWM System Easement Area. Such easement shall include the right to lay, construct, maintain and replace such pipes, sewers, lines, manholes, inlets, storm drains and other structures, both within and outside of the SWM System Easement Area, as may be reasonably necessary for such Owners to tie into the SWM System.

2.3 Utility Easement. The Declarant grants and conveys to the Owner of Lot B-6, for the benefit of such Owner and its respective Permittees, a perpetual, non-exclusive easement in, to and under the Roadways, for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation and removal of lines, cables, pipes, conduits or systems for utilities serving the grantee's Parcel, including, but not limited to, sanitary sewer, storm drains, water, gas, electrical, telephone, cable and communication lines, provided (i) the installing party bears the entire cost of installation and Maintenance; and (ii) such installation and Maintenance shall not materially interfere (other than during initial installation and Maintenance periods) with the use and enjoyment by any Occupant of any Easement or right granted hereunder. Such Owner shall have the right to relocate within the Roadway any such utility facility previously installed by such Owner.

2.4 Sanitary Sewer Easement. The Declarant grants and conveys to the Owners of Lots B-5, B-6, B-7, B-8 and B-9, for the benefit of such Owners and their respective Permittees, a perpetual, non-exclusive easement in, on and over the Sanitary Sewer Easement Area shown on **Exhibit B** for use in common of a sanitary sewer system (the **"SS System"**) serving such Lots, which SS System consists of underground sanitary sewer pipes, manholes, inlets and other associated structures located on or within the aforesaid Sanitary Sewer Easement Area.. Such easement shall include the right to lay, construct, maintain and replace such pipes, sewers, lines,

manholes, inlets and other structures, both within and outside of the Sanitary Sewer Easement Area, as may be reasonably necessary for such Owners to tie into the SS System.

2.5 Barriers and Traffic Control. No walls, fences or barriers of any sort or kind shall be constructed or maintained in any area covered by an Easement, or any portion thereof, which shall prevent or impair the use or exercise of any of such Easements, or the free access and movement including, without limitation, pedestrian and vehicular traffic between the various Parcels as provided for herein; provided, however, reasonable traffic controls as may be necessary to guide and control the orderly flow of traffic may be installed as long as the access driveways are not closed or blocked and the traffic circulation pattern as depicted on the Plat, is not changed or affected in any material way; unless the prior written approval of the Owners affected thereby is first obtained. Notwithstanding the foregoing: (a) detention basins and retention ponds, if any, may be fenced off as long as such fencing does not interfere with the intended use thereof; and (b) temporary closures by an Owner of any Easement area on its Parcel shall be permitted for the purpose of ensuring that such area is not deemed dedicated to the public, but only to the minimum extent necessary to prevent such dedication from occurring; nor shall any Roadway be closed without providing adequate temporary access.

3. Work.

3.1 Definition. "**Work**" means the performance of and the right to perform any construction, reconstruction, relocation, maintenance or repair necessary or incidental to the enjoyment or exercise of any Easement.

3.2 Construction Notice. At least thirty (30) days before the commencement of any Work, or, in the case of emergencies, such lesser time as may be reasonable under the circumstances, the Owner desiring to perform such Work shall deliver to each other Owner which may be affected by such contemplated Work: (i) a notice (the "**Construction Notice**") setting forth a reasonable description of the Work, including reasonable plans and specifications, and the approximate date that such Work will be commenced and completed; (ii) such other information as the Person receiving the Construction Notice may, within five (5) days thereafter, reasonably request in writing.

3.3 Standards. All Work shall be performed in accordance with the following provisions:

3.3.1 Workmanlike Manner. All Work shall be accomplished in a good and workmanlike manner and in accordance with all applicable laws, ordinances, codes, rules and regulations of all applicable governmental agencies and authorities.

3.3.2 Safety. Any Owner performing such Work shall take any and all safety measures reasonably required to protect persons and property from injury and damage, and shall erect adequate and proper construction barricades.

3.3.3 Restoration. Any ground which is disturbed or damaged as a result of any Work shall be restored as nearly as practicable to its prior condition.

3.3.4 Diligent Prosecution. From and after the commencement of any Work, the Owner shall diligently prosecute the Work to completion and promptly upon completion shall

remove all dirt, debris and equipment. All Roadway Improvements shall not materially interfere with the use, occupancy or enjoyment by any Owner of his Parcel or of the Roadway Easement of any Owner.

3.3.5 No Complete Blockage. In the event that in connection with any Work it is necessary to completely obstruct access to any Parcel or passage over either Roadway, such Work shall be accomplished during such times and using such methods as may be reasonable in order to minimize the duration of such obstruction.

3.4.6 Storage of Materials. The storage of materials and parking of construction vehicles and construction worker's vehicles shall occur only on the constructing party's Parcel unless allowed by an Owner on its Parcel.

3.4.7 Cleanliness. The Work shall be conducted so as to keep the Roadway and the Property reasonably clean and free of trash and building debris and, immediately upon completion of any Work, all trash and debris shall be removed.

4. Development, Operation and Maintenance.

4.1 Roadway Improvements and Maintenance. Rolling Road LLC shall be responsible, at its sole cost and expense, for the initial installation of the Roadway Improvements to both of the Roadways. Thereafter: (i) the Owner of Lot B-6 shall be responsible, at its sole cost and expense, for the Maintenance of the Roadway Improvements to the Center Roadway Easement Area; and (ii) the Owner of Lot B-7 shall be responsible, at its sole cost and expense (except as otherwise hereinafter provided), for the Maintenance of the Roadway Improvements to the South Roadway Easement Area. Notwithstanding the foregoing, the Owner of any Parcel shall be responsible for any cost or expense above normal installation or Maintenance costs and expenses resulting from such Owner's construction or other activities on its Parcel. Additionally, notwithstanding the foregoing, the Owner of Lot B-6 shall reimburse the Owner of Lot B-7 for ninety percent (90%) of the South Roadway Easement Area Maintenance costs incurred by the Owner of Lot B-7 from time to time. Such reimbursement shall be made by the Owner of Lot B-6 within thirty (30) days after receipt by the Owner of Lot B-6 of a statement setting forth the actual cost (excluding internal overhead and/or mark-up) of such Maintenance Costs, and a reasonable explanation of the nature of, and the necessity for, the Maintenance performed.

4.2 Parcel Development and Maintenance. Each Owner, at its sole cost and expense, shall supervise, operate, manage, repair, replace and maintain or cause to be maintained its Parcel and improvements thereon in a sightly, functional and safe condition in good repair, in compliance with all applicable governmental laws and the provisions of this Declaration, and all unimproved areas shall be regularly mowed and litter shall be regularly removed. The minimum standard of maintenance shall be comparable to the standard of maintenance followed in other first class retail or commercial developments of comparable size in Baltimore County. To the extent any Parcel is developed, such development shall occur in accordance with the same standard. The foregoing development and maintenance obligations shall include, but not be limited to the following:

4.2.1 Drive and Parking Areas. Except as otherwise provided in Section 4.1, Maintenance of all paved surfaces and curbs in a smooth and evenly covered condition including, without limitation, replacement of base, skin patch, resealing and resurfacing.

4.2.2 Debris and Refuse. Periodic removal of all papers, debris, filth, refuse, ice and snow, including regular cleaning and broom sweeping to the extent necessary to keep the non-building areas in a good, clean and orderly condition.

4.2.3 Non-Occupant Signs and Markers. Maintaining any appropriate directional, stop or handicapped parking signs; restriping parking lots and drive lanes as necessary to maintain parking space designation and traffic direction.

4.2.4 Lighting. Maintaining lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers. The parking areas shall be illuminated each day from dusk to at least one (1) hour past the normal business hours of the Occupant of the respective Parcel. However, any exterior building security lights shall be on from dusk until dawn.

4.2.5 Landscaping. Maintaining all landscape plantings, trees (to the extent feasible) and shrubs in an attractive and thriving condition, trimmed and weed-free; maintaining landscape planters, including those adjacent to exterior walls of buildings, and irrigation systems to satisfy governmental water allocation or emergency requirements.

4.2.6 Sidewalks. Maintaining all sidewalks, including those adjacent and contiguous to buildings located within the Parcels. Sidewalks shall be swept at appropriate intervals during such time as shall not interfere with the conduct of business or use.

4.2.7 Loading Docks. Each Owner shall maintain and repair, at its sole cost, in a clean, sightly and safe condition, any exterior shipping/receiving dock area, any truck ramp or truck parking area, and any refuse, compactor or dumpster area located on its Parcel.

4.3. Maintenance of the SWM System.

4.3.1 Initial Installation and Continuing Maintenance. Rolling Road LLC shall be responsible, at its sole cost and expense, for the initial installation of the SWM System. Notwithstanding the foregoing, the Owner of any Parcel shall be responsible for any cost or expense above normal installation costs and expenses resulting from such Owner's construction or other activities on its Parcel. The cost of the continuing Maintenance of the SWM System shall be responsibility of the Owners of Lots B-6, B-7, B-8 and B-9 only. The SWM System shall be maintained in good order and repair by the Owner of Lot B-7 in accordance with the standards set by Baltimore County (or other authority with jurisdiction over the SWM System) from time to time. Notwithstanding the foregoing, each Owner shall be solely responsible for the Maintenance of any tie-in or lateral lines running from the SWM System to such Owner's Lot, regardless of whether such tie-in or lateral lines are located on or off of such Owner's Lot.

4.3.2 Determination of Maintenance of the SWM System. The authorization for any Maintenance of the SWM System which would cost in excess of Twenty Thousand Dollars ($20,000.00) in any one instance shall be determined by the applicable Owners on the basis of simple majority vote in accordance with Subsection 4.3.3; provided, however, that Rolling Road LLC shall be entitled to perform any Work or Maintenance in connection with the initial installation without the consent or approval of any Owner. Notwithstanding the foregoing, no vote shall be required in order to authorize the Owner of Lot B-7 to perform any Maintenance:

(i) which would cost less than $20,000 in any one instance; or (ii) regardless of cost, which is mandated by Baltimore County (or other governmental authority with jurisdiction over the SWM System); or (iii) regardless of cost, which if not performed would with either the passage of time or giving of notice, or both, result in a violation of any law, rule, regulation or ordinance applicable to the SWM System.

4.3.3 Payment of Costs; Allocation of Votes. Each Owner identified below shall pay its share of the costs of Maintenance of the SWM System and shall be allocated votes in accordance with its pro rata share (herein, **"Pro Rata Share"**), which shall be determined by a fraction, the numerator of which is the gross acreage of that portion of each Parcel which utilizes the SWM System, and the denominator of which is the gross acreage of that portion of the Property which utilizes the SWM System, as follows:

		Pro Rata Share:	
Owner	Acreage	of Costs	of Votes
Lot B-6	1.60	31%	31
Lot B-7	1.71	33%	33
Lot B-8	1.09	21%	21
Lot B-9	0.75	15%	15
	Total:	100%	100

4.3.4 Payment of Expenses Generally. The Owner of Lot B-7 may submit to the other Owners an itemized statement (the **"SWM Expenses Statement"**), supported by copies of invoices, setting forth costs incurred with respect to the Maintenance of the SWM System, together with a reasonable explanation of the nature of such costs. Within thirty (30) days after receipt of such statement, the other responsible Owners shall remit their Pro Rata Share of such costs to the Owner of Lot B-7, but in no event shall the Owners be required to pay any costs incurred more than one (1) year prior to the date on which the SWM Expenses Statement is delivered to such Owners. The Owner of Lot B-7 shall thereafter promptly remit payment, together with its own Pro Rata Share, to the proper payee, if it has not already forwarded such payment in full.

4.3.5 Joinder. If reasonably requested to do so by an Owner, each Owner shall join in the execution of any applications, permits, licenses, public works agreement and other documents required to obtain any governmental approval necessary for the performance of any Maintenance of the SWM System, and shall pay its Pro Rata Share of the cost of same.

4.4. Maintenance of the SS System.

4.4.1 Initial Installation and Continuing Maintenance. Rolling Road LLC shall be responsible, at its sole cost and expense, for the initial installation of the SS System. Notwithstanding the foregoing, the Owner of any Parcel shall be responsible for any cost or expense above normal installation costs and expenses resulting from such Owner's construction or other activities on its Parcel. The cost of the continuing Maintenance of the SS System shall be responsibility of the Owners of Lots B-5, B-7, B-8 and B-9. The SS System shall be maintained in good order and repair by the Owner of Lot B-6 in accordance with the standards set by Baltimore County (or other authority with jurisdiction over the SS System) from time to

time. Notwithstanding the foregoing, each Owner shall be solely responsible for the Maintenance of any tie-in or lateral lines running from the SS System to such Owner's Lot, regardless of whether such tie-in or lateral lines are located on or off of such Owner's Lot.

4.4.2 Determination of Maintenance of the SS System. The authorization for any Maintenance of the SS System which would cost in excess of Twenty Thousand Dollars ($20,000.00) in any one instance shall be determined by the applicable Owners on the basis of simple majority vote in accordance with Subsection 4.4.3; provided, however, that Rolling Road LLC shall be entitled to perform any Work or Maintenance in connection with the initial installation without the consent or approval of any Owner. Notwithstanding the foregoing, no vote shall be required in order to authorize the Owner of Lot B-6 to perform any Maintenance: (i) which would cost less than $20,000 in any one instance; or (ii) regardless of cost, which is mandated by Baltimore County (or other governmental authority with jurisdiction over the SS System); or (iii) regardless of cost, which if not performed would with either the passage of time or giving of notice, or both, result in a violation of any law, rule, regulation or ordinance applicable to the SS System.

4.4.3 Payment of Costs; Allocation of Votes. Each Owner identified below shall pay its share of the costs of Maintenance of the SS System and shall be allocated votes in accordance with its pro rata share (herein, "**SS Pro Rata Share**"), which shall be determined by a fraction, the numerator of which is the gross acreage of that portion of each Parcel which utilizes the SS System, and the denominator of which is the gross acreage of that portion of the Property which utilizes the SS System, as follows:

	SS Pro Rata Share:	
Owner	of Costs	of Votes
Lot B-5	25%	25%
Lot B-7	25%	25%
Lot B-8	25%	25%
Lot B-9	25%	25%
Total:	100%	100%

4.4.4 Payment of Expenses Generally. The Owner of Lot B-6 may submit to the other Owners an itemized statement (the "**SS Expenses Statement**"), supported by copies of invoices, setting forth costs incurred with respect to the Maintenance of the SS System, together with a reasonable explanation of the nature of such costs. Within thirty (30) days after receipt of such statement, the other responsible Owners shall remit their SS Pro Rata Share of such costs to the Owner of Lot B-6, but in no event shall the Owners be required to pay any costs incurred more than one (1) year prior to the date on which the SS Expenses Statement is delivered to such Owners. The Owner of Lot B-6 shall thereafter promptly remit payment, together with its own SS Pro Rata Share, to the proper payee, if it has not already forwarded such payment in full.

4.4.5 Joinder. If reasonably requested to do so by an Owner, each Owner shall join in the execution of any applications, permits, licenses, public works agreement and other documents required to obtain any governmental approval necessary for the performance of any Maintenance of the SS System, and shall pay its SS Pro Rata Share of the cost of same.

4.5 Negligence. Notwithstanding anything in this Agreement to the contrary, any damage to the Roadways, SWM System or SS System which is caused by the negligence, gross negligence or willful act of one or more of the Owners shall be promptly repaired at the sole cost and expense of such Owner or Owners.

5. Land Use; Permitted and Prohibited Uses.

5.1 Permitted Uses. Except as otherwise prohibited in this Declaration, the Parcels shall be used, if at all, only for lawful uses permitted under applicable zoning regulations, as the same may be changed from time to time.

5.2 Prohibited Uses. None of Lots B-7, B-8 or B-9 nor any portion thereof shall be used for (or as):

5.2.1 a bar, tavern, pub, nightclub or dance hall or disco in which less than sixty percent (60%) of its space or revenue is devoted to and derived from food service.

5.2.2 a billiard or bingo parlor (except incidental to the operation of a restaurant).

5.2.3 a flea market.

5.2.4 a massage parlor.

5.2.5 a funeral home.

5.2.6 a facility for the sale of paraphernalia for use with illicit drugs.

5.2.7 a facility for the sale or display of pornographic material (as determined by community standards for the area in which the Property is located) (provided the foregoing shall not be deemed to prohibit or restrict the use of a Parcel for a bookstore other than an "adult bookstore" (as determined by community standards for the area in which the Property is located)).

5.2.8 an off-track betting parlor.

5.2.9 a carnival, amusement park or circus.

5.2.10 a facility for the sale of new or used trailers or mobile homes.

5.2.11 a facility for any use which is illegal or dangerous or constitutes a nuisance.

5.2.12 a banquet hall, auditorium or other place of public assembly; provided however a restaurant, hotel or motel shall be permitted so long as such hotel or motel is part of a national hotel or motel chain or franchise.

5.2.13 a facility for the sale or rental of used goods (including, without limitation, thrift shops, secondhand or consignment stores).

5.2.14 a business whose sole purpose is conducting auctions, fire or going-out-of-business sales, or conducting a job-lot, odd-lot or liquidation business.

5.2.15 an abortion clinic.

5.2.16 an agency or instrumentality of any government entity.

5.2.17 a collection agency, a check-cashing facility or food stamp distribution center.

6. Notices. Each notice, demand, request, consent, approval, disapproval, assessment, or designation required of or permitted to each Owner hereunder (each, a "**Notice**"), shall be in writing and shall be deemed to have been validly delivered and received (i) three (3) days after such Notice has been mailed by certified or registered mail, postage prepaid, return receipt requested or (ii) when delivered by hand with signed receipt therefor at the address set forth below or at any other address designated in writing by any Owner:

If to Owner of Lot B-5:	Rolling Road Minis LLC 9640 Deereco Road Timonium, Maryland 21093 Attention: Anthony E. Julio
If to Owner of Lot B-6:	Rolling Road LLC 9640 Deereco Road Timonium, Maryland 21093 Attention: Anthony E. Julio
If to Owner of Lot B-7:	Rutherford Tiger Properties 9640 Deereco Road Timonium, Maryland 21093 Attention: Anthony E. Julio
If to Owner of Lot B-8:	Rutherford Burger Investments LLC 9640 Deereco Road Timonium, Maryland 21093 Attention: Anthony E. Julio
If to Owner of Lot B-9:	Rutherford Windsor LLC 9640 Deereco Road Timonium, Maryland 21093 Attention: Anthony E. Julio

If to Declarant: To all Lot owners at the addresses listed above.

7. **Contract Lien**. Any amount which is: (a) required to be paid to one or more Owners or the Declarant by the terms of this Declaration; and (b) which is not paid within the time period provided herein; shall entitle the party entitled to payment to create and enforce a lien pursuant to and in accordance with the provisions of the Maryland Contract Lien Act (Section 14-201 et seq. of the Real Property Article of the Annotated Code of Maryland) against the Lot(s) of the non-paying party or parties.

8. **Remedies.**

8.1. Generally. Each Owner may proceed at law or in equity to enforce the provisions of this Agreement, or to prevent the occurrence or continuance of any violation of any provision of this Agreement. All costs and expenses of prosecuting any proceeding at law or in equity, including reasonable attorney's fees and expenses, shall be assessed in favor of the prevailing party as determined by the court.

8.2 Right To Take Action. If any Owner fails to perform any of its obligations when and as required hereunder, and such failure continues for thirty (30) days after written notice to the defaulting Owner, then any non-defaulting Owner, at its option, may thereafter perform the obligation in question. In such event, the defaulting Owner shall be liable for the cost of such performance plus interest thereon at the Default Rate. If the default is such that it cannot be cured within thirty (30) days, such thirty (30) day period shall be extended for such additional period as may be necessary, provided the defaulting Owner commences to cure within thirty (30) days and diligently pursues the cure to completion.

8.3. Interest. In the event any Owner fails to pay any sum of money required to be paid by it within the period set forth in this Agreement, such sum shall bear interest at the Default Rate from the date due until paid.

9. **[Reserved]**

10. **Captions**. All captions in this Agreement are for convenience of reference only and do not in any way define, limit, simplify or describe the scope of the provisions hereof and shall not be used to interpret the provisions of this Agreement.

11. **Covenants Run With Land**. The easements and covenants set forth herein shall run with and bind the Property and shall be binding upon and inure to the benefit of each Parcel and each Owner and their respective successors and assigns, and any other person having or acquiring any right, title or interest in the Property or any portion thereof and are imposed upon the Property as a covenant running with the land, in perpetuity.

12. **Indemnification**. Each Owner shall indemnify, defend and hold harmless each of the other Owners from and against all lawsuits, actions, claims, losses, damages, costs and expenses (including court costs and reasonable attorneys' fees) due to personal injury, illness, death of persons or destruction of property resulting from or arising out of or in any manner connected with (a) any use by the indemnifying party or its Permittees of the Easements, or (b) any Work by such indemnifying party or its Permittees.

13. **Assignment.**

13.1. Right to Assign. Declarant shall be entitled at any time to assign to any person or entity any or all of its right, title and interest hereunder, by an instrument which makes specific reference to this subsection, and is executed and delivered by the Declarant and such assignee and recorded among the Land Records of Baltimore County.

13.2. Use of Rights. Declarant may from time to time permit any right which it then holds under the provisions of this Declaration to be exercised on its behalf by any of its officers, directors, employees, agents, licensees or Permittees.

14. **Right to Relocate Improvements.** Any Owner of a burdened Parcel may, at its expense, relocate to another area within the Roadway any improvements installed in any Easement area on such Owner's Parcel by another Owner provided that: (a) notice of the proposed relocation, together with plans and specifications showing in reasonable detail all proposed work, shall be given to all Owners benefited by such easement at least seventy-five (75) days in advance of the start of construction; (b) a written easement substantially identical to the easement permitting such improvements is given to the benefited Owners; (c) the relocated improvements shall be substantially equivalent in terms of quality, capacity and utility; (d) such relocation does not materially and adversely affect the benefited Owners; and (e) all Work in connection therewith is prosecuted in accordance with the provisions of Section 3.

15. **Waiver.** Declarant shall not be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by Declarant in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.

16. **Arbitration.**

16.1. Selection of Arbitrator. In the event any Owner or Owners shall dispute any cost, calculation, charge, necessity to do Work, or assessment (collectively, a "**Dispute**") asserted against it or them by one or more Owners pursuant to any provision of this Declaration, including, then the disputing Owner or Owners may give written notice of the matters being disputed (herein, the "**Notice of Dispute**") to the other Owner or Owners involved. Such notice shall include an explanation in reasonable detail of the reasons for the dispute. The parties shall thereafter endeavor to resolve their dispute in good faith. If they are unable to resolve their dispute within ten (10) business days after the Notice of Dispute, then any party may refer the Dispute to arbitration by giving notice of arbitration to the other or others, which Notice shall include a reasonable statement of the issues or matters to be arbitrated ("**Notice of Arbitration**"). Each party shall, within seven (7) business days of the date of receipt of a Notice of Arbitration, designate in writing an engineer licensed to practice in the State of Maryland, and regularly practicing in Baltimore County or an adjacent county, and the engineers so designated shall within seven (7) business days select an arbitrator whom the engineers deem best qualified to resolve the dispute (including, as they deem appropriate, an engineer, attorney, accountant or other professional or a non-professional), who alone shall arbitrate the dispute (the "**Arbitrator**"). If any party fails to designate an engineer, then the engineer or engineers

designated shall alone select an Arbitrator with relevant experience and knowledge of the matters in dispute. If the engineers designated shall be unable to agree upon an Arbitrator within the period specified, then any party may request the director of the chapter of the American Arbitration Association with jurisdiction over disputes in Baltimore County to appoint an Arbitrator. The costs of the American Arbitration Association shall be divided equally among the parties.

16.2. Conduct of Arbitration. Within fifteen (15) business days after selection of the Arbitrator, each side may supply the Arbitrator with such documents, materials and other evidence supplied to the Arbitrator, or written arguments as they desire. Each party shall thereafter have an additional period of ten (10) business days to supply any rebuttal or other information they desire. The Arbitrator, in his sole discretion, may also request in writing specific information and/or a hearing and shall alone otherwise determine the conduct of the arbitration. Any information, documents, materials, and other evidence supplied to the Arbitrator, delivered or communicated during arbitration, shall be timely delivered or communicated to: (a) the opposing Owner(s); and (b) the Arbitrator.

16.3. Decision of Arbitrator; Attorney's Fees. The Arbitrator shall issue his or her written decision in prompt fashion and such decision shall be binding on the parties. In the event that the Arbitrator shall award any sums of money, the Arbitrator may also award that such monies be paid together with interest thereon from the date determined by the Arbitrator at the Default Rate. The Arbitrator may also award or assess such attorneys' fees and/or costs of arbitration, or portion thereof (including the Arbitrator's reasonable charges) as he or she may deem appropriate in his or her sole discretion.

16.4. Payment of Undisputed Assessment. The pendency of any dispute or arbitration shall not excuse any party from paying any portion of any Assessment which is not disputed.

17. No Merger. There shall be no merger of the easements or of any covenants, conditions or restrictions created and imposed by this Declaration solely by reason of the fact that the same person, firm or corporation may hold, own or acquire directly or indirectly the fee simple estate or other lesser estate in the Property or any individual Parcel or any part thereof. No such merger shall occur unless or until all of the persons, firms and corporations having any such fee simple interest in the Property, or any lesser estate, shall join in a written instrument effecting such merger and such written instrument is duly recorded among the Land Records of Baltimore County.

18. Amendments. This Declaration may be amended or supplemented only by an instrument in writing duly executed by all of the persons, firms and corporations owning 100% of the fee simple interest in the Property and duly recorded among the Land Records of Baltimore County. Any such amendment or supplementation shall not require the consent of Permittees.

19. Recitals. The Recitals are an integral part of this Declaration and are incorporated herein.

20. List of Exhibits.

A. Subdivision Plat

B. Drawing Showing Center Roadway Easement Area, South Roadway Easement Area, SWM System Easement Area and Sanitary Sewer Easement Area

IN WITNESS WHEREOF, the parties hereto have caused this Declaration to be executed under seal on the date first above written.

WITNESS: **DECLARANT:**

ROLLING ROAD LLC

By: _____ (SEAL)
Anthony E. Julio, General Manager

ROLLING ROAD MINIS LLC

By: _____ (SEAL)
Anthony E. Julio, General Manager

RUTHERFORD BURGER INVESTMENTS LLC

By: _____ (SEAL)
Anthony E. Julio, General Manager

RUTHERFORD TIGER PROPERTIES LLC

By: _____ (SEAL)
Anthony E. Julio, General Manager

RUTHERFORD WINDSOR LLC

By: _____ (SEAL)
Anthony E. Julio, General Manager

STATE OF Maryland)
) to wit:
COUNTY OF Baltimore)

I HEREBY CERTIFY that on this 13th day of May, 2002 before me, the subscriber, a Notary Public for the State aforesaid, personally appeared Anthony E. Julio, who acknowledged himself to be the general manager of **ROLLING ROAD LLC**, a Maryland limited liability company, and that he, as such general manager, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of said corporation.

IN WITNESS WHEREOF, I have hereunder set my hand and Notarial Seal.

Cynthia T. Blachowicz
Notary Public

My Commission Expires:
01-01-03

CYNTHIA T. BLACHOWICZ NOTARY PUBLIC BALTIMORE COUNTY, MARYLAND

119812.8/1471-28
05/08/02

STATE OF Maryland)
) to wit:
COUNTY OF Baltimore)

I HEREBY CERTIFY that on this 13th day of May, 2002 before me, the subscriber, a Notary Public for the State aforesaid, personally appeared Anthony E. Julio, who acknowledged himself to be the general manager of **ROLLING ROAD MINIS LLC**, a Maryland limited liability company, and that he, as such general manager, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of said corporation.

IN WITNESS WHEREOF, I have hereunder set my hand and Notarial Seal.

Cynthia T. Blachowicz
Notary Public

My Commission Expires:
01-01-03

CYNTHIA T. BLACHOWICZ NOTARY PUBLIC BALTIMORE COUNTY, MARYLAND

STATE OF Maryland)
) to wit:
COUNTY OF Baltimore)

I HEREBY CERTIFY that on this 13th day of May, 2002 before me, the subscriber, a Notary Public for the State aforesaid, personally appeared Anthony E. Julio, who acknowledged himself to be the general manager of **RUTHERFORD BURGER INVESTMENTS LLC**, a Maryland limited liability company, and that he, as such general manager, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of said corporation.

IN WITNESS WHEREOF, I have hereunder set my hand and Notarial Seal.

Cynthia T. Blachowicz
Notary Public

My Commission Expires:
01-01-03

CYNTHIA T. BLACHOWICZ NOTARY PUBLIC BALTIMORE COUNTY, MARYLAND

STATE OF Maryland)
) to wit:
COUNTY OF Baltimore)

I HEREBY CERTIFY that on this 13th day of May, 2002 before me, the subscriber, a Notary Public for the State aforesaid, personally appeared Anthony E. Julio, who acknowledged himself to be the general manager of **RUTHERFORD TIGER PROPERTIES LLC**, a Maryland limited liability company, and that he, as such general manager, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of said corporation.

IN WITNESS WHEREOF, I have hereunder set my hand and Notarial Seal.

Cynthia T. Blachowicz
Notary Public

CYNTHIA T. BLACHOWICZ NOTARY PUBLIC BALTIMORE COUNTY, MARYLAND

My Commission Expires:
01-01-03

STATE OF Maryland)
) to wit:
COUNTY OF Baltimore)

I HEREBY CERTIFY that on this 13th day of May, 2002 before me, the subscriber, a Notary Public for the State aforesaid, personally appeared Anthony E. Julio, who acknowledged himself to be the general manager of **RUTHERFORD WINDSOR LLC**, a Maryland limited liability company, and that he, as such general manager, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of said corporation.

IN WITNESS WHEREOF, I have hereunder set my hand and Notarial Seal.

Cynthia T. Blachowicz
Notary Public

CYNTHIA T. BLACHOWICZ NOTARY PUBLIC BALTIMORE COUNTY, MARYLAND

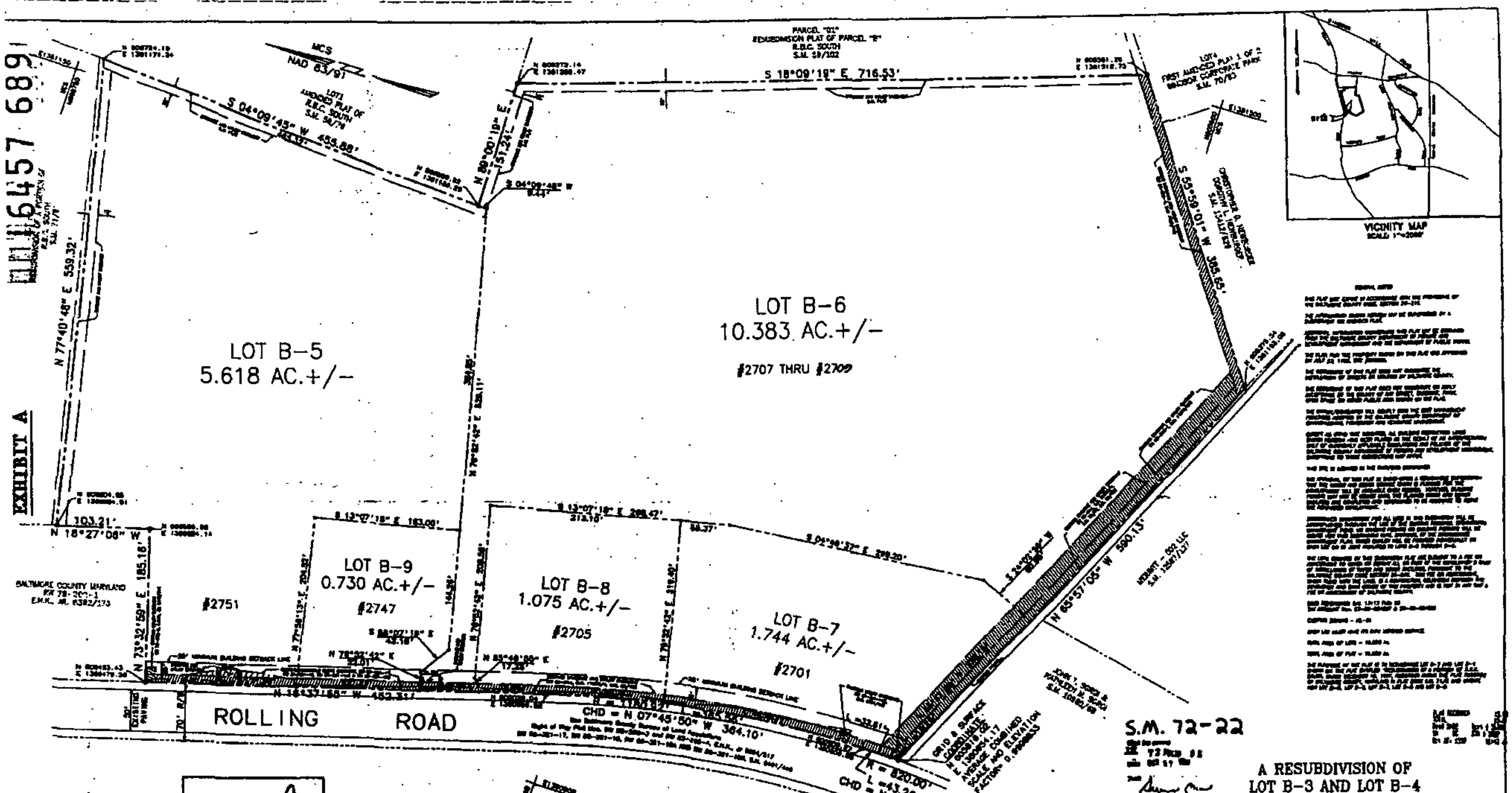
My Commission Expires:
01-01-03

119812.8/1471-28
05/08/02

CERTIFICATION

This instrument was prepared by or under the supervision of an attorney authorized to practice before the Court of Appeals of Maryland.

Robert P. Legg, Attorney



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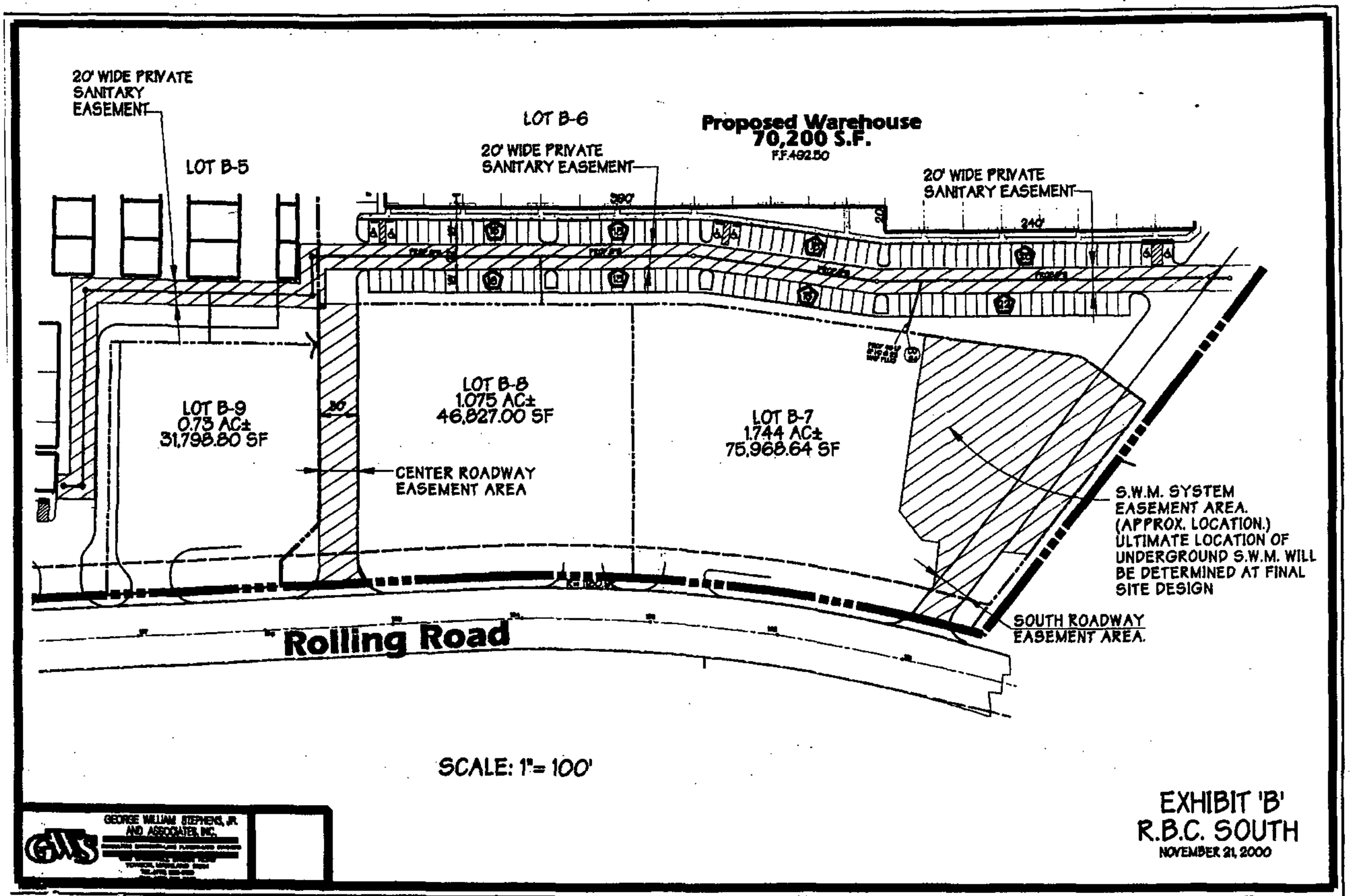

..\cad\micro\c126exhibit_b.gws Nov. 22, 2000 11:44:14

JOINDER BY TRUSTEE

See Indemnity Deed of Trust, dated October 27, 1999, from the Declarant (for the benefit of First Union National Bank of Maryland), and recorded among the Land Records of Baltimore County, Maryland, in Liber 14119, folio 113. The undersigned, TRSTE, Inc., Trustee, joins herein to assent to the terms and provisions of this Declaration of Easements, Covenants and Restrictions and assents to subordinate the lien of said Indemnity Deed of Trust to the legal operation and effect of the terms, covenants and restrictions contained in said Declaration.

Attest: TRUSTEE:

TRSTE, Inc., a Virginia corporation

By: Thomas A. Kashynski (SEAL), Vice President

STATE OF ~~MARYLAND~~ Virginia, ~~CITY~~/COUNTY OF Fairfax, to wit:

I HEREBY CERTIFY, that on this 24th day of May, in the year 2002, before me, the subscriber, a Notary Public, personally appeared Thomas A. Kashynski, who acknowledged himself~~/herself~~ to be the Vice President of TRSTE, Inc., a Virginia corporation, Trustee, and that he/~~she~~ as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing in my presence the name of the corporation as Trustee by himself/herself as such officer.

AS WITNESS, my hand and Notarial Seal.

Notary Public

my commission expires: 3/31/05

167643
1471.28

CBA
Pet 4

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: August 30, 2005

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

SUBJECT: 2705 Rolling Road

INFORMATION:

Item Number: 6-075

Petitioner: Stemark Inc. / Mark Ogrysko

Zoning: ML-IM

Requested Action: Special Exception

SUMMARY OF RECOMMENDATIONS:
The Office of Planning does not oppose the petitioner's request to permit a carwash in the ML-IM zone provided the following conditions are met:

1. Provide a landscape plan to include street trees along Rolling Road to the limits of the tract boundary of the subject property.
2. Submit a lighting plan to show lighting that will not conflict with adjacent residential uses. Lighting plan should include the locations and details of the proposed lighting and a computerized lighting design with point-by-point calculations that conforms to the *Illuminating Engineering Society of North America* (IESNA) standards, for review and approval by The Office of Planning and Avery Harden, Baltimore County Landscape Architect, in conjunction with the Final Landscape Plan.
3. Submit sign detail and building elevations to the Office of Planning for approval prior to building permit. The proposed building should be compatible with existing surrounding residential buildings.

For further information concerning the matters stated here in, please contact Dave Green at 410-887-3480.

Prepared by: Curtis M Murray

Division Chief: Lynn Lanham
AFK/LL: CM

Pet #6

W:\DEVREV\ZAC\6-075.doc

Pet 5
CBA

WILLIAM P. MONK **RESUME**

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110 West Road, Suite 245
Towson, Maryland 21204
(410) 821-1690
(410) 821-1748 (fax)
email: wmonk@mragta.com

PROFESSIONAL EMPLOYMENT:

MORRIS & RITCHIE ASSOCIATES, INC.
Towson, Maryland

Associate with consulting firm which provides civil, sanitary, structural and geotechnical engineering, architecture and landscape architecture, site and land planning, land surveying, and environmental consulting throughout the Mid-Atlantic Region.
August 2000 - Present

WILLIAM P. MONK, INC.
ENGINEERS • PLANNERS
Maryland, Delaware
Virginia, New Jersey
Pennsylvania and
North Carolina

Consultant to commercial and residential land developers, national and regional companies. Services include: civil engineering, site planning, landscape design, zoning consultation, government and community liaison services, expert witness testimony, golf course community master planning and golf course routing design.
June 1980 – August 2000

MID ATLANTIC PROPERTIES, INC.
Hunt Valley, Maryland

Commercial and industrial real estate brokers.
December 1987 – January 1991

NATIONAL HOMES CORPORATION: OFFICE PARKS DIVISION
Layfayette, Indiana

Regional Sales Manager – Mid Atlantic Region (NJ, Eastern, PA, DE, MD, DC, VA): provide design/planning, marketing, and project feasibility consulting services to developers involved in suburban office parks.
December 1983 – June 1986

THEODORE EMBER & COMPANY
Baltimore, Maryland

Commercial and industrial real estate brokers, emphasis on commercial pad site development, with national corporations.
January 1983 – November 1987

Pet #7

GENERAL AMERICAN REAL ESTATE AND DEVELOPMENT CORPORATION Ellicott City, Maryland	Commercial and industrial real estate brokers. April 1982 – December 1982
YORK ROAD PLANNING AREA COMMITTEE, INC. Baltimore, Maryland	Assistant director for private, non-profit community planning and re-development corporation, designated as national pilot program for neighborhood commercial revitalization. April 1977 – June 1980
ANNE ARUNDEL COUNTY OFFICE OF PLANNING & ZONING Annapolis, Maryland	Site planner for county, reviewed all subdivision proposals, coordinated county subdivision review process encompassing 17 agencies. September 1976 – March 1977
RTKL ASSOC., INC. ARCHITECTS/PLANNERS ENGINNERS Baltimore, Maryland	Project planner – projects include: Federal Government funded pedestrian system study, downtown pedestrian mall research, CBD study for Rochester, NY. September 1975 – April 1976

ORGANIZATIONS:

Mayor's Transition Committee for Economic Development
Mayor Martin O'Malley, City of Baltimore - 1999 – 2000

Towson Development Corporation - President - 1998 – 2000
- Board of Directors - 1994 – 1998

National Golf Association – Member

American Planning Association - Member

Mayor's Task Force – Oriole Park at Camden Yard Stadium Committee - 1987 – 1993

Citizens Planning and Housing Association, Baltimore, Maryland, Board of Governors, Chairman Downtown Development Committee - 1985 – 1986

Stone Oaks Condominium Association – President - 1986 - 1987

Chinquapin Hollow Community Association – President - 1978 - 1980

~ NATIONAL AND REGIONAL CLIENTS ~

During the past 20 years, **William Monk, Inc.** has prepared over 2,600 feasibility studies and development plans for commercial developers, as well as national and regional companies. This includes: office buildings, shopping centers, free-standing commercial uses, industrial warehouses, office parks, and mixed use developments. A partial list of national and regional companies includes the following:

CONVENIENCE STORES

7-Eleven Food Stores
High's Food Stores
Wawa Food Stores
Paceway Convenience Stores
Dash-In Food Stores
6-12 Convenience Food Marts
X-Tra Mart

AUTOMOTIVE SERVICE

Precision Tune
Mr. Transmission
Pit Stop, Inc.
Windshields of America
Grease Monkey
Econo Lube 'N' Tune
Midas Muffler
3 RiversGlass
Jiffy Lube
Mr. Tire
Kimmel Tire
Midas Muffler
Grease Monkey
Salvo Auto Parts
National Tire Warehouse
Western Auto
Parts America
NTW Automotive

AUTOMOTIVE-GASOLINE

BP/Amoco Oil Co.
Arco Petroleum
Gulf Oil Company
Steuart/Agip
Shell Oil Company
Southern Maryland Oil Co.
Sunoco
Texaco/Star Enterprise
Eastern Petroleum
Quarles Petroleum, Inc.
Carroll Independent Fuel
Ewing Oil Company
Ocean Petroleum Co.

RESTAURANTS

Dunkin Donuts
Pizza Hut
Taco Bell
Hot-N-Now
Big Boys
Roy Rogers Restaurants
Checkers
Church's Fried Chicken
Hardee's
Burger King
Golden Corral
Kentucky Fried Chicken
Mr. Donut
Friendly's Restaurants
Chili's Restaurants
Subway Sub Shops
Red Hot n' Blue
McDonald's Corporation
All-In-One (TacoBell, Pizza Hut, KFC)
East Side Marios
Chevys Mexican Restaurants
California Pizza Kitchen
Fuddruckers
Sweet Pea Cafe
Old Country Buffet
Cracker Barrel
Rita's Water Ice
Krispy Kreme
Wendy's

MISCELLANEOUS-COMMERCIAL

Rite Aid
K-Mart
Duron Paints
Nichol's Department Store
Safeway Food Stores
Blockbusters Video
Pier One Imports
Price Warehouse
F&M Drug Stores
Roses Department Store
Town & Country Pontiac-Nissan
Klein's Supermarkets
C.J. Bonner Co.
Carteret Savings Bank
Penn Advertising
Universal Advertising
Giant Foods
Nextel Corporation
PNE Media
Enterprise Rent-A-Car
Koons Ford
ATI Communications, Inc.
Wal-Mart
Sam's Club
Hechingers
Bluecrest North Caterers
Musselman Chevrolet
Bell Atlantic
Luby Chevrolet
Sports Authority
Revco Drugs
CVS Drugs
Weis Markets
Lamar Advertising
Hollywood Video
Food Lion
Graul's Food Markets
Jeepers, Inc.

WILLIAM P. MONK
JURISDICTIONS WHERE WORK HAS BEEN PERFORMED

MARYLAND
Aberdeen
Annapolis*
Anne Arundel County
Baltimore*
Baltimore County*
Bel Air
Bowie
Charles County
Calvert County
Cambridge
Caroline County
Carroll County*
Cecil County
Centreville
Chesapeake Beach
College Park
Columbia
Easton
Ellicott City
Frederick
Frederick County*
Gaithersburg
Hagerstown
Hampstead
Harford County*
Havre de Grace
Howard County*
Kent County
Laurel
Montgomery County
Ocean City
Perryville
Prince George's County*
Queen Anne's Co.
Rockville
St. Charles Community*
St. Mary's County
St. Michael's
Salisbury
Talbot County
Washington County
Westminster

DELAWARE
Dover
Kent County
Milford
Newark
Rehobeth Beach
Sussex County

DISTRICT OF COLUMBIA

NEW JERSEY
Cherry Hill
Dover Township
Mountainside
Pequannock Township
Perth Amboy
Piscataway*
Wall Township*
Pompton Plains
Toms River

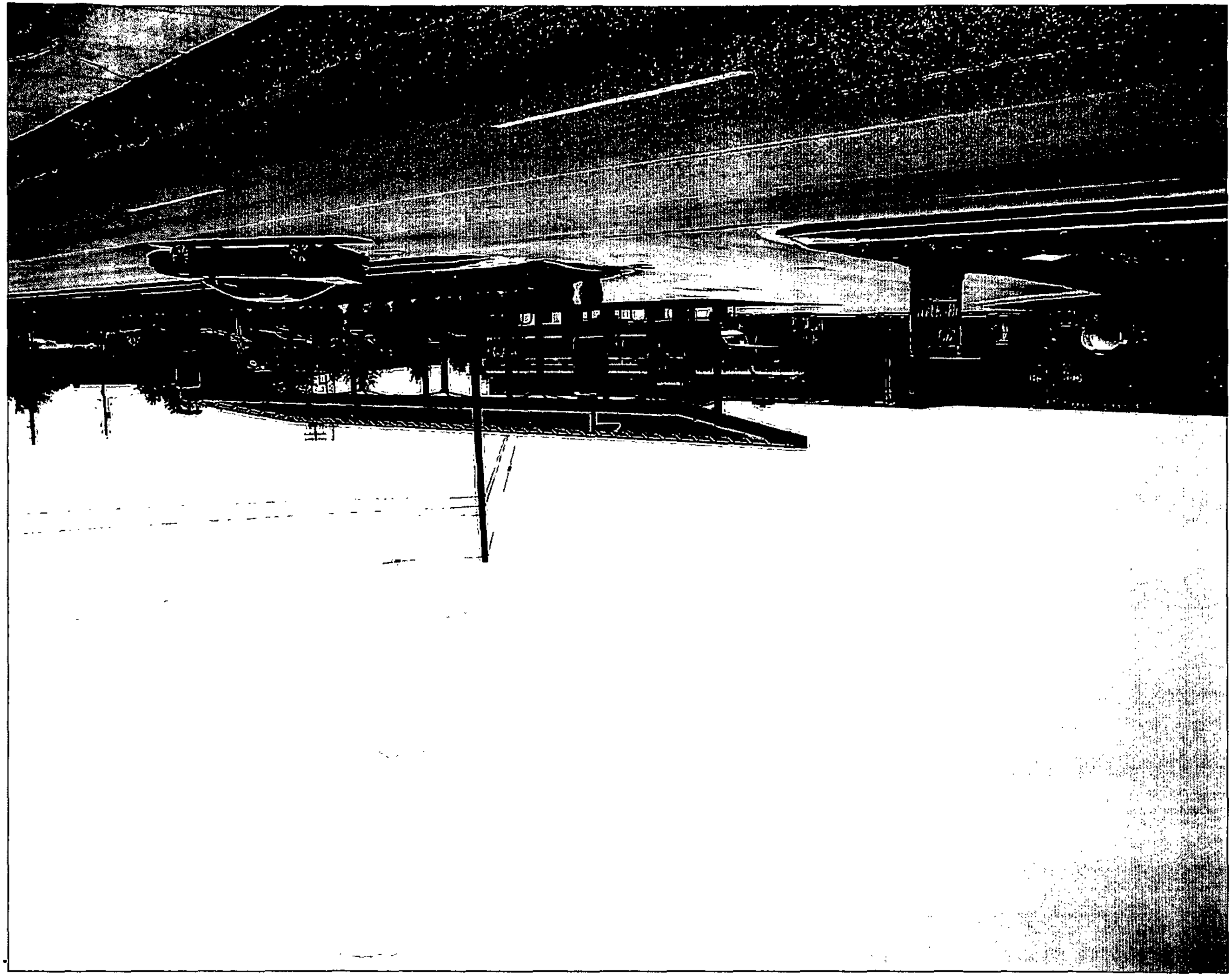
NORTH CAROLINA
Pinehurst

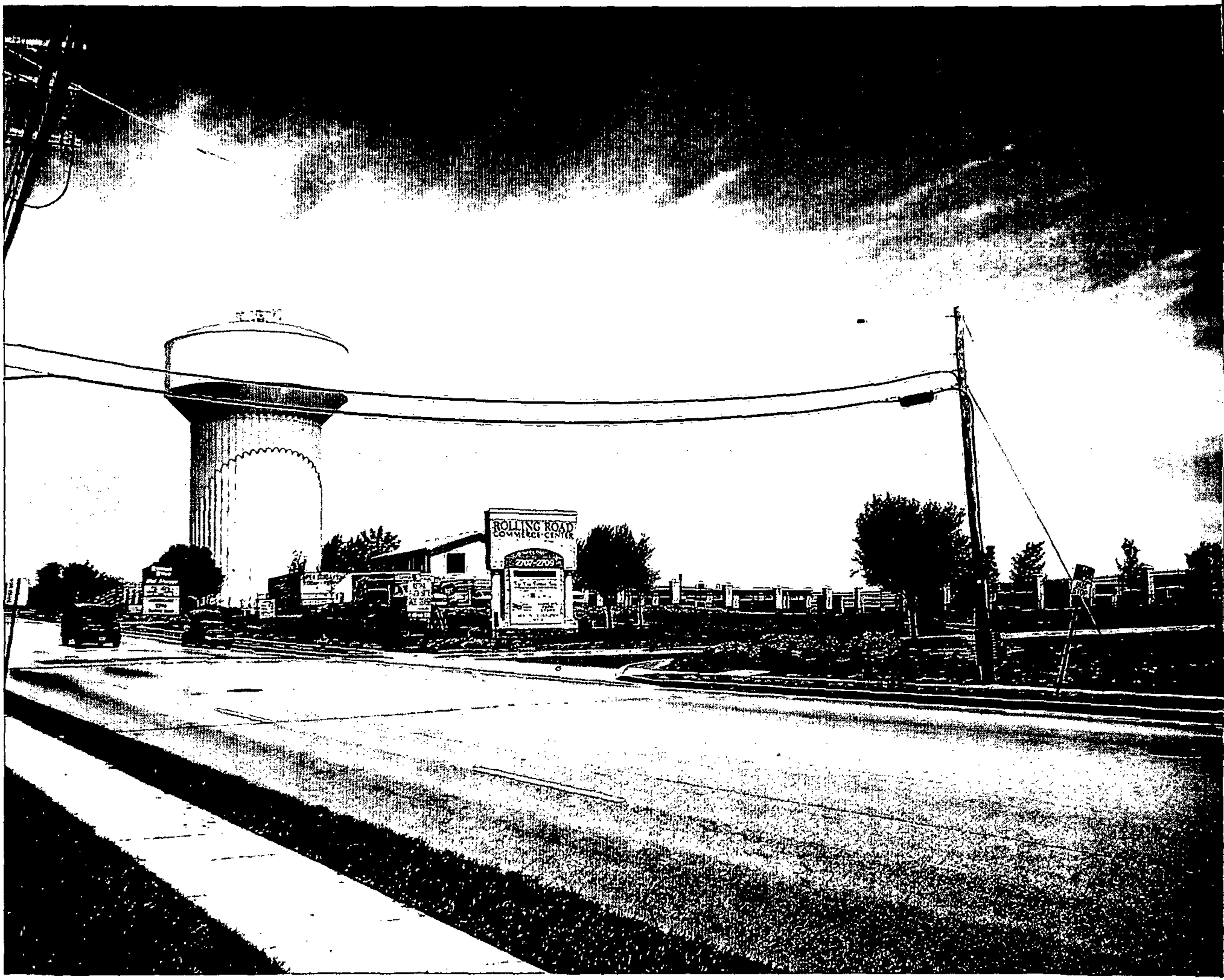
PENNSYLVANIA
Bucks County
Chester County
Montgomery County
Paoli
Shrewsbury

VIRGINIA
Alexandria
Arlington
Arlington County
Chesterfield County (Richmond area)
Fairfax City
Fairfax County
Falls Church
Fauquier County
Henrico County (Richmond area)
Herndon
Leesburg
Loudon County
Manassas
Manassas Park
McLean
Prince William County
Quantico
Richmond
Sterling
Vienna

WEST VIRGINIA
Martinsburg

***EXPERT WITNESS**

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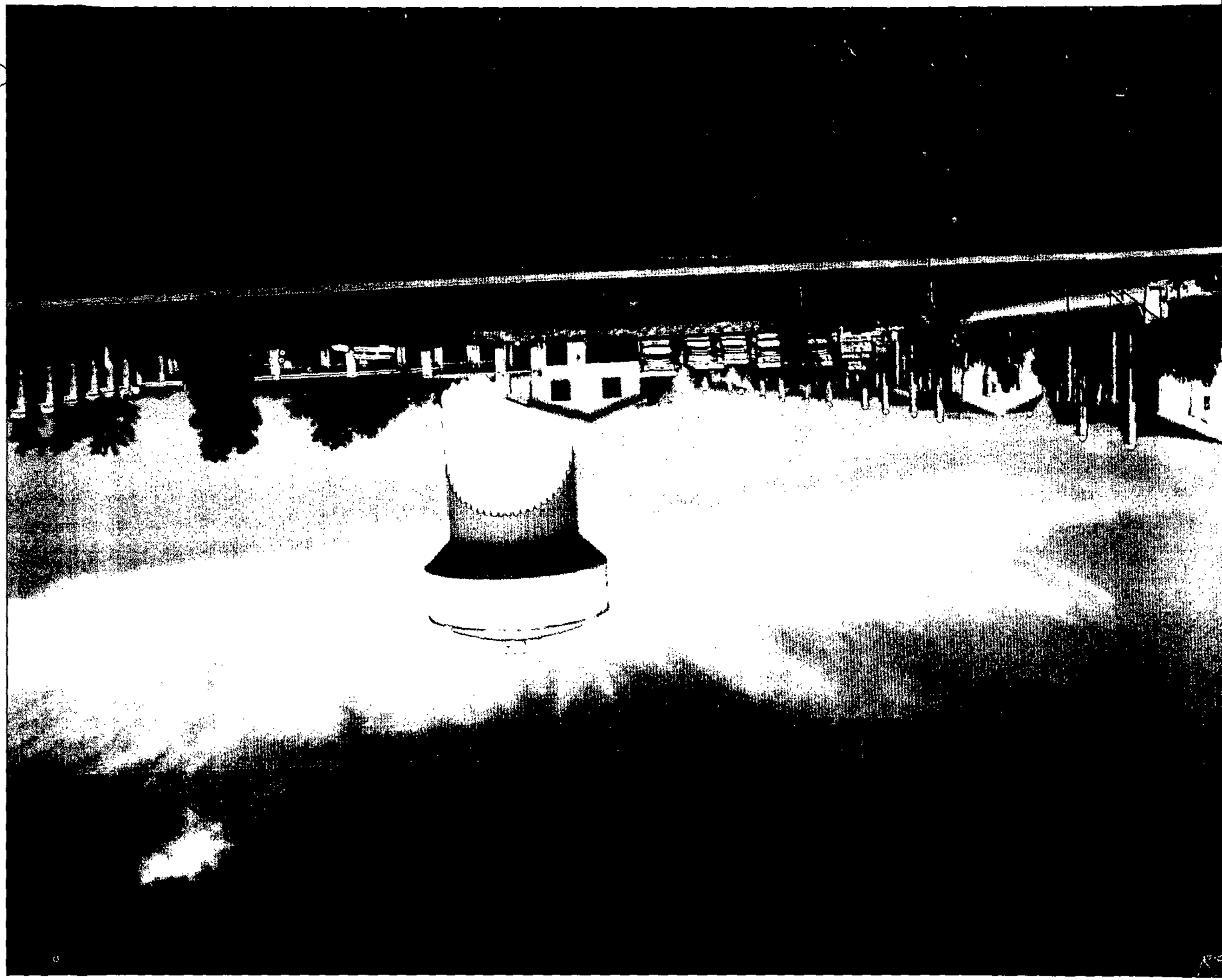
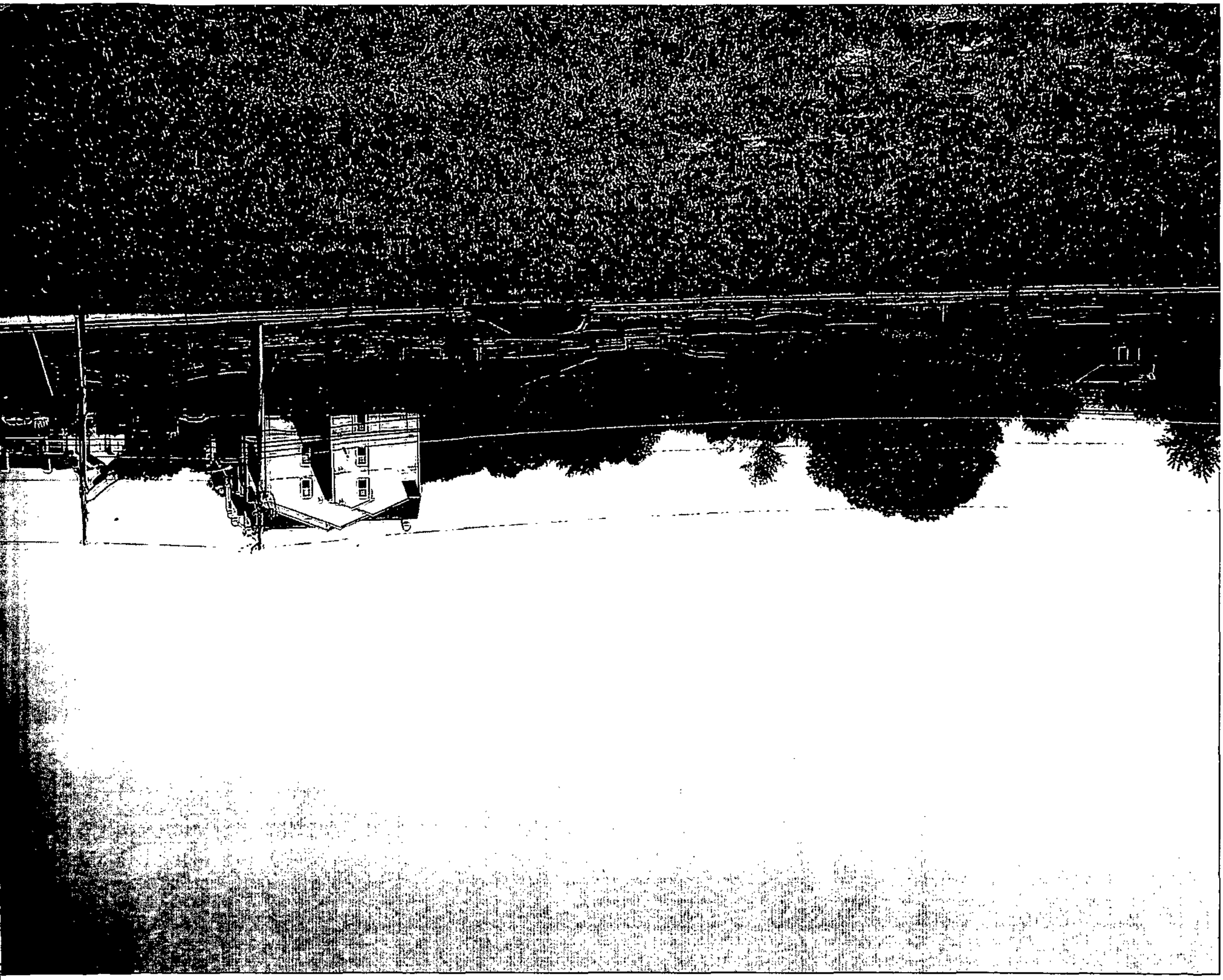
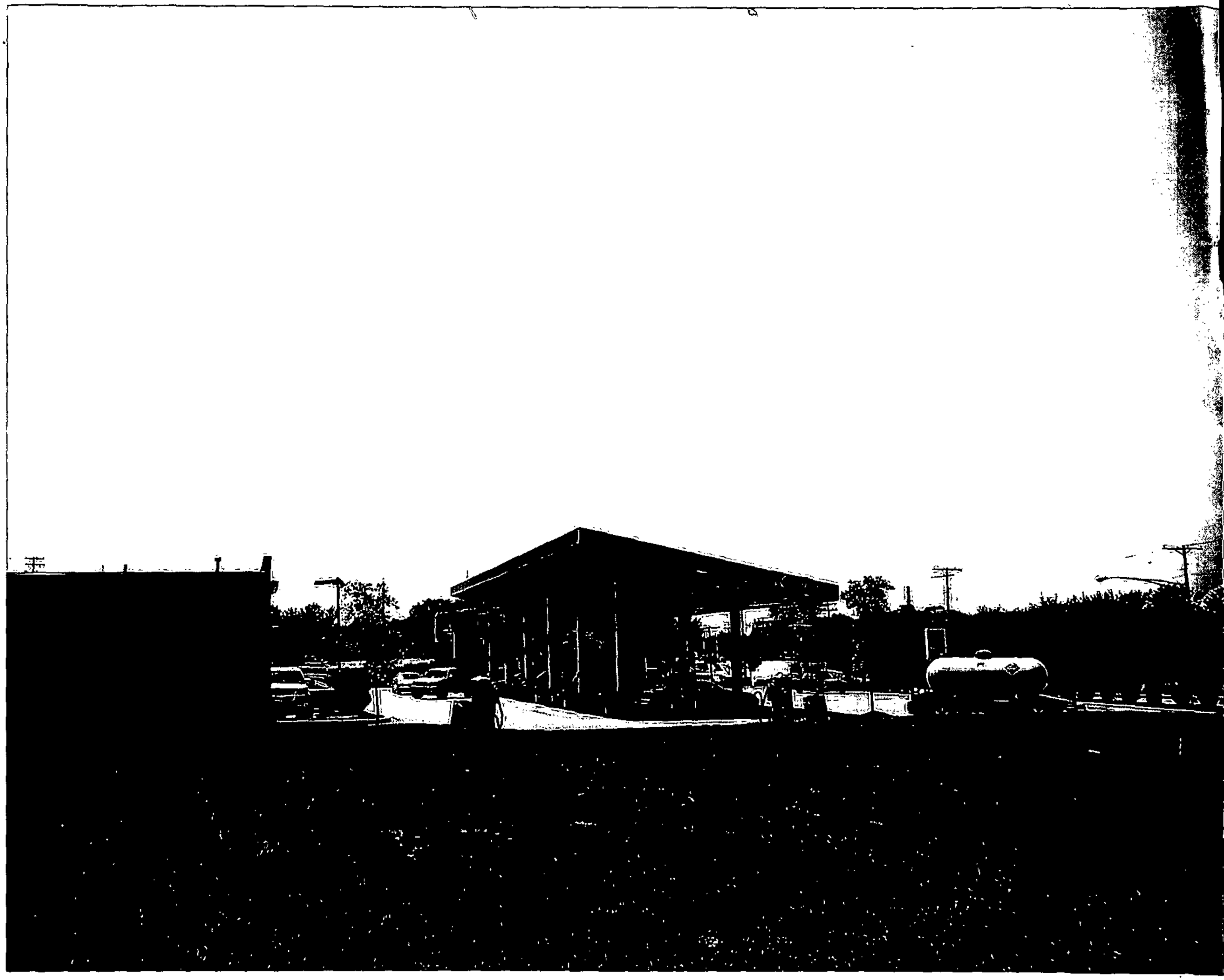
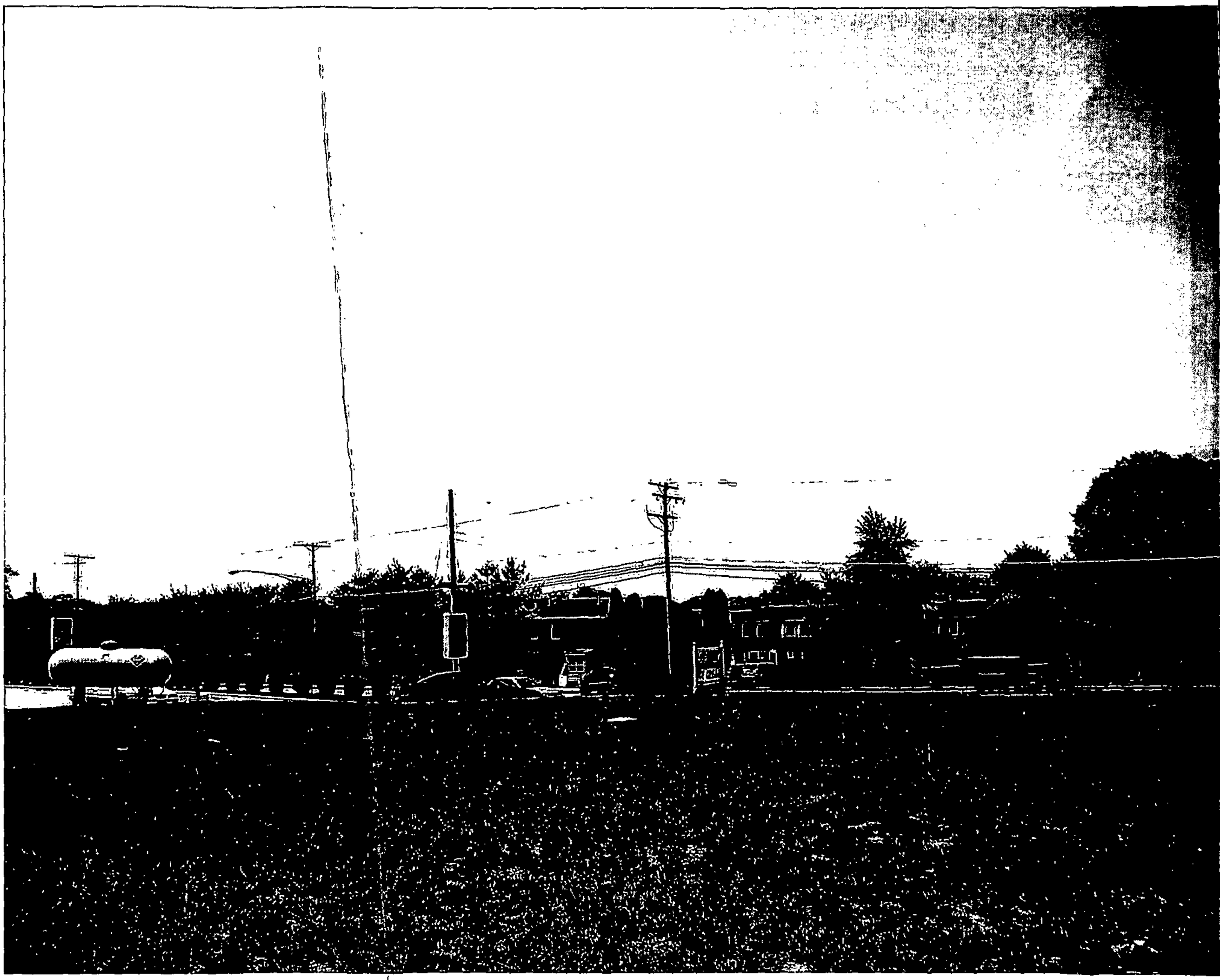
2707-2709

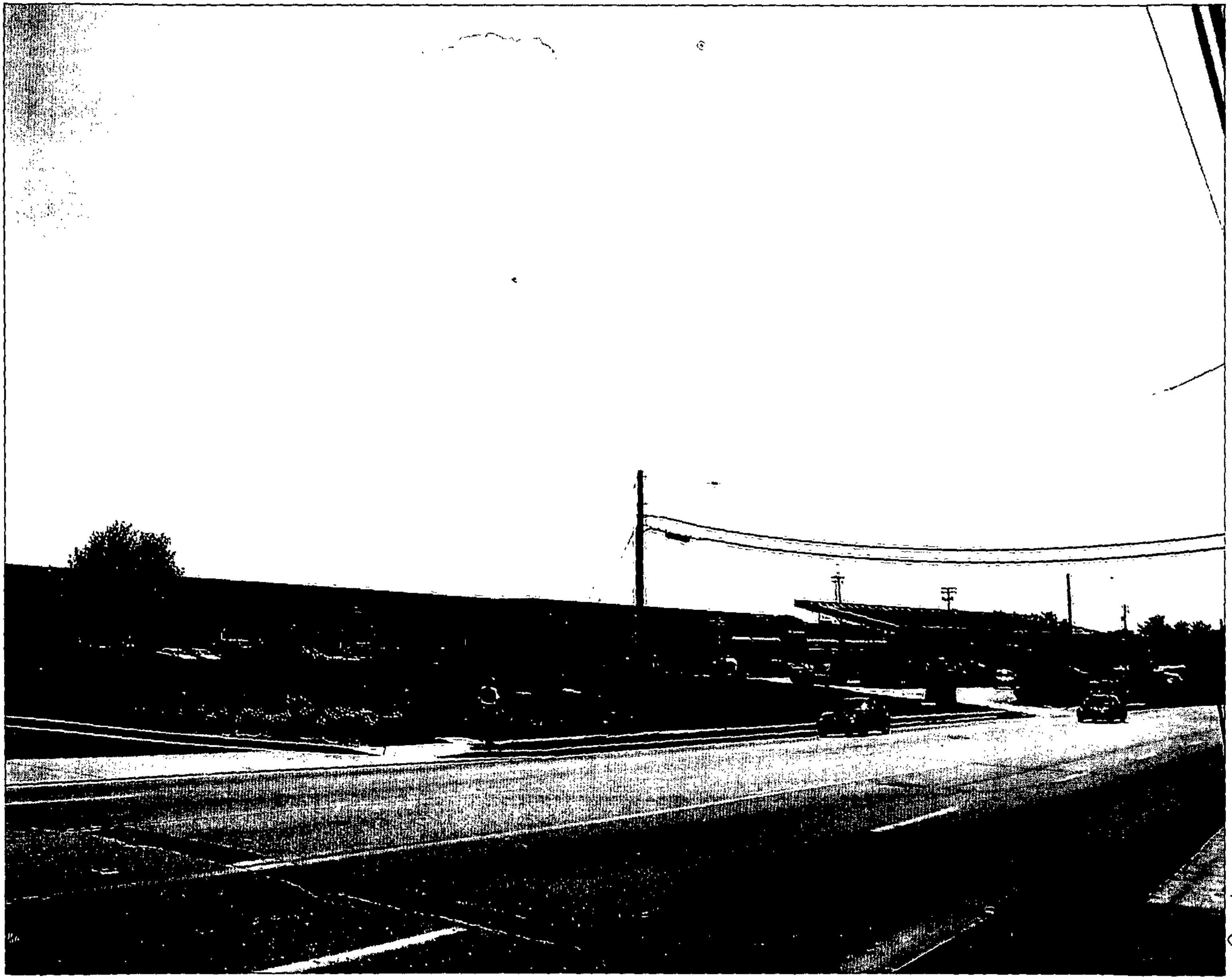


ROLLING ROAD









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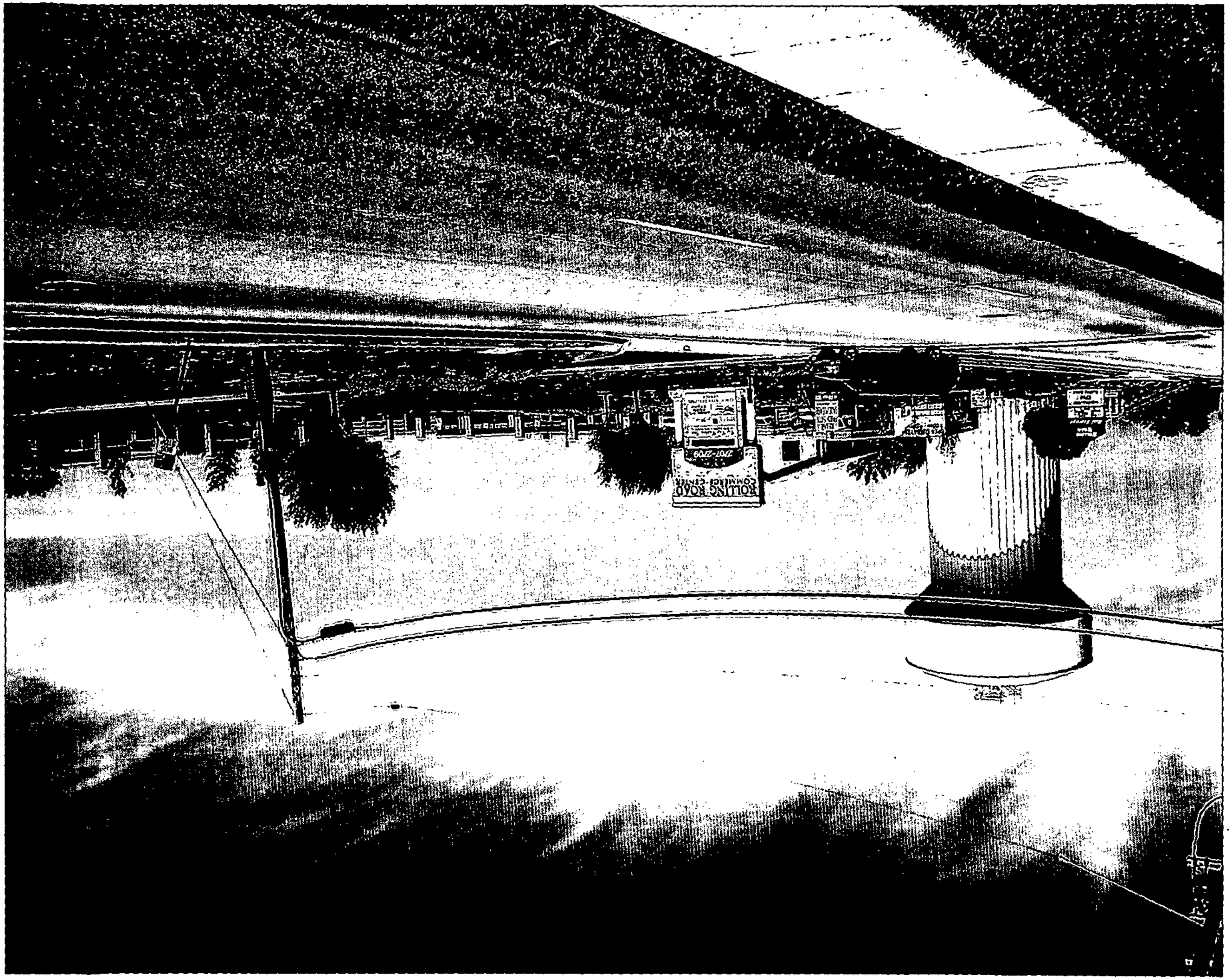
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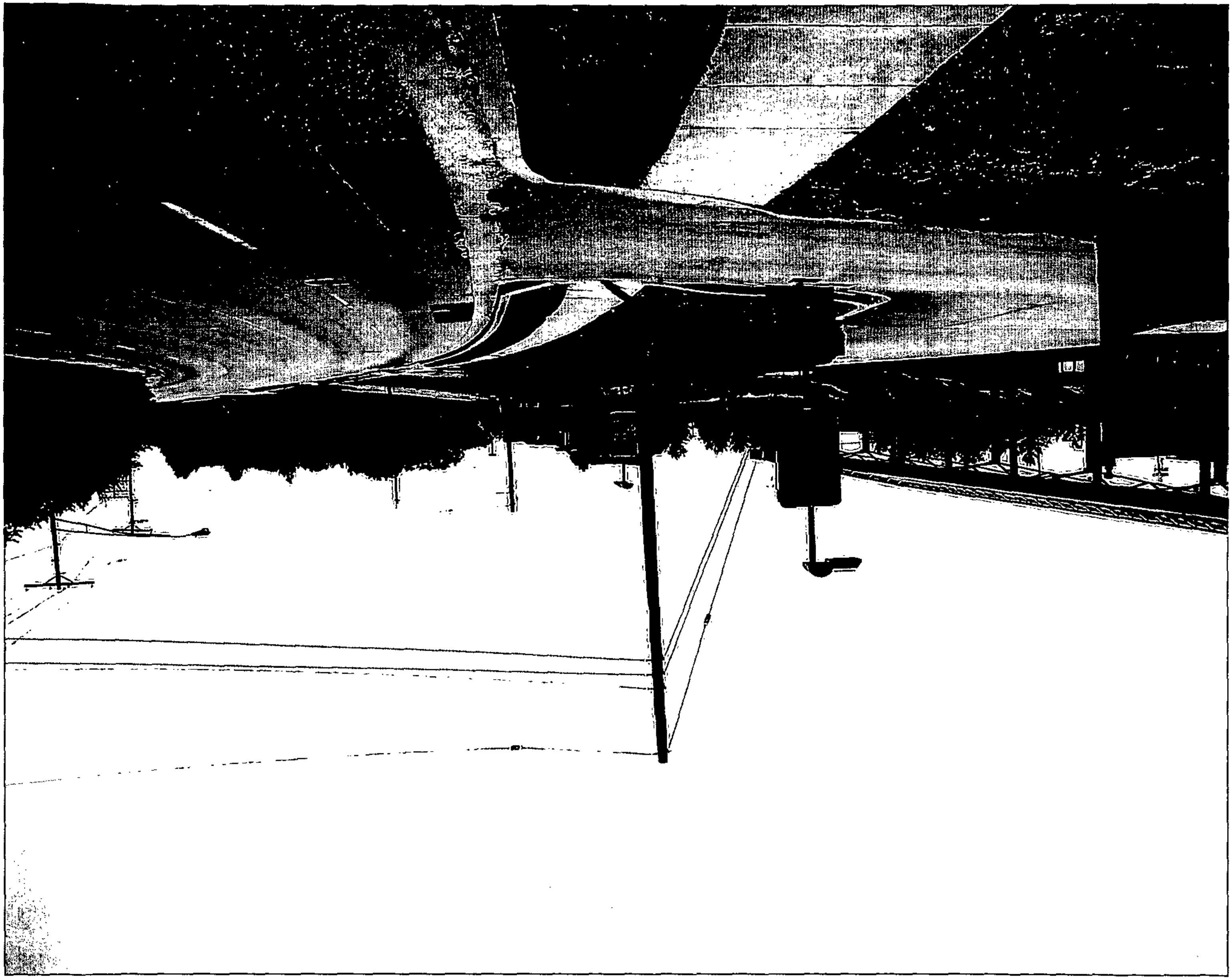
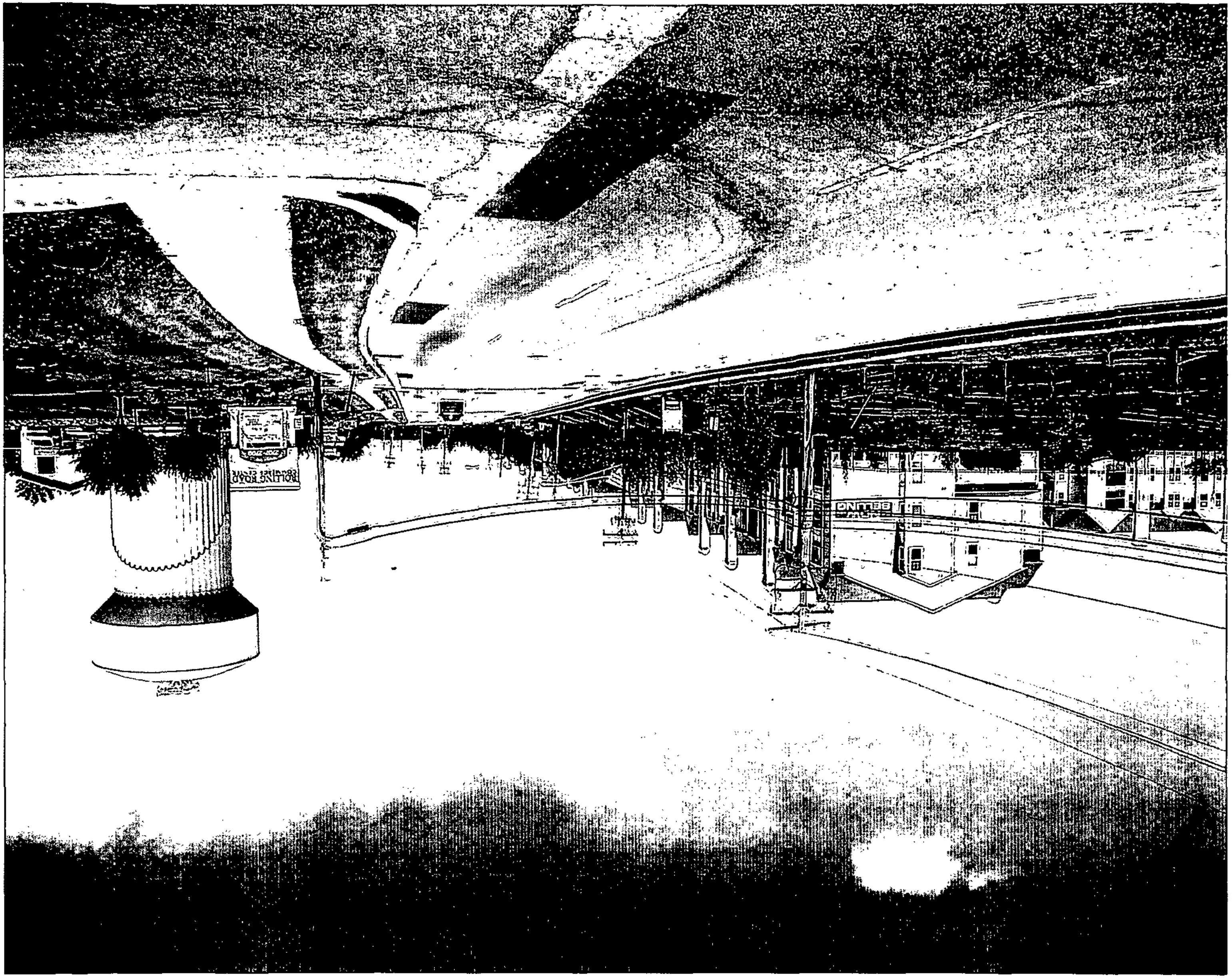
COMMUNITY CENTER

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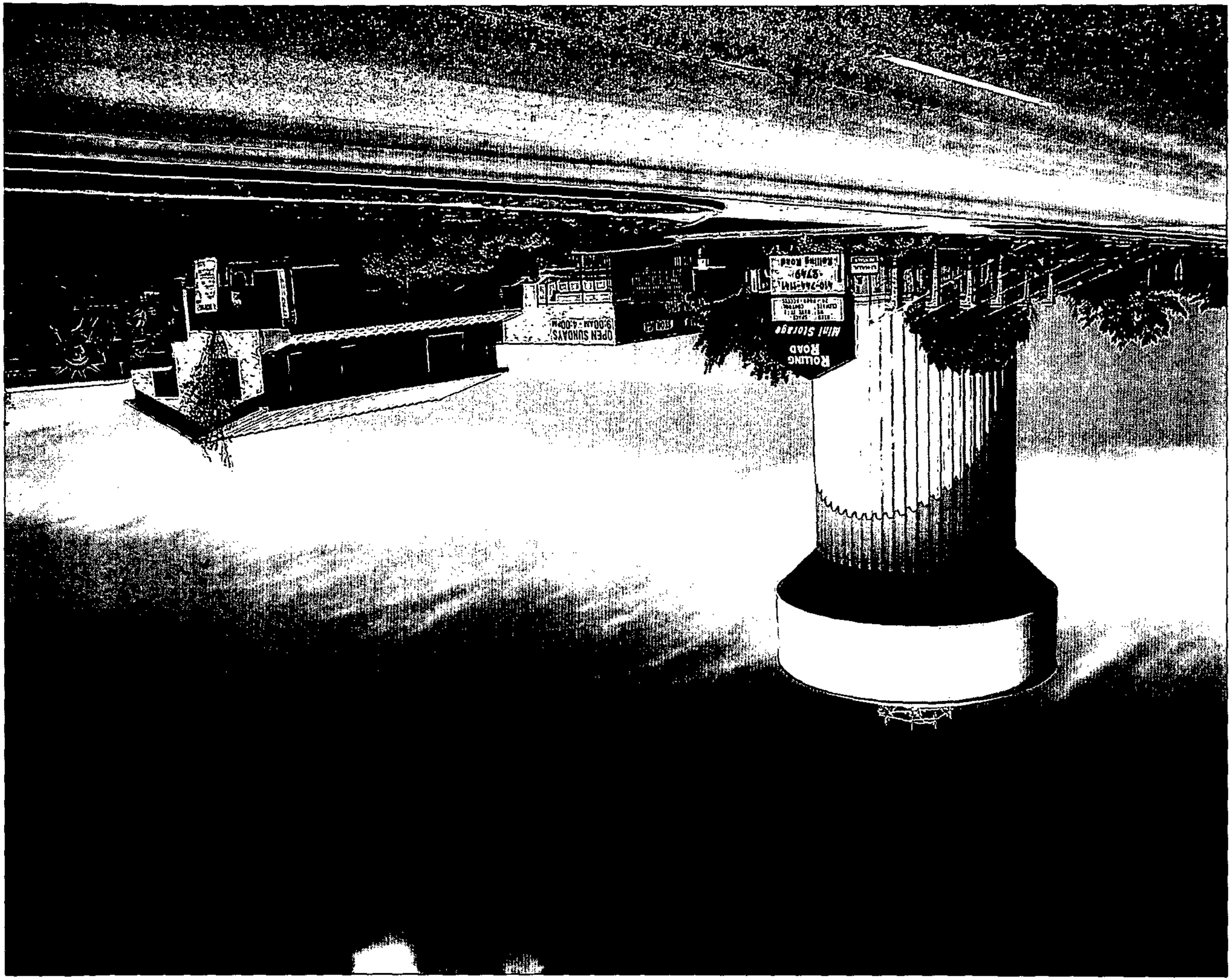
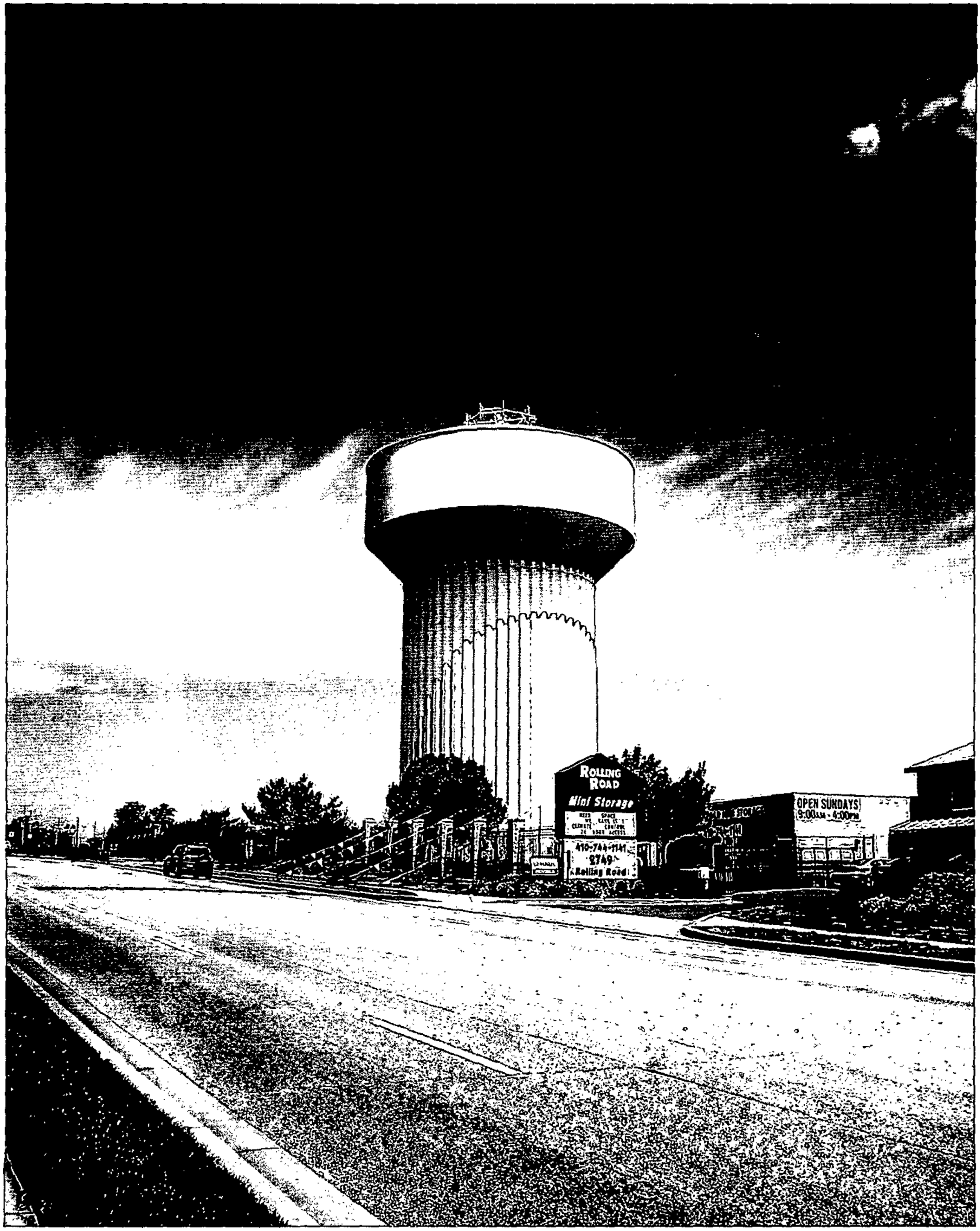
BRIDGE STOW


ROLLING ROAD
Mini Storage
OPEN SUNDAYS
9:00AM - 4:00PM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2749
Rolling Road
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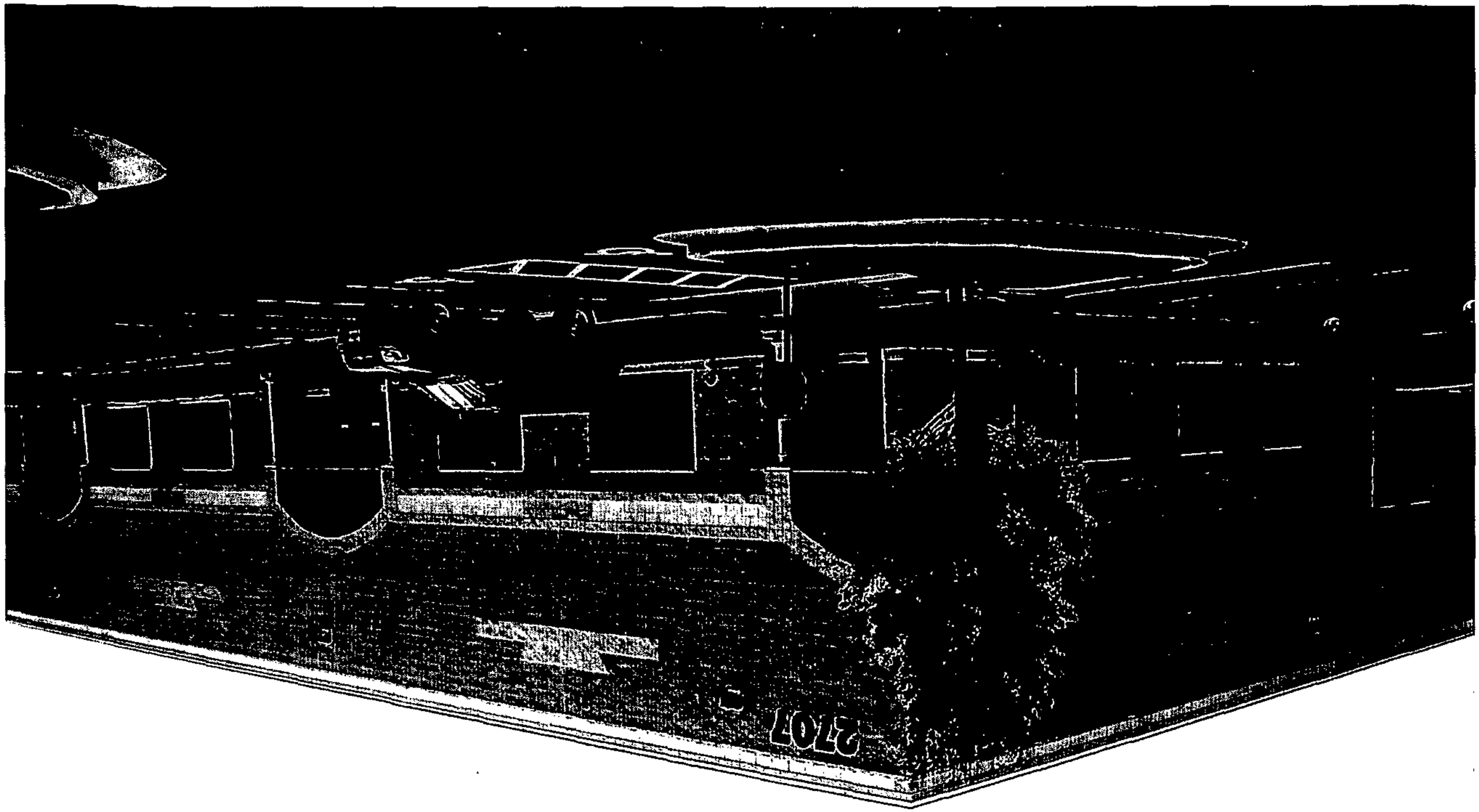
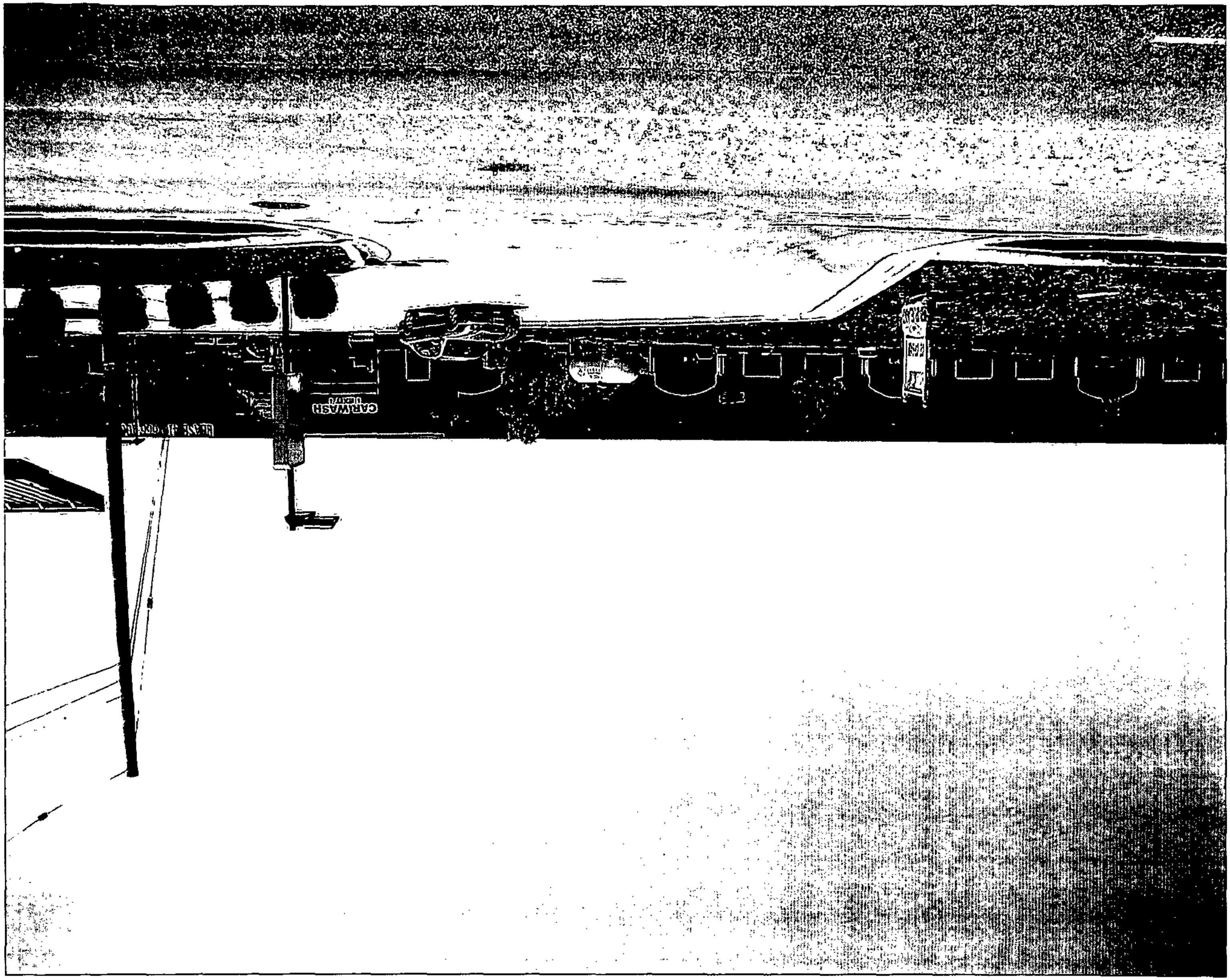
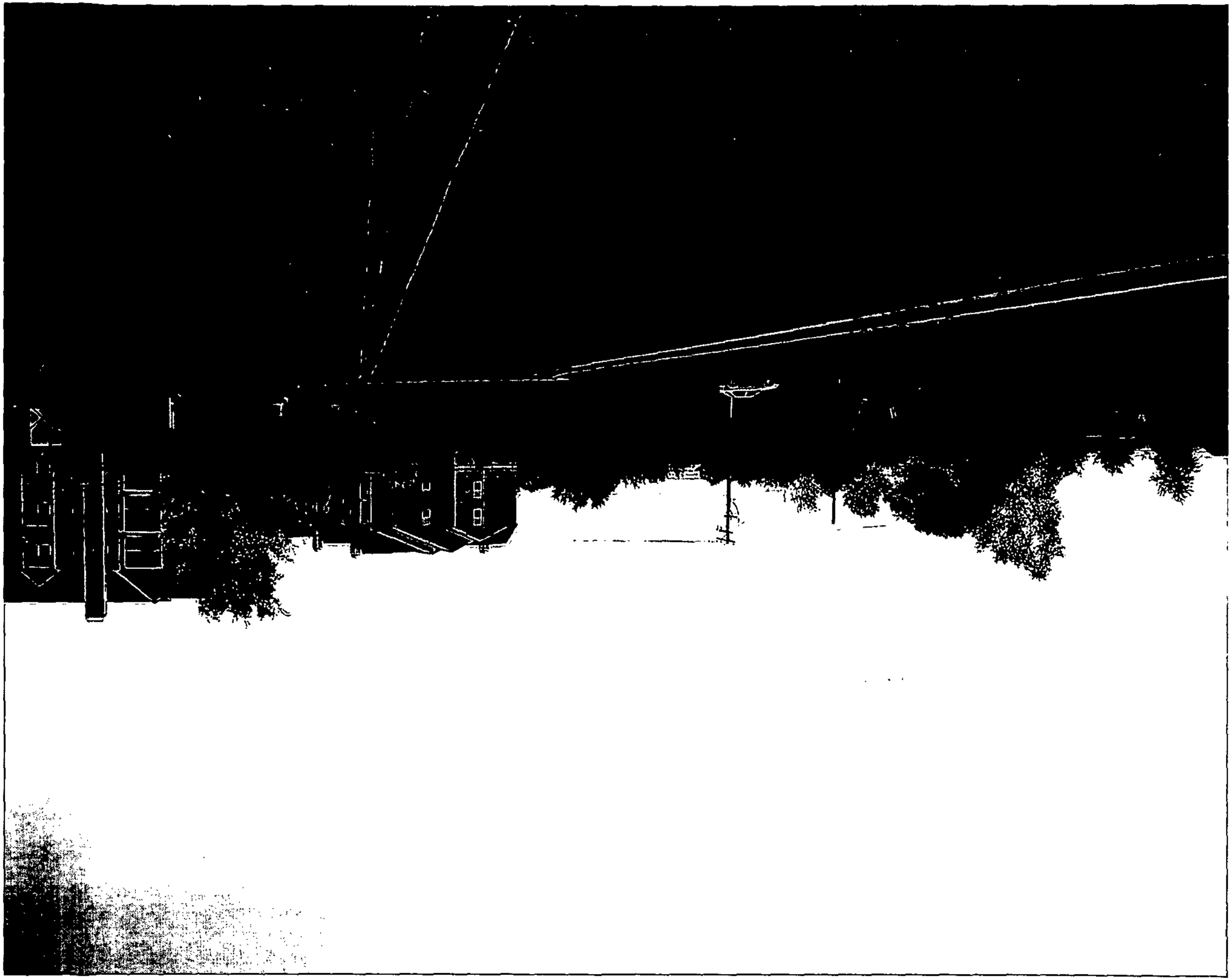
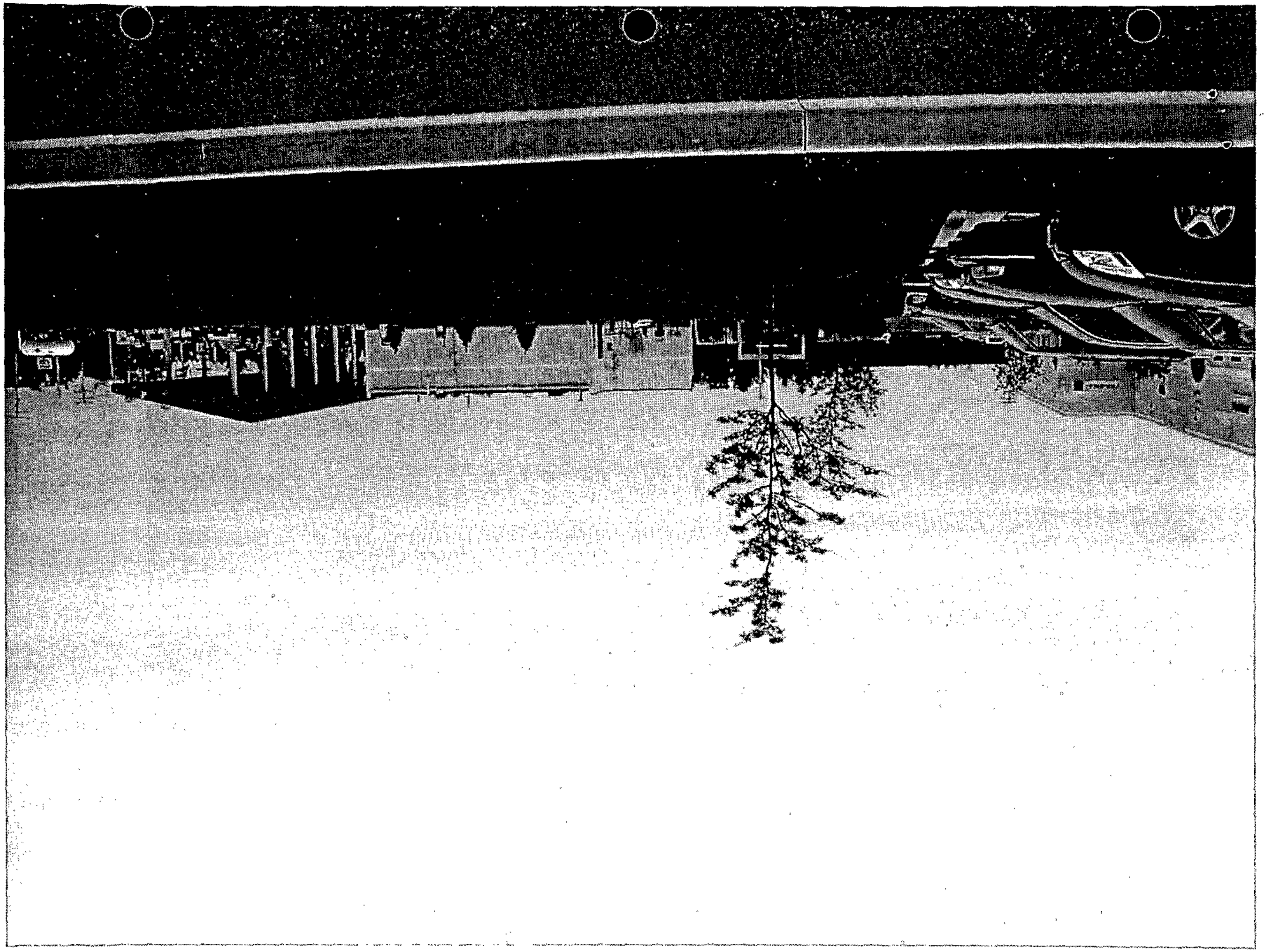
9:00AM - 4:00PM

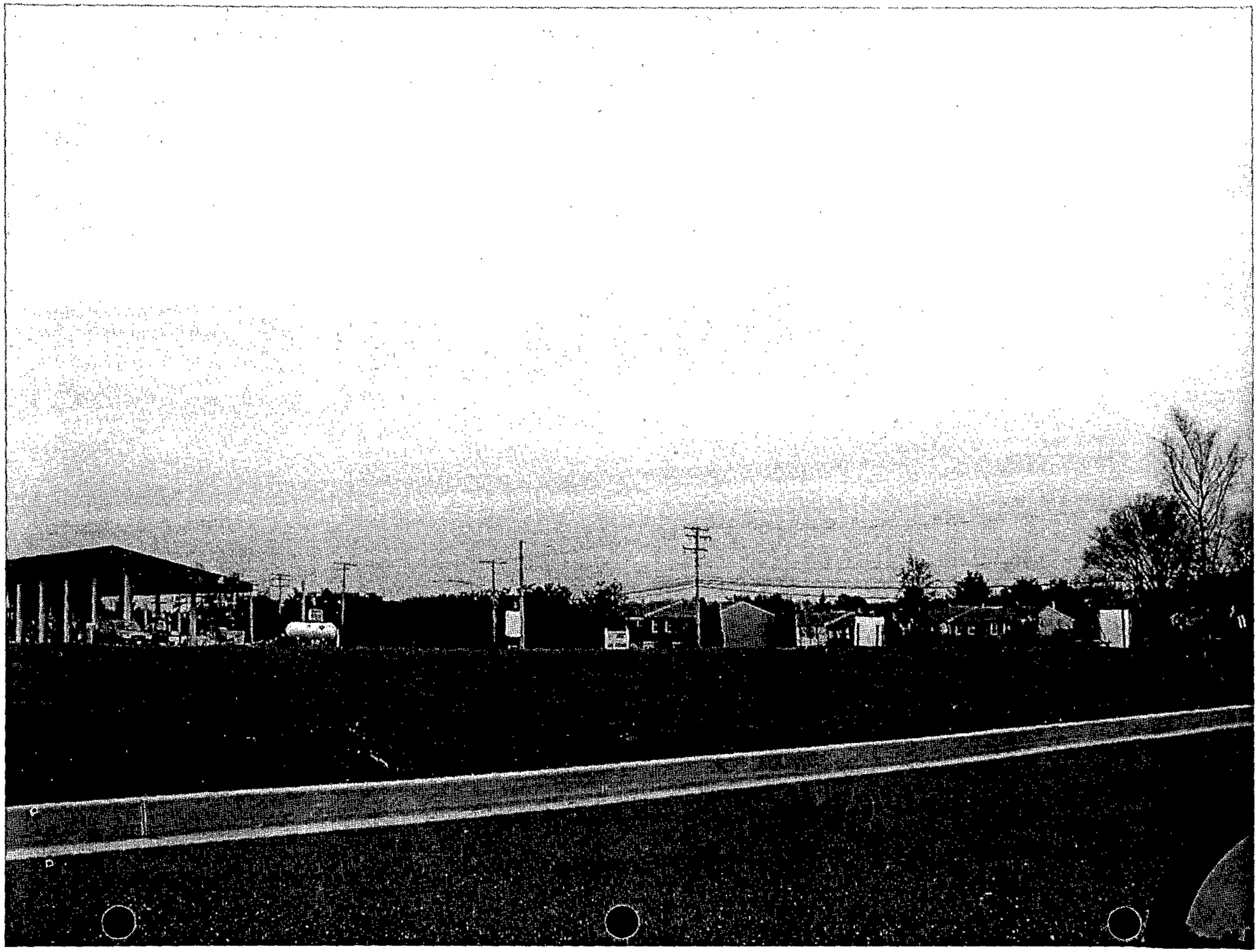


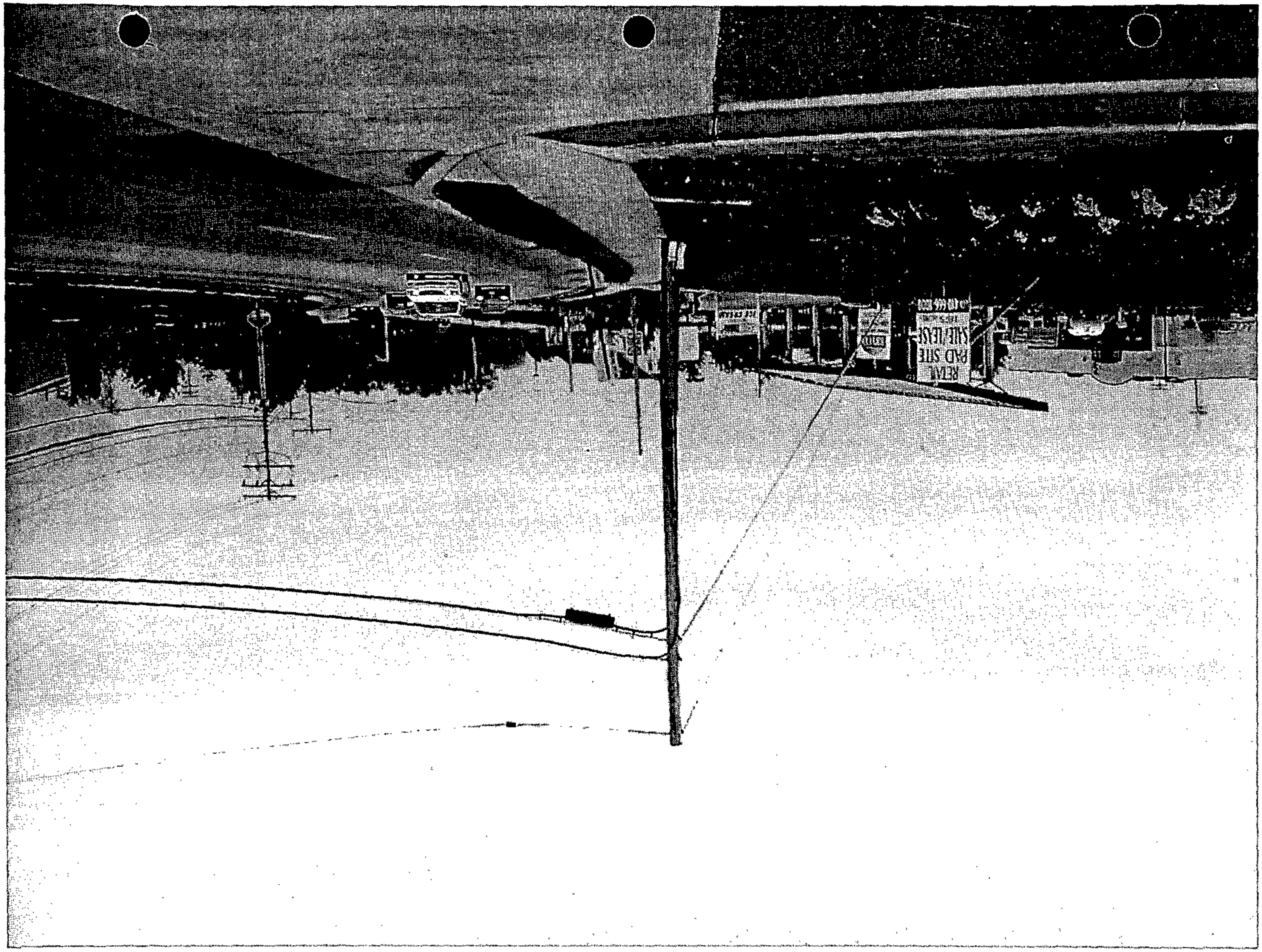

CAR WASH

ROLLING ROAD
COMMUNITY CENTER





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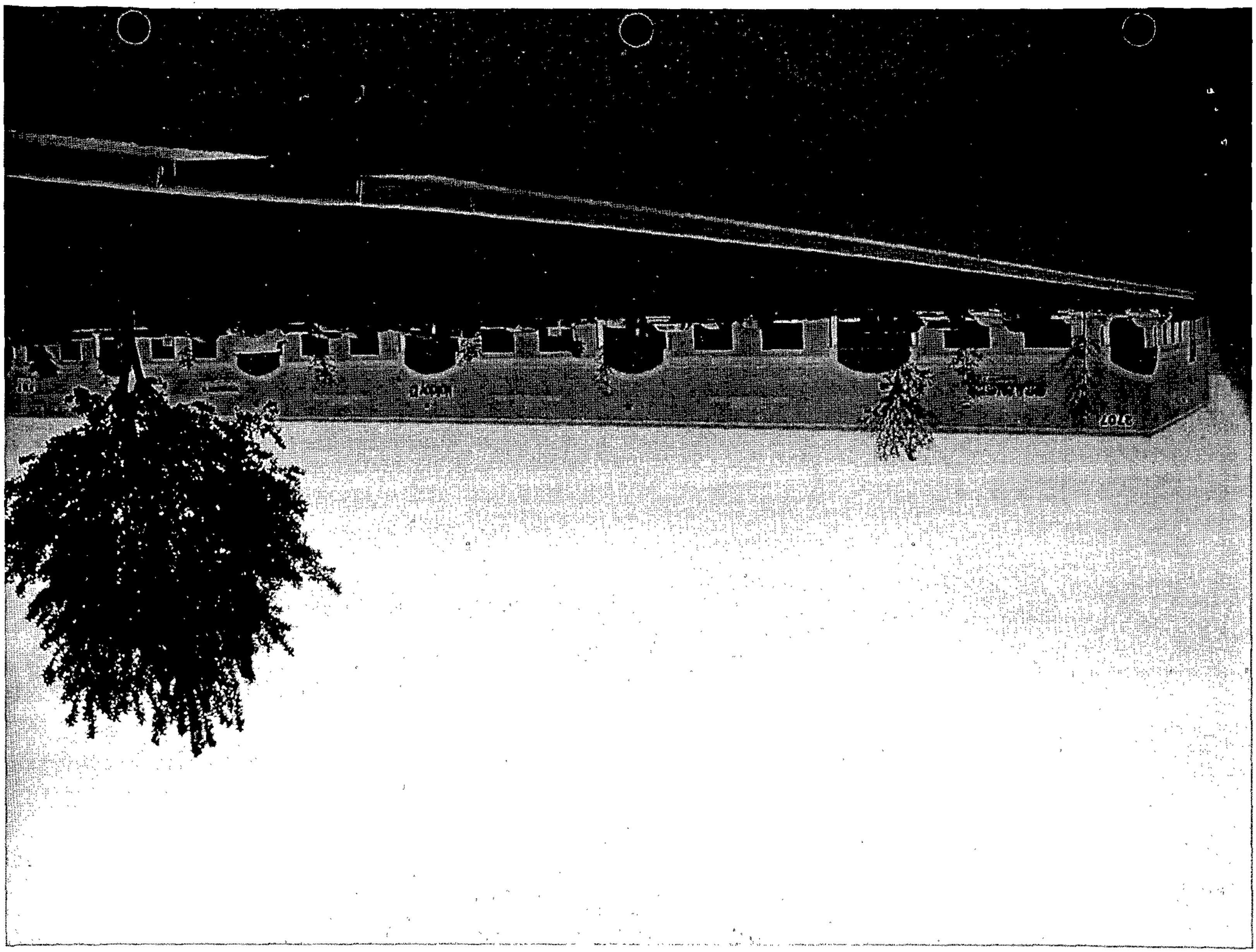

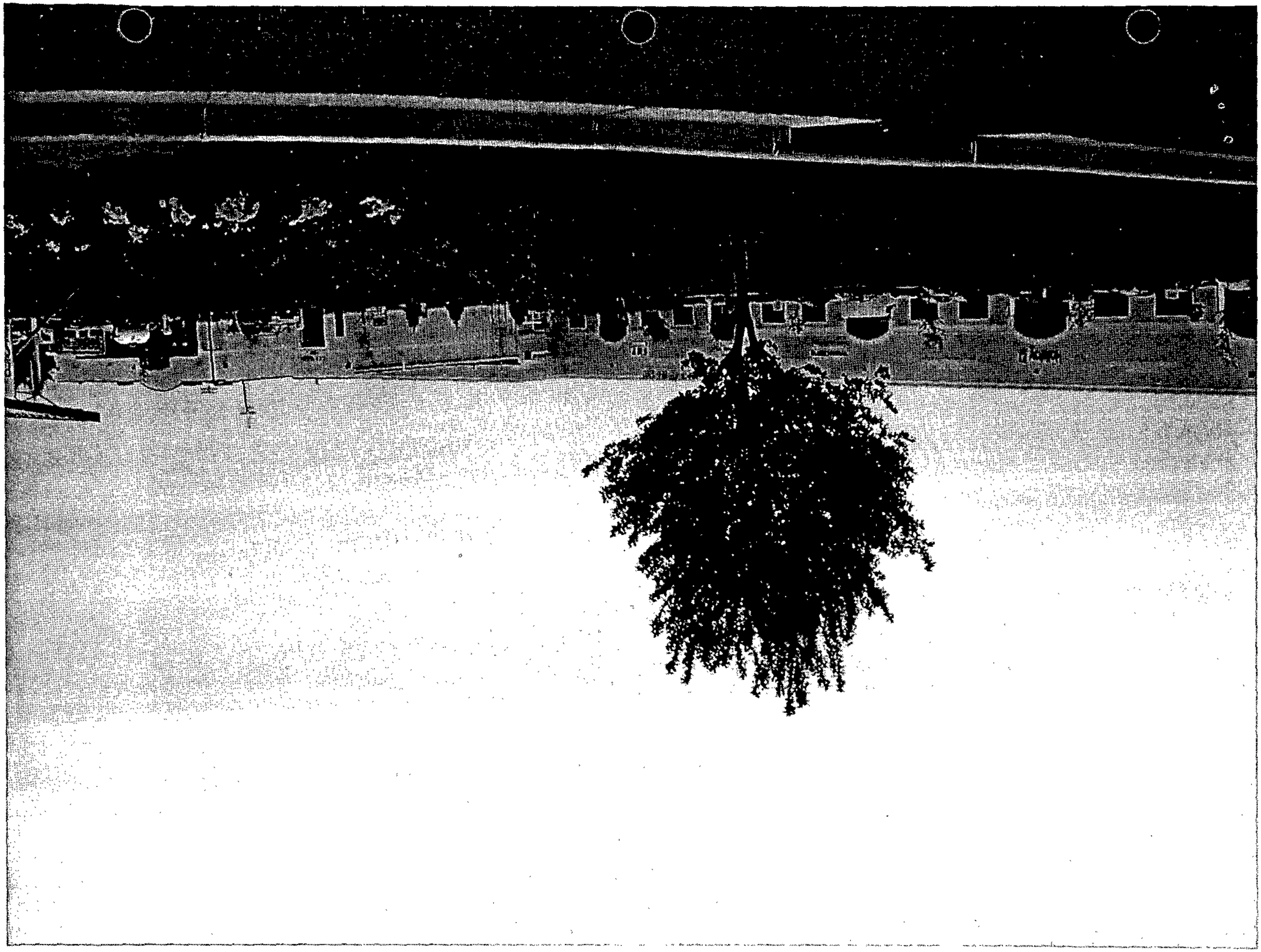

SIGN — For the definition of "sign" and all related terms, see Section 450. **[Bill No. 89-1997[23]]**

SLUDGE — The accumulated settled solids, deposited from sewage or nonhazardous industrial wastewater in any wastewater treatment facility tank or basin, which have been stabilized. **[Bill No. 46-1982]**

SLUDGE - CO-LANDFILLING — Co-landfilling is defined as the mixing and compacting of sludge with solid waste as part of a normal sanitary landfill operation. **[Bill No. 46-1982]**

SLUDGE - HANDLING IN GENERAL — Handling in general is defined as any manner in which sewage sludge is handled, utilized and managed or stored on land other than by incineration, composting, co-landfilling and land spreading. **[Bill No. 46-1982]**

SLUDGE - INCINERATION — Incineration is defined as the combustion of sewage sludge in a closed system with adequate control to yield a nonputrescible ash and an air effluent of a quality permissible by law. **[Bill No. 46-1982]**

SLUDGE - LANDSPREADING — Landspreading is defined as the spreading of sewage sludge or wastewater solids on the soil surface or incorporation, including injection of such material into the root zone or soil profile. **[Bill No. 46-1982]**

SLUDGE - SURFACE IMPOUNDMENT — A facility or part of a facility which is a natural topographical depression, man-made excavation or diked area formed primarily of earthen materials (although it may be lined with man-made materials) which is designed to hold an accumulation of solid waste in semisolid or liquid form. Examples of surface impoundments are holding, storage settling and aeration pits, ponds and lagoons. **[Bill No. 46-1982]**

SLUDGE DISPOSAL FACILITY — Any facility used to contain, store, utilize or dispose of stabilized sludge, including a surface impoundment, a site used for incineration, co-landfilling, land spreading or composting of stabilized sludge. **[Bill No. 46-1982]**

STABILIZED SLUDGE — The sludge that has been treated by a process to reduce putrescibility, significantly reduce pathogenic organisms and, except for lime stabilization, reduce the volatile solids content. **[Bill No. 46-1982]**

STORY — That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, the space between such floor and the ceiling above it. A basement shall be counted as a story if its ceiling is over six feet above the average level of the finished ground surface adjoining the exterior walls of such story or if it is used for business or dwelling purposes.

STREET — A motorway which is not a freeway or expressway but which has a right-of-way more than 20 feet in width. **[Bill No. 100-1970]**

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[23] **Editor's Note: This bill also repealed the former definitions of "sign, business" and "sign, outdoor advertising" which followed this definition.**

Pet #12

STREET LINE — A line which divides the right-of-way of a street from other property; a street right-of-way line. **[Bill No. 111-1958]**

STRIPTEASE BUSINESS — A commercial establishment where persons appear in a state of total or partial nudity in person. Such establishment shall, for example, include, but not be limited to, a restaurant, nightclub, dance club or social hall if such entertainment is provided as an accessory or principal use. A striptease business, including the building or portion thereof that contains or advertises the business, must be located at least 1,000 feet from a dwelling, church, park, child care center or school existing on the effective date of this legislation[24] and be arranged so that the interior is not visible from the outside. A striptease business may not operate between 2:00 a.m. and 6:00 a.m.

For the purpose of this definition, an establishment which is duly licensed by the Board of Liquor Commissioners for Baltimore County and which features striptease dancing, nudity or partial nudity as an accessory use shall not be considered a striptease establishment, except that it shall satisfy the setback limitation established hereinabove for a striptease business.

The one-thousand-foot distance requirement shall be considered an area requirement and, in addition to the authority and limitations set forth in Section 307.1 of these regulations, a variance may be granted if strict compliance with said setback would result in severe economic circumstances which are not the result of actions by the petitioner. **[Bill Nos. 137-1990; 29-1998]**

SUBDIVISION — The division of any tract or parcel of land, including frontage along an existing street or highway, into two or more lots, plots or other divisions of land for the purpose, whether immediate or future, of building development for rental or sale, and including all changes in street or lot lines; provided, however, that this definition of a subdivision shall not include divisions of land for agricultural purposes.[25]

SYSTEM OF RUBBLE DISPOSAL OR LAND RECLAMATION FOR PUBLIC OR PRIVATE USE — The services, facilities or properties used in connection with the disposal of rubble or land reclamation, unless these activities are limited to rubble generated by a single individual or business and disposed of on the same property where generated. While limited operation of a rubble landfill can be accessory to agricultural use, it is not a primary agricultural activity. **[Bill No. 97-1987]**

TAVERN — An establishment which has a Baltimore County Class D liquor license. A tavern which meets the criteria of nightclub, as defined in these regulations, shall be considered a nightclub. **[Bill No. 110-1993]**

TENNIS FACILITY — A single court, or two or more adjoining courts on a single lot, for playing tennis, paddleball, handball, squash, jai alai or other similar games or sports. **[Bill No. 62-1978]**

TOURIST HOME — A rooming house primarily for transient guests.[26]

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24 **Editor's Note: Bill No. 29-1998, which amended this definition, provided that it take effect March 20, 1998.**

25 **Editor's Note: The definition of "subdivision, cluster" which followed this definition was repealed by Bill No. 100-1970.**

26 **Editor's Note: The definition of "town" which followed this definition was repealed by Bill No. 3-1992.**

CBA Pet 12

8. Sludge disposal facility – composting (see Section 412A.2.B). **[Bill No. 46-1982]**

9. Sludge disposal facility – handling in general (see Section 412A.2.C). **[Bill No. 46-1982]**

10. Sludge disposal facility – incineration (see Section 412A.2.D). **[Bill No. 46-1982]**

11. Sludge disposal facility – landspreading (see Section 412A.2.E). **[Bill No. 46-1982]**

12. Trucking facilities (see Sections 410 and 410A). **[Bill No. 18-1976]**

13. Truck stops. **[Bill No. 18-1976[15]]**

14. Utilities not permitted under the provisions of Section 253.1.

B. The following auxiliary service uses, provided that any such use shall be located in a planned industrial park at least 25 acres in net area or in an I.M. District; provided, further, that it is shown that any such use will serve primarily the industrial uses and related activities in the surrounding industrial area: **[Bill No. 172-1993][16]**

1. Automotive-service stations, subject, further, to the provisions of Section 405.

2. Car washes, subject, further, to the provisions of Section 419.

3. Garages, service, including establishments for the service or repair of trucks, of truck trailers or of freight-shipping containers designed to be mounted on chassis for part or all of their transport. **[Bill No. 218-1980]**

4. Union halls or other places of assembly for employment-related activities.

C. The following interim uses, provided that it is shown by the petitioner and verified by the Director of Public Works that public sewerage and water supply facilities will not be available to the site of any such use for a period of at least two years after the time the petition is heard, and provided, further, that any such use shall be discontinued and the grant of the special exception shall expire on a date within a year after such time as public sewerage and water supply facilities do become available to the site, as shall be more particularly stipulated in the order granting the special exception. **[Bill No. 21-1996[17]]**

1. Amusement parks.

2. Farms or limited-acreage wholesale flower farms.

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15 **Editor's Note: This bill also repealed the former entry for truck terminals.**

16 **Editor's Note: All provisions of this subsection are originally from Bill No. 100-1970, except as otherwise noted.**

17 **Editor's Note: This bill reenacted this Subsection C, deleting the following entries and renumbering the rest: "baseball-batting ranges," "golf-driving ranges" and "miniature-golf courses." Original provisions of this subsection were derived from Bill No. 100-1970.**

Pet #4

Pat 14
CBA

and exterior detail cleaning that takes more than approximately two hours per car shall not be considered a full-service car wash. **[Bill No. 172-1993]**

CAR WASH, ROLL-OVER — A car wash where exterior-only cleaning, washing or waxing services are provided on a roll-over basis with the vehicle in a stationary position during the servicing. **[Bill No. 172-1993]**

CAR WASH, SELF-SERVICE — A car wash where equipment or facilities are provided for the self-service cleaning and washing of motor vehicles. **[Bill No. 172-1993]**

CATERING HALL — A facility or part of a facility used regularly for serving beverages and food to groups which reserve the facility for banquets or gatherings before the day of the event. A catering hall is not a standard restaurant. **[Bill No. 110-1993]**

CELLAR — That portion of a building below the first floor, the floor of which is more than one-half the height of the room below the average grade of the adjoining ground (see definition of "basement").

COLLECTION TRAILER — A trailer whose express purpose is to accommodate the collection of recyclable items for the good of the general public by:

Reducing the amount of waste to be picked up and disposed of by the county;

Reducing roadside litter, and;

Encouraging the conservation of energy (see Section 415B). **[Bill No. 154-1982]**

COLLECTOR STREET, MAJOR — A street, or a part of one, that: is intended for travel between neighborhoods or between neighborhoods and other places, but not for travel within neighborhoods; is not an arterial street; and has been designated as a major collector street by the Planning Board by the same method used to designate freeways, expressways and arterial streets. **[Bill No. 18-1976]**

COMMERCIAL FILM PRODUCTION — The shooting of film or videotape on location in a natural setting for the purpose of producing a feature-length movie, made-for-television movie, television series, documentary, commercial advertisement, industrial film or commercial still photograph. This term shall not include the shooting of current news events or filming, videotaping or photography in a studio. **[Bill No. 57-1990]**[9]

COMMERCIAL KENNEL — Any establishment where the commercial breeding of dogs or the boarding, sale, or training of dogs takes place and for which a fee is charged. A commercial kennel does not include a private kennel, pet shop, veterinarian's office, or veterinarium. **[Bill Nos. 87-2001; 72-2002]**

COMMERCIAL RECREATIONAL FACILITIES — Facilities whose principal purpose is to provide space and equipment for nonprofessional athletic activities. A commercial recreational facility includes, but is not limited to, a baseball-batting range or cage; golf-driving range; putting green; miniature golf; athletic field; swimming pool;

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[9] ***Editor's Note:*** **The following definitions, which originally followed this definition, were repealed as indicated: "commercial fishing, crabbing and shellfishing operation" was repealed by Bill No. 98-1975; "primary and secondary..." was repealed by Bill No. 30-1978 (see "fishing and shellfishing facility" below); and "commercial motorway, Class I" and "commercial motorway, Class II" were repealed by Bill No. 172-1993.**

CBA Pet 13

Section 418
(Reserved)[8]

Section 419
Car Wash
[Bill No. 172-1993[9]]

419.1 Roll-over, full-service and self-service car washes are permitted by special exception in the following districts: C.R. (provided no part of the lot is in R.C.5), C.C.C., A.S. or I.M. (provided no part of the site is in M.R.). Car washes are also permitted as a use in combination with a service station subject to the provisions of Section 405.

419.2 A site plan shall be submitted showing the location of the car wash and zone classification of adjacent properties, the location of ingress and egress, the manufacturer's rated hourly production capacity of the equipment to be installed, if available, or other evidence of the capacity of the equipment, the proposed stacking spaces as required by Section 419.3 below, the proposed landscape and buffer treatment, and such other information as may be required by the reviewing agencies. All site plans are subject to review by the Directors of the Department of Public Works, Office of Planning and Department of Permits and Development Management, who shall provide written comments to the approval authority.

419.3 All internal paved areas of a car wash site used for stacking, parking and driveway purposes shall comply with Section 409.1 and shall be laid out to allow automobile circulation in a manner that precludes vehicles from waiting on the street or blocking the right-of-way before gaining entrance.

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

1. Nine per roll-over car wash tunnel.

2. Nineteen per full-service car wash tunnel.

3. Four spaces for the first tunnel of a self-service car wash, and two waiting spaces for each additional.

B. All parking spaces shall be located to avoid conflict with on-site circulation patterns. The following minimum number of parking spaces shall be provided:

1. To dry vehicles, two for each tunnel of a roll-over or a self-service car wash and six for each tunnel of a full-service car wash.

2. One per vacuum cleaner unit, except in the case of a full-service or a self-service car wash, a stacking space may be used to serve as a parking space for the vacuum cleaner unit.

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8 *Editor's Note: Former Section 418, Research Institutes and Laboratories, was repealed by Bill No. 122-1984.*

9 **Editor's Note: This bill also repealed former Section 419.**

3. Two additional spaces at a roll-over car wash.

4. Four additional spaces at a full-service car wash.

419.4 Notwithstanding the provisions of the zone in which the car wash is located, all facilities are subject to the following requirements:

A. Locational standards.

1. Roll-over and full-service car wash buildings shall be set back at least 50 feet from the lot line of any residentially zoned property. Except for the landscape buffers, no part of a self-service car wash shall be within 100 feet of a residentially zoned property.

2. The tunnel exit of car wash facilities shall be set back at least 50 feet from the nearest exit drive.

B. General design.

1. No tunnel entrance or exit of a car wash operation shall face an adjacent residentially zoned property not including those across a street.

2. The rear and sides of buildings facing residentially zoned properties shall be finished with materials that in texture and color resemble the front of the building. The type of facade treatment shall be indicated on the site plan and shall be subject to review by the Director of the Office of Planning, who shall provide written comments to the approval authority.

3. Except for the required access drives, a landscaped transition area shall be provided along the perimeter of all car wash operations. Such area shall have a minimum width of 10 feet where the car wash fronts a public right-of-way and six feet in all side and rear yards abutting nonresidentially zoned land. Car wash operations located within 50 feet of any residentially zoned property (other than a residential zone line in a public right-of-way) shall provide a buffer that measures no less than 15 feet from that property line.

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

5. To increase compatibility with surrounding buildings or to enhance the attractiveness of the site, the Zoning Commissioner may require changes in building or site plan design or hours of operation for car washes for which a special exception is required.

419.5 The regulations contained in this Section 419 entitled "Car Wash" shall not apply to car washes legally existing prior to the effective date of Bill No. 172-1993. Bill No. 172-1993 does not affect the validity of any order granting a special exception or any plan approved by Baltimore County for a car wash which occurred prior to the effective date of this bill. Any such special exception or plan shall be subject to the applicable provisions of the Baltimore County Zoning Regulations in effect at the time of the grant of such special exception or plan.

#9

JOURNAL

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NO.	OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
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05	4804	Jun. 14 09:55AM	00'16	SND	00	DOCUMENT JAMMED
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22	94102963719	Jun. 26 12:32PM	01'32	SND	02	OK
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Finding of Facts / Conc. Law - ZC.
and Pet. for Spec. Ex.

IN THE MATTER OF:	* BEFORE THE
RUTHERFORD BURGER INVESTMENTS,	* BOARD OF APPEALS
LLC, by Anthony Julio, Legal	* OF
Owner, and Stemark, Inc., by	* BALTIMORE COUNTY
Mark Ogrysko, Lessee	* Case No. 06-075-X
	* August 9, 2006

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., August 9, 2006.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

1 BOARD MEMBERS:
LAWRENCE S. WESCOTT, Chairman
2 MARGARET BRASSIL, Ph.D.
3 ROBERT W. WITT
4
5 APPEARANCES:
6 C. WILLIAM CLARK, Esquire
7 On behalf of Petitioner
MICHAEL P. TANCZYN, Esquire
8 On behalf of Protestants
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1 P R O C E E D I N G S
2 * * * * *
3 THE CHAIRMAN: Good morning, ladies and
4 gentlemen.
5 This is a regular meeting of the Board of Appeals
6 of Baltimore County in Case No. 06-075-X, in the matter of
7 Rutherford Burger Investments, LLC, by Anthony Julio,
8 Legal Owner, and Stemark, Inc., by Mark Ogrysko, Lessee,
9 2705 Rolling Road, in the 2nd Election District and 4th
10 Councilmanic District.
11 It is an appeal from the Deputy Zoning
12 Commissioner's order in which the requested variance
13 relief was granted with conditions.
14 Would counsel please state their appearances, for
15 the record.
16 MR. CLARK: Good morning, your Honor. C. William
17 Clark, Nolan, Plumhoff & Williams, on behalf of the
18 petitioner.
19 MR. TANCZYN: Good morning, Mr. Chairman, members
20 of the Board.
21 Michael Tanczyn, on behalf of Sgt. Hector O'Berry

1 and his wife Yvonne O'Berry, who reside at the address we
2 gave you in our notice of the appeal.
3 THE CHAIRMAN: All right. Anything before we get
4 started?
5 MR. TANCZYN: Two admin things. I'm suffering in
6 my writing hand with gout.
7 And with the Board's indulgence, I would ask
8 permission to tape some of the proceedings with my tape
9 recorder because I can't make notes, if that's not
10 disagreeable to the Board.
11 MR. CLARK: I have no objection.
12 THE CHAIRMAN: It will not be an official record
13 of the proceedings.
14 MR. TANCZYN: No, I understand that. It would
15 help me at the end, if the Board, at the conclusion, asks
16 for memos.
17 THE CHAIRMAN: Anything to help move this along.
18 MR. TANCZYN: I would appreciate that. And Sgt.
19 O'Berry is a sergeant with the Department of Mental
20 Hygiene police, and working with the state facility, and
21 cannot be present today because at the last minute, he was

1 ordered to go to classes somewhere else.
2 But I have a tape recording if anybody cares to
3 hear it where he says, I am opposed to it, so on, so
4 forth, so if that were to be a question --
5 THE CHAIRMAN: You're here, Mr. Tanczyn. That's
6 enough for us.
7 MR. TANCZYN: Okay. That's all I have, sir.
8 THE CHAIRMAN: All right. Mr. Clark.
9 MR. CLARK: For the record, I was going to move
10 to dismiss the appeal for lack of the appearance of the
11 protestants.
12 While a corporation can appear in a court by its
13 attorney, I don't believe a protestant who's an absent
14 (sic) person can, and there's been no explanation to why
15 Mrs. O'Berry is not present, so for those reasons, I would
16 move to dismiss the appeal for the lack of protestants.
17 THE CHAIRMAN: We'll take -- we'll hold that sub
18 curia.
19 MR. CLARK: Thank you. Ready to proceed to
20 opening argument?
21 THE CHAIRMAN: Right.

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1 MR. CLARK: Opening statement. Good morning, Mr.
2 Chairman, members of the Board.
3 One small administrative note in the case. As it
4 was filed, Rutherford Burger Investment was the legal
5 owner of the property at the time the case was filed.
6 At the time that the case was heard before the
7 Zoning Commissioner, and as you will hear today, Stemark,
8 Inc., a Maryland corporation, has, in fact, acquired title
9 to this property and is the lawful owner.
10 They are also the petitioners for the proposed
11 use of the car wash.
12 The site is a 1.07 acre site zoned ML-IM, and it
13 fronts on Rolling Road in the area of Baltimore County.
14 What's proposed is, and what's on the board now
15 is Petitioner's 1B. This is a red lined plan that was
16 introduced before the Zoning Commissioner, and what was is
17 now proposed is a roll-over car wash with two bays, five
18 bays for a self-serve car wash and equipment bay.
19 And in order to make this a little more
20 understandable, we'll be introducing today a cleaner copy
21 of what is Exhibit 1B below.

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1 I've already provided a copy to Mr. Tanczyn a
2 couple days ago so that he would have a chance to review
3 it.
4 And we'll be introducing Mr. Monk, whose office
5 prepared this site plan, but this is the same proposed use
6 as was Exhibit 1B below.
7 And hoping that you can see this a little better,
8 you will see that there are two roll-over bays here and
9 equipment room and five self-service bays.
10 The entrance is gained to the site off of Rolling
11 Road because this property is part of the Rutherford
12 Business Park which exceeds a couple hundred acres in its
13 totality.
14 As I said, the property is zoned ML-IM, but
15 because it's part of the industrial park which exceeds
16 twenty-five acres in size, the car wash is permitted by
17 special exception.
18 You will also see the zone line runs down the
19 middle of Rolling Road, which caused a lot of testimony
20 and evidence before the Zoning Commissioner, which will be
21 of little or no import today, because the proposed plan

Page 8

1 sets all of the buildings for the roll-over car wash and
2 the self-service bay a distance of a hundred feet from
3 that zoned line.
4 My client Mark Ogrysko will testify he has
5 experience operating gas stations and car washes.
6 He will testify about the type of equipment that
7 will be used here, and the proposed plan, which is
8 basically a coin-operated car wash, open twenty-four hours
9 a day, seven days a week.
10 There won't be any gasoline or service of any
11 kind, no repair of vehicles, no detailing of vehicles and
12 the like.
13 The petitioners will also offer the testimony of
14 William Monk, who is an expert in zoning and site planning
15 and has been recognized as an expert witness in these
16 matters.
17 His firm prepared the plan, the site plan. He'll
18 testify to the operation, the proposed operations, how
19 they meet the requirements of the Baltimore County zoning
20 regulations, and will explain to you that the site meets
21 the setback requirements on all sides, there's no need for

Page 9

1 any variances.
2 It meets the stacking requirements for the cars
3 as they enter in the roll-over tunnel or the self-service
4 bays.
5 He will testify as to the parking calculations
6 and the requirements, and you'll see that the parking
7 required is twenty-three spaces, and there are
8 twenty-three spaces provided. There are no variances
9 necessary.
10 He'll also testify about -- and as will Mr.
11 Ogrysko -- will testify that there are certain covenants
12 and requirements of the Rutherford Business Park, one of
13 which in particular affects this site, and that is the
14 requirement of the covenant that there be a cross-easement
15 across lot B-8, which is the lot that Stemark has
16 purchased, to allow for access, ingress and egress from
17 lot seven to another lot which is not yet developed.
18 And because of that, they have to locate this
19 cross easement and allow the traffic to flow across the
20 site.
21 Mr. Monk will testify that in his opinion, the

1 proposed use meets the requirements both of section 419 of
2 the Baltimore County zoning regulations and Section 502.1,
3 and that's what the petitioners expect to prove today.
4 MR. TANCZYN: Mr. Chairman, members of the Board,
5 if I could, I have given this to Mr. Clark already, but
6 for the assistance of the Board, I have excerpted the car
7 wash definitions from the zoning regs, one for each board
8 member, as well as Section 419, which is the car wash regs
9 in place since 1993 when an omnibus bill was passed by the
10 County Council, and I'm going to refer to that in my
11 opening.
12 I thought it might be helpful to have it in your
13 hands.
14 I presume the Board is aware that Mr. Zimmerman
15 is not only not present, but has written to the Board in a
16 July 25th letter raising his points in objection which
17 include the points that the protestants raised below and
18 will raise before you.
19 And I would like to start with that, if I can
20 travel to the board. This Board, in a case I was involved
21 in, I was representing the protestants in that, for all

1 the cases that Mr. Clark and I were able to come up with
2 from the Zoning Commissioner and the Board of Appeals
3 since 1993 law was passed, this Board is the only Board
4 that has ever enforced the law as to the hundred feet for
5 a self-serve car wash as defined in 419.4.
6 And the case in which, ironically, the Board's
7 decision was to deny the variance requested in that case
8 when it came up here, and to grant the special exception,
9 it is not a car wash today, you know.
10 It is Case 04-032-XA, and in the same
11 neighborhood, 7416 Windsor Mill Road, a little bit to the
12 north.
13 But if I can point out the dilemma and refer to
14 those regulations that I gave you excerpts of, the County
15 Council, when it passed 172-93, did so because there was a
16 hue and cry about there were problems with car washes
17 getting along with their neighbors, being nuisances to
18 their neighbors, so they passed this omnibus law.
19 And of particular note is they differentiated in
20 setbacks from residentially zoned land, which is what they
21 did, when they passed the new regulations in '93, they

1 specifically grandfathered or exempted existing car washes
2 that could not comply with these new improved stricter
3 standards.
4 And significantly in this case, we think, they
5 differentiated between the type of use called a roll-over
6 car wash and a self-serve car wash unattended, or even if
7 not fully attended for the time period open, because of
8 the impact that those different uses and the lack of an
9 attendant could have, which caused them to pass 172-93 on
10 any residential neighbors. That's the long and short of
11 it.
12 What they essentially said, and this Board is the
13 only Board in the case that I mentioned that has ever
14 recognized the legislative edict or mandate carried in the
15 legislation in 419.4.A.1 that says, as to self-service car
16 washes, no part -- pardon me -- the sentence starts,
17 Except for the landscape buffers, no part of a
18 self-service car wash shall be within a hundred feet of a
19 residentially zoned property.
20 MS. BRASSIL: Could you give me that number
21 again?

1 MR. TANCZYN: It's BCZR 419.4.A.1. And that's on
2 the second page of what I gave you.
3 The significance of that is that the petitioner
4 has met the landscape requirements which are essentially
5 ten feet from the right-of-way on the front and six feet
6 on the side, as is required.
7 But as to the self-service car wash, they run
8 afoul of the access and exit points.
9 And another provision, which is the very next
10 section, Dr. Brassil, 419.4.A.2, which says the tunnel
11 exit of car wash facilities -- you will see the loading is
12 from the rear, so the exit is in the front for all of
13 these bays, roll-overs as well as self-service -- that
14 shall be set back at least fifty feet from the nearest
15 exit drive, which if you put a scale on this, you would
16 see is not honored in any way.
17 Now, as they say, them's are the facts, as you
18 will apprehend as the evidence comes in.
19 And the significance of what Mr. Clark says, that
20 there are no variances required, I would, just reading
21 those regulations, suggest that if since '93, this has

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been like this, and they want to come in and say hardship, or whatever under the variance standard, they had that option, chose not to.

So when he says no variance is required, I say no variance is requested.

And we believe that those regulations require either adherence or somebody saying, I can't, so please excuse me from, you know, adhering to those.

There's just no other way to look at it, as far as we are concerned.

The community's concerns were expressed below, and this was twice briefed by Mr. Clark and I at Mr. Murphy's request, because, after the first hearing below, the petitioner elected to put in a modified 1B, which is that plan underneath, which essentially moved buildings back and called for different provisions such as barricading the property when an attendant wasn't there and only allowing people to come onto the site when there was an attendant there, because of things that were testified to by Sgt. O'Berry below --

MR. CLARK: Objection. Unless Sgt. O'Berry is

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going to be here today to testify.

THE CHAIRMAN: That's what was said below. Overruled.

MR. TANCZYN: You know, he's a uniformed armed --

THE CHAIRMAN: Never mind about the -- I hope he's not going to be appearing in uniform if he comes.

MR. TANCZYN: Well, if he's comes, and he's at school today, I don't expect him today for the reason I told you on the tape, but if he did come, so on, so forth, and he was an duty, he might not have a choice.

THE CHAIRMAN: If he's on duty.

MR. TANCZYN: He might not have -- well, he's on duty, going to school. My point is he testified about problems with other car washes, unattended self-serve, and magnets for problems --

MR. CLARK: Objection.

THE CHAIRMAN: It's in the Zoning Commissioner's decision.

MR. CLARK: But it shouldn't be evidence before the Board today.

MR. TANCZYN: It's not argument.

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THE CHAIRMAN: The Zoning Commissioner's decision is --

MR. TANCZYN: I'm not certainly arguing anything that I say in argument is evidence, I wouldn't argue that.

THE CHAIRMAN: If he doesn't testify to it, we aren't going to take it.

MR. TANCZYN In essence, that led to the condition being, you know, ascribed to this site by the Deputy Zoning Commissioner after he looked at the modified plan and resolved the issue in the manner that he did.

And our argument essentially was, except for the landscape buffer, everything else has got to be a hundred feet from that line, and that this isn't, and it's not fifty feet back.

The Zoning Commissioner accepted what the petitioners were arguing, that you don't go by what the law says about residentially zoned property, you go by what's called residentially used property, on this side of the right-of-way for Rolling Road and interior from the zoning line as determined by the County Council.

And why that turns the law on its head is that

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the County Council, as you know, meets every four years, and this Board meets in between, to consider reclassifications petitions at the Board or comprehensive at the Council, and they had the option, if they cared to, to put that zoning line on the other side of the road if they wanted to, demark that's where the residentially zoned boundary should be.

But they chose not to. So my friend People's Counsel is usually here defending the maps and defending the decisions of the County Council, so in his stead, I would point that out to you that what they are saying is how they would have it interpreted and how some other deciders other than this Board have decided it in the past in terms of, Well, they couldn't have really meant what they said was the zoning boundary, so we are going to interpret it a different way.

And I suggest that's going into the briarpatch. They are going into dangerous territory if you don't look at what the Council did and you don't look at what the law says.

And that's what we're asking, and that's what

1 I'll say in my opening. Thank you.
2 THE CHAIRMAN: Mr. Clark.
3 MR. CLARK: Call Mark Ogrysko.
4 M A R K O G R Y S K O,
5 having been called as a witness, was duly sworn, and
6 testified as follows:
7 DIRECT EXAMINATION
8 BY MR. CLARK:
9 Q. State your name and address, for the record,
10 please.
11 A. My name is Mark Keith Ogrysko. I reside at 2309
12 Cool Woods Court, Jarrettsville, Maryland.
13 Q. What is Stemark, Inc.?
14 A. Stemark is a corporation that my brother and I
15 created. This corporation has probably been in existence
16 for about fifteen, sixteen years.
17 Q. Is Stemark, Inc., are you an officer of that
18 corporation?
19 A. Yes, I am.
20 Q. What business is Stemark, Inc. engaged in?
21 A. Stemark, we've had several businesses under

1 Stemark, including a 7-Eleven we operated for twelve,
2 thirteen years.
3 Q. In your work experience, have you had any
4 experience operating gasoline stations or car washes?
5 A. I have been self-employed for over twenty-eight
6 years in the gasoline convenience store operation which
7 includes we have two roll-over automatics at two of our
8 locations.
9 Q. And where are those locations?
10 A. We have three, altogether. One is in Owings
11 Mills, in Newtown. It's in a residential area. We have
12 been there for about eight, nine years.
13 The other -- one of the other two is off I-95 in
14 Belcamp, which we have been at that location for about
15 thirteen, fourteen years.
16 And another location in Belcamp which we built
17 from ground up, and we have been for eight years.
18 Q. Have you ever had any code citations or
19 violations in connection with any of those car wash
20 operations?
21 A. No.

1 Q. Now, Stemark, Inc. entered into a contract to
2 purchase lot B-8 from the Rutherford Business Park owners,
3 is that right?
4 A. That's correct.
5 Q. Have you gone to settlement on the property?
6 A. Yes, we have. Last -- either May or June of '05
7 Q. So Stemark, Inc. is now the lawful owner of lot
8 B-8 as it's shown on the drawing in front of the Board?
9 A. That's correct.
10 Q. Your corporation proposes to put a car wash at
11 this location which is known as 2705 Rolling Road in
12 Baltimore County, is that right?
13 A. That's correct.
14 Q. For the record, and maybe because the Board
15 hasn't had the opportunity to hear any of these cases,
16 would you tell us what a roll-over car wash is, and what a
17 self-service car wash is, what the differences are, and
18 how they work?
19 A. Basically, a self-serve car wash is one that's
20 coin operated, timed, and the customer obviously washes
21 their car with the equipment.

1 A roll-over is same thing, it's a timed device,
2 but the machine actually does the car wash itself.
3 So it's more like an automatic where the car is
4 stationary as the machine operates over the car.
5 Q. Is the equipment that is used for either one or
6 both of these types of car washes manufactured by a
7 national company?
8 A. Yes, it is, wash -- which is Wash Tech.
9 Q. That's the equipment that you propose to use
10 here?
11 A. Yes.
12 Q. Are there different times for the type of car
13 washes?
14 A. Yes. The maximum car wash time is a little over
15 four minutes from the time it starts to the time it
16 finishes. The minimum, I believe, is between two and a
17 half and three minutes.
18 Q. And is there any equipment required in connection
19 with heating the water, providing any other type of
20 additives, or soaps, or practices?
21 A. Yes. We'll have to have a boiler on site which

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1 we'll obtain a permit to do, which will heat the water.
2 It obviously uses that to heat the water for the soap
3 application.
4 Q. Let me show you for identification what's been
5 marked first as Exhibit 1B below.
6 MR. CLARK: And, Mr. Chairman, I don't know how
7 you want -- you want to start re-numbering these from one
8 on today, and just ignore the Zoning Commissioner's
9 numbers?
10 THE CHAIRMAN: Yes.
11 MR. CLARK: I'll mark this Petitioner's Exhibit 1
12 for identification.
13 Q. You're familiar with this plan?
14 A. Yes, I am.
15 Q. This is a plan that was produced at your
16 direction by Morris & Ritchie Associates, and submitted to
17 the Zoning Commissioner at the hearing below?
18 A. It is.
19 Q. This showed two roll-over bays, equipment room
20 and five self-storage bays?
21 A. That's correct.

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1 Q. With associated vacuums and the like?
2 A. That's correct.
3 MR. CLARK: Then let me mark the next one as
4 exhibit -- do you want to do 1A?
5 THE WITNESS: Two.
6 MR. CLARK: Petitioner's Exhibit 2 for
7 identification.
8 Q. Are you familiar with this plan?
9 A. Yes, I am.
10 Q. Is it the same proposed use as what was on
11 Exhibit 1B?
12 A. Yes, it is.
13 Q. Without all the different colored lines?
14 A. The colors, right.
15 Q. And it proposes two roll-over bays, equipment
16 room and five self-service bays, is that correct?
17 A. That's correct.
18 Q. And it proposes vacuum cleaners in the back?
19 A. Right. They moved all the vacuums to the back of
20 the building.
21 Q. And parking places at the rear and on the side?

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1 A. That's correct.
2 Q. And the landscape buffer area in front?
3 A. (Nodding head.)
4 Q. The proposed sign, is that correct?
5 A. That's correct.
6 Q. And the boiler that you speak about would be
7 located in the equipment room?
8 A. That's correct.
9 Q. As you say, you have to obtain a permit from
10 whom?
11 A. I believe there's a boiler inspection division
12 that you actually have to get it from.
13 Q. Now, what are your proposed hours of operation
14 and number of days a week for this car wash?
15 A. We'd like to operate twenty-four hours a day,
16 seven days a week.
17 Q. And if you would, describe for the Board what
18 type of building will be built at this location to house
19 these car wash bays?
20 A. Well, because we sit in an industrial park, we
21 have to go by the restrictions and covenants of the

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1 industrial park which includes a masonry building of a
2 certain color.
3 Any roof that exists, it has to be of a certain
4 color, but the building will be all masonry block.
5 Q. I want to show this and ask you if you can
6 identify it? Did I miss a page here?
7 A. We had separate information, too, on colors and
8 all that in the contract that we signed.
9 Q. Okay. Is this a copy of the Declaration of
10 Easements, Covenants and Restrictions to which you just
11 referred?
12 A. Yes.
13 MR. CLARK: I'd offer this as Petitioner's
14 Exhibit No. 3
15 THE WITNESS: We also have to submit the plans to
16 Rutherford -- not Rutherford -- but to the Hill
17 Management, Anthony, for review.
18 MS. BRASSIL: Two copies?
19 MR. CLARK: Yes.
20 A. We also have certain height requirements too in
21 the industrial park.

1 Q. Do you know what those height restrictions are?
2 A. I believe it's twenty-two feet.
3 Q. How tall do you propose these car washes to be?
4 A. Maximum, twenty, twenty-one feet.
5 Q. Do you propose any restrictions on the use of the
6 property by people who come to wash their cars?
7 A. Just to wash their vehicles and vacuum their
8 vehicles.
9 No detailing. No, obviously, no working on
10 vehicles on the site, mechanical work.
11 Q. No changing oil?
12 A. No.
13 Q. How do you propose to regulate the noise?
14 A. Well, we'll obviously have to post signs, which
15 is customarily.
16 We'll have an attendant on site during normal
17 business hours.
18 Q. And the attendant will also be available in the
19 case there's some mechanical breakdown or some other need?
20 A. Typically, that will be their job, and it could
21 even be myself doing it.

1 But keeping the place clean, making sure the
2 landscape is fresh, maintaining all equipment.
3 Q. Do you store any large quantities of cleaners or
4 solvents on the site?
5 A. We do. It's all biodegradable chemicals that we
6 use in the car wash.
7 Actually, all our chemicals will be -- chemicals
8 that will be stored will be purchased from the same
9 company we are buying the equipment from, which is Wash
10 Tech.
11 Q. And they'll be kept in a secured location?
12 A. They'll all be stored in the equipment room on
13 site.
14 Q. Do you propose to have any type of security
15 system on site?
16 A. Yes. Typically, in our other sites, we have
17 digital computerized monitoring on the site, so we have
18 already talked to a security company in reference to that,
19 to put it on this site.
20 You can monitor -- you can even monitor those now
21 over the phone line, over a video line.

1 Q. The equipment, is it run by some sort of
2 computer?
3 A. Yes.
4 Q. Do you know the maximum temperature to which the
5 water is heated?
6 A. We run the water up to about a hundred ten, a
7 hundred twenty degrees.
8 Q. Is there some sort of shutdown or shutoff system
9 in the boiler in the event the temperature exceeds that?
10 A. Absolutely.
11 Q. Now, with respect to the flooring for these
12 buildings, what type of flooring will there be?
13 A. It will all be masonry, but they'll all be
14 heated.
15 We are going to heat the entrance areas and the
16 exits, whatever exit area of concrete out of the bays.
17 It will all be heated, including the floors in
18 the bays, they'll be heated.
19 Q. What's the purpose of that?
20 A. You know, to keep the areas safe of ice during
21 the winter.

1 Q. Do you know whether or not you have to obtain any
2 type of water discharge permit?
3 A. Discharge like regular water and sewer, I believe
4 you do.
5 Q. And you expect to apply for and --
6 A. Absolutely.
7 Q. -- obtain that from Baltimore County?
8 A. (Nodding head.)
9 Q. Do you propose to have any coin changers on site?
10 A. Yes. We'll have several vending pieces of
11 equipment obviously installed in the wall of the equipment
12 room so that the customers can make change and buy
13 fragrances and stuff like that.
14 Q. But no ATM, no automated teller?
15 A. No separate ATM.
16 Q. Did Morris & Ritchie, at your direction, prepare
17 a landscape and lighting plan, or will they?
18 A. They have.
19 Q. They have a preliminary landscape plan now?
20 A. They do.
21 Q. Do you recall seeing comments from the office of

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1 planning in connection with the prior hearing in this
2 matter?
3 A. Yes, I do.
4 Q. Let me show you this and ask you to identify
5 that.
6 A. Yes.
7 MR. CLARK: These are the comments from the
8 office of planning. Mark that as Petitioner's No. 4.
9 MS. BRASSIL: Yes.
10 Q. Now, there are certain conditions that they have
11 requested.
12 One is to provide a landscape plan, which we
13 discussed?
14 A. Correct.
15 Q. Submit a lighting plan, which you'll agree to do,
16 is that correct?
17 A That's correct.
18 Q. And to direct the lighting so that it will not
19 conflict with adjacent residential uses, is that correct?
20 A. Absolutely.
21 Q. You would agree to submit sign detail and

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1 building elevations for approval prior to the building
2 permit?
3 A. Yes.
4 Q. Do you propose to have a sign, a freestanding
5 sign on the property?
6 A. Yes, we do. It's shown on the drawing.
7 Q. Okay. And you'll apply to Baltimore County --
8 A. Apply for a permit for that.
9 Q. -- to meet the requirement for that?
10 A. (Nodding head.)
11 Q. Do you know whether or not on any of the adjacent
12 properties, there are any car washes located?
13 A. Yes, there is. As a matter of fact, if you're
14 looking at our lot, to the right, there's a single-bay car
15 wash.
16 Q. It's depicted on Exhibit 1B -- or I'm sorry.
17 Petitioner's No. 2?
18 A. Yeah. And I think that lot -- that's considered
19 lot nine.
20 Q. Can you point to that? You can step down.
21 A. Sure. Right here.

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1 Q. In fact, it's labeled car wash, is it not?
2 A. Right. Yes, sir. Actually, it's lot B-7, and
3 this is lot B-8. Ours is property eight. There is the
4 car wash.
5 Q. Do you know what the hours of that car wash are?
6 A. I believe they're twenty-four.
7 Q. Do you know how many days a week they are open?
8 A. Seven days a week.
9 MR. CLARK: If I can have just a minute, Mr.
10 Chairman? I have no further questions.
11 THE CHAIRMAN: Mr. Tanczyn.
12 CROSS EXAMINATION
13 BY MR. TANCZYN:
14 Q. Good morning, Mr. Ogrysko.
15 A. Good morning.
16 Q. How are you today?
17 A. I'm doing well. Thank you.
18 Q. If you need to go to your Petitioner's 1 or two
19 to answer my question, with the Board's permission, please
20 do so.
21 A. Sure.

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1 Q. Listen to the question first.
2 A. Okay.
3 Q. Do you agree that the proposed sign lies
4 partially within the landscaped area for the front?
5 A. Yes, I do.
6 Q. And when you told the Board about the, in answer
7 to Mr. Clark's question, about these three other
8 locations, one of those is at 1327 Policy Drive?
9 A. Correct.
10 Q. What county is that in?
11 A. Harford County.
12 Q. Harford. And that one was opened at the time of
13 the last hearing when you testified, eighteen hours a day?
14 A. Yes. That one is open eighteen hours a day.
15 Q. 5 a.m. 11 p.m., is that I made a note of. Is
16 that --
17 A. Correct.
18 Q. -- when it was open then?
19 A. Correct.
20 Q. Are those hours still the same for that facility?
21 A It is, because that's a joint business where you

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1 have a Burger King we built in connection to the
2 convenience store, and the hours of operation for that
3 Burger King are the same hours that we mimic.
4 Q. So you kept it open the same hours that the
5 Burger King was open because you had a --
6 A. We had a facility designed --
7 COURT REPORTER: Let him finish the question.
8 Q. Because you had people that could watch over the
9 car wash, correct?
10 A. There's no car wash on that site.
11 Q. I thought you said there was on Policy Drive?
12 A. No, there's no car wash on Policy. At the
13 Riverside, the other location, and the Owings Mills
14 location, two of the three have car washes. That's what I
15 said.
16 Q. What's at Policy Drive?
17 A. That's a convenience store gasoline operation.
18 Q. But no car wash?
19 A. Correct.
20 Q. Okay. At Riverside -- I made a note --1319
21 Riverside, that's also in Harford County?

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1 A. That's correct.
2 Q. And that was a pad site in a shopping center?
3 A. That's correct.
4 Q. My notes indicate that at the time of the last
5 hearing, that was attended, a site with a car wash,
6 twenty-four hours?
7 A. It has a person in the convenience store, one
8 person, correct.
9 Q. And it's a 24/7 operation?
10 A. Yes.
11 Q. The third address, I believe, was 9330 Lakeside.
12 That's in Newtown?
13 A. That's correct.
14 Q. That's twenty-four hours?
15 A. That's correct.
16 Q. And is it that attended?
17 A. Yes. The convenience store is attended, correct.
18 You have to with gasoline, you have to have an attendant.
19 Q. And the responsibilities of that attendant
20 include supervising or monitoring the car wash?
21 A. They really can't see the car wash unless they

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1 look out the window, but they're not down at the location
2 at the car wash attending it, no.
3 Q. How far away is it from the C-store.
4 A. From the C-store at that location, probably a
5 good eighty, hundred feet.
6 Q. Eighty to a hundred feet?
7 A. I'd say at least eighty feet.
8 Q. Now, when asked about what you would do about
9 noise, you said a couple things. You said you'd put up
10 signs?
11 A. Uh-huh.
12 Q. How does a sign control noise when the property
13 is not attended?
14 A. Well, it's -- all I can say is, that's the only
15 thing I can think of to help reduce noise at any location,
16 is to put up a sign first.
17 If you realize that you have a problem on that
18 site, then you'd have to -- we'd have to address it at
19 that time.
20 Q. Okay. And in answer to Mr. Clark's question
21 about when an attendant would be present, I heard you say

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1 normal business hours.
2 Could you tell us what hours you consider normal
3 business hours that an attendant would be present under
4 your plan?
5 A. Under our plan, financial plan, probably between
6 eight and six.
7 Q. You say "probably." Are you really saying it's
8 between eight and six?
9 A. Well, I have to look at the financial -- you now,
10 how much it cost us to do that and how much revenues are
11 being produced by that site, so.
12 Q. Well, what effect would revenues being generated
13 have on whether or not you had an attendant there?
14 Just tell the Board what --
15 A. Well, if I'm losing money there, I'm not going to
16 have an attendant there. I'm going to put myself there.
17 Q. What hours will you have anybody there, whether
18 it's somebody else or you serving as an attendant?
19 A. What was the question? I'm sorry.
20 Q. Whether it's you or someone else --
21 A. Right.

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1 Q. -- what hours are you telling this Board that
2 you're going to have an attendant at this site?
3 A. Well, it's not to be any fixed hours, but will be
4 between eight and six. Eight in the morning to six in the
5 evening.
6 Q. By not fixed hours, what are you trying to say to
7 the Board?
8 A. Well, it's not going to be a sign like posted on
9 a regular retail store front where it will say open,
10 Saturday from eight to six, or attendant.
11 We could put a sign that says attendant available
12 between eight and six, but we are not going to have -- I
13 don't think we'll have the hours of operation posted on
14 the building.
15 Q. When you say no fixed hours, are you talking
16 about having them come at hours other than eight and six,
17 or not being there for the entire time?
18 A. Could.
19 Q. So at a minimum, what hours and what days are you
20 talking about an attendant?
21 A. Seven days a week, and between the hours of eight

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1 and six.
2 Q. Someone will be there between eight and six,
3 24/7, 8 a.m. to 6 p.m., is that what you're saying?
4 A. 24/7, you mean seven days a week?
5 Q. Seven days a week, you said?
6 A. Right.
7 Q. You're going to operate twenty-four hours a day?
8 A. Correct.
9 Q. On those seven days, are you going to have an
10 attendant there between eight through six?
11 A. That's what we'd like to do, is keep an attendant
12 there between eight and six.
13 Q. Who controls the site when you're not there?
14 A. Who controls it?
15 Q. Yeah. County police?
16 A. I don't think that they're going to be actually
17 patrolling it and taking care of it for us.
18 Q. Why should they have that responsibility --
19 A. It's normal and customary as any car wash.
20 Q. That it's not attended?
21 A. Well, most every car wash I know of that's of

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1 this stuff, of this type, are unattended.
2 Q. Are you telling this Board that every car wash of
3 this type is unattended?
4 A. I don't know of any car wash that has a
5 twenty-four hour attendant on site that is -- that has
6 self-serve and roll-overs of this style. There might be,
7 but I don't know of any.
8 q. The security system that you talked about -- I
9 wrote it down and I'm having trouble understanding my own
10 handwriting today -- but I wrote down digital computerized
11 monitoring.
12 A. Right.
13 Q. You said later that you can see that through a
14 phone line at some other site?
15 A. You can, sure.
16 Q. How far, where are you proposing to monitor this
17 site in that manner from?
18 A. You can monitor it right through my own personal
19 laptop, if I'd like.
20 Q. My question is simply, how far from this site is
21 that monitoring going to be?

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1 A. Well, it's going to be on a laptop, so it could
2 be right there at the site.
3 Or it could be at my house. Or it could be at my
4 other place of business. It could be -- it can travel
5 with me. It's in a laptop.
6 Q. You're going to be doing that?
7 A. Yes.
8 Q. How many hours of the day is it going to be
9 actively monitored, if you're doing it?
10 A. I have no idea. I have -- I have no idea at this
11 time.
12 Q. Well, if you're going to have an attendant there
13 from eight to six -- and I'm not suggesting things. I'M
14 asking -- are you proposing that it be actively monitored
15 from 6 p.m. until 8 a.m?
16 A. Actively, no. Honestly, I can't say it's going
17 to be actively monitored.
18 I'm not going to sit in front of a laptop between
19 all those hours, no.
20 Q. So how is anybody to react to what's going on at
21 the site if no one is actively monitoring it between the

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1 hours of 6 p.m. and 8 a.m. if no attendant is there during
2 those hours?
3 A. I don't understand what you mean by react to
4 something.
5 Q. How can anybody react to what's going on at the
6 site if nobody is watching the monitor, if something bad
7 is going on?
8 A. To me, it's pretty similar to my other retail
9 business that doesn't have any monitoring system. How do
10 they react?
11 Q. It's the same as not having a monitor?
12 A If they don't see it, it's hard to react to it.
13 Q. So what is the purpose of this monitoring system
14 if you're not committing to anybody using it when there's
15 no attendant there?
16 A. It would help prevent vandalism. It could help
17 with any crime investigation, which that's what we use
18 ours for currently at our stations, which we have helped
19 like Baltimore County police to try to help solve crimes.
20 Even crime outside of our location, we have
21 helped with pictures of people coming into the locations.

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1 Q. How would it help in terms -- is it going to help
2 identify somebody who did somebody that the monitor wasn't
3 watching?
4 A. It could. It's recording.
5 Q. And if a crime were to occur during those hours,
6 how often do you propose to look at this monitor?
7 A. If a crime was to occur during those hours, when
8 am I going to look at it?
9 Q. Yes, sir.
10 A. Well, if the crime occurred, and I was told about
11 the crime, I could look at it at any given time.
12 You can go back on it and look at it at any given
13 time.
14 Q. So it's more like an historic monitoring system
15 to record stuff that happened at the site when there was
16 no attendant, is that correct?
17 A. It can be used for both, correct, historic or
18 current, depending on it being monitored at the time.
19 Q. And if somebody does graffitti at the site, you
20 don't intend to call the police and try to get them to
21 stop it or try to react yourself to it?

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1 A. Well, I wouldn't react myself to it anyway. If a
2 crime is being committed, I'm not going to -- that's what
3 the police are for.
4 Q. You don't want to endanger yourself --
5 A. Correct.
6 Q. That's understandable.
7 A. Correct.
8 MR. CLARK: Mr. Ogrysko, please let him finish
9 the question.
10 THE WITNESS: Okay. I'm sorry.
11 Q. How will this digital computerized monitoring
12 system record or be capable of recording the level of
13 noise from people playing their radios while they're at
14 the site while they're washing their cars?
15 A. It's not going to record the level of sound.
16 Q. It won't?
17 A. It can. But I mean, if you need to put
18 monitoring in for sound, you could.
19 I mean, it's capable of recording sound. But I
20 mean, we don't have any plans of putting a, you know,
21 monitoring, because you'd have to put monitors all

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1 throughout the location in order to record every sound on
2 that one acre lot.
3 Q. And that would be some costs?
4 A. Yes.
5 Q. Which you'd rather avoid?
6 A. Sure.
7 Q. And if it bothers the neighborhood, you don't
8 hear it, is that correct, on the monitor?
9 A. If the neighborhood came to me with a concern, I
10 would try to do what I could to address the concern.
11 Q. And if they just came to you with a hypothetical
12 concern with this system, what are you doing to address
13 noise complaints, or criminal acts on the site, or people
14 might be getting knocked on the head when there's no
15 attendant there, or dealing drugs?
16 A. First, I would probably go the police, and ask
17 them what they thought I could do.
18 Q. Okay. So you just did that. And if they said,
19 Put an attendant on the site, would you put an attendant
20 on the site?
21 A. If the police said that, and it made sense, sure.

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1 Q. How about if the Board said that, an attendant on
2 the site to avoid all this so people don't have to get
3 knocked on the head and have drug deals going down when
4 there's no attendant there, would you do it if the Board
5 said it?
6 A. I guess if they required my location, out of all
7 locations to do it, I guess I would have to.
8 Q. But you'd do it grudgingly?
9 MR. CLARK: Objection.
10 THE CHAIRMAN: Sustained.
11 Q. The planning comment which was shown to you and
12 introduced as Petitioner's Exhibit 4, that referred to
13 your original plan as reviewed by planning, correct?
14 A. Not this drawing, but it was 1A, I think it was?
15 Q. The one that was before the Zoning Commissioner?
16 A. Yeah.
17 Q. Before you did these other two plans?
18 A. Yeah.
19 Q. The other two plans have never been reviewed by
20 planning, have they?
21 MR. CLARK: Objection.

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1 MR. TANCZYN: Sir?
2 THE CHAIRMAN: I'll overrule that. If he knows.
3 A. I have no idea.
4 Q. You can't say that they have?
5 A. No, I can't.
6 Q. You don't know that they have?
7 A. I'm not a hundred percent positive.
8 Q. The operation next door on lot B-7 that you told
9 the members of the Board about, that's a gas and go, and
10 the roll-over is an accessory to the gas and go,and
11 there's a twenty-four hour attendant at the C-store
12 there, is that correct?
13 MR. CLARK: Objection, just to the term
14 "accessory."
15 Q. The use in combination, as allowed by the zoning
16 regulations?
17 A. Yes.
18 Q. So they have their site attended 24/7, is that
19 correct?
20 A. Well, not every inch of that site. If you
21 worried about sounds and everything else, they're

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1 monitoring inside of the building.
2 Q. You have experience with self-service as well as
3 roll-over car washes, is that correct?
4 A. Yes.
5 Q. And from your experience, you are aware of the
6 different usage of those sites, and let's take them one by
7 one.
8 The self-service car wash, a person can have
9 their radio on while they're washing their car, vacuuming
10 their car, as provided on your site, or drying their car,
11 if they want to wipe it down, if they are unhappy, or want
12 to get the water off, is that correct?
13 A. Yes, sir.
14 Q. With a roll-over, usually the car windows are
15 rolled up when they are going through the roll-over, or
16 else they would get water inside the car, couldn't they?
17 A. True, yes.
18 Q. There'd be a different sound level if both cars
19 had their radios operating going through a roll-over as
20 opposed to a self-serve car wash?
21 A. At that particular time of what they're doing on

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1 that site, yes.
2 Q. And so at the neighboring site in terms of sound,
3 that's just a roll-over? There's no self-serve facility
4 there, is that correct?
5 A. Well, they have vacuums there, so I would assume
6 that they're using the vacuums also as part of that car
7 wash.
8 Q. Right. But the car wash itself, there are no
9 self-serve car washes, is my question?
10 A. Right. It's a roll-over.
11 Q. And they have vacuums?
12 A. Correct.
13 Q. And they have fewer vacuums than you're
14 providing, proposing, is that correct?
15 A. Yes.
16 Q. They have like four, three or four vacuums at
17 that site?
18 A. I believe four.
19 Q. The vacuums are located in front of the C- store
20 where the operator can look out the window and see them,
21 is that correct?

1 A. Well, I don't know if they have a straight
2 unobstructed view, because the distance between that
3 C-store and where that vacuum is, it's -- I don't know.
4 Q. Well, the vacuums are generally located right
5 here, are they not? Where it says X vacuum, existing
6 vacuum?
7 A. Yeah, but I think they also have some other
8 vacuums on the site. They're not in plain view.
9 Q. They're not shown on this plan?
10 A. I believe so.
11 Q. And there's a C-store right near that faces out
12 this way?
13 A. Right. So if they're standing at the window,
14 maybe at the C-store, just looking out the window, they
15 might be able to see it all the time.
16 Q. You have been out to the site. Can you tell the
17 Board that the window is right in that corner where the
18 attendant is --
19 A. There's a wall --
20 Q. -- that faces --
21 A. -- a masonry wall, and it has a glass front.

1 Q. We're still almost talking over each other.
2 THE COURT REPORTER: Yeah, you are.
3 A. I'm sorry. Did you want me to describe it again?
4 Q. No, sir.
5 MR. TANCZYN: I don't know. If the Board members
6 didn't hear, they would let you know.
7 THE WITNESS: Sorry.
8 MR. TANCZYN: Those are the questions I have.
9 Thank you.
10 THE CHAIRMAN: Hold on just a minute.
11 MR. WITT: Your answer to question I had, that
12 B-7 car wash is a roll-over?
13 THE WITNESS: Yes, sir.
14 MR. WITT: It is a roll-over, not a self-service?
15 THE WITNESS: Yes, sir.
16 MR. WITT: Not a self-service?
17 THE WITNESS: No, sir. It's a roll-over.
18 MR. CLARK: A couple follow-up questions, if I
19 may.
20 THE CHAIRMAN: Okay.
21 REDIRECT EXAMINATION

1 BY MR. CLARK:
2 Q. The vacuums that you have, is there any type of
3 noise suppression equipment on them?
4 A. They do.
5 Q. Can you tell the Board about that?
6 A. I think it came up at the last meeting where we
7 were trying to figure out the decibel reading.
8 But, in short, it's less than what is produced
9 from the road, from cars traveling on the road itself.
10 I think -- I believe it's -- if I remember right,
11 it's like four or five decibels.
12 Q. Do you plan to post a phone number on the site
13 for someone to call if there's any emergency or any
14 trouble?
15 A. Yes.
16 MR. CLARK: I have nothing further.
17 MR. TANCZYN: Just to follow up on that exact
18 point.
19 RECROSS EXAMINATION
20 BY MR. TANCZYN:
21 Q. You say that noise suppression systems will make

1 the vacuums noise less than the road?
2 A. No. I'm saying --
3 Q. The road noise?
4 A. -- the decibels that come out, typically out of
5 the vacuums today, are less than what the road noise
6 itself is.
7 Q. How about in the middle of night when there's no
8 road noise, there's no traffic?
9 A Well, see, then, you're measuring zero.
10 Q. Zero at the road?
11 A. Correct.
12 Q. Okay. So it wouldn't be true in hours of little
13 traffic, correct?
14 A. Well, little traffic or zero traffic?
15 Q. Little or zero.
16 A. There's a difference.
17 Q. Okay. You have somebody here who's going to talk
18 about that, do you not?
19 A. No.
20 Q. You don't today. Okay. All right. Well, did
21 you perform the study or are you relying on something you

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1 heard the other guy you brought in at the last hearing
2 say?
3 A. The manufacture specs of the actual vacuum.
4 Q. Do you have those with you?
5 A. I do not.
6 Q. Okay. Without having them with you, are you
7 capable of telling the Board what the specs say about the
8 decibel levels for the road or the site?
9 A. No.
10 Q. With the vacuums?
11 A. I don't have it with me, so I can't give it to
12 you as direct evidence to that reading.
13 Q. Well, if you recall, at what traffic level was
14 the road noise compared to the vacuum suppressant noise?
15 A. I'm -- I don't understand your question.
16 Q. How many cars a minute -- if the specs said that,
17 it has to be based on so much noise --
18 A. Right.
19 Q. -- or maximum noise from the road?
20 A. I don't have it in front of me right now, so I
21 couldn't tell you.

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1 MR. TANCZYN: That's all I had. Thank you.
2 MR. CLARK: Nothing further.
3 THE CHAIRMAN: Thank you, sir.
4 THE WITNESS: Thank you.
5 MR. CLARK: Call William Monk.
6 W I L L I A M M O N K,
7 having been called as a witness, was duly sworn and
8 testified as follows.
9 DIRECT EXAMINATION
10 BY MR. CLARK:
11 Q. State your full name and your business address,
12 please.
13 A. My name is William Monk. Business address is
14 1220 East Joppa Road, Towson, Maryland.
15 Q. By whom are you employed?
16 A. Morris & Ritchie Associates.
17 Q. In what capacity?
18 A. I am a principal of the firm, and I provide
19 management land planning and related activities for the
20 firm.
21 Q. Do you have any degrees beyond high school?

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1 A. Yes.
2 THE CHAIRMAN: Can we just stipulate Mr. Monk is
3 an expert?
4 MR. TANCZYN: I would, if asked.
5 Q. Let me show you this. Can you identify that?
6 A. Yes.
7 Q. What is that?
8 A. It's a resume.
9 Q. Of yours?
10 A. My resume.
11 MR. CLARK: I offer this as a petitioner's
12 exhibit, and I'm offering Mr. Monk as an expert witness in
13 the matter of land planning, the Baltimore County zoning
14 regulations and site development for a car wash.
15 MS. BRASSIL: No. 5.
16 MR. CLARK: If you would.-
17 MR. TANCZYN: Not as to traffic.
18 MR. CLARK: He's not a traffic expert.
19 Q. Mr. Monk, are you familiar with the Baltimore
20 County zoning regulations that govern car washes?
21 A. Yes, I am.

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1 Q. Have you had experience applying them?
2 A. Yes, I have.
3 Q. If you would, tell the Board, give a summary of
4 your experience in applying the car wash zoning
5 regulations.
6 A. Well, since the new regulations came into effect,
7 and you're referencing Section 914, I have been involved
8 in the design and layout of several car wash facilities in
9 Baltimore County.
10 And prior to that, I had done others, which
11 included gas stations, convenience stores, other uses in
12 combination as the code presently defines them to be.
13 Q. Have you had occasion to testify either before
14 the Zoning Commissioner or the Board of Appeals in
15 connection with car wash petitions?
16 A. Yes, I have.
17 Q. Do you know on how many occasions?
18 A. Numerous.
19 Q. Mr. Monk, you were retained by Stemark, Inc. for
20 the purposes of preparing a petition and site plan for the
21 proposed car wash at 2705 Rolling Road, is that correct?

1 A. I was.
2 Q. Did you and your firm under your direction
3 prepare a site plan for the petitioner?
4 A. Yes, we did.
5 Q. Let me show you Exhibit 1B and ask you to
6 identify it. I'm sorry. Exhibit 1.
7 A. That is the initial plan that we had prepared to
8 go in front of the Deputy Zoning Commissioner of which
9 this was an alternative that we submitted into the record
10 as evidenced by its exhibit number showing the layout,
11 which is the same as we had presented to this Board for
12 their review today.
13 Q. It's signed and sealed by a registered landscape
14 architect and applies the regulations, is that correct?
15 A. It does, yes.
16 MR. CLARK: I offer this as Petitioner's Exhibit
17 No. 1.
18 THE CHAIRMAN: We already have it.
19 MR. CLARK: I just marked it for identification.
20 THE CHAIRMAN: Okay. Accepted.
21 MR. TANCZYN: I'd just object for the record. If

1 I might, briefly, this plan has not been reviewed by
2 planning, so we object to that, or any other county
3 agency.
4 It was submitted directly to the Zoning
5 Commissioner after the first hearing day.
6 THE CHAIRMAN: Overruled.
7 Q. Let me ask you to look at what's been marked as
8 Petitioner's No. 2 for identification. Can you identify
9 this?
10 A. Yes, I can.
11 Q. What is that?
12 A. This is the enlarged at one inch equals twenty
13 feet site plan similar to the aforementioned exhibit
14 that's already been entered into the record.
15 We simply enlarged it to make it easier for the
16 Board to read, give it the level of detail and the amount
17 of information that was provided on the plan.
18 Q. You removed the underlying detail from the first
19 plan that was submitted to the Zoning Commissioner?
20 A. Yes, we did, just again to help the Board, once
21 again, not be confused by a bunch of lines on the drawing.

1 MR. CLARK: Offer this as Petitioner's 2.
2 THE CHAIRMAN: Accepted.
3 MR. TANCZYN: Same objection, if I might.
4 Q. You had occasion to visit the site at 2705
5 Rolling Road?
6 A. Yes, I have.
7 Q. Have you had occasion to take photographs?
8 A. I have.
9 Q. Let me show you a series of photographs and ask
10 you to identify them.
11 A. Actually --
12 Q. These --
13 A. -- we need to refer to the other exhibit, which
14 is the zoning map that's already in the record --
15 Q. Okay.
16 A. -- to utilize those photographs.
17 Q. Okay. Well, we'll start with these.
18 MS. BRASSIL: We don't have the map.
19 Q. Okay. We'll go the way you want. Did you have
20 occasion to obtain a 200 scale zoning map for the proposed
21 site?

1 A. Yes, I did.
2 Q. And --
3 MR. TANCZYN: Can I just take a peak at it?
4 MR. CLARK: Yes.
5 MR. TANCZYN: Okay.
6 (Discussion held off the record.)
7 Q. Let me show you this document which was
8 Petitioner's Exhibit No. 8 below. Can you identify this?
9 A. Yes, I can.
10 Q. What is this?
11 A. This is a composite drawing of a couple sheets of
12 the Baltimore County approved official zoning map which
13 indicates the location of the subject site, which is the
14 big red star, and other surrounding land uses and zoning
15 classifications and street systems.
16 Q. This was prepared under your direction?
17 A. Yes, it was.
18 MR. CLARK: Offer this as Petitioner's Exhibit
19 No --
20 MS. BRASSIL: Six.
21 MR. TANCZYN: Objection. It says right on it,

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1 it's a 2000 map. There's been a 2004 enactment of the
2 County Council.
3 THE CHAIRMAN: Overruled.
4 Q. Now we are back to photographs that you had
5 taken.
6 A. Okay.
7 Q. Let me show you this series of photographs and
8 ask if you can identify them.
9 Are these photographs taken by you or under your
10 direction, and do they fairly and accurately depict the
11 conditions of the site at 2705 Rolling Road as you
12 observed them?
13 A. Yes, I took these photographs myself.
14 MR. CLARK: I'm going to mark these as 7, or A, B
15 and C.
16 MS. BRASSIL: Okay.
17 Q. Let me show you what's been marked as
18 Petitioner's Exhibit 7A. Can you identify that?
19 A. Yes. This is a photograph that I took that views
20 the proposed developed site from the west side of Rolling
21 Road looking in a southeasterly direction.

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1 The large undeveloped field is the subject
2 property, undeveloped field approved subdivides parcel
3 that obviously had been graded and cleared for
4 development, future development purposes, and it's zoned
5 ML-IM.
6 MR. TANCZYN: Could I ask the Board -- I didn't
7 hear them being offered, if they were offered. I was
8 going to ask -- I haven't heard when they were taken.
9 THE WITNESS: Yesterday.
10 MR. TANCZYN: Thank you.
11 THE CHAIRMAN: It depicts the site. If it
12 doesn't accurately depict the site, I don't care when they
13 were taken.
14 MR. TANCZYN: Sometimes it helps to know when it
15 was taken in case there's been changes.
16 Q. Petitioner's exhibit 7B is a series of photograph
17 taken together. Can you tell -- let me hold them up.
18 A. This is a composite drawing looking straight onto
19 the subject property, once again from the west side of
20 Rolling Road.
21 It's a panoramic in that I want to be able to

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1 show the Board the adjacent land uses to the north and the
2 south on the east side which will be contiguous to the
3 subject site.
4 We have the gas station and the C-store that was
5 referenced in testimony located to the south, and we have
6 at present an undeveloped parcel immediately to the north
7 which is part of the industrial park, which also is zoned
8 ML-IM.
9 MR. CLARK: And 7C is also a series of
10 photographs. I'd offer that as 7B.
11 Q. This is 7C, a series of photographs. Again,
12 describe them for the Board.
13 A. Okay . This is once again a view of the site.
14 This time, I'm standing on the back of the site or the
15 eastern side of the site, looking easterly, once again in
16 a panoramic configuration so the Board can clearly see,
17 once again, the gasoline and C-store operation, which is
18 now on the left, then panning across the property itself,
19 looking to the right, which is the undeveloped subdivided
20 M.L. zoned parcel I referenced which is also next to a
21 used storage facility that's part of the industrial

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1 park,or was part of the industrial park originally.
2 And clearly and importantly, the Board then can
3 begin to see the activities going on, on the opposite side
4 or, if you will, the west side of Rolling Road across the
5 street from the subject site.
6 Q. You mentioned, Mr. had Monk, this is part of the
7 Rutherford Industrial Park.
8 Do you know the size of the Rutherford Industrial
9 Park?
10 A. I do not know the exact size, but I would gather
11 it to be several -- at least a couple hundred acres at the
12 time it was originally subdivided and platted.
13 Q. Based upon your knowledge, does it exceed
14 twenty-five acres?
15 A. Yes, it does.
16 Q. You also testified, do you know what types of
17 uses are in that industrial center?
18 A. Yes, I do. I am somewhat familiar with them.
19 Q. Can you tell us what the uses are in the
20 industrial center?
21 A. Yeah. I'd like to reference, once again, the

1 Board's exhibit, the exhibit -- the zoning map that we
2 entered into the record in that it's a frame of reference
3 for the Board so you can see this.
4 Rolling Road is situated to the left, running in
5 a north south direction. The Baltimore beltway is over
6 here shown running, once again, in this area, in a north
7 south direction.
8 The area between Rolling Road and betweeen the
9 beltway as you can see in this large area is the
10 Rutherford Business Park, or industrial park.
11 And I highlighted the zoning for this very large
12 area in and around the subject parcel.
13 All of these little pink notations indicate ML-IM
14 zoned area. You can see, as I referenced beforehand, the
15 property to the south, immediate south, is zoned ML-IM.
16 The property to the north is zoned ML-IM, as well
17 as additional area and everything easterly.
18 There's a whole host of industrial uses permitted
19 by right in the ML-IM zone. There are several dozen
20 buildings, everything from warehouses to light
21 manufacturing to office buildings. A postal service is in

1 there.
2 The whole myriad of uses that have developed over
3 the years within this industrial park.
4 Q. Have you completely described the surrounding
5 uses to the proposed site?
6 A. Not exactly.
7 Q. Okay.
8 A. I'd like to reference some photographs which,
9 once again, will help the Board to clearly understand
10 what's going on in the immediate area.
11 MR. CLARK: These are Petitioner's 8A through --
12 I'm not sure how far we're going to get in the alphabet
13 here.
14 Q. These photographs, Mr. Monk, you took, or they
15 were taken under your direction?
16 A. I took them myself yesterday.
17 Q. Do they fairly and accurately depict the
18 conditions of the site depicted in the photographs as they
19 appeared to you when you took the photographs?
20 A. I believe they do.
21 Q. I'm going to show you what's Petitioner's Exhibit

1 8A.
2 A. This is a view looking northeasterly from the
3 west side of Rolling Road at the undeveloped but approved
4 industrial lot immediately to the north of the subject
5 site, and directly behind that, one can begin to make out
6 the use storage type facility that also is part of the
7 industrial park adjacent.
8 MR. CLARK: We'd offer that as Exhibit 8A.
9 Q. Exhibit marked 8B, what is that?
10 A This is a photograph looking southerly along --
11 have these been marked?
12 Q. They're already marked.
13 A. They're already marked. Okay. Well, this is a
14 view looking south on Rolling Road.
15 And the purpose of this exhibit is to show the
16 adjacent land use which is the gas and C-store that's been
17 reference previously in testimony, and, importantly, to
18 show the nature and character of Rolling Road, which is a
19 five lane, two through lanes, the north and southbound
20 directions, with a center turn lane, curb, gutter and
21 sidewalk as designed and built according to Baltimore

1 County standards for a major commercial arterial road.
2 Q. And is it fifty feet of paving on the seventy
3 foot right-of-way?
4 (Cell phone ringing.)
5 THE WITNESS: I apologize, tremendously. Very
6 sorry. I apologize. I don't get too many calls. I'm not
7 a very popular person.
8 THE CHAIRMAN: Either am I.
9 Q. I think the question was, how many feet of paving
10 is it on a fifty foot wide road, right-of-way?
11 A. This is a minimum of fifty foot of pavement, and
12 in all probability it's closer to -- probably closer to
13 fifty-five feet.
14 Q. Okay.
15 A. This is a view looking northerly from the subject
16 property, once again depicting the character of the road,
17 curb, gutter, sidewalks, the five lanes of which one is a
18 center turn lane, which some people refer to it as a
19 suicide lane.
20 Q. There is an area on the left-hand side of this
21 photograph that you propose is a split rail fence?

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1 A. That is correct.
2 Q. Can you tell me what that area is?
3 A. That is the regional stormwater management
4 facility which is directly across the street from the
5 subject site which services the apartment complex located
6 to the north and west on the opposite side of Rolling
7 Road.
8 MS. BRASSIL: You're referring to this?
9 THE WITNESS: Yes, that area right there. And
10 this one refers back to the wide angle mini forms that we
11 spliced together, you can see as you look directly across
12 the street from the property, you can see there's no
13 buildings, no housing, but rather is that large regional
14 stormwater management facility that's required by law in
15 support of the development of that office or -- I'm
16 sorry -- of that apartment complex.
17 Q. So what's been marked Petitioner's 8D, tell me
18 what that is?
19 A. This is a photograph, once again, looking
20 southwesterly from the west side of Rolling Road, which
21 depicts the backs of a series of townhomes.

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1 They are located south of our property, and they
2 are buffered -- they are directly across the street from
3 the gas and the C-store.
4 They're not directly across the street from the
5 subject site.
6 And as you can see also by the photographs, they
7 are screened quite heavily with evergreen, mature
8 evergreen trees.
9 It provides a buffer and a transition between
10 them and the gas and C-store.
11 MR. CLARK: Next, I would offer Petitioner's 8E.
12 Q. Can you tell me what that is?
13 A. I simply moved up a little bit further up Rolling
14 Road heading northerly.
15 This is the water tower which shows up in several
16 of the other photographs and also the main entrance and
17 the primary front building to the use storage facility,
18 part of the industrial park zoned ML-IM.
19 Q. Photograph 8F?
20 A. Just another photograph, the size and scale of
21 the water tower.

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1 Q. 8G?
2 MR. TANCZYN: What was 8F?
3 MR. CLARK: Another photograph of the water
4 tower.
5 MR. TANCZYN: Thank you.
6 A. 8G shows the enclosed area for the use storage
7 facility for security purposes.
8 And, importantly, it shows the quality of the
9 design or level of the design detail that the applicant
10 was required to go to as part of being able to develop
11 within the covenants and restrictions of the Rutherford
12 Business Park.
13 q. And photograph 8H?
14 A. This is really a companion photo to the one I
15 just showed you which clearly shows one of the -- the flex
16 space building that is directly behind the subject site,
17 and it shows once again the level of detail and
18 architectural control and constraints that were placed on
19 this development as well.
20 And as you can see, they are compatible, uniform,
21 as far as brick material to the use storage facility as

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1 previously entered into the record.
2 MR. CLARK: If I haven't done so, I will offer
3 all of those photographs collectively as Petitioner's No.
4 8 --
5 THE CHAIRMAN: Accepted.
6 MS. BRASSIL: It's 8A through G.
7 MR. CLARK: H.
8 THE CHAIRMAN: H.
9 MR. TANCZYN: H.
10 MS. BRASSIL: Sorry.
11 Q. Mr. Monk, could you describe for us the road
12 network surrounding the site?
13 A. Yes. I think the road network, specifically
14 Rolling Road, is an extremely important component of the
15 handle use assessment for this type of proposed
16 development.
17 I mentioned previously on the zoning map, Rolling
18 Road runs in a north south direction through this area.
19 Those of us familiar with the west side know that
20 the county has been, over time, as development has been
21 occurring, or through the capital improvements program,

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1 has been widening and improving Rolling Road.
2 Why are they doing that? Because it serves a
3 very major function to the west side of Baltimore County.
4 It is the only north south major collector or
5 arterial extending from Liberty Road on the north all the
6 way down south of Frederick Road to the south.
7 This is the way people that don't want to get on
8 the beltway, and don't want to bother going through a
9 residential community, this is the way they get from Point
10 A to B as they move from north to south on the west side
11 of the county.
12 And as I indicated, and the photographs indicate
13 it's been improved and is being improved wherever possible
14 to five lanes.
15 So it's carrying a lot of non-local traffic. It
16 carries a high volume of traffic. I don't have the
17 traffic counts, but it's very evident by the nature and
18 character of the road, and it acts as a very appropriate
19 transition zone and transition area between much of the
20 commercial activity that occurs, if you will, on the east
21 side of Rolling Road versus the west side of Rolling Road.

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1 And it's obviously a transition right through the
2 frontage of the property as indicated by the previous
3 exhibits.
4 Q. All right. Let's go now to the site itself. Can
5 you describe for us any topographical features or
6 significant features of the site itself?
7 A. Yes, I can. The site, as you can see by the
8 photographs, is relatively flat based upon the rough
9 grading.
10 Obviously, additional grading would have to occur
11 at the time development was to occur on this site.
12 The important conditions that affect this site
13 and affect the Rutherford Business Park are the locations
14 of the joint use ingress and egress driveways that allow
15 traffic to move from the proposed development and/or the
16 gas and C-store, which have already been referenced,
17 and/or the undeveloped parcel to the north.
18 So the joint use driveways are located here
19 immediately adjacent to us on the north side, and here
20 immediately adjacent to us on the south side.
21 The approval and development of industrial park

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1 for the resubdivision process dictated that rather than
2 individual users having their own driveways onto Rolling
3 Road, that they be serviced by these joint use driveways
4 to reduce the number of driveways.
5 And there is also a third driveway immediately to
6 the south of the gas and C-store operation, and that joint
7 use driveway also serves the industrial park that moves
8 back in the direction like here, and you can probably see
9 it on some of the previous exhibits, and it may be
10 appropriate to introduce this other exhibit which helps to
11 clarify that.
12 Q. Let me just ask you this. Have you had occasion
13 to review the Declaration of Easements, Covenants and
14 Restrictions?
15 A. Yes, I have.
16 Q. Which has been marked at Exhibit 3?
17 MS. BRASSIL: Right.
18 Q. If I direct your attention to paragraph 2.1.3,
19 does that refer to the cross easements you have just
20 mentioned?
21 A. Yes, it does. In addition, it referrals to

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1 another cross easement which is on our property.
2 Q. But it specifically also mentions specifically
3 lot B8, does it not?
4 A. Yes, it does. We are lot B8.
5 Q. Now, you have prepared an illustration of the
6 cross easement?
7 A. Yes, I have.
8 MR. CLARK: I'm going to mark as Petitioner's No.
9 9.
10 Q. You prepared that under your direction, is that
11 correct?
12 A. Yes, sir.
13 Q. If you would, explain to us what this depicts.
14 A. Well, all this is, is a graphic representation to
15 help the Board to more clearly visualize these cross
16 easement driveways, joint use access for ingress and
17 egress that I've referenced.
18 And, once again, the subject property is outlined
19 in yellow, and on this exhibit we have tried to help the
20 Board by clearly graphically depicting the location of the
21 proposed car wash building, but for purpose of this

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1 exhibit -- in concert with the photographs that we'll
2 introduce in just a second -- it shows in gray, these two
3 use in common driveway throats that provide direct access
4 onto the public road, which is Rolling Road, which runs in
5 the north south direction and which shows in a lighter or
6 warmer gray.
7 So as you can see, this driveway entrance extends
8 with a use in common travel aisle that extends back in the
9 business park.
10 This use in common driveway entrance services
11 lots B-7 and B-8 through these cross easement
12 arrangements.
13 And as I mentioned, there is another driveway
14 immediately to the south which also services the
15 industrial park and provides another point of ingress and
16 egress into the convenience store facility.
17 Q. And you have taken some photographs?
18 A. Yes. Once again, I want to help understand the
19 Board to understand, to visualize these things, these
20 conditions I'm just describing.
21 Q. Let me show you some photographs which I'm going

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1 to mark as 10A, B and C, and ask you to identify them.
2 A. Yes. These are photographs I took yesterday.
3 Q. Do they fairly and accurately depict the
4 conditions of the site at you saw them at the time you
5 took them?
6 A. I believe they do.
7 MR. CLARK: Mark this 10A.
8 Q. And if you can tell us what this is?
9 A. Yes. 10A is the driveway, and it may be helpful
10 to mark them on the plan.
11 Q That's 10 --
12 A. This is the driveway immediately to the south of
13 the subject site which services the joint use driveway
14 entrance.
15 As you can see, it's already been constructed,
16 servicing both B-7 and B-8. This is 10A.
17 Q. You're writing that on Petitioner's Exhibit No.
18 9?
19 A. Yes. This view was taken from the west side of
20 Rolling Road looking across directly into the driveway.
21 Q. Exhibit 10B?

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1 A. 10B is, I moved further up the road and stood
2 right here, and once again took a photograph looking at
3 the joint use driveway entrance and exit which services
4 our site, the Rutherford Business Park, and it would also
5 service the undeveloped parcel that has been referenced
6 many times immediately to the north of the subject
7 property.
8 Q. And 10C?
9 A. 10C, as I went back over here and looked back
10 down that same driveway, once again, to clearly depict for
11 the Board the existing travelways and the value and the
12 service that they provide for this industrial park and
13 these pad site users that front on Rolling Road.
14 MR. CLARK: If I have not done it already, I
15 offer collectively 10A through C.
16 THE CHAIRMAN: Accepted.
17 Q. All right. Did the network of cross easements
18 affect the plan that you prepared for the proposed car
19 wash?
20 A. Yes, they did.
21 Q. Can you tell us about the plan that you propose?

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1 A. I will try to be brief. Mr. Clark has already
2 entered in his opening testimony some of the facts of the
3 car wash itself.
4 But as the plan and the Rutherford documents
5 dictate, we are required to provide internal an travel
6 aisle, if you will, that connect these joint use
7 driveways.
8 This is an internal access drive, but it's for
9 use in common by 7-B, B-8, and obviously other users of
10 the industrial park in order to avoid vehicles having to
11 go out onto Rolling Road in order to come back in to any
12 of these individual users.
13 It's done quite common. They also position,
14 because of the intent and the location where it is desired
15 to place this road, the position of stormwater management,
16 storm drain lines outside of this travel aisle area, and
17 they're depicted once again on the exhibit we entered into
18 the record as Exhibit 9, Petitioner's 9.
19 So there was a clear distinct purpose and intent
20 behind the positioning of these joint use driveways and by
21 the internal travel aisle that serve as for cross traffic

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1 with these pad sites.
2 The balance of the site is being developed as the
3 car wash operation. And in this particular exhibit, there
4 is shown in the light brown color, the area between
5 Rolling Road and the joint use travel aisle is a
6 landscaped area.
7 And that area is approximately twenty-eight feet
8 wide from the property line back to the travel aisle.
9 And we have such a landscape plan that we'll
10 enter into the record in a moment that will help you
11 graphically to see that.
12 The car wash operation, as it's been previously
13 testified to, is oriented towards Rolling Road.
14 The movements of all the vehicles out of the bays
15 comes in a counter-clockwise rotation, which is typical,
16 moves in through the joint use driveway point of ingress
17 and egress, or from this side, moves along the travel
18 aisle, and then moves into the stacking or the queuing
19 lanes for the self-serve car wash bays and the two
20 roll-over car wash bays.
21 And, hopefully, you will be able to see that the

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1 stacking lanes are very clearly defined, and they meet all
2 the requirements as far as number of cars being stacked
3 and positions to meet the Baltimore County zoning
4 regulations in Section 419.
5 There's also, as has been previously testified
6 to, internal parking spaces. And those parking spaces are
7 located predominately along the rear of the site, but on
8 the subject property.
9 And that is where the vacuums are positioned for
10 vehicles that wish to vacuum either before or after they
11 utilize the car wash bays. There are additional vacuums
12 positioned --
13 (Reporter changing paper.)
14 A. I was referring to the vacuums that are being
15 positioned on the stacking lanes for the self-serve car
16 wash bays only.
17 That is permitted by right, per Section 419, and
18 obviously when people are waiting, or someone is
19 hand-washing their cars, you've probably seen them, maybe
20 done it yourself, one can vacuum out their vehicles.
21 The balance of the site is the landscape

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1 transition areas that were previously referred to around
2 the south property line, the east property line and the
3 west property line, and those landscaped transition areas,
4 once again, meet Section 419 of the Baltimore County
5 zoning regulations referencing car washes and their
6 design, their site design requirements.
7 Q. The number of parking places required in the
8 calculations?
9 A. The number of parking spaces -- yes, we have
10 those -- twenty-three, the number of spaces provided is
11 twenty-three.
12 Q. And there's a proposed sign for the location?
13 A. Yes, there is, a proposed sign along the Rolling
14 Road frontage to be positioned or proposed to be
15 positioned within the landscaped area, that twenty-eight
16 foot wide landscaped area I previously referenced.
17 There are other signs in support of the
18 commercial activity that are occurring along the
19 Rutherford Business Park.
20 There's photographs in the record that show the
21 gas and C-store sign, which is positioned down in here.

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1 There's the Rutherford Business Park sign, a very
2 attractive sign, which is positioned up here.
3 Q. Can you give us the approximate distance between
4 the furthermost northern point of the proposed car wash
5 building and the apartments that are located on the
6 opposite side of the street?
7 A. Yes. You can see -- and we have gone to effort
8 to show clearly for the Board's edification -- the
9 location of that apartment building that sits up on a
10 hill.
11 It's a three-story garden apartment building
12 which is situated northwesterly of the subject property.
13 And the distance from -- is the question the
14 distance from our building?
15 Q. Yes.
16 A. The proposed building, this is one inch equals
17 twenty scale, the closest edge of the roll-over car wash
18 to the closest projecting edge of the apartment building
19 is approximately 220 feet across Rolling Road.
20 Q. The zone line between the ML-IM zone and D.R. 16,
21 can you locate that for us?

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1 A. Yes, I can. It is located in the center of
2 Rolling Road.
3 Q. And are the distances between that zone line and
4 the building for the car wash indicated on your exhibit?
5 A. Yes, they are.
6 Q. Now, you also mentioned a moment or so ago, a
7 landscape plan?
8 A. Yes, I did.
9 MR. CLARK: I'm going to mark this Petitioner's
10 Exhibit 11.
11 MS. BRASSIL: Yes.
12 Q. This landscape plan was prepared by you or under
13 your direction?
14 A. Under my supervision, yes.
15 Q. Can you explain it to us?
16 A. Yes. The main point is here is just for the
17 Board to understand the relationship between what we just
18 described as the residential activity occurring on the
19 west side of Rolling Road and the transition or buffer
20 zone that we are providing from our property line to the
21 use in common joint use travel ways servicing the

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1 Rutherford Business Park running through the frontage of
2 our site.
3 As you can see, there's approximately
4 twenty-eight feet of our property that would be landscaped
5 for that purpose.
6 And in contrast to the gas and C-store operation
7 immediately to the south, which is a ten foot landscaped
8 transition area which required by law, so we're providing
9 almost three times the amount of landscape transition
10 which can be screened from Rolling Road in a very
11 attractive manner with a combination of trees, low shrubs,
12 evergreens, all year around seasonal plant material for
13 further screening from the lovely stormwater management
14 pond which, don't forget, is directly across the street
15 from us. There's no housing directly across from us.
16 Q. And will you also be preparing a lighting plan?
17 A. Yes, we will.
18 Q. And the lighting plan will be comply with the
19 comments offered by the planning department?
20 A. Yes, it will.
21 Q. And meet the lighting standards?

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1 A. That's typically done when one applies for
2 building permit, and we'll abide by that requirement.
3 Q. Okay. Are you familiar with the Baltimore County
4 zoning regulations that govern the placement and/or use of
5 car washes in Baltimore County?
6 A. Yes, I am.
7 Q. Let me show you a certain section of the
8 Baltimore County zoning regulations.
9 Let me show you what is page 289 from the
10 Baltimore County zoning regulations. Are you familiar
11 with that?
12 A. Yes, I am.
13 Q. That is the section of the M.L. zone that allows
14 a special exception for car washes if certain conditions
15 are met?
16 A. Yes, sir.
17 MR. CLARK: Offer this as Petitioner's Exhibit
18 No. 12.
19 MR. TANCZYN: Can I look at that, Dr. Brassil,
20 please? Okay. Thank you.
21 Q. And this next one is what section of the

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1 Baltimore County zoning regulations?
2 A. This is Section 419 entitled Car Washes, that we
3 have been referencing during the course of the testimony.
4 MR. CLARK: Offer this as Petitioner's Exhibit
5 No. 13.
6 MS. BRASSIL: Yes.
7 Q. And you are familiar, are you not, with Section
8 502.1 of the Baltimore County zoning regulations that deal
9 with special exceptions?
10 A. I am.
11 Q. Now, you have been present at the hearing today
12 and heard Mr. Ogrysko describe the proposed use of the car
13 wash?
14 A. I have.
15 Q. Is there anything else about the proposed use
16 that you need to explain to the Board rendering any
17 opinions concerning the proposed use?
18 A. I don't believe so.
19 Q. Do you have an opinion as to whether or not the
20 proposed use at the proposed location meets the
21 requirements of Section 419 in the Baltimore County zoning

1 regulations?
2 A. I do have an opinion.
3 Q. What is that opinion?
4 A. My opinion is that we are consistent with all the
5 requirements set forth in Section 419.
6 Q. Do you have an opinion as to whether or not the
7 proposed use at the proposed location meets the
8 requirements of Section 502.1 of the Baltimore County
9 zoning regulations?
10 A. Yes, I have an opinion.
11 Q. What is that opinion?
12 A. Based upon my testimony and the exhibits that
13 have been presented to the Board, the surrounding land
14 uses and their nature, the surrounding zoning, the road
15 patterns, the density as proposed by the development, the
16 points of ingress and egress, and other related site
17 improvements, my opinion is that this plan meets and the
18 proposed use meets the requirements for a special
19 exception approval as set forth in the Baltimore County
20 zoning regulations.
21 Q. Do you have an opinion as to whether or not the

1 proposed use at the proposed location will be detrimental
2 to the health, safety or general welfare of the locality
3 involved?
4 A I have an opinion.
5 Q. What is that?
6 A. Based upon the testimony and the plan presented,
7 I do not believe it will be detrimental.
8 Q. Do you have an opinion to whether or not it will
9 tend to create congestion in roads, streets or alleyways
10 therein?
11 A. I have an opinion.
12 Q. What is that opinion?
13 A. We would not create a problem with the roads,
14 alleys or streets.
15 Q. Do you have an opinion as to whether or not the
16 proposed use at the proposed location will create a
17 potential hazard from fire, panic, or other dangers?
18 A. I have an opinion.
19 Q. What is that?
20 A. I do not believe that it would.
21 Q. Do you have an opinion as to whether or not the

1 proposed use at the proposed location would tend to
2 overcrowd land and cause undue concentration of
3 population?
4 A. I have an opinion.
5 Q. What is that minimum?
6 A. Based upon the proposed development, meeting the
7 FAR requirements, meeting other setback requirements as
8 set forth in the zoning regulations, I do not believe it
9 will be a detriment.
10 Q. Do you have an opinion as to whether or not the
11 proposed use at the proposed location would interfere with
12 adequate provisions for schools, parks, water, sewerage,
13 transportation or other public requirements, conveniences
14 or improvements?
15 A. I have an opinion. And based on our study, the
16 public utilities available, obviously a commercial use of
17 this nature does not impact schools, or park systems, and,
18 therefore, I believe it is consistent with the
19 requirements of the special exception criteria.
20 Q. By applying and obtaining the water discharge
21 permit, it will not interfere with the adequate provisions

1 for water?
2 A. That is correct.
3 Q. Do you have an opinion as to whether or not the
4 proposed use at the proposed location would interfere with
5 adequate light and air?
6 A. I have an opinion. And based upon the density
7 and the scale of the buildings and the bulk as shown, the
8 positioning of the buildings on the property, and the
9 height of the buildings, I do not believe it will have an
10 impact on light and air circulation.
11 Q. Do you have an opinion as to whether or not the
12 proposed use at the proposed location is inconsistent with
13 the purposes of the property's zoning classification or in
14 any other way inconsistent with the spirit and intent of
15 the zoning regulations?
16 A. I have an opinion.
17 Q. What is that opinion?
18 A. My opinion is the proposed use is consistent with
19 the spirit and intent of the zoning regulations and of the
20 uses permitted in the ML-IM zone as set forth in the
21 zoning regulations.

1 Q. Do you have an opinion as to whether or not the
2 proposed use at the proposed location is inconsistent with
3 the impermeable surface and vegetative provisions of the
4 zoning regulations?
5 A. I do have an opinion, and we will meet all the
6 requirements in Baltimore County for water quality and
7 quantity requirements, and not create an impact or runoff,
8 negative impact on the surrounding community or the road
9 system.
10 Q. Do you have an opinion as to whether or not the
11 proposed use at the proposed location will be detrimental
12 to the environmental and natural resources at the site and
13 the vicinity including forest, streams, wetlands, aquifers
14 and floodplains?
15 A. I do have an opinion, and I believe we will not
16 have a negative impact on any of the aforementioned
17 environmental conditions.
18 Q. Now, you were also here to hear the opening
19 statement by Mr Tanczyn?
20 A. Yes, I was.
21 Q. I lost track of the exhibit number, but it's

1 probably thirteen.
2 I believe one question that was raised is whether
3 or not the tunnel entrance or exits are within fifty feet
4 of an exit for the property, or something like that.
5 Do you see the requirement in the zoning
6 regulations?
7 A. Yes, I do.
8 Q. Do you have an opinion as to whether or not the
9 proposed use and buildings at the site meet the
10 requirements of Section 419.4.2 as to tunnel exit and car
11 washes?
12 A. I have an opinion.
13 Q. What is that?
14 A. My opinion is that the place in which one
15 measures the tunnel exit to the nearest exit drive, as
16 needs to be clarified -- and we have gone to great length
17 to explain to the Board where the exit drives are where
18 the properties touch on the public street system.
19 This is an exit drive. This is an exit drive.
20 It is not here or here. This --
21 Q. When you saw "here" or "here" --

1 A. I'm sorry. It's not where the joint use internal
2 travel aisle touches the property line at this point
3 because, in fact, it's actually where the joint use travel
4 aisles become the exit.
5 You're exiting the site onto the north with this
6 joint use location. You're exiting the site to the south
7 at this location. And they both far exceed the fifty foot
8 requirement as set forth in the code.
9 The purpose, to my understanding, designing many
10 of these, and testifying many times, the purpose is for
11 traffic safety, to not create congestion in the streets.
12 And that being the case, there is more than ample
13 area for a vehicle to exit these tunnel throats before
14 they enter out into a public street to avoid any backup or
15 congestion.
16 There is significant area here for the
17 transitioning in both instances, which clearly provides
18 adequate queuing space area for people to assess the
19 situation, if there were other vehicles exiting, so as to
20 not create traffic congestion, create traffic safety
21 problems.

1 Q. Using Petitioner's Exhibit 11 and the scales you
2 had, can you give us the minimum distance?
3 A. The minimum distance from the roll-over car wash,
4 which is the northernmost position of the tunnel to the
5 exit drive is, in my opinion -- defined in the Baltimore
6 County zoning regulations -- is a minimum of approximately
7 eighty feet, I think on how you want to measure. Could
8 be measured more. So many cars can't traverse the direct
9 line because they go through that landscape transition
10 area.
11 Q. And that's --
12 A. They come out, they turn, they go up, they come
13 out like this to the exit drive.
14 Q. And that's on the north side?
15 A. On the north. The south side, obviously, you can
16 the distance is even further. I would say,
17 conservatively, the distance is approximately a hundred
18 feet, not by the way the crow flies, but simply by the way
19 a car has to drive on those internal travel aisles.
20 Those are internal travel aisles. Not, in my
21 opinion, exit drives.

1 Q. And that's based on your experience?
2 A. That's based upon my experience of designing
3 literally dozens of car wash facilities in Baltimore
4 County and testifying in front of the various
5 administrative and reviewing bodies.
6 Q. Is it your understanding that the review staff
7 from the Department of Permits and Development Management
8 has interpreted that provision in that way?
9 A. That is correct.
10 MR. TANCZYN: Objection as to how others
11 interpret something.
12 THE CHAIRMAN: I'll sustain that objection.
13 MR. TANCZYN: Thank you.
14 Q. Do you have an understanding as to what the
15 longstanding interpretation of that provision is --
16 THE CHAIRMAN: Do you have something from them?
17 If you have got something -- that's hearsay as to what he
18 has.
19 Do you have something from somebody else, you
20 know, a document, let's see it.
21 If not, I'm not going to allow him to testify as

1 to his understanding of what somebody else --
2 MR. CLARK: With all due respect, Mr. Chairman,
3 for the record, an expert witness may testify based on
4 hearsay. It is provided to the expert witness,
5 particularly with respect to longstanding interpretations
6 of zoning regulations by the administrative body that is
7 charged with the responsibility of interpreting and
8 applying that.
9 THE CHAIRMAN: I will sustain the objection.
10 MR. TANCZYN: Thank you.
11 Q. Now, with respect to the drive aisles, how far
12 are they from residentially zoned property, in your
13 opinion?
14 A. The drive aisle which -- if I understand your
15 question -- starts on the backside of this curb separating
16 the green space from the drive aisle, internal drive
17 aisle.
18 You're asking how far is the closest point of the
19 drive aisle from the residential zone line?
20 Q. No. Do you have an opinion as to what the
21 requirement is for -- strike that.

1 Let me go at it this way. Do you have an opinion
2 as to whether or not this proposed use at this proposed
3 site meets the requirement that no part of the self-
4 service car wash shall be within a hundred feet of a
5 residentially zoned property when considering the drive
6 aisles?
7 A. Yes, I have an opinion.
8 Q. What is that opinion?
9 A. The opinion is no part of this development that
10 is within a hundred feet of the residential zone line
11 which is positioned in the center of Rolling Road.
12 We have struck for graphic purposes a line a
13 hundred feet distant at all points from that zone line to
14 show that all of the activities of the car wash operation
15 are outside of that hundred foot area, saving and
16 excepting the joint use internal drive aisle that services
17 our site, and as previously testified to, adjacent
18 properties, and as set forth in the Rutherford Business
19 Park covenants and restrictions.
20 MR. CLARK: I have no further questions.
21 THE CHAIRMAN: We are going to take a ten-minute

1 break.
2 (A recess was taken.)
3 THE CHAIRMAN: We're back on the record. Cross
4 examination.
5 MR. TANCZYN: Thank you, Mr. Chairman.
6 Dr. Brassil, could I trouble you for the picture exhibits,
7 the seven and eight, I guess.
8 I want to post a couple of them up there for the
9 purposes of Mr. Monk referring to them. Seven and eight.
10 Thank you.
11 CROSS EXAMINATION
12 BY MR. TANCZYN:
13 Q. Mr. Monk, you testified that -- for your
14 convenience, either from the stand or when you're
15 standing -- the first thing I want to talk about or ask
16 you about is the relative topography of the residential
17 properties that are shown in, principally in 7-C relating
18 to the subject site.
19 Would you agree that they are generally on the
20 higher ground across from the petitioners' site?
21 A. Yes.

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1 Q. The grading that you told us would have to occur
2 on the petitioner's site, will that lower the elevation of
3 the petitioner's site after the grading, or will it
4 increase it?
5 A. It will probably lower it by a foot or two at the
6 most. Depends upon were you're taking your measurements
7 from.
8 Q. And the petitioner's site, if we look at 7C, I
9 think I put them in A, B, C, B being on the bottom of this
10 panorama, this is part of the petitioner's site here, is
11 it not, at that corner?
12 A. Yes.
13 Q. Next to that northern -- what you call the
14 northern entrance road and the northern common driveway?
15 A. Use in common driveway.
16 Q. Use in common driveway. And this one goes deeper
17 into the subdivision, is that correct?
18 A. I'm sorry. What are you pointing to now?
19 Q. I said this road from which the use in common
20 driveway peels off --
21 A. Yes.

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1 Q. -- goes deeper into --
2 A. The Rutherford Park, industrial park area that's
3 correct.
4 Q. That's one of the major entrances to the interior
5 of the park, is it not?
6 A. It is one of the entrances, yes.
7 Q. Neither of these exits are signalized at present,
8 is that correct?
9 A. No, sir.
10 Q. And the public storage with the U-Haul trucks
11 shown in the vicinity, that's also part of the Rutherford
12 Park?
13 A. It is a subdivided parcel. It was part the
14 Rutherford Park, that is correct. They have direct access
15 from Rolling Road.
16 Q. Were they subject to the restrictions that were
17 declared in 2002?
18 A. I don't know.
19 Q. Okay.
20 A. What restrictions are you referring to?
21 Q. The ones that you testified to that are

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1 Petitioner's Exhibit 3, the Declaration of Covenants and
2 Restrictions?
3 A. I don't know.
4 Q. You're familiar that those were enacted after
5 Bill 173-92 was passed by the County Council, is that
6 correct?
7 A. That, I don't know.
8 Q. Well, that was passed in '93. And if those bear
9 a date of 2002, you would --
10 A. I would concur --
11 Q. -- agree? Okay. Now, for the public storage
12 facility, that is surrounded by a security fence, is it
13 not?
14 A. Yes, it is.
15 Q. And so for patrons of that facility, if they come
16 there, they have to get through some sort of a pass gate
17 to go to their storage facility, is that your
18 understanding?
19 A. That's my understanding.
20 Q. And that the purpose of the security gate is to,
21 in fact, secure their property and the buildings that they

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1 are in from people putting graffitti on them or entering
2 the property without permission, is that correct?
3 A. Ostensibly.
4 Q. Now, as to the topography, I think you told us
5 that there's an apartment complex directly across the
6 street from this intersection. Is that what you are
7 referring to?
8 A. I am referring to that apartment complex to the
9 north and west of that point.
10 Q. Okay. So it's not directly across that
11 intersection?
12 A. This is a very -- this building is actually
13 further north from where that driveway -- well, you can
14 see it.
15 Look here. Here's the driveway right here, and
16 the building is up here, if you're trying to be very
17 specific.
18 Q. Right. And you can consider that to be the
19 apartment complex?
20 A. Yes, sir.
21 Q. Can you tell the Board why they have a sign there

1 saying "Now Selling," if it's an apartment complex?
2 A. It's housing. I must be wrong. It must be
3 condominiums.
4 Q. Okay. So you're not saying that they are really
5 apartments, if they're selling?
6 THE CHAIRMAN: Does it make any difference?
7 MR. TANCZYN: Well, private ownership.
8 THE CHAIRMAN Well, in this case, does it make
9 any difference, private ownership?
10 MR. TANCZYN: Well, there are people there that
11 are affected, whether they're tenants or owners.
12 I was just trying to understand the pictures,
13 what was listed.
14 Q. Would you agree that sound traveling from the
15 petitioner's site, if this use were, as proposed, were
16 approved and built, would flow like an amphitheater up to
17 those residents?
18 A. No, sir.
19 Q. You wouldn't?
20 A. No, sir.
21 Q. You understand the concept from your engineering

1 background of reverberation?
2 A. Yes, sir.
3 Q. And the sound from the rear of the petitioner's
4 site that came from this car wash operation or from people
5 playing there radios, would go back, part of it, and
6 bounce off that stone building that you showed us is back
7 here, and then bounce back off the building, would it not?
8 A. I don't believe so, sir. I believe the distance
9 traveled is so significant, that's several hundred feet
10 across a major commercial arterial road, which carries a
11 significant amount of traffic, as it's designed to do so,
12 and generates its own noise, trucks, there's no limitation
13 to the type of vehicle that can utilize that road.
14 Q. Any surveys done, any sound studies --
15 A. No, sir.
16 Q. -- as part of your preparation for your
17 testimony?
18 A. Just try to use some common sense.
19 Q. Part of your common sense tells you, does it not,
20 that with many automobiles or truck drivers nowadays,
21 maybe of a younger generation, particularly, that they

1 have sophisticated sound systems which have woofers and
2 things that make big noises as they could up and down the
3 road?
4 A. That could possible be. I don't drive a truck,
5 as you know, and that would be speculation on our part.
6 Q. Not just a truck. It could be an automobile with
7 a window down?
8 A. Sure.
9 Q. Playing like the boombox sound, is what I call
10 it?
11 A. Uh-huh.
12 Q. Have you, prior to your testimony today, done any
13 field studies yourself of unattended car washes with
14 self-service facilities to see, hear, or measure the sound
15 by people playing their radios?
16 A. No, sir, I have not.
17 Q. Have you done any studies of those facilities to
18 inventory them for graffetti or for suspicious gatherings
19 of people in any way prior to your testimony today?
20 A. No, sir.
21 Q. If you need to refer to Exhibit 3, just say so,

1 for my next question.
2 The B-7 property, which was this gas and go
3 facility here, the one that's shown with the C-store and
4 the car wash?
5 A Yes.
6 Q. That's also part of the Rutherford Industrial
7 Park as lot B-7, I think you said?
8 A. Yes, sir.
9 Q. They would also be subject to the same
10 restrictions and covenants, to the best of your knowledge,
11 is that correct?
12 A. They are undoubtedly subject to some of them.
13 Whether there are certain that are excluded, I would have
14 to review all the covenants to make that determination.
15 Q. Well, I would ask you if -- and if you need to
16 look at it, I would ask Dr. Brassil to give you her copy
17 of it -- page nine specifically refers to this Section
18 5.2, what I wanted to ask you a question about.
19 It talks about three specific lots under
20 prohibited uses, and it says lot B-7, B-8 and B-9.
21 Now, the petitioner's property is B-8, is that

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1 correct?
2 A. Yes.
3 Q. So that's subject to that section. B-7 is as
4 well, is it not?
5 A. Uh-huh.
6 Q. Does that address that question, in your mind?
7 A. Uh-huh.
8 Q. And B-9 --
9 THE CHAIRMAN: Can you answer yes or no?
10 THE WITNESS: Yes, sir. I'm sorry.
11 Q. And B-9 is the next lot in the development.
12 That's also subject to -- and all those lots, what they
13 have in common is they front on Rolling Road, is that
14 correct?
15 A. Correct.
16 Q. And under amongst the prohibited uses, it says
17 those lots or any portion shall be used for -- and if
18 I ask you to look at 5.2.11, which is defined as a
19 facility for any use which is illegal or dangerous or
20 constitutes a nuisance -- that would apply to those three
21 lots, would it not?

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1 A. Yes, it would.
2 Q. And similarly, 5.2.6 prohibited a facility for
3 the sale of paraphernalia for use with illicit drugs as
4 well?
5 A. Yes, sir.
6 Q. Applicable to those three lots, correct?
7 A. Correct.
8 Q. Can you give the Board any idea how many lots
9 there are in this, subject to this declaration?
10 A. It appears to be three lots.
11 Q. Well, in the first page of the document, it talks
12 about five lots.
13 There is only three subject to that prohibited
14 section, but there are five lots subject to the
15 declaration? And if you look at the recital on the first
16 page, the first page of the declaration?
17 A. Uh-huh.
18 Q. Do you see that? Can you tell the Board from
19 your --
20 THE CHAIRMAN: Answer yes or no, Mr. Monk.
21 THE WITNESS: Yes.

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1 Q. Can you tell the Board from your review of the
2 Rutherford Business Park where lot B-5 and B-6 are located
3 in relationship to B-7?
4 A. I would have to look at a copy of the Rutherford
5 Business Park overall plan in order to make that
6 determination.
7 Q. Could they be the lots also on Rolling Road that
8 are below the gas and go, on down this way?
9 A. I don't believe so, because I don't believe they
10 have any other holdings that are south of the convenience
11 store and gas operation, other than the joint use driveway
12 which gets you to the rear where the R&D, Research and
13 Development, a warehouse flex space building are situated.
14 THE CHAIRMAN: Let's not waste a lot of time.
15 Let's find out where they are, if you know where they are,
16 Mr. Tanczyn.
17 MR. TANCZYN: I'm looking at the back of the
18 declaration to try to answer that, Mr. Chairman.
19 Q. I was asking him -- B-5 and B-6 are the interior
20 lots right behind these three lots. That's what I was
21 inferring, I believe, as shown on page 689, is that

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1 correct?
2 That's the recording page at the top. Under
3 Exhibit A. Should be a second page.
4 A. Yes, that's correct.
5 Q. So those are the lots behind your petitioner's
6 property, is that correct?
7 A. Correct.
8 Q. Okay.
9 A. They also encompass the use storage facility also
10 lot 5-B does.
11 Q. Okay. Now, I think they own A, B and C, because
12 I want to ask you some questions about this landscape
13 plan.
14 Has the landscape plan been submitted to Mr.
15 Avery Harden yet?
16 A. No. It's not required to be presented to him at
17 this point in time.
18 Q. I was asking if he's seen it. On this plan, as I
19 see it -- and referring to your legend -- the trees, the
20 trees are deciduous towards Rolling Road, is that correct?
21 A. There is street trees as is typically required

1 for any developer's subdivision that I believe you're
2 referring to along Rolling Road, which are the larger
3 circle that illustratively would be deciduous trees.
4 There are also evergreen trees shown for
5 illustrative purposes that could also be incorporated to a
6 greater extent within this area if Mr. Harden deemed it
7 appropriate, or if the Board deems appropriate.
8 Q. The sign, would you agree that the sign -- you
9 can refer to either your landscape plan or any of your
10 plans underneath -- the sign is located within the
11 landscape area, is that correct?
12 A. Correct.
13 Q. And the sign is proposed -- I didn't see a
14 dimension on any plan on how high, how wide.
15 A. The note on the site plan says the sign will be
16 consistent with Section 450 of the Baltimore County zoning
17 regulations which is all that's required at this point in
18 time for submittal purposes.
19 Q. It's proposed to be double faced illuminated, if
20 you know?
21 A. Don't know. I would assume it's going to be

1 double-faced.
2 THE CHAIRMAN: The sign is not an issue.
3 MR TANCZYN: Well, I think it is.
4 THE CHAIRMAN: Well, you haven't raised it.
5 MR. TANCZYN: Sir?
6 THE CHAIRMAN: You haven't raised it. There's
7 nothing -- we don't have a sign.
8 MR. TANCZYN: You have a sign shown on the plan.
9 THE CHAIRMAN: But it's said to be in compliance.
10 We don't know at this point what it's going to look like.
11 MR. TANCZYN: But I'm referring to something, I
12 think different, Mr. Chairman, about what is or isn't
13 permitted in that hundred foot area from the residentially
14 zoned land.
15 THE CHAIRMAN: Well, the sign isn't permitted, is
16 that what you are saying?
17 MR. TANCZYN: I'm going to ask him if you have --
18 I think it was Petitioner's 13, or the 419 excerpt from
19 the regulations.
20 Q. Do you have reference to that?
21 A. Yes, I do.

1 Q. In 419.4.A.1, specifically, if you can look at
2 that section?
3 A. Uh-huh.
4 Q. The second sentence in that section says, Except
5 for the landscape buffers, no part of a self-service car
6 wash shall be within a hundred feet of a residentially
7 zoned property.
8 Do you consider the sign to be part of the car
9 wash operation?
10 A. Yes, I do.
11 Q. Then questioning your opinion that you believe
12 this plan is in compliance with all of 419, how is that so
13 if the sign is within a hundred feet of the residentially
14 zoned property?
15 And I think you've demarked that on your
16 landscape plan by this black line. Is that correct?
17 A. Correct.
18 Q. That's a hundred foot from the B.R. 16 line,
19 is that correct?
20 A. Correct.
21 Q. And that regulation 419.4.A.1 -- if I can get you

1 to look at it again -- ends up saying a hundred feet of
2 residentially zoned property, correct?
3 A. Correct.
4 Q. Doesn't say residentially used property? It says
5 residentially zoned property, doesn't it?
6 A. Correct.
7 Q. Could you point to any section in the zoning
8 regulations which clarifies, amplifies, or explains
9 something different than what that section says as to what
10 constitutes residentially zoned property?
11 A. No, I cannot.
12 Q. So you would agree, or would you agree, that as
13 shown on your plan here, or your earlier plans, that the
14 land to the west of the D.R. 16 land is residentially
15 zoned property?
16 A. It is.
17 Q. You have told us, I believe, that no traffic
18 counts, you had no traffic counts, you had done no traffic
19 count studies?
20 A. No, sir. It's not required.
21 Q. Nor had you checked traffic counts for your

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1 testimony about this being a major collector road?
2 A. That is correct.
3 Q. The same section -- if I can ask you to look at
4 it, 419.4.A.2 about the tunnel exit for car wash
5 facilities, shall be set back, it says, at least fifty
6 feet from the nearest exit drive.
7 First question. Can you point anywhere -- let me
8 ask it this way first.
9 Do you agree that the zoning regulations do not
10 define separately exit drive in the definition section?
11 A. There is nothing in this definition section to
12 the best of my knowledge that defines specifically exit
13 drive.
14 Q. And as proposed by the petitioner's plan, you
15 would agree that the exit from the active car washes,
16 whether they're bays, whether they are self-service or
17 roll-over, that the exits are all towards the front of the
18 property, is that correct?
19 A. No, sir. The exit drive as I defined it --
20 Q. Wait a minute. Exit tunnel.
21 A. Yes, sir. You just said exit drive, I believe.

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1 Q. If I did --
2 A. I apologize if I misunderstood.
3 Q. I apologize. The flow of this comes from the
4 rear of the buildings as proposed through these tunnels?
5 A. Correct.
6 Q. Self-service bay tunnels, are they proposed to be
7 open-ended at both ends?
8 A. Yes, sir.
9 Q. So they are going to be built that way?
10 A. Yes.
11 Q. You don't pull in and then close the doors, or
12 something like that?
13 A. No, sir.
14 Q. Are they proposed to have interior fluorescent
15 lighting since they are proposed to be twenty-four hour
16 operation?
17 A. I am not familiar with all of the design details,
18 but I would assume they're going to have lighting internal
19 to those individual bays.
20 Q. So you can see to wash your car --
21 A. Yes, sir.

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1 Q. -- in hours of darkness? Have you done any part
2 of a proposed lighting plan for the exterior outside those
3 bays?
4 A. No, we haven't.
5 Q. The roll-over bays, are they proposed to be open
6 ended or with closed doors?
7 A. I believe they would have closed doors, or the
8 ability to close the door.
9 Q. Do you know that for a fact?
10 A. No, sir.
11 Q. Mr. Ogrysko hasn't testified to that, has he?
12 A. I don't believe that he did.
13 Q. So people coming out or people utilizing those
14 bays and then exiting would have to come out this way
15 towards the front of the property?
16 A. That is correct, that's the way the traffic flow
17 works.
18 Q. And if they wanted to use the vacuums after they
19 had gone through the car wash, the roll-over car wash,
20 because there was no line when they went through, they
21 would, under there -- this is actually the landscape

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1 plan -- if I can take that one down, because I think the
2 one before that shows your traffic arrows.
3 One of the concerns discussed -- or I'll just lay
4 this here for a minute, I won't step on it or anything --
5 one of the concerns that the regulations tried to address
6 is that these roll-over bay patrons, when they come out,
7 they have water on the windshield, and they are pulling
8 straight out into what appears to be two-way traffic
9 lanes, is that correct?
10 A. An internal two-way drive aisle.
11 Q. Right. And you have explained to us why that is,
12 that the flow is planned to be counter-clockwise when you
13 come in, whether you want to go to the vacuums first or go
14 to the car wash first, and when you come out, if you want
15 to come back, or even if you don't, you just went ahead
16 this way or that way, it's proposed and planned you can go
17 in either direction?
18 A. Correct.
19 Q. So you said traffic safety, you thought, was the
20 purpose of this concern for the fifty foot setback, did
21 you not?

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1 A. Yes.
2 Q. In your direct testimony?
3 A. Yes.
4 Q. So from the exit drive --
5 A. Right. As defined by the zoning regulations.
6 Q. Okay. One reason for that fifty foot setback
7 from the exit drive, which is what it says, is to --
8 because these are solid side walls on these bays, correct?
9 A. Yes.
10 Q You don't have windows in them. You can't see to
11 either side until you pull out, is that correct?
12 A. Correct.
13 Q. Okay.
14 A. But they are very wide, so I think that's a
15 misnomer to think that you can't see before you pull out,
16 because the bays are wide to give you better lateral
17 vision simply by the ability of one to turn their head or
18 the width of those bays that you're referring to.
19 Q. So someone in this - the first self-service bay
20 south of the equipment room, to be specific, I want you to
21 consider that one for my next question.

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1 A. Okay.
2 Q. Somebody pulling out of there who's -- let's say
3 an automobile -- they have a certain distance from the
4 front of the automobile to where they're sitting?
5 A. Sure.
6 Q. You have a projection on the equipment room that
7 goes forward of the exit from the bay, we have got that --
8 A. That projection area you're referring to is about
9 three feet.
10 Q. Three feet.
11 A. Plus or minus.
12 Q. So if they're more or less where this topo line
13 comes in and they are sitting in the car, what is their
14 field of vision in terms of seeing this way or that way?
15 How far can they see? There's a limited cone of
16 visibility, is that correct?
17 A. Typically, yes, there would be, just -- but if
18 you also notice, that that travel aisle, the area shown in
19 gray, the twenty-four feet, leaves more than adequate
20 space for one to pull out and see looking to the right or
21 to the left before they pull into that travel way.

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1 Q. Now, let me complicate the scenario for you,
2 because we have a number of self-service bays.
3 THE CHAIRMAN: Would you amplify on that, what
4 you mean by that, Mr. Monk?
5 THE WITNESS: Okay. The area -- we prepared
6 this graphic specific for this purpose.
7 This graphic shows the area in gray to be
8 approximately twenty-four feet wide. But this additional
9 area here is an area where a car can transition out before
10 entering into the travel way.
11 THE CHAIRMAN: How wide is that?
12 THE WITNESS: That area is approximately fourteen
13 additional feet.
14 So if you've got thirty-nine feet from the front
15 face of this curb to the leading face under a worst case
16 scenario of the roll-over car washes, you have a total of
17 thirty-nine feet of which approximately twenty-four feet
18 of that is for the joint use internal travel aisle that I
19 have been referencing, and you've got about another
20 fourteen, plus or minus of, shall we say, wiggle room, or
21 ability to see before one kind of enters, if you will,

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1 into the travel way for traffic safety purposes, which I
2 know you're concerned about.
3 Q. The regulations seem to be concerned about and
4 you say it was an important consideration?
5 A. Uh-huh. That's why we attempted to address it
6 the way we have with our site design.
7 Q. You're familiar in the road race with what is
8 called a LeMans start?
9 A. Quite candidly, I don't.
10 Q. A LeMans start, they all take off from a parking
11 lot and head onto the racetrack.
12 Let's assume for my next question we are just
13 dealing with the self-service bays, they are all together,
14 there's five of them.
15 Assume that they are all, for the purpose of my
16 question, that they are all being utilized and that the
17 patrons finish at the same time.
18 That would be called the most dangerous worst
19 case scenario.
20 And if they all don't want to go left and, in
21 fact, one, three and five want to go left, and two and

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1 four want to go right, and they all pull out at the same
2 time, at what point can the driver of any of these
3 self-service bays see the driver in the bay next to them
4 as they exit?
5 A. I fail to understand the -- how is that any
6 different than a shopping parking lot, we have cars moving
7 in various directions, utilizing the two-way internal
8 travel aisle that they have.
9 They wait. They stop. They look. They try not
10 to get hit. They don't want their insurance to go up.
11 Q. How many shopping centers can you direct us to
12 that have --
13 THE CHAIRMAN: Mr. Tanczyn, I think you're
14 beating a dead horse here.
15 There's a fourteen-foot space in between the
16 travel lane and the front of the car washes.
17 Certainly, fourteen feet. That's almost the
18 length of an automobile. And, certainly, somebody coming
19 out of there is going to be able to see if there's a car
20 next to him or going right.
21 Now, whether they going to take a left or right,

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1 those people are going to have to make up their own mind.
2 I'd get off that, if I were you.
3 MR. TANCZYN: Well, the regulations, most
4 respectfully, I will take what you have told me and I will
5 move on, but the regulations say fifty feet from the
6 nearest exit.
7 THE CHAIRMAN: I understand what it says. You
8 can argue that, whether or not that fifty feet, by you
9 were talking about coming out of the front of the --
10 MR. TANCZYN: That's a tunnel exit.
11 THE CHAIRMAN: Yeah. And there's fourteen feet
12 before he gets onto the travel lane. Let's move on.
13 MR. TANCZYN: Okay. I will.
14 Q. Do you agree that neither Petitioner's one or two
15 were ever submitted to the planning department?
16 I know those were your plats that were submitted
17 as an alternative to the Deputy Zoning Commissioner, and
18 the ones you blacklined for today, the first two exhibits,
19 that neither of those were ever submitted to planning for
20 review?
21 A. To the best of my knowledge, they were not. They

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1 were reviewed by the zoning intake officer at the
2 appropriate time we made the application.
3 But I do not believe that they were reviewed
4 after staff did their review.
5 So the petitioner's exhibits you specifically
6 site, I do not believe -- I concur with you.
7 Q. Neither of those went back through the review
8 process?
9 A. No, sir. That was based upon the limited amount
10 of changes that were made in those plans that did not
11 materially change the layout, the traffic circulation, the
12 location of parking spaces or whatnot. So there were not
13 substantial changes, in my opinion.
14 Q. In your opinion that this proposal, if approved,
15 would not be detrimental to the health, safety or general
16 welfare of the locality, would you consider criminal
17 activity to be a danger to the health, safety or general
18 welfare of the community?
19 A. Would I consider criminal activity?
20 Q. On this site.
21 A. That's -- no, sir.

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1 Q. You wouldn't --
2 A. I believe that's solely subjective, in my
3 opinion. You're making up a case that car washes have
4 some sort of sinister-bad element to them, and I can't go
5 there. I'm a land use planner.
6 Q. How about unattended sites that are open for
7 business?
8 A. Sir, they're no different than any other retail
9 activity or any other housing project or any other
10 commercial activity located anywhere, whether it be in
11 Baltimore County, Baltimore City, Howard County, whatnot.
12 Q. You were present at the hearing before the Deputy
13 Zoning Commissioner when Sergeant O'Berry testified as to
14 his concerns about people coming to these types of
15 facilities that he gave his actual experience about?
16 MR. CLARK: Objection.
17 Q. Pardon me. Doing drug deals.
18 THE CHAIRMAN: I'm going to sustain that
19 objection. You can have the sergeant testify to that.
20 MR. TANCZYN: Well, I'm questioning him about his
21 opinion, and he heard that before there was an objection.

1 THE CHAIRMAN: He's giving you his opinion to the
2 activity.
3 MR. TANCZYN: He hasn't yet.
4 THE CHAIRMAN: Yes, he did. He said he didn't
5 think car washes were different from anything else where
6 this activity can take place.
7 MR. TANCZYN: All right. I think that's all I
8 have, Mr. Chairman. Thank you.
9 THE CHAIRMAN: Do you have any?
10 MR. CLARK: A few.
11 REDIRECT EXAMINATION
12 BY MR. CLARK:
13 Q. Do you still have Exhibit 13 before you, which is
14 Section 419 of the zoning regulations?
15 A. Yes, sir, I do.
16 Q. Did you have occasion to review this prior to or
17 while you were preparing the site plan to accompany the
18 petitioner's petition in this case?
19 A. Yes, sir.
20 Q. Let me ask you this. Are there differences or
21 distinctions made in these regulations between roll-over

1 car washes and self-service car washes?
2 A. There are very specific and explicit distinctions
3 as well as by definition.
4 Q. Can you tell us what those differences are?
5 A. Tell you what the differences are? Well, the
6 differences have to do with the number of anything from
7 the number of parking spaces that need to be accommodated
8 to the number of stacking spaces that need to be
9 accommodated to their positioning of the physical
10 buildings relative to property lines or exit drives or
11 whatnot.
12 Q. Okay. Let me go at this this way. Section
13 419.4.A.1, does it govern where a car wash building may be
14 set?
15 A. Yes.
16 Q. What is the distance?
17 A. For what type of car wash?
18 Q. For a roll-over or full service car wash
19 building?
20 A. Shall be set back at least fifty feet from the
21 lot line of any residentially zoned property.

1 Q. And does the proposed use, proposed building,
2 meet that requirement?
3 A. Yes.
4 Q. So the building and, in fact, here, is proposed
5 to be a hundred feet back and not the fifty feet back that
6 the zoning regulations require?
7 A. Yes.
8 Q. Then this next section talks about no part of a
9 self-service car wash shall be within a hundred feet of a
10 residentially zoned property, correct?
11 A. Correct.
12 Q. Is the term "self-service car wash" defined in
13 the zoning regulations?
14 A. It is.
15 MR. TANCZYN: I gave it to the Board in my
16 opening.
17 MR. CLARK: Is it marked at an exhibit?
18 MS. BRASSIL: No.
19 MR. CLARK: Let's offer one as Exhibit --
20 MS. BRASSIL: Fourteen.
21 MR. CLARK: -- 14.

1 Q. Are you familiar with or are you refreshing your
2 recollection about the definition of self-service car
3 wash?
4 A I read it on Section 101.
5 Q. Yes.
6 A. Page 1-10.
7 Q. Yes. No. 1-11, I think.
8 A. It says 1-10, on mine.
9 Q. Then you don't have --
10 A. I don't have the up-to-date, the latest and
11 greatest?
12 Q. No. Sorry. 1-11. It's from the 2005. It's
13 self-service car wash and --
14 A. Okay. Self-service car wash is a car wash where
15 equipment or facilities are provided for the self-service
16 cleaning and washing of motor vehicles.
17 Q. Does it make any mention of a sign?
18 A. No.
19 Q. Do you still hold your opinion that a sign is
20 part of a self-service car wash as used in the Section
21 419.4.A.1?

1 A. I believe -- and I didn't get the opportunity to
2 testify to that -- and the reason we show the sign, we
3 believe it's up to the discretion of the Board if they
4 believe that a sign would meet the appropriate standards
5 for positioning at that location on the site.
6 Certainly, it's typical and standard to position
7 commercial signs adjacent to commercial roadways when, in
8 fact, they are describing the business, as long as they're
9 consistent with Section 450 of the Baltimore County zoning
10 regulations.
11 And we did indicate in our plan that if the Board
12 so chooses to permit the sign at that location, that the
13 sign would be consistent with those requirements, or any
14 other requirements that the Board would set forth for
15 aesthetic purposes, if, in fact, they felt the sign is
16 okay there, but should have other constraints or aesthetic
17 limitations placed on it.
18 Q. Now, in your preparation of the plan or while you
19 were working on the plan for accompanying the petition in
20 this case, did you have occasion to look at the section
21 419.4.B?

1 A. Yes.
2 Q. And does it make some distinctions there about
3 residentially zoned property that does not include those
4 across the street?
5 A. Yes.
6 Q. When you were preparing this plan for submission,
7 you were familiar with the requirements of Section
8 419.4.A.1 that no part of a self-service car wash should
9 be within a hundred feet of residentially zoned property,
10 is that correct?
11 A. Yes.
12 Q. And as I understand your testimony on direct was
13 you believe that no part of the self-service car wash as
14 defined by the regulations is within a hundred feet of
15 residentially zoned property, is that correct?
16 A. Correct.
17 Q. And why is it you believe that the drive aisles
18 are not part of a self-service car wash as defined by the
19 zoning regulations?
20 A. Well, because the Rutherford Business Center
21 covenants drive that layout to a great extent.

1 And the positioning of that internal drive aisle
2 is locked in, if you will, by where it ties it in or
3 touches down, if you will, properties both to the north
4 and south.
5 Q. Are you familiar with any prior decision of the
6 Zoning Commissioner or the Board of Appeals dealing with
7 car washes located fronting on public streets where the
8 zone line divides the public street between a commercial
9 zone and a residential zone?
10 MR. TANCZYN: Objection. Beyond the scope of
11 cross.
12 THE CHAIRMAN: Overruled.
13 A. Yes, I am.
14 Q. And what is your understanding of those?
15 THE CHAIRMAN: They will speak for themselves.
16 If you've got them, let him -- I'm not going to have him
17 interpret the rules.
18 MR. CLARK: I will be glad to submit them. Do
19 you want me to submit them as exhibits through him, or
20 just submit them --
21 THE CHAIRMAN: Just submit them.

1 MR. CLARK: Because I have the plats, the site
2 plans that go along with them and/or some of the opinions,
3 I will be glad to do that. Okay. Then I have no
4 further questions.
5 MR. TANCZYN: I have no recross.
6 THE CHAIRMAN: Thank you, Mr. Monk.
7 THE WITNESS: Thank you, for your indulgence.
8 (Discussion held off the record.)
9 MR. CLARK: That's the petitioner's case.
10 THE CHAIRMAN: Do you have any witnesses?
11 I don't see them. Are you through?
12 MR. TANCZYN: We rest.
13 THE CHAIRMAN: All right. Do you want to argue
14 orally?
15 MR. CLARK: Well, Mr. Wescott, now that I have
16 been asked to, or have been given the opportunity to
17 submit prior decisions of the Zoning Commissioner and
18 plats and things like that, I don't know that I can do
19 that at this moment, have them available to me.
20 As much as I really don't want to do this, I
21 think perhaps the better way to do it would be by

1 post-hearing memorandum, in sort order, maybe fifteen
2 days.
3 MR. TANCZYN: I'm going to ask for thirty, only
4 because I've got a ton of stuff that people are yelling at
5 me that isn't done yet.
6 We've memo'd it twice to the Zoning Commissioner
7 so that it would be pretty straightforward. Can I just
8 ask Mr. Clark, are those the same cases?
9 MR. CLARK: Same cases.
10 THE CHAIRMAN: They're already in the file?
11 MR. CLARK: The plats are. I'm not sure whether
12 the opinions are.
13 They were marked as Exhibits 13B, 14B, 15B, 16
14 and 17B below, and I suspect the "A" portion may be the
15 opinions that went with them, but for some reason, they
16 aren't in this packet.
17 MR. TANCZYN: There's a seventeen, too.
18 MS. BRASSIL: Are these referenced in your memos
19 that we have?
20 MR. CLARK: They are referenced in, yes, the
21 letters that I submitted.

1 THE CHAIRMAN: All right. Look, I'm going to
2 give you twenty days.
3 MR. CLARK: To submit simultaneously?
4 THE CHAIRMAN: Right. Today is the 9th. Submit
5 them by close of business on Tuesday, the 29th.
6 MR. CLARK: All right. Thank you very much.
7 MR. TANCZYN: Thank you very much.
8 THE CHAIRMAN: Thank you, gentlemen. If there's
9 nothing further, this matter will be adjourned.
10 (Hearing concluded.)
11 * * * * *
12
13
14
15
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17
18
19
20
21

1 INDEX

2 Witness	Direct	Cross	Redirect	Recross
3 Mark Ogrysko	18	32	51	52
4 William Monk	55	101	130	

5

6 Petitioner's Ex. No.	Page
7 No. 1	22
8 No. 2	23
9 No. 3	25
10 No. 4	30
11 No. 5	56
12 No. 6	61
13 No. 7A, 7B, 7C	62
14 No. 8A - 8H	73
15 No. 9	77
16 No. 10A, 10B, 10C	79
17 No. 11	86
18 No. 12	88
19 No. 13	89
20 No. 14	133

21

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER 06-75X
DATE 10/5/06

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
Laura Vu	43 Straw Hat Rd - Apt 2D	Owings Mills, MD 21117	laura.vu@verizon.net
Hector & Yvonne O'Berry	7000 Rockfields Rd.	Windsormill, MD 21244	
Michael TANCZYN	STE 106 606 BALTIMORE AVE	TOWSON MD 21204	MPTLAW@VERIZON.NET
SAJID CHAUDHRY	2318 HALLS GROVE RD	GAMBRILLS MD 21054	SAJID212@AOL.COM
IFTIKHAR AHMAD	2701 ROLLING RD	WOODLAND MD 21244	

PLEASE PRINT CLEARLY

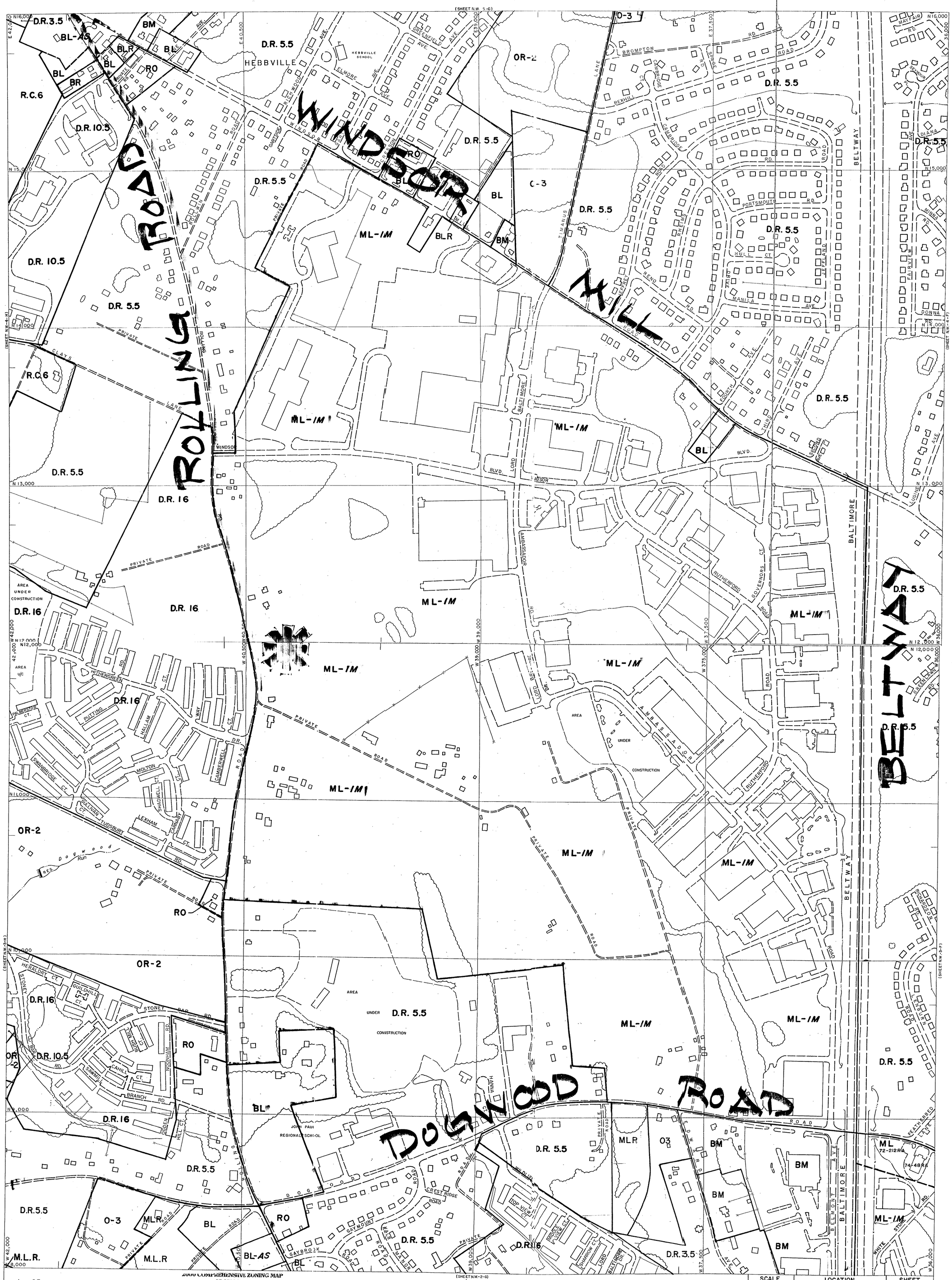
CASE NAME_____
CASE NUMBER_____
DATE_____

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Steve Ogrysko	1921 Pleasanton Rd	Fort Hill MD 21050	MIDATM@AOL.com
*Daniel West	6126 Three Cedars Lane	Fredericksburg Va. 22407	Laserwest@aol.com
*Mark Ogrysko	2309 Cool Woods Ct	Jarrettsville MD 21084	OTR9330@MSN.COM
B. Kacey Carter	9125 THAMESGATE ROAD	Laurel MD 20723	Kcarter@mvaqte.com
*Bill Monk	1220-C E Joppa Road STE 507	TOWSON MD 21286	
C. William Clark	502 WASHINGTON AVE	TOWSON MD 21286	

PETITIONER'S EXHIBIT NO. 8

Pet Exh 6



2000 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 10, 2000
Bills Nos. 87-00, 88-00, 89-00, 90-00, 91-00, 92-00, 93-00.

L - SE
L - NE

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS

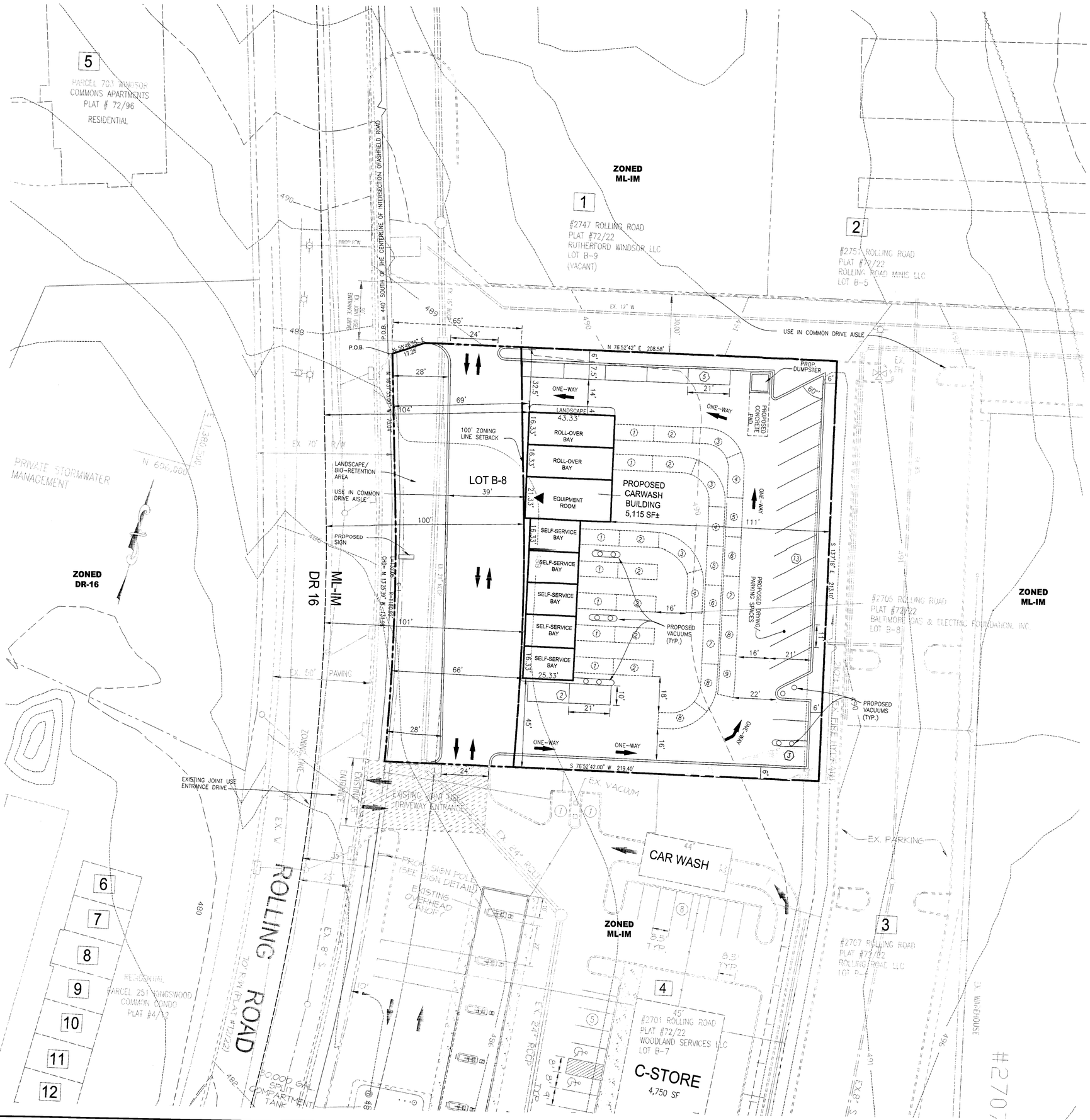
BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

RECEIVED

SCALE	LOCATION	SHEET
1" = 200'±	BELMONT AREA	N.W. 3-G
DATE OF PHOTOGRAPHY		

NW 3 G

Pet Exh 6



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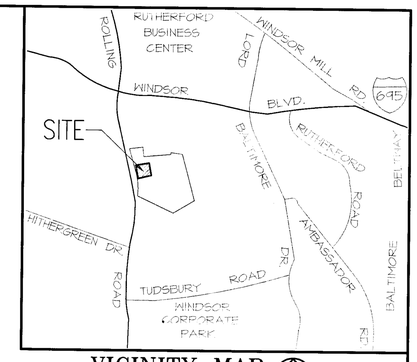

VICINITY MAP
SCALE: 1"=1,000'

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1. PURSUANT TO SECTIONS 253.2.B.2 AND 419.1, A SPECIAL EXCEPTION IS REQUIRED.

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MRAGTA.COM

PLAT TO ACCOMPANY
SPECIAL EXCEPTION APPLICATION

2705 ROLLING ROAD

ROLLING ROAD COMMERCE CENTER LOT B-8

ELECTION DISTRICT 2 COUNCILMANIC DISTRICT 4
BALTIMORE COUNTY MARYLAND

MARYLAND COORDINATE SYSTEM (MCS)

DATE	REVISIONS		
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		SCALE:	1"=20'
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		DRAWN BY:	KC
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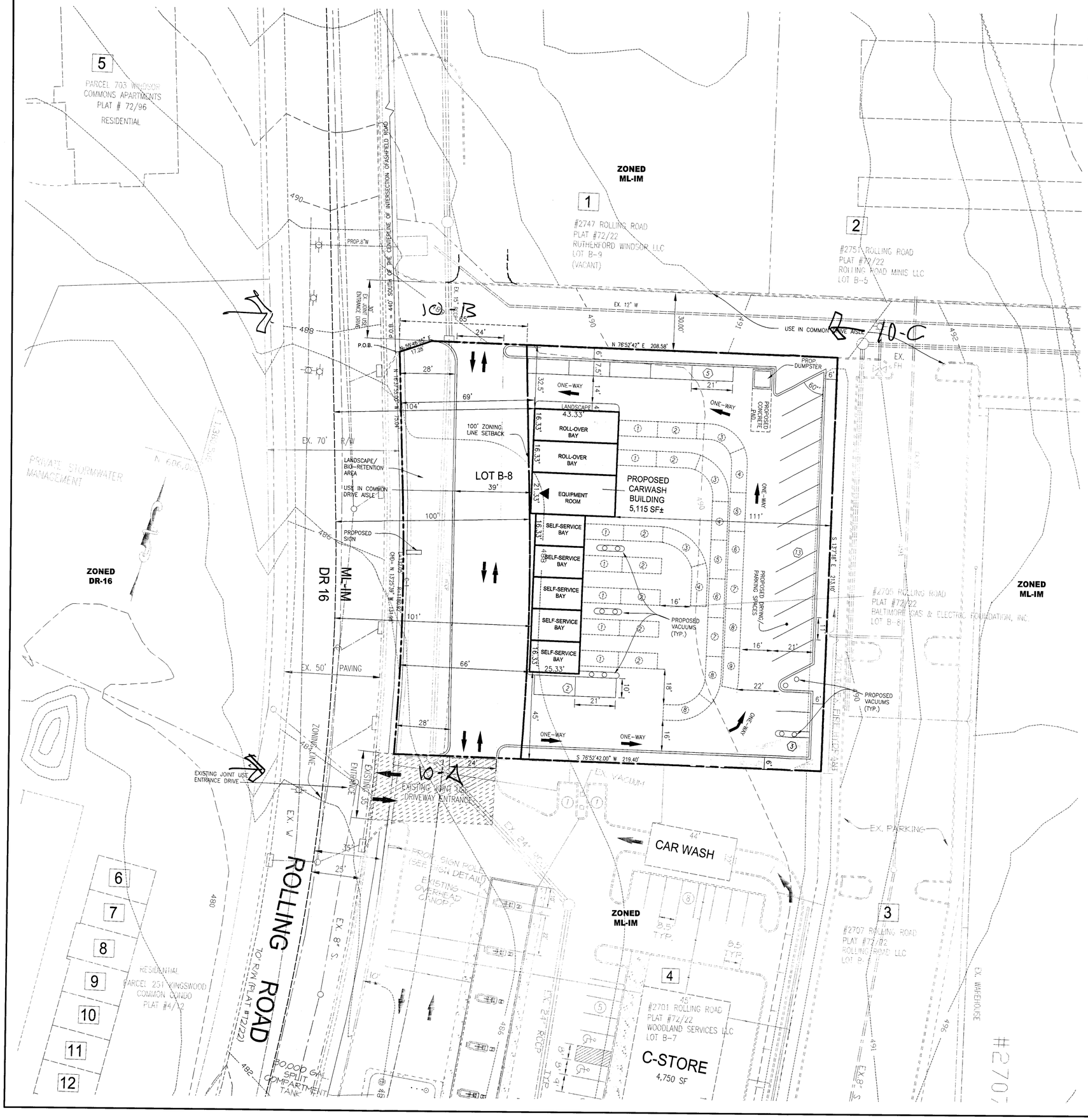

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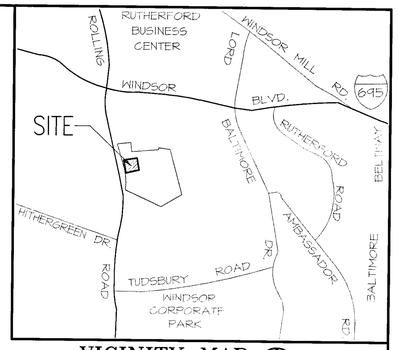

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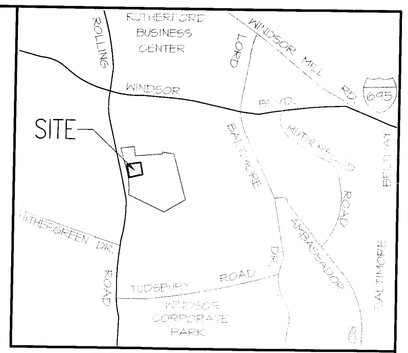

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LEGEND

- SHADE TREE
- FLOWERING TREE
- EVERGREEN TREE
- DECIDUOUS SHRUB
- EVERGREEN SHRUB

Pet Exh 11

MRA

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ILLUSTRATIVE LANDSCAPE PLAN

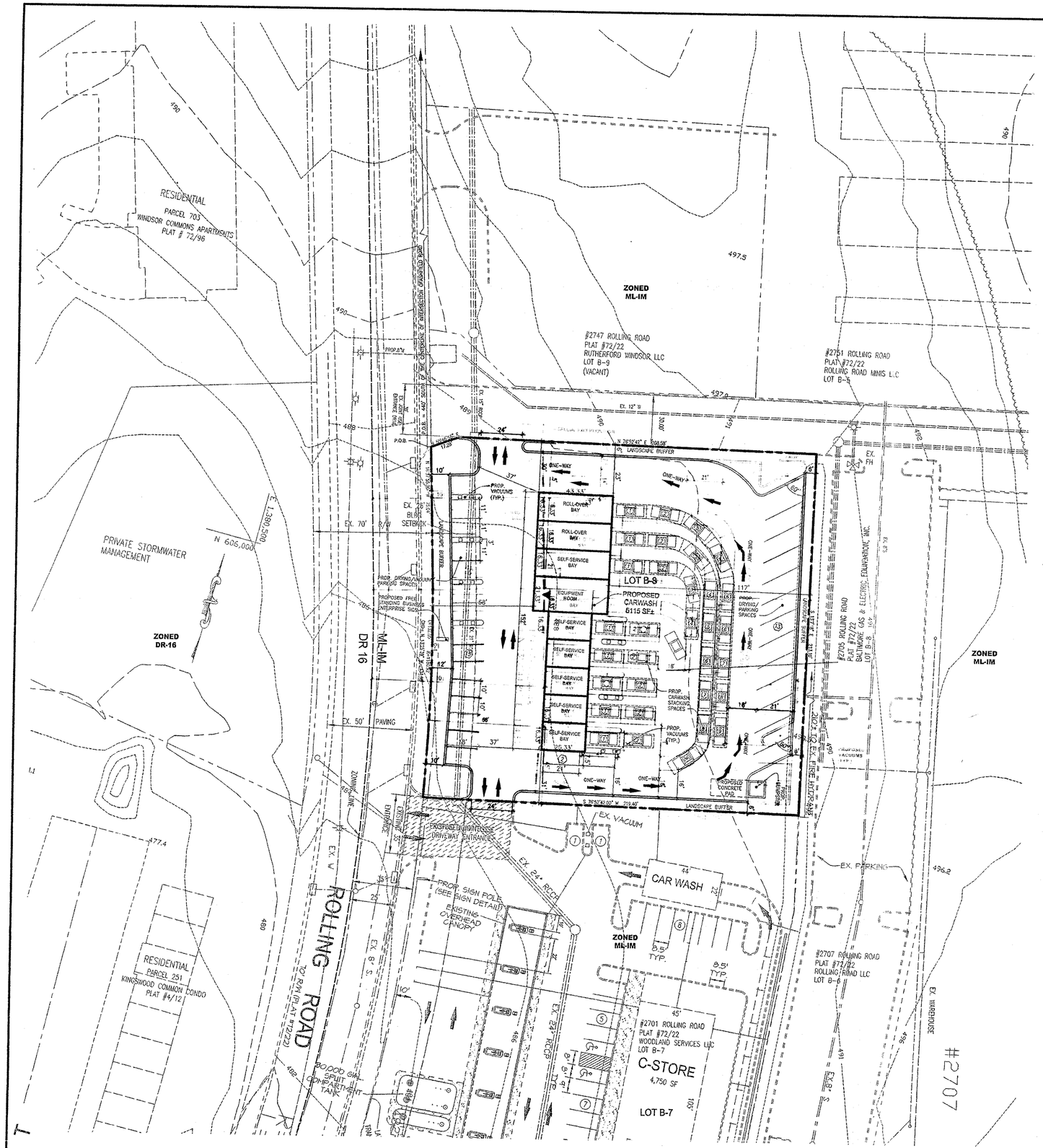
2705 ROLLING ROAD

ROLLING ROAD COMMERCE CENTER LOT B-8

ELECTION DISTRICT 2 — COUNCILMANIC DISTRICT 4

BALTIMORE COUNTY MARYLAND

DATE	REVISIONS		
		JOB NO.:	14409
		SCALE:	1"=20'
		DATE:	07/25/06
		DRAWN BY:	KC
		DESIGN BY:	KC
		REVIEW BY:	JH/BM



OWNER / DESIGN CONSULTANT:

OWNERS: RUTHERFORD BURGER INVESTMENTS LLC
9640 DEEROO ROAD
LUTHERVILLE–TIMONIUM, MD 21093
TAX. ACCOUNT # 2300007604
ATTN: ANTHONY JULIO

ENGINEER: MORRIS & RITCHIE ASSOCIATES, INC.
1220–C EAST JOPPA ROAD, SUITE 505
TOWSON, MD 21286
(410) 821–1690
ATTN: BILL MONK

CONTRACT/ PURCHASER/ LEASEE: STEMARK, INC.
2309 COOL WOODS COURT
JERRITSVILLE, MD 21084
ATTN: MARK OGRYSKO

PREMISES ADDRESS: 2705 N ROLLING RD
WOODLAWN, MD 21244

GENERAL NOTES:

1. ZONING: (ML–IM)
2. SITE AREA : 1.07 AC. – 46,457 S.F. ±
3. LOCATION: ADC MAP 33, GRID A–6
4. BALTIMORE COUNTY SOILS SURVEY MAPS 39 & 43
5. TAX MAP: 87, GRID 17, PARCEL 739 LOT B–8
6. ZONING MAPS NW3G & NW4G
7. DEED REFERENCES: 13413/60
8. PLAT REFERENCES: 72/22
9. CENSUS TRACT: 4024.01
10. WATERSHED: PATAPSCO
11. SUBSEWERSHED: 70
12. SEWAGE PLAN DESIGNATION: S–1 Map S–16A
13. WATER SUPPLY PLAN DESIGNATION: W–1 Map W–16A
14. REGIONAL PLANNING DISTRICT: 319–A
15. ELECTION DISTRICT: 2
    COUNCILMANIC DISTRICT: 4
16. EXISTING USE: VACANT
17. PROPOSED USE: ROLL OVER & SELF SERVICE CAR WASH.
18. PROPOSED BUILDING AREA: 5115.16 SF. (43.33'x152'±)
19. FLOOR AREA RATIO (F.A.R.):
    MAXIMUM ALLOWED – 2.0 PROPOSED – .11
20. THIS SITE SHALL BE SERVICED BY PUBLIC WATER AND SEWER.
21. SCREENING AND LANDSCAPING SHALL COMPLY WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL
22. THE SITE IS NOT WITHIN A MORATORIUM AREA OR IN AN AREA WHERE FAILURE OF BASIC SERVICES MAPS CURRENTLY EXISTS PER SECTION 4A02 (BCZR).
23. THE SITE IS NOT IN A 100 YEAR FLOODPLAIN.
24. THERE ARE NO NON–TIDAL WETLANDS ON THIS SITE.
25. THERE ARE NO FOREST BUFFERS ON THIS SITE.
26. THERE ARE NO KNOWN REGULATED PLANT OR WILDLIFE COMMUNITIES ASSOCIATED WITH THIS SITE.
27. THERE ARE NO KNOWN HISTORICAL STRUCTURE OR ARCHEOLOGICAL AREAS ASSOCIATED WITH THIS SITE.
28. THERE ARE NO KNOWN EXISTING WELLS OR SEPTIC FIELDS WITHIN 100' OF THIS PROPERTY
29. BUILDING CONSTRUCTION SHALL COMPLY WTH BUILDING AND FIRE CODE REQUIREMENTS.
30. ALL LIGHTING SHALL CONFORM TO IES STANDARDS (ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA) MAXIMUM HT. 18' PER SECTION 405.4.C.1.c (BCZR)
31. ALL PAVING SHALL BE BITUMINOUS DUST–FREE SURFACE AND PERMANENTLY STRIPED.
32. ZONING CASE HISTORY: PREVIOUS SPECIAL EXCEPTION VARIANCES OR SPECIAL HEARINGS FOR THIS SITE. NONE
33. STORM WATER MANAGEMENT IS PROVIDED AS PART OF THE OVERALL RUTHERFORD BUSINESS CENTER SOUTH.
34. AS STATED ON APPROVED PLAT PLANS (72/22) WITH BALTIMORE COUNTY, STORMWATER MANAGEMENT FOR ALL LOTS IN THIS SUBDIVISION WILL BE ACCOMPLISHED THROUGH THE USE OF THE EXISTING REGIONAL STORMWATER MANAGEMENT POND.
35. WATER QUALITY WILL BE PROVIDED INDIVIDUALLY ON EACH LOT OR IN JOINT FACILITIES TO LOTS B–5 THROUGH B–9.
36. NO PREVIOUS COMMERCIAL PERMITS FOR LOT #B–8.
37. THIS SITE IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
38. SIGNAGE:
    PROPOSED SIGNAGE SHALL BE IN COMPLIANCE WITH B.C.Z.R. SECTION 450.
39. SETBACKS (TO PROPERTY LINES):
    CAR WASH BUILDING

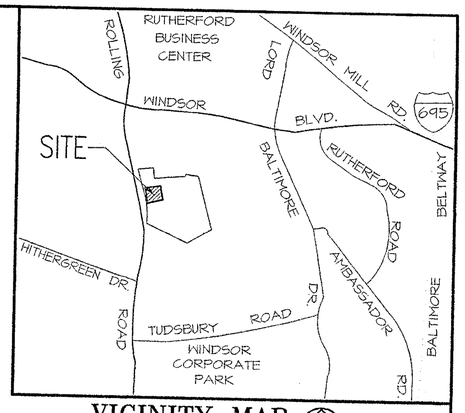
	REQUIRED	PROVIDED
FRONT	35'	58'
SIDE	30'	31' & 30'
REAR	30'	117'

40. ROLL–OVER CARWASH HOURLY RATED CAPACITY = 14 VEHICLES
41. WASHTECH – LASERWASH G5

BASIC	150 SECONDS	2.30 MINUTES
DELUXE	217 SECONDS	3:47 MINUTES
ULTIMATE	262 SECONDS	4:25 MINUTES

ADD AN ADDITIONAL 45 SECONDS TO EACH TIME FOR CUSTOMER PAYMENT AND DRIVING IN AND OUT.

THIS IS IN LINE WITH THE AUTOMATIC CAR WASH INDUSTRY AVERAGE OF TURNING OVER A CAR EVERY THREE AND ONE–HALF MINUTES OR FOURTEEN CARS PER HOUR WHEN UNDER MAXIMUM VOLUME DEMANDS.



VICINITY MAP

SCALE: 1"=1,000'

SECTION 419:

THE PLAN IS IN CONFORMANCE WITH ALL APPLICABLE CRITERIA AS SET FORTH IN SECTION 419 (BCZR), MORE SPECIFICALLY THE "LOCATION" AND "GENERAL DESIGN" STANDARDS IN SECTIONS 419.4 A & 419.4 B RESPECTIVELY.

SECTION 419.3:

CAR WASH PARKING & STACKING REQUIREMENTS

1. PARKING CALCULATIONS:

   A. PARKING REQUIRED — SPACES
   - CAR WASH DRYING SPACES (2 PER BAY, 8 BAYS) . . . . . = 16
   - ADDITIONAL SPACES (ROLL OVER CAR WASH, 2 BAYS) . . . . . = 4
   - VACUUM SPACE + (8 VACUUMS) . . . . . = 8

   TOTAL REQUIRED . . . . . = 28

   B. PARKING PROVIDED: . . . . . = 30

2. CAR WASH STACKING:
   - ROLL OVER CARWASH
     REQUIRED – (9 PER BAY, 2 BAYS) . . . . . = 18
     PROVIDED . . . . . = 18
   - SELF SERVE CAR WASH
     REQUIRED – (4) FOR FIRST TUNNEL . . . . . = 4
     (2) FOR EACH ADDITIONAL TUNNEL (5 TUNNELS) = 10

   TOTAL REQUIRED . . . . . = 14
   TOTAL PROVIDED . . . . . = 14

   * 5 ADDITIONAL VACUUMS PROVIDED ADJACENT TO STACKING SPACES.

ZONING RELIEF REQUESTED

1. PURSUANT TO SECTIONS 253.2.B.2 AND 419.1, A SPECIAL EXCEPTION IS REQUIRED.

MARYLAND COORDINATE SYSTEM (MCS)

MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
1220-C EAST JOPPA ROAD, SUITE 505
TOWSON, MARYLAND 21286
(410) 821-1690
FAX: (410) 821-1748
MRAGTA.COM

STATE OF MARYLAND — JAMES VINCENT MONK — REGISTERED LANDSCAPE ARCHITECT — NO. 1044 — 8/3/05

PLAT TO ACCOMPANY
SPECIAL EXCEPTION APPLICATION

2705 ROLLING ROAD

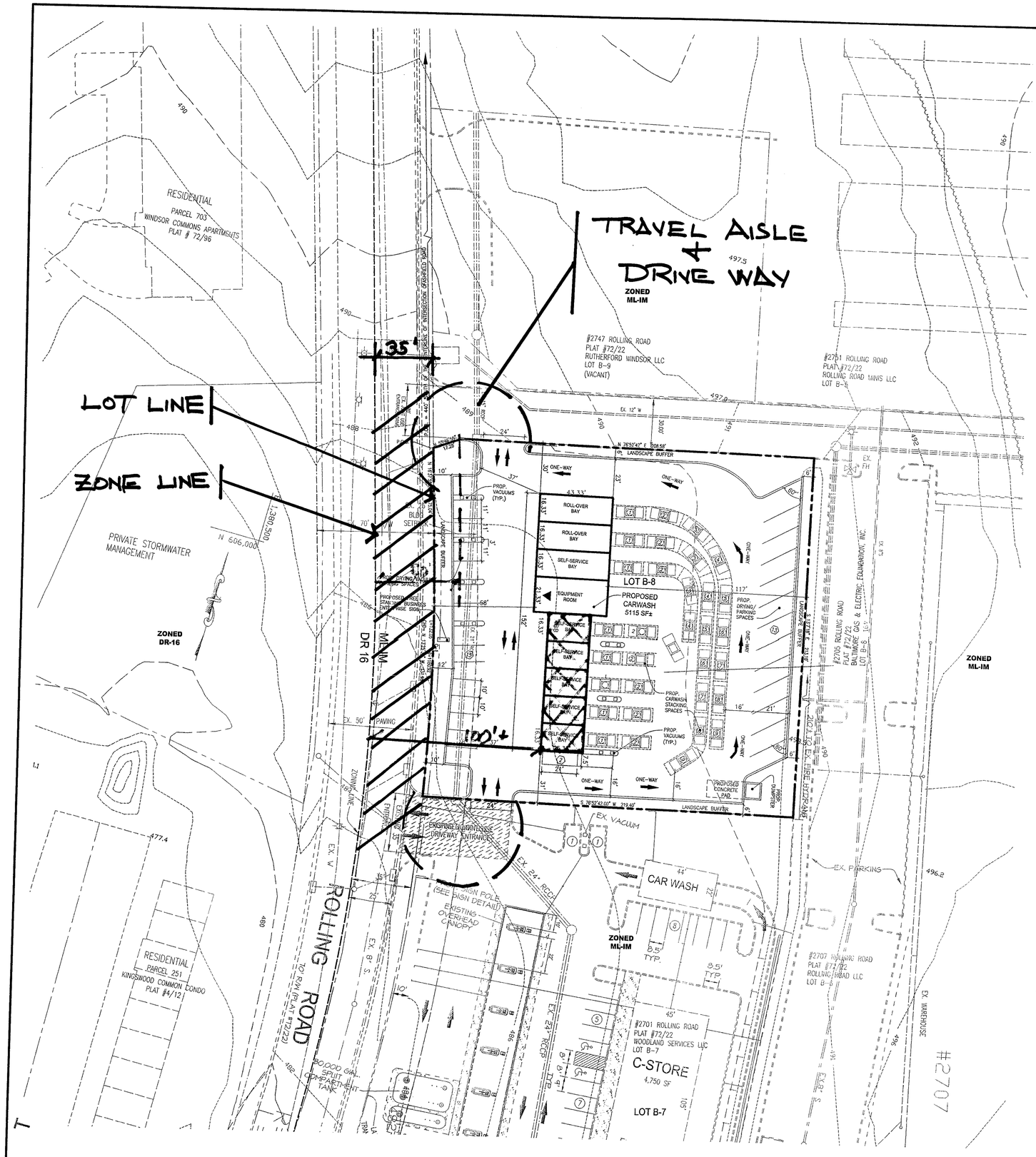
ROLLING ROAD COMMERCE CENTER LOT B–8

ELECTION DISTRICT 2 — COUNCILMANIC DISTRICT 4

BALTIMORE COUNTY MARYLAND

DATE	REVISIONS
08/03/05	REVISED BUILDING, ATTACH & VACUUM LOCATIONS PER SPECIAL EXCEPTION HEARING

JOB NO.:	14409
SCALE:	1"=30'
DATE:	08/03/05
DRAWN BY:	KC
DESIGN BY:	KC
REVIEW BY:	DR/BM
SHEET:	1 OF 1



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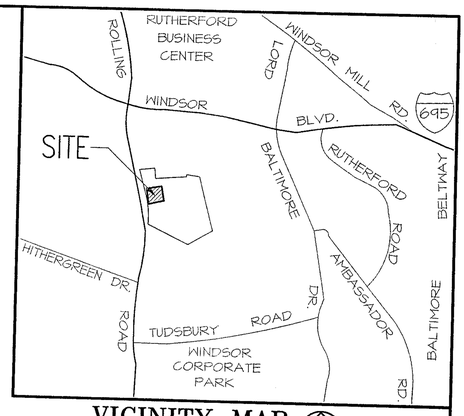

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ZONING RELIEF REQUESTED

1. **PURSUANT TO SECTIONS :**

QUIRED.

PETITIONER'S EXHIBIT

NO. 10

MARYLAND COORDINATE SYSTEM (MCS)

MRA

MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
1220-C EAST JOPPA ROAD, SUITE 505
TOWSON, MARYLAND 21286
(410) 821-1690
FAX: (410) 821-1748

MRAGTA.COM

STATE OF MARYLAND — JAMES WOODWARD MORRIS — NO. 1043 — LANDSCAPE ARCHITECT — 8/2/05

PLAT TO ACCOMPANY
SPECIAL EXCEPTION APPLICATION

2705 ROLLING ROAD

ROLLING ROAD COMMERCE CENTER LOT B–8

ELECTION DISTRICT 2 — COUNCILMANIC DISTRICT 4

BALTIMORE COUNTY MARYLAND

DATE	REVISIONS		
	1/26/06	JOB NO.:	14409
		SCALE:	1"=30'
		DATE:	08/03/05
		DRAWN BY:	KC
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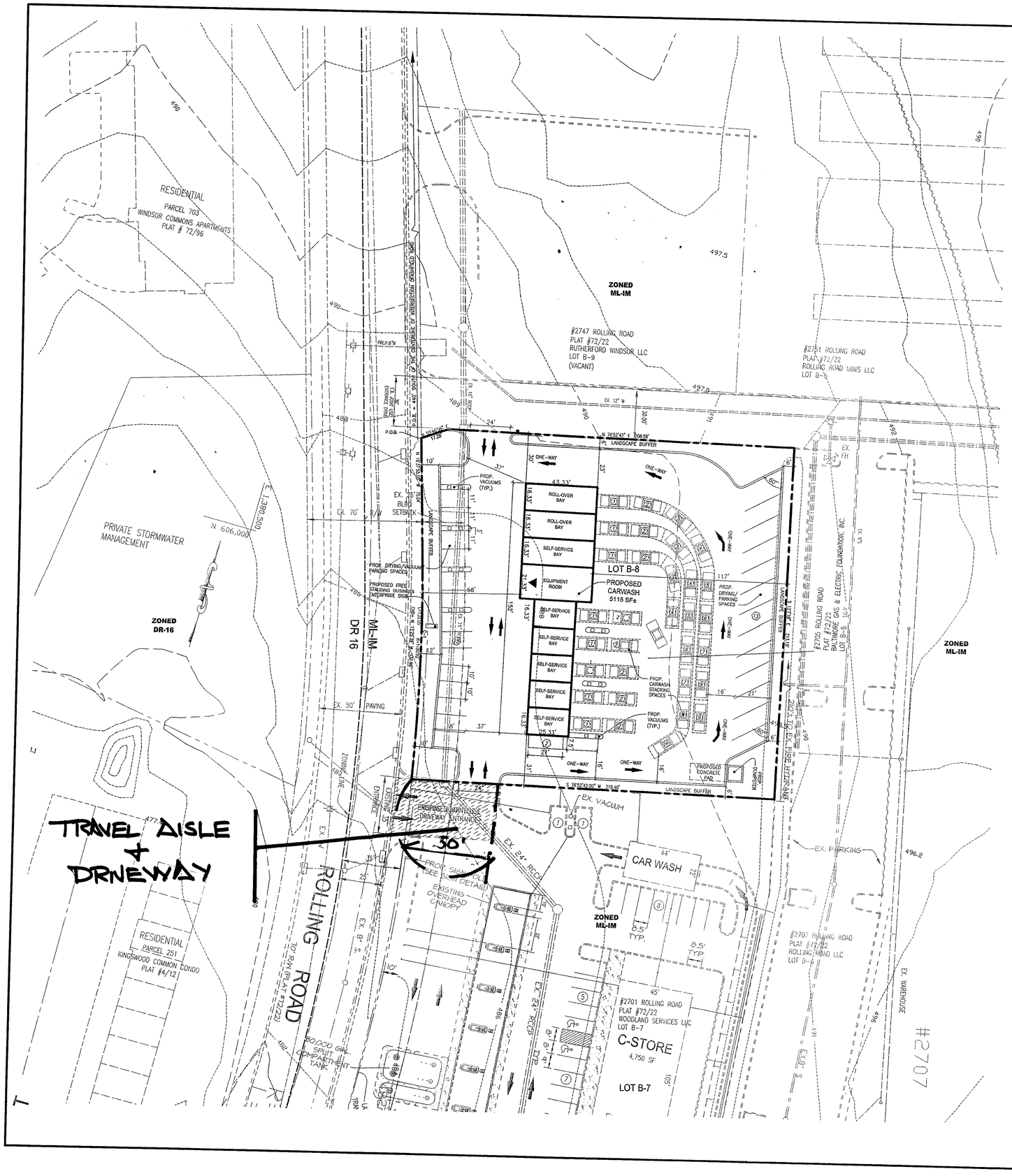

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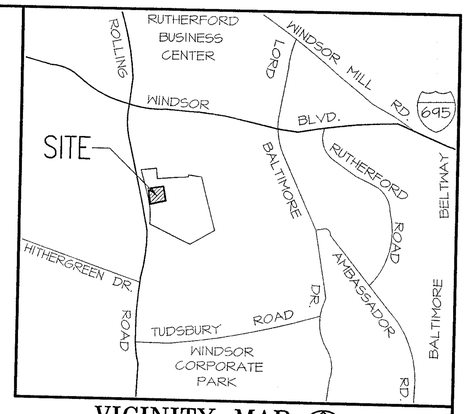

VICINITY MAP

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PETITIONER'S EXHIBIT

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MRA

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STATE OF MARYLAND JAMES VINCENT KOMOROWSKI III NO. 10494 REGISTERED PROFESSIONAL ENGINEER 8/3/05

PLAT TO ACCOMPANY
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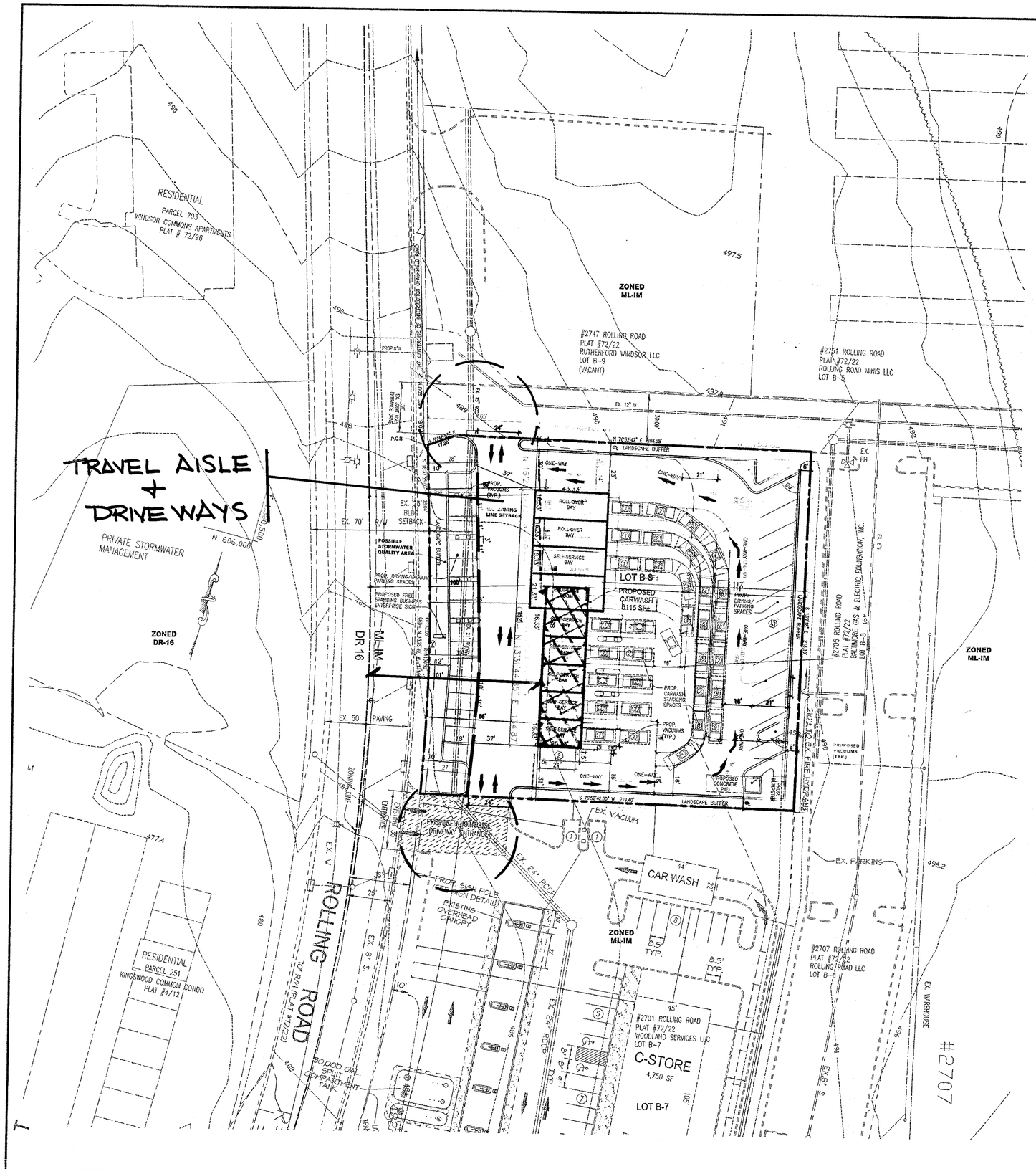

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4. BALTIMORE COUNTY SOILS SURVEY MAPS 39 & 43
5. TAX MAP: 87, GRID 17, PARCEL 739 LOT B-8
6. ZONING MAPS NW3G & NW4G
7. DEED REFERENCES: 13413/60
8. PLAT REFERENCES: 72/22
9. CENSUS TRACT: 4024.01
10. WATERSHED: PATAPSCO
11. SUBSEWERSHED: 70
12. SEWAGE PLAN DESIGNATION: S-1 Map S-16A
13. WATER SUPPLY PLAN DESIGNATION: W-1 Map W-16A
14. REGIONAL PLANNING DISTRICT: 319-A
15. ELECTION DISTRICT: 2
COUNCILMANIC DISTRICT: 4
16. EXISTING USE: VACANT
17. PROPOSED USE: ROLL OVER & SELF SERVICE CAR WASH.
18. PROPOSED BUILDING AREA: 5115.16 SF. (43.33'x152'±)
19. FLOOR AREA RATIO (F.A.R.):
MAXIMUM ALLOWED – 2.0 PROPOSED – .11
20. THIS SITE SHALL BE SERVICED BY PUBLIC WATER AND SEWER.
21. SCREENING AND LANDSCAPING SHALL COMPLY WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL
22. THE SITE IS NOT WITHIN A MORATORIUM AREA OR IN AN AREA WHERE FAILURE OF BASIC SERVICES MAPS CURRENTLY EXISTS PER SECTION 4A02 (BCZR).
23. THE SITE IS NOT IN A 100 YEAR FLOODPLAIN.
24. THERE ARE NO NON-TIDAL WETLANDS ON THIS SITE.
25. THERE ARE NO FOREST BUFFERS ON THIS SITE.
26. THERE ARE NO KNOWN REGULATED PLANT OR WILDLIFE COMMUNITIES ASSOCIATED WITH THIS SITE.
27. THERE ARE NO KNOWN HISTORICAL STRUCTURE OR ARCHEOLOGICAL AREAS ASSOCIATED WITH THIS SITE.
28. THERE ARE NO KNOWN EXISTING WELLS OR SEPTIC FIELDS WITHIN 100' OF THIS PROPERTY
29. BUILDING CONSTRUCTION SHALL COMPLY WTH BUILDING AND FIRE CODE REQUIREMENTS.
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31. ALL PAVING SHALL BE BITUMINOUS DUST-FREE SURFACE AND PERMANENTLY STRIPED.
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33. STORM WATER MANAGEMENT IS PROVIDED AS PART OF THE OVERALL RUTHERFORD BUSINESS CENTER SOUTH.
34. AS STATED ON APPROVED PLAT PLANS (72/22) WITH BALTIMORE COUNTY, STORMWATER MANAGEMENT FOR ALL LOTS IN THIS SUBDIVISION WILL BE ACCOMPLISHED THROUGH THE USE OF THE EXISTING REGIONAL STORMWATER MANAGEMENT POND.
35. WATER QUALITY WILL BE PROVIDED INDIVIDUALLY ON EACH LOT OR IN JOINT FACILITIES TO LOTS B-5 THROUGH B-9.
36. NO PREVIOUS COMMERCIAL PERMITS FOR LOT #B-8.
37. THIS SITE IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
38. SIGNAGE:
PROPOSED SIGNAGE SHALL BE IN COMPLIANCE WITH B.C.Z.R. SECTION 450.
39. SETBACKS (TO PROPERTY LINES):

CAR WASH BUILDING

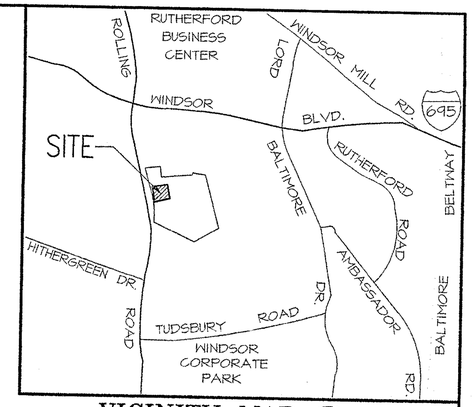
	REQUIRED	PROVIDED
FRONT	35'	58'
SIDE	30'	31' & 30'
REAR	30'	117'

40. ROLL-OVER CARWASH HOURLY RATED CAPACITY = 14 VEHICLES
41. WASHTECH – LASERWASH G5

BASIC	150 SECONDS	2.30 MINUTES
DELUXE	217 SECONDS	3:47 MINUTES
ULTIMATE	262 SECONDS	4:25 MINUTES

ADD AN ADDITIONAL 45 SECONDS TO EACH TIME FOR CUSTOMER PAYMENT AND DRIVING IN AND OUT.

THIS IS IN LINE WITH THE AUTOMATIC CAR WASH INDUSTRY AVERAGE OF TURNING OVER A CAR EVERY THREE AND ONE-HALF MINUTES OR FOURTEEN CARS PER HOUR WHEN UNDER MAXIMUM VOLUME DEMANDS.



VICINITY MAP

SCALE: 1"=1,000'

SECTION 419:

THE PLAN IS IN CONFORMANCE WITH ALL APPLICABLE CRITERIA AS SET FORTH IN SECTION 419 (BCZR), MORE SPECIFICALLY THE "LOCATION" AND "GENERAL DESIGN" STANDARDS IN SECTIONS 419.4 A & 419.4 B RESPECTIVELY.

SECTION 419.3:

CAR WASH PARKING & STACKING REQUIREMENTS

1. PARKING CALCULATIONS:

A. PARKING REQUIRED — SPACES

- CAR WASH DRYING SPACES (2 PER BAY, 8 BAYS) ..... = 16
- ADDITIONAL SPACES (ROLL OVER CAR WASH, 2 BAYS) ..... = 4
- VACUUM SPACE * (8 VACUUMS) ..... = 8

TOTAL REQUIRED ..... = 28

B. PARKING PROVIDED: ..... = 30

2. CAR WASH STACKING:

- ROLL OVER CARWASH
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  TOTAL REQUIRED ..... = 14
  TOTAL PROVIDED ..... = 14

* 5 ADDITIONAL VACUUMS PROVIDED ADJACENT TO STACKING SPACES.

ZONING RELIEF REQUESTED

1. **PURSUANT TO SECTIONS 253 ... IRED.**

PETITIONER'S EXHIBIT

NO. 1-B

MARYLAND COORDINATE SYSTEM (MCS)

MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
1220-C EAST JOPPA ROAD, SUITE 505
TOWSON, MARYLAND 21286
(410) 821-1690
FAX: (410) 821-1748
MRAGTA.COM

STATE OF MARYLAND — JAMES WINCHESTER MONK — REGISTERED LANDSCAPE ARCHITECT — NO. 1046 — 8/3/05

PLAT TO ACCOMPANY SPECIAL EXCEPTION APPLICATION

2705 ROLLING ROAD

ROLLING ROAD COMMERCE CENTER LOT B-8

ELECTION DISTRICT 2 — COUNCILMANIC DISTRICT 4

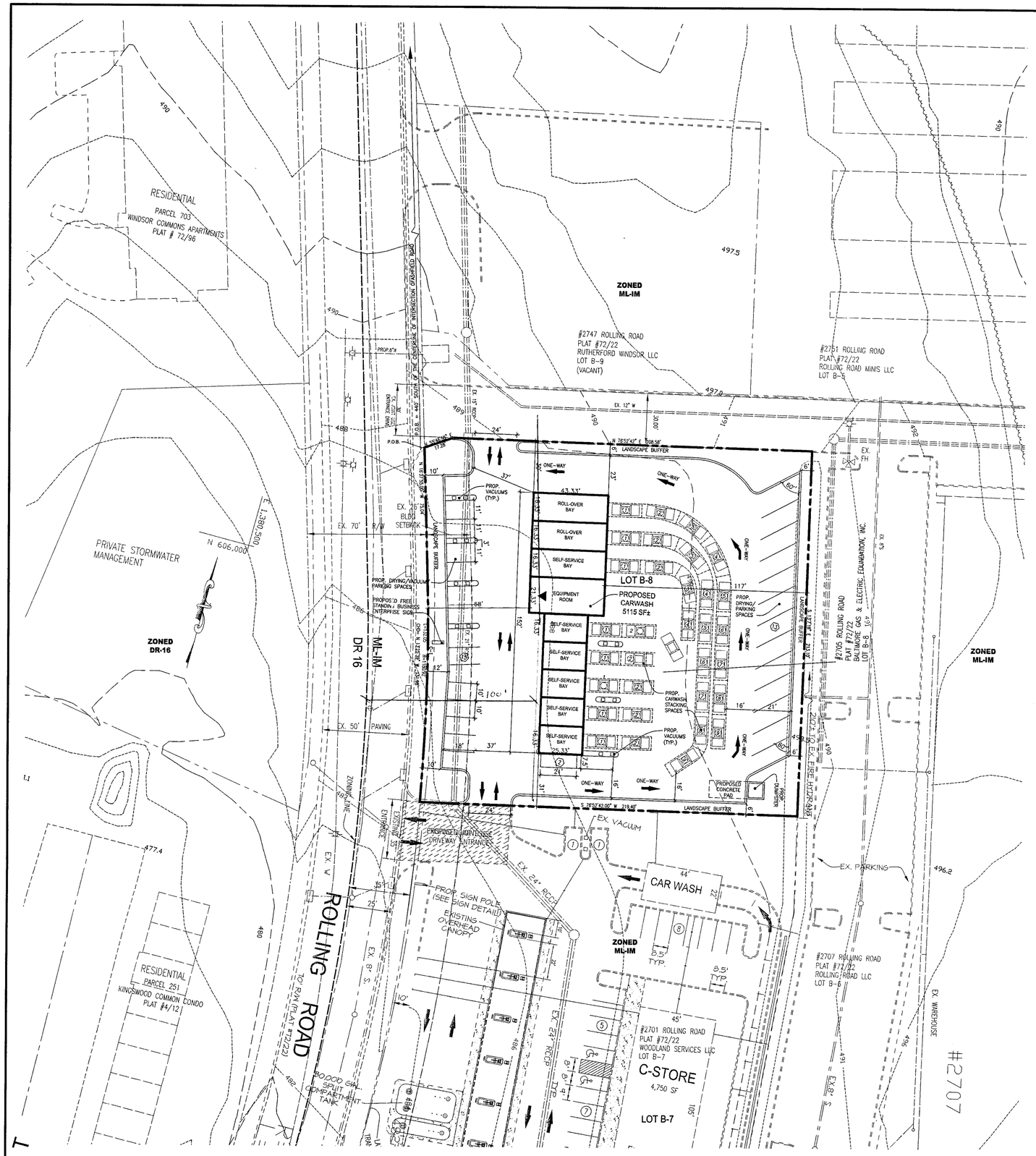
BALTIMORE COUNTY MARYLAND

DATE	REVISIONS
10/19/05	REVISED BUILDING SETBACK & VACCUM LOCATIONS PER SPECIAL EXCEPTION HEARING

JOB NO.:	14409
SCALE:	1"=30'
DATE:	08/03/05
DRAWN BY:	KC
DESIGN BY:	KC
REVIEW BY:	DR/BM
SHEET:	1 OF 1

Pet Exh 1

P:\14409\PLANNING\PLOT\SPECIAL EXCEPTION PLANS\SPEC-EXCP-REDLINE\14409-PL-SPEC-EXCPT-PLAN-OPTION-B.dwg, 1/24/2006 8:34:49 PM, Copyright 2005 Morris Ritchie Associates, Inc.



OWNER / DESIGN CONSULTANT:

OWNERS: RUTHERFORD BURGER INVESTMENTS LLC
9640 DEERCO ROAD
LUTHERVILLE-TIMONIUM, MD 21093
TAX. ACCOUNT # 2300007604
ATTN: ANTHONY JULIO

ENGINEER: MORRIS & RITCHIE ASSOCIATES, INC.
1220-C EAST JOPPA ROAD, SUITE 505
TOWSON, MD 21286
(410) 821-1690
ATTN: BILL MONK

CONTRACT/ PURCHASER/ LEASEE: STEMARK, INC.
2309 COOL WOODS COURT
JERRITSVILLE, MD 21084
ATTN: MARK OGRYSKO

PREMISES ADDRESS: 2705 N ROLLING RD
WOODLAWN, MD 21244

GENERAL NOTES:

1. ZONING: (ML-IM)
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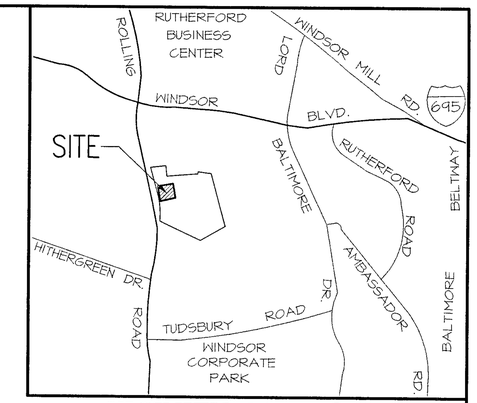

VICINITY MAP

SCALE: 1"=1,000'

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ZONING RELIEF REQUESTED

1. **PURSUANT TO SECTIONS 253.2.B.2 AND 419.1, A SPECIAL EXCEPTION IS REQUIRED.**

MARYLAND COORDINATE SYSTEM (MCS)

PETITIONER'S EXHIBIT NO. 1

MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
1220-C EAST JOPPA ROAD, SUITE 505
TOWSON, MARYLAND 21286
(410) 821-1690
FAX: (410) 821-1748
MRAGTA.COM

STATE OF MARYLAND JAMES VINCENT MONK NO. 1044 REGISTERED LANDSCAPE ARCHITECT 8/3/05

PLAT TO ACCOMPANY
SPECIAL EXCEPTION APPLICATION

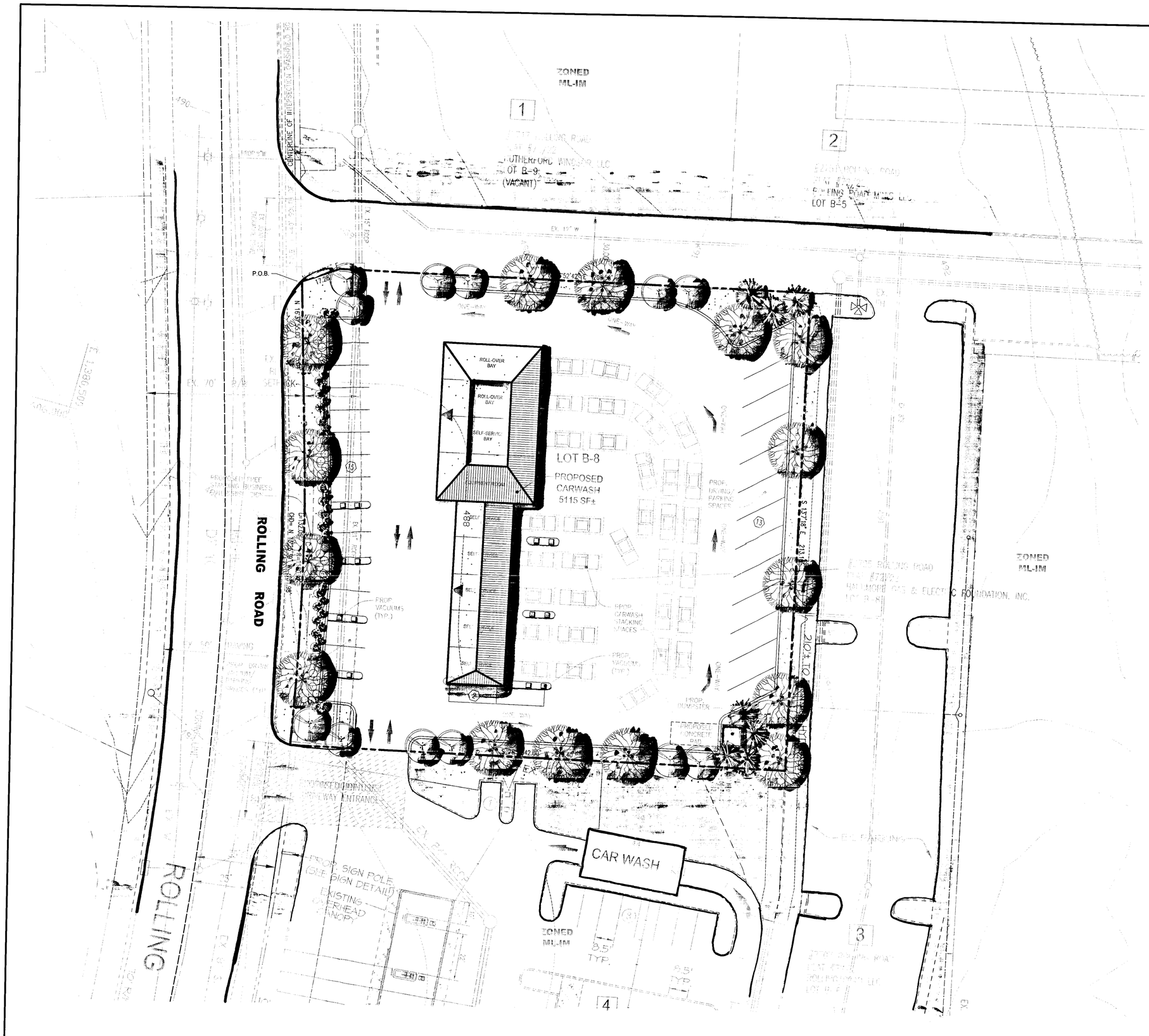
2705 ROLLING ROAD

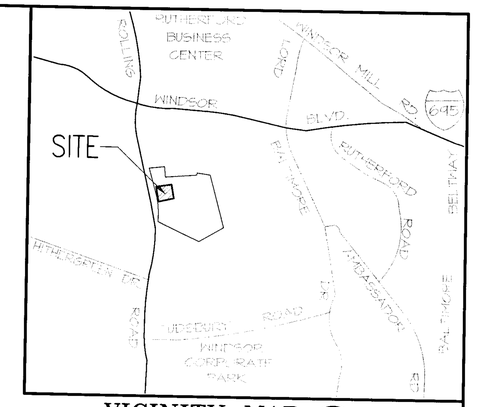
ROLLING ROAD COMMERCE CENTER LOT B-8

ELECTION DISTRICT 2 — COUNCILMANIC DISTRICT 4

BALTIMORE COUNTY MARYLAND

DATE	REVISIONS		
		JOB NO.:	14409
		SCALE:	1"=30'
		DATE:	08/03/05
		DRAWN BY:	KC
		DESIGN BY:	KC
		REVIEW BY:	DR/BM
		SHEET:	1 OF 1





VICINITY MAP

SCALE: 1"=1,000'

MARYLAND COORDINATE SYSTEM (MCS)

PETITIONER'S EXHIBIT NO. 1A

MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
1220-C EAST JOPPA ROAD, SUITE 505
TOWSON, MARYLAND 21286
(410) 821-1690
FAX: (410) 821-1748
MRAGTA.COM

SCHEMATIC LANDSCAPE PLAN
SPECIAL EXCEPTION CONCEPTUAL EXHIBIT

2705 ROLLING ROAD

ROLLING ROAD COMMERCE CENTER LOT B-8

ELECTION DISTRICT 2 — COUNCILMANIC DISTRICT 4
BALTIMORE COUNTY MARYLAND

DATE	REVISIONS		
		JOB NO.:	14409
		SCALE:	1"=20'
		DATE:	09/29/05
		DRAWN BY:	KC
		DESIGN BY:	KC
		REVIEW BY:	JH/BM
		SHEET:	1 OF 1

Ifikhar Ahmad
2701 Rolling Road
Woodlawn, MD 21244

Anthony Julio
Rutherford Burger Investments, LLC – L/O
9640 Deerco Road
Lutherville-Timonium, MD 21093

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

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

I HEREBY CERTIFY that on this 11th day of January, 2007, a copy of the foregoing Certificate of Notice has been mailed to: Michael P. Tznczyn, Esquire, 606 Baltimore Avenue – Suite 106, Towson, MD 21204, Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, Sgt. & Mrs. Hector O'Berry, 7000 Rockfields Road, Windsor Mill, MD 21244, C. William Clark, Esquire, Nolan, Plumhoff & Williams, 502 Washington Avenue, Nottingham Centre, Towson, MD 21204-4528, Steve Ogrysko, 1921 Pleasantville Road, Forest Hill, MD 21050, David West, 6126 Three Cedars Lane, Fredericksburg, VA 22401, Mark Ogrysko, 2309 Cool Woods Court, Jarrettsville, MD 21084, B. Kacey Carer, 9125 Thamemeade Road, Laurel, MD 20783, Bill Monk, Morris & Ritchie, 1220-C East Joppa Road – Ste. 505, Towson, MD 21286, Laura Vu, 43 Straw Hat Road – Apt. 2D, Owings Mills, MD 21117, Sajid Chaudhry, 2318 Halls Grove Road, Gambrills, MD 21054, Ifikhar Ahmad, 2701 Rolling Road, Woodlawn, MD 21244, Anthony Julio, Rutherford Burger Investments, LLC – L/O, 9640 Deerco Road, Lutherville-Timonium, MD 21093

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

County Board of Appeals of Baltimore County

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

January 11, 2007

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

RE: Circuit Court Civil Action No. 3-C-06-13405
Petition for Judicial Review
Rutherford Burger Investments, LLC
Board of Appeals Case No.: 06-075-X

Dear Mr. Tanczyn:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review, which you have taken to the Circuit Court for Baltimore County, in the above-entitled matter within sixty days. The cost of the transcript of the record must be paid by you and must be paid in time to transmit the same to the Circuit Court within the sixty day timeframe, as stated in the Maryland Rules.

The Court Reporter that you need to contact to obtain the transcript and make arrangement for payment is as follows:

CAROLYN PEATT
TELEPHONE: 410- 486-8209
HEARING DATE(S): August 9, 2006

This office has also notified Ms. Peatt that a transcript on the above captioned matter is due by February 15, 2007, for filing in the Circuit Court. A copy of your Petition, which includes your telephone number, has been provided to the Court Reporter, which enables her to contact you for payment provisions.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel
Legal Secretary

/lbf
Enclosure

c: Carolyn Peatt, Court Reporter
Peter M. Zimmerman, People's Counsel
C. William Clark, Esquire
Sgt. Hector O'Berry and Yvonne O'Berry
Rutherford Burger Investments, LLC/by Anthony Julio
Steamark, Inc., by Mark Ogrysko

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

January 11, 2007

Rutherford Burger Investments, LLC
c/o Anthony Julio – L/O
9640 Deerco Road
Lutherville-Timonium, MD 21093

RE: **Circuit Court Civil Action No. 03-C-06-13405**
Petition for Judicial Review
Rutherford Burger Investments, LLC
Board of Appeals Case No.: 06-075-X

Gentlemen:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on December 18, 2006, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, **must be filed under Civil Action No . 03-C-06-13405.**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel
Legal Secretary

/lbf
Enclosure

Michael P. Tanczyn, Esquire
C. William Clark, Esquire
Sgt. Hector O'Berry and Yvonne O'Berry
Steamark, Inc., by Mark Ogrysko
Steve Ogrysko
B. Kacey Carer
Peter Max Zimmerman, Esquire
William J. Wiseman, III, Zoning Commissioner
Timothy M. Kotroco, Director/PDM
Bill MOnk
Laura Vu
Sajid Chaudhry
Ifikhar Ahmad
David West

Printed with Soybean Ink
on Recycled Paper

606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
(410) 296-8823
Attorney for the Petitioners
Hector O'Berry and Yvonne O'Berry

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 18th day of December, 2006, a copy of the foregoing Petition For Judicial Review was delivered to Kathleen C. Bianco, Administrator, County Board of Appeals, Room 49, 400 Washington Avenue, Towson, Maryland 21204.

MICHAEL P. TANCZYN, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
(410) 296-8823
Attorney for the Petitioners
Hector O'Berry and Yvonne O'Berry

language by the County Council is significant because the County Council expressed its intent that self-service car washes would not be located within 100 feet of a residentially zoned land, to create a safe buffer, so that any residentially zoned and occupied land would not have to have a self-service car wash, regardless of whether its an attended car wash, within 100 feet of the DR zoned line. Those words are clear, unambiguous, and to be given their ordinary meaning, and given effect by the Board of Appeals in rendering its decision.

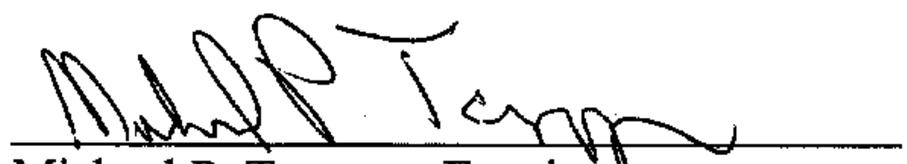
WHAT DOES BILL 172-1993 PROVIDE AS LEGISLATIVE MANDATED CONTROLS OF CAR WASHES, UNDER BCZR §419.1

Bill 172-1993 was a comprehensive law, dealing with rollover, full service and self service car washes, which were studied in depth by the County Council for voting to approve Bill 172-1993 (BCZR §419.1). That section grandfathered legally existing car washes prior to the effective date of Bill 172-1993 (BCZR §419.5)

When all the provisions of §419 are read together and harmonized, a cardinal rule of statutory construction, the provisions of §419.A.1, setting forth differing setback requirements for rollover and full service car wash buildings from those required for self service car wash facilities from residentially zoned property represent a clear legislative mandate based on the effects each type of facility would have on nearby residentially occupied land. A quick tour of BCZR§419 provisions sets forth the legislative intention to so provide different setback requirements, enhancing them for self service car wash facilities, for the benefit of the adjacent residents to facilitate their peaceful and quiet enjoyment of the their residences. The following provisions are apt:

1. The site plan was to provide detailed and substantial information about the subject site and adjacent properties, traffic plan, proposed landscape buffer treatment (BCZR §419.2)

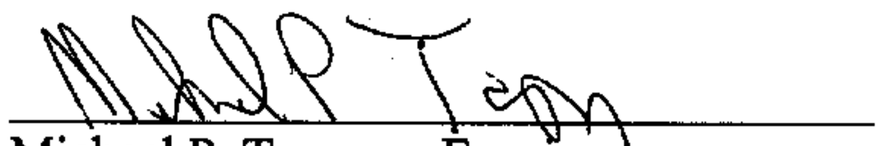
Respectfully Submitted,



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

CERTIFICATION OF MAILING

I HEREBY CERTIFY on this 3d day of February, 2006 that a copy of the foregoing was mailed, first-class, postage prepaid to C. William Clark, Esquire, 502 Washington Avenue, Suite 700, Towson, Maryland 21204.



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

Significantly, BCZR, Section 419.4.A.1 distinguishes between setback requirements for roll over and full service car wash buildings, and self-service car wash setbacks. With regard to roll over and full service car wash buildings, those are required to be at least 50 feet from the lot line of any residentially zoned property. Only the full service and roll over car wash buildings proposed on Petitioner's site meet that standard. However, regulations further provide, with regard to self-service car washes, that except for landscape buffers, no part of a self-service car wash shall be within 100 feet of a residentially zoned property. By examining the line scribed by Mr. Monk, to delimit the 100 foot setback from the DR zoned line, on Petitioner's site plan, in addition to the landscape buffer, the drying and vacuum parking spaces, as well as the traffic circulation aisles are all included within the 100 foot setback.

The Deputy Zoning Commissioner at the hearing expressed his intent to consider that issue and as part of that consideration, to review the approval for the automated car wash, approved as part of the gas station and C store, located next door at 2701 Rolling Road. That case was decided in 2002, zoning case #02-016X, under BCZR Section 253.2.B.1, as an automotive service station subject to the provisions of BCZR Section 405, with an ancillary use of an automated car wash, as well as a C store. As the neighboring C store layout was included, in part, on the Petitioner's site plan, when the Deputy Zoning Commissioner reviews that site plan he will see that the car wash facility and vacuums, which are part of the car wash service, are not only automated, and subject to a 50 foot setback, but are located at least 115 feet from the nearest zoning residential line in Rolling Road. Therefore, that car wash adheres to and meets the requirements for an automated car wash and even the set back requirements for a self-service car wash, even though it is not a self-service car wash facility. The only activity in the first 100 feet of the 2701 Rolling Road facility is canopied fuel dispensing pumps.

A. The County Council distinguished between roll over and full-service car washes and self-service car washes with a purpose, in BCZR Section 419.4.A.1. The County Council in enacting BCZR Section 419 noted the distinction between self-service car washes and automated car washes in the activities which self-service involve and the effects that those services could have on any nearby residentially zoned property residents. The 50 foot setback for roll overs and full service car washes can be understood as deemed legislatively appropriate, when contrasted with the 100 foot setback for self-service car washes, particularly for unattended facilities, where the persons utilizing the car wash will have to get out of their vehicles and manually utilize equipment to wash their vehicles and vacuum them and dry them, if they desire to do so. In performing any of those functions, the Petitioners announced intent to put up "no loitering" and "no loud noise" signs, not only describe the concerns of nearby residential neighbors about activity at an unattended facility where the hours of operation are proposed to be 24 hours a day, 12 months of the year, but an acknowledgment of the existence of the potential threat to the quality of life to the residential residents if the car wash is unattended and open 24 hours a day. The Petitioner's proposal to have an attendant there during daylight hours, but not during hours of darkness would not address the greatest problem time anticipated by Sgt. O'Berry and his wife, protesting this Petition. Furthermore, the adjacent car wash is attended 24 hours a day and is well supervised, according to the O'Berrys and appears to comply with all the requirements of BCZR Section 419, which treats self-service car washes differently than automated or roll over car washes.

When considering a Special Exception request, the Deputy Zoning Commissioner, under the law, is required to determine whether the proposed use will meet the requirements of BCZR Section 502.1 of the Baltimore County Zoning Regulations, as well as, in this case, the requirements of BCZR Section 419. Unfortunately for the Petitioner, their site plan with the 100 foot setback

EDUCATION:

University of Illinois, Urbana-Champaign, Illinois, Master of Urban Planning, May 1975, (4.81 G.P.A.)

University of Illinois, Urbana-Champaign, Illinois, Bachelor of Urban Planning, December 1973