

leads one to wonder how much actual thought and good judgment really went into the planning of this facility.

At this point, this Court may not substitute its judgment for the judgment of the County Board of Appeals of Baltimore County, but the Appellants have presented five alternative grounds upon which the decision of the County Board of Appeals must be reversed. First, the Appellee utterly failed to offer any evidence at all to sustain its burden of proving, as Appellee's counsel put it, "that this motel is primarily oriented to serve the twenty-five acres or more of contiguous industrial zoning". Secondly, under the clear language of Section 248.4c of the Zoning Regulations, the Appellee was obligated to prove that the proposed motel would primarily serve the M.L.R. Zone alone, and the Appellee stipulated that it could not sustain its burden of proof on this point. Thirdly, the record clearly reflects that the Appellee failed to satisfy Section 502.1c of the Zoning Regulations because of the serious fire hazard caused by the Appellee's plans to provide for but one entrance to the motel complex. Fourthly, the Appellee failed to satisfy Section 502.1a of the Zoning Regulations because of the potential for exacerbated local flooding that the intensive development of these 2.34 acres would entail. Finally, the Appellee created its own zoning violations by purchasing the property at a time that it was fully aware of the applicable Zoning Regulations and by then designing a project in violation of the same Zoning Regulations. Thus, the Appellee is responsible for creating its own practical difficulty and unreasonable hardship and is not entitled to the parking variance that it sought under Section 307 of the Zoning Regulations.

For all of these reasons, the Appellants submit that this Court should reverse the decision of the County Board of Appeals of Baltimore County.

Respectfully submitted,

James M. Smith
JAMES M. SMITH

Christopher R. West
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of February, 1983, I hand-delivered a copy of the foregoing Appellant's Memorandum on Appeal to John B. Howard, Esquire, 210 Allegheny Avenue, Towson, Maryland 21204, Counsel for the Applicants; and I mailed postage prepaid, a copy of the foregoing Memorandum to John W. Hessian, III, Esquire, People's Counsel, Room 223, Court House, Towson, Maryland 21204; to the County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204; and to the Zoning Commissioner of Baltimore County, County Office Building, Towson, Maryland 21204.

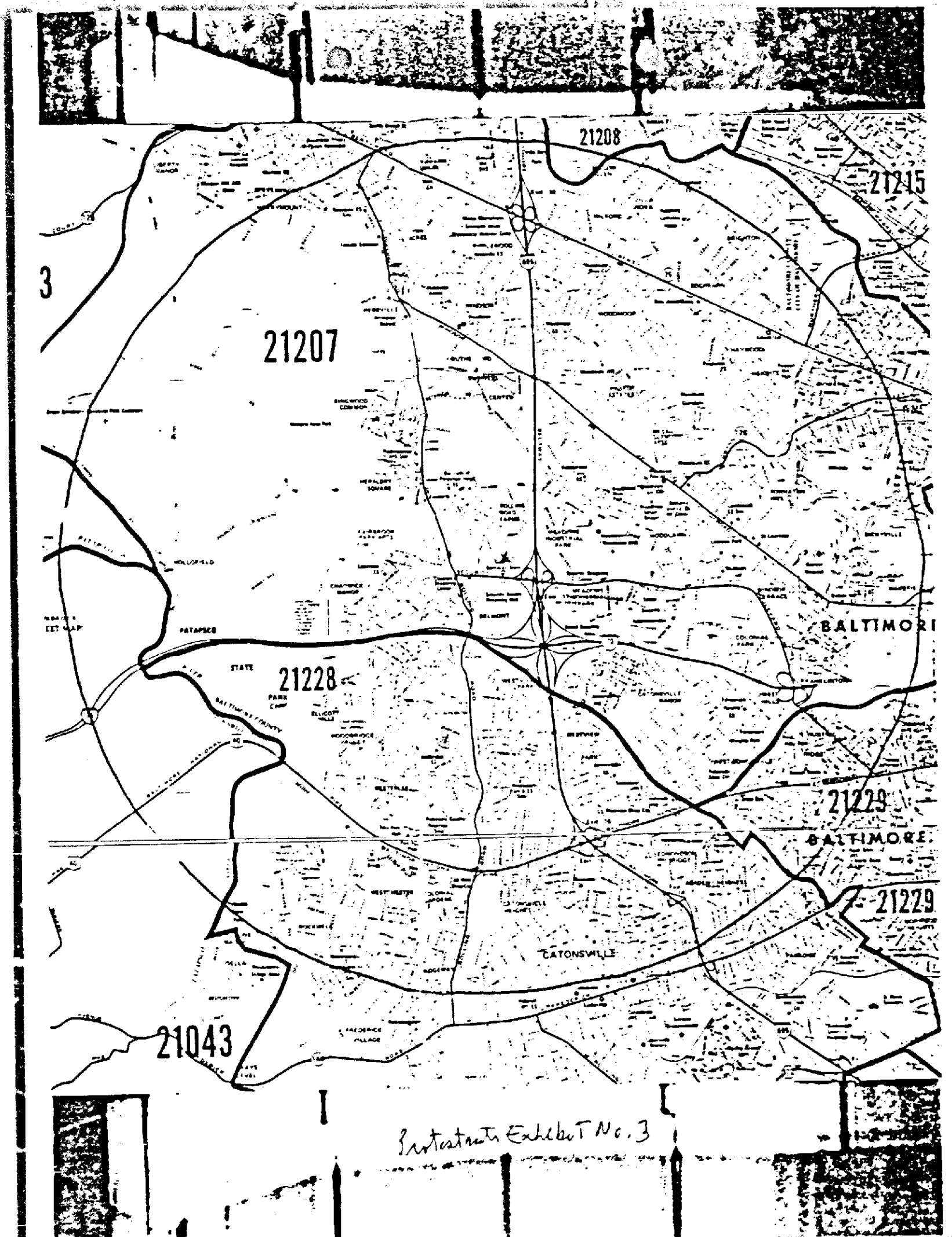
Christopher R. West
CHRISTOPHER R. WEST

F-00.24

Ref. E # 1

BALTIMORE SURVEY

COMPANY	VERY INTERESTED IN DAYS USES	APPROX. # OF ROOM NIGHTS NEEDED
Prudential Insurance Company	Yes	
Harris Corporation	No	
Sun Life Insurance Company	Yes	
Joseph Banks	Yes	
Reliance Electric Company	Yes	06 r/n month
Texas Instruments	Yes	20 r/n month
W. W. Grainger, Inc.	Yes	10 r/n week
Leaseway Transportation Corp.	Yes	30 r/n year
National Can Corporation	Yes	15-20 r/n year
General Electric	Yes	very little
Alcan Aluminum Corp.	Yes	less 10 rms./week
Savin Corporation	Yes	5-10 r/n month
Westinghouse Electric Corp.	Yes	7-10 r/n month
Excello Lighting Corp.	Yes	less 10 rms./week
Best Products Company, Inc.	Yes	less 10 rms./week
Heery & Heery Architects & Engineers	No	6-8 times year
Reynolds and Reynolds Company	Yes	1-2 r/n year



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APPENDIX

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES, AND REGULATIONS

Section 101—DEFINITIONS [B.C.Z.R., 1955.]

Words used in the present tense include the future; words in the singular number include the plural number; the word "shall" is mandatory. For the purposes of these Regulations, certain terms and words are defined as follows: [B.C.Z.R., 1955.]

Industrial, quasi-industrial, or industry-related use: Any use listed in Paragraph 253.1.A other than Item 33; any use listed in Paragraph 253.1.B, Paragraph 253.2.A, or Subsection 256.2; any manufacturing use not listed in those provisions; or any use accessory to one of those uses. [Bill No. 178-79]

M.L.R. Zone—Manufacturing¹ Light², Restricted [Bill No. 56, 1961.]

Section 247²—PURPOSE [Bill No. 56, 1961.]

To permit grouping of high types of industrial plants in industrial subdivisions in locations with convenient access to expressways or other primary motorways so as to minimize the use of residential streets; to fill special locational needs of certain types of light industry; to permit planned dispersal of industrial employment centers so as to be conveniently and satisfactorily related to residential communities; and as transitional bands between residential or institutional areas and M.L. or M.H. Zones. [Bill No. 56, 1961.]

Section 248—USE REGULATIONS: [Bill No. 56, 1961.]

The following uses only are permitted: [Bill No. 56, 1961.]

248.1—Uses permitted in the M.R. Zone, except Heliport, Type II, which may be permitted only as a Special Exception [Bills No. 56, 1961; No. 85, 1967.]

248.2—Uses permitted and as limited in the R. 40³ Zone by Section 200.11,⁴ except that Animal boarding place, Class A and Kennel are prohibited; [Bills No. 56, 1961; No. 85, 1967.]

248.3—Living quarters for watchmen and caretakers and their families living on the premises and engaged in connection with any lawful use in the M.L.R. Zone; [Bill No. 56, 1961.]
Accessory buildings and uses in connection with living quarters (see above) and as limited by Section 400. [Bill No. 56, 1961.]

248.4—Special Exceptions—When permitted as Special Exceptions (see Sections 270 and 502);⁵ [Bill No. 56, 1961.]

a.⁶ The following uses:

- Airstrips;
- Automotive-service station, subject to the provisions of Section 405; [Bills No. 40, 1967; No. 85, 1967.]
- Boat yard (including marine railway);
- Excavations, controlled (see Section 403);
- Heliport, Type II; [Bills No. 56, 1961; No. 85, 1967.]
- Public utility uses other than those noted in Section 200.11⁷ excluding steam power plant;

Notes to S. 247 1. Thus (without comma) in Bill No. 56, 1961.
2. Section numbers 244-246 reserved.

Notes to S. 248 3. Now D.R. 1—see Subsection 100.3A. 7. See note 14, Section 230.
4. See note 14, Section 230.
5. Thus (semicolon) in Bill No. 56, 1961.
6. All of this paragraph's provisions that are not followed by bracketed references are from Bill No. 56, 1961 and were re-enacted without substantive amendment by Bill No. 85, 1967.

248.4 (M.L.R.)

Riding stable (commercial), golf driving range, miniature golf, baseball batting range; as interim income-producing uses;
Sanitary landfill;
Volunteer fire company;
Wireless transmitting and receiving structure, except as a minor accessory use or structure (which is permitted without a special exception); provided that, for the purposes of this subsection, no exterior antenna greater than 50 feet above grade level shall be considered as an accessory use or structure. [Bills No. 56, 1961; No. 61, 1967; No. 85, 1967.]

b.⁸ The following commercial uses, when within an M.L.R. Zone which is part of a contiguous area of 25 acres or more of industrial zoning and if the specific use proposed is demonstrably an appropriate service to industries existing, planned or reasonably to be expected to locate therein; and in no case shall the combined tract areas developed for one or more of these service commercial uses occupy more than 15% of M.L.R. tract in which they are located:

- Bank;
- Business and trade schools;
- Motel;
- Public Restaurant, but food may be served and eaten on the premises only by persons seated at inside tables or counters; it may not be served to persons remaining in cars.

c. In order that the above-listed uses in sub-sections a and b hereof will be located within the M.L.R. Zone so as to assure their services' being rendered primarily to the industries therein, no building or structure connected with such commercial uses may be within 100 feet of the right-of-way of an existing or proposed major street. This limitation shall not apply to locations on minor or local industrial subdivision roads or to freeways (on which the use does not have direct access). [Bill No. 56, 1961.]

⁸ All provisions of this paragraph from Bill No. 56, 1961.
⁹ Thus (without article) in Bill No. 56, 1961.

253

M.L. Zone—Manufacturing, Light [B.C.Z.R., 1955.]

Section 253—USE REGULATIONS [B.C.Z.R., 1955; Bills No. 85, 1967; No. 100, 1970.]

253.1¹—Uses Permitted as of Right. The uses listed in this subsection, only, shall be permitted as of right in M.L. zones, subject to any conditions hereinafter prescribed. [B.C.Z.R., 1955, Section 253; Bills No. 85, 1967, Section 253; No. 100, 1970.]

A.² The following industrial uses:

1. Airplane assembly
2. Automobile assembly
3. Boat yards (including marinas or marine railways)
4. Bottling establishments, soft-drink
5. Candy manufacture, packaging, or treatment
6. Carpet or rug cleaning
7. Cellophane-products manufacture or processing—restricted production (See Subsection 253.3).
8. Cleaning or dyeing
9. Concrete-products manufacture, including manufacture of concrete blocks or cinder blocks
10. Cork-products manufacture or processing—restricted production (See Subsection 253.3).
11. Cosmetics manufacture, compounding, packaging, or treatment
12. Drug manufacture, compounding, packaging, or treatment
13. Electrical-appliance assembly
14. Enameling, japanning, or lacquering
15. Excavations, controlled, except those involving the use of explosives
16. Fiber-products manufacture or processing, including the manufacture or processing of articles made of felt or yarn, or of textiles, canvas, or other cloth—restricted production (See Subsection 253.3.)
17. Food-products manufacture, compounding, packaging, or treatment, including but not limited to: wholesale bakeries; canning plants or packing houses for canning, packing, or processing of vegetables; creameries or milk-pasteurization or -distributing stations; or cold-storage plants
18. Fur-products manufacture or processing—restricted production (See Subsection 253.3.)

1. Under Bill No. 100, 1970, former Subsections 253.1 through 253.5 were repealed. That material was part of B.C.Z.R., 1955, as amended by County Commissioners' Resolution of November 21, 1956 and County Council Bills No. 64, 1960; No. 56, 1961; No. 64, 1963; No. 40, 1967; No. 61, 1967; and No. 85, 1967.
2. All provisions of this paragraph from Bill No. 100, 1970. The external and internal periods following the parenthetical references to Subsection 253.3 in Items 7, 10, 16, 18, 19, 22, 24, 26, 30, 34, 35, 38, 48, 51, and 52 are as they appear in that bill.

19. Glass-products manufacture or processing—restricted production (See Subsection 253.3.)
20. Grain processing, provided equipment is installed for effective precipitation and recovery of dust
21. Greenhousing, wholesale
22. Horn-products manufacture or processing—restricted production (See Subsection 253.3.)
23. Ice manufacture
24. Ink blending etc.—restricted production (See Subsection 253.3.)
25. Instrument manufacture, of precision instruments, including manufacture of watches or clocks
26. Jewelry manufacture or processing, or manufacture or processing of other articles made of precious or semi-precious metals or stones—restricted production (See Subsection 253.3.)
27. Laboratories
28. Leather-products manufacture or processing—restricted production (See Subsection 253.3.)
29. Lumber yards
30. Metal-products manufacture or processing, limited to the restricted production (See Subsection 253.3.) of articles made of sheet metal, light metal mesh, pipe, wire, rods, strips, or other shapes or similar component parts
31. Metal-stamp manufacturing
32. Musical-instruments manufacture
33. Offices or Office Buildings
34. Paint blending etc.—restricted production (See Subsection 253.3.)
35. Paper- and paperboard-products manufacture or processing—restricted production (See Subsection 253.3.)
36. Perfume manufacture, compounding, packaging, or treatment
37. Phonograph assembly
38. Plastic-products manufacture or processing—restricted production (See Subsection 253.3.)
39. Plating, including galvanizing
40. Poultry killing
- 40A. Practice or training physical conditioning facilities and fields for amateur or professional sports organizations, provided that there shall not be any accommodations for public spectators, that no more than 1-sports organization uses such a facility at one time, and that no such facility includes any lighting of types that would produce substantial off-site illumination nor any provisions for selling public admissions to sports events to be conducted thereon. For the purposes of these Regulations, "practice or training physical conditioning facilities and fields for amateur or professional sports organizations" may include such offices as are necessary for the administration of the organization. (Bill No. 125, 1978)
41. Printing, lithographing, or publishing plants
42. Radio assembly, or assembly of other electronic instruments or devices
43. Research institutes
44. Rubber-stamp manufacture, and manufacture of other small molded rubber products
45. Shell-products manufacture or processing—restricted production (See Subsection 253.3.)
46. Stone or monument works
47. Tire retreading or recapping
48. Tobacco-products manufacture or processing—restricted production (See Subsection 253.3.)
49. Toy manufacture, or manufacture of novelties
50. Trailer assembly, including the assembly of truck trailers or mobile homes

51. Wax-products manufacture or processing—restricted production (See Subsection 253.3.)
52. Wood-products manufacture or processing—restricted production (See Subsection 253.3.)
53. Wrought-iron products manufacture
54. Other manufacture of articles of merchandise made from materials permitted to be used and made by processes permitted to be employed in the production activities more specifically listed above.

B.³ The following transportation, storage, or quasi-public uses or utilities:

1. Bus terminals
2. Building-materials storage or sales yards, general
3. Construction-equipment storage yards
4. Above-ground electrical-power, telephone, or telegraph lines, except above-ground electrical-power lines having a capacity of 35 kilovolts or more; pole-mounted transformers or transformer banks
5. Cables and conduits not described under item "4", above; gas, water, or sewer mains; or storm-drain systems—all underground
6. Feed or grain sales or storage
7. Fluid storage and sale, above ground, of flammable liquids or gases
8. Freight storage
9. Fuel storage and sale, of solid or gaseous fuels
10. Heliports, Type I
11. Heliports, Type II
12. Helistops
13. Railroads
14. Steam-power plants
15. Storage, warehousing, or wholesale distribution of any product whose sale (retail or wholesale) or final processing or production is permitted as of right as a principal use in M. L. zones; public warehousing
16. Utility service centers
17. Utility storage yards
18. Volunteer-fire-company facilities

C.⁴ The following auxiliary retail or service uses or semi-industrial uses, provided that any such use is located in a planned industrial park at least 25 acres in net area or in an I.M. district, in neither case with any direct access to an arterial street other than a Class I Commercial Motorway:

1. Automobile-rental agencies
2. Bakeries, retail
3. Barbershops
4. Banks, savings and loan associations, or other, similar chartered financial institutions accepting deposits
5. Beauty shops

2. All provisions of this paragraph from Bill No. 100, 1970.

4. All provisions of this paragraph from Bill No. 100, 1970.

6. Business or trade schools
7. Carpentry or cabinet-making shops
8. Drug stores, but the gross floor area devoted to any such store shall not exceed 1500 square feet
9. Electrical-contractors' shops
10. Electroplating shops
11. Food stores, but the gross floor area of any such store shall not exceed 2500 square feet
12. Heating- or air-conditioning-contractors' shops
13. Laundry, dry-cleaning, or clothing-repair or alteration establishments or stations, including self-service laundry or dry-cleaning facilities
14. Liquor or package stores
15. Machinery-sales or -repair establishments
16. Parking lots or garages
17. Painting shops
18. Plumbing-contractors' shops
19. Restaurants, except drive-in restaurants
20. Sheet-metal shops
21. Shoe-repair shops
22. Stationery or office-supply stores
23. Taverns
24. Truck-rental and truck-trailer-rental agencies.

D. The following temporary use: Carnivals, temporary, provided that no such use shall be established for more than 90 days in any one-year period. [Bill No. 100, 1970.]

E. Combinations of the uses listed above. [Bill No. 100, 1970.]

F.⁵ Accessory uses or structures, including but not limited to:

1. Incidental sales (wholesale or retail)
2. Living quarters for watchmen or caretakers and their families, and accessory uses or buildings subsidiary thereto
3. Trailers for temporary use, as permitted under Section 415
4. Industrial medical clinics
5. Employees' recreation facilities
6. Excavations, uncontrolled
7. Parking spaces (see Section 409)
8. Signs (see Section 413).

5. All provisions of this paragraph from Bill No. 100, 1970.

253.2—Uses Permitted by Special Exception. The uses listed in this subsection are permitted by special exception only (see Section 502). [B.C.Z.R., 1955, Subsection 253.5; Bill No. 85, 1967, Subsection 253.5; Bill No. 100, 1970.]

A.⁶ The following industrial, quasi-industrial, transportation, storage, or quasi-public uses or utilities:

1. Airstrips or airports, where it is shown that such use will serve primarily the industrial uses in the same area
2. Airports, general aviation, if located in accordance with the master plan
3. Excavations, controlled, involving the use of explosives (see Section 403)
- 3A. Moving and storage establishments [Bill No. 18-76]
4. Sanitary landfills
5. Storage, warehousing, or distribution not permitted as of right ["Truck terminal" deleted by Bill No. 18-76]
6. Trucking facilities (see Sections 410 and 410A) [Bill No. 18-76]
- 6A. Truck stops [Bill No. 18-76]
7. Utilities not permitted under the provisions of Subsection 253.1

B.⁷ The following auxiliary service uses, provided that any such use shall be located in a planned industrial park at least 25 acres in net area or in an I.M. district, in neither case with any direct access to an arterial street other than a Class I Commercial Motorway, and, provided further, that it is shown that any such use will serve primarily the industrial uses and related activities in the surrounding industrial area:

1. Automotive-service stations, subject, further, to the provisions of Section 405
2. Car washes, subject, further, to the provisions of Section 419
3. Garages, service, including establishments for the service or repair of trucks, of truck trailers, or of freight-shipping containers designed to be mounted on chassis for part or all of their transport. [Bill No. 218-80]
4. Motels, hotels, or apartment hotels, but the number of apartments in any apartment hotel permitted hereunder shall not exceed 10 per cent of the total number of apartments plus rooming units therein, and no more than 10 per cent of the rooming units in any such motel, hotel, or apartment hotel shall be occupied as principal places of residence
5. Union halls or other places of assembly for employment-related activities.

6. All provisions of this paragraph from Bill No. 100, 1970, except as otherwise noted.

7. All provisions of this paragraph from Bill No. 100, 1970, except as otherwise noted.

C.⁸ The following interim uses, provided that it is shown by the petitioner and verified by the Director of Public Works that public sewerage and water-supply facilities will not be available to the site of any such use for a period of at least two years after the time the petition is heard, and provided, further, that any such use shall be discontinued and the grant of the special exception shall expire on a date within a year after such time as public sewerage and water-supply facilities do become available to the site, as shall be more particularly stipulated in the order granting the special exception:

1. Amusement parks
2. Baseball-batting ranges
3. Farms, or limited-acreage wholesale flower farms
4. Golf-driving ranges
5. Kennels
6. Miniature-golf courses
7. Radio or television broadcasting studios
8. Racetracks
9. Riding stables, commercial
10. Shooting ranges
11. Trailers, non-accessory, subject to the provisions of Section 415, except that trailer parks are not permitted
12. Used-motor⁹ vehicle outdoor sales areas
13. Veterinarians' offices

D.¹⁰ The following miscellaneous uses:

1. Signs, outdoor-advertising (see Subsection 413.3)
2. Wireless transmitting and receiving structures, except as minor accessory uses or structures (which are permitted without a special exception); provided that, for the purposes of this paragraph, no exterior antenna greater than 50 feet above grade level shall be considered as an accessory use or structure.

E. Combinations of the uses listed in this subsection, or combinations of such uses with uses which are permitted as of right. [Bill No. 100, 1970.]

8. All provisions of this paragraph from Bill No. 100, 1970.

9. Thus (without hyphen) in Bill No. 100, 1970.

10. All provisions of this paragraph from Bill No. 100, 1970.

Section 256¹—USE REGULATIONS

The following uses only are permitted, subject to the provisions of 256.5: [B.C.Z.R., 1955; Bill No. 85, 1967 (substantive amendment).]

256.1²—Uses permitted in M.R. Zone, Section 241.1 and in Section 253.4⁴ of the M.L. Zone; [B.C.Z.R., 1955; Bill No. 85, 1967 (substantive amendment).]

- Animal boarding place, Class A; [Bill No. 85, 1967.]
- Animal boarding place, Class B; [Bill No. 85, 1967.]
- Boat Yard; [Bills No. 64, 1963; No. 85, 1967.]
- Commercial beach, with provision of adequate parking area, and permitting dressing facilities, snack bar, picnic area, and boat rental; [Bills No. 64, 1963; No. 85, 1967.]
- Community building, swimming pool, or other structural or land use devoted to civic, social, recreational, and educational activities; off-street parking areas shall be provided to such extent and be so located as the Zoning Commissioner or County Board of Appeals, on appeal, shall agree to be needed in relation to their surroundings; [Bills No. 64, 1963; No. 85, 1967.]
- Golf course, country club or other outdoor recreation clubs; also quasi-public camp, including day camps, but no such uses shall be located on less than five acres, and no building, parking lot, or out-of-water marine craft storage thereon shall be located within 60 feet of any residential property line; [Bills No. 64, 1963; No. 85, 1967.]

1. All unreferences provisions of this section from B.C.Z.R., 1955, and re-enacted without substantive amendment by Bill No. 85, 1967.
2. The title of Bill No. 56, 1961 indicates amendment of this subsection; however, no amendment to this subsection appears in the body of that bill.
3. Previous Subsection 253.4 (B.C.Z.R., 1955; Bills No. 56, 1961; No. 64, 1963; No. 85, 1967), to which this refers, repealed by Bill No. 100, 1970; it read: "253.4—The following (see also Section 255.1): Assembly of automobiles and airplanes; Boatyard; Bus terminal; Carpet, rug cleaning; Cleaning and dyeing; Concrete products, including concrete and/or cinder block manufacture; Contractor's equipment storage yard; Creamery; Enameling, japanning, lacquering, galvanizing and plating, when merely accessory to other permitted uses; Excavations, controlled, exclusive of those embodying use of explosives (see Section 403); Grain, processing of, provided equipment is installed for effective precipitation and recovery of dust; Heliport, Type I; Heliport, Type II; Ice, manufacture of; Milk pasteurization and distributing stations; Non-liquid fuel storage and sale (for requirements see Baltimore County Building Code); Poultry, commercial killing of; Storage of inflammable liquids and gases above ground (for requirements see Baltimore County Building Code); Vegetable canning or packinghouse (see also Section 255.1)."

Living quarters for watchmen and caretakers and their families employed and living on the premises, in connection with any lawful use in the M.H. Zone;
Marina; [Bills No. 64, 1963; No. 85, 1967.]
Storage of inflammable liquids and gases underground (for requirements see Baltimore County Building Code);
Veterinarian's office; [Bill No. 85, 1967.]
Veterinarian; [Bill No. 85, 1967.]
Volunteer fire company.

256.2—The following uses when located at least 300 feet from any residence zone or 200 feet from any business zone:

- Bag cleaning;
- Bituminous concrete mixing plant;
- Brewing and distilling of beer, ale or liquor, malt manufacture;
- Chemical fertilizer manufacture;
- Enameling, japanning, lacquering, galvanizing, and plating;
- Excavations, controlled, exclusive of those embodying use of explosives (see Section 403);
- Gravel, processing of;
- Hot rolling mills;
- Manufacture of airplanes, automobiles, trailers, trucks, railway cars, locomotives, and other vehicles;
- Manufacture of felt and shoddy provided equipment is installed for effective precipitation and recovery of dust; wool pulling and scouring;
- Manufacture of pickles, sauerkraut, vinegar, yeast, soda and soda compounds;
- Manufacture of structural clay products, babbitt metal and other non-ferrous alloys;
- Manufacture or processing of meat products, except slaughter houses;
- Moving and storage establishments [Bill No. 18-76]
- Processing, fabricating, and assembling of metals, including foundries, forging and casting shops, structural steel or pipe works, large stamping shops;
- Railroad classification yards and round house;
- Sand, processing of;
- Sanitary landfill;
- Shipbuilding and repair;
- Steam power plants;
- Stone, crushing and processing of;
- Testing of components or equipment manufactured or used in conjunction with heavy manufacturing or assembly;
- ["Truck terminal" deleted by Bill No. 18-76]
- Trucking facilities (see Sections 410 and 410A) [Bill No. 13-76]

256.3—Any other industrial or manufacturing use, except those listed in Section 256.4, when located at least 1000 feet from any residential zone and at least 500 feet from any B.L., B.M., or M.R. Zone. [B.C.Z.R., 1955; Bill No. 85, 1967 (substantive amendment).]

256.4—Special Exceptions—the following uses only when permitted as Special Exceptions (see Sections 270 and 502):

- Automotive-service station, subject to the provisions of Section 405; [Bills No. 40, 1967; No. 85, 1967.]
- Cemetery;
- Excavations, controlled, when explosives are used (see Section 403);
- Explosives;⁴
- ["Filling station;" deleted by Bill No. 40, 1967.⁵]
- Heavy chemical manufacture;
- Junk Yard;
- Kennel; [Bill No. 85, 1967.]
- Oil refinery;
- ["Open dump;" deleted by Bill No. 140, 1962.]
- Organic fertilizer manufacture;
- ["Reduction of dead animals..." deleted by Bill No. 140, 1962.]
- Shooting range;
- Signs, outdoor advertising (see Section 413.3);
- Slaughterhouse;
- Trailer Park (see Section 414);
- Wireless transmitting and receiving structure, except as a minor accessory use or structure (which is permitted without a special exception); provided that, for the purposes of this subsection, no exterior antenna greater than 50 feet above grade level shall be considered as an accessory use or structure. [B.C.Z.R., 1955; Bills No. 601, 1967; No. 85, 1967.]

256.5—Within 150 feet of any residential zone boundary or the right of way of any street abutting such a boundary, or within 150 feet of the right of way of an existing or proposed interstate highway, other freeway, or expressway which motorway is officially so designated by the State Roads Commission⁶ and/or the County, there shall be permitted only passenger-automobile parking and those uses permitted in M.R. Zone, as limited by the use regulations in Section 241, except that mineral aggregate excavated on-site may remain or be placed within 50 feet of such boundary or right of way, regardless of any requirements for greater distance. [Bills No. 56, 1961, Subsection 258.1; No. 65, 1967.]

7. Thus in B.C.Z.R., 1955 and Bill No. 85, 1967.

5. Section 12 of Bill No. 40, 1967 reads, in part, as follows: "And be it further enacted, that Sub-section 256.4 be and it is hereby amended by deleting the words 'Filling stations (sic plural)';...."

6. See note 12, Section 253.

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that strict compliance with the Baltimore County Zoning Regulations would result in practical difficulty and unreasonable hardship upon the Petitioner(s) and the granting of the variance(s) requested will not adversely affect the health, safety, and general welfare of the community, the variance(s) should be granted.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 24th day of January, 1982, that the herein Petition for Variance(s) to permit 169 parking spaces in lieu of the required 190 spaces should be and the same is GRANTED, from and after the date of this Order, subject, however, to the terms, provisions, and conditions contained in the accompanying Special Exception Order.

Jan M.H. Jung
Deputy Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING
DATE January 8, 1982
BY Stacy P. Blawie

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that by reason of the following finding of facts that the approval of a motel use in an M.L.R. Zone, pursuant to Section 248.4.b, when the proposed use will occupy more than 15% of the subject property but substantially less than 15% of the M.L.R. area or tract in which the subject property is located, would be in strict harmony with the spirit and intent of the Baltimore County Zoning Regulations and would not be detrimental to the health, safety, and general welfare of the community; and, therefore,

IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 8th day of January, 1982, that a motel use in an M.L.R. Zone, pursuant to Section 248.4.b, when the proposed use will occupy more than 15% of the subject property but substantially less than 15% of the M.L.R. area or tract in which the subject property is located, should be approved and, as such, the Petition for Special Hearing is hereby GRANTED, from and after the date of this Order, subject, however, to the terms, provisions, and conditions of the accompanying Special Exception Order.

Jan M.H. Jung
Deputy Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING
DATE January 8, 1982
BY Stacy P. Blawie

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that by reason of the requirements of Section 502.1 of the Baltimore County Zoning Regulations having been met and the health, safety, and general welfare of the community not being adversely affected, the Special Exception for a motel occupying less than 15% of an M.L.R. Zone, which is part of a contiguous area of 25 acres or more of industrial zoning and whose specific proposed use is an appropriate service to industries existing, planned, or normally to be expected to locate within that industrial zoned area, should be granted.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 8th day of January, 1982, that the herein Petition for Special Exception for a motel occupying less than 15% of an M.L.R. Zone, which is part of a contiguous area of 25 acres or more of industrial zoning and whose specific proposed use is an appropriate service to industries existing, planned, or normally to be expected to locate within that industrial zoned area, should be and the same is GRANTED, from and after the date of this Order, subject, however, to the following restrictions:

1. The size of the motel shall be reduced by eliminating one bay (10 units), thereby providing 140 total units and 134 rentable units.
2. The "parking chart" on the site plan shall be revised to read:

Required by rentable units	134
Total required	179.27
Total parking provided	169
3. A maximum of four game machines shall be allowed, and these machines shall not be advertised on external signs. The game room shall not have an outside entrance.
4. A revised site plan, incorporating the restrictions set forth above, shall be submitted for approval by the Department of Public Works and the Office of Planning and Zoning, including landscaping and screening required for approval by the Current Planning and Development Division.

Jan M.H. Jung
Deputy Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING
DATE January 8, 1982
BY Stacy P. Blawie

Baltimore County
Department of Public Engineering
TOWSON, MARYLAND 21204
301-494-3500

STEPHEN L. COLLINS
DIRECTOR

July 27, 1981

Mr. William Hammond
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Item No. 177 - ZAC - Meeting of April 7, 1981
Property Owner: Ford Motor Dealership Facilities Company
Location: NW/S Belmont Avenue 366' N. of Security Blvd.
Existing Zoning: MLR & BM
Proposed Zoning: Special Exception for a Motel and Variance for offstreet parking and loading.

Acres: 2.3951
District: 1st

Dear Mr. Hammond:

The requested variance to parking can be expected to cause parking problems in the area.

This site should have another entrance and Grove Road should be improved from Belmont Avenue to the northern property line of this site.

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Engineer Associate II

NSF/bza

BALTIMORE COUNTY
DEPARTMENT OF HEALTH
TOWSON, MARYLAND 21204
DONALD J. ROOP, M.D., MPH
DEPUTY STATE & COUNTY HEALTH OFFICER

May 18, 1981

Mr. William E. Hammond, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item #177, Zoning Advisory Committee Meeting of April 7, 1981, are as follows:

Property Owner: Ford Motor Dealership Facilities Company
Location: NW/S Belmont Avenue 366' N. of Security Blvd.
Existing Zoning: MLR & BM
Proposed Zoning: Special Exception for a Motel & Variance for off-street parking and loading.
Acres: 2.3951
District: 1st

Metropolitan water and sewer are available. Connection to metropolitan sewer may be subject to the Gwynns Falls sewer moratorium.

Prior to approval of a public pool at this site, complete sets of plans and specifications of the pool and bathhouse must be submitted to the Baltimore County Department of Health for review and approval. Contact Mark McManus, Program Supervisor, Recreational Hygiene Section, Division of Environmental Support Services at 494-2762 for additional information.

If a food service facility is proposed, complete plans and specifications must be submitted to the Plans Review Section, Environmental Support Services, Baltimore County Department of Health, for review and approval prior to construction.

Prior to new installation/s of fuel burning equipment the owner should contact the division of Air Pollution Control, 494-3775, to obtain requirements for such installation/s before work begins.

The parking area/s should be surfaced with a dustless, bonding material.

A Permit to Construct from the Division of Air Pollution Control is required for any charbroiler operation which has a total cooking surface area of five(5) square feet or more.

Very truly yours,
Ian J. Forrest
Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204
625-7310

PAUL H. RENCKE
CHIEF

April 21, 1981

Mr. William Hammond
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Ford Motor Dealership Facilities Company
Location: NW/S Belmont Avenue 366' N. of Security Blvd.

Item No.: 177 Zoning Agenda Meeting of March 31, 1981

Gentlemen:

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.

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals or feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at

EXCEEDS the maximum allowed by the Fire Department.

- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- (X) 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 "Life Safety Code", 1976 Edition prior to occupancy.
- () 6. Site plans are approved, as drawn.
- () 7. The Fire Prevention Bureau has no comments at this time.

REVIEWED BY *Paul H. Rencke* Noted and Approved: *Paul H. Rencke*
Planning Group Fire Prevention Bureau
Special Inspection Division

/mb

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3010

TED ZALESKI JR.
DIRECTOR

April 23, 1981

Mr. William E. Hammond, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item #177 Zoning Advisory Committee Meeting, April 7, 1981 are as follows:

Property Owner: Ford Motor Dealership Facilities Company
Location: NW/S Belmont Avenue 366' N. of Security Blvd.
Existing Zoning: MLR & BM
Proposed Zoning: Special Exception for a Motel and Variance for offstreet parking and loading

Acres: 2.3951
District: 1st

The items checked below are applicable:

- A. All structures shall conform to the Baltimore County Building Code 1978, the State of Maryland Code for the Handicapped and Aged, and other applicable Codes, and other miscellaneous.
- B. A building permit shall be required before beginning construction.
- C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/is not required.
- D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.
- E. In wood frame construction an exterior wall erected within 6' 0" of an adjacent lot line shall be of one hour fire resistive construction, no openings permitted within 3' 0" of lot line. A minimum 6" masonry firewall is required if construction is on the lot line.
- F. Requested variance conflicts with the Baltimore County Building Code, Section/s .
- G. A change of occupancy shall be applied for, along with an alteration permit application, and time required set of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings must require a professional seal.
- H. Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that, the structure for which a proposed change in use is proposed on, comply with the height/area requirements of Table 305, and the required construction classification of Table 211.
- X 1. Comments: Handicapped parking is in sufficient a minimum of 6 spaces with signs, etc., is required. It is assumed the structure will not need the 30' clear space on the end by the swimming pool to comply with Table 305. See Sect. 306. NOTE: These comments reflect only on the information provided by the owner or contact me at 494-3987. If desired additional information may be obtained by visiting Room #129 (Plans Review) at 111 West Chesapeake Ave., Towson.

Very truly yours,
Charles E. Sumner
Charles E. Sumner, Chief
Plans Review

CEB:rrj

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Nicholas E. Commodari, Zoning Advisory Committee
FROM: Sharon M. Caplan, Economic Development Commission
SUBJECT: Item #177 - Property Owner: Ford Motor Dealership Facilities Company
Location: NW/S Belmont Avenue 366' N. of Security Blvd.
Existing Zoning: MLR & BM
Proposed Zoning: Special Exception for a Motel & Variance for offstreet parking and loading.

Date: April 10, 1981

In recognition of Baltimore County's desire to foster a healthy economic growth we request the zoning officer to evaluate the above request in the best interest of industrial expansion.

Sharon M. Caplan
Sharon M. Caplan

SMC:alc

259.1—General. In any district, the use, height, and area regulations applicable in the zone upon which the district is superimposed shall govern except as may be specifically provided otherwise. [Bills No. 40, 1967; No. 111, 1968.]

259.2—Statements of Legislative Intent for Districts. (Compliance with a statement of legislative intent shall not, in itself, be sufficient cause to classify property within the district to which such statement applies.) [Bill No. 40, 1967.]

- A. C.R. District—Commercial, Rural. C.R. Districts may be applied only to certain areas of contiguous commercial development which are on land zoned B.L., B.M., B.R., and/or M.L. at intersections of paved roads each at least 2 miles in length, and which lie beyond the urban-rural demarcation line, or to certain other commercially or industrially zoned areas of substantial, established business activity beyond the urban-rural demarcation line. [Bill No. 40, 1967.]
- B. C.N.S. District—Commercial, Neighborhood Shopping. C.N.S. Districts may be applied only to certain existing or proposed centers of business activity which are on land zoned B.L., B.M., B.R., and/or M.L., any one of which centers must be intended to include at least one supermarket or grocery store; have less than 15 retail stores in total; have no department store; junior department store, nor, ordinarily, variety (dime) stores; and serve a resident neighborhood population of approximately 10,000 persons or less. A planned shopping center having such characteristics may lie wholly or partially within a C.N.S. District. [Bill No. 40, 1967.]
- C. C.C.C. District—Commercial, Community Core. C.C.C. Districts may be applied only to certain existing or proposed centers of shopping and auxiliary commercial activity which are on land zoned B.L., B.M., and/or B.R., any one of which centers must be intended to serve between 30,000 and 50,000 persons, provide shopping opportunities for convenience goods, appliances, and, optionally, furniture; and include one or more junior department stores or variety stores. A planned shopping center having such characteristics may lie wholly or partially within a C.C.C. District. [Bill No. 40, 1967.]
- D. C.T. District—Commercial, Town-Center Core. C.T. Districts may be applied only to primary shopping areas within town centers or land zoned B.L., B.M., B.R., and/or M.L., the primary shopping area of any such center being that area which contains or is intended to contain a high incidence of pedestrian-oriented retail uses of a type ordinarily producing relatively high income and profit per square foot of sales area; includes or is intended to include major business generators (such as department stores); and also includes or is intended to include certain auxiliary services (such as offices) typically not occupying ground-floor frontage. Certain planned shopping centers having such characteristics may lie wholly or partially within C.T. Districts. [Bill No. 40, 1967.]

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E. C.S.A. District—Commercial, Supporting Area. C.S.A. Districts may be applied only to areas which are contiguous with C.C.C. or C.T. Districts; are service commercial areas for community or town-center commercial cores; overlie the basic zones of B.L., B.M., B.R., and/or M.L.; and are individually limited as follows: [Bill No. 40, 1967.]

1. Not extending more than 500 feet outward from a C.C.C. District boundary. [Bill No. 40, 1967.]
2. Not extending more than 750 feet outward from a C.T. District boundary. [Bill No. 40, 1967.]

F. C.S-1 District—Commercial, Strip. C.S-1 Districts must be applied only to certain strips of land which are zoned B.L., B.M., B.R., and/or M.L., on both sides of the street, any one of which strips may be at least 1500 feet in length, front on a Class I commercial motorway, and not be greater than 250 feet in depth from either side of the right of way, and on which roadside commercial usage has so developed that traffic flow has become impeded to the extent that application of highly restrictive site-accessibility standards would serve no useful purpose. [Bill No. 40, 1967.]

G. C.S-2 District—Commercial, Strip. C.S-2 Districts may be applied only to certain strips of land which are zoned B.L., B.M., B.R., and/or M.L., on both sides of the street, any one of which strips must be at least 1500 feet but not more than 7500 feet in length, must front on a Class II Commercial motorway and not be greater than 250 feet in depth from either side of the right of way, and on which roadside commercial usage has not developed to an extent precluding the usefulness of restrictive site-accessibility standards. [Bill No. 40, 1967.]

H. I.M. District—Industrial, Major. I.M. Districts may be applied only to certain areas individually containing 100 acres or more of land zoned for industrial or semi-industrial use (M.H., M.L., M.L.R., M.R., B.R., and/or B.M.), undivided by expressway or freeways. In I.M. Districts, greater industrial use of prime industrial land is promoted by discouraging non-auxiliary commercial usage. [Bill No. 40, 1967.]

1. Thus in Bill No. 40, 1967. (In the Planning Board's final report recommending the legislation on which Bill No. 40, 1967 was based, the word "may" was used, in the same manner that "may" is used in Paragraphs A-E, G, and H of this subsection.)
2. Thus in Bill No. 40, 1967. (In the Planning Board's final report recommending the legislation on which Bill No. 40, 1967 was based, the word "must" was used, in the same manner that "must" is used in Paragraphs B, C, and G of this subsection.)
3. Thus (singular) in Bill No. 40, 1967.
4. Thus in Bill No. 40, 1967.

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Section 409—OFFSTREET PARKING AND LOADING (see Section 409.5) [B.C.Z.R., 1955.]

409.1—Parking and Loading Spaces—There shall be provided, at the time of application for a building permit for the erection or enlargement of any building for which offstreet parking and/or loading space is hereinafter required, other than a dwelling, a plan showing such parking and loading spaces, including the means of access and interior circulation both from the standpoint of the project itself and in relation to its surroundings. [B.C.Z.R., 1955.]

409.2—Parking space—Each offstreet parking space shall be not less than 8½ ft. wide by 18 ft. long, and there shall be not less than 300 sq. ft. per space in the case of lot or garage parking where there is no attendant, and not less than 250 sq. ft. where there is an attendant, such square foot figures to include access aisles. [B.C.Z.R., 1955; Resolution, November 21, 1956.]

a. Parking space for dwellings, including apartment houses—In any zone, except as otherwise provided below, at least 1 garage space or other usable offstreet parking space must be provided for each dwelling unit other than housing for the elderly. In all zones, in the case of a lodging, rooming or boarding house, fraternity or sorority house or dormitory, there shall be one offstreet parking space for each 5 guests or members residing on the premises, but not less than 2 parking spaces in any case. In the case of a hotel or apartment hotel, there shall be one such parking space for each guest room or suite. In the case of a motel, there shall be at least one parking space for each rental unit. Parking space as required above shall be provided on the same lot with the building which it serves or within 300 feet thereof (see Section 417.6). [B.C.Z.R., 1955; Bill No. 80-8]

b. Parking space for uses other than dwellings—In all zones, permanently maintained offstreet parking spaces shall be provided as follows: [B.C.Z.R., 1955; Bill No. 18-76]

USE	PARKING SPACES
(1) High school, college, or university auditorium, theatre, church, general auditorium, stadium or similar place of assembly	1 for each 6 seats [B.C.Z.R., 1955; Bill No. 18-76]

(2) Hospital, Class A ²	1 for each 4 beds [B.C.Z.R., 1955; Bill No. 18-76]
(3) Hospital, Class B ³ and convalescent home	1 for each 10 beds [B.C.Z.R., 1955; Bill No. 18-76]
(3-a) Bowling Alley	three per individual alley [B.C.Z.R., 1955; Resolution 11/21/56; Bill No. 18-76]
(4) Medical or dental offices and clinics	1 for each 300 square feet of total floor area [B.C.Z.R., 1955; Bill No. 18-76]
(5) Other institutional, office, and nonretail commercial buildings (excluding garage structures) having a total floor area of more than 5,000 square feet	1 for each 300 square feet of total ground floor area and 1 for each 500 square feet of total area of upper floors [B.C.Z.R., 1955; Bill No. 18-76]
(6) Buildings devoted to retail trade	1 of each 200 square feet of total floor area [B.C.Z.R., 1955; Bill No. 18-76]
(7) Industry, wholesale or warehouse type of commercial use, except trucking facilities	1 for each 3 employees in the numerically largest shift, except that the Zoning Commissioner may reduce the number of spaces required where employment conditions are such as to make the above requirements clearly excessive. [B.C.Z.R., 1955; Bill No. 18-76]

1. Subsection 217.6 (B.C.Z.R., 1955), part of the area regulations of the now-rescinded R.A. zoning classification, repealed by Bill No. 100, 1970; it read: "Offstreet Parking (see Section 409)—Not more than 50% of any yard area may be used for parking."

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IN THE MATTER OF THE APPLICATION OF FORD MOTOR DEALERSHIP FACILITIES COMPANY FOR SPECIAL EXCEPTION for a Motel.

FOR SPECIAL HEARING to approve a motel use in an MLR zone pursuant to Sec. 248.4b of the B.C.Z.R., and FOR VARIANCE from Sec. 409.2 a and b of the B.C.Z.R. NW/5 of Belmont Avenue, 366' NE of Security Boulevard 1st District

Zoning File No. 82-10-XSPHA

* * * * *

MARILYN A. METZ, et al.

Appellants

v.

DAYS INN OF AMERICA, INC.

Appellee

MEMORANDUM IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER

Days Inn of America, Inc., Appellee, by its attorneys John B. Howard and Cook, Howard, Downes & Tracy, in opposition to Appellants' Motion for Protective Order to prohibit Appellee from taking the depositions of certain of the Appellants, submits that such depositions are permitted under the Maryland Rules of Procedure and are necessary to obtain evidence to prove that the Appellants lack standing as aggrieved parties. Accordingly, the Appellants' Motion for a Protective Order should be denied.

In support of their Motion for a Protective Order the Appellants maintain that the taking of depositions is inappropriate in connection with an appeal from a decision by the County Board of Appeals. Their argument is

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|--|--|
| (2) Hospital, Class A ² | 1 for each 4 beds [B.C.Z.R., 1955; Bill No. 18-76] |
| (3) Hospital, Class B ³ and convalescent home | 1 for each 10 beds [B.C.Z.R., 1955; Bill No. 18-76] |
| (3-a) Bowling Alley | three per individual alley [B.C.Z.R., 1955; Resolution 11/21/56; Bill No. 18-76] |
| (4) Medical or dental offices and clinics | 1 for each 300 square feet of total floor area [B.C.Z.R., 1955; Bill No. 18-76] |
| (5) Other institutional, office, and nonretail commercial buildings (excluding garage structures) having a total floor area of more than 5,000 square feet | 1 for each 300 square feet of total ground floor area and 1 for each 500 square feet of total area of upper floors [B.C.Z.R., 1955; Bill No. 18-76] |
| (6) Buildings devoted to retail trade | 1 of each 200 square feet of total floor area [B.C.Z.R., 1955; Bill No. 18-76] |
| (7) Industry, wholesale or warehouse type of commercial use, except trucking facilities | 1 for each 3 employees in the numerically largest shift, except that the Zoning Commissioner may reduce the number of spaces required where employment conditions are such as to make the above requirements clearly excessive. [B.C.Z.R., 1955; Bill No. 18-76] |

2. See note 1, Section 407.
3. See note 1, Section 407.
4. Thus as result of amendment by Resolution, November 21, 1956.
5. Thus in Bill No. 18, 1976 s i c (for).

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Section 502—SPECIAL EXCEPTIONS [B.C.Z.R., 1955.]

(See Section 270—Schedule of Special Exceptions) [B.C.Z.R., 1955.]

NOTE: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junk yards, are inherently so objectionable as to make extra regulations and controls advisable even in the M.H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential, business, and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety, or general welfare of the public, the uses listed as Special Exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the Board of Zoning Appeals. [B.C.Z.R., 1955.]

In granting any Special Exception, the Zoning Commissioner and the Board of Zoning Appeals, upon appeal, shall be governed by the following principles and conditions. [B.C.Z.R., 1955.]

502.1—Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not: [B.C.Z.R., 1955.]

- a. Be detrimental to the health, safety, or general welfare of the locality involved; [B.C.Z.R., 1955.]
- b. Tend to create congestion in roads, streets or alleys therein; [B.C.Z.R., 1955.]
- c. Create a potential hazard from fire, panic or other dangers; [B.C.Z.R., 1955.]
- d. Tend to overcrowd land and cause undue concentration of population; [B.C.Z.R., 1955.]
- e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements; [B.C.Z.R., 1955.]
- f. Interfere with adequate light and air. [B.C.Z.R., 1955.]

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502.2 (Special Exceptions)

502.2—In granting any Special Exception, the Zoning Commissioner or the Board of Zoning Appeals, upon appeal, shall impose such conditions, restrictions, or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. The owners, lessees or tenants of the property for which a Special Exception is granted, if required by the Zoning Commissioner, or Board of Zoning Appeals, upon appeal, shall enter into an agreement in writing with said Zoning Commissioner and/or the County Commissioners of Baltimore County, stipulating the conditions, restrictions, or regulations governing such Special Exception, the same to be recorded among the Land Records of Baltimore County. The cost of such agreement and the cost of recording thereof shall be borne by the party requesting such Special Exception. When so recorded, said agreement shall govern the exercise of the Special Exception as granted, as to such property, by any person, firm or corporation, regardless of subsequent sale, lease, assignment or other transfer. [B.C.Z.R., 1955.]

502.3—A Special Exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void. The Zoning Commissioner or, on appeal, the County Board of Appeals, in connection with the grant of any Special Exception, shall fix within the foregoing limits, the period of time for its utilization. Any party to the proceedings may, by so specifying, appeal from either the order of the Zoning Commissioner or of the County Board of Appeals as the case may be, solely as to the reasonableness of the period of time allowed or, alternatively, may have such question determined in conjunction with any appeal from the grant or refusal of the application for a Special Exception. After a final order granting a Special Exception the Zoning Commissioner, at any time prior to expiration of the period of time authorized for its utilization, may grant one or more extensions of such period, provided that a maximum time for utilization of the Special Exception is not thereby extended for a period of more than five years from the date of the final order granting same. [B.C.Z.R., 1955; Bills No. 42, 1962; No. 85, 1967.]

A Special Exception which requires any construction for its utilization shall be deemed to have been used within its authorized time if such construction shall have commenced during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence. [Bills No. 42, 1962; No. 85, 1967.]

3. Superseded by County Board of Appeals—see note 1, Section 401.
4. Superseded by County Board of Appeals—see note 1, Section 401.
5. See note 21, Section 500.
6. Thus (comma) in Bills No. 42, 1962 and No. 85, 1967.

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Appellants have standing to prosecute this appeal. The question of the Appellants' standing was not raised or litigated before the Board of Appeals and, accordingly, there is insufficient evidence in the record upon which a determination on the issue of standing can be based.

Courts in Maryland, in reviewing administrative actions, have previously approved the practice of permitting a party to present additional evidence on the issue of standing, while simultaneously recognizing the inappropriateness of permitting additional testimony on the merits. Thus, for example, the Court in Town of Somerset v. Montgomery County Board of Appeals, 245 Md. 52 (1966), held:

"When the issue of standing of an appellant to appeal is raised in the court in which review of the administrative action is asked, we have approved of the practice of trial judges in permitting testimony on the point to be taken before them, see e.g., Chatham Corp. v. Beltram, 243 Md. 138, 148, 220 A.2d 589 (1966) and Wilkinson v. Atkinson, 242 Md. 231, 218 A.2d 303 (1966). The question is not one of taking additional testimony on the merits of the substantive issues decided by the Board (compare Suburban Properties, Inc. v. Rockville Council, 241 Md. 1, 5-6, 215 A.2d 700 (1965) and cases therein cited), but of determining whether the appellants have the requisite standing to have those issues reviewed." Id. at 63.

The Appellants also cite the Rules of Practice and Procedure of the County Board of Appeals as being dispositive of the issue as to whether discovery is permitted in administrative appeals from the County Board of Appeals. Such reliance is entirely misplaced, in that the application of those rules is limited to actions before the Board of Appeals. Once an action is appealed to the Circuit Court, the Maryland Rules of Procedure are

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CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 9th day of February, 1983, a copy of the foregoing Memorandum in Opposition to Motion for a Protective Order was mailed to James M. Smith, Esquire and Christopher R. West, Esquire, Gebhardt & Smith, Suite 1544, The World Trade Center, Baltimore, Maryland 21202, Attorneys for the Appellants; John W. Hessian, III, Esquire, People's Counsel, Room 223, Old Court House, Towson, Maryland 21204; The County Board of Appeals of Baltimore County, Room 200, Old Courthouse, Towson, Maryland 21204 and to the Zoning Commissioner of Baltimore County, County Office Building, Towson, Maryland 21204.


JOHN B. HOWARD

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clearly controlling. In this regard, the application of the rules of discovery in connection with administrative appeals is explicitly sanctioned by Rule 1, entitled "Scope of Rules", which, in pertinent part, provides:

"The Rules in Chapters 1, 100-600 apply to the Special Proceedings dealt with in Chapter 1100." (The B Rules which apply to all administrative appeals are contained in Chapter 1100.)

Elsewhere, Maryland Rule 400a., defines the "Application and Scope" of the depositions and discovery rules by noting: "This chapter [Chapter 400] shall apply to all actions." (Emphasis supplied.) Similarly, Rule 401a. provides, in part, that "any party to an action may, without leave of court, cause the testimony of any person, whether a party or not, to be taken by deposition for the purpose of discovery or for use as evidence in the action or for both purposes." (Emphasis supplied.) The term "action" as used in the foregoing rules is defined by Rule 5a., which provides:

"'Action' shall include all the steps by which a party seeks to enforce any right in a court of law or equity. Unless otherwise indicated the word 'action' shall include an appeal from the final decision of the District Court, an Orphans' Court or administrative body where such appeal is authorized by statute. 'Action' shall not include a criminal proceeding." (Emphasis supplied.)

In its Motion to Dismiss and/or for Preliminary Relief the Appellee averred that the Appellants lack standing as aggrieved parties to prosecute this appeal. Having raised the issue of the Appellants' standing it is now incumbent upon the Appellee to come forward with evidence to establish that the Appellants are not, in fact aggrieved. As the Appellants note, the court in

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IN THE MATTER OF THE APPLICATION OF FORD MOTOR DEALERSHIP FACILITIES COMPANY FOR SPECIAL EXCEPTION for a Motel.	*	IN THE CIRCUIT COURT FOR
FOR SPECIAL HEARING to approve a motel use in an MLR zone pursuant to Sec. 248.4b of the B.C.Z.R., and FOR VARIANCE from Sec. 409.2 a and b of the B.C.Z.R. NW/S of Belmont Avenue, 366' NE OF Security Boulevard 1st District	*	BALTIMORE COUNTY AT LAW
Zoning File No. 82-10-XSPHA	*	Docket 15
MARILYN A. METZ, et al.	*	Folio 20
Appellants	*	File No. 82-M-415
v.	*	
DAYS INN OF AMERICA, INC.	*	
Appellee	*	
* * * * *		

NOTICE OF DEPOSITIONS

TO: James M. Smith, Esquire, Christopher R. West, Esquire, and Gebhardt & Smith, Attorneys for Appellants, Marilyn A. Metz, Frank J. Metz, Jr., Frank E. Smith, Stephen D. Hansen, John I. Meushaw, Mr. and Mrs. James Kunkel, August S. Dietz, and Nancy J. Dietz.

FROM: Days Inn of America, Inc.

Please take notice that on February 3, 1983 and at the following times the depositions upon oral examination of the above-named Appellants will be taken at the offices of Cook, Howard, Downes & Tracy, 210 Allegheny Avenue, Towson, Maryland 21204, before a notary public, and pursuant to the Maryland Rules of Procedure:

1. Marilyn A. Metz: On Thursday, February 3, 1983, beginning at 9:00 a.m.
2. Frank J. Metz, Jr.: On Thursday, February 3, 1983, beginning at 9:15 a.m.
3. Frank E. Smith: On Thursday, February 3, 1983, beginning at 9:30 a.m.

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Brynarski v. Montgomery County Board of Appeals, 247 Md. 137 (1967) held:

"The person challenging the fact of aggravation has the burden of coming forward with evidence to establish that the petitioner is not, in fact, aggrieved." Id. at 143.

In order to meet the foregoing burden of proof, limited discovery on the issue of standing is certainly appropriate, and within the bounds permitted by the Maryland Rules of Procedure. Despite lengthy hearings before the Baltimore County Zoning Commissioner and the County Board of Appeals, only one of the Appellants testified on the record. Aside from that brief testimony, the Appellee knows nothing about the Appellants. Thus, without the opportunity to depose the Appellants, the Appellee has no means of obtaining the evidence it needs to meet its burden of proving that the Appellants lack the aggravation requisite to pursue this appeal.

In its Motion to Dismiss and/or for Preliminary Relief, the Appellee also requested, in the alternative, that if the Court finds that the Appellants Security Inn Associates and Hilltop Motor Inn, Inc. should be precluded by reason of competition from directly participating in these proceedings, then an order should be passed to prevent such competitors from indirectly participating in the appeal by financing the individual Appellants. In effect, upon a finding that Appellants Security Inn Associates and Hilltop Motor Inn, Inc. lack standing, the Appellee has asked the Court to prohibit those Appellants from participating in these proceedings in any manner whatsoever. The only evidence in the record regarding the payment of the Appellants' expenses is the testimony of

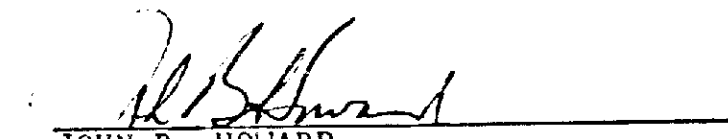
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4. Stephen D. Hansen: On Thursday, February 3, 1983, beginning at 9:45 a.m.
5. John I. Meushaw: On Thursday, February 3, 1983, beginning at 10:00 a.m.
6. James Kunkel: On Thursday, February 3, 1983, beginning at 10:15 a.m.
7. Mrs. James Kunkel: On Thursday, February 3, 1983, beginning at 10:30 a.m.
8. August S. Dietz: On Thursday, February 3, 1983, beginning at 10:45 a.m.
9. Nancy J. Dietz: On Thursday, February 3, 1983, beginning at 11:00 a.m.

REQUEST TO PRODUCE DOCUMENTS

The Deponents named in paragraphs 1 through 9 above are to bring with them and produce at the time of the deposition any and all documents in their possession which evidence that they have paid or contributed to the expenses and costs in connection with the preparation for and hearings before the Zoning Commissioner and County Board of Appeals for Baltimore County giving rise to this litigation.

The purpose of the depositions is for discovery and/or for use at trial, or for both purposes.


JOHN B. HOWARD
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorneys for Days Inn of America, Inc., Appellee

CERTIFICATE OF SERVICE

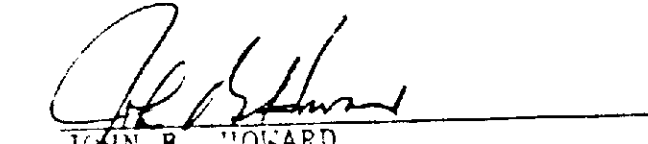
I HEREBY CERTIFY that on this 21st day of January, 1983, a copy of the foregoing Notice of Depositions was mailed to James M. Smith, Esquire and Christopher R. West, Esquire, Gebhardt & Smith, Suite 1544 The World Trade Center, Baltimore, Maryland 21202, Attorneys for the Appellants; to John W.

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Appellant Frank J. Metz, Jr. who, before the County Board of Appeals, conceded that he had not been asked to contribute to the Appellants' expenses. Thus, the use of discovery is necessary to obtain evidence in support of the allegation that the Appellee's competitors are bearing all or substantially all of the Appellants' expenses.

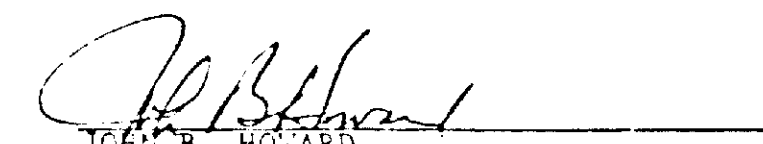
CONCLUSION

The absence of adequate evidence on the record on the issues raised in the Appellee's Motion to Dismiss and/or for Preliminary Relief necessitates the use of discovery, as permitted by the Maryland Rules of Procedure. Accordingly, the Appellants' Motion for Protective Order should be denied.


JOHN B. HOWARD
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorneys for Days Inn of America, Inc., Appellee

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Hessian, III, Esquire, People's Counsel, Room 223, Old Courthouse, Towson, Maryland 21204; the County Board of Appeals of Baltimore County, Room 200, Old Courthouse, Towson, Maryland, 21204; and to the Zoning Commissioner of Baltimore County, County Office Building, Towson, Maryland 21204.


JOHN B. HOWARD

3

IN THE MATTER OF THE APPLICATION OF FORD MOTOR DEALERSHIP FACILITIES COMPANY FOR SPECIAL EXCEPTION for a Motel, FOR SPECIAL HEARING to approve a motel use in an MLR zone pursuant to Sec. 248.4b of the B. C. Z. R., and FOR VARIANCE from Sec. 409.2 a and b of the B. C. Z. R. NW/4 of Belmont Avenue, 366' NE of Security Boulevard 1st District

Zoning File No. 82-10-XSPHA

Marilyn A. Metz, et al., Appellants

v. Days Inn of America, Inc., Appellee

MOTION TO DISMISS AND/OR FOR PRELIMINARY RELIEF

Now comes Days Inn of America, Inc., Appellee, by John B. Howard and Cook, Howard, Downes & Tracy, its attorneys, and respectfully moves this Honorable Court to dismiss the above referenced appeal and/or for preliminary relief, and for reasons states as follows:

1. That the Appellee's Answer to Petition on Appeal in the above captioned action is hereby incorporated by reference.

2. That pursuant to Article VI, Sec. 604 of the Charter of Baltimore County, a party only has standing to appeal a decision of the Board of Appeals to the Circuit Court if he was a party to the proceeding before the Board of Appeals and provided that he is aggrieved by the Board of Appeals' decision.

3. That in zoning appeals a competitor interested in preventing competition with his established business is not an "aggrieved party".

4. That Appellants, Security Inn Associates and Hilltop Motor Inn, Inc., are competitors of Appellee and their sole motivation for pursuing this Appeal is to prevent competition and, accordingly, they lack standing to prosecute this Appeal.

5. That the property owned by Hilltop Motor Inn, Inc., is separated from the subject property by the Baltimore Beltway and, accordingly in the absence of any facts which indicate that such Appellant will suffer a special injury or damage to its property, it lacks standing in this action.

6. That because Appellants Stephen D. Hansen and John I. Meushaw do not own property within sight or sound of the subject property they lack standing as "aggrieved" parties.

7. That the individual Appellants have no interest in the outcome of this proceeding, and that the uncontroverted evidence adduced before the Board of Appeals indicates that the individual Appellants are being financed entirely by Appellants Security Inn Associates and Hilltop Motor Inn, Inc.

8. That if the Court finds that Appellants Security Inn Associates and Hilltop Motor Inn, Inc., or either of them, should be precluded by reason of competition from participating in this proceeding, they should not be permitted to accomplish that end indirectly by financing the individual Appellants to prosecute this Appeal.

9. That an evidentiary hearing, after an opportunity for discovery, will be necessary to resolve the issues raised by this motion.

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WHEREFORE, the Appellee requests that the Appellants' Petition on Appeal be dismissed without leave to amend, or in the alternative that:

a. That each Appellant that lacks standing as an aggrieved party be precluded from participating in this Appeal.

b. That an Order be passed precluding Appellants Security Inn Associates and Hilltop Motor Inn, Inc. from financing the costs and expense of this Appeal on behalf of the individual Appellants.

c. And such other relief as this Court deems appropriate.

JOHN B. HOWARD
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorneys for the Appellee

REQUEST FOR HEARING AND MEMORANDUM OF POINTS AND AUTHORITIES

Now comes Days Inn of America, Inc., Appellee, by John B. Howard and Cook, Howard, Downes & Tracy and requests a hearing on the foregoing Motion to Dismiss and/or for Preliminary Relief, at which time it will rely on the following points and authorities:

1. Maryland Rules B9, B10 and 503.
2. Bryniarski v. Montgomery Co. Board of Appeals, 247 Md. 137 (1967).
3. Kretschman v. Ramsburg, 224 Md. 209 (1961).
4. Lucky Stores, Inc. v. Board of Appeals of Montgomery Co., 270 Md. 513 (1973).
5. Wilkinson v. Atkinson, 242 Md. 231 (1966).

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6. DuRay v. Crane, 240 Md. 180 (1965).
7. Maryland-National Capital Park & Planning Commission v. Rockville, 269 Md. 240 (1973).
8. Shore Acres v. Anne Arundel Co., 251 Md. 310 (1968).
9. Pattison v. Corby, 226 Md. 97 (1961).
10. Waltham Motor Inn, Inc. v. LaCava, 326 N.E. 2d 348 (MA. 1975).

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 13th day of January, 1983, a copy of the foregoing Motion to Dismiss was mailed to Christopher R. West, Esquire, and James M. Smith, Esquire, Gebhardt & Smith, Suite 1544, The World Trade Center, Baltimore, Maryland 21202, Attorney for the Protestants-Appellants; to John W. Hessian, III, Esquire, People's Counsel, Room 223, Court House, Towson, Maryland 21204; The County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204; and to The Zoning Commissioner of Baltimore County, County Office Building, Towson, Maryland 21204.

JOHN B. HOWARD

4

IN THE MATTER OF THE APPLICATION OF FORD MOTOR DEALERSHIP FACILITIES COMPANY FOR SPECIAL EXCEPTION for a Motel, FOR SPECIAL HEARING to approve a motel use in an MLR zone pursuant to Sec. 248.4b of the B. C. Z. R., and FOR VARIANCE from Sec. 409.2 a and b of the B. C. Z. R. NW/4 of Belmont Avenue, 366' NE of Security Boulevard 1st District

Zoning File No. 82-10-XSPHA

Marilyn A. Metz, et al., Appellants

v. Days Inn of America, Inc., Appellee

ANSWER TO PETITION ON APPEAL

Days Inn of America, Inc., Appellee, by its attorneys, John B. Howard and Cook, Howard, Downes & Tracy, answers Appellants' Petition on Appeal as follows:

1. Appellee admits the allegations contained in Paragraph 1.

2. Appellee denies the allegations contained in Paragraphs 2A, 2B and 2C.

3. Further answering the Petition, Appellee states that the decision of the County Board of Appeals was reasonable and supported by legally competent and substantial evidence.

4. Further answering the Petition, Appellee states that the Appellants are not aggrieved and therefore lack standing to pursue this Appeal.

WHEREFORE, Appellee respectfully requests that:

- a) The Appeal be dismissed; or
- b) The Order of the Board of Appeals be affirmed; and,
- c) That the Appellee be granted such other and further relief as the nature of this cause may require.

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 13th day of January, 1983, a copy of the foregoing Answer to Petition on Appeal was mailed to Christopher R. West, Esquire and James M. Smith, Esquire, Gebhardt & Smith, Suite 1544, The World Trade Center, Baltimore, Maryland 21202, Attorneys for the Appellants; to John W. Hessian, III, Esquire, People's Counsel Room 223, Court House, Towson, Maryland 21204; The County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204; and to The Zoning Commissioner of Baltimore County, County Office Building, Towson, Maryland 21204.

JOHN B. HOWARD

2

IN THE MATTER OF THE APPLICATION OF FORD MOTOR DEALERSHIP FACILITIES COMPANY FOR SPECIAL EXCEPTION for a Motel, FOR SPECIAL HEARING to approve a motel use in an MLR zone pursuant to Sec. 248.4b of the B.C.Z.R., and FOR VARIANCE from Sec. 409.2 a and b of the B.C.Z.R. NW/4 of Belmont Ave., 366' NE of Security Boulevard 1st District

Marilyn A. Metz, et al., Protestants-Appellants

Zoning File No. 82-10-XSPHA

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

Misc. Doc. No. 15

Folio No. 20

File No. 82-M-415

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hockett, William R. Evans, and Joanne L. Sudo, 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. 82-10-XSPHA

May 27, 1981 Petition of Ford Motor Dealership Facilities Co. for variance to permit 169 parking spaces in lieu of the required 190 spaces; for a special hearing to approve a motel use in an MLR zone; and a special exception for a motel, on property located on the northwest side of Belmont Ave., 366' northeast of Security Blvd., 1st District - filed

May 27, 1981 Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for July 9, 1981, at 1:30 p.m.

June 18, 1981 Certificate of Publication in newspaper - filed

June 22, 1981 " " Posting of property - filed

Ford Motor Dealership Facilities Co. Case No. 82-10-XSPHA

June 23, 1981 Comments of Balto. County Director of Planning - filed

June 29, " " " " " Zoning Plans Advisory Committee - filed

July 9, 1981 At 1:30 p.m. hearing held on petition by Deputy Zoning Commissioner

January 8, 1982 Order of Deputy Zoning Commissioner granting special exception, special hearing and variance

January 28, " Order for Appeal to County Board of Appeals from Order of Deputy Zoning Commissioner

April 28, " Hearing on appeal before County Board of Appeals

July 7, " Continued hearing

August 25, " Continued hearing

November 16, " Order of County Board of Appeals granting special exception, special hearing and variance

December 14, " Order for Appeal filed in the Circuit Ct. for Balto. County by Christopher West, Esq. and James Smith, Esq., counsel for protestants-appellants

" " " Petition to accompany Order for Appeal filed in the Circuit Ct. for Balto. County

December 15, " Certificate of Notice sent to all interested parties

December 22, " Transcript of testimony filed

Petitioner's Exhibit No. 1 - Baltimore Survey

- " " " 2A, 2B, 2C - Photos
- " " " 3 - Plat prepared by Mr. Walker (in Board's closet)
- " " " 4 - Contiguous Ind. Land Plat (in Board's closet)
- " " " 5 - Contiguous Ind. Land & Semi-Ind. Design IM Plat (in Board's closet)
- " " " 6 - Semi-Ind. & Comm'l. land use - plat (in Board's closet)
- " " " 7 - Plat sub-division of plat Champion Ford Dealership
- " " " 8 - Qual. of Mr. Guckert, Traffic Engineer
- " " " 9 - Memorandum of Mr. Guckert
- " " " 10 - Plat
- " " " 11 - Full testimony of Mr. Hartsfield

FOR THE CLERK

Ford Motor Dealership Facilities Co.
Case No. 82-10-XSPHA

- Protestants' Exhibit No. 1 - Plat, prop. located in MLR zone, 7/6/81
- " " " 2 - Plat, Belmont Hg.
 - " " " 3 - Street map of Balto. County depicting site
 - " " " 4A - Photo of water on Metz property
 - " " " 4B - " " " " " "
 - " " " 4C - " " " " " "
 - " " " 5 - Offer & purchase agreement, 1/12/81
 - " " " 6 - Testimony of Stephen Hartsfield

Argument Exhibit #1 - Enlargement of Sec. 248.4 Z.R. (In Bd.'s closet)

" " #2a - 2e - 1000 scale zoning maps (In Board's closet)

January 10, 1983 Record of proceedings filed in the Circuit Ct. 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 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,

June Holman
June Holman
County Board of Appeals of Baltimore County

cc: John Howard, Esq.
James M. Smith, Esq. & C. West, Esq.
J. W. Hessian, Esq.
File

Ford Motor - #82-10-XSPHA

producing the entire record for review by this Board. Such, if necessary, provides a ready reference to substantiate the comments expressed in this Opinion.

Mark Smith, Director of Development for the Petitioner, testified on direct and cross-examination that his survey indicates that approximately seventy to eighty percent of the business generated by the proposed motel would be of a commercial nature, and that if the variance is not granted a hardship would occur inasmuch as the project would then be infeasible and cost prohibitive. He also indicated that the proposed application and plans submitted necessitated 144 motel rooms, that the Petitioner did expect to generate business from the Social Security complex and that within the 49 acre M.L.R. zone (site of the subject property) there was little prospect of generating business for the proposed motel.

The Petitioner next produced William Fred Walker, an expert in Land, Architecture and Planning. Mr. Walker testified that his studies indicated that an area of 25 acres or more of industrial zoning is contiguous to the subject location. Mr. Walker also alluded to Petitioner's Exhibit No. 3 as demonstrative of the fact that approximately 400 acres, plus or minus, of industrially zoned land is contiguous to the subject site. Mr. Walker further testified that Petitioner's Exhibit No. 6, in his opinion, illustrated that Baltimore County had identified the area in and surrounding the subject site as a major business, commercial and industrial zone. Further, Mr. Walker testified that substantial manufacturing and industrial development was now occurring in the areas contiguous to the subject site. (McCormick, B.G. and E.). In the opinion of Mr. Walker, the proposed development is a demonstrably appropriate service to the industries existing, planned or normally to be located within 25 acres or more of an industrial zone. He further indicated that the single access planned and the parking planned are adequate for the proposed facility. On cross-examination, Mr. Walker testified that the 49 acre site presently zoned M.L.R. and the industrial concerns contained therein could not support the proposed facility.

People's Counsel, on cross-examination of Mr. Walker, raised the issue whether the proposed facility was within 100 feet of a major street or right of way. Mr. Walker's reply was to the effect that Belmont Avenue did not constitute a major street or

IN THE MATTER OF THE APPLICATION OF FORD MOTOR DEALERSHIP FACILITIES COMPANY FOR SPECIAL EXCEPTION for a Motel, FOR SPECIAL HEARING to approve a motel use in an MLR zone pursuant to Sec. 248.4b of the B. C. Z. R., and FOR VARIANCE from Sec. 409.2 a and b of the B. C. Z. R. NW/4 of Belmont Avenue, 366' NE of Security Boulevard 1st District

Marilyn A. Metz, et al,
Protestants-Appellants

Zoning File No. 82-10-XSPHA

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, William R. Evans, and Joanne L. Suder, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, James M. Smith, Esq., and Christopher R. West, Esq., World Trade Center, Baltimore, Md. 21202, Counsel for Protestants-Appellants; John B. Howard, Esq., 210 Allegheny Ave., Towson, Md. 21204, Counsel for Petitioner; Ford Motor Dealership Facilities Co., 300 Renaissance Center, P. O. Box 43336, Detroit, Michigan, 48243, Petitioner; Day Realty of South Carolina, Inc., 145 King St., Suite 227, P. O. Box 1086, Charleston, South Carolina 29402, Contract Purchaser; and John W. Hessian, Esq., Court House, Towson, Md. 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

June Holman
June Holman
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
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Ford Motor - #82-10-XSPHA

right of way. Inasmuch as this issue was not pursued with any degree of vigor, this Board considers it irrelevant of the ultimate issue before us.

The Petitioner then produced Joseph L. Mekuiski as an expert in commercial and industrial real estate, however, his testimony was, for the most part, cumulative. Mr. Mekuiski, on cross-examination, stated that the present M.L.R. zone could not support the proposed use.

John Guckert, an expert in traffic engineering and planning, testified that in his opinion the total number of parking spaces necessary to accommodate a 144 room motel and the adjacent restaurant was 122, not the 167 spaces required by the Baltimore County Zoning Regulations and, in fact, substantially less than the 167 spaces for which the Petitioner has requested a variance. Mr. Guckert further testified that his studies indicated that 167 parking spaces would accommodate a total of 200 motel rooms. These figures were arrived at by actual studies done on a similar Days Inn located in Gaithersburg, Maryland, and were based on one hundred percent occupancy at the time the studies were conducted. Mr. Guckert also testified that the amount of traffic generated by the proposed facility would not have an adverse impact on the surrounding street system during peak periods. Mr. Guckert also addressed the concern surrounding the proposed single access to the proposed development indicating that such was adequate to service the customers of the Petitioner as well as users of Belmont Avenue. Mr. Guckert also indicated that he was aware of the concerns expressed with respect to an emergency situation and the single access question, however, in view of the circular nature of the project, Mr. Guckert indicated that the subject property would be easily accessible in an emergency situation. On cross-examination, Mr. Guckert conceded that in an emergency situation if the one access is blocked and vehicles are parked on the perimeter of the site, access could be a problem.

Protestants produced Paul Lee, an expert engineer and urban planner, who testified that the subject property was too small for the proposed use. Mr. Lee indicated that the proposed use would overcrowd the land.

Frank Metz, a residential landowner and neighbor to the subject property,

Ford Motor Dealership Facilities Co.
Case No. 82-10-XSPHA

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to James M. Smith, Esq., and Christopher R. West, Esq., World Trade Center, Baltimore, Md. 21202, Counsel for Protestants-Appellants; John B. Howard, Esq., 210 Allegheny Ave., Towson, Md. 21204, Counsel for Petitioner; Ford Motor Dealership Facilities Co., 300 Renaissance Center, P. O. Box 43336, Detroit, Michigan, 48243, Petitioner; Day Realty of South Carolina, Inc., 145 King St., Suite 227, P. O. Box 1086, Charleston, South Carolina 29402, Contract Purchaser; and John W. Hessian, Esq., Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 15th day of December, 1982.

June Holman
June Holman
County Board of Appeals of Baltimore County

Ford Motor - #82-10-XSPHA

testified in opposition to the petition and stated that his primary concern was flooding and water runoff which would occur if the Petitioner's application is granted. However, in rebuttal, Mr. Walker testified that he was aware that as a matter of right any number of uses could be developed on the subject property which could create the same storm water runoff about which Mr. Metz is complaining.

The last witness produced by the Protestants was C. Richard Moore, an expert traffic and safety engineer. Mr. Moore was asked several specific questions. He was asked if the Petitioner's proposed application was detrimental to the health, safety or general welfare of the locality. Mr. Moore's answer was to the effect that a second access would be advantageous. With respect to the question of possible traffic congestion, Mr. Moore appeared somewhat vague in his answer and with respect to a question concerning whether the proposed petition would create fire, panic or other hazards, he again stated that he recommends a second access. Finally, on cross-examination, Mr. Moore admitted a basic unfamiliarity with the subject property or this particular proposed development.

It is apparent that although the evidence is complex it appears, on the surface, the ultimate issue to be addressed by this Board concerns the interpretation given to Section 248.4 of the Zoning Regulations and the law applicable to "use" and "area" variances.

Section 502.1 of the Baltimore County Zoning Regulations states: "Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:

- a. Be detrimental to the health, safety, or general welfare of the locality involved;
- b. Tend to create congestion in roads, streets or alleys therein;
- c. Create a potential hazard from fire, panic or other dangers;
- d. Tend to overcrowd land and cause undue concentration of population;
- e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
- f. Interfere with adequate light and air;
- g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these zoning regulations; nor

IN THE MATTER OF THE APPLICATION OF FORD MOTOR DEALERSHIP FACILITIES COMPANY FOR SPECIAL EXCEPTION for a Motel, FOR SPECIAL HEARING to approve a motel use in an MLR zone pursuant to Section 248.4b of the B. C. Z. R., and FOR VARIANCE from Section 409.2 a and b of the B. C. Z. R. NW/4 of Belmont Avenue 366' NE of Security Boulevard 1st District

OPINION

The above captioned matter comes before the Board on appeal from a decision of the Deputy Zoning Commissioner of Baltimore County granting a special exception with restrictions, a special hearing and a variance. On appeal the matter was heard de novo and the Petitioner again reiterated its desire to construct a 144 unit motel in an M.L.R. zone, to petition for a special hearing for the approval of a motel use in an M.L.R. zone pursuant to Section 248.4.b of the Baltimore County Zoning Regulations, and to seek a variance to permit 167 parking spaces in lieu of the required 189 parking spaces. (The Board notes the petition for 190 parking spaces was amended on the day of the hearing). The subject property is located on the northwest side of Belmont Avenue 366 feet northeast of Security Boulevard, in the First Election District of Baltimore County.

Testimony and the presentation of evidence encompassed two days, final arguments one-half day and each party submitted a Memorandum in support of their respective positions. The Board is compelled to note that all witnesses appeared well prepared and sincere in their presentation. Counsel, in particular, are to be complimented for the diligence, expertise and professional manner displayed in this complex matter as well as the manner in which they conducted the hearing, assisted this Board with respect to the applicable regulations and decisions pertaining to the case and, finally, the zeal with which each advocated the position of their respective clients.

The Petitioner presented a total of four witnesses and the Protestants presented three witnesses. Various exhibits were introduced through each of the witnesses. Counsel for the Petitioner and the Protestants have gone to great time and expense in

Ford Motor - #82-10-XSPHA

- h. Be inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations."

Noting at the outset that the Petitioner must sustain the burden of proof, the Board is persuaded that the Petitioner has sustained its burden and has convinced the Board that the petition for a special exception complies with the requirements of Section 502.1 of the Baltimore County Zoning Regulations.

Having determined that the Petitioner has met the requirements of Section 502.1, the Board next directs its attention to Section 248.4.b and c of the Baltimore County Zoning Regulations which states:

- "b. The following commercial use when within an M.L.R. Zone which is part of a contiguous area of 25 acres or more of industrial zoning and if the specific use proposed is demonstrably an appropriate service to industries existing, planned or normally to be expected to locate therein; and in no case shall be combined tract areas developed for one or more of these service commercial uses occupy more than 15% of M.L.R. tract in which they are located:

Bank;
Business and trade schools;
Motel;
Public Restaurant, but food may be served and eaten on the premises only by persons seated at inside tables or counters; it may not be served to persons remaining in cars.

- c. In order that the above-listed uses in sub-sections a and b hereof will be located within the M.L.R. Zone so as to assure their services being rendered primarily to the industries therein, no building or structure connected with such commercial uses may be within 100 feet of the right-of-way of an existing or proposed major street. This limitation shall not apply to locations on minor or local industrial subdivision roads or to freeways (on which the use does not have direct access)."

The Board is cognizant of the fact that counsel for both parties addressed this regulation during the course of the hearing, and at great length in final argument and Memoranda.

Protestants strenuously advanced the proposition that it is impossible for the Petitioner to satisfy the provisions of Section 248.4.b and c. In advancing this proposition, Protestants contend that a strict construction of Section 248.4.c requires the Petitioner to establish that the services of the motel in question, in an M.L.R. zone, would be "rendered primarily to the industries therein". Protestants further suggest that

as Section 248.4.c of the Baltimore County Zoning Regulations uses the term "therein" it relates to the M.L.R. zone only, not to areas contiguous to the M.L.R. zone. The Petitioner, on the other hand, urged this Board to construe Section 248.4.b or c of the Baltimore County Zoning Regulations in a more liberal sense. The Petitioner suggests that the term "therein" refers to a contiguous area of 25 acres or more of industrial zoning and, therefore, is not applicable to the M.L.R. zone only.

After reviewing all of the evidence, Memoranda and the law, the Board is persuaded that the more reasonable interpretation of Section 248.4.b and c of the Baltimore County Zoning Regulations is the one advanced by the Petitioner. The evidence adduced clearly indicates that the proposed use will not primarily serve the industries located within the M.L.R. zone in question. As a matter of fact, the Petitioner stipulates that fact. However, the evidence does indicate that the area which is the subject of this petition is part of a contiguous area of 25 acres or more of industrial zoning and further, that the specific use proposed is demonstrably an appropriate service to industries existing, planned or normally to be expected to locate therein. (Emphasis added). Indeed, the Board recognizes the subject location and the large areas contiguous thereto as industrial, quasi-industrial, commercial and business related areas. All parties admit that the Baltimore County Zoning Regulations are void of any definition of the term "industrial". Consequently, the Board interprets the applicable regulation as lending itself to a broad construction. The fact that the contiguous zones are not completely M.H. or M.L. zones is not, in this Board's opinion, of paramount concern.

The Board cannot look into a crystal ball and attempt to glean the intent of the legislative body when it enacted Section 248.4.b and c of the Baltimore County Zoning Regulations, however, in reviewing the Regulations it is apparent that the construction of Section 248.4.c advanced by the Protestants would require that uses permitted in Subsection a of Section 248.4, such as an airstrip, be primarily for the benefit of the M.L.R. zone in which it is located. This Board does not believe that the Baltimore County Council intended such a construction of the regulation. To the contrary, the Board believes, and therefore decides, that the intention of the Baltimore County Council when it enacted

Section 248.4 a, b and c was to permit commercial support uses, by special exception, in an M.L.R. zone which is contiguous to large areas of industrial zoning.

Applying such an interpretation to the Regulations, the Board dismisses the proposition that the M.L.R. zone will not support the proposed use, but to the contrary suggests that the purpose of the proposed use is to support the industries located not only within the M.L.R. zone, but those contiguous industrial zones as well. The Board believes that the Petitioner has presented sufficient evidence to persuade us that the proposed use is demonstrably appropriate to industries either existing, planned or normally to be expected to locate within the contiguous areas.

Finally, the Petitioner requests that it be granted a variance so as to permit 167 parking spaces in lieu of the required 189 parking spaces. The Protestants advance the proposition that said variance request should be denied because the Petitioner has voluntarily and knowingly created its own hardship (self-imposed hardship rule). The Protestants contend that the Petitioner purchased the property, designed the proposed use and now submits that if the variance is not granted practical difficulty and/or hardship will occur. Protestants further argue that the Petitioner has made no effort to conform the design of the proposed use so as to comply with the existing regulations. As authority for their proposition, Protestants cite McLean v. Solley, 270 Md. 208, 310 A.2d. 783 (1973), but in so doing point out that the purpose of McLean merely held that the self-created hardship rule is more strictly applied in "use" variance cases than in cases of "area" variances.

Petitioner, however, produced evidence that the planned 167 parking spaces were not only adequate but indeed were more than sufficient to service the proposed use. Further, Petitioner produced evidence to the effect that a denial of the variance would create a hardship. Such evidence was not contradicted except in connection with the question concerning single access. Petitioner argues that no Maryland decisions exist which would apply the self-created hardship rule to deny an "area" variance. As authority, therefore, the Petitioner cites Zengerle v. Board of County Commissioners, 262 Md. 1 (1971). Zengerle held that the self-created hardship rule was inapplicable to

cases involving petitions for "area" variances as distinguished from "use" variances where there is testimony of practical difficulty. Clearly, the Petitioner has presented evidence that without an area variance the cost of development of the proposed use would be cost prohibitive and the use itself would not be feasible. Further, the Board notes that the Petitioner did not consummate the purchase of the land in question until subsequent to the Deputy Zoning Commissioner granting the variance.

In conclusion, the Board must address the Order of the Deputy Zoning Commissioner, including the restrictions imposed therein. The Board believes that the record before it (de novo) does not lend itself to the issues surrounding pinball machines and the game room, or the revised site plan. However, the Board is persuaded that the evidence produced is sufficient to grant the special exception, special hearing and variance as prayed, and without the restrictions imposed by the Deputy Zoning Commissioner.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 16th day of November, 1982, by the County Board of Appeals, ORDERED that the Order of the Deputy Zoning Commissioner be affirmed as modified, and that the petition for a special exception for a Motel be and the same is hereby GRANTED; and it is

FURTHER ORDERED that the petition for a special hearing for the approval of a motel use in an M.L.R. zone pursuant to Section 248.4.b of the Baltimore County Zoning Regulations is hereby approved and GRANTED; and it is

FURTHER ORDERED that the variance petitioned for to permit 169 parking spaces in lieu of the required 189 parking spaces as indicated on the site plan submitted, be and the same is hereby GRANTED.

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 COUNTY

William T. Hackett, Jr.
William T. Hackett, Chairman

William K. Evans
William K. Evans

Joanne L. Suder
Joanne L. Suder

IN THE MATTER OF
THE APPLICATION OF
FORD MOTOR DEALERSHIP
FACILITIES COMPANY

- * IN THE
- * CIRCUIT COURT
- * FOR
- * BALTIMORE COUNTY
- * Law No.:

ORDER FOR APPEAL

Appellants, Marilyn A. Metz, Frank J. Metz, Jr., Frank E. Smith, Stephen D. Hansen, Security Inn Associates, John I. Meushaw, Hilltop Motor Inn, Inc., Mr. and Mrs. James Kunkel, August S. Dietz, and Nancy J. Dietz, by their attorneys, Christopher R. West, James M. Smith, and Gebhardt & Smith, appeal to the Circuit Court for Baltimore County from the Opinion and Order entered by the County Board of Appeals of Baltimore County on November 16, 1982 in the matter of In The Matter of the Application of Ford Motor Dealership Facilities Company (No. 82-10-XSPHA).

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CHRISTOPHER R. WEST
James M. Smith
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Ninth Floor
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(301) 752-5830
Counsel for the Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of December, 1982, copies of the foregoing pleading were mailed, postage prepaid to John B. Howard, Esquire, 210 Allegheny Avenue, Towson, Maryland 21204, Counsel for the Applicants; to John W. Hessian, III, Esquire, People's Counsel, Room 223, Court House, Towson, Maryland 21204; to the County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204; and to the Zoning Commissioner of Baltimore County, County Office Building, Towson, Maryland 21204.

Christopher R. West
CHRISTOPHER R. WEST

IN THE MATTER OF
THE APPLICATION OF
FORD MOTOR DEALERSHIP
FACILITIES COMPANY

- * IN THE
- * CIRCUIT COURT
- * FOR
- * BALTIMORE COUNTY
- * Law No.:

PETITION ON APPEAL

Appellants, Marilyn A. Metz, Frank J. Metz, Jr., Frank E. Smith, Stephen D. Hansen, Security Inn Associates, John I. Meushaw, Hilltop Motor Inn, Inc., Mr. and Mrs. James Kunkel, August S. Dietz, and Nancy J. Dietz, by their attorneys, Christopher R. West, James M. Smith, and Gebhardt & Smith, hereby file their Petition on Appeal pursuant to Rule B2e of the Maryland Rules of Procedure and state:

1. The action appealed from is an Opinion and Order entered on November 16, 1982 by the County Board of Appeals of Baltimore County in the matter of IN THE MATTER OF THE APPLICATION OF FORD MOTOR DEALERSHIP FACILITIES COMPANY FOR SPECIAL EXCEPTION for a Motel, FOR SPECIAL HEARING to approve a motel use in an MLR zone pursuant to Section 248.4b of the B.C.Z.R., and FOR VARIANCE from Section 409.2a and b of the B.C.Z.R. NW/S of Belmont Avenue 366' NE of Security Boulevard 1st District.

2. The County Board of Appeals of Baltimore County committed the following errors:

A. It erroneously granted a Special Exception for a motel although the Petitioners below failed to introduce any evidence at all to establish, in accordance with the requirements of Section 248.4c of the Baltimore County Zoning Regulations, that the services of such a motel would be rendered "primarily" to the industries within the relevant contiguous area.

B. It erroneously granted a Special Exception for a motel although the Petitioners below conceded that the motel would not render services primarily to industries in the M.L.R. Zone.

C. It erroneously granted a variance from Sections 409.2a and 409.2b of the Baltimore County Zoning Regulations on grounds of practical difficulty or unreasonable hardship where the Petitioners below voluntarily and knowingly created their own hardship and difficulty.

D. It erroneously granted a Special Exception in violation of Section 502.1 of the Baltimore County Zoning Regulations which proscribes special exceptions which, inter alia, create a potential hazard from fire, panic, or other dangers.

E. It arbitrarily and capriciously granted a Special Exception and a variance in disregard of the evidence adduced during the course of the hearing.

3. Appellants request this Court to reverse the Order of the County Board of Appeals of Baltimore County dated November 16, 1982 and to deny the Special Exception and the variance requested by the Petitioners below.

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Christopher R. West
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THE APPLICATION OF
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- * IN THE
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2. The County Board of Appeals of Baltimore County committed the following errors:

A. It erroneously granted a Special Exception for a motel although the Petitioners below failed to introduce any evidence at all to establish, in accordance with the requirements of Section 248.4c of the Baltimore County Zoning Regulations, that the services of such a motel would be rendered "primarily" to the industries within the relevant contiguous area.

B. It erroneously granted a Special Exception for a motel although the Petitioners below conceded that the motel would not render services primarily to industries in the M.L.R. Zone.

C. It erroneously granted a variance from Sections 409.2a and 409.2b of the Baltimore County Zoning Regulations on grounds of practical difficulty or unreasonable hardship where the Petitioners below voluntarily and knowingly created their own hardship and difficulty.

of which is a "salt pile", the Department of Public Safety and the Baltimore County Beltway. The property in question in this proceeding occupies just 2.2 acres, and the remaining 4.12 acres in the M.L.R. Zone are owned and used by a Ford dealership and a private individual. See also Protestants' Exhibit No. 1.

Days Inn seeks to erect a one hundred forty-four (144) room motel on the property in question. (April 28 hearing transcript, page 42) The motel would contain, in addition to rooms for guests, a restaurant with a seating capacity of forty-eight (48), a gameroom containing pinball machines, and a gift shop. (April 28 hearing transcript, pages 33, 32) Because of the inordinately small size of the parcel of property in question and the massive size of the five-story motel units which Days Inn proposes to erect on the property (April 28 hearing transcript, page 29), eighty to ninety percent (80-90%) of the property will be occupied by buildings or parking areas, and the landscaping to be provided will be minimal.

Of special importance to this proceeding is the fact that the Offer And Purchase Agreement (introduced as Protestants' Exhibit) for the sale of the subject property is dated January 12, 1982. That Agreement clearly provides a ninety (90) day contingency period for the obtaining of all "Required Approvals for the construction, restaurant, and meeting room facility on the Premises" (Paragraph 13.06). Mr. William Fred Walker, the site planner for Days Inn, candidly testified at the July 7, 1982 hearing that during the ninety (90) day contingency period, he explicitly advised Days Inn that the proposed motel/restaurant could not be built in compliance with the applicable Baltimore zoning laws pertaining to parking requirements. He then stated that Days Inn nevertheless elected to proceed forward with full knowledge of this inability to comply with Baltimore County's requirements. The testimony further reveals, even more surprisingly, that Days Inn took title to the property after it had petitioned for its variance from the applicable parking requirements on the grounds of practical difficulty and unreasonable hardship.

ARGUMENT

- I. THE PETITIONERS' REQUEST FOR A VARIANCE SHOULD BE DENIED BECAUSE THE PETITIONERS HAVE VOLUNTARILY AND KNOWINGLY CREATED THEIR OWN HARDSHIP.

The Petitioners have requested a variance from Sections 409.2a and

D. It erroneously granted a Special Exception in violation of Section 5C.1 of the Baltimore County Zoning Regulations which proscribes special exceptions which, inter alia, create a potential hazard from fire, panic, or other dangers.

E. It arbitrarily and capriciously granted a Special Exception and a variance in disregard of the evidence adduced during the course of the hearing.

3. Appellants request this Court to reverse the Order of the County Board of Appeals of Baltimore County dated November 16, 1982 and to deny the Special Exception and the variance requested by the Petitioners below.

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CHRISTOPHER R. WEST

F-00.20

409.2b of the Zoning Regulations in order to permit Days Inn to provide one hundred sixty-seven (167) parking spaces for their motel in lieu of the required one hundred eighty-nine (189) spaces. (April 28 hearing transcript, page 34) Section 307 of the Zoning Regulations provides that variances from offstreet parking regulations may only be granted "in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship". In this case, by purchasing the subject property with actual knowledge of the zoning restrictions relating to parking which were in effect at the time of such purchase and, as stated by Mr. Walker, with actual knowledge that the proposed motel could not be built without a parking variance, Days Inn, in fact, created for itself whatever hardship such parking restrictions entail. Thus, the hardship from which Days Inn seeks relief is entirely self-imposed, and Days Inn can scarcely be heard to complain of "unreasonable hardship" or "practical difficulty" when it has created its own hardship and difficulties in the first place by acquiring the property with actual knowledge of its use limitations.

In Salisbury Board of Zoning Appeals v. Bounds, 24 Md. 347, 214 A.2d 810, 184 (1965), the Maryland Court of Appeals held that "a self-inflicted hardship . . . cannot be the basis for a variance". As is stated in 3 Anderson, American Law of Zoning 2d §18.43, "Hardship is self-created where the applicant purchased [the property] with knowledge of the zoning restrictions from which he seeks administrative relief."

The Maryland Courts have explicitly held that "a variance or special exception will not be granted on the basis of practical difficulties or unnecessary hardships if such were the result of the applicant's own action." Pem Construction Co. v. City of Baltimore, 233 Md. 372, 196 A.2d 879, 881 (1964). See also, Marino v. City of Baltimore, 215 Md. 206, 137 A.2d 193 (1957). As the Court of Appeals of Maryland stated in City of Baltimore v. Saper, 230 Md. 291, 186 A.2d 884, 887-888 (1962):

This Court has held that when a person purchases property with the intention of applying for a variance from the restrictions imposed by ordinance, he cannot contend that such restrictions cause him such a peculiar hardship that entitles him to the special privileges which he seeks. (Emphasis supplied.)

See also, Gleason v. Ke-wick Improvement Association, 197 Md. 46, 73 A.2d 164 (1951).

In this case, the Petitioners have admitted that Days Inn entered into a contract knowing in advance of the parking difficulty and then actually purchased the

RE: PETITION FOR SPECIAL HEARING - BEFORE THE
For Motel and Public Restaurant - COUNTY BOARD OF APPEALS
NW/S Belmont Avenue - OF
306' N. of Security Boulevard - BALTIMORE COUNTY
Ford Motor Dealership -
Facilities Company, -
Petitioner -
Day Realty of South Carolina, Inc., - No. 82-10-XSPHA
Contract Purchaser -

PROTESTANTS' MEMORANDUM IN OPPOSITION TO PETITIONS FOR SPECIAL EXCEPTION, VARIANCE AND SPECIAL HEARING

This Memorandum is filed on behalf of Frank J. Metz, Jr. and Marilyn A. Metz, Frank E. Smith, Stephen D. Hansen, John I. Meushaw, Security Inn Associates, Hilltop Motor Inn, Inc., Mr. and Mrs. James Kunkel, and August S. Dietz and Nancy J. Dietz (hereinafter, collectively, the "Protestants"), by James M. Smith, Christopher R. West, and Gebhardt & Smith, Counsel for the Protestants, in opposition to the Petitions for Special Exception, Variance and Special Hearing filed by Ford Motor Dealership Facilities Company and Day Realty Company of South Carolina, Inc., and Days Inn of America, Inc., success in interest to Day Realty Company of South Carolina, Inc. (hereinafter, collectively, the "Petitioners").

STATEMENT OF FACTS

This proceeding involves a request by the Petitioners for a special exception under Section 248.4 of the Baltimore County Zoning Regulations (B.C.Z.R., Bill No. 56, 1961) (hereinafter the "Zoning Regulations") which would enable Days Inn of America, Inc. (hereinafter "Days Inn") to erect a large two (2) building (five (5) story) motel/restaurant complex on a tiny parcel of property located near the intersection of Security Boulevard and the Baltimore Beltway. The proceeding also involves a request for a variance from Sections 409.2a and 409.2b of the Zoning Regulations in order to permit Days Inn to provide one hundred sixty-seven (167) parking spaces in lieu of the one hundred eighty-nine (189) parking spaces required by the Zoning Regulations.

The fundamental underlying problem in this proceeding is that Days Inn seeks to construct an oversized motel/restaurant facility on an undersized parcel of land. As Counsel for Days Inn surprisingly and candidly admitted in his own original Memorandum

subject property at a time when it was fully aware that a variance would be necessary to permit the required number of off-street parking spaces to be reduced by over eleven percent (11%). Under the clear authority of applicable Maryland law, a person who creates his own hardship by purchasing a property under such circumstances may not contend that he is entitled to a variance. For this reason, the Petitioners' request for a variance must be denied by this Board.

Moreover, not only should the variance be denied because the Petitioners have created their own hardship, but in addition, the testimony offered by the Petitioners does not credibly support a claim that one hundred sixty-seven parking spaces will be sufficient for this five-story motel and restaurant complex. The Petitioners argue that their motel and restaurant will be unique and that they should not be required to provide the normal number of parking spaces. The Petitioners base this contention on the unsupported statement of a witness for the Petitioners that it is only necessary to provide an eighty-five percent (85%) parking space to room ratio. (April 28 hearing transcript, page 35) This witness failed to mention the parking space that would be needed for employees and restaurant patrons.

At the hearing below, Mr. Stephen Hartsfield testified on behalf of the Petitioners and conceded that parking space planning should take into consideration the maximum potential needs of the motel. Mr. Hartsfield testified that he believed the maximum needs of the motel would be one parking space for each room plus parking spaces for employees and restaurant patrons. (Transcript of hearing below before the Zoning Commissioner, page 53) The evidence before the Zoning Commissioner showed that the motel would employ ten (10) employees and that as many as forty-three (43) patrons could be seated in the restaurant. (Transcript of hearing below before the Zoning Commissioner, pages 58, 38-39). In addition, the evidence before the Zoning Commissioner showed that the times of peak motel occupancy and peak restaurant use would overlap. (Transcript of hearing below before the Zoning Commissioner, page 60).^{1/}

^{1/} As the Petitioners' own traffic engineer stated at the July 9, 1982 hearing, a solution to the parking problem would simply be to eliminate one of the two motel structures. The Petitioners, however, failed to present any studies whatsoever of whether their use of this site for motel purposes would be financially viable if they reduced the size of the project to the extent necessary to enable them to build the number of parking spaces that the Zoning Regulations require.

filed below before the Deputy Zoning Commissioner, "a standard exists in the motel industry which requires a site of four to six acres before construction of a motel is considered feasible." (Petitioner's Memorandum in Support of Petitions, p. 4) The property that Days Inn has acquired in Baltimore County, however, only contains 2.4 acres, barely more than half of the site area which Days Inn has conceded, through its own Counsel, to be the minimum feasible site area. As noted in the July 7, 1982 testimony of Mr. Paul Lee before this Board, the site that Days Inn has purchased is too small for the facility that it wants to construct, and should indeed be, as conceded by Mr. Howard in his Memorandum, at least four to four-and-one-half acres. Notwithstanding the plainly inadequate size of the site acquired by Days Inn, Petitioners seek to erect two (2) motel structures each to be five (5) stories in height containing an aggregate of one hundred forty-four (144) rooms. Because of the oversized nature of the motel, the Days Inn complex will be plagued by serious parking inadequacies and a dangerous fire hazard. As a result of these critical problems that are anticipated if this large motel is constructed on this undersized parcel of land, the Protestants are opposing the Petitions filed by the Petitioners.

Much has been made by Days Inn that two (2) of the Protestants, Security Inn Associates (Ramada Inn) and Hilltop Motor Inn, Inc., are existing motel operations; however, even those two entities are substantial nearby property owners. Furthermore, as Frank J. Metz, Jr. testified during the July 7, 1982 hearing, six (6) of the Protestants, Mr. and Mrs. Frank J. Metz, Jr., Mr. and Mrs. August S. Dietz, and Mr. and Mrs. James Kunkel, live within a few hundred yards of the proposed site, and have absolutely nothing to do with the hotel or motel business other than having the misfortune of living close to the proposed site of the Days Inn.

As noted above, the property in question contains only approximately 2.4 acres. Approximately 2.2 of these acres are located in a forty-nine and one half acre parcel which is zoned M.L.R. (hereinafter the "M.L.R. Parcel"). As Mr. Paul Lee testified during the July 7, 1982 hearing, the M.L.R. Parcel presently has four (4) major users. Ten acres of the parcel are used as a residential subdivision in which, as discussed above, a number of the Protestants live. Another 10.5 acres of the parcel are occupied by a mini-warehouse complex. Beltway Properties owns an undeveloped tract consisting of 3.67 acres, and 19 acres of the parcel are occupied by the State Highway Administration (much

- 2 -

In view of these facts, it is submitted that the 189 spaces required by the Zoning Regulations are the minimum number of adequate parking spaces needed and that if fewer spaces are required, cars from motel and restaurant patrons will assuredly spill out onto the local residential streets. The Petitioners have failed to sustain their burden of proving that they should be permitted to build only 167 parking spaces.

II. THE EXCEPTION REQUESTED BY PETITIONERS VIOLATES SECTIONS 248.4B AND 248.4C OF THE BALTIMORE COUNTY ZONING REGULATIONS IN THAT THE PROPOSED MOTEL IS NOT DESIGNED FOR THE PRIMARY USE OF THE INDUSTRIES LOCATED WITHIN THE MLR ZONE.

Section 248.4 of the Zoning Regulations clearly and succinctly sets forth the uses which may be permitted by special exception on property which is zoned M.L.R. Section 248.4b provides that a motel is a permissible use in an M.L.R. Zone only if: 1) the motel is located within a M.L.R. Zone which is part of a contiguous area of at least twenty-five (25) acres of industrial zoning; and 2) "the specific use proposed is demonstratively an appropriate service to industries existing, planned or normally to be expected to locate therein" (Emphasis supplied).^{2/} Section 248.4c of the Zoning Regulations makes it abundantly clear that in order for a Petitioner to demonstrate that a proposed use is "an appropriate service" to industries in the M.L.R. Zone, the Petitioners must establish that its services will be rendered primarily to the industries within the M.L.R. Zone. Section 248.4c expressly provides that this limitation is to assure that the

^{2/} Section 248.4b of the Zoning Regulations provides in full as follows:

The following commercial uses, when within an M.L.R. Zone which is part of a contiguous area of 25 acres or more of industrial zoning and if the specific use proposed is demonstrably an appropriate service to industries existing, planned or normally to be expected to locate therein; and in no case shall the combined tract areas developed for one or more of these services commercial uses occupy more than 15% of M.L.R. tract in which they are located:

Bank;
Business and trade schools;
Motel;
Public Restaurant, but food may be served and eaten on the premises only by persons seated at inside tables of counters; it may not be served to persons remaining in cars. (Emphasis added).

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businesses will render their services primarily to the industries within the M.L.R. Zone.^{3/} Thus, it is plain that the drafters of the Zoning Regulations contemplated that exceptions would be granted pursuant to Section 248.4b only when the business requesting the exception anticipates that it will provide services primarily to industries in the M.L.R. Zone. Such contemplation is clearly within the tenor of the overall concept that M.L.R. zoning is a special classification of zoning designed solely to promote and establish self-sustaining "industrial subdivisions".

Indeed, the Petitioners virtually conceded in their Memorandum filed below before the Zoning Commissioner that the above interpretation of Section 248.4b is correct. The Petitioners noted that Section 247 of the Zoning Regulations, which sets forth the purposes for establishing M.L.R. Zones, indicates that M.L.R. Zones were created for the purpose of establishing "industrial subdivisions." (Petitioners' Memorandum in Support of Petitions, page 2). The Petitioners also noted that Section 248.4b was adopted to enable property to be used for purposes which support the industries in the "subdivision." Thus, Petitioners conceded that Section 248.4b "provides for the supporting commercial services which these industrial subdivisions require" (Petitioners' Memorandum in Support of Petitions, page 1) (emphasis supplied). The Petitioners also stated that Section 248.4b "lists the supporting commercial services necessary for the efficient functioning of various and diverse industries contemplated for these subdivisions" (Petitioners' Memorandum in Support of Petitions, page 2) (emphasis supplied). Thus, the Petitioners have themselves acknowledged that Section 248.4b was adopted as part of a comprehensive scheme to create industrial subdivisions and specifically to provide support services to industries located within those subdivisions. Accordingly, unless a business intends to primarily render services to industries in an M.L.R. Zone, absolutely no authority exists for granting special exception under Section 248.4b.

^{3/} Section 248.4c of the Zoning Regulations provides in full as follows:

In order that the above-listed uses in sub-sections a and b hereof will be located within the M.L.R. Zone so as to assure their services' being rendered primarily to the industries therein, no building or structure connected with such commercial uses may be within 100 feet of the right-of-way of an existing or proposed major street. This limitation shall not apply to locations on minor or local industrial subdivision roads or to freeways (on which the use does not have direct access). (Emphasis added).

- 7 -

M.L.R. Zone and the contiguous area of zoning that the Petitioners claim is industrial in nature. The Petitioners however failed to offer any testimony which could possibly be construed as supporting this proposition.

Instead, both Mr. Hartsfield below and Mr. Smith at the July 9, 1982 hearing stated that the "business market" for the proposed motel would be, not the M.L.R. Zone and contiguous industrial zoned area, but rather the "three-mile area around that motel." (Transcript of hearing below before the Zoning Commissioner, page 26; April 28 hearing transcript, page 40) Further Mr. Smith testified repeatedly that he also expected many of his business-oriented lodgers to come from the Interstate 95 corridor and to stop off at the Baltimore Days Inn on their way north or south. (April 28 hearing transcript, pages 45, 49).

While there is no agreement as to precisely how many contiguous acres of industrial zoning there are, there can be no disagreement that a three mile radius of the proposed motel encompasses far more business and commercial areas and far more industries than those industries within the industrial zoned area directly contiguous to the M.L.R. Zone.

In this regard, the Respondents introduced their Exhibit No. 3 showing a three (3) mile radius from the site of the proposed Days Inn. (A copy of this Exhibit is attached hereto for the convenience of the Board) The circle superimposed on this Exhibit includes within it portions of Howard County, large sections of Baltimore City including Dickeyville, Forest Park, Franklinton, and the Edmondson Avenue commercial area, a substantial part of the Liberty Road commercial corridor within both Baltimore City and Baltimore County, the Security Square Shopping Mall complex with its large department stores and dozens of other commercial establishments, most of Catonsville, the Route 40 West commercial corridor, including the Westview Shopping Center commercial complex, and innumerable other business, commercial, and industrial areas which are not contiguous to the M.L.R. Zone. Construing Mr. Smith's testimony in the most favorable possible fashion, he thinks, based upon no studies, that the proposed Days Inn will derive a majority of its business from "the business market" within a "three-mile area around that motel." (April 28 hearing transcript, page 40) Even if Mr. Smith's testimony is accepted as an accurate projection, the Petitioners have utterly failed to establish that the proposed motel will primarily render its services to "industries" within an area of industrial zoning

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In the present case, the testimony given at the hearing on April 28, 1982 and July 7, 1982 clearly demonstrates that Days Inn has no intention of erecting its motel in order to primarily service the industries in the M.L.R. Zone. Instead, at the April 28 hearing, Counsel for Days Inn was forced, after extensive testimony was adduced, to stipulate that there are certainly not enough industrial users in the M.L.R. Zone to support a motel. (April 28 hearing transcript, pages 150-151) In fact, the evidence adduced at the July 7 hearing establishes that the M.L.R. Zone is less than fifty (50) acres large, that nearly half of its total area is occupied by the Beltway, a State Police barracks, and State Highway Administration salt piles, and that the rest of the M.L.R. Zone is occupied by mini-warehouses, a Ford dealership, a few private residences, and a small amount of undeveloped land. Clearly, the industrial uses of the M.L.R. Zone will generate very few lodgers at the proposed motel.

Therefore, in view of Counsel's stipulation and these facts, it is clear as a matter of law, that the special exception requested by the Petitioners must be denied as the proposed motel will not render services primarily to the industries in the M.L.R. Zone.

III. EVEN UNDER THE STRAINED AND BIZARRE INTERPRETATION OF SECTIONS 248.4B AND 248.4C SUGGESTED BY THE PETITIONERS, THE PETITIONERS HAVE FAILED TO SATISFY THEIR BURDEN OF PROVING THAT THE PROPOSED MOTEL WILL RENDER SERVICES "PRIMARILY" TO USERS OF CONTIGUOUS INDUSTRIAL ZONING.

Amazingly, the Petitioners contend that, when Section 248.4c refers to "the M.L.R. Zone" and requires that the services rendered by users within an M.L.R. Zone be "rendered primarily to the industries therein," the word "therein" should be read as meaning not only the M.L.R. Zone but also any other contiguous "industrial" zoning. In support of this novel statutory rewrite, the Petitioners offer the strained contention that the word "therein" in Section 248.4c does not refer to its logical antecedent in Section 248.4c but rather should be read as referring to the phrase "industrial zoning" contained in another part of the Zoning Regulations.

The Court of Appeals of Maryland has held that the failure of a zoning ordinance to define a word "calls for the application of its ordinary meaning." Arundel Supply Corp. v. Cason, 265 Md. 371, 289 A.2d 585, 589 (1972). The ordinary meaning of the word "therein" in a sentence containing a logical antecedent would of course be the antecedent and not some unreferenced other phrase found in another part of the zoning

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contiguous to the M.L.R. Zone. Indeed, they have not even established that the services will be primarily rendered to "industries" lying entirely within Baltimore County.

Thus, it is clear that the Petitioners' own testimony, taken in its best light, totally fails, even under the Petitioners' tortured construction of Sections 248.4b and 248.4c, to establish that the proposed motel is authorized under the existing facts as a special exception in the subject M.L.R. Zone.

IV. THE REQUESTED SPECIAL EXCEPTION VIOLATES SECTION 502.1 OF THE ZONING REGULATIONS.

Section 502.1 of the Zoning Regulations provides in relevant part:

Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not: a. Be detrimental to the health, safety, or general welfare of the locality involved; b. Tend to create congestion in roads, streets, or alleys therein; c. Create a potential hazard from fire, panic, or other dangers.

In this case, the plans proposed by Days Inn for the motel provide for only a single entrance to the entire motel complex. In the event of a fire, therefore, if the only entrance to the complex should become blocked and the Fire Department should not be able to get its equipment into the complex, the prospect of a terrible major disaster looms large. Lodgers on the upper floors of the five-story motel building would not be able to use the Fire Department's hook and ladder equipment and might either be forced to jump five (5) floors to the ground or perish by fire or smoke in their rooms. It is submitted that this Board should not knowingly permit the creation of such a constant serious risk of a catastrophe.

While this scenario is chilling enough in the abstract, the special circumstances of the planned motel complex make it even more frightening. The proposed single entrance does not even open directly onto the public street. Rather it opens onto a service drive used by the car dealership next door. Even the traffic engineer called by the Petitioners admitted that this service drive is regularly used by large trailer vehicles carrying new cars to the car dealership, and it is also used by large tow trucks. Thus, this Board is now affirmatively aware that the only entrance to the proposed five story motel has the very real potential of being blocked by large vehicles. If the motel is built as planned, the occurrence of a disaster awaits only for the occasion when one of these large vehicles breaks down or becomes involved in an accident in the area of the entrance to the motel complex at the time that a fire breaks out inside the motel.

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ordinance. This is especially true in view of the prevailing rule that the provisions of a zoning ordinance and any exceptions to the general rule established by it "should be strictly construed". Jyllett v. Bamber, 190 Md. 478, 58 A.2d 896, 898 (1949).

Even if the contention made by the Petitioners is accepted solely for the sake of argument, however, the Petitioners have failed to introduce any evidence whatsoever establishing that the proposed motel will primarily serve the "industries" in the M.L.R. Zone and the contiguous area of zoning that the Petitioners claim is industrial in nature.

At the hearing below before the Zoning Commissioner, Stephen Hartsfield testified on behalf of the Petitioners that he was the individual primarily responsible for planning the proposed motel in Baltimore County. He testified that his studies of projected sources of business for the motel persuaded him that forty percent (40%) of the motel's business would be from traveling families, and that only thirty percent (30%) would be from "business". (Transcript of hearing below before the Zoning Commissioner, page 29) Mr. Hartsfield never testified at all about what percentage of the motel's business would come from "industries" as distinct from "business".

Mr. Hartsfield further testified that in order for the motel to even break even financially, that it would be necessary for approximately sixty thousand to sixty-two thousand (60,000-62,000) people to stay at the motel each year. (Transcript of hearing below before the Zoning Commissioner, page 28). In order to draw thirty percent (30%) of that total number of needed lodgers from businesses, Mr. Hartsfield conceded that the business market for the motel would have to be the three-mile area surrounding the motel. (Transcript of hearing below before the Zoning Commissioner, page 28). Thus, the testimony of the Petitioner's own representative below plainly established that the motel will not be used "primarily" by persons connected with businesses located even within a three mile radius of the motel.

At the April 28 and July 7 hearings, the Petitioners failed to call Mr. Hartsfield as a witness. Instead, they called Mr. Mark Smith, who conceded that Mr. Hartsfield had been knowledgeable and well-informed when he had testified. (April 28 hearing transcript, pages 39, 40) Despite his concession that, subsequent to Mr. Hartsfield's testimony, Days Inn had not retained any marketing experts and had not taken any samples to discover whether Mr. Hartsfield had testified erroneously (April 28 hearing transcript, pages 43, 44), Mr. Smith testified that, based on a new (but unexplained)

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Mr. Smith, of Days Inn, blithely testified that Days Inn desired the restricted "one way in - one way out" entrance to the subject property for better security. Of course, it was admitted by him on closer examination by Protestants' Counsel that the Gaithersburg facility, as well as most other Days Inn facilities, have, not unsurprisingly, more than one exit.

Indeed, as Mr. Paul Lee testified, and common sense mandates, the use of only one (1) entrance to a two (2) building, five (5) story motel complex is not an acceptable or safe practice. Furthermore, Mr. Richard Moore adamantly testified on behalf of the Baltimore County Bureau of Traffic and Design that there should be a second means of access to the site to eliminate the fire hazards. Of course, a second entrance to the motel complex would involve the elimination of yet more parking spaces, but it is submitted that the risk of loss of human life in a terrible fire is too important a matter to be nonchalantly dismissed as the Petitioners would have this Board do on the hope that such a tragedy might not occur.

V. THE REQUESTED SPECIAL EXCEPTION VIOLATES SECTION 502.1 OF THE ZONING REGULATIONS

As noted above, Section 502.1 of the Zoning Regulations provides that no Special Exception shall be granted unless it appears that the use for which it is granted will not: "a. Be detrimental to the health, safety, or general welfare of the locality involved" and "c. Create a potential hazard from fire, panic, or other dangers".

At the July 7, 1982 hearing, Mr. Frank J. Metz, Jr. testified that his home is just down the street from the proposed Days Inn. Mr. Metz testified that he has lived at that location for twenty years and that in recent years for the first time, he has experienced terrible storm water flooding as a result of the development that has occurred nearby. He presented photographs taken on Memorial Day Weekend of this year, which was during a rainy period but certainly not during a hurricane or other unrecurrent climatic condition. His photographs show the street to his home transformed into a virtual river and his front lawn turned into a lake.

He testified that he is very concerned that the development of the proposed Days Inn will involve paving over 2.4 more acres of open land and will result in yet higher floodwaters coursing through his neighborhood and across his property during periods of heavy rain. He stated that, in his opinion, the construction of the proposed motel would

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marketing approach that Days Inn had initiated, he hoped that seventy percent (70%) to eighty percent (80%) of the business of the proposed motel would be "of a commercial nature" as distinct from family or tourist business. (April 28 hearing transcript, page 26) He never offered any explanation whatsoever for the fact that, within a nine month period of time between the hearing below and the April 28 hearing, the official Days Inn projections of the amount of lodging business at the Days Inn to be generated from commerce soared from thirty percent (30%) to seventy to eighty percent (70-80%).

Obviously there is a serious credibility gap between Mr. Hartsfield's testimony under oath and Mr. Smith's testimony under oath. Without commenting further, the Protestants would merely respectfully submit that the Petitioners have failed to sustain their burden of proof under Sections 248.4b and 248.4c of the Zoning Regulations.

More importantly, however, is the fact that Mr. Smith, at best, only testified that he projected that seventy to eighty percent (70-80%) of the Days Inn business would be "of a commercial nature". (April 28 hearing transcript, page 26) Even accepting for the sake of argument, the strained and bizarre interpretation of Sections 248.4b and 248.4c of the Zoning Regulations suggested by the Petitioners, it is incumbent upon the Petitioners to prove that the proposed motel in the M.L.R. Zone will primarily render services to "industries" within the M.L.R. Zone and contiguous industrially zoned area. Section 101 of the Zoning Regulations defines "industrial", and clearly the term "commercial" is far broader and more all encompassing than the terms "industrial" or "industries". Thus, office buildings would be "of a commercial nature" but are not "industrial" under the Zoning Regulations. Similarly, supermarkets, shopping centers, department stores, and other "service" establishments would be "of a commercial nature" but are not "industrial". Therefore, when Mr. Smith stated that seventy to eighty percent (70-80%) of the business at the Days Inn would be "of a commercial nature", he utterly failed to provide this Board with any evidence at all supporting the proposition that the proposed motel will primarily render services to "industries".

There is yet a more significant respect, however, in which the Petitioners have failed to provide this Board with any grounds that would enable this Board to grant the requested special exception. Again accepting for the sake of argument the interpretation of Sections 248.4b and 248.4c as proposed by the Petitioners, it is incumbent upon the Petitioners to prove that the proposed motel will "primarily" serve the industries in the

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be detrimental to the health, safety, and general welfare of the neighborhood and would create a potential hazard.^{4/}

Even the expert witness called by the Petitioners conceded that there is inadequate flood control in the vicinity of the proposed motel. He also conceded that the proposed motel complex would have an effect on the hydrology of the area. Because the proposed motel complex is literally planned to encompass every square inch of the 2.4 acre parcel, common sense indicates that it can be anticipated that if the proposed motel is built as planned, the local flooding will increase to the substantial detriment to the health, safety, and general welfare of nearby residents.

CONCLUSION

The proposed Days Inn project, obviously, has been poorly conceived from the outset. The fact that within the space of but nine months, Days Inn states that its projections of anticipated business use of the proposed motel were nearly trebled leads one to wonder how much actual thought and good judgment really went into the planning of this facility.

Further, the Petitioners have been forced to admit that they actually entered into a contract of purchase and the subsequent purchase of the proposed motel site knowing full well, and having been advised in advance by their site planner, Mr. Walker, that the property could not comply with the Baltimore County parking regulations. Having acted in such a manner, they now have the audacity to complain of "practical difficulty and unreasonable hardship", knowing that they have indeed imposed the difficulty and hardship upon themselves. Moreover, the Petitioners' attempt to sustain their request for a special exception in a M.L.R. Zone violates the clear language of Sections 248.4b and 248.4c which requires that the proposed facility serve the industries located within the M.L.R. Zone. Even to support the Petitioner's strained construction of these Sections, the Petitioners must amazingly rely on a market area that actually encompasses parts of Howard County and Baltimore City.

^{4/} Mr. Metz also testified that he was very concerned about the congestion in the local roads that would be caused by the Days Inn. See, e.g., Section 501.1b of the Zoning Regulations. The traffic engineer called by the Petitioners testified at the July 9 hearing that he had never studied the impact on the local residential community of the traffic generated by the proposed motel.

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(1960): Lucky Stores, Inc. v. Board of Appeals, 770 Md. 513, 528 (1973); Byniarski v. Montgomery County, 247 Md. 137 (1966). See also 3 Rathkopf, The Law of Zoning and Planning, 43.06. This position is consistent with the general rule that "the prevention of competition is not a proper element of zoning." Aspen Hill Venture v. Montgomery County, 265 Md. 303, 312 (1972). Kreatchman, 224 Md. at 222.

The rationale for the well-established rule that the prevention of competition is not a proper element of zoning was summarized by an Illinois court in Swain v. County of Winnebago, 11 Ill. App.2d 458, 250 N.E.2d 439, 444 (1969):

"It is not the function of the county zoning ordinances to provide economic protection for existing business... Neither the fact that parties may suffer reduced incomes or be put out of business by more vigorous or appealing competition nor the fact that properties on which such businesses are operated would thus depreciate in value, give rise to a standing to sue...

Free and open competition has always been a strong pillar in the foundation of our society. A person can have no vested or special property right in either the monopoly or competitive advantage accorded by zoning restrictions at a given time. It is the philosophy that any increased competition which may result from a change in the zoning restrictions will ultimately be beneficial. A competitor who may suffer has no actionable injury. Whether or not the particular zoning is in the best interest of the orderly development of the community is a determination to be made by the legislative body - the Winnebago County Board of Supervisors."

In the instant case, the Appellee's competitors Security Inn Associates and Hilltop Motor Inn, Inc., first objected to the Appellee's proposed motel before the Deputy Zoning Commissioner. At that time the only other

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If the industries to be supported by the uses permitted under Section 248.4b were to be limited to only those within the M.L.R. Zone, it would make little sense to have the requirement that the M.L.R. Zone must be a part of twenty-five (25) acres or more of industrial zoning. Further, it was not the need for commercial support of the industries within any particular isolated M.L.R. Zone that was the primary concern of the drafters of Section 248.4b, but rather it was the needs of those industries which are located within at least twenty-five (25) acres of contiguous industrial zoning upon which the drafters focused. The second requirement of Section 248.4b that the commercial uses in the M.L.R. Zone provide "an appropriate service to industries..." can only be related logically to the first requirement when it is recognized that the intended beneficiaries of such support are all the industries on property contiguous to the M.L.R. Zone and not merely within the M.L.R. tract. The clear intent of the regulation is not to permit commercial support uses by special exception in every M.L.R. Zone, but only those which are a part of large areas containing all types of industrial zoning.

The Appellants have groped in an effort to support their position by contending that Section 248.4c stands for the proposition that the services located in an M.L.R. Zone must be directed "primarily" to industries "therein". It is respectfully submitted that the term "therein" is used in Section 248.4c in exactly the same reference as it was used in Section 248.4b. This construction is more logical in light of the unambiguous reference in subsection c back to subsections a and b.

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protestants represented by counsel were John I. Meushaw, the owner of Hilltop Motor Inn, Inc., Stephen D. Hansen, an employee of Security Inn Associates, and Frank E. Smith who lives several miles from the subject site, in Catonsville. Clearly the sole motivation for that well financed challenge to the Appellee's motel was to stifle the competition expected to result from the proposed motel.

On appeal to the Board of Appeals, several property owners from the residential neighborhood near the subject site were added as Protestants. The only reasonable conclusion that one can draw is that the individuals living near the site of the proposed motel were marshalled by the Appellee's competitors to lend their names to the list of "Protestants". Dispite the inclusion of the foregoing individuals on appeal, the clear inference remains that the challenge to the proposed motel was being financed by the Appellee's competitors, who were attempting to use the zoning process to wrongfully protect their competitive advantage in the area.

The improper motive of the Appellants was further demonstrated by the testimony before the Board of Appeals of Frank J. Metz, Jr., a nearby property owner and designated as one of the "Protestants", who acknowledged that he had not made any personal contribution to the expense of the Appellants' challenge to the proposed motel, and that he knew who was bearing the entire cost of the action. (Transcript, pp. 232-234.) More importantly, the Appellants failed to offer any testimony to rebut the clear implication of Mr. Metz's testimony that the Appellants' expenses are being borne entirely by the competitors of Days Inn. The Appellants' sole interest in

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The Appellants' interpretation, which would require that the "uses in subsections a. and b." that are located within an M.L.R. Zone render their services primarily to the industries within the same M.L.R. tract, would require that the uses in subsection a, such as an airstrip or a volunteer fire company, be primarily for the benefit of the M.L.R. Zone within which they are located. Under that construction of Section 248.4c, it becomes questionable whether there exists a single M.L.R. Zone in the entire County which would be large enough to support such services by itself.

The concept of "industrial subdivision" as set forth in Section 247, which states the purposes of M.L.R. Zones, is entirely consistent with the Appellee's construction of Sections 248.4b and 248.4c. Contrary to the Appellants' implications, any subdivision, whether residential, commercial or industrial, is not totally self-contained. All subdivisions must relate favorably with surrounding properties which may allow for other users. The stated purpose of the M.L.R. Zones, to provide "transitional bands between residential or institutional areas and M.L. or M.H. Zones" (Section 247 B.C.Z.R.), illustrates the relation of industrial subdivisions to the surrounding area. The placement of commercial support uses within the M.L.R. Zone in support of the M.L. or M.H. Zones results in the type of "transitional bands" for which M.L.R. Zones were created. Limiting the commercial uses allowed in Section 248.4b to only those in support of industries within the M.L.R. Zone, as suggested by the Appellants, would completely frustrate the transitional purpose and effect of the zone in that few support uses would be permitted within the M.L.R. Zone.

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pursuing this Appeal is the prevention of competition with such Appellants' existing businesses, and not any proper zoning considerations. The Appellants, competitors of the Appellee, failed to present any evidence that the proposed motel will cause depreciation of the Appellants' property arising from the manner in which the use is conducted or any other detrimental effects related to the health, safety, and general welfare, which are the proper factors to consider in a zoning case. See Pattison v. Corby, 226 Md. 97, 101 (1960), Alvey v. Hedin, 243 Md. 334 (1966), Ginn v. Farley, 48 Md. App. 229 (1975).

Lacking a proper motive, the Appellee's competitors have financed adjacent property owners and have concocted a strained and erroneous interpretation of the Regulations, in a transparent attempt to conceal the real reason for this appeal: the prevention of competition.

In the absence of any evidence to support a finding that the Appellants are individually aggrieved by the Board of Appeal's decision, the requisite standing to pursue this Appeal does not exist. However, in the event that the Appellants are permitted to prosecute this Appeal, the Court must consider their case in light of the improper purpose for which the Appeal has been taken.

III.

THE EVIDENCE ADDUCED BEFORE THE BOARD OF APPEALS CLEARLY SUPPORTS THE FINDING THAT THE PROPOSED MOTEL CAN BE SUPPORTED BY, AND IS A DEMONSTRABLY APPROPRIATE SERVICE TO INDUSTRIES EXISTING, PLANNED OR NORMALLY EXPECTED TO LOCATE WITHIN THE CONTIGUOUS AREA OF 25 ACRES OR MORE OF INDUSTRIAL ZONING, WHICH AREA INCLUDES, BUT IS NOT LIMITED TO, THE M.L.R. ZONE IN WHICH THE PROPOSED MOTEL IS LOCATED.

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By providing commercial support for surrounding industrial areas, the M.L.R. Zones, which lie between industrial areas and residential neighborhoods, can best realize their express purpose, i.e. support industries; and act as transitional bands. Furthermore, the industrial areas which are intended to be supported by M.L.R. Zones in most cases do not allow for these commercial uses. The support uses for these zones logically belong in the adjacent M.L.R. Zones in the "transitional" manner that the drafters intended.

Based upon the evidence, the Memoranda submitted by the parties, and the law, the Board of Appeals concluded that the interpretation of Sections 248.4b and c advanced by the Appellee is the more "reasonable" one. (Board of Appeals Opinion, p.6.) Accordingly, the Board properly held that the proposed use need not primarily serve the industries located within the M.L.R. Zone in question.

Once it is clear that the relevant area to be served by the proposed motel includes not only the M.L.R. Zone in which it will be located, but also the contiguous industrial areas, it becomes necessary to determine what is meant to be included in the contiguous industrial tract. To that end, the Appellee introduced several exhibits into evidence at the hearing before the Board of Appeals which emphasized the extensive areas of industrial zoning contiguous to the 49.5 acre M.L.R. Zone in which the site of the proposed motel is situated. Petitioner's Exhibit No. 4 entitled "Contiguous Industrial Land", outlined in red approximately 400 acres of property zoned M.L. or M.L.-I.M., contiguous to the subject M.L.R. Zone.

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Section 248.4b of the B.C.Z.R. permits a motel by special exception on property which is located in a M.L.R. Zone if (i) the motel is located "within an M.L.R. Zone which is part of a contiguous area of 25 acres or more of industrial zoning", and (ii) "the specific use proposed is demonstrably an appropriate service to industries existing, planned or normally to be expected to locate therein."³ (Emphasis supplied.) Before the Board of Appeals, and in their Memorandum, the Appellants strenuously contended that the word "therein" refers only to the property within the particular M.L.R. Zone itself and, accordingly, that the Appellee's proposed motel must be in support of those industries located only within the M.L.R. zoned area in which it is located. Noting that the Appellee stipulated that there are not enough potential users in the M.L.R. Zone to support the proposed motel, the Appellants urge the court to conclude that the Appellee has failed to meet its burden of proof under Section 248.4b.

It is submitted that the Appellants' position is based on a clearly erroneous interpretation of Section 248.4b of the B.C.Z.R. Upon closer examination, it is clear that the word "therein" as used in Section 248.4b refers to the phrase "a contiguous area of 25 acres or more of industrial zoning" which includes, but is not limited to, the M.L.R. Zone. There is simply nothing else in the regulations to which it could refer.

³The entire text of Section 248.4 of the B.C.Z.R. is attached as an Appendix hereto.

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Petitioner's Exhibit No. 5, entitled "Contiguous Industrial Land and Semi-Industrial Land Designated I.M.", added the contiguous and adjacent areas that were superimposed with I.M. Districts to the areas outlined in Petitioner's Exhibit No. 4. Finally Petitioner's Exhibit No. 6 expanded the areas outlined in Exhibits 4 and 5 to include areas zoned B.M., B.R., B.L. and the entire Social Security Complex, which is zoned D.R. 3.5. That plat depicts the business and manufacturing districts adjacent and contiguous to the subject M.L.R. Zone. Although strictly speaking, the B.M and B.R. classifications are "commercial zones", the superimposition of the I.M. District along with the actual use as an industrial park, it is submitted, should result in treatment of those areas as "contiguous...industrial zoning" as used in Section 248.4b. This conclusion necessarily results from the fact that I.M. Districts may be applied "only to certain areas individually containing 100 acres or more of land zoned for industrial or semi-industrial use (M.H., M.L., M.L.R., M.R., B.R. and/or B.M.)..." (Emphasis added.) (Section 259.2b B.C.Z.R.)

Based on the foregoing, the total contiguous industrial zoning determined by the most strict interpretation of the term would result in approximately 400 acres, as set forth in Petitioner's Exhibit No. 4, containing the subject M.L.R. Zone and the contiguous M.L. and M.L.-I.M. Zones. However, the more reasonable interpretation of the term "industrial" would also include the semi-industrial area, as set forth in Petitioner's Exhibit No. 5, or even include all business and manufacturing land contiguous or adjacent to the proposed

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The fact that only one entrance to the motel complex was provided by Days Inn for the proposed facility can only be explained as an attempt to prevent the further loss of parking spaces. The risks of a calamitous conflagration posed by providing for only one entrance, however, are perfectly self-evident, particularly when the single entrance provided for has the very real potential of being blocked by large ear transport cars and tow trucks entering and leaving the car dealership next door.

Moreover, if the Board requires two entrances to this undersized site, then the proposed inadequate parking conditions will become even worse. As the Petitions stand now, the Petitioners propose to turn their site into virtually solid macadam from one end to the other. The effect that this will have on the already severe flood control problems in the neighborhood is not difficult to foresee. The further effect of a spillover of cars from the Days Inn onto the nearby residential streets is similarly predictable in view of the fact that the proposed motel will have one hundred forty-four (144) rooms, forty-three (43) seats in the twenty-four (24) hour restaurant, a game room, a swimming pool, and ten employees but only one hundred sixty-seven (167) parking spaces, twenty-two (22) fewer spaces than the Zoning Regulations require.

Thus, the Petitioners submit that Baltimore County should not encourage out-of-state developers to deliberately build oversized commercial facilities on tiny plots of land, to the consequent detriment of county residents, particularly when these developers plan in advance for facilities that are knowingly and flagrantly in violation of Baltimore County's Zoning Regulations.

For all of the above reasons, the Protestants respectfully submit that the Petitioners' Petitions herein must be denied.

James M. Smith
JAMES M. SMITH
Christopher R. West
CHRISTOPHER R. WEST

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option to purchase a 2.4 acre parcel of property on the northwest side of Belmont Avenue, 366 feet northeast of Security Boulevard, in Baltimore County, Maryland. Approximately 2.2 acres of the aforementioned property is located in a forty-nine and one-half (49.5) acre area which is zoned MLR.

The original Petitions for a Variance and Special Exception in this case were filed on March 23, 1981. At that time, Ford Motor Dealership Facilities Company, as legal owner of the subject property, and Day Realty of South Carolina, Inc. (subsequently merged with Days Inn of America, Inc.), as the Contract Purchaser, were the Petitioners. They sought a Special Exception for a motel in MLR Zone, pursuant to §248.4b of the Baltimore County Zoning Regulations (the "B.C.Z.R.") and a Variance to permit 169 parking spaces in lieu of the required 190 spaces. (The Variance was amended, before the Board of Appeals, to permit 167 parking spaces in lieu of the required 189 spaces.) In conjunction with the foregoing Petitions, a Petition for a Special Hearing was filed on June 8, 1981, for a determination as to whether a Special Exception for a Motel Use in an MLR Zone may be granted when the proposed use will occupy more than 15% of the subject property, but substantially less than 15% of the MLR area or tract in which the subject property is located.^{1/}

1/ This issue was addressed below by both parties in their respective Memoranda, and decided by the Deputy Zoning Commissioner in favor of the Petitioner. The identical issue was also previously decided by the Board of Appeals in *In re Petition for Special Exception, No. 72-186-X* (Proposed Ramada Inn, Shavano Road), in which the Board interpreted the Section 248.4b area limitation to apply the M.L.R. Zone in its entirety, not each individual parcel. Protestants have failed to raise this issue in the subject proceedings.

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(301) 752-5830
Counsel for the Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July, 1982, a copy of the foregoing pleadings was mailed, postage prepaid, to John B. Howard, Esquire, Cook, Howard, Downes & Tracy, 210 Allegheny Avenue, Towson, Maryland 21204, Counsel for the Petitioners, and to John W. Hessian, 3rd, Esquire, Suite 603, 102 W. Pennsylvania Avenue, Towson, Maryland 21204, Peoples' Counsel.

Christopher R. West
CHRISTOPHER R. WEST

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A hearing was held on July 9, 1981 before Jean M. H. Jung, Deputy Commissioner of Zoning for Baltimore County. At that hearing, testimony was taken and exhibits were introduced into evidence. Following the hearing, counsel for the parties submitted memoranda for consideration by the Deputy Zoning Commissioner.

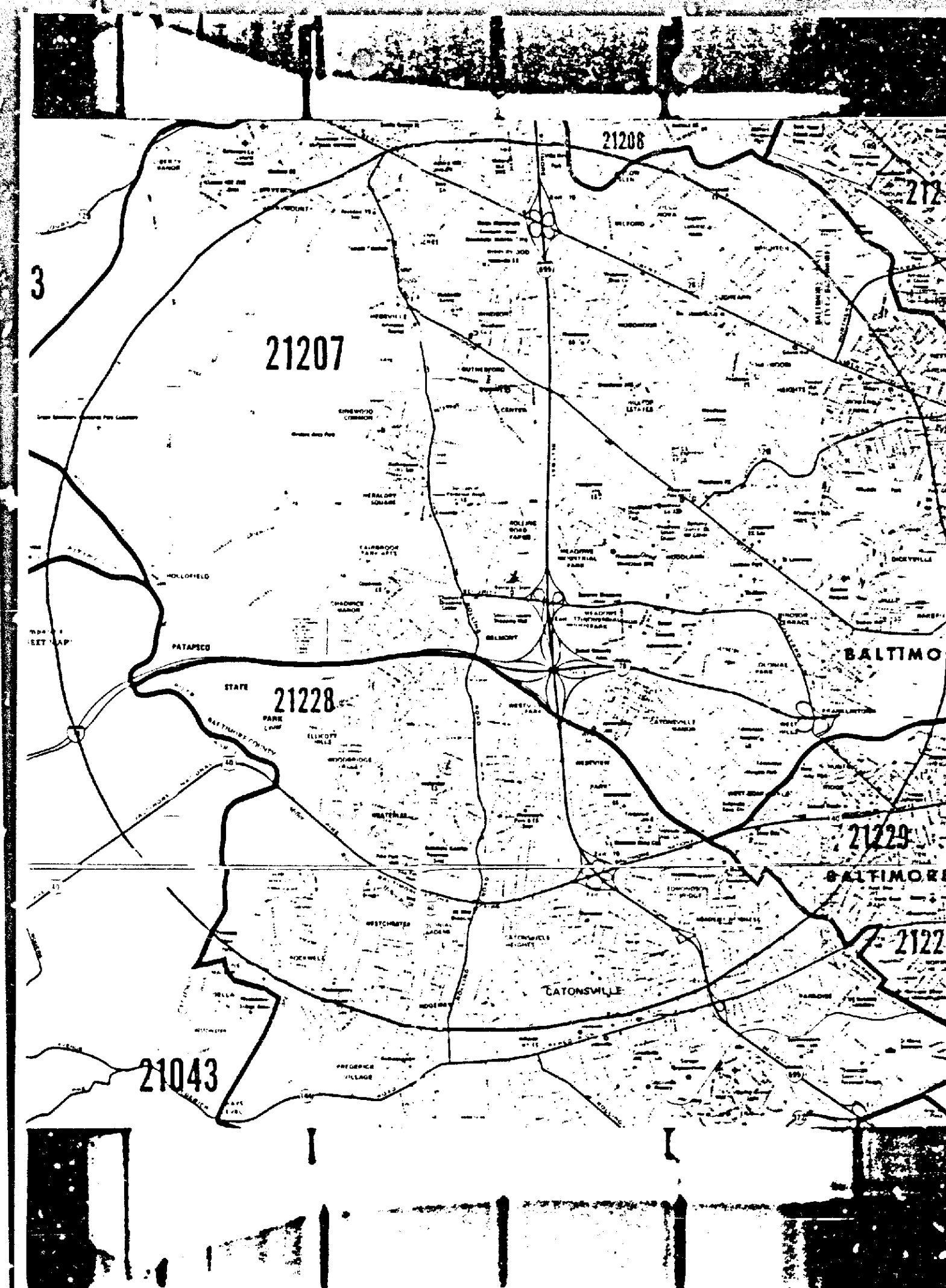
On January 8, 1982, the Deputy Zoning Commissioner granted the Petitions for Special Exception and Variance, disposed of the Special Hearing issue as previously indicated.

Several events of significance occurred subsequent to the issuance of the Deputy Zoning Commissioner's decision. On January 28, 1982, the Protestants in the present action appealed the Orders entered by the Deputy Zoning Commissioner to the County Board of Appeals. On February 23, 1982, Days Inn of America, Inc. exercised its option to purchase the subject property.

A hearing was held before the Board of Appeals for Baltimore County on April 28, 1982, and continued on July 7, 1982.

CONCLUSIONS

- I. The prevention of competition is not a proper element of zoning, and is the Protestants' sole interest in this Appeal.
- II. The requirements of §248.4b are satisfied upon a finding that the proposed motel can be supported by, and is a demonstrably appropriate service to, industries existing, planned or normally expected to be located within the contiguous area of 25 acres or more of industrial zoning, which area includes, but is not limited to, the MLR Zone in which the proposed use will be located.



IN THE MATTER OF THE
PETITION OF
DAYS INN OF AMERICA, INC.
For a Motel Special Exception
in an MLR Zone and a Variance
permitting 167 parking spaces
in lieu of the required 189;
Northwest side of Belmont Avenue,
366 feet northeast of Security
Boulevard in the
First Election District

* BEFORE THE
* COUNTY BOARD
* OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case No. 82-10-XSPHA

MEMORANDUM IN SUPPORT OF PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE

This Memorandum is filed by Days Inn of America, Inc. (the "Petitioner"), legal owner of the subject property, by its attorneys, John B. Howard and Cook, Howard, Downes & Tracy.

QUESTIONS PRESENTED

- I. Is the prevention of competition a proper element of zoning?
- II. Is the Special Exception requested by the Petitioner permitted under §§248.4b and 248.4c of the B.C.Z.R. upon a finding that the proposed motel can be supported by, and is a demonstrably appropriate service to, industries existing, planned or normally expected to be located within a contiguous area of 25 acres or more of industrial zoning, which area includes, but is not limited to, the MLR Zone in which the proposed use is located?
- III. Is the Petitioner precluded from asserting hardship as the basis for the requested parking variance by virtue of the fact that the Petitioner knew of the necessity for such a variance prior to purchasing the property?

STATEMENT OF FACTS

On January 12, 1981, Day Realty of South Carolina, Inc. entered into an Offer and Purchase Agreement for the

- III. The "self-created hardship" rule is only applicable to cases involving use variances, and accordingly, does not preclude the Petitioner from asserting hardship as the basis for an area variance such as requested herein..

ARGUMENT

I.

THE PREVENTION OF COMPETITION IS NOT A PROPER ELEMENT OF ZONING.

The courts in Maryland and elsewhere have repeatedly, and unequivocally, stated the general rule that "the prevention of competition is not a proper element of zoning". *Aspen Hill Venture v. Montgomery County*, 265 Md. 303, 312 (1972), *Kreatchman v. Ramsburg*, 224 Md. 209, 219 (1960). In each such case, the courts have concluded that an objection to a zoning decision for the sole purpose of preventing competition with a protestant's established business is an improper consideration in the zoning decision-making process. See, *Kreatchman at 222*, *Lucky Stores, Inc. v. Board of Appeals*, 270 Md. 513, 528 (1973), *Brwniarski v. Montgomery County*, 247 Md. 137, 145 (1966). See also 3 Rathkopf, *The Law of Zoning and Planning* 43.06.

The rationale for the well established rule that the prevention of competition is not a proper element of zoning was appropriately summarized by an Illinois court in *Swain v. County of Winnebago*, 11 Ill. App.2d 458, 250 N.E.2d 439, 444 (1969):

"It is not the function of the county zoning ordinances to provide economic protection for existing business. . . . Neither the fact that parties may suffer reduced incomes or be put out of business by more vigorous and appealing competition, nor the fact that the properties on which such businesses are operated would depreciate in value, give rise to a standing to sue . . ."

Free and open competition has always been a strong pillar in the foundation of our society. A person can have no vested or special property right in either a monopoly or competitive advantage accorded by zoning restrictions at a given time. It is the philosophy that any increased competition which may result from the change in the zoning restrictions will ultimately be beneficial. A competitor who may suffer has no actionable injury. Whether or not the particular zoning is in the best interests of the orderly development of the community is a determination to be made by the legislative body - the Winnebago Board of Supervisors."

While the Baltimore County Code grants the Protestants standing, as taxpayers, to appeal the Deputy Zoning Commissioner's decision to the County Board of Appeals, it is apparent that the Protestants' sole motivation for pursuing this action is to stifle competition that will result from the Petitioner's proposed motel and is a patent attempt by the Protestants to use the zoning appeals process to wrongfully protect their competitive advantage in the area.

The improper motive of the Protestants was demonstrated by the testimony of Frank J. Metz, Jr., a nearby property owner and designated as one of the "Protestants", who acknowledged that he has not made any personal contribution to the expense of the Protestants' challenge to the proposed motel, and that he knew who was bearing the entire cost of the action. More importantly, the Protestants offered no evidence to rebut the clear implication of Mr. Metz's testimony that the appeal is being financed by competitors of Days Inn. The Protestants' sole interest is the prevention of competition with such Protestants' existing businesses, and not any proper zoning considerations. The Protestants, competitors of the Petitioner, presented no evidence that the proposed motel will cause depreciation of the Protestants' property arising from the manner in which the use is conducted or any other detrimental effects related to the health, safety and general

welfare which are the proper factors to consider in a zoning case. See Pattison v. Corby, 226 Md. 97, 101 (1960), Alvey v. Hedin, 243 Md. 334 (1966), Ginn v. Farley, 48 Md. App. 229 (1975).

The Protestants have financed adjacent property owners and have concocted a strained and erroneous interpretation of the Regulations, in a transparent attempt to conceal the real reason for the appeal; the prevention of competition.

The Board of Appeals and the Baltimore County zoning process must not be a vehicle or instrumentality for the stifling of competition. It is overwhelmingly apparent that the Protestants are improperly motivated by their desire to extinguish the competition that the proposed motel threatens to create, and the Board must consider their case in light of the improper purpose for which the protest has been made.

II.

THE SPECIAL EXCEPTION REQUESTED BY THE PETITIONER IS PERMITTED IN AN MLR ZONE UNDER §§248.4b AND 248.4c OF THE B.C.Z.R. UPON A FINDING THAT THE PROPOSED MOTEL CAN BE SUPPORTED BY, AND IS A DEMONSTRABLY APPROPRIATE SERVICE TO, INDUSTRIES EXISTING, PROPOSED OR NORMALLY EXPECTED TO BE LOCATED WITHIN THE CONTIGUOUS AREA OF 25 ACRES OR MORE OF INDUSTRIAL ZONING, WHICH AREA INCLUDES, BUT IS NOT LIMITED TO, THE MLR ZONE IN WHICH THE PROPOSED USE IS LOCATED.

The Protestants' contend that the Petitioner's proposed motel must be in support of the industries located only within the MLR zoned area in which it is located, and not in support of those industries existing in the extensive industrial areas contiguous to the MLR Zone. It is submitted that this contention is based on a clearly erroneous interpretation of §§248.4b and 248.4c of the B.C.Z.R.

The language of §248.4b, which allows a motel by special exception on property which is located in a MLR zone if (1) the motel is located "within an M.L.R. Zone which is part

of a contiguous area of 25 acres or more of industrial zoning", and (11) "the specific use proposed is demonstrably an appropriate service to industries existing, planned or normally to be expected to locate therein" (emphasis supplied). The Protestants' argue that the word "therein" refers only to the property within the particular M.L.R. Zone itself. However, upon closer examination, it is clear that the word "therein" refers to the phrase "a contiguous area of 25 acres or more of industrial zoning" which includes, but is not limited to the M.L.R. Zone. There is simply nothing else in the regulations to which it could refer.

"Industrial zoning" would, of course, include all property zoned M.L. or M.H. and is not limited only to the M.L.R. zoned area. If the industries to be supported were to be only those within the M.L.R. Zone, it would make little sense to have the requirement that the M.L.R. Zone must be a part of twenty-five (25) acres or more of industrial zoning.

Further, it was not the need for commercial support of the industries within any particular isolated M.L.R. Zone that was the primary concern of the drafters of §248.4b, but rather it was the needs of those industries which are located within at least twenty-five (25) acres of contiguous industrial zoning upon which the drafters focused. The second requirement of §248.4b that the commercial uses in the M.L.R. Zone provide "an appropriate service to industries . . ." can only be related logically to the first requirement when it is recognized that the intended beneficiaries of such support are all the industries on property contiguous to the M.L.R. Zone and not merely within the particular M.L.R. tract. The clear intent of the regulation is not to permit commercial support uses by Special Exception in every MLR Zone, but only those which are a part of large areas containing all types of industrial zoning.

The Protestants have groped in an effort to support their argument by contending that §248.4c stands for the proposition that the services located in an M.L.R. Zone must be directed "primarily" to the industries "therein". It is respectfully submitted that the term "therein" is used in §248.4c in exactly the same reference as it was used in §248.4b. This construction is more logical in light of the unambiguous reference in subsection c. back to subsections a. and b. The Protestants' interpretation, which would require that the "uses in subsections a. and b." that are located within an M.L.R. Zone render their services primarily to the industries within the same M.L.R. tract, would require that the uses in subsection a., such as an airstrip or a volunteer fire company, be primarily for the benefit of the M.L.R. Zone within which they are located. Under that construction of §248.4c, it becomes questionable whether there exists a single M.L.R. Zone in the entire County which would be large enough to support such services by itself. In contrast, there was ample evidence presented at the hearing before the Board of Appeals that the proposed motel is intended to support all the industries located within the 25 acres or more of contiguous industrial zoning (Hearing T.16-19, 26, 51).

The concept of "industrial subdivision" set forth in §247, which states the purposes of M.L.R. Zones, is entirely consistent with this interpretation of §§248.4b and 248.4c. Contrary to the Protestants' implications, any subdivision, whether residential, commercial or industrial, is not totally self-contained. It must relate favorably with surrounding properties which may allow for other users. The stated purpose of the M.L.R. Zone, to provide "transitional bands between residential or institutional areas and M.L. or M.H. Zones"

(§247 B.C.Z.R.), illustrates the relation of industrial subdivisions to the surrounding area. The placement of commercial support uses within the M.L.R. Zone in support of the M.L. or M.H. Zones results in the type of "transitional bands" for which the M.L.R. Zones were created. Limiting the commercial uses allowed in §248.4b to only those in support of industries within the M.L.R. Zone, as suggested by the Protestants, would completely frustrate the transitional purpose and effect of the zone in that few support uses would be permitted within the M.L.R. Zone.

By providing commercial support for M.L. or M.H. zoned properties within the M.L.R. Zones which lie between industrial areas and other neighborhoods, both express purposes of M.L.R. Zones, i.e., support of industries and transitional banding, can best be realized. Additionally, the M.L. and M.H. Zones which are intended to be supported by M.L.R. Zones in most cases do not allow for these commercial uses. The support uses for these zones logically belong in the adjacent M.L.R. Zones in the "transitional" manner that the drafters intended.

Petitioner introduced several exhibits into evidence at the hearing before the Board of Appeals which emphasized the extensive areas of industrial zoning contiguous to the 49.5 acre M.L.R. Zone in which the site of the proposed motel is situated. Petitioner's Exhibit No. 4, entitled "Contiguous Industrial Land", outlined in red approximately 400 acres of property zoned M.L. or M.L.-I.M., contiguous to the subject M.L.R. Zone. Petitioner's Exhibit No. 5, entitled "Contiguous Industrial Land and Semi-Industrial Land Designated I.M.", added the contiguous and adjacent areas that were superimposed with I.M. Districts to the areas outlined in Petitioner's Exhibit No. 4. Finally, Petitioner's Exhibit No. 6 expanded

the areas outlined in Exhibits 4 and 5 to include areas zoned B.M., B.R., B.L. and the whole Social Security complex, which is zoned D.R.3.5. That plat depicts the business and manufacturing districts adjacent or contiguous to the subject M.L.R. Zone. Although strictly speaking, the B.M. and B.R. classifications are "commercial zones", the superimposition of the I.M. District, along with the actual use as an industrial park, it is submitted, should result in treatment of those areas as "contiguous . . . industrial zoning" as mentioned in §248.4b. The conclusion necessarily results from the fact that I.M. Districts may be applied "only to certain areas individually containing 100 acres or more in land zoned for industrial or semi-industrial use (M.H., M.L., M.L.R., M.R., B.R. and/or B.M.) . . ." (emphasis added) (§259.2h B.C.Z.R.). Therefore, the total contiguous industrial zoning determined by the most strict interpretation of the term would result in approximately 400 acres, as set forth in Petitioner's Exhibit No. 4, containing the subject M.L.R. Zone and the contiguous M.L.R.-I.M. Zones, but the more reasonable interpretation of the term "industrial" would also include the semi-industrial area, as set forth in Petitioner's Exhibit No. 5, or even including all business and manufacturing land contiguous or adjacent to the proposed site, as set forth in Petitioner's Exhibit No. 6, thereby encompassing a total area of approximately 950 acres to be serviced by the commercial uses set forth in §248.4b. The Petitioner's proposed motel is intended to provide the needed support for all of the industrial areas outlined in Exhibit No. 6.

It is submitted that the liberal interpretation of the term "contiguous", as used by §248.4b in defining the area to be served by the proposed motel, is supported by legal

authority. The Court of Appeals, in Swarthmore Co. v. Kaestner, 258 Md. 517 (1970) considered the meaning of the term "contiguous" as used in the Baltimore County Zoning Regulations. There, the Court relied on the definition in Black's Law Dictionary, where "contiguous" was defined to mean "in close proximity; near though not in contact; neighboring; adjoining; near in succession; an actual close contact; touching; bounded or traversed by". Id. at 530. From this definition, the Court concluded that "the C.S.A. District is 'near' the C.C.C. District and hence is 'contiguous' to it even if it is assumed, for the argument, that it did not 'abut' it". Id. at 530.

It could certainly be anticipated that the industries located within the overall area of industrial and business zoning designated in Exhibit No. 6 will generate more than enough business to support the proposed motel. With this larger area in mind, it becomes irrelevant what uses are made of the individual parcels within the M.L.R. Zone.

In sum, no authority exists for limiting the §248.4b commercial support uses to only those industries located in an M.L.R. Zone. Such a construction is illogical and renders much of the regulation superfluous. Further, the Protestants' construction would frustrate the intended purpose of M.L.R. Zones to complement and support larger tracts of industrial zoning throughout Baltimore County, and to act as "transitional bands" containing the very type of commercial support use as contemplated by the Petitioner. Without question, the Petitioner's commercial motel use in support of the larger industrial tract adjacent to the M.L.R. Zone in question fulfills the stated purposes and requirements of the applicable regulations.

III.

THE PETITIONER IS NOT PRECLUDED FROM ASSERTING HARDSHIP AS THE BASIS FOR THE REQUESTED PARKING VARIANCE BY VIRTUE OF THE FACT THAT THE PETITIONER KNEW OF THE NECESSITY FOR SUCH A VARIANCE PRIOR TO PURCHASING THE PROPERTY.

At the hearing before the Board of Appeals, the Protestants contended that the Petitioner was precluded from claiming hardship or practical difficulty, as the basis for its Petition for a Parking Variance, to the extent that the Petitioner was aware of the necessity for such a variance prior to its purchase of the subject property. (Hearing T.62). The Protestants' reliance on what is commonly referred to as the "self-imposed hardship rule" is clearly misplaced for several reasons.

Preliminarily, it should be acknowledged that the Court of Appeals in Gleason v. Keswick Improvement Ass'n, 197 Md. 46 (1951) adopted the self-created hardship rule to affirm a lower court decision denying an application for a use variance on the grounds of hardship. In that case, the applicants were persons who had operated several grocery stores in the vicinity and had bought the property involved in order to open a grocery store thereon, a use which was prohibited. The property, at the time of purchase, had for several years been used as a residence for several families. After its purchase, the applicants permitted the property to deteriorate to the point where they could claim that the structures thereon were no longer reasonably suitable for residential purposes. Quoting from Rathkopf, The Law of Zoning and Planning, p. 262, the Court stated the self-created hardship rule as follows:

"Where a person purchases property with the intention to apply to the Board of Appeals for a variance from the restrictions imposed by the ordinance, he cannot contend that such restrictions caused him such a peculiar hardship that entitles him to the special privileges which he seeks." Keswick at 50.

The court applied the self-created hardship rule, holding that the owners, having bought the property with a view to obtaining a variance in order to use the property for a prohibited use, could not claim that they had suffered a peculiar hardship which entitled them to a special privilege. Id. at 51.

No Maryland decisions have ever applied the self-created hardship rule to deny an area variance. When the appropriateness of applying the rule to an area variance case was considered, the Court distinguished Keswick. In Zengerle v. Board of County Comm'rs, 262 Md. 1 (1971), the Court held that the self-created hardship rule adopted in Keswick was inapplicable to cases involving petitions for area variances, as distinguished from use variances, where there is testimony of practical difficulty in the absence of the grant of the variance. The Zengerle decision holds that, in Maryland, an application for an area variance cannot be defeated by an allegation of self-created hardship. Since the Petition in the instant case is for an area variance, the Court of Appeals' holding in Zengerle controls rather than the self-created hardship rule adopted in Keswick for use variances.

The decision by the Court of Appeals to limit the applicability of the self-created hardship rule to applications for use variances is supported by other authorities. In Rathkopf, The Law of Zoning and Planning (4th Ed. 1981), the treatise that was cited by the Keswick court in support of the self-created hardship rule, now notes that the later trend is to reject the doctrine that the purchase of property subject to restrictions of an ordinance constitutes, in itself, a self-imposed hardship. 3 Rathkopf, §39.02[2].

As further support for the recent trend to reject the self-created hardship rule, Rathkopf also notes that "a

purchaser of property acquires no greater right to a variance than his predecessor and he should not be held to acquire less". Id. at 39-16. In the instant case, the previous owner of the subject property was entitled to pursue a petition for a variance before the Deputy Zoning Commissioner on the present Petitioner's behalf. There is no reason why the change in the Petitioner's status, from contract purchaser to legal owner, should diminish such Petitioner's right to a variance.

Finally, even in the absence of the Zengerle decision, the self-created hardship rule would have no bearing on this case because the Petitioner did not purchase the property until after the requisite Variance and Special Exception had been granted by the Deputy Zoning Commissioner. The aforementioned Petitions were granted on January 8, 1982, whereas, the Petitioner did not buy the property until February 23, 1982. In light of this sequence of events, the Petitioner does not fall within the self-created hardship rule as set forth in Keswick, which only pertains to persons who purchased property "with the intention to apply to the Board of Appeals for a variance from the restrictions imposed by the ordinance" (emphasis supplied). Pending a decision by the Board of Appeals, the Deputy Zoning Commissioner's decision has the force and effect of law. See Swarthmore Co. v. Kaestner, 258 Md. 517, 525.

In sum, the Zengerle decision holds that the self-created hardship rule is inapplicable to a case involving use variances. Further, the doctrine is also inapplicable in the instant case because the Petitioner did not purchase the property until after the Petition for the Variance had been granted.

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CONCLUSION

The Petitioner has clearly established that its plans are in conformity with the stated purposes of the existence of M.L.R. Zones and has provided abundant evidence that it has met the requirements and burdens of proof as set forth in the Regulations. It is respectfully requested that the Board of Appeals grant the Special Exception and Variance sought by the Petitioner.

Respectfully submitted,

John B. Howard
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorneys for the Petitioner

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 22d day of July, 1982, a copy of the foregoing Memorandum in Support of Petitions for Special Exception and Variance was mailed to James M. Smith, Esquire, Gebhardt & Smith, Suite 1544, The World Trade Center, Baltimore, Maryland 21202, and to John W. Hesslan, Esquire, People's Counsel, Room 223, Court House, Towson, Maryland 21204.

John B. Howard
John B. Howard

15

RE: PETITION FOR SPECIAL EXCEPTION:
PETITION FOR SPECIAL HEARING
PETITION FOR VARIANCE
NW/S of Belmont Avenue, 366'
NE of Security Boulevard,
1st District
FORD MOTOR DEALERSHIP
FACILITIES COMPANY,
Petitioner
BEFORE THE
BALTIMORE COUNTY
BOARD OF APPEALS
Case No. 82-10-SXPHA

REQUEST FOR ISSUANCE OF SUBPOENAS

Please issue a Subpoena to each of the below listed individuals to appear and testify on behalf of the Protestants in the hearing of the above-captioned matter on Wednesday, July 7, 1982 at 10:00 A.M. in Room 219 Court House, County Board of Appeals, Towson, Maryland 21204:

Michael S. Flanigan
Baltimore County Department
of Traffic Engineers
Towson, Maryland 21204
Richard Moore
Baltimore County Department
of Traffic Engineers
Towson, Maryland 21204

Pursuant to Rule 5, the statement of purpose of this Subpoena is that the deponents have relevant testimony with respect to traffic information in this matter.

BALTIMORE COUNTY
JUL 7 2 05 PM '82
CC: 10
BY: C. R. WEST

JAMES M. SMITH

CHRISTOPHER R. WEST

GEHARDT & SMITH
Ninth Floor
The World Trade Center
Baltimore, Maryland 21202
(301) 752-5830

Counsel for the Protestants

Subpoena issued by Board of Appeals of Baltimore County and privately served.

S-00.18

RE: PETITION FOR SPECIAL EXCEPTION:
PETITION FOR SPECIAL HEARING
PETITION FOR VARIANCE
NW/S of Belmont Avenue, 366'
NE of Security Boulevard,
1st District
FORD MOTOR DEALERSHIP
FACILITIES COMPANY,
Petitioner
BEFORE THE
BALTIMORE COUNTY
BOARD OF APPEALS
Case No. 82-10-SXPHA

REQUEST FOR ISSUANCE OF SUBPOENA DUCES TECUM

Please issue a Subpoena to the individual named below and command him to appear and testify on behalf of the Protestants in the hearing of the above-captioned matter on Wednesday, July 7, 1982 at 10:00 A.M. in Room 219, Court House, County Board of Appeals, Towson, Maryland 21204:

William Fred Walker, Individually
and as Custodian of Records of
Daft, McCune and Walker
2911 Westminster Avenue, S.O.E. Joppa Rd.
Towson, Maryland 21204

Please command such individual to produce all files, records and writings within his control or the control of Daft, McCune and Walker, Inc. which relate or pertain to the above-referenced matter, including, but not limited to all services rendered to Day Realty of South Carolina, Inc., Days Inn of America, Inc. or any other entity known as or trading as "Days Inn" in connection with the planning, design and consultation relating thereto of a proposed facility of the above-referenced site on Belmont Avenue.

Pursuant to Rule 5, the statement of purpose of this Subpoena is that the deponent previously testified in this matter for the Petitioner, and additional testimony is necessary to clarify his prior testimony.

JAMES M. SMITH
Ninth Floor
The World Trade Center
Baltimore, Maryland 21202
(301) 752-5830

Counsel for the Protestants

Subpoena issued by Board of Appeals of Baltimore County and privately served.

S-00.18

Edith T. Eisenhart, Admin. Secretary
County Board of Appeals of Baltimore County

Rec'd 7/5/82 - 2-14

MICROFILMED

145: 1920
Disc: R-009.1

RE: PETITION FOR SPECIAL HEARING
For Motel and Public Restaurant
NW/S Belmont Avenue
306' N. of Security Boulevard
FORD Motor Dealership
Facilities Company,
Petitioner
Day Realty of South Carolina, Inc.,
Contract Purchaser
BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY
No. 81-10-SXPHA

MEMORANDUM IN OPPOSITION TO PETITIONS FOR SPECIAL EXCEPTION, VARIANCE AND SPECIAL HEARING

This Memorandum is filed on behalf of Frank E. Smith, Stephen D. Hansen, John I. Meushaw, Security Inn Associates and Hilltop Motor Inn, Inc. (hereinafter, the "Protestants"), in opposition to the Petitions for Special Exception, Variance and Special Hearing filed by Ford Motor Dealership Facilities Company and Day Realty Company of South Carolina, Inc. (hereinafter the "Petitioners").

Statement of Facts

This proceeding involves a request by the Petitioners for a special exception which would enable Day Realty of South Carolina, Inc. (hereinafter "Day Realty") to erect a motel on a parcel of property located near the intersection of Security Boulevard and the Baltimore Beltway. The proceeding also involves a request for a variance from Sections 409.2a and 409.2b of the Baltimore County Zoning Regulations (hereinafter, the "Zoning Regulations") in order to permit Day Realty to provide one hundred sixty-seven (167) parking spaces in lieu of the one hundred eighty-nine (189) parking spaces required by the Zoning Regulations.

The property in question contains approximately 7.4 acres. Approximately 2.2 of these acres are located in a forty-nine and one half (49 1/2) acre parcel which is zoned M.L.R. (hereinafter the "M.L.R. Parcel"). The M.L.R. Parcel presently has four (4) major users. Ten (10) acres of the parcel are used as a residential subdivision. Another ten and one half (10.5) acres of the parcel are occupied by a mini-warehouse complex. Beltway Properties owns an undeveloped tract consisting of 3.67 acres, and nineteen (19) acres of the parcel are occupied by the State Highway Administration, the Department of Public

MICROFILMED

494-3180

County Board of Appeals
Room 219 Court House
TOWSON, MARYLAND 21204

May 27, 1982

NOTICE OF POSTPONEMENT and REASSIGNMENT (CONTINUED HEARING)

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #108

CASE NO. 82-10-SXPHA
FORD MOTOR DEALERSHIP
FACILITIES CO.
NW/S Belmont Ave. 366' NE Security Blvd.
1st District

For SE-Motel in an MLR zone
" Variance for parking (169 in lieu of 190)

1/8/82 - D.Z.C. GRANTED PETITION

The above case, scheduled for hearing on Thursday, June 10, 1982, at

11:30 a.m. HAS BEEN POSTPONED by the Board, and

REASSIGNED FOR: WEDNESDAY, JULY 7, 1982, at 10 a.m.

cc: John B. Howard, Esq. Counsel for Petitioner

William D. Bowen, President Contract Purchaser
Day Realty of South Carolina, Inc.

Tom Kolojeski, Real Estate Petitioner
Property Manager for Ford Motor
Dealership Facilities Co.

James M. Smith, Esq. Counsel for Protestants-Appellants

John W. Hesslan, Esq. People's Counsel

Mr. W. E. Hammond

Mr. J. E. Dyer

Mrs. J. Jung

Mr. N. Gerber

Mr. J. Howell

RE: PETITION FOR SPECIAL EXCEPTION
PETITION FOR SPECIAL HEARING
PETITION FOR ZONING VARIANCE
NW/S of Belmont Ave., 366'
NE of Security Blvd.
1st Election District
FORD MOTOR DEALERSHIP FACILITIES
COMPANY, Petitioner
BEFORE THE ZONING
COMMISSIONER
OF BALTIMORE COUNTY
Case No. 82-10-SXPHA
(Item No. 177)

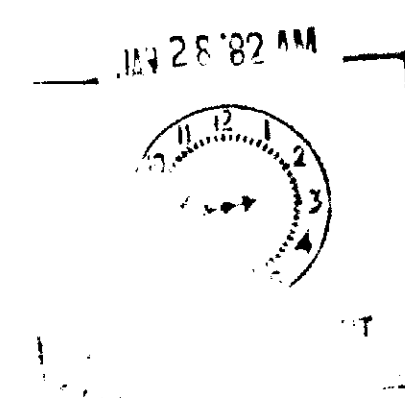
APPEAL

TO: ZONING COMMISSIONER
County Office Building
Towson, Maryland 21204

Sir:

Please be advised that the individuals and entities listed below appeal to the County Board of Appeals from the Orders entered by the Deputy Zoning Commissioner of Baltimore County in the above-captioned matters on January 8, 1982:

1. Marilyn A. Metz
1727 Hill Drive
Baltimore, Maryland 21207
2. Frank J. Metz, Jr.
1727 Hill Drive
Baltimore, Maryland 21207
3. Frank E. Smith
4 Marathon Drive
Baltimore, Maryland 21228
4. Stephen D. Hansen
2118 Arlone Drive
Catonsville, Maryland 21228
5. Security Inn Associates
1701 Belmont Avenue
Baltimore, Maryland 21207
6. John I. Meushaw
1660 Whitehead Court
Baltimore, Maryland 21207
(Business Address)
7. Hilltop Motor Inn, Inc.
1660 Whitehead Court
Baltimore, Maryland 21207
8. Mr. and Mrs. James Kunkel
1724 Hill Drive
Woodlawn, Maryland 21207
9. August S. Dietz
1708 Hill Drive
Baltimore, Maryland 21207



10. Nancy J. Dietz
1708 Hill Drive
Baltimore, Maryland 21207

JAMES M. SMITH

Brian C. Parker (S.S.)
Brian C. Parker

Gebhardt & Smith
Suite 1544
The World Trade Center
Baltimore, Maryland 21202
(301) 752-5830

Counsel for the Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of January, 1982, copies of the foregoing pleading were mailed, postage prepaid to John B. Howard, Esquire, 210 Allegheny Avenue, Towson, Maryland 21204, Counsel for the Applicants; and to John W. Hesslan, III, Esquire, People's Counsel, Room 223, Court House, Towson, Maryland 21204.

Brian C. Parker (S.S.)
Brian C. Parker

Z-00.01

June Holmen, Secy.

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 1204

Date: April 8, 1981

Mr. William E. Hammond
Zoning Commissioner
Baltimore County Office Building
1111 West Chesapeake Avenue
Towson, Maryland 21204

Z.A.C. Meeting of: April 7, 1981

RE: Item No: 177, 178, 179, 180, 181
Property Owner:
Location:
Present Zoning:
Proposed Zoning:

District:
No. Acres:

Dear Mr. Hammond:

All of the above have no bearing on student population.

Very truly yours,
Wm. Nick Petrovich
Wm. Nick Petrovich, Assistant
Department of Planning

WNP/bp

494-3180

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
November 16, 1982

James M. Smith, Esquire
Gebhardt and Smith
Suite 1544
The World Trade Center
Baltimore, Maryland 21202

Re: Case No. 82-10-XSPHA
Ford Motor Dealership
Facilities Company

Dear Mr. Smith:

Enclosed herewith is a copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary

Encl.

cc: John B. Howard, Esquire
Day Realty of South Carolina, Inc.
Ford Motor Dealership Facilities Co.
John W. Hession, III, Esquire
Mr. W. E. Hammond
Mr. J. E. Dyer
Mrs. Jean M. Jung
Mr. N. E. Gerber
Mr. J. G. Hoswell

LAW OFFICES
COOK, HOWARD, DOWNES & TRACY
210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

July 22, 1982

HAND-DELIVERED

William T. Hackett, Chairman
County Board of Appeals
Room 200
Court House
Towson, Maryland 21204

Re: Case No. 82-10-XSPA

Dear Mr. Hackett:

Enclosed herewith please find an original and two (2) copies of the Petitioner's Memorandum in Support of Petitions for Special Exception and Variance.

Kind regards.

Sincerely,

John B. Howard

JBH:dch

Enclosures

RECEIVED
BALTIMORE COUNTY
JUL 27 3 44 PM '82
CC 4 10 30
BY

494-3180

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

July 7, 1982

NOTICE OF ASSIGNMENT

(CONTINUED HEARING - FOR ARGUMENTS ONLY)

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #108

CASE NO. 82-10-XSPHA	FORD MOTOR DEALERSHIP FACILITIES CO.
	NW/s Belmont Ave. 366' NE Security Blvd.
	1st District
	For SE - Motel in an MLR zone
	" Variance for parking (169 in lieu of 190)
	1/8/82 - D.Z.C. GRANTED Petition
ASSIGNED FOR:	WEDNESDAY, AUG. 25, 1982, at 9 a.m.

cc: John B. Howard, Esq.	Counsel for Petitioner
William D. Bowen	Contract Purchaser
Day Realty of South Carolina, Inc.	
Tom Kolojeski	Petitioner
Ford Motor Dealership Fac. Co.	
James M. Smith, Esq.	Counsel for Protestants
J. W. Hession, Esq.	People's Counsel
J. E. Dyer	
J. Hoswell	
J. Jung	
N. Gerber	
W. Hammond	

June Holmen, Secy.

494-3180

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

April 2, 1982

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #108

CASE NO. 82-10-XSPHA	FORD MOTOR DEALERSHIP FACILITIES CO.
	NW/s Belmont Ave., 366' NE of Security Blvd.
	1st District
	Re: Motel in an MLR zone; 169 parking spaces in lieu of required 190.
	1/8/82 - D.Z.C.'s Order-GRANTED w/ restrictions
ASSIGNED FOR:	WEDNESDAY, APRIL 28, 1982, at 10:30 a.m.

cc: John B. Howard, Esq.	Counsel for Petitioner
W. D. Bowen	Contract Purchaser
Day Realty of S.C., Inc.	
Ford Motor Dealership Facilities Co.	Petitioner
James M. Smith, Esq.	Counsel for Protestants
J. W. Hession, Esq.	People's Counsel
J. E. Dyer	
J. Hoswell	
J. Jung	
W. Hammond	
N. Gerber	

June Holmen, Secy.

494-3180

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

April 29, 1982

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #108

CASE NO. 82-10-XSPHA	FORD MOTOR DEALERSHIP FACILITIES CO.
	NW/S Belmont Ave. 366' NE Security Blvd.
	1st District
	For SE - Motel in an MLR zone
	" Variance for parking (169 in lieu of 190)
	1/8/82 - D.Z.C. GRANTED PETITION
ASSIGNED FOR:	THURSDAY, JUNE 10, 1982 at 11:30 a.m.

cc: John B. Howard, Esquire	Counsel for Petitioner
William D. Bowen, President	Contract Purchaser
Day Realty of South Carolina, Inc.	
Tom Kolojeski, Real Estate Property Manager for Ford Motor Dealership Facilities Company	Petitioner
James M. Smith, Esquire	Counsel for Protestants-Appellants
John W. Hession, Esquire	People's Counsel
Mr. W. E. Hammond	
Mr. J. E. Dyer	
Mrs. J. Jung	
Mr. N. E. Gerber	
Mr. J. G. Hoswell	

Edith T. Eisenhart, Adm. Secretary

apf associates, inc.
surveyors-engineers

RECEIVED PLANS
JUL 1 1982

DESCRIPTION OF PROPERTY TO ACCOMPANY PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION, VARIANCE, AND VARIANCE.
LOT 4, PLAT OF CHAMPION FORD DEALERSHIP, BELMONT AND GROVE AVENUE, FIRST ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND

BEGINNING FOR THE SAME at a point on the northwesterly side of Belmont Avenue, 60 feet wide; said point being situated 26 feet more or less, measured in the northerly direction along said northwesterly side of Belmont Avenue from the end of the easement line connecting the northwesterly side of Belmont Avenue with the northerly side of Security Boulevard; said point of beginning being also situated in the division line between Lots 1 and 4 as shown on the plat of "Subdivision of Plat of Champion Ford Dealership, recorded among the Land Records of Baltimore County in Plat Book 44, page 99; thence leaving Belmont Avenue and running near the centerline of 30 foot entrance drive to Champion Ford Dealership and along the division line between Lots 1 and 4, North 49 degrees 52 minutes 40 seconds West 164.40 feet; thence leaving said drive but still continuing along the division lines between Lots 1 and 4 North 40 degrees 07 minutes 00 seconds East 59.60 feet and North 49 degrees 52 minutes 40 seconds West 173.11 feet to the southeasterly corner of a parcel designated on the beforementioned plat as "Storm Water Management Facility"; thence binding along the outlines of said parcel North 21 degrees 55 minutes 41 seconds East 225.89 feet and North 19 degrees 57 minutes 00 seconds West 10.76 feet to a point on the outline of the beforementioned plat; thence binding along said outline North 48 degrees 27 minutes 14 seconds East 59.00 feet to intersect the Southwesterly right of way line of Grove Avenue as proposed to be widened to 60 feet; thence binding along said right of way line South 41 degrees 33 minutes 10 seconds East 413.48 feet to intersect the Southeasterly outline of the beforementioned plat; thence leaving Grove Avenue and running with said outline and in part binding along the northwesterly side of Belmont Avenue, South 49 degrees 07 minutes 00 seconds East 220.00 feet to the point of beginning; containing 104,330 square feet or 2.3951 acres, more or less.

7427 harford road ballimore, md. 21234 tel: 301 444 4312
206 east main street elkton, md. 21921 301 398 7766

Settled as per conference call with John Howard,
James Smith & W. Hackett
Case to go as scheduled
April 28, + continued
to allow protestants expert testimony later
April 12, 1982

HAND DELIVERED

County Board of Appeals
Room 219
Courthouse
Towson, Maryland 21204

Attention: June Holman, Secretary

Re: Case No: 82-10-XSPHA (Ford Motor
Dealership Facilities Co.)

Dear Ms. Holman:

I have been out of the country on vacation for the past week, and upon my return today, have discovered that the above-referenced matter has been scheduled for hearing on Wednesday, April 28, 1982 at 10:30 a.m. I represent the Protestants and Appellants in this matter.

This letter is to request a postponement of this matter from the presently scheduled date. On Wednesday, April 28, I am scheduled to give a lengthy seminar to a large group of bankers. I made that commitment some time ago, and must appear to present that seminar.

Additionally, I personally telephoned your office approximately two weeks ago to ascertain the likely hearing date in order to arrange for expert witness testimony, and the preparation of the matter for hearing. I was advised by your office that the case had not been assigned, and that it was highly unlikely that it would be scheduled for hearing earlier than the latter part of May, and that in all likelihood it would be heard some time in June or July of 1982. The individual that I spoke with at that time mentioned that Mr. Howard, Counsel for the Petitioner, had requested an early hearing date, but that a hearing date had not been scheduled, and that your office was not prepared to assign a date at that time. I relied upon those representations, and I simply cannot, upon such short notice, prepare this matter for hearing on April 28.

For the above reasons, I would ask that this matter be rescheduled, no earlier than the latter part of May of 1982. I would be most appreciative if you would contact my office with the new hearing date.

Very truly yours,

James M. Smith

JMS:dcg
cc: John B. Howard, Esquire
J. W. Hession, Esquire

Safety and the Baltimore County Beltway. The property in question in this proceeding occupies 2.2 acres, and the remaining 4.12 acres are owned and used by a Ford dealership and a private individual.

Day Realty wishes to erect a one hundred forty-four (144) room motel on the property in question. The motel would contain, in addition to rooms for guests, a restaurant with a seating capacity of forty-eight (48), a gameroom containing pinball machines, and a gift shop. Because of the relatively small size of the parcel of property in question and the size of the motel which Day Realty proposes to erect on the property, eighty to ninety percent (80-90%) of the property will be occupied by buildings or parking areas.

Argument

I.

THE EXCEPTION REQUESTED BY PETITIONERS VIOLATES SECTIONS 248.4B AND 248.4C OF THE BALTIMORE COUNTY ZONING CODE IN THAT THE PROPOSED MOTEL IS NOT DESIGNED FOR THE PRIMARY USE OF THE INDUSTRIES LOCATED WITHIN THE M.L.R. PARCEL.

Section 248.4 of the Zoning Regulations sets forth the uses which may be permitted by special exception on property which is zoned M.L.R. Section 248.4b provides that a motel is a permissible use if 1) the motel is located within a M.L.R. Zone which is part of a contiguous area of at least twenty-five (25) acres of industrial zoning and 2) "the specific use proposed is demonstratively an appropriate service to industries existing, planned or normally to be expected to locate therein . . ." (Emphasis supplied.) Section 248.4c of the Zoning Regulations makes clear that in order for a Petitioner to demonstrate that a proposed use is "an appropriate service" to industries in the M.L.R. Zone, the Petitioners must establish that its services will be rendered primarily to the industries within the M.L.R. Zone. Section 248.4c states that an exception may not be granted pursuant to Section 248.4b if the business will be located within one hundred (100) feet of the right of way of an existing or proposed major street. Section 248.4c expressly provides that this limitation is to assure that the businesses will render their services primarily to the industries within the M.L.R. Zone. Thus, it is plain that the drafters of the Zoning Regulations contemplated that exceptions would be granted pursuant to Section 248.4b only when the business requesting the exception anticipated that it would provide services primarily to industries in the M.L.R. Zone.

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clearly does not make the regulation discriminatory or unconstitutional. If the Petitioners' reasoning were accepted, other zoning regulations which also favor large landowners, such as lot size and setback requirements, would also be invalid.

Contrary to the Petitioners' contention, the only fair and equitable construction of the regulation is that advanced by the Protestants. If the regulation is construed as suggested by the Petitioners, one person, by using his property for commercial purposes, could effectively foreclose another property owner in the same M.L.R. Zone from using his property for similar purposes. For example, if the Petitioners' construction of the regulation is accepted, a person owning a fifteen (15) acre parcel of property located in a one hundred (100) acre M.L.R. Zone could, by obtaining an exception for the use of his parcel, prevent any other property owner in the M.L.R. Zone from obtaining a similar exception. Section 248.4b should not be construed in a manner which enables one property owner to determine the manner in which other property owners can use their property. This is especially true where, as in the present case, the regulation in question can logically be construed in a manner which does not produce such a result.

In the present case, there is no question that the Petitioner intends to use more than fifteen percent (15%) of the subject property for commercial purposes. Indeed, as pointed out by the Protestants' expert, the motel complex would occupy more than fifteen percent (15%) of all the available land in the M.L.R. Parcel. (Hearing trans. at A-54-A-55). Accordingly, the Petitioners' request for an exception must be denied.

III.

THE PETITIONERS' REQUEST FOR A VARIANCE SHOULD BE DENIED IN THAT IT IS NOT SUPPORTED BY ADEQUATE EVIDENCE.

The Petitioners have requested a variance from Sections 409.2a and 409.2b of the Zoning Regulations in order to permit Day Realty to provide one hundred sixty-seven (167) parking spaces for their motel in lieu of the required one hundred eighty-nine (189) spaces. The Petitioners argue that their motel is unique and that they, therefore, should not be required to provide the normal number of parking spaces. The Petitioners base this contention on a study which concluded that it was only necessary to provide an eighty-five percent (85%) parking space to room ratio. Specifically, Mr. Giskert, the Petitioners' expert, testified that his firm performed a study at a Days Inn

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The Petitioners virtually conceded in their memorandum that the above interpretation of Section 248.4b is correct. The Petitioners note that Section 247 of the Zoning Code, which sets forth the purposes for establishing M.L.R. Zones, indicates that M.L.R. Zones were created for the purpose of establishing "industrial subdivisions." (Petitioners' Memo. at 2). The Petitioners also note that Section 248.4b was adopted to enable property to be used for purposes which support the industries in the "subdivision." Thus, Petitioners concede that Section 248.4b "provides for the supporting commercial services which these industrial subdivisions require . . ." (Petitioners' Memo. at 1) (emphasis supplied). The Petitioners also state that Section 248.4b "lists the supporting commercial services necessary for the efficient functioning of various and diverse industries contemplated for these subdivisions . . ." (Petitioners' Memo. at 2) (emphasis supplied). Thus, the Petitioners acknowledge in their own memorandum that Section 248.4b was adopted as part of a comprehensive scheme to create industrial subdivisions and specifically to provide support services to industries located within those subdivisions. Accordingly, unless a business intends to primarily render services to industries in an M.L.R. Zone, no authority exists for granting an exception under Section 248.4b.

In the present case, the testimony given at the July 9, 1981 hearing clearly demonstrates that Day Realty has no intention of erecting its motel in order to service the industries in the M.L.R. Zone. Mr. Hartsfield, a representative of Day Realty, testified that forty percent (40%) of the motel's business would be from traveling families, thirty percent (30%) would be from businesses and that the remainder would come from miscellaneous sources. (Hearing trans. at 29). Mr. Hartsfield further testified that in order for the motel to break even it would be necessary for the motel to have thirty-one thousand (31,000) occupied room-nights each year or, in other words, for approximately sixty thousand to sixty-two thousand (60,000-62,000) people to stay at the motel each year. (Hearing trans. at 28). In order to draw that many people to the motel, Mr. Hartsfield conceded that the business market for the motel would have to be the three-mile area surrounding the motel. (Hearing trans. at 26). Mr. Hartsfield also conceded that his company's own marketing study, which was based on the incorrect assumption that the mini-warehouse complex would not be constructed, estimated that businesses located in the M.L.R. Parcel would generate only thirty or forty room-nights, less than half of the room-nights which would be needed by the motel to break even and

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located in Gaithersburg, Maryland which indicated that the Gaithersburg motel used only .83 parking spaces per room. This study is flawed in several respects. First, no evidence was provided to establish that the Gaithersburg motel was used by the same type of clientele as would be using the motel in question. Second, the study was based on observations conducted on only three days, all of which were weekdays. Moreover, there is no evidence that the observations were conducted during the hours of peak restaurant usage.

Mr. Hartsfield, a representative of Day Realty, conceded that parking space planning should take into consideration the maximum potential needs of the motel. Mr. Hartsfield testified that he believed the maximum needs of the motel would be one parking space for each room plus parking spaces for employees and restaurant patrons. (Hearing trans. at 53). Mr. Hartsfield provided no evidence to support this statement, however. Mr. Hartsfield testified that only thirteen (13) spaces would be needed for all restaurant patrons and employees. (Hearing trans. at 53). The evidence showed, however, that the motel would employ ten (10) employees and that as many as forty-three (43) patrons could be seated in the restaurant. (Hearing trans. at 58 and 58-59). Given these facts, Mr. Hartsfield's bald conclusion that only thirteen (13) spaces would be needed for these fifty-three (53) people is unsupportable. This is especially true in light of the testimony indicating that the times of peak motel occupancy and peak restaurant use would overlap. (Hearing trans. at 60).

In essence, the Petitioners' request for a variance is based upon a study which flies in the face of the conclusion reached by the Traffic Department and which is obviously inconsistent with the actual needs of the motel. As such, it is plain that the Petitioners have failed to carry their burden of proof and that the proposed variance should not be granted.

Conclusion

Wherefore, for the reasons set forth above, it is respectfully requested that the Petitions for Special Exception, Variance and Special Hearing be denied.

James M. Smith
JAMES M. SMITH

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only a fraction of the room-nights which would be used if the motel operates at capacity. (Hearing trans. at 36). Mr. Meluski, the Petitioners' expert on real estate, subsequently testified that the mini-warehouse facility, which occupies 10.5 acres of the M.L.R. Parcel, would generate very few customers for the motel. (Hearing trans. at 30-31). Thus, the testimony of the Petitioner's own representatives plainly establishes that the motel will not be used primarily by persons connected with businesses in the M.L.R. Zone. Indeed, it is clear that if the motel is to be a viable entity, it will be necessary for it to attract the vast majority of its customers from the Beltway, the Social Security Complex and other areas. As such, the special exception requested by Petitioners falls outside the scope of the uses contemplated under Section 248.4b and Section 248.4c of the Zoning Regulations. Therefore, the Petitioner's request for exception must be denied.

II.

THE SPECIAL EXCEPTION REQUESTED BY THE PETITIONER VIOLATES SECTION 248.4B OF THE BALTIMORE COUNTY CODE IN THAT THE PROPOSED MOTEL WILL OCCUPY MORE THAN FIFTEEN PERCENT (15%) OF THE SUBJECT PROPERTY.

Section 248.4b of the Zoning Regulations provides that commercial uses, including motels, located within a M.L.R. Zone may not "occupy more than 15% of the M.L.R. tract in which they are located . . ." The Petitioners contend that the fifteen percent (15%) limitation referred to in Section 248.4b relates to the entire M.L.R. Parcel in which property subject to a proposed exception is located rather than the parcel subject to the exception itself. The Petitioners argue that because the parcel of property which they propose to develop is less than fifteen percent (15%) of the total 49.5 acre M.L.R. Parcel, Section 248.4b imposes no restriction on their development of the property. The Petitioners' construction of Section 248.4b is plainly incorrect. The drafters of the section clearly intended that commercial services located within a M.L.R. Zone occupy no more than fifteen percent (15%) of the property on which the commercial service is located. This interpretation of Section 248.4b is not only consistent with the language of the regulation but, contrary to the Petitioner's contention, provides the only fair and equitable manner in which the regulation can be construed.

As noted previously, Section 248.4b limits commercial uses to "15% of the M.L.R. tract in which they are located . . ." In order to properly interpret this portion of

- 4 -

Brian C. Parker
BRIAN C. PARKER
Gebhardt & Smith
Suite 1544
The World Trade Center
Baltimore, Maryland 21202
(301) 752-5830
Attorneys for Protestants

Certificate of Service

I hereby certify that on this 28th day of July, 1981, a copy of the foregoing Memorandum was mailed postage prepaid to John B. Howard, Esquire, Cook, Howard, Downs & Tracey, 110 Allegheny Avenue, Towson, Maryland 21204, Attorney for Petitioners.

Brian C. Parker
BRIAN C. PARKER

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the regulation, it is necessary to determine whether the terms "M.L.R. tract" refer to only the parcel of property on which the commercial use is to be located or to all contiguous property which is zoned M.L.R. Several factors indicate that the former construction of the regulation is the proper one. First, in the initial part of Section 248.4b, the drafters clearly refer to the entire M.L.R. parcel as the "M.L.R. Zone". Had the drafters of the regulation wished to refer to the entire M.L.R. parcel in the latter portion of the regulation, they would have again referred to the "M.L.R. Zone" and not to the "M.L.R. tract." Second, Section 248.4b specifically refers to property occupied for commercial uses as "tract areas". Thus, it is logical to assume that when the drafters of the regulation later used the terms "M.L.R. tract" they intended to refer to a parcel of property within the larger M.L.R. Zone and not to the entire M.L.R. Zone itself. Contrary to the Petitioner's contention, the fact that the fifteen percent (15%) limitation applies to "the combined tract areas developed for one or more of these service commercial uses," does not indicate that the limitation applies to all of the property located in the M.L.R. Zone. This language merely indicates that if a person, owning a single parcel of property in a M.L.R. Zone, intends to develop it for more than one commercial use, the combined commercial uses cannot occupy more than fifteen percent (15%) of the parcel.

The Petitioners, in their Memorandum, implicitly concede that the regulation in question is ambiguous. They, therefore, advance several policy arguments as to why the regulation should be construed in a manner favorable to them. First, they argue that unless the regulation is construed in the manner they suggest, none of the parcels of property presently available in the M.L.R. Parcel would be of sufficient size to enable them to construct a motel. This argument is plainly specious. The mere fact that there are no parcels of property in the M.L.R. Parcel which are sufficiently large to permit the proposed development is irrelevant to the proper interpretation of the regulation in question. The construction of the regulation proposed by the Protestants imposes no general limitation on the development of M.L.R. property and thus is clearly not inconsistent with the general development of M.L.R. Zones.

The Petitioners' second argument is that the regulation, if construed to be applicable to individual parcels within a M.L.R. Zone, would be discriminatory and unconstitutional because it would favor large landowners. The mere fact that a zoning regulation requires that a parcel be of a given size before construction can take place

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RE: PETITION FOR SPECIAL HEARING * BEFORE THE
For Motel and Public Restaurant * ZONING COMMISSIONER
NW/S Belmont Avenue *
306' N. of Security Boulevard * OF
Ford Motor Dealership * BALTIMORE COUNTY
Facilities Company, *
Petitioner * No. 82-10-XSPHA
Day Realty of South Carolina, *
Inc. *
Contract Purchaser *

REPLY MEMORANDUM IN SUPPORT OF PETITIONS FOR SPECIAL EXCEPTION, VARIANCE AND SPECIAL HEARING

This Reply Memorandum in Support of Petitions for Special Exception, Variance and Special Hearing is filed by Ford Motor Dealership Facilities Company and Day Realty of South Carolina, Inc. (the "Petitioners"), by their attorneys, John B. Howard and Cook, Howard, Downes & Tracy, in response to the Memorandum of Frank E. Smith, Stephen D. Hansen, John I. Meushaw, Security Inn Associates and Hilltop Motor Inn, Inc. (the "Protestants").

Preliminary Statement

The Protestants' Memorandum in Opposition to Petitions for Special Exception, Variance and a Special Hearing (the "Memo in Opposition"), presented the following three issues with respect to the Special Exception, Variance and Special Hearing sought by the Petitioner in connection with the erection of a motel on a 2.4 acre parcel of property, 2.2 acres of which is located in an M.L.R. Zone, located near the intersection of Security Boulevard and the Baltimore Beltway:

(1) Is the Special Exception requested by the Petitioners allowed under §§248.4b and 248.4c of the Baltimore County Zoning Regulations (the "B.C.Z.R.") in that the proposed motel is not designated primarily for the use of industries presently located only within the M.L.R. Zone?

(2) Is the Special Exception requested by the

Petitioners allowed under §248.4b of the B.C.Z.R., in that the proposed motel will occupy more than 15% of the subject property for which it is sought?

(3) Is the Petitioners' request for Variances from the parking requirements of §§409.2a and 409.2b(3) of the B.C.Z.R. to be denied in that it is not supported by adequate evidence?

Discussion

Issue I:

IS THE SPECIAL EXCEPTION REQUESTED BY PETITIONERS ALLOWED UNDER §248.4b AND 248.4c OF THE B.C.Z.R. IN THAT THE PROPOSED MOTEL IS NOT DESIGNATED PRIMARILY FOR THE USE OF INDUSTRIES PRESENTLY LOCATED ONLY WITHIN THE M.L.R. ZONE?

The Protestants argue that Petitioners' proposed motel must be in support of the industries located only within the M.L.R. Zone itself (Memo in Opposition p. 2) and not in support of those industries existing in the extensive industrial areas contiguous to the M.L.R. Zone. Such contention is clearly erroneous.

In support of their argument, Protestants cite the language of §248.4b which allows a motel by special exception on property which is located in a M.L.R. Zone if (1) the motel is located within a M.L.R. Zone which is part of a contiguous area of at least twenty-five (25) acres of industrial zoning, and (2) the specific use proposed is demonstrably an appropriate service to industries existing, or normally be expected to locate therein (Protestants' emphasis) (Memo in Opposition p. 2). The Protestants argue that the word "therein" refers only to the specific property for which the special exception is sought. Upon closer examination, it is clear, however, that the word "therein" more logically refers to the phrase, "a contiguous area of 25 acres or more of industrial zoning" which the M.L.R. Zone must be "a part of".

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The Petitioners contend that no authority exists for limiting the §248.4b commercial support uses to only those industries located in a M.L.R. Zone. It is clear that the intended purposes for those M.L.R. Zones defined in §248.4b are to complement and support large tracts of industrial zoning throughout Baltimore County. Furthermore, the M.L.R. Zones are intended to act as "transitional bands" containing this very type of commercial support use contemplated by the Petitioners. Without question, the Petitioners' commercial motel use in support of the larger industrial tract adjacent to the M.L.R. Zone in question, fulfills the stated purposes and requirements of the applicable regulations.

Issue II:

IS THE SPECIAL EXCEPTION REQUESTED BY THE PETITIONERS ALLOWED UNDER §248.4b OF THE B.C.Z.R. IN THAT THE PROPOSED MOTEL WILL OCCUPY MORE THAN 15% OF THE SUBJECT PROPERTY FOR WHICH IT IS SOUGHT?

As outlined in the Petitioners' Memorandum in Support of Petitions for Special Exception, Variances and Special Hearing, filed previously in this case (the "Petitioners' First Memo"), it is clear that the drafters of §248.4b used the phrase "15% of M.L.R. tract" to denote all of the property with M.L.R. zoning which is "a part of a contiguous area 25 acres or more of industrial zoning." The 15% limitation does not refer to any specific parcel located within the M.L.R. Zone.

In order to make it clear that not all M.L.R. Zones would be eligible for commercial use special exceptions of §248.4b, the drafters of the section used the phrase "M.L.R. tract in which [the industries] are located" to refer to the entire M.L.R. Zone which were a part of a contiguous area of at least 25 acres of industrial zoning. Had the drafters used the term "zone" instead of "tract" in the phrase relating to the 15% limitation the last statement of §248.4b taken by itself

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"Industrial zoning" would, of course, include all property zoned M.L. or M.H. and is not limited only to the M.L.R. Zone in question. If the industries to be supported were only those within the M.L.R. Zone, it would make little sense to have the requirement that the M.L.R. Zone must be a part of twenty-five (25) acres or more of industrial zoning.

It is clear that it was not the need for commercial support of the industries within any one M.L.R. Zone that was the primary concern of the drafters of §248.4b, but rather it was the needs of those industries which are located within at least 25 acres of contiguous industrial zoning upon which the drafters focused. The second requirement of §248.4b that the commercial uses in the M.L.R. Zone provide "an appropriate service to industries . . ." can only be logically related to the first requirement when it is recognized that the intended beneficiaries of such support are all the industries on property contiguous to the M.L.R. Zone and not merely within the M.L.R. Zone itself. The key distinction is that it is not every M.L.R. Zone which is permitted the commercial support uses by Special Exception, but only those which are a part of large areas containing all types of industrial zoning.

The Protestants further contend that §248.4c stands for the proposition that the services located on the M.L.R. Zone must be directed "primarily" to the industries "therein". It is respectfully submitted that the term "therein" is used in §248.4c in much the same way it was used in §248.4b. This is the only logical interpretation of the section's set-back restrictions, given the clear intention of §248.4b that the M.L.R. Zone contain commercial uses that would support all of the industries located within the 25 acres or more of contiguous industrial zoning. There was ample evidence presented at the hearing before the Deputy Zoning Commissioner

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would imply that all M.L.R. Zones were eligible for the special exceptions when that was not the case. It is respectfully submitted that the word "tract" as used in the phrase in question should be read as "zone which is a part of a contiguous area of 25 acres or more of industrial zoning."

Furthermore, the insertion of the phrase "M.L.R. tract" also makes it clear that it is not the area of "25 acres or more of industrial zoning" that qualifies for the commercial uses by special exception, but only the M.L.R. part of the entirety. In this sense "tract" means "portion of the entire area of industrial zoning".

Finally, the use of the term "they" when referring to the industries located within the contemplated industrial area strongly suggests that the 15% limitation applies to the summation of all of the support uses as they relate to the entire M.L.R. Zone in which they are allowed.

The Protestants interpretation of the 15% limitation of §248.4b is that it prohibits the combined commercial uses for any one parcel from occupying more than 15% of that parcel. Given the land area requirements of each allowable commercial use under §248.4b, it is clear that the Protestants' interpretation of the limitation is totally impractical. There are few, if any, parcels located within any M.L.R. Zone in Baltimore County which could provide even one commercial support service if the 15% limitation applied to each lot, let alone multiple uses as the Protestants suggest.

The fact that substantially all of the parcels contained in a M.L.R. Zone would be precluded from using any of the allowed special exceptions is far from "plainly specious" and "irrelevant to the proper interpretation of the regulation in question" (Memo in Opposition p. 5), but rather illustrates quite clearly the drafters' intentions of providing industrial

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that the proposed motel is intended to support such contiguous industrial and semi-industrial areas (Hearing Trans. at pp. 17-18, 26, A-21).

The concept of "industrial subdivision" set forth in §247 is quite consistent with the Petitioners' interpretation of §§248.4b and 248.4c. Contrary to the Protestants' implications, any subdivision, whether residential, commercial or industrial, is not totally self-contained. It must relate favorably with surrounding properties which may allow for other uses. One of the stated purposes of the M.L.R. Zone is to act "as transitional bands between residential or institutional areas and M.L. or M.H. Zones." Section 247 (B.C.Z.R.). The placement of commercial support uses within the M.L.R. Zone in support of the M.L. or M.H. Zones would result in the type of "transitional bands" for which the M.L.R. Zones were created. Limiting the commercial uses allowed in §248.4b to only those in support of industries within the M.L.R. Zone, as suggested by the Protestants, would severely limit the transitional effect of the Zone in that fewer support uses would be required or permitted within the M.L.R. Zone.

By providing commercial support for M.L. or M.H. Zones within the M.L.R. Zones which lie between industrial areas and other neighborhoods, both express purposes of M.L.R. Zones, i.e., support of industries and transitional banding, can best be realized. Additionally, the M.L. and M.H. Zones which are intended to be supported by M.L.R. Zones in most cases do not allow for these types of commercial uses. The support uses for these zones logically belong in the adjacent M.L.R. Zones in the "transitional" manner that the drafters intended.

Exhibit A attached hereto shows the M.L.R. Zone in question, containing 49.5 acres, outlined in blue and the contiguous M.L.-I.M. Zones, containing 365 acres, outlined in

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support in transitional bands through the use of M.L.R. Zones could only be practically accomplished if the 15% is applied to the entire M.L.R. Zone. The drafters' intentions in this regard would be substantially frustrated if the Protestants' interpretation of the 15% area limitation were adopted as very few of the §248.4b commercial uses would exist in the M.L.R. Zones.

It seems clear that if there is any doubt as to the interpretation of such a regulation, it should be interpreted in a manner that will allow the stated purposes of the legislation to be fulfilled. It would be an illogical restriction to preclude most of the parcels within a M.L.R. Zone from fulfilling the function of providing a transitional band between industrial areas and the other areas nearby. Similarly, it would make no sense to preclude most of the parcels within a M.L.R. Zone from providing the needed commercial use support to the industries located in adjacent tracts of industrial zoning. Such an interpretation would defeat the stated purposes of the statute and could hardly be categorized as the "only fair and equitable manner in which the regulation can be construed" (Opposition Memo p. 4).

The Protestants further allege that a single petitioner using his property for commercial purposes could foreclose the rights of other property owners in the same M.L.R. Zone from using their property for similar purposes. Protestants' argument overlooks the fact that the commercial uses allowed by §248.4b are granted by special exception. Granting of the use under this section does not divest other property holders of any rights vested in them by having their property included in that specific zone. The existence of Special Exceptions recognizes that under certain predesignated terms and conditions one's property may be used for the stated uses.

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red. To the east and south of that M.L. Zone is the Meadows Industrial Park, part of which is zoned B.M.-I.M. and B.R.-I.M., with the remainder zoned M.L. and M.L.-I.M. Although strictly speaking the B.M. and B.R. classifications are "commercial zones", the superimposition of the I.M. District, along with the actual use as an industrial park, it is submitted, should result in treatment of that area, all of which is outlined in green on Exhibit A and consists of an additional 195 acres, as "contiguous . . . industrial zoning" as mentioned in §248.4b. The conclusion necessarily results from the fact that the I.M. District may be applied "only to certain areas individually containing 100 acres or more of land zoned for industrial or semi industrial use (M.H., M.L., M.L.R., M.R., B.R. and/or B.M.) . . ." (emphasis added) §259.2H (B.C.Z.R.). Therefore, the total contiguous industrial zoning determined by the most strict interpretation of the term would result in 414.5 acres containing the subject M.L.R. Zone and the contiguous M.L.-I.M. Zones, but the more reasonable interpretation of the term "industrial" would also include the semi-industrial area and would, therefore encompass a total area of 605.5 acres to be serviced by the commercial uses set forth in §248.4b. The Petitioner's proposed motel is intended to provide the needed support for all of the industrial areas outlined on Exhibit A.

It could certainly be anticipated that the industries located within this overall area of industrial zoning will generate substantially more than 31,000 occupied room-nights per year needed for the motel to break even (Hearing Trans. p. 28). With this larger area in mind, it becomes irrelevant as to what uses are made of the individual parcels within the M.L.R. Zone.

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The Special Exceptions of this type are granted on a "first come, first serve" basis and it would be discriminatory to preclude an otherwise qualified property owner the right to the Special Exception merely because another property holder could not later seek the same use by Special Exception. There are a number of examples throughout the B.C.Z.R. that utilize the "first come, first serve" principle. For example, §405.A.1 limits the number of automobile-service stations to one per 60,000 square feet of retail floor area and §405.A.3 similarly limits the number of automobile-service stations in a permitted planned industrial park to one per 50 acres of net area. The "first come, first serve" principle applies equally to other areas of administrative law and is particularly analogous to population quotas limiting the number of each type of liquor license by Election Districts in Baltimore County.

As set forth in Petitioners' First Memo the County Board of Appeals has previously interpreted the §248.4b area limitation to apply to the M.L.R. Zone in its entirety, not each individual parcel, in In re Petition for Special Exception, No. 72-186-X (Proposed Ramada Inn, Shaven Road). The Petitioners believe the facts presented in this case are substantially similar in this regard and that the prior decision of the County Board of Appeals should be followed.

Issue III:

IS THE PETITIONERS' REQUEST FOR A VARIANCE FROM §§409.2a AND 409.2b(3) OF THE B.C.Z.R. TO BE DENIED IN THAT IT IS NOT SUPPORTED BY ADEQUATE EVIDENCE?

Protestants state that Petitioner should not be granted the requested variances from §409.2a and §409.2b(3) because they have failed to support the request by adequate evidence. The Protestants question the Petitioners' use of their Gaithersburg motel as a model which utilizes 85% of the parking space to room ratio. However, the Protestants offer no

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82-10-XSPHA

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 1 Date of Posting JUNE 22, 1981

Posted for: SPECIAL EXEMPTION AND VARIANCE

Petitioner: FED MOTOR DEALERSHIP FACILITIES COMPANY

Location of property: NORTH WEST SIDE OF BELMONT AVE. 326' NORTH EAST
OF SECURITY BOULEVARD

Location of Sign: WEST SIDE OF BELMONT AVENUE APPROX. 180'
NORTH OF SECURITY BLVD.

Remarks: _____

Posted by: Steph J. Crute Date of return: JUNE 26, 1981
Signature

Number of Signs: 3

[illegible]

TOWSON, MD., ... June 12, 19.....

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md. ~~for one year~~

for one time, ~~for one week,~~ before the 27th day of July, 19..... the first publication appearing on the 18th day of July.

10. 61.

THE JEFFERSONIAN,
[Signature]
Manager

Cost of Advertisment, \$ 45⁰⁰

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

82-10-XSPHA

Date of Posting 2-15-82

District 1st

Posted for: Appeal

Petitioner: Ford Motor Dealership Facilities Co.

Location of property: 11W/S Belmount Ave. 366 N.E. of Beauty Blvd

Location of Sign: West side of Belmount across approx 4661 north of Beauty Boulevard

Remarks: _____

Posted by: J. D. Orth Date of return: 2-26-82
Signature

Number of Signs: 1

No. 55115
 ALTIMORE COUNTY, MARYLAND
 DIVISION OF REVENUE
 RECEIPT
 FOR CASH RECEIPT
 DATE Jan. 7, 1983 ACCOUNT 01-712
 AMOUNT \$ 10.00
 RECEIVED BY Christopher Vlast, Esq., World Trade Center, (212) 203-1000
 FOR copies of documents from file no. 82-10-58PMA.
 ON Ford Motor Dealership (19/20/82-W-413)
 B 8135*****100015 2105F
 VALIDATION OR SIGNATURE OF CARRIER

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

No. 85108

DATE 7/2/82 ACCOUNT 01.712

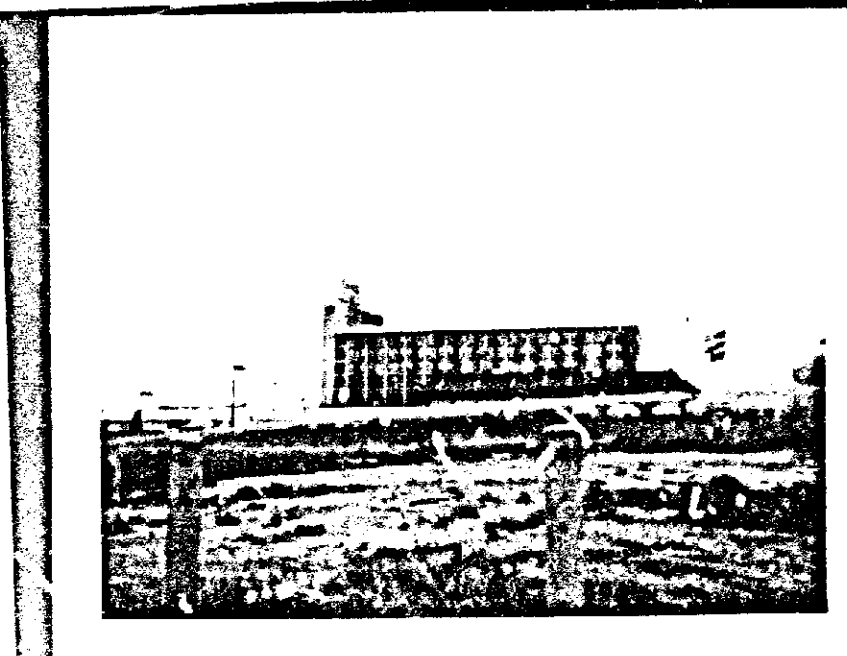
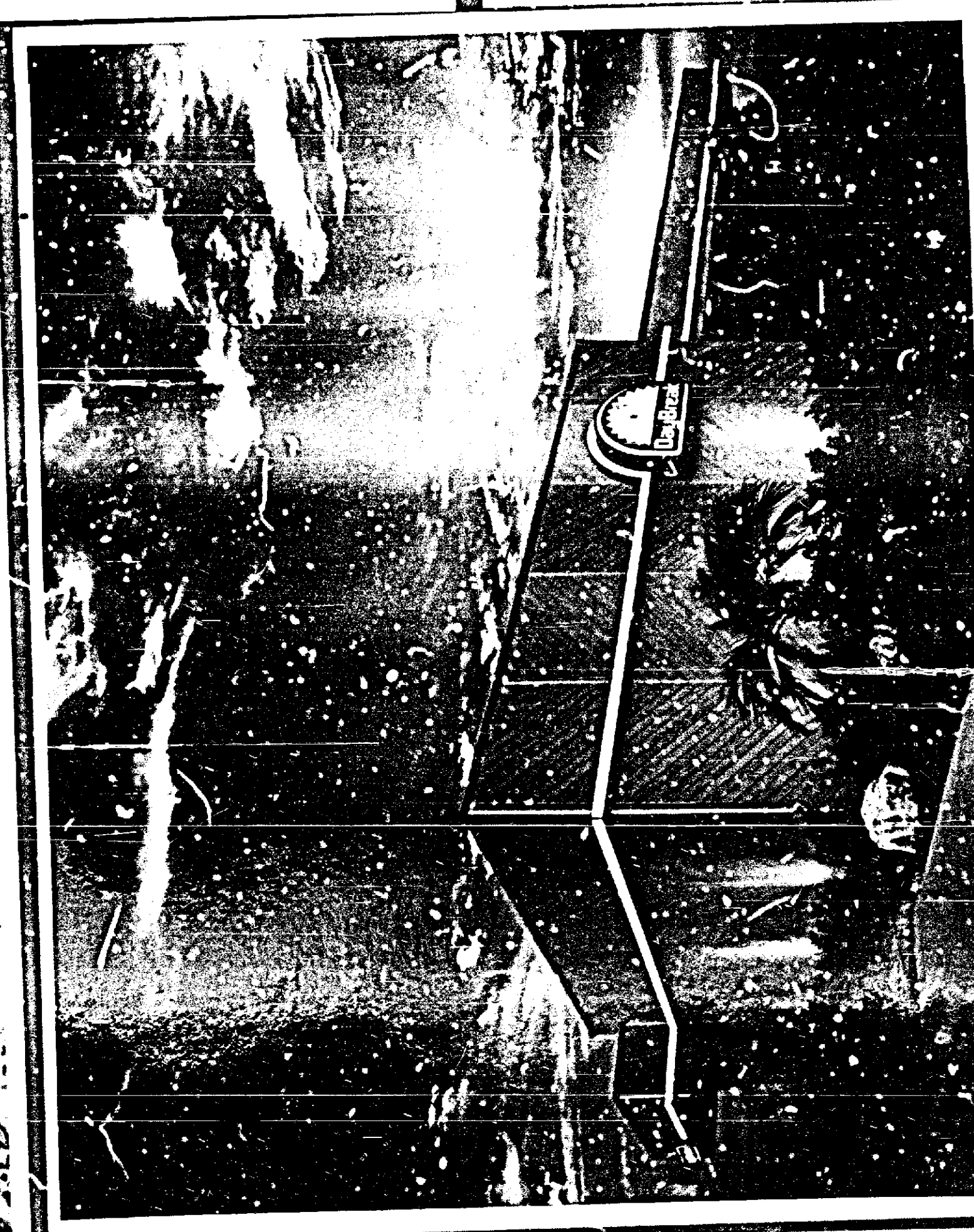
AMOUNT \$ 14.00

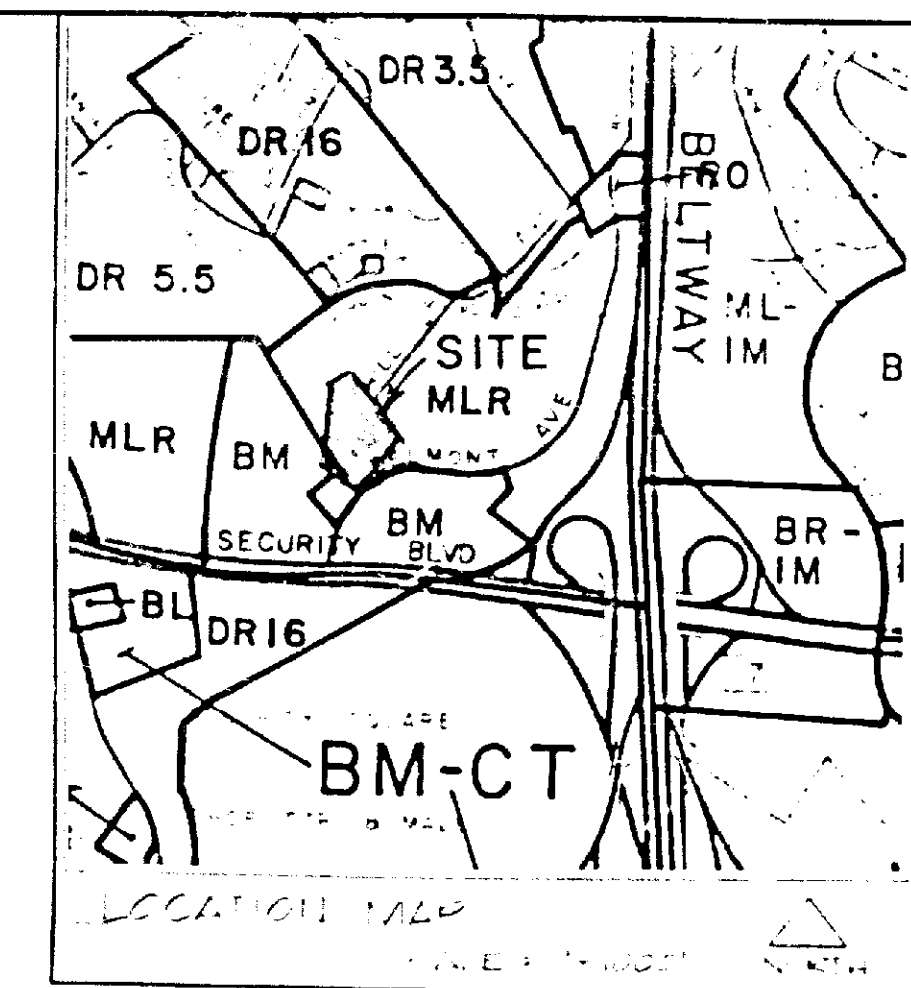
RECEIVED James M. Smith, Esq.
FROM copies of documents in File No. 82-10-XSPA
For Motor Dealership Facilities Co.

B B213*****140018 4062F

VALIDATION OR SIGNATURE OF CASHIER

82-10-XSPA 1st District
NW/S Belmont Ave. 366'
NE of Security Blvd.
Ford Motor Dealership Facilities Co., Petitioner
I - SIGN





NOTES

1. BENCH MARK SHOWN ON THE PLAT REFERS TO THE FILE NUMBER AND LOCATION OF THE MAPPING OF THE MOUNTAIN COUNTY MEMORIAL HOSPITAL DISTRICT.
2. ELEVATIONS ARE BASED ON THE MOUNTAIN COUNTY PLAT.
3. BENCH MARK 1 - 5822.4 ELEV. 137.33
CROSS CUT N. CENTER OF RUTEN " "
NEAR AN OLD SECURITY BUILD.
4. TITLE REFERENCE
CHAMBERLAIN FORD DEALERSHIP PLATBOOK ENR. 14. 33

BUILDING USE	PARKING AREA	PARKING SPACE	PERCENT AVAILABLE
VOTER:			
RENTABLE ROOMS	44	100%	44
REGISTRATION/OFFICE	200	100%	200
RECEIVING ROOM	20	100%	20
* GAMING ROOM	50	100%	50
GIFT SHOP	124	100%	124
	TOTAL	PARKING REQUIRED	438
	TOTAL	PARKING PROVIDED	167

LEGEND

EXISTING CONTENTS
PROPOSED CONTENTS

"	FIRE HYDRANT	
"	NET	
"	GUMBA DRAIN	
"	WATER LINE	
"	SANITARY LINE	

ADDITIONAL NOTES

1. THE ABOVE INFORMATION IS TRUE & MAXIMUM OF 200 WORDS ONLY.
2. SIGNATURE OF THE PERSON WHO KNOWS THE INFORMATION ON ANY CRIME (ANY CRIME) WITHIN 100 FT.

NOTE:

THE PLAN AS PREPARED REPRESENTS THE REVIEWERS BEST JUDGEMENT AS TO THE SIZE AND LOCATION OF PROPOSED IMPROVEMENTS.

APPROVAL OF THIS PLAN SHALL ALLOW FOR REASONABLE ADJUSTMENTS AND VARIATIONS AS MAY BE REQUESTED BY THE REVIEWING GOVERNMENT AGENCIES, LENDERS, INSURERS AND THE UTILITY COMPANIES.

CONTRACT PURCHASER
DAY REALTY OF
SOUTH CAROLINA, INC.

PLAT TO ACCOMPANY PETITION
FOR SPECIAL EXCEPTION, ZONING
VARIANCE, AND SPECIAL HEARING.

SHEET 1 OF 2 6/29/91

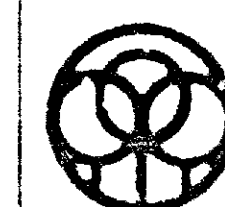
53. LOHRY AND TOUGHRON SURVEY

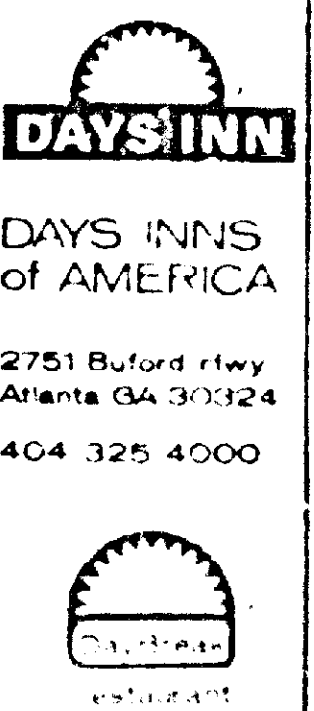
BELMONT ALE AND GROVE ALE.

5th ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

5.6.2.10.20 15842400.0 (3.4)

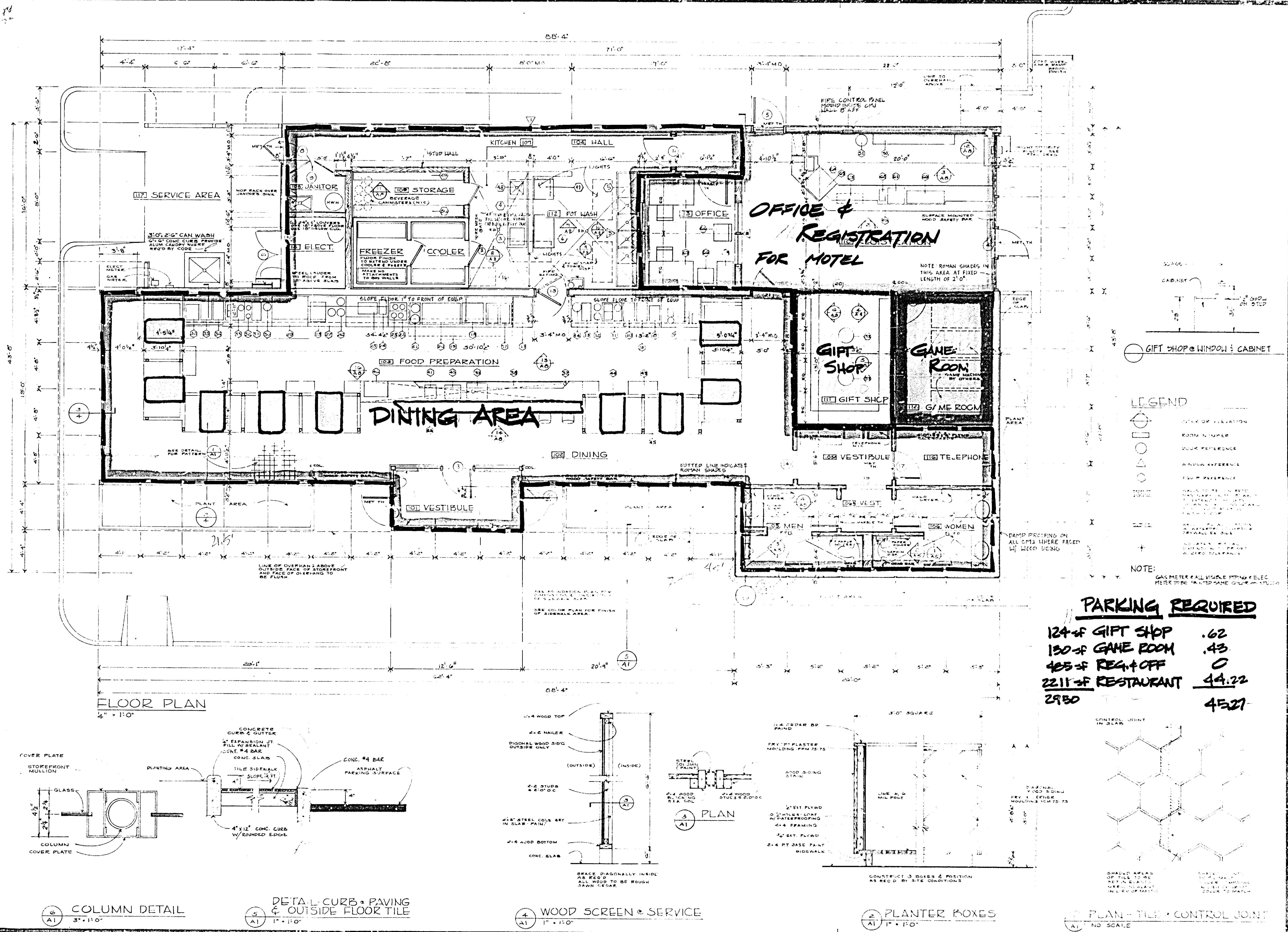
apr associates, inc.
surveyors - engineers





Plot 3

FLOOR
PLAN



site, as set forth in Petitioner's Exhibit No. 6, thereby encompassing a total area of approximately 950 acres to be served by the commercial uses set forth in Section 248.4b. The Appellee's proposed motel is intended to provide the needed support for all of the industrial areas outlined in Exhibit No. 6.

It is submitted that the liberal interpretation of the term "contiguous", as used by Section 248.4b in defining the area to be served by the proposed motel, is supported by legal authority. The Court of Appeals in Swarthmore Co. v. Kaestner, 258 Md. 517 (1970) considered the meaning of the term "contiguous" as used in the Baltimore County Zoning Regulations. There, the Court relied on the definition in Black's Law Dictionary, where "contiguous" was defined to mean "in close proximity; near though not in contact; neighboring; adjoining; near in succession; an actual close contact; touching; bounded or traversed by." Id. at 530. From this definition, the Court concluded that "the C.S.A. District is 'near' the C.C.C. District and hence is 'contiguous' to it even if it be assumed, for the argument, that it did not 'abut' it." Id. at 530.

In attempting to determine what constituted the relevant contiguous area the Board of Appeals noted that the applicable regulation lent itself to a "broad construction" and concluded that the contiguous industrial area was not limited to just M.H. and M.L. Zones. (Board of Appeals Opinion, p.6.) Elsewhere, the Board, tracking the language of Section 248.4b, held that "the evidence does indicate that the area which is the subject of this Petition is part of a contiguous area of 25 acres or more

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141.) Mr. Mekulski further testified that his research indicated that there were between 180 and 200 business concerns located in the areas zoned M.L. or designated I.M., contiguous to the subject site. (Transcript, pp. 142-145.) This number will undoubtedly increase as the area is further developed. Mr. Walker had previously expressed the opinion that the contiguous 400 acres of M.L.-zoned land was presently only half developed. (Transcript, p.97.)

Given the foregoing testimony regarding the existing and future development of the industrial areas contiguous to the subject site, it is clear that the Appellee met its burden of proof under Section 248.4 of the B.C.Z.R. by producing sufficient evidence to support a finding that the proposed motel will primarily serve and is demonstrably an appropriate service to industries existing, planned or normally to be expected to locate within the contiguous area of 25 acres or more of industrial zoning.

IV.

THE EVIDENCE PRESENTED BEFORE THE BOARD OF APPEALS SUPPORTS THE FINDING THAT THE PROPOSED MOTEL WILL NOT CREATE A FIRE HAZARD, AND WILL NOT BE DETRIMENTAL TO THE GENERAL WELFARE OF THE LOCALITY INVOLVED.

In relevant part, Section 502.1 of the Baltimore County Zoning Regulations provides: "Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not: a. Be detrimental to the health, safety, or general welfare of the locality involved;... c. Create a potential hazard from fire, panic or other dangers." After setting forth the entire text of Section 502.1, the Board of Appeals

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of industrial zoning and further, that the specific use proposed is demonstrably an appropriate service to industries existing, planned or normally to be expected to locate therein." (Board of Appeals Opinion, p. 6.) (Emphasis in original.)

The Appellants take issue with the Board's finding on this point. In their Memorandum on Appeal the Appellants allege that the Appellee "failed to adduce any testimony or introduce any exhibits which even inferentially show that the proposed motel will 'primarily' serve the industries within the contiguous industrial zoning." (Appellants' Memorandum, p.4.) The Appellants constructed their argument in support of that proposition by taking the testimony of the Appellees' witnesses out of context, while completely ignoring other testimony relevant to the issue. A fair reading of the testimony presented before the Board of Appeals clearly supports, well in excess of the "fairly debatable standard, the finding that the proposed motel will primarily serve the industries existing, planned or normally expected to locate within the M.L.R. Zone and the 400 acres of contiguous industrial zoning.

Mr. Mark Smith, the Director of Development for Days Inn, testified extensively as to the area to be served by the proposed motel and the anticipated composition of the motel's clientele. Mr. Smith testified that based on exhaustive market research Days Inn anticipates that a vast majority (between 70 to 80%) of its business at the proposed motel will be from commercial or industrial users. (Transcript, pp. 26-27.) This projection, which is somewhat higher than that given

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held, in its Opinion, that "[Days Inn] has sustained its burden and convinced the Board that the Petition for a Special Exception complies with the requirements of Section 502.1 of the Baltimore County Zoning Regulations." (Board of Appeals Opinion, pp. 4-5.) Despite this unambiguous finding by the Board of Appeals, the Appellants have alleged, in their Memorandum on Appeal, that "the construction of the proposed motel will raise serious dangers of fire and flooding." (Appellants' Memorandum, p.12)

The only testimony offered by the Appellants on the question of whether the proposed motel would create a potential hazard from fire was that of Mr. Richard Moore from the Baltimore County Bureau of Traffic Design, who testified that "a second means of access would be advantageous to this particular site plan." (Transcript, p.251.) However, the Board of Appeals was apparently unpersuaded by Mr. Moore's testimony, noting that "on cross-examination, Mr. Moore admitted a basic unfamiliarity with the subject property or this particular proposed development." (Board of Appeals Opinion, p.4)

Testifying on behalf of the Appellee, Mr. Walker, in his opinion as an expert land-use planner, indicated that the proposed motel meets all code requirements and would not create a potential hazard from fire. (Transcript, pp. 114-116, 121.) Mr. Walker discussed the safety features of the subject motel, pointing out the strategically located fire hydrants and the circular traffic system around the entire facility, enhancing securing, while permitting emergency vehicles with proper access to the buildings from all sides. (Transcript, pp. 114-116.)

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before the Deputy Zoning Commissioner, is based on additional market research that was conducted subsequent to the initial zoning hearing. During that time, Days Inn exercised its option to purchase the subject property. However, before finalizing its commitment to this location, Days Inn undertook additional research to assure itself that a motel at this location would succeed. (Transcript, pp. 27, 73-74.) The market research giving rise to the modified market projections, took several forms: visits to the subject site by several representatives from Days Inn (Transcript, p.60) providing a first-hand view of the expensive industrial areas surrounding the site; a telephone survey to some of the numerous businesses located in the area contiguous to the subject site (Transcript, pp. 17-19, 60); and a review of the reservation statistics generated by Days Inn's five million dollar computer reservation center, which projected a much greater volume of commercial users than previously anticipated (Transcript, pp. 46, 60).

Another circumstance contributing to the reevaluation of the potential market to be served by the proposed motel, was the decision by Days Inn to develop a location in Baltimore's Inner Harbor. This decision will have a direct impact on the proposed motel, to the extent that much of the tourist trade initially anticipated, will instead be served by the Days Inn motel to be located by the Inner Harbor. (Transcript, pp. 45, 52-53.)

Also testifying on behalf of the Appellee was William Fred Walker, an expert in land-use planning. Mr. Walker testified as to the extensive industrially zoned

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Mr. Walker also stated that members of his staff met with representatives from the Baltimore County Fire Department, who found the proposed site plan thoroughly adequate from a fire safety point of view. This conclusion is also reflected in the Zoning Plans Advisory Committee comment from the Fire Prevention Bureau, which implicitly approved the proposed motel, without imposing any specific requirements to enhance the safety of the proposed facility from a fire prevention point of view.

Also testifying before the Board of Appeals on behalf of the Appellee was Mr. John W. Guckert, an expert in traffic engineering and planning. On the issue of emergency access, Mr. Guckert shared the view expressed by Mr. Walker, that the circular traffic system around the motel would provide easy access in an emergency situation. (Transcript, pp. 170-171.) Should one point of access become blocked, Mr. Guckert pointed out several alternative means of emergency access. In Mr. Guckert's opinion, the likelihood that an emergency vehicle would be unable to gain access to the subject site is minimal. (Transcript, pp. 171, 191.)

In their Memorandum on Appeal the Appellants also allege that the development of the proposed motel may result in increased localized flooding. (Appellants' Memorandum, p.13.) This allegation is based solely on the testimony of one of the Appellants, Mr. Frank J. Metz, Jr., who expressed some concern as to the possible increase in storm water runoff that may be caused by the proposed motel. However, these concerns were adequately rebutted, to the satisfaction of the Board of Appeals, by Mr. Walker, who explained that the planned utilization of

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land surrounding the subject site, which, in his opinion, Baltimore County has identified as a major business, commercial and industrial zone. (Transcript, p. 93.) Focusing on the 400 acres of industrially zoned property contiguous to the M.L.R. Zone in which the subject site is located, (Petitioner's Exhibit No. 4), Mr. Walker conservatively projected the potential development of three million square feet of space. (Transcript, pp. 95-98.) That projection is just for the contiguous areas zoned M.L. and M.L.-I.M., and does not include the expansive areas zoned M.H., M.L.R., M.R., B.R. and B.M., which are contiguous to the subject M.L.R. Zone. Based on his study of the proposed use, and the surrounding area, Mr. Walker concluded that the proposed motel is demonstrably an appropriate service to industries existing, planned, or normally to be expected to locate in the contiguous area of 25 acres or more of industrial zoning, in accordance with the requirements of Section 248.4 of the B.C.Z.R.

Also testifying on behalf of Days Inn was Mr. Lawrence Mekulski, an expert in commercial and industrial real estate appraisal and development. Mr. Mekulski is associated with the commercial real estate brokerage firm that assisted Days Inn in locating the subject site. One of the primary considerations that attracted Days Inn to this particular location was the extensive industrial development within the immediate vicinity that is expected to support the proposed motel. (Transcript, pp. 145-146, 148.) In this regard, Mr. Mekulski noted the presence of the two nearby major industrial parks, Meadows Industrial Park and Rutherford Business Center. (Transcript, p.

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a storm water management facility will reduce storm water runoff caused by the proposed motel to a negligible amount. (Transcript, p. 274-276.) Confronted with sufficient evidence to render the Board's decision fairly debatable, the court, on appeal, has no choice but to affirm that decision.

As the foregoing clearly indicates, the Appellee presented substantial evidence to support the Board of Appeals' finding that the proposed use meets the requirements of Section 502.1 of the B.C.Z.R.

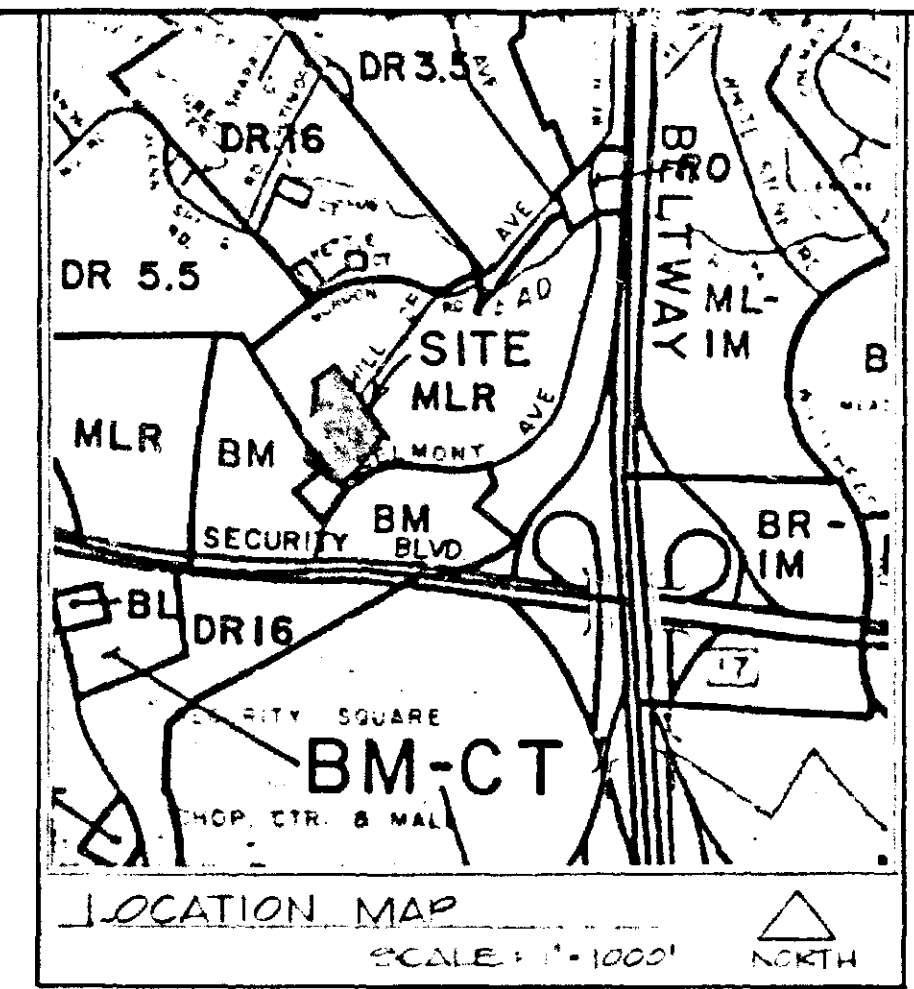
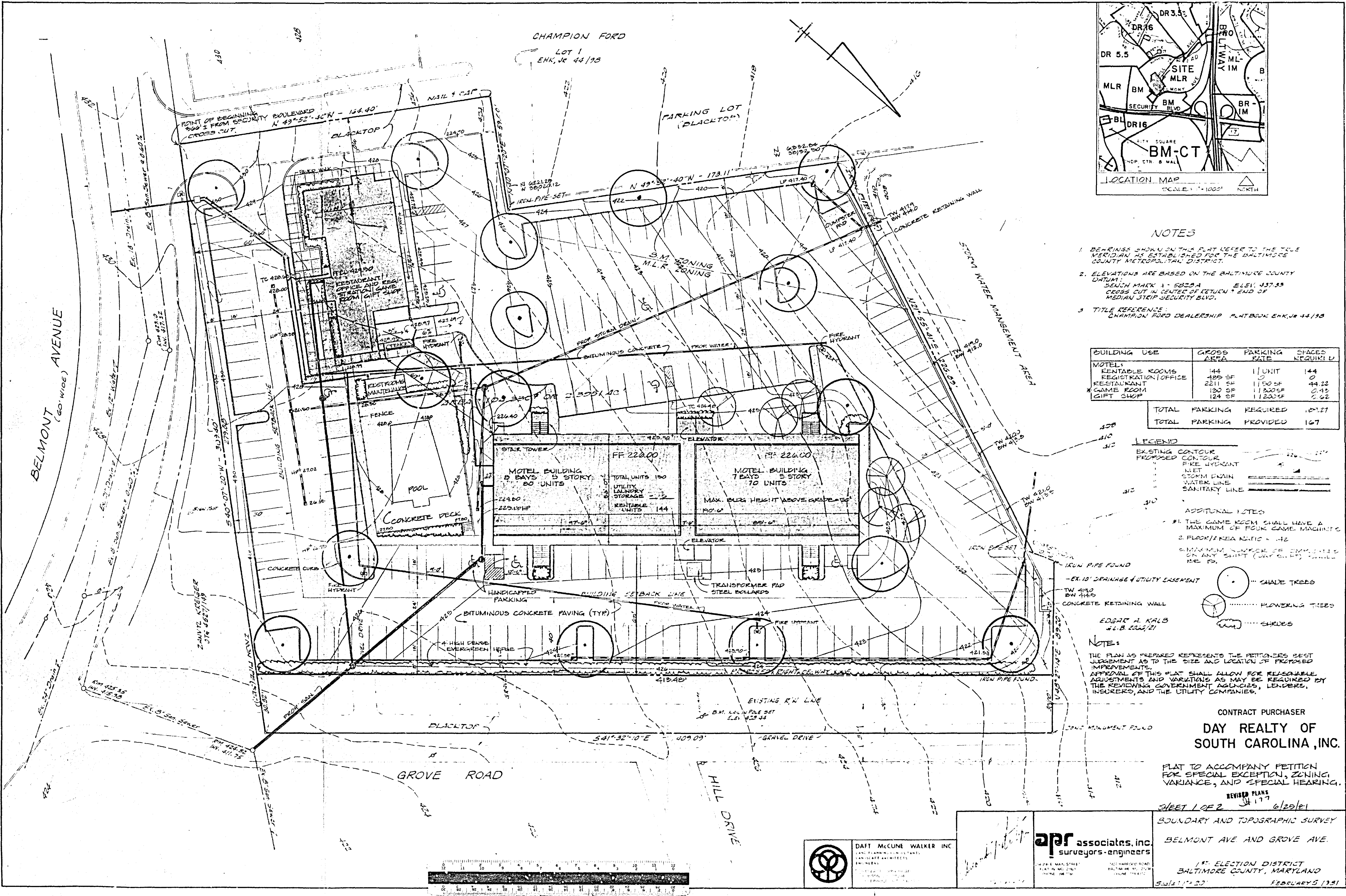
V.

THE APPELLEE IS NOT PRECLUDED FROM ASSERTING HARDSHIP AS THE BASIS FOR THE REQUESTED PARKING VARIANCE BY VIRTUE OF THE FACT THAT THE APPELLEE KNEW OF THE NECESSITY FOR SUCH A VARIANCE PRIOR TO PURCHASING THE PROPERTY.

In their Memorandum on Appeal, and before the Board of Appeals, the Appellants have taken the position that Days Inn should have been precluded from claiming hardship or practical difficulty, as the basis for its Petition for a Parking Variance, to the extent that Days Inn was aware of the necessity for such a variance prior to its purchase of the subject property. The Appellants' reliance on what is commonly referred to as the "self-created hardship rule" is clearly misplaced for several reasons.

Preliminarily it should be acknowledged that the Court of Appeals in Gleason v. Keswick Improvement Ass'n., 197 Md. 46 (1951) adopted the self-created hardship rule to affirm a lower court decision denying an application for a use variance on the grounds of hardship. In that case, the applicants were persons who had operated several grocery stores in the vicinity and had bought the property

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NOTES

1. BEARINGS SHOWN ON THIS PLAN REFER TO THE TRUE MERIDIAN AS ESTABLISHED FOR THE BALTIMORE COUNTY METROPOLITAN DISTRICT.
2. ELEVATIONS ARE BASED ON THE BALTIMORE COUNTY DATUM:
BENCH MARK 1 - 5829.4 ELEV. 437.33
CROSS CUT IN CENTER OF RETURN - END OF MEDIAN STRIP SECURITY BLVD.
3. TITLE REFERENCE:
CHAMPION FORD DEALERSHIP PLATBOOK ENK, JR 44/95

BUILDING USE	GROSS AREA	PARKING RATE	SPACES REQUIRED
MOTEL:			
RENTABLE ROOMS	144	1/UNIT	144
REGISTRATION/OFFICE	489 SF	0	0
RESTAURANT	2211 SF	1/50 SF	44.22
* GAME ROOM	130 SF	1/200 SF	0.65
GIFT SHOP	124 SF	1/200 SF	0.62
TOTAL PARKING REQUIRED 189.27			
TOTAL PARKING PROVIDED 167			

LEGEND

- EXISTING CONTOUR
- PROPOSED CONTOUR
- FIRE HYDRANT
- NET
- STORM DRAIN
- WATER LINE
- SANITARY LINE

ADDITIONAL NOTES

1. THE GAME ROOM SHALL HAVE A MAXIMUM OF FOUR GAME MACHINES.
2. FLOOR AREA RATIO = .42
3. MAXIMUM NUMBER OF DUMPSTERS ON ANY SITE (DUMPSTERS) SHALL BE 15.

- SHADE TREES
- FLOWERING TREES
- SHRUBS

NOTES

THE PLAN AS PREPARED REPRESENTS THE PETITIONER'S BEST JUDGMENT AS TO THE SIZE AND LOCATION OF PROPOSED IMPROVEMENTS. APPROVAL OF THIS PLAN SHALL ALLOW FOR REASONABLE ADJUSTMENTS AND VARIATIONS AS MAY BE REQUIRED BY THE REVIEWING GOVERNMENT AGENCIES, LENDERS, INSURERS, AND THE UTILITY COMPANIES.

CONTRACT PURCHASER
DAY REALTY OF SOUTH CAROLINA, INC.

FLAT TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION, ZONING VARIANCE, AND SPECIAL HEARING.

REVISOR PLANS
SHEET 1 OF 2 6/25/81

BOUNDARY AND TOPOGRAPHIC SURVEY

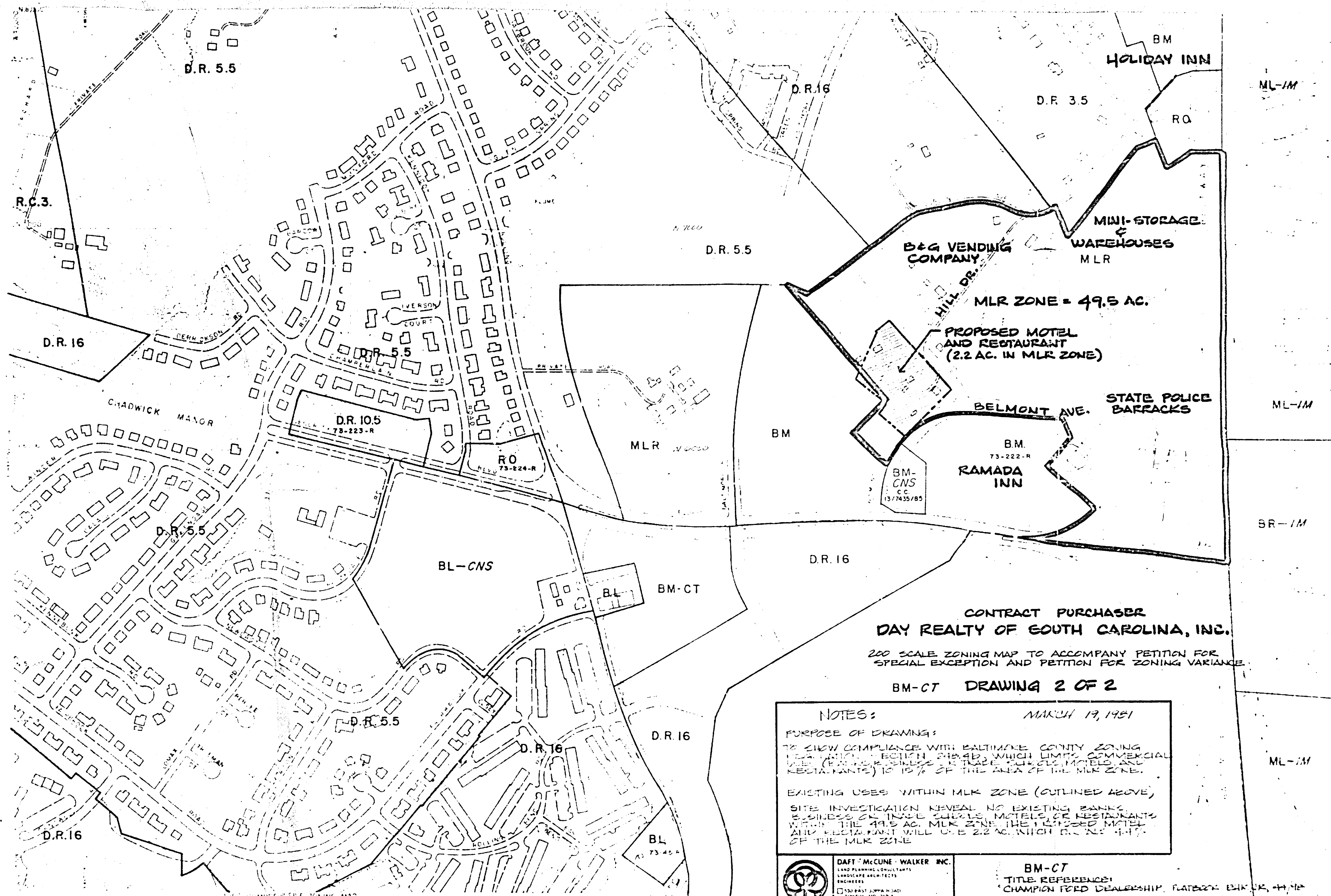
BELMONT AVE AND GROVE AVE.

1ST ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

5/21/82

DAFT McCUNE WALKER INC.
LAND SURVEYORS & ENGINEERS
1000 HARBOR ROAD
BALTIMORE, MD 21201
PHONE 366-1111

apr associates, inc.
surveyors-engineers
1000 HARBOR ROAD
BALTIMORE, MD 21201
PHONE 366-1111



CONTRACT PURCHASER
DAY REALTY OF SOUTH CAROLINA, INC.
 200 SCALE ZONING MAP TO ACCOMPANY PETITION FOR
 SPECIAL EXCEPTION AND PETITION FOR ZONING VARIANCE

BM-CT DRAWING 2 OF 2

NOTES: MARCH 19, 1951

PURPOSE OF DRAWING:
 TO SHOW COMPLIANCE WITH BALTIMORE COUNTY ZONING
 REGULATION SECTION 240.4B, WHICH LIMITS COMMERCIAL
 USES (BUSINESS, SERVICE, OR TRADE, HOTELS, MOTELS, AND
 RESTAURANTS) TO 10% OF THE AREA OF THE MLR ZONE.

EXISTING USES WITHIN MLR ZONE (OUTLINED ABOVE),
 SITE INVESTIGATION REVEAL NO EXISTING BANKS,
 BUSINESS OR TRAVEL SITES, MOTELS, OR RESTAURANTS
 WITHIN THE 49.5 AC. MLR ZONE. THE PROPOSED MOTEL
 AND RESTAURANT WILL USE 2.2 AC. WHICH IS 4.4%
 OF THE MLR ZONE.

DAFT MCCUNE WALKER INC.
 LAND PLANNING CONSULTANTS
 LANDSCAPE ARCHITECTS
 ENGINEERS
 150 EAST JEFFERSON AVE.
 BALTIMORE, MD. 21204
 TELEPHONE JOE 296-2333

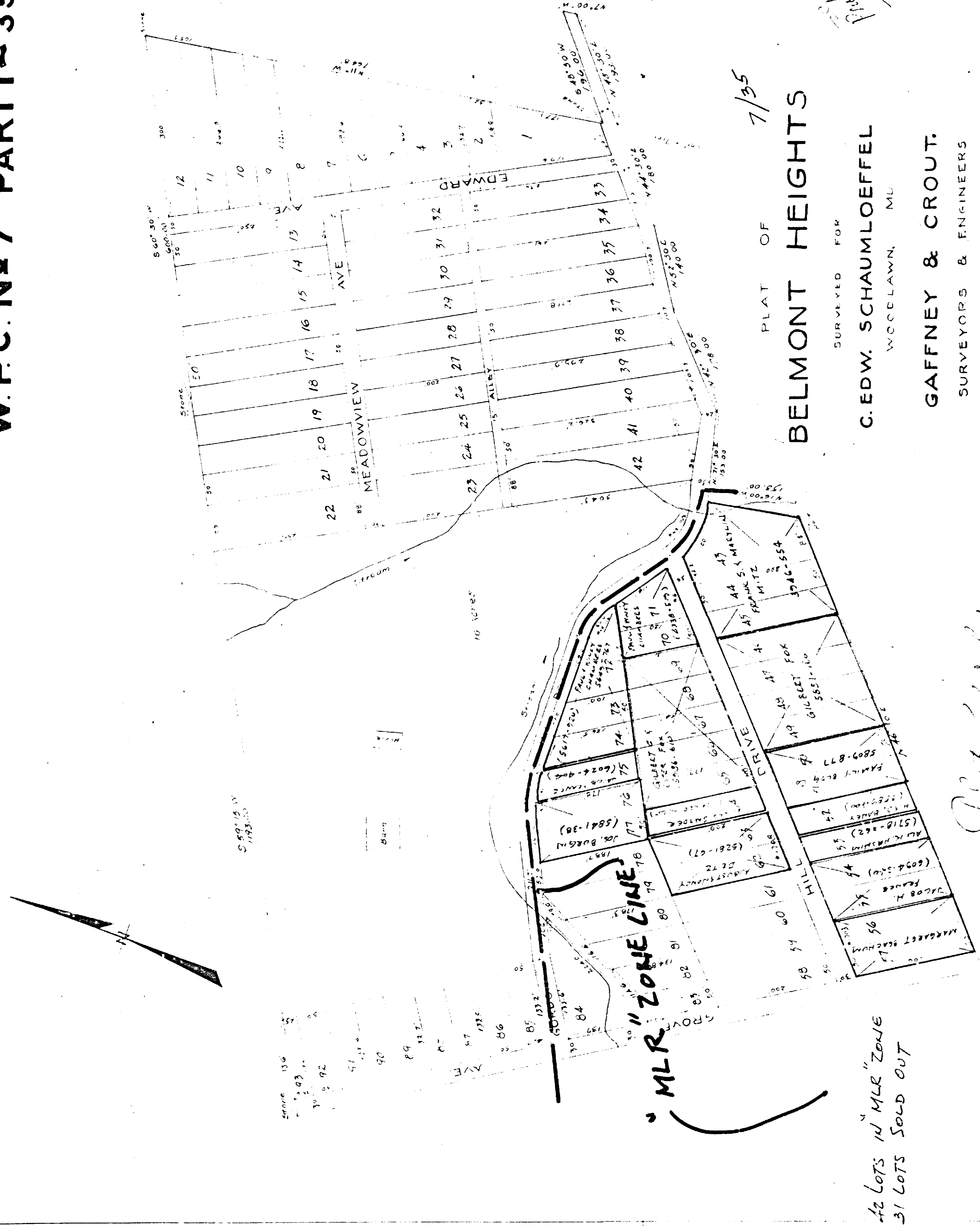
BM-CT
 TITLE REFERENCE:
 CHAMPION FORD DEALERSHIP, PLATBOOK BHMUR, 4TH ED.
 REV. 5-50

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY METROPOLITAN AREA

THIS COMPREHENSIVE ZONING MAP
 ADOPTED BY THE
 BALTIMORE COUNTY COUNCIL
 OCT. 14, 1948
 BILL NOS. 18171, 18585, 18680
 18780, 18840, 18980 AND 18981

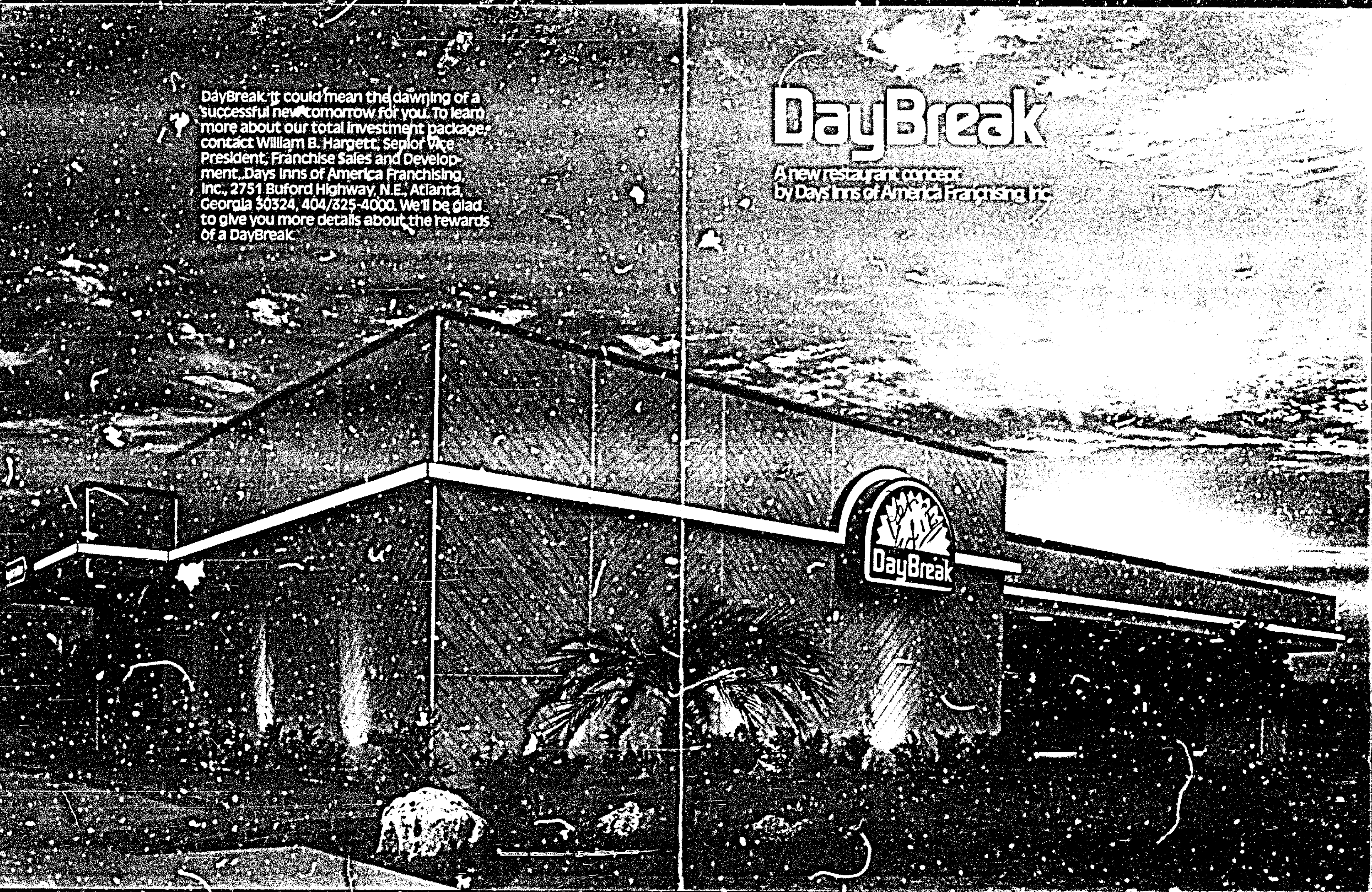
Plot #1

NW
 26



42 LOTS IN '10' ZONE
31 LOTS SOLD OUT

Plat filed for
rec'd June 6, 1924



DayBreak - it could mean the dawning of a successful new tomorrow for you. To learn more about our total investment package, contact William B. Hargett, Senior Vice President, Franchise Sales and Development, Days Inns of America Franchising, Inc., 2751 Buford Highway, N.E., Atlanta, Georgia 30324, 404/825-4000. We'll be glad to give you more details about the rewards of a DayBreak.

DayBreak
A new restaurant concept
by Days Inns of America Franchising, Inc.

DayBreak - attractive, efficient, profitable

DayBreak Restaurant. It's the freshest fast-food concept to come along in years. DayBreak combines an exciting menu with an exceptionally attractive, contemporary structure that includes the latest energy- and labor-saving features.

And, of course, it's an investment in the Days Inns tradition. Cash flow potential is good, as are tax shelter possibilities and the appreciation rate (which has stayed ahead of inflation).

The first DayBreak opened in 1978 in Fort Myers, Florida. We've tested and refined the concept at Days Inns in Sarasota, Denver, Raleigh, Columbia, Charleston and Sacramento, and we know it works.

But DayBreak doesn't need a Days Inn to succeed. It could stand alone to serve the American people what they're hungry for - convenient, wholesome, reasonably priced meals and snacks.

We've planned DayBreak to be especially appealing to the eye - an oasis for the weary, hungry traveler. The building is attractive, contemporary and clean looking.

It features warm wood tones, distinctive yellow trim and lush landscaping. But DayBreak isn't simply attractive. It's efficient, too. DayBreak offers its owners an enhanced return on investment because the use of the real estate is intensified. The 3,200-square-foot structure houses multiple profit centers - the restaurant, motel office, gift shop and game room. The use we get from the building is amazing.

Labor efficiency is unusually high because each of the restaurant's 42 seats can be reached from the food preparation

area. DayBreak personnel use fewer steps to serve guests, and quick service promotes a rapid customer turnover. Only three or four employees are needed each shift because they share the various jobs - preparing and serving food, clearing tables and operating the cash register.

All the latest energy-saving plans were incorporated into the building, too.

Because DayBreak restaurants can stay open round the clock, they are especially practical and versatile. The continuous operating hours attract not only travelers, but many local patrons, too. They'll run in for a quick bite on the way to work, maybe grab a sandwich for lunch, or stop by for a snack on the way home from shows, parties and other late-night gatherings.

This local market provides a stable base of customers that complements traffic from motel guests and highway travelers.

The DayBreak menu features wholesome food that will tempt everyone. The sandwiches and standard breakfast fare are included, but all the dishes are prepared and garnished with a flair that makes them uncommon. Doesn't a DayBreak Omelette Sandwich, a Hoagie Burger Platter or a DayBreaker - a refreshing meal in a glass - make your mouth water?

All the food is reasonably priced and can be packed to go. Preparation time is short, and elaborate training isn't necessary for new employees to master the cooking and serving techniques. This saves the management time and money because new DayBreak personnel become productive very quickly.



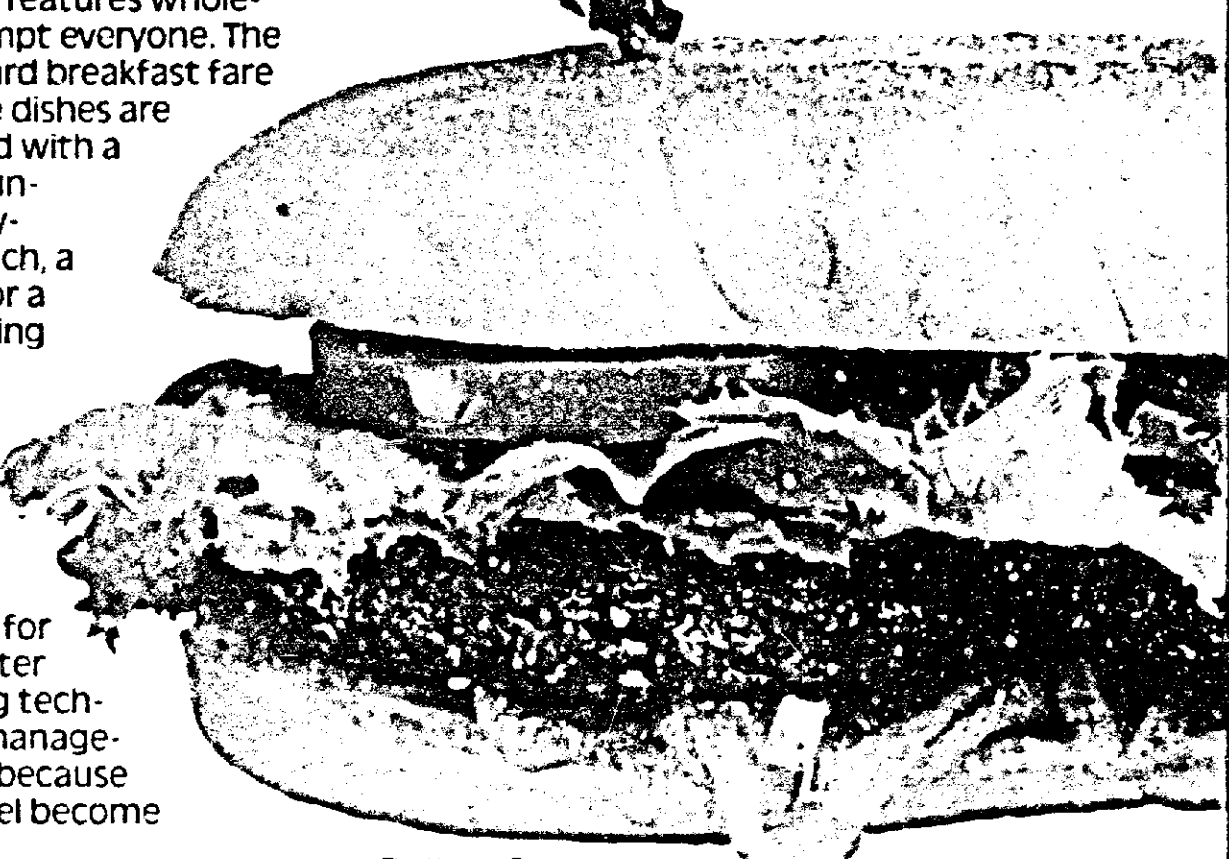
Convenient motel registration



Easily accessible booths



Streamlined food preparation area



The Hoagie Burger

 BELMONT HEIGHTS - 10 AC. (5% = 1.5 AC.)
 P.B. 7-35

 1718 BELMONT AVE - 10.5 AC.
 (EXISTING WAREHOUSE) (5% = 1.58 AC.)

 UNUSED MLR = .15% (5.27 - 4.2 - 2.2) = .15% (0.96) = 1.5 AC.
 % SUBJECT SITE BASED ON UNUSED MLR: 72/322 = 22%

 P. 336 BELMONT PROPERTIES = 3.67 AC.
 5812 - 795 (15% = 0.55 AC.)

 P. 29 S.R.C.
 P. 144 DEPT. PUBLIC SAFETY = 13.0 AC.
 (5% = 2.65 AC.)

 SUBJECT SITE = 2.2 AC. (8% 0.33 AC.)
 TOTAL ADDRESS = 46.38 AC.
 ASBA MLR ZONE = 40.5 AC.
 REMAINING MLR ZONE = 6.2 AC.
 (15% = 0.93 AC.)

PLAT SHOWING PROPERTIES
LOCATED WITHIN "MLR" ZONE
VICINITY OF
BELMONT AVE. & SECURITY BLVD.

ELECTION DIST. N° 1
SCALE: 1" = 100'

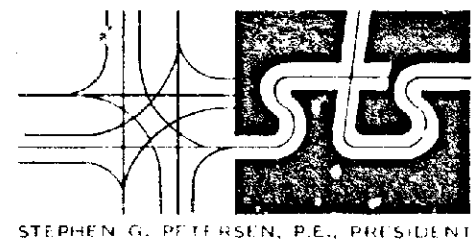
BALTIMORE CO., MD.
JULY 6, 1961

Prepared by
J. H. Thompson
June, August 1964

PLAT. SHEET 3

1841. 1842. 1843. 1844. 1845. 1846. 1847. 1848. 1849. 1850. 1851. 1852. 1853. 1854. 1855. 1856. 1857. 1858. 1859. 1860. 1861. 1862. 1863. 1864. 1865. 1866. 1867. 1868. 1869. 1870. 1871. 1872. 1873. 1874. 1875. 1876. 1877. 1878. 1879. 1880. 1881. 1882. 1883. 1884. 1885. 1886. 1887. 1888. 1889. 1890. 1891. 1892. 1893. 1894. 1895. 1896. 1897. 1898. 1899. 1900. 1901. 1902. 1903. 1904. 1905. 1906. 1907. 1908. 1909. 1910. 1911. 1912. 1913. 1914. 1915. 1916. 1917. 1918. 1919. 1920. 1921. 1922. 1923. 1924. 1925. 1926. 1927. 1928. 1929. 1930. 1931. 1932. 1933. 1934. 1935. 1936. 1937. 1938. 1939. 1940. 1941. 1942. 1943. 1944. 1945. 1946. 1947. 1948. 1949. 1950. 1951. 1952. 1953. 1954. 1955. 1956. 1957. 1958. 1959. 1960. 1961. 1962. 1963. 1964. 1965. 1966. 1967. 1968. 1969. 1970. 1971. 1972. 1973. 1974. 1975. 1976. 1977. 1978. 1979. 1980. 1981. 1982. 1983. 1984. 1985. 1986. 1987. 1988. 1989. 1990. 1991. 1992. 1993. 1994. 1995. 1996. 1997. 1998. 1999. 2000. 2001. 2002. 2003. 2004. 2005. 2006. 2007. 2008. 2009. 2010. 2011. 2012. 2013. 2014. 2015. 2016. 2017. 2018. 2019. 2020. 2021. 2022. 2023. 2024. 2025. 2026. 2027. 2028. 2029. 2030. 2031. 2032. 2033. 2034. 2035. 2036. 2037. 2038. 2039. 2040. 2041. 2042. 2043. 2044. 2045. 2046. 2047. 2048. 2049. 2050. 2051. 2052. 2053. 2054. 2055. 2056. 2057. 2058. 2059. 2060. 2061. 2062. 2063. 2064. 2065. 2066. 2067. 2068. 2069. 2070. 2071. 2072. 2073. 2074. 2075. 2076. 2077. 2078. 2079. 2080. 2081. 2082. 2083. 2084. 2085. 2086. 2087. 2088. 2089. 2090. 2091. 2092. 2093. 2094. 2095. 2096. 2097. 2098. 2099. 2100. 2101. 2102. 2103. 2104. 2105. 2106. 2107. 2108. 2109. 2110. 2111. 2112. 2113. 2114. 2115. 2116. 2117. 2118. 2119. 2120. 2121. 2122. 2123. 2124. 2125. 2126. 2127. 2128. 2129. 2130. 2131. 2132. 2133. 2134. 2135. 2136. 2137. 2138. 2139. 2140. 2141. 2142. 2143. 2144. 2145. 2146. 2147. 2148. 2149. 2150. 2151. 2152. 2153. 2154. 2155. 2156. 2157. 2158. 2159. 2160. 2161. 2162. 2163. 2164. 2165. 2166. 2167. 2168. 2169. 2170. 2171. 2172. 2173. 2174. 2175. 2176. 2177. 2178. 2179. 2180. 2181. 2182. 2183. 2184. 2185. 2186. 2187. 2188. 2189. 2190. 2191. 2192. 2193. 2194. 2195. 2196. 2197. 2198. 2199. 2200. 2201. 2202. 2203. 2204. 2205. 2206. 2207. 2208. 2209. 2210. 2211. 2212. 2213. 2214. 2215. 2216. 2217. 2218. 2219. 2220. 2221. 2222. 2223. 2224. 2225. 2226. 2227. 2228. 2229. 2230. 2231. 2232. 2233. 2234. 2235. 2236. 2237. 2238. 2239. 2240. 2241. 2242. 2243. 2244. 2245. 2246. 2247. 2248. 2249. 2250. 2251. 2252. 2253. 2254. 2255. 2256. 2257. 2258. 2259. 2260. 2261. 2262. 2263. 2264. 2265. 2266. 2267. 2268. 2269. 2270. 2271. 2272. 2273. 2274. 2275. 2276. 2277. 2278. 2279. 2280. 2281. 2282. 2283. 2284. 2285. 2286. 2287. 2288. 2289. 2290. 2291. 2292. 2293. 2294. 2295. 2296. 2297. 2298. 2299. 2300. 2301. 2302. 2303. 2304. 2305. 2306. 2307. 2308. 2309. 2310. 2311. 2312. 2313. 2314. 2315. 2316. 2317. 2318. 2319. 2320. 2321. 2322. 2323. 2324. 2325. 2326. 2327. 2328. 2329. 2330. 2331. 2332. 2333. 2334. 2335. 2336. 2337. 2338. 2339. 2340. 2341. 2342. 2343. 2344. 2345. 2346. 2347. 2348. 2349. 2350. 2351. 2352. 2353. 2354. 2355. 2356. 2357. 2358. 2359. 2360. 2361. 2362. 2363. 2364. 2365. 2366. 2367. 2368. 2369. 2370. 2371. 2372. 2373. 2374. 2375. 2376. 2377. 2378. 2379. 2380. 2381. 2382. 2383. 2384. 2385. 2386. 2387. 2388. 2389. 2390. 2391. 2392. 2393. 2394. 2395. 2396. 2397. 2398. 2399. 2400. 2401. 2402. 2403. 2404. 2405. 2406. 2407. 2408. 2409. 2410. 2411. 2412. 2413. 2414. 2415. 2416. 2417. 2418. 2419. 2420. 2421. 2422. 2423. 2424. 2425. 2426. 2427. 2428. 2429. 2430. 2431. 2432. 2433. 2434. 2435. 2436. 2437. 2438. 2439. 2440. 2441. 2442. 2443. 2444. 2445. 2446. 2447. 2448. 2449. 2450. 2451. 2452. 2453. 2454. 2455. 2456. 2457. 2458. 2459. 2460. 2461. 2462. 2463. 2464. 2465. 2466. 2467. 2468. 2469. 2470. 2471. 2472. 2473. 2474. 2475. 2476. 2477. 2478. 2479. 2480. 2481. 2482. 2483. 2484. 2485. 2486. 2487. 2488. 2489. 2490. 2491. 2492. 2493. 2494. 2495. 2496. 2497. 2498. 2499. 2500. 2501. 2502. 2503. 2504. 2505. 2506. 2507. 2508. 2509. 2510. 2511. 2512. 2513. 2514. 2515. 2516. 2517. 2518. 2519. 2520. 2521. 2522.





STREET TRAFFIC STUDIES, LTD.

July 8, 1981

MEMORANDUM

TO: Day Realty of South Carolina, Inc.
C/O Mr. John Howard

FROM: Mr. John W. Guckert

SUBJECT: Special Exception and Petition for Zoning
Variance for Days Inn
Belmont Avenue
Baltimore County, Maryland

As requested we have conducted a traffic engineering analysis related to the proposed Days Inn Motel to be located in the Woodlawn area of Baltimore County, Maryland. Three major issues are addressed in this report:

1. The impact of the traffic generated by the use of the site on the surrounding road system.
2. The need for 190 parking spaces (as required by the zoning code) versus the 169 parking spaces proposed by the developer (21 space variance).
3. The need for a second access point to Belmont Avenue via Grove Road.

The results of our analysis show that the use of the site as proposed will not have an adverse impact on the road system, the proposed 169 parking spaces will be sufficient to serve the motel uses and that a second access point is not required to serve the site.

The base conditions and existing traffic volumes are described first. The procedures used to arrive at the projected trip

distribution and trip generation rates are then presented. The final portion of our report contains the results of our capacity analyses, parking demand analysis and the conclusions.

Base Conditions

The site for the proposed Days Inn Motel is located along the west side of Belmont Avenue north of Security Blvd. as shown on Exhibit 1. The site is bounded by Grove Road on the north, an access road to Champion Ford on the south, Belmont Avenue on the east and undeveloped land on the west. Belmont Avenue is a 40 foot, north-south, closed section roadway posted for 30 MPH. The roadway is striped for two lanes, but due to its width left turns are easily by-passed by through vehicles at existing driveways. In lieu of an additional curb cut along Belmont Avenue, the developer plans to access the site from an existing roadway that serves the Champion Ford car dealership. This roadway is 30 feet wide and located approximately 300 feet north of Security Blvd. and opposite the access road (to the east) is the driveway for the McDonald's Restaurant. Both roadways have a single lane approach to Belmont Avenue.

The first major intersecting roadway along Belmont Avenue to the north of the site is at the signalized location of Belmont Avenue and Dogwood Road. To the south of the site, the first signalized intersection is located at Security Blvd. The chart below shows the existing lane configurations at both of the key signalized intersections.

| BELMONT AVENUE AND DOGWOOD ROAD | | | |
|---------------------------------|-------------------------------------|-------------------------------------|-----------------|
| From the North | From the South | From the East | From the West |
| 1 Lane Approach | 1 Through Lane
1 Right Turn Lane | 1 Through Lane
1 Right Turn Lane | 1 Lane Approach |

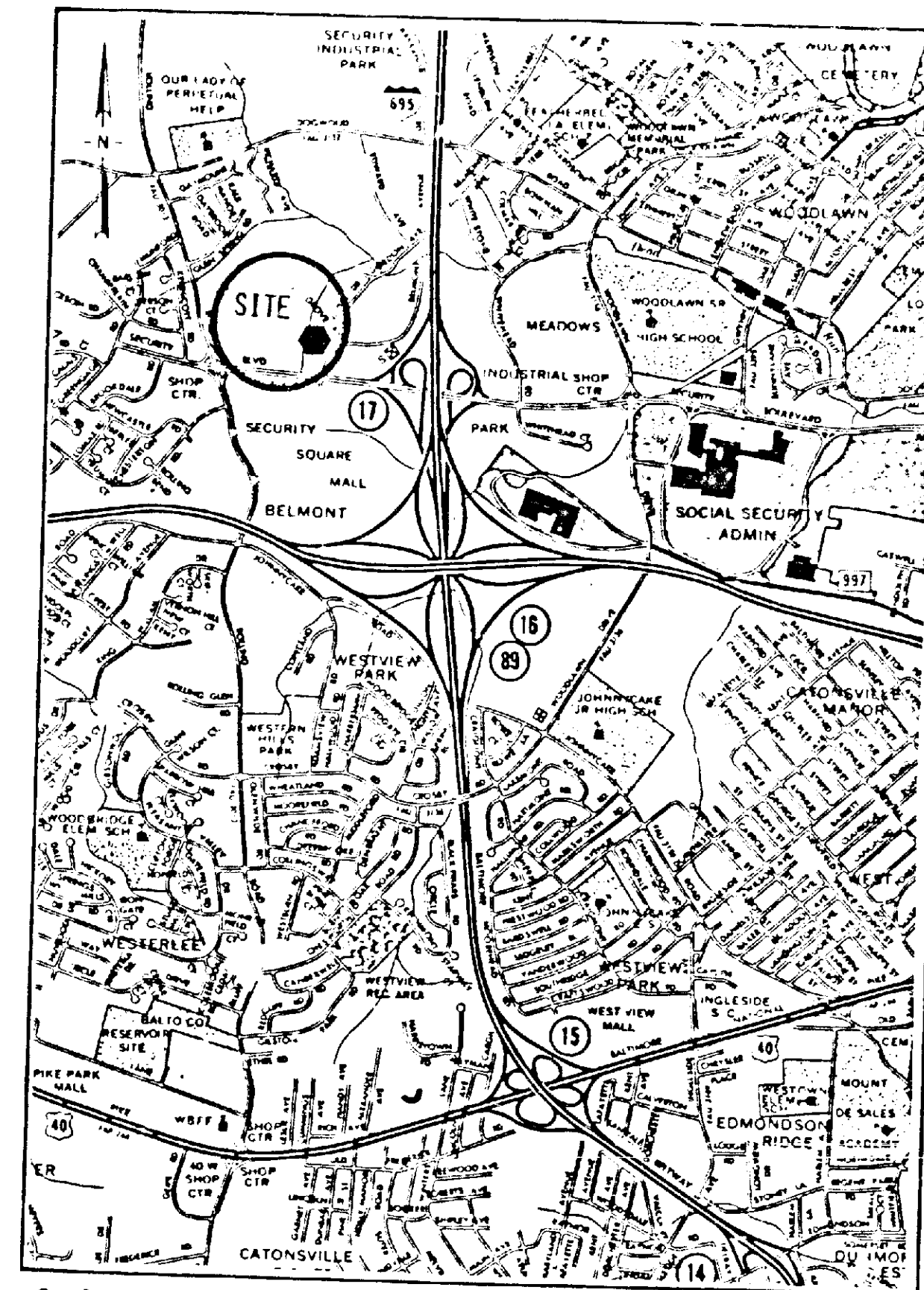


EXHIBIT 1
SITE LOCATION

| BELMONT AVENUE AND SECURITY BLVD. | | | |
|------------------------------------|------------------------------------|---|-------------------------------------|
| From the North | From the South | From the East | From the West |
| 1 Left Turn Lane
1 Through Lane | 1 Left Turn Lane
1 Through Lane | 1 Right Turn Lane
3 Through Lanes
1 Double Left Turn Lane | 1 Left Turn Lane
3 Through Lanes |

Existing Traffic Volumes

STS LTD conducted turning movement traffic counts at the following locations in June 1981.

| Location | Day | Date | Time of Count |
|--|----------|---------|----------------|
| Belmont Ave./Security Blvd. | Friday | 6/26/81 | 7-9 AM, 4-6 PM |
| Belmont Ave./Entrances to McDonald's-Champion Ford | Friday | 6/26/81 | 7-9 AM, 4-6 PM |
| Belmont Ave./Entrances to Ramada Inn | Thursday | 6/25/81 | 7-9 AM, 4-6 PM |
| Belmont Ave./Dogwood Rd. | Thursday | 6/25/81 | 7-9 AM, 4-6 PM |
| Shady Grove Rd./Entrances to Days Inn (Gaithersburg, Maryland) | Monday | 6/29/81 | 7-9 AM, 4-8 PM |

Copies of the complete turning movement counts and the total vehicles observed are available upon request. Exhibit 2 shows the existing morning and evening peak hour volumes at the major intersections along Belmont Avenue. Intersection capacity analyses were then conducted at the three key intersections along Belmont Avenue utilizing the Critical Lane Volume Method. The results of the analysis show that all three intersections are currently operating at a Level of Service A or B during both the morning and evening peak hours (see Exhibit 3).

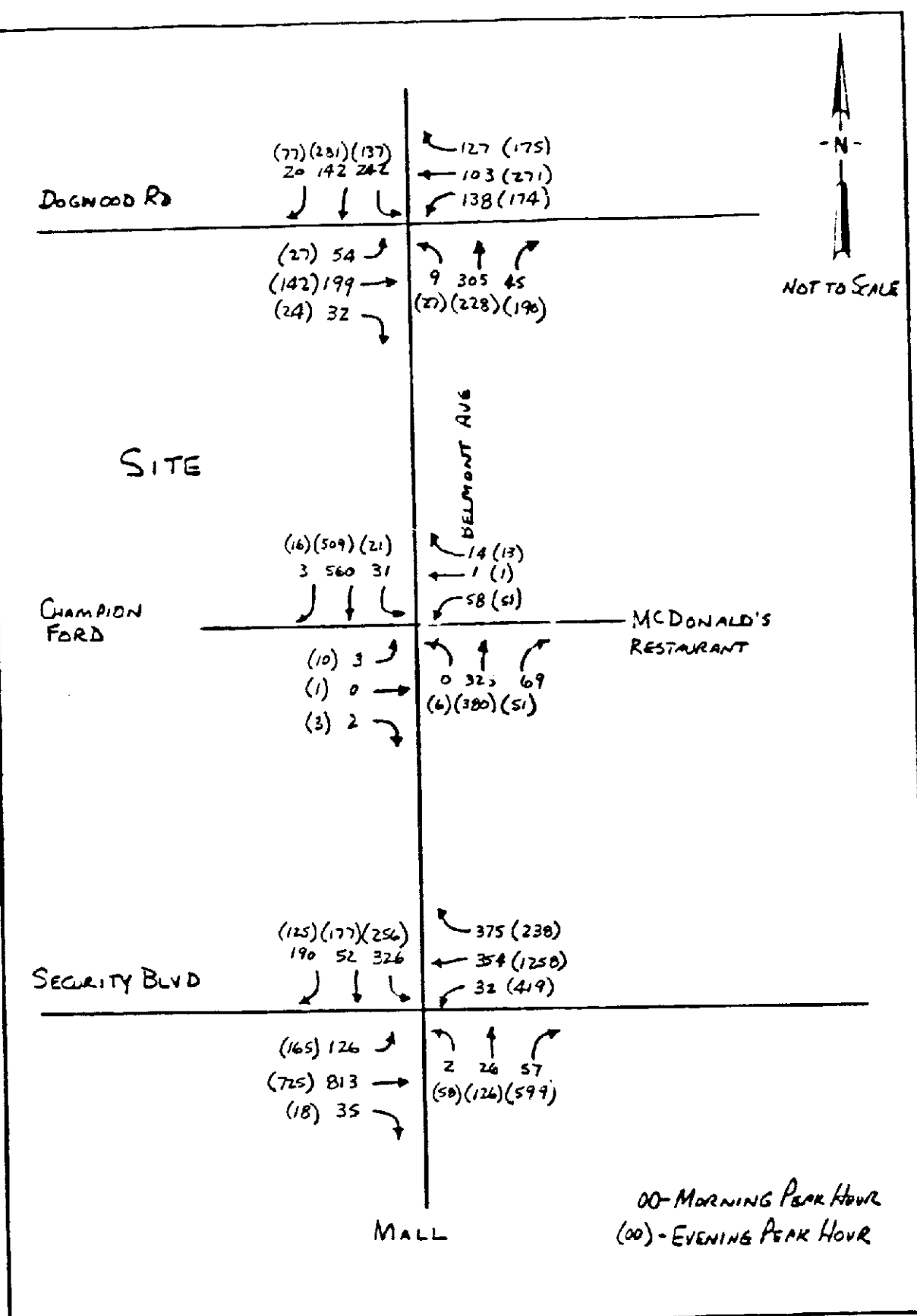


EXHIBIT 2
EXISTING EVENING PEAK HOUR VOLUMES

EXHIBIT 3 EXISTING LEVELS OF SERVICE AND CRITICAL LANE VOLUME TOTALS

| INTERSECTION | MORNING PEAK HOUR | EVENING PEAK HOUR |
|---------------------------------|-------------------|-------------------|
| Security Blvd./Belmont Avenue | A
709 | B
1050 |
| Belmont Avenue/Entrance to Site | A
670 | A
627 |
| Belmont Avenue/Dogwood Road | A
579 | A
994 |

Trip Distribution

The turning movement counts conducted along Belmont Avenue at the Ramada Inn provided the basis for projecting the basic north-south directional split from the proposed site to Belmont Avenue and a 20-80 north-south split resulted. The basic distribution was further factored at the two key signalized intersections based upon the existing turning movement counts.

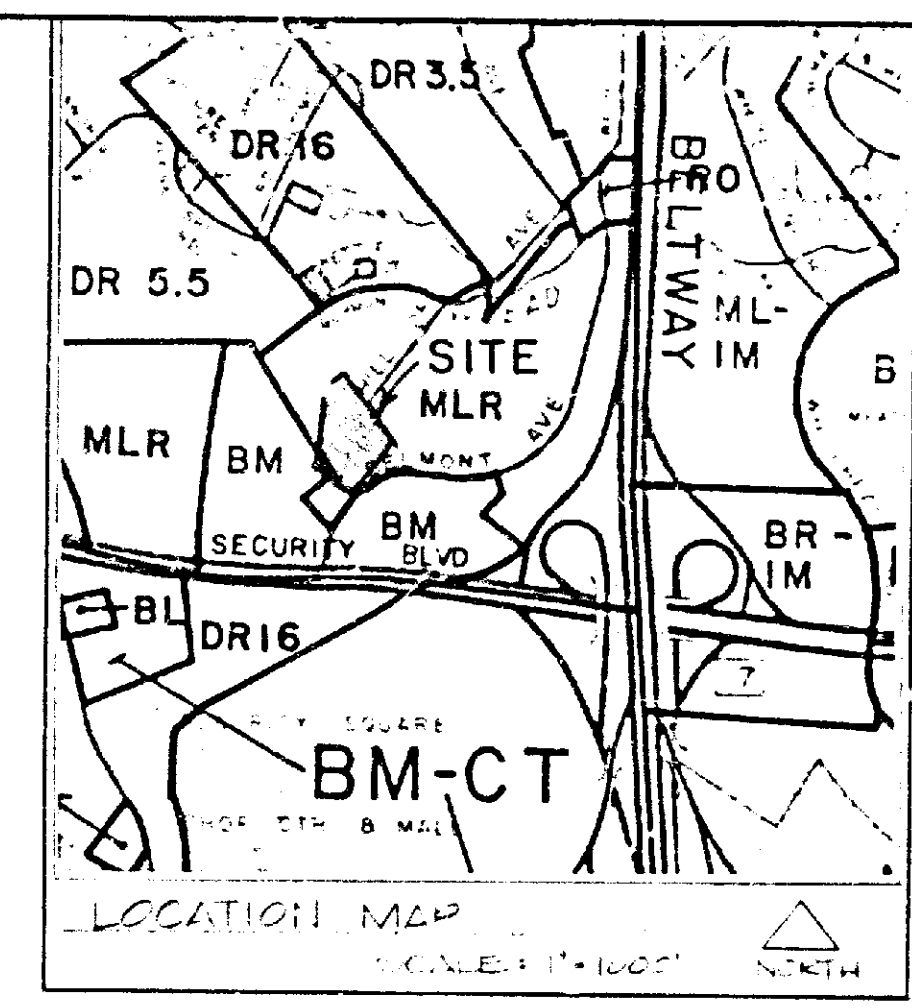
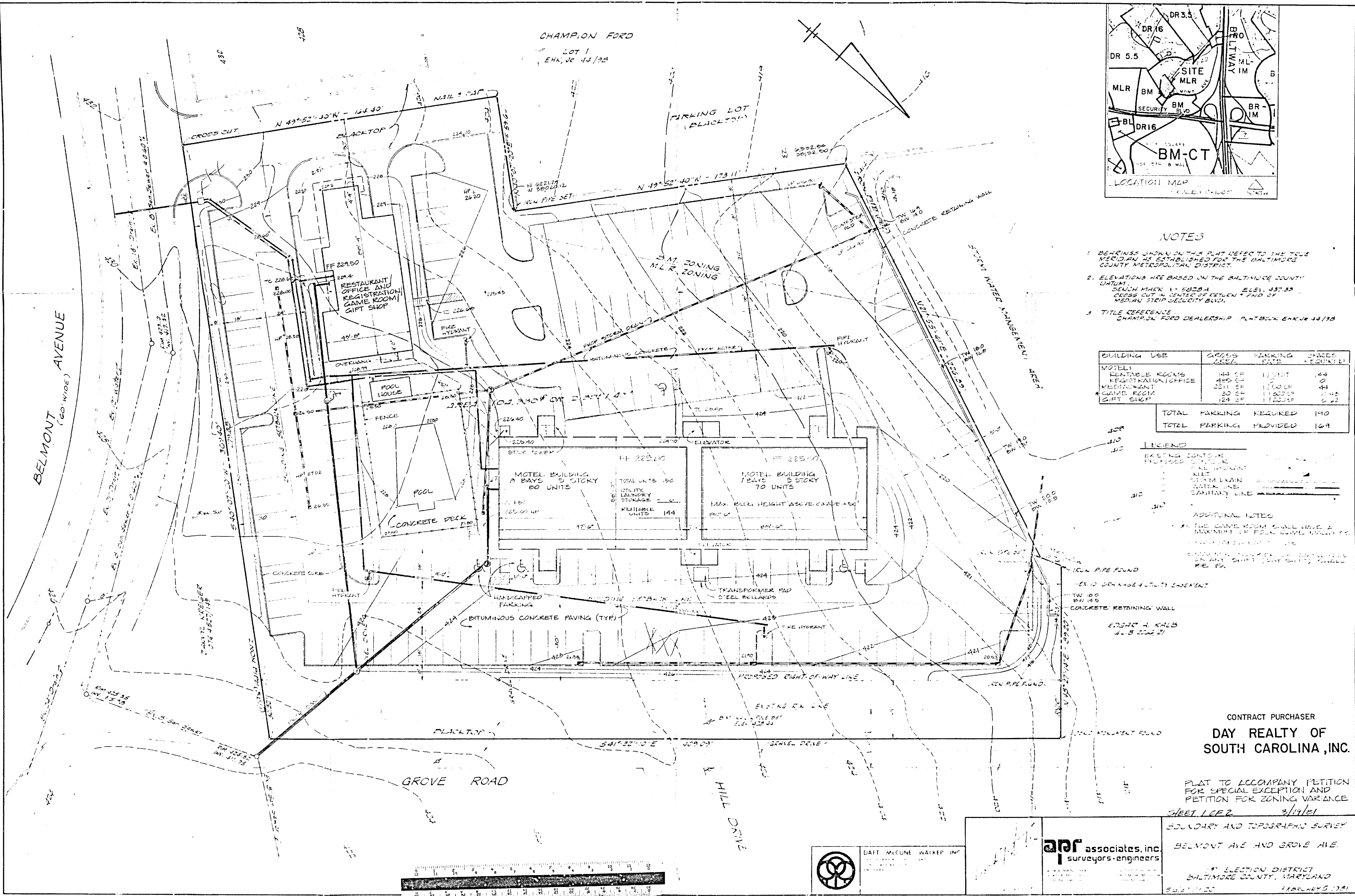
Trip Generation

Day Realty of South Carolina, Inc. plans to construct a 144 room (rentable) Motel on the subject site. In addition to the motel rooms, the site will contain a restaurant, game room and gift shop as ancillary uses. Days Inn Motels are promoted as moderate cost, family-type units and do not contain bars, cocktail lounges or meeting room facilities. Cocktail lounges and meetings rooms in other motel/hotel facilities are available to the guests of the motel as well as the general public. As such, the trip generation rates for facilities with lounges and meeting rooms have a higher trip rate/room than the typical Days Inn. The existing Ramada Inn to the east of the site contains both a cocktail lounge and has meeting room facilities and was not used to arrive at a basic trip rate/room for the subject site. In fact, there are no motel facilities in the Baltimore area that provide the same basic services at the proposed Days Inn and is located close to an interstate highway. As a result, we elected to conduct analyses at the Days Inn in Gaithersburg, Montgomery County, Maryland. That facility contains 190 rooms and has the same ancillary uses as the proposed site. (i.e. no cocktail lounge or meeting rooms, but does contain a restaurant and gift shop). Exhibit 4 shows the total in/out volumes observed at the Gaithersburg facility. The count was conducted on June 29, 1981 and the management

EXHIBIT 4

TRAFFIC COUNT CONDUCTED ON MONDAY, JUNE 29, 1981 AT
DAYS INN
SHADY GROVE ROAD
GAITHERSBURG, MARYLAND
(Volumes below are for the Total of Both Driveways)

| TIME | IN | OUT | TOTAL |
|--------------------------|----|-----|-------|
| 7:00-7:15 AM | 2 | 8 | 10 |
| 7:15-7:30 | 6 | 13 | 19 |
| 7:30-7:45 | 3 | 17 | 20 |
| 7:45-8:00 | 4 | 12 | 17 |
| 8:00-8:15 | 8 | 14 | 22 |
| 8:15-8:30 | 6 | 18 | 24 |
| 8:30-8:45 | 6 | 14 | 20 |
| 8:45-9:00 AM | 7 | 9 | 15 |
| Peak Hour (7:30-8:30 AM) | 21 | 62 | 83 |
| 2 Hour Total | 42 | 106 | 148 |
| 4:00-4:15 PM | 10 | 9 | 19 |
| 4:15-4:30 | 9 | 4 | 13 |
| 4:30-4:45 | 13 | 3 | 16 |
| 4:45-5:00 | 4 | 3 | 7 |
| 5:00-5:15 | 11 | 3 | 14 |
| 5:15-5:30 | 13 | 7 | 20 |
| 5:30-5:45 | 25 | 10 | 35 |
| 5:45-6:00 PM | 9 | 4 | 13 |
| Peak Hour (5-6 PM) | 58 | 24 | 82 |
| 2 Hour Total | 94 | 43 | 137 |



NOTES

- 1. BEARINGS SHOWN ON THIS PLAN REFER TO THE TRUE MERIDIAN AS ESTABLISHED FOR THE BALTIMORE COUNTY METROPOLITAN DISTRICT.
- 2. ELEVATIONS ARE BASED ON THE BALTIMORE COUNTY DATUM. BENCH MARK 1 - 5828.4 CROSS CUT IN CENTER OF RETURN + END OF MEDIAN STRIP SECURITY BLVD.
- 3. TITLE REFERENCE: CHAMPION FORD DEALERSHIP PLATBOOK ENR 44/93

| BUILDING USE | GROSS AREA | PARKING SPACES | SPACES REQUIRED |
|------------------------|------------|----------------|-----------------|
| MOTEL: RENTABLE ROOMS | 144 SF | 1/UNIT | 144 |
| REGISTRATION/OFFICE | 400 SF | | 0 |
| RESTAURANT | 2311 SF | 1/100 SF | 23 |
| * GAME ROOM | 120 SF | 1/100 SF | 1 |
| GIFT SHOP | 124 SF | 1/100 SF | 1 |
| TOTAL PARKING REQUIRED | | | 190 |
| TOTAL PARKING PROVIDED | | | 169 |

LEGEND

- EXISTING CONTOUR
- PROPOSED CONTOUR
- PROPOSED BUILDING
- PROPOSED DRIVE
- PROPOSED STORM DRAIN
- PROPOSED WATER LINE
- PROPOSED SANITARY LINE

ADDITIONAL NOTES

- * THE GAME ROOM SHALL HAVE A MAXIMUM OF FOUR CORNERS ONLY.
- * THE GAME ROOM SHALL HAVE A MAXIMUM OF FOUR CORNERS ONLY.
- * THE GAME ROOM SHALL HAVE A MAXIMUM OF FOUR CORNERS ONLY.

CONTRACT PURCHASER
DAY REALTY OF SOUTH CAROLINA, INC.

PLAT TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION AND PETITION FOR ZONING VARIANCE

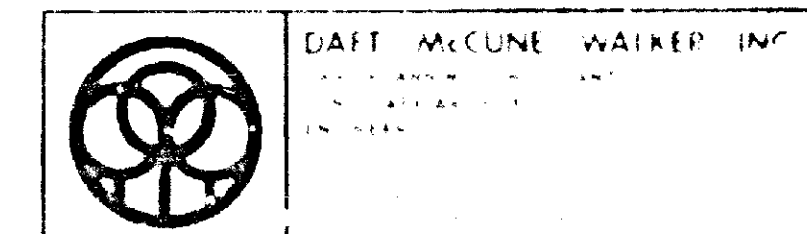
SHEET 1 OF 2 3/14/01

BOUNDARY AND TOPOGRAPHIC SURVEY

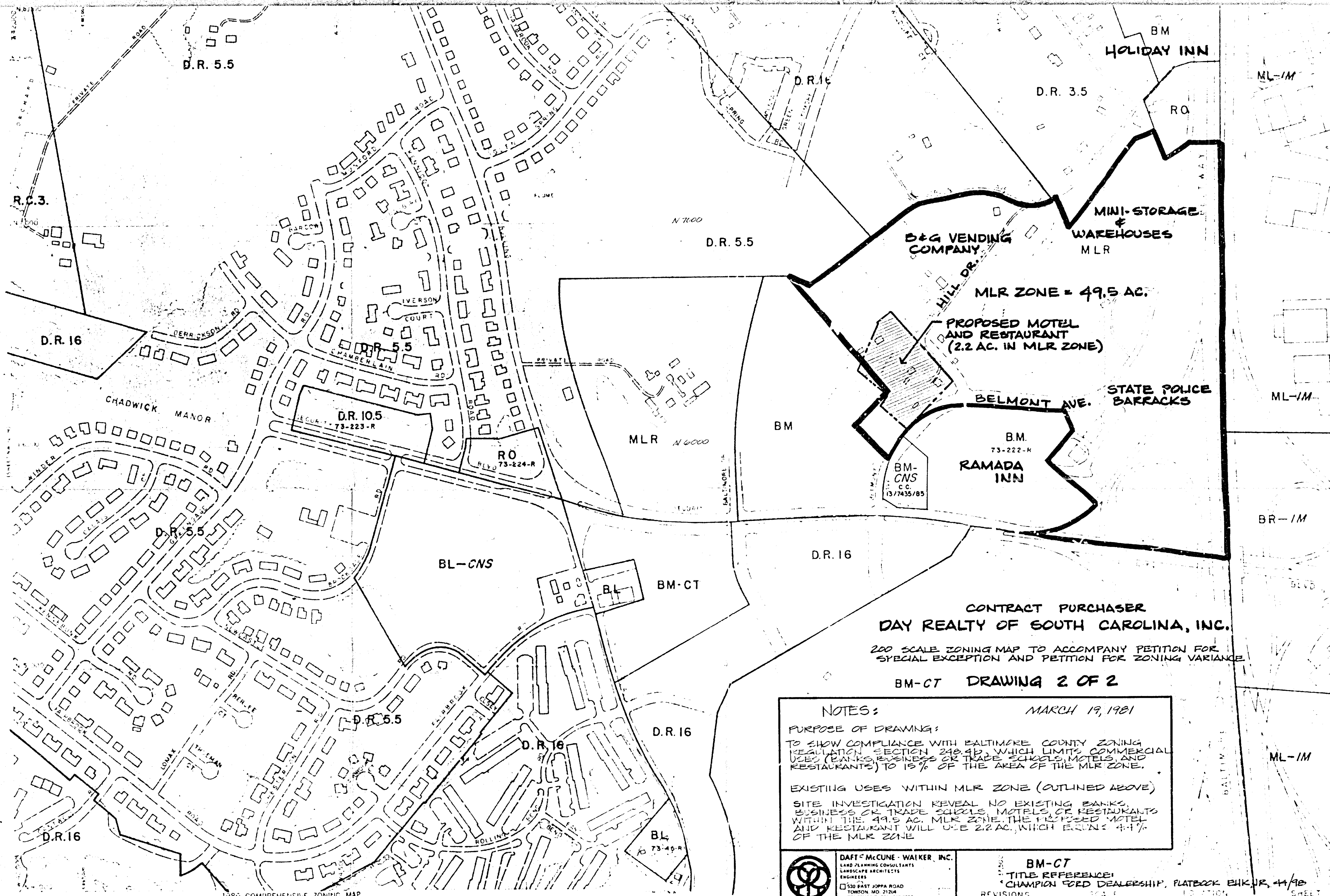
BELMONT AVE AND GROVE AVE.

ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND

DATE: 3/14/01



apr associates, inc.
surveyors-engineers



1980 COMPREHENSIVE ZONING MAP
ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
OCT. 14, 1980
BILL NOS. 18480, 18580, 18680,
18780, 18880, 18980 AND 19080
BALTIMORE COUNTY COUNCIL

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY METROPOLITAN AREA

CONTRACT PURCHASER
DAY REALTY OF SOUTH CAROLINA, INC.

200 SCALE ZONING MAP TO ACCOMPANY PETITION FOR
SPECIAL EXCEPTION AND PETITION FOR ZONING VARIANCE

BM-CT DRAWING 2 OF 2

NOTES: MARCH 19, 1981

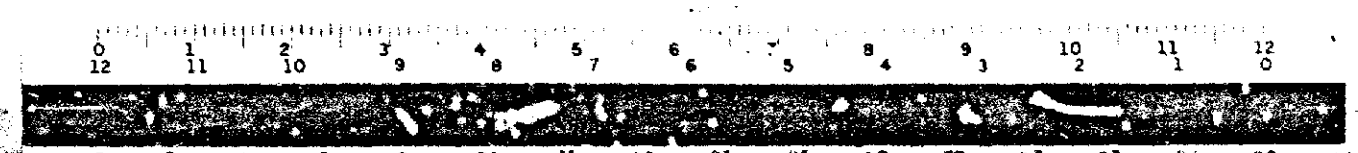
PURPOSE OF DRAWING:
TO SHOW COMPLIANCE WITH BALTIMORE COUNTY ZONING
REGULATION SECTION 240.40 WHICH LIMITS COMMERCIAL
USES (BANKS, BUSINESS OR TRADE SCHOOLS, MOTELS, AND
RESTAURANTS) TO 15% OF THE AREA OF THE MLR ZONE.

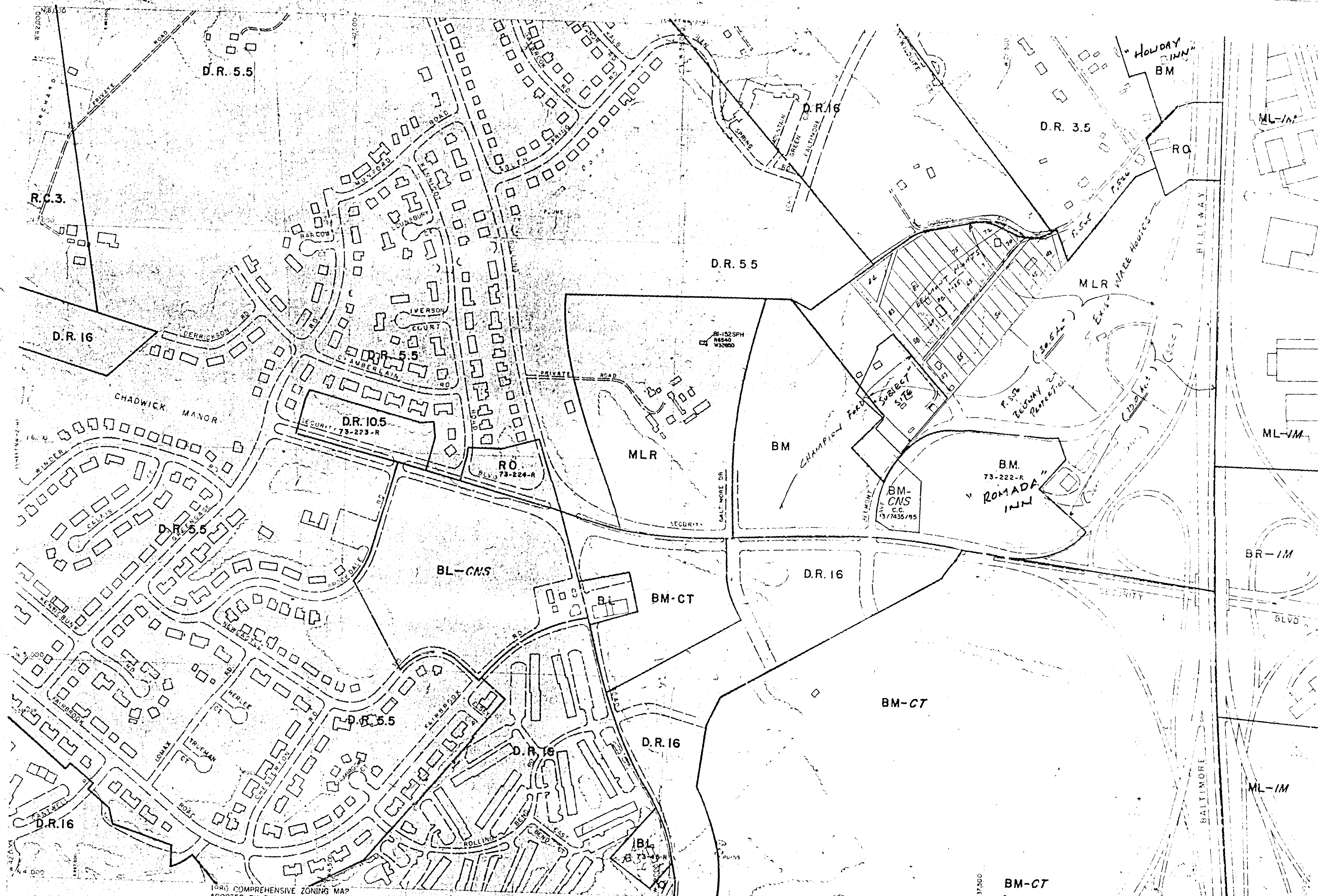
EXISTING USES WITHIN MLR ZONE (OUTLINED ABOVE)

SITE INVESTIGATION REVEAL NO EXISTING BANKS,
BUSINESS OR TRADE SCHOOLS, MOTELS, OR RESTAURANTS
WITHIN THE 49.5 AC. MLR ZONE. THE PROPOSED MOTEL
AND RESTAURANT WILL USE 2.2 AC. WHICH EQUALS 4.4%
OF THE MLR ZONE

DAFT McCUNE - WALKER, INC.
LAND PLANNING CONSULTANTS
LANDSCAPE ARCHITECTS
ENGINEERS
530 EAST JOPPA ROAD
TOWSON, MD. 21204
TELEPHONE 301-296-3333

BM-CT
TITLE REFERENCE:
CHAMPION FORD DEALERSHIP, PLATBOOK BHKJR, 44/98
REVISIONS SCALE LOCATION SHEET
BY DATE





1980 COMPREHENSIVE ZONING MAP
ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
OCT. 14, 1980
BILL NOS. 184 80, 185 80, 186 80,
187 80, 188 80, 189 80 AND 190 80
William W. Rosen
CHAIRMAN, COUNTY COUNCIL

PHOTOGRAMMETRIC MAP OF BALTIMORE COUNTY METROPOLITAN AREA

| REVISIONS | | DATE | SCALE | LOCATION | SHEET |
|-------------------------------------|--------|------|-----------|----------|-------|
| BY | DATE | | 1" = 200' | | |
| Map | 4-1-81 | | | | |
| Inc | | | | | |
| Compiled By Photogrammetric Methods | | | | | |
| ALERT SERVICE CORPORATION | | | | | |
| BELMONT | | | | | |
| N W | | | | | |
| 2-G | | | | | |

First sub

EXHIBIT 4 CONTINUED

| TIME | IN | OUT | TOTAL |
|-----------------------|----|-----|-------|
| 6:00-6:15 PM | 11 | 7 | 18 |
| 6:15-6:30 | 6 | 6 | 12 |
| 6:30-6:45 | 9 | 12 | 21 |
| 6:45-7:00 | 9 | 5 | 14 |
| 7:00-7:15 | 9 | 8 | 17 |
| 7:15-7:30 | 5 | 5 | 10 |
| 7:30-7:45 | 25 | 13 | 38 |
| 7:45-8:00 PM | 6 | 1 | 7 |
| Peak Hour (6:45-7:45) | 48 | 31 | 79 |
| 2 Hour Total | 80 | 57 | 137 |

9

reported that all 190 rooms were occupied on that date. The trip rate/room for the Gaithersburg unit was computed for the three peak hours and this same rate/room was then applied to the 144 rooms proposed for the subject site. The results show that the morning peak hour had only a slightly higher trip rate/room than the evening peak hour and the dinner peak hour. (see Exhibit 5). The projected morning and evening peak hour totals were then assigned to the road system as previously described and are shown on Exhibit 6.

Results of Analysis

The existing volumes were then added to the projected volumes with the totals shown on Exhibit 7. Intersection capacity analyses were again conducted and the results on Exhibit 8 show that the existing Levels of Service at the three key intersections will basically remain the same.

Parking Demand Analysis

The second issue requiring analysis deals with the need for parking for the site at a rate of 1.35 spaces/room (195 spaces for 144 rooms) as presently required by the zoning code. For the same basic reasons previously outlined in the trip generation section of this report, we conducted parking lot counts at various times at the existing Days Inn located in Gaithersburg, Maryland. The Inn management report 100% room occupancy on the three days that observations were made by STS LTD. The results of our observations show a maximum parking space requirement of 159 spaces for 190 occupied rooms or 0.85 spaces/occupied room (see Exhibit 9 for details). Please note that observations were conducted at various times throughout the day including two midnight observations. The peak parking lot occupancy occurred at 6:45 AM on June 29, 1981.

10

EXHIBIT 5 TRIP GENERATION RATES

EXISTING DAYS INN GAITHERSBURG, MARYLAND

| | MORNING PEAK HOUR | | | EVENING PEAK HOUR | | | DINNER PEAK HOUR | | |
|-------------------------------|-------------------|------|-------|-------------------|------|-------|------------------|------|-------|
| | IN | OUT | TOTAL | IN | OUT | TOTAL | IN | OUT | TOTAL |
| TRIPS/190 ROOMS ^{1/} | 21 | 62 | 83 | 58 | 24 | 82 | 48 | 31 | 79 |
| TRIPS/ROOM | 0.11 | 0.33 | 0.44 | 0.31 | 0.12 | 0.43 | 0.25 | 0.16 | 0.41 |

PROPOSED DAYS INN BELMONT AVENUE

| | MORNING PEAK HOUR | | | EVENING PEAK HOUR | | | DINNER PEAK HOUR | | |
|-------------------------------|-------------------|------|-------|-------------------|------|-------|------------------|------|-------|
| | IN | OUT | TOTAL | IN | OUT | TOTAL | IN | OUT | TOTAL |
| TRIPS/ROOM | 0.11 | 0.33 | 0.44 | 0.31 | 0.12 | 0.43 | 0.25 | 0.16 | 0.41 |
| TRIPS/144 ROOMS ^{2/} | 16 | 48 | 64 | 45 | 17 | 62 | 36 | 23 | 59 |

- ^{1/} Maximum number of rooms available - 100% occupancy on day of count
^{2/} Maximum number of rooms proposed - assumes 100% occupancy

11

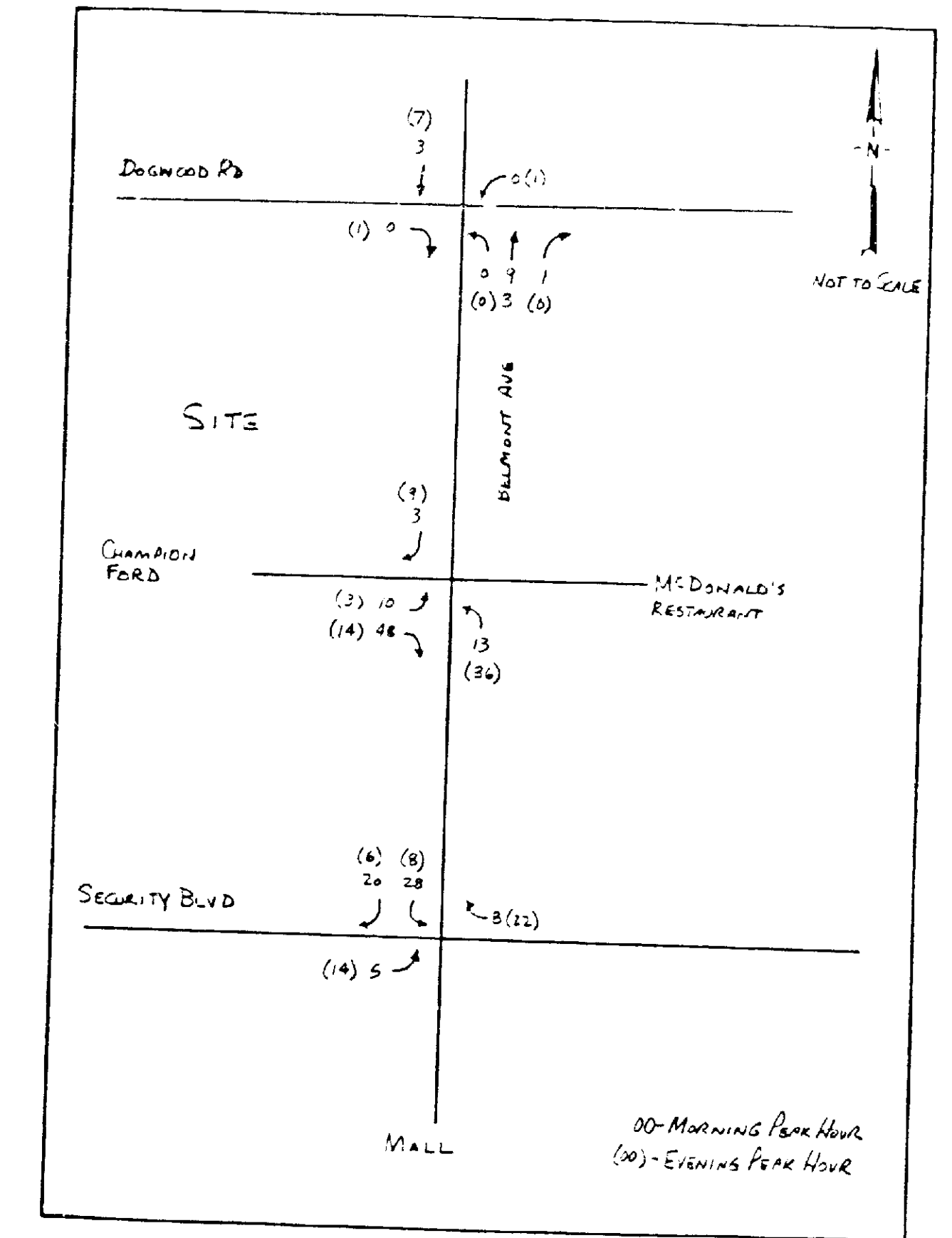


EXHIBIT 6
GENERATED PEAK HOUR VOLUMES

12

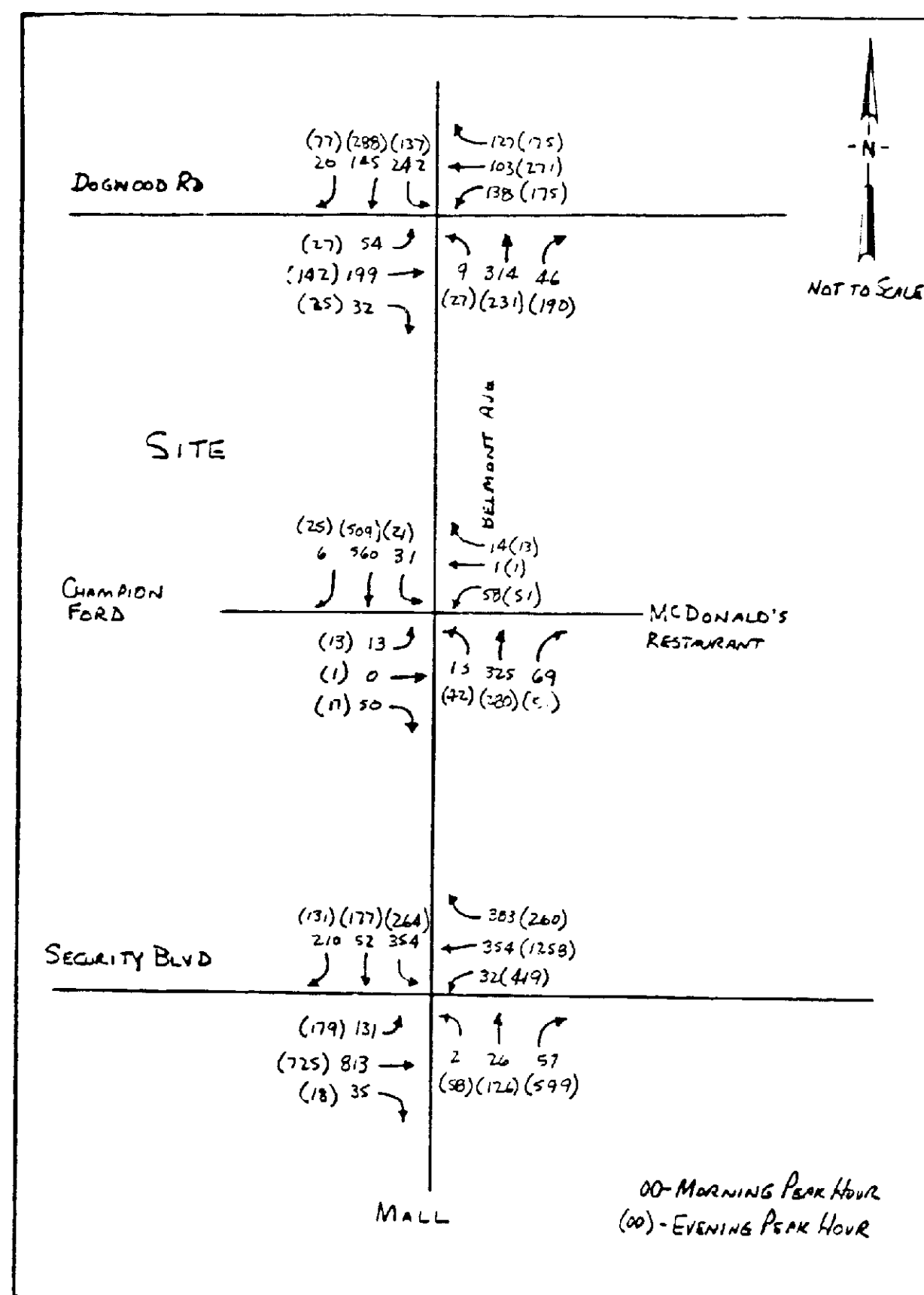


EXHIBIT 7
EXISTING PLUS GENERATED PEAK HOUR VOLUMES

13

EXHIBIT 8 EXISTING AND PROJECTED LEVELS OF SERVICE AND CRITICAL LANE VOLUME TOTALS

| | MORNING PEAK HOUR | | EVENING PEAK HOUR | |
|----------------------------------|-------------------|-----------|-------------------|-----------|
| | Existing | Projected | Existing | Projected |
| Security Blvd./ Belmont Avenue | A | A | B | B |
| | 709 | 737 | 1050 | 1072 |
| Belmont Avenue/ Entrance to Site | A | A | A | A |
| | 679 | 731 | 627 | 679 |
| Belmont Avenue/ Dogwood Road | A | A | A-B | B |
| | 979 | 988 | 994 | 1002 |

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EXHIBIT 9 PARKING SPACE DEMAND DAYS INN-GAITHERSBURG, MARYLAND

| Time | Day | Date | Spaces Occupied | Spaces Occupied/
Occupied Room |
|---------------|-----------|---------|-----------------|-----------------------------------|
| 12:00Midnight | Wednesday | 6/24/81 | 129 | 0.68 Spaces/Room |
| 6:45 AM | Monday | 6/29/81 | 159 | 0.85 Spaces/Room |
| 9:15 AM | Monday | 6/29/81 | 105 | 0.55 Spaces/Room |
| 3:45 PM | Monday | 6/29/81 | 40 | 0.21 Spaces/Room |
| 8:15 PM | Monday | 6/29/81 | 96 | 0.51 Spaces/Room |
| 12:00Midnight | Tuesday | 6/30/81 | 149 | 0.78 Spaces/Room |

NOTE: The management reported 100% occupancy (190 rooms occupied) on June 24, 29 and 30.

PROJECTED PARKING DEMAND AT DAYS INN-BELMONT AVENUE

No. of Rooms X Spaces Needed/Room = Maximum Number of Spaces Required
144 X 0.85 = 122 Spaces

Based upon site plan, 169 spaces will be provided or 47 excess spaces or a 39% excess over the number required.

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Based upon the above analysis, the subject site will require approximately 122 parking spaces.

Conclusions

The use of the site as proposed will be unlike most motels in the Baltimore area since it will not contain either meeting rooms or a cocktail lounge. The traffic projected to be generated by the site will not have an adverse impact on the surrounding road system. The existing Levels of Service will remain essentially the same after the site generated traffic is accounted for at the key intersections.

The zoning code for parking space requirements has been interpreted by the planning staff in such a way that the motel, office, restaurant, game room, and gift shop are all separate facilities. However, the ancillary uses are not expected to generate traffic separate from the users of the motel. That is to say, guests staying at the motel will use the restaurant and other facilities as well. It is not expected that the ancillary uses will generate traffic in addition to the motel guests and therefore separate parking spaces are not required for the ancillary uses. These facts are borne out by the analysis we conducted at the Days Inn in Gaithersburg. The proposed site will actually require approximately 122 parking spaces in lieu of the 190 that are presently required by the zoning code. However, the developer is planning to construct 169 spaces or 39% in excess of the 122 shown to be required by our analysis.

The capacity analysis shows that the Belmont Avenue/Site Access will operate at a Level of Service "A" during both

16

the morning and evening peak hours. This Level of Service is accomplished with only a single access point for Days Inn. Further, the existing McDonald's restaurant presently generates more peak hour traffic with a single access than that projected to be generated by the Days Inn. Thus, it is our opinion that the site can function satisfactorily with one access point in lieu of the two access points recommended by the County Department of Traffic Engineering. The site access plan has been designed to eliminate additional curb cuts along Belmont Avenue.

As a result of our analysis, it is my opinion that the use and design of the site as proposed will not have an adverse impact on the surrounding road system.

17

LAW OFFICES
COOK, HOWARD, DOWNES & TRACY
A PROFESSIONAL ASSOCIATION
210 ALLEGHENY AVENUE
P.O. BOX 557
TOWSON, MARYLAND 21204

June 8, 1981

JAMES B. C. DOWNES
(1906-1979)
823-4111
AREA CODE 301

HAND DELIVERED

Nicholas B. Commodari
Zoning Plans Advisory Committee
111 West Chesapeake Avenue
County Office Building
Towson, Maryland 21204

Re: Petitions for Special Exception,
Variance and Special Hearing
Contract Purchaser - Day Realty
Legal Owner - Ford Motor Dealership

Dear Nick:

I hand-deliver herewith three original Petitions for Special Hearing, all of which have been signed by the appropriate parties.

Your assistance in this matter is most appreciated.

Kind regards.

Sincerely,

John B. Howard

JBH:ecd
Enclosures

cc: Mr. F. Stephen Hartsfield

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

WILLIAM E. HAMMOND
ZONING COMMISSIONER

John B. Howard, Esquire
210 Allegheny Avenue
Towson, Maryland 21204

RE: Petitions for Special Exception, Special
Hearing and Variance
NW/s Belmont Ave., 366' NE of Security Blvd.
Ford Motor Dealership Facilities Co.-Petitioner
Case #82-10-XSPHA Item #177

Dear Mr. Howard:

Please be advised that an Appeal has been filed by James M. Smith, et al, from the decision rendered by the Deputy Zoning Commissioner of Baltimore County in the above referenced matter.

You will be notified of the date and time of the appeal hearing when it is scheduled by the County Board of Appeals.

Very truly yours,

William E. Hammond
Zoning Commissioner

WEH:klr

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

February 11, 1982

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. W. E. Hammond
Zoning Commissioner
Norman E. Gerber, Director
Office of Planning and Zoning
Petition No. 82-10-XSPHA Item 177

Petition for Special Exception, Special Hearing and Variance
Northwest side of Belmont Avenue, 366ft. Northeast of Security Boulevard
Petitioner- Ford Motor Dealership Facilities Company

First District

HEARING: Thursday, July 9, 1981 (1:30 P.M.)

This office is concerned with the lack of area for landscaping shown on the plan. It would appear that the petitioner proposes to cover the site almost in its entirety with buildings and asphalt. It is suggested that the plan be revised so as to provide appropriate landscaping. As to the permissibility of a motel here under the provisions of Section 248.4b of the Baltimore County Zoning Regulations, this office assumes that proof of compliance by the petitioner will be required at the hearing before the Zoning Commissioner.

Norman E. Gerber, Director
Office of Planning and Zoning

NEG:JGH:ab

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

WILLIAM E. HAMMOND
ZONING COMMISSIONER

John B. Howard, Esquire
210 Allegheny Avenue
Towson, Maryland 21204

RE: Petition for Special Exception; Special Hearing
and Variance
NW/s of Belmont Ave., 366' NE of Security Blvd.
Ford Motor Dealership Facilities Co. - Petitioner
Case #82-10-XSPHA

Dear Mr. Howard:

This is to advise you that \$111.80 is due for advertising and posting of the above property.

Please make check payable to Baltimore County, Maryland, and remit to Karen Riegel, Room 113, County Office Building, Towson, Maryland 21204 before the hearing.

Very truly yours,

William E. Hammond
Zoning Commissioner

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

No. 096982

DATE 7/10/81 ACCOUNT 01-662

AMOUNT \$111.80

RECEIVED John B. Howard, Esquire
FOR Posting & Filing of Case #82-10-XSPHA

VALIDATION OR SIGNATURE OF CASHIER

John B. Howard, Esquire
210 Allegheny Avenue
Towson, Maryland 21204

June 10, 1981

NOTICE OF HEARING

RE: Petition for Special Exception, Special
Hearing and Variance
NW/s of Belmont Ave, 366' NE of Security Blvd.
Ford Motor Dealership Facilities Company
Case #81-10-XSPHA

TIME: 1:30 P.M.

DATE: Thursday, July 9, 1981

PLACE: ROOM 106 COUNTY OFFICE BUILDING, 111 W. CHESAPEAKE AVENUE,

TOWSON, MARYLAND

cc: F. Stephen Hartsfield, Esquire
145 King Street - Suite 227
Charleston, South Carolina 29402

WILLIAM E. HAMMOND
ZONING COMMISSIONER OF
BALTIMORE COUNTY

• COPY •

LAW OFFICES

COOK, HOWARD, DOWNES & TRACY

A PROFESSIONAL ASSOCIATION

210 ALLEGHENY AVENUE

P.O. BOX 557

TOWSON, MARYLAND 21204

May 25, 1981

Mr. James B. Omer
Zoning Supervisor
Baltimore County Office Building
Towson, Maryland 21204

Re: Petitions for Special Exception,
Variance and Special Hearing
Contract Purchaser - Day Realty
Legal Owner - Ford Motor Dealership

Dear Jim:

Pursuant to our recent discussion, and several discussions that I have had with Nick Commodari, I have this date forwarded the appropriate Petition for Special Hearing forms for signature. These must go to Charleston, South Carolina and then Detroit, Michigan. Every effort will be made to have them returned and filed as soon as possible.

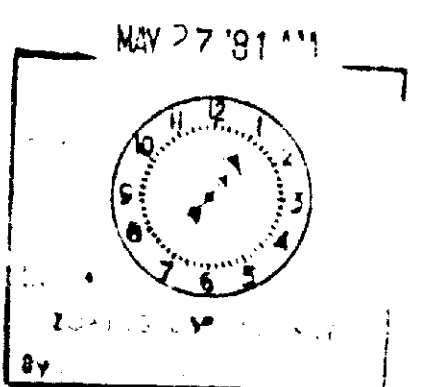
Nick has assured us that the Special Hearing will be assigned for hearing simultaneously with the Special Exception and Variance request, and the processing of the matter will be continued even though we are awaiting the Special Hearing filing.

It is respectfully requested that every effort be made to schedule this matter for hearing on the earliest possible date in that initial filing was made on March 23, 1981.

Very truly yours,

John B. Howard

JBH:ecd
cc: Nicholas B. Commodari
Zoning Plans Advisory Committee
cc: Mr. F. Stephen Hartsfield
cc: Mr. Thomas Kolojeski



involved in order to open a grocery store thereon, a use which was prohibited. The property, at the time of purchase, had for several years been used as a residence for several families. After its purchase, the applicants permitted the property to deteriorate to the point where they could claim that the structures thereon were no longer reasonably suitable for residential purposes. Quoting from Rathkopf, The Law of Zoning and Planning, p. 262, the court stated the self-created hardship rule as follows:

"Where a person purchases property with the intention to apply to the Board of Appeals for a variance from the restrictions imposed by the ordinance, he cannot contend that such restrictions caused him such a peculiar hardship that entitles him to the special privileges which he seeks." Keswick, 197 Md. at 50.

The court applied the self-created hardship rule, holding that the owners, having bought the property with a view to obtaining a variance in order to use the property for a prohibited use, could not claim that they had suffered a peculiar hardship which entitled them to a special privilege. Id. at 51.

Since first stated in Keswick, the self-created hardship rule has been relied on several times by courts in Maryland as the basis for denying applications for use variances. However, no Maryland decision has ever applied the self-created hardship rule to deny an area variance. When the appropriateness of applying the rule to an area variance case was considered, the court distinguished Keswick. In Zengerle v. Board of County Comm'rs., 262 Md. 1, 21 (1971), the court held that the self-created hardship rule adopted in Keswick was inapplicable to cases

involving petitions for area variances, as distinguished from use variances, where there is testimony of practical difficulty in the absence of the grant of the variance. In effect, the Zengerle decision held that, in Maryland, an application for an area variance cannot be defeated by an allegation of self-created hardship.

The distinction between area variances and use variances articulated in Zengerle was later relied on McLean v. Soley, 270 Md. 208 (1973). In that case, the appellant challenged an application for an area variance by contending that the applicant was precluded from asserting "practical difficulty" because he was charged with knowledge of the area requirements from which the variance was being sought prior to purchasing the property. The court, citing Zengerle with approval, stated:

"We see no merit to this argument. We note in Zengerle v. Board of County Comm'rs., 262 Md. 1, 21, 276 A.2d 646 (1971),...that the 'rule' is more strictly applied in 'use variance' cases than in cases of 'area variances,' such as the one at bar. In other words, it has less significance where we are concerned with 'practical difficulty' than it does in the event of 'hardship' which usually characterizes the 'use variance' cases." Id. at 215.

The decision by the Court of Appeals to limit the strict application of the self-created hardship rule to cases involving use variances is supported by other authorities. In Rathkopf, The Law of Zoning and Planning (4th Ed. 1981), the treatise that was cited by the Keswick court in support of the self-created hardship rule, now notes that the later trend is to reject the doctrine that the purchase of property subject to restriction of an ordinance constitutes, in itself, a self-imposed hardship. 3 Rathkopf, §39.02 [2].

As further support for the recent trend to reject the self-created hardship rule, Rathkopf also notes that "a purchaser of property acquires no greater right to a variance than his predecessor and he should not be held to acquire less." Id. at 39-16. In the instant case, the previous owner of the subject property was entitled to pursue a petition for a variance before the Deputy Zoning Commissioner on the Appellee's behalf. There is no reason why the change in the Appellee's status, from contract purchaser to legal owner should diminish its right to a variance.

Finally, even in the absence of the Zengerle decision, the self-created hardship rule would have no application in this case because the Appellee did not purchase the subject property until after the requisite Variance and Special Exception had been granted by the Deputy Zoning Commissioner. The aforementioned Petitions were granted on January 8, 1982, whereas, the Appellee did not buy the property until February 23, 1982. In light of this sequence of events, the Appellee does not fall within the self-created hardship rule as set forth in Keswick, which only pertains to person who purchased property "with the intention to apply to the Board of Appeals for a variance from the restrictions imposed by the ordinance." Keswick, 197 Md. at 50. (Emphasis supplied.) Once the Petition for a Parking Variance was granted, the Deputy Zoning Commissioner's decision had the force and effect of law, pending a decision by the Board of Appeals. See Swarthmore Co. v. Kaestner, 258 Md. 517, 525 (1970).

Since the Petition in the instant case was for an area variance, the Court of Appeals' holding in Zengerle

controls, rather than the strict self-created hardship rule adopted for use variances in Keswick. Accordingly, by introducing un rebutted testimony that compliance with the parking requirements would create a practical difficulty and undue hardship (Transcript, pp. 35, 120), thereby rendering the entire project cost prohibitive (Transcript, pp. 36, 255-266), Days Inn met its burden of proof. On this issue, the Board of Appeals held:

"Petitioner, however, produced evidence that the planned 167 parking spaces were not only adequate but indeed more than sufficient to service the proposed use. Further, Petitioner produced evidence to the effect that a denial of the variance would create a hardship....Clearly, the Petitioner has presented evidence that without an area variance the cost of development of the proposed use would be cost prohibitive and the use itself would not be feasible." (Board of Appeals Opinion, pp. 7-8.)

Based on the foregoing findings of fact the Board of Appeals was entirely justified in granting the requested parking variance.

CONCLUSION

The Appellee has clearly established that its plans are in conformity with the stated purposes of the existence of M.L.R. Zones and has provided abundant evidence that it has met the requirements and burden of proof as set forth in the Regulations. Because the Board of Appeals' decision is supported by substantial evidence, rendering all questions decided at least fairly debatable, the reviewing court may not substitute its judgment for that of the Board. It is respectfully requested that the decision of the Board of Appeals, granting the requested Special Exception and Variance, be affirmed.

JOHN B. HOWARD
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorneys for the Appellee

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 11th day of March, 1983, a copy of the foregoing Memorandum on Appeal was hand-delivered to James M. Smith, Esquire and Christopher R. West, Esquire, Gebhardt & Smith, Suite 1544, The World Trade Center, Baltimore, Maryland 21202, and mailed postage prepaid to John W. Hessian, III, Esquire, People's Counsel, Room 223, Court House, Towson, Maryland 21204; to the County Board of Appeals of Baltimore County, Room 200, Court House, Towson, Maryland 21204; and to the Zoning Commissioner of Baltimore County, County Office Building, Towson, Maryland 21204.

JOHN B. HOWARD

M.L.R. Zone Manufacturing Light, Restricted (Bill No. 56, 1961.)

Section 247²—PURPOSE [Bill No. 56, 1961.]

To permit grouping of high types of industrial plants in industrial subdivisions in locations with convenient access to expressways or other primary motorways so as to minimize the use of residential streets; to fill special locational needs of certain types of light industry; to permit planned dispersal of industrial employment centers so as to be conveniently and satisfactorily related to residential communities; and as transitional bands between residential or institutional areas and M.L. or M.H. Zones. [Bill No. 56, 1961.]

Section 248—USE REGULATIONS: [Bill No. 56, 1961.]

The following uses only are permitted: [Bill No. 56, 1961.]

248.1—Uses permitted in the M.L.R. Zone, except Heliport, Type II, which may be permitted only as a Special Exception; [Bills No. 56, 1961; No. 85, 1967.]

248.2—Uses permitted and as limited in the R.40³ Zone by Section 200.11,⁴ except that Animal boarding place, Class A and Kennel are prohibited; [Bills No. 56, 1961; No. 85, 1967.]

248.3—Living quarters for watchmen and caretakers and their families living on the premises and engaged in connection with any lawful use in the M.L.R. Zone; [Bill No. 56, 1961.]
Accessory buildings and uses in connection with living quarters (see above) and as limited by Section 400. [Bill No. 56, 1961.]

248.4—Special Exceptions—When permitted as Special Exceptions (see Sections 270 and 502);⁵ [Bill No. 56, 1961.]

a.⁶ The following uses:

Airstrips;
Automotive-service station, subject to the provisions of Section 405; [Bills No. 40, 1967; No. 85, 1967.]
Boat yard (including marine railway);
Excavations, controlled (see Section 403);
Heliport, Type II; [Bills No. 56, 1961; No. 85, 1967.]
Public utility uses other than those noted in Section 200.11⁷ excluding steam power plants;

Notes 1. Thus (without comma) in Bill No. 56, 1961.
to S. 247 2. Section numbers 244-246 reserved.

Notes 3. Now D.R. 1—see Subsection 100.3A. 7. See note 14, Section 230.
to 4. See note 14, Section 230.
Section 5. Thus (semicolon) in Bill No. 56, 1961.
248 6. All of this paragraph's provisions that are not followed by bracketed references are from Bill No. 56, 1961 and were re-enacted without substantive amendment by Bill No. 85, 1967.

248.4 (M.L.R.)

Riding stable (commercial), golf driving range, miniature golf, baseball batting range; as interim income-producing uses;
Sanitary landfill;
Volunteer fire company;
Wireless transmitting and receiving structure, except as a minor accessory use or structure (which is permitted without a special exception); provided that, for the purposes of this subsection, no exterior antenna greater than 50 feet above grade level shall be considered as an accessory use or structure. [Bills No. 56, 1961; No. 61, 1967; No. 85, 1967.]

b.⁸ The following commercial uses, when within an M.L.R. Zone which is part of a contiguous area of 25 acres or more of industrial zoning and if the specific use proposed is demonstrably an appropriate service to industries existing, planned or normally to be expected to locate therein; and in no case shall the combined tract areas developed for one or more of these service commercial uses occupy more than 15% of M.L.R. tract in which they are located:

Bank;
Business and trade schools;
Motel;
Public Restaurant, but food may be served and eaten on the premises only by persons seated at inside tables or counters; it may not be served to persons remaining in cars.

c. In order that the above-listed uses in sub-sections a and b hereof will be located within the M.L.R. Zone so as to assure their services' being rendered primarily to the industries therein, no building or structure connected with such commercial uses may be within 100 feet of the right-of-way of an existing or proposed major street. This limitation shall not apply to locations on minor or local industrial subdivision roads or to freeways (on which the use does not have direct access). [Bill No. 56, 1961.]

8. All provisions of this paragraph from Bill No. 55, 1961.
9. Thus (without article) in Bill No. 56, 1961.

IN THE MATTER OF THE APPLICATION
OF FORD MOTOR DEALERSHIP
FACILITIES COMPANY FOR SPECIAL
EXCEPTION for a Motel,
FOR SPECIAL HEARING to approve a
motel use in an MLR zone pursuant
to Sec. 248.4b of the B.C.Z.R., and
FOR VARIANCE from Sec. 409.2 a and b
of the B.C.Z.R. NW/S of Belmont
Avenue, 366' NE of Security Boulevard
1st District

Zoning File No. 82-10-XSPHA

MARILYN A. METZ, et al.

Appellants

v.

DAYS INN OF AMERICA, INC.

Appellee.

• IN THE
• CIRCUIT COURT
• FOR
• BALTIMORE COUNTY
• AT LAW
• Docket: 15
• Folio: 20
• File No.: 82-M-415

APPELLANTS' REPLY MEMORANDUM

Appellants, by their attorneys, James M. Smith, Christopher R. West, and Gebhardt & Smith, file this Reply Memorandum pursuant to Rule B12 of the Maryland Rules of Procedure.

L. THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY ERRONEOUSLY GRANTED A SPECIAL EXCEPTION FOR A MOTEL IN AN M.L.R. ZONE ALTHOUGH THE RECORD CONTAINS ABSOLUTELY NO EVIDENCE ESTABLISHING THAT THE SERVICES OF SUCH A MOTEL WOULD BE RENDERED "PRIMARILY" TO INDUSTRIES WITHIN THE RELEVANT CONTIGUOUS AREA.

The key issue raised by this appeal is whether the Appellee introduced sufficient evidence to sustain its burden of proving that the proposed motel complex would "primarily" serve the area of contiguous industrial zoning.^{1/} A review of the facts marshalled by the Appellee to support this proposition reveals that the Appellee's proof in this regard was utterly nonexistent.

In the Appellants' original memorandum, it was stressed that the Appellee's own Exhibit No. 1 established that, far from "primarily" serving the contiguous industrial area, the proposed motel complex would derive less than six percent

^{1/}As counsel for the Appellee admitted before the County Board of Appeals, "one of the tests or burdens we have here is to show that this motel is primarily oriented to serve the twenty-five acres or more of contiguous industrial zoning." (Emphasis added) ("see Transcript, page 15)

LAW OFFICES
COOK, HOWARD, DOWNES & TRACY
A PROFESSIONAL ASSOCIATION
210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

May 25, 1981

Mr. James E. Dyer
Zoning Supervisor
Baltimore County Office Building
Towson, Maryland 21204

Re: Petitions for Special Exception,
Variance and Special Hearing
Contract Purchaser - Day Realty
Legal Owner - Ford Motor Dealership
FACILITIES COMPANY
Item No. 177

Dear Jim:

Pursuant to our recent discussion, and several discussions that I have had with Nick Commodari, I have this date forwarded the appropriate Petition for Special Hearing forms for signature. These must go to Charleston, South Carolina and then Detroit, Michigan. Every effort will be made to have them returned and filed as soon as possible.

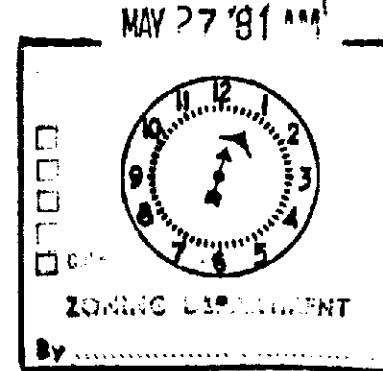
Nick has assured us that the Special Hearing will be assigned for hearing simultaneously with the Special Exception and Variance request and the processing of the matter will be continued even though we are awaiting the Special Hearing filing.

It is respectfully requested that every effort be made to schedule this matter for hearing on the earliest possible date in that initial filing was made on March 23, 1981.

Very truly yours,

John B. Howard

JBH:ecd
cc: Nicholas B. Commodari
Zoning Plans Advisory Committee
cc: Mr. F. Stephen Hartsfield
cc: Mr. Thomas Kolojeski



LAW OFFICES
COOK, HOWARD, DOWNES & TRACY
A PROFESSIONAL ASSOCIATION
210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

June 3, 1981

HAND DELIVERED

Nicholas B. Commodari
Zoning Plans Advisory Committee
111 West Chesapeake Avenue
County Office Building
Towson, Maryland 21204

Re: Petitions for Special Exception,
Variance and Special Hearing
Contract Purchaser - Day Realty
Legal Owner - Ford Motor Dealership

Dear Nick:

As discussed, I enclose herewith a copy of the Petition for Special Hearing which was forwarded to South Carolina and then routed to Detroit for execution. The signed originals should be back here momentarily but, in the meantime, I would ask that this matter along with the Petitions for Special Exception and Variance be assigned for hearing when you meet on Monday. We are most anxious to avoid any further delays.

Thank you for your assistance.

Kind regards,

Sincerely,

John B. Howard

JBH:ecd
Enclosure
cc: Mr. F. Stephen Hartsfield

LAW OFFICES
GEBHARDT & SMITH
SUITE 1544
THE WORLD TRADE CENTER
BALTIMORE, MARYLAND 21202

July 24, 1981

HAND DELIVERED

Mrs. Jean Jung
Deputy Commissioner of Zoning
for Baltimore County
Baltimore County Office of Planning
and Zoning
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Special Exception,
Variance and Special Hearing
File No. 81-10-XSPHA

Dear Mrs. Jung:

I am enclosing a copy of a Memorandum in Opposition to Petition for Special Exception, Variance and Special Hearing relating to the above described matter. I am also enclosing for your convenience a transcript of the hearing held before you on July 9, 1981.

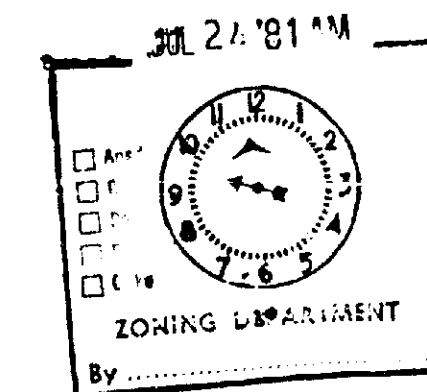
Very truly yours,

Brian C. Parker

BCP/kg

Enclosures

cc: John B. Howard



LAW OFFICES
COOK, HOWARD, DOWNES & TRACY
A PROFESSIONAL ASSOCIATION
210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

August 5, 1981

Mrs. Jean M. H. Jung
Deputy Zoning Commissioner for
Baltimore County
Baltimore County Office of Planning
and Zoning
County Office Building
Towson, Maryland 21204

Re: Petition for Special Exception,
Variance and Special Hearing
File No. 81-10-XSPHA
FORD MOTOR DEALERSHIP FACILITIES CO.

Dear Mrs. Jung:

I hand-deliver herewith the Reply Memorandum in Support of Petitions for Special Exception, Variance and Special Hearing.

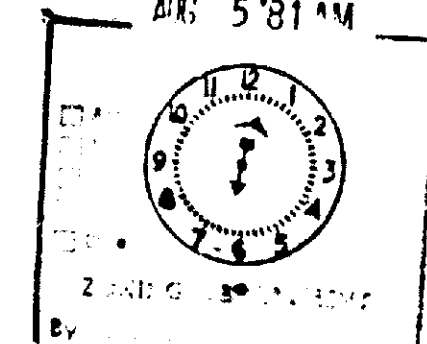
Thank you for your consideration of this matter.

Very truly yours,

John B. Howard

JBH:rm
Enc.

c.c.: Brian C. Parker, Esq.



BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

WILLIAM F. HAMMOND
ZONING COMMISSIONER

January 8, 1982

John B. Howard, Esquire
210 Allegheny Avenue
Towson, Maryland 21204

RE: Petitions for Special Exception,
Special Hearing, and Variance
NW/S of Belmont Ave., 366' NE of
Security Blvd. - 1st Election District
Ford Motor Dealership Facilities Co. -
Petitioner
NO. 82-10-XSPHA (Item No. 177)

Dear Mr. Howard:

I have this date passed my Orders in the above captioned matter in accordance with the attached.

Very truly yours,

JEAN M. H. JUNG
Deputy Zoning Commissioner

JMHJ/mc

Attachments

cc: James M. Smith, Esquire
Suite 1544
World Trade Center
Baltimore, Maryland 21202

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

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Boley Avenue
P.O. Box 6754
Towson, Maryland 21204-0754
April 29, 1983

Job Adams - 494-2860
Chief Assignment Commissioner
Settlement Clerk
Maria Escobedo - 494-2862
Master Assignment Clerk
Medical Records

TO: Christopher R. West, Esq.
James R. Smith, Esq.
John B. Howard, Esq.
County Board of Appeals of Baltimore Co.

County Board of Appeals of Baltimore Co.
John W. Hessian, III, Esq.
Honorable William L. Henshaw

RE: Jon Jung - 82 M 415 - MARTIN A. KESS ET AL VS COUNTY MD. OF APPEALS OF BALTO. COUNTY

HEARING DATE: Friday, May 13, 1983, @ 9:30 a.m.

ON THE FOLLOWING: Petition, May 13, 1983, @ 9:30 a.m.

Notes: Conflicting an agreed counsel date.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to confirm calendars. Claim of not receiving notice will not constitute a reason for postponement.

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Grimm - 494-3497.

SETTLEMENT CONFERENCES: All counsel must secure the attendance of all parties necessary to effect a binding settlement, including clients and insurance representatives. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. CICONE. Please direct all inquiries to the attention of Job Adams.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Boley Avenue
P.O. Box 6754
Towson, Maryland 21204-0754
March 29, 1983

Job Adams - 494-2860
Chief Assignment Commissioner
Settlement Clerk
Maria Escobedo - 494-2862
Master Assignment Clerk
Medical Records

TO: Christopher R. West, Esq.
James R. Smith, Esq.
John B. Howard, Esq.
County Board of Appeals of Baltimore Co.

County Board of Appeals of Baltimore Co.
John W. Hessian, III, Esq.

RE: J - 82 M 415 - MARTIN A. KESS ET AL VS COUNTY MD. OF APPEALS OF BALTO. COUNTY

HEARING DATE: Thursday, April 21, 1983, @ 9:30 a.m.

ON THE FOLLOWING: ALL OPEN MOTIONS IN THIS CASE, @ 9:30 a.m.

Notes: Conflicting notice of an agreed counsel date. Please note appeal will be heard on April 29, 1983.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to confirm calendars. Claim of not receiving notice will not constitute a reason for postponement.

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Grimm - 494-3497.

SETTLEMENT CONFERENCES: All counsel must secure the attendance of all parties necessary to effect a binding settlement, including clients and insurance representatives. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. CICONE. Please direct all inquiries to the attention of Job Adams.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Boley Avenue
P.O. Box 6754
Towson, Maryland 21204-0754
February 9, 1983

Job Adams - 494-2860
Chief Assignment Commissioner
Settlement Clerk
Maria Escobedo - 494-2862
Master Assignment Clerk
Medical Records

TO: Christopher R. West, Esq.
James R. Smith, Esq.
John B. Howard, Esq.
County Board of Appeals of Baltimore Co.

County Board of Appeals of Baltimore Co.
John W. Hessian, III, Esq.

RE: M 82 M 415 - MARTIN A. KESS ET AL VS COUNTY MD. OF APPEALS OF BALTO. CO. ET AL

HEARING DATE: Monday, March 21, 1983, @ 10:30 a.m.

Notes: Conflicting notice that case remains in the assignment on the above hearing date for ALL OPEN MOTIONS and the appeal hearing will be on Thursday, April 29, 1983, @ 9:30 a.m.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to confirm calendars. Claim of not receiving notice will not constitute a reason for postponement.

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Grimm - 494-3497.

SETTLEMENT CONFERENCES: All counsel must secure the attendance of all parties necessary to effect a binding settlement, including clients and insurance representatives. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. CICONE. Please direct all inquiries to the attention of Job Adams.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

Kathy Rushton - 494-2860
Assignment - Jury - Motions
Maria Escobedo - 494-2861
Assignment - Non-Jury - Motions
Freddie Grove
Assignment Clerk Typist

Kathy Rushton - 494-2860
Assignment - Jury - Motions
Maria Escobedo - 494-2861
Assignment - Non-Jury - Motions
Freddie Grove
Assignment Clerk Typist

Kathy Rushton - 494-2860
Assignment - Jury - Motions
Maria Escobedo - 494-2861
Assignment - Non-Jury - Motions
Freddie Grove
Assignment Clerk Typist

LAW OFFICES
GEBHARDT & SMITH
NINTH FLOOR
THE WORLD TRADE CENTER
BALTIMORE, MARYLAND 21202
(301) 752-5830

December 17, 1982

County Board of Appeals
Room 200
Court House
Towson, Maryland 21204

Re: Case No.: 82-10-XSPHA
Baltimore County Circuit Court
Law File No.: 82-M-415

Dear Mr. Clerk:

I am herewith remitting our check in the amount of fifty-seven dollars (\$57.00) in payment for the cost of certified documents filed in this case as per your statement dated December 15, 1982.

I understand that Carol Ann Beresh, your reporter, has filed the original copy of the transcript of the proceedings in this matter. Therefore, my understanding is that the entire record is on file in your office and can be transmitted to the Clerk of the Circuit Court for Baltimore County.

Before the record is transmitted, I would appreciate the opportunity to review the exhibits which are in the file of the County Board of Appeals. I will contact you next week to make arrangements to stop by your office and review these exhibits.

In the meantime, if I can be of any assistance to you in connection with preparing and transmitting the record, please do not hesitate to contact me.

Sincerely yours,

Christopher R. West
Christopher R. West

CRW:kam
Enclosure

BALTIMORE COUNTY
DEC 20 11 22 AM '82
CLERK
B-10-9-130

In the matter of the Application of
Ford Motor Dealership Facilities Co.

Vs.

County Bd. of Appeals of Balto. Co.

IN THE CIRCUIT COURT

FOR

BALTIMORE COUNTY

Docket 15 Folio 20

Case No. 82-M-415

NOTICE OF FILING OF RECORD

TO: Christopher R. West
James M. Smith
The World Trade Center 9th Fl.
Balto. Md. 21202

County Bd. of Appeals of Balto. Co.
Room 200 Court House
Towson, Md. 21204

In accordance with Maryland Rule of Procedure B12, you are notified that
the record in the above entitled case was filed on January 10, 1983.

Christopher R. West
Clerk

RECEIVED
BALTIMORE COUNTY
JAN 12 5 28 AM '83
455

FILED JAN 10 1983

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. W. E. Hammond, Zoning Commissioner
Office of Planning and Zoning
TO: William T. Hackett, Chairman
FROM: County Board of Appeals
SUBJECT: Certified copies of zoning documents
Ford Motor Dealership - Case No. 82-10-XSPHA

Attached please find the necessary documents from the

Zoning Commissioner's file which must be certified as True Test copies for the

Circuit Court.

Please certify these documents and return same to this

office.

Very truly yours,

William T. Hackett
William T. Hackett, Chairman
County Board of Appeals

494-3180

County Board of Appeals

Room 219, Court House
Towson, Maryland 21204
December 15, 1982

John B. Howard, Esq.
210 Allegheny Ave.
Towson, Md. 21204

Dear Mr. Howard:

Re: Case No. 82-10-XSPHA
Ford Motor Dealership Co.

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

June Holmen
June Holmen, Secretary

Encl.
cc: Day Realty of South Carolina
Ford Motor Dealership Facilities Co.
J. W. Hession, Esq.
J. Dyer
J. Howell
J. Jung
W. Hammond
N. Gerber

December 15, 1982

BILLED TO: James M. Smith, Esq. and
Christopher R. West, Esq.
Suite 1544, World Trade Center
Balto., Md. 21202

Cost of certified documents filed
in Case No. 82-10-XSPHA \$ 57.00

Ford Motor Dealership Facilities Company
NW/s Belmont Ave., 366' NE of Security Blvd.
1st District

MAKE CHECKS PAYABLE TO: Baltimore County, Md.

REMIT TO: County Board of Appeals
Rm. 200, Court House
Towson, Md. 21204

LAW OFFICES
GEBHARDT & SMITH
NINTH FLOOR
THE WORLD TRADE CENTER
BALTIMORE, MARYLAND 21202
(301) 752-5830

December 14, 1982

Clerk
County Board of Appeals
of Baltimore County
Court House
Towson, Maryland 21204

Re: In the Matter of the Application of
Ford Motor Dealership Facilities
Company;
Case No.: 82-10-XSPHA

Dear Mr. Clerk:

This is to advise you that, on this date, an Order for Appeal has been filed in the above-captioned matter from the Opinion and Order entered by the County Board of Appeals of Baltimore County on November 18, 1982. A copy of the Order for Appeal as well as a copy of the Petition On Appeal are attached hereto.

Pursuant to Rule B7 of the Maryland Rules of Procedure, I understand that within 30 days, you will transmit to the Clerk of the Circuit Court for Baltimore County the original or a certified copy of the record of the proceedings in this matter, including any transcript of testimony and any exhibits filed therein. The testimony has previously been transcribed by Carol Ann Beresh, your reporter. I spoke to Ms. Beresh this morning and she advised me that she would promptly file the original copy of the transcript with you.

If I can be of any assistance to you in connection with preparing and transmitting the record, please do not hesitate to contact me. In particular, if the Appellants will be expected to bear any expense of further transcription or of certified copies, please contact me, and I will expeditiously remit a check to you to pay for these costs.

Sincerely yours,

Christopher R. West
Christopher R. West

CRW:kam
Enclosure

BALTIMORE COUNTY
DEC 14 4 17 PM '82
CLERK
B-10-9-130

CIRCUIT COURT FOR BALTIMORE COUNTY

ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21204-0754
January 24, 1983.

Kathy Rushton - 494-2660
Assignment - July - Motion
Marilyn Fennell - 494-2661
Assignment - Non-Jury - Motion
Freddie Grove - 494-2661
Assignment - Non-Jury - Motion
Assistant Clerk Typist

RECEIVED
BALTIMORE COUNTY
JAN 25 9 24 AM '83
BY: CLERK

Page 12

CIRCUIT COURT FOR BALTIMORE COUNTY

ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21204-0754
January 20, 1983.

Kathy Rushton - 494-2660
Assignment - July - Motion
Marilyn Fennell - 494-2661
Assignment - Non-Jury - Motion
Freddie Grove - 494-2661
Assignment - Non-Jury - Motion
Assistant Clerk Typist

John Adams - 494-2660
County Board of Appeals
Marilyn Fennell - 494-2662
Western Assignment Clerk
Medical Records
TO: Christopher R. West, Esq.
James M. Smith, Esq.
John B. Howard, Esq.
County Board of Appeals of Balto. Co.
Thomas J. Hollings, Esq.

Page 13

John B. Howard, Esq.
County Board of Appeals of Balto. Co.
Thomas J. Hollings, Esq.

RE: 82-M-415 - HANLINE, INC. ET AL VS FORD MOTOR DEALERSHIP FACILITIES CO.
ON THE FOLLOWING: Thursday, April 20, 1983, 9:30 a.m.
Appeals 13 here

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to confirm calendars. (If n, of not receiving notice will not constitute reason for postponement.
POSTPONEMENTS: If the above date is not ar, able to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Grimm - 494-2497.

SETTLEMENT CONFERENCES: Counsel must secure the attendance of all parties necessary to effect a binding settlement, including clients and insurance representatives. THERE WILL BE NO EXCEPTIONS P.L.R. ORDER OF JUDGE FRANK E. CIGONE. Please direct all inquiries to the attention of John Adams.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

Page 14

CIRCUIT COURT FOR BALTIMORE COUNTY

ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21204-0754
January 24, 1983.

Kathy Rushton - 494-2660
Assignment - July - Motion
Marilyn Fennell - 494-2661
Assignment - Non-Jury - Motion
Freddie Grove - 494-2661
Assignment - Non-Jury - Motion
Assistant Clerk Typist

RECEIVED
BALTIMORE COUNTY
JAN 25 9 24 AM '83
BY: CLERK

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to confirm calendars. Claim of not receiving notice will not constitute reason for postponement.
POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Civil Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately.

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
December 15, 1982

James M. Smith, Esq.
Christopher R. West, Esq.
Suite 1544--The World Trade Center
Baltimore, Md. 21202

Re: Case No. 82-10-XSPHA
Ford Motor Dealership Facilities Co.

Dear Messrs. Smith & West:

In accordance with Rule 8-7 (a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the zoning appeal which you have taken to the Circuit Court for Baltimore County in the above matter within thirty days.

The cost of the transcript of the record must be paid by you. Certified copies of any other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you might file in court, in accordance with Rule 8-7 (a).

Enclosed is a copy of the Certificate of Notice; also invoice covering the cost of certified copies of necessary documents.

Very truly yours,

June Holmen
June Holmen, Secretary

Encls.

area or tract in which the subject property is located.¹

A hearing was held on July 9, 1981 before Jean M. H. Jung, Deputy Commissioner of Zoning for Baltimore County. At that hearing, testimony was taken and exhibits were introduced into evidence. Following the hearing, counsel for the Petitioners and counsel for the Protestants² submitted memoranda for consideration by the Deputy Zoning Commissioner.

On January 8, 1982, the Deputy Zoning Commissioner issued Orders granting the Petitions for Special Exception and Variance, and disposed of the Special Hearing issue as previously indicated. The Appellants in the present action appealed the Orders entered by the Deputy Zoning Commissioner to the County Board of Appeals on January 28, 1982. On February 23, 1982, Days Inn of America, Inc. exercised its option to purchase the subject property.

¹This issue was decided by the Deputy Zoning Commissioner in favor of the Appellee. The identical issue was also previously decided by the Board of Appeals in *In re Petition for Special Exception*, No. 72-186-- (Proposed Ramada Inn, Shavano Road), in which the Board interpreted the Section 248.4b area limitation to apply to the M.L.R. Zone in its entirety, not each individual parcel. The Appellants did not pursue this issue before the Board of Appeals, and have failed to raise it in their Memorandum on Appeal.

²Not all of the Appellants named in the instant appeal were parties before the Deputy Zoning Commissioner. At that point the only Protestants represented by counsel were Security Inn Associates, Hilltop Motor Inn, Inc., John T. Meushaw, Stephen D. Hansen and Frank E. Smith.

IN THE MATTER OF THE APPLICATION OF FORD MOTOR DEALERSHIP FACILITIES COMPANY FOR SPECIAL EXCEPTION for a Motel, FOR SPECIAL HEARING to approve a motel use in an MLR zone pursuant to Sec. 248.4b of the B.C.Z.R., and FOR VARIANCE from Sec. 409.2 a and b of the B.C.Z.R. NW/4 of Belmont Avenue, 366' NE of Security Boulevard 1st District

Zoning File No. 82-10-XSPHA

* * * * *

MARILYN A. METZ, et al.

Appellants

v.

DAYS INN OF AMERICA, INC.

Appellee

* * * * *

Docket 15
Folio 20
File No. 82-M-415

* IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

APPELLEE'S MEMORANDUM ON APPEAL

Days Inn of America, Inc., Appellee, by its attorneys, John B. Howard and Cook, Howard, Downes & Tracy, files this Memorandum on Appeal pursuant to Rule 812 of the Maryland Rules of Procedure.

STATEMENT OF THE CASE

This is an appeal from an opinion and Order of the Board of Appeals for Baltimore County, affirming the Order of the Deputy Zoning Commissioner, granting the Petition of Appellee, Days Inn of America, Inc., for a Special Exception for a motel use in an M.L.R. Zone pursuant to Section 248.4 b of the Baltimore County Zoning

A hearing was held before the Board of Appeals for Baltimore County on April 28, 1982, and continued to conclusion on July 7, 1982. At that hearing, the Appellee presented four witnesses in support of the proposed use, and the Appellants presented three witnesses in opposition thereto. After each party submitted a Memorandum in support of their respective positions, a final argument was held on August 25, 1982.

In a written decision dated November 16, 1982, the County Board of Appeals granted the Special Exception, Variance and determined the Special Hearing issue in the manner requested by the Appellee. In its decision the Board determined that the Appellee met its burden of proving that the proposed use complies with Section 502.1 of the B.C.Z.R. Further, the Board held that under the more reasonable interpretation of Section 248.4b and c of the B.C.Z.R., the Appellee met its burden of proof by presenting sufficient evidence to support a finding that the proposed use is demonstrably an appropriate service to the industries existing, planned or normally to be expected to locate within the M.L.R. Zone and the contiguous industrial zones. Finally, the Board found that "the planned 167 parking spaces were not only adequate but indeed more than sufficient to service the proposed use."

It is from the Board of Appeal's decision that this appeal was taken.

ARGUMENT

I.

THE BOARD OF APPEALS' DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND, THEREFORE, MUST BE AFFIRMED.

Regulations (the "B.C.Z.R.") and the Petition for a Variance to permit 167 parking spaces in lieu of the required 189 parking spaces. The Deputy Zoning Commissioner's decision was issued on January 8, 1982 and appeal to the Board of Appeals by the Appellants, on January 28, 1982. The Board of Appeals issued its decision on November 16, 1982. The Appellants filed this Appeal on December 14, 1982.

QUESTIONS PRESENTED

- I. What is the applicable standard by which the Board of Appeals' decision must be reviewed on appeal?
- II. Is the prevention of competition a proper element of zoning?
- III. Was there sufficient evidence in the record to make fairly debatable the question of whether the Appellee's proposed motel can be supported by, and is a demonstrably appropriate service to, industries existing, proposed or normally expected to be located within the contiguous area of 25 acres or more of industrial zoning, which area includes, but is not limited, the M.L.R. Zone in which the proposed use is located?
- IV. Was there sufficient evidence in the record to make fairly debatable the question of whether the proposed motel would create a potential fire hazard and would be detrimental to the general welfare of the locality involved?
- V. Is the Appellee precluded from asserting hardship as the basis for the requested parking variance by virtue of the fact that the Appellee knew of the

In their Memorandum on Appeal the Appellants raised three issues as the basis for requesting that the court reverse the decision of the County Board of Appeals: (i) There was insufficient evidence to support the Board's finding that the proposed motel will primarily serve the 25 acres or more of industrial zoning; (ii) There was insufficient evidence to support the Board's finding that the proposed motel will not create a potential fire hazard or be detrimental to the general welfare of the locality involved; and, (iii) The Appellee is precluded from asserting hardship as the basis for the requested Variance.

Not surprisingly, the Appellants failed to identify the evidentiary standard applicable on appeal and the limited role of a court when exercising appellate review of a zoning decision. The scope of judicial review of a decision by an administrative agency is very narrow, in recognition of the fact that board members have expertise in a particular area and ordinarily should be free to exercise their discretion as such. Finney v. Halle, 241 Md. 224, 241 (1966). The courts in Maryland have consistently held that the correct test to be applied is "whether the issue before the administrative body is 'fairly debatable', that is whether its determination is based upon evidence from which reasonable persons could come to different conclusions." Sembly v. County Bd. of Appeals, 269 Md. 177, 182 (1973). (Emphasis added.) Upon a finding that the issues involved are fairly debatable and the evidence presented is sufficient to support the Board's decision, that decision must be upheld. Id. at 182.

necessity for such a variance prior to purchasing the property?

STATEMENT OF FACTS

Day Realty of South Carolina, Inc. obtained an option to purchase a 2.4 acre parcel of property on the northwest side of Belmont Avenue, 366' northeast of Security Boulevard, in Baltimore County, Maryland when it entered into an Offer and Purchase Agreement on January 12, 1981. Approximately 2.2 acres of the aforementioned property is located in a forty-nine and one-half (49.5) acre area which is zoned M.L.R.

On March 23, 1981 the original Petitions for a Variance and Special Exception in this case were filed. At that time, Ford Motor Dealership Facilities Company, as legal owner of the subject property, and Day Realty of South Carolina, Inc. (subsequently merged with Days Inn of America, Inc.) as the Contract Purchaser, were the Petitioners. They sought a Special Exception for a motel in an M.L.R. Zone, pursuant to Section 248.4b of the B.C.Z.R., and a Variance to permit 169 parking spaces in lieu of the required 190 spaces. (The Variance was amended, before the Board of Appeals, to permit 167 parking spaces in lieu of the required 189 spaces.) In conjunction with the foregoing Petitions, a Petition for a Special Hearing was filed on June 8, 1981, for a determination as to whether a Special Exception for a motel use in a M.L.R. Zone may be granted when the proposed use will occupy more than 15% of the subject property, but substantially less than 15% of the M.L.R.

In reviewing an administrative agency's decision on appeal that decision must be reviewed in the light most favorable to the agency; it is prima facie correct and carries with it a presumption of validity. E.g., Bulluck v. Pelham Woods Apts., 283 Md. 505, 513 (1978). The reviewing court may not substitute its judgment for that of the administrative agency. Germerko v. County Bd. of Appeals, 257 Md. 706, 711 (1970), Eger v. Stone, 253 Md. 533, 543 (1969). The party attacking the determination made by the agency must show that it was arbitrary and capricious. Germerko, 257 Md. at 711, Kirkman v. Montgomery Co. Council, 251 Md. 273, 276 (1968).

The Appellee submits that the decision of the Board of Appeals is supported by substantial evidence. Accordingly, under the standard of review set forth above, that decision must be upheld.

II.

THE APPELLANTS, WHOSE SOLE INTEREST IN PURSUING THIS ACTION IS TO PREVENT COMPETITION WITH THEIR ESTABLISHED BUSINESSES, LACK STANDING TO PROSECUTE THIS APPEAL.

Pursuant to Section 604 of the Charter of Baltimore County, standing to appeal a decision rendered by the Board of Appeals is limited to parties to the proceedings before the Board who are deemed aggrieved by the Board's decision. In this regard, the courts in Maryland and elsewhere have repeatedly, and unequivocally, held that a protestant whose sole interest in objecting to a zoning decision is to prevent competition with such protestant's established business, lacks standing as an aggrieved party. Kreatchman v. Farnsburg, 224 Md. 209, 222

of its "break-even" revenues from a proposed 900 acre contiguous zone. Thus Petitioner's Exhibit No. 1 demonstrates that only 222.5 room nights per month at a maximum would be generated by such a 900 acre contiguous zone while 4166 room nights per month would be needed just to "break even". (See Appellants' original Memorandum, page 9) Clearly therefore, the Appellee's own evidence conclusively proves that the motel would not "primarily" serve even a 900 acre contiguous zone. As discussed in the Appellants' original memorandum, moreover, the relevant contiguous industrial area is not a 900 acre zone but rather the 400 acres of M.L. and M.L.L.M. zoned land illustrated on the Appellee's Exhibit No. 4. (See Appellants' original Memorandum, pages 6, 7^{2/}) Therefore, it can be assumed that far less than even six percent of the lodgers needed by the motel in order to "break even" would be generated by the relevant 400 acre contiguous industrial area. Furthermore, as one can assume that the Appellee expects its motel to do somewhat better than merely "break even", the percentage of total motel revenues generated by the relevant 400 acre contiguous industrial area would decline yet further as motel revenues increased beyond the "break even" level. Thus, the Appellee's own evidence proves that far less than six percent of the motel's revenues would be generated by the contiguous industrial zone.

In response, the Appellee's memorandum argues that industries "normally expected to locate" in the contiguous industrial area should also be counted when determining whether the motel would primarily serve the contiguous industrial area. (See Appellee's Memorandum, pages 19, 20)

The testimony to which the Court's attention is directed by the Appellee (at pages 97-98 of the Transcript) merely consists of a statement that in the entire contiguous 400 acre industrial area, a total of three million square feet of space could be

^{2/}The Appellee contends (at pages 15-17 of its memorandum) that the relevant contiguous industrial area is about 950 acres. This tract encompasses the entire 400 acres that the Appellants concede is contiguous industrial land but also includes I.M. Districts which the Appellee admits are only "semi-industrial" as well as B.M., B.R., and B.L. districts which the Appellee has acknowledged to be "commercial-type zones". As the Appellants pointed out in their original memorandum (at pages 6-7), Section 259.2H of the Zoning Regulations distinguishes between "land zoned for industrial or semi-industrial use". Therefore, the only conclusion that can be drawn from the fact that Section 248.4 only refers to contiguous "industrial" zoning is that contiguous "semi-industrial" zoning was not intended to be included. The Appellants also stressed in their earlier memorandum that Sections 101, 253, and 256 of the Zoning Regulations define the term "industrial" in a fashion which excludes all commercial uses. Therefore, it would not be proper to consider contiguous "semi-industrial" or "commercial-type" zones as contiguous industrial zoning under Section 248.4. The Appellee's memorandum never offers any response to these points other than to urge that it would be "more reasonable" to include the additional acreage in the contiguous industrial zone.

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that people park in front of such emergency access points. (See Transcript, page 253) In fact, the Appellee has planned for parking spaces along the entire perimeter of the site other than at the single access point. (See Petitioner's Exhibit No. 3) The Appellant's expert conceded on cross-examination that if the cars that he had planned for were occupying these parking spaces, the fire equipment would not be able to use the curbs as a second means of access to the site. (See Transcript, page 192)

Unfortunately, despite the abundant testimony about the fire dangers at the hearing below, and despite the stressing of this peril by the Appellants' counsel during his closing argument, the County Board of Appeals totally ignored this issue in its opinion. It is submitted that, in view of the insistence by Mr. Moore of the need for a second means of access and the reiteration of this point by Mr. Lee, and in view of the inability of the Appellee's witnesses to suggest how the fire equipment would be able to gain access to the motel should the single planned access become blocked, this Court should find that the Appellee has not satisfied Section 502.1 of the Zoning Regulations which requires the Appellee to prove that the motel will not "create a potential hazard from fire, panic, or other dangers". (emphasis added) Clearly, until a second access is provided for, a potential danger from fire exists.

III. THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY ERRONEOUSLY GRANTED A PARKING VARIANCE WHERE THE APPELLEE VOLUNTARILY AND KNOWINGLY CREATED ITS OWN PRACTICAL DIFFICULTY AND UNREASONABLE HARDSHIP.

In its memorandum, the Appellee quotes the key language from the decision of the Maryland Court of Appeals in McLean v. Soley, 270 Md. 208, 215, 310 A.2d 783, 787 (1973):

"... this [self-imposed hardship] 'rule' is more strictly applied in 'use variance' cases than in cases of 'area variances', such as the one at bar. In other words, it has less significance where we are concerned with 'practical difficulty' than it does in the event of 'hardship' which usually characterizes the 'use variance' cases."

Thus, as the Appellee is aware, the self-imposed hardship rule has not been eliminated in area variance cases. It is merely of less significance. The question is whether the rule should be disregarded in this case.^{5/}

^{5/}The Appellants do not disagree with the Appellee's discussion (at pages 23-26 of its memorandum) that the general trend is away from a strict adherence to the self-imposed hardship rule in area variance cases. As the McLean decision states, however, this rule has not been discarded altogether. It is merely of less significance. It is submitted that this case is one instance when the rule should be applied.

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developed and that "the site in this general area is more than half developed". No information was adduced by the Appellee about when the development of the remaining space would occur. No testimony was elicited by the Appellee about which businesses were planning or expected to locate in the as yet undeveloped area or how many employees they would have. No questions were posed by the Appellee about whether the remainder of the contiguous industrial area would be occupied by firms that had a greater need of motel rooms than the firms that currently occupied the half of the 400 acres that had already been developed. Thus the only information imparted to the County Board of Appeals was that the contiguous industrial area was more than half developed.

Based on the record developed by the Appellee, it would have been utterly impossible for the County Board of Appeals to have concluded, other than through the rankest speculation, that the as-yet undeveloped space in the contiguous industrial area would produce enough motel users to enable the proposed motel complex to "primarily" serve the contiguous industrial area. Even if the assumption were to be made that if and when the undeveloped half of the contiguous industrial area should be fully developed at some point in the indefinite future, it would generate as many room nights per month as the developed half of the contiguous industrial area, this assumption only would mean that far less than twelve percent of the motel's business would come from the contiguous industrial area.^{3/}

The Appellee's memorandum (at pages 17 and 18) also refers to another fact which the Appellee insists proves that the motel would primarily serve the contiguous industrial area. Reference is made to the testimony of one of the Appellee's witnesses that "seventy to eighty percent of our business would be of a commercial nature". (See Transcript, page 26) The Appellee's witness, however, provided no further details

^{3/} As the Appellee acknowledges on page 14 of its memorandum, the "express purpose" of an M.L.R. Zone is to support the industries in the contiguous industrial area. Thus, a motel which is expected to derive far less than six percent of its business from this area contiguous industrial area (or far less than twelve percent of its business from this area even after it is fully developed at some indefinite time) has no place in an M.L.R. Zone. From the Appellee's own evidence it is clear that the proposed motel would not primarily serve the contiguous industrial area but would attract over ninety-four percent of its business from elsewhere. Therefore, instead of serving as a transitional band between the industrial area and the residential neighborhood where several of the Appellants live, the proposed Days Inn motel would only aggravate the deleterious effect of the nearby industrial area on the residential neighborhood by attracting additional thousands of lodgers and diners who otherwise would have no reason to come into the M.L.R. Zone.

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In McLean, supra, the Court of Appeals found that "this is a close case" but nevertheless decided not to apply the self-imposed hardship rule because the applicant for the variance had presented extensive testimony relating to the detrimental effects that a denial of the variance would have. Based on its evaluation of the alternatives, the Court decided that the self-imposed hardship rule should not preclude the granting of the variance sought.

In McLean, supra, the Court held that the case was controlled by Loyola Loan Association v. Buchanan, 227 Md. 243, 176 A.2d 355 (1961) in which the applicant for the variance had established that if the variance were denied, it would be restricted to a building of uneconomic size. Under those circumstances, the Court held in Loyola that the self-imposed hardship rule should not be applied.

While in both McLean and Loyola, the applicant for the variance had proved that if the variance were denied, the applicant would have been placed in an economically unviable position or in an environmentally unsound position, in this case the Appellee never made any attempt to show whether it would be possible to build a slightly smaller motel which would comply with the County parking regulations. No testimony whatsoever was offered about the economic viability of a smaller motel or a motel without the attached all-night restaurant.^{7/}

If the Appellee had presented this kind of testimony and established that a smaller motel complex in compliance with the County parking regulations would not be economically viable, then under the authority of McLean and Loyola, the County Board of Appeals might have been entitled to make a finding of "practical difficulty" and disregard the self-imposed hardship rule. The Appellee, however, failed to supply the County Board of Appeals with any proof that a less intensive plan of development would not be

^{7/}The Appellee suggests (at page 26 of its memorandum) that because it did not "purchase" the property until February 23, 1982, the self-imposed hardship rule is inapplicable. The Appellee may not have "settled" on the property until February 23, 1982, but the applicable Offer and Purchase Agreement was introduced as Protestants' Exhibit No. 5. "The Offer and Purchase Agreement provides that within a maximum of sixty (60) days following January 12, 1981, the agreement would become 'a binding agreement . . . between Seller and Purchaser'". In Maryland, under the doctrine of equitable conversion, therefore, by no later than March 12, 1981, the Appellee (or its predecessor in interest) was the equitable owner of the property. Motel of Maryland, Inc. v. Baltimore County, 244 Md. 306, 223 A.2d 609 (1966). This was while the original application for the variance was still pending.

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specifying how much of this "commercial" business would be generated by the contiguous industrial zone as distinct from other areas or from drive-in commercial traffic from Interstate 695 (the Baltimore Beltway) which is located within plain view of the site of the motel. In fact, when pressed on cross-examination, this witness admitted that the relevant business market of the motel would be the "three-mile area around that motel". (See Transcript, page 40) The Appellants' Exhibit 3 shows that the area within three miles of the motel sweeps widely beyond the contiguous industrial area and includes portions of Howard County, large sections of Baltimore City, and such noncontiguous "commercial" areas as the Edmondson Avenue commercial area, the Liberty Road commercial corridor, the Security Square Mall commercial complex, the Westview Shopping Center commercial complex, and all of the commercial area in Catonsville and along Route 40 West. Based on this testimony, therefore, it would again have been utterly impossible for the County Board of Appeals to have concluded, other than through the rankest speculation, that the motel would primarily serve the contiguous industrial zone.

The Appellee's memorandum (at pages 19) also asserts that one of the primary considerations that attracted the Appellee to the site of its proposed motel was the nearby industrial development. In fact, however, the portion of the record referred to actually consists of various statements about how the Appellee's first priority was to locate its motel next to its competitors. (See Transcript, pages 145-148) Certainly this testimony does not remotely sustain the Appellee's burden of proving that its motel would primarily serve the contiguous industrial area.

The Appellant's memorandum concludes its discussion of this issue by citing (at pages 19, 20) general testimony that there are two industrial parks near the proposed motel and that they contain between 180 and 200 businesses. Once again, however, no attempt was made to show that the motel would primarily serve these industrial areas. In fact, a telephone survey of these businesses was the genesis of the Petitioner's Exhibit No. 1 which established that these businesses would only generate enough lodgers to provide the motel with less than six percent of its "break even" revenues.

Therefore, contrary to the Appellee's insistence that a fair reading of the transcript shows that enough evidence was adduced to make it "fairly debatable" that the motel would primarily serve the contiguous industrial area, the fact is that the Appellee introduced absolutely no proof from which the County Board of Appeals could possibly

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economically feasible. Instead, the Appellee had unilaterally decided to build its five story motel and restaurant facility on its 2.34 acre tract despite the admission by Counsel for the Appellee that "a standard exists in the motel industry which requires a site of four to six acres before construction of a motel is considered feasible." (See Petitioner's Memorandum in Support of Petitions, page 4). Once the Appellee allotted all of the leftover land on its 2.34 acre plot to parking and found that it was twenty-two spaces short, it evidently made no effort at all to scale down the size of the proposed development or to prove that a less intensive development was not viable. Under these circumstances, it is submitted that the Appellee is not entitled to a variance under Section 307 of the Zoning Regulations.

IV. THE STANDING ISSUE.

The Appellee inexplicably devotes four pages of its memorandum to an attack on the standing of the Appellants. The standing issue has been independently raised by the Appellee in a Motion To Dismiss which the Appellants have strongly opposed and which is scheduled to be argued before the Court on April 21, 1983, a week before the argument is scheduled on this appeal. As the question of standing should have been resolved before this appeal is heard, the portion of the Appellee's memorandum addressing the question of standing is completely irrelevant. Because this section of the Appellee's memorandum is obviously intended to prejudice the Court against the Appellants, however, a brief response is necessary.

Despite the vehement assertion of the Appellee that the only interest of the Appellants is to stifle competition, the fact is that the only party which has ever sought to raise the issue of competition in these proceedings is the Appellee. Thus, the Appellee sought to introduce testimony about the price competitiveness between the proposed Days Inn and the other motels located in the general vicinity. (See Transcript, pages 13, 14) At that point, counsel for the Appellants objected that any evidence about competition was irrelevant and asserted that "price competitiveness has nothing to do with the issues before this Board We certainly do not choose to make that issue (competition) ourselves. We envision litigating this request solely on the basic requirements found in Baltimore County Zoning Regulations." (See Transcript, pages 13, 14) It was over the objection of the Appellants, therefore, that the Appellee pressed the issue of competition.

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have concluded that the motel would primarily serve the contiguous area of industrial zoning. To the contrary, all of the evidence introduced by the Appellee establishes that, although the motel might derive a small percentage of its lodgers from the contiguous industrial area, it would draw the vast majority of its lodgers from elsewhere.^{4/}

II. THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY ERRONEOUSLY GRANTED A SPECIAL EXCEPTION FOR THIS MOTEL ALTHOUGH THE RECORD CLEARLY REFLECTS THAT THE MOTEL IN QUESTION WOULD CREATE A POTENTIAL FIRE HAZARD AND WOULD BE DETRIMENTAL TO THE GENERAL WELFARE OF THE LOCALITY INVOLVED.

The Appellee seeks to minimize the fire danger posed by its plans to build only one entrance to its motel complex by making reference to the testimony of its two paid experts who expressed their opinions that the fire danger was not worrisome to them.

The only dispassionate witness to testify about the fire hazards presented by the motel was C. Richard Moore, the Assistant Traffic Engineer of the Baltimore County Department of Traffic Engineering. Mr. Moore stated that his department had taken the position that there should be a second entrance to the site. (See Transcript, page 251) He explained that a second means of access was important in the event that the primary access should become blocked during a fire or other emergency. (See Transcript, pages 252, 253)^{5/}

One of the Appellee's experts had suggested that if the only access should become blocked in a fire, the fire equipment could just jump over the curb onto the motel site. (See Transcript, page 171) Mr. Moore responded that the problem with this idea is

^{4/}The Appellee's memorandum devotes four pages (pages 11-14) to a contention that when Section 248.4c of the Zoning Regulations states that the uses which may be allowed in an M.L.R. Zone must be "located within the M.L.R. Zone so as to assure their services being rendered primarily to the industries therein", the word "therein" does not refer to its logical antecedent, "the M.L.R. Zone", but rather to language in a different part of the Zoning Regulations. This contention violates fundamental precepts of statutory interpretation, as more fully discussed in the Appellants' original memorandum (at pages 10, 11). In any event, even if the Appellee's strained interpretation of "therein" should be accepted, the Appellee merely would have established that it was required to prove that the proposed motel would primarily serve the area of contiguous industrial zoning. As Section I of this Reply Memorandum has shown, the Appellee failed to sustain its burden of proof in that regard.

^{5/}The Appellee incorrectly asserts that the only testimony offered by the Appellants on the fire hazard question was that of Mr. Moore. (See Appellee's Memorandum, page 211) Mr. Paul Lee, a registered professional engineer, also testified about the importance of a second means of access in the event of a fire. (See Transcript, pages 209, 210)

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Although the Appellants have consistently insisted that the competition is totally irrelevant to this case, the Appellee has seized every opportunity to claim that this is a case like Kreatchman v. Ramsburg, 224 Md. 209, 167 A.2d 345 (1961) in which the protestant's "only expressed opposition to the [rezoning] application was fear of competition from the new proposed shopping center." Id. at 167 A.2d 350. Nothing could be further from the truth. The only times during this case that the question of competition has been raised, it has been raised by the Appellee or its counsel and over the objection of the Appellants.

Kreatchman and the other cases cited by the Appellee merely hold that zoning decisions cannot be made on the grounds of encouraging or discouraging competition. These decisions do not hold that neighboring landowners are precluded from participating in the zoning process in the event that they are arguably competitors of the petitioning party. Apparently, the Appellee is of the opinion that all arguable competitors should be shut out of the zoning process and disqualified from any participation at all. There is no support whatsoever for this proposition.

Furthermore, one of the Appellants who owns a personal residence just down the street from the site of the proposed motel and all-night restaurant, Frank J. Metz, Jr., appeared before the County Board of Appeals and disclaimed any interest in either of the two Appellants which are arguable competitors of the Appellee. Mr. Metz testified at some length about his strong opposition to the motel complex and the detrimental impact that he saw it having on his neighborhood. (See Transcript, pages 221-236) The allegation of the Appellee that the Appellants have one true purpose in pursuing this appeal, namely to prevent competition, is utterly unsupportable in view of the obvious and unchallenged sincerity of Mr. Metz.

By repeatedly insisting that the Appellants are proceeding with an "improper purpose" despite any evidence to sustain this allegation, the Appellee seems to be oblivious to the fact that various of the homeowners and businesses in the neighborhood of the proposed motel do not welcome the Appellee's attempt to squeeze what should be a 4 acre motel into 2.34 acres while in the process disrupting and degrading the neighborhood. The sincerity of the Appellants will be established at the hearing on the pending Motion To Dismiss, and the Appellee's invitation to this Court to ignore the ruling on the Motion to Dismiss and to "consider this case in the light of the [Appellant's alleged] improper purpose" is offensive and should be declined.

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**Court of Special Appeals
of Maryland**

No. 1101, SEPTEMBER TERM, 1983

MARILYN A. METZ, ET AL.
vs.
DAYS INN OF AMERICA, INC.

DISPOSITION OF APPEAL IN COURT OF SPECIAL APPEALS:
February 6, 1984: Line dismissing appeal filed by counsel for appellants.

TRANSCRIPT
RETURNED TO Clerk, Circuit Court for Montgomery County,
Baltimore,
Rockville, MD 20850 Date February 6, 1984

BY HAND DELIVERED
HOWARD E. FRIEDMAN, CLERK

REMARKS:
20 2/3/84
17 2/3/84
am

FILED FEB 23 1984

IN THE COURT OF
SPECIAL APPEALS OF MARYLAND
MARILYN A. METZ, et al.
Appellants
v.
DAYS INN OF AMERICA, INC.
Appellee
No. 1101
September Term 1983

**JOINT MOTION TO EXCLUDE EXHIBITS
FROM PRINTED RECORD EXTRACT**

Now comes Days Inn of America, Inc. Appellee, by its attorneys John B. Howard and Cook, Howard, Downes & Tracy, and Marilyn A. Metz, et al. Appellants, by their attorneys Christopher R. West, James M. Smith and Gebhardt & Smith, and move this Court to allow the parties to omit certain parts of the record from the printed record extract, and for reasons say the following:

1. This is an appeal from an order of the Circuit Court for Baltimore County affirming the decision of the Baltimore County Board of Appeals, granting Appellee a special exception for a motel and certain accessory uses and a variance for parking.
2. Several large exhibits, Petitioner's Exhibit Nos. 3, 4, 5, 6, 7 and 10, were introduced at the hearing

MANDATE
Court of Special Appeals of Maryland

No. 1101, September Term, 1983

MARILYN A. METZ, ET AL.
v.
DAYS INN OF AMERICA, INC.
February 6, 1984: Line dismissing appeal filed by counsel for appellants.
February 6, 1984: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: FOR BALTIMORE COUNTY
Record 30.00
Stenographer's Costs 102.50

In Court of Special Appeals:
Filing Record on Appeal 30.00
Printing Brief for Appellant 283.20
Reply Brief 2769.60
Portion of Record Extract - Appellant
Printing Brief for Cross-Appellee

Printing Brief for Appellee None
Portion of Record Extract - Appellee
Printing Brief for Cross-Appellant

STATE OF MARYLAND, Sec:
I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this 6th day of February, A.D. 1984.

Clerk of the Court of Special Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE.

before the County Board of Appeals by the Appellee, which were material and relevant to the County Board of Appeals' decision.

3. The Appellee has designated these Exhibits to be included in the joint record extract pursuant to Maryland Rule 1028(c).

4. The legibility of these exhibits would be impaired if reduced to a size for inclusion in the printed record extract and such reduction is generally impracticable.

5. These Exhibits are to be included in the record of the case and will be available for the Court's consideration.

WHEREFORE, the parties request this Court to allow Petitioner's Exhibit Nos. 3, 4, 5, 6, 7 and 10 to be excluded from the printed record extract although considered to be presented as a part of the Appeal record.

/s/
John B. Howard
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorney for the Appellee
Christopher R. West

IN THE COURT OF
SPECIAL APPEALS OF MARYLAND

MARILYN A. METZ, et al.
Appellants
v.
DAYS INN OF AMERICA, INC.
Appellee
No. 1101
September Term 1983

LINE

Mr. Clerk:
Appellants, Marilyn A. Metz, Frank J. Metz, Jr., Security Inn Associates, Mr. and Mrs. James Kunkel, August S. Dietz and Nancy J. Dietz, hereby request that you dismiss this appeal with prejudice.

JAMES M. SMITH

CHRISTOPHER R. WEST
Gebhardt & Smith
Ninth Floor
The World Trade Center
Baltimore, Maryland 21202

Counsel for the Appellants

Certificate of Service

I HEREBY CERTIFY that on this day of February, 1984, I mailed, postage prepaid, a copy of the foregoing Line to John B. Howard, Esquire, 210 Allegheny Avenue, Towson, Maryland 21204, Counsel for the Appellee.

CHRISTOPHER R. WEST

M-00.41

JAMES M. SMITH
James M. Smith
Gebhardt & Smith
World Trade Center
Baltimore, Maryland 21202
Attorneys for Appellants

IN THE COURT OF
SPECIAL APPEALS OF MARYLAND
MARILYN A. METZ, et al.
Appellants
v.
DAYS INN OF AMERICA, INC.
Appellee
PHC No. 379
September Term 1983

**ORDER TO EXCLUDE EXHIBITS
FROM PRINTED RECORD EXTRACT**

The Joint Motion of the parties having been considered, and in good cause appearing therein, it is her by:

by the Court of Special Appeals of Maryland
ORDERED that the Appellee's Exhibit Nos. 3, 4, 5, 6, 7 and 10 designated for inclusion in the joint record extract be excluded from the Printed Record Extract, although Exhibits shall be considered as a part of the Record on Appeal.

CHIEF Judge

Dated: October 13, 1983

Frank A. Lafalce, Jr., Esquire
John B. Howard, Esquire
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204

Christopher R. West, Esquire
James M. Smith, Esquire
World Trade Center
Baltimore, Maryland 21202

Re: Marilyn A. Metz et al. v. Days Inn of America, Inc.
No. 1101, September Term, 1983

Dear Counsel:

Your motion to exclude the reproduction of certain exhibits in the record extract in the above captioned case was granted by Order of this Court dated October 13, 1983. The Court will view these exhibits directly from the record.

Very truly yours,

Robert J. Booz
Chief Deputy Clerk

RJB:bcm

IN THE MATTER OF THE APPLICATION
OF FORD MOTOR DEALERSHIP
FACILITIES COMPANY FOR SPECIAL
EXCEPTION FOR A MOTEL,
FOR SPECIAL HEARING to approve a
motel use in an M.L.R. zone pursuant
to Sec. 248.4b of the B.C.Z.R., and
FOR VARIANCE from Sec. 409.2 a and b
of the B.C.Z.R. NW/4 of Belmont
Avenue, 365' NE of Security Boulevard
1st District

Zoning File No. 82-10-XSPHA

MARILYN A. METZ, et al.

Appellants

v.

DAYS INN OF AMERICA, INC.

Appellee.

APPELLANTS' MEMORANDUM ON APPEAL

Appellants, by their attorneys, James M. Smith, Christopher R. West, and Gebhardt & Smith, file this Memorandum on Appeal pursuant to Rule B12 of the Maryland Rules of Procedure.

STATEMENT OF THE CASE

This is an appeal by Appellants, Marilyn A. Metz, Frank J. Metz, Jr., Frank E. Smith, Stephen D. Hansen, Security Inn Associates, John I. Meushaw, Hilltop Motor Inn, Inc., Mr. and Mrs. James Kunkel, August S. Dietz, and Nancy J. Dietz, from an Opinion and Order entered on November 16, 1982 by the County Board of Appeals of Baltimore County granting a Special Exception and a parking variance to the Appellee, Days Inn of America, Inc.

QUESTIONS PRESENTED

1. Did the County Board of Appeals of Baltimore County erroneously grant a Special Exception for a motel in an M.L.R. Zone although the record contains absolutely no evidence establishing that the services of such a motel would be rendered "primarily" to industries within the relevant contiguous area?

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Docket: 5
Folio: 20
File No.: 82-M-415

2. Did the County Board of Appeals of Baltimore County erroneously grant a Special Exception for this motel although the record clearly reflects that the motel would create a potential fire hazard and would be detrimental to the general welfare of the locality involved?

3. Did the County Board of Appeals of Baltimore County erroneously grant a parking variance where the Appellee voluntarily and knowingly created its own practical difficulty and unreasonable hardship?

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES, AND REGULATIONS

Relevant to this appeal are the following sections of the Baltimore County Zoning Regulations (B.C.Z.R., Bill No. 56, 1961): Sections 101 (the word "Industrial"), 307, 247, 248, 253, 256, 259, 409, and 502. The pertinent text of each of these provisions is included in an appendix.

INTRODUCTORY STATEMENT OF FACTS

On January 12, 1981, Day Realty of South Carolina, Inc. (hereinafter "Day Realty") entered into an Offer and Purchase Agreement granting it the option to purchase approximately 2.34 acres of land on the northeast side of Belmont Avenue 366 feet northeast of Security Boulevard. (See Transcript, page 104; Protestants' Exhibit No. 5; May 27, 1981 Petition of Ford Motor Dealership Facilities Co.) Day Realty planned to build a motel on this site, and promptly retained the Baltimore County land use planning firm of Daft, McCune & Walker to perform various studies and render other professional services in connection with the project. (See Transcript, page 245) Shortly thereafter, Daft, McCune & Walker advised Day Realty that it would be necessary to procure a zoning variance in order to develop the property as planned. (See Transcript, pages 246, 247) Notwithstanding its knowledge of this fact, Day Realty's successor corporation, Days Inn of America, Inc. (hereinafter "Days Inn") exercised the option and settled on the property in February, 1982. (See Transcript, pages 27, 31, 63)

The property in question is located in an M.L.R. (Manufacturing Light Restricted) Zone under the Baltimore County Zoning Regulations (B.C.Z.R., Bill No. 56, 1961) (hereinafter "the Zoning Regulations"). On this small 2.34 acre plot, Days Inn proposes to build two five-story elevator motel structures containing a total of 144 rooms

(See Transcript, pages 29, 42, 66; Petitioner's Exhibit No. 3). In addition, Days Inn intends to build a twenty-four hour restaurant, a gift shop, an office with a check-in and registration area, a swimming pool, a large storage facility for the restaurant and a room to be used for pinball machines. (See Transcript, pages 30-32) Because of the size of these buildings compared to the small size of the property, there is only room left to squeeze 167 parking spaces onto the property instead of the 189 spaces required by the Zoning Regulations. (See Transcript, page 35) The result of the proposed development would be to pave over or build on virtually every square foot of the property. (See Petitioner's Exhibit No. 3)

Before Days Inn could commence construction, it was required to obtain a Special Exception under Section 248.4 of the Zoning Regulations which permits commercial uses such as motels to be located in M.L.R. Zones when certain conditions are satisfied. Days Inn was also required to obtain a variance from Sections 409.2a and 409.2b of the Zoning Regulations in order to gain the right to build twelve percent (12%) fewer parking spaces than are required by the Zoning Regulations.

ARGUMENT

I. THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY ERRONEOUSLY GRANTED A SPECIAL EXCEPTION FOR A MOTEL IN AN M.L.R. ZONE ALTHOUGH THE RECORD CONTAINS ABSOLUTELY NO EVIDENCE ESTABLISHING THAT THE SERVICES OF SUCH A MOTEL WOULD BE RENDERED "PRIMARILY" TO INDUSTRIES WITHIN THE RELEVANT CONTIGUOUS AREA.

Section 248.4 of the Zoning Regulations clearly and succinctly sets forth the uses which may be permitted by Special Exception on property which is zoned M.L.R. Section 248.4b provides that a motel is a permissible use in an M.L.R. Zone only if: 1) the motel is located within an M.L.R. Zone which is part of a contiguous area of at least twenty-five (25) acres of industrial zoning; and 2) "the specific use proposed is demonstratively an appropriate service to industries existing, planned or normally to be expected to be located therein."

^{1/}Section 249.4b of the Zoning Regulations provides in relevant part as follows:

The following commercial uses, when within an M.L.R. Zone which is part of a contiguous area of 25 acres or more of industrial zoning and if the specific use proposed is demonstratively an appropriate service to industries existing, planned or normally to be expected to be located therein; and in no case shall the combined tract areas developed for one or more of these services commercial uses occupy more than 15% of M.L.R. tract in which they are located: . . . Motel

and B.R. zones located within I.M. zones as "semi-industrial", the fact remains that Section 248.4 only refers to contiguous "industrial" zoning. This section does not make any reference to contiguous "semi-industrial" zoning. Thus, since the Zoning Regulations explicitly distinguish "industrial" from "semi-industrial" use, the only inference that can be drawn from the omission of the term "semi-industrial" from Section 248.4 is that contiguous "semi-industrial" zoning was not intended to be included. Furthermore, Section 247 of the Zoning Regulations states that the purpose of the M.L.R. zones is to serve as "transitional bands between residential or institutional areas and M.L. or M.H. Zones". In light of this language, it is submitted that the "contiguous industrial zoning" referred to in Section 248.4 merely consists of contiguous M.L. and M.H. zones.

As the Appellee's Exhibit No. 4 shows, there are no M.H. zones and only four hundred acres of M.L. and M.L.I.M. zoned land contiguous to the M.L.R. Zone. (See also Transcript, pages 82-85) Therefore, the relevant contiguous area of industrial zoning consists of four hundred acres adjacent to the forty-nine acre M.L.R. Zone (See Transcript, page 105)^{4/}

C. The Evidence Introduced by the Appellee

A great deal of testimony relating to the source of the clientele of the motel was adduced before the County Board of Appeals. None of the testimony, however, can be said to even inferentially establish that the motel will "primarily" serve the M.L.R. Zone and the contiguous four hundred acre industrial area, and much of the testimony introduced by the Appellee itself is flatly inconsistent with any such contention.

The Director of Development of Days Inn, Mark Smith, testified that the Appellee was attracted to Baltimore because it has traditionally been very strong in the Interstate 95 corridor and takes people "constantly back and forth between New England and vacation spots in Florida". (See Transcript, page 11) Days Inn hopes to pick up its customers on Interstate 95 and then pass them along from one motel to another up and down the corridor. (See Transcript, pages 49, 50) The site chosen for the proposed motel is in view of the Baltimore Beltway (See Transcript, page 58), and the accessibility and visibility of the site were important considerations in its selection. (See Transcript, page 59)

^{4/}It should be noted that the County Board of Appeals also found that about four hundred acres of industrially-zoned land is contiguous to the site. (See Opinion of November 16, 1982, page 2)

Section 248.4c of the Zoning Regulations thereafter makes clear that, in order for a Petitioner to demonstrate that a proposed motel is "an appropriate service" to industries in the M.L.R. Zone, such a Petitioner must establish that the motel's services will be rendered "primarily to the industries therein". (emphasis added)^{2/}

As counsel for the Appellee contended before the County Board of Appeals, "one of the tests or burdens we have here is to show that this motel is primarily oriented to serve the twenty-five acres or more of contiguous industrial zoning". (emphasis added) (See Transcript, page 15) Subsections A, B, and C below accept this contention of the Appellee and show that, despite this acknowledgement of its burden in this regard, the Appellee surprisingly failed to adduce any testimony or introduce any exhibits which even inferentially show that the proposed motel will "primarily" serve the industries within the contiguous industrial zoning.^{3/}

Indeed, as discussed more fully below, the Appellee's own witnesses admitted that the actual business market from which the motel would draw its customers was the area within a radius of three miles of the motel. (See Transcript, page 40) This vast area sweeps broadly beyond the contiguous industrial area and even includes portions of Howard County and Baltimore City. When pressed on how many customers of the motel would come from the contiguous industrial area, the Appellee introduced an exhibit which shows that less than six percent of the lodgers needed for the motel to merely break even financially would be drawn from nearby businesses. (See Petitioner's Exhibit No. 1) Thus, not only will it be shown that the Appellee failed to meet its burden of proving that the motel would "primarily" serve the contiguous industrial area, but in fact, it will be shown

^{2/}Section 248.4c of the Zoning Regulations provides in relevant part as follows:

In order that the above-listed uses in sub-sections a and b hereof will be located within the M.L.R. Zone so as to assure their services being rendered primarily to the industries therein, no building or structure connected with such commercial uses may be within 100 feet of the right-of-way of an existing or proposed major street. (emphasis supplied)

^{3/}The Appellee has contended throughout these proceedings that the word "therein" in Section 248.4c refers to the 25 acres or more of contiguous industrial zoning and thus that the Appellee merely had the burden to prove that the motel would primarily serve the contiguous area. The Appellants have contended throughout these proceedings that the word "therein" in Section 248.4c refers to its logical antecedent, "the M.L.R. Zone" and thus that the Appellee bore the burden of proving that the motel would primarily serve the M.L.R. Zone alone. This point will be discussed more fully at subsection D below. For purpose of subsections A, B, and C, however, the Appellee is given the benefit of the doubt, and it is assumed that "therein" means not only the M.L.R. Zone but all contiguous industrial zoning.

that the Appellee's own proof conclusively establishes that the motel would not primarily serve the contiguous industrial area.

A. The Appellee's Burden of Proof

The Maryland courts have frequently held that an applicant for a Special Exception bears "the burden of adducing testimony to support a finding that the statutory criteria for a special exception have been met". Board of County Commissioners for Prince George's County v. Brown, 253 Md. 632, 253 A.2d 883, 887 (1969); Board of County Commissioners for Prince George's County v. Lightman, 251 Md. 86, 246 A.2d 261 (1968); Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 73 A.2d 491 (1950). As the Maryland Court of Appeals held in Board of County Commissioners for Prince George's County v. Luria, 249 Md. 1, 3, 238 A.2d 108, 109 (1968),

It is our view that such findings [that each of the requisites contained in the county ordinance for the granting of a Special Exception have been met] must be based on testimony, and that the applicant assumes the burden of adducing such testimony, even in a prima facie case.

The Maryland courts have also held that "as a general rule, exceptions are granted sparingly and under exceptional circumstances". Marino v. City of Baltimore, 215 Md. 206, 137 A.2d 198, 202 (1957). (emphasis supplied)

In this case, therefore, in order for the Appellee to establish its entitlement to a Special Exception pursuant to Section 248.4 of the Zoning Regulations, it bore the burden of adducing testimony that the motel would primarily serve the industries within the M.L.R. Zone and the relevant contiguous industrial area.

In this regard, the word "primarily" assumes a certain significance. No Maryland cases have been located defining this word, but the federal courts have frequently been called upon to define it, and the Supreme Court has held that "primarily" means "of first importance" or "principally". Malat v. Riddell, 383 U.S. 569, 572, 86 S.Ct. 1030, 1032, (1966). More recently, another federal court considered how the word "primarily" should be defined in terms of numbers and held as follows:

"Primarily" means simply "of first importance," "principally." Malat v. Riddell, 383 U.S. 569, 86 S.Ct. 1030, 16 L.Ed.2d 102 (1966); Municipal Bond Corp. v. C. I. R., 341 F.2d 683 (8th Cir. 1965). In terms of numbers, primarily means a majority, a numerical plurality. Even accepting for purposes of argument the

defendant's suggestion that tools held for rental purposes which may be expected to be "involuntarily converted" on a regular basis must be considered "held for sale," the presence of "primarily" in § 1231 would make difficult a resolution of that section's application to involuntary conversions of rental tools where anything less than 50% of tool rentals resulted in lost or irreparably damaged tools. Deltide Fishing and Rental Tools, Inc. v. U.S., 279 F.Supp. 661, 670 (E.D. La. 1968)

Therefore, in the context of the instant case, the Appellee bore the burden of establishing that a majority of its prospective lodgers would come from the industries in the M.L.R. Zone and the contiguous industrial area.

B. The Relevant Contiguous Area of Industrial Zoning

Throughout the proceedings below, the Appellee attempted to impart the broadest possible definition to the word "contiguous" and urged that the County Board of Appeals should find that a large swath of land near the M.L.R. Zone is "contiguous industrial zoning".

One tract that the Appellee advanced as industrially zoned land was the Social Security complex in Woodlawn which the Appellee's witness conceded is zoned D.R.3.5 (See Transcript, page 91) Of course, this complex consists of office buildings. Section 101 of the Zoning Regulations defines "industrial" as consisting of *inter alia*, "any use listed in Paragraph 253.1A other than Item 33". Item 33 is "Offices or Office Buildings". Therefore, there can be no question but that the Social Security office complex is not "industrial", and D.R. 3.5 is certainly not industrial zoning by any conceivable definition.

The Appellee also contended that areas zoned B.M. (Business Major), B.R. (Business Roadside), and B.L. (Business Local) which the Appellee conceded are "commercial type zones" should nonetheless be included in the contiguous industrial land. (See Transcript, page 91) There is no support for this proposition. Sections 253 and 256 of the Zoning Regulations, which list the uses defined as "industrial" in Section 101, do not include any commercial uses.

Appellee also made a more sophisticated argument that certain other B.M. and B.R. zones onto which an I.M. District has been superimposed should be found to be "semi-industrial" zoning under Section 239.2H of the Zoning Regulations. (See Transcript, page 88) Section 259.2H, however, specifically distinguishes between "land zoned for industrial or semi-industrial use". Assuming that the Zoning Regulations do classify B.M.

Mr. Smith projected that on an annual basis, the proposed motel would have to have a sixty percent occupancy rate to break even financially and therefore would need to attract about fifty thousand customers a year. (See Transcript, pages 41, 42) This represents 4166 lodgers a month. Mr. Smith then testified that he had done a telephone survey of firms in the area, and in a 900 acre contiguous zone, an area no more than twice as large as the relevant 449 acre tract of the M.L.R. Zone and the contiguous industrial zone, he had found and contacted prospective clients and received favorable responses from them. (See Transcript, pages 17-19) He prepared an exhibit summarizing the results of his study and introduced it as Petitioner's Exhibit No. 1. A copy of this exhibit is attached hereto for the convenience of the Court.

Petitioner's Exhibit No. 1 contains a list of companies without any indication of where they are located, whether within the contiguous industrial zone or in the B.M., the B.R., and the B.L. areas outside it. Assuming for argument's sake, however, that all of these companies are located within the relevant contiguous industrial area, and interpreting Exhibit No. 1 to give the Appellee every benefit of every doubt in terms of the number of rooms each company would need, the fact remains that Exhibit No. 1 merely reflects that the companies in the adjacent industrial area would require a maximum of 222.5 room nights per month. As the Appellee admitted that it needs over four thousand customers per month just to break even, this evidence demonstrates that, far from "primarily" serving the contiguous industrial area, the motel will derive less than six percent of its "break-even" revenues from the contiguous industrial area.

The Appellee's witnesses offered additional testimony which is consistent with Exhibit No. 1. When pressed, Mr. Smith agreed with Mr. Hartsfield's earlier testimony that the relevant business market of the motel would be the "three-mile area around that motel". (See Transcript, page 40) In this regard, the Appellants introduced their Exhibit No. 3, a copy of which is attached hereto for the convenience of the Court. The circle superimposed on this exhibit shows a three mile radius from the site of the proposed Days Inn (See Transcript, pages 211-212) and includes within it portions of Howard County, large sections of Baltimore City including Dickeyville, Forest Park, Franklinton, and the Edmondson Avenue commercial area, a substantial part of the Liberty Road commercial corridor within both Baltimore City and Baltimore County, the Security Square Shopping Mall complex with its large department stores and dozens of

the site, the fire equipment would not be able to "jump over" the parked cars as well as the curbs. (See Transcript, page 192)

Obviously, the reason why the Appellee does not want a second entrance is because it would mean sacrificing yet more parking spaces, but as the Appellants' professional engineer testified, and as common sense mandates, the use of only one entrance to a two building, five story motel complex is not an acceptable or safe practice. (See Transcript, page 209) Furthermore, Mr. Richard Moore testified on behalf of the Baltimore County Bureau of Traffic and Design that the position of the County is that there should be a second means of access to the site to eliminate the fire hazards. (See Transcript, pages 252-254) Of course, a second entrance to the motel complex would involve the elimination of more parking spaces, but it is submitted that the risk of loss of human life in a terrible fire is too important a matter to be ignored as the County Board of Appeals did. So long as the obvious fire danger persists, the Appellee has not satisfied Section 502.1 of the Zoning Regulations, and the Special Exception sought should be denied.

Not only do the Appellee's plans involve a serious risk of loss of life as a result of fire, but they also give rise to well-founded concerns about increased localized flooding and consequential detriment to the health, safety and general welfare of the locality involved under Section 502.1a of the Zoning Regulations.

The Appellant, Frank J. Metz, Jr. testified before the County Board of Appeals that his home is just down the street from the proposed Days Inn (See Transcript, page 222). Mr. Metz testified that he has lived at that location for twenty years and that in recent years for the first time, he has experienced terrible rainstorm water flooding as a result of the development that has occurred nearby. (See Transcript, page 226) He presented photographs taken on Memorial Day Weekend of this past year, which was during a rainy period but certainly not during a hurricane or other unrecurrent climatic condition. (See Transcript, page 226) His photographs show the street to his home transformed into a virtual river and his front lawn turned into a lake. (See Protestants' Exhibits Nos. 4A, B and C)

Mr. Metz testified that he is very concerned that the development of the proposed Days Inn will involve paving over 2.34 more acres of open land and will result in yet higher floodwaters coursing through his neighborhood and across his property during

other commercial establishments, most of Catonsville, the Route 40 West commercial corridor, including the Westview Shopping Center commercial complex, and innumerable other business, commercial, and industrial areas which are not contiguous to the M.L.R. Zone.

Therefore, the Appellee utterly failed to adduce any testimony which even inferentially supports the proposition that the motel will primarily serve the contiguous industrial area. Indeed, the Appellee's own testimony even establishes that the motel's business market includes both Baltimore City and Howard County. As for the 49 acre M.L.R. Zone itself, Mr. Smith agreed that less than a thousand room nights per year would be generated by the businesses located in that zone. (See Transcript, page 58) Thus, even by consistently interpreting the testimony in the Appellee's favor, the record establishes that at most, less than eight percent of the room-nights needed to merely break even would be generated by the M.L.R. Zone and the contiguous area of industrial zoning. It was Appellee's own counsel who admitted that "one of the tests or burdens we have here is to show that this motel is primarily oriented to serve the twenty-five acres or more of contiguous industrial zoning." (See Transcript, page 15) Clearly, the Appellee failed to carry its burden of proof. For this reason the County Board of Appeals erred when it granted the Special Exception.

D. Application of the Proper Interpretation of Section 248.4c of the Zoning Regulations

Until this point in this memorandum, it has been assumed for argument's sake that the Zoning Regulations permit a motel to be located in an M.L.R. Zone if the motel will primarily serve the M.L.R. Zone and any contiguous area of industrial zoning. In fact, however, a close analysis of Section 248.4c of the Zoning Regulations reveals that it requires that such a motel primarily serve the M.L.R. Zone alone. The Appellee has stipulated that there are not enough users in the M.L.R. Zone to support the proposed motel. (See Transcript, pages 150, 151)

Section 248.4b of the Zoning Regulations provides that a motel is a permissible use in an M.L.R. Zone only if the motel is located within a M.L.R. Zone which is part of a contiguous area of at least twenty-five (25) acres of industrial zoning; and "the specific use proposed is demonstratively an appropriate service to industries existing, planned or normally to be expected to locate therein." (Emphasis supplied) Section

periods of heavy rain. (See Transcript, pages 228, 229) He stated that, in his opinion, the construction of the proposed motel would be detrimental to the health, safety, and general welfare of the neighborhood. (See Transcript, page 230) 1/

For these reasons also, it is submitted that the Appellee failed to comply with Section 502.1 of the Zoning Regulations by failing to establish that the requested Special Exception would not be detrimental to the health, safety and general welfare of the locality involved.

III. THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY ERRONEOUSLY GRANTED A PARKING VARIANCE WHERE THE APPELLEE VOLUNTARILY AND KNOWINGLY CREATED ITS OWN PRACTICAL DIFFICULTY AND UNREASONABLE HARDSHIP.

The only reason why the Appellee needs a parking variance is because it is seeking to construct an oversized motel/restaurant complex on an undersized parcel of land. As Counsel for the Appellee surprisingly and candidly admitted in his own original Memorandum filed below before the Deputy Zoning Commissioner, "a standard exists in the motel industry which requires a site of four to six acres before construction of a motel is considered feasible." (Petitioner's Memorandum in Support of Petitions, page 4) The property that the Appellee has acquired in Baltimore County, however, only contains 2.34 acres, barely more than half of the site area which the Appellee has conceded, through its own Counsel, to be the minimum feasible site area.

Notwithstanding the plainly inadequate size of the site, the Appellee seeks to erect two five-story high motel structures containing an aggregate of one hundred forty-four rooms plus a restaurant with a seating capacity of forty-eight, a gift shop, and a gameroom. (See Transcript, pages 30-32) Because of the oversized nature of the motel facilities and the inordinately small plot of land, the Appellee intends to cover virtually the entire tract with asphalt pavement and still finds itself twenty-two parking places short of the number required by Sections 409.2a and 409.2b of the Zoning Regulations.

Section 307 of the Zoning Regulations provides that variances from offstreet

1/ Mr. Metz also testified that he was very concerned about the congestion in the local roads that would be caused by the Days Inn. (See Transcript, page 229) The traffic engineer called by the Petitioners testified below that he had never studied the impact on the local residential community of the traffic generated by the proposed motel. (See Transcript, page 187)

248.4c of the Zoning Regulations provides that in order for a Petitioner to demonstrate that a proposed use is "an appropriate service" to industries in the M.L.R. Zone, the Petitioners must establish that its services will be rendered primarily to the industries within the M.L.R. Zone.

Section 248.4c of the Zoning Regulations thus states in relevant part that the uses which may be allowed in an M.L.R. Zone by Special Exception must be

located within the M.L.R. Zone so as to assure their services being rendered primarily to the industries therein. (emphasis supplied)

It is submitted that this Court should find that the word "therein" in this passage refers to its logical antecedent, namely "the M.L.R. Zone". At the Appellee's urging, however, the County Board of Appeals decided that the Zoning Regulations should be broadly construed and that the word "therein" refers not to its logical antecedent but rather to the language in Section 248.4b which refers to the contiguous area of industrial zoning. This interpretation is unsupportable and should be reversed.

The Court of Appeals of Maryland has held that the failure of a zoning ordinance to define a word "calls for the application of its ordinary meaning." Arundel Supply Corp. v. Cason, 265 Md. 371, 289 A.2d 585, 588 (1972). The ordinary meaning of the word "therein" in a sentence containing a logical antecedent would of course be the antecedent and not some unreferenced other phrase found in another part of the zoning ordinance. This is especially true in view of the prevailing rule that the provisions of a zoning ordinance and any exceptions to the general rule established by it "should be strictly construed". Heath v. Mayor and City Council of Baltimore, 190 Md. 478, 58 A.2d 896, 898 (1948).

No reason for the construction of the word "therein" in Section 248.4c, whether strict or otherwise, could disregard its logical antecedent in Section 248.4b and hold that its proper antecedent is a phrase contained in a different part of the Zoning Regulations. For this reason as well, therefore, the County Board of Appeals erred when it granted the Special Exception.

IV. THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY ERRONEOUSLY GRANTED A SPECIAL EXCEPTION FOR THIS MOTEL ALTHOUGH THE RECORD CLEARLY REFLECTS THAT THE MOTEL IN QUESTION WOULD CREATE A POTENTIAL FIRE HAZARD AND WOULD BE DETRIMENTAL TO THE GENERAL WELFARE OF THE LOCALITY INVOLVED.

parking regulations may only be granted "in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship". In this case, the testimony was clear that, although the Appellee had learned about the need for a variance in January, 1981, it nonetheless exercised its option and purchased the property. (See Transcript, pages 27, 61, 63, 104, 246, 247) By thus purchasing the subject property with actual knowledge of the zoning restrictions relating to parking which were in effect at the time of the purchase and with actual knowledge that the proposed motel could not be built without a parking variance (See Transcript, pages 246, 247), the Appellee created for itself whatever hardship the parking restrictions entail. Thus, the hardship from which the Appellee seeks relief is entirely self-imposed, and the Appellee can scarcely be heard to complain of "unreasonable hardship" or "practical difficulty" when it has created its own hardship and difficulties in the first place by acquiring the property with actual knowledge of the zoning restrictions to which it was subject.

In Salisbury Board of Zoning Appeals v. Bounds, 24 Md. 547, 214 A.2d 810, 184 (1965), the Maryland Court of Appeals held that "a self-inflicted hardship . . . cannot be the basis for a variance". As stated in 3 Anderson, American Law of Zoning 2d §18.43, "Hardship is self-created where the applicant purchased [the property] with knowledge of the zoning restrictions from which he seeks administrative relief."

The Maryland Courts have explicitly held that "a variance or special exception will not be granted on the basis of practical difficulties or unnecessary hardships if such were the result of the applicant's own action." Pem Construction Co. v. City of Baltimore, 233 Md. 372, 196 A.2d 879, 881 (1964). See also, Marino v. City of Baltimore, 215 Md. 206, 137 A.2d 198 (1957). As the Court of Appeals of Maryland stated in City of Baltimore v. Saper, 230 Md. 291, 186 A.2d 884, 887-888 (1962):

This Court has held that when a person purchases property with the intention of applying for a variance from the restrictions imposed by ordinance, he cannot contend that such restrictions cause him such a peculiar hardship that entitles him to the special privileges which he seeks.

See also, Gleason v. Keswick Improvement Association, 197 Md. 46, 78 A.2d 164 (1951).

The Appellee contended below that the self-created hardship rule is inapplicable to area variances. This is not accurate. In McLean v. Solley, 270 Md. 208,

Section 502.1 of the Zoning Regulations provides in relevant part:

Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not: a. Be detrimental to the health, safety, or general welfare of the locality involved; . . . c. Create a potential hazard from fire, panic, or other dangers.

The evidence adduced below forcefully shows that the Appellee failed to satisfy Section 502.1 as the construction of the proposed motel will raise serious dangers of fire and flooding. With respect to the potential fire hazard in particular, Richard Moore from the Baltimore County Bureau of Traffic and Design testified with alarm about the dangers posed by the Appellee's plans.

As Petitioner's Exhibit No. 3 reflects and as the testimony adduced below bore out, the proposed motel has only a single entrance. (See Transcript, page 64) Aside from this single access point, the site is to be surrounded by curbs with parking spaces for cars all along the inside of the curbs. Furthermore, the single access point does not open directly onto the public street but rather opens onto a little access road used by the Champion Ford dealership next door to enable large car-carrying trucks to drive into Champion's back lot where Champion stores its inventory of new cars. (See Transcript, page 176)

It should be remembered that the Appellee plans to build two five-story motel buildings which will presumably be filled with sleeping families all night long while the 24-hour restaurant continues to operate below. In the event of a fire, therefore, if the only entrance to the complex should become blocked and the Fire Department should not be able to get its equipment into the complex, the prospect of a terrible disaster looms large. Lodgers on the upper floors of the five-story motel building would be denied the use of the Fire Department's hook and ladder equipment and would either be forced to jump five (5) floors to the ground or to perish by fire or smoke in their rooms. The fact that the single access road to the motel is frequently used by large trailer vehicles carrying new cars to the dealership next door only enhances the possibility that the entrance could become blocked.

The Appellee's traffic engineer testified that the fire equipment could just "jump over" the curbs onto the site (See Transcript, page 171), but on cross examination he conceded that if the cars that he had planned for were parked along the perimeter of

310, A.2d 783, 787 (1973), the Court of Appeals merely held that the self-created hardship rule "is more strictly applied in 'use variance' cases than in cases of 'area variances', such as the one at bar. In other words, it has less significance where we are concerned with 'practical difficulty' . . ." Thus, the self-created hardship rule has not been eliminated in area variance cases. It is merely of less significance.

The Appellants submit that in this case, the Appellee has failed to establish the sort of practical difficulty which could entitle it to the variance it seeks. It in effect put the cart before the horse by unilaterally deciding to build a five-story motel with one hundred forty-four rooms and a forty-eight seat restaurant. Then, when it tried to divide the remaining land into parking spaces, it found that it was twenty-two spaces short. Its claim of "practical difficulty" thus rings doubly hollow because it purchased the land knowing of the parking restrictions, and then it planned for a complex too large for the land available.

It is especially significant in this regard that the Appellee evidently never made any attempt whatsoever to design the kind of slightly smaller motel complex which would comply with the County parking regulations. Thus, there was no testimony about the economic feasibility of a four-story motel or a motel with just one building instead of two or a motel without the attached restaurant. If the Appellee had presented this kind of testimony and established that such a smaller motel in compliance with the parking regulations would not be economically viable, perhaps it would have been able to make a reasonable "practical difficulty" argument under the less stringent rule adopted in McLean v. Solley, supra. It is submitted that, even under the less stringent McLean v. Solley rule, a developer fully aware of applicable Zoning Regulations should not be permitted to buy a parcel of land, adopt an overintensive plan of development in violation of the Zoning Regulations, and then argue "practical difficulty" without some proof that a less intensive plan of development in conformity with the Zoning Regulations would not be economically feasible. The record in this case is utterly bereft of any such proof.

CONCLUSION

The proposed Days Inn project, obviously, has been poorly conceived from the outset. The fact that within the space of but nine months, the Appellee states that its projections of anticipated "commercial" use of the proposed motel were nearly trebled