Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

January 11, 2000

Bank of America, N.A.
Bank of America Corporate Center, 15th Floor
100 N. Tryon Street
Charlotte, North Carolina 28255
Attn: Jodie O. Noble - NCI-007-15-07

Ladies and Gentlemen:

RE: Towson Marketplace, Talisman Towosn Limited Partnership, 1238 Putty Hill Avenue, Baltimore County Maryland

This is to advise you that the zoning and the use of the above captioned Premises have been zoned for retail and office use as allowed in the Business Local-Commercial Core and granted by Zoning Case No. 00-213-SPH, 98-245-SPH, 97-89-SPHX, 93-360-SPHA, 88-136-SPH, etc. and Development Hearing file #1X-386.

As of the date hereof, the Premises and the improvements thereon are not in violation of the aforesaid building and zoning laws, rules and regulations.

The number of parking spaces serving the Premises is adequate and is in conformance with the aforesaid building and zoning laws, rules, and regulations and hearings for the premises.

All required Certificates of Occupancy for the Premises have been issued - OR - Certificates of Occupancy have not been issued for the Premises as none are required.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

John J. Sullivan, Jr.
Planner II
Zoning Review

JJS:kew

Baltimore County
Department of Permits and
Development Management

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111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

88-136-SPH

September 11, 1998

NationsBank, N.A., a national banking association
c/o NationsBanc Montgomery Securities, LLC
NationsBank Corporate Center - 11th Floor
100 North Tryon Street
Charlotte, NC 28255

Attention: Conduit Program Manager

Ladies and Gentlemen:

RE: Towson Place (AKA Towson Marketplace), 1238 Putty Hill Avenue, Towson, MD 21286, 9th Election District

The zoning of this 43.12-acre site, per the 1" = 200' scale zoning map numbers NE 9 & 10-B is B.L.-C.C.C. (Business, Local - Commercial, community core), M.L.-I.M. (Manufacturing, Light - Industrial, major), and D.R.-10.5 (Density Residential). Enclosed are copies of zoning case number 98-245-SPH, in which the deputy zoning commissioner granted a special hearing which sought clarification and revisions, if necessary, of restrictions in prior approved zoning case numbers IX-386 and 96-95-XA and an amendment to the site plan approved in case numbers IX-386 and 97-89-SPHX. Also see attached sheet summarizing all prior zoning hearings held on this site. In accordance with the zoning classification and granted zoning hearings, the use of a retail shopping center, including an automotive service garage ancillary to the Montgomery Ward Department Store, complies with the Baltimore County Zoning Regulations (BCZR). Also enclosed are copies of the appropriate sections of the BCZR. A review of files in the Code Enforcement office found no current violations.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Very truly yours,

John J. Sullivan, Jr.
Planner II, Zoning Review

c: zoning case numbers 98-245-SPH, 97-89-SPHX, 96-95-XA, 93-360-SPHA, 88-136-SPH, 79-125-X, 77-230-XA, 74-143-R, 68-83-R, and 5900

Printed with Soybean Ink on Recycled Paper

IN RE: PETITION FOR SPECIAL HEARING
NE/cor. Goucher Boulevard and
Putty Hill Avenue
(1238 Putty Hill Avenue)
9th Election District
4th Councilmanic District
Bramales, Limited
Partnership

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 88-136-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests approval of a use permit, pursuant to Section 500.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), to store new automobiles on D.R. 5.5 zoned land located at Towson Marketplace, subject to the requirements of a Special Hearing, as more particularly described on Petitioner's Exhibit 1. In addition, the Petitioner also requested in a post-hearing memorandum that the Zoning Commissioner modify the requirements of a 1958 use permit for off-street parking on the subject property, pursuant to Sections 409.4 and 409.5 of the B.C.Z.R.

The Petitioner, by Greg Goleff, appeared, testified and was represented by Gail M. Stern, Esquire and Nancy Haas, Esquire. Also appearing and testifying on behalf of the Petition were Timothy A. Ryan, a traffic engineering and planning expert; Richard Smith, an engineer and planning expert; Gene Wirth for Towson Ford Motor Sales, Inc.; and Jeffrey B. Hazard for Key Oldsmobile, Inc. Numerous representatives from community organizations appeared in protest, testified and were represented by Counsel. In addition, an extensive number of individuals from the surrounding communities appeared as Protestants and testified and/or assigned a representative to testify on their behalf. Testimony for the collective Protestants was provided by Giff Nickol, Carol Hebble, Phil Davis, Doug Biser, Thomas Lynch and Stephen Buckingham, Esquire.

Testimony and evidence presented in this case tend to establish the following facts: The subject property is zoned B.L.-C.C.C. and D.R.5.5, is located near the corner of Goucher Boulevard and Joppa Road, and is improved with a shopping center known as Towson Marketplace. A shopping center has existed on the site since approximately 1954. Parking in the residentially zoned portion of this property has been permitted since approximately 1956 by Order of Wilis H. Adams, then Zoning Commissioner of Baltimore County. On November 19, 1958, the Zoning Commissioner issued a use permit, to and for the benefit of Swarthmore Realty, Inc., which is still in full force and effect, and contains the following conditions:

1) Only passenger vehicles may use the parking area.

2) No loading, service or any other use other than parking shall be permitted. This requirement is intended to cover such situations as service of food, beverages, and similar items from establishments commonly known as "drive-ins."

3) Lighting within the parking area south of an ornamental wall (which has since been constructed) shall be so constructed as not to shine over said wall, and to reflect light away from neighboring residential property.

4) A wall (of specified size and style) shall be constructed along the perimeter of the parking area together with landscaped screening of the parking area from surrounding residential properties.

5) There shall be no advertising on the above-described wall, at the north entrances to the parking area, or at any point between the parking area and Joppa Road.

6) The entire parking area shall have a durable and dustless surface, be properly drained, and be maintained in good order and condition.

7) The parking area shall be used in conjunction with the adjoining business area and the hours of use of the two shall conform.

8) Access to the parking area from Joppa Road shall be permitted only through (specified entrances).

There is no debate that the use permit is still in effect and would remain in effect for any future lessee or contract purchaser of the property. This use permit was subsequently modified by letter dated May 1, 1959 in which the following language was added to Condition 1 of the original use permit:

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Nothing herein contained shall in any manner be construed to prohibit trucks, or other commercial vehicles, from crossing over the residential area used for parking as means of ingress to and egress from any portion of the business area.

By Order dated October 24, 1977, in Case No. 77-230-XA, the Zoning Commissioner reduced the number of off-street parking spaces required (3,648) and granted a variance to permit 3,047 off-street parking spaces in lieu of 3,415 spaces. The property consists of approximately 43 acres, one-third of which are currently zoned D.R. 5.5. This residential portion of the property surrounds Towson Marketplace to the north and to the east along Joppa Road and contains only a portion of the parking lot that serves the shopping center.

Timothy A. Ryan, a traffic engineering and planning expert, testified that based upon an on site investigation he conducted in August 1987, the parking lot is only 58% utilized. He testified that he excluded any parking spaces designated for new car parking and any parking spaces leased or loaned to other local businesses or community organizations.

Mr. Greg Goleff, manager and representative for Towson Marketplace, testified that he agreed to lease a portion of the shopping center's parking lot to two local dealerships, Towson Ford Motor Sales, Inc. and Key Oldsmobile, Inc., for the storage of new unlicensed vehicles. He further testified that no sales operations are permitted on the property in accordance with the month-to-month leases, which may be terminated within 15 days notice at any time for any reason. Further, no trucks, buses or vans are permitted and the leases specifically state that the spaces are to be used for the parking of unlicensed new vehicles only. No identification signs are permitted to be posted with respect to the leased property and no loading or unloading, repairs, sales, advertising or other commercial use is permitted. Mr. Goleff further testified that an outside security firm monitors the entire parking area during the afternoon and evening

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hours and that the lighting of the entire parking lot does not reflect or glare onto nearby residential properties. Mr. Goleff further testified that the shopping center leases 111 spaces to two local businesses for its employees and that an informal agreement exists between Towson Marketplace and Calvert Hall High School to allow approximately 100 students to park their cars in the parking lot between the hours of 8:30 AM and 4:30 PM Monday through Friday during the school year at no expense. Mr. Goleff stated that, in his opinion, if the students were unable to park on the shopping center lot, they would be forced to park in the surrounding residential areas.

Key Oldsmobile is currently leasing 111 parking spaces from Towson Marketplace and Towson Ford is leasing 52 parking spaces. Of the 163 spaces (being leased) requested, 113 spaces are located along the eastern border of the parking lot. An additional 36 spaces are located along the northern perimeter of the lot, and 14 more spaces have been allotted for the new cars in the northeastern corner of the parking lot. Mr. Goleff testified that neither Key Oldsmobile, Inc. nor Towson Ford Motor Sales, Inc. are located at or across the street from Towson Marketplace. Therefore, none of the 163 spaces will support any business operation at Towson Marketplace.

Mr. Ryan testified that, in his expert opinion, the proposed use permit would not have any detrimental effect on the surrounding community or on motorists or pedestrians. He also stated that the new cars are moved less often than others on the lot thereby reducing traffic.

Mr. Smith testified as a planning expert and agreed with Mr. Ryan. He stated that he believed the use proposed met the conditions required in Section 502.1 of the B.C.Z.R. and that there is no harm to the health, safety and welfare of the community. He further testified that the use is consistent with the surrounding retail and office use. He did not testify that it would in any way support the retail use of Towson Marketplace.

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See also
77-230-XA

The evidence tends to establish that parking for several other nearby businesses is taking place at Towson Marketplace. Merry-Go-Round rents 90 spaces, Metpath rents 21 spaces, and Calvert Hall School uses 100 spaces. Although a questionnable activity, the instant case is not the proper forum at which to address this issue.

The Petitioner claims that it has been leasing parking spaces to the two new car dealerships for approximately two years. No one has ever complained of a problem with this activity. The Petitioner believes this proves there is no disruption to the community.

I strongly disagree. The successful undertaking of impressible activities does not render them correct or harmless. The list of examples is too long to repeat here.

The Protestants testified that their concerns involve the fundamental change in the purpose for which the original use permit was issued. This in turn would change the neighborhood. The surrounding residential communities believe this is all part of a continuing trend of commercial development encroaching upon residential areas.

The Protestants clearly believe that more than the storage of cars is actually taking place. Testimony indicated that unloading of truck trailers and sales of new vehicles are taking place from the lot. Witnesses testified they have seen car carriers on the lot and salesmen showing and test driving new cars on the lot. There are concerns over traffic congestion, and therefore, the safety of the community. Testimony indicated that the storage of these new cars is for dealers who are not from the immediate area and that these cars and their storage does not support any business at or surrounding Towson Marketplace. The testimony took issue with the Petitioner's parking space requirements and the method of counting the spaces. The Protestants claim there are less spaces available and less spaces unused than Petitioner claims.

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Mr. Davis testified that the arrangements with Metpath, Merry-Go-Round and Calvert Hall are essentially public services to the community. They help prevent the overflow of parking into the residential area.

The issue raised by the Petition for Special Hearing is whether or not to approve a use permit, pursuant to Section 500.4 of the B.C.Z.R., to allow new automobiles to be stored at Towson Marketplace. Specifically, the Petitioner is requesting a use permit to store new automobiles in a D.R. 5.5 zoned portion of the subject property and to modify the 1958 use permit accordingly. The request is being made pursuant to Section 500.4 and not Section 502.1. Although a great deal of testimony was offered by the Petitioner and supporting witnesses concerning the requirements of Section 502.1 for a Special Exception and Section 409.4 for parking in a residential zone, these standards are not the first level of review for the subject matter.

The Protestants have argued vigorously that the Petitioner misfiled the instant Petition for Special Hearing. They claim that there is no indication that a modification of the 1958 use permit for parking is being sought, pursuant to Section 409.4. Further, that as a result, the Petition should be dismissed.

In my opinion, a technical drafting error, whether it exists or not, is not singularly dispositive of this case. Further, I believe this matter can be disposed of on its merits without reference to this possible drafting error. As such, the cumbersome process of filing a petition to amend the instant Petition for Special Hearing will be avoided.

The underlying desire of the Petitioner is to obtain a use permit to store new automobiles in a residential zone. The "storage" areas are located on the residentially zoned property for which the 1958 use permit for customer parking was obtained. In essence, the Petitioner seeks to modify the 1958 use permit for off-street parking in a residential zone to include the storage (parking) of new automobiles. The Petitioner has argued that the storage (parking) of the new vehicles is consistent with the off-street parking requirement of the B.C.Z.R. However, the Petitioner's request falls to comply with the basic requirements of Section 409, and specifically, Section 409.4, and therefore must be denied.

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The need to consider the legal issues involved in Section 502.1 and the questions raised relevant to the alleged drafting errors is rendered unnecessary by simply reviewing the basic requirements of Section 409 of the B.C.Z.R. in light of the actual relief being requested by the Petitioner.

Section 409 establishes the requirements for off-street parking and loading. Section 409.4 empowers the Zoning Commissioner to approve use permits for parking on land in a residential zone, provided the requirements of "the foregoing schedule" are met. The foregoing schedule is interpreted to be all of the preceeding paragraphs of Section 409. The requirements address off-street parking and loading areas for all land in different zones. There are extensive formulae for developing parking ratios for onsite parking requirements. There are also sections dealing with the requirements for parking, and the application thereof, which are unique within certain areas and zones. Each paragraph of Section 409 from 409.1 through and including 409.4 specifically addresses the parking needs and the application of the parking requirements for a particular land use.

Section 409.4 says, in relevant part, that a "...use permit for the use of land in a residential zone for parking areas to meet the requirements of the foregoing schedule..." (may be approved) and that said use permit is also subject to the conditions contained in subparagraphs A thru H. Therefore, the requested use permit must comply with the requirements of A thru H, and must also meet the requirements of the foregoing schedule.

No paragraph or subsection of Section 409 indicates that any of the parking requirements envision the storage of vehicles from offsite commercial

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uses in a residential zone. Section 409.4A specifically states that the land used, which is interpreted to mean the land used in the residential zone, must adjoin or be across an alley or street from the business or industry involved. The business or industry that would be involved (i.e. using the parking spaces) in this instance would be Key Oldsmobile, Inc. or Towson Ford Motor Sales, Inc., not Towson Marketplace.

Based upon the testimony and evidence presented at the hearing, including, Petitioner's Exhibit 1, in the opinion of the Zoning Commissioner, it is clear that neither of the intended beneficiaries of the proposed use permit, namely, Key Oldsmobile, Inc. and Towson Ford Motor Sales, Inc. are adjoining to or are across an alley or street from Towson Marketplace. The use permit proposed is not for on-site parking for Towson Marketplace customers, but for offsite commercial use by Towson Ford Motor Sales, Inc. and Key Oldsmobile, Inc. Therefore, the proposed use permit is unacceptable on its face. Even if viewed in a light most favorable to the Petitioner, the request does not meet the requirements of Section 409.4 for a use permit for parking in a residential zone.

Furthermore, there is no need to address the issue of whether or not these new cars are being stored, as the Protestants argue, or are being parked, as the Petitioner claims. Even if it is viewed as parking, the storage of new cars by Key Oldsmobile, Inc. and Towson Ford Motor Sales, Inc. is still not permitted at Towson Marketplace. Accordingly, there is no need to address the issue of a possible drafting error in the Petition for Special Hearing as raised by the Protestants.

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

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ORDER RECEIVED FOR FILING
Date 11/4/88
By Kathi Schlaman

IN THE MATTER FOR PETITION FOR SPECIAL HEARING
BRAMALEA LIMITED
Petitioner

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
CASE NO. 88-136-SPH

MEMORANDUM OF LAW IN SUPPORT OF REQUEST FOR USE PERMIT

Petitioner, Bramalea Limited ("Bramalea"), by its undersigned attorneys, submits this Memorandum of Law in support of its request for a use permit pursuant to Section 500.4 of the Baltimore County Zoning Regulations ("BCZR") to allow unlicensed passenger vehicles to park in designated spaces in the parking lot at the Towson Marketplace Shopping Center (the "Shopping Center"). Specifically, Petitioner requests that the Zoning Commissioner exercise its authority under Section 409.5 of the BCZR in order to modify the requirements for off-street parking found in Section 409.4, and in a 1958 Use Permit for off-street parking at the Shopping Center. Bramalea's request is based primarily on the fact that the parking lot at the Shopping Center is at present underutilized. Moreover, the proposed use is consistent with the spirit and intent of the off-street parking regulations and is supported by both applicable law and the facts of this case.

FACTS

A. History of Use

Since 1956 off-street parking for passenger vehicles in the residential zone adjacent to the Shopping Center has been permitted by Order of the Baltimore County Zoning Commissioner. The proposed use is consistent with this Office's prior orders in that Petitioner is requesting only that unlicensed passenger vehicles be allowed to park along the perimeter of the Shopping Center parking lot. As demonstrated by the evidence offered during the Special Hearing in this case, no advertising, sales or other commercial activity is or will be permitted in the residential zone.

In April 1956, the Baltimore County Zoning Commissioner granted the Shopping Center's request for off-street parking.[1] To the best of Petitioner's knowledge, this Use Permit was granted "without any restrictions of any kind and without even reserving the right to approve detailed plans." See Mylander v. Swarthmore Reality, Inc., Case No. 38136, Equity Docket 61, folio 343, Bill of Complaint at 12 (a copy of which is attached as Exhibit A).

[1]This Use Permit was issued by the Honorable Wilsie H. Adams, then Zoning Commissioner of Baltimore County, by letter dated April 10, 1956. After diligent efforts, however, Petitioner has been unable to locate a copy of the letter granting the then owner of the Shopping Center's request for off-street parking in a residential zone. The issuance of the Use Permit back in 1956 is discussed in Mylander v. Swarthmore Realty, Inc., Case No. 38136, Equity Docket 61, folio 343, Bill of Complaint at 7-8 (a copy of which is attached as Exhibit A).

Thereafter, and apparently in an effort to clarify the terms and conditions of the Zoning Commissioner's April 1956 Order, owners of a large tract of residential property known as Towson Estates, brought suit in the Circuit Court for Baltimore County to invalidate the Order and to enjoin the Shopping Center from utilizing the residential portion of the property for off-street parking. The parties ultimately settled the dispute and on July 31, 1958 they executed an Agreement setting forth the terms of the settlement. A copy of the Agreement is attached as Exhibit B.[2] This Agreement confirms that use of the residential area for parking purposes had been authorized by Order of the Baltimore County Zoning Commissioner (See Agreement, page 2). The Agreement also provides that if the parking area is not developed with residential housing, but is developed for parking purposes as an adjunct of retail shopping, or of any other similar commercial use, then the owner and the developer of the Shopping Center would agree to certain restrictions, limitations and conditions which are thereafter set forth in the Agreement. These conditions are essentially aesthetic ones. For example, the Agreement specifies set back distances, screening requirements, means of ingress and egress to and from the Shopping Center and

[2]It is unclear whether the parties to this Agreement intended it to be recorded as a binding agreement at the time of its execution since the Agreement was not in fact recorded until March 26, 1959, and then, only as an exhibit to a lease between the Shopping Center and one of its tenants.

lighting conditions. The Agreement then directs the Shopping Center owner, to apply to the Zoning Commissioner for a use permit for use of approximately 16 acres of residentially-zoned land for parking purposes. The application was to contain the conditions set forth in the Agreement as well as those requirements of Section 409.4 of the BCZR which were apparently incorporated in the Zoning Commissioner's April 10, 1956 Order. See Agreement at 6.

On November 19, 1958, the Zoning Commissioner issued a new Use Permit in accordance with the terms of the Agreement. This Permit superseded the April 10, 1956 Use Permit. The 1958 Use Permit, which is still in full force and effect, contains the following conditions on use:

1. Only passenger vehicles may use the parking area.

2. No loading, service or any other use other than parking shall be permitted. This requirement is intended to cover such situations as service of food, beverages, and similar items from establishments commonly known as "drive-ins."

3. Lighting within the parking area south of an ornamental wall [which has since been constructed] shall be so constructed as not to shine over said wall, and to reflect light away from neighboring residential property.

4. A wall [of specified size and style] shall be constructed along the perimeter of the parking area together with landscaped screening of the parking area, from surrounding residential properties.

5. There shall be no advertising on the above-described wall, at the north entrances to the parking area, or at any point between the parking area and Joppa Road.

6. The entire parking area shall have a durable and dustless surface, be properly drained, and be maintained in good order and condition.

7. The parking area shall be used in conjunction with the adjoining business area and the hours of use of the two shall conform.

8. Access to the the parking area from Joppa Road shall be permitted only through [specified entrances].

This Use Permit was issued to and for the benefit of Swarthmore Realty, Inc. (owner), Eudowood Shopping Plaza, Inc. (contract purchaser) or a lessee or purchaser of the property, subject at all times, however, to the conditions of the Order.

The 1958 Use Permit was subsequently modified by a letter dated May 1, 1959, a copy of which is attached as Exhibit C. This letter added the following language to condition 1:

> Nothing herein contained shall in any manner be construed to prohibit trucks, or other commercial vehicles, from crossing over the residential area used for parking as a means of ingress to and egrees from any portion of the business area.

The amendment was apparently granted in response to a request for clarification by the Shopping Center. Thereafter, on May 15, 1959, the owners of Towson Estates, having obtained full performance from the Shopping Center of the terms of their

settlement of the off-street parking dispute, dismissed the original lawsuit with prejudice.

A number of years later, on October 24, 1977, in Case No. 77-230XA, the Shopping Center owner was granted a 368 space parking variance, reducing the required number of spaces from 3195 to 3008. The notes on the plat submitted during the October 28, 1987 Special Hearing in this case indicate, however, that the terms of the 1958 Use Permit are still in effect.

B. Present Use of the Parking Lot.

The Shopping Center is located at the northeast corner of Goucher Boulevard and Putty Hill Avenue and is commonly known as the Towson Marketplace. The property consists of approximately 43 acres, 14 of which are presently zoned for residential use (DR5.5). The portion of the property zoned DR5.5 surrounds the Shopping Center to the north and to the east, and contains only a portion of the parking lot that serves the Shopping Center.

Testimony given by Mr. Timothy A. Ryan, a traffic engineering and planning expert, during the Special Hearing, indicated that at peak hours and in peak season (2:00 to 3:00 p.m. on a Saturday afternoon in December) the parking lot is only 58% utilized. This conclusion was the result of an on-site investigation conducted by Mr. Ryan in August 1987. During his testimony, Mr. Ryan also explained that in calculating the percent of utilization, he excluded any parking

spaces designated for new car parking and any parking spaces leased or loaned to other local businesses or community organizations.

This testimony confirmed that the Shopping Center parking lot is and has been substantially underutilized by Shopping Center customers and tenants. Mr. Greg Goleff, the manager of the Shopping Center, testified during the Special Hearing that, as a result of lessened parking demand, he agreed to lease some of the unused spaces to two local car dealers -- Towson Ford Sales, Inc. and Key Oldsmobile, Inc. These cars are now parked at the Shopping Center pursuant to month-to-month leases which by their express terms permit only the parking of new cars. At present, Key Oldsmobile is leasing 100 parking spaces from the Shopping Center and Towson Ford is leasing 50 spaces. One hundred thirteen (113) of the 163 requested parking spaces are located along the eastern border of the parking lot. An additional 36 spaces are located along the northern perimeter of the parking lot, and 14 spaces have also been designated for new car parking in the northeast corner of the parking lot nearer to the Montgomery Ward department store.

As noted above, the terms of the leases with Towson Ford and Key Oldsmobile provide that these spaces are to be used for parking only. No sales, no salesmen, no trucks, buses or vans are permitted on the property pursuant to the express provisions of the leases. Mr. Goleff also testified that there

is an outside security patrol which monitors the entire parking area during the afternoon and evenings; that the lighting existing at the parking lot does not cast any reflection or glare onto nearby residential properties; that no identification signs are permitted to be posted with respect to the proposed use; and that no loading or unloading, repairs, sales, advertising or other commercial use is or will be permitted.

The uncebutted testimony of Mr. Goleff during the Special Hearing indicated that there has never been any problems with the lessees in the past, and he has never received any complaints from Shopping Center customers, tenants or local residents with respect to the proposed use.[3] Mr. Goleff further testified that the leases with the car dealers may be terminated for any reason, upon 15 days notice. He indicated at the Special Hearing, that in the event the parking spaces were needed to service the Shopping Center, which is the primary use of the property, or in the event the lessees were violating the terms of the leases or of any Use Permit, their leases would in fact be terminated.

[3]On October 27, 1987 Mr. Goleff received by hand delivery a letter signed by eight (8) local community organizations indicating their opposition to the proposed use. This was the first indication of community opposition received by Mr. Goleff. In fact, until the Shopping Center was cited on April 22, 1987 for "use of the subject property for the display of new motor vehicles," Mr. Goleff, as manager of the Center, had no knowledge that such use might not be allowed under the present zoning for the property. More important, Petitioner clearly had and continues to have no intention of violating the law.

In addition to the proposed use, the Shopping Center leases 111 spaces to two local employers for their employees. The Center also has an informal arrangement with the Calvert Hall School to allow approximately 100 students to park their cars in the parking lot between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday. Mr. Goleff testified during the Special Hearing that the Shopping Center received no monetary or other compensation from the students in exchange for the privilege to park, and instead, the students provide community service under the school's supervision. Mr. Goleff also testified that in the past, when the privilege to park had been discontinued, the students of the Calvert Hall School parked their vehicles in the residential area surrounding the Shopping Center.

ARGUMENT

THE PROPOSED USE IS CONSISTENT WITH THE OFF-STREET PARKING REQUIREMENTS OF THE BALTIMORE COUNTY ZONING REGULATIONS AND WILL HAVE NO ADVERSE IMPACT ON THE GENERAL WELFARE OF THE NEIGHBORING RESIDENTIAL COMMUNITY.

In Baltimore County, the standard to be applied for a use permit is essentially the same as the standard in a special exception case. See Hofmeister v. The Frank Realty Company, 35 Md. App. 691, 373 A.2d 273 (1977) (special use permit for off-street parking in a residential zone is a special exception within the delegated authority of the Baltimore County Zoning Commissioner). The Hofmeister court stated in a footnote that

it did not believe that Section 502 (Special Exceptions) need be complied with in order to obtain a use permit for off-street parking, which is governed exclusively by Section 409.4. See 35 Md. App. at 701 n.7. Nevertheless, the proposed use meets the special exception requirements as well as the requirements of the off-street parking regulations.

In a special exception case, the applicant must demonstrate simply that the proposed use would not have an adverse effect on the proposed location beyond that inherently associated with such use. See Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981). No actual benefit to the community need be demonstrated. See 291 Md. at 11. Since the proposed use, as demonstrated by the unrebutted testimony on behalf of Petitioner, will have no adverse effect on the health, safety or welfare of the community, and otherwise meets the requirements of Section 502 and 409, the proposed use should be permitted.

Timothy A. Ryan, a traffic engineering and planning expert, testified at the Special Hearing that in his expert opinion the proposed use would not have any detrimental effect on the surrounding community or on motorists or pedestrians. Moreover, because the unlicensed passenger vehicles would be driven less frequently than licensed passenger vehicles, it would seem that the proposed use would have little if any effect on traffic conditions.

Mr. Ryan's conclusions were echoed by the testimony of Mr. Richard Smith, a planning and engineering expert who resides and works in this area. Mr. Smith testified that he would, in his expert opinion, be no detrimental effect to the health, safety and welfare of the surrounding community as a result of the proposed use. He further testified that the proposed use was in compliance in all respects with the provisions of the BCZR. Specifically, Mr. Smith testified that the proposed use was a passive use of the subject property and that such use is entirely consistent with surrounding retail and office uses. He testified that the entire parking area is well-maintained, well-trained and screened, and that lighting is adequate but does not reflect upon surrounding residential areas.

All of the the evidence during the hearing showed that the proposed use will have no detrimental effect on the health, safety or welfare of the surrounding community. In addition, if 163 parking spaces are designated for the proposed use, the remaining parking spaces in the Shopping Center parking lot will be more than adequate to satisfy the parking space requirements of Section 409.2 of the BCZR.

Based on the plat submitted during the Special Hearing, the following is a summary of the existing parking and the parking requirements for the Shopping Center:

	Number of Spaces
Regulation Requirements	3195
October 24, 1977 Parking Variance	368

Existing Parking	3008
Required Parking	2827[4]
Excess Parking	181
New Car Parking	163
Remaining Surplus	18

With respect to Merry-Go-Round (90 spaces), Metpath (21 spaces) and Calvert Hall (100 spaces) parking, the unrebutted testimony of Greg Goleff at the Special Hearing was that the persons utilizing such spaces shop at the Shopping Center before work, during lunch and after work; in addition to utilizing such spaces for non-shopping purposes. As such, these 211 spaces need not be subtracted from the number of existing spaces for customer parking. If, however, these spaces were determined by the relevant authorities not to qualify as "customer parking," the remaining parking would be insufficient to meet the requirements of the BCZR before the 163 spaces for the proposed use are even considered. Clearly the protestants do not mean to suggest that these 211 spaces should continue to be utilized in their present fashion, in violation of the BCZR, and at the same time assert that the new car parking should be disallowed. On the other hand, if these 211 spaces are considered customer parking, then the proposed use is clearly within the parking space requirements of the BCZR.

This comparison highlights the fact that community opposition is not premised on the technical space requirements

[4] This number includes 2988 spaces, which in turn includes handicapped spaces, plus 20 spaces in a service garage.

of the Regulations, but on concerns that this particular use will lead to additional commercial development in this area. The basis for community opposition was confirmed by testimony given at the Special Hearing by Mr. Philip Davis, president of the Towson Estates Community Association, that the arrangements with Metpath, Merry-Go-Round and Calvert Hall are essentially a service to the surrounding community and help to prevent the overflow of additional vehicles into the surrounding residential area.[5]

At the Hearing, however, local residents did express concern over the impact of the proposed use. Some of these concerns are realistic and are easily overcome. For example, several area residents testified that they had seen trucks loading and unloading cars in the area and had seen salesmen attempting to display vehicles in the parking area. Without question, and consistent with the existing Use Permit, any revised use permit granted in this case should contain explicit restrictions on the loading and unloading of unlicensed passenger vehicles from delivery trucks in the DR5.5 zone and should prohibit any sales or salesman on the premises.

[5] If, in the opinion of the Zoning Commissioner, it is necessary for Petitioner to also obtain a variance to reduce the number of required off-street parking spaces, Petitioner would be willing to file for a variance. Petitioner's only request is that the unlicensed passenger vehicles be permitted to remain in those spaces designated at the Shopping Center for new car parking pending a final decision with respect to this entire matter.

The remaining concerns of the local residents appear speculative at best. Residents appear to be concerned about what the proposed use might lead to in terms of future commercial use of the subject property. Such concerns, while understandable, are not relevant to the instant proceeding. Petitioner has requested a use permit to park unlicensed motor vehicles in designated spaces in the parking lot at the Shopping Center. This request, if granted, will inevitably be conditioned along the lines suggested herein. Such use permit would in no way permit the sale of motor vehicles or any other commercial activities outside the explicit terms of the Zoning Commissioner's revised Order. Any other use of the parking lot would require the express approval of the relevant zoning authorities.

Several other witnesses for the protestants expressed concern about potential traffic problems. This testimony is directly contrary to the testimony of a traffic expert, Mr. Ryan, and, with the results of his study. Moreover, as a matter of law, unsubstantiated claims of lay witnesses are generally considered irrelevant under such circumstances. See, e.g., Furnace Branch Land Co. v. Bd. of County Commissioners, 232 Md. 536, 541, 194 A.2d 640, 642-43 (1963) (citing cases) (in denying a proposed use a court must find a real problem and not a potential problem); Mayor and City Council of Baltimore v. Bruce, 46 Md. App. 704, 714, 420 A.2d 27-28 (1930) (opinion expressed by neighbor that proposed use would cause traffic

problems was devoid of any factual basis and was therefore entitled to no weight).

In Anderson v. Sawyer, 23 Md. App. 612, 329 A.2d 716 (1974), cert. denied, 274 Md. 725 (1975), the Court, in granting a special exception, discounted the testimony of lay witnesses on the ground that the "unsupported conclusions of lay witnesses to the effect that a proposed use will or will not result in harm amount to nothing more than vague and generalized expressions of opinion which are lacking in probative value." 23 Md. App. at 618 (citing Rockville Fuel v. Board of Appeals, 257 Md. 183, 262 A.2d 499 (1970)). As in this case, the evidence presented by the protestants in Anderson did not disprove that of the applicant's traffic expert that traffic conditions would not be adversely affected by the proposed use. Id. at 618-619. In addition, in Anderson, when neighboring property owners expressed the view that the grant of the requested special exception would "create a wedge for future commercialization," the court appropriately dismissed such a claim as "nothing more than a generalized fear unsupported by facts or reasons." Id. at 621-22. Similarly, in this case, the requested relief will not cause additional commercial expansion.

The protestants' claims of depreciation in value and enjoyment of neighboring residential properties due to the proposed use are similarly entitled to little, if any, weight. In the recent case of Holbrook v. Bd. of County Commissioners,

70 Md. App. 207, 520 A.2d 1096 (1987), the court held that allegations such as these cannot overcome the presumption in favor of a permitted use unless there are strong and substantial existing facts or circumstances showing that the proposed use has detrimental effects above and beyond those ordinarily associated with such uses. See 70 Md. App. at 215 (citing Anderson v. Sawyer, 23 Md. App. at 624-25).

In this case, the protestants have not offered any concrete testimony showing the adverse effects of the proposed use. Instead, the testimony focused on the anticipated effect of other commercial uses not at issue. Moreover, even though the Shopping Center has been leasing space to the car dealers for approximately two years, no evidence was introduced during the Special Hearing that any local residents ever complained about such use until just prior to the Hearing. This supports the view that the use is not disruptive to the community. Note also that neither the Department of Traffic Engineering nor the Bureau of Fire Prevention expressed any concern about or opposition to the proposed use.[6]

[6] It appears that on or about October 19, 1987 Norman E. Gerber, Director of the Office of Planning and Zoning, sent a memorandum to the Zoning Commissioner objecting to the proposed use on the ground that the BCZR permits "passenger parking" only. Petitioner did not receive a copy of this memorandum until after the Special Hearing and after reading about it in a local newspaper, at which time Petitioner's counsel contacted the Zoning Office to request a copy of the memorandum.

Finally, some testimony was adduced on behalf of the protestants to the effect that parking patterns throughout the parking lot may not be uniform. Specifically, the testimony of both Mr. Ryan and the protestants indicated that the parking area located along the eastern side of the Shopping Center, by the Toys R Us store, may become more crowded than other areas of the Shopping Center. To the extent any of the spaces located along this border might interfere with parking for Toys R Us customers, Petitioner would, of course, be willing to relocate some of those spaces to alleviate this concern.

II.

PETITIONER REQUESTS THAT THE ZONING COMMISSIONER MODIFY THE PROVISIONS OF THE 1958 USE PERMIT BECAUSE THE OFF-STREET PARKING REQUIREMENTS OF THE BCZR CREATE UNDUE HARDSHIP FOR PETITIONER.

Section 409.5 of the BCZR provides that where the requirements for parking space or loading space in Section 409 would create an undue hardship, the Zoning Commissioner may approve a modified plan upon petition and after a public hearing. In examining such a request, the Zoning Commissioner may consider surveys and studies submitted by the Baltimore County Department of Traffic Engineering; projections of transit usage; any probability of lessened parking demand as a result of integrally housed business establishments with different (complementary) peak hours; trends with respect to patterns of car ownership or usage within the areas of concern; and other pertinent factors under which recommended decreases

in parking requirements may be effected. See BCZR Section 409.8.C(d).

Petitioner, pursuant to Section 409.5, requests that the Zoning Commissioner modify the November 19, 1958 Use Permit in the following respects: Item Number 7 of the November 19, 1958 Order provides that the parking area shall be used in conjunction with the adjoining business area and the hours of use of the two shall conform. As demonstrated by the testimony of a traffic engineering and planning expert, parking spaces in the Shopping Center are severely underutilized. As a result of lessened parking demand, the Shopping Center has entered into leasing arrangements with Towson Ford Sales, Inc. and Key Oldsmobile, Inc. Because of the nature of the proposed use, the parking of unlicensed passenger vehicles will not necessarily conform to the hours of use of the Shopping Center. Accordingly, Petitioner requests that the Zoning Commissioner modify the existing Order to permit the overnight parking of a specified number of automobiles in designated spaces. As written, the Order already provides that no loading, service or any use other than parking shall be permitted. In addition, the Order could be expanded to prohibit any sales or other commercial use in connection with the proposed use. Lighting, screening and advertising limitations already exist in the 1958 Use Permit.

An important factor in determining whether available parking is more than adequate to serve users is the practical

effect of lessened parking demand as a result of integrally housed business establishments with different (complementary) peak hours. The testimony of Mr. Timothy A. Ryan, a traffic expert, indicated that at peak hours on a Saturday afternoon in December, if the number of parking spaces currently leased to local businesses (Metpath-21; Merry-Go-Round-90) are subtracted from the existing parking supply and if the spaces currently used by Calvert Hall students (100) and the spaces for the proposed new car parking (163) are also subtracted from the existing parking supply, the resulting parking supply will still be more than adequate to meet the parking demands of the Shopping Center. In fact, Mr. Ryan testified that under those circumstances, the parking lot for the Shopping Center would still only be 58% utilized. Mr. Ryan's testimony clearly painted a worst case scenario. More typically, one would expect the parking demand at a shopping center to be at its peak on Saturdays, when parking demands for Merry-Go-Round, Metpath and Calvert Hall School would be minimal, if any. Mr. Ryan, upon cross-examination, indicated that his findings and conclusions were based on observations and data collected at the Shopping Center during a Saturday afternoon in August, 1987. His projections for December, during peak demand, were based on a reference manual entitled Shared Parking, a reference manual produced by the Urban Land Institute.

The requisite hardship under Section 409.5 exists in this case because of lessened parking demand and a concomitant

reduction in income to the Shopping Center as a result of such underutilization. In addition, with respect to the car dealers, the testimony of Mr. Gene Worth of Towson Ford and Mr. Jeffrey Hazard from Key Oldsmobile demonstrated that they have looked extensively throughout the community for a location to park their excess stock. Their testimony was unanimous that this was one of only two or three available locations, most of which were shopping center parking lots. Mr. Worth also testified that if he was forced to diminish his stock for lack of parking, he would ultimately have to let go of some of his employees. Moreover, to the extent the car dealers' ability to park in existing locations is curtailed, they would be forced to build a lot on uncleared, undeveloped land.

With respect to the arrangements with Metpath and Merry-Go-Round and with Calvert Hall School, if these cars are not permitted to park in the Shopping Center for similar reasons, i.e., traffic congestion and use not associated with the Shopping Center, there was testimony to the effect that these cars, under such circumstances, have parked and would again park in the surrounding residential neighborhood. Certainly, this is not the result that the protestants wish to obtain. For that matter, neither is this Petitioner's intention. In fact, Petitioner has demonstrated, through concessions with respect to lighting and screening, through its accommodation of local businesses and a local school for employee and student parking, and, by the concessions offered

herein, that Petitioner does not desire to harm in any way the health, safety or welfare of the surrounding community. Mr. Goleff himself testified that when the initial leasing arrangements were made with all of the above-mentioned entities, he had no knowledge of nor was it his intention to violate the law. Further support for this proposition exists in the leases themselves, which contain conditions similar to those proposed herein today.

For all of the reasons stated above, Petitioner believes that the requirements for off-street parking in Section 409 would create an undue hardship for Petitioner, local businesses and the local community. Accordingly, Petitioner requests that the Zoning Commissioner approve a modified plan for parking that would permit the proposed use.

III.

THE COVENANTS CONTAINED IN THE AGREEMENT DATED JULY 31, 1958 BY AND BETWEEN THE MYLANDERS ET AL. AND THE THEN OWNERS OF THE SHOPPING CENTER DO NOT PRECLUDE THE ZONING COMMISSIONER FROM GRANTING A USE PERMIT FOR THE PROPOSED USE.

The Agreement between the owners of Towson Estates and the then owners of the Shopping Center was entered into in settlement of a dispute between the Shopping Center owners and Towson Estates over the 1956 Use Permit granting the Shopping Center's request for off-street parking in a residential zone. Even assuming that the present Shopping Center owners are bound by the covenants contained in this Agreement, these covenants

do not in any way preclude the Zoning Commissioner from granting the requested relief. To begin with, the Agreement acknowledges at page 2 that "[u]se of the parking area for parking purposes has been authorized by Order of the Zoning Commissioner of Baltimore County, dated April 10, 1956 pursuant to and in accordance with then existing County zoning regulations". Next, paragraph 1 of the Agreement states that

> [i]f the parking area is . . . developed for parking purposes as an adjunct of retail shopping, or of any other similar commercial use, then, in such event, Swarthmore, for itself, its successors and assigns, and for any person, firm or corporation claiming by, through or under it, covenants and agrees, and Eudowood, for itself, its successors and assigns, also covenants and agrees if it is the developer of the Center Site, that the covenants, agreements, restrictions, limitations, and conditions hereinafter set forth shall apply to the parking area . . . .

As written, the Agreement would, at the very least, appear to allow parking as an adjunct to retail or other similar commercial use. It may, in fact, allow any commercial use. In any event, there is nothing affirmative in the above statement or the specific covenants in the Agreement that would prohibit the proposed use. The covenants instead speak to aesthetic concerns such as set back, screening, access and lighting. The only other affirmative covenant undertaken by the owner of the Shopping Center is contained in paragraph 2, whereby the owner agreed to make application to the Zoning Commissioner for a use permit for off-street parking in a residential zone, which application would be conditioned upon the previous requirements

set forth in the April 10, 1956 Order and the limitations set forth in the Agreement. Accordingly, nothing in the Agreement would prohibit the Zoning Commissioner from modifying the November 19, 1958 Use Permit to allow for the parking of unlicensed passenger vehicles in designated spaces at the Towson Marketplace.

CONCLUSION

The Petitioner, Bramalea Limited, requests that its application be approved for the parking of unlicensed passenger vehicles in designated spaces in the parking lot at the Towson Marketplace. Authority to grant such request is clearly within the power of the Zoning Commissioner, and is expressly governed by Section 409.5 of the BCZR. Moreover, there are no covenants existing of record which would preclude the granting of such relief. With respect to the request itself, the evidence presented at the Special Hearing overwhelmingly demonstrates that the requested modification is consistent with the existing off-street parking Regulations. The proposed use will not violate the technical space requirements of the Regulations nor will such use have any adverse effect on the health, safety or welfare of the surrounding community. In addition, Petitioner has assured the Zoning Commissioner and the community, and has offered to make it a condition of the Use Permit, that no sales, loading or unloading will occur on the residential area of the parking lot. As such, the proposed use

is not detrimental to the community, and is in strict harmony with the spirit and intent of the off-street parking regulations and all other provisions of the BCZR.

Respectfully submitted,

Gail M. Stern

Nancy Haas
Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202
(301) 625-3500

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of November, 1987, a copy of the foregoing was hand-delivered to Stephen C. Buckingham, Esquire, 201 W. Preston Street, Baltimore, Maryland, 21201, Attorney for Protestants.

Nancy Haas

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Exhibit A

BILL OF COMPLAINT

1. The object of this Bill of Complaint is to have this Honorable Court declare illegal and of no effect the purported action of the Defendant, Wilbie H. Adams, Zoning Commissioner of Baltimore County, in authorizing or attempting to authorize the use by the Defendant, Swarthmore Realty, Inc., its subsidiaries, successors or assigns, for purposes of parking automobiles as an adjunct to a commercial modern lasing, the following described parcel of land, hereinafter sometimes referred to as the "parcel in question", and to enjoin said Defendants, their subsidiaries, successors or assigns, from so using said property;

"Beginning for the same at a point on the south side of Joppa Road as now laid out 40 feet wide, said point of beginning being at the end of the fourth line of that parcel of land which by deed dated May 10, 1955, and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 2494, Folio 321, was conveyed by The Hospital for Consumptives of Maryland to Swarthmore Realty, Inc. and running thence binding on the fifth line of said deed and on the said fifth line extended southerly South 13 degrees 56 minutes 50 seconds West 1,186.72 feet to intersect the north side of Putty Hill Road as now laid out 80 feet wide, thence binding on said north side of Putty Hill Road the three following courses and distances, viz: First along a curve to the left with a radius of 1,657.00 feet for a distance of 434.40 feet, said curve being subtended by a chord bearing North 86 degrees 02 minutes West 433.13 feet, second South 85 degrees 40 minutes 50 seconds West 800.31 feet, and third North 49 degrees 19 minutes 10 seconds West 22.69 feet, thence for lines of division the three following courses and distances, viz: First North 85 degrees 34 minutes 33 seconds East 954.51 feet, second North 13 degrees 56 minutes 50 seconds East 815.16 feet, and third North 64 degrees 56 minutes 08 seconds West 1,009.42 feet to intersect the east side of Prince Road as now laid out 70 feet wide, thence binding on the said east side of Prince Road the two following courses and distances, viz: First North 23 degrees 48 minutes 33 seconds East 605.68 feet, and second North 68 degrees 30 minutes 50 seconds East 21.27 feet to intersect the said south side of Joppa Road and the second line of said deed, thence binding on said south side of Joppa Road and on part of said second line, and all of the third and fourth

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lines of said deed in the three following courses and distances, viz: First along a curve to the right with a radius of 20,091.16 feet for a distance of 285.10 feet, said curve being subtended by a chord bearing South 65 degrees 44 minutes 02 seconds East 285.09 feet, second South 65 degrees 36 minutes 08 seconds East 548.29 feet, and third along a curve to the left with a radius of 4,017.49 feet for a distance of 390.63 feet, said curve being subtended by a chord bearing South 67 degrees 43 minutes 16 seconds East 390.48 feet, to the place of beginning.

Containing 18.272 acres of land more or less."

2. The Complainants, Henry A. Mylander, Margaret M. Mylander, his wife; Walter C. Mylander, Jr., and Virginia B. Mylander, his wife; Mathilde M. Hebb and Donald B. Hebb, her husband; Harriet M. Maling and Henry F. Maling, Jr., her husband, and Henry A. Mylander, Trustee under the Last Will and Testament of Walter C. Mylander, deceased, which will is recorded in the office of the Register of Wills for Baltimore County in Wills Liber J.F.C. No. 44, Folio 57 &c., certified copy of which is filed herewith as part hereof and marked "Complainants' Exhibit A", are the owners as hereinafter set forth of a large tract of residential property, known as "Overen Estates", improved by a number of substantial dwelling houses, located in the Ninth Election District of Baltimore County on the north side of Joppa Road and immediately opposite and across the said road from the parcel in question. For title of the Complainants see the following:

1. Deed dated February 29, 1940, from Walter C. Mylander and wife to Walter C. Mylander, Jr., and Virginia B. Mylander, his wife, recorded among the Land Records of Baltimore County in Liber C.W.B.,Jr. No. 1119, Folio 60, a certified copy of which is filed herewith as part hereof and marked "Complainants' Exhibit B";

2. Deed dated September 30, 1944, from Baltimore Equitable Society to Harriet F. Maling recorded among the Land Records of Baltimore County in Liber R.T.S. No. 1355, Folio 226, a certified copy of which is filed herewith as part hereof and marked "Complainants' Exhibit C";

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3. Deed dated July 18, 1946, from Walter C. Mylander and wife to Harriet F. Mylander recorded among the Land Records of Baltimore County in Liber C.W.B.,Jr. No. 1111, Folio 116, a certified copy of which is filed herewith as part hereof and marked "Complainants' Exhibit D";

4. Deed dated September 30, 1939, from C. Courtney Hood to Harriet F. Mylander recorded among the Land Records of Baltimore County in Liber C.W.B.,Jr. No. 1078, Folio 215, a certified copy of which is filed herewith as part hereof and marked "Complainants' Exhibit E";

5. Deed dated August 27, 1946, from Harry L. Warshaw to Mathilde Mylander Hebb recorded among the Land Records of Baltimore County in Liber R.T.S. No. 1494, Folio 8, a certified copy of which is filed herewith as part hereof and marked "Complainants' Exhibit F";

6. Deed dated March 8, 1947, from Harry L. Warshaw to Mathilde M. Hebb recorded among the Land Records of Baltimore County in Liber J.W.B. No. 1548, Folio 134, a certified copy of which is filed herewith as part hereof and marked "Complainants' Exhibit G";

7. Deed dated September 21, 1940, from Walter C. Mylander and wife to Mathilde M. Hebb recorded among the Land Records of Baltimore County in Liber C.W.B., Jr. No. 1127, Folio 157, a certified copy of which is filed herewith as part hereof and marked "Complainants' Exhibit H";

8. Deed dated April 30, 1952, from Henry A. Mylander, Trustee, to Mathilde M. Hebb recorded among the Land Records of Baltimore County in Liber G.L.B. No. 2108, Folio 481, a certified copy of which is filed herewith as part hereof and marked "Complainants' Exhibit I"; and

9. Deed dated March 30, 1954, from Jean Claire Haig to Henry A. Mylander and Margaret M. Mylander, his wife, recorded among the Land Records of Baltimore County in Liber G.L.B. No. 2454, Folio 242, a certified copy of which is filed herewith as part hereof and marked "Complainants' Exhibit J".

3. The parcel in question is owned by the Defendant, Swarthmore Realty, Inc., having been conveyed to it by deed dated May 10, 1955, and recorded among the Land Records of Baltimore County in

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Liber G.L.B. No. 2494, Folio 321, from The Hospital for Consumptives of Maryland. A certified copy of said deed is filed herewith as part hereof and marked "Complainants' Exhibit K". Said property is subject to a purchase money mortgage dated May 10, 1955, and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 2494, Folio 324, from said Swarthmore Realty, Inc., to the Defendant, The American National Building and Loan Association of Baltimore City, which last named company is joined as a party defendant herein so that it may be bound by the force and effect of any decree entered herein. A certified copy of said mortgage is filed herewith as part hereof and marked "Complainants' Exhibit L".

4. An option agreement was entered into under date of May 17, 1956, which agreement is recorded among the Land Records of Baltimore County in Liber G.L.B. No. 2931, Folio 188, a certified copy of which is filed herewith as a part hereof and marked "Complainants' Exhibit M" between the Defendant, Endowood Shopping Plaza, Inc., as optionor and the Defendant, Swarthmore Realty, Inc., as optionee, under which agreement the optionee is given the option to enter into a long term lease of the entire premises owned by the said Defendant, Swarthmore Realty, Inc., and it is recited in said agreement that "It is the intention of the optionee to operate upon the entire premises a modern retail shopping center, having diversified commercial and mercantile establishments with parking incident to the operation of same."

5. Zoning Regulations for Baltimore County were adopted on March 30, 1955, by the County Commissioners of Baltimore County,

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pursuant to the provisions of The Enabling Act, codified as Sections 366 and 367 of the Charter and Public Local Laws of Baltimore County (1948 Edition). Public hearings were held, as required by the aforesaid Enabling Act, and a Land Use Map for the Ninth Election District was duly adopted which is Sheet Number 3C of the Baltimore County official zoning maps. A copy of said map is filed herewith as part hereof, marked "Complainants' Exhibit N".

6. The above described parcel of land owned by the Defendant, Swarthmore Realty, Inc., at the time of the adoption of said Baltimore County Zoning Map, Sheet 3C was classified in part R.10 (Residential, 1 Family Use, 10,000 square feet) and in part R.6 (Residential, 1 Family Use, 6,000 square feet). This area is outlined in red on the attached zoning map, Exhibit N. At the time the aforesaid public hearings were held as a necessary preliminary step before the adoption of an official land use plan for the Ninth Electica District of Baltimore County, a preliminary plan was made public for the use of the tract of land purchased by the Defendant, Swarthmore Realty, Inc., from The Hospital for Consumptives of Maryland. Said preliminary plan proposed the above mentioned residential zones to be located on the south side of Joppa Road and proposed that a commercial area be established within the entire tract, and the zoning map was adopted on this basis, limiting the commercial area to that shown on the attached Map 3C to the area marked 9 B.L. 13.

7. Henry A. Mylander, one of the above Complainants acting individually and as Trustee under the will of Walter C. Mylander, deceased,

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and as a representative of the other Complainants herein, attended the aforesaid hearings prior to the adoption of said zoning map and inspected the said preliminary land use plan proposed by the Defendant and discussed said plan with a representative of the Defendant, Swarthmore Realty, Inc. Because of the area designated on said plan as R.10 and R.6 abutting on the south side of Joppa Road immediately across the road from the land owned by the Complainants, and because of representations then made, that said area would be used for the construction of cottages, their objections to the commercial area (Marked B.L.) were not pressed and no formal protest was made by the Complainants to the proposed use as shown on the zoning Map 3C as finally adopted.

8. The Complainants were first informed that the Defendant contemplated a use of the above described parcel of land on the south side of Joppa Road for other than residential use during the course of a conference in the office of the Public Works Engineer of Baltimore County concerning the widening of Joppa Road on September 18, 1956. Subsequent inquiry was made by your Complainants' Solicitor in the office of the Zoning Commissioner of Baltimore County and he was informed for the first time on October 2, 1956, that a "permit" had been issued by the Zoning Commissioner of Baltimore County to "someone" for the use of the above described property for parking in connection with the business use of the area zoned B.L., but said permit could not be located in the office of the Zoning Commissioner of Baltimore County. Later on that date a typewritten copy of a letter from the Zoning Commissioner of Baltimore County to Swarthmore Realty, Inc., was mailed to your Complainants' Solicitor who then requested a certified copy of said

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permit and the application therefor. On October 24, 1956, the Complainants received for the first time photostatic copies of a letter dated April 9, 1956, from Swarthmore Realty, Inc., to the Honorable Wilbie H. Adams, Zoning Commissioner of Baltimore County, a photostatic copy of said letter being filed herewith as part hereof, and marked "Complainants' Exhibit O", together with a photostatic copy of the plat referred to in said letter from Swarthmore Realty, Inc., which copy is filed herewith as part hereof and marked "Complainants' Exhibit P", and a photostatic copy of a letter dated April 18, 1956, from Wilbie H. Adams, Zoning Commissioner of Baltimore County, to Swarthmore Realty, Inc., a photostatic copy of said letter being also filed herewith as part hereof and marked "Complainants' Exhibit Q".

9. The Enabling Act pursuant to which the Zoning Regulations for Baltimore County were adopted by the County Commissioners as above referred to, which is codified in Sections 366 and 367 of the Code of Public Local Laws of Baltimore County, 1948 Edition, requires in Section 366(c) that before the establishment of boundaries of proposed districts, divisions or zones and the regulations to be enforced therein, the Zoning Commissioner should first make a preliminary report of his recommendations to the County Commissioners and then hold public hearings before submitting his final report. The County Commissioners, after receipt of this final report and fifteen days' notice by publication, are required to hold a public hearing for the adoption of such regulations. This procedure was followed before the adoption of the above mentioned Zoning Regulations for Baltimore County on March 30, 1955. Said Section 366(c) further requires that before the boundaries of zoning

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districts are amended, supplemented or changed from time to time, the Zoning Commissioner shall hold a public hearing or hearings on any proposed amendment, supplement or change and that the same procedure shall be followed before the adoption of such amendments with respect to notice and public hearings as provided for the original regulations and restrictions. The action of the Zoning Commissioner for Baltimore County purporting to authorize the use of the above described parcel of land which is indicated on the plat marked Complainants' Exhibit P as "Parcel #1 - Parking Area - 18,272 sq." would have the effect of changing the zoning classification for this entire parcel zoned in part R.6 and in part R.10 and of permitting therein a use which under the duly adopted zoning regulations would not be permitted in that area but would only be permitted in a Business Local zone or in a lower zone as shown by the regulations hereinafter referred to and made a part hereof.

This purported action without public notice of any kind and without notice of any kind to adjoining property owners and without posting of the property and without a public hearing is in direct conflict with the provisions of the said Enabling Act and is therefore illegal and void.

10. The Zoning Regulations for Baltimore County above referred to adopted on March 30, 1955, a copy of which is filed herewith as part hereof and marked "Complainants' Exhibit R", prescribe the uses for each zoning district by the method technically known as the "positive method" by which the uses permitted in each district are

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specifically stated, and all uses other than those listed are prohibited.

(c) The use regulations for an R.O zone begin with the phrase "The following uses only are permitted:

"204.1—Uses permitted and as limited in R.A zones.

"204.2—Special Exceptions—The following uses when permitted as Special Exceptions."

Parking areas are not listed under the uses permitted in an R.A zone and are not listed even as Special Exceptions under the R.40 zone or the R.10 zone or the R.6 zone (see Sections 206 and 208).

(b) The regulations for the uses permitted in a R.A-1 zone specifically state that one of the permitted uses is "automobile parking lot" (Section 230.9). It is further provided "Section 232—Area Regulations" in sub-section 232.4 as follows: "Parking Area and Loading Spaces—In accordance with the provisions of Section 409."

(c) Leaves are permitted by section 307 "only if in strict harmony with the spirit and intent of said regulations, and only in such manner as to grant relief without substantial injury to the public health, safety, and general welfare," and the Zoning Commissioner is required to give public notice and hold a public hearing on any application for a variance in the same manner as in the case of a petition for reclassification.

(d) Offstreet parking and loading area requirements are set forth in Section 409. It is provided in sub-section 409.2b as follows:

"Parking space for buildings other than dwellings—In all zones, permanently maintained offstreet parking spaces shall be provided as follows: . . .

"(6) Buildings devoted to retail trade, . . 1 for each 200 square feet of total floor area."

(b) [illegible] Section 409.4 [illegible]

[illegible] parking [illegible] the [illegible] zone [illegible] the [illegible] of the [illegible] zoning [illegible] and [illegible] parking [illegible] for the protection of the residential zone in which the parking spaces is to be located. This provision to permit business or industrial parking in residential zones is manifestly [illegible] of the regulations designed to be operative only when it is impossible to provide the parking areas required by the above quoted sections in the zone where such use would be permitted. The clear intent is that parking spaces shall be provided within the zone where both the primary use and the parking use are permitted. It is further clear that this permissive use would be a variance when exercised in any zone and would be subject to the restrictions and requirements for public notice and hearing required before such a variance shall be granted. If permitted to the extent requested in this case, whereby two residential zones, which were clearly designed to be buffer zones, are completely destroyed, the variance would be so great that it would be a major alteration in the basic plan for the area.

11. The plat of Swarthmore Realty, Inc., which was attached to its letter requesting permission to use residential land for commercial parking (Complainants' Exhibit F) shows two areas included within the dark lines marked respectively "Parcel #1 - Parking Area - 14.272 ac.", and "Parcel #2 - Business Area - 26.357 ac.". Both parcels have been and now are vacant land. There is no reason why parking and loading

[illegible] [illegible] [illegible] [

ZONING DEPARTMENT OF BALTIMORE COUNTY

Exhibit C

May 21, 1959

Suburbmore Realty, Inc.
c/o M. William Adelson, Esq.
1035 Mathieson Building
Baltimore 2, Maryland

Re: Petition for Zoning Reclassification of Eudowood Tract - Ninth Election District of Baltimore County

Gentlemen:

Pursuant to your request of April 30, 1959, for an amendment of paragraph 1 of the Off-Street Parking Use Permit issued to and for the benefit of Suburbmore Realty, Inc. and Eudowood Shopping Plaza, Inc. on November 19, 1958, please be advised that your interpretation of paragraph number 1 of the permit is correct, and I hereby amend said paragraph of the use permit to read immediately as follows:

"1. Only passenger vehicles, excluding buses, may use the parking areas. Nothing herein contained shall cause the parking areas to be used to prohibit trucks, or other commercial vehicles, from crossing over the residential spaces used for parking as a means of ingress to and egress from any portion of the business area."

Very truly yours,

William E. Adams
Zoning Commissioner
of Baltimore County

WEA:MSL:ms

Rec'd for record 2SEP.29 1959 page
per Walter J. Rasmussen, Clerk
Mail to
Receipt No.

IN THE MATTER FOR PETITION FOR SPECIAL HEARING
BRAMALEA LIMITED, Petitioner

BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

CASE NO. 88-136-SPH

PROPOSED ORDER

Having read and considered the Memoranda of Law submitted by the parties hereto, and for the reasons stated in Petitioner's Memorandum of Law in Support of Request for Use Permit, it is this _____ day of _____, 1987

ORDERED, that

(1) The request of Bramalea Limited for a revised Use Permit for off-street parking on the residentially zoned land adjoining a business area in the Eudowood Tract and the Ninth Election District in Baltimore County is hereby granted.

(2) Paragraph 7 of the Use Permit granted by the Zoning Commissioner of Baltimore County on November 19, 1958, as modified by letter dated May 1, 1959, is hereby modified in the following respects:

The parking area shall be used in conjunction with the adjoining business area and the hours of use of the two shall conform, except that a maximum of one hundred sixty three (163) unlicensed passenger vehicles shall be permitted to park twenty-four (24) hours a day in designated spaces on the site plan attached hereto as Exhibit A. With respect to such vehicles, no loading or unloading, service, sales or any use other than parking shall be permitted.

(3) Except as modified hereinabove, the Use Permit issued on November 19, 1958, as modified by letter dated May 1, 1959, shall remain in full force and effect.

This Permit is issued to and for the benefit of Bramalea Limited, Inc., or any lessee or purchaser of the property, subject at all times, however, to the conditions hereof.

IT IS SO ORDERED, this _____ day of _____, 1987.

J. Robert Haines
Zoning Commissioner
of Baltimore County

1074t/1

IN THE MATTER FOR PETITION FOR SPECIAL HEARING
BRAMALEA LIMITED, Petitioner

BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

CASE NO. 88-136-SPH

PETITIONER'S RESPONSE TO MEMORANDUM OF PROTESTANTS

I.

THE PROPOSED USE IS A PERMITTED USE AND MAY BE CONDITIONED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 409.5 OF THE BCZR.

As Protestants themselves have stated, the testimony of Petitioner's expert witnesses at the Special Hearing on October 28, 1987, was that the proposed use involves only the "parking" of vehicles on the lot in question. Similarly, under the BCZR, the use of land for "parking spaces" is allowed as of right in both residential and commercial zones as an "accessory use." See BCZR Section 1801.1A.f. Moreover, while such use must conform to the restrictions established under Section 409, Section 409.5 expressly provides that the Zoning Commissioner may modify the requirements of Section 409.4 "where requirements for parking space or loading space in Section 409 would create an undue hardship . . . ." Despite all of the above, Protestants continue to argue that the proposed use is not permissible. Nevertheless, when all of the trappings involved in this case are stripped away, all that Petitioner is requesting is that

unlicensed passenger vehicles be permitted to park along the perimeter of the parking lot. The fact that this use is simply parking, which is clearly permitted by the BCZR, is difficult if not impossible to refute.

II.

PROTESTANTS' CONCERN ABOUT FUTURE COMMERCIALIZATION SHOULD NOT BE GIVEN ANY WEIGHT IN CONSIDERING THE PERMISSIBILITY OF THE PROPOSED USE.

All of Protestants' arguments against the proposed use may be reduced to one basic issue -- a generalized fear of future commercialization of this area. This Special Hearing is not the place for Protestants to be voicing such concerns. Moreover, the Protestants have not offered any concrete testimony showing how the proposed use would be detrimental to the community. With respect to the specific use at issue, Protestants' opposition is very surprising in view of the fact that no local residents ever complained about such use over the course of the last two years. As such, as a matter of law Protestants' unsubstantiated concerns about the adverse effect of the proposed use cannot be considered in this case.

III.

THE COVENANTS CONTAINED IN THE AGREEMENT DATED JULY 31, 1958 BY AND BETWEEN THE MYLANDERS ET AL. AND THE THEN OWNERS OF THE SHOPPING CENTER ARE LESS RESTRICTIVE THAN THE CONDITIONS CONTAINED IN THE NOVEMBER 19, 1958 USE PERMIT.

As stated in detail in Petitioner's initial Memorandum, the covenants contained in the Agreement do not in any way

preclude the Zoning Commissioner from granting the requested relief.

CONCLUSION

For all of the reasons stated in Petitioner's Memorandum of Law in Support of Request for Use Permit and for all of the reasons stated herein, Petitioner requests that the Zoning Commissioner permit the use of the property for parking of unlicensed passenger vehicles.

Respectfully submitted,

Gail M. Stern

Nancy Hyas

Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202
(301) 625-3500

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of November, 1987 a copy of the foregoing was hand delivered to Stephen Buckingham, Esquire, 201 West Preston Street, Baltimore, Maryland 21201, Attorney for Protestants.

Nancy Hyas

IN RE: PETITION FOR SPECIAL HEARING
NE/corner Goucher Blvd. and Putty Hill Avenue
(1238 Putty Hill Ave.)
Bramalea, Ltd. - Petitioner

BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

CASE #88-136-SPH

MEMORANDUM OF LAW IN OPPOSITION TO PETITION FOR USE PERMIT

Protestants, the Community Associations of Breezewick, Campus Hills, Cromwell Valley, Fellowship Forest, Greenbrier, Knettishall, Loch Raven Village and Towson Estates, by their undersigned attorney, submit this Memorandum of Law in rebuttal to Petitioner's Memorandum of Law filed with the Zoning Commissioner on November 13, 1987. From the outset, Protestants note that Petitioner's Memorandum addresses issues not properly before the Zoning Commissioner, either through the original petition filed or through motion made at the Special Hearing on October 28, 1987. We also note that Petitioner has changed its characterization of the use for which it has requested a permit from "storage" to "parking." While it is the position of Protestants that the variances between the original Petition for Special Hearing and Petitioner's Memorandum of Law would require new notice and hearing, we will address in this memorandum the substance of Petitioner's arguments for the newly requested relief.

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ZONING OFFICE

I. REQUEST FOR PERMIT TO PARK UNLICENSED VEHICLES

While Petitioner's original request was for a use permit under B.C.Z.R. §500.4 "to allow new vehicles to be stored at Towson Marketplace", Petitioner's Memorandum of Law describes the petition as a request "to allow unlicensed passenger vehicles to park in designated spaces in the parking lot at the Towson Marketplace." (page 1). Petitioner uses the term "parking" throughout its Memorandum and makes no reference to "storing" vehicles. The difference is more than semantics, since the permissible use of land for "storage" and for "parking" differ markedly under the Zoning Regulations. Indeed, while the latter is permitted under certain conditions, the former is prohibited. Since Petitioner has apparently abandoned its request for a "storage" use permit, we respectfully request that the petition in Case #88-136-SPH be dismissed. To allow Petitioner to change its request for relief at this point would frustrate the purpose of the laws and regulations designed to give interested members of the public adequate notice and opportunity for hearing (specifically Article 5, B.C.Z.R.).

Despite the use of the term "parking" in Petitioner's Memorandum, all of the testimony revealed that the proposed use would differ from what is usually considered "parking." Unlicensed vehicles would be left on the lot for extended periods of time, such as they would be on the showroom or storage lot of an auto dealership. Calling the use "parking" does not alter its fundamental character as new car storage. Those of Petitioner's arguments which rely on the characterization of the use as "parking" should be treated as irrelevant in this proceeding.

II. REQUEST FOR MODIFICATION OF PARKING REQUIREMENTS

Petitioner further requests that the Zoning Commissioner "modify the requirements for off-street parking found in Section 409.4, and in a 1958 Use Permit for off-street parking at the Shopping Center" (page 1). Despite Petitioner's characterization of this request as being "specifically" what was requested in the original petition, this request appears now for the first time; it is neither to be found in the original petition nor in Petitioner's statements at the hearing. While the Commissioner is authorized under §409.5 to "approve a modified plan" for business parking in a residential zone where the requirements for parking space . . . in Section 409 would create an undue hardship," this may only be done "upon petition and after a public hearing." The instant petition cannot be said to serve this purpose since it failed to give adequate notice of the matter to be considered at the hearing. Since the petition did not indicate that §409.5 was at issue and did not specify any "modified plan" for parking, Protestants were not prepared to counter the contention that failure to grant the requested relief would impose an "undue hardship" on Petitioner. For this reason, Petitioner's newly made request should be denied.

III. PETITIONER'S FACTUAL SUMMARY

Protestants take issue with Petitioner's characterization of the facts in several respects. First, the statements on pages 2 and 7 to the effect that no sales or other commercial activity is permitted in the residential zone by Petitioner was directly contradicted by the testimony. In fact, the unrebutted testimony

of Mr. Thomas Lee was that automobile sales were observed showing cars to prospective buyers on the shopping center lot. Other witnesses gave unrebutted testimony that trucks delivered the autos directly to the lot. While Petitioner may wish to indicate its hopes for future enforcement of these prohibitions, this should not be taken to imply that its past efforts have been successful.

The claim on page 8 that "there has[sic] never been any problems with the lessees in the past" must also be qualified. The testimony of Mr. Goleff was that he had no knowledge of any such problems, but the unrebutted testimony of Protestants' witnesses indicated problems with the lessees' car carriers and salesmen.

Protestants are uncertain of the purpose of Petitioner's footnote on page 3. It seems to imply that the timing of recording the 1958 agreement somehow affects whether it binds the parties. If one needs evidence of the intent of the parties to bind themselves and their assigns, one need only look to the agreement itself, which indicates a clear intention for the agreement to run with the land. If the point is to claim lack of notice on Petitioner's part, the land records indicate that the date of recording (after the November 1958 use permit was issued but before the Mylanders' suit was dismissed) was long before Petitioner purchased the property. Since there was timely record notice, the exact timing of recording is irrelavant.

OFFSTREET PARKING REGULATIONS

One reason Petitioner advances for allowing the proposed use is that it "meets the requirements of Section 502 and 409" of the Regulations. (page 10). We contend that §500.4 controls whether a use permit should issue in this case and that the proposed use fails to meet its standards.

As clarified in Hofmeister v. The Frank Realty Company, Md.App. 691, 373 A.2d 273 (1977), a special use permit is a "special exception" in the broad, generic sense of the term. This is in keeping with the well established principle that "any use other than those permitted and being carried on as of right or by special exception is prohibited." Kowalski v. Lunar, 25 Md.App. 493, 334 A.2d 536 (1975). To determine whether a particular use permit may be granted, however, we cannot rely on the regulation pertaining to "special exceptions" (B.C.Z.R. §502) since it only actually applies to exceptions other than those "singled out for special handling." Hofmeister, 373 A.2d at 278. Since a use permit is addressed specifically in §500.4, Petitioner must meet the conditions of §500.4 before a use permit may be issued.

A use permit may only be issued under §500.4 "[if] such use is permissible" under the Zoning Regulations. Storage of vehicles in a residential zone is not permitted under any section of the regulations. Section 409.4 does allow business parking in residential zones, but imposes conditions on the use. Under §500.4, a permit issued shall be "conditioned by other provisions [e.g. §409.4] contained in the Regulations which shall indicate that it authorizes [sic] particular use applied for." If the

proposed use is "storage" (as claimed in the original petition), it is prohibited; if it is "parking", it must comply with §409.4 (which limits its use to businesses adjoining or across an alley or street). In Dundalk Holding Co. v. Horn, 266 Md. 280, 292 A.2d 77 (1972), the Court of Appeals upheld a Baltimore County use permit which was intended to be used by surrounding businesses as well as the petitioner/property owner. Use by remote businesses, however, was not approved.

In addition to the requirements of §409.4, the proposed use must meet the requirements of §409.2, including the minimum space provisions. While Petitioner states that these requirements are met, Protestants introduced testimony which disputes the numbers used by Petitioner to arrive at its conclusion. Petitioner has not accounted for the excess spaces enclosed by the Post Office, the spaces utilized by the snowball stand or the garden center, nor the additional spaces needed to serve the garden center. Even without counting the spaces used by Merry-Go-Round and MetPath (Petitioner counts this as 90 and 21 despite Mr. Goleff's testimony that the numbers are 100 and 18), there are only 117 excess spaces on the lot. Using 163 spaces for auto storage would violate §409.2.

V. ADVERSE EFFECTS OF PROPOSED USE

Petitioner also argues that the proposed use "will have no adverse effect on the health, safety or welfare of the community" (page 10). In support of this contention, it states that the testimony of its expert witnesses was "unrebutted" and characterizes all opposition testimony as unworthy of

consideration. I contend that there was significant testimony showing adverse consequences of the proposed use regarding traffic congestion and alteration of the neighborhood character.

While Mr. Ryan's testimony was that the proposed use would not interfere with the shopping center's use or cause congestion, upon questioning, he admitted that particular areas (specifically the area near Toys-R-Us) would be more congested due to the cars stored in the area. Petitioner recognizes this in its Memorandum on page 17 by offering to relocate these cars "to the extent any of these spaces . . . might interfere with parking for Toys-R-Us customers." In addition, witnesses for Protestants gave accounts of overcrowding from personal experience which were exacerbated by the storing of unlicensed vehicles near Toys-R-Us. While Petitioner relies on cases which have discounted lay testimony to ...ite Protestants' witnesses, other cases have indicated that ...y testimony is admissible, even if hearsay, and may even be the ...e basis of a decision if sufficiently probative. Eger v. Stone, 253 Md. 533, 253 A.2d 372 (1969).

Testimony was also given which indicated that the proposed use would change the character of the property and increase commercialization in the area. Use of parking spaces for auto storage is a commercial use not related to the retail stores currently served by those spaces. It is nothing new to state that a variation in use of property changes the character of a zoned district. See Loyola Federal Savings & Loan Ass'n v. Buschman, 227 Md. 243, 176 A.2d 555,358 (1961). Protestants' testimony regarding the fundamental change in the lot's purpose should be entitled to consideration.

VI. MODIFICATION OF 1958 USE PERMIT

In its second argument, Petitioner requests modification of the 1958 use permit to allow the use of parking spaces (for storage of unlicensed vehicles) during hours when the retail stores are closed. As with the other request under §409.5 discussed earlier, this request is also newly made and gives the public no notice or opportunity to comment at a hearing. Furthermore, the hearing on October 28, 1987, could not serve to satisfy §409.5 since the testimony elicited can not reasonably support the argument that an "undue hardship" exists.

It is well established that in order to show "undue hardship" a petitioner must show that it "would be unable to secure a reasonable return from or make any reasonable use" of the property. Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md.App. 28, 322 A.2d 220 (1974). "Mere financial hardship or an opportunity to get an increased return from the property is not a sufficient reason" for granting a variance in use. Id. citing Daihl v. County Board of Appeals, 258 Md. 157,167, 265 A.2d 227,232 (1970). Here, Petitioner may lose an increased return from auto storage, but cannot reasonably be said to suffer any hardship. Nor can the auto dealers seriously be said to suffer an "undue hardship" from denial of a permit. Since we do not believe that Calvert Hall students are prohibited from parking on the lot under the existing zoning, we do not see how a "hardship" would occur, unless Petitioner decided on its own to deny them parking privileges.

VII. EFFECT OF THE 1958 AGREEMENT

Petitioner interprets the 1958 agreement between the landowners of Towson Estates and of the shopping center to permit any commercial use and to allow the proposed use. We contend that the proposed use is not "an adjunct to retail or other similar commercial use" since its nature is significantly different. It does not envision individuals arriving at different times and parking their legally licensed vehicles for short periods of time while patronizing the stores of Petitioner's lessees. Instead, it expects unlicensed vehicles to sit in designated spaces for long periods of time while remote auto dealers attempt to make room on the showroom floor. We do not believe that the parties to the agreement intended that the residentially-zoned parking lot would become an auto storage facility.

Petitioner is correct in stating that the agreement does not prohibit the Zoning Commissioner from modifying the 1958 use permit. Under §600 of the Zoning Regulations, however, the restrictions in the agreement would not be affected by such a change. The issue for Protestants is one of enforcement. While the residents of Towson Estates may be entirely willing and able to seek enforcement of the agreement in the civil courts of the County, such a process would be expensive and time-consuming. Public enforcement would be easier and more efficient than a private lawsuit. While the 1958 use permit remains in effect, the government's interest and that of Towson Estates coincide: to provide for planned, rational development and use of land.

V. CONCLUSION

Protestants believe that Petitioner has not met its burden of showing that its proposed use complies with the applicable Zoning Regulations. Its original request (storage of vehicles) is prohibited under the regulations, and Petitioner has abandoned that request. Its new theory characterizes the use as "parking" which it does not resemble. But even if it were parking, the regulations limit its use for patrons of the shopping center and buildings immediately surrounding it. Evidence was given that the proposed use would also have adverse effects on the community. Petitioner has made new requests for relief without giving legally adequate notice or opportunity for public comment. One is to modify the parking requirements governing the lot, another is to modify the 1958 use permit, but Petitioner cannot show "undue hardship". For these reasons, we respectfully request that Petitioner's use permit be denied and that the land be returned to the use for which it was originally intended under the 1958 agreement between the shopping center and its neighbors.

Stephen C. Buckingham
Counsel for Protestants

CERTIFICATE OF SEAVICE

I HEREBY CERTIFY that a copy of the foregoing Memorandum of Protestants was hand delivered this 20th day of November, 1987, to Gail M. Stern, Esquire, Attorney for Petitioner.

October 22, 1987

Mr. J. Robert Haines
Zoning Commissioner of Baltimore County
111 W. Chesapeake Avenue
Towson, MD 21204

Re: Towson Marketplace
Case No. 88-136-SPH

Dear Mr. Haines:

On Monday evening, October 19th, the Towson Estates Association invited the presidents of eight communities surrounding the marketplace for the purpose of discussing the proposed warehousing of cars on the residentially zoned DR 5.5 area of the parking lot. Nine of the eight communities attended this special meeting and the remaining communities contacted us the following day to express their concern. It was unanimous that the "use permit" should not be granted. As a result, all of the communities intend to have representation at the hearing on October 28th. Mr. Steven Buckingham, our attorney, will be representing the community associations which are listed below and a list of speakers will be filed prior to the hearing date.

If you or any of your board members should have any questions, I can be reached at work on 597-9040 or home on 823-7425.

Sincerely,

Phillip Davis
President, Towson Estates
Community Associations

Breezewich	James P. Murphy	10/26/87
Campus Hills	President/Representative	Date
Cromwell Valley	C. Wayne Kempske	10-25-87
Fellowship Forest	Thomas M. Lynch	10/23/87
Greenbriar	Robert P. Gray	10/24/87
Knettishall	H. Patrick Stamp Jr.	10/25/87
Loch Raven Village	Giff B. Nickol	10/26/87
Towson Estates	Stephen Buckingham Jr.	10/27/87
	Phillip Davis	10/23/87

cc: Gail M. Stern, Esquire
Frank, Bernstein, Conaway & Goldman
300 E. Lombard Street
Baltimore, MD 21202

Mr. Greg Goleff
Bramales Limited
26 Towson Marketplace
1238 Putty Hill Avenue
Towson, MD 21204-5808

LIST OF PERSONS TO TESTIFY AT THE OCTOBER 28th HEARING

Re: Towson Marketplace
Case Number: 88-136-SPH

✓	Giff Nickol	Knettishall
	Bill Troy	Towson Estates
✓	Carol Hebble	Towson Estates
✓	Phil Davis	Towson Estates
	Pat Cassidy	Towson Estates
✓	Doug Biser	Towson Estates
	Steve Buckingham	Loch Raven Village

Thomas M. Lynch
1529 Dexbury Rd.
Towson, MD 21204

Campus Hills
COMMUNITY ASSOCIATION, INC.
P.O. BOX 9776 TUDOWOOD STATION
TOWSON, MARYLAND 21204

JR 14

October 22, 1987

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ZONING OFFICE

Mr. J. Robert Haines
Zoning Commissioner of Baltimore County
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Case Number: 88-136-SPH
Towson Marketplace

Dear Commissioner Haines:

The Campus Hills Community Association supports the Towson Estates Association in opposition to the granting of a special use permit to Bramales, Limited. Said permit would allow for the storage of automobiles in areas of the Towson Marketplace property, portions of which are zoned D.R. 5.5.

The Association feels that storage of automobiles in these areas is undesirable, inappropriate and clearly an unnecessary commerical intrusion to the surrounding residential communities. Approval for the special use permit would adversely affect the quality of living in Towson Estates.

With many thanks for your careful consideration of the ramifications of this case as we appeal to you to deny the requested special use permit.

Sincerely,

C. Wayne Kempske
C. Wayne Kempske, Chairman
Zoning Committee

cc: Mr. Phillip Davis
908 E. Joppa Road
Towson, MD 21204

IN RE: PETITION FOR SPECIAL HEARING
NE/corner Goucher Blvd. and
Putty Hill Avenue
(1238 Putty Hill Ave.)
Bramales, Ltd. - Petitioner

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
CASE #88-136-SPH

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MEMORANDUM OF PROTESTANTS

The Community Associations of: Breezewich, Campus Hills, Cromwell Valley, Fellowship Forest, Greenbriar, Knettishall, Loch Raven Village and Towson Estates

I. BACKGROUND AND ISSUES

Petitioner requests a use permit, under B.C.R.R. §500.4 since it desires to use land for a "purpose other than that for which said land [was] being used at the time of adoption of" the Zoning Regulations. The cited section permits the Zoning Commissioner to issue a permit "[if] such use is permissible" under the Zoning Regulations and "conditioned by other provisions contained in the Regulations which shall indicate that it authorizes [sic] particular use applied for." Under §500.4, Petitioner's proposed use must be one permitted under the Regulations and, if permitted, would be conditioned by provisions of the Regulations.

In its petition, Petitioner characterized the proposed use as "storage" of new, unlicensed vehicles. However, testimony at the hearing on October 28, 1987 by Petitioner's expert witnesses was that the use would be "parking" of vehicles on the lot in question. Whether the use is characterized as "storage" or "parking", we believe that the Zoning Regulations prohibit the use in a zone of this nature (B.L.-C.C.C. and D.R. 5.5). We contend that (1) if the proposed use is "storage", it is prohibited by the regulations, and if the proposed use is

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"parking", it is limited to parking for the use of the shopping center and its customers. Furthermore, there exists a private agreement binding on Petitioner prohibiting the proposed use, and the Regulations do not affect the operation of a private agreement more restrictive than the Regulations.

II. ALLOWED USES AND LIMITS ON SUCH USES

Under the Regulations governing D.R. Zones, the use of land for "parking spaces is allowed as an 'accessory use' as of right ([§]1B01.1A.1.f). Such a use, however, must conform to the restrictions established under §409. Furthermore, if the area is considered a Residential Transition Area under §1B01.1B, permissible uses include "any parking area permitted under §409.4." Unlike parking, the use of land for storage is not specified as a use as of right, nor is it mentioned under "Uses Permitted by Special Exception" ([§]1B01.1C).

That a lot is zoned B.L. under §230 does not alter the allowable uses for parking or storage. Section 230.1 states that uses are both permitted and limited as in "the residential zone immediately adjoining", in this case, D.R. 5.5. Other provisions expand on permissible uses to expressly include "parking lot" ([§]230.9) and "Accessory uses . . . including . . . parking spaces for the use of owners, employees, tenants, and invitees" ([§]230.11). As with residential zones, however, parking areas must be "[in] accordance with the provisions of Section 409" ([§]232.4). The fact that a C.C.C. District is superimposed on a B.L. Zone has no effect since it neither permits a new use nor imposes an additional restriction.

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From the above, it is clear that "storage" is not an allowed use for the land in question. However, whether the proposed use is allowed as "parking" depends on whether it conforms with §409 governing offstreet parking. Section 409.2.b. sets parking space requirements for "buildings devoted to retail trade" as "1 of each 200 square feet of total floor area." Furthermore, it requires that a "parking space . . . shall be either on the same lot with the principal use to which it is accessory or within 500 feet of the building it is intended to serve." (This would allow the use of parking spaces for Calvert Hall students and for employees of MetPath and Merry-Go-Round, but not the two auto dealers). Under §409.4 entitled "Business or Industrial Parking in Residential Zones", an additional restriction is added that any "use permit shall be conditioned as follows: . . . No loading, service, or any use other than parking shall be permitted."

Petitioner's plat shows that 3,195 parking spaces are required to serve the retail space of the shopping center. Petitioner's estimate, however, does not include the retail space occupied by the garden center described in testimony as occupying 20 parking spaces; that would add 12 more spaces to the number required by regulation to be available for patrons for a total of 3,207. In 1977, a variance was granted for 368 spaces, reducing the (currently) required number to 2,839.

Petitioner indicates that 3,008 spaces are currently available for retail customers, but this does not account for the 20 spaces occupied by the garden center nor the 2 spaces used by the snowball stand. Leases with Merry-Go-Round for 100 spaces and with MetPath for 18 reduce the available spaces to 2,868.

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The post office has enclosed ten more spaces than would be allocated to its use under the formula, further reducing the available spaces to 2,858. Twenty of the parking spaces Petitioner counts are actually the 20 service bays inside the Wards Car Care Center, and we contend that they should not be counted as available for customer use. This would reduce the available number to 2,838, and Petitioner would be already one space below the minimum required by the regulations. However the spaces are counted, granting the use permit would reduce the available spaces far below the regulatory minimum.

III. EXISTING PRIVATE AGREEMENT

Section 600 of the Zoning Regulations provides: "When greater restrictions are imposed by any law, ordinance, regulation, or private agreement than are required by these Regulations, such greater restrictions shall not be affected by these Regulations." In this case, Petitioner is bound by an agreement prohibiting the proposed use. The agreement was made in 1958 and intended to run with the land in question for the benefit of that land and the adjoining land in the area known as Towson Estates. The agreement was signed by the prior owners of the adjoining lands and Swarthmore Realty, Inc., the prior owner of the land which now constitutes Towson Marketplace, as well as Zudowood, the developer of the shopping center.

This agreement came about as a result of a controversy surrounding a Zoning Order of April 10, 1956 which allowed the use of the residentially zoned area for parking for the proposed shopping center. At that time, the owners of all of the ad-

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joining property now known as Towson Estates brought suit to invalidate the Order. Negotiations between the owners of the shopping center land and the adjoining owners resulted in a settlement agreement dated July 31, 1958. The agreement anticipated the area's development "for parking purposes as an adjunct of retail shopping or of any other similar commercial use" and established conditions for the creation of the parking lot in its present location. The parties agreed to bind their successors and assigns "for the benefit of the lands" of the adjoining owners.

In return for Swarthmore's agreement, the adjoining owners agreed not to contest the issuance of a use permit allowing parking for the shopping center. The use permit duly issued November 19, 1958 limited parking to "only passenger vehicles" and provided that: "The parking area shall be used in conjunction with the adjoining business area" and that "No loading, service, or any use other than parking shall be permitted."

As the agreement is recorded in the land records of the County at Liber No. 3602, Folio 32, the agreement is a matter of public record of which Bramales Limited had notice when it purchased the land in question and is, therefore, bound by it.

IV. CONCERNS OF NEIGHBORS

In addition to the legal restrictions on the proposed use, the neighboring communities have substantial concerns which should be considered before any change is made in the property's use. Granting the use permit would change the nature of the property and alter its fundamental purpose. The surrounding

5

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 19th day of January, 1988, that the request for approval of a use permit to store new automobiles on D.R. 5.5 zoned land located at Towson Marketplace and further, as requested in a post-hearing memorandum, to approve a modification of the requirements of a 1956 use permit for off-street parking on the subject property, be and is hereby refused, and as such, the Petition for Special Hearing is hereby DENIED.

IT IS FURTHER ORDERED that all new vehicles belonging to Towson Ford Motor Sales, Inc. and Key Oldsmobile, Inc. be removed from Towson Marketplace by no later than March 1, 1988.

J. Robert Haines
ROBERT HAINES
Zoning Commissioner of
Baltimore County

JRH:bjs

ORDER RECEIVED FOR FILING
Date 1/19/88
By Kathi Weidenhammer

-9-

PETITION FOR SPECIAL HEARING

88-136-SPH

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 Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve

a use permit, pursuant to Section 500.7 of the Baltimore County Zoning Regulations, to allow new automobiles to be stored at Towson Marketplace on property zoned BL-CCC, DR 5.5

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

I, or we, agree to pay expenses of the above Special Hearing 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

Address

City and State

Legal Owner(s):

BRAMALEA LIMITED

(Type or Print Name)

Signature

(Type or Print Name)

Signature

MAP NE 9B
9-C
9B
E.D.
DATE 3-2-88
SDI 8 p.m.
VOTE X
DD

Attorney for Petitioner:

Gail M. Stern, Esquire

(Type or Print Name)

Signature

Frank, Bernstein, Conaway & Goldman

Address

300 E. Lombard Street

Baltimore, Maryland 21202

City and State

Attorney's Telephone No.: 625-3647

26 Towson Marketplace
1238 Putty Hill Avenue 337-0505
Address Phone No.

Towson, Maryland 21204-5808
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Gail M. Stern, Esquire
Name

Frank, Bernstein, Conaway & Goldman
300 E. Lombard Street
Address Phone No.

Baltimore, Maryland 21202 625-3647

ORDERED By The Zoning Commissioner of Baltimore County, this 28th day of August, 19 87, 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 Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 28th day of October, 19 87, at 2:45 o'clock P.M.

ESTIMATED LENGTH OF HEARING -1/2HR. +1HR.
AVAILABLE FOR HEARING
MON./TUES./WED. - NEXT TWO MONTHS
ALL
OTHER

J. Robert Haines
Zoning Commissioner of Baltimore County.

REVIEWED BY: RLM DATE 6/24/87

ORDER RECEIVED FOR FILING
Date 8/28/87
By Kathi Weidenhammer

KIDDE CONSULTANTS, INC.
Subsidiary of Kidde, Inc.

Towson Marketplace
KCI Job Order No. 01-86354S
June 4, 1987
Page 3

binding on the chamfer at the northeast corner of Goucher Boulevard and Putty Hill Road, (21) North 49 degrees 19 minutes 10 seconds West 106.07 feet to the place of beginning.

CONTAINING 43.120 acres of land more or less.

SAVING and excepting from the above land all that parcel of land zoned "BM" as shown on Baltimore County Zoning Map NE 9 B.

RO/pek KCI Job No. 01-86354S June 4, 1987

STATE OF MARYLAND
THOMAS A. DIGIACOMO
No. 7863
REGISTERED PROPERTY LINE SURVEYOR

January 29, 1988

Gail M. Stern, Esquire
Nancy Haas, Esquire
Frank, Bernstein, Conaway & Goldman
300 E. Lombard Street
Baltimore, Maryland 21202

RE: Petition for Special Hearing
NE/cor Goucher Boulevard and Putty Hill Avenue (1238 Putty Hill Avenue)
9th Election District, 4th Councilmanic District
Bramalea, Limited - Petitioner
Case No. 88-136-SPH

Dear Ms. Stern and Ms. Haas:

Enclosed please find the decision rendered on the above-referenced case. The Petition for Special Hearing has been Denied in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal to the County Board of Appeals. For further information on filing an appeal, please contact this office.

Very truly yours,

J. Robert Haines
ROBERT HAINES
Zoning Commissioner

JRH:bjs

Enclosures

cc: Stephen Buckingham, Esquire
915 Cathedral Street, Baltimore, Md. 21201

People's Counsel

File

KIDDE CONSULTANTS, INC.
Subsidiary of Kidde, Inc.

DESCRIPTION
TOWSON MARKETPLACE
9TH ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND

This description is for a Use Permit in a DR 5.5 Zone and a BL-CCC Zone;

BEGINNING FOR THE SAME at a point on the east side of Goucher Boulevard (110 feet wide) at the distance of 75.00 feet northerly from the intersection formed by the prolongation westerly of the north side of Putty Hill Road (94 feet wide) with the prolongation southerly of the east side of Goucher Boulevard, and running thence binding on the east side of Goucher Boulevard, (1) North 4 degrees 19 minutes 10 seconds West 279.68 feet and (2) by a line curving to the left with a radius of 1965.00 feet the arc distance of 132.50 feet and a chord bearing North 6 degrees 15 minutes 04 seconds West 132.47 feet, thence leaving Goucher Boulevard, on a chamfer to the original alignment of Prince Road, (3) North 7 degrees 22 minutes 07 seconds east 95.98 feet, thence (4) North 23 degrees 38 minutes 33 seconds East 497.69 feet to intersect Prince Road (70 feet wide), as now constructed, thence binding on Prince Road, (5) North 23 degrees 38 minutes 33 seconds East 655.64 feet to a chamfer or cut-off leading to Joppa Road, thence binding on said chamfer, (6) North 58 degrees 36 minutes 24 seconds East 33.18 feet to Joppa Road, thence binding on Joppa Road (varying in width), (7) South 64 degrees 56 minutes 08 seconds East 148.69 feet, (8) South 50 degrees 41 minutes 08 seconds East 36.53 feet, (9) South 64 degrees 56 minutes 08 seconds East 338.58 feet, (10) North 25 degrees 03 minutes 52 seconds East 9.00 feet, (11) South 64 degrees 56 minutes 08 East 301.79 feet, (12) by a line curving

KIDDE CONSULTANTS, INC.
Subsidiary of Kidde, Inc.

Towson Marketplace
KCI Job Order No. 01-86354S
June 4, 1987
Page 2

right with radius of 4062.49 feet the arc distance of 19.99 feet with a chord bearing South 65 degrees 04 minutes 36 seconds East 19.99 feet, (13) South 51 degrees 41 minutes 51 seconds East 17.79 feet and (14) by a line curving left with a radius of 4071.49 feet the arc distance of 344.34 feet with a chord bearing South 68 degrees 09 minutes 27 seconds East 344.24 feet to intersect the west outline of Parcel A of the plat of Maryland Business Park as recorded among the Plat Records of Baltimore County in Plat Book E.H.K. Jr. No. 38 folio 12, thence binding on said western outline and to and along the west side of a 16 foot alley as shown on Block D, Section 2A of the Plat of Loch Raven Manor as recorded in Plat Book G.L.B. No. 23 folio 139, in all, (15) South 13 degrees 56 minutes 50 seconds West 1132.47 feet to the north side of Putty Hill Road, thence binding thereon, (16) by a curving line to the left with a radius of 1637.00 feet the arc distance of 434.40 feet and a chord bearing North 86 degrees 43 minutes 02 seconds West 433.13 feet, (17) South 85 degrees 40 minutes 50 seconds West 93.96 feet, (18) North 4 degrees 19 minutes 10 seconds West 10.00 feet, (19) South 85 degrees 40 minutes 50 seconds West 294.00 feet, (20) North 56 degrees 28 minutes 50 seconds West 14.00 feet, (21) South 66 degrees 59 minutes 10 seconds West 58.00 feet, (22) South 85 degrees 40 minutes 50 seconds West 346.35 feet to a point measured North 85 degrees 40 minutes 50 seconds East 75.00 feet from the intersection referencing the place of beginning, thence

PETITION FOR SPECIAL HEARING

9th Election District - 4th Councilmanic District

Case No. 88-136-SPH

LOCATION: Northeast Corner Goucher Boulevard and Putty Hill Avenue (1238 Putty Hill Avenue)

DATE AND TIME: Wednesday, October 28, 1987, at 2:45 p.m.

PUBLIC HEARING: Room 106, County Office Building, 111 W. 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 Special Hearing to approve a use permit to permit new automobiles to be stored at Towson Marketplace on property zoned B.L.-C.C.C. and D.R. 5.5

Being the property of Bramalea, Limited, as shown on plat plan filed with the Zoning Office.

In the event that this Petition(s) 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.

J. ROBERT HAINES
ZONING COMMISSIONER
OF BALTIMORE COUNTY

RE: PETITION FOR SPECIAL HEARING
NE Corner Goucher Blvd. & Putty Hill Ave. (1238 Putty Hill Ave.)
9th District

BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY

BRAMALEA, LIMITED, Petitioner

Case No. 88-136-SPH

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
Room 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 21st day of September, 1987, a copy of the foregoing Entry of Appearance was mailed to Gail M. Stern, Esquire, Frank, Bernstein, Conaway & Goldman, 300 E. Lombard St., Baltimore, MD 21202, Attorney for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman

residential communities are this as part of a continuing trend of commercial development encroaching upon stable residential areas.

Along with the storage of vehicles on the parking lot has come other uses, including the unloading of truck trailers and the sale of vehicles from the lot. Petitioner's testimony was that its lease agreements with the two auto dealers prohibited delivery of the vehicles by truck and prohibited sales on Petitioner's property. Although it has indicated its willingness to enforce these agreements, its past history of enforcement has not been encouraging. Witnesses for Protestants testified to observing car carriers on the lot, and salesmen from the auto dealers have been seen showing cars to prospective buyers, both before and since the hearing on October 28, 1987. Since Petitioner's efforts to monitor the dealers' performance of the lease contracts have been less than effective, we do not believe we can rely on Petitioner's assurances that sales or truck deliveries will not occur in the future.

Protestants are also concerned that congestion problems will be exacerbated, especially in the area near Toys-R-Us and especially during the pre-Christmas shopping period. Petitioner's estimate of peak use of parking spaces (extrapolated from numbers obtained during a survey conducted on August 1, 1987 and not on an actual count of cars during the Christmas season) does not address the problem of traffic congestion in particular areas of the lot. We believe that Petitioner underestimates the impact of the car storage on areas which are more susceptible to congestion.

CONCLUSION

Protestants believe that the Zoning Regulations prohibit the use of the property as storage area for parking vacant parking area for patrons of the shopping center and buildings immediately surrounding it. We further believe that the proposed use would reduce the number of available spaces to a number below that required by regulation to serve the existing retail space of the shopping center. In addition, Protestants believe that the granting of a use permit would invite other unauthorized uses such as truck deliveries and sales of autos from the lot despite Petitioner's stated intentions. Furthermore, Protestants see the change in uses as a fundamental alteration of the character of the community which increases commercialization and jeopardizes the stable residential neighborhoods surrounding Towson Marketplace. For these reasons, we respectfully request that Petitioner's use permit be denied and that the land be returned to the use for which it was originally intended under the 1958 agreement between the shopping center and its neighbors.

Stephen C. Buckingham
Counsel for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Memorandum of Protestants was hand delivered this 13th day of November, 1987, to Gail M. Stern, Esquire, Attorney for Petitioner.

EXHIBIT 1

TOWSON MARKET PLACE
Rand-cout
88-136-SPH

A. Based on plat filed with petition

Zoning tabulation requires: October, 1977 variance:	3,193 -368	Parking spaces spaces on plat	what is this
Minimum parking allowed =	2,825		
Current Parking available:	3,008		
Use permit for new cars:	-163		
Final total of available parking spaces (20 spaces above the 2825 allowed by variance. These 20 spaces are actually the 20 service bays inside the Wards Car Care Center.	2,845	(11% reduction from 3193)	

B. Not show on plat

Calvert Hall	75 cars	
Merry-Go-Round	125 cars	
Garden Center	20 spaces used	
Garden Center	12 spaces needed	
Snow ball stand	2 spaces	
Post Office	10 reserved	
Total Used	244	
Currently provided:	3,008	
total used:	-244	
Patron parking actually available	2,764	(61 cars below variance minimum)
Proposed use permit	-163	
Final parking allowed for patrons	2,601	

3193 - 2601 = 592 spaces (18.5%)
2825 - 2601 = 224 spaces (7.9%)

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Phillip Davis	908 E Joppa Rd Towson 21204
Douglas Biser	9 Edgeview Rd. Towson MD 21204
Patrice Stringer	506 Holden Rd, Towson, Md
Carole Hebbel	8 Center Rd Towson, Md
Jean Hubbard	17 Foxcroft Rd 21204
Pat Karey	102 Edgerton Rd Towson MD
Mary Carol Davis	9085 Joppa Rd Towson MD 21204
[illegible]	512 Ewing Rd., Towson 21204
Bob Bernotas	918 E 37th St Balt 21218
Stu Atter	1204 Stevenson La 21204
[illegible]	613 Pinehurst 21204
[illegible]	43 Valley Towson 21204
[illegible]	122 Taba Dr 21204
Melissa M. Hill	1210 Stevenson Ln 21204
Phyllis Heinz	500 Cloverlake 21204
Virginia T. Cooper	502 Club Lane 21204
William P. Kahl Jr.	620 Hoker Dr 21204
[illegible]	1310 Stevenson Lane Towson 21204
Margaret Carroll	617 Hillen Rd Towson MD 21204
[illegible]	619 Hillen Rd Towson MD
[illegible]	503 Hilary Lane Towson 21204
[illegible]	503 Hilary 21204
[illegible]	601 Lake Dr 21204
Roberta L. Clarke	825 East Joppa Rd 21204
Jeff Nuttall	1620 Thirland Rd. 21204
WJ Yates	7 Edgeview Road 21204

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

J. ROBERT HAINES
ZONING COMMISSIONER

October 21, 1987

Gail M. Stern, Esquire
Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202

Re: PETITION FOR SPECIAL HEARING
NE/cor. Goucher Blvd. and Putty Hill Ave.
(1238 Putty Hill Ave.)
9th Election District - 4th Councilmanic District
Bramalea, Limited - Petitioner
Case No. 88-136-SPH

Dear Ms. Stern:

This is to advise you that $125.92 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

THIS FEE MUST BE PAID AND THE ZONING SIGN AND POST RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Do not remove sign from property from the time it is placed by this office until the day of the hearing itself.

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

Sincerely,
J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner

JRH:med

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 41776
DATE 11-3-87 ACCOUNT 01-615-000
AMOUNT $ 125.92
RECEIVED FROM Gail Stern
FOR Advtg & Posting 88-136-SPH
DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER
VALIDATION OR SIGNATURE OF CASHIER

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland
88-136-SPH

District 9th Date of Posting 10/11/87
Posted for: Special Hearing
Petitioner: Bramalea Limited
Location of property: NE/cor. Goucher Blvd. & Putty Hill Ave.
1238 Putty Hill Ave.
Location of Signs: Facing intersection on property being zoned
Remarks: Posted by sign at intersection
Posted by [signature] Date of return: 10/17/87
Number of Signs: 1

CERTIFICATE OF PUBLICATION

TOWSON, MD. Oct 7, 1987

THIS IS TO CERTIFY, that the annexed advertisement was published in the TOWSON TIMES, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each of successive weeks, the first publication appearing on Oct 7, 1987.

TOWSON TIMES,
Susan Lindsey Obrien
Publisher

CERTIFICATE OF PUBLICATION

TOWSON, MD. Oct 8, 1987

THIS IS TO CERTIFY, that the annexed advertisement was published in the TOWSON TIMES, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each of successive weeks, the first publication appearing on Oct 8, 1987.

THE JEFFERSONIAN,
Susan Lindsey Obrien
Publisher

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 20th day of August 1987.

J. Robert Haines
ZONING COMMISSIONER

Petitioner Bramalea, Limited Received by: Chairman, Planning Advisory Committee
Petitioner's Attorney Gail M. Stern, Esquire

Gail M. Stern, Esquire September 14, 1987
Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202

NOTICE OF HEARING

RE: PETITION FOR SPECIAL HEARING
NE/cor. Goucher Blvd. and Putty Hill Ave.
(1238 Putty Hill Ave.)
9th Election District - 4th Councilmanic District
Bramalea, Limited - Petitioner
Case No. 88-136-SPH

TIME: 2:45 p.m.
DATE: Wednesday, October 28, 1987
PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 36193
DATE 9/9/87 ACCOUNT 01-615-000
AMOUNT $ 100.00
RECEIVED FRANKEL
FOR Cost of Sign Post & Hearing
DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER
VALIDATION OR SIGNATURE OF CASHIER

RECEIVED
FEB 26 1988
ZONING OFFICE

88-136

Association of Towson Communities
c/o Patrick Cassidy
125 Edgewood Road
Towson, Maryland 21204
February 16, 1988

Mr. Gregory Golieff
Regional Manager
Bramalea Limited
1238 Putty Hill Avenue
20 Towson Marketplace
Towson, Maryland 21204

Dear Mr. Golieff:

We are the presidents of eight community associations representing the interests of 2800 families who shop at Towson Marketplace and live in the neighborhoods nearby. At a meeting with some of us on November 12, 1987, your firm's zoning request to convert 13.94 acres from D.R.5.5 to BL was discussed. At that time you stated that we would be contacted once your firm's plans for the Marketplace were clarified.

We recognize the complexities underlying the decision your firm is considering. However, the initial hearing before the Planning Board regarding your request is scheduled for April 7, 1988. We and other concerned residents will be at that hearing to present our perspective. We would like to meet with you and/or any other of your firm's representatives no later than the week of March 7, 1988 to discuss your plans. We hope that by establishing a dialogue between Bramalea Ltd. and our communities we can mutually chart a course which satisfies both our interests.

- 2 -

Please contact Patrick Cassidy at home (828-1326) or work (396-5586) to let us know your response to our request. Your prompt response would be appreciated so we can confirm a convenient time.

Sincerely,

Patrick Cassidy
Patrick Cassidy
Towson Estates Assoc.

Rosemary Ranier
Rosemary Ranier
Campus Hills Community Assoc.

Thomas Azzaro
Thomas Azzaro
Cromwell Valley Community Assoc.

James Murphy
James Murphy
Bressewick Community Assoc.

Robert Frey
Robert Frey
Fellowship Forest Community Assoc.

Patrick Stringer
Patrick Stringer
Greenbriar

Giffen Nickol
Giffen Nickol
Knettishall Community Assoc.

Thomas Lynch
Thomas Lynch
Loch Raven Village

xc Barbara Bachur
Joshua Wheeler
J. Robert Haines ✓
Joseph Maranto

Baltimore County
Fire Department
Towson, Maryland 21204-2586
494-4500

Paul H. Reincke
Chief

June 19, 1987

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

Dennis F. Rasmussen
County Executive

Re: Property Owner: Bramalea Limited

Location: NE/C Goucher Blvd. and Putty Hill Avenue

Item No.: 516 Zoning Agenda: Meeting of 6/23/87

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.

( ) 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: Capt. Lou Belli 6-19-87 Noted and Approved: John E. O'Neill
Planning Group
Special Inspection Division
Fire Prevention Bureau

/jl

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
494-3554

Dennis F. Rasmussen
County Executive

July 9, 1987

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

Dear Mr. Jablon:

The Bureau of Traffic Engineering has no comments for items number (516) 517, 519, 520, 521, 522, 523, 524, 525, and 526.

Very truly yours,
Michael S. Flanigan
Traffic Engineer Associate II

MSF:lt

Towson Market Place

Originally a 1958 Park agreement.

Prior hearings: (71) 1in = 200' scale NE 9B

① 45-45

② 74-143R

③ 77-230XA

④ 88-136 SPH

At 88-136 (Ford Olds Dealer) stated Leased Spaces 100 - Calvert Hall
90 - Merry go Round
21 - MET Path
= Site Plan = Parking Reqd. = 3195
" Provided = 2988 = (207)
T20 = 3008 277-230X = Variance
for 368 spaces

For Block Buster Bldg. Permit
#104135 (C-1664-88)

→ Carl's LTR 12-23-88 = after leased spaces to Site Plan
= a deficiency of 116 spaces

In Microfilmed Bldg. permit plan file - Permit appeal.
Bramlea refers to a 2-6-89 LTR to WCR Resolving Leased
- Deficient Space Problem
3/89 = Leased spaces. Bldg. Permit Plan = Park Reqd. 3012,
" Provided

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

11-8-91 site plan 5 Total spaces Reqd + Provided = 3012 additional information

December 23, 1988
September 16, 1988

Dennis F. Rasmussen
County Executive

M. Greene
The Columbia Design Collective
9881 Broken Land Pkwy.
Woodmere, Suite 200,
Columbia, Md. 21046
Sharon Hiber-Plano
S.T.V. Lyon Associates
21 Governor's Court
Baltimore, Maryland 21207-2722

RE: Building Permit No. 104135 (C-1664-88)
1238 Putty Hill Road (Towson Marketplace)
9th. Election district (Blockbuster Video)
88-136 SPH (latest zoning hearing)
Box #23

Dear : M. Greene, Mrs. Plano,

The Zoning Office cannot approve the above referenced building permit application for the following reason(s):

_____ Improper setbacks
_____ Improper use
_____ Improper location
_____ Inspection of the property must be made
_____ Insufficient information on permit
XX REVISED PLANS (9 COPIES) MUST BE SUBMITTED TO COUNTER IN ROOM 100, COUNTY OFFICE BUILDING, 111 WEST CHESAPEAKE AVENUE, TOWSON, MARYLAND. ALL PLANS MUST BE ACCOMPANIED BY A COVER LETTER LISTING THE REVISIONS AND REFERENCING THE PERMIT AND CONTROL NUMBER. REVISED PLANS MUST BE SUBMITTED IN PERSON.
XX Submit an overall site plan with complete parking and Amenity: Open Space Calculations. Include a tenant list with sq. footages of use areas. Shade and sub-total qualifying A.O.S areas on the Ma

12/23/88- When the leased parking spaces established in the above zoning case are calculated (Merry-Go-Round-90, Metpath-21, Calvert Hall-100 Total 211, there is a deficiency of 116 spaces. Also additional clarification is needed regarding the "actually 3043 spaces provided" note over the Kiddie plan. Remove the shaded areas that do not qualify with the definition of A.O.S.

If you have any further questions, you may contact me at 494-3391.

Very truly yours,

W. CARL RICHARDS, JR.
Zoning Coordinator

Dorel

cc: Zoning File
Planning File
Bramelia, LTD., 26 Towson Market Place, 1238 Putty Hill Avenue, Towson, Md. 21204

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

11-8-91 site plan 5 Total spaces Reqd + Provided = 3012 additional information

December 23, 1988
September 16, 1988

Dennis F. Rasmussen
County Executive

M. Greene
The Columbia Design Collective
9881 Broken Land Pkwy.
Woodmere, Suite 200,
Columbia, Md. 21046
Sharon Hiber-Plano
S.T.V. Lyon Associates
21 Governor's Court
Baltimore, Maryland 21207-27

RE: Building Permit No. 104135 (C-1664-88)
ill Road (Towson Marketplace)
district (Blockbuster Video)
latest zoning hearing)

Dear : M. Greene, Mrs

Owner LTR. to zoning date 2-7-89 was not microfilmed. Leasing issue must have been resolved as Block-buster bldg. permit was approved on 3-27-89. Approved plan (showing no Leased spaces) = 3012 parking required + " provided same.

The Zoning Office c
application for the fol

d building permit

_____
_____
_____
_____
_____
XX

be made
lt
SUBMITTED TO COUNTER IN
111 WEST CHESAPEAKE
ANS MUST BE ACCOMPANIED
ISIONS AND REFERENCING
THE PERMIT AND CONTROL NUMBER. REVISED PLANS MUST BE SUBMITTED IN PERSON.

XX Submit an overall site plan with complete parking and Amenity: Open Space Calculations. Include a tenant list with sq. footages of use areas. Shade and sub-total qualifying A.O.S areas on the Ma

12/23/88- When the leased parking spaces established in the above zoning case are calculated (Merry-Go-Round-90, Metpath-21, Calvert Hall-100 Total 211, there is a deficiency of 116 spaces. Also additional clarification is needed regarding the "actually 3043 spaces provided" note over the Kiddie plan. Remove the shaded areas that do not qualify with the definition of A.O.S.

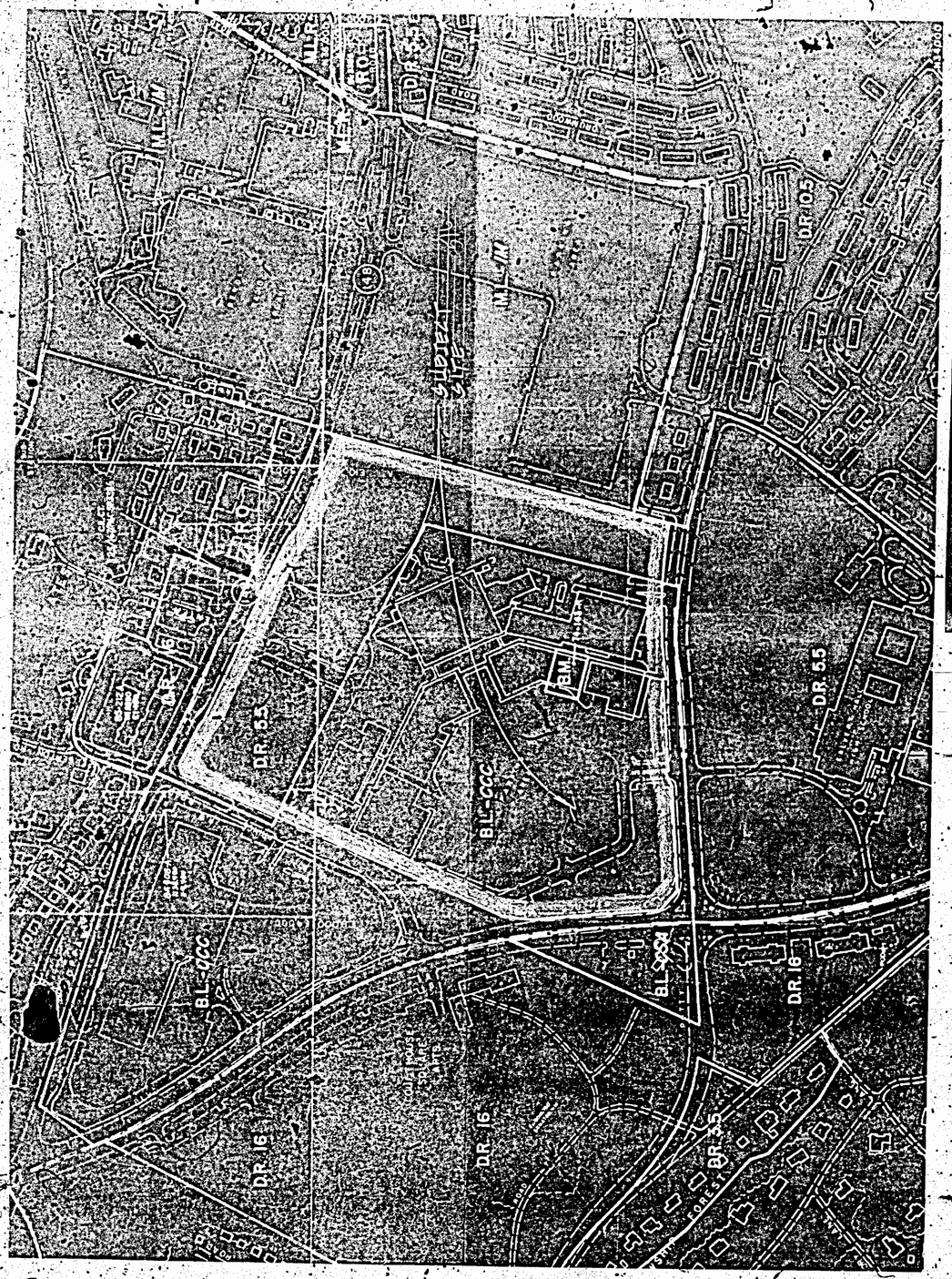
If you have any further questions, you may contact me at 494-3391.

Very truly yours,

W. CARL RICHARDS, JR.
Zoning Coordinator

Dorel

cc: Zoning File
Planning File
Bramelia, LTD., 26 Towson Market Place, 1238 Putty Hill Avenue, Towson, Md. 21204


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