

PETITION FOR ZONING VARIANCE 85-338-A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 413.5b to permit existing sign advertising Garrison Shopping Center at 9619 Reisterstown Road at Harden Lane which extends into right of way to remain.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (Indicate hardship or practical difficulty)

The sign advertising the shopping center has existed for at least fifteen years and to be required to remove it would present financial hardship, be impractical and would cause undue hardship to owner and tenants. The same is not interfering with the use or enjoyment of the road.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:
(Type or Print Name)
Signature

Legal Owner(s):
Sylvan L. Cornblatt
(Type or Print Name)
Signature

Address
City and State

(Type or Print Name)
Signature

Attorney for Petitioner:
John H. Denick, Esquire
(Type or Print Name)
Signature

916 Munsey Building
Address
Baltimore, Maryland 21202
City and State

Address
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Sylvan L. Cornblatt
Name
2303 N. Charles Street 484-5513
Address
Baltimore, Maryland 21218 Phone No.

Attorney's Telephone No.: 685-7400

ORDERED By The Zoning Commissioner of Baltimore County, this 1st day of May, 1985, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commission of Baltimore County in Room 106, County Office Building in Towson, Baltimore, Maryland, on the 3rd day of June, 1985, at 10:45 o'clock.

By: *Carl J. Jablon*
Zoning Commissioner of Baltimore County.

(over)

85-338-A

85-338-A

85-338-A

MARILYN DAY CARE CENTER, INC.
Michael J. Miller, J.P.
3607 MURRAY MILL ROAD.
BALTO. MD. 21207

Prof. Day Care Center -
Coulson Miller - Pres.
3617 MURRAY MILL RD 21207

Prime Time Tanning Co.
Lanny S. Molyneux, Pres.
1503 Cedar Ave. 21214

Free State Acupuncture, Inc.
Patricia A. Goodale, Sec. Treas.
13 Jonathans Ct
Cockeysville MD 21030

Uniover of Cosmetics Corp.
John J. M...
13 Jonathans Ct.
Baltimore, Md. 21208

PETITIONER'S EXHIBIT 2

Mrs. Vernon Robinson 27 Montrose Ave. Garrison, Md. 21055
Daniel C. Robinson 12 Harden Lane Garrison, Md. 21055
Joseph H. Proctor 13 Montrose Ave Garrison, Md. 21055

85-338-A

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

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

Your petition has been received and accepted for filing this 1st day of May, 1985.

Petitioner: Sylvan L. Cornblatt
Petitioner's Attorney: John H. Denick, Esquire
Received by: *Nicholas B. Commodari*
Nicholas B. Commodari
Chairman, Zoning Plans Advisory Committee

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 16, 1985

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

John H. Denick, Esquire
916 Munsey Building
Baltimore, Maryland 21202

Chairman

NICHOLAS B. COMMODARI

Chairman

RE: Item No. 295 - Case No. 85-338-A
Petitioner - Sylvan L. Cornblatt
Variance Petition

Dear Mr. Denick:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bsc

Enclosures

cc: David W. Dallas, Jr.
8713 Old Harford Road
Baltimore, Md. 21234



HARRY I. PISTEL, P.E.
DIRECTOR

May 6, 1985

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #295 (1984-1985)
Property Owner: Sylvan L. Cornblatt
N/W cor. Reisterstown Rd. & Harden Lane
Acres: .734 Acres
District: 3rd

Dear Mr. Jablon:

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

General:

All improvements, intersections, entrances, drainage requirements and construction affecting a State Road right-of-way are subject to the standards, specifications and approval of the Maryland State Highway Administration in addition to those of Baltimore County.

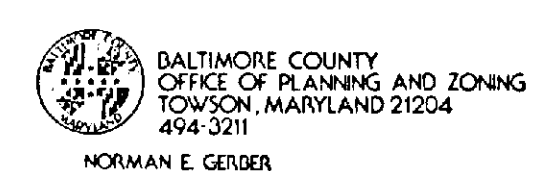
As no County public facilities are involved, this office has no comment.

Very truly yours,

James E. Roper
JAMES E. ROPER, P.E., Chief
Bureau of Public Services

JAM:RAM:ROP:iss

cc: File



Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

MAY 20, 1985

Re: Zoning Advisory Meeting of APRIL 23, 1985
Item # 295
Property Owner: SYLVAN L. CORNBLETT
Location: N/W COR. REISTERSTOWN RD. & HARDEU LANE

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable:

- ☒ There are no site planning factors requiring comment.
- ☒ A County Review Group Meeting is required.
- ☒ A County Review Group Meeting was held and the minutes will be forwarded by the Bureau of Public Services.
- ☒ This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
- ☒ A record plat will be required and must be recorded prior to issuance of a building permit.
- ☒ The access is not satisfactory.
- ☒ The circulation on this site is not satisfactory.
- ☒ The parking arrangement is not satisfactory.
- ☒ Parking calculations must be shown on the plan.
- ☒ This property contains soils which are defined as wetlands, and development on these soils is prohibited.
- ☒ Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-30 of the Development Regulations.
- ☒ Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
- ☒ The amended Development Plan was approved by the Planning Board on 1/15/85.
- ☒ Landscaping: Must comply with Baltimore County Landscape Manual.
- ☒ The property is located in a deficient service area as defined by B111 178-79. No building permit may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is:
- ☒ The property is located in a traffic area controlled by a "D" level intersection as defined by B111 178-79, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.
- ☒ Additional comments:

cc: James Hoswell

Eugene A. Roper
Chief, Current Planning and Development



Maryland Department of Transportation
State Highway Administration

William K. Wellmann
Secretary
Hal Kassoff
Administrator

April 29, 1985

Mr. A. Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

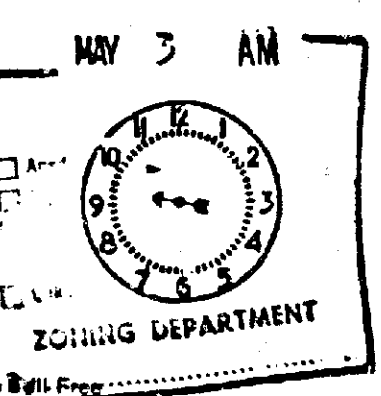
Att: Mr. N. Commodari

Re: ZAC Meeting of 4-23-85
ITEM: #295.
Property Owner: Sylvan L. Cornblatt
Location: N/W Cor. Reisterstown Rd., Route 140
Existing Zoning: B.L.
Proposed Zoning: Variance to permit existing sign advertising Garrison Shopping Center at 9619 Reisterstown Road at Harden Lane which extends into right of way to remain
Acres: .734 acres
District: 3rd District

Dear Mr. Jablon:

The State Highway Administration provided comments to Baltimore County on September 22, 1981 for change of occupancy (C-1350-81) with reference to show the existing location of the advertising sign 34' from the centerline of Reisterstown Rd. (see attachment).

On the day of inspection (April 25, 1985) the existing advertising sign appears to be enlarged and modified since our comments of September 22, 1981 were written.



My telephone number is (301) 659-1350
Teletypewriter for Impaired Hearing or Speech
383-7505 Baltimore Metro - 350-0451 D.C. Metro - 1-800-492-5082 Statewide Toll Free
P.O. Box 717 707 North Calvert St., Baltimore, Maryland 21203-0717

Mr. A. Jablon

-2-

April 29, 1985

If the property owner can provide additional information to the State Highway Administration that the advertising sign of today (see photo) has not been enlarged or modified after September 22, 1981 the sign can remain at its present location, otherwise the sign must be relocated outside the State Right-of-Way.

Very truly yours,

Charles Lee
Charles Lee, Chief
Bureau of Engineering
Access Permits

By: George Wittman

CL:GW:maw

cc: Mr. J. Ogle

85-338

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/would not result in practical difficulty and unreasonable hardship upon the Petitioner(s) and the granting of the variance(s) requested will/will not adversely affect the health, safety, and general welfare of the community, the variance(s) should /should not be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this _____ day of _____, 19____, that the herein Petition for Variance(s) to permit



Maryland Department of Transportation
State Highway Administration

James I. O'Donnell
Secretary
M. S. Caltrider
Administrator

September 22, 1981

Mr. Robert A. Morton, Chief
Bureau of Public Services
County Office Bldg.
Towson, Md. 21204
Re: Change of Occupancy
C-1350-81
E/S Reisterstown Rd.
(Route 140) - 118'±
S/R of Montrose Ave.

Dear Mr. Morton:

On review of the site plan of August 10, 1981 and field inspection, the State Highway Administration will require revisions to the plan.

The revised plan must show the existing radius and curb into Harden Avenue as bituminous curb.

The existing railroad tie curb must be shown on the existing right of way line.

The curb 15' from the building and parallel to Reisterstown Road must be labeled as proposed S.H.A. "Type A" concrete curb.

The existing advertising sign 34'± from the centerline of Reisterstown Road must be shown on the revised plan.

I am sending a sketch of the areas that need revision, if you have any questions please do not hesitate to call this office.

It is requested that the application be held until the plan is revised.

Very truly yours,
Charles Lee, Chief
Bureau of Engineering
Access Permits Office

Enclosure
CL:GW:VED
(with plan) A/H: 11/2/81
George Wittman

Enclosure
CL:GW:VED
(with plan) A/H: 11/2/81
George Wittman

Enclosure
CL:GW:VED
(with plan) A/H: 11/2/81
George Wittman

Enclosure
CL:GW:VED
(with plan) A/H: 11/2/81
George Wittman

Enclosure
CL:GW:VED
(with plan) A/H: 11/2/81
George Wittman

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Nicholas Commodari, Zoning Department Date: April 24, 1985
FROM: G. E. Burnham, Chief, Building Plans Review CEB
SUBJECT: Zoning Advisory Committee Meeting
Meeting Scheduled 4/23/85

Item #295 No Comment
Item #296 (not ready)
Item #297 Standard Comment - Critical Area
Item #298 Standard Comment

CEB/vv

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon
TO: Zoning Commissioner Date: May 22, 1985
Norman E. Gerber, Director
FROM: Office of Planning and Zoning
SUBJECT: Zoning Petition No. 85-338-A

I do not believe the variance can be granted.

NEG:JGH:slm

Norman E. Gerber, Director
Office of Planning and Zoning



BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF

April 25, 1985

Mr. Arnold Jablon
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Sylvan Cornblatt

Location: N/W Cor. Reisterstown Rd. & Harden La.

Item No.: 295 Zoning Agenda Meeting of 4/23/85

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 of _____ 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.

() 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.

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

REVIEWER: [Signature] Approved: [Signature]
Planning Group Fire Prevention Bureau

/mb



BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS
DIRECTOR

May 16, 1985

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Item No. (295, 297, and 298 Meeting of April 23, 1985)
Property Owner: Sylvan Cornblatt
Location: N/W Cor. Reisterstown Rd. & Harden La.
Existing Zoning: S.L.
Proposed Zoning: Variance

Acres: .734
District: 3rd

Dear Mr. Jablon:

The Department of Traffic Engineering has no comments for item numbers 295, 297, and 298.

Michael S. Flanagan
Traffic Engineering Assoc. II

HSF/ccm

4/25-338-A
Current



Maryland Department of Transportation
State Highway Administration

William K. Hollman
Secretary
Hal Karsell
Administrator

June 3, 1985

Mr. A. Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Attn: Mr. N. Commodari

Re: ZAC Meeting of 4-23-85
ITEM: #295.
Property Owner: Sylvan L. Cornblatt
Location: N/W Cor. Reisterstown Rd., Route 140
Existing Zoning: S.L.
Proposed Zoning: Variance to permit existing sign advertising Garrison Shopping Center at 9619 Reisterstown Road at Harden Lane which extends into right of way to remain
Acres: .734 acres
District: 3rd District

Dear Mr. Jablon:

The State Highway Administration is providing additional comments to our letter of April 29, 1985.

The owner of the site (9619 Reisterstown Road) has provided additional information showing the advertising sign has existed at its present location since 1977.

In addition, Mr. Cornblatt has provided a letter agreeing to relocate the sign at his expense if development occurs along Reisterstown Road that would require widening of Reisterstown Rd. by the State Highway Administration.

Since the sign has existed in its present location for 8 years or longer without conflict to the motoring public, the State Highway Administration is agreeable with the present location at this time.

My telephone number is (301) 659-1350
Teleprinter for Impaired Hearing or Speech
365-7555 Baltimore Metro - 365-0451 D.C. Metro - 1-800-482-5082 Statewide Toll Free
P.O. Box 717 / 707 North Calvert St., Baltimore, Maryland 21203 - 0717

Mr. A. Jablon

-2-

June 3, 1985

It is requested this letter and the attachments be made a part of the Zoning Commissioner's decision.

Very truly yours,
Charles Lee
Charles Lee, Chief
Bureau of Engineering
Access Permits

By: George Wittman

CL:GW:maw

Attachment

cc: Mr. J. Ogle
Mr. S. Cornblatt

HARRY GILBERT & CO., INC.

APPRAISERS - REALTORS
818 NORTH CALVERT STREET
BALTIMORE, MARYLAND 21202
(301) 758-7969

CLEAN CITY OFFICE
728 BRADLEY ROAD
CLEAN CITY, MD 21842
(301) 624-3055

HARRY E. GILBERT, JR., M.A.I.

September 12, 1977

Mr. Sylvan Cornblatt
2511 St. Paul Street
Baltimore, Maryland 21218

RE: Commercial Building
9623 Reisterstown Rd.
Baltimore, Maryland

Dear Mr. Cornblatt:

Pursuant to your request, I have examined the subject property for the purpose of preparing an appraisal to determine its Fair Market Value as of this date.

As a result of the appraisal and analysis, it is my opinion that the current Fair Market Value, as defined, of the subject property is:

FOUR HUNDRED EIGHTY TWO THOUSAND DOLLARS, (\$482,000)

The supporting data and analysis and conclusion upon which this value is based are contained in the accompanying report.

Very truly yours,

Harry E. Gilbert, Jr.
Harry E. Gilbert, Jr., M.A.I.

State Highway Administration
Room 609
707 N. Calvert Street
Baltimore, Md. 21203

Re: 9619 Reisterstown Road
Harrison, Maryland

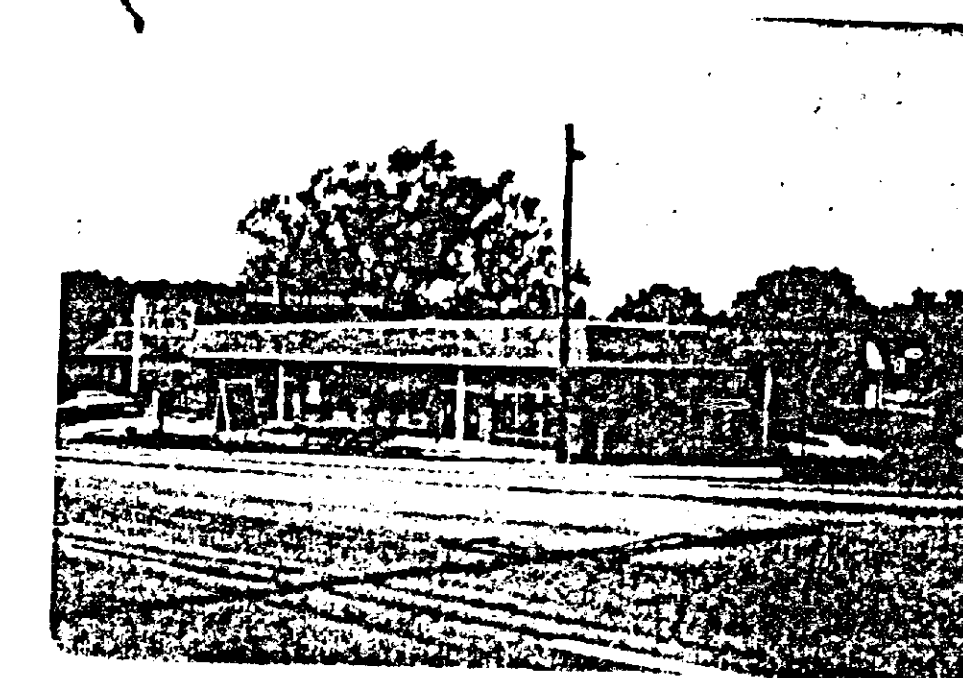
Gentlemen:

In reference to the sign that extends into the State Road right-of-way, please be advised that I will be willing to relocate the sign at my expense, if development occurs along Reisterstown Road which would require the widening of same, by the State Highway Administration.

Very truly yours,
Sylvan L. Cornblatt
Sylvan L. Cornblatt

SLC:jg

PHOTOGRAPHS



IN RE: PETITION ZONING VARIANCE
NW corner of Reisterstown
Road and Harden Lane - 3rd
Election District
Sylvan L. Cornblatt,
Petitioner
BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 85-338-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a variance to permit an existing advertising sign to extend into a State road right of way.

The Petitioner appeared and testified and was represented by Counsel. Appearing on behalf of the Petitioner were numerous tenants of the shopping center at which the sign is located. Also appearing were neighbors who live in the residential area behind the center. While not opposing the location of the sign, they do oppose the placement of one advertising panel on the sign which they maintain blocks traffic and obstructs vision.

Testimony indicated that the shopping center, located on Reisterstown Road, has had the sign in its present location since 1971. It is of interest to note that George Wittman of the Maryland Department of Transportation, State Highway Administration, Bureau of Engineering Access Permits, by letter, Petitioner's Exhibit 2, has no objection to the sign protruding into the right of way. However, James L. Rettberg, also of the Maryland Department of Transportation, State Highway Administration, Highway Beautification Inspections, appeared at the hearing and testified that the official position of his Bureau is to object. Without getting into the internal dispute between bureaus of a State agency, the issue to be decided first is whether a variance can even be considered.

The Court of Special Appeals has noted the distinction between a use variance which changes the character of the zoning district and an area variance

which does not. Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974). A use variance allows a landowner to use existing property in a manner not permitted by ordinance and inconsistent with uses in the surrounding area. Alumni Control Board v. City of Lincoln, 137 NW.2d 800 (Neb., 1965). An area variance authorizes deviations from restrictions upon the construction and placement of buildings and other structures; it allows modification of area, yard, height, floor space, frontage, density, setback, and similar restrictions. Blenz v. City of Dayton, 566 P.2d 904 (Ore., 1977); Ivanovich v. Tucson Bd. of Adj., 529 P.2d 242 (Ariz., 1974). An area variance does not affect the use of land and is not associated with the advent of an incompatible use, i.e., the use itself has already been determined to be permitted by right or by special exception. Assoc. for Pres. v. D.C. Bd. of Adj., 384 A.2d 674 (D.C., 1978). In contrast, a use variance generally allows land to be used for a purpose which is inconsistent with the basic character of the area. Conley v. Town of Brookhaven, 353 NE.2d 594 (N.Y., 1976). It is one which permits a use other than one prescribed by the zoning ordinance in the particular district; it permits a use which the ordinance prohibits. An area variance authorizes deviations from restrictions which relate to a permitted use rather than limitations on the use itself, i.e., restrictions on the bulk of buildings or relating to their height, size, and extent of lot coverage; minimum habitable area; or the placement of buildings and structures on the lot with respect to required yards. Variances made necessary by the physical characteristics of the lot itself are area variances. An area variance permits deviation from strict compliance with the law, i.e., the physical characteristics of the premises as long as the purpose for which the premises are intended to be used are permitted by the law. Crossant v. Zoning Bd. of Appeals, 442 NYS.2d 235 (1981). A use variance proposes a change in the character of the premises and involves a use not otherwise permitted. Crossant, supra.

It is clear that the subject request for a variance from Section 413.5.b, Baltimore County Zoning Regulations (BCZR), to permit a sign in the right of way would be a use variance, not an area variance. While a business sign is a use permitted as a matter of right in the zone in which the shopping center is located, the proposed deviation is from a use which is not permitted. The use of the word "shall" in Section 413.5.b is mandatory. Section 101, BCZR. Therefore, the language is clear and unambiguous. To permit a sign in the right of way would thus be to permit a use which is mandated by law not to be allowed.

Notwithstanding the State Highway Administration's position, the BCZR do not permit a sign to protrude into a right of way, State or local. Even if such were not the case, the Petitioner has not met his burden of satisfying Section 307, BCZR. The issues raised by the Petitioner, i.e., the long-standing existence of the sign and the potential cost of moving it, are not sufficient to comply with the strictures of Section 307, BCZR.

The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible.

Carney v. City of Balto., 201 Md. 130, 137 (1952). Financial burden is not legally sufficient for the granting of a variance. Salisbury Bd. of Zoning Appeals v. Bonds, 240 Md. 547.

Passage of time, unfortunately, also does not do for the existence of an illegal sign what it does for wine. The fact that an illegal act is permitted to continue does not make that act legal. The Petitioner argued that the County knew or should have known, that the sign was there and did nothing. In effect, he argues equitable estoppel.

Estoppel always requires proof that the party against whom estoppel is claimed must do or say something calculated or intended to induce another party to believe that certain facts exist and to act on that belief. The other party

must also change its position in reliance on those facts, thereby causing some injury. There must be good faith by a party acting on affirmative acts of municipality. Saah v. D.C. Bd. of Zoning Adj., 433 A.2d 1114 (D.C., 1981). In municipal zoning cases, however, estoppel may be invoked only with great caution; only when special circumstances make it highly inequitable or oppressive to enforce the regulations. SA McQuillin, Municipal Corporations, Sections 25.349 and 27.56; 3 Rathkopf, supra, 45-38. The defense of estoppel is based on a substantial burden of proof, a requirement to show that the agents of Baltimore County acted to induce reliance and that such reliance was to the owner's detriment to such an extent that enforcement of the regulations would be "highly inequitable or oppressive". Zoning Commission v. Iescynski, 453 A.2d 1144 (Conn., 1982). Maryland courts have dealt with this issue and reached the same conclusions. See Savonis v. Burke, 241 Md. 316 (1965). And even where statements were made by County officials contrary to existing law, courts have held that the municipality would not be estopped from later enforcing zoning regulations. Colonial Investment Co., Inc. v. City of Leawood, Kansas, 646 P.2d 1149 (1982).

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the requested variance should not be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 13th day of June, 1985, that the Petition for Zoning Variance to permit existing advertising sign to extend into a State road right of way be and is hereby DENIED.

John J. Ogle
John J. Ogle
Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING

DATE *June 13, 1985*
BY *John J. Ogle*

ORDER RECEIVED FOR FILING

DATE *June 13, 1985*
BY *John J. Ogle*

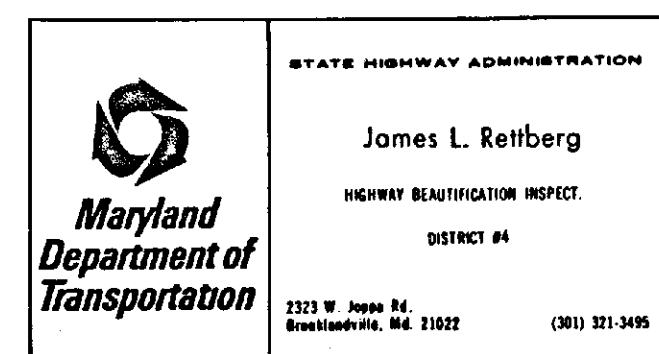
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DATE *June 13, 1985*
BY *John J. Ogle*

ORDER RECEIVED FOR FILING

DATE *June 13, 1985*
BY *John J. Ogle*

cc: John H. Denick, Esquire
Mr. James L. Rettberg
Ms. Veronica Staymater
Mr. Vernon Robinson
People's Counsel



BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arlene January Date: April 10, 1985
FROM: James Thompson
Item No. 295
SUBJECT: Sylvan L. Cornblatt-Petitioner

Please note that the above referenced matter is the subject of an active violation, Case No. C-85-722.

When this petition is scheduled, please notify:

Vernon Robinson
27 Montrose Avenue
Garrison, Maryland 21055

JHT:eah



Maryland Department of Transportation
State Highway Administration

William K. Holman
Secretary
Hal Kassoff
Administrator

PETITIONER'S
EXHIBIT 2

June 3, 1985

Mr. A. Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Attn: Mr. N. Commodari

Re: ZAC Meeting of 4-23-85
ITEM: #295.
Property Owner: Sylvan L. Cornblatt
Location: N/W Cor.
Reisterstown Rd., Route 140
Existing Zoning: B.L.
Proposed Zoning: Variance
to permit existing sign
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Shopping Center at 9619
Reisterstown Road at
Warden Lane which extends
into right of way to remain
Acres: .734 acres ±
District: 3rd District

Dear Mr. Jablon:

The State Highway Administration is providing additional comments to our letter of April 29, 1985.

The owner of the site (#9616 Reisterstown Road) has provided additional information showing the advertising sign has existed at its present location since 1977.

In addition, Mr. Cornblatt has provided a letter agreeing to relocate the sign at his expense if development occurs along Reisterstown Road that would require widening of Reisterstown Rd. by the State Highway Administration.

Since the sign has existed in its present location for 8 years or longer without conflict to the motoring public, the State Highway Administration is agreeable with the present location at this time.

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P.O. Box 717 / 707 North Calvert St., Baltimore, Maryland 21203-0717

Mr. A. Jablon -2- June 3, 1985

It is requested this letter and the attachments be made a part of the Zoning Commissioner's decision.

Very truly yours,
Charles Lee, Chief
Bureau of Engineering
Access Permits

By: George Wittman

CL:GW:maw

Attachment

cc: Mr. J. Ogle
Mr. S. Cornblatt ✓

ORDER RECEIVED FOR FILING

DATE June 14, 1985
BY [Signature]

- 5 -

URBAN PLANNING HANDBOOK BY HAGMAN

196 TYPES OF ZONING RELIEF Ch. 7
ship" beyond the "spirit of the ordinance" so that "substantial justice" is not done.

While a variance usually can be recognized and distinguished from a special permit, they are often confused and sometimes difficult to distinguish.

The variance and the special permit provisions have generated a vast body of law, probably for four major reasons: first, the grant or denial of permission can frequently have substantial economic consequences—it is a matter worth fighting over; second, there are thousands of administrative bodies who are making decisions; third, these bodies are frequently composed of men with greater political, economic and practical sense than technical expertise—they frequently overstep the bounds of their quasi-judicial functions; and, forth, recognizing the inadequacies of the boards, the courts are not as willing to defer to their judgments as they are to more expert administrative bodies, and lack of difference invites a judicial reshuffle of the issues involved.²¹

III. VARIANCES

§ 106. In General

Perhaps the variance is more often used and misused than the other types of administrative relief. It is intended to alleviate a situation in which for no public reason, uniform zoning for an area more stringently burdens one parcel of land than others. It is also to provide a "relief valve," so that zoning, which would otherwise be unconstitutional as applied can be made constitutional. Third, it is sometimes used to avoid the "evils" of spot zoning. Strictly construed, the classic formulation of the statute enabling the granting of variances²² does not include the second and third rationales, that is, zoning can be applied in an unconstitutional manner without necessarily qualifying the land for a variance and, while spot zoning may be invalid, a variance may not be the appropriate alternative.²³

Variances are of two basic kinds, 1. bulk variances, including height variances and variances for minor departures from the ordinance.

21. See Green, Are "Special Use" Provisions in Trouble? 12 Zoning Digest 73 (1980); Note, Administrative Discretion in Zoning, 83 Harv.L.Rev. 608 (1980); The Effect of Statutory Pre-emption on Decisions of Boards of Zoning Appeals, 1 Ind.Legal Forum 208 (1980).

22. See § 105 supra.

197
Sec. 106 VARIANCES
ranchise, and 2. use variances, which usually involve more substantial changes. The typical enabling act does not separately authorize the two different kinds of variances, though some statutes, ordinances and courts do not allow use variances, particularly when they are for large sized parcels.²⁴

The criteria for obtaining a variance are rigorous. If the courts really superintended their issuance, upwards from ninety percent of the variances granted would probably be found invalid. Where courts do superintend their issuance, administrative bodies may eventually limit the issuance of variances, but the educational effort involved is considerable when there are hundreds of boards in a state and the boards are composed of a changing body of laymen. Where the courts do not superintend the issuance of variances, one would expect many to be granted illegally, so that an attorney should seek one for a client. If practice dictates it will be approved, regardless of the law. For example, until Cow Hollow Improvement Club v. Board of Permit Appeals,²⁵ a case decided late in 1966 neither the courts²⁶ nor the commentators²⁷ could find a California appellate case which overturned the issuance of a variance. Illegal issuance is a wide-spread phenomenon nationwide.²⁸

The precise formulation of the standards that must be met before a variance is issued vary among the enabling acts and ordinances, though most formulations can be recognized as similar to the Standard Act provisions.²⁹ For purposes of discussion, the standards can be classified in three groups. A variance is proper only if there is 1. no adverse effect on public, 2. no adverse effect on neighbors, and 3. the property has characteristics making it eligible for a variance. All standards must be met.³⁰

24. See § 112 infra.
25. 243 Cal.App.2d 160, 53 Cal.Ptr. 610 (1966).
26. Allen v. Humboldt County Bd. of Supervisors, 241 Cal.App.2d 158, 50 Cal.Ptr. 444 (1966).
27. D. Hagman, J. Larson & C. Martin, California Zoning, Practice ¶ 724 (1980); Gaylord, Zoning: Variances, Exceptions and Conditional Use Permits in California, 5 U.C.L.A. L.Rev. 181 (1958).

28. Dukontiller & Stapleton, The Zoning Board of Adjustment: A Case Study in Illegality, 30 Cal.Ptr. 610 (1966).

198 TYPES OF ZONING RELIEF Ch. 7

§ 107. Effect on Public

Enabling acts and ordinances variously require that the variance cannot be issued if issuance would be contrary to the public interest, safety, health and welfare; or would be contrary to the intent or spirit of the ordinance; or would have an adverse effect on the master plan. These provisions have the same or at least overlapping meanings, and may be little more than a restatement of the general rule that all zoning variances, as all aspects of zoning, must be in the public interest. Sometimes the public interest test is met by showing that the proposed use would be an advantage to the public, such as the availability of a shopping center in an area.³¹ It may also be met in cases where a nonconforming use can be changed to a more nearly conforming use if a variance is given.³² The public interest test may also be met by a finding that taxes from the property will increase. However, there generally need be no showing of an affirmative benefit to the public but, as the language of the ordinances usually indicate, only a showing that the public is not harmed by the variance.

It is not the intent or within the spirit of a zoning ordinance to grant variances in a wholesale manner or to permit one variance which may lead to another so that eventually the entire zoning plan is adversely affected.³³ It is also not the intent or within the spirit of a zoning ordinance to permit commercial intrusions into residential areas by variance,³⁴ though such may also be violative of the requirement that neighboring property not be adversely affected.

§ 108. Effect on Neighborhood

Even though there is no adverse effect on the public, or even if the public is benefited, neighboring property may be adversely affected by a variance. If so, the variance should not be issued. As a matter of practical variance administration, variances are seldom issued where a large number of neighbors appear and vigorously oppose the variance, though the number of protesters and the intensity of the objections should not dictate the results.³⁵ However, some statutes and ordinances provide that if neighbors protest, a variance can be granted only by an extraordinary majority vote of the board.³⁶

31. Ward v. Scott, 10 N.J. 10, 105 A.2d 821 (1951).
32. See § 105 supra.

33. Heller v. Zoning Bd. of Adjustment, 40 Pa. 3, 171 A.2d 41 (1961).

34. See § 102 supra.

199
Sec. 108 VARIANCES

A typical ordinance might provide that a variance should not be granted if it would "alter the essential character of the neighborhood." The test might not be met, for example, if a commercial use was permitted in a residential zone.³⁷ However, a residential zone is not altered by a commercial variance if, because of previous commercial nonconforming uses, variances or special uses, the neighborhood is no longer residential in character.³⁸ The test may not be met if the variance would result in a depreciation of values in a neighborhood.³⁹ A variance permitting a use that generates an increase in traffic may not meet the neighborhood test.⁴⁰

The neighborhood test is usually stated in terms of effects on property, though the standard is sometimes stated in ordinances to provide that issuance of a variance should not adversely affect the health or safety of persons residing or working in the neighborhood. For example, it may be improper to grant a variance which permits a dormitory for mentally deficient persons, to be erected. The presence of such an institution may depress neighbors.⁴¹

A variance is not to confer special privileges—that is, it is only to relieve hardship, not to confer benefits that are not enjoyed by neighboring property. For example, property zoned large lot single family is not entitled to a variance for multiple family use but only to a variance for a small lot single family use, that being the zoning in the area.⁴²

Conditions

As distinguished from a rezoning, where the legislative body may be forced either to grant or deny the application, and may not have the choice of limiting the rezoning by contract or imposition of conditions,⁴³ the variance can be granted with the imposition of conditions designed to remove any special privilege or any adverse effect on the public or the neighborhood. To that end, the Standard Act provides that a board "may . . . subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in

37. Wilson v. Borough of Mountainge, 42 N.J. 420, 301 A.2d 510 (1973); Dula v. City of N.J., 130 N.J.L. 489, 200 A.2d 113 (Sup.Ct.1963); Otto v. Reisholmer, 282 N.J. 71, 24 N.E.2d 531 (1959); Bellamy v. Board of Appeals of City of Rochester, 22 Misc.2d 528, 223 N.Y. 2d 301 (Sup.Ct.1962).

38. Nelson v. Board of Zoning Appeals, 340 Ind. 212, 102 N.E.2d 410 (1950).

39. Greenwich Gas Co. v. Tuthill, 113 Conn. 604, 152 A. 800 (1931).

40. See § 104 supra.

41. Deveraux Foundation, Inc., Zoning Case, 321 Pa. 475, 41 A.2d 741 (1945).

42. Hamer v. Town of Ross, 59 Cal.2d 776, 354 P.2d 373, 31 Cal.Ptr. 335 (1960).

43. See § 104 supra.

harmony with its general purpose and intent. . . .⁴⁴ Even where the statute and ordinance do not contain such authority, the power to condition variances may be implied. The issuance of a variance is in large measure discretionary, and the power to grant variances is not limited to what the applicant requests.⁴⁵ On the other hand, where the standards are clearly met, there may be a right to a variance, or at least a right to some relief under one of the "zoning forms of action,"⁴⁶ so conditions that are irrelevant to zoning or do not relieve the hardship may be invalid.⁴⁷

Time conditions of various kinds may be imposed on a variance. One kind of time condition is primarily designed to force utilization of the variance. Variances are not a rezoning, may not be accurately noted in zoning records and should not be granted prematurely, so if the variance is not utilized, it makes sense to have it terminate after a period of time, e. g., six months.⁴⁸ Since conditions may change in the future so that the variance is no longer appropriate or necessary, the variance may be limited to a term of years, and then subject to review.⁴⁹ The term may be related to an event. For example, a variance may be issued for a commercial use in a holding zone, which use must be terminated if and when the surrounding area is developed by residential uses. A variance issued on condition that a restaurant in a residential zone be closed during certain hours of the evening has been held valid.⁵⁰

The condition applies to the property rather than the applicant, so that it would be improper to issue a variance on the condition that the property remain owned by the applicant.⁵¹ Such a decision is consistent with the theory that zoning relates to land not to the ownership of land and that the hardship to be relieved by the variance is hardship to the property rather than to the owner of the property.⁵²

If the conditions do not relate to the exercise of the zoning power or at least to the police power, they may be held invalid. For example, zoning deals with offstreet parking requirements, so it is proper to

44. Standard Act § 7 (emphasis added). The term "special exceptions" in this part of the Standard Act is a generic term that includes variances; see § 100 supra.

45. *Everson Elec. Co. v. Zoning Bd. of Adjustment*, 302 Pa. 108, 119 A.2d 63 (1959).

46. See § 103 supra.

47. See *Strine, The Use of Conditions in Land-Use Control*, 67 Dick. L. Rev. 110 (1963). Note, *Zoning Amendments and Variances Subject to Conditions*, 12 Syracuse L. Rev. 230 (1956).

48. *Ambleco v. Zoning Bd. of Appeals*, 105 Misc. 1005, 96 N.Y.S.2d 300 (Sup. Ct. 1949).

49. *Guenther v. Zoning Bd. of Review of City of Warwick*, 85 R.I. 57, 157 A.2d 214 (1959).

50. *Montgomery County v. Mosshart*, 228 Md. 555, 190 A.2d 831 (1962); *Amos*, 49 A.L.J. 227 (1953).

51. *Cuba v. County Bd. of Supervisors*, 131 Cal.App.2d 180, 280 P.2d 826 (1955).

52. See § 110 infra.

condition a variance for a funeral parlor by imposing a condition that adequate on-site parking space be provided.⁵³ A variance for a yard to store construction vehicles might be conditioned on the dedication of an easement for a road along the front of the property because the vehicles would add to traffic congestion, a matter that relates to the purposes of zoning.⁵⁴ On the other hand, the zoning board may not have the power to condition the issuance of a variance for a laundromat by a requirement that an attendant be present at all times. Such a requirement may be held invalid on the ground that such a regulation is a legislative matter⁵⁵ or that such a regulation is not a zoning type regulation and hence is unauthorized. Further, where zoning for aesthetic purposes is not held valid, it may be improper to condition the issuance of a variance on the ground that a proposed building comply with a certain design.⁵⁶

§ 109. Characteristics of Property

While the effect on the public or on neighbors is sometimes determinative, many cases are decided on the ground that there are no extraordinary or exceptional characteristics or no unique problems or no special conditions that create unnecessary hardship or practical difficulties or destroy property values.⁵⁷ The terms unique, special, exceptional and extraordinary and the like suggest that a variance is proper only where the property is somehow different from other property, particularly adjacent property. Legislative changes are the appropriate vehicle for a change which would affect a large number of properties.

Where the land is physically unique, the classic circumstances for a variance exist. For example, setback lines on the sides of a triangular lot limited the useable space of a lot to 10 square feet. The lot was clearly unique and entitled to a variance from the setback requirements.⁵⁸ A lot crossed by a deep ravine was unique, so as to justify a variance.⁵⁹

53. *Woodbury v. Zoning Bd. of Review of City of Warwick*, 85 R.I. 310, 82 A.2d 911 (1954).

54. *Denise v. Board of Supervisors*, 51 Cal.2d 86, 331 P.2d 125, 4 Cal.Hprr. 403 (1959).

55. *Denville Homes, Inc. v. Michaels*, 201 N.Y.S.2d 129 (Sup.Ct. 1959).

56. *Robo Park & Land Co. v. Board of Adjustment of Town of Hollisville*, 63 Md. Misc. 656, 142 A. 278 (Sup.Ct. 1952).

57. A finding that the characteristics of the property are not such as to

justify for a variance does not necessarily mean that the existing zoning is proper. It may only mean that the zoning should be attacked directly in court as being invalid as applied or that an amendment or a special permit is the proper form of action. See § 105 supra.

58. *Hodson v. County of Contra Costa*, 201 N.Y.S.2d 129 (Sup.Ct. 1959).

59. *Ferry v. Kowmehl*, 200 Pa. 253, 122 A.2d 450 (1959).

If a parcel is not unique but is disadvantaged by a zoning restriction equally with other property in the area, issuance of a variance is improper.⁶⁰ For example, if all property in an area is zoned residential, so that particular lot is fungle with the rest, it is not entitled to a variance for a commercial use.⁶¹ Just because property is adjacent to property zoned for business purposes does not constitute a unique circumstance justifying a variance from residential zoning where other adjacent property is zoned residential.⁶² A variance was improperly granted to permit a funeral parlor in a residence district because the property was not distinguishable from other property residentially zoned.⁶³

However, surroundings may create a unique situation. For example, if a lot is zoned residential, but all surrounding uses are commercial, the test of uniqueness may be met.⁶⁴ An apartment building may be located near several public garages, thus justifying a variance from offstreet parking requirements for the building.⁶⁵ In areas that are in transition or in a state of deterioration, property owners often apply for variances and their issuance may be upheld.⁶⁶

§ 110. Unnecessary Hardship

The Standard Act provides that a variance is authorized where the zoning "will result in unnecessary hardship." Thousands of judicial opinions have considered the application of the phrase unnecessary hardship, which appears in almost all enabling statutes and ordinances. A zoning ordinance almost always constitutes some hardship, that is, it restricts uses and lowers the value of some parcels of property. That kind of hardship is necessary in order to produce the overall benefit from zoning.

There is some confusion as to whether hardship is a separate standard or is established when the other three standards are met.

60. *Jay Corp. v. Board of Adjustment*, 413 Pa. 605, 109 A.2d 851 (1964).

61. *Lee v. Board of Adjustment*, 220 N.C. 107, 37 S.E.2d 129 (1949).

62. *Bellamy v. Board of Appeals of City of Rochester*, 12 Misc.2d 626, 233 N.Y.S.2d 1017 (Sup.Ct. 1962).

63. *Clark v. Board of Zoning Appeals*, 301 N.Y. 80, 92 N.E.2d 903 (1950).

64. *City of Mobile v. Sorrell*, 271 Ala. 468, 124 So.2d 403 (1959). An amendment covering all the property may be

a better "form of action" in this case. See § 104 supra.

65. *Silber v. Board of Supervisors*, 58 Cal.2d 479, 375 P.2d 41, 25 Cal.Hprr. 73 (1962).

66. *Parsons v. Board of Zoning Appeals*, 140 Conn. 290, 99 A.2d 140 (1953). However, some courts have properly reversed issuance on the ground that an amendment, or a direct attack in court on the constitutionality of the restriction is proper, since the problem is not unique. See note v. Board of Appeals of Springfield, 343 Mass. 464, 180 N.E. 2d 481 (1957).

For example, if an applicant for a variance is able to show 1. the public would not be adversely affected, 2. issuance would not adversely affect the neighbors, and 3. the property is unique, he may have established unnecessary hardship. If the three tests are met, the case is a proper one for the variance form of action, and since items 1 and 2 are met, no one could be hurt by the variance. If no one could be hurt, nothing justifies the present zoning—it is unnecessary, and regulation is justified only if necessary. On the other hand, perhaps the applicant has only proved hardship and must also prove that the hardship is unnecessary.⁶⁷ For example, suppose a property owner applies for a variance to make a commercial use of property zoned residential. His application meets tests 1, 2, and 3, and it might therefore be held the property is entitled to a variance. On the other hand, if the land is zoned could still enjoy a reasonable return if put to a residential use, he may not have established unnecessary hardship. Perhaps he must go further and prove that residential zoning is not a reasonable use for the property. There is language in the cases that would support a conclusion that unnecessary hardship is a separate standard to be met, but the matter is at best vague. Moreover, facts used to meet one standard often are the same as those used to meet other standards, so precision must sometimes yield to common sense.

The number of separate standards may depend on the ordinance. For example, in order to obtain a variance in San Francisco, five standards must be met.⁶⁸

*Otto v. Steinhilber*⁶⁹ is an early leading case of marked influence. It indicates that before a variance can be issued on the ground of unnecessary hardship it must be shown that the land as zoned cannot yield a reasonable return. The standard suggests that more than an economic disadvantage or hardship must be shown—it must be a hard-

67. See, e.g., *Lorenson v. Hudson*, 106 N.H. 470, 218 A.2d 528 (1963).

68. San Francisco, Calif., City Planning Code § 202.03 (1964):

1. that there are exceptional or extraordinary circumstances or conditions applying to the property involved, or to the intended use of the property, that do not apply generally to other property or uses in the same class of district;
2. that owing to such exceptional or extraordinary circumstances the literal enforcement of specified provisions of the Code would result in practical difficulty or unnecessary hardship;
3. that the variance is necessary for the preservation of a substantial property right of the petitioner possessed by other property in the same class of the district;
4. that the granting of the variance will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the vicinity; and
5. that the granting of such variance will be in harmony with the general purpose and intent of this Code and will not adversely affect the Master Plan.

69. 282 N.Y. 71, 24 N.E.2d 851 (1959).

ship to the extent that no reasonable use of the property is possible or at least that the economic effect is substantial.⁷⁰

Personal Hardship

There is one further major aspect to the phrase unnecessary hardship that has been added by judicial gloss, perhaps improperly. Administrative bodies and courts have sometimes personalized the variance, that is, they make its propriety turn on the character of the owner rather than the nature of the property.⁷¹ Typically, ownership is not relevant to a zoning determination. For example, it may be a hardship to a family with eleven children to be limited to a three bedroom house. A side yard variance might permit the addition of two more bedrooms. It may also be a hardship to deny an old and poor widow the opportunity to run a neighborhood store from her home. A use variance might relieve the hardship. However, these kinds of personal hardships are not usually held to entitle the owner to a variance; the hardship does not relate to the property.

However, in some cases, the character of the owner is held to make a difference. For example, where property is purchased and the owners then apply for a variance, it may be denied on the ground of self-induced hardship, that is, the owners knew or should have known the condition of the property when it was purchased and therefore cannot establish an unnecessary hardship.⁷² Similarly, a variance has sometimes been denied to an option holder, because he cannot show any hardship other than the loss of the option price if the variance is denied.⁷³ The problem can be avoided by having the owner apply or by having both option and optionee apply.⁷⁴

The courts which refuse to personalize the hardship or at least indicate some other reason for denial are more consistent with the general rule that zoning is a regulation of property, not of personal con-

70. Cf. *Cheska Zoning Co. v. Board of Appeals of City of Rochester*, 22 Misc.2d 626, 233 N.Y.S.2d 1017 (Sup.Ct. 1962), without variance there were still many uses for the property. Of course, a showing of no reasonable use of the property itself is not enough, for *Otto v. Steinhilber* also requires that the property be uniquely affected, see § 109 supra, and the variance will not alter the essential character of the locality. See § 108 supra. The public interest standard, see § 107 supra, is not stated as a separate test but more likely than not is subsumed under one of the other tests.

71. See text at notes 61 and 62 supra.

72. *Clark v. Board of Zoning Appeals*, 301 N.Y. 80, 92 N.E.2d 903 (1950); *Bellamy v. Board of Appeals of City of Rochester*, 22 Misc.2d 626, 233 N.Y.S.2d 1017 (Sup.Ct. 1962); *Cheska Zoning Co. v. Board of Appeals of City of Rochester*, 22 Misc.2d 626, 233 N.Y.S.2d 1017 (Sup.Ct. 1962); *Deverent Foundation, Inc. v. Zoning Case*, 531 Pa. 478, 41 A.2d 714 (1953).

73. *Lee v. Board of Adjustment*, 220 N.C. 107, 37 S.E.2d 129 (1949).

74. *Witch v. Nathan*, 108 N.H. 92, 227 A.2d 696 (1967).

duct. Therefore, purchase with knowledge is not considered a bar to a variance by some courts.⁷⁵ If the court feels compelled to deny the variance in such a situation, rather than find no hardship, it might rule that the variance is discretionary, and one who buys with knowledge does not have the equities on his side.⁷⁶ After all, one who buys property unsatisfactorily zoned usually purchases for a lesser price, and perhaps he should not be entitled to a windfall generated by a variance.

The suggestion that equities can be the basis for denial is contrary to the theory that a variance is a matter of right if the tests are met, so the courts considering equities may be as wrong (or right) as those personalizing hardship.⁷⁷

There is one situation where personalizing the variance may be proper. That situation exists where the applicant is the person who caused the condition requiring the variance. For example, it would hardly be proper to compel the issuance of a variance where an owner builds in violation of the zoning ordinance and then claims hardship entitling him to a variance. If that were the rule, persons who violated the ordinance could do so with impunity.

§ 111. Practical Difficulties

While not in the Standard Act, many enabling acts and ordinances provide for the issuance of a variance where there are practical difficulties as well as for unnecessary hardships. Most courts consider the terms to be interchangeable. The New York courts have evolved a rule that practical difficulties entitle the owner to an area variance whereas an unnecessary hardship must be established to obtain a use variance.⁷⁸ The elements necessary to prove practical difficulty are not well defined, though the test is clearly less rigorous than the unnecessary hardship standard.

§ 112. Large Parcel Use Variances

The Standard Act provides for variances, *inter alia*, where there are special conditions and where the spirit of the ordinance can be observed. The language may suggest that a variance is appropriately used only for minor departures from height or bulk regulations. A

75. *Wilson v. Borough of Mountlake*, 42 N.J. 425, 201 A.2d 649 (1964).

76. *Seafair v. Darling*, 40 Del. 263, 83 A.2d 90 (1951).

77. In a strict sense, one never has a right to a variance for his property except where the zoning is unconstitutional as applied and no other "form of action" is applicable.

78. *Village of Bronxville v. Francis*, 1 N.Y.2d 28, 239, 120 N.Y.S.2d 106 (1959); *Bellamy v. Bd. of Appeals of the City of Rochester*, 22 Misc.2d 626, 233 N.Y.S.2d 1017 (Sup.Ct. 1962).

PETITION FOR VARIANCE

3rd Election District

LOCATION: Northwest corner Reisterstown Road and Harden Lane

DATE AND TIME: Monday, June 3, 1985 at 10:45 a.m.

PUBLIC HEARING: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variance to permit existing sign advertising Garrison Shopping Center at 9619 Reisterstown Road at Harden Lane which extends into right of way to remain

Being the property of Sylvan L. Cornblatt as shown on the plat filed with the Zoning Office.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

DESCRIPTION OF PROPERTY AT 9019 REISTERSTOWN ROAD

Beginning for the first on the center of Harden Lane at the intersection of Reisterstown Road at a distance of 15.00' northwesterly to a point on Reisterstown Road and Harden Lane thence binding the Southern boundary along Harden Lane N.78°55'40" E a distance of 100.47' and thence continuing along Harden Lane N.86°39'40" a distance of 31.79' to a point on Harden Lane thence along the Easterly boundary N 3°23'20"W a distance of 142.00' and thence along the Northern boundary S 86°39'40"W a distance of 116.43 and thence along the Northeastly boundary N 34°10'20"W a distance of 62.11' and thence along the Northwestly boundary S 41°22'40"W a distance of 136.41' to a point on Reisterstown Road and thence binding Reisterstown Road S 48°37'20" a distance of 159.05' to the beginning.

Containing .734 Acres more or less.

RE: PETITION FOR VARIANCE : BEFORE THE ZONING COMMISSIONER
NW Corner Reisterstown Rd.
and Harden Lane, 3rd District : OF BALTIMORE COUNTY
SYLVAN L. CORNELIATT, : Case No. 85-338-A
Petitioner

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 14th day of May, 1985, a copy of the foregoing Entry of Appearance was mailed to John H. Denick, Esquire, 916 Munsey Bldg., Baltimore, MD 21202, Attorney for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman



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

ARNOLD JABLON
ZONING COMMISSIONER

May 29, 1985

John H. Denick, Esquire
916 Munsey Building
Baltimore, Maryland 21202

RE: Petition for Variance
NW/corner Reisterstown Rd. & Harden Lane
Sylvan L. Cornblatt - Petitioner
Case No. 85-338-A

This is to advise you that \$ 60.26 is due for advertising and posting of the above property.

This fee must be paid and our zoning sign and post returned on the day of the hearing before an Order is issued. Do not remove sign until day of hearing.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

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

No. 007330

DATE 6/10/85 ACCOUNT R-10-615-000

AMOUNT \$ 60.26

RECEIVED FROM John H. Denick, Esquire

FOR Advertising and Posting Case 85-338-A

VALIDATION OR SIGNATURE OF CASHIER

John H. Denick, Esquire
916 Munsey Building
Baltimore, Maryland 21202

May 7, 1985

NOTICE OF HEARING

RE: Petition for Variance
NW/corner Reisterstown Rd. & Harden Lane
Sylvan L. Cornblatt - Petitioner
Case No. 85-338-A

TIME: 10:45 a.m.

DATE: Monday, June 3, 1985

PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

cc: Vernon Robinson
27 Montrose Avenue
Garrison, Maryland 21035

Arnold Jablon
Zoning Commissioner
of Baltimore County

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

No. 007423

DATE 5/13/85 ACCOUNT R-10-615-000

AMOUNT \$ 107.00

RECEIVED FROM [Signature]

FOR [Signature]

VALIDATION OR SIGNATURE OF CASHIER

CERTIFICATE OF PUBLICATION

TOWSON, MD, May 16, 1985

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on May 16, 1985

THE JEFFERSONIAN,

18 Kentz
Publisher

Cost of Advertising
27.50

PETITION FOR VARIANCE
3rd Election District

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In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during the period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

By Order of
ARNOLD JABLON,
Zoning Commissioner
of Baltimore County
May 14, 1985

46" FROM GROUND

LINDA SEIDEL MAKE-UP CLINIC 8 FT	FREE STATE APRISTER 8 FT	PRIME TIME TAN 4 FT	REISTERSTOWN DAY CARE 8 FT	LEARNING CENTER 4 FT
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9619

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 3rd Date of Posting May 12-85

Posted for: Variance

Petitioner: Sylvan L. Cornblatt

Location of property: NW/Corner of Reisterstown Road and Harden Lane

Location of Signs: NW/Corner of Reisterstown Road and Harden Lane

Remarks: _____

Posted by: [Signature] Date of return: May 14-85

Number of Signs: 1

LANDMARK COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Westminster, Md., May 16, 1985

THIS IS TO CERTIFY that the annexed... Reg. #171740... P.O. #64997 was published for one (1) week previous to the 16th day of May, 1985, in the

☐ Carroll County Times, a daily newspaper published in Westminster, Carroll County, Maryland.

☐ South Carroll Herald, a weekly newspaper published in Eldersburg, Carroll County, Maryland.

☒ Community Times, a weekly newspaper published in Reisterstown, Baltimore County, Maryland.

LANDMARK COMMUNITY NEWSPAPERS OF MARYLAND, INC.

PETITION FOR VARIANCE
3rd Election District

LOCATION: Northwest corner Reisterstown Road and Harden Lane
DATE AND TIME: Monday, June 3, 1985 at 10:45 a.m.
PUBLIC HEARING: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

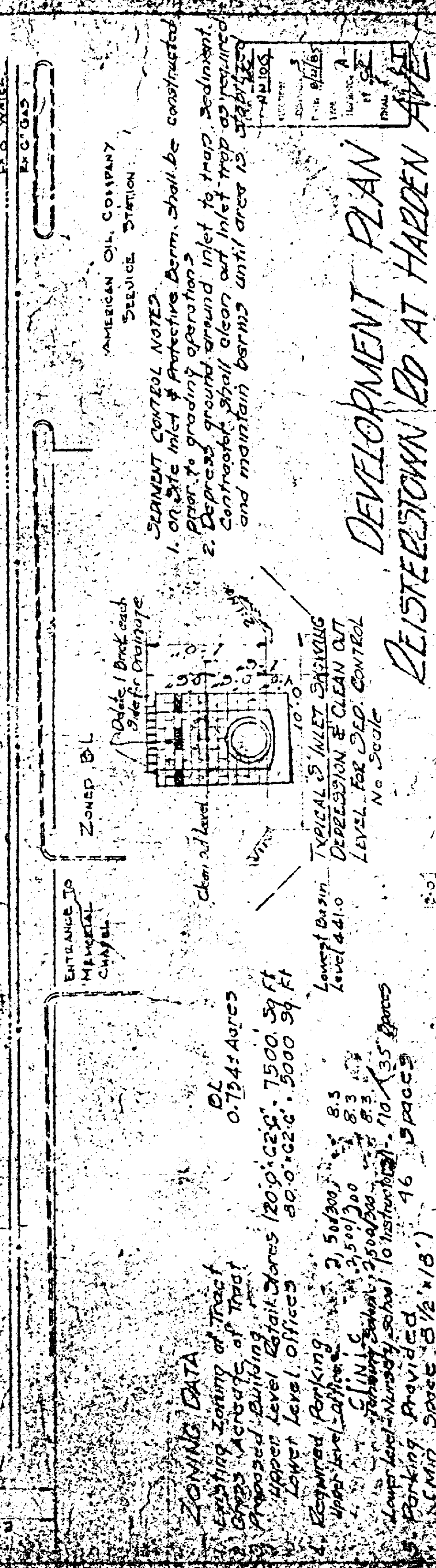
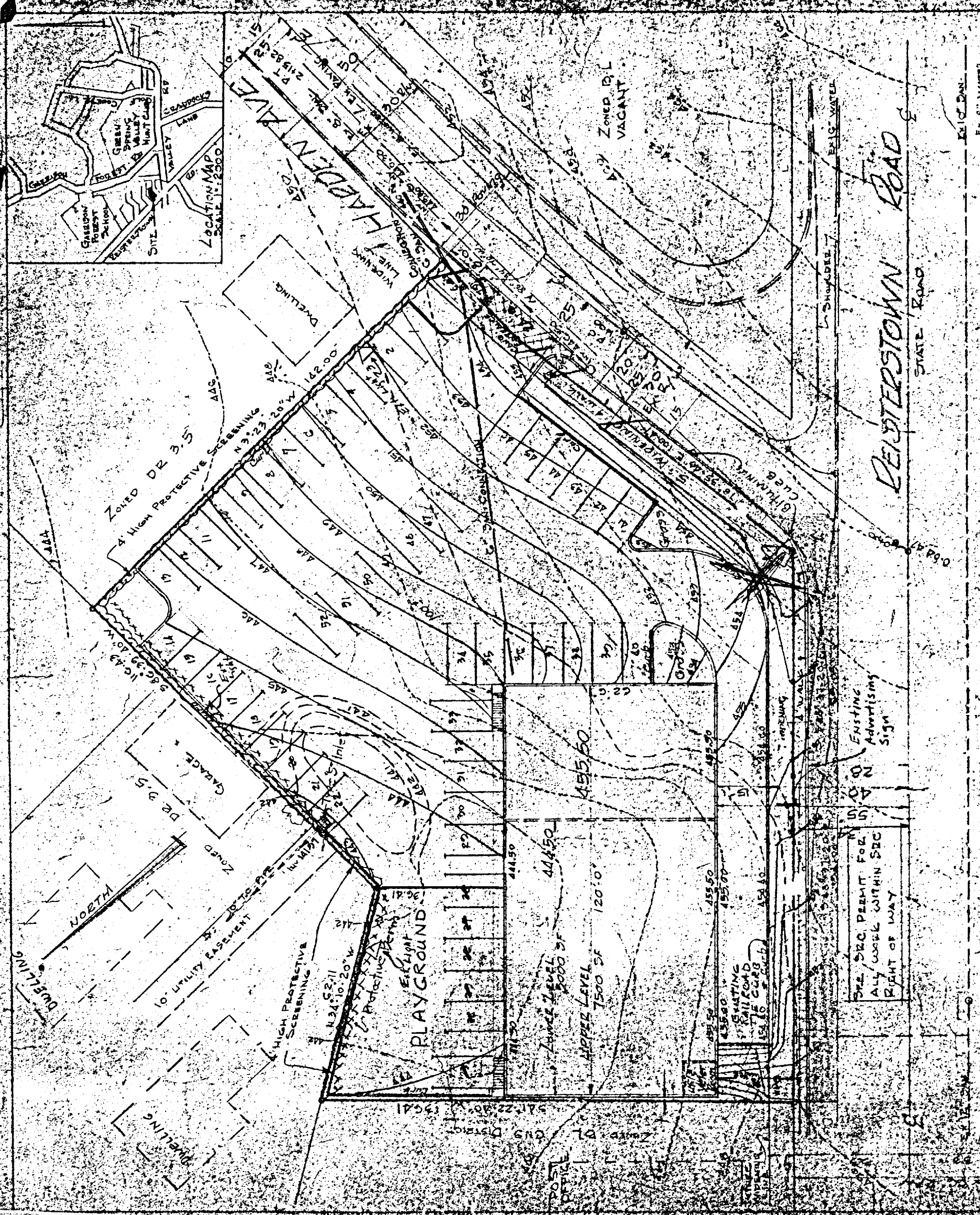
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variance to permit existing sign advertising Garrison Shopping Center at 9619 Reisterstown Road at Harden Lane which extends into right of way to remain.

Being the property of Sylvan L. Cornblatt as shown on the plat filed with the Zoning Office.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during the period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER of
ARNOLD JABLON,
ZONING COMMISSIONER
OF BALTIMORE COUNTY



DEVELOPMENT PLAN
REISTERSTOWN RD AT HARDEN AVE

3RD ELECTION DISTRICT
 SCALE: 1" = 20'

A DEVELOPMENT OF
LANDAY ENTERPRISES, LTD.
 819 N. NORTH POINT RD
 PHONE 448-4300
 BALTIMORE, MARYLAND 21237

BALTIMORE COUNTY, MD
 OCTOBER 14, 1971
 REV. JUNE 1, 1972
 REV. JULY 5, 1972
 REV. JULY 20, 1972
 REV. AUGUST 30, 1972
 REV. AUGUST 10, 1978

SECTION CONTROL NOTES
 1. On site inlet & protective berm shall be constructed prior to grading operations.
 2. Depress ground around inlet to trap sediment. Contractor shall clean out inlet trap as required and maintain berms until area is stabilized.

LEGEND
 1. Existing Contour
 2. Finish Contour
 3. Sediment Basin
 4. Curb

NOTES
 1. TYPICAL 15' INLET SHAKING DEPRESSION & CLEAN OUT LEVEL FOR DEP. CONTROL. No Scale.
 2. TYPICAL EARTH PROTECTIVE & DIVERSION BERM. No Scale.
 3. ZONED B.L.
 4. SERVICE STATION
 5. ENTRANCE TO MEDICAL CHAPEL
 6. EXISTING ADVERTISING SIGN
 7. EXISTING CONCRETE DRIVE
 8. 10' UTILITY EASEMENT
 9. 4' HIGH PROTECTIVE SCREENING
 10. PLAYGROUND
 11. UPPER LEVEL 7500 SF
 12. LOWER LEVEL 3000 SF
 13. ZONED B.L.
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