

IN THE MATTER OF
THE APPLICATION OF
EDITH PEARCE, ET AL
FOR A SPECIAL EXCEPTION AND
SPECIAL HEARING ON PROPERTY
LOCATED ON THE NORTHEAST SIDE
OF HARFORD RD, 100' NORTHEAST
OF THE C/L OF CUB HILL ROAD
(10105 HARFORD ROAD)
11TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT
ZONING CASE NO. 88-508-SPHX

* ON REMAND FROM THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* CG DOC NO. 79
* FOLIO NO. 48
* FILE NO. 90-CG-1248

AMENDED OPINION

This case comes before the Board on a remand Order by the Circuit Court for Baltimore County dated August 15, 1990, noting that the Appellees have withdrawn the original Petitions in the subject case. The Board is in receipt of a letter dated May 30, 1990, to the Board of Appeals from the attorney representing the Petitioners directing the Board to withdraw the requested petitions. In light of this development, the Board has no recourse except to amend its original Order dated March 2, 1990 and grant the dismissal of the original Petitions and will so order.

ORDER

IT IS THEREFORE this 29th day of August, 1990
by the County Board of Appeals of Baltimore County ORDERED that the

Case No. 90-CG-1248 Edith Pearce, et al (88-508-SPHX)

Petitions in Board of Appeals Case No. 88-508-SPHX be and the same are DISMISSED WITH PREJUDICE.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
William T. Hackett
William T. Hackett, Chairman
Harry E. Buchheister, Jr.
Harry E. Buchheister, Jr.

IN THE MATTER OF
PETITION FOR SPECIAL EXCEPTION
AND SPECIAL HEARING
N/E/S HARFORD ROAD
10105 HARFORD ROAD
11TH ELECTION DISTRICT
PETITIONERS: EDITH PEARCE, ET AL

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY

CASE NO.: 88-508 SPHX

MEMORANDUM IN SUPPORT OF PETITION FOR SPECIAL EXCEPTION AND SPECIAL HEARING

On March 9, 1988, Petitioners, Edith Pearce, Julia Blacklock and H & H Realty by their attorney, Michael B. Sauer, filed with the Zoning Commission for Baltimore County a Petition For Special Exception to permit a service garage and sales in a "B-L" Zone and a Petition For Special Hearing for a use permit to park in a residential zone. The Petitions were accepted for filing and public hearings were held before the Commissioner on June 23, July 1 and July 6, 1988. At the conclusion of the testimony it was requested that legal memorandums be filed.

STATEMENT OF FACTS

The subject property known as 10105 Harford Road is located on the N/E/S of Harford Road north of Cub Hill Road in Baltimore County, Maryland. It consists of 3.03 acres and is presently split zoned "B-L" and "DR 3.5". The front portion of the property facing Harford Road (1.02 acres) is "B-L" and the rear portion (2.01 acres) is "DR 3.5". At present, the property is improved by a two-story frame house, a wood barn, a greenhouse and other small out buildings. The property is leased to a residential tenant and is in desperate need of

of abandoned or disabled vehicles and Mr. Hare testified that such a use was not intended. The plan and Mr. Hare's testimony is that such vehicles will be located in a storage area in the B-L Zone or within the building itself.

The residential transition area wherein parking is requested provides for a buffer area 75' in width which runs along the entire rear of the property and back side particularly where the property adjoins the townhouses in the southeast corner. The buffer area is heavily and densely wooded providing natural screening of the proposed parking lot from view. Mr. Hare testified the existing buffer area in its natural state precluded him from being able to see the existing townhouses when standing at locations on the property 75' from the boundary lines. Photos (Petitioner's Exhibit #4) were also offered into evidence depicting the natural buffer area and its effective screening. Protestant photos (Exhibit 1 and 2) more effectively showed the density of the buffer area and the existence of trees clearly higher than the roofs of the townhouses and the backyards of the homes which are below the rear elevation of the subject property. Apparently, during recent construction of the townhouse community the rear yards of the 13 homes were graded by the developer to create a high embankment against the Petitioners' property with a swale in the rear yards for drainage. This embankment exceeds in height the back porches or decks attached to the homes.

Mr. Paul Lee, a registered professional engineer specializing in urban planning and development, testified on

clean up and repair. The property is heavily wooded extending to the perimeters of the property.

The property is located in a commercial area. Adjacent to and north of the subject property on Harford Road is a large parcel of land owned by the Mayor and City Council of Baltimore zoned "B-L" along Harford Road. To the south of the property along Harford Road is Hooters Restaurant zoned "B-L". Across the street from Cub Hill Road and running north along Harford Road there are several commercial businesses zoned either "B-L" or "B-R". The rear portion of the subject property is "L" shaped and a portion of the rear property adjoins a townhouse community of 55 homes known as "Northwinds" zoned "DR 3.5". The rear yards of approximately 13 of these townhouses back up to and adjoin part of the subject property at the lower "L" section of the property (the southeast corner). Access to this community is from North Wind Road at a location east of and distant from the subject property. The remaining rear property line (approximately 250 feet) of the subject property to the north of the townhouses adjoins a flood plain area serving as a drainage area for the townhouse community and this property.

The subject property presently accesses to Harford Road and the Petitioner's proposed plan is to do the same. Harford Road is a major arterial highway running north-south in front of Petitioner's property.

At the hearing, petitioners produced testimony in support of their request for a special exception and use permit

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ATTORNEY AT LAW
SUITE 202
EQUITABLE
TOWSON BUILDING
401 WASHINGTON AVE.
TOWSON, MD. 21204

-2-

behalf of the Petitioners. Over the past 30 years he has in his engineering capacity prepared, plat, site plans and engineering and development studies pertaining to zoning matters and hearings. He has testified on numerous occasions in zoning matters in Baltimore County at all levels of the zoning process. He testified from his plan prepared on behalf of the Petitioners (Exhibit #3) with particular regard to Sec. 502.1 of the Zoning Regulations. His testimony was the requested special exception and use permit for parking would not in any way be detrimental to the health, safety or general welfare of the locality involved and that the proposed plan of development would not be contrary to the requirements set out in paragraphs (a) through (h) of Sec. 502.1 of the Zoning Regulations. In addition to the requirements of Sec. 502.1 being met, Mr. Lee testified that from his investigation, information obtained and inspection of the site that he knew of no particular facts or circumstances tending to adversely effect the general neighborhood or surrounding community. In fact, Mr. Lee, after discussing the present condition of the property, testified the proposed use would be beneficial to the community. In his opinion, the proposed use of the property was in harmony with the purpose and intent of the existing comprehensive zoning plan in the area.

ARGUMENTS

1. Does the requested special exception for a service garage result in any adverse effect upon neighboring property unique and different from the adverse effects that would otherwise result from the development of such a special exception use located anywhere within the zone?

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TOWSON, MD. 21204

-6-

for parking. Mr. Charles E. Hare testified he was a general partner of H & H Realty along with James Hatfield. The property was purchased for development to be used as a service garage for the repair of automobiles and to conduct sales of automotive parts and accessories at the location. He testified he has been engaged in the body and fender repair business for over 20 years and presently owns and operates a service garage at Audrey Avenue on Joppa Road in Baltimore County. Having been in the business of repair work on an on-going daily basis, he is familiar with the trade and industry and with the requirements necessary to conduct such a business. He testified he operates the same type of business at the other location and is familiar with the requirements relating to the storage of disabled vehicles, the necessity for storage of cars and intends to conduct business at the new location in harmony with any such zoning regulations or requirements that may be imposed. Repeatedly he testified that he would do whatever is necessary to conform to the requirements of County Code or Zoning Regulations.

The plan submitted by Mr. Hare proposes to erect a two-story building in the "B-L" portion of the property. While the plan states two-story, the rear of the building at grade will not exceed one-story in height. Testimony established the topography of the property to be an up-hill grade from Harford Road to approximately the "B-L" zone line in the rear. Due to grade, the rear of the building will be one-story in height. As set out in the plan, the building will contain service

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-3-

In *Schultz v. Pritts*, 291 Md. 1 (1981) the Court of Appeals sets out the applicable standard to be applied when granting or denying a special exception use. The Court stated:

This Court has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstances negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. *Turner v. Hammond*, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); *Rockville Fuel & Feed Co. v. Board of Appeals*

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-7-

bays on each floor, an office, and a sales area for the sale of automotive parts and accessories.

Mr. Hare testified that in addition to doing automotive repair work, the building would also be used for the sale of automotive parts and accessories and a portion of the service bays would be used for this purpose. He stated there is a strong demand in the industry for the sale of after market automobile parts which would be purchased by consumers, as well as other tradesmen and suppliers in the industry. He testified that he was aware of the strong demand for the sale of after market parts and accessories and anticipated an active growth in sales once established and open for business. His plans are to assign up to one-half of the building for the sale of these products. Although initially he does not anticipate full use of the area until the sales market is established.

The plan provides for off-street parking required by the Zoning Regulations and as needed for the commercial use of the building as a service garage and for sales of automobile accessories. The required number of spaces is 92 and the requested spaces are 123. To support the commercial use and to meet the requirements of parking regulations, Mr. Hare testified that he is seeking a parking permit, as permitted under the Zoning Regulations, to use the rear of the property for parking which is a residential transition area. The plan provides that the parking area is being requested for passenger vehicles only. It does not request the area be used for storage

-4-

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ATTORNEY AT LAW
SUITE 202
EQUITABLE
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401 WASHINGTON AVE.

PROTESTANT'S EXHIBIT 18

VITA

CHARLES J. KLEIN III

Personal:

Address: 3011 North Branch Lane
Baltimore, MD 21234

Telephone: 301-661-5019 (home)
301-443-8843 (office)

Education:

The Johns Hopkins University Master of Science, 1977
Baltimore, Maryland Environmental Engineering

University of Maryland Bachelor of Science, 1973
College Park, Maryland Civil Engineering

Experience:

3/86-pres. Klein Engineering and Planning,
Specializing in Environmental and Coastal Engineering

Services:

- Land Development (i.e. flood plain delineation, sediment control plans, storm water management, wetland delineation, site layout)
- Coastal Engineering (i.e. shoreline erosion and tidal flooding protection, marina development, navigation - channels, dredging alternatives)
- Environmental Surveys - soils, topography, vegetation, hydrology.

PROTESTANT'S EXHIBIT 20

PERSONAL DATA: WILLIAM F. KIRWIN, PRESIDENT

WILLIAM F. KIRWIN, INC.

Occupation: Consultant, Landscape Architect
Environmental Land Planner

Registered: Maryland 1971, No. 8
West Virginia 1972, No. 78
Delaware 1976, No. 39

Education: B.S. Landscape Architecture, 1961, New York State College of Environmental Science
B.S. Science, 1961, Syracuse University
Juris Doctor Law, 1968, University of Baltimore
Post Graduate Courses in Public Administration
New York State Graduate School of Public Affairs
Albany

Professional Associations:

1988 President Elect, Maryland Chapter, American Society of Landscape Architects

1988 Chairman, State Board of Registration for Landscape Architects

Vice President, Maryland Association of Landscape Architects

Former Member, Maryland Interprofessional Committee on the Environment

Former Member, Landmark Preservation Commission, Baltimore County

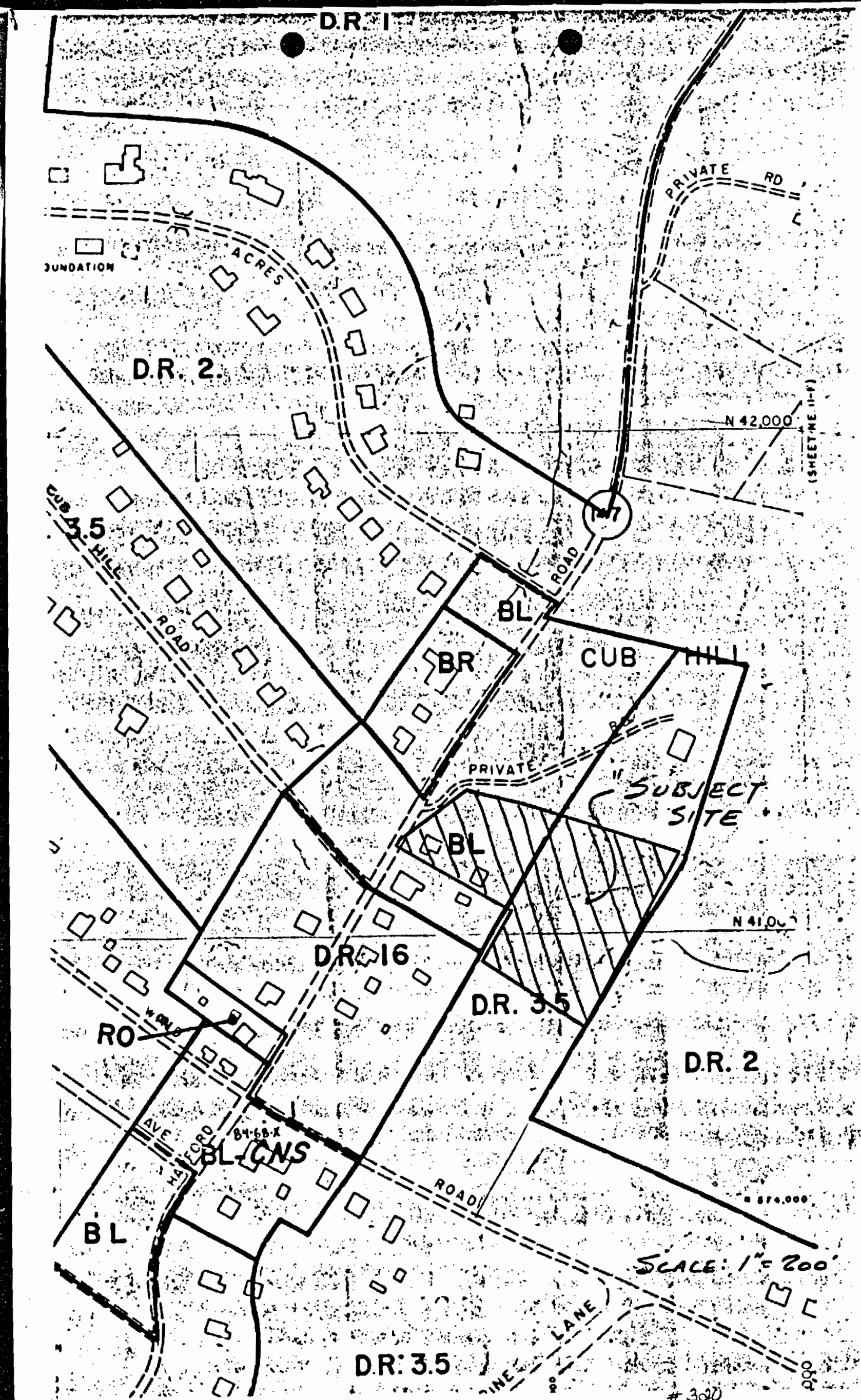
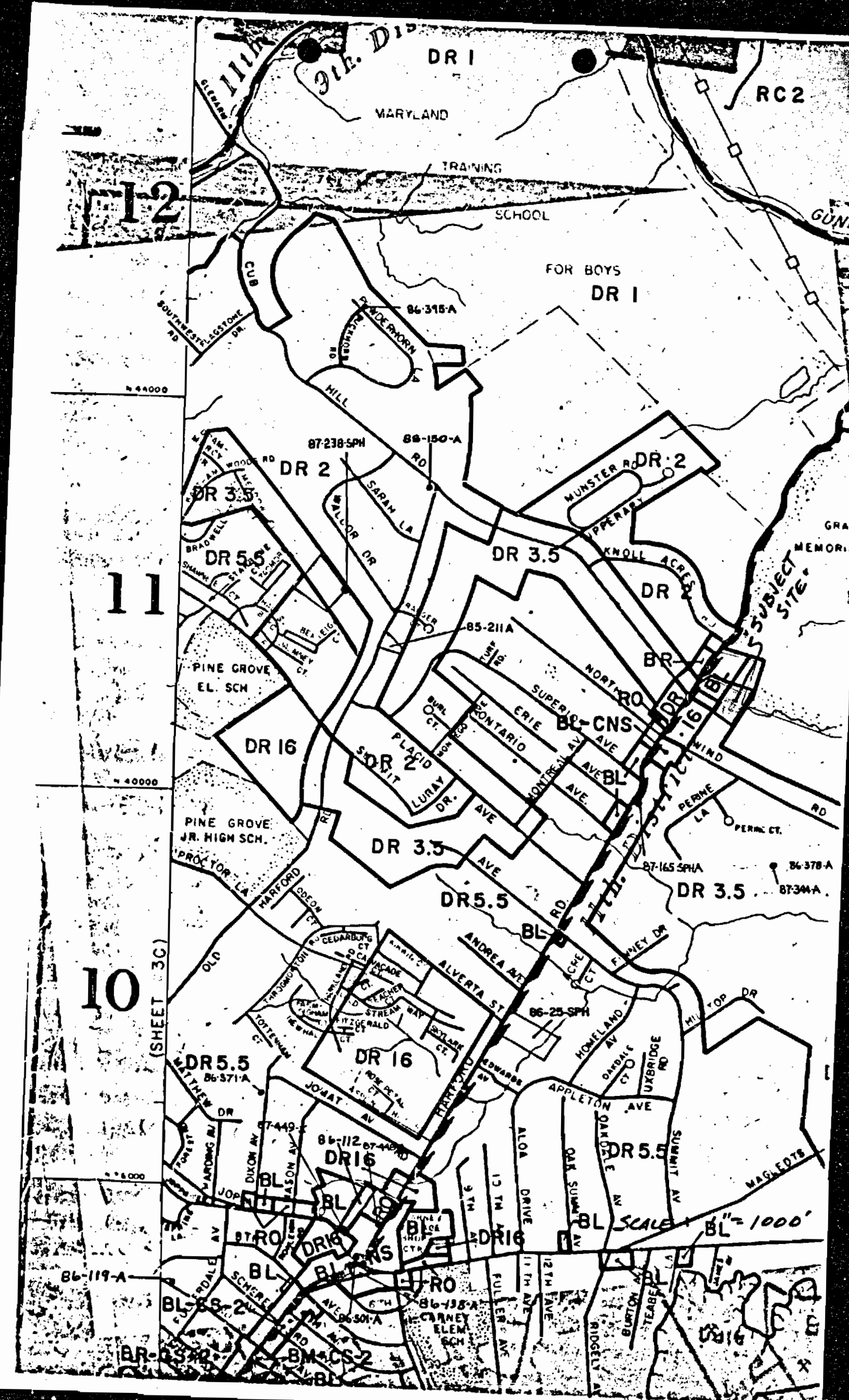
Former Member, Baltimore County Planning Board, Planning Board designate Regional Planning Council, Former Chairman, Baltimore County Planning Board

Guest Lecturer:

University of Maryland - Environmental Law

College of Notre Dame - Residential Landscape Architecture

Morgan State University - Professor for Design Studio Involving Environmental Planning
U.S. Representative, Guest Lecturer,



88-508-SPHX

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
23rd day of March, 1988.

Edith Pearce &
Petitioner Julia Blacklock
Petitioner's Attorney Michael B. Sauer

ROBERT HAINES
ZONING COMMISSIONER
Received by: James E. Dyer
Chairman, Zoning Plans
Advisory Committee

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

April 12, 1988

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 320, 324, 325, 326, 327, 328, 331, 333, 334 and 335.

Very truly yours,

Michael S. Flanagan
Traffic Engineer Associate II

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

June 1, 1988

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

Michael B. Sauer, Esquire
802 Equitable Towson Building
Towson, Maryland 21204

RE: Item No. 320 - Case No. 88-508-SPHX
Petitioner: Edith Pearce & Julia Blacklock
Contract Purchaser: H & H Realty
Petition for Special Hearing and Special Exception

Dear Mr. Sauer:

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

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

Very truly yours,

James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:dt

Enclosures

cc: Paul Lee Engineering, Inc.
304 West Pennsylvania Avenue
Towson, Maryland 21204

MDOT
Maryland Department of Transportation
State Highway Administration

Richard H. Trainor
Secretary
Hal Kassoff
Administrator

March 23, 1988

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204
Att: James Dyer

Re: Baltimore County
Pearce/Blacklock
Property
Zoning meeting 3/22/88
E/S Harford Road
Maryland Route 147
100' north of Cub Hill
Road
Item #320

Dear Mr. Haines:

After reviewing the submittal for a Special Hearing to approve a Use Permit to park in a residential zone and a special exception for a service garage and sales, the State Highway Administration-Bureau of Engineering Access Permits has the following comment.

The proposed entrance into this site must be changed to 30' with 15' radii curves. Also, due to the inadequate frontage of this site to provide for a deceleration lane for a project of this magnitude, a section of the existing property to the north should be purchased to relocate this entrance as far from the intersection of Cub Hill Road as possible.

If you have any questions, please contact Larry Brocato of this office (333-1350).

Very truly yours,

Creston J. Mills, Jr.
Acting Chief-Bureau of
Engineering Access Permits

LB/es

cc: Paul Lee Engineering Inc.
J. Ogle

COPY

1 IN THE MATTER OF: * BEFORE THE
2 EDITH PEARCE * BALTIMORE COUNTY
3 * BOARD OF APPEALS
4 * Case No. 88-508 SPHX
5 * June 9, 1989.
6
7 The above-entitled matter came on for hearing
8 before the County Board of Appeals of Baltimore County at
9 the County Office Building, Towson, Maryland 21204 at 10
10 o'clock a.m., June 9, 1989.
11
12 BOARD MEMBERS:
13 LAWRENCE E. SCHMIDT, Acting Chairman
14 WILLIAM T. HACKETT
15 HARRY BUCHHEISTER, JR.
16
17 APPEARANCES:
18 MICHAEL B. SAUER, Esquire
19 On behalf of Petitioners/Appellants
20 MICHAEL P. TANCZYK, Esquire
21 On behalf of Protestants
22 PHYLLIS COLE FRIEDMAN, Esquire
23 People's Counsel
24
25 Reported by:
26 C.E. Peatt

BOARD OF APPEALS

BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL
PROTECTION AND RESOURCE MANAGEMENT

3/22/88
Date
Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204
Zoning Item # 320 Zoning Advisory Committee Meeting of March 22, 1988
Property Owner: Edith Pearce / Julia Blacklock
Location: NES Harford Rd. 100' NE of c/l of Cub Hill District 11
Water Supply: metro Sewage Disposal: metro
COMMENTS ARE AS FOLLOWS:
() Prior to approval of a Building Permit for construction, renovation and/or installation of equipment for any existing or proposed food service facility, complete plans and specifications must be submitted to the Plans Review Section, Bureau of Regional Community Services, for final review and approval.
() Prior to new installation/s of fuel burning equipment, the owner shall contact the Bureau of Air Quality Management, 494-3775, to obtain requirements for such installation/s before work begins.
() A permit to construct from the Bureau of Air Quality Management is required for such items as spray paint processes, underground gasoline storage tank/s (5,000 gallons or more) and any other equipment or process which exhausts into the atmosphere.
() A permit to construct from the Bureau of Air Quality Management is required for any charbroiler operation which has a total cooking surface area of five (5) square feet or more.
() Prior to approval of a Building Permit Application for renovations to existing or construction of new health care facilities, complete plans and specifications of the building, food service area and type of equipment to be used for the food service operation must be submitted to the Plans Review and Approval Section, Division of Engineering and Maintenance, State Department of Health and Mental Hygiene for review and approval.
() Prior to any new construction or substantial alteration of public swimming pool, wading pool, bathhouse, saunas, whirlpools, hot tubs, water and sewerage facilities or other appurtenances pertaining to health and safety, two (2) copies of plans and specifications must be submitted to the Baltimore County Department of Environmental Protection and Resource Management for review and approval. For more complete information, contact the Recreational Hygiene Section, Bureau of Regional Community Services, 494-3811.
() Prior to approval for a nursery school, owner or applicant must comply with all Baltimore County regulations. For more complete information, contact the Division of Maternal and Child Health.
() If lubrication work and oil changes are performed at this location, the method providing for the elimination of waste oil must be in accordance with the State Department of the Environment.
() Prior to raising of existing structure/s, petitioner must contact the Division of Waste Management at 494-3768, regarding removal and/or disposal of potentially hazardous materials and solid wastes. Petitioner must contact the Bureau of Air Quality Management regarding removal of asbestos, 494-3775.
() Any abandoned underground storage tanks containing gasoline, waste oil, solvents, etc., must have the contents removed by a licensed hauler and tank removed from the property or properly backfilled.
() Prior to removal or abandonment, owner must contact the Division of Waste Management at 494-3768.
() Soil percolation tests, have been _____, must be _____, conducted.
() The results are valid until _____.
() Soil percolation test results have expired. Petitioner should contact the Division of Water and Sewer to determine whether additional tests are required.
() Where water wells are to be used as a source of water supply, a well meeting the minimum Baltimore County standards must be drilled.
() In accordance with Section 13-117 of the Baltimore County Code, the water well yield test () shall be valid until _____.
() is not acceptable and must be repeated. This must be accomplished prior to conveyance of property and approval of Building Permit Applications.
() Prior to occupancy approval, the possibility of the water supply must be verified by collection of bacteriological and chemical water samples.
() If substantial plans to the County Review Group is required, a Hydrogeological Study and an Environmental Effects Report must be submitted.
Others: Drainage from interior service bays is to be directed to sanitary sewer via oil separator.

Karen M. Morrey
BUREAU OF WATER QUALITY AND RESOURCE
MANAGEMENT

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

Paul H. Rebeck
Chief
J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

April 5, 1988



Re: Property Owner: Edith Pearce / Julia Blacklock - Contract
Purchaser: H. & H. Realty
Location: NES Harford Rd., 100' NE of c/l Cub Hill Rd.

Dennis F. Rasmussen
County Executive

Item No.: 320

Zoning Agenda: Meeting of 3/22/88

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.

(X) 1. Fire hydrants for the referenced property are required and shall be located at intervals or 300 feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

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

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

EXCEEDS the maximum allowed by the Fire Department.

() 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.

() 6. Site plans are approved, as drawn.

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

REVIEWER: [Signature] Noted and Approved: [Signature]
Planning Group Fire Prevention Bureau
Special Inspection Division

/s/

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines, Zoning Commissioner
FROM: P. David Fields, Director, Office of Planning and Zoning
SUBJECT: Zoning Petition #88-508-SPHX

Date: May 16, 1988

If the details of landscaping for the area labeled as buffer prove to be adequate, this office is not opposed to the granting of the subject request. It is requested that such plans be submitted to the Division of Current Planning and Development for review and approval by Mr. Avery Harden prior to any granting of this petition.

David Fields per [Signature]
P. David Fields, Director
Office of Planning and Zoning

PDP/jst
cc: Shirley Hess, People's Counsel
J. G. Hoswell
Zoning File

RECEIVED
MAY 17 1988

ZONING OFFICE

cc: Michael B. Sauer, Esq.

CPS-008

NEWTON A. WILLIAMS
WILLIAM H. HESSON, JR.
THOMAS J. PENNER
WILLIAM P. HENDERSON, JR.
STEPHEN J. NOLAN
ROBERT E. CARILL, SR.
ROBERT L. HANLEY, JR.
ROBERT S. GILLESPIE
STEPHEN M. SCHENNING
DOUGLAS L. BURGESS
ROBERT E. CARILL, JR.
DOUGLAS C. CLOSE, III
E. BRUCE JONES
HERALD KORTUM
GREGORY J. JONES
*NEW ADMITTED IN N.J.C.
*ALSO ADMITTED IN NEW JERSEY

LAW OFFICES

NOLAN, PLUMHOFF & WILLIAMS

CHARTERED
SUITE 700, COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5340
(301) 823-7800
TELEFAX: (301) 296-2765

February 23, 1990

HAND DELIVERY

Kathleen C. Weidenhammer
Administrative Assistant
County Board of Appeals of
Baltimore County
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Case No.: 88-508-SPHX
Edith Pearce, et al.
Petitioners

Dear Ms. Weidenhammer:

As counsel for the Petitioners in the above case, I am hand delivering herewith an original and two copies of Petitioners' Reply Memorandum in Support of Petitions for Special Exception and Special Hearing.

Thank you for filing this memorandum in the above case.

Very truly yours,

[Signature]
Stephen J. Nolan

SJN/mao

Enclosure

CC: Lawrence E. Schmidt,
Acting Chairman

Michael P. Tanczyn, Esquire

Phyllis Cole Friedman, Esquire

H & H Realty

Mr. Howard Chambers
Coldwell Banker Commercial

Received 4/23/80 p.c.
4:15 PM 8/27
Jaw CBH

IN THE MATTER OF * BEFORE THE
PETITIONS FOR SPECIAL * COUNTY BOARD OF APPEALS
EXCEPTION AND SPECIAL HEARING * OF
NE/S Harford Road, *
10105 Harford Road *
11th Election District * BALTIMORE COUNTY
6th Councilmanic District *

Edith Pearce, et al, *
Petitioners * Case No.: 88-508-SPHX

PETITIONERS' REPLY MEMORANDUM IN SUPPORT
OF PETITIONS FOR SPECIAL EXCEPTION AND SPECIAL HEARING

The Petitioners, Charles J. Pearce as Personal Representative of the Estate of Edith Pearce, and Julia Blacklock (hereinafter "Owners") and H & H Realty, a Maryland general partnership (hereinafter "Contract Purchaser"), by their undersigned counsel, file this memorandum of law in support of their petitions for special exception and special hearing and in opposition to the Protestant's Memorandum filed with the Board on February 20, 1990.

STATEMENT OF THE CASE

On March 9, 1988, Petitioners filed with the Zoning Commissioner for Baltimore County a Petition for Special Exception to permit a service garage and sales in the B.L. zone and a Petition for Special Hearing for a use permit for parking in a residential zone (DR 3.5). Public hearings were held before the Zoning Commissioner on June 23, July 1 and July 6, 1988. On November 30, 1988, the Zoning Commissioner issued his Findings of Fact and Conclusions of Law and an Order granting

the Special Exception with restrictions and denying the use permit for parking in the residential zone.

An appeal was noted on December 30, 1988 by Northwinds Homeowners Association, Inc.¹ and a separate appeal notice had earlier been filed on December 28, 1988 by People's Counsel for Baltimore County. The Petitioners filed their cross appeal of the denial of the use permit also on December 30, 1988.²

The County Board of Appeals heard testimony on June 9, December 6 and 13, 1989, and on January 24 and January 31, 1990. At the close of the January 31 hearing and at the request of the parties, the Board permitted the Protestants to file their memorandum of law on or before February 16, 1990 and the Petitioners were allowed to file their reply memorandum by February 23. This memorandum will primarily deal with reviewing the testimony and evidence rather than concentrating on legal authorities.

STATEMENT OF FACTS

The property which is the subject of these petitions is located on the northeast side of Harford Road, 100 feet north of the centerline of Cub Hill Road. With a total area of

1. Protestants' Memorandum misidentifies Stephen Rosasco as a party appellant; yet no appeal was filed by Mr. Rosasco, individually.

2. As noted hereinafter, Petitioners also challenged on this appeal the site plat notes numbers 13 and 14 which were required to be shown on the plat by the Zoning Office at the time the petitions were filed.

3.03 acres, the front portion of the property (1.02 Ac.) is zoned B.L. and the rear portion (2.01 Ac.) is zoned D.R.3.5. At present, the property is improved by a two-story frame house, a wood barn, an old greenhouse and other small outbuildings. As can be seen on Petitioner's Exhibit 14 (an aerial), the rear portion is fairly heavily wooded and screens the townhouse community of Northwinds to the rear.

Adjoining the property to the immediate south is a restaurant and lounge and opposite the property are several automotive-related commercial uses. Testimony from several witnesses indicated that this area of Harford and Cub Hill Roads has long established commercial uses (at least since the 1950s) all of which predated the subdivision development of Northwinds in about 1985 and 1986. In fact, the subject property is surrounded on three sides by commercial zoning.

The Contract Purchaser, H & H Realty, is comprised of Charles E. Hare and James Hatfield, who are seeking the special exception and use permit for parking in order to build a two story service garage. Because of the topography of the site and the fact that the building will be built into a hill, the building elevation in the rear will have a one story profile. Body work will be concentrated on the lower level which fronts on Harford Road and the second floor will have a paint booth but mainly be devoted to the retail sale of automotive parts and accessories to consumers and other auto repair shops.

Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261, 264 (1953); Anderson v. Sawyer, 23 Md.App. 612, 617, 329 A.2d 716, 720 (1974).

While the Schultz case does set out the standard to be applied in special exception requests, it does not give a clear insight as to the specific nature of those adverse effects which are required to be present to justify a denial of a special exception. A clear understanding of the adverse effects required to deny a special exception is found in the cases of Deen v. Baltimore Gas & Electric Company, 240 Md. 317 (1965) and Anderson v. Sawyer, 23 Md.App. 612 (1974) wherein the specific nature of the necessary adverse effect is defined.

In the Deen case, a special exception was sought to construct high tension lines in a rural area. The Appellants protested on the grounds that the high tension lines would have an adverse effect on the health, welfare and safety of the locality and was contrary to the requirements of Section 502.1 of the Baltimore County Zoning Regulations. On appeal, the Court affirmed the granting of the special exception stating:

"Appellants assert that it was error for the Board to fail to consider the future effects which the high tension wires would have on the health, safety and general welfare of the locality 'which would be reasonably anticipated in the normal course of its development.' This factor was without relevance in this case, because there was no evidence produced at the hearing which would show that the effect of high tension wires on the future health, safety and welfare of this area would be in any respect different than its effect on any other rural area. Section 502.1 implies that the effect on health, safety or general welfare must be in

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-8-

some sense unique or else a special exception could never be granted in such an area for the above ground location of high tension wires. The only evidence as to future conditions was testimony revealing the possibility of future residential development of this land but such a possibility alone does not come close to showing a future deleterious effect upon the public health, safety or general welfare." Deen, 240 Md. at 330-31, 214 A.2d at 153 (emphasis added).

In Anderson v. Sawyer, a special exception was requested for a funeral home in a residential zone. The neighborhood protested alleging that the requested use would have a depressing and disturbing psychological effect upon the neighborhood, would create traffic congestion, would create unsafe conditions and would interfere with the enjoyment of their properties making them less saleable and prevent them from appreciating in value. In affirming the grant of the special exception, the Court pointed out that there is a presumption that a funeral home in a residential district promotes the general welfare of the community since such a use has been legislatively pre-determined and that the inherent adverse effects of a funeral home in a residential district are not sufficient adverse effects to deny the use. The Court stated:

"There can be no doubt that an undertaking business has an inherent depressing and disturbing psychological effect which may adversely affect persons residing in the immediate neighborhood in the enjoyment of their homes and which may lessen the values thereof. Indeed, it is precisely because of such inherent deleterious effects that the action of a local legislature prohibiting such uses in a given zone or zones will be regarded as promoting the general welfare and

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-9-

as constitutionally sound. But in the instant case the legislature of Baltimore County has determined that as part of its comprehensive plan funeral homes are to be allowed in residential zones notwithstanding their inherent deleterious effects. By defining a funeral home as an appropriate use by way of special exception, the legislature of Baltimore County has, in essence, declared that such uses, if they satisfy the other specific requirements of the ordinance, do promote the health, safety and general welfare of the community. As part of the comprehensive zoning plan this legislative declaration shares in a presumption of validity and correctness which the Courts will honor.

The presumption that the general welfare is promoted by allowing funeral homes in a residential use district, notwithstanding their inherent depressing effects, cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses. Consequently, the bald allegation that a funeral home use is inherently psychologically depressing and adversely influences adjoining property values, as well as other evidence which confirms that generally accepted conclusion, is insufficient to overcome the presumption that such a use promotes the general welfare of a local community. Because there were neither facts nor valid reasons to support the conclusion that the grant of the requested special exception would adversely affect adjoining and surrounding properties in any way other than would result from the location of any funeral home in any residential zone, the evidence presented by the protestants was, in effect, no evidence at all.

It is clear from a review of the above cases and a review of the evidence presented at the hearing that Petitioners request for a service garage should be granted.

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-10-

The protestants have the burden of establishing that the proposed service garage has adverse effects upon the community which are unique and above and beyond the inherent adverse effects which are ordinarily associated with a service garage.

Against the presumption that a service garage is in the interest of the general welfare of the community and the evidence produced by the Petitioners at the hearing to meet the standards set in 501.2 of the Zoning Regulations, Protestants have failed to establish any adverse effects upon the community which are unique or above and beyond those normally associated with a service garage. The evidence presented by the Protestants, all of whom are collectively residents of a townhouse community located to the rear of the property, is that a service garage facility will adjoin the rear of their property, that the value of their homes will depreciate, that they do not desire a parking lot to the rear of their homes, that there may be an increase in run off of surface waters and that a service garage will bring an increase in traffic flow and possible congestion. While these objections may be of an adverse nature, they certainly are not unique or above and beyond those normally attributable to a service garage. Petitioners submit that the allegations raised by the Protestants lack any probative value and do not constitute an adequate showing of adverse effects upon the community as required by the applicable standards as set out by the Courts.

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-11-

2. Will the issuance of a use permit to allow parking in a residential area adversely impact the surrounding community?

Effective April 21, 1988, Baltimore County Council Bill No. 26-88 revised the Baltimore County Zoning Regulation governing off-street parking and re-enacted Section 409 of the Zoning Regulations. Section 409.B.2 permits the granting of a use permit by the Zoning Commission providing the requirements of 409.B.2 are satisfied and the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community. In addition, Section 409.B.1 (E) provides that if a public hearing is held, the Commissioner may grant or deny a use permit conditioned upon his findings following the hearing, the character of the surrounding community and the anticipated impact of the proposed use and the objectives of 502.1 of the Zoning Regulations.

Petitioners are proposing to use the rear portion of the subject property as a parking facility to support the commercial uses of a service garage and sales of automotive accessories in the "B-L" Zone. The parking facility is in a residential transition area and is permitted by the Zoning Regulations for Baltimore County, Section 1B01.1.B1.a.2 (c). Petitioners have provided for a buffer area in the residential zone as requested by the Regulations, Section 1B01.1.B1.b.3(b).

As set out previously in this Memorandum, the front portion of the site is to be used as a service garage and for sales. The proposed building will be in the front portion

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-12-

of the property and its use will be in harmony with the other surrounding properties with commercial uses. The plan does not, nor could it, provide for a building in the rear of the property. The rear portion of the property will be limited in the use as a parking facility for passenger vehicles only and not for storage of disabled vehicles. In support of Petitioners' request, a buffer area has been provided in accordance to Zoning Regulations to effectively screen the townhouses from the parking area. Testimony and photos produced at the hearing clearly established that the present buffer area is heavily and densely wooded with trees which exceed the townhouses in height. Nonetheless, the Petitioners in order to provide assurances to the adjoining residential owners have testified they would meet any requirements that may be imposed regarding screening. Additionally, their plan of development recites they will comply with the requirements of the landscape manual for Baltimore County. It is the Petitioners position that the parking area will not be visible by the adjacent residents and that their claim of any adverse impact upon them is minimal, if any.

In addition, testimony established that access to the property and the parking facilities will be only from the front of the property facing Harford Road. The property provides no access or interference to the residents in the use and enjoyment of their homes. Access to the townhouses is from North Winds Road located southeast of the property and at a considerable distance from the proposed site.

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-13-

It appears after testimony by the adjacent residents that their primary concern is the parking facility will be used for the storage of junk vehicles as specifically testified by Mr. Rosasco, President of the Association, based upon his viewing of a storage area at the Petitioners present place of business. In testimony it was pointed out by Mr. Hare that the storage area was that of Pikeway Towing and not part of his business. Mr. Hare clearly stated on repeated occasions there were no plans to operate a tow facility at the location and the parking area would be for passenger vehicle use only.

Petitioners contend their request for a use permit is in full compliance to the Baltimore County Zoning Regulations, which permit the requested parking in a residential zone, and have through the use of the regulations provided an adequate and satisfactory plan to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the community.

For the reasons above, Petitioners request that their Petitions for Special Exception and Special Hearing be granted.

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-14-

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of July, 1988, a copy of the foregoing Memorandum In Support Of Petition For Special Exception And Special Hearing was mailed to Michael P. Tanczyn, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204, and Stephen J. Rosasco, 1700 Gas & Electric Building, P.O. Box 1475, Baltimore, Maryland 21203, Attorneys for Protestants.

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-15-

Pursuant to BCZR Section 409.8.B.1 (Bill No. 26-88), the Petitioners are proposing to use a part of the rear portion of the subject property as a parking lot for the passenger cars of employees and customers. No damaged vehicles or commercial trucks would be permitted or parked in the residential area. In his November 30, 1988 Order, the Zoning Commissioner denied the use permit for parking at a time when the plat contained a proposed buffer area of 75 feet between the parking lot and the wooded area of the property screening the townhouses to the rear.

In an effort to address the community's concerns of an allegedly inadequate buffer area and to improve the site plan, the Petitioners made the decision to substantially increase the buffer area and reduce the amount of paved parking area in the residential zone. (Site Plan revised as of December 11, 1989). The rearmost portion of the buffer area was increased from 75 feet to 120 feet. (See Exhibit 17.) This is an improved site condition which was not before the Zoning Commissioner, and which could have caused him to view the use permit for parking petition in a favorable light. Therefore, the Petitioners firmly believe that the new, reduced development site plan serves as substantial justification for this Board's grant of both zoning petitions, especially when considered in light of the substantial evidence submitted by the Petitioners.

In support of this contention, the Petitioners will briefly review below some of the testimony submitted before the Board during its five hearing sessions:

Charles J. Pearce

As personal representative of the Estate of Edith Pearce, Charles Pearce testified concerning the contract with H & H Realty and that he had been familiar with the property for 43 years and the commercial character of the neighborhood. Mr. Pearce also testified that the owners realized that they would have to abide by any restrictions imposed by the Board.

Julia R. Blacklock

A stipulation was reached between counsel concerning the other owner of the property, Julia R. Blacklock. The parties stipulated that Ms. Blacklock continues to join in the petition and agrees to be bound by any restrictions imposed by the Board or by requirements of the Baltimore County Zoning Regulations.

Howard W. Chambers

Mr. Chambers testified as the commercial real estate agent involved in the contract of sale with H & H Realty. He also testified concerning the commercial character of this area of Harford Road.

Mr. Paul Lee was next called to the witness stand at the June 9, 1989 Board hearing for the sole purpose of introducing the site plan revised as of June 1, 1989, which was received into evidence as Petitioners' Exhibit 1. This early

version of the site plan did not contain the increased buffer area which has been mentioned above and which is shown on Petitioners' Exhibit 17.

Charles E. Hare

Mr. Hare began his testimony at the June 9 hearing session of the Board. The summary of his testimony in Protestants' Memorandum is substantially correct. Indeed, Mr. Hare has been involved in the automotive repair business for over 24 years and he holds patents on certain body repair equipment which he has developed. He testified concerning his plans to build a state-of-the art body shop with retail sales and that, consistent with extensive federal and state regulations of this industry, it would be a safe working environment, relatively noise-free and dust-free.

Much has been made by the Protestants concerning certain alleged variations in Mr. Hare's testimony concerning the proposed hours and work staff. Some of this perceived confusion on the part of the Protestants' part may derive from the fact that Mr. Hare had to change counsel in midstream in this appeal case. After entering his appearance, undersigned counsel immediately questioned original plat notes 13 and 14 (5 repair person limitation and 5 horsepower equipment limitation) as not being proper or applicable to the proposed special exception uses under BCZR Section 230.13. The Zoning Supervisor, James E. Dyer, later testified that these restrictions certainly did not apply to

the instant case. This lifting of the restrictions enabled Mr. Hare and Mr. Hatfield to reevaluate their proposed plans. Mr. Hare has always consistently testified that most body repair work only takes place between 8:00 a.m. and 5:30 p.m., Mondays through Fridays. The evening and weekend hours would mainly be limited to the retail portion of the operation.

At the December 13, 1989 Board hearing, Mr. Hare testified concerning the following proposed work force:

A. Body Shop Operation:	
6 body repair workers	
1 painter	
2 helpers	
1 manager	
1 secretary	
1 clean-up person	
Subtotal	12
B. Retail Sales	
2 counterpersons	
2 stock boys	
2 salesmen (on the road)	
Subtotal	6

There was no testimony to suggest that this number of employees would overburden the site.

Contrary to Protestants' Memorandum, Mr. Hare did not testify that 10110 Harford Road (a satellite garage across from the subject site) would serve to accommodate overflow work from the proposed site. In fact, he concluded his testimony by stating that he and his partner would probably have to sell the current annex shop in order to finance the development of the subject site.

Charles Lee

The first expert witness to testify on behalf of the Petitioners was Charles Lee who was accepted as an expert in

the field of access engineering. Mr. Lee who is associated with The Traffic Group worked for 38 1/2 years with the State Highway Administration and from 1960 to 1987 he served as Chief of the Bureau of Engineering Access Permits which controls access to all state roads.

Mr. Lee testified he had made two site visits and that based upon his investigation the proposed access is safe and the proposed location and width of the access meet all SHA requirements. Petitioners' Exhibit 10, the SHA comment letter dated June 9, 1989, came into evidence through Charles Lee. That letter from Creston J. Mills concluded that the highway improvements along Harford Road would result in "adequate frontage along this property to provide access to this project." Contrary to the Protestants' Memorandum (at p. 9), Mr. Lee did not testify "that the minimum stopping distance was 510 feet." He actually testified that the minimum intersectional safe sight distance was 510 feet and this requirement was exceeded and well met in the instant case. His un rebutted expert testimony also established that the proximity of three access points along this area of the Harford Road was lawful and in compliance with SHA requirement and that the proposed access will not be detrimental or cause undue road congestion.

Paul Lee

Expert testimony was next offered on Petitioners' behalf by Mr. Paul Lee who authorized the site plan and who was

accepted by the Board as an expert professional engineer and site planner. Mr. Lee testified concerning all aspects of the site plan as well as surrounding uses and he too disputed the applicability of the repair person limitation and equipment restriction.³ Despite the increase in the buffer area and the reduction in paved parking area, Mr. Lee testified that the proposed 94 parking spaces shown were fully adequate to serve the site and proposed uses.

During cross-examination and again in Protestants' Memorandum, counsel for protestants raised the possibility of access from Harford Road to serve the D.R.3.5 portion in the rear of the subject site. Mr. Lee testified that there was not sufficient access for both the commercial use in the front and the required fee simple panhandle access to serve seven (7) residential units in the rear. Legislative support for this contention can be found in recently adopted Bill No. 172-89, specifically Section 22-85(a) and (c). Also, Mr. Lee pointed out that the Northwinds subdivision did not provide for through access to the D.R.3.5 portion of the subject site. Thus, it

3. Contrary to Protestants' Memorandum (p. 10), Mr. Lee did not disagree with "notes 12 through 15." He did challenge notes 13 and 14 which was expressly flagged as deleted.

was Mr. Lee's expert opinion at the hearing that the County Council knew (as recently as the 1988 zoning map process) that the rear portion could be used to support the commercial frontage under the special parking regulations.

Mr. Lee also testified that storm water computations and soil analyses had to be dealt with during the development design stage. Nevertheless, he did state that a storm water management facility could be located under the parking paving (outside of the buffer area) and discharge in the rear because of the recorded drainage easements which already existed at the rear of the site.

Mr. Lee reviewed each of the requirements of Section 502.1 which the project met and testified concerning overall compliance with Bill No. 26-88 governing use permits for parking and the Schultz v. Pritts test.

Norman E. Gerber

Petitioners next called Mr. Norman Gerber who was accepted as a land planning expert and zoning expert. Mr. Gerber's curriculum vitae which was accepted as Petitioners' Exhibit 20 discloses that he served from 1956 to 1977 as a planner in the Baltimore County Office of Planning and Zoning and from 1977 to 1980 as Deputy Director of that Office. From 1980 to January, 1988, Mr. Gerber was the Director of OPZ for Baltimore County.

Although Protestants' Memorandum (pp. 11-12) creates a different impression, Mr. Gerber stated that the commercial uses in this area of Harford Road had most likely been in

existence prior to 1956. That was just the year he started with OPZ and the year he first became aware of the commercial uses in this area.

Mr. Gerber pointed out that the new parking regulations (Bill 26-88) which he helped to author did not change the parking requirement in the commercial zone but merely restated them as requiring 5 spaces per 1000 square feet instead of 1 space per 200 square feet.

Mr. Gerber also testified that along older radial arterials, such as Harford Road, commercial zoning was often placed at a standard depth with residential zoning in the rear. In other words, Mr. Gerber stated there has been a longstanding recognized technique of reserving the residentially zoned rear portion of properties to serve the commercial frontage. Even though there were not screening requirements as exist in Bill No. 26-88, the use permit for parking has been in use since Mr. Gerber joined OPZ in 1956 and beforehand. Furthermore, Mr. Gerber testified that the "anner" lot on the opposite side of Harford Road and to the north, would not be suitable or available to serve the parking requirements of the subject site.

Contrary to Protestants' Memorandum, Mr. Gerber did testify that the Zoning Plans Advisory Committee (which issued no negative comments) would have most likely been aware of the pendency of the new parking requirements.

Mr. Gerber also stated that the SHA taking did not materially alter the front setback requirements or pose a safety problem. This urban planner also testified that the increased buffer shown on Petitioners' Exhibit 17 would lessen the impact of the project even though it was not overly burdensome as originally proposed.

Finally, Mr. Gerber testified concerning the site plan's compliance with Sections 409.8 and 502.1. Section 502.1(h), concerning impermeable surfaces, Mr. Gerber stated, only applies in the R.C. 4 zone. He also stated that the special exception uses proposed for this site would not cause any adverse effects upon adjoining and surrounding properties unique or different, in kind or degree, than those inherently associated with such a service garage use regardless of its location within the B.L. zone. On this point, Mr. Gerber's testimony is in full accord with the conclusion reached by the Zoning Commissioner below.

James E. Dyer

Although Protestants' Memorandum covered a portion of Mr. Dyer's testimony (the allowance of spaces within the parking garage), it fails to mention that Mr. Dyer testified concerning the inapplicability of notes 13 and 14 to the present case and that the increased buffer (a benefit) would not trigger re-review of the plan by ZPAC.

-12-

Protestant Witnesses

In addition to several Northwind homeowners that testified in opposition to the petitions, the protestants called Michael Kendall who is employed by the Baltimore County Bureau of Air Quality. Key to Mr. Kendall's testimony was his statement that the Department of Environmental Protection and Resource Management will not approve any permit for the proposed use unless all environmental requirements and regulations are met to the full satisfaction of the Bureau of Air Quality and other DEPRM divisions.

The appellant-homeowner's association president, Mr. Rosasco, testified that neither the membership nor the Association's Board of Directors had met to consider the improved site plan with the increased buffer and reduced parking area, Petitioner's Exhibits 9 and 17. Despite concern for downstream fish and nearby streams, he also testified that many of the Northwind homeowners used weed and feed chemicals on their lawns.

There were two expert witnesses who testified for the Protestants - Charles J. Klein, an environmental engineer who resides in Northwinds, and John Rohde, a landscape architect who viewed the site for the first time on the morning of the 8:30 a.m. January 31 hearing. Although a land planner, William Kirwin, testified at the Zoning Commissioner hearing about the alleged inadequate buffer, Mr. Kirwin did not appear at any of the Board hearings.

-13-

Mr. Klein testified that he had not updated his SWM computations to take into account the mitigative effect of the increased buffer and reduced parking areas. He also admitted on cross examination that the state of the art had progressed in the area of designing air quality safeguards. Most of Mr. Klein's testimony and conclusions assumed, without any foundation, that "pollutants" will freely escape unchecked from the proposed body shop, a condition which Mr. Kendall had previously said his Bureau will not allow. Mr. Klein could offer no evidence concerning the exposure risk from a dose or quantity standpoint of any of the alleged "pollutants" notwithstanding the considerable distance from the service garage to Northwinds townhomes.

John Rohde, protestants' landscape architect, testified that he was "recently familiar" with the subject site. On direct examination, he testified it was his expert opinion that it would not be "fair" to place the proposed service garage in the B.L. zone with townhouses nearby. On cross, he admitted that he had made no independent investigation of potential noise levels. Although he testified at first that the site plan would result in overcrowding, he admitted that the proposed buildout and floor area ratio of .5 was far below the maximum permitted F.A.R. of 3.0 under the BCZR. Mr. Rohde stated that the proposed building would not interfere with light at all. Regarding the potential for

-14-

"frost heave," Mr. Rohde admitted that there were economical preventive measures which could be taken to avoid this when the site is engineered.

Also called as a witness by the protestants was Mr. Russell McClelland who worked at the Contract Purchaser's body shop on Joppa Road from November 1982 until March of 1989. Mr. McClelland confirmed Mr. Hare's testimony concerning normal hours of operation. He testified that there was "little noise" from the air driven tools used in body repair. He also testified that any leaking fluids from wrecked cars were usually gone by the time the towed vehicle reached the body shop and, if not, attempts were made to contain it.

ARGUMENT

Given the lengthy discussion of testimony hereinbefore and the fact that the Board is extremely knowledgeable about the legal requirements which must be met, Petitioners will not restate those regulatory requirements and the case law here. Suffice it to say that the preponderance of the evidence presented by Petitioners substantially supports the conclusion that all legal requirements have been met by them and the petitions should be granted, subject to the restrictions enumerated by the Zoning Commissioner.

As noted hereinbefore, the site plan that is before the Board is substantially improved from the one which the Zoning Commissioner had to consider. The evidence is

-15-

substantial that the D.R.3.5 portion of the subject property is unuseable for residential purposes because of the lack of suitable access. Unuseable except for the supportive parking purpose which has long been permitted in Baltimore County.

Based upon the evidence and testimony presented, Petitioners respectfully request that the petitions for special exception and special hearing be granted, subject to the restrictions enumerated by the Zoning Commissioner.

Stephen J. Nolan
Stephen J. Nolan

Nolan, Plunhoff & Williams, CHD
Suite 700, Court Towers
210 West Pennsylvania Avenue
Towson, Maryland 21204
(301) 823-7800

Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of February, 1990, a copies of the foregoing Petitioner's Reply Memorandum in Support of Petitions for Special Exception and Special Hearing were hand-delivered, to Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204 and to Phyllis Cole Friedman, Esquire, People's Counsel for Baltimore County, County Office Building, 3rd Floor, Towson, Maryland 21204.

Stephen J. Nolan
Stephen J. Nolan

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-16-



County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 494-3366 887-3180

January 25, 1990

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 88-508-SPHX

(cont'd from 1/24/90)

EDITH PEARCE, ET AL
NE/s Harford Rd, 100' NE of c/l of Cub Hill Road
(10105 Harford Road)
11th Election District
6th Councilmanic District

SPH -To permit parking of commercial vehicles
in residential zone

SE -For service garage and sales

11/30/88 -Z.C.'s Order in which special hearing
DENIED; special exception GRANTED w/restrictions

This matter has been set in for a brief hearing at 8:30 a.m. on Wednesday, January 31, 1990 for the purpose of the taking of testimony of Mr. Russell McClelland; and has

ASSIGNED FOR: WEDNESDAY, JANUARY 31, 1990 at 8:30 a.m.

cc: Stephen J. Nolan, Esquire Counsel for Appellants /Petitioners
Edith Pearce, et al Appellants /Petitioners
c/o Charles Pearce

Ms. Julia Blacklock

Michael P. Tanczyn, Esquire Counsel for Protestants

Mr. Charles E. Hare

Mr. James R. Hatfield

Mr. Paul Lee

Mr. Charles Pearce

Mr. Howard W. Chamberg

Mr. Tom Kimmel

P. David Fields

J. Robert Haines

Ann M. Nastarowicz

James E. Dyer

W. Carl Richards, Jr.

Docket Clerk -Zoning

Arnold Jablon, County Attorney

Mr. Russell McClelland

Kathleen C. Weidenhammer
Administrative Assistant



January 30, 1990

Lawrence E. Schmidt, Esq.
Baltimore County
Board of Appeals
County Office Building
111 W. Chesapeake Avenue
Room 315
Towson, MD 21204

Dear Larry:

Just a note to tell you that I was not asked by the clients of Mike Tanczyn to participate in the appeal process. I was not informed on any aspect of the case, and did not have any contractual obligation. I did not intend to participate from the beginning. I regret that it was implied that I withdrew unexpectedly.

I wish this to go no further, but felt that you should have a proper understanding of my position.

Sincerely,

WILLIAM F. KIRWIN, INC.

William F. Kirwin
WPK/pms

WILLIAM F. KIRWIN, INC.

28 E. Susquehanna Avenue Towson, MD 21204 Phone 301-337-0075 FAX 301-823-3827

IN RE * BEFORE THE BOARD OF APPEALS
PETITION FOR SPECIAL * OF BALTIMORE COUNTY
EXCEPTION & SPECIAL HEARING
NES Harford Road 100' NE of
C/L of Cub Hill Road
10105 Harford Road
11th Election District
6th Councilmanic District
Edith Pearce, et al,
Petitioners. * Case No. 88-508-SPHX

SUBPOENA DUCES TECUM

SECRETARY, please issue a Subpoena for the following person to appear and testify before the Board of Appeals of Baltimore County on Wednesday, January 24, 1990, at 10 a.m. to testify for the Protestants before the Board of Appeals, County Office Building, 111 West Chesapeake Avenue, Room 301, Towson, Maryland, 21204

Mr. Russell McClelland
Auto Collision Clinic
120 Connolly Road
Fallston, Maryland 21047

Board of Appeals

MR. SHERIFF:

Please issue the above Subpoena.

MICHAEL P. TANCZYN, ESQ.
Attorney for the Protestants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone (301) 296-8823

IN RE
PETITION FOR SPECIAL
EXCEPTION & SPECIAL HEARING
NES Harford Road 100' NE of
C/L of Cub Hill Road
10105 Harford Road
11th Election District
6th Councilmanic District
Edith Pearce, et al,
Petitioners.

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Mr. Michael Kendall
Baltimore County Emissions
300 East Towson Avenue
Towson, Maryland 21204

and to bring with him and testify as to all files relating to Ed & Jim's Body Shop located at 8902 Audrey Avenue, for Audrey Avenue and Joppa Road and for North Harford Road, including but not limited to emissions checks, licenses issued by date, and all other information contained in those files.

MR. SHERIFF:
Please issue the above Subpoena.

MICHAEL P. TANCZYN, ESQ.
Attorney for the Protestants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone (301) 296-8823

IN RE
PETITION FOR SPECIAL
EXCEPTION & SPECIAL HEARING
NES Harford Road 100' NE of
C/L of Cub Hill Road
10105 Harford Road
11th Election District
6th Councilmanic District
Edith Pearce, et al,
Petitioners.

SUBPOENA DUCES TECUM

SECRETARY, please issue a Subpoena for the following person to appear and testify before the Board of Appeals of Baltimore County on Wednesday, January 24, 1990, at 10 a.m. to testify for the Protestants before the Board of Appeals, County Office Building, 111 West Chesapeake Avenue, Room 301, Towson, Maryland, 21204

Mr. Russell McClelland
Auto Collision Clinic
120 Connolly Road
Fallston, Maryland 21047

MICHAEL P. TANCZYN, ESQ.
Attorney for the Protestants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone (301) 296-8823

MR. SHERIFF:

Please issue the above Subpoena.

RECEIVED
SHERIFF'S DEPT.
BALTIMORE COUNTY, MD.
JAN 15 12 25 PM '90

RECEIVED
COUNTY CLERK
BALTIMORE COUNTY, MD.
JAN 15 11 40 AM '90

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 444-3300; 887-3180
January 25, 1990
NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 88-508-SPHX
(cont'd from 1/24/90)

EDITH PEARCE, ET AL
NE/s Harford Rd, 100' NE of c/l of Cub Hill Road
(10105 Harford Road)
11th Election District
6th Councilmanic District
SPH -To permit parking of commercial vehicles
in residential zone
SE -For service garage and sales
11/30/88 -Z.C.'s Order in which special hearing
DENIED; special exception GRANTED w/restrictions

This matter has been set in for a brief hearing at 8:30 a.m. on Wednesday, January 31, 1990 for the purpose of the taking of testimony of Mr. Russell McClelland; and has

ASSIGNED FOR: WEDNESDAY, JANUARY 31, 1990 at 8:30 a.m.

cc: Stephen J. Nolan, Esquire Counsel for Appellants /Petitioners
Edith Pearce, et al Appellants /Petitioners
c/o Charles Pearce
Ms. Julia Blacklock
Michael P. Tanczyn, Esquire Counsel for Protestants
Mr. Charles E. Hare
Mr. James R. Hatfield
Mr. Paul Lee
Mr. Charles Pearce
Mr. Howard W. Chamberg
Mr. Tom Kimmel
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk -Zoning
Arnold Jablon, County Attorney
Mr. Russell McClelland
Kathleen C. Weidenhammer
Administrative Assistant

3/21/89 -Following notified of hearing set for Friday, June 9, 1989 at 10:00 a.m.:

Ms. Edith Pearce
Ms. Julia Blacklock
Michael B. Fauver, Esq.
Mr. Charles E. Hare
Mr. James R. Hatfield
Mr. Paul Lee
Mr. Charles Pearce
Mr. Howard W. Chamberg
Michael P. Tanczyn, Esq.
People's Counsel
Mr. Tom Kimmel
P. David Fields
Pat Keller
J. Robert Haines
Ann Nastarowicz
James E. Dyer
Docket Clerk -Zoning
Arnold Jablon, Esq.

6/14/89 - Above parties notified of Day #2 and Day #3, Wednesday, December 6, 1989 and Wednesday, December 13, 1989 both to begin at 10:00 a.m.

12/7/89 - Above parties with the addition of Stephen J. Nolan, Esq. and the deletion of Michael B. Sauer, Esq. notified of Day #4 set for January 24, 1990 at 9:00 a.m.

12/7/89 - Revised Notice of Assignment sent to above parties Day #3 set for December 13, 1989 is to begin at 9:00 a.m. not 10:00 a.m. as originally sent.

1/23/90 -Contacted S. Nolan and M. Tanczyn re: start time on 1/24/90 would be no earlier than 9:45 a.m. due to inability of one Board member to be here at 9:00 a.m.; agreement that hearing would start no sooner than 9:45 a.m. and by 10:00 a.m.

1/25/90 -Notice of Assignment sent to all parties and Mr. Russell McClelland; brief hearing set for Wednesday, January 31, 1990 at 8:30 a.m. for the purpose of taking the testimony of Russell McClelland (witness unable to attend 1/24/90 hearing). Agreement of all counsel re time and date for this witness to appear. Letter sent to Mr. McClelland with copy of Notice; counsel cc'd.

1/31/90 -Concluded hearing before Board; Memo due from M. Tanczyn by Friday, 2/16/90; response from S. Nolan by Friday, 2/23/90.

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

January 25, 1990

Mr. Russell McClelland
Auto Collision Clinic
120 Connolly Road
Fallston, MD 21047

RE: Case No. 88-508-SPHX
Edith Pearce, et al

Dear Mr. McClelland:

Enclosed is a copy of the Notice of Assignment sent this date to all parties in the subject matter.

This case has been set in for a brief hearing at 8:30 a.m. on Wednesday, January 31, 1990 in Room 301 of the County Office Building to permit the taking of your testimony in this matter.

This letter will confirm my telephone conversation with you on Wednesday, January 24 regarding your appearance at the January 31 hearing.

Sincerely,

Kathleen C. Weidenhammer
Administrative Assistant

Encl.

cc: Stephen J. Nolan, Esquire
Michael P. Tanczyn, Esquire
Arnold Jablon, County Attorney

IN RE
PETITION FOR SPECIAL
EXCEPTION & SPECIAL HEARING
NES Harford Road 100' NE of
C/L of Cub Hill Road
10105 Harford Road
11th Election District
6th Councilmanic District
Edith Pearce, et al,
Petitioners.

SUBPOENA DUCES TECUM

SECRETARY, please issue a Subpoena for the following person to appear and testify before the Board of Appeals of Baltimore County on Wednesday, January 24, 1990, at 10 a.m. to testify for the Protestants before the Board of Appeals, County Office Building, 111 West Chesapeake Avenue, Room 301, Towson, Maryland, 21204

Mr. Russell McClelland
Auto Collision Clinic
120 Connolly Road
Fallston, Maryland 21047

MICHAEL P. TANCZYN, ESQ.
Attorney for the Protestants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone (301) 296-8823

RECEIVED
COUNTY CLERK
BALTIMORE COUNTY, MD.
JAN 24 11 40 AM '90

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 444-3300; 887-3180
December 7, 1989
REVISED NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 88-508-SPHX
Day #3 and #4

EDITH PEARCE, ET AL
NE/s Harford Rd, 100' NE of c/l of Cub Hill Road
(10105 Harford Road)
11th Election District
6th Councilmanic District
SPH -To permit a Use Permit to park commercial vehicles in a residential zone (D.R.3.5)
SE -For service garage and sales
11/30/88 - Z.C.'s Order -SPH-DENIED; SE-GRANTED w/restrictions

which is scheduled for a third day on December 13, 1989 at 9:00 a.m. with the agreement of Counsel has been set for a fourth day on Wednesday, January 24, 1990 at 9:00 a.m.

ASSIGNED FOR: WEDNESDAY, DECEMBER 13, 1989 at 9:00 a.m. and WEDNESDAY, JANUARY 24, 1990 at 9:00 a.m.

cc: Ms. Edith Pearce Appellant/Petitioner
Ms. Julia Blacklock
Stephen J. Nolan, Esquire Counsel for Appellants/Petitioners
Michael P. Tanczyn, Esquire Counsel for Protestants
Mr. Charles E. Hare
Mr. James R. Hatfield
Mr. Paul Lee
Mr. Charles Pearce
Mr. Howard W. Chamberg
Mr. Tom Kimmel
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney
LindaLee M. Kuszmaul
Legal Secretary

IN RE: PETITION FOR SPECIAL
EXCEPTION & SPECIAL
HEARING NES HARFORD
ROAD 100' NE OF
C/L of Cub Hill Road
10105 Harford Road
11th Election Dist.
6th Councilmanic Dist.

Edith Pearce, et al
Petitioners

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that she executed service of Request for Subpoena Duces Tecum upon James Dyer on December 12, 1989, at 111 West Chesapeake Avenue, Towson, Maryland 21204, by delivering and leaving with him a copy of the Request for Subpoena Duces Tecum issued by this Court on December 12, 1989. The undersigned further certifies that she is over 21 years of age and is not a party to this action.

Marcie Zink

STATE OF MARYLAND, COUNTY OF BALTIMORE

Before me, the undersigned, a notary public in and for the State of Maryland aforesaid, personally appeared Marcie Zink this 12th day of December, 1989 and made oath in due form of law that the matters and facts hereinabove set forth are true.

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS
CHARTERED



1647B(2)

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

HEARING ROOM -
Room 301, County Office Building
June 14, 1989

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 88-508-SPHX EDITH PEARCE, ET AL
NE/s Harford Road, 100' NE
of C/L of Cub Hill Road
(10105 Harford Road)
11th Election District
6th Councilmanic District

Day #2 and #3

SPH - To permit a Use Permit to park commercial vehicles in a residential zone (D.R.3.5)
SE - For service garage and sales

11/30/88 - Z.C.'s Order - SPH-DENIED, SE-GRANTED w/restrictions

ASSIGNED FOR: WEDNESDAY, DECEMBER 6, 1989 at 10:00 a.m. and WEDNESDAY, DECEMBER 13, 1989 at 10:00 a.m.

cc: Ms. Edith Pearce Appellant/Petitioner
Ms. Julia Blacklock
Michael B. Sauer, Esquire Counsel for Appellants/Petitioners
Mr. Charles E. Hare
Mr. James R. Hatfield
Mr. Paul Lee
Mr. Charles Pearce
Mr. Howard W. Chamberg
Michael P. Tanczyn, Esquire
People's Counsel for Baltimore County
Mr. Tom Kimmel
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk - Zoning
Arnold Jablon, County Attorney

Appearance stucken 8/3/89

Outper Shirley Hess 12/5/89

Linda M. Kuszmaul
Legal Secretary

IN RE: PETITION FOR SPECIAL EXCEPTION & SPECIAL HEARING
N/S Harford Road 100' NE of C/L of Cub Hill Road
10105 Harford Road
11th Election District
6th Councilmanic District
Edith Pearce, et al,
Petitioners.

BEFORE THE BOARD OF APPEALS
OF BALTIMORE COUNTY

SUMMONED 12-6-89
NOT SERVED 19
REASON NOT SERVED

Case No. 88-508SPHX

SUBPOENA DUCES TECUM

SECRETARY, please issue a Subpoena for the following person to appear and testify before the Board of Appeals of Baltimore County on Wednesday, December 13, 1989 at 10 a.m. to testify for the Protestants before the Board of Appeals, County Office Building, 111 West Chesapeake Avenue, Room 301, Towson, Maryland, 21204

Richard Moore (or Representative)
Department of Traffic
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

and to bring with him and testify as to traffic volumes and the number of accidents occurring in front of 10105 Harford Road, Baltimore County, Maryland, and any site distance or safety studies which were done for this site.

MR. SHERIFF: Please issue the above Subpoena.

Linda Kuszmaul
Board of Appeals

Michael P. Tanczyn
Attorney for the Protestants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone (301) 296-8823

IN RE: PETITION FOR SPECIAL EXCEPTION & SPECIAL HEARING
N/S Harford Road 100' NE of C/L of Cub Hill Road
10105 Harford Road
11th Election Dist.
6th Councilmanic Dist.

BEFORE THE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY

Edith Pearce, et al
Petitioners

APPEAL FROM ZONING COMMISSIONER
CASE NO. 88-508SPHX

REQUEST FOR SUBPOENA DUCES TECUM

Madame Secretary:
Please issue a subpoena for the following-named witness to appear and testify in the above-entitled case on Wednesday, December 13, 1989 at 9:30 a.m. in Room 301, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland:

Mr. James E. Dyer
Zoning Supervisor or his Designee
Baltimore County Office of Planning & Zoning
111 West Chesapeake Avenue
Towson, Maryland 21204

The witness should be commanded to bring with him copies of any and all rules, regulations or policies (if any) with regard to that portion of the parking requirements which may be satisfied by spaces within a service garage.

Dated: December 12, 1989

Stephen J. Nolan
Stephen J. Nolan
NOLAN, PLUMHOFF & WILLIAMS, CHTD
Suite 700, Court Towers
210 West Pennsylvania Avenue
Towson, Maryland 21204
(301) 823-7800
Attorney for Petitioners

Linda Kuszmaul
Board of Appeals

IN RE: PETITION FOR SPECIAL EXCEPTION & SPECIAL HEARING
N/S Harford Road 100' NE of C/L of Cub Hill Road
10105 Harford Road
11th Election District
6th Councilmanic District
Edith Pearce, et al,
Petitioners.

BEFORE THE BOARD OF APPEALS
OF BALTIMORE COUNTY

Case No. 88-508-SPHX

SUBPOENA DUCES TECUM

SECRETARY, please issue a Subpoena for the following person to appear and testify before the Board of Appeals of Baltimore County on Wednesday, December 13, 1989 at 10 a.m. to testify for the Protestants before the Board of Appeals, County Office Building, 111 West Chesapeake Avenue, Room 301, Towson, Maryland, 21204

Richard Moore (or Representative)
Department of Traffic
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

and to bring with him and testify as to data showing how many accidents have occurred on Harford Road within 1/4 mile of 10105 Harford Road, either northbound or southbound.

Linda Kuszmaul
Board of Appeals

Michael P. Tanczyn
Attorney for the Protestants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone (301) 296-8823

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

November 28, 1989

Michael P. Tanczyn, Esquire
Suite 106
606 Baltimore Avenue
Towson, MD 21204

Stephen J. Nolan, Esquire
NOLAN, PLUMHOFF & WILLIAMS
Suite 700, Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204

RE: Case No. 88-508-SPHX
Edith Pearce, et al

Dear Counsel:
The Board is in receipt of Mr. Tanczyn's request for postponement of the above matter and the opposition thereto by Mr. Nolan.

Needless to say, the Board's hearing dates are at a premium due to the lack of a full-time hearing room and the large number of appeals. Additionally, at this point in time, the Board's docket is set through June 8, 1990. In that this is a continued matter and that the Board has previously had one full hearing day, the Board is reluctant to grant any postponement except for dire emergency. We do not feel that Mr. Tanczyn's request constitutes such an emergency, particularly when his trial is not in direct conflict with the hearing date and may or may not continue in to December 6.

For the foregoing reasons, the Board will deny Mr. Tanczyn's request for postponement and shall continue with the hearing presently set for December 6, 1989.

Very truly yours,

Lawrence E. Schmidt, Acting Chairman
County Board of Appeals

cc: Steven J. Rosasco, Esquire
People's Counsel for Baltimore County

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5340
(301) 823-7800
TELEFAX: (301) 296-8765

J. EARLE PLUMHOFF (940-1888)
JAMES G. NOLAN (823-1900)
OF COUNSEL
RALPH E. DEITZ
3026 LIBERTY ROAD
RANDALLSTOWN, MARYLAND 21133
(301) 222-2121
WRITER'S DIRECT DIAL 823-

November 22, 1989

The Honorable William T. Hackett
Chairman
County Board of Appeals
of Baltimore County
County Office Building
Towson, Maryland 21204

RE: Case No. 88-508 SPHX
Edith Pearce, et al., Petitioners
Hearing Dates: June 9, 1989,
December 6 and 13, 1989
Objection to Continuance Request

Dear Mr. Chairman:

I am enclosing herewith an original of a Request to Enter Appearance for filing in the above case which is scheduled to resume hearing on December 6 and 13, 1989.

On a separate matter, I have just received a copy of Mr. Tanczyn's November 21 continuance request. The Petitioners strenuously object to the elimination of the December 6 hearing session, which was set aside by the agreement of all parties last June.

In view of the posture of the case, testimony from both sides will most likely consume full hearing days on December 6 and 13. In other words, we had anticipated that all testimony would be concluded by December 13. It is wholly unfair to my clients to learn just two weeks before the scheduled hearing date that Mr. Tanczyn now has a schedule conflict.

In addition to the fact that Mr. Tanczyn has competent co-counsel, the elimination of the December 6 date will result in a substantial delay and a substantial injustice to our clients.

Therefore, we respectfully request that the protestants' request be denied and that the Board confirm the December 6 hearing.

The Honorable William T. Hackett
November 22, 1989
Page Two

Thank you for your consideration of this matter.

Very truly yours,

Stephen J. Nolan
Stephen J. Nolan
Counsel for Petitioners

SJN/caw

cc: Kathi Weidenhammer
Administrative Secretary

Michael P. Tanczyn, Esquire
Steven J. Rosasco, Esquire
Phyllis Cole Friedman

Mr. Charles E. Hare
Mr. James R. Hatfield

IN RE: PETITION FOR SPECIAL EXCEPTION & SPECIAL HEARING
N/S Harford Road 100' NE of C/L of Cub Hill Road
10105 Harford Road
11th Election Dist.
6th Councilmanic Dist.

BEFORE THE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY

Edith Pearce, et al.
Petitioners

APPEAL FROM ZONING COMMISSIONER
CASE NO. 88-508SPHX

REQUEST TO ENTER APPEARANCE

MR. CHAIRMAN:

Kindly enter the appearance of Stephen J. Nolan and Nolan, Plumhoff & Williams, Chartered as counsel for the Petitioners in the above captioned zoning appeal. Petitioners are ready to proceed with the hearing which is scheduled to resume on December 6 and 13, 1989.

Stephen J. Nolan
STEPHEN J. NOLAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of November, 1989, a copy of the foregoing Request to Enter Appearance was mailed postage prepaid to Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204; Steven J. Rosasco, 1700 Gas & Electric Building, Post Office Box 1475, Baltimore, Maryland 21203, Attorney for Protestants; and Phyllis Cole Friedman, People's Counsel for Baltimore County, Room 223, Courthouse, Towson, Maryland 21204.

Stephen J. Nolan
STEPHEN J. NOLAN

Law Offices
Michael P. Tanczyn, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(301) 296-8823 (301) 296-8824
FAX (301) 296-8827

November 21, 1989

Baltimore County Board of Appeals
111 West Chesapeake Avenue
Towson, MD 21204

Re Edith Pearce, et al
Case No. 88-508-SPHX

Gentlemen

This matter has been scheduled for hearing on December 6 and 13, 1989. I have a jury trial scheduled to begin on December 5, 1989 which may run over into December 6th. This trial was apparently scheduled but not on my book when the hearing dates in this case were scheduled.

The purpose of this letter is to request that the hearing of this case be held on December 13, 1989 instead of December 6th.

Your anticipated cooperation with this request is appreciated.

Very truly yours,

Michael P. Tanczyn
Michael P. Tanczyn



CHARLES CENTER - P.O. BOX 1475 - BALTIMORE, MARYLAND 21203

STEPHEN J. ROSASCO
ASSOCIATE GENERAL COUNSEL
(301) 296-8824

November 29, 1989

The Honorable William T. Hackett
Chairman
County Board of Appeals
of Baltimore County
County Office Building
Towson, Maryland 21204

Re: Case No. 88-508 SPHX
Edith Pearce, et al., Petitioners

Dear Mr. Chairman:

This is in response to a letter dated November 22, 1989 addressed to you by Stephen J. Nolan. Mr. Nolan's letter in paragraph four contains an error of fact. It is stated there that Mr. Tanczyn has co-counsel. If Mr. Nolan would check the record, he would find that it was made abundantly clear at the hearing that I was representing my son, Stephen Rosasco, as an individual. Mr. Tanczyn represented the Northwinds Homeowners Association.

The record will also show that I did not take an appeal on behalf of my son as his interest in the matter was congruent with that of the homeowners association, which is represented solely by Mr. Tanczyn.

Accordingly, it is fair to conclude that Mr. Tanczyn does not have any co-counsel of which I am aware.

Very truly yours,

Michael P. Tanczyn

SJR:jb

cc: Stephen J. Nolan, Esquire
Michael P. Tanczyn, Esquire

RECEIVED
COUNTY BOARD OF APPEALS
JAN 11 1990

IN RE: PETITION FOR SPECIAL EXCEPTION & SPECIAL HEARING NES HARFORD ROAD 100' NE OF C/L OF Cub Hill Road 10105 Harford Road 11th Election Dist. 6th Councilmanic Dist. Edith Pearce, et al. Petitioners

BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY COMMISSIONER

CASE NO.: 88-508SPHX

ORDER TO STRIKE APPEARANCE

MR. CHAIRMAN:

Kindly strike my appearance as counsel for the Petitioners in the above captioned matter. Petitioners will be engaging new counsel who will be entering his appearance shortly.

Michael B. Sauer
MICHAEL B. SAUER
401 Washington Avenue, Suite 802
Towson, Maryland 21204
(301) 296-2151
Attorney for Petitioners,
Edith Pearce, Julia
Blacklock and H & H
Realty

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of August, 1989, a copy of the foregoing Order to Strike Appearance was mailed to Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204; Steven J. Rosasco, 1700 Gas & Electric Building, P.O. Box 1475, Baltimore, Maryland 21203,

Attorney for Protestants, and Phyllis Cole Friedman, People's Counsel for Baltimore County, Room 223, Courthouse, Towson, Maryland 21204.

Michael B. Sauer
MICHAEL B. SAUER

June 12, 1989

Law Offices
Michael P. Tanczyn, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(301) 296-8823 (301) 296-8824
FAX (301) 296-8827

Kathy Weidenhammer, Secretary
Baltimore County Board of Appeals
111 West Chesapeake Avenue
Towson, MD 21204

Re Edith Pearce, et al
Case No. 88-508-SPHX

Dear Kathy

The dates of December 6 and 13, 1989 are open on my calendar at this time and I have noted them as hearing dates in this case.

Very truly yours,

Michael P. Tanczyn
Michael P. Tanczyn



County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 296-8822 887-3180

HEARING ROOM - Room 301, County Office Building March 21, 1989

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 88-508-SPHX EDITH PEARCE, ET AL

NE/s Harford Road, 100' NE of C/L of Cub Hill Road (10105 Harford Road)

11th Election District
6th Councilmanic District

SPH -To permit a Use Permit to park commercial vehicles in a residential zone (D.R.3.5)

SE - For service garage and sales

11/30/88 -Z.C.'s Order -SPH-DENIED, SE-GRANTED w/restrictions

ASSIGNED FOR: FRIDAY, JUNE 9, 1989 at 10:00 a.m.

cc: Ms. Edith Pearce Appellant/Petitioner
Ms. Julia Blacklock " "
Michael B. Sauer, Esquire Counsel for Appellants/Petitioners
Mr. Charles E. Hare
Mr. James R. Hatfield
Mr. Paul Lee
Mr. Charles Pearce
Mr. Howard W. Chamberg
Michael P. Tanczyn, Esquire
People's Counsel for Baltimore County
Mr. Tom Kimmel
P. David Fields
Pat Keller
J. Robert Haines
Ann Nastarowicz
James E. Dyer
Market Clerk -Zoning Arnold Jablon, County Attorney

Edith Pearce, et al 88-508-SPHX 11th Election District
NE/s Harford Road, 100' NE of C/L of Cub Hill Road (10105 Harford Road) 6th Councilmanic District

SPH -to permit parking of commercial vehicles in residential zone;
SE -for service garage and sales

November 30, 1988 Decision of Z.C. in which Petition for Special Hearing was DENIED; Petition for Special Exception GRANTED with restrictions

December 28 Appealed to CBA by People's Counsel

December 30 Appealed to CBA by Michael B. Sauer, Counsel for Petitioner

June 9, 1989 Hearing before Board; continued.

December 6 Hearing continued before Board.

December 13 " " " "

January 24, 1990 " " " "

January 31 Hearing completed before Board.

March 2 Order of the Board that: Petitions for SPH and SE are GRANTED with restrictions.

April 2 Appeal filed by Michael P. Tanczyn, Counsel for Northwinds Homeowners Assn. in Cct

April 4 Certificate of Notice filed.
Transcript of testimony; Record of Proceedings both filed in Cct,BCO.

2/23/90 * Petitioners' Reply Memorandum in Support of Petition for Special Exception and Special Hearing filed by Stephen J. Nolan, Esquire.

2/20/90 * Protestants' Memorandum filed by Michael P. Tanczyn, Esquire.

5/30/90 Letter withdrawing Petitions filed w/ C.B. of A. by Stephen J. Nolan, Esquire on behalf of lead Petitioner.

5/31/90 Motion to Remand to Board of Appeals filed in Cct,BCO by Michael P. Tanczyn, Esquire noting withdrawal of Petitions.

8/15/90 Order of the Cct,BCO (Jacobson) REMANDING case to C.B. of A. noting withdrawal of Petitions.

Law Offices
Michael P. Tanczyn, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(301) 296-8823
(301) 296-8824

July 22, 1988

Baltimore County Zoning Commissioner
111 West Chesapeake Avenue
Baltimore, MD 21204

Re: Case No. 88-508-SPHX

Dear Sirs:

Enclosed herewith please find Protestants' Memorandum in the above captioned matter.

Very truly yours,

Michael P. Tanczyn
Michael P. Tanczyn

MPT/ed
Enclosure

cc: Michael B. Sauer, Esq.
Stephen J. Rosasco, Esq.
Northwinds Homeowners Association, Inc.

Dictated but not read

Correspondence Only
Dear Mrs. Pearce,
I spoke to you on 7/22/88 about the information about the case that is numbered: 88-508-SPHX. I am across the street and would appreciate anything you could send me concerning the zoning appeal. Thank you.
Tom Kimmel
10000 Harford Rd.
Baltimore, MD 21234
96: Edith Pearce

County Board of Appeals
Room 301, County Office Building
Towson, MD 21204
PH 3-33
RECEIVED
COUNTY BOARD OF APPEALS
AUG 20 1989

88-508-SPHX Edith Pearce, et al
8/15/90 - REMANDED TO C.B. of A. - Petitioners' Withdrawal

IN THE MATTER OF THE APPLICATION OF EDITH PEARCE, ET AL FOR A SPECIAL EXCEPTION AND SPECIAL HEARING ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF HARFORD ROAD, 100' NORTHEAST OF THE CENTERLINE OF CUB HILL ROAD (10105 HARFORD ROAD) 11th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT

IN RE CASE NO. 88-508-SPHX Case No. 90-CG-1248

ORDER

UPON CONSIDERATION of the Motion to Remand to Board of Appeals filed heretofore by the Appellants, and any answer thereto, it is, by the Circuit Court for Baltimore County, this 15th day of Aug., 1990,

ORDERED that the case be remanded back to the Board of Appeals, noting that the Appellees have withdrawn the Petition.

Carina Jackson
JUDGE

True Copy Test

SUZANNE MENCH, Clerk
Assistant Clerk

FILED #1680

RECEIVED
COUNTY BOARD OF APPEALS
AUG 20 1989



County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

January 30, 1989

Mr. Tom Kimmel
10040 Harford Road
Baltimore, MD 21234

RE: Case No. 88-508-SPHX
Edith Pearce, et al

Dear Mr. Kimmel:

We have received your request and your name has been placed in the subject file, which will provide you with a copy of the Notice of Assignment when the case is set in for hearing and also a copy of the Board's final Opinion and Order when it is issued in this matter.

In the event you have a need to call this office regarding this case, Edith Pearce, et al, is the name under which the Petitions were filed. You and I spoke on the phone last week.

Any further questions, please call me.

Sincerely,

Kathleen C. Weidenhammer
Administrative Secretary

Law Offices
Michael P. Tanczyn, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(301) 296-8823 (301) 296-8824
FAX (301) 296-8827

August 20, 1990

Board of Appeals
111 West Chesapeake Avenue
Towson, MD 21204

Re Edith Pearce, et al
Zoning Case No. 88-508-SPHX
Case No. 90-CG-1248

Gentlemen

Pursuant to the August 15, 1990 Order of the Circuit Court for Baltimore County, this case has been remanded to the Board of Appeals. I enclose a copy of a letter from the Petitioners' counsel sent to the Court announcing their intention to withdraw the Petition.

Kindly dismiss the Petition by further Order of the Board of Appeals.

If you feel that a hearing is necessary, please schedule one as soon as possible.

Thank you very much for your attention to this request.

Very truly yours,

Michael P. Tanczyn
Michael P. Tanczyn

MPT/ed
Enclosure

cc Northwinds Homeowners Assoc., Inc.

NEWTON A. WILLIAMS
WILLIAM M. HERRON, JR.
THOMAS J. REINER
WILLIAM F. ENGLISH, JR.
STEPHEN L. NOLAN
ROBERT E. CAHILL, SR.
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW
STEPHEN M. SCHENNING
DOUGLAS L. BURGESS
ROBERT E. CAHILL, JR.
LOUIS G. CLOSE, III
E. BRUCE JONES
KERA L. KOSTYUS
GREGORY A. JONES

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5340
(301) 823-7600
TELEFAX (301) 296-2765

J. EARLE PLUMHOFF
(1940-1988)
JAMES D. NOLAN
(RETIRED 1980)
OF COUNSEL
RALPH E. DEITZ
9026 LIBERTY ROAD
RANDOLPHSTOWN, MARYLAND 21133
(301) 922-2121
WRITER'S DIRECT DIAL
923 - 7853

May 30, 1990

Kathleen C. Weidenhammer
Administrative Assistant
County Board of Appeals of Baltimore County
County Office Building, Room 315
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Board Case No. 88-508-SPH
Circuit Court Case No. 90-CG-1248
Edith Pearce, et al

Dear Ms. Weidenhammer:

On behalf of the lead petitioner, H & H Realty in the above captioned case, I have been directed to withdraw the petition for Special Exception and the petition for Special Hearing. Our office did not appear in the Circuit Court of Baltimore County appeal case filed by certain appellants represented by Michael P. Tanczyn and on April 16, 1990 I advised both of the legal owners, Ms. Julia R. Blacklock and Edith Pearce, that our office would not be taking any further action in regard to the pending appeal.

Therefore, I thought that your office and the Zoning Commissioner's office should be apprised of H & H Realty's intention with regard to this matter.

Very truly yours,

Stephen J. Nolan
Stephen J. Nolan

SJN/mks

cc: Ms. Julia Blacklock
T. Bayard Williams, Esquire
Mr. Charles Pearce, Personal Representative to the Estate of Edith Pearce
Jerome Lambdin, Esquire
Mr. Charles E. Hare
Mr. James R. Hatfield
The Honorable J. Robert Haines, Zoning Commissioner
Baltimore County
Michael P. Tanczyn, Esquire

SZ-C 114 06 AM 105

USA 15338

Edith Pearce, et al (Zoning File No. 88-508-SPHX)
Case No. 90-CG-1248

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, MD 21204, Counsel for Plaintiffs/Protestants; Northwinds Homeowners Association, Inc., and Stephen Rosasco, 3013 Northbranch Road, Baltimore, MD 21234, Plaintiffs/Protestants; Stephen J. Nolan, Esquire, NOLAN, PLUMHOFF & WILLIAMS, CHTD., Suite 700, Court Towers, 210 W. Pennsylvania Avenue, Towson, MD 21204, Counsel for Petitioners; Mr. Charles Pearce, 2900 Ontario Avenue, Baltimore, MD 21234, on behalf of Estate of Edith Pearce, Petitioners; Ms. Julia Blacklock, 204 E. Joppa Road, Towson, MD 21204, Contract Purchaser; and Arnold G. Foreman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, Towson, MD 21204, on this 4th day of April, 1990.

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer, Admin. Assistant
County Board of Appeals of Baltimore County

PLEASE PRINT CLEARLY PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
MICHAEL B. SALLER	802 E. Joppa Rd. Towson
Charles E. Hare	27 Franklin Valley Circle
James Hatfield	7730 Chapman Rd. 21087
John Blacklock	504 W. Pennsylvania Ave. 21204

88-508
SPHX

PLEASE PRINT CLEARLY PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Paul Lee Esquire	304 W. Pennsylvania Ave. 21204
Michael B. Saller	110 WASHINGTON AVE. 21004
Charles E. Hare	2900 ONTARIO AVE. 21234
James Hatfield	7730 Chapman Rd. 21087
Arnold G. Foreman	250 W. Pratt St. Suite 700, Towson, Md. 21201
Julia Blacklock	204 E. Joppa Rd. Towson Md. 21204

IN THE MATTER OF THE
APPLICATION OF EDITH PEARCE,
ET AL FOR A SPECIAL EXCEPTION
AND SPECIAL HEARING ON
PROPERTY LOCATED ON THE
NORTHEAST SIDE OF HARFORD
ROAD, 100' NORTHEAST OF THE
CENTERLINE OF CUB HILL ROAD
(10105 HARFORD ROAD)
11th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

IN RE CASE NO. 88-508-SPHX Case No.

MOTION TO EXTEND TIME FOR
TRANSMITTAL OF RECORD

NOW COMES, Stephen J. Rosasco and Northwinds Homeowners Association, Inc., Appellants, by their attorney, Michael P. Tanczyn, Esq. and respectfully avers.

1. That the Appeal was filed herein on April 2, 1990, and that the time within which the record should be filed will expire on May 2, 1990.

2. That counsel for Appellees has advised that the Petition may be withdrawn and has agreed to an extension of time to see if that occurs so that expenses are not incurred in the event the Petition is in fact withdrawn.

3. That Appellants request an extension of thirty (30) days for the filing of the record.

4. That counsel for Appellants has consulted with counsel for the Appellees, who is in agreement with this request.

WHEREFORE, Appellants respectfully request this

19-11-90 C-14406

373435 BOARD OF APPEALS

03/15/90

PLEASE PRINT CLEARLY PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Mr. & Mrs. Ronald G. Bartel Jr.	3035 N. Branch Lane
Lara Bonnell	3042 N. Branch Lane
WALTER W. PLEINES	3034 North Branch LA 21234
CHARLES J. KLEIN	3011 NORTH BRANCH LA 21234
STEPHEN ROSASCO	3012 NORTH BRANCH LA 21234
Jeffrey W. Savers	3006 North Branch Ln 21234
Judith C. Britt	3028 N. Branch Ln 21234
Stanley A. Bitt	3028 N. Branch Ln 21234
David H. Eggleston	3014 N. Branch Lane 21234
John K. Bartel Jr.	2 Northford Way 21234
David & Marilyn Parks	16 Northford Way 21234
James C. Conley	14 Northford Way 21234
Nancy Lawley	14 Northford Way 21234
Edward J. Conley	5 Northford Way 21234
Cynthia Pierce	12 Northford Way
Elizabeth Gilgator	10 Northford Way 21234
Timothy A. Sullivan	3010 North Branch Lane 21234
James A. Sullivan	3010 North Branch Ln 21234
Charles Dougherty	4 Northford Way 21234
Sharon Connelly	3012 North Branch Lane 21234
A. BAJACKSON	3005 NORTH BRANCH LA 21234
FRANK MARCHESE	3003 NORTH BRANCH LA 21234
Joann Munden	3016 NORTH BRANCH LANE 21234
Mr and Mrs Curtis Smith	3026 NORTH BRANCH Lane 21234
LEFTY M. WATKINS	3000 N. BRANCH LA 21234

PLEASE PRINT CLEARLY

Northwind
PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Dana Howard	3004 N. Branch Ln 21234
Scott Howard	3004 N. Branch Ln 21234
Marcus Blacklock	3 Northford Way 21234
John Blacklock	3 Northford Way 21234
JOYCE DITTMAR	6 NORTHFORD WAY 21234
BETHANN MEZZADRA	3001 NORTH BRANCH LN. 21234
Nancy Northman	3030 North Branch Lane 21234
Helene Skolow Potruska	7 Northford Way 21234
ETHEL WILSON	9 NORTHFORD WAY 21234
Shirley S. S. S.	3040 North Branch Ln. 21234
BOB ENGELBERT	3008 NORTH BRANCH LA 21234

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
CHARLES J. KLEIN	3011 NORTH BRANCH LA, BALTO 21234
STEPHEN ROSASCO	3012 North Branch LA Baltimore
Jeffrey W. Savers	3006 North Branch Ln 21234
Curtis H. Smith	3026 North Branch Ln 21234
Robert J. Smith	3026 N. Branch Ln 21234
Lara Bonnell	3042 N. Branch Ln 21234
James A. Sullivan	3010 N. Branch Ln 21234
Ronald Wharlow	8300 Loch Raven Blvd.
Mr. & Mrs. Ronald G. Bartel Jr.	3035 N. Branch Lane
Holly Klein	3011 North Branch Lane
Frank Blacklock	3003 North Branch 21234
Michael J. Dougherty	4 Northford Way 21234
Charles W. Dougherty	4 Northford Way 21234
Phyllis Gilgator	10 Northford Way 21234
Walter J. Potruska	7 Northford Way 21234
Edith Wilson	9 NORTHFORD WAY 21234
David H. Eggleston	3014 N. Branch Ln 21234
Dana Howard	3012 N. Branch Lane 21234
Dana Howard	3012 N. Branch Lane 21234

IN THE MATTER OF THE APPLICATION OF EDITH PEARCE, ET AL FOR A SPECIAL EXCEPTION AND SPECIAL HEARING ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF HARFORD ROAD, 100' NORTHEAST OF CENTERLINE OF CUB HILL ROAD (10105 HARFORD ROAD) 11th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT

NORTHWINDS HOMEOWNERS ASSN., INC. AND STEPHEN ROSASCO - PLAINTIFFS

Zoning File #88-508-SPHX

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt, William T. Hackett, and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, MD 21204, Counsel for Plaintiffs/Protestants; Northwinds Homeowners Association, Inc., and Stephen Rosasco, 3012 Northbranch Road, Baltimore, MD 21234, Plaintiffs/Protestants; Stephen J. Nolan, Esquire, NOLAN, PLUMHOFF & WILLIAMS, CHTD., Suite 700, Court Towers, 210 W. Pennsylvania Avenue, Towson, MD 21204, Counsel for Petitioners; Mr. Charles Pearce, 2900 Ontario Avenue, Baltimore, MD 21234, on behalf of Estate of Edith Pearce, Petitioners; Ms. Julia Blacklock, 204 E. Joppa Road, Towson, MD 21204, Contract Purchaser; and Arnold G. Foreman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, Towson, MD 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer, Admin. Assistant
County Board of Appeals of Baltimore County
Room 315, County Office Building
Towson, MD 21204

This is to advise the Zoning Commissioner for Baltimore County in Case No. 88-508-SPHX, scheduled for a hearing on June 23, 1988, that the legal owners of 10105 Harford Road, Baltimore County, Maryland, on the site plan filed in the above zoning proceedings consent to and join in the filing of the Petition for Special Exception and the Petition for Special Hearing in the above matter and agree to be bound by any zoning regulations and restrictions of Baltimore County, which may be adopted or imposed, pursuant to the Zoning Laws for Baltimore County.

Charles Joseph Pearce
CHARLES JOSEPH PEARCE,
LEGAL GUARDIAN OF EDITH D. PEARCE

Julia Blacklock
JULIA BLACKLOCK



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 867-3180

April 4, 1990

Michael P. Tanczyn, P.A.
Suite 106, 606 Baltimore Avenue
Towson, MD 21204

RE: Case No. 88-508-SPHX
CC Case No. 90-CG-1248
Edith Pearce, et al

Dear Mr. Tanczyn:

In accordance with Rule B-7(a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the appeal which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within thirty days.

The cost of the transcript of the record must be paid by you, said payment to be made in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you file in Court, in accordance with Rule B-7(a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant

Law Offices
Michael P. Tanczyn, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(301) 296-8823 (301) 296-8824
FAX (301) 296-8827

April 5, 1990

Baltimore County Board of Appeals
111 West Chesapeake Avenue
Towson, MD 21204

Re Edith Pearce et al
Case No. 88-508-SPHX

Gentlemen

In regard to the Appeal filed on the Petition of Edith Pearce, the purpose of this letter is to order the transcript of the proceedings before the Board of Appeals.

As we have already ordered and received the transcript for June 9, 1989, kindly have the reporter produce the other volumes of the transcript for the other hearing days and send them to me.

If you have any questions, don't hesitate to call me.

Very truly yours,

Michael P. Tanczyn
Michael P. Tanczyn

MPT/nd

cc Northwinds Homeowners Assoc., Inc.
Stephen J. Rosasco, Esq.

SS:DMW-6-4246
RECEIVED
COUNTY BOARD OF APPEALS
APR 10 1990

IN THE MATTER OF THE *
APPLICATION OF EDITH PEARCE, *
ET AL FOR A SPECIAL EXCEPTION *
AND SPECIAL HEARING ON *
PROPERTY LOCATED ON THE *
NORTHEAST SIDE OF HARFORD *
ROAD, 100' NORTHEAST OF THE *
CENTERLINE OF CUB HILL ROAD *
(10105 HARFORD ROAD) *
11th ELECTION DISTRICT *
6th COUNCILMANIC DISTRICT *

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

IN RE CASE NO. 88-508-SPHX * Case No. 90-CG-1248

PETITION TO ACCOMPANY ORDER FOR APPEAL

NOW COMES, Northwinds Homeowners Association, Inc. and Stephen Rosasco, for himself and other Protestants, by Michael P. Tanczyn, Esq. and Stephen J. Rosasco, Esq., their attorneys, who submit the following pursuant to Maryland Rule B2 and respectfully allege.

1. Action Appealed From.

The Protestants/Appellants herein appealed from the decision of the Board of Appeals of Baltimore County of March 2, 1990, granting a Petition for Special Exception to construct a service garage and sales facility on the BL portion of approximately one acre of the 3.03 acre site bordering Harford Road in Baltimore County, Maryland.

The Board of Appeals also granted the Petition for Special Hearing to utilize the 2.01 acres of the adjacent DR 3.5 residential land for parking to support the commercial use.

1

imposing to both five conditions contained in the Order.

2. The Board of Appeals committed error in both the grant of the Special Exception and the grant of the Special Hearing and its approvals of both petitions constituted error in that.

A. The decisions of the Board were arbitrary, capricious and illegal and are without evidence to support the requirements of Baltimore County Zoning Regulation Section 409 concerning the Petition for Special Hearing and Baltimore County Zoning Regulation Section 502.1 concerning the grant of the Special Exception.

B. The Board misconstrued the law applicable to both the special exception and the special hearing in that the un rebutted expert testimony of the Protestants' witnesses proved a threat to the community's health, safety or welfare under both Section 502.1 and Section 409 from the Petitioner's noxious emissions, storm water runoff, decreased air quality.

C. The Protestants established unique aspects attributable to this site, the standards of *Schultz vs Pritts*, 291 Md 1.

D. The Board's Decision is against the weight of the evidence concerning poor traffic access to the Petitioners' site; lack of storm water management or the ability to manage the storm water created by this site in view of the existing storm water conditions; the overscale posture of Petitioners' project

2

violating the provisions against the same under Section 502.1, the threat to the impervious permeable surface and vegetative retention provisions of the Zoning Regulations; the inconsistency of the proposed use with the purposes of the property's zoning classification and its inconsistency with the spirit and intent of the Zoning Regulations; the interference with adequate light and air; interference with adequate provisions for schools, parks, water, sewage; and the congestion created in the roads, streets or alleys by the Petitioners' proposed use.

E. Misapplication of Baltimore County Zoning Regulation 409.8.B.2.A. through G.

F. The Board's reliance on patently inconsistent, unreliable, contradictory testimony of the Petitioner used in support of his Petition relied on by the Board in granting those Petitions.

WHEREFORE, the Protestants/Appellants respectfully request this Honorable Court.

A. Reverse the Decision of the Board of Appeals and deny both the Special Exception for the service garage and retail sales of parts and equipment and the Petition for Special Hearing to utilize residential land for parking in support of a commercial use;

B. Order the Appellees to pay the costs of these proceedings, including the preparation of the transcript; and

C. Grant such other and further relief as the nature

3

of the Protestants/Appellants' cause may require and as to the Court, in the interests of justice, it may deem proper.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
Attorney for the Protestants/
Appellants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone (301) 296-8823

I HEREBY CERTIFY that, on this 12th day of April, 1990, a copy of the foregoing was mailed, postage prepaid to Stephen J. Nolan, Esq., Suite 700, 210 West Pennsylvania Avenue, Towson, Maryland, 21204, attorney for the Appellees; Board of Appeals for Baltimore County, 111 West Chesapeake Avenue, Towson, Maryland, 21204; and to Phyllis Cole Friedman, Esq., Baltimore County People's Counsel, 111 West Chesapeake Avenue, Towson, Maryland, 21204.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.

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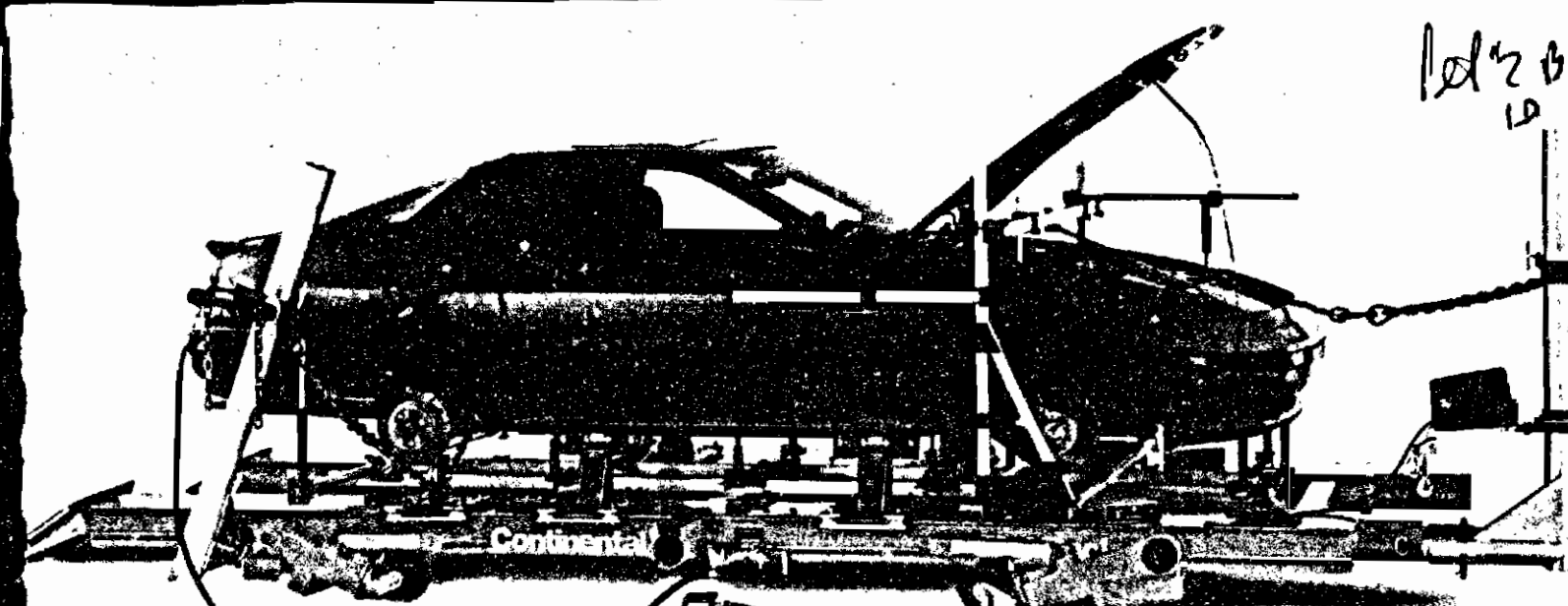
names of two that can.
Continental Versa-Rack. Bigger than the Flat-Rack, the Versa-Rack can handle full-frame vehicles as well as unbodies. It's available with either 4 or 6 towers, providing 280" or 360" pulling respectively. Each provides centralized, high-pressure hydraulics, a 10-ton cylinder at each tower and push-button controls.
Continental Uni-Liner. Designed to handle the biggest full-frame vehicles, the Uni-Liner is tough. Check out its add-a-tower

option, its multiple-pulling capacity from a single tower, hand-held controls, and numerous accessories. To learn more about these exciting products, call 1-800-328-2047, in Minn., 1-800-572-7002. Or if you prefer, use the convenient coupon.

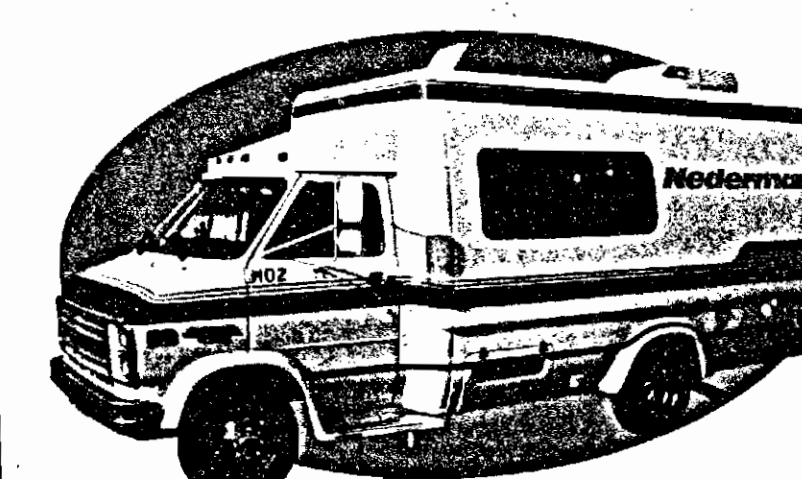
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models.

up to an explosion-proof electrical box approved by your local fire marshal. Respirators should be made available to employees, along with all other personal safety equipment used when working with solvents.

For ease of operation in recycling solvents and thinners, it is practical to include in the same space, storage cabinets or shelving for the clean, recycled solvents. The shop might also wish to keep storage drums for dirty solvents in this area of the building. These drums, however, should be limited to no more than five gallons. More than this amount would not only create a fire hazard, but it is not necessary. Remember, with continual recycling, the shop can eliminate large quantities of hazardous waste storage and, in doing so, reduce its liability for hazardous waste mishaps. Leakage of storage drums kept outside year after year can cost the shop expensive clean-up fines. Solvent recycling machines are becoming a necessity for every body shop. If you're designing a new facility or expanding your present building, include an area for your distiller equipment. It's the long-term asset you'll need to reduce your hazardous waste liability. By Sue Dodd, Dowmar Equipment Pils

the park and that he found the buffer to be inadequate and the growth to be secondary and deciduous and he felt that the blowing of the emissions at Petitioner's site would negatively impact on the surrounding townhome community.

He testified that the Petitioner's plan would violate the provisions of Section 502.1 as did Mr. Klein.

ARGUMENT

The Petitioner's case rises or falls on the testimony of Charles Hare. It is interesting to note that in the opinion of the Zoning Commissioner on page 4, he found, after hearing Mr. Hare, that he was not sure the Petitioner knew what he wanted to do at this site.

Mr. Hare's testimony before this Board was changed so many times and was so contradictory that it is unworthy of any belief. Although he testified to the Board, his testimony that over the last 15 years at the Joppa Road operation he had had less than 6 occasions where fluids had spilled from vehicles was plainly belied by the pictures admitted into evidence, showing numerous stains, and by the testimony of Steve Rosasco as to what occurred when his car was towed to the facility after an accident occurred right out in front of Ed and Jim's. Further, his testimony as to hours of operation vacillated from the first testimony which was Monday through Friday, one shift closing at 5 30 p.m. to his latest testimony where he was going to operate

21

Monday through Saturday 7 a.m. to 9 p.m. and for retail sales of parts Sundays from 12 Noon to 5 p.m. His testimony as to the number of employees he wished to utilize at this facility similarly changed from his original plans which called for not more than 5, to 15 employees; and his testimony that he did everything by the book and in accordance with regulations was belied by the testimony of his former shop manager, who testified that for at least the 6-1/2 years that he was there an additional area was used for painting uncontrolled at least once a week, which highlights the facility with which Mr. Hare changed his testimony to suit the circumstances of the day he was testifying or what he thought the Board wished to hear to best further his Petition. He was not candid with the Board and only advised the Board of the existence of the satellite facility across the street from his subject site, which he admitted would have ample space to park cars, although he would prefer not to do that, from his proposed operation at 10105 Harford Road. He further admitted only on cross-examination that he had a pecuniary interest in several of the technologies he testified to the Board he would utilize in his new shop and his testimony can be accurately summarized as "bigger is better" for why he needed a 110 by 100 foot building at his proposed site.

The Protestants clearly met their burden under Schultz vs. Pritts, 291 Md 1, 432 A 2d 1319 (1981), which stands for the proposition that special exceptions are permitted uses in

22

particular zones conditioned on meeting the requirements of Section 502.1. Schultz also stands for the principle that for a use to be denied Protestants bear the burden of showing how a proposed use at a particular site would create a problem to the community different than that the proposed use would generate at any site or a problem unique to the area where the project is proposed.

The testimony of Ms. Dougherty concerning her son's respiratory problems; Mr. Sauers' aerial photography which depicts the route of the storm water run-off -- shows the traffic congestion with 3 exits including Petitioner's within 70 feet on Harford Road; and particularly the environmental threat testified to in detail by Mr. Klein and as described by Mr. Kendall are examples of effects on the community generated by the Petitioner's proposed use. The proximity of environmentally sensitive Graham Memorial Park, the Gunpowder Park and the Baltimore Fish and Game Protective lands which would receive both air borne and water borne sediment and pollution are unique to this area. This project represents the deepest commercial intrusion and is grossly over scale when contrasted with the existing strip commercial.

The Petitioner manufactured his parking problem by making his building so large and by failing to tell the Board that he had a place to park his customers' cars at his annex building across the street.

The effect on the community of utilizing the DR 3.5 for

23

parking is clearly detrimental with 7 to 8 months of clear visibility exacerbated by the location of the building on the promontary and the parking on the facing slope to the townhomes.

In Board of County Commissioners v. Holbrook, 550 A 2d 664 (1988), the Court of Appeals held that where the facts indicate a particular special exception use would cause an adverse effect upon adjoining and surrounding properties unique and difficult in kind or degree with that inherently associated with such a use regardless of its location within the zone the application should be denied. In that case the effect that a mobile home community proposed would have on the adjacent single family residences was found to be sufficient to deny the petition.

Both the testimony of Mr. Klein and Mr. McClellan stand un rebutted and provide a strong basis on which to deny both the special exception and the special hearing petitions.

CONCLUSION

For the aforesaid reasons we request the Board deny both petitions. We renew our request that the Board visit the Audrey Avenue shop as well as the annex shop of the Petitioner during business hours as well as the subject site.

24

Respectfully submitted,

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
Attorney for Protestants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone (301) 296-8823

I HEREBY CERTIFY that, on this 16th day of February, 1990, a copy of the foregoing was mailed, postage prepaid, to Stephen Nolan, Esq., Suite 700, 210 West Pennsylvania Avenue, Towson, Maryland, 21204, attorney for the Petitioners.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.

25

PETITION FOR SPECIAL
EXCEPTION AND OFF-STREET
PARKING SPECIAL HEARING
10105 Harford Road
* * * * *

BEFORE THE ZONING COMMISSIONER

FOR BALTIMORE COUNTY

Case No. 88-508-SPHX
* * * * *

PROTESTANTS' MEMORANDUM

NOW COMES Northwinds Homeowners Association, Inc. and Stephen J. Rosasco, for himself and for other Protestants, by their attorneys, Michael P. Tanczyn, Esq. and Stephen J. Rosasco, Esq., and submit the following Memorandum in opposition to the Petition for Special Exception and Special Hearing for off-street parking in a residential zone to support a commercial use, and say:

BACKGROUND AND FACTS

Petitioner seeks to utilize a 1.02 acre BL portion by special exception for a service garage to auto body repair work with sales of car parts and accessories at 10105 Harford Road and to provide 112 parking spaces to support that activity on the 2.01 acres DR 3.5 land located at the rear of the BL and adjacent to the Northwinds townhome community. There were 123 total parking spaces provided on the site plan introduced as Petitioner's Exhibit No. 3.

Petitioners are contract purchasers for this site presently improved with an old frame residence with a small wooden garage and several greenhouses located to the rear of the

1

building, going less than than 50 feet frontage on Harford Road.

Petitioners produced testimony of two witnesses: Charles Edward Hare, who is a partner in H & H Realty with James Hatfield, and together they are both contract purchasers of 10105 Harford Road, Baltimore County, and partners in an auto body shop known as Ed and Jim's presently located at 8902 Audrey Avenue at the Corner of Audrey Avenue and Joppa Road in Towson, where he has been located for the past 15 years of his overall 22 years in the business.

Mr. Hare described the use to be made of the property as that with which he is familiar as an auto body and repair shop and said there was a nominal proposed building of 100 X 100 in which straightening, auto paint, lifts, front end alignments and an office would be located on one level and sales of automotive parts and accessory items would be located on another. It was his testimony that cars would come in and be repaired immediately and that the customer would leave the car, which would be parked on the lot, and pick it up shortly thereafter, although some could be held as long as two weeks. He located the storage area for tow-in vehicles to be next to the Graham Memorial Park, which is part of the Gunpowder Falls State Park, stated that it would be fully paved around the building and he had walked on the property approximately 12 times, the most recently on June 22, 1988.

He described the existing trees as very dense and the growth as so thick that you could not walk through the rear of the

2

property, which was planted with deciduous trees. He believed the ground was contoured and that the barn was located in the BL portion and that the townhomes lay at a lower level and that nothing could be seen on his property from the porches of the townhomes. He identified the vacant land to the north as parkland and Hooter's Bar to the south. He testified that he had stood where he believed the building would be located and said that he could not see the townhomes and that he proposed to clear approximately 3/4ths of the site and would be razing the existing buildings and did not know how high the proposed building would be.

He testified, based on his knowledge of 502.1 that the proposed use for the site would not violate any of the lettered subsections A through H of 502.1.

On cross-examination he stated that he had four service bays at his location on Joppa Road and that at the Harford Road location he proposed to have six on the lower level and six on the upper level and that most work would be drive-in work. He testified that they do burn off parts, do use power saws, air guns, hammers, grinders, and that his procedure would be for vehicles found to leaking fluids to put a pan underneath any vehicle leaking fluids. He testified that his operation would not, in his opinion, create dust and fumes, and that both his present shop and the proposed shop would not be air conditioned and that ear and respiratory protection was customarily worn by

3

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Circle 230 for information

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PETITIONER(S) EXHIBIT (8)

ATTORNEY(S) EXHIBIT (60) 63 Md. of app



PETITIONER(S) EXHIBIT (7) b6 b7C

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PRISONER(S) EXHIBIT 02 1

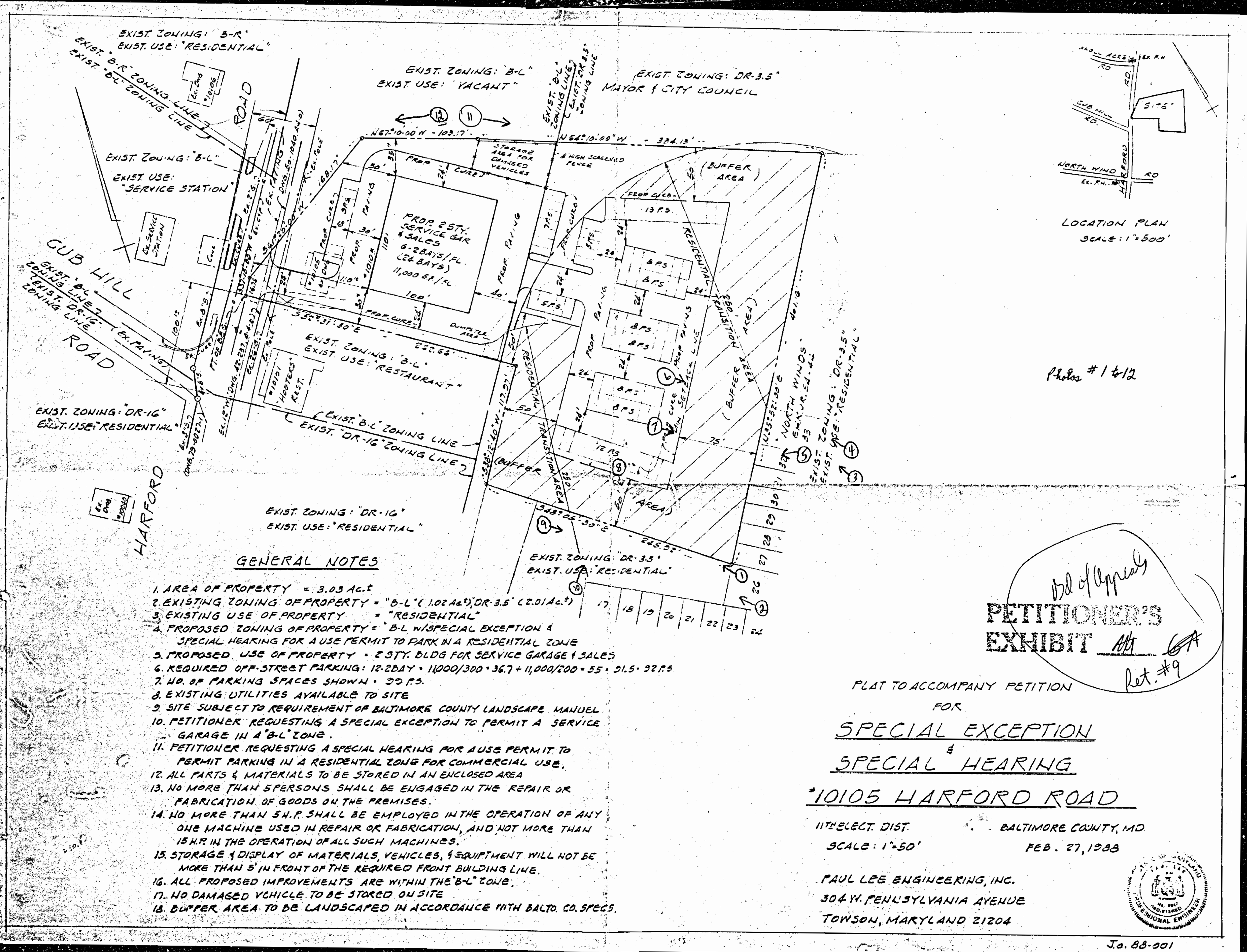
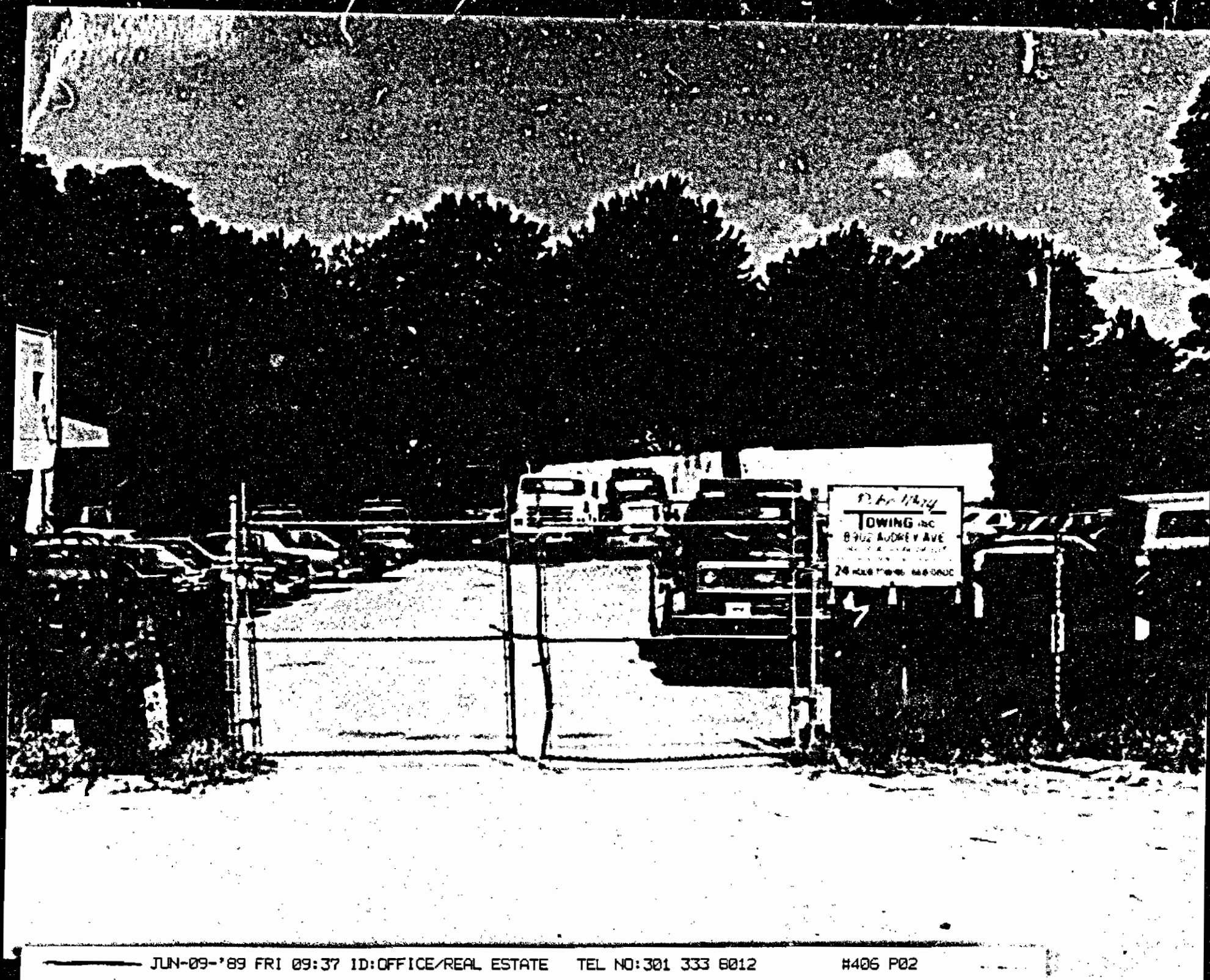
A high-contrast, black and white photograph of a prison building. The building is a long, single-story structure with a flat roof and several windows. In the foreground, there is a sign with text that is partially legible. The image is framed by a thick black border.

The image is a dark, high-contrast scan of a document page. It appears to be a photograph of a physical document, possibly a photograph of a photograph. The page is mostly black with some faint, illegible markings and a small white rectangular area at the top center. The overall quality is poor, with significant noise and artifacts.

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PETITIONER(S) EXHIBIT (44) 18
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PETITIONER(S) EXHIBIT (107C)



JUN-09-'89 FRI 09:37 ID:OFFICE/REAL ESTATE TEL NO:301 333 6812 #405 P02

Maryland Department of Transportation
State Highway Administration

Richard H. Trainor
Secretary
Hal Kassoff
Administrator

June 9, 1989

Paul Lee Engineering, Inc.
304 W. Pennsylvania Avenue
Towson, Maryland 21204
Attn: Mr. Paul Lee

Re: Baltimore County
Pearce/Blacklock Property
E/S Harford Road
(MD 147) 100' North of
Cub Hill Road
Zoning Item #320

Dear Mr. Lee:

We are revising our comments dated December 14, 1988 concerning access to this site.

We initially had concern about the inadequate roadway frontage for this site based on an existing 30' right-of-way (15' half section) on Harford Road. However, we currently have a highway widening project on Harford Road nearing advertisement for which we will be acquiring additional right-of-way. Once this right-of-way is acquired by the State Highway Administration, there will be adequate frontage along this property to provide access to this project.

If you have any questions, please contact Larry Brocato at 333-1350.

Very truly yours,

Robert J. Mills, Jr.
Robert J. Mills, Jr., Chief
Engineering Access Permits
Division

cc: Ms. Phyllis Cole Friedman
Mr. Robert Heines
Mr. J. Ogle

Plat No 10



IN THE MATTER OF THE APPLICATION OF
EDITH PEARCE, ET AL FOR A SPECIAL
EXCEPTION AND SPECIAL HEARING ON
PROPERTY LOCATED ON THE NORTHEAST
SIDE OF HARFORD ROAD, 100' NORTHEAST
OF THE CENTERLINE OF CUB HILL ROAD
(10105 HARFORD ROAD)
11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
CASE NO. 88-508-SPHX

OPINION

This matter comes before the Board on cross-appeals from the decision of the Zoning Commissioner dated November 30, 1988. The subject property is owned by the Estate of Edith Pearce (Mrs. Pearce is deceased since the original petition was filed) and Julia Blacklock. A contract for the purchase of the property has been entered into by H & H Realty, whose principals are Charles E. Hare and James Hatfield. Mr. Hare and Mr. Hatfield are also the principals of Ed and Jim's Auto Shop, and propose to relocate their business to this site.

In furtherance of this quest, Messrs. Hare and Hatfield have caused a Petition for Special Exception and Petition for Special Hearing to be filed. The property is bifurcated by a zoning line which bisects the total acreage of some 3.03 acres. On the "front" portion of the property bordering Harford Road, the site is zoned B.L. Toward the "rear" of the property, a portion of some 2.01 acres has been designated D.R.3.5. As indicated above, the Petitioners have requested approval of both their special exception and special hearing. As to the special exception, Messrs. Hare and Hatfield seek approval to construct a service garage and sales facility on the B.L. portion of the property. The special hearing request applies to the proposed use of a portion of the D.R. acreage. Within that acreage, the Petitioners seek authority to use a portion of that residential zone for parking to support the commercial service garage and sales facility.

The Board received extensive testimony and supporting exhibits describing

Edith Pearce, et al
Case No. 88-508-SPHX

the property and its environs. As stated earlier, the property abuts Harford Road and is just over 3 acres in size. Its configuration resembles that of an inverted "L-shape," with the greater portion of the parcel to the rear of the site. As to the site's topography, the land rises from its junction with Harford Road to a point roughly consistent with the zoning line. Therefrom, the property falls away. Thus, the zoning line sits upon a ridge which represents the high topographic point of the entire parcel. As indicated above, the matter comes before this Board as cross-appeals from the decision of the Zoning Commissioner. Within his well-reasoned and articulate Opinion, the Commissioner granted the Petition for Special Exception with restrictions, thereby permitting the service garage and sales facility. However, the special hearing request for use of residential land to support parking requirements was denied. The protestants, who include a neighboring community association as well as individual neighbors, oppose the decision of the Commissioner granting the special exception. The Petitioner, needing the parking to support his use, appealed the decision of Commissioner Haines denying the special hearing.

This matter first came before this Board for hearing on June 9, 1989. At that time, the Petitioner was represented by Michael B. Sauer, Esquire, and proceeded on Petitioners' Exhibit No. 1, the site plan accompanying the property owner's original Petitions for Special Hearing and Special Exception. After the first day's hearing, the Petitioner was obligated to retain substitute counsel due to Mr. Sauer's appointment to this Board. Further, the Petitioner subsequently introduced an amended site plan designated as Petitioners' No. 17 which altered the scope of the proposal. Thus, the entire record which comprises this case is somewhat convoluted. However, the Board will consider and decide this case upon the final site plan submitted (Exhibit No. 17) and based upon the totality of the evidence offered to us.

Edith Pearce, et al
Case No. 88-508-SPHX

Following the initial hearing day of June 9, 1989, the Board entertained testimony and evidence on this case for three additional hearing days, December 6 and December 13, 1989, and January 24, 1990. Numerous witnesses were called and recalled to the stand and a great deal of documentary and tangible evidence was produced. Counsel for the litigants have both compiled post-hearing memorandums which set forth in detail the testimony of the witnesses before us; or at least those portions which they deem relevant and material to their case. Due to its great length, the Board will not attempt within this Opinion to recount the testimony given but instead will merely note that consideration was given to all of the evidence before us. It should further be noted that both sides were firmly committed to the righteousness of their respective positions. The Board has had the opportunity to review the demeanor of the witnesses as they appeared before us and therefore assess the credibility of their testimony. This opportunity is significant particularly as it relates to Mr. Hare's testimony, for he spent a great amount of time on the witness stand. As the Protestants' Memorandum correctly notes, a comparison of Mr. Hare's testimony from day to day reveals some inconsistencies. We do not perceive these inconsistencies to be evidence of misrepresentation by the witness however. The protracted length of the case and the change in counsel and plan, contributed to the variances in Mr. Hare's testimony. In our view, Mr. Hare is an honest small businessman seeking growth of his shop, but willing to comply with governmental standards and regulations.

Turning therefore to the first issue before us, the Board will consider the Petitioners' request for special exception to construct a service garage and sales facility on the B.L. portion of the property. As was well-stated by the Zoning Commissioner in his Opinion, a special exception use is a use which has been pre-determined by the Baltimore County Council to be conditionally compatible

Edith Pearce, et al
Case No. 88-508-SPHX

with the uses permitted as of right in a particular zone. The test imposed in determining whether a special exception will be allowed is found within Section 502 of the Baltimore County Zoning Regulations (hereinafter B.C.Z.R.). Specifically, the criteria established in B.C.Z.R. 502.1 provide this Board with the measuring stick to decide if the Petition should be granted.

The Petitioner bears the burden of producing evidence that the special exception complies with the standards enunciated within the regulations (see Schultz v. Pritz, 291 Md. 1, 432 A.2d 1319 [1981]). The Court in Schultz also mandates that the Board must inquire if facts and circumstances exist which would show that the particular use, "... proposed at the particular location, would have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." (emphasis added) Schultz, p. 1327. Further, the standard by which the Board must consider this petition is not whether the proposed special exception produces any positive benefit to the surrounding locale; but whether any real detriment, as measured by the guidelines of 502.1 of the B.C.Z.R., is present. (See Anderson v. Sawyer, 23 Md. App. 612, 329 A.2d 716 [1974].)

The Petitioners' witnesses, specifically Charles E. Hare, Paul Lee (the engineer who prepared the site plan for this project), and Norman Gerber (the former Director of the County's Office of Planning & Zoning and recognized planning and zoning expert), all testified that the requirements of 502.1 were satisfied by the amended site plan. Thus, the Petitioners, through these witnesses, produced competent testimony in support of their argument that the special exception should be granted.

In opposition to this view, the protestants raised several issues where they believe the petition falls short of satisfying the provisions of 502.1. Generally speaking, these issues can be characterized into four classifications; namely,

Edith Pearce, et al
Case No. 88-508-SPHX

that the proposed use will, (1) overcrowd the subject site; (2) have negative impact on the general welfare of the community; (3) have negative impact on the traffic on Harford Road; and (4) have undesirable environmental effects on the surrounding locale.

Addressing that issue designated number 1 above, the Board is satisfied that the proposed use does not overcrowd the land. Of particular note in this regard is the testimony of Messrs. Paul Lee and Norman Gerber. Although the use proposed is obviously commercial in nature, we do not find that the plan as amended and expressed in Exhibit No. 17 overburdens or overwhelms the land. We believe that the site is of sufficient acreage to support the use proposed. Of note is that the petitioner has not requested any variances or other relief from any of the height or area regulations of the B.C.Z.R.

As to the second issue raised by the protestants, we also disagree with their assertion that the general welfare of the locale will be adversely affected. Particularly, we do not find that the installation of the service garage facility at this site will cause any detriment above and beyond those associated with its installation at a site elsewhere within the zone. That is, the Board recognizes the inherent undesirable effects of a service garage on residential properties. But we find no evidence here, as required by Schultz, to suggest that these inherent undesirable effects are aggravated by placement of the use at this particular site. In this regard, the protestants rely on several features of the site and its locale in support of their argument that the general welfare of their community will be adversely affected to a greater degree than would be the case by the placement of this use in any such similar zone. For example, the protestants produced testimony that a young resident in the surrounding community known as Northwinds suffers from a chronic respiratory ailment which would be aggravated by this facility. We believe that the protestants have

Edith Pearce, et al
Case No. 88-508-SPHX

improperly relied upon that example for at least two reasons; first, that there is no consistent testimony before us to suggest that in fact the proposed facility will aggravate that resident's condition, and, more importantly, we believe that the adverse effect to the general welfare must be to the surrounding land and its uses, not personally to the occupants thereon.

Also, the protestants expressed fears that stormwater runoff from the site would flood surrounding properties. In the context of the proposed special exception, the facility will be placed on the front portion of the subject property which, as we have noted, slopes toward Harford Road. Thus, there will be no runoff from the facility itself into the Northwinds community.

The Board also notes in regard to the "general welfare" issue that the special exception is proposed on the heavily commercialized corridor of Harford Road. Although we recognize that residential community and a public park is nearby, the fronting and adjoining properties are commercial in use. Thus, we believe that the proposed use is consistent in character with the other uses within proximity which also front Harford Road.

Turning to the third issue, that of traffic, the Board heard from but one traffic expert, Charles Lee. Mr. Lee's uncontradicted testimony was that the property offered sufficient or sight distances so as not to be an unreasonable danger to vehicles entering and exiting the site from Harford Road. We accept his testimony as persuasive. Therefore, we believe that the Petitioners have met their burden as to 502.1.b.

Lastly, the Board shall address the environmental issues. The Board received extensive evidence and testimony on this issue, both expert and otherwise. The Board was educated as to how the proposed body shop will be managed and received testimony, both expert and lay, as to potential environmental effects from the operation. We particularly note the government's; including federal,

Edith Pearce, et al
Case No. 88-508-SPHX

state and county, increased awareness of environmental impacts from businesses such as these. The testimony before us convinces us that this is a highly regulated and supervised area, as well it should be. The Board has wrestled with these environmental issues in considering the special exception before us. Again, however, we must consider the parameters of Schultz v. Pritz and whether the placement of this use in this particular site offers any considerations over and above those inherent with the use. In our view, it does not. Again, it is clear that this use will produce certain environmental toxins which are a by-product of the automotive service garage business. However, the testimony of the Petitioner was that sufficient safeguards will be taken to control any such harmful elements. Further, we are comfortable that the government agencies empowered with the responsibility for controlling the release of these by-products will do their job. Lastly, the Board notes the significant buffer area between this use and the residential neighborhood as depicted on Exhibit No. 17. We believe that this buffer adequately safeguards the concerns of the Northwinds residential community.

For the reasons above, this Board will therefore grant the Petition for Special Exception, with reasonable restrictions so as to insure protection of the residential community adjacent.

Turning now to the Petition for Special Hearing, the Board notes with approval the Petitioners' amended site plan (Exhibit No. 17), which reduced the intrusion of parking on the D.R. portion of the parcel and extended the buffer as described above. In considering the Petition for Special Hearing, the Board is constrained to evaluate the proposal pursuant to B.C.Z.R. 409.8. Again, we will not repeat herein the testimony of the numerous witnesses who appeared before us regarding this issue (e.g., Mr. Hare, Mr. Dyer, etc.), but will refer instead to the record. Suffice it to say, based upon the totality of the evidence

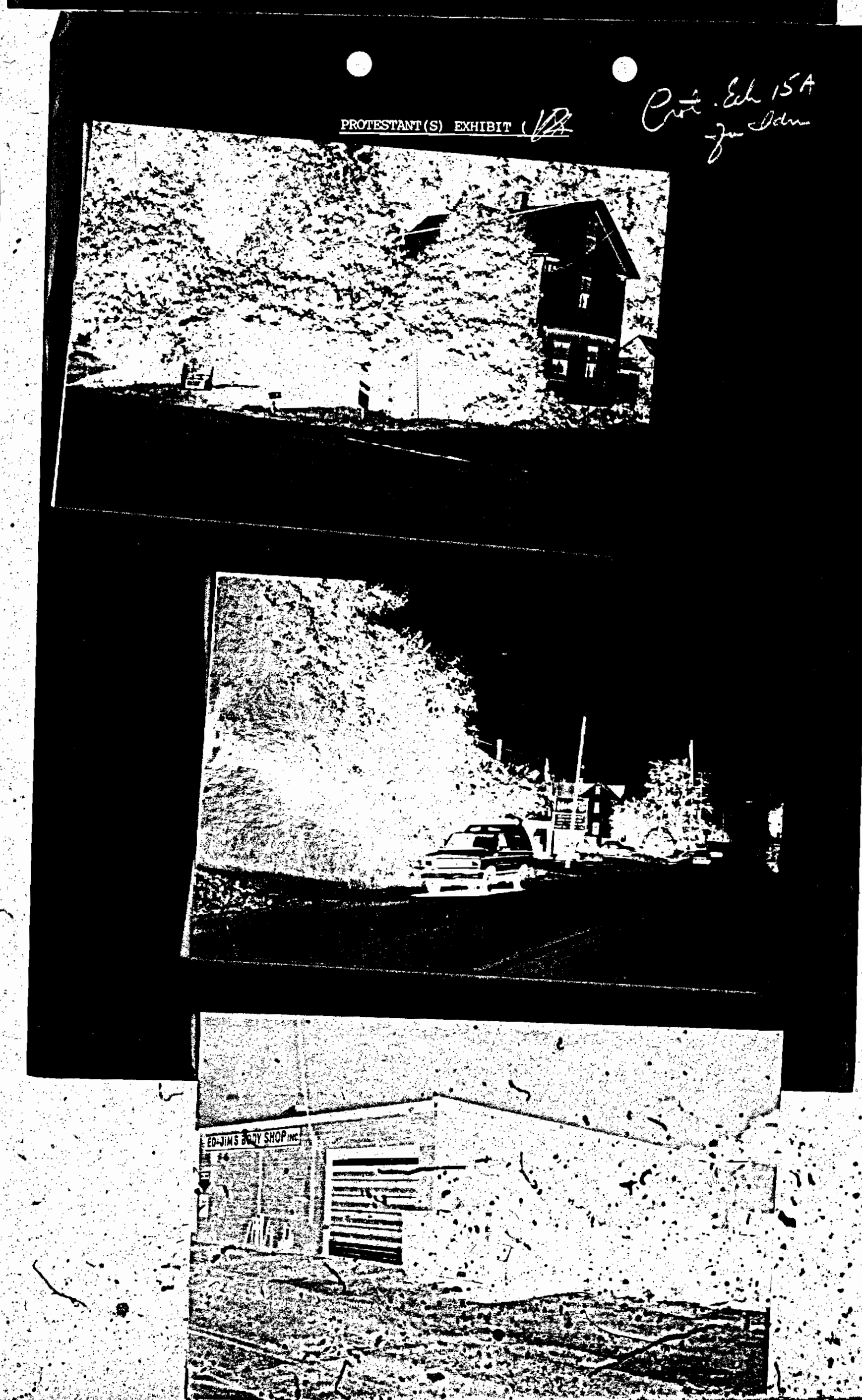
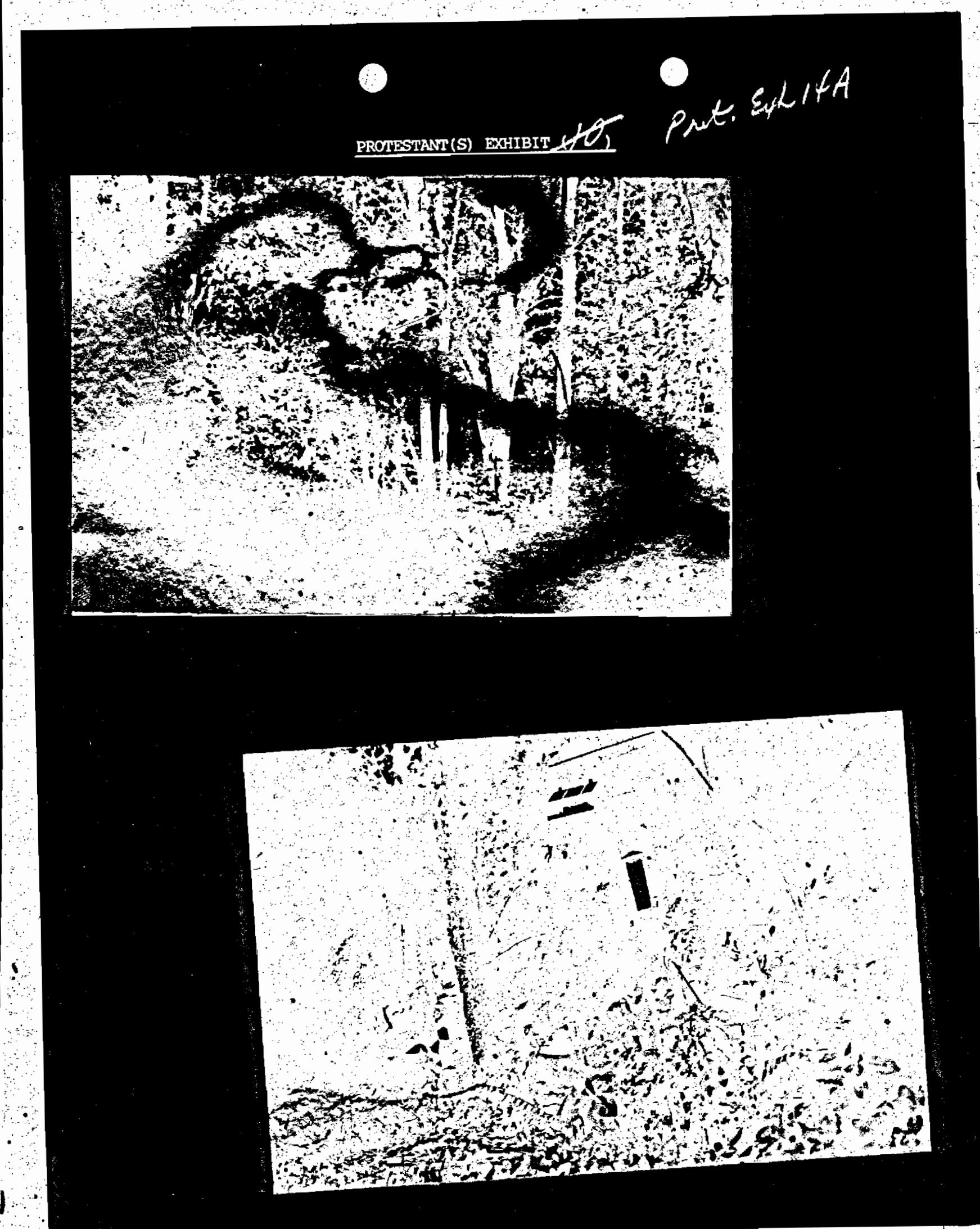
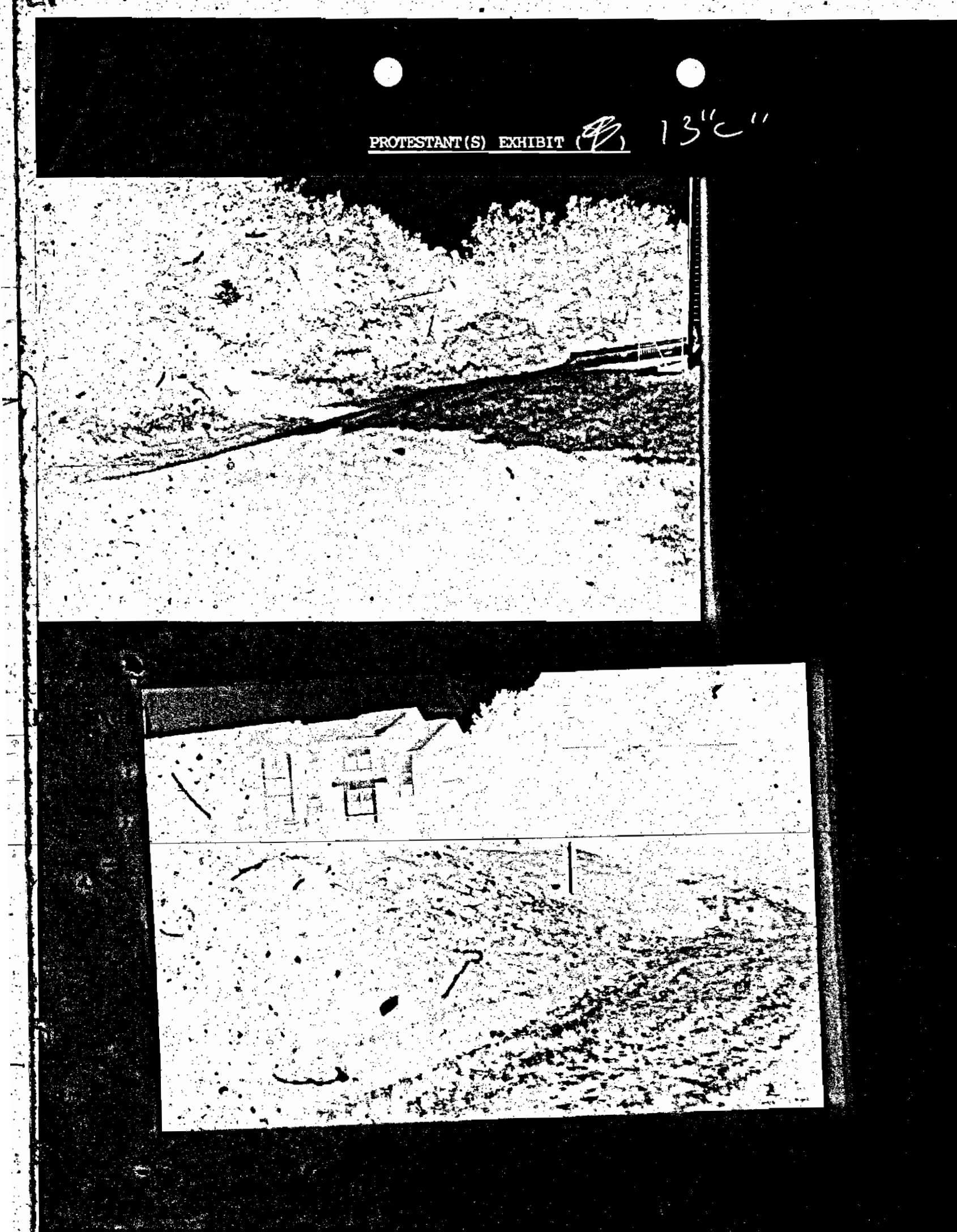
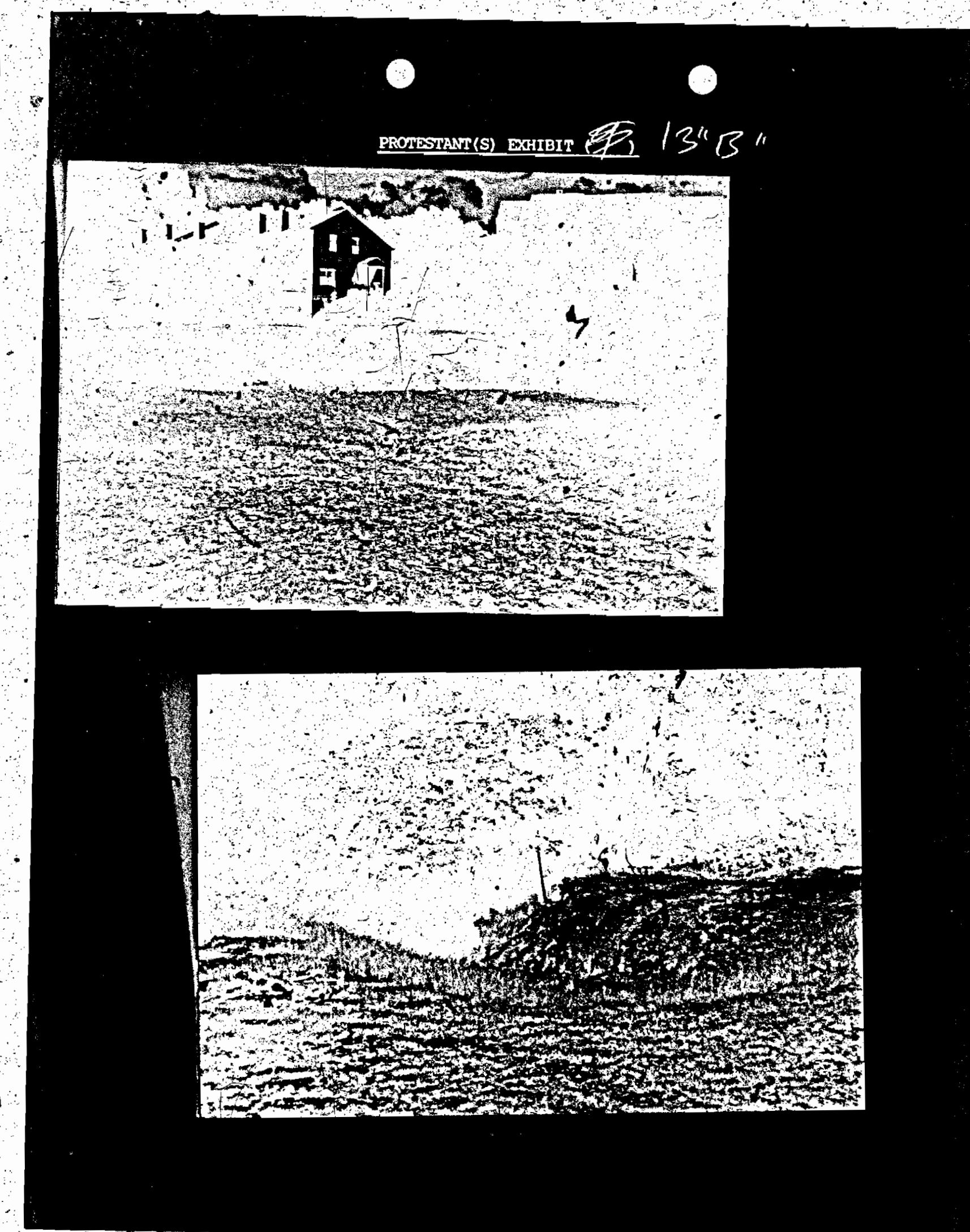
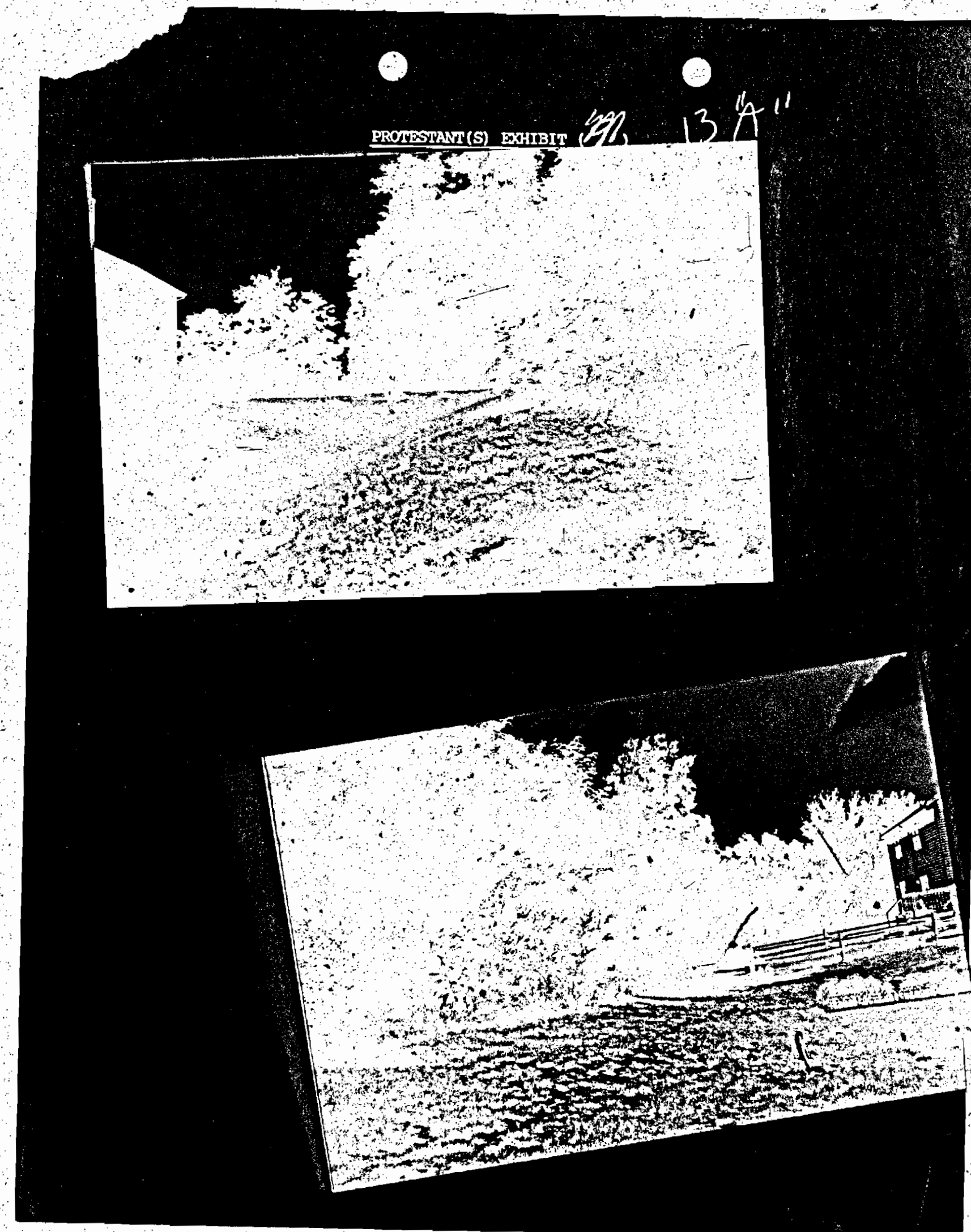
Edith Pearce, et al
Case No. 88-508-SPHX

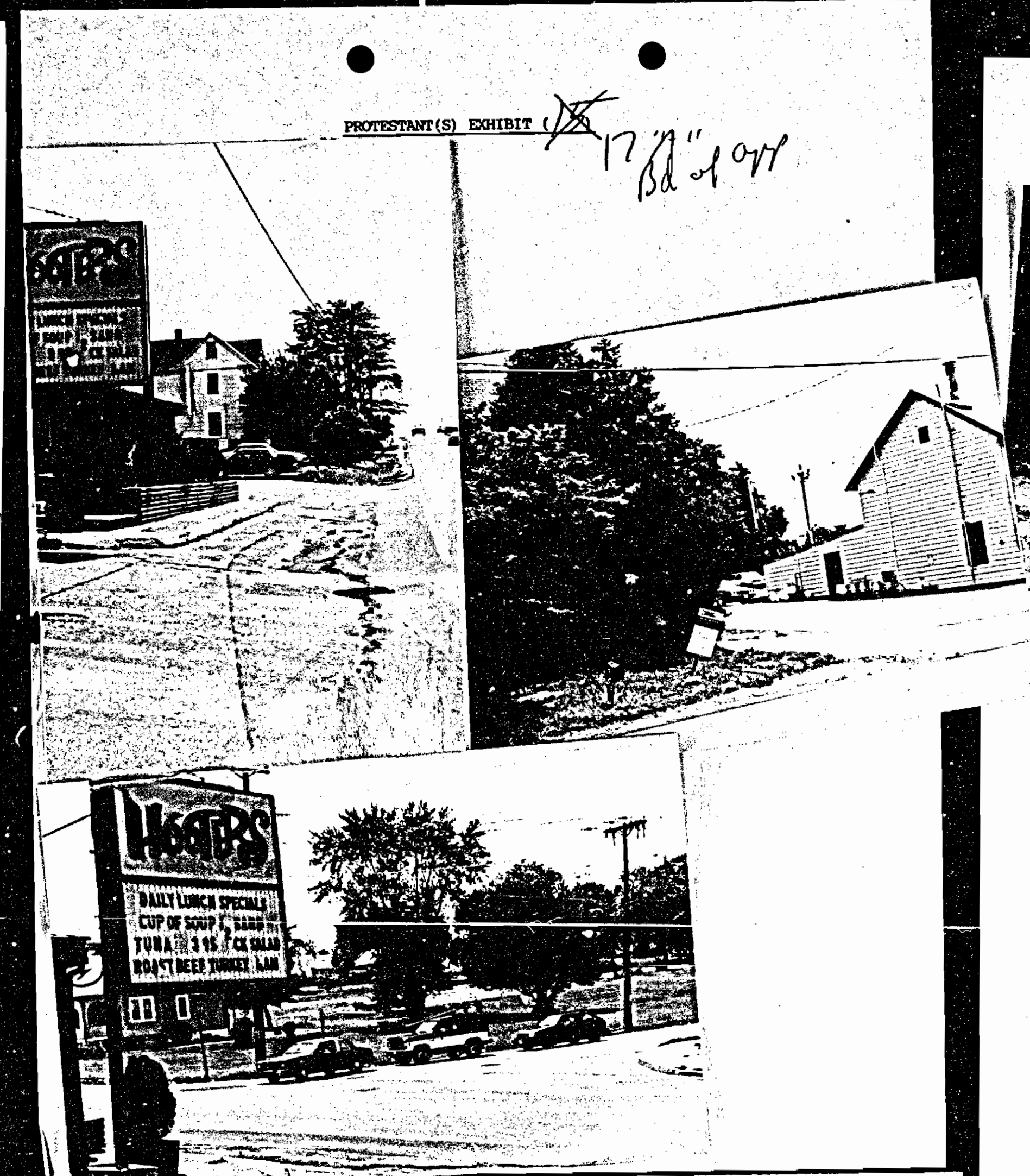
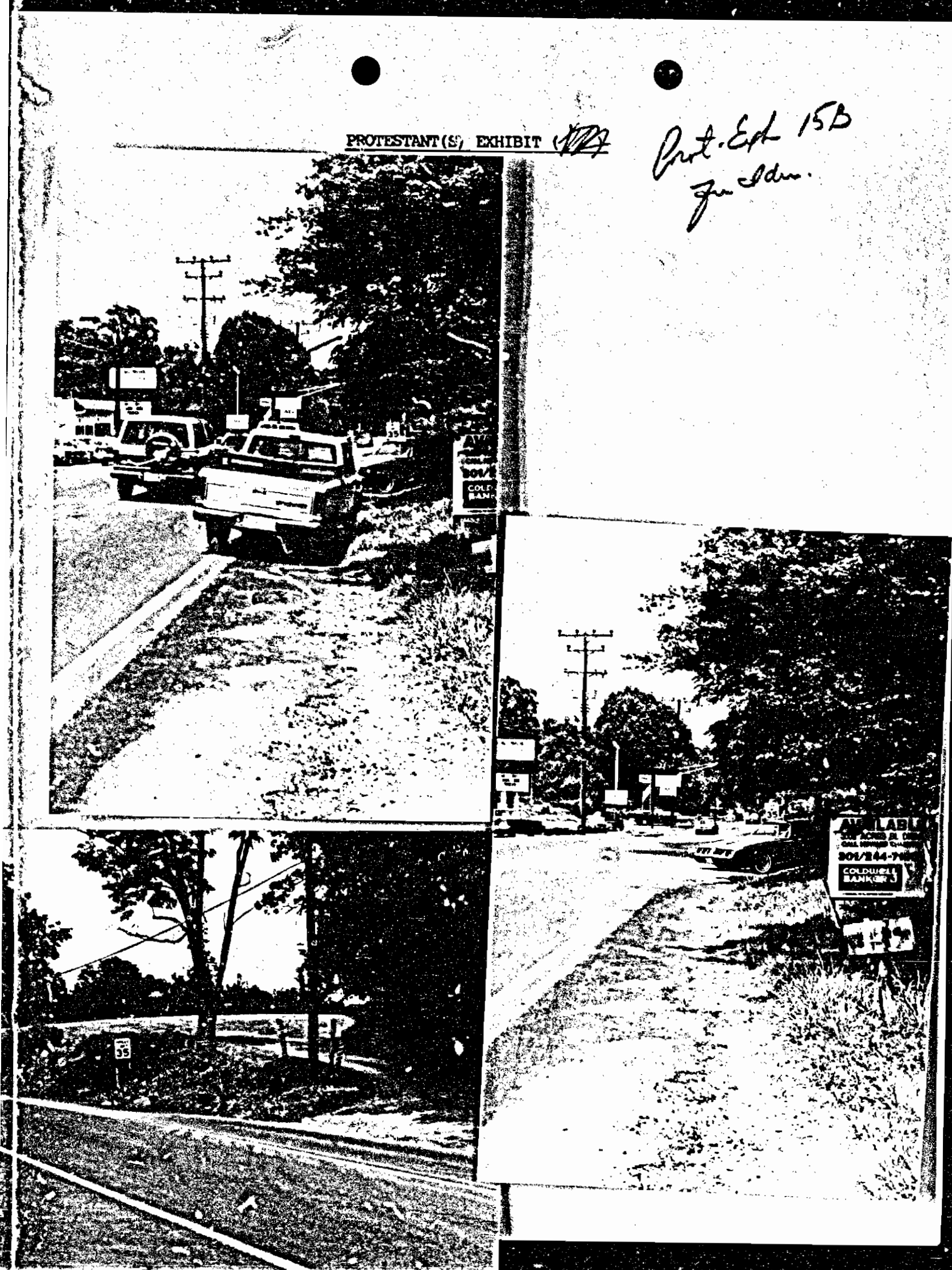
before us, we find that the criteria set forth in 409.8 of the B.C.Z.R. have been satisfied and that the granting of the special hearing will not adversely affect the surrounding locale. This Board cannot emphasize too strongly that the enlargement of the buffer zone weighed heavily upon our deliberations. Quite simply, in our view, this increased area of vegetation minimizes any adverse effects to the surrounding community. We believe that this increase in buffer size and the other features of the plan will control storm water. We also note Mr. Gerber's testimony that the D.R.3.5 portion is land locked by the surrounding properties and not developable residentially. We agree that the use of that portion to support a commercial use on the B.L. parcel fronting Harford Road is reasonable and appropriate. For the aforesaid reasons, the Board will likewise grant the Petition for Special Hearing and will so order.

ORDER

Upon the foregoing it is therefore this 2nd day of March, 1990 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Special Exception and the Petition for Special Hearing be and are hereby GRANTED subject to the following restrictions:

1. The hours of operation for the body repair portion of the proposed facility shall be limited to 8:00 a.m. to 5:30 p.m., Mondays through Fridays only;
2. The number of employees engaged in the body shop operation shall be limited to twelve, excluding Mr. Hare and/or Mr. Hatfield;
3. All parking lot lighting shall be no more than 8 ft. above grade. All exterior lighting shall be directed downward and shall not diffuse onto any residential property;
4. Development of the site, particularly the size and extent of the buffer area, shall be in accordance with the site plan marked as Petitioners' Exhibit No. 17.





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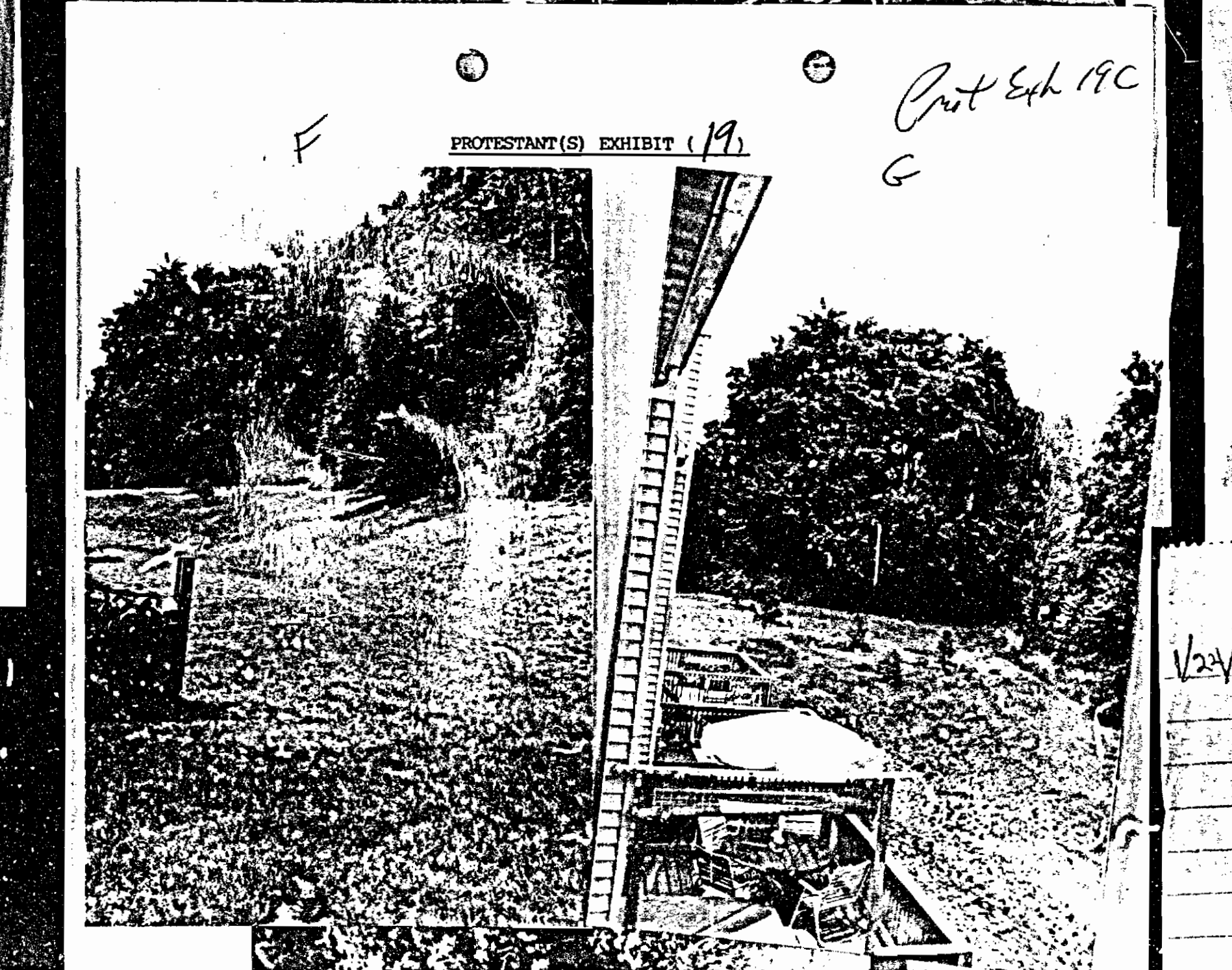
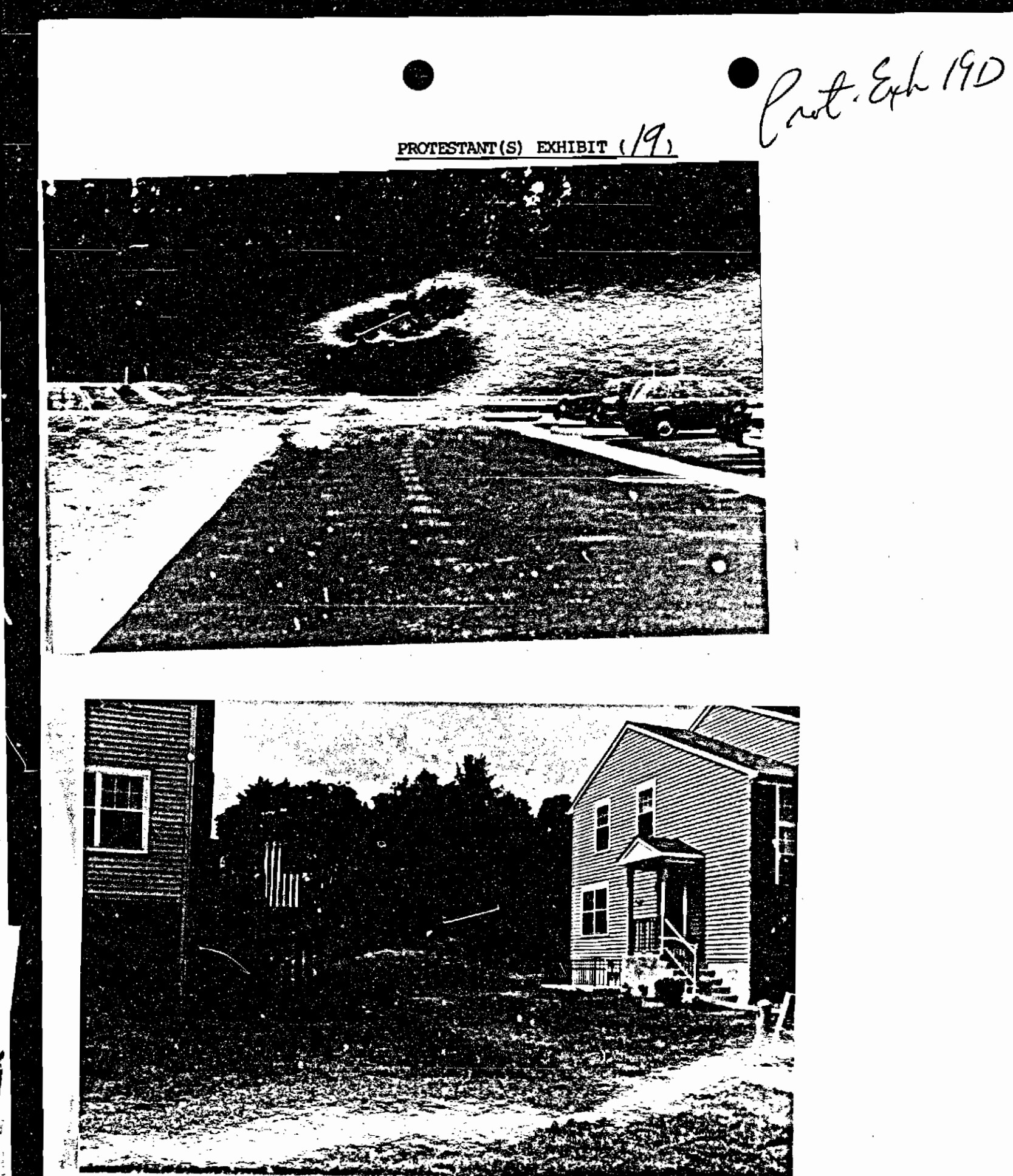
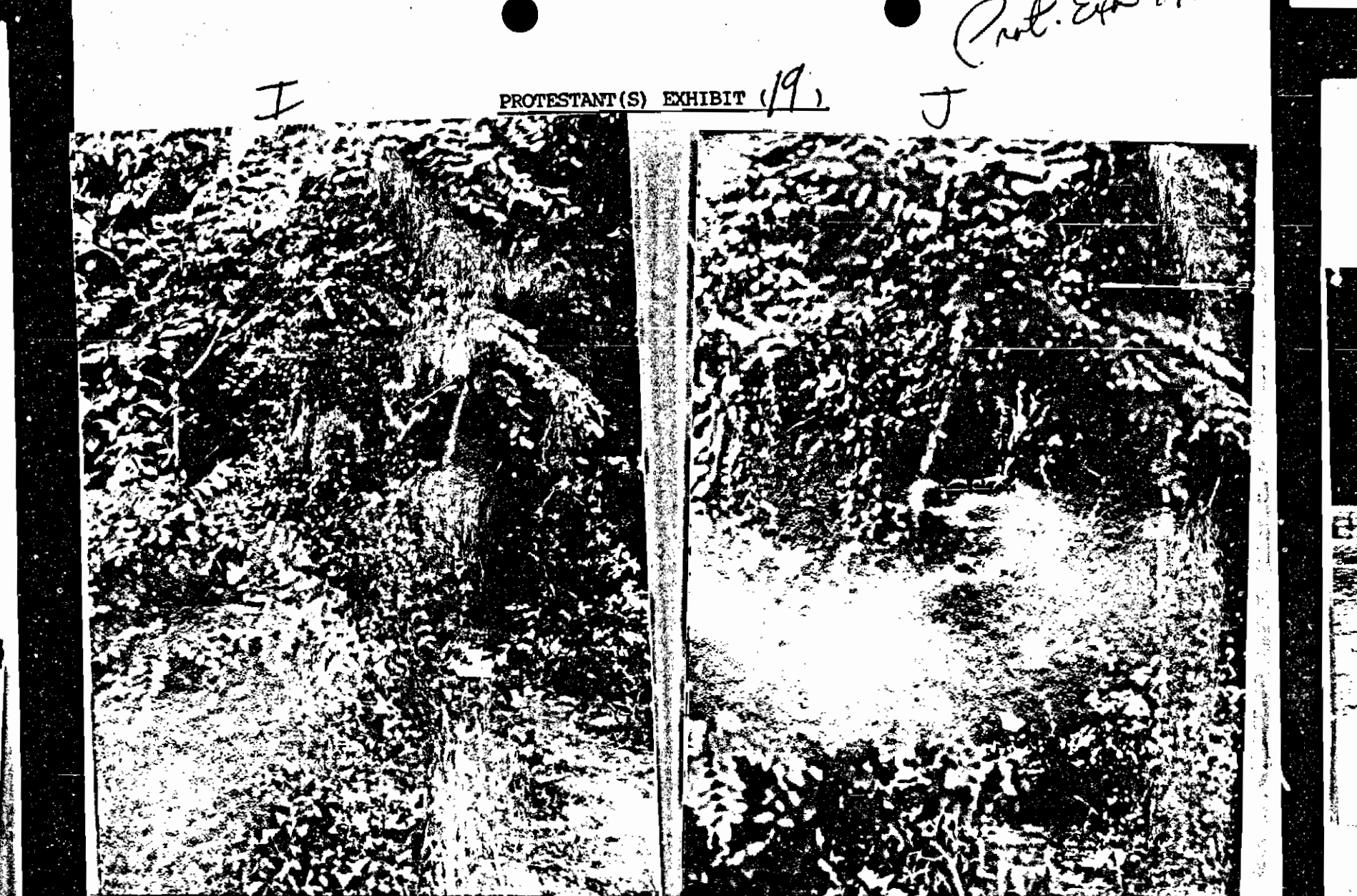
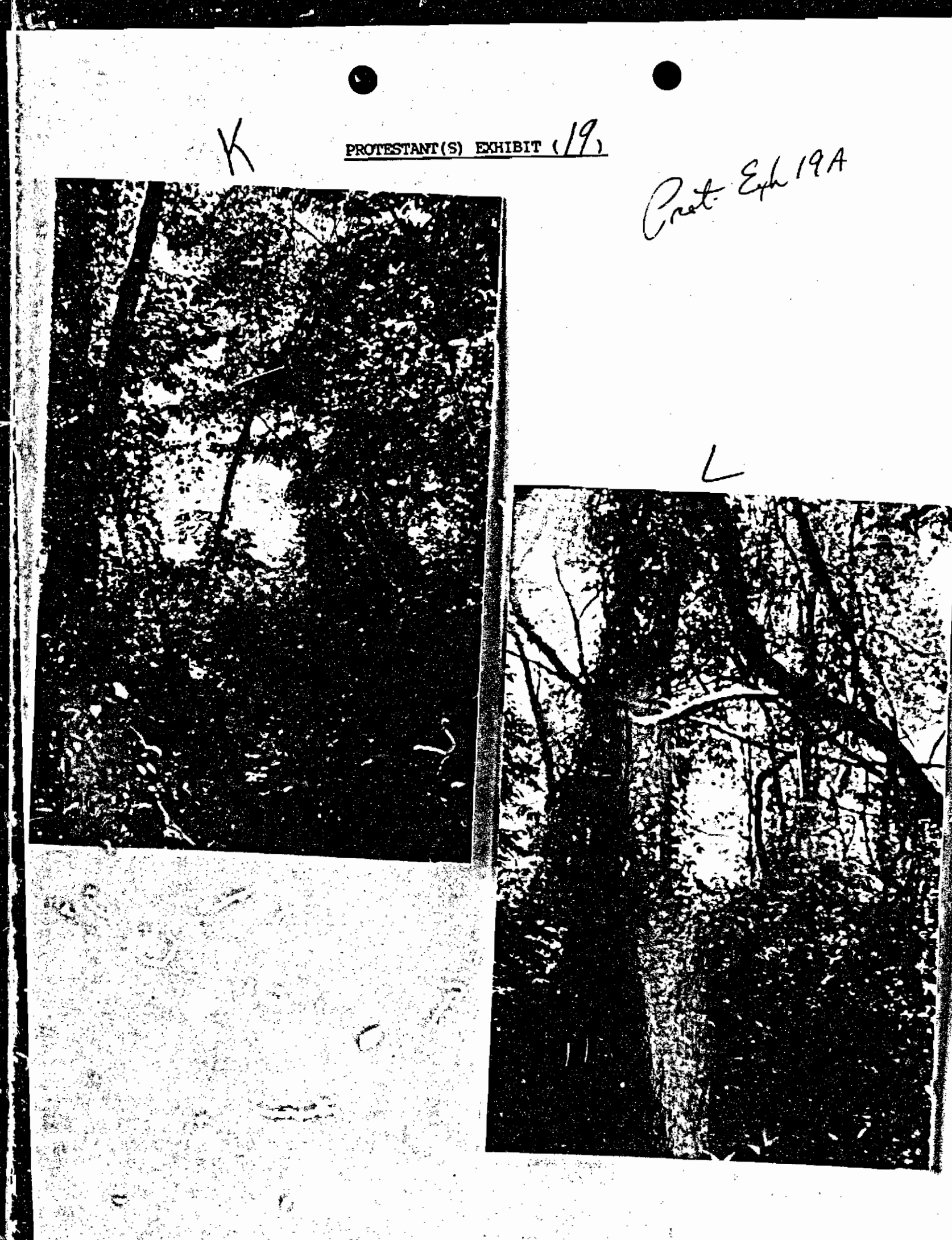
CURRICULUM VITAE:
C. JOHN KLEIN III

Personal:
Address: 3011 North Branch Lane
Baltimore, MD 21234
Telephone: 301-661-3019 (home)
301-443-8843 (office)

Education:
The Johns Hopkins University
Baltimore, Maryland
Master of Science, 1977
Environmental Engineering
University of Maryland
College Park, Maryland
Bachelor of Science, 1973
Civil Engineering

Experience:
3/86-pres. Klein Engineering and Planning Consultants
Specializing in Environmental and Coastal Engineering
Services:
-Land Development (i.e. flood plain delineation, sediment control plans, storm water management, wetland delineation, site layout)
-Coastal Engineering (i.e. shoreline erosion and tidal flooding protection, marina development, navigation - channels, dredging alternatives)
-Environmental Surveys - soils, topography, vegetation, hydrology
-Ambient and work environment air monitoring and analysis
-Environmental assessments and impact statement
-Critical Areas Compliance (Technical Guidance)
-State, Local and Federal Permit preparation

C. J. Klein III

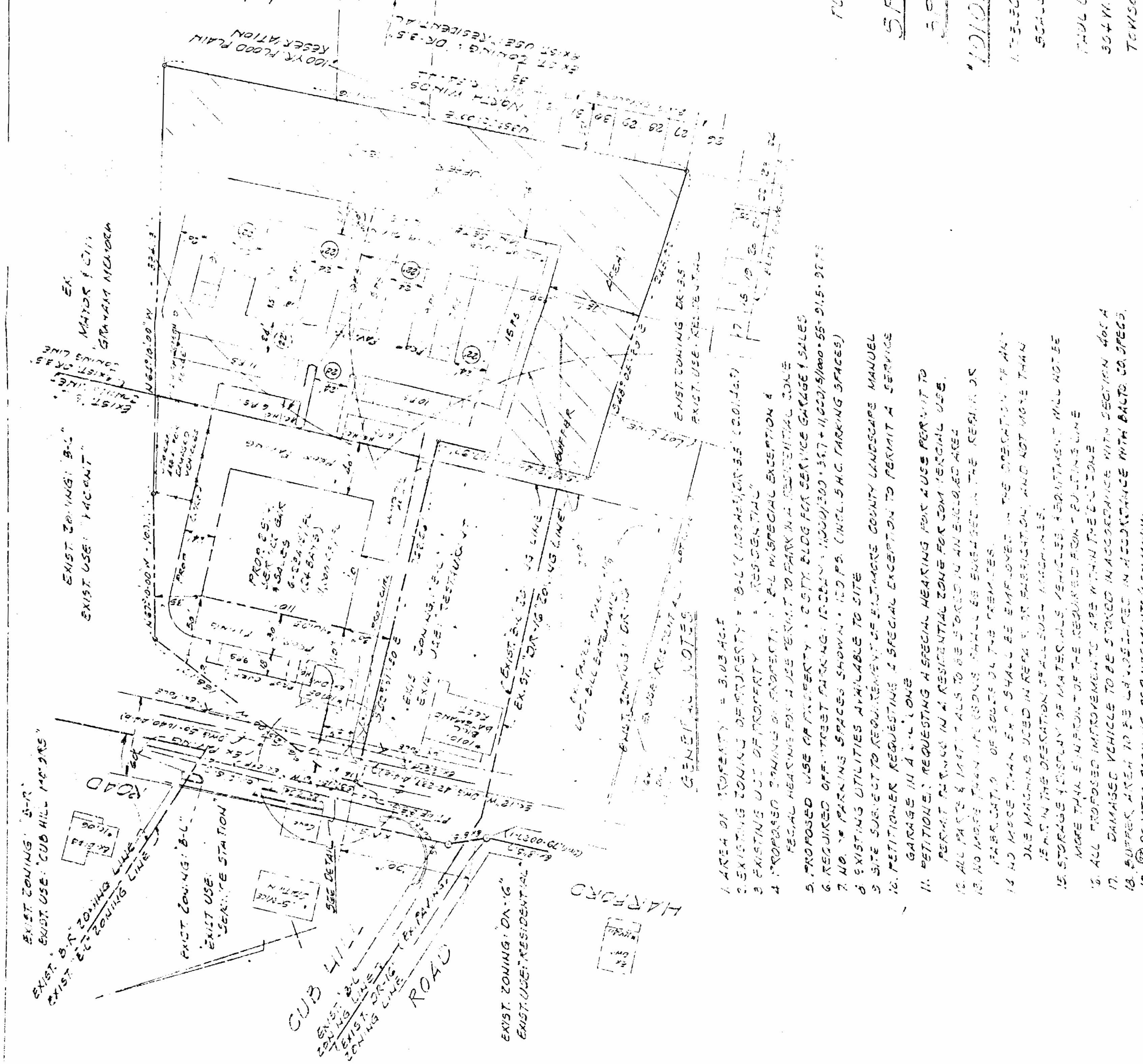
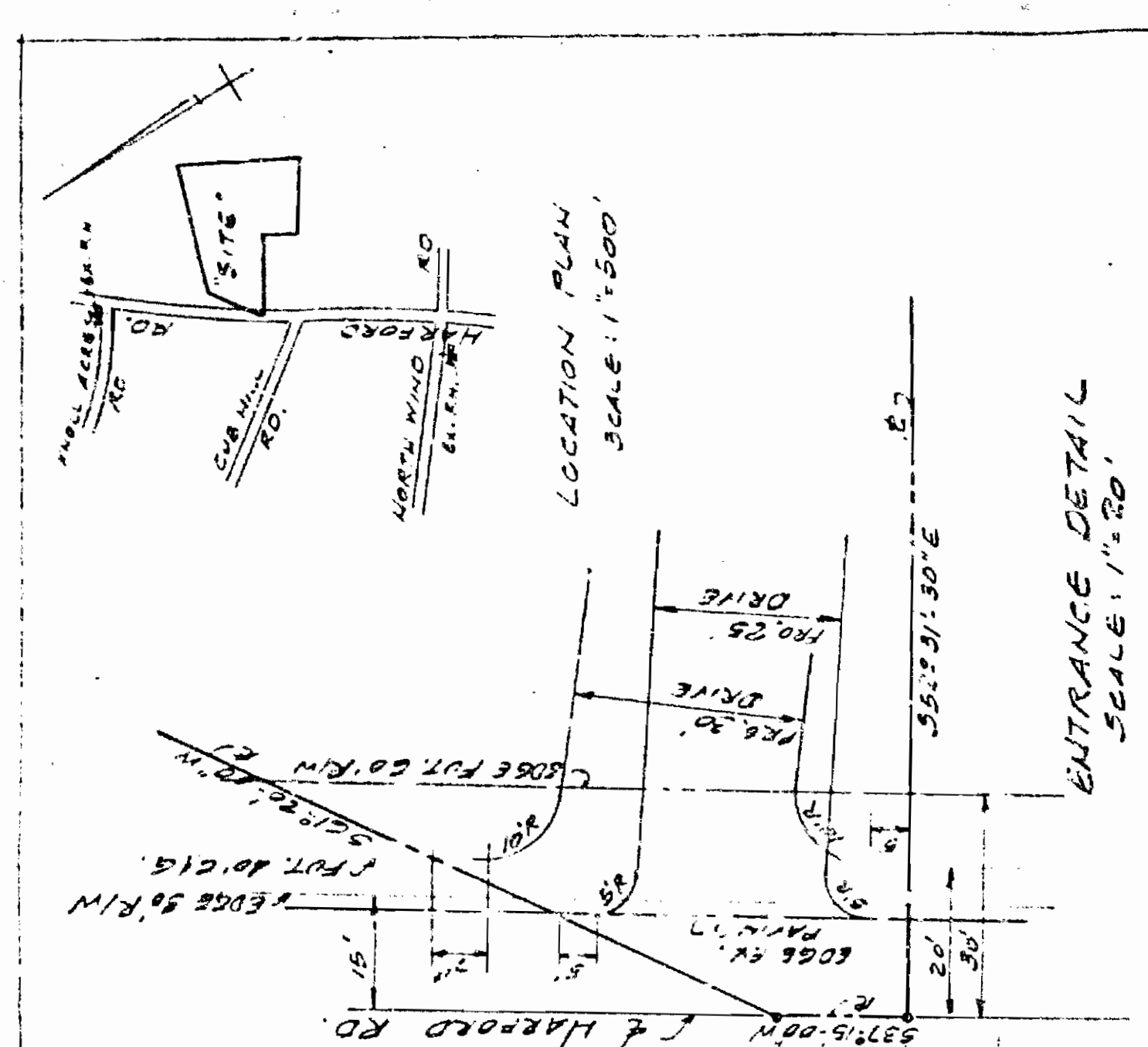


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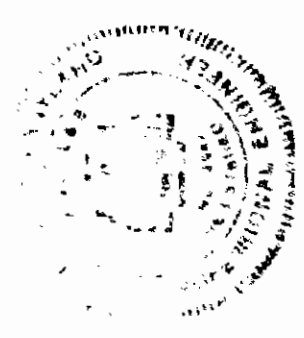
Name	Address
CHARLES JOHN KLEIN	3011 NORTH BRANCH LANE
JEFF SAUER	3006 NORTH BRANCH LANE
STEPHEN J. RAINCO	3012 NORTH BRANCH LANE
MICHAEL B. TORR	19 NORTH FOND WAY

1.1.49



20. PROPERTY SUBJECT TO SPECIAL HEARING: MAY 14, 1988
 REGULATED BY BALTIMORE COUNTY

FOR
 FULL TO ACCOUNTANT PETITION
 SPECIAL EXCEPTION
 SPECIAL HEARING
 10005 LARFORD ROAD
 BALTIMORE COUNTY, MD
 FEB. 27, 1988
 REV. JUNE 22, 1988
 REV. JUNE 1, 1989
 PHILIP ENGELBERG, INC.
 3041 PENNSYLVANIA AVENUE
 TOWSON, MARYLAND 21204



Jo 44-001

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

June 1, 1988

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

Michael B. Sauer, Esquire
 802 Equitable Towson Building
 Towson, Maryland 21204

RE: Item No. 320 - Case No. 88-508-SPHX
 Petitioner: Edith Pearce & Julia Blacklock
 Contract Purchaser: H & H Realty
 Petition for Special Hearing and Special Exception

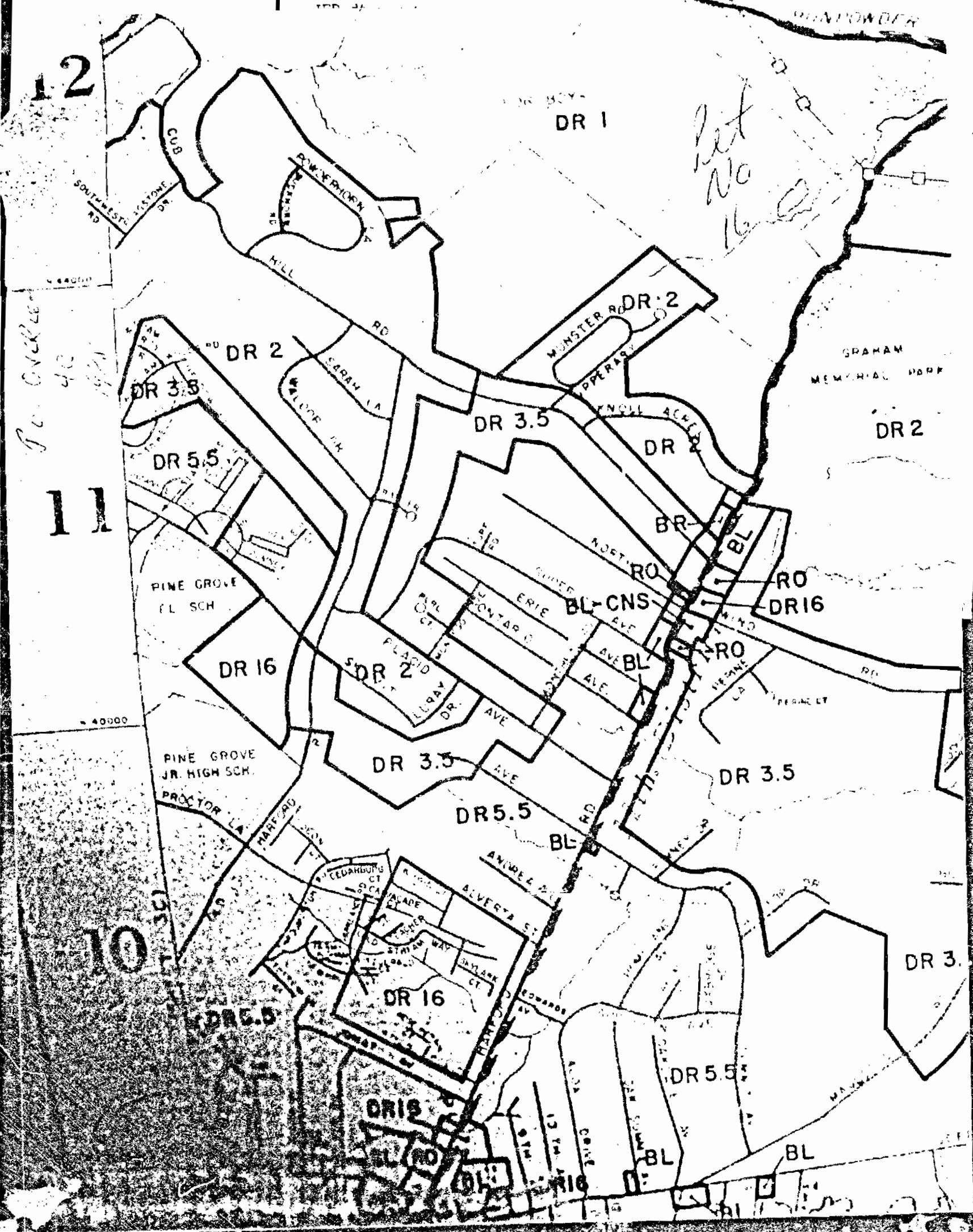
Dear Mr. Sauer:

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

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

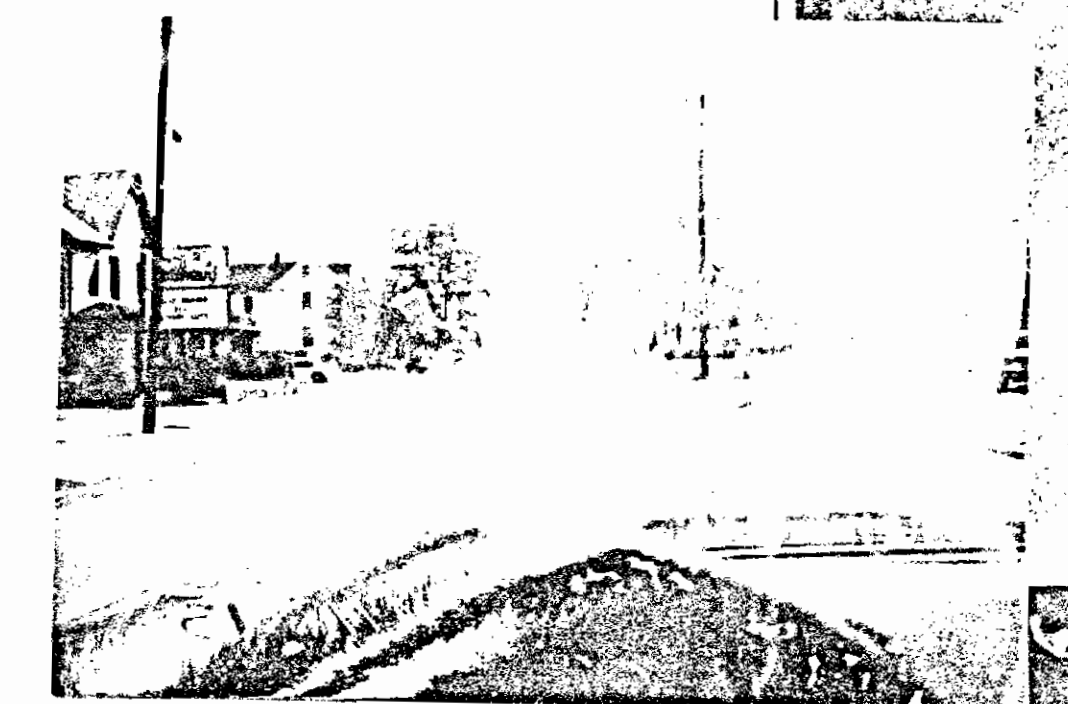
Very truly yours,

James E. Dyer, Jr.
 Chairman
 Zoning Plans Advisory Committee



Color Print
 18-508-SPHX

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 10
 11 A-C



NORMAN E. GERBER AICP
 35 Pickburn Court
 Cockeysville, MD 21030
 (301)-667-4543 Day
 (301)-667-4232 Evening

WORK EXPERIENCE:

2/88 to now

NORMAN E. GERBER AICP - Planning Consultant.

Specializing in land planning, development of regulations and expert witness in planning and zoning issues.

2/89 to now

CITY OF LAUREL MARYLAND

Director of the Department of Planning and Zoning

Title

Responsibilities

- General administration
- Prepare master plan, zoning and subdivision ordinances and maps
- Enforce Zoning Laws

4/86 - 1/88

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

Director of the Office of Planning and Zoning

9/80 - 1/88 Title

Responsibilities

- General administration of the Office
- Approved subdivision and development plans for entire County.
- Administered historic preservation and agricultural land preservation laws and programs.
- Testified at various state and local boards and commissions, state and federal legislative bodies, and state and federal judicial bodies.
- Lobbied the County Council for approval of the County Executive's programs, budgets and contracts.
- Secretary to 15 member planning board; maintained minutes, schedules meetings, prepared agenda, etc.
- Supervised the preparation, and assisted in the adoption process of a county-wide comprehensive zoning map every four years.
- Recommended new zoning, development and growth management regulations as well as amendments to the etc.
- Commented on zoning petitions and testified at necessary local, state and federal judicial levels.

VITA

CHARLES J. KLEIN III

Personal:

Address: 3011 North Branch Lane
 Baltimore, MD 21234

Telephone: 301-661-5019 (home)
 301-443-8843 (office)

Education:

The Johns Hopkins University Master of Science, 1977
 Baltimore, Maryland Environmental Engineering

University of Maryland Bachelor of Science, 1973
 College Park, Maryland Civil Engineering

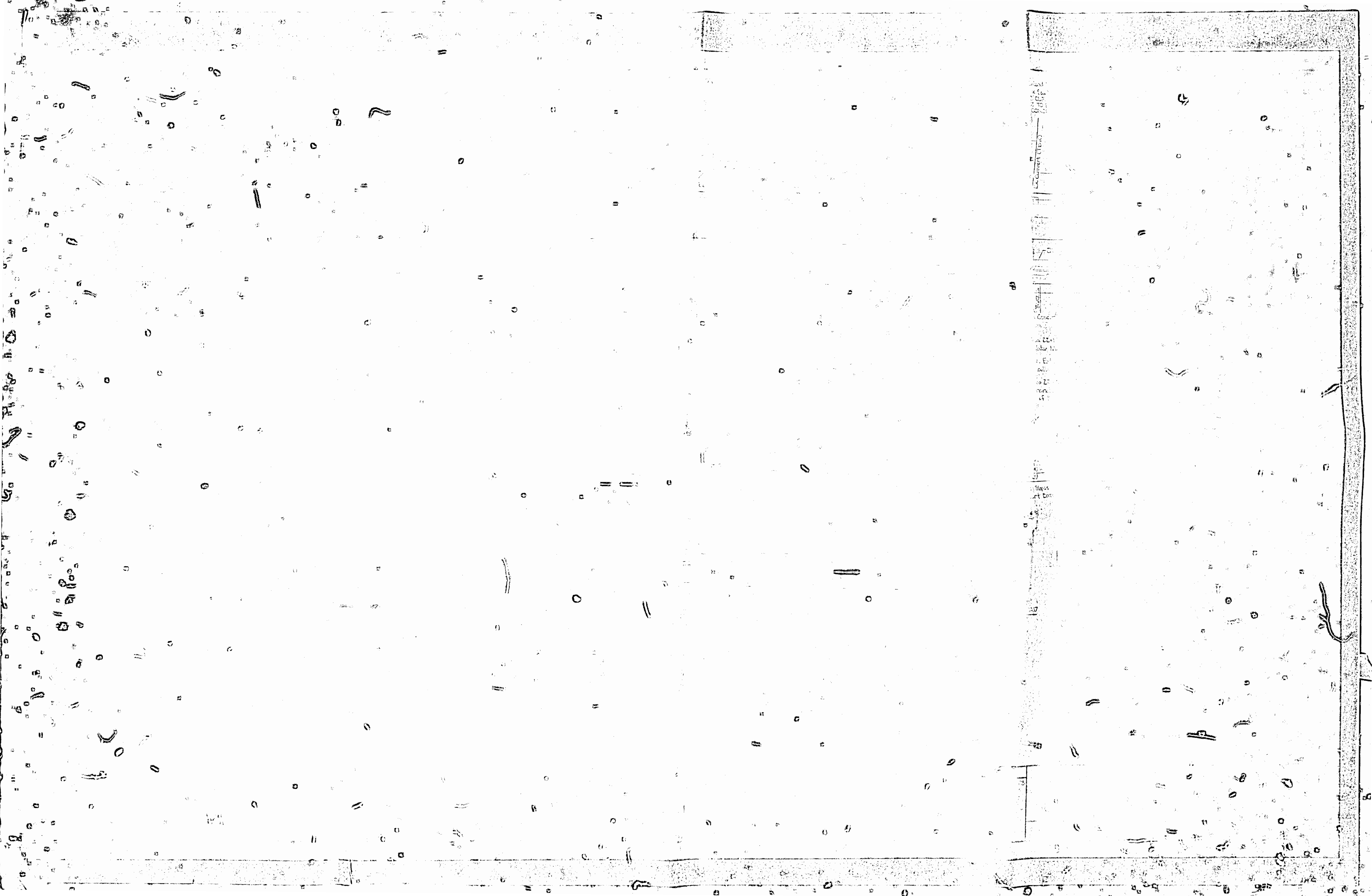
Experience:

3/86-pres.

Klein Engineering and Planning,
 Specializing in Environmental and Coastal Engineering

Services:

- Land Development (i.e. flood plain delineation, sediment control plans, storm water management, wetland delineation, site layout).
- Coastal Engineering (i.e. shoreline erosion and tidal flooding protection, marina development, navigation - channels, dredging alternatives)
- Environmental Survey - soils, topography, vegetation, hydrology.



GEORGE MELVIN BREWER, ET AL Item N° 79940	CUB HILL BIBLE PRESBYTERIAN CHURCH Item N° 79941
SECT. N° LINES RD.	SECT. N° LINES RD.
① N 52°21'29" E 20.00' ② N 44°55'27" E 20.00' ③ N 88°42'51" E 27.60'	① N 101°18'17" E 25.84' ② N 81°5'39" E 75.12' ③ N 55°31'15" E 9.68' ④ S 51°32'10" E 83.67' ⑤ S 58°25'44" N 27.64'
PER SAMPLE AREA 200 1/4 OR 0.005 AC. SHOWN TRUE	PER SAMPLE AREA 932 1/4 OR 0.021 AC. SHOWN TRUE

CHARLES JOSEPH PEARCE Item N° 79945	WILLIAM JACKSON BATEMAN, ET AL Item N° 79943
SECT. N° LINES RD.	SECT. N° LINES RD.
① N 52°50'40" E 26.92' ② N 38°31'37" E 99.74' ③ S 45°40'23" E 31.67' ④ S 38°17'00" N 6.72' ⑤ N 51°43'00" N 5.00' ⑥ S 38°17'00" N 10.31'	① N 65°10'23" E 26.92' ② N 38°31'37" E 115.00' ③ S 45°40'23" E 31.67' ④ S 38°17'00" N 116.95' ⑤ N 51°43'00" N 5.00' ⑥ S 38°17'00" N 10.31'
PER SAMPLE AREA 304 1/4 OR 0.012 AC. SHOWN TRUE	PER SAMPLE AREA 304 1/4 OR 0.012 AC. SHOWN TRUE

BENJAMIN F. CHERRY BERNARD CARTON & CHAROLAN JEAN CARTON Item N° 79944	Parcel One
SECT. N° LINES RD.	SECT. N° LINES RD.
① N 49°50'23" E 26.01' ② N 38°31'37" E 85.08' ③ S 45°40'23" E 31.67' ④ S 38°17'00" N 5.914' ⑤ N 51°43'00" N 8.00' ⑥ S 38°17'00" N 10.00' ⑦ N 51°43'00" N 3.00' ⑧ S 38°17'00" N 11.60'	① N 49°50'23" E 26.73' ② N 38°31'37" E 97.50' ③ S 45°40'23" E 31.67' ④ S 38°17'00" N 10.73' ⑤ N 51°43'00" N 8.00' ⑥ S 38°17'00" N 16.00' ⑦ N 51°43'00" N 5.00' ⑧ S 38°17'00" N 18.27'
PER SAMPLE AREA 1210 1/4 OR 0.051 AC. SHOWN TRUE	PER SAMPLE AREA 1255 1/4 OR 0.059 AC. SHOWN TRUE

CHARLES JOSEPH PEARCE C. JULIA R. BLACKLOCK Item N° 79946	MAYOR & CITY COUNCIL OF BALTIMORE CITY Item N° 79942
SECT. N° LINES RD.	SECT. N° LINES RD.
① N 51°14'53" E 25.22' ② N 38°31'37" E 16.76' ③ N 62°34'37" E 16.18' ④ S 38°17'00" N 7.69'	① N 52°34'37" E 41.14' ② N 40°04'20" E 123.65' ③ N 40°04'36" E 86.61' ④ S 51°43'00" N 9.55' ⑤ S 38°17'00" N 103.68'
PER SAMPLE AREA 1120 1/4 OR 0.026 AC. SHOWN TRUE	PER SAMPLE AREA 389 1/4 OR 0.009 AC. SHOWN TRUE

CUB HILL BIBLE PRESBYTERIAN CHURCH Item N° 79941
① N 51°43'00" N 11.00' ② N 38°25'44" E 10.84' ③ S 101°18'17" E 25.84' ④ S 58°25'44" N 20.20'
PER SAMPLE AREA 335 1/4 OR 0.008 AC. SHOWN TRUE

MAYOR & CITY COUNCIL OF BALTIMORE CITY Item N° 79942
① N 51°17'00" E 10.00' ② S 51°13'00" E 5.00' ③ S 38°17'00" N 10.00' ④ N 51°43'00" N 5.00'
PERMANENT EASEMENT 50 1/4 OR 0.001 AC. SHOWN TRUE

CHARLES JOSEPH PEARCE Item N° 79945
① S 51°43'00" E 5.00' ② S 38°17'00" N 27.00' ③ S 29°07'53" N 163.59' ④ N 52°56'46" N 15.12' ⑤ N 38°17'00" E 10.31'
PERMANENT EASEMENT 770 1/4 OR 0.018 AC. SHOWN TRUE

WILLIAM JACKSON BATEMAN, ET AL Item N° 79943
① N 38°17'00" E 116.20' ② S 51°43'00" E 5.00' ③ S 38°17'00" N 107.31' ④ N 52°56'46" N 5.00'
PERMANENT EASEMENT 586 1/4 OR 0.015 AC. SHOWN TRUE

B.F. CHERRY BERNARD CARTON & CHAROLAN JEAN CARTON Item N° 79944
① N 38°17'00" E 116.20' ② S 51°43'00" E 5.00' ③ N 38°17'00" E 10.00' ④ N 51°43'00" N 3.00' ⑤ N 38°17'00" E 30.00' ⑥ S 51°43'00" E 5.00' ⑦ S 38°17'00" N 54.76' ⑧ N 49°50'23" E 5.00'
PERMANENT EASEMENT 243 1/4 OR 0.002 AC. SHOWN TRUE

NOTES



LEGEND

REVERTIBLE EASEMENT FOR SUPPORTING SLOPES.

REVERTIBLE EASEMENT OR RIGHT FOR SPECIAL PURPOSE AS INDICATED BY NOTATION ON THIS PLAT.

PERPETUAL EASEMENT FOR DRAINAGE FACILITY AS INDICATED BY NOTATION ON THIS PLAT.

(ARROW INDICATES GENERAL DRAINAGE FLOW PATTERN)

PERPETUAL EASEMENT TO DISCHARGE FLOW OF WATER FROM OR INTO EXISTING WATERWAY OR NATURAL DRAINAGE COURSE.

PERPETUAL EASEMENT TO DISCHARGE FLOW OF WATER UPON EXISTING GROUND.

APPROXIMATE GENERAL DRAINAGE FLOW PATTERN (NOT TO SCALE FOR EXPLANATORY PURPOSE ONLY)

SENT TO RECORD OFFICE JULY 10, 1989

APPROVED BY CHAIRMAN AUG 16, 1989

BOOKS

REVISIONS

PART OF PLATS

LOCATED IN BALTIMORE COUNTY

PREPARED BY HARRIS, SPARIG & ASSOC., INC.

CONSTRUCTION PROJECT: No. 147 (HARFORD ROAD) AT NORTHWIND ROAD.

CONSTRUCTION PROJECT NO: B-888-501-476

STATE OF MARYLAND
DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION
STATE ROADS COMMISSION

RIGHT OF WAY PROJECT: No. 147 (HARFORD RD.) AT NORTHWIND ROAD.

RIGHT OF WAY PROJECT NO. B 888-501-476

ISSUED Dec 12, 1988

CHIEF, BUREAU OF PLATS & SURVEYS

SCALE 1" = 50'

PLAT No. 51724

his workers and that fiberglass was routinely utilized in their operation.

He did not know the speed limit of Harford Road, nor the road frontage on Harford Road, nor anything about a comment concerning a need for a deceleration lane from State Highways in this file.

He testified that acetylene and oxygen were used in the welding and burning operations and were kept on the premises; that there were not fluids in the welding area; that he believes that the construction of the Hooter's Bar was masonry; and that his operation would improve the Gunpowder Falls State Park and the Graham Memorial Park and adjacent homes.

He introduced poloroid pictures of his views of the site from the perimeter and, when questioned about the site plan, testified that the 14 spaces shown to the rear of the building would be used for estimates and that the other parking spaces would be used for customers and for delivery trucks to park in the area.

On the second hearing day Mr. Hare was recalled as a witness and identified 12 additional pictures taken the week of June 19, 1988 showing present improvements on the property.

The Petitioner's second witness was Paul Lee, who was called as a registered professional engineer and accepted as same. He testified that in preparation for this case he had checked the zoning, surveyed the existing area and met with his clients on

several occasions, both on and off the site; and that he found the zoning to the property to be split BL for the front and BR 3.5 for the back, the property to be a 3.0 acres parcel on which was proposed a 2-story building to house a service garage and sales. He found that the property fell topographically from the zoning line toward Harford Road and to the rear of the property from the rear BL line. He found the rise to that point from Harford Road to be approximately eight to ten feet and the fall from that point to the rear residential property line to be a 20 to 25 feet drop.

He testified that Hooter's did exactly what Petitioners seek to do in placing their parking on a DR 16 lot next to their restaurant. He testified that other uses in the neighborhood on the west side of Harford Road were a service station, another service garage, used car sales, to the north was the Graham Memorial Park, to the east were the Northwind townhomes, and he characterized the Harford Road frontage as commercial and that he had a knowledge of Baltimore County Zoning Regulations.

Although he had visited the site, he could not recall whether the number of parking spaces on Hooter's lot or the size of that lot or whether the spaces were lined, nor did he know how many bays were in the service garages on the other side of Harford Road, nor had he done any type of soil study, storm water management planning. As to the area on Harford Road, he merely rode by and did not get out of his car. He testified that the parking calculations were done under regulations prior to Bill No.

22-68 and that he had been to the site and could not see the townhomes from the site. He said that the plans called for a 100 X 110 foot building and landscaping in the buffer area, if necessary, according to the landscape manual. He did not know the proposed height of the building, although he knew that it was proposed to be a 2-story building with a low level entry from Harford Road to the lower level.

He testified that, in his opinion, Section 502.1, subsections A through H, would not be effected by the Petitioners' proposal and found the only unique aspect to this site was the park located nearby in the DR 3.5 zone.

Mr. Lee acknowledged that there were no loading spaces provided on the site pursuant to Section 409.3 of the Zoning Regulations because he believed the loading was to be provided within the premises.

The Protestants called as witnesses Cheryl Dougherty, a resident of No. 4 Northford Way, with her husband Michael with her son, who was 11 months of age. She testified as to the fact that her son had been born prematurely, had underdeveloped or immature lungs and was at risk for certain threats posed due to pollution in the environment which led to her pediatrician recommending that he not be exposed to certain hazardous environments, including dust, smoke and other types of pollution; that she and her husband had lived at that site for 11 months and paid \$86,000.00 for their house when they moved in.

The Protestants' next witness was Jeffrey Sauers, who is

an officer of Northwinds Homeowners Association, Inc. and a resident of 3006 Northbranch Lane. Both he and Mrs. Dougherty testified that the decks and living areas were oriented toward the rear of the townhomes and that those townhomes abutted from different sides; namely, the south and east; the Petitioner's DR zoned land; that with the deciduous trees when the leaves had fallen they clearly see all of the outbuildings of the Petitioner's property and that due to the topography and the previous negative experience they had had with storm water runoff of which came from the Petitioner's site, they were concerned about storm water runoff coming when the Petitioner's property was paved as proposed on the Petitioner's site plan.

The Protestants' next witness was Stephen Rosasco, who resides at 3012 Northbranch Road, Baltimore, Maryland, 21224. Mr. Rosasco testified individually and as President of Northwinds Homeowners Association, Inc. that his property also abutts the Petitioner's south side and that he can clearly see onto the Petitioner's property at this time and in the winter when the deciduous trees are without leaves he can see all the improvements on the site, which presently exist on the site. He further testified as to the topography of the land and the runoff from experience from the site onto the townhome community.

Additionally he testified as to the storm water management program of the community as built by the developer and testified that he was familiar with the surrounding area; that he

is a member of the Baltimore County Fish and Game Protective Association; and that he had personally traced the outfall from the storm water runoff pond to the Jennifer branch which feeds into the Gunpowder River and also feeds the fishing stream and pool at the Baltimore County Fish and Game Protective Association.

He also testified as to his experiences of jogging through the park four times per week; as to the natural beauty of the Gunpowder Falls State Park; and the wildlife and game found indigenous to the Park.

He further testified as to the series of pictures taken to show the number of entrances onto Harford Road, including the Petitioner's, in close proximity to one another, to the relatively short site distance both to the north and south due to the fact that Harford Road was one lane in each direction at that point with an unpaved shoulder and no shoulder at some points; and as to traffic congestion at the site anticipated due to the Petitioner's description of its operation, including tow trucks and delivery trucks coming to and from the property.

He testified that the homeowners association was opposed to the Petitioner's project for the reasons to which he testified and proffered a loose resolution opposing the development.

Mr. Rosasco also identified some of the pictures showing the outfall and streams leading to the Jennifer branch and testified on his previous experience working for an insurance company in auto body claims as to the noise, dirt and dust

routinely emanating from such an operation, including Ed and Jim's where he had done business at the Joppa Road location.

The Protestants next called a series of expert witnesses beginning with Mark P. Schlehr, who was accepted as an expert witness real estate appraiser and who had been retained by Northwind Homeowners Association, Inc. He had visited the site on June 21 and July 1, 1988 and visited the neighborhood and reviewed surrounding uses using Protestants' Exhibit No. 13 identifying Hooter's to the south, Graham Memorial Park to the north and Gunpowder Falls State Park, strip commercial on the west side of Harford Road including a 2-bay service garage at the Exxon station and a used car lot.

He characterized the neighborhood as rural residential and testified as to his understanding of Petitioner's requested use for this property for a service garage of auto body repair, including painting, in a BL zone and a second request to park on the DR 3.5 land to the rear of the BL providing a total of 123 parking spaces to support the BL uses.

He had conducted several market studies, the first being at Radcliffe Avenue which parallels York Road to the rear of the Towson Ford repair lot where he found an 11% difference in price on sales in April of 1987 of 910 Radcliffe Road for \$83,500.00 with a \$108.00 ground rent and 9 Winthrop Court, more removed from the auto body repair shop of Towson Ford, for \$91,900.00. He also studied sales in the Loch Raven Village area at 8107 Kirkwall,

sold in April of 1986 for \$78,900.00, immediately adjacent to the Giant Food Store in that shopping center, with 8107 Pleasant Plain sold May 5, 1986 for \$86,600.00 for an 11% difference in property prices brought.

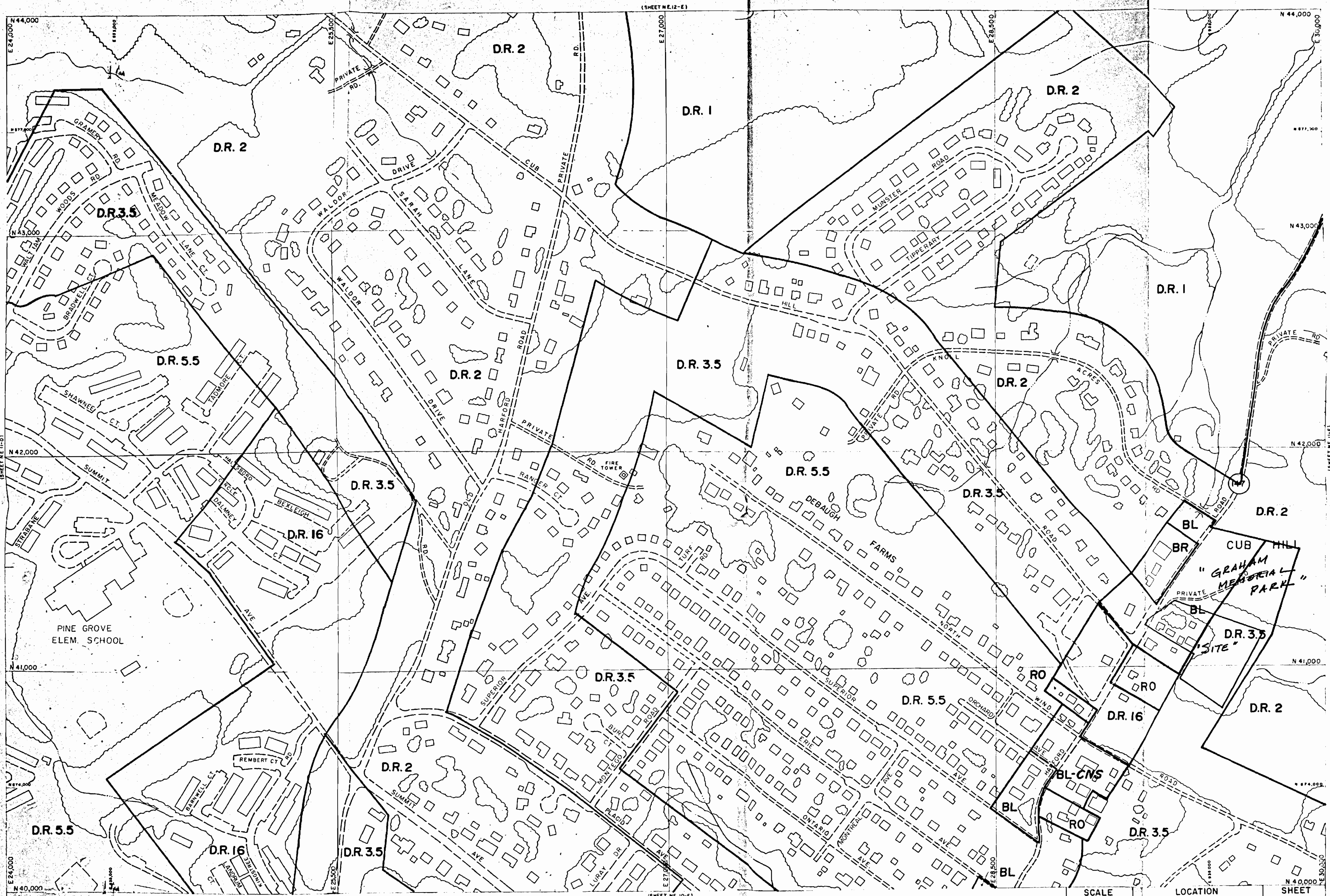
He stated that he was familiar with the location of the parkland and the Fish and Game Protective Association property and Section 502.1 of the Baltimore County Zoning Regulations.

He felt that the Petitioner's use of the BL zone as a service garage would be detrimental to the health and safety of the general community, that it would create congestion on Harford Road in the front due to the proximity of the numerous entrances, the curve of the road and the relatively short site distance. He felt that the Petitioner's use grossly overcrowded the land and that it called for an oversized building which was supported by the parking on the residential use closer to the townhomes and that the parking on the residential land represented the only parking to support commercial use on the east side of Harford Road between Cub Hill Road and the Graham Memorial State Park, and the deepest intrusion of such a use into a residential community. He felt that the Petitioner's proposal would additionally interfere with adequate provisions for parks, water and sewage considering the topography of the land and the falloff of pollution of airborne and waterborne pollution from Petitioner's site to the properties downhill, including Northwinds townhomes and the outfall to the Jennifer branch.

Although the height of Petitioner's building had not been established, he felt that since it sat on the higher ground that it could impact the light and air of the townhomes downhill to the east and he found the Petitioner's request to be inconsistent with the zoning class or the spirit of the Zoning Regulations due to the oversized building as limited by Section 230.12 calling for no more than five workers in the repair and that more than 15 horsepower for all of the machines used in the shop and no more than 5 horsepower for the shop to be more in keeping with the type of commercial uses on the west side of Harford Road in terms of size, scale and scope when contrasted with the Petitioner's proposed use, which would extend into the residential community for the parking to support the oversized commercial use.

He felt that the airborne and sediment carried pollution would have an impact on the parkland, the outfall and the neighbors in the Northwinds townhomes, and felt that the impermeable surface and vegetative retention provisions of the Zoning Regulations would be offended and effected by the greatly increased runoff to the Jennifer branch caused by paving more than 2/3rds of the Petitioner's property if the proposal were granted as requested.

Protestants' next expert witness was Charles J. Klein III who was accepted as an expert witness as a registered professional engineer and an environmental engineer with a



R-SE Q-SW
N-NE M-NW

1988 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 13, 1988
Bill Nos. 144-88, 145-88, 146-88, 147-88, 148-88, 149-88, 150-88
John J. Papp
Chairman, County Council

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING OFFICIAL ZONING MAP

SCALE 1" = 200' ±	LOCATION CUB HILL	SHEET N.E. 11-E
DATE OF PHOTOGRAPHY JANUARY 1986		

Ref No 18

Dec 6 1989 Postcards 88-558 SPHX
 Address
 2416 E. Joppa Rd. 21234
 302 Third Avenue 21234
 3011 North Branch Lane 21234
 3012 North Branch Lane 21234

Verbalents No 1

Johns Hopkins Children's Center

600 North Wolfe Street / CMSC 141 / Baltimore, MD 21205
 (301) 955-2035

Eudowood Division of Pediatric Respiratory Sciences

Gerald M. Loughlin, M.D.
 Gerald J. Rosenfeld, M.D.
 John L. Carroll, M.D.
 William S. Grogan, Ph.D.
 Stephen J. Metz, M.D.
 Mary H. Wagner, M.D.
 Pamela L. Zeman, M.D., Ph.D.
 Jo Ann Moore, R.N., B.S.N.
 Donna W. Porter, R.N., B.S.N.

March 29, 1989

Dr. Montilla
 6217 Harford Road
 Baltimore, MD 21214

RE: Thomas Dougherty
 JHH# 233-49-48

Dear Dr. Montilla:

We had the opportunity to see Thomas again in Pediatric Pulmonary Clinic on March 27, 1989 for follow-up of his January 22nd visit, which was a follow-up from his hospitalization for severe bronchiolitis.

In the interim, his mother reports that he has had no major problems, in particular, no obvious wheezing. She does report, in response to a question Dr. Loughlin has raised at the last visit, he does occasionally have heavy breathing, particularly after vigorous activity. This does not seem to be wheezing, and after vigorous activity. He seems only to be brought on with very vigorous physical activity. He does not otherwise appear to have excessive fatigue or any limitation in his activity. She also reported that she has noticed him choking occasionally when he drinks liquids as thin as water or juices, although he does not do so with milk. He appears to have no other feeding difficulty. The choking is of brief duration, and is not interfering with his activity otherwise.

Since his last visit, he has had a single MMR, thus far without complication. He has no other medications.

On examination, he was a delightful youngster with vital signs including a temperature of 38, pulse 140, respirations 36, BP 70/P, weight 8.06 kg, an increase of 980 grams since last visit, and his height was 72 cms, an increase of 3 cms. The only

Not
 No 4

Johns Hopkins Children's Center

600 North Wolfe Street / CMSC 141 / Baltimore, MD 21205
 (301) 955-2035

Eudowood Division of Pediatric Respiratory Sciences

Gerald M. Loughlin, M.D.
 Gerald J. Rosenfeld, M.D.
 John L. Carroll, M.D.
 William S. Grogan, Ph.D.
 Stephen J. Metz, M.D.
 Mary H. Wagner, M.D.
 Pamela L. Zeman, M.D., Ph.D.
 Jo Ann Moore, R.N., B.S.N.
 Donna W. Porter, R.N., B.S.N.

November 6, 1989

RE: Thomas Dougherty
 JHH# 233-49-48

To whom it may concern,

Thomas Dougherty is a former 27 week prematurely born infant, who developed chronic bronchopulmonary dysplasia following mechanical ventilations for his newborn lung disease. His subsequent course has been compounded by severe bronchiolitis which required hospitalization from December 27 through January 2, 1989.

Basically we feel that Thomas has evidence of chronic lung disease which possibly should improve over the next several years. In any child with this degree of lung injury, it is important that the pulmonary status be watched carefully, and that any subsequent lung injury be prevented. Subsequent lung injury would interfere with the healing process, and it could further compromise the child's baseline lung function.

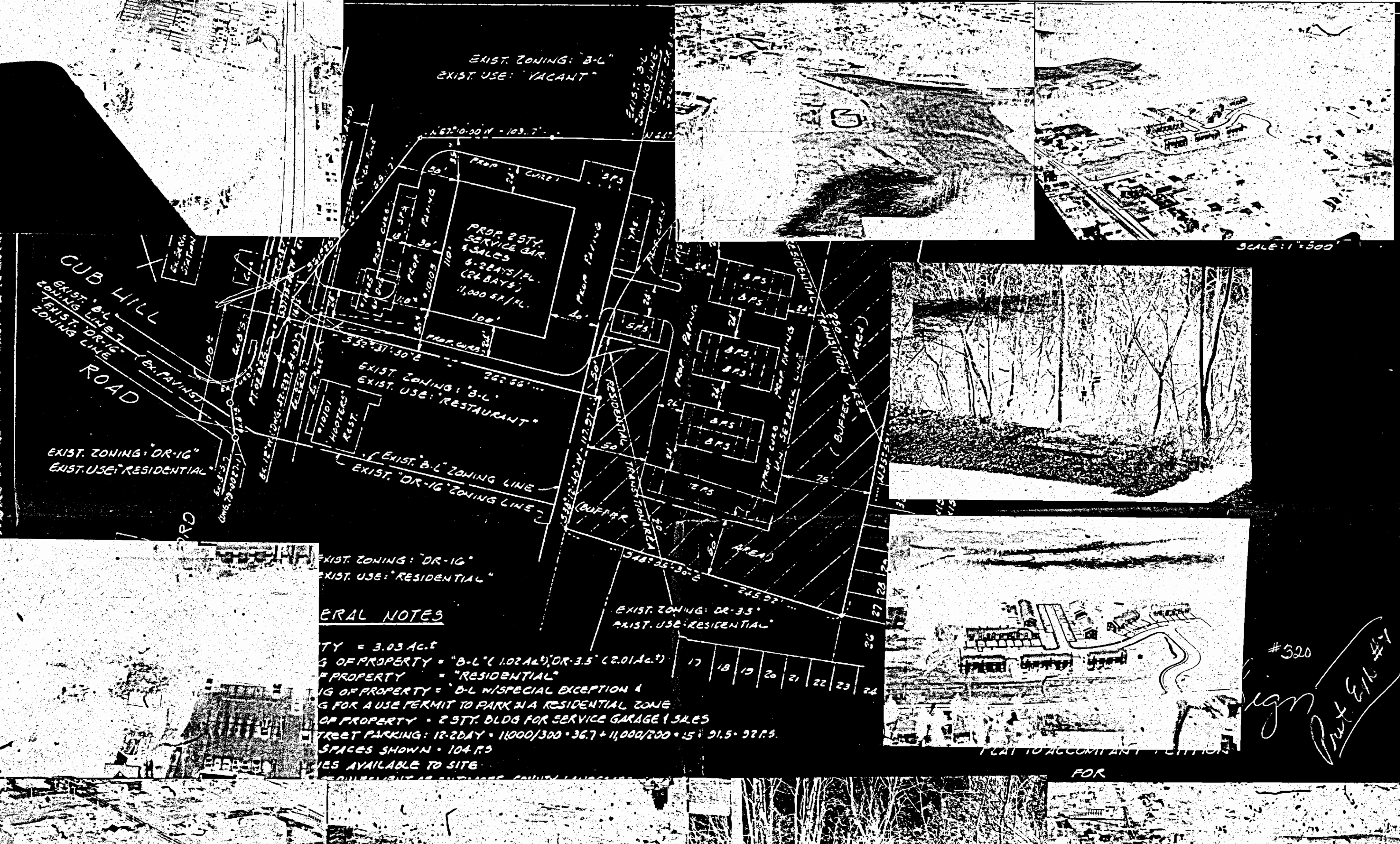
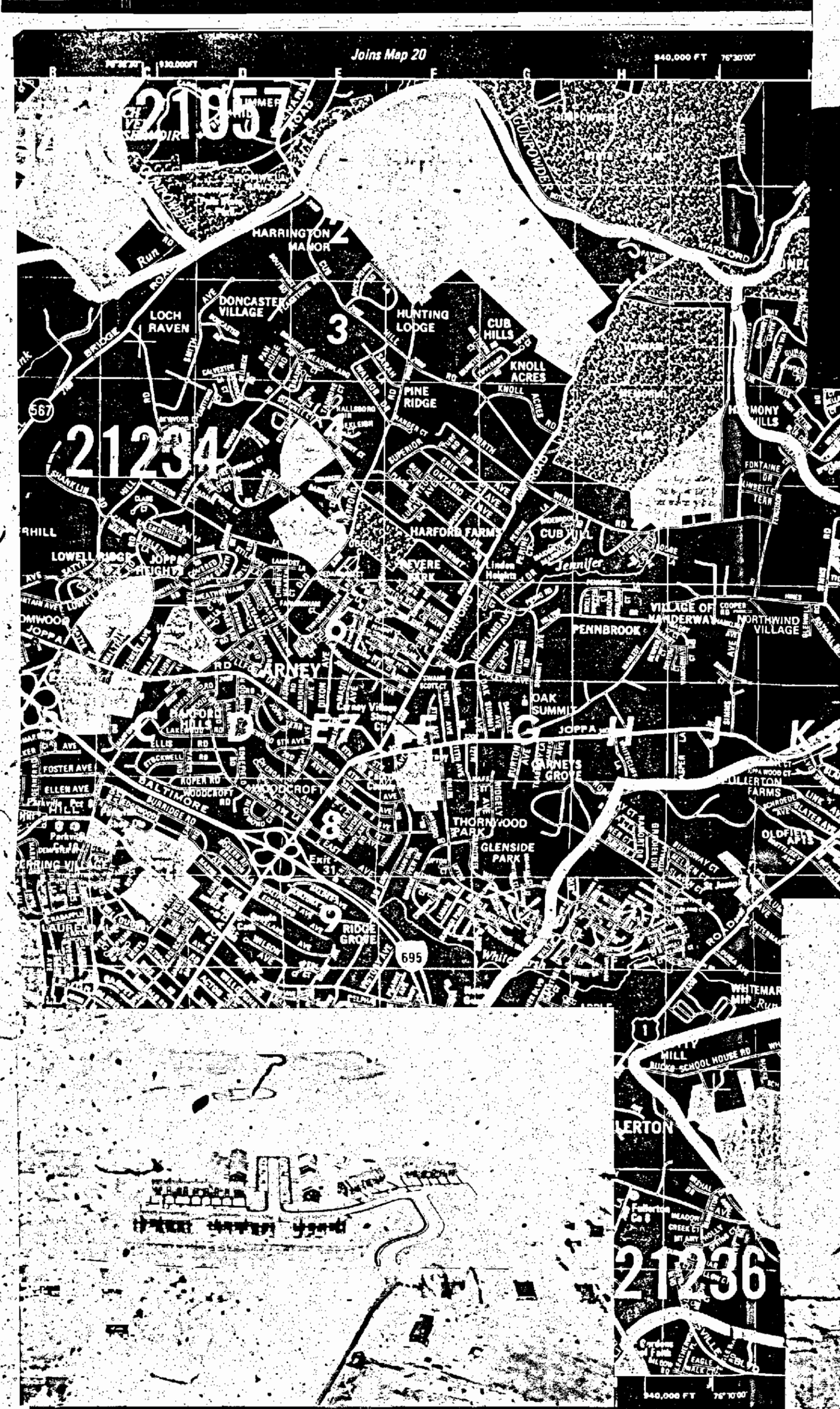
If you have any questions regarding this statement, please feel free to contact me.

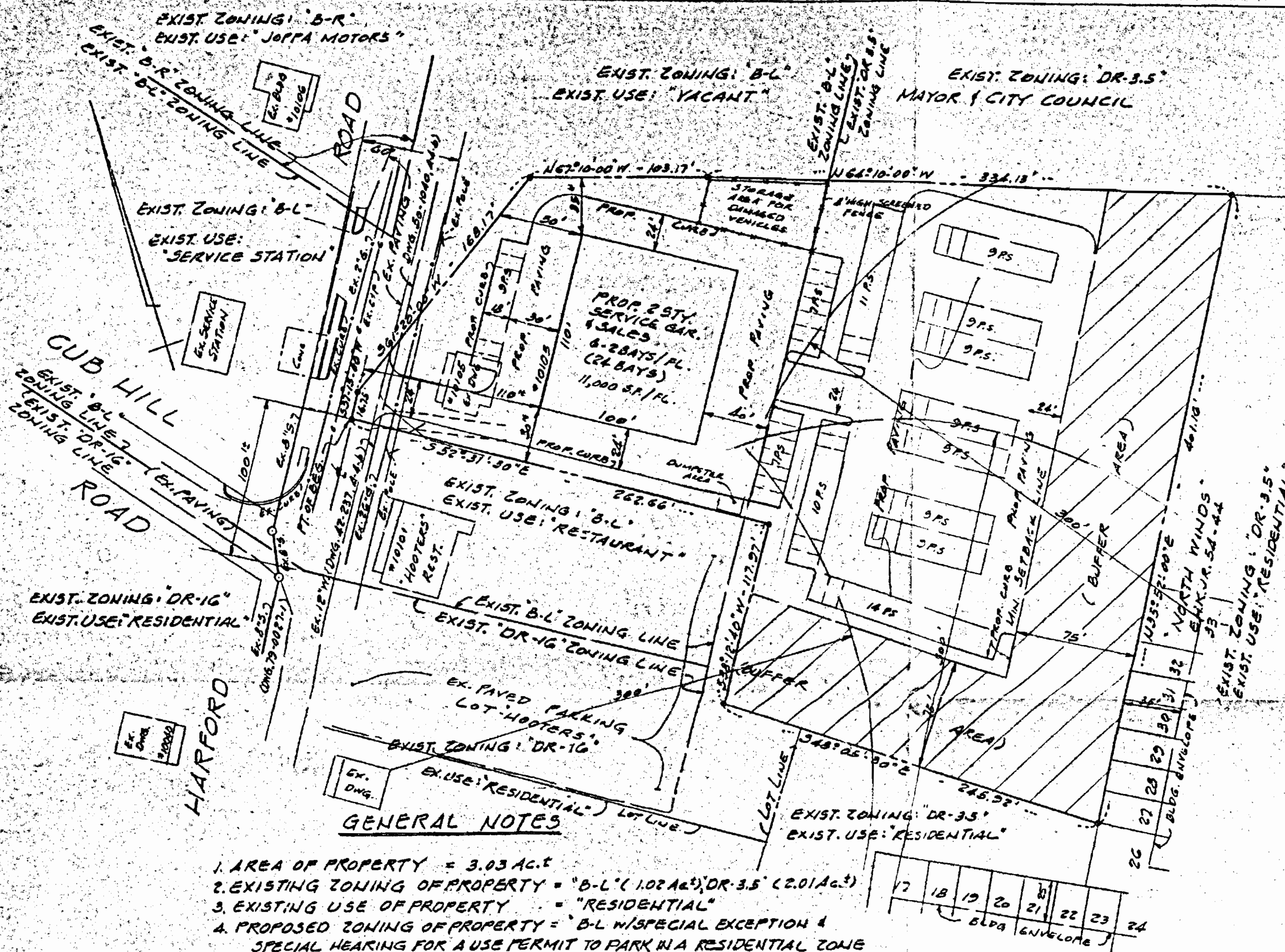
Sincerely,

Gerald M. Loughlin, M.D.
 Associate Professor
 Chief, Pediatric Pulmonary

GHL/MBTS/3
 Dictated: 11/6/89
 Typed: 11/8/89

Not
 No 5





LOCATION PLAN
SCALE: 1"=500'

NOTE:
1. ONLY PASSENGER VEHICLES EXCLUDING BUSES, MAY USE THE PARKING FACILITY IN "DR ZONE".
2. NO LOADING, SERVICE, OR ANY USE OTHER THAN PARKING SHALL BE PERMITTED

PETITIONER'S EXHIBIT 3

- GENERAL NOTES**
1. AREA OF PROPERTY = 3.03 AC.
 2. EXISTING ZONING OF PROPERTY = "B-L" (1.02 AC.) DR-3.5 (2.01 AC.)
 3. EXISTING USE OF PROPERTY = "RESIDENTIAL"
 4. PROPOSED ZONING OF PROPERTY = "B-L W/SPECIAL EXCEPTION 4
SPECIAL HEARING FOR A USE PERMIT TO PARK IN A RESIDENTIAL ZONE"
 5. PROPOSED USE OF PROPERTY = 2.5 STY. BLDG FOR SERVICE GARAGE & SALES
 6. REQUIRED OFF-STREET PARKING: 12-2 DAY = 11000/300 = 36.7 + 11,000/200 = 55 = 91.5 = 92 P.S.
 7. NO. OF PARKING SPACES SHOWN = 123 P.S.
 8. EXISTING UTILITIES AVAILABLE TO SITE
 9. SITE SUBJECT TO REQUIREMENT OF BALTIMORE COUNTY LANDSCAPE MANUAL
 10. PETITIONER REQUESTING A SPECIAL EXCEPTION TO PERMIT A SERVICE GARAGE IN A "B-L" ZONE
 11. PETITIONER REQUESTING A SPECIAL HEARING FOR A USE PERMIT TO PERMIT PARKING IN A RESIDENTIAL ZONE FOR COMMERCIAL USE.
 12. ALL PARTS & MATERIALS TO BE STORED IN AN ENCLOSED AREA
 13. NO MORE THAN 5 PERSONS SHALL BE ENGAGED IN THE REPAIR OR FABRICATION OF GOODS ON THE PREMISES.
 14. NO MORE THAN 5 H.P. SHALL BE EMPLOYED IN THE OPERATION OF ANY ONE MACHINE USED IN REPAIR OR FABRICATION, AND NOT MORE THAN 15 H.P. IN THE OPERATION OF ALL SUCH MACHINES.
 15. STORAGE & DISPLAY OF MATERIALS, VEHICLES, & EQUIPMENT WILL NOT BE MORE THAN 5' IN FRONT OF THE REQUIRED FRONT BUILDING LINE.
 16. ALL PROPOSED IMPROVEMENTS ARE WITHIN THE "B-L" ZONE.
 17. DAMAGED VEHICLE TO BE STORED IN ACCORDANCE WITH SECTION 405 A.
 18. BUFFER AREA TO BE LANDSCAPED IN ACCORDANCE WITH BALTO. CO. SPECS.

PLAT TO ACCOMPANY PETITION
FOR
SPECIAL EXCEPTION
SPECIAL HEARING
320
REVISED PLANS
*10105 HARFORD ROAD

11TH ELECT. DIST. BALTIMORE COUNTY, MD.
SCALE: 1"=50' FEB. 27, 1988
REV. JUNE 22, 1988
PAUL LEE ENGINEERING, INC.
304 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204



Edith Pearce, et al
Case No. 88-508-SPH

5. The Petitioner shall develop a landscape plan which shall be approved by the Baltimore County landscaping planner for the Office of Current Planning.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt
Lawrence E. Schmidt, Acting Chairman

William T. Hackett
William T. Hackett

Harry E. Buchmeister, Jr.
Harry E. Buchmeister, Jr.

MICHAEL B. SAUER
ATTORNEY AT LAW

SUITE 802, EQUITABLE TOWSON BUILDING, TOWSON, MD. 21204
(301) 296-2151
December 30, 1988

Appeals Clerk
Office of Zoning Commissioner
for Baltimore County
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition For Special Exception and Petition
For Special Hearing
Edith Pearce, et al, Petitioners
Case No.: 88-508SPHX

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE-REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 059875
DATE 12-30-88 ACCOUNT 201-006-4150
AMOUNT \$ 205.00
RECEIVED FROM MICHAEL B. SAUER
C/O - 8151
APPEAL FILING - CASE # 88-508 SPHX
B 8105*****205001a 5638F
VALIDATION OR SIGNATURE OF CASHIER
PHYLLIS COLE FRIEDMAN, Counsel for Baltimore County
County Board of Appeals

RECEIVED
12-30-88/cw
ZONING OFFICE

IN RE: PETITION FOR SPECIAL
EXCEPTION & SPECIAL
HEARING NES HARFORD
ROAD 100' NE OF
C/L of Cub Hill Road
10105 Harford Road
11th Election District
6th Councilmanic District
Edith Pearce, et al
Petitioners

* BEFORE THE
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* APPEAL FROM ZONING
* COMMISSIONER

* CASE NO.: 88-508SPHX

ORDER FOR APPEAL

MR. CLERK:

Kindly enter an appeal to the Board of Appeals for Baltimore County from the following decision and order of the Zoning Commissioner for Baltimore County:

1. Decision and Order of the Zoning Commissioner dated November 30, 1988, wherein the Petition For Special Hearing for a use permit to park commercial and business automobiles in a residential zone was denied.

Enclosed is check in payment for costs of appeal.

Michael B. Sauer
MICHAEL B. SAUER
401 Washington Avenue
Suite 802
Towson, Maryland 21204
(301) 296-2151
Attorney for Petitioners,
Edith Pearce, Julia
Blacklock and H & H
Realty

RECEIVED
12-30-88/cw
ZONING OFFICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of December 1988, that a copy of the foregoing Order For Appeal was mailed to Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204; Steven J. Rosasco, 1700 Gas & Electric Building, P.O. Box 1475, Baltimore, Maryland 21203, Attorney for Protestants; Phyllis Cole Friedman, People's Counsel for Baltimore County, Room 223, Courthouse, Towson, Maryland 21204; and the County Board of Appeals, Room 315, County Office Building, Towson, Maryland 21204.

Michael B. Sauer
MICHAEL B. SAUER

IN RE: PETITION FOR SPECIAL EXCEP-
TION & SPECIAL HEARING
NES Harford Road 100' NE OF
C/L of Cub Hill Rd.
10105 Harford Road
11th Election District
6th Councilmanic District
Edith Pearce, et al
Petitioners

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
CASE # 88-508 SPHX

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Petitioners herein request a Special Exception for a Service Garage and a Special Hearing to approve a Use Permit to park commercial and business automobiles in a residential zone, namely, D.R. 3.5 as described on Petitioners' Exhibits 3 and 4.

The Petitioners, Edith Pearce, Julia Blacklock and H & H Realty were represented by their attorney, Michael B. Sauer. Mr. Charles E. Hare testified as a general partner of H & H Realty. Mr. James Hatfield appeared as a general partner of H & H Realty. Mr. Paul Lee, a registered professional engineer, testified for the Petitioner. Also appearing for the Petitioner were Howard W. Chambers and Julia Blacklock.

Appearing as Protestants were members of the Northwinds Homeowners Association, Inc., (three pages of signatures attached hereto) and Stephen J. Rosasco represented by Michael P. Tanczyn, Esquire and Stephen J. Rosasco, Esquire. The following witnesses testified on behalf of the Protestants: Jeffrey Savers, as an officer of Northwinds Homeowners Association, Inc., Mrs. Dougherty, Stephen Rosasco, Mark P. Schlehr, a Real Estate Appraiser, Charles J. Klein III, Registered Professional Engineer, and an Environmental Engineer on the Chesapeake Bay, and William F. Kirwin, a Landscape Architect and Environmental Land Planner.

The subject property known as 10105 Harford Road is located on the northeast side of Harford Road north of Cub Hill Road in Baltimore County, Maryland. It consists of 3.03 acres and is presently split zoned B.L. and DR 3.5, all as shown on Petitioner's Exhibit 4. At present, the property is improved by a two-story frame house, a wooden barn, a greenhouse and other small out buildings. The rear of the property is heavily wooded extending to the perimeters of the site.

The property is located in a small commercial area along Harford Road. It is adjacent to and north of a large parcel of land owned by the Mayor and City Council of Baltimore. To the south of the property along Harford Road is Hooters Restaurant which is also zoned B.L. Across Harford Road and running north along Harford Road there are several commercial businesses which are all zoned either B.L. or B.R. The subject property is shaped like an "L" and the larger portion is to the rear in the D.R. zone. A portion of the rear of the property adjoins a townhouse community of 55 homes known as "Northwinds" zoned D.R. 3.5. The rear yards of approximately 13 of these townhouses adjoin part of the subject property at the rear of the "L" section of the property (the southeast corner). The subject property presently accesses on to Harford Road.

At the hearing, Petitioners produced testimony in support of their request for a special exception and for the use permit for parking in a residential zone. Mr. Charles E. Hare testified he was a general partner of H & H Realty. The property was purchased for development to be used as a service garage for the repair of automobiles and to conduct sales of automotive parts and accessories at the location. He

stated that he has been engaged in the body and fender repair business for over 20 years and presently owns and operates a service garage at Audrey Avenue on Joppa Road in Baltimore County. He also testified he operates the same type of business at the other location and is familiar with the requirements relating to the storage of disabled vehicles, the necessity for storage of cars and intends to conduct the same type of business at this new location. He testified that he would do whatever is necessary to conform to the requirements of County Code or the Baltimore County Zoning Regulations.

The site plan submitted by Mr. Hare described a two-story building in the B.L. zoned portion of the property. While the plan states a two-story building, the rear of the building will be at that grade level for the second story. Testimony established the topography of the property to be an up-hill grade from Harford Road to approximately the B.L. zone line in the rear. Due to this grade, the rear of the building will be one-story in height. As set out on the plan, the building will contain service bays on each floor, an office, and a sales area for the sale of automotive parts and accessories.

There will be 24 service bays arranged with 12 bays on each floor. The 12 bays are determined by the 6 lanes across each floor with two (2) service areas in each lane.

Mr. Hare testified that in addition to doing automotive repair work, the building would also be used for the sale of automotive parts and accessories and that 10 of the service bays would be used for this purpose. He stated there is a strong demand in the industry for the sale of after market automobile parts which would be purchased by consumers, as well as other tradesmen and suppliers in the industry.

His plans are to assign up to one-half of the building for the sale of these products. Although initially he does not anticipate full use of the area until the sales market is established.

All of this testimony is very confusing. The Petitioner, clearly, intends to use some part of the business in a retail sales operation. It appears that as much as one floor of the building could be used for retail sales. Then, again, if the retail sales business fails, the entire building will be used as a service garage. I am not sure the Petitioner knows what he wants.

The Petitioner claims the site plan provides for the off-street parking required by the Baltimore County Zoning Regulations. The required number of spaces is 92 and 123 spaces are provided. To support the commercial use and to meet the requirements of parking regulations, Mr. Hare testified that he is seeking a parking use permit in the residential zone. The parking use permit is to use the rear of the property for parking which is both zoned D.R. 3.5 and in a residential transition area. The plan provides that the parking area is being requested for passenger vehicles only. Mr. Hare stated that he would not use the area for the storage of abandoned or disabled vehicles.

The residential zoned area wherein parking is requested provides for a buffer area 75' in width which runs along the entire rear of the property and particularly where the property adjoins the townhouses in the southeast corner. The buffer area is wooded and provides some natural screening of the proposed parking lot. Mr. Hare testified the existing buffer area in its natural state precluded him from being able

to see the existing townhouses when staling at locations on the property 75' from the boundary lines.

Mr. Hare testified, based on his knowledge of 502.1 that the proposed use for the site would not violate any of the requirements found in subsections A through H of Section 502.1.

On cross-examination, Mr. Hare stated that he had four service bays at his location on Joppa Road and that at the Harford Road location he proposed to have six on the lower level and six on the upper level and that most work would be drive-in type. He testified that his business does not burn off parts, nor do they use power saws, air guns, hammers, or grinders. He stated that his procedure for vehicles found leaking fluids would be to put a pan underneath the leak. He testified that his operation would not, in his opinion, create dust and/or fumes, and that both his present shop and the proposed shop would not be air conditioned. That ear and respiratory protection are customarily worn by his workers and that fiberglass was routinely utilized in their operation.

On cross examination, Mr. Hare said he did not know the speed limit of Harford Road, nor the road frontage on Harford Road, nor anything about a comment concerning a need for a deceleration lane from the Maryland State Highways. He testified that acetylene and oxygen were used in the welding and burning operations and were kept on the premises in limited amounts.

When Mr. Hare was questioned about the site plan, he testified that the 14 spaces shown to the rear of the building would be used for estimates. He stated that the other parking spaces would be used for customers and for delivery trucks.

Mr. Paul Lee testified as the Petitioners' other primary witness. He stated that he prepared the plan on behalf of the Petitioners. It is marked as Petitioners' Exhibit #3. His testimony was basically that the requested special exception and use permit for parking would not in any way be detrimental to the health, safety or general welfare of the locality involved and that the proposed plan of development would not be contrary to the requirements set out in paragraphs (a) through (h) of Section 502.1 of the B.C.Z.R. In addition to the requirements of Section 502.1 being met, Mr. Lee testified, that from his investigation, information obtained and inspection of the site that he knew of no particular facts or circumstances tending to be adversely affected by this proposed use. Mr. Lee testified the proposed use would be beneficial to the community. In his opinion, the proposed use of the property was in harmony with the purpose and intent of the existing comprehensive zoning plan in the area.

On cross examination, Mr. Lee testified that he had checked the zoning, surveyed the existing area and met with his clients on several occasions, both on and off the site. That he found the zoning to the property to be split B.L. for the front and D.R. 3.5 for the back as shown on Petitioner's Exhibit 1. The proposal is for a 2-story building to house a service garage and retail sales operation. He found that the property fell topographically from the zoning line toward Harford Road and to the rear of the property from the B.L. line. He found the rise from Harford Road to be approximately eight (8) to ten (10) feet and the fall from that point to the rear residential property line to be a twenty (20) to twenty-five (25) foot drop.

Mr. Lee stated that Hooters did exactly what the Petitioners seek to do in placing their parking on a D.R. 16 lot next to their restaurant. He testified that other uses in the neighborhood on the west side of Harford Road were a service station, another service garage, and a used car sales center. Mr. Lee testified he had not done any type of soil study or storm water management planning. He testified that the parking calculations were done under the old B.C.Z.R. He said he had been to the site and could not see the townhomes from the site. He said that the plans called for a 100 x 110 foot building and landscaping in the buffer area. He did not know the proposed height of the building, although he knew that it was proposed to be a two-story building with the lower level entry from Harford Road. Mr. Lee also stated that the only unique aspect to this site was the park located nearby in the D.R. 3.5 zone.

Several witnesses testified on behalf of the Protestants, namely Mr. Jeffrey Sauers, who is an officer of Northwinds Homeowners Association, Inc. and a resident of 3006 Northbranch Lane. Mr. Sauers, along with Mrs. Dougherty, testified that the decks and living areas of their homes were oriented toward the rear of the townhomes. They both testified at length that they do not want the service garage and they object strongly to the parking lot in the residential zone. They claim they have a clear view of this property when the leaves are off of the deciduous trees. They said they can see all of the outbuildings on the Petitioner's property and that due to the topography, they were concerned about storm water runoff when the Petitioners' property was paved as proposed.

Mrs. Cheryl Dougherty, a resident of No. 4 Northford Way, testified that her son had been born prematurely, had underdeveloped immature lungs and was a risk for certain threats posed due to pollution in the environment. She said that his Pediatrician recommended that the son not be exposed to certain hazardous environments, including dust, smoke and other types of pollution.

Mr. Stephen Rosasco, who resides at 3012 Northbranch Road, Baltimore, Maryland 21224, testified individually and as President of Northwinds Homeowners Association, Inc. He stated his property abuts the Petitioner's property on the south side and that he can, clearly, see onto the Petitioner's property. He further testified to the topography of the land. He believes there are problems on his property and within the community caused by the storm water run off and the Petitioners' project will make it worse. He does not want either use and is very upset with the parking area in the D.R. zone.

Mr. Rosasco stated he was not happy with the close proximity of the business entrances onto Harford Road and the short site distances on Harford Road. He believes the road needs improvements because of the unpaved shoulders and traffic congestion. He does not believe tow trucks can safely use this site.

Mr. Mark P. Schlehr, a Real Estate Appraiser, testified to market values in this general area and compared them to values in the Towson area, next to Towson Ford. He believes the auto body repair business in general and, more specifically, the Petitioners' business, reduces residential home values.

He testified that he was familiar with the location of the parkland and the Fish and Game Protective Association property and Section 502.1 of the B.C.Z.R.

He felt that the Petitioners' use of the B.L. zone as a service garage would be detrimental to the health and safety of the general community. That it would create congestion on Harford Road due to the proximity of the numerous entrances, the curve of the road and the relatively short site distance. He felt that the Petitioners' use overcrowded the land and that it called for an oversized building which was supported by parking in the residential zone. That the parking on the residential land represented the only parking to support a commercial use on the east side of Harford Road between Cub Hill Road and the Graham Memorial State Park.

The Protestants' next witness was Charles J. Klein III who was accepted as an expert witness as a registered professional engineer and an environmental engineer with a specialization in the Chesapeake Bay.

Mr. Klein had been present for the case presentation on June 23, 1988, July 1, 1988 and July 6, 1988 and had heard Mr. Hare's testimony about his proposed operation. He had visited the site on numerous occasions and taken pictures on June 26, 1988. He stated that he had done a detailed analysis of the soils in the area and was familiar with the soils found on the site which he characterized as being a glen elg type soil which would range very well but be subject to frost heave because of their excellent draining qualities.

Mr. Klein was concerned about the paving of 2/3rds of the site in terms of what that would create in terms of storm water volumes which he had calculated as requiring 26,450 cubic feet of storage area.

Mr. Klein said he had done a review of the two, ten and 100 year storm calculations, he calculated an area of 60 foot square, 75 foot square or 82 foot square respectively; as being required exclusive of berms and catchment areas. No area is provided on Petitioner's Exhibit No. 3. He claims that in order to put the lower level entrance for the building from the Harford Road side, substantial excavation would have to occur prior to the paving which would alter the contours of the property.

He felt that the existing trees within the buffer area are inadequate due to the topography of the land. The clearing of the site for the building and paving areas proposed with the prevailing winds in the area coming from the west-northwest concerned him. He did not describe this wind as unusual to this property. He believes the wind will carry the pollution in the form of airborne dust or waterborne sediment downhill to the townhome community and to the Jennifer branch through the storm water outfall.

He said he considered the provisions of Section 502.1 of the B.C.Z.R. and found the Petitioners' proposed use to be incompatible with the existing uses. He stated that he is opposed to the project, from an environmental standpoint, in terms of the noise to be generated and the effect on the atmosphere from the hydrocarbons and fluorocarbons generated by the Petitioners' proposed activity and the storm water runoff. These problems are associated with every service garage in every zone. He believes there will be soil erosion on and off site although no plan for storm water has been presented.

The final witness for the Protestants was William F. Kirwin who was accepted as an expert witness, as a landscape architect and

environmental land planner. Mr. Kirwin testified that he was familiar with the site. He said that this site had several unique aspects; namely, the proximity to the parkland and the Fish and Game Protective Association property and the character of the neighborhood, which he found to be rural and residential.

Mr. Kirwin had many opinions about the subject site. Most of his opinions were negative. Mr. Kirwin stated that the Petitioner's project was overscale and would tend to overcrowd the land.

He testified that the residential transition areas (R.T.A.) are sacrosanct and are to be used only for parking and no other use. He said the Petitioners' representation that they would use 14 spaces to the rear of the BL zone line for estimates for cars driven in for repairs is unacceptable in an R.T.A. area.

There are many opinions in this case but few that I agree with totally. Most opinions are colored by position. I do agree with Mr. Kirwin that the R.T.A. area and parking therein may not be used to support the estimating aspect of the Petitioners' business.

Mr. Kirwin continued by saying that he was familiar with Section 502.1 and that the Petitioners' project would overcrowd the land. He believes that it would create a traffic problem due to inadequate site distance and three entrances within 70 feet of one another, all on Harford Road.

Mr. Kirwin felt that the buffer proposed was inadequate to prevent noise and dust from being blown onto the townhomes and toward the Jennifer branch. He felt that the buffer was secondary growth on 12 to 13 foot centers, with two to three inch trees, which were all deciduous and which would not adequately buffer this site. He felt that the

proposed building, being located on higher ground, could block the light and air of the townhomes and that the storm water runoff would violate the imperviable vegetative retention provisions of the B.C.Z.R. He said the Petitioners' use was not consistent with the B.C.Z.R. or the spirit of the regulations for the BL zone considering the restrictions found in Section 230.12 calling for no more than five repairs and a horsepower limitation on the machinery. He believes the Petitioners' proposal for a 100 x 110 foot building is grossly out of scale for the stated needs.

The first issue to be addressed will be the Petition for Special Exception for a Service Garage in the BL zone.

A special exception is a granting by the Zoning Commissioner or Deputy Zoning Commissioner, pursuant to the existing provisions of the Baltimore County Zoning Regulations (B.C.Z.R.). It is subject to the guidelines and standards contained in the provisions of the B.C.Z.R. A special exception is a use which has been predetermined by the Baltimore County Council to be conditionally compatible with the uses permitted as of right in a particular zone. The Zoning Commissioner or Deputy Zoning Commissioner must in each case, decide under the specific standards set forth in Section 502 of the B.C.Z.R. whether the presumptive compatibility does, in fact, exist in this case. See, Rockville Fuel and Feed Company, Inc., v. Board of Appeals of the City of Gaithersburg, 257 Md. 183, 262 A.2d 499 (1970). Furthermore, "... there cannot be a grant of a Special Exception unless the B.C.Z.R. provide that the conditional use sought is permissible in the zone in which the land involved is situated. ..." Schultz v. Pritts 291 Md. 1, 432 A.2d 1319 (1981). The duty of the Zoning Commissioner or Deputy

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Zoning Commissioner is to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the zoning plan.

The Petitioner has the burden of adducing testimony which will establish that the Petitioner's use meets the prescribed standards and requirements. He does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community and, furthermore, if the Petitioner shows to the satisfaction of the Zoning Commissioner or Deputy Zoning Commissioner that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, then the Petitioner has met the burden of proof. See Anderson v. Sawyer, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974).

The Petitioners and their witnesses testified that, based on his professional experience, it was his opinion that the business would not cause any adverse impact and would not create traffic congestion over and above what already exists. He testified that the conditions delineated in Section 502.1 (B.C.Z.R.) will be satisfied.

Mr. Lee testified that, in his opinion, the proposed use at the subject property would not be detrimental to the health, safety, and general welfare of the community, and that the conditions delineated in Section 502.1 of the B.C.Z.R. will be satisfied.

The Protestants' witnesses disagree. They believe there will be a great deal of adverse impact. The Protestants sent in many witnesses to describe their unhappiness with the project and their reasons therefor in believing there is adverse impact.

-13-

The issue in the Special Exception is whether or not the requirements of Section 502 of the B.C.Z.R. have been successfully met by the Petitioner. The cases clearly establish that "... the appropriate standard to be used in determining whether a requested special exception use would have an adverse affect and, therefore, should be denied is whether there are facts and circumstances that show the particular use, proposed at the particular location, would have any adverse affect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 at 1327 (1981).

The Court went on to say in Schultz that,

"... the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But, if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious and illegal." (at pg.1325)

The Petitioner must only show to the satisfaction of the Zoning Commissioner that the proposed use would be conducted without real detriment to the community to meet his burden. See Turner v. Hammond,

-14-

270 Md. 41, 310 A.2d 543 (1973). When the Petitioner produces credible and probative evidence on all of the specific issues established by Section 502.1, then a special exception should be granted.

The debate over the Special Exception was very forceful and strong. The parties both believe they are correct. The facts are that the Petitioner's use is a service garage and retail sales. The retail sales would be permitted as a matter of right. The service garage is in a B.L. zone and the evidence about dust, noise and pollution are not unique to this service garage. They are conditions every service garage creates. As the Court said in Anderson, these effects may lessen the values of homes or be inherently disturbing, but they are not any different than those generated in the B.L. zone by any service garage and, therefore, not a reason to deny a Special Exception.

The Protestants also offered a great deal of testimony about the impact of this use on the surrounding community, i.e., traffic concerns, water quality, storm water run off, topography of the land, location of adjoining homes, and fire problems. I believe these issues are very important, however, the evidence does not tend to prove that a service garage on this B.L. zoned site creates any more adverse impact above and beyond those inherently associated with a service garage in any B.L. zone. The facts are there are service garages directly across the street.

For the reasons set forth above, a service garage should be granted for this site in the B.L. zone by special exception. The site will require a new plan and must be restricted. Turning now to the issue of the parking in a residential zone. This issue turns on the

-15-

application of Section 409 of the B.C.Z.R. and the proper parking guidelines to be applied in this case.

There was some discussion by the parties concerning the proper version of Section 409 to be applied. In my opinion, there is no debate. The current provisions of Section 409 of the B.C.Z.R. apply in this matter. The new provisions were enacted in March of 1988 and became effective prior to this hearing. In this case there is no prior CRG approval and there have been no building permits issued for the project.

The site must comply with the current provisions of Section 409 and all parking must be recalculated to comply with the current provisions. The restriction placed on this Order will correct any problem with parking.

Now turning to the third issue, the use permit to park automobiles for a business use in a residential zone. The authority for this use permit can be found in Section 409.8.B.1.

Clearly, the Zoning Commissioner has the authority to grant use permits for the use of land in a residential zone for parking facilities to meet the requirements of Subsection 409.6. See Section 409.8.B.

The Petitioners are proposing to use the rear portion of the subject property as a parking facility to support the business use in the B.L. zone. The parking lot is also in a residential transition area. The parking lot could be permitted in R.T.A. by Section 1B01.1.B1.a.2(c) of the B.C.Z.R. The Petitioners have provided for a buffer area in the residential zone as required by the Regulations, Section 1B01.1.B1.b.3(b). This buffer is not properly designed and the

-16-

Baltimore County Landscape Planner shall review it and approve a new plan.

Much of testimony from both parties and one of the sources of greatest disagreement is this parking area. I will not repeat all of that testimony, again, but, clearly, the Protestants believe the parking area is the source of several of the major problems. They claim it allows the service garage to be too large and it will create many light, air and storm water problems.

According to the B.C.Z.R. the Zoning Commissioner may either deny or grant a use permit conditioned upon:

- (1) His findings following the public hearing;
- (2) The character of the surrounding community and the anticipated impact of the proposed use on that community;
- (3) The manner in which the requirements of Section 409.8.B.2 and other applicable requirements are met; and any additional requirements as deemed necessary by the Zoning Commissioner in order to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of Section 502.1 of these regulations.

The parties have argued the facts relating to this use permit as compliance with the letter of each subsection of 409.8.B and 502.1, (a) thru (h), is an end in of itself. This type of debate fails to recognize the spirit and intent of the zoning regulations.

For instance, the requirements of Section 409.8.B.2., (a) thru (g), are mandatory, but as Section 409.8.B.1.e. (2) makes clear the issue is also impact on the community. The level of review is to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the community, Section

-17-

409.8.B.1.e.(3), respecting the other requirements of Section 409 and Section 502.

The Section 409 impact level is somewhat different than regular Section 502.1 review of a special exception. Clearly, those requirements of Section 502.1 must be met, but the review is controlled additionally by Section 409.8.B. These added conditions and review are different from and in some cases more encompassing than Section 502.1. (See Section 409.8.B.1.e)

I believe the evidence presented by the Petitioners concerning the impact of the parking facility in the residential zone at this site is unconvincing and does not establish a case for relief pursuant to Section 409.8.B.1. I cannot find as a matter of fact that all of the elements of Sections 502.1 and 409.8.B. have been established by the Petitioners' evidence.

The Petitioner had the burden of proof to establish that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community. The Petitioners failed to provide the evidence to meet that burden.

For the reasons set forth above the Petition for Special Hearing for a Use Permit for parking business automobiles in a residential zone should be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the Petition for Special Exception should be granted and restricted and the Petitioner for Special Hearing should be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 30th day of Nov., 1988 that the Petition

-18-

for Special Exception for a Service Garage be and is hereby GRANTED, subject to the following restrictions:

1. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. A new site plan shall be submitted with any application for building permit that shows all development only in the B.L. zoned portion of the site, including all parking necessary to support the proposed operation. All parking shall be developed based upon the current requirements of the B.C.Z.R.
3. All parking lot lighting shall be no more than 108 feet above-grade. All exterior lighting shall be directed downward and shall not defuse onto any residential property.
4. Compliance with the comments submitted by the Baltimore County Zoning Plans Advisory Committee (ZAC), which are adopted in their entirety and made a part of this Order.
5. Pursuant to Section 502.2 of the B.C.Z.R. a new deed incorporating the reference to this case and the conditions, restrictions and regulations listed herein shall be recorded among the Land Records of Baltimore County, within 180 days of the date of this Order, and a copy of the recorded deed shall be delivered to the Zoning Commissioner.
6. Pursuant to Section 502.3 of the B.C.Z.R., this Special Exception may be utilized within five (5) years of the date of this final Order.
7. Plans for the proposed project must be submitted for CRG approval prior to the issuance of any building permits.
8. The Petitioner shall submit for approval to the appropriate Baltimore County agencies an appropriate storm water management plan. A

-19-

certified copy of the approved plan shall be submitted to this office for inclusion in the case file.

9. Petitioner shall provide fencing for the storage area for damaged vehicles in accordance with the following specifications:
 - a) Fabric Material -
 - 1) Vinyl coated steel chain link fabric in accordance with ASTM - 668 - type 2B.
 - 2) Steel core wire shall be galvanized in accordance with ASTM - 641 - 71A.
 - 3) Color shall be a dark, earth tone.
 - 4) The fabric type shall be:
 - a) Standard industrial type;
 - b) 2" +/- 1/8";
 - c) 9 gauge
 - d) 0.148" core wire diameter
 - e) 1,290 lbs. breakload
 - 5) The fabric selvage shall be knuckled on the top and bottom.
 - b) Post and Framing - All steel parts shall be hot-dipped galvanized as per ASTM, prior to vinyl coating. Thickness of vinyl coating shall be 10-14 mills applied by fusion bonding.
- c) Slating Specifications -
 - P.D.S. (Privacy Decorative Slating) or equal. 0.951 density polyethylene hollow rectangular tube that fits snugly into the weave of chain link fabric. The melt index value is .35/.40 environmental stress crack resistance (ESCR). The low temperature brittle point is -76 degrees Fahrenheit.

10. When applying for a building permit, the site plan and landscaping plan filed must reference this case and set forth and address the restrictions of this Order.
11. The Petitioner shall develop a landscape plan which shall be approved by the Baltimore County Landscaping Planner for the Office of Current Planning.

IT IS FURTHER ORDERED that the Petition for Special Hearing for approval of a Use Permit to park business and/or commercial automo-

-20-

biles in a residential zone, namely, a D.R. 3.5 zone, as described on
Petitioners' Exhibit 3, shall be and is hereby DENIED.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER OF
BALTIMORE COUNTY

JRH:mmm
cc: Peoples Counsel
Michael B. Sauer, Esquire
Michael P. Tanczyn, Esquire
Stephen J. Rosasco, Esquire

ORDER RECEIVED FOR FILING
Date 3/28/88
By [Signature]

-21-

#320
PETITION FOR SPECIAL HEARING
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: **88-508-SPHX**
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 to park in a residential zone (DR 35)

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:

H & H Realty
(Type or Print Name)

by: *Charles E. Hare*, a Partner
Signature

8902 Audrey Avenue
Address
Baltimore, Maryland 21234
City and State

Attorney for Petitioner:

Michael B. Sauer, Esquire
(Type or Print Name)

Michael B. Sauer
Signature

802 Equitable Towson Building
Address
Towson, Maryland 21204
City and State

Attorney's Telephone No.: 296-2151

Legal Owner(s):

Edith Pearce
(Type or Print Name)

by: *Charles E. Hare*, a Partner
Signature

Julia Blacklock
(Type or Print Name)
Julia Blacklock
Signature

601 Hampton House, 204 E. Joppa Rd.
Address
Towson, Maryland 21204 825-2513
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Michael B. Sauer, Esquire
Name
802 Equitable Towson Bldg., 296-2151
Address
Phone No.

ORDERED BY The Zoning Commissioner of Baltimore County, this 23rd day of MARCH, 1988, 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 23rd day of JUNE, 1988, at 10 o'clock A.M.

J. Robert Haines
Zoning Commissioner of Baltimore County.

ESTIMATED LENGTH OF HEARING: 15 MIN.
E.C.O.-No. 1 AVAILABLE FOR HEARING
ALL MON./TUES./WED. - NEXT TWO MONTHS
REVIEWED BY: *[Signature]* DATE: 3-9-88

#320
PETITION FOR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: **88-508-SPHX**
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 Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for Service Garage and Sales

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

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

H & H Realty
(Type or Print Name)

by: *Charles E. Hare*, a Partner
Signature

8902 Audrey Avenue
Address
Baltimore, Maryland 21234
City and State

Attorney for Petitioner:

Michael B. Sauer, Esquire
(Type or Print Name)

Michael B. Sauer
Signature

802 Equitable Towson Building
Address
Towson, Maryland 21204
City and State

Attorney's Telephone No.: 296-2151

Legal Owner(s):

Edith Pearce
(Type or Print Name)

by: *Charles E. Hare*, a Partner
Signature

Julia Blacklock
(Type or Print Name)
Julia Blacklock
Signature

601 Hampton House, 204 E. Joppa Rd.
Address
Towson, Maryland 21204 825-2513
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Michael B. Sauer, Esquire
Name
802 Equitable Towson Bldg., 296-2151
Address
Phone No.

ORDERED BY The Zoning Commissioner of Baltimore County, this 23rd day of March, 1988, 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 23rd day of June, 1988, at 10 o'clock A.M.

J. Robert Haines
Zoning Commissioner of Baltimore County.

ESTIMATED LENGTH OF HEARING: 15 MIN.
E.C.O.-No. 1 AVAILABLE FOR HEARING
ALL MON./TUES./WED. - NEXT TWO MONTHS
REVIEWED BY: *[Signature]* DATE: 3-9-88

Paul Lee P.E.

#320
Paul Lee Engineering Inc.
308 W. Pennsylvania Ave.
Towson, Maryland 21204
301-821-5261

DESCRIPTION

10105 HARFORD ROAD
11TH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point, said point being located in the center of Harford Road Northeasterly 100 feet ± from the center of Cub Hill Road, thence leaving said center of Harford Road

- (1) South 52°31'30" East 262.66 feet,
- (2) South 38°12'40" West 117.97 feet,
- (3) South 48°05'30" East 245.92 feet,
- (4) North 35°52'00" East 401.16 feet,
- (5) North 62°10'00" West 334.13 feet,
- (6) North 67°10'00" West 103.17 feet, and
- (7) South 61°20'00" West 168.17 feet

to the center of Harford Road, thence binding along the center of Harford Road (8) South 37°15'00" West 16.75 feet to the point of beginning.

Containing 3.03 acres of land, more or less.



Engineers - Surveyors - Site Planners 2/22/88

IN THE MATTER OF
PETITION FOR SPECIAL EXCEPTION
AND SPECIAL HEARING
N/E/S HARFORD ROAD
10105 HARFORD ROAD
11TH ELECTION DISTRICT
PETITIONERS EDITH PEARCE,
ET AL

Case No. 88-508-SPHX

PROTESTANTS' MEMORANDUM

NOW COMES, Northwinds Homeowners Association, Inc. and Stephen Rosasco, for himself and other Protestants, by Michael P. Tanczyn, Esq. and Stephen J. Rosasco, Esq., their attorneys, and submit the following Memorandum in opposition to the Petition for Special Exception and Special Hearing for off-street parking in a residential zone to support a commercial use and say.

BACKGROUND OF THE FACTS

The Petitioner seeks to utilize a 3.03 acre parcel located on the northeast side of Harford Road by special exception for a service garage / auto body repair work with sales of car parts and equipment at 10105 Harford Road and, in its latest version, the site plan (Petitioner's Exhibit 17) proposes 94 parking spaces, 14 of which are included in the proposed two story service garage building. Petitioner also seeks approval by way of special hearing for a use permit to utilize residential land zoned DR 3.5 to support the aforesaid commercial use.

A breakdown of the zoning of the two properties is that the portion zoned BL comprises 1.02 acres (before the State

Highway Administration taking is subtracted) and approximately 2.01 acres of DR 3.5.

The topography of the site is that it generally runs from the rear BL zoning line downhill toward Harford Road and downhill toward the Northwinds townhomes or the rear DR 3.5 line to the rear of the property.

After hearing the Zoning Commissioner, Honorable J. Robert Haines, on November 30, 1988 ordered that the Special Exception be granted with 11 enumerated conditions and that the Petition for Special Hearing be denied.

The Board of Appeals for Baltimore County heard testimony on this case June 9, 1989, December 6 and 13, 1989, and January 24, 1990.

Petitioner's first witness was Charles Pearce, Personal Representative of the Estate of Edith Pearce, who owns the property. He believed the property to be in poor condition. He had contracted to sell the property to H & H Realty, the principals of which were Charles Hare and James Hatfield, who are also principals in Ed and Jim's Body Shop. Mr. Pearce testified that the property had been formerly used for residential purposes except that a botanist who lived there had sold flowers from the greenhouse.

The Petitioner next called Howard Chambers, a commercial real estate agent with Coldwell Banker for 2-1/2 years, who testified that Charles Hare and James Hatfield contracted to

purchase the property known as 10105 Harford Road in November of 1987; that they had told him they were looking to expand their business; that they had an auto service body shop on Joppa Road. The contract purchasers told Mr. Chambers they had problems with their present location on Joppa Road, which was crowded with automobiles; that they had wanted to double the size of their existing facility at the new location. He testified that he was both a listing and selling agent and would receive 10% of the purchase price of \$180,000.00 if the property settled. He had never resided in the Carney area. He defined the neighborhood as bounded on the north by the Gunpowder, on the south by Joppa Road, on the east by Northwinds and on the west by almost over to Satyr Hill or Old Harford Road. He clarified on cross-examination that he was an agent rather than a broker.

Mr. Paul Lee was called and identified the plat he had prepared and revised most recently on June 1, 1989, which was accepted as Petitioner's Exhibit No. 1.

Petitioners next called Charles Hare who resided in Reisterstown, Maryland and who had a business address of 8902 Audrey Avenue, Baltimore, Maryland, at the corner of the 2200 block of East Joppa Road. He testified that he was a principal in H & H Realty, which had contracted to purchase 10105 Harford Road, with his partner Jim Hatfield, and that Ed and Jim's Body Shop, Inc. had as its principals at the Audrey Avenue address, James Hatfield and himself; that he had been together with Mr. Hatfield

for 24 years; that they had operated at Joppa Road for 16 years. He testified his reasons for having a building as large as what was proposed was to have one mechanic work on 3 to 4 cars at a time; that they were utilizing 10,000 square feet at Ed and Jim's on Audrey Avenue in 4 bays; that he proposed to use 11,000 of the 22,000 square feet for body and fender work at the new site (T74); that the remainder would be used for the sale of automotive parts and supplies (T75). He testified that if the Special Exception were approved and the new facility built he would be able to have more mechanics (T76) work on more cars (T77). He testified (T81) that he had been very successful in his business and that he had done things the right way. He defined after market parts (T82), including hoods, fenders, bumpers, spoilers, sunroofs, painting supplies (T83).

He testified on June 9, 1989 that the hours of operation would be in the sales facility from 10 in the morning until 7 in the evening 5 days per week; that he did not foresee opening on Saturdays (T88). He testified that he closed his shop at 5 30 p.m. for customers (T89). He talked about new technology utilized currently to straighten fenders (T91) which, according to him, produced minute noise levels (T92); he proposed utilizing equipment of the type depicted on Petitioner's Exhibits 2A and 2B; that they utilized automotive spray booths including a downdraft system (T96) which are approved by the State and local agencies, OSHA, which is what he would have in his new facility; that he had

one of those at his current location approved by the State and County agency which requires governmental inspection (T97); that sanding was required in body and fender work (T97), which emits a small amount of noise, and that the sanding drops to the floor (T98, T99); that there was no dust at all that leaves the work area (T99). An example of the spray booth type proposed was admitted as Petitioner's Exhibit 3.

He believed that the DR section was heavily wooded, very thick and heavy (T103). He testified that he was familiar with the provisions of Section 502.1 of the Baltimore County Zoning Regulations and that, in his opinion, his plan would not be detrimental to the health, safety or general welfare of the locality and would not violate any of the provisions of Section 502.1 (T129-131).

He testified in the last two years, prior to June of 1989, he had probably been in 30 to 40 repair shops (T133). He testified that, of that number, 6 to 8 shops were less than 300 feet from a residential zone; namely, Towson Dodge, Jerry's Chevrolet (T134), Towson Ford, Allstate Leasing, Reisterstown Auto Body. He testified (T140) that he did not propose to build a junk shop; that his standards were above that.

He testified that there would not be a towing facility on the premises (T151); that he estimated 20 cars per day would be coming into his establishment for repairs and estimating (T152) of which 2 or 3 would be under tow. He estimated he would complete

35 to 40 cars per week (T157) at the present location and at the new location. He said (T158) he expected to at least double and then said repair at least the same amount of cars (T158).

He said on cross-examination he was figuring on at least 2 cars per bay (T164); he admitted that none of the repair facilities he mentioned on direct (T173) were near a park like Graham Memorial Park or a Class 3 fish stream as exists adjacent to the property at 10105 Harford Road (T173); and that those shops did not possess the high-tech noise-free equipment (T174) that he had at Joppa Road (T174); that the noise levels at Joppa Road are what he expects to have at the new facility (T175); that the new building would not be air conditioned and the doors would be open in the summer (T175), the same as at Joppa Road. He believed that the shop here would be more "dust free" (T176).

He testified that Russ McClellan (T180) had been his manager at Joppa Road for 6 years and that he believed he had a basis to testify what goes on in a body shop.

He testified, beginning at T181, that Joppa Road in front of Towson Dodge as well as at his facility was 2 lanes in each direction; that in front of Allstate Leasing Reisterstown Road was 5 lanes wide; and that in front of Reisterstown Auto Body there were 2 lanes each way (T183). That he intended to store all delivery trucks in the BL zone.

He admitted that none of the other body shops mentioned that he had visited had frontage on its prime access of less than

50 feet (T186). He further believed that each of those other sites were on a straight road rather than a curvy, windy road as was the case in front of his proposed site (T188); and he told the Board that, coming north toward his property, you come down a hill and as you get beyond the property that it makes a slight turn on a downhill grade to the left (T188, T189); he did not know what the sight distance was north or to the south (T189, T190).

He defined the boundaries of the neighborhood as the park on the north, the Northwinds townhome community on the east, the High's Store and Northwind Motors to the south, and residential homes on the west, backing up to the commercial strip on Harford Road. He guessed that the depth of the commercial properties on the far side of the street were 100 to 150 feet, although they could be less and, although he had not measured them (T195); and that the other commercial uses on Harford Road in his vicinity had much more road frontage on Harford Road than his business would have by a factor of at least 2 to 1, which he agreed was a fair statement (T196).

He was unaware of any carcinogens contained in the items which they would sell (T197).

He testified that at Joppa Road he had 6 body and fender men (T203); that no more than 5 employees were involved in fabrication or repairs. He testified that, although he would have fewer employees at the new site, they would be able to work on more cars because they could work on more cars at the same time.

He testified that the actual workers don't usually come in until 8 a.m., although some of them come in at 7 30 a.m. (T203); and that they would not start making noise with mechanical equipment until 8 a.m.; that night operations beyond 5 30 p.m. would not happen too frequently, which he defined as 2 to 3 times per month (T204); and that on those occasions it would be not later than 7 30 p.m. (T204); that he had no plans to operate more than one shift at the new proposed location (T205).

When the hearing resumed on December 6, 1989, Mr. Hare resumed his testimony. Following cross-examination on re-direct he testified that there were 2 spray paint booths, 1 at Joppa Road and 1 at the Harford Road facility; that they kept their thinners in metal containers and their paints in 1 quart cans generally; that they used a Sherwin-Williams clear coat system utilizing clear resins.

On re-direct he then changed his proposed hours of operation to be from 7 a.m. to 9 p.m. Monday through Saturday for both retail and body work and retail sales of parts on Sundays from 10 a.m. to 5 p.m. He testified as to the overflow site from the Petitioner's proposed subject site on Harford Road to have been used for 5 years since 1985 and did 10 cars a week at that site in 3 bays. He testified as to the use of xylene and tylene, which he defined as thinners used in the business and solvents.

Mr. Hare then repeated his testimony that he had always run a first-class operation in accordance with standards of all

government regulatory bodies, which he would also propose to do at the site.

Petitioner's next witness was Charles Lee, an associate with The Traffic Group in Towson, who had retired in 1987 from the State Highway Administration where he had worked since 1949; and he had been since 1960 the chief of access permits in the Bureau of Engineering; that he had been engaged by the owners to look at this site in the summer of 1989; that he had no college degree, professional engineer's license; that his previous testimony had been on December 5, 1989 at a Charles County zoning hearing and he was accepted as an expert as far as access only and was not accepted as a traffic engineering expert.

He testified that he had done a site inspection and, according to him, the sight distances were fine; namely, 750 feet to the north and 780 feet to the south. He testified that he had done what he called a ride-by, had set up an instrument to measure sight distances and conducted those measurements and that it had all taken him approximately 1 hour. He considered the Petitioner's property, based on the State Highway Administration taking having been accomplished, thereby giving the Petitioner approximately 70 feet of frontage on Harford Road as opposed to the existing frontage of less than 50 feet. He testified that he believed the speed limits on that portion of Harford Road to be 35 miles per hour and that the minimum stopping distance was 510 feet at that speed.

He was followed by Paul Lee, P. E., who was recalled, who testified that he had been hired in early 1988; that he had done Petitioner's Exhibits 1 and 9, with 1 acre to be BL and 2 acres to be DR 3.5; he testified as to the surrounding uses of the property; he testified that the site had been BL since 1971 as to the existing uses on the property. He characterized the slope to the rear as being 20 to 25 feet and similarly an 8 to 10 foot rise to the BL from the front property line existing on Harford Road. He characterized the terrain as being wooded in the BL and heavily wooded in the DR 3.5.

He testified that under Petitioner's Exhibit 9, Petitioner's plat had been changed to increase the buffer and reduce the parking shown.

He testified over objection that he disagreed with notes 12 through 15 on his own plat and he felt that Petitioner's use would not violate the precepts of Section 502.1.

He could point on cross to no specific zoning regulation which requires DR 3.5 to have direct access to a street and acknowledged that it would be up to the owner to provide his own access.

He had done no computations as to the percent of the parcel to be paved over as to any storm water run-off or any soil studies and he specifically relied on Baltimore County Traffic Engineering's no comment as to whether this project would propose congestion.

His stated reason for feeling that the project was not over scale or that the land was not overcrowded was that 7 homes could be built in a DR 3.5 area according to his calculations.

He was unaware of any present storm water run-off problem and had done no calculations.

He felt that what the Petitioner proposed at this site was no different than other service garages and he had not visited the park nor had he run the trails to the Fish and Game Protective Association nor had he calculated the route of the storm water run-off from the Petitioner's property.

The Petitioner's next witness was Norman Gerber who was accepted as an urban planner, who had been retained one month prior to December 13, 1989 when he testified that he had reviewed the property; that he had visited the site on December 2, 1989 on a Saturday; that he defined the neighborhood as bounded by Graham and Gunpowder Parks on the north, on the east by Old Harford Road, on the southeast by Belair Road, and he defined the community as 3 to 5 neighborhoods or 6,000 to 10,000 dwelling units and opined that in that large area this service garage would have a small impact on the community.

He found the uses on Harford Road in the vicinity of the Petitioner's property to be commercial, including a restaurant, a service garage and a service station, which he characterized to be of an older commercial nature, and expressed his opinion that types of older commercial uses had probably been in the Harford

Road area since 1956.

He found that the zoning history for the site was that it had been BL and DR 3.5 from 1971. He had not checked and could not say whether there was any commercial use deeper from Harford Road on either side of Harford Road in this vicinity than the Petitioner's proposed commercial use, including the commercial use of the DR 3.5 for parking.

He testified there was no access to the DR 3.5 land owned by the Petitioners through the park; that the access would be through the BL area; that they could not gain access through Northwinds; and that it was his opinion that it was a long-standing practice in Baltimore County to have DR 3.5 land of the type that the Petitioner had here support a commercial use.

He had no studies nor calculations concerning storm water management nor frost heave; he believed that the DR 3.5 land was suitable for parking; he was aware that the new parking regulations for off-street parking under Bill 26-88 provided more protective standards. He found the State Highway Administration taking from the BL to be insignificant because it was a small piece of land being taken and he did not believe that the size of the building created the need for additional parking in the DR 3.5 area.

He acknowledged that the Z-Pak comments did not have significant concerns about the use preceded the passage of Bill 26-88 concerning new requirements for off-street parking; he felt

the Petitioner's revisions would not violate the tenets of Section 502.1 or Section 409.8 concerning parking.

He testified that his prior experience with a service garage principally had to do with a family garage called Gerber's Garage where between the ages of 13 and 22 he had kept the books and ordered parts and that the shop had been principally run by his brother and that Mr. Gerber had not been active in the business.

Petitioner's next witness was James E. Dyer, Zoning Supervisor since 1962, who had reviewed the Petitioner's plan in the initial stages and who expressed his opinion that the spaces shown in the service garage could be counted in the total for parking and that had been done for as long as he could remember and that his reasoning was that people drive there and leave the car inside and leave, although he could not point to any written authorization or source for that policy.

Petitioner's next again recalled Mr. Hare, who testified for the third time during Petitioner's case that he proposed to have at his new site now 6 body repairmen, 1 painter, 2 helpers, 1 secretary, 1 manager, and 1 clean-up person, for a total of 12 personnel in the body work shop and 6 personnel involved in the retail sales, in contradiction to his earlier testimony.

He further testified, in contradiction to his earlier plan, that he proposed to have 2 10-hp compressors, including 1 back-up; that he would use both at the same time; to have electric drills of 1/4-hp.

13

Protestants' witnesses included Cheryl Dogherty, who is a resident of Northwinds townhomes, and who adduced testimony as to the peculiar sensitivity of her minor child, who was born prematurely and who still had respiratory difficulties. She testified as well to the storm water run-off problems and to her concerns about the visibility of the project and the noise and dust which would be generated by the Petitioner's proposed project.

She was followed by Jeff Sauers, who testified that he was also a resident of the Northwinds community and who adduced Protestant's exhibit showing numerous aerial pictures of the neighborhood; and also testified as to the environmental sensitivity of the area and the abundance of natural wildlife in the Graham Memorial Park and the Gunpowder Park as well as the Baltimore Fish and Game Protective Association. He further testified as to storm water run-off concerns. He testified as to the orientation of the townhomes with decks located on the rear of the townhomes facing the Petitioner's property. He felt that the Petitioner's project was over-scale for the property; would produce a traffic hazard based on pictures adduced; would have a negative effect on the community of the DR 3.5 land were utilized for parking to support a commercial use.

Protestants also called Steve Rosasco, who is President of the Northwinds Homeowners Association, for himself as well as for the community association, who expressed the opposition of the

14

community to Petitioner's proposal, both as originally proposed and as changed with the various site plans submitted to the Board of Appeals. He testified as to his experience as a claims adjuster for a major insurance company and to his experience with Ed and Jim's at Audrey Avenue and Joppa Road when he had an automobile accident his vehicle was towed in dripping fluids; that the fluids continued to drip and the people at Ed and Jim's did nothing to put a pan underneath to catch the fluids, contrary to what Mr. Hare had stated was his usual and customary business practice. Mr. Hare had also said that, over the prior 15 years, that if they had had 6 fluid spills it would have been a lot at their Audrey Avenue premises.

Mr. Rosasco also testified as to the traffic and congestion on Harford Road and the use made by the residents and visitors of the Graham Memorial Park and the Gunpowder Park.

He also testified that he was a member of the Baltimore Fish and Game Protective Association; that storm water run-off from the Petitioner's site would run downhill, causing concerns as to not only volume created by the paving of a substantial amount of the Petitioner's site as proposed, but also by the carrying of sediment-borne pollution from the dust and other by-products generated from the Petitioner's proposed operation downhill to the residential community of Northwinds and then down to the trout stream at the Baltimore Fish and Game Protective Association.

He was followed by Michael Kendall, who was with the

15

Baltimore County Health Department, who is an environmental sanitarian; and who brought the files not only for the Petitioner's existing operation at Audrey Avenue and Joppa Road in Parkville, as well as the annex on Harford Road across from the Petitioner's subject site. He testified there was one authorized spray booth at both locations.

Mr. Kendall testified that the Petitioner's new site would be subject to new regulations and the plans had not yet been scrutinized for that by Baltimore County. He defined volatile organic compounds as principally propellants which are vaporized and not captured by controlled technology. He testified as to class one toxicants which required an operation to be in compliance by January 1, 1990 and class two toxicants which required an applicant to comply with those regulations within one year. He testified that technology to take care of volatile organic compounds consisted of either recycling the vapor or incinerating, which essentially burns, the VOCs. He testified that the expense of those technologies was very great and that the Petitioner would use both class one and class two toxicants in its operations; that the County depended on the good faith of people who operated spray booths to voluntarily report how much they used by way of class one or class two toxicants. He testified as to the usage by Petitioner at both sites as reported to him by the Petitioner. He was aware of only one spray booth at one area where painting occurred at the Audrey Avenue facility.

16

Mr. Kendall's testimony was followed on the last day by testimony of Russell McClellan. He testified that he had worked for Ed and Jim's as a shop manager for a period in excess of 6-1/2 years; that he was actively involved in all phases of the operation at Audrey Avenue and Joppa Road. He identified several pictures including of dumpsters and discarded car parts from the Audrey Avenue facility which were admitted to show conditions at that location as well as the pictures of the exterior showing numerous fluid stains on the ground at the Audrey Avenue facility.

He testified that in addition to the spray paint booth at Audrey Avenue, which was regulated and inspected by the County, that painting was done in another area on the average of once a week during the time he was there, which was not a controlled spray booth.

He finally testified that there was a fair amount of noise involved in the operation of the body repair shop.

The Protestants' expert witness, C. John Klein, III, a resident of the Northwinds townhome community, was accepted as an environmental engineer, based on his extensive credentials. He testified that he had done research as to the prevailing winds, which he found to come from the Northwest or generally over the Petitioner's property toward the Northwinds townhome community, and he testified as to his knowledge concerning air quality and volatile organic compound emissions. He testified that his calculations, based on the existing topography, prevailing winds,

17

proximity to residents including the young Dogherty child who had respiratory problems, led him to conclude that the emissions on the volumes reported by the Petitioner for its Audrey Avenue site, and based on those alone rather than the larger amount on the Petitioner's estimate that it would double its output at the new facility, indicated a hazard requiring closer monitoring and scrutiny as well as installation of expensive technology to burn off the VOCs which he opined would be cost prohibitive for an operation of the type of Petitioner's, testifying that it would only be economically feasible in a large operation, such as a GM assembly plant.

His concerns about the Petitioner's project had not only to do with air quality emissions from sanding and VOCs emitted, but also from the sediment-borne pollution, which would be washed either from fluids spilled or compounds washed out of the Petitioner's facility which, of necessity, would head downhill, whether from Harford Road or to the rear of Petitioner's property into the outfall going to the trout stream at the Fish and Game Protective Association.

He had calculated the storm water run-off requirements and the existence of soils on the Petitioner's property, which made the use of the DR 3.5 for parking lots inadvisable due to the phenomenon called "frost heave", which would naturally occur due to the draining qualities of the soils in the DR 3.5 portion of the land. He had further computed the storm water management

18

requirements to require a holding facility 70 by 70 by 4 which would not fit within the site plan most recently filed by the Petitioners, Number 17, and he testified as to likelihood of striking bedrock at 4 feet or less below the surface. The soils he found in the area to be glen elg and they were not recommended to be used for parking lots in the Baltimore County Soil Conservation Manual.

He expressed concerns about the noise and dust to be generated from the facility and the appearance and view of the facility from the period of September through May when essentially the deciduous trees would lack their leaves.

He testified as to his photos concerning the narrow frontage on Harford Road, a windy and inadequate road, with rush hour volumes creating back-up and congestion at present.

He found the proximity of the Petitioner's property to the Graham Memorial Park, the Gunpowder Falls State Park, and the Baltimore Fish and Game Protective Association an environmentally sensitive area, all of which were utilized year round by residents and visitors.

He testified that a percentage of his representation was 80% to 90% for developers. His drafted report was marked for identification as Petitioner's Exhibit No. 22. He testified that his calculations were based on a one hour concentration at the nearest boundaries and that the Petitioner's proposed operation would produce sufficient quantities to cause a problem in an

19

order of magnitude one time greater than that allowed, at least for metallic carbides. He testified that a heapovac in a totally controlled environment would help but not eliminate the problem; that the soils on the Northwind community he found to be predominately joppa soils with 20% glen elg.

In his expert opinion the Petitioner's proposed use of the DR 3.5 land would violate the tenets of Section 409.8 and would have a detrimental effect on the neighborhood and visibility; the existence of noise and dust; the new hours last testified to by Mr. Hare for 7 day per week operations would constitute and have a detrimental impact on the community. He testified in his opinion the use of that large a building in the BL section was over-scale when compared to any other commercial use on the size lots which existed in the area and testified, as had Mr. Rosasco and Mr. Sauers earlier, that there was no other commercial use which intruded so deeply into the community on either side of the street as was proposed by the Petitioners when the parking lot was included in the calculations.

The Protestants' final witness was John Rohde of Hunan and Rohde, who was accepted as an expert landscape architect. Mr. Rohde had surveyed the Petitioner's property and surrounding lands and was familiar with same; said that he had known the former owner for many years; and that he found the Petitioner's proposed use to be over scale and that it would represent a concern for storm water run-off and an environmental threat to the wildlife in

20

specialization in the Chesapeake Bay, its tributaries and estuaries and their susceptibility to environmental pollution. His CV, which was quite lengthy, established that he was nationally recognized as an expert by the Environmental Protection Agency and the National Oceanic and Atmospheric Administration which is one of his current employers.

He had been present for the entire case as presented on June 23, 1988, July 1, 1988 and July 6, 1988 and had heard Mr. Hare's testimony for the Petitioner of his proposed operation. He had visited the site on numerous occasions and taken pictures on June 26, 1988 and at other times. He resided in the community in a group of townhomes not directly abutting the Petitioner's site. He had done a detailed analysis of the soils in the area and was familiar with the soils found on the site which he characterized as being a glen elg type soil which would range very well but be subject to frost heave because of their excellent draining qualities.

So far as the Petitioner's operation on the site was concerned, Mr. Klein was concerned about the paving of 2/3rds of the site in terms of what that would create in terms of storm water volumes which he had calculated and requiring 26,450 cubic feet of storage area assuming a four foot depth due to the existence of bedrock in the area.

For the two, ten and 100 year storm calculations, he calculated a 60 foot square or 75 foot square or 82 foot square

area as being required exclusive of berms and catchment areas, none of which was provided on Petitioner's Exhibit No. 3. He had calculated the topography of the site and concluded that the high point on the Petitioner's property lay approximately 10 to 15 feet inside the proposed rear wall and that the property did run at present to Harford Road but that, in order to put the lower level entrance from the Harford Road side, substantial excavation would have to occur prior to the paving which would alter the contours of the property.

The contours from the high point to the rear of the property fell approximately 25 feet and he found the points of exit for storm water from the site would be generally along the rear but most pronounced at the northeast corner of the property as well as the southeast corner onto the lands of Northwinds townhomes.

He felt that the existing trees within what is proposed to be the buffer area to be inadequate due to the topography of the land, that the clearing of more than 2/3rds of the site for the building and paving areas proposed with the prevailing winds in the area coming from the west-northwest at what he found to be a significant speed to cause him to be concerned about the carrying of persistent pollution in the form of airborne dust or waterborne sediment downhill to the townhome community and to the Jennifer branch through the outfall.

Utilizing Section 753 of the SIC code which standardizes

the pollution found to be generated from specific uses which would correspond to the auto body and repair, he found a number of carcinogenic and mutagenic pollutants found routinely in fiberglass, fluorocarbons, and hydrocarbons generated by this site would be blown naturally by air or carried by storm water runoff onto these soils which he characterized as having a high erodability to the outfall; and he described the effect on the park and the wildlife living in the habitat, including fish and game, as being permanently negatively effected by this runoff and pollution generated by this site. He testified that, based on his measurements, it was 4/10ths of a mile from the Petitioner's property to the Jennifer branch, which he characterized as a perennial stream with a fish habitat ending in the fishing pool at the Baltimore County Fish and Game Pond where he observed the fishing tourney occurring on June 26, 1988 while taking pictures.

He testified to the character of Harford Road and the number of exits to Harford Road in close proximity to the Petitioner's, from the Graham Memorial Park and the two exits from Hooter's as well as the short site distance and curve of the road as causing a traffic hazard at the site.

He considered the provisions of Section 502.1 of the Baltimore County Zoning Regulations and found the Petitioner's proposed use to be incompatible with the existing uses testified to and from an environmental standpoint to be a problem in terms of the noise to be generated, the effect on the atmosphere of the

hydrocarbons and fluorocarbons generated by the Petitioner's proposed activity and the runoff both in amount and quality concerning the pollutants which would be borne by the sediment as well as the erosion on the soils to be expected from paving 2/3rds of the site with no provisions for storm water management or control, which would increase the flooding potential for the townhomes located to the south and east. He testified that there had been flooding problems which were corrected by the developer putting in drainage tile systems with the existing uses of Petitioner's site on which the soil drains reasonably well.

He testified that the pollutants to be produced by the Petitioner's operation do not go away quickly, they are persistent, and they are readily borne by sediment as carriers.

The Protestants' final expert witness was William F. Kirwin who was accepted as an expert witness, as a landscape architect and environmental land planner. Mr. Kirwin testified that he was familiar with the site and that this area had several unique aspects to it: its proximity to the parkland and the Fish and Game Protective Association property and the character of the neighborhood, which he found to be rural and residential.

He found that the Petitioner's project was overscale and would tend to overcrowd the land since there was no attempt to provide for parking on the BL portion to service the BL property; that the intrusion of the parking to support the BL into the DR 3.5 land was the only such intrusion to the rear of the BL line on

the east side of Harford Road between Cub Hill Road and the Graham Memorial Park.

He testified that the residential transition areas are sacrosanct and are to be used only for parking with no other use, contrary to the Petitioner's representation that they would at least use the 14 spaces to the rear of the BL line for estimates on cars driven in for repairs.

He testified that he was familiar with Section 502.1 and that Petitioner's project would overcrowd the land for the reasons stated, would create a traffic problem due to inadequate site distance and three entrances within 60 to 70 feet, considering Hooter's, the Petitioner's property and the park, due to the change in grade and the curve and the lack of shoulders for the road.

He felt that the buffer proposed was inadequate to prevent noise and dust, including pollution, from being blown onto the townhomes and toward the Jennifer branch or to be carried by the storm water; and he felt that the buffer was secondary growth on 12 to 13 foot centers, two to three inch trees, which were all deciduous and which would not adequately buffer this site because the trees closest to the townhomes are on a much lower elevation and deciduous. He felt that the proposed building, being located on higher ground, could, although the height was not known or stated by the Petitioner, in fact block the light and air of the townhomes and that the storm water runoff would violate the

imperviable vegetative retention provisions of the Baltimore County Zoning Regulations and that the Petitioner's use was not consistent with the regulations or the spirit of the regulations for the BL zone considering the restrictions found in Section 230.12 calling for no more than five repairmen and a horsepower limitation on the machinery; the Petitioner's proposal for a 100 X 110 foot building was grossly out of scale for his stated needs and desired uses of the property and would have a negative impact on the residential community to the east.

THE LAW

Application of Bill No. 22-68

The Baltimore County Council enacted Bill No. 22-68, introduced in March of 1988 and with an effective date prior to the hearing of this matter. In its enabling act provisions, Bill No. 22-68 provides that properties which have received building permits, or properties which have already been approved by CRG, to use either the pre-existing parking regulations or may choose to utilize parking requirements of Bill No. 22-68. As there have been no prior hearings on this Petition for Special Exceptions, there are no building permits which have issued and it was agreed at the hearing that the property has not been previously submitted or approved by CRG. Therefore, the mandate of O'Donnell vs Bassler, 289 Md 501 (1981) at 507, where the Court of Appeals in reversing the Court of Special Appeals stated:

"The central question presented is whether the law in effect at the time that a special exception use

permit was granted or the law in effect at the time of the appeal is applicable."

or at 508:

"An appellate court must apply the law in effect at the time a case is decided, provided that its application does not affect intervening vested rights. County Council for Prince George's County vs. Carl M. Freeman Associates, Inc., 281 Md 70, 76, 376 A 2d 860, 863-64 (1977); Rockville Fuel & Feed Co. vs. City of Gaithersburg, 265 Md 117, 127, 291 A 2d 672, 677 (1972). Generally, in order to obtain a vested right in an existing zoning use that will be protected against a subsequent change in a zoning ordinance prohibiting that use, the owner must initially obtain a valid permit. Additionally, in reliance upon the valid permit, the owner must make a substantial beginning in construction and in committing the land to the permitted use before the change in the zoning ordinance has occurred. Stewart Petroleum Co. vs. Board of County Commissioners of St. Mary's County, 276 Md 435, 442-44, 347 A 2d 854, 859-60 (1975); County Council for Montgomery County vs. District Land Corp., 274 Md 691, 707, 337 A 2d 712, 721 (1975)"

Applying the law of that case as well as the law in the case of Miller vs Forty West Builders, 62 Md.App. 320, 49 A 2d 76 (1985) at 329, stated that:

"Maryland consistently has followed the rule that 'an appellate court is bound to decide a case according to existing laws, even though a judgment right when rendered by the court below should be reversed as a consequence . . .'. '[A] change in the law after a decision below and before final decision by the appellate Court will be applied by that Court unless vested or accrued substantive rights would be disturbed or unless the legislature shows a contrary intent . . .'"

"The rule has been applied in zoning cases."

"Yorkdale vs Powell, 237 Md 121, 124, 205 A 2d 269 (1964)."

Applying that case law to this case, it is clear from the testimony of Mr. Lee that this property was not proposed in

accordance with the provisions of Bill No. 22-68 and therefore does not meet the design standards of Section 409.8 as well as the density calculations required for parking.

The Zoning Commissioner, under Section 409.8.B.1.(e) may either deny or grant a use permit conditioned on his findings following the public hearing, the character of the surrounding community and the anticipated impact of the proposed use on that community, the manner in which the requirements of Section 409.8.B.2. and other applicable requirements are met and any additional requirements as deemed necessary by the Zoning Commissioner in order to insure that a parking facility will not be detrimental to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of Section 502.1 of the Regulations.

Section 409.8.B.2. provides that only passenger vehicles, excluding buses, may use the parking facility; no loading service or any other use other than parking shall be permitted.

The Commissioner certainly has discretionary authority to either grant or deny the use request for residential parking to support the BL use proposed by the Petitioner. Protestants point out that topographically the parking area lies on a hillside below the BL use and that any and all waste from spills at the BL use or from vehicles leaking fluids will of necessity be washed downhill toward the community. They further rely on the expert opinion

expressed by John Klein and William Kirwin that the paving of over 2/3rds of the site of a previously well-drained area due to the soils will cause a tremendous amount of runoff and storm water which will not only increase the risk of flooding to their townhome community downhill, but will form an expressway for waterborne pollution generated by the preparation of the BL facility as an auto body and repair facility.

They are further concerned about the effect on their property values such an intrusion, unprecedented on that side of Harford Road north of Cub Hill Road, would have on their homes for which they paid between \$86,000.00 and \$95,000.00 and which have appreciated in the year and one-half time that the community has existed.

They are justifiably concerned about the storm water runoff and any pollution borne by it, not only as it would damage their individual properties but as it migrates of necessity to the adjacent parklands of the Gunpowder Falls State Park and the Graham Memorial Park and particularly to the Jennifer branch in which aquatic life has been found by John Klein whose testimony that the condition generated by the facility would be both carcinogenic and mutagenic. The Jennifer branch, as the testimony pointed out, runs into the Gunpowder River, which runs into the Chesapeake Bay.

The proposed provision of 112 parking spaces on the DR 3.5 portion to support the BL is totally out of scale for the type

20

of commercial operation envisioned under the BL rules. As required and provided in the notes on Petitioner's Exhibit No. 3, by Note 11, the Petitioner requested a use permit to permit parking in a residential zone for commercial use. The commercial use of an auto body and repair facility and sales of car accessories in Note 13 called for no more than five persons to be engaged in the repair or fabrication of goods on the premises and no more than five horsepower in any one machine and cumulatively no more than 15 horsepower in the operation of all such machines.

Further, the testimony of Mr. Hare belies the necessity for a 100 X 110 foot building. Mr. Hare's testimony, in contradiction to the 24 bays shown on his plat, was that he would have less than five repairmen on the site and that he would have less than six bays in operation and that not all of the bays would have lifts, some of them would be for specific equipment such as straightening machines or painting booths. Therefore, a surface analysis of the BL portion of Petitioner's site would indicate that he has provided nine parking spaces in the front to support 22,000 square feet of operation.

Mr. Hare further testified that the 14 parking spaces shown to the rear of the building in the DR 3.5 area would be areas where customers would pull in for estimates. That would clearly be at odds with the requirements of Section 409.8.B.2, which require that parking only be permitted and no other use in the area.

21

It is also clear from the testimony of Mr. Lee that there are no provisions for loading spaces as required by the Baltimore County Zoning Regulations on the BL portion of the plat. What he has proposed is a 2-story building, height unstated or unknown, with 22,000 square foot building, which has a frontage on the Harford Road of less than 50 feet.

So far as the traffic concerns of the residents, it is clear that there are four entrances within 70 feet of the Petitioner's sole entrance and exit point, which is on the Harford Road at 10105. Immediately to the north is the entrance to the Graham Memorial Park, paralleling the Petitioner's property line, which includes a fairly steep grade up that road, and which causes an obstruction or lessening of the site distance for people exiting or entering the park or the Petitioner's property due to the curve and grades on Harford Road, which is two lanes at that point. Further, immediately to the south of the Petitioner's property is an exit from the Hooter's Restaurant and the other side of the Hooter's building is another exit. It is clear then why the comment was contained in the Zoning Advisory Committee comments that the Petitioner should obtain additional land to provide an deceleration lane into its property, which Mr. Hare testified he was unaware of and that he had taken no steps to accomplish.

The photographs introduced by the Protestants clearly show a congested traffic situation in the pictures showing the

22

four vehicles, one of which is attempting to exit the park. A review of that picture as well as the other pictures showing the cars down at Cub Hill Road clearly indicates the poor sight distance by virtue of how far the cars pulling out of Graham Memorial Park or making turns at Cub Hill Road have pulled beyond the stop signs or out to the edge of the road where they are stopped prior to making the turn. The sight distance is, as testified to by Messrs. Kirwin, Schlehr and Klein as expert witnesses, although not traffic expert witnesses, as well as the residents of the Northwinds community.

The case of Schultz vs Pritts, 291 Md 1, 432 A 2d 1319 (1981) stands for the proposition that special exceptions are permitted uses in particular zones conditioned on meeting the requirements of Section 502.1. Schultz also stands for the principal that for a use to be denied Protestants bear the burden of showing how a proposed use at a particular site would create a problem to the community different than that the proposed use would generate at any site or a problem unique to the area where the project is proposed.

In this case there are many such factors. There are numerous other sites within the BL zone which are not so poorly serviced by roads as Harford Road services this site with a single lane in each direction, changes in grade and curves, and with the numerous exit points immediately adjacent to Petitioner's property which has very little road frontage on Harford Road; however, the

23

most unique aspects of Petitioner's site at this point and the effect which would threaten the health, safety or general welfare of the community is that topographically the proposed building, height unstated or unknown, will generate airborne and waterborne pollution which expert testimony has found to be both carcinogenic and mutagenic. Immediately downhill and to the east is a townhome community of 55 townhomes in which people reside, some of whom have particular susceptibility to airborne pollutants, such as dust, and in particular Mrs. Dougherty's infant son.

Further, the topography of the land on good draining soil will mean that, if Petitioner's requests are approved, at least 2/3rds of the site would be paved over or covered with buildings and that there is no provision on the plan whatsoever for storm water management. While CRG is admittedly another process, there is no space allocated for storm water management and Mr. Klein offered expert testimony as to the first cut requirement for a storm water containment basin.

Assuming arguendo, because it has not been provided on the plat, that this could be done, the Petitioner's plan to clear more than 2/3rds of the site would have a negative effect on the proposed buffer area according to Mr. Kirwin due to the presence of asphalt as well as the sunburn effect on trees when the canopy is removed from the trees cleared from the site. It is also clear from the testimony that any dust or fluids generated from the site would be blown by the strong winds from the west-northwest toward

24

the townhome community and toward the Jennifer branch and the park areas. Gunpowder Falls State Park, as was the testimony, is one of the two largest parks in the State of Maryland and is a sensitive natural resource. The outfall from the Northwinds community and presumably the outfall of necessity from the uphill lands of the Petitioner would run into the Jennifer branch and Mr. Klein testified that sediment was a good carrier for pollution.

Traditionally the hours of operation proposed by the Petitioner of 7:00 a.m. to 7:00 p.m. five days per week, Monday through Friday, and 7:00 a.m. to Noon on Weekends would disturb the peaceful tranquility of this rural residential neighborhood with the attendant sounds of straightening equipment, grinders, drills, air hammers, sanders and compressors used to operate them. The proposed operation does have a traffic impact which alone is a sufficient basis to deny an application for a special exception. Gowl vs Atlantic Richfield Company, 27 Md.App. 410, 341 A 2d 832 (1975).

The case of Anderson vs Sawyer, 23 Md.App. 612, 329 A 2d 716 (1974) dealt with noxious or offensive uses, in that case the proposal for a funeral home. The factors cited in Anderson are present in this application of the Petitioner which is out of size and scale for the BL portion of the property, will have a negative impact on the health, safety and welfare of the community, per the expert testimony concerning the pollution and the storm water runoff alone, and, for those reasons, ought to be denied.

25

Further, the application to use the residential land for parking to support the BL use should be denied because there is no other commercial intrusion into residential property lands on that side this northern Harford Road rural community and the Petitioner's own plan and testimony indicates that the space supposedly reserved for parking will in fact be used for the commercial use of the BL portion in violation of the Zoning Regulations.

The number of spaces provided are far in excess of those which might be expected to be generated by such a use and per Mr. Hare's testimony he expects to store a substantial number of vehicles within the building itself. Therefore, the provisions of 112 of 123 parking spaces on DR property violates both the letter and intent of the Zoning Regulations.

For these reasons and authority it is requested that both Petitions be denied.

Respectfully Submitted,

Michael P. Tanczyn, Esq.
MICHAEL P. TANCZYN, ESQ.
Suite 106, 606 Baltimore Avenue
Towson, Maryland, 21204
Telephone: (301) 296-8823

Stephen J. Rosasco, Esq.
STEPHEN J. ROSASCO, ESQ.
1700 Gas & Electric Building
P. O. Box 1475
Baltimore, Maryland, 21203
Telephone: (301) 234-5858

Attorneys for the Protestants

26

I HEREBY CERTIFY that, on this 23rd day of July, 1988, a copy of the foregoing Protestants' Memorandum was mailed, postage prepaid, to Michael B. Sauer, Esq., 410 Washington Avenue, Towson, Maryland, 21204.

Michael B. Sauer, Esq.
MICHAEL B. SAUER, ESQ.

27

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1124 Date of Posting: 1/15/89
Posted for: Appeal
Petitioner: Edith Pearce, et al.
Location of property: NES Harford Rd. 100' NE of C/L of Cub Hill Rd.
12105 Harford Rd.
Location of Sign: Facing Harford Rd. across 15' E. of road
on property of Baltimore
Remarks: None
Posted by: JRH Date of return: 1/20/89
Number of Signs: 1

Law Offices
Michael P. Tanczyn, P.A.
Suite 106, 806 Baltimore Avenue
Towson, Maryland 21204
(301) 298-8823
(301) 298-8824

November 14, 1988

J. Robert Haines, Zoning Commissioner
111 West Chesapeake Avenue
Towson, MD 21204

Re: Case No. 88-508-SPHX

Dear Mr. Haines:

Quite some time has passed since this case was heard by you on July 1 and 6, 1988. My clients have periodically inquired concerning whether or not an Opinion had been issued. In response to calls to your office we have been advised that no Opinion has yet been issued.

I am writing to ask, if you have not issued your Opinion recently, when you expect to issue it.

Very truly yours,

Michael P. Tanczyn
Michael P. Tanczyn

MPT/ed

cc: Michael B. Sauer, Esq.
Stephen J. Rosasco, Sr., Esq.
Northwinds Homeowners Association, Inc.

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

Date: 1/15/88

Ms. Edith Pearce
Ms. Julia Blacklock
501 Hampton House
204 E. Joppa Road
Towson, Maryland 21204

Re: Petition for Special Exception and Special Hearing
CASE NUMBER: 88-508-SPHX
NES Harford Road, 100' NE of C/L of Cub Hill Road
(10105 Harford Road)
11th Election District - 6th Councilmanic District
Petitioner(s): Edith Pearce, et al.
HEARING SCHEDULED: THURSDAY, JUNE 23, 1988 at 10:00 a.m.

Dear Petitioners:

Please be advised that 110.50 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

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

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) to the Planning Office, County Office Building, Room 111, Towson, Maryland, 15 minutes before your hearing is held.

No. 52701

sign and post set(s), there fee for each set not

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

DATE: July 6, 1988 ACCOUNT: P.C. 1105-000
AMOUNT: 110.50
RECEIVED FROM: Edith Pearce, et al.
FOR: 110508-SPHX
B DSC *****110508-SPHX

"DUPLICATE"
CERTIFICATE OF PUBLICATION

TOWSON, MD., June 2, 1988

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on June 2, 1988

THE JEFFERSONIAN,

S. Zake Orlan
Publisher

NOTICE OF HEARING
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:
Petition for Special Exception and Special Hearing
CASE NUMBER: 88-508-SPHX
NES Harford Road, 100' NE of C/L of Cub Hill Road
(10105 Harford Road)
11th Election District - 6th Councilmanic District
Petitioner(s): Edith Pearce, et al.
Hearing Date: Thursday, June 23, 1988 at 10:00 a.m.
Special Exception Service Charge and Sale
Special Hearing: A Use Permit to park in a residential zone (DR 3.5). In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.
J. ROBERT HAINES
Zoning Commissioner of Baltimore County
June 2, 1988

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353
J. Robert Haines
Zoning Commissioner

May 9, 1989

Baltimore County Board of Appeals
County Office Building, Room 315
Towson, Maryland 21204

RE: Petition for Special Exception and Special Hearing
NES Harford Road, 100' NE of C/L of Cub Hill Road
(10105 Harford Road)
11th Election District, 6th Councilmanic District
EDITH PEARCE, ET AL., - Petitioners
Case No. 88-508-SPHX

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on December 28, 1988 by People's Counsel and December 30, 1988 by Michael B. Sauer, Attorney on behalf of the Petitioners. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER
PETITION FOR SPECIAL HEARING
NES Harford Rd., 100' NE of C/L of Cub Hill Rd. (10105 Harford Rd.), 11th District : OF BALTIMORE COUNTY
EDITH PEARCE, et al., : Case No. 88-508-SPHX
Petitioners : : : : :
: : : : :
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, County House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 31st day of May, 1988, a copy of the foregoing Entry of Appearance was mailed to Michael B. Sauer, Esquire, 802 Equitable Towson Bldg., 401 Washington Ave., Towson, MD 21204, Attorney for Petitioners; and H & H Realty, Charles E. Hare, Partner, 8902 Audrey Ave., Baltimore, MD 21234, Contract Purchaser.

Peter Max Zimmerman
Peter Max Zimmerman

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1124 Date of Posting: 6/1/88
Posted for: Special Exception & Special Hearing
Petitioner: Edith Pearce, et al.
Location of property: NES Harford Rd. 100' NE of C/L of Cub Hill Rd.
12105 Harford Rd.
Location of Sign: Facing Harford Rd. across 15' E. of road
on property of Baltimore
Remarks: None
Posted by: JRH Date of return: 6/10/88
Number of Signs: 2

Appeal - Case No. 88-508-SPHX
January 9, 1989
Page 2

Mr. James R. Hatfield, 2730 Chapman Road, Baltimore, Md. 21087
Mr. Paul Lee, 304 W. Pennsylvania Avenue, Towson, Md. 21204
Mr. Charles Pearce, 2900 Ontario Avenue, Baltimore, Md. 21234
Mr. Howard W. Chamberg
250 W. Pratt Street, Suite 700, Baltimore, Maryland 21201
Ms. Julia Blacklock, 204 E. Joppa Road, Towson, Md. 21204
Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106, Towson, Md. 21204
People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204
File

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

J. Robert Haines
Zoning Commissioner

November 18, 1988

Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
RE: Petition for Special Hearing and Special Exception
NES Harford Road, 100' NE of the C/L of Cub Hill Road
(10105 Harford Road)
11th Election District - 6th Councilmanic District
Edith Pearce, et al - Petitioners
Case No. 88-508-SPHX

Dear Mr. Tanczyn:

In response to your letter dated November 14, 1988 on the above-captioned matter, please be advised that an Opinion will be issued by no later than the end of this year.

For your information, a rough draft of the Order has been prepared and I am in the process of making a final review.

Very truly yours,

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

JRH:bjb

cc: Michael B. Sauer, Esquire
802 Equitable Towson Building
Towson, Md. 21204

Stephen J. Rosasco, Esquire
1700 Gas & Electric Building
P.O. Box 1475, Baltimore, Md. 21203

Case File

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353
J. Robert Haines
Zoning Commissioner

April 25, 1988

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Special Exception and Special Hearing
CASE NUMBER: 88-508-SPHX
NES Harford Road, 100' NE of C/L of Cub Hill Road
(10105 Harford Road)
11th Election District - 6th Councilmanic District
Petitioner(s): Edith Pearce, et al.
HEARING SCHEDULED: THURSDAY, JUNE 23, 1988 at 10:00 a.m.

Special Exception Service Charge and Sale
Special Hearing: A Use Permit to park in a residential zone (DR 3.5)

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

J. ROBERT HAINES

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353
J. Robert Haines
Zoning Commissioner

NOTICE OF HEARING

Continued from 7/1/88

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Special Hearing and Special Exception
NES Harford Road, 100' NE of C/L of Cub Hill Road
(10105 Harford Road)
11th Election District - 6th Councilmanic District
Petitioner(s): Edith Pearce, et al.

CONTINUANCE SCHEDULED: Wednesday, July 6, 1988 at 1:00 p.m.

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

J. ROBERT HAINES
Zoning Commissioner of Baltimore County



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

APPEAL HEARINGS SCHEDULED FOR THE WEEK
OF DECEMBER 11, 1989

TUESDAY 12/12/89 10:00 a.m.
#R-89-462
HEARING ROOM - Room 301
County Office Building
(Reclassification)
ALVA & NADINE HOOPENGARDNER
S/s Eddlynn Drive, 510' E of c/l of
Church Road
12th Election District
7th Councilmanic District
D.R.5.5 to BL - C.N.S.

WEDNESDAY 12/13/89 10:00 a.m.
#R-508-SPHX
HEARING ROOM - Room 301
County Office Building
Day #3 (cont'd from
12/6/89)
EDITH PEARCE, ET AL
NE/s Harford Rd., 100' NE of c/l of
Cub Hill Road
(10105 Harford Road)
11th Election District
6th Councilmanic District
SPH - parking commercial autos in
residential zone
SE - service garage

THURSDAY 12/14/89 10:00 a.m.
#R-87-144
HEARING ROOM
COUNTY COUNCIL CHAMBERS
Second Floor, Old Courthouse
SHEPHERDS GLEN SUBDIVISION
Timber Grove Road
4th Election District
3rd Councilmanic District
RE: Cost of paving a portion of Owings
Mills Boulevard (70' right-of-way)

FRIDAY 12/15/89 CASE NO. 89-414-XA POSTPONED TO 12/26/89 @ 1:30 p.m.

cc: Executive Office
County Council
Law Office
People's Counsel
Planning Office
Current Planning
Board Members
Court Reporter
Information Desks (2)
Docket Clerk - Zoning

Law Offices
Michael P. Tanczyn, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(301) 298-8823
(301) 298-8824

December 30, 1988

J. Robert Haines, Zoning Commissioner
Office of Planning & Zoning
111 West Chesapeake Avenue
Towson, MD 21204

Re: Petitions for Special Hearing & Special Exception
NE/s Harford Road, 100' NE of c/l Cub Hill Road
(10105 Harford Road)
11th Election District - 6th Councilmanic District
Edith Pearce, et al - Petitioners
Zoning Case Number 88-508-SPHX

Dear Mr. Haines:

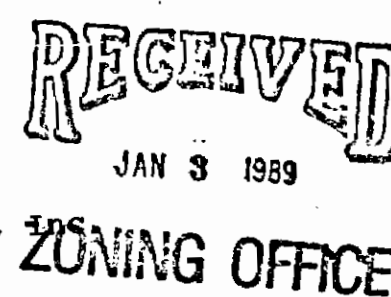
Please enter the Appeal by Northwinds Homeowners
Association, Inc., 3012 Northbranch Road, Baltimore, Maryland,
21234, from the Decision dated November 30, 1988.

Very truly yours,

Michael P. Tanczyn
Michael P. Tanczyn

MPT/ed

cc: Michael B. Sauer, Esq.
Baltimore County People's Counsel
Stephen J. Rosasco, Esq.
Mr. Steven J. Rosasco, President of
Northwinds Homeowners Association,



RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER
PETITION FOR SPECIAL HEARING
NE/s Harford Rd., 100' NE of : OF BALTIMORE COUNTY
C/L of Cub Hill Rd. (10105
Harford Rd.), 11th Election : Case No. 88-508-SPHX
Dist.; 6th Councilmanic Dist. :
EDITH PEARCE, et al., :
Petitioners :

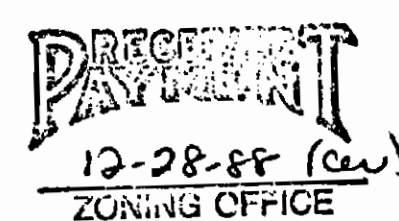
NOTICE OF APPEAL

Please note an appeal from your decision in the above-captioned
matter, under date of November 30, 1988, to the County Board of Appeals
and forward all papers in connection therewith to the Board for hearing.

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

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 304, County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
887-2188

I HEREBY CERTIFY that on this 28th day of December, 1988, a copy of
the foregoing Notice of Appeal was mailed to Michael B. Sauer, Esquire,
802 Equitable Towson Bldg., 401 Washington Ave., Towson, MD 21204;
Charles E. Hare, Partner, H & H Realty, 8902 Audrey Ave., Baltimore, MD
21234; Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue,
Towson, MD 21204; and Stephen J. Rosasco, Esquire, 1700 Gas & Electric
Bldg., P. O. Box 1475, Baltimore, MD 21203.



Peter Max Zimmerman
Peter Max Zimmerman

Law Offices
Michael P. Tanczyn, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(301) 298-8823
(301) 298-8824

June 24, 1988

Baltimore County Zoning Commissioner
111 West Chesapeake Avenue
Towson, MD 21204

Re: Case No. 88-508-SPHX

Dear Sir:

Please enter my appearance in the above matter on behalf of
Northwinds Homeowners Association, Inc. which is presently
scheduled for continuance on Friday, July 1, 1988 at 9:00 a.m.

Very truly yours,

Michael P. Tanczyn

MPT/ed

cc: Stephen Rosasco, President
Stephen J. Rosasco, Esq.
Michael B. Sauer, Esq.



Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-353

J. Robert Haines
Zoning Commissioner

June 15, 1990

Mr. Stephen J. Nolan
Nolan, Plumbhoff & Williams
Suite 700, Court Towers
210 West Pennsylvania Avenue
Towson, Maryland 21204-5340

RE: Zoning Case No. 88-508-SPHX
Edith Pearce, et al
Circuit Court Case No. 90-CG-1248

Dear Mr. Nolan:

We are in receipt of a copy of your letter dated May 30, 1990
indicating withdrawal of your petition for Special Exception. We
consider that action a termination of the request for Special
Exception and unless we are informed to the contrary, we will consider
this matter closed.

If you have any further questions, please do not hesitate to
contact myself or the Docket Clerk, Gwen Stephens at 887-3391.

Very truly yours,

Charlotte E. Radcliffe

CHARLOTTE E. RADCLIFFE
Legal Secretary

/cer

NEWTON A. WILLIAMS, JR.
WILLIAM M. HESSON, JR.
THOMAS J. RENNERT
WILLIAM A. ENGLISH, JR.
STEPHEN J. NOLAN
ROBERT L. HANLEY, JR.
ROBERT L. HANLEY, JR.
STEPHEN M. SCHENNING
DOUGLAS L. BURGESS
ROBERT E. CHAMBERG
LOUIS G. GLOUSE, III
E. BRUCE JONES
KEVIN L. KOSTUM
GREGORY J. JONES
*ALSO ADMITTED IN D.C.
*ALSO ADMITTED IN NEW JERSEY

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5340
(301) 823-7800
TELEFAX: (301) 296-2785

May 30, 1990

Kathleen C. Weidenhammer
Administrative Assistant
County Board of Appeals of Baltimore County
County Office Building, Room 315
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Board Case No. 88-508-SPHX
Circuit Court Case No. 90-CG-1248
Edith Pearce, et al

Dear Ms. Weidenhammer:

On behalf of the lead petitioner, H & H Realty in the
above captioned case, I have been directed to withdraw the
petition for Special Exception and the petition for Special
Hearing. Our office did not appear in the Circuit Court of
Baltimore County appeal case filed by certain appellants
represented by Michael P. Tanczyn and on April 16, 1990 I
advised both of the legal owners, Ms. Julia R. Blacklock and
Mr. Charles Pearce, personal representative of the Estate of
Edith Pearce that our office would not be taking any further
action in regard to the pending appeal.

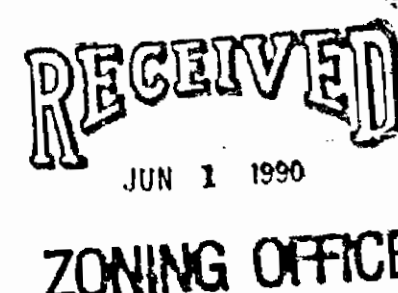
Therefore, I thought that your office and the Zoning
Commissioner's office should be apprised of H & H Realty's
intention with regard to this matter.

Very truly yours,

Stephen J. Nolan
Stephen J. Nolan

SJN/mks

cc: Ms. Julia Blacklock
T. Bayard Williams, Esquire
Mr. Charles Pearce, Personal Representative to the
Estate of Edith Pearce
Jerome Lambdin, Esquire
Mr. Charles E. Hare
Mr. James R. Hatfield
The Honorable J. Robert Haines, Zoning Commissioner for
Baltimore County
Michael P. Tanczyn, Esquire



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

HEARING ROOM -
Room 301, County Office Bldg.

December 7, 1989

REVISED NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT
REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND
IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS
WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING
DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL
BILL NO. 59-79.

CASE NO. 88-508-SPHX EDITH PEARCE, ET AL
NE/s Harford Rd., 100' NE
of c/l of Cub Hill Road
(10105 Harford Road)
11th Election District
6th Councilmanic District

SPH -To permit a Use Permit to park commercial
vehicles in a residential zone (D.R.3.5)

SE -For service garage and sales

11/30/88 - Z.C.'s Order -SPH-DENIED; SE-GRANTED w/restrictions

which is scheduled for a third day on December 13, 1989 at 9:00 a.m. with the agreement
of Counsel has been set for a fourth day on Wednesday, January 24, 1990 at 9:00 a.m.

ASSIGNED FOR: WEDNESDAY, DECEMBER 13, 1989 at 9:00 a.m. and WEDNESDAY, JANUARY 24, 1990 at
9:00 a.m.

cc: Ms. Edith Pearce Appellant/Petitioner
Ms. Julia Blacklock " "
Stephen J. Nolan, Esquire Counsel for Appellants/Petitioners
Michael P. Tanczyn, Esquire Counsel for Protestants
Mr. Charles E. Hare
Mr. James R. Hatfield
Mr. Paul Lee
Mr. Charles Pearce
Mr. Howard W. Chamberg
Mr. Tom Kimmel
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
✓Docket Clerk - Zoning
Arnold Jablon, County Attorney

Linda Lee M. Kusznau
Legal Secretary



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

HEARING ROOM - Room 301
County Office Building

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT
REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND
IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS
WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING
DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL
BILL NO. 59-79.

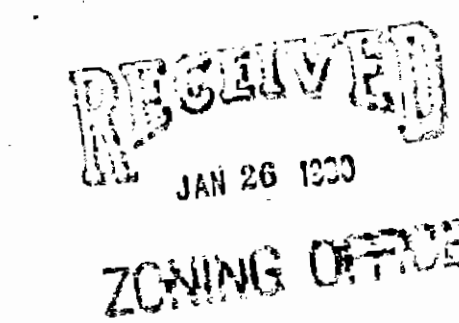
CASE NO. 88-508-SPHX
(cont'd from 1/24/90)

EDITH PEARCE, ET AL
NE/s Harford Rd., 100' NE of c/l of Cub Hill Road
(10105 Harford Road)
11th Election District
6th Councilmanic District
SPH -To permit parking of commercial vehicles
in residential zone
SE -For service garage and sales
11/30/88 -Z.C.'s Order in which special hearing
DENIED; special exception GRANTED w/restrictions

This matter has been set in for a brief hearing at 8:30 a.m. on Wednesday
January 31, 1990 for the purpose of the taking of testimony of Mr. Russell
McClelland; and has

ASSIGNED FOR: WEDNESDAY, JANUARY 31, 1990 at 8:30 a.m.

cc: Stephen J. Nolan, Esquire Counsel for Appellants /Petitioners
Edith Pearce, et al Appellants /Petitioners
c/o Charles Pearce
Ms. Julia Blacklock
Michael P. Tanczyn, Esquire Counsel for Protestants
Mr. Charles E. Hare
Mr. James R. Hatfield
Mr. Paul Lee
Mr. Charles Pearce
Mr. Howard W. Chamberg
Mr. Tom Kimmel
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk -Zoning
Arnold Jablon, County Attorney
Mr. Russell McClelland



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

HEARING ROOM -
Room 301, County Office Building
June 14, 1989

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 88-508-SPHX
Day #2 and #3

EDITH PEARCE, ET AL
NE/s Harford Road, 100' NE
of c/l of Cub Hill Road
(10105 Harford Road)
11th Election District
6th Councilmanic District

SPH -To permit a Use Permit to park commercial vehicles in a residential zone (D.R.3.5)
SE -For service garage and sales

11/30/88 - Z.C.'s Order -SPH-DENIED,
SE-GRANTED w/restrictions

ASSIGNED FOR: WEDNESDAY, DECEMBER 6, 1989 at 10:00 a.m. and WEDNESDAY, DECEMBER 13, 1989 at 10:00 a.m.

cc: Ms. Edith Pearce Appellant/Petitioner
Ms. Julia Blacklock " "
Michael B. Sauer, Esquire Counsel for Appellants/Petitioners
Mr. Charles E. Hare " "
Mr. James R. Hatfield " "
Mr. Paul Lee " "
Mr. Charles Pearce " "
Mr. Howard W. Chamberg " "
Michael P. Tanczyn, Esquire " "
People's Counsel for Baltimore County " "
Mr. Tom Kimmel " "
P. David Fields " "
Pat Keller " "
J. Robert Haines " "
Ann M. Nastarowicz " "
James E. Dyer " "
Docket Clerk -Zoning " "
Arnold Jablon, County Attorney " "

Lindalee M. Kuszmaul
Legal Secretary

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

HEARING ROOM -
Room 301, County Office Building
March 21, 1989

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 88-508-SPHX
Day #2 and #3

EDITH PEARCE, ET AL
NE/s Harford Road, 100' NE
of C/L of Cub Hill Road
(10105 Harford Road)
11th Election District
6th Councilmanic District

SPH -To permit a Use Permit to park commercial vehicles in a residential zone (D.R.3.5)
SE - For service garage and sales

11/30/88 -Z.C.'s Order -SPH-DENIED,
SE-GRANTED w/restrictions

ASSIGNED FOR: FRIDAY, JUNE 9, 1989 at 10:00 a.m.

cc: Ms. Edith Pearce Appellant/Petitioner
Ms. Julia Blacklock " "
Michael B. Sauer, Esquire Counsel for Appellants/Petitioners
Mr. Charles E. Hare " "
Mr. James R. Hatfield " "
Mr. Paul Lee " "
Mr. Charles Pearce " "
Mr. Howard W. Chamberg " "
Michael P. Tanczyn, Esquire " "
People's Counsel for Baltimore County " "
Mr. Tom Kimmel " "
P. David Fields " "
Pat Keller " "
J. Robert Haines " "
Ann M. Nastarowicz " "
James E. Dyer " "
Docket Clerk -Zoning " "
Arnold Jablon, County Attorney " "

Lindalee M. Kuszmaul
Legal Secretary

MICHAEL B. SAUER
ATTORNEY AT LAW

SUITE 802, EQUITABLE TOWSON BUILDING, TOWSON, MD. 21204
(301) 296-2154
July 25, 1988

HAND-DELIVERED

J. Robert Haines
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204

Re: Petition For Special Exception and Special Hearing
Case No.: 88-508-SPHX

Dear Commissioner Haines:

Enclosed please find Memorandum In Support Of Petition For Special Exception And Special Hearing.

Very truly yours,
MICHAEL B. SAUER

MBS/kms
Enclosure

cc: Michael P. Tanczyn, Esq.
Stephen J. Rosasco, Esq.

RECEIVED
JUL 26 1988
ZONING OFFICE

Law Offices
Michael P. Tanczyn, P.A.
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(301) 298-8823
(301) 298-8824

July 22, 1988

Baltimore County Zoning Commissioner
111 West Chesapeake Avenue
Baltimore, MD 21204

RECEIVED ZONING OFFICE
DATE: 7/22/88

Re: Case No. 88-508-SPHX

Dear Sir:

Enclosed herewith please find Protestants' Memorandum in the above captioned matter.

Very truly yours,
Michael P. Tanczyn

MPT/ed
Enclosure

cc: Michael B. Sauer, Esq.
Stephen J. Rosasco, Esq.
Northwinds Homeowners Association, Inc.

Dictated but not read

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

APPEAL HEARINGS SCHEDULED FOR THE
WEEK OF DECEMBER 4, 1989

TUESDAY 12/5/89 10:00 a.m.
#R-89-461
RECLASSIFICATION
HEARING ROOM - Room 301
County Office Bldg.

ROSE SHANEBROOK, 443' NW c/l Sunnyside Lane & 280' NE c/l Orens Road
15th Election District
6th Councilmanic District
MLR -I.M. to D.R.5.5

WEDNESDAY 12/6/89 10:00 a.m.
#88-508-SPHX
Day #2 (Cont'd. from 6/9/89)
HEARING ROOM - Room 301
County Office Bldg.

EDITH PEARCE, ET AL, NE/s Harford Rd., 100' NE c/l Cub Hill Rd. (10105 Harford Rd.)
11th Election District
6th Councilmanic District
SPH -parking commercial autos in residential zone
SE -service station

THURSDAY 12/7/89 10:00 a.m.
#CBA-89-137
and
#CBA-89-145
HEARING ROOM -
* COUNTY COUNCIL CHAMBERS *
Second Floor, Old Courthouse

MINE BANK LANE, N/s Mine Bank Lane
Baltimore, Maryland 21227
MINE BANK LANE (104 & 106 Mine Bank Lane)
13th Election District
RE: Denial of request for variation of standards
RE: Denial of permits per #CBA-89-137 and

cc: Executive Office
County Council
Law Office
People's Counsel
Planning Office
Current Planning
Board Members
Court Reporter
Information Desks (2)
Docket Clerk - Zoning

RECEIVED
ZONING OFFICE

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

April 4, 1990

Stephen J. Nolan, Esquire
NOLAN, FLUMHOFF & WILLIAMS, CHTD.
Suite 700, Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204

RE: Case No. 88-508-SPHX/
CCL Case No. 90-CG-1248
Edith Pearce, et al

Dear Mr. Nolan:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,
Kathleen C. Weidenhammer
Administrative Assistant

Encl.

cc: Mr. Charles Pearce
Mr. Charles E. Hare
Mr. James R. Hatfield
Mr. Paul Lee
Mr. Howard W. Chamberg
Ms. Julia Blacklock
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk -Zoning
Arnold Jablon, County Attorney

IN THE MATTER
OF THE TRUST
ESTATE OF
EDITH D. PEARCE

IN THE CIRCUIT
FOR BALTIMORE COUNTY
IN EQUITY
Docket 3
Folio 49
Case No. 1449

ORDER OF COURT

Upon the foregoing Petition, it is Ordered this 7 day of November, 1984 that Charles Joseph Pearce be and he is hereby appointed Guardian of the Person and Property of Edith D. Pearce, a Disabled Person; with full power and authority to care for and manage and protect the estate of said disabled person, in accordance with the provisions of the Annotated Code of Maryland and Maryland Rule V77, without enlargement or limitation; but before the said Guardian shall proceed to act as such he shall give a corporate bond to the State of Maryland in the penalty of Thirty Thousand (\$30,000.00) Dollars, with a surety or sureties to be approved by this Court or the Clerk thereof, for the faithful discharge of his duties as such Guardian, the penalty of said Bond, being subject to further Order of Court.

W. P. Sullivan
JUDGE

Very Copy Test
PETITIONER'S
EXHIBIT 1

This is to advise the Zoning Commissioner for Baltimore County in Case No.: 88-508-SPHX, scheduled for a hearing on June 23, 1988, that the legal owners of 10105 Harford Road, Baltimore County, Maryland, on the site plan filed in the above zoning proceedings consent to and join in the filing of the Petition For Special Exception and the Petition For Special Hearing in the above matter and agree to be bound by any zoning regulations and restrictions of Baltimore County, which may be adopted or imposed, pursuant to the Zoning Laws for Baltimore County.

Charles Joseph Pearce
CHARLES JOSEPH PEARCE,
LEGAL GUARDIAN OF EDITH D. PEARCE

Julia Blacklock
JULIA BLACKLOCK

PETITIONER'S
EXHIBIT 2

NORTHWINDS HOMEOWNERS ASSOCIATION, INC.

The Northwinds Homeowners Association, Inc. (Association) declares that the following individuals hold the below listed offices and positions in the Association:

President
Vice President
Secretary/Treasurer
Board of Directors
Zoning Committee Chairman

Stephen J. Rosasco
Fran Marchese
Helene S. Pokrywka
Stephen J. Rosasco
C. John Klein
Walter W. Pleines
Joanne Smith
Jeffrey W. Sauers

Stephen J. Rosasco 6/22/88

Helene S. Pokrywka 6/22/88

PROTESTANT'S
EXHIBIT 5

NORTHWINDS HOMEOWNERS ASSOCIATION REPRESENTATIVES

The Northwinds Homeowners Association, Inc. (Association), hereby represents that the following individuals are authorized to speak on behalf of the Association:

Stephen J. Rosasco
Fran Marchese
Helene S. Pokrywka
C. John Klein
Jeffrey W. Sauers
Nancy Wortman
Walter W. Pleines
Joanne Smith

Stephen J. Rosasco 6/22/88
Stephen J. Rosasco, President

Helene S. Pokrywka 6/22/88
Helene S. Pokrywka
Secretary/Treasurer

PROTESTANT'S
EXHIBIT 6

NORTHWINDS HOMEOWNERS ASSOCIATION, INC.

Resolution

On June 21, 1988 the Board of Directors and Officers of the Northwinds Homeowners Association, Inc. passed a resolution to oppose the erection of an automobile repair and body shop and Special Use Permit so outlined in Case No. 88-508-SPHX.

Stephen J. Rosasco 6/22/88
Stephen J. Rosasco, President

Helene S. Pokrywka 6/22/88
Helene S. Pokrywka
Secretary/Treasurer

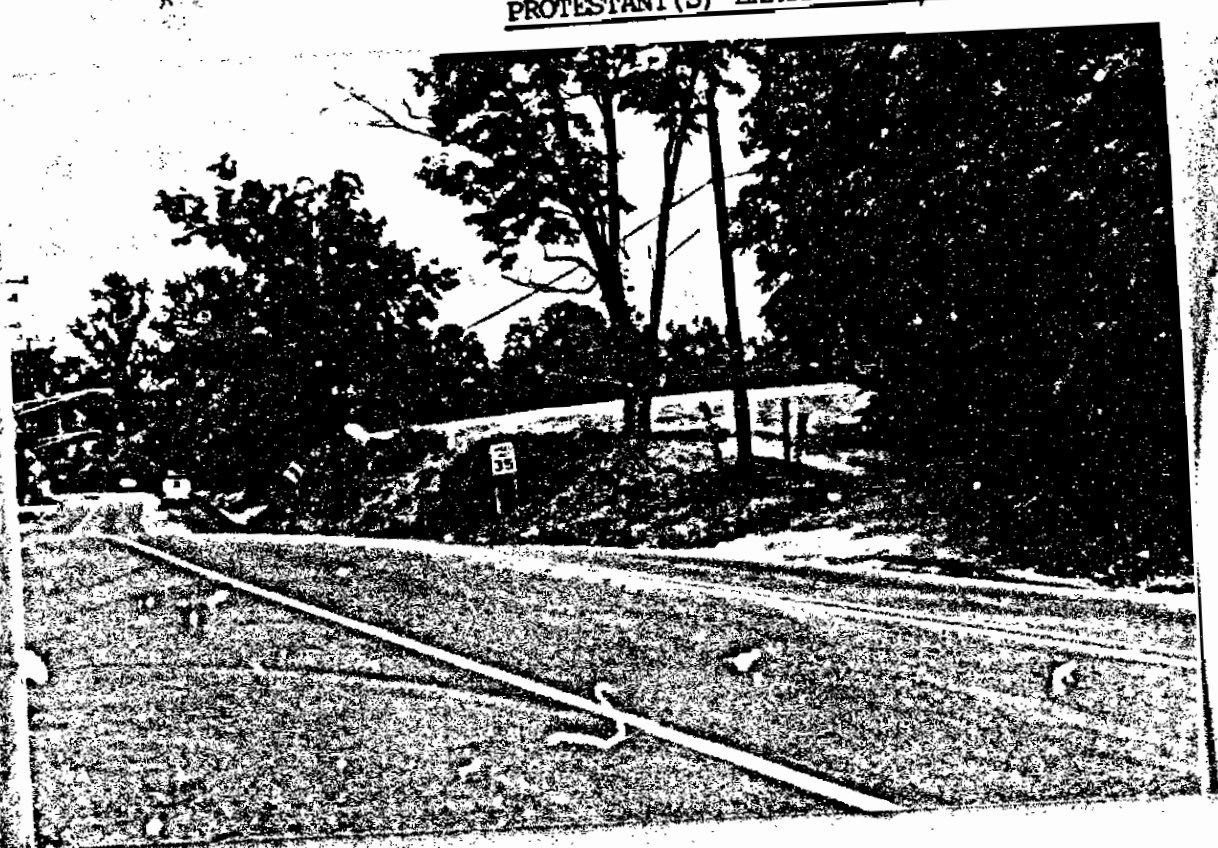
PROTESTANT'S
EXHIBIT 7

The below listed homeowners of the NORTHWINDS COMMUNITY OPPOSE the zoning change outline in case No. 88-508-SPHX to be heard on Thursday, June 23, 1988 at 10:00 AM:

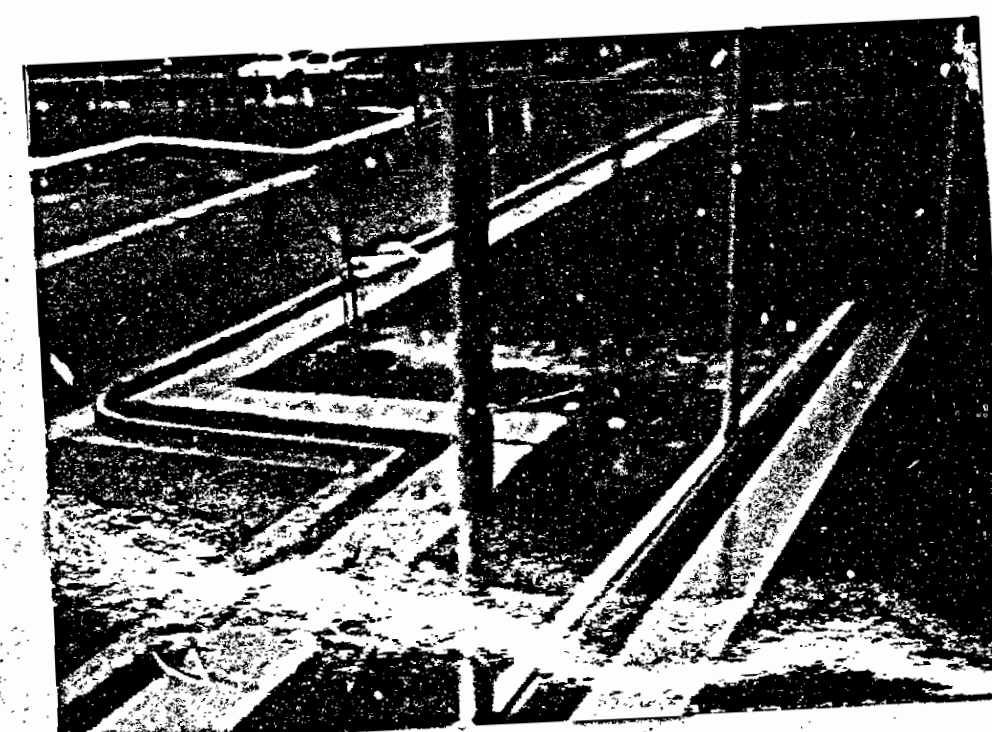
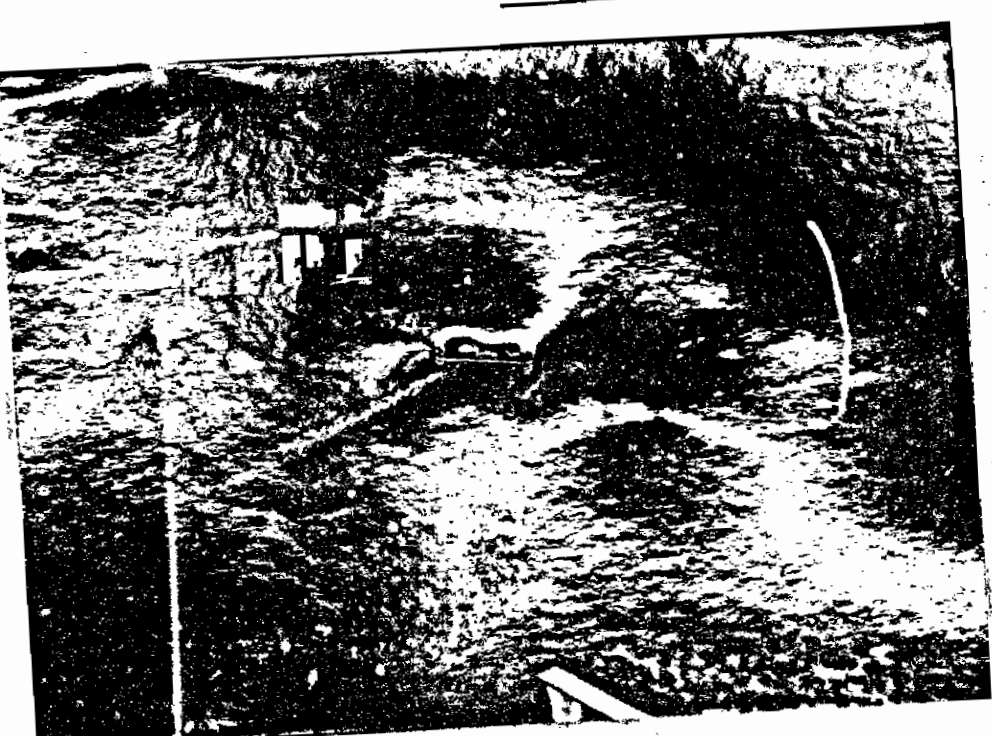
Name	Address
<i>Stephen J. Rosasco</i>	<i>3012 N. Branch Lane</i>
<i>Helene S. Pokrywka</i>	<i>3012 N. Branch Lane</i>
<i>Bob Engles</i>	<i>3009 North Branch Ln.</i>
<i>John A. Motin</i>	<i>3010 North Branch Ln</i>
<i>Joanne Smith</i>	<i>3010 North Branch Ln</i>

PROTESTANT'S
EXHIBIT 8

PROTESTANT(S) EXHIBIT (14)

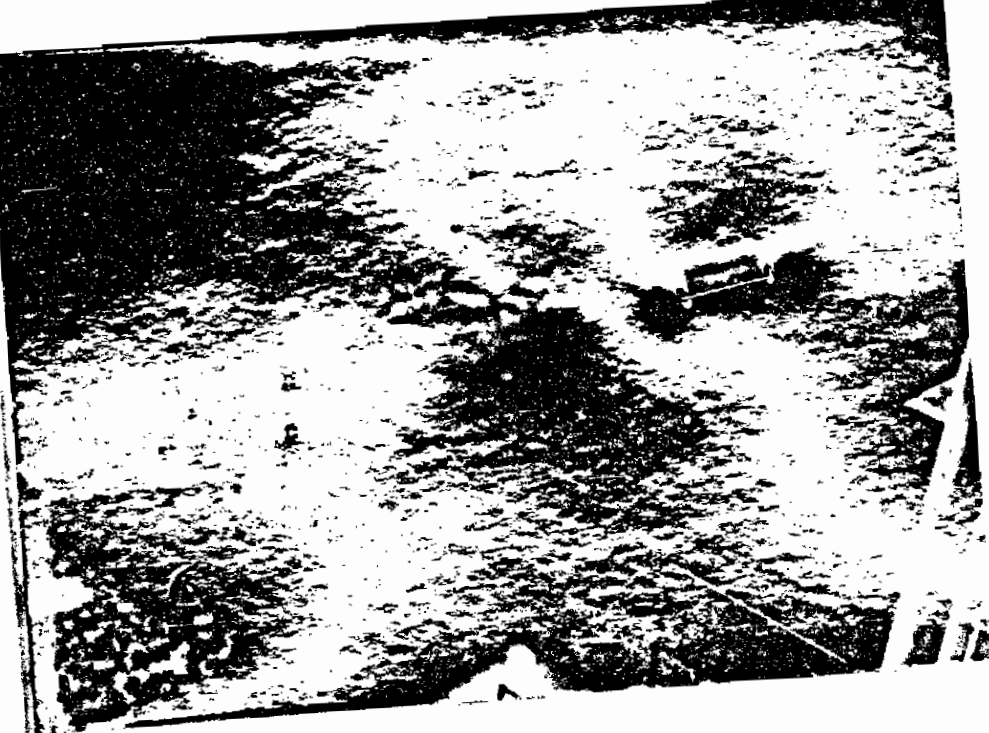


PROTESTANT(S) EXHIBIT (16)



PROTESTANT(S) EXHIBIT (16)

Pictures from Cheryl Dougherty



PROTESTANT(S) EXHIBIT (17)

RESUME
MARK P. SCHLEHR
REAL ESTATE APPRAISER

APPRAISAL EXPERIENCE:

1975 - 1977 Staff Appraiser for Vermont Federal Savings & Loan Assoc.
1977 - 1982 Staff Appraiser for J. E. Fish and Associates. Worked under the direction of John E. Fish, Jr., SRA
1982 - 1983 Self-employed real estate appraiser covering Harford, Cecil, Carroll, Baltimore, Anne Arundel, Howard, Calvert, St. Mary's, Charles, Prince George's, and Montgomery Counties as well as Baltimore City.
1983 - 1985 Senior Staff Appraiser for Record Data of Maryland, Inc. Responsible for the supervision of all company appraisal operations in Maryland, Delaware, Washington, D.C., and Northern Virginia. Duties also included appraisal field work, implementation of appraisal policies, and the conducting of seminars for clients and fee appraisers.
1985 - 1988 President of Appraisal Group Ltd., a company engaged in the appraisal of residential real estate covering Baltimore City, Baltimore County, Harford County, Carroll County, Howard County, and Anne Arundel County.
1988 - Present President of Schlehr Appraisal Company, specializing in the appraisal of residential real estate in Anne Arundel County, Baltimore County, Baltimore City, Carroll County, Cecil County, Harford County, Howard County and portions of Southern Pennsylvania.

APPRAISAL EDUCATION:

Courses & Exams Passed --
Course 101 "An Introduction to Appraising Real Property" (SREA); Course 102 "Applied Residential Property Valuation" (SREA); Exam 8-2 "Residential Valuation" (American Institute of Real Estate Appraisers); Exam 8-1 "Real Estate Appraisal Principles" (American Institute of Real Estate Appraisers); "Principles of Real Estate" (Harford Community College); "Real Estate Appraisal and Development" (Towson State University); "Basic Real Estate" (Towson State University); "Principles of Construction" (Md. Savings and Loan League); "Housing Load Calculations" (SREA); Course 8-3 "Standards of Professional Practice" (American Institute of Real Estate Appraisers).