

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

ARTHUR F. GNAU, and
I, or we, ESTELLE E. GNAU, legal owners of the property situate 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:

Petition for Variance from Section 232.3: To permit a rear yard of 9 feet instead of the required 26 feet

See attached description

and for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for _____ Garage service

Property is to be posted and advertised as prescribed by Zoning Regulations. 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 are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law of Baltimore County.

Contract purchaser _____
Address _____
F. Vernon Boozler, Petitioner's Atty.
Petitioner's Attorney
Edward C. Covinsky, Jr.
Suite 305 Heaver Plaza
Lutherville, Md. 21093

Address _____
Townson, Maryland 21204

Address _____
Lutherville, Md. 21093

ORDERED BY The Zoning Commissioner of Baltimore County, this _____ day of _____, 1972, 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 _____, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in _____, Baltimore County, on the _____ day of _____, 1972, at _____ o'clock _____ P.M.

Zoning Commissioner of Baltimore County.

(over)

SPECIAL EXCEPTION FOR GARAGE SERVICE IN A 3-1 ZONE

BEGINNING for the same on the easternmost side of Loch Raven Boulevard (90 feet wide) at a point distant 1064 feet measured southerly from the center of Taylor Avenue said point being Station 28 + 76.41 as shown on State Roads Commission Plat # 12381, thence binding on the easternmost side of said Loch Raven Boulevard north 28 degrees 33 minutes 00 seconds east 18.00 feet, thence leaving said boulevard and running for lines of division the two following courses and distances south 63 degrees 54 minutes 00 seconds east 217.00 feet and north 12 degrees 22 minutes 00 seconds east 220.68 feet to the beginning of the third line of the first parcel of that tract of land which by deed dated June 10, 1959 and recorded among the Land Records of Baltimore County in Liber 3543 folio 649 etc., was conveyed by James G. Crocker and wife to Arthur F. Gnaul and Sons, Inc., thence binding on said third line south 68 degrees 25 minutes 00 seconds east 117.08 feet to the northeasternmost corner of Lot 11 as shown on the Plat of Property of Arthur Gnaul as filed among the Land Records of Baltimore County in Plat Book 14 folio 21, thence binding on the easternmost outline of said Lot 11 south 15 degrees 10 minutes 10 seconds west 280.97 feet to the division line between Lots 12 and 13, thence binding on a part of said line north 70 degrees 24 minutes 30 seconds west 157.00 feet, thence leaving said line and running for lines of division the three following courses and distances north 52 degrees 01 minutes 37 seconds east 76.07 feet, north 63 degrees 54 minutes 00 seconds west 117.00 feet and south 68 degrees 25 minutes 00 seconds west 72.93 feet to the easternmost side of said Loch Raven Boulevard, thence binding on the easternmost side of said Boulevard northerly by a line curving to the east with a radius of 2301.68 feet for a distance of 57.00 feet to the place of beginning.

CONTAINING 0.922 acres of land more or less.



DAVID W. CALDWELL
CLERK, EXAMINER
1773 OLD ANNEAPOLIS RD.
BALTIMORE, MD. 21204
(301) 635-7800

RE: PETITION FOR SPECIAL EXCEPTION
for a Garage, Service, and
VARIANCE from Section 232.3
of the Baltimore County
Zoning Regulations
E/S of Taylor Avenue, 1064'
S. of Taylor Avenue
9th District
Arthur F. Gnaul, et ux,
Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 72-176-X

OPINION

This case comes before the Board of Appeals from an Order of the Circuit Court for Baltimore County, dated November 7, 1973, signed by The Honorable H. Kemp MacDaniel.

The case involves a petition for a special exception for a Service Garage and a variance from Section 232.3 for a rear yard setback from the required twenty (20) feet to nine (9) feet. The property is located on the east side of Loch Raven Boulevard, 1064 feet south of Taylor Avenue, in the Ninth Election District of Baltimore County. The property in question is zoned B.L. and is located to the rear (east) of a restaurant known as Hanson House; same lies somewhat lower than said restaurant and is improved by a large attractive stone structure that is and has been used as a service garage for the Petitioner's trucks. These vehicles are used in his business known as Arthur F. Gnaul and Sons; said enterprise being exclusively for wholesale drug deliveries to retail drug outlets.

The Petitioner produced testimony that the proposed use of the subject property has, in fact, been taking place since approximately 1950, and that they merely wish to continue their operation as it has existed. The Petitioner further testified that there is to be no additional construction and that the building will remain as it presently exists. The testimony satisfies this Board that the special exception requirements of Section 502.1 have been met, and that this continued use would not adversely affect the public health and general welfare. However, another problem develops in that the building is constructed at one point within nine feet of the easternmost boundary line of the subject property. The Petitioner indicated that a building permit was applied for and approval of the County was required prior to the construction of this portion of the above

Arthur F. Gnaul - #72-176-XA

2.

described existing building. Pursuant to this permit, the Petitioner did, in fact, erect the building which, as previously mentioned, is an attractive stone and frame structure. The testimony further indicated that compliance with the required twenty foot setback would require the demolition of this building, and the cost would be prohibitive. The Board concludes that same would amount to an unreasonable hardship and/or practical difficulty being placed upon the Petitioner if adherence to the setback regulations is required.

The Protestants in this case comprised some of the neighboring property owners to the south of the Petitioner's dwelling; said dwelling is located on the lot immediately to the south of the property which is the subject of these proceedings. These Protestants objected to the petition and cited for the most part an agreement existing between them and the Petitioner, who was the developer of the project known as Loch Knoll Manor (being that property on the east side of Loch Raven Boulevard, comprising thirteen lots and bounded on the north by the subject property). This Agreement is recorded among the Land Records of Baltimore County in Liber 3595 at page 521, (Protestants' Exhibit A in these proceedings). Some has been the subject matter of other collateral litigation. The Protestants maintain that in the past the Petitioner has and is now seeking to further violate the provisions of this Agreement, and that he is prohibited, by the terms of said Agreement, from some of the matters petitioned for in the instant case. This may well be, however, the matter of upholding or altering the existing recorded Agreement falls within the jurisdiction of another forum, and is not properly within the purview of this Board.

Consequently, the Board feels that the requirements of Section 502.1 have been met and that the denial of the requested variance would present the Petitioner with unreasonable hardship and/or practical difficulty. Therefore, the variance petitioned for shall be granted, and the special exception requested will also be granted subject to certain restrictions and conditions.

Arthur F. Gnaul - #72-176-XA

3.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 6th day of February, 1975, by the County Board of Appeals, ORDERED that the variance petitioned for, be and the same is hereby GRANTED; and it is

FURTHER ORDERED that the special exception for a Service Garage petitioned for, be and the same is hereby GRANTED, subject to the following restrictions:

1. That the use of the subject property as a service garage shall be limited to not more than seven (7) commercial vehicles owned by the Petitioner, and said use shall be limited to the existing structure
2. That the subject property shall be screened by, on eight (8) foot high screen fencing as outlined by this Board in red on Petitioner's Exhibit #2 (see plat attached)
3. That motor vehicles shall not be kept on the subject property for remuneration, hire or sale
4. Any parking incidental to the operation of the subject property as a service garage shall be limited to those parking spaces shown on Petitioner's Exhibit #2 within the screen fencing
5. That the Petitioner shall enter into a written agreement with the Zoning Commissioner stipulating the above conditions and/or restrictions, which shall be recorded among the Land Records of Baltimore County, as provided in Section 502.2 of the Baltimore County Zoning Regulations.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Walter A. Keller, Jr., Chairman
W. Giles Parker
Robert L. Gilliland

LAW OFFICES
WILLIAM J. BLONDELL, JR., CHARTERED
626 EASTERN AVENUE
BALTIMORE, MARYLAND 21201

March 3, 1974

Mrs. Muriel E. Buddemeier
County Board of Appeals
County Office Building
111 W. Chesapeake Avenue
Townson, Maryland 21204

Re: 72-176-XA
Arthur F. Gnaul
Petition for Special Exception

Dear Mrs. Buddemeier:

Kindly enter my appearance on behalf of the Petitioner in the above captioned matter.

Very truly yours,
William J. Blondell, Jr.

NJB:CM

LAW OFFICES
PAUL J. FEELEY
2016 COURTLAND AVENUE
TOWSON, MARYLAND 21204
443-2044

February 26, 1974

Board of Appeals of Baltimore County
County Office Building
Townson, Maryland 21204

Re: Case No. 72-176-XA
Arthur R. Gnaul

Gentlemen:

Would you please strike my appearance as attorney for the Appellant in the above captioned matter.

Yours very truly,

Paul J. Feeley

PJF/jah
CC-Mr. Arthur R. Gnaul

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Oliver Myers Date: January 3, 1972
FROM: Hoyt V. Bonner
SUBJECT: Item 101 - Zoning Advisory Committee Meeting, January 4, 1972

101. Property Owner: Arthur F. and Estelle E. Gnaul
Location: Rear of 8811 Loch Raven Boulevard
Present Zoning: B...
Proposed Zoning: Special Exception for service garage
District: 9th
No. Acres: 0.922

Metropolitan water and sewer are available to the site.
No health hazard is anticipated since this is a service garage.

Hoyt V. Bonner
Superintendent
Water and Sewer Section
BUREAU OF ENVIRONMENTAL HEALTH

Rec'd 3/11/74
1 PM

Rec'd 2/27/74
9:26 AM

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of

the above Reclassification should be had; and it further appearing that by reason of

a Special Exception for a should be granted

IT IS ORDERED by the Zoning Commissioner of Baltimore County this

day of 197, that the herein described property or area should be and

the same is hereby reclassified; from a zone to a

none, and/or a Special Exception for a should be and the same is

granted, from and after the date of this order.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of failure to meet the requirements of Section 592.1 of the Baltimore County Zoning Regulations, and failure to show practical difficulty or unreasonable hardship,

the Special Exception should NOT BE GRANTED

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this day

October, 1972, that the herein described property or area should be and

the same is hereby reclassified; from a zone to a

Service, and also that the Variance be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

RE: PETITION FOR SPECIAL EXCEPTION for a Garage, Service, and Variance from Section 232.2 of the Baltimore County Zoning Regulations
E/S of Loch Raven Blvd. 1074' S. of Taylor Avenue 9th District
Arthur F. Gnaul, et ux, Petitioners
Case No. 72-176 X
IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
Case No. 5541
LAW Docket Misc. No. 10 Folio 22
Board of Appeals No. 72-176-X

OPINION and ORDER

The Zoning Commissioner of Baltimore County on January 4th, 1972 ordered a public hearing on the petition of Arthur F. Gnaul and wife for a Special Exception, under the Zoning Law and Zoning Regulations of Baltimore County, to use their garage, located on their home property, for "Garage service"; and for variance from Section 232.3 to permit a rear yard of 9 feet instead of the required 20 feet behind the garage.

After the public hearing, on October 18, 1972, the Zoning Commissioner dismissed the petition.

The property owner appealed from the Zoning Commissioner's decision to the County Board of Appeals of Baltimore County. The Board of Appeals heard testimony of witnesses at a hearing on May 2, 1974, which was recorded and transcribed, and received exhibits.

The Board of Appeals on February 6, 1975, in effect, reversed the Zoning Commissioner by granting the Special Exception for a "Service Garage", and by granting the variance from Section 232.3 which was petitioned for by the property owners.

The protestors appealed to this court, and arguments in writing were filed in this court by the appellants, and the appellees. Oral arguments of counsel were heard on March 2, 1976, and the matter was held sub curia.

In the petition filed in this court with the appeal, the only error of the Board of Appeals set forth as ground for reversal was the decision of the Board of Appeals connected with the granting of the Special Exception for a Service Garage. The appellants do not claim that the Board of Appeals erred in granting the variance from Section 232.3 which was petitioned for by the property owners.

The appellants ask that the order of the Board of Appeals, granting the special exception on February 6, 1975, be reversed, because the Board's decision was improper, arbitrary, capricious,

Page 1 of 2

illegal and void, and an abuse of administrative discretion.

The testimony taken before the Board is to the effect that the appellants kept six trucks, sometimes seven, in the garage overnight, each night, and took them out daily for use in a business enterprise conducted by appellant Arthur F. Gnaul.

This activity was the subject of an appeal to the Court of Special Appeals from an order of this court affirming a decision of the Board of Appeals finding a violation of the Zoning Regulations. The higher court found that the Board was correct in finding that Gnaul was in violation of the Zoning Regulations, by keeping seven or eight trucks on the subject property overnight, each night. Gnaul v. Seidel, 25 Md. App. 16, at page 24.

This decision is quoted from extensively in appellants' appeal in this case, and in appellants' memorandum of law, and in oral arguments. This decision was made on February 24, 1975, just 18 days after the order was passed in this case allowing a special exception for the same activity.

It is clear that the arguments made in this court were not made to the Board of Appeals. A remand is indicated, so that the expertise of the Board may be invoked to resolve the matter in controversy, relating to the Special Exception, in the light of the decision of the higher court. Maryland Rule 812.

ORDER

Order granting variance affirmed; case involving special exception remanded to County Board of Appeals of Baltimore County, without affirmance or reversal, costs to abide the result.

BY ORDER OF THE CIRCUIT COURT FOR BALTIMORE COUNTY

MAR 18 1976

Judge

Copies sent to:
Charlotte W. Pine, Attorney
William J. Blondell, Jr., Attorney
County Board of Appeals of Baltimore County
Administrative Office of this Court

Page 2 of 2

RE: PETITION FOR SPECIAL EXCEPTION IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
Misc. Docket No. 10
Folio No. 22
File No. 5541
Rev. Claude M. Kinlen and George J. Seidel
Protestants - Appellants

SUPPLEMENTAL OPINION and ORDER

This case involves a remand from the Circuit Court of Baltimore County

(J. Haile) concerning an Order of this Board granting a variance and special exception at the subject property. The variance issue was affirmed by the Circuit Court, and only the special exception issue was remanded.

Judge Haile questioned whether or not the Board was fully aware of the disposition of a violation case for the subject property which was decided by the Court of Special Appeals eighteen days after the issuance of this Board's Order granting the special exception requested. The Board is fully cognizant of the violation case and the facts and testimony leading to that decision, which was affirmed by the Court of Special Appeals. The instant case, however, is a petition for a special exception for a service garage, which, by definition, is distinguishable from the operation of a truck terminal.

This Board's decision remains as in our prior Order of February 6, 1975, which granted the requested special exception for a service garage, subject to the five enumerated restrictions. This permits the Petitioner to operate within the purview of said Order and in no wise grants him the right to use the property as a truck terminal.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Board of Appeals Date: November 30, 1973
FROM: Office of Law
SUBJECT: Gnaul v. Board of Appeals

Please find attached hereto a copy of the Order of Court in reference to the above matter. Judge MacDaniel decided that the Petitioners should be granted an opportunity to be heard and to present testimony in the interest of justice.

If you have any questions, please do not hesitate to contact me.

Thomas J. Averis, Jr.
Assistant County Solicitor

TJAjr./bbr

Att.

ARTHUR F. GNAUL, et ux
Petitioners
vs.
JOHN A. SLONIK, et ux
BALTIMORE COUNTY
MISCL. CASE #5103

ORDER OF COURT

The above captioned matter having come on for a hearing, on October 26, 1973, on the Petition for Mandamus and Motion Raising Preliminary Objection, arguments of Counsel having been heard and considered, it is this 7 day of November, 1973, ORDERED that the Motion Raising Preliminary Objection is hereby denied and it is further ORDERED that the Baltimore County Board of Appeals reschedule a hearing date for the taking of testimony before that Board regarding zoning case File #72-176-XA.

Judge

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

To: S. Eric DiNenna
Zoning Commission
Date: January 10, 1972
FROM: Richard B. Williams
Project Planning Division
SUBJECT: Zoning Advisory Agenda Item #101

January 4, 1971
Arthur F. and Estelle E. Gnaul
Rear of 6811 Loch Raven Boulevard

This plan has been reviewed and there are no site-planning factors requiring comment.

True Copy Test
ELMER H. KAHLIN, JR., Clerk
Per: *Edward Smith*
Deputy Clerk

THE HANSON HOUSE, INC., ET AL. * IN THE CIRCUIT COURT
Plaintiffs * FOR BALTIMORE COUNTY
vs. *
93/8/09927
ARTHUR F. GNAU, ET AL. *
Defendants *

MEMORANDUM

The instant case is basically a repetition of a similar case instituted by Elsie Kinlein, George J. Seidel and Edith M. Seidel, his wife, et al vs. Arthur F. Gnaau, et al in the Circuit Court For Baltimore County, Equity Case No. 38069, Docket 61, Folio 309, decided in September 1957. Judge John B. Raine, Jr.'s decision in the prior case was upheld by the Court of Appeals in Arthur F. Gnaau, et al vs. Elsie Kinlein, et al, 217 Md. 41, 174 A.2d 492, decided in 1958.

The recitation of facts in Judge Raine's opinion is just as pertinent to the within case as it was in 1957:

"On April 30, 1947 * * * Arthur F. Gnaau and his wife owned a tract of land on the east side of the Loch Raven Boulevard, south of Taylor Avenue in the Ninth Election District of Baltimore County. The property had been subdivided into thirteen lots. The owners executed a straw deed to Rudolph Machovec, which deed expressed the grantors' desire to subject all of the property to certain covenants and restrictions. The restrictions are in the usual form and the one that is important for this case is the second restriction which states: 'The land included in said tract shall be used for private residential purposes only, and no building of any kind whatsoever shall be erected or maintained thereon other than a brick or stone dwelling house. * * * The deed further provided that there would be no sale or transfer otherwise than subject to the aforesaid covenants, and that all of the covenants shall run with and bind the land, and each and all of the above mentioned lots and premises.' On the same date the vicer man, Machovec, reconveyed the entire property to the defendants."

In the 1957 case, Arthur F. Gnaau and Estelle Gnaau sought to erect a professional building on the property. In the instant case, the Plaintiffs are contract purchasers of The Hanson House restaurant business which is located on property adjacent to Lot Thirteen (13). The Hanson House property is also owned by Arthur F. Gnaau and Estelle G. Gnaau. The Hanson House restaurant was operated by Mr. and Mrs. Gnaau

neighborhood that is either complete or radical. In this case the purpose of the restrictions was to preserve the subdivision predominantly for residential use, and with the few negligible exceptions mentioned this is still being accomplished. On this point we think the following words of Kirkley v. Seipelt, supra, 212 Md. at 135, 128 A.2d at 495 are particularly appropriate:

"The real crux of the inquiry in determining whether there has been such a change in the neighborhood as to defeat the covenant is to ascertain the purposes to be accomplished by the imposition of the restrictions. * * * We think the reasons for them were to develop an attractive and inviting community. From the evidence, it is apparent the reasons and objects for placing the restrictions on the property are as active and as alive today as they were when first imposed."

In the instant case there has been no radical change in the neighborhood and the residential character is just as attractive as it was at the time the restrictions were first placed on the property.

3. Were the appellants guilty of laches and therefor estopped from the enforcement of the subject covenants?

The Court held that the appellants were not guilty of laches, stating on p. 172:

"As the Court said in Schlicht v. Wengert, supra, 178 Md. at 636-637, 15 A.2d at 914: 'And toleration of violations, out of friendship or lack of inclination until incidental advantages grew to make the plaintiffs feel a grievance, could not be construed as surrender of those rights. They refrained from a contest until experience with the particular violation stirred them to enforcement; and they might do so without loss of rights from it.'

"So whether appellants should or should not have been estopped from enforcing the restrictive covenants under the conditions existing prior to 1967 is not relevant to the changed circumstances after 1967. Any waiver that may have existed was limited to the use of the office incidental to his living on the property. Once Appellees moved, however, such use ceased to be incidental and the appellants could still assert their rights to enforce the restrictions."

In the instant case the evidence will show that the Defendants have not been guilty of laches but to the contrary have even gone so far as to pursue their legal rights as regards restrictive covenants to the Court of Appeals of Maryland.

4. Under the doctrine of comparative hardship should the Court decline to enforce the restrictive covenants?

The Court held that the doctor should have been aware of the restrictive covenants even though there was only a

from June 30, 1965 until December 6, 1967. There has been no restaurant operation at Hanson House since that date. On October 26, 1970 Hanson House, Inc. was incorporated by Sidney L. Weinberg, Richard Mull and George H. Casals-Smith. These same parties, Weinberg, Mull and Casals-Smith, had, prior to the formal incorporation on October 25, 1970, applied for transfer of Class B Liquor License to their names from Arthur Gnaau and Estelle Gnaau, which transfer was granted. Their purpose in bringing this suit is to seek a change from residential to commercial all of Lot No. 13 which would be used in conjunction with a newly operated restaurant business of Hanson House in the future.

It is to be noted that a portion of Loch Knoll Manor which is subject to the restrictive covenants was zoned for commercial use when placed on the comprehensive zoning map of November 14, 1955. The lots in question, which were so included, are known as Lots Nos. 10 through 13, inclusive. It is anticipated that in the instant case evidence will again be introduced by the Plaintiffs to show changes in zoning classification of a portion of Loch Knoll Manor, as well as changes in the general vicinity of Loch Knoll Manor. Again the opinion of Judge Raine is applicable to the instant case. On page 3 of his opinion:

"The main question in the case is whether the character of the neighborhood has changed so as to defeat the purpose of the restrictions. It is clear that restrictions will not be enforced if the character of the neighborhood has deteriorated to an extent that the restrictions can no longer be said to be reasonable and proper. There is much evidence in the case as to changes in the zoning classification of the subject property and the general vicinity. Zoning cannot nullify binding restrictions, the latter being controlled by Contract and Real Estate Law are entirely independent of zoning. Perry vs. Board of Appeals, 211 Md. 394. The use of property may change the character of a neighborhood and lead to deterioration, but zoning status alone will not have the same effect."

The Zoning Map adopted by the Baltimore County Council on March 24, 1971 shows the same commercial area as the Map of 1955, but the name has been changed from B.L. to B.L.-CCC. The only material change in the area on the 1971 Zoning Map is a slightly higher residential density from 3.5 houses to the acre to 5.5 houses to the acre.

We submit that there has been very little change in the neighborhood since the restrictions were imposed in 1947. The land

reference is his deed to covenants in his predecessors' deed. The same can be said in the instant case.

Richard Mull, Sidney L. Weinberg and George H. Casals-Smith, the incorporators of Hanson House and the owners of the Class B Liquor License, had only to search the title to the Lot 13 to find that restrictive covenants applied to this property. There was no need for their expenditure of any sums of money had they taken the precaution of the prudent business man.

Respectfully submitted,

JAMES A. PINE

CHARLOTTE W. PINE

Attorneys for George J. Seidel, Edith M. Seidel, Mildred M. Jovanaki and the Reverend Claude M. Kinlein, some of the Defendants

to the south, southeast and west of Loch Knoll Manor has been developed residentially and has enhanced the residential character of the property. Judge Hall Hammond, in the Court of Appeals opinion, supra, stated at p. 497:

"In disposing of the final contention of the appellants--that the neighborhood has changed so substantially as to require a finding that the restrictions are no longer worthwhile or significant--the chancellor found, we think correctly, that the evidence did not support the claim. When the restrictions were imposed in 1947, the four corners of Loch Raven Boulevard and Taylor Avenue were commercial. The rest of the area was almost entirely residential. There has been an intensification of the commercial use at the intersection since 1947, but the testimony and photographs in Loch Knoll Manor remain essentially residential in character and fully support the chancellor's finding that the change in the neighborhood has been neither complete nor radical. Texas Company v. Harker, 212 Md. 146, 120 A.2d 364."

The Gnaau case of 1957 was most recently affirmed by Chevy Chase Village, et al v. Frank Y. Jaggars, Jr., et ux, 261 Md. 309, 275 A.2d 167, decided in March 1971. Chevy Chase Village, a homeowner and municipal corporation, sought to enjoin a resident of the subdivision from using his property as an office for the practice of medicine in contravention of covenants. Dr. Jaggars purchased his home in 1947, spent \$5,000.00 in 1946 to convert a garage into office space and in 1959 spent an additional \$15,000.00 to enlarge his office. He lived on the premises during a 20-year period and no one objected to the professional use of the premises. In 1964 Dr. Jaggars applied to the Montgomery County Board of Appeals for a special exception to use his property both as a dwelling and for the practice of medicine with another doctor. There were no protests and the special exception was granted. Dr. Jaggars moved from the premises in 1967 but continued his practice on the premises. After Dr. Jaggars moved from the premises injunctive relief was sought.

The Court of Appeals held for the appellants, upholding the restrictive covenants of the deed. There were four questions presented in the case which are also pertinent to the instant case:

1. Was there sufficient evidence to establish a uniform general scheme or plan of development to entitle the appellants to

enforcement of the covenants?

To this the Court said at p. 169:

"The first contention which the appellees made is that there was insufficient evidence to establish a uniform general plan of development as would entitle appellants to enforce the covenants. However, even if such a plan were absent it would not necessarily defeat their enforcement. The law in Maryland is well settled on this question. In Rogers v. State Roads Comm., 227 Md. 560, 564, 177 A.2d 450 (1962) we said: 'There need not be any general plan of development in order to make a restrictive covenant enforceable if it is imposed by a grantor on a single tract conveyed by him for the benefit of adjacent property retained by him.'"

Continuing on p. 170:

"In the present case we need not decide whether there was a uniform general plan of development, though the evidence may well support such a finding. The covenants are enforceable in any event because of the specific language used in the deeds."

Similarly, in the case at bar, the express language of the covenants make them enforceable without any uniform general plan. However, it is submitted that the Grantor Gnaau had a basic plan to keep all land immediately surrounding his home residential character. His restrictions that houses must cost at a minimum sum and be of stone or brick construction was an obvious plan to keep the area uniform in character.

As in the Chevy Chase case, the covenants are clearly binding on successive owners. The wording of the restrictions is as follows:

"* * * shall run with and bind the land and each and all of the above mentioned lots and premises and every part thereof and the heirs personal representatives, successors or assigns of each and all of the parties hereto and shall be kept and performed by and inure to the benefit of and be enforceable by all and every person and persons, bodies politic or corporate at any time owning or occupying said land property premises or interest or estates or any of them * * *"

2. Was there any abandonment and failure of the original plan of development and such a change in the general characteristics of the neighborhood as to render the covenants unenforceable?

The Court stated that there had not been a complete or radical change in the neighborhood causing the restrictions to outlive their usefulness. On p. 171:

"* * * minimal deviations from the original plan are not sufficient to show a change in the

ARTHUR F. GNAU, ET AL. NO. 72-176-XA
E 5 Loch Raven Blvd., 1064 S. of Taylor Avenue 9th District

SE - Service Garage

VARIANCE - from Sec. 232.3 - to permit rear yard of 9' instead of required 20'

Jan.	4, 1972	Petition Filed
Oct.	18	Z.C. DENIED PETITION
Nov.	15	Appealed to C. B. of A.
May	16, 1973	Hearing before Board
Aug.	16	Show Cause Order signed by Judge Proctor
"	21	Petition for Writ of Mandamus filed in the Circuit Court
Nov.	7	Order of Court ordering C. B. of A. to rescheduled hearing for the taking of testimony
May	2, 1974	Hearing on appeal before C. B. of A.
Feb.	6, 1975	Order of C. B. of A. GRANTING PETITION, subject to restrictions
Mar.	6	Order for Appeal filed in the Circuit Court by Mrs. Pine on behalf of Rev. Claude M. Kinlein & Geo. J. Seidel (File #5541)
Apr.	29	Record of proceedings filed in the Circuit Court
Mar.	18, 1976	Order of the Board granting Variance AFFIRMED, (TRAILE) Special Exception REMANDED to the Board
Apr.	15	Motion for Rehearing filed by Attorney for Defendant
July	18	Motion for Rehearing denied (J. Haile)
Jan.	10, 1976	Second hearing before Board of Appeals (R.G.)
Jan.	12	Supplemental Opinion and Order reaffirming I. rate Order of 2/6/75 (Reiter, Gilland) (on remand)

RE: PETITION FOR SPECIAL EXCEPTION FOR A Garage, Service, and VARIANCE from Section 232.3 of the Baltimore County Zoning Regulations 5/5 of Loch Raven Blvd., 1074 S. of Taylor Avenue 9th District
Arthur F. Gnaau, et ux, Petitioners
Case No. 72-176 X

ORDER FOR APPEAL

Please enter an Appeal on behalf of Reverend Claude M. Kinlein and George J. Seidel, Appellant, Plaintiff, Protestant, from the Opinion and Order of the Baltimore County Board of Zoning Appeals, dated February 6, 1975, Case No. 72-176 X.

JAMES A. PINE

CHARLOTTE W. PINE
607 Baltimore Avenue
Towson, Maryland 21204
823-5404
Attorneys for
Protestant, Appellant

I HEREBY CERTIFY that on this 5 day of March, 1975, a copy of the foregoing Order for Appeal was mailed to J. Carroll Holzer, Esquire, County Solicitor, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204; to William J. Blondell, Esquire, 628 Eastern Avenue, Baltimore, Maryland 21221 and to the Baltimore County Board of Zoning Appeals, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

JAMES A. PINE

CHARLOTTE W. PINE

CIRCUIT COURT FOR BALTIMORE COUNTY

RE: PETITION FOR SPECIAL EXCEPTION for a Garage, Service, and VARIANCE from Section 232.3 of the Baltimore County Zoning Regulations E/S of Loch Raven Blvd. 1064' S. of Taylor Avenue 9th District Arthur F. Gnaul, et ux Petitioners

REVEREND CLAUDE M. KINLEIN GEORGE J. SEIDEL Protestants

James A. Pine Charlotte M. Pine 607 Baltimore Ave. (4) 823-5404 Raymond J. Cannoles William J. Blondell, Jr. 608 Eastern Avenue Balto. (21) 687-7078

2/14/73 4 3/6

DATE	CLERK'S MEMORANDUM	NO.
3/5/75	Protestants' Order for Appeal from the decision of the Baltimore County Board of Zoning Appeals rec'd and fd.	1
3/5/75	Protestants' Appeal Petition fd.	2
3/7/75	Certificate of Notice fd.	3
3/21/75	Petition for Extension of time to Transmit Record and Order of the Court for same fd.	4
3/27/75	Petitioners' (ARTHUR F. GNAUL & ESTELLE E. GNAUL) Answer to Petition on Appeal fd.	5
4/23/75	Answer of County Board of Appeal of Baltimore County and Transcript of Record fd.	6
2/26/75	Petitioners' Memorandum fd.	7
6/11/75	Appellants' (CLAUDE M. KINLEIN & GEORGE J. SEIDEL) Motion to Dismiss Answer of Appellees fd. and Show Cause Order of Court fd. (MRE)	8
6/24/75	Appellees Memorandum fd.	9
6/24/75	Answer to Motion to Dismiss Answer of Appellees fd.	10
12/17/75	Appellants' Motion (Kinlein & Seidel) Motion to Dismiss (7-8) denied 1/1/76	
1/1/76	Hearing set for 1/14/76 (MRE)	
5/13/76	Now Walter K. Bailey, Esq. del. Hill date - correct (Continue Inside)	

Arthur F. Gnaul, et ux - No. 72-176-XA (#5541)

produce any and all such rules and regulations, together with the zoning use district maps at the hearing on this petition, or whenever directed to do so by this Court.

Respectfully submitted,

Marion E. Bodenheimer County Board of Appeals of Baltimore County

cc: Wm. J. Blondell, Jr., Esq.
James A. Pine, Esq.
Mr. Anne K. Krone
Mr. S. Anderson, Zoning

CIRCUIT COURT FOR BALTIMORE COUNTY

DATE	CLERK'S MEMORANDUM	NO.
3/19/76	Opinion and Order of Court from Judge Halla fd.	11
4/19/76	Petitioners' (ARTHUR F. GNAUL) Motion for Rehearing fd.	12
7/11/76	Petitioners' Motion for Rehearing, set for 7/11/76	

PETITION FOR SPECIAL EXCEPTION AND VARIANCE E/S of Loch Raven Blvd. 1064' S of Taylor Avenue Arthur F. Gnaul, et ux Petitioners

ZONING VIOLATION 6801 Loch Raven Boulevard 9th District Arthur F. Gnaul

Defendant

BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY Case Nos. 72-176-XA 72-10-V-ZV-71-64

ORDER TO STRIKE APPEARANCE

Mr. Clerk: Please strike our appearances as counsel for the above-captioned Petitioners/Defendants.

Edward C. Covachey, Jr.
614 Bosley Avenue
Towson, Md. 21204
828-9441
Attorney for Petitioners/Defendants

I HEREBY CERTIFY that on this 10 day of January, 1973, a copy of the foregoing Order to Strike Appearance was mailed to James Pine, Esquire, 607 Baltimore Avenue, Towson, Md. 21204, Charlotte Pine, 607 Baltimore Avenue, Towson, Maryland 21204 attorneys for Protestants and Mr. Harold Bocca, 4522 Drumwood Road, Towson, Md. 21204, Protestants.

Edward C. Covachey, Jr.

RE: PETITION FOR SPECIAL EXCEPTION for a Garage, Service, and for VARIANCE from Section 232.3 of the Baltimore County Zoning Regulations E/S of Loch Raven Boulevard 1064' S. of Taylor Avenue 9th District Arthur F. Gnaul, et ux Petitioners

Zoning File No. 72-176-XA

Reverend Claude M. Kinlein and George J. Seidel Protestants - Appellants

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

Misc. Docket No. 10

Folio No. 22

File No. 5541

CERTIFIED COPIES OF PROCEEDINGS

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Walter A. Reiter, Jr., W. Giles Parker and Robert L. Gilland, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

No. 72-176-XA

Jan. 4, 1972 Petition of Arthur F. Gnaul, et ux, for Special Exception for Service Garage, and Variance from Section 232.3 of Baltimore County Zoning Regulations, on property located on the east side of Loch Raven Boulevard 1064 feet south of Taylor Avenue, 9th District - filed

" 4 Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for February 14, 1972 at 1:00 p.m.

" 13 Comments of Baltimore County Zoning Advisory Committee

" 27 Certificate of Publication in newspapers - filed

Feb. 3 Certificate of Posting of property - filed

" 10 Comments of Director of Planning - filed

" 14 At 1:00 p.m. hearing held on petition by Zoning Commissioner - case held sub curie

Oct. 18 Order of Zoning Commissioner denying Special Exception and Variance

PETITION FOR SPECIAL EXCEPTION AND VARIANCE E/S of Loch Raven Blvd. 1064' S of Taylor Avenue Arthur F. Gnaul, et ux Petitioners

No. 72-176-XA

BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY

ORDER TO ENTER APPEAL

Mr. Clerk: Please enter an appeal from the decision of the Zoning Commissioner of Baltimore County dated October 18, 1972 denying the request for a special exception and variance.

Edward C. Covachey, Jr.
Atty. for Petitioners
614 Bosley Avenue
Towson, Md. 21204
828-9441

I HEREBY CERTIFY that on this 14 day of February, 1973, a copy of the foregoing Order to Enter Appeal was mailed to James A. Pine, Esquire, 607 Baltimore Avenue, Towson, Md. 21204, Charlotte Pine, 607 Baltimore Avenue, Towson, Md. 21204 and Mr. Harold Bocca, 4522 Drumwood Road, Towson, Md. 21204.

Edward C. Covachey, Jr.

Arthur F. Gnaul, et ux - No. 72-176-XA (#5541)

Nov. 15, 1972 Order of Appeal to County Board of Appeals from Order of Zoning Commissioner

May 16, 1973 Hearing held before County Board of Appeals

Aug. 16 Show Cause Order signed by Judge Kenneth C. Proctor

" 21 Petition for Writ of Mandamus filed in Circuit Court for Baltimore County

Nov. 7 Order of County Board of Appeals granting Variance, and Special Exception for service garage, subject to restrictions later

May 2, 1974 Hearing on appeal before County Board of Appeals - case held sub curie

Feb. 6, 1975 Order of County Board of Appeals granting Variance, and Special Exception for service garage, subject to restrictions later

Mar. 6 Order for Appeal filed in Circuit Court for Baltimore County

Apr. 15 Transcript of testimony filed

Petitioner's Exhibit No. 1 - Plat of subject property, 3/21/47, W. Lloyd Wallace

" " " 2 - Plat of subject property, 10/4/71, David W. Dolan, Jr.

" " " 3A - Series of photographs thru 31

" " " 4A - Series of photographs thru 4D

" " " 5 - State Roads right of way plat, 2/15/56

" " " 6 - Zoning File No. 72-176-XA

Protestants' Exhibit A - Copy of Agreement

" " " B - Page 291, Dec. 1973 yellow pages, Tel. Dir.

" " " C - Zoning File No. 72-10-V

" " " D - Official Zoning Map, NE 8-B

" " " E - Zoning Plat

" 29 Record of proceedings filed in Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County, as are also the use district maps, and your respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. S. Eric DiNenna, Zoning Commissioner, February 10, 1972

FROM: George E. Gavelis, Director of Planning

SUBJECT: Petition 72-176-XA. East side of Loch Raven Blvd. 1064 feet south of Taylor Ave. Petition for Special Exception for Garage, Service, Petition for Variance for a rear yard. Arthur F. and Estelle E. Gnaul - Petitioners

9th District

HEARING: Monday, February 14, 1972 (1:00 P.M.)

The planning staff is not enthusiastic about the concept of validating a non-conforming service garage here. If the petitioner can meet the proofs as set forth in Section 502.1 of the regulations, we suggest that a possible order granting the special exception be made subject to a series of conditions: 1) that the screen fencing be revised to extend southward from the corner of the existing building as an extension of that building along the edge of the paving. Similarly, the screening along the westerly boundary line should extend no further than the rear of the present garage; 2) service garage use should be allowed only within the present structure and related parking should not extend beyond the area defined by our suggested revised screening; 3) the balance of the tract should be limited to no additional commercial usage and the present parklike character should be maintained.

GEG:reg/msh

ARTHUR F. GNAU
ESTELLE E. GNAU, HIS WIFE,
Petitioners

vs
JOHN A. SLOWIK, CHAIRMAN
WILLIAM A. REITER, JR., MEMBER
JOHN A. MILLER, ALTERNATE MEMBER
CONSTITUTING THE BOARD OF APPEALS
BALTIMORE COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21204

IN THE
CIRCUIT COURT OF LAW
FOR
BALTIMORE COUNTY
MISCL. # 9/329/5103

PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The petition of Arthur F. Gnau and Estelle E. Gnau, his wife,
by Paul J. Feeley, their Attorney, respectfully represents unto
your Honor:

1. Your petitioners originally filed a Petition for a Special Exception for a service garage in the rear of their property at 6811 Loch Raven Blvd., in Baltimore County. A request for a rear yard variance was also requested at the same time.
2. By order of the Zoning Commissioner of Baltimore County dated October 18, 1972, the petitioners requests were denied.
3. A timely appeal to the Board of Appeals was filed on behalf of your petitioners.
4. On January 10, 1973, the petitioners then attorneys, Edward C. Cavanaugh, Jr., and F. Vernon Booser, struck their

appearance from the case.

5. On May 16, 1973, the Appeal was scheduled for a hearing before the Board of Appeals. No new attorney had entered his appearance on behalf of the petitioners prior to that date, but, on the morning of May 16, 1973, when the Appeal was to be heard, Arthur F. Gnau, one of the petitioners, advised the Board that he had engaged the services of John E. Mudd as his attorney and requested a postponement because of the illness on that date of Mr. Mudd.

6. The Board postponed the matter until 1:00 P. M. that afternoon and instructed your petitioners to have Mr. Mudd contact the board and enter his appearance and then request a postponement if he were sick on that date.

7. One of the petitioners representatives immediately contacted Mr. Mudd and was advised that he was, in fact, sick at home but that the representative could call at his home and obtain the necessary letter from Mr. Mudd so that the case might be postponed to a later date. The petitioners were so advised by their representative that the letter would be obtained by Mr. Mudd and presented to the Board so that the matter would be postponed. Because of this your petitioners did not return to the Board of Appeals hearing room at 1:00 P. M.

8. The representative of the petitioners did return to the office of the Board of Appeals at 1:00 P. M. with a letter from Mr. Mudd but the board did not consider that the letter was in fact a proper letter of representation and refused to grant a postponement.

9. The petitioners were not present at the afternoon session, none of their witnesses were present and no testimony was taken. The Board of Appeals had indicated it will render a decision when no hearing was, in fact, held.

10. There has been no opinion rendered by the Board of Appeals as of the date of the filing of this Petition.

11. That by reason of the arbitrary ruling of The Board of Appeals in not granting a postponement of this matter under the circumstances your petitioners have been denied the opportunity to present testimony in their behalf concerning their appeal and therefore would be denied an appropriate use of their property without due process of law.

WHEREFORE, your petitioners pray:

a. That this honorable court pass an Order directing John A. Slowik, William A. Reiter, Jr., and John A. Miller, constituting the Board of Appeals, to set a date for the taking of testimony in this matter.

b. And for other and further relief as the nature of your petitioners case may require.

Paul J. Feeley,
Attorney for Petitioners

ORDER

ORDERED this 16th day of August 1973, that the Defendants, John A. Slowik, William A. Reiter, Jr. and John A. Miller, show cause within 15 days from the date hereof why the relief prayed in the foregoing Petition should not be allowed, provided a copy of the foregoing Petition and Order be served on the Defendants, or anyone of them on or before the 23rd day of August 1973.

Kenneth C. Packer
Judge

True Copy Test
ELMER H. FULMER, JR., Clerk
Paul J. Feeley
Deputy Clerk

I hereby certify that a copy of the within Petition and Order was mailed this 16th day of August, 1973, to Charlotte W. Pine, 607 Baltimore Avenue, Towson, Maryland, 21204, Attorney for the Protestants.

Paul J. Feeley

1 # 72-176-XA * BEFORE THE COUNTY
2 IN THE MATTER OF * BOARD OF APPEALS
3 THE PETITION OF *
4 ARTHUR F. GNAU, ET UX, * FOR BALTIMORE COUNTY
5 for a Special Exception *
6 for a Service Garage and * MR. SLOWIK, Chairman;
7 a Variance from Section * MESSRS. REITER and MILLER
8 232.3, East Side of *
9 Loch Raven Boulevard, *
10 1,064 Feet South of *
11 Taylor Avenue, in the *
12 9th Election District. *
13 * * * * *
14 Wednesday, May 16, 1973, Towson, Maryland
15 HEARING ROOM COUNTY OFFICE BUILDING
16 1:30 P.M.
17
18 APPEARANCES:
19 MRS. CHARLOTTE W. PINE, Counsel for the Protestants.
20
21 MR. SLOWIK: This is the afternoon of May 16, 1973, at 1:50 p.m. We have before us the case 72-176-XA, the petition of Arthur F. Gnau for property at 6801 Loch Raven Boulevard, in the 9th Election District, for a variance from Section 232.3 of the Zoning Regulations, to permit

REPORTED BY: C. Leonard Perkins, County Office Building,
Towson, Maryland 21204 - 494-3182

1 a rear yard of 7 feet instead of the required 20 feet, and
2 a request for a special exception for a service garage.
3 Mr. Gnau, the petitioner, had as his attorneys
4 Edward C. Cavanaugh, Jr., and F. Vernon Booser, who struck
5 their appearance from this case on January 10, 1973. A copy
6 of their letter striking their appearance is in the file.
7 Mr. Gnau was given proper notice of this case being
8 scheduled, along with a companion case #72-10-V and
9 ZV-71-64 on the same property, constituting an alleged
10 violation for 10:00 a.m. today.
11 Mr. Gnau appeared in proper person at the morning
12 session without an attorney, and stated that he had engaged
13 the services of John E. Mudd, Esq., to represent him, but
14 that Mr. Mudd was sick today and could not make it at the
15 hearing.

The Board had no formal letters of Mr. Mudd's appearance in the case, and proceeded to hear the companion case this morning, and concluded it at 11:30 a.m.

At the conclusion of the earlier case the Board asked Mr. Gnau to put on his case, #72-176-XA. He said he was not prepared and he needed the services of counsel.

The Board then instructed Mr. Gnau that we would recess, and reconvene at 1:00 p.m., at which time he was to have had an attorney present or representative from that attorney's office, formally entering the attorney's appearance in the case as a representative of Mr. Gnau; and if he thought it was necessary, at that time, to request a continuance of Case #72-176-XA.

As I said, it is now ten minutes of two, the Board has reconvened, Mrs. Pine representing protestants is present, and Mr. Gnau has failed to return to the hearing. His attorney is not present.

We do have a letter from Mr. Mudd's office, which will be put into evidence as Board's Exhibit #1, dated May 16, 1973, addressed to the County Board of Appeals, and signed by John E. Mudd, stating that in effect Mr. Mudd has not yet worked out arrangements with Mr. Gnau to represent him in this case, and if and when arrangements are made after he confers with Mr. Gnau, then he would at that time enter his appearance in the case.

This case has a long record of postponement, as does the companion case. The companion case goes back to

May 1971. The Zoning Commissioner's Order, on the companion case, #72-10-V, was dated 9/7/71, and in the instant case the Zoning Commissioner's Order is dated the 18th of October, 1972.

The Board feels that the petitioner has had ample notice to prepare himself to put on his case. For reasons best known to himself, and certainly not known to the Board, he has dismissed his previous counsel and has had ample time to engage new counsel, and to come in prepared to put on his case.

He is not here. He is not represented by counsel.

The Board feels no additional extension of time can be given to Mr. Gnau, and we will take the case under advisement and issue a written decision in the matter. Appeal time will run from the date of our written decision and not from today's date. Notice will be sent to Mr. Gnau and to Mrs. Pine.

* * *

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

January 13, 1972

Edward C. Covehey, Jr., Esq.,
Suite 305, Weaver Plaza
Lutherville, Md. 21093

Re: Type of Hearings: Special Exception for service garage
Location: Rear of 6811 Loch Raven Blvd.
Petitioners: Arthur F. and Estelle E. Gnuau
Committee Meeting of January 4, 1972
9th District
Item 101

Dear Sirs:

The Zoning Advisory Committee has reviewed the plans submitted with the above referenced petition and has made an on site field inspection of the property. The following comments are a result of this review and inspection.

The subject property is located on the east side of Loch Raven Blvd., approximately 1054 feet south of its intersection with Taylor Avenue. The property in question lies to the rear of the property owned by Arthur Gnuau. This property is already improved with a very large attractive stone garage building, which is currently being used to store a number of antique vehicles that are owned by Mr. Gnuau. There is an existing paved parking lot and driveway on this entire property. The front portion of this property is improved with an existing restaurant building. On the north side of the subject site there is an existing Crown service station and the Millendale Shopping Center. On the south side is Mr. Gnuau's residence. To the rear of the subject site is residential subdivision that sits somewhat lower than this property. There is existing curb and gutter along Loch Raven Blvd. at this location, and the entrances as shown exist at this time.

BUREAU OF ENGINEERING:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

Highways:

Loch Raven Boulevard (Md. 542) is a State road; therefore, all improvements, intersections and entrances on this road will be subject to State Highway Administration requirements.

Edward C. Covehey, Jr., Esq.
Page 2
January 13, 1972

Sediment Control:

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Storm Drains:

Provisions for accommodating storm water or drainage have not been indicated on the submitted plan.

Loch Raven Boulevard (Md. 542) is a State road. Therefore, drainage requirements as they affect the road come under the jurisdiction of the State Highway Administration.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

Water and Sanitary Sewers:

Public water supply and sanitary sewerage are available to serve this property.

PROJECT PLANNING DIVISION:

This plan has been reviewed and there are no site planning factors requiring comment.

HEALTH DEPARTMENT:

Metropolitan water and sewer are available to the site.

No health hazard is anticipated since this is a service garage.

BOARD OF EDUCATION:

No hearing on student population.

STATE HIGHWAY ADMINISTRATION:

The existing entrance into the subject property is acceptable to the State Highway Administration.

Edward C. Covehey, Jr.,
Page 3
January 13, 1972

DEPT. OF TRAFFIC ENGINEERING:

No traffic problems are anticipated at this site.

ZONING ADMINISTRATION DIVISION:

This petition is accepted for filing on the date of the enclosed filing certificate. Notice of the hearing date and time, which will be held not less than 30, nor more than 90 days after the date on the filing certificate, will be forwarded to you in the near future.

Very truly yours,

Oliver L. Myers
OLIVER L. MYERS, Chairman

JJO:JD

Enc.

BALTIMORE COUNTY, MARYLAND N-W Key Sheet 31 & 32 NE 8 Position Shrs. NE 8 1/2 Zone 70 Tax Map

INTER-OFFICE CORRESPONDENCE

TO: S. Eric DiNenna
Attn: Oliver L. Myers
FROM: Edmund N. Diver, P.E.
Date: January 5, 1972

SUBJECT: Item #101 (1971-1972)
Property Owner: Arthur F. and Estelle E. Gnuau
Rear of 6811 Loch Raven Boulevard
Present Zoning: B.L.
Proposed Zoning: Special Exception for service garage
District: 9th
No. Acres: 0.922

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

Highways:

Loch Raven Boulevard (Md. 542) is a State Road; therefore, all improvements, intersections and entrances on this road will be subject to State Highway Administration requirements.

Sediment Control:

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Storm Drains:

Provisions for accommodating storm water or drainage have not been indicated on the submitted plan.

Loch Raven Boulevard (Md. 542) is a State Road. Therefore, drainage requirements as they affect the road come under the jurisdiction of the State Highway Administration.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

Water and Sanitary Sewers:

Public water supply and sanitary sewerage are available to serve this property.

Edmund N. Diver
EDMUND N. DIVER, P.E.
Chief, Bureau of Engineering

END:ZAM:PNB:rs

BALTIMORE COUNTY BOARD OF EDUCATION

ZONING ADVISORY COMMITTEE MEETING
OF Jan 9, 1972

Petitioner: Gnuau

Location: Rear of 6811 Loch Raven Blvd.

District: 9

Present Zoning: B.L.

Proposed Zoning: S.E. FOR SERVICE GARAGE

No. of Acres: 0.922

Comments: NO HEARING ON STUDENT POP.



STATE HIGHWAY ADMINISTRATION

300 WEST PAVEN STREET
BALTIMORE, MD. 21201

ROUTING ADDRESS: 1000 THE BALTIMORE, MD. 21201

January 5, 1972

Mr. S. Eric DiNenna
Zoning Commissioner
Attn: U.L. Myers

Item: Property Owner: Arthur F.
Location: Rear of 6811 Loch
Raven Boulevard
Present Zoning: B.L.
Proposed Zoning: Special
Exception for service garage
District: 9th
No. Acres: 0.922

Dear Mr. DiNenna:

The existing entrance into the subject property is acceptable to the State Highway Administration.

Very truly yours

Charles Lee Chisler,
Development Engineering Section

b1: John Maynard
Asst. Development Engineer



BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF TRAFFIC ENGINEERING
JEFFERSON BUILDING
TOWSON, MARYLAND 21204

INTER-OFFICE CORRESPONDENCE

TO: S. Eric DiNenna
Attn: Oliver L. Myers
FROM: Michael S. Flanigan
SUBJECT: Item 101 - ZAC - January 4, 1972
Property Owner: Arthur F. & Estelle E. Gnuau
Rear of 6811 Loch Raven Blvd.
Special Exception for service garage

Date: January 5, 1972

No traffic problems are anticipated at this site.

Michael S. Flanigan
Michael S. Flanigan
Traffic Engineer Associate

MSF:mr

May 22, 1973

County Board of Appeals
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 72-176-XA Arthur F. Gnau, et ux
SE-Garage, Service; Variance from
Sec. 232.3

Gentlemen:

Please enter my appearance as attorney for the
Appellants in the above captioned matter.

Yours very truly,

Paul J. Feeley
Paul J. Feeley

RJP/sam

cc: Charlotte W. Pine, Esq.

72-176-XA - Gnau - 5/22/73 - 2:58pm
Paul Feeley hand delivered
letter entering appearance
for Gnau - I told him
case had been heard, that
I thought you felt Mr.
Gnau had had sufficient
time to get an attorney -
He didn't understand then
having could be held when
no one showed up at 1:30. I
told him I was not sure
what you had decided to do -
He will call you.
That you did not transfer the matter
as being entered from letter sent.

County Board of Appeals
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

LAW OFFICES
PAUL J. FEELEY
208 COURTLAND AVENUE
TOWSON, MARYLAND 21204

4400-10000-0 5/22/73 RJP/sam

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
THE HANSON HOUSE, INC., a Maryland Corporation and RICHARD NULL VS ARTHUR F. GNAU, ET AL
CERTIFIED COPY OF MEMORANDUM OPINION
ORVILLE T. GOSNELL CLERK OF THE CIRCUIT COURT FOR BALTIMORE COUNTY
FILED

THE HANSON HOUSE, INC., *
a Maryland Corporation *
and *
RICHARD NULL *
vs. *
ARTHUR F. GNAU, et al *

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
IN EQUITY

DOCKET: 93
FOLIO: 8
CASE: 69927

MEMORANDUM OPINION

The above entitled case came up for hearing on
October 14, 1971, and October 15, 1971. Evidence was received,
testimony was heard, and counsel for each side submitted mem-
oranda. The Court has now reviewed the evidence and testimony,
researched and digested the law as applied to the facts of this
case, and is now ready to make its determination.

This is the second in what is beginning to appear as
the continuing conflict between the residents of Loch Knoll Manor
over the restrictive covenants covering that portion of land
which takes up the Knoll. Quoted further is a portion of the
opinion of Judge John E. Raine, Jr., filed on September 5, 1957,
concerning an earlier dispute that deals with the historical
development of this residential community. It remains relevant
and appropriate as the same restriction is again under attack,
that being Restriction Second.

"On April 30, 1947 the defendant Arthur F. Gnau and his wife owned a tract of land on the east side of the Loch Raven Boulevard, south of Taylor Avenue in the Ninth Election District of Baltimore County. The property had been subdivided into thirteen lots. The owners executed a straw deed to Rudolph Machovec, which deed expressed the grantors' desire to subject all of the property to certain covenants and restrictions. The restrictions are in the usual form and the one that is important for this case is the second

restriction which states, 'The land included in said tract shall be used for private residence purposes only, and no building of any kind whatsoever shall be erected or maintained thereon other than a brick or stone dwelling house' * * *. The deed further provided that there would be no sale or transfer otherwise than subject to the aforesaid covenants, and that all of the covenants 'shall run with and bind the land, and each and all of the above mentioned lots and premises'. On the same date the straw man, Machovec, reconveyed the entire property to the defendants."

The Complainant is the purchaser from Arthur F. Gnau and Estelle E. Gnau, his wife, of the Hanson House business, good will, equipment and liquor license, and the lessee of a thirty (30) year lease of the land and building from the Gnaus. The parking lot to the south of the building is part of the land lease and is a portion of Lot #13 covered by the restrictions.

The Hanson House, Inc., is desirous of having the restrictions lifted from Lot #13 which is adjacent to the parcel of land on which The Hanson House sits. Most of Lot #13 had been macadamized by Mr. Gnau on July 1, 1965, the day of the opening of The Hanson House. Mr. James P. Byrnes, a planning zoning technician for Baltimore County testified at this hearing that in order for Baltimore County to issue a license to The Hanson House for operation as a restaurant, one hundred three (103) parking spaces are required. This figure was based on the square footage of the existing building and the proposed additions to be built by the Plaintiff.

Mr. Byrnes also testified that even on the land on which The Hanson House lies, and without the proposed additions, there is insufficient space for parking to warrant the granting of a license by Baltimore County. He further stated that over

half of the required parking spaces are on the macadamized portion of Lot #13. The Plaintiff contends that without Lot #13 for parking they will not be able to operate The Hanson House as designed.

Even though the real interest in this case lies with the named Plaintiff, Mr. Gnau, who with full knowledge of these restrictions when he purchased the Hanson House and its land, and when he macadamized that portion of Lot #13, blatantly entered into agreements that would result in violations of the restrictions in an effort to take advantage of a lucrative opportunity. It was Mr. Gnau who had these restrictions placed on the land in order to protect the integrity of Loch Knoll Manor and now that a profitable opportunity has availed itself to him, he tries to violate them. He testified of the many changes in the surrounding area such as the widening of Loch Raven Boulevard, the commercial expansion, the additional roadways with Goucher Boulevard that justify the lifting of the restrictions. But many of the changes were proposed and known to Mr. Gnau in 1949, and are the very elements he was protecting himself and the other owners of Loch Knoll from when the restrictions were made to run with the land and to all successive owners, assigns and heirs. The old Hillendale Golf Course that was adjacent to Loch Knoll Manor on the east is now a community of residential properties.

After listening to the testimony of Mr. Arthur F. Gnau, this Court believes that on July 1, 1965, when Lot #13 was macadamized, it was with full knowledge that in doing so he was violating one of his own restrictive covenants, namely,

Restriction Second. Mr. Gnau bought The Hanson House and the land on which it lays in 1959, one year after the Court of Appeals by Judge (now Chief Judge) Hall Hammond, affirmed Judge Raine in Gnau v. Kinlein, 217 Md. 43, upholding this same restriction on Lot #13. It wasn't until 1965 that Mr. Gnau opened The Hanson House as a restaurant and on the stand before this Court he testified he was unaware that he could not use Lot #13 as a parking lot when it was opened. The use of The Hanson House as a public restaurant and cocktail lounge had been sporadic until November, 1970, and since then non-operative pending the finalizing of the contract of sale and the lease to the Plaintiff, which ultimately awaits the outcome of this case.

The Plaintiff is basing his position on four contentions in an attempt to have the restrictions lifted. Succinctly stated they are: (1) That there has been numerous and substantial changes in this area since 1949; (2) That Lots 10-11-12 and 13 have been zoned commercial since 1955; (3) That the benefit to the Defendants is heavily outweighed by the economic hardship to the Plaintiff; and (4) Waiver and Estoppel.

It is true that the four corners of Loch Raven Boulevard and Taylor Avenue have undergone a drastic metamorphosis since 1949. At the time of the 1957 case before Judge Raine, the four corners were fully developed and the 1955 zoning map, 9th District, Section 3-C (agreed Exhibit 6) shows Goucher Boulevard proposed and the fire station proposed. Cases cited by the Plaintiff favoring removal of restrictions from land deal basically with land that never had a general scheme of

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Plaintiff's Exhibit "D"

development, or if they did it was never followed. Testimony was heard, and photographs admitted into evidence show that the Loch Knoll Manor as designed and developed exists today as it did in 1957 and earlier. Surrounding Loch Knoll Manor to the east and 180° clockwise to west is all residential, either single dwelling individual homes, or row homes and apartments. The change in this residential zoning has only been the degree of density allowed - from 3.5 to 5.5 houses per acre.

As was stated in Kirkley v. Seipley, 212 Md. 127 (1955), "The real crux of the inquiry . . . is to ascertain the purposes . . . of the restrictions." On reading the deed from the Gnaus to Machovec in JWB No. 1568 Folio 711, it impresses the Court that the ulterior motive in the covenants was to create a planned residential community. The photographs on exhibit depict that the uniform general scheme was carried out. All the houses have conformed to the restrictions to make an attractive and valuable residential community. Loch Knoll has been unaffected since its development both in design and value by all the surrounding progress.

Testimony was given by Mr. Seidel that his property, land and house, are worth today about \$70,000.00. The original cost of the land was \$5,000.00 and the house with its existing improvements cost \$49,000.00. Father Kinlein testified that the cost of the Kinlein/Jorworski house was about \$42,000.00 in 1950 and today is worth around \$70,000.00. The inquiry then as to whether there has been such a radical change in the neighborhood as to defeat the purpose of the restrictions finds that Plaintiff has come up short in his proof. Though there

- 5 -

Chevy Chase has not changed the law in any way in reference to land covered by restrictive covenants, but has only clearly laid out the existing law in Maryland today on the subject. Chevy Chase becomes the final word to substantiate this case that today, more than ever before, these restrictions on Loch Knoll Manor are even more necessary to keep this development from being engulfed by growing commercialism.

For the reasons hereinbefore stated and discussed in full detail, the Circuit Court for Baltimore County rules this 20th day of November, 1971, that the relief sought by the Plaintiff to release that portion of Lot #13 from the restrictions running with the land, in the deed between Gnaus and Machovec, is hereby DENIED.

H. Keith MacDaniel
H. Keith MacDaniel
JUDGE

Copy to:
E. Scott Moore, Esq.
James A. Pine, Esq.
Frederick W. Invernizzi, Director, Adm. Office of Courts
Eugene Creed, Administrator

- 9 -

has been change since 1957 when Chief Judge Hammond affirmed Judge Raine, much of the changes existing today were proposed at that time, and even now as in 1957, the change hasn't been complete or radical. Loch Knoll remains a pleasant area in which to live in a home that has appreciated and continues to appreciate.

Plaintiff also argues, as was brought out in Gnaus v. Kinlein, supra, that lots 10, 11, 12 and 13 of the subject property were zoned commercial, and that this is a strong indication of radical change. The Court again finds this claim without merit and holds that Judge Raine's statement of the law was accurate when he stated:

"Zoning cannot nullify binding restrictions, the latter being controlled by Contract and Real Estate Law are entirely independent of zoning. Perry v. Board of Appeals, 211 Md. 294. The use of property may change the character of a neighborhood and lead to deterioration, but zoning status alone will not have the same effect."

It was Mr. Arthur F. Gnaus, himself, who had these lots zoned commercial in 1955, for what appeared to be an attempt to build an office building on Lot #13. That project was the bone of contention in the 1957 case.

Plaintiff's next point of attack was the comparative hardship that would result in great economic hardship to him as compared to the owners of Loch Knoll's negligible harm. Citing Dundalk Holding Co. v. Eastern, 215 Md. 549, as their authority, they contend that innocent mistake is a factor to be considered in deciding the disproportionate harm to the remedy. However, Dundalk Holding Co. v. Eastern, supra, dealt with an insubstantial encroachment of a new building on adjacent

- 6 -

THE HANSON HOUSE, INC.
Maryland Corporation and
RICHARD MULL
VS
ARTHUR F. GNAUS, ET AL
IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY
IN EQUITY
DOCKET OTG 93 FOLIO 8
CASE NO. 69927

CERTIFICATION

STATE OF MARYLAND, BALTIMORE COUNTY, To wit:
I HEREBY CERTIFY, That the foregoing is a true copy taken from the original MEMORANDUM OPINION FILED December 1, 1971



In testimony whereof, I hereto
set my hand and affix the seal
of the Circuit Court for Baltimore
County this
10th day of February, 1972

John M. T. Smith
John M. T. Smith
Clerk of the Circuit Court
for Baltimore County

land. Also cited is American Weekly, Inc. v. "Attorney", 179 Md. 109, in which the interest of the appellant in the land had ceased and the Court of Appeals affirmed the lifting of the restrictions, Judge Johnson stating:

"It has likewise long been a rule of equity that where the reason for the enforcement of a restrictive covenant on land has ceased as where the neighborhood has completely changed, equity will no longer enforce the covenant as to do so would be to encumber the economic use of the land without at the same time achieving any substantial economic benefit to the covenantee."

Neither case just cited stands on all fours with the matter at issue today. Chevy Chase v. Jagers, 261 Md. 321, is the most closely related wherein Judge Digges, at P. 320, stated:

"Their interest (Chevy Chase) in preserving the residential integrity of their community is simply not outweighed by his (Dr. Jager) desire to move to another fashionable and exclusively residential area."

The residents of Loch Knoll have shown that there does exist an integrity such as referred to in Chevy Chase. The argument made by Plaintiff of an innocent mistake has not been sufficiently proven to the Court. A simple matter of researching and abstracting titles would have put them on actual notice of the restrictions. So, for whatever reasons they had, they relied on the free marketability of the land and put themselves in a fine mess.

Plaintiff's final contention that the residents have waived their rights and are now estopped from relying on restrictions is not entertainable. The history of this community and its residents shows that whenever any major violations occurred legal proceedings were initiated immediately. The issue

- 7 -

made is that the Defendants should be estopped from reliance upon the restriction because since July 1, 1965, that portion of Lot #13 which has been macadamized has been used exclusively as a parking lot. Testimony was heard from Mr. Gnaus that when he opened The Hanson House in July, 1965, his mode of operation was at best sporadic, and being a resident of Loch Knoll himself what was said in Schlicht v. Wengert, 178 Md. @ 636-637, and quoted by Chevy Chase, supra, has application here:

"And toleration of violations, out of friendship or lack of inclination to deal incidental annoyances given to make the Schlichts feel a grievance, could not be construed as surrender of those rights. They refrained from a contest until experience with the particular violation stirred them to enforcement; and they might do so without loss of rights from it."

That refrain ended when it became apparent the particular violation was going to be conducted by a third party, the Plaintiff herein, and as soon as the Defendants were asked to sign a waiver freeing Lot #13 of the restriction, they immediately refused protesting their reliance on the restrictions in the deed. From that protest they all came before this Court.

Many of the cases cited in the Plaintiff's memorandum deal with land developments in the inner portions of Baltimore City many years ago. The lifting of the restrictions were finally granted when it became apparent to everyone that slum neighborhoods were rearing up. Running through those cases was a basic element of a lack of the general scheme of development. This is, of course, an element to be considered in allowing land to continue to be restricted, although it isn't always necessary as was stated in Chevy Chase, supra. The only case cited, and relied on heavily by the Defendants, is Chevy Chase which comes as close to being on all fours as possible.

- 8 -

THIS AGREEMENT, made and entered into this 5 day of April 1960, by and between ELLIE KINLIN, widow, of 6707 Loch Haven Boulevard, Towson 4, Maryland, MELVIN H. CROCKER and MELBA M. CROCKER, his wife, of 6711 Loch Haven Boulevard, Towson 4, Maryland, GEORGE J. SMITH and ELLIE M. SMITH, his wife, of 6709 Loch Haven Boulevard, Towson 4, Maryland, and ARTHUR R. GUNN and EVA H. GUNN, his wife, of 6712 Loch Haven Boulevard, Towson 4, Maryland, hereinafter called First Parties, and ARTHUR F. GUNN and EVELLE E. GUNN, his wife, of 6801 Loch Haven Boulevard, Towson 4, Maryland, hereinafter called Second Parties, all of Baltimore County, State of Maryland.

WHEREAS, First Parties and Second Parties are the present owners of all of the lots of land, and improvements, comprising Loch Knoll Minor as laid down on the Plat thereof recorded among the Land Records of Baltimore County in Flat Book J.W.P. No. 14, folio 21; and

WHEREAS, all of the said lots of land, and improvements, are subject to covenants, agreements, restrictions, conditions and charges as set forth in a Deed of Indenture from Arthur F. Gunn and Estelle E. Gunn, his wife, to Rudolph J. Machover dated April 30, 1947 and recorded among the Land Records of Baltimore County on June 17, 1947 in Liber J.W.P. No. 1568, folio 321; the validity of said covenants, agreements, restrictions, conditions and charges having been sustained by the Court of Appeals of Maryland in the case of Gunn et ux vs. Kinlin, et al., reported 217 Md., page 43; and

WHEREAS, among the aforementioned covenants, agreements, restrictions, conditions and charges there appears the following:

"Second - The land included in said tract shall be used for private residence purposes only and no building of any kind whatsoever shall be erected or maintained thereon other than a brick or stone dwelling house except that if such dwelling is two stories in height the second floor may be constructed of clapboard such dwelling being designed for occupation by a single family and private garage (constructed of similar building material as the dwelling for the sole use of the respective owners or occupants of the lot upon which such garages are erected."

WHEREAS, the Second Parties erected on a portion of the property retained by them a stone garage building which they have used for their own private purposes, including the garaging of seven commercial vehicles used in connection with their business, and Second Parties are now enlarging the size of the said garage building and First Parties have made objection thereto because the use made or to be made of said building violates, or will violate, the terms and conditions of the above set forth Restriction Numbered 2-d and

WHEREAS, Second Parties have represented to First Parties that the use made and to be made of the garage building, and as enlarged, will be solely for their private purposes, limited to the garaging of not more than ~~seven~~ ^{seven} commercial vehicles belonging to them plus certain personal property used and to be used by them in and about the care and maintenance of their residence dwelling and property; and

WHEREAS, in order to settle any difficulties that might exist with relation to the foregoing by and between First Parties and Second Parties and to obviate the necessity of having a judicial determination made relating thereto and for the purpose of setting forth the definite agreement and intention of all of the parties hereto,

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: that in consideration of the foregoing recitals, of the promises, and of the agreements and covenants herein contained, and of the further sums of FIVE DOLLARS (\$5.00) by First Parties paid unto Second Parties and by Second Parties paid unto First Parties, the receipt whereof is respectively acknowledged, First Parties and Second Parties do hereby covenant and agree as follows:

1. That Second Parties may enlarge the garage building situate on their property in accordance with the plans and the work presently underway, it being agreed that the dimensions of said garage building as enlarged shall not exceed an area of 2200 square feet, said garage building to be of stone construction one story in height, that said garage building shall be used by Second Parties for their own private personal use, including items of equipment to be used and employed for the maintenance and upkeep of the residence dwelling of Second Parties and of their property, and that Second Parties will not store, garage, keep or permit to be garaged, stored or kept in, about or upon their property or any part or portion thereof, including the said garage building, any commercial vehicles belonging to them in excess of ~~seven~~ ^{seven}, which use

shall relate solely to the garaging of said vehicles and not to the servicing, or repairing thereof;

2. That the within agreement relates solely to the specific items herein contained and shall not constitute by any of the parties hereto a waiver of any of their presently existing rights, privileges and/or obligations and shall not be deemed or construed to have any effect or operation except as herein specified, it being specifically and unequivocally agreed that all of the heretofore mentioned covenants, agreements, restrictions, conditions and charges, in whole or in part, are modified only to the extent provided for in this agreement and no further, and each of the parties hereto retains any rights which he or she has or may acquire in the future to proceed at law or in equity with respect thereto.

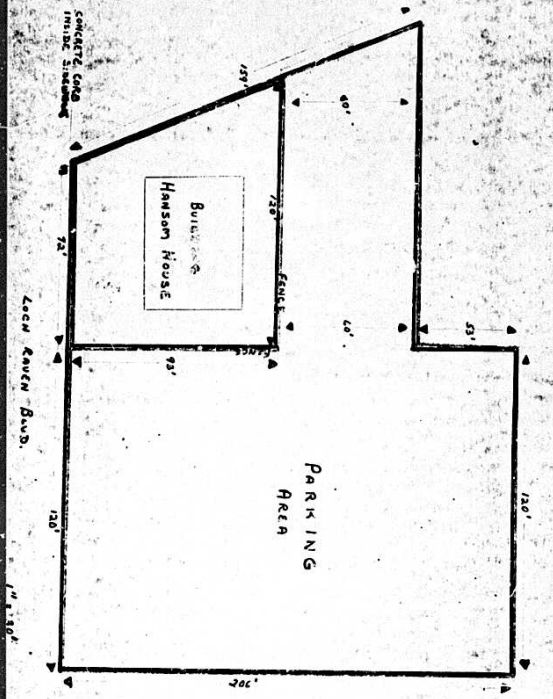
It is agreed by the Parties hereto that the within agreement is personal in nature as to Second Parties wherefore it shall not enure to the benefit of their heirs or assigns upon any voluntary or involuntary disposition by them of all or any portion of their property.

The within Agreement shall be binding upon all of the Parties hereto, their heirs and assigns and it shall enure to the benefit of First Parties, their heirs and assigns.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands and seals the day and year first above written.

WITNESS:

Ellie Kinlin (SEAL)
Melvin H. Crocker (SEAL)
Melba M. Crocker (SEAL)
George J. Smith (SEAL)
Ellie M. Smith (SEAL)
Arthur R. Gunn (SEAL)
Eva H. Gunn (SEAL)
First Parties



IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

CERTIFIED COPY OF DEED AND AGREEMENT

ORVILLE T. GORNELL
CLERK OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY

FILED

dated April 16 1960 and recorded in the Land Records of Baltimore County in Liber R J S No 136 folio 29 are free and clear from the operation and effect of said mortgage

WITNESSETH the corporate seal of said body corporate together with the signature of Howard H. Burkhardt the President thereof

Howard H. Burkhardt
Secretary

STATE OF MARYLAND BALTIMORE COUNTY to wit

I HEREBY CERTIFY that on this 15th day of June 1960 before me the subscriber a Notary Public of the State of Maryland in and for Baltimore County personally appeared Howard H. Burkhardt President of The Towson Building Association Incorporated and he acknowledged the foregoing release to be the act of said body corporate

AS WITNESS my hand and Notarial Seal

Marie M. Kraus
Notary Public
My commission expires May 2 1969

Recorded June 17 1960 at 10:45 AM & Ext per
John W. Bishop
Clerk

(Not by JLS) (End by 9849)

1960) THIS DEED AND AGREEMENT made this 10th day of April 1960 by
Arthur F. Gunn et al) and between ARTHUR F. GUNN and EVELLE E. GUNN his wife of the
First and Second) City of Baltimore State of Maryland hereinafter called Grantees
Parties) parties of the first part and RUDOLPH J. MACHOVER of the City
of Baltimore State of Maryland hereinafter called Grantee party
of the second part

WHEREAS the Grantees own a tract of land in Baltimore County State of Maryland which they have caused to be subdivided into lots as shown on a Plat entitled "Loch Knoll Minor" filed (concurrently herewith) and made expressly a part hereof and

WHEREAS the Grantees are desirous of subjecting all of said tract of land and the lots shown on said plat to certain covenants agreements restrictions conditions and charges as hereinafter set out and

WHEREAS in order to make said covenants agreements restrictions conditions and charges binding and of full force and effect on all the land included in said tract and the lots shown on said plat and upon the present and future owners and occupants of the same their and each of their heirs executors administrators successors and assigns the Grantees and Grantee have agreed to enter into this Deed and Agreement whereby the Grantees will convey to the Grantee all the lots shown on said Plat and immediately thereafter the Grantee will convey to the Grantees all the lots shown on said Plat and immediately thereafter the Grantee will convey to the Grantees all the covenants agreements restrictions conditions and charges hereinafter set out all the said lots

NOW therefore this Deed and Agreement WITNESSETH that in and consideration of the premises and the sum of Five Dollars (\$5.00) in hand paid by the Grantees to the Grantee the receipt whereof is hereby acknowledged and the performance of the covenants agreements restrictions conditions and charges hereinafter set out the parties hereto do hereby agree as follows

The Grantees do hereby grant and convey unto the Grantee subject to the covenants agreements restrictions conditions and charges hereinafter set out all the following lots of ground being and situate in Baltimore County State of Maryland and being marked and designated on said plat by numbers that is to say

All those lots of ground known as Lots Nos 1 2 3 4 5 6 7 8 9 10 11 12 and 13 shown shown on a Plat entitled "Loch Knoll Minor"

Said Lots being and comprising all that lot of ground described in a Deed from Arthur M. Braun undated as 4 8 Contee House and Elm Diller House his wife to Arthur F. Gunn and Estelle E. Gunn his wife dated September 13 1960 and recorded among the Land Records of Baltimore County in Liber R J S No 1401 folio 399

TOGETHER with the buildings and improvements thereon and the rights appurtenant waters privileges easements and advantages to the same belonging or in anywise appurtenant

TO HAVE AND TO HOLD the above granted property unto the Grantee his heirs and assigns forever to fee simple subject however to the following covenants agreements restrictions conditions and charges which it is hereby covenanted and agreed shall be binding upon the Grantee their heirs and assigns and upon the Grantee his heirs personal representatives and assigns and upon all the land included in said tract that is to say

First - There shall not be erected permitted maintained or operated upon any of the land included in said tract any brewery distillery millhouse slaughterhouse brass foundry tin mill iron or other foundry linoleum stone quarry cement mill sugar refinery crematory graveyard jail penitentiary house of correction hospital asylum sanatorium or institution of like or kindred nature hogpen poultry house or house of prostitution or any form of privy nor any plant factory or establishment for the purpose of making or preparing any articles

Second - The land included in said tract shall be used for private residence purposes only and no building of any kind whatsoever shall be erected or maintained thereon other than a brick or stone dwelling house except that if such dwelling is two stories in height the second floor may be constructed of clapboard such dwelling being designed for occupation by a single family and private garage (constructed of similar building material as the dwelling for the sole use of the respective owners or occupants of the lots upon which such garages are erected)

Third - No building or part thereof shall be erected or maintained on any part of said tract closer to Loch Haven Boulevard than is specified in the "Schedule of Setbacks" hereinafter set out

Fourth - Schedule of Setbacks

Lot No 1 - 130 Feet
Lot No 2 - 130 Feet
Lot No 3 - 135 Feet
Lot No 4 - 135 Feet
Lot No 5 - 140 Feet
Lot No 6 - 140 Feet

Lot 7 - 145 feet
Lot 8 - 145 feet
Lot 9 - 150 feet
Lot 10 - 150 feet
Lot 11 - 150 feet
Lot 12 - 150 feet
Lot 13 - 150 feet

Fifth - No private residence shall be constructed or erected upon any of the lots in said tract until the same shall cost at least Twelve Thousand Dollars.

Sixth - There shall not be erected, permitted or maintained upon any of the lots in said tract any structure in the nature of a house for dogs.

Seventh - No fence more than three (3) feet in height shall be constructed erected or maintained on any of the said lots in said tract and in no event shall any fence be of material other than brick or stone.

Eighth - Neither of the said lots nor any of them nor any part of them or any of them shall be at any time occupied or used by any negro or negroes or person or persons either in whole or in part of negro or African descent except only that negroes or persons of negro or African descent either in whole or in part may be employed as servants by any of the owners or occupants of said lots and as whilst so employed may reside on the premises occupied by their respective employers.

Ninth - No building to be erected as a residence shall be erected other than in the course of its respective lot or lots in such manner that there shall be free open spaces on both sides of such building which free spaces shall extend the full depth of the lot. The aggregate width of such free spaces in both sides of any building shall be not less than twenty (20) feet.

Tenth - There shall not be erected on any lot in said tract any dwelling which shall have less than a front footage of seventy-five (75) feet and said dwelling shall be centered upon said seventy-five (75) foot frontage it being understood and agreed by the parties hereto that no dwelling shall be erected on a lot with a frontage of fifty (50) feet.

And it is further covenanted and agreed by and between the parties hereto that no sale lease mortgage disposition or transfer thereof shall be made or create otherwise than subject to the above covenants agreements restrictions conditions and covenants as to and upon the use and occupancy that neither the said parties nor either of them their or either of their heirs personal representatives successors or assigns will do or suffer or permit to be done any of the nature or things above mentioned excepting only as aforesaid and that all the covenants agreements restrictions conditions and charges herein contained shall run with and bind the land and each and all of the above mentioned lots and premises and every part thereof and the heirs personal representatives successors or assigns of each and all of the parties hereto and shall be kept and performed by and more to the benefit of and be enforceable by all and every person and persons and bodies politic or corporate at any time coming or coming said land property premises or interest or estates or any of them or any part of them but no owners or occupants shall be responsible except for the use or the use of the land while owned or occupied.

And the said Grantees hereby covenant that they have not done nor suffered to be done any act matter or thing whatsoever to encumber the property hereby granted that they

Will warrant specially the property hereby granted and conveyed and they will execute such further assurances of said land as may be required.

WITNESSES (4 hands and seals of the within Grantees and Witnesses)

Edward I. Bushinsky
Arthur F. Goss
Estelle E. Goss
Rudolph J. Machovec

STATE OF MARYLAND BALTIMORE CITY to wit:

I HEREBY CERTIFY that on this 30th day of April in the year nineteen hundred and forty-seven before me the undersigned a Notary Public of the State of Maryland in and for the City of Baltimore aforesaid personally appeared Arthur F. Goss and Estelle E. Goss his wife the within named Grantees and they acknowledged the foregoing Deed to be their respective Deed.

IN TESTIMONY WHEREOF I haveunto set my hand and affix my Notarial Seal

(Notarial Seal)
Edward I. Bushinsky
My commission expires May 5 1947

WITNESSES
Edward I. Bushinsky
STATE OF MARYLAND BALTIMORE CITY to wit:

I HEREBY CERTIFY that on this 30th day of April in the year nineteen hundred and forty-seven before me the undersigned a Notary Public of the State of Maryland in and for the City of Baltimore aforesaid personally appeared Rudolph J. Machovec the within Grantee and he acknowledged the foregoing Deed to be his act.

IN TESTIMONY WHEREOF I haveunto set my hand and affix my Notarial Seal

(Notarial Seal)
Edward I. Bushinsky
My commission expires May 5 1947
Recorded June 17 1947 at 10:45 AM & 1st pag

(See by 13)
(End by 1347)

1647
THIS DEED made this 30th day of April 1947 by and between Rudolph J. Machovec et al. and EDWARD J. MACHOVEC and MARY A. MACHOVEC his wife of Baltimore City in the State of Maryland parties of the first part and ARTHUR F. GOSS and ESTELLE E. GOSS his wife of the second part said City and State parties of the second part.

WITNESSETH That in consideration of the sum of Five Dollars (\$5.00) and other good and valuable considerations the receipt whereof is hereby acknowledged the said parties of the first part do hereby grant and convey unto the parties of the second part as tenants in common and to their heirs and assigns and unto the survivor of them his or her heirs and assigns forever the covenants agreements restrictions conditions and charges hereinafter referred to in fee simple all those Lots of ground situated in Baltimore County in the State of Maryland and described as follows that is to say

All those Lots being known and designated as Lots Nos 1 2 3 4 5 6 7 8 9 10 11 12 and 13 inclusive as shown on a Plat entitled "Loch Raven 11 Manor" filed consecutively with



IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

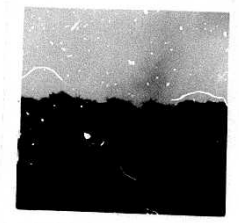
STATE OF MARYLAND :
COUNTY OF BALTIMORE : SCT.

I, CIVILLE T. GOSWELL, Clerk of the Circuit Court for Baltimore County, do hereby certify that the foregoing is a true photostatic copy of the original DEED AND AGREEMENT

taken from the Records of the said Circuit Court for Baltimore County as recorded in Liber JWB 1568 Folio 321, one of the LAND Records of Baltimore County

IN TESTIMONY WHEREOF, I hereto set my hand and affix the seal of said Court this 8th day of June A.D., 1971.

Civille T. Goswell
Clerk of the Circuit Court for Baltimore County



PETITION FOR SPECIAL EXCEPTION AND VARIANCE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

By: *Arthur F. Goss*

176-176-XA

OFFICE OF THE TOWSON TIMES
TOWSON, MD. 21204
January 31 - 1972

THIS IS TO CERTIFY, that the annexed advertisement of S. Eric DiNenna Zoning Commissioner of Baltimore County was inserted in THE TOWSON TIMES, a weekly newspaper published in Baltimore County, Maryland, once a week for one week before the 31 day of January 1972 that is to say, the same was inserted in the issue of January 27, 1972.

STROMBERG PUBLICATIONS, Inc.

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE: May 12, 1972 ACCOUNT: 01-662

AMOUNT: \$70.00

WHITE - CASHIER
DISTRIBUTION
PINK - AGENCY
YELLOW - CUSTOMER

Arthur F. Goss
601 Loch Raven Blvd.
Baltimore, Md. 21204
Advertiser and posting of property 7475

CERTIFICATE OF PUBLICATION

TOWSON, MD., January 27, 1972

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once a week for one week before the 31 day of January 1972 that is to say, the same was inserted in the issue of January 27, 1972.

THE JEFFERSONIAN
L. L. Lusk, Jr., Manager

Cost of Advertisement, \$

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE: Jan. 24, 1972 ACCOUNT: 01-662

AMOUNT: \$50.00

WHITE - CASHIER
DISTRIBUTION
PINK - AGENCY
YELLOW - CUSTOMER

Messrs. Covahay & Booser
1301 York Road Suite 405
Lutherville, Md. 21093
Petition for Variance & Special Exception for Arthur Goss

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th
Date of Posting: Jan. 27-28

Posted for: *Arthur F. Goss*

Petitioner: *Arthur F. Goss*

Location of property: *Eds. of Loch Raven Blvd. 1064' S. of Taylor Ave.*

Location of Sign: *D. Post & Estelle E. Goss, Hansen, Harris*

Remarks: *Arthur F. Goss*

Posted by: *Arthur F. Goss*

Date of return: 2/2/72

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

County Office Building
111 V. Chesapeake Avenue
Towson, Maryland 21204

Your Petition has been received and accepted for filing this 4th day of January 1972

Arthur F. Goss
Zoning Commissioner

Petitioners: *Arthur F. Goss and Estelle E. Goss*

Petitioner's Attorney: *Edward C. Covahay, Jr.* Reviewed by: *Arthur F. Goss*

PETITION MAPPING PROGRESS SHEET										
FUNCTION	Wall Map		Original		Duplicate		Tracing		200 Sheet	
	date	by	date	by	date	by	date	by	date	by
Descriptions checked and outline plotted on map										
Petition number added to outline										
Denied										
Granted by ZC, BA, CC, CA										
Reviewed by: <i>Arthur F. Goss</i>	Revised Plans: Change in outline or description				Yes _____ No _____					
Previous case: <i>15</i>	Map # <i>5C</i>									

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th
Date of Posting: 11-30-72

Posted for: *Arthur F. Goss*

Petitioner: *Arthur F. Goss*

Location of property: *Eds. of Loch Raven Blvd. 1064' S. of Taylor Ave.*

Location of Sign: *D. Post & Estelle E. Goss, Hansen, Harris*

Remarks: *Arthur F. Goss*

Posted by: *Arthur F. Goss*

Date of return: 12-2-72

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE: November 17, 1972 ACCOUNT: 01-662

AMOUNT: \$70.00

WHITE - CASHIER
DISTRIBUTION
PINK - AGENCY
YELLOW - CUSTOMER

Edward C. Covahay, Jr., Esquire
111 V. Chesapeake Avenue
Towson, Md. 21204
Petitioner's Attorney

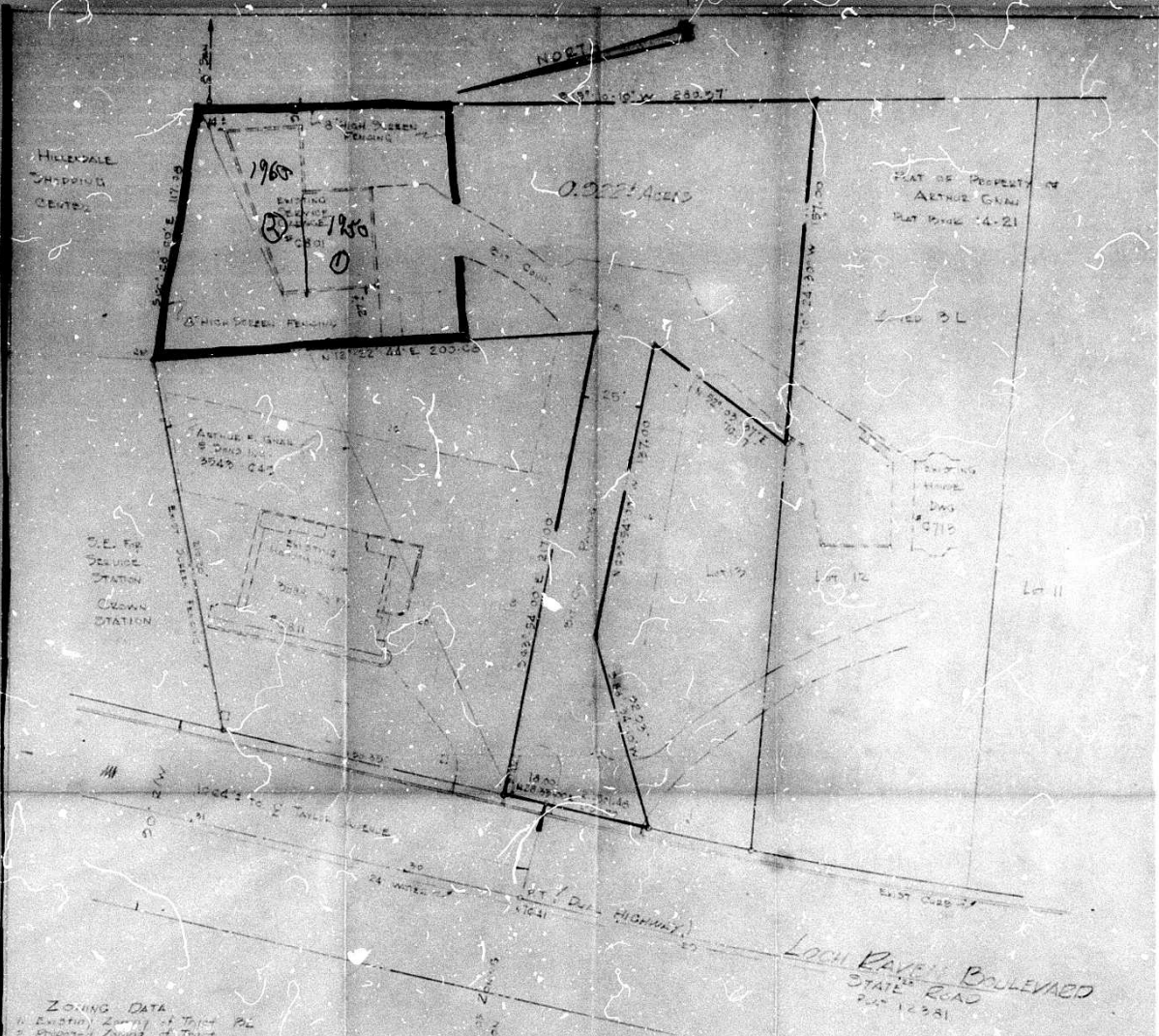
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE: 3/20/75 ACCOUNT: 01,712

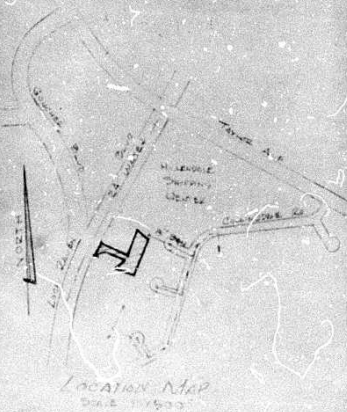
AMOUNT: \$19.00

WHITE - CASHIER
DISTRIBUTION
PINK - AGENCY
YELLOW - CUSTOMER

James A. Mine, Esq.
607 Baltimore Ave.
Towson, Md. 21204
Petitioner's Attorney



- ZONING DATA**
- 1. Existing Zoning: D-1, D-2, D-3
 - 2. Proposed Zoning: D-1, D-2, D-3
 - 3. Service Garage: D-1, D-2, D-3
 - 4. Gross Area: 0.227 ACRES
 - 5. Area of Existing House: 3,542 sq. ft.
 - 6. Existing Zoning: D-1, D-2, D-3
 - 7. All utilities Available



ZONING PLAT **SPECIAL EXCEPTION FOR GARAGE SERVICE** **IN A D-1 ZONE** **ON LOCH RAVEN BOULEVARD**

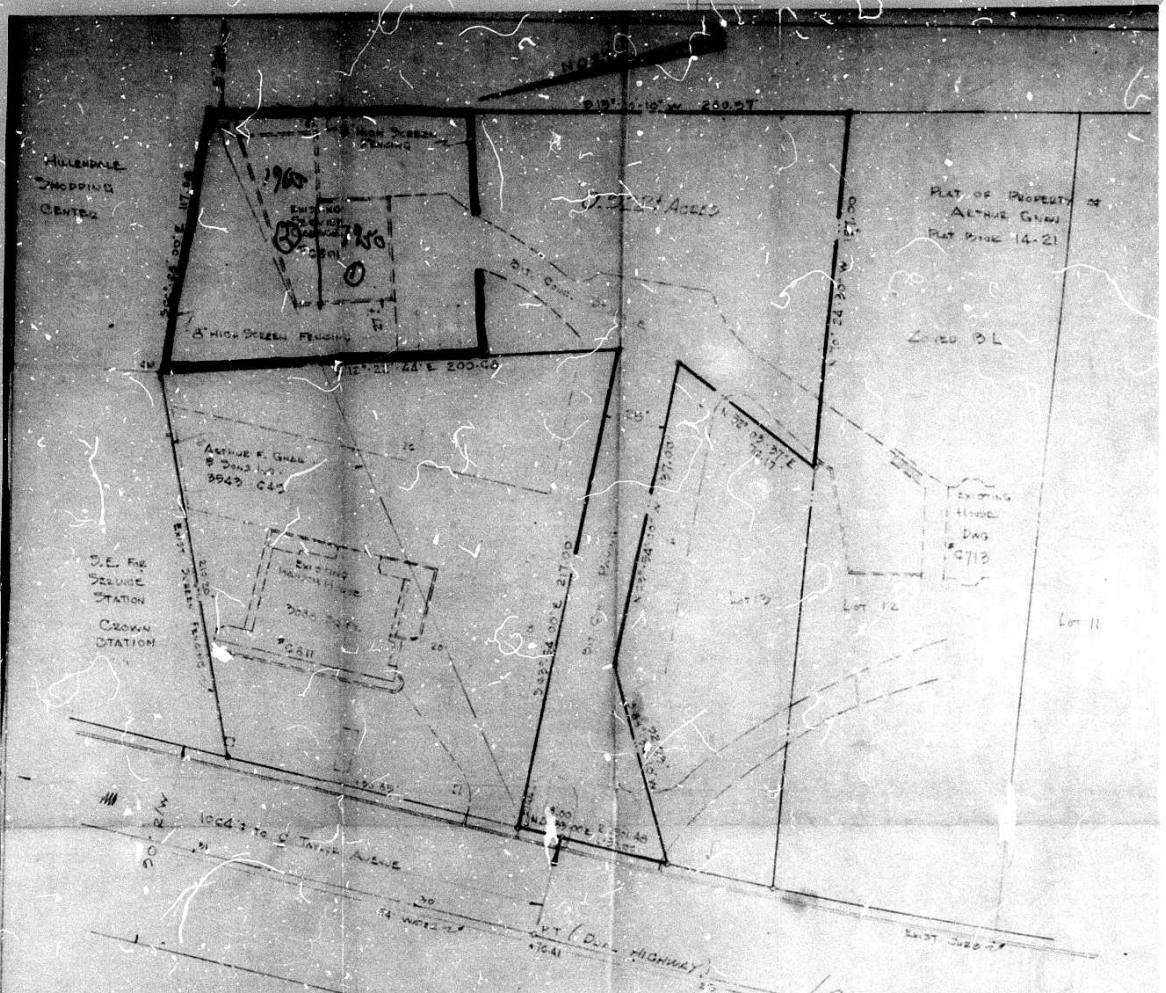
WITH EXEMPTION DATE: 11-30-30
 BALTIMORE COUNTY, MARYLAND
 OCTOBER 4, 1911

BOARD OF APPEALS
PETITIONER'S
EXHIBIT 2

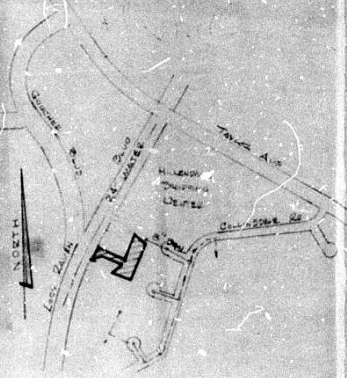
Part of Lot 15, Plat 154
 Part of 3542 245
 1/2 E. LANEY & S. HERR
 ATTORNEY
 DATE FOR HEARING: 11-30-30
 LUTHERING, MD. 21093
 PHONE: 213-2441



LAWD W. DALLAS, JR.
 CIVIL ENGINEER
 8715 OLD HARTFORD RD.
 BALTIMORE, MD. 21234
 (301) 545-7722



- ZONING DATA**
1. Existing Zoning of Tract: BL
 2. Proposed Zoning of Tract: Restaurant, BL
 3. Gross Acreage of Tract: 0.021 Acres
 4. Area of Handbl House Restaurant: 2,000 sq. ft.
 5. Proposed Parking: 30/100 - 02 Spaces
 6. Provided Parking: 30/100 - 02 Spaces
 7. All Utilities Available



ZONING PLAT
SPECIAL EXCEPTION FOR GARAGE SERVICE
IN A BL ZONE
CCM LOCH RAVEN BOULEVARD
 5TH ELECTION DISTRICT
 BALTIMORE COUNTY, MARYLAND
 DATE: 1-2-90
 DIST: REC 4, 1971

BOARD OF APPEALS
PETITIONER'S
EXHIBIT 2

PART OF LOT 13 DATED 1972
 PART OF 3345-045
 % CASHLEY & BOONER
 4772-167
 24TH ST. NEAR 24TH
 1900 HALL ST.
 LUTHERBURG, MD 21053
 PHONE 828-2441

