PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, <u>Howard Plumbing Co., Inches</u>al owners of the property situate in Baltimore County and which is described in the description and plat attached hereti and made a part hereof, hereby petition or special Hearing Under Section 500.7 of the Zoning Regulations of Balticore County, to determine whether or not the Zoning Commissioner and/or Deputy Zoning. Commissioner should approve the expansion of an existing non-conforming use at 1756 Forrest Ave in accordance with site plans submitted and

Property is to be posted and advertised as prescribed by Soning Regulations. I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the soning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County. Menditt & Housel UP

>714 Dalling Poal 21234

Contract Purchaser

PH 21 15 HM

Petitioner's Attorney

ED By the Zoning Commissioner of Baltimore County,

Simi Oli Plana

Zoning Commissioner of Baltimore County

Mulas & Post Protestant's Attorney

Balls 21201

10:80A

Mr. Meredith R. Howard Re: Item 157 March 16, 1976 Page 2

itself with the use of the rear parcel now in question without the benefit of zoning review and approval. The petitioner proposes additional parking area on the rear parcel as well as what is shown as the storage building.

In order that a clear understanding of this case and its ramifications may be afforded the hearing officer, it is required that a comprehensive breakdown by square footage area of all existing commercial uses, as well as existing residential uses must be indicated on the plan. Of course, the relationship of the proposed building area to the commercial non-conforming area must be indicated clearly.

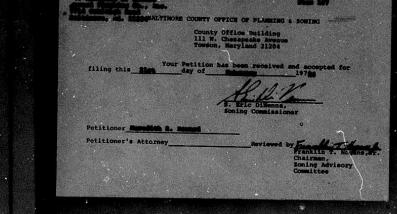
The petitioner should note with particular interest the comments of the Department of Traffic Engineering and the Project and Development Planning section.

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,

Frankli T. Hogans f FRANKLIN T. HOGANS, JR. Chairman, Zoning Plans Advisory Committee

Enclosure



TEPHEN E. COLLINS

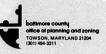
March 2, 1976

Mr. S. Eric DiMenna Zoning Commissioner County Office Building Towson, Maryland 21204

Item 157 - 2AC - February 10, 1976
Property Owner: Meredith R. Howard
Location: NM/C Oakleigh Rd. & Forrest Ave.
Existing Zoning: D.R. 5.5
Proposed Zoning: Special hearing to approve expansion of existing
non-conforming use

The access to this site is very bad and the parking along Cakleigh Road does not meet County standards.

Tyrihaeld. Heinge Michael S. Flanigan Traffic Engineer Asso



March 5, 1976

Mr. S. Eric DiNenna, Zoning Commissioner Zoning Advisory Committee Office of Planning and Zoning Baltimore County Office Building Towson, Maryland 21204

nts on Item #157, Zoning Adv'sory Committee Meeting, February 10, 1976, are as follows:

Property Owner: Meredith k. Howard
Location: NW/c Ookleigh Road and Forrest Avenue
Existing Zoning: D.R.5.5
Proposed Zoning: Special Hearing to approve expansion of existing non-conforming use
Acres:
District: 9th

This office has reviewed the subject petition and offers the following comments. These comments are not intended to indicate the appropriateness of the zoning in question, but are to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

The driveway on Oakleigh Road, to the proposed parking and storage areas, is inadquate because of the 10 foot width. all commercial type driveways must be a minimum of 24 feet in width. Parking calculations must be shown on the site plan. All parking areas must be paved and curbed.

The site plan must be revised to show the existing square footage of all uses, broken down into residential and non-residential; and the total floor area of uses to be added.

Very truly yours, John L. Wimbley
Planning Specialist II
Project and Development Planning

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

March 16, 1976

BUREAU OF

DEPARTMENT OF STATE ROADS COMM

BUREAU OF EALTH DEPARTMENT PROJECT PLANNING UILDING DEPARTMEN BOARD OF EDUCATION

INDUSTRIAL DEVELOPMENT

Mr. Meredith R. Howard Howard Plumbing Co., Inc. 7714 Oakleigh Road Baltimore, Maryland 21234

RE: Item 157 Meredith R. Howard, Inc. -Petitioner Special Hearing Petition

The Zoning Plans 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 comment are a result of this review and inspection.

These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the appropriateness of the requested zoning.

The subject property is located on the northwest corner of Oakleigh Road and Forrest Avenue, and is currently the site of the Howard Plumbing Comman, in the petitioner is requesting a Special Hearing to determine whether the existing non-courant use may be expanded onto a recontly acquired property to the rear of the subject site. The existing zoning for this property, as well as those properties surrounding, is D.R. 5.5.

It should be noted that this Special Hearing shall be heard concurrently with a pending Zoning Violation (Case No. 76-207-V), which concerns

BOARD OF EDUCATION OF BALTIMORE COUNTY

TOWSON, MARYLAND - 21204

Date: February 13, 1976

Z.A.C. Meeting of: February 10, 1976

Re: Item 157
Property Owner: Meredith R. Howard
Location: NW/C Oakleigh Rd. & Forrest Avenue
Present Zoning: D.R. 5.5
Proposed Zoning: Special Hearing to approve expansio

Special Hearing to appr

No bearing on student population.

Very truly yours, 1. Ties tourel

W. Nick Petrovich. Field Representative.

WNP/el

RICHARD W. THE-LY

Office of Planning and Zoning Baltimore County Office Building Towson, Maryland 21204

Attention: Mr. Jack Dillon, Chairman Zoning Advisory Committee

Re: Property Owner: Meredith R. Howard

Location: MM/c Oakleigh Road & Forrest Avenue

Zoning Agenda February 10, 1976

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "x" are applicable and required to be corrected or incorporated into the final plans for the property.

() 2. A second means of vehicle access is required for the site.

() 3. The vehicle dead-end condition shown at

EXCESS the maximum allowed by the Fire Department.

() is, The site shall be made to comply with all applicable parts of the
Fire Prevention Code prior to company or beginning of operations.

() 5. The buildings and structures existing or proposed on the site shall
comply with all applicable requirements of the National Fire Protection
Association Standard No. 101 "The Life Safety Code", 1970 Edition prior

() 6. Site plans are approved as drawn.

(1) 7. The Fire Prevention Bureau has no comments at this time.

(X) 8. Existing Drives way to rear of building makes it impossible to get Fire and Brook an

March 18, 1976

Mr. S. Eric DiNen Zoning Commissioner County Office Building

: Item #157 (1975-1976)
Property Owner: Meredith R. Howard
K/W cor. Oakleigh #6. & Porrest Ave.
Existing Zoning: DR 5.5
Proposed Zoning: Special Hearing to approve
expansion of existing non-conforming use.
District: 9th

Dear Mr. DiNenna

Calleigh Road in this vicinity, and Forrest Avenue, existing public roads, are proposed to be improved in the future as 40-foot and 30-foot closed section roadways on 60-foot and 50-foot rights-of-way, respectively. Highway improvements and highway rights-of-way widenings, including a filled trace for sight distance at the intersection and any necessary revertible easements for alopes will be required in connection with any grading or building permit application. Further information may be obtained from the Baltimore County Bureau of Engineering. The submitted plan must be revised accordinate.

The construction of sidewalks, curb and gutter, entrance, aprons, etc. as required, will be the full responsibility of the Potitioner.

The entrance locations are subject to approval by the Department of Traffic Engineering, and shall be constructed in accordance with Baltimore County Standards

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.

August 4, 1976

George A. Breshi, Esquire 418 Mercantile-Towson Building 409 Washington Avenue Towson, Maryland 21204

RE: Petition for Special Hearing and Alleged Zoning Violation NW/corner of Oakleigh Road and Forrest Avenue - 9th Election District Howard Plumbing Company, Inc. . Petitioner
Meredith R. Howard - Defendant
Nos. 76-200-SPH (Item No. 157)
and 76-207-V, C-76-295

Dear Mr. Breshi

I have this date passed my Order in the above referenced matter. Copy of said Order is attached.

Very truly yours.

S. ERIC DI NENNA

SED/scw Attachments
cc: Michael A. Pretl, Esquire
1700 One Charles Center
Baltimore, Maryland 21201 George A. Breshi, Esquire Page 2 August 3, 1976

cc: Mr. William G. Wood, President Towson-Lock Raven Community Council, Inc. P.O. Box 9709, Eudowood Branch

John W. Hessian, III, Esquire People's Counsel

rcem €157 (1975-1976) Property Owner: Page 2 March 18, 1976

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

The Petitioner must provide necessary drainage facilities (temporary or permanen to prevent creating any muisances 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.

Public water supply and sanitary sewerage are serving this property. Additional fire hydrant protection may be required in the area.

Very truly yours,

ELISMORTH N. DIVER, P.E.
Chief, Bureau of Engineering

N-SE Key Sheet 30 NE 11 Pos. Sheet NE 8 C Topo 80 Tax Map

RE: PETITION FOR SPECIAL HEARING for the expansion of an existing nonconforming use, and ALLEGED ZCNING VIOLATION on property located at the NW corner of Oakleigh Road and Forrest Avenue 9th District Howard Plumbing Co., Inc., Petit ioner Meredith R. Howard, Sr.,

BEFORE COUNTY BOARD OF APPEALS

OF BALTIMORE COUNTY

No. 76-200-SPH No. 76-207-V

OPINION

These cases come before the Board on an appeal by the Petitioner-Defer The properties are located at the northwest corner of Oakleigh Road and Forrest Avenue in the Ninth Election District of Baitimore County. Same may be further identified as 7714 and 7716 Oakleigh Road, and 1756 Forrest Avenue.

The file indicates that the County alleged that the lot at 1756 Forrest Avenue was being used for business purposes in violation of the Baltimore County Zoning Regulations The Appellant stipulated that such was the case. Absent any further testimony and evidence, the Board will find that the business use of 1756 Forrest Avenue is a violation of the Baltimore County Zoning Regulations.

The question was raised as to whether or not there was pending before the Board an allegation by the County that the properties known as 7714 and 7716 Oakleigh Road were being used in violation of the Baltimore County Zoning Regulations The Board can find no evidence that the violation charges were brought by the County against these two properties. Obviously, the Board, absent any charge, can make no findings of to whether or not there is a violation existing at 7714 and 7716 Oakleigh Road.

As to the Petitioner's request for a special hearing for expansion of a alleged existing nonconforming use on the subject property, said Petitioner chose to offer no testimony or evidence. Absent same, the Board will deny this petition. An Order in accordance with the above opinion follows hereafter.

TOWSON, MARYLAND 21204

April 7, 1976

Case 71.200 SPA

Mr. S. Eric DiNenna, Zoning Commissioner Office of Planning and Zoning County Office Building Towson, Maryland 21204

Couments on Item #157, Zoning Advisory Committee Meeting, February 10, 1976, are as follows:

Property Owner: Meredith R. Hovard
Location: NM/c Oakleigh Road & Forrest Avenue
Existing Zoning: D.R. 5.5
Proposed Zoning: Special Hearing to approve
expansion of existing nonconforming use.

District: 9th

Metropolitan water and sewer are existing.

Very truly yours.

Thomas H. Devlin, Director BUREAU OF ENVIRONMENTAL SERVICES

R.IW: nb

Howard Plumbing Co./Meredith R. Howard, Sr. No. 76-200-SPH and No. 76-207-V

2.

ORDER

For the reasons set forth in the aforegoing Opinion, it is this 14th day of February, 1977, by the County Board of Appeals, ORDERED that the findings and Order of the Zoning Commissioner, dated August 4, 1976, are hereby REVERSED, and

FURTHERMORE, the Board hereby finds that there is a violation existing or the lot at 1756 Forrest Avenue, and hereby ORDERS that the property owner cease all business use of this property within thirty (30) days from the date of this Order, and

FURTHERMORE, for the reasons set out above, the Petitioner's request for expansion of the alleged nonconforming use to the subject property is hereby DENIED.

Any appeal from this decision must be in accordance with Rules B-1 thru B-12 of the Maryland Rules of Procedure,

> COUNTY BOARD OF APPEALS OF BALTIMORE COUNT

Shert a Xais

17 1977

BEFORE THE

Howard Plumbing Company, Inc. -

: ZONING COMMISSIONER

Meredith R. Howard - Defendant NOS. 76-200-SPH (Item No. 157) and 76-207-V, C-76-295 BALTIMORE COUNTY

111 111 111

This matter comes before the Zoning Commissioner as a result of a Peti tion filed by Howard Plumbing Company, Inc., for a Special Hearing to approve the expansion of an existing nonconforming use at 1756 Forrest Avenue, and, additionally, as a result of a complaint filed with the Zoning Office concerning an alleged violation of the Baltimore County Zoning Regulations at the above location with reference to the operation of a commercial business in a residen

The following Baltimore County Zoning Regulations are involved:

Section 102. i - "No land shall be used or occupied and no ouilding or structure shall be erected, altered, located, or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use.

ction 104.1 - "A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandondiscontinuance of such nonconforming use for a period of one year or more, or in case any non business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shat-terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used. "

Both of the aforementioned cases were consolidated into one hearing, and

a copy of this Order shall appear in both case files.

Without reviewing the evidence in detail but based on all the evidence ed at the hearing, in the judgment of the Zoning Commissioner, the expansion of an existing nonconforming use should not be approved

In reference to the alleged zoning violation, i.e., an operation of a commercial business (plumbing and heating) in a residential zone, a review of the

By Order of the Deputy Zoning Commissioner on December 14, 1970, under Case No. 71-80-V, it was found that there is no apparent violation of the Baltimore County Zoning Regulations in that the owner of the property is conecting a plumbing business on the subject property and the same is considered a nonconforming use. This was a finding of fact based on the testimony presented

As a result of subsequent evidence presented at the initial and continued earings (Case Nos. 76-200-SPH and 76-207-V), and after reviewing the additional facts and accepting additional evidence, it is the opinion of the Zoning oner that the subject property does not, in fact, enjoy a nonconform ing use. Testimony by Mr. Meredith R. Howard, Petitioner-Defendant, and wner of the property, basically alleged that he began operating a business or the subject sites, i.e., 7714 Oakleigh Road and 7716 Oakleigh Road, in approx ately 1944-1945. He built a house on 7714 Oakleigh Road in 1948, acquiring the additional property in that same year. The improvement was not expanded 7716 Oakleigh Road until 1951 or 1952. The majority of the business is co ted at 7716 Oakleigh Road

mony on behalf of the Protestants-Complainants, indicated that the erties were never used prior to 1946 or 1947 and that Mr. Howard using the property for commercial reasons in 1948 to 1949, after he had built his house. The residents of the neighborhood never filed any type of complaint with reference to a commercial endeavor in a residential neighborhood because of Mr. Howard personally. At this time, it seems there has

-2-

been an increase in business or uses of the property, therefore, resulting in

A witness on behalf of the Petitioner, Mr. William J. Marsden, indicated that some trucks were stored on the subject properties prior to 1945; however Mr. Howard, in cross-examination testimony, indicated that no commercial use of 7714 took place until after his house was built. He indicated that property lying to the north of 7714 was used for storing of plumbing trucks and material. He further testified that the building, now located on 7716 Oakleigh Road, was formally a gas station, moved from the intersection of Loch Raver Boulevard and Taylor Avenue, and that said business is presently being operated out of that location

Without reviewing the evidence further in detail but based on all the evipresented at the hearing, in the judgment of the Zoning Commissioner, considering all the facts presented at both hearings, the subject property does not enjoy a nonconforming use for a plumbing business or any type of business The Zoning Commissioner has the right to overrule a previous decision if the present day facts are not substantially the same state of facts and same law applicable at the time of the initial hearing in 1970. Under this circumstance, it is obvious that more facts were presented at the present hearings to establish that the property does not enjoy a nonconforming use.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore day of August, 1976, that the Special Hearing to approve nsion of an existing nonconforming use at 1756 Forrest Avenue should and the same is hereby DENIED.

It is further ORDERED that the Defendant is guilty in violating the Baltinore County Zoning Regulations in that he is operating a business in a Density, Residential (D. R. 5. 5) Zone, which does not enjoy a nonconforming use. It is the Opinion of the Zoning Commissioner that an ample period of time should be given the property owner to move or relocate, inasmuch as the business has

been conducted on the subject property for some 25 to 27 years. It would be a difficulty and quite a hardship upon the Defendant to relocate immediately

It is further ORDERED that he relocate and cease and desist the use of the property as a business by April 4, 1977.

JER RECEIVED FOR

PROPERTY DESCRIPTION

For Proposed Rezoning of the Howard Property

Point of beginning for the first at a point made by the intersection of the northwest side of Oakleigh Road (40 feet in width) and the North side of Forrest Avenue (40 feet in width), thence N 83 degrees 48 minutes W 172.91', thence N 6 degrees 12 minutes E 289.94', thence N 82 degrees 10 degrees 10 seconds E 204.06', thence S 8 degrees 47 minutes 30 seconds W 165.0', thence S 57 degrees 07 minutes E 130.0'. thence N 32 degrees 53 minutes W 150.0' to the point of beginning.

I HERET CENTIFY, That on this 23rd day of September, 19th, before me, the subscriber, a Solary Public of said State, in and for the City of Ealtimore, aforesaid, personally account Sugare E. Reilly the vice-Fresident of said body corporate, Releasor, and acknowledged the said Deed of Fartial Release to be the act of the said body corporate Witness my hand and Noterial Seal.

08

RECE

Shirley Sutton

Shirley Sutton Notary Public. Recorded Sep 29 1946 at 12:10 PM & exd per T Braden Silcott-Clerk (red by MPH)

: eight, by and between Dorothy V. Burkholz Cresser

Exd by 594AG 70716 Dorothy V Suckhols Creamer et al : THIS DEED, Made this twenty-eight day of September. Deed to Meredith & Howard et al : In the year one thousand nine hundred and forty-USS \$1.65 ,SS \$1.65

-: and William Creamer, her husband, of ____ in the State of Maryland, of the first part, Grantors, and Maredith R. Howard and Catherin M. Howard, his wife, of Baltimore County, State of Maryland, of the second part, Grantees. WITHESSETZ, 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 Granters, do grant and convey unto the said Keredith R. Howard and Catherine M. Howard, his wife, as tenants by the entireties, their assigns, the survivor of them, and the heirs and assigns of the survivor of them in fee simple, all those two (2) lots of ground, situate, lying and being

in Baltimore County, State of Maryland, and described as follows, that is to say:-BEING all those two (2) lots of ground situate, lying and being in Beltimore County, State of Maryland, which are designated as Lots Nos. 375 and 376 on the Flat of the tract of land known as Hillendele Park No. 3, and recorded among the Land Records of Esitimore County in Plat Book C.W.B. Jr. No. 12, folio 12; and being the same two (2) lots of ground which by deed dated Pebruary 4, 1946, and recorded among the Land Records of Baltimore County is Liber J.W.B. No. 1643, folio 485, were granted and conveyed by The Moreland Real Estate Company, Incorporated, to the said Dorothy V. Buckhols, who has since married the said William

TOGETHER with the buildings and improvements thereupon spected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or anywise appertaining.

TO HAVE AND TO HOLD the said lots of ground and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurten advantages thereto belonging or appartaining unto and to the proper use and benefit of the said Meredith R. Howard and Catherine M. Howard, his wife, as tenants by the entireties, their sesigns, the survivor of them, and the heirs and assigns of the survivor of them, in fee

AND the said parties of the first part hereby covenant that they have not done or suffered to be done any act, matter or thing whatscever, to encumber the property hereby conveyed; that they will werrant specially the property granted and that they will execute such further assur ances of the same as may be requisite.

William Creamer

WITHESS the hands and seals of said gra-

George S. Nake George R. Make Dorothy V. Buckhols Creener (7741 Dorothy V. Buckholz Creams: William Creamer

I MEMPTY COUTLY. That on this 24th day of Santimber. In the year one thousand nice burning dred and forty-eight, before me, the subscriber, a Motary Public of the State of Maryland, in and for Baltimore City eforesaid, personally appeared borothy V. Buckholz Creamer and William Creamer, her husband, the above named grantors, and they acknowledged the foregoing Leed to be their act.

(Motarial Seal)

3

RECEIVED

090ER

George R. Nake

George R. Make Notary Public. Recorded Sep 29 1948 at 12:1C PM & exd per T Braden Silcott-Clerk (red by MAN) Exd by SGALG

: THIS DEED, Made this 28th day of September in the year Augt to Lillian Reichert et al : one thousand nine hundred and forty-eight between Wilter tes 310.45 as \$10.45 . F. Oliff and Elizabeth M. Oliff, his wife, of Beltimore -- : County in the State of Maryland of the first part, and Lillian Reichert and Blanche Reay, her mother, of the same County and State of the second

That in consideration of the sum of Five Dollars, and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said Walter F. Oliff and Elisabeth M Oliff, his wife, do grant and convey unto the said William Reichert and Blanche Resy, as joint temants and not as temants in common, their assigns, the survivor of them, her personal ntatives and assigns all that lot of ground situate lying and being in Baltimore County, State of Maryland, the improvements thereon being now known as Number 12 E. Manle Averue and described as follows, that is to says

ERGINNING FOR THE SAME on the northeast side of Maple Avenue at the distance of two hundred feet northwesterly from the corner formed by the intersection of the northeast side of Marle Avenue and the northwest side of Linden Avenue, which place of beginning is also designated to be at the southeast corner of lot number six hundred thirty-two (632) as shown on the pla of addition to Overles, which plat is recorded among the plat records of Baltimore County in Liber W.P.C. No. 2, folio 1964 and running thence northeasterly along the division line between lote numbers six bundred thirty-one (631) and six hundred thirty-two(632), a distant of one hundred forty-five feet to the southwest side of a ten foot alley there situates thence northwesterly along the southwest side of said ten foot alley together with the use thereof in common with others forty feet to the division line between lots numbers six bundred thirty (632) and six hundred thirty-three (633); and running thence southwesterly along said division line a distance of one hundred forty-five feet to the northeast side of Haple Avenue; thence asterly binding on the northeast side of Maple Avenue forty feet to the place of begin ning. Being known as lot number six hundred thirty-two (612) on the plat of the addition to

EEISG the same lot of ground as that described in a deed from the Frankford Real Estate Company to the said Walter F. Oliff and wife, dated July 13, 1946 and recorded among the Land Records of Baltimore County in Liber R.J.S. No. 1474, folio 391.

TOCKTIER with the buildings and improvements thereupon erected, made or being; and all and every, the rights, elleys, ways, waters, privileges, appurtenances and advantages, to the sees belonging, or in anywise apportaining.

TO HAVE AND TO MOLD the said described lot of ground and premises, unto and to the use of the said Lillian Reichert and Blanche Reay, as joint tenants and not as tenants in common, their assigns, the survivor of them, her personal representatives and assigns, for all th

CHIAPPARELLI AND BRESCH Atterneys at Law

SUITE 418
MERCANTILE - TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

GEORGE A BRESCHI CHARLES A CHIAPPA BOREST A BRESCHI



August 27, 1976

The Honorable Zoning Commissioner of Baltimore County Office of Planning and Zoning Towson, Maryland 21204

RE: N/W corner of Oakleigh Road and Forrest Avenue - 9th Election District Howard Plumbing Company, Inc. -Petitioner Meredith R. Howard, Sr. - Defendant 7714 5 7716 Oakleigh Road Nos. 76-200-SPH (Item No. 157) and 76-207-V, C-76-295

Dear Mr. Commissioner:

To clarify my letter of August 25, 1976, a copy of which is attached hereto, please be advised that it is our intention to not only appeal your determination as to a violation of the Zoning Regulations, but also to appeal your denial of the Special Hearing to approve the expansion of an existing nonconforming use at 1756 Forrest Avenue.

Thank you for your kind attention.

GAB:cm Encl.

cc: Michael A. Pretl, Esquire Smith, Somerville & Case cc: Mr. William G. Wood, President Towson-Loch Raven Community Cou Council. Inc. PPARELLI AND BRESCHI

SUITE 418
ERCANTILE - TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204



August 25, 1976

The Honorable Zoning Commissioner of Baltimore County Office of Planning and Zoning Towson, Maryland 21204

N/W corner of Oakleigh Road and Forrest Avenue - 9th Election District Howard Plumbing Company, Inc. - Petitioner Meredith R. Howard, Sr. - Defendant Nos. 76-200-SPH (Item No. 157) and 76-207-V, C-76-295

Dear Mr. Commissioner.

Please be advised that my clients, Howard Plumbing Company, Inc. and Mr. Meredith R. Howard, Sr., wish to enter an Appeal of the decision rendered on August 4, 1976 resulting in an adjudication that my client is in violation of the Baltimore County Zoning Regulations.

Attached please find check in amount of \$35.00 to cover the costs of said Appeal filing.

Thank you for your kind consideration and attention.

Very truly yours. GEORGE AL BRESCHI

GAR . cm

cc: Michael A. Pretl, Esquire
Smith, Somerville & Case
cc: Mr. William G. Wood, President
Towson-Loch Raven Community Council, Inc.

LIERS582 ME159

ents thereupon erected, made or being and all and Together with the buildings and improve very the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the seme

To Have and To Hold the said lot of ground and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Party of the second part, its

successors substand amigna

in fee simple.

And the said party of the first part hereby covenant a that he ha a not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that he will warrant specially the property granted and that he will xecute such further assurances of the same as may be requisite.

Witness the hand and seal of said grants

State of Maryland, City of Baltimore

1 HERENY CENTRY, That on this 24th.

before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore , personally appeared William J. Marades

known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are substribed to the within instrument and acknowledged that he executed the same for the purposes therein contained, and in my presence signed and scaled the same.

In Witness Whizzon, I hercunto set my hand and official sent

My Commission expires: July 1, 1978

Jenne A. Spenedond Res'd for resort NOV 6 1975 of 0 1975 For Elmer H. Kahline, Jr., Clerk

September 17, 1976

Case Nos. 76-200-SPH (Item No. 157) and 76-207-V, C-76-295 -

Howard Plumbing Company,

Meredith R. Howard, Sr. -

NW/corner of Oakleigh Road and Forrest Avenue - 9th Election District

Letter of Complaint from Eva C. Schmidt, dated December 17, 1975

Zoning Violation Inspection Record, dated January 13, 1976

Four Photographs

Four Letters of Protest-Complaint

Petition for Special Hearing

Memorandum of Howard Plumbing Company and Mr. Meredith R. Howard, Sr., from George A. Breschi, Esquire

Memorandum of Complainants and Protestants from Michael A. Pretl.

Description of Property

Plat of Subject Property.

Zoning Plans Advisory Committee Comments, dated March 16, 1975

Comments from William D. Fromm, Director of Planning, dated March 16, 1976

Resolution from William G. Wood, President, Towson-Loch Raven Community Council. Inc., dated March 9, 1976

Copies of Permit Nos. 25479 and 27850

Certificates of Publication

Certificate of Posting (Two Signs)

Square Footage Calculations Presented by Protestants

Zoning Inspector's Exhibit 1 - Four Photographs

Zoning Inspector's Exhibit 1A - Three Photographs

Protestants' Exhibit A - Illustrated Plat

Protestants' Exhibit B - Seven Photographs

Protestants' Exhibit C - Two Page Signed Petition from Area Residents Not

) THIS JEED Rade this sixth day of Septemberin the year one Mirey and Victoria R Airey his wife of Beltimore County in the Meredith R Howard et al little of Maryland of the first part and Grantors and Meredith a 10 12.20 55 52.20 Howard and Catherine M Howard his wife of Baltimore City State of Maryland of the second pat Grantees

WITSESSETH that is consideration of the sum of Five Dollars (\$5.00) and other valuable. considerations receipt whereof is hereby acknowledged the said Grantors do grantest compa unto the said Grantees as tenants by the entireties their heirs and assigns h fee single all those lots of ground situate lying and being in Seltimore County aforesaid and dea cribed as follows that is to say

BEGINNING for the same at the point made by the intersection of the Murthwest side of Cakley Avenue 40 feet wide and the North side of Forest Avenue 40 feet wide thence bind. ing on the Northernmost side of Porest Avenue North 83 degrees 48 minutes West 122.92 feet thence North 6 degrees 12 minutes East 44,91 feet thence parellel to Cakley Avenue Emith 32 degrees 53 minutes must 115.08 feet to the division line between Lot No 37% and Lot No 375 thence binding on said division line south 57 degrees 07 minutes East 130 feet to the Northwest side of Cakley Avenue thence binding on the Northwest side of Cakley Avenue South 32 degrees 53 minutes West 100 feet to the mint of beginning

BEIET lots Nos 371 372 373 and 374 as shown on the Flat of Hillendale Park So 3 recen among the Land Records of Bulti more County in Plat Hook Liber C w B Jr No 12 folio 12

Fig. title fee the following Deeds One dated March 5th 1941 from Moreland Real Little Company Incorporated to Victoria R Airey and recorded among the Land Records of Saltinize County in liber C W o Jr So 1147 folio 349 Etc and the other dated October 14th 1941 from Moreland Real Estate Company Incorporated to the said Grantors and recorded among the Lan Records of Beltimore Courty in liber C H & No. 1196 Folio 22 Etc.

TOSETHER with the buildings and improvements their upon erected hade or being and il ant every the rights alleys ways waters privileges appurtenances and advantages to the seme belonging or anywise apportaining

TO HAVE AND TO WILD the said by of ground and premises above described and man and hereby intended to be conveyed together with the rights privileges appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Grambes as tenants by the entireties their beirs and assigns h fee daple

AND the said parties of the first part hereby comment that they have not duest suffered to be done any act matter or thing whatspever to encumber the propertyhereby conveyed that they will warrant specially the property granted and that they will mertis such further assurances of the same as may be requisite Witness the hands and seels of mid grantors

in and for the County eforesaid personally appeared Thomas L Airey and Victoria E Aire?

Victoria 8 Airey (Seel)

STATE OF PLORIDACOUNTY OF SEMINOUS TO WIT I MARKET CENTIFY That on this 6th day of September in the year one thousand mind hundred and forty-seven before me the subscriber a Noticry Public of the State of Florida Case Nos. 76-200-SPH (Item No. 157) and 76-207-V, C-76-295 Page 2 September 17, 1976

Protestants' Exhibit D - Two Page Signed Petition from Area Residents

Protestants' Exhibit E - Map Showing Property Ownership

Protestants' Exhibit F - Microfilmed Copies of Legal Documents

Protestants' Exhibit G - Microfilmed Copies of Legal Documents

Protestants' Exhibit H - Deed Between William J. Marsden and Howard ambing Company, Inc., dated October 24, 1975

Protestants' Exhibit I - Fifteen Photographs

Protestants' Exhibit J - Nine Photographs

Protestants' Exhibit K - Ten Photographs

Protestants' Exhibit L - Colored Plat

Order of the Zoning Commissioner, dated August 4, 1976 - Special Hearing DENIED; VIOLATION EXISTS (the Defendant is guilty in violating the Baltimore County Zoning Regulations in that he is operating a business in a Density, Residential (D. R. 5. 5) Zone, which does not enjoy a nonconforming

Letter of Appeal from George A. Breschi, Esquire, on Behalf of Howard Plumbing Company, Inc., Petitioner, and Mr. Meredith R. Howard, Sr., Defendant, received August 25, 1976, with Attached Supplementary Letter,

George A. Breschi, Esquire Suite 418, Mercantile-Towson Building 409 Washington Avenue 21204

Counsel for Petitioner-

Mr. Meredith Howard

Petitioner, Defendant

Howard Plumbing Company, Inc. 7714 Oakleigh Road 21234

Michael A. Pretl, Esquire Counsel for Protestants 1700 One Charles Center 21201

Mr. William G. Wood, President Towson-Loch Raven Community

Council, Inc. P. O. Box 9709, Eudowood Branch 21294

Mr. & Mrs. Albert F. Schmidt 1754 Forrest Avenue 21234

Protestant

Protestant

John W. Hessian, III, Esquire People's Counsel

(Noterial Seal)

People's Counse

Liber 1509

his wife the above mated grantor; and they acknowledged the foregoing Deed b to that and As Witness my hand and Motorial Seal

Grace L French

Pr commission expires Feb 5 19-8 John & Bishop Clark Record Sep 17 1947 at 11:30 AM & ext per at by 35110

) THIS PARTIAL RALEASE Nade this 20th de of August 1967 by Selto Fed Swgs & L Asso | Haltimore Federal Savings And Loan Association a body corporate Chatles H Deise et al) . ITRESSETH That whereas portion of all the coverants of the

hereinafter described Mortgare have been performed and a portion of the whole sum of money and interest secured thereby has been told and satisfied the said body corporate doth grant and release unto Charles H Deise and Annabelle P Deise his wife heir heirs personal representatives and assigns all that lot of ground and premises being a portion of the property described in a Mortgage from Charles H Deise ad Annabelle P Deise his wife to the said body corporate deed January 3rd 1947 and recorded among the Lend Record of Saltimore County in Liber J . B No 1531 folto 159 more :mitfcularly described as follows

ABSINGING for the same on to southwest side of Topac Road at a point distant 250 feet resured south 45 degrees 28 minutes east from the intersection of the southwest side of oper Road and the southeast side of Opel Road running thence and leaving Topes Road at right angles and parallel with opal Road 140 feet thence southeasterly and parallel with Topas Road 50 feet thence northeasterly and parallel with Onal Road 140 feet to the south west side of Topus Road thence binding thereon 50 feet to a point of beginning being lot 85 as shown on the Flat of Subdivision 1 2 and 3 of the land of the Canton Company of Baltisore unrecorded free and olar from the operation of said Mortgage Said body corporate Releasor however retains its lien on the belance of the roperty described in said Mortface not hereby nor heretofore released

AS WITERS the corporate seel of said body corporate and the signature of Joseph M Eisley its Vice-Presi

attested to by its Secretary Joseph R Schneider

PALTIMORE FEDERAL SAVINGS AND LOAD ASSOCI-

By Joseph M Hisley Vice President

(Corporate Seal) STATE OF MARYLAND BALFINGRE CITY TO WIT

I HERBIY CERTIFY That on this 20th day of Aurust 1947 before me the subscriber a Motary Public of said State in and for pultimore County personally appeared Joseph M. Hisley the Vice President of said body corporate Releasor and canowledged the said Deed of Partial Release to be the act of the said body corrects

Witness my hand and Motorial seal

J Hot to Smith Motary Public BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO S. Eric DiNenna, Zoning Commissioner Date March 16, 1976

FROM William D. Fromm, Director of Planning

This Deed, Made this twenty-fourth

the mid party of the first par

buccessors knis and assigns,

in fee simple, all

Baltimore County

9th Election District of

GLIMAN J. NAPSDEM of Baltimore County, State of Maryland,

MONAND PLINDING COMPANY, INC. , a body corporate of the State of Maryland,

good and valuable considerations, the receipt whereof is hereby acknowledged

do es hereby grant and convey unto the said party of the second part, its

Witnesseth, that in consideration of the sum of five (+5,00) and 00/100 Pollars, and other

SUBJECT Petition #76-200-SpH. Petition for a Special Hearing for the expansion of an existing non-conforming use.

Borthwest corner of Oakleigh Boad and Porrest Avenue Petitioner - Howard Plumbing Company, Inc.

9th District

Hearing: Wednesday, March 31, 1976 at 10:00 A.M.

There are no comprehensive planning factors requiring comment for this special hearing.

UBER5582 PASEL 58

party of the first part and

lot (e) of ground, situate, lying and being in

4 5 0.00 80

, State of Maryland, and described as follows, that is to say:-

Octomingsforethe BEING ENGEN AND DESIGNATED as Lots Nos. 369 and 370, as shown

BEING the care lots of ground which by Deed dated September 5, 1942, and recorded

among the Land Records of Saltimore County in Maher C.H.K. No. 1252, Polio 157, was granted

and conveyed by Moreland Heal Estate Company/unto milliam *. Maraden and Elizabeth Maraden,

his wife, as temants by the entireties. The said blizabeth Marsden departed this life on or about the 15 day of JUNE , 1874 thereby vesting title in the said

on the Plat entitled, "Flat No. 3 dillendale Fark", which Plat is recorded among the

land Records of Baltimore County in Plat Book C.W.B., JR. No. 12, Folio 12.

William . Marsden, the within named Grantor, by right of curvivorship.

12061 2um 5

The improvements thereon being known as NO. 1756 Forrest Avenue.

177-6-75 2 1161# eee25678

WDP/JGH/er

GREEN HOUSE 2005,2 7 SF GAFAGE 400,00 SF 2463.00 S.F. 2485,00 SF 148,8563% RED HOUSE 522.00 S.F. BROWD SHED ORANGE HOUSE 1116 SF 1486E BULDING 594,99 SF SMALL BUNDING 258,72 SF 2 - 3 37,3869 % TOTAL PROP HOUSE & SHEP % INC 45,3106 % HOUSE ONLY %INC 65.9869 % TOTAL PROP HOUSE & SHED TO INC 79,9720% HOUSE OVER HOUSE & OUTBARD % INC

LISTING OF ATTENDANTS

AT

· Yes

· _ 40 yes

: yes

YES

260

yes

CASE NO. C-76-295, Special Hearing for Determination and Expansion of Non-Conformance Use

Oliver P. Revis 1749 Torrestare: no.

lina T. Bill 1800. Forest Hoad

Helen M. Boyles 1801 Faunt Road Dale & Boyles 1801 Formet Stand

Dorthy M. Leaves 7608. Oalligh Road

Era & Diet 1753 Forest and Plantes True Charles 1750 From Caklingh Rd.

Verginia M Cornelly 1803 Forest Rd. Meta Chaugh 1734 Forest are 40 . R Bough 1734 Forest Av Gra C. Schmidt 1754 Forest are

Mary Marrade 1809 Windows Rd Raymond Stopes 7722 OAKERGH Fo Central Stopes 222 CAKERGA S

Parl Thory 1738 Westworth AM

Linda Dansberger 1733 Forrest avenue

William of Justine 1750 Forest one: yes
William of Milfornian 1815 WE NOVER AD. 465
What C Klarman 1815 WE NOVER AD. 465
John of Klarman 1753 Forrest du No
Trond Jelante 7710 OAKleigh RI Yes
a. Douglas Markland 1712 Forest Ave Yes
Marke & Markland 1712 Forest Ave Yes
Willand H Jelman 1817 Helder Ro = 465

0

LISTING OF ATTEMDANTS (Continued)
Case No. G-76-295, Special Hearing for Determination and
Expansion of Non-Conformance Use

GARAGE 400,005F BEILIONAL SHOP

8 BROWN SHED

C ORANGE

1756 DAKLEGEN

PERPOSED AREA 52782

HOUSE TO PARKING LOT

1116.0 S.F.

D LACE OF ROG. 394.99 S.F. 3853.71 1969.712

E SAME OUT ALDG. 258,72 S.F. 3,755600

45,3,0 % NERESE

RED HOUSE - DWELLING + EXPANSION OF LOF 2,496"

HOUSE TO SHED INCREASE OF 21.194 %

2463.00 S.F. 29\$5,00 S.F. CHETCHINSE 615,75 % 522.00 S.F. 115 MINGERALE 7716 INCREASE

GARAGE TO HOTE I SHED 744,25 %

NAME	ADDRESS	WILL TESTIFY
aymond & Danst	ugue 1733 Formal ave	= 1900
Setty Mockans	6 1752/2 Forms	of anc : Mes
Tatal Markant	11501/2 Gornes	
Sparon June	4 130 Farest au 1710 Forest	e : nus
PAUL BECKER	1710 Forest	Ave : des
fel ofluis	of 1754 Fores	tave - Up.
	- 1710 Forrest	an : yes
Will Deal	O may yame Ti	ino : Pin
Cal Do Count	1 1003 Jones + Rd	- Wes
acting a some	ly 1803 Former Rd	i - h.
July 11 Many	for 1806 Forest Ro	" "Y so
1.7 malay	1821 Wenters	· ous
27 mal	K 1729 Formest a	y sps.
1 de morning	11737 Force	
N + Meller	1000	re: "
go Wonderor	A 1701 Format an	3 1/-
Hoyell Sur	1748 Forest av	. : yes
Giller G. Cour	i 1200 To race	- el
Janu Co-see	i 1728 Forest Que	- Ger
Moure of the	- 1728 Forest 1	tre: yes
Mary G. Stein	1708 Forrest au	
Barb Dem	1725 Forsest Are	
flun Vinup	17:47 Wentworth	, No
JOHN BROWNELL		
Rosaliz Reed	1740 Worthworth P	1. : No
a Slattery	7822 Oukle	get you
1 12 0	1822 Wake	sight!
Why La Bante	1718 Forget are	· yse
An La Plato Gotile F172 WAH P. P. Somlino.	ine June ta	e : clas
ESTIE FITZ AVAA	1720 FURRUST AN	· 45
SDC 0.	- Randallsten	med NIO

PROPOSED REAR PARKING AREA 61' X 93' = 5278 S.F. AREA

5673.00

TOTAL AREA OF HOWARD PROPERTY DE NOTED AP-2 = 22,753 S.F.

25 % of 22,753 SF = 5,688 AREA OF PROPOSED PARKING AREA IS 5278 S.F.

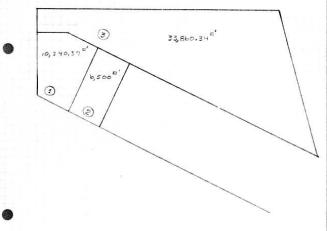
DWHEN MR HOWARD BOUGHT PROPERTY #1 IT EAVE HIM

2) WHEN ME HOWERS ROVERT PROPERTY \$\frac{1}{2} = 17 \text{ BAUF HIM} \\
\(\text{SSO 59.FT, ADDITIONAL AN INCREMSE OF 63.47169 \\
\text{FOR A TOTAL OF 16740.37 Sq.FT, PARCHINED 9-28-48} \end{area}

3) WHEN MR HOWERS BOUGHT PROPERTY \$... GAVE HIM

23,860.24 Sq.Ft. Additional Published 10-14-17

AN INCREASE OF 330,6554 76 OFFE HIS ORIGINAL PROPERTY
AN INCREASE OF 37.224517 MOVER FOR PRIVIOUS PROPERTIES
AN ATTAL INCREASE OF 394,12970 % OVER OXIGIONAL PROPERTY



PETITION

March 30, 1976

CASE #C-76-295, Special Hearing for Determination and Expansion of Non-Conformance Use

WE, THE UNDERSIGNED, though unable to attend, do oppose the (determination), expansion and violation of the non-conforming use referred to in Case No. C-76-295, to be heard by the Zoning Commissioner on March 31, 1976.

NAME	ADDRESS	ZIP
Lot of Myro (la 1745 Honoret la	Dec 21234
mela 1 Myst	1745 Foresta	e 2/23/
	igner	
Tabel & Har	hour 1746 Form	ex luc 212
rarie & Plot	1743 For	est Care 21.
rru 1 Plett	1743 Forre	et ave 21
attles Fither	D 1720 Forres	Qu. 2123
atherine 100	ble My Horres	t are 212
ous norak	1709 Fores	an. 312.
	1751 FORREST	
Lancy Pelson	1741 FORREST	AVENUE 210
what a Warry	1741 FUTTOS	7 Aur 217
forward V. Lel	early 1739 ForFEST	AUE 212
Robert P	Hillih 1736 FOREISS	AUE 2123
in M. Neberlem	1736 Forrest ave	2123
Rareines A.	esser 1731 Form	tan 2123
en y person	I 1731 Forest	an 2/23
ames P. Aleenen	6. 1780 FORREST	QUE 2/234
at Maghill	1725 Forest ave	21234
larene Lahosk	~ 1723 forrest a	ve 21234
	4 1733 Fruss ~	
enund P. M.	Munto 1701 FORK	EST ANT 212
100m (1) and	work 1701 Fort	+11 0

PETITION

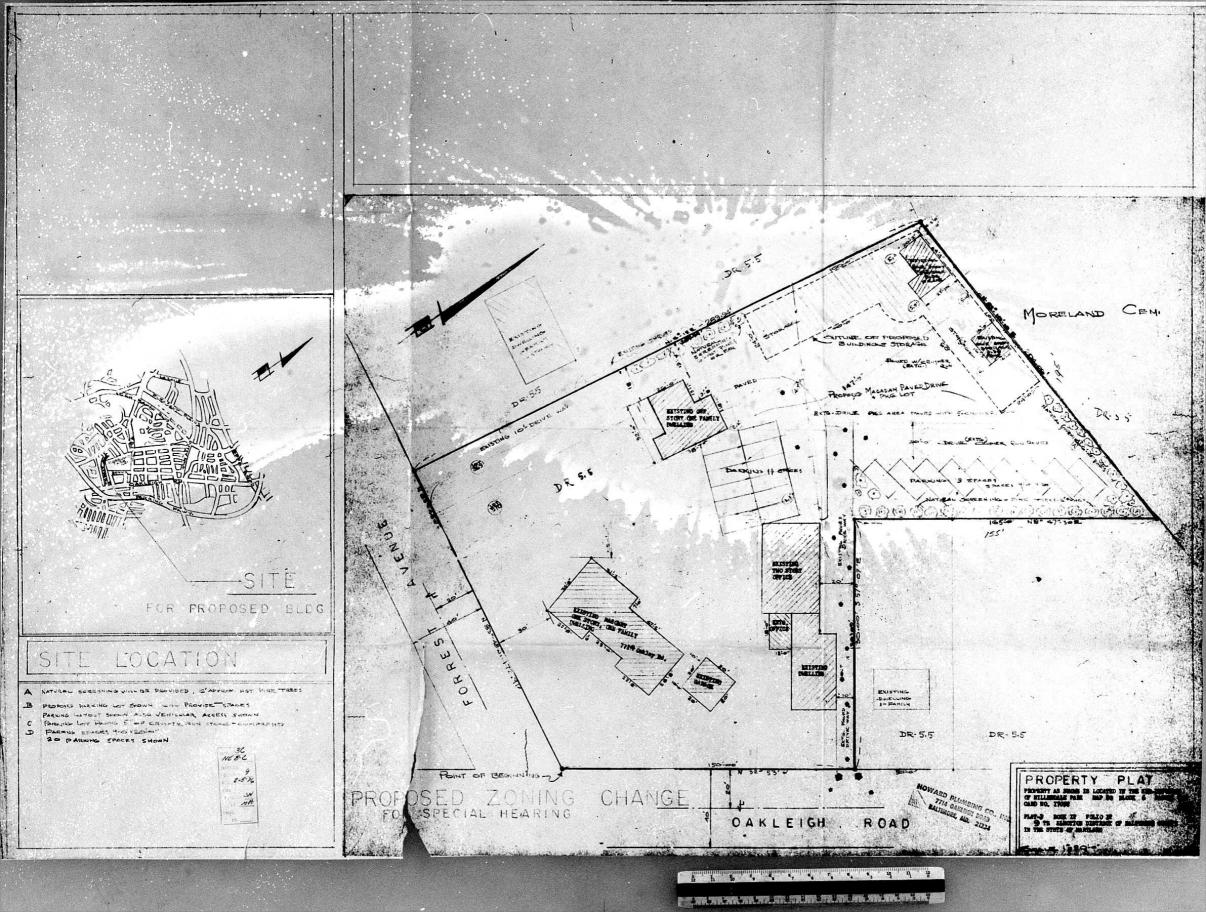
March 30, 1976

CASE #C-76-295, Special Hearing for Determination and Expansion of Non-Conformance Use

WE, THE UNDERSIONED, though unable to attend, do oppose the determination, expansion and violation of the non-conforming use referred to in Case No. C-76-295, to be heard by the Zoning Commissioner on March 31, 1976.

ADDRESS ·	ZIP
1809 Forust Let	21234
Sr. 1809 Forust K	2 21234
1804 Forestk	21234
1700 FURNESY R	1. 21234
1801 Wendover 1	rd - 212 34
1 1801 6/20 Sandel It	2 01234
- 7710 Dukland	Rom 212:
- 2708 Ochland	1. 2/224
	ADDRESS 1807 FORLET RE 82. 1809 FORLET R 1804 FORLEST R 1801 Wendower 1 1801 Wendower 1 1801 Wendower R 7710 Duklang 7718 Oaklugh R

Page 1



IN THE MATTER OF HOMARD PLUMBING COMPANY 7714 Oakleigh Road Baltimore, Maryland 21234

ZOUG DEPARTMENT OF BALTI Nos. 76-200 SPH (Item No. 157) and 76-207-V, C-76-295

.M. 8'76 PM

In order to place this matter in its proper prospective with regard to this case, let us briefly review the occurrence of

- 1. On December 14, 1970, the Deputy Zoning Commissioner ruled that the Howard Plumbing Company had a non-conforming use of the property located at 7714 Oakleigh Road, which includes 7716
- 2. In October, 1975, the Howard Plumbing Company purchase lot and home at 1756 Forest Avenue from William J. Marsden.
- 3. After consulting with members of the Soning Office in Baltimore County, Mr. Howard had a plat prepared expanding the use of his property at 7714 Cakleigh Road to include part of the proper located at 1756 Porest Avenue.
- 4. Before any action was taken by Mr. Howard, the plat was to the members of the community surrounding his property at Oakleigh Road. After review of the plat by the neighbors, and no ment forthcoming, Mr. Howard submitted the plat to the Soning
- 5. Upon review of the proposed plat as to cost involved the possible construction and upon advice of counsel, the plat was changed to reflect a twenty-five (25%) percent increase of the -conforming use in accordance with the Zoning Regulations of altimore County for parking only

be known and the neighbors were quite aware of the existence of the business when they purchased their homes in the neighborhood.

The difficulties of the Zoning Commissioner and any individual placed in the position of making a determination between two adverse parties can well be recognized. However, in the Neuman, et al vs. Mayor & City Council, supra, case, it stated

"Zoning should never be allowed or disallowed or the basis of a plebiscite of the neighborhood."

The right of an individual to own property without unneces sary interference and the right to earn a living are two of the most important rights that have been guaranteed by the Constitution of the United States. The situation in this case would appear to be a "neighborhood squabble". The Zoning Commission is not the proper place to resolve such intra-neighborhood differences

It should be noted that it was not Howard Plumbing Company fault that the residents of the neighborhood did not attend or protest the hearing held in 1970. To penalize Howard Plumbing Company for the inaction of the citizens of the neighborhood for over thirty (30) years is unconscionable.

Also, Howard Plumbing Company is willing to do what is necessary to shield the proposed parking area from the general public and to make any arrangements for the safety and health of all the citizens and neighbors in the neighborhood

In summation, it is respectfully requested that the proposed disallowance of the non-conforming use be overruled by the Commissioner and that the Howard Plumbing Company be allowed to extend the non-conforming use by twenty-five (25%) percent to allow proper parking in the area.

CHIAPPAREL

Respectfully submitted. CHIAPPARELLI & BRESCHI

DRIE A. BRESCHI GEORGE A. BRESCHI 418 Mercant/le-Towson Building Towson, Maryland 21204 296-682 Attorneys for Howard Plumbing

6. The amended plat was submitted to the Commissioner at the hearing on March 31, 1976.

7. At the hearing, the Protestants not only indicated that they were going to oppose the extension of the properties, but were also, in fact, going to attempt to have the original determination of 1970 as to the non-conforming use of 7714 Oakleigh Road reversed Counsel raised an objection on the fact of res judicata but the Commissioner withheld his decision and allowed testimony on the

8. On June 15, 1976, additional evidence was heard by the Soning Commission in regards to this matter and an on-sight inspe tion of the property was made.

The principal question to be determined is whether the held in 1970 and determination made by the Soning Commission as proper and if, in that case, res judicata would apply.

The Protestants in this case argue that res judicata does not apply to administrative hearings and prior to 1955 that was correct. As stated by Professor Davis in Section 18.08 of Volume 2 of his work on Administrative Law at pages 601 and 602:

"Worst of all is what the Maryland Court has done to lump together all agencies, to say that they are arms and instrumentalities of the legislature and are not judicial at all, and to conclude that, therefore, administrative action can never be residuicate. The unfortunate results of this type of thinking are rather clearly brought out in the Maryland Roming cases. - Happily, however, the Maryland Court has seemingly retreated from its extreme position, for it has specifically acknowledged that innumerable controversies are decided today, by boards of legislative creation, of a character that traditionally fell within the scope of judicial inquiry." (Citing Hecht vs. Crook, 184 Md. 271).

The most important case in Zoning matters and the of res judicata is the Whittle, et al vs. Board of Soning Appeals of Baltimore County, et al, 211 Md. 36. In that case, the Maryland

IN THE MATTER OF

BEFORE THE ZONING COMMISSIONER

HOWARD PLUMBING COMPANY NW/Corner of Oakleigh Road and Forrest Avenue -9th Election District

OF BALTIMORE COUNTY 488 Nos. 76-200 SPH (Item No. 157) and 76-207-V, C-76-295

MEMORANDUM OF COMPLAINANTS AND PROTESTANTS

More than 60 residents and property owners in the vicinity of the Howard Plumbing Company property made complaint, and appeared at hearings on March 31 and June 15, 1976, to protest expansion of that enterprise under the guise of non-conforming use.

THE FACTS

It is unnecessary to review the evidence in lengthy detail. Uncontradicted evidence at both hearings showed the following:

a) that Meredith R. Howard purchased the corner property at 7714 Oakleigh Road from Thomas L. Airey and wife by deed dated September 6, 1947, and immediately began construction of a large home on that lot;

b) that thereafter, on September 28, 1948, Howard purchased the adjoining 50-foot lot at 7716 Oakleigh from Dorothy Creamer, and erected various structures on that lot during the 1950's and 1960's: and

c) that on October 24, 1975, Howard Plumbing Company purchased a larger lot behind the other two at 1756 Forrest Awenue from William J. Marsden.

There is abundant evidence in the record that the use made (or proposed to be made) of these properties by Howard Plumbing Company is wholly incompatible with an area that has developed from rural terrain to a residential community within the last 30 years. The residents argue that the business has expanded not only in area but in intensity and disruptive impact during that period. Howard

Court of Appeals applied the doctrine of res judicata to administrative hearings. Although it was not a strict interpretation as would be commonly applied in judicial hearings, the general proposition of the doctrine was applied:

"This rule seems to rest not strictly on a doctrine of res judicate, but upon the proposition that it would be arbitrary for the Board to arrive at oppo-sit conclusion on substantially the same state of facts and the same law."

This doctrine was also applied in the Moodlawn Association vs. Board of County Commissioners of Prince George's County, 241 Md 187. In that case, the Maryland Court of Appeals recognized that a hearing held in 1961 denying a re-zoning of a parcel of property was valid and that the subsequent request for re-zoning in 1964 wa invalid based on the principals of res judicata. This doctrine was also recently discussed in the Board of County Commissioners of Cacil County, et al vs. Elwood Racine, 24 Md. Appellate's 435.

Normally, the doctrine is applicable in all situations except where a substantial error of fact is determined to have occurred in the original hearing. This is the principal contention of the Protestants in this case. However, it is apparent that the burden of proving the substantial error is upon the Protestants. They contend that this burden has been met principally on the fact that Mr. Howard did not purchase the land until 1947 and a second parcel, until 1948. As stated in the Nelson Neuman, et al vs. Mayor & City Council of Baltimore, 23 Md. Appellate's 13, the fact of ownership is not controlling as to the non-conforming use. It held that non-conforming use is not determined by ownership of the property, but by the use to which the property was put prior to the enactment of the Zoning Regulations.

To overcome this fact, two of the Protestants, a Mrs Frances Revis and a Mrs. Dietz, who owned property prior to 1945,

(3)

counters with an argument that he staked his claim to the location before most of the present residents arrived, and exercises therefore some kind of prescriptive right to the territory. In growing communities, this is a not unfamiliar and never-ending debate.

However in the present case, the decision must rest on more than a balancing of the present equities; the situation precludes some Solomon-like compromise. For fortuitously, the law wrests such an exercise of discretion from the decision-maker here, and permits

There is no question but that Howard Plumbing lacks the basis for its present or future uses of the site, under the Baltimore County Zoning Ordinance. That ordinance went into effect in 1945, and Howard clearly has not shown the necessary use of the property prior to that time.

At the hearing on March 31, as at the 1970 hearing in cases 71-80-V and 2V-70-376, Meredith Howard Sr. attempted to prove prior use of the corner lot at 7714 Oakleigh Road for his plumbing business. In the language of the Order in the previous case he testified in 1970

"...that in 1943 or 1944, equipment was being parked and that a plumbing business commenced to operate at that time."

On the occasion of the first hearing in this case, Howard conceded that he did not own the land until 1947, but he asserted that the then-owner of the corner property acquiesced in the storage of lumber and other materials of Kathy Construction Company on a portion of

Recognizing that protestants could disprove that assertion. Howard changed his testimony at the June 15 hearing to assert that vehicles of Howard Plumbing Company were parked prior to 1945 on the lot at 7716 Oakleigh, by permission of the owner's father. And recognizing that even if believed, that claim gave him too little territory subject to the alleged non-conforming use, he gratuitously

testified that Mr. Howard never used the property prior to 1946-47. For some unknown reason, these two ladies never complained about the use of the property for thirty (30) years, but come forward at this time to say that they, in fact, know that the property was never used prior to 1945. However, Mr. Howard testifies to the fact that he did use this property prior to 1945 and Mr. William J. Marsden, who lived directly in back of the property in question testifies that there was, in fact, storage of vehicles and plumbing equipment prior to 1945. This conflicting testimony can in no way substantiate the Protestants' claim that a substantial error was made in the determination of 1970. The burden of proof being squarely on the Protestants to prove such an error was made has not

Several other Protestants have testified that there has been a substantial increase in use of the business and expansion of the actual business. In the cases of Nyburg vs. Solmson, 205 Md. 150, Feldstein vs. Zoning Board, 246 Md. 204, and Jahnigen vs. Staley, 245 Md. 130, the Courts, over and over, state that the intensification of a non-conforming use is permissable as long as the nature and character of the use is unchanged and substantially the same facilities are used. There has never been a question raised that Howard Plumbing Company has been a mechanical plumbing company since 1937 when it was originally located in Baltimore City.

Other than Mrs. Revis, Mrs. Dietz and Mr. Marsden, no other Protestant has or can claim that they entered into the neighborhood not knowing of the non-conforming use of Howard Plumbing Company. One of the tests that have been used to determine a non-conforming use as stated in the Chayt vs. Board of Zoning Appeals, 177 Md. 426, is whether the non-conforming use was known in the neighborhood. The Howard Plumbing Company has always let it

added an assertion that he used also, for similar purposes, the adjoining land now owned by Mr. and Mrs. Strough, and that recently purchased from Marsden.

That testimony cannot be believed. Mrs. Revis testified that between 1942 and 1947, she and her friends picnicked on the then-wooded lots and saw no sign of vehicles, equipment or building materials. Mrs. Dietz, a friend of Meredith Howard for more than 50 years, stated that Howard lived in her home across the street until he built his own home in late 1947, that she assisted in his purchase of the corner lot at 7714 Oakleigh, and that to her acute recollection, he maintained no trucks, equipment or materials on the property in question before he began to construct his home.

ARGUMENT

It is submitted that this limited evidence is enough to compel, as a matter of law, a determination that no non-conforming use ever existed, that would justify expansion or even continuation of the use of these properties in the plumbing business.

To begin with, Howard did not and could not show what portion if any of the properties was so used prior to 1945. Nor did he show any right or title to use the land, even if his testimony were to be believed. Nothing in the record permits a finding in this case that any definable portion of property or properties was dedicated to the claimed use.

To constitute a nonconforming use of property, a use must be more than casual or temporary; one test is whether such use was known in the neighborhood. Feldstein v. Zoning Board, 246 Md. 204 (1967). It has been repeatedly stated that

"...'existing use' should mean the utilization of the premises so that they may be known in the neighborhood as being employed for a given purpose, i.e., the conduct of a business." Dorman v. Mayor & City Council, 187 Md. 678 (1947); Landay v. Board of Zoning Appeals, 173 Md. 460 (1938).

-3-

A closely analogous case to the present case is <u>Boulevard</u>
<u>Scrap Co. v. Mayor 6 City Council</u>, 213 Md. 6 (1957), where the Court
of Appeals held that a claim of non-conforming use was not sustained
by evidence which showed, at best, that an unspecified portion of a
"lot ... covered with well grown trees and bushes" was, from time
to time, used for purposes of storage. Not one of the witnesses
who testified was "explicit as to the extent of use"; one witness
testified that "practically the whole yard was used," but he was
unable to show the extent of use in relation to a plat describing
proposed expansion. On this evidence, the Court of Appeals (at 12)
stated two separate reasons for denying an application for expansion
of a use in effect for many years:

"We think at best the evidence only establishes a casual or occasional use of a portion of the lot for storage. Cf. Mayor 6 C.C. of Balto. V. Shapiro, 187 Md. 623, 635, and Daniels v. Board of Zoning Appeals, 205 Md. 36, 41.

. . [Moreover,] even accepting the testimony that one-third of the lot had been used occasionally for storage, the testimony is too vague and inconclusive to establish that such use was regularly made prior to the passage of the Ordinance in 1931."

It is earnestly submitted in this case that the evidence submitted by applicant at two hearings does not support extension or continuation of his nonconforming use. He bears the burden of proving that the nonconforming use existed in 1945, <u>Lapidus v. Mayor & City Council</u>, 222 Md. 260 (1960), a burden which he has not sustained.

Clearly no binding or presumptive effect may be given to the 1970 determination in Case 71-80-V, for two reasons. First, it has been held by the Court of Appeals that "the principles of res judicata do not apply where the earlier decision as well as the later decision is made by an administrative agency," especially where there is some "inadvertence" or change in fact. Gaywood Community Assoc. v. MTA, 246 Md. 93 (1969). Moreover, the present protestants obviously were not parties or privies in that proceeding. Prescott v. Coppage, 266 Md. 562 (1972); Pat Perusse Realty Co. v. Lingo, 249 Md. 33 (1968).

On the merits of the present application itself, the establishment of a nonconforming use is disfavored in the law, and the ordinance should be strictly construed against the applicant.

Arundel Corp. v. Board of Toning Appeals, 255 Md. 78 (1969). The policy of soning regulations is to restrict rather than increase any nonconforming use. Minor v. Shifflett, 252 Md. 158 (1969). It will of course cause a hardship on the applicant, but it must be recognized that the constant objective with nonconforming uses is "to extinguish them as early as possible with due regard to the lawful interest of those entitled to such use." Stieff v. Collins, 237 Md. 601 (1965).

CONCLUSION

For the reasons stated, Howard Plumbing Company should be found, as a fact, to lack a valid nonconforming use of the subject property, and to be presently acting in violation of the zoning laws. Its application for expansion of the use should be denied.

Hichael A. Pretl 1700 One Charles Center Baltimore, Maryland 21201 727-1164

Attorney for Complainants and Protestants

RE: PETITION FOR SPECIAL HEARING NW corner of Oakleigh Road and Forrest Avenue, 9th District

MEREDITH R. HOWARD, INC.,

BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY

: Case No. 76-200-SPH

ORDER TO ENTER APPEARANCE

Mr. Commissioner:

Pursuant to the authority contained in Section 524.1 of the Baltimore County
Charter, I hereby enter my appearance in this proceeding. You are requested to notify
me of any hearing date or dates which may be now or hereafter designated therefore,
and of the passage of any preliminary or final Order in connection therewith.

Charles E. Kountz, Jr.
Daputy People's Counsel

John W. Hessian, III
People's Counsel
County Office Building
Towon, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 26th day of March, 1976, a capy of the foregoing Order was mailed to Mr. Meredith R. Howard, Howard Plumbing Co., Inc., 7714 Oakleigh Road, Baltimore, Maryland 21234, Petitioners.

John W. Herring II

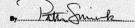




TOWSON, ND, 21300 Narch 11, 19 70

THIS IS TO CERTIFY, that the annexed advertisement of
Politionfor a Special Hearing— Howard Plumbing Company
was inserted in THE TOWSON TIMES, a weekly newspaper published
in Baltimore County, Maryland, once a week for one successive
weeks before the 31 skday of March 1976; that is to say, the same
was inserted in the issues of March 11, 1976.

STROMBERG PUBLICATIONS, Inc





CERTIFICATE OF PUBLICATION

G. Leank Structur

ost of Advertisement, \$____

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

Your Petition has been received * this day of
19%. Filing Fee \$ 25 . Received Check

Cash
Other

S. Eric Dimense.
Zoning Commissioner
Petitioner's Attorney

Reviewed by

This is not to be interpreted as acceptance of the Petition for assignment of a hearing date.

OFFICE OF FINANCE - REVENUE DIVISION MISCELLANEOUS CASH RECEIPT	m. 38985
DATE September 3, 1976 ACCOUNT	01-662
AMOUNT	\$35,00
RECEIVED George A. Breschi, Esc	quire
	n Case Nos. 76-200-
FOR Cost of Filing of an Appeal of SPH (Item No. 157) and 76-207-1	V, C-76-295
ros. Cost of Filing of an Appeal of SPH (Item No. 157) and 76-207-1 NW/corner of Oakleigh Road and	V, C-76-295
ros. Cost of Filing of an Appeal of SPH (Item No. 157) and 76-207-1 NW/corner of Oakleigh Road and Election District	V, C-76-295 Forrest Avenue - 9th
FOR Cost of Filing of an Appeal of SPH (Item No. 157) and 76-207-1	V, C-76-295 Forrest Avenue - 9th - Petitioner 5.0 0 MSC



Posted by Bleel H. Mass. Date of return: 16-2-26.

CENTIFICATE OF POSTING ZONING DEPARTMENT OF SALTMORE COUNTY

	AND DESCRIPTION OF MALLIMOSE COUNTY	11-11 - 2-21
	Touse, Maryland MC12 College	#76-200-51H
0.4		
Natrict	Date of Date	- 3- 11-71
osted for Hearing.	Wed March 314 16011	e inter and
etitioner Houdal	Thinking Co 2.	
ecation of preparty: N/III.,	Wed Merch 31 to 1916 C Clare bry Co De Sott Clar of Cableigh A	eld Que 1 a
	0	a. Ja. Hauston
ocation of Signe / Line	. Gold on Oaklajl +	18 H
Formet ac	Landige f	1 Joseu or

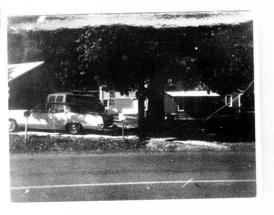
Date of return: 3- 18-76

BALTIMORE COUNTY, MARYLANI OFFICE OF FINANCE, REVENUE DIVIS MISCELLANEOU LASH RECEIPT	on • 3659
DATE No. 5, 1976 ACC	O1-662
1 _ H	DUNT \$25.00
PACETYED Bound Plumbing Co.	Dec. 77th Orderige Mr.
Petition for Special Se 976-200-200	wing
288652HW 8	25.0 CHS:

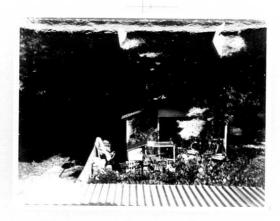
Posted by Mel H Here

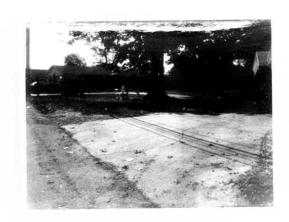
BALTIMORE COUNTY, MARYLAND OFFICE OF FRANCE - REVENUE DIVISION	3302
MISCELLANEOUS CASH RECEIPT	
DATE March 29, 1976 ACCOUN	-0-60
AMOUNT	. ¥±9.00
	The second secon
ROM Economic Planting Co	
No. 18L 21234	
Advertising and porting of 176-200-EFF	
No. M. 21234	

VALIDATION OR SIGNATURE OF CASHIER	
BALTIMORE COMMITY, MARYLAND OFFICE OF FINANCE REVENUE DIVISION MISCELLANEOUS CASH RECEIPT	N. 40412
DATE September 24, 1970 CCCOUNT	01-662
AMOUNT	
Cost of Donal	
coat of Posting Property of Pany, Inc., for an Appeal Hearing NW/corner of Cakleigh Road and Election District, or an Appeal Hearing Case No. 76-2001SPH (Item No. 1	
VALUE	57) 1 0.0 C MSC



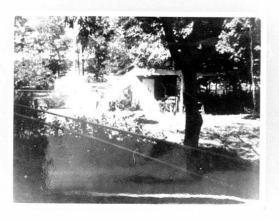


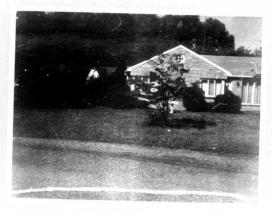




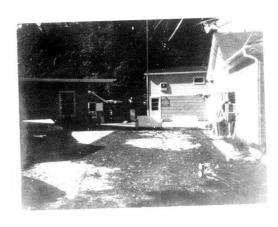


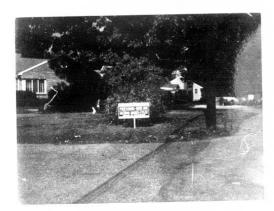








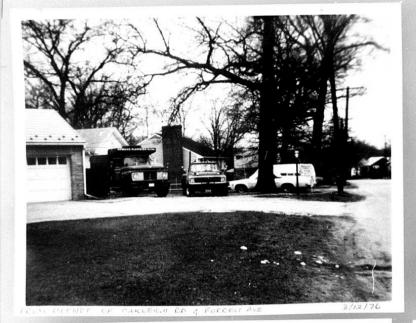
















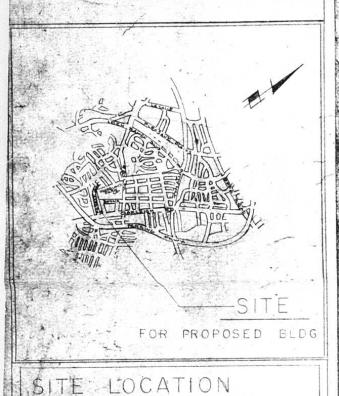








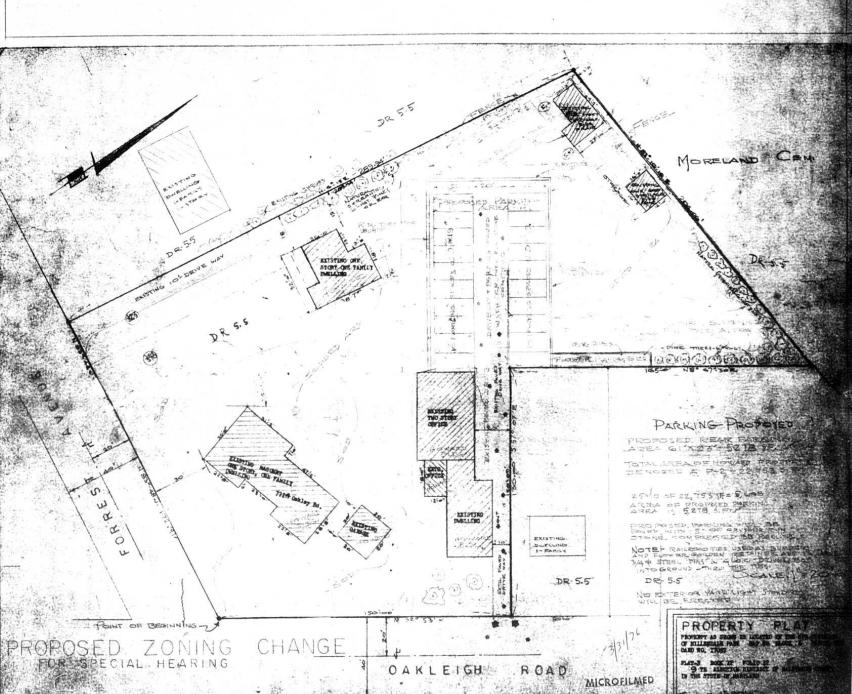


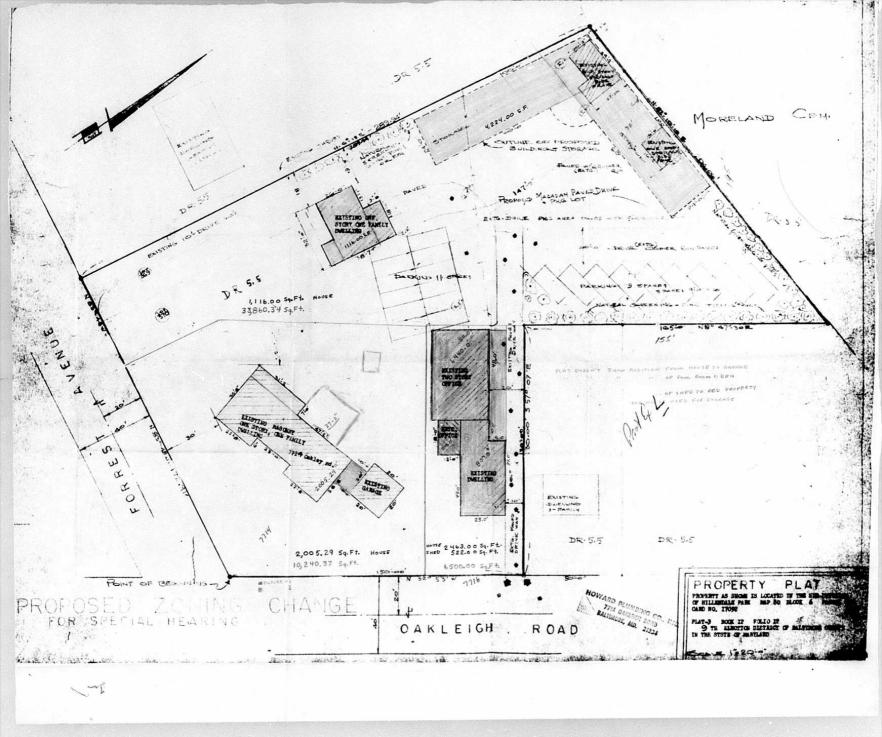


NATURAL SEREEVING WILL BE PROVIDED , C'APPROV. HET PINE TREES

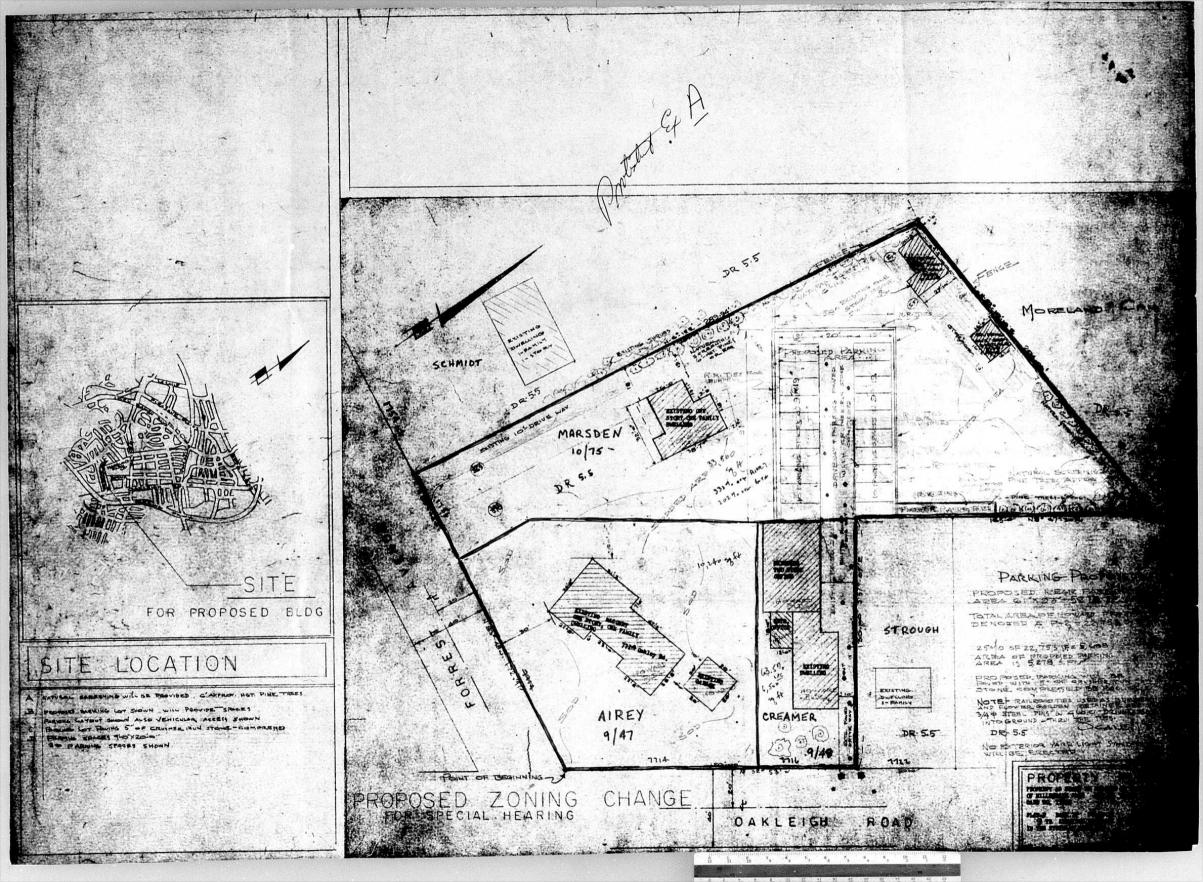
PARONO LATBUT SHOWN ALSO VEHICULAR ACCESS SHOWN
BARONO LATBUT SHOWN ALSO VEHICULAR ACCESS SHOWN
BARONO LOT PROVING STOR CRUSHER ISUN STONE - COMPRESSES

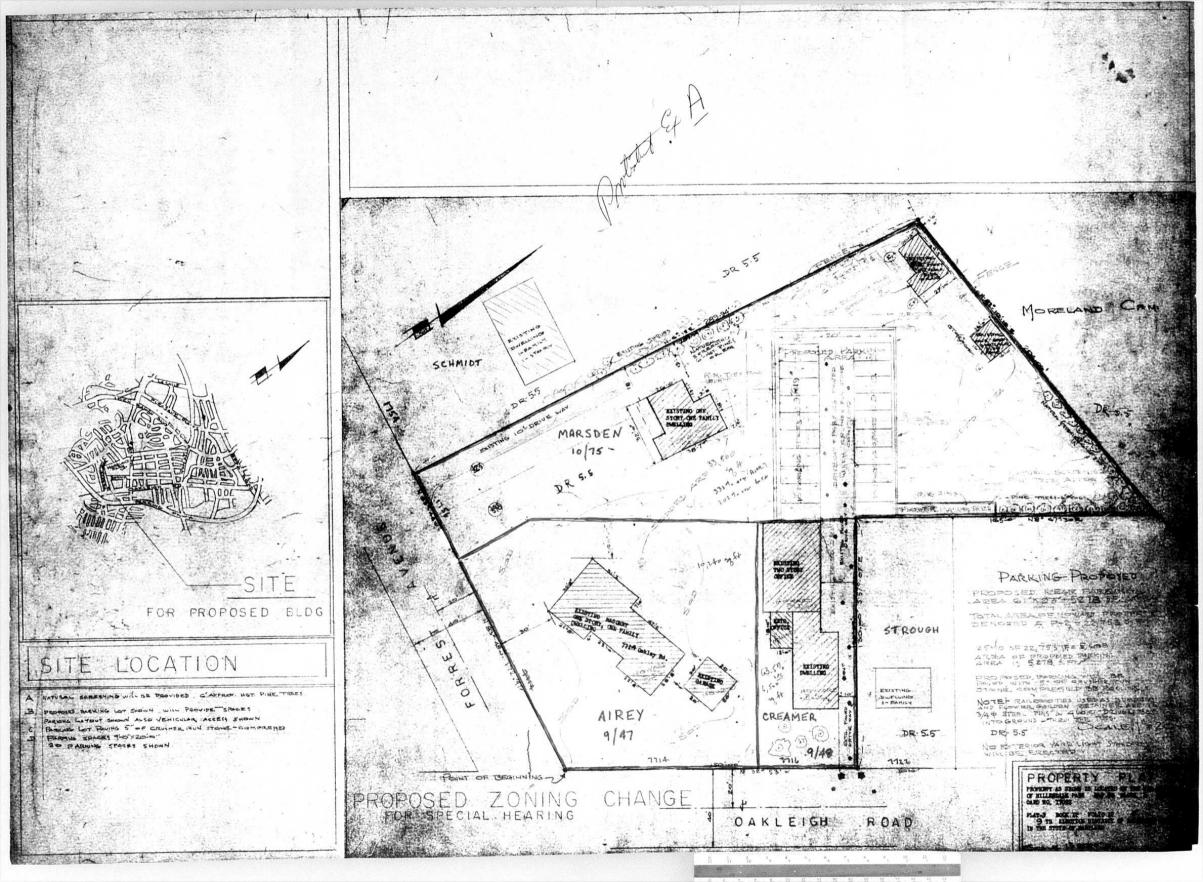
PERMIS SPACES 9-0"X20"0"

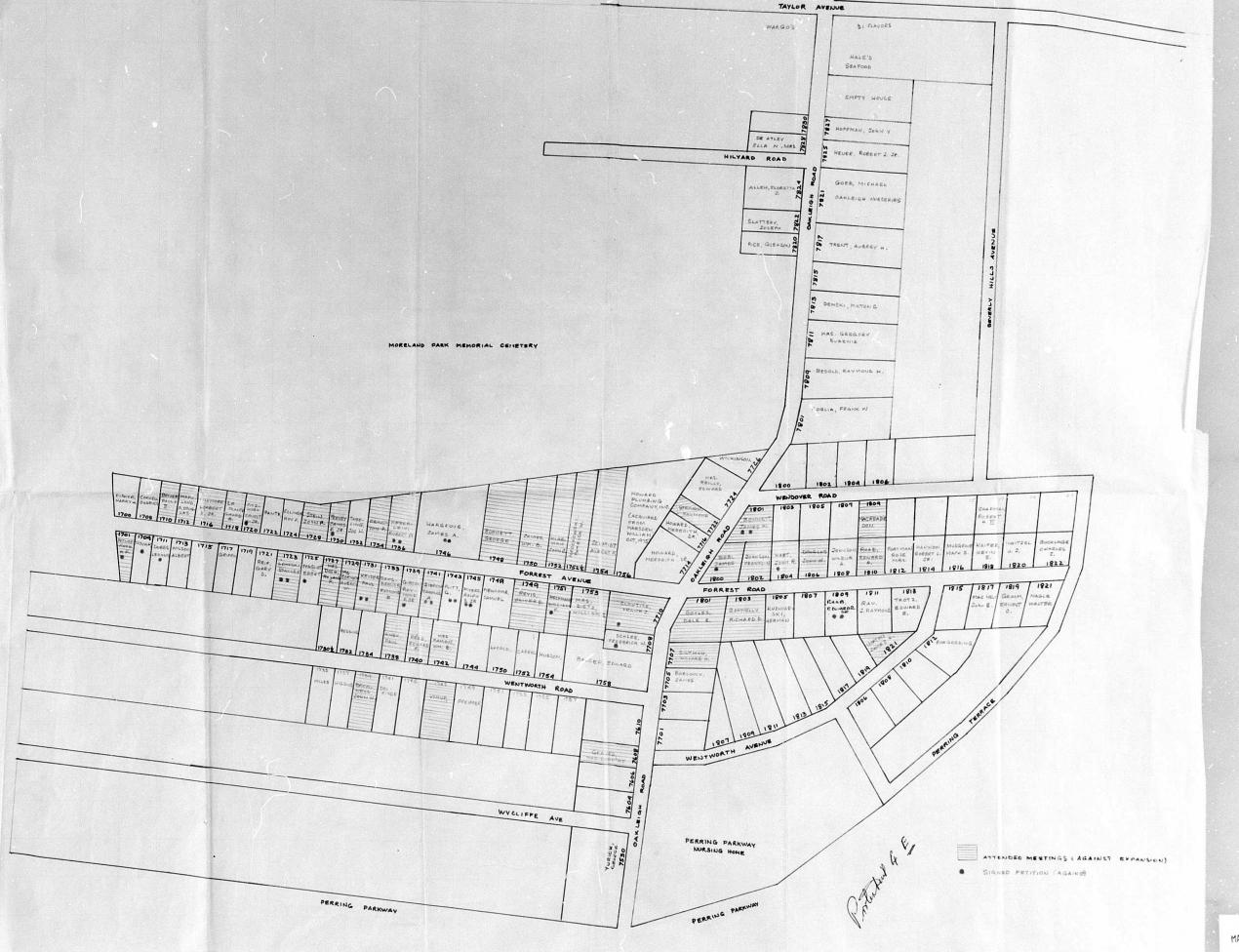




6. 52 50 75 50 8 11 51 11 10 11 5 7 5 7 5 7







MAY 1 7 1977