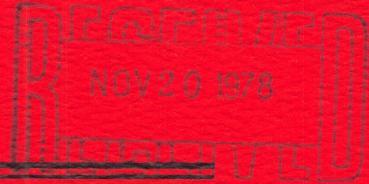


221 VA 168

CLERK
SUPREME COURT OF VIRGINIA



RICHMOND, VIRGINIA

IN THE
Supreme Court of Virginia
AT RICHMOND

Record No. 780720



TOWN OF BLACKSBURG, et als,

Appellants,

v.

WILLIAM H. PRICE, et als,

Appellees.

APPENDIX

Thomas D. Frith, Jr.
Post Office Box 25
Blacksburg, Virginia 24060

Counsel for Appellants

Warren S. Neily, Jr.
Post Office Box 43
Blacksburg, Virginia 24060

Counsel for Appellees

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* * *

NOTICE OF PETITION FOR MANDAMUS

(William H. Price, et als v. Town of Blacksburg, et als)

Filed February 19, 1976

Your Petitioners, William H. Price and Joseph T.

Jones would show unto the Court the following:

1. That your Petitioners have leased from the fee simple owner, Cambia Huffman, a certain lot of land lying on North Main Street in the Town of Blacksburg, Montgomery County, Virginia, for a term of thirty years, commencing June 1, 1974. A plat showing the dimensions of said lot is filed herewith, marked Exhibit 1.

2. That while negotiating said lease, your Petitioners, in January, 1974, began discussing the commercial development of said lot with the Planning and Zoning Officials of the Town of Blacksburg in order to determine the requirements for the issuance of a building permit; that as a result of these discussions with Planning and Zoning Officials of the Town of Blacksburg, your Petitioners prepared Plans and Specifications, known as a Site Development Plan showing the proposed Commercial Development of said lot, which plans showed the construction of a building thereon for the sale of auto parts and a 3-bay car wash; said plans also showed a solid fence, six feet in height, running along 75% of the length of the rear property line, adjacent to a public alley, thereby allowing access to said public alley for all persons using said property.

3. That by letter of transmittal dated April 2, 1974, your Petitioners sent to the Mayor and all Members of the Town Council a complete set of said plans and specifications. A copy of said letter, marked Exhibit 2, and a copy of said plans, marked Exhibit 3 are filed herewith.

4. That on May 14, 1974, your Petitioners personally appeared before the Town Council at a regular meeting and discussed the development of said lot.

5. That on May 24, 1974, the Director of Planning of the Town of Blacksburg, Richard F. Sale, wrote your Petitioners outlining certain changes to be made in said preliminary Site Development Plan, which changes were made and completed by your Petitioners in July, 1974. A copy of said letter is attached hereto, marked Exhibit 4.

6. That your Petitioners' Site Development Plan was approved by the proper officials of the Town, and after repeated requests, your Petitioners were issued a building permit on October 11, 1974, the only condition of said permit being that a second floor was not to be constructed on the building to be leased for an auto parts store.

7. That upon issuance of said building permit, your Petitioners had complied fully with all applicable laws and regulations of the Town of Blacksburg, and was entitled to commence and complete construction and development on said lot in accordance with the plans, specifications, data, and Site Development Plan submitted by your Petitioner

and approved by the officials of the Town of Blacksburg.

8. That, relying on said building permit and in accordance with the plans approved by the Town of Blacksburg, your Petitioners commenced construction of said building and car wash as shown on said Site Development Plan.

9. That on February 11, 1974, the Town Council, without any notice to the Petitioners and without complying with any requirements for the Amendment of the Zoning Ordinance, or any other Ordinance, unanimously passed a resolution requiring the Petitioners to "provide a screen to cover the entire rear of your car wash property and that any gate in the fence be opened for emergency purposes only."; and instructed the Zoning and Planning Officials of the Town of Blacksburg not to issue an occupancy permit to the Petitioners until such screening was provided. Your Petitioners were notified of such action by the Director of Planning and the Director of Public Works by letter dated February 12, 1975. A copy of said letter marked Exhibit 5, is filed herewith.

10. That your Petitioners have completed the construction of said development of said building and car wash in accordance with the Site Plan and building permit and said construction and development complies in all respects with all ordinances and regulations of the Town of Blacksburg, but notwithstanding the foregoing and despite a request by your Petitioners, the proper officials of the Town have refused to issue the Petitioners a Certificate of Occupancy

to which they are entitled pursuant to Article VI, Section I of the Zoning Ordinance, and your Petitioners allege and believe that the officials of said Town have been instructed not to issue said permit by the Town Council.

11. That your Petitioners allege that according to the terms of said Zoning Ordinance, the interpretation and enforcement of said Ordinance has been delegated to the Administrator of the Town and that the Administrator, acting through the properly designated Planning, Zoning and Building Officials determined that the Petitioners' Site Development Plan, showing required screening across 75% of the rear lot line complied with all Town Ordinances and regulations and issued a building permit.

12. That the Zoning regulations for the Central Business District under Special Exceptions (Pg. 54, Zoning Ordinances) which allows drive-in facilities "subject to approval by Town Council" is discriminatory and unconstitutional in that it provides no standards for Council to apply in giving or denying approval and your Petitioners further allege that Council has been informed of Petitioners' plans since April 22, 1974 and approved said plans.

13. That Council's action in attempting to require screening "to cover the entire rear of ... property" would have the effect of denying and restricting Petitioner's use of said public alley which would discriminate against your Petitioners in that other property adjacent to said alley

zoned both Commercial and Residential is not similarly restricted.

14. That your Petitioners allege that they have applied to the Zoning and Planning Officials of the Town of Blacksburg for a Certificate of Occupancy for said Property and that said Certificate has been denied; that said decision has been appealed to the Board of Zoning Appeals of the Town of Blacksburg and a hearing held thereon on January 14, 1976, and that your Petitioners' appeal was denied, the decision to deny said appeal having been filed in the office of the Board on January 11, 1976.

IN CONSIDERATION OF WHICH AND in as much as your Petitioners are without an adequate remedy and being aggrieved by said decision of the Board of Zoning Appeals, your Petitioners pray that a peremptory Writ of Mandamus be issued to W. R. Cook, individually and as Town Manager, J. E. Beck, individually and as Director of Public Works and William E. Issel, Dennis Pellerin and Gene Adams, individually and as Zoning, Planning and Building Officials of the Town of Blacksburg, ordering them to issue, or cause to be issued, a Certificate of Occupancy and any other necessary certificates or permits for the use and occupancy of said property by the Petitioners, their lessees, employees or agents and for all other relief.

* * *

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Exhibit III

APPLICATION No 1052

FOR BUILDING AND ZONING PERMIT

PROPERTY OWNER Cambia Huffman
 OWNER(S) % William H. Price
 ADDRESS P.O. Box 199
 TELEPHONE NO. 552-1161

NOTE: 2 copies of an accurate scale plot plan must accompany application. Plot plan must show the size and shape of the proposed building or structures with respect to the property lines, location of all existing buildings or structures with respect to property lines, the nature of the proposed use of the building or structure. Two (2) complete sets of Building Plans must also accompany this application.

TYPE OF CONSTRUCTION

☐ Frame
☐ Masonry brick
☐ Veneer: steel
☐ Other: steel
 Description of Work: construct building 40' x 100'
1 3 bay car wash
 Number of Rooms 2; No. Baths 1
 Type of Heat gas hot air
 Electric Service: Total Amps 400
 Fuse Box 2 - 200 amp panels
 Circuit Breakers concrete

Foundations: Material concrete
 Size 10" x 18"

Foundation Walls Material 10"
 Thickness 10"
 Depth in Ground 10"

Number of Flues X
 Flue Sizes X
X
X
X

Truss Span as engineered
 Rafter Size by Mitchell

Shingle Type Engineering Co.
 Shingle Weight 18,200 ±

Floor Framing Joint Size X
 Floor Framing Joint Size X

General Contractor and Number Quality Construction

Handy Work By Quality Construction
 Electrical Work By Quality Construction
 Plumbing Work By Quality Construction
 Mechanical Work By Quality Construction

Market Value of Improvements \$40,000

NOTE: Must include all building, electrical, plumbing, mechanical to be performed.)

LOCATION AND DESCRIPTION OF LOT(S)

Lot No. 606 N. Main St.
 Division 18,200 ±
 Section sq. ft.

Address 18,200 ±
 of Lot(s) sq. ft.

Dimensions of lot(s):
9ft. 111.2ft. 167.4ft. 165.75 ft.
 (front) (rear) (right side) (left side)

NOTE: undersigned applying for a Building and Zoning Permit hereby certifies that the above given information is true and correct to the best of his knowledge and belief, and further agrees to build according to the plans submitted and to comply with all Zoning and Construction Regulations and to notify the Inspector (552-1301) four hours in advance of all inspections to be made. The undersigned further understands that it is unlawful to allow occupancy of the premises as described in this application prior to issuance of a certificate of occupancy. Application for such certificate must be made in writing.

Signature of Owner or Agent Cambia Huffman (date) 8/30/74

Signature of Zoning Administrator Dennis Pallen (date) 8/30/74

Signature of Building Inspector William H. Price (date) 9-4-74

Signature of Building Inspector William H. Price (date) 9-4-74

Signature of Building Inspector William H. Price (date) 9-4-74

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Signature of Building Inspector William H. Price (date) 9-4-74

Signature of Building Inspector William H. Price (date) 9-4-74

Is lot located at street corner? no
 Present zoning classification of lot(s)? C-1

LOCATION OF BUILDING OR STRUCTURE

Setback 20 ft. (distance from street)
 Rear yard 20 ft.
 Left side yard 2 ft.
 Right side yard 16 ft.
 Height above grade 14 ft.
 No. of stories one

PARKING FACILITIES

No. of off-street parking spaces 12?

SITE DEVELOPMENT PLAN

Is a Site Development Plan required yes?
 If yes, has it been approved no?

CLASSIFICATION OF BUILDING OR STRUCTURE

(Check One)

☒ New construction
☐ Reconstruction
☐ Alteration/remodeling/repairs
☐ Temporary:
☐ Sign
☐ Addition
☐ Other:

TYPE OF BUILDING OR STRUCTURE

(Check & complete one or more)

☐ Single family residence
 Will building contain an apt. no?
 Will building contain a professional office? no?
 If so, what type? no
☐ Apartment Building
 Number of living units no
 Will building contain a professional office or a home occupation? no If so what type? no
☐ High-rise Apartment Building
 No. of living units no No. of professional offices no
☒ Business
 Type of business auto parts & car wash
☐ Church or school:
 No. of fixed seats no
☐ Garage or carport (attached to Main building)
☐ Fraternity
☐ Accessory Building (not attached to Main building)
☐ Sign: type of sign no
 Size of sign no sq. ft. Will sign project over right-of-way? no If so, how many ft. over right-of-way? no
 No. of signs presently existing no
 Total size of existing signs no sq. ft.
☐ Other: no give brief description of building or structure no

undersigned applying for a Building and Zoning Permit hereby certifies that the above given information is true and correct to the best of his knowledge and belief, and further agrees to build according to the plans submitted and to comply with all Zoning and Construction Regulations and to notify the Inspector (552-1301) four hours in advance of all inspections to be made. The undersigned further understands that it is unlawful to allow occupancy of the premises as described in this application prior to issuance of a certificate of occupancy. Application for such certificate must be made in writing.

Building/Zoning Permit Fee \$ 128.00 (office use only) Cambia Huffman 8/30/74
 Sanitary Sewer Connection Fee \$ 250.00 8/30/74
 Connection Fee Paid 10/6/74 11/6/74
 Connection Fee received by 11/6/74 11/6/74

Approved ✓ Disapproved ✓ (Zoning Administrator) Dennis Pallen (date) 8/30/74

Not to the following: second floor of building not to be constructed & notes indicated on drawings by the administrator.

Approved ✓ Disapproved ✓ (Building Inspector) William H. Price (date) 9-4-74

Not to the following:

September 1973 to August 1974 = 1 year = 12 months

COMPARABLES

ey - S. Main Street (2 bays) = 958,900 gals/year = 479,450 gal/bay/yr
- N. Main Street (2 bays) = 1,155,600 gals/year = 577,800 gal/bay/yr
ntic - Kabrich St. (1 bay) = 289,000 gals/year = 289,000 gal/bay/yr

Average of three 479,450 = 39,954/month
 577,800 = 48,150/month
 --289,000 = 24,083/month

total = 112,187 ÷ 3 = 37,396 gallons (average)

37,396 ÷ 30 = 1247 gpd/bay

For 3 bay car wash 3 x 1247 = 3741 gpd

3741 gpd ÷ 400 = 9.35 dwelling units

(Car Wash) 9.35 x 300 = \$2,805 sewer connection fee

Auto Store) 1 dwelling unit = \$300

total fee = \$3,105

less previous house connection 300

FEE DUE \$2,805

App. 7

Exhibit II



RAINES REAL ESTATE INC.

318 NORTH MAIN STREET
BLACKSBURG, VIRGINIA 24060

ERNESTINE FORESMAN
WILLIAM H. PRICE

AREA CODE 703
TELEPHONE 552-4201

April 22, 1974

Mayor John M. Barringer, Jr., & Members of Council
Town of Blacksburg
Blacksburg, Virginia 24060

Gentlemen:

Our present plans are to construct a building on North Main Street in accordance with plans enclosed.

Your approval permitting apartment occupancy upstairs would be appreciated. You will note that these ten apartments are arranged so they could very easily be converted to office use if we are able to obtain additional parking.

Your approval to locate the building as shown on plans would also be appreciated. I have been advised that the building should be located 7 1/2 feet from the lot lines to permit dedication of a 7 1/2 foot easement to the Town of Blacksburg. My concern is as follows:

1. The building serves our purposes and the lot much better as it is presently drawn.
2. The lot fronts on main and has a public alley to the rear. Public utilities can easily be provided at either front or rear of lot.
3. The property in this area is much too valuable to unnecessarily commit 15 feet of lot width for utilities.

I appreciate your time and consideration relative to this matter. Your advice will be greatly appreciated.

With kindest regards, I am

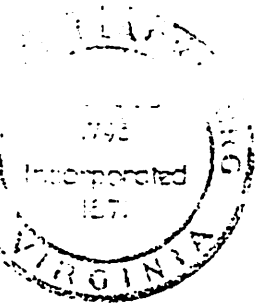
Sincerely,

William H. Price
Broker

WHP:cs

cc: William Cook
Bob Timberlake

Joe Jones
Cambia Huffman



TOWN OF BLACKSBURG

Blacksburg, Virginia

February 12, 1975

DIRECTOR OF
PLANNING

Mr. William Price
Raines Real Estate
318 N. Main Street
Blacksburg, Virginia

Re: 606 North Main Street

Dear Mr. Price:

Please be advised that last night the Blacksburg Town Council unanimously approved a motion which directs that you provide a screen to cover the entire rear of your car wash property and that any gate in the fence be opened for emergency purposes only.

Very truly yours,

William E. Issel

William E. Issel
Director of Planning

Robert W. Timberlake

Robert W. Timberlake
Director of Public Works

st

c.c. W. R. Cook
Mayor J.M. Barringer
Town Council

TOWN OF BLACKSBURG

PLANNING DEPARTMENT

May 12, 1975

Mr. Joseph T. Jones
Broker
Raines Real Estate, Inc.
318 North Main Street
Blacksburg, Virginia 24060

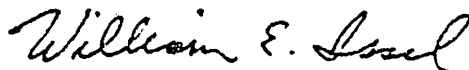
RE: Car Wash, 606 N. Main Street

Dear Mr. Jones:

In response to your letter of May 7, 1975, please be advised that we cannot issue a Certificate of Occupancy for the car wash until the following corrections are made:

- (1) Dirt bank on south side of property is stabilized
- (2) Parking space lines are painted
- (3) Fence is closed across back of property except for emergency access, as ordered by Town Council on February 11, 1975.

Sincerely yours,



William E. Issell
Director of Planning

cc: W. R. Cook

* * *
ORDER OVERRULING MOTION TO DISMISS

(William H. Price, et als v. Town of Blacksburg, et als)

Filed July 16, 1976

This case came on to be heard this day upon the Petition for Mandamus filed herein on February 18, 1976; upon the Respondent's Motion to Dismiss filed herein on March 2, 1976; upon evidence heard ore tenus and exhibits filed with the Court on April 19, 1976 at which time both Petitioners and Respondent appeared by counsel, and was argued by counsel.

And it appearing to the Court from the evidence that the Board of Zoning Appeals of the Town of Blacksburg met on January 14, 1976 to consider the Petitioners' appeal from a decision of the Zoning Administrator of the Town of Blacksburg denying an application for a Certificate of Occupancy; that said Board of Zoning Appeals did, on January 14, 1976, vote orally to uphold the Zoning Administrator's decision; that the minutes of said meeting were subsequently prepared and approved and filed by said Board of Zoning Appeals at their next meeting on February 11, 1976; that Petitioners filed their appeal from said decision and petition for a Writ of Mandamus on February 19, 1976, being within thirty (30) days of the filing of said decision by the Board of Zoning Appeals as required by §15.1-497 of the 1950 Code of Virginia, the Court doth so ADJUDGE, ORDER and DECREE, and

App. 11

It appearing to the Court that the Petitioners' appeal from said decision of the Board of Zoning Appeals for the Town of Blacksburg was timely filed, the Court doth ADJUDGE, ORDER and DECREE that Respondent's Motion to Dismiss, be, and it is hereby overruled and dismissed, and

The Court doth further Order that the Respondent be allowed twenty-one (21) days from the date of the entry of this order to file responsive pleadings.

* * *

* * *

STIPULATION OF FACTS

(William H. Price, et als v. Town of Blacksburg, et als)

Filed September 7, 1977

In January, 1974, William H. Price, Petitioner, leased certain commercial property on North Main Street in the Town of Blacksburg and contacted the Zoning Administrator and the Director of Public Works of the Town, with plans to construct a commercial building and car wash on the property. Mr. Price also submitted plans and made application for a building permit. The foregoing officials, who were authorized to review such plans for compliance with all Town ordinances, and to issue building permits, determined that the use was proper under the Zoning Ordinance and began review of Petitioner's plans for compliance with all applicable Town ordinances. Mr. Price made several changes in these plans at the request of Town officials, and reviewed his plans many times with these officials in January, February and March of 1974.

On April 22, 1974, at the suggestion of the Zoning Administrator, Mr. Price transmitted, by letter, a complete set of his building plans and a site plan to the Mayor and each member of the Town Council, and asked the Council to approve apartments on the second story of the commercial building and asked for a waiver of the requirement that a public utilities easement 7 1/2 feet in width be reserved along each lot line. This set of plans showed a car wash

on the property and showed a fence along the rear line of the property, with a 25 foot opening in the fence to permit access from Mr. Price's property to the alley.

On May 14, 1974, Mr. Price appeared before the Council and was told by the Mayor that there was not need to ask for approval for apartments since they were permitted by the Zoning Ordinance. He was referred to the Board of Zoning Appeals for action on his request regarding the public utilities easement. The location of the car wash and the opening in the fence were not discussed at this meeting. Mr. Price subsequently appeared before the Board of Zoning Appeals on June 19, 1974, and was granted a variance to waive the public utilities easement.

Throughout the summer, Mr. Price continued to discuss his plans with the Zoning Administrator and Director of Public Works and his plans were finally approved and signed by the Zoning Administrator and Director of Public Works, and a building permit was issued on October 11, 1974. These plans were the same as those submitted to Council and discussed at their May 14th meeting, with the exception that the plans for apartments on the second floor of the building were removed, and were not authorized by the building permit.

After securing his building permit, Mr. Price immediately began construction and work progressed until February 12, 1975, when Mr. Price received a letter from the Planning Director and Planning Works Director advising him that the Council met on February 11, 1975, and passed a motion directing

him to provide a screen to cover the entire rear of the car wash property. At the time this letter was received, the fence shown on Mr. Price's plans had not been constructed. This fence, with a 25 foot opening, was constructed shortly after May 1, 1975. Mr. Price considered this opening in the fence necessary for the Commercial success of the project.

On February 12, 1975, Mr. Price's car wash and commercial building was approximately 75% complete, and Mr. Price had spent or obligated himself for approximately One Hundred Thousand Dollars (\$100,000.00) worth of construction or equipment (including Twenty-Three Thousand Dollars (\$23,000.00) worth of car wash equipment which had been ordered).

Council's action was taken as a response to complaints during the public address section of the Council Meeting from citizens living in the area of the car wash regarding the increased traffic which would come out of the car wash and use the alley.

This was the first instance in which Council had considered the subject of screening, and Mr. Price was not given any notice of this meeting, although the Planning Director had informed Mr. Price in a telephone conversation several days prior to the February 11, Council Meeting that a group of citizens might appear at the Council Meeting with complaints concerning Mr. Price's plans. Mr. Price immediately contacted Robert W. Timberlake, The Town Director of Public Works, and was informed that a certificate

of occupancy would not be issued until this requirement was satisfied.

On May 7, 1975, when the construction was virtually complete, Joseph T. Jones, who had entered into an agreement with Mr. Price for the operation of the car wash property, requested a certificate of occupancy from the Zoning Administrator for the Town of Blacksburg, and was informed that a certificate could not be issued until two items of construction had been completed (stablizing a dirt bank, and painting lines on the parking area), and until a fence was erected in accordance with Council's motion of February 11, 1975.

On May 19, 1975, Petitioner filed a Petition for Mandamus and injuction, and on May 27, 1975, the Petition was heard in the Circuit Court of Montgomery County. On that date, the Court entered an Order ordering the Board of Zoning Appeals to hear Mr. Price's appeal from the Order of the Zoning Administrator, within ten days, and waiving advertising requirements. This appeal was heard and rejected, and when counsel approached the Court with motion for a final decree, the Court then felt that the record was somewhat confused and suggested that the parties take a voluntary non-suit without prejudice. This was done and a non-suit order was entered on October 27, 1975.

Mr. Price again appeared before the Board of Zoning Appeals on January 14, 1976, and the Board at that time voted to deny his appeal. The minutes of this meeting

were read at the February 11th meeting of the Board of Zoning Appeals and were corrected and approved. On February 17, Mr. Price filed the Notice of Appeal and Petition for Writ of Mandamus which is before the Court now. The Town, by counsel, filed a Motion to Dismiss the appeal on the ground that the appeal was not filed within thirty (30) days from the filing of the decision of the Board as required by Section 15.1-297 of the Code of Virginia, and on April 19, 1976, arguments on this motion were heard by the Court ore tenus. After further consideration, the Court entered an Order on July 16, 1976 ruling that the filing of the Appeal was timely.

* * *

* * *

ORDER

(William H. Price, et. als v. Town of Blacksburg, et als)

Filed April 3, 1978

This case came on this day to be heard upon the Orders entered herein and the papers formerly read; upon the Order entered herein on July 16, 1976 overruling the Respondents' Motion to Dismiss; upon the testimony; documents, exhibits and evidence set forth in the Petitioners' Memorandum of Law filed herein on July 12, 1977; upon Respondent's Memorandum of Law filed herein on September 7, 1977; upon the Stipulation of Facts filed herein on September 7, 1977, and was argued by counsel.

And it appearing to the Court from the foregoing that the Respondent issued a building permit to the Petitioners on October 11, 1974, authorizing the construction of a commercial building and car wash facility, situate on certain property in the Town of Blacksburg, in accordance with a site plan submitted by the Petitioners; that said site plan showed a fence across the rear line of the property with a 25 foot opening to permit access to a public alley; that Petitioners constructed said commercial building, car wash and fence in accordance with said site plan, and, on May 7, 1975, applied for a certificate of occupancy which was denied by the Zoning Administrator on the ground that the screening was not 75%

opaque as called for by the Zoning Ordinance and the 25 foot opening in said fence had not been closed in accordance with a resolution passed by the Town Council on February 11, 1975; that Petitioners filed a Petition for Mandamus and Injunction in this Court which was voluntarily non-suited on October 27, 1975; that the Board of Zoning Appeals met on January 4, 1976 to consider the Petitioners' appeal from the Zoning Administrator's decision not to issue said Certificate of Occupancy and voted on said date to deny Petitioners appeal; that said decision was filed on February 11, 1976; that on February 17, 1976 Petitioners filed a Notice of Appeal from the decision of the Board and Petition for Writ Mandamus; that on July 16, 1976 this Court entered an Order ruling that Petitioners' appeal from the Board's decision was timely filed and overruling Respondents' Motion to Dismiss; and that Petitioners have exhausted their administrative remedies with the Town of Blacksburg, the Court doth so ADJUDGE, ORDER and DECREE, and

It further appearing to the Court that the Building Permit issued October 11, 1974 was legally and properly issued and that the Petitioners thereby acquired a vested right to construct and develop said commercial building and car wash in accordance with said permit and site plan, the Court doth so ADJUDGE, ORDER and DECREE, and

It further appearing to the Court that Petitioners constructed said commercial building and car wash in accordance with said permit and site plan and are entitled to a Certificate of Occupancy from the Town of Blacksburg, the Court doth ADJUDGE, ORDER and DECREE that the decision of the Board of Zoning Appeals of the Town of Blacksburg upholding the Zoning Administrator's decision not to issue said Certificate of Occupancy be, and it is, hereby, overruled, and Court doth further ADJUDGE, ORDER and DECREE that a Writ of Mandamus be, and it is hereby issued to the Zoning Administrator and proper Zoning and Planning Officials and the Zoning Administrator of the Town of Blacksburg, or other proper official, is hereby ORDERED to issue said Certificate of Occupancy and the Court doth further ORDER that the Respondents pay the costs of this case.

The Respondent having indicated an intention to appeal the judgment of this Court to the Supreme Court of Virginia, the execution of this Order is hereby suspended pending the determination of such appeal.

* * *

EXHIBIT I

Excerpt from Zoning Ordinance for the Town
of Blacksburg (Ordinance # 356) adopted February 12,
1974, (Pages 75 and 76) provides screening requirements
between residential and commercial zones as follows:

* * *

ARTICLE III

General Development Standards

* * *

Section 5 Screening By Structure on
Landscaping Requirements.

Screening Requirements

Certain activities shall be screened by
structures, walls, fences, landscaping or a combination
of these so that these activities will not be detrimental
to adjacent land.

Screening Standards

Required screening shall be provided in accordance
with the following standards except where otherwise provided
in Article II.

(1) It shall have an opaqueness of Seventy-
five percent (75%) or more.

* * *

ASSIGNMENTS OF ERROR

1. The trial Court erred in its findings, as follows:

(a) That the building permit was legally and properly issued.

(b) That the Appellees acquired a vested right to develop the land in accordance with the approved site plan even if it did not meet the requirements of the Zoning Ordinance.