

BOARD OF APPEALS CASE NO. 4045	*	BEFORE THE
BOARD OF APPEALS CASE NO. 4110	*	ZONING HEARING EXAMINER
APPLICANT: T. C. SIMONS, INC.	*	OF
REQUEST: Special Exceptions, variances and interpretations to permit various commercial uses; eastside of Old Mountain Road, Central, Joppa	* * * *	HARFORD COUNTY
HEARING DATES: Oct. 29, 1990; Nov. 5, 1990; Nov. 20, 1990; Dec. 6, 1990; Jan. 14, 1991	* * *	Hearings Advertised Aegis: 7/3/90 & 7/11/90 9/26/90 & 10/3/90 Record: 7/3/90 & 7/11/90 9/26/90 & 10/3/90

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ZONING HEARING EXAMINER'S DECISION

The Applicant, T. C. Simons, Inc., is requesting a Special Exception, pursuant to Section 267-53(D)(1), of the Harford County Zoning Code, to park or store commercial vehicles and equipment; an interpretation of Section 267-53(H)(1) for existing parking to continue or, in the alternative, a variance from the requirement of the Code to allow less than the required 10 foot buffer setback with respect to vehicle parking; an interpretation that the existing scale house is a non-conforming building or, in the alternative, a variance from the setback requirements set forth in Section 267-34(B), Table II, which requires a minimum building setback of 100 feet; a Special Exception, pursuant to Section 267-53(E)(2), Table I, to allow a sawmill use; a Special Exception, pursuant to Section 267-53(E)(1), Natural Resource Table I, for permanent use for mineral extraction and processing to permit the retail sale of stone products; an interpretation that a mulch operation is permitted as a principal or accessory use in an Agricultural District and/or a variance to permit the mulch operation and the retail sale of stone products; a Special Exception for construction services and suppliers' use, to permit a mulch operation consisting of grinding trees and stumps and the sale of mulch. Additionally, the Applicant is requesting a variance from the provisions of Section 267-41(D)(6), to permit disturbance, filling and development of non-tidal wetlands in the Natural Resource District buffer area (This request concerns only Parcel No. 189 and 279, which will be described herein as "Parcel D".)

The property consists of eight (8) parcels located on both the east and west side of MD Route 152, between Old Mountain Road, Central, and Route 152, on the west side of Route 152, one-quarter mile south of Singer Road. The parcels are identified on Tax Map 60 as Parcel Nos. 79, 153, 188, 189, 279, 283, 291, and 292. All of the parcels are located within the First Election District.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Mr. Robert Cooper, Executive Vice President of T. C. Simons, Inc., testified that T. C. Simons, Inc. is a road and utility contractor incorporated in 1972. It has no offices outside of Harford County and is currently located on six (6) acres at 2011 Belair Road, Fallston, Maryland. Mr. Cooper stated that T. C. Simons, Inc. owns Parcels A, B and C and holds a right of first refusal to purchase Parcel D, which Mr. Cooper stated is still owned by Ignatius Jenkins and Pressie Jenkins.

Mr. Cooper testified that Parcel A contains approximately three and one-half (3-1/2) acres and Parcel C contains thirty-one (31) acres. Mr. Cooper stated that the road frontage on MD Route 152 extends across all of Parcels A, D and B. Old Mountain Road also binds on the rear of Parcel B. A 50 foot easement extends from Romney Road to Parcel A. A limited access way approximately 50-100 feet wide leads to Singer Road. Mr. Cooper testified that there are existing entrances from Mountain Road to Parcel D and Parcel A on the west side of Route 152. Parcel B has an existing entrance to the east side of Mountain Road and an existing entrance onto Old Mountain Road. There is also an existing entrance to Old Mountain Road at the scale house on Parcel C.

Mr. Cooper testified that the existing uses on the property are a scale house or shed on Parcel C for weighing loads coming in and out of the mining pit and two homes on Parcel B, one of which is occupied by Mr. and Mrs. Jenkins and the other owned and rented out by T. C. Simons, Inc. The only active use on Parcels A and D at this time are the storage of some equipment and material as per previous approval.

Mr. Cooper testified the existing building on Parcel B had previously been used as a shop building for a truck repair business. Prior to that, a road and construction business used the building to repair trucks. Both businesses are no longer on the site. T. C. Simons, Inc. currently is storing trucks and construction equipment on Parcel B.

Parcels A and D are currently being used only for storage of vehicles. Both parcels had been previously used for a mining operation. Materials from Parcels A and D had been removed and the pit filled with other materials such as brush and concrete. Mr. Cooper stated that T. C. Simons, Inc. had not placed any of those fill materials on Parcel D.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Parcel C is still actively being mined and is currently being reclaimed with clean fill according to State regulations. The fill is comprised of dirt, rock, concrete without rebar and broken blacktop. This area would be fertilized and seeded upon completion of the mining operation. Mr. Cooper testified that Parcel C still has an active mining license in effect. Currently, 11 acres are being mined for sand and gravel. T. C. Simons, Inc. requested a modification of the permit from the State to extend the mining permit on Parcel C. Mr. Cooper testified that the hours of operation for the mining operation are 6:00 a.m. to 6:00 p.m. Currently, one front-end loader and four to six trucks are used on Parcel C to bring material in and out of the pit at various times of the day.

Mr. Cooper testified that T. C. Simons, Inc. owns approximately 100 pieces of equipment and vehicles on the subject property, such as bulldozers, scrapers, paving equipment and trucks, that could be stored on the subject property at one time. The equipment would be parked for extended periods of time between jobs. It is unlikely that all of this equipment would be used in a single day. T. C. Simons, Inc. also proposes to lease space to other contractors for storage of similar types of vehicles and equipment. The vehicles and equipment would be stored outside on a stabilized surface such as stone after the reclamation was completed.

Mr. Cooper testified that the areas outlined in colors on Parcels A, B, C and D of Exhibit 16C were the proposed areas for the location of buildings. He stated that T. C. Simons, Inc. presently had no plans to build any new structures on the sites. Additionally, a landscaping plan could be submitted to Harford County for approval.

Mr. Cooper testified that although the hours of operation for the stored vehicles and equipment would be intermittent depending on when equipment was needed, they would generally be between 6:00 a.m. and 6:00 p.m. The equipment would generally be started up and loaded on flat bed trucks for transport. Any space, Mr. Cooper stated, leased to other contractors, would have the same hours of operation as T. C. Simons, Inc.

T. C. Simons, Inc. does not propose to repair equipment on the storage site. Mr. Cooper testified only preventative maintenance would be performed on the equipment such as starting up the equipment periodically to protect them from freezing up. Mr. Cooper testified that T. C. Simons, Inc. would be storing fuel and lubricants such as gasoline, oil, antifreeze, and hydraulic fluids on the subject parcel. Mr. Cooper testified that the proposed storage for the contractor's materials would mainly entail storage of equipment and materials such as excess pipe, lumber and stone.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Mr. Cooper testified that it would approximately be three to five years before Applicant would begin any formal reclamation of Parcel C. Reclamation of Parcel D would commence right away. However, because of the amount of material need to fill the site, he did not anticipate that the entire area would be usable for at least three to five years.

Mr. Cooper testified that the proposed mulch operation on Parcels A, C and D would entail the grinding or chipping of stumps, branches and logs. The Applicant proposes to use a stump grinding machine, similar to equipment used by other local contractors such as Naylor Construction, Crouse Construction and J. M. Comer. The proposed hours of operation would be Monday through Friday during daylight hours. The machinery would be portable and in operation intermittently. The raw materials to produce the mulch would be obtained from outside sources and stored on Parcels C or D. The mulch would be sold to the public or to landscaping contractors by either Applicant or an independent contractor.

Mr. Cooper testified that the retail sale of stone products would be conducted on Parcel D by an independent contractor. The stone would be brought in from quarries and displayed for sale to landscaping businesses or individuals needing stone for home projects. Delivery of the stone would be intermittent. The sale of stone would be primarily retail sale with a small quantity offered for wholesale to contractors. No crushing or water treatment of stone would take place on the subject property. A building for use as a sales office may be constructed at a later date.

Mr. Cooper testified that Applicant proposed to lease portions of Parcel D to either building construction trades or contractor trades or mechanical contracting. Mr. Cooper stated that Applicant had already been approached by some trades and mechanical contracting companies in regard to the possibility of leasing the property. In addition, Applicant would use this site for outside storage of its own excess materials, such as pipes, lumber and other construction equipment.

Mr. Cooper testified that Parcel B had been cleaned up after the former tenant had vacated. Parcel A had been recently cleaned up. T. C. Simons proposed to clean up Parcels C and D by filling it with clean fill in accordance with State requirements. Mr. Cooper stated that the property would not be used as a landfill or a rubble fill.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Mr. Cooper testified that the purchase and use of Parcel D as requested would be contingent upon zoning approval. Reclaiming this property would not be feasible if Applicant could not use the property for other purposes after reclamation. In his opinion the reclaiming of this property would eliminate an eyesore. T. C. Simons, Inc. would provide screening and a buffer yard around the subject parcels to fully screen the vehicles and equipment from adjoining properties. Mr. Cooper testified that some outside lighting would be installed for security purposes on the subject parcel.

Mr. Cooper stated that Parcels A and D would use the existing entrances onto Route 152. Parcel C would use the entrance near the scale house and traffic would travel north on Old Mountain Road to MD Route 152. Mr. Cooper stated they would like to use the Singer Road access after reclamation is completed. Mr. Cooper stated that the Romney Road access would be inconvenient since it went through the wetlands area.

Mr. Cooper testified T. C. Simons, Inc.'s existing business was located on commercially zoned property. The subject parcels were conveniently located near the existing business location which afforded Applicant the availability of mining materials and provided Applicant with the ability to dispose of materials from its own business operations on Parcels A and D. All of the uses proposed on the subject property are related to Applicant's present business.

Mr. Steve McCurdy testified as an expert in landscape architecture. Mr. McCurdy stated that he was a registered landscape architect in the State of Maryland and a project manager for Morris & Ritchie Associates, Incorporated. Mr. McCurdy testified that he had personally visited the site depicted on Petitioner's Exhibit 16C and was familiar with the application filed by T. C. Simons, Inc. Mr. McCurdy testified that the Stage 3 Plan (Exhibit 16C) contained general information and was a conceptual plan. Mr. McCurdy stated that after the preparation of Exhibit 16C, the wetlands had been field delineated and a boundary survey had been completed. Based on the completion of the delineation and the boundary survey, the usable area depicted on Exhibit 16C for development (after reclamation), will be actually smaller than shown on Exhibit 16C.

Mr. McCurdy described the topography of Parcels A and D as laying at a higher elevation along Rt. 152 with an existing embankment which dropped to the property line. Area C drops off from Old Mountain Road to the area of the mining operation. This area of Parcel C, Mr. McCurdy testified, is currently being reclaimed and slopes toward the back of the property. Area B is a high point along Old Mountain Road and slopes down towards Rt. 152.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Mr. McCurdy stated that the 75 foot buffer surrounding the non-tidal wetlands, and depicted on Exhibit 21, was established in accordance with the Harford County Development Regulations. Mr. McCurdy testified that the dark green area on the Exhibit 21 depicted the existing tree cover and wooded area of the property. The light green area represented open space. Surrounding the non-tidal wetlands and depicted in brown was the proposed buffer to be reestablished after reclamation. The existing gross area of Parcel D is 16.1 acres. The total area on Parcel D which is now classified as non-tidal wetlands is approximately 2.9 acres. Approximately 3.9 acres is non-tidal wetlands buffer. The existing buffer area to be disturbed is approximately 3.6 acres. The net usable area on Parcels A and D combined, after reclamation, would be 5.4 acres. Parcel C contains 31 acres. Approximately 12.5 acres of the reclaimed area of Parcel C would be usable after reclamation was completed. The calculation of the net usable area was based on the Reclamation Concept Plan which shows the filling and regrading of the reclaimed portion of the site. As a result of that grading, there will be sloped areas which will not be usable.

Mr. McCurdy testified that the required buffer area for construction services and suppliers was 10 feet wide around the property line. Commercial equipment and vehicles would have to be screened from adjacent residential properties and public roads. Mr. McCurdy testified that the dark green area on Exhibit 22 (Buffer Yard Site Plan) depicted the areas to be supplemented with vegetation to satisfy the County requirements. The lighter green area represented existing vegetation that extends onto the property within the 10-foot wide strip. Mr. McCurdy stated that plants, berms, mounds and/or a solid fence or wall could be used for screening. A detailed site plan would be submitted to Planning and Zoning at the time of final site plan review.

Mr. McCurdy testified that Parcel A or D would not be suitable for most agricultural or residential uses and the use of septic disposal systems is limited due to the high ground water table and the clay soil.

Mr. McCurdy stated that there would be very few, if any, existing trees removed from the subject parcels. Mr. McCurdy stated that there were no plans to remove any vegetation from the portion of property shown as open space. He stated that some of the proposed uses would be located in this open space. After reclamation was effectuated, the area would be graded in a condition to allow T. C. Simons, Inc. to conduct the proposed uses. Mr. McCurdy testified that the 75 foot buffer depicted on Exhibit 21 was partially wooded and partially open with undergrowth which extended around the parcel and non-tidal wetlands area.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Mr. McCurdy testified that the pink/gray area depicted on Exhibit 21 represented the existing wetlands that would be filled during reclamation. The green area surrounded by the rust color were the remaining non-tidal wetlands. Mr. McCurdy stated that the non-tidal wetlands would be reduced. However, he explained, the non-tidal wetlands on Parcel A would not be disturbed. Only a corner of the northeast section of Parcel A would possibly be used to store equipment. Drainage from Route 152 onto Parcels A and D would be controlled by swales which would direct the drainage into a buffer and from there into a proposed storm water management and sediment control facility. Both the landscaping and storm water management plans would have to be approved by Harford County.

Mr. Peter Bergmann, Vice President of Geo-Technologies Associates, Inc., ("GTA") was qualified as an expert witness in the area of environmental geology. Mr. Bergmann testified that he was familiar with the application filed. He was also familiar with the Stage Three Development Plan as well as the Conceptual Reclamation Plan Mr. McCurdy had described and had been involved in its preparation.

Mr. Bergmann stated that his firm had provided a delineation study of the wetlands on Parcel A and B in mid-summer of 1990. Mr. Bergmann testified that in his opinion Mr. McCurdy's depiction of the non-tidal wetlands and buffer on Petitioner's Exhibit 21 was accurate. Mr. Bergmann testified that the area shown in gray on Parcel D, and included in the variance request, represented the old gravel pit. The light green area depicted the naturally occurring wetlands which Applicant did not propose to disturb. Mr. Bergmann testified that the naturally occurring wetlands have some spring fed sources. The manmade wetlands, Mr. Bergmann testified, were still considered non-tidal wetlands by local, state and federal authorities. However, these wetlands had been degraded by placement of construction materials such as debris, reinforced concrete, asphalt, and railroad ties since the summer of 1966.

Mr. Bergmann testified that the subject manmade wetlands were not environmentally significant. He explained that he had done a field functional analysis report (Exhibit 24) on Parcel D under the guidelines given him by the Department of Planning and Zoning. Mr. Bergmann explained that he had used the Henderson instructional pamphlet to conduct his analysis on the non-tidal wetlands on Parcel C. The Department of Natural Resources, he explained, uses the Henderson analysis as a guide for analyzing non-tidal wetlands. The Henderson analysis is used to determine functional levels which would help to establish whether a wetland should be preserved or not. Wetlands that showed a low functional level would be less stringently regulated.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

The technique used for the functional analysis is one that had been adopted by the Department of Natural Resources in 1983 and is approved by the Department of Planning and Zoning for these types of cases. The analysis takes into consideration eight naturally occurring functions of the wetlands: 1) flood conveyance; 2) shore line anchoring; 3) flood storage; 4) aquifer recharge; 5) surface water supply; 6) sediment and pollution control; 7) fish and wildlife habitat; and 8) recreation. Flood conveyance refers to the functioning of the wetland to convey flood waters from an upstream point to a downstream point. A low functional value was given to this particular site. The reason for the low functional value was that the mining operation ended without any real reclamation of the site which would have assured positive drainage. As a result, the water sits in a ponded area.

Shore line anchoring refers to wetland and vegetation which anchors stream channels for shore line areas. Limited amounts of the ponded area have vegetation on them. A low level was assigned to this function.

Flood storage refers to the ability of some wetlands to store and retain flood waters. Mr. Bergmann assigned this a moderate low level because it's location in the head water area. He explained that because there is not a lot of drainage above it, this manmade wetland acts as a sink for runoff. Once it enters the gravel pit, it has nowhere to go.

Aquifer recharge refers to the ability of some wetlands to store water and then to slowly release it back into the ground water. The reason for the formation of manmade wetland on the subject property is because the sand and gravel operation took out the usable material until it got down to the clay layer. As a result, the water now sits perched on top of a clay area; it has nowhere to go and will infiltrate very slowly through this area. The subject property has no value as a recharge area. Surface water supply refers to the ability of some wetlands to serve as domestic water supplies. This function, on the subject property, was assigned a low to non-existent value because of the property's size and because, if used as a domestic water supply, it would be quickly exhausted since there is no continuous source of water. Mr. Bergmann explained that Harford County and the State of Maryland will not allow domestic water to come from surface water or standing water areas.

Sediment and pollution control refers to the ability of a wetland to store and retain flood waters that contain sediment and chemical pollutants. Mr. Bergmann assigned this a moderate value. The site, he stated, does not act as a sink for pollutants and sediments. The limited headwaters area does not allow a lot of runoff to get to the area.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Fish and wildlife habitat refers to the ability of wetlands to provide food, water, and cover for a variety of species. Because of the disturbed nature of the site, and the fact that more suitable habitat exists surrounding this disturbed bed, this component was assigned a low value.

Mr. Bergmann testified that any recreational aspect would be mainly a water-based recreation. Given the nature of the site, the accumulation of debris, and the general aesthetics, little opportunity exists for any kind of recreational use.

Mr. Bergmann explained that his analysis encompassed only the wetlands and buffer area within Parcel D. The value assigned to a wetland, Mr. Bergmann stated, determines whether a wetland can be disturbed or not. A wetland with high value would not be allowed to be disturbed. However, wetlands with a low value, could be disturbed subject to those conditions the County deems appropriate. Mr. Bergmann testified that when requesting any disturbance to a wetland or buffer area, there are certain mitigation requirements which must be followed to offset the impact of the disturbance of the wetlands. The dark green area on Exhibit 30, (the Reforestation Plan), was identified as the natural forest area on Parcel A and D surrounding the subject wetlands. Mr. Bergmann stated that these forests would not be disturbed by the proposed uses. The dark green area also depicted a proposed additional buffer from the adjoining properties. Mr. Bergmann stated that the revegetation plan shown on Exhibit 30 would have a positive impact. The existing buffer would be reforested with suitable species bringing the buffer to 200 feet. Currently, the edge of the forested area is even with the 75-foot buffer. Part of this buffer is unvegetated or is in early vegetation. Mr. Bergmann explained that the Applicant will be providing an extra 75 foot to 100 foot buffer that will enhance the total buffer from a wildlife, water quality and recreational value standpoint. Wildlife, Mr. Bergmann explained, would be able to use this area after clean up. The proposed uses would in no way deter wildlife from using the subject property.

In Mr. Bergmann's professional opinion, the proposed development would have no adverse effect on the wetlands. Presently water is running untreated into the Gunpowder Falls where there is no storm water management. Mr. Bergmann explained that, even though the acreage of man-made low quality wetlands would be decreased, the overall water quality and wetlands functional ability would be improved. Mr. Bergmann testified that he had reviewed the Staff Report and recommended conditions by the Department of Planning and Zoning and felt that these recommended conditions were reasonably designed to protect the wetlands.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Mr. Bergmann testified that any fuels that might be released from vehicles stored on the properties would not adversely affect the environment since Planning and Zoning could require that provisions be made to protect the environment, such as an oil and grit separator, infiltration pit or a water quality basin. The State, Mr. Bergmann explained, has well defined water quality standards for protecting the environment which T. C. Simons, Inc. would be compelled to meet.

Mr. Bergmann testified that the mulch operation would not affect water quality. He stated that once the 75 foot buffer area was established, there would be specific limitations on what Applicant could or could not do in that area. Mr. Bergmann stated that no activity should be conducted within a naturally occurring functioning buffer. However, if the mulch operation is conducted outside of the 75 foot buffer, there would be no adverse effect on the natural wetlands.

Mr. Bergmann testified that the non-tidal wetlands protection programs set values as to what impacts and mitigation procedures would be required in this area or any other area. The wetlands at issue in this case, he stated, were not included in the State's list of unique and sensitive wetlands. Mr. Bergmann testified that the provision within the non-tidal wetland act calling for any impact on wetlands to be stringently avoided, which would go into effect in January, 1991, was not relevant to this case. T. C. Simons, Inc., Mr. Bergmann stated, has applied to the U.S. Army Corps of Engineers and the Water Resources Administration for a permit. Any permit submitted prior to January 1, 1991 to permit a disturbance of the wetland would be grandfathered, thereby making it unnecessary for T. C. Simons, Inc. to go through the DNR permitting process.

Mr. Bergmann testified that the DNR review was a non-issue in this case since the act would not be in effect until January 1, 1991. Nevertheless, Mr. Bergmann stated, the Department of Planning and Zoning would review any request and make its own decision. Input from the Department of Natural Resources would be incorporated into the Planning and Zoning Staff Report, as well as input from the Soil Conservation Service.

Mr. Bergmann testified that the runoff from MD Route 152, which would be directed and channelized by swales, would probably create new wetland areas. The Department of Natural Resources considers mitigation and restoration synonymous. If the proposed impact can restore or enhance an existing wetland, that is considered mitigation.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Mr. Bergmann testified that the Department of Natural Resources could not make a final impact statement as to the effect the proposed uses would have on the non-tidal wetlands because the plans were still in the conceptual stage. Mr. Bergmann explained that the storm water management facility was designed as a water quality measure, not as a mitigation measure. The proposed swales, Mr. Bergmann testified, would have to be evaluated for their effect on the drainage after construction, to determine retention and water volume. However, because the act did not go into effect until January 1, 1991, Mr. Bergmann again reiterated that T. C. Simons was not bound by DNR's determination.

Mr. Bergmann testified that he was not aware that Parcels A and D had been placed on the Superfund list. However, he stated, if it is on the Superfund list and if it is determined that there are toxic wastes on the property, there would be no way it would be economically feasible for T. C. Simons to continue with its plans. Mr. Bergmann explained that all the non-tidal wetlands would be lost if the property were found to have a toxic waste problem because the entire property would have to be dug up.

Mr. Michael Myamoto, a transportation planner for Morris & Ritchie Associates, Inc., was accepted as an expert in traffic and transportation planning. Mr. Myamoto described MD Route 152, in the vicinity of the subject properties, as a 2-lane roadway with 12 foot lanes and 10 foot shoulders on both sides. The roadway surface is asphalt pavement. Mr. Myamoto described Route 152 as having good surface conditions and operating at an acceptable level of service. Mr. Myamoto testified that the vehicle capacity on MD Route 152 between Greenspring and Singer Road was approximately 2,404 vehicles per hour over two lanes. He testified that, currently, the Maryland State Highway Administration was in a project planning phase for improving MD Route 152 by dualizing the existing roadway. The ultimate plan is to construct a roadway facility similar to MD Route 24 but not as wide. Currently, Mr. Myamoto stated, the Consolidated Transportation Program of the State Highway Administration only has funds for the project planning study phase. No construction funds had been allocated for the project yet. Mr. Myamoto testified that Singer Road, in the vicinity of Parcel C, consisted of a two-lane roadway with 10 foot lanes and varying widths of shoulders up and down the road. The roadway surface is asphalt.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Mr. Myamoto testified that he had investigated whether the sight distances from existing entrances to the subject property from MD Route 152, Old Mountain Road and Singer Road were adequate. Mr. Myamoto defined sight distances as the distance between two vehicles desiring to use the same section of roadway. In his opinion, the sight distances from the existing entrances to the subject properties were adequate.

Mr. Myamoto testified that early in 1990 his firm performed intersection turning movement counts at Old Mountain Road and MD Route 152. Mr. Myamoto stated that he had performed traffic counts during the peak hours from 6:00 to 8:00 a.m. and from the evening hours of 4:00 to 6:00 p.m. The highest hourly volumes were then used in the analysis of MD Route 152 at the intersection of Old Mountain Road. The additional traffic that would be generated by the proposed development was then added to the existing volumes and the new volumes were then analyzed. The analytical methods used were methods that are currently accepted and used by the State Highway Administration. Mr. Myamoto testified that he concluded that the intersection of Old Mountain Road and MD Route 152 between Greenspring Road and Singer Road would still operate at acceptable levels of service even with the additional traffic. Mr. Myamoto stated that currently the road was operating at a level D or better. The State, Mr. Myamoto explained, considers a level D or better as adequate. Mr. Myamoto testified that approximately 400 vehicles could be added to the intersection of Old Mountain Road and MD Route 152 in the morning peak hours and approximately 300 vehicles could be added to the intersection of Old Mountain Road and MD Route 152 in the evening peak hours, without adversely affecting the road level operation.

Mr. Myamoto explained that, in order for there to be a safe means of ingress and egress to and from Route 152 at these existing entrances, T. C. Simons, Inc. would probably have to add deceleration and acceleration lanes and possibly a bypass lane for vehicles turning left on to Old Mountain Road and a passing lane to the entrances. Mr. Myamoto testified that acceleration and deceleration lanes help to channelize traffic. Although the number of trucks would increase, Mr. Myamoto explained, these improvements would help mitigate any adverse effect that might occur due to the increase. Mr. Myamoto stated that, with the proper roadway design, heavy trucks would be able to safely enter and exit these parcels by way of MD Route 152 and Old Mountain Road. Mr. Myamoto stated that, in his opinion, an increase in traffic flow of 300 vehicles per day at peak hours would not necessitate a traffic light if a geometric design for acceleration and deceleration lanes and other improvements were made.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Mr. Myamoto testified that Exhibit 16C showed the two access points T. C. Simons, Inc. was requesting from Parcel D. Currently, Mr. Myamoto stated, two access points existed between MD Route 152 and Parcel D, one at the southern end and one at the northern end. T. C. Simons, Inc. was requesting access from the northern area of Parcel D and an area three-quarters of the way down from that where Parcel A meets Parcel D. Mr. Myamoto testified that with the proper design a second access from Old Mountain Road would not create increased traffic congestion.

Mr. Myamoto testified that during the access permit approval process, the State would recommend or require that mitigating improvements be put in place prior to T. C. Simons, Inc. being allowed to utilize the properties as proposed. Mr. Myamoto stated that T. C. Simons, Inc. would be required to pay for these improvements. If the highway improvements were made, it was Mr. Myamoto's opinion that no dangerous conditions would be created by the additional truck traffic.

Mr. Myamoto testified that although the intersections of Singer Road and new MD Route 152 and the intersection of Greenspring Road and new MD Route 152 were within one-half mile of each other, with proper design and improvements, (i.e., proper access, acceleration, deceleration, and left-turn lanes), congestion could be minimized. Mr. Myamoto stated that further modification may be required from Old Mountain Road onto new Mountain Road but not onto Singer or Greenspring Roads.

Mr. Myamoto testified that he was able to determine what the trip generation would be for the proposed uses by using the Institute of Transportation Engineers (ITE) manual. The ITE manual Mr. Myamoto explained, uses either acreage of the lot that is being developed, square footage of buildings that are being proposed, or number of employees at the site to determine the number of vehicles that would be generated by a particular use. This information has been gathered by ITE from similar sites and is based on the number of trucks which can fit on a certain number of acres. The ITE manual gave high and low averages for these trip generations and is a nationally accepted means of obtaining traffic volumes.

Dr. Ira Kolman testified as an expert in sound and noise levels. Dr. Kolman testified that he was familiar with the Applicant's proposal. Dr. Kolman testified that he had taken measurements of the sound levels generated by vehicles now owned by T. C. Simons, Inc. on October 31, 1990 between 6:00 a.m. and 6:30 a.m. with a Quiet Electronic 215 sound level meter. He had taken these sound levels at the T. C. Simons, Inc. Belair Road site in Fallston. The types of vehicles he tested were maintenance trucks, tractors, and dump trucks.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Dr. Kolman stated that approximately 8-10 engines were operating at the time of the testing. He explained that he had taken measurements from varying distances ranging from 15 feet to 100 feet. At 50 feet, Dr. Kolman stated the decibel level was 68 to 69, and at 100 feet the level was 62-63 dB. Dr. Kolman went on to calculate the decibel level as 56-57 dB at 200 feet and 50-51 dB at 400 feet. Dr. Kolman testified that he was able to calculate the predicted sound levels based on the inverse square law which states that if you double the distance from the origin of the sound you decrease the intensity of that sound by one-fourth or 6 decibels. Dr. Kolman explained that the measurements he took were consistent with the inverse square law. Dr. Kolman testified that he also took sound level measurements off of Old Mountain Road. He explained that he went onto the subject property 200 feet from the entrance of the site on October 31, 1990 between 6:45 and 6:55 a.m., and measured a range of 47 to 52 decibels of sound. From Old Mountain Road he measured 57 to 78 decibels. From Route 152, he measured 60 to 88 decibels. Dr. Kolman stated that the predominant source of noise was the traffic on Route 152.

Dr. Kolman testified that he had also measured the sound levels generated by equipment used for making mulch on October 30, 1990 between the hours of 7:30 a.m. and 8:30 a.m. at Edrich Lumber Company in Baltimore. Dr. Kolman stated that he had measured the sound levels generated by a piece of equipment known as a wood hog. The wood hog, he explained, grinds large blocks of wood. The wood measured between two to two and one-half feet long and 10 to 12 inches in diameter. The wood was conveyed into the machine which ground it into mulch.

Dr. Kolman testified that sound level readings were taken while the machine was running at its maximum capacity. He testified that he had taken the readings while standing on the far side of a corrugated sheet metal wall which helped to attenuate the sound of the machines. At approximately 50 feet from the wall, Dr. Kolman measured a 75 to 80 decibels sound level; at 100 feet he measured 70 decibels; and at 200 feet, he measured 64 decibels. Dr. Kolman stated that the wall definitely helped attenuate the sound levels. Trees and vegetation, he explained, similarly would mitigate sound levels. Dr. Kolman testified that a stand of trees 200 feet wide could provide up to 10 decibels of attenuation. Dr. Kolman testified that maximum sound levels at the property line had been imposed and enforced by the State since the enactment of the 1974 Noise Act. The levels established by that act were 65 decibels for daytime hours and 55 decibels for evening hours. Dr. Kolman testified that State regulations listed evening hours to be between 10:00 p.m. to 7:00 a.m. and daytime hours to be between 7:00 a.m. to 10:00 p.m. Dr. Kolman testified that the sound produced by the proposed uses would comply with the State standards.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Dr. Kolman testified that vehicle noise levels measured at 100 feet from the subject property line were 62 to 63 decibels. These levels were within the state daytime requirement of 65 decibels. To comply with required nighttime levels, vehicles could not operate any closer than 200 to 300 feet from the property line. Dr. Kolman testified that readings taken from the wood hog at 200 feet produced a decibel level of 64 dB and at 400 feet a decibel level of 58 dB. If the machinery, Dr. Kolman explained, was not operated any closer than 200 to 400 feet to any adjoining property, the sound levels would comply with State levels. Dr. Kolman stated that, in his professional opinion, the sounds created would not be disturbing to people with average hearing sensitivity, as long as the equipment and machinery were operated at the recommended distances.

Dr. Kolman testified that the Occupational Safety and Health Administration defined 90 decibels as the maximum level of sound to which an average worker could be exposed to eight hours a day, five days a week, over a working lifetime, without incurring induced hearing loss. Dr. Kolman stated unequivocally that the sound produced by the subject equipment could in no way produce a hearing loss. Dr. Kolman explained that all the levels that had been taken were at or below the levels the EPA has set up to protect the public health and welfare, within an adequate margin of safety.

Dr. Kolman testified that all daily activities are affected by sound. The effects of sound are usually measured against annoyance factors such as, whether it interferes with activity, speech, communication, or sleeping. Based on data that he had collected and scientific studies, including the kinds of attenuation factors which can go into reducing sound, it was his opinion the level of sound that would be generated by the proposed uses would be at or below the interference level that would create problems with speech, intelligibility, or sleeping.

Dr. Kolman stated that in formulating his opinion, he took into account distance, trees, and in the case of the wood hog, the attenuating wall. All the levels he obtained were below the EPA standards for levels that were considered detrimental. Dr. Kolman testified that the normal sounds which came from the traffic on Route 152 were greater than any sound which would be generated by the equipment he tested. The overall intensity of sound, he explained, is reduced by the walls of a structure, such as a house. Even with an open window, a structure, in his opinion, could attenuate sound up to 15 decibels. Dr. Kolman explained that the effect on the residential homes from sound created by the stump grinder could be attenuated by the distance at which the machinery was operated, earth berms, and other noise barriers, such as mulch piles and trees.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Mr. Denis Canavan testified as an expert in the area of planning, zoning and land use matters. Mr. Canavan testified that he had been present during all the previous witnesses' testimony. He stated that he was familiar with the T. C. Simons, Inc. application and all the Applicant's exhibits. Mr. Canavan stated that he has been familiar with the subject property for approximately 20 years. He was familiar with the land use pattern in the subject corridor because he had been a staff member of the Department of Planning and Zoning for seven years.

Mr. Canavan described the existing vegetation around Parcel A as consisting of primarily deciduous trees ranging from 50 to 60 feet on the perimeter of the subject property with a descending slope as you go away from Old Mountain Road. The parcels had a stream system in the easternmost portion. Parcels A and D have approximately 40 to 50 foot high deciduous trees and evergreens as well as scrub growth separating the property from adjoining residences. Mr. Canavan testified that the existing vegetation would function to screen the proposed uses on Parcels D and C from surrounding properties. However, Mr. Canavan stated the screening was deciduous and depending on the time of year, the amount of screening provided would vary. He stated that a landscaping element has been addressed by the Applicant in its application for this reason.

Mr. Canavan stated that he had reviewed the previous Board of Appeal approvals that had been issued for the subject properties. Presently, Mr. Canavan explained, T. C. Simons, Inc. has an ongoing approval to excavate the 31 acres of Parcel C. Parcel B has a previous Board of Appeals approval for construction service equipment and storage of vehicles. The approval on Parcel B allows for the continuation of that use by the property owner.

Mr. Canavan testified that, for zoning purposes, the neighborhood of the subject properties was bounded on the north by Stockton Road which swings easterly toward Clayton Road. Clayton Road then runs north and south connecting Singer Road and then crosses over to I-95. I-95, he stated, constitutes the southern boundary of the neighborhood. Old Joppa Road serves as the west boundary running back up to Route 152 and to Stockton Road again. He explained that he had determined the boundaries based on the overall effects that may result from uses on the subject property, visibility and traffic patterns. Mr. Canavan stated that because Route 152 bisects the neighborhood in an east/west demarcation line, these boundaries give a definitive area from which you can measure the land use in terms of houses, development patterns and zoning patterns. The impact beyond this area was far less in terms of noise, visibility and traffic.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Mr. Canavan testified that neighborhoods such as the Greenspring residential subdivision, west of Parcel D, are zoned Rural Residential. The zoning of the subject property is Agricultural. Owens Market, at the intersection of Old Mountain Road and Route 152, is zoned B-1. The property located at the intersection of Franklinville Road and Rt. 152 and which had been the former site of a restaurant/bar and motel is zoned B-2.

Mr. Canavan testified that the surrounding area consisted primarily of single family detached homes on lots of 40,000 square feet or greater. The remaining area had a Church on Route 152 and a landscaping business on the north side of Singer Road east of Route 152. Mr. Canavan stated that there were large parcels of land in the area that remain vacant or wooded with a single family detached home on them. Aerial photos of the subject property depict its previous use as a quarry operation. Mr. Canavan testified that there is also another mining extraction operation off Orsburn Lane owned by Million Daneker.

Mr. Canavan testified that he had reviewed the 1977 comprehensive plan and the 1988 land use plan. The subject and surrounding properties are shown on the plans as agricultural and rural residential. Mr. Canavan stated that the uses proposed by T. C. Simons, Inc. for the subject properties are consistent with land use planning and zoning ordinances and are allowable uses in the agricultural zone in accordance with the special exception provisions. The proposed construction services, Mr. Canavan testified, would also comply with the special exception requirements of the Zoning Code. In addition, the production and sale of mulch, would be allowed under the construction services use as requested. Mr. Canavan stated that the proposed use would be allowed under construction services because the Applicant's primary business was to provide service to developers and builders. In addition, the equipment used by T. C. Simons, Inc. was generic in terms of land clearing and would be allowed under construction services.

Mr. Canavan testified that if T. C. Simons, Inc. wished to construct any new buildings on these parcels, building permits would have to be obtained. A site plan approval would have to be obtained from the Department of Planning and Zoning as well as a landscape plan and approval of an access permit by the State Highway Administration and County Department of Public Works for applicable road frontages. In addition, T. C. Simons, Inc. would have to demonstrate to the Department of Health that it had adequate water and sewer, because presently there was no public water and sewer on the subject parcel, only private on-site wells and private on-site septic.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Mr. Canavan testified that any buildings needed for contractors construction services and suppliers uses could be located on the usable area, as depicted on Exhibit 16C, without having an adverse impact on neighboring properties. Mr. Canavan stated that the usable areas would be reviewed by the Department of Planning and Zoning at the time the final site plan was submitted. Mr. Canavan stated that because of the size of the parcels, the adequate setbacks, the existing landscaping, and the capability of providing additional landscaping, there would be ample room to locate buildings on these properties without any adverse impact.

Mr. Canavan testified that the proposed uses were consistent with the orderly growth of the area. In formulating his opinion, he had reviewed the limitations, guides and standards listed in the zoning code and had considered the number of people who would work in the area. He explained that the primary source of employment in the area was a landscaping business to the north, Owens Market, a day care center attached to the Mountain Road Christian Church and some occasional employment at the Daneker mining operations. In addition, Mr. Canavan had considered the number of people who lived in the area and approximated that 300 to 325 homes consisting of two to three people would amount to an estimated population of 900 to 1,000 people.

Mr. Canavan stated that the subject parcels presently were eyesores to the community. In order to sustain the use proposed by the Applicant, reclamation at the site will be necessary. The proposed uses, Mr. Canavan stated, with the proper conditioning of the uses, would create a viable alternative use for the property. No one, including the Applicant, would be willing to come in and make improvements to the property if they could not then make use of this property. It would not be economically feasible to make such an investment without any hope of a reasonable return. Mr. Canavan stated that the proposed uses would provide a service to developers and contractors within Harford County and would provide a service to the overall general residents of the County. The location of these services, through the special exception process, he testified, is an orderly means of placing such uses in the County.

Mr. Canavan testified that his opinion that the proposed uses were consistent with orderly growth would remain unchanged even if the property has been placed on the Environmental Protection Agency's Super Fund watch list. Mr. Canavan explained that, if the property has been placed on this list, it would mean that the property would be earmarked for careful evaluation and environmental analysis prior to any building permits being granted. In his opinion, an analysis of the property should be conducted whether the property is on the list or not.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

The Applicant, Mr. Canavan explained, is aware of the questions regarding the property and would want an analysis conducted before proceeding with any uses. In the event that the property is placed on the list, a special exception could be conditioned so that no uses would take place until an analysis had been completed. Mr. Canavan testified that he would prefer that the analysis be conducted by the Applicant with State approval to save the taxpayers expense. But, regardless of who proceeded with the analysis, he felt that it was important it be done.

Mr. Canavan stated that the improvements to the property would result in an increase in tax assessment, hence an increase in the revenues which would be derived by the County. In addition, he stated, the expenditure for improvements to State roads in terms of access lanes, deceleration lanes and commercial entrances would be an expenditure placed on the property owner.

Mr. Canavan testified that the proposed uses would not create odors, dust, glare, fumes or vibrations. Based on the site plan submission and the noise attenuation measures proposed to by Dr. Kolman, placement of vehicles and the wood grinder at recommended distances would keep the noise level to no more than 55 DBA. He further testified that the sound mitigation measures, suggested by Dr. Kolman, were viable on the subject property.

Mr. Canavan stated that any disturbance that might be created from outside lighting used for security purposes could be mitigated by shielding the light or restricting the height of the pole. These mitigating measures could be addressed at the time a site plan was submitted and reviewed by the Department of Planning and Zoning.

In addition, Mr. Canavan testified that the subject parcels would not be viable for agricultural uses even if the land were in perfect shape and reclaimed because of the size, configuration, and proximity to neighboring residential uses. Mr. Canavan stated that his opinion was based on his experience as a staff member of the Montgomery County Planning Department where he has been an administrator in agricultural preservation efforts for the last ten years and has participated in the transfer of development rights process for preservation of agricultural land.

Mr. Canavan stated that in his opinion the proposed uses were viable and desirable in an agricultural and residential area such as this because they would improve the unsightly appearance of the property as it exists today. In addition, the size of the property gave it flexibility as to the different types of mitigating factors that could be applied to the proposed uses.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

In Mr. Canavan's opinion, the application was not eliminating a viable use since the land presently was unusable, but provided a viable alternative use for the property once it is reclaimed. The property is not appropriate for residential uses as it would be questionable whether the Health Department would ever approve an adequate on-site septic facility since the subject property had previously been a fill area. Secondly, a characteristic which runs with this property and does not run with many other properties in the agricultural district is that it fronts on a major arterial road (Route 152), providing access into Fallston from I-95. Because of this, Mr. Canavan testified, all permits for access would have to be reviewed by the State Highway Administration. This, he stated, gave the property a characteristic not afforded to many properties in the agricultural district.

Mr. Canavan stated that, in his opinion, it would be totally misconstruing the purpose of the special exception if you interpreted the Code to infer that the average density of vehicles per acre is one vehicle per two acres. Although the Code called for a two-acre minimum requirement before you can store one vehicle, this did not require that you could only park one vehicle per two acres. Mr. Canavan testified that the two acre minimum was implemented by the County Council as a threshold for the number of acres required for storage. Mr. Canavan stated that you could park ten vehicles on three acres and this would still be consistent with good zoning practices. The proposed storage of vehicles on Parcel C would not create an eyesore because it was not visible to the general neighborhood. In his opinion, the proposed use would be consistent with general zoning practices.

In conclusion, Mr. Canavan stated, based on the conditions, suitability and location of Route 152, plus the size and flexibility afforded both the Applicant and Planning and Zoning to mitigate impact, the granting of the special exceptions would not generate an adverse effect that would be significantly different in character and intensity from the effect that would be inherent on these uses regardless of their location.

Ms. Arden Holdredge, Chief of Current Planning for the Harford County Department of Planning and Zoning testified that she was involved in the preparation of the Staff Reports for Case Nos. 4045 and 4110. Ms. Holdredge stated that the Department recommended conditional approval of Applicant's request for a special exception for the storage of commercial vehicles and conditional approval for the special exception for the conducting of construction services and suppliers uses. However, the Department recommended denial of the request for a variance to conduct a stump grinding operation because the request is more of an industrial use.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

The Department agrees with the Applicant that the use on what is known as Parcel B is an established nonconforming use. The Department recommended denial of the request for special exception for a "saw mill" as stump grinding is not the same as a saw mill. The Department's position is that the special exception request to operate a mineral extraction is covered from a previous Board of Appeals case in terms of the mining operation of sand and gravel on what is known as Parcel C. The Department recommends that sales of mineral extractions products be permitted subject to the review of a detailed site plan.

The Department, Ms. Holdredge stated, has also noted a number of conditions that should be imposed for any development of the parcels which would be approved by the Board of Appeals. Condition 9A states that no disturbance of areas identified as wetlands and the appropriate buffer would be permitted except as would be approved in the case which is also being heard at this time (Case No. 4110 for Parcels A and D.) The Department would also require a detailed wetland delineation be performed and submitted for review and approval by the Department in regard to the unexcavated portions of Parcel C or reclaimed portions of Parcel C which applicant has proposed to use for storage of commercial vehicles or constructions services and suppliers use. The Department also noted that the State Highway Administration has recommended road improvements along MD Route 152 in conjunction with appropriate commercial access permits that would have to be obtained by the applicant for access onto Route 152. In addition, road improvements along Old Mountain Road Central would be required for the full width of the road. County commercial access permits would be required for the entrances from Parcel B and C onto the Old Mountain Road Central.

The Department would require that all necessary building permits and zoning certificates be obtained for each individual use or activity. As a result of the testimony which the applicant has put on in the previous two hearings, the Department would recommend that no access for any commercial activity be permitted from either Singer Road or Romney Road. It is the Department's position that these roads are not equipped to handle commercial traffic and that, in the case of Romney Road, this type of use would be disruptive to the residential neighborhood. However, she noted that there are no restrictions on Singer Road that limit or prohibit commercial vehicles. The Department further recommends specifically that the tree area which exists between the excavated portion of the subject property and the residential neighborhood on Parcels A and D be retained as a non-disturbance area.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

In regard to Case No. 4110, requesting a variance to allow disturbance of non-tidal wetlands, the Department recommends approval of the disturbances since the area the applicant is proposing to fill serves little or no functional value as a wetland area, and is, in fact, a man-made wetland which has resulted from the removal of sand and gravel down to a layer of clay. The Department recommends that the area of disturbance of wetlands and buffer area conform to those areas shown on the Reclamation Concept Plan which the applicant has submitted, that sediment control measures be designed and installed to minimize the potential pollution of wetland areas which would be retained and that detailed planting plans be submitted for review and approval by the Department of Planning and Zoning prior to the issuance of grading permits. The Department would require that the plans indicate species, size and location of planting and address enhancement planting in the retained wetlands area, revegetation in the buffer areas and planting of additional trees on the site as proposed by the applicant. Further, the Department would require that the plan be accompanied by a proposed schedule of grading and planting showing that the planting should be installed no later than the end of the first planting season. In addition, the Department would require that the applicant enter into an agreement with the County which would be executed and a letter of credit posted to provide financial guarantee of survival of planting in the wetland buffer. Ms. Holdredge testified that she was familiar with the prior Board of Appeals approval for the extraction of sand and gravel from Parcel C and was aware that the approval was granted prior to 1982. She stated that under the Zoning Code the Board of Appeals approvals that were granted prior to 1982 are allowed to continue without complying with the new requirements that were adopted as part of the 1982 Code. She confirmed that this would also permit the continuation of a conditional use such as extraction of sand and gravel without having to comply with the non-tidal wetlands requirements that are contained in the 1982 Code.

Ms. Holdredge testified that the recommendation that a wetlands delineation be done for Parcel C is based on the assumption that wetlands may remain on that parcel after the sand and gravel extraction. It appears to the Department that there may be areas which are not feasible from the applicant's point of view or financially productive to mine for sand and gravel. If there are areas which remain undisturbed, the Department feels that future use of the site should include a wetlands delineation and compliance with appropriate laws that are in effect at that time. Ms. Holdredge testified that the recommendation by the Department of Planning and Zoning concerning the reservation of right of way along MD Route 152 was included because of the plans the Maryland State Highway Administration had to widen Route 152. The planned widening, she explained, was not directly related to the use of T. C. Simons, Inc. or the Jenkins property. The proposed expansion is a State project to serve future traffic needs.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Ms. Holdredge testified that the condition requiring T. C. Simons, Inc. to reserve right of way was standard in review of any development project where a known alignment is done. It is standard procedure that a minimum area be reserved and no construction occur within that area. The condition does not require a dedication of right of way. It simply requires a reservation leaving the area basically unimproved except for the improvements necessary for the entrances.

Ms. Holdredge testified that she is familiar with Case No. 2254 regarding extraction of the sand and gravel and is familiar with the conditions that were placed on that conditional use. She stated that one of those conditions was a seeding and regrading of the property after it is mined out. Her inspection of the site showed that extraction of sand and gravel had not been completed and, therefore, the appropriate back filling and seeding have not occurred. Ms. Holdredge emphasized that the condition states that the seeding and fertilizing is to take place "upon completion of the applicant's extraction and processing in a particular area of the property." It is a condition that a bond be posted naming Harford County as an obligee to secure the performance of these conditions. It is her understanding that bonds now are normally part of the State mining permits. She testified that it has been the Department's policy in such cases for a bond being placed with the State to suffice on behalf of the State and County named as an obligee.

Ms. Holdredge stated that the Department could support a conditional use or special exception being granted prior to completion of conditions imposed on a prior special exception which would complete the original condition. It is the Department's position that the Board of Appeals could authorize such a change, since it is not an unreasonable request and the standard for special exceptions for construction services and commercial vehicle storage can be met. Ms. Holdredge explained that it is not inappropriate to consider such special exception request prior to completion of the other conditions. Ms. Holdredge stated that it is very difficult for the Board of Appeals to hold the successor in title responsible for performance of prior conditions. Although T. C. Simons, Inc. has not yet satisfied the conditions of the prior case in this situation, it is the Department's position that it would be acceptable to approve the requested uses as long as the conditions of the existing conditional use were met, when necessary.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Ms. Holdredge testified that to her knowledge at least seven Natural Resource District variance cases involving wetlands have gone to the Board of Appeals. Ms. Holdredge explained that the Department of Natural Resources, Non-tidal Wetlands Division has generally not recommended in favor of such variances. It is very strongly the philosophical mission of the Department of Natural Resources, Ms. Holdredge stated, to save as much wetlands as possible and to basically oppose the fill of wetlands for any purpose.

Ms. Holdredge testified that in cases involving smaller parcels, Planning and Zoning did require that a property owner or applicant specifically set forth the area in which the commercial vehicles are to be parked and the number of vehicles when requesting a special exception. In this case, the Department did not request location or number of vehicles. Ms. Holdredge testified that the Department of Planning and Zoning had not required that a specific area and a number of vehicles be provided in this case because, with regard to Parcel B, the parking of commercial vehicles already exists within an established area. With regard to the other three parcels, because of their size, it was the Department's position that, following testimony and additional details to be provided by the applicant, a site plan could be submitted to the Department with details of the location to be reviewed by the Development Advisory Committee. Ms. Holdredge explained that this is why the Department recommended that the detailed site plans be made a requirement of the special exception approval.

Ms. Holdredge testified that in regard to the identification of certain areas of parking and numbers of vehicles in this case, it was the Department's position that the Hearing Examiner would most appropriately provide parameters, require certain buffers and setbacks from existing residential neighborhoods within those areas. A detailed site plan would then be viewed as an administrative procedure through the Department. Ms. Holdredge testified that an applicant with a request of the type which involved two to five commercial vehicles on maybe two or three acres generally would not require a full site plan review through the Development Advisory Committee. Applicants, Ms. Holdredge stated, frequently have not considered where on their property they can actually park such vehicles and the spaces between their areas and the adjacent properties.

The Protestants called as their first witness Dr. Jerome Gerritsen. Dr. Gerritsen was qualified as an expert in non-tidal wetland ecology. On direct examination, Dr. Gerritsen described the background and intent of the federal and state laws protecting the wetlands. Dr. Gerritsen testified that there was great concern in the last few years regarding the loss of wetlands because of prior loss of wetlands in the period from the 1920's to the 1970's. Wetlands were important to the national biosphere and the national ecosystems.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Dr. Gerritsen testified that the Maryland law is actually more stringent than the existing federal regulations because state law provides jurisdiction over all wetlands.

Dr. Gerritsen testified that he was familiar with the subject matter of the present cases inasmuch as he had reviewed the applications filed by the Applicant, the Staff Reports of the Department of Planning and Zoning, the Reclamation Concept Plans, and Reforestation and Mitigation Concept Plans submitted by the Applicant and had physically visited the subject parcels.

Dr. Gerritsen testified that it was his opinion that the Reclamation Concept Plan and Reforestation and Mitigation Concept Plans submitted by the Applicant were not in conformity with the state law and regulations relating to non-tidal wetlands because said law and regulations require necessity for access to the water which was not demonstrated in the instant case; the protection of wetlands had not been adequately demonstrated in as much as no alternative options were pursued or investigated; and the state law and regulations require a one for one replacement for wetlands that are lost. Dr. Gerritsen testified that in the instant case approximately 2.4 acres of wetlands were simply going to be lost and not replaced by any other wetlands either newly created or restored.

Dr. Gerritsen testified that he was familiar with the Code provisions relating to non-tidal wetlands and that it was his opinion that the Reclamation Concept and Reforestation Mitigation Concept Plan submitted by the Applicant in the instant cases were not in conformity with such code provisions because the Code called for the protection of wetlands and the plan submitted by the Applicant would result in the loss of wetlands.

Dr. Gerritsen testified that he disagreed with respect to certain conclusions contained in the Environmental Assessment and Impact Analysis submitted by the Applicant in the instant cases. Dr. Gerritsen testified that he disagreed that there was a low or no value for aquafied recharge relative to the wetlands due to a lack of data to support that conclusion. Dr. Gerritsen testified that he disagreed with the conclusion that sediment and pollution control was low to moderate and fish and wildlife habitat is low to moderate. Dr. Gerritsen stated that if the property had been maintained to a minimal level of planting and not abused, its value as fish and wildlife habitat would and for sediment and pollution control would be much greater. Dr. Gerritsen testified that he did not see adequate details given in support of the assertion that the Storm Water Management Plan would be better than leaving the non-tidal wetlands in place.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Dr. Gerritsen testified that if the Applicant's Reclamation and Mitigation Plans were effectuated there would be a disturbance of the wildlife and fish habitats remaining on parcels and particularly due to noise and most importantly the large number of commercial vehicles anticipated to be placed upon the parcels by the Applicant with concomitant to oil leakage, fuel spills that would find their way into the water systems of Parcel D. On cross-examination by the Applicant, Dr. Gerritsen testified that it made no difference in terms of Maryland law and regulation whether the proposed wetlands to be disturbed and filled were man-made or natural.

Dr. Gerritsen testified that he had reviewed the Department's Zoning Staff Report which stated that there were problems with aquifer recharge in the area and that information pertaining to the hydrology in the area was simply not known.

Dr. Gerritsen testified that if the property was reclaimed and reforested as contemplated by the Applicants exhibits, the current situation with respect to fish and wildlife would not be enhanced or improved because of the removal of so much wetlands area.

The next witness called by the Protestants was Dr. Robert L. Kondner. Dr. Kondner was qualified as an expert in the area of hydrogeotechnical engineering. Dr. Kondner testified that he was familiar with the subject matter of the instant cases; had reviewed the Applicant's applications; the Department Staff Reports; the Reclamation Concept Plans submitted by the Applicant; the Impact Analysis Plan submitted by the Applicant; the Reforestation Mitigation Concept Plan submitted by the Applicant and was present at the prior hearings of this case.

Dr. Kondner testified that he had reviewed the geology information from the Maryland Geological Survey related to the subject parcels; the ground water information from the area of Harford County from the Maryland Geological Survey and had reviewed information from the Department of Natural Resources which relate to the types of matters involved in the instant cases. Dr. Kondner testified that he had physically inspected the site approximately one month prior to the hearing.

Dr. Kondner testified that it was his opinion that if the Reclamation Concept Plan and Reforestation Plan submitted by the Applicant in this case were effectuated, there would be very serious effects upon adjacent ground waters systems in the neighboring properties.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

The basis for Dr. Kondner's opinion in accordance with his testimony was that the wells of the persons living adjacent to the property were recharged at Parcel D. Dr. Kondner testified that he had evaluated the Edgewood quad generated by the U. S. Department of the Army Corps of Engineers, which provided the topography for the portion of Harford County where the subject parcels were located and more specifically the subject parcels themselves.

Dr. Kondner testified that a 300 foot contour was reflected on said topography. Dr. Kondner testified that due to the nature of the topography and the fact that the elevations drop off from the section of Parcel D fronting on MD Rt. 152 and dropped off toward the houses in the Greenspring subdivision along Romney Road, Beverly Drive and Chilberry Drive, there was no question that the wetlands in Parcel D served as an aquifer recharge for the ground water table feeding the well systems for the neighboring property owners in the Greenspring subdivision.

Dr. Kondner testified that both deep and shallow wells serviced the Greenspring subdivision area and all of said wells, depended on the water which flowed from the areas of Parcel A and D.

Dr. Kondner took issue with respect to the Environmental Report prepared by Geotechnology Associates dated September, 1990. Specifically, Dr. Kondner testified that the soil data contained in said report made mention of sandy loam, gravelly sand and sandy clay loam soil types. Dr. Kondner testified that gravelly sand was porous and a great deal of water could infiltrate such a soil type. Dr. Kondner testified that all the soil types reflected in the report prepared by Geotechnology Associates were associated with various infiltration rates. By way of example, Dr. Kondner testified that the gravelly sandy loam pointed out in the Geotechnology Report allowed an excess of five inches per hour for infiltration. A silt loam allowed over two inches per hour. A clay loam, 3.98 inches per hour. Sandy, 8.27 inches per hour. Gravelly sand would be in excess of even the sand itself in terms of infiltration rates. Dr. Kondner testified that thus, if you put water on top of Parcel D it will infiltrate into the soil in great amounts in simply an hour. Dr. Kondner testified that given the rates which he had testified to the infiltration rate of the water was substantial.

Dr. Kondner testified that if rain fell in excess of the infiltration rates which could be accepted by the soil types in question, that water would run off from Parcel D. Dr. Kondner testified that the water build up areas located on Parcel D are shallow.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

It was Dr. Kondner's testimony that said water build ups are shallow because they are leaking due to the Patapsco formations which are the geographical formation and upland gavels which are discontinuous and which contain lenses which allow infiltration.

Dr. Kondner testified that in his discussions with the owners of wells in surrounding properties surrounding subject parcels, he discovered that various home owners were having difficulty with sediment showing up in their wells because of fluctuation in the ground water table.

Dr. Kondner testified that, in looking at storage areas purposed by the Applicant, a significant groupage of petroleum products on a surface could occur. Dr. Kondner testified that salt from the trucks in the wintertime would wash into the water system. Dr. Kondner testified that he had heard indications of the proposal of an infiltration system with respect to oil and lubricants seepage from the construction vehicles and equipment which the Applicant proposed to park/store on the subject parcels. Dr. Kondner testified that infiltration was precisely the problem that may occur with respect to allowing said pollutants to infiltrate the ground water system which feeds the well system around Parcel D.

Dr. Kondner testified that if you have pollutants in the area of Parcel D there is no question in his mind that, judging from the topography where the water is flowing, the pollutants will eventually show up in the well water of the surrounding residential neighborhoods. Dr. Kondner testified that the rates which those pollutants were moved down towards those wells were on the order of the magnitude of one hundred and fifty to three hundred feet per year.

Based on the possibility of the disruption of the aquifer recharge for the ground water well system around Parcel D and A and the possibility of pollutants infiltrating said water systems, Dr. Kondner testified that it was his opinion that it would be a threat to the health and safety of the surrounding residents if the Reclamation Concept Plan and Reforestation Mitigation Plan submitted by the Applicant were effectuated.

Dr. Kondner testified that if the wetlands themselves or a substantial proportion thereof would be filled, that the reaquafiltration system of the ground water system serving the surrounding property would be affected particularly with respect to the type of fill that was placed in the wetlands being disturbed. Dr. Kondner testified that construction debris, particularly types of old road materials, stone bases and the like would result in pollution of the ground water system in the areas of Parcel A and D.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Dr. Kondner testified that if, for example, a mulch operation was placed on Parcel D, if the mulch was to be treated, that the chemicals related to that treatment would run down over the material and constitute pollutants.

Dr. Kondner testified that Parcel C also served as a recharge area for the residential areas surrounding it. Dr. Kondner again testified that due to leakage from fueling vehicles and filling with road materials, the well water systems in the area of Parcel C would be detrimentally affected.

Dr. Kondner testified that he was familiar with the September 26, 1990 letter from the Maryland Department of the Environment to Mr. and Mrs. Jenkins. Dr. Kondner testified that the fact that the Department of the Environment was intending to perform an environmental response or investigation on the site relative to potential hazardous site inventory was a very serious problem for the well systems that are downgraded from Parcel B. Dr. Kondner testified that it would be foolish to do anything with Parcel D, until the State finished with its investigation of the site and that disturbance of the property by the Applicant in accordance with its Reclamation and Litigation Concept Plan would make the potential for problems with the well water relative to the residential areas surrounding Parcel D and A infinitely worse.

Upon cross-examination by the Applicant, Dr. Kondner testified that he was able to conclusively determine that the ground water from the subject parcels in question served as an aquifer that feeds the wells on adjoining properties from examining surface topography and well data and the geological formations that form the ground and substrata of the subject parcels.

Dr. Kondner testified that he was not only referring to the flow of surface water in his testimony but also the flow of under ground water in as much as the flow of ground water followed the contour lines of the flow of the surface water. Dr. Kondner testified that the source of both the ground and surface water on Parcels A and D as reflected by its contours point toward the source of same which was the area of Parcel D. Dr. Kondner testified that he was not saying that Parcel D had a large number of springs, but he was testifying that it was a recharge area based on rainwater that falls there and infiltration of same. Dr. Kondner testified that because of the presence of shallow wells in the Greenspring subdivision, that for those wells to contain water flows, the water must be supplied from Parcel D.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Dr. Kondner testified that there may be clay lenses located on Parcel D, but he was not convinced in any fashion that there was a total clay base across the property. Dr. Kondner testified that one reason that he took the position that he was not convinced with respect to the later point was that in examining the report of Geotechnology Associates the report reflected only one spot of clay. Dr. Kondner testified that in his working with the Patapsco formations, it was his experience that continuous layers of clay were not present and in fact a sieve like aspect was present.

On redirect examination, Dr. Kondner testified that if an impervious surface was placed on the filled area of Parcel D or any area of Parcel D, that there would be a great deal of run off and further problems would develop because of breaks in the surface cap.

The next witness called by the Protestants was Curtis Cullen. Mr. Cullen testified as a private resident whose address was 2405 Romney Road, Joppa, Maryland, 21085.

Mr. Cullen testified that his property joins Parcel D. Mr. Cullen testified that the neighborhood where he lives is peaceful, quite and residential. Mr. Cullen testified that traffic within the Greenspring subdivision is very light and limited to homeowners usage such as an oil delivery truck and the like. Mr. Cullen testified that he was familiar with traffic conditions on MD Route 152, and that they were extremely busy and that it was very difficult to make left hand turns out of the Greenspring subdivision. Mr. Cullen testified that he knew of two instances where people had been killed in automobile accidents at the intersection of Greenspring Road and MD Rt. 152. Mr. Cullen testified that he knew of no other uses such as those being requested by the Applicant in the instant cases which were present in the neighborhood of the subject parcels.

Mr. Cullen testified that he was in opposition to the Applicants' request for zoning relief in both cases due to detrimental impact on his neighborhood; his property values; noise; impact on well water and incompatibility with a residential neighborhood.

On cross-examination by the Applicant, Mr. Cullen stated that he was referring to his neighborhood as essential constituting Greenspring Hills and the people along Mountain Road. Mr. Cullen testified that he goes to work somewhere between 6:30 and 7:00 A.M. and gets home usually about 5:00 or 5:30 P.M.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

The next witness called by the Protestants was Crishna David Pollard. Mr. Pollard testified that he lived at 2018 Mountain Road, Joppa, Maryland. Mr. Pollard testified that his property adjoined Parcel D. Mr. Pollard testified that the neighborhood in which he lived was quiet and residential. Mr. Pollard testified that during morning and evening hours traffic on MD Rt. 152 was extremely heavy and it was difficult to make right hand and left hand turns in and out of his driveway. Mr. Pollard testified that he was familiar with the smell of diesel fumes emanating from trucks located at Parcel D would flow toward his house.

On cross examination by the Applicant, Mr. Pollard testified that he did not know how deep his well was. Mr. Pollard testified that during the winter there were times when his windows were closed when he could hear truck traffic but not car traffic.

The next witness called by the Protestants was Samuel Denes. Mr. Denes testified that he resided at 2408 Romney Road, Joppa, Maryland, 21085. Mr. Denes stated that his property was located across the road from Parcel D. Mr. Denes described the Greenspring subdivision as being a very quiet residential neighborhood where children can play. Mr. Denes testified that traffic was extremely hectic and that it was very difficult to get out onto MD Rt. 152 in the morning or coming home in the evening. Mr. Denes testified that he was unaware of any other property owners pursuing the types of uses which the Applicant was requesting in the instant cases. Mr. Denes testified that the operations and uses requested by the Applicant were not in harmony with those presently located in the surrounding neighborhood. Mr. Denes testified that during the drought which occurred two years ago his well was close to being out of water. He testified that all his water from his well emanated from the pit, meaning the area on Parcel D.

Mr. Denes testified that he was concerned about noise from dump trucks which had not been previously addressed such as banging tailgates which he can hear at the active mining pit on Parcel C.

On cross examination, Mr. Denes testified that he was familiar with two neighbors who had had to have their wells deepened. Mr. Denes testified that he could hear traffic noise coming from MD Rt. 152 particularly when big trucks were downshifting. Mr. Denes testified that he could hear the loaders in operation on Parcel C and the banging of tailgates even when his windows were closed up.

On redirect examination, Mr. Denes stated that he was not familiar with any other miner trucking operations conducted by any other persons in the vicinity of Parcel C or in the general vicinity.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

The next witness called by the Protestants was John M. Dodson, 2309 Beverly Drive, Joppa, Maryland. Mr. Dodson testified that his property was located approximately 600 to 800 feet from Parcel D. Mr. Dodson testified that the Greenspring area was a quiet residential area consisting of mostly single family homes.

Mr. Dodson testified that the only point of access out of the Greenspring development was Greenspring Road to MD Rt. 152. Mr. Dodson testified that traffic conditions were heavy in both the morning and evening hours and that it was difficult to gain access to MD Rt. 152 during said hours.

Mr. Dodson testified that to his knowledge there were no other property owners pursuing types of operations or uses on properties in the neighborhood that the Applicant was requesting. Mr. Dodson testified that the operations and uses requested by the Applicant in this case would not be in harmony with the existing uses and operations located in the neighborhood of the subject parcels. Mr. Dodson further testified that he was in opposition to the Applicant's request in the instant cases because of possible impact on well water and the quality of life in his neighborhood which would be degraded by increased truck noise and increased traffic. On cross examination, Mr. Dodson stated that he had not contacted any county or state officials about his well.

The next witness called by the Protestants was Loretta Lowe. Ms. Lowe testified that she lived at 2324 Orsburn Lane in Joppa, Maryland. She testified that her parcel adjoined Parcel C. She testified that she was in opposition to the zoning relief requested by the Applicant in the instant cases. Ms. Lowe testified that her neighborhood was quiet and residential with a county type setting. Ms. Lowe testified that the traffic conditions on MD Rt. 152 were substantially similar to those to which the other Protestant witnesses had testified. Ms. Lowe testified that there had been several accidents in the area.

Ms. Lowe testified that there were no other property owners pursuing the types of uses and operations on other properties in the general neighborhood that the Applicant was requesting in this case. Ms. Lowe testified that the types of uses that the Applicant was requesting would not be in harmony with those presently existing in the general neighborhood of the subject parcels.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Ms. Lowe testified that to her knowledge the scale house located on Parcel C had not been in use for the last three years unless the Applicant had used it in the summer of 1990. Ms. Lowe testified that she was in opposition to the zoning relief requested by the Applicant also because of the impact on wells and the fact that on the Parcel C side of MD Rt. 152 the property owners located there were in very poor financial straights and would not be able to afford remedial measures with respect to well repairs. Ms. Lowe testified that persons in the neighborhood had asked to use some of the springs in the back of her property for water because their wells had run dry.

Ms. Lowe testified she was also concerned about the noise, particularly with respect to the tailgates banging. Ms. Lowe testified that although there were five acres of woods between her and the active pit on Parcel C, she could still hear noise from trucks dumping at Parcel C.

On cross examination, Ms. Lowe testified that her well had gone dry in 1980 and it was her belief that it was a direct result of the Jenkins pit.

On redirect examination, Ms. Lowe testified that she had occasion to go by the scale house located on Parcel C on a regular basis for the last three years. She testified that during that period there appeared to be no operation of the scale house.

The next witness called by the Protestants was Paulette Van Vranken. Ms. Van Vranken testified that she lived at 2505 Chilberry Avenue in Joppa, Maryland, 21085. Ms. Van Vranken testified that her property was approximately 1,000 feet from Parcel D. Ms. Van Vranken testified that she was in opposition to the zoning relief requested by the Applicant. Ms. Van Vranken testified that the general neighborhood surrounding the subject parcels was a quiet, residential neighborhood which was beautiful and full of nature. Ms. Van Vranken testified that the traffic conditions on MD Rt. 152 were substantially similar to those to which the previous Protestants' witnesses had testified. She was aware of three deaths having occurred at the intersection of Greenspring Avenue and Mountain Road. Ms. Van Vranken testified that she was not aware of any other uses similar to those which the Applicant was requesting or being presently pursued by any other property owners in the general neighborhood. Ms. Van Vranken testified that the operations and uses requested by the Applicant in the instant cases were not in harmony and were inconsistent with the prevailing uses in the general area.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Ms. Van Vranken testified that she was opposed to the relief requested by the Applicant for the reasons she had previously testified as well as noise, real estate values, well impact and overall change to the residential nature of the area.

On cross-examination by the Applicant, Ms. Van Vranken testified she guessed the depth of her well was approximately 120 feet. Ms. Van Vranken testified that she had contacted state and county officials concerning possible contamination of her well.

On redirect examination, Ms. Van Vranken testified that she and her husband contacted state agencies regarding problems they perceived with respect to the connection between Parcel D and surrounding the well aquafication system and that said contacts had been made prior to the proceedings in the instant cases. On recross-examination by the Applicant, Ms. Van Vranken testified that she did not drink her water and instead drank bottled water because she was afraid her water.

The next witness called by the Protestants was Edwin Sokel. Mr. Sokel testified that he lived at 2306 Beverly Drive, Joppa, Maryland. Mr. Sokel testified that his property abuts Mr. Pollard's property and Parcel D. Mr. Sokel testified that the neighborhood surrounding the subject parcels was residential and very quiet.

Mr. Sokel testified that the traffic conditions on MD Rt. 152 were substantially similar to those to which the previous Protestants' witness had testified. Mr. Sokel was particularly sensitive as to the conditions on MD Rt. 152 inasmuch as he belonged to the local volunteer fire company and if he had to go out on a call, it was very difficult for him to get into traffic and, in fact, sometimes had to get out onto the shoulder of the road instead of the travel portion of the road. Mr. Sokel testified that there were no other uses or types of operations being pursued on properties in the general vicinity of the subject parcels that the Applicant was requesting in the instant cases. Mr. Sokel testified that the operations and uses requested by the Applicant in the instant cases were not in harmony with the general neighborhood of the subject parcels. Mr. Sokel testified that he had worked for the telephone company and had experience being around garages and truck with diesel equipment. Mr. Sokel testified that he believed that if the Applicant's requests were granted it would change the quality of life totally in his residential area. Mr. Sokel testified that he lived downwind of the site, meaning Parcel D, and in the summertime he would not be able to sit out on his patio. Mr. Sokel testified that the prevailing wind generally was from MD Rt. 152 down toward his property.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

On cross examination, Mr. Sokel testified that he had never had a problem with his well going dry. Mr. Sokel testified that he could hear traffic noise from MD Rt. 152 at his house.

The next witness called by the Protestants was Mary Cadwalader. Miss Cadwalader testified that she resided at 2008 Old Joppa Road, Joppa, Maryland, and had resided there since approximately 1920. Miss Cadwalader testified that her property was located approximately 100 yards from Parcel D. Miss Cadwalader presented an aerial photograph which depicted the general vicinity of the subject parcels and the surrounding area. Said photograph was entered into evidence as Protestants' Exhibit 8. Miss Cadwalader testified that she was in opposition to the zoning relief requested by the Applicant because she considered it plunking down a large industrial park in the middle of an agricultural and residential area. Miss Cadwalader testified that it was her understanding of special exceptions based on information she had received from the County Council at the time the special exceptions were created that they were only designed for certain businesses related to agriculture. Miss Cadwalader testified that she believed that the level of noise was going to be much greater because the full aspect of the types and numbers of vehicles and the extent of their usage had not been fully described by the Applicant. Miss Cadwalader also testified that she was concerned about drop in property values. Miss Cadwalader testified she was in substantial agreement with the previous Protestants' witnesses regarding traffic conditions on MD Rt. 152. Miss Cadwalader testified that she was familiar with the Singer Road area and that most of the residents there had been there for generations and had children. Miss Cadwalader described the Singer Road area as a residential area.

On cross examination, Miss Cadwalader stated that she owned 40 acres of woods on the east side of Old Joppa Road. Miss Cadwalader testified that she believed the well at her house was approximately 80 to 90 feet in depth and the well at the barn was approximately 115 feet in depth.

The next witness called by the Protestants was Geraldine Russell. Ms. Russell testified that her address was 2512 Chilberry Avenue, Joppa, Maryland, 21085. Ms. Russell testified that she lived right across the street from Mrs. Van Vranken. Ms. Russell testified that she was in opposition to the Applicant's zoning relief requested and did not have anything technical to say, but simply wished to express her opposition to the requests, particularly due to the traffic problems.

On cross examination, Ms. Russell stated that she had a dug well at her property that was 16 rings but was not able to swear to said depth.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

The next witness called by the Protestants was Luther Cox. Mr. Cox testified that he resided at 2603 Kenwood Drive, Joppa, Maryland, 21085. Mr. Cox testified that his property was located approximately one mile from Parcel D. Mr. Cox testified that he thought that the pit located on Parcel D contaminated his water. Mr. Cox testified as to various problems he has had with his water for a number of years.

The next witness called by the Protestants was Katherine Kleinsmith. Ms. Kleinsmith testified that she lived at 1011 Old Mountain Road North, which was approximately one and one-half miles from the property in question. Ms. Kleinsmith testified that she was in opposition to the Applicant's request for zoning relief and was a member of the Little Gunpowder Association which was also in opposition to the Applicant's requested zoning relief. Ms. Kleinsmith testified that she was in opposition to the Applicant's relief because of the effect on traffic, noise, impact on drinking water and air pollution resulting from dust, dirt and digging related to the Applicant's proposed usages. Ms. Kleinsmith testified that in her opinion a proposed activity on the subject site would not be allowed in an industrial park and should not be considered for a rural, residential and agricultural setting with non-tidal wetlands.

The next witness called was a rebuttal witness called on behalf of the Applicant, Peter Bergmann. Mr. Bergmann testified that the information upon which he based his conclusion as to the functional value of the non-tidal wetlands located on Parcel D for aquifer recharge was the test pit investigation performed on the site in 1989, which apparently included numerous hand drilled borings of the soils on Parcel D. Mr. Bergmann testified that a clay layer that he considered to be impervious was five to twelve feet deep in the test pit area. Mr. Bergmann testified that he had learned from the State of Maryland that the State had not completed its investigation relative to placement of the subject parcel, that is, Parcel D on the CERCLA list. Mr. Bergmann testified that he would not recommend to the Applicant that it implement its reclamation and reforestation plan in development of Parcel D prior to the completion of the state investigation.

On cross-examination, Mr. Bergmann testified that he had not considered the geological survey or well data in setting forth his opinions regarding the reaquafication value of the wetlands in Parcel B which Dr. Kondner had specifically utilized in rendering his opinions with respect to said subject. Mr. Bergmann testified that his opinion that Parcel D did not serve as a reaquafication system for residential wells in the surrounding area was confined only to the 2.4 acres that the Applicant is requesting to fill. Mr. Bergmann testified that the report of Geotechnology Associates dealt with the wetland areas on Parcel D.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Mr. Bergmann testified that he had no way of knowing for sure what the nature and extent of any contaminants might be on Parcel D at the time of the hearing.

Mr. Bergmann testified that Dr. Kondner had the site specific information, that is, the test boring information as to the 2.4 acres of wetlands available to him in formulating Dr. Kondner's opinion. Mr. Bergmann testified that all of the data including the site specific data that Mr. Bergmann based his opinion on was available to Dr. Kondner at the time Dr. Kondner formulated his opinions with respect to the reaquafication value of the wetlands and Parcel D. Mr. Bergmann testified that he could make no conclusions as to the entirety of Parcel D inasmuch as what he said pertained to the wetland area of Parcel D only.

Mr. Bergmann testified that water level increases after precipitation and stays elevated until evaporation takes place. Mr. Bergmann testified that it was his opinion that the water which was being eliminated, in view of the fact that the water level would decrease after precipitation, was evaporating rather than infiltrating the ground. Mr. Bergmann testified that he had done no scientific studies to determine whether the water in the wetland areas on Parcel D was evaporating.

The next witness, Aimee O'Neill, was called by the Protestants. Ms. O'Neill was qualified as an expert in real estate evaluation. Ms. O'Neill testified that she had had an opportunity to review the files pertaining to the instant cases, had had an opportunity to inspect the general area where the subject parcels were located, and had attended at least two prior hearings in the case.

Ms. O'Neill testified that as a result of her expertise, her review of the subject matter of the case and her attendance at the hearings and the inspection of the properties, she had formed an opinion that the zoning relief requested by the Applicant in these cases if granted would have a negative impact on the values of the surrounding residential homesites. Ms. O'Neill testified that the basis for her opinion in said regard was that the nature and extent of the relief requested by the Applicant was so substantial that it was inconsistent with the residential use of the surrounding properties.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

On cross examination, Ms. O'Neill testified that it was her understanding of the intensity of the uses that there were 56 acres more or less involved in the Applicant's request and that although all 56 acres were not going to be put into use for the purposes for which the variance and special exceptions were applied that the number of variances and special exceptions including construction services, storage of commercial vehicles, use of the property for a mulching operation, and the retail sale of stone were inconsistent in her opinion with the existing residential uses located in the area. Ms. O'Neill testified that there was no commercial use in the area with the exception of Owens Market, which is located at the corner of the junction of MD Rt. 152 and Old Mountain Road Central. Ms. O'Neill testified that she had testified in previous cases involving contractor services and suppliers use and had found that there would be no adverse impact on neighboring property values. Ms. O'Neill testified that if a piece of property was located next to property which had been placed upon a list of potential sites for contamination maintained by the state and/or the Environmental Protection Agency, that the same would have a negative impact upon the property value of said piece of property.

On redirect examination, Ms. O'Neill testified that she found a substantial difference between the cases where she had testified in favor of contractors applications for storage of commercial vehicles and similar relief and this case in that the intensity of the uses in the instant cases was substantially greater than the cases in which she had testified in favor of the applicants that it changed her opinion in this case. Ms. O'Neill testified that the relief requested by the Applicant in this case would do nothing in her opinion to neutralize or mitigate the difficulties that may arise or properties that may be located next to properties placed on the list of possible contamination sites and that, further, the uses requested by the Applicant in the instant cases would simply serve as another negative impact from the property values of the neighborhood.

The next witness was called by the Applicant, Mr. John Wirth. Mr. Wirth was qualified as an expert witness in the areas of engineering, geology, hydrology and environmental matters.

On direct examination by the Applicant, Mr. Wirth testified that he had compiled information obtained on drillers' well logs, which was available through the County Health Department. Mr. Wirth testified that said compilation was not a complete list of all wells that were drilled within the subdivision.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Mr. Wirth testified that if you relied entirely on the 1975 Maryland geological survey report, one would have surmised that a typical well depth in the Greenspring Hills subdivision was on the order of 30 to 40 feet. Mr. Wirth testified, however, that only about 10 or 12 of the wells in said subdivision were of such depth. Mr. Wirth testified that his firm performed testing of samples from Parcel C and D. Mr. Wirth testified that based on the testing and sampling performed by his firm, the surface on Parcels C and D consisted of film materials and sand and gravel materials that had been left behind from the mining operations, but which had not been excavated to this point in time. Mr. Wirth testified that underlying the surface materials was some thickness of clay or silt at depths of up to 15 feet above the ground surface. The test pits investigation also, according to Mr. Wirth, encountered some perched water above this clay layer.

Mr. Wirth then testified as to a cross section which he prepared of Parcel D. Mr. Wirth testified as to his conclusions as to the flow of surface and ground water on Parcel D. Mr. Wirth's conclusion with respect to same according to his testimony was that precipitation falling in and around area D was allowed to seep to the impervious surface created by the clay and silty soils of the potomac group seeping along the surfaces until they become exposed, until there is contact between the two geological formations which occur at the ground surface. Mr. Wirth testified that precipitation in perched ground water within the potomac group formation was seeping to the surface causing seepage in the way of ponds, swales and intermittent streams. Mr. Wirth testified that there were two distinct groundwater environments on Parcel D, one of the perched groundwater condition above the clay soils and one of a constant year long and steady flow of ground water into domestic wells through the cracks and fissures in the rock along that particular line. Mr. Wirth testified that his firm had prepared an analysis of Parcel C which reflected that Parcel C is isolated hydrologically from residences north along Singer Road and west along Orsburn Lane. Mr. Wirth testified that samples had been taken of ground water in the Greenspring Hills subdivision from two residences and that no evidence of contamination was found in said test results. Mr. Wirth testified that he had formed an opinion that the area within a Parcel D is a discharge area which discharges water accumulated in the sand by precipitation. The discharge occurs at seeps, springs and streams that run in a mostly southerly direction. Mr. Wirth testified that there was risk due to runoff of petroleum products, but not greater than any suburban environment adjacent to a school parking lot, shopping center or a highway.

Mr. Wirth testified that his firm had not detected any evidence of serious ground water or soil contamination and the state of Maryland had indicated to him that there was "no hard evidence" that the site was contaminated.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

On cross examination, Mr. Wirth testified that he was familiar with Dr. Kondner and his reputation and that as a general matter he respected his expert opinions. Mr. Wirth testified that Dr. Kondner had available to him the results from the test borings done by Mr. Wirth's firm which are some 20 to 25 in number. Mr. Wirth testified that he was unsure as to whether Dr. Kondner had utilized proper data in formulating Dr. Kondner's opinions or not. Mr. Wirth testified that the clay located in Parcel D was interrupted. Mr. Wirth testified that a soil formation known as a potomac formation was located on Parcel D. Mr. Wirth testified that the potomac group is a lense type soil configuration in which sand, gravel and clay in various levels and various points are present. Mr. Wirth testified that such a soil configuration would create the possibility of permeation into the ground of water. Mr. Wirth testified that he disagreed with the testimony of an earlier expert witness of the Applicant that there was no permeation of water into the ground water table into Parcel D. Mr. Wirth testified that no matter how deep a well may be drilled it still can be aquafied at depth of 30 or 40 feet. Mr. Wirth testified that he could not be positive but he was reasonably certain within the limits of his professional expertise that the persons with wells in the Greenspring Hills subdivision of 100 feet or deeper are getting their well water from bedrock. Mr. Wirth testified that it was his understanding that the State of Maryland Department of the Environment investigation regarding the possible existence of contamination of soils on Parcel D was not complete. Mr. Wirth testified that the state regulations regarding casing of wells may not have taken effect so that some of the deeper wells in Greenspring Hills subdivision may not have the required casing.

On examination by the Examiner, Mr. Wirth testified that precipitation which accumulates along Parcel D would run along the top of the potomac group line and that there existed a chance of surface runoff into the wells in the Greenspring area with respect to wells that are not property cased or that are shallow.

Mr. Roger Mainster testified in rebuttal as an expert real estate appraiser. Mr. Mainster testified that he is familiar with noise and fumes generated by diesel equipment through observation and listening. He testified that he has personally visited the property owned by T. C. Simons, Inc. and I. W. Jenkins. Mr. Mainster stated that he has walked site A, B, C and D, and was familiar with the application submitted by T. C. Simons, Inc. Mr. Mainster testified that he has also traveled and observed the areas surrounding the four parcels and has reviewed the transcript of testimony previously given in this case prior to this evening. Mr. Mainster testified that he was present during the testimony of Ms. O'Neill.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Mr. Mainster stated that based on his education, experience, and the information that he has obtained from the record in this case (personal visits to the area), it was his professional opinion that the proposed uses requested by T. C. Simons, Inc. would not have an adverse effect on the surrounding properties.

Mr. Mainster stated that if the proper grading and screening as provided by the zoning code were enacted, neighborhood concerns in regard to water seepage, would be controlled, resulting in less chance of contamination. In regard to the aesthetics and potential noise emanating from this property, the screening and/or berms that would be required would mitigate any adverse effects and vastly improve the sites. In addition, there would be less potential in the neighborhood in regard to contaminants and unknown dumping because the area would be filled with clean fill dirt.

Mr. Mainster testified that the only houses that would have a direct view of Parcels, A, B, C or D would be the Jenkins houses on Parcel B. Mr. Mainster stated that presently you could catch glimpses of the property from Orsburn Road but they were remote and distant.

Mr. Mainster testified that he had obtained data concerning the sales of other lots near uses similar in impact to the uses being requested by T. C. Simons, Inc. Mr. Mainster stated that he had looked at the area of Woodland Run which is off Hookers Mill Road east of MD Route 924, and runs back directly to the Spencer Landfill. Mr. Mainster testified that two transfers on October 26, 1990 to Lexington Homes, show that the lots sold for \$42,000.00. Lots in the adjacent village of Bynum Run, which also adjoins and backs up to the Spencer landfill, sold for \$42,500.00.

Mr. Mainster testified that the Spencer Landfill site was filled with clean rubble, fill dirt, concrete and asphalt. Mr. Mainster stated that heavy dump trucks visited the Spencer Landfill on a regular basis.

In comparison, Mr. Mainster testified that lots sold in the Constant Friendship, a development which is not near either landfill or equipment uses, lots have sold for \$43,000.00 and were increasing in increments by the quarter. Mr. Mainster stated that developments along Route 136 that are in close proximity to the government testing grounds for tanks and heavy equipment, Cool Spring II and Pegasus Estates, were showing lot values of \$62,900.00 to \$75,000.00.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Mr. Mainster testified that the government testing ground on Route 136 was used for performance testing of tanks. Mr. Mainster stated that he did not see any difference in valuation of the lots contiguous to the landfill as opposed to those that were not. In comparison, Mr. Mainster stated that the lot sales in Pegasus Estates and Cool Spring compared to the lot sales in Glen Angus, which backs on a golf course. Mr. Mainster testified that he had selected the Spencer Landfill and the government testing grounds to obtain property values because they were two areas where people might be concerned about noise and other factors that they would consider when looking to buy a homesite.

Mr. Mainster testified that property values would only be negatively affected if the T. C. Simons, Inc. proposed uses created a negative impact on the wells in the surrounding area. Mr. Mainster stated that he did not know whether the site was contaminated or not, but if there were contaminants, it would decrease the value of adjoining properties.

Mr. Mainster stated that he there had been no lot sales in the Greenspring subdivision so he had compared developed lots without improvements in Greenspring Valley with developed lots without houses in the area surrounding the Spencer Landfill. Mr. Mainster stated that he was comparing properties that were near landfills or that type of use versus those that were not. Mr. Mainster testified that he was trying to show that there is no difference in the lot value of a property adjacent to a landfill versus lots such as the ones Constant Friendship which are not adjacent to a landfill or construction operation. Mr. Mainster stated that he had chosen the Cool Spring site because of the sometime ongoing or sporadic operations of heavy equipment use.

Mr. Mainster again reiterated that if T. C. Simons, Inc. property was filled in accordance with the zoning ordinances, you would have better control of water runoff and the quality of life would be sustained because the property would be improved and leveled. Mr. Mainster stated that the neighborhood would no longer have to worry about increased pollution because of unknown dumping of hazardous materials. Mr. Mainster stated that the property, at present, did not look very attractive and the proposed screening would enhance, not adversely affect the surrounding properties. Mr. Mainster testified that if the debris on Parcel D were eliminated and a nursery placed on the site, the adverse impact on adjoining properties would be greater because a nursery would run seven days a week generating a lot of traffic. Mr. Mainster stated that he could not render an opinion whether the noise from a nursery type operation would be less intrusive than the noise from a commercial operation because he did not know what nursery stock would be involved.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

CONCLUSION:

The Applicant is requesting a Special Exception, pursuant to Section 267-53(D)(1), of the Harford County Zoning Code, to park or store commercial vehicles and equipment; an interpretation of Section 267-53(H)(1) for existing parking to continue or, in the alternative, a variance from the requirement of the Code to allow less than the required 10 foot buffer setback with respect to vehicle parking; an interpretation that the existing scale house is a non-conforming building or, in the alternative, a variance from the setback requirements set forth in Section 267-34(B), Table II, which requires a minimum building setback of 100 feet; a Special Exception, pursuant to Section 267-53(E)(2), Table I, to allow a sawmill use; a Special Exception, pursuant to Section 267-53(E)(1), Natural Resource Table I, for permanent use for mineral extraction and processing to permit the retail sale of stone products; an interpretation that a mulch operation is permitted as a principal or accessory use in an Agricultural District and/or a variance to permit the mulch operation and the retail sale of stone products; a Special Exception for construction services and suppliers' use, to permit a mulch operation consisting of grinding trees and stumps and the sale of mulch. Additionally, the Applicant is requesting a variance from the provisions of Section 267-41(D)(6), to permit disturbance, filling and development of non-tidal wetlands in the Natural Resource District buffer area (This request concerns only Parcel No. 189 and 279, which will be described herein as "Parcel D".)

The applicable Sections of the Harford County Code to be considered in this case include the following:

Section 267-51 Purpose, provides as follows:

Special Exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special Exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.

Section 267-52 General Regulations, provides as follows:

- A. Special Exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

- B. A Special Exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a Special Exception shall require further Board approval.
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the Special Exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.

Section 267-53(D)(1) Motor Vehicle and Related Services, provides as follows:

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:
 - (a) The vehicles and equipment are stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads.
 - (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.
 - (c) A minimum parcel area of two (2) acres shall be provided.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Section 267-53(E)(1) Natural Resource Uses, states:

- (1) Mineral extraction and processing. These uses may be granted in the AG, RR, R, R1, R2, R3, R4, VR, VB, B1, B2 and B3 Districts, provided that:
 - (a) A permit for such use has been approved by the State Department of Natural Resources.
 - (b) No building or structure shall be located within one hundred (100) feet of any road right-of-way or adjoining property line.
 - (c) No washing, crushing, processing, blasting or similar operation shall be conducted within two hundred (200) feet of any road right-of-way or adjacent residential lot.
 - (d) Existing trees and ground cover along public road frontage shall be preserved, maintained and supplemented by the selective cutting, transplanting and addition of trees, shrubs and other ground cover for the depth of the front yard setback. Where it is determined that landscaping is not practical because of soil and/or operation conditions, other screening shall be provided.
 - (e) Any use authorized as a conditional use pursuant to Board of Appeals approval prior to the effective date of this Part 1, as amended, shall comply with the conditions as previously established. Any use authorized after the effective date of this Part 1, as amended, may proceed, subject to the conditions of this section. Where a conditional use or special exception has been granted, any modification or change of operations affecting the conditions or expansion of the use shall be subject to approval by the Board of Appeals.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Section 267-53(E)(2) states:

- (2) Sawmills. These uses may be granted in the AG and B3 Districts, provided that:
 - (a) A minimum parcel area of ten (10) acres is required.
 - (b) Noise shall not become a nuisance to the neighborhood.

Section 267-53(H)(1) Services, provides:

- (1) Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten (10) feet wide shall be provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road.

In addition, the Hearing Examiner shall be guided by the "Limitations, Guides and Standards" section of the Code, which states:

Section 267-9(I) Limitations, Guides and Standards

Limitations, Guides and Standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.
- (10) The preservation of cultural and historic landmarks.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Also, Section 267-11 provides the criteria for variances and states:

Section 267-11 Variances

- (A) Variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:
- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

The Applicant's requests will be addressed individually:

I. The Applicant has requested a Special Exception, pursuant to Harford County Code, Section 267-53(D)(1), to park and store commercial vehicles in an AG district. According to the Applicant, the grant of this Special Exception would attach to Parcels B, C and D of the subject property. The Hearing Examiner finds, as a matter of fact, that based on the testimony of the witnesses and the exhibits presented, the Applicant's request complies with the 2 acre minimum provisions of Section 267-53(D)(1) of the Code. The inquiry left to the Examiner is to determine if the request of the Applicant complies with applicable standards for Special Exceptions as enumerated by the Courts and to examine the request in light of the Limitations, Guides and Standards as set forth in Section 267-9(I) of the Harford County Code.

The Hearing Examiner finds that the Applicant has provided insufficient facts upon which a conclusion could be reached as to the standards required to be met in order to obtain a grant of the Special Exception. The basic premise in any zoning case regarding a Special Exception is that the Applicant will adduce testimony which will show that his use meets the prescribed standards and requirements and, additionally, shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981).

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

While the Applicant has requested a Special Exception to store commercial vehicles, the record is clear that the Hearing Examiner is being asked to render a decision, without the benefit of knowing how many vehicles are to be stored, their exact types or their locations within the various parcels. Testimony indicated that T. C. Simons owns and operates approximately 100 vehicles of various types, it is clear that this number of vehicles is the minimum number to be stored but is not descriptive of the actual number, type, or location actually contemplated by the Applicant. Indeed, the Applicant states that he intends to lease out portions of the property to other entities for the purpose of storage of commercial vehicles of unspecified number and type.

While the Applicant brought several expert witnesses before the Hearing Examiner who testified that, in their opinion, there would be no adverse impact to adjacent properties or the surrounding neighborhood as a result of the storage of commercial vehicles on the property, none of them was able to say with certainty how many vehicles would be stored there or of what type they might be, or even their specific locations on the various parcels. Arden Holdredge, testifying for the Department of Planning and Zoning stated that it was very difficult to analyze the impact that would result from the storage and operation of a large number of vehicles at this location. Ms. Holdredge further stated that the number of vehicles would certainly be a matter that the Department of Planning and Zoning would examine in order to take a position relative to the support of a request for Special Exception such as this. Based on Ms. Holdredge's testimony, the Department clearly anticipated that only the vehicles owned and operated by T. C. Simons (presumably 100 in number) would be stored on the subject property and formed its position to support the request on those circumstances. Both the Applicant and the Department of Planning and Zoning take the position that it is the Hearing Examiner who must decide, based on the evidence presented, how many vehicles should be allowed, what type they should be, where they should be stored and the hours of operation. Presumably, the Hearing Examiner is being asked to guess at the potential impacts of unknown quantities of commercial vehicles and their various impacts regarding noise, odors, effect on traffic and each of the other impacts that are potentially associated with commercial vehicle operations. The Applicant's witness, Roger Mainster admitted that 1000 vehicles would be too many for this parcel, but felt there would be no impact from 100. When asked if there were some number of vehicles in between 100 and 1000 that would be too many, the witness was unable to characterize a given number of vehicles that would result in an adverse impact, citing as reasons for that inability, questions of type of vehicles, size of vehicles, whether a given vehicle were motorized or not or whether a given vehicle would leak oil or not. Similarly, Arden Holdredge was unable to state with particularity if a given number of vehicles would be so many as to create an adverse impact on the surrounding community.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

The Hearing Examiner notes that, prior to the commencement of this case, Protestants submitted a Motion to Dismiss based on the vagueness and uncertainties of the Application in regard to the number, type and location of commercial vehicles to be stored on the site. The Hearing Examiner denied the Motion based on assurances that these questions would be made clear during the testimony adduced during the hearings to be conducted in the case. The Applicant has failed, however, to produce facts upon which the Hearing Examiner can adduce the impact of the proposed operation. It can hardly be expected that the Hearing Examiner inquire into possible impacts without specific information presented which would allow informed conclusions.

The Applicant has failed to meet its burden of proof and it is, therefore, the recommendation of the Hearing Examiner that the request for a Special Exception to store commercial vehicles on the subject site be denied.

II. The Applicant's request for a Special Exception pursuant to Section 267-53(H)(1) for construction services and suppliers use is equally vague. The Applicant's witness, Robert Cooper, testified that the Applicant was seeking a blanket request for unknown types of construction services and suppliers. The witness indicated that it was the intent of the Applicant to lease out various portions of the property to unknown persons and entities who would presumably engage in construction services and supplier activities as contemplated by the Harford County Code. The witness was unable to state the nature and extent of these operations and he was unable to state where each of these may be located. Once again, the Applicant and the Department of Planning and Zoning seem to infer that it is left to the Hearing Examiner to decide the specific parameters of the allowable operations without any facts related to specific proposals. The proper inquiry to be made by the Hearing Examiner has been stated by the Maryland Courts and is enunciated particularly in Schultz, supra., wherein the Court stated, "The appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." The threshold issue is identification of the particular use and the Applicant is unable to describe with any particularity what specific uses are intended. Without the benefit of particular facts which would indicate particular uses, impacts cannot be ascertained. The Applicant retains the burden of adducing testimony which will show that his use meets the prescribed standards and requirements and a failure to carry that burden must result in a denial of the request.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

The Hearing Examiner, therefore, recommends that the request for a Special Exception, pursuant to Section 267-53(H)(1) for construction services and suppliers be denied.

III. The Applicant has requested an interpretation as to whether the existing parking area in front of the existing shop may continue or, in the alternative, a variance to permit the parking of commercial vehicles on the existing parking area. This particular issue has been examined in the past by the Circuit Court for Harford County Civil Appeal Case No. 1486/4/143. The opinion of Judge Carr in that case allowed the continuation of the use of the area for parking provided that no more equipment than Mr. Jenkins had during the operation of his construction business would be allowed. By letter dated December 3, 1987, the Harford County Law Department, in interpreting Judge Carr's decision indicated that the equipment claimed to have been owned by Jenkins during his operations during 1957, stated during Jenkins' sworn testimony in Board of Appeals Case No. 2983, was a controlling base.

The Hearing Examiner recommends, based on the testimony herein and prior decisions regarding this issue, that the interpretation regarding this parking area be controlled and be in accordance with the decision of Judge Carr in Harford County Circuit Court Civil Appeal 1486/4/143 (Board of Appeals Case No. 2983).

IV. The Applicant has requested an interpretation as to whether the existing scale house on Parcel C is a valid, non-conforming use and thus, may continue, or, in the alternative, a variance to allow the house to remain. While it is apparent that the structure in question has existed at least since 1957, its use as a scale house continuously during that period is questionable. The unrebutted testimony of Loretta Lowe is that the scale house has not been used for a period of at least three years. The burden of proving a non-conforming use is upon the party asserting the claim. County Comm'rs of Carroll County v. Uhler, 78 Md. App. 140, 552 A.2d 942 (1989). Pursuant to Section 267-20(C) of the Harford County Code, if a use goes into abeyance for a period in excess of one year, it is deemed abandoned and must otherwise comply with the Code. An intent to abandon is not a necessary showing, only that the use has been, in fact, discontinued for a period of time exceeding one year. Harford County v. McDonough, 74 Md. App. 119, 536 A.2d 724 (1988).

The Hearing Examiner concludes, based on the testimony presented, that the scale house has ceased to be used for a period in excess of one year and is, therefore, no longer a valid non-conforming use.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

The Applicant has similarly failed to provide the requisite factual basis regarding the uniqueness of the property or practical difficulty or unreasonable hardship in support of its request for a variance. The only apparent reason for the request is that the scale house may be needed as part of the other requested uses herein and thus, is merely for the convenience of the Applicant, a basis insufficient to justify the grant of the requested variance.

The Hearing Examiner, therefore, recommends that the Applicant's request to interpret the scale house as enjoying a non-conforming status, or, in the alternative, that a variance be granted to permit its use, be denied.

V. The Applicant has requested a Special Exception pursuant to Section 267-53(E)2, Table I, for a sawmill operation. Additionally, the Applicant requests an interpretation that a mulch operation is permitted as a principal or accessory use in an AG district and/or variance to permit mulch operation, or, a Special Exception for construction services and suppliers use to permit mulch operation consisting of grinding trees and stumps and sale of mulch. The Applicant is not, in fact, requesting a Special Exception for a sawmill, but instead, is requesting a Special Exception to permit stump grinding at various locations throughout the property. This is not the first time that the issue of stump grinding has been addressed by the Hearing Examiner. In Board of Appeals Case No. 4047, decided October 9, 1990, the Hearing Examiner concluded that stump grinding was not forestry, agricultural products processing nor construction services and suppliers uses. In that case, the Hearing Examiner classified the use under the wood products classification (SIC Code 2499), a use first permitted in the Commercial Industrial District. In the instant case, the Applicant has presented no facts to support the operation of a sawmill. The Applicant intends to gather scrap portions of trees (the stumps), put them into a large grinding machine which converts them to mulch and ultimately sell this by-product to the public. The grinding machine is portable and may, according to the witnesses, be used anywhere on the various parcels.

The Hearing Examiner supports the conclusions reached in Case No. 4047 in finding that stump grinding would be first permitted in the Commercial Industrial District and may not, therefore, be permitted as a Special Exception in an Agricultural District. The stump grinding operation and the mulching operation are one and the same according to the testimony and are not permitted by way of Special Exception in the AG District.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Nor has the Applicant presented sufficient facts to warrant the grant of a variance to permit such uses. Since the mulching operation and stump grinding have been found not to be principally permitted uses nor are they permitted by way of Special Exception in an AG District, the variance must be considered a use variance. The Maryland Court of Special Appeals, in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220 (1974), noted the distinction between area variances and use variances. To prove undue hardship sufficient for the grant of a use variance, the following criteria must be met:

1. Applicant must be unable to secure a reasonable return or make any reasonable use of his property (mere financial hardship or opportunity for greater profit is not enough).
2. The difficulties or hardships are peculiar to the subject property in contrast with other properties in the zoning district.
3. Hardship was not the result of Applicant's own actions.

Based on the testimony presented, the Applicant has failed to carry its burden of proof sufficient to warrant the granting of the requested variance. The operations intended by the Applicant are profit motivated, are not peculiar to the subject property and will ensue only as a result of the Applicant's own actions. The Applicant's witnesses have stated that the Applicant will not even operate the retail sale operations but will lease it to other persons, a clear intent that financial gain is the primary motivation of this request. Moreover, there was no evidence presented that the subject property could not be reasonably used for purposes other than those requested and proposed by the Applicant. In fact, the property has been used as a mining operation in the past and continues to be used for mineral extraction.

The Hearing Examiner recommends, therefore, that the request for a Special Exception to operate a sawmill, to permit mulching operations and to permit the retail sale of mulch be denied.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

VI. The Applicant is requesting a Special Exception to permit mineral extraction and processing and to permit retail sale of stone products. Once again, the request is not entirely reflective of what the Applicant actually intends. Based on opening statements of Applicant's counsel and the testimony of Robert Cooper, the Applicant is actually asking that the retail sale of stone products be allowed as an incidental or accessory use to the presently permitted mineral extraction operations. This retail sales operation would be confined to Parcel D and would, according to the Applicant's witness, Robert Cooper, be subcontracted to an entity or person other than Applicant. The Applicant has already obtained approval for mineral extraction and processing on Parcel C pursuant to the decision in Board of Appeals Case No. 2254. By coupling the request for retail sales operations for the sale of stone products with a request for mineral extraction and processing, the Applicant has camouflaged the request in a manner leading to the conclusion that the stone products to be sold would be extracted from the Applicant's permitted mining operations and thus incidental or accessory to said operations. Mr. Cooper, Vice President of T. C. Simons, the Applicant herein, testified to the contrary in stating that the stone (to be sold through the retail operation), would be brought in from quarries and displayed for sale to landscapers and home owners. Mr. Cooper clearly stated that the stone proposed to be sold would be purchased from sources not associated with the subject property and are clearly not incidental or accessory to the mining operations conducted on these parcels by the Applicant.

The Harford County Code defines accessory use as "...a use of land, or portion thereof, customarily incidental and subordinate to the principal uses of the land and located on the same lot or parcel of land with such principal use." The Applicant's request does not comply with the definition provided as to accessory uses. Moreover, general merchandise stores are first permitted in the VB District and may not be allowed as a Special Exception in an AG District. The Hearing Examiner notes that Farmers co-ops and feed and grain mills are the only principally permitted retail sales uses allowable in an AG district and antique shops, art galleries, museums, and animal auction houses are the only retail sales uses permitted by special exception in the AG District.

For the reasons stated herein, the Hearing Examiner recommends that the request for a special exception for mineral processing and extraction to allow the retail sale of stone products be denied.

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

VII. The Applicant is seeking a variance pursuant to Section 267-41(D)(6) to permit disturbance, filling and development of non-tidal wetlands and the Natural Resources District (NRD) buffer.

A review of the testimony presented in this case indicates that the Applicant proposes a program of wetland restoration/enhancement, buffer restoration/re-establishment and water quality treatment for Parcels A and D. The reclamation is intended to allow the various uses requested herein including storage of commercial vehicles, construction services and suppliers uses, sale of stone products as part of a mining operation and stump grinding and sale of mulch. In that all of these use requests have resulted in a recommendation by the Hearing Examiner that each be denied, the reasons for the development propounded by Applicant have ceased to exist. The Applicant does not own the property but has only a right of first refusal and presumably, unable to proceed with the development uses it proposes, no hardship would be imposed as a result of the denial of the requested variance.

Again, the Hearing Examiner concludes that the failure of the Applicant to adduce facts which would indicate the particular nature and extent of the operations make it impossible to ascertain the impacts that may result if the requested variance is granted. The Maryland Department of Natural Resources, by letter dated October 12, 1990, in commenting regarding the potential impacts resulting from the grant of this variance stated:

"According to the Non-tidal Wetlands Protection Act regulations, impacts to non-tidal wetlands must be avoided and minimized to the greatest extent possible. This practice applies regardless of the estimated functional value of the wetland. Since the ultimate use of the site is not stated, we cannot evaluate whether impacts to wetlands have been avoided and minimized."

While expert opinions were offered by both sides regarding the potential impacts associated with this development, it would be mere guesswork on the part of the Hearing Examiner to determine what impacts may result without particular facts that would allow informed conclusions. Pursuant to the Harford County Code, Section 267-41(D)(6):

"The Board may grant a variance to Subsection (d)(3), (4), or (5) of the Natural Resource District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resource District."

CASE NOS. 4045 AND 4110 - T. C. SIMONS, INC.

Based on the testimony, the Applicant and its witnesses were either unable or unwilling to state with particularity the specific uses to be made on the property. The Hearing Examiner is, therefore, unable to make an informed determination that this development will not result in adverse impacts to the Natural Resource District.

For the reasons stated, the Hearing Examiner recommends that the request for variance to permit disturbance, filling and development of non-tidal wetlands and the Natural Resource District buffer area should be denied.

Date

March 19, 1991

William F. Casey
William F. Casey
Zoning Hearing Examiner