

IN THE MATTER OF \* BEFORE THE CECIL COUNTY  
THE APPLICATION OF \* BOARD OF APPEALS  
YORK BUILDING PRODUCTS CO., INC. \* CASE NO.: 3964  
\*  
(Special Exception – RR/MEB OVERLAY) \*  
\*  
\* \* \* \* \*

**OPINION**

Application of York Building Products Co, Inc. (“Applicant”), for a special exception to perform mineral extraction on property located at E/S Principio Road, Port Deposit, MD 21904, being designated as Parcel 712 on Tax Map 29, in the Seventh Election District of Cecil County, in an area presently zoned Rural Residential/MEB Overlay (RR). The property is owned by Carolyn Diane Merrimen.

This application is brought under the provisions of Article XVII, Part II, Section 311 of the Ordinance which governs the application for and approval of special exceptions.

Article XVII, Part II, Section 311 of the Ordinance specifies that no special exception shall be approved by the Board of Appeals after considering all facts in the case unless the following findings are made:

1. Such use or any operations thereto will not be detrimental to or endanger the public health, safety, or general welfare.
2. The use will not be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, nor substantially diminish or impair property values in the neighborhood.
3. The establishment of the use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zone.

4. The use will not, with respect to existing development in the area and development permitted under existing zoning, overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements.

5. The use shall not adversely affect critical natural areas or areas of ecological importance.

6. The use shall, in all other respects, conform to the applicable regulations of the zone in which it is located.

7. That the particular use proposed at the particular location proposed, would not have any adverse effect above and beyond those inherently associated with such special exception use irrespective of its location in the zone. (*Schultz v. Pritts*, 291 MD. 1)

8. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

9. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the County.

Applicant requests a special exception to perform mineral extraction of gravel. The Applicant appeared and testified that it has operated as a family business for over sixty (60) years to produce masonry block, concrete and aggregates, and that it has a vested interest in maintaining its positive relationship with the County members of the local community. Applicant provided information supporting its community involvement such as past recognition by the State of Maryland for land reclamation efforts, participation in local school events and initiatives, and Cecil County board membership in the Boys and Girls Club, Chamber of Commerce, and the Comprehensive Plan Committee. Applicant also

testified as to the economic benefits of the proposed mineral extraction, such as employment of three hundred (300) people, partnership with affiliated companies and the Cecil County Concrete and Asphalt plants, and annual economic stimulus through the purchasing of local goods and services. Operations would begin between two (2) and four (4) years from the date of Application, and would last approximately two (2) years. In addition, Applicant's company provides a well guarantee which would address well failure within one thousand (1,000) feet of the subject mineral extractions.

No witnesses spoke in favor of the Application. Three witnesses spoke in opposition of the Application.

Bruce Walther presented questions as to how much material will be removed and to what depth. Walther's concern centered on drainage changes and water quality resulting from runoff.

Charles Maggiore, who resides south of the proposed project, is a plumber by trade. Maggiore testified in his experience that sulfur smells result due to the activity of other similar mining companies, and he is concerned that no studies have been done to deter these resulting effects.

John Lowery lives on Jackson Station Road, and stated concerns with the mineral extraction leaving holes that would turn in to swamp-like pools on property which would lower property values.

Bryan Lightner, Zoning Administrator, Cecil County, Maryland Department of Land Use and Development Services ("LUDS"), testified that LUDS recommends, and that the Planning Commission concurred with its recommendation, approval of the special

exception so long as the applicant adheres to the requirements of Section 67 in the Zoning Ordinance.

From the evidence, the Board makes the following findings of facts pursuant to the requirements of Section 311:

1. That granting the special exception will not be detrimental to or endanger the public health, safety, or general welfare. Applicant provided testimony that no airborne dust particles from equipment would be released “due to the natural moisture content of the bank run” and “water trucks are being used to prevent dusting in pit area.” Land reclamation would be completed within six (6) months of mining completion. Furthermore, as stated previously, there will be no stream, wetland, or wetland buffer impact.

2. There was no evidence indicating that the use will be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, nor was there any evidence to demonstrate that such use will substantially diminish or impair property values in the neighborhood. The application for special exception was supported by competent testimony which demonstrates that the proposed use will be consistent with its current (non-conforming) use. Testimony at the hearing established that electrically driven conveyors will carry material to the existing plant, the only employee access to the site will be at Hawley Road, and there will be no gravel truck hauling from the site, minimizing noise and traffic in the area.

3. There was no evidence indicating that normal and orderly development and improvement of the surrounding properties will be impeded by the proposed use. The

Board relies on the reasons stated in item 2 above to determine there will be no disruption to the normal and orderly activity of neighboring properties.

4. There was no evidence indicating that the use will, with respect to existing development in the area and development permitted under existing zoning, overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements. Based on the foregoing, the Board finds that the proposed use will be consistent with the current use of the Property.

5. The proposed use will not adversely affect critical natural areas or areas of ecological importance. The Property is not in the Critical Area, the Critical Area Buffer, or the 100-year Floodplain. Applicant provided testimony there would be no stream, wetland, or wetland buffer impact, and no concerns to listed plant or animal species per MDDNR.

6. The proposed use will, in all other respects, conform to the applicable regulations of the zone in which it is located.

7. The particular use proposed at the particular location proposed, will not have any adverse effect above and beyond those inherently associated with such special exception use irrespective of its location in the zone. (*Schultz v. Pritts*, 291 Md. 1)

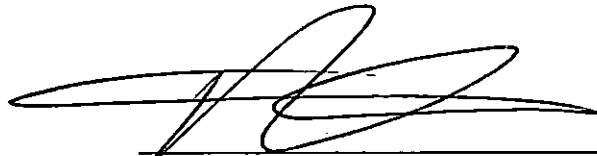
8. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets. There will only be one employee access to the site at Hawley Road, and there will be no gravel truck hauling from the site, minimizing traffic in the area.

9. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the County. As stated above, the Board finds that the Applicants meet all applicable provisions of the Ordinance.

For the reasons stated, by unanimous vote, the Board is satisfied that the requirements of Article XVII, Part II, Section 311 of the Ordinance, as well as *Schultz v. Pritts*, 291 Md. 1 (1981) have been met, and the application is therefore **APPROVED SO LONG AS THE APPLICANT ADHERES TO THE FOLLOWING CONDITIONS:** (1) **REQUIREMENTS OF SECTION 67 IN THE ZONING ORDINANCE ARE MET;** (2) **A MAJOR SITE PLAN IS SUBMITTED AND APPROVED BY LUDS;** (3) **A COPY OF THE MINING PERMIT IS SUBMITTED TO LUDS PRIOR TO COMMENCEMENT OF ANY ACTIVITY ON THE PROPERTY;** (4) **HOURS OF OPERATION ARE RESTRICTED TO 5:00 A.M. TO 5:00 P.M.;** AND (5) **A COPY OF THE WELL GUARANTEE IS PROVIDED TO THE PROPERTY OWNERS OF ANY PARCEL ADJACENT TO THE SUBJECT PROPERTY.**

All applicants are hereby notified that they are required to obtain any and all necessary licenses and permits required for the use described herein.

10/29/19  
Date

  
Mark Saunders, Chairperson

<b>BOARD OF APPEALS APPLICATION</b> CECIL COUNTY, MARYLAND	MEET. MONTH: <u>Sept 2019</u> FILE NO. <u>39104</u>
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THIS REQUEST IS FOR:  
 SPECIAL EXCEPTION RENEWAL   
 SPECIAL EXCEPTION   
 VARIANCE   
 APPEAL

DATE FILED: 8/14/19  
 AMOUNT PD: \$250.00  
 ACCEPTED BY: JB

**A. APPLICANT INFORMATION**

York Building Products Co., Inc.  
 APPLICANT NAME - PLEASE PRINT CLEARLY

<u>950 Smile Way</u>	<u>York</u>	<u>PA</u>	<u>17404</u>
ADDRESS	CITY	STATE	ZIP CODE
<u>David J. Swani</u>			<u>717-848-2831</u>
APPLICANT SIGNATURE			PHONE NUMBER

**B. PROPERTY OWNER INFORMATION**

Carolyn Diane Merrimen  
 PROPERTY OWNER NAME - PLEASE PRINT CLEARLY

<u>P.O. Box 28</u>	<u>Port Deposit</u>	<u>MD</u>	<u>21904</u>
ADDRESS	CITY	STATE	ZIP CODE
<u>Carolyn Diane Merrimen</u>			<u>443-206-2950</u>
PROPERTY OWNER SIGNATURE			PHONE NUMBER

**C. PROPERTY INFORMATION**

<u>E/S Principio Road</u>	<u>7th</u>	<u>046170</u>
PROPERTY ADDRESS	ELECTION DIST.	ACCT. NUMBER
<u>29</u>	<u>5</u>	<u>712</u>
TAX MAP #	BLOCK	PARCEL
<u>6.487</u>	<u>RR/MEB Overlay</u>	<u>ZONE</u>
#ACRES		

**D. PURPOSE OF APPLICATION** - Indicate reasons why this application should be granted. (attach separate sheet if necessary)  
To perform Mineral Extraction consistent with the requirements of Section 311 of the Zoning Ordinance

**E.** On an attached sheet, **PLEASE** submit a sketch of the property indicating the proposed project. Show distances from the front, side and rear property lines and the dimensions of the project.

**F. LAND USE DESIGNATION**

Is property in the Critical Area?  YES  NO  
 If yes, Pertinent provision of the Chesapeake Bay Critical Area Program: \_\_\_\_\_  
 Is property in the 100 year Floodplain?  YES  NO  
 Is property an Agricultural Preservation District?  YES  NO

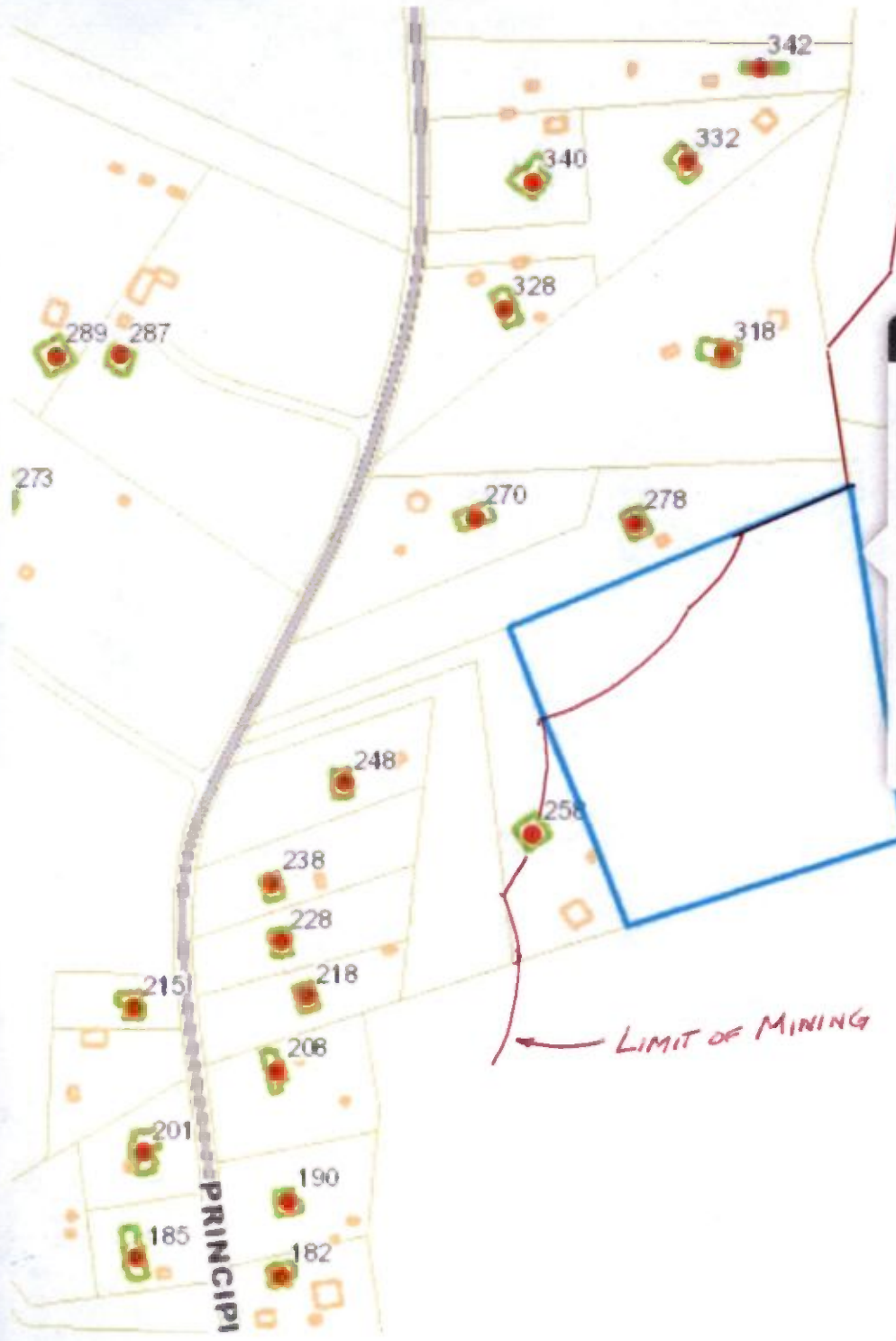
If property is located in the Critical Area, all provisions and requirements must be met as outlined in Article XVII, Part I, II & III of the Zoning Ordinance.

**G. PROVISION OF ZONING ORDINANCE:** Code Sections: Article XI, Part 2, Section 67.2 and 216

**H. SPECIAL EXCEPTION RENEWAL** - PREVIOUS FILE NO. & CONDITIONS FOR APPROVAL: \_\_\_\_\_

**I. SPECIAL EXCEPTION FOR A MANUFACTURED HOME** - Please fill out the following information:

Will unit be visible from the road? Please select... If yes, distance: \_\_\_\_\_  
 Will unit be visible from adjoining properties? Please select. If yes, distance: \_\_\_\_\_  
 Distance to nearest manufactured home: \_\_\_\_\_ Size/Model/Year of Unit: \_\_\_\_\_  
 Number of units on property at present time: \_\_\_\_\_



Account ID.: 0807046170

**SDAT Link:** [Maryland Property View](#)

**Map:** 29

**Parcel:** 712

**Lot:** Null

**Owner:** MERRIMAN CAROLYN DIANE

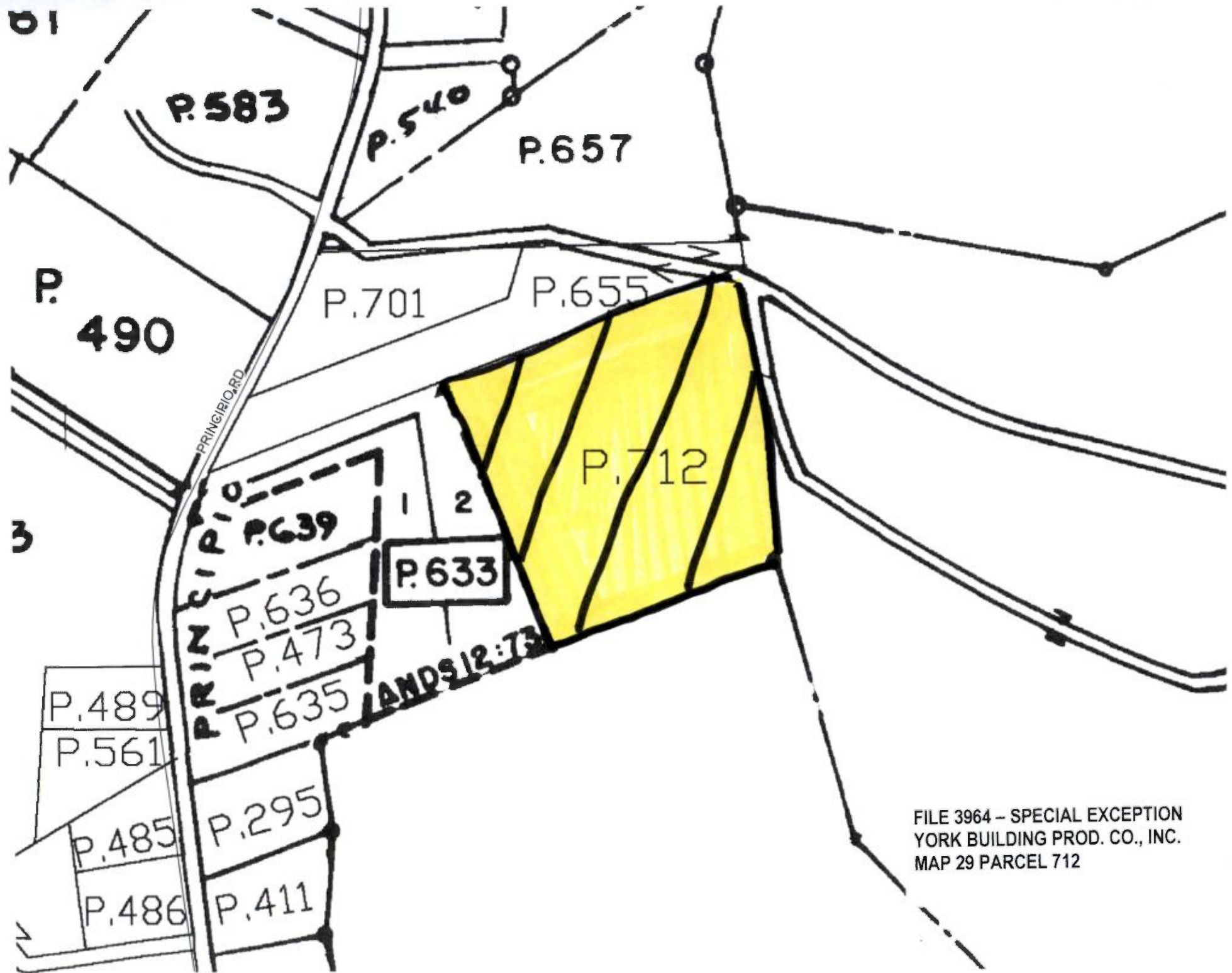
**Owner2:** Null

**Prem. Address:** 0 PRINCIPIO RD

**Zoning:** RR/MEB

[Zoom to](#)





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PRINCIPAL RD

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LANDS 12:73

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FILE 3964 - SPECIAL EXCEPTION  
YORK BUILDING PROD. CO., INC.  
MAP 29 PARCEL 712