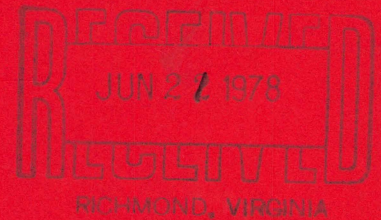


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CLERK  
SUPREME COURT OF VIRGINIA



IN THE  
SUPREME COURT OF VIRGINIA  
AT RICHMOND

---

GILBERT R. KNOWLTON,  
ZONING ADMINISTRATOR OF  
FAIRFAX COUNTY, VIRGINIA

Appellant,

v.

BROWNING-FERRIS INDUSTRIES OF VIRGINIA, INC.  
d/b/a BIG K TRASH SERVICE,  
RAYMOND H. ZELL, JR.,  
EVA J. ZELL,  
THOMAS A. GERMAINE,  
SAMUEL ZIFF,

Appellees.

RECORD NO. 780109

APPENDIX

Submitted by:  
Frederic Lee Ruck, Esquire  
County Attorney  
Robert F. Flinn, Esquire  
Assistant County Attorney  
4100 Chain Bridge Road  
Fairfax, Virginia 22030  
Counsel for Appellant



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## APPENDIX



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PHOTOGRAPH OF SUBJECT PROPERTY – PART OF EXHIBIT 1



### BILL OF COMPLAINT

NOW COMES Gilbert R. Knowlton, Complainant, and respectfully requests that this Honorable Court grant a permanent injunction enjoining the defendants from continuing to operate a business in violation of the Zoning Code of Fairfax County, and as grounds for this Bill states as follows:

1. That he is the duly appointed Zoning Administrator of the County of Fairfax, Virginia, and is empowered by Section 15.1-491(d) and 15.1-499 Va. Code Ann. (1973 replacement volume) and Section 30-14.1, Fairfax County, Virginia, Code, to bring legal action to insure compliance with the Zoning Ordinance of Fairfax County, including injunction;

2. That Raymond H. Zell, Jr. and Eva J. Zell are the joint and sole owners of a 6.035 acre parcel of land located at 6600 Sydenstricker Road in the Springfield Magisterial District of Fairfax County, Virginia, more particularly described in Fairfax County Deed Book 447 at 164 and designated Parcel 22 on Fairfax County Tax Assessment Map 88-2-((1));

3. That Browning-Ferris Industries of Virginia, Inc., doing business as Big K Trash Service, is a corporation and the leasee of the premises described in paragraph 2;

4. That Raymond H. Zell, Jr., is an employee of Browning-Ferris Industries of Virginia, Inc., and is the line manager of the business known as Big K Trash Service and located on the premise described in paragraph 2;

5. That Thomas A. Germaine is an employee of Browning-

Ferris Industries of Virginia, Inc.;

6. That Samuel Ziff is the president of Browning-Ferris Industries of Virginia, Inc.;

7. That the property described in paragraph 2 is zoned RE-1 (single family houses on one acre lots) and has been so zoned since 1941;

8. That the defendants are conducting a trash collection business on the property described in paragraph 2;

9. That the conduct of a trash collection business is not a use permitted by right in the RE-1 zoning district and is a violation of § 30-2.2.1 and § 30-2.2.2 of the Zoning Code of the County of Fairfax;

10. That the defendants are parking more than one commercial vehicle, to-wit, eighteen (18) trash trucks on the property described in paragraph 2.

11. That parking more than one commercial vehicle on property in the RE-1 zoning district is not permitted by § 30-3.2.1.4 of the Zoning Code of the County of Fairfax;

12. That the defendants are storing and warehousing stock in trade, to-wit, trash containers, on the property described in paragraph 2;

13. That the storing and warehousing of stock in trade is not a use permitted in the RE-1 district and is a violation of § 30-2.2.1 and § 30-2.2.2 of the Zoning Code of the County of Fairfax;

14. That the defendants are maintaining, repairing



and painting trucks and trash containers on the property described in paragraph 2;

15. That the maintaining, repairing and painting of trucks and trash containers is not a use permitted in the RE-1 district and is a violation of § 30-2.2.1 and §30-2.2.2 of the Zoning Code of the County of Fairfax.

WHEREFORE, Complainant respectfully requests that this Honorable Court issue a permanent injunction restraining defendants, their agents or employees, or others acting under their direction, from continuing to use the subject property for the purpose of conducting a trash business and from parking more than one commercial vehicle on the subject property.

GILBERT R. KNOWLTON

By /s/ Gilbert R. Knowlton  
Zoning Administrator  
for Fairfax County

ANSWER

COME NOW the Defendants, Raymond H. Zell, Jr., and Eva J. Zell, by counsel, and in answer to the Bill of Complaint they state the following:

1. The defendants admit the allegations set forth in paragraphs 1, 2, 3, 4, and 5.

2. The defendants deny the allegations set forth in paragraphs 6, 7, 8, 9, 10, 12, and 14.

3. Paragraphs 11, 13, and 15 are statements of law and not of fact and need not, therefore, be denied.

4. The use of the property is lawful and has been condoned by the County of Fairfax which is now estopped from interfering with its continuance.

RAYMOND H. ZELL, JR.  
EVA J. ZELL

By /s/ Dexter S. Odin  
Counsel



ANSWER

Comes now Defendants, Browning-Ferris Industries of Virginia, Inc. and Sam Ziff and for answer to the Bill of Complaint heretofore filed against them state as follows:

1. Defendants admit that the Complainant is the duly appointed Zoning Administrator, but denies the remainder of Paragraph 1 since it states a legal conclusion.

2. Defendants have insufficient information as to Paragraph 2 to admit or deny and therefore demand strict proof.

3. Defendants admit the allegations contained in Paragraph 3.

4. Defendants have insufficient information as to Paragraph 5 to admit or deny, and therefore demand strict proof.

5. Defendants admit the allegations contained in Paragraphs 4 and 6.

6. Defendants deny the allegations contained in Paragraph 7, but admit that the property is presently zoned RE-1.

7. Defendants admit the allegations contained in Paragraph 8.

8. Defendants deny the allegations contained in Paragraphs 9 and 11 because they call for legal conclusions.

9. Defendants admit that more than one commercial vehicle is parked on the premises, but deny the remainder of Paragraph 10.

10. Defendants deny the allegations contained in Paragraph 12.

11. Defendants deny the allegations contained in Paragraph 13 since it is a legal conclusion.

12. Defendants admit the allegations contained in Paragraph 14.

13. Defendants deny the allegations contained in Paragraph 15.

For further answer, Defendants state that the referred to business has been operated continuously on said property for approximately thirty (30) years. This use antedates the Fairfax County Zoning Ordinance.

Therefore having fully answered the Defendants' request that this Bill of Complaint be dismissed.

BROWNING-FERRIS INDUSTRIES  
OF VIRGINIA, INC. d/b/a  
BIG K TRASH SERVICE

By /s/ E. A. Prichard  
Counsel



FINAL ORDER

THIS CAUSE came on to be heard on May 24, 1977 and June 20, 1977 upon the papers formally read, upon the evidence presented by the Complainant and the Defendants, and upon argument of counsel for the Complainant and the Defendants;

AND IT APPEARING TO THE COURT that the Defendants have established by competent evidence that a general trucking business was established on the property owned by Raymond and Eva Zell as a legal nonconforming use and that this use has continued without interruption to the present time without any changes other than normal growth and business transitions and without expansion to any additional parcels of land, it is hereby

ADJUDGED, ORDERED and DECREED that the Complainant's request for a permanent injunction be and hereby is denied; and it is further

ADJUDGED, ORDERED and DECREED that the transcript of this matter become part of the record as provided in Rule 5:9(a) of the Rules of the Supreme Court of Virginia.

THIS DECREE IS FINAL.

ENTERED THIS 24th day of October, 1977.

/s/ Hon. Burch Millsap  
The Honorable Burch Millsap  
Circuit Court Judge

### ASSIGNMENTS OF ERROR

1. The court erred in refusing to rule that a landowner, when charged with conducting an industrial use in a residential zone, must bear the burden of proof in establishing a nonconforming use as an affirmative defense.

2. The court erred in allowing one nonconforming use to be changed to a different nonconforming use.

3. The court erred in ruling that the growth of the defendant's business was not an enlargement or extension of a nonconforming use as prohibited by law.

4. The court erred in ruling that the construction on the defendant's property was not an alteration or extension of the nonconforming buildings as prohibited by law.

EXHIBIT 11  
1941 Fairfax County Zoning Ordinance, adopted 2/5/41,  
effective 3/1/41, Sections III (Agricultural District)  
and Section X (Non-conforming Uses)

---

SECTION III

Agricultural District

A. Use Regulations: In any Agricultural District no building or structure shall be erected, altered, or used, and no land shall be used, unless otherwise provided in this Ordinance, except for one or more of the following uses:

1. Farming, dairy farming, livestock and poultry raising, lumber and sawmilling, and all uses commonly classed as agriculture and forestry, and uses which are customarily appurtenant thereto, and which are in harmony with the character of the neighborhood with no restrictions as to the operation of such vehicles or machinery as are incident to such uses and with no restrictions as to the sale or marketing of products raised on the premises, provided that no building or structure for the raising, housing or sale of poultry, livestock or other animals on a commercial scale, or sawmill, shall be located less than one hundred (100) feet from any street, lot or property line.
2. Any use permitted in the Rural Residence District, and subject to the same conditions in each case as set

forth in Section IV, A.

3. Any of the following uses subject to the provisions of Section XII.

- a. Tourist camps and cabins.
- b. Signs, billboards and other advertising devices.
- c. Hotels, Tea Rooms and Restaurants.
- d. Automobile filling stations and repair shops in connection therewith as permitted in the Rural Business District.
- e. Wayside stands for the sale of products produced in the immediate vicinity, except the set back required shall be twenty-five (25) feet from the nearest side line of the street or road or fifty (50) feet from the center line whichever is the greater distance.
- f. Mines (including utilization of any natural resources), quarries and gravel pits.

B. Height Regulations: No height regulations shall apply in the Agricultural District.

C. Area Regulations: The minimum size of yards and other open spaces including the minimum lot area per dwelling shall be as follows, except as provided in Section XI.

1. Lot area per structure: No structure shall be erected or placed on a lot or building site containing an area of less than one-half (1/2) acre, provided a larger area is not required by the Fairfax County Health Unit. The lot shall have width of not less than one hundred (100) feet, measured at the building set back line.
2. Building Set-Back Line: There shall be a building set-back line of not less than seventy-five (75) feet from the center line or fifty (50) feet from the side line of the abutting street, whichever is the greater distance.
3. Side Yards: There shall be on each side of every building a side yard having a minimum width of twenty-five (25) feet.
4. Rear Yards: No part of a building shall be erected within twenty-five (25) feet of the rear lot line.
5. Corner lots and corner clearance shall conform to provisions prescribed in Section XI.

\* \* \*

## Non-Conforming Uses

### A. Continuation of Non-Conforming Uses:

If at the time of enactment of this ordinance, any building, structure or land is being used in a character or manner or for a purpose or is in a location which does not conform to the provisions of this ordinance and which is not prohibited by some other ordinance, such character or manner of use or purpose or location as then existing may be continued, and no change of title or possession shall be construed to prevent the non-conforming use of such building, structure or land as hereinbefore provided.

### B. Termination of Non-Conforming Uses:

No building, structure or land in which a non-conforming use is abandoned for a period exceeding one hundred eighty (180) days, or is superseded by a permitted use subsequent to the enactment of this Ordinance, shall again be devoted to any prohibited use.

### C. Restoration After Damage:

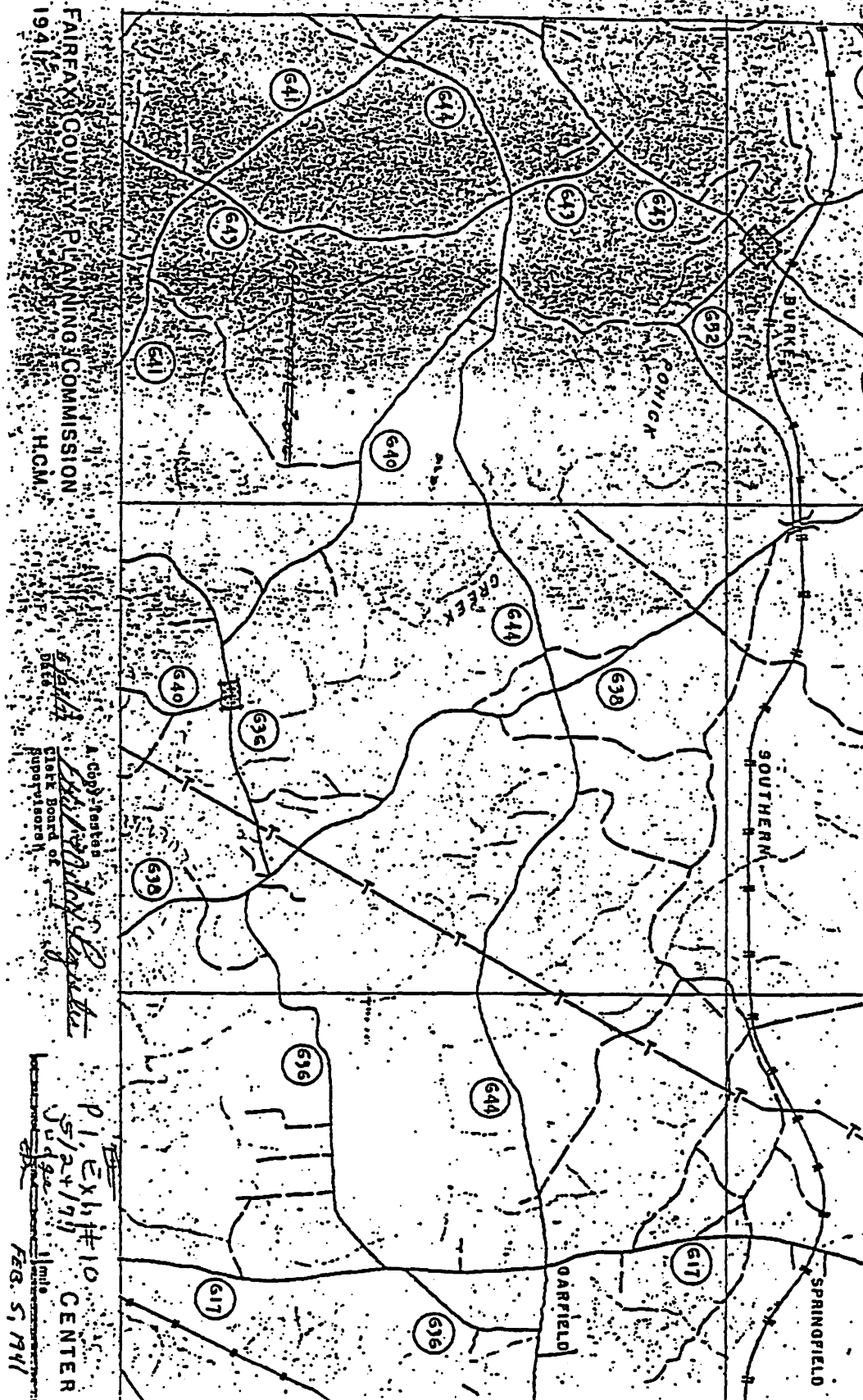
Any non-conforming building, structure, or land which is hereafter damaged to an extent exceeding fifty (50) per cent of its then reproduction value, exclusive of foundation, by fire, flood, explosion, earthquake, war,



riot, storm, or so-called Act of God, may not be restored, reconstructed, or used for any other purpose than a purpose permitted under the provisions of this ordinance governing the district in which the building, structure or land is located, except where the floors and/or foundation walls or agricultural buildings are concrete or other masonry and not practical to move, or if the non-conforming location is necessary to meet the requirements of the other existing regulations of the County or of the District of Columbia Health Department.

D. Nothing in this Ordinance shall prevent such structural alterations as may be necessary to restore to a safe or lawful condition any part of a building or structure declared unsafe or unlawful by any duly authorized County Official.

EXHIBIT 10  
1941 Zoning Map applicable to subject property.



# 1959 Fairfax County Zoning Ordinance, Schedule of Regulations, and Section 8, Non-Conforming Uses.

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BING &amp; P

DISTRICT	COLUMN 1	COLUMN 2	COLUMN 3		COLUMN 4
	USES PERMITTED BY RIGHT	SPECIAL PERMIT USES	APPROX. LOT SIZE		MINIMUM PERCENTAGE OF LOT COVERAGE
	The references in this schedule to "uses permitted" are to specified districts are solely to uses permitted by right, as set forth in this Column 1 for the respective districts, and do not apply to uses permitted on special permit obtained from the Board of Zoning Appeals, as set forth in Column 2, unless specifically so noted.	Uses permitted only on the obtaining of a special permit from the Board of Zoning Appeals for each use, in accordance with the provisions of Sections 11 and 12.			By (1) all main and accessory buildings in the aggregate, but not including buildings used exclusively for agricultural purposes, and (2) one parking space for each dwelling unit on the lot. For purposes of computing lot coverage, a minimum of 100 sq. ft. of accessory buildings or parking space shall be required for each dwelling unit occupying any lot.
			AREA	WIDTH	
RE-2	1. Accessory buildings and uses as specified in Section 4.1. 2. All agricultural uses. 3. Automobile parking as specified in Section 4. 4. Churches, schools, institutions and uses appropriate thereto. 5. Home occupations & home professional offices. 6. Community buildings. 7. Public and community uses, except fire stations. 8. Servicing of timber groves on the same property. 9. Signs as specified in Section 7. 10. Soil, sand or gravel removed but only as follows: (a) removal of such materials, for shipping and, to a maximum depth of 10 inches or (b) removal for use exclusively on the land from which the material is removed and by the owner or company thereof; or (c) conversion to connection with the construction or alteration of a building for which a building permit has been obtained; or (d) grading in accordance with an approved grading plan of a subdivision, as defined in Sec. 4-1 (2) of this Code, for which a final plat has been recorded among the land records of the county, except the removal of soil, gravel or sand for purposes of sale or resale unless in accordance with other provisions of this ordinance. 11. Upright stands for the sale of agricultural products grown in the immediate vicinity, or products of any home occupation conducted on the same property. 12. Keeping of horses on any lot not less than two acres in area.	The uses comprised within Groups I, II, III, IV, V, VI, VII, VIII and IX.	In approved subdivisions: average: 2 acres minimum: 50,000 sq. ft. All others: 2 acres.	Interior lots 200 ft.; corner lots 225 ft.	30%
RE-3		Same as specified for RE-2 districts.	In approved subdivisions: average: one acre minimum: 40,000 sq. ft. All others: one acre.	Interior lots 150 ft.; corner lots 175 ft.	30%
RE-3.5	11. Upright stands for the sale of agricultural products grown in the immediate vicinity, or products of any home occupation conducted on the same property. 12. Keeping of horses on any lot not less than two acres in area.	The uses comprised within Groups I, II, V, VI, and IX and vegetation grounds as comprised within Group VII.	In approved subdivisions: average: one-half acre minimum: 20,000 sq. ft. All others: one-half acre.	Interior lots 100 ft.; corner lots 125 ft.	30%
R-17	All uses permitted in RE districts subject to the following limitations: 1. All agricultural uses except the raising or keeping of livestock other than (a) fowl and animals kept incidentally to a residential use of the lot and (b) horses as provided in Item 12, Column 1 for RE districts. 2. Servicing prohibited.	Same as specified for RE-3.5 districts.	In approved subdivisions: average: 27,000 sq. ft. minimum: 15,000 sq. ft. All others: 27,000 sq. ft.	Interior lots 90 ft.; corner lots 115 ft.	30%
R-22.5	Same as specified for R-17 districts.	Same as specified for RE-3.5 districts.	In approved subdivisions: average: 22,500 sq. ft. minimum: 10,000 sq. ft. All others: 22,500 sq. ft.	Interior lots 80 ft.; corner lots 105 ft.	30%
R-28	Same as specified for R-17 districts.	Same as specified for RE-3.5 districts.	In approved subdivisions: average: 10,000 sq. ft. minimum: 5,000 sq. ft. All others: 10,000 sq. ft.	Interior lots 70 ft.; corner lots 95 ft.	30%
RM-2	1. All uses permitted in R-17 districts. 2. Semi-detached dwellings, subject to approval of a site plan for each use.	The uses comprised within Groups II and VI.	1. For uses permitted in R-17 districts: same as specified for R-17 districts. 2. For each dwelling unit of a semi-detached dwelling: In approved subdivisions: average: 2,500 sq. ft. minimum: 1,000 sq. ft. All others: 2,500 sq. ft.	50 feet	30%
RM-2	1. All uses permitted in R-17 districts. 2. Multi-family dwellings, subject to approval of a site plan of each development.	Same as specified for RM-1 districts.	1. For uses permitted in R-17 districts: same as specified for R-17 districts. 2. For multi-family dwellings: minimum lot width 75 feet for an interior lot or 100 feet for a corner lot; minimum lot area 30,000 sq. ft. but not less than a total area computed on the basis of the number of dwelling units on the lot and the number of rooms per dwelling unit, as follows: No. of rooms per dwelling unit: 1 3000 2 3000 3 3000 4 or more 3000 Sq. ft. of lot area per dwelling unit:		30%
RM-3	1. All uses permitted in RM-2 districts. 2. Mobile dwelling units, subject to approval of a site plan of each development.	Same as specified for RM-1 districts.			

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Catherine A. Butler

# CHEDULE OF REGULATIONS

OF SECTION 3 OF THE ZONING ORDINANCE OF FAIRFAX COUNTY, VA.

COLUMN 3	COLUMN 4	COLUMN 5	COLUMN 6	COLUMN 7	COLUMN 8	COLUMN 9
MAXIMUM HEIGHT OF BUILDING	MINIMUM YARD DIMENSIONS AND BUILDING LOCATION REQUIREMENTS			FLOOR AREA	MINIMUM OFF-STREET PARKING SPACE	OTHER OPEN SPACE
	The required minimum side yard width applies to each of 2 side yards, except for semi-detached dwellings in RM-3 districts; provided, however, that: 1. No side yard shall have a width of less than equal to one-half the height of the building to which it is adjacent; 2. The side yard on the side street side of a corner lot shall have a width of not less than the minimum depth of front yard required on that lot.				For the purpose of computing required off-street parking space, each automobile parking space shall be not less than 100 sq. ft. in area.	For the purpose of computing required off-street loading space, gross floor area shall be used, measured at the exterior walls of the building, and the basis of computation shall be as follows: 1. For all or part of a building used for offices or personal services establishments each building or part thereof as a unit. 2. For any building groups the aggregate floor area of the group. 3. For other uses, the individual establishment.
	FRONT YARD	SIDE YARD	REAR YARD			
Dwellings 35 ft. Buildings used exclusively for agricultural purposes NR Other buildings 45 ft.; or 75 ft. in conformity with the provisions of Section 4.1.4.	60 ft. from the front lot line or 75 ft. from the center line of the abutting street, whichever is greater.  Wayside streets: above dimensions less 25 ft.  None of the following structures shall be located at a distance of less than 100 ft. from any lot line: 1. All structures used for agriculture on a commercial scale and all other structures used for the confining or shelter of any poultry and livestock. 2. All structures used in connection with swimming.	20 feet  except as follows:	25 feet	NR	1. For dwellings: one space for each dwelling unit. 2. For churches: one space for each 8 seats. 3. For all other uses: a total number of spaces sufficient to accommodate the vehicles of all employees of the establishment, plus those of all persons who may be expected to visit the same at any one time, as determined by the Board of Zoning Appeals with respect to any use for which a permit from said board is required and by the Zoning Administrator with respect to all other uses, subject, under either procedure, to any requirements adopted by resolution of the Planning Commission in accordance with the policy as to automobile parking space set forth in Section 4.	1. Minimum off-street loading space: (a) For dwellings: NR. (b) All other uses: sufficient space to provide on the lot for all loading and unloading of goods or persons in connection with the use, as determined by the Board of Zoning Appeals with respect to any use for which a permit from said board is required and by the Zoning Administrator with respect to all other uses, subject, under either procedure, to any requirements adopted by resolution of the Planning Commission in accordance with the policy as to off-street loading space set forth in Section 4. 2. Adequate space for drainage, as determined in accordance with the provisions of Section 4.A.
Same as specified for RE-3 districts.	Same as specified for RE-3 districts.			NR	Same as specified for RE-3 districts.	Same as specified for RE-3 districts.
Same as specified for RE-3 districts.	Same as specified for RE-3 districts.			NR	Same as specified for RE-3 districts.	Same as specified for RE-3 districts.
Dwellings 35 ft. Buildings used for agricultural purposes 35 ft. Other buildings 45 ft.; or 60 ft. in conformity with the provisions of Section 4.1.4.	45 ft. from the front lot line or 75 ft. from the center line of the abutting street, whichever is greater.  None of the following structures shall be located at a distance of less than 100 ft. from any lot line: 1. All structures used for agriculture on a commercial scale. 2. All structures used for the confining or shelter of any poultry and livestock.	25 feet  except as follows:	25 feet	NR	Same as specified for RE-3 districts.	Same as specified for RE-3 districts.
Same as specified for R-17 districts.	40 ft. from the front lot line or 45 feet from the center line of the abutting street, whichever is greater. except as provided with respect to the exceptions listed for R-17 districts as set forth in this Column 6 of this schedule.	25 feet	25 feet	NR	Same as specified for RE-3 districts.	Same as specified for RE-3 districts.
Same as specified for R-17 districts.	30 ft. from the front lot line or 60 ft. from the center line of the abutting street, whichever is greater.  except as provided with respect to the exceptions listed for R-17 districts as set forth in this Column 6 of this schedule.	Not less than 1/2 the height of the building, except that no side yard shall be less than 15 feet.	25 feet	NR	Same as specified for RE-3 districts.	Same as specified for RE-3 districts.
Same as specified for R-17 districts.	35 ft. from the front lot line or 60 ft. from the center line of the abutting street, whichever is greater, except as provided with respect to the exceptions listed for R-17 districts as set forth in this Column 6 of this schedule.	For uses permitted in R-10 districts: same as specified for R-10 districts. For semi-detached dwellings: There shall be one side yard for each dwelling unit; which side yard shall conform to side yard requirements in the R-10 district.	25 feet	NR	Same as specified for RE-3 districts.	Same as specified for RE-3 districts.
Same as specified for R-17 districts.	1. For uses permitted in R-10 districts: same as specified for R-10 districts. 2. For multi-family dwellings: (a) No main or accessory building shall be located less than: I. 200 ft. from the center line of any street bordering the development; II. 30 ft. from the corner line of any street drive lying alongside any street bordering the development; III. 60 ft. from the center line of any street within the development, or 30 ft. from the right of way line thereof, whichever is greater. (b) No main building shall be located at a distance of less than 50 ft. from any side or rear property line and to no case closer than to a distance equal to the height of the building. (c) No accessory building shall be located at a distance of less than 25 ft. from any main building, or from any side or rear property line. (d) Minimum distance between main buildings: I. Front-to-front, front-to-rear, or rear-to-rear: 60 feet; II. End-to-end: not less than a distance equal to the average of the heights of the buildings; provided that if two buildings are so located that no portion of either building lies within the prolongation of lines along any two opposite exterior walls of the other, a distance of not less than 30 feet shall separate such buildings.			NR	1. For all uses permitted in R-10 districts: same as specified for RE-3 districts. 2. For multi-family dwellings: 1-1/2 spaces for each dwelling unit, at least one-third of which shall be so located as to be convenient for frequent forward-out vehicle movements and for use by tradesmen and visitors.	Same as specified for RE-3 districts and, in addition thereto: play space for multi-family dwellings: 50 sq. ft. for each dwelling unit, but not less than a play area of 5000 sq. ft. for any one multi-family development and located on the site thereof.
For uses permitted in RM-3 districts: same as specified for RM-3 districts. For mobile dwelling units: subject to the provisions of Section 2.5 (Trailer Parks).						
Same as specified for RM-3 districts and, in addition thereto: for each dwelling unit a mobile dwelling unit: play space as specified for multi-family dwellings in RM-3 districts, but not less than a play area of 2500 sq. ft. for any one mobile dwelling development and located on the site thereof.						

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## Section 8. Non-conforming Uses

8.1 The following types of non-conforming uses may be continued, and, on the obtaining of a permit from the Board of Zoning Appeals in accordance with the provisions of Subsection 3 of Section 11.6 any such use may be enlarged to an aggregate extent, at all times, of not to exceed 25 per cent of the area of land occupied by such use and to an aggregate extent, at all times, of not to exceed 25 per cent of the floor area of the building in which such use is conducted, but not so as to exceed the maximum building area or floor area prescribed for the district, and structural alterations may be made in such building to an aggregate extent, at all times, of not to exceed 50 per cent of its current appraised value according to the records of the Supervisor of Assessments.

8.1.1 A one-family dwelling existing as a non-conforming use in a C-D or an I district.

8.1.2 A use permitted in a C district of one class, either with or without a permit from the Board of Zoning Appeals, and existing as a non-conforming use in a C district of another class.

8.2 Any non-conforming use other than those specified in Section 8.1 may be continued but shall not be enlarged or extended nor shall any structural alteration be made in any building in which such use is conducted.

8.2.1 Any non-conforming junk yard in any district shall, within one year after the adoption of this ordinance, be brought into full conformity with the requirements as to fencing that are set forth in the ordinance of the county relating to the licensing and regulation of Automobile Graveyards in Fairfax County. This requirement shall apply regardless of the location of such junk yard with respect to any state highway.

8.2.2 Any non-conforming use may be extended to occupy any part of a building that was manifestly arranged or designed for such use at the time of the adoption of this ordinance, but no such use shall be extended to occupy any land outside such building. Except as provided in Section 8.1, no non-conforming use shall be extended to occupy a greater area of land than that occupied by such use at the time of the adoption of this ordinance.

8.2.3 Nothing in this article shall be deemed to prevent keeping in good repair a non-conforming building or a building in which a non-conforming use is conducted,

Section 8. Non-conforming Uses - Ctd.

but no such building that is declared by any duly authorized county official to be unsafe or unlawful by reason of physical condition shall be restored, repaired or rebuilt.

8.2.4 If a building in which a non-conforming use is conducted is moved for any distance whatever for any reason, then any future use of such building shall be in conformity to the regulations specified by this ordinance for the district in which such building is located. If any building in which any non-conforming use is conducted is hereafter removed, the subsequent use of the land on which such building was located and the subsequent location and use of any building thereon shall be in conformity to the regulations specified by this ordinance for the district in which such land is located.

8.2.5 A non-conforming building or a building in which a non-conforming use is conducted that is destroyed or damaged by any casualty to an extent not exceeding 50 per cent of its current appraised value according to the records of the Supervisor of Assessments, exclusive of foundations, may be restored within one year after such destruction or damage, but shall not be enlarged except as provided in Section 8.1. If any such building is so destroyed or damaged to an extent exceeding 50 per cent of its value as above, it shall not be reconstructed except

8.2.5.1 for a conforming use; or

8.2.5.2 if the building is used for agricultural purposes and the floors and foundation walls are of concrete or other masonry and are not practical to move; or

8.2.5.3 if the non-conforming location is necessary to meet any requirement or regulation of the Health Department of the county or of the District of Columbia; or

8.2.5.4 if the non-conforming building is a one-family dwelling, in which event it may be reconstructed within one year after the aforesaid destruction or damage so as to occupy the same space that it occupied prior to such destruction or damage, or any part thereof.



Section 8. Non-conforming Uses - Ctd.

- 8.2.6 If any non-conforming use ceases for any reason for a continuous period of 6 months or more other than for reasons beyond the control of the owner of the property, except for provisions of Section 8.2.5 above, or is changed to or replaced by a conforming use, the land and building theretofore devoted to such non-conforming use shall thereupon be subject to all the regulations as to use for the district in which such land and building are located, as if such non-conforming use had never existed.
- 8.2.7 Any use for the establishment of which a permit from the Board of Zoning Appeals is required under the use regulations for a particular district as set forth in the schedule contained in Section 3, whether such use is existing in such district at the time of the adoption of this ordinance or is subsequently established therein on the obtaining of such a permit, shall be deemed to be a conforming use in such district; provided that any subsequent replacement or enlargement of such use or of any building in which the same is conducted or the construction of any additional building for such use beyond the extent specified in any such permit (or the extent to which such use existed at the time of the adoption of this ordinance) shall be subject to the obtaining of a further permit therefor from the Board of Zoning Appeals.
- 8.2.8 The rights pertaining to a non-conforming use or building shall be deemed to pertain to the use or building itself, regardless of the ownership of the land or building on or in which such non-conforming use is conducted, or of such non-conforming building, or the nature or the tenure of the occupancy thereof.
- 8.2.9 All the foregoing provisions relating to non-conforming uses and buildings shall apply to all non-conforming uses and buildings existing at the time of the adoption of this ordinance and to all uses and buildings that become non-conforming by reason of any amendment thereof, but not to any use established or building erected in violation of law, regardless of the time of establishment or erection. However, any error in the location of any building with respect to required minimum yard dimensions or maximum percentage of lot area coverage applicable at the time such building was erected shall not be deemed to be a violation of the provisions of this ordinance if, and only if:

Section 8. Non-conforming Uses " Ctd.

8.2.9.1 the foundation and walls of the building are completed prior to the time of the adoption of this ordinance; and

8.2.9.2 the owner of the building obtains a certificate of non-conformity for the purposes of this section

(a) from the Zoning Administrator if the error does not exceed 10 per cent of the measurement that is involved;

(b) from the Board of Zoning Appeals if the error is greater than 10 per cent of the measurement that is involved, which certificate shall not be issued unless said Board finds that the error will not cause serious detriment to the neighborhood and will not be seriously adverse to the purposes of this ordinance.

Upon a finding of the foregoing facts and a statement of the foregoing opinion with respect to a particular building, the same shall be deemed to be a lawful non-conforming building, subject to the provisions of this Section 8. The Board of Zoning Appeals shall have no power to vary the application of any of the limitations specified in the foregoing proviso.

EXHIBIT 15  
1959 Zoning Map applicable to subject property

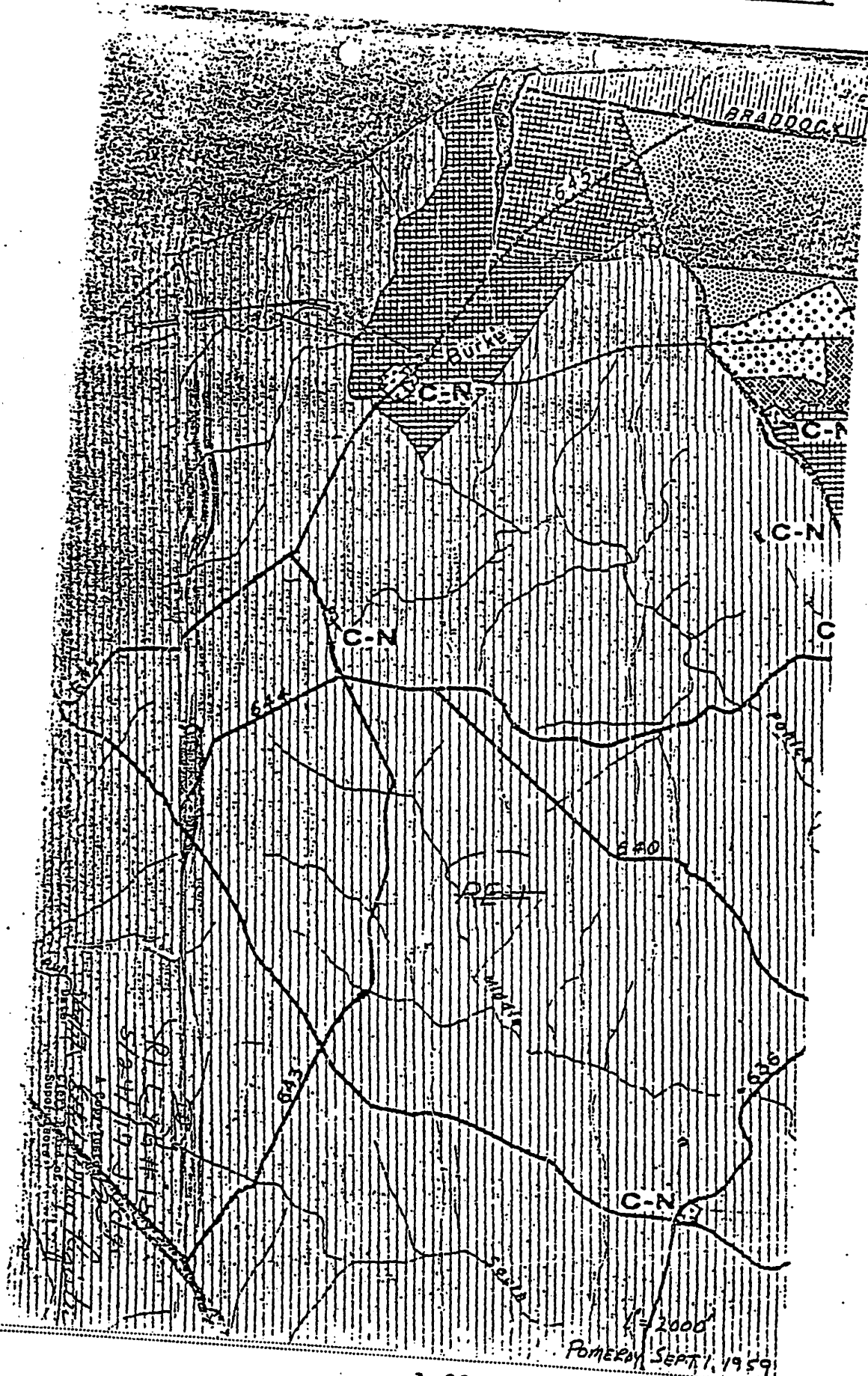


EXHIBIT 9

Present Fairfax County Zoning Ordinance, adopted May 19, 1965

30-2.2.

*Schedule of regulations.*

30-2.2.1.

GENERAL EFFECT. No building shall hereafter be erected and no existing building shall be moved, altered, added to or enlarged, nor shall any land or building be used, designed or arranged to be used for any purpose other than is included among the uses listed in the following schedule as permitted in the district in which such building or land is located, nor in any manner contrary to any other requirements specified in this article.

See Zoning  
Amendment  
#232

The regulations listed in said schedule for each district are hereby adopted and prescribed for each district and shall be deemed to be the minimum requirements in every instance of their application subject to the provisions of other sections of this chapter.

474.4

Supp. # 17, 2-73

Zoning  
Amend.  
#232

ADOPTION OF AN AMENDMENT TO CHAPTER 30  
(ZONING ORDINANCE) OF THE 1961 CODE OF  
THE COUNTY OF FAIRFAX, VIRGINIA  
AS AMENDED

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Room in the Massey Building at Fairfax, Virginia, on Monday, May 6, 1974, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment to Chapter 30, (Zoning Ordinance) Article II of the 1961 Code of the County of Fairfax, Virginia, as amended, said amendment so adopted being in the words and figures following, to-wit:

BE IT ORDAINED AND ENACTED BY THE BOARD OF SUPERVISORS OF  
FAIRFAX COUNTY:

- 2 -


Amend Chapter 30 (Zoning Ordinance) Article II (Districts Established; Regulations; Zoning Map), Section 30-2.2.1 (General Effect of the Schedule of Regulations) to read as follows:

General Effect. No building shall hereafter be erected and no existing building shall be moved, altered, added to or enlarged, nor shall any land or building be used, designed or arranged to be used for any purpose other than is included among the uses listed in the following schedule as permitted in the district in which such building or land is located, nor in any manner contrary to any other requirements specified in this article.

The setback and yard requirements of this Chapter, however, shall not apply to telephone booths and pedestals, underground utility equipment, mailboxes, bus shelters, public bicycle shelters, or any similar structure or device which in the opinion of the Zoning Administrator are obviously intended to be otherwise located in the public interest, and are not incongruous with the aesthetic standards of the surrounding area.

The regulations listed in said schedule for each district are hereby adopted and prescribed for each district and shall be deemed to be the minimum requirements in every instance of their application subject to the provisions of other sections of this chapter.

GIVEN under my hand this 6th day of May, 1974.

  
Theodore J. Wessel  
Acting Clerk to the Board



30-2:2.2 (Cont'd) ONE-FAMILY RESIDENTIAL 1 ACRE. (RE-1) DISTRICT.

Column 1 Uses Permitted By Right:

Same as specified for RE-2.

Column 2 Special Permit Uses:

Same as specified for RE-2.

Column 3 Minimum Lot Size:

Area: All lots other than in approved subdivisions shall have a minimum area of one acre. In approved subdivisions, lot area shall have an average of one acre, and the minimum lot area shall be 40,000 sq. ft.

In subdivisions approved for alternate density development, the minimum lot area shall be 20,000 sq. ft.

Width: Interior lots shall have a minimum width of 150 ft. Corner lots shall have a minimum width of 175 ft.

In subdivisions approved for alternate density development, the interior lots shall not have any minimum width.

Column 4 Maximum Percentage of Lot Coverage:

In subdivisions approved for alternate density development, the total number of lots shall not cover more than 50% of the gross acreage of the subdivision and the maximum number of lots per gross acre shall not exceed .92.

Column 5 Maximum Height of Building:

Same as specified for RE-2.

Column 6 Minimum Yard Dimensions and Building Location Requirements:

Same as those specified for RE-2 districts, except

Side: In subdivisions approved for alternate density development a minimum side yard of 12 feet and a total minimum of 40 feet.

Column 7 Floor Area:

NR

Column 8 Minimum Off-Street Parking Space:

Same as specified for RE-2 districts.

30-2.2.2 (Cont'd) Column 9 Other Open Space:

Same as specified for RE-2 districts.

## Column 1. Uses Permitted By Right:

Amended by Zoning  
Amendment # 250



Amended by Zoning  
Amendment # 285

1. Accessory buildings and uses as specified in section 30-3.2.
2. All agricultural uses.
3. Automobile parking as specified in sections 30-3.11 and 30-3.10.
4. ~~Home occupations and home professional offices.~~
- 4a. Offices for foundations formed for the promotion of the performing arts in facilities within Fairfax County which are owned by the National Park Service; provided, that:
  - (1) No such use shall be maintained for a period of more than 12 months.
  - (2) Such use shall be conducted in an existing structure located within one mile of the facility in which the performances promoted will occur.
  - (3) No more than 6 employees of said foundation shall be employed in such office at any one time.
5. One-family dwellings.
6. Public uses, except fire stations, subject to approval of a site plan of each development.
7. Sawmilling of timber grown on the same property.
8. Signs as specified in Article 16 of this chapter.
9. Soil removal but only as follows:
  - a. Removal from an R district of sod and soil to a depth of not more than eighteen inches and over an area not exceeding 5,000 square feet; or
  - b. Removal or excavation necessary for construction when in accordance with an approved site plan or approved plans and profiles for a subdivision when such approval has been obtained in accord with the provisions of this Code.
  - c. Grading of land in accord with a grading plan approved by the director, which grading plan shall provide for even finished grades which meet adjacent properties' grades and do not substantially alter natural drainage, and which plans include siltation and erosion control measures conforming with section 17-7a of this Code.

Any other grading, excavating, mining and/or burrowing of land not listed above shall be permitted only in accordance with the provisions of section 30-7.2.1 of this chapter.
10. Wayside stands for the sale of agricultural products grown in the immediate vicinity, or products of any home occupation conducted on the same property.
11. Keeping of livestock, fowl, and animals *ferae naturae* on any lot not less than two acres in area, provided, however, that such minimum area shall not be deemed to limit the keeping of rabbits, hamsters, mice, guinea pigs, and other similar such small animals, or birds or fowl, for personal use or enjoyment, when such animals are not kept

30-2.2.2 (Cont'd)

for sale or other commercial purpose, and further provided that such animals, birds or fowl are confined to the interior of the dwelling or other permitted accessory building not designed for the primary purpose of keeping such animals, birds or fowl.

12. Guest house as an accessory building located on a lot not less than two acres.

0-2.2.2 (Cont'd) 13. Construction or building material yard; provided that:

- (a) no such yard shall be maintained for a period in excess of 18 months unless such time be extended by the Board of Zoning Appeals.
- (b) such yard serves only the recorded subdivision within which it is located or additional sections thereof.
- (c) no portion of such yard is closer than 150 feet to any dwelling not occupied or leased by the owner of the subdivision and not nearer than 50 feet to the right of way line of any public road or street existing prior to the recordation of the subdivision served by such yard, and provided further if such yard is to be used in connection with the construction of 100 or more dwellings, then no portion thereof shall be closer than 300 feet to any dwelling not owned or leased by the owner of the subdivision and not nearer than 100 feet to the right of way line of any public road or street existing prior to the recordation of the subdivision served by such yard.
- (d) all areas of such yard and access thereto are treated or kept in such a manner as to prevent dust or debris from blowing or spreading onto the property of another or onto any public road or right of way, and are maintained in a clean and orderly manner, and building material and construction residue and debris are not permitted to accumulate.
- (e) all buildings, materials, supplies and debris are completely removed from such yard within 60 days from the date of completion of the last building to be constructed in the subdivision or within 60 days from the date active construction within the subdivision is discontinued, whichever occurs first. The use of temporary office facilities and the storage of building materials, supplies and construction equipment on a lot for use in connection with the erection of a structure or structures thereon, for which a building permit has been issued, or construction otherwise authorized, and during the actual construction of such structure or structures, are permitted uses and not subject to sub paragraphs a., b., and c., hereof.

14. Family day care homes.

Column 2: A Special Permit Uses

—  
Add 15. - See  
Zoning Amendment  
#222

↓  
Delete 15. - See  
Zoning  
Amendment #260

Amended by Zoning  
Amendment #215

~~The uses comprised within Groups II, III, IV, V, VI, VII, VIII, and IX as set out in Sections 30-7 thru 30-7.2.10.3 may be allowed under special permit.~~

30-2.2.2 (Cont'd) Column 3 Minimum Lot Size:

Area: All lots other than in approved subdivisions shall have a minimum area of two acres. In approved subdivisions, lot area shall have an average of two acres, and the minimum lot area shall be eighty thousand square feet.

In subdivisions approved for alternate density development, the minimum lot area shall be 40,000 square feet.

Width: Interior lots shall have a minimum width of two hundred feet. Corner lots shall have a minimum width of two hundred twenty-five feet.

In subdivisions approved for alternate density development, interior lots shall not have any minimum width.

Column 4 Maximum Percentage of Lot Coverage:

In subdivisions approved for alternate density development, the lots shall not cover more than 48% of the gross acreage of the subdivision, and the maximum number of lots per gross acre shall not exceed .47.

Column 5 Maximum Height of Building

Dwellings: 35 feet

Buildings used exclusively for agricultural purposes: NR

Other buildings: 45 feet, provided that a building may be erected to a maximum height of ninety feet if it is set back from every street and lot line, in addition to each of the required minimum yard dimensions, a distance of not less than two feet for each one foot of height that it exceeds the forty-five foot limit.

Amended by  
Zoning Amendment  
#316

Column 6. Minimum Yard Dimensions and Building Location Requirements:

None of the following structures shall be located at a distance of less than 100 feet from any lot line:

- a. All structures used for agriculture on a commercial scale and all other structures used for the confining or shelter of any poultry and livestock and any structures used for the confining or shelter of four or more dogs but excluding dogs of less than four months of age; except that any structure used for the confining or shelter of horses or ponies may be located not less than twenty feet from the rear lot line and forty feet from the side line on 80,000 square feet of land or more.



30-2.2.2 (Cont'd) b. All structures used in connection with sawmilling.

Front: 50 feet from the front lot line or 75 feet from the center line of the abutting street, whichever is greater.

Wayside stands: above dimensions less 25 ft.

In subdivisions approved for alternate density development front yards shall be a minimum of 30 feet from the front lot line where facing on a local street with 50 feet of right of way or less, and a minimum of 45 feet where facing on a local or major thoroughfare with 60 feet of right of way or more.

Side: 20 feet

In subdivisions approved for alternate density development, a minimum side yard of 15 feet and a total minimum of 40 feet shall be provided.

Rear: 25 feet, except corner lots, which setback shall be the same as side yard requirements.

Column 7 Floor Area:

NR

Column 8 Minimum Off-Street Parking Space:

1. For dwellings: one space for each dwelling unit.
2. For churches: one space for each 5 seats.
3. For all other uses: a total number of spaces sufficient to accommodate the vehicles of all employees of the establishment, plus those of all persons who may be expected to visit the same at any one time, as determined by the board of zoning appeals with respect to any use for which a permit from said board is required and by the Zoning Administrator with respect to all other uses; subject, under either procedure, to any requirements adopted by resolution of the Planning Commission in accordance with the policy as to automobile parking space set forth in sections 30-3.10 and 30-3.11.

Column 9 Other Open Space:

1. Minimum off-street loading space:
  - (a) For dwellings: NR
  - (b) All other uses: Sufficient space to provide

30-2.2.2 (Cont'd)

on the lot for all loading and unloading of goods or persons, in connection with the use, as determined by the board of zoning appeals with respect to any use for which a permit from the said board is required and by the zoning administrator with respect to all other uses, subject, under either procedure, to any requirements adopted by resolution of the planning commission in accordance with the policy as to off-street loading space set forth in sections 30-3.10 and 30-3.3.11.

2. Adequate space for drainage, as determined in accordance with the provisions of section 30-3.6.

Amended by  
Zoning  
Amendment #305

~~In subdivisions approved for alternate density development, a minimum of 3 acres of open space shall be provided in one continuous parcel of land with a minimum depth and width of 50 feet and an average of 200 feet.~~

In cases where the balance of land not contained in lots and streets is needed by the County of Fairfax for school sites, parks, recreational areas, highways or flood plains, the location as determined by the County Planning Engineer, and such land is suitable in size, shape, condition and topography, and such needed purpose as determined by the County Planning Engineer of Fairfax County, then this land shall be deeded to Fairfax County for such purpose.

The Planning Engineer may, however, approve the balance of the land not contained in lots and streets to be conveyed to a non profit corporate ownership authorized under the laws of Virginia, provided that the owner or developer presents a plan, proper agreements, covenants, acceptable to the County for the development and maintenance of the open land. The members of such non profit corporate ownership shall be the owners of all the lots in the subdivision and said land to be held and used for the recreational purposes for the owners of the said subdivision lots. Covenants shall provide that assessments, charges, and costs for the maintenance of open space, whether made by the corporate ownership or the County, shall constitute a pro rata lien upon the individual lots of the subdivision, second only to taxes, and any bona fide duly recorded first trust lien on each lot.

Open space not contained in lots and streets shall not be denuded, defaced nor otherwise disturbed in any manner at any time without the approval of the appropriate County Departments and in concurrence with the County Planning Engineer.

Zoning  
Ord.  
#215

ADOPTION OF AMENDMENTS TO CHAPTER 30  
(ZONING ORDINANCE) OF THE 1961 CODE OF  
THE COUNTY OF FAIRFAX, VIRGINIA,  
AS AMENDED

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Room in the Massey Building, at Fairfax, Virginia, on Monday, May 7, 1973, the Board, after having first given notice of its intention so to do, in the manner prescribed by law, adopted amendments to Chapter 30, (Zoning Ordinance) of the 1961 Code of the County of Fairfax, Virginia, as amended, said amendments so adopted being in the words and figures following, to-wit:

Amend Article II, Section 30-2.2.2 (Schedule of Regulations), Column 2 (Special Permit Uses), of the RE-2 District so as to read as follows:

Column 2

Special Permit Uses:-

The uses comprised within Groups II, III, IV, V, VI, VII, VIII, IX and those Group X uses permitted in R districts as set forth in Article VII of this Chapter may be allowed under Special Use Permits.

Zoning  
Amend.  
#222

ADOPTION OF AMENDMENT TO CHAPTER 30  
(ZONING ORDINANCE) OF THE 1961 CODE OF  
THE COUNTY OF FAIRFAX, VIRGINIA,  
AS AMENDED

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Room in the Massey Building, at Fairfax, Virginia, on Monday, October 1, 1973, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment to Chapter 30, (Zoning Ordinance) of the 1961 Code of the County of Fairfax, Virginia, as amended, said amendment so adopted being in the words and figures following, to-wit:

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA:

Amend Chapter 30 (Zoning Ordinance) of the 1961 Code of the County of Fairfax, Virginia, as amended, as follows:

Amend Article II, Section 30-2.2.2 (Schedule of Regulations), Column 1 of the RE-2 District by adding thereto a new item 14 to read as follows: 15

15. One-family dwellings under the Horizontal Property Act of Virginia, subject to site plan approval for each development.

Zoning  
Amendment  
#250

ADOPTION OF AN AMENDMENT TO CHAPTER 30  
(ZONING ORDINANCE) OF THE 1961 CODE OF  
THE COUNTY OF FAIRFAX, VIRGINIA,  
AS AMENDED

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Room in the Massey Building, at Fairfax, Virginia, on Monday, June 23, 1975, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment to Chapter 30 (Zoning Ordinance), Article II (Schedule of Regulations) of the 1961 Code of the County of Fairfax, Virginia, as amended, said amendment so adopted being in the words and figures following, to-wit:

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF  
FAIRFAX COUNTY:

Amend Article II, Section 30-2.2.2 (Schedule of Regulations), Column 1 of the RE-2 district, Item 4, to read as follows:

4. Home Occupation.

GIVEN under my hand this 23rd day of June, 1975.

*Ethel Wilcox Register*  
Ethel Wilcox Register  
Clerk to the Board

Zoning  
Amend.  
#260

ADOPTION OF AN AMENDMENT TO CHAPTER 30  
(ZONING ORDINANCE) OF THE 1961 CODE OF  
THE COUNTY OF FAIRFAX, VIRGINIA,  
AS AMENDED

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Room in the Massey Building, at Fairfax, Virginia, on Wednesday, September 3, 1975, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment to Chapter 30 (Zoning Ordinance), of the 1961 Code of the County of Fairfax, Virginia as amended, said amendment so adopted being in the words and figures following, to-wit:

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY:

( Amend Article II, Section 30-2.2.2 (Schedule of Regulations), Column 1 of the RE-2 District, Paragraph 15, by deleting that paragraph in its entirety.

Zoning  
Amend.  
#285

ADOPTION OF AN AMENDMENT TO CHAPTER 30  
(ZONING ORDINANCE) OF THE 1961 CODE OF  
THE COUNTY OF FAIRFAX, VIRGINIA  
AS AMENDED

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Room in the Massey Building, at Fairfax, Virginia, on Monday, January 10, 1977, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment to Chapter 30 (Zoning Ordinance), of the 1961 Code of the County of Fairfax, Virginia, as amended, said amendment so adopted being in the words and figures following, to-wit:

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY:

Amend Chapter 30 (Zoning), Article II, Section 30-2.2.2 (Schedule of Regulations), Column I (Uses Permitted by Right) of the RE-2 District by rewording item #4 to read as follows:

4. Home Occupation as defined, subject to approval of each occupation by the Zoning Administrator.

Zoning Amend  
#305

ADOPTION OF AMENDMENT TO CHAPTER 30  
(ZONING ORDINANCE) OF THE 1961 CODE OF  
THE COUNTY OF FAIRFAX, VIRGINIA,  
AS AMENDED

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Room in the Massey Building, at Fairfax, Virginia, on Monday, July 11, 1977, the Board, after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment to Chapter 30 (Zoning), Article II, of the 1961 Code of the County of Fairfax, Virginia, as amended, said amendment so adopted being in the words and figures following, to-wit:

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY:

Amend Chapter 30 (Zoning), Section 30-2.2.2 (RE-2, Column 9) as follows:

In subdivisions approved for alternate density development, a minimum of three acres of open space shall be provided in one continuous parcel of land with a minimum depth and width of fifty feet and an average of 200 feet, except that only the Board of Supervisors may permit minor deviations in the minimum requirements with appropriate proffered conditions if it finds that it will further the intent of the Zoning Ordinance, the applicable comprehensive plan, and other adopted policies.

GIVEN under my hand this 11th day of July, 1977.

*Ethel Wilcox Register*  
Ethel Wilcox Register  
Clerk to the Board



Zoning #316

ADOPTION OF AN AMENDMENT TO CHAPTER 30  
(ZONING ORDINANCE) OF THE 1961 CODE OF  
THE COUNTY OF FAIRFAX, VIRGINIA,  
AS AMENDED

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Room in the Massey Building, at Fairfax, Virginia, on Tuesday, October 11, 1977, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment to Chapter 30 (Zoning Ordinance), of the 1961 Code of the County of Fairfax, Virginia, as amended, said amendment so adopted being in the words and figures following, to-wit:

BE IT ORDAINED AND ENACTED BY THE BOARD OF SUPERVISORS OF  
FAIRFAX COUNTY:

Amend Article II, Section 30-2.2.2 (Schedule of Regulations), Column 6 of the RE-2 District, to read as follows:

Column 6 Minimum Yard Dimensions and Building Location Requirements:

1. None of the following structures shall be located at a distance of less than one hundred feet (100') from all property lines:
  - a. All structures used in connection with sawmilling.
  - b. All structures used in connection with agriculture on a commercial scale.

- c. All structures used for the confining or sheltering of any poultry or any livestock, except horses and ponies.
- 2. Wayside stands shall be not less than twenty-five feet (25') from all property lines.
- 3. Structures used for the confining or sheltering of horses or ponies, not involving a riding stable as defined, shall be on lots of not less than 80,000 square feet, and shall be not less than twenty feet (20') from the rear, and forty feet (40') from all side property lines.
- 4. The keeping of dogs, other than as a kennel under the provisions of Group VII of this Chapter (Section 30-7.2.8.1.1), shall be in accordance with the following:
  - a. Two (2) dogs may be kept upon any lot without restriction as to area or setback.
  - b. Four (4) dogs may be kept upon any lot of 12,500 square feet or more subject to the provisions of subparagraphs (d) and (e).
  - c. Six (6) dogs may be kept upon a lot of 20,000 square feet or more subject to the provisions of subparagraphs (d) and (e).
  - d. When four or more dogs are kept upon any lot of 12,500 square feet or more, such dogs shall be kept not less than twenty-five feet (25') from all property lines.
  - e. Additional dogs above the six (6) allowed in paragraph c above may be kept, provided that, in addition to the requirements of paragraph d above, the setback is increased ten feet (10') not to exceed a maximum of one hundred feet (100'), and the lot area is increased 10,000 square feet for each additional two (2) dogs.
  - f. In counting the number of dogs upon a lot, only those dogs which have attained the age of six (6) months shall be counted.
  - g. The word "kept," as used in this Section, shall mean any enclosure or structure used to house, shelter, restrain or exercise dogs, but shall not mean a dwelling or a fence constructed to demarcate a property line.

Nothing in this Chapter shall be construed to determine the type of license required for dogs under the provisions of Chapter 41 of this Code.

5. In subdivisions approved for alternate density development, the following setbacks shall apply:
  - a. Front: Thirty feet (30') from the front property line facing on a local street with fifty feet (50') of right-of-way width.
  - b. Side: Fifteen feet (15') minimum setback, and the total of the two side yards upon that lot shall not be less than forty feet (40').
  - c. Rear: Twenty-five feet (25').
6. For all other buildings, structures or uses, the following setbacks shall apply:
  - a. Front: Fifty feet (50') from the front lot line or seventy-five feet (75') from the center line of the abutting street, whichever is greater.
  - b. Side: Twenty feet (20').
  - c. Rear: Twenty-five feet (25').

GIVEN under my hand this 11th day of October, 1977.

  
Ethel Wilcox Register  
Clerk to the Board

**Sec. 30-4. Nonconforming uses.**

- 30-4.1. *Uses which may be continued and enlarged.* The following types of nonconforming uses may be continued, and, on the obtaining of a permit from the board of zoning appeals in accordance with the provisions of subsection 30-6.7, any such use may be enlarged to an aggregate extent, at all times, of not to exceed twenty-five per cent of the area of land occupied by such use and to aggregate extent, at all times, of not to exceed twenty-five per cent of the floor area of the building in which such use is conducted, but not so as to exceed the maximum building area or floor area prescribed for the district, and structural alterations may be made in such building to an aggregate extent, at all times, of not to exceed fifty per cent of its current appraised value according to the records of the supervisor of assessments:
- 30-4.1.1. A one-family dwelling existing as a nonconforming use in a C-D or an I district.
- 30-4.1.2. A use permitted in a C district of one class, either with or without a permit from the board of zoning appeals, and existing as a nonconforming use in a C district of another class.
- 30-4.2. *Uses which may be continued but not enlarged.* Any nonconforming use other than those specified in subsection 30-4.1 may be continued but shall not be enlarged or extended, nor shall any structural alteration be made in any building in which such use is conducted.
- 30-4.2.1. Any nonconforming junk yard in any district shall, within one year after the adoption of this chapter, be brought into full conformity with the requirements as to fencing that are set forth in chapter 3. This requirement shall apply regardless of the location of such junk yard with respect to any state highway.
- 30-4.2.2. Any nonconforming use may be extended to occupy any part of a building that was manifestly arranged or designed for such use at the time of the adoption of this chapter, but no such use shall be extended to occupy any land outside such building. Except as provided in subsection 30-4.1, no nonconforming use shall be extended to occupy

a greater area of land than that occupied by such use at the time of the adoption of this chapter.

30-4.2.3.

Nothing in this section shall be deemed to prevent keeping in good repair a nonconforming building or a building in which a nonconforming use is conducted, but no such building that is declared by any duly authorized county official to be unsafe or unlawful by reason of physical condition shall be restored, repaired or rebuilt.

30-4.2.4.

If a building in which a nonconforming use is conducted is moved for any distance whatever for any reason, then any future use of such building shall be in conformity to the regulations specified by this chapter for the district in which such building is located. If any building in which any nonconforming use is conducted is hereafter removed, the subsequent use of the land on which such building was located and the subsequent location and use of any building thereon shall be in conformity to the regulations specified by this chapter for the district in which such land is located.

30-4.2.5.

A nonconforming building or a building in which a nonconforming use is conducted that is destroyed or damaged by any casualty to an extent not exceeding fifty per cent of its current appraised value according to the records of the supervisor of assessments, exclusive of foundations, may be restored within one year after such destruction or damage but shall not be enlarged except as provided in subsection 30-4.1. If any such building is so destroyed or damaged to an extent exceeding fifty per cent of its value as above, it shall not be reconstructed except:

(1) For a conforming use.

(2) If the building is used for agricultural purposes and the floors and foundation walls are of concrete or other masonry and are not practical to move.

(3) If the nonconforming location is necessary to meet any requirement or regulation of the health department of the county or of the District of Columbia.

(4) If the nonconforming building is a one-family dwelling, in which event it may be reconstructed within one year after the aforesaid destruction or damage so as to occupy the same space that it occupied prior to such destruction or damage or any part thereof.

30-4.2.6.  
Amended by  
Zoning  
Amendment  
#290

~~If any nonconforming use ceases for any reason for a continuous period of six months or more other than for reasons beyond the control of the owner of the property, except for provisions of subsection 30-4.2.5, or is changed to or replaced by a conforming use, the land and building theretofore devoted to such nonconforming use shall thereupon be subject to all the regulations as to use for the district in which such land and building are located as if such nonconforming use had never existed.~~

30-4.2.7.

Any use for the establishment of which a permit from the board of zoning appeals is required under the use regulations for a particular district as set forth in subsection 30-2.2.2, whether such use is existing in such district at the time of the adoption of this chapter or is subsequently established therein on the obtaining of such a permit, shall be deemed to be a conforming use in such district; provided, that any subsequent replacement or enlargement of such use or of any building in which the same is conducted or the construction of any additional building for such use beyond the extent specified in any such permit (or the extent to which such use existed at the time of the adoption of this chapter) shall be subject to the obtaining of a further permit therefor from the board of zoning appeals.

30-4.2.8.

The rights pertaining to a nonconforming use or building shall be deemed to pertain to the use or building itself, regardless of the ownership of the land or building on or in which such nonconforming use is conducted or of such nonconforming building or the nature or the tenure of the occupancy thereof.

30-4.2.9.

All the foregoing provisions relating to nonconforming uses and buildings shall apply to all nonconforming uses and buildings existing at the time of the adoption of this chapter and to all uses and buildings that become nonconforming by reason of any amendment thereof, but not to any use established or building erected in violation of law, regardless of the time of establishment or erection.

30-4.2.9.1.

ADDITIONAL PROVISIONS CONCERNING ERRORS IN LOCATION OF BUILDINGS. However, any error in the location of any building with respect to required minimum yard dimensions or maximum percentage of lot area coverage applicable at the time such building was erected shall not be deemed to be a violation of the provisions of this chapter

if and only if:

(1) The foundation and walls of the building are completed prior to the time of the adoption of this chapter; and

(2) The owner of the building obtains a certificate of nonconformity for the purposes of this section:

a. From the zoning administrator if the error does not exceed ten per cent of the measurement that is involved.

b. From the board of zoning appeals if the error is greater than ten per cent of the measurement that is involved, which certificate shall not be issued unless the board finds that the error will not cause serious detriment to the neighborhood and will not be seriously adverse to the purposes of this chapter.

Upon a finding of the foregoing facts and a statement of the foregoing opinion with respect to a particular building, the same shall be deemed to be a lawful nonconforming building, subject to the provisions of this article. The board of zoning appeals shall have no power to vary the application of any of the limitations specified in the foregoing proviso. (5-19-65.)

Zoning  
Amend.  
#290

ADOPTION OF AN AMENDMENT TO CHAPTER 30  
(ZONING ORDINANCE) OF THE 1961 CODE OF  
THE COUNTY OF FAIRFAX, VIRGINIA  
AS AMENDED

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Room in the Massey Building, at Fairfax, Virginia, on Tuesday, February 22, 1977, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment to Chapter 30 (Zoning Ordinance), Section 30-4.2.6 of the 1961 Code of the County of Fairfax, Virginia, as amended, said amendment so adopted being in the words and figures following, to-wit:

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX  
COUNTY:

Amend Chapter 30 (Zoning), Section 30-4.2.6 as follows:

Section 30-4.2.6.

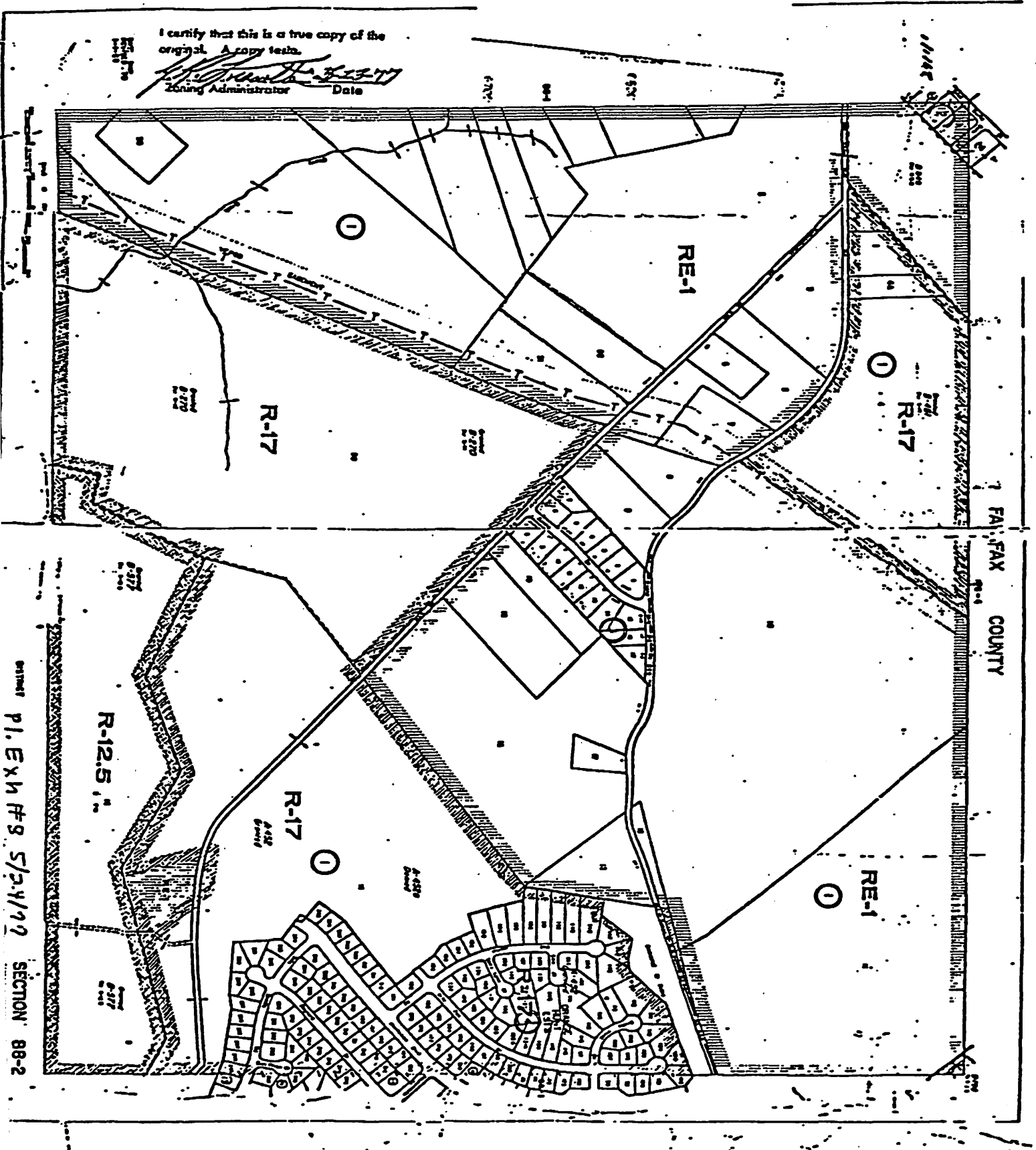
If any nonconforming use ceases for any reason for a continuous period of two years or more other than for reasons beyond the control of the owner of the property, except for provisions of subsection 30-4.2.5, or is changed to or replaced by a conforming use, the land and building theretofore devoted to such nonconforming use shall thereupon be subject to all the regulations as to use for the district in which such land and building are located as if such nonconforming use had never existed.

GIVEN under my hand this 22nd day of February, 1977.

*Ethel Wilcox Register*  
Ethel Wilcox Register  
Clerk to the Board



Applicable Zoning Map for subject  
property under existing Zoning Ordinance



## COUNTY OF FAIRFAX, VA. - BUILDING PERMIT

Zell, Raymond H.

No. **P 26894**Has Per-  
mission To**Build Barn**

according to approved plans and application

Date **4/1/65**

Lot No.

Blk. No.

Sect.

Mag. Dist.

**Mason**

Subdivision

**Acreage**Use  
Group **M**Type  
Const. **4-B**Fire  
Dist.Street or  
Location**Route 640**

Contractor

**Owner**Valuation **\$2,500.00**Fee **\$17.00**

COUNTY OF FAIRFAX

APR 5 1965

NOTE: Notify Office of Building Inspector 24 hours in  
Advance of:INSTALLING FOOTINGS  
POURING REINFORCING CONCRETE

DIRECTOR OF FINANCE CONCEALING FRAMING

AND WHEN READY FOR FINAL INSPECTION

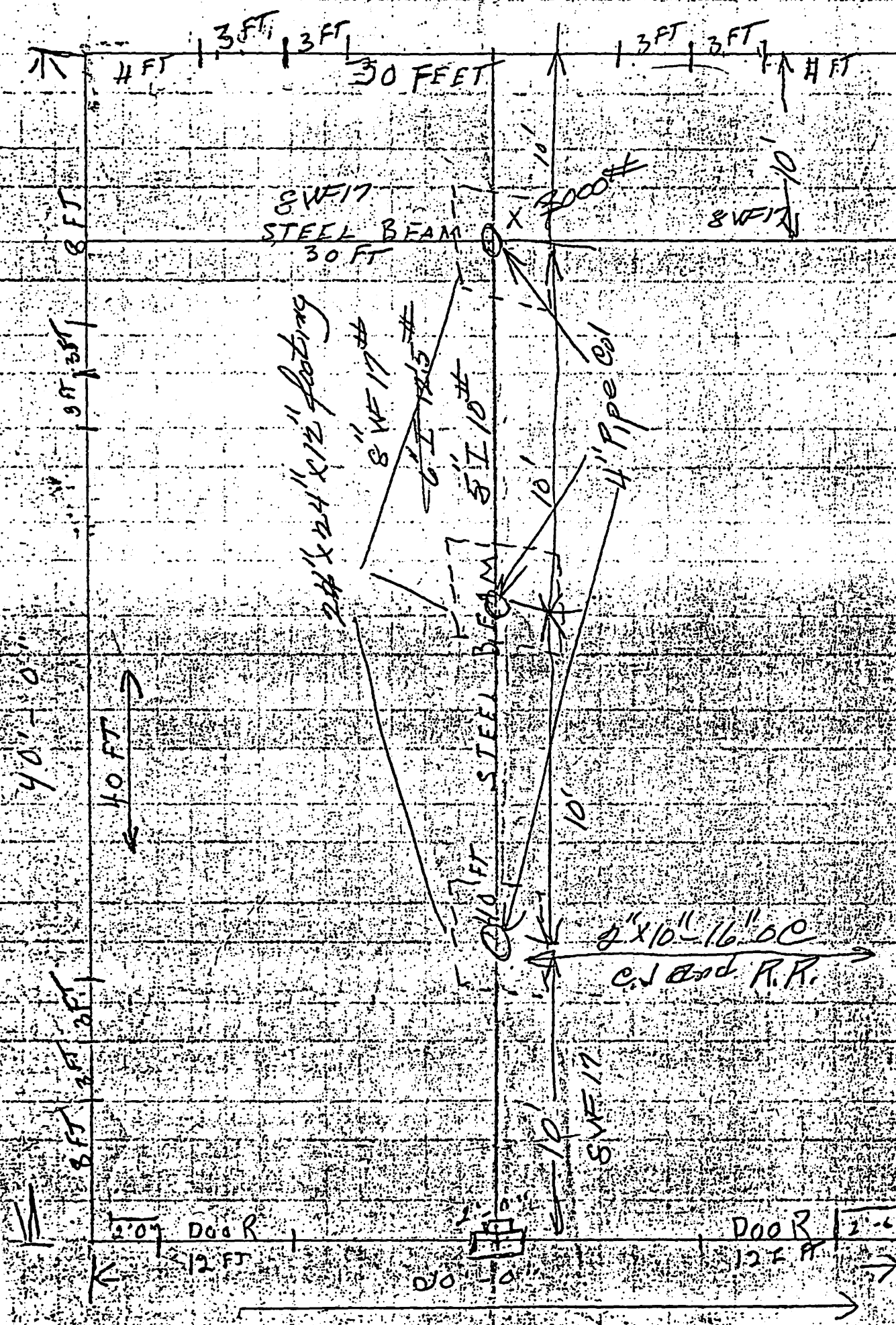
THIS PERMIT IS NOT COMPLETE OR VALID UNLESS SIGNED BY  
THE BUILDING INSPECTOR AND RECEIPTED BY THE DIRECTOR OF  
FINANCE.PERMIT EXPIRES SIX MONTHS FROM DATE OF ISSUE IF NO  
WORK HAS COMMENCED.

PERMIT NOT TRANSFERABLE.

(See Reverse Side)

**Charles W. Wood**  
BUILDING INSPECTOREXHIBIT 7  
Building Permit for Barn, 1965





PLANS APPROVED FOR PERMIT S  
 TO APPROVAL OF CONSTRUCTION  
 Charles W. W.

## EXHIBIT 13

Building Permit for Porch, 1959

COUNTY OF FAIRFAX, VIRGINIA

OFFICE OF THE BUILDING INSPECTOR

# Application for Building Permit

CENSUS TRACT NO.	111.61
9/14 1959	288.61
DATE	PERMIT NO.

To: **BUILD** ☒ Alter or Repair ☐ Add to ☐ Demolish ☐ Move ☐ .....

JOB LOCATION	DIRECTIONS	DESCRIPTION
Route <u>640 Home's Improvement</u>		For: Residential <input checked="" type="checkbox"/> Institutional <input type="checkbox"/>
Street <u>640-640</u>		Commercial <input type="checkbox"/> Industrial <input type="checkbox"/>
Lot No. <u>1/2 mi. East of S. Fork</u>		No. of Bldgs. <input type="text"/> Type <u>Reflex Panel</u>
Subdivision <u>Buck Run</u>		No. of Units <u>1</u> Est. Const. Cost <u>\$700-800</u>
OWNER: Name <u>R. H. Zell</u>		No. of Kitchens <input type="text"/> No. of Stories <u>1</u>
Address <u>Buck, Va.</u>		No. of Baths <input type="text"/> Ht. of Building <u>11</u> Ft.
City <u>CL-5-9020</u>		No. of Rooms <input type="text"/> Total Area <input type="text"/>
		(Exclude Klt. & Bath)
		Basement <input type="checkbox"/> Slab <input type="checkbox"/> Crawl <input type="checkbox"/> INS <input type="checkbox"/> Soil <input type="checkbox"/>
		Footing Size <u>4x4</u> Depth from Finish Grade <u>2</u> Ft.
ARCHITECT ENGINEER: Name <u>[Signature]</u>		Material of Exterior Walls <u>Frame</u>
Address <u>[Signature]</u>		Basement <u>6</u> 1st Floor <u>6</u>
City <u>[Signature]</u>		2nd Floor <u>6</u> Other <u>6</u>
		Material of Interior Walls <u>Base Trenching</u>
CONTRACTOR: Name <u>W. E. Sturdivant</u>		HEAT: Gas <input type="checkbox"/> Oil <input type="checkbox"/> Hot Air <input type="checkbox"/> Hot Water <input type="checkbox"/>
Address <u>Chilton, Va.</u>		Boiler <input type="checkbox"/> Air Conditioner <input type="checkbox"/> Sprinkler <input type="checkbox"/>
City <u>[Signature]</u>		ROOF: Flat <input type="checkbox"/> Pitch <input type="checkbox"/> Shed <input checked="" type="checkbox"/>
		SEWAGE: Public <input type="checkbox"/> Community <input type="checkbox"/> Septic Tank <input type="checkbox"/> Pit Privy <input type="checkbox"/> None <input type="checkbox"/>
		WATER: Public <input type="checkbox"/> Individual Well <input type="checkbox"/> None <input type="checkbox"/>
		Remarks:

Ballace old bench with a check bench  
11/2' x 24' size dip # 28815 low  
uplying rock. This bench is better than with 12' x 9' @ 1/2  
and 1/5 common - 2-10' wide -

I hereby certify that I have the authority to make this application, that the information given is correct, and that the use and construction shall conform to the County Health Regulations, the Building and Zoning Ordinances, and private deed restrictions, if any, which are imposed on the property.

G.L. 5-9020      9-14-59      Earn J. Zell  
 Phone No.      Date      Signature of Owner or Auth. Agent

PLAN APPROVAL

Use Group of Building C-3 Area of Bldg. \_\_\_\_\_ @ \_\_\_\_\_ per Sq. Ft. \$ \_\_\_\_\_

Type of Construction 4-13 Area of Bldg. \_\_\_\_\_ @ \_\_\_\_\_ per Sq. Ft. \$ \_\_\_\_\_

Fire District \_\_\_\_\_ Total Each Bldg. \$ \_\_\_\_\_

Date Checked 7/14, 1989 By aw TOTAL FEE \$ 300

Approved by Building Inspector [Signature]

ROUTING		OFFICE	Rm. No.	DATE	APPROVAL	REMARKS
		✓	Land Office	112	9-14-59	M.H.
✓	Zoning Administrator	210	9-10-59	W.H.		
	Health Officer	Rt. 237			Health and Welfare Bldg. on Rt. 237	
	Sanitary Engineer	East				
✓	Finance Office	120				
✓	Building Inspector	203			Return to secure Bldg. Permit	

Supervisor of Assessments

Property is listed in name of Evan J. Zell & Raymond H. Zell

Municipal District Macon Deed Book Reference 447-164

6.035 ac. Authorization John H. Ferguson

Subdivision \_\_\_\_\_ Lot No. \_\_\_\_\_ Block \_\_\_\_\_ Section \_\_\_\_\_ Zone R-1

No. Acres 6.035

Street Address 14221 Birch St. NW, Right side

LOT SIZE: Front \_\_\_\_\_ Right Side \_\_\_\_\_ Left Side \_\_\_\_\_ Rear \_\_\_\_\_

Use of Bldg. res. for farm Use after Alteration \_\_\_\_\_ No. Families 2

1 Deck: Front 1 Rt. Side 1 Left Side 1 Rear 1 Authorization \_\_\_\_\_

Building Permit for Additional Room, 1974

217-22-22

MAP REFERENCE

Plot Number	Subd. Desc.	Blk. or Sec.	Parcel or lot
217-22-22	111	22	

COUNTY OF FAIRFAX, VIRGINIA

OFFICE OF THE BUILDING INSPECTOR

Application for Building Permit  
and Certificate of Occupancy

APPLICATION NO.

DATE 10 PERMIT NO. P147413

To: BUILD ☐ ALTER OR REPAIR ☐ ADD TO ☒ DEMOLISH ☐ MOVE ☐

**JOB LOCATION**

Street 6600 Sigmon Drive NW

Lot No. \_\_\_\_\_

Subdivision Acreage

**OWNER**

Name Raymond H. Zell

(Rep. Appl.)

Address 6600 Sigmon Drive NW

City 1155991

Telephone Number \_\_\_\_\_

**ARCHITECT/ENGINEER**

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State Reg. No. \_\_\_\_\_

**CONTRACTOR**

Name Self

Address \_\_\_\_\_

City \_\_\_\_\_

County Reg. # \_\_\_\_\_

State Reg. # \_\_\_\_\_

**DESCRIPTION**

For Pylon enclosed ss

No. of Bldgs. \_\_\_\_\_ Est. Const. Cost \$ 15000

No. of Units \_\_\_\_\_ No. of Stories \_\_\_\_\_

No. of Kitchens \_\_\_\_\_ Penthouse \_\_\_\_\_

No. of Baths \_\_\_\_\_ Ht. of Bldg. \_\_\_\_\_

No. of Rooms \_\_\_\_\_ Bldg. Area \_\_\_\_\_ sq. ft.

(Exclude Rm. & Bath)

Basement ☐ Slab ☐ Crawl ☐ Soil ☐ Pile ☐

Fly Concrete ☐ Pile ☐ Caisson ☐

Ext. Walls Wood ☐ Metal ☐ Brick ☐

Int. Walls Plaster ☐ Drywall ☐ Panel ☐

Roof Flat ☐ Pitch ☐ Shed ☐

Roofing Built-up ☐ Shingle ☐ Roll ☐

Heat Oil ☐ Gas ☐ Electric ☐

Equipment Boiler ☐ Furnace ☐ Heat Pump ☐ Air Cond. ☐

Sewage Public ☐ Community ☐ Septic Tank ☐ None ☒

Yard Public ☐ Individual Well ☐ None ☒

Remarks \_\_\_\_\_

I hereby certify that I have the authority to make this application, that the information given is correct, and that the use and construction shall conform to the County Health Regulations, the Building and Zoning Ordinances, and private deed restrictions, if any, which are imposed on the property.

1155-9991 - 1155-174 P 1155-9991

Print Name \_\_\_\_\_ Date \_\_\_\_\_ Signature of Agent \_\_\_\_\_

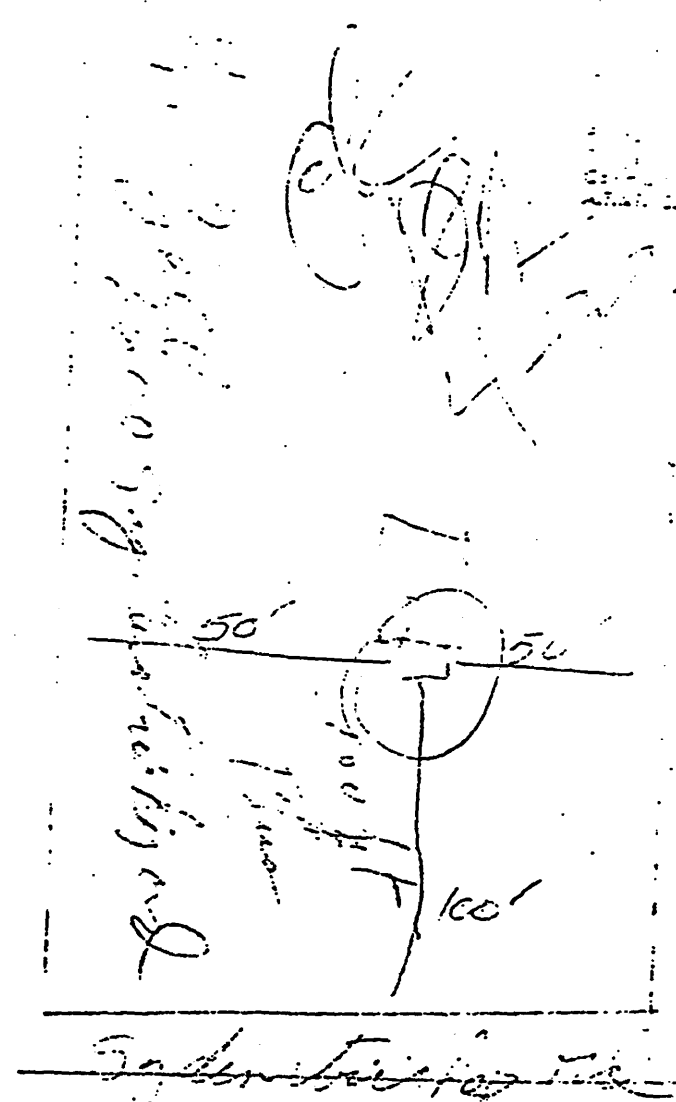
[illegible]

Original - 72  
①  
2-00  
Average - Zell

6600 Sydentruck Road -

7/14/74

MS



Re-1

APPROVED location of building shown. Final approval subject to wall check

Date FEB 26 1974

Building Administrator

COMMONWEALTH OF VIRGINIA  
**COUNTY OF FAIRFAX**  
 FAIRFAX, VIRGINIA 22030

DEPARTMENT OF PUBLIC WORKS  
 DIVISION OF SOLID WASTE



APPLICATION FOR PERMIT TO REMOVE AND/OR TRANSPORT  
 REFUSE IN FAIRFAX COUNTY, VIRGINIA

The undersigned hereby makes application for a permit to engage in the business of collection and/or transporting of refuse.

It is agreed that the above operation will be conducted in accordance with rules and regulations set forth in the Code of the County of Fairfax, Chapter 14, Garbage, Trash and Refuse, adopted by the Board of Supervisors, July 28, 1971.

It is agreed that the undersigned will pay all disposal charges accrued through use of a Fairfax County operated or associated disposal site.

1. Name of Firm, Company, or Corporation Big "K" Trash Service
2. Owner of Firm/or Parent Company Browning-Ferris Industries
3. Business Address 6600 Sydenstricker Rd.
4. Mailing Address P. O. Box 548, Springfield, Va. 22150
5. Business Telephone Res. 455-9020; Comm. 455-2032
6. Business office staffed during normal business hours with authorized agent of applicant yes ☒ no ☐
7. Number of Permits Required (one for each vehicle) 22
8. Rates and Charges for Collection

Collection	Curb once/wk	Curb twice/wk	Backdoor once/wk.	Backdoor twice/wk	Commercial Industrial Multi-family	Other
Type of Service (Check those you offer)		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Rate to be Charged						
Minimum		\$6.50			\$5.50	
Maximum		\$7.50			\$6.50	
Rate to be charged for Specials						

Comments:



9. Name and address of Bonding Company Roseberry Bonding Co.  
10430 Main St., Fairfax, Va. 22030

Amount of Bond \$ 30,000.00 Date of Bond 8-31-75 - 8-31-76

10. Name and address of Liability Insurance Company Highlands Ins. Co.  
600 Jefferson St., Houston, Texas 77002

Policy Number GA821625

11. If company has only one truck. list name and telephone number of another company licensed in Fairfax County that will act in a back-up capacity.

Name N/A Telephone

Number of reserves or back-up trucks

12. Refuse business- Full Time X Part Time

13. Previous refuse collection experience:

Where:

When:

How long:

14. Attach customer list to application sheets. (Contains name and address of customer, rate to be charged, and type of service).

Name of Firm: Big K BFI. P.O. Box 548 Springville

VEHICLES

	Permit Number	Make of Vehicle	Chassis Model Year	Serial Number	Body Type	Capacity	Inspected Date	By
1.	139	INT	1969	416090G323976	TRUX MOR	23 YD	6-24-75	W.S.
✓ 2.	140	INT	1973	106820H345866	TRUX MOR	27 YD	6-24-75	W.S.
✓ 3.	141	INT	1972	416090H105942	TRUX MOR	27 YD	6-24-75	W.S.
✓ 4.	142	INT	1970	416090G369557	TRUX MORIE	27 YD	6-24-75	W.S.
✓ 5.	143	INT	1975	106820HA51764	TRUX MORIE	27 YD	6-24-75	W.S.
✓ 6.	144	INT	1974	106820HH17881	TRUX MORIE	27 YD	6-25-75	W.S.
✓ 7.	145	INT	1969	416090G343443	TRUX MORIE	27 YD	6-25-75	W.S.
✓ 8.	146	INT	1971	416090H106007	TRUX MORIE	27 YD	6-25-75	W.S.
✓ 9.	147	INT	1972	416090H106448	TRUX MORIE	27 YD	6-26-75	W.S.
✓ 10.	148	INT	1973	717951G520558	TRUX MORIE	27 YD	6-26-75	W.S.
✓ 11.	149	MACK	1973	DM685514323	ROLL OFF	40 YD	6-26-75	W.S.
✓ 12.	150	MACK	1973	DM685514318	ROLL OFF	40 YD	6-26-75	W.S.
✓ 13.	151	MACK	1974	DM685521196	ROLL OFF	40 YD	6-27-75	W.S.
✓ 14.	152	INT	1973	717951G521013	TRUX MORIE	27 YD	6-27-75	W.S.
✓ 15.	153	INT	1973	747221G500513	ROLL OFF	40 YD	6-27-75	W.S.

Approved by Director of Finance

AUG 21 '75

W. S. HUTCHISON

Approved by Supervisor of Assessments

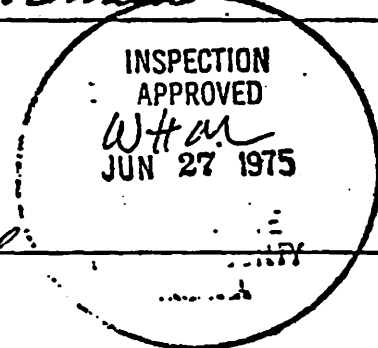
Approved by Director of Public Works

Permit Approved: Date 6-26-75

License Issued: Date \_\_\_\_\_

Signature of Applicant Thomas A. Merriam

Date 8/20/75



Name of Firm:

Big K BFI P.O. Box 548 Springfield VaVEHICLES

	Permit Number	Make of Vehicle	Chassis		Body Type	Capacity	Inspect	
			Model Year	Serial Number			Date	By
1.	154	INT	1971	416090H078159	TRUX MORE	27 yds	6-27-75	W.H.M.
2.	155	BROOKWAY	1971	75738	ROLL OFF	40 yds	6-27-75	W.H.M.
3.	156	INT	1974	416090H055654	TRUX MORE	27 yds	6-27-75	W.H.M.
4.	157	TNT	1970	416090H-374461	TRUX MORE	27 yds	6-27-75	W.H.M.
5.	158	INT	1972	2472212487575	ROLL OFF	40 yds	6-27-75	W.H.M.
6.	159	INT. TR.	1973	22581CCA16407	TRUX MORE	20 yds	6-27-75	W.H.M.
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								

Approved by Director of Finance

AUG 21 75

E. S. HUTCHISON

Approved by Supervisor of Assessments

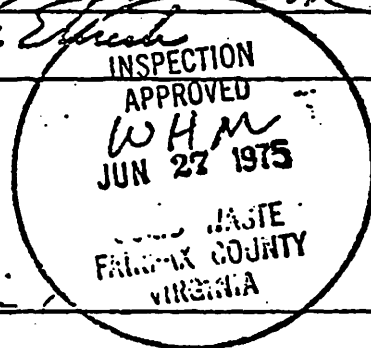
Approved by Director of Public Works

Permit Approved: Date 8-20-75

License Issued: Date \_\_\_\_\_

Signature of Applicant

Date

Thomas A. Harrison8/20/75

Name of Firm: Big R. BFI PO Box 548 Springfield VA

VEHICLES

	Permit Number	Make of Vehicle	Chassis Model Year	Serial Number	Body Type	Capacity	Inspect. Date	By
1.	160	Ford	1972	C80FVN13432	TRUCK MARE	27-yd	6/27/75	12-6
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								

Approved by Director of Finance

AUG 21 75

W. S. HUTCHISON

Approved by Supervisor of Assessments

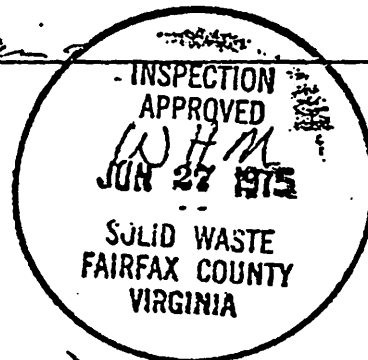
Approved by Director of Public Works

Permit Approved: Date 8-20-75

License Issued: Date \_\_\_\_\_

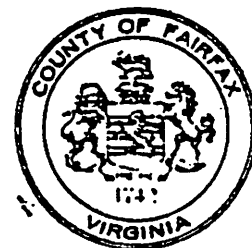
Signature of Applicant

Date 2/20/75





COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX  
FAIRFAX, VIRGINIA 22030



DEPARTMENT OF PUBLIC WORKS  
DIVISION OF SOLID WASTE

APPLICATION FOR PERMIT TO REMOVE AND/OR TRANSPORT  
REFUSE IN FAIRFAX COUNTY, VIRGINIA

The undersigned hereby makes application for a permit to engage in the business of collection and/or transporting of refuse.

It is agreed that the above operation will be conducted in accordance with rules and regulations set forth in the "Solid Waste Collection Ordinance" of Fairfax County adopted by the Board of Supervisors, July 28, 1971.

1. Name of Firm, Company or Corporation BIG K TRASH SERVICE
2. Owner of Firm/or Parent Company BROWNING-FERRIS INDUSTRIES, INC.
3. ~~Business~~ <sup>Mailing</sup> Address P. O. Box 548, Springfield, Va. 22150
4. ~~Business~~ <sup>Mailing</sup> Address 6600 Sydenstricker Rd., Burke, Va. 22015
5. Business Telephone 455-9020, 455-2032, 455-5730
6. Business office staffed during normal business hours with authorized agent of applicant yes X no
7. Number of Permits Required (one for each vehicle) 22 21 ok
8. Rates and Charges for Collection

Collection	Curb	Backdoor	Commercial Industrial Multi-Family	Other
Type of Service	X		X	
Rate to be Charged Minimum	\$6.50			
Maximum	undetermined			
Rate to be Charged for Specials	\$5.00 Minimum			
Rate to be Charged for Leaves/Other				

Comments:

We do not wish to set a maximum residential rate because of the current inflationary trend.

Commercial and Industrial rates vary greatly; they are available upon request.

9. Name and Address of Bonding Company Taylor & Clark Insurance Services  
7254 Maple Pl., Annandale, Virginia 22003

Amount of Bond \$ 30,000.00 Date of Bond \_\_\_\_\_

10. Name and Address of Liability Insurance Company Highlands Insurance Co.  
Cullen Center Bank Bldg., Houston, Texas 77002

11. Complete:

AREA OF COLLECTION OPERATION

AREA	SUBDIVISION	SECTIONAL GRID NUMBER
North Springfield	North Springfield	
Springfield	Kings Park	
Fairfax	Kings Park West	
Annandale	Red Fox Forest	
Burke	Cardinal Estates	
"	Burke Station Square	
"	Glen Oaks	
"	Glen Cove	
"	Rolling Valley West	
"	Sugar Loaf Hills	
Springfield	Orange Hunt Estates	
"	Westmeath	
"	Springfield Station	
Burke	Old Mill Community	
Springfield	Pohickery	
"	Saratoga	
"	Chancellor Farms	
West Springfield	W. Springfield Village	
"	West Springfield	
"	Walden Glen	

9. Name and Address of Bonding Company \_\_\_\_\_

Amount of Bond \$ \_\_\_\_\_ Date of Bond \_\_\_\_\_

10. Name and Address of Liability Insurance Company \_\_\_\_\_

11. Complete:

AREA OF COLLECTION OPERATION

AREA	SUBDIVISION	SECTIONAL GRID NUMBER
West Springfield	Point of Woods	
"	Charlestown	
"	Pennsbury	
"	Tivioli	
"	The Crossings	
"	The Timbers	
"	Keene Mill Woods	
Central Springfield	Crestwood	
"	Central Springfield	

Name of Firm: Big K Braconing & Ferris PC Inc, 548 Springfield St

# VEHICLES

	Permit Number	Make of Vehicle	Chassis Model Year	Serial Number	Body Type	Capacity	Inspected Date By	
1.	60	Brackway	1971	75738	Roll off	20-40	8-26-74	W.H.
2.		<del>Alcoa</del>	<del>1971</del>	<del>68551176</del>	<del>Roll off</del>	<del>20-40</del>		
3.	61	INT	1972	7472216500 513	Roll off	20-40	8-23-74	C.W.
4.	62	INT	1972	747221647573	Roll off	20-40	8-23-74	C.W.
5.	63	Mack	1973	Dm 12551423	Roll off	20-30	8-23-74	W.H.
6.	64	Mack	1973	Dm 55514318	Roll off	20-40	8-23-74	W.H.
7.	65	Mack	1974	Dm 85821196	Roll off	20-40	8-23-74	W.H.
8.	66	INT	1970	416090H105942	Trail	27	8-16-74	W.H.
9.								
10.								
11.								
12.								
13.								
14.								
15.								

Approved by Director of Finance

Approved by Supervisor of Assessments

Approved by Director of Public Works

Permit Approved: Date 8-26-74

License Issued: Date 8-26-74

Signature of Applicant

Date 8-26-74

W. S. HUTCHISON

AUG 26 '74

John W. Ferris

Glen G. Church

INSPECTION APPROVED

W.H. 1974

AUG 26 1974

SOLID WASTE FAIRFAX COUNTY



Name of Firm: Big K Trash Service - Brunswick & Ferris  
P.O. Box 548 Springfield, Va.

VEHICLES

	Permit Number	Make of Vehicle	Chassis	Serial Number	Body Type	Capacity	Inspected	
			Model Year				Date	By
1.	67	TRUCK #12 INT.	1973	7179516520958	TRUCK MORE	27 YD	8-7-74	CLW
2.	68	TRUCK #21 INT.	1970	416090C-374461	TRUCK MORE	27 YD	8-7-74	HTT
3.	69	TRUCK #28 INT.	1973	C80 FVN13432	TRUCK MORE	27 YD	8-7-74	CLW
4.	70	TRUCK #6 INT.	1969	416090C-343443	TRUCK MORE	27 YD	8-7-74	HTT
5.	71	TRUCK #3 INT.	1971	416090C-055654	TRUCK MORE	27 YD	8-8-74	WJH
6.	72	TRUCK #27 INT.	1974	10682 DHA17881	TRUCK MORE	27 YD	8-8-74	WJH
7.	73	TRUCK #14 INT.	1972	416090 H106448	TRUCK MORE	27 YD	8-8-74	WJH
8.	74	TRUCK #7 INT.	1973	106820K 345966	TRUCK MORE	27 YD	8-8-74	WJH
9.	75	TRUCK #10 INT.	1971	416090C H106067	TRUCK MORE	27 YD	8-8-74	WJH
10.	76	TRUCK #3 INT.	1970	416090C-369557	TRUCK MORE	27 YD	8-9-74	HTT
11.	77	TRUCK #11 INT.	1973	7179516521013	TRUCK MORE	27 YD	8-9-74	CLW
12.	78	TRUCK #9 INT.	1969	416090C-323976	TRUCK MORE	23 YD	8-7-74	WJH
13.	79	TRUCK #20 INT.	1973	22681CC H16407	TRUCK MORE	23 YD	8-12-74	CLW
14.	80	TRUCK #4 INT.	1970	416090C-374461	TRUCK MORE	27 YD	8-13-74	WJH
15.	81	TRUCK #13 INT.	1971	416090 H078159	TRUCK MORE	27 YD	8-14-74	WJH

Approved by Director of Finance

Approved by Supervisor of Assessments

Approved by Director of Public Works

Permit Approved: Date 8-23-74

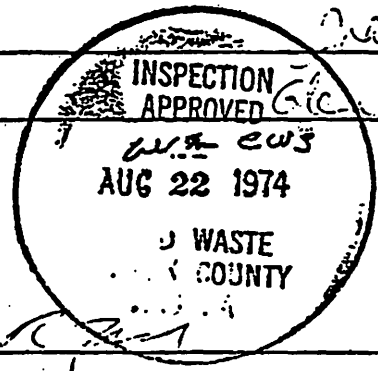
License Issued: Date 8-26-74

Signature of Applicant William R. [Signature]

Date 8-26-74

W. S. HUTCHISON

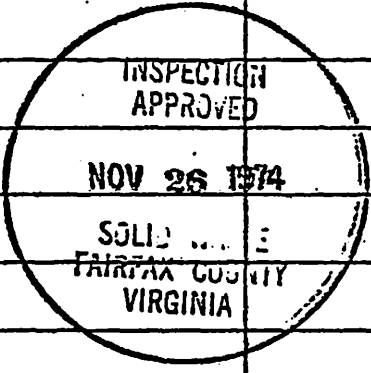
AUG 26 1974



Name of Firm: Big & B. Brown and Jerry Roberts

VEHICLES

	Permit Number	Make of Vehicle	Chassis Model Year	Serial Number	Body Type	Capacity	Inspected Date By	
1.	250	INT	75	10682DHA57464	TRUCK BOX	27	11-26-74	WHD
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								



Approved by Director of Finance W. S. HUTCHESON DEC. 2 '74

Approved by Supervisor of Assessments [Signature]

Approved by Director of Public Works [Signature]

Permit Approved: Date 11-26-74

License Issued: Date 12/2/74

Signature of Applicant Thomas A. Hernandez

Date 12/2/74

EXHIBIT 30  
Trash Collection Permit, 1973



COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX

FAIRFAX, VIRGINIA 22030

DEPARTMENT OF PUBLIC WORKS  
DIVISION OF SOLID WASTE

APPLICATION FOR PERMIT  
TO REMOVE AND/OR TRANSPORT REFUSE IN  
FAIRFAX COUNTY, VIRGINIA



The undersigned hereby makes application for a permit to engage in the business of collection and/or transporting of refuse.

It is agreed that the above operation will be conducted in accordance with rules and regulations set forth in the "Solid Waste Collection Ordinance" of Fairfax County adopted by the Board of Supervisors, July 28, 1971.

Big K Trash Service Division

1. Name of Firm, Company or Corporation Browning-Ferris Industries of Va., Inc.
2. Owner of Firm/or Parent Company Browning-Ferris Industries, Inc.
3. Business Address 6600 Sydenstricker Rd., Burke, Va. 22015
4. Mailing Address P. O. Box 548, Springfield, Va. 22150
5. Business Telephone 455-9020, 455-2032
6. Business office staffed during normal business hours with authorized agent of applicant Yes Yes No
7. Number of Permits Required (one for each vehicle) 20
8. Rates and Charges for Collection

Collection	Curb	Backdoor	Commercial Industrial Multi-Family	Other
Type of Service	X Curb		X	
Frequency of Collection	twice week		as often as necessary	
Rate to be Charged Minimum				
Maximum	5.00			
Rate to be Charged for Specials	5.00 Min.			
Rate to be Charged for Leaves/Other	not yet determined			

Comments: Rates for commercial and industrial service is available upon request. Price freeze information is also available upon request.

Complete: Area of Collection Operation: See attached form.

9. Name and Address of Bonding Company Lumbermens Mutual Casualty Co.  
20 North Wacker Dr., Chicago, Illinois 60606

Amount of Bond \$ 5000.00

Date of Bond June 4, 1973

11. Name and Address of Liability Insurance Company Highlands Insurance Company, Cullen Center Bank Bldg., Houston, Texas 77002

PI Exh #30  
5/24/77  
J odger

VEHICLES

	Permit No.	Make of Vehicle	Chassis		Body Type	Capacity	Inspected	
			Model Year	Serial No.			Date	By
1. ✓	143	Internatnl	1969	G325154 ✓	Pakker	23 yd	9-3-73	Wm
2. ✓	<del>144</del> 144	Internatnl	1970	G374461 ✓	Pakker	27 yd	9-3-73	Wm
3. ✓	145	Internatnl	1972	G487575 ✓	Rolloff	15 ton	9-3-73	Wm
4. ✓	146	Internatnl	1972	G500513 ✓	Rolloff	15 ton	8-30-73	Wm
5. ✓	147	Internatnl	1969	G323976 ✓	Pakker	23 yd	9-3-73	Wm
6. ✓	148 63	Internatnl	1972	H106448 ✓	Pakker	27 yard	8-30-73	Wm
7. ✓	149 69	Internatnl	1969	G343443 ✓	Pakker	23 yd	8-30-73	Wm
8. ✓	150	Internatnl	1970	G369557 ✓	Pakker	27 yd	9-3-73	Wm
9. ✓	151 60	Internatnl	1971	H106007 ✓	Pakker	27 yd	8-30-73	Wm
10. ✓	152	Internatnl	1973	H345966 ✓	Pakker	27 yd	7-30-73	Wm
11. ✓	153	Internatnl	1971	H055654 ✓	Pakker	27 yd	8-30-73	Wm
12. ✓	274 154	Internatnl	1972	H105942 ✓	Pakker	27 yd	9-3-73	Wm
13. ✓	293 155	Internatnl	1971	H078159 ✓	Pakker	27 yd	9-3-73	Wm
14. ✓	156	Ford	1970	H106002 ✓	Rolloff	15 ton	9-3-73	Wm
15. ✓	25 157	Ford	1961	H187433 ✓	opn bdy	4 ton	9-3-73	Wm
16. ✓	158	Mack	1973	514323 ✓	Rolloff	15 ton	9-3-73	Wm
17. ✓	159	Mack	1973	514318 ✓	Rolloff	15 ton	9-3-73	Wm
18. ✓	160	Internatnl	1973	G520958 ✓	Pakker	27 yd	9-3-73	Wm
19. ✓	161	Internatnl	1973	G521013 ✓	Pakker	27 yd	9-3-73	Wm
20. ✓	162	Internatnl	1973	CA16407 ✓	Lf Colltr	23 yd	9-3-73	Wm

Approved by Director of Finance

SEP 4 73 117.840

\$5,000.00 Bond

Approved by Supervisor of Assessments

*J. H. Zell*

Approved by Director of Public Works

*J. H. Zell*

Permit Approved:

Date 9-3-73 *William H. Zell*

Permit Issued:

Date 9-4-73

Signature of Applicant

*Raymond H. Zell*  
Raymond H. Zell, Line Manager

Date 8/14/73

Trash Collection Permit, 1972DEPARTMENT OF PUBLIC WORKS  
Division of Solid WasteCounty of Fairfax  
VirginiaAPPLICATION FOR PERMIT  
TO REMOVE AND/OR TRANSPORT REFUSE IN FAIRFAX COUNTY, VIRGINIA

The undersigned hereby makes application for a permit to engage in the business of collection, and/or transporting of refuse.

It is agreed that the above operation will be conducted in accordance with rules and regulations set forth in the "Solid Waste Collection Ordinance" of Fairfax County.

1. Name of Firm, Co. or Corp. BIG K TRASH SVC.  
6600 Sydenstricker Rd.
2. Business Address Burke, Va. 22015. Tel. No. 455-9020
3. Mailing Address P. O. Box 548  
Springfield, Va. 22150

4. Number of Permits applied for (One for each vehicle) 16
5. Permit Numbers Assigned 59, 60, 63, 65, 71, 75, 76, 111, 115,  
113, 223, 224, 225, 269, 270, 271.
- 6.

COLLECTION	CURB	SET-OUT	SET-OUT SET-BACK	BACKYARD	COMM., IND., OTHER
Type of Service	X				
Frequency of Collection	twice weekly				
Rate to be Charged	\$6.00				

7. Complete Area Of Operation - Page 2

8. Signature of VEHICLE OWNER

Raymond H. 200  
Charles W. Fulmer  
for BFI of Va  
A-69

10

DEPARTMENT OF PUBLIC WORKS  
DIVISION OF SOLID WASTE

County of Fairfax  
Virginia

PERMIT

TO REMOVE AND/OR TRANSPORT REFUSE IN FAIRFAX COUNTY, VIRGINIA

Permit No.: 269

Name: Big K Trash Service, Inc.

Make of Vehicle	Model Year	Serial Number
International	1970	L90DVH40602
Type of Body	Name of Body	Capacity
Roll-Off	Atlas	40 yd

Inspection:

Date: 8-21-72

By: W. T. Alexander

Bonded By: Taylor & Clark Insurance Services  
P. O. Box 199  
Annandale, Va. 22003

Bond of \$ 5000.<sup>00</sup>

Approved by Director of Finance

Date \_\_\_\_\_

By: \_\_\_\_\_

License Issued: 8-31-72

Supervisor of Assessments

By: John H. Ferguson

Permit Approved:

Asst Director of Public Works

Date Aug. 31, 1972

By: J. H. Lambert  
DLE

BIG K

\_\_\_\_\_

AREA	SUBDIVISION	SECTIONAL GRID NUMBER
Annandale	Red Fox Forest	
"	Ravensworth Farms	
West Springfield	Westview	
"	Keene Mill Manor	
"	Walden Glen	
"	Cardinal Forest	
"	West Springfield	
"	Rolling Valley	
Burke	Rolling Valley West	
Burke	West Kings Park	
Springfield	Kings Park	
West Springfield	Keene Mill Station	
"	Orange Hunt Estates	
"	Springfield Station	
"	Bramblewood	
Burke	Cardinal Estates	
Central Springfield Area		
	A-71	

Trash Collection Permit, 1971

DEPARTMENT OF PUBLIC WORKS  
Division of Solid Waste

County of Fairfax  
Virginia

APPLICATION FOR PERMIT  
TO REMOVE AND/OR TRANSPORT REFUSE IN FAIRFAX COUNTY, VIRGINIA

The undersigned hereby makes application for a permit to engage in the business of collection, and/or transporting of refuse.

It is agreed that the above operation will be conducted in accordance with rules and regulations set forth in the "Solid Waste Collection Ordinance" of Fairfax County.

1. Name of Firm, Co. or Corp. THE BIG K TRASH SERVICE, INC.
2. <sup>Mailing</sup> ~~Business~~ Address P. O. Box 548, Springfield, Va. Tel. No. 455-9020
3. <sup>Business</sup> ~~Mailing~~ Address 6600 Sydenstricker Rd., Burke, Va.

4. Number of Permits applied for (One for each vehicle) 13
5. Permit Numbers Assigned 63, 60, 113, 112, 76, 111, 75, 71
6. 59, 65, 223, 224, 225

COLLECTION	CURB	SET-OUT	SET-OUT. SET-BACK	BACKYARD	COMM., IND., OTHER
Type of Service	✓			✓	
Frequency of Collection	<u>twice weekly</u>			<u>twice weekly</u>	
Rate to be Charged	<u>4.00</u>			<u>4.50</u>	

7. Complete Area Of Operation - Page 2

8. Signature of VEHICLE OWNER Raymond H. Zell



DEPARTMENT OF PUBLIC WORKS  
DIVISION OF SOLID WASTE

County of Fairfax  
Virginia

PERMIT

TO REMOVE AND/OR TRANSPORT REFUSE IN FAIRFAX COUNTY, VIRGINIA

Permit No.: 59

Name: Big K Trash Service, Inc.

Make of Vehicle	Model Year	Serial Number
International	1969	416090G343443
Type of Body	Name of Body	Capacity
Pakker	Truxmore	27 cu. yd.

Inspection:

Date: 8-26-71

By: D. L. Franklin

Bonded By: Taylor & Clark Insurance Services, Inc.

St Paul Fire & Marine Co

Bond of \$ 5000

Approved by Director of Finance

Date AUG 31 1971 5

By: WILLIAM PERIER L.A.

License Issued: (Aug 31, 1971)

Supervisor of Assessments

By: J. H. Lambert

Permit Approved:

Asst Director of Public Works

Date August 31, 1971

By: J. H. Lambert

Lm

## EXHIBIT 33

Trash Collection Permit, 1963

Office of Sanitary Engineer

County of Fairfax, Virginia

No. 181APPLICATION FOR PERMITTO DISPOSE OF REFUSE AT COUNTY OPERATED SANITARY LANDFILLS

Date

7/18/63

Applicant

Big H. Trash

Inc. Corp. Corporation

Address

Burke, VA

Telephone Number

455-9020TYPE OF COLLECTION EQUIPMENT TO BE USED

Make	Model	Serial Number	License Number	Body Capacity	Dump
<u>Ford</u>			<u>144-764</u>	<u>23</u>	
<u>Ext.</u>			<u>146-114</u>	<u>23</u>	

COMMUNITIES TO BE SERVED

Location

Day of Week

1. Springfield Tue - Fri
2. Pine Park Mon. - Thurs.
3. Lawsonville Wed. Sat.
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_

The undersigned hereby applies to the Board of County Supervisors of Fairfax County, Virginia, for a permit to dispose of refuse at County operated sanitary land-fills and declares that he will observe and comply with regulations governing the use and operation of County operated sanitary land-fills should a permit be granted and agrees that in the event of non-compliance therewith the permit shall be revoked by the Board; and further that he will promptly pay all charges which may be imposed upon him for the use of the land-fills when bills therefore are rendered and become due.

Big K. Trust  
(Full Name of Applicant, Person,  
Firm, Corporation, etc.)

By Raymond H. Zell  
Signature of Authorized Agent

Owner  
Title

(To be made out in triplicate)

- 1- Board of County Supervisors' File
- 1- Sanitary Engineer's File
- 1- Applicant's File

Sydenstrider RD

A hand-drawn sketch map of Sydenstrider RD, oriented vertically. The map is enclosed in a large rectangle. On the left side, there are two small squares labeled 'gas'. Further down, a larger square is labeled 'winter Barn'. In the center, there is a square labeled 'garage Barn'. To the right of the garage Barn, there is a small square labeled 'shed'. Further right, there is a larger rectangle labeled 'metal Building'. At the top, there is a small square labeled 'A house'. The map is drawn on lined paper.

A-76

TRANSCRIPT  
OF  
TRIAL

4

P R O C E E D I N G S

(The court reporter was sworn.)

THE COURT: Any preliminary matters?

MR. ARNOLD: Yes, sir, Your Honor. Before we start this case, I would like to ask a ruling from the Court concerning the burden of proof on the non-conforming use.

The reason that I ask for it at this time, Your Honor, is that it will affect the order and manner in which I will present my evidence to the Court.

THE COURT: You have alleged violation of the zoning ordinance and it seems like the burden falls upon you to prove the violation of the ordinance.

MR. ARNOLD: Your Honor, we will prove what the zoning ordinance is, what the use of the property is. The cases have fairly consistently held that a nonconforming use is in the nature of an affirmative defense to an action.

THE COURT: What is your authority?

MR. ARNOLD: Well, I have a brief that is on the way over here.

THE COURT: The Court can't read a brief on the day of trial, sir. The brief should be filed ahead

1 of time. To submit a brief during trial is kind of  
2 ridiculous, to ask the Court to read it and read the  
3 authorities cited in it and be prepared for the trial.

4 MR. ARNOLD: Section 25.188a, which I  
5 will present to the Court concerning the evidence in  
6 burden of proof, provides that a majority of the Courts  
7 have held that the burden of proof is on the person  
8 asserting it as a defense.

9 THE COURT: Any further argument?

10 MR. ARNOLD: Yes, sir, Your Honor. I also  
11 want to present to the Court Anderson's American Law  
12 on Zoning and direct the Court's attention to Section  
13 6.09 which is to the same effect.

14 THE COURT: Do you have a Virginia case?

15 MR. ARNOLD: No, Your Honor.

16 I have searched the Virginia and West  
17 Virginia law also and I have been unable to locate any  
18 decisions on the question of burden of proof in a non-  
19 conforming use case.

20 The cases cited here are in other juris-  
21 dictions.

22 THE COURT: Do they have the same basic law  
23 as the Commonwealth of Virginia on zoning?

1 MR. ARNOLD: Yes, sir, Your Honor.

2 The way the zoning ordinances are set up,  
3 almost uniformly, they divide the area into different  
4 zones and restrict the uses in those zones, and non-  
5 conforming use is, by its very nature, inconsistent  
6 with the very purpose and spirit of zoning and,  
7 therefore, the cases that tended  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

1 to limit the growth of nonconforming uses and the avail-  
2 ability of that as a defense to the defendants.

3 MR. ODIN: Your Honor, a Virginia case,  
4 Washington & Old Dominion Railroad versus the City of  
5 Alexandria, which is 191 Virginia 184 is the only case  
6 that I find that speaks to the subject matter.

7 It is a criminal case. In that case, of  
8 course, the proof went beyond reasonable doubt. The  
9 allegations in the case had to do with the railroad  
10 company and the question was whether or not it had  
11 erected its trestle in violation of the zoning ordinance.

12 And there the case stated, quoting: "Obviously,  
13 unless the defendant's right of way at the location  
14 indicated has been actually zoned, no offense has been  
15 committed. That is, that it had been zoned a resi-  
16 dential area at the time the erection of the trestle  
17 was undertaken is, in any event, a necessary fact  
18 circumstances incumbent upon the city to prove beyond  
19 a reasonable doubt. Otherwise stated, if the right  
20 of way had not, in fact, been zoned a residential  
21 area, no crime had been committed."

22 I think two situations can arise in a case  
23 like this. One is that if someone introduces an



1 ordinance, if you will, the best, I take the position  
2 that the burden of proof is on the proponent, the one  
3 who is asking for an injunction, one who is trying  
4 to restrain an individual from a use which has  
5 continued over a long period of time.

6 But even under the worst of circumstances,  
7 once it is shown, either by their evidence or our  
8 evidence, that that use precedes the ordinance, it  
9 seems to me it is incumbent upon them; the burden of  
10 going forward would again shift back to them to prove,  
11 if you will, that that use was lawfully or unlawfully  
12 established.

13 It is never presumed that an individual  
14 committed a crime, it is never presumed, if you will,  
15 without some proof that an individual violated an  
16 ordinance. Zoning is a land use ordinance. It is also  
17 a criminal statute.

18 MR. PRICHARD: I would add on to this,  
19 Your Honor, the ordinance under which the county  
20 proceeds has a provision in it which permits non-  
21 conforming uses to continue so that a use -- there can  
22 be a nonconforming use which is one permitted by the  
23 ordinance under which he proceeds. There is also

1 a state statute which protects nonconforming uses.  
2 So, if the county happened to have a zoning ordinance  
3 which did not provide for nonconforming uses, then  
4 we would be claiming outside the ordinance.

5 But our defense here is within the very  
6 ordinance on which he is proceeding, we think the  
7 burden of proof should be upon him.

8 THE COURT: Do you make any distinction  
9 when you are asking for injunctive relief?

10 MR. ARNOLD: Any distinction between what?

11 THE COURT: The burden attached under the  
12 general treatise of law, the burden is on the property  
13 owner to prove nonconforming use.

14 You are asking that an activity be  
15 enjoined.

16 MR. ARNOLD: Yes, sir.

17 This is not a criminal case and I  
18 think the burden of proof is significantly different.

19 THE COURT: Wouldn't you still have to  
20 carry it on your prayer for an injunction that they  
21 are doing something wrong?

22 MR. ARNOLD: No, Your Honor.  
23

1 THE COURT: They have no burden at this time  
2 since you are asking for an injunction.

3 MR. ARNOLD: Your Honor, we can show that  
4 the zoning ordinance as it exists prohibits this use,  
5 that this use is going on and that I think in and of  
6 itself is a prima facie case that there is a violation.

7 Now if they want to present a defense, an  
8 affirmative defense, much in the way of laches or satis-  
9 faction of a debt, statute of limitations, it is that  
10 type of defense and we can make a prima facie case by  
11 showing what the zoning ordinance is, what the use is,  
12 that it is in violation of the zoning ordinance. If  
13 they want to raise this defense, then they have the burden  
14 of proof.

15 THE COURT: But since it has not been  
16 decided in the Commonwealth of Virginia and an appeal  
17 is somewhat easier to obtain by the County than it is  
18 by a property owner, the Court would not rule that it  
19 is an affirmative defense that had to be carried by  
20 the property owners of the Commonwealth of Virginia.

21 MR. ARNOLD: Then it is the Court's ruling  
22 that it is the county's burden?  
23

1 THE COURT: Right.

2 MR. ARNOLD: Thank you, Your Honor.

3 THE COURT: All witnesses who are going to  
4 testify in this matter, please rise and be sworn.

5 (The witnesses were sworn.)

6 THE COURT: Does either party request a  
7 rule on the witnesses?

8 MR. ODIN: I do, Your Honor.

9 THE COURT: All the witnesses who are going  
10 to testify with the exception of the party petitioner,  
11 the representative of the corporate defendant and  
12 individual defendant, will have to remain on the outside  
13 of the court room.

14 While you are waiting outside the court  
15 room, please do not discuss your testimony with any one.  
16 After you testify, please do not discuss your testimony  
17 that you have given.

18 (The witnesses were excluded from the  
19 court room.)

20 THE COURT: Opening statements.

21 MR. ARNOLD: Your Honor, for the record,  
22 I am William M. Arnold, representing Mr. Knowlton and  
23 the County of Fairfax today.

1 Whereupon,

2 MAMIE BREEDEN,

3 a witness, was called for examination by counsel on  
4 behalf of the complainant, and, after having been  
5 previously duly sworn, was examined and testified as  
6 follows:

7 DIRECT EXAMINATION

8 BY MR. FINNEGAN:

9 Q Would you state your name, please, for your  
10 Court?

11 A Mamie Breedon.

12 Q And what is your occupation?

13 A I'm a housewife and a school bus driver.

14 Q Could you tell me where you live?

15 A 6616 Keene Drive, Springfield, Virginia.

16 MR. FINNEGAN: Your Honor, this is not in  
17 evidence, this is an exhibit. I would like to have the  
18 witness point out where she does live, on this map.

19 THE WITNESS: Right here, on Keene Drive.

20 MR. FINNEGAN: Right there, Mr. Prichard.

21 Would you put an "X" on that, please?

22 Your Honor, if the clerk would mark the "X"

23 THE COURT: Mark the "X".

1 MR. FINNEGAN: "X" marks the spot where --

2 THE COURT: Do you want this identified?

3 MR. FINNEGAN: At a later time.

4 MR. ARNOLD: Could we have it identified at  
5 this time as Plaintiff's Exhibit Number 1?

6 THE COURT: That's what I'm trying to determine,  
7 who really wants what?

8 MR. FINNEGAN: I'd like to have it marked as  
9 Complainant's Exhibit Number 1.

10 THE COURT: All right.

11 (The document referred to above  
12 was marked Plaintiff's Exhibit  
No. 1 for identification.)

13 BY MR. FINNEGAN:

14 Q How long have you lived there?

15 A 22 years, in July.

16 Q Are you familiar with the Big K Trash operation?

17 A Yes, I am.

18 Q And could you tell the Court how you have been  
19 familiar with this operation?

20 A Well, they use our street quite a bit. The  
21 number of trucks come in through there are quite a large  
22 number, and there are different types of trucks. There  
23 are compactors, there's even at least one huge truck

1 that carries the dumpsters in commercial parking lots,  
2 pickup trucks, and steadily the quality of life in our  
3 community has steadily gotten worse and deteriorated.

4 Q Well, do the trucks have any effects on you?

5 A Yes, they do, because of noise. They come  
6 through there a majority of the time, I suppose, they  
7 are empty, most of the time they vibrate terribly and  
8 the road, in spots, has become like a washboard, and you  
9 can imagine the blub-blub-blub-blub, the empty trash  
10 truck coming through, vibrating, especially when it's  
11 between 5:00 and 6:00 a.m., and you're trying to sleep.

12 It's gotten to be almost an impossible situa-  
13 tion. It was peaceful and quiet and birds singing and  
14 all of a sudden blub-blub-blub, all through the street.  
15 I believe there are times it's even earlier than that,  
16 that I have awakened very early. I get complaints from  
17 my neighbors because of this, because they can't sleep,  
18 because of the noise from the trucks.

19 I suppose the noise is the main thing. However,  
20 there are small children still in our community and our  
21 neighborhood who are prone to run out in the road and  
22 you can imagine. We have -- there's a small hill coming  
23 down towards the center of the street and when a big

1 truck like that pops up over the hill, I'm sure it would  
2 be kind of hard to stop.

3 I have trouble getting out of my driveway. I  
4 would hate to be hit by one of these large trucks.

5 MR. ODIN: Your Honor, I think the Court has  
6 the gist of it, and I do believe it's irrelevant to the  
7 issue.

8 THE COURT: I would sustain the objection.

9 MR. FINNEGAN: Your Honor, we have no further  
10 questions.

11 THE COURT: Cross examine?

12 MR. ODIN: No cross examination.

13 MR. PRICHARD: No questions.

14 THE COURT: You may step down.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 THE COURT: Call your next witness.

18 MR. ARNOLD: Mr. Raymond H. Zell.  
19  
20  
21  
22  
23



1 Whereupon,

2 RAYMOND HENRY ZELL,

3 a defendant, was called for examination by counsel on  
4 behalf of the complainant, and, after having been  
5 previously sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. ARNOLD:

8 Q Would you state your full name, please?

9 A Raymond Henry Zell.

10 Q Where is your residence located?

11 A 6600 Sydenstricker Road.

12 Q What is your occupation?

13 A Line Manager, Browning and Ferris.

14 Q Could you give the Court a brief idea, or your  
15 ideas, as a line operator?

16 A I ran the operation like I always do.

17 Q What type of operation is this?

18 A It's a trash service.

19 Q Does running it include maintaining the vehicles?

20 A That is correct.

21 Q Does that include managing the employees?

22 A The whole operation, yes.

23 Q And by maintenance of vehicles, that includes

1 changing or repairing the engines, or changing flat  
2 tires; is that correct?

3 A Correct.

4 Q How long have you been so employed?

5 A I merged with Browning-Ferris, I think, going  
6 on five years.

7 Q Prior to that time, what was your occupation?

8 A Self-employed. I owned the business.

9 Q Do you receive a salary from Browning-Ferris?

10 A I am on an incentive plan and I'm salaried, too.

11 Q What is your wife's name?

12 A Eva G. Zell.

13 Q Who are the owners of the property located at  
14 6600 Sydenstricker Road?

15 A Who is the owners?

16 Q Yes, sir.

17 A My wife and I.

18 Q Do you rent this property to Browning-Ferris  
19 Industries?

20 A I do.

21 Q Are you also an officer in Browning-Ferris  
22 Industries?

23 A I am, of Virginia.

A-90

1 Q And a director of that same corporation of  
2 Virginia?

3 A Yes.

4 Q And also a stockholder?

5 A Yes.

6 Q Approximately how large is the property  
7 located at 660 Sydenstricker?

8 A It's very near 7 acres. It's a part of a  
9 farm of 180 acres.

10 Q The parcel that's identified as 6600  
11 Sydenstricker is only approximately seven acres in size?

12 A Just about, yes.

13 Q Approximately how many employees do you employ  
14 in this business?

15 A 43, I'd say.

16 Q And how many of these employees work full time  
17 on the place, on the premises.

18 A Let me see. It's my wife, my son, my daughter  
19 and myself, and four more, I think, three or four more.

20 Q That's about eight?

21 A About eight, yes.

22 Q Did I count those right?

23 A Yes.

1 Q Well, where do the rest of the employees work?  
2 That leaves about 35.

3 A On their routes.

4 Q Where do these employees park?

5 A Well, I think about two or three percent --  
6 not that many park on the premises, the rest of them, we  
7 pick up.

8 Q It's your testimony then, you pick up 98  
9 percent of your employees?

10 A Right. We run vehicles for them, because they  
11 do not have transportation.

12 Q Where are those vehicles parked?

13 A On the premises.

14 Q Do you have any mechanics you employ?

15 A That was counted in with the employees.

16 Q And how many full-time mechanics do you have  
17 working on the premises?

18 A Three.

19 Q Do you have any repair bays?

20 A I do.

21 Q How many do you have?

22 A Two.

23 Q Are there any large trucks that park on the

1 property?

2 A All trash vehicles are large.

3 Q Are there any large trash vehicles that park  
4 on the property?

5 A All trash vehicles are large that park there?

6 Q But, how many that park there?

7 A Eighteen.

8 Q What other type of vehicles park there?

9 A That's it, trash vehicles.

10 Q Could you explain what you mean by trash  
11 vehicles?

12 A Packers. We're up in the part of the century,  
13 now, that everything is automatic. We have to have  
14 packers, we don't go for the open-body trucks anymore.

15 Q Don't you have some other types of trucks,  
16 besides the packers?

17 A No, all are trash trucks.

18 Everything that sits out there is a trash truck.

19 Q Don't you have some of the big trucks that  
20 pick up some of the really large dumpsters?

21 A Yes, but that's still a trash truck.

22 Q And it is your testimony that there are a total  
23 of eighteen trucks that park on the premises, and that's

1 all?

2 A Right.

3 Q At no time have there been more than eighteen?

4 A No, not as I know of.

5 Q Well, you would know it if they didn't.

6 A You, I think, have the list of my trucks. You  
7 asked for it and I gave it to you, I think.

8 Q Yes, sir.

9 MR. ARNOLD: If I could have this marked  
10 complainant's exhibit two, please.

11 (The document referred to above  
12 was marked Plaintiff's Exhibit  
13 2 for identification.)

13 BY MR. ARNOLD:

14 Q I would ask you if you recognize this document?

15 A I do.

16 Q What is it?

17 A This is the application for my permit.

18 Q And how many vehicles are listed on there?

19 A Twenty-one, but also, there are some of them  
20 here, has been junked since this permit was taken out.

21 Q I beg your pardon?

22 A This has got 21 on it, the list.

23 Q Yes, sir.

1           A     Some of them has been gotten rid of, too.  
2     This list has not been updated.

3           Q     The list has not been updated?

4           A     No, not right now, for the -- for a new renewal.

5           Q     Aren't you supposed to update the list?

6           A     I'm coming this June or July, I'm not sure.

7           Q     How many trucks did you have last year?

8           A     Twenty-one. That is on the list.

9           Q     The year before that?

10          A     I think about the same number. I couldn't  
11     tell you.

12          Q     Well, was it 18 or 21?

13          A     I couldn't tell you, because, you know, I can't  
14     keep all of that in my head. I'm not that bright.

15          Q     I now show you a document that has been marked  
16     as Complainant's Exhibit 1 --

17                 THE COURT: For identification only.

18                 MR. ARNOLD: For identification, yes, sir.

19                 BY MR. ARNOLD:

20          Q     -- and ask you if you recognize the photograph  
21     that is at the top of this exhibit?

22          A     Yes, sir. You take a good picture.

23          Q     Is this your property?

1 A That's my property.

2 Q Are all these your trash trucks?

3 A Right.

4 Q Could you count them for me, please, sir?

5 A Twenty.

6 Q Thank you.

7 Directing your attention to the photograph on  
8 Complainant's Exhibit 1, also, the second one from the  
9 top, could you tell the Court what this is?

10 A What this is right here (indicating)?

11 Q Yes, sir.

12 A That's just a storage area.

13 Q Okay.

14 Does that also show your repair bays?

15 A Right here (indicating), yes.

16 That's a meat house there (indicating). You  
17 took a good picture.

18 Q You're referring to the third from the top?

19 A Yes. That's a meat house.

20 Q Now, in addition to the trash trucks that you  
21 counted there, what other type of vehicles do you keep  
22 on the property?

23 A I keep support vehicles, like -- actually, they



1 don't stay at the property. They stay at individual's  
2 homes. I have bus that goes and pick up people to bring  
3 to work, because they haven't got any transportation,  
4 and they keep them vehicles at the house. I have --

5 Q Those buses are not kept at your property?

6 A No.

7 Q They're not parked there at any time?

8 A No.

9 Q What other type of vehicles would you have?

10 A That's it. Only my personal car.

11 Q You don't have any pickup trucks that you use  
12 for light hauling?

13 A All of them are put out. They go out at  
14 certain men's home every night. I have six or seven of  
15 them, but they assign each individual to bring them in.  
16 You see, we pick up, like I said, 90 percent of our men,  
17 or better, 98 percent of our men. And we have to go  
18 all over the county.

19 In this business, here, you don't get help,  
20 per se, you have to go get your help.

21 Q Where are these trucks repaired?

22 A Right on the premises.

23 Q And you're in charge of the repairing and

1 supervising?

2 A I am.

3 Q Is all the maintenance on the trucks done on  
4 the property?

5 A Correct.

6 Q Including changing the oil and fixing the flat  
7 tires, that type of thing?

8 A Correct.

9 Q Do you have any telephones that are located on  
10 the property?

11 A We do.

12 Q How many telephones do you have there?

13 A For the office use or for the home use?

14 Q Well, both, if you could break them down, please.

15 A Well, we have one for the home, and I think it's  
16 three for the business.

17 Q What are the numbers of those phones, please?

18 A The home phone is 455-9091, one of them is  
19 9020 and 9032, I think it is.

20 Q That would be 455-9020?

21 A Right.

22 Q And what was the last one?

23 A 9032, I think. I've never used it.

1 THE WITNESS: So, what is it?

2 It's 2032, I'm sorry.

3 BY MR. ARNOLD:

4 Q 2032?

5 A Right.

6 Q Who does the billing for your customers?

7 A Well, my wife does some of it and the other is  
8 computerized.

9 Q Where is the computer?

10 A The computer now?

11 We just changed from a private to a company  
12 computer, and it's in Seabrook, Maryland.

13 Q When was this change made?

14 A I guess about a year ago, maybe not quite a  
15 year.

16 Q Prior to that date, where was the billing done?

17 A In Fairfax County.

18 Q On the premises?

19 A Some of it was and some of it was done in  
20 Annandale.

21 Q Do you do your own accounting, or do you have  
22 an accountant that does it?

23 A I have my own accountant.

1 Q Do you do your own billing, or do you hire  
2 somebody to do that?

3 A No, I do my own billing.

4 Q And is that done at 6600 Sydenstricker Road?

5 A Some of it is, some of it is, but the magni-  
6 tude of it on the residential customers, we wouldn't be  
7 able to hand bill, because there'd be too many of them.

8 Q Where is the money sent when the customers  
9 pay you?

10 A Some of it comes to the office at 66 -- well,  
11 some of it comes to a Post Office box, Springfield 548,  
12 and a percentage of it goes to Seabrook.

13 Q Do you have any business cards?

14 A I do. I think you have one of my business  
15 cards. That's the only one I had left.

16 Q What is the address on the business cards?

17 A 6600 Sydenstricker Road.

18 Q Do you have any checking accounts that you  
19 utilize at the business?

20 A Do I?

21 Q Yes, sir.

22 A Phrase that over for me, so I know what you're  
23 talking about.

1 Q You have to write checks for the business;  
2 right?

3 A Right.

4 Q To write checks, you have to have a checking  
5 account?

6 A Right.

7 Q What is the address shown on that checking  
8 account? Where do the statements go?

9 A I think the payroll account is Northern Virginia  
10 Bank. I'm not sure right now.

11 Q No, I'm saying, where are the statements sent  
12 when they come to you? Do they come to you at 6600  
13 Sydenstricker, or do they go somewhere else?

14 A To Seabrook, Maryland.

15 Q So, you don't have any checking accounts for  
16 which you personally write the checks?

17 A I write all checks.

18 Q But you don't see the statements?

19 A Yes, sure, I see the statements.

20 Q Do the statements -- are they mailed to your  
21 house?

22 A Oh, yes, definitely, yes.

23 Q Who is Thomas Germaine?

1 A He is just a clerk in my office.

2 Q He is an employee of yours?

3 A Right.

4 Q How long has he been employed by you?

5 A Oh, I guess about three years.

6 Q And where does he physically work?

7 A In the office.

8 You know, per se, we don't have all this office  
9 help. If he can drive, he'll drive a truck, it depends  
10 on how much help shows up. We don't keep anyone that  
11 can't drive a truck, especially the men. They work out  
12 on trucks. Actually, today he is out on a truck.

13 MR. ARNOLD: Concerning the premises, I have here  
14 a survey of plat I'd like to have marked as Complainant's  
15 Exhibit 3.

16 (The document referred to above  
17 was marked Plaintiff's Exhibit  
3 for identification.)

18 MR. ARNOLD: For the Court, Your Honor, I have  
19 provided copies of certain documents to counsel before  
20 trial, and it's just taking a minute here to compare this  
21 exhibit to the exhibits that they have been presented  
22 prior.

23

1 BY MR. ARNOLD:

2 Q Mr. Zell, I show you the plat that has been  
3 marked Complainant's Exhibit 3, and ask you to examine  
4 it.

5 Do you recognize it?

6 A I recognize the drawing. It's a drawing here,  
7 but that's about it.

8 Q What is the property? What is it a drawing of?

9 A It's supposed to be of my property, I guess.

10 Q Does it have a date on it?

11 A 22nd. I can't make out the 197 -- I don't  
12 know whether that's 3 or what, on this one.

13 Q Does that show the location of your house  
14 on the property?

15 A Is this supposed to be my house?

16 THE COURT: Have you ever seen that plat before?

17 THE WITNESS: No. I think it was drawn up.  
18 I'm not sure, the swimming pool man drew it up, I'm  
19 not sure.

20 No, I don't think I've ever seen it.

21 THE COURT: Do you have the survey here?

22 MR. ARNOLD: I beg your pardon?

23 THE COURT: Do you have the survey here?

1 MR. ARNOLD: No, sir, I don't.

2 If I could have this document marked as  
3 Complainant's Exhibit 4.

4 (The document referred to above  
5 was marked Plaintiff's Exhibit  
6 4 for identification.)

7 BY MR. ARNOLD:

8 Q I would ask you to examine this document and  
9 see if it refreshes your memory.

10 A This is for a swimming pool, yes.

11 Q Is there a second sheet to that?

12 A It's the same as that (indicating).

13 Q So, that's an application for a building permit  
14 for a swimming pool on your property?

15 A I didn't make the application, the swimming  
16 pool man did.

17 Q Doesn't it have your signature on the front  
18 page?

19 A On the front page it did, yes, but I never  
20 drew this. I never knew anything about this drawing. I  
21 think he just knocked this out hisself, yes. I'm not  
22 sure.

23 Q Is that not your signature on the front page?

A It is my signature, yes.



1           Q     Well, at any rate, Mr. Zell, what I would like  
2 to do is to have you explain for the Court the various  
3 buildings that are on the property, and if you would like  
4 to utilize the plat, feel free to do so. If not, I think  
5 if you could draw them on a piece of paper, we would have  
6 it for the record.

7           And I think that might be a little easier to  
8 do. If you'd like to utilize the plat, I have a copy  
9 which you can use.

10          A     The plat doesn't show the buildings.

11          Q     I know. That's why if you would like to use  
12 the plat, if you could put the buildings on there and  
13 identify them as you do so.

14          A     Well, I don't know what he -- where he has it.  
15 This must be a shed I built for the swimming pool for  
16 the pump house, right there (indicating).

17          Q     Well, why don't you go ahead and just ignore  
18 the plat, since you're not familiar with it, and go  
19 ahead and draw here the property, and if you could  
20 indicate the buildings that are located at the present  
21 time on it.

22          A     That would be the house (indicating), this  
23 would be the shed (indicating) for the pump.

1 Q Okay, now, that shed is for what?

2 A For the pump for the swimming pool.

3 Q The swimming pool pump?

4 A That's right. And utility shed.

5 Q And where is the swimming pool located?

6 A About right here (indicating).

7 Q And this at the top, here, is Sydenstricker  
8 Road; is that correct?

9 A Right.

10 And right here is a power line (indicating).  
11 It's about a 500-foot power line on the right of it.

12 Q And where is the driveway?

13 A Right here (indicating).

14 Q Now, what other buildings do you have besides  
15 the house, the swimming pool and the shed for the pump?

16 A I have the barn.

17 Q Now, what do you use the barn for?

18 A Storage.

19 Q Could you write barn next to that?

20 A That's the old wooden barn.

21 Q What type of materials do you store in there?

22 A Tires, old cookstove, anything that comes along.

23 Q Are these related to the business?

1           A     Antifreeze. Well, it's business, or anything  
2 I choose to use it for.

3           Q     What other buildings do you have there?

4           A     The truck barn.

5           Q     Okay, now, what is that used for?

6           A     To repair the trucks.

7           Q     Directing your attention, again, to Complainant's  
8 Exhibit 1, you say the truck barn. That would be the  
9 second from the top, the middle building, the red building  
10 with the two green doors?

11          A     Right.

12          Q     And what other buildings do you have on the  
13 property?

14          A     I have a metal building next to this, and then  
15 I have a cement pad right here (indicating), where I  
16 repair things on. I've got bolts in the ground where I  
17 can tie down -- where the gentleman, Mr. Prichard, I  
18 believe, said I used to use a tree for a repair shop.

19                Yes, that's true, that's very true. I took  
20 the same idea and made it in this cement pad. I put eye  
21 bolts down into it where I could put a chain or anything  
22 to it and pull bumpers and things back on. That's  
23 actually my body shop.

1 Q Could you label this metal building, you called  
2 it?

3 A Yes. That's just a throw-down building we put  
4 up there. It's a bolted building we just put up,  
5 we can take down any time we choose.

6 Q What do you use that for? Would you identify  
7 it in some way, metal building?

8 A Just about anything. You can throw it up for  
9 anything. It doesn't make any difference.

10 Q Do you use it for repairing vehicles?

11 A No, we can't use it for that, because you can't  
12 make the turn in there.

13 Q Do you use it just for equipment?

14 A No equipment.

15 Q Do you use it for storage?

16 A Oh, yes.

17 Q What type of stuff do you store in there?

18 A Anything that comes along.

19 Q For example?

20 A Tires, or if we run out of room, we switch them  
21 over there, paints, anything like that, anything that  
22 comes along, ladders. It's just a handy place for any-  
23 thing that comes along.

1 Q Do you store things there that you use in your  
2 business?

3 A Oh, definitely.

4 Q What other buildings do you have on your  
5 property?

6 A I've got a meat house right there (indicating),  
7 a walk-in meat house with a walk-in freezer, a walk-in  
8 cooler box. I don't think you've got that in your  
9 picture, though.

10 Yes, that's it right there.

11 Q Are there any other buildings on the property?

12 A No, that's it.

13 Q Now, you do have a gas stand on the property,  
14 a place to store gasoline?

15 A I've got two underground gas tanks.

16 Q Could you draw them and indicate where they're  
17 located, approximately.

18 A One here (indicating) and one about right in  
19 here (indicating). They're underground storage.

20 Q They're both on your property? You've drawn  
21 it slightly off the property.

22 A No, it's on the property.

23 Q Could I get you to label those as gas tanks?

1 A (The witness complied with the request.)

2 Q How many gallons can you store in those tanks?

3 A 5,000 gallons, 4,000 to 5,000 gallons.

4 Q Mr. Zell, have you ever been -- excuse me one  
5 minute and let me have this paper marked as an exhibit,  
6 and I would move it into evidence if I could get you to  
7 do one more thing.

8 Would you label this metal building for me,  
9 please, and write on there where Sydenstricker Road is  
10 located?

11 A (The witness complied with the request.)

12 MR. ARNOLD: A couple of more questions con-  
13 cerning these buildings, but let me get this marked,  
14 first.

15 (The document referred to above  
16 was marked Plaintiff's Exhibit  
No. 5 for identification.)

17 MR. ARNOLD: I would move this into evidence  
18 at this time.

19 MR. ODIN: I assume it's coming in as demon-  
20 strative evidence, and not actually evidence of the  
21 location, and simply as an aid in receiving his testimony.

22 THE COURT: That's the only way the Court would  
23 recieve it, because it's not drawn to scale.

1 MR. ODIN: No objections, with that purpose.

2 THE COURT: It will be admitted.

3 (The document heretofore marked  
4 Plaintiff's Exhibit No. 5 for  
5 identification was received in  
6 evidence.)

7 BY MR. ARNOLD:

8 Q Directing your attention, again, to Plaintiff's  
9 Exhibit 5, 5 is a schematic diagram, when was your house  
10 built, Mr. Zell?

11 A I think I started on it the last of '44 or first  
12 of '45, '45, I think.

13 Q 1944 and 1945?

14 A I think it was, yes. I'm not sure.

15 Q When did you and your wife actually get title  
16 to the property?

17 A In 1945. I think that's correct. I'm not sure  
18 about that.

19 Q What was on the property when you acquired  
20 title to it, was it vacant, or did it already have a  
21 house of some kind on it?

22 A No, no house.

23 Q It was vacant then.

What was the property used for?

A-111

1 A Running hogs.

2 Q Did the hogs actually live on the property?

3 A That's right.

4 Q Were there any other facilities on the property?

5 I guess a fence for the hogs.

6 Were there any other facilities, any other  
7 shelters, or anything?

8 A Well, hog shelters, and from the point of the  
9 road, where the power line is now, going back, there  
10 wasn't no power line there then, and we put a fence up  
11 between, I think it was the old Matthews place, between  
12 us and the Matthews place, just something to hold the  
13 hogs in.

14 Actually, it's still there.

15 Q When you acquired the property in '45 --

16 A I didn't acquire the property, it was gave to  
17 me.

18 Q When the property was given to you in '45, it  
19 had a place to keep hogs, and that was about all that  
20 was on it?

21 A No, because in '45 we started building. That  
22 barn was built at same time.

23 Q You are referring to which barn, the wooden



1 barn?

2 A Right. That was built before the house. That  
3 was built before. Actually, I started that barn in -- I  
4 went in the service in '42, and, actually, we started  
5 that barn just before I went in the service, and I had  
6 to complete it when I come back.

7 Q When did you come back?

8 A In '45.

9 Q When was the truck barn built?

10 A Oh, I was given a permit for the truck barn,  
11 I think it was in -- it's been about ten or twelve years  
12 ago, I'm not sure about that.

13 MR. ARNOLD: If I could have this marked as  
14 Complainant's Exhibit 6?

15 (The document referred to above  
16 was marked Plaintiff's Exhibit  
No. 6 for identification.)

17 BY MR. ARNOLD:

18 Q Okay, Mr. Zell, I show you Complainant's  
19 Exhibit Number 6, and ask you if you recognize this  
20 document?

21 A No, I don't.

22 Q What are the approximate dimensions of the  
23 truck barn?

1 A Of the truck barn?

2 Q Yes, sir.

3 A I think it's 40-foot long and 40-foot wide, I  
4 think. We've got two 12-foot doors in it. I think it's  
5 -- I'm not sure what it is.

6 Q When do you think the truck barn was built, then?

7 A The truck barn, itself?

8 Q Yes, sir.

9 A It was built -- right off, I don't remember what  
10 year it was. I know it's been about 10 or 12 years ago.

11 Q Ten or twelve years ago would be about 1965?

12 A That's about right.

13 Q And it's your testimony that you got a building  
14 permit from the County for that?

15 A I did. The gentleman in the office drew up  
16 the plat for me. I can remember that.

17 Q Who was that?

18 A I don't know. I just went up there and told  
19 them what I wanted.

20 Q What office are you referring to?

21 A I think it was the Zoning Office. I'm not  
22 sure where you get building permits.

23 Q You went up there yourself?

1 A That's right.

2 Q Do you have a copy of that permit anywhere?

3 A I believe I do, home somewhere. I don't know.

4 THE WITNESS: Do you have it?

5 Well, Mr. Odin has it.

6 MR. ARNOLD: If I could have this document  
7 marked at Complainant's Exhibit 7?

8 (The document referred to above  
9 was marked Plaintiff's Exhibit  
No. 7 for identification.)

10 BY MR. ARNOLD:

11 Q Directing your attention to Complainant's Exhibit  
12 7, is this the building permit you were referring to?

13 A Yes, that's it.

14 Q So that was in '65.

15 When was the concrete pad installed?

16 A About the same time.

17 Q Did you get a building permit for that?

18 A No. I didn't think I needed one for it,  
19 because I put it in myself.

20 Q Did you -- how about the small metal building,  
21 when was that installed?

22 A No. About four or five years ago. I'm not sure.

23 Q Approximately in 1973?

1           A     I'm not sure what year it was, but I know it's  
2     been four or five years.

3           Q     Did you get a building permit for that?

4           A     No, because it's a knock-down building.

5           THE COURT: Does it have footings?

6           THE WITNESS: No, sir.

7           BY MR. ARNOLD:

8           Q     When did you install the gas tanks?

9           A     I can't remember. I know it's been a right  
10    good while ago, when I installed my first one.

11          Q     They were not both installed at the same time?

12          A     No.

13          Q     What is the approximate size of each one?

14          A     One of them is a 2,000-gallon tank. Actually,  
15    both of them is 2,000-gallon tanks.

16          Q     Was it within the last ten years that they  
17    were installed?

18          A     Yes, I guess so. I'm not sure.

19          Q     But it was after the house was built?

20          A     Oh, definitely.

21          Q     Was it after the barn was built?

22          A     Definitely. Which Barn?

23          Q     The wooden barn.

1 A Yes.

2 Q After the wooden barn was built?

3 A Yes.

4 Q Was it after the truck barn was built?

5 A No.

6 Q Before that, both of them before that?

7 A No. One of them was before that.

8 Q One of them was before that and then one of them  
9 after that?

10 A Yes.

11 Q Do you have a garage for your personal car?

12 A No.

13 Q When was the swimming pool put in?

14 A I believe it was in '73. What is that? I can't  
15 make it out, because I can't remember when all of this --

16 Q All right, thank you.

17 Mr. Zell, have you ever been notified that your  
18 business was being operated illegally, in violation of  
19 the zoning code.

20 A I have, but not illegally, I don't think. It  
21 was never put in that term to me.

22 Q Do you ever remember going to court on the  
23 zoning violation charge?

1 A I did.

2 Q Do you remember approximately when that was?

3 A No, I don't. It's been about, I guess, about  
4 eight years ago, or six or eight years ago. I'm not sure.

5 Q What was the outcome of that?

6 MR. ODIN: I object, Your Honor. It's  
7 irrelevant.

8 THE COURT: Sustained.

9 MR. ARNOLD: Your Honor, I would submit that it  
10 is relevant, and it shows the knowledge of the defendant  
11 of the violation, that he was not in conformance with  
12 the zoning code. And it also shows that there was a  
13 time in the past where he has been convicted, criminally,  
14 of a zoning offense, which I think is definitely relevant  
15 in light of the nonconforming use argument, which the  
16 defendants have raised.

17 MR. PRICHARD: I would object to the statement  
18 Mr. Arnold has made. He just testified, and I would ask  
19 that that be stricken.

20 THE COURT: The Court will sustain the objection  
21 by Mr. Odin.

22 BY MR. ARNOLD:

23 Q Mr. Zell, have you ever applied for a re-zoning?

1 THE COURT: Now, if he entered a plea of  
2 guilty in a charge --

3 MR. ODIN: He didn't, Your Honor. In fact,  
4 since that's been introduced to his prejudice and I told  
5 this gentleman, it's quite possible to check it out.  
6 Mr. Ken Sanders was prosecutor at the time. I went to  
7 him after this man's conviction. I said I was going to  
8 appeal the case. Mr. Sanders talked to other county  
9 officials and it was agreed that it would never be  
10 used against him.

11 And I'll go further, if I may, to tell you  
12 the facts and circumstances of the case, and I'll be glad  
13 to do it. But, I made that information known before this  
14 case, and I assumed they checked it out.

15 THE COURT: Are you going to call Mr. Sanders?

16 MR. ODIN: I'd be glad to call him if it becomes  
17 relevant, but it's not relevant. It's a prejudicial  
18 statement and should never have been made in this court.

19 MR. ARNOLD: Well, if Mr. Odin informed me  
20 of that, I do not recall that, and I have not spoken with  
21 Mr. Sanders. What I've relied on are the documents that  
22 are in the file. And perhaps it would be best to call  
23 Mr. Sanders to clear that up, because I was intending to rely

1 on that in this case.

2 MR. ODIN: First of all, so far as a reliance  
3 is concerned, the court record itself would have no  
4 evidence. Secondly, his knowledge or his citing is  
5 totally irrelevant to this particular case, and thirdly,  
6 if you'll recall, I gave you Mr. Bowman and Mr. Burtahl  
7 who were county officials at that time, who said they  
8 want to ignore this particular situation, forget it and  
9 let the man continue his business.

10 THE COURT: The Court has sustained the  
11 objection. If you wish to call Counsel, you may do that  
12 in your defense.

13 BY MR. ARNOLD:

14 Q Mr. Zell, have you ever applied for a re-zoning?

15 A No, I haven't.

16 Q Have you ever applied for a special-use permit  
17 or a variance?

18 A No, I haven't.

19 Q Have you ever received any letters from anyone  
20 in the County, saying that your use of this property was  
21 all right?

22 A No. In a roundabout way, hearsay, you know.

23 It was handed down to me from officials in the county that



1 I could go ahead and operate, because I was taking up  
2 the slack where the County couldn't do anything about it,  
3 down in my area, for me to keep operating, because I was  
4 knocked out of operating and the County couldn't, at that  
5 time, couldn't take over my operation.

6 And the people down there would be hurting and  
7 they said, leave me alone.

8 Q How did this information come to you?

9 A I think it was -- I'm only saying, now,  
10 through some official of the County. I don't know.

11 Q How did it come to you, though? Somebody must  
12 have told you.

13 A Definitely, but right off, I can't remember  
14 who told me, because it was such a big uproar at that  
15 time, because the County said, and I think Mr. Bowman  
16 and Mr. Murtaugh --

17 Q Now, wait a minute here. You don't remember  
18 who told you?

19 A Right off, I don't know.

20 MR. ARNOLD: Well, Your Honor, I would ask that  
21 that be stricken as evidence. Not only is it hearsay,  
22 but he doesn't even remember who told him.

23 THE COURT: I think that was in response to

1 your question, wasn't it, what was told to him?

2 MR. ARNOLD: Yes, sir. I asked him if he'd  
3 ever received any letters, and he said, no, I never  
4 received any letters, but by way of hearsay, I was told  
5 blah-blah. My question was, did you ever receive any --

6 THE COURT: And then you followed that up with,  
7 who told you.

8 MR. ARNOLD: Yes, sir. I was trying to  
9 establish what was hearsay.

10 THE COURT: The Court will strike it, but it's  
11 very unusual to strike your own question from his  
12 testimony.

13 BY MR. ARNOLD:

14 Q Mr. Zell, do you remember testifying at a  
15 deposition given in my office on Friday, April the 1st,  
16 1977?

17 A Sure, I remember.

18 Q And do you remember your response to the  
19 question, to the best of your recollection, then, there  
20 aren't any conversations you've ever had with any zoning  
21 inspectors or members of the Board of Supervisors or any  
22 other County officials, which has indicated to you that  
23 you had in their eyes a right to use the property for your

1 trash business; is that correct?

2 A I think the way you put the question to me in  
3 your office --

4 Q I'm asking do you recall your response?

5 A Yes, at that time, yes.

6 Q What was your response at that time?

7 A I said, no, at that time.

8 Q Thank you.

9 A Because I think the way the question --

10 Q Thank you very much, Mr. Zell.

11 Now, Mr. Zell, going back to when you got into  
12 this business, when was it that you started this trash  
13 business?

14 A When I was twelve years old, and I've been in it  
15 -- I'm 56 years old now.

16 Q Where did you live when you were twelve years  
17 old?

18 A Alexandria.

19 Q When did you start hauling trash from this  
20 location?

21 A What location do you mean?

22 Q 6600 Sydenstricker Road.

23 A Going back to trash and garbage; is that the

1 way you want to put it? Because there wasn't no distinc-  
2 tion then.

3 Q All right, trash and garbage.

4 A My father-in-law's business was the hogs then,  
5 and I took up with him. I guess I started going with  
6 my wife in the 40's, in 1940, somewhere along in there.

7 Q When did you meet your wife, what year?

8 A I guess, it'd be the last of '39, somewhere in  
9 there.

10 Q And you had started going with her for a few  
11 years?

12 A Yes. You know, in them days, you didn't just  
13 get married, we didn't. You had to save to get enough  
14 to get married.

15 Q So, when did you start operating a trash  
16 collection business from 6600 Sydenstricker Road?

17 A Fully trash?

18 Q Yes.

19 A Fully trash, in 1962, nothing but trash. But,  
20 before that we was hauling both trash and garbage.

21 Q When did you start hauling trash and garbage?

22 A I don't know. I guess it was in '40, '41,  
23 somewhere up in there. I don't know, because then I

1 left. We had the business going and then I went in the  
2 service in '42, and my father-in-law and brother-in-law  
3 -- my father kept the business going until I got back  
4 out, and then I continued when I got back out. That was  
5 in '45.

6 Q So, you got out in '45?

7 A Right.

8 MR. ARNOLD: No further questions, Your Honor.

9 MR. ODIN: No questions at this time.

10 THE COURT: You may step down.

11 (Witness excused.)

12 THE COURT: Call your next witness.

13 MR. ARNOLD: I call Mr. Knowlton.

14 Whereupon,

15 GILBERT R. KNOWLTON,

16 the complainant, was called for examination by counsel  
17 on his own behalf, and, after having been previously duly  
18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. ARNOLD:

21 Q Would you state your full name for us?

22 A Gilbert R. Knowlton, K-n-o-w-l-t-o-n.

23 Q What is your occupation?

1 A Zoning Administrator for Fairfax County.

2 Q How long have you been so employed?

3 A As Zoning Administrator, since July of '72.

4 Q And what are your duties, briefly.

5 A To administratively interpret, administer and  
6 enforce the zoning ordinances of the County.

7 Q Are you familiar with the property located at  
8 6600 Sydenstricker Road?

9 A I am, yes.

10 Q What is the present zoning of that property?

11 A RE-1, 1-acre, single-family residence.

12 Q Is the operation of a trash business a permitted  
13 use in the RE-1 zone?

14 A No, it is not.

15 MR. ODIN: These are legal questions, Your  
16 Honor, and I think the best evidence would be the zoning  
17 ordinance, itself.

18 THE COURT: The Court would sustain the  
19 objection.

20 MR. ARNOLD: We will now enter into evidence  
21 copies of sections of the zoning code, which have been  
22 certified by the Clerk.

23 While they are looking at those, if I could

1 have this marked as Complainant's Exhibit Number 8.

2 (A zoning map, referred to above,  
3 was marked Plaintiff's Exhibit  
4 No. 8 for identification.)

5 BY MR. ARNOLD:

6 Q I ask you, Mr. Knowlton, if this is a true and  
7 accurate representation of the zoning map for the subject  
8 property?

9 A Yes, it is.

10 MR. ARNOLD: I will move that into evidence at  
11 this time.

12 THE COURT: Show it to Counsel.

13 It will be admitted. Leave it with the clerk  
14 so the clerk can mark it off of the identification list.

15 (The zoning map, previously  
16 marked Plaintiff's Exhibit No. 8,  
17 for identification, was received  
18 in evidence.)

19 MR. ODIN: Your Honor, I would object to the  
20 introduction of this document. It is being offered, as I  
21 understand it, as the current ordinance relating to  
22 nonconforming uses and I have two objections to it.

23 Firstly, I would like to call the court's  
attention to, I think it's 15.1 492 of the Code of  
Virginia, and in that section of the code it states what

1 may or may not be included in a zoning ordinance.

2 THE COURT: 15.1?

3 MR. ODIN: I don't have my code book, so if  
4 I could borrow one for just one second. I'm sorry. 15.1  
5 492 states in this article: "Nothing in this article  
6 shall be construed to authorize the impairment of any  
7 vestige right, except that a zoning ordinance may provide  
8 that the land, building and structures and the use thereof,  
9 which do not conform to the regulation and restrictions  
10 prescribed for the district in which they are situated  
11 may be continued only so long as the then-existing, or the  
12 more restricted use continues and such use is not dis-  
13 continued for more than two years and so long as the  
14 building structures are maintained," et cetera, et  
15 cetera.

16 Two important distinctions to be made. First  
17 of all, it requires a two-year abandonment or discontinu-  
18 ation of the use, and, secondly, it does allow the  
19 continuation of not only the use in question, but a  
20 continuation of any other use, so long as it is not --  
21 or it is less restrictive, or not as intense, if you will,  
22 a use as the prior nonconforming use.

23 The ordinance which the County has presented



1 there are two things. One is, and I do not have a certi-  
2 fied copy, but I'm prepared to represent, one is, it  
3 states right on the ordinance, which has been certified,  
4 that Section 30-4 2.6 was amended, and it says, see  
5 Amendment 290, and if any nonconforming use ceases for any  
6 reason for a continuous period of six months or more,  
7 other than for reasons beyond the control -- not two years,  
8 but six months for the provision of subsection, et cetera  
9 -- or is changed to or replaced by a conforming use, the  
10 land and building thereof devoted to such nonconforming use  
11 shall thereupon be subject to all the regulations as to  
12 the use for the district, et cetera.

13 Two things. One, the amendment that came in  
14 after that -- and again, I'm prepared to represent that  
15 it was amended and it was and it should be attached  
16 before it comes in -- the particular nonconforming use  
17 section that is there is in derogation of the enabling  
18 legislation, one, and two, there was an amendment.

19 MR. ARNOLD: Your Honor, the amendment was to  
20 conform this provision with the state code, and the  
21 purpose was to delete this entire section.

22 THE COURT: Do you have the amendment with you?

23 MR. ARNOLD: No, sir. I have not attached it.

1 I have a copy here which I'd be glad to show Counsel.

2 THE COURT: Well, the Court cannot accept that  
3 as a current zoning ordinance if you don't have your  
4 amendments to it.

5 MR. ARNOLD: Your Honor, I have a copy here,  
6 which is a Xerox copy which is certified by the Board.

7 THE COURT: Attach that to your ordinance, then,  
8 so you'll have a complete exhibit. Because, if you are  
9 introducing that ordinance in conflict with the state  
10 statute, then, we all realize the state statute is going  
11 to prevail.

12 MR. ODIN: Your Honor, may I just read you  
13 the amendment?

14 It says: "If any nonconforming use ceases  
15 for any reason for a continuous period of two years," and  
16 they brought in in compliance with the two years -- "or  
17 more, other than for reasons beyond the control of the  
18 owner of the property except for provisions of subsections  
19 30-4 2.5 or as changed to or replaced by a conforming use,  
20 the land and buildings thereof devoted to such non-  
21 conforming use, shall thereupon be subject to all the  
22 regulations as to the use of the district," et cetera.

23 Again, the derogation is simply that this

1 ordinance and the other ordinances dealing with non-  
2 conforming uses, attempt, if you will, in derogation  
3 of the state statute, to preclude an individual from  
4 changing one use to another use, which is less restricted.

5 And, for that reason, I maintain, one, that it  
6 is an improper ordinance, it's an unlawful ordinance,  
7 it's in derogation of the state --

8 THE COURT: The Court will admit it into  
9 evidence so we'll have it in evidence and you can argue  
10 that at the conclusion, after all the evidence has been  
11 presented, contrary to the enabling legislation.

12 The Court will take a ten-minute recess.

13 (Brief recess.)

14 THE COURT: Do you have some sections of the  
15 County Ordinance that are not applicable?

16 MR. ARNOLD: Yes, sir, there are sections not  
17 applicable, and they've been stricken.

18 THE COURT: Have you marked those that are  
19 applicable?

20 MR. ARNOLD: I have stricken through the  
21 sections that are not applicable.

22 I move these in evidence at this time.

23 THE COURT: Any objection?

1 MR. PRICHARD: No objection.

2 THE COURT: They'll be admitted.

3 (The document referred to above  
4 was marked Plaintiff's Exhibit  
5 9 for identification and  
6 received in evidence.)

7 BY MR. ARNOLD:

8 Q Mr. Knowlton, where are the permitted uses set  
9 forth in the zoning code?

10 A In the schedule of regulations, Article 2 of  
11 that document.

12 Q And is a trash business listed therein?

13 MR. ODIN: Your Honor, they are in evidence,  
14 and they speak for themselves, and I think it is for the  
15 Court to determine the best evidence --

16 THE COURT: Your best evidence is the ordinance,  
17 itself. The Court can then read the list.

18 MR. ARNOLD: All right, fine.

19 BY MR. ARNOLD:

20 Q Now, concerning Mr. Zell's property at 6600  
21 Sydenstricker Road, you testified the present zoning is  
22 RE-1.

23 When was that zoned? When was that so zoned?

MR. ODIN: Excuse me, Your Honor, that would be

1 a matter, again, from proof from the Clerk, and not from  
2 Mr. Knowlton, and I would object.

3 THE COURT: Argument?

4 MR. ARNOLD: Well, Your Honor, Mr. Knowlton is the  
5 Zoning Administrator and is charged with the duty of  
6 interpreting the Code. Through this line of testimony,  
7 I was trying to establish what that zoning has been in  
8 the past, and I feel that the question is proper, and  
9 that in his position as Zoning Administrator, he is  
10 familiar with the ordinance and the history of the  
11 ordinance, and how that zoning has developed through  
12 the county.

13 THE COURT: Do you have that ordinance?

14 MR. ARNOLD: Yes, sir, I have copies of the  
15 maps right here, I'll have marked and use in his testi-  
16 mony.

17 THE COURT: If it was zoned by the overall  
18 adoption of the zoning ordinance and map, then your best  
19 evidence, again, would be your ordinance and your map.  
20 Changes in the zone, unless it is an individual applica-  
21 tion for some --

22 MR. ARNOLD: I have certified copies of that.  
23 I'll move these in evidence at this time.

1 THE COURT: Any objection.

2 MR. ODIN: Yes, Your Honor.

3 First of all --

4 THE COURT: Find Article 2 for me, in here,  
5 please.

6 Go ahead, Mr. Odin.

7 MR. ODIN: Your Honor, right now, just let me  
8 say to you if I may, that I think they are out of order,  
9 that the first thing that should come in -- these are  
10 maps purportedly or allegedly to be copies of the 1941  
11 ordinance, but the ordinance is not now in evidence, and  
12 I would object until it is.

13 THE COURT: On the -- isn't your map referred  
14 to in your ordinance? Wouldn't you have the adoption of  
15 your ordinance and your map at the same time by the  
16 Board of Supervisors?

17 MR. ARNOLD: Yes, sir.

18 THE COURT: Wouldn't it have to come in?

19 The map doesn't mean anything without the  
20 ordinance, and the ordinance doesn't mean anything  
21 without the map.

22 Don't you have to have it in its entirety to  
23 effectuate a change or to effectuate a zoning, itself,

1 by either an amendment to the map and your ordinance  
2 amendment?

3 MR. ARNOLD: Well, yes, sir, that's correct,  
4 Your Honor, but as a matter of evidence, what I have  
5 here is a copy of a document which has -- the original  
6 which is in possession of the County -- a Xerox copy as  
7 attested to by the Clerk.

8 THE COURT: His objection is that you do not  
9 have the ordinance attached to the map. You are isolating  
10 the map from your ordinance.

11 MR. ARNOLD: Is the objection to the  
12 authenticity?

13 THE COURT: No. It's that you do not have the  
14 entire package, the ordinance and the map.

15 MR. ARNOLD: Well, is it an objection to the  
16 relevance?

17 THE COURT: No, because your map doesn't mean  
18 anything without an ordinance, and your ordinance  
19 doesn't mean anything without your map. To show your  
20 zoning, you have to have both of them, to be read  
21 together. That's my understanding' and the procedure of  
22 Fairfax County for years. You have an ordinance and a  
23 map, and the County then adopts both the ordinance,

1 zoning ordinance, and the map, which establishes your use.

2 I may be in error, but that is my understanding  
3 of the procedure for years. So, with the zoning map,  
4 you should have attached to your zoning map, your zoning  
5 ordinance. And I think that is Mr. Odin's objection.  
6 You do not have the two of them together.

7 MR. ARNOLD: All right.

8 If I could have this marked, please.

9 THE COURT: Have it marked as part of your map,  
10 also, the two together.

11 MR. ARNOLD: Well, I believe, Your Honor, I'll  
12 introduce them in another order, in that I will attach  
13 each map to each ordinance, rather than attach them all  
14 together, as I believe it would be easier.

15 THE COURT: Well, isn't this ordinance going  
16 to this map?

17 MR. ARNOLD: The top one, but these show the  
18 ordinances, the zoning at other times under different  
19 ordinances.

20 THE COURT: All right.

21 THE CLERK: So, should it be --

22 THE COURT: We'll leave it up to him.

23 MR. ARNOLD: Then I would move into evidence



1 Plaintiff's Exhibit Numbers 10 and 11, simultaneously.

2 (The documents referred to above  
3 were marked Plaintiff's Exhibits  
4 10 and 11 for identification)

5 MR. ODIN: Your Honor, may I approach the  
6 bench?

7 I have a zoning ordinance dated, effective  
8 March 1, 1941, and a map, and if Your Honor will look  
9 at the map, it has been certified by Ethel Register, Clerk  
10 of the Board of Supervisors. It does not show any zoning  
11 districts. And in red, superimposed upon this map, is  
12 simply the words "agricultural district".

13 THE COURT: Counsel, was this the map that was  
14 adopted with your ordinance?

15 MR. ARNOLD: Yes, it's a Xerox copy of a  
16 portion of the map.

17 THE COURT: Setting out your zoned districts?

18 MR. ARNOLD: Yes, sir.

19 THE COURT: Well, everything in here is  
20 agricultural.

21 MR. ARNOLD: Yes, sir.

22 THE COURT: In this area.

23 MR. ODIN: Your Honor, first of all that requires

1 extraneous evidence in statements of counsel. It says  
2 that the location and boundaries of the districts are  
3 hereby established as shown on this zoning map, dated  
4 1941, which accompanies this ordinance, and is hereby  
5 declared to be a part thereof.

6 Those district boundary lines are, unless  
7 otherwise shown on the zoning map as herein described,  
8 either the center line of the streets, or the roads or  
9 railroads, or lines parallel or perpendicular thereto  
10 as noted on the map.

11 Said zoning map and old notations, dimensions  
12 and designations shown thereon shall be as much a part  
13 of the ordinance as if it were fully described. In  
14 another section in this ordinance, as I understand, was  
15 adopted February the 5th, and in the notations, or the  
16 minutes, if you will, for that date, it states: For  
17 the purpose of identification, each of the said nine maps  
18 accompanying the said zoning ordinance, were marked zoning  
19 map one of nine, Fairfax County, February 5, 1941.  
20 Board of Supervisors of Fairfax County, signed G. W.  
21 Carper, Chairman.

22 What I'm really wondering is, and I understand  
23 from a conversation with counsel, that he is unaware of

1 whether those are copies of the maps that were certified  
2 by Mr. Carper. So I question the authenticity.

3 THE COURT: Well, the Clerk of the Board by  
4 "copy attest" would indicate a true copy of the original.

5 MR. ODIN: Then I'd have to object because  
6 that doesn't show the boundaries, number one, and, number  
7 two, whether she is attesting to that which has been  
8 superimposed -- I mean clearly, that's not a copy. That's  
9 something that has been added to the map.

10 THE COURT: The notation "agricultural" zone?

11 MR. ODIN: Yes, Your Honor.

12 THE COURT: Argument?

13 MR. ARNOLD: Once again, Your Honor, this is  
14 a copy of a document that's in the possession of the  
15 County Clerk. By statute, the Clerk, as a public  
16 record --

17 THE COURT: What the Court is going to do this  
18 time is going to admit it, and if this is not accurate,  
19 then you can move the Court to strike it, and then the  
20 Court will strike it if this is not an accurate copy of  
21 this original zoning map.

22 MR. ODIN: I've never seen it.

23 As I understand it, he represented to me that

1 it was not in the Clerk's office, it was not in her  
2 possession. That which he has copied is a map down in  
3 the mapping section of Fairfax County.

4 THE COURT: But, I take it the attestation  
5 by the Clerk that this is a copy of the original map  
6 adopted by the Board of Supervisors with the zoning  
7 ordinance, 1941, --

8 MR. ODIN: Are you accepting the "agricultural"  
9 notation, which has been placed on this, as if that were  
10 a part of it?

11 THE COURT: That would be a part of the  
12 original of this map. If not, then you can ask that it be  
13 stricken, and the Court will not consider it.

14 MR. ODIN: I've just asked counsel, is he  
15 representing that to be the case, that that notation  
16 right there is a part of that ordinance --

17 THE COURT: He is.

18 MR. ODIN: -- that when I walk over there,  
19 I'm going to find that on it?

20 MR. ARNOLD: What exactly are you referring to?

21 THE COURT: The Clerk makes a representation  
22 by the attestation that this is an exact copy of the  
23 original.

MR. ODIN: But, I think Counsel will admit it

1 is not.

2 THE COURT: Then if it's not, it can't be  
3 admitted.

4 MR. ODIN: I believe he would admit it's not.

5 THE COURT: And by his representation to the  
6 Court, then the Court would admit it as an exact copy of  
7 the original, because I think the statute provides for  
8 any exact copies to be attested by the Clerk to be  
9 admitted into evidence, but if it's not, then it can't  
10 be admitted into evidence, by statute.

11 MR. ARNOLD: Your Honor, we can go across the  
12 street at the lunch break, and I'll be glad to show Mr.  
13 Odin the original map.

14 MR. ODIN: I'm just asking if you're repre-  
15 senting to the Court that that's the original.

16 MR. ARNOLD: That's a true and accurate copy  
17 of what's represented on the map.

18 MR. ODIN: And the word "agricultural" just  
19 as it appears there is on that map? It is a part of  
20 it?

21 MR. ARNOLD: If you could point out what  
22 you're referring to?

23 MR. ODIN: That which is in red, that I'm going

1 to find that on the map.

2 MR. ARNOLD: No, that's not a map.

3 THE COURT: You can't make additions to it.  
4 The Clerk -- did the Clerk attest to that?

5 MR. ARNOLD: Yes, sir.

6 THE COURT: In what capacity?

7 MR. ARNOLD: In her capacity as Clerk.

8 THE COURT: I think you better go check that  
9 original, because I don't think you have a copy of the  
10 original here. I think somebody has added that. That  
11 probably shouldn't be shown on the original, and she  
12 cannot attest to something that's not on the original.  
13 If she does, it's not admissible into evidence, and I  
14 think that she should be aware of the fact.

15 MR. ARNOLD: Could I proffer this in evidence  
16 at this time? How has the Court ruled? How should I  
17 proceed at this time; is this in evidence?

18 THE COURT: If you, as an Officer of the Court  
19 tell me that that is a copy of the original --

20 MR. ARNOLD: It's a copy of the original.  
21 What is written in red, agricultural zone, is not on the  
22 original. That was added after the copy was made.

23 THE COURT: That's not admissible.

1 MR. ARNOLD: May I proffer it at this time?

2 THE COURT: No.

3 MR. ARNOLD: May I have the witness proffer  
4 as to this document?

5 THE COURT: No, because it's not admissible  
6 under the statute.

7 MR. ARNOLD: May I proffer it as evidence  
8 subject to -- Can I have him testify subject to having  
9 Mr. Odin examine the original at lunch?

10 THE COURT: Any objection?

11 MR. ODIN: I would like the original produced,  
12 and I object until that time, because I think if it is  
13 not, I would like to see, really, the map.

14 THE COURT: The proffer certainly can't go in  
15 as evidence. Now, this cannot come into evidence be-  
16 cause there's been additions made prior to or after  
17 the attestation by the Clerk by someone else, unknown.  
18 And it can't come into evidence. Under statutory  
19 requirements, it cannot come into evidence, so why  
20 proffer through this witness something that is not  
21 going to come into evidence?

22 Now, if you want to make it as part of a  
23 possible appeal procedure, go ahead and proffer it.

1 But that's the only reason and the Court  
2 will not consider it as evidence in the case. You  
3 could get it in as far as the record is concerned,  
4 as far as possible appeal.

5 MR. ARNOLD: That's what I was referring to  
6 by proffer, Your Honor.

7 THE COURT: It's being refused solely because  
8 you have not complied with the statute as to the admis-  
9 sibility of the evidence.

10 MR. ODIN: May I on further grounds, in the  
11 event it is appealed, also because of admission of Counsel  
12 that it is not a genuine document, and, secondly, I would  
13 like to point out in paragraph seven of Mr. Knowlton's  
14 bill of complaint states that the property described in  
15 paragraph 2 is zoned RE-1, and has been so zoned since  
16 1941, which is in derogation of the exhibit they proffer.

17 THE COURT: You may proffer for the record,  
18 Counselor.

19 MR. ARNOLD: Okay.

20 Well, what is the ruling as to Plaintiff's  
21 Exhibit 11, the '41 copy of the code, the zoning code?

22 MR. ODIN: As I understand in response to a  
23 question that was addressed by the County of Fairfax to the



1 Attorney General, it was ruled that the zoning is not  
2 effective until the map is adopted.

3 THE COURT: You have a two-step procedure.

4 MR. ARNOLD: So, Court is ruling that both  
5 have to be put in at the same time?

6 THE COURT: You don't have one without the  
7 other, it's my understanding. You can't have an  
8 ordinance without the map or a map without the ordinance.  
9 That's my understanding of it.

10 Doesn't the ordinance refer to the map?

11 MR. ARNOLD: Yes, sir, the ordinance does refer  
12 to the map.

13 THE COURT: You can proffer both of them.

14 BY MR. ARNOLD:

15 Q Now, Mr. Knowlton, I now show you a document  
16 that has been marked as Plaintiff's Exhibit Number 6  
17 for identification and ask you if you recognize this  
18 document?

19 A This is a building permit application, which  
20 was processed through the county in 1949.

21 Q And where is the addition located?

22 Who is the applicant?

23 A The applicant is R. H. Zell, Jr.

1 MR. ARNOLD: I would offer this in evidence  
2 at this time and move it into evidence.

3 MR. ODIN: I have no objection.

4 THE COURT: It will be admitted as number six.

5 (The document heretofore marked  
6 Plaintiff's Exhibit No. 6 for  
7 identification was received in  
8 evidence.)

9 MR. ARNOLD: I'd like to have this marked as  
10 Complainant's Exhibit 12.

11 (The document referred to above  
12 was marked Plaintiff's Exhibit  
13 No. 12 for identification.)

14 BY MR. ARNOLD:

15 Q I now show you a document that has been marked  
16 as Complainant's Exhibit 12, and ask you if you recognize  
17 it?

18 A This, too, is a copy of a building permit  
19 application in the name of R. H. Zell.

20 MR. ODIN: Excuse me. If I may interpose an  
21 objection.

22 Counsel indicated to me that Mr. Knowlton is  
23 not the building inspector. These are not records in  
his office. If he will show them to me, I will be glad  
to review them and determine if we can agree on their

## AFTERNOON SESSION

(The Court reconvened at 1:30 o'clock p.m.)

MR. ARNOLD: Now, Your Honor, I have out in the hall, a Mr. Fred Beales, who is Custodian of Records for the zoning documents and he has with him some of the original '41 and '59 original zoning maps.

I would request at this time, if I could interrupt Mr. Knowlton's testimony, to have Mr. Beales identify the maps in order to establish their authenticity, that the Xerox copies that we have, may be compared to the originals.

I would request after that has been done, if they are found to be satisfactory, that rather than have the originals entered into evidence, we be allowed to enter the Xerox copies so that Mr. Beales can take the originals back with him.

THE COURT: All right.

1 Whereupon,

2 FREDERICK R. BEALES,

3 a witness, was called for examination by counsel on  
4 behalf of the plaintiff, and, after having been  
5 duly sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. ARNOLD:

8 Q Would you state your full name, please?

9 A Frederick R. Beales.

10 Q And what is your occupation?

11 A Supervising Map Draftsman, Division of Mapping.

12 Q And as part of your duties are you the  
13 custodian of the zoning maps for the County of Fairfax?

14 A Yes, I am.

15 Q And did you bring with you the 1941, the full set  
16 of 1941 zoning maps?

17 A Yes.

18 MR. ARNOLD: Could I have these marked -- well,  
19 Your Honor, would you like me to have these marked for  
20 identification?

21 THE COURT: Why don't you go ahead and lay  
22 your groundwork for admissibility first, and then if you  
23 wish to withdraw them subject to substitute copies, you

1 may.

2 MR. ARNOLD: I guess I should have them marked,  
3 then, in order that I can have him properly identify them

4 THE COURT: Do you have a copy to be marked first?

5 MR. ARNOLD: Yes, sir, the copy that we moved  
6 into evidence, or that we had identified earlier. I  
7 believe the Clerk has the exhibit. Exhibit Number 10.

8 THE COURT: I thought you took it back over to  
9 the Massey Building to check.

10 MR. ARNOLD: All right.

11 BY MR. ARNOLD:

12 Q Mr. Beales, did you bring with you the 19 --  
13 the official zoning map of the 1959 zoning for Fairfax  
14 County?

15 A I did.

16 Q Okay.

17 MR. ODIN: Your Honor, we stipulate that those  
18 are copies, that the red is not a part of it.

19 THE COURT: The Court will accept it with that  
20 stipulation.

21 Will it be necessary to have any further  
22 testimony of the witness?

23 MR. ARNOLD: No, sir.

1 MR. ODIN: No, sir.

2 THE COURT: You may step down, and you may take  
3 the originals back.

4 Thank you.

5 (Witness excused.)

6 MR. ARNOLD: And at this time I would move  
7 into evidence the '41 Code, with the Xerox copy of the  
8 map pertaining to this section.

9 THE COURT: Any objection?

10 MR. ODIN: No objections.

11 MR. PRICHARD: No objections.

12 MR. ODIN: As certified to, less the red.

13 THE COURT: Less the red.

14 MR. ODIN: I understand. No objections.

15 THE COURT: What is your exhibit number?

16 MR. ARNOLD: All right. What I'll do is mark  
17 through the red here.

18 The following map is identified as Plaintiff's  
19 Exhibit Number 10, and the 1941 ordinance has already  
20 been marked as number 11. I believe we have a notation  
21 on there.

22 THE COURT: The 1941 zoning ordinance is  
23 admitted as number 11, and the map thereof is admitted

1 as number 10.

2 (The documents heretofore marked  
3 Plaintiff's Exhibit Nos. 10 and  
4 11 for identification were  
received in evidence.)

5 MR. ARNOLD: And I would move into evidence  
6 the 1959 map and portions of the 1959 code, the map  
7 identified as exhibit 15, and the section of the '59 code  
8 is 16.

9 THE COURT: Any objections?

10 MR. ODIN: No.

11 THE COURT: The map will be admitted as 15,  
12 the ordinance as number 16.

13 (The documents referred to above  
14 were marked Plaintiff's Exhibit  
15 Nos. 15 and 16 for identifica-  
tion and received in evidence.)

16 MR. FIFER: Could we see the one that you're  
17 admitting, now, for identification.

18 MR. ARNOLD: At this time, Your Honor, I would  
19 recall Mr. Knowlton.

20 THE COURT: All right.  
21  
22  
23

1 and the zoning classification would be as set forth on  
2 the map and the zoning ordinance. So, expert testimony  
3 would not be necessary.

4 So, my understanding is there's been no appli-  
5 cation for re-zoning of the property, itself. It's all  
6 down to the current zoning, with reference to the adoption  
7 of the overall master plan, and zoning for the districts.

8 MR. ARNOLD: Well, Your Honor, then is it the  
9 Court's ruling, in light of the evidence that has been  
10 produced, there is sufficient evidence to show that the  
11 property was zoned RE-1 -- excuse me, agriculture from  
12 '41 to '59, and was then re-zoned in '59 to RE-1, and  
13 has remained so zoned until today?

14 THE COURT: From the evidence before the Court,  
15 from 1941 until the adoption of the zoning ordinance and  
16 the map in 1959, it was an agriculture zone, and after  
17 the adoption of the 1959 ordinance and map, then it was  
18 changed to RE-1 zoning classification.

19 MR. ARNOLD: Thank you.

20 MR. ODIN: You haven't looked at that evidence,  
21 but you're assuming that --

22 THE COURT: No.

23 MR. ODIN: -- aren't you? Isn't your ruling



115  
MR. ARNOLD: (continued from pages 109 et seq.; direct  
examination of Jackie Edward Ash, a witness, called on  
behalf of the plaintiff)  
Exhibit Number 20, would you tell the Court what this is?

A This is a zoning violation issued to Mr.  
Raymond Zell on May 17th, '66, by a zoning inspector,  
Charlie Ellicott, Jr. It's for operating a business  
in a residential zone and repairing and maintaining  
commercial vehicles.

MR. ARNOLD: I would move this into evidence  
at this time.

THE COURT: Any objection?

MR. ODIN: No, Your Honor.

(The document heretofore marked  
Plaintiff's Exhibit No. 20 for  
identification was received in  
evidence.)

BY MR. ARNOLD:

Q Directing your attention to a letter marked as  
Complainant's Exhibit 21 --

(The document referred to above  
was marked Plaintiff's Exhibit  
21 for identification.)

-- and I would ask you what this document is.

Is this found in the zoning file?

A Yes, it was.

This is a document of Mutual Ice Company, in  
Alexandria, Virginia, dated February the 23rd, 1966,

1 regarding, Mr. Zell at this time was selling ice with  
2 one truck from his property, prior to January 1, 1941.

3 MR. ARNOLD: I would move this into evidence  
4 at this time.

5 THE COURT: Any objection?

6 MR. ODIN: No.

7 THE COURT: It will be admitted.

8 (The document heretofore marked  
9 Plaintiff's Exhibit No. 21 for  
10 identification was received in  
11 evidence.)

12 BY MR. ARNOLD:

13 Q Directing your attention to this document that's  
14 been marked Complainant's Exhibit 22 for identification --

15 (The document referred to above  
16 was marked Plaintiff's Exhibit  
17 No. 22 for identification.)

18 -- I ask you what that is.

19 A This is from Mutual Ice Company, Alexandria,  
20 Virginia, dated October 20, 1966, Department of Zoning,  
21 Fairfax County. It says: A search of the records indicate  
22 that Raymond H. Zell owned and operated two open trucks  
23 used for purchase and resale of ice from our plant in  
Alexandria as far back as 1941.

Zell was operating a retail ice business out of

1 Burke, Virginia, in the Burke, Springfield area. Mr.  
2 Zell is a dealer here of Mutual Ice Company for about 25  
3 years. To the best of my knowledge and of our employees  
4 and officers who were here then, he operated with his  
5 father from the same place he now operates in Burke,  
6 signed O. A. Reardon, Treasurer.

7 MR. ARNOLD: I would move this into evidence  
8 at this time.

9 THE COURT: Any objection?

10 MR. ODIN: No.

11 THE COURT: It will be admitted.

12 (The document heretofore marked  
13 Plaintiff's Exhibit No. 22 for  
14 identification was received in  
evidence.)

15 BY MR. ARNOLD:

16 Q I now show you a document that's been marked  
17 Plaintiff's Exhibit Number 23, and ask you if you can  
18 identify this.

19 (The document referred to above  
20 was marked Plaintiff's Exhibit  
No. 23 for identification.)

21 MR. ODIN: Your Honor, this particular document  
22 I have objections to for two reasons.

23 First of all, it speaks of the contents of a

1 MR. ARNOLD: Thank you, Your Honor, and  
2 please note my exception.

3 And we have no further evidence. We rest.

4 MR. ODIN: On behalf of Mr. and Mrs. Zell, I  
5 would move to strike the evidence. And, first, if Your  
6 Honor please, may I go back to the pleadings that have  
7 been filed in the case?

8 And if you will notice in addition to paragraph  
9 7, alleging that, in fact, the property was zoned RE-1,  
10 it is further stated in those. And according to their  
11 evidence -- if you will accept it for the moment as if it  
12 really does prove that -- the RE-1 zoning came much later  
13 in the game.

14 And there is no question, according to the  
15 testimony prior to that time, an agricultural use,  
16 accepting their evidence for these purposes, right now,  
17 as if they established in 1941, it was restricted to an  
18 agricultural use.

19 That agricultural use was then a valid existing  
20 use. This man had the right to his hogs. This man had  
21 a right to haul garbage and trash to his hogs, to feed  
22 his hogs and to engage in the trucking operation.

23 And, as an incidental use, if you will, surely

1 that was one part and parcel of it. The evidence goes  
2 further than that. The County has introduced evidence that  
3 in addition to that there was during this period of time,  
4 another trucking operation going on, referring to  
5 the ice business Mr. Zell has testified to other  
6 trucking operations that were going on, and also trucking  
7 operations that were engaged in by his predecessor in  
8 title.

9 In the 1941 ordinance, if there is anything  
10 clear, it makes it very, very clear that you can perpet-  
11 uate nonconforming uses. I believe the ordinance  
12 specifically states -- if you have it, Your Honor.

13 THE COURT: What is the exhibit; do you recall?

14 MR. ARNOLD: I believe that's number 11, Your  
15 Honor.

16 THE COURT: Number 11.

17 MR. ODIN: Page 15, Your Honor, in Section 10:  
18 If at the time of the enactment of this ordinance, any  
19 building, structure or land is being used in a character  
20 or manner or for a purpose or is in a location which  
21 does not conform to the provisions of this ordinance,  
22 and which is not prohibited by some other ordinance,  
23 such character or manner of use or purpose of location

1 as then existing, may be continued and no change or  
2 title or possession, shall be construed to prevent the  
3 nonconforming use of such building, structure or title,  
4 and no change of title.

5 Now, I think there are two things that I would  
6 like to point out, having read this. First of all, of  
7 course, what occurred was occurring on the property  
8 before Mr. Zell's --

9 THE COURT: The ordinance that I have,  
10 Plaintiff's Exhibit Number 11, page 15 --

11 MR. ODIN: Yes. Page 15, Section 10.

12 THE COURT: This is labeled zoning ordinance of  
13 Fairfax County, effective March 1st, 1941, as amended  
14 December the 1st, 1954. Is that the same one?

15 MR. ODIN: I really don't know that.

16 MR. PRICHARD: I believe, then, I misled the  
17 Court, because I had the earlier one.

18 MR. ARNOLD: I probably put that one in evidence.

19 MR. ODIN: I'm totally confused.

20 Is this the one that's in evidence?

21 MR. ARNOLD: No. The one that's in evidence  
22 is 1954.

23 THE COURT: We don't have a March 1, '41. We

1 have an amended March 1, '41, amended December the 1st, of  
2 1954.

3 MR. ODIN: If that be the case, Your Honor,  
4 I would object to the ordinance.

5 You have an ordinance, February 5th, '41?

6 THE COURT: Effective March 1st, '41, but as  
7 amended December 1, 1954, and on page 15, subparagraphs  
8 3, 4, 5 and 6, and then E states: Powers relative to  
9 a decision of administrative officer and F: Powers  
10 relative to special exception on special questions.

11 MR. ODIN: Can I approach the bench and  
12 assist the Court?

13 I think I may be of some assistance.

14 My point is, in that last line, no change of  
15 title or possession shall be construed to prevent the  
16 nonconforming use of such building, structure or land as  
17 hereinabove provided. And so, that which was being done  
18 by Mr. and Mrs. Zell's predecessor, in title, obviously,  
19 may thereafter continue.

20 Now, the evidence therefore is not as stated in  
21 the Bill of Complaint. That is to say, that they were  
22 unlawfully conducting an operation, if you will, so much  
23 as if the debate is anything the question is an expansion

1 of a nonconforming use and not whether there was a  
2 nonconforming use.

3 And there, I think, is the critical question.  
4 All the evidence speaks to the existence of a nonconform-  
5 ing use, and the question is, how can you expand that use.  
6 There, I think, we have to leave this ordinance and go to  
7 the statutory language. And I submit, if you will look  
8 at the ordinances which have been presented to you and  
9 this original ordinance in 1941, it does not coincide  
10 with the enabling legislation.

11 The enabling legislation is not as restrictive  
12 as one would like to interpret the ordinances.

13 THE COURT: 15.1 4092, is that the same  
14 enabling legislation that would be effective with reference  
15 to the 1941 --

16 MR. ODIN: I'm sure that there were changes.  
17 As I understand it, and I stand corrected, this particular  
18 ordinance was actually promulgated years ago by the  
19 Department of Interior, and there have been changes in  
20 it. However, is it not the statutory language which is  
21 applicable today, at this time.

22 Let me argue that for just a moment. If that  
23 be the case -- and I submit that we then have to look at



1 whether or not a nonconforming use can be expanded and  
2 I would point the Court to a large body of law. And I  
3 submit, the ordinance, itself -- I mean, the statute,  
4 itself, does not prohibit the expansion of the use,  
5 itself, as such.

6 Now, secondly, it seems that the cases which  
7 have dealt with this problem have, in essence, stated that  
8 one may, in fact, expand a nonconforming use. One case  
9 in point is Minquadale Civic Association vs Kline. It's  
10 a Delaware case, and it is cited at 212 Atlantic (2d)  
11 811, and only the pertinent part says, furthermore,  
12 according to what would appear to be better reasoned  
13 cases on the subject, a nonconforming use may be intensi-  
14 fied, where normal growth and expansion reasonably require  
15 such intensification.

16 And, again, they talk in terms State of  
17 Connecticut versus Szymanski, 189 Atlantic (2d) 514,  
18 and Humphrey versus Stewart Realty Corporation, 73  
19 Atlantic (2d) 403, a Pennsylvania case.

20 In Anderson, on zoning, there is this in Section  
21 6.45. It says: a nonconforming use of land, whether it  
22 is a dairy farm, a manufacturing plant or a rooming house,  
23 is not likely to remain static. As the use is exploited

1 and economic changes occur it may grow in volume or  
2 intensity, in periods of active use, may become more  
3 frequent or of a longer duration.

4           These changes in the level of use may have  
5 profound impact on the property in the area where they  
6 are located, but the zoning regulations seldom include  
7 specific provisions for restricting this kind of growth.  
8 Lacking in specific limitation, the land owner aggrieved  
9 by a growing nonconforming use must resort to a more  
10 general restriction on extension of change of use. Absent  
11 some evidence of an identifiable change or extension,  
12 an increase sometimes referred to as a mere increase, in  
13 volume, intensity or frequency of use, is held not to be  
14 an extension of use proscribed by the ordinance of the  
15 kind described in Section 640 above.

16           Some Courts have held that a nonconforming use  
17 may be expanded where the increase is caused by natural  
18 expansion and growth of trade. One Court remarked that  
19 any other principle would serve to penalize success and  
20 place a premium upon a failure of the nonconforming  
21 venture itself. Such approval of growth is reflected in  
22 decisions which uphold an increasing volume, accompanied  
23 by change in the commercial emphasis of a

1 nonconforming business.

2 My point is, that Fairfax County has attempted,  
3 if you will, through their ordinances, to limit the use or the  
4 expansion of the use, and it is our position that once  
5 that use has been established, then it may grow. And  
6 mere evidence of growth is not evidence of a violation.

7 I think the cases-- and there are cases that  
8 state that if you are conducting an activity on a parcel  
9 of land, you cannot buy adjacent land and expand the use  
10 to adjacent property or adjacent land. But, absent the  
11 evidence that you have spread out, so to speak, then you  
12 have to talk in terms, if you will, of what was there  
13 and the mere intensification of the use in the same area  
14 is not a violation.

15 Now, with respect to the buildings, I submit  
16 that we have a harder question. But, in this particular  
17 case, I don't believe that there is any prayer, if you  
18 will, for the destruction of these buildings. I think  
19 there is some evidence, if you will, that, of course --  
20 and certainly we can presume that these permits were  
21 issued in accordance, lawfully issued in accordance with  
22 the zoning ordinances, but even if they were not, that's  
23 really not a question at this point, that they seek an

1 injunction to prohibit the use and they have failed to  
2 show, one, the extent of the use at the time. They have  
3 shown that there was a use, but there is no measurable  
4 evidence before the Court so you can say, if you will,  
5 that he can go no further.

6 We maintain, though, that is not the proper  
7 test, anyway. Regardless of what the existing ordinance  
8 says, the State Code would control, and it does not  
9 prohibit it in that manner.

10 MR. PRICHARD: May it please the Court. I  
11 would join in Mr. Odin's very able argument.

12 It seems to me that a part of the plaintiff's  
13 case, here, is that there was no valid nonconforming use,  
14 and the evidence, I think, has shown quite the contrary,  
15 that there was a valid and subsisting nonconforming use.

16 The evidence of Mr. Zell and, indeed, the  
17 evidence of the two letters from the ice company bear out  
18 Mr. Zell's testimony that prior to March 1st, 1941, the  
19 general trucking business was being conducted from the  
20 Germaine farm of which this 6 point something acres was a  
21 part. It indicates that there were a number of vehicles  
22 there and that they were being stored there when they  
23 were not on the road, and that they were being serviced

1 there. Part of it was collecting garbage and trash and  
2 disposing of it on the property. In a sense, the use has  
3 been cut back, it has been cut back to something less  
4 intensive because no longer do the Zells dispose of garbage  
5 on the premises.

6 Some years ago they got out of the hog business,  
7 and from that time on, they picked up garbage and trash  
8 and disposed of it in remote locations. They got out of  
9 the ice business because people stopped needing ice.  
10 But they continued through all those years, and this was  
11 from March 1st, 1941, when the zoning ordinance went into  
12 effect. They continued during the war years with Mr.  
13 Zell's father and his father-in-law conducting the  
14 business while he, himself, was away at war.

15 He came back, they built a house on the farm.  
16 In 1945, they got a deed to a piece of the farm, and  
17 they continued throughout that period of time to expand  
18 that nonconforming use. Now, we don't know how many  
19 vehicles there were on the premises in 1941, but the  
20 1941 ordinance, which was a very general ordinance and  
21 which permitted almost any use in the agricultural  
22 districts, such as the type which is being carried on,  
23 and this is Section 3, Use Regulations: A-1 was farming,

1 dairy farming, livestock, lumber and sawmilling and all  
2 uses commonly classed as agricultural and forestry and  
3 uses which are customarily appurtenant thereto, and  
4 which are in harmony with the character of the neighbor-  
5 hood, with no restriction as to the operation of such  
6 vehicles or machinery.

7           So, it was very general language. It is our  
8 contention that the use which was the nonconforming use  
9 between that date and 1959, when a more restrictive  
10 ordinance was adopted, was perfectly lawfully enlarged,  
11 because they were uses which were permissible in the  
12 agricultural zone.

13           Hauling gravel, hauling pulpwood, hauling  
14 firewood, hauling garbage to feed the hogs, hauling trash,  
15 general hauling, these were things which were ancillary  
16 to agriculture. It was a subsistence farm and it was  
17 simply the way they made a living. These were things  
18 that were permitted to continue, they did continue. The  
19 use was enlarged.

20           THE COURT: May I interrupt at this point. On  
21 the use of the trucks --

22           MR. PRICHARD: Yes.

23           THE COURT: -- as ancillary to the operation of  
the farm, we have no evidence before the Court that the

1 trucks being used were used for hire.

2 Does that make a difference?

3 MR. ODIN: Ice business?

4 THE COURT: Hire -- into trash, garbage and so  
5 forth, in which it continued on.

6 MR. PRICHARD: I don't think it does make a differ-  
7 ence, Your Honor. They were not hired out in a sense that  
8 the U-Haul properrent a truck to someone else. They were  
9 used -- of course, you do have the evidence of the ice  
10 company that every day a couple of trucks went there and  
11 picked up ice and disposed of it elsewhere.

12 I think Mr. Zell's testimony was that they  
13 were hauling wood and things of that nature, and they  
14 were hauling garbage and trash and disposing of it on  
15 the premises. So, I think the type of use, with the  
16 relationship to customers was the same in 1941 as it is  
17 today.

18 It was doing a service for people, picking up  
19 their garbage, disposing of it somewhere else.

20 I do believe there is evidence that it was not  
21 something they were driving a truck from one place on the  
22 farm to another place on the farm and putting down some-  
23 thing they'd picked up somewhere else on the farm. They

1 were using the roads.

2 Mr. Odin has cited, Your Honor, Section 10,  
3 on the nonconforming uses, and, again, I would like to  
4 point out that that nonconforming use Section under the  
5 1941 ordinance did not say anything about the expansion  
6 of the use. That if it was a nonconforming use, it  
7 could be expanded, even if it wasn't a permissible use  
8 in an agricultural zone.

9 So, we have a nonconforming use which was  
10 expanded. It was expanded partly in connection with  
11 agriculture; it was expanded partly without reference to  
12 agriculture, because they ceased to feed the garbage to  
13 the hogs and from that time on, they picked up the trash  
14 and garbage from one point and disposed of it at another.

15 But, it was a valid nonconforming use and it  
16 was expanded. Now, the enabling act says that such  
17 valid nonconforming uses may continue unless they're  
18 interrupted for two years. And I believe that the  
19 Achilles heel of the County's case is that they have not  
20 shown any discontinuation at all. There is no evidence  
21 in their case of a two-year discontinuation. There is  
22 no evidence of a six-month discontinuation.

23 So, their own evidence proves that we have a



1 valid nonconforming use. Now, there is one piece of  
2 evidence which seems to indicate that there are a number  
3 of more trucks today than there were in 1963. There was  
4 a permit placed in evidence which showed two trucks --  
5 Mr. Zell got a permit for two trucks to dump garbage in  
6 the County landfill.

7 But, that's not conclusive, because there are  
8 other landfills around. That was simply that two trucks  
9 were going to discharge garbage in the landfill, and it  
10 certainly doesn't indicate that he was not disposing of  
11 garbage elsewhere, there are other landfills. So, I  
12 submit, the situation when Browning-Ferris came into the  
13 picture was that Mr. Zell had a valid nonconforming use.

14 We are perfectly aware that the County, or some  
15 people in the County, were contending otherwise. But,  
16 nevertheless, he had a valid nonconforming use, and  
17 Browning-Ferris has not changed the situation in any  
18 degree. I think the evidence indicates that the business  
19 is operated under the same name, exactly the same people  
20 are working there, the same number of trucks; nothing  
21 has changed as far as Browning-Ferris is concerned,  
22 except that some of the billing is done elsewhere in  
23 Maryland.

1           So, we submit the County's evidence fails to  
2       establish that Mr. Zell is doing something here which is  
3       prohibited by the zoning ordinance. And, if Mr. Zell  
4       has a valid nonconforming use, Browning-Ferris should not  
5       be enjoined any more than is Mr. Zell.

6           MR. ODIN: Your Honor, may I just have a second  
7       round, just to this extent.

8           You asked me about the statute, the enabling  
9       legislation which was in effect in 1938, and it reads,  
10      and I refer to Chapter 415 of the Acts of Assembly. I  
11      failed to go back to it. It states that such ordinance  
12      or ordinances shall not prohibit the continuance of the  
13      use of any land, building or structure for the purpose  
14      of which such land, building or structures are used at  
15      the time of such ordinance or ordinances takes effect.  
16      But, the alterations of or additions to any existing  
17      building or structure for the purpose of carrying on any  
18      prohibitive use within the district, may be prohibited.

19                   If a nonconforming use has been  
20      discontinued, any further use of such land, building or  
21      structure shall be in conformity with the provisors of the  
22      ordinance, et cetera.

23           This is not an uncommon provision as I understand

1 it, insofar as ordinances are concerned. You will notice  
2 that one thing it does not do is prohibit the expansion  
3 of the use, itself. Now, insofar as the buildings, as I  
4 indicated earlier, without referring to the 1938 Code,  
5 that can be a different question, of course. But, it's  
6 one that's not firmly addressed in this litigation.

7 But, insofar as the use, itself, is concerned,  
8 there is nothing in the enabling legislation which  
9 prohibits, if you will, the expansion of the use, and all  
10 of the statutory -- I mean, the cases do refer -- I don't  
11 mean all, as if there are no cases to the contrary, but  
12 I think it has been referred to as the better rule, if  
13 you will, that it is the better business that we want  
14 to nurture, if you will. And, to that extent, we do not  
15 penalize those who do a good job, by prohibiting their use.

16 They can continue the use, they can expand it  
17 some more, in an orderly fashion. One bit of evidence  
18 that Mr. Prichard alluded to, I, too, would like only to  
19 say this, you will recall there are ordinances that take  
20 us back to 1971, which require registering all vehicles.

21 So, this, in 1963, referring to a landfill has  
22 nothing to do with vehicles being used, carrying and  
23 dumping in Prince William County or surrounding juris-

1 dictions. The force of the registration through 1971,  
2 the evidence, I think, obviously, I assume that was  
3 the reason they brought the evidence before the Court,  
4 but it's rather uniform and it does not show any great  
5 expansion.

6 Be that as it may, there is no proof, if you  
7 will, that from 2 to 20, from 1941 to 1977, is not  
8 normal growth, considering the population of Fairfax  
9 County. And, of course, if you will notice the subdivi-  
10 sions are listed on the subdivision plats--I mean, the  
11 permit applications.

12 One can readily see from them, as well, the  
13 growth which is taking place, so it seems a normal  
14 expansion, I think, of a nonconforming use.

15 THE COURT: All right.

16 MR. ARNOLD: Your Honor, I must admit, I'm  
17 a little confused at the defendant's motion to strike.  
18 It seems to me that the facts have been established and  
19 are fairly clear, and I see no grounds for such a motion.

20 Mr. Zell testified that in 1941, on this tract  
21 of property, it was virtually vacant. There was a hog  
22 farm and a shed for the hogs to stay in. Now, of course,  
23 1941 is the date of the enactment of the zoning code,

Whereupon

EVA GERMAINE ZELL

a witness, called for examination by counsel in her own behalf, and, after, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ODIN:

Q State your full name, please.

A Eva Germaine Zell.

Q Would you give us your father's name?

A William Germaine.

Q Did he own the property in question.

A Yes, he did.

Q And do you know how long that property has been in your family?

A Well, approximately 70 years.

Q And do you recall what was taking place on that property back in 1938?

A Farming and anything along that line where you could make a little money.

Q Did your father own any trucks?

A Yes, sir.

Q How were they used?

1           A       They were used for hauling of produce, wood,  
2           hauling gravel, and garbage for the hogs. Almost  
3           anything really that they could make a living with.

4           Q       And pulpwood, things of that sort?

5           A       Yes.

6           Q       Were they hired out?

7           A       Not as such.

8           Q       He would use the trucks himself; right?

9           A       Yes.

10          Q       And he would go haul for others; is that  
11          correct?

12          A       Yes.

13          Q       And he made his living that way as well  
14          as farming; is that correct?

15          A       Yes.

16          Q       Was that a common practice here in  
17          Fairfax County in 1938?

18          A       I would say that it was. yes.

19          Q       I mean, did most farmers do something of  
20          that nature?

21                   MR. ARNOLD: Objection. It's leading.

22                   THE COURT: Sustained. Rephrase your  
23          question.

1 BY MR. ODIN:

2 Q Did farmers often need to have trucks?

3 MR. ARNOLD: Objection. It's leading.

4 THE COURT: Overruled. It doesn't  
5 suggest an answer.

6 THE WITNESS: Yes.

7 BY MR. ODIN:

8 Q And how would they use their trucks?

9 A Why, I imagine, they --

10 MR. ARNOLD: Objection. Irrelevant.

11 THE COURT: Sustained. It is a matter of  
12 conjecture if she imagines.

13 BY MR. ODIN:

14 Q Not what you imagine. Tell us, if you will,  
15 what you know about other farmers and their operation.

16 MR. ARNOLD: Objection. Irrelevant.

17 MR. ODIN: The relevancy, Your Honor, if I  
18 may state it for the record, has to do with what is an  
19 incidental use or an accessory use and if, during that  
20 period of time, this type of operation was incidentally  
21 an accessory to agricultural uses, it would be a  
22 continuation of that use, not through 1941, but until  
23 another ordinance was adopted changing the zoning to

1 RE-1 and prohibiting, if ever prohibiting, agricultural  
2 uses.

3 MR. ARNOLD: Your Honor, I don't believe that's  
4 the question before the Court, but rather the use of the  
5 truck that is not hired out but for the person himself  
6 is an accessory use in an agricultural zone.

7 I don't believe that's the question before  
8 the Court.

9 THE COURT: Overruled.

10 BY MR. ODIN:

11 Q Was this a common practice of other farmers  
12 here in Fairfax County?

13 A Yes.

14 Q Then there came a time, of course, when  
15 you and your husband acquired this property; is that  
16 correct?

17 A Yes.

18 Q And did this hauling business continue?

19 A Yes.

20 Q And so when he went away in the service,  
21 who continued the business?

22 A My father and his brother and father.

23 Q You have worked with your husband since



1 the beginning of your marriage?

2 A. Yes.

3 Q And you still work with him; do you not?

4 A. Correct.

5 Q And who else of your family works in the  
6 home in this business?

7 A. My son and a daughter.

8 Q And they are actively engaged in the  
9 business today?

10 A. That's right.

11 MR. ODIN: I have nothing further.

12 THE COURT: Mr. Prichard, are you going to  
13 ask any questions of the witness?

14 MR. PRICHARD: Yes, Your Honor.

15 BY MR. PRICHARD:

16 Q Mrs. Zell, I believe you were born on the  
17 property in question?

18 A. Yes, I was born on the property.

19 Q More than 21 years ago?

20 A. Yes.

21 Q So you had a first hand opportunity to  
22 observe everything which has gone on there from 1941  
23 down to the present time?

1 MR. ARNOLD: Objection. It's leading.

2 THE COURT: Sustained.

3 MR. PRICHARD: She is not my client. She  
4 is another defendant.

5 THE COURT: Overrule the objection.

6 BY MR. PRICHARD:

7 Q Mrs. Zell, did your husband participate in  
8 the trucking business prior to March 1, 1941?

9 A Yes.

10 Q And did he continue to be a part of the  
11 trucking business until he went away to war?

12 A Yes.

13 Q Now was there maintenance work done on  
14 the vehicles which were kept on the farm during that  
15 period of time.

16 A Yes.

17 Q And has that always been the case?

18 A Yes.

19 MR. PRICHARD: I have no further questions.

20 THE COURT: Did you store or park the  
21 vehicles on the premises at that time?

22 THE WITNESS: Yes, sir.

23 THE COURT: Have you --all these vehicles

1 that you have used in the hauling of pulpwood, trash,  
2 garbage and so forth, have you continually parked the  
3 vehicles on the premises?

4 THE WITNESS: Yes, sir.

5 THE COURT: The period of time about which  
6 Mr. Prichard was asking questions, how many trucks  
7 did your father and his brother and your husband have  
8 at that time?

9 THE WITNESS: I don't recall. I couldn't  
10 give an accurate answer.

11 THE COURT: Was it more than one?

12 THE WITNESS: I am sure it was more than  
13 one but I don't know the number.

14 THE COURT: Cross examine?

15 CROSS EXAMINATION

16 BY MR. ARNOLD:

17 Q Mrs. Zell, if I might direct your attention  
18 to Plaintiff's Exhibit 1 in evidence, now, when you  
19 speak of the premises, could you identify which  
20 property you're speaking of as the premises where  
21 your father and your brother maintained this business?

22 A On the same tract where our place is.  
23

1 Q On the same six acres?

2 A No. See, they gave us land which was a  
3 part of the farm.

4 Q All right.

5 Directing your attention to the particular  
6 six acres which you and your husband now live on, six  
7 or seven acres, how was that used in 1941?

8 A For anything in the way of farming or making  
9 a living.

10 Q Were there any buildings on it then?

11 A You are speaking of the whole tract of land?

12 Q No, ma'am. I am speaking of just the  
13 six acres that you and your husband own today.

14 A I don't remember.

15 Q So when you testified earlier that there  
16 were trucks parked on the premises, you didn't mean  
17 the six acres you and your husband own. You meant  
18 the whole 180 acres; right?

19 A No. The 180 acres was divided by  
20 Keene Mill Road.

21 Q How many acres were on your side of Keene  
22 Mill Road?

23 A In the neighborhood of 50.

1 Q About 50 acres?

2 A In the neighborhood of 50.

3 Q Where was your parents' house?

4 A On that 50-acre tract.

5 Q Is the house still there?

6 A Yes.

7 Q Would you put a zero on the exhibit where  
8 your parents' house was?

9 A (Witness complied with the request.)

10 Q Does the house still exist?

11 A Yes.

12 I thought it might show up in this picture.  
13 Let's see, is this taken from the power lines here?

14 Q Uh-huh.

15 A I don't have my glasses. Wait a minute.

16 This is our house (indicating) and this is the barn  
17 (indicating). It would be right out this way (indicating).

18 Q Is it on Sydenstricker Road?

19 A You see, Sydenstricker comes into a point  
20 right at Keene Mill and it is right at that point but  
21 the exact address is Keene Mill.

22 Q So they are on Keene Mill Road?

23 Is that right?

9

1           A       Yes, but Sydenstricker comes in at a point  
2 right at Keene Mill and the house is located right there.

3           Q       Let me get you to look at this map. Maybe  
4 I can help you.

5                   This is Sydenstricker and this is Old  
6 Keene Mill Road. Now is it your understanding and is  
7 it your testimony that their house is located somewhere  
8 in this parcel that is identified as number three?

9           A       This is Sydenstricker and where are we?

10          Q       This is your property here (indicating). So  
11 you come out your driveway and go left on Sydenstricker  
12 and what side of the road is your parent's house?

13          A       The same side we are on.

14          Q       On Old Keene Mill?

15          A       You can see it from our house. You can  
16 see it right up the field. You can see the house from  
17 where we are.

18          Q       And it is near the point where Sydenstricker  
19 and Old Keene Mill intersect?

20          A       Yes, right at that point.

21          Q       About how far from that corner is their  
22 house located?

23          A       How many feet off the road?

10

1 Q Yes, ma'am.

2 A Well, I am not very good in estimating things  
3 like that -- I don't know.

4 Q 200 feet, 250 feet I guess.

5 Q Concerning these trucks that your parents  
6 used, did they park most of the trucks at their house  
7 or near their house?

8 A Yes.

9 Q Now if there were 50 acres of your family's  
10 property on one side of Sydenstricker, then I take it,  
11 the other 130 was on the other side of Sydenstricker;  
12 correct?

13 A It was on the other side of Keene Mill  
14 Road.

15 Q On the other side of Keene Mill Road?

16 A Yes.

17 Q And that is where Rolling Valley Mall is  
18 now? Is that correct?

19 A Rolling Valley West.

20 Q Rolling Valley West?

21 A Yes.

22 Q That's a shopping center?

23 A That is a subdivision.

1 Was it before you were married?

2 A Yes.

3 Q And you were married in '45; is that right?

4 A In '43.

5 Q Getting back to the particular parcel where  
6 you and your husband live, do you have any memory of  
7 any of these trucks being parked on that particular  
8 six acres?

9 A In what year?

10 Q In any year?

11 Well, before you were married.

12 A Oh, yes.

13 Q There were trucks parked on that particular  
14 six acres before you were married?

15 A You see, the six acres were a part of the  
16 50 acres, approximately 50 acres and it was all one  
17 tract.

18 Q And the trucks were parked on the 50 acres;  
19 right?

20 A Yes, on the 50 acres.

21 Q But they were parked near your parents' house;  
22 right?

23 A Yes, in the general vicinity.



1 Q What type of trucks were these?

2 A I don't know. That has been a long time  
3 ago and the men took care of the business really. I  
4 wasn't, at that time, involved in it. I just don't  
5 know.

6 Q So you don't remember how many trucks  
7 there were and you don't remember what type of trucks  
8 there were?

9 A No.

10 Q Getting back to this business of -- do  
11 you have any idea of how much income was derived from  
12 the hauling, in other words, when your father and his  
13 brother rented out their trucks, did they spend a sub-  
14 stantial portion of their time working for other people  
15 or did they mostly work for themselves and then when  
16 a neighbor said, "Well, look, I've got some logs to haul,  
17 would you help me," and they'd say, "Okay."

18 Was it a substantial portion of their income  
19 that came from hauling or was it only minor?

20 A I just couldn't give you a factual answer  
21 on that. I just couldn't do it. I am just unable to  
22 do it.

23 Q Now what was Mr. Zell's brother's name?

- 1 A Charles.
- 2 Q Charles?
- 3 A Yes.
- 4 Q Is he alive today?
- 5 A Yes.
- 6 Q Is he involved in this business at all?
- 7 A Not at this time.
- 8 Q Has he been in the past?
- 9 A Yes, in the past.
- 10 Q When did he disassociate himself from the
- 11 business?
- 12 A I don't remember the year. I just don't
- 13 remember.
- 14 Q Was it after you were married?
- 15 A Yes, sometime after we were married. I don't
- 16 remember when it was.
- 17 Q Concerning the maintenance of the vehicles,
- 18 you testified that the trucks were maintained. By that,
- 19 do you mean, they were, I take it -- they changed flat
- 20 tires and repaired the engines and that type thing?
- 21 Is that correct? Is that what you mean by maintained?
- 22 A Well, we didn't have garages and service
- 23 stations around then. You had to learn to do things

1 yourself and you did it yourself.

2 Q Where did most of this maintenance take  
3 place? Was it around the house where the trucks were  
4 kept, your parents' house?

5 A Well as I remember.

6 Q Beg your pardon?

7 A As I remember, that is where it was done.

8 Q Where did Mr. Zell's father live?

9 A He lived about two miles down Sydenstricker  
10 Road?

11 Q About ten miles?

12 A About two.

13 Q About two miles.

14 A Yes.

15 Q And did Charles Zell and your husband live  
16 with their father before you were married?

17 A Yes.

18 Q Did they keep at their premises any of  
19 these trucks they used in their business?

20 A I could not give a factual answer to that.

21 Q So you don't remember whether they had  
22 them there or not?

23 A No. I wasn't involved in it and what they

16

1 did, so I couldn't, you know, really give you an answer  
2 on that.

3 MR. ARNOLD: No further questions, Your  
4 Honor.

5 THE COURT: Redirect?

6 MR. ODIN: No, Your Honor.

7 THE COURT: You may step down.

8 (Witness excused.)

9 Whereupon

10 RAYMOND HENRY ZELL

11 a defendant, called for examination by counsel in his  
12 own behalf, and, after having previously been duly sworn,  
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. ODIN:

16 Q Mr. Zell, prior to the time -- what time  
17 did you go into the service?

18 A In '42.

19 Q Now, let's talk in terms of what was  
20 occurring prior to 1940, what were you then doing?

21 A I had an ice truck, gravel trucks,  
22 general work.

23 Q Were you then making use of some of your

1 future father-in-law's land?

2 A. Oh, definitely. I had the run of the  
3 whole place.

4 Q. Were you storing any trucks on the premises  
5 in question. I am referring to the six acres?

6 A. Yes. We used to have to. You see, in  
7 them days, we had valve trucks, too, you know. There  
8 wasn't no steel trucks until later years. You had  
9 trucks that you would put 55 gallon drums on and go  
10 collect and instead of having them up around the house,  
11 because in them days, there was flies and things like  
12 that.

13 Let's face it. It was a mess. And we  
14 would park them away from the house.

15 Q. You didn't park your slop trucks near the  
16 house because of odors?

17 A. That's right.

18 Q. Tell us how this operation was occurring?  
19 How many head of hogs were on the total premises then?

20 A. 1500 head.

21 Q. Tell us what 1500 head of hogs can do, if  
22 you will?

23 A. What do you mean, eat or make a mess?

1 Q Yes.

2 A Oh, you had to keep it clean at all times.  
3 If you had that many hogs right today, there is no way  
4 around this area that you could get rid of the manure  
5 and the debris from them. There is no way. You couldn't  
6 keep plowing it under.

7 Q Do I take it back then you were not only  
8 picking up trash but you were actually using the land  
9 itself and the hogs to get rid of the trash?

10 A That's right.

11 Q And tell us how you did that?

12 A Well, you fed them right out on the ground  
13 and then you cleaned up behind them. Every two days,  
14 you had to go back and clean. If you didn't, you would  
15 have one of the biggest messes in the county.

16 Q Were you all making money with your trucks?

17 A Oh, definitely. We was making a living.  
18 That was all you could make back then.

19 Q How about her father, how was he handling  
20 his trucks?

21 A Right.

22 Q What do you mean "right"?

23 A We worked together and whatever we made, we

1 kind of split it up.

2 Q I am talking about -- let's go back before  
3 1941, before March 1, 1941, let's just discuss that for  
4 a bit.

5 Before March 1, 1941, what was he doing?  
6 What was he doing with his trucks during that time?

7 A He was hauling gravel. Also he was picking  
8 up. In them days back then, Wonder Bread Company and  
9 the bread companies, you could get day-old bread and  
10 he was picking it up with his truck and with mine, when  
11 we combined, I picked up garbage from the City of  
12 Alexandria and then we fed together.

13 Q Referring to the six acres right now, was  
14 there any repairing of the vehicles going on on these  
15 six acres back then?

16 A Only when we would park them down there.  
17 We would go down on a Saturday evening or something  
18 like that and worked on them then.

19 Q This business eventually expanded; is that  
20 correct -- obviously.

21 A Well, we were living in the country back  
22 then and the city came to us and we had to go along.

23 Q Tell us what it was like back then

1 insofar as the land and the area. Were there many  
2 people around?

3 A Not many. My nearest neighbor a family  
4 by the name of Harrison, Hillary Harrison and that was  
5 the nearest neighbor that we had back in them days  
6 and that was before the subdivision that this lady here  
7 complained about the trucks, it was way before she ever  
8 came into the area. In fact, I helped to build the  
9 road that she lives on.

10 Q Have you had people come to you and make  
11 any complaints other than the county?

12 A I have never had a complaint as long as I  
13 have been in business. I have never had a complaint  
14 from Fairfax County on picking up of trash or the  
15 garbage truck smelling or anything like that at my  
16 place.

17 Q During the 40's and during the 50's and  
18 into -- well, let's stay with the 40's and 50's, if  
19 you will -- did you know all the county officials here  
20 in Fairfax County?

21 A Yes, I did, just about all of them.

22 Q Do you think they knew you?

23 A No. The biggest one actually that I really



1 knew and was close to was Mr. Blincoe. He was on the  
2 Board of Supervisors back then.

3 Q Did you know the policemen?

4 A Oh, yes.

5 Q And the County officials?

6 A That's right.

7 Q Was there any doubt in your mind that during  
8 those years, they knew what you were doing?

9 A Oh, definitely. Definitely.

10 Q And up through 1968, was there an awareness  
11 by the County what you were doing then?

12 A Definitely the County knew what I was doing  
13 because then the way I grew so fast in the trash  
14 business of picking up in the Springfield area is that  
15 the small companies would go out everynight. They would  
16 come in and go out over night and the County would  
17 refer all their customers to me because the County itself  
18 couldn't take care of them.

19 Q But who would then be handling the trash  
20 function here in Fairfax County in the 60's?

21 A Murtaugh, Mr. Murtaugh.

22 Q Mr. Murtaugh is still with the County, isn't  
23 he?

1           A       Yes. I think he is the engineer in the  
2 landfill.

3           Q       Is all the hauling done by private people?

4           A       I would say 90 percent of it. There are  
5 124 to 150 private haulers in Fairfax County.

6           Q       And is the County also engaged?

7           A       They are.

8           Q       The County is using their own men?

9           A       Yes.

10          Q       And I take it -- well, were you required to  
11 have a license prior to 1971?

12          A       No, we could haul then right on up to  
13 19 -- I guess '65, '68, on up in there. I am not sure  
14 now, but you could haul your trash anywhere you'd choose  
15 and Fairfax County was getting paid by the yard.

16                   They were asking 30 cents a yard and that  
17 was high. So we choosed to haul it to Prince William  
18 County where we paid \$5 a load and we could haul it  
19 to Maryland.

20          Q       Now other than the trash business, or you  
21 engaged in any other hauling operation?

22          A       Now?

23          Q       Yes, sir.

1 A No.

2 Q Now these premises are used for storing  
3 the vehicles; is that correct?

4 A Definitely.

5 Q And when are they stored usually?

6 A They start coming in about three or four  
7 o'clock in the afternoons.

8 Q And at night, are there any activities?

9 A No, none whatsoever. My trucks -- the  
10 lady made a mistake, that the trucks go out all hours  
11 of the night. Well, the county law says that we  
12 cannot begin picking up trash until six o'clock in the  
13 morning.

14 My route. trucks do not go out until  
15 seven o'clock.

16 Q And when do they come in?

17 A Around about three.

18 Q And while they are out, what's happening  
19 on the premises?

20 A Just mechanic's general work, fixing the  
21 tires and things like that. We do our own maintenance  
22 work. We fix our own tires. We have two-way radios  
23 in the trucks and if they have a break down or if they

24

1 have a flat tire, we send a mechanic on out to keep  
2 the vehicles on the move.

3 Q Would you compare for us, if you will, how  
4 your operation today compares to how it was in 1941  
5 insofar as its affect on the surrounding property?

6 A It is just as different as between day  
7 and night. Say right on up, '38, '39, '40, '41 and  
8 when I came back out the service, we had open body  
9 trucks that did this kind of work. Now we have had to  
10 go to sophisticated equipment, that's packers and  
11 things like that and also the County ordinance says  
12 we cannot pick up any trash in an open-body truck.

13 It has got to be in a packer. It has got  
14 to be in a mechanized packer. We had to change the  
15 whole concept of the business.

16 Q So your premises are used for storing the  
17 vehicles and for repairing; is that correct?

18 A Yes.

19 Q In 1940 and '41, were repairs being made  
20 on the same property?

21 A Oh, definitely. We didn't have garages.  
22 We had a shade tree.

23 Q Thank you.

1 THE COURT: Cross examine?

2 CROSS EXAMINATION

3 BY MR. ARNOLD:

4 Q Mr. Zell, directing your attention to  
5 Plaintiff's Exhibit 1 and directing your attention back  
6 to 1941, on the parcel that is marked here with a double  
7 ((10)), identified as RCT-10, with town houses repre-  
8 sented thereon, were these town houses there in 1941?

9 A There wasn't nothing in there.

10 Q There was nothing in here; right?

11 A Nothing at all.

12 Q There were none of these houses or town  
13 houses or anything?

14 A Nothing.

15 Q Now, you said you started in the trash  
16 business when you were 12 years old. Did you have your  
17 own truck then?

18 A No, I didn't have my own truck but I had  
19 a team of horses.

20 Q You had your own team of horses?

21 A Yes, sir, that's right.

22 Q How many teams of horses did you have?

23 A My father gave me two horses.

1 When I was 12 years old, I went to work with him.

2 Q So at 12 years, you had a team of horses  
3 and what, one wagon?

4 A Going back, when I was 12 years old, there  
5 wasn't any work and that's why they started -- the first  
6 job that I had was picking up with a horse and the  
7 scoopers down to Lorton Reformatory and that is where  
8 I got my first wagon.

9 Q Beg your pardon? That's where you got what?

10 A My first wagon. In them days, you hooked  
11 up to a wagon and went with it.

12 Q And that was when you were 12 years old?

13 A That's right.

14 Q And getting back -- how old were you in  
15 1940?

16 A In 1940, I was 20 years old, I think, or  
17 19.

18 Q How many wagons did you have then?

19 A On the farm or what or around?

20 Q That you owned yourself.

21 A Right then --

22 Q How many did you and your father have? Who-  
23 ever were involved in the business in 1941?

A-199

AUDREY J. RUDIGER REPORTING SERVICE  
CERTIFIED VERBATIM REPORTERS  
3859 CHAIN BRIDGE ROAD  
FAIRFAX, VIRGINIA 22030

591-3136

- 1 A Mr. Germaine, he had two, I think it was.
- 2 Q Two wagons?
- 3 A No, two trucks by then. He had two trucks.
- 4 Q So by then you had switched over to trucks?
- 5 A That's right. We still had teams.
- 6 Q You still had teams?
- 7 A That's right. In the '40's and in '41.
- 8 Q So Mr. Germaine had two trucks?
- 9 A Mr. Germaine, I do not know him.
- 10 Q Mr. Germaine, excuse me.
- 11 A Oh.
- 12 Q Mr. Germaine had two trucks?
- 13 A I guess.
- 14 Q And what type of trucks were these?
- 15 A Well, actually he's still got one, a 1941
- 16 dump truck is up there now. It is antique.
- 17 Q Were these big dump trucks for hauling
- 18 gravel?
- 19 A Right.
- 20 Q Both of them?
- 21 A Well, actually, the first dump truck we had
- 22 was a '41 dump truck. The other was a flat bed truck.
- 23 They was Model A's.

1 Q A subdivision?

2 A Yes.

3 Q Where does your brother live?

4 A At the home place.

5 Q Has he always lived there? Does he still  
6 live there?

7 A I have two.

8 Q Do they both live there?

9 A I have one that lives there.

10 Q You said that your father and your brother  
11 both worked in this business. Was that both brothers  
12 or just one?

13 A I said my husband's brother.

14 Q I am sorry. I misunderstood you.

15 It was your father?

16 A Yes.

17 Q And your husband's brother?

18 A Right and his father that took over during  
19 the war.

20 Q When did these two businesses unite?

21 A What two businesses?

22 Q When did your father's business connect  
23 up with your husband's brother's business?



1 Q So before '41, they were Model A trucks,  
2 flat bed trucks?

3 A That's right.

4 Q Who else was involved in the business besides  
5 Mr. Germaine?

6 A There was my brother and myself.

7 Q And your brother is Charles?

8 A That's right.

9 Q How many trucks did you and your brother  
10 have?

11 A My brother didn't have any. I had it all.

12 Q How many did you have?

13 A Up to what time, now?

14 Q 1941.

15 A About three or four, I think it was. I  
16 am not sure.

17 Q What type of trucks were these? Were these  
18 Model A flat beds, too?

19 A No. They was, I think the first Chevrolets  
20 that came out, we got some of them, the first Chevrolet.

21 Q Were they stake bodies or a pick-up truck?

22 A They were short stake bodies then.

23 Q And stake body is the same as a flat bed;

1 isn't that right?

2 A. That's right.

3 Q. And you didn't have any gravel trucks then,  
4 any big dump gravel trucks?

5 A. My father-in-law had them. We merged.

6 Q. But he didn't get them until '41?

7 A. No, he had -- well, yes, the first part of  
8 '41, I think on that particular one but he had --  
9 actually, the Model A Fords are sitting up there in the  
10 yard now, too. They was. Some of the trucks I think  
11 are still up there.

12 Q. He got one gravel truck in early '41?

13 A. (Nodding head.)

14 Q. Who else besides Mr. Germaine, your wife's  
15 father, yourself and your brother were involved in the  
16 business?

17 A. You mean --

18 Q. Back in 1941.

19 A. As partners or as people who were working  
20 for us?

21 Q. Partners.

22 A. Just the three of us were partners.

23 Q. When did you go into the war?

1 A '42. The last part of '42.

2 Q Before you went into the war, how many  
3 trucks did you have? Did Charles have any trucks then  
4 right before you went into the war?

5 A No, all of it was mine.

6 Q How many trucks did you have before you  
7 went into the war?

8 A I think it was three or four. I am not  
9 sure.

10 Q Three to four?

11 A I am not sure how many at all because it  
12 has been so long.

13 Q It has been a while back, but what type  
14 of trucks were these at that time?

15 A What make or --

16 Q No. Were they flat bed trucks, gravel  
17 trucks, dump trucks?

18 A Two of them had old ice bodies on them.

19 Q An ice body? For hauling ice?

20 A Yes, you see, the tops, it was just the same  
21 as -- actually it was a wagon, old wagon body that you  
22 put on the trucks.

23 Q And what were the others? Two ice trucks

31

1 and what else?

2 A. And we had the garbage truck.

3 Q. How many were those, I mean, that you had  
4 now. Just you, right now.

5 A. I think it was a couple of them. I am not  
6 sure.

7 Q. And what were they? Were they flat bed  
8 trucks at that time?

9 A. Yes, they had to be. Yes.

10 Q. Now how about Mr. Germaine?

11 A. He had the dump truck and he had the Model  
12 A, I think it was.

13 Q. So he had one dump truck and one -- that's  
14 a Model A flat bed type truck?

15 A. Yes.

16 Q. Now once again, before you went into the  
17 war in '42, you had three to four trucks and Mr.  
18 Germaine had two trucks?

19 A. As far as I can remember; yes.

20 Q. And there wasn't anybody else involved in  
21 the business at that time; is that correct?

22 A. No, none whatsoever.

23 Q. Did you have those 1500 head of hogs in

1 1940?

2 A. No, no, we didn't have that many then.

3 Q. But you had some then?

4 A. Yes, we had some but I couldn't tell you  
5 how many it was, pigs and sows and that but when I  
6 came back out of the service, that's when we really  
7 went into it strong because the feed was free and we  
8 got paid for some of it and you picked some of it up free

9 Q. When did you get out of the service then?

10 A. It was in '45.

11 Q. So you got married while you were in the  
12 service?

13 A. In '43.

14 Q. Now these three or four trucks that you had  
15 before you went into the war, were they parked on your  
16 property where your parents lived?

17 A. No..

18 Q. You and your brother lived with your  
19 parents; right, back before the war?

20 A. Well, actually we didn't -- we lived on  
21 Telegraph Road and then we moved up into the country,  
22 further up into the country, we had the place, my  
23 father bought this place down there for the wood.

1 the old home place, and it had an old house on it and  
2 that's where I stayed and then my parents came up and  
3 built a new house, then it was -- I think I still  
4 lived in the old house.

5 Q About when was that?

6 A That was '38 and '39 and then when they  
7 built the new house, why, then I got ready to go into  
8 the army and I didn't stay there with my father and  
9 mother. I didn't stay with my parents.

10 Q I am sorry. I didn't understand you.  
11 You didn't stay with your parents?

12 A No, not in their home, no.

13 Q Where did you stay?

14 A Well, there was another old house that was  
15 on the place.

16 Q Okay. This was about 10 miles or, I mean,  
17 two miles south on Sydenstricker?

18 A Right.

19 Q You don't recall ever parking any of your  
20 four trucks there before the war on your property?

21 A No. You see, the reason we parked the ice  
22 trucks up on the other end, we had to pick up ice, take  
23 two trucks into town to pick up ice and then when the

1 rout got done -- they came on up, they came through  
2 Westend, that's what it was called, and on out Duke  
3 Street to Telegraph Road, down Telegraph Road, up  
4 Francoinia Road and it ended up, up at Mr. Germaine's.

5 It was Five Forks then. There was a com-  
6 munity up in there and that's where the trucks ended  
7 up and that's where they stayed because it was late at  
8 night when we got done.

9 Q What did you use the two flat bed -- did  
10 you use the ice truck for anything besides hauling  
11 ice, the two ice trucks?

12 A No. I mean, in the summertime, that's what  
13 we did.

14 Q Did you have any other occupation besides  
15 trucking?

16 A No. Never knew anything but trucking and  
17 farming.

18 Q That piece of property down the road was not  
19 a farm. It was just a wood lot; is that right, the place  
20 where you and your parents lived?

21 A Yes, because we cleared it for the wood that  
22 was on it and then they made it a farm.

23 Q Then they made it a farm?

1 A. Yes.

2 Q. What did you use the two flat bed trucks for?

3 A. For any general work, hauling wood. You see,  
4 we used to haul wood to all the wood yards in Alexandria,  
5 Foundry; Robinson, all the wood yards would contract for  
6 wood and we would cut and sell it to them. Also pulpwood.

7 We used to unload the pulp at Burke on the  
8 railroad tracks.

9 Q. Then what else would you use them for besides  
10 wood and pulp? I am talking about the flat bed trucks.

11 A. General work. You used them for anything.

12 Q. How about feeding the hogs?

13 A. Definitely.

14 Q. About how often did you have to make the  
15 runs to collect food for the hogs?

16 A. Every day.

17 Q. Now concerning the dump truck that Mr.  
18 Germaine had, this is back before you went to war, con-  
19 cerning the dump truck that he had, what was that used  
20 for?

21 A. Anything.

22 Q. Was it used for hauling wood?

23 A. (Nodding head.)



1 Anything.

2 Q Was it used for hauling trash for the hogs?

3 A Uh-huh.

4 Q Was it used for hauling ice?

5 A No.

6 Q You had to have a special truck to haul  
7 ice; is that it?

8 A Not necessarily, but in the summertime,  
9 you had to have something to cover it to keep it, but  
10 we changed bodies, too.

11 Q Now concerning the Model A flat bed truck  
12 that Mr. Germaine had, what was that used for?

13 A Hauling pulpwood or anything else.

14 Q The same thing?

15 A That's right.

16 Q Where were these trucks generally parked?  
17 Were they generally parked near the house or where?

18 A The trucks that didn't have the garbage on  
19 them. You know on the ground, the spillage, so you  
20 wouldn't have them parked at the house. The rest of  
21 them would be parked around there.

22 Q How many trucks would not usually have  
23 garbage in them?

1           A.     Well, I tell you. It depends on if you  
2 had any breakdowns or anything. Everything was used.

3           Q.     So sometimes you would have three or four  
4 trucks at the house and other times, you would have --

5           A.     I would have none.

6           Q.     You'd have none?

7           A.     That's right. It just depends.

8           Q.     Then if they weren't at the house, where  
9 would they be parked?

10          A.     Back down there in the clearing.

11          Q.     In other words, you built your house where  
12 the hog farm was and where you used to park the trash  
13 trucks?

14          A.     Yes.

15                 You see, when we acquired this place, when  
16 my father-in-law gave us this place, we had our choice  
17 of taking off of each end of the place. We choosed  
18 to take down there where we are at now because we was  
19 running a business and we wasn't too close to the people  
20 at Five Forks to cause them any inconvenience with the  
21 odor and the flies and the stuff.

22                 That's the reason we choosed where we are  
23 at.

1           Q       In other words, you were parking the trucks  
2 with the flies and the stuff near your house instead  
3 of near theirs?

4           A       Well, my house -- my house? I didn't have  
5 a house then. I didn't have anything but the trucks.  
6 I didn't have anything else..

7           Q       Do you remember when the telephone line was  
8 put in there?

9           A       Yes, sir, I do.

10          Q       About what year was that?

11          A       Oh, that was in 19 -- anyway I helped to  
12 haul the poles, because there wasn't any electric or  
13 telephone out there. You had to buy your own pole.

14          Q       How many trucks did you have when you came  
15 back from the war? What was it, in '45?

16          A       Yes. We kept the same amount.

17          Q       So you still had four and Mr. Germaine had  
18 two?

19          A       All I did was start on into work when I  
20 came back out of service, took over and went on back.  
21 That's all.

22          Q       How many trucks did you have in 1963?

23          A       I couldn't tell you. That's the truth

1 because I don't know.

2 Q Was it more than four?

3 A Oh, definitely. I think it was. I am not  
4 sure.

5 Q You are not sure?

6 A No.

7 Q You are not sure if it was more than four  
8 or not?

9 A Well, I started building in 1963. That's  
10 when I started getting customers. We started the  
11 trash, of picking up all of it and from '62 or '63,  
12 I think it just accelerated over night and over night,  
13 I had to buy more trucks.

14 MR. ARNOLD: No further questions, Your  
15 Honor.

16 THE COURT: Redirect?

17 MR. ODIN: No, Your Honor, no questions.

18 THE COURT: You may step down. Thank you.

19 (Witness excused.)

20 MR. ODIN: That's all we have.

21 THE COURT: Any rebuttal?

22 MR. ARNOLD: No, Your Honor.

23 THE COURT: Counsel for the Complainant this

BRIEF IN OPPOSITION

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT  
OF VIRGINIA:

Your Appellees, Browning-Ferris Industries of Virginia, Inc.  
d/b/a Big K Trash Services, et al., respectfully oppose the Petition  
for Appeal on the grounds that the decree of the Court below is cor-  
rect.

STATEMENT OF MATERIAL PROCEEDINGS BELOW

This lawsuit began with the filing on September 20, 1976.  
of a Bill of Complaint in which Gilbert R. Knowlton, Fairfax County  
Zoning Administrator (hereafter the "Zoning Administrator") sought  
to permanently enjoin Defendant-Appellees, (hereinafter "BFI-ZELL")  
from further using for industrial purposes a tract of land zoned  
for residential uses. Defendants answered alleging inter alia a  
permissible non-conforming use.

The case was heard on May 24, 1977 with final argument  
on June 20, 1977. After dismissing Sameul Ziff as a Defendant,  
the Court found that the landowner has established by competent  
evidence that a general trucking business had been legally estab-  
lished on the property owned by them prior to the enactment  
of the zoning ordinance and that the use has continued without  
interruption to the present time without any changes other than  
normal growth and without expansion to any additional parcels  
of land. The request for a permanent injunction was denied and  
the final order was entered October 24, 1977.

### QUESTIONS PRESENTED

- I. Whether, in a suit to enjoin the continuation of an alleged zoning violation the Zoning Administrator has the burden of proving that the use of property is not a legally established non-conforming use?
- II. Whether a legally established non-conforming business use may grow normally or must it remain forever at the size it was when the zoning ordinance was imposed?

### STATEMENT OF FACTS

The property in question consists of 6.035 acres located at 6600 Sydenstricker Road, Fairfax County, Virginia. (T29). The property was originally a part of a 180 acre farm owned by Eva Zell's parents, the Germaines. Zell's residence was built on this parcel in 1945. (T49).

The Germaine farm was used for various agricultural purposes (T179, 180, 195-198) long prior to the adoption of the first zoning ordinance for Fairfax County, on March 1, 1941. Additionally, Germaine and Zell, his son-in-law, operated a general trucking business from the farm, hauling ice, wood and gravel, and picking up trash and garbage. (T180, 184, 195, 197). Various pieces of equipment were used in the farming and trucking operations including ice trucks, dump trucks, and other rolling equipment and farm machinery. (T195, 197). Both the farm and the trucking operations were conducted from family residences. (T187, 191).

One of the primary agricultural uses of the property was the raising of hogs. (T196). A trash and garbage operation was initiated to collect feed for the hogs. (T198). The same trucks used for gravel and wood hauling were used to collect trash and garbage. (T214).

In 1952 the hogs were destroyed because of disease. However, the Zells continued to operate the related general trucking operations from the property. The equipment used with the general trucking operation and agricultural uses has always been maintained, repaired and stored on the property. (T184, 194, 202, 203).

These activities were the full-time occupation of Raymond Zell, his brother and Mrs. Zell's father. (T180, 197, 198). This group ran these businesses with whatever help they could obtain, maintaining all the equipment and trucks themselves. (T182, 184, 198).

Raymond Zell sold his business to Browning-Ferris Industries of Virginia, Inc., (BFI) but the business continued to be operated by Raymond Zell exactly as he has operated it for years. (T27). Mr. Zell is a Vice-President of Browning-Ferris Industries of Virginia, Inc., the Big K Trash Division, and has complete authority over the operation of the business from his property, which is leased to Browning-Ferris Industries of Virginia, Inc. (T28).

BROWNING-FERRIS INDUSTRIES OF  
VIRGINIA, INC. d/b/a BIG K  
TRASH SERVICE,  
RAYMOND H. ZELL, JR.,  
EVA J. ZELL,  
THOMAS A. GERMAINE,  
SAMUEL ZIFF,

By /s/ E. A. Prichard

A-215 /s/ Dexter S. Odin  
Counsel

Letter

MUTUAL ICE COMPANY

Alexandria, Virginia

J. DULANY HAMMOND  
VICE-PRESIDENT

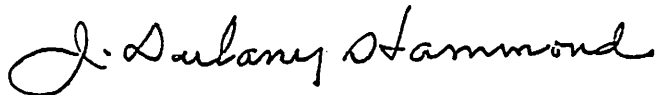
February 25, 1966

TO WHOM IT MAY CONCERN:

Mr. Raymond H. Zell, Jr., Fairfax County, Virginia was selling ice from his truck prior to January 1, 1941.

He was an ice dealer, having customers in the City of Alexandria, Virginia and Fairfax County, Virginia, both before and after January 1, 1941 for number of years.

Yours truly,

A handwritten signature in cursive script that reads "J. Dulany Hammond".

J. Dulany Hammond  
Vice-President



EXHIBIT 22  
Letter

MUTUAL ICE COMPANY

ALEXANDRIA, VIRGINIA 22313

October 20, 1966

Department of Zoning  
Fairfax County Court House  
4000 Chain Bridge Road  
Fairfax, Virginia 22030

Attn: Mr. Covington

Gentlemen:

A search of our records indicates that Raymond H. Zell owned and operated two open trucks used for purchase and resale of ice from our plant in Alexandria as far back as 1941.

Zell was operating a retail ice business out of Burke, Virginia in the Burke-Springfield area.

Mr. Zell was a dealer here at the Mutual Ice Company for about twenty five years, and to the best knowledge of our employees and officers who were here then, he operated with his father from the same place he now operates in Burke, Virginia.

Sincerely,

  
O. A. Reardon, Jr.  
Treasurer

OAR/ms

### REQUESTS FOR ADMISSIONS

COMES NOW the plaintiff, by counsel, and makes the following Requests for Admissions pursuant to Rule 4:11 of the Rules of the Supreme Court of Virginia:

1. That Raymond H. Zell, Jr. and Eva J. Zell are the joint and sole owners of a 6.035 acre parcel of land located at 6600 Sydenstricker Road in the Springfield Magisterial District of Fairfax County, Virginia, more particularly described in Fairfax County Deed Book 447 at Page 164 and designated Parcel 22 on Fairfax County Tax Assessment Map 88-2-((1));
2. That Browning-Ferris Industries of Virginia, Inc., doing business as Big K Trash Service, is a corporation and the lessee of the premises described in paragraph 1;
3. That Raymond H. Zell, Jr., is an employee of Browning-Ferris Industries of Virginia, Inc., and is the line manager of the business known as Big K Trash Service and located on the premises described in paragraph 1;
4. That Samuel Ziff is the president of Browning-Ferris Industries of Virginia, Inc.;
5. That the property described in paragraph 1 is zoned RE-1 (single family houses on one acre lots) and has been so zoned since 1941;
6. That the defendants are conducting a trash collection

business on the property described in paragraph 1;

7. That the defendants are parking more than one commercial vehicle, to-wit, eighteen (18) trash trucks on the property described in paragraph 1;

8. That the defendants are storing and warehousing stock in trade, to-wit, trash containers, on the property described in paragraph 1;

9. That the defendants are maintaining, repairing and painting trucks and trash containers on the property described in paragraph 1;

GILBERT R. KNOWLTON,

By /s/ W. McCauley Arnold  
Counsel

RESPONSE TO REQUEST FOR ADMISSIONS

Come now the Defendants, Browning-Ferris Industries of Virginia, Inc. and Sam Ziff, by counsel, and for response to the Request for Admissions submitted by Complainant, pursuant to Rule 4:11 of the Rules of the Supreme Court of Virginia, say as follows:

1. Upon information and belief, they admit that Raymond H. Zell, Jr. and Eva J. Zell are the joint and sole owners of Parcel 22, Fairfax County Tax Map 88-2 ((1)).

2. These Defendants admit Paragraphs 2 and 3.

3. These Defendants deny Paragraph 4. Samuel Ziff is an Executive Vice-President of Browning-Ferris Industries of Virginia, Inc.

4. These Defendants deny Paragraph 5. In 1941 the property was zoned "Agricultural"; between 1947-1956 the property was zoned "Agricultural"; in 1956 the property was zoned "Agricultural, Class 1"; and in 1959 the property was zoned RE-1.

5. These Defendants admit Paragraph 6, but add that they are conducting only a part of the agricultural business previously conducted at this site. The Defendants previously collected garbage and trash from remote points and disposed of it partially on the property; they no longer dispose of trash on the property.

6. These Defendants admit only that they are parking up to eighteen (18) trucks on the property, in response to Paragraph 7.

7. These Defendants deny Paragraph 8 in that they are not storing and warehousing stock in trade on the property, although they admit that they do store trash containers from time to time on the property.

8. These Defendants admit Paragraph 9.

BROWNING-FERRIS INDUSTRIES OF  
VIRGINIA, INC.

SAM ZIFF

By /s/ Carson Lee Fifer, Jr.  
Counsel

RESPONSE TO REQUEST FOR ADMISSIONS

COMES NOW the Defendants, RAYMOND H. ZELL, JR. and EVA J. ZELL, by counsel, and make the following Response to Request for Admissions pursuant to Rule 4:11 of the Rules of the Supreme Court of Virginia:

1. Admits the facts contained in Paragraph One.
2. Admits the facts contained in Paragraph Two.
3. Admits the facts contained in Paragraph Three.
4. Admits the facts contained in Paragraph Four.
5. Defendants deny the requested admission in Paragraph Five. The property was not zoned RE-1 (single family houses on one acre lots) in 1941, and to the extent that the current zoning attempts to prohibit the current use of the property, it is unlawful and in derogation of the vested rights of the Defendant.
6. These defendants are employees of the Browning-Ferris Industries of Virginia, Inc., who is conducting a business at the premises which may be commonly referred to as a trash collection business, to this extent, Requested Admission No. 6 is admitted.
7. Admits the facts contained in Paragraph Seven.
8. Trash containers are often on the premises for the purposes of repair and to that extent the Requested Admission No. 8 is admitted. These containers are not stored there, nor warehoused there, nor are they "stock in trade".

9. Admits the facts contained in Paragraph Nine.

RAYMOND H. ZELL, JR. and  
EVA J. ZELL

By /s/ Dexter S. Odin  
Counsel

REQUEST FOR ADMISSIONS

Come now the Defendants, Browning-Ferris Industries of Virginia, Inc. and Samuel Ziff, by counsel, and make the following request for admissions pursuant to Rule 4:11 of the Rules of the Supreme Court of Virginia:

1. That the first Zoning Ordinance for Fairfax County was implemented in or about March, 1941.

2. That in 1948, major modifications were made to the initial Zoning Ordinance for Fairfax County.

3. That in September of 1959, the present Zoning Ordinance became effective.

4. That Lot 22, Tax Map 88-2 ((1)), the subject tract, was zoned as "Agricultural" on the 1941 Zoning Map; as "Agricultural" on the 1947-1956 Zoning Map; as "Agricultural, Class 1" on the 1956 Zoning Map (the "Freehill" Map); and as "RE-1" on the 1959 Zoning Map.

BROWNING FERRIS INDUSTRIES OF  
VIRGINIA, INC.

SAMUEL ZIFF

By /s/ E. A. Prichard  
Counsel



ANSWER TO REQUEST FOR ADMISSIONS

COME NOW the complainant, by counsel, and answers the defendants' request for admissions as follows:

Request for Admission 1. That the first Zoning Ordinance for Fairfax County was implemented in or about March, 1941.

Admitted.

Request for Admission 2. That in 1948, major modifications were made to the initial Zoning Ordinance for Fairfax County.

Admitted, except there were no modifications affecting the uses for the subject property.

Request for Admission 3. That in September of 1959, the present Zoning Ordinance became effective.

Admitted.

Request for Admission 4. That Lot 22, Tax Map 88-2-((1)), the subject tract, was zoned as "Agricultural" on the 1941 Zoning Map; as "Agricultural" on the 1947-1956 Zoning Map; as "Agricultural, Class 1" on the 1956 Zoning Map (the "Freehill" Map); and as "RE-1" on the 1959 Zoning Map.

Admitted.

GILBERT R. KNOWLTON

By /s/ W. McCauley Arnold  
Counsel