

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, the undersigned, legal owner(s) of the property (hereinafter referred to as the "property") located in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an _____ zone to an _____ zone for the following reasons:

Changes which have occurred in the area in which the property is located, and/or, error which occurred in the original zoning of the property.

See Attached Description

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for a filling station on the parcel shown on the plat of the property at the Southeast corner of Green Ridge Road and York Road, running a frontage on the South side of Green Ridge Road of 285 feet and a depth of 160 feet, as shown on the plat of the property attached hereto and made a part hereof.

I, or we, agree to pay expenses of above re-classification and/or Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law of Baltimore County.

Subscribed and sworn to before me this _____ day of _____, 1964, at _____, Maryland.

Notary Public for Baltimore County

Address: _____, Baltimore, Maryland 21201

ORDERED by the Zoning Commissioner of Baltimore County, this _____ day of _____, 1964, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the _____ day of _____, 1964, at 2:00 o'clock.

Attorney for Petitioner,
 Harry E. Silverman, Jr.,
 900 Avenue Federal Bldg.,
 Baltimore, Maryland 21201
 547-2770

SEE PETITION FOR RECLASSIFICATION
 FROM R-6-ZONE TO M-1-ZONE
 AND SPECIAL EXCEPTION FOR FILLING
 STATION - S.E. COR. YORK
 AND GREEN RIDGE ROADS 5th DIST.,
 THOMAS B. McMAHON, MABELLE H. McMAHON,
 GEORGE S. SEWELL, JR., MARY
 ELLEN SEWELL, JAMES T. RUEL,
 ROSE P. RUEL, RUSSELL B. FULTON,
 MANNIE M. FULTON,
 H. DENTON SMITH, and
 VIRGINIA S. SMITH,
 Petitioners

The petitioners in the above entitled matter seek reclassification of property at the southeast corner of York and Green Ridge Roads, in the 5th District of Baltimore County, from an R-6-Zone to an M-1-Zone and a special exception for a filling station on the parcel of property shown on the plat at the southeast corner of York and Green Ridge Roads, having a frontage of 285 feet on the south side of Green Ridge Road and 160 feet on the east side of York Road.

As the petitioners did not prove that the same was in error, the reclassification should be denied.

The only thing being considered for the requested zoning is shown on the attached plat marked "MANNIE'S".

The Special exception for a filling was withdrawn by the petitioners.

It is this 23rd day of September, 1964, by the Zoning Commissioner of Baltimore County, ORDERED that the above reclassification be and the same is hereby DENIED and that the above described property or area be and the same is continued as and to remain an R-6-Zone.

Zoning Commissioner of Baltimore County

CROCKETT, SMITH & ASSOCIATES - CONSULTING ENGINEERS

JAMES E. CROCKETT
 J. STROUD SMITH

3838 MARYLAND AVENUE • BALTIMORE 12, MARYLAND
 BALTIMORE 12, MARYLAND

DESCRIPTION OF PROPERTY AT SOUTHEAST CORNER OF YORK ROAD AND GREEN RIDGE ROAD

BEGINNING FOR THE SAME at the corner formed by the intersection of the northeast side of York Road, as widened and shown on the State Roads Commission of Maryland Plat No. 10930, with the centerline of Green Ridge Road as shown on the Plat of Green Ridge, recorded among the Land Records of Baltimore County in Plat Book No. 5 page 85; thence leaving said point of beginning and running with and binding along said centerline of Green Ridge Road, referring all courses to said last heretofore mentioned plat, North 74 degrees 56 minutes East 285 feet more or less to intersect the westernmost outline of parcel of land now owned by Charles W. Held, Jr.; thence leaving said centerline of Green Ridge Road and binding on said beforementioned outline South 15 degrees 04 minutes East 355.00 feet to intersect the division line between Lots 2 and 3 as shown on said last heretofore mentioned Plat of Green Ridge; thence running with and binding along a part of said division line North 74 degrees 56 minutes East 157.00 feet to intersect the westernmost outline of Lot 7 as shown on said last heretofore mentioned plat and the centerline of a 30-foot Right of Way there situate, thence running with and binding along said westernmost outline of Lot 7 and along the centerline of said 30-foot Right of Way, South 15 degrees 04 minutes East 177.33 feet to intersect the southernmost outline of said last heretofore mentioned Plat of Green Ridge, thence running with and binding along a part of said outline South 75 degrees 31 minutes West 375 feet more or less to intersect the beforementioned northeast side of York Road as followed; thence running with and binding along said northeast side of York Road the following two courses and distances, viz: (1) North 25 degrees 12 minutes West 135 feet more or less to a point of curve, and (2) by a curve to

S.E. CORNER OF YORK ROAD AND GREEN RIDGE ROAD Cont'd
 the right having a radius of 2800 feet for an arc distance of 405 feet more or less to the point of beginning.

BEING and comprising land described in the following Deeds recorded among the Land Records of Baltimore County:

- 1) Steven W. Laitch and wife to Russell B. Fulton, recorded in Liber L.W.J. No. 964 page 267
- 2) John E. Bollinger and wife to Thomas B. McMath, recorded in Liber T.B.M. No. 1816 page 328
- 3) Charles W. Held, Jr. and wife to George Seeds, Jr. and wife, recorded in Liber G.L.S. No. 672 page 331
- 4) Lillian A. Kelly to James T. Ruhl and wife, recorded in Liber G.L.S. No. 3103 page 7
- 5) Herbert L. Wynne and wife to H. Denton Smith and wife, recorded in Liber T.B.S. No. 1862 page 253.

JES:led
 1-13-64
 File 664-S

This description is for zoning purposes only and is not to be used for the conveyance of property.

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CROCKETT, SMITH & ASSOCIATES - CONSULTING ENGINEERS

JAMES E. CROCKETT
 J. STROUD SMITH

3838 MARYLAND AVENUE • BALTIMORE 12, MARYLAND
 BALTIMORE 12, MARYLAND

DESCRIPTION OF 0.04 ACRES PARCEL OF LAND AT SOUTHEAST CORNER OF YORK ROAD AND GREEN RIDGE ROAD

BEGINNING FOR THE SAME at the corner formed by the intersection of the northeast right of way line of York Road, as widened and shown on the State Roads Commission of Maryland Plat No. 10930, with the centerline of Green Ridge Road, as shown on the plat of Green Ridge, recorded among the Land Records of Baltimore County in Plat Book No. 5 page 85; thence leaving said point of beginning and running with and binding along said centerline of Green Ridge Road, referring all courses to said last heretofore mentioned plat, North 74 degrees 56 minutes East 150 feet to a point; thence leaving said centerline of Green Ridge Road and running at right angles to said centerline of Green Ridge Road South 15 degrees 04 minutes East 110 feet to a point; thence running parallel with centerline of Green Ridge Road South 74 degrees 55 minutes West 150 feet plus or minus to intersect the beforementioned northeast right of way line of York Road; thence running with and binding along said right of way line by a curve to the right having a radius of 2800 feet for an arc distance of 110 feet plus or minus to the point of beginning.

BEING part of land which by Deed recorded among the Land Records of Baltimore County in Liber L.W.J. No. 964 page 267 was conveyed by Steven W. Laitch and wife to Russell B. Fulton.

JES:led
 2-10-64

This description is for zoning purposes only and is not to be used for the conveyance of property.

664-S



RE: PETITION FOR RECLASSIFICATION
 from an R-6-Zone to M-1-Zone,
 SPECIAL EXCEPTION
 for a Filling Station
 SE corner York and Greenridge Roads
 5th District
 THOMAS B. McMAHON, et al
 Petitioners

BEFORE
 COUNTY BOARD OF APPEALS
 OF
 BALTIMORE COUNTY
 No. 65-47-RX

OPINION

The above entitled case has been remanded to the County Board of Appeals of Baltimore County by the Circuit Court by Order of July 7, 1965. Since that time all counsel for the petitioners have stricken their appearance, but for reason of their own have failed to file an Order of Dismissal of the case, either in the Circuit Court or before the County Board of Appeals.

The Court's Order remanding the case provided that the Board reconsider its Amended Opinion of November 8, 1965 in the light of the decision of the Court of Appeals of Maryland in the case of *Cassidy v. the Court of Appeals*, 218 Md. 418. That case determined that it was within the jurisdiction of the Board to grant a special exception under an R-6-Zone for a steam generating plant to be operated by a public utility rather than to allow the same use by means of granting rezoning from R-6 to M-1 (manufacturing heavy). The question was raised as to whether adequate notice of hearing had been given under these circumstances because the original application was for a change to M-1 zoning and did not mention the special exception. The Court held that in view of the fact that everyone had been notified of the proposed land use, and since the action of the Board in granting the special exception was much more restrictive than would have been the unrestricted granting of the change to M-1 zoning, that no one had thereby been prejudiced and no one could claim that there had not been sufficient notice of the application for the use of the land as a steam generating plant.

The facts are entirely different in the case at bar. In this case the application was for a change from R-6 to R-8 zoning. Automobile uses, agencies are

Thomas B. McMath, et al
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 only allowed in R-8 and B-M zones and are not allowed as a special exception in any zone. An application had been filed for a special exception for a gasoline filling station, but this was abandoned in open hearing by the petitioners at the time of trial. The Board therefore feels that under the facts of the present case it had no choice other than to grant or deny the requested change to R-8, and no other outcome of the case would have been proper under the law and the Zoning Regulations without a new application having been filed, which would involve new advertising, etc.

The Board, therefore, having reconsidered its Opinion in accordance with the Order of Remand referred to above, has determined that its views as expressed in its Amended Opinion of November 8, 1965 should stand as stated, and it will therefore be so ordered.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 6th day of August, 1965, by the County Board of Appeals ORDERED, that the previous decision of the Board denying the reclassification requested shall be affirmed, and the petition is hereby DENIED.

Any appeal from this decision must be in accordance with Chapter 1133, subtitle B of the Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
 OF BALTIMORE COUNTY

William S. Baldwin, Chairman
 W. Allen Palmer
 John A. Shaw

THOMAS B. McMAHON,
 MABELLE H. McMAHON,
 GEORGE S. SEWELL, JR.,
 MARY ELLEN SEWELL,
 JAMES T. RUEL,
 ROSE P. RUEL,
 RUSSELL B. FULTON,
 MANNIE M. FULTON,
 H. DENTON SMITH, and
 VIRGINIA S. SMITH,
 Petitioners

vs.

G. MITCHELL AUSTIN,
 W. GILES PARKER, and
 WILLIAM S. BALTIMORE
 constituting the
 COUNTY BOARD OF APPEALS
 OF BALTIMORE COUNTY

ORDER OF REMAND

The transcripts and exhibits having been reread and reconsidered by the Court and argument of counsel having been heard on May 18, 1965, it is this 17th day of July, 1965, by the Circuit Court for Baltimore County,

ORDERED:

1. That this case be remanded to the County Board of Appeals for Baltimore County for reconsideration by such Board of their Opinion and Order of November 8, 1965, and
2. That in so reconsidering their Opinion and Order they determine whether or not on the record, applying the standards set down by the Court of Appeals in the case of *Cassidy*, the Board of Appeals 218 Md. 418, the Board feels that some lesser reclassification than that which is petitioned for is proper and justified.

True Copy Test
 DONALD T. GOSNELL, Clerk
 DONALD GAGE

Judge

THOMAS B. McMath,
MARSHALL H. McMath,
GEORGE SEEDS, JR.,
MARY ELLEN SEEDS,
JAMES T. RUEL,
ROSE F. RUEL,
RUSSELL B. FULTON,
NANNIE M. FULTON,
H. DENTON SMITH and
VIRGINIA S. SMITH

IN THE CIRCUIT COURT

FOR BALTIMORE COUNTY

Petitioners

Misc. Docket 7 Folio 483

vs.

File 3214

WILLIAM S. BALDWIN,
W. GILES PARKER and
JOHN A. SLOWIE
Constituting the County Board
of Appeals for Baltimore County

ORDER FOR APPEAL

Mr. Clerk:

Please enter an appeal on behalf of Thomas B. McMath, Mabelle H. McMath, George Seeds, Jr., Mary Ellen Seeds, James T. Ruel, Rose F. Ruel, Russell B. Fulton, Nannie M. Fulton, H. Denton Smith and Virginia S. Smith from the County Board of Appeals for Baltimore County to the Circuit Court for Baltimore County in the matter of a petition for reclassification from an "R-6" Zone to a "B-M" Zone - southeast corner of York and Greenridge Road, sixth election district of Baltimore County. This appeal is from an Amended Opinion and Order of the County Board of Appeals for Baltimore County in case No. 65-47-RX, dated November 8, 1965; and this appeal is being filed pursuant to the provisions of Chapter 1100, Sub-Title B, of the Maryland Rules of Procedure.

James H. Cook
22 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: PETITION FOR RECLASSIFICATION :
from an R-6 zone to a B-M zone, :
SPECIAL EXCEPTION for a :
Filing Station :
SE corner York & Greenridge Roads, :
9th District :
Thomas B. McMath, et al, :
Petitioners :
BALTIMORE COUNTY :
No. 65-47-RX

BEFORE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

No. 65-47-RX

AMENDED OPINION

This case was determined previously by the Board and upon appeal to the Circuit Court for Baltimore County it was determined that the Board should not have considered the testimony of Mr. George T. Gavrells, Director of Planning for Baltimore County, because he had not been summoned in time to comply with Section 500.2(d) of the Zoning Regulations. The Order of Remand, in fact, has instructed the Board to dutifully brainstorm itself of all evidence presented by Mr. Gavrells, and because of change of membership of the Board one of the three members was required to read the transcript of testimony and consider all exhibits in the case before presenting to the Court a reconsidered and amended opinion.

The petition in this case was for reclassification from R-6 to a B-M zone with a special exception for a gasoline service station of a piece of property consisting of five separate owners, 3.6 acres total, on the east side of York Road and extending from the south side of Greenridge Road southward to Ridgfield Road and the Baltimore County Beltway ramp and having approximately 540 feet of frontage on the east side of York Road. The proposed use for the property is for a new car automobile agency for new and used car sales, for show-rooms, and outdoor selling lots to be embellished, we presume, with strings of bare incandescent bulbs at night and little flipping flags by day, together with a service garage repair shop and all the concomitant uses associated with such business enterprises. The special exception for a gasoline service station, as such, was withdrawn by the petitioners at the opening of the hearing.

The existing zoning surrounding the property is as follows: All the property on the east and south sides of the subject tract and across York Road to the west is zoned R-6 or R-10 and is developed with cottages. There are four or more separate residences in good condition, and now occupied, on the subject property all on lots larger than required in R-6 zoning. North of Greenridge Road, opposite the north side of this property, there is a 100 foot deep strip of R-4 ground which was specifically left in that classification by a previous zoning decision to act as a buffer zone between residential property on Greenridge Road and a sizeable B-1 zone running north from the said buffer strip to another buffer south of Seminary Avenue which "buffer" is, as frequently happens, being used as a parking lot with an asphalt lawn for the benefit of the stores in the shopping center at the corner of York and

McMath - 65-47-RX

Seminary. South of this shopping center and north of Greenridge Road and its buffer strip is a church and the Baptist Book Store and Office Building, both of which have been attractive additions to the community. The property on the west side of York Road is not only zoned but is in use as residential property and an application for rezoning on that side of the road south of Westbury Road, which is approximately opposite the Baptist Church, has been denied by this Board which decision has been affirmed by the Circuit Court in the case of Manfield vs. County Board of Appeals on October 21, 1965. Another similar case involving property in the neighborhood in which rezoning was denied by the Board was that of Stackdale vs. Board, as entitled in the Court of Appeals of Maryland, which affirmed the Board's decision on July 29, 1965. We agree with these two mentioned previous decisions, specifically to the effect that a street or road may be a natural boundary line between two zones, fortified in the present case by the classification of the buffer strip on the north side of Greenridge Road, which was placed there specifically for the purpose which we have stated.

A witness for the petitioner presented testimony to the effect that the rezoning sought here would have no detrimental effect on the value of surrounding residential properties and, needless to say, all the protesters, who are actually residents and land-owners in the neighborhood, disagreed with this expert and testified that in their individual opinions the rezoning of the property would adversely affect the value of their real estate and the Board is in agreement with them.

A traffic expert testifying on behalf of the petitioners expressed his opinion that traffic studies indicated that the proposed use would not overly congest the York Road at this point based on his estimate of the practical capacity of the road. The physical facts concerning the road, which are obvious upon inspection, are that the number of lanes on York Road are cut down from three or four to two almost exactly at the subject property, and that the southernmost portion of the property almost abuts the ramp which must be used by westbound Beltway traffic to get to the York Road, and it seems to the Board that there might very well be a hazardous situation created by the combination of entering traffic from the Beltway, augmented by traffic entering York Road from Ridgfield Road, which, entering on the east side of York Road directly north of the Beltway ramp, is one of the very few access roads to the entire developments of Ridgfield and Meadowsdale, all of which traffic would merge with the normal northbound traffic on York Road at a point, almost, opposite the frontage of the subject property.

The petitioners also presented evidence from an expert land planner that there had been a number of changes in commercial uses along York Road and that the zoning map did not recognize existing commercial uses when adopted. However, in view of the two Court decisions cited above and the general principle in zoning that a line must be drawn

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McMath - 65-47-RX

somewhere, added to the fact that almost all of the reclassifications mentioned by the expert were north of Seminary Avenue which the Board feels are not specifically oriented to the subject property, we cannot go along with his opinion.

The protesters from the surrounding neighborhood were numerous and vocal to the proposed rezoning and without going into each individual's testimony the Board feels that their protests were, in the main, justified and that the proposed use of the property would be extremely incompatible with present land uses. We will refer to one bit of testimony however, which was to the effect that the proposed use would result in the pollution of a stream which runs from the subject property through the land of one protestant and some of the others and appears to be at present one of the few unpolluted streams remaining in the area, and is used by the children of the neighborhood for play and nature study.

For the foregoing reasons the Board is convinced in this case that R-6 zoning here with the proposed automobile agency use would be improper and detrimental to the surrounding neighborhood, if not actually hazardous.

ORDER

For the reasons set forth in the foregoing Amended Opinion, it is this 8th day of November, 1965 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby DENIED.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle B of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman

W. Giles Parker

John A. Slowie

LAW OFFICES
DUE, WHITEFORD, TAYLOR & PRESTON

1001 E. JEFFERSON BUILDING
BALTIMORE, MARYLAND 21201
TELEPHONE: 742-1000

5th LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
TELEPHONE: 742-1000

JEFFERSON BUILDING
COURT HOUSE NEAR
TOWSON, MARYLAND 21204
TELEPHONE: 845-5000

October 24, 1967

MEMO TO TOWSON OFFICE

William S. Baldwin, Chairman
County Board of Appeals of
Baltimore County
County Office Building
Towson, Maryland 21204

Re: Zoning File No. 65-47-RX
Thomas B. McMath, et al
Circuit Court No. 3214 and
No. 3417
Our File No. C-10-173

Dear Mr. Baldwin:

Pursuant to the Board's letter dated October 4, 1967, I have checked Case No. 3214 and Case No. 3417 in the Circuit Court for Baltimore County in regard to the McMath appeal, zoning file No. 65-47-RX, and no remset or petition for a dismissal has been filed and no order has been passed in either appeal.

Of course, I checked the records of the Board of Appeals for Baltimore County and no remset or order for dismissal is noted in that file.

As you requested, I contacted W. Lee Thomas, Esquire, counsel for the Chrysler Corporation, and he stated that he never made any request for a dismissal. I also contacted James H. Cook, Esquire, counsel for the property owners, who stated that he had prepared a dismissal and had given it to a realtor involved in the matter to obtain one or more signatures of property owners. However, he stated that he had not received it back in final form. Inasmuch as there has been no dismissal asked for or granted, either in the Circuit Court for Baltimore County or before the Board of Appeals, I would respectfully request that the Board render its decision in the above entitled matter and should not wait for a dismissal, which may or may not be filed in the future.

Very truly yours,

Ernest C. Trimble

Ernest C. Trimble

ECT:dm

copy of record therein." It is, therefore, this 1st day of July, 1965, by the Circuit Court for Baltimore County.

ORDERED:

1. That this case be remanded to the County Board of Appeals of Baltimore County for reconsideration by such Board of their Opinion and Order of March 5, 1965; and

2. That in so reconsidering their Opinion and Order, they shall eliminate entirely from such reconsideration all testimony given by George C. Gavrells during the course of the proceedings before such County Board of Appeals so that the decision they then reach will be based on the entire transcript of the proceedings with the exception of the aforesaid testimony of George C. Gavrells as if such testimony had not been given; and

3. That such reconsideration and subsequent Opinion and Order by the two surviving Board members before whom the initial Board of Appeals proceedings were held, to wit, William S. Baldwin and W. Giles Parker; and in addition thereto, a third member of the County Board of Appeals, or a substitute member thereof, shall sit and vote on this remanded case, using as a basis therefor the entire written transcript and all exhibits accepted by the Board with the exception of the aforesaid testimony of George C. Gavrells.

JUDGE

WLT:md
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6/25/65

THOMAS B. McMath,
MARSHALL H. McMath,
GEORGE SEEDS, JR.,
MARY ELLEN SEEDS,
JAMES T. RUEL, and
ROSE F. RUEL,
RUSSELL B. FULTON,
NANNIE M. FULTON,
H. DENTON SMITH and
VIRGINIA S. SMITH

vs.

G. MITCHELL AUSTIN,
W. GILES PARKER, and
WILLIAM S. BALDWIN
constituting the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

AT LAW

Petitioners

Misc. Docket No. 7

Folio 483

File 3214

ORDER OF REMAND

The transcript and exhibits having been read and considered by the Court, and argument of counsel having been heard on the 23rd day of June, 1965; it is the decision of the Court that the summonses issued by instructions of the protesters for the attendance of George C. Gavrells, Director of Planning and Zoning for Baltimore County, to testify before the Board of Appeals of Baltimore County were not issued in compliance with the five days' notice requirement of §21-22(d) of the Baltimore County Code and §500.2.3. of the Baltimore County Zoning Regulations, each of which reads as follows, "... nor shall the director of planning or any member of his staff be permitted to testify at any such hearing or subsequent proceeding unless summoned by one of the parties to the case with at least five days' notice." All other

TRIMBLE & ALDERMAN

ATTORNEYS AT LAW

JEFFERSON BUILDING

COURT HOUSE SQUARE

TOWSON, A. MARYLAND

December 3, 1964

G. Mitchell Austin, Chairman
County Board of Appeals
County Office Building
Towson, Maryland 21204

Dear Mr. Austin:

Re: Petition No. 65-47 RX
Thomas B. McMath, et al.

I have just been retained by the Protestants to the above referenced reclassification to represent them in the hearing before the Board. At this time I do not know whether or not we will require expert testimony and I will not have an opportunity to get together with my clients until the latter part of next week or the first of the following week. I am therefore confirming my telephone request for a postponement of this case at this time.

Mr. Charles Held has advised me that Mr. Silverwood no longer represents the Protestants.

Thanking you for your courtesy in this matter, I am

Very truly yours,

Ernest C. Trimble

Ernest C. Trimble

ECT/dmc

CC: Kenneth C. Proctor, Esquire

Saunders M. Almend, Esquire

Charles W. Held, Jr., Esquire

ERNEST C. TRIMBLE
JAMES H. COOK
JAMES H. COOK
JAMES H. COOK
JAMES H. COOK

WILLIAM S. BALDWIN
W. GILES PARKER
JOHN A. SLOWIE
JAMES H. COOK
JAMES H. COOK

THOMAS B. McMAHON,
RUSSELL E. McMAHON,
GEORGE REEDS, JR.,
MARY ELLEN STEDS,
JAMES T. ROHL, and
ROSE P. ROHL, RUSSELL B.
FULTON, MARIE M. FULTON,
S. CUSTON SMITH, and
VIRGINIA S. SMITH,
Petitioners
vs.
S. MITCHELL AUSTIN,
W. OLLEN PARKER, and
WILLIAM S. BALDWIN,
constituting the County
Board of Appeals for
Baltimore County,
Defendants

June 23, 1965

Before: HONORABLE JOHN ORASON TURNBULL, Judge

THE COURT: Gentlemen, this is a three-to-two decision. I have conferred with four other judges, who were not connected with this matter -- I did not talk to Judge Prester. It is the opinion of the majority, upon reading subsection d. of Article 500.2 of the Baltimore County Zoning

Regulations, that the clear legislative intent is to prevent surprise. If you read it carefully you will note that the subsection never refers to a hearing before the Board. The second sentence reads: "Not later than ten days before the hearing before the Zoning Commissioner, the Director of Planning or his Deputy, may file such written report with the Zoning Commissioner as part of the file in the case, and a copy thereof shall be mailed to any counsel of record in the case. Unless such report shall be filed as aforesaid within such period, it shall not be accepted in the case and shall not be used in evidence for any purpose either before the Zoning Commissioner or in any subsequent proceedings, nor shall the Director of Planning or any member of his staff be permitted to testify at any such hearing or subsequent proceeding unless summoned by one of the parties to the case with at least five days' notice to all other counsel of record therein." It is the opinion of three members of this Court that "the hearing" is what takes place before the Zoning Commissioner because it is so described in the law itself, and that "subsequent proceedings" in the last sentence

means the proceeding before the Board of Appeals, and that the proceeding before the Board of Appeals, once begun, any further taking of testimony is not a further proceeding but a continuation of the proceeding already started.

The majority of this Court feels that the provision of the law is mandatory, is substantive, and is not procedural. The Court concludes, therefore, that the Board of Appeals erred in permitting Mr. Gervais to testify, that it erred as a matter of law.

I can't quote it offhand, but there is a recent case where the Court of Appeals has held that cases should be remanded to the Board of Appeals for correction of errors of law. For that reason the matter will be remanded for further consideration by the Board of Appeals, excluding altogether the testimony of Mr. Gervais, and upon proper order --

MR. TRINKLE: We have a new Board now. Would it be a three-man Board, with a new man looking at the record, or --

THE COURT: Who did you try this before?

MR. COOK: Mr. Austin, Parker and Baldwin.

THE COURT: Well, two of them heard it.
MR. TRINKLE: Yes, sir.
THE COURT: Is it satisfactory to counsel on both sides for those two to reconsider in the light of this ruling?
MR. TRINKLE: Yes, sir.
THE COURT: Or would you rather have one of the substitutes read the record?
MR. TRINKLE: I would be satisfied to have the two remaining --
MR. COOK: May I have just a moment to read Judge Monahan's synopsis --
THE COURT: You don't have to decide that at the moment. If you decide to have the two hear it, put that in the order; if you decide you want a three-man Board, put that in there and I will so order.

RE: PETITION FOR RECLASSIFICATION : BEFORE
from an R-4 Zone to a B-4 Zone, : COUNTY BOARD OF APPEALS
SPECIAL EXCEPTION for a :
Filling Station : OF
SE corner York & Greenridge Roads, :
9th District : BALTIMORE COUNTY
Thomas B. McMahon, et al, :
Petitioners : No. 65-47-RX

OPINION

The subject petition is for reclassification from an R-4 Zone to a B-4 Zone and a special exception for a gasoline service station on a piece of property consisting of five ownerships, totaling approximately 2.6 acres, on the east side of York Road and the south side of Greenridge Road, being approximately 300 feet north of the Baltimore County Beltway ramp and having approximately 540 feet of frontage along the York Road. The proposed use of the property is for a new car automobile agency providing its customers with new and used car sales through lots and showrooms, and a service garage to service the agency's customers. The special exception for a gasoline service station was withdrawn at the opening of the hearing.

The existing zoning surrounding the property is as follows. To the north of Greenridge Road, opposite the north side of the property, there is a 100 foot strip of R-4 ground. North of this 100 foot strip is a sizeable B-4 zone. All of the property on the east and south sides of the subject tract is zoned R-4 and is developed with cottages. On the west side of the York Road, opposite the subject tract, the properties are zoned R-10 and R-4 and are so developed.

The petitioners presented expert testimony by Mr. Hugh E. Gelston, a recognized real estate expert, that, in his opinion, the rezoning sought here would have no detrimental effect on the surrounding residential properties.

There also was testimony by W. Worthington Ewell, a traffic expert testifying on behalf of the petitioners, that the small additional traffic which would be generated by the proposed use would not overly congest the York Road.

Mr. Bernard Willemin, a recognized expert land planner before this Board and the Courts testifying on behalf of the petitioners, stated that he thought that an error had been committed regarding this property when the zoning map was adopted on November 14, 1955, stating that he felt the land use studies by the County prior to the adoption of the map were too sketchy to sufficiently examine each property in detail, further stating that the map did not recognize many existing commercial uses along the York Road at that time, and that the need for retail service business along the York Road was not properly anticipated by the County authorities. He further testified and intro-

duced as petitioners' exhibit No. 8, a list of numerous reclassifications and special exceptions along both sides of the York Road extending from the Beltway northerly to Ridgely Road. It should be noted, however, that the only substantial reclassification on the York Road from the Beltway northerly to Seminary Avenue is the Mandel tract which was reclassified to B-1 in March, 1961 (File No. 4959). He further testified that the "dog-leg" on the south side of the property could properly be used for parking under a residential parking permit so as not to extend the Business-Roadside zoning past the rear lot line of the properties fronting on the York Road.

George E. Gervais, Director of Planning for Baltimore County, stated that he completely discounted, from his viewpoint, the property along the York Road north of Seminary or south of the Baltimore County Beltway indicating to the minds of the Board, but not to stating directly, that the frontage north of Seminary Avenue and south of the Baltimore County Beltway had changed to mostly commercial uses, but that this is not the same situation for this area between the Beltway and Seminary Avenue.

Upon cross-examination he testified that with one possible exception, he did not know of any new houses that had been built facing the York Road from the Beltway northerly to Ridgely Road since the adoption of the map in 1955.

The protestants, from the surrounding neighborhood, were numerous and vocal in their objections to the proposed rezoning and without going into each witness' individual testimony, the Board felt that their objections were in some cases justified and in others not completely justified.

Again the Board comes to the problem of determining the proper use of the existing residentially zoned properties along the York Road which problem has been before this Board on many other petitions. We are not absolutely convinced in each individual case that R-4 zoning is proper for the York Road frontage. However, the Board is absolutely convinced in this particular case that Business-Roadside (B-4) zoning here with the proposed automobile agency use is improper and would be detrimental to the surrounding neighborhood.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 5 day of March, 1965 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby denied.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle B of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

G. Mitchell Austin, Chairman

W. Glen Parker

William S. Baldwin

LAW OFFICES
COOK, MUDD & HOWARD
22 WEST PENNSYLVANIA AVE.
TOWSON, MARYLAND 21204

December 8, 1964

Mr. G. Mitchell Austin, Chairman
County Board of Appeals
County Office Building
Towson 4, Maryland

Re: Petition for Reclassification,
southeast corner York and
Greenridge Roads, 9th District,
Thomas B. McMahon, et al
Petition #65-47RX

Dear Mr. Austin:

Will you kindly enter my appearance as additional counsel for the Petitioner in the above entitled case, which I understand is now set for hearing before your Board on Thursday, January 7, 1965 at 10:00 A.M.

Very truly yours,

James H. Cook

JHC:rm

THOMAS B. McMath, MABELLE H. McMath, GEORGE SEEDS, JR., MARY ELLEN SEEDS, JAMES T. RUHL, and ROSE F. RUHL, RUSSELL B. FULTON, NANNIE M. FULTON, R. DENTON FAITH, and VIRGINIA S. SMITH

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

Petitioners vs. Miscellaneous Docket

G. MITCHELL AUSTIN, W. GILES PARKER, and WILLIAM S. BALDWIN, constituting the County Board of Appeals for Baltimore County

ORDER FOR APPEAL

Mr. Clerk:

Please enter an appeal on behalf of Thomas B. McMath, Mabelle H. McMath, George Seeds, Jr., Mary Ellen Seeds, James T. Ruhl, Rose F. Ruhl, Russell B. Fulton, Nannie M. Fulton, H. Denton Smith and Virginia S. Smith from the County Board of Appeals for Baltimore County to the Circuit Court for Baltimore County in the matter of a petition for reclassification from an "R-6" Zone to a "B-R" Zone - southeast corner of York and Greenridge Roads, ninth election district of Baltimore County. This appeal is from the order of the County Board of Appeals for Baltimore County in case no. 65-47-RX, dated March 5, 1964; and this appeal is being filed pursuant to the provisions of Chapter 1100, Sub-Title B of the Maryland Rules of Procedure.

James H. Cook
21 W. Pennsylvania Avenue
Towson 4, Maryland

THOMAS B. McMATH, ET AL. NO. 65-47-RX
SE corner York and Greenridge Roads 9th District
Reclassification from R-6 to B-R 3.6 Acres
SE - Filling Station

July 2, 1964 Petition filed

Sept. 23 Order of Zoning Commissioner: "The SE for a filling station was withdrawn by the petitioner. * * * Ordered that the reclassification is hereby DENIED." * * *

" 25 Order of Appeal to C.B. of A. filed

Mar. 5, 1965 Reclassification DENIED by the Board

" 19 Order for Appeal filed in the Circuit Court (File #2314)

Oct. 23 Order of Judge Turnbull REMANDING case to the Board, "for further consideration by the Board, including the testimony of Mr. Gervelle."

Nov. 8 Order of Remand - Judge Turnbull

Nov. 8 Amended Opinion and Order passed by the Board DENYING reclassification

" 29 Order for Appeal filed in the Circuit Court (File #3417)

Dec. 1 Record of proceedings and Court File filed in Circuit Court

Oct. 7, 1966 Order of Remand by Judge Turnbull:

1. For consideration by such Board of their Opinion and Order of 11/8/65, and
2. That in so reconsidering their Opinion and Order they determine whether or not on the record, applying the standards set down by the Court of Appeals in the case of Comely v. Board of Appeals 218 Md. 418, the Board feels that some lesser reclassification than that which is petitioned for is proper and justified.

May 15, 1968 James H. Cook, Esq., Notice to Strike Appearance filed Saunders M. Almond, Jr., Esq., W. Lee Thomas, Esq. (copies of above in Zoning File - originals included in Court File)

Oct. 6 Order of Board affirming their previous decision of 11/8/65 DENYING reclassification

Oct. 6 Record of proceedings filed in the Circuit Court (Copies of Remand Order, A.A.M., Original Map to be submitted to Court File - Court File - Court File - including existing amendments, etc.)

JENIFER PITTS & ALMOND ATTORNEYS AT LAW
TOWSON, MARYLAND 21204

September 11, 1964

Mr. G. Mitchell Austin
County Board of Appeals
County Office Building
Towson, Maryland

Re: Zoning Application 65-47
Petition of McMath et al
S/E corner York and Greenridge Roads

Dear Mr. Austin:

I represent the petitioners in the above entitled proceeding which was denied by the Zoning Commissioner and is now on an appeal before the County Board of Appeals.

Lee Lafayette has options from all of the petitioners but, unfortunately, one of the five petitioners would only grant his option until December 31, 1964 and now is refusing to extend the option beyond that date. Mr. Lafayette has put a great deal of time, money and effort into this zoning matter and it would be unfortunate for him if the zoning cannot be determined finally before December 31, 1964.

I, therefore, request that consideration be given to the possibility of setting this matter in for a hearing before the County Board of Appeals on or before November 30, 1964 in order that there may be a final determination prior to the expiration of Mr. Lafayette's option. Thank you for your cooperation.

Sincerely yours,

Samuel M. Almond Jr.

PROCTOR, ROYSTON & MUELLER ATTORNEYS AT LAW
TOWSON, MARYLAND 21204

September 25, 1964

Mr. John G. Rose
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Petition for Reclassification and Special Exception for Filling Station - S.E. corner York and Green Ridge Roads, 9th District, Thos. B. McMath, et. al., Petitioners No. 65-47-RX

Dear Mr. Rose:

Please note an Appeal from your Order in the above captioned matter dated September 23, 1964, to the County Board of Appeals.

Enclosed is check for \$70.00 to cover the filing fee.

Very truly yours,

Kenneth C. Proctor

KCP/lg
Encl.-ck.

Cc: Charles W. Held, Esq.
Harry E. Silverwood, Jr., Esq.
Mrs. John Wheeler

MICROFILMED

PROCTOR, ROYSTON & MUELLER ATTORNEYS AT LAW
TOWSON, MARYLAND 21204

September 23, 1964

Mr. John G. Rose
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Your File No. 65-47-RX
S.E. corner York and Greenridge Roads

Dear Mr. Rose:

This is to advise you that we wish to withdraw the request for Special Exception which was filed in the above entitled case.

It is my understanding that you have already formally filed the revised plat which was submitted to you on Thursday, September 10.

In all other respects the Petition remains as filed.

Sincerely yours,
Kenneth C. Proctor.

KCP/lg

MICROFILMED

STATE OF MARYLAND
STATE ROADS COMMISSION
300 WEST PRINCE STREET
BALTIMORE, MD. 21201

September 8, 1964

Dwell, Rowhart & Nelson, Inc. RE: Cont. B 610-13-421
Consulting Engineers Route 45 York Road
1800 N. Charles Street (New Auto Dealership)
Baltimore, Maryland, 21201

Attention: Dr. Dwell

Dear Dr. Dwell:

In compliance with your verbal request we have reviewed your plan for access into the proposed Auto Dealership to be located on the east side of Route 45 from Greenridge Road south. Generally your plan calls for one "all purpose all direction" entrance opposite Greenridge Road and one "in only" entrance south of the main entrance. No further entrances will be required for the entire property. The main entrance will be serviced by a left turn lane (the painted island will be eliminated and a concrete island is to be constructed by the Developer).

After reviewing the matter with our Traffic Division we feel that if the zoning classification is granted, the access scheme as described above and shown on attached plat, would be acceptable to the State Roads Commission.

All work relative to the left turn lane and entrances will be the responsibility of the Developer.

CL/sth

CC: Mr. G. E. Lewis, Jr.
Mr. E. C. Chaney

MICROFILMED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. James A. Hyer, Chairman
Zoning Advisory Committee

Date: July 3, 1964

FROM: Capt. Paul H. Balnake
Fire Bureau

SUBJECT: Thomas B. McMath et al
S/E York Road, S/E corner of Greenridge Road
District 9 June 19, 1964

Hydrant spacing for proposed use of property is 300 feet apart as measured along an improved road and the National Code of Fire Underwriters requirements for the structure involved.

Contact Capt. Paul H. Balnake at Valley 5-7310 for information.

PHB/De

JUL 20 1964
JUL 20 1964
JUL 20 1964

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner Date: July 31, 1964

FROM: Mr. Robert E. Gervelle, Director

SUBJECT: McMath et al, Pet. for Rec. and Special Exception for a Filling Station on the corner of York and Greenridge Roads, having a frontage on the South side of Greenridge Road of 285 feet and the East side of York Road of 150 feet. Southeast corner of York and Greenridge Roads. Being property of Thomas B. McMath, et. al.

9th District

HEARING: Wednesday, August 12, 1964 (2:00 P.M.)

Demands on the writer's time prevent the preparation of written planning advisory comments on this petition. The writer or representatives of the planning staff can be available for oral testimony at the hearing.

MICROFILMED

TELEPHONE
525-5000

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

No. 25359

DATE 9/29/64

To: **Revere, Francis, Captain 66 Harbor,**
Comptroller Building
Towson 4, Md.
BILLED BY: **Office of Planning & Zoning**
110 County Office Building
Towson 4, Md.

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT COST
1	Cost of appeal - Rever, F. Francis, et al, 65-47-21	\$20.00
	PAID - Baltimore County, Md. - Office of Finance	
	7-1564 6131 • 25359 TIP-	70.00
3	MICROFILMED	

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

To: **Revere, Francis, Captain 66 Harbor,**
Comptroller Building
Towson 4, Md.
BILLED BY: **Office of Planning & Zoning**
110 County Office Building
Towson 4, Md.

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT COST
1	Cost of appeal - Rever, F. Francis, et al, 65-47-21	\$20.00
	PAID - Baltimore County, Md. - Office of Finance	
	7-1564 6131 • 25359 TIP-	70.00
3	MICROFILMED	

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

TELEPHONE
525-5000

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

No. 29906

DATE 9/29/64

To: **Revere, Francis, Captain 66 Harbor,**
Comptroller Building
Towson 4, Md.
BILLED BY: **Office of Planning & Zoning**
110 County Office Building
Towson 4, Md.

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT COST
1	Cost of appeal - Rever, F. Francis, et al, 65-47-21	\$20.00
	PAID - Baltimore County, Md. - Office of Finance	
	7-1564 6131 • 29906 TIP-	120.00
4	MICROFILMED	

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

TELEPHONE
525-5000

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

No. 25379

DATE 10/9/64

To: **Revere, Francis, Captain 66 Harbor,**
Comptroller Building
Towson 4, Md.
BILLED BY: **Office of Planning & Zoning**
110 County Office Building
Towson 4, Md.

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT COST
5	Cost of appeal - Rever, F. Francis, et al, 65-47-21	\$20.00
	PAID - Baltimore County, Md. - Office of Finance	
	10-064 6139 • 25379 TIP-	25.00
3	MICROFILMED	

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

TELEPHONE
525-5000

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

No. 23091

DATE 9/29/64

To: **Revere, Francis, Captain 66 Harbor,**
Comptroller Building
Towson 4, Md.
BILLED BY: **Office of Planning & Zoning**
110 County Office Building
Towson 4, Md.

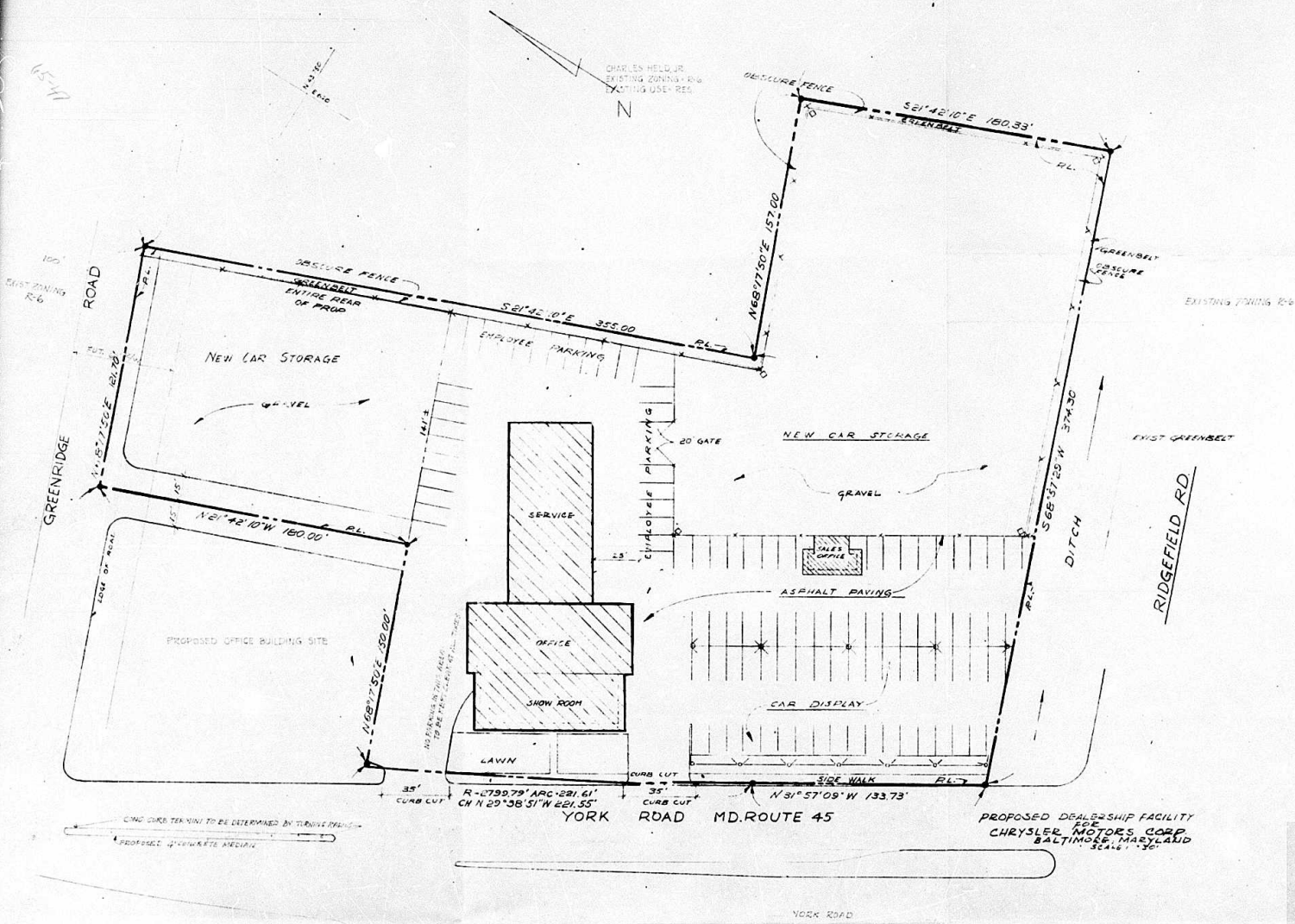
QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT COST
1	Cost of appeal - Rever, F. Francis, et al, 65-47-21	\$20.00
	PAID - Baltimore County, Md. - Office of Finance	
	7-1564 6139 • 23091 TIP-	\$0.00
3	MICROFILMED	

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 9th Date of Posting 10-9-64
 Posted for: Tolson, B. M. Smith, et al.
 Petitioner: Tolson, B. M. Smith, et al.
 Location of property: 1100 York St. - Trueneidge Rd.
 Location of sign: On the back corner of each of the properties
1100 York St. and on the corner of York St. and
Trueneidge Rd. and on the corner of York St. and
Trueneidge Rd. and on the corner of York St. and
 Posted by: Robert K. Smith Date of return: 10-15-64

45-17



SITE PROPOSED USE	SITE AREA	BUILDING AREA	PARKING REQUIRED	PARKING PROVIDED
1A SERVICE STATION	23000'	24000'		
1B AUTO SALES & SERVICE	34500'	11500'	54	54
TOTAL	57500'	35500'	54	54

- GENERAL NOTES:
1. EXISTING ZONING - R-6
 2. EXISTING USE - RESIDENTIAL
 3. PROPOSED ZONING - R-6 WITH SPECIAL EXCEPTION ON SITE FOR SERVICE STATION
 4. PAVING WATER & SEWER AVAILABLE
 5. EXISTING HOUSES TO BE RAZED



PLAT TO ACCOMPANY ZONING PETITION
YORK ROAD AT GREENRIDGE ROAD

EWELL NELSON & BOMHARDT
CONSULTING ENGINEERS
1800 N. CHARLES STREET
BALTIMORE, MARYLAND

ELECTION DISTRICT 9
BALTIMORE COUNTY
SCALE: 1" = 30'