



APPLICATION FORM

DO NOT WRITE IN THIS SPACE:

Application No.(s): CNU 40223-2013 Planning Board Review Planning Director Review

Acceptance Date: 4-4-2014 70-day limit _____ Limit waived-2nd 70-day limit _____

Posting Waived Posting Date: 4-16-14 No. of Signs Posted: 3 Agenda Date: _____

Filing Fee: None Posting Fee: 90.00 Case Reviewer: M. Hampton

Subdivision Development Review Committee Date: _____

Referral Mail-Out Date: _____ Referral Due Date: _____

Date of Informational Mailing: _____ Date of Acceptance Mailing: 4-11-14

APPLICATION TYPE: Non Conforming Use Revision of Case # _____

(See page 2 for a list of applications)

PROJECT NAME: D.C. Materials

Geographic Location (give distance related to or near major intersection):

1,160 ft. + from Kenilworth Avenue and 52nd Avenue intersection

Address (if applicable) 3334 Kenilworth Avenue Hyattsville, Maryland 20781

Companion Case(s): None

Total Acreage: 6.91

Planning & Policy Analysis Areas: 69/244C69

Election District: 2

Tax Map/Grid: 058/D1

Current Zone(s): I-2

Council District: 5

200 Sheet: 204NE04

Existing Lots/Blocks/Parcels: 76

Dev. Review District: N/A

COG TAZ: 244Z

PG TAZ: 768

Aviation Policy Area: N/A

Plat Book/Page:

Municipality(ies): N/A

Is development exempt from grading permit pursuant to 32-127.(a)(6)(A): Y N

General Plan Tier (check one): Developed Developing Rural

Proposed Use of Property and Request of Proposal
Concrete Recycling Operation

Please list and provide copies of resolutions of previously approved applications affecting the subject property:
None

Applicant Name, Address & Phone:

HMH Partnership
3334 Kenilworth Avenue
Hyattsville, MD 20781

Consultant Name, Address, Phone, & Fax:

Owner Name, Address & Phone:

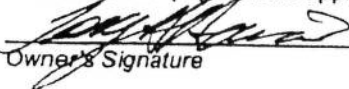
(if same as applicant, please indicate)

Same

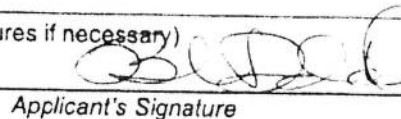
Contact Person, Phone Number, Fax & E-Mail:

Arthur J. Home, Jr.
301-925-1800 301-925-1803 ahome@shpa.com

SIGNATURE (Sign where appropriate; attach additional signatures if necessary)


Owner's Signature

2/27/14
Date


Applicant's Signature

2/27/14
Date

Owner's Signature

Date

Contract Purchaser's Signature

Date

ZONING CASES:	
Details of Request: SEE ATTACHED	Zoning Ordinance Section(s): Section 27-473 (Uses permitted in I-2 Zone) Section 27-244 (NCU)
Number of Dwelling Units: Attached _____ Detached _____ Multifamily _____	Gross Floor Area (Commercial/Industrial Only):

SUBDIVISION CASES – PRELIMINARY PLAN/CONSERVATION SKETCH PLAN:			
Type of Application: (Check all that apply)			
Conventional <input type="checkbox"/>	Comprehensive Design <input type="checkbox"/>	Conservation Sketch Plan <input type="checkbox"/>	Pre-Preliminary Plan <input type="checkbox"/>
Overlay Zone: Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, provide name:			
Variation Request Required: Yes <input type="checkbox"/> No <input type="checkbox"/>		Justification Statement Attached: Yes <input type="checkbox"/> No <input type="checkbox"/>	
Sewer and Water Service Categories: Existing: Sewer _____ Water _____ Proposed: Sewer _____ Water _____			
TOTAL NUMBER OF PROPOSED:			
Lots:	Outlots:	Parcels:	Outparcels:
Number of Dwelling Units: Attached _____ Detached _____ Multifamily _____		Gross Floor Area (Non-residential only):	
AREAS OF DEDICATION:			
Total Parkland:	Homeowners:	Street ROW:	Other:
OWNER:			
Last Recorded Conveyance: Grantor:		Grantee:	
Date of Conveyance:		Land Records Reference: Liber _____ folio _____	
Legal Restrictions/Encumbrances Liber/folio:			

SUBDIVISION CASES – FINAL PLAT:	
Water/Sewer: DER <input type="checkbox"/> Health Dept. <input type="checkbox"/>	Number of Plats:
Conceptual Stormwater Management Approval No.	WSSC Authorization No.:
CSP/DSP/SDP No.:	Approval Date of CSP/DSP/SDP:
Preliminary Plan No.:	Approval Date of Preliminary Plan:
I hereby certify that the submitted final plats are in conformance with the above-referenced SP/SDP.	
_____ <i>Signature of Surveyor, Authorized Representative</i>	

URBAN DESIGN CASES:	
Number of Dwelling Units: Attached _____ Detached _____ Multifamily _____	Gross Floor Area: (Commercial or Industrial use only)
Nature of Revision:	

APPLICATION TYPE

ZONING: I-2 (Heavy Industrial)- NCU

ADT	Alternative Development Technique
DDS	Departure from Design Standards
DPLS	Departure from Parking and Loading Spaces
DSDS	Departure from Sign Design Standards
NCCF	Nonconforming Fast-Food Restaurant
NCGS	Nonconforming Gas Station
NCU	<u>Certified Nonconforming Use</u>
ROSP	Revision of Site Plan
SE	Special Exception
SP	Special Permit
ZMA	Zoning Map Amendment:
	<ul style="list-style-type: none">• Euclidean Zone• Comprehensive Design Zone• Floating Zone• Mixed-Use Zone• Chesapeake Bay Critical Area Zone• Basic Plan Amendment• Official Plan Amendment

CHESAPEAKE BAY CRITICAL AREA:

CP Chesapeake Bay Critical Area - Conservation Plan

SUBDIVISION:

4-	Preliminary Plan
P-	Pre-Preliminary Plan
5-	Final Plat
V-	Vacation Petition
S-	Conservation Sketch Plan

URBAN DESIGN:

AC	Alternative Compliance
CDP	Comprehensive Design Plan
CSP	Conceptual Site Plan
DSP	Detailed Site Plan
SDP	Specific Design Plan
SDP/H	Specific Design Plan for a Homeowners Minor Amendment

VARIANCES TO SUBTITLE 27

Variance with Chesapeake Bay Critical Area
Variance with Detailed Site Plan
Variance with Departure from Parking and Loading Spaces
Variance with Departure from Design Standards
Variance with Preliminary Plan of Subdivision
Variance with Final Plat of Subdivision
Variance with Special Exception

VARIANCES TO SUBTITLE 25

**Do not use this form – use the
Subtitle 25 Variance Application Form**

For variances to:

Division 2: The Woodland and Wildlife
Habitat Conservation Ordinance

Division 3: The Tree Canopy Coverage Ordinance

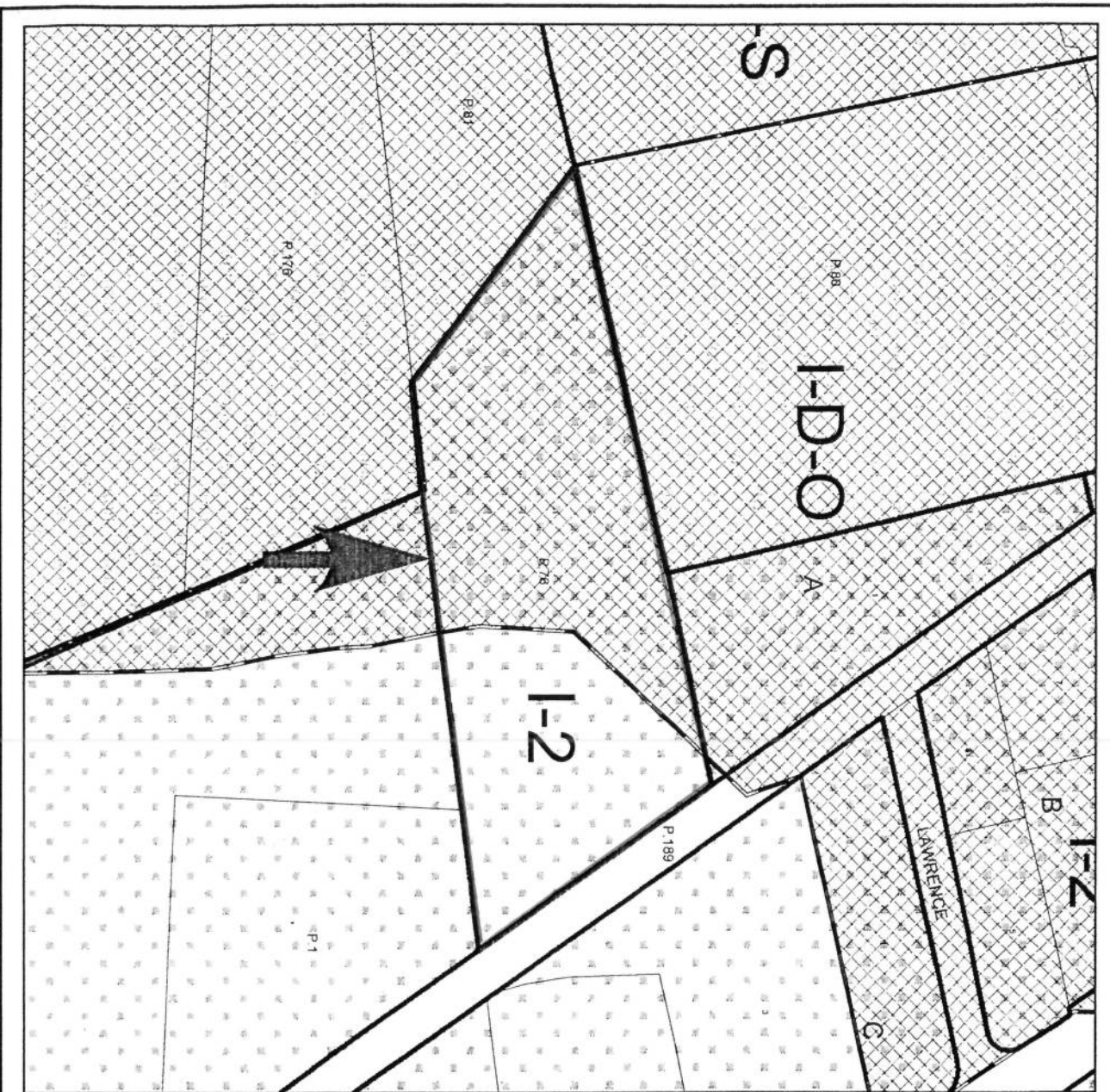
Application Type: Non Conforming Use
Project Name: D.C. Materials
Applicant Name: HMM Partnership

PAGE 3

ZONING CASES:

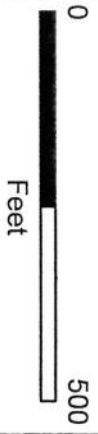
Details of Request:

The property owner operates an industrial use on Kenilworth Avenue which is not in any municipality but has a Hyattsville, Maryland postal address. The property is used as a recycling facility for non-ferrous materials. A "rock crusher" was established on the property with a permit issued therefore by the Maryland Department of the Environment (MDE) prior to 2004. Zoning Ordinance Section 27-473 (uses permitted in I-2 Zone), Section 27-244 (NCU).

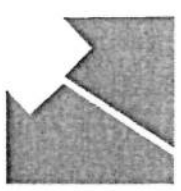


ZONING SKETCH MAP

APPLICATION NO: CNU 4023.2013
 REQUEST: Certification of existing concrete recycling facility
 PAZ: 244069
 EXISTING ZONE: I-2
 PLANNING AREA: 69
 WSSC GRID: 204NE04
 TAX MAP: 58
 TAX GRID: D1
 COUNCIL DISTRICT: 5



1 inch = 250 feet



The Maryland-National Capital Park and Planning Commission
 Prince Georges County Planning Department
 Geographic Information System

Created: March 4, 2014

MH



M-NCPPC – Development Review Division

Prince George's County Planning Department • 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772 • 301-952-3530

SIGN POSTING INFORMATION – PLANNING DIRECTOR REVIEW

Application Number: CNU-40223-2013

Application Name: DC MATERIALS

Date sign(s) were transmitted to applicant or applicant's agent: 4/16/14

Number of signs transmitted: 3

Person to whom signs were transmitted: IGNACIO NUNEZ (Print)

Ignacio Nunez (Signature)

Capacity in which that person was acting: ENGINEER FOR APPLICANT.
(owner, applicant, agent)

EDW
4/16/14

**RETURN THIS PORTION TO CHERYL SUMMERLIN
(TICKLER FOR MEMO TO COUNCILMEMBER'S OFFICE)
IN CHERYL'S ABSENCE, EDWARD WILL DO THE NOTICE**

SIGN POSTING AFFIDAVIT

I, Ignacio Nuñez, hereby certify that the subject property was posted with
(print or type name)

Three (3) sign(s) on 4/16/2014
(specify number) (date)

I further certify that the signs were inspected on 4/23/2014 (7 to 15 days after site was posted) and were maintained in a reasonable manner.

Signature: Ignacio Nuñez

DO NOT SUBMIT THIS AFFIDAVIT UNTIL THE SITE HAS BEEN INSPECTED.

Application Number: CNU-40223-2013 Application Name: DC Materials

Contact Person & Telephone: Paul Woodburn, (301)430-2000

Company Name & Address: Ben Dyer Associates, Inc. 11721 Woodmore Road Suite-200, Mitchellville, MD 20721

Capacity in which you are acting: Engineer for Applicant
(owner, applicant, agent)

Note: Attach legible, close up photograph(s) showing sign(s) in place and at least one additional photograph from a distance sufficient to show physical improvements or natural characteristics to identify the subject property.

Return this affidavit and photographs to the Development Review Division no less than 14 days prior to the Planning Board hearing date.

* * * * *

Planning Director

Case name & number: DC Materials (CNU-40223-2013)

Reviewer: Mary Hampton

Signs expire: 5/6/14



A=1 sign (off-site) B=1 sign C=1 sign

Request – Certification of Non-Conforming Use for a concrete recycling operation.

Project: DC Materials
Case Number: CNU-40223-2013

Signs Posted on: 4/16/2014

Location-A (Close)



Location-A (Away)



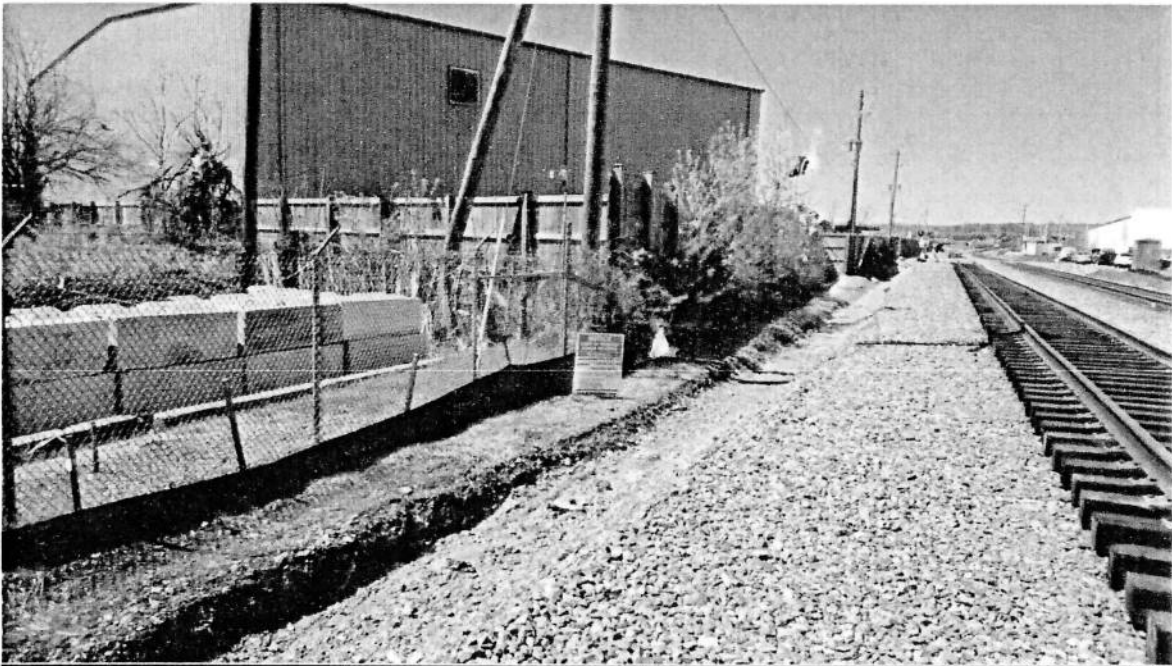
Project: DC Materials
Case Number: CNU-40223-2013

Signs Posted on: 4/16/2014

Location-B (Close)



Location-B (Away)



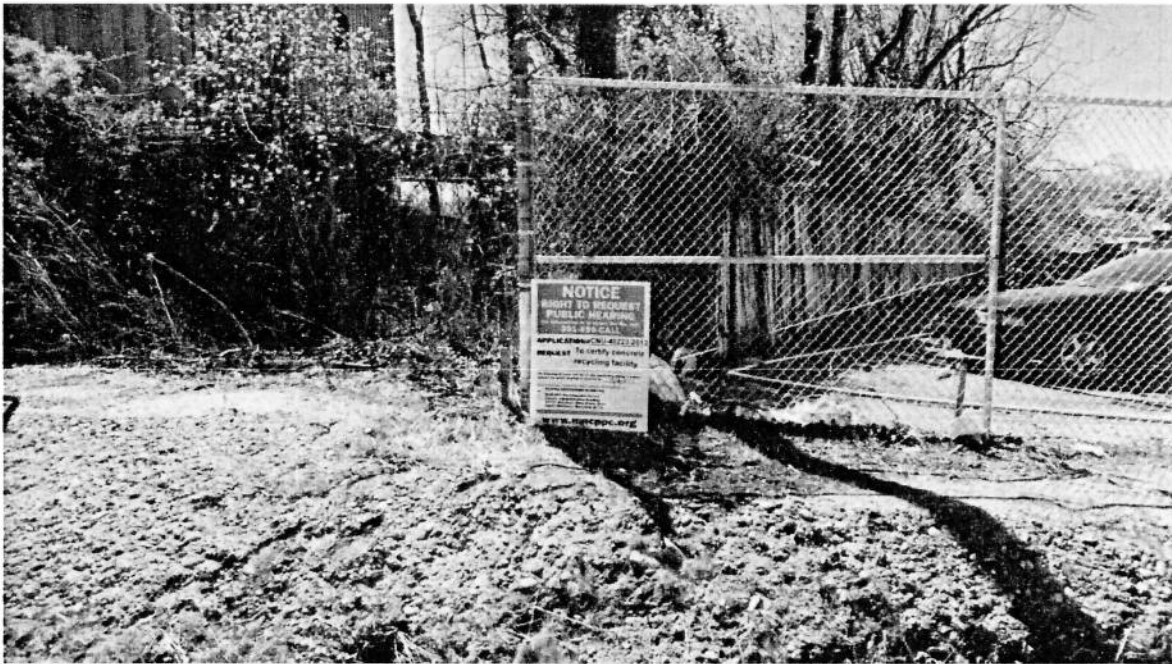
Project: DC Materials
Case Number: CNU-40223-2013

Signs Posted on: 4/16/2014

Location-C (Close)



Location-C (Away)



Project: DC Materials
Case Number: CNU-40223-2013

Signs Inspected on: 4/23/14

Location-A (Close)



Location-A (Away)



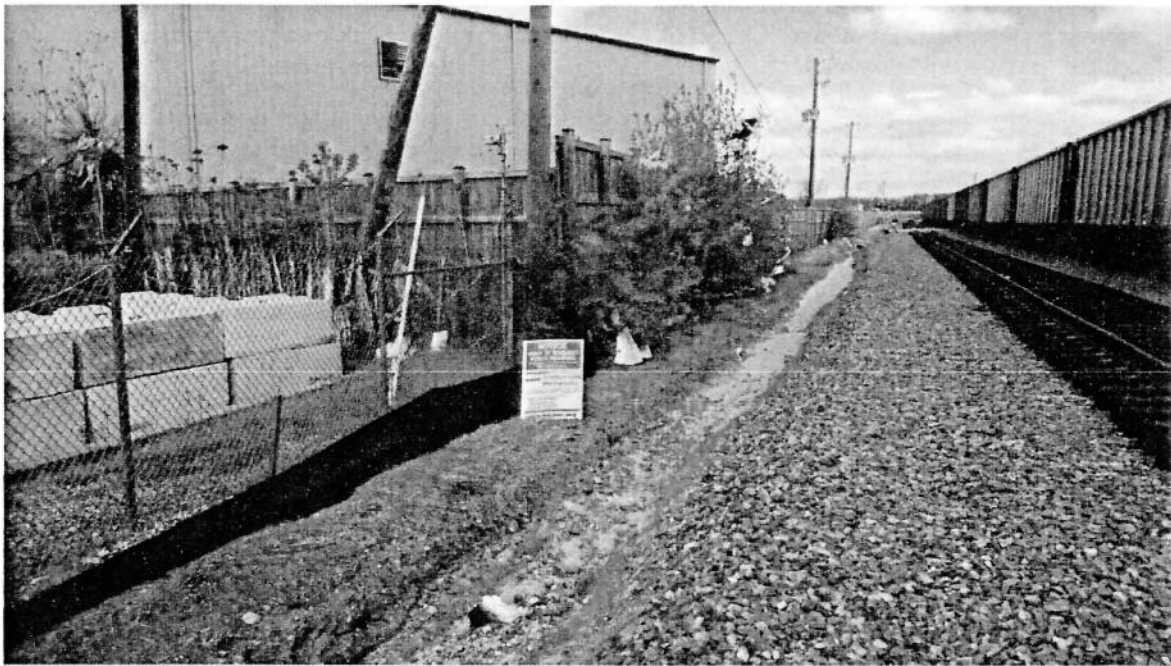
Project: DC Materials
Case Number: CNU-40223-2013

Signs Inspected on: 4/23/14

Location-B (Close)



Location-B (Away)



Project: DC Materials
Case Number: CNU-40223-2013

Signs Inspected on: 4/23/14

Location-C (Close)



Location-C (Away)



11721 WOODMORE ROAD, SUITE 200 MITCHELLVILLE, MD 20721



BEN DYER ASSOCIATES, INC.
ENGINEERS, SURVEYORS, PLANNERS
TELEPHONE: 301-430-2000

SIGN POSTING REPORT

JOB NAME:	DC MATERIALS-KENILWORTH	JOB NO./WORK ORDER:	A90034-1833 /102330
APPLICATION NO.:	CNU-40223-2013	DATE POSTED:	4/16/2014
NUMBER OF SIGNS:	Three (3)	PM:	PBW

COMMENTS:

I installed three (3) signs at the location marked on the map. I took two (2) pictures of the signs; one close to the sign and one from a distance. The signs are in good condition.

By: 
Ignacio Nuñez
Engineer
Ben Dyer Associates, Inc.

11721 WOODMORE ROAD, SUITE 200 MITCHELLVILLE, MD 20721



BEN DYER ASSOCIATES, INC.
ENGINEERS, SURVEYORS, PLANNERS
TELEPHONE: 301-430-2000

SIGN INSPECTION REPORT

JOB NAME:	DC Materials-Kenilworth	JOB NO./WORK ORDER:	A90034-1833 / 102330
APPLICATION NO.:	CNU-40223-2013	DATE INSPECTED:	4/23/2014
NUMBER OF SIGNS:	Three (3)	PM:	PBW

COMMENTS:

I inspected three (3) signs at the locations marked on the map. The signs are in good condition.

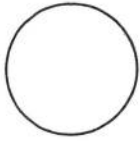
By: 
Ignacio Nuñez
Engineer
Ben Dyer Associates, Inc.

11721 WOODMORE ROAD, SUITE 200
MITCHELLVILLE, MD 20721

TELEPHONE: 301-430-2000

FAX: 301-430-2001

E-MAIL: bendyer@bendyer.com



BEN DYER ASSOCIATES, INC.
Engineers / Surveyors / Planners

TRANSMITTAL

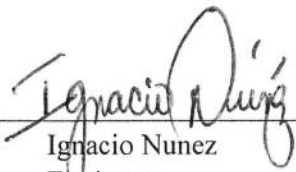
TO: Edward Holley Maryland-National Capital Park and Planning Commission Zoning Section County Administration Building, 4 th Floor 14741 Governor Oden Bowie Drive Upper Marlboro, Maryland 20772	DATE : April 24, 2014 JOB NO. : A90034-1833 JOB NAME : KENILWORTH WORK ORDER : 102330 CASE NO. : CNU-40223-2013
--	---

No. Copies	Drawing No.	Description
3 each	--	Sign Posting Inspection and Affidavits
	--	Photograph of Posted Signs
	--	Sign Posting Maps

Reason for Sending: For submittal.

Sent Via: Mail _____ Pick-Up _____ Courier _____ Deliver X Other _____

BEN DYER ASSOCIATES, INC.

BY  _____
Ignacio Nunez
Engineer

cc: Russell Shipley
Robert J. Antonetti
Arthur J. Horne

PM:PBW
2.MNCPPC.Holley.Kenilworth.IN.0424/col



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
TTY: (301) 952-4366
www.mncppc.org/pgco

April 16, 2014

MEMORANDUM

TO: Council Member Andrea Harrison
Chief of Staff Rodney Streeter

FROM: Edward Holley, Senior Planning Technician *EDH*
Development Review Division

SUBJECT: Planning Director Review with Posting – CNU-40223-2013, D.C. Materials

The above application was accepted on April 4, 2014. The nature of the review is a Certification of Non-Conforming Use for a concrete recycling facility.

Per CB-42-2002, the site was posted with notice signs on April 16, 2014. The Zoning Ordinance requires that the signs remain on the site for 20 days from the date of the posting.

CB-42-2002 allows any interested person to request a Planning Board hearing during the 20-day posting period. If you would like additional information about this case, the applicant contact information, or if you would like to request a Planning Board hearing, please contact Mary Hampton at 301-952-5411.

cc: Mary Hampton, Principal Planning Technician
Debbie Gallagher, Permit Supervisor

LAW OFFICES
SHIPLEY & HORNE, P.A.

Russell W. Shipley
Arthur J. Horne, Jr.*
Dennis Whitley, III*
Robert J. Antonetti, Jr.

1101 Mercantile Lane, Suite 240
Largo, Maryland 20774
Telephone: (301) 925-1800
Facsimile: (301) 925-1803
www.shpa.com

Bradley S. Farrar
L. Paul Jackson, II*

* Also admitted in the District of Columbia

March 26, 2014

STATEMENT OF JUSTIFICATION

Certification of Non-Conforming Use (Rock Crusher on I-2 Property in Conjunction with Permitted Use of "Recycling, Non-Ferrous Materials")

OWNER/APPLICANT: HMH Partnership
OPERATOR: D.C. Materials, Inc.
ADDRESS: 3334 Kenilworth Avenue, Hyattsville, Maryland 20781

In accordance with Section 27-244 of the Prince George's County Zoning Ordinance, this Statement of Justification is in support of the premise that the rock crusher currently in use on the subject property conforms with all applicable provisions to certify it as a Legal Non-Conforming Use. The Applicant is HMH Partnership ("HMH") owner of the property located at 3334 Kenilworth Avenue, Hyattsville, Maryland 20781. Said property has been utilized by its long-term tenant, D.C. Materials ("DCM"). The property in question is zoned I-2 and contains 6.9186 acres (301,374 s.f.) and is identified on Tax Map 58/D1 as Parcel 76. The property is also identified with a street address of 3334 Kenilworth Avenue, Hyattsville, Maryland 20781. The property is zoned I-2.

FINDINGS:

A. Location and Existing Use:

The existing and proposed use of the property is for a commercial recycling center with a rock crusher, warehousing and storage yard. The Applicant is applying for certification of a non-conforming use for the existing rock crusher element of the existing use. Based on the State Department of Assessment and Taxation records, the existing improvements located on the property were constructed in 1970. Maryland-National Capital Park and Planning Commission records show that an approximately 50,316 s.f. building was approved by Permit 685591-U on November 14, 1969 for Long Fence Company for manufacturing fence fittings and related materials. The same records also show that an approximately 10,432 s.f. addition to Building 1 was approved sometime after October, 1971. The commercial recycling center was established and issued an occupancy permit in October of 1989 with Permit No. 7922-

89-U. (Copy attached.) The aforesaid occupancy permit (copy attached) was issued to D.C. Materials as the operator or occupant. D.C. Materials has been and currently is the occupant and operator of the aforesaid business on the property. Said occupancy permit lists the property owner as Glendal W. Harris and Peter L. Babb, et al. with a business address of 6611 Kenilworth Avenue, Suite 41, Riverdale, Maryland 20737. (Thereafter, the property owner became HMH Partnership, LLC which was a distinction in form, but essentially owned by the same principals.) A new use and occupancy permit is required whenever a change of ownership or tenant occurs.

B. History:

As aforesaid, the permit for recycling of non-ferrous materials was effective on October 8, 1989 by Use and Occupancy Permit No. 7922-89-U. At that time, the establishment of a "rock crusher" was a permitted use in conjunction with that operation. However, Council Bill 78-2004 was adopted November 16, 2004, and became effective December 30, 2004. This council bill amended the Zoning Ordinance by defining a concrete recycling facility, amending the definition of recycling plant to exclude concrete recycling facilities, to require a special exception for concrete recycling facilities in the industrial zones, and prohibiting the use of a rock crusher in conjunction with the manufacturing or cutting of structural products made of clay, concrete, glass, stone or similar materials. Therefore, it is the Applicant's assertion that the use of the rock crusher was established prior to the passage of that legislation. The documents attached hereto and made a part hereof, indicate that the Maryland Department of the Environment approved a permit for the continued use of the previously established rock crusher in 1993. It is the Applicant's assertion (supported by the materials attached hereto and made a part hereof) that the said use of the rock crusher has continuously been in operation without interruption since that time. The Applicant is attaching hereto the annual records submitted to the Maryland Department of the Environment indicating the tonnage of rock that was processed in the previous year. Those permits also indicate that the rock crusher machinery approved for use initially had a capacity of 250 tons per day. These records also indicate that this tonnage capacity has remained the same and has not increased from 1993 until the current time. Moreover, the Applicant has provided daily production logs for the operation on the subject property showing a continuous use of the operation from January 1, 2005 to December 31, 2013. (See Attached Exhibit 12.)

The attached site plan produced by Ben Dyer Associates, Inc. and dated 2013 is made a part of this application and demonstrates the location of the recycling facility on the subject property. It is noted that the current precise location of the rock crusher is not noted within said area. This is due to the fact (See, attached exhibits) that from time to time the rock crusher is portable and has been located to more efficiently serve the needs of recycling.

C. Planning Consideration for the Property:

In further reference to the details of the current use, zoning and related matters concerning the subject property, the Applicant notes as follows. The subject appears on the Washington Suburban Sanitary Commission Sheet No. 204 and 804. The subject property has an existing Water/Sewer Capacity Category of W3/S3 and a proposed Water/Sewer Capacity of W3/S3. The property is entirely outside the designated boundaries of any aviation policy area. There is no evidence of a cemetery on or contiguous to the subject property. There are no historic structures on or in the vicinity of the subject property. There are no identifiable wetlands or waters of the United States identified on the subject property. However, according to Digital Mapping Services, there is a very minor FEMA floodplain encroachment on the northwest-most corner of the subject property. Said floodplain encroachment does not impact any building or other structure or site improvements located on the property. The subject property is located within the boundary of the I-D-O (Intense Development Overlay) and unimproved Chesapeake Bay Critical Area legislation (Resolution CR-95-1988).

D. Documentation:

The following documents are respectfully submitted as attachments to this application:


1. Attachments with reference to application.
2. Compilation of documents with Table of Contents identifying documents from 1 through 48. The documentation contained in this notebook, and the opinion of the Applicant, confirms that (1) that the rock crusher was clearly permitted in 1993 in response to a notification by the MDE that it had already established a rock crusher without obtaining the necessary permit. That necessary permit is reflected by the permit issued in 1993 and (2) that its use has been continuous from and after that time which clearly preceded the change in the Zoning Ordinance adopted by the Council in 2004.
3. Daily Production Logs for D.C. Materials, Inc. from January 1, 2005 to December 31, 2013.
4. A copy of a plat prepared by Ben Dyer Associates.
5. A copy of Occupancy Permit No. 7922-89-U.
6. A copy of comments on permit review for occupancy permit made by Maryland-National Capital Park and Planning Commission Permit Review Section for proposed Occupancy Permit 40223-2013-U and dated November 22, 2013.

Statement of Justification
March 26, 2014
Page 4

The Applicant would be happy to furnish any clarifying or additional information that may be required for the proper processing of this application.

Respectfully submitted,

SHIPLEY & HORNE, P.A.



Russell W. Shipley

RWS/pl

Enclosures

LAW OFFICES
SHIPLEY & HORNE, P.A.

1101 Mercantile Lane, Suite 240
Largo, Maryland 20774
Telephone: (301) 925-1800
Facsimile: (301) 925-1803
www.shpa.com

Russell W. Shipley
Arthur J. Horne, Jr.*
Dennis Whitley, III*
Robert J. Antonetti, Jr.

Bradley S. Farrar
L. Paul Jackson, II*

* Also admitted in the District of Columbia

March 5~~26~~, 2014

STATEMENT OF JUSTIFICATION

Certification of Non-Conforming Use (Rock Crusher on I-2 Property in Conjunction with Permitted Use of "Recycling, Non-Ferrous Materials")

OWNER/APPLICANT: HMH Partnership
OPERATOR: D.C. Materials, Inc.
ADDRESS: 3334 Kenilworth Avenue, Hyattsville, Maryland 20781

In accordance with Section 2427-244 of the Prince George's County Zoning Ordinance. The Applicant is HMH Partnership ("HMH") owner of the property located at 3334 Kenilworth Avenue, Hyattsville, Maryland 20781. Said property has been utilized by its long-term tenant, D.C. Materials ("DCM"). The property in question is zoned I-2 and contains 6.9186 acres (301,374 s.f.) and is identified on Tax Map 58/D1 as Parcel 76. The property is also identified with a street address of 3334 Kenilworth Avenue, Hyattsville, Maryland 20781. The property is zoned I-2.

FINDINGS:

A. Location and Existing Use:

The existing and proposed use of the property is for a commercial recycling center with a rock crusher, warehousing and storage yard. The Applicant is applying for certification of a non-conforming use for the existing rock crusher element of the existing use. Based on the State Department of Assessment and Taxation records, the existing improvements located on the property were constructed in 1970. Maryland-National Capital Park and Planning Commission records show that an approximately 50,316 s.f. building was approved by Permit 685591-U on November 14, 1969 for Long Fence Company for manufacturing fence fittings and related materials. The same records also show that an approximately 10,432 s.f. addition to Building 1 was approved sometime after October, 1971. The commercial recycling center was established and issued an occupancy permit in October of 1989 with Permit No. 7922-89-U. (Copy attached.) The aforesaid occupancy permit (copy attached) was issued to D.C. Materials as the operator or occupant. D.C. Materials has been and currently is

the occupant and operator of the aforesaid business on the property. Said occupancy permit lists the property owner as Glendal W. Harris and Peter L. Babb, et al. with a business address of 6611 Kenilworth Avenue, Suite 41, Riverdale, Maryland 20737. (Hereafter, the property owner became HMH Partnership, LLC which was a distinction in form, but essentially owned by the same principals.) A new use and occupancy permit is required whenever a change of ownership or tenant occurs.

B. History:

As aforesaid, the permit for recycling of non-ferrous materials was effective on October 8, 1989 by Use and Occupancy Permit No. 7922-89-U. At that time, the establishment of a "rock crusher" was a permitted use in conjunction with that operation. However, by Council Bill 78-2004 the Industrial Use tables were changed to exclude the use of a "rock crusher" without obtaining a Special Exception. was adopted November 16, 2004, and became effective December 30, 2004. This council bill amended the Zoning Ordinance by defining a concrete recycling facility, amending the definition of recycling plant to exclude concrete recycling facilities, to require a special exception for concrete recycling facilities in the industrial zones, and prohibiting the use of a rock crusher in conjunction with the manufacturing or cutting of structural products made of clay, concrete, glass, stone or similar materials. Therefore, it is the Applicant's assertion that the use of the rock crusher was established prior to the passage of that legislation. The documents attached hereto and made a part hereof, indicate that the Maryland Department of the Environment approved a permit for the continued use of the previously established rock crusher in 1993. It is the Applicant's assertion (supported by the materials attached hereto and made a part hereof) that the said use of the rock crusher has continuously been in operation without interruption since that time. The Applicant is attaching hereto the annual records submitted to the Maryland Department of the Environment indicating the tonnage of rock that was processed in the previous year. Those permits also indicate that the rock crusher machinery approved for use initially had a capacity of 250 tons per day. These records also indicate that this tonnage capacity has remained the same and has not increased from 1993 until the current time. Moreover, the Applicant has provided daily production logs for the operation on the subject property showing a continuous use of the operation from January 1, 2005 to December 31, 2013. (See Attached Exhibit 12.)

The attached site plan produced by Ben Dyer Associates, Inc. and dated 2013 is made a part of this application and demonstrates the location of the recycling facility on the subject property. It is noted that the current precise location of the rock crusher is not noted within said area. This is due to the fact (See, attached exhibits) that from time to time the rock crusher is portable and has been located to more efficiently serve the needs of recycling.

C. Planning Consideration for the Property:

In further reference to the details of the current use, zoning and related matters concerning the subject property, the Applicant notes as follows. The subject appears on the Washington Suburban Sanitary Commission Sheet No. 204 and 804. The subject property has an existing Water/Sewer Capacity Category of W3/S3 and a proposed Water/Sewer Capacity of W3/S3. The property is entirely outside the designated boundaries of any aviation policy area. There is no evidence of a cemetery on or contiguous to the subject property. There are no historic structures on or in the vicinity of the subject property. There are no identifiable wetlands or waters of the United States identified on the subject property. However, according to Digital Mapping Services, there is a very minor FEMA floodplain encroachment on the northwest-most corner of the subject property. Said floodplain encroachment does not impact any building or other structure or site improvements located on the property. The subject property is located within the boundary of the I-D-O (Intense Development Overlay) and unimproved Chesapeake Bay Critical Area legislation (Resolution CR-95-1988).

D. Documentation:

The following documents are respectfully submitted as attachments to this application:

1. Attachments with reference to application.
2. Compilation of documents with Table of Contents identifying documents from 1 through 48. The documentation contained in this notebook, and the opinion of the Applicant, confirms that (1) that the rock crusher was clearly permitted in 1993 in response to a notification by the MDE that it had already established a rock crusher without obtaining the necessary permit. That necessary permit is reflected by the permit issued in 1993 and (2) that its use has been continuous from and after that time which clearly preceded the change in the Zoning Ordinance adopted by the Council in 2004.
3. Daily Production Logs for D.C. Materials, Inc. from January 1, 2005 to December 31, 2013.
- ~~3.4.~~ A copy of a plat prepared by Ben Dyer Associates.
- ~~4.5.~~ A copy of Occupancy Permit No. 7922-89-U.
- ~~5.6.~~ A copy of comments on permit review for occupancy permit made by Maryland-National Capital Park and Planning Commission Permit Review Section for proposed Occupancy Permit 40223-2013-U and dated November 22, 2013.

Statement of Justification

March 5~~2~~6, 2014

Page 4

The Applicant would be happy to furnish any clarifying or additional information that may be required for the proper processing of this application.

Respectfully submitted,

SHIPLEY & HORNE, P.A.

Russell W. Shipley

RWS/pl

Enclosures



**THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
PERMIT REVIEW SECTION**

14741 Governor Oden Bowie Drive, Upper Marlboro Md. 20772

Permit Reviewer: Mary Hampton 40223-2013-U
Telephone Number: 301-952-5411 November 22, 2013
Fax Number: 301-952-4141
Permit Status: www.mncppc.org

The following comments were generated from permit review. Any questions or concerns regarding the following should be directed to the reviewer at the phone number provided above.

1. This permit is for the certification of nonconforming use for concrete recycling in the I-2 Zone. Council Bill 78-2004 amended the Industrial Use tables to exclude the use of a rock crusher as part of manufacturing or cutting of structural products made of clay, concrete, glass, stone, or similar materials which is how rock crushers were previously categorized and permitted in the I-2 Zone. It also defined concrete recycling and required a special exception in the I-2 Zone. Permit 7922-89-U was approved for DC Materials for recycling equipment only and the approved site plan clearly indicated the use of a rock crusher. Therefore certification of nonconforming use must be pursued. **12/18/13 – Per revised this comment is still outstanding.**

3/11/14 – See updated comments generated below on 3/11/14 regarding the submittal of the application for certification of nonconforming use.

4/4/14 – All permit comments and NCU submittal requirements have been satisfied. See updated comments below.

2. The rock crusher is an outdoor component therefore our recommendation of approval for the nonconforming use certification must be transmitted to the District Council in accordance with Section 27-244(d)(2) of the Zoning Ordinance. Therefore, once the application for certification of nonconforming use and all supporting documentation is submitted and reviewed and deemed complete, a sign posting fee will be determined and will be required to be submitted for sign posting of the property. The property is posted for 20 days and if no request for a public hearing is requested, a recommendation of approval is forwarded to the District Council for review. The District Council has 30 days to elect to review the case. If the District Council elects to hear the case then the Office of the Zoning Hearing Examiner will hold a public hearing. If the District Council does not elect to hear the case the use certification will be approved. **12/18/13 – Per revised this comment is still outstanding.**

3/11/14 – See updated comments generated below on 3/11/14 regarding the submittal of the application for certification of nonconforming use.

4/4/14 – All permit comments and NCU submittal requirements have been satisfied. See updated comments below.

3. A copy of the ingress/egress easement Liber 2987 Folio 421 must be submitted. **12/18/13 – Per revised plans this comment is still outstanding.**

3/11/14 – This comment is still outstanding. 4/3/14 – OK per deed submitted.

4. The use of the 2 warehouse buildings must be clarified. If they are used as contracture services or part of this manufacturing/recycling use then the use should be labeled as contractors services, manufacturing, etc. The parking would then be calculated at 1:000 (pre 1970 requirement) for all gross floor area except for the portion of the addition constructed after 1970 which would be



**THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
PERMIT REVIEW SECTION**

14741 Governor Oden Bowie Drive, Upper Marlboro Md. 20772

calculated at 1:500. 12/18/13 – OK per revised plans. Building #1 is the recycling use and Building #2 is a vacant warehouse. The parking schedule reflects the parking calculation done per the 1989 approved site plan and building addition site plan.

5. Does one occupant occupy both building? If not then the parking and loading calculations must be calculated per tenant. 12/18/13 – OK per revised plans. DC Materials occupies Building #1 and Building #2 is vacant.

6. The parking schedule has separated out office use and calculated it at 1:500. Is this a separate tenant or part of the overall use? Parking should only be calculated separately for an office use if this is an office use/separate tenant. Otherwise accessory office area for a warehouse or contractor service or manufacturing use should be calculated as the same parking ratio as the main use. This applies to the loading schedule. The loading schedule has calculated loading for an office building which this is not. 12/18/13 – *This comment has been addressed except that interior loading spaces have been shown. The height of the overhead doors must be provided. A minimum of 15 feet is required if current loading space sizes are to be used.* 12/19/13 – OK per revised plans.

7. Does this applicant occupy one of the buildings in addition to operating the rock crusher on the property? 12/18/13 – This occupant occupies Building #1 only.

Additional comments may be generated once the application for certification of nonconforming use and all submittal requirements are received and reviewed.

I emailed the permit comments to Brandy Stuart at bstuart@shpa.com

12/18/13 – I called and discussed the revised comments with Francis Silberholz at Ben Dyer.

12/19/13 – I emailed the revised comments to Brandy Stuart and Francis Silberholz.

3/11/14 – These revised comments were generated after the review of the application for certification of nonconforming use and submittal requirements:

1. The geographical location on the application should be revised to indicate that the subject property is approximately 580 feet from Kenilworth Ave. This is the access to the site via an ingress/egress easement. 4/3/14 – *Still required per revised application. Since the property does not have frontage on an improved public street one sign shall be placed near to, and visible from, the improved portion of the nearest, most-traveled street in accordance with Section 27-125.03, which is Kenilworth Ave.* 4/4/14 – OK per revised application.

2. The subject property is a parcel and not a recorded lot, therefore why is plat book/page filled out on the application with 0000/894? It appears to a portion of liber and folio. In addition the Development Review District and Aviation Policy Area section of the application must be completed with a N/A if not applicable. 4/3/14 – OK per revised application.

3. Page 3 of the application must be submitted with the Zoning Case section completed. 4/3/14 – OK per revised application.



**THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
PERMIT REVIEW SECTION**

14741 Governor Oden Bowie Drive, Upper Marlboro Md. 20772

4. The statement of justification should be revised under “B History” to clarify that Council Bill 78-2004 was adopted November 16, 2004, and became effective December 30, 2004. This council bill amended the Zoning Ordinance by defining a concrete recycling facility, amending the definition of recycling plant to exclude concrete recycling facilities, to require a special exception for concrete recycling facilities in the industrial zones, and prohibiting the use of a rock crusher in conjunction with the manufacturing or cutting of structural products made of clay, concrete, glass, stone, or similar materials. This justifies why the rock crusher was permitted under permit 7922-89-U and thus became nonconforming on December 30, 2004. **4/3/14 – OK per revised justification statement.**

5. Additional documentation must be submitted which demonstrates that the use has not ceased operation for more than 180 days from December 2004 to the present date. The MDE permits that were submitted are issued every 4-5 years, various emails, faxes and permits from 2011 and 2012 were submitted, and an affidavit from Tony Harris indicating the production in tons from 1993 through 2012 was submitted. However copies of records of the crushing and screening plant must be submitted and would be adequate additional documentation. **4/3/14 – OK per additional documentation submitted.**

6. Additional comments may be generated once the above comments are addressed.

3/11/14 - I emailed the comments to Robert Antonetti.

4/3/14 – I emailed the revised comments to Robert Antonetti.

4/4/14 – All permit comments and submittal requirements have been addressed. The application for certification of nonconforming use is now accepted. A check for \$90.00 (3 signs) for the required sign posting has been submitted. The check and a copy of the application have been transmitted to the admin staff for preparation of the acceptance letter.

4/14/14 – Acceptance letter received. A copy of the acceptance letter, NCU application, and site plan submitted to Edward Holley for sign posting. I notified Robert Antonetti that he needs to coordinate sign pick up with Edward.

4/16/14 – Sign posted.

5/7/14 – No request for a public hearing was received. Notification of Recommendation for Certification of Nonconforming Use memo to be prepared and transmitted to the Clerk of the Council. Memo awaiting Alan’s signature.

5/9/14 – Memo submitted to the Clerk of the Council’s Office

PRINCE GEORGE'S COUNTY
CERTIFICATE OF USE AND OCCUPANCY

DEPARTMENT OF ENVIRONMENTAL RESOURCES
CONSTRUCTION STANDARDS DIVISION
COUNTY ADMINISTRATION BUILDING

PERMISSION IS GRANTED TO OCCUPY: 3334 KENILWORTH AVE
HYATTSVILLE MD, 20784

ID NUMBER: 7922-89-U

TO: METREX EXCA/HARRIS CONSTR
PROF OWNER: HARRIS, GLENDAL W. & PETER L. HARR ETAL
6611 KENILWORTH AV #41
RIVERDALE, MD 20737

OCCUPANT: D C MATERIALS
3334 KENILWORTH AVE
HYATTSVILLE, MD 20781

USE OF: RECYCLING, NON FERRUS MATERIALS

OWNERSHIP: PRIVATE

SPECIAL EXCEPTION:
ZONE : I2
TAX MAP: 0058
OCCUPANCY LOAD:
LIVE LOAD:
SUBDIVISION:
LOT
BLOCK
PARCEL
PARKING SP : 76 40

ELEC DIST: 02
LIBER : 5791
FOLIO : 621
USE GROUP:
TYPE CONST:

EFFECTIVE DATE: 10/18/89

John M. ... #585

CHIEF BUILDING INSPECTOR

Willie R. Turner

0082089

THIS CERTIFICATE MUST BE CONSPICUOUSLY DISPLAYED AND NOT REMOVED FROM THE PREMISE FOR WHICH IT WAS ISSUED. IT IS NOT TRANSFERABLE.

14

orig. 15 in oi patch
+ trailer @ site
File in m/Re: 11/14

STATE OF MARYLAND, DEPT. OF ENVIRONMENTAL CONTROL, DEPT. F. R., CDD, APPLICATION FOR PLAN EXAM - PERMIT 3/20/89 TD JBR 7002-89-11 00

LOCATION OF WORK: 3334 KENILWORTH

OWNER: HYATTSVILLE 20781 LIBER 5794 POLID: 621

SEC. 06 PLAT: 02 LAND ACCT 4 4201545000

GRID: D-1 FEETION: A14 FEETION DT 7/22/72

ZONE: 12 REC. PLAT: NONE MAP NO: 20494R

PROF. OWNER: HARRIS, GLENDA, W & PETER L BADD PLAT

6611 KENILWORTH AV 441

RIVERDALE, MD 20737

DEVELOPER: D C MALLERIAS

3334 KENILWORTH AVE

HYATTSVILLE, MD 20781 301-474-8878

TYPE OF APPLICATION: PROPOSED USE: RECYCLING, NON FERROUS MATERIALS

USE & OCCUPANCY--CHANGE: equipment

EXISTING OR FORMER USE: FISHING

WORK DESCRIP: OPEN LANDS

HEIGHT FT	TOT FLOOR AREA	TYPE OF:	NO. OF:	NON-RES:
0	0	SEWER W/SC	40	KITCHEN: NO
0	0	WATER: WESC	0	ELECTRICITY: N/A
0	0	TRASH: N/A	0	CENTRAL A/C: N/A
0	0	HEAT: N/A	0	VEND MACH: N/A
0	0	LIQ LOAD	0	ELEVATOR: N/A
0	0	USE GROUP	0	ESCALATOR: N/A
0	0	SPCL EXCEPT	0	ROOFER: N/A
0	0		0	TNSP AREA: N/A

M.N.C.P.P.C.
APPROVED
PERMIT # 7922-89-061

STRUCTURE DECLARED UNSAFE OR INCOMPLETE

I HEREBY CERTIFY THAT I HAVE AUTHORITY OF THE OWNER TO MAKE THIS CONSTRUCTION AND TO THE

CONFLICT AND CONFLICT, AND THAT IF A PERMIT IS ISSUED THE CONSTRUCTION AND TO THE

VIOLATING CODES, THE ZONING ORDINANCE AND OTHER APPLICABLE LAWS AND REGULATIONS INCLUDING PRIVATE

BUILDING RESTRICTIONS, IF ANY, WHICH RELATE TO THE PROPERTY

Thomas Mill house

Big of owner or agent, address

City, St and Zip Code: 507-6054

Telephone No: 507-6054

THE FOLLOWING REVIEWING AGENCY ENDORSEMENTS ARE REQUIRED.

PLEASE HAVE AGENCY APPROVAL OR DENIAL / DATE / CONTROL NO. AND

NOIF--ALL CORRESPONDENCE TO: ***

DATE: 03/20/89